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Title: FEDERAL REGISTER.

Volume: 67

Issues: 50 - 60
PAGES: 11383-15094

Date: MARCH 14 - 28, 2002

UMI Number: 2575.00

Notes:

REEL NO: 4 OF 13



Bell & Howell Information and Learning Company
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Federal Register

3–14–02 Thursday
Vol. 67 No. 50 Mar. 14, 2002

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Federal Register

3–14–02 Thursday
Vol. 67 No. 50 Mar. 14, 2002
Pages 11383–11554

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–01–07]

Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the hourly fee rate charged for voluntary Federal seed testing and certification services and establishing a fee for issuing preliminary test reports. The fee rate is increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs. A new fee is established to recover the cost of providing preliminary test reports.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC–East, Beltsville, Maryland 20725–2325; Telephone: (301) 504–9430, Fax: (301) 504–8098; e-mail: *Richard.Payne2@usda.gov*.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule has been received by the Office of Management and Budget and has been determined to be not significant for purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It has determined that its provisions will not have a significant economic impact on a substantial number of small entities.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Over ninety-five percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the USDA's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $137,000, costs are projected at $172,000, and the trust fund balance is projected to be $47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $174,000, and the trust fund balance is projected to be $68,000 or 4.69 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees in 2001 and 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

The AMS estimates that this rule will yield an additional $22,000 during FY 2002. The hourly rate for seed testing and certification services will increase by approximately 17 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $13.00 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.90 for each duplicate certificate issued. In addition, this action will establish a fee of $13.00 to recover the cost of issuing preliminary test reports.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Background and Changes

The USDA is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective March 1, 2001,

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revealed that anticipated revenue will not cover increased program costs. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at $137,000, costs are projected at $172,000, and the trust fund balance is projected to be $47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at $160,000, costs are projected at $174,000, and the trust fund balance is projected to be $68,000 or 4.69 months of operating reserve.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated revenue hours of service provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include the salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 75 percent of the total budget. A general and locality salary increase of 3.81 percent for 2001 and 4.77 percent for 2002 for Federal employees involved in the seed testing and certification service became effective in January 2002 and will affect program costs.

This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is increasing the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $44.40 to $52.00. The fee for issuing additional duplicate certificates is increasing from $11.10 to $13.00 and a fee of $13.00 is established for issuing preliminary reports.

This action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $13.00 per Federal Seed Analysis Certificate and $1.90 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $22,000 annually.

Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (66 FR 53550) on October 23, 2001. No comments were received.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 75 is amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, "$44.40" is removed and "$52.00" is added in its place.

3. In § 75.43, a new paragraph (c) is added to read as follows:

§ 75.43 Laboratory testing

* * * * *

(c) The charge for a preliminary report issued prior to completion of testing shall be $13.00 and billed in accordance with paragraph (a) of this section.

§ 75.47 [Amended]

4. In § 75.47, "$11.10" is removed and "$13.00" is added in its place.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6142 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 81

[Docket No. FV01–81–01 FR]

RIN 0581–AC03

Regulations Governing the California Prune/Plum (Tree Removal) Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for a California Prune/Plum Diversion Program. The program is voluntary and consists wholly of tree removal. The program is being implemented under clause (3) of Section 32 of the Act of August 24, 1935, as amended. The program will help the California dried plum industry address its severe oversupply problems. The tree removal is expected to bring supplies into closer balance with market needs, and provide some relief to growers faced with excess supplies and acreage, and low prices.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, D.C. 20250–0237; Telephone: 202–720–2491; Fax: 202–720–8938; or E-mail: *Ronald.Cioffi@usda.gov.*

Small businesses may request information on the diversion program by contacting Jay Guerber at the above address, telephone, fax, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB).

This final rule is effective January 2, 2002, to reflect the beginning of the application period specified in the proposed rule. Prompt notification of growers concerning their participation in the program and prompt tree removal are needed for the industry to achieve the expected program goals.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the AMS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions generated by this final rule were approved by the Office of Management and Budget (OMB). The Agricultural Marketing Service received emergency approval under OMB No. 0581–0201, California Prune/Plum Tree Removal Program—Section 32 (as amended 7 U.S.C. 612c). The emergency approval expires May 31, 2002. A regular submission will be sent to OMB requesting approval for three years.

Two forms are needed for the administration of the tree removal program. Growers wishing to participate in the program submitted an "Application for Prune Tree Removal Program" (FV–298). The proposed rule estimated that about 200 growers would submit applications. The application period ended January 31, 2002, and a total of 481 program applications have been submitted. It is estimated that each form took about 30 minutes to complete. Thus, the total burden for filing grower applications has increased from 100 to 240.5 hours. A total of 10 hours has been added to cover the recordkeeping burden on growers. Thus, the total burden hours for the program will be 250.5 hours. After removing their trees, growers will then have to sign a statement (FV–299) stating they wish payment. No additional burden has been estimated for this second form which would require only a signature. Finally, participants will be required to retain records pertaining to the tree removal program for two years after the year of removal.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Authority for Tree Removal Program

The program is intended to reestablish prune/plum farmers' purchasing power. Programs to reestablish farmers' purchasing power are authorized by clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) ("Section 32"). This clause of Section 32 authorizes USDA to "* * * reestablish farmers" purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption." Section 32 also authorizes USDA to use Section 32 funds "* * * at such times, and in such manner, and in such amounts, as USDA finds will effectuate substantial accomplishments of any one or more of the purposes of this section." Furthermore, "Determinations by USDA as to what constitutes * * * normal production for domestic consumption shall be final."

Need for the Tree Removal Program

Production of prune/plums for marketing as dried plums is concentrated in California. Production of dried plums during the 2000 season increased for the second consecutive year, to nearly 219,000 tons (natural condition).

Changes in growing conditions have substantially altered the production outlook for 2001. Production was originally estimated to be 220,000 tons. However, due to a lighter crop-set in major producing areas, as well as freezing temperatures and hail, production for the 2001 crop year is now expected to range between 140,000 and 155,000 tons. This smaller crop somewhat alleviates the oversupply situation, but does not represent a change in the longer-term oversupply situation.

When the crop was estimated at 220,000 tons in the spring of 2001, the industry discussed the use of volume control authorized under the Federal marketing order. In addition, carryin inventories from the 2000 crop year were reported at 100,829 tons. With this level of inventories and crop, the total available supply would have been 320,829 tons.

With this estimated crop size, establishing a 48 percent reserve (52 percent free tonnage) was discussed. The industry does not have a history of establishing reserve percentages, and reserve percentages were last used in the 1970's. The fact that the marketing order committee even considered use of the reserve provisions indicates the gravity with which the industry views the oversupply problem. The use of marketing order reserve provisions is intended to help industries deal with surplus production and facilitate orderly marketing of their crops.

The Prune Bargaining Association (PBA) represents about 40 percent of the independent growers and negotiates a selling price for its members. With the large anticipated crop for the 2001 season and the large carryin inventory, the PBA had difficulty establishing a price with handlers. Even with the smaller crop of 155,000 tons, the PBA could only negotiate a price of $763 per ton. This compares to $845 for the 2000 season, or a decrease of 9.7 percent. Although the price has been set, not all handlers have signed the agreement. Even this lower price may be too high in the eyes of the non-signing handlers, given current supply conditions.

The smaller crop size for 2001 has provided the industry some relief in reducing total available supplies. However, there are still a large number of nonbearing acres (15,000) that will become productive over the next six years. In addition, there are many acres with older, less productive trees which could be replanted in the near future. A tree removal program will assist growers who are facing difficult replanting decisions by allowing them to receive funds for the removal of trees and, at the same time, prohibit those growers from replanting prune/plums in those orchards. Prune/plum growers also tend to be producers of almonds, walnuts, and cling peaches. Plantings of these crops could increase in future years as growers remove prune/plum acreage.

Bearing acreage expanded to a record 86,000 acres during the 2000 season and the average yield increased 19 percent. Yields are anticipated to increase further as more densely planted acres

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become productive over the next several years.

Nonbearing acreage, which is an indicator of future production levels, increased to an all-time high of 26,000 acres in 1998. This represented a 22-percent increase in the productive capacity of the industry. The non-bearing acres are more densely planted than in previous years which results in a higher yield per acre.

The dried plum industry faces a long-run surplus situation. For the 2000 crop year, bearing acres were 86,000 and non-bearing acres were 15,000. Bearing acres could exceed 100,000 in the near future. With yields in excess of 2.0 tons per acre, production could be expected to be above 200,000 tons in many crop years.

Total domestic shipments exceeded 100,000 tons for six seasons in the late 1980's and early 1990's, but have declined from a high of 108,085 processed tons in 1996. Per capita consumption has been steadily declining since 1980. Export shipments have been stagnant. As a result of these domestic and export trends, total shipments have never exceeded 190,000 processed tons.

Until recently, export shipments were a source of growth in the dried plum industry. In 2000, exports represented 47 percent of total shipments. However, the strong dollar and the downturn in the economies in Asia and Europe have significantly slowed export sales.

Due to the significant supply-demand imbalance, the industry anticipates several years in which the expected annual carryin inventories will exceed the industry's desirable carryin level of approximately 40,000 tons. If dried plum markets continue to be over-supplied with product, grower prices and grower relations with packers will deteriorate significantly. Even with the lower production estimate for the 2001 crop year, the carryout inventory is expected to exceed 76,000 tons.

High prices from 1992 through 1995, and a more balanced supply and demand situation, helped to stimulate investments in new acreage. This additional acreage came from a variety of sources, mainly rice and pasture land. Intensifying the anticipated surplus situation is the fact that new acres are more productive than existing acres, which causes output to grow more rapidly in proportion to acreage growth.

It takes dried plum trees 6 years to become fully productive. Many of the costs of producing plum trees are "sunk," making it difficult to reverse decisions once those acres are planted. Because supply is slow to adjust to changing market conditions, the industry anticipates many years of production outpacing demand, resulting in continued distressed grower conditions.

From 1980 through 2000, the total cost per ton of producing dried plums exceeded the growers' season-average prices. Similarly, the total cost per acre exceeded revenue per acre.

However, it is also important to consider variable cost. In recent years, the total revenue per ton and per acre has been greater than the total variable cost per ton and per acre. Prices and revenues greater than variable costs provide some indication of why a dried plum producer continues to harvest and process a crop despite losing money.

Tree Removal Diversion Program

The industry is requesting a voluntary tree removal program estimated to cost $17 million. The industry would like to remove a minimum of 20,000 bearing acres of prune/plum trees. With many of the current bearing acres reaching the age where replanting would be considered, the industry is trying to provide an incentive to growers to remove older trees, while ensuring that those orchards are not replanted with prune/plum trees.

To be eligible for the tree removal program, orchards must have a minimum yield of 1.5 tons of dried prune/plums per net-planted acre. With a minimum threshold yield of 1.5 tons of dried prune/plums per net-planted acre, sufficient land would be enrolled in the tree removal program to reduce annual production by approximately 30,000 tons. A net-planted acre is the actual acreage planted with prune/plum trees.

The industry has estimated that it will take $8 to $9 per tree to induce growers to participate in such a program. It is believed that financial institutions that provide growers operating funds would not allow them to participate if the payment per tree is below this level.

This type of one-time decrease in production would more closely align supply with demand, while assuring an adequate supply. This would allow the industry to concentrate their efforts on rebuilding demand for future years.

The industry has already undertaken a smaller-scale tree removal program. However, to finance this grower-initiated tree pull program, grower assessments for promotion were reduced from $50 per ton to $30 per ton. Less money is available for promotion, but growers felt that this re-direction of funds was necessary to help address the oversupply situation.

The tree removal program would be administered through the Agricultural Marketing Service (AMS) and the Prune Marketing Committee (Committee). The Committee is an administrative agency appointed by AMS to locally administer the terms of Federal Marketing Order No. 993.

Any prune/plum producer wishing to participate in the program filed an application with the Committee. The application period began January 2, and ended January 31, 2002.

Each applicant provided information needed by the Committee to operate the program. This included, for example, the number of trees the applicant wished to remove and their location. The applicant also will have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed for commercial purposes (*e.g.*, shopping centers, housing developments, resorts, etc.). Applicants should note that under the regulations, they bear responsibility for ensuring that prune/plum trees are not replanted, whether by themselves or by successors to the land, until after June 30, 2004, and that if they fail to prevent such replanting, they must refund any USDA payment, with interest, made in connection with the tree removal program. The Committee will review each application for completeness, and make reasonable efforts to contact growers to obtain any missing information.

In order to be eligible to participate in the program, the orchards or blocks of trees being removed from production would have to have a minimum yield of 1.5 dried tons per net-planted acre during either the 1999 or 2000 crop years. A net-planted acre is the actual acreage planted with prune/plum trees. This means that abandoned orchards will not be eligible for participation. USDA considered establishing the minimum qualifying yield at 2.2 tons per acre, but determined that at that level, too many orchards would be ineligible for the program. A lower yield would not reduce production as much as the industry desires.

USDA has allocated $17 million for this program, including administrative costs. Applications would be approved until the level of available funding was reached. Each participating grower will have to then remove trees from production by June 30, 2002. Growers will be paid $8.50 for each eligible tree removed. This level of payment is deemed necessary for a significant number of growers to participate in the tree-removal program. It would cover most of the costs of removing the trees (bulldozing, cutting, etc.), and preparing the land for other uses. The costs vary depending on the number of acres removed. Some cost savings may accrue with larger acreage removals.

Estimated costs for removing, piling, chipping, or other disposal methods range from $142–$225 per acre or from $1.29–$2.05 per tree. Costs for removing the roots and other debris are expected to range from $163–$289 per acre or from $1.48–$2.63 per tree. Leveling of the ground is expected to cost $161–$401 per acre or $1.46–$3.65 per tree. Fumigation of the tree holes is expected to cost $550 per acre or $5.00 per tree. This would amount to $9.23–$13.33 for each tree removed. The $8.50 payment under the program is expected to offset most of the grower's costs, but should be sufficient to encourage growers to participate in the program.

Each grower participating in the program will have to agree not to replant prune/plum trees on land cleared under this program through June 30, 2004. Because it takes new acres at least six years to be productive, acreage participating in the tree-removal program would not return to commercial prune/plum production for at least eight years and possibly nine years because plantings occur in January and February. Alternative crops could be planted. Additionally, the current economic conditions in the industry, specifically weak demand, reduced per capita consumption, stagnant domestic shipments and exports, and declining grower prices and revenues, would appear to limit the incentives for replanting acreage to prune/plum trees.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 1,250 producers of dried plums in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000. An estimated 32 producers, or less than 13 percent of the 1,250 total producers, would be considered large producers with annual incomes over $750,000.

This final rule establishes a tree removal diversion program for California dried prune/plums. Authority for the program is provided in clause (3) of Section 32 of the act of August 24, 1935, as amended.

Participation in the diversion program is strictly voluntary, so individual producers, both small and large, can weigh the benefits and costs for their own operations before deciding whether to participate in the program.

Economic Assessment of the Tree Removal Diversion Program

To assess the impact a tree removal program would have on prices growers receive for their product, impacts on grower prices and inventories with a tree removal program and without a tree removal program were estimated. An econometric model was developed for the purpose of estimating nominal season average grower prices under both scenarios.

A tree removal program will directly reduce the number of bearing acres, but there will not be an impact until the 2002 crop year since harvesting of the 2001 crop is completed.

In 2000, there were still 15,000 non-bearing acres. The industry has indicated that no additional plantings of prune/plum trees for acreage expansion are occurring at this time. Therefore, after the 15,000 non-bearing acres come into production, the productive capacity of the industry is assumed to stay constant.

The tree removal analysis assumes that 20,000 acres are removed through the tree removal program, while 3,000 of the non-bearing acres become productive in 2002. This results in bearing acres being reduced from 86,000 in 2001 to 69,000 in 2002. Bearing acres increase by 3,000 acres in each of the subsequent years until 2007, rising to 72,000 in 2003, 75,000 in 2004, 78,000 in 2005, and 81,000 in 2006 and 2007.

At the time the analysis was performed, production for the 2001 crop year was estimated by the Department's National Agricultural Statistics Service (NASS) at 155,000 natural condition tons. Marketable production is generally 93 percent of total production, yielding an estimated 144,500 marketable tons for 2001. Carryin inventory for the 2001 crop year was computed by the marketing order committee at 100,829 tons as of June 30, 2001. These figures are used to derive an estimated total available supply of 244,979 tons for 2001. This level of supply accounts for the fact that a number of voluntary measures have been taken by the industry to reduce the level of production for the 2001 crop year, including crop abandonment and cutbacks on cultural practices.

Shipments are estimated to grow by 1 percent annually, which results in estimated total shipments of 165,932 tons for 2001. The one percent growth in shipments reflects decreased government surplus purchases and possible retail price effects.

For 2002, total shipments are estimated at 167,591 tons and the carryin inventory is estimated at 79,047 tons. With the tree removal diversion program reducing bearing acres to 69,000 for the 2002 crop year, total available supply is estimated at 257,440 tons. It should be noted that through 2001, carryin inventory does not exactly match the prior year's difference between total available supply and total shipments. This is due to shrinkage and other minor adjustments computed by the Federal marketing order committee. However, for this analysis, the estimated carryin from 2002 to 2007 is estimated to be the exact difference between estimated total supply and estimated shipments from the prior year.

The analysis also assumes that yields will fluctuate up and down, in keeping with the known "alternate bearing" tendency of prune/plum trees. Estimated production, computed by multiplying acreage times yield, fluctuates accordingly.

As carryin inventories are reduced, the total available supply moderates for crop years 2003 through 2007, relative to the situation without a tree removal program. This results in season average grower prices ranging from $845 to $1,084 during that same time span. It should be noted that the margin of error for these estimates becomes very large for future crop years.

Even though season-average grower prices per ton rise under the tree removal program, all product produced is not necessarily of marketable quantity. Costs are incurred on all the production, but revenue is received only on product actually marketed. Thus, the economic effect of the tree removal program on a per acre basis is to dramatically reduce losses and bring producer returns closer to a break-even level. With losses still being incurred by producers, there should be only a limited incentive to further expand production as a result of the tree removal program. It will remain for growers to control costs and to expand demand to ensure their longer-term economic stability.

Grower prices are a small component of the finished dried plum product and are not closely associated with movements in retail prices. However, the increases in grower prices estimated for crop years 2003 through 2007 may have an impact on retail prices. The extent of any retail price increases would depend on processor and retailer

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margins and the pricing and availability of substitute products, such as raisins or other dried fruits. It should be noted that dried plum prices are estimated to increase with or without a tree removal program, but the magnitude of the grower price increase is greater with the program.

Without a tree removal program, bearing acres are estimated to increase to 89,000 by the 2002 crop year. Production would be in excess of 200,000 tons, resulting in carryout inventories in excess of 100,000 tons in 2002. In addition, under this scenario, 2002 grower prices are estimated at $789 per ton. With high inventories and low grower prices, market forces are assumed to induce growers to remove less productive acres and the number of bearing acres is estimated to decline from 89,000 in 2002 to 84,000 in 2007. Even with the decline in bearing acres, production and inventories remain excessive from 2002 through 2007. However, in 2007, carryout inventories fall to an estimated 6,592 tons.

Under both scenarios, grower prices increase and inventories become more manageable. The difference is that, under a tree removal program, adjustments to inventories and prices occur more rapidly. This would accelerate benefits to growers, who would otherwise be struggling to break even in a depressed market, until market forces brought about a slow correction.

In addition to the direct impact on growers' prices and revenues that a tree removal program would have, there are also indirect impacts. A tree removal program will assist in decreasing burdensome (undesirable) carryout inventories. Without a tree removal program, large quantities of dried plums held in packers' inventories prevent grower pools from being closed, which delays grower payments. Large amounts of undesirable inventory lead to strained grower-packer relations. In an attempt to sell the excessive inventories, packers reduce f.o.b. prices, which in turn leads to market share battles and lower prices being passed back to producers. A more balanced supply and demand situation allows growers and packers to jointly continue developing markets in ways that benefit the entire industry.

Industry Self-Help Initiatives

The California dried plum industry has undertaken an initiative to reduce acreage and production. The industry implemented a pre-harvest tree removal program during the 2001 crop year. The industry collected about $3 million to support this effort by reducing assessments under their California State marketing order from $50 to $30 a ton. The $20 per ton reduced assessment was used to support the industry tree removal program.

The program was successful in removing about 2,500 acres. The effects of this industry self-help diversion are included in the analysis of the Federal program.

The industry also has taken measures to stimulate demand, including: (1) The development of new products and new uses for dried plums; (2) marketing efforts to attract younger customers; and (3) domestic and export market promotion programs under the California State marketing order and the Foreign Agricultural Service's Marketing Assistance Program (MAP). One of the most recent initiatives involved securing approval from the Food and Drug Administration to change the name "dried prunes" to "dried plums." This has allowed the industry to redirect its generic marketing efforts to attract a new generation of consumers.

Benefits of the Program

The economic assessment of the tree removal program indicates that it is expected to benefit producers, particularly small, under-capitalized producers, as well as the entire dried plum industry, including packers. The per ton sales price is projected to increase from 2002–2007, reducing losses and moving producer returns closer to break-even levels. The benefit to producers from reduced losses is projected to total approximately $93 million over the six-year period 2002–2007. The benefits over the six-year period would average nearly $15.5 million annually. The proposed rule incorrectly indicated that the benefit to producers from reduced losses would be about $128 million and that the benefits over the six-year period would average nearly $24 million annually.

Costs of the Program

The major cost of the program would be the payment to producers for removing their prune/plum trees. A total of $17 million, less Committee administrative costs, is available for the tree removal program. Committee administrative costs for reviewing applications and verifying tree removals are expected to be about $125,000. Major expense categories for administration include costs for salaries and benefits; vehicle rental and maintenance; insurance and overhead; and supplies.

Total producer costs associated with filing applications to participate in the program and maintaining records for the period specified after tree removal are expected to be about $2,500. These costs were estimated to be $1,000 in the proposed rule. The increased producer cost estimate is due to the increased number of applications and the addition of 10 hours to cover grower recordkeeping. The number of applications received was estimated to be 200 in the proposed rule and the actual number received was 481.

Overall Assessment

Payments made through this program could help prune/plum producers by addressing the oversupply problem that is adversely affecting the dried plum industry. A tree removal program is expected to allow supply to be adjusted downward more quickly. Market forces will also result in supplies being reduced, but this adjustment may occur more slowly, likely resulting in a number of farm failures. The tree-removal program may be beneficial in reducing the risk of loan default for lenders that financed prune/plum growers. This program will likely help small, under-capitalized producers to stay in business. These producers are often efficient, but do not have adequate resources to continue to operate given the current depressed conditions within their industry.

Reducing the level of unprofitability also should provide opportunities for the industry to engage in additional demand-enhancing activities, especially directed at the domestic market. Even a moderate increase in domestic per capita consumption will have a significant, positive impact on grower returns.

Costs for the program would include the $17 million to be paid growers and to the Committee for administration costs under the Federal tree removal diversion program. Additionally, growers would incur costs totaling about $2,500 to comply with the filing and record-keeping requirements of the program.

Benefits to growers under the tree removal program could total approximately $93 million. The first step in this calculation is to multiply marketable production for each of the six years (2002–2007) times the difference between grower price and variable cost, and to sum those figures. This is done for each of the two scenarios (with and without a tree pull program). The $93 million difference between those figures represents a conservative (low-end) estimate of program benefits resulting from reduced grower losses. This cost calculation assumes that the acreage on which trees are removed remains idle, and that

growers must therefore absorb all fixed costs on that acreage. To the extent that the land is put to other productive uses, growers would not be absorbing all fixed costs of producing prune/plums, and grower benefits would be higher.

If growers are earning more, it follows that processors and/or retailers beyond the farmgate would pay higher raw product costs to obtain the prune/plums from the growers. These higher costs could be passed on to consumers through higher retail prices or could be absorbed as reduced operating margins for other affected sectors of the economy—processors, wholesalers, or retailers. An estimate of these costs is obtained by multiplying the estimated grower price changes over each of the six years (2002–2007) times annual shipments (an average of the prune/plum shipments with the tree pull program and without the tree pull program). That figure, summed over the six years, is approximately $68 million. However, this $68 million cost is likely overstated due to the fact that grower prices are currently less than the cost of production. Adjustments in retail prices, and retailer and processor margins, are anticipated to change with or without a tree removal program.

Another cost of the tree removal program is the reduced economic activity due to the growers purchasing fewer inputs (labor, chemicals, etc.) from the reduction in prune/plum acres managed and harvested. Input producers (laborers and agricultural chemical firms) would see less revenue because of lowered purchases of these inputs. To the extent that acreage removed is replanted in other crops, those costs could be somewhat offset by purchases of inputs to produce the alternative crops. This cost of the tree removal program is difficult to quantify and is not included in this analysis.

Savings over the same period of up to $60 million could be realized through reduced surplus removal purchases of dried plum products for Federal feeding programs. These government savings would be used to purchase other commodities for use in school and other food assistance programs.

Historically, the dried plum industry has not relied heavily on the Federal surplus removal program. Since the 1991 season, the industry has requested and received surplus removal purchases in only 4 of the past 11 seasons. Should supplies be reduced as expected through the tree removal program, it would be unlikely that the dried plum industry would seek government assistance in the form of surplus removal purchases for several years to come.

Conclusion

Based on this information, USDA has determined that there is a surplus of dried plums, and that reestablishment of producers' purchasing power would be encouraged by using Section 32 funds to reduce supplies under a Diversion Program for Dried Plums/Prunes consisting wholly of a tree-removal program. USDA has further determined that this program is expected to be a long-term solution to the oversupply situation that exists in the California dried plum industry, and that it will provide relief to growers.

Notice of this action was published in the **Federal Register** on December 17, 2001. Interested persons were invited to submit comments until January 16, 2002. Eleven comments were received. Most of them supported the tree removal program and expressed appreciation to USDA for proposing to put the program in place. Other commenters requested changes or clarifications to the eligibility, removal, and replanting requirements, and several suggested alternatives to tree removal. One commenter did not support the proposed program.

One commenter suggested that USDA should buy the surplus production and distribute the dried plums to needy persons in the United States and outside the United States. Another suggested that USDA should arrange to have the trees removed and shipped to other countries so they could be replanted and possibly provide food for needy people. USDA generally purchases commodities requested by users in quantities which can be distributed quickly. Available storage space is limited and storage is quite expensive. The tree removal program, on the other hand, is designed to help the California dried plum industry by bringing supplies more closely in line with market needs, and by providing more lasting benefits. Consumers should benefit through a stabilized market and reduced fluctuation in supplies and prices. The idea of shipping trees as a gift to needy countries with compatible climates and growing conditions has merit. However, the cost of removal, packaging of the trees with their roots intact, and the shipment to various countries would be prohibitive and the survival rate of the trees would probably be quite low.

Six comments were received from individuals requesting changes or clarifications to the eligibility, replanting, and tree removal requirements of the program.

Comments from two representatives of the California raisin industry requested USDA to incorporate a provision into the tree removal program specifying that each grower participating in the tree removal program must agree not to replant raisin grape vines on land cleared under the tree removal program through June 30, 2004, to prevent harming the raisin industry. A prune/plum grower from the Santa Clara Valley suggested that the yield requirements be reduced from 1.5 to 1.2 tons per acre to recognize that yields in the Santa Clara Valley are traditionally lower than the yields in the Central Valley of California, where most of the prune/plums are grown.

Adding prohibitions on what could or could not be planted on land cleared under this program goes beyond the intended scope of the program and does not appear justified at this time. The limits placed on producers with respect to the trees involved in this program reflect that at a minimum prune/plum producers should not be allowed to accept the payment and, in the near future, recommit the same ground to prune/plum trees.

The program will assure that removal is not part of the normal process of tree replacement. The program directly affects land identified by the producer as prime prune/plum production land. Market conditions, moreover, would govern what producers will or will not plant. Producers are not likely to plant a crop which can be expected to be in surplus. In the end, USDA's desire was to have this program be as simple as possible.

With respect to changes in the yield per acre limit, the suggestion was not adopted because USDA desires program dollars to be used for removing higher yielding trees. The program is designed to benefit the industry by stabilizing supplies and prices of dried plums.

Two comments were received from the Executive Director of the Prune Marketing Committee. The commenter requested that an exception be made to the eligibility requirements specifying that the trees removed must have yielded at least 1.5 tons per net-planted acre during the 1999 or 2000 crop years. The commenter reported that some producers might not have the required production information because the producers did not harvest, or only harvested a portion of, their crops during the 1999 or 2000 crop years. The commenter indicated that these producers' crops generated little or no revenue because their handlers either pro-rated the quantity of dried plums they purchased or made no purchases of dried plums during 1999 or 2000.

The commenter further indicated that these producers should not be further

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disadvantaged by declaring them ineligible to participate because they were not able to sell any of their fruit or only some of their fruit during the 1999 or 2000 crop years. The commenter requested that these producers be allowed to qualify if they sold production during the 2001 or 1998 crop years.

This comment was not adopted because expanding the eligibility base period could result in some growers gaining an advantage over other growers. While some producers could fare better than other producers under a broader base period, the point of the program is to achieve an overall reduction in the level of the commodity available for market. The simplest and most assured manner for achieving this goal is to limit producer eligibility to production from the 1999 or 2000 crop years as was proposed. Moreover, limiting eligibility to these two crop years will provide some measure of assurance of uniform treatment among producers and should help the public's understanding of the program.

This commenter also questioned a statement in the supplementary information section of the proposed rule that appeared on page 64920, first column, last paragraph of the December 17, 2001, issue of the **Federal Register**. The statement specified that the applicant would have to certify that he/she has not contracted to sell the land or otherwise already arranged to have the trees removed. The commenter indicated that the language implies that a grower cannot sell a prune orchard to another grower who agrees not to replant trees until after June 30, 2004, and could also exclude a grower who is in the process of buying a prune orchard.

It was not the intent of USDA to prevent participants from selling their orchards should they so choose after enrollment in the program. However, the owner who accepts the payment, or is the party of record for program purposes, will still be liable for ensuring that the two-year planting prohibition is followed even though the participant no longer owns the land. The non-planting promise is a guarantee by the participant that no one (not just the participant) will plant the property with prune/plum trees during the two-year non-planting period. Further, it was and remained the intent of USDA that only those persons who are the current owners of the property, and have not already contracted to sell the property or destroy the trees could participate. This is to avoid conflict where title to the property is already in transition—and where the new buyer may be expecting the trees to stay.

The certification that producer applicants are required to sign, guarantees that they have not made prior arrangements to sell the land or remove the trees for commercial purposes. That is, they guarantee that the land is not going to be commercially developed for shopping centers, housing developments, vacation resorts, or similar such purposes. It was determined that including such non-agricultural land in the program would not serve the purposes of the program.

The Chairman of the Prune Marketing Committee suggested that the application period be extended for an additional 15 to 30 days to give producers more time to apply. The commenter indicated that this would be extremely helpful to the industry in obtaining as many participants as possible. This commenter subsequently withdrew the request. An extension of the application period was considered but was found not to be necessary in light of producer program interest and the fact that no material changes were found appropriate or needed based on the comments received. Had a need for material change in the program been found warranted and appropriate based on the comments received, an extension or other action would have be taken to allow for the adjustment. Deadlines were set out clearly in the proposed rule and the program was widely publicized in the industry.

Another commenter raised questions regarding the definition of the term "removal" in § 81.3. In the proposed rule, the term was defined to mean that the prune/plum trees are no longer standing and capable of producing a crop. The provision states that the producer can accomplish removal by any means the producer desires. The commenter contends that grafting other fruit stock to a prune/plum tree should be considered removal under the proposed definition. The commenter states that the prune/plum trees would no longer be standing, nor will they be able to produce a crop of prune/plums. In fact, no part of the prune/plum tree would be left.

This procedure would advance the likelihood of the production of other crops, and it is preferred that the program be neutral in that respect. Also, this would add unneeded complication to the program. Given that producer interest in the program is very high without this allowance, there does not appear to be any need to increase the attractiveness of the program. Moreover, the intent of the program is to remove prune/plum trees and the roots of those trees. Grafting is not consistent with the intent of the program. Therefore, the definition of removal has been clarified to exclude grafting as a method of removal and to specify that "removal" means that the prune/plum trees are no longer standing and capable of producing a crop, and that the roots of trees have been removed.

A final commenter indicated that he was opposed to the program. He stated that the industry got itself into the oversupply situation and should not look to the government to get itself out of it. This program is a valid exercise of the authority granted USDA under section 32. USDA is monitoring this program very closely to ensure that program objectives are attained. The majority of the industry supports this program having considered a number of less effective alternatives to balance supplies and demand.

All of the comments received have been thoroughly reviewed. Some adjustments have been made in the rule for clarity and to assure accomplishment of the goals of the program as set out in the proposed rule and as set out in this final rule.

After consideration of all relevant matter presented, including the comments received, and other information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the policy of 7 U.S.C. 612c.

Pursuant to 5 U.S.C. 553, it is also found that no good cause existed for delaying the effective date of this rule. Such delay would be contrary to the public interest because prune/plum producers needed to know immediately whether they would be accepted into the program by February 14, 2002. Eligible producers wanted to begin removing the prune/plum trees. In addition, further delay could have jeopardized the ability of the program to accomplish its goal of reducing the supply of dried plums. As a technical matter, the rule has been made retroactive to January 2, 2002, for the reasons given. In fact, however, no obligations were undertaken until February 14, 2002. If for any reason January 2, 2002, is considered inappropriate as an effective date, then the effective date will be considered February 14, 2002, which was well after the close of the comment period. Program issues were open until that date.

List of Subjects in 7 CFR Part 81

Administrative practice and procedures, Agriculture, Prunes, Reporting and record keeping requirements, Surplus agricultural commodities.

For the reasons set forth in the preamble, Title 7, Subtitle B, Chapter I is amended as follows:

1. In Subtitle B, Chapter I, part 81 is added to read as follows:

PART 81—PRUNE/DRIED PLUM DIVERSION PROGRAM

Sec.
81.1 Applicability.
81.2 Administration.
81.3 Definitions.
81.4 Length of program.
81.5 General requirements.
81.6 Rate of payment; total payments.
81.7 Eligibility for payment.
81.8 Application and approval for participation.
81.9 Inspection and certification of diversion.
81.10 Claim for payment.
81.11 Compliance with program provisions.
81.12 Inspection of premises.
81.13 Records and accounts.
81.14 Offset, assignment, and prompt payment.
81.15 Appeals.
81.16 Refunds; joint and several liability.
81.17 Death, incompetency or disappearance.

Authority: 7 U.S.C. 612c.

§ 81.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Secretary of Agriculture will make payment to California producers who divert prune/plums by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

§ 81.2 Administration.

The program will be administered under the direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be implemented by the Prune Marketing Committee (Committee). The Committee, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. Such power shall rest solely with the Administrator of AMS, or delegatee. The Administator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines or other conditions, as needed or appropriate to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

§ 81.3 Definitions.

(a) *Administrator* means the Administrator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(c) *Application* means "Application for Prune Tree Removal Program."

(d) *Committee* means the Prune Marketing Committee established by the Secretary of Agriculture to locally administer Federal Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California.

(e) *Diversion* means the removal of prune-plum trees after approval of applications by the Committee through June 30, 2002.

(f) *Producer* means an individual, partnership, association, or corporation in the State of California who grows prune/plums that are dehydrated into dried plums for market.

(g) *Removal* means that the prune-plum trees are no longer standing and capable of producing a crop, and the roots of the trees have been removed. The producer can accomplish removal by any means the producer desires. Grafting another type of tree to the rootstock remaining after removing the prune/plum tree would not qualify as removal under this program.

§ 81.4 Length of program.

Producers diverting prune/plums by removing prune-plum trees must complete the diversion no later than June 30, 2002.

§ 81.5 General requirements.

(a) To be eligible for this program, the trees to be removed must have yielded at least 1.5 tons of dried prune/plums per net-planted acre during the 1999 or 2000 crop year. A net-planted acre is the actual acreage planted with prune-plum trees. Abandoned orchards and dead trees will not qualify. In new orchards diverted, qualifying trees must be at least 5 years of age (6th leaf), contain at least two scaffolds, and be capable of producing at least 1.5 tons per net-planted acre. The block of trees for removal must be easily definable by separations from other blocks and contain at least 1,000 eligible trees or comprise an entire orchard.

(b) Any grower participating in this program must agree not to replant prune-plum trees on the land cleared under this program through June 30, 2004. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, or by successors to the land, or by others, until after June 30, 2004. If trees are replanted before June 30, 2004, by any persons, participants must refund any USDA payment, with interest, made in connection with this tree removal program.

§ 81.6 Rate of payment; total payments.

(a) The rate of payment for each eligible prune-plum tree removed will be $8.50 per tree.

(b) Payment under paragraph (a) of this section will be made after tree removal has been verified by the staff of the Committee.

(c) The $8.50 per tree payment shall be the total payment. USDA will make no other payment with respect to such removals. The producer will be responsible for arranging, requesting, and paying for the tree removal in the specified orchard blocks or orchard(s), as the case may be.

(d) Total payments under this program are limited to no more than $17,000,000. No additional expenditures shall be made, unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

§ 81.7 Eligibility for payment.

(a) If total applications for payment do not exceed $17,000,000, less administration costs, payments will be made under this program to any eligible producer of prune/plums who complies with the requirements in § 81.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed $17,000,000, less administration costs, the Committee will approve the applications (subject to the requirements in § 81.8) in the order in which the completed applications are received in the Committee office up to the funding limit of $17,000,000, less administration costs, for the program. Any additional applications will be denied.

(c) The Administrator or his delegatee may set other conditions for payment, in addition to those provided for in this part, to the extent necessary to accomplish the goals of the program.

§ 81.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by Committee office personnel.

(b) Applications for participation in the Prune-Plum Diversion Program can be obtained from the Committee office at 3841 North Freeway Boulevard, Suite 120, Sacramento, California 95834; telephone (916) 565–6235.

(c) Any producer desiring to participate in the prune-plum diversion program must have filed an application with the Committee by January 31,

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2002. The application shall be accompanied by a copy of any two of the following four documents: Plat Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number and tax identification number/social security number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The prune/plum production from the orchard or portion of the orchard to be diverted during the 1999–2000 and 2000–2001 seasons;

(4) A statement that all persons with an equity interest in the prune/plums in the production unit to be diverted consent to the filing of the application. That is, the statement must show that the applicant has clear title to the property in question, and/or as needed, the statement must show an agreement to participate in the tree removal program from all lien or mortgage holders, and/or land owners, lessors, or similar parties with an interest in the property to the extent demanded by AMS or to the extent that such persons could object to the tree removal. However, obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the prune/plum diversion program;

(6) A certification that the information contained in the application is true and correct;

(7) The year that the unit of prune/plums was planted;

(8) An identification of the handler(s) who received the prune/plums from the producer in the last two years.

(d) After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and that the information appears reliable.

(e) As previously indicated, if the number of trees to be removed in such applications, multiplied by $8.50 per tree, exceeds the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the Committee office. AMS may reject any application for any reason, and its decisions are final.

(f) After the application reviews and confirmation of eligible trees are completed, the Committee shall notify the applicant, in writing, as to whether or not the application has been approved and the number of trees approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval. AMS shall be the final arbiter of which applications may be approved or rejected, and the final arbiter of any appeal.

§ 81.9 Inspection and certification of diversion.

When the removal of the prune-plum trees is complete, the producer(s) will notify the Committee on a form provided by the Committee. The Committee will certify that the trees approved for removal from the block or orchard, as the case may be, have been removed, and notify AMS.

§ 81.10 Claim for payment.

(a) To obtain payment for the trees removed, the producer must submit to the Committee by June 30, 2002, a completed form provided by the Committee. Such form shall include the Committee's certification that the qualifying trees from the blocks or orchards have been removed. If all other conditions for payment are met, AMS will then issue a check to the producer in the amount of $8.50 per eligible tree removed.

§ 81.11 Compliance with program provisions.

If USDA on its own, or on the advice of the Committee, determines that any provision of this part have not been complied with by the producer, the producer will not be entitled to diversion payments in connection with tree removal. If a producer does not comply with the terms of this part, including the requirement specified in § 81.5(b), the producer must refund, with interest, any USDA payment made in connection with such tree removal, and will also be liable to USDA for any other damages incurred as a result of such failure. The Committee or USDA may deny any producer the right to participate in this program or the right to receive or retain payments in connection with any diversion previously made under this program, or both, if the Committee or USDA determines that:

(a) The producer has failed to properly remove the prune/plum trees from the applicable block or the whole orchard regardless of whether such failure was caused directly by the producer or by any other person or persons;

(b) The producer has not acted in good faith in connection with any activity under this program; or

(c) The producer has failed to discharge fully any obligation assumed by, or charged to, him or her under this program.

§ 81.12 Inspection of premises.

The producer must permit authorized representatives of USDA or the Committee, at any reasonable time, to have access to their premises to inspect and examine the orchard block where trees were removed and records pertaining to the orchard to determine compliance with the provisions of this part.

§ 81.13 Records and accounts.

(a) The producers participating in this program must keep accurate records and accounts showing the details relative to the prune/plum tree removal, including the contract entered into with the firm or person removing the trees, as well as the invoices.

(b) The producers must permit authorized representatives of USDA, the Committee, and the General Accounting Office, or their delegatees, at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for two years after the date of payment to the producer under the program, or for two years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the producer at any time will be at the risk of the producer when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

§ 81.14 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the producer or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a producer under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

(c) Prompt payment interest from AMS will not be applicable.

§ 81.15 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

§ 81.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any producer shall be refunded to AMS together with interest.

(b) All producers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any producer under this part if AMS determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS was at fault for the overpayment.

(d) Interest allowable in favor of AMS in accordance with paragraph (c) of this section may be waived when there was no intentional noncompliance on the part of the producer, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for those claims which are addressed in 7 CFR part 792.

(f) Producers must refund to AMS any excess payments, as determined by AMS, with respect to such application.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the producer, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest.

§ 81.17 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a prune/plum producer that is eligible to receive benefits in accordance with this part, such person or persons who would, under 7 CFR part 707 be eligible for payments and benefits covered by that part, may receive the tree-removal benefits otherwise due the actual producer.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6098 Filed 3–11–02; 3:09 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01–916–3 FIR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the reporting requirements under the marketing orders for California nectarines and peaches by modifying the requirement that all handlers submit a monthly destination report. This rule continues in effect the relaxation of the requirement by establishing an exemption for handlers who ship fewer than 50,000 containers or container equivalents of tree fruit, including nectarines, peaches, and plums. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative (NAC) and Peach Commodity Committees (PCC) (committees). The handling of plums grown in California is regulated by a California State marketing order.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the modification of the reporting requirements under the orders' rules and regulations by establishing an exemption from filing mandatory monthly destination reports for handlers who handle less than 50,000 containers or container equivalents of nectarines, peaches, and plums. While nectarines and peaches are regulated under the Federal marketing orders, plums are regulated under a California state marketing order. Most handlers,

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however, handle and report on a combination of these fruit.

Under this modification, handlers who shipped less than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums in the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, provided their shipments continue to total less than 50,000 containers or container equivalents of these fruit in the previous season.

Handlers who begin operation during or after the 2001 season will also be exempt from filing monthly destination reports during their first year of operation. These handlers will continue to be exempt from such reporting requirements as long as their shipments of these tree fruit total less than 50,000 containers or container equivalents, in the previous season.

Handlers who are not exempt, but in some subsequent year ship less than 50,000 containers or container equivalents, will be exempt the following season and will be exempt in subsequent seasons, provided their shipments continue to total less than 50,000.

Under the orders, reporting requirements are established in §§ 916.60 and 917.50 for fresh shipments of California nectarines and peaches, respectively. Prior to publication of the interim final rule, such reports were to be filed with the committees by all handlers. The information required includes: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade, and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled. Other information may be requested by the committees, with the approval of the Secretary, to enable the committees to carry out their duties.

Sections 916.160 and 917.178 of the orders' rules and regulations specify the reporting procedures for handlers of nectarines and peaches, which include the requirements related to destination reports.

Information from destination reports is utilized by the NAC and PCC to determine the quantities of nectarines and peaches shipped to various markets. Such information permits the committees to target marketing research and promotion efforts more effectively, giving the committees the flexibility to direct their limited marketing funds to open new markets or expand existing markets.

The more accurate the information obtained from handlers, the more precisely the committees can address their marketing research and promotion efforts. However, this information collection comes at a cost to the committees and to handlers, especially smaller handlers who generally lack the staff to prepare such reports.

The NAC and PCC, which are responsible for local administration of the orders, met on May 3, 2001, and unanimously recommended that these reporting requirements be revised, beginning with the 2001 season, which began April 1. However, because the season had already begun, the relaxation in report requirements was implemented as of the effective date of the interim final rule.

At three subcommittee meetings prior to the May 3, 2001 committee meetings, discussions on the merits of the exemption were held. The Management Services Committee met on January 18, 2001, and discussed a request from a small handler to review the destination report requirements. It was reported that destination information from small handlers is not always accurate since the reporting handlers do not necessarily know the final destination of their fruit sold at terminal markets. It was also noted that the burden of filing destination reports is often a complaint of small handlers.

The Management Services Committee then directed the committee staff to review the destination report requirements and procedures, and make recommendations based upon their review at the following Management Services Committee meeting.

The Management Services Committee met again on March 6, 2001, and discussed the destination report information provided by the committee staff. The members also discussed changes to the destination report requirements, as well as the effect of the revision on handlers in the industry and on information gathering conducted by the committees.

A review of destination report records by the staff revealed that approximately 160 handlers shipped less than 50,000 containers of all three tree fruit during the 2000 season. As a percentage of total shipments, these handlers represent approximately 3 percent of all shipments of nectarines, peaches, and plums. The committees' staff spends a portion of their time administering the collection of this relatively small amount of additional information. The committees believe that exempting information from handlers who represent approximately 3 percent of all tree fruit shipments would not have a significant effect on overall destination information, and may actually improve the accuracy of destination information. These handlers are small entities, and such a relaxation will reduce the reporting burden on them. In addition, the committees' administrative costs associated with destination reports may be reduced.

Finally, the Management Services Committee met on April 18, 2001, to review destination report summaries from the 2000 season. Based on all the information considered, the members voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit (including nectarines, peaches, and plums) should be exempted from filing monthly destination reports.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities. Since the interim final rule was published, the small business producer standards were changed from $500,000 to $750,000.

The committees' staff has estimated that there are less than 20 handlers of nectarines and peaches in the industry who could be defined as other than small entities. In the 2000 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 555,556 containers of nectarines and peaches to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the previous season, the committees' staff estimates that small handlers of nectarines and peaches represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 20 percent of the nectarine and peach producers in the industry could be defined as other than small entities. In the 2000 season, the average producer price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2000 season, the committees' staff estimates that small producers represent approximately 80 percent of the nectarine and peach producers within the industry.

This rule continues in effect the revision of §§ 916.160 and 917.178 of the orders' administrative rules and regulations to relax the requirement that all handlers file monthly destination reports. Under that revision, handlers who shipped less than 50,000 containers or container equivalents of tree fruit during the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

Handlers who begin operations during or after the 2001 season will also be exempt from filing monthly destination reports during their first season of operation. Such handlers will continue to be exempt in subsequent seasons as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

The NAC and PCC met on May 3, 2001, and unanimously recommended these changes to the reporting requirements for the 2001 season, which began April 1. This action was recommended to the committees by a subcommittee charged with review and discussion of the changes.

The Management Services Committee met on January 18, 2001, to discuss a request from a small handler concerning destination report requirements. At that time, the members reviewed the request and directed the staff to research the destination report requirements and procedures. At the March 6, 2001, meeting, the Management Services Committee reviewed a staff recommendation to relax the destination reporting requirements for small handlers. The members also considered two alternatives to this action at that meeting.

First, the committee considered not establishing any exemption for small handlers. This alternative was rejected because the members felt that small handlers should be provided an exemption from the destination reporting requirements. Second, they considered establishing a filing exemption for handlers who shipped less than 10,000 containers of tree fruit during the 2000 season. The committee estimated that this exemption would affect approximately 100 handlers only and one percent of total shipments. The Management Services Committee rejected that alternative because they believed that more handlers should be exempted from the requirement for filing destination reports. After some discussion, it was determined and recommended by the Management Services Committee that handlers who ship less than 50,000 containers or container equivalents of tree fruit should be exempted from filing monthly destination reports.

At a subsequent Management Services Committee meeting on April 18, 2001, the members reviewed destination report summaries from the 2000 season and voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit be exempted from filing monthly destination reports.

The committees make recommendations regarding all the revisions in reporting requirements after considering all available information, including comments of persons at committee and subcommittee meetings, and comments received in writing or verbally by committee staff. Such subcommittees include the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry, who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments, both in person and in writing, are widely solicited.

This relaxation is expected to have an impact on small handlers by reducing the time and related costs of filing monthly destination reports. The committees estimate that approximately 160 peach and nectarine handlers would be exempt from filing destination reports. Each handler files an average of four reports each season. The time each handler spends preparing the monthly report has been estimated at 45 minutes. Therefore, in terms of reporting burden time, each qualified respondent handler will save an average of three hours each season as a result of this exemption. In total, this exemption could save the qualified industry respondents approximately 480 hours annually each for peach handlers and nectarine handlers.

This rule is also expected to have an impact on the committees by decreasing hours of staff time currently utilized to collect, reconcile, and assimilate destination report data received from small handlers.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, as noted previously, this rule will reduce reporting and recordkeeping requirements on qualified handlers, as well as on the committees themselves. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies, such as effectuated by this rule.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. The committees routinely schedule meetings bi-annually during the last week of November or first week of December, and the last week of April or first week of May. Like all committee meetings, the May 3, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

In addition, the committees have a number of appointed subcommittees to review certain issues and make

recommendations to the NAC and PCC. For this action, three subcommittee meetings were held prior to the May 3, 2001, meeting at which these regulations were reviewed and discussed.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39406). Copies of the rule were provided to all committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 1, 2001. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without changes, as published in the **Federal Register** (66 FR 39406, July 31, 2001), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 66 FR 39406, July 31, 2001, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6148 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1 FIR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, a corrected interim final rule which relaxed pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938 or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season. In addition, grower prices have steadily declined in spite of

a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. In 1997–1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992–93 season through the 1997–98 season was $0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(4)(iv) of the order's administrative rules and regulations was revised by an interim final rule issued on September 3, 1998 (63 FR 46861). A final rule published on July 30, 2001, redesignated § 920.302(a)(4)(iv) as (a)(4)(iii)(66 FR 39267).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations was needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. The continued relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller-sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(4)(iii) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27 * 32
27/28	30 * 35
30	33 * 38
33	36 * 43
36	42 * 45
39	48 * 49
42	53 * 54
45	55

* Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25, respectively.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered "undersized" to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined by the Small Business Administration as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, 354 of the 360 growers subject to regulation have annual sales less than $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the

maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27* 32
27/28	30* 35
30	33* 38
33	36* 43
36	42* 45
39	48* 49
42	53* 54
45	55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or size designation 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered undersized to be shipped. Imports from Europe have increased 1,409 percent since 1992–1993. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size differences should help California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry $24,407,981 in FOB value versus the $22,442,648 received for the 2000–2001 season. This is an additional $2.0 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believes that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

These changes continue to address the marketing and shipping needs of the kiwifruit industry and are in the interest of growers, handlers, buyers, and consumers. The impact of these changes is expected to be beneficial to all growers and handlers regardless of size. There is widespread agreement in the industry to relax the pack requirements.

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit from this relaxation. It is estimated that grower returns will increase by approximately $1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on October 29, 2001 (66 FR 54411). Copies of the rule were mailed by the Committee staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the internet by the Office of the Federal Register and USDA. That rule provided a 60-day comment period which ended December 28, 2001. No comments were received. A correction concerning this action was published in the **Federal Register** on January 11, 2002. (67 FR 1413). The interim final rule, as published, contained an error in the amendatory instructions affecting 7 CFR part 920. The amendatory instructions incorrectly indicated that the revised table in § 920.302 appears at the end of paragraph (a)(4)(iv). The revised table actually appears at the end of paragraph (a)(4)(iii) of that section and appropriate corrections were made to the interim final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, which was published in the **Federal Register** (66 FR 54411, October 29, 2001) and corrected in the **Federal Register** (67 FR 1413, January 11, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 66 FR 54411, October 29, 2001, and corrected at 67 FR 1413 on January 11, 2002, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6138 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–1 FR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes handled. The Committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202)720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning on January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes.

The grape marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 5, 2001, and estimated a January 2002 beginning reserve of approximately $124,800, and unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. In comparison, last year's budgeted expenditures were $186,023. The assessment rate of $0.015 is $0.005 higher than the rate currently in effect. The higher assessment rate is needed to offset increases in salaries and to keep the operating reserve at an adequate level.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

The assessment rate recommended by the Committee was chosen because it will provide $142,500 in assessment income (9.5 million lugs x $.015 per lug) and, when $2,000 in interest income and $50,715 of its reserves are used for

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approved expenses, allow the Committee to end the 2002 fiscal period with a $74,085 reserve. The current rate of $.01 per lug would generate $95,000 in assessment income, and require the Committee to use the $2,000 in interest and $98,215 of its reserves to cover its anticipated expenses. This will result in an ending reserve of $26,585, which was not acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) with the new assessment rate will be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 925.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts less than $750,000. Therefore, the majority of handlers and producers of grapes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. The assessment rate of $0.015 is $0.005 higher than the 2001 rate. The volume of assessable grapes is estimated at 9.5 million 18-pound lugs. Thus, the $0.015 rate should provide $142,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve should be adequate to cover budgeted expenses.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

Prior to arriving at this budget the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($195,215), plus the desired 2002 ending reserve ($74,085), minus the 2002 beginning reserve ($124,800), minus the anticipated interest income ($2,000), divided by the total estimated 2002 shipments (9.5 million 18-pound lugs). This calculation results in the $0.015 assessment rate. This rate will provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $195,215 and results in a December 2002 ending reserve of $74,085, which is acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) will be kept within the maximum permitted by the order, approximately one fiscal periods' expenses (§ 925.41).

A review of historical information and preliminary information pertaining to the 2002 fiscal period indicates that the on-vine grower price for the 2002 season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2002 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 5, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large production area grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1315). Copies of the proposed rule were also mailed or sent via facsimile to all grape handlers. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received. However, the provisions of proposed § 925.215 have been modified in this action to add specific reference to an 18-pound lug for purposes of clarity.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002 fiscal period began on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 925.215 is revised to read as follows:

925.215 Assessment rate.

On and after January 1, 2002, an assessment rate of $0.015 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6145 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV02–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 2001, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal

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period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2001, and unanimously recommended 2001–02 expenses of $115,189.85 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 10, 2001, and recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent of onions. Ten of the 11 Committee members present voted in support of the $0.02 per 50-pound container equivalent increase. One Committee member abstained from voting. In comparison, last year's budgeted expenditures were $306,740. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498, $39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 7.5 million 50-pound equivalents, which should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 producers of onions in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2000–01 marketing year, the industry's 40 handlers shipped onions produced on 15,166 acres with the average and median volume handled being 208,700 and 177,377 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 40 handlers were estimated to be $73,879,800, with average and median revenues being $1,846,995 and $1,569,786, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 40 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other production enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 78 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container equivalent of onions. The Committee recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent. The assessment rate of $0.05 is $0.02 higher than the 2000–01 rate. The quantity of assessable onions for the 2001–02 fiscal period is estimated at 7.5 million 50-pound equivalents. Thus, the $0.05 rate should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498, $39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The Committee reviewed and recommended 2001–02 expenditures of $449,189, which included an increase in its promotion program. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee, the Research Subcommittee, and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.05 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 7.5 million 50-pound equivalents for the 2001–02 fiscal period. This is approximately $74,190 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between $6 and $11 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.45 and 0.83 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 10, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1317). Copies of the proposed rule were also mailed or sent via facsimile to all onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001–02 fiscal period began August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2001, an assessment rate of $0.05 per 50-pound container or equivalent is established for South Texas onions.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6146 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV02–979–1 FR]

Melons Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Melon Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

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Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 2001, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled.

The South Texas melon marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on September 25, 2001, and unanimously recommended 2001–02 expenses of $90,888 for personnel, office, compliance, and partial market development expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on November 8, 2001, and unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. This amount is derived by taking the current reserve ($327,200), adding the $166,875 in assessment income based on the old rate (3,337,500 cartons x $0.05 per carton) and anticipated interest totaling $15,000, and then subtracting the 2001–02 budget of $314,388. With the new rate, $200,250 in assessment income would be generated, and the reserve fund would only drop to $228,062.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, anticipated interest income, and the amount of funds in the Committee's operating reserve. Melon shipments for the fiscal period are estimated at 3,337,500 cartons, which should provide $200,250 in assessment income at the $0.06 per carton rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses for the 2001–02 fiscal period. Funds in the reserve (currently $327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 979.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 33 growers of melons in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2000–01 marketing year, the industry's 22 handlers shipped melons produced on 6,979 acres with the average and median volume handled being 192,450 and 84,532 cartons, respectively. In terms of production value, total revenue for the 22 handlers was estimated to be $37,478,447, with the average and median revenues being $1,703,566 and $748,273, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that half of the 22 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons. The Committee unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The assessment rate of $0.06 is $0.01 higher than the rate currently in effect. At the rate of $0.06 per carton and an estimated 2001–02 melon production of 3,337,500 cartons, the projected income derived from handler assessments ($200,250), along with interest and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. With the increased rate, the reserve fund would drop to $228,062.

The Committee voted to increase its assessment rate because the current rate would reduce the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with interest and funds from the Committee's authorized reserve, will provide the Committee with adequate funds to meet its 2001–02 fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–02 expenditures of $314,388, which included an increase in its market development program. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and market development projects to the melon industry. The assessment rate of $0.06 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons estimated at 3,337,500 cartons for the 2001–02 fiscal period, anticipated interest income, and the funds in the Committee's operating reserve. The recommended rate will generate $200,250, which is $114,138 below the anticipated expenses. The Committee found this acceptable because interest and reserve funds will be used to make up the deficit.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between $7 and $11 per carton of cantaloupes and between $6 and $10 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.9 and 0.5 percent for cantaloupes and between 1.0 and 0.6 percent for honeydew melons.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 8, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2002 (67 FR 1319). Copies of the proposed rule were also mailed or sent via facsimile to all melon handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the

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compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001–02 fiscal period began on October 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.219 is revised to read as follows:

§ 979.219 Assessment rate.

On and after October 1, 2001, an assessment rate of $0.06 per carton is established for South Texas melons.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6140 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV02–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: This interim final rule is effective March 15, 2002. Comments received by May 13, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office; Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2001–2002 marketing year (July 1, 2001, through June 30, 2002). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years" trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 48,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared carry-in (6 tons.) Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. This difference or disappearance consists of unharvested hazelnuts, cull product that is harvested and delivered to handlers but later discarded, or product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons x 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 tons for the export and kernel market.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carry-out). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 4.9363 percent free and 95.0637 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were recommended at 6.1048 percent free and 93.8952 percent restricted effective May 31, 2002. The final free percentage releases 2,722 tons of inshell hazelnuts from the 2001 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387

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Percentages	Free	Restricted
(14) Final percentages (Item 10 divided by Item 5) × 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $35,700, computed by dividing National Agriculture Statistics Service (NASS) figures for the average value of production for 1999 and 2000 ($28.563 million) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: inshell domestic, inshell export, and shelled (kernel) markets. Handlers and growers receive the highest return on inshell domestic, less for inshell export, and the least for kernels (shelled). Based on Board records of average shipments for 1997–2000, the percentage going to each of those markets was 13 percent (domestic inshell), 46 percent (export inshell) and 41 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping inshell hazelnut supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

This rule implements volume control procedures for the 2001–2002 marketing year by establishing marketing percentages (free and restricted percentages) which determine the quantity of inshell hazelnuts that may be marketed in domestic markets. The free quantity may be marketed in domestic inshell markets and the restricted quantity must be exported, shelled, or otherwise disposed of by handlers. The computations for 2001–2002 are explained herein.

The Board is required to meet prior to September 20 of each marketing year to establish its marketing policy for that year. At its marketing policy meeting, the Board computes and announces its estimate of inshell trade demand, which is the quantity of inshell hazelnuts that handlers typically ship to the domestic market throughout the marketing season. If it determines that volume regulations would tend to effectuate the declared policy of the Act, the Board also computes and announces the preliminary free and restricted percentages for that year. At subsequent meetings, the Board determines interim final percentages and final percentages, which may be the same as, or higher than, the preliminary percentages.

The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. If market conditions warrant, the Board may increase the three-year average by up to 25 percent.

Establishing the preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

At its November 2001 meeting, the Board computed the available supply of merchantable product for sale by handlers by subtracting the average crop disappearance over the preceding three years (7.12 percent) from the 48,000-ton hazelnut crop estimate. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are harvested and delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. Subtracting an additional 6 tons (the undeclared carryin) yielded the adjusted crop estimate of 44,588 tons.

The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted inshell trade demand by 80 percent and dividing the result by the adjusted crop estimate: (2,201 tons × 80 percent)/44,588 tons = 3.9495 percent. Establishing the 3.9495 percent preliminary free percentage allowed the initial release of 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use. Establishing the 96.0505 percent restricted percentage had the effect of allocating 42,804 tons to the export and kernel markets.

Under the order, the Board must meet again on or before November 15 each year to recommend interim final and final percentages, using current crop estimates. The interim final percentages are calculated in the same way as the preliminary percentages. Computing and announcing the interim final percentage allows the release of the remaining 20 percent (to total 100 percent) of the inshell trade demand previously computed by the Board. In establishing final free percentage and restricted percentages, the Board may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions, to provide an adequate carryover into the following season (i.e., desirable carry-out).

The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(9) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) x 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387
(14) Final percentages (Item 10 divided by Item 5) x 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to at least 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons (average trade acquisitions for three prior years) and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the 110 percent goal of the Guidelines.

The high level of production and carryin were key market factors leading to the 6.1048 percent final free percentage. Hazelnut production in 2001 is estimated to be an all-time record, 1,000 tons higher than the previous record set in 1997. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (*i.e.*, average trade acquisitions of 3,473 tons) equals about 8 percent of the supply (44,588 tons subject to regulation). However, the

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free tonnage carryin level of 1,272 tons was also high (37 percent of the quantity of inshell hazelnuts that handlers typically ship), meaning that even less of the new production was needed to fully supply the 2001–2002 domestic inshell market. Although the domestic inshell market is a relatively small proportion of total sales (13 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, inshell exports and kernels, are expected to continue to provide good outlets for US hazelnut production.

Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2002, and burdensome carryin levels will likely be significantly reduced.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the ten year period between 1991 and 2000, from a low of 16,500 tons (inshell) in 1998 to a high of 47,000 tons in 1997. Production in the shortest crop year and the biggest crop year were 55 percent and 157 percent, respectively, of the 10-year average tonnage of 29,880. The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the ten-year period is 0.35. In contrast, the coefficient of variation for hazelnut grower prices is 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Without the stabilizing impact of the order, growers may have lost more money. The volume regulations contribute to orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell hazelnut market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2001–2002 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 5 percent of total U.S. production for other tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 82 percent of the kernels were marketed in the domestic market and 18 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a ten-year average of 5,452 tons out of total average exports of 10,236 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 3,986 tons, representing 28 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 58 percent of total exports of 14,400 tons in 2000. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 31, and November 15, 2001, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the establishment of interim final and final free and restricted percentages for the 2001–2002 marketing year under the hazelnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2001–2002 marketing year began July 1, 2001, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.249 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.24 Free and restricted percentages—2001–2002 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 4.9363 and 95.0637 percent, respectively.

(b) On May 31, 2002, the final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 6.1048 and 93.8952 percent, respectively.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6147 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–05]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1999. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 110 to 108, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2003.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Acting Chief, Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number is 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 26, 2001, issue of "Cattle," USDA's National Agricultural Statistics Service (NASS) estimates that in 2000 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and will result in a decrease in Board membership from 110 to 108.

Background and Final Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by USDA from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that

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includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999 and will be decreased to 108 members with appointments for terms effective early in 2003.

The current Board representation by States or units has been based on an average of the January 1, 1996, 1997, and 1998 inventory of cattle in the various States as reported by NASS of USDA. Current importer representation has been based on a combined total average of the ~~1995~~, 1996, and 1997 live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its August 9, 2001, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1998, to January 1, 2001. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1999, 2000, and 2001 USDA cattle inventory numbers will best reflect the number of cattle in each State or unit since publication of the 1999 reapportionment rule.

The Board reviewed the February 28, 2001, USDA's Economic Research Service circular, "Livestock, Dairy and Poultry Situation and Outlook," to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1998, 1999, and 2000 cattle import data and the average of the 1998, 1999, and 2000 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its August 9, 2001, meeting to be consistent with the procedures used for domestic representation.

On October 19, 2001, AMS published in the **Federal Register** (66 FR 53124) for public comment a proposed rule providing for the adjustment in Board membership. The proposed rule was published with a request for comments to be submitted to USDA by December 18, 2001.

USDA received one comment concerning the proposed rule for Board reapportionment. The comment was from a cattle producer and supported the reapportionment plan.

Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule decreases the number of representatives on the Board from 110 to 108. Five States—Alabama, Illinois, Kentucky, New York, and Wisconsin—lose one member each; two States and one unit—New Mexico, Wyoming, and Importer unit—gain one member each. In addition, because South Carolina no longer has sufficient cattle inventory to qualify for a position on the board independently, South Carolina will be merged with Georgia, a contiguous State that has only one member, to form a Southeast unit. The combined cattle inventory of South Carolina and Georgia will entitle the Southeast unit to two members on the Board, thus enabling both States to be represented. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current Representation	Revised Representation
1. Alabama	2	1
2. Illinois	2	1
3. Kentucky	3	2
4. New Mexico	1	2
5. New York	2	1
6. Wisconsin	4	3
7. Wyoming	1	2
8. Importer unit	7	8
9. Southeast unit		2
South Carolina	1	
Georgia	1	

Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein.

The 2001 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as provided for under the rulemaking will be effective with 2002 nominations and appointments that will be effective early in the year 2003.

This action makes final the provisions of the proposed rule published at 66 FR 53124 on October 19, 2001.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2002 Board nominations and the associated appointments effective early in the year 2003, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,440	1
2. Arizona	833	1
3. Arkansas	1,823	2
4. California	5,117	5
5. Colorado	3,167	3
6. Florida	1,820	2
7. Idaho	1,940	2
8. Illinois	1,497	1
9. Indiana	953	1
10. Iowa	3,683	4
11. Kansas	6,617	7
12. Kentucky	2,303	2
13. Louisiana	887	1

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
14. Michigan	1,013	1
15. Minnesota	2,533	3
16. Mississippi	1,100	1
17. Missouri	4,333	4
18. Montana	2,583	3
19. Nebraska	6,650	7
20. Nevada	517	1
21. New Mexico	1,617	2
22. New York	1,433	1
23. North Carolina	957	1
24. North Dakota	1,927	2
25. Ohio	1,237	1
26. Oklahoma	5,183	5
27. Oregon	1,447	1
28. Pennsylvania	1,653	2
29. South Dakota	3,950	4
30. Tennessee	2,167	2
31. Texas	13,900	14
32. Utah	903	1
33. Virginia	1,650	2
34. Wisconsin	3,383	3
35. Wyoming	1,563	2
36. Northwest		1
Alaska	11	
Hawaii	162	
Washington	1,187	
Total	1,408	
37. Northeast		1
Connecticut	65	
Delaware	28	
Maine	99	
Massachusetts	55	
New Hampshire	45	
New Jersey	50	
Rhode Island	6	
Vermont	300	
Total	647	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	243	
West Virginia	420	
Total	663	
39. Southeast		2
Georgia	1,293	
South Carolina	463	
Total	1,756	
40. Importer [2]	7,654	8

[1] 1999, 2000, and 2001 average of January 1 cattle inventory data.

[2] 1998, 1999, and 2000 average of annual import data.

* * * * *

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6141 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No.01–016N]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On October 31, 2001, the Food Safety and Inspection Service (FSIS) published a direct final rule "Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products" in the **Federal Register**. This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to permit the use of one or both of these substances, in limited amounts, as binders in certain standardized meat and poultry products. This direct final rule also announced the Agency's intention to prescribe labeling requirements when tranglutaminase enzyme (TG enzyme) is used to fabricate or reform cuts of meat or poultry. FSIS received one comment in response to the direct final rule. However, the comment was not an adverse comment or notice of intent to submit an adverse comment. Therefore, FSIS is affirming the December 31, 2001, effective date for this direct final rule.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2001, FSIS published a direct final rule "Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products" (66 FR 54912). This direct final amended the Federal meat inspection regulations to permit the use of pork collagen and TG enzyme, in limited amounts, as binders in certain standardized meat food products and amended the poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, in certain standardized poultry products. This direct final rule also amended the meat and poultry products inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. This direct final was in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

On December 3, 2001, FSIS received a comment from Hogan & Hartson, L.L.P. on behalf of Ajinomoto USA, Inc., in response to the rulemaking. The commenter, also one of the petitioners, requested that FSIS provide clarification on the scope of the direct final rule. Specifically, Ajinomoto requested that FSIS clarify that the Agency intended to allow the use of TG enzyme in cured pork products under 9 CFR 319.104 when it published the direct final rule. The commenter noted that in its petition it had specifically requested that the standard of identity for cured pork products under 9 CFR 319.104 be amended to provide for the use of TG enzyme as a binder and provided data in support of this request. The commenter also expressed full support for the rule and stated that the comment was not intended to be an adverse comment but rather a clarification on the scope of the final rule.

When it began development of the direct final rule, FSIS had determined that, based on the data submitted by Ajinomoto, TG enzyme was suitable for use as a binder in sausages as provided under part 319 of title 9. While the rule was under development, Ajinomoto submitted additional data to support the use of TG enzyme in other standardized products, including cured pork products under 9 CFR 319.140. Upon review of the additional data, FSIS determined that, in addition to sausages as provided under part 319, TG enzyme was suitable for use in restructured meats (9 CFR 319.15(d)), roast beef parboiled and steam roasted (9 CFR 319.104) cooked sausages (9 CFR 319.180) and poultry rolls (9 CFR 381.159), and incorporated these findings into the direct final rule. However, when it incorporated these products in the direct final rule, the Agency was still reviewing the data submitted on the use of TG enzyme in cured pork products defined under 9 CFR 319.104. Thus, the direct final rule does not provide for the use of TG enzyme in these products. FSIS ultimately determined that TG enzyme is suitable for use as a binder in cured pork products under 9 CFR 319.104. In response to the commenter's request to clarify the scope of the direct final rule,

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the rule, as published, is not intended to provide for the use of TG enzyme in cured pork products under 9 CFR 319.104. However, because FSIS ultimately found that TG enzyme is suitable for use as a binder in these standardized products, the Agency intends to publish another direct final rule to permit such a use.

Because FSIS did not receive any adverse comments or notice of intent to submit adverse comments in response to the direct final rule, the effective date remains as December 31, 2001.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the meeting and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: March 11, 2002.

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–6124 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–OM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30299; Amdt. No. 434]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on March 8, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 18, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 434 effective date: April 18, 2002]

From	To	MEA
§ 95.1001 Direct Routes—U.S. **Atlantic Routes—G437 Is Amended To Read in Part**		
Mapyl, OA FIX	Elbow, BS FIX	7000
Bahamas Routes—063V Is Added To Read		
Kuray, BS FIX *1500—MOCA	Nassau, BS, VOR/DME	*2000
§ 95.6001 Victor Routes—U.S. **§ 95.6002 VOR Federal Airway 2 Is Amended To Read in Part**		
Alexandria, MN VOR/DME	Gopher, MN VORTAC	3400
§ 95.6051 VOR Federal Airway 51 Is Amended To Read in Part		
Alma, GA, VORTAC *1700—MOCA	Dublin, GA VORTAC	*3000
§ 95.6066 VOR Federal Airway 66 Is Amended To Read in Part		
Baret, CA, FIX *6700—MCA Kumba, CA FIX, W BND	*Kumba, CA FIX	8000
Kumba, CA FIX	Imperial, CA VORTAC	4100
§ 95.6093 VOR Federal Airway 93 Is Amended To Read in Part		
Vinny, PA FIX *10000—MRA **2600—MOCA	*Roast, PA FIX	**4500
Roast, PA FIX *2600—MOCA	Lancaster, PA VORTAC	*4500
§ 95.6157 VOR Federal Airway 57 Is Amended To Read in Part		
Alma, GA VORTAC *1700—MOCA	Lotts, GA FIX	*3000
Lotts, GA FIX *1700—MOCA	Allendale, SC VOR	*6000
§ 95.6161 VOR Federal Airway 161 Is Amended To Read in Part		
Ardmore, OK VORTAC	Phara, OK FIX	3000
§ 95.6184 VOR Federal Airway 184 Is Amended To Read in Part		
Delro, PA FIX *10000—MRA *3900—MOCA	**Roast, PA FIX	**10000
Roast, PA FIX *3900—MOCA	Modena, PA VORTAC	*10000
§ 95.6194 VOR Federal Airway 194 Is Amended To Read in Part		
Hobby, TX VOR/DME	Sabine Pass, TX VOR/DME	3000
§ 95.6198 VOR Federal Airway 198 Is Amended To Read in Part		
Hobby, TX VOR/DME	Sabine Pass, TX VOR/DME	3000
§ 95.6362 VOR Federal Airway 362 Is Amended To Read in Part		
Brunswick, GA, VORTAC *1700—MOCA	Alma, GA VORTAC	*3000
Alma, GA VORTAC *1900—MOCA	Vienna, GA VORTAC	*3000
§ 95.6457 VOR Federal Airway 457 Is Amended To Read in Part		
Lancaster, PA VORTAC *10000—MRA	*Roast, PA FIX	**4500

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REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued
[Amendment 434 effective date: April 18, 2002]

From	To	MEA
**2600—MOCA Roast, PA FIX *2600—MOCA	Vinny, PA FIX	*4500
§ 95.6458 VOR Federal Airway 458 Is Amended To Read in Part		
Julian, CA VORTAC *5600—MCA Kumba, CA FIX, NW BND	*Kumba, CA FIX	7700
Kumba, CA FIX	Imperial, CA VORTAC	4100
§ 95.6474 VOR Federal Airway 474 Is Amended To Read in Part		
Delro, PA FIX *10000—MRA **3900—MOCA	*Roast, PA FIX	**10000
Roast, PA FIX *3900—MOCA	Modena, PA VORTAC	*10000
§ 95.6521 VOR Federal Airway 521 Is Amended To Read in Part		
Teres, FL FIX *7000—MCA CRESS FIX E BND **1400—MOCA	*Cress, FL FIX	**4000
§ 95.6575 VOR Federal Airway 575 Is Amended To Read in Part		
Mile High, CO VORTAC *9500—MCA NIWOT FIX NW BND	*NIWOT, CO FIX	8000
§ 95.6578 VOR Federal Airway 578 Is Amended To Read in Part		
Tift Myers, GA VOR *1900—MOCA	Alma, GA VORTAC	*3000

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7138 Jet Route No. 138 Is Amended To Read in Part			
San Antonio, TX VORTAC	Hobby, TX VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V–2 Is Amended To Add Changeover Point			
Gopher, MN VORTAC	Nodine, MN VORTAC	50	Gopher
V–97 Is Amended To Add Changeover Point			
Nodine, MN VORTAC	Gopher, MN VORTAC	60	Nodine
§ 95.6575 VOR Federal Airway 575 Is Amended To Read in Part			
Mile High, CO VORTAC *9500—MCA NIWOT FIX NW BND	*NIWOT, CO FIX	8000	
§ 95.6578 VOR Federal Airway 578 Is Amended To Read in Part			
Tift Myers, GA VOR *1900—MOCA	Alma, GA VORTAC	*3000	

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7138 JET ROUTE NO. 138 Is Amended To Read in Part			
San Antonio, TX VORTAC	Hobby, TX VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V–2 Is Amended To Add Changeover Point			
Gopher, MN VORTAC	Nodine, MN VORTAC	50	Gopher
V–97 Is Amended To Add Changeover Point			
Nodine, MN VORTAC	Gopher, MN VORTAC	60	Nodine

[FR Doc. 02–6126 Filed 3–13–02; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7153–2]

Approval of the Clean Air Act Section 111 and 112 Delegation of Authority Updates to the Washington State Department of Ecology, Benton Clean Air Authority, Northwest Air Pollution Authority, Puget Sound Clean Air Agency, and Spokane County Air Pollution Control Authority

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency, Region 10 (EPA) is providing public notice of actions which are already final. EPA updated delegation of authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) to the Washington State Department of Ecology (Ecology), Benton Clean Air Authority (BCAA), Northwest Air Pollution Authority (NWAPA), Puget Sound Clean Air Agency (PSCAA), and Spokane County Air Pollution Control Authority (SCAPCA). EPA also delegated of authority for the Consolidated Air Rule (CAR) to Ecology, BCAA, and SCAPCA.

EPA is publishing informational tables in the regulations for NESHAPs and NESHAP source categories that show which subparts these agencies now have authority to implement and enforce. EPA is also publishing revisions to the names and addresses of Region 10 air agencies.

DATES: This rule is effective April 15, 2002.

ADDRESSES: Copies of information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–1172.

SUPPLEMENTARY INFORMATION:

Contents

I. Background and Purpose
  a. What is the NESHAP program?
  b. What is the Consolidated Air Rule (CAR)?
  c. What is the purpose of delegating authority for NESHAPs and the CAR?
  d. What is the background on delegation to these agencies?
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  b. What are the conditions of these delegations?
  c. What does updated delegation mean for these agencies?
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  d. Regulatory Flexibility Act
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  g. Petitions for Judicial Review

I. Background and Purpose

h. What is the NESHAP program?

Hazardous air pollutants are defined in the Clean Air Act (Act) as pollutants that threaten human health through inhalation or other type of exposure. These pollutants are commonly referred to as "air toxics" and are listed in Section 112(b)(1) of the Act.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of Section 112 of the Act. These standards are found in 40 CFR parts 61 and 63.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these agencies can accept delegation of authority for implementing and enforcing the NESHAPs. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

Pursuant to the authority of Section 112(l) of the Act, EPA previously delegated authority to Ecology, BCAA, NWAPA, PSCAA, and SCAPCA through a formal rule-making process. At the time of delegation, EPA also approved streamlined procedures for requesting and approving delegation of new or updated NESHAPs.

The streamlined process for updating delegation is as follows: (1) The requesting agency sends a letter to EPA asking for delegation of new and/or revised NESHAPS that have been adopted unchanged into their regulations; (2) EPA sends a letter of response granting this delegation request (or explaining why it cannot be granted); (3) the agency does not need to send a response back to EPA; (4) if EPA does not receive a negative response from the requesting agency within 10 days of the signature date of EPA's letter, then the updated delegation becomes final 10 days after the date of EPA's letter.

i. What is the Consolidated Air Rule (CAR)?

The Consolidated Federal Air Rule (CAR) is a pilot rulemaking originating from President Clinton's March 16, 1995 initiative to reinvent environmental regulations. This rule consolidates major portions of the following New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the Synthetic Organic Chemical Manufacturing Industry (SOCMI): 40 CFR part 60, subparts A, Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts A, V, Y, and BB; and 40 CFR part 63, subparts A, F, G, and H.

The CAR gathers together applicable Federal SOCMI rules to form one

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integrated set of rules. It is an optional compliance alternative for SOCMI sources; sources may choose to comply with the consolidated rule or simply continue to comply with existing applicable rules. The intent of this consolidation is to improve understandability, reduce burden, clarify requirements, and improve implementation and compliance.

The CAR is not a new rule per se, but a repackaging of existing rules. It requires a separate delegation because it consists of new subparts in a new part of the CFR. Because it consolidates and streamlines existing rules—which may already be delegated—EPA can delegate the CAR with no additional burden other than notification. Consequently, EPA approved Ecology, BCAA, and SCAPCA's CAR delegation requests using the same streamlined approval procedures described above.

j. What is the purpose of delegating authority for NESHAPs and the CAR?

One of the goals of the Clean Air Act is to place state and local governments in positions of leadership for air pollution prevention and control. Consistent with the Act, the NESHAP program and the CAR allow EPA to transfer primary implementation and enforcement responsibility to state and local agencies, provided they request delegation and demonstrate adequate resources, procedures, and authority. As with all delegations, EPA retains authority under Section 113 of the Act to implement and enforce any federal air quality standard if needed, including NESHAPs and the CAR.

d. What is the background on delegation to these agencies?

In the past, EPA delegated authority to implement and enforce certain NESHAPs to Ecology, BCAA, NWAPA, PSCAA, and SCAPCA through formal rule-making. (For Ecology, BCAA, and SCAPCA *see* 66 FR 35115 and 66 FR 48221; for NWAPA and PSCAA *see* 63 FR 66054, 63 FR 7793, 64 FR 19719, 65 FR 10391, and 66 FR 14320) These delegations were based on EPA's determination that they have adequate resources and authority to carry-out this responsibility in a manner comparable to EPA.

Recently, all these agencies requested updated delegation of NESHAPs and some requested delegation of the CAR based on implementation of state or local rules that adopt new or more current federal rules by reference. EPA approved these requests because these agencies continue to meet the requirements for delegation.

e. How were these actions taken and why is this action being published?

The purpose of this notice is to notify the public of actions already taken by EPA to delegate new and more current NESHAP standards to Ecology, BCAA, NWAPA, PSCAA, SCAPCA and the CAR to Ecology, BCAA, and SCAPCA. These actions were taken by letter approval as follows:

Ecology—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Ms. Mary Burg, Program Manager, Air Quality Program, Ecology, signed February 8, 2002, effective February 18, 2002.

BCAA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Dr. David Lauer, Executive Director, BCAA, signed February 8, 2002, effective February 18, 2002.

NWAPA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air Quality to Mr. James Randies, Director, NWAPA, signed February 8, 2002, effective February 18, 2002.

PSCAA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Mr. Dennis McLerran, Air Pollution Control Officer, PSCAA, signed February 8, 2002, effective February 18, 2002.

SCAPCA—Letter from Ms. Barbara McAllister, Director, EPA, Region 10, Office of Air to Mr. Eric P. Skelton, Director, SCAPCA, signed February 8, 2002, effective February 18, 2002.

These delegations were effective ten days after the signature date. If an agency did not agree to the terms of their delegation, they could submit a written Notice of Objection within 10 days and EPA would withdraw the delegation. No agency submitted a Notice of Objection.

II. Implications

a. What specific subparts were delegated?

Ecology's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in affect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, W and M as it applies to nonmajor sources; 40 CFR part 63 and Appendices in effect on February 20, 2001, except Subparts C, E, and M as it applies to nonmajor sources; 40 CFR part 63 subpart MM in effect on March 13, 2001; and 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to Ecology; these remain the responsibility of EPA.

BCAA's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in effect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, and W; 40 CFR part 63 and Appendices in effect on February 20, 2001, except Subparts C, E, S, LL and M as it applies to nonmajor sources; 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to BCAA; these remain the responsibility of EPA.

NWAPA's updated delegation of authority covers standards promulgated and revised before July 1, 2000, except as specified in NWAPA's Regulation Section 104.2, amended on June 14, 2001. The delegation excludes: 40 CFR part 61, Subparts B, H, I, K, Q, R, T, and W; and 40 CFR part 63, Subparts LL and S as it applies to Kraft and Sulfite Pulping Mills. New or revised NESHAPs that become effective after July 1, 2001 are not delegated to NWAPA; these remain the responsibility of EPA.

PSCAA's updated delegation of authority covers standards promulgated and revised prior to July 1, 2001 as specified in PSCAA Regulation I, Section 6.11, amended on September 13, 2001. The delegation excludes: 40 CFR part 61, Subparts B, H, I, K, Q, R, T, and W; and 40 CFR part 63, Subparts LL and S as it applies to Kraft and Sulfite Pulping Mills. New or revised NESHAPs that become effective after July 1, 2001 are not delegated to PSCAA; these remain the responsibility of EPA.

SCAPCA's updated delegation of authority covers standards promulgated and revised as of the dates specified in WAC–173–400–075, amended on August 15, 2001. These are as follows: 40 CFR part 61 and Appendices in effect on February 20, 2001, except Subparts B, H, I, K, Q, R, T, and W; 40 CFR part 63 and Appendices in effect on February 20, 2001 except Subparts C, E, LL, M as it applies to nonmajor sources, and S as it applies to Kraft and Sulfite Pulping Mills; 40 CFR part 65 in effect December 14, 2000. New or revised NESHAP and CAR subparts that become effective after the dates cited here are not delegated to SCAPCA; these remain the responsibility of EPA.

b. What are the conditions of these delegations?

These delegations are subject to all federal law, policy, guidance and determinations pursuant to 40 CFR parts 61, 63, and 65. Some authorities cannot be delegated and are retained by EPA. These include: (1) certain authorities in the General Provisions of Parts 61 and 63; (2) specific provisions within some Part 61 and 63 subparts; and (3) for those agencies receiving delegation of the CAR, 40 CFR part 65, § 65.8 and § 65.46 of subpart C, and § 65.102 of subpart F.

In general, EPA does not delegate any authorities that require implementation through formal rulemaking or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of the Act. Examples of the types of authorities EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and decisions that require rulemaking to implement. The authorities listed in the table below are the specific General Provision authorities that cannot be delegated to any state or local agency and are retained by EPA

TABLE 1.—PART 61 AND 63 GENERAL PROVISIONS AUTHORITIES THAT CANNOT BE DELEGATED

Section	Authorities
61.04(b)	Waiver of Recordkeeping.
61.12(d)(1)	Approval of Alternative Means of Emission Limitation.
61.13(h)(1)(ii)	Approval of Major Alternatives to Test Methods.
61.14(g)(1)(ii)	Approval of Major Alternatives to Monitoring.
61.16	Availability of Information.
61.16	Availability of Information.
61.53(c)(4)	List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chloralki Plants.
63.6(g)	Approval of Alternative Non-Opacity Emission Standards.
63.6(h)(9)	Approval of Alternative Opacity Standard.
63.7(e)(2)(ii) and (f)	Approval of Major Alternative to Test Methods.
63.8(f)	Approval of Major Alternatives to Monitoring.
63.10(f)	Waiver of Recordkeeping—all.

The reader should refer to 40 CFR 63.90 as well as each agency's original delegation for more information about which General Provisions are delegated and which are reserved by EPA. For information about specific exclusions within a particular standard, the reader should refer to that specific subpart in 40 CFR parts 61, 63, and 65.

c. What does updated delegation mean for these agencies?

Ecology, BCAA, NWAPA, PSCAA, and SCAPCA are the primary implementation and enforcement authority for delegated standards. They are the recipient of notifications and reports and the point of contact for most questions and compliance issues. They work directly with owners and operators of affected facilities subject to delegated standards to ensure all required information is submitted to them. EPA ensures that this information is submitted to EPA upon request.

EPA requests that these agencies meet certain reporting requirements. For example, EPA requires submission of source data, compliance information, copies of determinations, copies of notifications pertaining to continuous opacity monitoring use, and copies of information about changes to test methods and monitoring. More detail about these requirements are provided in Ecology, BCAA, NWAPA, PSCAA, and SCAPCA's original delegations.

d. What does updated delegation mean for affected sources?

Sources who are subject to delegated NESHAPs or the CAR will send notifications and reports to their respective agency, except for notifications, reports, and requests that pertain to authorities that are not delegated. The later should be sent to EPA. (see above, "What are the conditions of these delegations?")

III. Summary

This document provides public notice of updates to NESHAP and CAR delegations for Ecology, BCAA, NWAPA, PSCAA, and SCAPCA. These delegations are already final and were granted by letter approval from the Director, Office of Air Quality, EPA, Region 10, to the air program directors at Ecology, BCAA, NWAPA, PSCAA, and SCAPCA. These delegations are subject to all Federal law, policy, guidance and determinations issued pursuant to 40 CFR parts 61, 63, and 65. Copies of delegation letters can be obtained by contacting EPA at the address above.

IV. Administrative Requirements

a. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled "Regulatory Planning and Review."

This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

b. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local

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officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request.

c. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

d. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under Section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

e. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

f. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

g. Petitions for Judicial Review

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 13, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* Section 307(b)(2)).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 20, 2002.

Ron Kreizenbeck,

Acting Regional Administrator, Region 10.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 61 and 63 as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 61.04 is amended by adding paragraph (b)(N); revising paragraphs (b)(C); (b)(MM) introductory text, (b)(MM)(i) through (vii); (b)(WW) and (c)(10) to read as follows:

§ 61.04 Addresses.

* * * * *

(b) * * *

(C) State of Alaska. (i) Alaska Department of Environmental Conservation (ADEC), 410 Willoughby Avenue, Suite 303, Juneau, AK 99801–1795, *http://www.state.ak.us/local/akpages/ENV.CONSERV/home.htm.*

(ii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(N) State of Idaho. (i) Idaho Department of Environmental Conservation (IDEQ), 1410 N. Hilton, Boise, ID 83706, *http://www2.state.id.us/deq/.*

(ii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(MM) State of Oregon. (i) Oregon Department of Environmental Quality (ODEQ), 811 SW Sixth Ave, Portland, OR 97204–1390, *http://www.deq.state.or.us/.*

(ii) Lane Regional Air Pollution Authority (LRAPA), 1010 Main Street, Springfield, Oregon 97477, *http://www.lrapa.org.*

(iii) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

(iv)–(vii) [Reserved]

* * * * *

(WW) State of Washington. (i) Washington State Department of Ecology (Ecology), P.O. Box 47600, Olympia, WA 98504–7600, *http://www.ecy.wa.gov/.*

(ii) Benton Clean Air Authority (BCAA), 650 George Washington Way, Richland, WA 99352–4289, *http://www.bcaa.net/.*

(iii) Northwest Air Pollution Control Authority (NWAPA), 1600 South Second St., Mount Vernon, WA 98273–5202, *http://www.nwair.org/.*

(iv) Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Road S.E., Suite 1, Lacey, WA 98503–1128, *http://www.oapca.org/.*

(v) Puget Sound Clean Air Agency (PSCAA), 110 Union Street, Suite 500, Seattle, WA 98101–2038, *http://www.pscleanair.org/.*

(vi) Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College, Suite 403, Spokane, WA 9920, *http://www.scapca.org/.*

(vii) Southwest Clean Air Agency (SWCAA), 1308 NE 134th St., Vancouver, WA 98685–2747, *http://www.swcleanair.org/.*

(viii) Yakima Regional Clean Air Agency (YRCAA), Larson Building, Suite 1016, 6 South 2nd St., Yakima WA 98901, *http://co.yakima.wa.us/cleanair/default.htm.*

(ix) See paragraph (c)(10) of this section for a table indicating the delegation status of National Emission Standards for Hazardous Air Pollutants for Region 10—Alaska, Idaho, Oregon, and Washington.

* * * * *

(c) * * *

(10) The following table lists the delegation status of specific Part 61 Subparts that have been delegated unchanged to state and local air pollution control agencies in Region 10. An "X" indicates the subpart has been delegated, subject to all the conditions and limitations set forth in federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

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DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10 [1]

40 CFR Part 61, Subparts [2]	ADEC [3]	IDEQ [4]	ODEQ [5]	LRAPA [6]	Ecology [7]	BCAA [8]	NWAPA [9]	OAPCA [10]	PSCAA [11]	SCAPCA [12]	SWAPCA [13]	YRCAA [14]
A General Provisions [15]	X	4X			X	X	X	X	X	X	X	X
B Radon from Underground Uranium Mines.						X	X	X	X	X	X	X
C Beryllium		4X			X	X	X	X	X	X	X	X
D Beryllium Rocket Motor Firing		4X			X	X	X	X	X	X	X	X
E Mercury	X	4X			X	X	X	X	X	X	X	X
F Vinyl Chloride		4X			X	X	X	X	X	X	X	X
H Emissions of Radionuclides other than Radon from Dept of Energy facilities.												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H.												
J Equipment Leaks of Benzene	X	4X			X							
K Radionuclides from Elemental Phosphorus Plants.												
L Benzene from Coke Recovery		4X			X							
M Asbestos	[3]X	4X			[7]X							
N Arsenic from Glass Plants		4X			X							
O Arsenic from Primary Copper Smelters		4X			X							
P Arsenic from Arsenic Production Facilities		4X			X							
Q Radon from Dept of Energy facilities												
R Radon from Phosphogypsum Stacks.												
T Radon from Disposal of Uranium Mill Tailings.		4X										
V Equipment Leaks	X	4X			X							
W Radon from Operating Mill Tailings.												
Y Benzene from Benzene Storage Vessels	X	4X			X							
BB Benzene from Benzene Transfer Operations.		4X			X							
FF Benzene Waste Operations	X				X							

[1] Table last updated on April 15, 2002.

[2] Any authority within any Subpart of this Part that is identified as not delegatable, is not delegated.

[3] Alaska Department of Environmental Conservation (01/18/1997). Note: Alaska received delegation for §61.145 and §61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in §61.145, as §61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for Subpart M for sources not required to obtain an operating permit under Alaska's regulations.

[4] Idaho Department of Environmental Quality (07/01/2000). Note: Delegation of these 40 CFR Part 61, Subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.

[5] Oregon Department of Environmental Quality.

[6] Lane Regional Air Pollution Authority.

[7] Washington Department of Ecology (02/20/2001). Note: Delegation of 40 CFR Part 63, Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford).

[8] Benton Clean Air Authority (02/20/2001). Note: Delegation of 40 CFR Part 63, Subpart M excludes Hanford, see footnote 7.

[9] Northwest Air Pollution Authority (07/01/2000).

[10] Olympic Air Pollution Control Authority (07/01/2000). Note: Delegation of 40 CFR Part 63, Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act.

[11] Puget Sound Clean Air Agency (07/01/2001).

[12] Spokane County Air Pollution Control Authority (02/20/2001).

[13] Southwest Air Pollution Control Authority (08/01/1998).

[14] Yakima Regional Clean Air Authority (07/01/2000).

[15] General Provisions Authorities which are not delegated include approval of major alternatives to monitoring, and any sections in the subparts pertaining to approval of alternative standards (*i.e.*, alternative means of emission limitations). For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see 40 CFR 63.90.

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising (a)(47)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(47) Washington. (i) The following table lists the delegation status of specific part 63 Subparts that have been delegated to state and local air pollution control agencies in Washington. An "X" indicates the subpart has been delegated, subject to all the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of Federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON [1]

40 CFR Part 63, Subparts [2]	Ecology [3]	BCAA [4]	NWAPA [5]	OAPCA [6]	PSCAA [7]	SCAPCA [8]	SWCAA [9]	YRCAA [10]
A General Provisions [11]	X	X	X	X	X	X	X	X
D Early Reductions	X	X	X	X	X	X	X	X
F HON-SOCMI	X	X	X	X	X	X	X	X
G HON-Process Vents	X	X	X	X	X	X	X	X
H HON-Equipment Leaks	X	X	X	X	X	X	X	X
I HON-Negotiated Leaks	X	X	X	X	X	X	X	X
L Coke Oven Batteries	X	X	X	X	X	X	X	X
M Perchloroethylene Dry Cleaning	X[3]	X[4]	X		X[7]	X[8]	X	X[10]
N Chromium Electroplating	X	X	X	X	X	X	X	X
O Ethylene Oxide Sterilizers	X	X	X	X	X	X	X	X
Q Industrial Process Cooling Towers	X	X	X	X	X	X	X	X
R Gasoline Distribution	X	X	X	X	X	X	X	X
S Pulp and Paper [12]	X		[5]	X[6]	X[7]	X[8]	X[9]	X[10]
T Halogenated Solvent Cleaning	X	X	X	X	X	X	X	X
U Polymers and Resins I	X	X	X	X	X	X	X	X
W Polymers and Resins II–Epoxy	X	X	X	X	X	X	X	X
X Secondary Lead Smelting	X	X	X	X	X	X	X	X
Y Marine Tank Vessel Loading	X	X	X		X	X	X	
AA Phosphoric Acid Manufacturing Plants	X	X	X	X	X	X		X
BB Phosphate Fertilizers Production Plants	X	X	X	X	X	X		X
CC Petroleum Refineries	X	X	X	X	X	X	X	X
DD Off-Site Waste and Recovery	X	X	X	X	X	X	X	X
EE Magnetic Tape Manufacturing	X	X	X	X	X	X	X	X
GG Aerospace Manufacturing & Rework	X	X	X	X	X	X	X	X
HH Oil and Natural Gas Production Facilities	X	X	X	X	X	X		X
II Shipbuilding and Ship Repair	X	X	X	X	X	X	X	X
JJ Wood Furniture Manufacturing Operations	X	X	X	X	X	X	X	X
KK Printing and Publishing Industry	X	X	X	X	X	X	X	X
LL Primary Aluminum [13]	X							
MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills [14].	X							
OO Tanks—Level 1	X	X	X	X	X	X		X
PP Containers	X	X	X	X	X	X		X
QQ Surface Impoundments	X	X	X	X	X	X		X
RR Individual Drain Systems	X	X	X	X	X	X		X
SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process.	X	X	X	X	X	X		X
TT Equipment Leaks—Control Level 1	X	X	X	X	X	X		X
UU Equipment Leaks—Control Level 2	X	X	X	X	X	X		X
VV Oil-Water Separators and Organic-Water Separators.	X	X	X	X	X	X		X
WW Storage Vessels (Tanks)—Control Level 2	X	X	X		X	X		X
YY Source Categories: Generic MACT	X	X	X		X	X		X
CCC Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.	X	X	X		X	X		X
DDD Mineral Wool Production	X	X	X		X	X		X
EEE Hazardous Waste Combustors	X	X	X		X	X		X
GGG Pharmaceuticals Production	X	X	X		X	X		X
HHH Natural Gas Transmission and Storage Facilities.	X	X	X		X	X		X
III Flexible Polyurethane Foam Production	X	X	X		X	X		X
JJJ Polymers and Resins IV	X	X	X		X	X		X
LLL Portland Cement Manufacturing	X	X	X		X	X		X
MMM Pesticide Active Ingredient Production	X	X	X		X	X		X
NNN Wool Fiberglass Manufacturing	X	X	X		X	X		X
OOO Manufacture of Amino Phenolic Resins	X	X	X		X	X		X
PPP Polyether Polyols Production	X	X	X		X	X		X

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DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON [1]—Continued

40 CFR Part 63, Subparts [2]	Ecology [3]	BCAA [4]	NWAPA [5]	OAPCA [6]	PSCAA [7]	SCAPCA [8]	SWCAA [9]	YRCAA [10]
RRR Secondary Aluminum Production	X	X			X	X		
TTT Primary Lead Smelting	X	X	X		X	X		
VVV Publicly Owned Treatment Works	X	X	X		X	X		
XXX Ferroalloys Production: Ferromanganese & Silicomanganese.	X	X	X		X	X		
CCCC Manufacture of Nutritional Yeast					X			
GGGG Extraction of Vegetable Oil					X			
VVVV Boat Manufacturing.								

[1] Table last updated on April 15, 2002. See 40 CFR 61.04(b)(WW) for agency addresses.
[2] Any authority within any subpart of this part that is identified as not delegatable, is not delegated.
[3] Washington State Department of Ecology (03/13/2001 for MM, 02/20/2001 for all others). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act.
[4] Benton Clean Air Agency (02/20/2001). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act.
[5] Northwest Air Pollution Control Agency (07/01/2000). Note: delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[6] Olympic Air Pollution Control Agency (07/01/2000). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[7] Puget Sound Clean Air Agency (07/01/2001). Note: delegation of subpart S applies to all applicable facilities and processes exept Kraft and Sulfite Pulping Mills (see footnote 12). For information about delegation of subpart M, see paragraph (a)(47)(ii) of this section.
[8] Spokane County Air Pollution Control Agency (02/20/2001). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[9] Southwest Clean Air Agency (08/01/1998). Note: delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[10] Yakima Regional Clean Air Authority (07/01/2000). Note: delegation of subpart M applies only to those sources required to obtain an operating permit under Title V of the Clean Air Act; delegation of subpart S applies to all applicable facilities and processes except Kraft and Sulfite Pulping Mills (see footnote 12).
[11] General Provisions Authorities which are not delegated include approval of major alternatives to test methods, approval of major alternatives to monitoring, and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations). For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see § 63.90.
[12] Subpart S of this part as it pertains to Kraft and Sulfite Pulping Mills cannot be delegated to any local agencies in Washington. The Washington State Department of Ecology retains sole authority to regulate Kraft and Sulfite Pulping Mills, pursuant to Washington State Administrative Code 173–405–012 and 173–410–012.
[13] Subpart LL of this part cannot be delegated to any local agencies in Washington because the Washington State Department of Ecology retains sole authority to regulate Primary Aluminum Plants, pursuant to Washington Administrative Code 173–415–010.
[14] Subpart MM of this part cannot be delegated to any local agencies in Washington because the Washington State Department of Ecology retains sole authority to regulate Kraft and Sulfite Pulping Mills, pursuant to Washington State Administrative Code 173–405–012 and 173–410–012.

* * * * *

[FR Doc. 02–5603 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7156–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion for the White Bridge Road property of the Asbestos Dump Superfund site from the National Priorities List; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a document in the **Federal Register** of February 8, 2002 (67 FR 5955), announcing the deletion of the White Bridge Road property of the Asbestos Dump Superfund site from the National Priorities List. The document contained an error regarding a reference to a table of appendix B of 40 CFR part 300. This document corrects the reference to "Table 2" to read "Table 1".

DATES: Effective on March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kim O'Connell, (212) 637–4399; e-mail: *oconnell.kim@epa.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2002, in FR Doc. 02–3098, under the "PART 300—[AMENDED]" caption, make the following correction:

PART 300—[CORRECTED]

Appendix B—[Corrected]

On page 5955, in the second column, correct amendatory instruction 2 to read as follows:

2. Table 1 of appendix B to part 300 is amended by adding a "P" in the Notes column in the entry for Asbestos Dump, Millington, New Jersey.

Dated: February 25, 2002.
William J. Muszynski,
Deputy Regional Administrator, Region II.
[FR Doc. 02–5864 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–3 and 102–84

[FPMR Amendment D–98]

RIN 3090–AG55

Annual Real Property Inventories

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adopting as final without change an interim rule which revised the Federal Property Management Regulations (FPMR) by moving coverage on the annual real property inventories into the Federal Management Regulation (FMR). A cross-reference was added to the FPMR to direct readers to the coverage in the FMR: The FMR coverage was written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: This final rule becomes effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, 202–501–1737.

SUPPLEMENTARY INFORMATION:

A. Background

In furtherance of its leadership role in real property asset management, the Office of Governmentwide Policy, Office of Real Property, conducted a comprehensive review of the policies contained in Federal Property Management Regulations (FPMR) Part 101–3 (41 CFR part 101–3), entitled "Annual Real Property Inventories." This review was based on a collaborative effort with Federal real property holding agencies that utilize the Worldwide Inventory of Federal Real Property.

Representatives from the Department of the Interior, the Department of Energy, and the Army Corps of Engineers participated with GSA in conducting the initial steps of the comprehensive review of the policies in FPMR part 101–3 (41 CFR part 101–3). The review focused on improvements to make the real property inventory program more useful and to enable Federal agencies to more effectively manage their real property inventories. In addition, we have rewritten these regulations in plain language format. These regulations are being transferred from the FPMR to the FMR to enable the Government to better focus on implementing statutory requirements, Executive Orders, and governmentwide policies rather than on detailed operating procedures.

An interim rule was published in the **Federal Register** on November 2, 2001 (66 FR 55593). No comments were received in response to the interim rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612 because it applies solely to matters concerning agency management and personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–3 and 102–84

Federal buildings and facilities, Government property management.

Interim Rule Adopted as Final Without Change

For the reasons set forth in the preamble and under the authority of 40 U.S.C. 486(c), the interim rule revising 41 CFR part 101–3 and adding 41 CFR part 102–84 which was published in the **Federal Register** at 66 FR 55593 on November 2, 2001, is adopted as a final rule without change.

Dated: February 28, 2002.
Stephen A. Perry,
Administrator of General Services.
[FR Doc. 02–5775 Filed 3–13–02; 8:45 am]
BILLING CODE 6820–23–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 01–32; FCC 02–09]

Implementation of Competitive Bidding Rules to License Certain Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission ("the Commission"), pursuant to the Balanced Budget Act of 1997, takes action to grant initial licenses for certain areas of the country for cellular service by allowing all eligible parties to apply for initial licenses, licensing markets based on rural service areas (RSAs) under part 22 of its rules, and using its part 1 competitive bidding rules to auction these licenses.

DATES: Effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine M. Harris at (202) 418–0609 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order ("R&O") in WT Docket No. 01–32, FCC 02–9, adopted January 16, 2002 and released January 28, 2002. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. The document is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2001/fcc02-9.pdf*.

Paperwork Reduction Act

1. The R&O contains no proposed information collection.

Synopsis of the Report and Order

2. In the *Notice of Proposed Rule Making* in this proceeding (*NPRM*), 66 FR 14104 (March 9, 2001), the Commission proposed rules for awarding licenses for four cellular Rural Service Areas (RSAs) that remain unlicensed because the initial lottery winner was disqualified or has otherwise withdrawn its application.

3. There are currently four cellular RSA markets that remain unlicensed because the initial lottery winner was disqualified. These markets are: 332A—Polk, AR; 582A—Barnes, ND; 672A—Chambers, TX ; and 727A—Ceiba, PR. Three additional markets (370A—Monroe, FL; 492A—Goodhue, MN; and 615A—Bradford, PA) were the subject of recent Congressional action in which the Commission was directed to reinstate the original lottery winner in each of the three markets to tentative selectee status and proceed with processing the selectee's application for authority to operate. *See* District of Columbia Appropriations Act of FY 2001, Public Law 106–553, Title X, 1007, 114 Stat. 2762, Launching Our Communities' Access to Local Television Act of 2000 (2000) (D.C. Appropriations Act of FY 2001); *Public Notice*, Wireless Telecommunications Bureau Grants Rural Cellular Licenses, 16 FCC Rcd 5601 (2001) (not published in the **Federal Register**), recon. denied, In the Matter of Applications of Great Western Cellular Partners, L.L.C., Monroe Telephone Services, L.L.C., and Futurewave Partners, L.L.C., *Memorandum Opinion and Order*, DA 01–2443 (CWD rel. Oct. 19, 2001) (application for review pending). Under

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the Balanced Budget Act of 1997 (1997 Budget Act), the Commission is now required, with certain exceptions not applicable here, to resolve mutually exclusive applications for initial licenses by competitive bidding. *See* Balanced Budget Act of 1997, Public Law 105–33, 3002(a), 111 Stat. 251, 258–60 (1997); 1997 Budget Act, Section 3002(a)(1)(A), *codified* at 47 U.S.C. 309(j)(1), (2); 1997 Budget Act, Section 3002(a)(2)(B), *codified* at 47 U.S.C. 309(i)(5). Based on the record compiled in this proceeding the Commission has decided to implement the proposals put forth in the *NPRM*, namely, to: (1) Allow all eligible parties to apply for these initial licenses; (2) license these markets on an RSA basis under our part 22 rules; and (3) use our part 1 competitive bidding rules to auction these licenses.

Background

4. The Commission has been awarding cellular licenses since 1982. Under the original cellular licensing rules, one of the two cellular channel blocks in each market (the B block) was awarded to a local wireline carrier, while the other block (the A block) was awarded competitively to a carrier other than a local wireline incumbent. After awarding the first thirty Metropolitan Statistical Area (MSA) licenses pursuant to comparative hearing rules, the Commission adopted rules in a 1984 *Report and Order*, 49 FR 23628 (June 7, 1984), and a 1986 *First Report and Order*, 51 FR 26895 (July 28, 1986), to award the remaining cellular MSA and RSA licenses through lotteries. On January 31, 2001, the Commission adopted a *Notice of Proposed Rulemaking*, 66 FR 14101 (March 9, 2001), acknowledging that in four RSA markets no initial licensee had been granted.

5. In the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act), Congress added Section 309(j) to the Communications Act, authorizing the Commission to resolve mutually exclusive applications for use of the electromagnetic spectrum by auction. Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, 6002(a), 107 Stat. 312, 387–92 (1993). In addition, Section 6002(e) of the 1993 Budget Act provided that: "[t]he Federal Communications Commission shall not issue any license or permit [by lottery] after the date of enactment of this Act unless . . . one or more applications for such license were accepted for filing by the Commission before July 26, 1993." This provision left to the Commission's discretion whether to use auctions or lotteries for applications filed before July 26, 1993. Beginning in 1994, the Commission, in a *Memorandum Opinion and Order*, 59 FR 37163 (July 21, 1994), exercised its discretion and used lotteries, rather than auctions, to resolve already-pending mutually exclusive applications for cellular unserved areas filed prior to July 26, 1993.

6. On August 5, 1997, the 1997 Budget Act was signed into law, modifying the Commission's auction authority by amending Section 309(j) of the Communications Act to require that all mutually exclusive applications for initial licenses or construction permits be auctioned, with certain exceptions not applicable here. 1997 Budget Act, Public Law 105–33, 3002(a), 111 Stat. 251, 258–60 (1997) (amending 47 U.S.C. 309(j)). The 1997 Budget Act expressly repealed Section 6002(e) of the 1993 Budget Act, *id.* at 3002(a)(4), and terminated the Commission's authority to award licenses through random selection, even in the case of applications filed prior to July 26, 1993, except for licenses for noncommercial educational and public broadcast stations, *id.* at 3002(a)(2)(B). The Commission had found in the *Competitive Bidding Second Report and Order* that mutually exclusive applications for initial licenses to provide cellular service were auctionable under the auction authority provided by the 1993 Budget Act. Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 59 FR 22980 (May 4, 1994), (*Competitive Bidding Second Report and Order*). Because the 1997 Budget Act terminated the Commission's remaining lottery authority, the Bureau dismissed all pending RSA lottery applications. *See* In the Matter of Certain Cellular Rural Service Area Applications, *Order*, 14 FCC Rcd 4619 (WTB 1999) (not published in the **Federal Register**) (dismissing applications in RSAs 332A (Polk, AR), 370A (Monroe, FL), 492A (Goodhue, MN), 582A (Barnes, ND), 615A (Bradford, PA), and 727A (Ceiba, PR)); In the Matter of Certain Cellular Rural Service Area Applications in Market Nos. 599A and 672A, *Order*, DA 99–814 (CWD rel. Apr. 29, 1999) (dismissing applications in RSAs 599A (Nowata, OK) and 672A (Chambers, TX)); In the Matter of Certain Rural Service Area Applications in Market Nos. 599A and 672A, *Order on Reconsideration*, DA 99–1426 (CWD rel. July 21, 1999) (reinstating applications of tentative selectees in those markets—Zephyr Tele-Link in RSA 599A and Alee in RSA 672A); In the Matter of Zephyr Tele-Link Application for a Construction Permit to Establish a Cellular System Operating on Frequency Block A in the Domestic Public Cellular Radio Telecommunications Service To Serve the Oklahoma 4-Nowata Rural Service Area, Market No. 599A, *Order* 15 RCC Rcd 4247 (CWD 2000) (granting application of Zephyr Tele-Link); In the Matter of Application of Alee Cellular Communications for Authorization to Construct Nonwireline Cellular System in Texas RSA 21 Market 672, *Memorandum Opinion and Order*, 15 FCC Rcd 2831(2000) (not published in the **Federal Register**) (recon. pending) (dismissing application of Alee) (*Alee Cellular*). Several of the applicants sought reconsideration of the Bureau's dismissal of the RSA applicants, and the Bureau declined to reconsider its actions. In the Matter of Certain Cellular Rural Service Area Applications, *Order*, 16 FCC Rcd 4619 (WTB 2001) (not published in the **Federal Register**) (affirming dismissals) (*March 2, 2001 Order*). Ranger Cellular and Miller Communications, Inc. have sought further reconsideration of the Bureau's dismissal of the applications, and High Tower Communications, Inc. has sought Commission review of the Bureau's action. Consolidated Petition for Reconsideration of Ranger Cellular and Miller Communications, Inc. (filed Mar. 30, 2001); Application for Review of High Tower Communications, Inc. (filed Apr. 2, 2001).

7. In the first dismissal order cited above, the Bureau also dismissed as moot CCPR's Petition requesting that we award licenses for the remaining RSA markets through competitive bidding. CCPR's Petition specifically requested that market 727A—Ceibo, Puerto Rico, be awarded through competitive bidding rather than through a second lottery. However, the CCPR Petition raised certain issues concerning the broader applicability of the use of competitive bidding for all markets where an initial lottery was held and the winner was disqualified. The Commission therefore treated the CCPR Petition as a petition for rulemaking and requested comment on awarding cellular licenses through competitive bidding for all remaining unlicensed RSAs. Although the Commission dismissed CCPR's Petition as moot because we are required by the 1997 Budget Act to award licenses through competitive bidding, we have considered, and are incorporating into the record of this proceeding, all comments and reply comments submitted in response to the CCPR Petition.

8. The four markets for which no initial license has been granted are: 332A—Polk, AR; 582A—Barnes, ND; 727A—Ceiba, PR; and 672A—Chambers, TX. These four markets are the subject of this *Report and Order*.

A. Need for and Objectives of the Report and Order

9. Congress enacted the Balanced Budget Act of 1997, which requires the Commission to resolve mutually exclusive applications for initial licenses through competitive bidding instead of random selection, with certain exceptions not applicable here. Accordingly, the Commission initiated this rulemaking in order to adopt rules for the granting of initial cellular RSA authorizations by means of competitive bidding. The Commission's objective in this rulemaking proceeding is to establish, for cellular RSA markets for which a tentative selectee has been disqualified, the applicable competitive bidding and licensing rules. Such rules are necessary in order to determine the classes of eligible entities as well as determine what policies, if any, should be adopted to promote participation by small business entities, consistent with the Commission's statutory obligation under Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. 309.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

10. No comments were submitted specifically in response to the IRFA. Some of the comments responding to the proposals contained in the *NPRM*, however, discussed issues that could affect small businesses. Two of the three commenters that addressed eligibility for the four cellular RSA licenses at issue generally supported permitting all eligible entities to apply for the licenses. *See Report and Order* at ¶¶ 8–21. The third commenter opposed such open eligibility (which would encompass small businesses), instead arguing that only entities that had filed lottery applications for these licenses in 1988 and 1989 *and* had appealed the dismissal of their lottery applications should be permitted to apply for these licenses (which would mean only three entities would be potentially eligible). *See Report and Order* at ¶¶ 8–21.

11. One commenter supported the proposals contained in the *NPRM* to provide bidding credits to small businesses to encourage them to bid on and win the cellular RSA licenses. *See Report and Order* at ¶¶ 27–33. Another commenter opposed adoption of such bidding credits on the basis that such credits would unfairly and uneconomically skew the auction in favor of smaller entities. *See Report and Order* at ¶¶ 27–33.

12. Regarding eligibility for the four cellular RSA licenses, the Commission determined in the *Report and Order*, that any entity otherwise qualified under the rules would be permitted to apply for any of the four RSA licenses. *See Report and Order* at ¶¶ 8–21. As explained in greater detail in the *Report and Order* and in Section E *infra*, the Commission concluded that permitting broad-based eligibility would best further the public interest as well as facilitate participation by small businesses.

13. Regarding the adoption of bidding credits for certain categories of small businesses, the Commission concluded that including such bidding credits as part of the cellular RSA application and bidding process would help to promote opportunities for small businesses. *See Report and Order* at ¶¶ 27–33. As explained in greater detail in the *Report and Order* and Section E *infra*, implementation of bidding credits facilitates the ability of small businesses to compete against larger entities and promotes economic opportunities for those small businesses.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisidiction." *Id.* 601(6). The term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. *Id.* 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA at 15 U.S.C. 632.

15. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

16. According to recent telecommunications industry revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Services (PCS), which are placed together in that data. Trends in Telephone Service, Table 19.3 (March 2000). This data does not indicate how many of these 808 carriers fall within each of the revenue tiers defined by the Commission for the purpose of receiving bidding credits as some form of small business or entrepreneur. *See Report and Order* at ¶¶ 29–33. As described in the *Report and Order* and Section E *infra*, the Commission defined an "entrepreneur" as an entity with average annual gross revenues not exceeding $40 million for the preceding three years and provided a 15 percent bidding credit; a "small business" as an entity with average annual gross revenues not exceeding $15 million for the preceding three years and provided a 25 percent bidding credit; and a "very small business" as an entity with average annual gross revenues not exceeding $3 million for the preceding three years and provided a 35 percent bidding credit.

17. The Commission is required to estimate in this FRFA the number of small entities to which any new rules would apply, provide a description of such entities, and assess the impact of the rule on such entities. The rules adopted in the *Report and Order* will

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apply to all entities that seek to obtain the subject licenses, including small entities. The number of entities that may apply to participate in these future auctions is unknown. Moreover, these entities might already be providers of cellular service or PCS or other wireless services, or they may have no current involvement in the wireless industry. To the extent that existing cellular or PCS operators would apply for the subject authorizations, the applicable NAICS code is 513322. Existing paging carriers, which might also be interested in these authorizations, fall under NAICS code 513321. Resellers of paging and cellular services are identified by NAICS code 51333.

18. The number of small businesses that have participated in prior auctions has varied. Small businesses, as defined under the Commission's rules in the context of various auctions for authorizations in specific services, have accounted for 1,667 out of a total of 2,096 qualified bidders in all prior auctions, not including broadcast auctions. As provided in Section 1.2110(c)(1) of the Commission's rules, and in conformity with the Small Business Act and the regulations of the Small Business Administration, the Commission establishes small business definitions for purposes of its auctions on a service-specific basis. *See* 47 CFR 1.2110(c)(1); 15 U.S.C. 632(c)(2)(c); 13 CFR 121.902(b). Statistics for broadcast license auctions are not available, and would be less relevant to the licenses at issue here. Given these statistics, the Commission expects a large percentage of participants in our auctions program generally to be small businesses in the future, although this may not be the case in this individual auction.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

19. The Commission imposes no new reporting, recordkeeping, or other compliance requirements in the *Report and Order*. The only projected reporting and recordkeeping requirements that will apply in any auctions for the four cellular RSA authorizations are those that are already established by Commission regulations. Nothing in this rulemaking changes those regulations. The Commission will accept new license applications and use our general Part 1 competitive bidding rules to conduct the auction. These rules require all applicants to electronically submit FCC Form 175 in order to participate in the auction and, at the conclusion of the auction, all high bidders to electronically submit FCC Form 601 to apply for a license. *See* 47 CFR 1.2105(a), 1.2107(a). The purposes of these forms are to ensure that applicants are eligible to participate in the auction and that high bidders are eligible to hold the cellular RSA licenses at issue. The Office of Management and Budget has already approved both of these forms. FCC Form 175, OMB Control No. 3060–0600 (effective until Apr. 30, 2004); FCC Form 601, OMB Control No. 3060–0798 (effective until Mar. 31, 2002). In addition, under our Part 1 rules, any entity wishing to receive a bidding credit for serving qualifying tribal lands must comply with 47 CFR 1.2110(f)(3), an obligation also approved by the Office of Management and Budget. *See* 47 CFR 1.2110(f)(3).

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)-(4).

21. In the *Report and Order*, the Commission adopts rules to permit us to grant initial licenses in four cellular RSAs. In adopting these rules, the Commission considered the potential significant economic impact of the rules on small entities. Specifically, the Commission considered the impact of its eligibility definition on the ability of small businesses even to apply for the licenses at issue in this proceeding and to participate in the associated auctions. The Commission also considered the effect of the proposed bidding credits for three categories of small businesses on the ability of small businesses to compete successfully in the auctions and to build out a system should such businesses be awarded any of the licenses. As described in the *Report and Order* and Section E *infra*, the Commission defined an "entrepreneur" as an entity with average annual gross revenues not exceeding $40 million for the preceding three years and provided a 15 percent bidding credit; a "small business" as an entity with average annual gross revenues not exceeding $15 million for the preceding three years and provided a 25 percent bidding credit; and a "very small business" as an entity with average annual gross revenues not exceeding $3 million for the preceding three years and provided a 35 percent bidding credit.

22. Also, in proposing to apply the Commission's existing Part 1 competitive bidding rules to any auctions for these licenses, the Commission took into account their effect on small businesses.

23. The rules adopted by the *Report and Order* will affect all small entities that seek to acquire any of the four cellular RSA licenses discussed herein. The Commission believes that permitting all eligible entities to apply for the four licenses—instead of restricting eligibility to three applicants that filed lottery applications in 1988 and 1989—will promote opportunities for participation by small businesses. A greater number of small businesses will have the chance to seek the authorizations at issue.

24. The Commission has sought to promote small business ownership by defining three tiers of small businesses for the purposes of providing bidding credits to small entities: an "entrepreneur" is an entity with average annual gross revenues not exceeding $40 million for the preceding three years; a "small business" is an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and a "very small business" is an entity with average annual gross revenues not exceeding $3 million for the preceding three years. The Small Business Administration approved these proposed small business definitions on January 30, 2001. *See* Letter from Fred P. Hochberg, Acting Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 30, 2001 (*SBA Letter*). *See also* Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Gary M. Jackson, Assistant Administrator, Small Business Administration, dated Sept. 21, 2001. The bidding credits are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. The Commission specifically rejected arguments in opposition to the use of bidding credits for small businesses. As explained in the *Report and Order*, adoption of bidding credits for small businesses provides them with an opportunity to compete successfully against larger, well-financed bidders. *Report and Order* at ¶ 32. The Commission believes the bidding credits it has adopted will benefit a range of small businesses.

25. The Commission will apply its Part 1 competitive bidding rules equally to all applicants for the licenses, including small businesses. Our Part 1 competitive bidding rules have been designed to ensure that small businesses are not placed at a disadvantage and have a full and fair opportunity to compete in fair auction proceedings. While these rules require small businesses to submit application forms in order to participate in the auctions for the subject licenses, the Commission believes that equitably applying the same rules to all entities helps to promote fairness in the process and to ensure that the auction is effective. Fair and effective auction proceedings benefit small businesses as well as all other participants.

I. Discussion

A. Eligibility for Licenses

26. *Background.* In the *NPRM*, the Commission proposed to allow all eligible entities to participate in an auction for the four cellular RSA licenses at issue in this proceeding. The Commission noted that the competitive bidding program seeks to award each license to the applicant that values it most highly and that is, therefore, most likely to offer valued service to the public. The Commission explained that excluding potential applicants that were not previously lottery applicants would be inconsistent with that goal. The Commission also recognized that, because nearly twelve years have passed since the closing of the original RSA filing window, a number of commenters that have expressed interest in participating in RSA auctions would not have had the opportunity to file applications, while some applicants that did file lottery applications may no longer exist. Finally, the Commission reasoned that, to the extent former lottery applicants continue to have an interest in applying for these markets, open eligibility allows them to do so.

27. In each of the four unlicensed RSAs, the Commission has granted interim operating authority to one or more cellular operators to provide cellular service on the Channel A block pending the ultimate permanent licensing of these RSAs. The Commission also specifically proposed to permit cellular operators that have been granted interim operating authority (IOA) in the four unlicensed RSAs to participate in the RSA auction. The Commission noted that although IOAs confer no interest or expectation of receiving a cellular license, IOA holders might have a substantial interest in bidding for permanent authorizations in markets where they may have been providing interim cellular service.

28. *Discussion.* After careful consideration, the Commission concludes that it is in the public interest to allow all entities, including current IOA holders and former lottery applicants, to participate in the RSA auction. In recent years, the Commission has generally favored open eligibility because the Commission believes that maximizing the pool of auction applicants helps to ensure that licenses are awarded to entities that value them most highly and are, therefore, most likely to offer prompt service to the public. *See, e.g., Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994); Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18617–20, ¶¶ 30–35 (1997) (not published in the **Federal Register**); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, *Report and Order*, 15 FCC Rcd 22709, 22736–37, ¶¶ 54–56 (2000) (*BBA Report and Order*) (not published in the **Federal Register**). *But see, e.g., BBA Report and Order*, 15 FCC Rcd at 22737, ¶ 56 (not published in the **Federal Register**) (the Commission has authority to restrict eligibility in particular cases if such restrictions are consistent with our spectrum management responsibilities under Section 309(j)). The Commission has found that this approach to auction participation best fulfills the public interest objectives set forth in Section 309(j)(3) of the Communications Act. 47 U.S.C. 309(j)(3)(A)–(D). Further, the Commission does not believe that there are any compelling reasons to exclude potential participants in the upcoming RSA auction.

29. A number of commenters support open eligibility, particularly current IOA holders and entities that did not previously file lottery applications. With respect to eligibility, two of the four commenters that responded to the *Notice* support open eligibility. In addition, several commenters that responded to the CCPR Petition favored open eligibility. Cingular argues that permitting open eligibility will ensure that licenses are awarded to applicants that value them the most highly. Cingular specifically insists that the Commission allow IOA holders in the subject markets to apply for licenses. ALLTEL also supports the Commission's proposal to permit open eligibility. BANM asserts that open eligibility will expedite cellular service to the RSA markets. WWC urges the Commission to give all interested applicants an opportunity to provide cellular service in the RSAs. Century contends that the number of potential service providers has increased in the years since the closing of the original RSA filing window and that broadening auction participation would permit the best qualified and most highly motivated entities to compete.

30. Several commenters oppose open eligibility. Some of these commenters, such as Ranger and Miller, seek to restrict eligibility to former lottery applicants who continue to contest dismissal of their applications. One commenter responding to the *Notice* contends that the auction should be restricted to former lottery applicants. Commenters in response to the *CCPR Petition* also argue that the Commission should limit the auction to former lottery applicants. Other commenters argue that IOA holders should be barred from participating in the cellular RSA auction. These commenters generally contend that it is the Commission's policy, when it grants a party's application for IOA service, to dismiss that party's pending application for permanent authority for the subject market. AALA claims that an IOA holder would have an advantage over other applicants in an auction because it would have a "unique ability" to calculate the value of the license. In contrast, BANM and CCPR argue that the Commission's policy for excluding IOAs was implemented to avoid unfair advantage in the comparative hearing process and thus is not relevant when licenses are assigned by competitive bidding.

31. Several commenters cite to *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945). See, e.g., AALA Comments at 14 (to allow one applicant to operate in a market under temporary authority poses a severe threat to the principles set forth in *Ashbacker*). We note that short-form applications to participate in competitive bidding are governed by Section 309(j), and not the procedural requirements of Sections 309(a), 309(b), or 309(e), or the *Ashbacker* doctrine, which requires a comparative hearing when competing applicants file conflicting license or construction

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permit applications for the same authorization. See Elleron Oil Co. and WVI Partners, Inc. Petition for Reconsideration of Dismissal of Short-Form Applications for Interactive Video and Data Service Auction, *Order*, 13 FCC Rcd 17246, 17251–52, ¶ 9 (WTB 1998) (not published in the **Federal Register**). Section 309(j) does not require the Commission to use a notice and cut-off procedure or establish "cut-off dates" to invite mutually exclusive applications for a particular license. *See id.* at 17250, ¶ 8.

32. In determining eligibility for auction participation, the Commission is required by Section 309(j)(3) to promote certain public interest objectives. Those objectives include rapid deployment of new technologies and services to the public, promotion of economic opportunity and competition, recovery for the public of a portion of the value of the spectrum, and efficient and intensive use of the spectrum. 47 U.S.C. 309(j)(3)(A)–(D). The Commission believes that a policy of unrestricted eligibility in the RSA auction will best fulfill our public interest goals. Here, open eligibility has a higher probability of promoting the rapid delivery of services to the public than limited eligibility. This is because open eligibility increases the likelihood that all entities who have an interest in putting the license to use will participate in the auction. Among these, the bidder who is willing to pay the most will be highly motivated to rapidly put the license to a use that the public finds valuable because only such a use will make its investment worthwhile. Importantly, no commenter has presented evidence in this case that there are entities with market power whose participation might allow them to limit or reduce competition by their entry. In such a situation, permitting as many qualified bidders as possible allows competition and economic opportunity to flourish by reducing one barrier to market entry, potentially resulting in a more competitive applicant pool. In the absence of evidence of market failure, the market, and not regulation, should determine participation in competitive bidding here, and the Commission should allow the maximum number and types of bidders to participate in the auctions.

33. An important factor in our decision to permit open eligibility is that the licenses at issue in this proceeding will cover rural areas. Under Section 309(j)(4)(B), the Commission is required to encourage the rapid deployment of services specifically to rural areas. 47 U.S.C. 309(j)(4)(B). BANM also highlights the need for the provision of service in rural markets, stating that, "[w]hile many urban markets have enjoyed cellular service for as long as thirteen years, these rural service areas have remained without a permanent nonwireline cellular licensee." The Commission believes that open eligibility will encourage participation in the RSA auction by entities that are most likely to be interested in, and capable of, serving rural areas.

34. Our decision to permit open eligibility in the RSA auction includes the participation of current IOA holders in the four unlicensed RSAs. The Commission's policy to dismiss applications for permanent status filed by IOA holders originated in the context of comparative hearings, based on the concern that the decision to grant a license in a comparative hearing would be biased in favor of an IOA holder because it had incurred substantial expenses in its temporary operations. *See* In re Applications of La Star Cellular Telephone Co. and New Orleans CGSA, Inc, *Memorandum Opinion and Order*, 4 FCC Rcd 3777 (1989) (not published in the **Federal Register**), *aff'd*, 899 F.2d 1233 (D.C. Cir 1990). *See Community Broadcasting Co. v. FCC*, 274 F.2d 753 (D.C. Cir. 1960) (an interim operator's expenditure of sizeable funds on its temporary operation would inevitably influence the Commission's final decision, no matter how much the Commission tried to eliminate this factor). The Commission declines to extend that policy to the competitive bidding process. IOA holders will not have an advantage over other bidders as they once had over other applicants in comparative hearings because, in an auction, licenses are assigned to the highest bidder, regardless of prior operating status. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8737–39, ¶¶ 23–26 (1999) (not published in the **Federal Register**) (the Commission rejected arguments that holders of interim authority have a comparative advantage in an auction process). As the Commission stated in the *NPRM*, although IOAs confer no entitlement to, or expectation of, receiving a cellular license, IOA holders may have a substantial interest in bidding for permanent authorizations in markets where they have been providing interim cellular service. Given our previously adopted policies and the record in this proceeding, the Commission concludes that current IOA holders should not be excluded from participating in the auction of licenses for the unlicensed RSAs on an equal basis with other applicants.

35. Joint commenters Ranger and Miller raise a variety of statutory and equitable arguments against open eligibility, none of which the Commission find persuasive. First, Ranger and Miller argue that Section 309(l) of the Communications Act of 1934, as amended, restricts eligibility for cellular radio licenses to lottery applicants that filed their applications prior to July 1997 and whose applications allegedly are "unresolved." Section 309(l) provides in pertinent part that, with respect to competing applications for initial licenses for "commercial radio and television stations" that were filed with the Commission before July 1, 1997, the Commission shall treat the persons filing such applications as the only persons eligible to be qualified bidders. Public Law 105–33, 3002(a)(3), 111 Stat. 251, 260 (1997) (codified at 47 U.S.C. 309(l)). Ranger and Miller contend that the Commission's rules define cellular radio as a "commercial mobile radio service" and that, therefore, the reference to "commercial radio" in Section 309(l) includes cellular radio. Cingular disagrees with Ranger and Miller, asserting that the Commission should not view "commercial radio" and "television stations" as distinct, unrelated terms. Cingular maintains that the term "commercial" was intended to exclude *noncommercial educational radio and television* applications from the scope of Section 309(l) and from competitive bidding under Section 309(j)(2)(C).

36. The Commission agrees with Cingular's interpretation of the statutory language, which is plain on its face. The statute does not use "commercial radio" and "television stations" as distinct terms. Rather, the reference in the statute to "commercial radio and television stations" clearly refers to broadcast facilities. Where Congress has referred to wireless services like cellular in other provisions of the Communications Act of 1934, as amended, it has clearly used the term "commercial mobile services." *See, e.g.*, 47 U.S.C. 253(e), 274(i)(2)(B), 332(c)(1), 332(d)(1). As the Supreme Court has explained, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted), citing *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972). The legislative history also confirms that Section 309(l) applies only to commercial broadcast radio and television applications. The Conference Report specifically states that "[n]ew section 309(l) of the Communications Act requires the Commission to use competitive bidding to resolve any mutually exclusive applications for *radio or television broadcast licenses* that were filed with the Commission prior to July 1, 1997." H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess. at 573 (1997) (*Conference Report*) (emphasis added). The Commission has applied Section 309(l) only to pending comparative broadcast licensing cases. *See* Implementation of Section 309(j) of the Communications Act " Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 63 FR 48615 (Sept. 30, 1998) (*Broadcast First Report and Order*); recon. denied, 14 FCC Rcd 8724 (1999) (not published in the **Federal Register**); modified, 14 FCC Rcd 12541 (1999) (not published in the **Federal Register**); *See* In the Matter of Amendment of Section 73.202(B), FM Table of Allotments, FM Broadcast Stations, *Memorandum Opinion and Order*, 16 FCC Rcd 2272 (2001) (not published in the **Federal Register**).

37. Contrary to the claim of Ranger and Miller, *Bachow Communications, Inc. v. FCC* does not support the notion that Section 309(l) applies to cellular RSA applications as well as broadcast license applications. *Bachow Communications, Inc. v. FCC*, 237 F.3d 683 (D.C. Cir. 2001) (*Bachow*). *Bachow's* central holding instead is that license applications for 39 GHz service filed under a comparative hearing licensing scheme could be dismissed when the Commission shifted to an auction licensing scheme. *Bachow*, 237 F.3d at 686–688 (recognizing the "Commission's authority to change license assignment allocation (*sic*) procedures midstream" even though it disrupts expectations and alters the competitive balance among applicants). Ranger and Miller also cite the D.C. Circuit's opinion in *McElroy* to support their argument that the Commission cannot make the RSA licenses available to new applicants. *McElroy Electronics Corp. v. FCC*, 86 F.3d 248 (D.C. Cir. 1996) (*McElroy*). *McElroy* holds that when the Commission decides to process timely-filed applications, it generally may not also process competing applications filed out of time. *McElroy*, 86 F.3d at 253–259. Because we will permit open eligibility for the subject licenses, and all applications to participate in the auction will be newly filed, the *McElroy* decision is inapposite.

38. Ranger and Miller also offer up a litany of equitable arguments that they contend support artificially limiting eligibility. They argue that the Commission should limit the RSA applicant pool because the number of unresolved lottery applicants is small, the applications have been pending for thirteen years, the service rules for RSA licenses have not changed, and the lottery applicants did not have notice when they filed their applications that competitive bidding, rather than lotteries, might be used to assigned licenses. In addition, Ranger and Miller oppose open eligibility on the grounds that the Commission did not refund their lottery application filing fees, and that open eligibility will lead to delay and litigation.

39. Ranger and Miller fail to show how the public interest would be served by limiting the RSA auction to only three former lottery applicants. In fact, it is well-established that, regardless of when an application is filed, an applicant has no vested right to a continuation of the licensing procedures in effect at the time its application was filed. *See, e.g., Bachow*, 237 F.3d at 687–688; Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 64 FR 33762 (June 24, 1999); *Broadcast First Report and Order*, 13 FCC Rcd at 15937, ¶ 44 (not published in the **Federal Register**); Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, *Third Order on Reconsideration*, 13 FCC Rcd 4856, 4941, ¶ 195 (1998) (not published in the **Federal Register**), citing *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235, 240–41 (D.C. Cir. 1997). Moreover, there is no logical nexus between the length of time the applications were pending and the rationale for restricting eligibility to bid in the RSA auction. Similarly, the claim that the lottery applicants did not have any notice of possible rule changes at the time they filed their applications provides no reasonable rationale for the proposed narrowing of eligibility. The Commission's action declining to refund application filing fees neither gives the applications continued "life" nor justifies restrictions on eligibility. Finally, the Commission necessarily is guided by the public interest objectives set forth in Section 309(j)(3)(A)–(D) in setting application eligibility and not by concerns over the prospects of litigation and appeals. 47 U.S.C. 309(j)(3)(A)–(D).

40. Ranger and Miller Comments at 9, 12–13. Ranger and Miller argue that the Commission should restrict eligibility because Miller helped the Commission determine that a cellular RSA licensee was unqualified to hold a RSA license. Ranger and Miller Comments at 10–12. We disagree. Any action by Miller that may have led the Commission to such a determination is irrelevant to our decision whether we should, as a general rule, adopt open eligibility with respect to the four cellular RSA markets. We are obligated to promote the public interest, not individual applicants.

41. Ranger and Miller totally disregard the equities of other parties potentially interested in seeking the subject authorizations, as well as equitable considerations relevant to the public interest. As the Commission found above, adopting open eligibility—the antithesis of the licensing plan promoted by Ranger and Miller—for these licenses has a greater probability than limited eligibility of resulting in the rapid deployment of new technologies and services to the public, the possibility of competition and economic opportunity, and the efficient and intensive use of the spectrum. Such a result would promote the public interest, and therefore, open eligibility is warranted. In addition, it is important to recognize that there may be parties interested in providing cellular service in these markets, and qualified to do so, that did not even exist at the time the lottery applications were filed.

42. Finally, Ranger and Miller argue that an open eligibility policy in this context must necessarily be based on the potential for increased revenue to the Treasury. Section 309(j)(7)(B) does not preclude the Commission from adopting eligibility rules based on other considerations, even though such rules may also result in increased federal revenues. The purpose of open eligibility is not to maximize the amount of revenues raised in an auction but to ensure that licenses are awarded to those that value them most highly and that, therefore, will be most likely to provide rapid and efficient service to the public. Indeed, by asserting that auction revenues will be greater if they are forced to compete with a larger number of bidders, Ranger and Miller may be suggesting that they value the RSA licenses less highly than their potential competitors. Our determination to permit open eligibility in the RSA auction is based on our statutory obligations to promote

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competition and rapid deployment of services to rural areas, not to enhance the Federal Treasury.

B. Market Areas To Be Auctioned

43. *Background.* In the *NPRM*, the Commission sought comment on whether the markets for which licenses are to be awarded through competitive bidding should be based on RSAs, or whether alternative licensing models should be considered. The Commission received two comments that supported licensing the markets on an RSA basis, and no party expressed opposition to that proposal.

44. *Discussion.* The Commission concludes that the remaining unlicensed cellular RSA markets should be licensed on an RSA basis under our Part 22 rules. As the Commission observed in the *NPRM*, the initial lotteries for the unlicensed markets were for RSAs as defined in 47 CFR 22.909 of our rules. To employ another market model for these RSAs would be potentially disruptive to adjacent cellular operations, as well as possibly impede the cost-effective buildout of facilities to serve the residents of these areas as well as transient users. The Commission also will, pursuant to 47 CFR 22.947, subject licenses awarded for these markets to the same construction and operational rules as licenses granted to prior RSA lottery winners, including the exclusive right of the auction winner to expand its system within that market for a period of five years. After the expiration of the five-year expansion period, any areas within the RSA that remained unserved would be available for licensing pursuant to 47 CFR 22.949 of our rules which governs unserved areas Phase I and Phase II filing procedures.

C. Competitive Bidding Procedures

1. Incorporation by Reference of Part 1 Standardized Auction Rules

45. *Background.* In the *Part 1 Third Report and Order*, the Commission streamlined its auction procedures by adopting general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules applicable to all auctionable services. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997) (modified by Erratum, DA 98–419 (rel. March 2, 1998)) *(Part 1 Third Report and Order)*. The Commission clarified and amended these general competitive bidding procedures. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 65 FR 52323 (Aug. 29, 2000) (modified by Erratum, DA 00–2475, 65 FR 52401 (rel. Aug. 29, 2000)) *(Part 1 Order on Reconsideration)* (recons. pending). More recently, the Commission adopted modifications to Section 1.2105(c) of the Commission's rules, the competitive bidding "anti-collusion rule." Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, *Seventh Report and Order*, 66 FR 54447 (Oct. 29, 2001). *See also* 47 CFR 1.2101 *et seq.* In the *NPRM*, the Commission proposed to conduct the auction of cellular RSA licenses in conformity with the general competitive bidding rules, including any amendments adopted in the *Part 1 Order on Reconsideration, Fifth Report and Order, and Fourth FNPRM*, 65 FR 52323 (August 29, 2000) proceeding. Specifically, the Commission proposed to employ the Part 1 rules governing competitive bidding design, designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment. The Commission further stated that winning bidders would be eligible to obtain a bidding credit for serving qualifying tribal lands. *See* 47 CFR 1.2110(f)(3). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application. In this regard, we note that only one RSA subject to these proposals—RSA 582A-Barnes, ND—contains any federally recognized tribal lands. Finally, the *NPRM* contemplated that auction-related procedural matters such as the appropriate competitive bidding design for the RSA auction, as well as minimum opening bids and reserve prices, would be determined by the Bureau pursuant to its delegated authority prior to the start of the cellular RSA auction. *See* 47 CFR 0.131(c), 0.331, and 0.332; *see also* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997).

46. *Discussion.* The Commission adopts the proposal to conduct the auction for initial licenses in the four cellular RSAs in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules. The Commission believes that this decision to conduct the RSA auction in conformity with the standardized Part 1 rules will increase the efficiency of the competitive bidding process and provide specific guidance to auction participants.

47. Although the Commission received few comments on this issue, none of the commenters opposed the application of the general competitive bidding rules. One commenter, Cingular, favors application of the general competitive bidding rules to the RSA auction. In its comments, Cingular also requests that the bidding design ultimately selected not include combinatorial bidding, (Combinatorial bidding design allows for bids on combinations or packages of licenses.) arguing that it is inappropriate where no "synergies" exist among the markets in question. As indicated in the *NPRM*, the Bureau will seek comment by Public Notice on auction-related procedural issues, including the appropriate competitive bidding design, prior to the start of the cellular RSA auction. This approach will provide the Bureau with an opportunity to weigh the benefits and disadvantages of combinatorial bidding design, among other auction-specific issues.

2. Small Business Definitions and Bidding Credits

48. *Background.* In the *NPRM*, the Commission proposed to adopt special provisions for small businesses that participate in the auction for cellular RSA licenses. The Commission noted that the markets at issue could attract a wide range of entities and the adoption of bidding credits will help us meet our Congressional mandate to promote competition and to disseminate licenses among a wide variety of applicants. Accordingly, the Commission proposed to define an entrepreneur as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, a small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $3 million. The entrepreneur and small business definitions are consistent with the small business definitions we established for the broadband Personal Communications Services C and F blocks. We also proposed the definition of very small business for the RSA auction because smaller businesses may be interested in acquiring licenses to provide service in these markets. The Small Business Administration approved these proposed small business definitions on January 30, 2001. *See SBA Letter.* The Commission further proposed, as provided in Section 1.2110(f)(2) of our rules, to offer entrepreneurs a bidding credit of 15 percent, small businesses a bidding credit of 25 percent, and very small businesses a bidding credit of 35 percent.

49. The Commission sought comment on whether the characteristics and capital requirements of cellular service call for a different approach. The Commission also asked commenters, to the extent that they propose additional provisions to ensure participation by businesses owned by minorities and women, to address how such provisions should be crafted to meet the relevant standards of judicial review.

50. *Discussion.* As the Commission tentatively concluded in the *NPRM*, it will adopt the following small business definitions and bidding credits: (1) An "entrepreneur" with average annual gross revenues for the preceding three years not exceeding $40 million will be eligible for a 15 percent bidding credit; (2) a "small business" with average annual gross revenues for the preceding three years not exceeding $15 million will be eligible for a 25 percent bidding credit; and (3) a "very small business" with average annual gross revenues for the preceding three years not exceeding $3 million will be eligible for a 35 percent bidding credit.

51. The Commission is not persuaded that large carriers are necessarily better suited to provide cellular RSA service. In any case, the Commission does not prescreen applicants' relative qualifications. Further, the Commission believes that competition between large and small entities will benefit subscribers in the rural markets. Also, the Commission is not persuaded that the adoption of bidding credits will, in any way, impede service to these areas. To the extent that, as ALLTEL suggests, cellular service is a national "mature" service dominated by large carriers, our decision to adopt bidding credits should help eliminate barriers to entry for small businesses, consistent with our statutory mandate. *See* 47 U.S.C. 309(j)(3)(B).

52. Finally, ALLTEL contends that the auction will be skewed toward smaller entities that receive an overly generous bidding credit, which will distort market valuation. While the Commission agrees that bidding credits provide small businesses with an advantage, Congress, in Section 309(j), specifically directed the Commission to promote economic opportunities for small businesses. The Commission further notes that bidding credits alone do not guarantee success; rather, they provide small businesses with an opportunity to successfully compete against larger, well-financed bidders. *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order and Further Notice of Proposed Rulemaking*, 62 FR 11616 (March 12, 1997). Because bidding credits are the best tool the Commission has to promote these opportunities, the Commission concludes that it is appropriate to adopt the special provisions for small businesses.

53. The Commission does adopt special preferences for entities owned by minorities or women. As the Commission did not receive any comments on this issue, the Commission does not have an adequate record to support such special provisions under the current standards of judicial review. *See Adarand Constructors* v. *Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for Congressionally mandated race-conscious measures); *United States* v. *Virginia*, 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification). The Commission believes the bidding credits adopted here for small businesses will further our objective of disseminating licenses among a wide variety of applicants. Furthermore, minority and women-owned entities that qualify as small businesses may take advantage of the special provisions.

D. Disposition of Alee's Argument Concerning Texas 21

54. In its comments, Alee has requested that RSA 672A (Texas 21—Chambers) not be included in any upcoming auction pending the outcome of its petition for reconsideration of an order denying its application in that market. For the reasons stated below, the Commission denies Alee's request and includes the Texas 21 RSA authorization among the markets to be subject to auction rules.

55. Alee requests that, if the Commission includes the Texas 21 authorization in the contemplated auction, the Commission gives notice to any potential bidder that any license won in that market would be subject to Alee's claim. If Alee ultimately prevails in the hearing process, the license will be awarded accordingly. If Alee does not prevail, then the Commission will have the necessary licensing rules and policies in place for the Texas 21 authorization without having to conduct another rulemaking proceeding. The Commission will ensure that interested parties are fully informed to the extent that Alee's claim remains unresolved.

E. IOA Operations

56. *Background.* Under the terms of each of the existing IOAs, the IOA operator must cease operations immediately upon initiation of service by the new licensee, provided that the new licensee gives at least 30 days written notice of its intent to provide service. The IOA condition specifically provides that "[t]he interim operator must fully cooperate with the permanent licensee in effectuating a smooth transition to the provision of service in the market by the permanent licensee without *disruption* of service to the public. The interim operator must cease operations in the market on the date of initiation of permanent service or within 30 days of written notice by the permanent permittee to the interim operator of the day and time that it intends to initiate service, whichever date occurs later." In order to prevent unnecessary interruption of service to existing cellular customers, the Commission proposed in the *NPRM* that, in the event that any of the current IOA holders do not obtain the RSA license for their markets, they should be allowed to continue providing service on a temporary basis subject to these conditions, *i.e.*, until the auction winner provides the required notice and is prepared to commence service. Minimizing such interruptions while the auction winner establishes its service will also help to retain 911 access in the IOA service area. Cingular requests that the Commission clarify its rules to provide that interim operators may continue to operate until the auction winner is prepared to commence service in that particular part of the market where the IOA holder is operating in order to avoid disruption in service to the public.

57. *Discussion.* Because of the nature of these markets and carrier buildout practices, the Commission anticipates the auction winner will not initially provide coverage throughout the entire market. As a result, the auction winner may or may not initiate service in the area where the public currently is receiving service from the IOA holder. The Commission will require the IOA holder to "pull back" its service area boundaries (SAB) to eliminate any overlap with the auction winner's own

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SAB, and to terminate service in the RSA upon notice from the auction winner that the latter is extending coverage into the area served under the IOA. The Commission feels that this will best serve the public interest by preventing localized disruptions in service during the transition period.

II. Final Regulatory Flexibility Analysis

A. Procedural Matters

1. Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in this docket. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed above. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

59. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, the Final Regulatory Flexibility Analysis (FRFA) is set forth above. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

60. *Report to Congress:* The Commission will include a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

B. Ordering Clauses

61. Pursuant to 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j), Part 22, 47 CFR *is Amended* as specified in the rule changes and the auctions for Markets 322A—Polk, AR, 592A—Barnes, ND, 727A—Ceiba, PR, and 672A—Chambers, TX be conducted under Part 1, Subpart Q of the Commission's rules, 47 CFR 1.2101 *et seq.*, and that all eligible parties be permitted to participate in the bidding.

62. The rules and policies adopted in this Report and Order shall become effective April 15, 2002.

63. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Rural areas.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.228 is added to Subpart B to read as follows:

§ 22.228 Cellular rural service area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

3. Section 22.229 is added to Subpart B to read as follows:

§ 22.229 Designated entities.

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section.

(5) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

4. Section 22.969 is added to Subpart H to read as follows:

§ 22.969 Cellular RSA licenses subject to competitive bidding.

Mutually exclusive applications for initial authorization for the following Cellular Rural Service Areas filed after the effective date of this rule are subject to competitive bidding procedures as prescribed by Sections 22.228 and 22.229: 332A—Polk, AR; 582A—Barnes, ND; 672A—Chambers, TX; and 727A—Ceiba, PR.

[FR Doc. 02–6110 Filed 3–13–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252 and Appendix I to Chapter 2

[DFARS Case 2001–D006]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2001. Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 807 adds women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program. This rule also clarifies that business concerns owned and controlled by an Indian tribe or a Native Hawaiian organization are eligible to participate as protege firms in the Program.

DoD published an interim rule at 66 FR 47108 on September 11, 2001. DoD received one comment on the interim rule. The comment did not recommend any change to the rule. Therefore, DoD is converting the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis. Interested parties may obtain a copy of the analysis from the point of contact specified herein. The analysis is summarized as follows: This rule permits women-owned small businesses to participate as protege firms in the DoD Pilot Mentor-Protege Program. The objective of the rule is to provide an opportunity for women-owned small businesses to enhance their capabilities and increase their participation in Government and commercial contracts. Presently, there are 3,471 women-owned small business concerns that do business with DoD. Since the inception of the Mentor-Protege Program, 160 mentor firms and 509 protege firms have participated in the Program. Each protege firm must provide annual data to its mentor firm, for submission to the Government, regarding the progress of the protege firm in employment, revenues, and participation in DoD contracts. DoD received no comments in response to the initial regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor-Protege Program have been approved by the Office of Management and Budget under Control Number 0704–0332, for use through March 31, 2004.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 219 and 252 and Appendix I to Chapter 2, which was published at 66 FR 47108 on September 11, 2001, is adopted as a final rule without change.

[FR Doc. 02–5950 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 2001–D016]

Defense Federal Acquisition Regulation Supplement; Partnership Agreement Between DoD and the Small Business Administration

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement streamlines procedures for contract awards under SBA's 8(a) Program.

DATES: Effective date: March 14, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2001–D016 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D016.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

A partnership agreement between DoD and SBA, dated February 1, 2002, permits DoD to award 8(a) contracts directly to 8(a) concerns, on behalf of SBA. The partnership agreement replaced a memorandum of understanding, which also permitted direct award of 8(a) contracts, and which was implemented in DFARS Subpart 219.8. This interim rule amends DFARS Subpart 219.8 to reflect the provisions of the new partnership agreement. The amendments include the following:

1. Emphasis that SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under Section 19.810 of the Federal Acquisition Regulation. SBA delegates to DoD only the authority to sign contacts on its behalf.

2. For negotiated acquisitions, authorization for the contracting officer to submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted. Previously, the contracting officer

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submitted eligibility determinations on no more than three of the most highly rated offerors.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects only the administrative procedures used for award of contracts under the 8(a) Program. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D016.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements a partnership agreement between DoD and SBA. The agreement streamlines procedures for awards under SBA's 8(a) Program by authorizing DoD to award contracts directly to 8(a) concerns. The partnership agreement became effective on February 1, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 219 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.800 is revised to read as follows:

219.800 General.

(a) By Partnership Agreement (PA) dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority expires on September 30, 2004.

(b) Contracts awarded under the PA may be awarded directly to the 8(a) participant on either a sole source or competitive basis. An SBA signature on the contract is not required.

(c) Notwithstanding the PA, the contracting officer may elect to award a contract pursuant to the provisions of FAR Subpart 19.8.

3. Section 219.804–2 is revised to read as follows:

219.804–2 Agency offering.

(1) For requirements processed under the PA cited in 219.800 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA must clearly indicate that the requirement is being processed under the PA. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and must specify that—

(i) Under the PA, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance must include a size verification and a determination of the 8(a) firm's program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the PA cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer must establish the prices, terms, and conditions with the 8(a) contractor and must prepare a purchase order consistent with the procedures in Part 213 and FAR Part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer must provide to the cognizant SBA Business Opportunity Specialist, using facsimile, electronic mail, or any other means acceptable to the SBA district office—

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also must indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA must identify any joint venture proposed for performance of the contract. SBA must approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

219.804–3 [Amended]

4. Section 219.804–3 is amended by removing "MOU" and adding in its place "PA".

5. Section 219.805–2 is amended by revising paragraph (c) introductory text and paragraph (c)(ii) to read as follows:

219.805–2 Procedures.

(c) For requirements processed under the PA cited in 219.800—

* * * * *

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.

219.806 [Amended]

6. Section 219.806 is amended as follows:

a. In the introductory text, by removing "MOU" and adding in its place "PA";

b. In paragraph (1), by removing "shall" and adding in its place "must"; and

c. In paragraph (2), in the last sentence, by removing "shall" and adding in its place "must".

219.808–1 [Amended]

7. Section 219.808–1 is amended in the introductory text by removing "MOU" and adding in its place "PA".

219.811–1 [Amended]

8. Section 219.811–1 is amended as follows:

a. In paragraph (a), in the first sentence, by removing "MOU" and adding in its place "PA" and by removing "shall" and adding in its place "must";

b. In paragraph (a), in the second and last sentences by removing "shall" and adding in its place "must"; and

c. In paragraph (b) introductory text, by removing "MOU" and adding in its place "PA".

219.811–2 [Amended]

9. Section 219.811–2 is amended by removing "MOU" and adding in its place "PA" and by removing "shall" and adding in its place "must".

219.811–3 [Amended]

10. Section 219.811–3 is amended in paragraphs (1) and (2) by removing "MOU" and adding in its place "PA".

219.812 [Amended]

11. Section 219.812 is amended in paragraph (d), in the first sentence, by removing "MOU" and adding in its place "PA".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 252.219–7009 is amended by revising the clause date, paragraph (a), and paragraph (c) introductory text to read as follows:

252.219–7009 Section 8(a) direct award.

As prescribed in 219.811–3(1), use the following clause:

Section 8(a) Direct Award (Mar 2002)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

[*To be completed by the Contracting Officer at the time of award*]

* * * * *

(c) The 8(a) Contractor agrees that—

* * * * *

[FR Doc. 02–5952 Filed 3–13–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D006]

Defense Federal Acquisition Regulation Supplement; Restriction on Acquisition of Vessel Propellers

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the statutory restriction on acquisition of vessel propellers from foreign sources applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002-D006.

SUPPLEMENTARY INFORMATION:

A. Background

The restriction on acquisition of vessel propellers at DFARS 225.7020 implements Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259). Section 8064 provides that no funds appropriated in fiscal year 2000 or 2001 may be used for the procurement of vessel propellers other than those produced by a domestic source and of domestic origin. The DoD Appropriations Act for Fiscal Year 2002 (Public Law 107–117) contains no such provision. Therefore, this final rule amends DFARS 225.7020 to clarify that the restriction applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002-D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7020–4 is amended by revising the introductory text to read as follows:

225.7020–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds

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for the acquisition of vessels or vessel propellers, unless—

* * * * *

[FR Doc. 02–5949 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 226

[DFARS Case 2001–D007]

Defense Federal Acquisition Regulation Supplement; Preference for Local 8(a) Contractors—Base Closure or Realignment

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The rule clarifies that both competitive and noncompetitive acquisitions under the Section 8(a) Program are permitted if an eligible 8(a) contractor is located in the vicinity of the base to be closed or realigned.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 226.7103 to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment. The present policy permits award under the Section 8(a) Program if "the 8(a) contractor" is located in the vicinity of the base to be closed or realigned. This rule amends the text to permit use of 8(a) procedures if "at least one eligible 8(a) contractor" is located in the vicinity. This change clarifies the intent of the policy, which is to permit both competitive and noncompetitive 8(a) acquisitions in support of a base closure or realignment. A similar clarifying amendment is made to the text pertaining to set-asides for small business concerns.

DoD published a proposed rule at 66 FR 47158 on September 11, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing policy pertaining to acquisitions made in support of a base closure or realignment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 226 is amended as follows:

1. The authority citation for 48 CFR Part 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7103 is amended by revising paragraph (c) to read as follows:

226.7103 Procedure.

* * * * *

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the expected offers is from a small business located in the vicinity.

[FR Doc. 02–5951 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR part 237

[DFARS Case 2001–D018]

Defense Federal Acquisition Regulation Supplement; Performance of Security Functions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1010 of the USA Patriot Act. Section 1010 provides an exception to the prohibition on contracting for security functions at a military installation or facility. The exception applies during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter.

DATES: *Effective date:* March 14, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2001–D018 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D018.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless certain exceptions apply. Section 1010 of the USA Patriot Act (Public Law 107–56) adds another exception to this prohibition, to apply during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. The exception permits award of contracts for security functions to proximately located local and State governments. This interim rule amends DFARS 237.102–70 to implement Section 1010 of Public Law 107–56.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to military installations and facilities and proximately located local and State governments. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1010 of the USA Patriot Act (Public Law 107–56). Section 1010 permits DoD to enter into contracts for the performance of security functions at military installations and facilities during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. Section 1010 became effective on October 26, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 237 is amended as follows:

1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.102–70 is amended by adding paragraph (c) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(c) Under Section 1010 of Public Law 107–56, this prohibition does not apply to any contract that'

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

[FR Doc. 02–5953 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–U

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515, 1533 and 1552

[FRL–7155–7]

Acquisition Regulation: Administrative Changes and Technical Amendments

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate two EPAAR requirements in order to streamline the EPA contracting process. The first requirement relates to the detail required in the EPA contracting officer's source selection decision. The second requirement relates to EPA contracting officer duties if there is a contractor appeal of a final decision of the contracting officer. In addition, technical amendments are being made to the EPAAR solicitation provision entitled "Procedures for Participation in the EPA Mentor-Protege Program."

DATES: This rule is effective on June 12, 2002 without further notice, unless EPA receives adverse comments by April 15, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted to Larry Wyborski, US Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20004, or electronically at: *wyborski.larry@epamail.epa.gov*.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20004, (202) 564–4369, *wyborski.larry@epamail.epa.gov*

SUPPLEMENTARY INFORMATION:

A. Background

EPA's Office of Acquisition Management established a Procurement Guidance Work Group to assess EPA acquisition policies and recommend changes where appropriate. Among the recommendations were two changes to the EPAAR to eliminate requirements which either: (1) Duplicate other Federal Regulations, or (2) outline unnecessary procedural requirements for EPA contracting officers. Specifically, EPAAR 1515.308–71 provides procedural requirements for documentation in source selection decisions over and above those required by Federal Acquisition Regulation (FAR) 15.308. The EPA Procurement Guidance Work Group determined these additional procedural requirements are not necessary, and therefore should be removed from the EPAAR. The Procurement Guidance Work Group also determined that EPAAR 1533.212, Contracting Officer's duties upon appeal, essentially duplicate procedures set forth in 43 CFR part 4 (Department of Interior Board of Contract Appeals Regulations) and should therefore be removed from the EPAAR.

In addition, technical amendments are being made to the solicitation provision at EPAAR 1552.219–71, Procedures for Participation in the Mentor-Protege Program, in order to bring the provision into compliance with statutory language. Specifically, since Pub. L. 102–389 (EPA's 1993 Appropriations Act) did not require certain restrictions on the mentor-protege program previously specified in the provision, these restrictions have been eliminated.

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B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule streamlines agency internal operating procedures and will therefore not have a significant economic impact on small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

G. Executive Order 13132

Executive Order 13132 entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and tribal input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule in an acquisition regulation that is technical and administrative in nature. Thus, Executive Order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), in its procurement activities when applicable. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rule making, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

K. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Parts 1515, 1533 and 1552

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for parts 1515, 1533 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

1515.308–71 [Removed]

2. 1515.308–71 is removed.

1553.212 [Removed]

3. Section 1533.212 is removed.

4. Section 1552.219–71 is revised to read as follows:

1552.219–71 Procedures for Participation in the EPA Mentor-Protege Program.

As prescribed in 1519.203(b), insert the following provision:

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTEGE PROGRAM **(Oct 2000)**

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of concerns owned and/or controlled by socially and economically disadvantaged individuals as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship between these concerns and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of these concerns, which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of these concerns; and to aid in the achievement of goals for the use of these concerns in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h) of this section.

(c) A Protege must be a concern owned and/or controlled by socially and economically disadvantaged individuals within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 673(a)(5) and (6)), including historically black colleges and universities. Further, in accordance with Public Law 102–389 (the 1993 Appropriation Act), for EPA's contracting purposes, economically and socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program; the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) of this section as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under any disadvantaged subcontracting programs. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all concerns owned and/or controlled by disadvantaged individuals under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by paragraph (e) of this section, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship:

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program;

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the

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contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in paragraphs (e) and (f) of this section. To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, or is awarded a contract without discussions, the offeror will be advised by the contracting officer whether their application is approved or rejected. The contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled "Mentor-Protege Program."

(i) Subcontracts of $1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 44.202–2(a)(5), and 52.244–5(b). However, price reasonableness must still be determined and the requirements in FAR 44.202–2(a)(8) for cost and price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703–1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program.

The application for the Program for Headquarters and Regional procurements shall be submitted to the contracting officer, and to the EPA OSDBU at the following address: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Ariel Rios Building (1230A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4322, *Fax:* (202) 565–2473.

The application for the Program for RTP procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small Business Program Officer, RTP Procurement Operations Division (E105–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, *Telephone:* (919) 541–2249, Fax: (919) 541–5539.

The application for the Program for Cincinnati procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small and Disadvantaged Business Utilization Officer, Cincinnati Procurement Operations Division (CPOD-Norwood), U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487–2024 *Fax:* (513) 487–2004.

(End of provision)

Dated: February 28, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

[FR Doc. 02–5743 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI35

Endangered and Threatened Wildlife and Plants: Listing the Desert Yellowhead as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine *Yermo xanthocephalus* (desert yellowhead) to be threatened under the authority of the Endangered Species Act of 1973, as amended. This plant is a recently described Wyoming endemic known only from the south end of Cedar Rim on the summit of Beaver Rim in southern Fremont County, Wyoming. It is known from a single population with plants found scattered over an area of 20 hectares (50 acres). The total area actually occupied by the population is only 3.37 hectares (8.33 acres) within the 20 hectares. In 2001 this population contained 11,967 plants and existed entirely on Federal lands. Surface disturbances associated with oil and gas development, compaction by vehicles, trampling by livestock, and randomly occurring, catastrophic events threaten the existing population.

EFFECTIVE DATE: April 15, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, WY 82001.

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772–2374; facsimile (307) 772–2358.

SUPPLEMENTARY INFORMATION:

Background

Yermo xanthocephalus was discovered by Wyoming botanist Robert Dorn while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus*, or literally "desert yellowhead."

Yermo xanthocephalus is a tap-rooted, glabrous (hairless) perennial herb with leafy stems to 30 centimeters (cm) (12 inches (in)) high. The leathery leaves are alternate, lance-shaped to oval, 4 to 25 cm (1.5 to 10 in) long and often folded along the midvein. Leaf edges are smooth or toothed. Flower heads are many (25 to 180) and crowded at the top of the stem. Each head contains four to six yellow disk flowers (ray flowers are absent) surrounded by five yellow, keeled involucre (whorled) bracts (small leaves beneath the flower). The pappus (the outer whorl of flowering parts) consists of many white bristles.

The species is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation (Van Houten 1964). These wind-excavated hollows accumulate drifting snow and may be more mesic (moist) than surrounding areas. The vegetation of these sites is typically sparse, consisting primarily of low-cushion plants and scattered clumps of Indian ricegrass (*Stipa hymenoides*).

Dorn observed approximately 500 plants within 1 hectare (2.5 acres) in 1990 on Federal land managed by the Bureau of Land Management (BLM). Surveys conducted since 1990 by Richard Scott, Curator of the Central Wyoming College Herbarium in Riverton, have failed to locate additional populations on outcrops of the White River, Wagon Bed, and Wind River formations in the Beaver Rim area. The estimate of the plant population's size has increased from 500 in 1990 to 11,967 plants in 2001. However, Dorn's original estimate of 500 plants was a visual estimate and did not include 2 nearby subpopulations, while Scott has been counting all plants in all 3 subpopulations using a monitoring grid. Therefore, the difference in estimates may be largely the result of different techniques used over differing acreages and cannot be assumed to show a significantly increasing trend in population size between 1990 and 2001. Based upon Scott's data collected from 1995 through 2001, the actual population count has increased from 9,293 in 1995 to 11,967 in 2001, possibly in response to higher than normal precipitation over the study period (R. Scott, Central Wyoming College, pers. comm., 2001).

Previous Federal Action

In the plant notice of review published on September 30, 1993 (58 FR 51144), we designated *Yermo xanthocephalus* a Category 2 species for potential listing under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At that time, Category 2 species were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a proposed rule. On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of Category 2 species as candidates, and this species was upgraded to candidate status at that time. A candidate is a species for which we possess substantial information on biological vulnerability and threats to support preparation of a listing proposal.

On November 24, 1997, we received a petition from the Biodiversity Legal Foundation and Biodiversity Associates alleging that *Yermo xanthocephalus* warranted emergency listing. On December 22, 1997, we notified the petitioners that emergency listing was not appropriate because BLM regulations provided some conservation measures for the species, and current exploratory oil and gas activities near the known occupied habitat of *Y. xanthocephalus* were being coordinated with our staff in the Wyoming Field Office. In addition, we notified the petitioners that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing is warranted. Therefore, no 90-day finding was required for Biodiversity Legal Foundation's petition.

The proposed rule to list *Yermo xanthocephalus* as threatened was published in the **Federal Register** on December 22, 1998 (63 FR 70745). With a **Federal Register** publication on September 5, 2000 (65 FR 53691), we reopened the comment period. In the same publication, we sought comments regarding a draft conservation agreement, assessment, and strategy submitted by BLM for our consideration when making this listing decision. The conservation agreement, assessment, and strategy was never finalized or signed and has not been considered as a firm commitment to perform the actions when assessing conservation commitments in making this listing decision.

On August 9, 1999, BLM segregated (proposed withdrawal of) 3,759.12 acres surrounding the population of *Yermo xanthocephalus* for 2 years from location and entry under the General Mining Act of 1872, and from settlement, sale, location, and entry under the general land laws (64 FR 43209). However, this segregation expired on August 9, 2001, with no finalized withdrawal in place.

On November, 12, 2001, Biodiversity Legal Foundation, Biodiversity Associates, Center for Native Ecosystems, and Wyoming Outdoor Council filed a complaint in the U.S. District Court of Colorado alleging that the Service failed to make a timely final listing determination and critical habit designation for *Yermo xanthocephalus*.

Summary of Comments and Recommendations

In the December 22, 1998, proposed rule (63 FR 70745) we requested that all interested parties submit factual reports and information that might contribute to the development of this final rule. The comment period for the proposed rule was open from December 22, 1998, through February 22, 1999. On September 5, 2000, the comment period was reopened (65 FR 53691) to accommodate the public notice requirement of the Act, consider any new scientific information, and allow for comments on the draft conservation agreement submitted by BLM. We published legal notices in the "Casper Star Tribune" on September 5, 2000, and in the "Riverton Ranger" and the "Lander Journal" on September 6, 2000. The reopened comment period closed October 5, 2000.

During the initial comment period, 12 sets of comments were received. During the reopened comment period, we received 3 sets of comments regarding the proposed listing action. Additionally, 4 sets of comments were received by BLM regarding its draft conservation agreement, assessment, and strategy. We had no requests for a public hearing during either comment period. Of the comments we received, 8 supported, 3 opposed, and 4 were neutral regarding the proposed threatened status for *Yermo xanthocephalus*.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below.

Issue 1: *Yermo xanthocephalus* warrants endangered status, not threatened status.

Response: As mentioned above, the population of Yermo xanthocephalus has increased from 9,293 individuals in 1995 to 11,967 individuals in 2001. The future existence of the species is threatened by potential oil and gas development and other factors, including its extremely limited range. Although we believe the species is likely to become endangered in the foreseeable future if the threats to the habitat are realized, the population has shown stability since 1995. Additionally, the population occurs on Federal land and BLM is cooperating with interested parties to conserve the plant. A monitoring and research program is being implemented as well. As a result, *Y. xanthocephalus* does not meet the definition of an endangered species under the Act because it is not in imminent danger of extinction in the foreseeable future. Therefore, listing as threatened is appropriate.

Issue 2: Listing of *Yermo xanthocephalus* is not warranted since the population has increased from 500 plants in 1990 to an estimated 15,000 plants in 1998.

Response: The proposed rule did indicate that the population contained an estimated 15,000 plants. The actual population size (based upon counting of all plants) was 11,635. The population has fluctuated between 9,293 and 13,244 since 1995, with the 2001 population being comprised of 11,927 individual plants. However, a meaningful comparison of the recent numbers with Dorn's initial estimate is not possible. The 1990 estimate of 500 plants made by Dorn was based purely on a visual estimate of 1 subpopulation within 1 hectare (2.5 acres). Subsequent surveys since 1995 by Dick Scott have involved counting all plants in all three subpopulations. It is not possible to make trend estimates comparing such different survey methods implemented on disparate acreages.

Issue 3: Listing *Yermo xanthocephalus* will draw attention to its location and increase the risk of harm through vandalism or collection. Similarly, critical habitat designation is not prudent because it will increase these risks.

Response: We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. However, we do not believe the listing of *Yermo xanthocephalus* increases the likelihood of such activities. The general location of *Y. xanthocephalus* is widely known by

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many citizens. At this time we have no specific evidence of taking, vandalism, collection or trade of this species. We do not believe listing the species will increase this threat. Additionally, in the absence of specific evidence, we cannot conclude that designation of critical habitat would not be prudent based on increased threat. See the Critical Habitat section below for more detailed discussion of this issue.

Issue 4: Livestock use of the area and associated potential adverse effects to *Yermo xanthocephalus* are not characterized correctly.

Response: We have adjusted our description of livestock use in the area to better reflect information provided during the comment period. We acknowledge that livestock grazing may not currently be resulting in significant adverse effects to the *Yermo xanthocephalus* population. However, we believe a low level of adverse effect is occurring with the potential to become more significant in the future.

Issue 5: The existing data contain significant gaps and the Service should complete studies prior to making a listing determination.

Response: We thoroughly reviewed all scientific data available on *Yermo xanthocephalus* in preparing the proposed rule. We contacted experts and reviewed data collected since intensive population monitoring began in 1995. We based our opinion on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. We have reviewed this information and any new information available since the date of the proposed rule in making this final listing decision.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we requested the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Two of the specialists responded with comments. We have incorporated their comments into the final rule, as appropriate, and summarized their observations below.

One reviewer questioned the adequacy of the Act to appropriately protect *Yermo xanthocephalus* without making it more vulnerable to collectors and vandals. Additionally, the reviewer believed that certain land use changes (such as restriction of cattle and wildlife grazing) might be detrimental to the plant.

The second reviewer believed the evidence supported listing *Yermo xanthocephalus* as either threatened or endangered. The reviewer provided information regarding unsuccessful attempts to locate *Y. xanthocephalus* in other suitable habitat and indicated it is unlikely other populations of *Y. xanthocephalus* will be found. This reviewer expressed concerns regarding the likelihood that adequate funding and commitment will be provided to implement the BLM conservation strategy for the species. Additionally, the reviewer indicated a need for captive propagation and establishment of new populations as necessary conservation measures that should be implemented.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Yermo xanthocephalus* (desert yellowhead) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range:* The entire known range of *Yermo xanthocephalus* consists of an area of 20 hectares (50 acres) in southern Fremont County, Wyoming. Surveys conducted since 1990 have failed to find additional populations, although there are a number of sites with similar soils, drainage and plant associations in the area. Surveys conducted since 1995 by Dr. Ron Hartman in similar potential habitat within the North Platte watershed, Washakie basin, Great Divide basin, and Green River basin have proved equally unsuccessful in locating additional populations (W. Fertig, University of Wyoming, *in litt.*, 1999). The plant is easily recognized during its summer flowering season, so it seems likely that surveys would have found additional populations if they exist. Therefore, the species is vulnerable to extinction from even small-scale habitat degradation due to its small population size and limited geographic range.

The known population is threatened by surface disturbances associated with recreation, oil and gas development, mineral extraction, trampling by livestock, and soil compaction by vehicles (Fertig 1995). Recreational off-road vehicle use presents a threat to *Yermo xanthocephalus* through the crushing of plants and compaction or erosion of soil. This threat is greatest in the spring and summer when plants are in flower or heavy with fruit. No physical barriers prevent vehicle use in the immediate area of the *Y. xanthocephalus* population. The known population is several miles from Wyoming State Highway 135 and other maintained roads. In 1996, Highway 135 had an estimated daily traffic of 360 vehicles (Wyoming Department of Transportation 1996). A two-track, four-wheel drive trail leading to an abandoned oil well bisects the population, and is open to hunters or other recreationists using four-wheel drive trucks and other smaller all-terrain vehicles (ATVs). The most common activities that attract users to the area are hunting, rock collecting, and searching for human artifacts (such as arrowheads). The population is a few miles north of the Sweetwater Crossing on the Oregon-California Trail, which is a popular tourist attraction. There has been no significant surface disturbance caused by vehicles during the past 6 years that the site has been under study (R. Scott, Central Wyoming College, pers. comm., 2001). However, Scott (2000) has noted light vehicular traffic and fresh tire tracks in the site. The BLM Resource Management Plan limits vehicle use to existing roads (including established two-tracks), but the potential for habitat and plant destruction by ATVs remains a threat.

Oil and gas development also threaten the known population. In 1997, BLM leased for oil and gas development a 1,160-acre tract (designated WYW140702) that encompasses the *Yermo xanthocephalus* population. An adjacent lease (WYW138846) consisting of 2,080 acres was purchased by the same operator in May 1996. Both leases are for a 10-year period, and no specific lease stipulations were included to protect the plant. Construction of well pads, access roads, and pipelines through occupied habitat would result in direct destruction or crushing of plants and soil compaction and erosion. The 1920 Mineral Leasing Act promotes maximum recovery of Federal mineral resources. However, the 1987 Amendments to the Mineral Leasing Act (30 U.S.C. 226(g)) require lessees to have an approved operating plan that protects surface resources prior to submitting Applications for Permission to Drill. The BLM regulations provide that

species that are candidates for listing under the Act be afforded protection.

The current lessee is aware that the plant exists in the area, and has been very cooperative with BLM staff. The current drilling plan proposes exploration in locations that should not pose a threat to *Yermo xanthocephalus*, but the current operator is free to sell its leases to other companies that could revise the drilling plan. An existing two-track road leading to an abandoned oil well currently bisects the only population of *Y. xanthocephalus*. Redrilling of abandoned wells in search of producing formations that may have been previously overlooked is a common technique used during oil and gas exploration. Permits to drill can be conditioned by BLM to provide some protection to sensitive species by requiring a proposed drill pad be relocated up to 200 meters (656 feet). Candidate, proposed, and listed species can be protected by prohibiting surface occupancy in known populations.

Although the current oil and gas exploratory wells pose no threat to *Yermo xanthocephalus*, the discovery of an oil or gas pool on the lease areas would precipitate field developments that would introduce new threats to the plant and its habitat. In-field development could involve up to eight wells per section, depending on the characteristics of the producing formations. This intensified drilling activity would result in a new network of additional roads and well pads, and more human intrusion into what is now a remote area.

Seismic explorations for oil and gas producing formations also present a threat to *Yermo xanthocephalus* and its habitat through use of explosives, direct trampling, and soil compaction. However, these activities were carried out in the lease area during the early 1990s, so a permit application for further exploration is not likely. In addition, seismic explorations on BLM surface now require environmental analysis prior to permitting, and BLM will protect occupied *Y. xanthocephalus* habitat from damage if a request for further exploration is received (J. Kelly, BLM, pers. comm., 1998).

The known *Yermo xanthocephalus* population is located in an area managed by BLM's Lander Field Office, and locatable mineral resources, such as gold and uranium, are known to exist in that part of Wyoming. Private parties can stake a mining claim, explore for, and extract locatable minerals in accordance with the 1872 General Mining Law, and such activity could jeopardize the known population of *Y. xanthocephalus*. Uranium and zeolites, a locatable mineral with properties useful in water softening, manufacturing of catalysts, and pollution control, are found in the Beaver Rim area. Zeolites also may have marketability for use in processes to remove radioactive products from radioactive wastes (Bureau of Land Management 1986). The BLM's authority to regulate mineral claims under the 1872 General Mining Law is limited, although mining activities in areas with 5 or more acres of surface disturbance of unpatented BLM land are required to have an approved operating plan under 43 CFR 3809. Although the staking of locatable mineral claims on or near the plant's habitat is not likely, official withdrawal of the area from locatable mineral claims would remove this threat.

Livestock grazing also may present a threat to *Yermo xanthocephalus* habitat, which is within an existing grazing allotment. Although Fertig (1995) indicated livestock appear to use the *Y. xanthocephalus* habitat primarily as a travel corridor between adjacent sagebrush-grassland pastures, the area is actually a large pasture and livestock trampling of plants occurs only as cattle casually move along "cow trails" or two-tracks while grazing or moving to water. Scott (2000) noted signs of moderate horse traffic adjacent to the site. There are no existing barriers to prevent livestock access to the habitat. Fencing of the area would protect the plants from this threat, but also would probably result in a change in the associated plant community in the habitat. This change could result in unanticipated adverse impacts to the survival of *Y. xanthocephalus*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes: Yermo xanthocephalus* is vulnerable to over-collecting conducted for scientific or educational purposes because of its small extant population size and habitat. The leaves of *Y. xanthocephalus* contain a chemical that produces a mild numbing sensation in the human mouth when even tiny portions are tasted (R. Scott, pers. comm., 1998). This could indicate potential medicinal qualities that could prove attractive to pharmaceutical companies, but the potential for this to be a threat to the existing population is currently unknown.

C. *Disease or predation:* Cattle graze in the immediate vicinity of occupied Yermo xanthocephalus habitat, but observation on the site indicate that the plant is not palatable to grazers. Tracks reveal that domestic and wild animals grazing the area spit out *Y. xanthocephalus* leaves and flowers after tasting (R. Scott, pers. comm., 1998). Predation of *Y. xanthocephalus* fruit by insects does occur, and in 1990 fruit production appeared low because of insect predation. However, it is unknown whether or not the extent of current predation differs from historical levels. Therefore, the degree of threat that this factor poses to the species is unknown.

D. *The inadequacy of existing regulatory mechanisms:* The State of Wyoming has no endangered species act or other laws to provide protection to plant species. The current BLM Lander Resource Management Plan (RMP), which covers the known population of *Yermo xanthocephalus*, was approved in 1987, 3 years prior to the species' discovery. Therefore, the plan does not specifically mention the species. The RMP protects special status plant species in general across the entire Resource Area, and provides no-surface-occupancy restrictions for threatened and endangered species impacted by oil and gas development. As *Y. xanthocephalus* is not currently listed, and no specific stipulations were included with the current oil and gas leases, attempts by BLM to restrict activities by imposing conditions during the application to drill stage are appealable by the operator. On April 9, 2001, BLM approved a list of sensitive species occurring on BLM properties in Wyoming. The list is intended to heighten awareness of the conservation needs of the species and encourage protective measures where possible. However, there are no protective measures mandated for the species. Additionally, *Y. xanthocephalus* is not currently on the sensitive species list and would have to be officially added.

E. *Other natural or manmade factors affecting its continued existence:* Species with small population size and restricted distribution are vulnerable to extinction by natural processes and human disturbance (Levin et al. 1996). Random events causing population fluctuations or population extirpations become a serious concern when the number of individuals or the geographic distribution of the species is very limited. A single human-caused or natural environmental disturbance could destroy the entire population of *Yermo xanthocephalus*.

This species physically occupies an area of 3.37 hectares (8.33 acres), and while the total number of plants known to exist through actual counting of each plant has increased from 9,293 in 1995 to 11,967 in 2001 (with a high of 13,244 in 2000), this increase may be due to higher than normal precipitation during study years (R. Scott, Central Wyoming

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College, pers. comm., 2001). The establishment of this species is probably episodic and dependent on suitable spring and summer moisture conditions (Fertig 1995). Total fruit production appeared low due to heavy herbivory by insects and drought-induced abortion in 1990 (Dorn 1991). Dorn further speculated that in typical years recruitment of seedlings is probably extremely low or nil. However, observations since then have not supported that reproduction is necessarily low or that heavy herbivory by insects causes low reproduction. Drought-induced abortion has not been studied (Bureau of Land Management 1998). A decrease in population size from 12,099 plants in 1997 to 11,635 plants in 1998 may have been due to overall decreased precipitation (R. Scott, Central Wyoming College, pers. comm., 2001). A similar decrease in population size from 13,244 plants in 2000 to 11,967 in 2001 was noted and seems to have coincided with decreased precipitation. Therefore, a series of drought years could result in a severe reduction in population size and eventual extinction.

As described by Fertig (1995), the species is characterized by a long-lived perennial growth form, adaptation to severe habitats, and low annual reproductive output. This low reproductive output makes the species increasingly vulnerable to extinction due to chance events as population size declines, because it is unlikely that the species will exhibit a high rate of population growth, even if environmental conditions improve after such an event.

In addition to the above factors, threats to *Yermo xanthocephalus* are increased when people use the occupied area for recreational purposes. For example, erosion or trampling of plants is possible due to hikers or off-road vehicle use. The species occurs on barren sites with less than 25 percent total vegetative cover, and may be intolerant of competition (Fertig 1995). Competition from plants not native to the area would pose a greater threat than competition from species with which *Y. xanthocephalus* has evolved. Non-native plants that might outcompete *Y. xanthocephalus* could be introduced to the area if their seeds are carried in on the footwear or clothing of recreationists.

An additional threat that affects *Yermo xanthocephalus* is that posed by its small population size. Populations of plants that remain very small for several generations or that have gone through a past episode of rapid population decline may lose much of their previous genetic variability (Godt et al. 1996). When a population's genetic variability falls to low levels, its long-term persistence may be jeopardized because its ability to respond to changing environmental conditions is reduced. In addition, the potential for inbreeding depression increases, which means that fertility rates and survival rates of offspring may decrease. Although environmental and demographic factors usually supercede genetic factors in threatening species viability, inbreeding depression and the low genetic diversity may enhance the probability of extinction of rare plant species (Levin et al. 1996).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Yermo xanthocephalus* in determining to issue this final rule. Based on this evaluation, the preferred action is to list *Y. xanthocephalus* as threatened. Although the population has increased since 1995, the future existence of the species is still threatened by potential oil and gas in-field development and by its extremely limited habitat and population size. While not in immediate danger of extinction, *Y. xanthocephalus* is likely to become an endangered species in the foreseeable future if the threats to the habitat are realized and if present threats posed by small population size and limited geographic range continue to exist. We have determined that threatened status would provide adequate protection from the described threats. As the species occurs only on Federal surface, a classification as endangered, if warranted, would provide no additional level of protection.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat often have similar standards and thus similar thresholds for violation of section 7 of the Act.

Critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat also may benefit these species by alerting permitting agencies to potential sites for reintroduction and allowing them the opportunity to evaluate proposals that may affect those areas.

In the proposed rule, we found that the designation of critical habitat for *Yermo xanthocephalus* was not prudent because the minimal benefits of such designation would be far outweighed by the increase of threats from over collection or other human activities. We believed critical habitat designation would provide no additional benefit to the species beyond that conferred under sections 7 and 9 of the Act by listing. We indicated protection of *Y. xanthocephalus* would be most effectively addressed through the recovery process under section 4 of the Act and the consultation process under section 7 of the Act, and the current interagency coordination processes.

Given the extremely limited range of *Yermo xanthocephalus*, we believed any case of adverse modification of its habitat also would constitute jeopardy for the taxon. The designation of critical habitat for the purpose of informing Federal agencies of the location of occupied *Y. xanthocephalus* habitat was not thought to be necessary because BLM currently permits the surveys and monitoring of the only extant population. *Yermo xanthocephalus* is not known to have previously existed on any other sites. If future management actions include unoccupied habitat, the Service believed any benefit provided by designation of such habitat as critical would be conferred more effectively and efficiently through the current coordination process.

In the proposed rule, we indicated vandalism and unauthorized collection of *Yermo xanthocephalus* could be a significant threat to the species' survival and recovery, because of the plant's rarity and the fact that it is a monotypic genus. Critical habitat designation would require publication of the legal description of the 20 hectares (50 acres) habitat site in the **Federal Register**, providing information that might encourage collectors.

We received two comments agreeing with our prudency determination based upon possible adverse effects from collecting if the location of the plant is disclosed. Two commenters also expressed concern that the listing alone may draw attention to the plant's location and possibly lead to adverse effects from collection or vandalism.

Recent court decisions (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) have forced us to reevaluate our "not prudent" finding. The *Conservation Council* ruling is particularly relevant to our determination. In that case, the court held that in order to conclude that designation would increase the risk to the species, the Service must have evidence of specific threats (such as instances of collection and vandalism) that would be increased by designation of critical habitat. The court said that without species-specific evidence, the fact that there are few plants and that even a single taking could cause the species to become extinct was not sufficient justification for a "not prudent" finding based on increased threat.

We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. Due to the relatively low numbers of individuals, small area covered by the population, and the inherent transportability of plants, *Yermo xanthocephalus* is vulnerable to collection and other disturbance. However, at this time we have no specific evidence of taking, vandalism, collection or trade of this species. This may be due to its fairly recent description as a new species to science and its remote location. Nonetheless, in the absence of specific evidence, we cannot conclude that designation would not be prudent based on increased threat.

Without a finding that critical habitat would increase threats to a species, then designation would be prudent if it would provide any benefits to the species. As to benefits of designation on Federal land, the court ruled in *Conservation Council of Hawaii* v. *Babbitt* that if even as a general rule an action that would adversely modify critical habitat was likely to jeopardize the continued existence of the species, the Service must consider the adverse modification/jeopardy relationship for each species individually. The court also ruled that designation of critical habitat on any type of land serves to educate the public and government officials that this habitat is essential to the protection of the species.

With this taxon, designation of critical habitat may provide some minor benefits. The primary regulatory effect of critical habitat designation is to require Federal agencies to consult before taking any action that could destroy or adversely modify critical habitat. A critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome, because an action that destroys or adversely modifies such critical habitat also would be likely to result in jeopardy to the species. However, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include designated unoccupied habitat or occupied habitat that may become unoccupied in the future. No such habitat is known at this time, but some may be found in the future. Additionally, there will be educational or informational benefits from designating critical habitat.

Reevaluating our prudency determination under the standards mandated by court decisions, we find that designation of critical habitat for *Yermo xanthocephalus* is prudent. However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing *Y. xanthocephalus* as threatened without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke the protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to a species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, local and private agencies, groups, and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities impacting listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Thus, the Act will require BLM to evaluate potential impacts to *Yermo xanthocephalus* that may result from activities it authorizes or permits, such as oil and gas development, grazing, and

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recreational use. No special land management designations or conservation agreements currently exist to provide special protection for *Y. xanthocephalus*. Section 43 U.S.C. 1712(c)(3) allows BLM to protect tracts as Areas of Critical Environmental Concern (ACEC). Designation of the plant's habitat as an ACEC is a long process and would not, in itself, afford the species protection, unless a management plan for the ACEC identified the protective measures to be put in place. The BLM has prepared a draft conservation agreement, assessment, and strategy which outlines management, inventory, and monitoring actions to be taken to ensure the conservation of this species. However, the draft has not been finalized or signed.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits will ever be sought or issued for *Yermo xanthocephalus* because the species is not in cultivation or common in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone (303) 236–7400, facsimile (303) 236–0027).

We adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on future and ongoing activities within a species' range. We believe that based upon the best available information, the actions listed below would not result in a violation of section 9 of the Act provided these activities are carried out in accordance with existing regulation and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, range management, rodent control, mineral development, road construction, human recreation, pesticide application, controlled burns) and construction/maintenance of facilities (e.g., fences, power lines, pipelines, utility lines) when such activity is conducted according to any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act; and

(2) Casual, dispersed human activities on foot (*e.g.*, bird watching, sightseeing, photography, and hiking).

The actions listed below may potentially result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal Lands;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Office (see **ADDRESSES** section).

Required Determinations

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared concerning regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new requests or requirements for collection of information, other than those associated with permits, already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094, which is valid through July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

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Author

The primary author of this proposed rule is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
FLOWERING PLANTS						
*	*	*	*	*	*	*
Yermo xanthocephalus	Desert yellowhead	U.S.A. (WY)	T	723	NA	NA
*	*	*	*	*	*	*

Dated: March 8, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–6134 Filed 3–13–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 50
Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of Florida citrus fruit to determine whether they favor continuance of the marketing order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area.

DATES: The referendum will be conducted from April 4, 2002 through April 26, 2002. To vote in this referendum, growers must have been producing Florida citrus during the period August 31, 2000, through September 1, 2001.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 799 Overlook Drive, Suite A, Winter Haven, Florida 33884, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, at 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit & Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 905 (7 CFR part 905), hereinafter referred to as the "order" and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by producers. The referendum shall be conducted during the period April 4, 2002 through April 26, 2002 among Florida citrus producers in the production area. Only producers that were engaged in the production of Florida citrus during the period of August 31, 2000, through September 1, 2001, may participate in the continuance referendum.

The Department of Agriculture (USDA) has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Florida citrus represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for Florida citrus. It has been estimated that it will take an average of 20 minutes for each of the approximately 11,970 producers of Florida citrus to cast a ballot. Participation is voluntary. Ballots postmarked after May 6, 2002 will not be included in the vote tabulation.

William G. Pimental and Christian D. Nissen of the Southeast Marketing Field Office, and Melissa Schmaedick of the Washington, DC Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq*).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, and Tangerines.

Authority: 7 U.S.C. 601–674.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6108 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 01–018E]

Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule: Reopening and extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening and extending the comment period for the proposed rulemaking, "Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard," that closed on January 2, 2002. This action responds to requests from two trade associations and a private company to allow additional time for comment.

DATES: Comments are due April 15, 2002.

ADDRESSES: Send one original and two copies of written comments to FSIS Docket No. 01–018P, Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION: On November 2, 2001, FSIS published a proposed rule, "Definitions and Standards of Identity or Composition: Elimination of the Pizza Standard" (66 FR 55601). In that document, the Agency proposed to amend the Federal meat inspection regulations to remove the standards of identity for "pizza with meat" and "pizza with sausage" and provided a 60-day comment period ending on January 2, 2002. FSIS received three comments requesting that the Agency extend the comment period for the proposed rule. Two comments from industry trade associations requested that the Agency extend the comment period for an additional 60 days and one comment from a private company requested that the Agency extend the comment period for an additional 90 days. The commenters requested additional time to get input and feed-back from trade association members who may be affected by the proposed rule and to conduct, gather, and analyze consumer research data. Because the comment period included the holiday season, the requestors asked for additional time to accommodate loss of time during the holidays.

FSIS has considered the requests and will reopen the comment period. However, FSIS is only reopening the comment period for an additional 30 days, which will provide additional time for comments to be made, while ensuring that the rulemaking proceeds in a timely manner. As a result of this reopening and extension, the comment period for the proposed rule will close on April 15, 2002.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the meeting and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–6125 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE174; Notice No. 23–02–01–SC]

Special Conditions: Installation of Full Authority Digital Engine Control (FADEC) System on Liberty Aerospace, Model XL–2 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Liberty Aerospace, Model XL–2 Airplane, which will use a FADEC System. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE174, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE174. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this action may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE174." The postcard will be date stamped and returned to the commenter.

Background

On October 26, 2000, Liberty Aerospace applied for a Type Certificate for the Model XL–2 airplane. The Model XL–2 is a small, normal category airplane. The airplane is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system,

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Type Certification Basis

• Under the provisions of 14 CFR 21.17, Liberty Aerospace must show that the Model XL–2 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23.53 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model XL–2 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LC40–550FG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Liberty Aerospace, Model XL–2 Airplane will incorporate the following novel or unusual design features:

Liberty Aerospace, Model XL–2 airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Liberty Aerospace, Model XL–2 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Liberty Aerospace, Model XL–2 to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the Liberty Aerospace, Model XL–2 Airplane. Should Liberty Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, Liberty Aerospace, Model XL–2 Airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Liberty Aerospace, Model XL–2 Airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on February 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6131 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure, and corrective actions, if necessary. This action is necessary to prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–166–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

• Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

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FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of uncommanded deployment of the cabin oxygen masks on a McDonnell Douglas Model MD–88 airplane. This deployment occurred as the airplane was in flight climbing through 19,000 feet. The oxygen mask deployment was isolated to the aft lavatories, aft flight attendant seat, and passenger seats aft of the aft galley. No oxygen system/mask deployment cockpit indication lights illuminated. Inspection revealed 30 burnt wires in the area of a disconnect panel above the aft left lavatory. The burnt wires were attributed to chafing against the disconnect panel structure due to slack in the wires from the module blocks to a wire bundle riding against the disconnect panel. Additional inspections revealed two airplanes with chafed wires, three airplanes with wiring coming into contact with surrounding structure, and seven airplanes with slack wiring.

Chafing of wires at the disconnect panel above the aft left lavatory, if not corrected, could result in electrical arcing, and consequent fire in the cabin.

The disconnect panel above the aft left lavatory on certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes is identical to that on the affected Model MD–88 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–24A184, including Appendix, dated October 26, 2000, which describes procedures for a general visual inspection of the disconnect panel area above the aft left lavatory for chafed or damaged wires or unacceptable clearance between the wires and adjacent structure; and corrective actions, if necessary. The corrective actions include securing wires using tie-wraps to obtain a 0.50-inch minimum clearance, and repairing or replacing any chafed or damaged wire with a new wire; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,198 airplanes of the affected design in the worldwide fleet. The FAA estimates that 586 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $35,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for some airplanes for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–166–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin MD80–24A184, dated October 26, 2000; equipped with Jamco lavatories.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wires at the disconnect panel above the aft left lavatory, which could result in electrical arcing, and consequent fire in the cabin, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 120 days from the effective date of this AD, perform a general visual inspection of the disconnect panel area above the aft left lavatory for damaged or chafed wires or unacceptable clearance between the wires and structure, in accordance with Boeing Alert Service Bulletin MD80–24A184, including Appendix, dated October 26, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Condition 1. If no damaged or chafed wire and if acceptable clearance (i.e., 0.50 inch minimum) between the wires and adjacent structure is found, no further action is required by this AD.

(2) Condition 2. If no chafed or damaged wire and if unacceptable clearance between the wires and adjacent structure is found, before further flight, secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

(3) Condition 3. If any chafed or damaged wire and unacceptable clearance between the wires and adjacent structure is found, before further flight, repair or replace any chafed or damaged wire with a new wire and secure wires using tie-wraps to obtain a 0.50-inch minimum clearance, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6097 Filed 3–13–02; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000–D029]

Defense Federal Acquisition Regulation Supplement; Restriction on Contingent Fees for Foreign Military Sales—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause from the list of clauses included in contracts for commercial items to implement provisions of law or Executive orders. The clause proposed for removal pertains to restrictions on contingent fees for foreign military sales.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 13, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2000–D029 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D029.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, includes a list of clauses that may be included in a contract for commercial items to implement provisions of law or Executive orders. Included on the list is the clause at DFARS 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, which cites 22 U.S.C. 2779 as its statutory basis. However, the clause at DFARS 252.225–7027 does not implement 22 U.S.C. 2779, which requires in subsection (c) that no fee may be included in the amount paid under a contract unless the amount is reasonable, allocable, and not made to a person who has used improper influence. The clause at DFARS 252.225–7027 implements DoD policy only, requiring that, in order for the costs of certain contingent fees to be allowable, the Government must identify the fees and the foreign military sales customer must approve payment of the fees in writing before contract award. This requirement has little effect in commercial contracts where the price the Government pays is generally a fixed price, not based on cost analysis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most firms that pay or receive contingent fees for foreign military sales are not small business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

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List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

2. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read "(XXX 2002)", and

b. In paragraph (b), by removing the entry "____ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).".

[FR Doc. 02–5954 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking; status.

SUMMARY: RSPA is issuing this document to inform persons of the status of a notice of proposed rulemaking (NPRM) which it published in the **Federal Register** on December 7, 2000, proposing to: temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials; charge not-for-profit organizations the same registration fee as a small business; use the North American Industry Classification System for size criteria for determining if an entity is a small business; and allow payment by additional credit cards than previously authorized. Consistent with the President's Fiscal Year 2003 budget request to Congress, RSPA is further delaying final action on these proposals pending enactment of the Fiscal Year 2003 Department of Transportation appropriations. Therefore, under the existing regulations, for registration year 2002–2003, which begins July 1, 2002, the registration fees remain $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other registrants.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On December 7, 2000 (65 FR 76889), RSPA issued a NPRM proposing to temporarily lower the registration fee for all registrants for the next six registration years (2001–2002 through 2006–2007) in order to eliminate an unexpended balance (or surplus) in the Hazardous Materials Emergency Preparedness (HMEP) grants fund. The HMEP grants program supports hazardous material emergency response planning, training and related activities by States, local governments, and Indian tribes. RSPA also proposed to charge not-for-profit organizations the same registration fee as a small business; amend its reference to the Small Business Administration's (SBA) small business criteria to reflect SBA's replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System; and allow payment by additional credit cards than previously authorized.

On May 2, 2001 (66 FR 22080), RSPA published a status document in the **Federal Register** stating that, consistent with the President's Fiscal Year 2002 budget request to Congress, it was delaying final action on the proposals in the NPRM pending enactment of the Fiscal Year 2002 Department of Transportation appropriations. In that budget request, the President proposed to fund a portion of RSPA's hazardous materials safety program from fees collected through the Hazardous Materials Registration program. Although that proposal was not adopted by Congress in the Fiscal Year 2002 DOT appropriations, the President's Fiscal Year 2003 budget request to Congress again proposes to fund a portion of RSPA's hazardous materials safety program budget from fees collected through the Hazardous Materials Registration program. Therefore, consistent with the President's current budget request to Congress, RSPA is again delaying final action on the proposals contained in this rulemaking to temporarily reduce registration fees pending enactment of the Fiscal Year 2003 Department of Transportation appropriations.

Consistent with current regulations, for registration year 2002–2003, which begins July 1, 2002, the registration fees remain unchanged at $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other registrants. Later this year, RSPA intends to issue a final rule on other proposals contained in the December 7, 2000 NPRM. A copy of the 2002–2003 registration form can be obtained after May 1, 2002, from our Web site at *http://hazmat.dot.gov/register.htm* and from our fax-on-demand service at 1–800–467–4922 (extension 2; document 700) .

Issued in Washington, DC, on March 8, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–6122 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 67, No. 50

Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV01–81–2NC]

Notice of Request for OMB Approval and Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Agricultural Marketing Service (AMS) is submitting to the Office of Management and Budget (OMB) for approval and extension the information collection on prune trees grown in California per clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). This information collection was approved as an emergency package through May 31, 2002, and assigned OMB No. 0581–0201.

DATES: Comments on this notice must be received by May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; Tel: (202) 720–2491, Fax: (202) 720–8983, or E-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: California Prune/Plum Tree Removal Program ("the program").

OMB Number: 0581–0201.

Expiration Date of Approval: May 31, 2002.

Type of Request: Approval and extension of a currently approved information collection.

Abstract: The information collection requirements in this request are applied only to those growers who voluntarily participate in the tree removal program. The information is essential to carry out the program, and to administer release of payments to participating growers.

This program is intended to reestablish prune/plum growers' purchasing power and is authorized under clause (3) of section 32 of the Act of August 24, 1935, as amended (Section 32). Clause (3) of Section 32 authorizes USDA to "reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption." Section 32 also authorizes USDA to use Section 32 funds "* * * at such times, and in such manner, and in such amounts, as * * *" is found to "* * * effectuate substantial accomplishments of any one or more of the purposes of this section." Furthermore, "Determinations by the Secretary as to what constitutes * * * normal production for domestic consumption shall be final."

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of clause (3) of Section 32 and the rules and regulations issued thereunder.

The California prune industry has requested a tree removal program estimated to cost $20 million. The industry asked the Department of Agriculture (USDA) to provide $17 million in Section 32 funds. The industry has contributed $3 million. California's prune bearing acreage is expected to reach 94,000 acres next year if no acreage is removed. The industry's objective is to remove a minimum of 20,000 bearing acres of prune trees. Prune trees are generally planted 100 to 140 trees per acre. With an average yield of 2.2 tons per acre (5-year average), about 44,000 tons of prune variety plums would be removed from production under the program. Such a decrease will more closely align prune supply with demand while assuring an adequate supply for all market needs. If less productive acres are removed (yields less than 2.2 tons per acre) or less than 20,000 acres are removed, then the reduction in production would be less than 44,000 tons. With prune supplies more in line with market needs, market conditions are expected to stabilize and producer prices are expected to rise to more remunerative levels.

Two forms are needed to implement the program. The first form is "Application for Prune Tree Removal Program" (FV–298). Growers who wish to participate in the program must submit this form to the Prune Marketing Committee (Committee), which administers the program. Upon receipt of FV–298, the Committee will send the grower a "Notification of Prune Tree Removal" (FV–299) that requires only the grower's signature certifying that the trees were removed, and the date of removal. The notification also must be signed by a Committee staff member to verify actual removal of the trees. Growers are required to maintain copies of both forms for at least three years.

These forms require the minimum amount of information necessary to carry out the program. In addition, USDA has developed these forms in consultation with the Committee on behalf of the California prune industry. Because this program is not maintained by any other agency, the information collected is not available from any other existing records.

The information collected will be used only by authorized representatives of the USDA, including AMS' Fruit and Vegetable Programs' regional and headquarters staff, and authorized employees of the Committee. All information collected will be treated as confidential (as indicated on the forms), and will be in conformance with the Privacy Act and the Freedom of Information Act.

AMS estimates that the total annual burden are 250 hours. The proposed request for approval of the information collection under the program is as follows:

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FV–298—Application for Prune Tree Removal Program Reporting:

Estimate of Burden per Response: 30 minutes.

Respondents: California prune growers.

Estimated Number of Respondents: 480.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 240 hours.

Recordkeeping:

Estimate of Burden: 1.2 minutes.

Respondents: California prune growers.

Estimated Number of Respondents: 480.

Estimated Annual Time per Respondent: 1 hour.

Estimated Total Annual Burden on Respondents: 10 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0201 and the California Prune Tree Removal Program, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at room 2525–S, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20090–6456; or telephone: (202) 720–2491.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6099 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–078–1]

Monsanto Co.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for corn designated as Event MON 863, which has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 13, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comments (an original and three copies) to Docket No. 00–078–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–078–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and Docket No. 00–078–1 on the subject line.

You may read a copy of the petition for a determination of nonregulated status submitted by Monsanto Company, the environmental assessment, and any comments we receive on this notice of availability in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On May 17, 2001, APHIS received a petition (APHIS Petition No. 01–137–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays* L.) designated as Corn Rootworm Protected Corn Event MON 863 (MON 863), which has been genetically engineered for resistance to the larvae of certain corn rootworm (CRW) species. The Monsanto petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, MON 863 corn has been genetically engineered to express a Cry3Bb1 insecticidal protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kumamotoensis (Bt kumamotoensis)*. The petitioner states that the Cry3Bb1 protein is effective in controlling the larvae of CRW pests (Coleoptera, *Diabrotica* spp.). The subject corn also contains the *nptII* marker gene derived from the bacterium *Escherichia coli*. The *nptII* gene encodes neomycin phosphotransferase type II and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Particle gun acceleration technology was used to transfer the added genes into the recipient inbred yellow dent corn line A634.

MON 863 corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In § 403 of the Plant Protection Act (7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. Accordingly, Monsanto has filed an application to register the active ingredient *B. thuringiensis* Cry3Bb protein and the genetic material necessary for its production in corn (66 FR 15435–1536, March 19, 2001). When the use of the pesticide on the genetically modified plant would result in an increase in the residues in a food or feed crop for which the pesticide is currently registered, or in new residues in a crop for which the pesticide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. EPA has established an exemption from the requirement of a tolerance for residues of the *B. thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in or on all raw agricultural commodities (66 FR 24061–24066, May 11, 2001).

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has completed consultation with FDA on the subject corn.

In accordance with the regulations in 7 CFR 340.6(d), we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for determination of nonregulated status from any interested person for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for MON 863 corn. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The petition and the EA, and any comments received on these documents, are available for public review, and copies of the petition and the EA may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's insect-resistant MON 863 corn and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6135 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Management Assistance

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Notice of availability of program funds for Agricultural Management Assistance.

SUMMARY: This notice announces the availability of funds for Agricultural Management Assistance (AMA) to implement Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section 133 of the Agricultural Risk Protection Act of 2000, Public Law 106–224. The Commodity Credit Corporation (CCC) administers the funds under the general supervision of a Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). CCC is

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announcing the availability of funds under Section 524(b) of the Federal Crop Insurance Act. Section 524(b) authorizes the Secretary of Agriculture to use $10 million of CCC funds annually for cost-share assistance to producers in 15 States in which participation in the Federal Crop Insurance Program is historically low. The 15 States include Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The cost-share assistance will encourage and assist producers in the selected States to adopt natural resources conservation practices and investment strategies that will reduce or mitigate risks to their agricultural enterprises.

DATES: March 14, 2002 to September 30, 2002.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, AMA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 720–1845, fax: 202–720–4265; Submit electronic comments to: *mark.berkland@usda.gov* or *gary.gross@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), was added by Section 133 of the Agricultural Risk Protection Act of 2000, (Pub. L. 106–224, June 22, 2000). Section 524(b) authorizes the Secretary of Agriculture (Secretary) to use $10 million of CCC funds for cost-share assistance in 15 States where participation in the Federal Crop Insurance program is historically low. The 15 States designated by the Secretary are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and NRCS will administer the funds in such amounts per agency as determined by the Secretary.

Section 524(b)(2)(A), (B), and (C), provides for cost-share assistance to producers to: construct or improve water management structures or irrigation structures; plant trees for windbreaks or improve water quality; and mitigate risks through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.

Section 524(b)(2)(D) and (E), provides for cost-share assistance to producers to: enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk; and enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk.

This notice deals with the funding administered by NRCS, approximately $7 million in fiscal year 2002, to carry out the conservation provisions of Section 524(b)(2)(A),(B), and (C).

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance.

The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that improve soil or water management or water quality, or mitigate financial risk through resource conservation. AMA does not provide for incentive payments.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, taking into account local and state priorities. The State Conservationist may also delegate the selection of applications to the local designated conservationist who will work in consultation with the local USDA Work Group.

AMA Requirements

CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will widely distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. The applicants must meet the definition of "person" as set out in Section 1001(5), of the Food Security Act, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment. The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made. There will be a 5 to 10 year cost-share agreement period to install eligible practices. Cost-share practices need to be maintained for the life of the practice. The maximum payment to any one person under the AMA program is $50,000 for any fiscal year.

The Federal share of cost-share payments shall be 75 percent of the cost of an eligible practice(s), based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs. Producers will be paid upon certification of the completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost-share agreement.

Eligible participants must have control of the land for the life of the cost-share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to construct or improve watershed management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; or to mitigate financial risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is privately-owned or publicly-owned where the land is under private control for the length of the cost-share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization from the government landowner to apply the conservation practices. Land that is Federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in AMA.

Applicants must submit an application (CCC–1200 form) to CCC to be considered for participation in AMA. Any producer who has eligible land may obtain and submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the State-developed ranking criteria.

Conservation Plan Requirement

A conservation plan is required for the area to be included in the AMA cost-share agreement and becomes the basis for developing the cost-share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost-shared with AMA funds and the non-cost shared practices needed in the conservation plan.

Cost-Share Agreement Requirements

Participants will enter into a cost-share agreement agreeing to implement eligible conservation practices. An AMA cost-share agreement will incorporate by reference all portions of a unit applicable to AMA and be for a duration of 5 to 10 years.

Cost-share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost-share agreement; refund to CCC any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the cost-share agreement; refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the cost-share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost-share agreement; and supply information as required by CCC to determine compliance with the cost-share agreement and requirements of AMA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost-share agreement before CCC will approve any cost-share payments.

With respect to land under an AMA cost-share agreement which is inherited during the cost-share agreement period, the $50,000 per fiscal year limitation to any person will not apply to the extent that the payments from any cost-share agreements on the inherited land cause an heir, who was party to an AMA cost-share agreement on other lands prior to the inheritance, to exceed the annual limit.

With regard to cost-share agreements on tribal land, Indian trust land, or BIA allotted land, payments exceeding $50,000 per fiscal year limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the fiscal year limitation.

Conservation Practice Operation and Maintenance

The cost-share agreement will provide for the operation and maintenance of the conservation practices applied under the cost-share agreement. The participant will operate and maintain the conservation practices for their intended purposes as agreed-to as part of the cost-share agreement, and form CCC–1245, Practice Approval and Payment Application.

Additional Requirements and Information

Additional requirements and information pertaining to the AMA program relating to cost-share agreements, administrative requirements, and other matters can be found on CCC form CCC–1200, Conservation Program Contract, and the appendix to form CCC–1200, both of which are available at local USDA service centers.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2002 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 230 cost-share agreements in the 15 States. On each farm or ranch, during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case by case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on August 23, 2001.

Thomas A. Weber,

Deputy Chief for Programs, Natural Resources Conservation Service.

[FR Doc. 02–6171 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on March 19, 2002, 6:30–9:30 p.m. The Fresno County Resource Advisory Committee will meet at the Districts Ranger's office Prather, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on March 19, 2002. The meeting will be held from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra

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National Forest, Pineridge/Kings River Districts Ranger office, 29688 Auberry Road, Prather, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611. (559) 297–0706 ext. 4804; E-MAIL *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the March 19, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Consideration of Title II Project proposals from the public and/or the RAC members; (4) Determine the date and location of the next meeting; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 1, 2002.

Nancy Fleenor,

Ecosystem Coordinator.

[FR Doc. 02–6105 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the technical assistance sub-committee of that Committee, which will be open to the public.

DATES: The meeting of the sub-committee is scheduled for April 4, 2002 (beginning at 9 a.m. and ending at 5 p.m.) and April 5, 2002 (beginning at 9 a.m. and ending at 12:30 p.m.).

ADDRESSES: The meeting will be held at the Marriott Riverwalk, 711 East Riverwalk, San Antonio, TX 78205.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail *windley@access-board.gov.* This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet site (*http://www.access-board.gov/prowmtg.htm*).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (Committee). 64 FR 56482 (October 20, 1999). The objectives of the Committee include providing recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968, recommendations regarding technical assistance issues, and guidance for best practices for alterations in the public rights-of-way.

On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled "Building a True Community". The report is available on the Access Board's Web site at *www.access-board.gov* or can be ordered by calling the Access Board at (800) 872–2253 (voice) or (800) 993–2822 (TTY).

At its April meeting, the technical assistance sub-committee will continue to address the development and format of technical assistance materials relating to public rights-of-way. The sub-committee meeting will be open to the public and interested persons can attend the meeting and participate on subcommittees of the Committee. All interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by March 20, 2002. Notices of future meetings will be published in the **Federal Register.**

Lawrence W. Roffee,

Executive Director.

[FR Doc. 02–6112 Filed 3–13–02; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty New Shipper Review of Certain Cased Pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is rescinding the antidumping duty new shipper review, requested by Wuxi Andi Civilization PE Gift Give Away Co., Ltd. (Wuxi or respondent), the exporter, and Safety Touch & Javithon Inc., (Safety Touch) the importer, of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The period of the requested review is December 1, 2000 through May 31, 2001.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Paul Stoltz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1009 and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On December 3, 2001, counsel for the respondent notified the Department that it was withdrawing its representation. Counsel instructed the Department to direct all correspondence, questions and inquiries to Safety Touch. On January 23, 2002, the Department notified the petitioner and Safety Touch of the preliminary rescission of the instant new shipper review. On January 28, 2002, the Department published its preliminary rescission in the Federal Register. See Certain Cased Pencils from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review, 67 FR 3878 (January 28, 2002). In that notice, we invited interested parties to comment on the preliminary rescission within 21 days of the date of publication of the notice. Interested parties also were notified that they may request a hearing in this review within 30 days of publication of the preliminary results.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

The time limits for submitting comments and requesting a hearing have passed without the Department receiving either comments or hearing requests. We have not changed our preliminary position with respect to rescission of this review. Thus, the Department is rescinding this new shipper review.

This new shipper review and this notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 02–6178 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene (PTFE) Resin from Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria Schepker or Constance Handley, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1756 or (202) 482–0631, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On September 24, 2001, the Department published a notice of initiation of administrative review of the antidumping order on PTFE resin from Italy, covering the period August 1, 2000, through July 31, 2001 (66 FR 49924). The preliminary results are currently due no later than May 3, 2002.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than September 3, 2002. See Decision Memorandum from Gary Taverman to Bernard T. Carreau, dated March 7, 2002, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant SecretaryImport Administration.

[FR Doc. 02–6177 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Rescission of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On August 20, 2001, in response to a request made by Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, and United States Steel LLC ("Domestic Producers"), the Department of Commerce ("the Department") published in the **Federal Register** (66 FR 43570) a notice announcing the initiation of an administrative review of the agreement suspending the antidumping duty investigation on certain hot-rolled flat-rolled carbon quality steel products from Brazil. The review period is July 1, 2000 to June 30, 2001. This review has now been rescinded because Domestic Producers have withdrawn their request for review.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1394.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the

provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2001).

Scope of the Review

The products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successive, superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90%	0.025% Max	0.005% Max	0.30–0.50%	0.30–0.50%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063-0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16 ..... Mo 0.21% Max	0.70–0.90	0.025% Max	0.006% Max	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% ..... V(wt.) ..... 0.10% Max	1.30–1.80% ..... Cb ..... 0.08% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50%–0.70% ..	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max ..... Nb ..... 0.005% Min	1.40% Max ..... Ca ..... Treated	0.025% Max .... Al 0.01–0.07%	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this agreement, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this agreement is dispositive.

Background

On July 31, 2001, Domestic Producers, as Petitioners in the suspended investigation, requested an administrative review of the agreement suspending the antidumping duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil published in the **Federal Register** on July 19, 1999 (64 FR 38792). On August 20, 2001, the Department published in the **Federal Register** (66 FR 43570) a notice of "Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part" initiating the administrative review. On February 19, 2002, Domestic Producers withdrew their request for the review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Additionally, the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. Given that we have received no submissions opposing Domestic Producers' request for withdrawal of the administrative review and the Department terminated the suspension agreement in the first administrative review of the suspension agreement, we find it reasonable to extend the time period for filing a withdrawal request. Based upon Domestic Producers' request, therefore, we are rescinding this review of the agreement suspending the antidumping duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil covering the period July 1, 2000 through June 30, 2001.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 6, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–6175 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain–on–Steel Cookware from Mexico: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor at (202) 482–4929 or (202) 482–4007, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

POSTPONEMENT OF FINAL RESULTS OF ADMINISTRATIVE REVIEW:

The Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on Porcelain–on–Steel Cookware from Mexico on November 13, 2001 (66 FR 56799). The current deadline for the final results in this review is March 13, 2002. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended, the Department finds that it is not practicable to complete this administrative review within the original time frame because it is conducting a changed–circumstances antidumping duty administrative review in which it is considering revoking the order on porcelain–on–steel cookware from Mexico and rescinding this administrative review. Thus, the Department is extending the time limit for completion of the final results until May 12, 2002, which is 180 days after the date on which notice of the preliminary results was published in the Federal Register.

March 8, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6174 Filed 3–13–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit For Final Results of Antidumping Duty New Shipper Review.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff at (202) 482–1009 or Chris Brady at (202) 482–4406, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a final determination within 90 days after the date on which the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 90–day period to 150 days.

Background

On March 8, 2001, the Department published a notice of initiation of a new shipper review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) covering the period of January 1, 2000, through December 31, 2000 (66 FR 13895). On January 3, 2002, the Department published the preliminary results of its antidumping duty new shipper review (67 FR 303). In our notice of preliminary results, we stated our intention to issue the final results of this new shipper review within 90 days from the date of the preliminary results unless the time limit is extended.

Extension of Time Limit For Final Results of Review

Based on a number of complex factual issues in the preliminary results, we have determined that additional time is needed in order to complete the final results of this review. Therefore, the Department is extending the time limit for completion of the final results until no later than May 25, 2002. *See* Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant Secretaryfor Import Administration, Group II.

[FR Doc. 02–6176 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On January 17, 2002, CEMEX, S.A. de C.V. ("CEMEX") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Dismissal of the Request for Institution of a Section 751(b) review of the Sunset decision made by the International Trade Commission, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (66 FR 65740) on December 20, 2001. The NAFTA Secretariat has assigned Case Number USA-MEX–2002–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 17, 2002, requesting panel review of the Dismissal of the Request for Institution of a Section 751(b) review of the Sunset decision described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 18, 2002);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 4, 2002); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 22, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6106 Filed 3–13–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Historical Records Declassification Advisory Panel

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel (HRDAP). The purpose of this meeting is to discuss and form recommendations to the Secretary of Defense on issues involving the declassification and management of DoD classified historical documents. This is the first meeting held in 2002. The OSD Historian will chair this meeting.

DATES: Friday, March 29, 2002.

TIME: The meeting is scheduled 9 a.m. to 3 p.m.

ADDRESSES: 1777 Kent Street, Arlington (Rosslyn), VA, Room 005, 14th Floor, Penthouse Conference Area.

FOR FURTHER INFORMATION CONTACT: Ms. Chris Bromwell, Office of the Deputy Assistant Secretary of Defense (Security and Information Operations), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20302–6000, telephone (703) 697–1988.

Dated: March 7, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6116 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Intelligence in Support of War on Terrorism will meet in closed session on April 22–23, 2002; May 20–21, 2002; and June 17–18, 2002, in the Pentagon. The Task Force will identify capabilities, technologies and approaches for strengthening intelligence in support of the war against terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address capabilities and approaches for achieving early indications and warning of terrorist capabilities and intentions, providing effective operational and tactical intelligence in support of crisis operations against terrorists, and the capability for attribution of attackers, should a terrorist event occur. The Task Force will also consider promising new capabilities facilitated by recent changes in statutes (*e.g.*, Combating Terrorism Act of 2001).

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: March 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 02–6115 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Special Operations and Joint Forces in Support of Countering Terrorism will meet in closed session on April 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA; May 13–14, 2002, at the Joint Forces Command and the Training & Doctrine Command in Hampton, VA; May 22–23, 2002, at US Central Command and US Special Operations Command in Tampa, FL; and July 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review all elements of the future joint force, including Special Operation Forces that can contribute to military campaigns.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address how to: enhance and best integrate information, maneuver and fires (kinetic and other, lethal and otherwise); deploy, sustain and protect the joint force in these missions, particularly in remote locations and in the face of counter-access measures; and, exploit and leverage the contributions of coalition partners both traditional (*e.g.*, NATO allies) and non-traditional (*e.g.*, the Afghan Northern Alliance). The Task Force will recommend steps to pursue and implement the new and enhanced operational capabilities it identifies. These steps will include initiatives for technology, systems, doctrine, organization, training, leader development, experiments and demonstrations, modeling and simulation tools and facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these matters will be closed to the public.

Dated: March 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6117 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration revises the purposes for releasing records under the routine uses.

DATES: This proposed action will be effective without further notice on April 15, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was

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submitted on March 5, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 8, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AFJA D

SYSTEM NAME:

Patent Infringement and Litigation Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete last sentence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'Air Force Instruction 51–301, Intellectual Property—Patents, Patent Related Matters, Trademarks and Copyrights.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent Office to the extent such disclosures are necessary for the processing and verification of patent applications.

To the Department of Justice for the purpose of asserting and defending patent infringement action.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.'

* * * * *

STORAGE:

Delete entry and replace with 'Case files are maintained in file folders. Correspondence and other data generated by the agency may be maintained in computer files. Information from case files may be extracted and entered into a database used to store general information for management purposes.'

SAFEGUARDS:

Add to entry 'Those records in computer storage devices are protected by computer system software.'

* * * * *

F051 AFJA D

SYSTEM NAME:

Patent Infringement and Litigation Records.

SYSTEM LOCATION:

Air Force Legal Services Agency, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Blvd, Suite 606, Arlington, VA 22209–2403, and

Air Force Materiel Command, Directorate of Intellectual Property Law (AFMC LA/JAZ), 2240 B Street, Room 100, Wright-Patterson Air Force Base, OH 45433–7109.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All claimants or petitioners who have alleged unlicensed use of their patents by the Air Force or who have brought suit against the United States concerning patent, trademark or copyright matters related to the Department of the Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters; messages; forms; reports; contracts; bids; photographs; legal opinions; petitions; answers; discovery documents; memoranda; infringement studies; validity studies; procurement information; license agreements; other documents including but not limited to: Contract determinations, witness statements, and engineering and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386, Copyrights, patents, designs; 22 U.S.C. 2356, Foreign Assistance, acquisition; 28 U.S.C. 1498, Patent and copyright cases; 35 U.S.C. 183, Right to compensation; and Air Force Instruction 51–301, Intellectual Property—Patents, Patent Related Matters, Trademarks and Copyrights.

PURPOSE(S):

Purpose of the collection of information is to enable the United States and its officers and employees to investigate claims and/or defend the legal interests of the United States because of claims for compensation and litigation involving patent, trademark and copyright matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent Office to the extent such disclosures are necessary for the processing and verification of patent applications.

To the Department of Justice for the purpose of asserting and defending patent infringement action.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files are maintained in file folders. Correspondence and other data generated by the agency may be maintained in computer files. Information from case files may be extracted and entered into a database used to store general information for management purposes.

RETRIEVABILITY:

Retrievable by name of claimant or litigant.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties, and who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets/safes and controlled by personnel screening. Those records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files for three years after end of year in which the case was closed, then retired to Washington National Records Center, Washington, DC 20409, for retention up to twelve years thereafter, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Records in computer storage are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Commercial Litigation Division, Directorate of Civil Law, Air Force Legal Services Agency (AFLSA/JACN), 1501 Wilson Boulevard, Suite 606, Arlington, VA 22209–2403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Air Force Legal Services Agency, Directorate of Civil Law, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Boulevard, Suite 606, Arlington, VA 22209–2403.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system should address written inquiries to or visit the Air Force Legal Services Agency, Directorate of Civil Law, Commercial Litigation Division (AFLSA/JACN), 1501 Wilson Blvd, Suite 606, Arlington, VA 22209–2403.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information received from the individual, contractors, other government agencies, individual corporations (non-contractors) and from source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6114 Filed 3–13–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 13, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 11, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of English Language Acquisition

Type of Review: Reinstatement.

Title: Application for Grants under School Improvement: Elementary School Foreign Language Incentive Program.

Abstract: This application is used by public elementary schools and local education agencies to apply for formula grants authorized under the Elementary School Foreign Language Incentive Program.

Additional Information: The Elementary School Foreign Language Incentive Program is an incentive payment program, authorized in Section 5494, Subpart 9 of Part D of Title V of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The purpose of the Foreign Language Incentive Program is to provide incentive payments to public elementary schools that provide students attending such a school a program designed to lead to communicative competency in a foreign language.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300

Burden Hours: 7,650.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov,* or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov,* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6170 Filed 3–13–02; 8:45 am]

BILLING CODE 4000–01–P1

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This notice is

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published less than 15 days prior to the date of the meeting as a result of special administrative clearances.

DATE AND TIME: March 22, 2002, 9 a.m. to 3:30 p.m.

ADDRESSES: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036. Telephone: (202) 223–0200.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: *donald_fischer@ed.gov* Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday).

The meeting site is accessible to individuals with disabilities. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, Section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Friday, March 22, 2002, from 9 a.m. to 3:30 p.m. to discuss the Fund's programs and special initiatives.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Dated: March 8, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6152 Filed 3–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–003]

Northern Natural Gas Company; Notice of Compliance Filing

March 8, 2002.

Take notice that on March 1, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Revised Volume No. 2, the following tariff sheets in compliance with the Commission's Order dated February 1, 2002:

Fifth Revised Volume No. 1

1st Revised 58 Revised Sheet No. 50
Substitute 59 Revised Sheet No. 50
Substitute 60 Revised Sheet No. 50
First Revised 59 Revised Sheet No. 51
Substitute 60 Revised Sheet No.51
Substitute 61 Revised Sheet No.51
1 Revised 26 Revised Sheet No. 52
Substitute 27 Revised Sheet No. 52
1 Revised 55 Revised Sheet No. 53
Substitute 56 Revised Sheet No.53
Substitute 57 Revised Sheet No. 53
1 Revised Eighth Revised Sheet No. 56
Substitute Ninth Revised Sheet No. 56
Substitute 10 Revised Sheet No. 56
1 Revised 19 Revised Sheet No. 59
1 Revised Third Revised Sheet No. 59A
First Revised 22 Revised Sheet No. 60
1 Revised Third Revised Sheet No. 60A
Ninth Revised Sheet No. 263
Fifth Revised Sheet No. 267
Sixth Revised Sheet No. 268
Original Sheet No. 268A
Second Revised Sheet No. 269A

Original Revised Volume No. 2

First Revised 166 Revised Sheet No. 1C
Substitute 167 Revised Sheet No. 1C

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6102 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2262–002, et al.]

Frederickson Power L.P., et al.; Electric Rate and Corporate Regulation Filings

March 7, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Frederickson Power L.P.

[Docket No. ER01–2262–002]

Take notice that on February 28, 2002, Frederickson Power L.P. (Frederickson Power) filed a notice of change of status and a Code of Conduct respecting Frederickson Power's pending affiliation with Duke Energy Corporation.

Comment Date: March 21, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1188–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Ameren Energy, Inc.

A copy of this filing was sent to Ameren Energy, Inc.

Comment Date: March 22, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1189–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Constellation Power Source, Inc.

A copy of this filing was sent to Constellation Power Source, Inc.

Comment Date: March 22, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1190–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Consumers Energy Company d/b/a/ Consumers Energy Traders.

A copy of this filing was sent to Consumers Energy Company d/b/a/ Consumers Energy Traders.

Comment Date: March 22, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1191–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by DTE Energy Trading, Inc.

A copy of this filing was sent to DTE Energy Trading, Inc.

Comment Date: March 22, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1192–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Dynegy Energy Services, Inc.

A copy of this filing was sent to Dynegy Energy Services, Inc.

Comment Date: March 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1193–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by El Paso Merchant Energy, L.P.

A copy of this filing was sent to El Paso Merchant Energy, L.P.

Comment Date: March 22, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1194–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by enXco, Inc.

A copy of this filing was sent to enXco, Inc.

Comment Date: March 22, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1195–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Minnesota Power-MPEX.

A copy of this filing was sent to Minnesota Power-MPEX.

Comment Date: March 22, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1196–000]

Take notice that on March 1, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Mirant Americas Energy Marketing, LP.

A copy of this filing was sent to Mirant Americas Energy Marketing, LP.

Comment Date: March 22, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1197–000]

Take notice that on March 1, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Rainbow Energy Marketing Corporation.

A copy of this filing was sent to Rainbow Energy Marketing Corporation.

Comment Date: March 22, 2002.

12. Cinergy Services, Inc.

[Docket No. ER02–1198–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.4, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

13. Cinergy Services, Inc.

[Docket No. ER02–1199–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.4, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of March 4, 2002.

14. Cinergy Services, Inc.

[Docket No. ER02–1200–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.18, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.8.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

15. Cinergy Services, Inc.

[Docket No. ER02–1201–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.154, under Cinergy Operating Companies, FERC Electric

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Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

16. Cinergy Services, Inc.

[Docket No. ER02–1202–000]

Take notice that on March 1, 2002, Cinergy Services, Inc. (Cinergy) and Baltimore Gas and Electric Company are requesting a cancellation of Service Agreement No.154, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of March 4, 2002.

Comment Date: March 22, 2002.

17. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1203–000]

Take notice that on March 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into *Engage Energy America LLC.* Ameren Energy seeks Commission acceptance of these service agreements effective January 1, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 22, 2002.

18. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1204–000]

Take notice that on March 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *Wisconsin Electric Power Company.* Ameren Energy seeks Commission acceptance of these service agreements effective December 21, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 22, 2002.

19. PJM Interconnection, L.L.C.

[Docket No. ER02–1205–000]

Take notice that on March 1, 2002, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated PJM Operating Agreement to implement it Emergency Load Response Program on a permanent basis. Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of June 1, 2002 for the amendments.

Comment Date: March 22, 2002.

20. New England Power Pool

[Docket No. ER02–1206–000]

Take notice that on March 1, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Sprague Energy Corp. (Sprague); and (2) to terminate the memberships of Niagra Mohawk Energy Inc. (NIMO) and Amerada Hess Corporation (Hess). The Participants Committee requests an effective date of March 1, 2002 for commencement of participation in NEPOOL by Sprague and December 31, 2001 and February 1, 2002 for the terminations of NIMO and Hess, respectively.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: March 22, 2002.

21. New England Power Pool

[Docket No. ER02–1207–000]

Take notice that on March 1, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a Service Agreement for Regional Network Service, including Network Integration Transmission Service pursuant to section 205 of the Federal Power Act and 18 CFR35.12 of the Commission's regulations. Acceptance of this Service Agreement will recognize the provision of Regional Network Service to Miller Hydro Group, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff, as amended and supplemented. An effective date of February 1, 2002 for commencement of transmission service has been requested.

Copies of this filing were sent to the NEPOOL Participants, the New England state governors and regulatory commissions, and all parties to the transaction.

Comment Date: March 22, 2002.

22. New England Power Company

[Docket No. ER02–1208–000]

Take notice that on March 1, 2002, New England Power Company (NEP) tendered for filing the Original Service Agreement No. 210 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Millennium Power Partners, L.P., the First Revised Service Agreement No. 109 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Massachusetts Electric Company and Nantucket Electric Company; the First Revised Service Agreement No. 108 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and The Narragansett Electric Company; and the First Revised Service Agreement No. 116 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and USGen New England, Inc. (USGen).

NEP states that this filing has been served upon USGen and regulators in the Commonwealth of Massachusetts and the State of Rhode Island.

Comment Date: March 22, 2002.

23. American Electric Power Service Corporation

[Docket No. ER02–1209–000]

Take notice that on March 1, 2002, Central Power and Light Company (CPL) and American Electric Power Service Corporation (AEPSC), as designated agent for Central Power and Light Company, submitted for filing (1) a service agreement (the OATT Service Agreement) under which Pedernales Electric Cooperative, Inc. (Pedernales) will take transmission service pursuant to Part IV of the Open Access Transmission Tariff of the American Electric Power System (AEP OATT); and (2) an Interconnection Agreement (IA) between CPL and Pedernales, implementing new arrangements attendant to converting the former Pedernales Points of Delivery on CPL to Points of Interconnection with CPL.

CPL and AEPSC seek an effective date of February 1, 2002 for the two agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of the filing have been served on Pedernales and on the Public Utility Commission of Texas.

Comment Date: March 22, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6100 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–54–000, et al.]

The New Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. The New Power Company, NewPower Holdings, Inc., Centrica plc

[Docket No. EC02–54–000]

Take notice that on February 28, 2002, The New Power Company, its parent company NewPower Holdings, Inc. and Centrica plc, filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Centrica plc will indirectly acquire NewPower Holdings, Inc. Applicants request confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations, for the written instruments associated with the proposed disposition. Further, Applicants respectfully request that the Commission approve this application on an expedited basis by March 27, 2002.

Comment Date: March 21, 2002.

2. Shanghai WEI-Gang Energy Company Ltd.

[Docket No. EG02–70–000]

Take notice that on February 19, 2002, Shanghai WEI-Gang Energy Company Ltd. (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant states that it is a Sino-foreign cooperative joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 50 MW simple cycle power plant in Shanghai, China, which will be an eligible facility.

Comment Date: March 25, 2002.

3. American Transmission Company LLC

[Docket No. ER02–529–001]

Take notice that on February 27, 2002, American Transmission Company LLC (ATCLLC) tendered for filing, in compliance with the Federal Energy Regulatory Commission's (Commission) January 30, 2002 order, a Revised Generation-Transmission Interconnection Agreement with Cloverland Electric Cooperative, which is designated as Revised Service Agreement No. 220. ATCLLC requests an effective date of June 29, 2001.

Comment Date: March 20, 2002.

4. RAMCO, Inc.

[Docket No. ER01–1916–001]

Take notice that on February 28, 2002, RAMCO, Inc. (RAMCO) filed a Notice of Change in Status with the Federal Energy Regulatory Commission (Commission) in accordance with the delegated letter order issued June 26, 2001 in RAMCO, Inc., Docket No. ER01–1916–000, accepting for filing RAMCO's marked-based rate tariff. The Notice of Change in Status reports that PG&E Dispersed Power Corporation will purchase 100% of the ownership shares of RAMCO. *Comment Date:* March 21, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1164–000]

Take notice that on February 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Dayton Power and Light Company—DP&L Power Services.

A copy of this filing was sent to Dayton Power and Light Company—DP&L Power Services.

Comment Date: March 21, 2002.

6. Connexus Energy

[Docket No. ER02–1165–000]

Take notice that on February 28, 2002, Connexus Energy submitted for filing with the Federal Energy Regulatory Commission (Commission) revised sheets to Connexus Energy's Electric Rate Schedule FERC No. 1. Connexus Energy states that the revised sheets effect minor rate changes under Connexus Energy's contract with Elk River Municipal Utilities.

Connexus Energy requests waiver of the Commission's notice requirement to allow a March 1, 2002 effective date.

Comment Date: March 21, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1167–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Indianapolis Power & Light Company.

A copy of this filing was sent to Indianapolis Power & Light Company. *Comment Date:* March 21, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1168–000]

Take notice that on February 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the

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Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by New Power Company.

A copy of this filing was sent to New Power Company.

Comment Date: March 21, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1169–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Western Area Power Administration-UGP Marketing.

A copy of this filing was sent to Western Area Power Administration-UGP Marketing.

Comment Date: March 21, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1170–000]

Take notice that on February 28, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Minnkota Power Cooperative.

A copy of this filing was sent to Minnkota Power Cooperative.

Comment Date: March 21, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6101 Filed 3–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7157–6]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation. Current vacancies on these committees are scheduled to be filled by May 1, 2002.

ADDRESSES: Submit nominations to: Mark Joyce, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004; telephone 202–564–9802; fax 202–501–0661; e-mail *joyce.mark@epa.gov*.

SUPPLEMENTARY INFORMATION: The National and Governmental Advisory Committees advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation (CEC). The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

Members are appointed by the Administrator of EPA for a two year term with the possibility of reappointment. The Committees usually meet 3 times annually and the average workload for Committee members is approximately 10 to 15 hours per month. Members serve on the Committees in a voluntary capacity, but EPA does provide reimbursement for travel expenses associated with official government business.

The following criteria will be used to evaluate nominees:

- They have extensive professional knowledge of the subjects the Committees examine, including trade and the environment, the NAFTA, the NAAEC, and the CEC.
- They represent a sector or group that is involved in the issues the Committees evaluate.
- They have senior level experience that will fill a need on the Committees for their particular expertise.
- They have a demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.

Nominees will also be considered with regard to the mandates of the Federal Advisory Committee Act that require the Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: March 1, 2002.

Mark N. Joyce,

Designated Federal Officer.

[FR Doc. 02–6154 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30523; FRL–6826–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30523, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30523 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By Mail: Mary L. Waller, Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354 and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30523. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30523 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30523. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 432–REER. *Applicant*: Aventis Environmental Science USA LP, 95 Chestnut Ridge Road, Monvale, NJ 07645. *Product name*: Triticonazole Technical Fungicide. *Active ingredient*: Triticonazole [(5-[(4-chlorophenyl) methylene]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol at 92.5%. *Proposed classification/Use*: None. For formulation of fungicides only for turf and ornamentals.

2. *File Symbol*: 264–ANG. *Applicant*: Aventis Crop Science, 2TW Alexandria Drive, Research Triangle Park, NC 27709. *Product name*: CHARTER Triticonazole Fungicide. *Active ingredient*: Triticonazole at 2.4%. *Proposed classification/Use*: None. For control of various seed-borne diseases in wheat, barley, and oats.

3. *File Symbol*: 264–ANR. *Applicant*: Aventis Crop Science. *Product name*: Chipco(R) Brand Triton(TM) Fungicide. *Active ingredient*: Triticonazole at 19.3%. *Proposed classification/Use*: None. For the prevention and control of certain diseases of commercial turfgrass, golf courses, and sod farms.

4. *File Symbol*: 264–ATE. *Applicant*: Aventis Crop Science. *Product name*: CHARTER(TM) Brand PB Fungicide. *Active ingredient*: Triticonazole at 1.25%. *Proposed classification/Use*: None. For control of various seed-borne diseases in wheat and barley.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–6157 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1071; FRL–6825–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1071, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1071 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1071. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1071 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1071. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Aventis CropScience, and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

PP 9F6051

EPA has received a pesticide petition (9F6051) from Aventis CropScience, 2 TW Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for combined residues of the fungicide triticonazole 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol), and its metabolites, 5-[(4-chlorophenyl)methylene]-2-hydroxymethyl-2-methyl-1-(1H-1,2,4-triazol- 1ylmethyl)cyclopentanol (RPA 404886) and 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H- 1,2,4-triazol-1ylmethyl)cyclopentan-1,3-trans-diol (RPA 406341)] in or on the raw agricultural commodities wheat grain at 0.05 parts per million (ppm), wheat forage at 0.05 ppm, wheat hay at 0.05 ppm, wheat straw at 0.05 ppm, barley grain at 0.05 ppm, barley forage at 0.05 ppm, barley hay at 0.05 ppm, and barley straw at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

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A. Residue Chemistry

1. *Plant metabolism.* Metabolism studies in wheat and barley were conducted using both phenyl-ring and triazole-ring labeled material in order to fully define the metabolic fate of triticonazole. Treatment regimes were chosen to simulate a commercial seed treatment application. The results from both crops were similar. Hydroxylation is the primary route of metabolism with the carbons of the cyclopentane ring and the methyl groups being the sites susceptible to oxidative degradation.

2. *Analytical method.* The plant metabolism studies indicated that analysis for the parent compound, triticonazole, and the metabolites RPA 404886 and RPA 406341 was sufficient to enable the assessment of the relevant residues in wheat and barley. Following extraction of the crop matrix and sample cleanup, the analytical enforcement method relies on the use of Turbo Ionspray, liquid chromatography/mass spectroscopy (LC/MS) for determination of the residue level. This method allows detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level. Analysis using Electrospray, liquid chromatography/ mass spectroscopy/ mass spectroscopy (LC/MS/MS) is more sensitive, and allows quantitation of analytes down to 0.005 ppm.

3. *Magnitude of residues.* Field residue trials were conducted across the major regions of small-grain cereal production in the United States. The treatment regime was selected to represent the use pattern that is the most likely to result in the highest residues.

Trials to define the magnitude of the residues in wheat raw agricultural commodity, were conducted at 22 trial sites of which 13 used spring wheat varieties and 9 used fall wheat varieties. The wheat seeds were treated with a triticonazole formulation at a rate of approximately 10 g active ingredient (a.i.)/100 kg wheat seed, a rate twice that anticipated under commercial use practice. Generally, the level of triticonazole residues observed in the samples were very low. For wheat forage, the residue of triticonazole found in or on the samples did not exceed 0.02 ppm; whereas, the residues for wheat hay did not exceed 0.008 ppm and the residues for wheat straw did not exceed 0.007 ppm. Triticonazole was not detected (method detection limit (MDL) = 0.002 ppm) in or on the wheat grain samples, except in one of the two replicate samples from one trial site where the residue level was determined to be 0.0055 ppm. Residues of the metabolites were not detected (MDL = 0.002 ppm) in any forage, hay grain or straw samples, except at one site where residues of RPA 406341 in the straw were just above the MDL but less than the limit of quantification (LOQ) of the method.

Trials to define the magnitude of the residues in the raw agricultural commodity barley were conducted at 14 trial sites of which 12 used spring wheat varieties and 2 used fall wheat varieties. The barley seeds were treated as described above for wheat. No residues of triticonazole or metabolites were detected (MDL = 0.002 ppm) in or on the barley grain samples. In the barley hay samples, no residues of triticonazole or metabolites were detected above the LOQ of the method (0.005 ppm), except at one site where the mean level of triticonazole in the duplicate samples was 0.0058 ppm. Similarly, in the straw, no residues of triticonazole or metabolites were detected above the LOQ of the method except in one replicate at one site where triticonazole was found at 0.0067 ppm.

Studies were conducted to determine if triticonazole residues concentrated upon processing wheat or barley grain. The wheat or barley seeds used for these studies were treated at a nominal rate of 50 g a.i./100kg wheat seed, a rate 10 times that anticipated under commercial use practice. Grain samples were collected at normal commercial maturity. Using procedures that simulate commercial practices, wheat grain was processed into bran, flour, middlings, shorts, and germ; whereas barley grain was processed into bran, flour, or pearled barley. Using LC/MS/MS, the LOQ and MDL for triticonazole and metabolites were 0.005 ppm and 0.002 ppm, respectively, for all matrices. Triticonazole-related residues were below the MDL for all grain and processed fraction samples. Based on these results, residues of triticonazole and metabolites do not concentrate in wheat or barley processed fractions following a triticonazole seed treatment application.

B. Toxicological Profile

1. *Acute toxicity.* Triticonazole is of low acute toxicity placing the active ingredient in Toxicity Category III and IV. Triticonazole is non-irritating to the eyes and skin and is not a skin sensitizer.

2. *Genotoxicty.* The genetic toxicity of triticonazole has been evaluated through a full battery of mutagenicity assays. Triticonazole was not mutagenic or genotoxic in any assay in either the presence or absence of metabolic activation.

3. *Reproductive and developmental toxicity.* Triticonazole is not a reproductive or developmental toxicant.

a. *Teratology - rat.* Groups of at least 23 pregnant rats received daily oral doses of 0, 40, 200 or 1,000 mg/kg/day of triticonazole from day 6 to day 15 of gestation inclusive. The mean weight gain and the food intake of females receiving 1,000 mg/kg/day was marginally lower than that of the controls. Litter size, survival *in utero* and mean fetal and placental weights were unaffected by treatment. There were no major abnormalities or visceral abnormalities at any dosage used. The mean weight gain and the food intake of females receiving 1,000 mg/kg/day was marginally lower than that of the controls. Females at 40 and 200 mg/kg/day were unaffected.

There was an apparent increase in the incidence of fetuses with an additional 14th rib or pair of ribs at 1,000 mg/kg/day. The incidences at 40 and 200 mg/kg/day were within the historical control range. Because the increased incidence of supernumerary (14th) ribs is not toxicologically significant, the NOAEL for maternal and developmental toxicity was 1,000 mg/kg/day.

b. *Teratology - rabbit.* Triticonazole was administered by gavage to 4 groups of at least 18 pregnant New Zealand white rabbits at dosages of 5, 25, 50 or 75 mg/kg/day, from Day 6 to Day 19 of gestation inclusive. Administration of 25 mg/kg/day was associated with body weight reduction and reduced food intake. At 50 and 75 mg/kg/day more marked body weight loss, reduced food intake and deaths were observed. Slightly increased pre-implantation and post-implantation losses and increased incidences of skeletal anomalies were observed at 75 mg/kg, secondary to severe maternal toxicity (6 animals died out of 20). The NOAEL for maternal toxicity was 25 milligrams/kilogram of body weight/day (mg/kg bwt/day) based on reduced body weight gains and food consumption at 50 mg/kg bwt/day. The NOAEL for fetal development was 50 mg/kg bwt/day, based on skeletal abnormalities noted in the presence of severe maternal toxicity at 75 mg/kg bwt/day.

c. *Two-generation reproduction - rat.* Groups of 28 males and 28 females Crl:CD BR/VAF/Plus rats (F0) were offered diets containing 0, 5, 25, 750 and 5,000 ppm of triticonazole for 10 weeks before mating and throughout gestation, lactation and weaning of the pups. A second generation of selected pups (F1) was provided diets at the same concentrations as their parents from weaning for at least 10 weeks before mating and throughout mating, gestation and lactation. The NOAEL for systemic toxicity is 750 ppm, based on mortality, decreased body weight gain, and food consumption seen in the high dose animals in both generations. The NOAEL for reproductive performance and fetal effects is also 750 ppm, based on a reduction in mating and fertility indices, number of live births, pup viability and pup body weights at 5,000 ppm.

4. *Subchronic toxicity*—i. 28-day *dietary - rat.* Groups of five male and five female F–344 rats received triticonazole continuously, via the diet, at concentrations of 0, 500, 1,500, 5,000, 15,000 or 50,000 ppm (0, 50, 150, 500, 1,500, and 5,000 mg/kg/day, respectively for 4–weeks. At 5,000 ppm (500 mg/kg/day) growth performance, food consumption and efficiency of food utilization of males were inferior to control values throughout the treatment period. Hematological investigations revealed low platelet counts in males. Blood chemistry investigations revealed minimally low glucose concentrations. High liver weights and low prostate and uterus weights were noted at necropsy. The NOAEL for systemic toxicity was 1,500 ppm (150 mg/kg/day).

ii. *90–day dietary - rat.* Four groups of 10 male and 10 female CD rats received triticonazole via the diet at concentrations of 25, 250, 12,500 or 25,000 ppm (2.5, 25, 1,250, or 2,500 mg/kg/day) for 13 weeks. The NOAEL for this study was 12,500 ppm (1,250 mg/kg/day) based on reduced body weight gain, food consumption, and histopathological changes in the liver and adrenals.

c. *Dermal toxicity evaluation.* No adverse effects were noted in rats at the limit dose of 1,000 mg/kg bwt/day.

5. *Chronic toxicity - dog.* a. Four groups of 4 male and 4 female beagle dogs received triticonazole in gelatin capsules at dosages 2.5, 25 and 150 mg/kg/day. A similar control group received only empty gelatin capsules. The NOAEL for this study was 25 mg/kg bwt/day based on clinical signs of toxicity, lower for body weight gains; organ weight changes and histopathological changes of the liver and adrenals were seen at the LOAEL of 150 mg/kg/day.

b. *Combined chronic toxicity/ oncogenicity - rat.* Four groups of 50 males and 50 females CD rats were administered triticonazole via the diet at concentrations of 5, 25, 750 and 5,000 ppm for 2–years. Observed adverse effects were only at the highest dose of 5,000 ppm with decreased body weight gain in females and histopathological changes in the adrenals. The NOAEL for this study was 750 ppm that is equivalent to 29.4 and 38.3 mg/kg/day respectively for males and females.

c. *Oncogenicity - mouse.* Triticonazole was administered via the diet to four groups of 52 male and 52 female CD mice at concentrations of 0, 15, 150 and 1,500 ppm for 78 weeks. The NOAEL was 150 ppm (17.4 and 20.1 mg/kg for males and females respectively) based on reductions in body weight gain, increased relative and absolute liver weights and histopathological changes in the liver at 1,500 ppm. There were no treatment-related neoplasms in this study.

6. *Neurotoxicity*—a. *Acute neurotoxicity.* Groups of 10 male and 10 female rats were dosed once by oral gavage at dose levels of 0, 80, 400, or 2,000 mg/kg of triticonazole in a methyl cellulose suspension. There were no differences observed in body weight, in any of the functional observation battery (FOB), or in motor activity. Microscopy revealed no changes related to the administration of triticonazole. Therefore, the NOAEL for acute neurotoxicity exceeds 2,000 mg/kg.

b. *Subchronic neurotoxicity.* Groups of 10 male and 10 female rats received basal diet containing triticonazole at inclusion levels of 0, 500, 2,500 or 10,000 ppm (0, 33, 170 and 695 mg/kg/day in the males, and 0, 39, 199 and 820 mg/kg/day in the females). There were no differences observed in bodyweight, in any of the FOB, or in motor activity. Microscopy revealed no changes related to the administration of triticonazole. Therefore, the NOAEL for sub-acute neurotoxicity exceeds 10,000 ppm (exceeds 695 mg/kg/day) in the rat.

7. *Animal metabolism.* Studies conducted in cows and hens using ^{14}C-triticonazole indicate the majority of the radioactivity is rapidly excreted with almost a negligible amount transferred to tissues, milk or eggs. Hyrdoxylation represented the primary metabolic pathway with the carbon atoms on the cyclopentane and those of the methyl groups being the sites of attack. Principal metabolites included RPA 406341 and RPA 404886 and a metabolite in which the hydroxymethyl group of RPA 404886 was further oxidized to a carboxylic acid function.

8. *Endocrine disruption.* No studies have been conducted to investigate the potential of triticonazole to induce estrogenic or other endocrine effects. The EPA has not yet developed the criteria it will use for characterizing endocrine disrupting substances. Therefore, an evaluation of the potential of triticonazole to induce estrogenic or other endocrine effects cannot be conducted at this time.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances are proposed under 40 CFR part 180 for the combined residues of triticonazole and metabolites in or on wheat grain, forage, straw, and hay, and in or on barley grain, forage, straw, and hay. The registration of triticonazole for control of fungal diseases in turf (non-food use) is pending at EPA. The turf use is for application by professional applicators, and does not include use on residential turf. Therefore, potential non-occupational (residential) exposure would include exposures resulting from consumption of potential residues in food and water only.

i. *Food.* Potential dietary exposures from food were estimated using the DEEM software system (Novigen Sciences, Inc.) and the 1994–96 USDA consumption data. Residue data from field trial studies in which grain grown from triticonazole treated barley and wheat seed was used to estimate chronic and acute dietary exposure. Percent crop treated values include the total amount of barley and wheat treated with any seed treatment pesticide, and thus, are conservative. Metabolism studies show that triticonazole residues are not expected in livestock tissues from animals fed at levels found in treated seed feed items. Tier 3 chronic exposure for the overall U.S. population was estimated to be 0.000002 mg/kg/bwt/day, representing less than 0.1% of the chronic reference dose. Chronic exposure for the most highly exposed population subgroup, children 1–6 years of age, was calculated to be 0.000004 mg/kg/bwt/day, also less than 0.1% of the chronic reference dose.

Tier 3 acute exposure at the 99.9th percentile for the overall U.S. population was estimated to be 0.000017 mg/kg/bwt/day, less than 0.1% of the acute reference dose. Acute exposure for the most highly exposed population subgroup, again children 1–6 years old, was estimated to be 0.00002 mg/kg/bwt/day, less than 0.1% of the acute reference dose. These analyses represent worst case estimates of potential dietary exposure to wheat and barley. Any exposure from residues of triticonazole in the diet are likely to be negligible to non-existent in real world situations.

ii. *Drinking water.* EPA's standard operating procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessment. These tools include water models such as screening concentration in ground water (SCI-GROW), generic

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expected environmental concentration (GENEEC), pesticide root zone management system/exposure analysis modeling system (PRZMS/EXAMS), and monitoring data. If monitoring data are not available, then the models are used to predict potential residues in surface and ground water, and the highest residue is assumed to be the drinking water residue. In the case of triticonazole, monitoring data do not exist; therefore, GENEEC was used to estimate the concentration of triticonazole that might occur in water. The GENEEC values represent very conservative assumptions and worst case scenarios. The calculated drinking water levels of comparison (DWLOC), for chronic and acute exposures for all adults and children exceed the drinking water estimated concentrations (DWECs) from the models by many orders of magnitude. The acute DWLOC for children is 2,500 parts per billion (ppb). The acute DWEC is 0.098 ppb. The chronic DWLOC for adults is 5,950 ppb. The chronic DWLOC for children/toddlers is 1,700 ppb. The DWEC for the worst case chronic scenario is 0.024 ppb. The drinking water levels of comparison are based on highly conservative dietary (food) exposures and are expected to be even higher in real world situations. Any exposure from triticonazole in drinking water would be negligible based on these highly conservative analyses.

2. *Non-dietary exposure*. The pending CHIPCO brand TRITON registration for triticonazole is for commercial turf grass, golf courses and sod farms. It is not intended for home use. As such, there would be no exposure in residential homes from this use, and is not included in the aggregate risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information", concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." There is no reliable data at this time to determine whether triticonazole has a common mechanism of toxicity with other substances, or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, triticonazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that triticonazole has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the proposed uses of triticonazole will utilize less than 0.1% of the chronic reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or, below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Acute exposure estimates for the U.S. population utilizes less than 0.1% of the acute RfD. This is a conservative assessment and actual exposure is likely to be far less. Drinking water levels of comparison based on the dietary exposure are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) residues of triticonazole.

2. *Infants and children*. FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre-natal and post-natal toxicity or incompleteness of the data base. The toxicology data base for triticonazole regarding potential pre-natal and post-natal effects in children is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns. The developmental toxicity studies clearly demonstrate that triticonazole is not teratogenic and the reproductive toxicity study did not indicate any increased sensitivity to the effects of triticonazole in developing, or young animals. Therefore, an extra safety factor is not warranted.

Using the conservative assumptions described in the exposure section above, exposure to residues of triticonazole in food for children 1–6 years old, (the most highly exposed sub group) is less than 0.1% of the acute and chronic reference doses. As in the adult situation, drinking water levels of comparison are much higher than the worst case drinking water estimated concentrations, and are expected to use well below 100% of the reference dose, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of triticonazole.

F. International Tolerances

Maximum residue limits codex MRLs for triticonazole and metabolites in or on wheat and barley commodities have not been established by the Codex Alimentarius Commission.

[FR Doc. 02–6156 Filed 3–13–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1074; FRL–6826–3]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–1074, must be received on or before April 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1074. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1074 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1074. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the FFDCA, 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2002.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent

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the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project Number 4

PP 6E4636

EPA has received pesticide petition (6E4636) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.142 by establishing a tolerance for residues of the herbicide, plant regulator, and fungicide 2,4–D (2,4-dichlorophenoxyacetic) in or on the raw agricultural commodity wild rice at 0.1 parts per million (ppm). This notice includes a summary of the petition prepared by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue of 2,4–D is adequately understood. The regulable residue is 2,4–D *per se*, as established in 40 CFR 180.142. No livestock feed issues are raised by this action.

2. *Analytical method.* EN-CAS Method ENC gas liquid chromatograhy/ electron capture detector (GLC/ECD), which has underdone successful independent laboratory validation is available for enforcement.

3. *Magnitude of residues.* One field trial (Minnesota) with 2 treatment rates was conducted. 2,4–D was applied by hand-held sprayer at 0X, 1X, and 2X the proposed label rate. The preharvest interval (PHI) was 53–64 days. Samples of grain and hulls were analyzed with 22+ months of harvest. No detectable residues (<0.05 ppm) of 2,4–D were reported.

B. Toxicological Profile

The nature of the toxic effects caused by 2,4–D are discussed in Unit II.B. of the **Federal Register** of October 24, 2001, (66 FR 53791) (FRL–6802–5).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for 2,4–D is discussed in Unit II.C. of the **Federal Register** of October 24, 2001. The dietary exposure assessment includes a time-limited tolerance for wild rice at 0.1 ppm which was established in support of a section 18 emergency exemption.

D. Cumulative Effects

The potential for cumulative effects for 2,4–D and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of October 24, 2001.

E. Safety Determination

The safety determination for the U.S. population, infants, and children for 2,4–D is discussed in Unit II.E. of the **Federal Register** of October 24, 2001.

F. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits for use of 2,4–D on wild rice. Therefore, international harmonization is not an issue for this commodity.

2. Interregional Research Project Number 4

PP 1E6325

EPA has received pesticide petition (1E6325) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.448 by establishing a tolerance for residues of the miticide, hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on the raw agricultural commodity date at 1.0 ppm. This notice includes a summary of the petition prepared by Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of hexythiazox as well as the nature of the residues in plants is adequately understood for purposes of this tolerance. The residue of concern is hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety as specified in 40 CFR 180.448.

2. *Analytical method.* Adequate methods to enforce the tolerance expression have been submitted for publication in Pesticide Analytical Manual (PAM) II. The approved method is designated as AMR 985–87 which has been used in a variety of commodities. The method involves separation by high performance liquid chromotography (HPLC) followed by ultraviolet (UV) detection at 225 nm.

3. *Magnitude of residues.* Three field trials (06957.99–CA82, CA83, and CA84) were conducted in Coachella, California. No detectable residues of hexythiazox were found in the untreated date samples. The treated samples from trial CA82 had residues of 0.07 ppm and 0.26 ppm. The treated samples from trial CA83 had residues of 0.09 ppm and 0.11 ppm. The treated samples from trial CA84 had residues of 0.30 ppm and 0.63 ppm. Based on available data, the proposed use, one application of hexythiazox at the rate of 6 oz. (0.1875 lb active) per acre, minimum 90 day PHI should be reported.

B. Toxicological Profile

The nature of the toxic effects caused by hexythiazox are discussed in Unit II.B. of the **Federal Register** of December 28, 2000 (65 FR 82349) (FRL–6761–6).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for hexythiazox is discussed in Unit II.C. of the **Federal Register** of December 28, 2000. Dates were included in this risk assessment in connection with a section 18 emergency exemption. A time-limited tolerance has been established at 1.0 ppm and is currently set to expire on October 31, 2002.

D. Cumulative Effects

The potential for cumulative effects caused by hexythiazox and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of December 28, 2000.

E. Safety Determination

The safety determination for hexythiazox is discussed in Unit II.E. of the **Federal Register** of December 28, 2000.

F. International Tolerances

There are no CODEX, Canadian, or Mexican maximum residue limits for hexythiazox on dates.

[FR Doc. 02–6158 Filed 3–13–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7157–8]

Developing EPA Information Quality Guidelines Pursuant to OMB Information Quality Guidelines Under Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554; HR 5658)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will hold an Online Public Comment Session between March 19, 2002, and March 22, 2002, to give early opportunity to comment on areas to be considered as EPA develops Information Quality Guidelines pursuant to Office of Management and Budget Final Guidelines issued on February 22, 2002 (67 FR 8452–8460). EPA will post a request for public input on March 19 and comments will be accepted until midnight EST March 22, 2002. The time frame for this comment opportunity is brief due to the accelerated schedule for finalizing the Guidelines. The Public's comments will help inform and shape the direction EPA will take in developing the Guidelines. Instructions for providing your comments will be available online as of March 19, 2002. In addition to this online comment opportunity, EPA will make its draft Guidelines available for public comment and hold a Public Meeting on the Information Quality Guidelines in May 2002 in Washington, DC. Additional details about the Public Meeting will be posted on the EPA Office of Environmental Information website as soon as they become available.

DATES: The Online Public Comment Session will be held March 19–22, 2002.

ADDRESSES: The Online Public Comment Session will be accessible via the Internet at *www.epa.gov/oei*.

FOR FURTHER INFORMATION CONTACT: Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access; telephone: 202–260–1655; e-mail: *cummings.evangeline@epa.gov*

Dated: March 7, 2002.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–6155 Filed 3–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA–02–502]

Eighth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on April 4, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: April 4, 2002; 2 p.m.–4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the eighth meeting of the WRC–03 Advisory Committee.

The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eighth meeting is as follows:

Agenda

Eighth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

April 4, 2002; 2 p.m.–4 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Seventh Meeting
4. Status of Preliminary Views and Proposals
5. Reports from regional WRC–03 Preparatory Meetings
6. NTIA Draft Preliminary Views and Proposals
7. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
8. Future Meetings
9. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureou.

[FR Doc. 02–6111 Filed 3–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2002.

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A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group PLC, Edinburgh, Scotland, United Kingdom; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the "First Integrion Order") and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the "Second Integrion Order"; and together with the First Integrion Order, the "Integrion Orders"). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Barclays PLC and Barclays Bank PLC, both of London, England; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to Sec. 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the "First Integrion Order") and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the "Second Integrion Order: and together with the First Integrion Order, the "Integrion Orders"). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, March 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02-6173 Filed 3-13-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First Citizens Bancshares, Inc., Dyersburg, Tennessee; to acquire 100 percent of Metropolitan Bancshares, Inc., Munford, Tennessee, and thereby indirectly acquire The Munford Union Bank, Munford, Tennessee.

Board of Governors of the Federal Reserve System, March 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-6094 Filed 3-13-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. John T. Michell, Great Falls, Montana; to retain voting shares of First Bancshares of Baton Rouge, Inc., Baton Rouge, Louisiana, and thereby indirectly retain voting shares of First Bank, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, March 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-6172 Filed 3-13-02; 8:45 am]

BILLING CODE 6210-01-S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 21, 2002, through Wednesday, April 24, 2002, in Mobile, Alabama. The sessions will take place from 7:30 p.m. until 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 2:30 p.m. on Wednesday. The meeting will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, Alabama 36602. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of hotel rooms have been reserved at the Radisson Admiral Semmes Hotel for anyone needing hotel accommodations. Telephone: 251-432-8000. Please specify the U.S. Government Printing Office or the Depository Library Council meeting when you contact the hotel. Room cost is $55 (plus tax) per night through March 20, 2002.

Robert T. Mansker,

Deputy Public Printer.

[FR Doc. 02-6093 Filed 3-13-02; 8:45 am]

BILLING CODE 1520-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held of Friday, March 29, from 8:30 a.m. to 4 p.m. and is open to the public..

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594-7216. for press related information, please contact Karen Migdail at (301) 594-6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, on (301) 594-6662 no later than March 22, 2002.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland, 20852. Her phone number is (301) 594-1846. Minutes will be available after April 30, 2002.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce cost of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II Agenda

On Friday, March 29, 2002, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include discussions on disparities in health care, bioterrorism, and AHRQ's Priority Populations Inclusion Policy. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than March 8, 2002. The meeting will adjourn at 4:00 p.m.

Dated: March 4, 2002.

Lisa Simpson,

Acting Director.

[FR Doc. 02-6118 Filed 3-13-02; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measure.

OMB No.: 0970-0230.

Description: This is a proposed extension of a current information collection. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270. Specifically, DHHS will use the data to award the portion of the bonus that rewards States for their success in moving TANF recipients from welfare to work. States will not be required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

Respondents: Respondents may include any of the 50 States, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	54	2	16	1,728

Estimated Total Annual Burden Hours: 1,720.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed

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collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–6120 Filed 3–13–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: DHHS/ACF Employment Retention and Advancement (ERA) Evaluation 12-Month Survey.

OMB No.: New Collection.

Description: The Employment Retention and Advancement (ERA) Evaluation is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on past research by rigorously testing a wide variety of approaches to promoting employment retention and advancement for a range of populations. The project, conceived and sponsored by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS),[1] seeks to "conduct a multi-site evaluation that studies the net impact and cost-benefits of programs designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or families at-risk of needing TANF benefits retain and advance in employment."[2] The ERA Evaluation involves up to 15 random assignment experiments in 9 states, testing a diverse set of strategies designed to promote stable employment and/or career advancement for current and former welfare recipients and other low-income parents. Over the next several years, the ERA project will generate a wealth of rigorous data on the implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study ERA's impacts on employment, earnings, participation, educational attainment and income;
- To collect data on a wider range of outcome measures than is available through welfare or UI records in order to understand how individuals were affected by ERA; job retention and job quality, educational attainment; interactions with and knowledge of the ERA program; household composition; childcare, transportation, and health coverage; and income;
- To supplement research on the implementation of ERA across sites;
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of low-wage workers;
- To obtain participation information important to the evaluation's benefit-cost component;
- And to obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 36-month survey.

Respondents: The respondents of the 12-month survey are Temporary Assistance for Needy Families (TANF) applicants, current and former TANF recipients, or individuals in families at-risk of needing TANF benefits (working poor and hard-to-employ) from 9 states participating in the ERA Evaluation: California, Oregon, New York, Ohio, Minnesota, Illinois, South Carolina, Texas, Tennessee. Survey respondents can be grouped according to 3 program clusters: Advancement projects; placement and retention (hard-to-employ) projects; and mixed goal projects. All 3 program clusters will receive the 12-month core survey. The placement and retention (hard-to-employ) participants will also receive the hard-to-employ survey module. Survey participants will be administered a telephone survey (for those individuals who cannot be reached by phone, staff at the survey firm will attempt to contact them in person) approximately 12 months after random assignment. Approximately 7,050 participants will complete the core survey and 2,400 participants will complete the core plus hard-to-employ module survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
12-Month Survey (Core only)	7,050	1	30 minutes or .5 hrs	3,525
12-Month Survey (Core plus Hard-to-Employ Module)	2,400	1	45 minutes or .75 hrs	1,800

Estimated Total Annual Burden Hours: 5,325.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

[1] The U.S. Department of Labor has also provided funding to support the ERA project.

[2] From the Department of Health and Human Services RFP No.: 105–99–8100

Dated: March 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–6121 Filed 3–13–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS 02–04]

Fiscal Year 2002 Discretionary Announcement for Nationwide Competition of Early Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of Fiscal Year 2002 Early Head Start availability of financial assistance for nationwide competition and request for applications.

SUMMARY: Early Head Start programs provide early, continuous, intensive and comprehensive child development and family support services on a year-round basis to low-income families. The purpose of the Early Head Start program is to enhance children's physical, social, emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency. The Administration on Children, Youth and Families announces approximately $72 million in financial assistance to be competitively awarded to local public and private non-profit and for-profit entities—including Early Head Start and Head Start grantees—to provide child and family development services for low-income families with children under age three and pregnant women. Faith-based organizations are eligible to apply for these funds to become Early Head Start grantees.

Applicants may apply for one or more of the following categories of expansion:

1. Current Early Head Start grantees, proposing to expand in their currently approved EHS service area ($20 million). (See Priority 1 Evaluation Criteria.)

2. Applicants, including current Early Head Start grantees and, proposing to establish an Early Head Start program in areas currently unserved by Early Head Start (see Attachment A for a listing of currently served areas; any area not listed is eligible for funding in this category) ($42 million). (See Priority 1 Evaluation Criteria.)

3. Applicants proposing to serve children in an Early Head Start program whose families are receiving support from the Child Welfare Services (CWS) system ($10 million). (See Priority 2 Evaluation Criteria.)

Applicants eligible for funding under this category are as follows:

a. Current grantees may include a request for serving CWS children as a second part of their application under either 1 or 2 above or may submit an application only to serve CWS children.

While each applicant should decide on the appropriate mix between CWS children and other children, we would not expect applicants to propose that a large portion of their children be CWS children unless there are compelling reasons for doing so which must be documented in the application.

b. Applicants who are not current EHS providers may apply to serve CWS children only if they are also submitting an expansion proposal under 2 above.

While each applicant should decide on the appropriate mix between CWS children and other children, we would not expect applicants to propose that a large portion of their children be CWS children unless there are compelling reasons for doing so which must be documented in the application.

DATES: The closing date and time for receipt of applications is 4:30 p.m. EDT on May 13, 2002.

Note: Applications should be submitted to: Early Head Start Nationwide Competition, 1901 N. Fort Myer Drive, Suite 301, Arlington, VA 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: A copy of the program announcement, necessary application forms, and appendices can be obtained by contacting: Early Head Start Nationwide Competition, 1901 North Fort Myer Drive, Suite 301, Arlington, Virginia 22209. The telephone number is 1–800–458–7699; or e-mail to: *ehsn@pal-tech.com.*

Copies of the program announcement and necessary application forms can also be downloaded from the Head Start Web site at: *www.acf.dhhs.gov/programs/hsb*

FOR FURTHER INFORMATION CONTACT: Early Head Start Nationwide Competition, 1901 N. Fort Myer Drive, Suite 301, Arlington, VA 22209 or telephone: 1–800–458–7699 or e-mail to: *ehsnpal-tech.com.*

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Applicants eligible to apply to become an Early Head Start program are local public and private non-profit and for-profit entities. Early Head Start and Head Start grantees are eligible to apply. Faith-based organizations are eligible to apply for funds. Applicants are reminded that eligibility to apply for a grant under this Notice is limited to local agencies, as defined in section 641 (a) and (b) of the Head Start Act.

Project Duration

For new Early Head Start grantees, the competitive awards made through this announcement will be for one-year budget periods and an indefinite project period. Subsequent year budget awards will be made non-competitively, subject to availability of funds and the continued satisfactory performance of the applicant. Successful applicants which are current Early Head Start grantees will be funded in one of two ways. Those Early Head Start grantees that currently have indefinite project periods will continue to be funded as indefinite project period grants. However, those Early Head Start grantees that have finite project periods will be given supplements to their current, time limited grant. A grantee, for example, currently funded for $200,000 with a project period ending September 30, 2003 that is awarded another $100,000 through this announcement would then be funded as a $300,000 Early Head Start grantee with a project period that still ends on September 30, 2003. This would be true regardless of whether the new funds are to expand services within the grantee's current service area or to expand into another currently unserved area. Prior to the end of an Early Head Start grantee's current project period (*i.e.*, September 30, 2003 in the above example), ACF will announce a competition for those areas served by each EHS grantee whose project period is nearing an end. In such a competition, current EHS grantees in good standing, who submit acceptable

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applications, will be given priority in funding decisions.

Early Head Start Child Welfare Services Initiative (See Priority 2 Evaluation Criteria)

The Head Start Bureau is establishing a new initiative to promote and expand partnerships between local EHS programs and local child welfare services (CWS) agencies. This initiative will enhance and expand services for children and their families who are part of the child welfare service system and provide additional and more intensive services in local communities for this population. The Head Start Bureau is setting aside $10 million to fund this initiative and plans to serve approximately 1,000 children. Both new applicants and existing EHS grantees may apply for these funds. See below for the Priority 2 Evaluation Criteria for the EHSCWS Initiative. For additional information about the Initiative, see the full Program Announcement for this competition which is available from the address listed above.

Federal Share of Project Costs

The Federal share will not be more than 80 percent of the total approved costs of the project except if a waiver is granted under the authority cited in section 640(b) of the Head Start Act.

Matching Requirements

Grantees that operate Early Head Start programs must, in most instances, provide a non-Federal contribution of at least 20 percent of the total approved costs of the project.

Available Funds

See the Program Announcement for the list of the approximate amount of funds available for States. (The Program Announcement is available from the address listed above.)

Anticipated Number of Projects to be Funded

It is estimated that there will be 100–125 awards.

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9831 et seq.

Priority 1 Evaluation Criteria

All new applicants and current grantees proposing to expand services in their current service area or provide services in a new service area should address the criteria for Priority 1 below. Competing applications for financial assistance will be reviewed and evaluated on the six criteria which are summarized below. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (15 Points)

The extent to which, based on community assessment information, the applicant identifies any relevant physical, economic (e.g., poverty in the community), social, financial, institutional, or other issues which demonstrate a need for the Early Head Start program.

The extent to which the applicant lists relevant program objectives that adequately address the strengths and needs of the community.

The extent to which the applicant describes the population to be served by the project and explains why this population is most in need of the services to be provided by the program.

The extent to which the applicant gives a precise location and rationale for the project site(s) and area(s) to be served by the proposed project. If the applicant is a current grantee planning to expand its program it needs to demonstrate that the geographic area is currently underserved or, where applicable, unserved by Early Head Start Programs. If the applicant is new, it needs to demonstrate that the proposed service area is currently unserved by Early Head Start programs.

Criterion 2: Results or Benefits Expected (10 Points)

The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives.

The extent to which the applicant describes the kind of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Criterion 3: Approach (25 Points)

The extent to which the applicant demonstrates a thorough knowledge and understanding of the Head Start Program Performance Standards.

The extent to which the applicant explains why the approach chosen is effective in light of the needs, objectives, results and benefits described above.

The extent to which the approach is grounded in recognized standards and/or guidelines for high quality service provision or is defensible from a current research or best practices standpoint.

Criterion 4: Staff and Position Data and Organization Profiles (15 Points)

The extent to which the proposed program director, proposed key project staff, the organization's experience, including experience in providing early, continuous, and comprehensive child and family development services, and the organization's history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope.

The extent to which the applicant's management plan demonstrates sufficient management capacity to implement a high quality Early Head Start program.

The extent to which the organization demonstrates an ability to carry out continuous improvement activities.

Criterion 5: Third Party Agreements/Collaboration (15 Points)

The extent to which the applicant presents documentation of efforts (letters of commitment, interagency agreements, etc.) to establish and maintain ongoing collaborative relationships with community partners.

The extent and thoroughness of approaches to combining Early Head Start resources and capabilities with those of other local child care agencies and providers to provide high quality child care services to infants and toddlers which meet the Head Start Program Performance Standards.

Criterion 6: Budget and Budget Justification (20 Points)

The extent to which the program's costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes.

The extent to which the program has succeeded in garnering cash or in-kind resources, in excess of the required Federal match, from local, State, other Federal or private funding sources. The extent to which costs for facilities are reasonable and cost effective.

The extent to which the salaries and fringe benefits reflect the level of compensation appropriate for the responsibilities of staff.

The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost.

Priority 2 Evaluation Criteria

All applicants (current grantees and new applicants) applying to serve children under the EHS Child Welfare Services Initiative discussed in detail in the full program announcement should address the following six evaluation criteria separately in their application. Competing applications for financial assistance will be reviewed and evaluated on the six criteria. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (15 Points)

The extent to which the applicant identifies the need and objectives for services to children and their families who are in the child welfare system, how many children and families will be served, and provide a description of the children and families to be served through the EHSCWS Initiative. This could include children in the child welfare system who are living with their parents or other family members, those in foster care settings, children whose parents are incarcerated or in substance abuse recovery programs, and/or other children birth to three who are within the child welfare system. The children the applicant proposes to serve must also meet EHS eligibility requirements, and can receive EHS services until the child is three years of age, even if the CWS services end.

Criterion 2: Results or Benefits Expected (10 Points)

The extent to which the applicant identifies and describes the results and benefits to be derived from the EHSCWS Initiative and link these to the stated objectives.

The extent to which the applicant describes the kind of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Criterion 3: Approach (25 Points)

The extent to which the applicant describes the Early Head Start Child Welfare Services (EHSCWS) collaboration design and the approach to providing services to EHSCWS children through this Initiative, and outlines a plan of action for implementing those services, including the scope and detail of how the proposed work will be accomplished. This will include information about recruitment, what each partner will be responsible for in the delivery of services, how both the Head Start and the applicable Child Welfare Services regulations will be met, and what kind of shared communication system will be in place between the partners that will ensure quality and timely delivery of services

Criterion 4: Staff and Position Data and Organization Profiles (15 Points)

The extent to which the applicant describes the staffing plan for the EHSCWS Initiative, including how the partners will share staff, supervise staff, and provide training. They will indicate other areas of resource sharing, such as space and the possible co-location of staff.

Criterion 5: Third Party Agreements/Collaboration (15 Points)

The extent to which the applicant includes a written collaboration agreement between the EHS and local CWS agency that specifically outlines the roles and responsibilities of each partner and how the EHSCWS Initiative will be carried out.

Criterion 6: Budget and Budget Justification (20 Points)

The extent to which the applicant submits a reasonable budget and justification that supports the activities proposed for the partnership, and that is appropriate in the carrying out of the EHSCWS Initiative. Grantees must budget for two meetings in Washington, DC, during the first year of funding. Project directors and evaluators will meet approximately three months after funding for approximately two days. In years two and three, grantees will be expected to send both their project directors and evaluators to one meeting in Washington, DC each year.

Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to the ACF, they should be addressed to: William Wilson, Head Start Bureau, Grants Officer, 330 C Street SW., Room 2220, Washington, DC 20447.

Attn: Early Head Start Nationwide Competition/Expansion

A list of the Single Points of Contact for each State and Territory can be found on the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: March 7, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002

State and county	Service area (local community)
Alabama:	
Blount	The communities of Allgood, Locust Fork and all areas north of those communities.
Lawrence	Entire County.

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SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Morgan	Entire County.
Jefferson	Birmingham, Bessemer, Tarrant City, Centerpoint, Adamsville, Grayville, Brookville, Sayre, Roebuck, Ensley, Forrestdale, Gardendale, and other small unincorporated areas.
	Referrals from the county welfare agency for teen mothers and mothers with chemical addictions and at risk of child abuse.
St. Claire	Entire County.
Walker	Jasper.
Elmore	Bradford.
Chilton	Entire County.
Autauga	Autaugaville.
Lee	Entire County.
Russell	Entire County except Phenix City.
Tuscaloosa	Entire County.
Montgomery	Entire County.
Calhoun	Anniston.
Houston	Entire County.
Alaska:	
Lower Yukon	Villages of Pilot Station and St. Mary's.
Kuskokwin	Villages of Akiak and Nunapitchuk.
Anchorage	Municipality of Anchorage.
Fairbanks North Star	Entire Borough.
Arizona:	
Apache	Concho, Springerville, St. Johns.
Coconino	Grand Canyon, Flagstaff, Page, Williams.
Yavapai	Ashfork/Seligman, Black Canyon City, Camp Verde, Sedona, Prescott Valley, Prescott, Humboldt/Dewey/Mayer, Cottonwood, Chino Valley, Clarkdale.
Navajo	Holbrook, Pinetop-Lakeside, Show Low, Snowflake, Winslow.
Maricopa	City of Phoenix: an area bounded by Camelback Road on the north; Elliot Road on the south; 40th Street on the east; and 43rd Avenue on the west.
	City of Avindale: an area bounded on the north by Van Buren; on the east by Dysart; on the south by Litchfield Road; and on the west by Lower Buckeye Road.
	El Mirage: an area bounded on the north by Bell Road; on the east by 107th Avenue; on the west by 120th Avenue; and on the south by Northern Avenue.
	South Central Phoenix: Baseline on the south; north to Van Buren; 35th Avenue on the west; and east to 40th Street.
Pima	Entire County.
Graham	Entire County.
Santa Cruz	Entire County.
Conchise	Entire County.
Greenlee	Entire County.
Pinal	Entire County.
Gila	Entire County.
Navajo Nation (also see CO, NM, and UT).	Navajo Reservation.
	Navajo School Board.
Mohave (also see Washington County in UT).	Colorado City.
Arkansas:	
Arkansas	Entire County.
Logan	Entire County.
Lonoke	Entire County.
Conway	Entire County.
Franklin	Entire County.
Johnson	Entire County.
Yell	Entire County.
Polk	Entire County.
Pope	Entire County.
Calhoun	City of Hampton.
Ouachita	City of Bearden.
Union	City of Fairview.
Clay	Cities of Rector, Piggott, and Corning.
Lawrence	Entire County.
Randolph	Entire County.
Newton	Entire County.
Mississippi	Entire County.
Pulaski	(1) Townships of College Station, Sweet Homes, Higgins, and Wrightsville to Oak Street.
	(2) In the City of Little Rock: the township of Granite Mountain; and in east Little Rock: east of Main Street to include West Broadway north and south; Interstate 30 South, Scott Hamilton Rd., Baseline Rd., and Geyer Springs Road.
	Within the City of Little Rock: north of Roosevelt Road; west of Main Street; east of University Avenue; and south of I–630.
Sebastian	All of Wards One and Two on the north side of Fort Smith; joined and bordered by the Arkansas River on the north, east and west; ending to the south at Rogers Avenue, Dodson Avenue, and Euper Lane.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Washington	Entire County.
California:	
Alameda	Albany, Berkeley, Emeryville.
	San Leandro, Castro Valley, Union City, Fremont, San Lorenzo, Hayward Livermore, Dublin and Pleasanton (Cherryland), and Newark.
	West Oakland, San Antonio, Fruitvale; Central East Oakland and Elmhurst.
Calaveras	San Andreas, Valley Springs and Angels Camp.
Colusa	Colusa, Grimes, Princeton, Williams, Arbuckle, Maxwell, Meridian.
Contra Costa	Concord, Pleasant Hill, Antioch, Brentwood, Oakley, Richmond, San Pablo, Pittsburg.
Del Norte	The cities of Crescent City, Fort Dick, Smith River, Orleans, Orick, Willow Creek, McKinleyville.
Humboldt	Eureka, Arcata, South Bay, Fortuna, Ferndale, Rio Dell, Rohnerville, Bridgeville, Miranda, Alderpoint, Redway.
	Hoopa Valley Indian Reservation.
El Dorado	Entire County.
Fresno	West Fresno, Southeast Fresno, and Fresno Unified School District.
Kern	East Bakersfield, Arvin/Lamont, Delano, Shafter, and Southwest Bakersfield.
	Metro Bakersfield.
Kings	Corcoran and Hanford.
Hanford	Avenal and Lemoore.
Lake	Lake, Mendocino.
Modoc	Entire County.
Siskyu	Tulelake School District.
Los Angeles	City of Los Angeles: Areas within the following boundaries:
	(1) 3rd and Temple—on the north, to Hoover, to Vermont, to 7th, to Wilshire, to Hoover and Central on the south border in downtown L.A.
	(2) Baldwin Park USD—north: Oak Ave. and Arrow Hwy; south: Farnell; east: Azusa Canyon, La Serna, Willow, Ardilla, Mayland; west: San Gabriel River.
	(3) City of South El Monte—north: Garvey Ave, Fern St., Elliot Ave., and Schmidt Rd.; south: Whittier Narrows Recreation Area; east: San Gabriel River, Fruitvale Ave.
	(4) El Monte City border; west to Whittier Narrows Recreation Area and Rio Hondo River; north: Century Blvd., 104th Street, 103rd Street; south: Anderson Fwy (105); east: Prairie Ave.; west: La Cienega Blvd.
	(5) Gardena—north: El Segundo Blvd.; south: 182 St., Artesia Blvd. and Redondo Beach Blvd; east: Vermont Ave; west: Crenshaw Blvd. and Gramercy Blvd.
	(6) North: Century Blvd., 104th Street, 103rd Street; south: Anderson Freeway (105); east: Prairie Ave.; and west: Crenshaw and Gramercy Blvds.
	(7) Plaza De La Raza—north: A.T.& S. F. Railroad and Washington Blvd.; south: Lakeland Rd. and Imperial Hwy.; east: Shoemaker, Carmenita and Mulberry; west: San Gabriel River (605 Freeway).
	(8) Plaza De La Raza—north: Imperial Hwy; south: Excelsior Dr., Alondra Blvd. and Santa Ana Frwy; east: Valley View Ave., Marquardt Ave.; west: Shoemaker Ave., Bloomfield Ave., Best Ave. and Norwalk City border.
	(9) Pomona USD—north: Foothill Blvd., Lewis Ave., Oak Dr., Parkwood Ln., Harrison Ave., Arrow Ave. and American Ave.; south: Pomona Frwy (60) and Riverside Dr.; east: San Bernardino County Line, Mountain Ave., Carnegie Ave., and Towne Ave.; west: Fulton Rd., L.A. County Fairplex, Fairplex Dr., San Bernardino Frwy (10), and Campus Dr.
	(10) North Hollywood—north: Saticoy St.; south: Universal City Border, Acama St. and Riverside Dr.; east: Clyboum Ave., Burbank Airport, and Burbank City border; west: Tujunga Ave., Fulton Ave., Coldwater Canyon Ave., and Hollywood Frwy. (170).
	(11) Harbor City—north: Sepulveda Blvd., Lomita Blvd.; south: Palo Verdes Dr., Anaheim St.; east: Harbor Frwy (110) and Normandie Ave.; west: Western Ave., City of Torrance border, and City of Lomita border.
	(12) North Hollywood, Sunland and Harbor City, Wilmington, San Perdo, Lomita, Carson, portions of Torrence and Ranchos PalasVerde, Downey, Southcentral, LA, Westwood, Pomano, Echo Park area, Pico Rivera, Antelope Valley (Lancaster, Palmdale). Bell, Bell Gardens, and Cudahy.
	(13) West: Highland Avenue; north: 6th Street; east: Hoover Street; south: 9th Street (turns into James M. Wood Blvd.).
	North: 6th Street; East: Hoover; West: Highland Avenue; South: 9th Street.
	An area bounded on the north by 3rd Street; on the east by Central Avenue; on the south by Vernon Avenue; and on the west by Western Boulevard.
	Greater Hollywood area: City of West Hollywood and Mid-Wilshire District.
	An area bounded on the north by Wilshire Blvd to Sepulveda to Olymouc; on the east by Beverly Drive to Pico to Durango to La Cienega to Jefferson to Sepulveda to Centinela to Praire; on the south by Imperial Highway to Sepulveda to Lincoln to Admiralty Way to Washington; on the west by the Pacific Ocean Cities of Santa Monica, West Los Angeles, Culver City, Inglewood, Lennox, Westchester, Venice, Palms and Mar Vista.
	City of Long Beach, central area.
	South Central LA: an area bounded on the north by Slauson Avenue; on the south by Century Blvd.; on the east by Avalon Blvd.; and on the west by Van Ness Avenue.
	The communities of West Adams, Jefferson Park, and University Park.
	An area bounded by 9th Street on the north; Martin Luther King Blvd. on the south; San Perdro Street on the east; and Crenshaw on the west.
	Compton.

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SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	Cities of Pasadena, Altadena and Glendale.
	City of Hawaiian Gardens.
Orange County	Entire County.
San Bernardino	City of Upland.
	Cities of San Bernardino and Colton.
Marin	San Rafael, Novato, Corte Madera, Greenbrae, San Anselmo.
Mendocino	Ukiah, Willits.
Nevada	North San Juan, Nevada City, Truckee.
Placer	Lincoln, Rocklin, Kings Beach, Foresthill.
Sacramento	(1) The City of Sacramento: the communities of Del Paso Heights, North Sacramento/Gardenland, Midtown, Oak Park, South Sacramento, Meadowview, Natomas, Land Park and Arden/Howe.
	(2) Cities of Citrus Heights and Galt.
	(3) Towns of Rio Linda/Everta, North Highlands, Foothill Farms, Orangevale, Carmichael, Fair Oaks, Rancho Cordova, South Sacramento, Franklin/Laguna, Elk Grove, and Antelope.
	(4) Woodland, Winters, Davis and West Sacramento.
San Diego	Carlsbad, Encinitas, Del Mar, Solana Beach, Escondido, San Diego, Poway, Coronado, La Mesa, El Cajon, Lemon Grove, Santee, Ramona, Palomar Julain, Anza Borrego, Lakeside, Spring Valley, Jamul, Harbinson Crest, Laguna Pine Valley, Mountain Empire, Alpine, Chula Vista, National City, Imperial Beach, Nestor.
	Oceanside, Vista, San Marcos, Fallbrook, Valley Center, Rincon, San Pasqual, Pauma Valley.
	Campo Reservation, Rincon Reservation, San Pasqual Reservation, Pauma Reservation, and Pala Reservation.
Riverside	Soboba Reservation, Morongo Reservation, and San Jacinto.
	Cities of Banning and Beaumont.
	All cities in Riverside County with the exception of Banning, Beaumont and Morongo Band Indian Reservation.
San Francisco	Chinatown, Tenderloin, Visitation Valley; and parts of Northbeach, Civic Center, and Bayview Hunters Point.
San Joaquin	Entire County.
San Mateo	Half Moon Bay, East Palo Alto, Menlo Park, South San Francisco, Daly City, San Bruno and San Mateo.
Santa Barbara	Santa Maria, Lompoc, Santa Barbara and Summerland.
Santa Clara	Northwest and central San Jose.
Santa Cruz	Watsonville and Santa Cruz.
Shasta	Entire County.
Siskyu	Community of Weed.
Trinity	Cities of Weaverville and Hayfork.
Stanislaus	Westside of county: areas of Westley and Patterson.
Sutter	Entire County.
Yuba	Entire County.
Tulare	Entire County.
Ventura	Oxnard, Hueneme, Santa Paula, Fillmore and Piru.
Yolo	Entire County.
Sonoma	Sebastopol, Petaluma, Guernville, Sonoma, Rohnert Park, Windsor, and Santa Rosa.
San Luis Obispo	Entire County.
San Benito	Entire County.
Monterey	Chular, Greenfield, King City, San Lucas, San Ardo, Bradley, Gonzales.
	Seaside, Marina, East Salinas, Pajaro, Castroville, Prunedale, Soledad, Speckles, Monterey, Boronda.
Colorado:	
Adams	City of Aurora within Adams County.
Arapahoe	City of Aurora within Arapahoe County.
Crowley	Entire County.
Otero	Entire County.
Denver	An area bounded on the east by Colorado Boulevard; on the north by I–70; on the west by Sheridan Boulevard; and on the south by Hampden Avenue.
	Neighborhoods of East Colfax, Northeast Park Hill, Elyrie Swansea, Clayton, Cole, Five Points, Whittier, and Auraria Lincoln Park.
	Northwest Denver: an area bordered by Sheridan Blvd. on the west; I–70 on the north; I–25 on the east; and Mississippi Avenue on the south.
Eagle	Entire County.
El Paso	Entire County.
Fremont	Entire County.
Larimer	Pourde School District boundary that includes the cities of Fort Collins, LaPorte, Timnath and Wellington, and the communities of Wellington, La Porte, Loreland and surrounding areas.
La Plata	Within the boundaries of the Southern Ute Reservation and the Ignacio School District.
	Entire County, with the exception of the area served by Southern Ute Nation.
Navajo Nation (also see AZ, NM, and UT).	Navajo Reservation, Navajo School Board.
Connecticut:	
Fairfield	City of Bridgeport: neighborhoods of The Hollow, West End, South End, North End, East End, and East Side.
	City of Stamford.
Hartford	City of Manchester.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Litchfield	Towns of Torrington, Winston, Canaan, and New Milford.
Middlesex	Towns of Middletown, Essex, Portland, Clinton, Westbrook, East Hampton and Deep River.
New Haven	City of Waterbury.
	City of New Haven.
Windham	Towns of Brooklyn, Danielson and Willimantic.
Tolland	City of Vernon.
Delaware:	
Kent	Entire County.
New Castle	Entire County.
Sussex	Georgetown.
Florida:	
Alachua	Communities of Majestic Oaks, Sugarfoot Oaks, Tower Oaks, Cedar Ridge, Clayton Estates, Magnolia Plantation.
Bay	Panama City Beach.
Franklin	Apalachicola.
Jackson	Entire County.
Baker	Entire County.
Brevard	Entire County.
Broward	Pompano Beach, Hollywood.
Charlotte	Punta Gorda, Port Charlotte.
Collier	Entire County.
DeSoto	Entire County.
Glades	Entire County.
Hardee	Entire County.
Hendry	Entire County.
Highlands	Entire County.
Columbia	Lake City.
Dade	City of Homestead and towns of Brownsville, Scott Carver, Liberty City, Winwood, Goulds, Leisure City, Carol City and Opalocka.
Gadsden	Entire County.
Gulf	Wewahitchka, Port St. Joe.
Jefferson	Entire County.
Madison	Madison, Greenville.
Lake	Clermont, Eustis, Leesburg, Mount Dora, Montclair Village, Groveland.
Lee	Entire County.
Marion	Entire County.
Citrus	Entire County.
Martin	Within Hobe Sound, the communities of Banner Lake and Gomez; within Port Salerno, the communities of Jack Avenue, and New Monrovia; and within Stuart, the community of Golden Gate.
Okaloosa	Crestview and 20 mile radius.
Palm Beach	Pahokee, South Bay and Belle Glade—western region of county, West Palm Beach Hispanic Community, West Palm Beach, North-South West Palm Beach, South Bay, Riviera Beach, Lake Worth, Boynton Beach, Delray Beach.
Sarasota	Sarasota, Cities of Newton, Venice and North Port.
Hillsborough	Entire County.
St. Lucie	Entire County.
Santa Rosa	Entire County.
Dixie	Cross City.
Gilchrist	Trenton.
Levy	Chiefland, Yankeetown, Williston, Bronson.
Volusia	Cities of Daytona Beach and Pierson.
Manatee	Palmetto and East Bradenton.
Pinellas	Entire County.
Georgia:	
Chatham	Savannah.
Catoosa	Entire County.
Chattooga	Entire County.
Dade	Entire County.
Walker	Entire County.
Whitfield	Dalton.
	Entire County, except south of Tilton and north of Varnell.
Murray	Entire County, except north of Eton and south to North Georgia Speedway.
Dougherty	Albany.
Emanuel	Swainsboro, Twin City, Summertown, Adrian, Oak Park, Lexsy, Garfield, Stillmore.
Fulton	East Point, Alpharetta, Roswell, Sandy Springs.
	Downtown Atlanta, Reynoldstown and Bankhead.
Clayton	Jonesboro.
Cobb	Marietta.
Douglas	Douglasville.
Gwinnett	Lawrenceville.
Dekalb	Chamblee.
	South Dekalb bounded by Covinton Highway, Brown's Mill Road and Bouldercrest Road.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Hall	Entire County.
White	Entire County.
Forsyth	Entire County.
Hart	Entire County.
Sumter	Americus.
Carroll	Entire County.
Troup	Entire County.
Coweta	Entire County.
Clarke	Athens.
Greene	Entire County.
Morgan	Entire County.
Hawaii:	
Hawaii	South Kona, North Kona, South Kahala, North Kahala, Ka'u.
Maui	Lanai, Makawao/Upcountry, Hana/East Maui, Lahaina/West Maui.
Oahu	(1) Kalhili and Waipahuto Hawaii Kai. (2) Honolulu vicinity defined by Hawaii Kai (Koolauloa): Kaaawa, Hau'ula, Laie, Kahuku, Pupukea (North Shore), Sunset, and Kahana Valley. Waianae Coast (Leeward Oahu); Waimanalo area (Winward Oahu); and Makalapa area (Central Oahu and Honolulu).
Idaho:	
Bonner	Community of Sand Point.
Kootenai	Cities of Coeur d'Alene, Post Falls and surrounding areas.
Nez Perce (also see Asotin County in the State of Washington.	Nez Perce County, Idaho, except Nez Perce Reservation. Nez Perce Reservation.
Lewis	Nez Perce Reservation.
Clearwater	Nez Perce Reservation.
Ada	Entire County.
Elmore	Entire County.
Payette	City of Payette.
Canyon	Cities of Caldwell and Nampa.
Benewah	Couer d'Alene Reservation.
Kootenai	Couer d'Alene Reservation.
Franklin (also see Box Elder and Cache Counties, Utah).	Entire County.
Illinois:	
Champaign	Entire County.
Clinton	Entire County.
Washington	Entire County.
Cook County	South Chicago, South Deering, South Lawndale, and Lower West Side communities. Near South, Armour Square. An area of New City bounded by Damen Ave. on the west; Racine Ave. on the east; Garfield Blvd. on the south; 49th Pl. on the north; and West Englewood and Englewood communities. Communities of West Humboldt Park and New City with the exception of an area bounded by Damen Ave. on the west; Racine Ave. on the east; Garfield Blvd. on the south; 49th Pl. on the north. Communities of Cicero/Berwyn, Maywood, Bellwood, Robbins, and Hoffman Estates/Schaumburg. Uptown community. Rogers Park and West Ridge communities. Evanston Township. Communities of Grand Boulevard, Washington Park, and Kenwood. Communities of Oakland, Albany, Park, North Lawndale, Gage Park, Fuller Park, Near West Side, Roseland, West Town, Austin, Logan Square, West Pullman, Chatham, Woodlawn, Washington Heights, Near North Side, Garfield Park, and Douglas.
Edwards	Entire County.
Saline	Entire County.
Gallatin	Entire County.
Hamilton	Entire County.
Wabash	Entire County.
Wayne	Entire County.
White	Entire County.
Kane	Towns of Elgin, Aurora, and Carpentersville.
Sangamon	Entire County.
St. Clair	District 1: East St. Louis; District 3: Cahokia; Centreville.
Peoria	City of Peoria.
Madison	Towns of Alton, Granite City, Pontoon Beach, Venice, Collinsville and East Alton.
Will	Town of Joliet.
Williamson	Entire County.
Franklin	Entire County.
DuPage	Towns of Bensenville and surrounding areas, Wheaton, West Chicago, Villa Park, and Lombard.
Lake	Town of Waukegan.
Hancock	Entire County.
McDonough	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Pike	Entire County.
Alexander	Entire County.
Hardin	Entire County.
Johnson	Entire County.
Massac	Entire County.
Pope	Entire County.
Pulaski	Entire County.
Union	Entire County.
Indiana:	
Blackford	Entire County.
Grant	Entire County.
Clay	Entire County.
Owen	Entire County.
Putnam	Entire County.
DeKalb	Entire County.
Howard	Entire County.
Miami	Entire County.
Lawrence	Entire County.
Martin	Entire County.
Orange	Entire County.
Washington	Entire County.
Madison	Entire County.
Marshall	Entire County.
Starke	Entire County.
Marion	Pike, Washington, Lawrence, Wayne, Center, and Warren Townships.
Tippecanoe	Entire County.
Vanderburg	Entire County.
Posey	Entire County.
Vigo	Entire County.
Knox	Entire County.
Sullivan	Entire County.
Kosciusko	Entire County.
Benton	Entire County.
Boone	Entire County.
Fountain	Entire County.
Montgomery	Entire County.
Parke	Entire County.
Vermillion	Entire County.
Warren	Entire County.
Iowa:	
Allamakee	Entire County.
Clayton	Entire County.
Carroll	Entire County.
Dallas	Entire County.
Greene	Entire County.
Guthrie	Entire County.
Blackhawk	City of Waterloo.
Cherokee	Entire County.
Plymouth	Entire County.
Clarke	Entire County.
Decatur	Entire County.
Clay	Entire County.
Des Moines	Entire County.
Henry	Entire County.
Lee	Entire County.
Louisa	Entire County.
Hamilton	Entire County.
Humboldt	Entire County.
Webster	Entire County.
Wright	Entire County.
Linn	Entire County.
Polk	An area bounded on the west by County Line from Raccoon River to 9400 N.; on the north by 9400 N to NW 58th to NW 110th Place to NE 22nd Street to NE 118th Street; on the east by NE 29th to I–80 to NE 120th Street to East University to NE 64th Street to SE 6th to SE 60th to the Des Moines River to I–65 to 80th SW; and on the south by 80th SW/County Line from Des Moines River to 9800 W.

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SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Scott	City of Davenport: an area bounded on the west by the west side of I–280 on the west edge of Davenport continuing from the Mississippi River north to the north side of I–80 on the north edge of Davenport; on the north, from a point where I–280 meets I–80 continuing east to the east side of I–74 on the east edge of Davenport; on the east, from the north starting point of I–74 where it meets I–80, continuing south of I–74 to the Mississippi River; and on the south: east from the east side of I–74 west along the Mississippi River to the west edge of I–280 where I–280 meets the river; and smaller surrounding cities in Scott County including Bettendorf, Bluegrass, Buffalo, Donahue, Eldridge, LeClaire, Long Grove, Maysville, and Walcott.
Woodbury	Entire County.
Hardin	Entire County.
Marshall	Entire County.
Poweshiek	Entire County.
Story	Entire County.
Tama	Entire County.
Kansas:	
Atchinson	Entire County.
Brown	Entire County.
Doniphan	Entire County.
Jefferson	Entire County.
Leavenworth	Entire County.
Marshall	Entire County.
Nemaha	Entire County.
Pottawatomie	Entire County.
Jackson	Entire County, except the Prairie Band Pottawatomi Reservation. Prairie Band of Potawatomi Reservation and two communities adjacent to the reservation, Hoyt and Mayetta.
Cherokee	Entire County.
Crawford	Entire County.
Labette	Entire County.
Montgomery	Entire County.
Clay	Entire County.
Cloud	Entire County.
Washington	Entire County.
Dickerson	Entire County.
Ellsworth	Entire County.
Saline	Entire County.
Ford	Entire County.
Johnson	An area bounded on the west by Ogg Road; on the east by Stateline Road; on the north by County Line Road; and on the south by I–435.
Lyon	Entire County.
Riley	Entire County.
Rush	Entire County.
Russell	Entire County.
Ellis	Entire County.
Sedgwick	City of Wichita: an area bounded by Murdock Street on the north; 47th South Street on the south; Woodlawn Street on the east; and Main Street on the west.
Shawnee	Entire County.
Sumner	Entire County.
Wyandotte	Kansas City, an area bounded by Wyandotte/Douglas County Line on the west; the Wyandotte/Johnson county line on the south; and the Kansas/Missouri state line on the north and east.
Finney	Entire County.
Kentucky:	
Bourbon	Entire County.
Fayette	Entire County.
Harrison	Entire County.
Nicholas	Entire County.
Scott	Entire County.
Breckinridge	Entire County.
Grayson	Entire County.
Calloway	Entire County.
Carlisle	Entire County.
Fulton	Entire County.
Marshall	Entire County.
Hickman	Entire County.
Ballard	Entire County.
Graves	The towns of Mayfield, Fancy Farm, Lowes, Sedalia, Symsonia and Wingo.
Warren	Bowling Green, Rockville, Albaton, Rich, Panel, Plano.
McCracken	Paducah, Concord, Farley, Heath, Hendron, Loneoak.
Christian	Hopkinsville.
Daviess	Owensburg.
Ohio	Entire County.
Lyon	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Trigg	Entire County.
Harlan	Entire County.
Clay	Entire County.
Knox	Entire County.
Laurel	Entire County.
Jackson	Entire County.
Rockcastle	Entire County.
Jefferson	Entire County.
Knott	Hindman, West Caney.
Letcher	Jenkins, Fleming.
Lincoln	Entire County.
Owsley	Entire County.
Bullitt	Mt. Washington.
Henry	Eminence.
Casey	Entire County.
Cumberland	Entire County.
Green	Entire County.
Taylor	Entire County.
Bell	Communities of Pineville and Middlesboro.
Whitley	Communities of Williamsburg and Boston.
Louisiana:	
East Baton Parish	City of Baton Rouge: an area starting at the Long Allen Bridge: east to Plank Road (Highway 67); north to Hooper (State Highway 408); northeast on Hooper Road to Greenwell Springs Road (State Highway 37); south and southwest on Greenwell Springs Road to Airline Highway; southeast on Airline Highway to Bayou Manchac; west on Bayou Manchac to the Mississippi River; north to the Long Allen Bridge.
Bossier Parish	Entire Parish.
Iberia Parish	Entire Parish.
Lafayette Parish	Entire Parish.
St. Martin Parish	Entire Parish.
Rapides Parish	Entire Parish.
St. Charles Parish	Entire Parish.
St. Helena Parish	Entire Parish.
St. Tammany Parish	The northern portion of Parish bordered on the north by the St. Tammany/Washington Parish Line; on the east by the Pearl River/Mississippi State Line; on the south by US Highway 190; and on the west by the St.Tammany-Tangipahoa Parish.
Tangipahoa Parish	Entire Parish.
Washington Parish	Entire Parish.
Livingston Parish	Entire Parish.
West Feliciana Parish	Entire Parish.
Orleans Parish	Entire Parish.
Caddo Parish	Entire Parish.
St. Landry Parish	Entire Parish.
Maine:	
Andro-scoggin	City of Lewiston. Towns of Livermore, Livermore Falls.
Franklin	Entire County.
Cumberland	Entire County.
Northern Kennebec	Entire County.
Somerset	Entire County.
Oxford	Entire County.
York	City of Biddeford.
Penobscot	Greater Bangor.
Hancock	Greater Ellsworth.
Maryland:	
Alleghany	Entire County.
Baltimore	City of Baltimore: The communities of Edmondson Village, Sandtown/Winchester, Reservoir Hill, Park Heights (upper and lower), WashingtonVillage/Pigtown, Mideast, Forest Heights, Mondawmin, Howard Park, Rosemount, Franklin Square, Poppletown, Penn/Druid/Uppertown, Green Mount East, Hopkins Middleast, Madison East End, Cherry Hill, Brooklyn/Curtis Bay, Claremount, Armstead, Beechfield/ Irvington, Belair/Edison, Waverly, Govans, Hampden/Woodbury, and Barclay (entire city). City of Baltimore: An area bounded on the north by Monument Street; on the south by the Waterfront; on the east by the City Line; and on the west by Broadway Street.
Caroline	Entire County.
Anne Arundel	Southern Anne Arundel County, including the towns of Harwood, West River, Galesville, Lothian, Churchton, Deale, Shady Side and Traceys Landing.
Cecil	Entire County.
Dorchester	Entire County.
Garrett	Entire County.
Harford	Entire County.
Montgomery	Gaithersburg and Germantown. Rockville, Silver Spring, Wheaton, and Tacoma Park.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Prince George's	Hyattsville, Riverdale, Langley Park, Greenbelt, Adelphi, College Park, Glendarden, Capital Heights, and Landover.
Washington	Entire County.
Massachusetts:	
Bristol	City of Fall River, and the Towns of Somerset, Swansea, Rehoboth, Dighton, Freetown, Berkley, Lakeville, and Seekonk.
	Towns of Raynham and Taunton.
Essex	Cities and towns of Lawrence, Methuen, Andover, and North Andover.
Franklin	Towns of Greenfield, Orange, and Turners Falls.
Hampden	Cities of Holyoke, Chicopee, and Springfield.
Middlesex	City of Somerville.
	City of Lowell.
Suffolk	City of Boston.
	City of Boston.
Worcester	Towns of Southbridge, Webster, Oxford, Millbury, Spencer.
Norfolk	Quincy, Braintree, Weymouth, and Milton.
Plymouth	Hull.
Middlesex	Arlington, Watertown, Waltham, Newton.
Norfolk	Brookline.
Michigan:	
Alger	Entire County.
Marquette	Entire County.
Alpena	Entire County.
Bay	Entire County.
Iosco	Entire County.
Arenac	Entire County.
Cheboygan	Entire County.
Antrim	Entire County.
Benzie	Entire County.
Charlevoix	Entire County.
Emmet	Entire County.
Grand Traverse	Entire County.
Kalkaska	Entire County.
Leelanau	Entire County.
Missaukee	Entire County.
Roscommon	Entire County.
Wexford	Entire County.
Delta	Entire County.
Menominee	Entire County.
Schoolcraft	Entire County.
Baraga	Entire County.
Houghton	Entire County.
Keweenaw	Entire County.
Genesee	Carman-Ainsworth School District and Bendel School District.
	Eligible families enrolled in the Michigan Job Corp, Mott Community College, University of Michigan-Flint, and the Career Alliance Program (Sylvester Broome Training Center); Flint School District including service areas of Holmes and Whittier; and School Districts of Clio, Montrose, Mt. Morris, Genesee, Kearsley, West Wood Heights and Flushing.
Clare	Entire County.
Gladwin	Entire County.
Mecosta	Entire County.
Midland	Entire County.
Osceola	Entire County.
Chippewa	Entire County.
Luce	Entire County.
Mackinac	Entire County.
Ionia	Entire County.
Isabella	Entire County.
Gratiot	Entire County.
Montcalm	Entire County.
Gogebic	Entire County.
Ontonagon	Entire County.
Kent	(1) Within the City of Grand Rapids: an area bounded by 3 Mile Road to the north; East Beltline Ave (except East Grand Rapids) to the east; 28th Street to the south; and Byron Center Road/Covell Avenue/ Walker Avenue to the west.
	(2) South of Grand Rapids: an area bounded by 28th Street to the north; Patterson Avenue to the east; 68th Street to the south; and Byron Center Avenue to the west.
Manistee	Entire County.
Lake	Entire County.
Newaygo	Entire County.
Mason	Entire County.
Huron	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
LaPeer	Entire County.
Sanilac	Entire County.
Tuscola	Entire County.
Ottawa	Towns of Ferrysburg, Grand Haven, Spring Lake, Crockery Township, Robinson Township; and Holland, West Olive, and Allendale communities.
Wayne	City of Detroit—neighborhoods bounded to the:
	(1) North by Woodland St.; to the east by Oakland St.; to the south by Warren Av.; and to the west by Byron St.
	(2) North by Fullerton St.; to the east by Byron St.; to the south by W. Grand Blvd.; and to the west by Holmur St.
	(3) North by Puritan St.; to the east by Thomas St.; to the south by Fullerton St.; and to the west by Meyers Rd.
	(4) North by 8 Mile Rd.; to the east by Southfield Fwy.; to the south by Puritan St.; and to the west by Five Points St.
	(5) North by Puritan St.; to the east by Southfield Fwy.; to the south by Fullerton St.; and to the west by Telegraph Rd.
Calhoun	Entire County.
St. Joseph	Entire County.
Barry	Entire County.
Mackinac	Entire County.
Luce	Entire County.
Delta	Entire County.
Schoolcraft	Entire County.
Marquette	Entire County.
Elger	Entire County.
Chippewa	Entire County.
	Bay Mills Reservation.
Baraga	Keweehaw Reservation.
Gogebic	Lac Vieux Desert Reservation.
Menominee	Hannahville Reservation.
Delta	Little Traverse Bay Band Reservation.
Emmet	Little Traverse Bay Band Reservation.
Charlevoix	Pokagom Reservation.
Otsego	Pokagom Reservation.
Cass	Pokagom Reservation.
Berrien	Entire County.
Van Buren	Entire County.
Ingham	City of Lansing, Lansing School District.
Hillsdale	City of Hillsdale, and north of US 12 to the Jackson County line.
Jackson	Entire County.
Leelanau	Grand Traverse Band Reservation.
Minnesota:	
Anoka	Entire County.
Becker	Entire County.
Hubbard	Entire County.
Mahnomen	Entire County.
Beltrami	Entire County.
Cass	Entire County.
Crow Wing	Entire County.
Morrison	Entire County.
Todd	Entire County.
Kittson	Entire County.
Lake of the Woods	Entire County.
Marshall	Entire County.
Roseau	Entire County.
Ramsey	The following school districts: Moundview, Roseville, North St. Paul-Maplewood-Oak Dale, and White Bear Lake; City of St. Paul (excluding old Model Cities area) bounded by Interstate 35, Interstate 94 and Lafayette Road.
Benton	Entire County.
Sherburne	Entire County.
Stearns	Entire County.
Mille Lacs	Mille Lacs Reservation.
Hennepin	The following communities within the City of Minneapolis: Northeast, University, and Phillips
	Communities of: Camden, Central, Longfellow, Near North, Nokomis, Powderhorn and Southwest in the City of Minneapolis; the suburban communities of Brooklyn Park, Golden Valley, and Richfield.
Menhnomen	White Earth Reservation.
Becker	White Earth Reservation.
Hubbard	White Earth Reservation.
Cloquet	Fond du Lac Reservation.
Sawyer	Fond du Lac Reservation.
Brookston	Fond du Lac Reservation.
Arlton	Fond du Lac Reservation.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
St. Louis	Fond du Lac Reservation.
Mississippi:	
Calhoun	Entire County.
Lauderdale	Meridian.
Leflore	Greenwood.
Perry	Entire County.
Printiss	Entire County.
Warren	Vicksburg.
Harrison	Biloxi.
Hinds	Entire County.
Holmes	Lexington, Ebenezer, Bowling Green.
Jones	City of Laurel and Towns of Ellisville and Soso.
Copiah	Job Corps site—Crystal Springs.
Leake	Walnut Grove.
Newton	Entire County.
Monroe	Entire County.
Lee	Entire County, except Tupelo.
	Tupelo.
Lafayette	Oxford.
Grenada	Grenada City.
Marshall	Byhalia, Holly Springs.
Panola	Batesville.
Pontotoc	City of Pontotoc.
Tallahatchie	Glendoro.
Tate	Senatobia.
Tunica	City of Tunica.
Chickasaw	Houston.
Oktibbeha	Starkville.
Clay	West Point.
DeSota	Walls.
Lowndes	Columbus.
Noxubee	Macon.
Washington	Hollandale, Arcola, Tralake, Murphy.
Henry	Eminence.
Leake	Mississippi Band of Choctaw Indians Reservation: Community of Redwater.
Neshoba	Mississippi Band of Choctaw Indians Reservation: Communities of Pearl River, Boguechitto, and Tucker.
Adams	Entire County.
Stone	Entire County.
Pike	Entire County, except the City of McComb.
Pearl River	Entire County.
Missouri:	
Adair	Entire County.
Knox	Entire County.
Barry	Entire County.
Christian	Entire County.
Dade	Entire County.
Dallas	Entire County.
Lawrence	Entire County.
Greene	City of Springfield—an area bounded on the north by I–44; on the south by Battlefield Road; on the east by Hwy 65; and on the west by Haseltine Road.
Polk	Entire County.
Stone	Entire County.
Taney	Entire County.
Webster	Entire County.
Bates	Entire County.
Cass	Entire County.
Henry	Entire County.
St. Clair	Entire County.
Buchanan	Entire County.
Cape Girardeau	Entire County.
Jackson	City of Kansas—an area bounded to the north by the Missouri River; to the west by State Line Road; to the south by 112th Street; to the east by Hillcrest Road.
Jasper	Entire County.
Newton	Entire County.
McDonald	Entire County.
Lincoln	Entire County.
Montgomery	Entire County.
St. Charles	Entire County.
Warren	Entire County.
Lafayette	Entire County.
Chariton	Entire County.
Saline	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Ray	Entire County.
Johnson	Entire County.
Moniteau	Entire County.
Pettis	Entire County.
St. Louis	(1) St. Louis County—an area bounded on the north by the Missouri River; on the south by the Meramec River; on the east by Mississippi River, except for St. Louis City which borders St. Louis County on the following streets: Riverview, Goodfellow, Skinker-McCausland, River Des Peres and Carondelet; and on the west by Wild Horse Creek Road, Ossenfort Road, Boguett Road, and Fox Creek Road. (2) St. Louis City—an area bounded on the east by the Mississippi River; on the north, south and west, bordering St. Louis County on the following streets: Riverview, Goodfellow, Skinker-McCausland, River Des Peres, and Carondelet. (3) St. Louis City—an area bounded on the south by Forest Park Parkway and portions of Forest Park; on the west by Skinker Boulevard, Kienlen, Jennings Station Road; on the north by West Florissant Road; and on the east by Grand Boulevard. St. Louis City—an area bounded on the south by Meramec Street; on the west by Grand Avenue to Arsenal Avenue, Arsenal Avenue west to Kingshighway Blvd., north to Columbia Avenue west to Hampton, north to Highway 40 (64), west to Skinker Avenue, north to Forest Park Parkway; on the north by Forest Park Parkway to Grand Avenue, north to St. Louis Avenue, west to Clay Avenue, north to Natural Bridge, west to Clay Avenue, north to West Florissant to Adelaide, north to Highway 70; on the east by Highway 70 to Chouteau Avenue, Chouteau Avenue east to the river and the river south to Meramec.
Marion	Entire County.
Boone	Entire County.
Montana:	
Beaverhead	Entire County.
Silver Bow	Entire County.
Lincoln	School District #4 boundary that includes the city of Libby.
Missoula	Entire County.
Yellowstone	City of Billings and School District #2 boundary that includes the City of Lockwood.
Glacier	Blackfeet Reservation.
Lake	Flathead Indian Reservation.
Hill	Rocky Boy's Indian Reservation.
	Entire County.
Blaine	Entire County.
Nebraska:	
Adams	Entire County.
Clay	Entire County.
Franklin	Entire County.
Hall	Entire County.
Nuckolls	Entire County.
Webster	Entire County.
Box Butte	Entire County.
Dawes	Entire County.
Douglas	City of Omaha: an area bordered on the north by I–680; on the east by the Missouri River; on the south by Harrison Street (Sarpy County Line); and on the west by 72nd Street. City of Omaha: an area bordered on the north by I–680; on the east by Iowa State Line; on the south by Harrison Street (Sarpy County Line); and on the west by 72nd Street.
Gage	Entire County.
Saline	Entire County.
Brown	Entire County.
Colfax	Entire County.
Custer	Entire County.
Garfield	Entire County.
Greeley	Entire County.
Holt	Entire County.
Howard	Entire County.
Platte	Entire County.
Sherman	Entire County.
Valley	Entire County.
Lancaster	City of Lincoln.
Scotts Bluff	Entire County.
Sarpy	Entire County.
Nevada:	
Clark	Las Vegas, North Las Vegas and Henderson.
Elko	Entire County.
Whitepine	Entire County.
Washoe	Cities of Reno and Sparks.
New Hampshire:	
Belknap	Entire County.
Merrimack	City of Concord, Bossawen, Loudon, Penacook.
Hillsborough	City of Manchester.
Strafford	Entire County.

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SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
New Jersey:	
Atlantic	Entire County.
Cape May	Entire County.
Camden	City of Camden.
Ocean	Lakewood Township.
Cumberland	Entire County.
Salem	Entire County.
Glouster	Entire County.
Essex	City of East Orange.
	Newark Central Ward, West Ward, North Ward (Verona Avenue to Orange Street and Lake Street to McCarter Highway), and Bakery Village.
	Cities of Montclair and Orange.
Hudson	Union City, North Bergen, West New York, Weehawken, Guttenberg, and Seacaucus.
Passaic	Upper Passaic County—West Milford, Wayne, Ringwood, Bloomingdale, Little Falls, Haledon, Pompton Lakes, Hawthorne, and Wanaque.
	Patterson, Prospect Park, and Clifton.
Sussex	Entire County.
Warren	Entire County.
Morris	Netcong, Dover, and Victory Gardens.
Mercer	City of Trenton.
Middlesex	Entire County.
New Mexico:	
Bernalillo	Within Bernalillo County, areas bounded by: (1) Eastern boundary is the Sandia Mountains; south to Kirtland Air Force Base; west to Wyoming Blvd.; and north to Indian School. (2) Eastern boundary is Wyoming Blvd; south to Kirtland Air Force Base; west to Louisiana at San Pedro at Louisiana; and north to Copper. (3) Eastern boundary is the Sandia Mountains; south to Indian School; west to Eubank; and north to the Bernalillo County line. (4) Eastern boundary is Eubank; south to Indian School; west to San Mateo; south to Indian School at Montgomery; and north to the Bernalillo County line. (5) Eastern boundary is San Mateo; south to the I–40 Freeway at Candelaria; west to Rio Grande and Edith; and north to Ortega Road. (6) Eastern boundary is Rio Grande River; south to Bridge Street; west to 98th Street; and north to I–40. (7) Eastern boundary is 98th Street; south to 122nd Street at Valley Road; west to 122nd Street; and north to I–40. (8) Eastern boundary is Tapia to Joe Sanchez Road; south to Rio Bravo; west to Coors; and north to Arenal. (9) Eastern boundary is Girard; south to Airport Terminal Road; west to I–25; and north to Coal. (10) Eastern boundary is Val Verde; south to Gibson to Smith; west to Girard; and north to Silver.
	Within Bernalillo County, areas bounded by: (1) Eastern boundary is Louisiana and San Pedro; south to Kirtland AFB and the Sunport; west to Girard to Val Verde; and north to Central and Anderson. (2) Eastern boundary is Wyoming; south to Central and Coal; west to I–25; and north to I–40 and Indian School. (3) Eastern boundary is Eubank; south to Indian School; west to Wyoming; and north to Montgomery. (4) Eastern boundary is Edith; south to Ortego Road; west to Rio Grande River; and north to the Bernalillo County line. (5) Eastern boundary is Rio Grande River; south to I–40; west to Petroglyphs; north to the Bernalillo County line. (6) Eastern boundary is Coors Road; south to Blake Road; west to 98th Street; and north to Bridge Blvd. (7) Eastern boundary to Tapia; south to Arenal; west to Coors; and north to Bridge Blvd. (8) Eastern boundary is Rio Grande River; south to Rio Bravo; west to Tapia to Joe Sanchez; and north to Bridge Blvd. (9) Eastern boundary is I–25; south to Isleta Indian Reservation; west to Coors; and north to Rio Bravo. (10) Eastern boundary is I–25; south to Rio Bravo; west to Rio Grande; and north to Caldelaria.
Doña Ana	City of Las Cruces.
Lea	Hobbs and Lovington.
Sandoval	Bernalillo, Cuba, and Rio Rancho.
Santa Fe	Entire County.
Torrance	Entire County.
San Juan	Entire County except the Alamo Navajo Reservation.
	The Alamo Navajo Reservation.
Navajo Nation (also see AZ, CO & UT).	Navajo Reservation, Navajo School Board.
Cibola	Pueblo Laguna Reservation.
Dulce	Jicarilla Apache Reservation.
New York:	
Bronx	Communities of:

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	(1) University Heights. (2) Fordham. (3) Riverdale. (4) Morris Heights. (5) Highbridge.
	Mott Haven and surrounding areas of South Bronx.
	Districts 1, 2, 3, and 4.
	(1) 3rd Ave. and Courtland Ave. through E.161st Street; Grand Ave. through East Featherbed Lane; University Ave. through West 182nd Street; East 146th Street through 156th Street; West on St. Anns Ave. and Union Ave. (2) Fulton Ave. to Park Ave. (3) East 171st Street and Prospect Ave. through East 182nd. (4) East 183rd Street and East 187th St. to East Mosholu. (5) North on Longwood Ave. and Boston Rd and Jennings St. (6) Charlotte St. and White Plains Rd. (7) Sedwick Ave. and Goulden Ave. through West 242nd St. (8) West 183rd St. and Grand Concourse through Mosholu to Bruckner Blvd. (9) Mott Haven and Hunts Point (Community Board # 1 & 2). (10) Spuyten Duyvil (Community Board # 8); University Heights (Community Board # 7).
Manhattan	Mid-town Manhattan—Homeless Population. Washington Heights. An area bounded by 14th Street to the west; on the north by East of Broad Street and South of 14th Street and Lower East Side; East River across Delancey St. to Allen St., south on Allen St. to Pike St. to East River. An area bounded by 125 St. to 218 St, Riverside Drive to Harlem River, Edgecomb Ave, St Nicholas Ave; Washington Hgts: FDR Drive east, to Binery to the south. Lower Eastside, north of Broadway and south of 14th Street.
Kings	An area bounded by the Brooklyn Navy Yard on the north; Flatbush and Eastern Parkway on the south and west; and Ashland Place on the east. (1) Borough Park—Community Board 12. (2) Camarsie—Community Boards 17 & 18. (3) Crown Heights—Community Boards 8 & 9.
Richmond	North Shore-Community Board 13.
Queens	Rockaway Peninsula. Northwestern Queens County area, Astoria and Jackson Heights.
Alleghany	Entire County.
Cattaraugus	Entire County.
Wyoming	Entire County.
Chautauqua	Entire County.
Chenango	Entire County.
Dutchess	Entire County.
Herkeimer	Cities of Herkeimer and Rome.
Oneida	City of Utica.
Monroe	City of Rochester.
Onondaga	City of Syracuse.
Rensselaer	Entire County.
Rockland	Village of New Square. The village of Haverstraw and outlying areas, the village of Nyak and outlying areas including Valley Cottage, Congeis, Piermont, and Sparkill.
Schenectady	City of Schenectady.
Orange	The Black Dirt Region of Goshen, Warwick, and Florida; and within the City of Middletown, an area bounded by West Main Street on the northwest, to Wickham Avenue on the northeast, south to Genung Street, and west to West Main Street.
Steuben	Entire County.
Yates	Entire County.
Sullivan	Entire County.
Wayne	Wolcott, Butler, Savannah, Huron, Rose Galen, Sodus, Lyons, Newark.
Westchester	Entire county, excluding the City of White Plains. City of White Plains.
Erie	City of Buffalo: Teen mothers and pregnant women attending the following high schools: Bennett, Lafayette, Grover Cleveland, Emmerson Vocational, South Park, Riverside, Seneca, Kensington, Alternative, City of Schools, Performing Arts, Buffalo Traditional, Hutch Technical, McKinley, Burgard, and City Honors.
Orleans	Entire County.
Genesee	Entire County.
Saratoga	Entire County.
Washington	Entire County.
Suffolk	Central Brookhaven, including Coram, Medford, North Bellport, Seldon, and Ridge.
Madison	Entire County.
Otsego	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
North Carolina:	
Buncombe	Asheville City School District and Buncombe County School District; Districts of Emma, Woodfin and Johnstown.
	Entire County except Asheville City and Emma, Woodfin, and Johnstown.
Caswell	Entire County.
Guilford	Greensboro.
	Entire County outside of Greensboro.
Macon	Entire County.
McDowell	Entire County.
Orange	Entire County.
Pamlico	Entire County.
Carteret	Entire County.
Craven	Entire County.
Jones	Entire County.
Rowan	Entire County.
Davison	Entire County.
Montgomery	Entire County.
Moore	Entire County.
Stanley	Entire County.
Transylvania	Entire County.
Henderson	Entire County.
Union	Monroe.
Wayne	Entire County.
Cumberland	Fayeteville.
Rutherford	Entire County.
Swain	Entire County.
Jackson	Entire County.
North Dakota:	
Barnes	Entire County.
Stutsman	Entire County.
Dickey	Entire County.
Eddy	Entire County.
Foster	Entire County.
Griggs	Entire County.
LaMoure	Entire County.
Logan	Entire County.
McIntosh	Entire County.
Benson	Spirit Lake Reservation.
	Entire County with the exception of the Spirit Lake Reservation boundary.
Ramsey	Entire County with the exception of the Spirit Lake Reservation boundary.
Wells	Entire County.
Ward	Minot Public School District #1 Boundary, which includes the Minot Air Force Base.
Sioux	Boundaries of Standing Rock Reservation.
Grant	Boundaries of Standing Rock Reservation.
Nelson	Entire County.
Steele	Entire County.
Traille	Entire County.
Grand Forks	Emerado, Larimore, Niagra, Northwood, Reynolds, Thompson, and rural portion of the county.
Cass	City of Fargo and West Fargo.
Ohio:	
Adams	Entire County.
Brown	Entire County.
Clermont	Entire County.
Clark	Entire County.
Montgomery	City of Dayton.
Cuyahoga	City of Cleveland: Glenville, Hough, Detroit-Shoreway, Clark-Fulton, and City of East Cleveland.
Darke	Entire County.
Greene	Entire County.
Shelby	Entire County.
Miami	Entire County.
Hamilton	City of Cincinnati: Neighborhoods of Over-the-Rhine, Mount Auburn, Price Hill, West End, Bond Hill, Roselawn, Avondale, Millvale, and Walnut Hills, Westwood, Camp Washington, Evanston, and East End, South Commonville Fairmont, Fay Apartments/English Woods, Winton Hills, Lincoln Heights, Lockland, and Forest Park.
Lake	Entire County.
Lawrence	Entire County.
Lorain	Towns of Lorain, Elyria, Oberlin, Wellington, Columbia Station, and South Amherst.
Medina	Entire County.
Wayne	Entire County.
Morgan	Entire County.
Washington	Entire County.
Pike	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Preble	Entire County.
Richland	Entire County.
Summit	City of Akron: Communities of North Akron, South Akron, West Akron, East Akron.
Guernsey	Entire County.
Monroe	Entire County.
Noble	Entire County.
Fairfield	Entire County.
Mahoning	Entire County.
Allen	Entire County.
Franklin	Linden-McKinley: a south Linden subdivision which is south of Morse Road, east of Interstate 71, north of East Fifth Avenue, and west of Conrail; Pincrest-Whitehall municipality which is south of East Fifth Avenue, east of James Road, north of Livingston Avenue, and west of Hamilton Road; St. Agnes which is the westside of Columbus bounded on the west by Outerbelt 270, east by the Scioto River, south by Clime Road and north by Interstate 70.
Oklahoma:	
Choctaw	Entire County.
McCurtain	Entire County.
Pushmataha	Entire County.
Creek	Entire County.
Okmulgee	Entire County.
Tulsa	An area bounded on the west by the Creek County line; on the south by the Okmulgee County line; on the east by Hwy 75, from the Okmulgee County line north to 71st St., east to Peoria Avenue, and north to 15th St; and on the north by 15th Street to the Arkansas River to the Creek County line
	East Tulsa, Southwest Tulsa, and North Tulsa.
Mays	Entire County.
Rogers	Entire County.
Wagner	Entire County.
Oklahoma	Oklahoma City: an area bounded on the north by North 50th; on the east by Bryant Avenue; on the south by South 44th; and on the west by Meridian Avenue.
Green	Entire County.
Payne	Entire County.
Seminole	Entire County.
Cleveland	Entire County.
Logan	Entire County.
Potawatomi	Entire County.
	The Sac, Fox and Absentee Shawnee Districts of Potawatomi County.
	Potawatomi Reservation, extending north to the North Canadian River; south to the South Canadian River; west to the Indian Meridian Line; and east to the county line.
Seminole	Entire County.
Cherokee	Entire County.
Mayes	Entire County.
Craig	Entire County.
Oregon:	
Hood River	Entire County (also serves Klickitat County in Washington State).
Wasco	Entire County.
Jackson	City of Medford and metropolitan area, and the Illinois Valley.
Josephine	Entire County.
Multnomah	City of Portland: an area bounded by N.E. Skidmore to the north; N.E. Tillamook to the south; 82nd Street to the east; and the Willamette River to the west.
	City of Portland: an area bounded by the Willamette River on the west; the Columbia River on the north; Holgate Blvd on the south; and N.E. 122nd Ave on the east (excluding the Enterprise Zone between N.E. Skidmore and N.E. Tillamook Streets).
	City of Portland: an area bounded by Holgate Ave on the north; the Multnomah County line to the south; SE 45th St. to the west; and 122nd Ave. to the east. After 122nd, the service area extends north to Burnside and out to S.E 162nd Avenue (Lents Junction).
	An area bounded by the Columbia River on the north; Multnomah County line on the east; 122nd Street on the west until Burnside Street, then moving east to 162nd Street, and south to the Clackamas County line.
Umatilla	The communities of Pendleton, Hermiston, Umatilla, and Stanfield.
Marrow	City of Boardman.
Washington	City of Hillsboro.
Jefferson	Warm Springs Indian Reservation.
Pennsylvania:	
Allegheny	Hill District, Uptown, Upper Hill, Middle Hill, Lower Hill, South Oakland, North Oakland, Clairton, City of Clairton, West Mifflin, Wilson, Jefferson, Glassport, Elizabeth, Dravesburg, Sto-Rox, McKees Rocks Borough, Kennedy Township, Esplen, Neville Island, and Stowe Township.
	Bloomfield, East Hills, East Liberty, Friendship, Garfield, Homewood, Larimer, Lawrenceville, Lincoln-Lemington-Belmar, Morningside, Baldwin.

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SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	City of Pittsburgh including: Allentown, Arlington, Arlington Heights, Beltzhoover, Beechview, Brookline, Banksville, Carrick, Duquesne Heights, Glen Hazel, Greenfield, Hays, Hazelwood, Lincoln Place, Knoxville, Mt. Washington, Mt. Oliver, Overlook, St Clair Village, South Side Flats, South Side Slopes; and the County communities: Aspenwall. Blawnox, Cheswick, East Deer, Etna, Fox Chapel, Frazer, Harmar, Indiana, Millvale, Oakmont, O'Hara, Shaler, Sharpsburg, Springdale Borough, Springdale Township, Verona, West Deer.
Beaver	Entire County.
Bedford	Entire County.
Bradford	Entire County.
Tioga	Entire County.
Butler	Entire County.
Centre	Entire County.
Clearfield	Entire County.
Fayette	Entire County.
Fulton	Entire County.
Huntingdon	Entire County.
Indiana	Entire County.
Lackawanna	Entire County.
Wayne	Entire County.
Pike	Entire County.
Susquehanna	Entire County.
Lehigh	Entire County.
Luzeme	Entire County.
Mercer	Entire County.
Snynder	Entire County.
Union	Entire County.
Mifflin	Entire County.
Philadelphia	City of Philadelphia—an area bounded by the Schuylkill River; north to Girard Avenue; west on Girard to Parkside Avenue; north on Parkside Avenue to Belmont Avenue; south on Belmont to Westminster Avenue; west on Wesminster to 50th Street; south on 50th Street to Spruce Street; east on Spruce to 45th Street; and south on 45th Street to the Schuylkill River. City of Philadelphia—an area bounded by Pine Street on the north; Broad Street on the east; Philadelphia Naval Base on the south; and Schuylkill River on the west. City of Philadelphia—North Central Philadelphia Empowerment Zone: 6th Street to 23rd Street, and from Montgomery Street to Poplar Street. City of Philadelphia—An area bounded on the north by Allegheny Avenue; on the south by Norris Street; on the east by 5th Street; and on the west by 17th Street, excluding the North Philadelphia Empowerment Zone area. City of Philadelphia—Frankford Area.
Venango	Entire County.
Washington	Entire County.
Greene	Entire County.
Westmoreland	Entire County.
Dauphin	City of Harrisburg.
Rhode Island:	
Bristol	Bristol, Warren, and Barrington.
Newport	Entire County.
Providence	Town of East Providence. City of Cranston. City of Central Falls, South and Southwest Providence. Towns of Burrillville, Johnston, North Providence, Smithfield, North Smithfield, Glocester, Scituate, and Foster.
Kent	The City of Warwick and the towns of Coventry and West Warwick.
South Carolina:	
Bamberg	Olar, Bamberg City, Denmark, Ehrhardt.
Charleston	West Ashley, downtown Charleston, and Charleston Nech area.
Greenville	City of Greenville: Communities of Nicholtown (including the Jesse Jackson Town Homes), Woodland-Pierce Homes, and Parker District (including Monaghan, San Souci).
Anderson	Honeapath.
Pickens	City of Pickens.
Greenville	Pleasant Valley.
Lancaster	Entire County.
Spartanburg	Entire County.
Sumter	City of Sumter: Sumter School District, Maysville, Dalzell, Wedgefield, Sahw Air Force Base, Pinewood, Rembert, within the eastern section of Sumter County.
Beaufort	St. Helena.
Jasper	Robertville.
Greenwood	Greenwood City.
Saluda	Saluda City.
South Dakota:	
Brookings	Entire County.
Codington	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Hamlin	Entire County.
Lake	Entire County.
Minnehaha	Entire County.
Moody	Entire County.
McCook	Entire County.
Clark	Entire County.
Deuel	Entire County.
Grant	Entire County.
Kingsbury	Entire County.
Miner	Entire County.
Butte	Towns of Belle Fourche, Fruitdale, Newell, Nisland and Vale.
Harding	Towns of Buffalo and Reva.
Perkins	Towns of Bison and Lemmon.
Hughes	Entire County.
Hyde	Entire County.
Jones	Entire County.
Mellette	Entire County.
Stanley	Entire County.
Sully	Entire County.
Meade	Cities of Black Hawk and Sturgis.
Lawrence	Cities of Deadwood, Lead, Spearfish.
Custer	City of Custer.
Fall River	City of Hot Springs.
Haakon	City of Phillip.
Jackson	City of Kadoka.
Pennington	The cities of Box Elder, Ellsworth Air Force Base, Rapid Valley, Rapid City and a 15 mile radius. Rapid City and the communities of Box Elder and Rapid Valley within the incorporated limits of Rapid City.
Jackson	Pine Ridge Reservation.
Shannon	Pine Ridge Reservation.
Robert	Lake Traverse Reservation.
Day	Lake Traverse Reservation.
Marshall	Lake Traverse Reservation.
Clay	Entire County.
Lincoln	Entire County.
Turner	Entire County.
Union	Entire County.
Tennessee:	
Anderson	Andersonville, Briceville, Claxton, Clinton, Dutch Valley, Fairview, Grand Oaks, Lake City, Norris, Norwood.
Carroll	Entire County.
Fayette	Entire County.
Lauderdale	Entire County.
Madison	Entire County.
Obion	Entire County.
Tipton	Entire County.
Bedford	Shelbyville city limits and 10 miles around Shelbyville.
Lawrence	Lawrenceburg city limits and 10 miles around Lawrenceburg.
Giles	Pulaski city limits and 10 miles around Pulaski.
Hamilton	Communities of Soddy—Daisy, Cedar Hill, and the Avondale area of the City of Chattanooga.
Knox	North Knoxville.
Loudon	Entire County.
Roane	Entire County.
Shelby	Frayse, North Memphis, South Memphis, Midtown, Vincent, Alabaster, Columbiana.
Weakley	Entire County.
Gibson	Entire County.
Henry	Entire County.
Williamson	Franklin.
Wilson	Lebanon.
Cannon	Woodbury.
Cheatham	Ashland City.
Robertson	Springfield.
Rutherford	Murfreesboro and Smyrna.
Summer	Gallatin.
Trousdale	Hartsville.
Morgan	Entire County.
Tazewell	Campbell, Hancock, Claiborne, Scott.
Texas:	
Bexar	City of San Antonio—an area on the westside of San Antonio bounded by Woodlawn on the north; U.S. Highway 90 on the south; Interstate 35 on the east; and Callahan on the west. The communities of Fredericksburg II, Circle North, New Westwood, Terrell Plaza, Fort Sam and Mount Zion.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Brazos	Entire County.
Brooks	Entire County.
Jim Wells	Entire County.
Kleberg	Entire County.
Brown	Entire County.
Burnet	An area bounded to the east by the City of Tow; to the north by County Road 206; to the west by the City of Bertram; and to the south by Park Road off State Highway 281.
Williamson	School district boundaries of the cities of Taylor, Georgetown, and Leander as described as: (1) City of Taylor—an area bounded to the east by Morning Glory and Mariposa; to the north by State Highway 95 and the San Gabriel River; to the west by County Road 3349; and to the south by Janick Lane. (2) City of Georgetown—an area bounded to the east by San Gabriel River and State Highway 95; to the north by State Highway 195; to the west by County Road 241; and to the south by County Road 111. (3) City of Leander—an area bounded to the east by County Road 1431 and Sam Bass Road; to the north by State Highway 29; to the west by County Road 1431 West to City of Jonestown; and to the south by County Road 2222 and City Park Road.
Cameron	Entire County.
Willacy	Entire County.
Cochran	Entire County.
Garza	Entire County.
Collin	McKinney Independent School District.
Grayson	Entire County.
Rockwall	Entire County.
Dallas	The communities of: (1) Pleasant Grove—an area bounded by I–635 on the north and east; I–45 on the south; and I–30 on the west. (2) West Dallas—an area bounded by the Trinity River on the north; I–30 on the south; Jefferson Boulevard on the east; and Loop 12 on the west. (3) Irving—an area bounded by Walnut Hill Rd on the north; Hunter Ferrel St. on the south; Walton Walker (Loop 12) on the east; and Beltline Rd on the west. (4) North Oak Cliff—an area bounded by I–30 on the north; Camp Wisdom Road on the south; I–35 on the east; and Duncanville Road on the west.
El Paso	Rural communities of Fabens, San Elizario, Clint, Canitillo, and the following areas in the city limits of El Paso: (1) Socorro/Sparks—an area bounded by Horizon City on the north; I–10 on the south; Bufford Road on the east; and Avenue of the Americas on the south. (2) Northeast—an area bounded by New Mexico State line on the north; Montana Avenue on the south; Loop 375 on the east; and Patriot on the west. (3) Ysleta—an area bounded by I–10 on the north; Border Freeway on the south; Avenue of the Americas on the east; and Delta Drive on the west. (4) Central Area—an area bounded by Montana Avenue on the north; Mexico border on the south; Alameda Avenue on the east; and Paisano Avenue on the west. (5) Canutillo—an area bounded by Vinton Road to the north; Sunland Park to the south; I–10 on the east and the Rio Grande River on the west.
Fort Bend	Entire County.
Gray	Entire County.
Hutchinson	Entire County.
Randall	Entire County, except teen parents residing within Amarillo School District Boundaries.
	Teen parents residing within Amarillo School District Boundaries.
Potter	Entire County, except teen parents residing within Amarillo School District Boundaries.
	Teen parents residing within Amarillo School District Boundaries.
Harris	City of Houston: an area bordered by Tidwell on the north; Hardy and Maury on the east; Yale and Studewood on the west; and IH–10 on the south (also know as Fifth Ward).
	City of Humble: an area bordered on the north by Montgomery County line; on the east by the middle of Lake Houston; on the south by Beltway 8; and on the west by McKay Boulevard up to Spring Creek where it intersects the Montgomery County line.
	Communities of Galena Park and Jacinto City within the City of Houston: an area bordered on the north by the East Fork of the San Jacinto River; on the east by Liberty County; on the south by the north side of Indian Shores; and on the west to the middle of Lake Houston.
	Within Harris County: (1) Gulfton Area—an area bounded by Richmond Street on the north; S. Braeswood Street on the south; Newcastle on the east; and S. Gessner on the west; (2) Spring Branch—an area bounded by Highway 290 on the north; I–10 on the south; Wirt Road (Wirt to Kempwood, Kempwood to Bingle, Bingle to Highway 290) on the east; and Blalock/Campbell Road on the west.
	Within Harris County, an area bordered by: (1) Loop 610 on the north; Loop 610 West to North to East on the south; Hardy Road on the east; and Studewood Street on the west; (2) An area bounded by Tidwell Road on the north; Loop 610 on the south; Hardy Road on the east; and North Main Street on the west;

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
	(3) An area bounded by E. Mt. Houston Road; Lynnfield Road on the south; Hirsch Road on the East; and Hardy Road on the west.
Hays	Entire County.
Caldwell	Entire County.
Hood	Cities of Granbury, Cresson, Lipan, Paluxy, and Thorspring.
Erath	Entire County.
Palo Pinto	Entire County.
Lubbock	City of Lubbock: The Cherry Point neighborhood bordered by Loop 289 and East Municipal Drive on the north; East Broadway on the south; East Idalou Road on the east; and Yellowhouse Canyon on the west.
Mclennan	Eligible residents of an empowerment zone in the City of Waco identified as East Waco, and nearby north and south sections of the city.
Houston	Entire County.
Nacogdoches	Entire County.
Nueces	Entire County.
Scurry	Entire County.
Starr	Rio Grande City.
Duval	City of San Diego.
Jim Hogg	City of Hebronville.
Zapata	Zapata City.
Taylor	Abilene Independent School District boundaries.
Titus	Entire County.
Tom Green	Entire County.
Travis	Entire County.
Uvalde	Entire County.
Zavala	Entire County.
Brazoria	Entire County.
Nolan	Entire County.
Tarrant	Entire County.
Bowie	Entire County.
Utah:	
Carbon	City of Price.
Grand	City of Moab.
San Juan	City of Blanding.
Davis	Davis County School District Boundary.
Utah:	Entire County.
Box Elder (also see Franklin County, Idaho).	Brightman City, Fielding, Garden City, Garland, Thatcher, and Tremonton.
Cache (also see Franklin County, Idaho).	College Ward, Hyde Park, Hyrum, Logan, Mendon, Millville, Nibley, North Logan, Richmond, River Heights, Smithfield, and Wellsville.
Navajo Nation (also see AZ, CO, & NM).	Navajo Reservation, Navajo School Board.
Washington (also see Colorado City in Mohave County, AZ).	St. George and Hurricane.
Vermont:	
Caledonia	Entire County.
Essex	Entire County.
Orleans	Entire County.
Lamoille	Entire County.
Orange	Entire County.
Washington	Entire County.
Windham	Entire County.
Virginia:	
Buchanan	Entire County.
Dickerson	Entire County.
Russell	Entire County.
Washington	Entire County.
Fairfax	Cities of Fairfax and Falls Church and South Fairfax County from I–495 to Prince William County.
City of Alexandria	City of Alexandria—Rt. 1 Corridor.
Isle of Wight	Entire County.
Southhampton	Entire County.
City of Franklin	Entire City.
City of Suffolk	Entire City.
York	Entire County.
James City County	Entire County.
City of Williamsburg	Entire City.
Arlington	Entire County.
Loudoun	Entire County.
Prince William	Entire County.
Roanoke	City of Roanoke.
Newport News	City of Newport News—from Jefferson Street east.
Wise	Entire County.

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SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Orange	Entire County.
Washington:	
Asotin (also see Nez Perce County, ID).	Entire County.
Chelan	Entire County.
Douglas	Entire County, except for Community of Bridgeport.
	Bridgeport.
Yakima	City of Yakima.
	Towns of Grandview, Sunnyside, Mabton, Granger, Toppenish and White Swan.
Clark	Entire County.
Ferry	Entire County.
Pend Oreille	Entire County.
Steven	Entire County.
Grant	Entire County.
Island	Entire County.
Skagit	Entire County.
San Juan	Entire County.
King	City of Seattle: Ballard and West Seattle—an area bounded on the east by Lake Washington; on the west by Puget Sound; on the north by 145th Street; on the southwest by Roxbury Street; on the southeast by Juniper Street (excluding the garden communities of Holly Park, Yesler Terrace, Rainier Vista and High Point).
	City of Seattle: Central District of Seattle bounded on the north by East Madison St and Lake Washington Blvd; on the south by Interstate 90; on the east by Lake Washington; and on the west by Rainier Avenue South, South Main Street, Interstate 5, James Street and 12th Avenue.
	City of Seattle: Yesler Terrace, Holly Park, High Point, and Rainier Vista Public Housing Districts.
	Communities of Kent, Renton, Auburn, Skyway, Tukwilla, Southeast King County, and Federal Way.
Walla Walla	The City of Walla Walla, Farm Labor Homes Community and College Place.
Kitsap	South Kitsap School District (Discovery High School), students who attend Olympic College, and City of Port Orchard.
	Cities of Bremerton, West Bremerton and Poulsbo.
	Port Madison Indian Reservation.
	Port Gamble S'Klallam Reservation.
Klickitat (also see Hood River and Wasco Counties, OR).	Entire County.
Pierce	School Districts: Clover Park; Bethel; Peninsula; the teen parents attending the Tacoma School District and the Woman's Correctional Center in Purdy, Washington.
Snohomish	City of Everett.
Spokane	The City of Spokane and surrounding metropolitan area; and students attending Community Colleges in the City of Spokane.
Whatcom	Entire County.
Jefferson	Entire County.
Clallam	Entire County.
West Virginia:	
Brooke	Entire County.
Marshall	Entire County.
Wetzel	Entire County.
Cabel	Cities of Huntington and Barboursville.
Lincoln	Towns of Harts and Ranger.
Wayne	Towns of Crum and Fort Gay.
Marion	City of Fairmont.
Randolph	Entire County.
Tucker	Entire County.
Preston	Entire County.
Monongalia	Entire County.
Wyoming	Entire County.
Wisconsin:	
Adams	Entire County.
Columbia	Entire County.
Dodge	Entire County.
Juneau	Entire County.
Sauk	Entire County.
Dane	Entire County.
Barron	Entire County.
Chippewa	Entire County.
Dunn	Entire County.
Grant	Entire County.
Richland	Entire County.
Kenosha	City of Kenosha—neighborhoods of Wilson Heights and Bain.
Brown	Entire County.
Manitowac	Entire County.
Forest	Entire County.
Oneida	Entire County.

SERVICE AREAS FOR CURRENT EARLY HEAD START GRANTEES AS OF FY 2002—Continued

State and county	Service area (local community)
Vilas	Entire County.
Pierce	Entire County.
Polk	Entire County.
Pepin	Entire County.
St. Croix	Entire County.
Milwaukee	City of Milwaukee—an area bounded on the north by Capital Drive; on the east by Hwy 43; on the south by Wisconsin Ave.; and on the west by Sherman.
Waukesha	Entire County.
Kesheua	Menominee Reservation.
Rock	Entire County.
Bayfield	Red Cliff Reservation.
Vilas	Lac du Flambeau Reservation.
Wyoming:	
Big Horn	Entire County.
Hot Springs	Entire County.
Washakie	Entire County.
Converse	Entire County.
Goshen	Entire County.
Natrona	Entire County.
Niobrara	Entire County.
Platte	Entire County.
Fremont	Wind River Indian Reservation.
Campbell	Entire County.
Teton	Entire County.
Sublette	Entire County.
Laramie	Entire County.
District of Columbia	(1) In Ward One, an area bounded on the northeast by Spring Road; on the northwest by Piney Branch Parkway; on the east by Michigan Avenue to Florida Avenue; on the southeast by S Street; and on the west by Rock Creek.
	(1) In Ward Two an area bounded on the northeast by New Jersey, Florida Avenue and S Street; on the northwest by Florida Avenue; on the east by Florida Avenue and Southwest Freeway; on the southeast by the Anacostia River; and on the west by the Potomac River.
	(1) In Ward Four an area bounded on the northeast by Eastern Avenue; on the northwest by Western Avenue; on the southeast by Michigan Avenue; and on the southwest by Rock Creek.
	(2) In Ward Five an area bounded on the northeast by Eastern Avenue; on the northwest by South Dakota; on the southeast by the Anacostia River; on the southwest by Florida Avenue; and on the west by Harewood Road.
	Sections of Wards One, Two and Four, which includes the areas of Shepherd Park, Upper Cordoza, Adams Morgan, and Mount Pleasant.
Commonwealth of Puerto Rico:	
Municipality of Carolina	Entire Municipality.
Municipality of Cayey	Entire Municipality.
Municipality of Cidra	Entire Municipality.
Municipality of Luquillo	Entire Municipality.
Municipality of Trujillo Alto	Entire Municipality.
Municipality of Humacao	Entire Municipality.
Municipality of Ceiba	Entire Municipality.
Municipality of Juncos	Entire Municipality.
Municipality of Loiza	Entire Municipality.
Municipality of Canovanas	Barrio Cuboy in Canovanas.
Municipality of Rio Grande	Entire Municipality.
Municipality of Naguabo	Entire Municipality.
Municipality of Toa Baja	Entire Municipality.
Municipality of Catano	Bajo Costo.
	Barrio Palmas in the Municipality of Catano.
Municipality of Coamo	Las Flores in the Municipality of Coamo.
Municipality of Vega Alta	Vega Alta (Muchauchal and Santa Ana).
Municipality of San Juan	Cantera in the Municipality of San Juan.
	Barrios: Hato Rey Norte and the sub-barrios of Puerto Nuevo, Nemesio R. Canales Public Housing Project.
Municipality of Ponce	Entire Municipality.
Municipality of Santa Isabel	Entire Municipality.
Municipality of Bayamon	Entire Municipality.
Municipality of Barceloneta	Entire Municipality.
Municipality of Guaynabo	Entire Municipality.
Municipality of Sabana Grande	Entire Municipality.
Municipality of Caguas	Entire Municipality.
Municipality of San Sebastian	Entire Municipality.
Municipality of Arecibo	Entire Municipality.
Virgin Islands: Island of St. Croix	St. Croix.

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[FR Doc. 02-5948 Filed 3-13-02; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0070]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit written or electronic comments on the collection of information by May 13, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring (OMB Control No. 0910-0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105-115), FDA published a final rule (64 FR 26657, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products [1] already in place under the authorities of the act and the PHS act. The information, which is usually submitted as part of a new drug application (NDA) or biologics license application (BLA) or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA received during fiscal years 2000 and 2001, FDA estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB until February 28, 2002, under OMB Control No. 0910-0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

[1] The information collection requirements for biological products are no longer submitted for approval to OMB in this package, but are included under OMB Control No. 0910-0124.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000
Total					4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-6095 Filed 3-13-02; 8:45 am]
BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1672]

Ashford Blood Bank, Inc.; Revocation of U.S. License No. 0740-001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics license (U.S. License No. 0740-001) issued to Ashford Blood Bank, Inc., for the manufacture of Whole Blood and Red Blood Cells. Ashford Blood Bank, Inc., did not respond to a notice of opportunity for a hearing on a proposal to revoke its license.

DATES: The revocation of the biologics license (U.S. License No. 0740-001) is effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the biologics license (U.S. License No. 0740-001) issued to Ashford Blood Bank, Inc., Ashford Medical Center, suite 401-402, Santurce, PR 00907, for the manufacture of Whole Blood and Red Blood Cells. FDA initiated proceedings to revoke the biologics license because: (1) Authorized FDA employees were unable to gain access to either of the establishment's locations for the purpose of carrying out a required inspection of the facility as mandated under § 600.21 (21 CFR 600.21), and (2) manufacturing of products had been discontinued to an extent that a meaningful inspection or evaluation could not be made. In a certified, return-receipt letter dated October 28, 1997, FDA notified an authorized official of the firm that FDA had suspended the establishment's biologics license for the manufacture of Whole Blood and Red Blood Cells at its facilities at Santurce, PR, and Bayamon, PR. This action was based on the fact that significant deviations from the regulations were noted by FDA's San Juan district office during inspections of the facilities conducted August 19, 1997, through September 17, 1997, and September 9, 1997, through September 17, 1997, respectively. FDA's San Juan district office attempted to conduct additional inspections of the two Ashford facilities. On May 1, 1998, FDA investigators attempted to inspect the satellite collection facility at Bayamon, PR, but found that the facility was no longer in operation, and the manufacturing of Whole Blood and Red Blood Cells had been discontinued. On November 23, 1999, FDA investigators attempted to inspect the main facility in Santurce, PR, but found that the facility was no longer in operation and the manufacturing of Whole Blood and Red Blood Cells had been discontinued.

In certified, return-receipt letters dated April 13, 2000, sent to the establishment's facility at Santurce, PR, and also to the Ashford Blood Bank, Inc., P.O. Box 195034, San Juan, PR, 00919, FDA notified an authorized official of the firm that FDA's attempt to conduct inspections of the two facilities at Santurce, PR and Bayamon, PR were unsuccessful because the facilities were no longer in operation and the manufacture of Whole Blood and Red Blood Cells had been discontinued. The letter advised the establishment that, under § 601.5(b)(l) and (b)(2) (21 CFR 601.5(b)(1) and (b)(2)) (now codified as § 601.5(b)(1)(i) and (b)(1)(ii)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection required under § 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection could not be made at the establishment, FDA may initiate proceedings for license revocation. FDA also stated that a meaningful inspection could not be made at the establishment's facilities and issued to the establishment a notice of FDA's intent to revoke U.S. License No. 0740-001 and announced its intent to offer an opportunity for a hearing.

Under § 12.21(b) (21 CFR 12.21(b)), FDA published in the **Federal Register** of February 6, 2001 (66 FR 9087), a notice of opportunity for a hearing on a proposal to revoke the biologics license of Ashford Blood Bank, Inc. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the establishment because it was no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The notice provided the establishment 30 days to submit a written request for a hearing and 60 days to submit any data and information

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justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The establishment did not respond within the 30-day time period with a written request for a hearing, and under § 12.21(b), the 30-day time period prescribed in the notice of opportunity for a hearing may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the biologics license (U.S. License No. 0740–001) issued to Ashford Blood Bank, Inc., is revoked, effective March 14, 2002.

Dated: March 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6096 Filed 3–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1610–DO–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meetings.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces the schedule of meetings for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as "National Monument"). The meetings will be held on the following dates:

Saturday, April 6, 2002
Saturday, June 1, 2002
Saturday, August 3, 2002
Saturday, October 5, 2002
Saturday, December 7, 2002
Saturday, February 1, 2003

The meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meetings will take place from 9 a.m. until 4:00 p.m. There will be a half hour dedicated to public input during both the first half hour of the meetings and at the last half hour of the meetings. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings and provide a written copy of their statement. All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (*http://www.ca.blm.gov/palmsprings/.*) The subject matter of each meeting will focus on the development and implementation of the Santa Rosa San Jacinto Mountains National Monument Management Plan.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meetings will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: April 6, 2002; June 1, 2002; August 3, 2002; October 5, 2002; December 7; 2002; February 1, 2003; All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 9 to 9:30 a.m. and an afternoon public comment period from 3:30 to 4 p.m.

ADDRESSES: The meetings will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov.* Information can be found on our webpage: *http://www.ca.blm.gov/palmsprings/.* Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: February 7, 2002.

Danella George,

Designated Federal Official, National Monument Manager.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 02–6165 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–02–0046; WAOR–22434, WAOR–22369]

Public Land Order No. 7515; Modification of Secretarial Orders Dated October 10, 1905 and February 2, 1912; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies two Secretarial orders insofar as they affect 97.95 acres of public lands withdrawn for the Bureau of Reclamation's Yakima-Tieton Reclamation Project. The action will open the lands to exchange only.

EFFECTIVE DATE: March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated November 10, 1905 and February 2, 1912, which withdrew lands for the Bureau of Reclamation's Yakima-Tieton Reclamation Project, are hereby modified insofar as they affect the following described public lands to allow for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1716 (1994):

Willamette Meridian

T. 14 N., R. 16 E.,
  Sec. 12, SE¼SW¼.
T. 12 N., R. 17 E.,
  Sec. 6, lot 10.
T. 13 N., R. 17 E.,
  Sec. 10, SE¼NE¼ and E½E½SE¼SW¼NE¼;
  Sec. 20, NE¼NW¼NW¼.

The areas described aggregate 97.95 acres in Yakima County.

2. The lands described in paragraph 1 are hereby made available for exchange in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. 1716 (1994), subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law.

Dated: February 15, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–6119 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1610–DO–083A]

Notice of intent To Prepare a Land and Resource Management Plan

AGENCY: Bureau of Land Management; Palm Springs-South Coast Field Office, and the United States Forest Service, San Bernardino National Forest.

ACTION: Notice of intent to prepare a Land and Resource Management Plan (LRMP) for the Santa Rosa and San Jacinto Mountains National Monument, designated by Congress on October 24, 2000. This action will require a single Environmental Impact Statement (EIS). The planning area is located in Riverside County, California.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) and United States Forest Service (USFS) intend to prepare an LRMP with an associated EIS for the Santa Rosa and San Jacinto Mountains National Monument located within the BLM Palm Springs-South Coast Field Office and the San Bernardino National Forest. This planning activity encompasses approximately 150,800 acres of Federally managed public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, and BLM and USFS management policies. The BLM and USFS will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues, develop planning criteria, and will include an evaluation of the existing BLM and USFS land and resource management plans in the context of the needs and interests of the public and conservation of natural and cultural resources specified in the legislation.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria may be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*www.ca.blm.gov*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and document preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among the communities located within the Santa Rosa and San Jacinto Mountains and the cities of the Coachella Valley, Riverside County. Meeting sites will also be provided throughout southern California commensurate with interest in the National Monument. Early and ongoing participation is encouraged and will help determine the future management of Federally managed public lands within the Santa Rosa and San Jacinto Mountains National Monument. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the draft LRMP/EIS. Written comments will be accepted and considered throughout the entire planning process.

ADDRESSES: Written comments should be sent to Mr. James G. Kenna—Field Manager, Palm Springs-South Coast Field Office, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by email at *cdunning@ca.blm.gov.* Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 7:45 a.m. to 4:30 p.m.,

Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Ms. Connell Dunning at (760) 251–4817, *cdunning@ca.blm.gov*, or Elena Misquez at (760) 251–4810, *emisquez@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The creation of the Santa Rosa and San Jacinto Mountains National Monument along with the changing needs and interests of the public necessitates a separate stand-alone plan for the Monument. This action requires a maintenance action to BLM's California Desert Conservation Area Plan (as amended in 1980) to change its planning boundary and an amendment to the USFS's San Bernardino National Forest Land and Resource Management Plan. A management plan for the Santa Rosa and San Jacinto Mountains National Monument will facilitate coordination and efficiency between the BLM and USFS as joint Federal leads, and to focus collaborative efforts with state and local government, the Agua Caliente Band of Cahuilla Indians and interested public. This joint BLM–USFS planning document will require a single EIS and two separate Records of Decision (ROD).

Preliminary issues and management concerns have been identified by BLM and USFS personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues identified thus far represent the USFS and BLM's knowledge to date on the existing issues and concerns with current management, but are not limited to these. The major issue themes that will be addressed in the plan effort include:

- Integrating monument management with community, tribal, and other agency needs.
- Recreation/visitor use and safety.
- Access and transportation on the public lands; management and protection of public land resources; and balancing multiple uses.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan.
2. Issues resolved through policy or administrative action.
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, archaeology, paleontology, wildlife and plants, lands and realty, hydrology, soils, geographic information systems, rangeland management, minerals and geology, forestry, sociology and economics. Where necessary, outside expertise may be used.

Dated: October 11, 2001.

Danella George,

Acting Field Manager, Bureau of Land Management.

Gene Zimmerman,

Forest Supervisor, Forest Service, USDA.

[FR Doc. 02–6166 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 15, 2002.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Pacific Northwest Regional Office, Attention Ms. Vicki Kellerman, 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information form, contact Ms. Vicki Kellerman at (208) 378–5326.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodoly and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

Title: Ririe Reservoir Recreation Survey.

Abstract: Ririe Reservoir is located on Willow Creek, a minor tributary of the Snake River in Bonneville County of eastern Idaho. Ririe Reservoir has recreation attributes that serve Idaho Falls, Ririe, and southeastern Idaho, as well as out-of-state visitors. Primary summer activities consist of boating, swimming, fishing, camping, and picnicking. In general the survey will be used to determine carrying capacity for recreation uses on both Reclamation lands and water, and necessary management actions related to recreation, as identified in the Resource Management Plan for this reservoir. Further, the survey will determine if and when boat ramps, docks, trails, parking, and other facilities need to be expanded for recreation during the next 10 years and if the expansion can be accomplished without detriment to natural, recreational, and cultural resources.

Description of respondents: Ririe Reservoir recreationists from Idaho Falls, Ririe, southeastern Idaho, and an indeterminate diversity of out-of-state visitors to Ririe Reservoir.

Frequency: This is a one-time voluntary survey.

Estimated completion time: An average of 30 minutes per respondent.

Annual responses: 250 respondents.

Annual burden hours: 125.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the forms.

The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 13, 2001 (66 FR 64454). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Jerrold D. Gregg,

Area Manager.

[FR Doc. 02–6113 Filed 3–13–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 60-day notice of information collection under review: new collection; Domestic Preparedness Training Evaluation and Follow-up.

The Department of Justice, Office of Justice Programs, Office for Domestic Preparedness has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 13, 2002.

If you have comments, suggestions, or need a copy of the proposed information collection instrument or additional information, please contact Patricia A. Malak, 202–616–3461, Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposal collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: New collection

(2) The title of the form/collection: Domestic Preparedness Training Evaluation and Follow-up.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: The Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice is sponsoring the collections. A form number has not been assigned.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals who participate in Office for Domestic Preparedness-sponsored training other: None.

Abstract: The data collection effort is designed to obtain feedback from participants, who attend Office for Domestic Preparedness-sponsored training, on enhanced knowledge and/or skills, course improvements, and actions to use the information to improve personal, agency, or jurisdictional preparedness to respond to a terrorism incident. Approximately 4 months after the training, a sample of participants will be asked to complete a follow-up survey on how useful the training has been to them in performing their job actions they have taken to enhance response capacities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.* It is estimated that approximately 21,390 respondents will be asked to complete the training evaluation forms and that will take approximately 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete evaluation forms is approximately 5,347 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530– or via facsimile at (202) 514–1590.

Dated: March 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–6109 Filed 3–13–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancy of Unexpired Term of Investment Counseling Member

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 20 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be

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representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The un-expired term of one member of the Council who has been serving as the investment-counseling representative is now open to nominations as the member has resigned from the Advisory Council. There are two years remaining of the un-expired term. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent the field specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before April 10, 2002. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC this 11th day of March 2002.

Ann L. Combs,

Assistant Secretary of Labor Pension and Welfare Benefits Administration

[FR Doc. 02–6164 Filed 3–13–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–037)]

National Environmental Policy Act; NASA Routine Payloads for Expendable Launch Vehicles

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental assessment (DEA) for launch of NASA routine spacecraft as payloads on expendable launch vehicles.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued a DEA for launch of NASA routine spacecraft as payloads on expendable launch vehicles. This DEA addresses the potential environmental impacts associated with preparing and implementing the launch of missions that are designated routine payloads on U.S. expendable launch vehicles from existing U.S. facilities using established procedures. The spacecraft covered by this DEA (referred to as routine payload spacecraft) would meet rigorously defined criteria ensuring that the spacecraft, their operation, and their decommissioning would not present any new or substantial environmental and safety concerns. A Routine Payload Checklist (RPC) is used to exclude missions from consideration as routine payloads if they include any extraterrestrial sample return; would be launched on a vehicle and launch pad combination not covered in this DEA; carry radioactive sources that could not be approved by the NASA Office of Safety and Mission Assurance (OSMA) Nuclear Flight Safety Assurance Manager (NFSAM); cause the manifested launch rate (per year) for a particular launch vehicle to exceed the rate previously approved and permitted at the launch sites; require the construction of any new facilities (or substantial modification of existing facilities); utilize hazardous materials in quantities exceeding the Envelope Payload Characteristics (EPCs); utilize potentially hazardous material whose type or amount would not be covered by new or existing local permits or is not included within the definition of the Envelope Spacecraft (ES); release material other than propulsion system exhaust or inert gases into the atmosphere; suggest the potential for any substantial impact on public health and safety not covered by this DEA; have the potential for substantial effects on the environment outside the United States; utilize an Earth-pointing laser system that does not meet the requirements for safe operations according to American National Standards Institute (ANSI) analysis techniques; carry live or inactive disease-causing biological agents; or have the potential to create substantial public controversy related to environmental issues. The proposed launches would occur from existing launch facilities at Cape Canaveral Air Force Station (CCAFS), Florida, and Vandenberg Air Force Base (VAFB), California, during the period 2002 to 2012. Spacecraft that comply with the RPC would utilize materials, quantities of materials, launch vehicles, and operational characteristics that are consistent with normal and routine spacecraft preparation and flight activities at VAFB, CCAFS, and Kennedy Space Center (KSC), Florida. Therefore, the environmental impacts of launching routine payload spacecraft would fall within the range of routine, ongoing, and previously documented impacts associated with approved programs that have been determined not to be significant. The purpose and need for this proposed action is to fulfill NASA's mission for Earth exploration, space exploration, technology development, and scientific research. The scientific missions associated with NASA routine payload spacecraft could not be accomplished without launching orbital and interplanetary spacecraft.

DATES: Comments must be provided in writing to NASA on or before April 15, 2002.

ADDRESSES: Comments should be addressed to Mark R. Dahl, Program Executive, NASA Headquarters, Code SM, Washington, DC 20546. Hard copy comments are preferred, but comments may be sent by electronic mail to *mdahl@hq.nasa.gov*. The DEA may be reviewed at the locations listed under the supplementary information in this notice.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, 202–358–4800; *mdahl@hq.nasa.gov*. The DEA also is available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/routine_EA/index.htm*.

SUPPLEMENTARY INFORMATION: U.S. space and Earth exploration is integral to NASA's strategic plan for carrying out its mission. NASA is also committed to the further development of advanced, low-cost technologies for exploring and utilizing space. To fulfill these objectives, a continuing series of scientific spacecraft would need to be designed, built, and launched into Earth orbit or towards other bodies in the Solar System. These spacecraft would flyby, encounter, orbit about, land on, or impact with these bodies to collect various scientific data that would be transmitted to Earth via radio for analysis. The scientific missions associated with NASA routine payload spacecraft could not be accomplished without launching such scientific spacecraft.

The proposed action is comprised of preparing, launching, and decommissioning missions designated NASA routine payload spacecraft. The design and operational characteristics and, therefore, the environmental impacts of routine payload spacecraft would be rigorously bounded. Routine payload spacecraft would utilize materials, launch vehicles, facilities, and operations that are normally and customarily used at Vandenberg Air Force Base (VAFB), California, and Cape Canaveral Air Force Station (CCAFS) and Kennedy Space Center (KSC), Florida. The routine payload spacecraft would use these materials, launch vehicles, facilities, and operations only within the scope of activities already approved or permitted. The scope of this DEA includes all spacecraft that would meet specific criteria on their construction and launch, would accomplish the requirements of NASA's research objectives, and would not present new or substantial environmental impacts or hazards. These spacecraft would meet the limitations set forth in the Routine Payload Checklist (RPC), which was developed to delimit the characteristics and environmental impacts of this group of spacecraft. Preparation and launch of all spacecraft that are defined as routine payloads would have environmental impacts that fall within the range of routine, ongoing, and previously documented impacts associated with approved missions that have been determined not to be significant. Alternative spacecraft designs that exceed the limitations of the RPC may have new or substantial environmental impacts or hazards and are not covered by this DEA. Foreign launch vehicles would require individual consideration, review, and separate environmental analysis, and were not considered to be reasonable alternatives for the purpose of this routine payload spacecraft DEA. The No-Action Alternative would mean that NASA would not launch scientific spacecraft missions defined as routine payloads using specific criteria and thresholds. NASA would then continue to propose spacecraft missions for individualized review under NEPA. Such duplicate analyses and redundant documentation for spacecraft missions that meet the limitations of the RPC, however, would not present any new information or identify any substantially different environmental impacts.

The expendable launch vehicles (ELVs) proposed for launching the routine payload spacecraft represent domestic (U.S.) ELVs that would be suitable for launching the routine payload spacecraft, would potentially be available during the 2002 to 2012 period, have documented environmental impacts, and would utilize existing launch facilities. The ELVs included in this action are the Atlas series, Delta series, Taurus, Athena series, Pegasus XL, and Titan II. These launch vehicles would accommodate the desired range of payload masses, would provide the needed trajectory capabilities, and would provide highly reliable launch services. Individual ELVs would be carefully matched to the launch requirements of each particular routine payload spacecraft. For the NASA routine spacecraft missions, the potentially affected environment for normal launches includes the areas at and in the vicinity of the two launch sites, CCAFS in Florida, and VAFB in California. For normal launches of routine payloads under the proposed action, the environmental impacts would be associated principally with the exhaust emissions from the launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near each launch complex, particularly if a rain storm occurred. To minimize the potential for disturbance of protected wildlife species, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act of 1973 (as amended) is required. Routine payload processing and launch activities would not require any additional permits or mitigation measures beyond those already existing, or in coordination, for VAFB or CCAFS launches.

There are no direct or substantial environmental impacts, including cumulative impacts, associated with the proposed action that have not already been covered by NEPA documentation for the existing launch sites, launch vehicles, launch facilities, and payload processing facilities. NASA missions covered by this DEA would be manifested at VAFB or CCAFS and would be within the total number of launch operations previously analyzed in launch vehicle and launch site NEPA documents.

The DEA may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546 (202–358–0167).

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Penny Myers beforehand at 321–867–9280 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The DEA may be examined at the following NASA Centers by contacting the appropriate Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–258–3689).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–6255).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DEA are available, on a first request basis, by contacting Mr. Dahl at the address or telephone number indicated herein.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–6169 Filed 3–13–02; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27495]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 8, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

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provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 2, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 2, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9897)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, Allegheny Ventures, Inc. ("Ventures"), a direct wholly owned nonutility subsidiary company of Allegheny, both located at 10435 Downsville Pike, Hagerstown, Maryland 21740; and Allegheny Energy Supply Company, L.L.C. ("AE Supply"), 4350 Northern Pike, Monroeville, Pennsylvania 15146–2841, a direct wholly owned generating subsidiary company except by order under section 3(a)(2) of the Act and direct held by Allegheny; (collectively, "Applicants") have filed a post-effective amendment under sections 6(a) and 7, of the Act, and rules 53 and 54 under the Act.

By order dated December 31, 2001 (HCAR No. 27486) ("Order"), the Commission authorized, among other things, through July 31, 2005 ("Authorization Period"): (1) Allegheny to issue up to $1 billion in equity securities [1] and (2) Allegheny and/or AE Supply to issue short-term debt [2] and long-term debt in an aggregate amount up to $4 billion. Applicants now seek to amend the authorization granted in the Order.

Specifically, Applicants now make the following requests:

(1) Allegheny to issue up to an aggregate of $1 billion at any one time outstanding through the Authorization Period to issue and sell, common stock or options, warrants or other stock purchase rights exercisable for common stock or contracts to purchase common stock in public or privately negotiated for cash or as consideration for the acquisition of equity securities or assets of other companies, provided in section 32 and 33 of the Act and under rule 58; and

(2) Allegheny and AE Supply seek to modify the Order to extend the maturity of the Notes from 270 days to 364 days.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–6103 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Specifically, the Order stated, "Allegheny may issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions for cash or as consideration for the equity securities or assets of other companies, provided that the acquisition of securities of the equity securities or assets has been authorized in this proceeding, a separate proceeding, or is exempt by the Act or the rules under the Act."

[2] The Order generally provided that short-term debt will not have a maturity of less than one day and not more than 364 days. The Order also provided that notes payable to banks would have a maturity of not more than 270 days after the date of issuance or renewal ("Notes").

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13841]

Issuer Delisting; Notice of Application for Withdrawal From Listing and Registration on the American Stock Exchange LLC (the Rottlund Company, Inc., Common Stock, Par Value $.10 Per Share)

March 8, 2002.

The Rottlund Company, Inc., a Minnesota corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, par value, $.10 per share ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

On March 5, 2002, the Board of Directors of the Issuer ("Board") approved a resolution to withdraw the Issuer's Security from the Amex. On January 24, 2002, the Issuer commenced a tender offer to purchase any and all of the outstanding shares of its Security, pursuant to the terms and conditions set forth in the Issuer's Tender Offer Statement filed with the Commission (the "Offer"). The Offer expired on March 6, 2002 and, as a result, the Issuer no longer meets Amex's required maintenance standards concerning the number of registered shareholders of the Security. In addition, the Issuer also cites the following reasons for withdrawal of its Security from the Amex; (i) the Security has had historically low trading prices and trading volume; (ii) the costs of remaining a publicly-traded company are significant; (iii) the Issuer has not been able to realize the benefits associated with being a publicly-traded company; and (iv) as a result of the merger, the Issuer will no longer have any public shareholders. Consequently, the Issuer has not made alternative arrangements for the trading of the Security following its delisting from the Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing and registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before March 29, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6163 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following additional meeting during the week of March 4, 2002: An additional closed meeting was held on Tuesday, March 5, 2000 at 5:45 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting held on Tuesday, March 5, 2002 was: Regulatory matter concerning financial markets.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 11, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6215 Filed 3–11–02; 4:47 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45524; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; the Depository Trust Company, the Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Notice of Filing of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company ("DTC"), The Options Clearing Corporation ("OCC"), National Securities Clearing Corporation ("NSCC"), Emerging Markets Clearing Corporation ("EMCC"), Government Securities Clearing Corporation ("GSCC"), and MBS Clearing Corporation ("MBSCC") (collectively referred to as the "clearing corporations"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2000–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) as described in Items I, II, and III below, which items have been prepared primarily by DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into a multilateral cross-guaranty agreement ("Multilateral Agreement").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission the clearing corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The clearing corporations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At the present time, there are limited cross-guaranty agreements ("bilateral agreements") in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC);[3]

(2) MBSCC and Participants Trust Company;[4]

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation ("ISCC");[5]

(4) NSCC and OCC;[6] and

(5) EMCC and each of NSCC, GSCC, and ISCC.[7]

In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the common member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the common member in excess of the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03](orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

[4] Participants Trust Company has been merged into DTC. Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01].

[5] ISCC has ceased operations and is no longer a registered clearing agency. Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11].

[6] Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12].

[7] Securities Exchange Act Release No. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–NSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

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common member's liabilities, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency, and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess which the clearing agency with the excess may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the common member has a deficiency of assets to satisfy its liabilities.

Background

The proposed Multilateral Agreement is similar in purpose to the existing bilateral agreements but differs in form, scope, and operation because (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person ("ceases to act") and if that person is a member or participant of two or more clearing agencies ("common member"), such clearing agency must give each other clearing agency a notice ("default notice") that it has ceased to act for such common member (thereafter, "defaulting member"). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given ("participating clearing agency") will have fifteen business days to deliver to each other participating clearing agency a statement ("information statement") that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the "available net resources" of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources ("payor clearing agency") has an obligation to make a payment ("guaranty obligation") to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources ("payee clearing agency") will have an entitlement to receive a payment ("guaranty entitlement") from each participating clearing agency with positive available net resources, in an amount determined by a formula set forth in the Multilateral Agreement which: (i) Limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to each of the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency or (c) has become the subject of an insolvency proceeding or has become a "failed member" within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any clearing agency to secure the obligations and liabilities of such member or participant, first, to such clearing agency and, second, to other clearing agencies to the extent of any excess assets. The Multilateral Agreement, therefore, should reduce risk to the clearing agencies (and to the national system for the clearance and settlement of securities transactions) because a defaulting common member may have positions spread across the clearing agencies in such manner as to cause its available net resources at one or more clearing agencies to be positive even though its available net resources at one or more other clearing agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below.

If at any time within four years after any payment is made with respect to a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency a notice thereof ("adjustment notice"). Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a statement ("supplemental information statement") which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies (whether or not DTC is a participating clearing agency with respect to such default) and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments as a result of the recalculation of guaranty obligations and guaranty entitlements described above will debit their settlement accounts the amounts they are obligated to pay and will credit the settlement accounts of the participating clearing agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose. So, if as a result of a recalculation of guaranty obligations and guaranty entitlements, a participating clearing agency which was a payor clearing agency has an increased payment obligation or a participating clearing agency which was a payee clearing agency is now required to make a payment, the amount of that payment will be limited to the net assets of the defaulting member then in the possession of the participating clearing agency plus the net amount of any payments it previously received from other participating clearing agencies regarding the same claim.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement upon ten days' advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. DTC may terminate the Multilateral Agreement entirely on one year's advance written notice. However, any such withdrawal or resignation will not affect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement, NSCC, EMCC, GSCC, MBSCC, and OCC will be terminating the bilateral agreements so that there will be no issues of conflict or priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement ("New DTC–NSCC Agreement"). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21,

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1996,[8] between DTC and NSCC ("Old DTC–NSCC Agreement"). The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC, and the other parties to the Multilateral Agreement.

Pursuant to the Multilateral Agreement, a clearing agency party may be entitled to receive a guaranty payment from one or more other parties to the Multilateral Agreement with respect to the obligations of a defaulting member. However, if a clearing agency party receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each colloquially referred to as a "clawback"):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as stated above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that an amount paid by a payor clearing agency to a payee clearing agency was not paid on account of an amount owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) if so ordered by a court, the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.*, a trustee or receiver).

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make such court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.*, the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payor clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.*, that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four to six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, because MBSCC does not currently mutualize risk among its participants and a payment of such amount from its own resources would have the economic effect of charging all participants for such costs, MBSCC must make appropriate arrangements to deal with a clawback if it ever occurs.

GSCC and MBSCC are proposing to amend their rules regarding clawbacks. The following is a summary of the amendments proposed by GSCC and the amendments proposed by MBSCC.

GSCC

GSCC is proposing to amend its rules to provide it with two options in dealing with a clawback:

Option 1

The proposed rule change would give GSCC the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. the members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. the obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. to deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent, and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an "other loss" pursuant to GSCC Rule 4, Section 8(g); and

d. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (b) or (c) above, by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

The proposed rule change will give GSCC the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. the members would be assessed pursuant to GSCC's loss sharing rule and

b. at the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is proposing to make comparable changes in the rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is proposing to amend its rules as follows:

a. upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. the original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. to deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions.[9] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[10]

The clearing agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations promulgated thereunder because they will: (i) Reduce the risk of loss to clearing agencies resulting from the failure or default of a common member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and the impact of such failure or default on clearing agencies and their other members or participants, (iii) foster cooperation and coordination among clearing agencies and other persons involved in the clearance and settlement of securities transactions, and (iv) assist clearing agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The clearing agencies do not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. All submissions should refer to the File Nos. SR–DTC–

[8] Securities Act Release Nos. 36867 (February 21, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 21, 1996), 61 FR 7288 [File SR–NSCC–96–03] (orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

[9] 15 U.S.C. 78q–1(a)(2)(A).

[10] 15 U.S.C. 78q–1(b)(3)(A).

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2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6162 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45519; File No. SR–NASD–2001–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. To Clarify That the Nasdaq Limited Partnership Qualitative Listing Requirements Are Applicable to Limited Partnerships Listed on Both the National Market and the SmallCap Market

March 7, 2002.

On August 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, with the requirements of Section 15A(b)(6).[5] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[6] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The Commission believes that the adoption of uniform listing requirements for limited partnerships will assist Nasdaq in maintaining an efficient and open market.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2001–48), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6160 Filed 3–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45526; File Nos. SR–NASD–2002–21; SR–NYSE–2002–09]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASDR"), and on February 27, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). On March 7, 2002, NASDR submitted Amendment No. 1 to its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NASDR is proposing to amend the rules of the NASD to establish new NASD Rule 2711 ("Research Analysts and Research Reports") to address research analyst conflicts of interest. The NYSE is proposing amendments to NYSE Rule 472 ("Communications with the Public"), which will place prohibitions and/or restrictions on the Investment Banking Department, Research Department, and Subject Company Relationships and Communications, and will impose additional disclosure requirements on members, member organizations, and associated persons preparing research reports and making public appearances.

The NYSE is also proposing amendments to NYSE Rule 351 ("Reporting Requirements"), which will require members and member organizations to submit to the Exchange, annually, a written attestation, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472.

Below is the text of the proposed rule changes. Proposed new language is in italic; proposed deletions are in [brackets].

A. NASD Proposed Rule Text

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) "Investment banking department" means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(2) "Investment banking services" include, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs or similar investments; or serving as placement agent for the issuer.

(3) "Member of a research analyst's household" means any individual whose principal residence is the same as the research analyst's principal residence.

(4) "Public appearance" means any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security.

(5) "Research analyst" means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of "research analyst."

(6) "Research analyst account" means any account in which a research analyst or member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control, other than an investment company registered under the Investment Company Act of 1940.

(7) "Research department" means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(8) "Research report" means a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security.

(9) "Subject company" means the company whose equity securities are the subject of a research report or recommendation in a public appearance.

(b) Restrictions on Investment Banking Department Relationship with Research Department

(1) No research analyst may be subject to the supervision or control of any employee of the member's investment banking department.

(2) Except as provided in paragraph (b)(3), no employee of the investment banking department may review or approve a research report of the member before its publication.

(3) Investment banking personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report or to review the research report for any potential conflict of interest, provided that:

(A) Any written communication between investment banking and research department personnel concerning such a research report must be made either through an authorized legal or compliance official of the member or in a transmission copied to such an official; and

(B) any oral communication between investment banking and research department personnel concerning such a research report must be documented and made either through an authorized legal or compliance official acting as intermediary or in a conversation conducted in the presence of such an official.

(c) Restrictions on Review of a Research Report by the Subject Company

(1) Except as provided in paragraphs (c)(2) and (c)(3), a member may not submit a research report to the subject company before its publication.

(2) A member may submit sections of such a research report to the subject company before its publication for review as necessary only to verify the factual accuracy of information in those sections, provided that:

(A) The sections of the research report submitted to the subject company do not contain the research summary, the research rating or the price target;

(B) a complete draft of the research report is provided to the legal or compliance department before sections of the report are submitted to the subject company; and

(C) if after submitting the sections of the research report to the subject company the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, the legal or compliance department for the change. The member must retain copies of any draft and the final version of such a research report for three years following its publication.

(3) The member may notify a subject company that the member intends to change its rating of the subject company's securities, provided that the notification occurs on the business day before the member announces the rating change, after the close of trading in the principal market of the subject company's securities.

(d) Prohibition of Certain Forms of Research Analyst Compensation

No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(e) Prohibition of Promise of Favorable Research

No member may directly or indirectly offer favorable research, a specific rating or a specific price target, or threaten to change research, a rating or a price target, to a company as consideration or inducement for the receipt of business or compensation.

(f) Imposition of Quiet Periods

No member may publish a research report regarding a subject company for which the member acted as manager or co-manager of:

(1) An initial public offering, for 40 calendar days following the date of the offering; or

(2) a secondary offering, for 10 calendar days following the date of the offering; provided that this provision will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued.

(g) Restrictions on Personal Trading by Research Analysts

(1) No research analyst account may purchase or receive any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows.

(2) No research analyst account may purchase or sell any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; provided that:

(A) A member may permit a research analyst account to sell all of the securities held by them that are issued by a company that the research analyst follows, within 30 calendar days after the research analyst began following the company for the member;

(B) a member may permit a research analyst account to purchase or sell any security issued by a subject company within 30 calendar days before the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45137 (December 6, 2001), 66 FR 64490.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (March 7, 2002) ("Amendment No. 1"). In Amendment No. 1, NASDR revised its response to Items 1(b) and 1(c) of the Form 19b–4 to indicate the impact that proposed NASD Rule 2711 would have on NASD Rule 2210. Additionally, NASDR is inserting language in its Purpose section to clarify how the current disclosure requirements regarding securities recommendations in NASD Rule 2210 would apply if proposed NASD Rule 2711 is approved by the SEC. Finally, NASDR is revising the provisions requiring disclosure of actual material conflicts of interest to conform its provisions to those of the NYSE.

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publication of a research report or change in the rating or price target of the subject company's securities due to significant news or a significant event concerning the subject company, provided that the member's legal or compliance department pre-approves the research report and any change in the rating or price target.

(3) No research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member.

(4) A member's legal or compliance department may authorize a transaction otherwise prohibited by paragraphs (g)(2) and (g)(3) based upon significant personal financial circumstances of the beneficial owner of the research analyst account, provided that:

(A) The legal or compliance department authorizes the transaction before it is entered;

(B) each exception is granted in compliance with policies and procedures adopted by the member that are reasonably designed to ensure that these transactions do not create a conflict of interest between the professional responsibilities and the personal trading activities of a research analyst; and

(C) the member maintains written records concerning each transaction and the justification for permitting the transaction for three years following the date on which the transaction is approved.

(5) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply to a purchase or sale of the securities of:

(A) any registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or

(B) any other investment fund over which neither the research analyst nor a member of the research analyst's household has any investment discretion or control, provided that:

(i) The research analyst accounts collectively own interests representing no more than 1% of the assets of the fund;

(ii) the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst follows; and

(iii) the investment fund does not distribute securities in kind to the research analyst or household member before the issuer's initial public offering.

(h) Disclosure Requirements

(1) Ownership and Material Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) If the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of five business days before the publication of the research report or the public appearance, the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company; and

(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.

(2) Receipt of Compensation

(A) A member must disclose in research reports if:

(i) The research analyst principally responsible for preparation of the report received compensation that is based upon (among other factors) the member's investment banking revenues; and

(ii) the member or its affiliates received compensation from the subject company within twelve months before, or reasonably expects to receive compensation from the subject company within three months following, publication of the research report.

(B) A research analyst must disclose in public appearances if the analyst knows or has reason to know that the subject company is a client of the member or its affiliates.

(3) Position as Officer or Director

A member must disclose in research reports and a research analyst must disclose in public appearances if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

(4) Meaning of Ratings

A member must define in its research reports the meaning of each rating used by the member in its rating system. The definition of each rating must be consistent with its plain meaning.

(5) Distribution of Ratings

(A) Regardless of the rating system that a member employs, a member must disclose in each research report the percentage of all securities rated by the member to which the member would assign a "buy," "hold/neutral," or "sell" rating.

(B) In each research report, the member must disclose the percentage of subject companies within each of these three categories for whom the member has provided investment banking services within the previous twelve months.

(C) The information that is disclosed under paragraphs (h)(5)(A) and (h)(5)(B) must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(6) Price Chart

A member must present in any research report concerning an equity security on which the member has assigned any rating for at least one year, a line graph of the security's daily closing prices for the period that the member has assigned any rating or for a three-year period, whichever is shorter. The line graph must:

(A) Indicate the dates on which the member assigned or changed each rating or price target;

(B) Depict each rating and price target assigned or changed on those dates; and

(C) Be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(7) Price Targets

A member must disclose in research reports the valuation methods used to determine a price target. Price targets must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target.

(8) Market Making

A member must disclose in research reports if it was making a market in the subject company's securities at the time that the research report was published.

(9) Disclosure Required by Other Provisions

In addition to the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws.

(10) Prominence of Disclosure

The disclosures required by paragraph (h) must be presented on the front page of research reports or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

(i) Supervisory Procedures

Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule, and a senior officer of such a member must attest annually to the Association that it has adopted and implemented those procedures.

B. NYSE Proposed Rule Text

Rule 472 Communications with the Public

Approval of Communications and Research Reports

(a)(1) Each advertisement, market letter, sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public [shall] *must* be approved in advance by a member, allied member, supervisory analyst, or *qualified* person designated under the provisions of Rule 342(b)(1).

(2) Research reports [shall] *must* be prepared or approved, in advance, by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344. Where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization. In the event that the member organization has no principal or employee qualified with the Exchange to approve such material, it [shall] *must* be approved by a qualified supervisory analyst in another member organization by arrangement between the two member organizations.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research Department personnel or any associated person(s) engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department of the member or member organization. Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department.

(2) Investment Banking personnel may check research reports prior to distribution only to verify the accuracy of information and to identify or to review for any potential conflicts of interest that may exist, provided that:

(i) *Any such written communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be made either through the Legal or Compliance Department or in a transmission copied to Legal or Compliance; and*

(ii) *any such oral communication concerning the accuracy of research reports between the Investment Banking and Research Departments must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.*

(3) The subject company may not review or approve research reports prior to distribution, except for the review of sections of a draft of the research report solely to verify facts. Members and member organizations may not, under any circumstances, provide the subject company sections of research reports that include the research summary, the research rating or the price target.

(i) Prior to submitting any sections of the research report to the subject company, the Research Department must provide a complete draft of the research report to the Legal or Compliance Department.

(ii) If after submission to the subject company, the Research Department intends to change the proposed rating or price target, the Research Department must provide written justification to, and receive prior written authorization from, the Legal or Compliance Department for any change. The Legal or Compliance Department must retain copies of any drafts and changes thereto of the research reports provided to the subject company.

(iii) The member or member organization may not notify a subject company that a rating will be changed until after the close of trading in the principal market of the subject company one business day prior to the announcement of the change.

Written Procedures

(c) Each member and member organization must establish written procedures reasonably designed to ensure that members, member organizations and their associated persons are in compliance with this Rule (see Rule 351(f) for attestations to the Exchange regarding compliance).

Retention of Communications

[(c)] (*d*) Communications with the public prepared or issued by a member or member organization [shall] *must* be retained in accordance with Rule 440 ("Books and Records"). The names of the persons who prepared and who reviewed and approved the material [shall] *must* be ascertainable from the retained records and the records retained [shall] *must* be readily available to the Exchange, upon request.

Restrictions on Trading Securities by Associated Persons

(e)(1) No associated person or member of the associated person's household may purchase or receive an issuer's securities prior to its initial public offering (e.g., so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports.

(2) No associated person or member of the associated person's household may trade in any recommended subject company's securities or derivatives of such securities for a period of thirty (30) calendar days prior to and five (5) calendar days after the member's or member organization's issuance of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No associated person or member of the associated person's household may effect trades contrary to the member's or member organization's most current recommendations (i.e., sell securities while maintaining a "buy" or "hold" recommendation, buy securities while maintaining a "sell" recommendation, or effecting a "short sale" in a security while maintaining a "buy" or "hold" recommendation on such security).

(4) The following are exceptions to the prohibitions contained in paragraphs (1), (2), and (3):

(i) Transactions by associated persons and household members that have been pre-approved in writing by the Legal or Compliance Department that are made due to an unanticipated significant change in their personal financial circumstances;

(ii) a member or member organization may permit the issuance of research reports or permit a change to the rating or price target on a subject company, regardless of whether an associated person and/or household members traded the subject company's securities or derivatives of such securities, within the thirty (30) calendar day period

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described in paragraph (e)(2), when the issuance of such research reports, or change in such rating or price target is attributable to some significant news or events regarding the subject company, provided that the issuance of such research reports, or change in rating or price target on such subject company has been pre-approved in writing by the Legal or Compliance Department;

(iii) sale transactions by an associated person and/or household member who is new to the member or member organization within thirty (30) calendar days of such associated person's employment with the member or member organization when such associated person and/or household member had previously purchased such security or derivatives of such security prior to the associated person's employment with the member or member organization;

(iv) sale transactions by an associated person and/or household member within thirty (30) calendar days from the date of the member's or member organization's issuance of research reports or changes to the rating or price target on a subject company when such associated person and/or household member had previously purchased the subject company's securities or derivatives of such securities prior to initiation of coverage of the subject company by the associated person;

(v) transactions in accounts not controlled by the associated person and for investment funds in which an associated person or household member participates as a passive investor, provided the interest of the associated person or household member in the assets of the fund does not exceed 1% of the fund's assets, and the fund does not invest more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies (or in the same industry classification) which the associated person usually covers in research reports. If an investment fund distributes securities in kind to an associated person before the issuer's initial public offering, the associated person must either divest those securities immediately or refrain from participating in the preparation of research reports concerning that issuer.

(vi) transactions in a registered diversified investment company as defined under Section 5(b)(1) of the Investment Company Act of 1940.

Restrictions on Member's or Member Organization's Issuance of Research Reports

(f)(1) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of an initial public offering within forty (40) calendar days following the effective date of the offering.

(2) A member or member organization may not issue research reports regarding an issuer for which the member or member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the effective date of the offering.

(3) A member or member organization may permit exceptions to the prohibitions in paragraphs (f)(1) and (2) (consistent with other securities laws and rules) for research reports that are issued due to significant news or events, provided that such research reports are pre-approved in writing by the Legal or Compliance Department.

Prohibition of Offering Favorable Research for Business

(g) No member or member organization may directly or indirectly offer a favorable research rating or specific price target, or offer to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation.

Restrictions on Compensation to Associated Persons

(h) No member or member organization may compensate an associated person(s) for specific investment banking services transactions. An associated person may not receive an incentive or bonus that is based on a specific investment banking services transaction. However, a member or member organization is not prohibited from compensating an associated person based upon such person's overall performance, including services provided to the Investment Banking Department (see Rule 472(k)(2) for disclosure of such compensation).

(i) [.30] General Standards for All Communications

No change

(j) [.40] Specific Standards for Communications

(1) Recommendations

A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.

When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered.

The market price at the time the recommendation is made must be indicated.

(2) [(3)] Records of Past Performance

No change

(3) [(4)] Projections and Predictions

No change

(4) [(5)] Comparisons

No change

(5) [(6)] Dating Reports

No change

(6) [(7)] Identification of Sources

No change

(7) [(8)] Testimonials

No change

(k) [(2)] Disclosure

[When a communication (excluding extemporaneous interviews in and with the media) recommends the purchase or sale of a specific security, member organizations must disclose the following information:

(i) if the organization usually makes a market in the security being recommended or if some or all of the recommended securities are to be sold to or bought from customers on a principal basis.

(ii) if the member organization was manager or co-manager of the most recent public offering (within 3 years) of any securities of the recommended issuer.

(iii) if the member organization or its employees involved in the preparation or the issuance of the communication may have positions in any securities or options of the recommended issuer.

(iv) if a member, allied member or employee is a director of a corporation whose security is being recommended.]

(k)(1) Disclosures Required in Research Reports and Scheduled Public Appearances Disclosure of Member's, Member Organization's and Associated Person's Ownership of Securities

(i) *A member or member organization must disclose in research reports and an associated person must disclose in public appearances:*

a. *if, as of five (5) business days before the publication or appearance, the member or member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934,*

b. *if the associated person or a household member has a financial interest in the securities of the subject company, or*

c. *any other actual, material conflict of interest of the member or member organization, which the associated person knows, or has reason to know, at the time the research report is issued or at the time the public appearance is made.*

Member Organization Compensation

(ii) *A member or member organization must disclose in research reports if the member or member organization or its affiliates received compensation from the subject company within the twelve (12) months prior to the date of the research report. A member or member organization must also disclose if the member or member organization or its affiliates reasonably expects to receive compensation from the subject company within the three months following the date of issuance of the research report. When an associated person recommends securities in a public appearance, the associated person must disclose if the subject company is an investment banking services client of the member, member organization, or one of its affiliates, when the associated person knows or has reason to know of this relationship.*

Disclosure of Associated Person's Affiliations With Subject Company

(iii) *A member or member organization must disclose in research reports whether the associated person or member of the associated person's household is an officer, director or advisory board member of the recommended issuer.*

(k)(2) Disclosures Specific to Research Reports

The front page of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found. Disclosures, and references to disclosures, must be clear, comprehensive and prominent. A member or member organization must disclose in research reports if the associated person preparing such reports received compensation that is based upon (among other factors) the member's or member organization's overall investment banking revenues. A member or member organization must disclose in research reports that recommend securities:

(i) If it is making a market in the subject company's securities at the time the research report is issued.

(ii) the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks.

(iii) the meanings of all ratings used by the member or member organization in its ratings system. (For example, a member or member organization might disclose that a "strong buy" rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period). Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a "hold" rating should not mean or imply that an investor should sell a security.

(iv) the percentage of all securities that the member or member organization recommends an investor "buy," "hold," or "sell". Within each of the three categories, a member or member organization must also disclose the percentage of subject companies that are investment banking services clients of the member or member organization within the previous twelve (12) months. (See Rule 472.70 for further information.)

(v) a chart that depicts the price of the subject company's stock over time and indicates points at which a member or member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating for at least one year, and need not extend more than three years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

[Supplementary Material * * *]

.10 Definitions

(1) Communication—The term "Communication" is deemed to include, but is not limited to, advertisements, market letters, research reports, sales literature, electronic communications, communications in and with the press and wires and memoranda to branch offices or correspondent firms which are shown or distributed to customers or the public.

(2) Research Report—"Research reports"are generally defined as, *but are not limited to*, an analysis of *equity securities of* individual companies[,] or industries, [market conditions, securities or other investment vehicles] which provide information reasonably sufficient upon which to base an investment decision *and include a recommendation. For purposes of Rule 472(a)(2), research reports include, but are not limited to, reports which recommend equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.*

(3) *Advertisement—"Advertisement" is defined to include, but is not limited to, any sales communications that is published, or designed for use in any print, electronic or other public media such as newspapers, periodicals, magazines, radio, television, telephone recording, web sites, motion pictures, audio or video device, telecommunications device, billboards or signs.*

(4) *Market letters—"Market letters" are defined as, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles. They also include "follow-ups" to research reports and articles prepared by members or member organizations which appear in newspapers and periodicals*

(5) *Sales literature—"Sales literature" is defined as, but is not limited to, written or electronic communications including, but not limited to, telemarketing scripts, performance reports or summaries, form letters, seminar texts, and press releases discussing or promoting the products, services and facilities offered by a member or member organization, the role of investment in an individual's overall financial plan, or other material calling attention to any other communication.*

[.20 Other Communications Activities

Other communications activities are deemed to include, but not be limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles and making radio/TV appearances.

Member organizations must establish specific written supervisory procedures applicable to members, allied members and employees who engage in these types of communications activities. These procedures must include provisions which require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in .30. In addition, any activity which includes discussion of specific securities is subject to the specific standards in .40.]

.20 For purposes of this Rule, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer.

.30 For purposes of this Rule, the term "Investment Banking Department" means any department or division of the member or member organization, whether or not identified as such, that

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performs any investment banking services on behalf of the member or member organization.

.40 For purposes of this Rule, the term "associated person" includes a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with the making of the recommendation to purchase, sell or hold an equity security in research reports, or public appearances or establish a rating or price target of a subject company's equity securities. For purposes of this Rule, the term "household member" means any individual whose principal residence is the same as the associated person's principal residence. Paragraphs (e)(1), (2), (3); (4)(i), (ii), (iii), (iv) and (v); (k)(1)(i)(B), (k)(1)(iii) apply to any account in which an associated person has a financial interest, or over which the associated person exercises discretion or control.

.50 For purposes of this Rule, the term "public appearance" includes, without limitation, participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

.60 For purposes of this Rule, "subject company" is the company whose equity securities are the subject of research reports.

.70 For purposes of Rule 472(k)(2)(iv), a member or member organization must determine, based on its own ratings system, into which of the three categories each of their securities ratings utilized falls. This information must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter). For example, a research report might disclose that the member or member organization has assigned a "buy" rating to 58% of the securities that it follows , a "hold" rating to 15%, and a "sell" rating to 27%.

Rule 472(k)(2)(iv) requires members or member organizations to disclose the percentage of companies that are investment banking services clients for each of the three ratings categories within the previous twelve (12) months. For example, if 20 of the 25 companies to which a member or member organization has assigned a "buy" rating are investment banking clients of the member or member organization, the member or member organization would have to disclose that 80% of the companies that received a "buy" rating are its investment banking clients. Such disclosure must be made for the "buy", "hold" and "sell" ratings categories as appropriate.

.80 For purposes of this Rule, the term "Legal or Compliance Department" also includes, but is not limited to, any department of the member or member organization which performs a similar function.

.90 For purposes of Rule 472(a), a qualified person is one who has passed an examination acceptable to the Exchange.

.100 For purposes of this Rule, the term "initial public offering" refers to the initial registered equity security offering by an issuer, regardless of whether such issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, prior to the time of the filing of such issuer's registration statement.

.110 For purposes of this Rule, a secondary offering shall include a registered follow-on offering by an issuer or a registered offering by persons other than the issuer involving the distribution of securities subject to Regulation M of the Securities Exchange Act of 1934.

Rule 351 Reporting Requirements

(a)–(e) No change

(f) *Each member and member organization that prepares, issues or distributes communications to the public, (including but not limited to, research reports, media presentations and interviews), is required to submit to the Exchange annually, a letter of attestation signed by a senior officer or partner that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472.*

* * * * *

.11 For purposes of Rule 351(f), the attestation must be submitted by April 1 of each year.

.12 The term "research reports" is defined in Rule 472.10.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NASDR and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASDR and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NASD's Purpose

According to NASDR, it has worked closely with the NYSE to develop rules to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. NASD's proposed rule change is intended to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions.

To that end, the NASD's proposed rule change generally would minimize the influence that a member's investment banking department has over its research department and would restrict analysts' personal trading of securities. The NASD's proposed rule change also would require disclosure of financial interests held by the member firm, the analyst and his or her family members, and any other material conflict of interest associated with a recommendation of a security. The NASD's proposed rule change also would require firms to clarify the meanings of their research ratings and provide historical price and ratings distribution data in research reports to better enable investors to evaluate and compare the quality of research.

A more detailed discussion of the proposed rule's provisions follows.

a. Definitions

The terms "research analyst" and "research report" are used frequently throughout the NASD's proposed rule change. "Research analyst" would be defined to mean an "associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with preparation of the substance of a research report, whether or not any such person has the job title of 'research analyst.'" "Research report" would be defined to mean "a written or electronic communication that the member has distributed or will distribute with reasonable regularity to its customers or the general public, which presents an opinion or recommendation concerning an equity security."

Accordingly, the term "research analyst" would not include every associated person who may express an opinion on an equity security. Thus, for example, most mutual fund portfolio managers are not principally responsible for the preparation of "research reports" as defined by the NASD's proposed rule change. Consequently, a mutual fund portfolio manager generally would not be deemed to be a "research analyst," even if the portfolio manager is an associated person of a member firm and discusses the mutual fund's portfolio holdings in a television interview.

The NASD specifically requests comments on these definitions. Would the definition of "research analyst" have any regulatory gaps? Would it impose any unnecessary burdens on members, particularly by including any associated person who reports to a research analyst? Would the definition of "research report" properly exclude those communications that do not present the types of concerns that the proposed rule change is designed to address?

The NASD's proposed rule change would require research analysts to make various types of disclosures in their public appearances. The term "public appearance" would be defined to include any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security. Consequently, this term also would include any public conference call in which a research analyst expresses an opinion on an equity security. The NASD's proposed rule change would require only that a research analyst make these disclosures. An independent decision by the sponsor of the public appearance, such as a television program sponsor, to edit out the required disclosures, would not constitute a violation of the NASD's proposed rule. NASD requests comment on whether the scope of this definition is adequate to address the concerns raised by a research analyst's public speaking activities and whether it might impose any unnecessary burdens on members or their research analysts.

The term "member of a research analyst's household" is used in connection with the proposed rule change's personal trading restrictions and disclosure requirements. NASD proposes to define this term to include any individual whose principal residence is the same as the research analyst's residence. Thus, it would include any family member living with the research analyst, as well as any other individual living in the same principal residence. NASD requests comment on whether this definition is appropriate.

The term "research analyst account" is used in connection with the NASD's proposed rule change's personal trading restrictions. The NASD proposes to define this term to include any account in which a research analyst or a member of the research analyst's household has a beneficial interest, or over which such analyst or household member has discretion or control. The term would not include an investment company registered under the Investment Company Act of 1940 that is managed by a research analyst or a member of the analyst's household.

b. Investment Banking Department Relationship With Research Department

NASD believes that a potential conflict exists between a firm's responsibility to provide fair, objective and unbiased research and its interest in obtaining or retaining investment banking business from a company that is the subject of a research report ("subject company"). The NASD proposes to adopt several measures to address this potential conflict.

(1) Supervision and Control of Research Department

The NASD's proposed rule change would prohibit a member's investment banking department from supervising or controlling the member's research department and from reviewing or approving research reports before their publication. "Investment banking department" is proposed to be defined to include any department or division, whether or not identified as such, that performs any investment banking service on behalf of the member. "Investment banking services" is proposed to encompass a broad array of services typically offered to investment banking clients, including acting as an underwriter in an offering for the issuer, acting as a financial advisor in a merger or acquisition, providing venture capital, equity lines of credit, PIPES or similar investments, or serving as placement agent for the issuer. NASD requests comment on whether this definition of "investment banking services" is appropriate or inclusive enough in light of the purposes of the proposed rule change.

The NASD believes that this provision would better ensure that research is shielded from the influence of the investment banking department's relationship with the subject company. Under the NASD's proposed rule change, investment banking personnel could communicate with research personnel concerning a research report before the report's publication only to ensure the report's factual accuracy and to screen for conflicts of interest. The NASD's proposed rule change would require an authorized legal or compliance official to act as intermediary for all such communications. The term "legal or compliance department" as used in the proposed rule change would include any department or division that is principally responsible for compliance with applicable securities laws, regardless of whether the department or division is named "legal" or "compliance." The NASD's proposed rule change would not restrict or impose conditions on any communication between a research department and an investment banking department that does not concern a proposed research report.

The NASD's proposed rule change also would address the concern that the subject company may attempt to influence the conclusions provided in a research report. The NASD's proposed rule change would prohibit a member from submitting a research report to the subject company for approval. The NASD's proposed rule change would allow the subject company to review only certain sections of a research report before its publication to ensure that it is factually accurate. However, a member could not submit in advance to the subject company those sections of the report that contain the research summary, the rating or the price target. The NASD's proposed rule change would require that if a research analyst intends to make changes to the proposed rating or price target after review by the subject company, the research analyst would first have to receive written approval from the member's legal and compliance department.

The NASD requests comment on the "gate-keeping" functions that the proposed rule change would impose on the legal or compliance department. The NASD recognizes that these responsibilities may require members to hire additional legal or compliance staff and to dedicate resources to these gate-keeping functions. Nevertheless, the possibility that investment banking departments exert undue influence over the contents of a research report has necessitated the proposed gate-keeping provisions. NASD requests comment on whether these provisions adequately address these concerns about undue influence and whether any alternative provisions would be equally effective. In addition, NASD requests comment on whether the gate-keeper approach that the proposed rule change would impose with respect to contact with the subject company also should apply to contacts with the investment banking department?

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(2) Research Analyst's or Member's Investment Banking Compensation

The NASD's proposed rule change would prohibit a member from tying analyst compensation to specific investment banking transactions. The NASD requests comment on whether this provision might impose unnecessary burdens on smaller members that may have the same employee perform investment banking and research services. To the extent that this provision might impose such unnecessary burdens, the NASD requests comment on how widespread this problem would be? Further, NASD requests comment on what, if any, alternative measure would respond to the concerns that this provision is intended to address without imposing these burdens?

Since research analysts, as part of their job responsibilities, advise investment banking departments concerning such matters as whether a potential underwriting client is financially or operationally prepared for an initial public offering, the NASD's proposed rule change would permit a member to compensate its research analysts based on their overall performance, which may include these services to the investment banking department. However, a member would have to disclose in research reports if a research analyst received compensation based in whole or in part on the member's investment banking revenues.

The NASD's proposed rule change also would require a member to disclose in research reports if the member or its affiliates received compensation from the subject company within the last 12 months, or expected to receive compensation within the next three months following publication of the report. This disclosure requirement, like all of the other disclosure requirements of the proposed rule change, would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member "may have" received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NASD recognizes the possibility that this requirement might necessitate disclosure of compensation related to non-public transactions. The NASD believes that this type of compensation presents the same conflicts as the receipt of compensation related to transactions that have been publicly disclosed. Moreover, the NASD does not believe that the proposed rule change would alert the research department or the investing public concerning non-public transactions, for at least two reasons. First, the proposed rule change would require only disclosure that compensation was received by the member or one of its affiliates. It would not require disclosure concerning the nature of the transaction, such as the fact that the member received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member (as opposed to one of its affiliates that is not engaged in investment banking). Second, the term "compensation" is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of "compensation," the NASD believes that this disclosure requirement should not alert the research department whether the compensation related to a non-public transaction. Nevertheless, the NASD does request comment on the efficacy of this disclosure requirement, and whether any alternative, definitive disclosure would be effective.

The NASD proposes that a research analyst would have to disclose in public appearances if the issuer of a recommended security is a client of the member or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, the NASD proposes that an issuer would be deemed a "client" of the member if the member or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member.

c. Promises of Favorable Research

The proposed rule change would include a provision that expressly prohibits a member from offering or threatening to change favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. According to the NASD, such behavior already constitutes a violation of just and equitable principles of trade (NASD Rule 2110) and could violate the anti-fraud provisions of the federal securities laws. The proposed rule change would make this prohibition explicit. A member would violate this provision simply by making such an offer or threat, whether or not the member provided any service to or received any compensation or business from the issuer.

d. Quiet Periods

The NASD's proposed rule change would impose two "quiet periods" on the issuance of research reports. The proposed rule change would prohibit a member from issuing a research report regarding a subject company for which the member acted as an underwriting manager or co-manager for 40 days following the date of an initial public offering and 10 days following the date of a secondary offering. For purposes of this provision, the "date" of an IPO is proposed to be the date on which the IPO's registration statement becomes effective. The "date" of a secondary offering is proposed to be the date on which a member commences sales on behalf of an issuer or selling security holders pursuant to an underwriting agreement or similar agreement that governs the transaction.

According to the NASD, the quiet periods are intended to reduce a manager's ability to improperly reward the subject company for its underwriting business by publishing favorable research after completion of the offering. The NASD's proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, NASD proposes that a "significant" news item or event would constitute a news item or event that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NASD specifically seeks comment on the proposed quiet period after secondary offerings. In addition, the NASD seeks comment on the following: (1) How significant is a manager's opportunity to engage in this behavior with respect to a public company that conducts a secondary offering?; (2) Should the NASD adopt an exception to this provision for seasoned companies qualified to issue their securities in an initial public offering under Form S–3?; (3) Would the $75 million public float and one-year reporting requirements applicable to S–3 companies provide a sufficiently high threshold to ensure that the quiet period for secondary offerings is effective?; (4) Would an alternative standard, such as the $150 million public float value for actively traded securities under Regulation M, be more appropriate?

NASD also requests comment on whether the proposed quiet periods should apply not only to the issuance of research reports, but also to any public appearance by a research analyst employed by the manager or co-manager of the underwriting.

e. Research Analysts' Personal Trading

The NASD's proposed rule change would impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment and to ensure that analysts do not profit from the issuance of a research report or change in a rating or price target. The NASD's proposed rule change would prohibit a research analyst account (which would include any account of the research analyst or member of the analyst's household, and any account over which the analyst or household member has discretion or control) from purchasing or receiving securities of a company in the industry the analyst covers before that company's initial public offering. According to the NASD, this provision is designed to prevent a research analyst from receiving "cheap stock" before the initial public offering of a company that the analyst may subsequently cover.

The NASD's proposed rule change also would prohibit a research analyst account from trading a subject company's securities during a "blackout" period beginning 30 calendar days before, and ending five calendar days after, the issuance of a research report or change in the research rating or price target for the subject company's securities. This prohibition would apply not only to transactions in the subject company's securities themselves (including short sales), but also any derivative security, such as an option, right, warrant or future. Furthermore, the NASD's proposed rule change would prohibit a research analyst account from trading in a manner inconsistent with the analyst's most current recommendation concerning a security. Thus, for example, the proposed rule change would prohibit a research analyst from selling or effecting a short sale in a security while maintaining a "buy," "hold" or "neutral" recommendation.

The NASD's proposed rule change would permit members to adopt certain exceptions to these prohibitions that are reasonable in light of the purposes of the personal trading restrictions. For example, the proposed rule change would permit a transaction within 30 calendar days before the member publishes a research report or changes a rating or price target due to significant news or a significant event concerning the subject company. This exception is designed to ensure that the 30-day blackout provision does not impede the member's ability to publish a research report or change a rating or price target in these circumstances. The exception would require that the member's legal or compliance department pre-approve any research report or change in a rating or price target made in connection with a significant news item or event. The legal or compliance department should consider, among other factors, whether the research analyst knew or had reason to know of the significant news or event before the research analyst account entered into the transaction that occurred less than 30 days prior to the new research report, rating or price target.

The NASD's proposed rule change would permit members to authorize an exception to the blackout period and prohibition of trading against recommendations to allow a research analyst account to trade securities due to significant personal financial circumstances, provided certain conditions are met. Reliance on this provision should be rare. In most cases, a research analyst account should not hold such a significant interest in a subject company's securities as to necessitate reliance on this provision. Moreover, this provision is meant to be narrowly construed to permit an exception in extremely limited circumstances such as when the beneficial owner of a research analyst account must liquidate securities holdings in order to have funds available for an unforeseen medical emergency.

According to the NASD, the restrictions on personal trading would not apply to transactions in shares of registered diversified investment companies as defined under Section 5(b)(1) of the Investment Company Act of 1940, even if the diversified investment company held shares of a subject company.[4] NASD also proposes that the restrictions would not apply to transactions in holdings of any other investment fund (including a non-diversified investment company) over which neither the research analyst nor a household member has any investment discretion or control, provided that the fund meets certain conditions. First, the research analyst account could not own more than one percent of the fund's assets. Second, the fund could not invest more than 20 percent of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst covers. Third, the fund could not distribute securities in kind to the research analyst or household member before the issuer's initial public offering. The NASD requests comment on whether this investment fund exception would create a regulatory gap that could undermine the effectiveness of the personal trading restrictions or, would it impose any unnecessary restrictions on a research analyst's ability to invest appropriately in certain investment funds?

f. Members' or Research Analysts' Financial Interests

The NASD's proposed rule change would impose several disclosure requirements on members and research analysts concerning their financial interest in a subject company's securities. First, the NASD's proposed rule change would require members and research analysts to disclose in research reports and public appearances if the research analyst (or a member of the research analyst's household) has a financial interest in a subject company, and the nature of the financial interest. According to the NASD, this "financial interest" could include any option, right, warrant, future, long or short position in the subject company's securities. The NASD requests comment on whether members and research analysts also should be required to disclose if any discretionary account managed by the research analyst or a member of the analyst's household (other than a registered investment company) has a financial interest in a subject company, and the nature of this interest.

Second, the NASD's proposed rule change would require members and analysts to disclose if the member or its affiliates beneficially own 1% or more of any class of a subject company's common equity securities. Members could determine whether they or their affiliates "beneficially own" a security by relying upon the standards set forth

[4] According to the NASD, under Section 5(b)(1) of the Investment Company Act of 1940, a "diversified" investment company's assets are divided into two baskets, one representing 75% of its assets and one representing 25% of its assets. The restrictions focus on the 75% basket: its assets must consist of cash, government securities, securities of other investment companies, and "other securities." The "other securities" of a single issuer may not account for more than 5% of the fund's assets, and the fund may not hold more than 10% of a single issuer's voting securities. The 25% basket is not subject to these restrictions. 15 U.S.C. 80a–5 (b)(1).

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in Section 13(d)[5] and section 13(g)[6] of the Act, and the rules thereunder.

Finally, the NASD's proposed rule change contains a provision that would require disclosure in research reports and public appearances of any other actual, material conflict of interest of which the analyst knows or has reason to know. The NASD requests comment on this provision. Specifically, the NASD solicits comment on what types of guidance would members need in order to know when this disclosure is necessary? The NASD's proposed rule change would explicitly require that members and their research analysts comply with the disclosure requirements of other applicable laws and regulations, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In light of this explicit requirement, the NASD requests comment on whether the general admonishment to disclose "other, actual material conflicts of interest" is necessary.

g. Other Disclosures

The NASD's proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's ratings system and provide investors with better information to evaluate and compare the quality of a firm's research and the influence of possible conflicts on the assignment of ratings.

First, the NASD's proposed rule change would require that research reports disclose the meaning of all ratings used in the member's rating system. The NASD's proposed rule change also would require that the definition of each rating be consistent with its plain meaning. For example, a "hold" rating could not mean that an investor should sell the security.

Second, the NASD's proposed rule change would require a member to disclose in its research reports the percentage of all securities rated by the member to which the member would assign a "buy," "hold/neutral" or "sell" rating, regardless of whether the member's rating system uses other categories. The NASD's proposed rule change would require a member to determine based on its own rating system into which of the three categories each securities rating falls. Thus, for example, a rating of "market outperform" or "strong buy" might constitute a "buy" under this requirement. The member then would provide the percentage of all of its ratings in each of these categories. For example, a research report might disclose that the member has assigned a "buy" rating to 70% of the securities that it follows, a "hold" rating to 25%, and a "sell" rating to 5% (even if the member employs a system that assigns five different ratings to the securities that it follows). NASD requests comment on whether another set of terms would be more appropriate than "buy," "hold/neutral" or "sell," such as a numerical rating system of "one," "two" and "three."

Third, the NASD proposes that the member would have to disclose the percentage of subject companies within each of these three rating categories for which the member has provided investment banking services within the previous twelve months. For example, if 20 of the 25 companies that a member categorizes with a "buy" rating are investment banking clients , the member would have to disclose that 80 percent of the companies in the "buy" rating category are its investment banking clients. NASD proposes that all of this information would have to be current as of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

Fourth, the NASD's proposed rule change would require that research reports present a price chart that maps the historical price movements of the recommended security and indicates those points at which the member assigned or changed a research rating or price target. The NASD believes that such a chart could enable investors to compare the ratings and price targets that a member has assigned with the stock performance of the recommended security.[7]

The NASD proposes that this disclosure requirement would apply only to securities on which the member has assigned a rating for at least one year, in recognition of the long-term nature of many ratings. The NASD proposes that the provision also would require that the price chart cover the period that the member has rated the security or three years, whichever is shorter. The NASD proposes that the price chart would have to be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

Fifth, the NASD's proposed rule change would require disclosure in research reports of the valuation methods used in developing the research rating price target. The price target must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target. The requirement that the price target have a reasonable basis is based upon the current requirement in NASD Rule 2210(d)(2)(B)(i) that any member securities recommendation in an advertisement or item of sales literature have a reasonable basis.

Sixth, the NASD's proposed rule change would require the member to disclose if it makes a market in the subject company's securities. According to the NASD, the market-making provisions are similar to requirements that exist under NASD Rule 2210. Ambiguous or conditional language, such as the fact that a member "may" make a market, or "usually" makes a market in the security, would not comply with this disclosure requirement.[8]

Seventh, the NASD proposed rule change would require disclosure in research reports and public appearances of whether a research analyst or a member of the research analyst's household is an officer, director or advisory board member of the subject company. The NASD requests comment as to whether this disclosure requirement should extend to *any* employment with the subject company, including recent past employment.

Finally, in addition to the disclosure required by this proposed rule change, members and research analysts would be required to provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the anti-fraud provisions of the federal securities laws. In particular, NASD Rule 2210(d)(2)(B)(i) provides that, in making a recommendation in advertisements and sales literature, a member must disclose, as applicable:

- That the member usually makes a market in the recommended security, or that the member or associated persons will sell to or buy from customers on a principal basis;
- That the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the recommended issuer, unless the extent of such ownership is nominal; and
- That the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

To the extent that the proposed rule change's disclosure requirements regarding market-making activities differ from those in Rule 2210(d)(2)(B)(i), the proposed rule change provisions would govern. However, the other disclosure requirements of Rule 2210(d)(2)(B)(i) would continue to apply to advertisements and sales literature (including research reports) in addition to the proposed rule change's disclosure requirements. Thus, a member would continue to be required to disclose in research reports if the member buys the recommended securities from, or sells them to, customers on a principal basis; if the member or its officers or partners own options, rights or warrants to purchase any securities of the recommended issuer in any amount (unless the extent of such ownership is nominal); and if the member was a manager or co-manager of a public offering of the recommended issuer's securities within the last three years.

The NASD proposes that disclosures required by the proposed rule change either would have to be presented on the front page of a research report, or the report's front page would have to refer to the page on which the disclosures are found. The NASD's proposed rule change would require disclosures to be clear, comprehensive and prominent. Ambiguous or conditional disclosures would not meet this standard.

h. Supervisory Procedures/Reporting Requirements

The NASD's proposed rule change would require each member that is subject to the proposed rule to adopt written supervisory procedures reasonably designed to ensure that the member and its employees comply with the rule. The NASD also proposes that a member's senior officer also would have to attest annually to the NASD that the member has established and implemented procedures reasonably designed to comply with the rule. The NASD believes that this provision is similar to NYSE Rule 351, which requires NYSE members to submit to the NYSE annually a letter signed by a senior officer of a member that the member has met certain supervisory requirements. The NASD requests comment on whether attestation to the NASD is necessary, or whether this provision should simply require members to maintain records of such annual attestations. The NASD also requests comment as to whether this attestation should be submitted only to a member's designated examining authority (generally the NYSE or the NASD).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[9] of the Act, which require, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change will eliminate or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

According to the NYSE, its Rule 472 establishes standards governing member and member organization communications with the public. In particular, NYSE Rule 472.40(2) requires disclosure by member organizations as to certain relationships with recommended issuers, *e.g.*, if the member organization participates in a public offering, makes a market or has positions in the securities of a company that is recommended in a communication to the public.

a. Background

According to the NYSE, during 2000 and 2001, the stock market decline and negative news reports brought attention to the issue of research analysts' conflicts of interest as well as to the adequacy of disclosure in communications with the public that recommend securities. According to the NYSE, the SEC expressed particular concern about analysts and others who make stock recommendations during TV interviews and had additional concerns about written communications in which disclosures were vague and buried in hedge clauses or footnotes.

According to the NYSE, in 2000, the NYSE and NASDR began working on proposed amendments to NYSE and NASDR rules governing communications with the public (NYSE Rule 472 and NASDR Rule 2210) to strengthen the disclosure requirements.

In June 2001, the Securities Industry Association's ("SIA") Ad Hoc Committee on Analyst Integrity issued new guidelines for research analysts entitled "Best Practices for Research." These best practices, which do not have the effect of rules of the SEC or SROs, suggested prohibitions on linking analysts' compensation to investment banking deals; on analysts' trading against their own securities recommendations; and on approving research by investment banking departments and subject companies. The guidelines also recommended disclosure of ownership positions in securities of companies that research analysts cover.

In July 2001, the Association for Investment Management and Research ("AIMR") published for comment an issues paper, "Preserving the Integrity of Research," in which it identified conflicts of interest and pressures on research analysts that may bias research and recommendations.

In addition, during the second half of 2001, several broker-dealers announced that they would either prohibit analysts from owning shares in companies they cover or require their analysts to disclose ownership stakes in such companies.

During June and July 2001, the House Committee on Financial Service's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (the "Subcommittee") held hearings on the sources and ramifications of analysts" conflicts of interest and on the adequacy of disclosures in communications to the public.

During these hearings, according to the NYSE, the following industry issues were addressed: [10] research analysts were "subject to several influences that may affect the integrity and the quality of their analysis and recommendations;" analysts provide assistance to investment banking by "initiating research coverage on prospective investment banking clients;" "many firms pay their analysts largely based upon the profitability of their investment banking unit;" "investment bankers at some firms are involved in evaluating the firm's research analysts to determine their compensation;" and several "firms reported that investment banking had input into research analysts' bonuses."

Further, according to the NYSE, it was found that "analysts were invited to invest" in "companies' private

[5] 15 U.S.C. 78m(d).
[6] 15 U.S.C. 78m(g).

[7] The NASD submitted a sample price chart that complies with this proposed rule provision as Exhibit 3 to its Furm 19b–4, which is part of the public file and can be inspected at the Commission's Public Reference Room, as well as at the principal office of the NASD.

[8] To the extent that there are differences in the disclosure requirements regarding market making between the proposed rule change and current NASD Rule 2210, the proposed rule change provisions would govern.

[9] 15 U.S.C. 78o–3(b)(6).

[10] July 31, 2001 testimony given by then SEC Acting Chairman Laura Unger, before the Subcommittee.

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placements, which were not available to the public generally," and "if the company went public and the analyst's firm underwrote the IPO, the analyst always issued positive research on the company." Also, "firms did not always know whether their research analysts owned stock in companies they underwrote and upon which their analysts then issued research reports."

Additionally, "analysts sometimes provided investment bankers with prior notice of changes in recommendation," and in some instances, "analysts provided investment bankers and client management with advance notice of a pending change in the analyst's recommendations."

According to the NYSE, it was also found that some research analysts issued "booster-shot" research reports, whereby they reiterated "buy recommendations shortly before, or just after, the lock-up period expired." Further, it was noted that some analysts "executed trades for their personal accounts that were contrary to their recommendations in their research reports." In some instances, "analysts" ownership in stock of the covered company was not disclosed in the research report at all."

In addition, according to the NYSE, it was found that "sell-side analysts routinely recommend securities during public appearances in the media (such as on financial television and radio programs), but rarely reveal any conflicts of interest to investors." Finally, ratings categories used by firms in their research reports "may be unclear to investors" and that "full-service broker-dealers use a variety of undefined terms to describe their investment recommendations," and that "the wide variety of terms may confuse investors."

The report of these hearings deemed the SIA best practices to be inadequate as a means of eliminating and/or mitigating the systemic conflicts of interest confronting analysts and the biased research attributable to such conflicts. According to NYSE, the Subcommittee concluded that rulemaking would be a more effective way to deal with these issues.

In November 2001, the NYSE and NASDR established a joint SRO/industry committee to elicit industry comment on the proposal on communications with the public developed to address Congress' concerns. The proposal also incorporates as rules many of the SIA best practices, and recommendations from the AIMR issues paper.

b. Proposed Amendments to NYSE Rule 472

As proposed, the NYSE Rule amendments will address and remediate the issues discussed above in regard to analysts' conflicts of interest and lack of adequate disclosure.

NYSE's proposed rules are intended to reinforce the integrity of the process and help rebuild investors' faith in research and in the equities markets as a whole. The amendments should impact the way research analysts work within their firms and with subject companies. As an unavoidable consequence, NYSE believes that this will add to the firms' costs and administrative burden of operating and overseeing the research process.

The most significant changes are as follows:

(1) Proposed amendments to NYSE Rule 472 would place the following prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company Relationships and Communications:

- Research Department personnel or others engaged in the preparation of research reports may not be subject to the supervision or control of the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- Research reports may not be subject to review or approval prior to distribution by the Investment Banking Department (Proposed NYSE Rule 472(b)(1)).
- The NYSE believes that analyst's responsibility to provide fair, objective and unbiased research may be compromised if, at the same time, the analyst is involved with and/or supervised by the member or member organization's Investment Banking Department responsible for taking a company public or participating in other types of equity underwritings.

The NYSE's proposed rule change would address this potential conflict by prohibiting investment banking supervision and control, and thus should protect research analysts from undue influence by the Investment Banking Department. Further, NYSE believes that this prohibition would be a codification of one of the SIA's Best Practices recommendations.

- An exception is provided for written and oral communications, intermediated through the Legal or Compliance Department, to verify the accuracy of information and to identify potential conflicts of interest (Proposed NYSE Rule 472(b)(2)(i) and (ii)).
- This limited exception would further the purpose of the NYSE's proposed rule change in that research analysts will be shielded from pressure and influences of investment banking, while providing for the issuance of factually accurate research reports. Moreover, NYSE believes that the Legal or Compliance Department intermediation requirement is consistent with and furthers the purpose of both Federal securities laws and NYSE rules governing information barriers.[11]
- The subject company may not review or approve a research report prior to its distribution (Proposed NYSE Rule 472(b)(3)).
- However, the subject company may review sections of draft research reports excluding the research summary, research rating or price target to verify facts, provided the Legal or Compliance Department receives a complete draft prior to submission to the subject company (Proposed NYSE Rule 472(b)(3)(i)).
- After submission of the draft research report to the subject company, any changes in the proposed rating or price target must be justified by the Research Department, and receive prior written authorization from the Legal or Compliance Department (Proposed NYSE Rule 472(b)(3)(ii)).

The NYSE believes that its proposed rule change addresses concerns raised by AIMR in its issues paper that a subject company may attempt to pressure an analyst to issue a favorable research recommendation provided in a research report. Moreover, should an analyst change a recommendation on a subject company, after limited review by the subject company, such change would have to be justified to, and approved by, the Legal or Compliance Department.

The NYSE recognizes that the proposed rule amendment may require members and member organizations to make additions to their Legal or Compliance Departments, with concomitant financial costs to the members and member organizations.

- The subject company may not be notified of a ratings change until after the close of trading in the principal market one business day prior to the announcement of the change (Proposed NYSE Rule 472(b)(3)(iii)).

The NYSE believes that limiting advance notification of the ratings change should substantially reduce the

[11] According to NYSE, Section 15(f) of the Act provides, in part, that every registered broker or dealer shall establish, maintain, and enforce written policies and procedures designed to prevent the misuse of material non-public information. 15 U.S.C. 78o(f). *See also* NYSE Rules 98, 342, and 351.

possibility of the subject company and its insiders from taking advantage of such knowledge to their benefit, and to the detriment of its shareholders.

(2) Proposed amendments to NYSE Rule 472 prohibit and/or restrict the following in connection with associated persons and/or their household members and to any account in which an associated person has a financial interest or over which the associated person exercises discretion or control, in preparing research reports:

- Prohibits compensation linked to specific investment banking services transactions (Proposed NYSE Rule 472(h)).
- Prohibits ownership positions (including purchasing or receiving pre-IPO shares) if the issuer is principally engaged in the same type of business or industry classification as companies which the associated person covers in research reports (Proposed NYSE Rule 472(e)(1)).
- Prohibits trading in recommended securities thirty (30) days prior to and five (5) days after the issuance of research reports, changes in rating or price target (Proposed NYSE Rule 472(e)(2)).
- Prohibits trades contrary to the analyst's current recommendation (Proposed NYSE Rule 472(e)(3)).

The proposed amendments include exceptions to the above prohibitions for:

- A significant unanticipated change in the personal financial circumstances which is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(i));
- Thirty (30) and five (5) day blackout period for the issuance of research reports, change in rating or price target attributable to significant news or events regarding the subject company which are pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(e)(4)(ii));
- Sale transactions for associated persons new to the member or member organization within thirty (30) days of employment (Proposed NYSE Rule 472(e)(4)(iii)) or being assigned the responsibility of preparing research reports with respect to a subject company (Proposed NYSE Rule 472(e)(4)(iv)); and
- Transactions in accounts not controlled by the associated person, *e.g.*, certain investment funds (Proposed NYSE Rule 472(e)(4)(v)), or registered investment company (Proposed NYSE Rule 472(e)(4)(vi)).

The NYSE believes that prohibitions on tying analyst compensation to specific investment banking deals, or on analyst ownership of pre-IPO shares in subject companies would help eliminate incentives analysts and members or member organizations may have to publish favorable research on such subject companies.

The NYSE believes that the proposed rule change would also impose certain restrictions on an analyst's personal trading activities to help ensure that research reports and recommendations are not influenced by the prospect of personal enrichment.

Further, the NYSE proposed rule change would prohibit a research analyst from trading in a manner contrary to the analyst's most current recommendation concerning a security. Thus, for example, the NYSE proposed rule change would prohibit a research analyst from selling a security while maintaining a "buy" recommendation.

(3) Proposed amendments to NYSE Rule 472 place the following prohibitions and/or restrictions on members or member organizations:

- The publishing of research reports within forty (40) calendar days of the completion of an initial public offering and ten (10) calendar days of the completion of a secondary offering in which a member or member organization acted as a manager or co-manager (Proposed NYSE Rule 472(f)(1) and (2)).
- An exception to the forty (40) and ten (10) day quiet period for a research report issued due to significant news or events about the issuer, provided it is pre-approved by the Legal or Compliance Department (Proposed NYSE Rule 472(f)(3)).
- Offering favorable research to companies as consideration or inducement for their business is prohibited (Proposed NYSE Rule 472(g)).

While NYSE recognizes that efficient markets require the dissemination of information on publicly traded companies, the proposed quiet periods are intended to minimize the concern that a managing underwriter has the ability to reward the subject company for its underwriting business by publishing favorable research soon after completion of the offering.

As proposed, the forty (40) and ten (10) calendar day quiet periods exceed those provided for under the federal securities laws.[12] Although the proposed quiet periods are longer than what is currently mandated, NYSE believes that they are warranted.

Recognizing that markets may be volatile, the proposed rule change would not prohibit a manager or co-manager from issuing a research report during these quiet periods due to significant news or a significant event concerning the subject company. In general, a "significant" news item or event is one that is expected to have a material impact on, or that reflects a material change to, the subject company's earnings, operations or financial condition.

The NYSE proposed rule change would include a provision that expressly prohibits a member or member organization from offering favorable research, a specific research rating or a specific price target as consideration or inducement for the receipt of business or compensation. While, according to NYSE, such action constitutes a violation of existing just and equitable principles of trade, the NYSE proposed rule change makes this prohibition explicit.

(4) Proposed amendments to NYSE Rule 472 impose requirements on members, member organizations, and associated persons preparing research reports to disclose the following in written communications and public appearances:

- whether, as of five (5) days prior to the publication of a research report, a member or member organization owns a position in excess of 1% of any class of common equity securities of the subject company (Proposed NYSE Rule 472 (k)(1)(i)(a));
- the associated person's or household member's financial interest in the subject company (Proposed NYSE Rule 472(k)(1)(i)(b));
- any actual, material conflict of interest of the member or member organization which the associated person knows or has reason to know exists at the time of the issuance of a research report or public appearance (Proposed NYSE Rule 472(k)(1)(i)(c));
- whether the member or member organization received compensation from subject companies within the past twelve (12) months or reasonably expects to receive compensation in the next three (3) months (Proposed NYSE Rule 472(k)(1)(ii)); and
- whether the associated person or household member is an officer, director, or advisory board member of the recommended issuer (Proposed NYSE Rule 472(k)(1)(iii)).

[12] According to NYSE, currently Rule 174(d) of the Securities Act of 1933 provides for a twenty-five (25) day prospectus delivery requirement for an issuer's IPO if the security is to be listed on an exchange or authorized for inclusion in an interdealer quotation system such as Nasdaq. The twenty-five (25) day quiet period coincides with the twenty-five (25) day prospectus delivery requirement under this rule. In addition, according to NYSE, the restrictions regarding publication of research reports in Rule 101 of Regulation M do not apply to research reports that comply with Rules 138 or 139 (available to S–2 and/or S–3 issuers) of the Securities Act.

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NYSE proposes that all required disclosures must be clear, comprehensive and on the first page of a research report or must reference the reader to the page in which it is found (Proposed NYSE Rule 472(k)(2)).

As noted above, the NYSE proposed rule change would require a member or member organization to disclose in research reports whether the member, member organization or its affiliates received compensation from the subject company within the last 12 months, or reasonably expects to receive compensation within the next three months following publication of the research report. According to NYSE, this requirement would mandate definitive disclosure. Ambiguous or conditional language, such as disclosure that the member or member organization "may have" received compensation from the subject company, would not comply with the disclosure requirements of the proposed rule change.

The NYSE recognizes the possibility that this requirement might include compensation related to non-publicly announced transactions. However, both publicly announced and non-publicly announced related compensation present the potential for conflicts. Moreover, the NYSE does not believe that the proposed rule change would alert the Research Department or the investing public concerning non-public transactions, for at least two reasons.

First, the NYSE proposed rule change would require only disclosure that compensation was received by the member, member organization or its affiliates. It would not require disclosure concerning the specific amount received or expected to be received or the nature of the transaction, such as the fact that the member, member organization or its affiliates received the compensation in connection with non-public merger and acquisition services, or even that the compensation was received by the member or member organization (as opposed to one of its affiliates that is not engaged in investment banking). Second, according to NYSE, the term "compensation" is to be broadly interpreted to include the receipt of any consideration from the subject company. Given the breadth of the meaning of "compensation," this disclosure requirement should not alert the Research Department whether the compensation is related to a non-public transaction.

According to the NYSE, research analysts would have to disclose in public appearances if the issuer of a recommended security is a client of the member, member organization or its affiliates, provided the analyst knows or has reason to know this fact. For purposes of this provision, an issuer would be deemed a "client" of the member, member organization or its affiliates, if the member, member organization or its affiliates received compensation from the issuer within the previous twelve months, or reasonably expects to receive compensation from the issuer within the next three months. This disclosure requirement thus would not apply with regard to a non-public transaction in which the issuer is a client of the member, member organization or its affiliates and the research analyst does not know and has no reason to know of this fact due to an information barrier imposed by the member or member organization.

(5) The proposed rule change would require additional disclosures in research reports to clarify the meaning of a member's or member organization's ratings system and provide investors with better information to evaluate and compare the quality of a member or member organization's research and the influence of possible conflicts in the assignment of ratings (Proposed NYSE Rule 472(k)(2)(iv)).

(6) Proposed amendments to NYSE Rule 351 would require members and member organizations to submit to NYSE, annually, a letter of attestation signed by a senior officer or partner, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472 (Proposed NYSE Rule 351(f)). *See also* NYSE Rule 472(c) for the requirement to establish written procedures.

According to the NYSE, the scope of sales practice examinations conducted by NYSE will be expanded to ensure compliance with the new rule amendments.

4. NYSE's Statutory Basis

The Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)[13] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NASDR and the NYSE do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

1. NASD

Written comments were neither solicited nor received for this proposed rule change. Previously, the NASD published for comment in NASD Notice to Members 01–45 (July 2, 2001) a more limited proposal to amend NASD Rule 2210, Communications With The Public. The NASD received 850 comments in response to that Notice. The NASD has not included a discussion of the comments received on that proposal because the current proposed rule change is significantly different and more comprehensive.

2. NYSE

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SROs consent, the Commission will:

A. By order approve such proposed rule changes, or

B. institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NASDR and NYSE have worked together to fashion these proposals. However, there are differences in the text of the proposals. The Commission specifically requests comment on the substance of proposed NASD Rule 2711, as amended; NYSE's proposed rule changes to NYSE Rule 472 and NYSE Rule 351; and whether there are any differences between the NYSE proposed Rule 472 and NASD proposed Rule 2711 that present compliance or interpretive issues. The Commission also specifically seeks comment on whether the text or substance of proposed NASD Rule 2711 and current NASD Rule 2210 present compliance or interpretive issues.[14] The Commission notes that, in Section II above, the NASD has requested comment on several issues relating to proposed NASD Rule 2711.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to File Nos. SR–NASD–2002–21 and SR–NYSE–2002–09 and should be submitted by April 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6159 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.*, the discussion in Section II.A.1.g. above.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45525; File No. SR–SCCP–2002–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees Applicable to Philadelphia Stock Exchange Competing Specialists

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 9, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to establish clearly that SCCP's fees, credits, discounts, and other charges which are based upon Philadelphia Stock Exchange ("Phlx") equity specialists" specialist activities also apply to competing specialists' specialist activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clearly establish that any fees and charges (as well as any credits and discounts) included in SCCP's fee schedule which are based upon Phlx equity specialists' specialist activities also apply to competing specialists' specialist activities. On December 21, 2001, the Commission approved a Phlx proposed rule change to adopt rules designed to facilitate the establishment of a competing specialist program on Phlx.[3] The new rules provide for the approval by Phlx's Equity Allocation, Evaluation and Securities Committee of applications by qualified specialist units to act as competing specialists in one or more equity securities. Phlx contemplates commencing a competing specialist program in the near future. Under that program, equity securities traded on Phlx may have both a primary specialist (contemplated to be Phlx's current sole specialist in the security) and one or more competing specialists. At this time, SCCP is proposing to apply all specialist fees and charges (as well as any applicable credits or discounts) to Phlx specialists whether primary or competing.

For these reasons, SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because SCCP will charge the same for primary and competing specialists.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 34–45183 (December 21, 2001), 67 FR 118 (January 2, 2002) (order approving SR–Phlx–2001–97).

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–2002–01 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6161 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities; Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of three previously approved information collections consisting of customer survey forms.

OSC is required by law to conduct an annual survey of those who seek its assistance. The information collections are used to carry out that mandate. The current OMB approval for these collections of information expires on March 31, 2002; OSC does not plan to use the forms again until the next round of annual surveys beginning on October 1, 2002.

Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on these information collections. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments should be received by May 13, 2002.

ADDRESSES: Kathryn Stackhouse, Attorney, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Attorney, Planning and Advice Division, at the address shown above; by facsimile at (202) 653–5151; or by telephone at (202) 653–8971. The survey forms for collection of information are available for review on OSC's Web site, at www.osc.gov/reading.htm.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for: (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code; and (3) the provision of a secure channel through which Federal employees may make disclosures of information evidencing violations of law, rule or regulation; gross waste of funds; gross mismanagement; abuse of authority; or a substantial and specific danger to public health or safety.

OSC is required to conduct an annual survey of all individuals who seek its assistance. Section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note, states, in part: "[T]he survey shall—(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel." The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at www.osc.gov/forms.htm#annual, or by calling OSC at (202) 653–2253.

OSC uses three forms to survey potential respondents in three types of matters closed during the previous fiscal year: Form OSC–48a is sent to complainants who alleged prohibited personnel practices, or other prohibited activities (including violations of the Hatch Act); Form OSC–48b is sent to persons who received a written advisory opinion on the application of the Hatch Act; and Form OSC–48c is sent to covered persons who made whistleblower disclosures to OSC. Each of these forms for information collection is described below. The forms to be submitted to OMB contain some minor modifications to existing forms, including increased use of "plain English" and minor format changes. In addition, the estimated number of annual respondents for each survey has been reduced to reflect estimated actual survey response rates, rather than surveys sent.

1. Title of Collection: OSC Survey—Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC–48a; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 682.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 20 minutes.

Estimated Annual Burden: 227 hours.

Abstract: This form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed during the prior fiscal year (FY), on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

2. Title of Collection: OSC Survey—Hatch Act Advisory Opinion (Agency Form Number OSC–48b; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 65.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 12 minutes.

Estimated Annual Burden: 13 hours.

Abstract: This form is used to survey those who request a written advisory opinion on the application of the Hatch Act, and whose matter has been closed during the prior FY, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC; and (3) satisfied with the treatment received at the OSC.

3. Title of Collection: OSC Survey—Whistleblower Disclosure (Agency Form Number OSC–48c; OMB Control Number 3255–0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expires on March 31, 2002, with some revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 93.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 15 minutes.

Estimated Annual Burden: 23 hours.

Abstract: This form is used to survey those who have filed a whistleblower disclosure, and whose matter has been closed during the prior FY, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC; and (3) satisfied with the treatment received at the OSC.

Dated: March 8, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–6168 Filed 3–13–02; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 3946]

Culturally Significant Objects Imported for Exhibition Determinations: "Greuze The Draftsman"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Greuze The Draftsman," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, NY from on or about May 14, 2002 to on or about August 4, 2002, and at the J. Paul Getty Museum from on or about September 10–December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–6150 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3944]

Culturally Significant Objects Imported for Exhibition Determinations: "The Quest for Immortality: Treasures of Ancient Egypt"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Quest for Immortality: Treasures of Ancient Egypt" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about April 21, 2002 to on or about August 11, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–6151 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3945]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Balkans Junior Faculty Development Program

SUMMARY: The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs announces an open competition for the new Balkans *Junior Faculty Development Program* (JFDP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501 (c) (3) may submit proposals to place visiting faculty from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia at U.S. universities in a one academic year (nine months) teacher training and curriculum development program. The grantee organization for this new program will support and oversee the activities of the faculty throughout their stay in the United States, including their undertaking a practical internship at the end of the academic program (an additional two months). In addition, the

[7] 17 CFR 200.30–3(a)(12).

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grantee organization will recruit and select candidates for the JFDP in Bosnia and Herzegovina, Macedonia, Montenegro and Serbia to begin the program in the United States in Fall 2003.

Program Information

Overview

The new Balkans Junior Faculty Development Program (JFDP) will offer fellowships to university instructors from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Selected through an open, merit-based competition, JFDP Fellows will attend U.S. universities for one academic year to work with faculty mentors and to audit courses in order to develop new curricula and approaches to teaching in their fields of study. The JFDP will encourage its Fellows to develop professional relationships with the U.S. academic community, and to forge ties between their U.S. colleagues and colleagues in their home countries, and to share their experiences and knowledge with U.S. students and professors. Throughout their stay in the United States, JFDP Fellows will attend conferences and seminars, and participate in two-month practical internships after completing the academic component of the program. The goals of the program are to allow U.S. scholars and scholars from the participating countries to exchange ideas on curriculum design and teaching, and to increase collaboration and cooperation between universities in the United States and Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Participation in the JFDP under this grant is restricted to university instructors from Bosnia and Herzegovina, Macedonia, Montenegro and Serbia in the following fields of study: American studies, business administration, economics, education administration, environmental studies, history, international affairs, journalism, law, library science, political science, public administration and public policy.

Programs must comply with J–1 Visa regulations. Subject to the availability of funds, it is anticipated that this grant will begin on or about July 1, 2002. Please refer to the Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. The Bureau anticipates awarding one grant in the amount of $1,240,000 ($140,000 for Bosnia and Herzegovina; $550,000 for Macedonia; $150,000 for Montenegro; and $400,000 for Serbia) to support the program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Overseas recruitment and selection of candidates

(2) Participant travel expenses, stipends, accident and sickness insurance, visa fees, professional development costs

(3) Orientations, participant conferences

(4) Host university fees

(5) Alumni and follow-on activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–02–07.*

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 205–0525, fax (202) 260–7985, *exchanges@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Sheila Casey on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 10, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–02–07, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Sections at U.S. Embassies (or Public Affairs Office in Montenegro) for review, with the goal of reducing the time it takes to obtain Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Deadlines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the Public Diplomacy Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The JFDP should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. The proposal should include creative ways to involve program participants in U.S. communities.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through participant recruitment efforts, and through its selection of host universities.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau/USIA grants as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Follow-on and Alumni Activities:* The proposal should provide a plan for continued follow-on activity that insures that Bureau-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place.

6. *Project Evaluation:* The proposal should include a plan to evaluate the success of the JFDP, both during and after the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The grantee organization will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided in part through the Support for East European Democracy (SEED) Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 5, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–6149 Filed 3–13–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Sponsor Entitlement, Cargo Funds, and Nonprimary Entitlement Funds for Fiscal Year 2002

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2002, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2002 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Program Implementation Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8812.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those

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airports that have received such entitlements, except those nonprimary airports located in designated Block Grant States. Notification of the sponsor's intent to apply during fiscal year 2002 for any of its available entitlement funds including those unused from prior years, shall be in the form of inclusion of projects for fiscal year 2002 in the Airports Capital Improvement Plan.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, 2002, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2002.

Issued in Washington, DC on March 6, 2002.

Stan Lou,

Manager, Program Implementation Branch.

[FR Doc. 02–6133 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 16–19, 2002, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Aviation Administration Headquarters Building, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 16 through April 19, 2002, at the Federal Aviation Administration Headquarters Building, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above or not later than April 12, 2002. The next quarterly meeting of the FAA ATPAC is planned to be held from July 15–18, 2002, in Seattle, Washington.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 4, 2002.

David W. Madison,

Acting Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 02–6130 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Regional Airport, Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley S. Whited, A.A.E., Airport Director, of the city of Fayetteville at the following address; Mr. Bradley Whited, A.A.E., Airport Manager, Fayetteville Regional Airport, P.O. Box 64218, Fayetteville, NC 28306.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Fayetteville under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mrs. Tracie D. Kleine, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7148.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 4, 2002, the FAA determined that the application to use the revenue from a PFC submitted by the city of Fayetteville was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–02–U–00–FAY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2000.

Proposed charge expiration date: November 1, 2005.

Total estimated net PFC revenue: $1,026,513.

Brief description of proposed project(s): Construct North General Aviation Ramp, Security System Upgrade, Phase II, Design and Construct Runway 04 Safety Area, Phase I, Acquire Land, Renovate Terminal Building, Phase II, Construct Runway 04 Safety Area, Phase II, Renovate Terminal Building, Phase III, Construct Runway 22 Safety Area, Construct non-license Vehicle Road, Construct Jet Bridge Modification, Construct Taxiway 'K'.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fayetteville Regional Airport.

Issued in College Park, Georgia on March 6, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–6128 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–RDM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Roberts Field, Submitted by the City of Redmond, Roberts Field, Redmond, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Roberts Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carolyn S. Novick, Airport Manager, at the following address: City of Redmond, PO Box 726, Redmond, Oregon 97756.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Roberts Field, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington, 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–04–C–00–RDM to impose and use PFC revenue at Roberts Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 6, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Redmond, Roberts Field, Redmond, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 24, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: April 1, 2006.

Total requested for use approval: $1,968,545.

Brief description of proposed project: Expand Terminal Access Road; Design of Terminal Expansion; Install Perimeter Fence; Wildlife Mitigation; Design and Rehabilitate Air Carrier Terminal Apron; Rock Obstruction Removal.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: Air Taxis which comprise less than one percent of the total enplanements at Roberts Field.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Roberts Field.

Issued in Renton, Washington on March 6, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–6132 Filed 3–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34179]

Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport Company

Bulkmatic Railroad Corporation (BRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 3.9 miles of railroad right-of-way and trackage at transloading and freighthouse facilities known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated no earlier than March 6, 2002, the effective date of the exemption (7 days after the exemption was filed).[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The Board exempted BRC's acquisition by sublease of the line from Bulkmatic Transport Company. *See Bulkmatic Railroad Corporation-Acquisition Exemption-Bulkmatic Transport Company*, STB Finance Docket No. 34145 (STB served Jan. 15, 2002). The Board also exempted the Chicago Heights Switching Company's (CHSC) operation of the line. *See Chicago Heights Switching Company-Operation Exemption-Bulkmatic Railroad Corporation*, STB Finance Docket No. 34146 (STB served Jan. 15, 2002). BRC states that the exemptions in STB Finance Docket Nos. 34145 and 34146 have not been consummated. BRC also states that the exemption in STB Finance Docket No. 34145 will go forward but that BRC will be the operator of the line in lieu of CHSC.

[2] On March 4, 2002, a petition to reject and/or to revoke the exemptions in STB Finance Docket Nos. 34145 and 34179 and for stay of the effective date of the exemption in STB Finance Docket No. 34179 was filed by Joseph C. Szabo, for and on behalf of the United Transportation United-Illinois Legislative Board (UTU–IL). By decision served on March 5, 2002, the petition for stay was denied. That decision also noted that UTU-IL had not supported its request for rejection of the notices and that the request to revoke the exemptions would be addressed in a subsequent decision. *See Bulkmatic Railroad Corporation-Acquisition and Operation Exemption-Bulkmatic Transport Company*, STB Finance Docket No. 34145 *et al.* (STB served Mar. 5, 2002). In the decision served on March 5, 2002, the title of STB Finance Docket No. 34145 was incorrect. The correct title of STB Finance Docket No. 34145 is shown in note 1 above.

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An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34179, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Esq., Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6023 Filed 3–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34174]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company

Pennsylvania Lines LLC (PRR), as owner, and Norfolk Southern Railway Company (NS), as operator, pursuant to a written trackage rights agreement entered into among Grand Trunk Western Railroad Incorporated, PRR and NS, have agreed to grant nonexclusive overhead trackage rights to GTW [1] between milepost UW–2.4 of the former Chicago Junction Railway Company to a point approximately 250 feet south of 43rd Street via Tracks #237 and #222, and between 43rd Street and a point approximately 100 feet south of 43rd Street, via Track #224, all in Chicago, IL, a total distance of approximately 0.7 miles.

[1] GTW is a wholly owned subsidiary of Canadian National Railway Company.

The transaction was scheduled to be consummated on or after March 7, 2002, the effective date of the exemption.

The purpose of the trackage rights is to allow GTW to connect with Track #224.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S. C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34174, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6022 Filed 3–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS (VA)

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans scheduled to take place on Wednesday, March 13, 2002, beginning at 8:00 a.m. until 5:30 p.m. The meeting will be held in the Horizon Ballroom, the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC, and is open to the public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and for Department of Defense (DoD) military retirees who are also eligible from VA, through better coordination of the activities of the two departments;

(b) Review barriers and challenges that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement. Identify opportunities to improve such business practices to ensure high quality and cost effective health care; and

(c) Identify opportunities for improved resource utilization through partnership between VA and DoD to maximize the use of resources and infrastructure, including: buildings, information technology and data sharing systems, procurement of supplies, equipment and services, and delivery of care.

During this meeting, the Task Force work groups will continue to obtain current and updated information and to validate and/or clarify that information. The work groups will make presentations on the various topics to the members.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: March 5, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–6104 Filed 3–13–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 50

Thursday, March 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–F]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-Update; Final Rule

Correction

In rule document 01–18869 beginning on page 39562 in the issue of Tuesday, July 31, 2001, make the following correction:

On page 39582, the table heading "TABLE 10.A–1992 AND 1997 SKILLED NURSING FACILITY MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICATE COST REPORTS", should read "TABLE 10.A–1992 AND 1997 SKILLED NURSING FACILITY MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICARE COST REPORTS".

[FR Doc. C1–18869 Filed 3–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 28, 109, 122, 131, 169, 185, and 199

[USCG–2001–11118]

RIN 2115–AG28

Liferaft Servicing Intervals

Correction

In proposed rule document 02–5211 beginning on page 9939 in the issue of Tuesday, March 5, 2002, make the following corrections:

1. On page 9941, in the table, under the heading, "Current first servicing (in months), in the fourth line, " 12 months" should read, "12".

2. On the same page, in the same table, under the same heading, in the eighth line, "12 months" should read, "12".

3. On the same page, in the same table, under the heading, "Proposed first servicing (in months), in the first line, add the number "24".

[FR Doc. C2–5211 Filed 3–13–02; 8:45 am]

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Part II

The President

Notice of March 13, 2002—Continuation of the National Emergency with Respect to Iran

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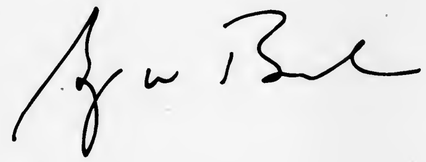
The President

Notice of March 13, 2002

Continuation of the National Emergency with Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2001. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
March 13, 2002.

[FR Doc. 02–6376
Filed 03–13–02; 11:46 am]
Billing code 3195–01–P

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–2 IFR]

Raisins Produced From Grapes Grown in California; Reduction In Production Cap for 2002 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule reduces the production cap for the 2002 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2002 RDP will bring the figure in line with 2001 crop yields.

DATES: Effective March 18, 2002. Comments received by April 1, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reduces the production cap for the 2002 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2002 RDP will bring the figure in line with 2001 crop yields. This action was recommended by the RAC at a meeting on November 13, 2001.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase,

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distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Such producers curtail their production by vine removal or some other means established by the RAC and receive a certificate from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in an RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 tons per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in an RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC by December 20. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in an RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on November 13, 2001, and recommended reducing the production cap from 2.75 to 2.0 tons per acre. With 2001 raisin-type variety grape production down by 31 percent, according to the California Agricultural Statistics Service, the RAC recommended reducing the production cap by about 30 percent to reflect 2001 crop yields. Paragraph (t) in § 989.156 of the order's rules and regulations is revised accordingly.

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projects a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the 2002 RDP. Of the 45,182 tons, 40,182 tons will be made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who plan to remove vines receiving priority over those who plan to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons will be made available to approved producers who submit applications to the RAC from December 21, 2001, through May 1, 2002, and plan to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(t) of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in an RDP. This rule reduces the cap from 2.75 to 2.0 tons per acre to accurately reflect 2001 crop yields. Authority for this action is provided in § 989.56(a) of the order.

Regarding the impact of this action on affected entities, producers who participate in the 2002 RDP will have the opportunity to earn some income for not harvesting a 2002–03 crop. Producers will sell the certificates to handlers next fall and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2002 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2001–02 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2001 RDP.

Alternatives to the recommended action include leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre more accurately reflects 2001 yields.

There was some discussion at the RAC's meeting that the 2.0-ton per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 13, 2001, the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated, and the RAC's meeting on November 28, 2001, where a diversion program was announced, were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this rule. A 15-day comment period is deemed appropriate because producer applications were due to the RAC by December 20, 2001, and therefore the 2.0 tons per acre production cap should be in place as soon as possible.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The submission deadline for producer applications for the 2002 RDP was December 20, 2001; (2) producers are aware of this action which was recommended by the RAC at a public meeting; (3) the program is voluntary, and any producer can choose to produce a raisin crop for delivery in 2002; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989 — RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (t) is revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(t) Pursuant to § 989.56(a), the production cap for the 2002 raisin diversion program for the Natural (sun-dried) Seedless varietal type is 2.0 tons of raisins per acre.

Dated: March 11, 2002.

A.J. Yates.

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6143 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 161

[Docket No. 99–053–2]

Origin Health Certificates for Livestock Exported From the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to animal exports and the standards for accredited veterinarians to allow origin health certificates for animals intended for export from the United States to be valid for more than 30 days in some cases, depending on the testing requirements of the country of destination. This change will align our requirements for export origin health certificates with the testing requirements of importing countries. This action will eliminate the need for exporters to obtain another certificate when animals arrive at the port of embarkation after more than 30 days have elapsed, thereby reducing costs and delays for U.S. livestock exporters who ship animals to certain countries. This change will not increase the risk of infected or exposed animals being exported, since all animals are inspected an additional time before leaving the United States.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Bokma, Coordinator, Americas Region, National Center for Import and

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Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8066.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, referred to below as the regulations, prescribe conditions for exporting animals from the United States. Among other things, § 91.3(a) provides that all animals intended for exportation be accompanied from the State of origin to the port of embarkation or border by an origin health certificate issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian. Origin health certificates attest that the animals in a shipment were inspected prior to export and were found free from any evidence of or exposure to communicable disease. The certificates also include identifying information pertaining to the individual animals in the shipment, as well as all test results, certifications, or other statements required by the country of destination.

The regulations in § 91.3(c) further require that all samples for tests be taken by an APHIS inspector or accredited veterinarian in the State of origin of the export movement and that, with certain exceptions, such sampling and testing be conducted within 30 days prior to the date of the export movement. Exceptions include cases in which the country of destination requires testing more than 30 days prior to the date of export. The regulations in 9 CFR part 161 contain requirements and standards for accredited veterinarians. Accredited veterinarians are authorized by APHIS to perform various types of work such as testing and inspecting animals for and issuing origin health certificates—on behalf of the Federal Government. Section 161.3, paragraph (b), states the length of time that certificates and other documents issued by an accredited veterinarian shall be valid. Prior to this final rule, the timeframe was 30 days from the date of inspection of the animal identified on the document, without exception. This meant that animals intended for export had to be inspected for purposes of the origin health certificate within 30 days prior to the date of export, even when sampling and testing could be conducted earlier.

On April 17, 2000, we published in the **Federal Register** (65 FR 20384–20387, Docket No. 99–053–1) a proposal to amend § 91.3(a) to allow animals intended for exportation to be inspected for origin health certificates more than 30 days prior to the date of export, in accordance with the testing requirements of the country of destination. In conjunction with this proposed action, we also proposed to amend the language in § 91.3(c) to provide that sampling and testing may be conducted more than 30 days prior to the date of export in instances where a receiving country allows rather than just requires, as the regulations previously stated this to occur. In addition, we proposed replacing the phrase "the date of the movement of the animals for export" with "the date of export" in both 91.3(a) and (c). We proposed this change to clarify that animals must be tested and inspected for origin health certificates 30 days or more, if the receiving country requires or allows it prior to the date they are actually exported, rather than 30 days from the date the animals started in transit to the port of embarkation or border. We further proposed to amend § 161.3(b) to allow origin health certificates issued by accredited veterinarians to be valid for more than 30 days in cases where the Administrator allows the animals identified on the document to be inspected more than 30 days prior to the date of export.

We solicited comments concerning our proposal for 60 days ending June 16, 2000. We received five comments by that date—four from livestock exporters, and one from a representative of a livestock export industry association. All supported the proposed rule, stating that, among other things, the proposed changes would improve their efficiency, eliminate costly delays, and help expedite livestock shipments.

However, two of the commenters indicated that, while our action was a step in the right direction, we did not go far enough. These commenters asserted that APHIS should change the validity timeframe of all U.S. origin health certificates and test results from 30 days to 45 days, unless otherwise required by the importing country. These commenters stated that 30 days is an insufficient amount of time to address the numerous problems that may arise during the export process; for example, if reactor animals need to be retested, or if mistakes or delays occur at the diagnostic laboratory. One of these commenters also asserted that extending the validity of origin health certificates for another 15 days would, in serious outbreak situations, give exporters time to avoid flight cancellation fees imposed by the airlines, and give importers time to reschedule quarantine space without incurring penalties. Moreover, this commenter stated that such a change would give APHIS' National Veterinary Services Laboratories (NVSL) more time to perform the necessary export tests.

One of the commenters also objected to our proposal to change the phrase "date of movement for export" in the regulations to "date of export." This commenter stated that the "previous interpretation" that tests and origin health certificates remained valid if the animals had started in transit to the port of embarkation or border prior to 30 days from the date of the first test or the date of issuance of the certificate had assisted in facilitating livestock shipments on many occasions. The commenter also asserted that this change would likely contribute to the time problems faced by exporters.

We are making no changes to the final rule based on these comments. We agree that 30 days can be a short amount of time in which to complete the numerous steps involved in the export certification process. More to the point, however, the countries of destination—not APHIS— determine and enforce their own import health requirements, including the timeframes within which test results and export origin health certificates are considered valid.

As stated previously, while we recognize that problems and delays can occur with regard to obtaining the necessary tests, inspection, and other documentation required to certify animals for export, our experience shows that 30 days is not an unreasonable amount of time in most cases to complete the steps involved. For example, it typically takes only about 7 to 10 days to obtain test results for brucellosis, as well as for many of the other diseases of concern to importing countries. Nevertheless, APHIS' NVSL has undertaken a number of initiatives to improve its ability to provide efficient and expeditious service to exporters and other customers. For example, NVSL officials have developed guidelines that address the specific test requirements for exporting swine to China. NVSL officials have also developed a booklet that contains information about all currently available tests and reagents, including the length of time required to conduct each test. This document is available on the NVSL website at *http://www.aphis.usda.gov/vs/nvsl*. To avoid delays in processing the diagnostic tests necessary for export health certification, exporters are also encouraged to contact NVSL and/or the APHIS area veterinarian in charge in the State of origin to make arrangements for testing well in advance of planned shipping dates. Advance notification is particularly important for tests that are not run on a routine basis, such as those for diseases like *Salmonella abortus-equi*.

It is ultimately the exporters' responsibility to ensure that he or she complies with all requirements for testing and obtaining the appropriate health certification for animals intended for export. Accordingly, while we recognize that flight and quarantine space cancellations caused by delays in completing the steps involved in the export process can be costly to both exporters and importers, such issues are beyond the scope of APHIS' jurisdiction and this rulemaking action. Finally, it was always our intent that the actual date of export—not the date when animals start in transit to the port of embarkation or border—determine the timeframe within which origin health certificates and test results are deemed valid.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. By extending the validity for origin health certificates issued for animals being exported to certain countries, this rule will make the export process less time consuming and expensive for livestock exporters and marketers. We have determined that approximately 2 weeks are needed to ensure that APHIS field personnel receive official notice of this change in the regulations. Therefore, the Administrator of APHIS has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the regulations in 9 CFR part 91 to allow animals to be inspected for an origin health certificate as early as the country of destination allows or requires sampling or testing to be performed. We are also amending 9 CFR part 161 to allow an origin health certificate to be valid for more than 30 days when animals are allowed to be inspected more than 30 days prior to the date of movement for export in accordance with § 91.3.

Costs

Formerly, exporters who had their animals inspected and obtained an origin health certificate more than 30 days prior to the date of export had to obtain a new origin health certificate when the animals arrived at the port of embarkation or the border. On average, it costs $150 per shipment to have a veterinarian inspect animals for export and issue an origin health certificate. When this final rule becomes effective, the original origin health certificate will still be valid when the animals arrive at the port of embarkation or the border, and the exporter will not incur the costs of obtaining an additional origin health certificate.

Live Animal Exports

United Nations trade data show that U.S. exports of live animals are worth more than $1½ billion dollars a year (see tables 1 and 2). On average, U.S. exports of live animals from 1993 through 1999 were distributed as follows: More than 40 percent went to Mexico and Canada, approximately 13.5 percent went to Japan, 2 percent went to Brazil, 1.1 percent went to the Republic of Korea (South Korea), and less than 1 percent went to Turkey, Egypt, or Taiwan. Of these countries, Brazil, Egypt, Japan, South Korea, Taiwan, and Turkey provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin.

TABLE 1.—U.S. EXPORTS OF LIVE ANIMALS

[In $1,000]

Year	Mexico	Canada	Brazil	Egypt	Japan	South Korea	Taiwan	Turkey	Rest of the world	Total
1993	$108,679	$127,058	$12,339	$1,337	$39,667	$4,777	$3,116	$2,339	$219,615	$518,927
1994	149,747	146,578	12,415	2,800	47,516	6,740	3,496	1,136	216,924	587,352
1995	31,409	124,974	14,179	2,196	110,646	8,856	2,791	7,689	216,502	519,242
1996	81,119	105,130	10,598	6,362	103,228	7,412	3,236	9,307	206,141	532,533
1997	210,013	111,446	13,691	2,261	109,123	8,060	2,495	2,042	235,965	695,096
1998	138,117	135,328	9,969	5,614	72,758	3,709	1,923	9,623	302,825	679,866
1999	103,681	180,262	9,863	4,115	74,766	6,866	2,882	4,276	271,306	658,017

TABLE 2.—U.S. EXPORTS OF LIVE ANIMALS

[As a percentage of total U.S. exports]

Year	Mexico	Canada	Brazil	Egypt	Japan	South Korea	Taiwan	Turkey
1993	20.9	24.5	2.4	0.3	7.6	0.9	0.6	0.5
1994	25.5	25.0	2.1	0.5	8.1	1.1	0.6	0.2
1995	6.0	24.1	2.7	0.4	21.3	1.7	0.5	1.5
1996	15.2	19.7	2.0	1.2	19.4	1.4	0.6	1.7
1997	30.2	16.0	2.0	0.3	15.7	1.2	0.4	0.3
1998	20.3	19.9	1.5	0.8	10.7	0.6	0.3	1.4
1999	15.8	27.4	1.5	0.6	11.4	1.0	0.4	0.6

Kazakhstan, Turkmenistan, and Uzbekistan also provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin. These three Central Asian countries imported relatively few live animals from 1993 through 1998 and none from the United States; 1999 import data are not currently available. Table 3 shows the value of live animals imported into these three countries and

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the rest of the world, based on United Nations data.

TABLE 3.—IMPORTS OF LIVE ANIMALS

[In $1,000]

Year	Kazakhstan	Turkmenistan	Uzbekistan	All countries
1993	$600	$551	.....	$8,965,958
1994	29	.....	$400	9,556,484
1995	427	.....	200	10,020,452
1996	137	.....	200	9,925,704
1997	231	.....	200	8,991,483
1998	433	.....	200	8,991,071
1999	.....	.....	.....	.....

This final rule will facilitate live animal exports from the United States to Brazil, Egypt, Japan, Kazakhstan, Korea, Taiwan, Turkey, Turkmenistan, Uzbekistan, and other countries that may allow or require animals to be tested, or samples to be taken for testing, more than 30 days prior to export from the United States. Approximately 17.5 percent of live animal exports from the United States went to these countries in the years 1993 through 1999. We do not know how many of these shipments were made by small entities. However, all U.S. entities, including small entities, who export live animals to these countries will benefit from this rule, albeit in a relatively small way, by not having to bear the costs of an additional origin health certificate, estimated at approximately $150 per shipment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we are amending 9 CFR parts 91 and 161 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 is revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 3901 and 3902; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.4.

2. In § 91.3, paragraph (a) and the second sentence in paragraph (c) are revised to read as follows:

§ 91.3 General export requirements.

(a) All animals intended for exportation to a foreign country, except by land to Mexico or Canada, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation by land to Mexico or Canada must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30 days prior to the date of export, except as follows: When the Administrator allows sampling or testing to be done more than 30 days prior to the date of export, in accordance with paragraph (c) of this section, then the animals also may be inspected within that same time period, and the origin health certificate will remain valid for that time period. The origin health certificate must certify that the animals were found upon inspection to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be endorsed by an authorized APHIS veterinarian in the State of origin and must include any test results added by the authorized APHIS veterinarian pursuant to § 161.3(k) of this chapter (any added test results must be initialed by the authorized veterinarian). The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings. The origin health certificate must include all test results, certifications, or other statements required by the country of destination.

* * * * *

(c) * * * The samples must be taken and tests must be made within the 30 days prior to the date of export, except that the Administrator may allow such sampling or testing to be conducted more than 30 days prior to the date of export if required or allowed by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of export. * * *

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.22, 2.80, and 371.4.

4. In § 161.3, the last two sentences in paragraph (b) are revised to read as follows.

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(b) * * * Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document, except that origin health certificates may be valid for a longer period of time as provided in § 91.3(a) of this chapter. The accredited veterinarian must distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

* * * * *

Done in Washington, DC, this 11th day of March 2002 .

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6266 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–028–2]

Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the animal import regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. In the interim rule, we also amended the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected, and if necessary, treated for screwworm. The interim rule was necessary to prevent the introduction of screwworm into the United States.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Senior Staff Officer, Invasive Species Team, Animal Health Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093.

SUPPLEMENTARY INFORMATION:

Background

Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian peninsula that causes extensive damage to livestock and other warmblooded animals. The adult female screwworm typically lays her eggs in open wounds on warmblooded host animals. Screwworm larvae hatch in as little as 12 hours and begin to feed on the flesh of the host animal; they are fully grown within 5 to 7 days after hatching. The fully grown larvae then drop from the host and tunnel into the soil, where they form protective cases to house themselves while they pupate. Adult screwworm flies emerge from these pupal cases and are ready to mate again within 3 to 5 days.

Screwworm was eradicated from the United States in 1966. However, in July of 1999, and again in February and March of 2000, screwworm larvae were found in horses that were imported into the United States from Venezuela and Argentina.

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals and birds into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively.

In an interim rule effective and published in the **Federal Register** on November 13, 2000 (65 FR 67617–67624, Docket No. 00–028–1), we amended the regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. We also amended the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected, and if necessary, treated for screwworm. The interim rule was necessary to prevent the introduction of screwworm into the United States.

We solicited comments concerning the interim rule for 60 days ending January 12, 2001. We received five comments by that date. They were from foreign and State governments, a trade association, and a U.S. veterinary medical association. We have carefully considered all of the comments we received. They are discussed below by topic.

Note: As explained below, we are amending the regulations in this final rule to require that horses that are imported from screwworm-affected regions must be tranquilized or sedated, rather than anesthetized, for the final examination so that the veterinarian performing that examination can thoroughly examine the horses' external genitalia. We are also amending the regulations to clarify that only male horses must be tranquilized or sedated for the purposes of the final examination. For consistency's sake, in the preamble of this final rule, we use the terms "sedate or tranquilize" in place of "anesthetize" in discussing the comments submitted by the public when it is consistent with the intent of the issues raised.

Anesthetization Requirement

In the interim rule, we set out inspection and treatment requirements for horses, ruminants, swine, and dogs imported from any region of the world where screwworm is considered to exist. Among other requirements, the interim rule established that horses that are imported from screwworm-affected regions be quarantined for a minimum of 7 days upon arrival in the United States at an Animal and Plant Health Inspection Service (APHIS) animal import center. On the seventh day of quarantine, prior to a horse's release, a veterinarian must examine the horse for screwworm at the expense of the owner or broker. For this final examination, the interim rule provided that the veterinarian must anesthetize the horse so that he or she can thoroughly examine the horse's external genitalia. If screwworms are found during this examination, the horse must be held in quarantine and treated until free.

Several commenters took issue with requiring that horses imported from screwworm-affected regions be anesthetized for the final examination. These commenters stated that anesthesia is unnecessary and that tranquilization or sedation will be sufficient in order to perform the final examination. Two of these commenters expressed concern over the physical risk associated with the use of anesthetics. One commenter recommended that if APHIS finds it necessary to examine the horses for screwworm during quarantine, then that examination could be performed on the final day of quarantine without anesthetization. This commenter suggested that if the veterinarian performing the final examination determined that further examination requiring anesthetization was necessary, then the horse could be held and examined at a later point in time.

We agree with these commenters that sedating or tranquilizing the horses will

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be sufficient so that the veterinarian performing the final examination can thoroughly examine the horses' external genitalia. Many of the horses imported into or entering the United States from screwworm-affected regions are valuable purebred horses. Tranquilizing or sedating the male horses will help to ensure the safety of the horses and the veterinarian during the examination. Therefore, we are amending the regulations to require that horses that are imported from screwworm-affected regions be tranquilized or sedated, rather than anesthetized, for the final examination so that the horses' external genitalia can be thoroughly examined by the veterinarian.

Horses Subject to the Sedation or Tranquilization Requirement

One commenter stated that, while it has been assumed that the tranquilization or sedation requirement applies only to male horses because of the difficulties in examining their external genitalia, the interim rule does not specify only male horses are subject to this requirement. This commenter recommended that we specify that male horses must be tranquilized or sedated for the final examination.

We appreciate this commenter's suggestion. The interim rule required that horses be tranquilized or sedated for the final examination so that the external genitalia of the horses can be thoroughly examined. However, we did not state that this requirement only pertains to male horses. For greater clarity, we are amending the regulations in § 93.301(j)(7) in this final rule to specify that only male horses are subject to this requirement.

Different Examination Requirements for Horses Than for Ruminants and Swine

Two commenters questioned the rationale for requiring the tranquilization or sedation of only horses for the final examination; both commenters noted that there is no similar requirement for ruminants or swine. One of these commenters asked if APHIS had determined that tranquilizing or sedating ruminants and swine is unnecessary to thoroughly examine their external genitalia, or if APHIS had gathered information from other countries confirming that screwworm infestations are not found on the prepuce of ruminants and swine. Another commenter stated that if horses are tranquilized or sedated for the final examination so that the veterinarian can thoroughly examine the horses' external genitalia, then the genitals of all species should be examined because screwworm infestations do not occur exclusively on the prepuce of horses. This commenter also stated that, because of the final examination requirement and extended quarantine period for horses that are imported from screwworm-affected regions, the interim rule placed a greater regulatory burden on the horse industry than on importers of other species mentioned in the rule.

Protocol requirements for ruminants and swine are the same as for horses, other than for the 7-day quarantine and final examination of the tranquilized or sedated animal. Due to the life cycle of screwworm, a minimum quarantine period of 7 days is necessary to ensure the detection of screwworm infestations in animals that were infested just prior to their export to the United States. Because ruminants and swine are already required under the regulations to be quarantined for at least 7 days, it was not necessary to adjust the length of time those animals must be held in quarantine. It was necessary, however, to extend to 7 days the length of time that horses, when imported from screwworm-affected regions, must be held in quarantine, given the life cycle of the pest.

After hatching, screwworm larvae are fully grown within 5 to 7 days. Because horses are released from quarantine close to the time that any screwworm infestations that may have occurred just prior to export would mature and become visible upon inspection, it is necessary to perform an examination on the final day of quarantine to ensure that any infestations are detected and eliminated. Due to the difficulties in examining the external genitalia of male horses, those animals must be tranquilized or sedated for that examination so that the veterinarian can thoroughly examine the external genitalia while ensuring his or her own safety, as well as the safety of the horses.

Screwworm infestations can be detected on the prepuce of ruminants and swine. However, except for those ruminants imported from Central America and the West Indies, ruminants and swine are already required under §§ 93.411 and 93.510 of the regulations to be quarantined for 15 and 30 days, respectively. During this period, the animals are observed for disease or infestation with animal pests. These quarantine and inspection requirements provide ample time and opportunity to detect and eliminate any screwworm infestations on these animals. Therefore, a final examination for these animals is unnecessary.

Ruminants from Central America and the West Indies are subject to different importation requirements than ruminants from all other regions. Out of those countries and regions that constitute Central America and the West Indies, only Panama is affected by screwworm. Panama does not have a history of ruminant exports to the United States; within the last 10–15 years, only one ruminant, a prized bull, was imported from Panama into the United States. In the event that ruminants were imported from Panama, or in the event that ruminants were imported from any other region in Central America or the West Indies that becomes affected by screwworm, the ruminants are required under § 93.423 to be quarantined for 7 days upon arrival in the United States, during which time they are subject to dippings and blood tests or other tests necessary to determine if these animals are free from communicable diseases. We believe that these requirements are sufficient to prevent the introduction of screwworm from ruminants imported from those regions.

Treatment Protocols

Several commenters questioned the need to quarantine horses for 7 days before performing the final examination for screwworm infestation and recommended alternative treatment protocols. One of these commenters suggested that if ivermectin was administered at recommended doses 2 weeks prior to export and again 24 hours prior to export, there would be sufficient tissue concentration of the drug to ensure that any larvae present are killed. Another commenter questioned whether the 7-day quarantine could be cut to 5 days with a second administration of ivermectin upon arrival in the United States.

Research has shown that ivermectin is effective within 3 to 5 days after treatment against the early stages of screwworm infestation, which are difficult to observe during visual inspection of the animals. Screwworm larvae hatch in as little as 12 hours and are fully grown within 5 to 7 days after hatching. Although additional doses of ivermectin administered just prior to export or upon arrival in the United States would reduce the risk of the horses becoming infested with screwworm, a 7-day quarantine is necessary to allow time for any screwworms that infested the animals just prior to export to the United States to mature and for any infestations to become visible upon inspection.

Cancellation of Reservations at APHIS Quarantine Facilities

One commenter expressed concern over the cancellation policy for reservations at quarantine facilities maintained by APHIS. This commenter stated that reservation fees should not be forfeited if services provided by carriers are unavailable within the required period because of unforseen circumstances. In particular, this commenter was concerned that transportation services for livestock from Argentina to the United States are unreliable due to a limited number of regularly scheduled flights and frequent, unscheduled delays that exceed 24 hours.

The regulations in § 93.304(a)(3) set out the reservation fee requirements for securing space at quarantine facilities for horses. The importer or importer's agent must pay or ensure payment of a reservation fee for each lot of horses to be quarantined in a facility maintained by APHIS. With certain exceptions, reservation fees will be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse for which the reservation was made. The reservation system is necessary in order to ensure that there is sufficient space in the quarantine facilities and that APHIS recovers its expenses for providing these services. Because this system is necessary and applies to all horses quarantined at an APHIS quarantine facility, not just those horses imported from screwworm affected regions, and because the interim rule did not make any changes to the reservation system, this comment falls outside the scope of this rulemaking. Therefore, we are not making any changes to the rule as a result of this comment.

Exemptions for the 7-Day Quarantine Requirement

One commenter requested that APHIS consider allowing registered thoroughbred horses imported temporarily into the United States and registered thoroughbred horses returning to the United States from screwworm-affected regions to enter the United States without meeting the extended 7-day quarantine requirement. This commenter argued that the risk of screwworm being introduced into the United States would be negligible provided that these horses are kept under intensely managed and controlled conditions while in the screwworm-affected region.

We are not making changes in this final rule as a result of this comment. We do not currently have an assessment of the risk associated with the importation of horses under the conditions described by the commenter and, therefore, cannot confirm that importing horses under those conditions would ensure against the further introduction of screwworm into the United States. However, we may consider amending the regulations in future rulemaking to address the issues raised by this commenter.

Approved 7-Day Quarantine Facilities

Two commenters expressed concern over the lack of space in, and the limited numbers of, APHIS animal import centers approved as 7-day quarantine facilities. One of these commenters was concerned that, because the quarantine facility located at Hollywood Park, CA, is not approved as a 7-day quarantine center, horses entering the United States to race at Hollywood Park from screwworm-affected countries must be quarantined at another facility approved as a 7-day quarantine facility. The other commenter argued that no scientific rationale supports limiting approved quarantine centers to APHIS-owned facilities. This commenter requested that APHIS consider authorizing those public or private quarantine facilities that are equipped to undertake the required inspection and testing protocols for screwworm as approved 7-day quarantine centers.

Authorizing public or private quarantine facilities as approved 7-day quarantine centers is outside the scope of this rulemaking. Therefore, we are not making any changes to the rule based on this comment. However, because recent demand for quarantine services for horses has exceeded the space available at existing facilities, we are considering developing standards for allowing the establishment of permanent, privately owned quarantine facilities.

Increases in User Fees for Quarantine Services

In a final rule published in the **Federal Register** on August 28, 2000 (65 FR 51997–52010, Docket No. 97–058–2), we changed our user fees for import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors. That final rule increased user fees for quarantine services, among other services, for fiscal years 2001 through 2004. One commenter requested that APHIS review those increases in user fees for quarantine services in light of the increased costs associated with the additional inspection and quarantine requirements for horses imported from screwworm-affected countries.

The annual increases in user fees for quarantine services set out in the August 2000 final rule mentioned above reflect standard annual increases in expenses and are necessary for APHIS to recover the anticipated cost of providing those services each year. Because the user fees must be adjusted annually for APHIS to recover its expenses, and because the interim rule did not make any changes to the user fees, reviewing or making changes to the user fees charged for quarantine services falls outside the scope of this rulemaking.

Emergency Action and Opportunity to Comment on Rulemaking

One commenter objected to the issuance of an interim rule "without sufficient time to consider the issues." This commenter stated that, at the time of publication, the United States was not facing such emergency conditions that would have warranted an interim rule.

We disagree with this comment. Screwworm was eradicated from the United States in 1966. However, in July 1999, and again in February and March 2000, screwworm larvae were found in horses imported into the United States from Argentina and Venezuela. The Administrator of APHIS determined that immediate action was necessary to prevent further introductions of screwworm into the United States. Prior notice was impracticable and contrary to public interest under these circumstances. The preembarkation requirements for ruminants, swine, and dogs and preembarkation and postarrival requirements for horses imported from any region of the world where screwworm is considered to exist were considered necessary on an emergency basis to safeguard the United States from screwworm.

Economic Effects

One commenter stated that the economic information presented in the interim rule underestimated the number of horses exported from the United Arab Emirates to the United States between 1995 and 1998. In the interim rule, we stated that, out of those screwworm-affected regions where other diseases that would require at least a 7-day quarantine are not known to exist, only Argentina is a significant source of horses imported into the United States. To support this point, we stated that China, the Philippines, Taiwan, and the United Arab Emirates also exported horses to the United States during the period 1995–1998, but collectively they exported only 5 horses in 1995, 9 horses in 1996, 14 horses in 1997, and 13 horses in 1998. The commenter stated that the number of horses exported from the United Arab Emirates alone in each of those years exceeded the collective

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number of horses exported from China, the Phillippines, Taiwan, and the United Arab Emirates cited in the interim rule.

This commenter is indeed correct; while the interim rule's economic analysis accurately estimated the number of horses imported permanently into the United States from those regions, it did not account for horses imported under temporary permits, such as competition or race horses. Out of all breeding, commercial, competition, purebred, and race horses imported, both permanently and temporarily, from screwworm-affected regions, Argentina accounted for 83 percent (1,730 of 2,094) of horses imported between 1996 and 2001. The United Arab Emirates supplied 14 percent (299 of 2,094) of horses imported from affected regions during the same 6-year period. The remaining 3 percent of horses imported from screwworm-affected regions were from China, India, Malaysia, Philippines, Qatar, Singapore, Taiwan, and Thailand. However, because only 2 percent (1,952 of 94,729) of all horses imported into the United States between 1996 and 2001 were from screwworm-affected regions, we continue to expect that the interim rule will not have a significant economic effect on a substantial number of small entities.

Several commenters expressed concern that the economic effects of the interim rule on the horse industry were underestimated in the interim rule's economic analysis. Several commenters stated that the costs associated with the additional inspection and quarantine requirements for horses imported from screwworm-affected regions will have a significant impact on the U.S. horse industry, especially in light of the increase in quarantine fees at APHIS quarantine facilities. Several commenters also opposed the additional inspection and quarantine requirements because the resulting cost increases, along with reservation deposits, time away from training for horses, additional post-quarantine time to allow for drug residues to be eliminated prior to competition, and any potential complications, will inhibit the movement of foreign horses to and from the United States. For example, one commenter stated that these costs alone exceed the value of a green polo pony from Argentina.

The additional inspection requirement for horses contained in the interim rule affects only those importers moving horses into the United States from regions of the world where screwworm is considered to exist. In addition, the quarantine period is extended to 7 days only for those horses that are imported from screwworm-affected regions where other diseases that require at least a 7-day quarantine are not known to exist. These requirements affect a limited number of regions. As mentioned above, Argentina and the United Arab Emirates accounted for 83 percent and 14 percent, respectively, of horses imported from regions subject to these requirements during the period 1996–2001. The remaining 3 percent of horse imports from affected regions were from China, India, Malaysia, Philippines, Qatar, Singapore, Taiwan, and Thailand during that same 6-year period. Furthermore, the additional costs borne by importers moving horses into the United States from screwworm-affected regions as a result of the additional inspection and treatment requirements are small when compared to the import value of the horses. For example, the average value of purebred horses imported from screwworm-affected countries in the Western Hemisphere, excluding Argentina, between 1998 and 2000 was $10,697. The costs for the preembarkation inspection of and treatment for screwworm represent 1 to 2 percent of this average value.

For horses imported from screwworm-affected regions that are not already affected by other diseases that require at least a 7-day quarantine, the additional cost will have a larger impact. Between 1998 and 2000, the average value of purebred horses imported from Argentina was $6,625; the preembarkation inspection and treatment costs for screwworm, as well as the 4 additional days in quarantine, are about 13 to 14.6 percent of the average value of these horses.[1] However, a relatively small percentage of horses imported into the United States are expected to be affected. Out of 94,729 horses imported into the United States between 1996 and 2001, only 2 percent (1,952 of 94,729) were from screwworm-affected regions.

As only a small percentage of horses are imported into the United States from screwworm-affected regions, it can be concluded that the additional requirements set out in the interim rule will not significantly impact the entire U.S. horse industry nor inhibit the movement of foreign horses to and from the United States. The largest impact will be borne by the importers of horses from Argentina and other countries that must quarantine their animals for 4 additional days. Nonetheless, we continue to expect that the interim rule will not have a significant economic effect on a substantial number of small entities.

In addition to the changes mentioned above, we are adding, to §§ 93.301, 93.405, 93.505, and 93.600, the Office of Management and Budget control numbers assigned to the information collection requirements associated with the interim rule, as required by the Paperwork Reduction Act.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on November 13, 2000. This rule provides that horses that are imported from regions of the world where screwworm is considered to exist must be sedated or tranquilized, rather than anesthetized, for the purposes of the examination on the seventh day of quarantine. In addition, this rule specifies that only male horses must be sedated or tranquilized during that examination. Immediate action is necessary to provide for the use of an appropriate level of chemical restraint and clarify that female horses do not require such restraint. These changes are, therefore, necessary to relieve requirements that we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR part 93 that was published at 65 FR 67617–67624 on November 13, 2000, is adopted as a final rule with the following changes:

[1] The cost estimates quoted in the interim rule for horse imports have been updated here to incorporate up-to-date import figures for 1999 through 2001 and reflect the annual cost increases in user fees for quarantine services provided by APHIS.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.301, paragraph (j)(7) is revised to read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(j) * * *

(7) Horses must be held at the animal import center for a minimum of 7 days. On day 7, prior to the horses' release, the horses must be examined by a veterinarian at the expense of the owner or broker. For this examination, male horses must be tranquilized or sedated so that the external genitalia of the horses can be thoroughly examined. If screwworm is found during this examination, the horses must be held in quarantine and treated until free of infestation. (Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0165)

§ 93.405 [Amended]

3. Section 93.405 is amended by revising the OMB control number citation at the end of the section to read as follows: "(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0165)".

§ 93.505 [Amended]

4. Section 93.505 is amended by adding, at the end of the section, the following: "(Approved by the Office of Management and Budget under control number 0579–0165)".

§ 93.600 [Amended]

5. Section 93.600 is amended by adding, at the end of the section, the following: "(Approved by the Office of Management and Budget under control number 0579–0165)".

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6268 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 01–125–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services by adding a commuted traveltime allowance for travel between Olympia and Sumas in the State of Washington. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Inez D. Hockaday, Acting Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of the Animal and Plant Health Inspection Service's Veterinary Services (VS) program on a Sunday, holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding a commuted traveltime allowance for travel between Olympia and Sumas in the State of Washington. The new allowance is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a VS employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not

intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, we are amending 9 CFR part 97 as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.22, 280, and 371.4.

2. In § 97.2, the table is amended by revising, under the State of Washington, the entry for Sumas to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
. . . . .			.
Washington:			
. . . . .			.
Sumas	Blaine		2
Do	Olympia		6
Do	Seattle		6
. . . . .			.

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6269 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment 2 to Certificate of Compliance (CoC) Number 1025. This amendment will allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

DATES: The final rule is effective May 29, 2002, unless significant adverse comments are received by April 15, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013480571. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

CoC No. 1025, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment 2, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7608, e-mail *RWB@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail *RWB@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444) that approved the NAC–MPC cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1025.

Discussion

NAC International, the certificate holder for CoC No. 1025, submitted an application to the NRC to amend the CoC on May 19, 2000; supplemental information to support the application was submitted on September 6, October 2, and 12, 2000; and April 13, September 6, October 5, 10, and 15, and November 21, 2001. The applicant requested an amendment to permit a part 72 licensee to store a new type of fuel in the NAC–MPC. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. No other changes to the NAC–MPC cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–MPC cask design listing in § 72.214 by adding Amendment 2 to CoC No. 1025. The amendment includes a revision of the TS in their entirety to revise the format of the TS and to include specifications for the new type of fuel and new operational limits. Details on specific changes to the TS are discussed in the SER.

The redesigned NAC–MPC cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

§ 72.214 List of approved spent fuel storage casks.

Certificate No. 1025 is revised by adding the effective date of Amendment 2.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 29, 2002. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility

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Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the NAC–MPC cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the NAC–MPC cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment 2 will allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7608, e-mail *RWB@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to part 72 that approved the NAC–MPC cask design by adding it to the list of NRC-approved cask designs in § 72.214. On May 19, 2000, the certificate holder, NAC International, submitted an application to the NRC to amend CoC No. 1025; supplemental information to support the application was submitted on September 6, October 2, and 12, 2000; and April 13, September 6, October 5, 10, and 15, and November 21, 2001. Amendment 2 will allow for modification of the design of the cask system to accommodate a new type of fuel. The MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC International. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.
Initial Certificate Effective Date: April 10, 2000.
Amendment Number 1 Effective Date: November 13, 2001.
Amendment Number 2 Effective Date: May 29, 2002.
SAR Submitted by: NAC International.
SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).
Docket Number: 72–1025.
Certificate Expiration Date: April 10, 2020.
Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6228 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

RIN 3038–AB88

Reporting Levels for Large Trader Reports; Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its rules to establish reporting levels for security features products (SFPs) traded on designated contract markets and notice-designated contract markets. The reporting levels are 1000 contracts for an SFP involving an individual security and 200 contracts for an SFP involving a narrow-based index of equity securities.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [*GMartinaitis@cftc.gov*] or [*NYanofsky@cftc.gov*].

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. 106–554, which extensively revised the Commodity Exchange Act (Act). Among other things, the CFMA removed the restriction in the Act on the trading of futures contracts on individual equity securities and narrow-based indices of equity securities.[1] Under the revised law, these products are now referred to as "security futures products" (SFPs)[2] and may be traded on designated contract markets, notice-designated contract markets and registered derivatives transaction execution facilities.

SFPs, like all other commodities traded on Commission-designated markets, will be subject to the Commission's large trader reporting rules. Those rules require futures commission merchants, clearing members and foreign brokers to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set for individual futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures

[1] *See* section 251(a) of the CFMA. This trading previously had been prohibited by section 2(a)(1)(B)(v) of the Act.

[2] The term "security futures product" is defined in section 1a(32) of the Act to mean "a security future or any put, call straddle, option, or privilege on any security future." The term "security future" is defined in section 1a(31) of the Act: it generally means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except exempted securities (with the exclusion of municipal securities) and certain agreements, contracts, or transactions excluded from the Act. Because the CFMA provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures product that may be made available for trading during the next two years.

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markets and other matters of public interest. Generally, large trader reports are filed by the firm carrying the reportable trader's position.[3]

Based upon its experience in administering the large trader reporting system, the Commission proposed establishing a reporting level of 1000 contracts for SFPs involving an individual security[4] and 200 contracts for SFPs involving a narrow-based index of securities.[5] 66 FR 64383 (December 13, 2001). In its proposal, the Commission stated its intent to review these levels an appropriate amount of time after trading in SFPs commences to determine if they provide adequate coverage for effective market surveillance. At that time, the Commission will also consider actual trading experience—including trading volume, open interest and the number and position sizes of individual traders—to determine whether these levels are too high or too low for effective market surveillance.

The Commission noted in its proposal that the rules require the reporting of positions in SFPs on notice-designated contract markets. Notice-designated contract markets are entities that are otherwise regulated by the Securities and Exchange Commission (such as registered national securities exchanges and registered national securities associations) that apply for and, pursuant to a notice-filing procedure, become designated as contract markets by the Commission for the limited purpose of trading SFPs.[6] The Act and the Commission's regulations exempt notice-designated contract markets from certain provisions of the Act and the Commission's regulations; these trading facilities, however, are subject to the Commission's large trader reporting system.[7] Thus, futures commission merchants (whether registered under a full or a notice filing-procedure under rule 3.10[8]), clearing members, foreign brokers and others who have reporting and other obligations under parts 15 through 21 of the Commission's rules will have concomitant obligations with respect to SFPs traded on notice-designated contract markets.

The Commission received two comment letters on its proposal—one from a contract market, the Chicago Mercantile Exchange (CME), and one from a national securities exchange that, in connection with listing and trading SFPs, is required to become a notice-designated contract market, the American Stock Exchange (AMEX). Both the CME and the AMEX generally supported the reporting levels. The CME specifically noted that the levels appropriately balance the protection of market integrity with administrative burdens. AMEX commented that, based on actual trading experience, the Commission may in the future need to establish higher reporting levels. AMEX also suggested that it may be appropriate for the Commission to tier reporting levels to take into account capitalization, trading volume and/or public float of the underlying security.[9]

The Commission is adopting the reporting levels as proposed. As stated in the proposal, and consistent with the comments, the Commission will review these levels an appropriate amount of time after trading in SFPs commences to determine if they provide adequate coverage for effective market surveillance. At that time, the Commission will also consider actual trading experience—including trading volume, open interest and the number and position sizes of individual traders—to determine whether the levels are too high or too low for effective market surveillance. While the Commission does not anticipate tiered reporting levels, due to the administrative difficulties inherent in such a system, the Commission has not ruled out such an approach and will consider it, as appropriate.[10]

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. 66 FR at 64384. The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules with their comment letters. The Commission has considered the two comment letters received, neither of which specifically addressed the Commission's analysis of the costs and benefits of the proposed rules.

The Commission has considered the costs and benefits of the proposed rules and has decided to adopt the rules as discussed above.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that federal agencies, in proposing rules, consider the impact of those rules on small entities. The Commission has previously determined that large traders and FCMs are not "small entities" for purposes of the RFA.[11] The amendment to reporting requirements primarily impacts FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. The Commission invited comments from any firm believing that these rules would have a significant economic impact on its operations. No comments were received in response to that invitation,

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes that the rule amendment does not contain information requirements which require the approval of the Office of Management and Budget. The purpose of this rule is to establish a specific reporting level for security futures products.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 4g, 4i, 5, 5a and 8a of the Act, 7 U.S.C. 6g, 6i, 7, 7a and 12a, as amended, the Commission hereby proposes to amend Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is amended by revising paragraph (b) to read as follows:

§ 15.03 Reporting levels.

* * * * *

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
Security Futures Products: Individual Equity Security	1,000
Narrow-Based Index of Equity Securities	100
All Other Commodities	25

Issued in Washington, DC, this 11th day of March, 2002 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–6288 Filed 3–14–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 96P–0460]

Topical Antifungal Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 8, 2002 (67 FR 5942). The document amended the final monograph for over-the-counter (OTC) topical antifungal drug products to add the ingredient clotrimazole as generally recognized as safe and effective for the treatment of athlete's foot, jock itch, and ringworm. The document was inadvertently published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 02–3079, appearing on page 5942 in the **Federal Register** of Friday, February 8, 2002, the following correction is made:

1. On page 5942, in the first column, "[Docket No. 99N–4063]" is corrected to read "[Docket No. 96P–0460]".

Dated: March 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6180 Filed 3–14–02; 8:45 am]

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[3] Generally, parts 17 and 18 of the regulations, 17 CFR parts 17 and 18, require reports from firms and traders, respectively, when a trader holds a "reportable position." A reportable position is any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in Commission rule 15.03 in either: (1) Any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or (2) long or short put or call options that exercise into the same future of any commodity on any one contract market. 17 CFR 15.00 and part 150.

The firms which carry accounts for traders holding "reportable positions" are required to identify those accounts by filing a CFTC Form 102 and to report all reportable positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[4] Based on staff discussions with industry participants, the Commission understands that futures contracts on individual securities will specify 100 shares of the underlying security.

[5] This number corresponds to the current reporting level for security options.

[6] *See* section 5f of the Act, 7 U.S.C. 7f.

[7] *See* section 4f[a](4) of the Act, 7 U.S.C. 6f(a)(4); 17 CFR 41.34. The Commission discussed the application of its large trader reporting system to notice-designated contract markets when it adopted its rules governing these markets. *See* 66 FR 44960 (Aug. 27, 2001).

[8] *See* 66 FR 43080 (Aug. 17, 2001).

[9] AMEX also noted its intent to use its current reporting level of 200 (which applies to options positions on stocks, shares of exchange-traded funds and stock indexes) for SFPs.

[10] AMEX noted that some firms are considering submitting their reports through the Security Industry Automation Corporation (SIAC). The Commission and the exchanges are working with SIAC to facilitate this. Whether or not the reports are filed through SIAC, the reporting firm remains responsible for the filing of the report.

[11] 47 FR 18618–20 (Apr. 30, 1982).

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in April 2002. Interest assumptions are also published on the PBGC's Web site *(http://www.pbgc.gov)*.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during April 2002, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during April 2002, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during April 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 5.50 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for March 2002) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 4.25 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for March 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during April 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 102, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
102	4–1–02	5–1–02	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 102, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
102	4–1–02	5–1–02	4.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
.	.	.	.	.	.	.
April 2002	.0550	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of March, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–6427 Filed 3–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AA79

Payment of Federal Taxes and the Treasury Tax and Loan Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is amending the regulation governing the Treasury Tax and Loan (TT&L) program, to provide the Secretary greater flexibility to adjust the rate of interest we charge on funds loaned through the existing TT&L investment option. In addition, Treasury is making regulatory changes that will allow us to test the feasibility of a new investment option known as the term investment option. The term investment option would provide financial institutions participating in the TT&L investment program with another option for borrowing Treasury funds. Under the term investment option, Treasury may invest excess balances with TT&L participants at a market based rate of interest for a predetermined period of time.

DATES: This final rule is effective April 15, 2002.

ADDRESSES: You can download this final rule at the following web site: *http://www.fms.treas.gov/eftps*. You may also inspect and copy this final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or *walt.henderson@fms.treas.gov;* Ellen Neubauer, Senior Attorney, at (202) 874–6680 or *ellen.neubauer@fms.treas.gov;* or John Galligan, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or *john.galligan@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background on the Treasury Tax and Loan Program

The Treasury Tax and Loan (TT&L) program, 31 CFR part 203 (part 203), encompasses two separate components—a depositary component through which we collect Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which we invest short-term operating balances not needed for immediate cash outlays.

Through the TT&L depositary component, which comprises nearly 10,000 commercial financial institutions and Federal Reserve Banks (FRBs), we collected over $1.6 trillion in Fiscal Year 2001, representing approximately 80 percent of the total Federal annual tax receipts, from approximately 5 million business taxpayers.

Nearly 1,400 of the TT&L depositaries borrow excess short-term Treasury operating funds by participating in the investment component of the TT&L program. Through agreements executed under this Part, participating depositaries borrow Treasury funds in the form of a note secured with collateral pledged to Treasury and pay interest to the Treasury on these balances. In Fiscal Year 2001, we earned nearly $1 billion in interest income through the TT&L investment component.

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The Secretary is required to consider the prevailing market in prescribing the rate of interest. (31 U.S.C. 323) In 1978 when the interest rate formula was implemented, the overnight repurchase agreement market was not mature and a published rate was not available. Thus, the TT&L rate was set as an approximation of an overnight repurchase agreement rate. At that time, it was generally believed that the Federal funds rate averaged twenty-five basis points above the volume-weighted average interest rate from overnight repurchase agreements secured by Treasury securities and select Agency securities, and executed by the Federal Reserve Bank of New York for its monetary operations. Historically, the overnight repurchase agreement rate and the Federal funds rate generally have moved broadly in tandem.

On July 30, 1999, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) at 64 FR 41748. The NPRM proposed a change to the interest rate we charge on funds loaned through the TT&L program, including funds loaned through the direct investment and special direct investment programs, from the Federal funds rate less twenty-five basis points to an overnight repurchase agreement rate. The closing date for submission of comments was September 28, 1999. Copies of the comments are available on the Financial Management Service's (FMS) web site at *http://www.fms.treas.gov/eftps*. Based on the comments we received, we have reconsidered that change. Instead, we are amending Part 203 to allow the Secretary the flexibility to adjust the rate of interest, taking into consideration prevailing market conditions.

The NPRM also sought comment on the extent to which TT&L participants were interested in obtaining TT&L funds for a predetermined period of time. Given the level of interest expressed for this concept, Treasury is considering offering an investment option which incorporates a term feature. Amending Part 203 will enable us to proceed with the design and testing of this option. The new TT&L investment option under consideration is called the term investment option and will be designed so that the Treasury may earn a market based rate of return on investments with a fixed term. The term investment option will provide an additional investment option for current TT&L participants and may also increase participation in the TT&L program. Treasury expects that the rate of interest earned on term investments will reflect a market rate of return for similar funds.

At a later date, Treasury will also be publishing an NPRM for Part 203 to reflect terminology changes brought about by the October 2000 implementation of the Treasury Investment Program (TIP), the component of the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure invested funds and public money.

Comments on the Proposed Rule

By the close of the comment period on September 28, 1999, we received comment letters on the NPRM from 56 financial institutions and 3 industry trade associations. Following is a discussion of the issues:

Reaction to a Change in the Treasury Tax and Loan Rate of Interest

All of the commenting financial institutions and one industry trade association opposed the change in the TT&L rate of interest proposed in the NPRM. All commenting financial institutions stated that the proposed rate change (from the Federal funds rate less twenty-five basis points to a rate based on the overnight repurchase agreement rate) would decrease the level of participation in the TT&L program. Several financial institutions, including the largest TT&L investment program participants, commented that the proposed TT&L rate of interest did not take into account certain characteristics of the program such as Treasury's ability to place or call funds with little or no notice and prescribed collateral requirements, both of which should be factored into the rate. Also, many commenting financial institutions expressed concerns about the source and availability of the overnight repurchase agreement rate and the lack of historical data associated with this rate.

Adjusting the TT&L Rate of Interest

We agree with the respondents that a TT&L rate based on the overnight repurchase agreement rate does not adequately take into consideration the embedded option to place or call funds with little or no advance notice, nor the administrative costs associated with posting and transferring TT&L collateral. Thus, the proposed rate does not meet our goal of establishing a rate reflective of the prevailing market for a transaction with characteristics economically similar to the TT&L investment program. We have therefore deleted those provisions of the NPRM that would change the TT&L rate of interest to an overnight repurchase rate.

Nevertheless, we have determined that the best way to ensure that the Treasury continues to earn the prevailing market rate of return is to periodically review the TT&L rate of interest and make any necessary adjustments as market conditions dictate. The final rule therefore allows the Secretary to periodically adjust the rate taking into consideration the prevailing market for a transaction with characteristics similar to the TT&L investment program. This will provide Treasury greater flexibility in earning a market based rate of return on investments. The rate will be established through *TT&L Special Notices to Depositaries* and will be published in the **Federal Register** and on the FMS web site. A *TT&L Special Notice to Depositaries* is included herein establishing the TT&L rate of interest as the Federal funds rate less twenty-five basis points.

Obtaining Funds for a Predetermined Period of Time

The NPRM sought comment on the extent to which TT&L participants were interested in obtaining TT&L funds for a predetermined period of time. The majority of commenters noted that the call feature associated with TT&L funds made participation in the program less desirable for financial institutions. Of the 15 commenters who specifically commented on their interest in obtaining TT&L funds for a predetermined period of time, 11 expressed some interest in the concept. In further discussions with financial institutions regarding the benefits of holding funds for a predetermined period of time, financial institutions again generally reacted favorably to the concept. Based upon these comments, we are considering a new investment component of TT&L, referred to as the term investment option.

Description of the Term Investment Option

The term investment option would provide Treasury with an option to invest excess operating funds with participating financial institutions for a predetermined period of time. This option is in the early stages of development and we anticipate that it will be offered initially on a pilot basis. Under this option, Treasury will determine the rate of interest taking into consideration the prevailing market and will either establish a predetermined rate based on a benchmark or establish the rate of interest based on the results of a bidding process. The term investment option may be offered by the Treasury at any time there are excess operating funds, providing an additional cash management tool for placing excess funds. The addition of this option may also expand the total capacity within the TT&L program by providing an additional investment option for financial institutions, and may encourage greater participation. This rule is being amended to give us the flexibility to offer this option on a pilot basis and, after evaluating the pilot, on an ongoing basis if warranted. Additional details regarding the term investment option will be published in procedural instructions provided to financial institutions.

Summary of Changes

Definitions

Main note balance—the phrase main note balance has been added to section 203.2 of the final rule to describe the existing open-ended note balance maintained by financial institutions currently participating in the TT&L investment program. This phrase has been added as a means of differentiating between the existing open-ended note balance and the new *term note balance*. The phrase main note balance is used in §§ 203.3; 203.13; 203.19; 203.21; and 203.23 as necessary to clarify that certain features of the existing investment program, such as how funds move in and out of the main note balance, are not applicable to the new term investment option. The features of the existing investment program are unchanged. Where the phrase note balance is used, it is intended to refer to both the main note balance and the term note balance as, for example, in § 203.24 (g).

Term investment option—the phrase *term investment option* has been added to § 203.2 of the final rule to describe the new investment option introduced in this rule. Through the term investment option, financial institutions will have the ability to hold excess Treasury operating funds for a predetermined period of time. Section 203.23 (f) describes the features of this option.

Term note balance—the phrase *term note balance* has been added to § 203.2 of the final rule to describe the note balance maintained by financial institutions participating in the term investment option.

Treasury Tax and Loan rate of interest—the definition of Treasury Tax and Loan (TT&L) rate of interest has been changed in § 203.2 of the final rule to clarify that the phrase TT&L rate of interest refers only to the rate of interest charged on the main note balance. The phrase TT&L rate of interest does not describe the rate of interest charged on the term note balance which is addressed in § 203.23. The definition of the TT&L rate of interest has also been changed to give the Secretary greater flexibility to change the TT&L rate of interest when market conditions warrant.

Collateral requirements. Section 203.24 (b) describes the collateral requirements for the term note balance. Financial institutions participating in the term investment option will be required to pledge collateral sufficient to cover the total term note balance prior to the time the term investment is placed. Collateral will be pledged in the same manner as collateral for the main note balance, although specific collateral requirements may differ. As with main note balances, types and valuations of acceptable collateral for the term note balance will be published on the Bureau of the Public Debt's web site at www.publicdebt.treas.gov.

TT&L Special Notice to Depositaries

This is notice to Treasury Tax and Loan (TT&L) depositaries regarding the rate of interest the Department of the Treasury charges on TT&L main note balances, including funds invested through the direct investment and special direct investment programs. Effective April 15, 2002, the TT&L rate of interest is the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System less twenty-five basis points.

Executive Order 12866

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is herein certified that this final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this final rule does not require any actions on the part of or impose any new requirements on small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic fund transfers, Taxes.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR part 203 is amended as follows:

PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

2. Amend § 203.2 by revising paragraph (g); redesignating paragraphs (w) through (dd) and (ee) through (kk) as paragraphs (x) through (ee) and (hh) through (nn), respectively; adding new paragraph (w); revising newly redesignated paragraphs (x) and (dd); adding new paragraphs (ff) and (gg); and revising newly redesignated paragraph (nn) to read as follows:

§ 203.2 Definitions.

* * * * *

(g) *Direct investment* means placement of Treasury funds with a depositary and a corresponding increase in a depositary's main note balance.

* * * * *

(w) *Main note balance* means an open-ended interest-bearing note balance maintained at the FRB of the district.

(x) *Note option* means that program available to a TT&L depositary under which Treasury invests in obligations of the depositary. The amount of such investments will be evidenced by interest-bearing note balances maintained at the FRB of the district.

* * * * *

(dd) *Special direct investment* means the placement of Treasury funds with a depositary and a corresponding increase in a depositary's main note balance, where the investment specifically is identified as a "special direct investment" and may be secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.24(c)(2)(i).

* * * * *

(ff) *Term investment option* means the program available to financial institutions that offers the ability to borrow excess Treasury operating funds for a predetermined period of time.

(gg) *Term note balance* means an interest-bearing note balance maintained at the FRB of the district for a predetermined period of time.

* * * * *

(nn) *Treasury Tax and Loan (TT&L) rate of interest* means the interest charged on the main note balance. The TT&L rate of interest is the rate prescribed by the Secretary taking into

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consideration prevailing market interest rates. The rate and any rate changes will be announced through a *TT&L Special Notice to Depositaries* and will be published in the **Federal Register** and on a web site maintained by Treasury's Financial Management Service at http://www.fms.treas.gov.

3. Amend § 203.3 to revise paragraph (c) to read as follows:

§ 203.3 Financial institution eligibility for designation as a Treasury Tax and Loan depositary.

* * * * *

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, note option depositaries shall possess either general or specific authority permitting the maintenance of a note balance. In the case of note option depositaries maintaining main note balances, the authority shall permit the maintenance of a main note balance which is payable on demand without previous notice of intended withdrawal.

4. Amend § 203.13 to revise paragraphs (b), (c)(1), and (d) (1) to read as follows:

§ 203.13 Same-day reporting and payment mechanisms.

* * * * *

(b) *Fedwire value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depositary's main note balance.

(c) * * *

(1) For a note option depositary using a Fedwire non-value transaction, the tax payment amount will be credited to the depositary's main note balance on the day of the transaction.

* * * * *

(d) * * *

(1) For a note option depositary using a Direct Access transaction, the tax payment amount will be credited to the depositary's main note balance on the day of the transaction.

* * * * *

5. Revise § 203.19 to read as follows:

§ 203.19 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the main note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the main note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the main note balance on the business day following the receipt of the tax payment.

6. Revise § 203.21 to read as follows:

§ 203.21 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting main note balances under the various payment methods; debiting main note balances; maintaining term note balances; and pledging collateral security.

7. Amend section 203.22 to remove "and" at the end of paragraph (b), revise paragraph (c) and add paragraph (d) to read as follows:

§ 203.22 Sources of balances.

* * * * *

(c) Direct investments and special direct investments pursuant to subpart D of this part; and

(d) Other excess Treasury operating funds.

8. Amend § 203.23 by revising paragraphs (a)(1), (a)(2), (c), (d), and (e); and adding paragraph (f) to read as follows:

§ 203.23 Note balance.

(a)* * *

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its main note balance as stated in § 203.19(b).

(2) *EFTPS*—(i) *ACH debit and ACH credit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its main note balance for the value of the transactions on the date that an exchange of funds is reflected on the books of the Federal Reserve Bank of the district. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the main note balance.

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its main note balance and debit its customer's account for the value of the transactions on the date ETA receives and processes the transactions.

* * * * *

(c) *Main note balance withdrawals.* The amount of the main note balance shall be payable on demand without prior notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent on the day specified in the call for payment.

(d) *Interest.* A main note balance shall bear interest at the TT&L rate. Such interest is payable by a charge to the Federal Reserve account of the depositary or its designated correspondent in the manner prescribed in the procedural instructions.

(e) *Maximum balance*—(1) *Note option depositaries.* A depositary selecting the note option shall establish a maximum for its main note balance by providing notice to that effect in writing to the FRB of the district. The maximum balance is the amount of funds for which a main note option depositary is willing to provide collateral in accordance with § 203.24(c)(1). The depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance unless it is a reduction resulting from a collateral re-evaluation as determined by the depositary's FRB. That portion of any advice of credit or EFTPS tax payment, which, when posted at the FRB, would cause the main note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A main note option depositary that participates in direct investment shall set a maximum for its main note balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow. The direct investment note option depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance.

(3) *Special direct investment depositaries.* Special direct investments, when credited to the main note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

(f) *Term investment option.* Treasury may, from time to time, invest excess operating funds in obligations of depositaries selecting the term investment option. Such obligations shall be in the form of interest-bearing notes payable upon a predetermined period of time not to exceed 90 days. Such notes shall bear interest at a rate prescribed by the Secretary by auction or otherwise taking into consideration prevailing market interest rates.

9. Amend § 203.24 to revise paragraph (a); redesignate paragraphs (b) through (f) as paragraphs (c) through (g), respectively; add a new paragraph (b); and revise newly redesignated paragraph (d)(1) to read as follows:

§ 203.24 Collateral security requirements.

* * * * *

(a) *Note option—main note balance*—(1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (d)(1), (e), and (f) of this section in an amount that is sufficient to cover the pre-established maximum balance for the main note balance, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in direct investment is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each note option depositary participating in direct investment shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (d)(1), (e), and (f) of this section to cover the total main note balance including those funds received through direct investment. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's main note balance, the note option depositary shall pledge collateral security, in accordance with the requirements of paragraphs (d)(2) and (f) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Note option—term note balance.* Each note option depositary participating in the term investment program shall pledge, prior to the time the term investment is placed, collateral in accordance with paragraphs (d) (1), (e), and (f) of this section sufficient to cover the total term note balance.

* * * * *

(d) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), (b), and (c) of this section shall be deposited with the FRB of the district, or, where appropriate, with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

* * * * *

Dated: October 26, 2001.

Kenneth R. Papaj,

Acting Commissioner.

[FR Doc. 02–5918 Filed 3–14–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–162]

RIN 2115–AA97, 2115–AA97, and 2115–AA98

Anchorages, Regulated Navigation Areas, Safety and Security Zones; Boston Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising a temporary final rule (§ 165.T01–171) published September 27, 2001. This change will extend the effective period for four temporary safety and security zones in this rule until June 30, 2002. allowing us adequate time to conduct a rulemaking to make these four safety and security zones permanent. The anchorage area restrictions (§ 110.T01–162) and regulated navigation areas (§ 165.T01–162) created by the rule published September 27, 2001 will expire as provided in that rule on March 16, 2002.

DATES: Section 165.T01–171 is revised effective March 15, 2002 and will remain effective until June 30, 2002.

ADDRESSES: MSO Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Maritime Security Operations, MSO Boston, at 617–223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated.

For these same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rulemaking is urgently required to prevent future terrorist strikes within and adjacent to waters within the areas protected by these safety and security zones. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render individuals, vessels and facilities within and adjacent area vulnerable to subversive activity, sabotage or terrorist attack.

Background and Purpose

On September 27, 2001, we published a temporary final rule creating anchorage area restrictions, three regulated navigation areas and five safety and security zones in the Boston Marine Inspection Zone and Captain of the Port Zone. (66 FR 49280). One of the safety and security zones, § 165.T01–171 (a)(4), for Pilgrim Nuclear Power Plant has been removed by a different temporary final rule (67 FR 1607, January 14, 2002), which was followed by an NRPM for a permanent rule (67 FR 4218, January 29, 2002).

We have determined that the anchorage area restrictions and three regulated navigation areas will not be

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needed after their current expiration date, March 16, 2002.

As indicated by an NPRM we published last month, and in the reasons supporting our finding of good cause, we do see a need to continued the four remaining safety and security zones in temporary 33 CFR 165.T01–171. (67 FR 8915, February 27, 2002). We are extending the effective period of these zones until June 30, 2002, to allow us to issue a supplemental NPRM with a longer comment period on the proposal to make these safety and security zones permanent.

Safety and Security Zones

The rule extends the effective period for four distinct safety and security zones, having identical boundaries. Three of these zones are being established by reference to a radius around a particular coordinate or easily identifiable landmark. One zone is being established by reference to readily identifiable boundaries. All of the zones are being established in order to protect the waterfront facilities, terminals, power plants, as well as persons and vessels from subversive or terrorist acts. No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port.

The Captain of the Port may take possession and control of any vessel in a safety and security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around some of the safety and security zones in Boston Harbor and the zone in Salem Harbor; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential impacts, the Coast Guard still deems that these safety and security zones are need to protect the ports of Boston and Salem and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston and Salem Harbor in which entry would be prohibited by safety or security zones.

This rule does not have a significant impact on a substantial number of small entities because the majority of the zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the Port of Boston are deemed to be low.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry, Maritime Security Operations, Marine Safety Office Boston, at 617–223–3030.

Collection of information

This rule does not call for new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46

2. Revise § 165.T01–171 published at 66 FR 49283–49284 to read as follows:

§ 165.T01–171 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following are established as safety and security zones:

(1) All waters of the Mystic River within a five hundred (500) yard radius of the Distrigas terminal pier in Everett, MA.

(2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the North Jetty and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(3) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(4) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

(b) *Effective dates.* This section is effective from September 18, 2001 until June 30, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 12, 2002.

G. N. Naccara,

Rear Admiral, U.S. Coast Guard, District Commander, First U.S. Coast Guard District.

[FR Doc. 02–6459 Filed 3–13–02; 3:48 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

National Primary and Secondary Ambient Air Quality Standards

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 50 to 51, revised as of July 1, 2001, on page 62, in Part 50 Appendix H, under the third heading, the fifth paragraph is amended by correcting the formula to read as follows:

Appendix H to Part 50—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone

* * * * *

3. Estimating the Number of Exceedances for a Year

* * * * *

$$e = v + [(v/n) * (N-n-z)] \quad (1)$$

* * * * *

[FR Doc. 02–55506 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 150–1150; FRL–7158–6]

Approval of Operating Permit Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing its approval of the amendments to the Iowa Title V operating permit program. EPA announced its proposed approval of these amendments on January 11, 2002. These amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

DATES: This rule is effective on April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permit program?

What is the Federal approval process for the Part 70 operating permit program?

What does Federal approval of a state operating permit program mean to me?

What is being addressed in this document?

Have the requirements for approval of a revision to the operating permit program been met?

What action is EPA taking?

What Is the Part 70 Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed

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in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter that is 10 micrometers in size (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval.

What Is the Federal Approval Process for the Part 70 Operating Permit Program?

In order for state regulations to be incorporated into the Federally enforceable Title V operating permit program, states must formally adopt the regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the operating permit program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally approved operating permit program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled "Approval Status of State and Local Operating Permits Program."

What Does Federal Approval of a State Operating Permit Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved operating permit program is primarily a state responsibility. However, after the state program is Federally approved, we oversee the program and review proposed permits submitted by the state in accordance with 40 CFR part 70. We are also authorized to enforce the permit program and individual permits issued under the program. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has adopted amendments to 567 Iowa Administrative Code (IAC) 22.108(3). The purpose of the amendments is to incorporate IDNR's existing Title V Periodic Monitoring Guidance into its rules. Periodic monitoring is required by 40 CFR 70.6 and 71.6 where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Also, the amendments to 567 IAC 22.108(3) adopt by reference Compliance Assurance Monitoring (CAM) that is required to be included in 40 CFR part 70 or 71 operating permits for major stationary sources of air pollution that are required to obtain operating permits under Title V of the CAA. Periodic monitoring and CAM are needed to provide reasonable assurance of compliance with applicable requirements under the CAA. The amendments were adopted and filed by the Environmental Protection Commission on June 21, 2001; published on July 11, 2001; and became effective on August 15, 2001.

As a part of our review of these amendments, EPA requested clarification from IDNR regarding the list of factors to be considered in evaluating the type of periodic monitoring appropriate for an applicable requirement, as set forth in the narrative of the June 18, 2001, Periodic Monitoring Guidance. This narrative lists numerous factors to be considered, while Attachment 1 to that guidance contains a decision matrix considering only type of source and whether the source is controlled or uncontrolled. In response to EPA's request, IDNR sent EPA a November 7, 2001, letter in which the state clarified that it has flexibility in deciding to follow the matrix which is found in appendix A to that guidance or to make a case-by-case determination that differs from the periodic monitoring guidance and the matrixes. EPA believes that the state's ability to deviate from the guidance on a case-by-case basis is essential to implementation of this program, and our approval of the state program revisions is based, in part, on the state's assurance that it retains authority to establish appropriate periodic monitoring on a case-by-case basis. EPA reserves our authority to object to permit provisions regarding periodic monitoring if they do not meet the requirements of the CAA or 40 CFR 70.6(a)(3).

On January 11, 2002, we proposed to approve this rule revision. In the proposal, EPA expressly stated its understanding that IDNR retained authority to establish periodic monitoring on a case-by-case basis, and also stated that it retained authority to object to periodic monitoring which did not meet the requirements of the CAA (67 FR 1432). The public comment period was open through February 11, 2002. No comments were received.

This **Federal Register** document takes final action to approve the amendments to Iowa's Title V operating permit program to incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

Have the Requirements for Approval of a Revision to the Operating Permit Program Been Met?

Our review of the material submitted indicates the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

EPA is hereby approving amendments to Iowa rule, 567 IAC 22.108(3), effective August 15, 2001, as supplemented on November 7, 2001, as a revision to the Iowa Title V operating permit program.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding under "Iowa" paragraph (d) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(d) The Iowa Department of Natural Resources (IDNR) submitted amendments to Iowa Rule, 567 Iowa Administrative Code (IAC) 22.108(3), as a revision to the Iowa Title V operating permits program on August 31, 2001, effective August 15, 2001. The amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements. The IDNR submitted a supplement regarding these amendments on November 7, 2001, clarifying IDNR's authority to establish periodic monitoring on a case-by-case basis. This revision to the Iowa program is effective April 15, 2002.

* * * * *

[FR Doc. 02–6272 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

Organization and Delegation of Powers and Duties, Update of Secretarial Delegation to the Administrator, Federal Motor Carrier Safety Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to the Administrator of the Federal Motor Carrier Safety Administration in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

Section 1012 of the USA PATRIOT ACT amends the United States Code by adding a new section relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. By this action, the Secretary delegates the authority to carry out this provision to the FMCSA Administrator.

EFFECTIVE DATE: This final rule is effective on March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Burke, Office of the Chief Counsel, MC–CC, (202) 366–0834, Federal Motor Carrier Safety Administration, U.S. Department of

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Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, (Public Law 107–56, 115 Stat. 272 at 396, (October 26, 2001)), amends chapter 51 of title 49 United States Code, by adding a new section 5103a, relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. The new provision is best administered by the FMCSA, which is responsible for the commercial driver's license (CDL) program. This delegation broadens the FMCSA Administrator's delegated authority relating to hazardous materials transportation programs.

This final rule updates the delegations of authority from the Secretary to the FMCSA Administrator to reflect the organizational posture of the Department. As such, the final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b).

Furthermore, this rule does not impose substantive requirements on the public. Also, this final rule expedites the Department of Transportation's ability to implement section 1012 of the USA PATRIOT ACT. Consequently, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective on the date of publication in the **Federal Register**.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect a delegation of authority from the Secretary to the FMCSA Administrator, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–56, 115 Stat. 396.

2. In § 1.73, revise paragraph (d)(2) to read as follows:

§ 1.73 Delegation to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(d) * * *

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5103a relating to limitations on issuance of licenses to operate motor vehicles transporting hazardous materials in commerce; 49 U.S.C. 5112 relating to highway routing of hazardous materials; 49 U.S.C. 5109 relating to motor carrier safety permits, except subsection (f); 49 U.S.C. 5113 relating to unsatisfactory safety ratings of motor carriers; 49 U.S.C. 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 49 U.S.C. 5105(e) relating to inspections of motor vehicles carrying hazardous material; and 49 U.S.C. 5119 relating to uniform forms and procedures.

* * * * *

Issued in Washington, DC on March 7, 2002.

Norman Y. Mineta,

Secretary.

[FR Doc. 02–6123 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 244 and 1106

[FRA Docket No. 1999–4985, Notice No. 4]

Surface Transportation Board

[STB Ex Parte No. 574]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCIES: Federal Railroad Administration (FRA), Surface Transportation Board (STB), DOT.

ACTION: Final rules.

SUMMARY: The Federal Railroad Administration ("FRA") and the Surface Transportation Board ("STB" or "Board"), working in conjunction with each other, hereby issue joint final rules establishing procedures for the development and implementation of safety integration plans ("SIPs" or "plans") by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same.

Under FRA's final rule, Class I railroads seeking to consummate a covered transaction must file a proposed SIP with FRA after they seek authority for the transaction from the Board. (A SIP is a written document explaining how each step in implementing a contemplated transaction would be performed safely.) FRA then reviews the proposed SIP and advises the Board as to whether it provides a reasonable assurance of safety for the transaction. The rule further requires that, once the STB has approved a transaction, a railroad must operate over property subject to the transaction in compliance with a SIP approved by FRA, and authorizes FRA to exercise its full enforcement remedies should a railroad fail to implement the terms of an approved plan. Finally, the rule provides that FRA will consult with the STB at all appropriate stages of SIP implementation, assuming FRA approves the SIP and the STB approves the transaction.

Under the STB's final rule, rail carriers seeking to carry out a regulated transaction are required to file a proposed SIP with FRA and the Board 60 days after they seek authority for the transaction. FRA will review the proposed SIP and file written comments with the Board's Section of Environmental Analysis ("SEA"), which is responsible for preparing the Board's environmental documents. SEA will then include the proposed SIP, FRA's written comments on the proposed SIP, and any additions or revisions based on continued discussions with FRA in the Board's draft environmental documentation. After reviewing the proposed SIP, SEA's analysis, and comments provided by interested persons during the STB's environmental review process, the Board will then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction and adopt the SIP, it will require compliance with the SIP as a condition to its approval. FRA then will oversee the implementation of the SIP, consult with the Board at all appropriate stages of implementation, and advise the Board when the proposed integration has been safely completed.

The final rules are designed to enable the Board and FRA to ensure adequate and coordinated consideration of safety integration issues in covered rail transactions while minimizing the burdens on the applicants. FRA and the STB believe that the joint rules will serve the public interest in promoting safety in the railroad industry, consistency in decisions, and efficiency in compliance, enabling the agencies to employ their areas of expertise to fulfill their respective statutory objectives in a complementary manner.

DATES: *Effective Date:* The final rules become effective on April 15, 2002.

ADDRESSES: Petitions for reconsideration of FRA's rule should be submitted to Docket Clerk, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590. Petitions for reconsideration of the STB's rule should be submitted to Office of the Secretary, STB, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6053 and E-mail: jonathan.kaplan@fra.dot.gov); and Evelyn G. Kitay, Office of the General Counsel, STB, 1925 K Street, NW., Washington, DC 20423–0001 (telephone: (202) 565–1563 and e-mail: kitaye@stb.dot.gov). (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION:

Joint FRA/STB Introduction

On December 31, 1998, FRA and the STB issued a joint notice of proposed rulemaking ("NPRM") establishing procedures for developing and implementing SIPs by railroads proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. 63 FR 72225, Dec. 31, 1998. FRA's proposed rule would have required railroads seeking to consummate any mergers, acquisitions, or consolidations of property involving (i) Class I railroads, (ii) Class II railroads when the railroads would directly interchange freight with each other, (iii) transactions in which the consummation of operations would produce revenue in excess of the Class I threshold, (iv) a passenger railroad (intercity or commuter) with another passenger railroad, a Class I railroad, or a Class II railroad; or (v) start-up operations on a rail line or lines in which the commencement of operations would either involve passenger service or produce revenue in excess of the Class II threshold, to file a proposed SIP for the agency's review and approval. (Class I railroads are rail carriers generating operating revenue, measured in inflation-adjusted 1991 dollars, in excess of $250 million per year for a period of three successive years. Class II railroads are rail carriers generating operating revenue, measured in inflation-adjusted 1991 dollars, between $20 million and $250 million.) Concurrently, the STB's proposed rule would have required railroads seeking to engage in all transactions addressed in FRA's NPRM other than start-up operations to file a SIP with the Board for its review and approval.

The proposed rules set out specific procedures governing the development, approval, and implementation of SIPs, and explained that FRA and the Board are jointly responsible for promoting a safe rail transportation system. Under FRA's proposed rules, railroads seeking to consummate a covered transaction would be required to file a proposed SIP with FRA contemporaneously with the filing of the SIP with the STB. FRA would review the proposed SIP and advise the Board as to whether it provides a reasonable assurance of safety for the transaction. The proposed rule required a railroad to have a SIP approved by FRA before it could execute operations over property subject to the transaction. Where the Board has been involved in authorizing the transaction, FRA would consult with the Board at all appropriate stages of implementation.

Likewise, under the STB's proposed rules, rail carriers seeking to carry out a transaction within the Board's jurisdiction that would require a SIP would file their SIP with the Board and FRA. FRA would review the SIP and file written comments with the Board's SEA. After reviewing the SIP, SEA's analysis, and comments provided by interested persons during the Board's environmental review process, the Board would then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction, the railroads would coordinate with FRA in implementing the SIP, including any amendments made to the plan, and FRA would monitor the implementation process and apprise the Board about the railroad's progress in carrying out the plan until FRA advised the Board that the proposed integration had been safely completed. Both FRA and the Board

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would be authorized to exercise their full independent enforcement remedies should either FRA or the Board reject the proposed SIP or a railroad fail to implement the terms of an approved SIP.

FRA and the STB received written comments on the proposal from 11 entities and conducted a joint public hearing at the request of one of the commenters in Washington, D.C., on May 4, 1999. Based on the comments received, the testimony at the public hearing, and further analysis of the rules proposed, FRA and the Board now publish these joint final rules. As will be discussed below, both agencies underscore the importance of SIPs when Class I railroads seek to engage in mergers, consolidations, or acquisitions. These are railroads transporting large volumes of freight, frequently including hazardous materials. Given the size and complexity of their operations, careful advance planning is critical to ensure that safety is maintained as the transactions are implemented.

The agencies, however, agree with certain of the comments that the final rules should be limited to consolidations, mergers, or acquisitions of control involving either two or more Class I railroads or a Class I railroad and a Class II railroad with which it proposes to "amalgamate operations" as defined by FRA at 49 CFR 244.9. (*See also* the STB's final rule at 49 CFR 1106.2.) Only the complexity and difficulty of these very large transactions are now believed to present sufficient dangers to merit a SIP under these rules. This substantially comports with the recommendations of some commenters.

In its final rule, FRA has modified the subject matter areas to be addressed in a SIP to cover those disciplines that a regulated transaction affects, and has decided not to require an applicant to file a SIP when a transaction does not involve an amalgamation of operations. In response to the comments, FRA and the Board have "fine tuned" their respective procedures governing the filing, review, and approval of a SIP, and their oversight of an approved plan. The final rules also clarify the respective roles of the two agencies. It is made clearer that (i) the STB is regulating the economic transaction and, in the course of doing so, fulfilling its responsibility to assess environmental impacts, as required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321 *et seq.*, and promote a safe transportation system, and (ii) FRA is regulating the safety of the implementation of any transaction the STB may approve, just as FRA regulates all other aspects of railroad safety. FRA is not approving or disapproving the transaction in any respect, and both agencies state explicitly that FRA has no "veto power," either explicit or implicit as some commenters alleged, over transactions regulated by the STB. If the STB approves a transaction, a railroad must conduct operations over properties that are part of the transaction in compliance with a SIP approved by FRA, just as it must conduct those operations in compliance with the railroad safety statutes and implementing regulations administered by FRA.

Discussion of Comments and Conclusions

FRA and the STB received written comments from various railroads and their representative organizations, labor organizations, and public service organizations. The railroad interests were represented by the Association of American Railroads ("AAR"), American Short Line and Regional Railroad Association ("ASLRRA"), National Railroad Passenger Corporation ("Amtrak"), Guilford Transportation Industries ("GTI"), and the Wheeling & Lake Erie Railway Company ("W&L"). The American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers ("ATDD"), Transportation Trades Department, American Federation of Labor-Congress of Industrial Organizations ("TTD"), Brotherhood of Railway Carmen Division of the Transportation Communications International Union ("BRC"), and Brotherhood of Maintenance of Way Employes ("BMWE") represented the interests of rail labor. The public service organizations were represented by the American Public Transit Association, now the American Public Transportation Association ("APTA"), and the Oklahoma Department of Transportation ("OK DOT"). At the public hearing held on May 4, 1999, two organizations participated: the TTD and the AAR. The commenters raised questions about the proposal itself, suggested alternative language to some of the proposed rule text, and requested clarification about the meaning and application of certain proposed rules. The discussion that follows highlights the principal issues advanced by the commenters and explains how the final rules reflect the comments received. Because many of the comments focus on the rules proposed by one agency and not the other, FRA and the Board present separate sections addressing the comments and each agency's conclusions.

A. FRA's Response to Comments Concerning the Need To Require SIPs for Mergers, Consolidations, and Acquisitions of Control

Several comments addressed the types of transactions that warrant preparation of a SIP under these rules. The ATDD and TTD, for instance, endorsed the breadth of FRA's proposed rule, asserting that that type of rule is necessary to ensure the safety of railroad employees and the public. The ATDD commented that operational changes, *i.e.*, changes in traffic volume and traffic patterns, timetable schedules, and labor reductions, needed to be evaluated for safety concerns. The TTD added that the rulemaking action should be transferred to FRA's Railroad Safety Advisory Committee ("RSAC") to secure fuller labor input in the development of FRA's final rule. Amtrak also supported the proposition of the SIP rules, agreeing that "mega-mergers" present unique safety issues that should be identified and addressed at the application stage to enable FRA and the Board to handle proposed transactions as safely as possible.

GTI disagreed with the premise of the SIP rules. Specifically, GTI claimed that FRA need not issue any regulations governing mergers, consolidations, or acquisitions of control because the agency already has the regulations necessary to ensure safe operations subject to a proposed regulated transaction. GTI further postulated that FRA is without expertise in regulating these transactions and that self-regulation was most appropriate in this instance because merging railroads recognize that unsafe operations lead to increased costs and decreased returns on an investment. In other words, GTI recommended that the agencies terminate this rulemaking action and apply the existing regulations that govern regulated transactions.

The AAR argued that SIPs should be limited to consolidation, merger, and acquisition of control proceedings involving at least two Class I railroads and not to other less complex proceedings. The AAR also argued that only the Board should have approval authority over SIPs and that FRA's role should be limited to advising the Board. According to the AAR, any regulations purporting to vest FRA with authority to approve a SIP would be contrary to law and in derogation of the Board's "exclusive" authority to approve merger transactions under 49 U.S.C. 11321.

FRA strongly endorses the concept of the SIP rules and their importance in

regulating the complex railroad transactions involving mergers, consolidations, and acquisitions of large railroads where operations are amalgamated. As the agencies explained in the NPRM, acquisitions, consolidations, and mergers must be carefully planned and implemented to maintain safety. *See* 63 FR 72226–27. Transactions involving Class I railroads significantly change the carrier landscape and raise potential safety issues relating to integrating operations, facilities, personnel, safety practices, and corporate cultures. The NPRM noted FRA's concerns regarding safety problems that resulted from inadequate safety planning before implementation of the merger of the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP") (collectively referred to as "UP/SP") and the merger of the Burlington Northern Railroad Company ("BN") and the Atchison, Topeka and Santa Fe Railway Company ("ATSF") (collectively referred to as "BNSF"). *See* 63 FR 72227. The chief executive officers of the Norfolk Southern Railway Company and CSX Transportation, Incorporated, which acquired and divided Consolidated Rail Corporation ("Conrail"), amplified this point when they testified before the STB about the operational and safety difficulties they encountered in implementing their respective transactions, even with the planning and experiences of earlier mergers to guide them and having prepared SIPs. *See Public Views on Major Rail Consolidations*, STB Ex Parte No. 582, slip op. at 4–5 (STB served Mar. 17, 2000).

FRA believes that the final SIP rules accomplish the objective of ensuring safe railroad operations during and after implementation of an approved transaction. First, the regulations set out subject matter areas that are critical to railroad safety that an applicant must address in a proposed SIP. These requirements address safety issues unique to the amalgamation of large, complex railroad operations that are not covered in any existing Federal regulations, necessitating their issuance here. Second, FRA has the necessary expertise in railroad safety to review, analyze, approve, and oversee the implementation of a proposed SIP. FRA has officials and inspectors with knowledge, training, and experience in five railroad disciplines—operating practices, motive power and equipment, signal and train control, track safety, and hazardous materials—that cover the ambit of railroad operations. Therefore, the final rules provide for FRA a mechanism to evaluate and approve SIPs and monitor their implementation if the transactions to which they relate are approved by the Board. As discussed in greater detail below, FRA is regulating the safety aspects of how a railroad implements a transaction permitted by the Board and not whether the railroad is permitted to consummate the transaction or on what economic terms. FRA concludes that the SIP rules are a step forward in providing railroad safety and therefore adopts these final rules. Although FRA entertained TTD's suggestion to add this proceeding to those addressed by FRA's RSAC, the agency decided that a joint rulemaking with the Board, using the complementary authority of both agencies, would be the best way to proceed.

B. FRA's Views on Jurisdiction of FRA and the STB To Issue the Final Rules

The AAR and GTI commented that the STB and not FRA is authorized to issue any regulations governing acquisitions, consolidations, and mergers. Relying on statutory authority, 49 U.S.C. 11321, and decisional law, *Schwabacher* v. *United States*, 334 U.S. 182, 197 (1948); *Norfolk & Western Rwy.* v. *ATDA*, 499 U.S. 117, 127–34 (1991); and *City of Auburn* v. *United States*, 154 F.3d 1025 (9th Cir. 1998), *cert. denied*, 527 U.S. 1022 (1999), the AAR claims that the Board is vested with exclusive authority to issue regulations that are within the STB's jurisdictional purview. GTI echoed the AAR's position, maintaining that an application to consummate an acquisition, consolidation, or merger is an economic transaction, which is fully within the Board's authority.

FRA agrees that the Board has sole authority to regulate the economic transactions, but disagrees with these commenters that issuance of FRA's final rule trespasses upon that jurisdiction. FRA believes that it and the STB have so interpreted their respective statutes and jurisdiction as to reconcile them seamlessly, thereby serving the public interest by assuring that all parts of the affected statutes are given effect and the purposes of Congress are fully carried out. *Tyrrell* v. *Norfolk Southern Rwy. Co.*, 248 F.3d 517, 523 (6th Cir. 2001) (FRA's and the STB's "complementary exercise of their statutory authority accurately reflects Congress's intent for the (Interstate Commerce Commission Termination Act) and the (Federal Railroad Safety Act) to be construed *in pari materia*"). The Supreme Court provides that "it is a cardinal principle of construction that * * * when there are two acts upon the same subject, the rule is to give effect to both." *United States* v. *Borden Co.*, 308 U.S. 188, 198 (1939). Congressional intent behind one Federal statute should not be thwarted by the application of another Federal statute if it is possible to give effect to both laws, *id.*, and courts should "construe the relevant statutes in a manner that most fully effectuates the policies to which Congress was committed." *Commonwealth of Pennsylvania* v. *Lynn*, 501 F.2d 848, 857 (D.C. Cir. 1974); *see also Food and Drug Administration* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 134 (2000) (a reviewing court should "examin[e] a particular statutory provision * * * (in) context and with a view to [its] place in the overall statutory scheme"); *Blanchette* v. *Connecticut General Ins. Corp.*, 419 U.S. 102, 133–34 (1974) (statutory repeals by implication are disfavored). The agencies have done so in a manner entirely consistent with the cases cited by the commenters. *Tyrrell*, 248 F.3d at 523 ("while recognizing their joint responsibility for promoting rail safety in their 1998 Safety Integration Plan rulemaking, FRA exercised primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*, while the STB handled economic regulation and environmental impact assessment(,)" citing the NPRM at n.2).

As FRA and the Board explained in the NPRM:

FRA and STB are jointly responsible for promoting a safe rail transportation system.

Under Federal law, primary jurisdiction, expertise and oversight responsibility in rail safety matters are vested in the Secretary of the Department of Transportation, and delegated to the Federal Railroad Administrator. 49 U.S.C. 20101 *et seq.*; 49 CFR 1.49. FRA has authority to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries. 49 U.S.C. 20101 and 20102. FRA has exercised its jurisdiction to protect the safety of railroad operations through the issuance and enforcement of regulations, partnering with railroad labor organizations and management of particular railroads to identify and develop solutions to safety problems, actively participating in STB rail proceedings, and monitoring railroad operations during the implementation of STB-approved transactions.

The Board is also responsible for promoting a safe rail transportation system. The rail transportation policy (RTP), 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), establishes the basic policy directive against which all of the statutory provisions the Board administers must be evaluated. The RTP provides, in relevant part, that, "(i)n regulating the railroad industry, it is the policy of the United States

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Government * * * to promote a safe and efficient rail transportation system" * * * (by allowing rail carriers to) "operate transportation facilities and equipment without detriment to the public health and safety * * *." 49 U.S.C. 10101(8). The rail transportation policy applies to all transactions subject to the Board's jurisdiction.

Thus, both FRA and STB are vested with authority to ensure safety in the railroad industry. Each agency, however, recognizes the other agency's expertise in regulating the industry. FRA has expertise in the safety of all facets of railroad operations. Concurrently, the Board has expertise in economic regulation and assessment of environmental impacts in the railroad industry. Together, the agencies appreciate that their unique experience and oversight of railroads complement each other's interest in promoting a safe and viable industry.

63 FR 72225–26. FRA believes that each agency's interpretation of its statute is reasonable, reflects a plausible construction of the plain language of the statutes, and gives effect to Congress' expressed intent. *Tyrrell*, 248 F.3d at 523 (statutory construction that FRA has primary authority over national rail safety policy and STB is responsible for encouraging "safe and suitable working conditions" properly reflects Congress's purpose in enacting the Federal railway laws).

FRA has "primary jurisdiction, expertise and oversight responsibility in rail safety matters' under 49 U.S.C. 20101 *et seq.*, as delegated by the Secretary of Transportation to the Federal Railroad Administrator at 49 CFR 1.49, and has the authority "to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries" under 49 U.S.C. 20101 and 20102. 63 FR 72225. Specifically, 49 U.S.C. 20103 confers authority on FRA to "prescribe regulations" "for every area of railroad safety," 49 U.S.C. 20103(a), and "in prescribing regulations[,]" FRA "shall consider existing relevant safety information and standards." 49 U.S.C. 20103(c). Congress intended that FRA would possess the authority to regulate "all those means of rail transportation as are commonly included within the term * * * in addition to those areas currently regulated." H.R. No. 91–1194, Federal Railroad Safety and Hazardous Materials Transportation Control Act of 1970, Pub. L. 91–458, *reprinted in* 1970 USCCAN 4104, 4114 (1970). In other words, Congress authorized FRA to promulgate regulations to ensure railroad safety after analyzing safety data.

A key element in the argument of the AAR and other commenters is that, by approving a SIP, FRA is encroaching upon the STB's jurisdiction, supposedly because approving a SIP is equated with approving a transaction and because the NPRM states that the railroad resulting from a covered transaction "shall have an FRA approved Safety Integration Plan before changing its operations to implement a proposed transaction * * *." *See* proposed 49 CFR 244.21(a) at 63 FR 72241. These commenters have misinterpreted both FRA's intentions and the meaning of the text. FRA has amended the text to eliminate the possibility of interpreting it as giving FRA authority to approve a transaction, and to clarify FRA's intentions. *See* the discussion of § 244.21(a) below. This change makes clear that FRA has no intention of approving or disapproving or vetoing a transaction covered by this part. FRA agrees that approving or disapproving a transaction covered by this part is wholly within the jurisdiction of the STB. FRA's role in the STB's process is an advisory one, providing expert advice to the STB on safety issues presented by a transaction. As the STB said in the NPRM, it relies upon FRA's safety expertise, and it is clearly in the public interest that FRA make its expertise available to the STB.

On the other hand, regulation of "every area of railroad safety" is FRA's jurisdiction. In approving or disapproving a SIP under this part, and enforcing one, FRA is regulating *the safety aspects of how* a railroad implements a transaction permitted by the STB and *not whether* the railroad is permitted to consummate the transaction or on what economic terms. This is an appropriate exercise of the "plenary safety authority with respect to the safety of rail operations—before, during, and after a transaction," which the AAR acknowledges that FRA enjoys. AAR comments at 9. In that regard, approval of a SIP is no different than approval of an engineer certification program under 49 CFR part 240. There is no question that a railroad must have an engineer certification program approved by FRA and operate in accordance with it at all times, whether or not the railroad is involved in a transaction within the STB's jurisdiction. The commenters' view would require a repeal by implication of some portion of the Federal railroad safety laws ("safety laws"), 49 U.S.C. 5101 *et seq.* and 20101 *et seq.*, to except from them railroad operations conducted during implementation of transactions approved by the STB. Such repeals by implication are strongly disfavored. *See Tyrrell*, 248 F.3d at 523. Here, there is obviously no need to infer any such repeal.

In FRA's view, it is necessary for safety purposes for the agency to approve or disapprove SIPs to provide a baseline for enforcement. First, FRA approval or disapproval denotes whether a railroad has submitted a proposed SIP meeting the requirements of the rule. Upon disapproval of a proposed SIP, FRA can take enforcement action if the railroad does not change its SIP to bring it into compliance with the law. Upon approval of a SIP, FRA can take enforcement action if the railroad fails to implement the SIP. Absent FRA approval, it is hard to see how FRA could take enforcement action in this arena.

FRA believes that the suggestion that FRA could veto a transaction by disapproving a proposed SIP is a red herring because only the STB can approve and veto a transaction. In any event, the standard set by the rule for approval of a proposed SIP can easily be met by any Class I or Class II railroad, and FRA cannot arbitrarily or capriciously reject a SIP that meets the standard. If FRA disapproves a proposed SIP because it fails to be thorough, complete, or clear, FRA must articulate to the railroad what is missing or unclear. If FRA disapproves a proposed SIP because it fails to describe a logical and workable transition or because it is insufficiently detailed, FRA must articulate how the proposed SIP is illogical or unworkable or lacking in detail. In either of those cases, upon receiving FRA's reasons for disapproval, a railroad can readily remedy its submission. In practice, FRA will continue to work informally with railroads proposing a covered transaction to assure that their proposed SIPs comply. It should be easy for applicants to secure FRA approval of their proposed SIPs in time for the Board's SEA to include the proposed SIP in the draft environmental documentation for the STB proceeding. FRA has no interest in blocking transactions and has a powerful interest in seeing that transactions are implemented safely.

The text also makes clear that FRA is not prescribing any particular way to implement covered transactions. Instead, FRA is requiring the railroads involved to be thorough and logical, and to maintain a reasonable assurance of safety at every step of the proposed transaction.

Correspondingly, FRA recognizes that the STB is also vested with authority to promote a safe rail transportation system in determining whether a proposed transaction should be permitted and, if so, on what economic terms. As discussed in *Tyrrell* and in the NPRM, the rail transportation policy ("RTP"); 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), Pub. L. 104–88, 109 Stat. 803 (1995), provides the foundation for which all of the statutory provisions the Board administers must be analyzed. *See Tyrrell*, 248 F.3d at 522–23. The RTP provides, in relevant part, that, "(i)n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation system" * * * (by allowing rail carriers to) "operate transportation facilities and equipment without detriment to the public health and safety * * *." 49 U.S.C. 10101(8). The STB applies the RTP to all transactions within its jurisdiction, authorizing it to consider the impact a merger, consolidation, or acquisition of control has on safety of railroad operations. *See Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 5 (STB served Mar. 31, 2000) (49 U.S.C. 10101, in part, directs the Board to ensure that safety concerns are addressed in railroad merger cases).

FRA submits that the cases AAR cited are misplaced. Read together, *Schwabacher, ATDA*, and *City of Auburn* stand for the proposition that the STB and its predecessor, the Interstate Commerce Commission, have exclusive authority to examine, condition, and approve mergers, consolidations, or acquisitions of control. The statute at issue, 49 U.S.C. 11321 (formerly, 49 U.S.C. 11341), specifically exempts a railroad from complying with all other laws to the extent "necessary to (let that railroad) carry out an approved transaction," *ATDA*, 499 U.S. at 134, thereby preempting any Federal or state law remedies. *City of Auburn*, 154 F.3d at 1030. FRA's SIP rule will not impede or restrict the Board in approving or rejecting a proposed transaction and, since the STB contemplates requiring a SIP when it approves covered transactions, a railroad could not logically assert that an exemption from FRA's rule would be "necessary to carry out an approved transaction." Instead, the rule provides that FRA will determine whether a SIP provides a reasonable assurance of safety for the subject transaction and provide expert advice to the STB on safety issues presented by a proposed transaction. The Board, in turn, will rule on the application based in part on FRA's recommendations. This process employs FRA's plenary authority over railroad safety and respects and complements the Board's role of determining whether a transaction should be approved. At bottom, FRA believes that it and the Board each are fully exercising their respective statutory authorities by examining a transaction for its safety aspects (FRA), and the impact that safety has on an application as a whole (STB).

In FRA's view, the final SIP rule fulfills this objective. The rule responds to critical safety shortcomings and errors in planning and implementation of significant transactions that may have occurred in the past where no SIP was prepared. FRA documented its concerns in the NPRM by examining the difficulties of the BNSF and UP/SP mergers. *See* 63 FR 72227–28. To illustrate, after the UP/SP merger, five employees were killed in accidents during the Summer of 1997, and employee injuries rose nine percent in 1998. FRA determined that the BNSF and UP/SP mergers faced significant challenges in harmonizing information systems; training dispatchers; modifying operational practices and procedures; implementing personnel policies directed toward safety; determining appropriate staffing requirements; and providing adequate rail facilities, infrastructure and rolling stock and equipment.

Likewise, FRA identified serious safety shortcomings in CSX Transportation, Incorporated's ("CSXT"), and the Norfolk Southern Railway Company's ("NS") initial filings in the *Conrail Acquisition* [1] proceeding before the Board. The agency determined that the railroads had not articulated a detailed plan explaining the manner in which they individually and collectively intended to implement the transaction, and thus they had not thoroughly assessed the safety impacts of the proposed acquisition. As a result, FRA requested that the Board require the carriers to provide information detailing how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction. The Board agreed with FRA's suggestion and directed the applicants to file detailed SIPs pursuant to guidelines developed by FRA.[2] The railroads complied with the STB's order and after FRA approved the respective SIPs, the Board, concluding that applicants had satisfactorily addressed the safety implementation concerns presented by the transaction to date, approved the transaction in 1998. Nevertheless, FRA, while monitoring the railroads' implementation of their respective SIPs,[3] has concluded that more needs to be done, and that, among other things, the railroads should address information technology problems resulting in a lack of hazardous materials documentation on trains, and conduct more advanced safety training of supervisory and operating personnel at designated terminals to ensure adequate staffing and retention of institutional knowledge. *See Conrail Merger Surveillance: NS, CSXT, and CRCX Second Safety Integration Plan/ Safety Update, pp. 1–3 (June 23, 2000) (hereinafter "SIP Update")*. In short, FRA believes, based on its experience in recent cases, that "mega-mergers," consolidations, or acquisitions of control present safety challenges during implementation, which are best remedied by requiring SIPs for these complex transactions. FRA concludes that SIPs achieve a safety purpose within the purview of 49 U.S.C. 20103, and thus are within FRA's rulemaking authority. *Tyrrell*, 248 F.3d at 523 (FRA's responsibility in the SIP joint rulemaking action focuses on rail safety matters); *see also Brown & Williamson*, 529 U.S. at 134 ("if Congress has not specifically addressed the (precise question at issue), a reviewing court must respect the agency's construction of the statute so long as it is permissible"); *accord Oklahoma Natural Gas Company v. Federal Energy Regulatory Comm'n*, 28 F.3d 1281, 1283–84(D.C. Cir. 1994) (agency is afforded *Chevron* [4] deference in interpreting its statutory authority); *Western Coal Traffic League* v. *Surface Transportation Board*, 216 F.3d 1168, 1171 (D.C. Cir. 2000) (judicial review of agency's statutory jurisdiction is premised on *Chevron* standards);

[1] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (hereinafter "*Conrail Acquisition*").

[2] *Conroil Acquisition*, STB Decision No. 52, served Nov. 3, 1997.

[3] A detailed explanation of the SIP process in the *Conrail Acquisition*, including the Memorandum of Understanding the Board executed with FRA in establishing an ongoing monitoring process, is set out in the NPRM at 63 FR 72228.

[4] *Chevron* is shorthand for the landmark Supreme Court case *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), which stands for the proposition that courts must defer to an agency's interpretation of a statute, even if other statutory constructions are more plausible, if the statute is silent or ambiguous with respect to a specific issue.

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Transmission Access Policy Study Group v. *Federal Energy Regulatory Comm'n*, 225 F.3d 667, 694 (D.C. Cir. 2000) ("it is the law of (the D.C.) (C)ircuit that the deferential standard of *Chevron* applies to an agency's interpretation of its own statutory jurisdiction" (citing *Oklahoma Natural Gas*)), *affirmed sub nom. New York* v. *FERC*, 2002 U.S. LEXIS 1380 (U.S. Mar. 4, 2002). *See generally Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979) (regulations issued by an agency must be promulgated pursuant to statutory authority in which "the grant of authority contemplates the regulations issued").

C. FRA's Views on Issuance of a Final Rule v. Guidelines

The AAR commented that the SIP process is best employed through the issuance of policy guidelines adopting the model procedures that were used in the *Conrail Acquisition* and Canadian National Railway Company/Illinois Central Railroad Company [5] control transactions, and embodied in the memoranda of understanding ("MOU") between FRA and the STB entered in these cases. See 63 FR at 72228. Under this approach, the Board would determine when a SIP would be required for a transaction within its jurisdiction.

The AAR based its position on three points. First, this approach would ensure that each agency would respect each other's division of authority and role in overseeing the SIP process. Second, an MOU would offer the flexibility for an applicant to meet changing customer needs and market opportunities, such as staffing levels reached through collective bargaining agreements ("CBAs"), infrastructure improvements for highway-grade crossings, and designating repair facilities and computer software operating systems. Finally, a rule along the lines suggested by the NPRM would, according to AAR, represent government micromanagement of rail operations and implementation programs and could potentially delay integration, leaving an applicant at a competitive disadvantage with other railroads.

FRA respectfully disagrees with the AAR's proposal. The agency believes that the issuance of final rules ensures that all applicants seeking to consummate a regulated transaction will execute a SIP and complete the SIP process as enunciated in the rules. These final rules codify the prescribed requirements and stake out the legal landscape for regulating complex railroad transactions. *See* Attorney General's Manual on the Administrative Procedure Act 14–15 (1947) ("(t)he object of [a] rulemaking proceeding is the implementation or prescription of law or policy for the future * * *."). In other words, the rules will prescribe substantive and procedural standards that will govern each application filed with the STB to carry out a transaction and the safety of operations during implementation of transactions the STB approves. *Cf.* the Administrative Procedure Act, 5 U.S.C. 551(4), which, in part, defines a rule as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." FRA believes that the SIP process should be mandatory in large mergers, acquisitions of control, and consolidations cases because of the unique nature of the transactions involved and the complexity of safely integrating operations that are part and parcel of the transactions.

On the other hand, guidelines are simply recommendations issued by an agency that do not prescribe or mandate any standards on the regulated community. *See Industrial Safety Equipment Ass'n, Inc.* v. *EPA*, 837 F.2d 1115 (D.C. Cir. 1988). Rather than impose a regimen for conduct or action, guidelines do not "change any law or official policy presently in effect," *id.* at 1119–21, nor do they "implement, interpret, or prescribe law or policy." 5 U.S.C. 551(4); *see also National Ornament & Elec. Light Christmas Ass'n* v. *Consumer Product Safety Comm'n*, 526 F.2d 1368 (2d Cir. 1975). Without sufficient "effect" to regulate conduct, guidelines have an "advisory character" without any firm commitment to law or policy. FRA believes that the issuance of guidelines would preclude the agencies from mandating standards or binding applicants to meet these requirements, creating an illusion of adequate safety oversight. FRA, like the Board, is committed to safe integration of complex railroad transactions and believes that these rules can best achieve that objective.

FRA also maintains that these rules enable the agencies to articulate interpretations of their respective statutes and reconcile them effectively, thereby preserving and recognizing each agency's authority to regulate aspects of these transactions. *See Tyrrell*, 248 F.3d at 523. The joint rules ensure that the agencies' roles and responsibilities complement each other in establishing SIP procedures and standards, and complete the rulemaking process announced in the NPRM. Lastly, the final rules will provide uniformity in regulating SIPs and preempt other efforts to regulate the safety of implementing transactions. FRA concludes that the issuance of rules is the most effective instrument in defining each agency's function in the SIP process and requirements a railroad must satisfy for transactions that warrant a SIP.

Concurrently, FRA takes issue with the reasons supporting the AAR's recommendation. First, as previously explained, the final rules cement the division of authority and prescribe textual interface between the agencies in regulating SIPs. Next, FRA believes that the SIP contents and subject matter areas capture the operations that are affected by a complex transaction. Although an applicant may propose a flexible plan to address these topics, the SIP elements themselves should not be compromised to ensure a safe transition of operations.

Finally, FRA rejects the notion that the rules represent government micromanagement of rail operations and implementation programs. The premise of the rules focuses on an applicant's preparation, issuance, and implementation of a plan that provides safe integration of rail operations. FRA's and the STB's individual and collective roles are to review and approve the railroad's SIP, and monitor its implementation. The agencies' oversight is to ensure that the SIP provides a reasonable assurance of safety. It is not to "second guess" the proposed migration or deployment of resources necessary to carry out a plan. Therefore, FRA characterizes its role as that of a "gatekeeper" to cross-check the SIP and its implementation against the safety aspects in integrating operations.

D. FRA's Views on Issues Involving the Framework of the Joint Final Rules

FRA received several comments from interested parties about the framework of the proposed SIP rules. The comments focused on two issues-scope and applicability of the joint rules, and the approval and disapproval process of an application.

FRA proposed to require certain railroads seeking to merge, consolidate, or acquire control of another railroad, or "start-up" operations as a railroad to file proposed SIPs with FRA before consummating the regulated transaction. The NPRM proposed covering the following transactions: (1) A Class I railroad, a railroad providing intercity passenger service such as Amtrak, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad; (2) a Class II railroad proposing to consolidate, merge, or acquire another Class II railroad with which it connects so as to involve the integration of operations; (3) any merger, consolidation, or acquisition resulting in operations that would generate revenue in excess of the Class I railroad threshold, except those transactions involving Class III freight only railroads; and (4) all start-up operations involving the establishment of a new line for passenger or freight service generating revenue that would exceed the Class II railroad threshold. Correspondingly, the Board proposed covering all transactions addressed in FRA's NPRM with the exception of "start-up" operations.

The AAR, Amtrak, and OK DOT commented that the STB lacks jurisdiction to regulate Amtrak or commuter railroads, citing 49 U.S.C. 10501(c) and *Norfolk & Western Railway Company-Petition for Declaratory Order-Lease of Lines*, STB Finance Docket No. 32279 (STB served February 3, 1999), for the proposition that the Board may not regulate any mass transportation provided by any local governmental authority, and arguing that the Amtrak Reform and Accountability Act of 1997, Pub. L. 105–134, 111 Stat. 2570, 2585, amending 49 U.S.C. 24301(c)(1)(C), prohibits the Board from regulating Amtrak. Accordingly, the commenters recommended that the scope of the joint rules be curtailed.

FRA agrees that the scope of the joint rules should be narrowed to cover unique complex transactions. After considering the comments, the agency has determined that acquisitions, consolidations, or mergers involving large railroads present transactions of significant size and complexity that warrant a SIP. These transactions generally involve substantial changes in railroad operations that impact effective communications, coordination, and execution of operations, *i.e.*, all aspects of safety. The final rules narrow the scope and applicability sections to capture these significant transactions because of the correlation between complexity of large rail entities and operational safety. As a result, the joint final rules only apply to transactions in which a Class I railroad proposes to merge, consolidate with, or acquire control of another Class I railroad or a Class II railroad with which it also proposes to amalgamate operations.

Some of the comments addressed each agency's independent approval process for a SIP, and any amendments thereto. The TTD endorsed the proposed two-step disposition process in which FRA and then the Board would review and approve a proposed SIP before an applicant could consummate a transaction. The AAR disagreed, claiming that FRA is without the authority to sanction a transaction that is within the STB's jurisdiction.

FRA believes that the safe transition of integrating operations is best achieved when FRA and the STB work together using their respective jurisdictions. As discussed above and in the NPRM, FRA enjoys primary jurisdiction, expertise, and oversight responsibility in railroad safety matters and is best positioned to ensure that a plan will comply with the safety laws and otherwise provide for safe railroad operations. *See Canadian Pacific Limited, et al.—Purchase and Trackage Rights—Delaware & Hudson Railway Company*, STB Finance Docket No. 31700, slip op. at 1, 5 (served Mar. 2, 2000) (hereinafter "*CP Purchase*") (FRA entitled to "great weight" in identifying potential safety problems before STB imposes conditions on a transaction). At the same time, the Board, which has expertise in economic regulation and assessment of environmental impacts in the railroad industry, *Tyrrell*, 248 F.3d at 523, considers safety in the transactions that it regulates. *Id.* (STB's "duty [is] to encourage "safe and suitable working conditions" for railway employees through its assessment of individual railway proposals subject to its authority"). FRA believes that these final rules meet the safety objectives of both agencies while interpreting their respective jurisdictions in a complementary way that is in the public interest.

E. Foundation of FRA's Final Rule

FRA received comments from three interested parties about the elements set out in the proposed rule. Generally, the labor organizations supported the subject matter areas contained in the regulatory text because they addressed the "four adequates"—adequate work force, adequate training, adequate rest, and adequate familiarity with the subject territory. In fact, the TTD went further, contending that an applicant should detail information in the subject matter areas that are required in a SIP to prevent a railroad from pledging vague commitments in filing a plan.

The AAR, however, objected to the proposed rule's SIP elements on two grounds. First, the AAR asserted that the subject matter areas go beyond the scope of assuring safe integration. The AAR maintained that a SIP should center on railroad lines that will experience changes in motive power and equipment, signal and train control, dispatching operations, highway-rail grade crossings, personnel staffing, capital investment, and relationships between freight and passenger service; and changes in operations or traffic volume that will affect a railroad's systems or programs. These requirements, the AAR posited, should be captured in a SIP to enable FRA to review an applicant's practices and procedures to ensure that they provide a "reasonable assurance of safety." The AAR added that the proposed SIP rules impose new standards on the railroad industry that are not required under the existing regulations and serves as a "back door" vehicle for issuing substantive regulations that impact selected transactions. These rules, the AAR reflects, impose new burdens, costs, and delays on an applicant, which leaves it at a competitive disadvantage with other railroads.

FRA agrees in part and disagrees in part with the AAR's comments. The agency has amended the subject matter areas in its proposed rule to require an applicant to focus its SIP on changes in railroad operations during the integration phase. The agency believes that a plan must analyze the major changes that will occur as railroads subject to a regulated transaction integrate their operations from commencement to completion. Advance planning will require an applicant to consider the nature of operations involved in the transaction and the migration or transition from two or more entities to one entity. The final rule satisfies these concerns.

FRA disagrees with AAR's characterization that the SIP rules are a "back door" approach to regulating subject matter areas that are not already covered under the existing regulations. The integration of very large and complex railroad operations present safety hazards not found (or not found to a degree sufficient to merit regulatory attention) either before a transaction or after operations have been successfully integrated. It is entirely appropriate for FRA to address those hazards in the limited context in which they are found. For example, integrating the operations of two railroads will usually require choosing a set of operating rules that differ in important respects from the operating rules used by one of the

[5] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998) (hereinafter "*CN/IC*").

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railroads. The employees of that railroad will have to be trained in the new operating rules and will have to overcome the bias common among railroaders that the railroad on which they started had the best way of running a railroad.

There are several essential tasks that affect railroad safety, *e.g.*, training, qualifications, fatigue, hazardous materials inspection programs, and information system compatibility. Failing to address such issues adequately can jeopardize railroad safety, as some recent mergers have demonstrated. FRA believes that UP/SP, for instance, faced increased exposure to accidents, injuries, and fatalities as overworked officials and employees encountered workforce reductions, inadequate infrastructure and equipment, and service delays and disruptions. Between June 22 and August 31, 1997, UP/SP experienced five major train collisions that resulted in the deaths of five UP/SP employees and two trespassers. These accidents were in addition to a series of yard switching accidents that claimed the lives of four UP/SP train crew employees. In connection with the UP/SP merger, for example, FRA launched a comprehensive review of UP/SP's operations, including its dispatching operations. FRA observed inefficient and unsafe practices by supervisors and dispatchers caused by inadequate training and work overload. FRA made specific recommendations, which UP/SP accepted, such as creating additional dispatch operations, realigning dispatcher territories to better balance the workload, hiring new dispatchers, tripling the number of dispatching supervisors, making improvements to the software in UP/SP's CAD computer system, and forming a working group consisting of representatives of FRA, rail labor, and UP/SP management to continually monitor and address dispatching issues that may arise. As a result of FRA's effort, UP/SP's safety performance recovered rapidly; UP/SP's fatalities due to train collisions dropped from seven in 1997 to none in 1998.

Similarly, FRA believes that most of the other recent mergers involving Class I railroads had safety integration problems. The BNSF merger, for example, resulted in the merged entity having incompatible electronic database systems used by BN and ATSF. This incompatibility resulted in terminal offices generating and transmitting inaccurate and incomplete train consist lists and waybills, which compromised the safety of train crews transporting the shipments. Even at a very simple level, BN and ATSF each had locomotives bearing the same number; this problem was not addressed before integrated operations began, resulting in dangerous confusion for dispatchers and train crews. In NS's and CSXT's acquisition of Conrail, both railroads also grappled with information technology shortcomings in preparing hazardous materials shipping papers, and training deficiencies in the computer software programs and the safety laws.

Based on observation, professional experience and judgment, and empirical evidence, FRA believes that there is a nexus between safe integration of large railroads and the subject matter areas identified in the SIP rule. Although filing a SIP will involve certain costs, burdens, and delays, FRA reasons that the safety benefits that will result from the SIP process outweigh these impediments.

Finally, there was some confusion within the regulated community that the SIP rules would impose explicit standards for the elements the railroads would have to address in their SIPs. FRA therefore clarifies that its rule only requires a railroad to identify measures, efforts, commitments, and targeted completion dates that it will take to completely integrate those elements identified in § 244.13. *See* § 244.11 for the contents required in a SIP. FRA's review and approval is predicated on whether the details in executing the elements in the plan provide "a reasonable assurance of safety." 49 CFR 244.19. As enunciated in the NPRM, FRA reiterates that:

> [I]t has no intention of operating the railroad or questioning management decisions implementing the SIP. Instead, the agency sees it[s] role as conducting a rational basis review of the SIP, meaning that the plan must be reasonable.

63 FR 72234. Provided that the SIP comprehensively explains how an applicant intends to proceed from commencement to completion in executing a transaction, FRA will approve the plan, contingent upon fulfillment of the elements enunciated in the plan and execution of those operations. In summary, a SIP must provide for the safety of operations, systems, practices, and programs that are identified in FRA's final rule before FRA will approve the plan.

FRA's Section-by-Section Analysis of Its Final Rule

The final rule contains significant changes from the proposed rule in response to the written comments received, the testimony at the public hearing, and further review and reflection within FRA. This section of the preamble explains the changes made in the final rule to the provisions of the NPRM. FRA informs interested parties that this section focuses on the specific requirements of FRA's proposed and final rules as applied to the coextensive authority of the STB to regulate the transactions identified, and respectfully refers the regulated community to the agency's Section-by-Section Analysis of the NPRM for a full discussion of those aspects of the proposed rule that remain unchanged in the final rule. *See* 63 FR 72228–35.

Subpart A—General

Section 244.1—Scope, Application, and Purpose

Proposed rule: FRA proposed that a railroad seeking to consummate certain discrete transactions would be required to file a SIP. Section 244.1(a)(1) proposed that a Class I railroad, a railroad providing intercity passenger service, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad would be subject to this part. The rule further proposed that a Class II railroad applying to acquire, consolidate, or merge with another Class II railroad with which it would connect so as to involve the integration of operations would also be required to file a SIP. Additionally, part 244 would apply to any merger, consolidation, or acquisition, excluding a transaction involving a Class III freight-only railroad, that would result in operations generating revenue in excess of the Class I railroad threshold, and all start-up operations as defined in § 244.9.

Paragraph (b) of this section explained that the proposed rule was designed to mandate that a railroad detail a plan before it would merge, consolidate, or acquire another railroad to ensure that safety interests were advanced before integrating operations of complex transactions. Section 244.1(c) informed the regulated community that part 244 applied only to FRA's disposition of an application filed pursuant to this part, and did not apply to the STB's rules, 49 CFR part 1106, governing transactions under the STB's authority.

Comments: FRA received several comments addressing a wide range of views on the proposed scope of the SIP rule. The AAR recommended that the rule should cover only Class I—Class I or Class I—passenger operations transactions because of the magnitude and complexity of these transactions and the lack of evidence that the other proposed transactions demonstrated a compromise to railroad safety. The ASLRRA and W&L suggested that the rule regulate only Class I transactions given that Class II railroad operations are less complex than their Class I counterparts, *e.g.*, lower volume, slower speeds, shorter consists, and more condensed networks, and the weight of the evidence shows that only Class I railroads need to be regulated. The ASLRRA and W&L added that Class II railroads should be regulated on an *ad hoc* basis and that the proposed coverage of start-up operations should be dropped. Amtrak commented on start-ups as well, expressing its position that a SIP should only be required when a start-up involves a new railroad and not existing railroads commencing operations over newly constructed track. APTA opined that the rule should not apply to start-ups covering existing commuter railroads that commence operations over newly constructed track or extending service on existing track.

Conversely, the BMWE, BRC, and TTD suggested that the scope of the rule be expanded to cover Class II and Class III railroads. The BRC, for instance, asserted that although Class III railroads present less complex operations than their Class I counterparts, shortline railroads use less sophisticated roadway equipment and track maintenance practices because of their lower revenue base, and employ workers who may not understand the complexities of Class I rail traffic control systems with which they interchange. The TTD supported its position by claiming that shortline railroads lack sufficient capital resources, training requirements, and staffing levels to execute transactions, and that these railroads have higher casualty and accident rates than Class I railroads.

Final Rule: Having considered the entire spectrum of comments, FRA believes that the SIP rule should apply only whenever a Class I railroad proposes to merge with, consolidate with, or acquire control of another Class I railroad or a Class II railroad with which it also proposes to amalgamate operations. The agency has re-examined the anecdotal and empirical evidence and determined that there is a correlation between large-scale transactions and compromises to railroad safety in the absence of advance planning and the preparation of a SIP. As the recent UP/SP and BNSF mergers illustrated, large-scale transactions present unique challenges in operations that can affect the resulting carrier's ability to conduct business while complying with the safety laws. (Indeed, CSXT and NS may have experienced the same shortcomings in the *Conrail Acquisition* had FRA and the STB not required the railroads to file individual SIPs addressing a systematic plan that assessed the safety effects of the transaction and explaining the manner in which they intended to implement the transaction.) Integrating cultures and differing work rules, migrating work forces, deploying capital resources, and adopting information systems are initial steps that must be planned before consummation and implemented during integration to ensure the safety of railroad employees and the public, and the protection of the environment. Therefore, to combat safety and operational problems associated with complex transactions, FRA is requiring a SIP for Class I—Class I transactions and Class I—Class II transactions when there is an amalgamation of operations. The agency believes that advance safety planning by an applicant will promote safety of its lines and minimize exposure to unnecessary accidents, incidents, injuries, or fatalities.

Although FRA recognizes that transactions not involving Class I railroads (*e.g.*, Class II railroads, passenger railroads, and start-ups) can be sophisticated operations, the agency has decided to withhold regulating these transactions for the time being. Nevertheless, FRA reserves the right to revisit the scope section should evidence or experience warrant expanding the reach of the SIP rule.

FRA also notes that paragraph (b) of this section has been modified from the proposed regulatory text to read, "This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction." The meaning and application of this paragraph, however, remains unchanged.

Section 244.3—Preemptive Effect

Proposed Rule: FRA proposed this section to inform the public of its views regarding the preemptive effect of the proposed rule. The rule would provide that 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as the regulations proposed with the exception of a provision directed at an essentially local safety hazard.

Comments: The AAR commented that FRA's reading of the preemption provision of the safety laws is incompatible with the STB's exclusive jurisdiction over economic regulation of railroads.

Final Rule: The final rule adopts the proposed rule in full. (The AAR's comments and FRA's response are discussed in the preamble above.)

Section 244.5—Penalties

Proposed Rule: FRA proposed § 244.5 to identify the penalties that the agency may assess upon any person, including a railroad or employees of a carrier, that violated any requirement of this part. The provision would provide that any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, and FRA may assess a penalty of up to $22,000 per violation where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury. Each day would constitute a separate offense, and the agency could assess civil penalties against individuals for only willful violations of this part. Criminal penalties would be available for persons knowingly and willfully falsifying entries or reports required by the SIP rule.

Paragraph (b) of this section would authorize FRA to exercise any of its other enforcement remedies available under the safety laws if an applicant failed to comply with this part. For instance, FRA could issue an emergency or compliance order or seek the issuance of a mandatory or prohibitory injunction should a railroad violate § 244.21.

Comments: Two parties commented on this section. The TTD suggested that the agency clarify the penalty provision to reflect that an individual may be subject to the maximum penalty under the safety laws. The AAR restated its jurisdictional argument that was discussed earlier, asserting that FRA lacks the authority to assess penalties against an applicant, and that conditions or remedies imposed by the STB, such as a cease and desist order, would suffice to address a noncomplying condition.

Final Rule: FRA adopts the proposed rule in full. FRA refers the TTD to the definition of "person" contained in § 244.9, which covers individuals such as managers, supervisors, officials, or other employees or agents of a railroad, and independent contractors providing goods or services to a railroad. As explained earlier in the preamble, the agency believes that the safety laws authorize the issuance of this final rule and its penalty provisions. FRA further reasons that enforcement is a necessary and effective tool to promote compliance with the safety laws. Such enforcement actions include assessing civil penalties, issuing compliance, disqualification, or emergency orders,

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seeking equitable remedies in Federal court, or referring selected incidents to the Department of Justice for criminal investigation and prosecution. In the SIP rule, these sanctions are necessary to ensure that applicants obtain agency approval of a proposed SIP before implementing a regulated transaction, and execute all measures provided in an approved plan. FRA approval or disapproval of a SIP serves as a baseline for enforcement. Should the agency disapprove of a SIP or portions thereof, this provision provides various remedies if the railroad does not change its SIP to bring it into compliance with the law. Likewise, FRA can take enforcement action if the railroad fails to implement specific requirements of an approved SIP that currently exist under the safety laws. In summary, FRA believes that this section will ensure compliance with the SIP rule by identifying the legal and equitable remedies available.

At this time, FRA has decided not to include a schedule of civil penalties for this rule. The agency received no comments from interested parties about the appropriate penalties corresponding to the sections violated in the rule. Therefore, FRA will reserve Appendix A to 49 CFR part 244 until further notice. Because such penalty schedules are statements of policy, notice and comment are not required before their issuance. *See* 5 U.S.C. 553(b)(3)(A).

Section 244.7—Waivers

Proposed Rule: Proposed § 244.7 would provide the procedures for seeking a waiver of compliance with the requirements of the SIP rule. Any railroad subject to part 244 could petition for such a waiver, and FRA would conduct its own independent investigation to determine whether an exception to the general criteria existed to warrant granting the waiver, provided that the waiver would not compromise or diminish rail safety.

Comments: The AAR suggested that FRA's waiver provision be modified to meld it with the STB's waiver provision.

Final Rule: The proposed rule is adopted with the addition of paragraph (d). FRA believes that its rule text is closely aligned with the STB's counterpart, but informs interested parties that its waiver provision governs only FRA's disposition of a petition for a waiver. An applicant must still seek a waiver from the STB to be free and clear of any SIP requirements under 49 CFR parts 244 and 1106. This caveat is spelled out in paragraph (d) of this section.

Of special note, FRA informs applicants that a petition for a waiver in which a Class I railroad seeks to consummate a transaction with a small Class II railroad with which it proposes to amalgamate operations may be received more favorably than a waiver request in a transaction involving two Class I railroads. Presently, FRA intends to focus its energies on monitoring transactions involving Class I and large-scale Class II railroad operations, *e.g.*, the Canadian National Railway Company's acquisition of the Wisconsin Central Transportation Corporation,[6] where it believes systemic operating deficiencies are most likely to manifest themselves during the integration phase if no SIP is prepared and implemented. Although transactions involving smaller-scale Class II railroads may present safety challenges, FRA opines that not every merger, consolidation, or acquisition covered in this rule should face a comprehensive SIP review. Rather, FRA invites applicants seeking to execute less complex transactions to petition for a waiver of this rule's requirements. FRA will then review the petition on an *ad hoc* basis and may grant it should the agency determine that it is in the public interest and is consistent with rail safety.

FRA reminds the regulated community that it reserves the right to impose any conditions as it believes are necessary to promote rail safety. The agency further advises that it has plenary authority to approve or reject a petition for a waiver of this rule, and its decision is "agency discretion by law." 5 U.S.C. 701(a)(2); *see also Heckler* v. *Chaney*, 470 U.S. 821 (1985).

Section 244.9—Definitions

Proposed Rule: The NPRM proposed an extensive set of definitions that would introduce the regulations. As FRA explained in the proposed rule, the definitions were issued to clarify the meaning of important terms as employed in the rule text and were designed to minimize any possible misinterpretation of the rule. Because the commenters only responded to two proposed definitions, FRA will focus on these terms. The agency refers interested parties to the NPRM for a complete recitation of the meaning and application of those definitions that are adopted as proposed. *See* 63 FR 72230.

FRA proposed defining "corporate culture" to mean the attitudes, commitments, directives, and practices of railroad management with respect to safe railroad operations. The concept was to cover a railroad management's attitudes, directives, planning and resource allocations when safety was at issue. "Best practices" was defined to mean the safest and most efficient rules or instructions governing rail operations that a railroad issued.

Comments: FRA received two comments on "corporate culture." The AAR represented that the definition as applied could not be quantified in an objective fashion to place an applicant on notice about the measures that must be taken to comply with this element. At the same time, the BMWE wanted to expand the definition to include modifications or changes to CBAs that were not negotiated under the Railway Labor Act that the applicants wished to have the STB impose under the authority of 49 U.S.C. 11321 (commonly referred to as "cram downs"). *See* 49 U.S.C. 11324(c).

The AAR also questioned the definition of "best practices," asserting two reservations. First, the AAR asserted that the clause "railroad industry standards" is code for FRA practices. Second, the railroad organization claimed that the proposed definition invited the agency to formulate business decisions. In response, the AAR recommended qualifying the definition to permit an applicant to select the "best practices" of the parties that are subject to the transaction, which would best promote the safety interests.

Final Rule: FRA amends the proposed definitions. "Corporate culture" is now defined as "the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad." The notion is to capture the business directives issued by a railroad's management and the practices implementing these directives by labor to encompass a wide range of field operations. These activities include the formulation, development, issuance, and execution of measures and programs related to safe railroad operations that involve consultations between railroad management and railroad employees. The heart of the safety issue involved is that FRA has observed (1) that a railroad tends to operate more safely when all of its employees understand that the railroad has a defined way of operating and comply with it and (2) that employees coming from different railroads will tend to continue to do their jobs as they learned them on their first railroad until they are taught to operate differently. This part of the rule is intended to get the railroads subject to a covered transaction to observe their differences, choose how the resulting railroad is to operate, and assure that their employees adopt the chosen culture. FRA does not intend to impose its own choice of corporate safety culture, but insists that the railroad choose and implement its choice.

FRA grappled with "corporate culture" in light of the AAR's comments about how objectively the agency could apply its meaning in evaluating a proposed SIP, and in light of BMWE's suggestion that it be expanded to include "cram downs." FRA believes that "corporate culture" quantifies sufficient elements to provide for meaningful and objective agency review, and given the spirited debate over cram downs, and the recent settlement among most Class I railroads and labor organizations representing most rail employees, including the BMWE, on the issue of CBA overrides, FRA cannot adopt the BMWE's suggestion that cram downs be considered a part of the definition of corporate culture.

"Best practices" is modified to read those "measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations." This amended definition incorporates the change recommended by the AAR. To reiterate, FRA does not intend to substitute its judgment for that of a railroad in determining which legally permissible safety and efficiency measures to use, but instead will defer to a railroad's construction and application of its operating rules and practices that promote these interests. Put another way, the agency believes that the railroad has the prerogative in identifying the best practices to be employed within the law.

Subpart B—Safety Integration Plans

Section 244.11—Contents of a Safety Integration Plan

Proposed Rule: FRA proposed § 244.11 to frame the structure of a SIP that a railroad must file. The section would require an applicant to prepare a roadmap or playbook detailing the practices and procedures, financial commitment, and timetable for integrating or commencing field operations identified as subject matter areas under § 244.13. In particular, the NPRM would require a plan to propose a timetable from commencement to completion to implement the transaction.

Comments: Only one interested party commented on this section. The AAR generally agreed with FRA's proposal with one exception. The railroad organization opposed the timetable provision in paragraph (f) because it was perceived as being too rigid to afford flexibility in reaching proposed milestones in the plan. The AAR countered with its own textual proposal to require a general overview of steps and order in which the steps would be implemented.

Final Rule: The rule is adopted as proposed with minor textual changes and paragraphs (c)–(e) redesignated as paragraphs (d), (e), and (c), respectively. Paragraph (a) replaces the conjunctive clause "and the best practices of these railroads" with "including the rules or instructions governing railroad operations of these railroads," and paragraph (b) adds the text "including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction" at the end of the provision to narrow the scope of the information on integrating operating practices a SIP must provide. Paragraph (f) inserts the word "targeted" in lieu of "stated" to enable an applicant to set benchmarks for completing the specified elements. FRA understands the dynamics of assimilating disparate operating practices and procedures and recognizes the flexibility needed to achieve their integration. The change of the operative word "stated" to "targeted" thus assuages the AAR's concern. FRA intends to hold a railroad accountable for conducting front-end planning measures and executing the same within identified milestones to complete the integration of operations.

FRA believes that the final rule should delineate the SIP contents and SIP subject matter areas as separate regulatory functions. The contents provision provides the basis for identifying and addressing the subject matter areas and facilitates a well organized plan that will articulate the execution and implementation of these elements. Section 244.11 best exemplifies the roadmap or playbook concept necessary to address the subject matter areas provided in § 244.13. Accordingly, the section's regulatory heading and introductory text remain unchanged.

Section 244.13—Subjects To Be Addressed in a Safety Integration Plan Involving an Amalgamation of Operations

FRA received several comments expressing a wide variety of opinions about the contents of § 244.13. To improve the flow of this analysis, each paragraph will be treated as a separate section, summarizing the proposal, comments, and final rule. FRA refers interested parties to the NPRM's Section-by-Section Analysis for the background of the elements identified in this section, and the justification for requiring these subject matter areas for transactions that involve an amalgamation of operations. Because FRA received no comments about the basis for or scope of proposed § 244.13, the introductory text of the regulation is adopted as proposed.

Section 244.13(a)—Corporate Culture

Proposed Rule: FRA proposed paragraph (a) to require an applicant to explain the basis for its safety culture. Specifically, the regulation would require a railroad to identify and describe differences in corporate cultures for each safety-related area; describe how these cultures lead to different practices governing rail operations; and explain how the proposed integration of corporate cultures would result in a system of 'best practices' when the proposed transaction was implemented.

Comments: Management and labor organizations commented on the "corporate culture" provision. APTA wanted "corporate culture" to address the safety of passenger operations, and the TTD suggested that a railroad detail similarities and differences in corporate culture to avoid issuing "boilerplate language" in its proposed SIP. Concurrently, the AAR agreed with the proposed rule text because it provided sufficient flexibility in accounting for different organizational structures, styles, and operations.

Final Rule: The proposed rule is adopted with revisions to § 244.13(a)(1), and (3). Subparagraph (1) is refined to mandate that an applicant "(i)dentify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction(,)" and subparagraph (3) is changed to read that the railroad must "(d)escribe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of 'best practices' when the transaction is implemented." These provisions draw a closer nexus between safety and corporate culture

[6] A SIP was prepared and adopted in that case. *See Conadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation, et al.*, STB Finance Docket No. 34000, 66 FR 23757 (May 9, 2001) (STB Decision No. 2, served May 9, 2001) (STB order mandates the preparation of a SIP) (hereinafter "*CN/WCTC*"); and *CN/WCTC*, STB Finance Docket No. 34000 (STB Decision No. 10, served Sept. 7, 2001) (STB adopts the SIP and approves the transaction).

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than the proposed rule and require a railroad to detail the incremental measures it will take to integrate disparate cultures that will culminate in adopting safe and efficient standards governing railroad operations.

As FRA explained in the proposed rule, safety culture is an instrumental element in achieving rail safety. Acquisitions, consolidations, and mergers of large rail operations are complicated transactions that require a railroad to adopt an operating structure that underscore safety and good communications among management, employees, and the employees' union representatives. Such a structure should unify the different cultures under which railroads operate that draw upon the best practices of each to facilitate the formulation, development, issuance, and implementation of safety practices and procedures within a seamless merged company.

To carry out this task, an applicant needs to describe how it will successfully integrate the underlying priorities, practices, and philosophies while implementing the transaction. For example, UP recently published a three-step directive to its officials. First, the railroad indicated that it would focus, in part, on adequate staffing levels and predictable work schedules. Second, it would direct its attention to values, leadership development, training, and quality. Finally, the railroad pledged that it would build a new relationship with its employees. At the same time, NS has established a culture that elevates training, professionalism, commonality of purpose, and rules compliance to achieve safety on its railroad. NS has acknowledged that rules compliance is most fundamental to avoid accidents or incidents, and has stressed effective communications between management and the rank-and-file workers to implement this measure. CSXT has amplified the importance of safety culture by establishing a cooperative program comprising management officials and labor union members that educates, counsels, and improves the performance of safety-sensitive employees who commit operating rules violations, and instituting safety culture offices that ensure that safety is foremost in job performance. *See* SIP Update at 22.

At bottom, FRA posits that it will not dictate attitudes, directives, planning, or resource allocation criteria under this part. Rather, the agency intends to defer to proposed and implemented planning processes that promote and value railroad safety. It is incumbent on a railroad to resolve different cultures, direct and carry out programs that emphasize safety practices, and engage management and labor to develop, issue, and implement an iteration process to execute these programs. To this end, FRA endorses the corporate culture concept and incorporates the textual standards accordingly.

Section 244.13(b)—Training

Proposed Rule: The proposed rule would require a railroad to discuss its training and educational programs to ensure that its employees and supervisors who are responsible for field operations would be proficient and qualified. FRA identified the employment crafts that would be covered in the NPRM, which were train and engine service employees, dispatchers or operators, roadway workers, signal employees, mechanical officials, and hazardous materials personnel.

Comments: FRA received diverse comments from interested parties. The TTD, for example, wanted the rule to set minimum qualifications and training requirements, and require an applicant to detail the number of class and on-the-job training hours and file a report on hazardous materials training. At the same time, the BRC wanted to establish qualification and training standards for car inspectors when defect ratios exceed three percent for an applicant, and the ATDD suggested training and qualification requirements for dispatchers. The AAR agreed with the regulatory concept, but opposed new training requirements that are not prescribed under the safety laws because such standards do not present an integration issue.

Final Rule: FRA adopts the proposed rule with some substantive changes to the introductory text and paragraph (b)(6). The rule centers on ensuring that designated employees, including information technology personnel affecting hazardous materials transportation, are proficient, qualified, and familiar with the operating rules and operating tasks of territory assigned when these employees are moved to a new territory or the operating rules on a given territory are changed. Training impacts integration of operations when employees are either transferred to new divisions or subdivisions, or when operating rules, timetables, or timetable special instructions, *e.g.*, superintendent bulletins, are changed in an assigned territory. In other words, when operating circumstances change, the "front line" employees must be familiar with all aspects of their crafts or occupations. A SIP should also include details identifying the scope and depth of the type of training operating personnel will receive, discuss the resources allocated to conduct and complete training, and a proposed schedule for reaching this milestone.

FRA and the AAR are in agreement about the concept of the SIP rule. It is not the agency's intention to prescribe new substantive standards in this rulemaking action. Instead, the rule requires a railroad seeking to consummate a transaction to inaugurate and implement certain programs when integration commences. In this instance, an applicant needs to make certain that its operating employees are conversant in logistics, operations, and equipment handling in unfamiliar localities, and when operating rules, timetables, or timetable special instructions are changed in an assigned territory. Although FRA is receptive to the labor organizations' recommendations, the agency believes that training standards are more appropriate in another rulemaking action and therefore, declines the invitation.

Section 244.13(c)—Operating Practices

Proposed Rule: FRA proposed requiring a railroad to provide operating practices information that would address operating rules, accidents/incidents, hours of service laws, and the alcohol and drug and locomotive engineer qualification and certification programs. The regulation would also require an applicant to discuss the efforts taken to minimize fatigue of covered service employees, *i.e.*, employees who perform train and engine service, dispatching, or signal system service, to enhance safety in the field and reduce the likelihood of committing errors while performing safety-sensitive functions.

Comments: Four parties filed comments on this proposal. The labor union commenters supported the proposal, but suggested changes. The BMWE wanted the rule to also require a railroad to consider fatigue management of roadway workers because of the physical demands of their labor and the travel necessary to carry out their assigned tasks. The BRC recommended that the proposed accident/incident reporting procedures be amended to require an applicant to certify the integrity of electronic data entered and a security system to reflect any amendments to initial data entries. The TTD supported the provision, but suggested four changes. First, the labor organization wanted a railroad to identify the size of current operating crews and detail the injuries, fatalities, and expenditures on safety-related claims. Second, it recommended that an applicant file a compilation of all

alcohol and drug tests performed and their results for the previous three years, and an explanation of its options for substance abuse treatment. Next, it wanted a railroad to specify the measures necessary to minimize employee fatigue. Lastly, the TTD wanted a SIP to identify how an engineer would be qualified on the physical characteristics to operate over any new territory.

The AAR also commented on paragraph (c). The railroad organization agreed with the operating rules provision because of its integral nature in governing operations on a new railroad system, but opposed the accident/incident reporting and alcohol and drug testing provisions on the ground that they are not integration issues unique to regulated transactions.

Final Rule: FRA adopts the proposed rule with two modifications. The agency amends § 244.13(c)(1) to add "freight and passenger service" to the provision requiring a railroad to identify the operating rules, timetables, and timetable special instructions that govern railroad operations. The inclusion of this proviso renders § 244.13(l) redundant, which substantiates its withdrawal from the final rule. FRA also drops proposed paragraph (c)(2) from the final rule, agreeing with the AAR that there is no correlation between accident/incident reporting procedures and safe integration of operations. The agency has determined that accidents/incidents reporting is not a safety problem with the transactions it has reviewed. FRA believes that the current regulations under 49 CFR part 225 achieve the interests of safety for reporting accidents or incidents and establishing an internal control plan under § 225.33. Therefore, the accidents/incidents provision is unnecessary and is withdrawn.

FRA believes that the final rule captures the information a railroad needs to address in a SIP to ensure that operations are performed safely during the integration phase. Although the agency considered expanding the reach of the operating practices area, it decided to focus on those employees and practices that will be most affected by a transaction, particularly those aspects that involve logistics, operations, and equipment handling in unfamiliar territories, and the need to retain institutional knowledge on lines experiencing operational changes. A railroad, for instance, needs to identify the alcohol and drug testing programs that will apply after it consummates operations to facilitate continuity and consistency during the transition period. Again, the rule's objective is to require an applicant to conduct advance planning of operations that impact rail safety. The operating practices enumerated in the rule text are such critical operations that mandate detailed planning. This rationale thus undergirds the requirements contained in this provision.

Section 244.13(d)—Motive Power and Equipment

Proposed Rule: Section 244.13(d) would require an applicant to identify the qualification standards for employees who inspect, maintain, or repair rolling stock and designate the facilities that will repair the rolling equipment, and provide adequate assurances that mechanical officials who are responsible for performing required inspections and tests of the equipment are proficient in mechanical practices to safeguard the use of freight or passenger cars and locomotives on a railroad.

Comments: The AAR, BRC, and TTD shared their respective comments with FRA about the proposed rule. The AAR agreed that the regulation should be adopted with the proviso that a railroad be afforded flexibility to change the designation of repair facilities without the need of agency approval. The BRC took issue with the provision "designation of facilities that will repair such equipment" because it implies that a railroad would be authorized to assign repair facility locations irrespective of safety concerns. The BRC recommended that the sentence read, in part, that an applicant must identify "all facilities being used, and that will be used following consummation of the transaction, to repair such equipment," to enable FRA to determine whether a railroad is eliminating redundant repair facilities or increasing the distance noncomplying cars may be permitted to travel. The TTD also wanted to amend the provision to require a railroad to identify the average and mean age of engines owned by an applicant and the location of new repair facilities.

Final Rule: FRA agrees with the BRC that a SIP must identify all repair facilities that are being used or will be used after a transaction is consummated. The agency is concerned about the safety of rolling stock and believes that the modification will enable it to determine whether an applicant is eliminating redundant repair facilities or increasing the distance in which noncomplying rolling equipment may travel, thereby compromising rail safety. FRA thus rewords the last clause in the provision to read "the designated facilities used, or to be used, to repair such equipment" to reflect this amendment.

Section 244.13(e)—Signal and Train Control

Proposed Rule: The NPRM would require a railroad to identify the signal and train control systems used, and maintenance, capital improvement, and research and development projects planned for signal and train control operations.

Comments: The TTD supported the proposed requirement, but recommended that the rule should also require an applicant to identify signal malfunctions and false signal reports, dark territory, and accidents in signal and non-signal territory. The AAR opposed the TTD's suggestion to require a railroad to identify signal malfunction reports, asserting that it does not present an integration issue.

Final Rule: FRA agrees with the AAR that the TTD's proposal does not present an integration issue but instead, an operational issue affecting the routine movement of engines, equipment, or trains. The TTD's suggestion is therefore not adopted. The final rule tailors the proposed rule text to require a railroad to address "any planned amendments or modifications to capital improvement" to focus an applicant on advance planning of signal systems integration to prevent any incompatibility between signal and train control systems and reconcile or harmonize signal practices and standards when dissimilar systems exist.

Section 244.13(f)—Track Safety Standards and Bridge Structures

Proposed Rule: FRA would require a railroad to identify the maintenance and inspection programs for track and bridges to ensure that its infrastructure was safe or would be repaired, rehabilitated, or replaced, if necessary.

Comments: The labor organizations, led by the BMWE and TTD, wanted the regulation to require an applicant to identify the qualification standards for trackside workers to track the requirements contained in § 244.13(d). The AAR opposed the NPRM, claiming that Track Safety Standards and bridge structures do not present an integration issue.

Final Rule: Based on FRA's recent assessment of the *Conrail Acquisition*, the agency believes that track safety does present an integration issue that should be addressed in the final rule. FRA's audit found that CSXT experienced track maintenance and inspection practices shortcomings after the implementation of the *Conrail Acquisition*. In 1999, FRA determined

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that the railroad's track defects ratios did not improve from the previous year, and track-related accidents remained a problem on its lines. These accidents were caused by wide gage and defective switch points and track hardware at turn-outs, which were easily preventable and evidence the need for the railroad to redouble its efforts in upgrading its track program. *See* SIP Update at 24. Because track maintenance and inspection programs are essential elements to promote safe rail operations during integration, FRA believes that the roadway or trackside workers should be qualified in carrying out these tasks. As a result, the final rule adopts the labor organizations' recommendation by requiring a SIP to identify the qualification standards for these workers.

Section 244.13(g)—Hazardous Materials

Proposed Rule: Section 244.13(g) proposed requiring an applicant to address hazardous materials in a SIP. First, a railroad would have to identify a hazardous materials inspection program that covered field inspection practices, communication standards, and emergency response procedures. Second, the applicant would have to discuss its development and deployment of an automated system at designated locations for immediate retrieval of hazardous materials shipping papers.

Comments: Three parties commented on the proposal. The BMWE and TTD wanted an applicant to provide an emergency action hazardous materials plan. Conversely, the AAR opposed the requirement of developing and delivering computer software operating systems because there was insufficient evidence that the regulation would promote the safe integration of hazardous materials safety programs.

Final Rule: FRA has reorganized paragraph (g) by requiring a railroad to identify a hazardous materials inspection program that covers four discrete areas. The first three are identical to the proposed rule. The fourth area reconfigures proposed § 244.13(g)(2) to require the program to address information technology ("IT") systems and employees who are responsible for shipping papers accompanying hazardous materials shipments. The provision also stipulates that a SIP should identify preventive measures that an applicant will use in responding to IT integration and hazardous materials documentation problems.

FRA believes that IT systems that transmit and receive hazardous materials information must employ programs that properly place cars in train consists and identify the contents of hazardous materials shipments to the hostler and train and engine crews. The agency documented several IT deficiencies in implementing the *Conrail Acquisition*, finding improper hazardous materials shipping papers and inaccurate train consists hauling hazardous materials shipments because of, in part, the lack of familiarity with the data systems used to process hazardous materials documentation. *See* SIP Update at 2, 25, and 28. To prevent recurrences, FRA believes that a railroad should test the computer systems that will be responsible for handling hazardous materials paperwork to detect and eliminate any incompatibility problems found and provide for information accuracy. FRA's revision captures the lesson learned from a recent transaction.

Section 244.13(h)—Dispatching Operations

Proposed Rule: Paragraph (h) would require a railroad to identify the dispatching system to be adopted, the migration of the existing system to the adopted one, if applicable, the qualifications for determining duties performed by dispatchers or operators, and the volume of work assigned to the dispatchers or operators.

Comments: The ATDD and AAR provided disparate comments on this proposal. The ATDD opined that a railroad should be required to address the familiarity of the dispatchers with the territory that is subject to the transaction, whereas the AAR opposed this recommendation because no current substantive regulation exists and proper training alone may provide adequate territory familiarization. The AAR also asserted that the dispatching requirements should apply only to operations that are affected by the transaction.

Final Rule: FRA adopts the suggestions that were provided. The proposals are incorporated in § 244.13(b) introductory text and § 244.13(b)(4) by requiring a SIP to identify training programs for dispatchers to ensure familiarity with the operating tasks of the territory assigned when these employees are assigned to a new territory or the rules governing an assigned territory are changed. Otherwise, the term "workload" is added to paragraph (h)(3) and paragraph (h)(4) is withdrawn. This cosmetic change retains the sum and substance of the information on dispatcher workloads in a SIP without setting out a separate regulatory function.

Section 244.13(i)—Highway-Rail Grade Crossing Systems

Proposed Rule: The NPRM would require a SIP to address highway-rail grade crossing signal system safety, emergency response measures, public education initiatives, and proposals to improve grade crossings and grade crossing system warning devices.

Comments: Only one party commented on the proposal. The AAR maintained that the proposed regulation was inappropriate because railroads already discuss grade crossing issues and upgrades with state highway departments, and FRA's insertion into the process may create conflicts with these government agencies and impose unnecessary burdens on an applicant. Alternatively, the AAR suggested that a SIP require a railroad to discuss grade crossing safety programs and the integration of the programs in a transaction.

Final Rule: The final rule adopts the AAR's suggestion in part and breaks out the information required in a SIP in more detail. The regulation mandates that an applicant identify the grade crossings that will experience an increase in traffic as a result of the transaction, the existing grade crossing programs of the railroads as they apply to these crossings, the integration of the grade crossing programs of the railroads that are subject to the transaction to the extent the programs differ, emergency response action plans, measures to avoid blocking or obstructing grade crossing systems, and signs used for changes to rail traffic patterns.

FRA believes that grade crossing safety is a critical element that a SIP must address. As was explained in the NPRM, statistics show that the vast majority of fatalities and injuries during railroad operations occur at grade crossings due to collisions or trespass incidents. 63 FR 72233. A complex transaction presents its own challenges given that a railroad acquiring, consolidating, or merging with another railroad will dedicate traffic on certain corridors or lines. The SIP rule requires an applicant to consider the impact of increased traffic density in a territory on the safety of grade crossings.

Again, FRA's role is not to approve or reject specific measures, such as upgrading grade crossings, a railroad may take during the course of a transaction. Rather, the agency reviews the applicant's proposed plan within the context of providing a "reasonable assurance of safety." FRA does not foresee that such a review process will interfere with a railroad's consultations with a state highway agency or impose

a substantial burden on the railroad. The interests of safety direct an applicant to develop and implement a grade crossing program that will reduce accidents, incidents, injuries, and fatalities that occur at crossings. The grade crossing element is thus retained in the final rule.

The rule also sets out discrete new items-avoidance of blocked crossings and signs used for changes in traffic patterns-that a railroad must address in its grade crossing program. Blocked crossings are of particular concern to FRA and communities that will experience increased rail traffic over its crossings. To illustrate, the agency found that a significant number of NS crossings were blocked for extended periods of time in the State of Ohio during the end of 1999. *See* SIP Update at 20. The agency has determined that this deficiency is more systematic and frequent than previously believed, creating unnecessary challenges for emergency response vehicles and creating congestion at crossings. To reduce the likelihood of similar problems occurring in the future, FRA believes that a railroad should identify in its SIP practices to alleviate blocked crossings, which may include identifying additional sidings required, crew change points, and other actions or construction needed. (The agency notes that this requirement is similar to the STB regulations requiring applicants to submit evidence about potentially blocked grade crossings as a result of anticipated merger-related traffic increases. *See* 49 CFR 1105.7(e)(7) and 49 CFR 1180.1(f)(3)(ii) and 1180.8(a)(2), requiring an applicant to identify specific measures to be employed to avoid blocking crossings that may result otherwise due to the consummation of a transaction, at 66 FR 32582, 32585 and 32589, June 15, 2001.) The SIP must also discuss the signs used for changes in traffic patterns. FRA believes that these signs serve to advise motorists and pedestrians of the frequency of rail traffic traversing crossings to protect them from possible collisions.

Section 244.13(j)—Personnel Staffing

Proposed Rule: Paragraph (j) would require a SIP to cover personnel staffing in terms of the number of employees, both current and proposed, for certain occupations carrying out safety-sensitive service in the railroad industry.

Comments: FRA received two comments to this proposal. The ATDD agreed with the regulatory text as proposed. The AAR wanted to clarify the proposal by authorizing a railroad to file a copy of its Labor Impact Exhibit that is filed with an application to the STB under 49 CFR part 1180 to avoid any redundancies in information provided pursuant to an application.

Final Rule: FRA adopts the proposed rule with one minor modification. An applicant need only address the personnel staffing element when it projects a change of operations that will impact workforce duties or responsibilities. A railroad may omit this section if it expects operations will remain constant after the transaction is consummated. Otherwise, it must address the full litany of job functions that are provided in subparagraphs (1)–(8).

FRA declines to accept AAR's suggestion in authorizing a railroad to file a copy of its Labor Impact Exhibit to satisfy this provision. Under 49 CFR 1180.6(a)(2)(v), also known as the Labor Impact Exhibit requirement, the STB only requires an applicant to address projected changes that a transaction will impact on its employees by class or craft, the geographic locations where the impact will occur, the timeframe of the impact, and whether any employee protection agreements have been reached. The Board's regulation thus does not cover current employees and does not enunciate specific job duties that are prescribed here. Because the two regulations are not congruent, the filing of a Labor Impact Exhibit alone will fall short of the requirements enumerated in this section. Nevertheless, a railroad may use the same information provided in its Labor Impact Exhibit to meet portions of this regulation where appropriate.

Section 244.13(k)—Capital Investment

Proposed Rule: Paragraph (k) would require an applicant to explain its capital investment program by describing its intended investments in the company's infrastructure and addressing changes to existing investment forecasts.

Comments: The TTD agreed with the capital investment proposal.

Final Rule: FRA adopts the rule as proposed.

Section 244.13(l)—Relationship Between Freight and Passenger Service

Proposed Rule: FRA proposed requiring a railroad to describe the relationship of freight and passenger service on railroad lines subject to a transaction.

Comments: The agency received comments from APTA and OK DOT about proposed paragraph (l). APTA requested that the regulation enunciate the schedule changes involving commuter and freight service on operations subject to the transaction. OK DOT, on the other hand, wanted the provision to require an applicant to address the density of combined freight and passenger operations.

Final Rule: Upon further consideration, FRA has concluded that freight and passenger service should be addressed within the context of the operating rules that will govern their operations. The agency reasons that safe integration is premised on identifying those rules and practices that will govern these services on property that is the subject of a transaction. Service alone does not present an integration issue that warrants separate analysis and requiring a railroad to address schedule changes or density concerns serves to "micromanage" an application, which is contrary to the purpose of the SIP rule. Service falls within the rubric of railroad operations that must be evaluated to identify the potential safety impact and the measures directed to minimize any consequences during integration. Based on this analysis, FRA withdraws proposed paragraph (l) and transfers "freight or passenger service" to paragraph (c)(1).

Section 244.13(m) (Now Section 244.13(l))—Information Systems Compatibility

Proposed Rule: Section 244.13(m) proposed requiring a railroad to address the steps it intended to execute to provide a single interface of data on train consists, freight car and locomotive movements and movement history, also known as "wheel reports," dispatching operations, accident/incident reporting and recordkeeping requirements, and emergency cessation of operations.

Comments: Both the BMWE and TTD suggested expanding the regulation to require information systems to address movement and movement history of roadway equipment and hi-rail vehicles.

Final Rule: FRA adopts the proposed rule, now redesignated as § 244.13(l), with two changes. First, the final rule removes proposed subparagraph (4), which addressed accident/incident reporting and recordkeeping requirements within the information systems context. As explained in its discussion of Section 244.13(c)(2) above, FRA has concluded that accidents/incidents reporting is not a problem warranting a SIP. The agency therefore believes that requiring an applicant to explain the transmission and receipt of such information when integrating computer technologies is unnecessary. Consequently, the provision is withdrawn.

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Second, this section adds one provision. A SIP must also address the compatibility of information systems that are responsible for transporting hazardous materials to ensure their safe movement while a railroad is switching or converting hardware, software, or program systems. The agency found that both NS and CSXT experienced difficulties in identifying and tracking hazardous materials shipments through their respective computer systems after they switched over from Conrail's "CATS" system in June 1999. *See, e.g.*, SIP Update at 25, 28, and 32. For example, CRCX employees, who work for the Shared Assets Areas in the *Conrail Acquisition*, reportedly had difficulty in obtaining documentation from CSXT and NS computer systems to properly place hazardous materials shipments in train consists. *Id.* at 32. Hazardous materials shipping papers must represent the contents of shipments being transported on the railroad. To this end, the IT systems must be capable of receiving and transmitting accurate hazardous materials documentation to ensure the seamless and efficient flow of information during the interchange of shipments. FRA, however, disagrees with expanding the regulation to include roadway equipment or hi-rail vehicles. There has been no evidence of problems associated with these service vehicles during the integration of complex transactions. Therefore, FRA demurs on the suggestion.

Section 244.15—Subjects To Be Addressed in a Safety Integration Plan Not Involving an Amalgamation of Operations

Proposed Rule: FRA proposed, in part, requiring a railroad engaging in a transaction that did not involve an amalgamation of operations to file a SIP that covered only the training, personnel staffing, and capital investment elements.

Comments: The AAR opposed requiring a SIP for a "paper transaction" because such a transaction does not present operational changes and only serves to impose an unnecessary burden on an applicant without any consummate safety benefit. In response, the AAR proposed revising the provision to require a SIP on an *ad hoc* basis when no operational changes exist.

Final Rule: FRA agrees with the AAR's rationale that a "paper transaction" presents minimal changes in operations that will affect rail safety and revises the regulation as suggested. An applicant seeking to consummate a transaction that does not propose an amalgamation of operations need not file a SIP unless FRA directs the railroad to do so.

As we explained in the NPRM, FRA distinguishes "operational transactions" that present a migration of personnel or equipment, or infrastructure changes from "paper transactions" that are limited to changes in company letterhead. *See* 63 FR 72234. FRA advises interested parties, however, that changes in operating rules, timetables, bulletins, special instructions, or any other written directives that affect the movement of locomotives or rolling stock impact safety and are therefore designated as "operational transactions," requiring the filing of a SIP. FRA thus adopts a broad interpretation of "amalgamation of operations" by mandating a SIP for transactions that propose only changes in practices or procedures governing railroad operations.

Section 244.17—Procedures

Proposed Rule: The NPRM proposed a set of procedures that would govern the filing and handling of an application to carry out a transaction. Section 244.17(a) provided that a railroad would be required to file a SIP with FRA and the STB no later than the date it submitted its request for authority to the Board. Under paragraphs (b) and (c), FRA would review and comment on the proposed SIP, and the railroad would provide additional information supporting its plan should the agency require it. Paragraph (d) proposed requiring FRA to issue its factual findings and conclusions on the proposed SIP to the STB before the Board ruled on the application. Section 244.17(e) would require a railroad to coordinate with FRA in implementing a proposed SIP approved by FRA and the STB until integration was complete. The proposed rule also set out the interplay between FRA and the Board during the implementation phase of the transaction in paragraph (f).

Comments: The AAR maintained that the proposal to require the contemporaneous filing of a proposed SIP and a request for authority with the STB was unrealistic, as the same employees generally would write both the operating plan for the STB application and the SIP. The organization also questioned the proposal because it may compromise the quality of the SIP and was inconsistent with the *Conrail Acquisition* proceeding in which the STB gave NS and CSXT four months to file their separate plans after they filed their respective applications. As an alternative, the AAR proposed that the rule provide a railroad 30–90 days after it files its application with the Board to file a proposed SIP.

The AAR further opposed proposed paragraph (b) on the ground that the regulatory text called for information that was beyond the scope of the rule. The organization recommended amending the text to authorize FRA to obtain additional information on matters that address specific safety concerns. Finally, the AAR requested that proposed paragraph (f) be amended to establish a three-year window of regulatory oversight of a railroad's SIP implementation, and that the section add a provision covering the confidential treatment of information provided by an applicant to the agency to safeguard proprietary and competitively sensitive information.

Final Rule: FRA revises § 244.17 to reflect the proposals advanced by the AAR and to clarify the procedural requirements governing the SIP process. Paragraph (a) is amended to give a railroad up to 60 days after it files an application with the STB to file a proposed SIP with FRA. FRA believes that a two-month interim will provide sufficient time for the company to complete its SIP after filing its operating plan. The agency also adds the phrase "to satisfy the requirements of this part" to paragraph (b) to assuage the AAR's concerns. Restated, the regulation now requires a railroad to provide additional information in a SIP that FRA may require to meet the rule's requirements, such as the operational elements within the framework of the plan's contents as provided in § 244.11. The final rule also has been revised to delete the reference to "exemptions" filed with the STB, because Class I carriers typically file applications in consolidation transactions.

FRA adds paragraph (f) to § 244.17 to require a railroad to communicate with the agency about any changes and refinements to its plan in response to unfolding developments, and file any amendments to its plan with FRA for approval. Proposed paragraph (f) is redesignated paragraph (g), and the last sentence of the proposed provision is amended to reflect that FRA will oversee the implementation of a SIP for a period of five years, for a period prescribed by an order issued by the Board, or when FRA advises the Board in writing that the integration of operations is complete, whichever is shorter. The oversight period is necessary to ensure that the SIP is being implemented as intended, that the railroads are adhering to the representations made in the SIP, that no unforeseen circumstances have arisen

requiring FRA to exercise any of its enforcement remedies, and that the milestones established in the SIP are being met in a timely fashion.

Finally, the agency adds paragraph (h) to provide a procedural mechanism for an applicant to request that advance drafts of a proposed SIP and information filed in support of the proposed or approved plan receive confidential treatment should an outside party submit a request for the documents under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. The regulation directs the railroad to comply with the procedures enumerated under 49 CFR 209.11 to petition for such treatment. Nevertheless, FRA reminds the regulated community that the agency alone will decide whether to grant or deny a request, but that it will afford a company whose request was denied an opportunity to respond no less than five days before the agency discloses the information. *See* 49 CFR 209.11(e). It should be noted, however, that FRA, like the STB, will not treat a proposed or approved SIP that is filed pursuant to the regulations prescribed under 49 CFR 244.17(a) and 1106.4(a) as confidential because the proposed plan will be incorporated in the Board's environmental documentation, which will be made available for public review and comment.

Section 244.19—Disposition

Proposed Rule: Section 244.19 would enunciate FRA's review and approval process of a proposed SIP. The regulation proposed requiring a plan that detailed a logical and workable transition from conditions existing before the proposed transaction to conditions intended to exist after the transaction was consummated. FRA would review the SIP on a "reasonable assurance of safety" standard, meaning that the agency would conduct rational basis review of the plan to ensure that it was reasonably sufficient to comply with the safety laws, provide for safe railroad operations, and satisfy expectations of integration of operations. The agency would then issue its notice of approval should the SIP prove satisfactory, provided that the railroad implemented the plan as proposed.

The rule also would authorize amendments to a SIP. A railroad could amend its plan as needed with FRA's approval or the agency could mandate changes consistent with rail safety should it identify deficiencies during implementation of an approved plan that were unforeseen while the plan was under review. Again, SIP approval would be contingent on a railroad's fulfillment of the subject matter elements in the plan and the execution of operations necessary to implement the plan.

Comments: The AAR was the only commenter to the proposed section. The railroad organization opposed FRA's formal review and approval process of a SIP, and any amendments thereto, on the grounds of the agency's lack of jurisdiction to consider transactions within the STB's scope of authority, and the need to maximize flexibility in updating and improving safety plans and minimize the burdens imposed by the rule. The AAR proposed four revisions to the section. First, FRA would advise the Board in reviewing a proposed SIP on practices and procedures relating to rail safety, with the STB to determine whether to approve or disapprove of a plan based on its adequacy after FRA comments on it. Second, an applicant would be permitted to file any amendments with FRA and explain the need for the changes should the agency request the same. Third, the section would authorize amendments to take effect within 20 days after they are filed with the agency and remove the review process of amendments. Finally, the AAR recommended modifying paragraph (b) by replacing "later developments" with "amendments to a SIP."

Final Rule: FRA adopts the core of the proposed rule and certain changes advanced by the AAR. Paragraph (a) is rewritten to articulate the standard of review for a proposed SIP, and any amendments thereto, up front. The rule further explains the structure of the plan to be filed, which the NPRM set out. Recast, the SIP must be thorough, complete, and clear; and address a logical and workable transition of railroad operations from conditions before the transaction to conditions intended after the transaction is consummated that provide a reasonable assurance of safety at every step during implementation. FRA intends to work informally with an applicant both before and after the transaction is approved and consummated to ensure that the SIP complies with the regulations and that the transaction is safely implemented.

Consistent with the AAR's proposal, FRA amends paragraph (b) by inserting "any amendments to the plan approved by FRA" in lieu of "all later developments subject to FRA approval that could not be completed before approval of it." This revision clarifies an applicant's role in fulfilling the elements of an approved SIP by requiring it to implement all of the plan's measures and any amendments to the plan. The agency notes that it may approve portions of a SIP while disapproving other portions if it concludes that the actions under the plan can be segregated without jeopardizing safety.

Section 244.19(c) is also amended by requiring a railroad to substantiate any changes to its SIP and communicate with the agency to resolve any comments about the amendments. The regulation also prescribes that any amendments approved by FRA will take effect within 20 days of approval, and the agency may "request" rather than "require" a railroad to amend its approved plan should circumstances dictate. The operative word "request" is inserted to afford the agency discretionary review of the plan while it is being implemented and sufficient leverage to proffer a change that promotes safety interests.

FRA takes issue with the AAR's suggestion that the agency lacks authority to adopt a formal review and approval process of SIPs. As FRA explained earlier, the agency believes that it has the authority to regulate railroad safety during implementation of mergers, consolidations, and acquisitions that are approved by the STB. FRA has always done so for the hazards presented by railroading generally. In this rule, FRA is exercising its existing jurisdiction and expertise in regulating the safety hazards presented by the proposed integration of operations of different railroads. *See* 49 U.S.C. 20103. In short, the transaction that is approved by the STB is the context within which the potential safety hazards are presented and dealt with, but the transaction itself is not regulated by FRA. The rule does not authorize FRA to sanction or veto a transaction subject to STB approval or to impose conditions upon which approval of the transaction is authorized because those functions are exclusively vested with the STB. *See* 49 U.S.C. 11321–24.

FRA believes that there is a need to codify an ongoing SIP approval process to allow for appropriate enforcement. There are two parts to this process. First, a railroad must submit a proposed SIP for agency review and approval to determine whether the plan meets the requirements of the rule. Second, assuming the proposed SIP, including any amendments thereto, is approved, the railroad must implement the SIP as approved. Should FRA disapprove a SIP, or portions thereof, or the railroad fail to implement the SIP, the rule authorizes the agency to take enforcement action to ensure safety. *See* 49 CFR 244.21(b).

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Section 244.21—Compliance and Enforcement

Proposed Rule: Proposed § 244.21 would require a railroad to have an FRA-approved SIP before it could change its operations to implement a transaction. Additionally, the rule would authorize the agency to use any of its enforcement remedies available under the safety laws should the railroad either change its operations without an approved plan or fail to execute any measure in an approved plan. The regulation also provided that FRA would consult with the STB at all appropriate stages of SIP implementation for a transaction that involved Board authorization.

Comments: The AAR objected to this proposal, asserting that FRA is not authorized to take any enforcement action against a railroad under this part because the STB is the only agency with jurisdiction to approve or disapprove a proposed SIP.

Final Rule: FRA revises § 244.21(a) to clarify that, in approving a SIP, FRA is regulating the safety of railroad operations and is neither approving nor disapproving the transaction before the STB nor exercising an alleged veto over whether that transaction can be consummated if it should be approved by the STB. FRA also withdraws proposed paragraph (c) because it duplicates the requirements provided under § 244.17(g). The regulation now requires a railroad implementing a transaction to operate in compliance with the SIP approved by FRA until all of its operations are completely integrated. The rule is rewritten in this fashion to eliminate the possibility of interpreting the rule, as some commenters did, to equate FRA's approval or disapproval of a SIP with approving or disapproving an application to the STB to approve a transaction. As explained above, FRA agrees that the STB has exclusive authority to approve or disapprove a transaction covered by this part.

Correspondingly, FRA's role in the STB's process is to advise the Board on safety issues identified in a transaction. Indeed, the Board's own proposed and final rule relies upon the FRA's safety expertise as the Board evaluates the merits of a transaction and disposes of an application. *See* 49 CFR 1106.4; *see also* Tyrrell, 248 F.3d at 523; *CP Purchase*, slip op. at 5–6 (the STB gives "great weight" to FRA's expert view on rail safety in determining whether to impose any conditions on a proceeding).

Briefly stated, regulation of "every area of railroad safety" is FRA's jurisdiction. *Tyrrell*, 248 F.3d at 523 ("FRA exercise[s] primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*"). In approving or disapproving a SIP under this part, and enforcing one, FRA is regulating *the safety aspects of how* a railroad operates while implementing a transaction permitted by the STB, *not whether* the railroad is permitted to consummate the transaction or on what economic terms. This is an appropriate exercise of the "plenary safety authority with respect to the safety of rail operations-before, during, and after a transaction" which the AAR acknowledges that FRA has. AAR comments at 9. In that regard, approval of a SIP is no different than approval of an engineer certification program under 49 CFR part 240. There is no question that a railroad must have an engineer certification program approved by FRA and operate in accordance with it at all times, whether or not the railroad is involved in a transaction within the STB's jurisdiction.

In summary, FRA is authorized to exercise any of its legal or equitable enforcement remedies should a railroad either not operate in accordance with an approved SIP or not comply with any element provided in that plan.

Regulatory Impact of FRA's Final Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA is adopting rules that will require merging or acquiring railroads to adopt SIPs before commencing merged operations. Two railroads, NS and CSXT, prepared such plans for their acquisition of the Conrail system. One of those railroads has informed FRA that its SIP cost $300,000, the other said it cost $212,000. The main difference is that the more expensive plan was developed almost exclusively by a contractor, while the other was mostly done in-house. It is unlikely that any SIP would cost much more. It is possible that a SIP for a smaller Class I railroad might cost less. A likely range for the cost of a SIP is $150,000 to $400,000. A SIP for a Class II railroad might cost much less. The Class II railroad's business plan will be smaller, and the safety information will be easier to gather. A SIP for a Class II might cost $25,000 to $100,000. It is a one-time expense for any railroad. The assumed total cost of the SIP rule to a railroad is twice the initial cost of preparing the SIP, to account for such vagaries as SIP modifications and restrictions on training.

Although FRA cannot with certainty say which of the several accidents following mergers were the result of poor planning, it appears extremely likely that at least one of them could have been prevented with a SIP. Assuming that the SIP would prevent two fatalities and $600,000 in damage implies that a SIP for the UP/SP merger would have saved at least $6,000,000 in accident costs. FRA believes that one or more of these accidents could have been prevented based on its findings when it did a detailed analysis of the UP/SP operations. For other railroads the accident savings might vary. For a larger railroad, the accident savings might be twice as much ($12,000,000), while for smaller Class I railroads the safety benefits might be one-fourth that much ($1,500,000). FRA does not have as much information on Class II railroads, but it appears that the accident savings on a Class II railroad might be one percent ($60,000) or as much as twenty percent ($1,200,000) of the savings that would have been available for the UP/SP. These figures are roughly based on ratios of reported accidents, noting that when railroads merge, they become larger entities than they are now.

FRA's careful review of the impacts of mergers that have taken place in the recent past has clearly revealed that mergers and acquisitions disrupt existing safety and operating patterns. Because these transactions are generally justified in significant part by cost savings, there is pressure to close redundant facilities and eliminate positions. This can lead to degradation of safety programs unless formal, written, systematic, and detailed plans are prepared to ensure that safety programs are continued and closely followed. Any less attention to safety could produce catastrophic results, both in terms of economic cost and, more importantly, loss of life.

The final rule will cost $300,000 to $800,000, and will prevent $1,500,000 to $12,000,000 in accident costs for Class I railroads, and will cost $50,000 to $200,000, and will prevent $60,000 to $1,200,000 for Class II railroads. The final rule will not apply to small entities, *i.e.*, the Class III railroads. In addition, the railroad may avoid substantial service difficulties by carrying through the safety planning process. This could save the railroad hundreds of millions or billions of dollars. In the first three quarters of 1998, UP reported losses exceeding $900,000,000 due to service difficulties. The societal losses of these delays is probably much greater, as the figures only account for costs to UP. FRA notes that although numerous parties have submitted data to the STB regarding the impact of the service difficulties, the Board has not attempted to quantify the societal costs of these service problems. *See Rail Service in the Western United States*, STB Ex Parte No. 573 (STB Decision served Feb. 25, 1998).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of rules on "small entities." The final rule relates to acquisitions, consolidations, and mergers involving only Class I railroads and a Class I railroad with a Class II railroad where there is a proposed amalgamation of operations. Given FRA's recently published interim policy establishing "small entities" as being railroads that meet the line haulage revenue requirements of a Class III railroad, FRA certifies that this proceeding will not have a significant economic impact on a substantial number of small businesses. *See* Interim Statement of Policy Concerning Small Entities Subject to the Railroad Safety Laws, 62 FR 43024, Aug. 11, 1997.

Paperwork Reduction Act

The information collection requirements ("ICRs") in this final rule have been submitted for approval to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the ICRs and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual reponses	Average time per response	Total annual burden (in hours)	Total annual burden cost
244.13—Subjects to be addressed in a Safety Integration Plan (SIP) involving an amalgamation of operations.	8 railroads	1 SIP (plan)	360 hours	360	$22,224
244.17—Procedures	8 railroads	25 reports	40 hours/2 hours	92	$5,152
—Coordinating Implementation of Approved SIP with FRA.	8 railroads	50 phone calls	10 minutes	4	$224
—Request For Confidential Treatment	8 railroads	.5 request	8 hours	8	1,224
244.19—Disposition	8 railroads	2 communications	16 hours	32	1,792

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning whether these ICRs are necessary for the proper performance of the agency's function, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Organizations and individuals desiring to submit comments on the ICRs should direct them to the Office of Management and Budget, FRA Desk Officer, Washington, DC 20503. OMB is required to make a decision concerning the ICRs contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA hereby notices that it cannot impose a penalty on persons for violating ICRs that do not display a current OMB control number, if required. FRA intends to obtain a current OMB control number for any new ICRs resulting from this rulemaking action before the effective date of the agency's final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated the final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by NEPA, other environmental statutes, Executive Orders, and related directives. This rule meets the criteria that establish this action as a non-major action for environmental purposes.

Federalism Implications

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Statement of Energy Effects

The final rule has been reviewed in accordance with Executive Order 13211 (66 FR 28355, May 22, 2001), which requires agencies to prepare a Statement of Energy Effects describing the effects of certain regulatory actions on energy supply, distribution, or use when such measures are identified as "significant energy actions." FRA certifies that this rulemaking action is not a significant energy action to warrant the preparation of such a statement.

STB's Statement of Basis

The circumstances that led to the promulgation of these rules are set out in the NPRM. As explained there, in the advance notice of proposed rulemaking ("ANPRM") published in the **Federal Register** on December 4, 1997, at 62 FR 64193, the Board requested comments on the extent to which railroads should be required to provide information pertaining to the manner in which they intend to provide for the safe implementation of merger and acquisition authority granted by the Board. The Board explained that for several years the Board and its predecessor agency, the Interstate Commerce Commission ("ICC"), have considered the issue of safety along with other relevant issues in individual cases. As particularly pertinent here, in the Conrail Acquisition proceeding,[7] the Board for the first time required applicants to submit detailed information on how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction.[8] (The Board required the same type of showing in the CN/IC merger,[9] which the Board approved on May 25, 1999. A SIP also

[7] *Conrail Acquisition*, STB Finance Docket No. 33388 (STB Decision No. 52, served Nov. 3, 1997).

[8] The Board did so at the suggestion of FRA and rail labor interests.

[9] *CN/IC*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998).

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was prepared and adopted in the CN/WCTC merger proceeding.[10]

Specifically, the Board's practice in recent railroad merger proceedings involving Class I and Class II railroads has been to require applicants to file detailed SIPs based on guidelines issued by FRA. The railroads' submissions are made part of the environmental record in those proceedings and addressed in the ongoing environmental review process in those proceedings. This allows review and comment by FRA, other interested parties, and the public. The Board's environmental staff, SEA, also independently reviews the plans.

Moreover, the Board has entered into an MOU with FRA, with DOT's concurrence, to establish an ongoing monitoring process during implementation of these transactions. The MOU clarifies the actions that FRA and the Board will take to ensure the successful implementation of the SIP. Under the terms of the MOU, FRA monitors, evaluates, and reviews the applicants' progress in implementing the approved SIP. The MOU provides that FRA may request action by the Board in the exercise of its oversight authority over the applicants to correct safety deficiencies identified and to address other safety-related concerns resulting from the approved transaction. FRA also agrees to report to the Board at least on a biannual basis regarding the applicants' implementation of the SIP. In those circumstances in which FRA informs the Board of safety deficiencies that may require Board action, FRA will identify the deficiencies and provide recommendations for correcting them. FRA's reporting will continue until FRA advises the Board in writing that the proposed integration of operations has been safely completed.

The Board's ANPRM explained that, having developed a vehicle by which to evaluate safety integration issues in the *Conrail Acquisition*, it was appropriate to consider promulgating rules extending this process to other rail transactions subject to the Board's jurisdiction. Accordingly, the Board solicited comments from FRA and any other interested persons on how the Board should proceed to ensure the safe implementation of rail transactions subject to its jurisdiction (*i.e.*, whether the STB should proceed broadly by general rule or exclusively on a case-by-case basis, and whether procedures other than those adopted in *Conrail Acquisition* might be preferable in Board-approved transactions outside the merger area).[11]

Based on the comments received and the Board's experience with the SIP process in *Conrail Acquisition*, the Board issued its decision served on July 27, 1998, finding sufficient merit to warrant further exploration of establishing regulations addressing the safe implementation of Board approved transactions. *Safe Implementation of Board-Approved Transactions*, STB Ex Parte No. 574 (STB served July 27, 1998). The Board directed its staff to develop a joint notice of proposed rulemaking with FRA that would address the issues that have arisen in this proceeding and that are of concern to FRA.

Following the issuance of the Board's July 27, 1998, decision, the Board's staff met informally with FRA staff regarding the development of an appropriate proposal that would accomplish the objectives of both agencies, avoid gaps and inconsistencies in the two agencies' regulatory requirements, and impose as little burden as possible on the participating parties. The NPRM was published in the **Federal Register** on December 31, 1998, at 63 FR 72225. On May 4, 1999, a public hearing was held jointly with FRA to hear testimony on the proposed rules.[12]

As noted, eleven parties representing labor, freight and passenger railroads, and state departments of transportation filed comments on the NPRM. Many of the commenters endorsed the objectives of the SIP rules and indicated that they were generally satisfied with the approach used in the *Conrail Acquisition* and *CN/IC* proceedings.[13] However, they offered a number of recommendations on how the proposed rules could be clarified and improved. In issuing final rules, the Board has taken into account all the concerns raised in the parties' written comments and presented at the hearing. As discussed below, the Board is adopting some of the suggestions offered.

STB's Analysis of the Comments Pertaining to the Scope of the Rules

A number of commenters expressed concerns about the scope of the STB's proposed rules. The AAR and Amtrak asserted that the proposed inclusion of transactions that involve a passenger railroad or commuter service in a metropolitan area would exceed the Board's jurisdiction.[14] (*See* proposed 49 CFR 1106.2.) In response to the comments, the definitions of "applicant" and "transaction" in § 1106.2 have been amended. The new definitions clarify that the SIP requirement applies only to a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad or a Class II railroad with which it proposes to "amalgamate operations," as defined in FRA's regulations at 49 CFR 244.9. (The Board also adds FRA's definition of "amalgamation of operations" to its rule.) The changed definitions coincide with the scope of the transactions covered by FRA's final rule, which will promote consistency and efficiency in the interplay between FRA and the Board.

Rail labor interests took the position that the Board's SIP rule should apply to transactions involving Class III carriers,[15] *i.e.*, those railroads that generate revenue, measured in 1991 dollars, of less than $20 million per year, whereas the railroad interests argued that it is not necessary to require the preparation of a SIP for transactions that do not involve two or more Class I railroads.[16] Commenters also suggested that freight traffic density or combined freight and passenger traffic (rather than the Class of railroad) could

[10] *See CN/WCTC*, STB Finance Docket No. 34000 (STB Decisions Nos. 2, 9, and 10 served May 9, August 2, and September 7, 2001, respectively) (hereinafter "*CN/WCTC Decisions*").

[11] The administrative process permits the Board to proceed either on a case-by-case basis or by rule, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

[12] AAR and TTD presented testimony at the oral hearing. AAR filed supplemental comments following the hearing.

[13] *See also Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001) ("*Major Rail Consolidation Procedures*"), slip op. at 36–37 (practice of requiring applicants to work with FRA to formulate SIPs in major mergers received wide public support, and no opposition, in proceeding adopting new rules for major rail consolidations). Indeed, some commenters including the AAR questioned whether formal rules in this area were necessary because the Board could continue to work with FRA on a case-by-case basis, as in the *Conrail Acquisition* and *CN/IC* proceedings. The Board agrees with the AAR that the SIP process used in these proceedings generally has been successful and is publishing final rules to codify existing practices and FRA's role in advising the Board on safety integration matters in transactions that the Board regulates.

[14] Under 49 U.S.C. 10501(c), the Board does not have jurisdiction over mass transportation (commuter service) provided by a local governmental entity. Thus, a transaction involving a railroad subject to the STB's jurisdiction and a commuter railroad "is now a one-railroad transaction over which [the Board does] not have jurisdiction under 49 U.S.C. 11323." *Norfolk & Western Railway Company—Petition for Declaratory Order—Lease of Line in Cook & Will Counties, IL. To Commuter Rail Division of the Regional Transp. Auth. of Northeast Illinois*, STB Finance Docket No. 32279 (STB served Feb. 3, 1999). Moreover, except for certain provisions not relevant here, Amtrak is not subject to the Board's jurisdiction. 49 U.S.C. 24301(c).

[15] *See* the comments of TTD, ATDD, BRC, and BMWE.

[16] *See* the comments of AAR, ASLRRA, and W&LE.

serve as a benchmark for determining the necessity of a SIP.[17]

The Board's final rule covers Class I railroads and Class II railroads that will have their operations amalgamated by a Class I railroad. The Board believes that this scope of coverage is reasonable because it is consistent with the scope of FRA's rule and Congress has treated Class II railroads more like Class I railroads than like Class III railroads in ICCTA.[18] The Board believes that it would be unduly burdensome to expand the proposed rules to cover transactions involving Class II railroads or Class III railroads as a matter of course. Under §§ 1106.5 and 1106.6 of the final rule, however, the Board retains the flexibility to require a SIP for such transactions if warranted, or to waive or modify SIP requirements on a case-by-case basis, if it concludes that doing so is appropriate for particular transactions.[19]

AAR indicated that the Board should allow an additional 30 to 90 days for preparing and filing a proposed SIP, rather than requiring the SIP to be submitted simultaneously with the application. This request is reasonable. Therefore, section 1106.4(a) of the STB's final rule provides 60 days from the date of the application[20] for the filing of a proposed SIP.

The BMWE urged that the Board clarify proposed § 1106.4(b)(4), which, it argued, could be construed to give the Board discretion to approve a transaction without a SIP or without requiring compliance with the SIP. To eliminate any possible confusion, the Board's final rule has been clarified to specifically state that, if the Board approves the transaction and adopts the SIP, the Board will require compliance with the SIP as a condition to its approval of the transaction.

STB's Section-By-Section Analysis of Its Final Rule

§ 1106.1 Purpose.

The regulations are designed to assure adequate and coordinated consideration of safety integration issues by the Board and FRA in implementing certain transactions subject to the Board's jurisdiction.

§ 1106.2 Definitions.

This section sets forth definitions used in this part; these definitions are self explanatory.

§ 1106.3 Actions for Which Safety Integration Plan is Required.

This section explains which transactions require a railroad to file a SIP with the Board. As noted above, a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations, as defined in FRA's rule at 49 CFR 244.9, will be subject to the requirements of this rule. Where the filing of a SIP is required by the Board's rules, the Board will enforce the requirement with appropriate sanctions, including suspending the processing of the application or, in extreme cases, dismissing the application itself.

§ 1106.4 The Safety Integration Plan Process

Section 1106.4 sets out the procedures for an applicant to file a proposed SIP, and the procedures by which the Board will consider a proposed SIP in connection with its approval of transactions for which the Board has concluded such consideration is required. A railroad seeking to carry out a covered transaction must file a proposed SIP prepared in accordance with FRA's regulations with the STB's SEA and FRA no later than 60 days from the date the application is filed with the Board. The proposed SIP will become part of the environmental documentation in the Board proceeding, and will be considered in the Board's environmental review process conducted in accordance with NEPA and the Board's environmental rules at 49 CFR part 1105. Generally, covered transactions will be subject to environmental review because the nature of the transaction involves operational changes that exceed the regulatory thresholds established under 49 CFR 1105.7(e)(4) or (5). *See* 49 CFR 1105.6(b)(4)(i). In the event that a SIP should be required in a transaction that would not be subject to environmental review, *see* 49 CFR 1105.6(c)(2), the Board intends to develop appropriate case-specific SIP procedures.[21]

After FRA reviews the proposed SIP, FRA will issue its findings and conclusions on the adequacy of the plan and will provide its analysis of the proposed SIP early enough to permit incorporation in the Board's draft environmental assessment or draft environmental impact statement. Nevertheless, recognizing that the SIP is an ongoing and fluid process, as in the *Conrail Acquisition* proceeding, FRA may comment on the plan and on an applicant's progress in completing a SIP, without endorsing the plan in full. The Board agrees with FRA that flexible procedures for FRA's response are necessary to enable an applicant to complete a comprehensive plan.

Additionally, this approach will enable the Board to incorporate FRA's comments in its draft environmental documentation, which, in turn, will encourage the public to review and comment on the proposed SIP. SEA will then independently review the proposed SIP and respond to comments received on the plan in its final environmental documentation. Finally, the Board will consider the entire environmental record, including information concerning the SIP, in deciding whether to approve the proposed transaction. Should the Board approve the transaction and adopt the SIP, it will require that the applicants comply with the SIP as a condition to its approval and require each applicant to coordinate with FRA in implementing the SIP, including any amendments to the plan, if necessary. (*See* FRA's Section-By-Section Analysis

[17] *For example*, OK DOT notes that the Board's environmental regulations at 49 CFR 1105.7(e)(5) consider the amount of increased traffic on a line in determining whether there is a need for environmental review.

[18] The Board's recently adopted new rules for major railroad mergers and consolidations involving two or more Class I railroads, published at 66 FR 32582, June 15, 2001, require Class I applicants to bear a substantially heavier burden in demonstrating that a merger proposal is in the public interest. The agency concluded that the current merger regulations at 49 CFR part 1180, subpart A, are not adequate to address future major rail merger proposals that, if approved, would likely result in the creation of two North American transcontinental railroads. But although the economic and service issues that drove the Board's action in *Major Rail Consolidation Procedures* are of concern principally when two Class I railroads merge, the safety considerations underlying SIPs also apply to mergers, consolidations, and acquisitions involving a Class I railroad and a Class II railroad with which it proposes to amalgamate operations.

[19] In the NPRM, the Board specifically solicited comments from interested parties as to whether the final rule should cover Class III railroads. The comments did not persuade the Board that transactions involving Class III railroads typically create sufficient safety problems to warrant requiring the preparation of a SIP. However, the Board's final rule at 49 CFR 1106.6 would allow the agency to require a SIP in particular cases involving Class III railroads if it concluded that doing so is necessary in its proper consideration of the proposed transaction.

[20] Because the Board is narrowing the scope of transactions that require a SIP to those filed under 49 U.S.C. 11323(a) involving Class I railroads and Class II railroads that will have their operations amalgamated with Class I railroads, the final rule eliminates the reference to "exemptions" in § 1106.4(a)(1). The reference to "applications" and "other requests for authority" in the definition of "transaction" in § 1106.2, and in the reservation of jurisdiction provision in § 1106.6, however, give the Board the flexibility to require a SIP in cases filed by exemption as well as by application should it be appropriate to do so.

[21] *See CN/WCTC Decisions*, STB Finance Docket No. 34000 (STB Decision Nos. 2 and 9, served May 9 and Aug. 2, 2001, respectively) (SIP prepared even though no environmental review was required).

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discussing amendments to 49 CFR 244.17 for a more complete discussion.)

As explained in FRA's Section-By-Section Analysis of § 244.17(g), FRA will advise the Board about its findings on the ongoing implementation process in accordance with an agreement that the agencies will enter into and execute (1) over a five-year period, (2) during any other oversight period for the transaction established by the Board, or (3) until FRA advises the Board that, in its view, the proposed integration of the applicants' operations has been safely completed, whichever is shortest.[22] Should FRA identify shortcomings or deficiencies during the integration process, the Board reserves jurisdiction to reopen the proceeding and impose terms and conditions on the transaction to ensure that the transaction is safely implemented.

§ 1106.5 Waiver.

The Board can waive or modify the requirements of this part where a carrier shows that relief is warranted or appropriate.

§ 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require the filing of a SIP in transactions other than those provided in this part or to adopt modified SIP requirements in individual cases if it concludes that doing so is necessary to properly consider an application or other request for authority.

Regulatory Flexibility Act

The Board certifies that its decision to adopt regulations requiring Class I and Class II railroads to prepare safety integration plans under certain circumstances will not have a significant effect on a substantial number of small entities.

Environmental Impact

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Statement of Energy Effects

Even though the Board is an independent regulatory agency, it recognizes the importance of the policy objective in Executive Order 13212 to expedite consideration of projects that would increase the production, transmission, or conservation of energy. The SIP rulemaking action, however, should not affect the production, transmission, or conservation of energy.

[22] The Board's new rules at 49 CFR 1180.1(g) provide for at least a five-year oversight period for major railroad mergers and consolidations involving two or more Class I railroads.

Federal Railroad Administration 49 CFR Chapter II

List of Subjects in 49 CFR Part 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA amends chapter II of title 49, Code of Federal Regulations, to read as follows:

1. Part 244 is added to read as follows:

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Subpart A—General

Sec.
244.1 Scope, application, and purpose.
244.3 Preemptive effect.
244.5 Penalties.
244.7 Waivers.
244.9 Definitions.

Subpart B—Safety Integration Plans

244.11 Contents of a Safety Integration Plan.
244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.
244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.
244.17 Procedures.
244.19 Disposition.
244.21 Compliance and Enforcement.

Appendix A to Part 244—Schedule of Civil Penalties [Reserved]

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

Subpart A—General

§ 244.1 Scope, application, and purpose.

(a) This part prescribes requirements for filing and implementing a Safety Integration Plan with FRA whenever a Class I railroad proposes to consolidate with, merge with, or acquire control of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations.

(b) The purpose of this part is to achieve a reasonable level of railroad safety during the implementation of transactions described in paragraph (a) of this section. This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction.

(c) The requirements prescribed under this part apply only to FRA's disposition of a regulated transaction filed by an applicant. The transactions covered by this part also require separate filing with and approval by the Surface Transportation Board. *See* 49 CFR part 1106.

§ 244.3 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that:

(a) Is necessary to eliminate or reduce an essentially local safety hazard;

(b) Is not incompatible with a law, regulation, or order of the United States Government; and

(c) Does not unreasonably burden interstate commerce.

§ 244.5 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $11,000 per day, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

(b) As specified in § 244.21, FRA may also exercise any of its other enforcement remedies if a railroad fails to comply with § 244.21.

(c) Any person who knowingly and willfully makes a false entry in a record or report required by this part shall be subject to criminal penalties under 49 U.S.C. 21311.

§ 244.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with any requirement of this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement pending action on such a petition.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

(d) The procedures governing a petition for a waiver that are prescribed under this part apply only to FRA's disposition of such a petition. A person seeking a waiver of a Surface Transportation Board regulation would need to file a petition for a waiver with the Board. (*See* 49 CFR 1106.5.)

§ 244.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Amalgamation of operations means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.*, changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

Best practices means measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations.

Class I or Class II railroad has the meaning assigned by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

Corporate culture means the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad.

Control means actual control, legal control, or the power to exercise control through:

(1) Common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(2) Any other means. *See* 49 U.S.C. 10102.

Consolidation means the creation of a new Class I railroad by combining existing Class I railroads or a Class I railroad and a Class II railroad where there is an amalgamation of operations, or by a railroad or a corporate parent of a Class I railroad taking over the assets or assuming the liabilities, or both, of another Class I railroad such that the resulting unified entity has the combined capital, powers, and subsidiaries and affiliates, if applicable, of all of its constituents.

Environmental documentation means either an Environmental Assessment or Environmental Impact Statement prepared in accordance with the Surface Transportation Board's environmental rules at 49 CFR part 1105.

Merger means the acquisition of one Class I railroad or Class II railroad where there is amalgamation of operations by a Class I railroad such that the acquiring railroad or a corporate parent of that railroad acquires the stock, assets, liabilities, powers, subsidiaries and affiliates of the railroad acquired.

Person means an entity of any type covered under 1 U.S.C. 1, including the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Safety Integration Plan means a comprehensive written plan submitted to and approved by FRA in compliance with this part that demonstrates in required detail how an applicant will provide for safe railroad operations during and after any transaction covered by this part, and otherwise assure compliance with the Federal railroad safety laws.

Section of Environmental Analysis or "SEA" means the Section of the Surface Transportation Board that prepares its environmental documentation and analyses.

Transaction means a consolidation, merger, or acquisition of control subject to the requirements of this part.

Subpart B—Safety Integration Plans

§ 244.11 Contents of a Safety Integration Plan.

Each Safety Integration Plan shall contain the following information for each subject matter identified in § 244.13 or § 244.15:

(a) A detailed description of how the applicant differs from each railroad it proposes to acquire or with which the applicant proposes to consolidate or merge, including the rules or instructions governing railroad operations of these railroads;

(b) A detailed description of the proposed manner of operations of the resulting railroad, including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction;

(c) The measures to be taken to comply with applicable Federal railroad safety laws and regulations;

(d) The proposed specific measures, expressed step-by-step, for each relevant subject matter that the applicant believes will result in safe implementation of the proposed transaction consistent with the requirements of this part;

(e) The allocation of resources, expressed as human and capital resources within designated operating budgets, directed to complete safety-relevant operations subject to the transaction; and

(f) The timetable, targeted in specific terms from commencement to completion, for implementing paragraphs (c), (d) and (e) of this section.

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

Each Safety Integration Plan involving an amalgamation of operations shall address the following subjects for railroad operations conducted on property subject to the transaction:

(a) *Corporate culture.* Each applicant shall:

(1) Identify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction;

(2) Describe how these cultures lead to different practices governing rail operations; and

(3) Describe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of "best practices" when the transaction is implemented.

(b) *Training.* Each applicant shall identify classroom and field courses, lectures, tests, and other educational or instructional forums designed to ensure the proficiency, qualification, and familiarity with the operating rules and operating tasks of territory assigned of the following employees, either when these employees are assigned to a new territory or the operating rules on a given territory are changed:

(1) Employees who perform train and engine service;

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(2) Employees who inspect and maintain track and bridges;
(3) Employees who inspect, maintain and repair any type of on-track equipment, including locomotives, passenger cars, and freight cars of all types;
(4) Dispatchers or operators;
(5) Employees who inspect and maintain signal and train control devices and systems;
(6) Hazardous materials personnel, including information technology personnel who affect the transportation of hazardous materials;
(7) Employees who maintain or upgrade communication systems affecting rail operations; and
(8) Supervisors of employees enumerated in paragraphs (b)(1) through (7) of this section.

(c) *Operating practices.*

(1) *Operating rules.* Each applicant shall identify the operating rules, timetables, and timetable special instructions to govern railroad operations, including yard or terminal operations and freight or passenger service.

(2) *Alcohol and drug.* Each applicant shall identify the post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR part 219.

(3) *Qualification and certification of locomotive engineers.* Each applicant shall identify the program for qualifying and certifying locomotive engineers under 49 CFR part 240.

(4) *Hours of service laws.* Each applicant shall identify the procedures for complying with the Federal hours of service laws and related measures to minimize fatigue of employees covered by 49 U.S.C. chapter 211.

(d) *Motive power and equipment.* Each applicant shall identify the qualification standards for employees who inspect, maintain, or repair railroad freight or passenger cars and locomotives, and the designated facilities used, or to be used, to repair such equipment.

(e) *Signal and train control.* Each applicant shall identify the signal and train control systems governing railroad operations and maintenance, and any planned amendments or modifications to capital improvement and research and development projects for signal and train control operations.

(f) *Track Safety Standards and bridge structures.* Each applicant shall identify the maintenance and inspection programs for track and bridges, and the qualification standards for roadway workers.

(g) *Hazardous Materials.* Each applicant shall identify an inspection program covering the following areas:
(1) Field inspection practices;
(2) Hazardous materials communication standards;
(3) Emergency response procedures; and
(4) Information technology systems and personnel employed for transmitting or receiving information accompanying hazardous materials shipments. The inspection program should identify preventive measures that will be employed to respond to potential information technology integration and hazardous materials documentation deficiencies.

(h) *Dispatching operations.* Each applicant shall identify:
(1) The railroad dispatching system to be adopted;
(2) The migration of the existing dispatching systems to the adopted system, if applicable; and
(3) The criteria used to determine workload and duties performed by operators or dispatchers employed to execute operations.

(i) *Highway-rail grade crossing systems.* Each applicant shall identify a program, including its development and implementation, covering the following:
(1) Identification of the highway-rail grade crossings at which there will be an increase in rail traffic resulting from the transaction;
(2) An applicant's existing grade-crossing programs as they apply to grade crossings identified in paragraph (i)(1) of this section;
(3) Integration of the grade crossing programs of the railroads subject to the transaction to the extent the programs may be different;
(4) Emergency response actions;
(5) Avoidance of blocked or obstructed highway-rail crossing systems by trains, locomotives, railroad cars, or other pieces of rolling equipment; and
(6) Signs employed for changes in rail traffic patterns.

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform each of the following types of function when there is a projected change of operations that will impact workforce duties or responsibilities:
(1) Train and engine service;
(2) Yard and terminal service;
(3) Dispatching operations;
(4) Roadway maintenance;
(5) Freight car and locomotive maintenance;
(6) Maintenance of signal and train control systems, devices, and appliances;
(7) Hazardous materials operations; and
(8) Managers responsible for oversight of safety programs.

(k) *Capital investment.* Each applicant shall identify the capital investment program, clearly displaying planned investments in track and structures, signals and train control, and locomotives and equipment. The program shall describe any differences from the program currently in place on each of the railroads involved in the transaction.

(l) *Information systems compatibility.* Each applicant shall identify measures providing for a seamless interchange of information relating to the following subject matters:
(1) Train consists;
(2) Movements and movement history of locomotives and railroad freight cars;
(3) Dispatching operations;
(4) Emergency termination of operations; and
(5) Transportation of hazardous materials.

§ 244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.

If an applicant does not propose an amalgamation of operations conducted on properties subject to the transaction, the applicant shall not be required to file a Safety Integration Plan unless directed to do so by FRA.

§ 244.17 Procedures.

(a) Each applicant shall file one original of a proposed Safety Integration Plan with the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC, 20590, no later than 60 days after the date it files its application with the Surface Transportation Board.

(b) The applicant shall submit such additional information necessary to support its proposed Safety Integration Plan as FRA may require to satisfy the requirements of this part.

(c) The applicant shall coordinate with FRA to resolve FRA's comments on the proposed Safety Integration Plan until such plan is approved.

(d) FRA will file its findings and conclusions on the proposed Safety Integration Plan with the Board's Section of Environmental Analysis at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(e) Assuming FRA approves the proposed Safety Integration Plan and the Surface Transportation Board approves the transaction and adopts the Plan, each applicant involved in the transaction shall coordinate with FRA in implementing the approved Safety Integration Plan.

(f) During implementation of an approved Safety Integration Plan, FRA expects that an applicant may change and refine its Safety Integration Plan in response to unforeseen developments. An applicant shall communicate with FRA about such developments and submit amendments to its Safety Integration Plan to FRA for approval.

(g) During implementation of an approved Safety Integration Plan, FRA will inform the Surface Transportation Board about implementation of the plan at times and in a manner designed to aid the Board's exercise of its continuing jurisdiction over the approved transaction in accordance with an agreement that FRA and the Board will enter into and execute. Pursuant to such agreement, FRA will consult with the Board at all appropriate stages of implementation, and will advise the Board on the status of the implementation process:
(1) For a period of no more than five years after the Board approves the transaction,
(2) For an oversight period for the transaction established by the Board, or
(3) Until FRA advises the Board in writing that the integration of operations subject to the transaction is complete, whichever is shorter.

(h) *Request for Confidential Treatment.* Each applicant requesting that advanced drafts of the proposed Safety Integration Plan and information in support of the proposed and approved plan that are filed with FRA receive confidential treatment shall comply with the procedures enumerated at 49 CFR 209.11.

§ 244.19 Disposition.

(a) *Standard of review.* FRA reviews an applicant's Safety Integration Plan, and any amendments thereto, to determine whether it provides a reasonable assurance of safety at every step of the transaction. In making this determination, FRA will consider whether the plan:
(1) Is thorough, complete, and clear; and
(2) Describes in adequate detail a logical and workable transition from conditions existing before the transaction to conditions intended to exist after consummation of the transaction.

(b) *Approval of the Safety Integration Plan and Amendments Thereto.* FRA approves a Safety Integration Plan, and any amendments thereto, that meets the standard set forth in paragraph (a) of this section. The approval will be conditioned on an applicant's execution of all of the elements contained in the plan, including any amendments to the plan approved by FRA.

(c) *Amendment.*—(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the amendment. Any amendment is subject to the approval of FRA as prescribed in paragraph (b) of this section, and shall take effect within 20 days of approval. The applicant shall communicate with FRA to resolve any FRA comments on the proposed amendment until it is approved.

(2) *By FRA.* FRA may request an applicant to amend its approved Safety Integration Plan from time to time should circumstances warrant.

§ 244.21 Compliance and Enforcement.

(a) After the Surface Transportation Board has approved a transaction subject to this part, a railroad implementing a transaction subject to this part shall operate in accordance with the Safety Implementation Plan approved by FRA until the properties involved in the transaction are completely integrated into the form contemplated in the Surface Transportation Board's approval of the transaction.

(b) FRA may exercise any or all of its enforcement remedies authorized by the Federal railroad safety laws if a railroad fails to comply with paragraph (a) of this section or to execute any measure contained in a Safety Implementation Plan approved by FRA.

Appendix A to Part 244—Schedule of Civil Penalties [Reserved]

Issued in Washington, DC, on March 8, 2002.

Allan Rutter,

Federal Railroad Administrator.

Surface Transportation Board 49 CFR Chapter X

List of Subjects in 49 CFR Part 1106

Railroad Safety, Railroads, Safety Integration Plans.

For the reasons set forth in the preamble, in title 49, subtitle IV, part 1106 is added to read as follows:

PART 1106—PROCEDURES FOR SURFACE TRANSPORTATION BOARD CONSIDERATION OF SAFETY INTEGRATION PLANS IN CASES INVOLVING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Sec.
1106.1 Purpose.
1106.2 Definitions.
1106.3 Actions for which Safety Integration Plan is Required.
1106.4 The Safety Integration Plan Process.
1106.5 Waiver.
1106.6 Reservation of jurisdiction.

Authority: 5 U.S.C. 553; 5 U.S.C. 559; 49 U.S.C. 721; 49 U.S.C. 10101; 49 U.S.C. 11323–11325; 42 U.S.C. 4332.

§ 1106.1 Purpose.

This part is designed to ensure adequate and coordinated consideration of safety integration issues, by both the Board and the Federal Railroad Administration, the agency within the Department of Transportation responsible for the enforcement of railroad safety, in the implementation of rail transactions subject to the Board's jurisdiction. It establishes the procedures by which the Board will consider safety integration plans in connection with its approval and authorization of transactions for which the Board has concluded such consideration is required.

§ 1106.2 Definitions.

The following definitions apply to this part:

Act means the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995).

Amalgamation of operations, as defined by the Federal Railroad Administration at 49 CFR 244.9, means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.*, changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

Board means the Surface Transportation Board.

Class I or Class II railroad has the meaning assigned by the Board's regulations (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

Environmental documentation means either an Environmental Assessment or an Environmental Impact Statement prepared in accordance with the National Environmental Policy Act and Board's environmental rules at 49 CFR part 1105.

Federal Railroad Administration ("FRA") means the agency within the

Department of Transportation responsible for railroad safety.

Safety Integration Plan ("SIP") means a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the Board approves the transaction that requires a SIP.

Section of Environmental Analysis ("SEA") means the Section that prepares the Board's environmental documents and analyses.

Transaction means an application by a Class I railroad that proposes to consolidate with, merge with, or acquire control under 49 U.S.C. 11323(a) of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations, as defined by FRA's regulations at 49 CFR 244.9. "Transaction" also includes a proceeding other than those specified above if the Board concludes that a SIP is necessary in its proper consideration of the application or other request for authority.

§ 1106.3 Actions for which Safety Integration Plan is required.

A SIP shall be filed by any applicant requesting authority to undertake a transaction as defined under § 1106.2 of this part.

§ 1106.4 The Safety Integration Plan process.

(a) Each applicant in a transaction subject to this part shall file a proposed SIP in accordance with the informational requirements prescribed at 49 CFR part 244, or other FRA guidelines or requirements regarding the contents of a SIP, with SEA and FRA no later than 60 days from the date the application is filed with the Board.

(b) The proposed SIP shall be made part of the environmental record in the Board proceeding and dealt with in the ongoing environmental review process under 49 CFR part 1105. The procedures governing the process shall be as follows:

(1) In accordance with 49 CFR 244.17, FRA will provide its findings and conclusions on the adequacy of the proposed SIP (*i.e.*, assess whether the proposed SIP establishes a process that provides a reasonable assurance of safety in executing the proposed transaction) to SEA at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(2) The draft environmental documentation shall incorporate the proposed SIP, any revisions or modifications to it based on further consultations with FRA, and FRA's written comments regarding the SIP. The public may review and comment on the draft environmental documentation within the time limits prescribed by SEA.

(3) SEA will independently review each proposed SIP. In its final environmental documentation, SEA will address written comments on the proposed SIP received during the time established for submitting comments on the draft environmental documentation. The Board then will consider the full environmental record, including the information concerning the SIP, in arriving at its decision in the case.

(4) If the Board approves the transaction and adopts the SIP, it will require compliance with the SIP as a condition to its approval. Each applicant involved in the transaction then shall coordinate with FRA in implementing the approved SIP, including any amendments thereto. FRA has provided in its rules at 49 CFR 244.17(g) for submitting information to the Board during implementation of an approved transaction that will assist the Board in exercising its continuing jurisdiction over the transaction. FRA also has agreed to advise the Board when, in its view, the integration of the applicants' operations has been safely completed.

(c) If a SIP is required in transactions that would not be subject to environmental review under the Board's environmental rules at 49 CFR part 1105, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented.

§ 1106.5 Waiver.

The SIP requirements established by this part may be waived or modified by the Board where a railroad shows that relief is warranted or appropriate.

§ 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require a SIP in cases other than those enumerated in this part, or to adopt modified SIP requirements in individual cases, if it concludes that doing so is necessary in its proper consideration of the application or other request for authority.

Decided: March 6, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6046 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 031202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2002, until 1200 hrs, A.l.t., August 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20 (a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest at the beginning of the next season(s) shall be subtracted from or added to the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The B season allowance of the pollock TAC in Statistical Area 610 of the GOA is 2,916 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). The Regional Administrator hereby reduces the B season pollock TAC by 141 mt. This amount is the A season pollock over harvest in Statistical Area 610 and provides for an aggregate B season allowance in the Central and Western Regulatory Areas that does not exceed 15,187 mt. In accordance with § 679.20 (a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 610 is 2,775 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,725 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 B season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 B season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6275 Filed 3–12–02; 3:00 pm]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. 98–030–3]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; supplemental.

SUMMARY: We are proposing additional changes related to an earlier proposed rule to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against fruit flies and the mango seed weevil. This supplemental proposed rule concerns the use of radiation indicators on packaging of irradiated articles and additional provisions for monitoring foreign irradiation facilities.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–030–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–030–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–030–3" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For general information on program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799. For information on technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the **Federal Register** on May 26, 2000 (65 FR 34113–34125, Docket No. 98–030–1), we proposed a framework for the use of irradiation as a phytosanitary treatment for imported fruits and vegetables, and proposed specific standards for an irradiation treatment for fruit flies and the mango seed weevil in imported fruits and vegetables. We solicited comments concerning our proposed rule for a period of 60 days, ending July 25, 2000. On August 4, 2000, we published a **Federal Register** notice that reopened and extended the comment period until August 21, 2000 (65 FR 47908, Docket No. 98–030–2). We received 2,212 comments by the end of the comment period, including many form letters and form postcards.

Several of those comments suggested that the proposed rule establish certain requirements not included in the proposal. We are publishing this supplemental proposed rule to allow an opportunity for public comment on these issues that were not included in the earlier proposed rule. After evaluating any comments received on this supplemental proposal, we will publish a final rule addressing comments received on both the earlier proposed rule and this supplemental proposed rule.

Monitoring of Foreign Irradiation Facilities by Foreign Plant Protection Organizations and by APHIS

Several commenters suggested that effective monitoring of operations at foreign facilities where treatments are conducted is crucial to ensure that treatments are safe and effective. These commenters pointed out that in some countries the national plant protection organization could provide most of this monitoring, while in others APHIS would have to provide most of the monitoring, depending on different situations in different countries. They suggested that the section of the rule dealing with monitoring should be flexible enough to let APHIS vary its level of monitoring as needed, based on the infrastructure and capabilities of plant protection organizations in different countries. They also suggested that the activities that foreign plant protection services would conduct to enforce the regulations and monitor compliance should be recorded in an agreement between the foreign plant protection service and APHIS.

Furthermore, commenters suggested that APHIS should develop documentation to demonstrate that the requirements APHIS imposes for importation of irradiated articles are consistent from country to country, and are consistent with the requirements other countries apply to imported irradiated articles, in accordance with the equivalence principle of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. They suggested that, in addition to establishing the level of monitoring required at individual foreign irradiation facilities, APHIS should sign work plans with foreign plant protection services to clearly state what regulatory requirements and levels of inspection, monitoring, and other activities apply to importation of irradiated articles into the United States and into the signatory foreign country.

We agree with these comments, and have decided that the monitoring section of the rule should allow APHIS to target its monitoring as needed and provide the appropriate level of monitoring, ranging from intermittent

monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for target and nontarget pests. We also believe that providing this level of monitoring may require APHIS to arrange for foreign plant protection services to deposit monies into a trust fund to reimburse APHIS for services, as is common practice under many other APHIS import regulations (*e.g.*, importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff).

We also agree that the activities of foreign plant protection services with regard to irradiation facilities in their countries in support of the regulations should be recorded in a work plan that the foreign plant protection service submits to APHIS. We further agree that, in support of the equivalence principle, APHIS and each foreign plant protection service should sign an irradiation treatment framework equivalency work plan that clearly states what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country.

We propose to revise the monitoring section of the proposed rule, § 305.2(f), published on May 26, 2000, at 65 FR 49770, to allow APHIS to provide an appropriate level of monitoring at irradiation facilities, depending on the situations in different countries, to require that APHIS and foreign plant protection services sign work plans, and to establish trust fund agreements with national plant protection organizations to reimburse APHIS expenses. The new proposed paragraph (f) would read as follows:

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation treatment operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables into that country;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

Much of this language is similar to the language already contained in APHIS regulations for programs where it has been necessary to establish trust fund agreements with foreign plant protection services to reimburse APHIS for inspection and monitoring activities necessary to allow importation of fruits and vegetables into the United States.

Indicators and Tests To Identify Irradiated Fruit

Several commenters suggested that we should require that, prior to treatment, irradiation indicators be attached to cartons of articles. These indicators would change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles. The commenters stated that these indicators would be a very useful safeguard, and could be used by enforcement personnel and others as a quick check to confirm that a particular carton had in fact been exposed to the required level of radiation. Commenters identified several inexpensive devices and dye-impregnated labels that react to radiation at various doses in the 100–250 gray range. Such tools could aid Federal and State inspectors who may find live larvae in shipments where the accompanying paperwork claims the shipment was irradiated.

We agree that carton indicators could be a useful enforcement tool. They could not serve as primary documentation that articles have been irradiated in accordance with the regulations, because such indicators are not as sensitive or accurate as the dosimetry systems required by the regulations, and because it would be relatively easy to produce fraudulent indicators (*e.g.*, by subjecting a large number of indicators to irradiation and then attaching them to cartons that have not been irradiated). However, we believe that such indicators can be useful when used in conjunction with the other documentation and system controls required by the regulations. In particular, they can be a useful "cross check" when personnel at irradiation facilities are distinguishing irradiated cartons from non-irradiated cartons, and when inspectors at ports of entry are correlating the required import documents with the cartons referred to in the documents.

Therefore, we propose to add additional language to § 305.2(g)(1) of

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the proposed rule published on May 26, 2000, at 65 FR 49770, to state that "each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated."

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This action supplements a proposed rule published in the **Federal Register** on May 26, 2000, that proposed to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The economic analysis for the earlier proposed rule was set forth in that proposed rule. It included a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

The economic effects of this supplemental proposed rule lie in two areas: The establishment of trust fund agreements to reimburse APHIS for its activities monitoring irradiation facilities in foreign countries and the requirement for radiation indicators to be attached to cartons holding irradiated articles.

Trust Fund Agreements

APHIS proposes that the inspection and monitoring activities performed by a foreign plant protection service at irradiation facilities located overseas be recorded in an agreement signed by the foreign service and APHIS. The purpose of the agreement would be to ensure appropriate levels of inspection and monitoring at the facilities, thereby reducing any pest risk due to misunderstandings or shortcomings in the oversight of irradiation and related processes at facilities.

When a foreign plant protection service establishes a trust fund agreement to reimburse APHIS for expenses, that service may or may not pass along the cost of depositing those funds to producers in that country, depending on the service's funding mechanisms. If it passes along that cost to foreign producers, those producers will likely raise the price of fruits and vegetables exported to the United States to cover the costs. In this sense, the trust fund requirement would have an adverse differential effect on foreign producers relative to domestic producers. However, the cost of the trust fund agreement for APHIS services could be distributed among many foreign producers treating a large volume of products, and would probably result in a price increase for imported articles of only a few cents per pound. Therefore, trust fund agreement costs are expected to have a negligible effect on the prices paid by U.S. merchants and consumers for the imported produce.

Irradiated Carton Indicators

APHIS proposes that indicators be put on cartons to show that irradiation has taken place. Prototypes that have already been developed are based on dosimeter technology, but are much less expensive to manufacture than dosimeters because no precise measurement is involved, only an indication that irradiation has occurred.

A phosphor-based technology for irradiation indication produces an invisible fluorescence that can be easily detected by an inexpensive hand-held "light-pen" reader. According to the manufacturer, a "light-pen" reader can be thought of as a hand-held product similar to a common barcode reader. When the indicator has received a dose above 100 Gy, the hand held "light-pen" reader will activate a signal, such as an audible beep or a light. The indicator is able to be read easily and inexpensively.

Indicators could also be incorporated into a white-on-white bar code that would only become apparent (darkened background) after irradiation. Bar code information could record lot number or other marketing information that could prove useful in tracing a carton back to its source. As a safeguard against repeated use of the same indicator, they could be applied with one-time-only adhesive. Or, as an alternative, an indicator might not provide any visual indication at all that the carton has been irradiated, thereby reducing any chance of counterfeited indicators.

The manufacturer expects to be able to produce indicators in large quantities at a low unit cost—pennies per indicator—with a reader cost comparable to that of hand-held barcode readers. The cost of the indicators, once they are produced in volume, would be negligible compared to the value of the produce shipped, and would add at most a few cents per pound to the retail price of the irradiated fruits and vegetables.

Costs and Benefits

As discussed above, the proposed trust fund and carton indicator requirements contained in this supplemental proposed rule involve moderate costs distributed among many importers, with an end result of an increase of a few cents per pound in the retail price of irradiated articles. The benefits of the proposed changes accrue because the proposed changes would increase the reliability of irradiation as a phytosanitary treatment. Thus, benefits are evaluated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that could occur if pests should enter the United States with articles that were not properly irradiated, either because trust fund agreements to monitor treatments were not in effect, or because carton indicators were not employed as a monitoring tool. These benefits cannot be readily quantified. As an example, however, averting the costs associated with a single fruit fly outbreak in the United States would save more than the total costs for trust fund agreements and indicators over several years.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. In this case, entities that would be most affected by the proposed rule are the operators of foreign irradiation facilities. Under the Small Business Administration's Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning), a firm would qualify as a small entity if it had annual revenues of $5 million or less. None of the foreign irradiation companies that have submitted comments on previous irradiation proposed rules, or that have expressed interest in the current rulemaking, are small by this standard.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceedings would not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–030–3. Please send a copy of your comments to: (1) Docket No. 98–030–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require that the national plant protection service of each country from which irradiated articles are imported into the United States must sign a trust fund agreement with APHIS, and must submit an annual work plan to APHIS describing the activities the plant protection service will carry out to meet the requirements of the regulations. These documents would be drafted jointly by the foreign plant protection service and APHIS. We estimate that developing and approving each document would require about 20 hours of development and review time by the submitting foreign plant protection service.

These information collection requirements would be in addition to information collection activities that we described in the original proposal published August 21, 2000 (65 FR 47908, Docket No. 98–030–1), including a compliance agreement, labeling requirements, 24-hour notification, dosimetry recordings, requests for dosimetry device approval, recordkeeping requirements, and requests for facility approval.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.08411 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel.

Estimated annual number of respondents: 124.77.

Estimated annual number of responses per respondent: 1001.

Estimated annual number of responses: 124,895.

Estimated total annual burden on respondents: 10,505 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we propose to amend part 305 as set out in the proposed rule published on May 26, 2000 (65 FR 34113–34125), as follows:

1. The authority citation for part 305 would be revised to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 305.2, paragraphs (f) and (g)(1) are revised to read as follows:

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

* * * * *

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiotion treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That

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agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) * * *

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables. Each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.

* * * * *

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6267 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV02–915–2 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 15, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884: telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 9, 2002, and unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $187,384. The assessment rate of $0.20 is $0.01 higher than the rate currently in effect.

The Florida Lime Administrative Committee and the Avocado Administrative Committee have shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to generate more assessment funds to cover the increased expenses, and to reduce the amount of reserve funds the avocado committee would have to use to pay those expenses. Without the assessment rate increase, the avocado committee would have to use $26,582 of its operating reserve to cover the estimated expenses. With the increase, the avocado committee would only have to use $17,082 of its operating reserve to cover expenses.

The major expenditures recommended by the Committee for the 2002–03 year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expense by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 950,000 bushels which should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $96,633) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers or avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Florida Agricultural Statistics Service, the average f.o.b. price for fresh avocados during the 2000–01 season was $14.60 per 55-pound bushel container or equivalent for all domestic shipments and total shipments were 1,005,000 bushels. Using these prices, virtually all avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado handlers and producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container. The proposed assessment rate of $0.20 is $0.01 higher than the 2001–02 rate. The quantity of assessable avocados for the 2002–03 season is estimated at 950,000. Thus, the $0.20 rate should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The Florida Lime Administrative Committee and the Avocado Administrative Committee shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs

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was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to cover the increased costs and to keep its operating reserve at an acceptable level.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $211,082 which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. These groups discussed alternative expenditure levels. The assessment rate of $0.20 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 950,000 55-pound bushel containers or equivalents for the 2002–03 fiscal year. This is approximately $21,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2002–03 season could range between $10.00 and $60.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue fro the 2002–03 fiscal year as a percentage of total grower revenue could range between .3 and 2 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period begins on April 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past year.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6139 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2001–2002 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2001–2002 crop year. The percentages are 59 percent free and 41 percent restricted and would establish the proportion of cherries from the 2001 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 2001–2002 crop year, beginning July 1, 2001, through June 30, 2002. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District eight—Washington. Districts five, six, seven, and nine (Oregon, Utah, Pennsylvania, and Wisconsin, respectively), would not be regulated for the 2001–2002 season.

The order prescribes under § 930.52 that, upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2001–2002 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because Utah's production is less than the 50 percent of the previous 5-year production average, handlers in Utah also would not be subject to volume regulation during the 2001–2002 crop year. Production from District four (New York) was not regulated last crop year, but, as mentioned above, will be regulated in 2001–2002. This would be the first year of regulation for District eight (Washington), since the order was promulgated.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into canned or frozen products, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a

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preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board must announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 21, 2001, and computed, for the 2001–2002 crop year, an optimum supply of 219 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 356 million pounds; a 33 million pound carryin added to that estimate results in a total available supply of 389 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 219 million pounds from the total estimated available supply results in a surplus of 170 million pounds of tart cherries. An adjustment for changed economic conditions of 50 million pounds was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 120 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (338 million pounds) and resulted in a restricted percentage of 36 percent for the 2001–2002 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board unanimously established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2001–2002 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	219
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	219
Preliminary Percentages:	
(4) USDA crop estimate	356
(5) Plus carryin held by handlers as of July 1, 2000	33
(6) Total available supply for current crop year	389
(7) Surplus (item 6 minus item 3)	170
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus item 8)	120
(10) USDA crop estimate for regulated districts	338

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	64	36

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

On September 17, 2001, the Board conducted a telephone meeting and voted unanimously to establish interim percentages since the September 13, 2001, meeting was postponed until October due to the tragic events on September 11, 2001. The Board recommended an interim free percentage of 57 percent and an interim restrictive percentage of 43 percent. These percentages were based on the actual production for the 2001–2002 crop year of 366 million pounds, and more up-to-date sales and carryin inventory amounts.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. Because of the events of September 11, 2001, and subsequent flight delays, the Board met on October 12, 2001, and recommended final free and restricted percentages of 59 percent and 41 percent, respectively. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the interim percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure.calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 217 million pounds, instead of 219 million pounds used in June. The 3-year average sales figure computed in June included an estimate of June 2001 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual sales for each month of the 3-year period.

The actual production reported by the Board was 366 million pounds, which is a 10 million pound increase from the USDA crop estimate of 356 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, Washington). For 2001–2002, production in the regulated districts totaled 336 million pounds, 2 million pounds less than the USDA estimate of 338 million pounds.

A 39 million pound carryin (actual carryin as opposed to the 33 million pounds originally estimated in June) was added to the Board's reported production of 366 million pounds, yielding a total available supply for the current crop year of 405 million pounds. The optimum supply of 217 million pounds was subtracted from the total available supply which resulted in a 188 million pound surplus. An adjustment of 50 million pounds for changed economic conditions was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 138 million pounds of tart cherries. The total surplus of 138 million pounds is divided by the 336 million-pound volume of tart cherries produced in the regulated districts. This results in a 41 percent restricted percentage and a corresponding 59 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in October for the 2001–2002 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	217
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	217
Final Percentages:	
(4) Board reported production	366
(5) Plus carryin held by handlers as of July 1, 2001	39
(6) Tonnage available for current crop year	405
(7) Surplus (item 6 minus item 3)	188
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus 8)	138
(10) Production in regulated districts	336

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	59	41

As previously mentioned, the Board recommended an economic adjustment of 50 million pounds in computing both the preliminary and final percentages for the 2001–2002 crop year. This is authorized under § 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions. The Board recommended the adjustment to reflect the impact of USDA surplus removal purchases might have on the sales component of the optimum supply formula.

Purchases by USDA and other government agencies are part of the average sales history for the industry. In recent years, USDA and other government purchases of tart cherry products have averaged about 17 million pounds and these have been factored into the optimum supply formula. In 2000–2001, USDA announced the acceptance of bids for a large surplus removal purchase. The amount of the purchases is expected to total 50 million pounds and be delivered during the 2001–2002 crop year. The Board discussed how this purchase should be accounted for in the optimum supply formula. The Board decided on a full 50-million pound economic adjustment because it results in a smaller restricted percentage than with no adjustment. With the adjustment, the restricted percentage is 41 percent. Without the adjustment, the restricted percentage would have been 56 percent.

By recommending this marketing policy modification, the Board believes that fewer cherries would have to be diverted and more cherries would be available to meet market needs. This modification is intended to further facilitate and encourage market expansion. It is also expected to benefit growers who receive higher payments for free tonnage cherries.

In May 2001, reserve release provisions were added to the administrative rules and regulations in § 930.154. The provisions provide that if USDA or any other governmental agency initiates an invitation to purchase product for surplus removal (as a non-entitlement purchase), the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve. These provisions were not effective prior to the initiation of the invitation to bid on USDA's planned 50 million pound surplus removal purchase. Therefore, reserve cherries could not be released from the inventory reserve pursuant to § 930.154 and the cherries had to be supplied from free tonnage, not reserve tonnage. Consequently, the Board recommended the economic adjustment of 50 million pounds to account for the free tonnage cherries delivered from the 2001–2002 crop to satisfy the purchase. If an invitation to bid on a surplus removal purchase is initiated by USDA or another government agency during the 2001–2002 crop year, or subsequent season, a like quantity of reserve tonnage would be released under § 930.154 and no economic adjustment would be necessary to account for those cherries. The Board believes that such releases will equitably spread the benefit of such purchases throughout the industry because all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA or other government agencies, will benefit from the surplus removal of tart cherry purchases.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 22 million

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pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

The 2001 crop is the second largest ever harvested in the United States at 366.3 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than 15 million pounds. Currently, only the three districts in Michigan, New York, and Washington are subject to restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, New York and Washington are the only restricted areas for this crop year and their combined total production is 336 million pounds. A 41 percent restriction means 198 million pounds is available to be shipped to primary markets from these three states. Production levels of 2 million pounds for Oregon, 4 million pounds for Pennsylvania, 12 million pounds for Utah, and 13 million pounds for Wisconsin results in an additional 31 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 22 million pounds being available for the primary market. The 198 million pounds from Michigan, New York and Washington, the 31 million pounds from the other producing states, and the 22 million pound release gives a total of 251 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.10 per pound. With volume controls, the estimated grower price would increase to approximately $0.15 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $36.6 million in 2001/02. In this scenario, production is 366 million pounds and price, without regulation, is estimated to be $0.10 per pound. With regulation, growers' revenues from processed cherries are estimated to be $46.5 million. In this scenario, 251 million pounds are available for the primary markets with an estimated price of $0.15 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as grower prices are greater than $0.11 per pound, then growers' are better off with the regulation. With a price of $0.11 per pound, the estimated revenues under no regulation would be similar to the revenues with a 41 percent restricted regulation.

It is concluded that the 41 percent volume control would not unduly burden producers, particularly smaller growers. The 41 percent restriction is only applied to the growers in Michigan, New York, and Washington. The growers in the other 4 regulated states will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001/02 crop year.

Recent grower prices have been as high as $0.21 per pound. At current production levels, the cost of production is reported to be $0.25 per pound. Thus, the estimated $0.15 per pound received by growers remains below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0029 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

In discussing the possibility of marketing percentages for the 2001–2002 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in October 2001 of the restricted percentages proposed in this rule (59 percent free and 41 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries.

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2001–2002 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110

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percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2001–2002 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2001–2002 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2001, which shall be free and restricted, respectively, are designated as follows: Free percentage, 59 percent and restricted percentage, 41 percent.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6136 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound. It also would increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2001–2002 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable tart cherries beginning July 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would be increased from $0.0006 to $0.000875 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2001–2002.

The Board met on January 25, 2001, and unanimously recommended 2001–2002 expenditures of $442,500. The Board also recommended an assessment rate of $0.00175 per pound of tart cherries utilized in the production of tart cherry products other than juice, juice concentrate and puree products and an assessment rate of $0.000875 per pound for juice, juice concentrate and puree products. In comparison, last year's budgeted expenditures were $455,000. The recommended assessment rates of $0.00175 and $0.000875 are higher than the current rates of $0.0012 and $0.0006, respectively. The Board recommended increased assessment rates to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rates established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2001–2002 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy,

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AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2001–2002 expenditures of $442,500 and assessment rate increases from $0.0012 to $0.00175 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.0006 to $0.000875 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. The Board unanimously recommended 2001–2002 expenditures of $442,500. The quantity of assessable tart cherries expected to be produced during the 2001–2002 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

This action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate increases the burden on handlers, and may increase the burden on producers. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 25, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2001–2002 fiscal period began on July 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after the effective date of this rule, the assessment rate imposed on handlers shall be $0.00175 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.000875 per pound.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6137 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–1 PR]

Dried Prunes Produced in California; Undersized Regulation for the 2002–03 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2002–03 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the excess of dried prunes by approximately 3,800 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by April 15, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the undersized regulation in § 993.49(c) of the prune marketing order for the 2002–03 crop year for inventory management. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening would be increased from $^{23}/_{32}$ to $^{24}/_{32}$ of an inch in diameter; and for non-French prunes, the opening would be increased from $^{28}/_{32}$ to $^{30}/_{32}$ of an inch in diameter. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. This rule would be in effect from August 1, 2002, through July 31, 2003, and was unanimously recommended by the Committee at a November 29, 2001, meeting.

Authority for Undersized Regulations for Inventory Management

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter.

Section 993.49(c) of the prune marketing order establishes an undersized regulation of $^{23}/_{32}$ of an inch for French prunes and $^{26}/_{32}$ of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also

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provides that the USDA upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation.

Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes." * * * Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the USDA on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit openings of 23/32 or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

History of Undersized Regulations Used for Inventory Management

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by USDA at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, including the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000. Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001. Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop of about 178,000 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop increased to 100,829 natural condition tons. This increase was due to a larger crop size of about 219,000 natural condition tons and a modest increase in shipments during the 2000–01 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2001, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2002–03 crop year for supply management purposes. This regulation would be in effect from August 1, 2002, through July 31, 2003.

The Committee estimated that there would be an excess of about 15,422 natural condition tons of dried prunes as of July 31, 2002. This proposed rule would continue to remove small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99, 1999–2000, 2000–01, and 2001–02 crop years. It is estimated that approximately 3,800 natural condition tons of small prunes would be removed from human consumption channels during the 2002–03 crop year. This would leave sufficient prunes to fill domestic and foreign trade demand during the 2002–03 crop year, and provide an adequate carryout on July 31, 2003, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2002–03 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing this century (estimated at 317,628 natural condition tons by the year 2006); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) extremely low producer prices. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing all available supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. There already have been efforts to reduce burdensome supplies. Through an industry-funded tree removal program that was initiated in the fall of 2001, about 3,500 bearing acres of prune plum trees were removed. The Committee also recommended removal of prune plum trees through a USDA funded program, wherein growers would be encouraged to remove up to 20,000 bearing acres of prune plum trees. A proposed rule with request for comments was published by USDA in the December 17, 2001, **Federal Register** (66 FR 64918). The proposed changes to the undersized regulation for the 2002–03 crop year and the expected removal of prune plum trees are intended to bring supplies in line with market needs.

Despite these supply management efforts, the industry's oversupply situation may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 15,000 acres during the 2000–01 crop year. The 1996–97 through 2000–01 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10 years, the average was 2.1 tons per acre.

The 2001–02 dried prune crop is expected to be 139,000 natural condition tons. The Committee recently estimated that another large crop of about 200,000 natural condition tons could be expected for the 2002–03 crop year, because of new bearing acreage coming into production and high yields.

The 1997–98 crop year producer prices for the 24/32 of an inch in diameter French prunes have been about $40–$50 per ton, about $260–$270 per ton below the cost of production. During the 2001–02 crop year, feedlot prices are expected to be about $20 to $40 per ton for the 24/32 of an inch in diameter French prunes, which is about $270–$290 per ton below the cost of production. The lower producer prices are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this proposal is to remove small sizes which have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average producer returns currently are below the cost of production and the proposal would assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, and 2001–02 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2001, was 100,829 natural condition tons, and only about 3,800 natural condition tons of dried prunes are expected to be removed from the 2001–02 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2002–03 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2002–03 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. Congress intended marketing orders to foster income equity for agricultural producers with non-agricultural producers, and used parity as a means of comparison. Parity compares agricultural producer prices against those for non-agricultural producers during the early 1900's, when income for agricultural producers and non-agricultural producers were generally thought to be fair. It further states that any change (i.e. increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2002–03 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action would not impact the dried prune import regulation because the action would affect inventory management, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as

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those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

As recommended by the Committee, this proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2002–03 crop year for inventory management. This change in regulation would result in more of the smaller-sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2001–02 are the same as proposed for 2002–2003 and are expected to remove only 3,806 tons of dried prunes from the excess marketable supply. Implementation of the larger openings in 2002–03 is expected to remove approximately 3,800 tons from the marketable production.

The Committee estimates carryout inventories at July 31, 2002, to be 56,195 tons. This is 15,422 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, grower prices are reported at an average of $763 per ton for the 2001–02 crop year. This compares to $845 per ton for the 2000–01 season, or a decrease of 9.7 percent. The $763 average grower price is substantially below total cost of production of $1,724 per ton and the total variable cost of production of $985 estimated for 2001–2002, meaning that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels exceeding the total cost of production.

A tree removal program funded by the industry and a USDA-funded program are in various stages of implementation. If these programs are successful in removing 20,000 bearing acres from production, marketable production will be reduced. Even with these tree removal programs, total available supply is estimated at 242,195 tons for the 2002–03 crop year (marketable production estimated at 186,000 tons and 56,195 tons of carryin inventories). Total demand is estimated at 167,591 tons, resulting in carryout inventories of 74,604 tons. With this large estimated crop size, inventories will increase and remain in excess of the industry's desired inventory of 40,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of maintaining these inventories are deducted from grower payments.

This action would result in an additional 3,800 tons being removed from the total available supply. An econometric model shows that this proposed rule would strengthen growers' prices modestly by $11 per ton. This price is still expected to be less than the cost of production for 2002–2003, estimated at $1,032 per ton.

Because the benefits and costs of the proposed action would be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the proposal. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that the proposal should not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large; but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to disproportionately impact small handlers or producers. The only additional costs on producers and handlers expected from the increased openings would be the disposal of additional tonnage (now estimated to be about 3,800 tons) to non-human consumption outlets. These costs are expected to be minimal and would be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2001, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handler and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers losing about $270–$290 on every ton of small-sized prunes delivered to handlers. During the 2002–03 crop year, the feedlot prices for 24/32 screen French prunes are expected to be about $20 to $40 per ton. This price is similar to the $20–$40 price received during the 2001–02 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton for a total cost of about $310 per ton. This equates to a loss of about $270–$290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, USDA has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 3,800 tons of small-sized dried prunes during the 2002–03 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 100,829 tons of natural condition prunes on July 31, 2001, the end of the 2000–01 crop year. The 100,829 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2001–02 inventory surplus of about 60,000 tons. The undersized regulation would help reduce the surplus, but the anticipated large 2002–03 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, and producers continue to implement improved cultural and

thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of $1,140 per ton to a low of $764 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2001–02 season is expected to be about the same as the 2000–01 season average producer price of $809 per ton, or about 36 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. The Committee also considered the potential impact of tree removals through the industry-funded program which removed about 3,500 acres, and the proposed tree removal program to be funded through USDA (California Prune/Plum Diversion Program), but concluded that these efforts alone were not likely to reduce the oversupply of small dried prunes sufficiently. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation during the 2001–02 crop year. This alternative was not widely supported for a number of reasons. Reserve pools for prunes have historically been implemented "across the board" as far as sizes are concerned. While there is an exchange provision that allows handlers to remove larger prunes from the pool by replacing them with smaller prunes and the value difference in cash, this would be a comparatively cumbersome, expensive-to-administer alternative to changing the undersized rule as proposed. A third alternative discussed was to advance to a 25/32 screen undersized regulation for French prunes. However, handlers expressed concern that this would reduce the amount of manufacturing prunes (approximately 6,000 tons) available for the manufacture of prune juice and concentrate. This would increase the prices of these products.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

The Committee requested a comment period through April 15, 2002, to allow interested persons to respond to this proposal. This longer comment period is needed to give the Committee more time to observe the bloom period during the spring and industry shipment trends during the year and allow sufficient time to comment to the Department concerning any changes that are deemed appropriate. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 993.409 is added to read as follows:

§ 993.409 Undersized prune regulation for the 2002–03 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2002–03 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agriculture Marketing Service.

[FR Doc. 02–6144 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment 2 to Certificate of Compliance (CoC)

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Number 1025. This amendment would allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications would include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes would also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC would be revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) would also be revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

DATES: Comments on the proposed rule must be received on or before April 15, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013480571. If you do not have access to ADAMS or if their problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail, *RWB@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on May 29, 2002. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

SAR Submitted by: NAC International.

SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC-MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6227 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 259–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the "Inmate Trust Fund Accounts and Commissary Record System" (JUSTICE/BOP–006), as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security; to ensure the safety of inmates, Bureau personnel and the public; to protect third party privacy; to protect law enforcement and investigatory information; and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by May 14, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717 and 9701.

2. Section is amended by adding paragraphs (l) and (m) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(l) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Trust Fund Accounts and Commissary Record System, (JUSTICE/BOP–006).

(m) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance as an investigation progresses or with the passage of time, and could be relevant to future law enforcement decisions. In addition, amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject or other criminal justice agencies. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

Dated: February 28, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–6202 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 257–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the "Inmate Physical and Mental Health Records System, (JUSTICE/BOP–007)", as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure

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the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by May 14, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. Section 16.97 is amended by adding paragraphs (n) and (o) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access

* * * * *

(n) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Physical and Mental Health Records System, (JUSTICE/BOP–007).

(o) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from sources outside the Bureau of Prisons, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the health care of the inmates and the safety and security of the prisons and the public.

Dated February 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–6204 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095–AB07

Nixon Presidential Materials; Reproduction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to modify the regulations for obtaining copies of the Nixon White House tape recordings which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. These regulations apply to the public.

DATES: Comments are due by May 14, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via email to comments@nara.gov. See the **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–713–7360, ext. 240, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: NARA is updating the regulations affecting research use of the Nixon Presidential Materials in NARA custody to reflect a change in the 1996 Nixon Tapes Settlement Agreement. NARA is amending § 1275.64, § 1275.66, and Appendix A of the regulations.

- The proposed § 1275.64 includes a provision allowing for the reproduction of tape recordings opened to the public. Effective April 20, 2001, the Nixon estate agreed to allow NARA to make available for sale and copying all tape recordings of conversations from the Nixon presidency that have been previously opened. Prior to April 20, 2001, NARA only permitted the public to obtain copies of selected tape recordings through a vendor. Self-service copying was not permitted. These changes to the negotiated Nixon Tapes Settlement Agreement are not applicable to tapes that have not yet been released.
- The proposed § 1275.66 is expanded to include tape recordings. This change allows the self-service copying of tape recordings.
- The proposed introductory paragraph to Appendix A—Settlement Agreement, waives paragraph 11 of the Agreement. The rule in paragraph 11 states that the public has to wait until January 1, 2003, to copy tapes not made publicly available before April 12, 1996. This rule is no longer applicable.

Please submit email comments within the body of your email message or attach comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 3095–AB07 and your name and return address in your Internet message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

2. Amend § 1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in § 1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

3. Amend § 1275.66 by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

4. Amend Appendix A to Part 1275—Settlement Agreement, by revising the introductory paragraph to read as follows:

Appendix A to Part 1275—Settlement Agreement

Settlement Agreement filed April 12, 1996, in Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.). By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: February 8, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–6190 Filed 3–14–02; 8:45 am]

BILLING CODE 7515–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA072–FOA, FRL–7158–1]

Proposed Finding of Failure To Attain; State of California, San Joaquin Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to find that the San Joaquin Valley did not attain the 24-hour and annual particulate matter (PM–10) National Ambient Air Quality Standards (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001. This proposed finding is based on monitored air quality data for the PM–10 NAAQS from 1999 through September 2001.

If EPA finalizes, after public notice and comment, the failure to attain finding, the San Joaquin Valley must submit by December 31, 2002, plan provisions that provide for attainment of the PM–10 air quality standards and that achieve percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

DATES: Comments on the proposed action must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to: Celia Bloomfield, Planning Office, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; or to *bloomfield.celia@epd.gov*.

A copy of this proposed rule and related information are available in the air programs section of EPA Region 9's Web site, *http://www.epa.gov/region09/air*. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 947–4148 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 947–4148, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, *bloomfield.celia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 EPA revised the health-based national ambient air quality standards (NAAQS) (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

The San Joaquin Valley, which is made up of 8 counties (Stockton County, Stanislaus County, Merced County, Madera County, Fresno County, Kings County, Tulare County, and Kern County), has had a PM–10 problem for more than a decade. The area violates both the 24-hour and annual PM–10 standards. Exceedances are recorded throughout the Valley but tend to peek in the fall and winter. (See Tables 1 and 2 below in Section II.B). The violations are caused by both primary particulates (dust) and secondary particulates (other pollutants that react in the atmosphere to form particulate matter).

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM–10 areas, including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA

codified the boundaries of the San Joaquin Valley PM–10 nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishing the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3334, 3337), EPA made such a determination and reclassified the San Joaquin Valley nonattainment area as serious. As a serious PM–10 nonattainment area, the San Joaquin Valley acquired a new attainment deadline of December 31, 2001 (CAA section 188(c)(2)).

II. Proposed Finding of Failure To Attain

A. Clean Air Act Requirements for Attainment Findings

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the San Joaquin Valley PM–10 nonattainment area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date," and section 188(b)(2) is consistent with this requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K.

Pursuant to appendix K, attainment of the annual PM–10 NAAQS is achieved when the expected annual arithmetic mean PM–10 concentration is less than or equal to the level of the standard (50 $\mu g/m^3$). Attainment of the 24-hour PM–10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 $\mu g/m^3$) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the annual and 24-hour standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

B. Ambient Air Monitoring Data

1. Annual PM–10 Standard

According to data currently in AIRS, three monitoring sites in the San Joaquin Valley are in violation of the annual PM–10 NAAQS. These data cover the period 1999 through September 30, 2001. While the nonattainment status of the Corcoran and Visalia monitors could still be affected by end of year data, even under the best case scenario (using values of 0.0 $\mu g/m^3$ for the sampling days in the last quarter of 2001), the Bakersfield Golden State Highway site would still register an annual arithmetic mean of 53 $\mu g/m^3$, which violates the annual NAAQS.[1]

TABLE 1.—SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE ANNUAL PM_{10} NAAQS (1999–2001 *)

Site name	3 year annual mean ** $\mu g/m^3$
Bakersfield—Golden State	*** 58
Corcoran	51
Visalia	51

* 2001 data available through September 30, 2001.

** The annual mean reported here is based on data through September 30, 2001. The actual 3 year mean could change based on a complete data set for calendar year 2001.

*** 3rd quarter 2001 data do not meet EPA data completeness requirements.

2. 24-Hour PM–10 Standard

According to 40 CFR part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average above 150 $\mu g/m^3$ is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number exceedances in each calendar year and then averaging them over the past three calendar years. This means that if a monitoring site has four or more observed or estimated exceedances in a three-year period then it is in violation of the 24-hour PM–10 NAAQS. Generally, if PM–10 sampling is scheduled less than every day, EPA requires the adjustment of observed exceedances to account for incomplete sampling. The method for adjusting the observed exceedances is described in 40 CFR part 50, appendix K, § 3.1.

In spite of the lack of data for the fourth quarter in 2001, there are ten monitoring sites in the San Joaquin Valley that are in violation of the 24-hour PM–10 NAAQS. The following table shows the number of estimated exceedances at the 10 sites after adjusting for incomplete sampling. All of the sites listed in Table 2 operate on a one in six day schedule. Table 2 lists the number of days over the standard in all three years as well as the three-year average. For each of these sites, the average number of exceedance days per year over the three-year period 1999–2001 exceeds one.

TABLE 2.—24-HOUR PM–10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Fresno East Drummond	8	0	6	4.7
Fresno First St	0	0	6	2

[1] The expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM–10 concentration for the past three calendar years. The procedure for calculating the annual arithmetic mean is discussed in 40 CFR part 50, appendix K, § 4.0.

TABLE 2.—24-HOUR PM–10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *—Continued

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Clovis	0	0	6	2
Bakersfield Golden State	6	0	12	6
Bakersfield California Ave	0	0	9	3
Oildale	3	0	6	3
Corcoran	6	0	6	4
Hanford	0	0	6	2
Turlock	11	0	0	3.7
Modesto	0	0	6	2

* Data available through September 2001.

III. Summary of Proposed Action

A. Proposed Finding of Failure to Attain

EPA is proposing a finding that the San Joaquin Valley did not attain the annual or 24-hour PM–10 NAAQS by the December 31, 2001 attainment deadline as discussed above in Section II.

B. SIP Consequences

Under section 189(d) of the Act, serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, "plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area." Since the applicable attainment date was December 31, 2001, the deadline for the 5 percent plan will be December 31, 2002 if EPA's proposed finding of failure to attain is finalized.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action in and of itself establishes no new requirements, it merely notes that the air quality in the San Joaquin Valley did not meet the federal health standards for PM–10 by the CAA deadline. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's proposed action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. Because this proposed finding of failure to attain is a factual determination based on air quality considerations, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 28, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 02–6271 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CT–066–7223; A–1–FRL–7158–3]

Full Approval of Operating Permit Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 13, 2001, EPA proposed to approve changes that the State of Connecticut made to its operating permit program that addressed issues identified in EPA's interim approval action in 1997. Today, EPA is proposing to approve all other changes the state has made to its operating permit program regulations since EPA granted interim approval on March 24, 1997. With the combination of the August 2001 proposal and this proposal, EPA is proposing to fully approve Connecticut's entire title V program. Even though the earlier proposal was limited to the program changes necessary to address interim approval issues, EPA received several comments on Connecticut's title V program that went beyond the interim approval issues. In a future rulemaking document, EPA will address all comments we receive as a result of this document, as well as any comments that we have already received on Connecticut's program that concern the state's title V program. Connecticut's operating permit program was created to meet the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources of air pollution and to certain other sources within the state's jurisdiction.

DATES: Comments on this notice must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to Donald Dahl, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the state submittal and other supporting documentation relevant to this action are available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Connecticut Required To Develop an Operating Permit Program?

Title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 *et seq.* and sections 7661–7661e), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. The Act directs states to submit their operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. EPA granted the State of Connecticut final interim approval of its program on March 24, 1997 (see 62 FR 13830) and the program became effective on April 23, 1997.

II. In 1995, What Did Connecticut Submit To Meet the Title V Requirements?

The Governor of Connecticut submitted a Title V operating permit program for the State of Connecticut on September 28, 1995. In addition to regulations (section 22a–174–33 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Connecticut stating that the laws of the state provide adequate legal authority to carry out all aspects of the program, and a description of how the state would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of part 70.

III. What Was EPA's Action on Connecticut's 1995 Submittal and How Did Connecticut Respond?

EPA granted interim approval to Connecticut's submittal on March 24, 1997. In the notice granting interim approval, EPA stated that there were several areas of Connecticut's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA worked closely with the state to develop all of the rule changes necessary to address EPA's interim approval issues. Connecticut proposed for public comment regulatory amendments that addressed EPA's interim approval issues on July 17, 2001. Based on the state's proposal, EPA in parallel proposed to approve those amendments because they addressed the interim approval issues. EPA's August 13, 2001 (66 FR 42496) proposal discussed those interim approval issues and the state's proposed regulations to address them, and this notice will not repeat that discussion. EPA notes, however, that Connecticut did adopt final regulations addressing the interim approval issues that were consistent with the changes EPA proposed to approve, and EPA continues to propose to approve these elements of the state's program for the reasons stated in our August 2001 proposal.

IV. In 2002, What Did Connecticut Submit To Revise Its Title V Permit Program?

On January 11, 2002, Connecticut submitted regulatory amendments to its title V operating permit program. The amendments to the state's regulations not only addressed the interim approval issues, but included changes to the balance of the state's program, largely designed to clarify the program requirements EPA had already approved in 1997. EPA has reviewed the remaining amendments, which the state made throughout portions of R.C.S.A. sections 22a–174–1 (the general definitions for DEP's air regulations), 22a–174–2a (air permitting procedural requirements), and 22a–174–33 (title V operating permit program requirements). Aside from minor alterations throughout these sections to clarify the operation of the title V program, the most important changes Connecticut has made include a major restructuring of the permit processing and modification requirements, which moves those provisions from section 33 to section 2a. In addition, to clarify its rules, in several areas the state incorporated by reference important sections of part 70. We propose that these changes meet title V permit program requirements, and that Connecticut's program should be fully approved under part 70. (This notice will generally simply cite to the section in part 70 for references to 40 CFR part 70 and will cite to the relevant section in Connecticut's air pollution control regulations for references to R.C.S.A. 22a–174.)

V. Explanation of Certain Provisions in Connecticut's Regulatory Amendments To Its Title V Program

EPA believes that the following amendments to Connecticut's Title V program merit detailed discussion in light of Title V, part 70, and Connecticut law.

1. Section 22a–174–2a(f)(2)(D) in Connecticut's rule provides that the state can use its "permit revision" process not only to increase the frequency of monitoring, but also to add "additional monitoring" to the permit. EPA has consulted with DEP concerning the meaning of this provision, and the Department agrees that the plain reading of this language is that it allows DEP to add monitoring in addition to the monitoring already provided for in the permit using what is equivalent to EPA's administrative amendment process in § 70.7(d). Importantly, DEP confirms that this provision may not be used to change or in any way alter any existing monitoring requirements already provided for in the permit terms and conditions. Furthermore, DEP agrees that any monitoring added using this provision would be "additional" in the sense that it is in addition to any monitoring that is already required to be in the permit under the Act, its applicable requirements, and part 70. Therefore, this provision cannot be used to add monitoring necessary to meet the monitoring requirements of an applicable requirement, of § 70.6(a)(3)(B) regarding periodic monitoring, or of § 70.6(c)(1) regarding monitoring sufficient to assure compliance with the permit. Essentially, monitoring added under section 22a–174–2a(f)(2)(D) will be above and beyond what is required in the Act where DEP concludes that such data would be useful. An example of the kind of use DEP expects to make of this provision would be: a municipal waste combustor has a permit with sufficient periodic monitoring consistent with applicable requirements, but the state and source agree that they want to try a novel and experimental continuous emissions monitor to track hazardous VOC emissions. Section 22a–174–2a(f)(2)(D) would allow DEP to authorize installation of the CEM expeditiously to try it out without any permit shield.

This provision does not correspond exactly to the types of administrative amendments already provided for in § 70.7(d)(1). But § 70.7(d)(1)(vi) allows EPA to approve other types of permit changes that can be processed as administrative amendments, provided EPA determines that the change is similar to the changes specifically listed in § 70.7(d)(1)(i)–(iv). EPA is proposing to use this authority to approve the ability for Connecticut to add "additional monitoring" to a title V permit, beyond the monitoring already provided for in the permit, using the state's "permit revision" process in section 22a–174–2a(f)(2)(D). EPA is relying on the fact that an existing permit will already contain monitoring which the public and EPA have had an opportunity to review and which must be consistent with the applicable requirements and Part 70's monitoring requirements. See sections 22a–174–33(j)(1)(K) and (L). Additionally, DEP cannot use this provision to affect monitoring that is required under the Act. EPA believes this type of change is similar to the type of changes listed in §§ 70.7(d)(1)(i)–(v) because it will not alter the requirements or stringency of the existing permit, it will generally increase the rigor of the compliance requirements in the permit, and it cannot affect monitoring requirements mandated under the Act. This very limited authority is similar to the concept of increasing the frequency of monitoring under § 70.7(d)(1)(iii), which allows monitoring to be adjusted in a way that will tend to increase its rigor and will not undercut the monitoring required to meet the Act's requirements. Therefore, EPA proposes to approve section 22a–174–2a(f)(2)(D) pursuant to § 70.7(d)(1)(vi) because it is similar in kind to types of changes in §§ 70.7(d)(1)(i)–(v).

2. Section 22a–174–2a(d)(4)(C) of Connecticut's regulations specifically requires the equivalent of a significant permit modification procedure under § 70.7(e)(4) (a "non-minor modification" as denominated in section 22a–174–2a(d)) to "relax the form or type of or any reduction in the frequency of any monitoring, reporting or recordkeeping required by the title V permit." This provision is not identical to the requirement in § 70.7(e)(4) that "every significant change in existing monitoring" must undergo the significant permit modification procedure. It could be unclear, for example, how one must process a significant change in monitoring that has an indeterminate effect on the rigor of the permit, i.e. which may or may not "relax" the monitoring. Nonetheless, EPA interprets section 2a to mean that all significant monitoring changes must go through the "non-minor modification" process, and Connecticut agrees with EPA's interpretation.

Section 22a–174–2a(e)(2)(B), a provision of Connecticut's "minor permit modification" regulations, excludes any significant change to monitoring from the minor permit modification track, by way of incorporating the exclusions in EPA's rule, including § 70.7(e)(2)(i)(A)(2). It is equally clear that significant changes in monitoring do not qualify for the administrative amendment track, or a "permit revision" under section 22a–174–2a(f) of Connecticut's rule. Pursuant to section 22a–174–2a(d)(4)(D), any change that does not qualify under the other permit modification tracks must be made using significant modification procedures under the "non-minor modification" track of 22a–174–2a(d). Therefore, section 22a–174–2a handles significant changes in monitoring consistent with § 70.7(e)(4).

3. Connecticut's provision for administrative permit amendments, or "permit revisions" under section 22a–174–2a(f), includes "a fuel conversion described in section 22a–174–3a(a)(A)(iv) or (v)" in the list of changes that can be made administratively. Section 22a–174–2a(f)(2)(G). [1] This cross reference is to a provision in the state's revised new source review program that exempts from preconstruction permitting certain limited conversions from oil to natural gas or from residual oil to distillate oil. While it is expected that these conversions to cleaner fuels will generally result in beneficial emissions reductions, on the face of the regulation this exemption allows for actual emissions increases of up to fifteen tons per year. As a result, it is difficult to reconcile the terms of this fuel conversion provision with the sort of administrative amendment changes provided for in § 70.7(d)(1), which are designed to have no emissions impact. However, another provision of Connecticut's regulations, section 22a–174–2a(e)(2), requires these fuel conversions to undergo a minor permit modification. Specifically, section 22a–174–2a(e)(2)(A) allows only those changes covered by "2a(f)(2)(A) through (F), inclusive" to avoid a minor permit modification, with no reference to section 2a(f)(2)(G). Therefore, the fuel conversions provided for in section 22a–174–2a(f)(2)(G) are captured as minor permit amendments, not administrative amendments, which is consistent with §§ 70.7(d) and (e)(2).

4. Connecticut's definition of "applicable requirements" at section 22a–174–33(a)(2) does not include a

[1] It appears that the cross reference is probably intended to read "section 22a–174–3a(a)(A)(iii) or (iv)."

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reference to the national ambient air quality standards as they would apply to temporary sources, as provided for in § 70.2. See "applicable requirement," clause (12). Connecticut's program is nevertheless consistent with part 70 and the Act because the state does not permit temporary sources under its section 33 regulation. Section 504(e) of the Act allows, but does not require, states to issue a single permit authorizing emissions from similar operations at multiple temporary locations. Connecticut has chosen not to implement this provision. Section 22a–174–33(c)(1) requires that "every Title V source" apply for a permit. Section 22a–174–33(a)(10) defines a Title V source to be at a "premises." Section 22a–174–1(88) defines "premises" to be the "grouping of all stationary sources *at any one location*" (emphasis added). Having required a source to receive a section 33 permit for any one location, Connecticut lacks the authority to permit temporary sources at multiple locations pursuant to section 504(e) of the Act. Accordingly, Connecticut is not required to address ambient standards as an applicable requirement under section 22a–174–33 for temporary sources at multiple locations.

5. Section 22a–174–33(j)(1)(I) is the provision in Connecticut's program designed to implement § 70.6(a)(1)(iii) of EPA's regulation, providing for a title V permit to establish alternative emission limits to the extent allowed in the underlying implementation plan. The previous version of Connecticut's regulation provided for the title V permit to address "allowable alternative emission limits," which was consistent on its face with the requirement that these alternative limits must be allowed in the underlying applicable requirement. The new version of this section provides for the permit to address "alternative emission limits or means of compliance *allowed by the Commissioner*" (emphasis added). This new formulation creates the unintended implication that Connecticut is providing the Commissioner with broad discretion to use the title V permit to fashion alternative limits, even where they are not provided for in the underlying implementation plan. Connecticut did not intend this language change to create such discretion, and the surrounding provisions in section 22a–174–33 make this clear. Section 22a–174–33(j)(1)(H) requires each permit to impose the terms of each applicable requirement to each emission unit, and section 22a–174–33(j)(1)(J) requires all alternative operating scenarios to meet all applicable requirements. Nothing in section 22a–174–33(j)(1)(I) waives these requirements that a permit must impose the applicable requirements, and Connecticut agrees that alternative emission limits addressed under 22a–174–33(j)(1)(I) must be allowed under the applicable requirements. Therefore, this section is consistent with § 70.6(a)(1)(iii).

6. In section 22a–174–2a(f)(2)(F) the state incorporates § 70.7(d)(1)(v) which allows Connecticut to add the terms of a new source review permit to the title V permit using the state's permit revision (or administrative amendment) track if the new source review permit program meets procedural requirements substantially equivalent to §§ 70.7 and 70.8 and permit content requirements substantially equivalent to § 70.6. Connecticut's new source review program does not currently meet the requirements of §§ 70.6, 70.7 and 70.8. Therefore, the state cannot incorporate new source review permits into a title V permit using its permit revision track. EPA understands that section 22a–174–2a(f)(2)(F) is essentially a place-holder that would allow the state to bring a new source review permit onto the title V permit administratively in the event Connecticut augments its new source review regulation to incorporate the relevant part 70 procedural and substantive requirements. Connecticut agrees with this understanding and with the limitation on its authority under section 22a–174–2a(f)(2)(F).

VI. Proposed Action and Opportunity to Comment

EPA is proposing to approve the balance of the changes Connecticut has made to its title V operating permit program, along with those changes already discussed in our August 2001 notice. Interested members of the public may comment on those changes, as described above. Note that most of the comments EPA received in response to our August 2001 proposal concerning the interim approval issues included comments addressing the entirety of Connecticut's title V program changes. EPA will be responding to all those comments when we take final action on the August 2001 proposal and this proposal. The public need not resubmit comments already made in response to our August 2001 proposal.

In particular, EPA solicits comments from the State of Connecticut. In this proposal, EPA has interpreted various Connecticut regulations in a manner that EPA believes to be most consistent with the Act and part 70. If Connecticut disagrees with or wishes to support EPA's interpretations, EPA encourages the state to comment during the public comment period so that EPA may respond when we take final action on this proposal and the August 2001 proposal.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no clear authority to disapprove a permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a permit program submission, to use VCS in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 6, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 02–6273 Filed 3–14–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7153–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR) to exclude (or "delist") certain hazardous wastes from the lists of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). DOE–SR generated the petitioned waste by treating wastes from various activities at the Savannah River Site (SRS). The petitioned waste meets the definitions of listed RCRA hazardous wastes F006 and F028. DOE–SR petitioned EPA to grant a one-time, generator-specific delisting for its F006 and F028 waste, because DOE–SR believes that its waste does not meet the criteria for which theses types of wastes were listed. The waste is a radioactive mixed waste (RMW) because it is both a RCRA hazardous waste and a radioactive waste. EPA reviewed all of the waste-specific information provided by DOE–SR, performed calculations, and determined that the waste, which has a low level of radioactivity, could be disposed in a landfill for low-level radioactive waste without harming human health and the environment. The petition is for a one-time delisting, because the petitioned waste has been generated, will be completely disposed of at one time, and will not be generated again. Today's proposed rule proposes to grant DOE–SR's petition to delist its F006 and F028 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, DOE–SR's petitioned waste will no longer be classified as F006 and F028, and will not be subject to regulation as a hazardous waste under Subtitle C of RCRA. The waste will still be subject to the Atomic Energy Act and local, State, and Federal regulations for low-level radioactive solid wastes that are not RCRA hazardous wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until April 29, 2002. Comments postmarked after the close of the comment period will be stamped "late." These "late" comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by April 1, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Myra C. Reece, Director, South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Caolina 29801, and one copy to Shelly Sherritt, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. Identify your comments at the top with this regulatory docket number: R4–01–02–DOESRSP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov*. If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8190; South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Carolina 29801, Myra C. Reece, Director, Phone: (803) 641–7670; and DOE Public Reading Room, Gregg-Graniteville Library, University of South Carolina at Aiken, 171 University Parkway, Aiken, South Carolina 29801, Phone: (803) 641–3465.

The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Lower Savannah District Environmental Quality Control Office of the South Carolina Department of Health and Environmental Control is located a block north of U.S. Highway 78 on Beaufort Street (State Road 118) which is near the eastern boundary of Aiken. The University of South Carolina at Aiken is located on University Parkway (also State Road 118), on northwest boundary of Aiken, between Interstate Highway 20 and U.S. Highway

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78 and about a half-mile west of State Road 19.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in Sec. 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. *See* Section 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A "generating facility" is a facility in which hazardous waste is produced, and a "generator" is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of "generator," "facility," "person," and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006 and F028. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Section 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* section 260.22(a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the Newer EPACMTP Model To Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a newer model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of DOE–SR's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Register**, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. DOE–SR's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide*, Office of Solid Waste, U. S. EPA. Washington, D.C., September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors*, U. S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the waste's constituents will leach and move out of the landfill. If EPA makes a final decision to delist DOE–SR's F006 and F028 waste, DOE–SR must meet the delisting levels and dispose of the waste

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm
2. Delisting Risk Assessment Software (DRAS) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm
3. DRAS Technical Support Document (DTSD) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm
4. DRAS Users Guide http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf

Region 6 has made them available to the public, free of charge.

[3] *Notionwide Survey of Industrial Subtitle D Landfills*, Westat, 1987.

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in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model. Because of its radioactivity, DOE–SR's waste when delisted must be disposed in a low-level radioactive landfill in accordance with the Atomic Energy Act.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML. The improvements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents; fate and transport of metals);
2—Use of enhanced flow and transport equations (e.g., for calculating transport in three dimensions); and
3—Revision of the Monte Carlo methodology (e.g., to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide*, Office of Solid Waste, U. S. EPA, Washington, D.C., September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact her by e-mail: *sophianopoulos.judy@epa.gov*.

The EPACML accounts for: one-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations.

The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation; and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;
2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;
3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and
4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble Section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Methods Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

DOE–SR submitted to the EPA analytical data from its Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste consists of treated F006 and F027 waste from the M–Area of SRS, where nuclear reactor components were produced. The M–Area waste was treated by vitrification and DOE–SR petitioned EPA to delist the vitrified waste treatment residue, classified as F006 and F028, because it was derived from the treatment of F006 and F027 waste. DOE–SR's petitioned waste also included a small volume of non-vitrified waste treatment residue consisting of cementitious treatability samples (EPA Hazardous Waste No. F006). DOE–SR's delisting petition is based on analytical results for untreated waste, laboratory scale treatability studies, pilot scale testing, and testing of the vitrified waste from the full-scale vitrification unit. A summary of analytical data is presented in Table 2 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and vitrification feed materials that DOE–SR submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for DOE–SR's petitioned waste.

EPA also requests comment on three additional methods of evaluating DOE–SR's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[4] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) comparing total concentrations of constituents in the waste to the results obtained by DRAS for total concentrations; and (3) comparing concentrations of constituents in the waste and waste leachate to the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for DOE–SR's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; *Barium:* 21 mg/l TCLP; *Beryllium:* 1.22 mg/l TCLP;
Cadmium: 0.11 mg/l TCLP; *Chromium:* 0.60 mg/l TCLP; *Lead:* 0.75 mg/l TCLP;
Nickel: 11 mg/l TCLP; *Silver:* 0.14 mg/l TCLP; and *Acetonitrile:* 38 mg/kg.

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina

DOE–SR is seeking a delisting for vitrified radioactive mixed waste (RMW) generated at the Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste meets the listing definitions of F006 and F028 in Section 261.31 [5] and was generated by vitrification treatment of F006 and F027 [6] waste from the SRS M-Area where nuclear reactor components were produced. The petitioned waste also includes a small volume of non-vitrified waste which consists of cementitious treatability samples (EPA Hazardous Waste No. F006).

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude this F006 and F028 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern [7] for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). F028 was listed for tetra-, penta-, and hexachlorodibenzo-*p*-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts. DOE–SR petitioned the EPA to exclude its F028 waste (generated from thermal treatment of F027 waste) and F006 waste because DOE–SR believes that the petitioned waste does not meet the criteria for which the waste was listed. DOE–SR claims that its F006 and F028 waste will not be hazardous because the constituents of concern for which F006 and F028 are listed are either not present or present only at such low concentrations that the waste does not meet the criteria in Section 261.11(a)(3) for listing a waste as hazardous. DOE–SR also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous [8]). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of DOE–SR's petition.

In support of its petition, DOE–SR submitted: (1) Descriptions [9] of the waste streams that contributed to the petitioned waste, the areas where the contributing waste streams were generated, and the vitrification treatment process that generated the petitioned waste; (2) Material Safety Data Sheets (MSDSs) for all chemicals used in processes that generated the waste streams from which the petitioned waste was derived and the vitrification process that generated the petitioned waste; (3) the total volume of petitioned waste generated; (4) results of analysis of untreated waste and the petitioned waste for all constituents in Appendix VIII of 40 CFR part 261 or Appendix IX of part 264; (5) results of the analysis of leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311), from the petitioned waste and historical results obtained by the Extraction Procedure Toxicity leaching method ((EPTox), SW–846 Method 1310); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; and (7) results of the MEP analysis of the petitioned waste.

The SRS vitrification unit treated all of the M-Area waste streams from October 1996 through March 22, 1999, pursuant to the Land Disposal Restrictions—Federal Facility Compliance Agreement (LDR–FFCA) of March 13, 1991, between EPA and DOE. Forty-four batches, a total of 2,960 metric tons, of M-Area waste streams were treated.[10] The LDR–FFCA required that the treatment residue meet LDR treatment standards. The petitioned waste is this treatment residue and, except for a small volume of cementitious treatability samples is the glass that formed after cooling and shaping molten glass made from the M-Area waste streams and glass-making additives. The vitrification unit, called the Vendor Treatment Facility (VTF) Melter, was an electric joule-heated glass melter, with a capacity of 5 to 6 tons per day, which maintained the molten glass at 1150°C for an average of 4 to 5 days. The total amount of vitrified waste generated was 538 cubic yards, classified as F006 and F028 because it was derived from F006 and F027 M-Area waste streams. Table 1 presents a summary of the M-Area waste streams and their generation dates.

In addition to the vitrified waste, the DOE–SR requested the delisting of a small volume of cementitious treatability samples (EPA Hazardous

[4] "SW–846" means EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's proposed rule as "SW–846," followed by the appropriate method number.

[5] F006: "Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum."

F028: "Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F023, F026, and F027."

[6] F027: "Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-tri-chlorophenol as the sole component.)"

[7] The hazardous constituents of concern for every listed waste are in *Appendix VII to Part 261—Basis for Listing Hazardous Waste.*

[8] Note that the waste remains subject to the Atomic Energy Act because of its radioactivity.

[9] Detailed descriptions may be found in the DOE–SR's Approved Site Treatment Plan (1996), developed pursuant to the Federal Facility Compliance Act of 1992.

[10] The RCRA Docket, R4–01–02–DOESRSP, for today's proposed rule contains the letter, dated June 15, 1999, to David E. Wilson from J. V. Odum, which documents the treatment of the petitioned waste to LDR treatment standards.

Waste No. F006). These samples were generated during treatability studies on stabilization conducted by the Savannah River Technology Center (between 1988–1991), and amounted to a total of 24 gallons (approximately 0.12 cubic yards). Analytical data were presented in the delisting petition which indicated that concentrations of hazardous constituents in these cementitious treatability samples were well below levels of concern. DOE–SR reported that these treatability samples might have been size reduced and vitrified in the VTF melter, but VTF operations personnel were concerned that the size reduced samples might not dissolve in the molten glass, and might plug the discharge ports. Therefore, the 0.12 cubic yard of cementitious treatability samples was not vitrified, but was included in the delisting petition (Section 2.1.5.2) as a separate waste stream in addition to the 538 cubic yards of vitrified M-Area wastes.

TABLE 1.—M-AREA WASTE STREAMS OF SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA

Stream name	Stream designation in site treatment plan	EPA hazardous waste number (waste code) for listed waste	Dates generated
Plating Line Sludge from Supernate Treatment.	W–004	F006	June 1990–Apr. 1995.
Mark 15 Filter Cake	W–005	F006	Apr. 1983–July 1983.
Sludge Treatability Samples (glass and cementitious).	W–029	F006	1988–1994.
Uranium/Chromium Solution	W–031	Not listed, but hazardous by characteristic	1990–1992.
High Nickel Plating Line Sludge	W–037	F006	June 1985–Sept. 1988.
Plating Line Sump Material	W–038	Not listed, but hazardous by characteristic	Oct. 1988.
Nickel Plating Line	W–039	Not listed, but hazardous by characteristic	Feb. 1992.
Soils from Spill Remediation and Sampling Programs.	W–048	Not listed, but hazardous by characteristic	1983–1985.
Uranium/Lead Solution	W–054	Not listed, but hazardous by characteristic	1986–1988.
Soils from Chemicals, Metals, and Pesticides Pits Excavation.	W–082	F027	1984.
Dilute Effluent Treatment Facility (DETF) Filtercake from VTF off-gas condensate.	Not Applicable	F006	1996–1999.

Table 1B below summarizes the hazardous constituents and their concentrations in DOE–SR's petitioned waste.

TABLE 1B.—SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA: PROFILE OF VITRIFIED M-AREA WASTE

Parameters[1]	1 2	2 10	3 15	4 21	5 26	6 33	7 39	8 44	Maximum[3]	Mean	Standard deviation	Coefficient of variation (%)
Metals												
Arsenic[2] (mg/kg)	2.37	4.84	2.01	2.42	2.54	2.09	1.81	1.52	4.84	2.45	1.02	41.8
Arsenic—TCLP	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	NA	NA	NA
Barium (mg/kg)	79.6	116	101	127	104	83.3	85.3	101	127	99.6	16.5	16.6
Barium—TCLP	0.018J	0.010J	0.013J	0.011J	0.009J	0.010J	0.0083J	0.0082J	0.018J	0.011	0.0032	30
Beryllium (mg/kg)	0.52	0.73	0.67	0.82	0.65	0.52	0.56	1.0	1.0	0.68	0.16	24
Beryllium—TCLP	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0008J	0.0008J	NA	NA	NA
Cadmium (mg/kg)	1.3	2.0	1.0	1.2	2.1	1.8	2.4	1.1	2.4	1.6	0.53	33
Cadmium—TCLP	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.0008J	NA	NA	NA
Chromium (mg/kg)	293	401	131	163	224	218	443	449	449	290	126	43.6
Chromium—TCLP	0.18J	0.007J	0.007J	0.006U	0.006J	0.010J	0.010J	0.015J	0.18J	0.030	0.061	200
Lead (mg/kg)	53.5	74.9	59.2	99.2	94.0	61.5	76.0	33.6	99.2	69.0	21.6	31.3
Lead—TCLP	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	NA	NA	NA	NA
Nickel (mg/kg)	4,450	6,270	3,990	6,130	9,800	6,420	8,680	1,540	9,800	5,910	2,620	44.4
Nickel—TCLP	0.32	0.19	0.41	0.37	0.35	0.34	0.46	0.072	0.46	0.31	0.12	40
Silver (mg/kg)	7.4	11.5	5.3	6.0	10.2	10.2	8.3	1.5	11.5	7.55	3.26	43.2
Silver—TCLP	0.010J	0.011J	0.014J	0.012J	0.015J	0.013J	0.016J	0.017J	0.017J	0.014	0.0024	18
Organics												
Aceto-nitrile (µg/kg)	8.8J	3.70J	9.60J	5.70J	8.54J	9.85J	9.4J	6.2J	9.85J	7.7	2.2	29
Aceto-nitrile-TCLP									NA	NA	NA	NA
Non-Metal Inorganics												
Fluoride	0.20U	0.24U	0.23U	0.45J	0.19U	0.270J	0.20U	0.23J	0.45J	0.25	0.084	35

Notes to Table 1B:
[1] Parameters are the chemicals or properties analyzed.
[2] The first set of results for each chemical shows the concentrations determined by total analysis of the samples in milligrams of chemical per kilogram of waste (mg/kg) for metals and micrograms per kilogram (µg/kg) for organics. "Total analysis" means analysis of unextracted waste. The second set of results for each chemical shows the concentrations determined by analysis of the TCLP extracts of the samples in milligrams of chemical per liter of TCLP extract of the waste (mg/L). The TCLP results are in the row where the name of the chemical is followed by "—TCLP." U = Not detected above the method detection limit, which is the value preceding the U. J = Detected at a concentration greater than the detection limit but less than the reporting limit.—= not analyzed. The metals, antimony, mercury, selenium, and thallium were not detected by total analysis of samples and are not included in the table in order to save space. Acetonitrile was the only organic compound detected and is the only organic compound included in the table. Acetonitrile was not detected above the laboratory reporting limit. Columns 2 through 9 in the table heading contain sample identification numbers. The samples were composite samples for total analysis and grab samples for TCLP from one or more of the VTF batches associated with the composite sample. The top numbers in Columns 2 through 9 are composite sample numbers and the bottom numbers are TCLP grab sample numbers that identify a VTF batch number that was grab-sampled for TCLP. Sampling and analysis details are in Sections 4 and 5 of the petition.

[3] The last four columns contain a statistical analysis of the analytical results. Max. = maximum concentration found; Mean. = mean or average concentration found = sum of concentrations divided by the number of samples; S.D.= standard deviation = the square root of [(sum of squares of the differences between each measured concentration and the mean) divided by (the number of samples minus 1)]; C.V. = coefficient of variation, expressed as a percent = 100 times the standard deviation divided by the mean concentration. Statistical analyses were performed only if the parameter was detected in more than one sample. If a chemical was not detected in any of the samples, NA (not applicable) was written in the last three columns. Detection limits reported by the laboratory were used in the statistical calculations when chemicals were not detected (U) in some of the samples. This is a conservative assumption, which is likely to result in overestimation of the mean concentration.

EPA concluded after reviewing DOE–SR's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in DOE–SR's petitioned waste. In addition, on the basis of test results and other information provided by DOE–SR, pursuant to section 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See Sections 261.21, 261.22, and 261.23, respectively.

During its evaluation of DOE–SR's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from DOE–SR's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of DOE–SR's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at low-level radioactive waste landfills can effectively control runoff. DOE–SR plans to dispose the petitioned waste at the bottom of a 30 foot deep burial trench, so it does not anticipate that runoff from rainwater will directly contact the disposed waste. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Compliance with Atomic Energy Act requirements would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 2 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. The input values required by DRAS were the chemical constituents in DOE–SR's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (Values in Table 1B, Preamble Section II.A.); the maximum one-time volume to be land-disposed (538 cubic yards); the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The carcinogenic constituents in the waste are arsenic, beryllium, and cadmium. Beryllium and cadmium also have non-carcinogenic toxic effects. Allowable concentrations in the TCLP leachate of the waste, as calculated by DRAS, are higher than the Toxicity Characteristic (TC) levels for all TC constituents except arsenic. Therefore, the delisting levels for all TC constituents except arsenic are capped at the TC regulatory level. The maximum TCLP concentrations found by DOE–SRS for the petitioned waste are all well below the TC levels and are also below the Universal Treatment Standards (UTS) of the Land Disposal Restrictions (LDR). All total concentrations reported for the unextracted petitioned waste are also many orders of magnitude below the DRAS-calculated total levels. The maximum reported total concentrations for DOE–SR's petitioned waste were all below the following levels (mg/kg): Arsenic-10; Barium-200; Beryllium-10; Cadmium-10; Chromium-500; Lead-200; Nickel-10,000; Silver-20; Acetonitrile-1.0, and Fluoride-1.0

TABLE 2:—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR SRS PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated Hazard quotient for maximum concentration of non-carcinogen in waste
Arsenic	0.0649	1,330	3.47×10^{-7}	
Barium	5,070*; 3,860 Based on MCL	1,930		566×10^{-6}.
Beryllium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation 28.8 Based on MCL.	7.21×10^{3}	2.13×10^{-11}	
Beryllium (Non-Carcinogenic Effect).	541 28.8 Based on MCL	7.21×10^{3}		2.16×10^{-6}.
Cadmium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 10.4 Based on MCL.	2,080	4.17×10^{-15}	
Cadmium (Non-Carcinogenic Effect).	39* 10.4 Based on MCL	2,080		1.15×10^{-4}.
Chromium (Hexavalent; Carcinogenic Effect).	Not Enough Information: Effect Based on Inhalation; 107 Based on MCL.	1,070	5.30×10^{-12}	
Chromium (Not Hexavalent; Non-Carcinogenic Effect).	1.50×10^{7}*, 2.67×10^{4} Based on MCL.	2.67×10^{5}		5.48×10^{-7}.

TABLE 2:—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR SRS PETITIONED WASTE—Continued

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated Hazard quotient for maximum concentration of non-carcinogen in waste
Lead	5,200*	3.46×10^{5}		Not Enough Information: There is No Reference Dose for Lead.
Nickel	1,960	2,610		5.64×10^{-4}.
Silver	266*	1420		3.71×10^{-5}.
Fluoride	Not Enough Information; 4,990 Based on MCL.	1,250		Not Enough Information.
Acetonitrile	847	1,320		6.00×10^{-7}.
total Hazard Quotient for All Waste Constituents.				1.09×10^{-3}.
Total Carcinogenic Risk for the Waste (due to Arsenic, Beryllium, Cadmium, and Hexavalent Chromium)).			3.48×10^{-7}	

*These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; 5.0 for Lead; and 5.0 for Silver. MCL = Maximum Contaminant Level of National Primary Drinking Water Standards.

C. How Did EPA Use the Multiple Extraction Procedure (MEP) To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0 ± 0.2). The synthetic acid rain extraction fluid was developed to determine the effect of "natural" acid rain on a hazardous waste inappropriately disposed, i.e., directly exposed to rainfall. The standard TCLP extraction fluid was developed to simulate the leaching of a hazardous waste disposed in a landfill, with the simulated extractant having a pH of 4.93. During the MEP test, the original sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these synthetic acid rain extractions would simulate approximately 1,000 years of rainfall. (See 47 *FR* 52687, Nov. 22, 1982.) 1982.) DOE–SR modified the MEP procedure for the petitioned waste by using the TCLP extraction fluid with pH = 4.93 for all the extractions, instead of using the synthetic acid rain for the nine extractions following the initial TCLP extraction. DOE–SR believed that the TCLP would represent more accurately the long term leaching from the SRS low-level radioactive waste landfill in which the waste would not be exposed to direct rainfall leaching. Table 3 below presents the results of analysis of modified MEP extracts.

The modified MEP data in Table 3 indicate that the petitioned waste would be expected to leach metals at low and decreasing concentrations for a period of at least 100 years, and much less than 10 per cent of the total amount of metal in the waste would leach during this time period.[11] The average life of a landfill is approximately 20 years. (See 56 *FR* 32993, July 18, 1991; and 56 *FR* 67197, Dec. 30, 1991.)

TABLE 3.—MULTIPLE EXTRACTION PROCEDURE (MODIFIED SW–846 METHOD 1320) RESULTS FOR DOE–SR'S PETITIONED WASTE

Extract No.	Nickel (Ni) concentration (mg/l TCLP)
1 (Initial TCLP)	0.46
2 (First TCLP extraction of the modified MEP)	0.33
3	0.34
4	0.29
5	0.32
6	0.30
7	0.31
8	0.31
9	0.33
10 (Ninth TCLP extraction of the modified MEP)	0.33

[11] This estimate is based on the following calculation for nickel: % nickel leached out over more than 100 years=100×(total number of milligrams of nickel in all of the 2-liter sample MEP extracts)÷the number of milligrams of nickel in the 100-gram sample that was extracted by the MEP: $100 \times 2 \times (0.46 + 0.33 + 0.34 + 0.29 + 0.32 + 0.30 + 0.31 + 0.31 + 0.33 + 0.33) \div 954 = 100 \times 6.64 \div 954 = 0.70\%$.

D. Conclusion

After reviewing DOE-SR's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in DOE-SR's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that DOE-SR's petitioned waste will not harm human health and the environment when disposed in a low-level radioactive waste landfill.

EPA proposes to exclude DOE-SR's petitioned waste from being listed as F006 and F028, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that DOE-SR's petitioned waste must be disposed in accordance with the Atomic Energy Act. If the proposed rule becomes effective, the exclusion will be valid if the petitioner disposes of the waste in a low-level radioactive waste landfill in accordance with the Atomic Energy Act, as required by the amended Table 1 of Appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves the disposal method, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA and a low-level radioactive waste under the Atomic Energy Act. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management and low-level radioactive waste regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to verify reported analytical data.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, SRS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. State Authorization

A. Statutory Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorization

Today's proposal would be promulgated pursuant to HSWA authority, and contains provisions that are less stringent than the current Federal program. The proposed exclusion for DOE–SR's petitioned waste would be less stringent. Consequently, States would not be required to adopt the proposed exclusion, if it becomes final, as a condition of authorization of their hazardous waste programs.

V. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866. This proposed rule is not a "significant regulatory action," because it applies to a single facility.

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B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule is de-regulatory in nature, and, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility.

Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule will not significantly or uniquely affect small governments. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Today's rule is not, therefore, subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. There are no information collection requirements for this proposed rule that require an ICR. Furthermore, only one facility is affected by this proposal. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB Control Number 2050–0053.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 *FR* 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System ("PBMS"), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule pertains to treated waste at a single facility. EPA does not believe this petitioned waste would pose a risk to any community, whether minority, low-income, middle-income, non-minority, or affluent. The petitioned waste, if excluded from regulation as a hazardous waste under RCRA, must comply with the Atomic Energy Act and all federal, state, and local solid waste regulations. Therefore, this proposed rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

We encourage all stakeholders including members of the environmental justice community and members of the regulated community to provide comments or further information related to potential environmental justice concerns or impacts, including information and data on facilities that have evaluated potential ecological and human health impacts (taking into account subsistence patterns and sensitive populations) to minority or low-income communities.

I. Executive Order 13211 (Energy Effects)

This proposal is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this proposal will not have any adverse energy effects. It is a de-regulatory proposal that will affect a single facility.

J. Federalism—Applicability of Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the

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distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 27, 2002.

Jewell Harper,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under Secs. 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
.	.	.
Savannah River Site (SRS)	Aiken, South Carolina	Vitrified waste (EPA Hazardous Waste Nos. F006 South and F028) that the United States Department of Energy Savannah River Operations Office (DOE–SR) generated by treating the following waste streams from the M-Area of the Savannah River Site (SRS) in Aiken, South Carolina, as designated in the SRS Site Treatment Plan: W–004, Plating Line Sludge from Supernate Treatment; W–995, Mark 15 Filter Cake; W–029, Sludge Treatability Samples (glass and cementitious); W–031, Uranium/Chromium Solution; W–037, High Nickel Plating Line Sludge; W–038, Plating Line Sump Material; W–039, Nickel Plating Line Solution; W–048, Soils from Spill Remediation and Sampling Programs; W–054, Uranium/Lead Solution; W–082, Soils from Chemicals, Metals, and Pesticides Pits Excavation; and Dilute Effluent Treatment Facility (DETF) Filtercake (no Site Treatment Plan code). This is a one-time exclusion for 538 cubic yards of waste (hereinafter referred to as "DOE–SR Vitrified Waste") that was generated from 1996 through 1999 and 0.12 cubic yard of cementitious treatability samples (hereinafter referred to as "CTS") generated from 1988 through 1991 (EPA Hazardous Waste No. F006). The one-time exclusion for these wastes is contingent on their being disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act, after [insert date of final rule.] DOE–SR has demonstrated that concentrations of toxic constituents in the DOE–SR Vitrified Waste and CTS do not exceed the following levels. (1) *TCLP Concentrations:* All leachable concentrations for these metals did not exceed the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS): (mg/l TCLP): Arsenic-5.0; Barium-21; Beryllium-1.22; Cadmium-0.11; Chromium-0.60; Lead-0.75; Nickel-11; and Silver-0.14. In addition, none of the metals in the DOE–SR Vitrified Waste exceeded the allowable delisting levels of the EPA, Region 6 Delisting Risk Assessment Software (DRAS): (mg/l TCLP): Arsenic-0.0649; Barium-100.0; Beryllium-0.40; Cadmium-1.0; Chromium-5.0; Lead-5.0; Nickel-10.0; and Silver-5.0. These metal concentrations were measured in the waste leachate obtained by the method specified in 40 CFR 261.24. *Total Concentrations in Unextracted Waste:* The total concentrations in the DOE–SR Vitrified Waste, not the waste leachate, did not exceed the following levels (mg/kg): Arsenic-10; Barium-200; Beryllium-10; Cadmium-10; Chromium-500; Lead- 200; Nickel-10,000; Silver-20; Acetonitrile-1.0, which is below the LDR UTS of 38 mg/kg; and Fluoride-1.0

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) *Data Records:* Records of analytical data for the petitioned waste must be maintained by DOE–SR for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be maintained with a signed copy of the certification statement in 40 CFR 260.22(i)(12). (3) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, DOE–SR possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent is identified at a level higher than the delisting level allowed by EPA in granting the petition, DOE–SR must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (3)(A) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If EPA determines that the reported information does require Agency action, EPA will notify the facility. The notice shall include a statement of the proposed action and a statement providing DOE–SR with an opportunity to present information as to why the proposed action is not necessary. DOE–SR shall have 10 days from the date of EPA's notice to present such information.(E) Following the receipt of information from DOE–SR, as described in paragraph (3)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (3)(A) or (3)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (4) *Notification Requirements:* DOE–SR must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

[FR Doc. 02–6153 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

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Notices

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 11, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR Part 1951–L, Servicing Cases Where Unauthorized Loan or Other Assistance are Received.

OMB Control Number: 0560–0160.

Summary of Collection: The Farm Service Agency (FSA) farm loan programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT) [P.L. 87–128). Occasionally, FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the recipient did not meet the eligibility requirements set forth in program regulations or where the borrower qualified for loan assistance but a subsidized interest was charged on the loan, resulting in receipt of unauthorized interest subsidy benefits. The assistance may also be loan servicing where a borrower received an excessive write down or write-off of their debt. The information collected under the provisions of this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan.

Need and Use of the Information: The information collected by FSA will primarily be financial data such as amount of income, farm operating expenses, crop yields, etc. The borrower will provide written records or other information to refute FSA's findings when it is determined through audit or by other means that a borrower has received financial assistance to which he or she was not entitled. If the borrower is unsuccessful in having the FSA change its determination of unauthorized assistance, the borrower may appeal the FSA decision. Otherwise, the unauthorized loan recipient may pay the loan in full, apply for a loan under a different program, convey the loan security to the government, enter into an accelerated repayment agreement, or sell the security in lieu of forced liquidation.

Description of Respondents: Farms, Individuals or household; Business or other for-profit.

Number of Respondents: 200.

Frequency of Responses: Reporting; On occasion; Annually.

Total Burden Hours: 800.

Farm Service Agency

Title: Request for Aerial Photography.

OMB Control Number: 0560–0176.

Summary of Collection. The USDA Farm Service Agency (FSA) Aerial Photography Field Office (APFO) has the authority to coordinate aerial photography work in USDA, develop and carry out aerial photography and remote sensing programs and the Agency's aerial photography flying contract programs. Section 387 of the Agriculture Adjustment Act of February 1, 1938, states "The Secretary may furnish reproduction of such aerial or other photographs, mosaics, and maps as have been obtained in connection with the authorized work of the Department of farmers and governmental agencies at the estimated cost of furnishing such reproduction, and to persons other than farmers at such prices (not less than estimated cost of furnishing such reproductions) as the Secretary may determine. The money received from such sales is deposited in the Treasury to the credit of the appropriation charged with the cost of making such reproductions. FSA will collect information using FSA–441 form to collect the necessary customer and photography information needed for the USDA FSA Aerial Photography Field Office to produce and ship the various products ordered from their office.

Need and Use of the Information: FSA will collect information on the name, address, contact name, telephone, fax, e-mail, customer code, agency code, purchase order number, credit card number/exp. date and amount remitted/po amount. Customers have the option of placing orders by mail, fax, telephone, walk-in or floppy disk. Furnishing this information requires the customers to research and prepare their request before submitting it to APFO.

Description of Respondents: Farms; Individuals or household; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting; Other (when ordering).

Total Burden Hours: 8,000.

Animal and Plant Health Inspection Service

Title: 9 CFR part 94 Importation of Pork from Yucatan and Sonora, Mexico.

OMB Control Number: 0579–0138.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic disease such as brucellosis, as well as, to take actions to prevent and to manage exotic diseases such as classical swine fever. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Veterinary Services, a division within USDA's Animal and Plant Health Inspection Service, is responsible for administering regulations intended to prevent the introduction of animal diseases, such as classical swine fever, into the United States. APHIS will collect information from the foreign meat inspection certificate that accompanies the pork from Yucatan and Sonora to the United States.

Need and Use of the Information: APHIS will collect information to certify that; the pork is from swine slaughtered at Federally inspected slaughter plants and are approved to export to the United States; and the pork has not been in contact with pork from any State in Mexico other than Yucatan or Sonora. Also, the Secretary certificate must show the seal number that appears on the shipping container in which the pork is transported.

Description of Respondents: Farms; Business or other for-profit; Individuals or households; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 40.

Animal and Plant Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.

OMB Control Number: 0579–0013.

Summary of Collection: To fulfill its mission of preventing the importation, preparation, sale, or shipment of harmful veterinary biological products, the Veterinary Biologics Division of USDA's Animal and Plant Health Inspection Service (APHIS) issues licenses to qualified establishments that produce biological products, and issues permits to importers seeking to import such products into the United States. In order to effectively implement the licensing, production, labeling, importation, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms and field study summaries.

Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also, APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 51,177.

Animal and Plant Health Inspection Service

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the U.S.

OMB Control Number: 0579–0015.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. which permits the Secretary to prevent, control and eliminate domestic disease such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as bovine spongiform encephalopathy (BSE) and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products.

Need and Use of the Information: APHIS will collect information to ensure that imported items do not present a disease risk to the livestock and poultry populations of the United States. The information will provide APHIS with critical information concerning the origin and history of the items destined for importation into the United States. Without the information, the United States would be at risk of an exotic disease incursion.

Description of Respondents: Business or other for-profit; Individuals or households; Not for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 7,098.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 17,830.

Animal Plant and Health Inspection Service

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Summary of Collection: Title 21, U.S.C. authorizes the Secretary and the Animal and Plant Health Inspection Service (APHIS) to prevent, control and eliminate domestic diseases, as well as to take actions to prevent and manage exotic disease such as hog cholera, foot-and-mouth disease, and other foreign disease. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS ability to compete in the world market of animals and the trade of animal products. Garbage is one of the primary media through which numerous infections or communicable diseases of swine are transmitted. The Act and the regulations will allow only operators of garbage treatment facilities, which meet certain specification to utilize garbage for swine feeding. APHIS will use various forms to collect information.

Need and Use of the Information: APHIS collects information from persons desiring to obtain a permit (license) to operate a facility to treat garbage. Prior to issuance of a license, an inspection will be made of the facility by an authorized representative to determine if it meets all requirements of the regulations. Periodic inspections will be made to determine if licenses are meeting the standards for operation of their approved facilities. Upon receipt of the information from the Public Health Officials, the information is used by Federal or State animal health personnel to determine: whether the waste collector is feeding garbage to swine; whether it is being treated; and whether the feeder is licensed or needs to be licensed.

Description of Respondents: Farms; Business or other for profit.

Number of Respondents: 383.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 584.

Animal Plant and Health Inspection Service

Title: Foreign Animal Disease (Emerging Disease Investigation (FAD/ED) Database).

OMB Control Number: 0579–0071.

Summary of Collection: Title 21 U.S.C. authorizes section 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g, which permits the Secretary to prevent, control and eliminate domestic diseases, as well as taking actions to prevent and manage

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exotic diseases such as foot-and-mouth disease, exotic Newcastle disease, and other foreign diseases. Animal and Plant Health Inspection Service (APHIS) has the responsibility to investigate and eventually control foreign animal disease occurrences. Through its Foreign Animal Disease Surveillance Program, the Emergency Program Staff of Veterinary Services compiles essential epidemiological and diagnostic data that is used to define foreign animal diseases and their risk factors. APHIS collects the information using form VS 12–27.

Need and Use of the Information: APHIS collects information such as the purpose of the diagnostician's visit to the site, the name and address of the owner/manager, the type of operation being investigated, the number of and type of animals on the premises, the number of sick or dead animals, the results of post mortem examinations, and the name of the suspected disease. This information assists APHIS personnel in detecting and eradicating foreign animal disease incursions.

Description of Respondents: Farm; Business or other for profit.

Number of Respondents: 535.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,070.

Animal Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508), requires APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the kind of pesticide used, the date of application, the location and description of where samples are collected, and the environmental conditions at the collection site including wind speed and direction, temperature, humidity, amount of rainfall, and topography. The supporting information contained on the APHIS Form 2060 is vital for interpreting the laboratory test APHIS conducts on collected samples. Also, if a given sample were not accompanied by the form, APHIS would have no way of knowing from which site the sample was taken.

Description of Respondents: Federal Government; Individuals or households; Farms.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Animal Plant and Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests form entering the United States, as well as the spread of pests not widely distributed in the United States, and eradicating those imported when feasible. The Plant Quarantine Act and the Federal Pest Act authorizes the Department to carry out this mission. The regulations in 7 CFR part 353 allow non-government facilities (such as commercial laboratories and private inspection services) to be accredited by the Animal and Plant Health Inspection Service (APHIS) to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal or re-export phytosanitary certificates, or export certificates for processed plant products. APHIS provides export certification services to assure other countries that the plants and plant products are free of plant diseases and insect pests.

Need and Use of the Information: APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name, full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If the activities are not conducted properly, APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: business or other for profit.

Number of Respondents: 15.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 300.

Food and Nutrition Service

Title: Report of Coupon Issuance & Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: The Emergency Food Stamp Assistance Program is authorized by the Disaster Relief Act of 1970; the Food Stamp Act, as amended; and Part 274 of the Food Stamp Program regulations. The Food and Nutrition Service (FNS) initiated this program in a food stamp project area when all or part of the area had been affected by a disaster. Sections 274.7 and 274.14 of the Food Stamp Program regulations contain requirements that State agencies keep records and submit reports on food stamps issued under disaster procedures "as may from time to time be required by FNS." Food distribution in disaster situation is authorized under Section 32 of the Act of August 24, 1935. Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disaster such as hurricanes, floods, tornadoes, etc. Distribution to these recipients is made primarily through such organizations as the American Red Cross or the Salvation Army. These organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply. Form FNS–292 will be used by State welfare departments to report to FNS the number of households and persons who were certified for Emergency Food Stamp Assistance, and also to report the value of coupons issued to those households.

Need and Use of the Information: FNS will collect information through the use of form FNS–292, which is used by the FNS Administrator, the Food Distribution Division, and the three Food Stamp Program divisions to monitor program activity, assess coverage provided to needy recipients, and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of food stamp coupons and the distribution of surplus foods during disaster situations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 97.

Food and Nutrition Service

Title: Affidavit of Return or Exchange of Food Coupons.

OMB Control Number: 0584–0052.

Summary of Collection: Section 11(a), of the Food Stamp Act (the Act) requires that the state agencies assume responsibility for the certification of applicant households and for the issuance of coupons and the control and accountability thereof. Records shall be kept to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for not less than 3 years.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information on coupons returned or exchanged and provides verification of who returned and received the coupons. FNS will use form FNS–135, Affidavit of Return or Exchange of Food Coupons to collect information.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 30,000.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 7,500.

Forest Service

Title: 36 CFR Part 228, Subpart A—Locatable Minerals.

OMB Control Number: 0596–0022.

Summary of Collection: The United States Mining Law of 1982, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on 192 million acres of National Forest set up by proclamation from the public domain. The law gives individuals the right to search for and extract valuable mineral deposits of locatable minerals and secure title to the lands involved. Recording the claim in the local courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to claim for further prospecting, mining or necessary related activities, subject to the other laws and applicable regulations. The Forest Service (FS) will collect information using form FS 2800–5, Plan of Operations for Mining Activities on National Forest System Lands.

Need and Use of the Information: FS will collect information requirements for a Notice of Intent; to identify the area involved; the nature of the proposed operations; the route to the area of operations; and the method of transport. The information requirements for a Plan of Operations includes: the name and legal mailing address of the operators; a description of the type of operations proposed; a description of how it would be conducted; a description of the type and standard of existing/proposed roads/access route; a description of the means of transportation to be used; a description of the period during which the proposed activity will take place; and measures to meet the environmental protection requirements. The information requirements for a cessation of operation include: verification to maintain the structures, equipment and other facilities; expected reopening date; estimate of extended duration of operations; and maintenance of the site, structure, equipment and other facilities during nonoperating periods.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,208.

Frequency of Responses: Reporting: Other (approved for a given period).

Total Burden Hours: 13,174.

Forest Service

Title: Forest Products Free Use Permit, Forest Products Removal Permit and Cash Receipt, and Forest Products Sale Permit and Cash Receipt.

OMB Control Number: 0596–0085.

Summary of Collection: Individuals or other Federal agencies that wish to remove forest products from the National Forest must request a permit. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pinecones, moss, and mushrooms. Regulations at 36 CFR 223.5–223.13 sets forth conditions under which free use of forest product may be obtained by individuals and organizations. 15 U.S.C. 607 provides that a defense against trespass is that the forest product be removed under the regulations. These statutes and regulations apply to 16 U.S.C. 477, 492, and 607a. Regulations at 36 CFR 216.6 require persons to obtain permits to remove special forest products from National Forest Land. Forest Service Regional offices have been issuing Forest Product Removal Permit for over 20 years. The collection of information is required to determine if the applicant meets the criteria under which free use or sale of forest products is authorized by the regulations and to ensure that the permittee complies with the regulations and terms of the permit. This information is also needed to allow Forest Service (FS) compliance personnel to identify permittees in the field.

Need and Use of the Information: FS will collect the name address and tax identification number from person applying for permits. The information will be used by FS to keep a record of persons buying forest products. The information will also be used to ensure that the permittee has not received product values in excess of the amount allowed by regulation in any one fiscal year. Without the forest product removal program, achieving multiple use management programs such as reducing fire hazard and improving forest health on the National Forest would be impaired.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 18,500.

Frequency of Responses: Recordkeeping, Reporting: On occasion.

Total Burden Hours: 1,365.

Farm Service Agency

Title: Agreement for the use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Summary of Collection: Section 335(f) of the Consolidated Farm and Rural Development Act (CONACT) requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Farm Service Agency (FSA) accelerates the loans. The FSA agreed in the consent degree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation.

Need and Use of the Information: FSA will collect information on the actual and planned disposition of chattel security through the use of form FSA 1962–I. This form allows for normal income releases as required for payment of essential family living and farm operating expenses, provides the borrower with information on how to report sales of chattels, income received and how to notify agency of any changes to the operation or the use of chattel proceeds. The information collected will come from FSA borrowers who may be individual farmers and farming entities.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 68,750.

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Frequency of Responses: Recordkeeping; Reporting: Annually.
Total Burden Hours: 20,350.

Farm Service Agency

Title: Lamb Meat Adjustment Assistance Program (LMAAP).
OMB Control Number: 0560–0205.
Summary of Collection: The Lamb Meat Adjustment Assistance Program (LMAAP) is administered and implemented under the general direction and supervision of the Farm Service Agency (FSA) through its State and County Committees. Authorizing legislation for LMAAP provides for the re-establishment of farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. The objective of the LMAAP is to make direct payments to producers of sheep and lamb operations to help them weather the current economic crisis, as well as, help improve their production efficiencies and the marketability of lamb meat during the 4 year period from July 21, 1999 through July 31, 2003.
Need and Use of the Information: FSA will collect information using form FSA 383 for program year 2–4 for the sheep and lamb operations. The information obtained from the form is needed to verify commodity and producer eligibility and calculate payment amounts. Without the information from the producers, FSA would be unable to administer the program to provide direct payments to the sheep and lamb operations.
Description of Respondents: Farm; Individuals or households; Business or other-for-profit.
Number of Respondents: 60,000.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 339,240.

Farm Service Agency

Title: General Regulations Governing Loans for 1996 and Subsequent Crops.
OMB Control Number: 0560–0087.
Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996, authorizes The Farm Service Agency (FSA) to make commodity loans for certain commodities to eligible producers. Producers requesting Commodity Credit Corporation (CCC) commodity loans must meet eligibility requirements that are basic to all commodity loan programs. These requirements that are needed to insure the integrity of the loan program and that only eligible producers receive the benefits of the loan program. FSA will collect information on commodity type, quantity of commodity, storage, location, liens on the commodity, etc., through the use of a variety of forms.
Need and Use of the Information: FSA County Committees are responsible for administration of the CCC loan program. The committees use the information collected to verify eligibility of participants to receive loan benefits and to determine cases of noncompliance with the regulations governing the loan program. Furnishing this data is voluntary; however, without it, assistance under the CCC loan program cannot be provided.
Description of Respondents: Farm.
Number of Respondents: 382,455.
Frequency of Responses: Reporting: On occasion; Annually.
Total Burden Hours: 700,591.

Agricultural Marketing Service

Title: Recordkeeping Requirements for Certified Application of Federally Restricted Use Pesticides (7 CFR part 110).
OMB Control Number: 0581–0164.
Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Department of Agriculture (USDA) in consultation with the Administrator of the Environmental Protection Agency (EPA), "shall require certified applicators of federally restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each state." In addition, USDA and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records, develop and maintain a database so USDA and the Administrator of EPA can prepare and publish annual pesticide use reports, of which copies must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restricted use pesticides to maintain records of all restricted use pesticide applications for a period of two years.
Need and Use of the Information: AMS will collect information using form STD–8, Pesticide for Recordkeeping Inspection. The form provides information on the brand or product name and the EPA registration number of the federally restricted use pesticide that was applied; the total amount of the federally restricted use pesticide applied; the location, the size of the area treated, the crop, commodity, stored product or site to which a restricted use pesticide was applied; the month, day and year on which the restricted use pesticide application occurred; and the name and certification number of the certified applicator who applied or who supervised the application of the restricted use of pesticide. In order to properly administer the Pesticide Recordkeeping Program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non/or partial compliance. AMS has the responsibility to assure records are kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the stature requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.
Description of Respondents: Farm; Federal Government; State, Local or Tribal Government.
Number of Respondents: 915,780.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 1,785,041.

Rural Development

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.
OMB Control Number: 0575–0018.
Summary of Collection: The Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901–E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin.
Need and Use of the Information: RD will use this information to monitor a recipient's compliance with the civil rights laws and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.
Description of Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; Farms; State, Local or Tribal Government.
Number of Respondents: 19,565.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 555,692.

Food and Nutrition Service

Title: Uniform Grant Application for Non-Entitlement Discretionary Grants.
OMB Control Number: 0584–New.
Summary of Collection: The Food and Nutrition Service (FNS) has establish a process for a uniform grant application usable for all of the non-entitlement discretionary grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required to use the uniform grant application package. The authorities for these grants vary. The term "grant" in this submission refers only to non-entitlement discretionary grants or cooperative agreements Discretionary grant announcements include a number of information collections, including a "project description" (program narrative), assurances and certifications. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c(5) of OMB Circular A–102 and OMB A–110.
Need and Use of the Information: As the primary users of the information collected, FNS will review, evaluate and approve application package will include general information and instructions; requirements for the program narrative statement describing how the grant objectives will be reached as well as a description of the budget; the Standard Form (SF 424 series that requests basic information, budget information and assurances) and certifications. Currently, there is no government-wide OMB pre-approved form for the project narrative, although a program narrative is required in existing OMB circulars.
Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not for profit institutions.
Number of Respondents: 505.
Frequency of Responses: Reporting: Other (one-time).
Total Burden Hours: 30,000.

Food and Nutrition Service

Title: Consumer Food Guide Pyramid Study.
OMB Control Number: 0584–New.
Summary of Collection: The U.S. Department of Agriculture's Food Guide Pyramid is designed to help all healthy Americans two years of age and older implement the Dietary Guidelines for Americans. The proposed qualitative consumer research will describe consumers' understanding and use of the Food guide Pyramid along with possible barriers to following the Pyramid's guidance. The study involves 18 focus group sessions, 6 with general consumers and 4 each with the elderly, overweight, and food stamp recipients, to explore how consumers understand concepts and messages of the consumer brochure and graphic illustration of the Food Guide Pyramid. The authority to conduct this information collection is found in 7 CFR 2.19(a)(3).
Need and Use of the Information: The Center for Nutrition Policy and promotion (CNPP) will collect information to develop practical and meaningful food and nutrition guidance for Americans to help improve their diets. Information will be collected concerning how the Food Guide Pyramid recommendations and messages are understood and used by consumers to improve their diets, and barriers to their use of the Pyramid. If the information is not collected, USDA's ability to incorporate messages and materials that are practical, meaningful, and relevant for the intended audience in any proposed update of the Food Guide Pyramid will be impaired.
Description of Respondents: Individuals or households.
Number of Respondents: 2,790.
Frequency of Responses: Reporting: Other (one-time).
Total Burden Hours: 1,035.

Forest Service

Title: Small Business Timber Set-Aside Program: Appeal Procedures on Recomputation of Shares.
OMB Control Number: 0596–0141.
Summary of Collection: The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub L. 104–208) requires that the Forest Service establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-aside (SBA) shares or changes in policies impacting the Small Business Timber Sale Set-aside Program.
Need and Use of the Information: the information collected is submitted to a Forest Service Officer to review any appeal of decisions related to recomputations of timber sale share to be set-aside for small business timber purchasers.
Description of Respondents: Business or other for-profit.
Number of Respondents: 40.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 320.

Sondra A. Blakey,
Departmental Information Clearance Officer.

[FR Doc. 02–6211 Filed 3–14–02; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is June 3, 2002.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3-year term, respectively. As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 2002. Nominations for a 3-year appointment for all 10 of the vacant categories are sought.

In addition, the current member of Category U. Food and Fiber Processors, will not be serving out the remainder of his term. Therefore, this slot will be vacant as well and available for a 1-year term nomination. All nominees will be carefully reviewed for their broad expertise, leadership, and relevance to a category. The full 11 slots to be filled are:

Category B. Farm Cooperatives

Category D. Plant Commodity Producers
Category G. National Aquaculture Associations
Category J. National Food Science Organizations
Category L. National Nutritional Science Societies
Category M. 1862 Land-Grant Colleges and Universities
Category R. Scientific Community not closely associated with Agriculture
Category U. Food and Fiber Processors (1-year term)
Category AA. An Agency of USDA lacking Research Capabilities
Category BB. Research Agency of the Federal Government other than USDA
Category DD. National Organization directly concerned with REE

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below or may printed out from the following Web site: *http://www:fs.fed.us*, then search AD–755). All nominees will be vetted before selection. Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture. Send nominee's name, resume, and their completed AD–755 to USDA, Office of the Advisory Board, Research, Education, and Economics, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255, postmarked no later than June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done at Washington, DC, this 26th day of February 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics, U.S. Department of the Agriculture.

[FR Doc. 02–6208 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board general meeting and focus session from March 28, 2002—March 29, 2002. This meeting is entitled, Food and Agriculture Biosecurity: Research and Education Implications. It will be held at the Washington Court Hotel in Washington, DC. Also, a pre-meeting reception with special guest speakers, including the President of the Council of Scientific Society Presidents, Dr. Martin Apple, will be held the evening of Wednesday March 27 from 7–8 p.m. at the same location.

On Thursday, March 28, 2002, the morning session will begin with opening remarks by the Chair of the Advisory Board, Dr. Victor Lechtenberg. Dr. Michael Osterholm, Director of the Center for Infectious Disease Research and Policy, University of Minnesota, will provide the keynote address. The Deputy Secretary of Agriculture, Jim Moseley, has been invited to provide an overview on Food and Agricultural Biosecurity at USDA. Additional remarks on USDA's key research activities will be given by Dr. Joseph Jen, Under Secretary for Research, Education, and Economics. There will also be a panel on "Homeland Security in USDA Agencies," followed by a panel on "Preparedness Plans." A mid-afternoon panel at 3 p.m. will address "Biosecurity Education and Protection for the American Public." The floor will be open to the public, as time permits, prior to the day's adjournment. A buffet reception with be held that evening (Thursday, March 28) from 5:30 p.m.—7:30 p.m. with an invited guest speaker from the Office of Homeland Security.

On Friday, March 29, 2002, the Advisory Board will reconvene with a panel that addresses "Biosecurity in the Food and Agriculture Industries Involved in the Food Supply Chain," and include topics such as grain handling and transportation, meat production, food processing, retail, food service, and fresh produce. Dr. John Marburger, Director of the Office of Science and Technology Policy, Executive Office of the President, has been invited to speak during lunch on high priority research and development issues, interagency collaborations, and public and private sector partnerships with regard to homeland security in food and agriculture. The afternoon panel session focuses on "Research Implications for Biosecurity." Guest speakers at this meeting are representative of the broad food and agriculture stakeholder community across the country. Prior to the wrap up of the meeting and as time permits, the floor will be open for public comments. The Board will discuss in detail findings of this 2-day meeting on Food and Agriculture Biosecurity and begin to develop research and education recommendations that will be tendered as advice to the Secretary of Agriculture. Written comments will be accepted at the USDA Advisory Board Office for public record up to 2 weeks following the Board meeting.

This meeting is open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Should an attendee at this meeting require any special needs, please contact the USDA Research, Education, and Economics Advisory Board Office cited below.

DATES:

March 27 7 p.m. to 8 p.m.—Pre-Meeting Reception with Guest Speaker
March 28 8:30 a.m. to 4:15 p.m.—Focus Session

March 28 4:15 p.m. to 4:30 p.m.—Public Comments and Adjournment for the Day
March 28 5:30 p.m. to 7:30 p.m.—Working Reception with Guest Speaker
March 29 8 a.m. to 12 noon—Advisory Board Meeting and Focus Session
March 29 12 noon to 1:15 p.m.—Working Lunch with Guest Speaker
March 29 1:15 p.m. to 3 p.m.—Focus Session and Discussion
March 29 3 p.m. to 3:45 p.m.—Public Comments, Wrap-up and Recommendations, and Adjournment of Meeting

Place: Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C.; Atrium Ballroom and Executive Room (Receptions Only).

Type of Meeting: Open to the Public.

Comments: The public may file written comments before or up to two weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344–A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP: 2255, 1400 Independence Avenue, SW.,; Washington, DC 20250–2255; Telephone: 202–720–3684; Fax: 202–720–6199; or e-mail: *SMORGAN@reeusda.gov*. Done at Washington, DC, this 26th day of February 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–6207 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCIES: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Commodity Credit Corporation (CCC), through the Farm Service Agency (FSA), to request an extension and revision of the currently approved information collection for the regulation used in support of the CCC Conservation Reserve Program (CRP). This renewal includes revisions incorporated in the proposed rule, "Cropland Eligibility and Private Sector Technical Assistance," including revisions to amend total burden hours to reflect ongoing CRP activity as authorized by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, and Title XI of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Pub. L. 106–387.

DATES: Comments on this notice must be received on or before May 14, 2002 to be assured consideration.

FOR FURTHER INFORMATION, AND TO FILE COMMENTS, CONTACT: Comments may be sent to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, telephone (202) 720–6221; facsimile (202) 720–4619; or e-mail at *crppra@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 1410) Conservation Reserve Program.

OMB Control Number: 0560–0125.

Expiration Date: October 31, 2002.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0125, as identified above allows FSA to effectively administer the regulations under the CRP. The CRP regulations at 7 CFR part 1410 and formerly at 7 CFR part 704 set forth basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term CRP contracts with financial and technical assistance and for making cost-share and annual rental payments under the program. All information collection under 7 CFR part 704 has ceased. This regulation was removed by the final CRP rule published February 19, 1997, which revised 7 CFR part 1410. CRP information collection requirements will continue under 7 CFR part 1410.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.7 minutes per respondent.

Respondents: Owners, operators, and other producers on eligible cropland.

Estimated Number of Respondents: 160,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 153,861.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, 1400 Independence Avenue, SW., STOP 0513, Washington DC 20250–0513.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6206 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Tobacco Marketing Quota Referenda Results: Burley and Flue-Cured Tobaccos, 2001

AGENCY: Farm Service Agency, USDA.

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ACTION: Notice of results of marketing quota referenda for burley and flue-cured tobaccos for 2001.

SUMMARY: The Farm Service Agency (FSA) herein announces results of marketing quota referenda held in 2001 for burley and flue-cured tobacco. These referenda were conducted to determine if a sufficient number of voting producers who own or grow these tobaccos wanted national marketing quotas to continue for the three marketing years 2001, 2002 and 2003. A majority of the eligible producers voting in the referenda approved continuation of the national marketing quotas.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202)720–2715 or at e-mail address *ann_wortham@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

In January 2001, the Secretary of Agriculture (the Secretary) announced that national marketing quotas would be in effect for flue-cured tobacco for the three marketing years beginning with 2001, subject to approval by flue-cured producers in a referendum held in accordance with Sec. 312(c) of the Agricultural Adjustment Act of 1938, as amended. The flue-cured tobacco referendum was conducted January 8 through January 12, 2001, and indicated that 97 percent of voting producers favored the quotas.

The Secretary announced in February 2001, that national marketing quotas would be in effect for burley tobacco for the three marketing years beginning with 2001, subject to approval by burley producers in a referendum. The burley marketing quota referendum, held from February 12 through February 16, 2001, indicated that 97.4 percent of the producers who voted favored the quotas.

This notice is to announce the referenda results, as required by 7 CFR part 717.24. The results of each referenda are set forth below.

Notice

Results of the National Marketing Quota Referenda for the 2001 Through 2003 Marketing Years for Flue-Cured and Burley Tobaccos

The following is a summary, by State, of the results of each referendum.

FLUE-CURED

State	Yes	No	Total
Alabama	1	0	1
Florida	133	3	136
Georgia	363	84	447
North Carolina	6,589	160	6,749
South Carolina	761	13	774
Virginia	1,420	37	1,457
Total	9,267	297	9,564

BURLEY

State	Yes	No	Total
Alabama	1	0	1
Arkansas	1	0	1
Georgia	13	2	15
Indiana	3899	183	4,082
Kansas	19	2	21
Kentucky	85,682	1,272	86,954
Missouri	770	33	803
North Carolina	4,644	164	4,808
Ohio	4,851	201	5,052
Oklahoma	0	0	0
Tennessee	26,720	1,442	28,162
Virginia	7,146	219	7,365
West Virginia	1,276	47	1,323
Total	135,022	3,565	135,587

Signed at Washington, DC, on February 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6209 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC); Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings/work sessions on March 15 & 20, in Quincy, California, and another in Portola, CA on April 12. The purpose of the March 15 meeting is to design concept paper review and project evaluation/selection processes. The purpose of the March 20 work session is to answer questions from members of the community interested in submitting projects for funding consideration under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the April 12 meeting is to review proposed project concept papers and generate comments for project proponents' use.

DATES AND ADDRESSES: The March 15 meeting will take place from 9–3 p.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California. The March 20 work session will take place from 7–9 p.m., at the Catholic Church Annex, 176 Lawrence Street, Quincy, CA. The April 12 meeting will take place from 9–3 p.m., at the Williams House, 424 East Sierra Ave (Highway 70), Portola, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by E–MAIL *eataylor@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items for the March 15 meeting include: (1) Review applicable sections of the Secure Rural Schools and Community Self-Determination Act of 2000, regarding project solicitation and approval; and (2) Continue project solicitation/design and selection process; and, (3) Future meeting schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee at any time, after being recognized by the Chair. The March 20 work session is open to the public. Agenda items for the April 12 meeting include: (1) Review concepts papers and generate comments for project proponents' use; (2) Public Comment; and, (3) Future meetings schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee in the time provided on the agenda.

Dated: March 8, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–6220 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received on or Before: April 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product and service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Holder, Key and Credit Card/ 7510–01–445–9348.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.
Product/NSN: Holder, Key and Credit Card/ 7510–01–NIB–0613.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.

Services

Service Type/Location: Janitorial/Custodial/ Alton Federal Building, Alton, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Janitorial/Grounds Maintenance/Ed Jones Federal Building & U.S. Courthouse, Jackson, Tennessee.
NPA: Madison Haywood Developmental Services, Jackson, Tennessee.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Janitorial/Grounds Maintenance/Federal Building & U.S. Post Office, Dyersburg, Tennessee.
NPA: Madison Haywood Developmental Services, Jackson, TN.
Contract Activity: GSA, Public Buildings Service.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products and services proposed for deletion from the Procurement List.

The following products and services are proposed for deletion from the Procurement List:

Products

Product/NSN: Hood, Sleeping Bag/8465–00–518–2769.
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, California.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.
Product/NSN: Stamp, Rubber/7520–00–NSH–0001.
Product/NSN: Stamp, Rubber/7520–00–NSH–0002.
Product/NSN: Stamp, Rubber/7520–00–NSH–0003.
Product/NSN: Stamp, Rubber/7520–00–NSH–0004.
Product/NSN: Stamp, Rubber/7520–00–NSH–0005.
Product/NSN: Stamp, Rubber/7520–00–NSH–0006.
Product/NSN: Stamp, Rubber/7520–00–NSH–0007.
Product/NSN: Stamp, Rubber/7520–00–NSH–0008.

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Product/NSN: Stamp, Rubber/7520–00–NSH–0009.
Product/NSN: Stamp, Rubber/7520–00–NSH–0010.
Product/NSN: Stamp, Rubber/7520–00–NSH–0011.
Product/NSN: Stamp, Rubber/7520–00–NSH–0012.
Product/NSN: Stamp, Rubber/7520–00–NSH–0013.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0015.
Product/NSN: Stamp, Rubber/7520–00–NSH–0016.
Product/NSN: Stamp, Rubber/7520–00–NSH–0017.
Product/NSN: Stamp, Rubber/7520–00–NSH–0018.
Product/NSN: Stamp, Rubber/7520–00–NSH–0019.
Product/NSN: Stamp, Rubber/7520–00–NSH–0020.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0028.
Product/NSN: Stamp, Rubber/7520–00–NSH–0029.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0032.
Product/NSN: Stamp, Rubber/7520–00–NSH–0033.
Product/NSN: Stamp, Rubber/7520–00–NSH–0034.
Product/NSN: Stamp, Rubber/7520–00–NSH–0035.
Product/NSN: Stamp, Rubber/7520–00–NSH–0036.
Product/NSN: Stamp, Rubber/7520–00–NSH–0037.
Product/NSN: Stamp, Rubber/7520–00–NSH–0038.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: McClellan Air Force Base, California.
Product/NSN: Stamp, Rubber/7520–00–NSH–0045.
Product/NSN: Stamp, Rubber/7520–00–NSH–0046.
Product/NSN: Stamp, Rubber/7520–00–NSH–0047.
Product/NSN: Stamp, Rubber/7520–00–NSH–0048.
Product/NSN: Stamp, Rubber/7520–00–NSH–0049.
Product/NSN: Stamp, Rubber/7520–00–NSH–0050.
Product/NSN: Stamp, Rubber/7520–00–NSH–0051.
Product/NSN: Stamp, Rubber/7520–00–NSH–0052.
Product/NSN: Stamp, Rubber/7520–00–NSH–0053.
Product/NSN: Stamp, Rubber/7520–00–NSH–0054.
Product/NSN: Stamp, Rubber/7520–00–NSH–0055.
Product/NSN: Stamp, Rubber/7520–00–NSH–0056.
Product/NSN: Stamp, Rubber/7520–00–NSH–0057.
Product/NSN: Stamp, Rubber/7520–00–NSH–0058.
Product/NSN: Stamp, Rubber/7520–00–NSH–0059.
Product/NSN: Stamp, Rubber/7520–00–NSH–0060.
Product/NSN: Stamp, Rubber/7520–00–NSH–0061.
Product/NSN: Stamp, Rubber/7520–00–NSH–0062.
Product/NSN: Stamp, Rubber/7520–00–NSH–0063.
Product/NSN: Stamp, Rubber/7520–00–NSH–0064.
Product/NSN: Stamp, Rubber/7520–00–NSH–0065.
Product/NSN: Stamp, Rubber/7520–00–NSH–0066.
Product/NSN: Stamp, Rubber/7520–00–NSH–0067.
Product/NSN: Stamp, Rubber/7520–00–NSH–0068.
Product/NSN: Stamp, Rubber/7520–00–NSH–0069.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0071.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0075.
Product/NSN: Stamp, Rubber/7520–00–NSH–0076.
Product/NSN: Stamp, Rubber/7520–00–NSH–0077.
Product/NSN: Stamp, Rubber/7520–00–NSH–0078.
Product/NSN: Stamp, Rubber/7520–00–NSH–0079.
Product/NSN: Stamp, Rubber/7520–00–NSH–0080.
Product/NSN: Stamp, Rubber/7520–00–NSH–0081.
Product/NSN: Stamp, Rubber/7520–00–NSH–0082.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: Travis Air Force Base, California.

Services

Service Type/Location: Janitorial/Custodial/ West LA VA Community Base Clinic, Los Angeles, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of Veterans Affairs.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–6286 Filed 3–14–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.
ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
EFFECTIVE DATE: April 15, 2002.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.
FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.
SUPPLEMENTARY INFORMATION: On January 25, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 3683) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the commodities and services.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Laundry Service/ Naval Air Station, Patuxent River, Maryland.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
Contract Activity: Department of the Navy.
Service Type/Location: Transcription Services/Equal Employment Office (Federal Bureau of Prisons), Washington, DC.
NPA: The Lighthouse of Houston, Houston, Texas.
Contract Activity: Federal Bureau of Prisons Department of Justice.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–6287 Filed 3–14–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Addition; Correction

In the correction document appearing on page 10664, FR Doc. 02–5612, in the issue of March 8, 2002, in the second column the Committee published a notice of proposed addition to the Procurement List of, among other things, Janitorial/Custodial, Ronald Reagan Building, International Trade Center, At the Federal Tenant Spaces Only, Washington, DC. This notice is amended by deleting the reference "International Trade Center". The proposed addition now reads "Janitorial/Custodial, Ronald Reagan Building, at the Federal tenant spaces only, Washington, DC".

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–6285 Filed 3–14–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 030802B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Survey to Measure Effectiveness of Community-Oriented Policing for ESA Enforcement.
Form Number(s): None.
OMB Approval Number: 0648–0435.
Type of Request: Emergency submission.
Burden Hours: 316.
Number of Respondents: 787.
Average Hours Per Response: 20 minutes for a citizen survey; 45 minutes for a survey of Washington Department of Fish and Wildlife personnel; and 60 minutes for interviews of public officials, key stakeholders, and Washington Department of Fish and Wildlife managers.

Needs and Uses: Community-oriented policing (COP) promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community problems at their source. Recognizing the significant role non-traditional enforcement efforts will play in Endangered Species Act enforcement in the Northwest, a measurement tool has been developed to ensure that the performance outcomes of these non-traditional enforcement (COP) efforts are effectively measured. Through this instrument, COP efforts can be evaluated for success and elements essential for achieving successful outcomes in future programs can be identified and quantified. Anadromous species enforcement will be the focus of the survey, and the surveys/interviews will take place in the Walla Walla and Cherry Creek river basins.

Affected Public: Individuals or households, and State, Local, or Tribal Government.
Frequency: One-time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by April 19, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 2002.
Gwellnar Banks,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 02–6184 Filed 3–14–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2035–03]

RIN 0607–XX63

Urban Area Criteria for Census 2000

AGENCY: Bureau of the Census, Department of Commerce.
ACTION: Notice of final program criteria.

SUMMARY: This Notice announces the Bureau of the Census' (Census Bureau's) criteria for defining urban and rural territory based on the results of Census 2000. These criteria replace and supersede the 1990 census criteria for defining urban and rural territory. In establishing these criteria, the Census Bureau took into account the comments received regarding the information published in the **Federal Register** on March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143), as well as research and investigation conducted by Census Bureau staff. The new criteria appear later in this Notice.
EFFECTIVE DATE: This Notice is effective immediately.
FOR FURTHER INFORMATION CONTACT: Robert Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road-Stop 7400; Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail at: *ua@geo.census.gov*.
SUPPLEMENTARY INFORMATION: The Census Bureau identifies and tabulates data for the urban and rural populations and their associated areas solely for the presentation and comparison of census statistical data. It does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their associated data, nor does it attempt to meet the requirements of such nonstatistical program uses. Nonetheless, the Census Bureau recognizes that some Federal and state agencies are required by law to use Census Bureau-defined urban and rural classifications for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urban and rural criteria for Census 2000 might affect the implementation of their programs.

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If a Federal, state, local, or tribal agency voluntarily uses these urban and rural criteria in a nonstatistical program, it is that agency's responsibility to ensure that the results are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the results of implementing the urban and rural criteria specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly identifies the different criteria being applied so as to avoid confusion with the Census Bureau's official urban and rural classifications.

This section of the Notice, among other things, provides a brief synopsis of the public comments the Census Bureau received in response to the March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143) **Federal Register** Notices, and the decisions the Census Bureau made in response to the public comments received.

In addition, the Census Bureau plans to announce the determinations of Census 2000 urban and rural territory in the near future. Federal agencies should begin to use the new urban/rural definitions to tabulate and publish statistics when the determinations are announced.

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Even though we gave the public prior notice and an opportunity for public comment, we were not required to do so by Title 5, United States Code (U.S.C.), Section 553, or any other law. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603[a]).

Paperwork Reduction Act

This program Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Summary of Comments Received in Response to the March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143) Federal Register Notices

The March 28, 2001 **Federal Register** document provided the proposed criteria and the July 27, 2001 **Federal Register** document provided further clarification. Both Notices requested comment on the Census Bureau's proposed Urban Area Criteria for Census 2000. In response to the two Notices, the Census Bureau received 142 comment letters. Of that number, 81 comments were received from regional planning and nongovernmental organizations, 24 from municipal and county officials, 22 from Members of Congress, 8 from state government officials, 4 from officials of other federal agencies, and 3 from individuals. Many comment letters addressed more than one topic.

Of the 142 letters, 67 offered comments to the proposed criteria for recognizing uninhabitable areas adjacent to bodies of water (floodplains, marshes, and other wetlands); 37 of these dealt specifically with areas not accommodated in the criteria that respondents believed to be uninhabitable. Of these 37 letters, 22 expressed concern about the area that separates Brunswick City and St. Simons Island, Georgia, and 15 dealt with the area in the vicinity of the St. Francis Levee between West Memphis, Arkansas, and Memphis, Tennessee. The majority of the comments concerned the inability of the proposed criteria to define additional types of areas as "uninhabitable" territory. In particular, respondents commented on the inadequacy of the criteria to define intermittently flooded, uninhabited land adjacent to water bodies as uninhabitable, and thus exempted from the distance measurement when attempting to connect qualifying territory. It was recommended that if these additional types of uninhabitable land areas were included in the criteria, important outlying urban territory would qualify for inclusion in urban areas. Not having this territory included in the urban areas would result in a loss of valuable funding. The remaining comments addressed the criteria that allow a 5 mile jump over uninhabitable area, stating that they would benefit large states and urban areas, but not small states and urban areas.

Ten comments expressed concern that there were no provisions in the criteria to include nonresidential urban land uses, such as airports, industrial parks, and large commercial areas, within urban areas. Comments were received from the Lewiston, Idaho-Clarkston, Washington, area (3); the Dallas-Fort Worth, Texas, area (2); the Reno-Sparks, Nevada, area (2); and one comment each was received from the Indianapolis, Indiana; Paducah, Kentucky-Metropolis, Illinois; and Grand Forks, North Dakota-East Grand Forks, Minnesota, areas. The commentors believed the population density criterion of 500 people per square mile (ppsm) was too high and, therefore, would unfairly exclude the surrounding adjacent nonresidential urban land use areas and what they considered the complete extent of their urbanized area. All comments expressed concern about a possible loss of funding or an inability to expend the funding where the community believed it was needed if there were no way to identify and include nonresidential land use as part of the Urban Area Criteria for Census 2000.

Twenty-seven of the comments questioned elimination of the grandfathering criteria; that is, not automatically retaining in the Census 2000 urban definition territory that had been classified as urban based on the 1990 census. Of those commenting, 16 of the 27 comments were concerned with the Bristol, Tennessee-Bristol, Virginia, area and 5 were concerned with the Ventura County and Orange County areas in California. The remaining 6 letters did not cite a specific area; however, all were similar in that they asserted grandfathering should be retained as part of the Urban Area Criteria for Census 2000. It was believed the elimination of this criterion would cause not only a loss in funding, but, more importantly, a loss of urbanized area status.

There were 26 comments expressing concern about eliminating the provision for including whole functioning governments, particularly incorporated cities; towns, villages, and boroughs. Ten of those commenting were especially concerned about the Bristol, Tennessee-Bristol, Virginia, area and one comment was received regarding the Lewiston, Idaho-Clarkston, Washington, area. Although 15 of the 26 responses did not refer to a specific area, all letters dealing with the elimination of the whole-functioning government criterion were in favor of retaining it as part of the Urban Area Criteria for Census 2000. It was believed that by using corporate limits to include whole governmental units in urban definitions, additional nonresidential urban land use would be included in the urban area definitions, thereby alleviating concerns of loss of funding and loss of urbanized area status.

Coupled with elimination of the grandfathering and the whole-functioning government criteria, 18 additional comments specifically expressed concern regarding the loss of urbanized area status; 11 of these additional comments addressed the governments in the Bristol, Tennessee-Bristol, Virginia area. All 18 favored retention of the grandfathering and the whole-functioning government criteria, as all believed their elimination would result in a loss of urbanized area status.

The Census Bureau received 31 comments regarding the splitting and merging of urban areas; 23 of these expressed concern about splitting urban areas in the vicinity of Los Angeles, California, in particular in Ventura County (the Oxnard-Ventura, Simi Valley, and Thousand Oaks areas) and in Orange County. The comments questioned whether smaller urban areas would retain their individual status or be included in the larger Los Angeles urbanized area. The majority of these comments dealt equally with the loss of funding, loss of data, and loss of urbanized area status. There were no comments in favor of merging existing urbanized areas. It was widely held that the splitting of urbanized areas should occur at metropolitan area boundaries.

Twenty-four comments addressed the overall population density criterion, with the majority agreeing that the population density requirement of 500 ppsm was too high and did not allow for the inclusion of nonresidential urban land use areas adjacent to the urbanized area core. Five comments remarked on the density requirements for military installations; all concerned Vandenberg Air Force Base near Lompoc, California, and stated the population density requirement of 500 ppsm was too high and, therefore, would exclude some blocks that are part of the military installation.

There were 11 commenters who remarked about the 2 square mile size limit criterion for census block groups with qualifying density. The majority of commenters believed that the area size limitation should be larger than 2 square miles or that an area threshold should not be used to determine urban area qualification. The consensus among the commenters was that this criterion was arbitrary and, thus, should be removed.

The enclave and indentation criteria generated 11 comments. Those commenters who wanted the criteria to include nonresidential urban land uses in urban areas believed that the 5 square mile size limit for adding enclaves to urban areas was too small. Other commenters remarked that the 3:1 ratio criterion for including indentations favors large urban areas over small urban areas.

There were 19 comments received regarding the jump and hop criteria. The jump and hop criteria are used to include noncontiguous but qualifying territory within an urban area. The criteria are based on the distance of the connection and overall density or population in the qualifying territory. All 19 agreed that the distance for hops and jumps should be increased to better include nonresidential urban land uses in urban areas.

The Census Bureau received one comment requesting the recognition of ferries and other nonroad transport networks as links to discontiguous qualifying areas. It favored the use of ferries and other nonroad connections for hops and jumps, especially in the West, as some transit systems have ferry service across water bodies or lines tunneling through mountains where the alternate road connections may not meet the hop or jump distance criteria.

The Census Bureau's Decisions Regarding Recommendations Received From Comments Concerning Changes to the Urban Area Criteria for Census 2000

This section of the Notice provides information about the Census Bureau's decisions related to the recommendations and comments received. These decisions benefited greatly from the public participation, which served as a reminder that, although identified for purposes of collecting, tabulating, and publishing federal statistics, the urban areas defined through these standards represent areas in which people reside, work, and spend their lives and to which they attach a considerable amount of pride. In arriving at its decisions, the Census Bureau took into account the comments received regarding the information published in the **Federal Register** on March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143), as well as research and investigation conducted by Census Bureau staff.

I. The Census Bureau presents below its decisions on changes that were incorporated into the Urban Area Criteria for Census 2000 in response to the many comments received.

A. The Census Bureau accepted the recommendations to include criteria that define "uninhabitable" territory along major bodies of water. The Census Bureau is changing the proposed criteria to include selected unpopulated blocks adjacent to a road connection where that road connection crosses a substantial water area. In addition, the Census Bureau is replacing the term uninhabitable with the term "exempted" to more clearly define the territories that are in this category: water bodies, uninhabited census blocks adjacent to bridged water bodies, military installations, national parks, and national monuments.

The original uninhabitable criteria, which were more restrictive than in the past, were limited to bodies of water, military installations, national parks, and national monuments. The intent was to make the delineation process as objective and uniform as possible, and because only these four categories of topography and land use were uniform and complete for the Nation in the Census Bureau's TIGER database, they were the only items that the Census Bureau believed it could use as a basis for evaluation.

The Census Bureau decided to rename "uninhabitable" as "exempted," and to include as exempted those land portions of a hop or jump (defined in Sections II.B. and II.C. of the Urban Area Criteria for Census 2000) where the tabulation blocks on both sides of the road connection have zero population and the road connection crosses at least 1,000 feet of water.

Incorporating this new criterion, which is meant to provide a measurable and objective surrogate to define floodplains and marshlands, will allow the Census Bureau to achieve its goal of being able to apply the criteria uniformly throughout the Nation.

B. The Census Bureau accepted the recommendations to include major airports adjoining or surrounded by qualifying urbanized areas or urban clusters, but the Census Bureau decided not to include commercial or industrial areas.

The Census Bureau decided to include major airports adjoining qualifying urbanized areas (UAs) or urban clusters (UCs) when it was able to obtain a comprehensive database of major airports. The decision was made to include only those airports that, according to 2000 Federal Aviation Administration statistics, had an annual enplanement of at least 10,000 people and, thus, qualified as a primary airport. The research conducted regarding the methodology for determining what boundaries to use for the airports determined that airport inclusion should be by whole census block where at least half the land area of the census block was within the airport.

The Census Bureau believes it is advantageous to include major airports within urban areas because doing so will give a better overall picture of an "urbanized area." Heavily used airports are considered part of the urban fabric of an area and, most importantly, the Census Bureau was able to obtain a single, reliable database source that its staff could use to apply the criteria objectively.

The Census Bureau determined that it could not include industrial or commercial areas on the fringes of UAs or UCs because it could not find a consistent national database that

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identifies such areas, as it found for major airports. Thus, the Census Bureau does not have the capability to specifically identify commercial and industrial areas on a uniform and comprehensive basis. The Census Bureau is continuing research to determine some objective and consistent way to address issues involving nonresidential urban land uses for urban area determinations in future censuses.

C. The Census Bureau adopted criteria that would permit the splitting of a UA within the same metropolitan statistical area (MSA) and primary metropolitan statistical area (PMSA), and in counties that are not within an MSA or PMSA, when two areas that each would qualify as a UA have only a point connection or are connected by a hop or a jump.

The Census Bureau determined that it is just as important to recognize the autonomy of areas within a metropolitan area (MA) as it is between two or more MAs. The Census Bureau also determined it would not be realistic to apply the same distance criterion of 3 miles used to split a UA that has qualifying territory in separate MAs as the basis for splitting a UA that is within the same MA or outside any MA. The Census Bureau believes the criteria for splitting a UA within the same MA or outside any MA should be more restrictive to ensure that the splitting is limited to areas that are more likely to be independent and to avoid the splitting of a single large UA into many smaller UAs that are not autonomous.

D. The Census Bureau reevaluated the block population density criterion within a military installation. The Census Bureau revised the final Urban Area Criteria for Census 2000 to treat blocks on a military installation that have a population of 1,000–2,499 the same as blocks that have a population density of 500–999 ppsm. The Census Bureau also decided to treat blocks that have a population of 2,500 or more the same as blocks that have a population density of 1,000 ppsm or greater.

The change in the block density criterion for census blocks within a military installation formally recognizes the special situation that was created in agreement with the Department of Defense regarding the collection and presentation of data about military installations. The block numbering algorithm used by the Census Bureau specified that military installations be identified by using as few block numbers as possible. Blocks that have a large area and significant population were created, but seldom did they meet the minimum criteria for qualification as urban based on population density. Even though the density requirement is consistent, the delineation of military blocks is inconsistent; therefore, the 500 ppsm requirement is being waived for blocks on military installations. To apply these new criteria to other blocks would not be appropriate because the Census Bureau used consistent criteria to define the blocks in areas where external agreements for processing were not a factor.

E. The Census Bureau modified the methodology for the indentation criteria from the 3:1 linear ratio measurement to a 4:1 area ratio measurement; it also clarified the criteria.

The decision to change from the linear ratio of measurement to an area ratio, or "circle method," of measurement was based on the results of research by Census Bureau staff. The results of the research showed that the "circle method" gives a constant comparative ratio, whereas the linear measurement method does not. It also is more difficult to use the length-to-area measurement in a computer environment, where one must first determine the values of an indentation and then calculate the ratio. The inability to ensure consistent automated results made the proposed indentation criteria less objective.

II. Recommendations and comments were received from the public regarding other issues, and subsequent research by Census Bureau staff determined that changes to the current criteria for some issues would be detrimental to the goals of the program. The Census Bureau has decided that no changes will be made to accommodate the following issues in the Urban Area Criteria for Census 2000.

A. Grandfathering

The goal for Census 2000 is to bring the urban area criteria back to a single set of rules that allow for application of automated processes that yield consistent results rather than to have the areas defined through a process of accretion over time. The Census Bureau is striving to eliminate any subjectivity in these delineations. This can be done only by reexamining areas that qualified as UAs in earlier censuses due to the implementation of different criteria following each of those censuses, the possibility of misinterpretations of the criteria, and the inevitable mistakes made during clerical delineations of the past. The areas that no longer qualify as UAs likely will qualify as UCs for Census 2000.

B. Developing a Set of Criteria To Include Whole Functioning Governments in Urban Area Definitions

The Census Bureau wants to define a continuum of urban territory created objectively and equitably for the entire Nation. To apply these criteria consistently, the use of governmental unit boundaries and criteria designed to include whole functioning governments must be eliminated. The Census Bureau evaluated the geographic characteristics of municipal corporations and found widespread variation as a result of each state's unique set of annexation and incorporation laws. The Census Bureau believes the lack of consistency among state laws for establishing governmental unit boundaries would result in inconsistency in urban area definitions.

C. Recognition of Ferries and Other Transportation Modes To Link Discontiguous Qualifying Areas

There is no consistent database of ferry connections and other transportation networks; therefore, the Census Bureau cannot apply the limited data available consistently.

D. Size Criteria for Block Groups

The Census Bureau included a maximum block group size criterion to avoid adding large sparsely settled territories to urban areas. Census Bureau staff found a significant reduction in the percentage of individual blocks that have a population density greater than 500 ppsm, and a significant increase in the land area of blocks that have a population density less than 500 ppsm, when the size of a block group exceeded two square miles. Based on this research, and with the allowance in the criteria for inclusion of individual blocks that have qualifying density, the Census Bureau determined that it was not necessary to change the block group size criterion.

E. Changing the Distance Allowable for a Hop

The Census Bureau determined, after further research, to retain the proposed length for a hop at a distance of less than or equal to 0.5 mile. Based on empirical review, allowing a longer distance for a hop resulted in a significant number of areas linking to other urban areas that were not perceived as actually being connected.

F. Changing the Distance Allowable for a Jump

The Census Bureau determined, after further research, to retain the proposed increase in length for a jump at greater than 0.5 mile but no more than 2.5 miles (it was 1.5 miles in 1990). Based on empirical review, allowing a longer distance for a jump resulted in a significant number of areas linking to other urban areas that were not perceived as actually being connected. In the case of longer jumps, many of the connections would be eliminated subsequently because a UA would be split to avoid joining autonomous qualifying UAs.

G. Changing the Population Density Criteria for Block Groups and Blocks

The proposed population density requirement of 500 ppsm will remain unchanged. This change in the population density requirement will allow the Census Bureau to take into account government policies requiring green space between developments, lessen the effect of large census block groups and blocks that contain both a developed and undeveloped portion, and because consistent nonresidential land use information is not available, will help to qualify areas that have mixed land use within the same block group or block.

Urban Area Criteria for Census 2000

The following criteria apply to the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States.

I. Census 2000 Urbanized Area (UA) and Urban Cluster (UC) Definitions

For Census 2000, a UA consists of contiguous,[1] densely settled census block groups (BGs)[2] and census blocks[3] that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people.

For Census 2000, a UC consists of contiguous, densely settled census BGs and census blocks that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 2,500 people, but fewer than 50,000 people.

All criteria based on land area, population, and population density reflect the information contained in the Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) database (the Census 2000 TIGER/Line file at the time of initial delineation) and the official Census 2000 redistricting data file (the Public Law 94–171 file at the time of initial delineation).

II. UA and UC Delineation Process Criteria

The following criteria are provided in the sequence in which they are used by the Census Bureau in an automated software program, with limited interactive modifications, to delineate the UAs and UCs. The purpose of providing the criteria in sequence and in technical terms is to ensure that others can develop similar software to replicate the Census Bureau's urban area delineations.

A. The Census Bureau initiates its delineation of a potential urban area by delineating a densely settled "Initial Core." The Initial Core is defined by sequentially including the following qualifying territory:

1. One or more contiguous census BGs that have a total land area less than 2 square miles and a population density of at least 1,000 people per square mile (ppsm)[4]. NOTE: All calculations of population density include only land; the areas of water contained within census BGs and census blocks are not used to calculate population density.

2. If no qualifying census BG exists, one or more contiguous census blocks that have a population density of at least 1,000 ppsm.

3. One or more census BGs that have a land area less than 2 square miles, a population density of at least 500 ppsm, and are contiguous with the BGs identified by criterion II.A.1.

4. One or more contiguous census blocks, each of which has a population density of at least 500 ppsm, and at least one of which is contiguous with the qualifying census BGs or census blocks identified by criterion II.A.1., II.A.2., or II.A.3.

5. Any enclave of contiguous territory that does not meet the criteria above but that is surrounded by census BGs and census blocks that qualify for inclusion in the initial core by criteria II.A.1. through II.A.4., provided the area of the enclave is not greater than 5 square miles.

B. The Census Bureau continues its delineation of a potential urban area by adding, to all initial cores that have a population of 1,000 or more[5], other territory with qualifying density that can be reached using a "hop" connection. That is, from the edge of the initial core, the Census Bureau will define a road connection of no greater than 0.5 mile across land that is not classified as "exempted" territory[6] and that consists of one or more nonqualifying census blocks that connect the initial core to a contiguous area of census BG(s) and/or census blocks(s) that otherwise qualify based on population density and land area.

1. The territory being added to the initial core using a hop connection, which includes the connecting census block(s), census BG(s), and census block(s) that have a population density of at least 500 ppsm, and any enclave blocks within the connecting block(s) or area with qualifying density, must:

a. Have a combined overall population density of at least 500 ppsm, or

b. Have 1,000 or more total population in the qualifying area being added.

2. When adding qualifying territory to the initial core using a hop connection, the Census Bureau tests the five shortest road connections and:

a. Selects the shortest qualifying road connection that does not exceed 0.5 mile across land that is not classified as "exempted" territory, and

b. Selects the connecting block(s) along that road connection that forms the highest overall population density for the entire area (hop blocks plus

[1] Contiguity requires at least one point of intersection.

[2] A census block group is a group of census blocks within a census tract whose numbers begin with the same digit; for example, BG 3 within a census tract includes all census blocks numbered from 3000 to 3999.

[3] A census block is an area normally bounded by visible features, such as streets, streams, and railroads, and by nonvisible features, such as the boundary of an incorporated place, minor civil division (MCD), county, or other Census 2000 tabulation entity.

[4] The Census Bureau, in agreement with the Department of Defense, imposed restrictions on the selection of features that could be used as block boundaries within military reservations. This resulted in census blocks within military reservations that contain populations of 1,000 or greater, but with unusually low population densities caused by these restrictions. In recognition of this situation, for purposes of urban area delineation, the Census Bureau treats blocks on military reservations that have a population of 2,500 or more as having a population density of 1,000 ppsm, even if the actual density is less than 1,000 ppsm, and those that have a population of 1,000 to 2,499 as having a population density of 500 ppsm.

[5] All cores of less than 1,000 population are not selected as the starting point for the delineation of a separate urban area; however, these core areas still are eligible for inclusion in a UA or UC, using subsequent criteria and procedures.

[6] The Census Bureau defines "exempted" territory as areas in which normal residential development is significantly constrained or not possible due to either topographic or land use reasons. Exempted territory is limited to bodies of water, national parks and monuments, military installations, and those segments of a road connection where the populations of the census blocks on both sides of the road are zero and, additionally, the road connection crosses at least 1,000 feet of water. Because the Census Bureau does not have access to or maintain a comprehensive land use database for the entire United States, Puerto Rico, and the Island Areas, only the aforementioned land use types, which are included in or can be derived from the Census Bureau's TIGER database, will be used when identifying exempted territory.

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qualifying blocks) being added to the initial core.

3. Territory that is added to the initial core by means of a hop connection becomes part of the adjusted initial core. The Census Bureau then determines if there is additional qualifying territory that can be added to the adjusted initial core. All measurements of distance and contiguity to the core are made from the adjusted initial core, not from the original initial core. The Census Bureau continues to add qualifying territory by means of a hop connection, modifies the adjusted initial core to include the added territory, and continues to add more qualifying territory via a hop connection, until no additional territory qualifies to be added via a hop connection.

C. After completing the process that adds all territory to an initial core that can be added via hop connections, those cores that have a population of 1,500 or more, now termed "interim cores," continue the delineation process by adding qualifying territory via a "jump" connection [7].

The determination of jumps starts with the interim core that has the greatest population and continues in descending order of population size of each interim core. Starting from the edge of the interim core, the Census Bureau identifies a road connection of greater than 0.5 mile and no more than 2.5 miles across land that is not classified as "exempted" territory, and that consists of one or more nonqualifying census blocks that connect the interim core to contiguous qualifying territory based on population density, land area, and connections made using the hop criteria.

1. The territory being added to the interim core using a jump connection, including the connecting census block(s), qualifying census BG(s), and census block(s) that have a population density of at least 500 ppsm, and any enclave blocks within the connecting block(s) or territory with qualifying density, must:

a. Have a combined overall population density of at least 500 ppsm, or

b. Have a population of 1,000 or more in the qualifying territory being added.

2. When adding qualifying territory to the interim core using a jump connection, the Census Bureau tests the five shortest road connections and:

a. Selects the shortest qualifying road connection that does not exceed 2.5 miles across land that is not classified as "exempted," and

b. Selects the connecting block(s) along that road connection that forms the highest overall population density for the entire territory (jump blocks plus qualifying blocks) being added to the interim core.

3. No additional jumps may originate from a qualifying area after the first jump in that direction unless the territory being included as a result of the jump was an interim core with a population of 50,000 or more.

D. After territory has been added to the interim core via jump connections, the Census Bureau again includes additional noncontiguous territory to the adjusted interim core using a hop connection, provided the territory qualifies as defined in the criteria associated with II.B.

E. During all phases in which qualifying territory that is discontiguous to the initial or interim cores is being added to the cores, the Census Bureau adds to the cores any qualifying territory where the hop or jump road connections pass through "exempted" territory.

1. Discontiguous territory is added to the cores using hop or jump connections that cross "exempted" territory, provided that:

a. The road connection is no greater than 5 miles between the core and the qualifying area, and

b. The road connection does not cross more than a total of 2.5 miles of territory not classified as "exempted" (those segments of the road connection where "exempted" territory is not on both sides of the road), and

c. The territory being added meets either the population density criteria or total population criteria specified in Sections II.B.1 and II.C.1.

2. The Census Bureau selects the road connection using the criteria specified in Sections II.B.2 and II.C.2.

3. The Census Bureau considers linkages over exempted territory as a hop connection when the total distance of the road segments, excluding the distance across "exempted" territory, does not exceed 0.5 mile, and as a jump connection when the total distance of the road segments is from 0.5 to 2.5 miles, excluding the distance across "exempted" territory.

F. After all territory has been added to the interim core via jump and hop connections, the Census Bureau adds whole tabulation blocks that approximate the territory of major airports, provided at least one of the blocks that represent the airport is included within or contiguous with the interim core.

G. The Census Bureau then adds to the interim cores territory that constitutes enclaves, provided that:

1. The territory is contiguous, surrounded only by land, and consists of census BGs and census blocks that qualify for inclusion in the interim core, and

a. The area of the enclave is not greater than 5 square miles, or

b. All area of the enclave is more than a straight-line distance of 2.5 miles from a land block that is not part of the interim core, or

2. The territory is contiguous, surrounded by both land consisting of census BGs and census blocks that qualify for inclusion in the interim core, and water, and the linear contiguity of the enclave to the land that is within the interim core is greater than the linear contiguity of the enclave to the water.

H. The Census Bureau then inspects the interim cores and, where necessary, splits the interim cores into separate interim cores for purposes of identifying individual urban areas, following the criteria specified in Section III.

I. Upon completing the separation of interim cores, the Census Bureau completes the delineation of urban areas by identifying and adding territory that qualifies as "indentations."

1. The Census Bureau examines and qualifies only those potential indentation areas that are within the same interim core, not between separate interim cores.

2. Starting from the outermost part of the potential indentation, the Census Bureau will define a "closure qualification line," defined as a straight line no more than 1 mile in length, that extends from one point along the edge of the interim core across area that is not within the interim core to another point along the edge of the interim core, with both points on land.

3. The Census Bureau then determines if there are any tabulation blocks that have at least 75 percent of their area within the territory formed between the closure qualification line and the interim core.

4. If there are no blocks that have 75 percent or more of their area within that territory, the potential indentation does not qualify to be added to the interim core.

5. If there are any blocks that have 75 percent or more of their area within the territory formed between the closure qualification line and the interim core, the total area of those blocks that meet or exceed the 75-percent criterion is compared to the area of a circle, the diameter of which is the length of the closure qualification line.

6. Those territories under review that have at least four times the area of the circle qualify as an indentation, and the Census Bureau will add the entire area of all those blocks to the interim core.

7. If the collective area of the indentation blocks is less than four times the area of the circle, the Census Bureau defines a different closure qualification line, if possible, and continues the testing and qualification of the potential indentation until it determines if the potential indentation qualifies or fails.

J. As a result of the urban area delineation process, an incorporated place [8] or census designated place (CDP) [9] may be partially within and partially outside an urban area. Any place that is split by an urban area boundary is referred to as an extended place.

III. Splitting UAs

The Census Bureau uses the definition of metropolitan areas (MAs), which include metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), and primary metropolitan statistical areas (PMSAs), in effect for Census 2000 (those MAs established by the Office of Management and Budget on June 30, 1999) to determine when to define separate contiguous UAs. (Note: UCs are never split to recognize MA boundaries.) After delineating the boundary of each UA, the Census Bureau will examine the relationship between that UA and any MSA, CMSA, or PMSA, using the following criteria to determine if the UA should be split and, if so, where the boundary should be located between the resulting separate UAs.

A. UA Split Criteria When There Are Separate MAs

The Census Bureau splits an initial UA that contains at least 50,000 people in two or more separate MAs when the following conditions exist:

1. The UA has at least 50,000 people in each of at least two different MSAs or PMSAs, and the distance along which their areas are contiguous is less than 3 miles. The split will occur at a location near the MSA or PMSA boundary along which their area of contiguity is less than 3 miles.

2. The UA has at least 50,000 people in each of at least two different CMSAs, and the distance along which their areas are contiguous is less than 3 miles. The split will occur at the CMSA boundary.

B. UA Split Criteria Within the Same MA or County

The Census Bureau splits an initial UA within the same MA, or within a county that is not in an MA, when the following conditions exist:

1. The only connection linking or causing contiguity between areas, each of which has an initial core population of at least 50,000, includes either a hop or jump connection, or

2. The connection between areas, each of which has an initial core population of at least 50,000, is not greater than a point-to-point connection.

In both cases, the split will occur at the point-to-point connection, or at both ends of the hop or jump connection that initially linked the areas into a single UA.

IV. Urban Area Title Criteria

A. For those urban areas that contain an incorporated place that has at least 2,500 people in the urban area:

1. The urban area title includes the name of the incorporated place with the most population within the urban area.

2. As many as two additional incorporated place names may be part of the urban area title, provided that:

a. The incorporated place's urban area population exceeds 250,000 people, or

b. The incorporated place has both an urban area population of at least 2,500, and its urban area population includes at least 2/3 of the population in the most populous incorporated place in the urban area.

B. If the urban area does not contain an incorporated place that has at least 2,500 people in the urban area, the urban area title includes the single entity name [10] that occurs first from the following list:

1. The nonmilitary CDP having the largest population in the urban area, provided its population in the urban area is at least 2,500.

2. The incorporated place having the largest population in the urban area.

3. The nonmilitary CDP having the largest population in the urban area.

4. The military CDP having the largest population in the urban area.

5. The governmental MCD [11] having the largest population in the urban area.

6. A local name recognized for the area by the United States Geological Survey's Geographic Names Information System, with preference given to post office names recognized by the United States Postal Service (USPS).

C. The criterion for the sequence of place names in the urban area title consists of the qualifying names in descending order of their official population in the urban area. (If two or more entities that qualify to have their names included in the urban area title have exactly the same population, the total population of each is used to determine the sequence of names; or, if no population data are available, as in Section IV.B.6., the entity names will be listed alphabetically.)

D. The urban area title will include the USPS abbreviation of the name of each state or statistically equivalent entity into which the urban area extends.

1. The order of the state names is the same as the order of the related place names in the urban area title.

2. For urban areas that extend into a state(s) in which no incorporated place, CDP, or MCD name is part of the urban area title, the name(s) of this state(s) is included in the urban area title after the name of the state(s) that includes a place or MCD having its name in the urban area title, in descending order of the state's Census 2000 population within the urban area.

E. If a single place or MCD qualifies as the title of more than one urban area, the largest urban area will use the name of the place or MCD. The smaller urban area will have a title consisting of the place or MCD name and a compass directional (North, South, East, or West) as the smaller urban area relates in direction to the larger urban area. For example, if Allenville is used to title the largest urban area, a smaller urban area also using Allenville in the title that lies south of the larger urban area is titled Allenville South.

F. If any title of an urban area duplicates the title of another urban area within the same state, or uses the name of an incorporated place, CDP, or MCD that is duplicated within a state, the name of the county that has most of the population of the largest place or MCD is appended, in parentheses, after the

[7] All adjusted initial cores of less than 1,500 population are not selected to continue the delineation of a separate urban area; however, these core areas still are eligible for inclusion in an urban area using subsequent criteria and procedures.

[8] An incorporated place is a governmental unit designated as a city, town (except in New England and Wisconsin), village, city and borough, municipality, or borough (except in New York and Alaska); the term also includes all consolidated cities.

[9] A CDP is a statistical equivalent of an incorporated place and represents a locally defined named area. CDPs are called communidades and zonas urbanas in Puerto Rico.

[10] If two or three of the entities being considered for an urban area title have exactly the same population in the urban area, the title will include both (or all three) entity names in the title. If four or more entities being considered for an urban area title have exactly the same population, the total population of each entity (as oppose to its urban population) will determine the three names to be included in the title.

[11] An MCD is a legal subdivision of a county or statistically equivalent entity. Governmental MCDs exist in Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin.

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duplicate place or MCD name for each urban area. If there is no incorporated place, CDP, or MCD name in the urban area title, the name of the county having the greatest population residing in the urban area will be appended to the title. For example, Springfield (Ames County), OH, and Springfield (Jefferson County), OH.

V. Urban Area Code Criteria

The Census Bureau assigns a 5-digit numeric code to each urban area. The code is based on a national alphabetic sequence of all urban area names, and is sequenced by state code or state and county code when urban area names are duplicated.

VI. Urban Area Central Place Criteria

The Census Bureau identifies one or more central places for each urban area (if an incorporated place or CDP exists within the urban area) using the following criteria:

A. Any incorporated place or CDP that has its name in the title of the urban area, and

B. Any other incorporated place or CDP that has a population of 50,000 or more within the urban area.

VII. Urban and Rural Classification

The Census Bureau classifies as urban all population and territory within the boundaries of urban areas.[12] Conversely, the Census Bureau classifies as rural all population and territory that are not within any urban area.

The Census Bureau does not attempt to classify all bodies of water as being either urban or rural. Those bodies of water that appear in the Census Bureau's TIGER database as area features are included in urban areas only if the water body is included in a land BG or census block classified as urban, or if the water body serves as a connection when performing a hop or a jump. The urban and rural classification is not definitive for other bodies of water because the Census Bureau's definition is not intended to limit other classifications of urban and rural when applied to water area.

Dated: February 27, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–6186 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–07–P

[12] The Census Bureau's TIGER database is a centerline file; that is, the line representing each feature (such as a road or a stream that has a very small area) follows the center line of the feature. This criterion is not intended to preclude other application from including the entire area of a feature that the Census Bureau has used as the boundary between urban and rural territory as being either entirely urban or entirely rural.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, Brandon Farlander, and Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1102, (202) 482–0182, and (202) 482–3434, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Amendment of Final Determination

On February 4, 2002, the Department of Commerce ("the Department") issued its final determination and found that ARG windshields from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002) (Final Determination).

On February 14, 2002, respondents Fuyao Glass Industry Group Company, Ltd. ("FYG") and Xinyi Automotive Glass (Shenzhen) Co., Ltd. ("Xinyi"), and Petitioners timely filed ministerial error allegations, pursuant to 19 CFR 351.224(c)(2). On February 19, 2002, respondent FYG and Petitioners timely filed rebuttal comments on the alleged ministerial errors.

The Department is amending the Final Determination in the antidumping investigation of ARG windshields from the PRC for FYG, Xinyi, Shenzhen Benxun Auto–Glass Co., Ltd. ("Benxun"), Changchun Pilkington Safety Glass Co., Ltd. ("Changchun"), Guilin Pilkington Safety Glass Co., Ltd. ("Guilin"), Wuhan Yaohua Pilkington Safety Glass Co., Ltd. ("Wuhan"), and TCG International ("TCGI").

Scope of the Investigation

As addressed in the final determination, interested parties requested that the Department clarify whether automotive replacement glass windshields ("ARG") windshields for buses, farm and heavy machinery are included in the scope of this investigation. Based on the information received, we clarified that ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. For further discussion, please see the Issues and Decision Memorandum for the Scope Clarification for the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Edward C. Yang, Director, Office 9 to Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, dated January 24, 2002.

The products covered by this investigation are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Ministerial Error

A ministerial error is defined in section 351.224(f) of our regulations as

"an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." Section 351.224(e) of our regulations provides that we "will analyze any comments received and, if appropriate . . . correct any ministerial error by amending the final determination. . . ." After reviewing interested parties' allegations we have determined, in accordance with 19 CFR 351.224, that the Final Determination includes ministerial errors discussed below.

FYG's Allegation of Ministerial Errors

Updated Market Economy Prices

Comment 1: FYG alleges that the Department made a ministerial error by using outdated market price values for ink, silver and mirror buttons and using a surrogate value for solder-even though FYG reported market economy purchases of solder. FYG maintains that the Department failed to apply the updated market economy values for these inputs, as reported in FYG's November 16, 2001 submission.

Petitioners did not provide rebuttal comments.

Department's Position: We agree with FYG. Following the Preliminary Determination, FYG provided updated market economy values to the Department which the Department inadvertently failed to use for the Final Determination. It is the Department's practice to use the most updated factor value information available. For the amended final determination, we used updated market economy prices for the inputs ink, silver, mirror buttons and solder. See Analysis Memo for the Amended Final Determination of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China: Xinyi Automobile Glass (Shenzhen) Co., Ltd. ("Xinyi") and Fuyao Glass Industry Group Co., Ltd. ("FYG") (Amended Final Analysis Memo) from Brandon Farlander and Stephen Bailey to Robert Bolling dated March 6, 2002.

Xinyi's Allegations of Ministerial Errors

Incorrect Margin Calculation Results

Comment 2: Xinyi argues that it calculated a margin using all relevant documents provided by the Department issued for the Final Determination and that the margin Xinyi calculated is fifty–five one–hundredths of a percent lower than the margin calculation generated by the Department. Xinyi argues that the final margin should be 3.15 percent as compared to 3.70 percent as calculated by the Department in its Final Determination.

Petitioners argue that Xinyi's ministerial error submission does not fulfill the conditions necessary for correction of ministerial errors contained in section 351.224 of the regulations. Petitioners argue that Xinyi did not identify any error of omission or commission in its request, which is required according to section 351.224(4)(d). Petitioners argue that it is Xinyi's responsibility, and not the Department's, to identify any errors in the Final Determination.

Department's Position: We disagree with Xinyi. Xinyi has not alleged an error, specific or otherwise, by the Department in the Department's calculation of Xinyi's margin that would fall within the meaning of 19 CFR 351.224(f). Xinyi argues that, because it obtained different margin results then those calculated by the Department, the Department's margin calculations must contain clerical errors. Xinyi has provided no official record evidence that the Department has made a clerical error in Xinyi's margin calculation program or has Xinyi provided an appropriate correction pursuant to the requirements of 19 CFR 351.224(d).

Aberrational Indian Import Statistics Data

Comment 3: Xinyi argues that the Department incorrectly included aberrational Indian Import Statistics data for colored float glass imports from the United Arab Emirates in September 2000, aberrational values for colored float glass imports from Belgium in September and December 2000, and aberrational values for colored float glass imports from Taiwan in August and December 2000. Xinyi argues that the import data from these countries and the values for the specific months listed above are aberrationally high when compared to the average colored float glass surrogate value calculated by the Department.

Petitioners argue that Xinyi's claims that certain Indian Import Statistics data are aberrationally high is a new substantive methodological argument. Petitioners contend that this new argument is subject to comment and rebuttal by interested parties to the investigation and to the final determination by the Department. Additionally, Petitioners argue that Xinyi had ample opportunities to argue that there were aberrations in the Indian Import Statistics data, but did not do so.

Department Position: We disagree with Xinyi that this is a ministerial error. The Department included Indian imports from Belgium, Taiwan, and the United Arab Emirates as set forth in Attachment 4 of the Factor Valuation Memorandum for the Preliminary Determination. This remained unchanged for the Final Determination. Therefore, the allegation is not a ministerial error pursuant to 19 CFR 351.224(f).

Petitioner's Allegations of Ministerial Errors for FYG

Colored Float Glass Surrogate Value from the Indian Import Statistics

Comment 4: Petitioners allege that the Department made a ministerial error by failing to apply the Indian surrogate value used for colored float glass, exclusive of Thailand and Korea. Citing to the Department's Factors of Production Valuation Memorandum for the Final Determination (Factor Value Memo), Petitioners argue that the Department determined in the Final Determination to exclude Thai and Korean prices for all inputs in its surrogate value calculations and also in determining market economy purchases. Petitioners maintain that the Department's failure to apply the revised Indian surrogate value for the colored float glass resulted in an understatement of the value of a certain type of windshield. Because the type of windshield is business proprietary information, see the Amended Final Analysis Memo for a further discussion of this issue.

FYG points out that the windshield in question is comprised of two types of float glass. FYG argues, therefore, that Petitioners' methodology of using a weighted–average of only one value for the windshield is distortive.

Department's Position: We agree with Petitioners. In the Final Determination, the value of colored float glass, the second pane of glass used for the windshield in question, was derived by the Department using FYG's market economy purchases. However, the Department inadvertently failed to exclude market economy purchases from Thailand and Korea from FYG's market economy purchases of colored float glass. As the Department stated in Comment 1 of the final Issues and Decision Memorandum, it would disregard prices that the Department has reason to believe or suspect are distorted by subsidies, including FYG's market economy purchases from Thailand and Korea. See Final Determination, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. When market economy purchases of colored float glass from Thailand and

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Korea are excluded, the Department must then use Indian Import Statistics to value colored float glass because FYG did not purchase colored float glass from other market economy countries. Therefore, for the amended final determination, we will use the Indian surrogate value for colored glass less purchases of Thai and Korean float glass. See Amended Final Analysis Memo.

International Freight Container Rate

Comment 5: Petitioners argue that the Department erred in the Final Determination in its calculation of ocean freight by using a freight rate for a 20–foot container instead of a freight rate for a 40–foot container, which is the container size used by FYG in transporting subject merchandise. Citing to the Factor Value Memo, Petitioners maintain that the Department rejected, in part, FYG's methodology for freight and used a freight rate provided by the Federal Maritime Commission. Petitioners contend that the Department used a basic freight rate for a 20–foot shipping container, to which was added a fuel surcharge and destination delivery charge. Petitioners assert that their October 29, 2001 Surrogate Values Submission provided evidence on the record to value a 40–foot shipping container. Petitioners further contend that the Department should either: (1) match the particular ocean rate to the closest port of entry for each shipment; or (2) apply an average of the ocean rates for all ports through which the non–market economy ("NME") shipments entered for which surrogate ocean freight is being assigned.

FYG agrees with Petitioners that the Department incorrectly used a 20–foot container rate when the Department should have used a 40–foot container rate to value ocean shipping. However, FYG argues that Petitioners' suggested ocean freight value was rejected by the Department for the final determination. FYG suggests that the Department use the actual freight rates paid for the ocean segment of the overall transportation charge, which are reported in Exhibit 19–A of FYG's verification report. See Memorandum from Stephen Bailey, Sarah Ellerman, case analysts and Emily Lawson, Office of Chief Counsel through James C. Doyle, Program Manager to the File: Verification of Sales and Factors of FYG in the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China (FYG Verification Report) dated December 19, 2001, Exhibit19–A. FYG also suggests the Department convert the 20–foot container charge to a 40–foot container charge by using a conversion rate presented in their October 29, 2001 submission.

Department's Position: The Department agrees that this is a ministerial error. In our analysis memorandum for FYG, the Department stated that it would value shipping containers based on a length of 40 feet but instead valued it on a 20–foot container rate. See Analysis for the Final Determination of Automotive Replacement Glass Windshields ("ARG") from the People's Republic of China: Fuyao Glass Industry Group Co., Ltd., ("FYG") (February 1, 2002) (FYG's Final Analysis Memo). In order for the Department to correct this error (i.e., obtain a 40–foot shipping container base rate), we must adjust the 20–foot base container rate to reflect a 40–foot base container rate. In this instance, we are using information provided by FYG to convert a 20–foot base container rate to a 40–foot base container rate to determine a surrogate value for ocean freight. By reviewing a contract between FYG and a market economy shipper, reviewed at verification, and using information provided by FYG in its October 29, 2001 submission, the Department determined that the rate charged for a 40–foot container is 33 percent higher than the rate charged for a 20–foot container. See FYG Verification Report, Exhibit 19–A. The Department has multiplied this conversion rate, 1.33, by the charge for a 20 foot container to arrive at a charge for a 40 foot container. See Amended Final Analysis Memo. FYG's methodology allows the Department to continue to use information from the Federal Maritime Commission, as used in the Final Determination. The Department did not use Petitioners' proposed correction or FYG's other proposed correction because both change the ocean freight methodology used by the Department in the Final Determination.

Wholesale Price Index Base for Domestic Inland Insurance

Comment 6: Petitioners allege that the Department made a ministerial error by using a 1992 Wholesale Price Index ("WPI") base for data collected from the period November 1991 through April 1992 in calculating an average value in Indian rupees per metric ton value for domestic inland insurance, as opposed to using a WPI that corresponds to the period for the Indian surrogate value, which is November 1991 through April 1992. Citing the Department's Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From the People's Republic of China, 66 FR 53776 (October 24, 2001) (Amended Preliminary Determination), Petitioners argue that the Department stated that it considered this a methodological error at the preliminary determination and would consider this error for the final determination. Additionally, Petitioners contend that the Department did not address this issue in the Final Determination. Furthermore, Petitioners assert that they provided International Financial Statistics ("IFS") for the period November 1991 through April 1992 in their September 24, 2001 submission which contain all relevant IFS data necessary for the Department to calculate an accurate WPI for the period in question. Petitioners also argue that the WPI for the period November 1991 through April 1992 should be adjusted to account for the re–basing of the Indian WPI, which occurred in June 1994 and June 1999.

FYG argues that Petitioners' allegation is not a ministerial error but a methodological argument. Also, FYG also asserts that Petitioners' methodology for determining the correct inflation rate is flawed because it incorrectly adjusts the WPI to account for re–basing. FYG also argues that the correct inflation rate adjustment that it calculated results in basically the same rate used by the Department in the Final Determination.

Department's Position: We agree with Petitioners. The Department intended to correct this error in the Final Determination. See Amended Preliminary Determination at 53778. However, we inadvertently failed to make this correction in the Final Determination. Therefore, the Department is using the Indian WPI for the period November 1991 through April 1992 from IFS data. Additionally, the Department has adjusted the WPI to account for the re–basing which occurred in June 1994, by multiplying the WPI for the period November 1991 through April 1992 by 0.70, which is the percentage change in the WPI between May 1994 and August 1994. The Department has also adjusted the WPI to account for the re–basing which occurred in June 1999, by multiplying the WPI by 0.61, which is the percentage change in the WPI between May 1999 and August 1999. See Amended Final Analysis Memo.

Weight Conversion for Other Scrap Glass

Comment 7: Petitioners argue that the Department made a ministerial error by inadvertently converting a value to a kilogram basis that was already being consumed on a kilogram basis. Citing to FYG's Verification Report at 14, Petitioners allege that FYG reported that "Other Scrap Glass" was reported on a kilogram basis, not in square meters as the Department assumed.

FYG argues that the Department was correct in converting a kilogram value into a meters squared value because FYG's reported consumption rate for the "Other Scrap Glass" offset was in meters squared.

Department's Position: We disagree with Petitioners. The Department verified that FYG reported that "the big pieces of scrap generated from the cutting process . . . is sold on a square meter basis." See FYG Verification Report at 14. Therefore, for the final determination, the Department calculated a surrogate value for "Other Scrap Glass" by multiplying the Indian surrogate value, which is reported in kilograms, by a kilograms–to–square–meter conversion rate which is based on the amount of kilograms in a square meter of glass. See FYG's Final Analysis Memo, dated February 1, 2002.

Petitioner's Allegations of Ministerial Errors for Xinyi

Plastic Adhesives Surrogate Value from the Indian Import Statistics

Comment 8: Petitioners allege that the Department made a ministerial error by deducting the value and quantity of Switzerland's exports of plastic adhesives (rather than Thailand's value and quantity of exports) to India from the Indian Import Statistics.

Xinyi did not provide rebuttal comments.

Department's Position: We agree with Petitioners. The Department intended to deduct, from Indian Import Statistics, imports of plastic adhesives from Thailand, but instead deducted imports of plastic adhesives from Switzerland. As the Department stated in Comment 1 of the Issues and Decision Memo, we will disregard prices that we have reason to believe or suspect are distorted by subsidies, including the values from Thailand and Korea. Therefore, for the amended final determination, we will deduct Thailand's exports of plastic adhesives (rather than Switzerland's exports) to India from the Indian Import Statistics in our surrogate value calculation for plastic adhesives. See Amended Final Analysis Memo.

Petitioner's Allegations of Ministerial Errors for FYG and Xinyi

Adhesive Sheets (Tape) Calculation Error

Comment 9: Petitioners allege that the Department made a ministerial error by including two minus signs when deducting Korean imports of adhesive sheets (tape) from the quantity and value of Indian Import Statistics. Petitioners argue that this error resulted in an understatement of the value of adhesive sheets (tape).

FYG agrees with Petitioners that the Department incorrectly included a double minus sign in its calculation sheet which resulted in counting the Indian imports of Korean adhesive sheets (tape) twice in the surrogate value calculation. However, FYG argues that the per unit surrogate value provided by the Petitioners is not correct.

Department's Position: We agree with Petitioners and FYG that this is a ministerial error. The Department intended to deduct, from Indian Import Statistics, imports of adhesive sheets from Korea. However, the Department double counted imports of adhesive sheets from Korea by inadvertently including two minus signs in the calculation sheet, which resulted in Korean imports being added twice instead of being deducted. As stated in Comment 8, the Department intended to disregard prices from Korea. The Department agrees with FYG that Petitioners' per unit surrogate value, while properly deducting Korean imports of adhesive sheets from Indian Import Statistics, is incorrect due to addition errors. Therefore, for the amended final determination, we will remove one minus sign in the calculation sheet for Korean exports of adhesive sheets (tape) to correct for this error. See Amended Final Analysis Memo.

Amended Final Determination

In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of ARG from the PRC to reflect the correction of the above–cited ministerial errors. The revised final weighted–average dumping margins are as follows:

Exporter/Manufacturer	Original Weighted Average Margin Percent for Final	Revised Weighted Average Margin Percent
FYG	9.67	11.80
Xinyi	3.70	3.71
Benxun	8.22	9.84
Changchun	8.22	9.84
Guilin	8.22	9.84
Wuhan	8.22	9.84
TCGI	8.22	9.84
China–Wide	124.50	124.50

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the United States Customs Service ("Customs") to continue suspending liquidation on all imports of the subject merchandise from the PRC. Customs shall require a cash deposit or the posting of a bond equal to the weighted–average amount by which normal value exceeds the export price as indicated in the chart above. These suspension–of–liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

March 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6290 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, A–122–840, A–428–832, A–560–815, A–201–830, A–841–805, A–274–804, A–823–812]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle (Brazil, Canada, Mexico, and Trinidad and Tobago), Robert James (Germany), Donna Kinsella (Indonesia), Dana Mermelstein (Moldova), and James Doyle (Ukraine) at (202) 482–0650, (202) 482–0649, (202) 482–0194, (202) 482–1391, and (202) 482–0159, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing further the preliminary determinations in the antidumping duty investigations of Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

The deadline for issuing the preliminary determinations in these investigations is now April 2, 2002.

On January 22, 2002, the Department postponed the deadline for issuing the preliminary determinations in these investigations by 30 days (i.e., until March 13, 2002). See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 3877 (January, 28, 2002). On March 4, 2002, Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, petitioners), requested an additional 20–day postponement of the preliminary determinations in these investigations, in accordance with section 351.205(b)(2) of the Department's regulations. Therefore, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, and section 351.205(e) of the regulations, and absent any compelling reason to deny the request, the Department is postponing the deadline for issuing these determinations (i.e., until April 2, 2002).

March 7, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6291 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–806)

Silicon Metal From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

DATES: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482- 5831 or Thomas Futtner at (202) 482–3814, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On August 30, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on Silicon Metal from Brazil, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 1, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. See Decision Memorandum from Holly A. Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–6289 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–401–806)

Stainless Steel Wire Rod From Sweden: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On October 26, 2001, in response to a September 28, 2001, request made by Fagersta Stainless AB, a producer/exporter of stainless steel wire rod from Sweden, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on stainless steel wire rod from Sweden, covering the period September 1, 2000 to August 31, 2001. Because Fagersta Stainless AB has withdrawn its request for review, the Department of Commerce is rescinding this review in accordance with 19 CFR 351.213(d)(1).

DATES: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Terre Keaton, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department ofCommerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230, telephone: (202)482–1280.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to 19 CFR part 351 (2001).

Background

On September 15, 1998, the Department published an antidumping duty order onstainless steel wire rod from Sweden (63 FR 49329). On September 28, 2001, Fagersta Stainless AB ("Fagersta"), a producer/exporter of the subject merchandise, requested an administrative review of the antidumping duty order on stainless steel wire rod from Sweden covering the period of September 1, 2000, through August 31, 2000. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on October 26, 2001 (66 FR 54195). On February 13, 2002, Fagersta, the sole requester of this review, withdrew its request for review.

Rescission of Review

Pursuant to our regulations, the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." See 19 CFR 351.213(d)(1). This section further provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. See 19 CFR 351.213(d)(1). Although the interested party's withdrawal of its request for review was not within the 90–day time limit, there were no objections to the withdrawal from the petitioner, and the Department has no compelling reason to deny the request. (See February 25, 2002, Memorandum to the File.) As a result, we are rescinding this administrative review. The Department will issue appropriate assessment instructions to the Customs Service.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

March 7, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6292 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–816]

Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping and Countervailing Duty Laws: Notice of Hearing

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of hearing.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Becky Erkul or Jim Nunno, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1277 or (202) 482–0783.

SUMMARY: The Department of Commerce is holding a public hearing to solicit views on the issue of the status of the Russian Federation as a non-market economy country under the antidumping and countervailing duty laws. The hearing will be held at 9 a.m. on March 27, 2002, in Room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Hearing presentations should be limited to no more than ten minutes to allow for possible questions from the Chair and the panel. Additional time for oral presentations may be granted as time and the number of participants permit. Parties wishing to testify orally at the hearing must provide written notification of their intention, and indicate the amount of time they will need to make their presentation, no later than 5 p.m., March 22, 2002, to Faryar Shirzad, Assistant Secretary for Import Administration; Subject: Public Hearings on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the Antidumping and Countervailing Duty Laws; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; and (3) if applicable, any request for an extension of the time limitation on the oral presentation. In addition, please send a copy of this notification via facsimile to Becky Erkul at (202) 482–2308.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6317 Filed 3–12–02; 3:56 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010813205–2043–02]

RIN 0648–XA74

NOAA Ocean Exploration Initiative; Correction

AGENCY: Office of Ocean Exploration, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Technical Amendment to the Notice from NOAA's Ocean Exploration Program for FY 2002: Announcement to Solicit Proposals.

SUMMARY: NOAA amends the notice regarding the NOAA Office of Ocean Exploration (OE) proposal solicitation published in the **Federal Register** on September 4, 2001. The amendment will modify the language regarding the number of reviews required for OE's independent peer mail review process. This action is being taken due to the receipt of an insufficient number of responses from pre-selected peer reviewers.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, NOAA Office of Ocean Exploration, Bldg.SSMC3, 1315 East-West Highway, Silver Spring, MD 20901, (301) 713–9444 ext. 155, *margot.bohan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NOAA Office of Ocean Exploration

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published a notice on September 4, 2001, describing the Ocean Exploration Program and soliciting proposals in support of its mission (66 FR 46260). The program description, funding guidance, submission procedures, evaluation criteria, selection process, and background are in that notice and are not repeated here. The original notice's independent peer mail review procedure defined a requirement for receipt of 3 mail-in reviews before panel review. This requirement is beyond the agency's control and ability to attain within the time available to commence the 2002 field season. The Office hereby revises the mail-in review requirements (page 46262, column 3, section XII, first sentence) to read as follows: "Proposals will be evaluated by an independent peer mail review, i.e., each proposal will be reviewed, by *at least two* qualified scientific and/or technical peers * * *".

Applications under this solicitation will be subjected to both a mail review and a panel review.

Program authority: 33 U.S.C. 883d; (CFDA No. 11.460)—Special Oceanic and Atmospheric Projects.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–6250 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031102A]

North Pacific Fishery Management Council Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of public meeting.

SUMMARY: NMFS and the NPFMC will hold a workshop March 25—26, 2002, to discuss effects of fishing on habitat, mitigation tools and fishery descriptions. The NPFMC will hold an essential fish habitat (EFH) committee meeting on March 27, 2002.

DATES: The workshop will be on Monday, March 25, 2002, from 1 p.m. to 5 p.m. and from 8 a.m. to 5 p.m. on Tuesday, March 26, 2002. The EFH committee will meet from 8 a.m. to 5 p.m. on Wednesday, March 27, 2002.

ADDRESSES: The workshop and committee meeting will be in Seattle, WA, in Building 9, at the National Oceanic and Atmospheric Administration, Western Regional Center, 7600 Sand Point Way, N.E.

Questions should be addressed to NMFS, Habitat Conservation Division, ATTN: Cindy Hartmann, 709 West 9th, Suite 801, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: Cindy.Hartmann@noaa.gov; or Cathy Coon, NPFMC, (907) 271–2809, e-mail: Cathy.Coon@noaa.gov. To facilitate security clearance at the NOAA facility the public is requested to contact Cindy by March 22, 2002.

SUPPLEMENTARY INFORMATION:

Background

The focus of the workshop will be a discussion of the effects of fishing on EFH including the following: (1) A discussion of the criteria on what is a minimal and what is a temporary impact on EFH; (2) Review of the scientific studies on gear impacts pertinent to Alaska fisheries; (3) Discussion of a set of tools for mitigating adverse impacts and to what situations they apply; (4) Description of Alaska fisheries. The discussion of criteria for a minimal and temporary impact, review of scientific studies on gear impacts pertinent to Alaska fisheries and an initial discussion of mitigation tools and to what situations they apply is planned for Monday afternoon. On Tuesday, participants will break into four workgroups to revise fishery descriptions, discuss potential adverse effects of their specific fisheries and discuss mitigation tools and their application to their fisheries.

For further information about the EFH supplemental environmental impact statement (SEIS), see the notice of intent to prepare an SEIS published in the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001). For further information on the preliminary alternative approaches for the designation of EFH and habitat areas of particular concern (HAPC) see 67 FR 1325, January 10, 2002.

On March 27, 2002, the EFH Committee meets to: review fishery descriptions; discuss potential mitigation tools from each subgroup and any other group products; develop committee recommendations for the April NPFMC meeting; and plan for future EFH Committee tasks and meetings.

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare an SEIS for the EFH fishery management plan amendments. The function of the committee is to serve as a steering committee in facilitating input to NMFS on the SEIS for EFH submitted by the industry, conservation community, Council, and general public and the involvement of the NPFMC in the SEIS. The Committee will work to provide input as appropriate, and submit periodic updates to the Council on the environmental impact statement for EFH. Further information on the EFH Committee can be found on the NPFMC web site at: http://www.fakr.noaa.gov/npfmc/Committees/EFH/efh.htm.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

Dated: March 11, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6182 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030802A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a research and enhancement permit (1368).

SUMMARY: Notice is hereby given of the following action regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a research/enhancement permit from Dr. John Hunter, of the NMFS Southwest Fisheries Science Center of the (SFSC).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 15, 2002.

ADDRESSES: Written comments on the new application should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Mollusks

Endangered White Abalone (*Haliotis sorenseni*)

Application 1368

The applicant proposes to breed and reintroduce white abalone in southern California. The applicant wants to collect up to 50 white abalone per year for five years in order to breed, grow out and reintroduce the progeny to the wild. Wild abalone will be collected using ROVs and divers. The animals will be transported to the laboratory and induced to spawn using H_2O_2 or the thermal shock method. The progeny will be grown to 15–100mm before introduction. Precautions will be taken to avoid disease and inbreeding.

Dated: March 11, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6311 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012302D]

Marine Mammals; File No. 751–1614–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Ocean Alliance/Whale Conservation Institute, 191 Weston Road, Lincoln, Massachusetts 01773 [Dr. Celine Godard, Principal Investigator] has been issued a permit to take 13 species of odontocete whale and eight species of baleen whale for purposes of scientific research.

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On June 8, 2001, notice was published in the **Federal Register** (66 FR 30885) that a request for a scientific research permit to take 13 species of odontocete whale and eight species of baleen whale for purposes of scientific research had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Dated: March 11, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6310 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030102D]

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 2002 Bank-specific Harvest Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of no harvest guideline for crustaceans.

SUMMARY: NMFS announces that annual harvest guidelines for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) will not be issued for the year 2002.

ADDRESSES: Copies of background material pertaining to this action, which is identical to the action taken in 2001, may be obtained from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2937.

SUPPLEMENTARY INFORMATION: Under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region, 50 CFR 660.50(b)(2), NMFS is required to publish the harvest guidelines for lobster Permit Area 1 around the NWHI. Although the lobster stock is not overfished, the NWHI lobster fishery has been closed since 2000: (a) as a precautionary measure to prevent overfishing of the lobster resources; (b) in compliance with an order of the U.S. District Court for the District of Hawaii to keep the crustacean fisheries closed until an environmental impact statement and a biological opinion have been prepared for the crustacean fisheries in the western Pacific region; and (c) consistent with Executive Orders 13178 and 13196, issued in December 2000 and January 2001, respectively, that appear to close indefinitely the NWHI crustacean fishery.

NMFS announces that it will not be publishing any harvest guideline for this fishery for the year 2002 and no harvest of NWHI lobster resources will be allowed. NMFS intends to conduct biological research on the status of NWHI lobster resources and to examine the resulting data for indications as to the appropriate direction for future fishery management actions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6183 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability Missile Defense Agency Ground-Based Midcourse Defense Validation Of Operational Concept Environmental Assessment

AGENCY: Missile Defense Agency

ACTION: Notice of availability

SUMMARY: The Missile Defense Agency (MDA) (formerly the Ballistic Missile Defense Organization) announces the availability of the Ground-Based Midcourse Defense (GMD) Validation of Operational Concept (VOC) Environmental Assessment (EA). The EA assesses the potential impacts of construction and test activities at GMD VOC test sites. The proposed action includes construction and operational testing of six ground-based interceptor (GBI) silos and support facilities, In-Flight Interceptor Communication System Data Terminals (IDTs), and Defense Satellite Communication System (DSCS) earth terminals in central Alaska; an IDT and DSCS earth terminal at Eareckson Air Station (AS), Alaska; construction of a missile transfer facility at Eielson Air Force Base (AFB), Alaska; use of the existing COBRA DANE Radar, with upgraded hardware and software and interior modifications, at Eareckson AS; interior modifications and hardware and software upgrades to the Early Warning Radar at Beale AFB, California; and Battle Management, Command and Control [BMC2] nodes at one or more of Peterson AFB, Cheyenne Mountain Complex and Shriever AFB in Colorado, Eareckson AS, Alaska, Beale AFB California, and contractor facilities in Alabama and California.

Fort Greely, Alaska was considered as the preferred alternative for the six GBI silos and support facilities and associated BMC3 including one IDT, one DSCS earth terminal, a BMC2 execution node and installation of terrestrial fiber optic cable. Clear Air Force Station, Alaska is being considered as an alternative location to Fort Greely, Alaska as the GBI silo and support facilities location.

The no-action alternative was also considered. Under the no-action alternative, MDA would not proceed with construction and testing to support validation of the GMD operational concept through ground-based testing. Selection of the no-action alternative would not allow the operationally realistic testing needed to further develop the GMD element of the Midcourse Defense Segment.

Comments: Public comments on the EA must be received by April 13, 2002. Written comments or a request for a copy of the EA should be directed to: U.S. Army Space and Missile Defense Command, ATTN: Mr. David Hasley, SMDC–EN–V, P.O. Box 1500, Huntsville, AL 35807–3801.

As the proposed action includes multiple locations, some of which are under the administrative control of the United States Army and some of which are under the administrative control of the United States Air Force, the MDA has used both Army Regulation 200–2 and Air Force Instruction 32–7061 in preparing the EA and Finding of No Significant Impact (FNSI). An unsigned FNSI will be distributed with the final EA. The FNSI will be signed after a 30-day public review period, and the proposed action could be implemented unless the MDA determines that information presented during the 30-day public review period reveals an unassessed potential for significant impacts on the environment. Interested parties can also review the unsigned FNSI, EA, and referenced NMD Deployment EIS on the internet at: *www.acq.osd.mil/bmdo/bmdolink/html/newrel.html#envir.ANC* or at the following locations:

University of Alaska, Anchorage
Consortium Library
3211 Providence Drive
Anchorage, AK 99508

Alaska Resources Library & Information Services
3150 C Street, Suite 100
Anchorage, AK 99503

Delta Junction Library
2288 Deborah Street
Delta Junction, AK 99737

Anderson School Library
1st Avenue
Anderson, AK 99744

Alaska State Library 344 W. 3rd. Avenue, Suite 125
Anchorage, AK 99501

Fairbanks North Star Borough Public Library
Noel Wien Library
1215 Cowles Street
Fairbanks, AK 99701–4313

University of Alaska, Fairbanks
Elmer E. Rasmuson Library
PO Box 756800
Fairbanks, AK 99775–6800

Barbo Branch Library
10321 Live Oak Blvd.
Live Oak, CA 95953

Beale Air Force Base
Military Library
Marysville, CA 95903

Sutter County Library
750 Forbes Avenue
Yuba City, CA 95991

Yuba City Library
303 2nd Street
Marysville, CA 95901

Yuba College Library
Yuba College
Marysville, CA 95901

Falmouth Public Library Reference Section
123 Katherine Lee Bates Rd
Falmouth, MA 02540

Mashpee Public Library
Steeple Street,
Mashpee Common
Mashpee, MA 02649

Sandwich Public Library
142 Main Street
Sandwich, MA 02563

U.S. Coast Guard Library
Building 502
Otis ANGB, MA 02542

Cape Cod Community College Library
2240 Iyanough Rd.
West Barnstable, MA 02668–1599

Defense Technical Information Center
8725 John J. Kingman Road, Suite 0944
Ft. Belvoir, VA 22060–6218

Dated: March 12, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6429 Filed 3–13–02; 1:41 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Sources and Collection Management Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet at McDill AFB. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the "data gathering" phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 5, 2002.

ADDRESSES: McDill Air Force Base, FL.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6276 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Prediction and Confirmation Tools Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet at Barksdale Air Force Base, Eglin Air Force Base, and Hurlburt Field. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the "data gathering" phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 5–7, 2002.

ADDRESSES: Barksdale AFB, LA, Eglin AFB, FL, and Hurlburt Field, FL.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6277 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Operational Architecture Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet Langley Air Force Base. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the "data gathering" phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 7–8, 2002.

ADDRESSES: Langley Air Force Base, VA.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6278 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System; Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System. The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: 28 March 2002.

ADDRESSES: NSS, Skyline 3, Suite 500, 5201 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–1924.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6221 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

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DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendments to the Administrative Manual—Rules of Practice and Procedure Concerning Fees Associated With Responses to the Freedom of Information Act Requests

AGENCY: Delaware River Basin Commission.

SUMMARY: The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the agency's *Administrative Manual—Rules of Practice and Procedure* updating the fee schedule associated with Commission responses to Freedom of Information Act (FOIA) requests. The current schedule of fees was promulgated in 1975 and has not been updated since. Over the past quarter of a century, computer technologies have introduced new methods of recording and reproducing information that were not contemplated by the 1975 regulations, and administrative costs have increased. The proposed fee structure reflects current technology and costs. The current fees, at Section 2.8.10 of the *Administrative Manual—Rules of Practice and Procedure*, 18 CFR 401.110, and proposed amendments may be viewed on the Commission's Web site at *http://www.drbc.net.*

DATES: The public hearing will be held on Friday, May 31, 2002, during the Commission's regular business meeting, which will begin at 1:00 p.m. The meeting on May 31 must end by 3:00 p.m., but if necessary, the hearing will continue at the Commission's next scheduled business meeting until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609–883–9500 ext. 203. Written comments will be accepted through the close of the public hearing; however, earlier submittals would be appreciated.

ADDRESSES: The public hearing will be held at Grey Towers National Historic Landmark, 151 Grey Towers Drive, Milford, PA. Directions will be posted on the Commission's Web site at *http://www.drbc.net* by April 1, 2002. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela Bush at 609–883–9500 ext. 203 with questions about the proposed amendments or the rulemaking process. Notice also is posted on the Commission's Web site, at *http://www.drbc.net.*

Dated: March 7, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–5958 Filed 3–14–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.234Q]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Projects With Industry (PWI) program creates and expands job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placements and career advancement services.

Eligible Applicants: Employers, nonprofit agencies or organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes, tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

In order to ensure an equitable distribution of funds among the States as required by statute, grant awards will be made only to organizations that provide job and career opportunities for individuals with disabilities within the State in which the organization is located. Only organizations that have the ability to directly receive the grant and directly carry out the project are eligible to apply.

Only applicants that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program may apply.

SUPPLEMENTARY INFORMATION: Funds under this competition will be used to support projects in FY 2002. The Assistant Secretary may consider funding approved applications submitted in FY 2002 to support projects in future years.

The Business Leadership Network (BLN), staffed by the U.S. Department of Labor, works to promote best practices in rehabilitation and to enhance opportunities for workers who are disabled. The BLN currently has programs in 30 States, the District of Columbia, and Puerto Rico. These programs operate independently of each other and focus on meeting the specific needs of the business community and State Government. Through BLNs, participating employers, in partnership with State Governor's Committee representatives and other community services professionals, identify specific hiring requirements of employers so that referral and placement services can be customized to meet those employers' needs. Applicants applying under the PWI program are encouraged to collaborate with their local BLN, if one has been established in the State, in order to expand services and employment opportunities to project participants. We believe that strong working relationships with local BLNs will expand the employer network available to projects and, as a result, increase employment opportunities for individuals with disabilities.

Applications Available: March 15, 2002.

Deadline for Transmittal of Applications: May 31, 2002.

Deadline for Intergovernmental Review: July 30, 2002.

Estimated Available Funds: $17,478,135.

Estimated Range of Awards: $175,000-$250,000.

Estimated Average Size of Awards: $221,200.

Estimated Number of Awards: 79.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99; and (b) The regulations for this program in 34 CFR part 379.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: We are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1

Projects should demonstrate effective collaboration with the "One-Stop" service delivery system established under title I of the Workforce Investment Act of 1998, as amended (WIA), to assist individuals with disabilities to secure job skills training and employment opportunities in the competitive labor market. Proposed PWI service delivery models should promote the delivery of services to individuals with disabilities through local "One-Stop" centers. Proposed PWI service delivery models should investigate replicable innovative approaches to effective collaboration with the "One-Stop" service delivery system in placing individuals with disabilities into competitive employment. Applicants who wish to address this invitational priority may get further information about the "One-Stop" service delivery system by calling the Department of Labor (DOL) at (202) 693–2700 or visiting the DOL web site at: *www.dol.gov/dol/allcfr/Title_20/Part_662/toc.htm*

Invitational Priority 2

Projects should demonstrate the use of alternative work settings, such as flexiplace or telecommuting, to assist individuals with disabilities, especially individuals with significant disabilities, to secure job skills training and employment opportunities in the competitive labor market. Projects should investigate replicable innovative approaches in the use of alternative work settings. Projects also should demonstrate how these alternatives may increase the number of individuals with disabilities placed into competitive employment.

Invitational Priority 3

Projects should facilitate the school-to-work transition of students with disabilities. Projects should focus on placing youth with disabilities in employment with clearly defined career-path or career-advancement opportunities, or both. Projects also should investigate replicable innovative approaches that can be used to assist students in transition from school-to-work in obtaining competitive employment.

Invitational Priority 4

Projects should demonstrate how literacy services can assist PWI consumers with low literacy levels to obtain higher earnings in competitive employment. Proposed PWI service delivery models should investigate replicable innovative approaches that can be used to assist individuals to obtain higher quality jobs (e.g., jobs with higher wages and health insurance benefits). Projects should focus on enhancing collaboration between local Adult Education and Family Literacy (AEFL) programs, the primary resource for providing adult basic education (ABE) services, and Vocational Rehabilitation programs. This collaboration should include the provision of training, experience, or appropriate reasonable accommodations to AEFL or ABE programs to assist them in serving individuals with disabilities, particularly individuals with significant disabilities, and working cooperatively to share in the cost of training and placement.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Competitive Preference Priority

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that is otherwise eligible for funding under this program. The maximum score under the selection criteria for this program is 100 points; however, we will also use the following competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA No. 84.234Q.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Kerrie Brown, Mary Jane Kane, Sonja Turner, or Lois Vaughan, U.S. Department of Education, 400 Maryland Avenue, SW., room 3329, Switzer Building, Washington, DC 20202. Telephone: (202) 401–9707 for Kerrie Brown; (202) 205–8484 for Mary Jane Kane; (202) 205–9396 for Sonja Turner; and (202) 205–8749 for Lois Vaughan. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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Program Authority: 29 U.S.C. 795 *et seq.*

Dated: March 11, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–6214 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Change in notice of meeting time.

SUMMARY: Due to a change in meeting time the President's Board of Advisors on Historically Black Colleges and Universities will now meet on Tuesday, March 19, 2002 from 5:30 p.m. to 7:30 p.m. and Wednesday, March 20, 2002 from 8 a.m. to 3:30 p.m.

This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Beverly Ward at 202–502–7900 by no later than Monday, March 11, 2002.

DATE AND TIME: Tuesday, March 19, 2002 from 5:30 p.m. to 7:30 p.m. and Wednesday, March 20, 2002 from 8 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Madison Hotel, 15 & M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Ward, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 7C103, Washington, DC 20202. Telephone: (202) 401–1311.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 13256 of February 12, 2002. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on the status and future of federal agency support for Historically Black Colleges and Universities. Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW., Suite 8099, Washington, DC 20006, from the hours of 8:30 a.m. to 5 p.m.

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Authority: 5 U.S.C. 5701–5707.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6222 Filed 3–14–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–96–000]

Columbia Gas Transmission Corporation; Notice of Application

March 8, 2002.

Take notice that on February 27, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–96–000 pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Hydrocarbon Generation, Incorporated (Hydrocarbon) natural gas facilities, known as the Sheldon System, located in Wyoming County, New York, as well as the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Columbia states that on February 20, 2002, Columbia and Hydrocarbon signed a Purchase and Sale Agreement, which provides for the sale of the Sheldon System consisting of 15 miles of pipelines ranging in diameter from 4-inch to 10-inch and appurtenances. The Sheldon System was part of Columbia's former Project Penny facilities, which were developed in the mid 1970's and 1980's for the purpose of accessing production volumes to satisfy the supply needs of Columbia's customers. In Docket No. CP98–569–000, Columbia was given authorization to abandon by sale all but two parts of the Project Penny facilities, one being the Sheldon System and another which has not yet been sold. Columbia states that the Sheldon System is not connected to any part of Columbia's system. Columbia receives the volumes of local production from producers such as Hydrocarbon and the gas that is received is largely consumed by local markets. Any volumes that are not consumed are delivered to National Fuel for delivery to Columbia by displacement.

According to Columbia, the facilities will be sold for a negotiated amount of $50,000. Columbia states that it does not propose the abandonment of service to customers other than those currently served directly from the facilities. Once the facilities are acquired, Hydrocarbon intends to operate the facilities as a natural gas gatherer providing gathering and related services. According to Columbia, Hydrocarbon has agreed to assume any obligation Columbia may have to provide service to customers receiving service through the facilities, on terms and conditions acceptable to both Hydrocarbon and the customers. Therefore, Columbia states that it does not anticipate any material change to, or interruption in, the services currently being provided to customers through the facilities. Columbia states that there are no firm contracts or mainline tap consumers served from the facilities.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before March 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6245 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–97–000]

West Texas Gas Inc.; Notice of Application

March 11, 2002.

Take notice that on March 4, 2002, West Texas Gas, Inc. (WTG) filed in Docket No. CP02–97–000 an application, pursuant to Section 3 of the Natural Gas Act (NGA), Section 153, *et seq.*, of the Commission's Regulations, for a Section 3 authorization and the Presidential Permit in order to site, construct, operate, and maintain certain natural gas facilities, all as more fully described below. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202) 208–2222 for assistance).

Specifically, WGT requests authorization to construct, operate, and maintain approximately 400 feet of 8-inch diameter pipeline (border crossing) at the International Boundary near Del Rio, Val Verde County, Texas for the delivery of up to 25,000 MMBtu per day of natural gas to Mexico. The border crossing, situated at the center of the Rio Grande River, will connect on the Mexico side with the pipeline facilities of Gas Natural Industrial, S.A de C. V. (GNI) and, on the U.S. side, with approximately nine miles of 8-inch diameter pipeline and related measurement and regulation equipment to be constructed, which will extend from WGT's existing Del Rio Lateral on its intrastate natural gas transmission system.

Any questions regarding the application should be directed to Richard D. Hatchett, Vice President, West Gas Texas, Inc., 211 North Colorado, Midland, Texas, or at (915) 682–4349.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 1, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Interventions, comments, and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6242 Filed 3–15–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Fact-Finding Investigation of Potential ManipulationDocket No. PA02–2–000 of Electric and Natural Gas Prices; Notice of Clarification of March 5, 2002 Information Request

March 11, 2002.

On March 5, 2002 (67 FR 11111, March 12, 2002), the Associate Director, Office of Markets, Tariffs and Rates, issued an information request in this proceeding directed to all jurisdictional sellers and all non-jurisdictional sellers in the West. In response to telephone inquiries received by Staff, the Associate Director clarifies that the March 5, 2002, information request does not apply to sales by qualifying facilities. The Associate Director reserves the right to issue information requests to qualifying facilities in the future in this proceeding.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6244 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–100–000, et al.]

Choctaw Gas Generation, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 8, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Choctaw Gas Generation, LLC

[Docket No. EG02–100–000]

Take notice that on March 5, 2002, Choctaw Gas Generation, LLC (Applicant), having its principal place of business at 1177 West Loop South, Suite 900, Houston, Texas 77027, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will own and operate a 700 MW generating facility near the city of Choctaw, Mississippi, consisting of two natural gas-fired combined-cycle combustion turbine generator units and a steam turbine generator, having a total nominal output of 700 MW. *Comment Date*: March 29, 2002.

2. Mirant Oregon, LLC

[Docket No. EG02–101–000]

Take notice that on March 6, 2002, Mirant Oregon, LLC (Mirant Oregon) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Mirant Oregon proposes to own an indirect, 50 percent undivided interest in a 280 MW generating facility located in Morrow County, Oregon (Facility). All output from Mirant Oregon's interest in the Facility will be sold by Mirant Oregon exclusively at wholesale. All requisite state consent has been obtained and is reflected in Oregon Public Utility Commission Order Nos. 00–115 and 00–214 attached to the application. *Comment Date*: March 29, 2002.

3. System Energy Resources, Inc.

[Docket No. ER95–1042–006]

Take notice that on March 1, 2002, Entergy Services, Inc. (Entergy Services) as agent for System Energy Resources, Inc. (SERI), submitted for filing its response to the January 30, 2002 letter in the above-referenced docket number ER95–1042–005. *Comment Date*: March 21, 2002.

4. American Transmission Company LLC

[Docket Nos. ER01–1107–001]

Take notice that on March 1, 2002, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission's (Commission) January 30, 2002 letter Order an executed Revised Network Operating Agreement and an executed Second Revised Network Integration Service Agreement between ATCLLC and Dairyland Power Cooperative.

ATCLLC requests an effective date of February 13, 2002. *Comment Date*: March 21, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–438–001]

Take notice that on February 28, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing, pursuant to the Order of the Federal Energy Regulatory Commission (Commission) in Midwest Independent Transmission System Operator Inc., 98 FERC ¶ 61,051 (2002), Section 205 of the Federal Power Act (FPA), 16 USC 824d (2000) and Section 385.205 of the Commission's regulations, 18 CFR 385.205 (2001), revisions to Attachment M (Losses) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1.

The Midwest ISO has requested an effective date of March 1, 2002.

Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request. *Comment Date*: March 21, 2002.

6. Conectiv Bethlehem, Inc.

[Docket No. ER02–453–002]

Take notice that Conectiv Bethlehem, Inc., on March 4, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised page of CBI's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, to comply with a letter order issued by the Commission on January 31, 2002 in the above-captioned proceeding. *Comment Date*: March 25, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–489–001]

Take notice that on March 4, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revised pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, pursuant to the Commission's Order in Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,087 (2002).

Pursuant to the requirements set forth in 18 CFR 385.2010 (2001), the Midwest ISO has served a copy of its compliance filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. Finally, the Midwest ISO has electronically posted its filing on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request. *Comment Date*: March 25, 2002.

8. Michigan Electric Transmission Company

[Docket No. ER02–562–001]

Take notice that on March 4, 2002, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the February 1, 2002 order issued in this proceeding: Sub Second Revised Sheet No 140 and Substitute Original Sheet Nos. 140A and 140B.

The sheets are to be effective as of December 13, 2001. Copies of the filing were served upon those on the official service list in this proceeding. *Comment Date*: March 25, 2002.

9. Southern Company Services, Inc.

[Docket No. ER02–1210–000]

Take notice that on March 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed one (1) agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a department of SCS, as agent for Mississippi Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the East Mississippi Electric Power Association's DENA Enterprise Delivery Point. This agreement is being filed in conjunction with a power sale by SCS, as agent for Mississippi Power Company, to the East Mississippi Electric Power Association under Southern Companies' Market-Based Rate Power Sales Tariff. *Comment Date*: March 22, 2002.

10. Exelon Generation Company, LLC

[Docket No. ER02–1211–000]

Take notice that on March 1, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Duke Energy Trading & Marketing, LLC under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2 *Comment Date*: March 22, 2002.

11. Carolina Power & Light Company

[Docket No. ER02–1212–000]

Take notice that on March 1, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) between CP&L and Cogentrix Eastern Carolina, LLC (Cogentrix). The Interconnection Agreement provides for the interconnection of Cogentrix's generating facility with CP&L's transmission system.

CP&L respectfully requests that the Interconnection Agreement become effective on February 4, 2002. Copies of the filing were served upon the North Carolina Utilities Commission and the attached List of Recipients. *Comment Date*: March 22, 2002.

12. Mirant Energy Trading, L.L.C.

[Docket No. ER02–1213–000]

Take notice that on March 1, 2002, Mirant Energy Trading, L.L.C. (MET) tendered for filing an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. MET requested expedited Commission consideration. MET requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or March 31, 2002. MET also filed its FERC Electric Tariff No. 1. *Comment Date*: March 22, 2002.

13. Invenergy Energy Marketing LLC

[Docket No. ER02–1214–000]

Take notice that on March 1, 2002, Invenergy Energy Marketing LLC (Invenergy Marketing) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule FERC No. 1, Original Volume No. 1. Invenergy Marketing proposes that its Rate Schedule FERC No. 1, Original Volume No. 1 become effective upon issuance of a Commission order accepting the rate schedule for filing.

Invenergy Marketing intends to sell energy, capacity, replacement reserves, and certain ancillary services in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party. Invenergy Marketing also seeks authority to reassign transmission capacity and to resell Firm Transmission Rights. *Comment Date*: March 22, 2002.

14. American Electric Power Service Corporation

[Docket No. ER02–1215–000]

Take notice that on March 1, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), an Interim Qualified Scheduling Entity Service Agreement (Agreement).

AEP requests that the Agreement be made effective on March 3, 2002. Copies of the filing have been served on the party to the Agreement as well as on the Public Utility Commission of Texas. *Comment Date*: March 22, 2002.

15. American Electric Power Service Corporation

[Docket No. ER02–1216–000]

Take notice that on March 1, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), seven Interim Qualified Scheduling Entity Service Agreements (Agreements).

AEP requests that the Agreements be made effective on March 3, 2002. Copies of the filing have been served on the parties to the Agreements as well as on the Public Utility Commission of Texas. *Comment Date*: March 22, 2002.

16. Valero Refining Company—California

[Docket No. ER02–1217–000]

Take notice that on March 1, 2002, Valero Refining Company—California (Valero) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Valero rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Valero will construct and operate a natural gas fired, combined-cycle electric generation facility. The electric output of the facility will be used for onsite purposes, with periodic excess electric energy to be sold at wholesale. Valero is an indirect, wholly owned subsidiary of Valero Energy Corporation, a Delaware corporation. *Comment Date*: March 22, 2002.

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17. Duke Energy Corporation

[Docket No. ER02–1218–000]

Take notice that on March 1, 2002, Duke Energy Corporation filed a Third Revised Service Agreement No. 53 to Duke's FERC Electric Tariff Second Revised Volumn No. 4

Comment Date: March 22, 2002.

18. Bangor Hydro-Electric Company

[Docket No. ER02–1219–000]

Take notice that on March 1, 2002, Bangor Hydro-Electric Company (BHE) tendered for filing an Operation and Maintenance Agreement between BHE, Great Northern Paper, Inc. (GNP), and Great Lakes Power, Inc. (GLPI).

Copies of this filing were sent to GNP, GLPI, Maclaren Energy, Inc., the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: March 22, 2002.

19. Central Maine Power Company

[Docket No. ER02–1220–000]

Take notice that on March 4, 2002 Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Wight Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 143.

Comment Date: March 25, 2002.

20. Central Maine Power Company

[Docket No. ER02–1221–000]

Take notice that on March 4, 2002, Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Gardner Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 144.

Comment Date: March 25, 2002.

21. Central Maine Power Company

[Docket No. ER02–1222–000]

Take notice that on March 4, 2002, Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Stony Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 142.

Comment Date: March 25, 2002.

22. Central Maine Power Company

[Docket No. ER02–1223–000]

Take notice that on March 4, 2002 , Central Maine Power Company (CMP) tendered for filing unexecuted Local Network Operating Agreements (LNOAs) and unexecuted service agreements for Local Network Transmission Service (LNSA) entered into with four retail customers: Miller Hydro Group; Topsham Hydro Partners; United American Hydro, L.P.; and CHI Operations, Inc.—Mechanic Falls Hydro. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Fifth Revised Volume No. 3, under the following Service Agreement Numbers:

Miller Hydro Group LNSA—Service Agreement No. 145
Miller Hydro Group LNOA—Service Agreement No. 146
United American Hydro LNSA—Service Agreement No. 147
United American Hydro LNOA—Service Agreement No. 148
CHI Operations, Inc. LNSA—Service Agreement No. 149
CHI Operations Inc. LNOA—Service Agreement No. 150
Topsham Hydro LNSA—Service Agreement No. 151
Topsham Hydro LNOA—Service Agreement No. 152.

Comment Date: March 25, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–1224–000]

Take notice that on March 4, 2002, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Delta Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Delta Energy Center, LLC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective February 8, 2002.

Comment Date: March 25, 2002.

24. California Independent System Operator Corporation

[Docket No. ER02–1225–000]

Take notice that on March 4, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Scheduling Coordinator Agreement between the ISO and TransAlta Energy Marketing (U.S.) Inc., for acceptance by the Commission.

The ISO states that this filing has been served on TransAlta Energy Marketing (U.S.) Inc. and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective February 8, 2002.

Comment Date: March 25, 2002.

25. California Independent System Operator Corporation

[Docket No. ER02–1226–000]

Take notice that on March 4, 2002,the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Delta Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Delta Energy Center, LLC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective February 8, 2002.

Comment Date: March 25, 2002.

26. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1227–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Ameren Energy Marketing Company.

A copy of this filing was sent to Ameren Energy Marketing Company.

Comment Date: March 25, 2002.

27. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1228–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by CMS MS&T Michigan L.L.C.

A copy of this filing was sent to CMS MS&T Michigan L.L.C.

Comment Date: March 25, 2002.

28. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1229–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission)

Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Kansas City Power & Light Company.

A copy of this filing was sent to Kansas City Power & Light Company.

Comment Date: March 25, 2002.

29. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1230–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by NRG Power Marketing Inc.

A copy of this filing was sent to NRG Power Marketing Inc.

Comment Date: March 25, 2002.

30. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1231–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Public Service Company of Colorado-Marketing.

A copy of this filing was sent to Public Service Company of Colorado-Marketing.

Comment Date: March 25, 2002.

31. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1232–000]

Take notice that on March 4, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Southwestern Public Service Company-Marketing.

A copy of this filing was sent to Southwestern Public Service Company-Marketing.

Comment Date: March 25, 2002.

32. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1233–000]

Take notice that on March 4, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Wolverine Power Supply Cooperative, Inc.

A copy of this filing was sent to Wolverine Power Supply Cooperative, Inc.

Comment Date: March 25, 2002.

33. Pinnacle West Capital Corporation

[Docket No.ER02–1234–000]

Take notice that on March 4, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 9 under PWCC's Rate Schedule FERC No. 1 for service to Central Arizona Water Conservation District (CAW).

A copy of this filing has been served on CAW.

Comment Date: March 25, 2002.

34. Central Illinois Light Company

[Docket No. ER02–1235–000]

Take notice that on March 4, 2002,Central Illinois Light Company (CILCO), tendered for filing with the Commission a Service Agreement with Corn Belt Energy Corporation under its Market Rate Power Sales Tariff.

CILCO requested an effective date of April 1, 2002. Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: March 25, 2002.

35. Illinois Power Company

[Docket No. ER02–1236–000]

Take notice that on March 4, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Termination, effective at 11:59 p.m., January 15, 2002, of the Firm Short-Term Point to Point Transmission Service Agreement and the Non-Firm Point to Point Transmission Service Agreement, entered into by Illinois Power and The Legacy Energy Group, LLC, each dated May 16, 2001 and effective on June 1, 2001, as Original Service Agreement Nos. 304 and 310, respectively, under FERC Electric Tariff Third Revised Volume 8 of Illinois Power.

Illinois Power states that the termination has been requested by the customer and agreed to by Illinois Power. Illinois Power further states that a copy of the Notice of Termination has been mailed to the customer.

Comment Date: March 25, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6241 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12146–000.

c. *Date filed:* January 30, 2002, supplemented March 6, 2002.

d. *Applicant:* Paul C. Rizzo Associates, Inc.

e. *Name of Project:* St. Michael Pump Storage Project.

f. *Location:* In Adams Township, Cambria County, Pennsylvania. The project does not utilize federal or tribal lands.

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g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Paul C. Rizzo, Paul C. Rizzo Associates, Inc., 105 Mall Boulevard, Monroeville, Pennsylvania 15146, (412) 856–9700.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Please include the project number (P–12146–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed rockfill dike impounding a proposed 100-acre upper reservoir, (2) a proposed upper concrete intake structure, (3) a proposed 125-foot-high, 1,000-foot-long earthen dam impounding a proposed 77-acre lower reservoir, (4) a proposed lower concrete intake structure, (5) three proposed eight-foot-diameter steel penstocks approximately 5,000 feet long, (6) a proposed powerhouse containing three pump turbines having a total installed capacity of 60 MW, (7) a proposed 1.5-mile-long, 66 kV transmission line, and (8) appurtenant facilities. The project would have an annual generation of 178.8 Gwh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant (s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6243 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. A mailing error has occurred; therefore, this notice is being reissued and the deadline for filing is extended.

a. *Application Type:* Amendment of License.

b. *Project No.:* 4204–024.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* City of Batesville (City).

e. *Name of Project:* White River Lock and Dam No. 1 Hydroelectric Project.

f. *Location:* The project is located on the White River, in the Town of Batesville, Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street NW, Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or e-mail address: *dhclarke@GKRSE-law.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or e-mail address: *janet.hutzel@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

k. This notice was issued January 29, 2002, with a comment date of February 28, 2002, and is being reissued with an extended deadline for filing.

All documents (original and eight copies) should be filed with: Magalie R.Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4204–024) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, motions to intervene, and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://www.ferc.gov*, under the "e-Filing" link.

l. *Description of Amendment:* The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). The City of Batesville now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. The City thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed 25 kV transmission line would extend along the north side of the White River westward 9.6 miles from Lock and Dam No. 1 to the proposed substation. Underground transmission line is proposed for the first 3000 ft from Lock and Dam No. 1, while the remaining line would use single pole structures.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number (No. 4204–024) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the City of Batesville specified in item h, above.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative listed in item h, above.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6246 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000,RT01–10–000, RT01–15–000, ER02–323–000,RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (RTO Cost Benefit Analysis Report); Notice of Technical Conference on Results of RTO Cost Benefit Report

March 8, 2002.

The Federal Energy Regulatory Commission (Commission) is planning to hold a technical conference at its Washington, DC, headquarters on March 25, 2002 to allow the public and all interested participants an opportunity to ask questions about the results of its RTO Cost Benefit Report. This technical conference is in additional to the regional teleconferences announced in our March 1, 2002 notice. The technical conference will be held from 10:00 am-2:00 pm EST in the Commission's Meeting Room. All previously scheduled regional teleconferences for industry and the public will still be held on March 18 and 19, 2002 .

Like the regional technical teleconferences, the March 25th technical conference is designed to assist participants in understanding the results of the RTO Cost Benefit Report and not to discuss the merits of the Commission's RTO policy. The Commission believes that this conference and the regional teleconferences will assist the participants in preparing comments on the report which are due April 9, 2002. Reply comments are still due April 23, 2002.

No telephone communication bridge will provided at this meeting. The technical conference will be transcribed

and the transcript will be placed in appropriate and related dockets. Copies of the transcripts will be available from Ace-Federal Reporters (800–336–6646 or 202–347–3700) at cost and will be available on the Commission's web site 10 days after receipt from Ace-Federal Reporters.

For further information, please contact either: William Meroney at 202–208–1069 or William.meroney@ferc.gov, Charles Whitmore at 202–208–1256 or Charles.whitmore@ferc.gov, Federal Energy Regulatory Commission, 888 N. Capitol Street, NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6248 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P A

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000, RT01–10–000, RT01–15–000, ER02–323–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (Cost Benefit Analysis Report); Instructions for Participating in the RTO Cost Benefit Report Teleconferences for Industry and the Public

March 8, 2002.

As described in its March 1, 2002 Notice of Regional Teleconferences and Due Dates for Comments and Reply Comments, the Commission's staff and ICF Consulting will conduct regional teleconferences with members of Industry and the Public on March 18 and 19, 2002. The purpose of the teleconferences is to discuss the results of the RTO Cost Benefit Report and assist interested persons in preparing comment on the report which are due on April 9, 2002. Reply comments are due April 23, 2002.

To participate in the teleconferences, all interested persons must call 1–888–593–9820, within 15 minutes of the scheduled time of the each teleconference. Please provide the operator with your name, the code word for the specific teleconference, and the contact name as listed below. In order to facilitate discussion, it will be more efficient if persons from one organization or group call in on one telephone line. The teleconferences will be transcribed and transcripts will be placed in the appropriate dockets.

Industry and Public Teleconferences

1. Monday, March 18—10 a.m. to 12 p.m. EST. Code Word: MIDWEST. Contact: Ed Meyers.
2. Monday, March 18—2 p.m. to 4 p.m. EST. Code Word: SOUTHEAST. Contact: Ed Meyers.
3. Tuesday, March 19—10 a.m. to 12 p.m. EST. Code Word: NORTHEAST. Contact: Ed Meyers.
4. Tuesday, March 19—2 p.m. to 4 p.m. EST. Code Word: WESTERN. Contact: Ed Meyers.

If you have questions about the teleconferences, please contact one of the persons below.

William Meroney at 202–208–1069
William.meroney@ferc.gov.
Charles Whitmore at 202–208–1256
Charles.whitmore@ferc.gov.
Federal Energy Regulatory Commission, 888 N. Capitol Street, NE., Washington DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6249 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 8, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Docket No.	Date filed	Presenter or requester
1. CP01–176–000	03–05–02	Richard Gilda.
2. CP01–176–000	03–05–02	Barbara E. Brenner.
3. CP01–176–000	03–05–02	Michael Kaufman.
4. Project No. 2342	03–06–02	James H. Hulbert.
5. CP01–361–000	03–08–02	Yvonne Dettlaff, *et al.*
6. CP01–439–000	03–08–02	Annette Paynter.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6247 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FR–FRL–6627–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001, (66 FR 27647).

Draft EISs

ERP No. D–BLM–L65391–OR Rating EC2, Lakeview Resource Management Plan, Unified Land Use Plan to Replace All or Portions of Three nearly Twenty Year Old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR.

Summary: EPA expressed environmental concerns about lack of information on the management of noxious weeds, impacts to water and air quality and roads, and protection of tribal interests. EPA requested that these issues be fully addressed in the final EIS.

Final EISs

ERP No. F–AFS–G65076–OK, Quachita National Forest, An Amendment to the Land and Resource Management Plan, Implementation, Glover River, McCurtain County, OK.

Summary: EPA has no objection to the selection of the preferred alternative, Alternative C.

ERP No. F–AFS–J65349–UT, Griffin Springs Resource Management Project, Implementation, Commercial Timber Ha:vesting, Aspen Regeneration, Management Ignited Prescribed Fire and Road Work, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA continues to express environmental concerns that there was no scientific evidence presented for the use of thinning to prevent a spruce beetle epidemic and regarding the attempt to segregate travel management analysis and decisions from site-specific project decisions.

ERP No. F–NRC–J00031–UT, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT.

Summary: EPA continues to have environmental concerns with the emergency response procedures and the characterization of Clean Water Act Requirements. EPA requested that these concerns be addressed in the Record of Decision.

ERP No. F–USN–K11033–CA, El Toro Marine Corps Air Station Disposal and Reuse, Recommendation and Approval of an Airport Layout Plan for Civilian Airport, Funding, NPDES Permit, Orange County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11105–CA, Point Molate Property Naval Fuel Depot (NFD) for the Disposal and Reuse, Implementation, Fleet and Industrial Supply Center, City of Richmond, Contra Costa County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FC–NRC–A00164–00, Generic—License Renewal of Nuclear Power Plants, Supplement 5, Turkey Point Units 3 and 4 (NUREG–1437), Operating License Renewal, Biscayne Bay, Miami-Dade County, FL.

Summary: EPA continues to have environmental concerns about the project, Specifically noise impacts to nearby Biscayne National Park merit further discussion as the project progresses.

Dated: March 12, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6293 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed March 4, 2002 Through March 8, 2002,

Pursuant to 40 CFR 1506.9.

EIS No. 020087, Draft EIS, FHW, CT, Groton-New London Airport, Construction of Runway 5–23 Safety Area, Permits and Approvals, Town of Groton, New London County, CT, *Comment Period Ends:* May 10, 2002, *Contact:* John Silva (781) 238–7502.

EIS No. 020088, Draft EIS, AFS, PA, Lewis Run Project, Management Strategies for Road Construction and Reconstruction, Timber Management Activities, Soil and Water Improvements, Wildlife Habitat Enhancements and Recreation Improvements, Implementation, Lewis Run Project Area, Bradford Ranger District, Allegheny National Forest, McKean County, PA, *Comment Period Ends:* April 29, 2002, *Contact:* Andrea Hille, Ext. 129 (814) 362–4613.

EIS No. 020089, Draft EIS, FHW, WV, KY, Appalachian Corridor I–66 Highway Construction, U.S. 23/119 south of Pikeville, KY eastward to the King Coal Highway southeast of Matewan, Funding and U.S. Army COE Section 404 Permits Issuance, Pike County, KY and Mingo County, WV, *Comment Period Ends:* April 29, 2002, *Contact:* Jose Sepuveda (502) 223–6764.

EIS No. 020090, Draft EIS, AFS, Mt, Bitterroot National Forest Noxious Weed Treatment Project, Ground and Aerial Herbicides Application, Mechanical, Biological and Cultural Weed Treatment and Public Awareness Measures, Implementation, Stevensville Ranger District, Bitterroot National Forest, Ravalli County, MT, *Comment Period Ends:* April 30, 2002, *Contact:* Ken Hotchkiss (406) 777–5461.

EIS No. 020091, Final EIS, COE, CA, Pine Flat Dam Fish and Wildlife Habitat Restoration Investigation, Restoration and Protection of the Ecosystem for Fish and Wildlife Resources, King River Basin, Fresno County, CA, *Wait Period Ends:* April 15, 2002, *Contact:* John Bellinger (202) 761–4831.

EIS No. 020092, Draft Supplement, FAA, FL, Fort Lauderdale-Hollywood International Airport, New Information and Changes to the Aviation Activity Forecasts Presented, Proposed Expansion of Runway 9R–2FL and other Associated Improvements, Funding, Broward County, FL, *Comment Period Ends:* April 29, 2002, *Contact:* Virginia Lee (407) 812–6331 ext 29.

EIS No. 020093, Draft EIS, FHW, NV, Boulder City/U.S. 93 Corridor Study, Study Limits are between a western boundary on U.S. 95 in the City of Henderson, where the Present Freeway ends, and an Eastern boundary on U.S. 93 approximately 4.7 miles east of downtown Boulder City, NPDES, Right-of-Way and COE Section 404 Permits, Clark County, NV, *Comment Period Ends:* May 10, 2002, *Contact:* Daryle James (775) 888–7013.

EIS No. 020094, Final EIS, FHW, IL, U.S. 34/FAP 313 Transportation Facility Improvement Project, U.S. 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and U.S. Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL, *Wait Period Ends:* May 13, 2002, *Contact:* Norman R. Stoner (217) 492–4600.

EIS No. 020095, Final EIS, AFS, NH, Loon Mountain Ski Resort Development and Expansion Project, Implementation,

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Special Use Permit and NPDES Permit issuance, White Mountain National Forest, Pemgewasset Ranger District, Grafton County, NH, *Wait Period Ends:* April 15, 2002, *Contact:* Jay Strand, Ext. 522 (802) 767–4261.

EIS No. 020096, Final EIS, AFS, ID, Curfew National Grassland Land and Resource Management Plan, Implemetation, Caribou-Targhee National Forest, Oneida County, ID, *Wait Period Ends:* April 15, 2002, *Contact:* Jerry B. Reese (208) 557–5761.

EIS No. 020097, Final EIS, FHW, MI, MI–59 Proposed Right-of-Way Preservation Project, Funding for Right-of-Way Perservation Project, Funding for Right-of-Way Acquisition, I–96 to U.S. 23, Livingston County, MI, *Wait Period Ends:* April 29, 2002, *Contact:* James A. Kirschensteiner (517) 702–1835.

EIS No. 020098, Draft Supplement, COE, IL, WI, Upper Des Plaines River, Flood Damage Reduction at Site 37, Construction of a Concrete Floodwall along Des Plaines River, Milwaukee Avenue, Willow Road, and Palatine Road in Mt. Prospect, Cook County, IL, *Comment Period Ends:* April 29, 2002, *Contact:* Keith Ryder (312) 353–6400 ext. 2020.

EIS No. 020099, Final EIS, AFS, MT, WA, ID, Programmatic EIS—Kootena, Idaho Panhandle, and Lolo National Forests, Forest Plan Amendments for Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones, ID, WA and MT, *Wait Period Ends:* April 15, 2002, *Contact:* Rob Carlin (406) 882–4451.

Amended Notices

EIS No. 020074, Final EIS, FHW, AR, TX, US 71 Highway Improvement Project, between Texarkana, (US71) Arkansas and DeQueen, Funding, Right-of-Way Approval and COE Section 404 Permit, Little River, Miller and Sevier Counties, AR and Bowie County, TX, *Wait Period Ends:* April 15, 2002, *Contact:* Randal J. Looney (501) 324–6430.

Revision of FR Notice Published on 03/01/2002: CEQ Comment Period Ending 04/01/2002 has been extended to 04/15/2002. Also Correction to Contact Name and Telephone.

Dated: March 12, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6294 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7159–4]

Office of Emergency and Remedial Response Availability of Superfund Annual Report to Congress; Progress Toward Implementing Superfund Fiscal Year 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the Agency's Progress Toward Implementing Superfund: Fiscal Year 1998, which is required by section 301(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. The Report to Congress contains information on overall progress, and includes the following categories of information specifically required by section 301(h) of CERCLA: Feasibility studies, remedial and enforcement actions; an evaluation of newly developed and feasible permanent treatment technologies; progress in reducing the number of facilities subject to review under section 121(c) of CERCLA; and an estimate of resources needed by the Federal Government to complete CERCLA's implementation. The Report also includes information required by section 105(f) of CERCLA about the participation of minority firms in Superfund contracting; and the EPA Inspector General audit report required by section 301(h)(3) of CERCLA.

ADDRESSES: Published copies of the Report may be purchased by the public from the National Technical Information Service (NTIS) at 5285 Port Royal Road, Springfield, VA, 22161 (call 703–487–4650). Electronic copies of the Report may be downloaded from EPA's Web site, *http://www.epa.gov/superfnd/oerr/accomp/index.htm#reptocong.*

FOR FURTHER INFORMATION CONTACT: David Reynolds, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or 703–603–9026 or *reynolds.david@epa.gov.*

Dated: March 7, 2002.

Michael H. Shapiro,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–6274 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 4, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 14, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0068.

Title: Application for Consent to Assign an Experimental Authorization.

Form Number: FCC 702.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 10.

Estimated Time per Response: 0.6 hr. (36 mins.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 6 hrs.

Total Annual Costs: $500.

Needs and Uses: In November 2001, the FCC revised and reinstated FCC Form 702. The Communications Act of 1934, as amended, and 47 CFR 5.59 of FCC Rules require applications for Experimental Radio Services to submit FCC Form 702 when the legal right to control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a station authorization or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner. Form 702's revisions were the following: (1) The expiration date was deleted; (2) Section 1 (Fee Portion) was deleted; (3) questions 2, 4, 7b, 7c, 9, 10, 13–19, and 12c–26 were removed; (4) the **FOR FCC USE ONLY** fields were removed; (5) assignor's and assignee's e-mail address fields were added; (6) a field for "FCC Registration Number (FRN)" was added; (7) the instructions pertaining Section I (Fee Portion) were removed; (8) the "No. of Stations" and "Service" columns were deleted (9) the item numbers were changed; (10) instructions referring to FCC Forms 159 and 160 were added; (11) an Internet URL for the FCC Registration Number (FRN) was added; (12) the Experimental Radio Service address was added; (13) the courier address changed.

OMB Control Number: 3060–0072.

Title: Airborne Mobile Radio Telephone License Application.

Form Number: FCC 409.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 260.

Estimated Time per Response: 5 mins. (0.083 hrs.).

Total Annual Burden: 22 hours.

Total Annual Cost: $13,000.

Needs and Uses: Individuals who intend to become subscribers to a common carrier service use FCC Form 409 to apply for, to modify, and/or to renew their license(s) giving them authority to operate an airborne mobile radio telephone. In recent years, the number of respondents has declined dramatically.

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC 854 and FCC 854R.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Non-Profit Institutions; and state, local, or tribal government.

Number of Respondents: 9,000.

Estimated Time per Response: 30 Minutes.

Total Annual Burden: 6,750 hours.

Total Annual Costs: $182,000.

Needs and Uses: Owners of wire or radio communications towers with antenna structures use FCC Form 854 to register their structures within the United States, to notify the Commission when a structure has been built, to make changes to an existing registered structure, or to notify the Commission when a structure is dismantled. 47 CFR part 17 and sections 303(q) and 503(b)(5) of the Communications Act, as amended, authorize the FCC to require the painting and/or illumination of radio towers where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. The FCC uses FCC Form 854R to notify an owner that the Commission has registered the tower structure, its modification, or the change of ownership.

OMB Control Number: 3060–0707.

Title: Over-the-Air Reception Devices.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal government; Individuals or households.

Number of Respondents: 320.

Estimated Time per Response: 2 to 6 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,240 hours.

Total Annual Costs: $144,280.

Needs and Uses: The FCC uses petitions for waivers of Section 207 rules to determine whether the state, local, or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions of the use of over-the-air reception devices.

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 30 mins. (0.5 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,200 hours.

Total Annual Costs: None.

Needs and Uses: Under 47 CFR 76.946 of FCC Rules, cable operators that advertise for basic service and cable programming service tiers are required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas, having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures, may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a "fee plus" rate that indicates the core rate plus the range of possible additions, depending upon the particular location of the subscriber. This requirement is to make consumers aware of all fees associated with basic service and cable programming service tier rates.

OMB Control Number: 3060–0795.

Title: Associate WTB Call Signs and Antenna Registration Numbers with Licensee's FRN.

Form Number: FCC 606.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 429,000.

Estimated Time per Response: 1 hour.

Total Annual Burden: 429,000 hours.

Total Annual Costs: None.

Needs and Uses: Licensees use FCC Form 606 to associate their FCC Registration Number (FRN) with their Wireless Telecommunications Bureau call signs and antenna structure registration numbers. In addition, those antenna structure tenant licensees subject to the Anti-Drug Abuse Act of 1998 must use Form 606 to register their antenna structures. The form must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration and prior to applying for an initial Wireless Telecommunications license or antenna structure registration. The Commission is revising FCC Form 606 and its instructions to remove information about the TIN registration requirements (including the title of the form) due to the implementation of the Commission Registration System (CORES) and to facilitate compliance with the Debt Collection Improvement Act of 1996 (DCIA).

OMB Control Number: 3060–0862.

Title: Handling Confidential Information, GC Docket No. 96–55.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 600.

Estimated Time per Response: 1 to 3 hours.

Total Annual Burden: 800 hours.

Total Annual Costs: $23,000.

Needs and Uses: On August 4, 1998, the FCC released *a Report and Order, Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission (R&O)* in GC Docket No. 96–55. The R&O included a Model Protective Order (MPO) that is used, when appropriate, to grant limited access to information that the Commission determines should not be routinely available for public inspection. The party granted access to the confidential information materials must keep a written record of all copies made and provide this record to the submitter of the confidential materials on request. The approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to materials. In addition, the FCC amended 47 CFR 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment. This listing of the types of information to be submitted was adopted to provide guidance to the public for confidentiality requests.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6313 Filed 3–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 7, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 14, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jbherman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0243.

Title: Section 74.551, Equipment Changes.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 1.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 1 hour.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 74.551(b) requires licensees of aural broadcast studio transmitter links (STL) or intercity relay stations to notify the Commission in writing of minor changes that can be made without prior Commission authorization upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with FCC rules and regulations.

OMB Control No.: 3060–0245.

Title: Section 74.537, Temporary Authorizations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 12.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 21 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 74.537 requires licensees of an aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. The data is used by FCC staff to insure that the temporary operation of a STL or intercity relay station will not cause interference to existing stations.

OMB Control No.: 3060–0290.

Title: Section 90.517, Report of Operation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, state, local or tribal government.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 200 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 90.517 provides developmental authorizations that are usually employed licensees who wish to test and develop new use of radiocommunications facilities. Each such developmental licensee must report upon termination of development, or application for license renewal, specific information evaluating the usefulness of previous or desired continued operation of such a system. Commission personnel use the data to evaluate the need for renewal of the applicant's authorization. This information is also used by policy-making personnel to decide the desirability of instituting rulemaking proceedings involving new technologies or new uses of the radio spectrum.

OMB Control No.: 3060–0434.

Title: Section 90.207(e)(6), Stolen Vehicle Recovery System Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 80 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Applications for base stations operating on a particular frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located with 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Applicants will have to certify to certain requirements set out in rule section 90.20(e)(6).

OMB Control No.: 3060–0537.

Title: Section 13.217, Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 15.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 15 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Recordkeeping requirement.

Needs and Uses: Each COLEM recovering fees from examinees must maintain records of expenses and revenues, frequency of examinations administered, and examination pass rates. Records must cover the period from January 1 to December 31 of the preceding year and must be submitted as directed by the Commission. Each COLEM must retain records for 1 year and the records must be made available to the FCC upon request.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6314 Filed 3–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission is seeking comments from the shipping public on current laws, rules, and policies of the Government of the People's Republic of China that appear to have an adverse impact on U.S. shipping, and which may merit Commission attention under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988. The Commission is seeking information on the impact of new Chinese legislation on U.S. oceanborne trade, as well as the effects of that legislation on a number of existing Chinese practices and restrictions. Interested parties, including shippers, transportation intermediaries, vessel operators and others in the shipping industry, are invited to comment.

DATES: Comments due on or before June 13, 2002.

ADDRESSES: Send comments (original and 20 copies) to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5725.

FOR FURTHER INFORMATION, CONTACT: David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

This proceeding was initiated on August 12, 1998, to gather information regarding certain apparently restrictive laws, rules and regulations of the People's Republic of China ("PRC" or "China") in order to determine if further Commission action under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988 was warranted.[1] In its effort to continue to monitor the issues identified in this proceeding, the Commission, by this Notice of Inquiry is inviting affected parties to comment on the effects of recent changes in Chinese law.

The Commission has learned that the PRC recently issued a new law, "Regulations of the PRC on the International Maritime Transportation," which became effective January 1, 2002,[2] and is expected very soon to promulgate implementing regulations addressing requirements for operators in international shipping generally. It appears that this new law and regulations may significantly affect the Commission's review of the potentially restrictive practices that existed prior to January 1, 2002. Therefore, through this Notice of Inquiry, and Information Demand Orders to be formulated as appropriate, the Commission seeks to ensure that it has the most accurate information with regard to these issues, so that it may in turn determine whether any current Chinese laws, rules, regulations or practices merit the initiation of a proceeding under section 19 of the Merchant Marine Act, 1920 ("Section 19"), or the Foreign Shipping Practices Act of 1988 ("FSPA").

The Commission has received expressions of concern regarding the new Chinese legislation from several sources. These include the U.S. Government Executive Branch agencies with responsibilities affecting transportation policy and the conduct of negotiations with foreign governments as well as organizations representing shippers and ocean transportation intermediaries ("OTIs") operating or seeking to provide shipping and shipping-related services in the U.S. trade with China.

A. Comments From Intermediaries

Concerns about the new Chinese shipping legislation were raised in a March 4, 2002 letter to Brucė J. Carlton, Acting Deputy Maritime Administrator, (with copies to the Commission) from the National Customs Brokers and Forwarders Association of America ("NCBFAA"), a trade association of ocean freight forwarders and non-vessel-operating common carriers ("NVOCCs"): NCBFAA states that "U.S. intermediary and shipper interests will be directly and discriminatorily affected in an adverse manner."

NCBFAA expresses specific concerns regarding the effects of Chinese law on the ability of its members to do business in China, including possibly conflicting and confusing requirements for direct ownership and control of NVOCC businesses and separate Chinese incorporation of foreign NVOCCs; the required maintenance of substantial funds in Chinese banks (rather than bonding or insurance); provisions governing the filing of rates, waiting periods for rate changes and the confidentiality of service contract rates (which may subject NVOCCs to requirements inconsistent with recently

[1] Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes and directs the Commission, inter alia, to "make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country. * * *."

The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, authorizes the Commission to investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country result in the existence of conditions that (1) adversely affect the operations of United States carriers in the United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States. If the Commission determines that such adverse conditions exist, it may take actions including limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

[2] The law is in the form of a Decree promulgated by the State Council of the PRC on December 5, 2001, signed by Prime Minister Zhu Rong Ji, which was published on December 21, 2001 and became effective on January 1, 2002.

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amended U.S. laws); and the required use of vouchers prepared by Chinese tax authorities to invoice customers in China. NCBFAA identifies other matters as to which the new Chinese law is ambiguous, including whether the PRC intends to regulate rate levels and which entities will be subject to such rate regulation, and the mandatory or other status of rate-fixing conferences, discussion agreements, and capacity fixing agreements.

B. The Executive Agencies

On March 1, 2002, Maritime Administrator William G. Schubert wrote Chairman Harold J. Creel, Jr., expressing concern that the new law may restrict the operations not only of shipping companies, but also of shippers and OTIs. The Administrator further indicates that he has made these concerns known to the Chinese government, and that he has sought clarification on the law and the suspension of the effectiveness of any implementing regulations pending an opportunity to discuss the impact they may have with the Government of the PRC. The Maritime Administration has now announced that a U.S. government delegation will meet with PRC authorities in Beijing March 19–22, 2002 to obtain clarification about the meaning and impact of the Decree and any related implementing regulations.

Discussion and Request for Comments

It appears that U.S. OTIs, carriers and other providers of transportation services may face serious restrictions in obtaining the necessary licenses and permissions to do business in China. Indeed, it appears that wholly foreign-owned NVOCCs continue to be completely barred from engaging in a number of commercial activities, such as offering through transportation as an NVOCC. Other types of services may be permitted, but only if a foreign firm enters a joint venture with a Chinese entity.

The Commission is seeking to establish a clear record of what types of services U.S. NVOCCs or ocean freight forwarders, as those terms are defined by the Shipping Act of 1984, are now permitted to perform in China, what activities are prohibited, what requirements or prerequisites are imposed and what, if any, detrimental effects these requirements and prohibitions have on U.S. companies seeking to do business in China. It would be most useful for the Commission to receive comments describing, in detail, what types of ocean transportation intermediary activities are permitted under Chinese law in effect since January 1, 2002; what are prohibited; and in what situations joint ventures or similar arrangements are required.

The Commission, in order to determine how the new Chinese laws, rules, regulations, policies and/or practices will affect its consideration of whether further Commission action under section 19 or the Foreign Shipping Practices Act may be merited, is now collecting information on the following specific areas.

1. General

Individual companies' accounts of their efforts, successful or otherwise, to establish operations in China, and their dealings with Chinese authorities, would be especially useful. Any supporting documentation would be welcomed. The Commission also seeks to determine the effects on shippers of any such restrictions; that is, will the Chinese law in effect since January 1, 2002 as it is applicable to non-Chinese ocean transportation intermediaries and vessel operators, have any effects on shippers' ability to secure efficient and economical intermodal transportation services in U.S. oceanborne commerce? The Commission would welcome comments from any carrier, shipper, or other party on the details or effects of these issues.

2. Licensing Requirements

The Commission has concerns about apparent new Chinese requirements for the licensing of vessel operators, non-vessel operators, international ocean freight forwarders, shipping agency operators and ship management operators. It is not clear whether there continue to be nationality-or investment-based limitations on a company's ability to obtain certain types of transportation business licenses in China or what the criteria are by which licenses can be withheld or denied, and what, if any, appeal rights applicants enjoy. The Commission would welcome comments from any carrier, shipper, or other party that could shed light on these practices and their effects on U.S.-China oceanborne trade.

3. Branch Offices and Multimodal Transport Operations

It appears that after January 1, 2002, non-Chinese vessel operators continue to face a number of restrictions on operating and increasing the number of the branch offices they may operate in China. For the branch offices that do exist, it appears that there may continue to be serious restrictions on their operations, both in terms of the geographic area they may serve and the scope of services they may offer. A number of these may be the same as, or similar to, the restrictions faced by NVOCCs and freight forwarders in China. Apparently, there are certain narrowly prescribed business areas in which non-Chinese vessel operators are now allowed to operate; however, it remains unclear just what those are as a result of the new Chinese law that went into effect on January 1, 2002.

We are particularly concerned that there may continue to be restrictions that seriously limit vessel operators' and ocean transportation intermediaries' ability to offer multimodal transportation services in China. The Commission requires more information on such restrictions on vessel operators' and ocean transportation intermediaries' branch office or multimodal operations.

4. Rate Filing Requirements

It appears that the new Chinese legislation may require vessel operators and NVOCCs to file the rates they charge customers for carriage to and from China. Please describe the Chinese ministry or regulatory body with whom you must file these matters, how they are filed, and what types of review or analysis of the rates are made by the relevant authority. Describe whether there are any mechanisms to protect the confidentiality of service contract rates. Please also describe what action may be taken by the relevant authority upon a finding that the rate in question does not meet regulatory criteria.

5. Ocean Transportation Intermediaries

What conditions, requirements or restrictions are placed on OTI activities? [3] What types of licenses are required, and what restrictions are placed on their issuance? Who issues the necessary licenses and permissions, and what are the legal standards and procedures for granting them? What are the capital investment or deposit requirements to obtain such a license? Also, what commercial partners are available in China for joint ventures, and under what commercial conditions? If your company had already been doing OTI operations in China prior to January 1, 2002, please describe how your ability to do business in China has been affected, if at all, by the new Chinese law effective that day. Are there nationality or investment-based differences? If your company has sought a license to do these types of activities since January 1, 2002, please describe that process, including the criteria, requirements and procedure for obtaining a license, whether there are any limitations on the type of license your company may obtain, and the Chinese government authority(ies) to whom applications must be submitted or from which approvals must be sought.

[3] *E.g.*, arranging inland or ocean transportation, preparing documentation and issuing bills of lading, consolidation, warehousing, cargo agency, and logistics services.

Now Therefore, It is ordered, that this Notice of Inquiry be published in the **Federal Register.**

By the Commission.*

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6305 Filed 3–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–04]

Anchor Shipping Co. v. Alianca Navegacao e Logistica LTDA.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Anchor Shipping Co. ("Complainant") against Alianca Navegacao E Logistica Ltda. ("Alianca").

Complainant contends that Alianca engaged in a number of activities in connection with a service contract which violated sections 10(a)(2), 10(a)(3), 10(b)(3) and 10(c)(1) of the Shipping Act of 1984 ("Shipping Act") and injured the Complainant.

Complainant asks that Alianca be compelled to answer its charges and that the Commission issue an order commanding Alianca to cease and desist from these violations; to establish and put in force such practices the Commission determines to be lawful and reasonable; to pay Complainant $1,000,000 in reparations, with interest and attorney's fees, or such other sum as the Commission may determine to be proper as an award of reparation; and such other further order as the Commission determines proper. Complainant requests that hearing be held in Miami, FL.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 13, 2003, and the final decision of the Commission shall be issued by July 11, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6218 Filed 3–14–02; 8:45 am]

BILLING CODE 6730–01–P

*Commissioner John A. Moran is not participating.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board –approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer–Mary M. West–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer–Alexander T. Hunt–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860)

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the implementation of the following report:

1. Report title: Intermittent Survey of Businesses
Agency form number: FR 1374
OMB control number: 7100–0302
Frequency: Biweekly and semiannually
Reporters: Purchasing managers, economists, or other knowledgeable individuals at business firms
Annual reporting hours: 125 hours
Estimated average hours per response: 15 minutes
Number of respondents: biweekly, 10; semiannually, 120
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 263, and 15 U.S.C. §1691b) and is given confidential treatment (5 U.S.C. 552(b)(6)).
Abstract: The proposed survey would be used by the Federal Reserve to gather information that would be specifically tailored to the Federal Reserve's policy and operational responsibilities. It is necessary to conduct the survey biweekly to keep up with the rapidly changing developments in the economy and to provide timely information to staff and Board members. Usually, the surveys would be conducted by staff economists telephoning purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. The content of the questions and the businesses contacted would vary depending on changing developments in the economy.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report title: Notification of Foreign Branch Status
Agency form number: FR 2058
OMB control number: 7100–0069
Frequency: on occasion
Reporters: member banks, bank holding companies, Edge and agreement corporations
Annual reporting hours: 38 hours
Estimated average hours per response: 15 minutes
Number of respondents: 150
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.
Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an foreign branch. The notice requires information

on the location and extent of service provided by the branch and is filed within thirty days of the change in status. The Federal Reserve System needs the information to fulfill supervisory responsibilities specified in Regulation K, including the supervision of foreign branches of U.S. banking organizations. The information is needed in order to evaluate the organization's international exposure and to update the Federal Reserve's structure files on U.S. banking organizations.

Regulation K, "International Banking Operations," sets forth the conditions under which a foreign branch may be established. According to the final rule on Regulation K, published in the **Federal Register** on October 26, 2001 (66 FR 54345), organizations must give thirty days prior notice to the Board before the establishment of branches in the first two foreign countries. For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System twelve days prior written notice. The FR K–1, "International Application and Prior Notifications Under Subparts A and C of Regulation K" (OMB No. 7100–0107) will be used for these notices. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

Current Actions: The revisions include adding the location of the reporting institution and the subsidiary and a few minor technical clarifications.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K

Agency form number: FR K–1
OMB control number: 7100–0107
Frequency: on occasion
Reporters: state member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations
Annual reporting hours: 695 hours
Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours
Number of respondents: 39
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 601–604(a), 611–631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K–1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. The applications and notifications collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Current Actions: The changes incorporate revisions to Regulation K, published in the **Federal Register** on October 26, 2001, which became effective November 26, 2001 (66 FR 54345). Technical changes to each of the existing attachments conform with the new regulatory language. One new attachment was included for applications by U.S. banking organizations to invest in excess of 10 percent of capital and surplus in Edge corporations. This change is necessary as a result of The Economic Growth and Regulatory Paperwork Reduction Act of 1996. In addition, the Federal Reserve added certain new items, which are often requested after the application has been filed. Finally, several items that are no longer relevant have been deleted from the attachments.

3. Report title: Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y–9C
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 252,675 hours
Estimated average hours per response: 33.98 hours
Number of respondents: 1,859
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier bank holding companies that have total assets of $150 million or more and by lower–tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

Current Actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes effective with the March 31, 2002, reporting date with the following changes:

- modify certain aspects of the proposal relating to the reporting of federal funds transactions and securities resale/repurchase agreements; and
- modify Schedule HC–R, Regulatory Capital, so that the capital calculations in this schedule are consistent with amended regulatory capital standards. These changes parallel the modified revisions to the March 31, 2002, Call Reports, recently adopted by the FFIEC and are discussed in further detail below.

Federal Funds Transactions and Securities Resale/Repurchase Agreements

As indicated above, the Federal Reserve originally proposed to separate the existing balance sheet (Schedule HC) items for "Federal funds sold and securities purchased under agreements to resell" and for "Federal funds purchased and securities sold under agreements to repurchase" into two asset and two liability items. This proposed change was parallel to a proposed change for the commercial bank Call Report for March 31, 2002. As proposed, the reporting of amounts as "Federal funds sold" (the asset item) and "Federal funds purchased" (the liability item) would have been based on the longstanding definition of "federal funds transactions," i.e., the lending and borrowing of immediately available funds for one business day or under a continuing contract, regardless of the nature of the contract or of the collateral, if any. Under this definition, securities resale/repurchase agreements involving the receipt of immediately available funds that mature in one business day or roll over under a continuing contract are considered federal funds transactions.

As a result of comments received on the proposal for the commercial bank Call Report revisions, the FFIEC and the agencies decided to modify the original proposal. The agencies decided to revise the definition of "federal funds transactions." As revised, federal funds sold and purchased would be limited to transactions in domestic offices only and would not include:

- any securities resale/repurchase agreements,
- overnight Federal Home Loan Bank advances, or
- lending and borrowing transactions in foreign offices involving immediately available funds with an original maturity of one business day or under a continuing contract.

Lending and borrowing transactions in foreign offices involving immediately available funds with an original maturity of one business day or under a continuing contract that are not securities resale/repurchase agreements will begin to be reported in "Loans and leases, net of unearned income" and "Other borrowed money," respectively. The Federal Reserve decided to adopt the same modifications for the FR Y–9C.

Regulatory Capital

On November 29, 2001, the agencies published a final rule revising the regulatory capital treatment of recourse arrangements and direct credit substitutes, including residual interests and credit–enhancing interest–only strips, as well as asset–backed and mortgage–backed securities (66 FR 59613). This final rule took effect on January 1, 2002. Any transactions settled on or after that date are subject to the rule. However, for transactions settled before January 1, 2002, that result in increased capital requirements under the final rule, banks may delay the application of the final rule to those transactions until December 31, 2002. In response to this final rule and comparable changes on the commercial bank Call Reports, the Federal Reserve is revising the instructions for reporting these types of exposures in Schedule HC–R, Regulatory Capital, so that the capital calculations in this schedule are consistent with the amended regulatory capital standards.

4. Report title: Parent Company Only Financial Statements for Large Bank Holding Companies
Agency form number: FR Y–9LP
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 40,495 hours
Estimated average hours per response: 4.55 hours
Number of respondents: 2,225
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.

Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9LP, as originally described, effective with the March 31, 2002, reporting date.

5. Report title: Parent Company Only Financial Statements for Small Bank Holding Companies
Agency form number: FR Y–9SP
OMB Control number: 7100–0128
Effective Date: June 30, 2002
Frequency: Semiannual
Reporters: Bank holding companies
Annual reporting hours: 28,273 hours
Estimated average hours per response: 3.89 hours
Number of respondents: 3,634
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9SP is a parent company only financial statement filed on a semiannual basis by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9SP, as originally described, effective with the June 30, 2002, reporting date.

6. Report title: Supplement to the Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y–9CS
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: on occasion
Reporters: Bank holding companies
Annual reporting hours: 1,200 hours
Estimated average hours per response: 0.50 hour
Number of respondents: 600
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). The Federal Reserve considers the information on the current version of the report form confidential pursuant to the Freedom of Information Act (5 U.S.C. 554(b)(4)), except for item 4.

Abstract: The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y-9C and FR Y–9SP reports. Due to the enactment of the GLB Act in 1999, the current version of this supplement was implemented in 2000 to collect basic information about the new activities of FHCs.

Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9CS, as originally described, effective with the March 31, 2002, reporting date.

Board of Governors of the Federal Reserve System, March 12, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–6306 Filed 3–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 1, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. R.H. Krumme Testamentary Trust, Tulsa, Oklahoma; Diane Krumme Cox, Sands Springs, Oklahoma, both individually and as co-trustee of the R.H. Krumme Testamentary Trust; and Jill Krumme Burns, Tulsa, Oklahoma, both individually and as co-trustee of the R.H. Krumme Testamentary Trust, to retain voting shares of Falcon Bancorp, Inc., Anadarko, Oklahoma, and thereby retain voting shares of Anadarko Bank & Trust Company, Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, March 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6307 Filed 3–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—02/19/2002			
20020388	deCODE genetics, Inc	MediChem Life Sciences, Inc	MediChem Life Sciences, Inc
20020417	Carl C. Icahn	Imclone Systems Incorporated	Imclone Systems Incorporated
20020420	McLaren Health Care Corporation	Bay Medical Center	Bay Medical Center
20020428	ESL Partners, L.P	AutoNation, Inc	AutoNation, Inc
20020429	The Nichido Fire and Marine Insurance Company, Limited.	The Tokio Marine and Fire Insurance Company, Ltd.	The Tokio Marine and Fire Insurance Company, Ltd
20020430	Liberty Mutual Holding Company, Inc	Liberty Mutual Fire Insurance Company.	Liberty Mutual Fire Insurance Company
20020431	Liberty Mutual Holding Company, Inc	Employers Insurance of Wausau Mutual Holding Company.	Employers Insurance of Wausau Mutual Holding Company
20020436	The 1818 Fund III, L.P	Xspedius Holding Corp	Xspedius Holding Corp
20020440	Ziff Asset Management, L.P	AutoNation, Inc	AutoNation, Inc
20020447	Nexfor, Inc	International Paper Company	International Paper Company
20020451	Cinergy Corp	Oak Mountain Acquisition Company, LLC.	Oak Mountain Products, LLC
Transactions Granted Early Termination—02/20/2002			
20020410	The Toronto-Dominion Bank	John S. Stafford, Jr	JSS Investments, L.L.C
20020438	Corvis Corporation	Dorsal Networks, Inc	Dorsal Networks, Inc
Transactions Granted Early Termination—02/26/2002			
20020404	Grupo Industrial Bimbo, S.A. de C.V. (a Mexican corp.).	W. Galen Weston	Entenmann's Inc Entenmann's Products, Inc Entenmann's Sales Company, Inc George Weston Bakeries, Inc	
20020435	The Lubrizol Corporation	William Frost	Chemron Corporation
20020448	U.S. Unwired, Inc	Georgia PCS Management, L.L.C	Georgia PCS Management, L.L.C
20020449	EMCOR Group, Inc	Comfort Systems USA, Inc	CSUSA Holdings L.L.C
20020450	Forbo Holding AG	Dainippon Ink and Chemicals, Incorporated.	Reichhold, Inc
20020452	SmartForce Public Limited Company	Centra Software, Inc	Centra Software, Inc
20020453	O. Bruton Smith	Donald E. Massey	Amgar, Inc Capitol Cadillac Corp Crest Cadillac Corp Donald Massey Buick Inc Donald Massey Cadillac Inc Massey Cadillac, Inc Massey Cadillac, Incorporated Massey Chevrolet, Inc Massey-Cadillac-Oldsmobile, Ltd
20020454	First Reserve Fund IX, L.P	Frank Vallentine Novak, Jr	Welding Services, Inc
20020455	First Reserve Fund IX, L.P	Philip Nelson Hulsizer	Welding Services, Inc
20020456	Berkshire Hathaway Inc	Carl M. Bouckaert and Marie T. Bouckaert.	Beaulieu Group, LLC

Trans #	Acquiring	Acquired	Entities
20020458	First Horizon Pharmaceutical Corporation.	AstraZeneca plc	South Richmond Chemical, LLC AstraZeneca UK Limited
20020460	US Unwired Inc	IWO Holdings, Inc	IWO Holdings, Inc
20020463	Exxon Mobil Corporation	Solutia Inc	Advanced Elastomer Systems, L.P
20020470	JAKKS Pacific, Inc	Toymax International, Inc	Toymax International, Inc
20020472	Giant Industries Inc	BP, p.l.c	BP Corporation North America Inc
20020478	Deutsche Post AG	DHL International Limited	DHL International Limited
Transactions Granted Early Termination—02/28/2002			
20020434	Cablevision Systems Corporation	Loral Space & Communications Ltd	R/L DBS Company L.L.C
20020457	Keane, Inc	Arlington Capital Partners, L.P	SignalTree Solutions Holdings, Inc
20020459	Kvaerner ASA	Kjell Inge Rokke	Aker Oil & Gas Holding AS
20020461	Spectrum Equity Investors IV, L.P	Broadwing, Inc	Cincinnati Bell Director Inc
20020468	Joseph M. & Marie H. Field	Jeffrey H. Smulyan	Emmis Radio License Corporation Emmis Radio Corporation

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–6253 Filed 3–14–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252]

Proposed Collection Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy will submit to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Preparation, Submission, and Negotiation of Subcontracting Plans. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, Submission, and Negotiation of Subcontracting Plans requires all negotiated solicitations having an anticipated award value over $500,000 ($1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions:

(1) When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans),

(2) When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1,

(3) The acquisition is not a commercial item acquisition, and

(4) The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether the information collection generated by the GSAR Clause, Preparation, Submission, and Negotiation of Subcontracting Plans is necessary for small business/subcontracting plans; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* May 14, 2002.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Office of Acquisition Policy (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting that the Office of Management and Budget (OMB) review and approve information collection, 3090–0252, concerning the Preparation, Subcommission, and Negotiation of Subcontracting Plans. This provision requires a contractor (except other than small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions:

When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans), when award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1, the acquisition is not a commercial item acquisition, and the acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.

Annual responses: 1.

Average hours per response: 12.

Burden hours: 12,240.

Obtaining copies of proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans.

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Dated: March 8, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–6197 Filed 3–14–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. State Studies on TANF Caseload—NEW—The Assistant Secretary for Planning and Evaluation has developed a common TANF beneficiary survey instrument to be administered by five states and the District of Columbia through cooperative agreements. This data collection will provide information on the characteristics, barriers to employment and service needs of the TANF caseload. *Respondents:* Individuals; *Number of Respondents:* 6,640; *Average Burden per Response:* .66 hours; *Total Burden:* 4,378 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC. 20201. Written comments should be received within 30 days of this notice.

Dated: February 28, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–6191 Filed 3–14–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974: Revision to Existing System of Records

AGENCY: Child Care Subsidy Program, Office of the Assistant Secretary for Administration and Management, Office of the Secretary, HHS.

ACTION: Notice of revision to an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Department of Health and Human Services (HHS) is publishing a notice of the revision of an existing system of records, 09–09–2000, child Care Subsidy Program. The revised system will collect family income data from employees in the Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR), as well as the Health Resources and Services Administration, the Food and Drug Administration (FDA), the Program Support Center (PSC), the Office of the Secretary (OS), the Administration on Aging (AoA), and the Substance Abuse and Mental Health Services Administration (SAMHSA) who are already covered by this system, for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: This revision does not revise the routine uses for this system. This amendment will be effective without further notice on the day of its publication unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Child Care Subsidy Program Administrator, Office of Human Resources, Office of the Assistant Secretary for Administration and Management, U.S. Department of Health and Human Services, Room 536–E, 200 Independence Ave., SW., Washington, DC 20201. The telephone number is 202–690–6191.

SUPPLEMENTARY INFORMATION: The current Notice of System of Records covered only employees of OS, AoA, HRSA, SAMHSA, FDA and the PSC. Since that time, CDC/ATSDR has established a child care subsidy program for its employees. This amendment expands coverage of the Child Care Subsidy Program Records to include employees in CDC/ATSDR who are eligible for this program. The notice is published below in its entirety, as amended.

Dated: March 6, 2002.

Roy L. Tucker,

Acting Deputy Assistant Secretary for Human Resources.

09–90–0200

SYSTEM NAME:

Child Care Subsidy Program Records (HHS).

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located throughout HHS in offices of agency child care program administrators and in offices of contract employees engaged to administer the subsidy programs. Since there are several sites around the country, contact the appropriate System Manager listed in Appendix A for more details about specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the Administration on Aging (AoA), Office of the Secretary (OS), Substance Abuse and Mental Health Services Administration (SAMHSA), Food and Drug Administration (FDA), Program Support Center (PSC), Health Resources and Services Administration (HRSA) and the Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) in the Department of Health and Human Services (HHS), who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for a child care subsidy contain personal information, including employee's (parent) name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issues, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 630 of Pub. L. 107–67 (November 12, 2001) and Executive Order 9397 (November 22, 1943).

PURPOSE(S):

To establish and verify HHS employees' eligibility for child care subsidies in order for HHS to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records where collected.

3. HHS intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of HHS if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of Health and Human Services is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

The records are retrieved by name and may also be cross-referenced to Social Security Number.

SAFEGUARDS:

—Authorized Users: Only HHS personnel working on this project and personnel employed by HHS contractors to work on this project are authorized users as designated by the system manager.
—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms.
—Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.
—Technical Safeguards: Electronic records are protected by use of passwords.
—Implementations Guidelines: HHS Chapter 45–13 of the General Administration Manual, "Safeguarding Records Contained in Systems of Records and the HHS Automated Information System Security Program Handbook, Information Resources Management Manual."

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

SYSTEM MANAGER(S) AND ADDRESSES:

The records of individuals applying for and receiving child care subsidies are managed by System Managers at the various HHS sites listed in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may submit a request with a notarized signature on whether the system contains records about them to the local System Manager.

RECORD ACCESS PROCEDURES:

Request from individuals for access to their records should be addressed to the local System Manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided by HHS employees who apply for child care subsidies. Furnishing of the information is voluntary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

Appendix A

1. For employees of the Office of the Secretary and the Administration on Aging, nationwide, contact:

Child Care Subsidy Program Coordinator, PSC Work/Life Center, Room 1250, 330 C Street, SW., Washington, DC 20201

2. For employees of the Substance Abuse and Mental Health Services Administration, contact:

Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857

3. For employees of the Food and Drug Administration, nationwide, contact:

Child Care Subsidy Program Coordinator, Office of Human Resources and Management Services, Food and Drug Administration—HFA—410, 5600 Fishers Lane, Rockville, Maryland 20857

4. For employees of the Program Support Center, contact:

Work & Family Coordinator, Program Support Center, Room 1250, 330 C Street SW., Washington, DC 20201

5. For employees of the Health Resources and Services Administration, nationwide, contact:

Child Care Subsidy Program Coordinator, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–25, Rockville, MD 20857

6. For Employees of the Centers of Disease Contract and Agency for Toxic Substances and Disease Registry, nationwide, contact:

Work Family Program Specialist, Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724

[FR Doc. 02–6192 Filed 3–14–02; 8:45 am]

BILLING CODE 4150–24–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 1, 2002, through February 1, 2004.

For further information, contact Julie Fishman, Acting Executive Secretary, Advisory Committee to the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., (D–23), Atlanta, GA 30333, telephone 404/639–7080 or fax 404/639–7171.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 11, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–6223 Filed 3–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N–0042]

RIN 0910–AA01

Anticaries Drug Products for Over-the-Counter Human Use; Use of Intraoral Appliance Models for Compliance With Biological Testing Requirements; Request for Information and Comments; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 12, 2002, the comment period on the notice requesting information and comments on the use of intraoral appliance (IOA) models as a substitute for the animal caries reduction biological test required by the monograph for over-the-counter (OTC) anticaries drug products to demonstrate the availability of fluoride in OTC dentifrice formulations. The notice was published in the **Federal Register** of October 15, 2001 (66 FR 52418). FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit comments and information on the use of IOA models. The comment period for this information closed on January 14, 2002.

DATES: Submit written or electronic comments by July 12, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Robert L. Sherman, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 2001 (66 FR 52418), FDA published a notice requesting information and comments regarding use of the IOA test in lieu of animal caries studies to demonstrate the effectiveness of new fluoride formulations. FDA issued this notice to gather information concerning IOA models and whether and how they can be used in lieu of the animal caries models in meeting the biological testing requirements for OTC anticaries drug products. The agency has determined that it is appropriate to address these issues in a public forum where experts can debate the usefulness and acceptability of alternate biological testing methods such as the IOA model. The agency anticipates that this information-gathering process will be followed by an advisory committee meeting at which the various models and the appropriate statistical analyses will be discussed.

On November 14, 2001, the Joint Anticaries Task Group (the Task Group) of the Consumer Healthcare Products Association, a trade association of manufacturers of nonprescription drugs and dietary supplements, and the Cosmetic, Toiletry, and Fragrance Association, a trade association of manufacturers of personal care products, requested a 180-day extension in which to file comments and new information (Ref. 1). The request stated that the closing date for the original comment period would not allow the Task Group to utilize the results of its ongoing research in its response to FDA, resulting in important information being omitted from the agency's consideration. In addition, the Task Group noted that the agency's request raises complicated questions concerning statistical approaches that could potentially impact statistical methodology utilized for current biological testing requirements for fluoride dentifrices. The Task Group also stated that manufacturers need sufficient time to assess the potential impact that the agency's statistical questions may have on manufacturing practices, as well as research and product development.

FDA has carefully considered the request and acknowledges the complicated issues concerning statistical approaches used to evaluate IOA testing and their potential affect on current biological testing requirements of the anticaries monograph. Manufacturers and the Task Group may require additional time to obtain and review information to fully respond to the agency's request. FDA considers an extension of time for comments in this case to be in the public interest. Accordingly, the comment period is reopened to July 12, 2002.

II. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this notice by July 12, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT11, Docket No. 80N–0042.

Dated: March 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6181 Filed 3–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April:

Name: Council on Graduate Medical Education (COGME).

Date and Time: April 10, 2002, 8:30 a.m.–5 p.m., April 11, 2002, 8 a.m.–12 p.m.

Place: Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

Agenda: The agenda for April 10 will include: Welcome and opening comments from the Chair and Acting Executive Secretary of COGME. There will be a panel of speakers on the topic of "Views on the Adequacy of the Physician Supply" and a presentation on "Physician Workforce Models of the Bureau of Health Professions." The afternoon agenda includes a panel on "Physician Preparedness to Meet Emerging Public Health Needs."

The Council's three workgroups will convene. They are: Workgroup on Diversity, Workgroup on Graduate Medical Education Financing, and Workgroup on Workforce.

The agenda for April 11 will include reports from the three workgroup chairs. There will be a discussion of COGME's 2002 Summary Report, plans for future work, and new business.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: March 8, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–6225 Filed 3–14–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Projects for Assistance in Transition From Homelessness (PATH) Annual Report—(0930–0205, extension)

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for extension of the current approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions. The estimated annual burden for these reporting requirements is summarized in the table that follows.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response	Total burden hours
States—automated	55	1	26	1,430
States—hard copy	1	1	28	28
Local provider agencies—automated	398	1	31	12,338
Local provider agencies—hard copy	1	1	24	24
Total	455			13,820

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Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 8, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–6224 Filed 3–14–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 8, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–6027 Filed 3–14–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; United Auburn Indian Community of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 49.21 acres, more or less, of land into trust for the United Auburn Indian Community of California on February 5, 2002. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On February 5, 2002, the Assistant Secretary—Indian Affairs decided to accept approximately 49.21 acres, more or less, of land into trust for the United Auburn Indian Community of California pursuant to Section 1300I of the Auburn Indian Restoration Act of October 31, 1994, 25 U.S.C. 1300I (1994). The Secretary shall acquire title in the name of the United States in trust for the United Auburn Indian Community of California for the following parcel of land described below no sooner than 30 days after the date of this notice.

That portion of Parcel "B" described in the Resolution to Approve a Minor Boundary Line Adjustment recorded June 27, 1997, as Instrument No. 97–0037123, Official Records of Placer County, located in Section 33, Township 12 North, Range 6 East, Mount Diablo Meridian, Placer County, California, as shown on the Record of Survey filed in Book 9 of Surveys, Page 19, Placer County Records, described as follows:

Beginning at the southeasterly corner of said Parcel "B," thence along the boundary of said Parcel "B" the following three courses and distances: (1) North 00°31′40″ East 616.00 feet; (2) South 89°53′59″ West 285.00 feet; and (3) North 00°13′49″ East 186.41 feet; thence, leaving said boundary, South 89°53′59″ West 150.00 feet; thence South 00°06′01″ East 100.00 feet; thence South 89°53′59″ West 300.00 feet; thence North 00°06′01″ West 100.00 feet; thence South 89°53′59″ West 2018.08 feet; thence South 00°13′49″ West 812.49 feet to a point on the southerly boundary of said Parcel "B", thence along the southerly boundary of said parcel "B" the following two courses and distances: (1) North 89°48′20″ East 1652.05 feet; and (2) North 89°30′51″ East 1097.92 feet to the point of beginning, containing 49.21 acres, more or less. APN 021–280–063.

Dated: March 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6315 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–1269]

Public Land Order No. 7516; Revocation of Oil Shale Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order and a Public Land Order insofar as they affect the lands in the State of Colorado withdrawn for protection of oil shale values. This action will open approximately 900,000 acres of public lands to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 5327, as amended, and Public Land Order No. 4522, as amended, which withdrew oil shale deposits and the public lands containing such deposits for the protection of oil shale and associated values are hereby revoked insofar as they affect all of the lands in the State of Colorado within the following Townships:

Sixth Principal Meridian

T. 3 N., R. 98 W., Tps. 2 N., Rs. 98, 99, and 100 W.; Tps. 1 N., Rs. 95, 96, 97, 98, 99, and 100 W.; Tps. 1 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 2 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 3 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 4 S., Rs. 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 5 S., Rs. 93, 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 6 S., Rs. 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 7 S., Rs. 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 8 S., Rs. 99 and 100 W.

The areas described aggregate approximately 900,000 acres in Moffat, Rio Blanco, Garfield, and Mesa Counties.

2. At 9 a.m. on April 15, 2002, the lands identified in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a. m. on April 15, 2002, the lands identified in Paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands identified in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 27, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–6233 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–1430–ET; NMNM 23614]

Public Land Order No. 7517; Extension of Public Land Order No. 6182; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6182 for an additional 20-year period. This extension is necessary to continue the protection of the land for use as training site by the New Mexico Army National Guard.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 505–438–7593.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6182 (47 FR 9842, March 8, 1982), which withdrew land for use as a training site by the New Mexico Army National Guard, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6182 will expire March 7, 2022, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–6232 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–044–1430–ET; OKNM 36236]

Public Land Order No. 7518; Extension of Public Land Order No. 6183; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6183 for an additional 20-year period. This extension is necessary to continue the protection of the land for use by the Department of the Army for military purposes at Fort Sill, Oklahoma.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 505–438–7593.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6183 (47 FR 9842, March 8, 1982), which withdrew land from use by the Department of the Army, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6183 will expire March 7, 2022, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–6231 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Nevada, INT–DES 01–43]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public comment period extension.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of availability of and public hearing for a draft environmental impact statement (EIS) on the Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions in the **Federal Register**, (67 FR 1988), on January 15, 2002, requesting comments on the adequacy of the draft EIS. This notice extends the original comment period, as identified below in the **DATES** section.

DATES: The comment period for receiving comments on the draft EIS has been extended from March 12, 2002, to March 26, 2002.

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ADDRESSES: Send written comments to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006.

A copy of the draft EIS is available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: Reclamation has issued a draft EIS on the proposed execution of an Implementation Agreement (IA) that would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies to implement a proposed Quantification Settlement Agreement (QSA). (The QSA is an agreement in principle among several southern California water agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. The QSA provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.) The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111.

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 11, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–6284 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–446]

Certain Ink Jet Print Cartridges and Components Thereof; Notice of Commission Decision to Review-in-Part an Initial Determination That Finds a Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (ID) of the presiding administrative law judge (ALJ) that finds a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3094. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.ustic.gov).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: On January 19, 2001, the Commission instituted this investigation based on a complaint filed by Hewlett-Packard Company ("HP"), alleging a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain inkjet print cartridges and components thereof by reason of infringement of U.S. Letters Patent 4,827,294; 4,635,073; 4,680,859; 4,872,027; 4,992,802; and 5,409,134; 66 FR 7783 (January 25, 2001). The following five firms were named as respondents: Microjet Technology Co., Ltd. of Taipei, Taiwan; Printer Essentials of Reno, Nevada; Price-Less Inkjet Cartridge Company of Port Charlotte, Florida; Cartridge Hut and Paperwork Plus of Sun City, California; and ABCCo.net, Inc. of Port Charlotte, Florida.

Based on joint stipulations and proposed consent orders, the ALJ issued IDs terminating the investigation as to Printer Essentials (Order No. 7, dated May 11, 2001) and as to Cartridge Hut (Order No. 15, dated October 12, 2001). These IDs became Commission final determinations, pursuant to 19 CFR 210.42(h)(3).

On August 21, 2001, the ALJ issued an ID (Order No. 12) granting HP's motion for summary determination on the economic prong of the domestic industry requirement for all patents at issue. This ID became a Commission final determination, pursuant to 19 CFR 210.42(h)(3).

On October 24, 2001, HP filed a motion to terminate the investigation as to its infringement allegations based on claim 5 of U.S. Letters Patent 4,635,073, claim 2 of U.S. Letters Patent 4,827,294 and claims 12–14 of U.S. Letters Patent 5,409,134. On November 15, 2001, the ALJ issued an ID (Order No. 17) terminating the investigation as to the patent claims that were the subject of HP's motion. These IDs were not reviewed by the Commission, and thus became the determinations of the Commission, pursuant to 19 CFR 210.42(h)(3).

The ALJ issued his final ID, along with a recommended determination on remedy and bonding, on January 25, 2002, concluding that there was a violation of section 337, based on his findings that (a) the accused devices infringe claims of five of the six patents at issue, U.S. Letters Patent 4,827,294, 4,680,859, 4,872,027, 4,992,802 and 5,409,134; and (b) that a domestic industry exists with respect to each of these patents. The ALJ found no infringement of U.S. Letter Patent 4,635,073, and he found that HP had not satisfied the technical prong of the domestic industry requirement with respect to this patent.

On February 14, 2002, complainant HP and the Commission investigative attorney ("IA") petitioned for review of parts of the ID concerning the '073 patent. No responses to these petitions for review were filed.

Having examined the record in this investigation, including the ID, and the petitions for review, the Commission has determined to review:

(1) The ID's construction of the asserted claim of the '073 patent;

(2) The ID's finding of no infringement with respect to the '073 patent; and

(3) The ID's findings with respect to the technical prong of the domestic industry requirement with respect to the '073 patent.

The Commission has determined not to review the remainder of the ID. The Commission does not request further briefing on the issues that it has determined to review.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to this investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than 14 days from the date of issuance of this notice. Response submissions must be filed no later than seven days after the deadline for filing the main submissions. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.42–45 of the Commission's rules of practice and procedure (19 CFR 210.42–45).

Issued: March 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6316 Filed 3–14–02; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Preliminary)]

Silicon Metal From Russia

AGENCY: International Trade Commission.

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ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–991 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 22, 2002. The Commission's views are due at Commerce within five business days thereafter, or by April 29, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179/ *ffischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on March 7, 2002, by Globe Metallurgical Inc., Cleveland, OH; SIMCALA, Inc., Mt. Meigs, AL; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (I.U.E.–C.W.A, AFL–CIO, C.L.C., Local 693), Selma, AL; the Paper, Allied-Industrial Chemical and Energy Workers International Union (Local 5–89), Boomer, WV; and the United Steel Workers of America (AFL–CIO, Local 9436), Niagara Falls, NY.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 26, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 / *ffischer@usitc.gov*) not later than March 22, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 2, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 11, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–6193 Filed 3–14–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–006]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 19, 2002 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–922 (Final) (Automotive Replacement Glass Windshields from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 28, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 12, 2002

By order of the Commission:

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6460 Filed 3–13–02; 2:46 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 258–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled "Inmate Commissary Accounts Record System, JUSTICE/BOP–006", last published on September 30, 1977 (42 FR 53288, 53294). JUSTICE/BOP–006 has been retitled the "Inmate Trust Fund Accounts and Commissary Record System" and will become effective 60 days from the date of publication.

The new title reflects the addition of information on vendors who provide supplies to institution commissaries.

In addition to edits which have been made to better describe the system and/or improve its clarity, the Bureau proposes to modify the system as follows:

(1) By further expanding the categories of individuals covered by the system to include all individuals placed directly under the custody of the Director of the Bureau and persons who send and/or receive funds to/from inmates.

(2) By providing additional authorities for the maintenance of the expanded categories of records.

(3) By expanding the categories of records in the system to include system-generated reports.

(4) By adding a statement on the purpose of this system.

(5) By reorganizing the routine use section to group similar routine uses together, to re-designate certain routine uses, to better describe, clarify or expand certain routine uses, and to add new routine uses.

(6) By expanding the policies and practices for storage, retrieval, access, retention and disposal of records in the system to reflect technological advances and new agency practices.

(7) By redesignating the system manager from the Chief of Management and Information Systems to the Chief of the Trust Fund Branch in the Administration Division.

(8) By adding exemptions from (e)(1) and (e)(5) of the Privacy Act for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be provided a 30 day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by April 15, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification. A description of the modified system is provided below.

Dated: February 28, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Justice/BOP–006

SYSTEM NAME:

Inmate Trust Fund Accounts and Commissary Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location operated by a contractor authorized to provide computer, financial and/or correctional services to the Bureau. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons, vendors who supply products to institution commissaries, and persons who send or receive funds to/from inmates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Financial data on individuals currently or formerly under custody; (2) personal identification data for individuals covered by this system; (3) vendor lists and linked product information; and (4) system generated reports, such as Inmate Balance Reports, Transaction Input Listings, Inmate Sales Receipts, and Stock Status Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under authority of 18 U.S.C. 3621, 4042, and 5003, and 31 U.S.C. 1321.

PURPOSE(S):

The purpose of this system is to track trust fund accounts of current and former inmates, including all payments in and out of these accounts, to provide accounting of inmate trust fund balances for purposes of verifying pauper status under 28 U.S.C. 1915, and to maintain information on all vendors who supply products to institution commissaries to facilitate ordering of commissary products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To officers and employees of the Department of Justice who have a need for the information in the performance of their official duties;

(b) To federal, state, local, tribal, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings;

(c) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear for purposes of verifying pauper status under 28 U.S.C. 1915, or when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or (2) any Department or Bureau employee in his or her official capacity, or (3) any Department or Bureau employee in his or her individual capacity where the Department has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(d) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations

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which require information concerning the suitability or eligibility of an individual for a license or permit;

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(g) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(h) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(i) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records; and

(j) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media, including the Federal Prison Point of Sale (FPPOS) System, in Bureau and contractor facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, Compact Discs (CDs), magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data of the persons covered by the system, including name and address, inmate register number, and/or system-generated vendor number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau and contractor personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Inmate financial data in the system of records is retained for six years from the date of transaction, and system-generated reports are retained for as long as they are needed. Computerized records are destroyed by degaussing; documentary records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Trust Fund Branch, Administration Division, Federal Bureau of Prisons, 320 First Street NW., Room 5005, Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked "Privacy Act Request." This system is exempt, under 5 U.S.C. 552a (j) from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by individuals currently or formerly under custody, persons sending or receiving funds to/from inmates, vendors supplying products to institution commissaries, Department of Justice and contractor employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–6203 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 256–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled "Inmate Physical and Mental Health Record System, JUSTICE/BOP–007". This system, which was last published on September 28, 1978, (43 FR 44676, 44735), is now being modified and will become effective May 14, 2002.

As previously published, the system included only those persons who were committed to the custody of the Attorney General and thereby to the Bureau of Prisons under 18 U.S.C. 4003, 4042 and 4082. The Bureau is modifying the system to include all additional individuals who are committed directly to the custody of the Bureau of Prisons, pursuant to the additional authority of 18 U.S.C. 3621, 5003 (state inmates) and inmates from the District of Columbia, pursuant to Section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 740). The authority of 18 U.S.C. 4014 is also added to authorize the maintenance and disclosure of records relating to HIV testing. The Bureau has also added a statement on the purpose of this system.

The list of records in this system has been expanded to include drug testing and DNA samples and analysis.

The section on routine uses has been reorganized and expanded. New routine uses have been added to permit release of information to former employees, a court or administrative body, the General Services Administration for record management inspections and to prevent immediate loss of life or serious bodily injury in emergency situations, such as an inmate escape. Another new routine use assists the Bureau in complying with recent laws requiring limited, specific disclosures of information concerning infectious diseases.

Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The Bureau has re-designated the system manager from the Chief of Management and Information Systems to the Assistant Director, Health Services Division. The Bureau has also clarified record access procedures.

The authorities for exemptions from certain Privacy Act provisions have been specified. Exemptions from subsections (e)(1) and (e)(5) have been added for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be given a 30-day period in which to comment.

The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by April 15, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the modified system is provided below.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: February 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–007

SYSTEM NAME:

Inmate Physical and Mental Health Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) or at any location operated by a contractor authorized to provide correctional, medical, and/or computer service to the Bureau. A list of Bureau system locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Identification data, including name, inmate register number, date of birth, Social Security number, FBI number, drug testing and DNA samples and analysis; (2) medical and dental history and examinations (past and present), including diagnosis and treatment notes, records, and pharmaceutical information; (3) medical information concerning deaths of inmates; (4) offense information, including Pre-sentence Reports; (5) designations of inmates from parent facilities to medical facilities, including date and type of referral; (6) pre-certifications authorizing inmates to receive care at local medical facilities, including authorized and actual length of stay, and all associated cost information; (7) mental health and drug abuse information, including interview, testing data, and progress or observation notes, generated and maintained by Bureau staff; (8) mental health and drug abuse information generated outside the Bureau by other corrections agencies and health care providers such as surgical clinics, mental hospitals, private therapists, etc.; (9) urine surveillance reports of drug program participants; (10) automated data, including Electronic Signatures, Sensitive Medical Data (SMD), Medical Duty Status (MDS), and Diagnosis Group (DGN); and (11) information concerning infectious diseases, including HIV and Tuberculosis (TB) testing and treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 3621, 4014, 4042, 4082, 4241 et seq., 5003, and section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997.

PURPOSE(S):

This system assists the Bureau in providing appropriate health care to persons in the custody of the Bureau. It provides for the maintenance and release of records concerning the medical, mental and dental health of persons in the Bureau's custody.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(b) To community health care professionals, including physicians, psychiatrists, psychologists, state and federal medical facility personnel, who are providing treatment for a pre-existing condition to former federal inmates;

(c) To federal, state, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings;

(d) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or (2) any Department or Bureau employee in his or her official capacity, or (3) any Department or Bureau employee in his or her individual capacity where the Department has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(e) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(f) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(h) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(i) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury; and

(j) For information relating to infectious diseases, as follows:

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(1) To state health departments and/or the Center for Disease Control, pursuant to state and/or federal laws requiring notice of cases of reportable infectious diseases;

(2) To the United States Probation Office in the district where an inmate is being released from Bureau custody on parole, placement in a community-based program, furlough, or full-term release, when the inmate is known to be HIV positive or under treatment for exposure to or active Tuberculosis (TB);

(3) To the Director of a Community Corrections Center (halfway house) receiving an inmate from Bureau custody when the inmate is known to be HIV positive or under treatment for exposure to or active TB;

(4) To the physician/provider of a Bureau or non-Bureau staff, or other person exposed to a blood-born pathogen while lawfully present in a Bureau facility, for the purpose of providing prophylaxis or other treatment and counseling; and

(k) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media in Bureau facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, Compact Discs (CDs), floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders, microfilm and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data, including last name and inmate register number, and/or the inmate's social security number and/or FBI number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Records in this system are retained for a period of thirty (30) years after expiration of the sentence. Documentary records are destroyed by shredding; computer records are destroyed by degaussing and/or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Health Services Division, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked "Privacy Act request." This system is exempt, under 5 U.S.C. 552a(j), from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Records are generated by: (1) Individuals currently or formerly under Bureau custody; (2) Bureau of Prisons staff; (3) community health care providers, including individuals, hospitals and/or other professionals involved in the medical, mental, and dental care of inmates and/or former inmates; and (4) other federal and/or state, local or tribal agencies, including those preparing or providing information on pre-sentence reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–6205 Filed 3–14–02; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Application for Naturalization; Form N–400.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 14, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of currently approved collection.*

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–400. Business Process and Reengineering Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individuals or households. The information collected is used by the INS to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to response:* 700,000 responses at 6 hours and 8 minutes (6.13) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,291,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 11, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6213 Filed 3–14–02; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume IV

Wisconsin
WIO020046 (MAR. 15, 2002)
WIO020047 (MAR. 15, 2002)
WIO020048 (MAR. 15, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020002 (MAR. 1, 2002)
NJ020003 (MAR. 1, 2002)

Volume II:

Maryland
MD020002 (MAR. 1, 2002)
MD020037 (MAR. 1, 2002)
MD020042 (MAR. 2, 2002)
MD020048 (MAR. 1, 2002)
MD020057 (MAR. 1, 2002)

Volume III

Alabama
AL020008 (MAR. 1, 2002)

Volume IV

Illinois
IL020001 (MAR. 1, 2002)
IL020002 (MAR. 1, 2002)
IL020003 (MAR. 1, 2002)
IL020007 (MAR. 1, 2002)
IL020012 (MAR. 1, 2002)
IL020013 (MAR. 1, 2002)
IL020014 (MAR. 1, 2002)
IL020015 (MAR. 1, 2002)
IL020016 (MAR. 1, 2002)

IL020017 (MAR. 1, 2002)
IL020019 (MAR. 1, 2002)
IL020021 (MAR. 1, 2002)
IL020025 (MAR. 1, 2002)
IL020026 (MAR. 1, 2002)
IL020028 (MAR. 1, 2002)
IL020033 (MAR. 1, 2002)
IL020034 (MAR. 1, 2002)
IL020036 (MAR. 1, 2002)
IL020040 (MAR. 1, 2002)
IL020041 (MAR. 1, 2002)
IL020044 (MAR. 1, 2002)
IL020056 (MAR. 1, 2002)
IL020058 (MAR. 1, 2002)
IL020060 (MAR. 1, 2002)
IL020062 (MAR. 1, 2002)
IL020063 (MAR. 1, 2002)
IL020064 (MAR. 1, 2002)
IL020067 (MAR. 1, 2002)
IL020068 (MAR. 1, 2002)

Indiana
IN020001 (MAR. 1, 2002)
IN020002 (MAR. 1, 2002)
IN020004 (MAR. 1, 2002)
IN020005 (MAR. 1, 2002)
IN020006 (MAR. 1, 2002)
IN020017 (MAR. 1, 2002)
IN020021 (MAR. 1, 2002)

Michigan
MI020002 (MAR. 1, 2002)
MI020005 (MAR. 1, 2002)
MI020007 (MAR. 1, 2002)
MI020013 (MAR. 1, 2002)
MI020028 (MAR. 1, 2002)
MI020030 (MAR. 1, 2002)
MI020062 (MAR. 1, 2002)
MI020063 (MAR. 1, 2002)
MI020073 (MAR. 1, 2002)
MI020077 (MAR. 1, 2002)
MI020078 (MAR. 1, 2002)
MI020083 (MAR. 1, 2002)

Wisconsin
WI020001 (MAR. 1, 2002)
WI020002 (MAR. 1, 2002)
WI020003 (MAR. 1, 2002)
WI020004 (MAR. 1, 2002)
WI020005 (MAR. 1, 2002)
WI020009 (MAR. 1, 2002)
WI020030 (MAR. 1, 2002)

Volume V

Arkansas
AR020023 (MAR. 1, 2002)

Volume VI

Oregon
OR020002 (MAR. 1, 2002)
OR020003 (MAR. 1, 2002)
OR020004 (MAR. 1, 2002)

Washington
WA020001 (MAR. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during this year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of March 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–6044 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "Current Population Survey (CPS)." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before May 14, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for nearly 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the only source of data on total employment and unemployment, with the monthly unemployment rate obtained through this survey being regarded as one of the most important economic indicators. Moreover, the survey also yields data on the basic status and characteristics of persons not in the labor force. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to which the various components of the American population are participating in the economic life of the Nation and with what success.

The labor force data gathered through the CPS are provided to users in the greatest detail possible, consistent with the demographic information obtained in the survey. In brief, the labor force data can be broken down by sex, age, race and ethnic origin, marital status, family composition, educational level, and other characteristics. Through such breakdowns, one can focus on the employment situation of specific population groups as well as on the general trends in employment and unemployment. Information of this type can be obtained only through

demographically oriented surveys such as the CPS.

The basic CPS data also are used as an important platform to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.

There is wide interest in the monthly CPS data among Government policymakers, legislators, economists, the media, and the general public. While the data from the CPS are used in conjunction with data from other surveys in assessing the economic health of the Nation, they are unique in various ways. They provide a measurement of total employment, including farm work, self-employment and unpaid family work, while the other surveys are generally restricted to the nonagricultural wage and salary sector. The CPS provides data on all jobseekers, and on all persons outside the labor force, while payroll-based surveys cannot, by definition, cover these sectors of the population. Finally, the CPS data on employment, unemployment, and on persons not in the labor force can be linked to the demographic characteristics of the many groups that make up the Nation's population, while the data from other surveys are usually devoid of demographic information.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Current Population Survey (CPS).

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Current Population Survey (CPS).

OMB Number: 1220–0100.

Affected Public: Households.

Total Respondents: 57,000 per month.

Frequency: Monthly.

Total Responses: 684,000.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 79,800 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of March, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–6235 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. D & F Deep Mine Buck Drift

[Docket No. M–2002–001–C]

D & F Deep Mine Buck Drift, RD #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner further states that one gas test result would be recorded in the on-shift examination record and equipment operation will be suspended when methane concentration at the equipment reaches 0.5 percent CH_4, either during operation or when found during a pre-shift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Canyon Fuel Company, LLC

[Docket No. M–2002–002–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of a nominal voltage of longwall power circuits not to exceed 4,160 volts to supply power to permissible longwall mining equipment. The petitioner has listed specific terms and conditions in this petition that would be followed when implementing the proposed alternative method. The petitioner states that its present longwall voltage is 2,400-volts, but due to increased horsepower necessary to operate the longwall, the operating voltage must be increased. The petitioner asserts that a diminished safety factor exists as the short circuit interrupting rating limits of the available 2,400-volt breaker are approached and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Knott County Mining Company

[Docket No. M–2002–003–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mallet Branch Mine (I.D. No. 15–18393) located in Knott County, Kentucky. The petitioner proposes to use contactors to obtain undervoltage protection instead of using circuit breakers. The petitioner states that all qualified persons who perform work on the equipment and circuits will receive training in safe maintenance procedures as well as the terms and conditions of the proposed decision and order. The training will occur before

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implementing the proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Perry County Coal Company

[Docket No. M–2002–004–C]

Perry County Coal Company, 1845 South Hwy, 15, P.O. Box 5001, Hazard, Kentucky 41702 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its HZ4–1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to establish evaluation check points to measure the quality and quantity of air in certain areas of the return air course. This is necessary due to hazardous roof and rib conditions impeding passage. The petitioner states that the check points will be established at locations that will allow effective evaluation of ventilation in the affected areas and will be examined by a certified person. These measuring stations will be maintained in safe conditions at all times. Further, conditions at the stations will be recorded in a book or on a date board located at each measuring station with the date, time and results of the measurements. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Cannelton Industries, Inc.

[Docket No. M–2002–005–C]

Cannelton Industries, Inc., P.O. Box 88, Mammoth, West Virginia 25132 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Shadrick Mine (I.D. No. 46–08159) and its Mine #130 (I.D. No. 46–06051) both located in Kanawha County, West Virginia. The petitioner proposes to use a spring-loaded device on battery plug connectors on mobile battery-powered machines in lieu of a padlock to prevent the plug connector from accidentally disengaging while under load. The petitioner states that a warning tag that states "Do Not Disengage Under Load", will be installed on all battery plug connectors and that instructions on the safe practices and provisions for complying with its proposed alternative method will be provided to all persons who operate or maintain the battery-powered machines. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

6. Point Mining, Inc.

[Docket No. M–2002–006–C]

Point Mining, Inc., 197 Branch Road, Belle, West Virginia 25015 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Point Mining Number 4 Mine (I.D. No. 46–08437) located in Kanawha County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device on battery plug connectors on mobile battery-powered machines instead of a padlock to prevent the plug connector from accidentally disengaging while under load, and provide instructions to all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with its proposed alternative method. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

7. OCI Wyoming, L.P.

[Docket No. M–2002–001–M]

OCI Wyoming, L.P., P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its Big Island Mine and Refinery (I.D. No. 48–00154) located in Sweetwater County, Wyoming. The petitioner proposes to use a 12 to 18 volt battery powered cordless drill manufactured by Black & Decker, DeWalt, Makita, Milwaukee or Hilti, or use similar battery powered drills for an indefinite period of time, in or beyond the last open crosscut. The drills would be used to drill spad holes for surveying and to install rock mechanics stations. The petitioner asserts that the alternative method of using a cordless drill would not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. OCI Wyoming, L.P.

[Docket No. M–2002–002–M]

OCI Wyoming, L.P., P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its Big Island Mine and Refinery (I.D. No. 48–00154) located in Sweetwater County, Wyoming. The petitioner proposes to use a Topcon GTS Series Electronic Total Station surveying instrument or similar surveying instrument in or beyond the last open crosscut to traverse for mine expansion and obtain elevations in support of on-going geologic and rock mechanics modeling. The petitioner states that the Topcon GTS is mounted with an intrinsically sealed 9.6 volt battery and that the use of the Topcon GTS would eliminate labor intensive ventilation modifications and allow for more accurate surveying of abandoned panels. The petitioner asserts that the alternative method of using the Topcon would not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 12th day of March 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–6236 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0228(2002)]

Forging Machines Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Forging Machines Standard (29 CFR 1910.218). The paperwork provisions of the Standard specify requirements for developing and maintaining inspection records. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition.

DATES: Submit written comments on or before May 14, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0228(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Forging Machines Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select *"Information Collection Requests."*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Forging Machines Standard (*i.e.*, "the Standard") specifies two paperwork requirements. The following section describes who use the information collected under each requirement, as well as how they use it.

Information of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and keep a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices, and prepare a certification record of each inspection that contains the date the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, thereby assuring that they will operate properly and safely, and prevent impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Forging Machines Standard (29 CFR 1910.218). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Forging Machine Standard (29 CFR 1910.218).

OMB Number: 1218–0228..

Affected Public: Business or other for-profit; not-for-profit institutions: Federal government; State, local, or tribal governments.

Number of Respondents: 27,700.

Frequency of Recordkeeping: Biweekly.

Average Time per Response: Twenty minutes (.33 hour) to inspect a forging machine and its guard or point-of-operation protection, and to prepare, maintain, and disclose the inspection certification record.

Total Annual Hours Requested: 244,868.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on March 8, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–6216 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Learning Opportunities Grant Application Form

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collectinos of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed inforamtion collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

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DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 14, 2002.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Mary Estelle Kennelly, Director Office of Museum Programs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 610, Washington, DC 20506. Fax: 202–606–0010 or by e-mail *mkennely@imls.gov* Fax or e-mail preferred.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. Learning Opportunities Grants will be a one year transitional program as IMLS refines and refocuses its current General Operating Support grant program to better meet the changing needs of the public.

Agency: Institute of Museum and Library Services.

Title: Learning Opportunities Grant Application

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums.

Number of Respondents: 500.

Estimated Time Per Respondent: 9 hours.

Total Burden Hours: 4500 hours.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. E-mail *mbittner@imls.gov* fax (202) 606–8591. E-mail of fax preferred.

Dated: March 12, 2002.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 02–6237 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice; the first notice was published at 66 FR 64889 and no comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. comments regarding these information collections are best assured to having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Louis Stokes Alliance for Minority Participation (LSAMP) Program.

OMB Control No.: 3145–NEW.

Expiration Date of Approval: Not applicable.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Louis Stokes Alliance for Minority participation (LSAMP) Program. The goal of this program is to increase the number of interested, academically qualified minority students receiving baccalaureate degrees in science, technology, engineering and math (STEM), continuing to graduate school to attain a STEM graduate degree, and entering the STEM workforce. The program makes awards to alliances, which are composed of institutional partnerships (e.g., with two- and four-year higher education institutions, business, research labs, and local, state, and federal agencies). LSAMP projects fund students, offer a range of student support services, and undertake systemic reform of undergraduate education in STEM (particularly curricular improvement and faculty professional development). This mixed-methods study will gather data through telephone interviews with project staff, a survey questionnaire of program graduates, and in person interviews with faculty, staff, and students at three selected case study sites. The process evaluation component of this study will identify strategies that accelerate or inhibit the attainment of project goals, strategies employed to promote linkages among Alliance partners, and the manner in which the LSAMP model has evolved since its inception. The impact evaluation component of this study will examine program impact on institutions of higher education in promoting diversity in STEM, and participant career outcomes.

2. Expected Respondents

The expected respondents are project directors and/or managers of all 27 projects; LSAMP graduates who received program funding and who earned STEM baccalaureate degrees between 1992 and 1997; and, faculty, staff, and student participants at the three selected case study sites.

3. Burden on the Public

The total elements for this collection are 308 burden hours for a maximum of 795 participants annually, assuming a 90-100% response rate. The average annual reporting burden is under 1 hour per respondent. The burden on the public is negligible because the study is limited to project participants that have received funding from the LSAMP Program.

Dated: March 11, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–6283 Filed 3–14–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 3, 2002, 9 a.m.–5:30 p.m. and April 4, 9 a.m.–2:30 p.m.

Place: Stafford II Annex, Room 555, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Science Foundation, Suite 1205, 4201 Wilson Blvd, Arlington, Virginia 22230. Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

April 3

AM
- Panel Discussion: Building a Diverse Workforce in Environmental Science, Engineering, Education, and Technology
- Update on NSF Activities

PM
- General Discussion of Outline/Draft Decadal Plan
- Modifications of Outline/Draft Decadal Plan: Small Group Meetings

April 4

AM
- Meeting with Director: (Tentative)
- Approval of Specific Modifications to Outline/Draft Decadal Plan

PM
- Trends and Opportunities in Research & Education: Tom Graedel
- Plans for Vetting and Publication of Decadal Plan and Wrap-up

Dated: March 12, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–6282 Filed 3–14–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Plant, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix G, for Facility Operating License Nos. DPR–52 and DPR–68, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Browns Ferry Plant, located in Limestone county Alabama. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow TVA to apply the methodologies of the American Society of Mechanical Engineers (ASME) Code Case N–640, "Alternative Requirement Fracture Toughness for Development of P–T [Pressure-Temperature] Limit Curves for ASME B&PV [Boiler and Pressure Vessel] Code, Section XI, Division 1," for the Browns Ferry Plant reactor vessel circumferential welds.

The proposed action is in accordance with the licensee's application dated August 17, 2001, as supplemented by letters dated December 14, 2001, and February 6, 2002.

The Need for the Proposed Action

Appendix G of 10 CFR part 50, requires that P–T limits be established for reactor pressure vessels during normal operating and hydrostatic pressure or leak-testing conditions. Specifically, 10 CFR part 50, Appendix G, states that "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G further specifies that the requirements for these limits are the ASME Code, Section XI, Appendix G, limits.

To address the provisions of amendments to the Technical Specifications P–T limits, the licensee requested in its submittals that the staff exempt Browns Ferry Units 2 and 3 from the application of the specific requirements of 10 CFR part 50, Appendix G, and permit the use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness for reactor vessel materials in determining P–T limits.

Application of the methodology specified in Appendix G to Section XI of the ASME Code for the development of facility P–T limits may not be necessary to meet the underlying purpose of the regulations, which is to protect the reactor coolant pressure boundary from brittle fracture. To satisfy this purpose, the staff had previously required the use of the conservative assumptions in Appendix G to 10 CFR part 50, because the conservatism was initially necessary due to the limited knowledge of the fracture toughness of reactor pressure vessel (RPV) materials at that time. Since 1974, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness resulting from the application of this ASME Code Case would greatly exceed the margin of safety required to protect the public and safety from potential RPV failures. Exemptions to employ an alternative to the methodology specified in Appendix G to Section XI of the ASME Code which result in the development of less conservative P–T limits may be granted by the NRC staff. The use of ASME Code Case N–640 represents one of these alternatives.

Licensees may request the use of alternative methodologies which continue to meet the underlying intent of the regulations for many reasons. Regarding Browns Ferry Plant, application of the specific requirements of Appendix G to Section XI of the ASME Code would result in the need for the licensee to maintain an unnecessarily high vessel temperature during pressure testing which would have an adverse impact on personnel safety because of the corresponding higher temperatures which would exist inside containment as leakage

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walkdown inspections are conducted. Further, less restrictive P–T limit curves based on the application of ASME Code Case N–640 will enhance overall plant safety by minimizing challenges to operators during pressure testing, heatup, cooldown, and normal power operation. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulations will continue to be served.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the use of the alternative analysis methods to support the revision of the RPV P–T limits for the Browns Ferry Plant, Units 2 and 3.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Browns Ferry Plant, Units 2 and 3, dated April 1975.

Agencies and Persons Consulted

On February 28, 2002, the staff consulted with the Alabama State official, Kirk Whatley, of the Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 17, 2001, as supplemented by letters dated December 14, 2001, and February 6, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of March 2002.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6229 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest assumptions for multiemployer plan valuations following mass withdrawal under the Pension Benefit Guaranty Corporation's regulation on Duties of Plan Sponsor Following Mass Withdrawal (part 4281). These assumptions are published elsewhere but are referenced in this notice for the convenience of the public. This notice also informs the public that announcement of the required interest rate for determining the variable-rate premium under the PBGC's regulation on Premium Rates is being deferred. The PBGC plans to announce the required interest rate well before the variable-rate premium is due. Interest rates are published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). Until recently, that yield figure was reported in Federal Reserve Statistical Release H.15.

The Treasury Department has suspended issuance of 30-year Treasury securities and, effective February 18, 2002, ceased supplying the Federal Reserve board with an estimate of the annual yield on 30-year Treasury securities for publication in Statistical Release H.15. As a result of these changes, the PBGC is consulting with the Treasury Department on how best to determine the required interest rate. As soon as the PBGC determines the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in March 2002, it will inform the public of the rate. This will be well before the variable-rate premium for premium payment years beginning in March 2002 is due.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of March 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–6428 Filed 3–14–02; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement of a Revised Information Collection: Nonforeign Area Cost-of-Living Allowance; Price and Background Surveys

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reinstatement of two previously-approved information collections for which approval has expired. OPM uses the two information collections—a price survey and a background survey—to gather data to be used in determining cost-of-living allowances (COLAs) for certain Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price surveys will be conducted in each COLA area on a rotating basis once every 3 years and annually in the Washington, DC, area. The background surveys will be conducted in these same areas and according to the same schedule, but on a more limited basis.

The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLAs) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the allowance areas. COLAs are based on differences in living costs in the allowance areas compared with living costs in the Washington, DC, area. The background survey is used to improve the COLA methodology and to plan the price surveys and determine such things as the appropriateness of items, services, and businesses selected for survey.

OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. Approximately 2,200 establishments will be contacted in the price survey, and approximately 30 establishments will be contacted in the background survey. Participation in the surveys is voluntary.

OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 257 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 5 hours.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358; fax: (202) 418–3251; or e-mail: *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Submit comments on or before April 15, 2002.

ADDRESSES: Send or deliver comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, fax: (202) 606–4264, or e-mail: *cola@opm.gov*.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: OPM published notice of its intention to request a reinstatement of the price and background surveys in the **Federal Register** on October 17, 2001 (66 FR 52813). OPM received one comment in response to the notice. The commenter noted that a sentence in the Summary section of the notice could be interpreted to mean that OPM will conduct surveys annually in selected COLA areas. We agree that the sentence could be misinterpreted, and wish to clarify that OPM will not conduct price surveys annually in any COLA area. As stated in the Supplementary Information section of the notice, OPM will conduct the price surveys in each COLA area on a rotating basis once every 3 years and annually in the Washington, DC, area.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–6200 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Federal Long Term Care Insurance Program Early Enrollment

AGENCY: Office of Personnel Management.

ACTION: Notice of Federal Long Term Care Insurance Early Enrollment.

SUMMARY: The Office of Personnel Management, in conjunction with LTC Partners, is announcing an early enrollment for eligible persons to submit applications for enrollment in the Federal Long Term Care Insurance Program. LTC Partners is an organization formed by the John Hancock and Metropolitan Life Insurance Companies to provide long term care insurance to eligible persons under this Program.

DATES: Early enrollment will run from March 25 through May 15, 2002.

FOR FURTHER INFORMATION CONTACT: You may call 1–800–LTC–FEDS (1–800–582–3337) or visit *www.ltcfeds.com* for information on applying during early enrollment.

SUPPLEMENTARY INFORMATION: The Federal Long Term Care Insurance Program early enrollment is an opportunity for eligible persons to submit applications for enrollment before the open season begins on July 1, 2002. Early enrollment is designed for persons who are already knowledgeable about long term care insurance and do not need the extensive educational campaign that LTC Partners will undertake before and during the open season.

In our contacts with potential applicants ever since the Program was announced, we realized that there were

a significant number of persons who were very familiar with the various aspects of long term care insurance, and wanted to purchase the insurance as soon as possible. We decided to provide an early enrollment opportunity for this group of applicants, so they would not have to wait until the open season to apply for coverage.

The specific provisions of early enrollment are as follows:

Eligible persons: Persons eligible for early enrollment are those specified in the Federal Long Term Care Insurance law (5 U.S.C. 9002) as eligible for coverage. The eligible groups are Federal civilian employees and annuitants; members of the uniformed services; retired members of the uniformed services; their spouses and adult children; and the parents, stepparents, and parents-in-law of employees and members of the uniformed services. There will be no difference in eligibility requirements between the early enrollment period and the open season.

Underwriting requirements: Federal civilian employees, members of the uniformed services, and their spouses will be required to submit applications with short form underwriting. The short form contains several questions regarding health status.

All other eligible persons will be required to submit applications with long form, or full, underwriting. If you are subject to full underwriting, you must answer more questions about your health status. It may also include a review of medical records and/or a personal interview.

Benefits available: Under early enrollment, a limited number of benefit options will be available. Benefit levels will be described in printed material provided by LTC Partners and on their Web site at *www.ltcfeds.com.* More options will be made available during the open season that begins in July. You will be able to change to a different benefit level during that open season if you wish, and still retain your "billing age" from early enrollment.

Billing age: Premiums are based on your age at the time LTC Partners receives your application for coverage (your "billing age"). Billing age rules will be different for the open season.

Premiums: Premiums vary depending on your age and the level of coverage you choose. Premiums will be provided by LTC Partners in print material and on their Web site at *www.ltcfeds.com.*

During early enrollment, premiums may be paid in one of two ways. You may request direct billing for premiums, or you may have premiums automatically deducted from a bank account. Payroll deductions will not be available until the open season. You may switch to payroll deductions at any time after they become available.

Effective date: The effective date of an enrollee's coverage under early enrollment is the later of May 1, 2002, or the first day of the month that is on or after the date LTC Partners approves your application for coverage.

Authority: 5 U.S.C. 9008.

Kay Coles James,

Director.

[FR Doc. 02–6198 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Teresa Floyd, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–2309.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Kay Coles James,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Paul T. Conway—Chair,
William E. Flynn,
Richard A. Ferris,
John C. Gartland,
Teresa M. Jenkins,
Kathleen M. McGettigan,
Mark A. Robbins,
Ronald P. Sanders.

[FR Doc. 02–6199 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–39–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25457; 812–12706]

LaSalle Funding LLC; Notice of Application

March 11, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

Summary of Application: Applicant, LaSalle Funding LLC ("LaSalle Funding"), seeks an order to permit LaSalle Funding to sell securities and use the proceeds to finance the business activities of certain companies controlled by its parent company, ABN AMRO Bank N.V. ("Bank").

Filing Dates: The application was filed on December 3, 2002 and amended on March 11, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 135 South LaSalle Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The ABN AMRO group ("ABN AMRO Group"), which consists of Bank, Bank's parent company ABN AMRO Holding N.V. ("Holdings") and subsidiaries of Holdings, offers a wide range of commercial and investment banking products and services on a global basis. Holdings and its subsidiaries, on a worldwide basis, are extensively regulated in The Netherlands by the Dutch Central Bank. ABN AMRO Group is one of the largest banking groups in the world with total consolidated assets, as of December 31, 2000, of EUR 543.2 billion.

2. LaSalle Funding, a Delaware limited liability company, is an indirect wholly owned subsidiary of Bank. LaSalle Funding was established to engage in financing activities and to provide financing to LaSalle Bank, National Association ("LaSalle Bank") and to other companies controlled by Bank within the meaning of rule 3a–5(b)(3) under the Act and after giving effect to the requested order (such companies, together with LaSalle Bank, collectively, the "Controlled Companies"). LaSalle Funding proposes to issue in the United States up to $2.5 billion of debt securities ("Notes") with maturities expected to range from nine months to 30 years pursuant to an effective "shelf" registration statement under the Securities Act of 1933 ("1933 Act"). LaSalle Funding may also offer other debt securities in the United States pursuant to a registration statement or an applicable exemption from registration under the 1933 Act.

3. The Notes and any other issuance of debt securities by LaSalle Funding will be guaranteed unconditionally by Bank with a guarantee that meets the requirements of rule 3a–5(a) ("Guarantee"). In accordance with rule 3a–5(a)(5), at least 85% of any cash or cash equivalents raised by LaSalle Funding will be invested in or loaned to Controlled Companies as soon as practicable, but in no event later than six months after LaSalle Funding's receipt of such cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by LaSalle Funding, including temporary investments, will be made in Government securities (as defined in the Act), securities of Controlled Companies or debt securities that are exempted from the provisions of section 3(a)(3) of the 1933 Act.

4. In connection with LaSalle Funding's offering of securities guaranteed by Bank, Bank will submit to the jurisdiction of any State or Federal court located in the Borough of Manhattan in the City of New York and will appoint an agent to accept any process which may be served in any action based upon Bank's obligations to LaSalle Funding as described in the application. Such consent to jurisdiction and such appointment of an agent to accept service of process will be irrevocable until all amounts due and to become due with respect to securities issued by LaSalle Funding as described in the application have been paid.

Applicant's Legal Analysis

1. LaSalle Funding requests relief under section 6(c) of the Act for an exemption under 6(c) of the Act from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). Certain of the Controlled Companies do not, or are not expected to, fit within the definition of "companies controlled by the parent company" because they derive their non-investment company status from section 3(c) of the Act. LaSalle Funding states that neither LaSalle Bank, nor any other Controlled Company excluded under section 3(c), nor Bank will engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. LaSalle Funding submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

LaSalle Funding agrees that any order issued on the application shall be subject to the following condition:

LaSalle Funding will comply with all of the provisions of rule 3a-5 under the Act, except paragraph (b)(3)(i) to the extent that LaSalle Funding will be permitted to invest in or make loans to entities that do not meet that portion of the definition of "company controlled by the parent company" solely because they are corporations, partnerships and joint ventures that are excluded from the definition of investment company by section 3(c)(1), (2), (3), (4), (5), (6) or (7) of the Act, provided that any such entity:

(i) If excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) of the Act, will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act;

(ii) If excluded from the definition of investment company pursuant to section 3(c)(5) of the Act, will fall within section 3(c)(5)(A) or 3(c)(5)(B) solely by reason of its holding of accounts receivable of either its own customers or of the customers of other Bank subsidiaries, or by reasons of loans made by it to such subsidiaries or customers; and

(iii) If excluded from the definition of investment company pursuant to section 3(c)(6) of the Act, will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in (ii) above).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6254 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25456; 812–12771]

The Catholic Funds, Inc., et al.; Notice of Application

March 11, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit the proposed reorganizations of the following series of The Catholic Funds, Inc. ("CFI"): The Catholic Equity Income Fund ("Equity Income Fund") with and into The Catholic Equity Fund ("New Equity Fund"); The Catholic Large-Cap Growth Fund ("Large-Cap Growth Fund") with

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and into the New Equity Fund; and The Catholic Disciplined Capital Appreciation Fund ("Capital Appreciation Fund" and, together with the Equity Income Fund and the Capital Appreciation Fund, the "Existing Funds") with and into the New Equity Fund. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: CFI and Catholic Financial Services Corporation ("CFSC").

Filing Dates: The application was filed on February 4, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Fredrick G. Lautz, Esq., Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. CFI, a Maryland corporation, is registered under the Act as an open-end management investment company and currently offers several series, including the Existing Funds (and together with the New Equity Fund, the "Funds"). The New Equity Fund is a newly designated series of CFI. CFSC, a Wisconsin corporation, is registered under the Investment Advisers Act of 1940 and is the investment adviser to the Funds. As of December 31, 2001, Catholic Knights and Catholic Order of Foresters, both of which are non-profit organizations, each owned beneficially and of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of each Existing Fund.

2. On February 14, 2002, the board of directors of CFI ("Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), unanimously approved separate Agreements and Plans of Reorganization and Liquidation (each, a "Plan"), whereby each of the Existing Funds would be consolidated with and into the New Equity Fund. In each of these reorganization transactions (a "Reorganization"), the relevant Existing Fund would transfer substantially all of its assets, net of its liabilities, to the New Equity Fund in exchange solely for shares of the New Equity Fund. In each Reorganization, shareholders of the relevant Existing Fund will receive shares of the New Equity Fund having an aggregate net asset value equal to the aggregate net asset value of the Existing Fund's shares. The value of the assets of each Fund will be determined in the manner set forth in each Fund's then-current prospectus and statement of additional information. Immediately after the exchange, each Existing Fund would liquidate and distribute the shares of the New Equity Fund received in the exchange to its shareholders pro rata.

3. Applicants state that the Board has determined that the investment objective, program and policies of the Funds are sufficiently similar to make an investment in the New Equity Fund an appropriate substitute investment for shareholders of the Existing Funds. Each Existing Fund offers one class of shares, Class A, and the New Equity Fund will offer three classes of shares, only one of which, Class A, will be issued in the Reorganizations. In connection with the Reorganizations, shareholders of each Existing Fund will receive the corresponding Class A shares of the New Equity Fund. No sales charge will be imposed on shares of The New Equity Fund issued to shareholders of the Existing Funds in the Reorganizations. CSFC has committed to pay all costs incurred by an Existing Fund in connection with each Reorganization.

4. The Board, including a majority of the Independent Directors, determined that the Reorganizations are in the best interests of the New Equity Fund and the Existing Funds and that the interests of the shareholders of the Existing Funds would not be diluted by the Reorganizations. In approving the Reorganizations, the Board considered various factors, including, among others: (a) The investment objectives and policies of the Existing Funds and the New Equity Fund; (b) the terms and conditions of each Plan; (c) the tax-free nature of the Reorganizations; and (d) the expense ratios of the Existing Funds and the New Equity Fund.

5. The consummation of each Reorganization is subject to a number of conditions, including, among others: (a) Approval of the Plan by the affirmative vote of a majority of the outstanding voting securities of the relevant Existing Fund; (b) receipt by CFI of an opinion from its legal counsel that the relevant Reorganization will not result in recognition of income, gain or loss for federal income tax purposes by the New Equity Fund, the relevant Existing Fund or the shareholders of the relevant Existing Fund, and (c) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan also provides that, prior to completion of the Reorganization to which it relates, the relevant Existing Fund shall have declared and paid dividends and other distributions, effectively distributing to its shareholders substantially all investment company taxable income and all net capital gains for all taxable years ending on or before the date of the relevant Reorganization. Each Plan may be terminated by the Board. Applicants agree not to make any material changes to a Plan that would affect the application without prior approval of the Commission or its staff.

6. CFI began mailing definitive proxy statements/prospectuses for each of the three separate Reorganizations on March 1, 2002. The definitive proxy statements/prospectuses were filed with the Commission on March 6, 2002. Special meetings of shareholders of each of the Existing Funds are scheduled for April 2, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among others: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Section 2(a)(9) of the 1940 Act defines "control" in part to mean "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of any company shall be presumed to control such company."

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganizations because the Existing Funds and the New Equity Fund may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Each Existing Fund and the New Equity Fund may be deemed affiliated persons since they are under the common control of CFSC. Additionally, the Existing Funds may be deemed affiliated persons since they are under the common control of Catholic Knights, which beneficially owns more than 25% of the outstanding voting securities of each Existing Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b). Applicants state that the Reorganizations will be based on the relative net asset values of the Existing Funds and New Equity Fund's shares. Applicants also state that the investment objective and policies of the Funds are substantially similar. Applicants state that the Board, including the Independent Directors, has made the requisite determinations that the participation of each Existing Fund in the respective Reorganization is in the best interests of each Existing Fund and the New Equity Fund and that such participation will not dilute the interests of the existing shareholders of each Existing Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6255 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 18, 2002: A closed meeting will be held on Tuesday, March 19, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, March 19, 2002, will be: Opinion; litigation matter; formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 12, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6318 Filed 3–12–02; 4:12 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45532; File No. SR–OPRA–2002–01]

Options Price Reporting Authority; Notice of Filing of a Proposal To Establish Terms Governing the Provision by OPRA of a Best Bid and Offer for Each of the Options Series Included in OPRA's Market Data Service, and Governing Its Use by Vendors

March 11, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 26, 2002, the Options Price Reporting Authority ("OPRA"),[2] submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would add to the OPRA Plan terms governing the provision by OPRA of a best bid and offer ("BBO") for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed amendment would establish in the OPRA Plan, and in BBO Guidelines that would be a part of the OPRA Plan, terms governing the provision by OPRA of a consolidated BBO service that would show the best

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

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bid and offer for each options series that is included in OPRA's market data service. The BBO for a given options series would show the number of contracts included in the best bid and best offer for that series subject to a minimum of ten contracts, and would identify the exchange where the best bid is being quoted and where the best offer is being quoted. In accordance with the proposed OPRA Plan amendment, OPRA vendors would be required to include only the consolidated BBO for any series of options included in the market data they provide to their customers (together with last sale reports for each such series of options), instead of having to show all bids and offers in all markets for each such series as they are currently required to do.

Under the proposed OPRA Plan amendment, the BBO for any series of options would be the highest bid and the lowest offer currently being quoted on any of OPRA's participant exchanges. In the case of options traded on two or more participant exchanges, if the same best bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts would be identified as the exchange that is quoting the best bid or offer, and if the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts would be identified as the BBO. Thus, the BBO would be prioritized, in order, on the basis of price, size, and time.

The proposed BBO Guidelines provide that the minimum price increment for purposes of the BBO is no less than five cents, and that the minimum size increment for purposes of the BBO is no less than ten contracts.[3] This means that in order to displace the current BBO by improving the price at which an options series is quoted, the price improvement must be at least five cents per contract, and in order to displace the current BBO by increasing the number of contracts covered by a quote at the same price as the current BBO, the new bid or offer must be for at least ten contracts more than the current BBO. This would not preclude markets from entering bids and offers that improve the current BBO by less than five cents (to the extent such quotes may be permitted under applicable exchange rules) or that increase the number of contracts by less than ten. However, in order to displace the disseminated BBO, the price or size improvement must equal or exceed these minimums.

The adoption by OPRA of these minimum price and size increments occurred after OPRA received input from its vendors and subscribers, who view a BBO service that would enable OPRA to offer a meaningful options market data service as a significant benefit. Additionally, OPRA believes that the proposed BBO would require significantly less data processing and transmission capacity on the part of vendors and subscribers than is required by OPRA's full market data service. In this respect, OPRA anticipates that the BBO service would mitigate the huge increase in message traffic represented by OPRA's full service over the past several years, and the concomitant increase in the capacity required of vendors' and subscribers' systems in order to handle the full service. By proposing minimum price and size increments for purposes of the BBO at five cents and ten contracts respectively, OPRA believes that it has attempted to strike a balance between the need to show meaningful price and size improvement, and the need to keep the capacity demands of the BBO service at a level that is significantly less than the capacity demands of OPRA's full service.

OPRA states that its full market data service would continue to include all disseminated bids and offers from all of OPRA's participant exchanges and this information would continue to be available to vendors of, and subscribers to, the full service. OPRA believes that since major vendors may be expected to continue to offer the full OPRA service, and since most if not all broker-dealer subscribers would likely continue to subscribe to the full service in order to be able to fulfill their best execution obligations to customers, broker-dealers would have access to the same complete market data as they do today. For this reason, OPRA believes that the new BBO service should be viewed as an alternative to the full service for those persons who do not require the full service, and who therefore do not need to maintain the large systems needed to handle the full service.

The text of the amendment is set forth below. Text additions are in italics, deletions are in brackets:

III. Definitions

* * * * *

(g) "Quotation information" means bids, offers, or related information pertaining to quotations in eligible securities, *including information consisting of the BBO (as defined below) for eligible securities.*

* * * * *

(s) "BBO" ("Best Bid and Offer") means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the parties, as determined and disseminated by OPRA in accordance with "BBO Guidelines" adopted by the parties. The adoption of the initial BBO Guidelines shall require the approval of all of the parties; thereafter the BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.

* * * * *

V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

* * * * *

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of *consolidated options information*, on fair and reasonable terms over a network or networks to vendors, subscribers and other approved persons. [Last sale reports and quotation] *Such* information [with respect to eligible securities] shall [be disseminated only through the OPRA System,] *include consolidated last sale reports and consolidated quotation information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a)–(b) of this Section V. Not later than _____ 2002,[4] or upon the earlier completion of modifications to the OPRA System necessary to enable the System to carry the BBO, such information shall also include* [and only] *the BBO for all* such [reports] *series of options. Once the BBO is available through the OPRA System, OPRA may offer a complete options market data service consisting of the BBO combined with consolidated last sale reports and quotation information, or OPRA may offer a limited service consisting of the BBO combined with consolidated last sale reports only while separately continuing to offer last sale reports and complete quotation information. Only such consolidated market information and related* information, together with other information that satisfies the conditions of paragraph (iv) of this Section V(c) or is approved by OPRA, shall be disseminated through the System.

* * * * *

VII. Vendors, Subscribers and Other Approved Persons

* * * * *

(b) Agreements. Agreements for the furnishing of options [last sale reports and/or quotation] information shall be designed to insure that such information is disseminated in an orderly, reliable and timely fashion, and that it is available only to approved vendors, subscribers and other approved persons. Such agreements may impose reasonable and nondiscriminatory charges for the privilege of receiving such information. OPRA may, in its discretion, contract separately for the dissemination of last sale reports and quotation information, or it may offer last sale reports and quotation information together in a single contract. *As provided in Section V(c), upon the availability of a BBO through the OPRA System OPRA may contract separately for last sale reports combined with the BBO, or it may offer last sale reports, quotation information and the BBO together in a single contract.* OPRA may *also* contract separately for access to information and facilities pertaining to FCO securities or index option securities.

Agreements with vendors shall provide that last sale reports and quotation information may be received by vendors only for the purpose of (A) developing a data base that enables the vendor to respond to inquiries from interrogation devices or other devices located in the office of approved subscribers that are capable of displaying last sale reports of transactions in, and/or quotations for, eligible securities as they occur; (B) reporting changes in last sale reports and quotation information through display devices located in the office of approved subscribers; and (C) providing last sale reports and/or quotation information to approved subscribers and to such other persons and in such other forms as OPRA may approve. In furtherance of the foregoing purposes, vendor agreements shall include provisions relating to the following:

(i) There shall be uniform specifications governing the manner in which last sale reports and quotation information are transmitted by or on behalf of OPRA to vendors. Such specifications may be different for different categories of eligible securities;

(ii) There shall be standards governing the services provided by vendors to subscribers which shall require that such services facilitate dissemination of last sale reports and quotation information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of options markets;

(iii) Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of last sale reports or quotation information shall be capable of displaying all such reports or information regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market , *provided, however, that agreements with vendors may provide that the requirements of this paragraph (b)(iii) will be deemed to be satisfied if a vendor's market data service includes last sale reports together with the BBO, or last sale reports together with all bids and offers furnished by OPRA, for each eligible security included in the service, notwithstanding that the service may also include additional unconsolidated information in respect of such security.*

All agreements entered into between the parties and persons receiving last sale reports and/or quotation information shall provide that the respective reports and information covered thereunder remain the property of the respective party on or in whose market the reported transaction or quotation took place, and all contracts shall be executed, and the fees collectable thereunder shall be billed and collected, on behalf of all parties, except that OPRA may provide for certain contracts pertaining exclusively to FCO securities or index option securities to be executed, and certain fees pertaining to such eligible securities to be billed and collected, on behalf of those parties that provide a market in such eligible securities.

* * * * *

Options Price Reporting Authority

BBO Guidelines

Section V(c)(i) of the OPRA Plan provides for the dissemination by OPRA of, among other things, a consolidated BBO. Section III(s) of the OPRA Plan defines the BBO as the highest bid and lowest offer for a series of options available in one or more of the options markets maintained by the parties, as determined in accordance with "BBO Guidelines" adopted by the parties to the Plan. The BBO Guidelines as currently in effect are as follows:

1. Price/Time Priority. The BBO is determined on the basis of the best price (highest bid and lowest offer) quoted first in time by a market, provided that in order to displace the current best bid or offer, a quote must improve the current quote by no less than five cents.

2. Size Included in BBO. The BBO will include the actual size of the included bid and offer, subject to a minimum size of 10 contracts. A bid or offer at the same price as the current BBO but for a size larger than the current BBO by no less than ten contracts will displace the current BBO.

3. Market Identifier. The BBO as disseminated by OPRA will include identification of the market quoting the best bid or best offer comprising the BBO in accordance with these Guidelines.

4. Crossed or Locked Markets. Crossed or locked markets may be shown as the BBO.

5. Excluded Quotes. Whenever quotes in a market are identified by that market as not being firm, those quotes will be excluded for purposes of determining the BBO. In addition, if, based on information provided by an exchange, the OPRA Processor determines that the exchange is experiencing system problems resulting in the unreliability of its quotes, the Processor will exclude those quotes from the BBO determination until it determines that these problems have been resolved.

II. Implementation of Plan Amendment

OPRA believes that its BBO service will be implemented upon the approval of the proposed OPRA Plan amendment (including its proposed BBO Guidelines) and promptly as practicable upon completion by OPRA's processor of the systems modifications necessary for its implementation. According to OPRA, its processor, the Securities Industry Automation Corporation ("SIAC"), is not now in a position to estimate when that work may be completed, since that depends upon certain technical decisions that have not yet been made by OPRA. However, OPRA has represented to the Commission that once SIAC is able to provide such an estimate, OPRA will amend this filing to include the latest date when the BBO service will go into production.[5] In addition, the introduction of OPRA's BBO service

[3] The minimum price variation for option quotes under the rules of OPRA's participant exchanges is currently five cents for options trading under $3.00 per share per option contract; *See, e.g.*, American Stock Exchange Rule 952.

[4] OPRA represents that it will specify the date when the BBO service will be in production by the filing of a subsequent amendment to this proposal. See letter from Joseph P. Corrigan, Executive Director, OPRA, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2002.

[5] *Id.*

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will likely necessitate certain changes to OPRA's forms of Vendor Agreement and Subscriber Agreements to make them conform to the revised requirements of the Plan, and perhaps to OPRA's fee structure. OPRA intends to file any such proposed amended agreements and fee changes with the Commission in one or more separate filings that may need to become effective prior to the implementation of the BBO service.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–01 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6256 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45527; File No. SR–EMCC–2002–02]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Conforming Rule Changes Resulting From the Integration With The Depository Trust and Clearing Corporation

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 1, 2002, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend EMCC's rules to conform the rules to recent changes EMCC made to its by-laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 25, 2001, the Commission approved EMCC's integration with The Depository Trust and Clearing Corporation ("DTCC") whereby EMCC became a subsidiary of DTCC ("Integration Filing").[3] As part of the integration, (i) EMCC's Class A shareholders were to be offered the right to exchange their EMCC shares for DTCC common shares, (ii) the EMCC shares held by EMCC's trade association shareholders were to be repurchased and cancelled, and (iii) EMCC's certificate of incorporation and by-laws were to be revised to provide for a corporate governance structure consistent with its integration into the DTCC organization. The integration, including the exchange offer, trade association share repurchases, and amendment of EMCC's governing documents, was completed as of January 1, 2002, and on that date EMCC became a subsidiary of DTCC.

When EMCC's by-laws were amended, the reference to "participant directors" was deleted because that term was no longer relevant in the new corporate governance structure. A conforming change should also have been made to EMCC's rules in the Integration Filing but was inadvertently omitted. Also, because EMCC users are now given the opportunity to buy shares of DTCC at periodic intervals under the new structure, the obligation to become an EMCC shareholder as part of an applicant's initial membership requirements should have been omitted from EMCC's by-laws.

Accordingly, Rule 1 ("Definitions") and Rule 31 ("Hearing Procedures") are being amended to delete the definitions of "participant director." Rule 1 is also being amended to delete the definition of "ISMA," which was a "participant director." EMCC Rule 2 ("Members") is being amended to delete the requirement that applicants for membership become EMCC shareholders.

EMCC believes that the proposed rule change is consistent with the requirements of the section 17A of the Act[4] and the rules and regulations thereunder because it permits EMCC's rules to be consistent with its current corporate governance structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Securities Exchange Act Release No. 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001).

[4] 15 U.S.C. 78q–1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C)[5] of the Act, which requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. In approving the Integration Filing, the Commission found that the proposed rule change was consistent with section 17A(b)(3)(C). Because this proposed rule change merely makes changes to EMCC's rules to conform them to the changes made in the Integration Filing, the Commission also finds this proposed rule change to be consistent with section 17A(b)(3)(C).

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow EMCC to immediately conform its rule to its current corporate governance structure which should help to avoid confusion among participants.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6069. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC–2002–02 and should be submitted by April 5, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC–2002–02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6264 Filed 3–14–02; 8:45 am]

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[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45522; File No. SR–ISE–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to the Status of Market Makers

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to clarify that its market makers are specialists for all purposes under the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The term "specialist" includes any market maker deemed to be or treated as a specialist for purposes of the Act by an exchange.[3] The purpose of this proposed rule change is to specify in the Exchange's rules that ISE market makers are deemed to be specialists under the Act.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed, among other things, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to

[3] *See, e.g.*, Exchange Act Release No. 17574 (Feb. 25, 1981), 46 FR 15134 (Mar. 4, 1981). *See also* Rule 8.1 of the Chicago Board Options Exchange; Rule 958.01(a) of the American Stock Exchange; Rule 1014.01 of the Philadelphia Stock Exchange; and Rule 6.32 of the Pacific Exchange.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after February 11, 2002, the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE–2002–04 and should be submitted by April 5, 2002.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).
[7] 17 CFR 240.19b–4(f)(6).
[8] 15 U.S.C. 78s(b)(3)(A)(iii).
[9] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6258 Filed 3–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45529; File No. SR–ISE–2002–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC Proposal to Restructure From a Limited Liability Company to a Corporation

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on March 5, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The International Securities Exchange LLC ("Old ISE") proposes to restructure from a limited liability company to a corporation, New ISE, (with the on-going business of both Old ISE and New ISE referred to collectively as "ISE" or the "Exchange") and to "demutualize" by separating the equity interest in the Exchange from members' trading rights. The text of the proposed rule change consists of: (1) A new Certificate of Incorporation; (2) a new Constitution; and (3) amendments to the Exchange's Rules. In addition, the Exchange has adopted the following interpretation of its Rules:

Upon reorganization, the Exchange would be a Delaware corporation. Pursuant to Paragraph (a)(ii) of section II of the Exchange's Certificate of Incorporation, the holders of the Exchange's Class A Common Stock "would be entitled to receive, when and if declared by the Board of Directors, out of the assets of [New ISE] which are by law available therefor, dividends payable either in cash, in stock or otherwise." The Exchange states its policy is that any revenues it receives from regulatory fees or regulatory penalties: would be segregated; would be applied to fund the legal, regulatory and surveillance operations of the Exchange; and would not be used to pay dividends to the holders of the Class A Common Stock.

The text of the proposed rule change is available for inspection at the Office of the Secretary, the ISE, the Commission's Public Reference Room, and on the Commission's Internet Web site (*http://www.sec.gov*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The ISE is currently structured as a limited liability company ("LLC"), in which memberships encompass both trading rights and equity ownership. The Exchange states that the purpose of this proposed rule change is to restructure the company into a corporation, in which trading rights are separated from equity ownership. Except as specified below, the Exchange represents that these changes do not affect the manner of the Exchange's operations or governance structure. The three documents that would accomplish the restructuring and demutualization of the Exchange, and that encompass this rule change, are as follows:

- Certificate of Incorporation: This is the basic corporate document and replaces Old ISE's current LLC Operating Agreement.
- Constitution and By-Laws: This document replaces Old ISE's Constitution.
- Amended rules: These proposed rule changes reflect the changes to the Certificate and Constitution. Most changes are non-substantive and reflect changes to "membership" terminology required by the demutualization. In particular, the applicability of various rules to "owners" of shares and to "Members" of the Exchange, which are broker-dealers that have been approved to exercise trading privileges on the Exchange, has been clarified.

Overview of the Restructuring and Demutualization

The Exchange would convert into a Delaware stockholder corporation through a merger of Old ISE with New ISE, its newly-formed subsidiary; the members of Old ISE would become stockholders of New ISE. Memberships in Old ISE would convert into shares of New ISE Class A Common Stock, par value $.01 per share (the "Class A Common Stock"), and shares of New ISE Class B Common Stock, par value $.01 per share (the "Class B Common Stock"). Other than the nominal par value of the Class B Common Stock, the Class A Common Stock would constitute all of the equity in New ISE. New ISE may issue classes of preferred stock in the future, the terms of which would be defined by the Board and filed with the Commission for approval.

The Class B Common Stock would confer upon holders trading privileges and specified voting rights associated with the memberships in Old ISE. The Class B shares would be issued in three series corresponding with the existing membership types. Each series of Class B Common Stock would confer the same trading privileges associated with the membership interest that is converted into such series, and would be distributed as follows:

- Each Class A Membership Interest (Primary Market Maker ("PMM") Members) would receive one share of Class B Common Stock, Series B–1 (the "Series B–1 Stock");
- Each Class B Membership Interest (Competitive Market Maker ("CMM") Members) would receive one share of Class B Common Stock, Series B–2 (the "Series B–2 Stock"); and
- Each Class C Membership Interest (Electronic Access Members ("EAM")) would receive one share of Class B Common Stock, Series B–3 (the "Series B–3 Stock").

Description of New ISE Stock

Class B Common Stock

As discussed below, the holders of the Class B Common Stock would have the right to elect six members of New ISE's Board of Directors. In addition, Series B–1 Stock holders and Series B–2 Stock holders would have voting rights with respect to actions affecting the number of issued shares of Series B–1 Stock and Series B–2 Stock (the "Core Rights"). A vote with respect to a Core Right would require the majority approval of the Series B–1 holders, voting as a separate class, and the Series B–2 holders, voting as a separate class. This replicates the voting provisions of Old ISE.

A holder of Class B Common Stock, together with any affiliate, may not own more than 20% of Series B–1 Stock or Series B–2 Stock. ISE Founders[4] would have a temporary exemption, not to extend past May 26, 2010, from the ownership concentration limits. Founders, however, would have no voting rights, other than a vote related to Core Rights, for any shares in excess of 20% of the Series B–1 Stock or 20% of the Series B–2 Stock.

The holders of Class B Common Stock would not have the right to receive any dividends. Upon liquidation of New ISE, holders of each series of Class B Common Stock would be entitled to receive a liquidation amount equal to the par value of the shares of Class B Common Stock ($0.01 per share). The shares of Series B–1 and B–2 Common Stock may be transferred only with approval of the Exchange, as is currently required with respect to PMM and CMM memberships. As with current EAM memberships, the shares of Series B–3 Stock would be non-transferable. In the event an EAM withdraws from trading, New ISE would buy back its share of B–3 Stock at par value.

Class A Common Stock

As discussed below, the holders of shares of Class A Common Stock would have the right to elect nine members of the Board of Directors of New ISE. The holders of the Class A Common Stock also would have the right to vote on any matter that requires a vote of the stockholders of New ISE, other than votes with respect to the Core Rights. Upon liquidation of New ISE, the holders of Class B Common Stock receive the par value of their stock and the holders of Class A Common Stock receive all residual amounts, subject to the rights of any classes of preferred shares.

If a holder of Class A Common Stock, together with any affiliate, owns more than 20% of the Class A Common Stock, the holder would have no voting rights for shares owned in excess of the 20% concentration limit. The New ISE Board, however, may approve an exemption to this prohibition for any person other than a New ISE member, an affiliate of a New ISE member, or a person subject to a statutory disqualification under section 3(a)(3) of the Act,[5] if the Board determines that such an exemption generally would be consistent with the New ISE's self-regulatory responsibilities. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Class A Common Stock shares owned in excess of 20%, but only with respect to any vote regarding any merger, consolidation, or dissolution of the New ISE or any sale of all or substantially all of the assets of the New ISE.

The holders of shares of Class A Common Stock would be entitled to receive dividends, when and if declared by the Board of Directors. Prior to its registration as a national securities exchange, the ISE adopted an interpretation restricting the ISE from paying dividends out of revenues received from regulatory fees or regulatory penalties.[6] The ISE proposes a similar interpretation to apply the same restrictions to New ISE.

Election of Board of Directors

The size and composition of the Board of Directors of New ISE would remain the same following the demutualization. The Board would be comprised of 15 directors, and initially would consist of the current Board of Old ISE. In future elections, the holders of the Class B Common Stock would elect six directors: Two directors elected by the holders of Series B–1 Stock; two directors elected by the holders of Series B–2 Stock; and two directors elected by the holders of Series B–3 Stock.

[10] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 4, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange expanded the concentration limits regarding ownership of the Class A Common Stock of its proposed corporation, International Securities Exchange, Inc. ("New ISE"). Specifically, the Exchange amended the proposed rule change to include a general prohibition on the voting rights with respect to stock that a person owns above a 20 percent ceiling. However, the Exchange states that its Board of Directors ("Board") would be able to exempt a person from the voting limit if such an exemption generally would be consistent with the Exchange's self-regulatory responsibilities. The Board would not be able to grant an exemption to: members; their affiliates; or persons subject to a statutory disqualification. In addition, Amendment No. 1 specifies that any "poison pill" New ISE adopts will be subject to prior Commission approval.

[4] As defined in the New ISE Constitution, the term "Founder" means a person or entity that purchased the former Class A or Class B Memberships directly from the Exchange on or prior to August 1, 1998, but only with respect to his or its ownership of such memberships.

[5] 15 U.S.C. 78c(a)(3).
[6] File No. 10–127, Amendment No. 2 (Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 17, 2000).

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The holders of the Class A Common Stock would elect nine directors: Eight non-industry directors (including at least two who would be public representatives) and the Chief Executive Officer. As opposed to the current structure, PMMs, CMMs, and EAMs would have the right to vote for the non-industry directors only to the extent they own Class A Common Stock. The Exchange believes that retaining members' rights to elect six directors fully complies with the statutory requirement that the ISE "assure a fair representation of its members in the selection of its directors. * * *."[7]

Currently, the Exchange has a single nominating committee, consisting of both industry and non-industry members, that nominates all candidates for election to the Board. Consistent with the new election structure, a nominating committee consisting of representatives of holders of the Series B Common Stock would select the nominees for Series B directors, and the non-industry directors on the Board would select the nominees for non-industry directors. Holders of the appropriate classes of common stock also would be able to nominate rival candidates for the Board.

Trading Privileges on the Exchange

The holders of each series of Class B Common Stock would have the same trading privileges they currently hold as PMMs, CMMs, and EAMs. The proposed rules of New ISE do not change any trading privileges. According to the Exchange, virtually all of the proposed changes are intended simply to conform the rules to the new Certificate of Incorporation and Constitution.

Transfer of Memberships

In filing number SR–ISE–2001–24, the Exchange proposed changes to the process by which members could transfer memberships. Concurrently with submitting the current filing, the ISE is withdrawing SR–ISE–2001–24 and including the substantive provisions of that filing in the Rules of New ISE. These changes update the Exchange's rules relating to the sale, transfer, and lease of market maker memberships. In particular, these changes eliminate the bid/offer system of selling these memberships and eliminate the claims process and deposit requirements for sales, transfer, and leases.[8]

Current ISE Rules provide that market maker memberships generally must be sold through a bid and offer system. Given its experience to date, the Exchange believes that the bid/offer system is not compatible with the unique structure of its market maker memberships. The PMM and CMM memberships are assigned to particular bins. In contrast to memberships on other exchanges, these memberships are not fungible with memberships outside those bins. In addition, there are relatively few memberships within each bin (1 PMM and 10 CMMs), rendering a bid/offer system limited to bin and class impractical. The Exchange proposes instead to allow members to negotiate their own purchases and sales, subject to the purchase or transfer agreement being filed with, and approved by, the Exchange. As a convenience, the Exchange would maintain a "bulletin board" for members to list memberships for sale, but use of that facility would be voluntary.

Currently, the Rules require the Exchange to hold proceeds from sales made pursuant to the bid/offer system for 20 days, during which time claims against the proceeds may be made. Similarly, under the lease provisions contained in the Exchange's current rules, a deposit is required prior to the lease becoming effective, to be applied at the beginning and the end of the lease term to satisfy the claims process. The Exchange proposes to remove the claims process and deposit requirements. These modifications would eliminate a significant administrative burden on the Exchange, Clearing Members, and other members that is a byproduct of the current membership claims process. As exists currently, Members can still pursue claims against other Members through the arbitration process.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b)(5) of the Act [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–01 and should be submitted by April 5, 2002.

[7] Section 6(b)(3) of the Act. 15 U.S.C. 78f(b)(3).

[8] The Exchange also proposes to change the terminology used in these Rules to reflect the fact that the sale or transfer of market maker trading rights will be accomplished by the sale or transfer of the appropriate share of Series B–1 or Series B–2 Class B Common Stock.

[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6260 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–10–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45531; File No. SR–NASD–2002–05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval to Proposed Rule Change Relating to Revisions to Form U–4 and Form U–5

March 11, 2002.

On January 9, 2002, the National Association of Securities Dealers, Inc. ("NASD" or the "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change revising the Uniform Application for Securities Industry Registration or Transfer ("Form U–4") and Uniform Termination Notice for Securities Industry Registration ("Form U–5") (collectively, the "Forms"). On January 23, 2002, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] On January 31, 2002, NASD Regulation submitted Amendment No. 2 to the proposed rule change.[4] On February 28, 2002, NASD Regulation submitted Amendment No. 3 to the proposed rule change.[5]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7, 2002.[6] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder,[7] and, in particular, the requirements of Section 15A of the Act [8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[9] Section 15A(b)(6) [10] requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will accomplish these ends by making technical changes to the Forms to accommodate the electronic submission of investment adviser filings on the Investment Adviser Registration Depository ("IARD") system; establishing procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms; making certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; providing separate paper filing instructions for those filers that do not use the CRD or IARD systems; clarifying certain items that have been a source of confusion for Web CRD users; and updating the Form U–4 to add examination and registration categories that were not previously included. The proposed rule change also amends NASD IM–8310–2, Release of Disciplinary Information, to refer to the newly numbered Item 14 of the Form U–4.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NASD–2002–05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6259 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45521; File No. SR–NYSE–99–51]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Order Tracking by Exchange Members and Member Organizations

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 27, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On May 24, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.[4] On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.[5] The

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 22, 2002 ("Amendment No. 1").

[4] *See* letter from Patrice M..Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated January 31, 2002 ("Amendment No. 2").

[5] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated February 27, 2002 ("Amendment No. 3"). In Amendment No. 3, NASD Regulation made various technical corrections to the proposed language changes to Form U–4 and Form U–5.

[6] *See* Securities Exchange Act Release No. 45385 (February 1, 2002), 67 FR 5862.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation ("Division"), Commission, dated May 22, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange deleted the phrase "or execution" from proposed Rule 132B(a)(1)(C) as unnecessary for application of the Rule.

[4] *See* Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed to: (1) amend Rule 123 by adding proposed paragraph (f) which would set forth the details required to be recorded of each execution report, including a unique order identifier, and (2) amend Rule 132.30 by deleting 132.30(10), which would have required a unique order identifier be added to the data elements in post trade processing. The Exchange represents that this change will ensure that a unique order identifier will be attached throughout the life of an order, thus simplifying the tracking process.

[5] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 ("Amendment No. 3"). In Amendment No. 3, the Exchange explained that it did not believe that it was cost-effective to store all order tracking data collected from members on a daily basis, and

Continued

proposed rule change was published, as amended, on January 30, 2002.[6] The Commission is publishing this notice to solicit comments on Amendment No. 4 to File No. SR–NYSE–99–51 from interested persons.

I.Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As originally filed in SR–NYSE–99–51, the proposed rule change consisted of amendments to NYSE Rule 132, and the proposed adoption of NYSE Rules 132A, B and C on order tracking. In Amendment No. 4 to the proposed rule change, the Exchange proposes that the requirement that copies of execution reports be entered into an Exchange database be implemented within 6 months, instead of 15 months (as originally proposed), after Commission approval of the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC") [7] and proposed requirements for the electronic capture of orders at the point of receipt (order tracking system, or "OTS").[8] The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. These requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing. As originally filed in SR–NYSE–99–51, the proposed rule change consisted of amendment of Exchange Rule 132, and adoption of new Rules 132A, B and C on order tracking. These new rules require the recording of details of orders in Exchange listed securities by members and member organizations.

Amendment No. 1 effected a minor change to proposed NYSE Rule 132(B).[9] Amendment No. 2 proposed amendments to NYSE Rules 123 and 132 to require that members and member organizations provide a drop copy of the report of execution to FESC, with the unique order identifier linking the execution report to the original order, rather than requiring that the order identifier be submitted as part of audit trail post-trade processing.[10] Amendment No. 3 discussed the Exchange's position that data be submitted to the Exchange on an "as requested" basis rather than daily as a matter of routine under NYSE Rule 132C.[11]

As originally proposed in File No. SR-NYSE–99–51, the implementation date for the entire rule change and amendments would occur fifteen (15) months after Commission approval, if such approval is granted. The Exchange now proposes to amend this time frame with respect to the drop copy of execution reports requirement *only* (as described in Amendment No. 2 to the proposed rule change) to a shorter time frame, namely six (6) months after Commission approval of the filing. The Exchange believes that this is feasible since the system architecture for the Exchange database (FESC) is already in place. This six-month time frame should allow sufficient time for members and member organizations to do programming and training so that execution reports can be captured and drop-copied into the Exchange database. In addition, the Exchange believes that the phasing-in of the requirements will give members and member organizations time to better plan for full implementation of the rule changes proposed in File No. SR-NYSE–99–51.

2. Statutory Basis

The Exchange believes that the basis under the Act for Amendment No. 4 to this proposed rule change is the requirement under section 6(b)(5)[12] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes that this amendment to the proposed rule change will enhance the Exchange's tools to effectively surveil its market. The Exchange notes that the proposed rule change fulfills an undertaking contained in an order issued by the Commission relating to the Exchange's regulatory responsibilities.[13] Specifically, the Order directed the Exchange to "design and implement * * * an audit trail sufficient to enable the NYSE to reconstruct its market promptly. * * *" The Order called for "an accurate, time-sequenced record of orders * * *" throughout an order's life, from receipt through execution or cancellation and for synchronization of clocks used in connection with the audit trail of orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

clarified that therefore members would be required to submit data to the NYSE on an "as requested" basis rather than daily as a matter of routine. The Exchange also represented that the data collected would be used solely for regulatory purposes, and that it would not use data received from its members pursuant to the proposed rules to gain a competitive advantage over another self-regulatory organization or broker-dealer. Lastly, the Exchange explained what it considered order origination and time of receipt of an order.

[6] *See* Securities Exchange Act Release No. 45326 (January 23, 2002), 67 FR 4479.

[7] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000).

[8] *See* note 6, *supra*.

[9] *See* note 3, *supra*.

[10] *See* note 4, *supra*.

[11] *See* note 5, *supra*.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999); Administrative Proceeding File No. 3–9925 ("the Order").

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to Amendment No. 4 of File No. SR–NYSE–99–51 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6262 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45534; File No. SR–OCC–2001–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the By-Laws

March 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], notice is hereby given that on December 19, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend certain sections of Article IV and Article VI of OCC's By-Laws to correct minor errors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of this rule change is to correct technical errors in Article IV of OCC's By-Laws that deals with officers. There are two principal errors that OCC desires to correct. First, in 1980, when Chapter XII of OCC's Rules was amended to eliminate the authority of the Chairman and the President to prescribe penalties for rule violations, Article IV of the By-Laws should have also been amended to eliminate references to that authority in Section 6 ("Chairman of the Board") and Section 8 ("President").

Second, in 1997, when Article IV was amended to create the office of Management Vice Chairman, OCC's stated intent was to remove the Member Vice Chairman from the line of succession.[3] However, language that should have been deleted in order to implement that intent was inadvertently left in. As a result, there are now mutually inconsistent By-Laws providing that in the absence or disability of the Chairman, the Management Vice Chairman and the Member Vice Chairman each succeed to the powers of the Chairman.

A secondary purpose of this rule change is to make minor corrections to Section 15 and 16 of Article VI of the By-Laws. Those corrections are to delete material that should have been deleted when references to market baskets were removed from the By-Laws and Rules.[4]

The proposed rule change is consistent with Section 17A of the Act because it provides consistency within OCC's by-laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [5] and Rule 19b–4(f)(1) [6] thereunder for it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Prior to that time, the By-Laws provided that Member Vice Chairman would succeed to the power of the Chairman in the absence or disability of the President and all the Vice Presidents. Securities Exchange Act Release No. 39420 (December 10, 1997), 62 FR 66167 (December 17, 1997) [File No. SR-OCC–97–08].

[4] Securities Exchange Act Release No. 41222 (March 29, 1999), 64 FR 16772 (April 6, 1999) [File No. SR–OCC–99–03].

[5] 5 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

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proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-2001-18 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-6257 Filed 3-14-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45523; File No. SR-Phlx-2002-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Adopt an Application Fee for Equity Trading Permits

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on March 1, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to apply a $200 Application Fee to applicants for Equity Trading Permits ("ETPs") who, at the time application is made, are not Exchange members or foreign currency options ("FCO") participants. The Exchange states that it would not charge the $200 ETP Application Fee to ETP applicants who, at the time the application is made, are Exchange members or FCO participants. The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23 which provides for ETPs.[4] The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to amend the Exchange's Schedule of Dues, Fees and Charges, to establish that a $200 ETP Application Fee will be charged to applicants for ETPs who, at the time application is made, are not Exchange members or FCO participants.[5] The Exchange proposes this new ETP application fee to defray the Exchange's administrative costs of review and processing such applications.

Exchange Rule 23(b) provides that ETP holders must meet all qualifications that are required for membership in the Exchange. It provides that applications must be approved by the Exchange, and that applicants who are not Exchange members must be admitted by the Exchange. Exchange Rule 23(b) also states that the admissions process for applicants who are not members of the Exchange will be the same as that required for membership applicants for admission, and that the decision to grant or deny an application for admission will be made by the Admissions Committee. The Exchange noted in its filing proposing Exchange Rule 23, that ETP applicants who are members of the Exchange when they apply for an ETP will have already received a favorable admissions determination by the Exchange's Admissions Committee when they became a member. Consequently, they will not be charged the ETP Application Fee. The Exchange now proposes that a $200 ETP Application Fee apply to ETP applicants who are not members or FCO participants at the time of application in order to defray the administrative costs associated with processing applications made by individuals who have not previously been evaluated by the Exchange as applicants for membership or FCO participation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the $200 ETP Application Fee is reasonable and equitable, because it is charged to all ETP applicants who are not members or FCO participants.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[8] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that application of the $200 ETP Application Fee to ETP applicants who are not members or FCO participants when they apply will defray administrative costs involved in the review and processing of an ETP application when made by an individual with respect to whom this has not previously been done in the context of an application for a membership or FCO participation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b-4(f)(2) hereunder.[10] At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2002-12 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-6263 Filed 3-14-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45533; File No. SR-SCCP-2002-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communications Networks

March 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 17, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends SCCP's pilot program for an additional one year period thereby continuing to implement the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. ("Phlx") for Electronic Communications Networks ("ECNs").[2] The current pilot program expired on January 23, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.[4] Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges but not account fees, research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.[5] The fee schedule was to operate as a pilot program for one year. It was intended that after the initial pilot period, the ECN would be eligible for the SCCP fee schedule rates for ECNs only if the ECN achieved certain average daily equity volume on the Phlx.[6] At this time, SCCP proposes to continue to implement the existing fee schedule for ECNs, as described above, without imposing volume requirements.

This rule change affects ECN trades not related to such ECN acting as a Phlx specialist or floor broker. Thus, an ECN may incur specialist or floor brokerage transaction fees if it acts in that capacity. Currently, no ECN operates from Phlx's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting

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[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On March 1, 2002, the Exchange filed a new Form 19b-4, which replaces and supercedes the original filing in its entirety ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR-Phlx-00-02 and SR-Phlx-00-03).

[5] The Exchange has separately filed pursuant to section 19(b)(3)(A) of the Act, SR-Phlx-2002-10, a proposed rule change amending Appendix A to its Schedule of Dues, Fees and Charges to establish fees applicable to ETP holders and ETP organizations. *See* Securities Exchange Act Release No. 44213 (April 23, 2001), 66 FR 22058 (May 2, 2001) (SR-Phlx-2001-01). That filing does not address the $200 ETP Application Fee that is proposed here. The Exchange now files this proposed rule change pursuant to section 19(b)(2) of the Act.

[6] 15 U.S.C 78f(b).

[7] 15 U.S.C 78f(b)4.

[8] 15 U.S.C 78f(b)(5).

[9] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[10] 17 CFR 240.19b-4(f)(2).

[11] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR-SCCP-2001-01).

[5] Certain provisions of the SCCP fee schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges and buy-ins.

[6] The average daily equity volume requirements on the Phlx were initially at least 5,000 trades and 5,000,000 shares in the twelfth month after the ECN first became subject to the ECN fee schedule.

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its non-ECN floor operation.[7] In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee as would any ECN's specialist trades. Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather as an ECN, would be subject only to the monthly and not other transaction charges.

The proposed rule change extends SCCP's existing fee schedule for ECNs for an additional one year period in order to have the opportunity to fully review and evaluate the overall structure of the ECN program, including whether to impose volume threshold requirements.

SCCP believes that its current ECN fee schedule provides competitive fees with appropriate incentives thus proving a reasonable method to attract large order flow providers such as ECNs to Phlx and SCCP. Additional order flow should enhance liquidity and improve Phlx's, and therefore SCCP's, competitive position in equity trading and clearing.

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing to implement the existing SCCP fee waivers described above for ECNs, is consistent with section 17A(b)(3)(D) of the Act[8] because it provides for the equitable allocation of reasonable dues, fees, and other charges. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to Phlx. Specifically, SCCP points out that ECNs operate a unique electronic agency business similar to a securities exchange as opposed to directly executing orders for their own customers as principal or agent.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–2002–02 and should be submitted by April 5, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6261 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[7] For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 15, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys in accordance with E.O. 12862.

No: N/A.

Frequency: On Occasion.

Description of Respondents: SBA Customers.

Responses: 33,115.

Annual Burden: 2,760.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–6187 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 15, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Loan Closing Forms.

No's: 159, 160, 160A.

Frequency: On Occasion.

Description of Respondents: 7(a) Participants.

Responses: 60,000.

Annual Burden: 15,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–6188 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3397]

State of New York

Jefferson County and the contiguous counties of Lewis, Oswego and St. Lawrence in the State of New York constitute a disaster area as a result of a fire that occurred in the Village of Carthage on March 2, 2002. The fire destroyed nine buildings containing a number of rental units and businesses. Applications for loans for physical damage may be filed until the close of business on May 7, 2002 and for economic injury until the close of business on December 9, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 339705 and for economic injury the number is 9O7700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–6189 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed

Aviation Proceedings, Agreements filed during the week ending March 1, 2002. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11696.

Date Filed: February 25, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SEA 0136, dated 26 February 2002, Mail Vote 208—TC23 Europe-South East Asia, Resolution 078i, PEX Fares from Europe to South East Asia via EH, FE, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11697.

Date Filed: February 26, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 SATL–EUR 0085 dated 1 February 2002, TC12 South Atlantic-Europe Resolutions r1-r12, Minutes—TC12 SATL–EUR 0087, dated 22 February 2002, Tables—TC12 SATL–EUR Fares 0026, dated 5 February 2002, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11698.

Date Filed: February 26, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 MATL–EUR 0060 dated 1 February 2002, Mid Atlantic-Europe Resolutions r1-r28, PTC12 MATL–EUR 0062 dated 22 February 2002, (Technical Correction), Minutes—PTC12 MATL–EUR 0061, dated 22 February 2002, Tables—PTC12 MATL–EUR Fares 0021, dated 5 February 2002, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11699.

Date Filed: February 26, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–ME 0161 dated 15 February 2002, North Atlantic-Middle East Resolutions r1-r27, Minutes—PTC12 NMS–ME 0160, dated 15 February 2002, Tables—PTC12 NMS–ME Fares 0089, dated 19 February 2002, Intended effective date: 1 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6302 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending February 8, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4686.

Date Filed: February 7, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 28, 2002.

Description: Amendment of Continental Airlines, Inc., to its application, amending its authority to engage in the scheduled foreign air transportation of persons, property, and mail over the following segments: (1) From points behind the United States via the United States and intermediate points to point or points in France, the French Departments of America, French Polynesia, Saint-Pierre and Miquelon

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and beyond; (2) from points behind the United States via the United States to New Caledonia and/or Wallis and Futuna. Continental also requests to integrate its U.S.-France certificate authority with its existing exemption and certificate authority.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6301 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending March 1, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2686.

Date Filed: February 26, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 19, 2002.

Description: Contingent Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and subpart B, requesting renewal of its certificate of public convenience and necessity for Route 744, to engage in foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Zurich, Switzerland, and the terminal point Prague, Czech Republic.

Docket Number: OST–2002–11708.

Date Filed: February 26, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 19, 2002.

Description: Application of ExpressJet, d/b/a Continental Express, requesting the Department to disclaim jurisdiction and reissue a certificate, designations and code-sharing authority to New ExpressJet Airlines, Inc. (NewCo), which will be renamed ExpressJet Airlines, Inc. and do business as Continental Express.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6303 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed highway project in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Thomas F. Oelerich, P.E., Acting Regional Director, State Office Building; 250 Veterans Memorial Highway; Hauppauge, NY 11788; Telephone: (631) 952–6632 or Robert, E. Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve the Northern State Parkway/NYS Route 110 interchange in Suffolk County, New York. The proposed improvement would involve the reconstruction of the existing routes in the Town of Huntington for a distance of about 0.98 miles along Northern State Parkway and 1.65 miles along NYS Route 110. Improvements to this interchange are considered necessary to provide for the existing and projected traffic demand along NYS Route 110 and to address an area with a history of accidents. Also included in this project is the replacement of the Northern State Parkway bridge over NYS Route 110.

Alternatives under consideration include: (1) Taking no action; (2) reconfiguring the Northern State Parkway/NYS Route 110 interchange and replacing the existing Northern State Parkway bridge over NYS Route 110; (3) reconfiguring the Northern State Parkway/NYS Route 110 interchange without replacing the existing Northern State Parkway bridge over NYS Route 110; (4) replacing the Northern State Parkway bridge over NYS Route 110 without reconfiguring the interchange; this would include widening of the Northern State Parkway; and (5) widening NYS Route 110 to a six lane arterial. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment and various intersection improvements.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. In addition to scoping discussion with these interested parties, the general public will have the opportunity to make scoping comments both in writing and in person at a Public Information/ Scoping Meeting that will be held at the Sunquam Elementary School, 15 Sweet Hollow Road, Melville on March 14, 2002. After the DEIS is prepared, it will available for public and agency review and comment. This will be followed by a public hearing. Public notice will be given of the time and place of the hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addressed provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; CFR 771.123

Issued on: February 27, 2002.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. 02–6281 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34171]

Butte-Silver Bow County—Acquisition Exemption—Silver Bow County, MT

Butte-Silver Bow County (BSB, or the County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 [1] to acquire an 11-mile rail line known as the Missoula Gulch and Butte Hill Line (MGBH) in and near Butte, in Silver Bow County, MT.[2] The MGBH extends from milepost 0.0 at Rocker, west of Butte, to milepost 4.40 at the Butte Hill Yard (Missoula Gulch segment), and also extends north and east from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine (Butte Hill segment). BSB is acquiring the MGBH in order to facilitate abandonment of the line, an environmental cleanup, and conversion of the railroad beds to trail and public use.[3]

The exemption was scheduled to become effective on February 22, 2002.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34171, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Susan J. Geer, Esq., Davis Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202.

Board decisions and notices are available on our website at *"WWW.STB.DOT.GOV."*

Decided: March 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6308 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] BSB has also invoked 49 CFR 1180.2(d)(1), pertaining to finance transactions involving more than one railroad. However, because the acquisition in question does not involve more than one railroad, this provision is inapplicable.

[2] The MGBH was most recently owned and operated by a non-profit corporation called the Butte/Anaconda Historic Park and Railroad Corporation (BAHPR, or the Railroad). The BAHPR operated a tourist train over the portion of the MGBH between Rocker and the former Butte Hill Yard. BAHPR operated over the MGBH under a lease from the State of Montana from 1988 to 1991, at which time the BAHPR acquired the MGBH. *See Butte/Anaconda Historic Park and Railroad Corporation—Acquisition Exemption—State of Montana, Department of Commerce*, ICC Finance Docket No. 31982 (ICC served Feb. 11, 1992). In 1994, the Montana Secretary of State's Office involuntarily dissolved the BAHPR for failing to maintain its filings. However, the BAHPR continued intermittently to operate a tourist train over the MGBH through 1996, did not seek reinstatement, and never distributed its assets following dissolution.

[3] BSB states that it intends to seek authority to abandon the line following receipt of authority to acquire it. In *Land Conservancy—Acq. And Oper.—Burlington Northern*, 2 S.T.B. 673 (1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998) (*Land Conservancy*), *pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB*, 238 F.3d 429 (9th Cir. 2000), the Board disallowed the sale of an active rail line to a purchaser that had, immediately after the purchase, sought to abandon the line. Acquisitions of active rail lines under 49 U.S.C. 10901 are supposed to be for continued rail use. In *Land Conservancy*, the Board found that the deliberate course of conduct on the part of the abandoning carrier and the purchaser constituted a misuse of Board procedures and acted to preserve the integrity of its processes.

Here, the acquisition is not taking place pursuant to an agreement or course of conduct by the parties—no transaction has occurred—but rather pursuant to the operation of state law. BAHPR didn't sell the line to BSB. Rather, the Railroad was dissolved by the Montana Secretary of State. The County acquired the Railroad's assets pursuant to an order of the Court of the Second Judicial District of Montana, Silver Bow County. Acquisition of an active rail line—the line is not presently in service, but it has never been abandoned—requires Board authority and BSB has sought to comply with the statute. BSB has no desire to go into the railroad business—it is an agency of local government, not a commercial enterprise—and seeks merely to dispose of the property. Under the circumstances, BSB's notice invoking the class exemption to obtain authority for its acquisition is consistent with the statute.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision is anticipated to be issued by June 14, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 4, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 606X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before April 4, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 606X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

On February 25, 2002, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad in its Northeast Region, Baltimore Division, P&W Subdivision, extending between milepost BFH 0.0 and milepost BFH 2.1, a distance of approximately 2.1 miles, in Pittsburgh, Allegheny County, PA. The line traverses U.S. Postal Service Zip Code 15212 and includes no stations.

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the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6024 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, March 21, 2002, and Friday, March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, March 21, 2002, from 9 a.m. to 4 p.m. and Friday, March 22, 2002, from 8 a.m. to Noon at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Public comments will be welcome during the meeting, or you can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, discussion of issues, and an update on the recruitment for new panel members.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cynthia Vanderpool,

CAP Project Manager.

[FR Doc. 02–6299 Filed 3–14–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Florida Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Florida Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Saturday, March 23, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Saturday, March 23, 2002, from 8 a.m. to 1 p.m, at the Sunrise Hilton, 3003 N. University Drive, Sunrise, Florida 33322. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com.* Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973, or e-mail *firstcapsfl@mindspring.com.*

The agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cindy Vanderpool,

Director, CAP, Communications and Liaison.

[FR Doc. 02–6300 Filed 3–14–02; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 67, No. 51

Friday, March 15, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

Correction

In notice document 02–4617 beginning on page 8664 in the issue of Wednesday, February 27, 2002, make the following correction:

On page 8964, the table at the bottom of the page is changed to read as follows:

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current Oct. 1, 2001 through Sept. 30, 2002	Proposed Oct. 1, 2002 through Sept. 30, 2003	% change increase
Total Composite (mills/kWh)	10.32	12.44	21
Base Charge ($)	48,039,988	58,993,730	23
Energy Rate (mills/kWh)	5.33	6.22	17
Capacity Rate ($/kWmonth)	0.99	1.26	27

[FR Doc. C2–4617 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN139–1a; FRL–7155–3]

Approval and Promulgation of State Implementation Plans; Indiana

Correction

In rule document 02–5598 beginning on page 10620 in the issue of Friday, March 8, 2002 make the following correction:

PART 62—[CORRECTED]

On page 10622, in the second column, under amendatory instruction 2. in the new center heading, in the seventh line, "Aust" should read "August".

[FR Doc. C2–5598 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

Correction

In notice document 02–5128 beginning on page 9737 in the issue of Monday, March 4, 2002, make the following correction:

On page 9738, in the first column, the third paragraph should read:

"*Burden hours and costs for established entities*: Burden for established entities already familiar with the Rule would predictably be less than for start-up entities since start-up costs, such as crafting a privacy policy, are generally one-time costs and have been incurred. Staff's best estimate of the average burden for these entities as follows:"

[FR Doc. C2–5128 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4027–P]

RIN 0938–AL25

Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative

Correction

In proposed rule document 02–5129 beginning on page 10262 in the issue of Wednesday, March 6, 2002, make the following correction:

On page 10272, in table 1, under the column "Drug groups/subgroups (subgroups where shown are indented)", in the second line, "Vasodilators 3", should read, "Vasodilators".

[FR Doc. C2–5129 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-16]

Modification of Class E Airspace; Portsmouth, OH

Correction

In rule document 02–5629 beginning on page 10839 in the issue of Monday, March 11, 2002 make the following correction:

§71.1 [Corrected]

1. On page 10840, in §71.1, in the second column, under the heading **AGL OH E5 PORTSMOUTH, OH [REVISED]**, the third line, '25'' should read '26''.'

[FR Doc. C2–5629 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-20]

Modification of Class E Airspace; Washington Court House, OH

Correction

§71.1 [Corrected]

In rule document 02–5628 beginning on page 10840 in the issue of Monday, March 11, 2002 make the following correction:

1. On page 10841, in §71.1, in the third column, in the third line, "radious" should read "radius."

[FR Doc. C2–5628 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-21]

Modification of Class E Airspace; Zanesville OH

Correction

In rule document 02–5633 beginning on page 10835 in the issue of Monday, March 11, 2002 make the following corrections:

§71.1 [Corrected]

1. On page 10836, in §71.1, in the third column, in the first paragraph, in the fifth line "radiul" should read "radial.".

2. On the same page, in the same section, in the same column, in the same paragraph, in the eighth line "radius" should read "radial.".

3. On the same page, in the same section, in the same column, in the same paragraph, in the ninth line, "northwest" should read "northeast.".

[FR Doc. C2–5633 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March 15, 2002

Part II

Environmental Protection Agency

40 CFR Part 49

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[Docket #: A–2000–25; FRL–7147–9]

RIN 2012–AA01

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. The FIPs would include basic air quality regulations for the protection of communities in and adjacent to such Indian reservations. These rules would be implemented by EPA, or a delegated Tribal Authority, until replaced by Tribal Implementation Plans (TIPs).

DATES: Comments must be received no later than June 13, 2002.

ADDRESSES: Written comments should be addressed to: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128. Please cite the administrative docket, #A–2000–25, upon which you are providing comment.

Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Standard Time at EPA's Central Docket Section, Office of Air and Radiation, Room 1500M (6102), 401 M Street, SW., Washington, DC 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4253.

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I. Background

A. Today's Action

EPA is proposing to establish Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. These rules, when promulgated, would be an important step in ensuring that basic air quality protection is in place to protect health and welfare on Indian reservations located in the Pacific Northwest. In Region 10, EPA has been working with the Tribes to identify the primary sources of air pollution emissions on Indian reservations, and evaluating the CAA statutory authorities available to regulate those sources. EPA's evaluations have identified concerns with unregulated particulate matter, such as from open burning for agricultural purposes. A significant number of industrial major stationary sources subject to Title V of the CAA are located on these Indian reservations. By means of these rules, EPA would impose regulatory requirements on industry and residents on reservations, similar to those imposed by the rules of State and local air agencies in the surrounding areas. EPA believes that it is appropriate to focus initially on the sources in Region 10 that have been identified as ones that may cause or contribute to prevalent air quality problems on reservations and in shared airsheds of the Pacific Northwest. Aside from existing national emissions standards and requirements, the FIPs proposed in this rule are the first building blocks under the CAA to address such emissions.

In the Clean Air Act (42 U.S.C. 7401 to 7671q), Congress gave EPA broad authority to protect air resources throughout the nation, including the air resources on Indian reservations and other areas of Indian country. Based on the authority of section 301 of the CAA, EPA promulgated a final rule entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998, 63 FR 7254. The rule, generally referred to as the "Tribal Authority Rule" or "TAR," establishes procedures for EPA determinations on Tribal eligibility applications for "treatment in the same manner as a State" (commonly referred to as "TAS") under CAA authorities for Indian reservations and for non-reservation areas within a Tribe's jurisdiction. The U.S. Court of Appeals for the District of Columbia Circuit recently upheld the TAR in *Arizona Public Service Co.* v. *EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied* 121 S. Ct. 1600 (2001).

In the TAR, EPA explained that it intends to use its authority under the CAA "to protect air quality throughout Indian country" [1] by directly implementing the CAA's requirements where Tribes have chosen not to develop or implement a CAA program. EPA wrote in the final rule at 40 CFR 49.11 that it would "promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality" for these areas.

In order to further this commitment to protect air quality, EPA is proposing rules for Indian reservations in Idaho, Oregon, and Washington.[2] In exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or

[1] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdication of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

[2] EPA is not proposing at this time to establish rules for Indian country areas in Alaska, and will continue to evaluate the need and appropriateness of air quality rules there in consultation with the Federally recognized Tribes in Alaska. EPA is working with the U.S. Bureau of Indian Affairs (BIA) to complete the mapping of the Indian country in Alaska. Once the extent and specific locations of the Indian country is better known, air quality characterization and subsequent assessment of the needs can be initiated in consultation with the affected Tribal governments. EPA anticipates that conditions and needs in Alaska may warrant a different array of requirements and provisions than are included in these proposed FIPs.

appropriate to protect air quality in Indian country, EPA has stated that it will carry out this authority in a prioritized way, beginning with sources that pose the greatest threat to public health and the environment. 64 FR at 8255. The FIPs proposed today are the first building block under the CAA to address the most prevalent gaps identified to date on reservations in the Pacific Northwest. EPA will continue to evaluate air quality conditions and the sources that cause or contribute to the degradation of air quality, and expects to promulgate additional FIP provisions, in consultation with Tribes, including Tribes that are developing TIPs. Thus, EPA views these FIP provisions as a first step towards establishing a complete plan for maintaining the NAAQS that, together with approved TIPs, would meet the goals of section 110(a) of the CAA.

After consulting with the Tribes in Idaho, Oregon, and Washington, EPA Region 10 is concerned that there is currently a gap in air quality requirements in these areas under the CAA. While many Tribes in Region 10 are in the process of developing air quality management programs, EPA Region 10 has approved only one Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho, to assume certain CAA authorities. Furthermore, States generally lack the authority to regulate air quality in Indian country. See *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 216 and n.18 (1987); see also *HRI* v. *EPA*, 198 F.3d 1224, 1242 (10th Cir. 2000), *Montana* v. *EPA*, 137 F.3d 1135 (9th Cir. 1998), *cert. denied* 525 U.S. 921 (1998). These proposed rules, as described below, are intended to fill the gap in current regulations until such time as individual Tribes develop and implement approved TIPs.

As discussed in greater detail below, EPA believes that in light of the particular air quality issues generally present on reservations in the Pacific Northwest, it is appropriate to establish each of the air quality rules for each reservation that are proposed today. These rules would regulate activities, pollutants, and sources by supplementing the existing Federal regulatory programs such as the Prevention of Significant Deterioration (PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS) programs. These proposed rules would provide additional regulatory tools for EPA to use in implementing the CAA on Indian reservations. EPA has adequate enforcement authority under section 113 of the CAA to ensure compliance with the requirements that are proposed.

In Region 10, EPA is continuing to identify the primary sources of air pollution emissions on Indian reservations, and evaluating the CAA statutory authorities available to regulate those sources pending submission of a TIP by a Tribe and approval by EPA. This information is assisting EPA in determining, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources. EPA believes that it is appropriate to focus its efforts to develop FIPs initially on the sources that may cause or contribute to air quality problems that have been identified.

EPA's evaluations and information from affected Indian Tribes identified concerns with pollution from unregulated sources of particulate matter. Examples of categories of sources of air pollution not currently regulated include emissions from open burning and fugitive dust. Agricultural burning has been identified as a source of uncontrolled particulate matter that if not properly regulated can endanger people's health and safety, as well as cause other environmental impacts such as regional haze. EPA Region 10 is working at a regional level in partnership with States, Tribes, local governments, growers, and citizen groups to support and strengthen tools and programs for addressing particulate matter, including the development of appropriate regulatory controls in each jurisdiction. EPA also is identifying the industrial and commercial sources of emissions that are not fully regulated. There are at least 11 facilities on these reservations that meet the definition of major source, under the Federal Operating Permits provisions in Title V of the CAA. Most of these facilities are in the forest products industry, that can emit plumes of particulate matter at levels that should be controlled. Industrial facilities such as these also use fuels containing sulfur that can cause excessive concentrations of ground-level sulfur dioxide if not properly controlled. Regulating these sources is appropriate in order to protect air quality from the potential for significant deterioration caused by the release of particulate matter and sulfur dioxide. Particulate matter and sulfur dioxide are regulated by National Ambient Air Quality Standards (NAAQS) under section 109 of the CAA. A number of rules proposed today would control emissions of particulate matter and sulfur dioxide to the atmosphere as appropriate for the purpose of maintaining or attaining the NAAQS. Along with the protections these Federal air quality rules would provide, the rules can also assist Tribes in developing air quality management programs by using the Federal rules as templates in drafting TIPs.

It is important to note that these proposed rules are analogous to, but different from, the types of rules generally approved by EPA into State Implementation Plans (SIPs). The rules proposed today represent an average program, and so are more stringent than some SIP rules and less stringent than others. However, while these would be Federal CAA rules, they would not change the minimum criteria in 40 CFR Part 51, the CAA, or the TAR for approval of rules in either a SIP or a TIP. [3] EPA encourages Tribes to develop individual TIPs and will work with Tribes seeking to replace these rules with TIPs. These regulations would apply until they are replaced by Tribal regulations in an approved TIP.

EPA Region 10 has actively consulted with and encouraged Tribes to assist EPA in developing these proposed regulations to ensure that Tribal considerations are addressed. EPA Region 10 staff has worked with, and will continue to work with, individual Tribes to assess air quality problems, and develop, in consultation with the Tribes, Tribal or Federal strategies for addressing these problems. For example, EPA Region 10 has worked with Tribes to develop emission inventories and air monitoring studies where appropriate, to determine the nature of air quality problems, and to identify a range of potential control strategies. During the development of the rules proposed here, EPA Region 10 staff consulted with affected Tribes in a series of group and individual meetings that are described in detail below in Section V.G, which discusses compliance with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.

B. Areas and Sources Covered by the Rules

These proposed rules would apply to any person who owns or operates an air pollution source within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR Part 49, Subpart M Implementation Plans for Tribes—Region X. Further, as discussed in the TAR at 63 FR 7257–58, EPA interprets the term "reservation" consistent with U.S. Supreme Court case law to include

[3] EPA has used the planning requirements applicable to States as a guide in developing these FIPs.

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trust lands that have been validly set apart for the use of a Tribe even though the land has not been formally designated as a reservation. EPA is not proposing to establish rules for all of Indian country, e.g., these rules would not apply to allotment lands that are held in trust for individual Indians that are located outside the exterior boundaries of a reservation or for dependent Indian communities. Based on consultations, EPA is not aware of any sources on those types of land outside of reservations to which these rules need to apply. This proposed rulemaking is a step in addressing known air quality concerns on reservations. If in the future, EPA becomes aware of air quality concerns for Indian country outside of reservations, EPA may propose other requirements that are deemed necessary or appropriate.

This proposal includes: (1) Rules of general applicability that would regulate emissions of particulate matter and sulfur dioxide from combustion and process sources, visible emissions and fugitive dust; and (2) additional proposed rules that would control particulate matter emissions from specific types of equipment used to burn wood wastes, sometimes known as "wigwam burners," and certain wood product industry sources. The proposed rules would also regulate open burning, and allow the Regional Administrator to impose restrictions on emissions during periods of impaired air quality or when emissions from sources are detrimental to human health and welfare. Finally, the proposed rules would require registration of many stationary sources of air pollution and would provide the opportunity for stationary sources with low emission levels to obtain potential to emit limits in operating permits. The specific rules that would apply to sources on a particular reservation are specified in today's proposed rule, at 40 CFR part 49, Subpart M.

EPA will decide whether a source or activity located on an Indian reservation is subject to the provisions of these rules as made applicable in the implementation plan for that reservation. Today's proposed rules include procedures for sources to obtain individual determinations from EPA as to whether they are subject to these regulatory requirements. A source that is uncertain regarding the applicability of a rule may submit a written request to EPA for an applicability determination. In response to a request for an applicability determination, EPA will issue a written determination stating whether the source or activity is subject to a particular Federal air quality rule. In most cases, determining whether the source or activity is on an Indian reservation will be straightforward and non-controversial. For example, in most cases EPA and the source will be able to easily determine whether a source is located within the exterior boundaries of a reservation, including Tribal trust lands. In the rarer, more complex factual cases, EPA will work with the U.S. Department of the Interior, Tribes, and stakeholders to assess the reservation status of the location. After EPA has reviewed the relevant materials, the Agency will send a letter to the source stating EPA's belief whether the source is located within the boundaries of a reservation. For sources or activities located on Indian reservations, the source or activity would be expected to comply with the applicable requirements of these FIPs.

C. Organization of the Rules

EPA has structured these proposed regulations consistent with the "modular" approach described in the TAR to allow for both variation among reservations and to facilitate the development and approval of TIPs to replace all or part of these Federal regulations. EPA is using this modular approach to propose a full set of regulations, and each regulation in today's proposal is effectively a "stand-alone" rule. Each FIP is tailored and is being proposed on a reservation-by-reservation basis. For example, the proposed regulation for particulate matter emissions from wood products industry sources would only be promulgated for reservations that have existing wood products industry sources or for those where such sources might be expected to locate. Similarly, the proposed regulation for forestry burning permits would only be promulgated for reservations with forestry lands where the use of fire as a forest management tool is prevalent.

EPA expects that many Tribes will develop their own air quality programs. However, Tribes are not required to adopt and implement all CAA programs at once. Under section 49.7(c) of the TAR, Tribes that meet the eligibility criteria for TAS have the option of developing severable elements of a TIP and submitting those elements to EPA for approval under the CAA. The modular approach used in these proposed regulations would allow EPA to approve a Tribal rule covering a particular source type or activity and revoke the EPA regulation, while still leaving in place the EPA regulations for other sources and/or activities. For example, a Tribe may initially want to adopt and implement Tribal rules for open burning and rules for the registration of air pollution sources, while EPA would continue to regulate industrial emissions under the FIP for that reservation. This modular approach would allow for an easy incremental transition from Federal regulations to EPA-approved Tribal rules.

While most of the rules in the FIPs constitute a "base program" that EPA is proposing to put in place in all reservations in Idaho, Oregon, and Washington, some of the proposed FIPs would include rules where specific needs exist or where EPA determines, in consultation with the relevant Tribe, that a more stringent provision than would otherwise apply is appropriate. These "additional rules" are being proposed only for certain reservations. For example, EPA is proposing rules specific to particular kinds of woodwaste burners and certain wood products industries that will require better controls for particulate matter emissions than the general limits for visible emissions and particulate matter. These regulations are proposed for reservations where such sources exist and where EPA determines, in consultation with the Tribe, that more stringent provisions are appropriate. The following table identifies the rules summarized below in section III.B that would be included in the "Base Program" and the "Additional Rules" that may be included as appropriate.

TABLE 1.—PROPOSED BASE PROGRAM AND ADDITIONAL RULES

Rule #	Title	Base program	Additional rules
Section 49.123	General provisions	X	
Section 49.124	Rule for limiting visible emissions	X	
Section 49.125	Rule for limiting the emissions of particulate matter	X	
Section 49.126	Rule for limiting fugitive particulate matter emissions	X	
Section 49.127	Rule for woodwaste burners		X

TABLE 1.—PROPOSED BASE PROGRAM AND ADDITIONAL RULES—Continued

Rule #	Title	Base program	Additional rules
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.		X
Section 49.129	Rule for limiting emissions of sulfur dioxide	X	
Section 49.130	Rule for limiting sulfur in fuels	X	
Section 49.131	General rule for open burning	X	
Section 49.132	Rule for open burning permits		X
Section 49.133	Rule for agricultural burning permits		X
Section 49.134	Rule for forestry burning permits		X
Section 49.135 or	Rule for emissions detrimental to human health and welfare or	X	
Section 49.136	Tribal Alternative Rule		X
	Rule for emissions detrimental to persons or property, cultural or traditional resources.		
Section 49.137	Rule for air pollution episodes	X	
Section 49.138	Rule for the registration of air pollution sources and the reporting of emissions.	X	
Section 49.139	Rule for non-Title V operating permits	X	

The modular approach provides flexibility to promulgate provisions where EPA will have adequate resources to carry out the FIP, including situations where Tribes assist EPA in implementation of FIP provisions. For certain rules that are best administered at a local level, EPA is proposing to establish requirements for a reservation and to delegate to the affected Tribal government the authority to administer that particular program, as discussed below. A delegation agreement will authorize a Tribe, with Federal assistance, to administer the Federal program but refer unresolved noncompliance matters to EPA for Federal enforcement. This approach allows EPA to establish requirements tailored to local needs that can be effectively implemented through a partnership between EPA and the Tribe.

With respect to the rule that would regulate emissions detrimental to persons and property, EPA is proposing two versions. One version of the detrimental emissions regulation, proposed as § 49.135, would allow EPA to address situations where emissions would be injurious to human health and welfare. The Tribal alternative rule, § 49.136, would provide additional protection for situations where emissions would unreasonably interfere with the enjoyment of life or property, or would damage unique Tribal cultural or traditional resources. The second, more inclusive regulation (§ 49.136) is proposed for reservations where EPA, based on a request from the relevant Tribe, has considered and determined that regulatory authority to address such situations is appropriate and will generally include agreements with the Tribe to assist EPA in implementing the programs. EPA requests comment on this proposed determination. EPA developed § 49.136 to address the Tribes' unique concern regarding the holistic concept of health and welfare, which was emphasized by Tribes during consultation. In this rulemaking, EPA is proposing that § 49.136 will apply only on two reservations, the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2. Section 49.135 will apply on all other reservations in Idaho, Oregon, and Washington. EPA is seeking comment on this proposed approach. If EPA does not finalize § 49.136, § 49.135 will be promulgated for the Nez Perce and Umatilla Indian Reservations.

Finally, EPA is proposing three additional open burning permit programs: general open burning (§ 49.132), agricultural open burning (§ 49.133), and forestry open burning (§ 49.134). These rules differ from the general open burning rule proposed in § 49.131 by requiring that any person who conducts a regulated open burn to obtain and comply with a permit. These permit programs are proposed only for reservations where EPA, in consultation with the relevant Tribe, has determined that the programs are appropriate and will generally include delegations of authority from EPA to the Tribe for implementation of the Federal rules upon promulgation, as discussed below.

D. Delegation

The modular approach will allow Tribes that are building air quality programs to gain experience by assisting with implementation of the Federal rules before they decide to adopt their own rules and regulations. EPA recognizes that a Tribe may choose not to develop a Tribal air program under Tribal law for approval under the TAR, but may still like to assist EPA in implementing the Federal air quality requirements for its reservation and to build its capacity in managing an air quality program. The rule proposed here at § 49.122 provides Tribal governments the alternative of seeking delegation from EPA of the authority to administer all or some of the Federal rules that have been promulgated for their reservation. These rules would allow EPA to delegate distinct and severable Federal regulations to a Tribe for implementation, without requiring a Tribe to take on all aspects of the Federal air regulations. For example, if a Tribe wished to implement the open burning permit program, or run the source registration program, EPA could delegate responsibility to the Tribe for just those regulations. The process EPA would follow to delegate the administration of a Federal program to a Tribal government is similar to the process EPA follows to delegate programs to State governments. As part of the process for delegating the authority to administer one or more of the rules, the Tribe and EPA would enter into an agreement that specifies how the governments would work together for the effective implementation of the particular CAA program(s) at issue on that reservation.

The delegation from EPA to a Tribe to implement a specific Federal air rule proposed in these rules is to be distinguished from EPA's interpretation that the CAA is a delegation of Federal authority from Congress to Tribes, as described in the TAR at 63 FR 7254–7259. It is EPA's position that the CAA TAS provision constitutes a statutory delegation of authority to eligible Tribes over their reservations. As described above, the TAR established how EPA can approve Tribal eligibility applications for a Tribe to operate a CAA program under Tribal law. When

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EPA approves a Tribal eligibility application and approves a TIP, the approved Tribe will manage the approved air quality program under Tribal law, and the approved Tribal program is Federally enforceable. In contrast, the delegation approach proposed in these rules provides for EPA to administratively delegate its own Federal authority to a qualified Tribe to implement specified Federal rules. EPA has well-established processes for delegating its Federal authority to States for administering Federal rules under the CAA, such as for conducting new source review under 40 CFR part 52, at 40 CFR 52.21(u); and for issuing Federal operating permits under 40 CFR part 71, at 40 CFR 71.4(j). With delegated Federal programs, the Federal requirement administered by the delegated Tribe is subject to enforcement by EPA, not the Tribe, under Federal law.

EPA believes that the modular approach will provide the maximum flexibility for EPA and Tribes to work in partnership to ensure that the goals and objectives of the CAA will be met on Indian reservations and to make real the principles set out in the TAR. It will allow EPA and Tribes to jointly manage air quality on Indian reservations through a combination of TIP and FIP elements, and delegations to Tribes of FIP elements. Under this modular approach, Tribes may adopt and submit severable elements of TIPs that replace elements of FIPs while leaving in place FIP provisions that Tribes are not yet willing or able to take on.

II. Basis for Proposed Action

A. EPA's Authority To Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over Indian country generally lies with EPA and Federally recognized Indian Tribes leads to the conclusion that a regulatory gap exists with regard to air pollution sources there. EPA is proposing to take an initial step towards remedying this gap with a FIP for each Indian reservation in Idaho, Oregon, and Washington. These FIPs will establish new Federal requirements where no general air pollution control program other than nationally applicable rules is currently in effect.

As described above, the CAA Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the CAA in Indian country. Section 301(d) of the CAA authorizes EPA to issue regulations specifying the provisions of the CAA for which Indian Tribes may be treated in the same manner as States. See CAA sections 301(d)(1) and (2). Based on that authority, EPA promulgated the TAR.

In the preamble to the proposed and final TAR, EPA discusses generally the legal basis under the CAA by which EPA and Tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory delegation of Federal authority to eligible Indian Tribes over all sources on their reservations. Under the CAA, Tribes are allowed to develop air programs covering their reservations and non-reservation areas within their jurisdiction for submission to EPA for approval in the same manner as States. 63 FR 7254–7259; 59 FR 43958–43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands, until a Tribe is approved for TAS and Tribal programs are approved. See 63 FR 7262; 59 FR 43960–43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)); see also Federal Operating Permits Program, Final Rule, 64 FR 8251–8254. EPA decided that in areas of Indian country where no Tribal program has been explicitly approved by EPA, a gap exists in air quality requirements under the CAA that EPA is authorized to fill. In fact, in promulgating the TAR, EPA specifically stated that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the CAA, EPA:

> shall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4), if a Tribe does not submit a Tribal implementation plan meeting the completeness criteria of 40 CFR Part 51, Appendix V, or does not receive EPA approval of a submitted Tribal implementation plan. 63 FR 7273 (codified at 40 CFR 49.11(a)).[4]

It is EPA's policy to aid Tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop the current State and Federal programs to cover State areas, it will also require time to develop Tribal and Federal programs to cover reservations and other areas of Indian country. 59 FR 43961.

Many of the Tribal governments in Idaho, Oregon, and Washington have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on their reservations and in non-reservation areas under Tribal jurisdiction pursuant to the CAA. Based on discussions with the Tribes, however, EPA believes that it will be some time before most Tribes will be ready to seek authority under the TAR to assume CAA planning and regulatory responsibilities and that, when they do, the Tribes are likely to build their capacity and seek authority for the various CAA programs over time, rather than all at once. Through government-to-government consultation between EPA and Tribal governments, the Tribes have advised EPA that they support EPA's efforts to impose such controls on Indian reservation air pollution sources as are necessary or appropriate to protect air quality in the interim.

Therefore, in these proposed FIPs, EPA is exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate FIPs in order to remedy an existing regulatory gap under the CAA with respect to Indian reservations located in the States of Idaho, Oregon, and Washington. Although many facilities in these areas have historically followed State, regional, and local government air quality programs, with only one exception EPA has never approved those governments to exercise regulatory authority under the CAA on any Indian reservations.[5] It is EPA's position that absent an explicit finding of jurisdiction and approval in Indian country, those governments lack authority under the CAA over the sources or their owners or operators for compliance or enforcement purposes. Given the longstanding air quality concerns in some areas and the need to establish requirements in all areas to maintain CAA standards, EPA believes that the proposed FIP provisions are appropriate to protect air quality on the identified reservations.

[4] In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat Tribes in the same manner as States with respect to section 110(c) of the CAA, that directs EPA to promulgate a FIP within two years after EPA finds a State has failed to submit a complete State plan or within two years after EPA disapproval of a State plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected Tribal areas within a reasonable time. See 63 FR 7264–7265.

[5] For purposes of approving the Washington Department of Ecology (WDOE) operating permits program under 40 CFR Part 70, EPA explicitly found that WDOE demonstrated that the Washington Indian Puyallup Land Claims Settlement Act, 25 U.S.C. 1773, gives explicit authority to State and local governments to administer their environmental laws on all non-trust lands within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington.

B. Relation to Tribal Authority Rule

The TAR provides the framework for Tribes to obtain authority to administer Federally-approved and Federally-enforceable programs under the CAA. See 59 FR 43956, August 25, 1994 (proposed rule) and 63 FR 7254, February 12, 1998 (final rule). Thus, each Federally recognized Indian Tribe now has the option of assuming responsibility for the development and implementation of Federally-enforceable air quality programs under the CAA by seeking EPA approval of a Tribal air program established under Tribal law, i.e., a TIP. Until a Federally-approved implementation plan that covers a source is in place, however, EPA has the authority to regulate the source under the CAA. The regulations proposed here also offer another alternative. Specifically, Tribes in Idaho, Oregon, or Washington may seek delegation from EPA to assist EPA in implementing a Federal regulation (FIP).

III. Summary of FIP Provisions

A. Origin of the Rules

EPA's intention is to promulgate Federal regulations that reflect an important initial step to fill the "regulatory gap" on Indian reservations in Idaho, Oregon, and Washington. As described above, EPA has been evaluating, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources. EPA believes it is appropriate to focus its efforts initially on developing FIPs for the most prevalent sources that cause or contribute to identified air quality problems.

However, EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. This approach is intended to formally "level the playing field". In other words, EPA intends that people living within reservation boundaries receive equivalent air quality protection, and that emissions from sources located within reservations are controlled to levels similar to those of sources located outside the reservations.

To do this, EPA Region 10 first determined what types of air pollution sources and pollutant-emitting activities were most prevalent on Indian reservations in Idaho, Oregon, and Washington. Then EPA Region 10 reviewed the State and local rules from air pollution agencies throughout the western United States that are included in SIPs that EPA has approved for those types of sources and activities. The gap-filling rules proposed here are generally based upon the aspects of these State and local rules most relevant to the air polluting activities on reservations in the Pacific Northwest, and follow a level of control of a typical air quality control program. The proposed regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. Nor do the proposed regulations look like State or local rules because they use the Federal regulatory structure and are written in a "plain language" format in accordance with the Plain Language Executive Memorandum, dated June 1, 1998. EPA invites your comments on ways to make these proposed rules easier to understand. Included in the docket for this proposed rulemaking are copies of all the State and local rules that EPA considered in this process, as well as a technical support document with summary tables showing the State and local agency levels of control as compared with the proposed regulations and a description of why EPA believes the proposed rules are appropriate.

Each of the rules proposed as part of the Base Program to be applicable on all reservations in Idaho, Oregon and Washington either addresses particular sources, activities or pollutants identified by EPA as the most prevalent and in need of regional regulation or implements an important structural aspect of the CAA regulatory scheme for Indian reservations. A number of the Base Program rules are proposed in order to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA (see § 49.124 Rule limiting visible emissions; § 49.125 Rule for limiting the emissions of particulate matter; § 49.126 Rule for limiting fugitive particulate matter emissions; and § 49.129 General rule for open burning). Two Base Program rules would protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. These rules would limit the amount of sulfur dioxide emitted to the atmosphere from certain air pollution sources in order to control ground-level concentrations of sulfur dioxide (see § 49.130 Rule for limiting emissions of sulfur dioxide and § 49.131 Rule for limiting sulfur in fuels). The Base Program would also include a number of provisions to establish the infrastructure of a CAA regulatory program. Provisions at § 49.122 describe how EPA would process delegation requests from a Tribe; § 49.123 would define the terms that are used throughout the FIPs; § 49.135 would establish a process for EPA to limit emissions that are detrimental to human health and welfare; § 49.137 would establish the measures EPA could take to address excessive buildup of certain air pollutants during periods of stagnant air; § 49.138 would provide for the registration of air pollution sources and reporting of emissions so that EPA can maintain a current and accurate record of air pollution sources within an Indian reservation; and § 49.139 would set up a permitting program for non-Title V sources that would establish federally-enforceable requirements.

Further, EPA is proposing certain Additional Rules to be applicable on specified reservations where EPA has determined, in consultation with the relevant Tribe, that such additional regulatory measures are appropriate. During the course of its consultation with Tribes and analysis of regulatory needs, EPA attempted to identify instances where specific sources or pollution control needs beyond those addressed in the Base Program exist on particular reservations. For example, certain types of wood products industries, or certain practices of agricultural or forestry burning, may be prevalent on particular reservations and may be important contributors to air pollution concerns. In order to address these concerns, EPA has developed the current set of Additional Rules. As an initial step, EPA is proposing to promulgate some or all of these rules for those reservations where relevant sources have been identified as prevalent and where particular Tribes have indicated an interest in the additional regulation. For example, at the request of specific Tribes, EPA considered and is now proposing to promulgate a rule that would provide additional protections against emissions detrimental to their unique Tribal cultural or traditional resources. EPA considers this approach an appropriate first step in prioritizing its efforts to address these concerns consistent with CAA responsibilities. EPA anticipates that relevant Tribes may choose to assist in the implementation of the Additional Rules through the delegation process described above. EPA is continuing to consult with Tribes regarding sources of air pollution and air regulatory needs on their reservations and may propose some or all of the Additional Rules, or

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may propose further additional rules, for reservations as needs and priorities are identified. As described in section I.C. the current package of Additional Rules includes § 49.127 Rule for woodwaste burners; § 49.128 Rule for limiting particulate matter emissions from wood products industry sources; § 49.132 Rule for open burning permits, § 49.133 Rule for agricultural burning permits, § 49.134 Rule for forestry burning permits; and § 49.136 Rule for emissions detrimental to persons or property, cultural or traditional resources. With this proposal, EPA is seeking comment on these Additional Rules, whether the criteria EPA used for selecting the Additional Rules are appropriate, and whether EPA has appropriately applied those criteria in this proposal.

In developing these regulations EPA also had two other objectives in mind, in addition to filling the regulatory gap. First, EPA is proposing only those regulations that it believes it has the resources to implement and enforce. To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. Second, EPA anticipates that these regulations can serve as models for Tribes as they develop their own air quality programs. To that end, the regulations are designed so they can be implemented by a small air pollution agency, and can be readily delegated to a Tribe for implementation.

B. Rule Summaries

These proposed rules would establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington to ensure a basic level of air pollution control that protects public health and welfare. The following paragraphs summarize each of the proposed rules. The actual rule requirements being proposed are set forth in 40 CFR part 49, subpart C.

Section 49.122—Delegation of authority to a Tribe. This section would provide a mechanism for delegating to a Tribe, for administration, all or a portion of the FIP rules that apply within a reservation. It sets out the process a Tribe must follow to request delegation, how that delegation will be accomplished, and how the public and regulated sources will be informed of the delegation. The Regional Administrator will not delegate authority to a Tribe for areas for which EPA believes the Indian reservation status is in question. This section would not affect the requirements established under the TAR for Tribal applications to administer EPA-approved Tribal CAA programs or requirements for delegation of other EPA air programs such as Part 71 operating permits or PSD permits under 40 CFR 52.21.

Section 49.123—General provisions. This section includes definitions of the terms used in these rules as well as general provisions regarding requirements for emission testing, monitoring, recordkeeping, reporting, the use of credible evidence in compliance certifications and for establishing violations, and the incorporation by reference of the American Society for Testing and Materials Methods referenced in this rulemaking.

Section 49.124—Visible emissions. Section 49.124 would restrict visible emissions from air pollution sources to 20% opacity, averaged over 6 consecutive minutes, as measured by EPA Method 9. This rule would not apply to certain sources, such as: Open burning; agricultural activities; non-commercial smoke houses; sweat houses or lodges; smudge pots; furnaces and boilers used exclusively to heat residential buildings with four or fewer units; fugitive dust from public roads owned or maintained by any Federal, Tribal, State or local government; and emissions from fuel combustion in mobile sources. The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 minutes in any 8 consecutive hours, but must not exceed 60% opacity at any time.

All of the State and local air agency rules that EPA reviewed contain a 20% opacity limit. Most of these visible emissions rules allow a 3-minute exception over a 60-minute period. However, EPA decided to use the method with an average opacity over a 6-minute interval to be consistent with the only Federally promulgated opacity measurement method, which is EPA Method 9, found at 40 CFR Part 60, Appendix A. This method is used to determine compliance with Federal New Source Performance Standards for numerous categories of industrial sources. This rule does not require any person to conduct Method 9 opacity readings or to install a COMS unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.125—Particulate matter. Particulate matter emissions from combustion (except for wood-fired boilers) and process sources would be limited to an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to 7% oxygen (for combustion sources), during any 3-hour period. Particulate matter emissions from wood-fired boilers would be limited to an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to 7% oxygen, during any 3-hour period. Woodwaste burners, furnaces, and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, and mobile sources would be exempt from this rule.

For combustion sources and wood-fired boilers, the particulate matter limit in this rule is the same as the limit in most of the State and local agency air rules that EPA reviewed. For process sources, many State and local air agencies employ process weight rate tables in their rules to limit particulate matter. EPA is proposing to use a concentration limit rather than a process weight rate table for this rule to be consistent with the EPA method for measuring particulate matter, which is EPA Method 5, found at 40 CFR Part 60, Appendix A. The particulate matter limit for process sources in this rule equals the control of all but one of the concentration-based rules that EPA reviewed. This rule does not require any person to conduct a Method 5 source test unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.126—Fugitive particulate matter. The owner or operator of any source of fugitive particulate matter emissions would be required to take all reasonable precautions to prevent fugitive particulate matter emissions and to maintain and operate the source to minimize these emissions. A person subject to this rule would be required to periodically survey the air pollution source to determine if there are sources of fugitive particulate matter emissions, determine and document in a written plan the reasonable precautions that would be taken to prevent fugitive particulate matter emissions, and then implement the plan. This rule would not apply to activities associated with single-family residences or residential buildings with four or fewer dwelling units, agricultural activities, or public roads owned or maintained by any

Federal, Tribal, State, or local government.

All but one of the State and local air agency rules that EPA reviewed have rules for controlling fugitive particulate matter. All of these rules contain reasonable precautions provisions similar to the ones in § 49.126. A few rules control fugitive emissions beyond reasonable precautions, but these rules are primarily for nonattainment areas so EPA believes they are not appropriate here because the reservations at issue are generally not designated nonattainment for PM10.

Section 49.127—Woodwaste burners. Section 49.127 would phase out the operation of woodwaste burners (commonly known as wigwam or teepee burners). In the interim, visible emissions from a woodwaste burner would not be allowed to exceed 20% opacity, averaged over 6 consecutive minutes, as measured by EPA Method 9, and only wood waste generated onsite could be burned or disposed of in the woodwaste burner. The owner or operator would be required to submit a plan for shutting down the woodwaste burner to EPA within 180 days after the effective date of these rules and to shut down and dismantle the woodwaste burner by no later than 2 years after the effective date of these rules. Sources could apply to EPA for an extension of the 2-year deadline if there is no reasonably available alternative method of disposal for the wood waste.

EPA recognizes that on some reservations particulate matter from woodwaste burners can contribute to air quality deterioration. This section would be promulgated in Part 49 Subpart M on reservations only where EPA finds, in consultation with the relevant Tribe, that it is appropriate to establish this requirement in order to control air pollution. This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of these sources on the reservation, the significance of the resulting pollution on air quality in the area, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that § 49.127 will apply only on the Nez Perce Reservation and the Colville Indian Reservation, as shown in Table 2.

Most woodwaste burners under programs of State and local air agencies have already been shut down. All but one of the State and local air agency rules that control the woodwaste burners that still exist have a 20% opacity limit. Most of these rules use an opacity measurement method with a 3-minute exception over a 60-minute period. However, EPA is proposing use of the method with an average opacity over a 6-minute interval to be consistent with the only Federally promulgated opacity measurement method, which is EPA Method 9, found at 40 CFR Part 60, Appendix A. This method is used to determine compliance with Federal New Source Performance Standards for numerous categories of industrial sources. This rule does not require any person to conduct Method 9 opacity readings unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.128—Particulate matter emissions from wood products industry sources. Section 49.128 would apply to any person who owns or operates any of the following wood products industry sources: veneer manufacturing operations, plywood manufacturing operations, particleboard manufacturing operations, or hardboard manufacturing operations. This section would impose limits on the amount of particulate matter that could be emitted from such sources, in addition to the particulate matter limits for combustion and process sources in § 49.125. The reference method for determining compliance with the particulate matter limits is EPA Method 202, found at 40 CFR part 51, Appendix M. This rule does not require any person to conduct a Method 202 source test unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

In Part 49 Subpart M, EPA is proposing this requirement on reservations where EPA finds, in consultation with the relevant Tribe, that it is appropriate to establish this requirement in order to control air pollution. This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from those specific wood products industry sources. EPA will base this determination on a number of factors, including the prevalence of these sources on the reservation, the significance of the resulting pollution on air quality in the area, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that § 49.128 will apply only on the Nez Perce Reservation and the Colville Indian Reservation, as shown in Table 2.

One State has both State-wide rules and area-specific rules to control particulate matter emissions from the wood products industry. The limits that EPA is proposing in this rule closely resembles the area-specific rules for that State.

Section 49.129—Sulfur dioxide. This rule would restrict sulfur dioxide emissions from combustion and process sources to no more than an average of 500 parts per million by volume, on a dry basis, and corrected to 7% oxygen (for combustion sources), during any 3-hour period. Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour and mobile sources would be exempt from this rule.

This rule is appropriate to protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. This section would limit the amount of sulfur dioxide emitted to the atmosphere from certain air pollution sources in order to control ground-level concentrations of sulfur dioxide. All of the concentration-based rules that EPA reviewed have one of two sulfur dioxide concentration limits: 500 ppm averaged over a 3-hour period or 1,000 ppm average over a 1-hour period. EPA is proposing to use the 500 ppm, 3-hour average limit because it does a better job of accounting for the short-term variability in process emissions and in the sulfur content of fuels. The reference methods for determining compliance with the SO2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each Method. These methods are found at 40 CFR 60, Appendix A. This rule does not require any person to conduct Method 6, 6A, 6B, or 6C source tests or to install a continuous emissions monitoring system (CEMS) unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.130—Sulfur content of fuels. This section would apply to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, or gaseous fuel on Indian reservations. This rule restricts the sulfur content of the previously

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listed types of fuels. Fuels used exclusively for mobile sources, such as automotive or marine diesel fuel, would be exempt from this rule. A person subject to this rule would be required to demonstrate compliance through recordkeeping and/or continuous monitoring or sampling. Owners or occupants of a single-family residence and the owners or managers of a residential building with four or fewer units are not subject to the sulfur content recordkeeping requirements if the furnace fuel is purchased from a licensed fuel distributor.

This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. Fuel combustion sources can emit sulfur dioxide. This section would limit the amount of sulfur in fuels to control the amount of sulfur dioxide emitted to the atmosphere and minimize ground-level concentrations of sulfur dioxide.

The majority of the State and local air agency rules that EPA reviewed contain the same level of control that EPA is proposing for the sulfur content in each type of fuel.

Section 49.131—Open burning. This rule would prohibit certain materials from being open burned, such as: Garbage, dead animals, junked motor vehicles, tires or rubber materials, plastics, asphalt or composition roofing, tar, tarpaper, petroleum products, paints, paper or cardboard other than what is necessary to start a fire, lumber or timbers treated with preservatives, construction debris or demolition waste, pesticides, herbicides, hazardous wastes, or any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned (see rule for a complete list). The following situations would be exempt from certain provisions of this rule: Fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires set for recreational purposes, provided that no prohibited materials are burned; the burning of combustible household waste in burn barrels at single-family residences or residential buildings with four or fewer dwelling units; with permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated; with permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials; and open burning for the disposal of diseased animals or infested material by order of a public health official. All open burning, except for cultural and traditional purposes, would be prohibited under the following circumstances: The Regional Administrator declares a burn ban due to deteriorating air quality; the National Weather Service issues an air stagnation advisory; or the Regional Administrator declares an air pollution alert, air pollution warning, or air pollution emergency. This section also describes the practices a person subject to this rule must follow in conducting an open burn.

This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere. All of the State and local air agency rules that EPA examined have an open burning rule with procedures, conditions, prohibitions and exemptions similar to those in the rule that EPA is proposing.

Section 49.132—Open burning permits. Any person who conducts an open burn would be required to: (1) Apply for and obtain a permit for each open burn; (2) have the permit available on site during the open burn; (3) conduct the open burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. The following activities are exempt: Fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires for recreational purposes, provided that no prohibited materials are burned; forestry or silvicultural burning; agricultural burning; and the burning of combustible household waste in burn barrels at single family residences or residential buildings with four or fewer dwelling units. The Regional Administrator shall take into consideration the size, duration, and location of the proposed open burn, the current and projected air quality conditions, forecasted meteorological conditions, and other scheduled burning activities in the surrounding area in determining whether to issue the permit.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of these activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.132 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Most of the State and local air agency rules that EPA reviewed have a permitting program for open burning with procedures, conditions, prohibitions and exemptions similar to those in the rule that EPA is proposing.

Section 49.133—Agricultural burning permits. Any person who conducts an agricultural burn would be required to: (1) Apply for and obtain a permit for each agricultural burn; (2) have the permit available on site during the agricultural burn; (3) conduct the burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from unregulated agricultural burning activities. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of agricultural burning activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.133 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Two of the States, three local air agencies, and one Tribe in Region 10 have established a permitting program

for agricultural burning with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

Section 49.134—Forestry burning permits. Any person who conducts a forestry burn would be required to: (1) Apply for and obtain a permit for each forestry burn; (2) have the permit available on site during the forestry burn; (3) conduct the burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from unregulated forestry burning activities. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of forestry burning activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. This rule would protect air quality on those reservations where forestry burning can contribute to air quality deterioration. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.134 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Three of the States in Region 10 have established a permitting program for forestry burning with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

Sections 49.135 and 49.136—Emissions detrimental to persons or property. These are two alternatives to regulate emissions that are detrimental, and EPA would promulgate one of the rules for each reservation. For both §§ 49.135 and 49.136, an owner or operator of an air pollution source would not be allowed to cause or allow the emission of any air pollutants, in sufficient quantities and of such characteristics and duration, that the Regional Administrator determines is, or would likely be, injurious to human health and welfare. The Tribal alternative rule § 49.136 would include the same requirements as § 49.135, and also authorize controls when the Regional Administrator determines an emission does, or is likely to, unreasonably interfere with the enjoyment of life or property or damage unique Tribal cultural or traditional resources. If the Regional Administrator makes such a determination under § 49.135 or § 49.136, EPA is proposing that the Regional Administrator would be able to require the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions.

Section 49.136 would provide additional protection of unique Tribal resources, and would be promulgated on reservations only where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base this determination on a number of factors, including the prevalence of activities on the reservation which can affect unique Tribal cultural or traditional resources, the significance of the resulting pollution on those resources, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that the Tribal alternative rule § 49.136 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Most State and local air agency rules incorporate similar provisions prohibiting emissions detrimental to persons or property.

Section 49.137—Air pollution episodes. Under § 49.137, the Regional Administrator could issue warnings about air quality that would apply to any person who owns or operates an air pollution source on Indian reservations. An air pollution alert, air pollution warning, or air pollution emergency could be declared by the Regional Administrator whenever it is determined that the accumulation of air pollutants in any place is attaining, or has attained, levels that could lead to a threat to human health. These announcements would be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health, describe actions that people can take to reduce exposure, request voluntary actions to reduce emissions from sources of air pollutants, and indicate that a ban on open burning is in effect. Voluntary or mandatory curtailment of emissions could be declared by the Regional Administrator.

Most State and local air agencies have rules for air pollution episodes with procedures and conditions similar to those in the rule that EPA is proposing. Section 110(a)(2)(G) of the Clean Air Act and 40 CFR part 51, Subpart H of EPA's regulations require agencies to have pre-planned procedures to follow in the event of an air pollution episode as well as adequate authorities to require sources to reduce emissions in order to protect public health. Section 49.137 is consistent with EPA's requirements for State and local agencies as set forth in 40 CFR part 51, Subpart H and the model procedures in 40 CFR part 51, Appendix L.

Section 49.138—Registration of air pollution sources and reporting of emissions. Any person who owns or operates an air pollution source except those exempted below would be required to register the source with EPA. A person subject to this rule must register the air pollution source by no later than one year after the effective date of these rules. A new air pollution source must register within 90 days after beginning operation. Sources must re-register each year and provide updates on any changes since the previous registration. The following sources are exempt from this rule: mobile sources; single family residences, and residential buildings with four or fewer units; air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the CAA and do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour; cooking of food, except for retail and wholesale businesses that both cook and sell cooked food; consumer use of office equipment and products; janitorial services and consumer use of janitorial products; maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment, such as automobile repair shops or appliance repair shops; agricultural activities and forestry activities, including agricultural burning and forestry burning; and open burning.

This requirement is appropriate as it would enable EPA to develop and maintain accurate records of air pollution sources and their emissions

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on reservation lands. Maintaining an accurate inventory of sources and emissions would help EPA protect air quality from potential significant deterioration that can occur if many sources within a particular area increase their air pollutant emissions. While the emission increase at each facility may be de minimis, the cumulative effect of the increases may be significant. The registration program would enable EPA to track trends and identify potential problems before they arise.

Many State and local air agencies have a registration program or a permitting program to collect information similar to that required by the registration program in this section.

Section 49.139—Rule for non-Title V operating permits. This section would create a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources on Indian reservations. This rule would apply in the following three situations: (1) The owner or operator of any source wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit and submits an application to the Regional Administrator requesting such limitation; (2) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure compliance with the Federal or, if applicable, Tribal Implementation Plan; or (3) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure the attainment and maintenance of any NAAQS or PSD increment. A source that would otherwise require a Part 71 Federal operating permit may instead obtain an operating permit under this section that limits its potential to emit to below major source thresholds so that the source is not subject to Part 71. The Regional Administrator would write the operating permit and follow the consultation and public comment procedures described in this rule.

This rule would provide air pollution sources on reservations with air quality control requirements and regulatory alternatives similar to those available to sources located off-reservation. The rule also would enable the Regional Administrator to require further air emission reductions if necessary to attain or maintain the NAAQS or PSD increment.

All State and local air agencies have a permitting mechanism to control emissions and to allow a source to limit its potential to emit so that it is not subject to Title V or other requirements for major stationary sources with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

C. Rules Proposed for Specific Reservations

The proposed rules that follow this discussion identify for each Indian Tribe listed in Subpart M the specific rules that EPA is proposing to promulgate as a FIP for the Indian reservation of that Tribe. Subpart M is organized to contain the implementation plan for each Indian Tribe with a reservation. This plan will consist of a combination of Tribal rules and measures and Federal regulations and measures that apply to all applicable sources within the specific reservation, including trust lands set aside for the Tribe.

While most of the rules in the FIPs constitute a base program that EPA is proposing for all reservations in Idaho, Oregon, and Washington, some of the proposed FIPs would include additional rules where specific needs have been identified through consultation with Tribes. Table 1 lists the "Base Program" rules, as well as the "Additional Rules". The following "Additional Rules" are being proposed for three reservations (see Table 2 below) where EPA has found, in consultation with the relevant Tribe, that it is appropriate to establish these requirements in order to control air pollution.

EPA is proposing the rules listed in Table 2 for the Nez Perce Reservation to limit the amount of particulate matter emitted to the atmosphere in the airsheds in and around the Reservation. EPA has found, in consultation with the Nez Perce Tribe, that these rules are appropriate because the activities that would be regulated by these rules are taking place on the Nez Perce Reservation. Specifically, the woodwaste burners, the wood products industries, open burning, agricultural, and forestry activities may be significant contributors to air quality concerns in the area. Based on consultations with the Nez Perce Tribe, EPA also is concerned that air pollution sources could adversely affect cultural or traditional resources of the Tribe in ways that may not be adequately protected by Tribal law.

For the Umatilla Reservation, EPA is proposing the rules listed in Table 2 to limit the amount of particulate matter emitted to the atmosphere and airsheds in and around the Reservation. EPA has found, in consultation with the Confederated Tribes of the Umatilla Reservation, that these rules are appropriate because the activities that would be regulated by these rules are taking place on the Umatilla Reservation. Specifically, open burning, agricultural, and forestry activities may be significant contributors to air quality concerns in the area. Based on consultations with the Confederated Tribes of the Umatilla Reservation, EPA also is concerned that air pollution sources could adversely affect cultural or traditional resources of the Tribes in ways that may not be adequately protected by Tribal law.

Finally, EPA is proposing the rules listed in Table 2 for the Colville Reservation to limit the amount of particulate matter emitted to the atmosphere in the airsheds in and around the area. EPA has found, in consultation with the Confederated Tribes of the Colville Reservation, that these rules are appropriate because the operations of woodwaste burners and wood products facilities located on the Colville Reservation cause the release of particulate matter which may adversely affect air quality in ways that may not be adequately protected by Tribal law.

Correspondence from these Tribes providing relevant information and requesting that EPA propose these Additional Rules are included in the docket for this proposal.

TABLE 2.—RESERVATION SPECIFIC ADDITIONAL RULES

Rule #	Additional rules
Nez Perce Reservation, Lapwai, Idaho	
Section 49.127	Rule for woodwaste burners.
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.
Section 49.132	Rule for open burning permits.
Section 49.133	Rule for agricultural burning permits.
Section 49.134	Rule for forestry burning permits.
Section 49.136	Rule for emissions detrimental to persons, property, cultural or traditional resources.
Umatilla Indian Reservation, Pendleton, Oregon	
Section 49.132	Rule for open burning permits.
Section 49.133	Rule for agricultural burning permits.
Section 49.134	Rule for forestry burning permits.
Section 49.136	Rule for emissions detrimental to persons, property, cultural or traditional resources.
Colville Indian Reservation, Nespelem, Washington	
Section 49.127	Rule for woodwaste burners.
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.

TABLE 2.—RESERVATION SPECIFIC ADDITIONAL RULES—Continued

D. Costs Associated With These Rules and Request for Comment

As part of developing these proposed rules, EPA conducted an analysis of the expected costs should these rules be adopted. Included in the docket for this rulemaking is an Economic Impact Analysis (EIA) that was prepared to assist EPA in estimating the costs of compliance for the sources that would be subject to these rules.

For the purposes of generating cost estimates for each of the proposed rules, EPA assumed that there will be no capital costs incurred under any of these rules. EPA makes this assumption because the unique nature of this rule—sources are believed to be complying in the absence of the rule because they thought they were subject to State and local rules—makes it difficult to establish a counterfactual baseline showing what sources would be doing had they realized they were not subject to those rules under the CAA. Furthermore, based on information obtained from State, local, and Tribal authorities, as well as the businesses and other entities affected by these rules, EPA does not anticipate that facilities will add control devices as a result of these rules. In addition, EPA has not estimated operation and maintenance (O&M) costs to comply with these rules. EPA believes that O&M costs should be considered, but insufficient data were available to estimate them. O&M costs estimates based on information gathered from comments on the proposal will be included in the analysis for the final rule.

Thus the costs estimated for these rules are primarily the labor costs associated with record keeping and reporting under the regulations. Costs for both the basic rules and additional rules were estimated in the EIA. For the basic rules, the annualized labor costs and non-labor costs were estimated to be $117,000 and $17,000, respectively, while incremental capital costs and incremental O&M costs were assumed to be zero. Thus, the total estimated cost associated with the basic rules is $134,000. Cost estimates for the additional rules only account for costs on those reservations for which EPA has proposed additional rules. The additional rules were estimated to have annualized labor costs of $23,000, while non-labor costs, incremental capital costs, and incremental O&M costs were each assumed to equal zero for a total of $23,000. Overall, annualized labor costs were estimated to be $140,000, annualized non-labor costs are estimated to be $17,000, incremental capital costs are assumed to be zero, and incremental O&M costs are assumed to be zero for a total estimated cost of $157,000.

The information available to EPA for this analysis was assembled from a number of sources, including surveys of sources on the reservations, consultations with the sources and Tribal governments, and EPA's experience with air quality issues in the Pacific Northwest. Based on this information, several assumptions were made in order to estimate the expected compliance costs associated with these rules. EPA is now seeking comment on these assumptions. While comments on all aspects of the analysis are solicited, EPA specifically is soliciting comments on the assumptions described below regarding capital costs, O&M costs, and the costs of meeting visible emission and fugitive emission requirements, conducting source tests, and meeting the sulfur content in fuel limits.

EPA is seeking comments on the assumption that no incremental capital costs would be required by these rules. The O&M costs associated with the continued compliance with these rules are expected to be small. However, there were insufficient data to estimate the magnitude of these costs. Therefore, EPA is requesting comment and supplemental information if appropriate on the expected O&M costs that would result from continued compliance with these rules. In addition, EPA would like comments on the following assumptions used for costing several of the individual rules. For the visible emission rule, it was assumed for costing purposes that two facilities would voluntarily train their own visible emissions readers and would send them to retraining each year. For the fugitive particulate matter emissions rule, it was assumed that an average of one construction project per reservation per year would need to develop and update particulate matter control plans. Under the particulate matter rule and the sulfur dioxide rule, it was assumed that six facilities and one facility, respectively, would conduct source tests within the first three years (Method 5 tests for the particulate matter rule and Method 6 tests for the sulfur dioxide rule). Finally, for the sulfur content of fuels rule, EPA assumed that fuel distributors have access to data on the sulfur content of delivered fuel and that fuel purchases would be unaffected because the fuel currently available already meets the sulfur limits established in the rule. EPA would like feedback from interested parties on the accuracy of these assumptions and suggestions for modifications, if applicable. For additional details on the assumptions used in the development of the estimated compliance costs associated with these rules, the reader is referred to the EIA.

IV. Request for Public Comment

EPA solicits comments on all aspects of today's proposal. In this proposal, EPA is trying to create a level playing field without imposing significant new costs to sources. Interested parties should submit comments by mail or in person to the address listed in the front of this proposal. Be sure to identify the

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appropriate docket control number (#A–2000–25) in your correspondence. Your comments must be received by June 13, 2002 to be considered in the final action taken by EPA.

You may also comment on this proposal by attending the public hearing if one is held and providing oral comments. If EPA determines that a hearing should be held, the date and time will be announced in the local papers. You may also call David Bray at (206) 553–4253 to determine if a hearing will be held and to obtain the time and location.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed rulemaking is a "significant regulatory action" because it may raise novel legal or policy issues. The rulemaking marks the first time that, under the Clean Air Act, EPA has proposed Federal Implementation Plans for specific reservations that would be generally applicable to all sources within the exterior boundaries of those reservations.

However, EPA's analysis indicates that this rulemaking will not have a significant economic impact. EPA is finding that many sources on Indian reservations have historically been following similar air programs that are established by State and local agencies acting under State law or local rules. Although EPA has not approved SIPs as extending into Indian country under the CAA, some sources located on Indian reservations have made efforts to follow those programs. Most industrial sources on the Region 10 reservations have installed or upgraded air pollution control equipment to conform with State or local air programs without challenging the authority of those agencies within Indian country. As a result, these sources already have pollution controls that would satisfy State and local rules.

As discussed above in section III.A. this rulemaking would establish regulatory requirements for sources under the authority of the CAA that are substantially similar to the requirements of adjacent jurisdictions that most sources already meet. Thus, it is EPA's expectation that these rules would not impose significant costs or require changes at regulated sources. Nevertheless, because of the limited precedent this rulemaking would set, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section in Washington DC and at EPA Region 10 in Seattle, Washington. See the **ADDRESSES** section of this preamble for specific addresses and times when the docket may be reviewed.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rulemaking on small entities, small entity is defined as: (1) A small business as defined by the RFA (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on our economic analysis, we certify that this action will not have a significant economic impact on a substantial number of small entities. The economic analysis shows the total annual compliance costs of the basic and additional rules to be approximately $1,000 per small business. The cost-to-sales ratio for small business entities is expected to be less than one percent, with the exception of one facility whose estimated ratio is 1.15, when the worst-case scenario is applied.

Although this proposed rulemaking will not have a significant economic impact on a substantial number of small entities, EPA also has included a number of exemptions in the rules where appropriate to reduce impacts of this rulemaking on small entities. There are 13 rules that EPA proposes to apply to all reservations in Idaho, Oregon and Washington. Of these 13 rules, one (§ 49.121) provides an introduction, one (§ 49.122) provides delegation procedures for Tribes, and one (§ 49.123) provides definitions. The remaining ten (§§ 49.124, 49.125, 49.126, 49.129, 49.130, 49.131, 49.135, 49.137, 49.138, 49.139) have some regulatory effect. Eight of these ten contain exemptions for sources considered sufficiently small, such as households or the owners of mobile sources. Only two rules, one that addresses emissions detrimental to persons (§ 49.135) and one that addresses air pollution episodes (§ 49.137), do not include exemptions. These two rules require determinations by the Regional Administrator and would only be used when EPA determines that adverse effects of air pollution warrant their use.

In developing this proposal, EPA consulted extensively with Tribal governments regarding the potential impacts of these rules (see section G below). In order to better understand the implications of these rules for small entities, as part of the consultations with Tribal representatives, EPA also explored the possible effects for small businesses operating on Tribal lands. Moreover, while making site visits to Tribal reservations, EPA staff met one-on-one with numerous small business owner/operators and discussed today's proposal. Also during the course of these rules' development, EPA attended and made presentations about this activity at numerous public meetings and conferences; venues at which representatives of Tribally-owned and Indian-owned small businesses were present and had opportunities to comment on the rule. We continue to be interested in the potential impacts of the proposed rulemaking on small entities and welcome comments on issues related to such impacts. In addition, EPA intends to continue outreach to affected businesses, especially small businesses, during the public comment period to provide additional opportunities for input from small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. With regard to State and local governments, there is no expenditure because these rules only apply on Indian reservations. With regard to Tribal governments, there is no expenditure in implementing and enforcing the rules because the rules would provide that EPA would take on that responsibility unless a Tribe chooses to assist EPA or assume responsibility for its own reservation. In such a case, EPA would seek to provide funding to support these efforts. Thus, today's rules are not subject to the requirements of sections 202 and 205 of UMRA.

In developing this rulemaking, EPA consulted with small governments pursuant to its interim plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rules that might significantly or uniquely affect small governments. As explained in the discussion of Executive Order 13175 in section G below, among other things, we notified all potentially affected Tribal governments of the requirements in these proposed rules. Further, although there are no significant Federal intergovernmental mandates, we provided officials of all potentially affected Tribal governments an opportunity for meaningful and timely input in the development of the regulatory proposals. Finally, through consultation meetings and other forums, we will continue to keep Tribal governments involved by providing them with opportunities for learning about and receiving advice on compliance with the regulatory requirements.

D. Paperwork Reduction Act

The information collection requirements in this proposed rulemaking have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2020.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The proposed FIPs include information collection requirements related to the registration of and reporting of emissions from air pollution sources. EPA believes these information collection requirements are appropriate because they would enable EPA to develop and maintain accurate records of air pollution sources and their emissions on reservation lands. As discussed in the summary of § 49.138 in section III.A. of this preamble, maintaining an accurate inventory of sources and emissions would, among other things, help EPA protect air quality from potential significant deterioration that can occur if many sources within a particular area increase their air pollutant emissions. These registration requirements would be mandatory under § 49.138. Regulated entities would be able to assert claims of business confidentiality and EPA would treat these claims in accordance with the provisions of 40 CFR part 2, Subpart B.

The reporting and record keeping burden for this collection of information is described below. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that the owners or operators of facilities affected by these basic and additional rules will incur a total of $140,000 in labor costs and $17,000 in non-labor costs to comply with the information collection requirements of these rules.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for

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EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 15, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by April 15, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rulemaking is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that had Federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rulemaking does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules only prescribe regulations for facilities in areas where a State does not administer an approved Clean Air Act program, and thus does not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rulemaking. EPA has provided advance draft copies of the proposed rules to State and local authorities in Idaho, Oregon and Washington. Generally, the States are pleased that EPA is developing rules for Indian reservations, as the rules will create more parity in the regulatory environment between on-reservation and off-reservation lands. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rulemaking from State and local officials.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications and that preempts Tribal law, unless the Agency consults with Tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule will have Tribal implications. These regulations would significantly affect specific Indian reservation communities by filling the gap in air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. However, the air quality requirements proposed here are applicable broadly to all sources within the identified Indian reservation areas, and are not uniquely applicable to Tribal governments. The gap-filling approach used in this proposal would create Federal requirements similar to those that are already in place in jurisdictions adjacent to the reservations covered by the proposal. Tribal governments may incur some compliance costs in meeting those requirements that apply to sources they own or operate; however, the economic impacts analysis does not indicate that those costs will be significant. Finally, although Tribal governments are encouraged to partner with EPA on the implementation of these regulations, they are not required to do so. EPA will seek to provide funding to Tribes that apply for delegation of EPA's authority to administer specific rules to support their activities. Since this proposed rulemaking will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA consulted with Tribal officials and representatives of Tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The concept for this rulemaking grew from discussions related to implementation of the CAA and the TAR with Tribes throughout Region 10 who are engaged in developing Tribal air quality programs. EPA Region 10 began assembling an inventory of air pollution sources in 1995, and EPA has been working with Tribes and other air management agencies since then to better determine the need for specific rules and to evaluate alternatives for Tribal and Federal programs. Based on the discussions and inventory development, EPA decided to develop the proposed approach to rulemaking that would be tailored to the air quality issues of Tribes in Idaho, Oregon and Washington.

In June 1999, EPA Region 10 met in Seattle, Washington, with Tribal leaders, managers, and attorneys to introduce the Tribal Air Rules Project. A generally favorable response from Tribal leadership to the project led EPA to prepare a formal consultation package that included preliminary rules, and the package was distributed for review to the leadership of all of the potentially affected Tribes in Idaho, Oregon, and Washington. In August 1999, EPA Region 10 held three technical meetings with Tribal staff who are air specialists for in-depth discussions. Thirteen Tribes participated in these technical meetings. The Consultation Record in the docket for this proposal provides detailed information on the consultations.

In July 2000, a complete draft of the proposed rules was formally distributed to all 41 of the Tribal governments in Idaho, Oregon, and Washington. At the time of this proposal, 39 of the 41 Tribes have reservations. Two Tribes recently received Federal recognition and do not have reservation lands yet. The letter that transmitted the rule package was addressed to the Tribal Chair and sent by certified mail. Complete copies of the package were sent to the Natural Resource or Environmental Director at each Tribe and to the air specialist, in cases where the Tribe has one. In the letter, EPA Region 10 requested that the Tribe provide their views and comments on the proposed rules by September 30, 2000, and identify any additional rules that the Tribe would like EPA to propose for a particular reservation.

EPA Region 10 conducted follow-up telephone inquiries to offer opportunities for Tribes to participate in conference calls, group consultation meetings with EPA Region 10, and individual meetings with EPA Region 10. EPA Region 10 reached 39 of the 41 Tribes through these initial telephone contacts. In September and October of 2000, EPA Region 10 held four consultation meetings to discuss the draft proposed rulemaking package in Spokane, Puyallup, the Swinomish Reservation, and Portland. In the 2000 consultation round, 19 Tribes participated in face-to-face meetings with EPA Region 10. Another seven tribes consulted with EPA Region 10 through individual or group conference calls. Three Tribes submitted comments supporting the rule and requesting that EPA propose specific rules for their reservation. Please see the consultation record for more detailed information on the consultations. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

H. Executive Order 13211: Energy Effects

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects, because the facilities affected already have the pollution controls in place to enable them to comply with these rules.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

This proposed rulemaking involves technical standards. EPA proposes to use American Society for Testing and Materials (ASTM) Methods and generally accepted test methods previously promulgated by EPA. Because all of these methods are generally accepted and are widely used by State and local agencies for determining compliance with similar rules, EPA believes it would be impracticable and potentially confusing to put in place methods that vary from what is already accepted. As a result, EPA believes it is unnecessary and inappropriate to consider alternative technical standards. Nevertheless, EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in these regulations.

List of Subjects in 40 CFR Part 49

Environmental protection; Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 13, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 49 is amended by revising subpart C to read as follows:

Subpart C—General Federal Implementation Plan Provisions

Sec.

49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

49.121 Introduction.
49.122 Delegation of authority to a Tribe.
49.123 General provisions.
49.124 Rule for limiting visible emissions.
49.125 Rule for limiting the emissions of particulate matter.
49.126 Rule for limiting fugitive particulate matter emissions.
49.127 Rule for woodwaste burners.
49.128 Rule for limiting particulate matter emissions from wood products industry sources.
49.129 Rule for limiting emissions of sulfur dioxide.
49.130 Rule for limiting sulfur in fuels.
49.131 General rule for open burning.
49.132 Rule for open burning permits.
49.133 Rule for agricultural burning permits.
49.134 Rule for forestry burning permits.
49.135 Rule for emissions detrimental to human health and welfare.
49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
49.137 Rule for air pollution episodes.
49.138 Rule for the registration of air pollution sources and the reporting of emissions.
49.139 Rule for non-Title V operating permits.
49.140–49.200 [Reserved]

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Subpart C—General Federal Implementation Plan Provisions

§§ 49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

§ 49.121 Introduction.

(a) *What is the purpose of these rules?* These "General Rules for Application to Indian Reservations in EPA Region 10" establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these rules developed?* These "General Rules for Application to Indian Reservations in EPA Region 10" were developed through consultation with the Indian Tribes located in Idaho, Oregon, and Washington. The rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these rules applicable to sources on a particular Indian reservation?* These "General Rules for Application to Indian Reservations in EPA Region 10" apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules into effect for that reservation. Rules shall be promulgated into effect through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this Part. These "General Rules for Application to Indian Reservations in EPA Region 10" will not apply to air pollution sources located on newly established Tribal trust lands located outside the exterior boundaries of an Indian reservation until after they are promulgated into effect through notice and comment rulemaking.

§ 49.122 Delegation of authority to a Tribe.

(a) *What is the purpose of this rule?* The purpose of this rule, § 49.122, is to establish the process by which the Regional Administrator may delegate to an Indian Tribe the authority to administer all, or a portion of, the rules that have been promulgated into effect in Subpart M of this Part for a particular Indian reservation. This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request delegation?* In order to be delegated authority to administer the rules that are in effect in Subpart M of this Part for a particular Indian reservation, the authorized representative of a Tribe must submit a request to the Regional Administrator that:

(1) Identifies the specific rules and provisions for which delegation is requested;

(2) Identifies the Indian reservation for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the rules and provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, adequate resources to carry out the aspects of the rules and provisions for which delegation is requested.

(c) *How is the delegation of authority accomplished?*

(1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rules and provisions that the Tribe shall be authorized to implement, and shall be entered into by the Regional Administrator and the Tribe. The Regional Administrator will not delegate authority to a Tribe for areas for which EPA believes the Indian reservation status is in question. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Act, to the extent specified in the Agreement, for administering the rules in effect in Subpart M of this Part for the particular Indian reservation and shall act as the Regional Administrator as that term is used in these regulations.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe.

(d) *How will any delegation of authority be publicized?* The Regional Administrator shall publish a notice in the **Federal Register** informing the public of any delegation of authority to a Tribe to administer all or a portion of the rules in Subpart M of this Part that apply for an Indian reservation and will indicate such delegation in the implementation plan for the Indian reservation. The Regional Administrator shall also publish an announcement of the delegation in local newspapers.

§ 49.123 General provisions.

(a) *Definitions.* The following definitions apply for the purposes of the "General Rules for Application to Indian Reservations in EPA Region 10". Terms not defined herein have the meaning given to them in the Act.

Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Actual emissions means the actual rate of emissions, in tons per year, of an air pollutant from an air pollution source. For an existing source, the actual emissions are the actual rate of emissions for the most recently completed calendar year and must be calculated using the actual operating hours, production rates, and types of materials processed, stored, or combusted during that calendar year. For a new source that has not operated for a complete calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative of the Administrator.

Agricultural activities means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.

Agricultural burning means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

Air pollutant means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

Air pollution source means any building, structure, facility, installation, activity, or equipment that emits, or may emit, an air pollutant.

Allowable emissions means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

(1) The applicable standards in 40 CFR parts 60, 61, 62 and 63;

(2) The applicable implementation plan emission limitations, including those with a future compliance date; or

(3) The emissions rates specified in Federally-enforceable permit conditions.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.

British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

Burn barrel means a cylindrical steel vessel, no greater than 55 gallons in size, with an open top, bottom air holes, and equipped with a steel spark screen, used for burning combustible household waste.

Coal means all fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Materials (ASTM) in ASTM Method D388–99, Standard Classification of Coals by Rank.

Combustible household waste means paper, paper products, cardboard, food packaging, plastic containers, garbage, rags, wood, and other combustible waste materials resulting from general residential activities, but does not include the following household wastes: tires; rubber materials or products; plastic materials or products (except containers); asphalt or composition roofing, or any other asphaltic material or product; tar or tarpaper; petroleum products; paints; timbers treated with preservatives; pesticides, herbicides, or fertilizers; insulated wire; batteries; light bulbs; materials containing mercury; or materials containing asbestos.

Combustion source means any source that combusts a solid fuel, liquid fuel, or gaseous fuel, or an incinerator.

Continuous emissions monitoring system (CEMS) means the total equipment used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous opacity monitoring system (COMS) means the total equipment used to sample, analyze, and provide a permanent record of opacity.

Distillate fuel oil means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils in ASTM Method D396–98, Standard Specification for Fuel Oils.

Emission means a direct or indirect release into the atmosphere of any air pollutant; or the air pollutants released into the atmosphere.

Emission factor means an estimate of the rate at which an air pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity.

Emission unit means any part of an air pollution source that emits, or may emit air pollutants into the atmosphere.

Federally enforceable means enforceable by the Administrator under the Act.

Fuel means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

Fuel oil means a liquid fuel derived from crude oil or petroleum, including distillate oil, residual oil, and used oil.

Forestry or silvicultural burning means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

Fugitive dust means a particulate matter emission made airborne by forces of wind, mechanical disturbance of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.

Fugitive particulate matter means particulate matter emissions that do not pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive particulate matter includes fugitive dust.

Garbage means food wastes.

Gaseous fuel means any fuel that exists in a gaseous state at standard conditions, including but not limited to natural gas, propane, fuel gas, process gas, and landfill gas.

Grate cleaning means removing ash from fireboxes.

Hardboard means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

Heat input means the total gross calorific value (where gross calorific value is measured by ASTM Method D240–92(1997)e2, D1826–94(1998), D5865–99a, or E711–87(1996)) of all fuels burned.

Implementation plan means a Tribal implementation plan approved by EPA pursuant to this Part or 40 CFR Part 51, or a Federal implementation plan promulgated by EPA in this Part or in 40 CFR Part 52 that applies in Indian country, or a combination of Tribal and Federal implementation plans.

Incinerator means any device, including a flare, designed to reduce the volume of solid, liquid, or gaseous waste by combustion. This includes air curtain incinerators, but does not include open burning.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Marine vessel means a waterborne craft, ship, or barge.

Mobile sources means locomotives, aircraft, motor vehicles, non-road vehicles, non-road engines, and marine vessels.

Motor vehicle means any self-propelled vehicle designed for transporting people or property on a street or highway.

New air pollution source means an air pollution source that begins actual construction after the effective date of the "General Rules for Application to Indian Reservations in EPA Region 10".

Noncombustibles means materials that are not flammable, capable of catching fire, or burning.

Non-road engine means:

(1) Except as discussed below, any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely

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for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Non-road vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

Oil-fired boiler means a furnace or boiler used for combusting fuel oil for the primary purpose of producing steam or hot water by heat transfer.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Open burning means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

Owner or operator means any person who owns, leases, operates, controls or supervises an air pollution source.

Particleboard means a matformed flat panel consisting of wood particles bonded together with synthetic resin or other suitable binder.

Particulate matter means any airborne finely divided solid or liquid material, other than uncombined water.

Permit to construct or construction permit means a permit issued by the Regional Administrator pursuant to 40 CFR 52.10 or 52.21, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR Part 51, Subpart I, authorizing the construction or modification of a stationary source.

Permit to operate or operating permit means a permit issued by the Regional Administrator pursuant to § 49.139 or 40 CFR Part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR Part 51 or 40 CFR Part 70, authorizing the operation of a stationary source.

Plywood means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

PM10 means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

Potential to emit means the maximum capacity of an air pollution source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

Press/Cooling vent means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

Process source means an air pollution source using a procedure or combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

Rated capacity means the maximum sustainable capacity of the equipment.

Reference method means any method of sampling and analyzing for an air pollutant as specified in the applicable rule.

Refuse means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

Regional Administrator means the Regional Administrator of EPA Region 10 or an authorized representative of the Regional Administrator.

Residual fuel oil means any oil meeting the specifications of ASTM Grade 4, Grade 5, or Grade 6 fuel oils in ASTM Method D396–98, Standard Specification for Fuel Oils.

Solid fuel means wood, refuse, refuse-derived fuel, tires, tire-derived fuel, and other solid combustible material (other than coal), including any combination thereof.

Solid fuel-fired boiler means a furnace or boiler used for combusting solid fuel for the primary purpose of producing steam or hot water by heat transfer.

Soot blowing means using steam or compressed air to remove carbon from a furnace or from a boiler's heat transfer surfaces.

Stack means any point in a source that conducts air pollutants to the atmosphere, including, but not limited to, a chimney, flue, conduit, pipe, vent, or duct, but not including a flare.

Standard conditions means a temperature of 293 degrees Kelvin (68 degrees Fahrenheit, 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

Start-up means the setting into operation of a piece of equipment.

Stationary source means any building, structure, facility, or installation that emits, or may emit, any air pollutant.

Tempering oven means any facility used to bake hardboard following an oil treatment process.

Uncombined water means droplets of water that have not combined with hygroscopic particles or contain dissolved solids.

Used oil means petroleum products that have been recovered from another application.

Veneer means a single flat panel of wood not exceeding ¼ inch in thickness formed by slicing or peeling from a log.

Veneer dryer means equipment in which veneer is dried.

Visible emissions means air pollutants in sufficient amount to be observable to the human eye.

Wood means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

Wood-fired boiler means a furnace or boiler used for combusting wood for the primary purpose of producing steam or hot water by heat transfer.

Wood-fired veneer dryer means a veneer dryer that is directly heated by the products of combustion of wood in addition to, or exclusive of, steam or natural gas or propane combustion.

Woodwaste burner means a wigwam burner, teepee burner, silo burner, olivine burner, truncated cone burner, or other such wood waste burning device used by the wood products industry for the disposal of wood wastes by burning.

(b) *Requirement for testing.* The Regional Administrator may require, in a permit to construct or a permit to operate, that a person demonstrate compliance with the "General Rules for Application to Indian Reservations in EPA Region 10" by performing a source test and submitting the test results to the Regional Administrator. A person may also be required by the Regional Administrator, in a permit to construct or permit to operate, to install and operate a continuous opacity monitoring system (COMS) or a continuous emissions monitoring system (CEMS) to demonstrate compliance. Nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, a person subject to the "General Rules for Application to Indian Reservations in EPA Region 10" to demonstrate compliance by performing source testing, even where the source does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement, nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(e) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(1) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(i) ASTM D388–99, Standard Classification of Coals by Rank, IBR approved for § 49.123(a).

(ii) ASTM D396–98, Standard Specification for Fuel Oils, IBR approved for § 49.123(a) and § 49.130(d).

(iii) ASTM D240–92(1997)e2, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).

(iv) ASTM D1826–94(1998), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).

(v) ASTM D5865–99a, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

(vi) ASTM E711–87(1996) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).

(vii) ASTM D2880–98, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).

(viii) ASTM D4294–98, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).

(ix) ASTM D6021–96, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).

(x) ASTM D3177–89(1997), Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

(xi) ASTM D4239–00, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for § 49.130(e)(2).

(xii) ASTM D2492–90(1998), Standard Test Method for Forms of Sulfur in Coal, IBR approved for § 49.130(e)(2).

(xiii) ASTM E775–87(1996), Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).

(xiv) ASTM D1072–90(1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 49.130(e)(4).

(xv) ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 49.130(e)(4).

(xvi) ASTM D4084–94(1999) Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 49.130(e)(4).

(xvii) ASTM D5504–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 49.130(e)(4).

(xviii) ASTM D4468–85(1995)e1, Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 49.130(e)(4).

(xix) ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for § 49.130(e)(4).

(xx) ASTM D6228–98 Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 49.130(e)(4).

§ 49.124 Rule for limiting visible emissions.

(a) *What is the purpose of this rule?* This rule, § 49.124, limits the visible emissions of air pollutants from air pollution sources operating within the Indian reservation in order to control emissions of particulate matter to the atmosphere and ground-level concentrations of PM10 and to detect the violation of any other rules and regulations.

(b) *Who is affected by this rule?* This rule, § 49.124, applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless exempted in paragraph (c) of this section.

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(c) *What is exempted from this rule?* This rule, § 49.124, does not apply to open burning, agricultural activities, non-commercial smoke houses, sweat houses or lodges, smudge pots, furnaces and boilers used exclusively to heat residential buildings with four or fewer dwelling units, fugitive dust from public roads owned or maintained by any Federal, Tribal, State or local government, and emissions from fuel combustion in mobile sources.

(d) *What are the opacity limits for air pollution sources?*

(1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive 6-minute period, unless paragraph (d)(2) or (d)(3) of § 49.124 applies to the air pollution source.

(2) The visible emissions from an air pollution source may exceed the 20% opacity limit if the owner or operator of the air pollution source demonstrates to the Regional Administrator's satisfaction that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet the 20% opacity limit.

(3) The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 minutes in any 8 consecutive hours, but must not exceed 60% opacity at any time.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the opacity limits is EPA Method 9 of Appendix A of 40 CFR Part 60. A complete description of this method is found in Appendix A.

(2) An alternative reference method for determining compliance is a COMS that complies with Performance Specification 1 found in Appendix B of 40 CFR Part 60.

(3) This rule, § 49.124, does not require any person to conduct Method 9, of Appendix A of 40 CFR Part 60, opacity readings or to install a COMS unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.124, are defined in § 49.123 General provisions: Act, agricultural activities, air pollutant, air pollution source, ambient air, coal, continuous opacity monitoring system (COMS), distillate fuel oil, emission, fuel, fuel oil, fugitive dust, gaseous fuel, grate cleaning, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, oil-fired boiler, opacity, open burning, particulate matter, permit to construct, permit to operate, PM10, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, solid fuel-fired boiler, soot blowing, stack, standard conditions, start-up, stationary source, uncombined water, used oil, visible emissions, and wood.

§ 49.125 Rule for limiting the emissions of particulate matter.

(a) *What is the purpose of this rule?* This rule, § 49.125, limits the amount of particulate matter that can be emitted from certain air pollution sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.125, applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this rule?* This rule, § 49.125, does not apply to woodwaste burners, furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, and mobile sources.

(d) *What are the particulate matter limits for sources?*

(1) Particulate matter emissions from a combustion source (except for wood-fired boilers) must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven (7) percent oxygen, during any three (3) hour period.

(2) Particulate matter emissions from a wood-fired boiler must not exceed an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven (7) percent oxygen, during any three (3) hour period.

(3) Particulate matter emissions from a process source must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot) during any three (3) hour period.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the particulate matter limits for a combustion source, wood-fired boiler, or process source is EPA Method 5. A complete description of this method is found in Appendix A of 40 CFR Part 60.

(2) This rule, § 49.125, does not require any person to conduct a Method 5 source test unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.125, are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, open burning, particulate matter, permit to construct, permit to operate, PM10, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, uncombined water, used oil, wood, wood-fired boiler, and woodwaste burner.

§ 49.126 Rule for limiting fugitive particulate matter emissions.

(a) *What is the purpose of this rule?* This rule, § 49.126, limits the amount of fugitive particulate matter that can be emitted from air pollution sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.126, applies to any person who owns or operates a source of fugitive particulate matter emissions.

(c) *What is exempted from this rule?* This rule, § 49.126, does not apply to activities associated with single family residences or residential buildings with four or fewer dwelling units, agricultural activities, or public roads owned or maintained by any Federal, Tribal, State or local government.

(d) *What are the requirements for sources of fugitive particulate matter emissions?*

(1) The owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

(2) Reasonable precautions include, but are not limited to the following:

(i) Use, where possible, of water or chemicals for control of dust in the demolition of buildings or structures, construction operations, grading of roads, or clearing of land.

(ii) Application of asphalt, oil (but not used oil), water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces that can create airborne dust.

(iii) Full or partial enclosure of materials stockpiles in cases where application of oil, water, or chemicals is not sufficient or appropriate to prevent particulate matter from becoming airborne.

(iv) Implementation of good housekeeping practices to avoid or minimize the accumulation of dusty materials that have the potential to become airborne, and the prompt cleanup of spilled or accumulated materials.

(v) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.

(vi) Adequate containment during sandblasting or other similar operations.

(vii) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.

(viii) The prompt removal from paved streets of earth or other material that does or may become airborne.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.126, must:

(i) Periodically survey the air pollution source during typical operating conditions to determine if there are sources of fugitive particulate matter emissions. This must be done at least once each calendar quarter, and must be done weekly if dry or dusty materials are handled at the air pollution source. Document the results of the survey, including the date and time of the survey and identification of any sources of fugitive particulate matter emissions found.

(ii) If sources of fugitive particulate matter emissions are present, determine the reasonable precautions that will be taken to prevent fugitive particulate matter emissions.

(iii) Prepare, and update as necessary following each periodic survey, a written plan that specifies the reasonable precautions to be taken and the procedures to be followed to prevent fugitive particulate matter emissions.

(iv) Implement the reasonable precautions and procedures plan, and maintain and operate the source to minimize fugitive particulate matter emissions.

(v) Maintain records for five years that document the periodic surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions.

(2) The Regional Administrator may require specific actions to prevent fugitive particulate matter emissions, or impose conditions to maintain and operate the air pollution source to minimize fugitive particulate matter emissions, in a permit to construct or a permit to operate for the source.

(3) A prudent approach to complying with this rule, § 49.126, requires that the owner or operator consider all environmental implications of any particular measures. Efforts to comply with this rule cannot be used as a reason for not complying with other environmental rules, or in the absence of such rules, creating other environmental problems.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.126, are defined in § 49.123 General provisions: Agricultural activities, air pollutant, air pollution source, ambient air, emission, fugitive dust, fugitive particulate matter, owner or operator, particulate matter, permit to construct, permit to operate, PM10, Regional Administrator, stack, and uncombined water.

§ 49.127 Rule for woodwaste burners.

(a) *What is the purpose of this rule?* This rule, § 49.127, phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners), and in the interim, limits the visible emissions from woodwaste burners operating within the Indian reservation in order to control emissions of particulate matter to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.127, applies to any person who owns or operates a woodwaste burner.

(c) *What are the requirements for woodwaste burners?*

(1) The owner or operator of a woodwaste burner must shut down and dismantle the woodwaste burner by no later than 2 years after the effective date of this rule, § 49.127. Until the woodwaste burner is shut down, visible emissions from the woodwaste burner must not exceed 20% opacity, averaged over any consecutive 6-minute period.

(2) Until the woodwaste burner is shut down, only wood waste generated onsite may be burned or disposed of in the woodwaste burner.

(3) If there is no reasonably available alternative method of disposal for the wood waste other than by burning it onsite in a woodwaste burner, the owner or operator of the woodwaste burner that is in compliance with the opacity limit in paragraph (c)(1) of this section, may apply to the Regional Administrator for an extension of the 2-year deadline. If the Regional Administrator finds that there is no reasonably available alternative method of disposal, then a 2-year extension of the deadline may be granted. There is no limit to the number of extensions that may be granted by the Regional Administrator.

(d) *What is the reference method for determining compliance with the opacity limit?*

(1) The reference method for determining compliance with the opacity limit is EPA Method 9. A complete description of this method is found in 40 CFR Part 60, Appendix A.

(2) This rule, § 49.127, does not require any person to conduct Method 9 opacity readings unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(e) *Are there additional requirements that must be met?* A person subject to this rule, § 49.127, must submit a plan to shut down and dismantle the woodwaste burner to the Regional Administrator within 180 days after the effective date of this rule, § 49.127. Unless an extension has been granted by the Regional Administrator, the woodwaste burner must be shut down and dismantled within 2 years after the effective date of this rule, § 49.127. The owner or operator of the woodwaste burner must notify the Regional Administrator that the woodwaste burner has been shut down and dismantled within 30 days after completion.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.127, are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, opacity, owner or operator, particulate matter, permit to construct, permit to operate, PM10, reference method, Regional Administrator, stationary source, uncombined water, visible emissions, wood, and woodwaste burner.

§ 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(a) *What is the purpose of this rule?* This rule, § 49.128, limits the amount of particulate matter that can be emitted from certain wood products industry sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.128, applies to any person who owns or operates any of the following wood products industry sources:

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(1) Veneer manufacturing operations;
(2) Plywood manufacturing operations;
(3) Particleboard manufacturing operations; and
(4) Hardboard manufacturing operations.

(c) *What are the particulate matter limits for wood products industry sources?* These particulate matter limits are in addition to, and not in lieu of, the particulate matter limits for combustion sources and process sources.

(1) *Veneer Dryers at Veneer Manufacturing Operations and Plywood Manufacturing Operations.*

(i) Particulate matter emissions from direct natural gas fired or direct propane fired veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(ii) Particulate matter emissions from steam heated veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(iii) Particulate matter emissions from wood fired veneer dryers must not exceed a total of 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis) and 0.2 pounds per 1000 pounds of steam generated in boilers, prorated for the amount of combustion gases routed to the veneer dryer, one-hour average.

(2) *Wood Particle Dryers at Particleboard Manufacturing Operation.* Particulate matter emissions from wood particle dryers must not exceed a total of 0.4 pounds per 1000 square feet of board produced by the plant (3/4 inch basis), one-hour average.

(3) *Press/Cooling Vents at Hardboard Manufacturing Operations.* Particulate matter emissions from hardboard press/cooling vents must not exceed 0.3 pounds per 1000 square feet of hardboard produced (1/8 inch basis), one-hour average.

(4) *Tempering Ovens at Hardboard Manufacturing Operations.* A person must not operate any hardboard tempering oven unless all gases and vapors are collected and treated in a fume incinerator capable of raising the temperature of the gases and vapors to at least 1500 degrees Fahrenheit for 0.3 seconds or longer.

(d) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the particulate matter limits is EPA Method 202. A complete description of this method is found in 40 CFR Part 51, Appendix M.

(2) This rule, § 49.128, does not require any person to conduct a Method 202 source test unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.128, are defined in § 49.123 General provisions: Act, combustion source, emissions, hardboard, particleboard, particulate matter, permit to construct, permit to operate, plywood, PM10, press/cooling vent, process source, tempering oven, veneer, veneer dryer, wood, and wood-fired veneer dryer.

§ 49.129 Rule for limiting emissions of sulfur dioxide.

(a) *What is the purpose of this rule?* This rule, § 49.129, limits the amount of sulfur dioxide (SO_2) that can be emitted from certain air pollution sources within the Indian reservation in order to control ground-level concentrations of SO_2.

(b) *Who is affected by this rule?* This rule, § 49.129, applies to any person who owns or operates an air pollution source that emits, or could emit, SO_2 to the atmosphere.

(c) *What is exempted from this rule?* This rule, § 49.129, does not apply to furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, and mobile sources.

(d) *What are the sulfur dioxide limits for sources?*

(1) Sulfur dioxide emissions from a combustion source must not exceed an average of 500 parts per million by volume, on a dry basis and corrected to seven (7) percent oxygen, during any three (3) hour period.

(2) Sulfur dioxide emissions from a process source must not exceed an average of 500 parts per million by volume, on a dry basis, during any three (3) hour period.

(e) *What are the reference methods for determining compliance?*

(1) The reference methods for determining compliance with the SO_2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each Method. A complete description of these methods are found in 40 CFR Part 60, Appendix A.

(2) An alternative reference method is a continuous emissions monitoring system (CEMS) that complies with Performance Specification 2 found in 40 CFR Part 60, Appendix B.

(3) This rule, § 49.129, does not require any person to conduct Method 6, 6A, 6B, or 6C of Appendix A of 40 CFR Part 60 source tests or to install a continuous emissions monitoring system (CEMS) unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.129, are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, continuous emissions monitoring system (CEMS), distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, open burning, permit to construct, permit to operate, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, used oil, wood, and woodwaste burner.

§ 49.130 Rule for limiting sulfur in fuels.

(a) *What is the purpose of this rule?* This rule, § 49.130, limits the amount of sulfur contained in fuels that are burned at stationary sources within the Indian reservation in order to control emissions of sulfur dioxide (SO_2) to the atmosphere and ground-level concentrations of SO_2.

(b) *Who is affected by this rule?* This rule, § 49.130, applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, or gaseous fuel within the Indian reservation.

(c) *What is exempted from this rule?* This rule, § 49.130, does not apply to fuel oils used exclusively for mobile sources, such as automotive and marine diesel fuels.

(d) *What are the sulfur limits for fuels?* A person must not sell, distribute, use, or make available for use any fuel oil, coal, solid fuel, or gaseous fuel that contains more than the following amounts of sulfur:

(1) For distillate fuel oil—0.3 percent by weight for ASTM Grade 1 fuel oil;
(2) For distillate fuel oil—0.5 percent by weight for ASTM Grade 2 fuel oil;
(3) For residual fuel oil—1.75 percent sulfur by weight for ASTM Grades 4, 5, or 6 fuel oil;
(4) For used oil—2.0 percent sulfur by weight;
(5) For coal—1.0 percent sulfur by weight;
(6) For solid fuels—2.0 percent sulfur by weight;
(7) For gaseous fuels—1.1 grams of sulfur per dry standard cubic meter of gaseous fuel (400 parts per million at standard conditions).

(e) *What are the reference methods for determining compliance?* The reference methods for determining the amount of sulfur in a fuel are as follows:

(1) Sulfur content in fuel oil—ASTM methods D2880–98, D4294–98, and D6021–96;
(2) Sulfur content in coal—ASTM methods D3177–89(1997), D4239–00, and D2492–90(1998);
(3) Sulfur content in solid fuels—ASTM method E775–87(1996);
(4) Sulfur content in gaseous fuels—ASTM methods D1072–90(1999), D3246–96, D4084–94(1999), D5504–98, D4468–85(1995)e1, D2622–98, and D6228–98.

(f) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.130, must:

(i) For fuel oils, obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of fuel oil. If the vendor is unable to provide this information, then obtain a representative grab sample for each purchase and test the sample using the reference method.

(ii) For gaseous fuels, either obtain, record, and keep records of the sulfur content from the vendor, or continuously monitor the sulfur content of the fuel gas line using EPA Methods 11 or 16. Complete descriptions of these Methods are found in 40 CFR Part 60, Appendix A. If only pipeline natural gas is used, then keep records showing that only pipeline quality natural gas was used.

(iii) For coal and solid fuels, either obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of coal or solid fuel, or obtain a representative grab sample for each day of operation and test the sample using the reference method. The owner or operator of a coal or solid fuel-fired source may apply to the Regional Administrator for a waiver of this provision or for approval of an alternative fuel sampling program.

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five (5) years and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

(g) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.130, are defined in § 49.123 General provisions: Act, air pollutant, ambient air, coal, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, owner or operator, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, standard conditions, stationary source, and used oil.

§ 49.131 General rule for open burning.

(a) *What is the purpose of this rule?* This rule, § 49.131, limits the types of materials that can be open burned within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.131, applies to any person who conducts open burning.

(c) *What is exempted from this rule?* The following open fires are exempted from this rule, § 49.131:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, burn barrels located at single family residences or residential buildings with four or fewer dwelling units that are only used to dispose of combustible household wastes generated onsite;

(5) With permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service shall ensure that the structure does not contain any asbestos or asbestos containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe;

(6) With permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe;

(7) Open burning for the disposal of diseased animals or infested material by order of a public health official.

(d) *What are the requirements for open burning?*

(1) A person must not open burn, or allow the open burning of, the following materials:

(i) Garbage;
(ii) Dead animals or parts of dead animals;
(iii) Junked motor vehicles or any materials resulting from a salvage operation;
(iv) Tires or rubber materials or products;
(v) Plastics;
(vi) Asphalt or composition roofing, or any other asphaltic material or product;
(vii) Tar, tarpaper, petroleum products, or paints;
(viii) Paper or cardboard other than what is necessary to start a fire;
(ix) Lumber or timbers treated with preservatives;
(x) Construction debris or demolition waste;
(xi) Pesticides, herbicides, fertilizers, or other chemicals;
(xii) Insulated wire;
(xiii) Batteries;
(xiv) Light bulbs;
(xv) Materials containing mercury (thermometers for example);
(xvi) Asbestos or materials containing asbestos;
(xvii) Pathogenic wastes;
(xviii) Hazardous wastes; or
(xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

(2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard and will continue to exceed that level for at least the next 24 hours.

(3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the National Weather Service issues an air stagnation advisory, or the Regional Administrator declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to § 49.137 Air pollution episodes.

(4) Nothing in this rule, § 49.131, exempts or excuses any person from

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complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.131, must conduct open burning as follows:

(i) Prohibited materials must not be open burned;

(ii) All materials to be open burned must be kept as dry as possible through the use of a cover or dry storage;

(iii) Before igniting a burn, noncombustibles must be separated from the materials to be open burned to the greatest extent practicable;

(iv) Natural or artificially induced draft must be present;

(v) To the greatest extent practicable, materials to be open burned must be separated from the grass or peat layer; and

(vi) A fire must not be allowed to smolder.

(2) A person must not initiate any open burning subject to this rule when:

(i) The Regional Administrator has declared a burn ban;

(ii) An air stagnation advisory has been issued by the National Weather Service; or

(iii) An air pollution alert, warning, or emergency has been declared by the Regional Administrator.

(3) Any person conducting open burning subject to this rule, § 49.131, when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.131, are defined in § 49.123 General provisions: Air pollutant, ambient air, burn barrel, combustible household wastes, emission, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.132 Rule for general open burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.132, establishes a permitting program for open burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.132, applies to any person who conducts open burning.

(c) *What is exempted from this rule?* The following open fires are exempted from this rule, § 49.132:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Fires set for recreational purposes, provided that no prohibited materials are burned;

(4) Forestry or silvicultural burning;

(5) Agricultural burning; and

(6) Burn barrels located at single family residences or residential buildings with four or fewer dwelling units that are only used to dispose of combustible household wastes generated onsite.

(d) *What are the requirements for open burning?*

(1) A person must apply for and obtain a permit for the open burn, have the permit available on site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

(2) A person must comply with the § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.132, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.132, must submit an application to the Regional Administrator for each open burn. An application must be submitted in writing at least one working day, and no earlier than 5 working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

(i) Street address of the property upon that the proposed open burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning.

(iii) A plot plan showing the location of the proposed open burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of materials proposed to be burned, including the estimated volume of material to be burned and the area over that burning will be conducted.

(v) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water.

(vi) The requested date (or dates if the duration of the burn is more than one day) that the proposed open burning would be conducted.

(vii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed open burning is consistent with this rule (§ 49.132) and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a burn permit. The permit will authorize burning only for the requested date(s) and will include any conditions that the Regional Administrator determines are necessary to ensure compliance with this rule (§ 49.132), § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), and to protect the public health and welfare.

(3) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed open burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed open burning can be conducted without causing an adverse impact on air quality, a permit may be issued.

(4) The Regional Administrator, to the extent practical, will coordinate the issuance of open burning permits with the opening burning permit programs of surrounding jurisdictions.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.132, are defined in § 49.123 General provisions: Agricultural burning, air pollutant, ambient air, burn barrel, combustible household wastes, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.133 Rule for agricultural burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.133, establishes a permitting program for agricultural burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.133, applies to any person who conducts agricultural burning.

(c) *What are the requirements for agricultural burning?*

(1) A person must apply for and obtain a permit for the agricultural burn, have the permit available onsite during the agricultural burn, and conduct the agricultural burning in accordance with the terms and conditions of the permit.

(2) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.133, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.133, must submit an application to the Regional Administrator for each proposed agricultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed agricultural burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed agricultural burning.

(iii) A plot plan showing the location of the proposed agricultural burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of agricultural wastes proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile or stack burn, open field or broadcast burn, windrow burn, mobile field sanitizer, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and plowed firebreaks.

(vii) The requested date(s) that the proposed agricultural burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed agricultural burning is consistent with this rule, § 49.133, and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a preliminary burn permit.

(3) On the morning of the day that the agricultural burning is to be conducted (or on Friday morning if the burn is to be conducted on a weekend, or on the morning of the last workday before a holiday), the person responsible for the burning must contact the Regional Administrator to receive final approval for the burn. Final approval can be obtained either verbally or in writing and will authorize burning to be conducted in accordance with the preliminary burn permit.

(4) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed agricultural burning can be conducted without causing an adverse impact on air quality, final approval may be granted.

(5) The Regional Administrator, to the extent practical, will consult with and coordinate final approvals with the open burning permit programs of surrounding jurisdictions.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.133, are defined in § 49.123 General provisions: Agricultural burning or agricultural burn, air pollutant, ambient air, emission, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.134 Rule for forestry burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.134, establishes a permitting program for forestry burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.134, applies to any person who conducts forestry burning.

(c) *What are the requirements for forestry burning?*

(1) A person must apply for and obtain a permit for the forestry burn, have the permit available onsite during the forestry burn, and conduct the forestry burning in accordance with the terms and conditions of the permit.

(2) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.134, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this rule must submit an application to the Regional Administrator for each forestry burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed forestry burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed forestry burning.

(iii) A plot plan showing the location of the proposed forestry burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of forestry residues proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile burn, broadcast burn, windrow burn, understory burn, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and firebreaks.

(vii) The requested date(s) that the proposed forestry burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed forestry burning is consistent with this rule, § 49.134, and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a preliminary burn permit.

(3) On the morning of the day that the forestry burning is to be conducted (or on Friday morning if the burn is to be conducted on a weekend, or on the morning of the last workday before a holiday), the person responsible for the burning must contact the Regional Administrator to receive final approval for the burn. Final approval can be obtained either verbally or in writing and will authorize burning to be conducted in accordance with the preliminary burn permit.

(4) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed forestry burning can be

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conducted without causing an adverse impact on air quality, final approval may be granted.

(5) The Regional Administrator, to the extent practical, will consult with and coordinate final approvals with the opening burning permit programs of surrounding jurisdictions.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.134, are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.135 Rule for emissions detrimental to human health and welfare.

(a) *What is the purpose of this rule?* This rule, § 49.135, is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to human health and welfare.

(b) *Who is affected by this rule?* This rule, § 49.135, applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard; or

(ii) Is, or would likely be, injurious to human health and welfare.

(2) If the Regional Administrator makes either of the above determinations, then the Regional Administrator may require the owner or operator of the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this rule, § 49.135, affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require the owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this rule, § 49.135, shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this rule need to do?* A person subject to this rule, § 49.135, must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.135, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, and stationary source.

Tribal Alternative Rule

§ 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(a) *What is the purpose of this rule?* This rule, § 49.136, is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to persons, property, or cultural or traditional resources.

(b) *Who is affected by this rule?* This rule, § 49.136, applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard;

(ii) Is, or would likely be, injurious to human health and welfare, animal or plant life, or property;

(iii) Unreasonably interferes with the enjoyment of life or property; or

(iv) Is, or would likely be, damaging to unique Tribal cultural or traditional resources.

(2) If the Regional Administrator makes any of the above determinations, then the Regional Administrator may require the owner or operator of the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this rule, § 49.136, affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require the owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this rule, § 49.136, shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this rule need to do?* A person subject to this rule, § 49.136, must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.136, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, and stationary source.

§ 49.137 Rule for air pollution episodes.

(a) *What is the purpose of this rule?* This rule, § 49.137, establishes procedures for addressing the excessive buildup of certain air pollutants during periods of stagnant air. This rule is intended to prevent the occurrence of an air pollution emergency within the Indian reservation due to the effects of these air pollutants on human health.

(b) *Who is affected by this rule?* This rule, § 49.137, applies to the Regional Administrator and any person who owns or operates an air pollution source within the Indian reservation.

(c) *What are the requirements of this rule?*

(1) *Air pollution action level triggers.* Conditions justifying the declaration of an air pollution alert, air pollution warning, or air pollution emergency shall exist whenever the Regional Administrator determines that the accumulation of air pollutants in any place is attaining, or has attained, levels that could lead to a threat to human health. The following criteria will be used for making these determinations:

(i) *Air stagnation advisory.* An air stagnation advisory shall be declared whenever the National Weather Service issues an atmospheric stagnation advisory.

(ii) *Air pollution alert.* An air pollution alert shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—350 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—17 milligrams per cubic meter (15 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—800 micrograms per cubic meter (0.3 ppm), 24-hour average;

(D) Ozone (O_3)—400 micrograms per cubic meter (0.2 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

(iii) *Air pollution warning.* An air pollution warning shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—420 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—34 milligrams per cubic meter (30 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;

(D) Ozone (O_3)—800 micrograms per cubic meter (0.4 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

(iv) *Air pollution emergency.* An air pollution emergency shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—500 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—46 milligrams per cubic meter (40 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;

(D) Ozone (O_3)—1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.4 ppm), 24-hour average.

(v) *Termination.* Once declared, an air pollution alert, warning, or emergency shall remain in effect until the criteria for that level is no longer met. At such time, the Regional Administrator will make a new determination and shall make an appropriate declaration of the new level.

(2) *Announcements by the Regional Administrator.* The Regional Administrator shall request that announcement of an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(3) *Voluntary curtailment of emissions by sources.* Whenever the Regional Administrator declares an air stagnation advisory or air pollution alert sources of air pollutants shall be requested to take voluntary actions to reduce emissions. People should refrain from using their wood-stoves and fireplaces unless they are their sole source of heat. People should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel if possible.

(4) *Mandatory curtailment of emissions by order of the Regional Administrator.*

(i) Open burning must cease in accordance with the requirements of § 49.131 General rule for open burning.

(ii) During an air pollution warning or air pollution emergency, the Regional Administrator may issue an order to any air pollution source requiring such source to curtail or eliminate the emissions.

(d) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.137, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, fuel, motor vehicle, open burning, and Regional Administrator.

§ 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(a) *What is the purpose of this rule?* This rule, § 49.138, allows the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian reservation.

(b) *Who is affected by this rule?* This rule, § 49.138, applies to any person who owns or operates an air pollution source except those exempted below.

(c) *What is exempted from this rule?* This rule, § 49.138, does not apply to the following air pollution sources:

(1) Mobile sources;

(2) Single family residences, and residential buildings with four or fewer dwelling units;

(3) Air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the Act and do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(4) Ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(5) Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour;

(6) Cooking of food, except for retail and wholesale businesses that both cook and sell cooked food (restaurants, for example);

(7) Consumer use of office equipment and products;

(8) Janitorial services and consumer use of janitorial products;

(9) Maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment, such as automobile repair shops or appliance repair shops;

(10) Agricultural activities and forestry activities, including agricultural burning and forestry burning; and

(11) Open burning.

(d) *What are the requirements of this rule?* Any person who owns or operates an air pollution source subject to this rule must register the source with the Regional Administrator as specified below.

(e) *Are there additional requirements that must be met?* A person subject to this rule, § 49.138, must register an air pollution source as follows:

(1) *Initial registration.* The owner or operator of an air pollution source that exists on the effective date of this rule must register the air pollution source with the Regional Administrator by no later than one year after the effective date of this rule. The owner or operator of a new air pollution source must register with the Regional Administrator within 90 days after beginning operation. Submitting an initial registration does not relieve the owner

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or operator from the requirement to obtain a permit to construct if the new air pollution source is subject to those rules.

(2) *Annual re-registration.* After initial registration, the owner or operator of an air pollution source must re-register with the Regional Administrator by February 15 of each year. The re-registration must include all of the information required in the initial registration and must be updated to reflect any changes since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the Regional Administrator.

(3) *Information to include in initial registration and annual re-registration (all that are applicable).*

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this rule.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) A description of the production processes and a related flow chart.

(vii) Identification of emission units and air pollutant generating activities.

(viii) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance and direction of the nearest residential or commercial property.

(ix) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis.

(x) Type and quantity of raw materials used on a daily and annual basis.

(xi) Estimates of the total actual emissions for the air pollution source of the following air pollutants: particulate matter emissions, PM10 emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds. Include all of the calculations for the estimates.

(xii) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(xiii) Any other information specifically requested by the Regional Administrator.

(4) *Procedure for estimating emissions.* The initial registration and annual re-registration must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(5) *Report of relocation.* The owner or operator of an air pollution source must report any relocation of the source to the Regional Administrator no later than 30 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator from the requirement to obtain a permit to construct if the relocation of the air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(6) *Report of change of ownership.* The owner or operator of an air pollution source must report any change of ownership to the Regional Administrator within 90 days after the change in ownership is effective.

(7) *Report of closure.* The owner or operator of an air pollution source must submit a report of closure to the Regional Administrator within 90 days after the cessation of operations.

(8) *Certification of truth and accuracy.* All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.138, are defined in § 49.123 General provisions: Act, actual emissions, agricultural activities, air pollutant, air pollution source, ambient air, British thermal unit (Btu), emission, emission factor, emission unit, fuel, marine vessel, mobile source, motor vehicle, new air pollution source, non-road engine, non-road vehicle, open burning, owner or operator, particulate matter, permit to construct, PM10, rated capacity, Regional Administrator, stack, stationary source, and uncombined water.

§ 49.139 Rule for non-Title V operating permits.

(a) *What is the purpose of this rule?* This rule, § 49.139, establishes a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Indian reservation.

(b) *Who is affected by this rule?*

(1) This rule, § 49.139, applies to:

(i) The owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit;

(ii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan; or

(iii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment.

(2) To the extent allowed by 40 CFR Part 71, or a Tribal operating permit program approved pursuant to 40 CFR Part 70, a Title V operating permit may be used in lieu of an operating permit under this section to establish the limitations or requirements in paragraph (b)(1).

(c) *What are the procedures for obtaining an owner-requested operating permit?*

(1) The owner or operator of an air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit shall submit an application to the Regional Administrator requesting such limitation. The application must contain the information specified in paragraph (d) of this section.

(2) Within 60 days after receipt of an application, the Regional Administrator shall determine if it contains the information specified in paragraph (d) of this section and if so, shall deem it complete for the purpose of preparing a draft permit to operate. If the Regional Administrator determines that the application is incomplete, it shall be returned to the owner or operator along with a description of the necessary information that must be submitted in order for the application to be deemed complete.

(3) The Regional Administrator shall prepare a draft permit to operate and a draft technical support document that describes the proposed limitations and their effect on the actual emissions and/or potential to emit of the air pollution source.

(4) The Regional Administrator shall provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the ~~air~~ pollution source and shall provide an opportunity for the owner or operator to meet with EPA and discuss the proposed limitations.

(5) The Regional Administrator shall provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, the permit application, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice shall be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices shall also be made in the Tribal newspaper.

(iii) Copies of the notice shall be provided to the owner or operator of the air pollution source, the Tribal governing body, and the State, local, and Tribal air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments shall be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator shall review all comments received and prepare a final permit to operate and final technical support document. The final technical support document will include the responses to all comments received during the public comment period.

(7) The final permit to operate and final technical support document shall be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document shall be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate shall be a final agency action for purposes of administrative appeal and judicial review.

(d) *What must the owner or operator of an air pollution source include in an application for a Federally-enforceable limitation?*

(1) The owner or operator of an air pollution source that wishes to obtain a Federally-enforceable limitation must submit to the Regional Administrator an application for a permit to operate that includes the following information:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this rule.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) For each air pollutant and for all emission units and air pollutant generating activities to be covered by a limitation:

(A) The proposed limitation and a description of its effect on actual emissions or the potential to emit. Proposed limitations may include, but are not limited to, emission limitations, production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonably short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes and a related flow chart.

(D) Identification of emission units and air pollutant generating activities.

(E) Type and quantity of fuels and/or raw materials used.

(F) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit. Include all of the calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation. Include all of the calculations for the estimates.

(vii) Any other information specifically requested by the Regional Administrator.

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(3) All applications for a permit to operate must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(e) *What are the procedures that the Regional Administrator will follow to require an operating permit?*

(1) Whenever the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment, the owner or operator of the air pollution source shall be so notified in writing.

(2) The Regional Administrator may require that the owner or operator provide whatever information that the Regional Administrator determines is necessary to establish such requirements in a permit to operate under this rule, § 49.139.

(3) The Regional Administrator shall prepare a draft permit to operate and a draft technical support document that describes the reasons and need for the proposed requirements.

(4) The Regional Administrator shall provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and shall

provide an opportunity for the owner or operator to meet with EPA and discuss the proposed requirements.

(5) The Regional Administrator shall provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice shall be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices shall also be made in the Tribal newspaper.

(iii) Copies of the notice shall be provided to the owner or operator of the air pollution source, the Tribal governing body, and the State, local, and Tribal air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments shall be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator shall review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include the responses to all comments received during the public comment period.

(7) The final permit to operate and final technical support document shall be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document shall be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate shall be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.139, are defined in § 49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan, owner or operator, potential to emit, and Regional Administrator.

§§ 49.140–49.200 [Reserved]

3. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9861 through 49.9870 to read as follows:

Subpart M—Implementation Plans for Tribes—Region X

Implementation Plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon

§ 49.9861 Identification of plan.

This section and §§ 49.9862 through 49.9890 contain the implementation plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Burns Paiute Indian Colony.

§ 49.9862 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Burns Paiute Indian Colony.

§ 49.9863 Legal authority. [Reserved]

§ 49.9864 Source surveillance. [Reserved]

§ 49.9865 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Burns Paiute Indian Colony is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9866 Contents of implementation plan.

The implementation plan for the Reservation of the Burns Paiute Indian Colony consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9871–49.9890 [Reserved]

4. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9891 through 49.9900 to read as follows:

Implementation Plan for the Confederated Tribes of the Chehalis Reservation, Washington

§ 49.9891 Identification of plan.

This section and §§ 49.9892 through 49.9920 contain the implementation plan for the Confederated Tribes of the Chehalis Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Chehalis Reservation.

§ 49.9892 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Chehalis Reservation.

§ 49.9893 Legal authority. [Reserved]

§ 49.9894 Source surveillance. [Reserved]

§ 49.9895 Classification of regions for episode plans.

The air quality control region which encompasses the Chehalis Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.9896 Contents of implementation plan.

The implementation plan for the Chehalis Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9897 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9898 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9899 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9900 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Chehalis Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9901–49.9920 [Reserved]

5. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9921 through 49.9930 to read as follows:

Implementation Plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho

§ 49.9921 Identification of plan.

This section and §§ 49.9922 through 49.9950 contain the implementation plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Coeur D'Alene Reservation.

§ 49.9922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Coeur D'Alene Reservation.

§ 49.9923 Legal authority. [Reserved]

§ 49.9924 Source surveillance. [Reserved]

§ 49.9925 Classification of regions for episode plans.

The air quality control region which encompasses the Coeur D'Alene Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.9926 Contents of implementation plan.

The implementation plan for the Coeur D'Alene Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9930 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Coeur D'Alene Reservation:

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(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9931–49.9950 [Reserved]

6. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9951 through 49.9960 to read as follows:

Implementation Plan for the Confederated Tribes of the Colville Reservation, Washington

§ 49.9951 Identification of plan.

This section and §§ 49.9952 through 49.9980 contain the implementation plan for the Confederated Tribes of the Colville Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Colville Reservation.

§ 49.9952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Colville Reservation.

§ 49.9953 Legal authority. [Reserved]

§ 49.9954 Source surveillance. [Reserved]

§ 49.9955 Classification of regions for episode plans.

The air quality control region which encompasses the Colville Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9956 Contents of implementation plan.

The implementation plan for the Colville Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.135 Rule for emissions detrimental to human health and welfare.
(k) Section 49.137 Rule for air pollution episodes.
(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(m) Section 49.139 Rule for non-Title V operating permits.

§ 49.9957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Colville Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.135 Rule for emissions detrimental to human health and welfare.
(k) Section 49.137 Rule for air pollution episodes.
(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(m) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9961–49.9980 [Reserved]

7. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9981 through 49.9990 to read as follows:

Implementation Plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon

§ 49.9981 Identification of plan.

This section and §§ 49.9982 through 49.10010 contain the implementation plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9983 Legal authority. [Reserved]

§ 49.9984 Source surveillance. [Reserved]

§ 49.9985 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9986 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9991–49.10010 [Reserved]

8. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10011 through 49.10020 to read as follows:

Implementation Plan for the Coquille Tribe of Oregon

§ 49.10011 Identification of plan.

This section and §§ 49.10012 through 49.10040 contain the implementation plan for the Coquille Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Coquille Tribe.

§ 49.10012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Coquille Tribe.

§ 49.10013 Legal authority. [Reserved]

§ 49.10014 Source surveillance. [Reserved]

§ 49.10015 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Coquille Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10016 Contents of implementation plan.

The implementation plan for the Reservation of the Coquille Tribe consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10017–49.10040 [Reserved]

9. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10041 through 49.10050 to read as follows:

Implementation Plan for the Cow Creek Band of Umpqua Indians of Oregon

§ 49.10041 Identification of plan.

This section and §§ 49.10042 through 49.10100 contain the implementation

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plan for the Cow Creek Band of Umpqua Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10043 Legal authority. [Reserved]

§ 49.10044 Source surveillance. [Reserved]

§ 49.10045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Cow Creek Band of Umpqua Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10046 Contents of implementation plan.

The implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10051–49.10100 [Reserved]

10. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10101 through 49.10110 to end as follows:

Implementation Plan for the Confederated Tribes of the Grand Ronde Community of Oregon

§ 49.10101 Identification of plan.

This section and §§ 49.10102 through 49.10130 contain the implementation plan for the Confederated Tribes of the Grand Ronde Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10103 Legal authority.[Reserved]

§ 49.10104 Source surveillance. [Reserved]

§ 49.10105 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Grand Ronde Community is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10106 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10111–49.10130 [Reserved]

11. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10131 through 49.10140 to read as follows:

Implementation Plan for the Hoh Indian Tribe of the Hoh Indian Reservation, Washington

§ 49.10131 Identification of plan.

This section and §§ 49.10132 through 49.10160 contain the implementation plan for the Hoh Indian Tribe of the Hoh Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Hoh Indian Reservation.

§ 49.10132 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Hoh Indian Reservation.

§ 49.10133 Legal authority. [Reserved]

§ 49.10134 Source surveillance. [Reserved]

§ 49.10135 Classification of regions for episode plans.

The air quality control region which encompasses the Hoh Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10136 Contents of implementation plan.

The implementation plan for the Hoh Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10137 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10138 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10139 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10140 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Hoh Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10141–49.10160 [Reserved]

12. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10161 through 49.10170 to read as follows:

Implementation Plan for the Jamestown S'Klallam Tribe of Washington

§ 49.10161 Identification of plan.

This section and §§ 49.10162 through 49.10190 contain the implementation plan for the Jamestown S'Klallam Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10162 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10163 Legal authority. [Reserved]

§ 49.10164 Source surveillance. [Reserved]

§ 49.10165 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Jamestown S'Klallam Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10166 Contents of implementation plan.

The implementation plan for the Reservation of the Jamestown S'Klallam Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10167 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10168 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10169 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10170 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Jamestown S'Klallam Tribe:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10171–49.10190 [Reserved]

13. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10191 through 49.10200 to read as follows:

Implementation Plan for the Kalispel Indian Community of the Kalispel Reservation, Washington

§ 49.10191 Identification of plan.

This section and §§ 49.1019192 through 49.10220 contain the implementation plan for the Kalispel Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Kalispel Reservation.

§ 49.10192 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Kalispel Reservation.

§ 49.10193 Legal authority. [Reserved]

§ 49.10194 Source surveillance. [Reserved]

§ 49.10195 Classification of regions for episode plans.

The air quality control region which encompasses the Kalispel Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10196 Contents of implementation plan.

The implementation plan for the Kalispel Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10197 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10198 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10199 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10200 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Kalispel Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10201–49.10220 [Reserved]

14. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10221 through 49.10230 to read as follows:

Implementation Plan for the Klamath Indian Tribe of Oregon

§ 49.10221 Identification of plan.

This section and §§ 49.10222 through 49.10250 contain the implementation plan for the Klamath Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Klamath Indian Tribe.

§ 49.10222 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Klamath Indian Tribe.

§ 49.10223 Legal authority. [Reserved]

§ 49.10224 Source surveillance. [Reserved]

§ 49.10225 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Klamath Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10226 Contents of implementation plan.

The implementation plan for the Reservation of the Klamath Indian Tribe consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10227 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10228 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10229 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10230 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Klamath Indian Tribe:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10231–49.10250 [Reserved]

15. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10251 through 49.10260 to read as follows:

Implementation Plan for the Kootenai Tribe of Idaho

§ 49.10251 Identification of plan.

This section and §§ 49.10252 through 49.10280 contain the implementation plan for the Kootenai Tribe of Idaho. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Kootenai Tribe of Idaho.

§ 49.10252 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Kootenai Tribe of Idaho.

§ 49.10253 Legal authority. [Reserved]

§ 49.10254 Source surveillance. [Reserved]

§ 49.10255 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Kootenai Tribe of Idaho is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10256 Contents of implementation plan.

The implementation plan for the Reservation of the Kootenai Tribe of Idaho consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10257 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10258 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10259 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10260 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Reservation of the Kootenai Tribe of Idaho:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.

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(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.103261–49.10280 [Reserved]

16. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10281 through 49.10290 to read as follows:

Implementation Plan for the Lower Elwha Tribal Community of the Lower Elwha Reservation Washington

§ 49.10281 Identification of plan.

This section and §§ 49.10282 through 49.10310 contain the implementation plan for the Lower Elwha Tribal Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lower Elwha Reservation.

§ 49.10282 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lower Elwha Reservation.

§ 49.10283 Legal authority. [Reserved]

§ 49.10284 Source surveillance. [Reserved]

§ 49.10285 Classification of regions for episode plans.

The air quality control region which encompasses the Lower Elwha Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10286 Contents of implementation plan.

The implementation plan for the Lower Elwha Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10291–49.10310 [Reserved]

17. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10311 through 49.10320 to read as follows:

Implementation Plan for the Lummi Tribe of the Lummi Reservation, Washington

§ 49.10311 Identification of plan.

This section and §§ 49.10312 through 49.10340 contain the implementation plan for the Lummi Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lummi Reservation.

§ 49.10312 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lummi Reservation.

§ 49.10313 Legal authority. [Reserved]

§ 49.10314 Source surveillance. [Reserved]

§ 49.10315 Classification of regions for episode plans.

The air quality control region which encompasses the Lummi Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10316 Contents of implementation plan.

The implementation plan for the Lummi Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10317 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10318 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10319 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10320 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lummi Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10321–49.10340 [Reserved]

18. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10341 through 49.10350 to read as follows:

Implementation Plan for the Makah Indian Tribe of the Makah Indian Reservation, Washington

§ 49.10341 Identification of plan.

This section and §§ 49.10342 through 49.10370 contain the implementation plan for the Makah Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Makah Indian Reservation.

§ 49.10342 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Makah Indian Reservation.

§ 49.10343 Legal authority. [Reserved]

§ 49.10344 Source surveillance. [Reserved]

§ 49.10345 Classification of regions for episode plans.

The air quality control region which encompasses the Makah Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10346 Contents of implementation plan.

The implementation plan for the Makah Indian Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10347 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10348 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10349 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10350 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Makah Indian Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10351–49.10370 [Reserved]

19. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10371 through 49.10380 as follows:

Implementation Plan for the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington

§ 49.10371 Identification of plan.

This section and §§ 49.10372 through 49.10400 contain the implementation plan for the Muckleshoot Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Muckleshoot Reservation.

§ 49.10372 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Muckleshoot Reservation.

§ 49.10373 Legal authority. [Reserved]

§ 49.10374 Source surveillance. [Reserved]

§ 49.10375 Classification of regions for episode plans.

The air quality control region which encompasses the Muckleshoot Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10376 Contents of implementation plan.

The implementation plan for the Muckleshoot Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

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(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10377 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10378 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10379 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10380 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Muckleshoot Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10381–49.10400 [Reserved]

20. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10401 through 49.10410 as follows:

Implementation Plan for the Nez Perce Tribe of Idaho

§ 49.10401 Identification of plan.

This section and §§ 49.10402 through 49.10430 contain the implementation plan for the Nez Perce Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nez Perce Reservation.

§ 49.10402 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nez Perce Reservation.

§ 49.10403 Legal authority. [Reserved]

§ 49.10404 Source surveillance. [Reserved]

§ 49.10405 Classification of regions for episode plans.

The air quality control region which encompasses the Nez Perce Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10406 Contents of implementation plan.

The implementation plan for the Nez Perce Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.132 Rule for open burning permits.
(k) Section 49.133 Rule for agricultural burning permits.
(l) Section 49.134 Rule for forestry burning permits.
(m) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(n) Section 49.137 Rule for air pollution episodes.
(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(p) Section 49.139 Rule for non-Title V operating permits.

§ 49.10407 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10408 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10409 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10410 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nez Perce Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.132 Rule for open burning permits.
(k) Section 49.133 Rule for agricultural burning permits.
(l) Section 49.134 Rule for forestry burning permits.
(m) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(n) Section 49.137 Rule for air pollution episodes.
(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(p) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10411–49.10430 [Reserved]

21. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10431 through 49.10440 to read as follows:

Implementation Plan for the Nisqually Indian Tribe of the Nisqually Reservation, Washington

§ 49.10431 Identification of plan.

This section and §§ 49.10432 through 49.10460 contain the implementation plan for the Nisqually Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nisqually Reservation.

§ 49.10432 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nisqually Reservation.

§ 49.10433 Legal authority. [Reserved]

§ 49.10434 Source surveillance. [Reserved]

§ 49.10435 Classification of regions for episode plans.

The air quality control region which encompasses the Nisqually Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10436 Contents of implementation plan.

The implementation plan for the Nisqually Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10437 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10438 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10439 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10440 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nisqually Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10441–49.10460 [Reserved]

22. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10461 through 49.10470 to read as follows:

Implementation Plan for the Nooksack Indian Tribe of Washington

§ 49.10461 Identification of plan.

This section and §§ 49.10462 through 49.10490 contain the implementation plan for the Nooksack Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Nooksack Indian Tribe.

§ 49.10462 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Nooksack Indian Tribe.

§ 49.10463 Legal authority. [Reserved]

§ 49.10464. Source surveillance. [Reserved]

§ 49.10465 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Nooksack Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10466 Contents of implementation plan.

The implementation plan for the Reservation of the Nooksack Indian Tribe consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10467 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10468 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10469 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10470 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the

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implementation plan for the Reservation of the Nooksack Indian Tribe:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10471–49.10490 [Reserved]

23. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10491 through 49.10500 to read as follows:

Implementation Plan for the Port Gamble Indian Community of the Port Gamble Reservation, Washington

§ 49.10491 Identification of plan.

This section and §§ 49.10492 through 49.10520 contain the implementation plan for the Port Gamble Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Gamble Reservation.

§ 49.10492 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Gamble Reservation.

§ 49.10493 Legal authority. [Reserved]

§ 49.10494 Source surveillance. [Reserved]

§ 49.10495 Classification of regions for episode plans.

The air quality control region which encompasses the Port Gamble Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10496 Contents of implementation plan.

The implementation plan for the Port Gamble Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10497 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10498 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10499 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10500 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Gamble Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10501–49.10520 [Reserved]

24. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10521 through 49.10530 as follows:

Implementation Plan for the Puyallup Tribe of the Puyallup Reservation, Washington

§ 49.10521 Identification of plan.

This section and §§ 49.10522 through 49.10550 contain the implementation plan for the Puyallup Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply to lands in trust that are within the 1873 survey area of the Puyallup Tribe (Puyallup Reservation), consistent with the Puyallup Tribe of Indians Land Claims Settlement Act, ratified by Congress in 1989 (25 U.S.C. 1773).

§ 49.10522 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the lands in trust that are within the Puyallup Reservation.

§ 49.10523 Legal authority. [Reserved]

§ 49.10524 Source surveillance. [Reserved]

§ 49.10525 Classification of regions for episode plans.

The air quality control region which encompasses the lands in trust that are within the Puyallup Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10526. Contents of implementation plan.

The implementation plan for the lands in trust that are within the Puyallup Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10527 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10528 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10529 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10530 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the lands in trust that are within the Puyallup Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10531–49.10550 [Reserved]

25. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10551 through 49.10560 to read as follows:

Implementation Plan for the Quileute Tribe of the Quileute Reservation, Washington

§ 49.10551 Identification of plan.

This section and §§ 49.10552 through 49.10580 contain the implementation plan for the Quileute Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quileute Reservation.

§ 49.10552 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quileute Reservation.

§ 49.10553 Legal authority. [Reserved]

§ 49.10554 Source surveillance. [Reserved]

§ 49.10555 Classification of regions for episode plans.

The air quality control region which encompasses the Quileute Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10556 Contents of implementation plan.

The implementation plan for the Quileute Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10557 EPA-approved tribal rules and plans. [Reserved]

§ 49.10558 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10559 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10560 Federally-promulgated regulations and federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quileute Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10561–49.10580 [Reserved]

26. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10581 through 49.10590 to read as follows:

Implementation Plan for the Quinault Tribe of the Quinault Reservation, Washington

§ 49.10581 Identification of plan.

This section and §§ 49.10582 through 49.10640 contain the implementation plan for the Quinault Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quinault Reservation.

§ 49.10582 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quinault Reservation.

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§ 49.10583 Legal authority. [Reserved]

§ 49.10584 Source surveillance. [Reserved]

§ 49.10585 Classification of regions for episode plans.

The air quality control region which encompasses the Quinault Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10586 Contents of implementation plan.

The implementation plan for the Quinault Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10591–49.10640 [Reserved]

27. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10641 through 49.10650 to read as follows:

Implementation Plan for the Sauk-Suiattle Indian Tribe of Washington

§ 49.10641 Identification of plan.

This section and §§ 49.10642 through 49.10670 contain the implementation plan for the Sauk-Suiattle Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Sauk-Suiattle Tribe.

§ 49.10642 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Sauk-Suiattle Tribe.

§ 49.10643 Legal authority. [Reserved]

§ 49.10644 Source surveillance. [Reserved]

§ 49.10645 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Sauk-Suiattle Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10646 Contents of implementation plan.

The implementation plan for the Reservation of the Sauk-Suiattle Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10647 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10648 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10649 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10650 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Sauk-Suiattle Tribe:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10651–49.10670 [Reserved]

28. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10671 through 49.10680 to read as follows:

Implementation Plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

§ 49.10671 Identification of plan.

This section and §§ 49.10672 through 49.10700 contain the implementation plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Shoalwater Bay Indian Reservation.

§ 49.10672 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoalwater Bay Indian Reservation.

§ 49.10673 Legal authority. [Reserved]

§ 49.10674 Source surveillance. [Reserved]

§ 49.10675 Classification of regions for episode plans.

The air quality control region which encompasses the Shoalwater Bay Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10676 Contents of implementation plan.

The implementation plan for the Shoalwater Bay Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10677 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10678 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10679 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10680 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoalwater Bay Indian Reservation:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10681–49.10700 [Reserved]

29. Subpart M of Part 49 is amended by revising the undesignated center heading and §§ 49.10701 and 49.10702 to read as follows:

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho

§ 49.10701 Identification of plan.

This section and §§ 49.10702 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Fort Hall Indian Reservation.

§ 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Fort Hall Indian Reservation.

30. Subpart M of Part 49 is amended by revising §§ 49.10704 through 49.10706 to read as follows:

§ 49.10704 Source surveillance. [Reserved]

§ 49.10705 Classification of regions for episode plans.

The air quality control region which encompasses the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.10706 Contents of implementation plan.

The implementation plan for the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.
(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

31. Subpart M of Part 49 is amended by revising §§ 49.10709 through 49.10710 to read as follows:

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§ 49.10709 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10710 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Fort Hall Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

32. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10731 through 49.10740 to read as follows:

Implementation Plan for the Confederated Tribes of the Siletz Reservation, Oregon

§ 49.10731 Identification of plan.

This section and §§ 49.10732 through 49.10760 contain the implementation plan for the Confederated Tribes of the Siletz Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Siletz Reservation.

§ 49.10732 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Siletz Reservation.

§ 49.10733 Legal authority. [Reserved]

§ 49.10734 Source surveillance. [Reserved]

§ 49.10735 Classification of regions for episode plans.

The air quality control region which encompasses the Siletz Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	III
Sulfur oxides	III

§ 49.10736 Contents of implementation plan.

The implementation plan for the Siletz Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10737 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10738 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10739 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10740 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Siletz Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permit.

§§ 49.10741–49.10760 [Reserved]

33. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10761 through 49.10770 to read as follows:

Implementation Plan for the Skokomish Indian Tribe of the Skokomish Reservation, Washington

§ 49.10761 Identification of plan.

This section and §§ 49.10762 through 49.10820 contain the implementation plan for the Skokomish Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Skokomish Reservation.

§ 49.10762 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Skokomish Reservation.

§ 49.10763 Legal authority. [Reserved]

§ 49.10764 Source surveillance. [Reserved]

§ 49.10765 Classification of regions for episode plans.

The air quality control region which encompasses the Skokomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10766 Contents of implementation plan.

The implementation plan for the Skokomish Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10767 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10768 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10769 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10770 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Skokomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10771–49.10820 [Reserved]

34. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10821 through 49.10830 to read as follows:

Implementation Plan for the Spokane Tribe of the Spokane Reservation, Washington

§ 49.10821 Identification of plan.

This section and §§ 49.10822 through 49.10850 contain the implementation plan for the Spokane Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Spokane Reservation.

§ 49.10822 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Spokane Reservation.

§ 49.10823 Legal authority. [Reserved]

§ 49.10824 Source surveillance. [Reserved]

§ 49.10825 Classification of regions for episode plans.

The air quality control region which encompasses the Spokane Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10826 Contents of implementation plan.

The implementation plan for the Spokane Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10827 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10828 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10829 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10830 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Spokane Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10831–49.10850 [Reserved]

35. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10851 through 49.10860 to read as follows:

Implementation Plan for the Squaxin Island Tribe of the Squaxin Island Reservation, Washington

§ 49.10851 Identification of plan.

This section and §§ 49.10852 through 49.10880 contain the implementation

plan for the Squaxin Island Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Squaxin Island Reservation.

§ 49.10852 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Squaxin Island Reservation.

§ 49.10853 Legal authority. [Reserved]

§ 49.10854 Source surveillance. [Reserved]

§ 49.10855 Classification of regions for episode plans.

The air quality control region which encompasses the Squaxin Island Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10856 Contents of implementation plan.

The implementation plan for the Squaxin Island Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10857 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10858 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10859 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10860 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Squaxin Island Reservation:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10861–49.10880 [Reserved]

36. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10881 through 49.10890 to read as follows:

Implementation Plan for the Stillaguamish Tribe of Washington

§ 49.10881 Identification of plan.

This section and §§ 49.10882 through 49.10920 contain the implementation plan for the Stillaguamish Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Stillaguamish Tribe.

§ 49.10882 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Stillaguamish Tribe.

§ 49.10883 Legal authority. [Reserved]

§ 49.10884 Source surveillance. [Reserved]

§ 49.10885 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Stillaguamish Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10886 Contents of implementation plan.

The implementation plan for the Reservation of the Stillaguamish Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10887 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10888 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10889 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10890 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Stillaguamish Tribe:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10891–49.10920 [Reserved]

37. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10921 through 49.10930 to read as follows:

Implementation Plan for the Suquamish Indian Tribe of the Port Madison Reservation, Washington

§ 49.10921 Identification of plan.

This section and §§ 49.10922 through 49.10950 contain the implementation plan for the Suquamish Indian Tribe of the Port Madison Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Madison Reservation.

§ 49.10922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Madison Reservation.

§ 49.10923 Legal authority. [Reserved]

§ 49.10924 Source surveillance. [Reserved]

§ 49.10925 Classification of regions for episode plans.

The air quality control region which encompasses the Port Madison Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10926 Contents of implementation plan.

The implementation plan for the Port Madison Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10930 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Madison Reservation:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10931–49.10950 [Reserved]

38. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10951 through 49.10960 to read as follows:

Implementation Plan for the Swinomish Indians of the Swinomish Reservation, Washington

§ 49.10951 Identification of plan.

This section and §§ 49.10952 through 49.10980 contain the implementation plan for the Swinomish Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Swinomish Reservation.

§ 49.10952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Swinomish Reservation.

§ 49.10953 Legal authority. [Reserved]

§ 49.10954 Source surveillance. [Reserved]

§ 49.10955 Classification of regions for episode plans.

The air quality control region which encompasses the Swinomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10956 Contents of implementation plan.

The implementation plan for the Swinomish Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

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§ 49.10957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Swinomish Reservation:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10961–49.10980 [Reserved]

39. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10981 through 49.10990 to read as follows:

Implementation Plan for the Tulalip Tribes of the Tulalip Reservation, Washington

§ 49.10981 Identification of plan.

This section and §§ 49.10982 through 49.11010 contain the implementation plan for the Tulalip Tribes. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Tulalip Reservation.

§ 49.10982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Tulalip Reservation.

§ 49.10983 Legal authority. [Reserved]

§ 49.10984 Source surveillance. [Reserved]

§ 49.10985 Classification of regions for episode plans.

The air quality control region which encompasses the Tulalip Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10986 Contents of implementation plan.

The implementation plan for the Tulalip Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10991–49.11010 [Reserved]

40. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11011 through 49.11020 to read as follows:

Implementation Plan for the Confederated Tribes of the Umatilla Reservation, Oregon

§ 49.11011 Identification of plan.

This section and §§ 49.11012 through 49.11040 contain the implementation plan for the Confederated Tribes of the Umatilla Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Umatilla Reservation.

§ 49.11012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Umatilla Reservation.

§ 49.11013 Legal authority. [Reserved]

§ 49.11014 Source surveillance. [Reserved]

§ 49.11015 Classification of regions for episode plans.

The air quality control region which encompasses the Umatilla Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11016 Contents of implementation plan.

The implementation plan for the Umatilla Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.132 Rule for open burning permits.
(i) Section 49.133 Rule for agriculture burning permits.
(j) Section 49.134 Rule for forestry burning permits.
(k) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(l) Section 49.137 Rule for air pollution episodes.
(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(n) Section 49.139 Rule for non-Title V operating permits.

§ 49.11017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Umatilla Reservation:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.132 Rule for open burning permits.
(i) Section 49.133 Rule for agriculture burning permits.
(j) Section 49.134 Rule for forestry burning permits.
(k) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(l) Section 49.137 Rule for air pollution episodes.
(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(n) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11021–49.11040 [Reserved]

41. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11041 through 49.11050 to read as follows:

Implementation Plan for the Upper Skagit Indian Tribe of Washington

§ 49.11041 Identification of plan.

This section and §§ 49.11042 through 49.11070 contain the implementation plan for the Upper Skagit Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Upper Skagit Indian Tribe.

§ 49.11042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Upper Skagit Indian Tribe.

§ 49.11043 Legal authority. [Reserved]

§ 49.11044 Source surveillance. [Reserved]

§ 49.11045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Upper Skagit Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.11046 Contents of implementation plan.

The implementation plan for the Reservation of the Upper Skagit Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Upper Skagit Indian Tribe:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

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§§ 49.11051–49.11070 [Reserved]

42. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11071 through 49.11080 to read as follows:

Implementation Plan for the Confederated Tribes of the Warm Springs Reservation of Oregon

§ 49.11071 Identification of plan.

This section and §§ 49.11072 through 49.11100 contain the implementation plan for the Confederated Tribes of the Warm Springs Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Warm Springs Reservation.

§ 49.11072 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Warm Springs Reservation.

§ 49.11073 Legal authority. [Reserved]

§ 49.11074 Source surveillance. [Reserved]

§ 49.11075 Classification of regions for episode plans.

The air quality control region which encompasses the Warm Springs Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11076 Contents of implementation plan.

The implementation plan for the Warm Springs Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11081–49.11100 [Reserved]

43. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11101 through 49.11110 to read as follows:

Implementation Plan for the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington

§ 49.11101 Identification of plan.

This section and §§ 49.11102 through 49.11130 contain the implementation plan for the Confederated Tribes and Bands of the Yakama Indian Nation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Yakama Reservation.

§ 49.11102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Yakama Reservation.

§ 49.11103 Legal authority. [Reserved]

§ 49.11104 Source surveillance. [Reserved]

§ 49.11105 Classification of regions for episode plans.

The air quality control region which encompasses the Yakama Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	IIII
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.11106 Contents of implementation plan.

The implementation plan for the Yakama Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Yakama Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11111–49.11130 [Reserved]

§§ 49.11131–49.17810 [Reserved]

44. Subpart M of Part 49 is amended by revising the "Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections" to read as follows:

Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections

Indian tribe	Refer to the following sections in subpart M
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	§§ 49.9861 to 49.9890
Chehalis Reservation, Washington—Confederated Tribes of the	§§ 49.9891 to 49.9920
Coeur d'Alene Tribe of the Coeur D'Alene Reservation, Idaho	§§ 49.9921 to 49.9950
Colville Reservation, Washington—Confederated Tribes of the	§§ 49.9951 to 49.9980
Coos, Lower Umpqua and Siuslaw Indians of Oregon—Confederated Tribes of the	§§ 49.9981 to 49.10010
Coquille Tribe of Oregon	§§ 49.10011 to 49.10040
Cow Creek Band of Umpqua Indians of Oregon	§§ 49.10041 to 49.10100
Grand Ronde Community of Oregon—Confederated Tribes of the	§§ 49.10101 to 49.10130
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	§§ 49.10131 to 49.10160
Jamestown S'Klallam Tribe of Washington	§§ 49.10161 to 49.10190
Kalispel Indian Community of the Kalispel Reservation, Washington	§§ 49.10191 to 49.10220
Klamath Indian Tribe of Oregon	§§ 49.10221 to 49.10250
Kootenai Tribe of Idaho	§§ 49.10251 to 49.10280
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington	§§ 49.10281 to 49.10310
Lummi Tribe of the Lummi Reservation, Washington	§§ 49.10311 to 49.10340
Makah Indian Tribe of the Makah Indian Reservation, Washington	§§ 49.10341 to 49.10370
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	§§ 49.10371 to 49.10400
Nez Perce Tribe of Idaho	§§ 49.10401 to 49.10430
Nisqually Indian Tribe of the Nisqually Reservation, Washington	§§ 49.10431 to 49.10460
Nooksack Indian Tribe of Washington	§§ 49.10461 to 49.10490
Port Gamble Indian Community of the Port Gamble Reservation, Washington	§§ 49.10491 to 49.10520
Puyallup Tribe of the Puyallup Reservation, Washington	§§ 49.10521 to 49.10550
Quileute Tribe of the Quileute Reservation, Washington	§§ 49.10551 to 49.10580
Quinault Tribe of the Quinault Reservation, Washington	§§ 49.10581 to 49.10640
Sauk-Suiattle Indian Tribe of Washington	§§ 49.10641 to 49.10670
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington	§§ 49.10671 to 49.10700
Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho	§§ 49.10701 to 49.10730
Siletz Reservation, Oregon—Confederated Tribes of the	§§ 49.10731 to 49.10760
Skokomish Indian Tribe of the Skokomish Reservation, Washington	§§ 49.10761 to 49.10820
Spokane Tribe of the Spokane Reservation, Washington	§§ 49.10821 to 49.10850
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	§§ 49.10851 to 49.10880
Stillaguamish Tribe of Washington	§§ 49.10881 to 49.10920
Suquamish Indian Tribe of the Port Madison Reservation, Washington	§§ 49.10921 to 49.10950
Swinomish Indians of the Swinomish Reservation, Washington	§§ 49.10951 to 49.10980
Tulalip Tribes of the Tulalip Reservation, Washington	§§ 49.10981 to 49.11010
Umatilla Reservation, Oregon—Confederated Tribes of the	§§ 49.11011 to 49.11040
Upper Skagit Indian Tribe of Washington	§§ 49.11041 to 49.11070
Warm Springs Reservation of Oregon—Confederated Tribes of the	§§ 49.11071 to 49.11100
Yakama Indian Nation of the Yakama Reservation, Washington—Confederated Tribes and Bands of the	§§ 49.11101 to 49.11130

[FR Doc. 02–4140 Filed 3–14–02; 8:45 am]
BILLING CODE 6560–50–P

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Federal Register

Friday,
March 15, 2002

Part III

Court Services and Offender Supervision Agency for the District of Columbia

28 CFR Part 802
Freedom of Information, Privacy Act and Other Disclosure of Records; Proposed Rule and Notice

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COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 802

[CSOSA–0003–P]

RIN 3225–AA01

Freedom of Information, Privacy Act and Other Disclosure of Records

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: In this document, the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") is proposing to adopt regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency ("PSA" or "Agency") records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for the production of records in response to a subpoena or other legal demand for testimony. The regulations also identify Privacy Act systems of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the Agency and that adequate safeguards are in place to protect the privacy rights of individuals.

DATES: Comments due by May 14, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov).*

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") is proposing to adopt regulations (28 CFR part 802) on the disclosure of records maintained by CSOSA or the District of Columbia Pretrial Services Agency ("PSA" or "Agency"). CSOSA previously published its organizational regulations (28 CFR part 800) in the **Federal Register** on January 8, 2001 (66 FR 1259). As noted in these organizational regulations, PSA is an independent entity within CSOSA.

Summary of Regulatory Provisions

Subpart A of the proposed regulations provides a general introduction. Subpart B covers procedures for Freedom of Information Act (FOIA) requests; subpart C covers procedures for Privacy Act requests; subpart D covers disclosures in response to subpoenas or other legal demands; and subpart E covers exemptions to CSOSA and PSA Privacy Act systems of records.

Freedom of Information Act Requests

The general guidelines for disclosure (§ 802.3) under the FOIA note that a record must be in the possession and control of the agency at the time of the request to be considered subject to release under the regulations. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. Hard copy of electronic records which are subject to FOIA, but which are available to the public through an established distribution system, the **Federal Register**, or the Internet at CSOSA's web site (*www.csosa.gov*), normally do not need to be processed under the FOIA. CSOSA will process such requests under the FOIA only if the requester insists on such processing.

Definitions for certain terms used in the subpart are contained in § 802.4. The procedures for submitting and processing FOIA requests are contained in § 802.5. Section 802.6 explains how CSOSA handles requests for documents which relate to or were created by another agency.

Section 802.7 covers the denial of a request. This section also explains how the requester may appeal the denial. Section 802.8 explains how to request expedited processing. Section 802.9 covers procedures for the disclosure of business information which may have been provided to the Agency. The business submitter (any entity which provided the business information to the Agency and which has a proprietary interest in the information) will receive notice of the FOIA request and have an opportunity to object to disclosure. Section 802.10 contains the fee schedule for FOIA requests.

Privacy Act Requests

The regulations in subpart C are intended to let you know how you can determine whether CSOSA or PSA maintains records about you, how you can obtain access to your records, and how to have your records corrected or amended.

Definitions for certain terms used in the subpart are contained in § 802.12. Section 802.13 explains how to verify your identity when making a request for your own records and how to document that you have consent when you make a request for information concerning another individual. The procedures for submitting and processing requests for access to records are contained in § 802.14. Section 802.15 covers the denial of a request. Section 802.16 explains how the requester may appeal the denial. Section 802.17 explains how CSOSA or PSA handle requests for documents which relate to or were created by another agency.

Section 802.18 explains how you may request to correct or amend a record about you which the Agency maintains. Section 802.19 contains procedures for appealing a denial to correct or amend your record.

Section 802.20 contains the procedures for accounting for disclosures, and § 802.21 notes your appeal rights for a denial of a request for an accounting. Fees for Privacy Act requests are described in § 802.22. Section 802.23 explains the Agency's policy on the use and disclosure of social security numbers.

Subpoenas or Other Legal Demands for Testimony or Production or Disclosure of Records or Other Information

Subpart D contains procedures for the production of records in response to subpoenas or demands of courts or other authorities in connection with a proceeding to which the Agency is not a party. These regulations establish a systematic means by which the Agency can evaluate requests for production of official agency information. The regulations are intended to: (1) Conserve Agency employee's time for conducting official business, (2) minimize the possibility of involving the Agency in controversial issues that are not related to the mission of the Agency, (3) prevent the possibility that the public will misconstrue variances between personal opinions of Agency employees and Agency policy, (4) avoid spending the government's time and money for private purposes, (5) preserve the integrity of the administrative process, and (6) protect confidential, sensitive information and the deliberative process of the Agency.

Exemption of Record Systems

The Privacy Act permits specific systems of records to be exempt from some of its requirements. Subpart E identifies these exemptions and explains the basis for making the exemptions. CSOSA exemptions are contained in § 802.28; PSA exemptions are contained in § 802.29. The full text of CSOSA and PSA systems of records appear in a separate notice document in today's **Federal Register**.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 802

Freedom of information; Privacy; Probation and parole.

Jasper Ormond,

Interim Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 802 as set forth below.

PART 802—DISCLOSURE OF RECORDS

Subpart A—General

Sec.
802.1 Introduction.

Subpart B—Freedom of Information Act

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802.3 Guidelines for disclosure.
802.4 Definitions.
802.5 Freedom of Information Act requests.
802.6 Documents from other agencies.
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Subpart C—Privacy Act

802.11 Purpose and scope.
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802.22 Fees.
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Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

802.24 Purpose and scope.
802.25 Definitions.
802.26 Receipt of demand.
802.27 Compliance/noncompliance.

Subpart E—Exemption of record systems under the Privacy Act

802.28 Exemption of the Court Services and Offender Supervision System—limited access.
802.29 Exemption of the Pretrial Services Agency System.

Authority: 5 U.S.C. 301, 552, 552a; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

Subpart A—General

§ 802.1 Introduction.

This part contains regulations of the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") and the District of Columbia Pretrial Services Agency ("PSA" or "Agency") which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and provide for the production of records in response to a demand from a court or other non-congressional authority in connection with a proceeding to which the Agency is not a party.

Subpart B—Freedom of Information Act

§ 802.2 Purpose and scope.

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

§ 802.3 Guidelines for disclosure.

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available

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to the public through an established distribution system or through the **Federal Register** or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

§ 802.4 Definitions.

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrignted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 802.5 Freedom of Information Act requests.

(a) *Submission, processing, and release procedures.* (1) Requests for any record (including policy) ordinarily will be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope "Freedom of Information Request."

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (see § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

§ 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with paragraph (c) of this section; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (i.e., to challenge the adequacy of the search for responsive records) in accordance with paragraph (c) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Administrative appeal.* (1) A requester may appeal an initial determination when:

(i) Access to records has been denied in whole or in part;

(ii) There has been an adverse determination of the requester's category as provided in § 802.10(d);

(iii) A request for fee waiver or reduction has been denied; or

(iv) It has been determined that no responsive records exist.

(2) Appeals must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked "Freedom of Information Act Appeal."

(3) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you.

§ 802.8 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever staff determines that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester must fully explain the circumstances warranting such an expected threat so that the Agency may make a reasoned determination.

(2) With respect to a request made by a person primarily engaged in disseminating information, a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A person "primarily engaged in disseminating information" does not include individuals who are engaged only incidentally in the dissemination of information. The standard of "widespread and exceptional media interest" requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. The requester must adequately explain the matter or activity and why it is necessary to provide the records being sought on an expedited basis.

(b) If you seek expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date]."

(c) The determination as to whether to grant or deny the request for expedited processing will be made, and the requester notified, within ten days after the date of the request. Because a decision to take a FOIA request out of order delays other requests, simple fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances. The decision will be made solely based on the information contained in the initial letter requesting expedited processing.

(d) Appeals of initial determinations to deny expedited processing must be made promptly. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 2004 and must be clearly marked "Expedited Processing Appeal."

(e) The General Counsel will make an appeal determination regarding expedited processing as soon as practicable.

§ 802.9 Business information.

(a) *In general.* Business information provided to the Agency by a business submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. Any claim of confidentiality must be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(b) *Notice to business submitters.* The Agency will provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) Notice of a request for business information falling within paragraph (c)(2)(i) or (ii) of this section will be required for a period of not more than ten years after the date of submission unless the business submitter had requested, and provided acceptable justification for, a specific notice period of greater duration.

(2) The Agency shall provide a business submitter with notice of receipt of a request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Agency shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide a detailed statement of any objection to disclosure. Such statement shall specify why the business submitter believes the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph might itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such

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notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that staff may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* The Agency will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision to disclose business information over the objection of a business submitter is made, the Agency shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Agency shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 802.10 Fee schedule.

(a) The fees described in this section conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(b) The term *direct costs* means those expenditures the agency actually makes in searching for, review (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(c) Fees shall be charged in accordance with the schedule contained in paragraph (i) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(1) Services were performed without charge;

(2) The fees were waived or reduced in accordance with paragraph (f) of this section.

(d) Specific levels of fees are prescribed for each of the following categories of requesters.

(1) *Commercial use requesters.* These requesters are assessed charges, which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Agency is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) All other requesters. Requesters who do not fit any of the categories described in paragraphs (d)(1) through (3) of this section shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Agency may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in a systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(e) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to paragraph (g) of this section.

(f) *Waiver or reduction of fees.*

(1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the current fee waiver policy guidance issued by the Department of Justice.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004 within 30 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays and holidays).

(3) Appeals from an adverse determination of the requester's category as described in paragraphs (d)(1) through (3) of this section shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the Agency's own records. Appeals shall be addressed in writing to the office or officer specified in § 802.7(c)(2) within 30 days of the receipt of the Agency's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and holidays).

(g) *Advance notice of fees.*

(1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250.00, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(h) *Form of payment.*

(1) Payment may be made by check or money order payable to the Treasury of the United States.

(2) The Court Services and Offender Supervision Agency reserves the right to request prepayment after a request is processed and before documents are released in the following circumstances.

(i) When costs are estimated or determined to exceed $250.00, the Agency shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require the requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(ii) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or the pending request. Whenever interest is charged, the Agency shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717.

(i) *Amounts to be charged for specific services.* The fees for services performed by an employee of the Agency shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge; the first two hours of search time free; or charge which total $10.00 or less. Fees for the copies are to be calculated as follows:

(i) The duplication cost is calculated by multiplying the number of pages in excess of 100 by $0.25.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The cost of search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

(i) $7.00 per quarter hour for clerical staff;

(ii) $10.00 per quarter hour for professional staff; and

(iii) $14.00 per quarter hour for managerial personnel.

(3) *Assessment exclusions.* Only fees in excess of $10.00 will be assessed. This means that the total cost must be greater than $10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100), or for both costs combined.

(j) *Searches for electronic records.* The Agency shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the "all other" category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (i.e., the operator), the charge for the computer search will begin.

(k) *Aggregating requests.* When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency shall aggregate any such requests and charge accordingly.

Subpart C—Privacy Act

§ 802.11 Purpose and scope.

The regulations in this subpart apply to all records which are contained in a system of records maintained by the Agency and which are retrieved by an individual's name or personal identifier. This subpart implements the Privacy Act by establishing Agency policy and procedures providing for the maintenance of and guaranteed access to records. Under these procedures:

(a) You can ask us whether we maintain records about you or obtain access to your records; and

(b) You may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

§ 802.12 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Agency* has the meaning as defined in 5 U.S.C. 552(e).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Agency. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger print or a photograph.

(e) *System of records* means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) *Request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(i) *Request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(j) *Request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

§ 802.13 Verifying your identity.

(a) *Requests for your own records.* When you make a request for access to records about yourself, you must verify your identity. You must state your full

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name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(b) *Requests on behalf of another.* Information that concerns an individual and that is contained in a system of records maintained by the Agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(c) *Disclosure criteria.* Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) Pursuant to a specific exception listed under the Privacy Act (5 U.S.C. 552a(b)). For example, specific exceptions allow disclosure:

(i) To employees within the Agency who have a need for the record in the performance of their duties.

(ii) If disclosure is permitted under FOIA, e.g. "public information," when the public interest in disclosure of the information outweighs the privacy interest involved.

(iii) For a routine use described in the agency system of records as published in the **Federal Register**.

(A) The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

(B) CSOSA publishes notices of system of records, including all pertinent routine uses, in the **Federal Register**.

§ 802.14 Requests for access to records.

(a) *Submission, processing, and release procedures.*

(1) Requests for any agency record about yourself ordinarily will be processed pursuant to the Privacy Act, 5 U.S.C. 552a. Such a request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope "Privacy Act Request."

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

(2) A requester will be notified of the decision on the request in writing. Every effort will be made to respond to the requester within the time limit set under the governing disclosure statute.

(3) Generally, all Privacy Act requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (see § 802.8).

§ 802.15 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the FOIA exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with § 802.16(e); and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (i.e., to challenge the adequacy of the search for responsive records) in accordance with paragraph (a)(1) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

§ 802.16 Administrative appeal.

(a) A requester may appeal an Agency initial determination when:

(1) Access to records has been denied in whole or in part;

(2) There has been an adverse determination of the requester's category as provided in § 802.9(d);

(3) A request for fee waiver or reduction has been denied; or

(4) It has been determined that no responsive records exist.

(b) Appeals of initial determinations must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked "Privacy Act Appeal."

(c) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you of that decision.

§ 802.17 Documents from other agencies.

(a)(1) *Documents from or pertaining to Federal agencies.* When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a Privacy Act request; thus no appeal rights accrue to the requester.

(2) When a Privacy Act request is received for a record created by the Agency that includes information originated by another Federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.18 Correction or amendment of records.

This section applies to all records kept by the Agency except for records of earnings. If you believe your record is not accurate, relevant, timely, or complete, you may request that your record be corrected or amended. A request for correction or amendment must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the correction. To amend or correct your record, you should write to the Office of the General Counsel identified in § 802.14(a)(1). You should submit any available evidence to support your request. Both the request and the envelope must be clearly marked "Privacy Act Correction Request." Your request should indicate:

(a) The system of records from which the record is retrieved;

(b) The particular record which you want to correct or amend;

(c) Whether you want to add, delete or substitute information in the records; and

(d) Your reasons for believing that your record should be corrected or amended.

§ 802.19 Appeal of denial to correct or amend.

(a) Agency staff may grant or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the **Federal Register** and exempted from the Privacy Act provisions requiring amendment and correction.

(1) Any denial of a request for correction should contain a statement of the reason for denial and notice to the requester that the denial may be appealed to the General Counsel by filing a written appeal.

(2) The appeal should be marked on the face of the letter and the envelope, "PRIVACY APPEAL—DENIAL OF CORRECTION," and be addressed to the Office of the General Counsel, address cited at § 802.14(a)(1).

(3) The General Counsel will review your request within 30 days from the date of receipt. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that the record should be corrected, the record will be corrected. If, after review, the General Counsel refuses to amend the record exactly as you requested, we will inform you:

(i) That your request has been refused and the reason;

(ii) That this refusal is the Agency's final decision;

(iii) That you have a right to seek court review of this request to amend the record; and

(iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record.

(b) Requests for correction of records prepared by other federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

(c) When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

§ 802.20 Accounting of disclosures.

(a) We will maintain an accounting of all disclosures of a record for five years or until the record is destroyed, whichever is longer, except that, we will not make an accounting for:

(1) Disclosures of public information;

(2) Disclosures made within the agency; and

(3) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. Your request should be in accordance with the procedures in § 802.14. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record, excepting disclosures made for an authorized civil or criminal law enforcement agency as provided by subsection (c)(3) of the Privacy Act. You will be required to provide reasonable identification.

§ 802.21 Appeals.

You may appeal a denial of a request for an accounting to the Office of the General Counsel in the same manner as a denial of a request for access to records (See § 802.16) and the same procedures will be followed.

§ 802.22 Fees.

The Agency shall charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under the Freedom of Information Act (See § 802.10).

§ 802.23 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* If the Agency requests an individual to disclose his or her social security account number, we shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

§ 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency ("CSOSA" or "Agency") and the District of Columbia Pretrial Services Agency ("PSA" or "Agency") follow in response to a demand from a Federal, state, or local administrative body for the production and disclosure of material in connection with a proceeding to which the Agency is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

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§ 802.25 Definitions.

Demand means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

Employee includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired while working at the Agency, such as sensitive or confidential agency information.

Legal Proceeding includes any pretrial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

§ 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

§ 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) An employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) If the court or other authority declines to stay the effect of the demand pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) The agency will consider the following factors in determining whether a demand should be complied with:

(1) The Privacy Act, 5 U.S.C. 522a;

(2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 et. seq.;

(3) The Victims Rights Act, 42 U.S.C. 10606(b);

(4) D.C. statutes and regulations;

(5) Any other state or federal statute or regulation;

(6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;

(7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;

(8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;

(9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Background Investigation (CSOSA–2).

(ii) Supervision Offender Case File (CSOSA–9).

(iii) Pre-Sentence Investigations (CSOSA–10).

(iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA–11).

(v) Recidivism Tracking Database (CSOSA–12).

(vi) Employment Profile (CSOSA–14).

(vii) Substance Abuse Treatment Database (CSOSA–15).

(viii) Screener (CSOSA–16).

(ix) Sex Offender Registry (CSOSA–18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved].

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OPR but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OPR for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OPR may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OPR should retain

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this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(vii) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(viii) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(ix) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

§ 802.29 Exemption of the Pretrial Services Agency System.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)-(3), (4)(G)-(I), (5) and (8), (f) and (g):

(i) Automated Bail Agency Database (ABADABA) (CSOSA/PSA–1).

(ii) Drug Test Management System (DTMS) (CSOSA/PSA–2).

(iii) Interview and Treatment Files (CSOSA/PSA–3).

(iv) Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA/PSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA/PSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b) [Reserved].

[FR Doc. 02–6091 Filed 3–14–02; 8:45 am]
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COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Privacy Act of 1974; Notice of New Systems

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) gives notice that it proposes to establish the following new systems of records for itself and for the Pretrial Services Agency, an independent entity within CSOSA.

Public Affairs File (CSOSA–1). Information in this system relates to matters for which the Office of Legislative, Intergovernmental and Public Affairs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include handling and responding to inquiries from Congress, the DC City Council and the news media. This system covers records relating to Congressional inquiries relating to CSOSA and its employees (identified in the system description below).

Background Investigation (CSOSA–2). Information in this system relates to matters for which the Security Office has responsibility pursuant to Executive Order 10450 and 5 CFR parts 5, 731, 732 and 736. Responsibilities include providing investigatory information for employee suitability determinations to include FBI and name checks. This system covers records relating to CSOSA employee background checks (identified in the system description below).

Employee Credential System (CSOSA–3). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing investigatory information for employee suitability determinations. This system covers records relating to issuance of CSOSA employee credentials (identified in the system description below).

Proximity Card System (CSOSA–4). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing security determinations for agency employees. This system covers records relating to CSOSA employee access to agency offices.

Budget System (CSOSA–5). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing payroll projections for budget purposes. This system covers records relating to CSOSA payroll and budget projections and to track employees by organizations within CSOSA (identified in the system description below).

Payroll and Leave Records (CSOSA–6). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. Responsibilities include providing personnel management services to the agency. This system covers records relating to CSOSA employee name and other personal identifying information as well as salaries, leave balances, withholdings and financial allotments (identified in the system description below).

Time and Attendance Records (CSOSA–7). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 CFR, part 630. Responsibilities include maintaining time and attendance reports, leave slips and audit reports on agency employees. This system covers records relating to CSOSA employee time and attendance, leave category, leave balances and organization code.

Training Management System (CSOSA–8). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing training to agency employees. This system covers records relating to CSOSA employee training, class schedules and attendance.

Supervision Offender Case File (CSOSA–9). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing supervision for individuals sentenced as District of Columbia offenders who are under parole and/or probation supervision. This system covers records relating to, for example, risk/needs assessment, supervision documentation and case management (identified in the system description below).

Pre-sentence Investigations (CSOSA–10). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing the sentencing judge with criminal and social history investigations on defendants. This system covers records relating to defendants sentenced in the District of Columbia Superior Court (identified in the system description below).

Supervision & Management Automated Record Tracking (SMART) (CSOSA–11). Information in this system relates to matters for which CSOSA has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing supervision for individuals sentenced as District of Columbia offenders who are under parole and/or probation supervision. This system covers records relating to, for example, risk/needs assessment, supervision documentation and case management (identified in the system description below).

Recidivism Tracking Database (CSOSA–12). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offenders' employment in the community (identified in the system description below).

Freedom of Information-Privacy Acts System (CSOSA–13). Information in this system relates to matters for which the Office of the General Counsel has responsibility pursuant to 5 U.S.C. 552 and 552a. Responsibilities include providing legal representation and legal advice, ethics advice and processing of FOIA/PA requests for agency records. This system covers records relating to CSOSA FOIA/PA requests and responses (identified in the system description below).

Employment Profile Database (CSOSA–14). Information in this system relates to matters for which Community Justice Programs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offenders employment in the community (identified in the system description below).

Substance Abuse Treatment Database (CSOSA–15). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offender substance abuse treatment (identified in the system description below).

Screener Database (CSOSA–16). Information in this system relates to matters for which Community Justice Programs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offender risk assessments (identified in the system description below).

Office of Professional Responsibility Record (OPR) (CSOSA–17). Information in this system relates to matters for which the Office of Professional Responsibility has oversight pursuant to 5 U.S.C. 301. Responsibilities include auditing, inspecting and investigating agency programs and employee misconduct and preventing waste, fraud and abuse in agency programs. This system covers records relating to CSOSA OPR investigations of staff misconduct (identified in the system description below).

Sex Offender Registry (CSOSA–18). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280. Responsibilities include sex offender registration and sentencing commission issues for individuals sentenced as District of Columbia offenders. This system covers records relating to, for example, sex offender registration (identified in the system description below).

Drug Free Workplace Program (CSOSA–19). Information in this system relates to matters for which Management and Administration has responsibility pursuant to Executive Order 12564. Responsibilities include providing finance and budget information as well as security information for employee suitability determinations. This system covers records relating to CSOSA employee and applicant drug testing (identified in the system description below).

Automated Bail Agency Database (ABA DABA) (CSOSA/PSA–1). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Drug Test Management System (DTMS) (CSOSA/PSA–2). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Interview and Treatment Files (CSOSA/PSA–3). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Payroll Files (CSOSA/PSA–4). Information in this system relates to matters for which the PSA Human Resources has responsibility pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. Responsibilities include providing personnel management services to the agency. This system covers records relating to PSA employee name and other personal identifying information as well as salaries, leave balances, withholdings and financial allotments (identified in the system description below).

Time and Attendance Files (CSOSA/PSA–5). Information in this system relates to matters for which the PSA Human Resources has responsibility pursuant to 5 CFR, Part 630. Responsibilities include maintaining time and attendance reports, leave slips and audit reports on agency employees. This system covers records relating to PSA employee time and attendance, leave category, leave balances and organization code.

Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges and municipal and traffic violations (identified in the system description below).

A rule document promulgating exemptions for these systems appears in the Proposed Rules Section of today's **Federal Register**.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 40-day period in which to review the system.

Therefore, please submit any comments by April 15, 2002. The public, OMB and Congress are invited to send written comments to Renee Barley, FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

In accordance with Privacy Act requirements, CSOSA has provided a report on the proposed systems to OMB and Congress.

Dated: March 7, 2002.

Jasper Ormond,

Interim Director, Court Services and Offender Supervision Agency.

Court Services and Offender Supervision Agency for the District of Columbia (Including Pretrial Services Agency)

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CSOSA–1

SYSTEM NAME:

Public Affairs File.

SECURITY CLASSIFICATION:

None,

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Office of Legislative, Intergovernmental and Public Affairs Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the United States Congress and the District of Columbia (D.C.) City Council.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Inquiries from Members of Congress and D.C. City Council; (2) Replies to congressional and D.C. City Council inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

This system is maintained to provide a history of congressional and D.C. City Council inquiries. Also, to provide the capability to control and track correspondence to ensure a timely response and/or any other required action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Primary use of the system is limited to the Office of Legislative, Intergovernmental and Public Affairs staff and to officials who need access to perform official duties. Records in this system may be disclosed as follows:

A. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of an employee, contractor, vendor employed by or offender under supervision of CSOSA and/or PSA.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, State, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.*, the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA or PSA and/or who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.*, debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets in hardcopy (paper copies).

RETRIEVABILITY:

Information is arranged and retrieved alphabetically by the name of the congressional staff member or D.C. City Council member.

SAFEGUARDS:

Information is stored in file cabinets in secured offices or in guarded buildings, and accessed only by authorized, screened personnel.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Legislative, Intergovernmental and Public Affairs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORD ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual who corresponded with the agency. Requesters should also reasonably specify the record contents being sought. The address is the same as indicated in the Notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the incoming and outgoing correspondence from congressional and/or D.C. City Council members and CSOSA and/or PSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

CSOSA–2

SYSTEM NAME:

Background Investigation.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The two systems (Background Investigation Files and Background Investigation Database) maintain records on: (1) Current and former employees of CSOSA; (2) Current or former contract employees; and (3) Applicants for employment with CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records containing investigative material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment; (2) FBI and other agency name checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and 5 CFR parts 5, 731, 732 and 736.

PURPOSE(S):

To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances and evaluations of qualifications for performance of contractual services for the Court Services and Offender Supervision Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member(s) in response to an inquiry made at the request of an employee or contractor employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

H. To disclose information to consumer reporting agencies to obtain commercial credit reports.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained manually in file jackets in hardcopy (paper copies) and electronically.

RETRIEVABILITY:

Information is arranged and retrieved alphabetically by the name of the employee, applicant or contractor.

SAFEGUARDS:

The information is stored in GSA approved security containers, which use GP–1 combination locks in a guarded building. Electronic information is stored on a computer which is password protected in a locked office.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (j),

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(k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–3

SYSTEM NAME:

Employee Credential System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each employee issued an agency credential with badge or medallion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to maintain a record of each individual issued an agency credential as well as the accountability of each badge and medallion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional member or staff in response to an inquiry made at the request of an employee employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a stand-alone computer system in a room which is protected by a control access device.

RETRIEVABILITY:

Information is retrieved by the name and/or social security number of the employee.

SAFEGUARDS:

See storage procedures above.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number or similar information). The address is the same as indicated in the notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information is provided by employees of CSOSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–4

SYSTEM NAME:

Proximity Card System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees and (2) current or former contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name and proximity card number for each current or former employee or contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to track each individual issued an agency proximity card and their associated access control level, as well as the accountability of each card. Also used to ensure the physical security of the employee and work environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose to other government agencies and to the public whether an individual is a current employee of CSOSA.

C. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

D. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

E. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

F. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

G. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

H. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained manually in file jackets in hardcopy (paper copies) and electronically.

RETRIEVABILITY:

Information is retrieved by the name and/or identification number of the individual.

SAFEGUARDS:

The information is stored on a computer system that is password protected and located in a room with limited access.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by employees whose files are on record as authorized and information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–5

SYSTEM NAME:

Budget System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each individual employed by the agency. Each record contains the name, social security number, position title, salary and benefits of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to make payroll projections for budget purposes and to track employees by organization within CSOSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. To the appropriate Federal, state, local, foreign or other public authority

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responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a personal computer which is password protected.

RETRIEVABILITY:

The information can be retrieved by the name and/or personal identifier of the employee.

SAFEGUARDS:

The information is maintained on a server with limited access by user-ID and password.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided by employees and information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–6

SYSTEM NAME:

Payroll and Leave Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, social security number, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 CFR 550.

PURPOSE(S):

Document employee salary, tax and related information and to track and document employee leave transfers, reinstatements and other leave issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member or D.C. City Council member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place of residence, place of employment or both.

I. To disclose information to the Department of Agriculture, National Finance Center to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

N. Information may be disclosed to the General Accounting Office during a records management audit or inspection pursuant to GAO's audit authority.

O. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in individual folders or on computer.

RETRIEVABILITY:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

This information is maintained on either a password protected computer or filed in a locked file cabinet in a private office.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency; (2) information obtained from current and former employers; (3) National Finance Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–7

SYSTEM NAME:

Time and Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, social security number, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member or D.C. City Council member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting

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individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To disclose information to the Department of Agriculture, National Finance Center to effect maintenance of leave.

I. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

J. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders. Electronic access to the information is maintained on a password protected computer.

RETRIEVABILITY:

Information is retrieved by the name of the individual employee.

SAFEGUARDS:

Information is either locked in a file cabinet or in offices that are locked.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employee; (2) current or former Time and Attendance personnel; (3) current or former employer; (4) National Finance Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–8

SYSTEM NAME:

Training Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the type and dates of training programs for CSOSA employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track individual employees and their training history, class schedules, attendance and to ensure prerequisites have been met.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information is maintained to assist in performing the administrative functions of the Training and Career Development Office and is used to prepare class directories, class rosters and statistical reports.

B. To provide information to a congressional or D.C. City Council member from the record of an individual in response to an inquiry from that congressional or D.C. City Council member made at the request of the employee or contractor.

C. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

D. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders and electronically.

RETRIEVABILITY:

Information is retrieved by the name of the individual.

SAFEGUARDS:

The manual records are maintained in locked file cabinets and the automated portion is maintained on a password-protected computer

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of

employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are now or were employees of the agency; (2) individuals from other Federal, state and local agencies, and (3) individuals from formally established schools who may train agency employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–9

SYSTEM NAME:

Supervision Offender Case File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. See 28 CFR part 800, Appendix A for field office addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former District of Columbia offenders under parole, supervised release and/or probation supervision. These offenders were sentenced by the D.C. Superior Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain but are not limited to presentence information, sentencing information, institutional adjustment (parole only), treatment records, compliance orders, field notes, PD–163 (police report), judgment and commitment orders, program reports, psychiatric reports, assessments, Parole Board and judicial decisions and post-release information to include risk assessment, substance abuse testing, referrals, offender reporting forms, progress and behavior reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is maintained and used to determine risk/needs assessment, supervision documentation, case management and documentation of the offenders' compliance with release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or member or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

G. To provide information to employers or prospective employers concerning an offender's criminal history and other pertinent information where there is a foreseeable risk of harm unless prohibited by 42 CFR part 2.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in file folders.

RETRIEVABILITY:

Information can be retrieved by the name of the offender or by the DC Department of Corrections (DCDC) number.

SAFEGUARDS:

Information is maintained manually in file cabinets which are kept in locked offices.

RETENTION AND DISPOSAL:

Information will be maintained for 20 years after expiration of parole and/or probation supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation agencies; (4) relatives, friends, and other community individuals; (5) evaluation, observations, and findings of agency staff and treatment staff; and (6) employers and/or social service agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5

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U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–10

SYSTEM NAME:

Pre-sentence Investigations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former District of Columbia offenders under parole and/or probation supervision. These offenders were sentenced in the D.C. Superior Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain but are not limited to D.C. Superior Court information, offender information, details of the casework performed by CSOSA staff and a completed copy of the pre-sentence report (investigation).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

At the direction of a sentencing judge, criminal and social histories investigations of defendants are performed by staff to aid the judge in the disposition of the defendant's criminal case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender, supervised by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders or electronically on password protected computers or on microfilm.

RETRIEVABILITY:

Information is retrieved by the name of the individual, case number assigned or police department identification (PDID) number.

SAFEGUARDS:

Information is kept in a locked file room with access by authorized personnel only.

RETENTION AND DISPOSAL:

Information will be maintained for 20 years after expiration of parole and/or probation supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC, 20001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation agencies; (4) relatives, friends, and other community individuals; (5) evaluation, observations and findings of agency staff and treatment staff; and (6) employers, schools (primary and secondary), colleges/universities, social agencies and public defenders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–11

SYSTEM NAME:

Supervision & Management Automated Record Tracking (SMART)

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders sentenced by the D.C. Superior Court and currently on parole and/or probation or supervised release.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Identification Data Records:* Stores client's base record containing identification, socio-demographical and case status information (i.e., DCDC number, name, aliases, police department ID number, social security

number, date of birth, current location, full term date, parole/probation/probation eligibility date, date of parole/probation or probation status, date off parole/probation or probation status.)

2. *Substance Abuse Data Records:* Stores substance abuse testing information on up to four illegal drugs for each client if applicable.

3. *Release Data Records:* Stores information on each time the client is released from D.C. Department of Corrections custody, if applicable.

4. *Special Events Data Records:* Stores special event information for each client while incarcerated through supervision until the sentence expires.

5. *File Folder Tracking Data Records:* Stores information on last time a client's case folder was checked out of the file room, by whom and for what reason.

6. *Reports Received Data Records:* Stores information on all reports received by the USPC and/or Superior Court except for Face Sheets, PV Face Sheets, Reports of Alleged Violations and Work Release Violations.

7. *Work Release Violation Reports Data Records:* Stores information on Work Release Violation reports received by the USPC and/or Superior Court.

8. *Reports of Alleged Violations Data Records:* Stores information on all Reports of Alleged Violations received by the USPC and/or Superior Court including date report prepared, and the state where alleged violations were committed.

9. *Sentence Data Records:* Stores information on new and updated Face Sheets (FS) received by the USPC and/or Superior Court including date update received, prepared, minimum aggregate sentence, maximum aggregate sentence, full term date, mandatory release/short term date parole/probation eligibility date, reason PED was changed, maximum supervision date.

10. *Offense Data Record:* Stores offense information listed on new Face Sheet received by the USPC and/or Superior Court including Court's case number, date sentenced, minimum sentence, maximum sentence, whether consecutive or concurrent sentence, type of sentence.

11. *Detainer Data Records:* Stores detainer information listed on Face Sheets received by the USPC and/or Superior Court including jurisdiction placing detainer, and the date detainer was logged.

12. *Conduct Credit Data Records:* Stores conduct credit information listed on Face Sheets received by the USPC and/or Superior Court including date started credit time, number of days credited, number of days forfeited, number of forfeited days restored, and remaining number of days balance.

13. *Time Credit Data Records:* Stores time credit information listed on new and updated Face Sheets received by the USPC and/or Superior Court including type of time credit, date time credit started, date time credit ended, and the number of days credited.

14. *Parole/probation Violator Face Sheet Data Records:* Stores information on Parole/probation Violator Face Sheets (PV–FS) received by the USPC and/or Superior Court including date PV-FS prepared, date PV–FS received, case number (assigned by the Court), full term date, mandatory release/short term date, maximum date of supervision, time owed, and the date warrant executed.

15. *Hearing Calendar Data Records:* Stores list of hearing and non-hearing events scheduled for USPC Members and Hearing Examiners. Include name of hearing official, date of event, and the docket number.

16. *Hearing Data Records:* Stores information on each client's scheduled hearing. A record is added to the file each time a client is scheduled for a hearing. Includes hearing docket number, type of consideration, the hearing outcome, the hearing recommendation, date case into office docket, and the date case came out of office docket.

17. *Non-Hearing Data Records:* Stores information each time a case is presented to the USPC through a non-hearing docket. Includes non-hearing docket number, date office docket prepared, date into office docket, date out of office docket, analyst who reviewed the case, type of consideration, outcome of the review, and the analyst's recommendation.

18. *USPC and/or Superior Court Order Data Records:* Stores USPC and/or Superior Court Order information for every case presented to the USPC and/or Superior Court for review thru a hearing or non-hearing docket. A minimum of one record is added to the file per case per docket. Includes disposition, date USPC and/or Superior Court made decision, and any special conditions/instructions.

19. *Conditions Data Records:* Stores information on special conditions and instructions imposed by the USPC and/or Superior Court, or a Community Supervision officer.

20. *Parole/probation Certificates Data Records:* Stores information on parole/probation certificates issued by the USPC and/or Superior Court. Only one certificate can be issued per USPC and/or Superior Court Order. Includes hearing/non-hearing docket number, date certificate was issued, and the type of certificate issued.

21. *Parole/probation Plan Data Records:* Stores information on parole/probation plan requested and plan status. When the USPC and/or Superior Court grant parole/probation, a record is added to the file if the DCDC number does not already exist. Otherwise, the existing record is updated. Includes type of plan requested, date plan was requested, person requested plan, and the plan/report due date.

22. *Case Assignment Data Records:* Stores parole/probation supervision case assignment information for each client granted parole/probation. When the USPC and/or Superior Court grant parole/probation, a record is added to the file if the DCDC number does not already exist. Otherwise, the existing record is updated. Includes parole/probation supervision unit assigned, date parole/probation unit assigned, community supervision officer (CSO) assigned, date CSO assigned, CSO's phone number, and the supervision level assigned.

23. *Field Contact Data Records:* Stores field supervision information for scheduled and unscheduled contacts between parolee/probationer and the CSO. Date CSO made contact. Includes type of contact, location where contact was established, and the purpose of contact.

24. *Order to Appear for Revocation Data Records:* Stores information on Orders to Appear for Revocation issued by the USPC and/or Superior Court on non-hearing cases presented for review. Includes date PDS issued OAR, hearing/non-hearing docket number, date PSS received OAR, date OAR sent to CSO, and the date served OAR returned to PDS.

25. *OAR Contact Data Records:* Stores information on attempts to service the OAR issued by the USPC and/or Superior Court.

26. *Warrant Issued Data Records:* Stores information on warrant issued by the USPC and/or Superior Court as a result of a Report of Alleged Violation.

27. *Notice of Rights Data Records:* Stores information on Notices Of Rights that must be served by the USPC and/or Superior Court as a result of a warrant being executed.

28. *Housing Data Records:* Stores residence information verified by parole/probation officers as part of a client's parole/probation plan and case supervision. Includes street address.

29. *Job/Employment Data Records:* Stores employment information verified by CSOs as part of a client's parole/probation plan and case supervision. For each job held, a record is added to

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the file. Includes job description and employer.

30. *Programs Data Records:* Stores information on academic, vocational and/or treatment programs in which the client enrolls/participates. Includes program name, date started program, date finished program, and the type of program.

31. *Narcotics Data Records:* Stores information on urine test surveillance program in which a client must participate as a condition for parole/probation. For each urine sample collected, a record is added to the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The District of Columbia parole/probation statute authorizes to USPC and/or Superior Court of Parole/probation (integrated into CSOSA on August 5, 1997 by the National Capital Revitalization and Self-Government Act—D.C. Code 24–1231) to determine if and when to terminate parole/probation or conditional release or to modify the terms or conditions of parole/probation or conditional release. Also see D.C. Code 24–201.2, D.C. Code 24–205, D.C. Code 24–201.3, 28 DCMR 217.x

PURPOSE(S):

Information maintained in the system is used to assist the Court Services and Offender Supervision Agency (CSOSA), USPC and/or Superior Court in monitoring the compliance with conditions of release of parolees, probationers, and supervised releasees, in measuring adjustment to and progress under community supervision and in protecting the safety of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Member of Congress or congressional office staff member or D.C. Council member or D.C. Council office staff member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. To any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation to the extent necessary to accomplish their assigned duties.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To Federal, state, and local authorities participating in the JUSTIS database system through database access to limited information to permit a determination of an individual's status on parole, probation, or supervised release and the assigned supervision officer to the extent necessary for the accomplishment of the participating authorities' assigned duties. The participants in the JUSTIS database that will have limited access to CSOSA's SMART information are the Federal Bureau of Prisons, the D.C. Department of Corrections, the D.C. Superior Court, the Metropolitan Police Department, the D.C. Pretrial Services Agency, the United States Attorney's Office for the District of Columbia, the United States Marshals Service, and the United States Parole Commission.

F. To provide an information source for contract or treatment facilities that provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The SMART database and processing programs are hosted on servers, which are managed by CSOSA IT Staff. The system provides online data entry and query in a real-time fashion using preformatted input/output screens.

RETRIEVABILITY:

Information can be retrieved by name, DCDC number, PDID number, Social Security Number, FBI number, and Interstate Compact Number. 22

SAFEGUARDS:

The server room is locked; access to the servers are restricted and end users must have a valid User ID and password before they can gain access to the one processing program they have been authorized to use.

RETENTION AND DISPOSAL:

Information in this system will be destroyed 20 years after date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Technology Officer, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation services; (4) relatives, friends, and other community individuals; (5) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–12

SYSTEM NAME:

Recidivism Tracking Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under agency supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), type of supervision, offense code, docket number, source of information, pretrial release status, police service area and arrest and conviction information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track and detail all official incidents of recidivism by offenders under the jurisdiction of the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in paper format and electronically on a computer which is password protected.

RETRIEVEABILITY:

Information is retrieved by the name, DCDC or PDID number assigned to the individual.

SAFEGUARDS:

The electronic database is protected by a password and only authorized staff have access. Paper copies are maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender, (2) agency staff, (3) treatment facilities, (4) Federal, state and local law enforcement agencies, (5) U.S. Parole Commission and (6) Federal, state and local courts and court personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–13

SYSTEM NAME:

Freedom of Information-Privacy Acts System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals or organizations who have requested access to information pursuant to the Freedom of Information Act or Privacy Act; (2) individuals who have made a request to access or correct records pertaining to themselves; and (3) persons who, on behalf of another individual, have made a request to access or correct that individual's records.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records contain Freedom of Information Act and Privacy Act requests for CSOSA/PSA records requested and any other correspondence or internal memoranda related to the processing of these requests. Records will also contain such data as the name of requester, address of requester, subject of request. (2) Documents relevant to appeals and litigation under the Freedom of Information Act and Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a.

PURPOSE(S):

To assist CSOSA staff in carrying out their responsibilities under the Freedom of Information Act and the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Public information permitted to be released to the news media and the public may be made available unless it is determined that release of the specific information in the context of a

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particular case would constitute an unwarranted invasion of personal privacy.

B. Disclosure may be made to a congressional office. Member of Congress or member of the D.C. City Council in response to an inquiry made at the request of an employee, contractor, vendor or offender (current and/or former) employed by or under supervision of CSOSA and/or PSA.

C. Information may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency or for the purpose of consulting with that agency as to the propriety of access or correction.

D. Records may be disseminated to any appropriate Federal, state, local or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records.

E. Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record may be disclosed to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual requests are stored in a locked file cabinet. Automated information is contained on a password-protected computer.

RETRIEVABILITY:

Requests are retrieved and filed under the name and/or personal identifier of the requester or subject of the request.

SAFEGUARDS:

Access to records is limited to CSOSA staff who have a need for the records to perform their official duties. Request files are stored in a locked file cabinet.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual who corresponded with the agency. Requesters should also reasonably specify the record contents being sought. The address is the same as indicated in the Notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the individuals and/or companies making requests, the system of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

CSOSA–14

SYSTEM NAME:

Employment Profile, Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under agency supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervision information to include the police department identification number (PDID), DC Department of Corrections number (DCDC), social security number, phone number, address, conviction information, dates supervision begins and ends, education, restrictions, expenses, interests and needs of the offender.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track the employment status of offenders. This information is examined to assess the number of employment slots needed for offenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained electronically and manually.

RETRIEVABILITY:

Information can be retrieved by the name, social security number, PDID number or DCDC number.

SAFEGUARDS:

Electronic information is maintained on a password-protected computer. Manual information is maintained in a locked file cabinet in a secured office.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Justice Programs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender and (2) evaluation, observations and findings of agency staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–15

SYSTEM NAME:

Substance Abuse Treatment Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under the supervision of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), supervision status, date referred for treatment, social security number, FBI number, employment status, education level, date of birth, sex, race, reason for referral and drug test information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To assist staff in tracking offenders through the treatment continuum.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials unless prohibited by 42 CFR part 2.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained electronically and manually.

RETRIEVABILITY:

Information can be retrieved by the name of the offender or DCDC or PDID number assigned to the offender.

SAFEGUARDS:

Electronic information is stored on a password-protected computer.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g)

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of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–16

SYSTEM NAME:

Screener Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under CSOSA supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), social security number, date of birth, race, sex, type of supervision, offense code, age, education, home address, employment information, criminal history, history of substance abuse and level of supervision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track and detail all screeners (risk assessments) conducted on offenders under the agency's supervision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically at the University of Maryland, 4511 Knox Road, Suite 301, College Park, MD 20740 and paper copies are stored in a locked file and in the offender's supervision file.

RETRIEVABILITY:

Information can be retrieved by the name of the offender and the DCDC or PDID assigned to the offender.

SAFEGUARDS:

Paper copies are maintained in locked files in locked offices, accessible only by unique employee numeric code.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Justice Programs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation services; (4) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–17

SYSTEM NAME:

Office of Professional Responsibility Record.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of Professional Responsibility (OPR) will maintain records on the following categories of individuals:

(1) Individuals or entities who are or have been the subject of inquiries or investigations conducted by OPR including current or former employees; current and former consultants, contractors and subcontractors with whom the agency has contracted and their employees; and such other individuals or entities in association with CSOSA as it relates to alleged violation(s) of CSOSA's rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity or physical facilities of CSOSA; and (2) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by CSOSA or by other agencies, by constituent units of CSOSA, or by members of the general public as potential subjects of or parties to an investigation under the jurisdiction of OPR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including: (1) Letters, memoranda and other documents citing complaints of alleged criminal, civil or administrative misconduct; and (2) Investigative files which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The Office of Professional Responsibility (OPR) for the Court Services and Offender Supervision Agency (CSOSA) will maintain this system of records in order to conduct its responsibilities pursuant to 5 U.S.C. 301. The OPR is directed to conduct and supervise investigations relating to programs and operations of CSOSA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records in this system are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts and in conducting related criminal prosecutions, civil proceedings or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

A. In the event that records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or other pursuant thereto, or if records indicate a violation or potential violation of a contract, the relevant records may be disclosed to the appropriate agency, whether Federal, state, local, foreign or international, charged with the responsibility of investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation or order, or with enforcing such contract.

B. A record may be disclosed to a Federal, state, local, foreign or international agency, or to an individual or organization when necessary to elicit information which will assist an investigation, inspection or audit.

C. A record may be disclosed to a Federal, state, local, foreign or international agency maintaining civil, criminal or other relevant information if necessary to obtain information relevant to an OPR decision concerning the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance or revocation of a license, grant or other benefit.

D. A record may be disclosed to a Federal, state, local, foreign or international agency in response to its request in connection with the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, letting of a contract or the issuance or revocation of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

E. A record may be disclosed to a Member of Congress or D.C. City Council member or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and the request of, the individual who is the subject of the record.

F. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

G. To provide relevant information to Federal, local, state and foreign courts, court personnel and probation officials.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets in a locked, fireproof safe and electronically on a password-protected computer.

RETRIEVABILITY:

Entries are arranged numerically and/or alphabetically and are retrieved with reference to the surname of the individual covered by this system of records or the assigned case number.

SAFEGUARDS:

Information and/or manual records are stored in a locked, fireproof safe and office automation equipment in a secured office and accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of 10 years after final review.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Professional Responsibility, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempted from this requirement

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pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing. Include in this request the full name of the individual involved, his or her current address, date and place of birth, notarized signature, and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall clearly and concisely state which information is being contested, the reason for contesting it and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of the investigations; individuals with whom the subjects of investigations are associated; current and former CSOSA employees; officials of Federal, state, local and foreign law enforcement and non-law enforcement agencies; private citizens, witnesses; confidential and nonconfidential informants; and public source materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Director has exempted this system from subsections (c)(3) and (4), (d), (e)(1) through (e)(3), (4)(H), (5) and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–18

SYSTEM NAME:

Sex Offender Registry.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former sex offenders, sentenced by a court in the District of Columbia and those offenders sentenced as a sex offender in other jurisdictions who live, work or attend school within the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and identifying information, including, but not limited to, photograph, fingerprints, physical description and identifying marks or characteristics, aliases, identifying numbers assigned by law enforcement agencies, home, work and school address, type of automobile owned by offender, criminal history, crime for which offender was convicted, the official version of the offense and the presentence report, the sentence that was imposed and when the offender was released into the community.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and sections 11271–11280 as amended by the District of Columbia Appropriations Act, 2000, and the District of Columbia Sex Offender Registration Act of 1999, 24 DC Code Sections 1117–1137.

PURPOSE(S):

Pursuant to delegation by Congress, the Court Services and Offender Supervision Agency will exercise the powers and functions for the District of Columbia relating to sex offender registration as provided in the District of Columbia Sex Offender Registration Act of 1999.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an agency investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel, pretrial, parole and/or probation officials to the extent necessary to accomplish their assigned duties.

G. To provide information to Federal, state and local law enforcement agencies responsible for monitoring, enforcing and/or implementing a Federal, state or local statute or regulation related to sex offenders.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in individual file folders and electronically on a password-protected computer.

RETRIEVABILITY:

Information can be retrieved by the name and/or personal identifier assigned to the offender.

SAFEGUARDS:

Information is maintained manually in a locked file cabinet and electronic information is maintained on a password-protected computer with limited access.

RETENTION AND DISPOSAL:

Records will be maintained until the death of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal parole or probation services; (4) Federal, state and local courts or court personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–19

SYSTEM NAME:

Drug Free Workplace Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The two systems (Drug Free Workplace Program Files and Drug Free Workplace Program Database) maintain records of each individual who has provided a urine specimen for testing. It also includes employees determined by the Agency to fill a designated testing position subject to random urinalysis testing as well as individuals who have volunteered to be part of the random pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record contains the name, social security number, date of birth as well as the collection information, reason for testing, types of drugs tested for and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564, Drug-Free Federal Workplace.

PURPOSE(S):

The information is used to make employment or continued employment determinations. The database is used to randomly select individuals for urinalysis testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of an employee or contractor employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is either stored in locked bar file cabinets fitted with combination locks or stored on a stand-alone computer in a room which is protected by a control access device.

RETRIEVABILITY:

The information is retrieved by the name of the individual or by the assigned drug test control number.

SAFEGUARDS:

Information is limited to those agency employees with a need-to-know and is stored in an office protected by a control access device.

RETENTION AND DISPOSAL:

Information is maintained in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure

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above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–1

SYSTEM NAME:

Automated Bail Agency Database (ABA DABA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The database is housed at the Metropolitan Police Department, 300 Indiana Avenue, NW., and the application is used at the following locations: 633, 601, 500 and 300 Indiana Avenue, NW., and 333 Constitution Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes defendants' personal, health and demographic information, criminal histories, substance abuse information and defendants' personal references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, Sections 11231–11234 and Sections 11271–11280.

PURPOSE(S):

Information is used to set bail, provide substance abuse treatment, monitor compliance with release conditions, report compliance with and violations of release conditions and assist with sentencing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office member in response to an inquiry made at the request of a current or former offender under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information, except substance abuse and mental health treatment information, relating to D.C. defendants to Federal, local and state courts, court personnel, prosecutors, defense attorneys and/or corrections, parole, other pretrial and probation officials.

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is currently stored on the Metropolitan Police Department's mainframe.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases, PDID, Bail Agency ID (BAID) number, case docket number and Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

Information is maintained in a building which has 24-hour security.

RETENTION AND DISPOSAL:

Information will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant; (2) Federal, state and local law enforcement agencies; (3) local, state and Federal corrections; (4) Federal, state and local probation, parole and pretrial services; (5) relatives, friends, and other community individuals; (6) evaluation, observations and findings of agency staff, treatment staff and other social service agencies/staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–2

SYSTEM NAME:

Drug Test Management System (DTMS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency (PSA), 633 Indiana Avenue, NW., Washington, DC 20004. The main server is located at 500 Indiana Avenue, NW., Room C–225 and the application is on workstations at all PSA and Community Supervision Services locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and on probation and parole for local offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Substance abuse testing and treatment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and Sections 11271–11260 and 5 U.S.C. 301.

PURPOSE(S):

Information is used to determine bail, make recommendations for sentencing, provide substance abuse treatment, monitor compliance with release conditions and report compliance with and violations of release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants and offenders to Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole and other pretrial officials (except substance abuse and mental health treatment information).

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney of record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is maintained on a computer which is password-protected and accessed by the personal identifier assigned.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases and PDID, temporary ID numbers and by an "A" number.

SAFEGUARDS:

Information is maintained on a password-protected computer.

RETENTION AND DISPOSAL:

Records will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant and Offender, (2) treatment facility staff, (3) Federal, state and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–3

SYSTEM NAME:

Interview and Treatment Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004, 500 Indiana Avenue, NW., 601 Indiana Avenue, NW., 300 Indiana Avenue, NW., and 333 Constitution Avenue, NW.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview information, criminal history and treatment assessments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is used to determine bail, provide substance abuse treatment, monitor compliance with release conditions and report compliance with and violations of release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel, prosecutors, defense attorneys, and corrections, probation, parole and/or other pretrial officials except substance abuse and mental health treatment information.

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

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DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files (paper copies) are maintained in locked file cabinets.

RETRIEVABILITY:

Information can be retrieved by the name of the individual or by the Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

Files are kept in locked drawers and behind locked doors.

RETENTION AND DISPOSAL:

Records will be retained for 5 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant, (2) Federal and local law enforcement agencies, (3) family and friends, (4) substance abuse treatment and medical facilities, and (5) Federal and local courts, (6) Federal, state and local corrections, pretrial, probation and parole agencies, and (7) evaluation, observations and findings of agency staff, treatment staff and other social service agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–4

SYSTEM NAME:

Payroll Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, social security number, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 and 5 CFR part 550.

PURPOSE(S):

Document employee salary, tax and related information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by PSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where PSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place of residence, place of employment or both.

I. To disclose information to the Department of Agriculture, National Finance Center, to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for PSA.

N. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders.

RETRIEVABILITY:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

The information is maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2 and the Code of Federal Regulations. The period of retention will not exceed 6 years and 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency, and (2) Information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–5

SYSTEM NAME:

Time and Attendance Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, social security number, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by PSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where PSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To disclose information to the Department of Agriculture, National Finance Center to effect maintenance of pay and leave.

I. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for PSA.

J. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual folders and electronically on a computer and computer disks.

RETRIEVABILITY:

Information can be retrieved by the name and/or social security number of the individual.

SAFEGUARDS:

Information is maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2 and the Code of Federal Regulations. The period of retention will not exceed 6 years and 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employee; (2) current or former Time and Attendance personnel; (3) current or former employer; (4) National Finance Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–6

SYSTEM NAME:

Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Pretrial Services Agency (PSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and (2) Individuals charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and on probation and parole for local offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes defendants' personal, health and demographic information, criminal histories, substance abuse information to include assessments, testing and treatment, defendants' personal references and interview information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and sections 11271–11260; 5 U.S.C. 301 and DC Code 23, sections 1301–1309.

PURPOSE(S):

Information is used to set bail, provide substance abuse treatment, monitor and supervise compliance with release conditions, report compliance with and violations of release conditions and assist with sentencing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants and offenders to Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole and other pretrial officials (except substance abuse and mental health treatment information).

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored electronically. Only authorized personnel have access to the information.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases and PDID, temporary ID numbers, "A" number, Bail Agency ID (BAID) number, case docket number and Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

The server room is locked; access to the server is restricted and end users must have a valid User ID and password before they can gain access.

RETENTION AND DISPOSAL:

Information will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendants; (2) Federal, state and local law enforcement agencies; (3) local, state and Federal corrections; (4) Federal, state and local probation, parole and pretrial services; (5) relatives, friends, and other community individuals; and (6) evaluation, observations and findings of agency staff, treatment providers and other social services agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 02–6092 Filed 3–14–02; 8:45 am]

BILLING CODE 3129–01–P

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Federal Register

Friday,
March 15, 2002

Part IV

Department of Housing and Urban Development

Public Housing Assessment System (PHAS); Notice Adopting Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators; Notice

VOL
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ISS
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MR
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4710–N–05]

Public Housing Assessment Systems (PHAS); Notice Adopting Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces to Public Housing Agencies (PHAs) and the public that PHAs with fiscal years ending September 30, 2001, through and including September 30, 2002, will be assessed under the PHAS in accordance with interim scoring procedures described in notices published in the **Federal Register** on November 26, 2001. This notice also addresses public comments received in response to a request for comments in the November 26, 2001, notices. The Department considered all comments but has decided to make no changes to the interim scoring procedures in response to the public comments. This notice also advises that if the Department determines that the effective period of the interim scoring processes should be extended beyond September 30, 2002, the Department will notify PHAs and the public by notice published in **Federal Register**.

DATES: *Effective Date:* March 15, 2002.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center of the Office of Public and Indian Housing, Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, Telephone Technical Assistance Center as (888) 245–4860 (this is a toll free number) or Judy Wojciechowski, Director of PHAS Operations, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932 extension 3464. Persons with hearing or speech impairments may access these telephone numbers via TTY by calling the Federal Information Relay Service at (800) 887–8339. Additional information is available from the Real Estate Assessment Center Office of Public and Indian Housing Web site at *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2001, HUD published for public comment notices that proposed an interim PHAS scoring methodology that would be applicable to PHAs with fiscal years ending September 30, 2001, and continuing for up to one year to include PHAs with fiscal years ending September 30, 2002. For this interim assessment period, the Department advised that it proposed to make scoring changes to two of the four PHAS assessment indicators: the Financial Condition Indicator and the Physical Condition Indicator. Detailed information about these scoring changes was provided in the notices published on November 26, 2001. Essentially, the Department proposed that for physical condition scoring purposes during the interim assessment period, the inspectable areas will be reduced from five or two. The weights assigned to the three unscored inspectable areas will be redistributed over the two remaining inspectable areas. For financial condition scoring purposes, the Departmental proposed to remove the use of peer groupings from two of the financial components. The Physical Condition Indicator Scoring Process notice was published in the **Federal Register** at 66 FR 59084, and the Financial Condition Indicator Scoring Process notice was published in the **Federal Register** at 66 FR 59126.

The Department solicited public comment on the interim scoring procedures. Eight comments were received in response to the public comment solicitation. The Department carefully considered all comments and has decided to make no changes to the scoring methodologies as a result of the comments.

Accordingly, with the publication of this notice, the Department advises that the PHAS is effective beginning with PHAs having a fiscal year end of September 30, 2001, and PHAs will receive an overall PHAS score based on the four PHAS indicator scores. PHAs with fiscal years ending September 30, 2001, through and including September 30, 2002, will be scored for the Physical Condition Indicator and the Financial Condition Indicator in accordance with the scoring procedures described in the notices published on November 26, 2001. If the Department determines that the effective period of the interim scoring processes should be extended beyond September 30, 2002, the Department will notify PHAs and the public by notice published in the **Federal Register**.

II. Discussion of the Public Comments

Of the eight commenters on the November 26, 2001, notices, five of the commenters were PHAs and the three other commenters were representatives of PHAs. One PHA commenter supported the interim scoring methodologies and the changes to the Physical Condition and Financial Condition Indicators. The other commenters had comments that are discussed below.

Comment. PHAS should not be implemented at this time, except on an advisory basis.

One commenter stated that it is not understandable or acceptable to subject PHAs to scores and potential penalties using an assessment tool that is still under development. For the system to be credible, the system must not continuously redefine itself as public resources are being expended in PHAs' efforts to comply. HUD should continue to implement the PHAS on an advisory basis while HUD continues to work with PHAs, resident organizations and other interested parties to refine the system or find another one that will work. The commenter stated that even in advisory form, the PHAS is a valuable tool for identifying areas that may need improvement. This commenter also stated that the system was overly dependent on the subjectivity of the inspectors.

Another commenter stated that the notices do not improve the PHAS enough to warrant issuance of official scores to PHAs, and there should have been an additional year of advisory scores, under which inspections would have continued and, more importantly, exigent health and safety violations would have been identified and remediated.

Response. While HUD acknowledges that the assessment system can be enhanced, HUD believes that PHAS, as currently amended, is useable for an interim period. The Office of Inspector General (OIG) and the General Accounting Office (GAO) have both indicated that the Public Housing Management Assessment Program (PHMAP), on which the PHAS Management Operations Indicator is substantially based, is not a reliable means of assessing PHA performance. Further, both the OIG and GAO indicated that HUD, as required by statute, must determine the condition of public housing to ensure that funds provided by Congress are being used to provide decent, safe, and sanitary housing that is in good repair. This interim scoring methodology provides for technical reviews, database adjustments, and appeals of overall scores and designation.

Comment. In the Physical Condition Indicator, the reduction of the number of inspectable areas and redistribution of the weights results in unfairness.

Two commenters stated that the notice shifts an inordinate amount of weight to Dwelling Units. One commenter stated that under the interim physical condition scoring procedure, all five areas will be inspected, scored and the inspection data captured in the system, but for assessment purposes, a property's score, and the PHA's overall Physical Condition Indicator score, will be derived only from the deficiencies observed in Building Systems and Dwelling Units. The redistribution of the area weights from Site, Building Exterior, and Common Areas to Building Systems and Dwelling Units and the continued use of a 100 point scale for property scores means heavier weights will be applied to Dwelling Unit items such as a missing sink stopper and PHA's will be "further penalized."

Another commenter stated because the interim scoring process will base the score of the physical assessment on Dwelling Units (64%) and Building Systems (36%), ignoring the scores received for Site, Building Exterior and Common Areas, the "adjusted" normalized weight will shift most of the weight to Dwelling Units for properties that have limited Building Systems components. This PHA estimated that under the interim scoring assessment, the "adjusted" normalized weight for its family developments will shift to 73% for Dwelling Units and 27% for Building Systems.

The commenter further stated that to inspect an entire property and have the "official scores" be uniformly based on only two components, then regardless of the physical and structural considerations of each property, the official score will not provide an accurate reflection of each property's true condition. Under the new formula, this PHA commenter stated that its 2001 Physical Condition Indicator score could be reduced by 10 points—enough so that the exact physical considerations currently rated "standard" may become "at risk."

The commenter also stated that there appears to be a bias toward properties with building systems indicative of East Coast and Midwest housing. However, on the West Coast, the townhouse style properties are spread across acres of land and lack the expected level of building system components as other public housing properties. As a result, shifting the scoring to only Dwelling Units and Building Systems does a disservice to public housing in Southern California.

One commenter stated that PHAs should have the option of being scored on all five physical condition criteria. By only scoring two areas, the notice sends the disturbing message to managers that only those two areas are of importance and the other areas need not be accorded the same level of maintenance. By not according the agency the option to be scored on all five areas, human nature dictates that non-scored areas will experience a decline in attention.

Response. Both HUD and the public housing stakeholders realized that compromises would be necessary in order to proceed with the assessment of PHAs during the interim period. Most PHAs will fare better with the proposed scoring changes, although some will not fare as well.

During the effective period of the interim scoring process, inspectors will inspect all five inspectable areas and record all deficiencies observed. While PHAs will be provided with a complete inspection report reflecting all observed deficiencies, they will be scored only on Dwelling Units and Building Systems. This will enable PHAs to effectively plan short-term maintenance and long-term modernization needs. Accordingly, the inspection does not ignore or diminish the importance of any inspectable area or any deficiency. Both HUD and significant stakeholders believe that this compromise will best serve the interest of the PHAs, the residents, and HUD.

HUD appreciates the suggestion that PHAs be given the option of being scored on all five areas. However, the time, effort and cost to the government of providing this option would not be warranted given the interim nature of these scoring changes.

Comment. Certain health and safety violations should not be scored.

Two commenters asked that the notice specifically state that health and safety violations found in the three areas not scored (Site, Building Exterior, and Common Areas) will not be part of the physical score under the interim assessment process.

Response. In the November 26, 2001, Physical Condition Scoring Process notice (66 FR 59084), the Department stated, "[t]he inspector also will record and report all health and safety deficiencies in each of the five inspectable areas. However, the inspection score for each property will be based only on the information reported by the inspector for the two inspectable areas, Building Systems and Dwelling Units, after the redistribution of the areas' weights for the three non-included areas." Consequently, HUD believes that this issue was addressed in the November 26, 2001, Physical Condition Scoring Process notice.

Comment. Revisions should be made to the overall physical inspection process through confirmatory reviews of inspections, more use of proportionality, and rights to appeal.

Three commenters asked for revisions in the physical inspection process. One commenter argued that, aside from the requirement that PHAs inspect their units annually, there should be a confirmatory inspection by an outside agency chosen by the PHA from a list of firms "recognized" by HUD. Physical inspections should be limited to a set percentage of PHA units to validate the sample, and, when more than one unit is involved, should consider "proportionality with regard to issues such as fencing" (i.e., measuring the overall impact of a deficiency as a percentage, such as percentage of total surface area affected by a deficiency).

The commenters stated that scoring systems must be flexible so they meet the needs of large and small PHAs. Physical inspections should result in numeric scores with a right of appeal, and not a pass-fail grade. Two other commenters agreed with the idea of a confirmatory inspection, stating, "there is a definite need for a third party confirmation audit." These two commenters also stated that the frequency of inspections is not addressed and also not addressed are possible solutions for PHAs that fail inspections.

Response. HUD declines to accept the suggestion that there should be an outside agency to conduct a confirmatory inspection. The Department has several processes in place for inspection review. HUD has its own Quality Assurance inspectors that review the performance of contract inspectors. HUD also has engineers who review the inspection information when it is uploaded to HUD. The PHAS regulation provides for technical reviews, database adjustments and appeals of the overall PHAS scores and designation. As a result, HUD believes that there are adequate procedures available to PHAs to ensure the accuracy of their scores. Further, due to financial constraints, confirmatory reviews are not feasible.

At this time, HUD also declines to adopt the suggestion that units sampled should be limited to a set percentage of PHA units, and, when more than one unit is involved, should consider

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proportionality with regard to issues such as fencing.

HUD chose instead to use a statistically valid random sample method rather than such set percentages at the inception of the PHAS. Educational, scientific and private communities use this methodology when attempting to draw conclusions about a given subject matter. However, in future consultations with public housing stakeholders, HUD intends to consider alternative inspection methodology, which may include the further use of proportionality. With regard to the frequency of the inspections, the PHAS regulation provides for an annual assessment of a PHA, including the physical condition of the PHA's housing stock. The November 26, 2001, physical condition scoring notice provides that where a PHA's score is equal to or greater than 24 points out of the total of 30 points for the Physical Condition Indicator, the PHA will be inspected every other year. If the PHA's Physical Condition Indicator score is less than 24 points, the inspection frequency will be annually. The PHAS regulation does not provide for a failing score for individual inspections. Instead, the regulation assesses the overall condition of all of a PHA's properties. The regulation establishes a threshold of less than 18 points out of a total of 30 points before a PHA is designated as being in substandard physical condition.

It is not the intent of the Department either through its scoring notices or the PHAS regulation to offer possible solutions for PHAs that are designated to be in "substandard physical condition." Rather, it is the purpose of PHAS to provide a measuring tool so that HUD and PHAs can monitor the condition of housing stock and take appropriate action where necessary to ensure that residents are living in housing that is decent, safe, sanitary, and in good repair. The reasons for a PHA to receive a substandard designation vary from PHA to PHA. Once designated to be in "substandard physical condition," the PHA and HUD analyze the root causes for the designation and determine what corrective actions need to be taken which will then be embodied in a Memorandum of Agreement in accordance with the PHAS regulation.

Comment. Clarify the applicable physical inspection standard.

Three commenters stated that the notice does not adequately address physical inspection standards. One commenter stated that Housing Quality Standards (HQS) should be the minimum standard, unless there is a local code that has higher standards, in which case the local code should prevail. Two commenters stated "[i]n spite of the proposed rule change, we are still in a quandary on the inspection standards—HQS, UPCS, local codes, the "higher" of HQS than local codes."

Response. The scoring notice change does not alter the required inspections standard for PHAs. The UPCS regulation (codified at 24 CFR part 5), and the PHAS regulation (codified at 24 CFR part 902) clearly establish the UPCS as the HUD physical condition standard for public housing. HUD has long required PHAs to comply with federal standards as well as applicable local code in the development and modernization of public housing. The standard in the industry, when there are two codes at variance, is to use the more stringent standard. This was the case under the annual unit and system inspection component of PHMAP (24 CFR 901.30(d)), the predecessor to PHAS. HUD expects PHAs during this interim period to continue with this practice.

Comment. Allow PHAs time to remediate problems.

Two commenters "strongly recommended" that there should be a period of time for low scoring PHAs to remediate problems before HUD imposes consequences.

Response. The PHAS regulation requires that overall troubled PHAs (and troubled-substandard in a single indicator) be referred to the Troubled Agency Recovery Center (TARC). The TARC will enter into a Memorandum of Agreement with the troubled agencies outlining corrective actions to be taken within specified time frames. Further, the PHAS regulation permits the PHA to petition for removal of the troubled designation. A petition for removal can occur if the conditions that gave rise to the troubled designation have been cured. While HUD believes that these procedures provide adequate opportunities for remediation, this issue may be further considered as HUD continues to work with stakeholders in determining what long-term evaluation methodology will be adopted.

Comment. In the Physical Condition Indicator, certain items should not be scored

A commenter stated that only significant items that rise to the level of code violations should be scored. This commenter also stated that there should be no deductions for missing tub stoppers or non-functional defects. Tenant-caused defects should not result in point loss, but should be noted for correction or treated like smoke detectors when the batteries have been removed.

Three commenters stated that there should be no deductions for units undergoing modernization. Along similar lines, two other commenters stated that "mitigating circumstances (e.g., tenant damages) should be taken into account." Yet another commenter found the number of deficiencies, the severity of them and the weights and criticalities in the units and building systems to be problematic. This commenter stated, "[t]here are still too many tenant-caused damages and too many minor "problems" in units that are scored." As a result, the commenter questions whether the score is a fair and accurate representation of the housing stock.

Response. The U.S. Housing Act of 1937 requires that public housing be decent, safe and sanitary. The Act further requires that HUD determine the extent to which the PHA is providing basic acceptable housing conditions. HUD does not believe that the Act intended for HUD's determination to be limited to local housing code or functionality. Local codes vary throughout the nation. In some cases, local code is nonexistent or at an extremely low level. Functionality is a question of whether a particular inspectable item works or not. HUD does not believe that functionality alone is sufficient to meet either the statutory requirement or to assist PHAs and HUD in managing the inventory of approximately 14,000 public housing developments around the country. Accordingly, HUD established the federal standard, the UPCS, to determine compliance with this statutory requirement. HUD acknowledges that improvements can be made and will seek to make them in a permanent methodology. HUD appreciates the concern regarding resident-caused damage. However, the statutory requirements obligate HUD to determine the condition of the properties and do not exempt various causes of the deficiencies from decent, safe and sanitary housing that is in good repair. Reasons for the condition of a property and the attendant remedial actions should be the subject of further review and analysis by the PHA and HUD Field Offices. The PHAS regulation already exempts vacant units undergoing modernization from the inspection. However, where units are occupied, HUD has the obligation to determine if the resident is living in decent, safe and sanitary housing that is in good repair. The PHAS regulation does provide for a database adjustment for those elements when modernization is in progress.

Comment. The Notices fail to address problems with the PHAS appeals process.

Two commenters asked that HUD "codify * * * in writing" that, since HUD can no longer commit to confirmatory reviews as had been "agreed" because of lack of manpower, instead appeals would be reviewed broadly and a PHA can make its case to the Assistant Secretary for Public and Indian Housing. One commenter stated that it was "disappointed" that there would be no "common-sense" review, and suggested that was another reason the PHAS scores should remain advisory.

Response. Although confirmatory reviews and "common sense" appeals were discussed during the recent meetings with stakeholders, HUD subsequently found it to be impractical to implement these items during the interim assessment period. As a result, the Department will continue to accept and review requests for technical reviews, database adjustments and score and designation appeals per the PHAS regulation. Prior to responding to the PHA, the Assistant Secretary for the Office of Public and Indian Housing will ensure that all appeals will continue to be given due consideration. While the interim scoring procedures are in effect, the Department is willing to consider improvements to the evaluation methodology, including the appeal process.

Comment. Incentives for PHAs designated as high performers should be provided.

Four commenters stated that there should be some form of reward for high performers. One commenter stated that the scores must be tied to a system of rewards and there should be regulatory waivers granted to high performers in addition to capital assistance under section 9(j)(3)(C) of the U.S. Housing Act of 1937 (which provides for the reallocation of certain Capital Funds to high performing PHAs). Two commenters stated generally that the notice fails to address the concept of rewards for high performers, which they state was at the heart of changing the old assessment system. One commenter stated that the notice was silent as to whether high performer status would entitle PHAs to all the privileges defined by the Department, including additional Capital Funds, and that this entitlement should be stated in writing. This commenter urged that Capital Funds be distributed based on high performer status as soon as technically possible.

Response. The current PHAS regulation provides incentives for high performers and PHAs will be afforded those incentives. Further, the Capital Fund Program rule provides incentives for high performers. The interim scoring notice does not modify or change the implementation of incentives to high performers. Accordingly, PHAs that are designated as high performers during the period when the interim scoring notices are in effect will receive additional capital funds as a result of their performance, as provided by the Capital Fund Program rule. HUD will notify PHAs of the schedule upon which these funds will be provided, which depends in part on administrative considerations. The Department is willing to consider the issue of additional regulatory waivers during the long-term review of changes to the evaluation methodology.

Comment. The changes to the Financial Condition Indicator may change a PHA's designation.

One commenter stated that the constant change to the financial components, specifically Current Ratio (CR) and number of Months Expendable Fund Balance (MEFB), "may establish a perception that HUD is setting up housing authorities to fail." The commenter also stated that the changes to CR and MEFB under the interim scoring process may cause a PHA that was a "high performer" in 2001 to be designated as a "standard performer" or "troubled performer" in 2002, regardless of a change in actual performance.

Response. The Department disagrees that there have been substantial changes to the Financial Condition Indicator. The changes that have been made were either to improve the method of scoring based on industry discussions or update the thresholds based on current data.

Under the interim financial scoring process, the thresholds for the components are lowered so that a PHA with a CR or MEFB value equal to or greater than 1.0 will receive the full 9.0 points available for each component. As a result of this change, a PHA's performance designation improved in most cases, and in the remaining cases, the PHA's performance designation stayed the same.

Comment. Financial peer groupings should be eliminated.

Four commenters stated that peer groupings should be eliminated from the financial indicators and that HUD should use a more constructive measure to assess financial condition. One commenter further stated that all groupings should be abandoned and the focus should be on each PHA's individual performance given the measures by which the management assessment is based.

Response. HUD has conducted extensive research based on the total number of entity-wide units operated to validate the use of peer groups in assessing a PHA's financial condition. The research shows that PHAs of different sizes have statistically different values under the financial indicator components. In addition, financial rating services consider size and market-share as a measure of diversification, i.e., risk management. Based upon this information, HUD believes that it is appropriate to measure certain financial indicator components based on peer groups because it provides for a more accurate overall financial assessment of PHAs. However, this issue will be reconsidered as HUD works with stakeholders in determining what the long-term evaluation methodology will be.

Comment. Financial assessments should not be "entity-wide."

Three commenters stated that HUD should not assess a PHA's financial condition on an entity-wide basis. Two commenters stated "entity-wide" assessments for some PHAs with sizeable Section 8 programs result in a lower Occupancy Loss component score. The commenters went on to say "[t]he emphasis should be on a PHA's ability to manage its public housing dwelling units that it has control over, not the housing market in its jurisdiction." One commenter also noted that, "for these sub-indicators, there are (sic) no statutory authority for HUD to impose these conditions."

Response. HUD has considered whether a PHA should be financially evaluated on an entity-wide basis and has determined that the overall financial condition of a PHA provides a valid basis to assess its long-term viability and financial performance. The Department is concerned about a PHA's ability to manage non-public housing grant and subsidy programs, as well as other federal and non-federal sources of funding. However, other options may be explored as HUD considers permanent changes to the assessment system.

With reference to the statutory requirements, HUD has the authority to assess any factors it determines appropriate in accordance with section 6(j)(1)(K) of the U.S. Housing Act of 1937, as amended. The Single Audit Act and OMB Circular A–133 require entity-wide audits of the financial statements of PHAs receiving federal funds.

Comment. The financial review should be limited to the independent audit.

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One commenter stated that the financial review should be "limited to the independent audit and the data that HUD draws from the Financial Data Schedule." There should be no other requirements included in the financial review.

Response. HUD understands this comment to mean that PHAs should only be required to submit an audited financial statement and not submit both an unaudited and an audited financial statement.

As required by the Single Audit Act and OMB Circular A–133, HUD requires PHAs to submit audited financial statements nine months following the close of the PHA's fiscal year-end. However, there may be information in the unaudited financial statement that would assist HUD in monitoring a PHA's financial health. Therefore, HUD will continue to require both submissions.

Comment. Business practice dictates that scores of less than one for CR and MEFB are unacceptable.

One commenter stated that "good business practice dictates that an authority has sufficient current assets to cover current liabilities and adequate reserves to operate independently of HUD, if circumstances should warrant." In addition, the commenter stated that "it might be considered harsh to penalize a housing authority zero points for scoring less than one on either current ratio or number of months expendable fund balance; however, sound business principles indicate a score of less than one is unacceptable."

Response. HUD agrees that sound business principles indicate a value of less than one on the CR or MEFB is unacceptable. As a result, under the interim scoring process, a value of less than one on the CR component would result in a CR score of zero. The CR component measures the cash liquidity of a PHA by dividing current assets by current liabilities. This component predicts whether or not the PHA can meet its current obligations, therefore a PHA with a CR value of less than one (i.e., when current liabilities are greater than current assets) would pose a financial risk because it may be unable to cover its current obligations and thus should merit a score of zero for the CR component.

Similarly, the MEFB is a viability measure of a PHA's ability to operate using primarily its net available, unrestricted resources without reliance on additional funding. This component compares the net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses and the repayment of operating debt principal can be covered with currently available, unrestricted resources. Therefore, a PHA with a MEFB value of less than one would pose a financial risk because it may be unable to cover its operating expenses using its reserves and thus should merit a score of zero for the MEFB component.

Comment. Concur with changes to interim scoring for the Financial Condition Indicator.

Four commenters concurred with the interim scoring changes for the Financial Indicator. In particular, they concurred with HUD's decision to use pass/fail when scoring the components CR and MEFB, rather than scoring these two components based on percentiles and peer grouping.

Response. The Department appreciates the commenters' agreement with these changes.

Comment. Indicate essential elements in the PHA evaluation system.

One commenter stated that the interim assessment processes should indicate which elements are essential in the public housing evaluation system.

Response. The Department believes that the four indicators that comprise the PHAS are the essential elements in an overall assessment of public housing. As stated in the November 26, 2001, Introduction Notice (66 FR 59080), these four essential elements are the: (1) Physical condition of properties; (2) financial condition; (3) management operations; and (4) resident's assessment through a survey. Since this information is in the current PHAS regulation, no change to these notices is required.

Comment. Reduce the management reporting requirements, in particular the drug elimination program information.

One commenter stated that the management assessment indicator should be retained but the reporting requirements lessened, and in particular, the information on the drug elimination program that Congress no longer funds.

Response. The Department is not considering changes to the Management Operations Indicator for the period when the interim scoring notices are in effect, but has committed to continue to meet with public housing stakeholders during this time to further discuss evaluation methodologies and the scoring processes. In these meetings, the Department is willing to consider the drug elimination reporting requirements under the Management Operations Indicator.

Comment. Modify the resident survey questions and include the property address with the responses.

One commenter suggested that the Department retain the current questions in the Customer Service and Satisfaction Survey and allow PHAs to insert five to ten additional questions about local issues. The commenter also stated that the resident responses should indicate the resident's address in order for the PHA to deal with the responses.

Response. While the Department is not making changes to the Resident Service and Satisfaction Indicator during the period when the interim scoring notices are in effect, the Department has committed to continue to meet with public housing stakeholders to further discuss the evaluation methodologies. In these meetings, changes to the resident survey will be discussed. In November 2001, the Department began reporting resident survey results to PHAs on the property level. This provides the PHA with the ability to more specifically respond to resident concerns while at the same time maintaining the residents' anonymity, which is important because of privacy concerns.

III. Adoption of Interim Physical Condition and Financial Condition Scoring Procedures Without Change

The Department appreciates the public comments submitted on the November 26, 2001, notices. For the reasons discussed above in Section II of this notice, the Department adopts the interim physical condition and financial condition scoring procedures without change.

Dated: March 8, 2002.

Michael Liu,

Assistant Secretary, Public and Indian Housing.

[FR Doc. 02–6196 Filed 3–14–02; 8:45 am]

BILLING CODE 4210–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Friday,
March 15, 2002

Part V

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

Risk-Based Capital; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA23

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is amending appendix A to subpart B of 12 CFR part 1750 Risk-Based Capital. These amendments modify provisions relating to counterparty haircuts, multifamily loans, and refunding and make several technical adjustments and corrections. These amendments are intended to refine the stress test model to tie capital more closely to risk.

DATES: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Leonard Reid, Associate Director, Office of Risk Analysis and Model Development, telephone (202) 414–3754 (not a toll-free number), or David Felt, Deputy General Counsel, telephone (202) 414–3750 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test (Rule) on September 13, 2001, which formed the basis for determining the risk-based capital requirement for the Federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1] The risk-based capital stress test set forth in the Rule simulates the performance of each Enterprise's assets, liabilities, and off-balance-sheet obligations under severe credit and interest rate stress for a period of ten years (stress period). The stress test projects rates of default and prepayment for the mortgages guaranteed by the Enterprises, as well as cash flows from these and other assets, liabilities, and off-balance-sheet obligations. Using these cash flows, the stress test produces monthly balance sheets for the 120 months of the stress period in order to determine the amount of starting capital that would be necessary to maintain positive capital during the stress period. Thirty percent of the amount of capital so determined is then added to that amount to protect against management and operations risk. By statute, the Rule becomes fully enforceable on September 13, 2002, one year after it was issued.[2]

On December 18, 2001, OFHEO published a notice proposing to amend certain provisions in the risk-based capital stress test (AmendNPR).[3] The proposed amendments related to counterparty haircuts, multifamily loans, and refunding and included several technical adjustments and corrections. The purpose of the proposed changes was to improve the Rule's measurements and formulas to tie capital more closely to risk and to ensure that the Rule supports the safety and soundness regime created by the 1992 Act. OFHEO stated that such a proposal is consistent with OFHEO's intention to review, on an ongoing basis, the operation of the stress test and its various components and to evaluate the need for revisions and improvements. Also, OFHEO committed to act expeditiously to remedy any technical and operational issues that arise during the one-year implementation period during which time the capital requirement under the Rule is not being enforced.

OFHEO received 48 comments on the AmendNPR. Commenters included Freddie Mac; Fannie Mae; housing and financial trade associations; financial services companies, including mortgage insurance companies; housing advocacy groups; State housing authorities; academics; consultants; and other interested parties. Many of the comments discussed aspects of the Rule that were not addressed specifically in the AmendNPR. In other instances, commenters approved of certain changes proposed, but suggested that OFHEO go farther or make additional changes in the same area. Numerous commenters, for instance, applauded OFHEO's changes to the multifamily model, which had the effect of lowering adjustable rate mortgage (ARM) defaults in the stress test, but urged OFHEO to take additional steps to lower ARM loss rates. The amended Rule reflects OFHEO's consideration of all of these comments. However, the need for OFHEO to establish a firm baseline for the stress test and apply it to the Enterprises prior to the end of the implementation period does not allow OFHEO to consider further changes or enhancements at this time. A description of the comments along with OFHEO's responses to them is set forth below.

A. Changes to Counterparty Haircuts

The Rule gives the Enterprises credit for cash payments that would be received during the stress period from securities and various counterparties, such as mortgage insurance companies and derivative counterparties. However, because Enterprise counterparties are themselves likely to be adversely affected by the economic conditions of the stress period and to default on some or all of their obligations, the stress test discounts the value of cash payments received during the stress period by a specified percentage, based on the public credit rating of the security or counterparty. The amount by which cash payments from a counterparty or security are discounted in each month of the stress period is the haircut. The specified haircut percentages increase as the credit rating declines—the lower that rating, the more severe the haircut. In the previous Rule, the haircuts were phased in over the first five years of the stress period, except for haircuts for below-investment-grade providers and instruments, which are applied fully in the first month of the stress period.

The Rule applies one set of haircuts for non-derivative counterparties and securities, based on analysis of historical bond default rates, and a different set of haircuts for derivative counterparties, reflecting lower expected loss severities associated with the use of strong collateral agreements.[4] To further refine the previous Rule's treatment of haircuts, OFHEO has improved the consistency between haircuts for derivative counterparties and securities and non-derivative counterparties and securities by specifying default and severity rates separately; extending the phase-in period for the haircuts from five to ten years; providing for netting of exposures to the same derivative counterparty; providing for certain technical amendments described herein; and providing for an exception to the BBB haircut for certain unrated multifamily seller/servicers, as described in the AmendNPR.

OFHEO proposed lowering the maximum haircuts for both non-derivative and derivative counterparties and securities. The specified default and severity rates were calculated separately. Their products are the maximum haircuts. Previously, no explicit allowance was made for recoveries after default (severities of less than 100 percent) for non-derivative losses.

Default Rates

The amended Rule adopts the former Rule's non-derivative maximum haircut levels as maximum default rates, except that the percentage for AA-rated firms and securities was lowered from 15 to 12.5. Many commenters argued that using data from the Great Depression as a basis for default rates was inappropriate because of the broad changes in the economy since then and because default rates should be consistent with mortgage losses applied elsewhere in the stress test. Others focused on the relationship between defaults in the AA and AAA categories. Most argued that the ratio embodied in the proposal (2.5:1), which is lower than in the former Rule, was still too high or that there should be no differential between the categories at all. Many suggested that the proposed difference would drive all or most mortgage insurance business to the two AAA-rated firms, lessening competition and creating concentration risk for the Enterprises.

One commenter, however, opposed the change in the ratio, arguing that the average ratio (3:1) over the longest period available, 1920–1999, should be the basis for the Rule. A few commenters argued that maintaining a substantial differential between AAA and AA categories was important in either the maximum default rates used or the phase-in of those rates. In their view, a large differential would promote capital accumulation by mortgage insurers, decreasing the risk of losses to the Enterprises, and reversing the trend toward smaller market shares of mortgage insurance at AAA-rated firms. These commenters also noted that defaults of AAA-rated firms generally have occurred later for any given cohort of mortgage loans than defaults of AA-rated firms. One commenter further pointed out that OFHEO's haircuts differ far less across rating categories than rating agency haircuts on reinsurance that is provided by lesser-rated insurance providers.

After reviewing the comments, OFHEO has decided to adopt the proposed default rates. No single set of data provides a clear guide to the determination of default rates for the stress test. OFHEO agrees that many changes have occurred since the Great Depression and, therefore, does not view it as the sole relevant period for determining appropriate haircuts during the stress period. Data from the past three decades, however, do not contain any periods of interest rate stress or credit stress on a national basis comparable to that during the stress period.[5] Furthermore, the implication of data raised by some commenters that AAA-rated firms are as risky or riskier than AA-rated firms is based on a very small number of actual defaults. The characteristics of AAA-rated and AA-rated firms, as described in rating agency analyses, suggest significantly better relative credit performance should be expected for AAA-rated firms in a future stressful environment.

OFHEO has examined the available data from a variety of sources with varying perspectives as described in the preambles to NPR2,[6] the September 13, 2001 Rule, and the AmendNPR. OFHEO has based its choices on the totality of the data, but also has taken into account treatment of credit supports by rating agencies, although OFHEO recognizes that the agencies' purposes and perspectives differ somewhat from OFHEO's. The Depression-era data are of particular interest because, unlike other data, they reflect a very stressful period. OFHEO notes, however, that cumulative defaults in Moody's data for 1929–31, as discussed in the proposal, are very close to those obtained by using Moody's 1920–1999 data and adding 2½ standard deviations to the average 10-year default rates. Data from Hickman's 1928 cohort and more recent time periods could suggest higher default rates for the AAA category relative to the other categories, but the relatively later timing of AAA defaults in much of the data is also relevant given that OFHEO has not imposed different phase-in patterns for different rating categories. OFHEO has similarly considered the earlier timing of historical defaults in the A category and especially in the BBB category. OFHEO also considered the fact that the stress test interest rate shocks and mortgage losses as specified in the 1992 Act are heavily front-loaded in comparison to historical periods.

OFHEO recognizes that relative haircut levels for the different rating categories can have competitive implications and, therefore, has focused great attention on differences in haircuts across rating categories, so that they reflect differences in risk to the Enterprises well, without adding undue complexity to the Rule.

Severity Rates

The amended Rule adopts the severity rates from the proposal, a 70 percent severity rate for all non-derivative defaults and a 10 percent rate for derivative defaults. Much of the comment with respect to non-derivative severity rates was positive, but some commenters suggested higher or lower rates. Those favoring lower rates objected to the use of Great Depression data and suggested focusing on severity rates for senior obligations. One commenter also suggested reflecting ultimate recovery rates (1 minus severity rates) in historical data rather than security prices at the time of default. Those favoring higher severity rates stressed the variability of recovery rates, not only across users and industries, but also over time. One of the commenters also recommended using data for recovery rates on financial issues, which tend to be lower. This commenter also noted that Moody's average recovery rate for even senior secured debt was only 31 percent (69 percent severity) during the 1970s. Finally, some commenters suggested special treatment for particular types of counterparties, such as mortgage insurers, or obligations, such as mortgage revenue bonds or other mortgage related securities.

OFHEO decided to adopt the proposed non-derivative severity rates. Severity data from the Great Depression, which show higher severities during stressful periods, are relevant for the same reasons as default data from the same period. As two commenters pointed out, more recent data also show higher severity during recessions. At the same time, however, OFHEO found the average experience of 10-year periods, such as the 1930s or the 1970s more

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[1] Risk-based Capital, 66 FR 47730 (September 13, 2001).

[2] Section 1364 of Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), (12 U.S.C. 4614(d)).

[3] Risk-based Capital, Notice of proposed rulemaking 66 FR 65146 (December 18, 2001).

[4] The term "derivative" is used to refer to over-the-counter interest rate and foreign currency derivatives that are used by the Enterprises to hedge interest rate risk and foreign exchange risk. The term should not be read to encompass credit derivatives, which are currently not in use by the Enterprises and would be considered a "new activity" and dealt with under section 3.11 of the Rule, if the Enterprises began to use them.

[5] Some commenters argued that OFHEO should use the years, 1983–1984, of the benchmark loss experience. The benchmark loss experience, which is specified by the 1992 Act, includes only loans from a small area of the country and is intended only as a benchmark for credit losses on mortgage loans. It was never intended to be and would be entirely inappropriate as a benchmark for counterparty defaults for many reasons. Even more inappropriate would be use of the national data from those years without applying the requirement that they represent the highest default rates from an area of the country containing at least five percent of the population.

[6] The second notice of proposed rulemaking issued prior to the initial issuance of a final Rule on September 13, 2001. 64 FR 18084 (April 13, 1999).

relevant than subtracting standard deviations of annual data from long-term averages as one commenter suggested. Year-to-year variability does not imply that a string of ten consecutive poor results is a reasonable projection. Also, OFHEO has found data on security prices at default to be more relevant than ultimate recoveries, because prices at default take account the time value of money and uncertainties about actual future payments, which payments may even be lower during a continuing period of stress than otherwise expected.

OFHEO recognizes that the characteristics of specific exposures, such as collateral or line of business, may affect severity rates. However, taking account of such characteristics could add undue complexity to the Rule. At this time, OFHEO does not consider such additional complexity to be warranted, but may reevaluate that conclusion in the future, if appropriate.

Comments on the proposed severity of 10 percent for derivative defaults were mostly favorable. Some commenters recommended consideration of even lower severities, in the range of 1 percent to 2½ percent. They view the proposed severity rate as consistent only with a combination of very unlikely events; sudden failures and large, simultaneous, adverse changes in interest rates. A few commenters, however, voiced disapproval of OFHEO's reasoning, which relies heavily on the existence and implementation of collateral agreements. They argued that haircuts on derivative receipts should be unchanged or raised to the level of non-derivative receipts. They suggested that only actual collateral held by an Enterprise at the start of the stress period should be considered, not promises to provide collateral under certain circumstances. They questioned whether it would be feasible to unwind and replace the very large positions the Enterprises have with individual counterparties in a market that may have experienced a shock of some type.

OFHEO has decided to adopt the proposed severity rate for derivative defaults. OFHEO continues to have a high level of confidence in the successful operation of the Enterprises' collateral agreements, even in difficult times. The majority of the Enterprises' over-the-counter derivatives are simple interest rate swaps, which have been consistently very liquid, even in weak markets. Nonetheless, some caution is appropriate, given the high levels of stress contemplated in the stress test and potentially significant levels of correlation between the unlikely events considered in the proposal. While some derivatives are less liquid and could merit more cautious treatment, OFHEO judges that the added complexity is unwarranted at this time.

Haircuts

Under the amendment, haircuts will be determined by multiplying the default rate for each rating category by the severity rate. The resulting haircuts are set forth in Table 1 below.

TABLE 1—STRESS TEST HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties [1]	Non-Derivative Contract Counterparties or Instruments
Cash	0%	0%
AAA	0.5%	3.5%
AA	1.25%	8.75%
A	2%	14%
BBB	4%	28%
Below BBB and Unrated	100%	100%

[1] Does not include interim rates prior to implementation of netting. *See* Table 2.

Phase-In

Under the former Rule, haircuts were phased in linearly over a 5-year period. OFHEO proposed lengthening the phase-in to the full 10 years of the stress period. Most of the comments supported the change. A few commenters suggested changing the pattern of the phase-in to reflect actual default timing during the 10-year period for the cohort for a specific year or the average of cohorts from a specific time period. This approach would have different phase-in patterns for different rating categories. A few other commenters urged OFHEO not to change the existing 5-year phase-in. They argued that it is particularly appropriate for AA-rated mortgage insurers, which could expect to experience their greatest losses during the middle years of the stress period.

OFHEO decided to adopt the proposed 10-year linear phase-in. Historical data indicate that defaults have not been concentrated in the first 5 years of the 10-year periods. OFHEO recognizes that defaults generally occur increasingly later within 10-year experiences as ratings increase. That is, not only have higher-rated firms (AAA versus AA, for example) shown lower default rates during periods of economic stress, those that have not survived tended to have sufficient capital to withstand the stress longer and, therefore, defaulted later than lower-rated firms. OFHEO considered timing differences across different rating categories in determining maximum default rates for those categories, as discussed above. Determining a special timing pattern of defaults for any specific type of counterparty, such as mortgage insurers, would be difficult and speculative. Even the timing of claims is uncertain during the stress period because, while the stress test does not incorporate new business of the Enterprises, no similar provision applies to mortgage insurers. In any event, OFHEO can not add the complexity involved with explicit consideration of specific types of counterparties in the time frame required for implementation of the Rule.

Netting of Derivative Counterparty Exposures

OFHEO adopts as proposed the treatment for netting of derivative counterparty exposures. Due to technical limitations, the previous Rule did not model the master netting agreements associated with derivative counterparty exposures. OFHEO will now recognize the risk mitigation effects of master netting agreements by reducing the haircuts for derivative contract counterparties as set forth in Table 2, under heading of Haircuts for Derivative Contract Counterparties prior to Implementation of Netting. Upon implementation of modeling of master netting agreements, maximum haircuts for derivative contract counterparties will be readjusted. (*See* Table 2, under heading of Haircuts for Derivative Contract Counterparties upon Implementation of Netting). The interim treatment will remain effective only for the period required to complete the technical software modifications necessary to model master netting agreements.

TABLE 2—STRESS TEST HAIRCUTS FOR DERIVATIVE CONTRACT COUNTERPARTIES

Ratings Classification	Haircuts for Derivative Counterparties Prior to Implementation of Netting	Haircuts for Derivative Counterparties Upon Implementation of Netting	Number of Phase-in Months
AAA	0.3%	0.5%	120
AA	0.75%	1.25%	120
A	1.2%	2.0%	120
BBB	2.4%	4.0%	120
Below BBB and Unrated	100%	100%	1

Commenters generally supported OFHEO's proposal to recognize the impact of derivative counterparty netting agreements and urged OFHEO to implement counterparty netting as soon as possible.

OFHEO has adopted the proposed treatments and will continue to work toward implementation of the technical changes required to model netting agreements.

Unrated Seller/Servicers

OFHEO adopted the change to the treatment of unrated seller-servicers as proposed in the AmendNPR, with the addition of language to clarify that the change applies only to unrated multifamily seller-servicers. The previous Rule provided that unrated seller-servicers will be treated as if they are BBB-rated counterparties, unlike other unrated counterparties, which are treated as below BBB. Consistent with OFHEO's commitment in the Rule to evaluate alternative approaches to determine risk distinctions among unrated seller-servicers, OFHEO is amending the Rule to permit a higher rating than BBB (but not to exceed AA) for certain unrated multifamily seller-servicers. These unrated multifamily seller-servicers must participate in a delegated underwriting and servicing program that requires a loss-sharing agreement collateralized by a fully funded reserve account pledged to the Enterprise and the reserve account must be in an amount that is equal or greater than an amount determined by OFHEO to be adequate to support the seller-servicer's loss-sharing obligation under the program. Each program will be evaluated on a case-by-case basis by the Director to determine whether the program qualifies the seller-servicer for the refined ratings treatment. The amendment only applies to multifamily seller-servicers and does not incorporate a similar treatment for single-family seller-servicers.

For example, if the loss-sharing obligation of a seller-servicer participating in Fannie Mae's Delegated Underwriting and Servicing (DUS) Program (which is a multifamily mortgage program) is collateralized by a fully funded reserve account that is equal to or greater than one percent of the seller-servicer's aggregate unpaid principal balance covered by the loss-sharing agreement at the start of the stress test, the rating of the issuer of the instrument backing the reserve account may be used, in lieu of BBB, as the rating of the unrated seller-servicer, not to exceed AA. Determinations of the required reserve amount and the rating equivalent permitted will be made on a program-by-program and Enterprise-by-Enterprise basis.

With a few exceptions, commenters generally viewed the proposed amendment to the Rule regarding unrated seller-servicers as a positive contribution that would tie capital more closely to risk. Indeed, commenters who supported the amendment largely suggested that OFHEO also consider other factors, such as the value of the servicing stream and the level of capital of unrated seller-servicers as support for an improved rating for these seller-servicers. Commenters who disagreed with the proposed amendment included some who objected to the use of a BBB rating for any unrated counterparty, and objected further to allowing a rating higher than BBB for unrated counterparties under any circumstances. One commenter indicated that OFHEO should have empirical data supporting the BBB rating for unrated seller-servicers. Others who objected cited the example given of the DUS program, questioning whether a one percent fully funded reserve account would be adequate to support the loss-sharing obligation under the DUS program, and objecting to the competitive advantage that a higher than BBB rating for unrated seller-servicers would impart to the Automated Underwriting (AU) systems of the Enterprises, thereby placing other AU systems at a disadvantage. Finally, one commenter recommended that OFHEO clarify its intent to limit this approach to unrated multifamily seller-servicers.

OFHEO believes that the amendment ties capital more closely to risk by allowing for an improved rating for specified unrated multifamily seller-servicers. OFHEO has relied upon its own specialized expertise in the mortgage business and its detailed understanding of the Enterprises' seller-servicer agreements in making its decision to treat unrated seller-servicers more favorably than other unrated counterparties of whom OFHEO may lack such specialized understanding. Beyond the BBB rating to which all unrated seller-servicers are elevated, the amendment allows a higher rating than BBB to be used for certain multifamily seller-servicers. The increased rating is available if OFHEO determines that their ongoing relationships with the

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Enterprises and the contractual leverage available to the Enterprises in managing their exposure to counterparty risk from these seller-servicers is further enhanced by a fully funded reserve account—pledged to the Enterprise—of sufficient size to support the loss-sharing obligation adequately. With regard to the consideration of other factors as the basis for ratings above BBB, OFHEO will continue to evaluate alternative approaches for assessing the risk of unrated seller-servicers.

Finally, OFHEO notes that there appeared to be some confusion among commenters who objected to the amendment regarding the extent of the obligations of DUS lenders to share in multifamily credit losses. The one percent fully funded reserve account is not intended to be adequate to support all losses incurred on the covered loans. Rather it is determined to be adequate to support the much smaller loss-sharing obligations of the seller-servicer under the DUS program. In addition, there also appeared to be some confusion among commenters regarding the distinction between the multifamily DUS program and the single-family Automated Underwriting (AU) systems of the Enterprises. There is no connection between the two. The amendment does not apply to single-family programs.

B. Changes to Multifamily Model

OFHEO is adopting as proposed a number of changes to the multifamily default model, multifamily loss severity parameters, and multifamily prepayment speeds specified in the Rule. These changes and the comments regarding them are summarized below:

Underwater Debt Coverage Ratio Flag (UWDCRF)

As amended, the multifamily default model includes an Underwater Debt Coverage Ratio Flag (UWDCRF), which accounts for the additional default risk posed when the projected debt service coverage ratio (DCR)—net operating income (NOI) divided by mortgage payment—falls below 0.98 during the stress test. The stress test projects the DCR in each month of the stress period from the prior month's value by updating NOI, using rent growth rates and rental vacancy rates that reflect the economic conditions of the benchmark region and time period,[7] and adjusting mortgage payments over time according to the note terms and the stress test interest rate scenario. The UWDCRF adds value to the multifamily default model by capturing the additional risk of default when NOI is insufficient to cover mortgage payments.

OFHEO has re-specified the UWDCRF to turn the flag on when the projected DCR is less than 0.98 (that is, when net operating income (NOI) on the collateral property is more than two percentage points below the mortgage payment), altering the previous Rule, which turned the flag on when the projected DCR fell below one. The re-specified multifamily default model results in a slightly lower coefficient on UWDCRF, and the coefficients for the other explanatory variables do not change materially. Simulations using the revised UWDCRF definition result in lower predicted default rates for ARMs in the up-rate scenario and for FRMs with low initial DCR in both interest-rate scenarios, making the revised model less sensitive to the UWDCRF than the prior version. The revised model does not substantially affect the predicted default rates for most FRMs or for ARMs in the down-rate scenario.

All commenters that addressed this change recommended its adoption. These commenters included a number of seller-servicers of the Enterprises, State housing authorities, and both Enterprises. In view of these comments, together with OFHEO's concern, discussed in detail in the AmendNPR, that borrowers often have reasons to carry properties with slightly negative cash flows for a period of time, OFHEO decided to adopt the change as proposed.

ARM Flags

The amended Rule retains the same explanatory variables as the model in the earlier Rule, except that three dummy variables or flags, the New ARM flag (NAF), the New Balloon Loan Flag (NBLF), and the Ratio-Updated Flag (RUF) are removed, and a re-specified flag is introduced that captures both the distinction between ARMs and FRMs and the distinction between ratio-updated and not-ratio-updated loans. Specifically, the new variable OFHEO has adopted in its re-specified default model is a Not-Ratio-updated ARM Flag (NRAF) that is turned on if a loan is both an ARM and not-ratio-updated and is turned off otherwise. However, there were insufficient data on FRMs that were not-ratio-updated to include a flag similar to the NRAF for FRMs.[8] Instead, the revised Rule calculates the monthly conditional default rates for not-ratio-updated FRMs by applying a factor of 1.2 to the conditional monthly default rates for otherwise comparable ratio-updated FRMs.

The NRAF variable was introduced because OFHEO observed higher ARM default rates compared with FRM default rates even during historical periods of flat-to-declining interest rates, which should, other things being equal, have favored ARM performance. Additionally, when FRM and ARM data were combined, OFHEO found substantially higher Enterprise default rates for not-ratio-updated versus ratio-updated loans. This result was not surprising given that the ratio-updating process is intended to improve underwriting and the resultant performance of all loans. The factor of 1.2 that is applied to not-ratio-updated FRMs is based upon the multiplicative difference in simulated stress test default probabilities for the typical ratio-updated versus not-ratio-updated ARM loan, holding all other factors constant at their means. Given the definition of ratio-updating, OFHEO determined that it is reasonable to expect proportionate performance differentials for ratio-updated versus not-ratio-updated ARMs and FRMs when other factors are held constant.

All commenters to address this issue favored the elimination of the NAF, NBLF, and RUF variables and the introduction of the NRAF flag. However, several comments, including those of Fannie Mae, suggested that the 1.2 factor applied to FRMs should be eliminated, because it lacked statistical or factual basis. Some of those commenters may have confused the ratio-updating process with the Enterprises' receipt or lack of receipt of annual operating statement data and rent rolls on certain loans.[9]

OFHEO disagrees with the suggestion that the 1.2 factor be dropped and notes that, although there are insufficient data to incorporate an FRM counterpart to the NRAF into the multifamily default model, the decision to include a similar and proportionate adjustment to the default rates of not-ratio-updated FRMs was predicated on statistical analysis. Statistical evidence suggests that the ratio-update process, whereby loans originated using underwriting standards that may differ from those of the Enterprises are re-underwritten using the Enterprises' standards at the time of acquisition, reduces stress test default rates for a typical ARM by about 17 percent. Furthermore, Enterprise data confirm lower historical default rates of ratio-updated versus not-ratio-updated loans without regard to product type. At this time, OFHEO has no evidence that the ratio-update process should operate in a different fashion for one product than for another. Therefore, OFHEO believes the use of a multiplicative factor of 1.2 applied to the conditional monthly default rates of not-ratio-updated FRMs is a reasonable approach reflecting sound judgment based in fact and statistical evidence. If sufficient data become available to convince OFHEO that the use of the multiplicative factor of 1.2 is no longer appropriate, OFHEO will consider a change to the Rule.

One commenter questioned how the definition of the NRAF would be affected by any future changes in the underwriting standards of the Enterprises. For example, if as a result of ongoing experience, the standards of an Enterprise were to become tighter or looser, or simply emphasize different financial ratios, the commenter asked whether the entire current ARM portfolios of the two companies would be subject to this variable. In response to this comment, OFHEO notes that if an Enterprise were to stop updating the ratios of loans at acquisition, for example, the entire Enterprise multifamily portfolio would eventually be subject to the NRAF variable (or its FRM counterpart) as older ratio-updated loans terminated. As to the other part of the commenter's question, OFHEO continually examines the Enterprises' underwriting standards and processes and may modify variables or introduce new ones where the data indicates it is appropriate to do so.

Initial Vacancy Rate

OFHEO modified the Rule so that the change in vacancy rates between the period immediately prior to the stress test and month one of the stress test is based on the change in the benchmark region vacancy rate from the month prior to the benchmark period to the first month of the benchmark period. OFHEO views this change as a technical correction. The change sets the initial vacancy rate at ten percent, which is the estimated West South Central (WSC) Census division vacancy rate in 1983. Thus, the vacancy rate change in the initial month of the stress test will be increased from ten percent to 13.6 percent. All comments to discuss this change were favorable, although some suggested that OFHEO's technical correction should have reflected a higher initial vacancy rate. OFHEO did not find any convincing arguments from those who suggested the initial rate should have been higher and, therefore, OFHEO will adopt the rate as proposed.

Loss Severity

OFHEO has modified the multifamily severity parameters to take into consideration the performance of Fannie Mae multifamily REO[10] in the 1980s and both Enterprises' more recent multifamily REO. Loss severity parameters in the previous Rule were based upon the experience of 705 Freddie Mac multifamily REO properties from the 1980s. The multifamily loss severity calculations that use the severity parameters in the Rule have not changed. Specifically, OFHEO has decided to reduce net REO holding costs to seven percent from 13.33 percent and to increase REO sales proceeds from 58.88 percent to 63 percent of the unpaid principal balance as of the default date. Additionally, OFHEO is reducing the time from default to foreclosure completion from 18 to 9 months, while increasing the time from REO acquisition to REO disposition from 13 to 15 months. Changing these severity parameters yields a 44 percent "baseline" severity rate, as compared to the 55 percent "baseline" produced by the model in the Rule. "Baseline" severity is a simple way to compare one set of severity parameters with another.[11]

All comments received regarding this change were favorable.

Prepayment Penalties

OFHEO has modified the Rule to provide for no prepayments in the down-rate scenario inside prepayment penalty or yield maintenance periods. This approach is more consistent with OFHEO's preference to model contractual instruments according to their terms, but recognizes that modeling these penalties according to their terms would be immensely complicated, because those terms vary greatly from loan to loan. The change implicitly assumes that the prepayment penalty provisions either prevent prepayments or provide compensating economic benefit to the Enterprises.

All comments regarding this change were supportive.

Other Comments

Numerous comments were received suggesting that OFHEO should make further refinements to the multifamily model in the stress test. Many commenters stated that although the proposed changes had gone a long way to address what they viewed as inappropriately high loss rates associated with ARMs, the changes had not gone far enough and that the Rule might cause such loans to be disfavored by the Enterprises. OFHEO will consider these comments as it studies the impact of the current modifications to the Rule and will propose additional changes to the Rule when sufficient data indicates a need for them.

Among the refinements suggested by commenters was that OFHEO take into consideration the effects that low-income-housing tax credits (LIHTCs) have in reducing the likelihood of default on loans collateralized by properties with these credits. OFHEO agrees with experts in the housing finance industry that such loans are less likely to default than otherwise identical non-LIHTC loans. OFHEO has responded to this comment by clarifying the Risk-Based-Capital Report Instructions to provide that potential income from the holders of the tax credits is included in the calculation of current debt-service-coverage ratios on these loans. A rule change was unnecessary, because the existing Rule is sufficient to provide for consideration of the tax benefits to the equity investor from the tax credit.

Both Enterprises argued that the multifamily model should consider seasoning of loans that lack annual operating statements by accounting for the likely improvement in NOI and DCR prior to the stress period. OFHEO agreed. However, this comment also did not require a change to the Rule, which does not prohibit consideration of such improvements. To provide clarity to the Enterprises about how to report current NOI and DCR, OFHEO has added language to the Risk-Based Capital Report Instructions.

One Enterprise's comments suggest that the multifamily model does not account for rate caps and payment caps. In fact, the model does account explicitly for these features. However,

[7] The terms "benchmark region and time period" refer to the regional credit loss experience identified by OFHEO in compliance with the "Credit Loss" parameters outlined in 12 U.S.C. 4611, as described in additional detail in NPR2.

[8] OFHEO decided against using an FRM counterpart to the NRAF in the multifamily default model, despite the fact that a similar distinction between ratio-updated and not-ratio-updated FRMs was consistent with the data. The introduction of a flag to capture non-ratio-updated FRMs substantially altered the size of other variable coefficients and the significance of other model variables. Further examination of Enterprise data indicated that this result likely occurred because of insufficient data on not-ratio-updated FRMs, particularly in recent years. Therefore, OFHEO rejected the inclusion of a not-ratio-updated flag in the re-specified default model.

[9] As described in the AmeadNPR, ratio-updating refers to New Book loans for which the LTV and the DCR have been calculated by the Enterprise or its delagee at loan origination or for which the LTV and DCR have been recalculated by an Enterprise or its delagee upon acquisition according to current underwriting standards. New Book loans for which origination and/or acquisition LTV and DCR are unknown cannot be considered to be ratio-updated.

[10] REO is real estate owned as a result of loan default.

[11] The "baseline" consists of a simple adding up of the cost components of the rate, without considering discounting, credit enhancements, or passthrough interest on sold loans.

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the Risk-Based Capital Report Instructions have been clarified to include specifically third party rate caps or swaps that may be required by loan documents and used to cap a multifamily loan.

C. Changes to Yields on Enterprise Debt

This amended Rule modifies the previous Rule by adding 10 basis points to the cost of debt for an Enterprise in the stress test vis-a-vis other borrowers in the debt markets. This amendment serves to reflect the reaction of the debt markets to the financial stress imposed upon the Enterprise.

Only five commenters addressed the issue of the cost of new Enterprise debt. Those commenters voiced significant disagreement among themselves about whether OFHEO should add a debt premium to the Enterprises' cost of debt compared to other lenders. Several commenters, including FM Watch, the Consumer Mortgage Coalition (CMC), and an individual investment advisor, stated that not only was a debt premium appropriate but that the debt premium should be significantly larger than proposed. They argued that 10 basis points might not realistically reflect changes in the Enterprises' debt financing costs. CMC stated that, in times of stress, GSE debt spreads could increase significantly and that a 50 basis point or greater spread increase is not unlikely. CMC continued that Agency spreads to Treasuries have varied by about 70 basis points since 1998 and that a small spread adjustment in effect allows the GSEs to assume that they have essentially unlimited access to capital markets at preferred rates even in periods of distress. They cited the experience of the Farm Credit System in the 1980s as historical evidence of the need for a debt premium when a government sponsored enterprise faces adverse credit and interest rate stress.

Another commenter noted that if the capital markets perceived the Enterprises to be in trouble, liquidity premiums and default premiums would both increase. That commenter noted that after both the Asian currency devaluations of 1997 and the Long Term Capital Management/Russian debt crisis of 1998, spreads between LIBOR and AA rated instruments increased five to 10 basis points. He concluded that an economic event that directly impacted the GSEs would likely cause the spread between their debt and LIBOR/COFI to increase by more than 10 basis points, especially as their perceived special status might be brought into question by poor performance.

Only Freddie Mac [12] and Fannie Mae opposed including a debt premium. The Enterprises claimed that there was no factual basis for the agency's decision and that it fails to tie capital to risk. Freddie Mac's consultants opined that historical evidence might instead support reducing Enterprise spreads relative to other issuers. Freddie Mac concluded that OFHEO added what it termed a costly premium on Enterprise debt yields based on a mere possibility, unsupported by evidence. Accordingly, the Enterprises recommended that OFHEO retain the methodology under the previous Rule, which projects yields on Enterprise debt based on historical spreads to Treasury, without a debt premium.

OFHEO has decided to adopt the proposed debt premium in which 10 basis points is added after the first year of the stress period. After one year of stress conditions, the Enterprises might appear strong based on accounting measures of earnings and net worth. However, market values of the Enterprises' assets, liabilities, and derivatives contracts would fully reflect the effects of the interest rate shock and some credit quality deterioration of the stress test. Investors would be aware of these changes in market value and adjust their evaluations of the Enterprises' financial health accordingly.

Notwithstanding the Enterprises' critique, historical evidence does exist to support OFHEO's decision to include a debt premium. The historical experiences of Fannie Mae in the early 1980s and the Farm Credit System in the mid-1980s were periods during which government sponsored enterprises faced financial stress, which indicated that borrowing costs would include some risk premium during economic conditions such as those in the stress test. In fact, in drafting the 1992 Act, legislators referenced the Farm Credit System bailout to support having the Enterprises subject to a rigorous risk-based capital test.[13] This historical experience is further illustrated by data reported in the General Accounting Office's 1990 report on government sponsored enterprises in which Fannie Mae's short-term borrowing costs during 1980 through 1982 were generally about 80 basis points in excess of yields of comparable maturity Treasury debt, and rising at one point to 200 basis points above Treasury yields. Spreads receded after sharp declines in interest rates greatly improved Fannie Mae's condition to a more normal range centered roughly at 20 basis points. Spreads were high again in the late 1980s for both Fannie Mae and the Farm Credit System, ranging from 40 to 100 basis points over a two-year period during the Farm Credit System's time of greatest difficulty.[14]

These episodes could support a stress test projection that spreads of Enterprise debt yields to Treasury yields widen by 50 to 60 basis points. However, the stressful circumstances likely would also cause yield spreads of other debt to widen. OFHEO has chosen not to project how each yield series in the stress period might be affected by the stresses incorporated in the test, but wider spreads for some indexes generally would benefit an Enterprise with more fixed-pay than floating-pay swaps or swaptions. Because, in recent years, both Enterprises generally have relied much more heavily on fixed-pay instruments, that benefit could easily offset more than half of the cost of wider spreads on the Enterprises' own debt issues. However, based on recent Enterprise asset-liability structures, a substantial portion of new debt that would be issued by each Enterprise in stress tests would not be matched by fixed-pay swaps. Also, the nature of the stresses (sharp changes in long-term yields and high mortgage credit losses) is designed to affect the Enterprises specifically, and short-term yield indexes typically used in swap contracts might be affected less than Enterprise yields. In view of these considerations, OFHEO has decided that an appropriate adjustment to Enterprise yields (in the absence of any adjustment to other yield indexes) should be significantly less than the sustained 50 to 60 basis point spread widenings of the 1980s, low enough to avoid potentially inappropriate adverse affects on the Enterprises, but high enough to be meaningful, pending further consideration.

The Enterprises suggest that the only rational stress test is one that presumes that spreads of Enterprise debt to

[12] Freddie Mac commissioned two consultants to file comments in support of its arguments.

[13] "Because of their Federal ties, GSEs emerged as a major public policy issue in the wake of the $4 billion Federal bailout of the Farm Credit System in 1987 * * *" H.R. Rep. No. 102–282 (1991) at 109; *see also* S. Rep. No. 102–282 (1992)0 at 10 ("While both GSEs are currently very prosperous, HUD estimated in a 1986 report to Congress, that Fannie Mae was insolvent on a marked-to-market basis at year-end 1978 and did not return to solvency until 1985. Its negative net worth reached a peak of more that (sic) $20 billion in 1981, which was roughly 20 percent of its outstanding liabilities.")

[14] U.S. General Accounting Office (1990), Government Sponsored Enterprises: The Government's Exposure to Risk. Washington, DC: U.S. General Accounting Office. (GAO/GGD–90–97) 87–88.

Treasuries widen no more than spreads on any other non-Treasury rate. Far from being irrational to presume a wider yield spread on the debt of a stressed Enterprise, OFHEO determined that it was the most prudent and responsible course from a regulatory perspective. To assume, as the failed risk-management strategies at Long Term Capital Management did, that yield spreads would never fall far outside recent experience, is to ignore the reasonable implications of out-of-sample events such as the interest rate and credit stresses that are imposed during the stress period.

D. Changes to New Debt Mix

The previous Rule provided for the funding of all cash deficits by the issuance of new long-or short-term debt, whichever was in shorter supply, until a 50/50 balance of short-to-long-term debt was reached in each Enterprise's portfolio. Thereafter, long- and short-term debt were to be issued in whatever ratio would best contribute to maintaining that balance. OFHEO chose this approach because it did not want to include an assumption about any particular behavioral preference by the Enterprises during the stress test. The previous Rule specified that the new short-term debt being issued as six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds, and the new-long term debt being issued as callable five-year bonds not callable for the first year. The previous Rule also provided a 50 basis point call premium, which required that callable debt would be called when it was 50 basis points out-of-the-money. The Rule further specified an issuance cost of 2.5 basis points on new short-term debt and an issuance cost of 20 basis points on new long-term debt.

OFHEO has decided to adopt its proposal to change the target balance embodied in the previous Rule's approach. Specifically, the 50/50 debt mix has been replaced with the actual ratio of an Enterprise's debt obligations (as adjusted by interest rate swaps) at the start of the stress period. In addition, OFHEO has decided to modify the call rule for long-term debt so that no calls will be executed on new long-term debt in the up-rate scenario.

Fannie Mae, Freddie Mac, the Mortgage Bankers Association (MBA) and JP Morgan each commented on the new debt mix. All these comments favored the proposed approach over the 50/50 mix adopted in the Rule.

These commenters provided additional recommendations for OFHEO to further refine the new debt mix in the stress test. MBA suggested that OFHEO meet with professional portfolio risk management experts to devise additional funding rules for each interest rate scenario. MBA also stated, without elaboration, that the capital requirements resulting from this funding rule would cause the agencies to curtail their activities in the housing market at unpredictable times.

The Enterprises provided detailed comments on this issue. Freddie Mac expressed concern that, under the Rule, callable debt issued in the up-rate stress test after month 12 would always be called at the first opportunity, even though interest rates remain constant during the last nine years of the stress period and the Enterprises would incur issuance fees as a result of calling the debt. Freddie Mac requested that the cost of callable debt reflect the degree of prepayment risk in the mortgages being funded. Freddie Mac argued that the issuance fees were inappropriate because there would be no reason for the Enterprise, without more, to call the debt. Freddie Mac requested that the Rule include detailed refunding provisions, including that callable debt match the callability of the mortgages being funded and that the 50 basis point call premium for long term debt be reduced significantly. Specifically, Freddie Mac believed the call premium for 5-year callable debt should be reduced from an initial cost of 50 basis points to 5 basis points over the first 12 months of the up-rate scenario and from an initial cost of 50 basis points to minus 45 basis points over the first 12 months of the down-rate scenario.

Like Freddie Mac, Fannie Mae was particularly concerned about repeatedly calling new long-term debt at the end of one year and incurring the 20 basis point issuance fee for an identically yielding long-term debt instrument. Fannie Mae also supported Freddie Mac's recommendation for lower call premiums on new callable debt. In addition, Fannie Mae suggested that new long-term debt should be a mix of 5-year callable debt and seven year noncallable debt and that calls on newly issued callable debt should reflect the month-end cash position.

As noted above, OFHEO has decided to adopt the proposed change to the new debt mix to reflect an Enterprise's actual short-term/long-term proportions of corporate debt outstanding at the start of the stress test. As the commenters stated, this new approach provides a more typical debt structure than the 50/50 mix set forth in the Rule. In addition, OFHEO has decided to modify the specification for calling long-term debt so that the call option for new long-term debt will never be executed in the up-rate scenario. OFHEO determined that this modification is appropriate because the earlier requirement would have resulted in new long-term debt being called even though there would be cost but little benefit to an Enterprise in calling it.

OFHEO read with interest the more detailed alternative debt funding strategies suggested by the commenters. However, OFHEO has decided not to adopt any of the more detailed alternative recommendations, but will continue to analyze the issue. In addition, OFHEO is aware that the proposed treatment may place excessive significance on the quantity of an Enterprise's debt maturing early in the second year of the stress test. Such debt will contribute to the long-term (greater than one year) portion of its initial debt ratios, but will count as short-term debt in early months of the stress test when calculating whether new debt is issued as short-term or long-term debt. OFHEO will monitor the amounts of debt with these maturities closely and could decide to reclassify some debt if the amounts do not appear consistent with normal business practice.

E. Miscellaneous Technical Changes

Operating Expenses

OFHEO has decided to modify the stress test treatment of operating expenses by converting 75 percent of starting-position fixed-asset balances to cash over the ten-year stress period. The amended Rule retains 25 percent of the fixed assets on an Enterprise's books throughout the stress period to reflect the acquisition of some new fixed assets, such as computer equipment, which is likely even in a "wind-down" scenario. The effect of this change is to reduce the Enterprises' need for debt to carry nonearning fixed assets.

Only Fannie Mae and Freddie Mac commented on this aspect of the proposal. Each Enterprise stated that the proposal was superior to the treatment of operating expenses in the Rule, because the proposal provides a "more realistic" treatment of fixed assets. Nevertheless, each Enterprise stated that the stress test should use an accelerated rate of amortization of fixed assets, which they believed would be more economically realistic.

This amendment to the treatment of operating expenses adopts the approach proposed in the AmendNPR, without modification. OFHEO believes that the adopted change provides a straightforward and reasonable approach to the treatment of fixed assets.

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Float Income

The Rule provides for the modeling of float income associated with passthrough payments on securities issued by the Enterprises. Float income can be positive or negative depending upon whether the Enterprise holds the funds for a period of time before remitting them to security holders or remits funds to security holders before they are actually received. When an Enterprise owns its own passthrough securities, the timing of payment to itself is not relevant. However, the previous Rule included these securities in the calculation of float income, resulting in an overstatement of float income. OFHEO corrected this overstatement by reducing the float income on passthrough securities issued by the reporting Enterprise by the percentage of the Enterprise's ownership interest.

Fannie Mae and Freddie Mac commented favorably about the proposed treatment of float income, provided that the stress test accurately accounts for such income. Freddie Mac provided an alternative equation which it believed more completely implements the proposal.

After reviewing this suggested alternative, OFHEO determined that the alternative, with slight further modification, is correct. Accordingly, OFHEO has adopted its proposal with the appropriate adjustment.

Currency Swaps

Regarding the treatment of Foreign Exchange Risk specified in the previous Rule, OFHEO stated that it would not apply haircuts to foreign currency swaps. However, in furtherance of its commitment to continue to refine the ability of the stress test to tie capital to risk more accurately, OFHEO indicated that it would continue to seek a suitable methodology for applying an appropriate haircut to foreign currency swaps. After additional analysis, including evaluation of the technical enhancements required for implementation, OFHEO has eliminated the simplifying assumption applied in the previous Rule and applied a haircut to foreign currency swap counterparties. Because the stress test does not project foreign currency values, the haircut is applied by adjusting the pay (dollar-denominated) side of the swap upward by the amount of the haircut percentage rather than haircutting the foreign-currency receive side of the swap.

Commenters agreed with OFHEO that the stress test should recognize the capital impact of foreign currency swaps, however, they criticized OFHEO's methodology. One commenter characterized OFHEO's approach as imprecise and conservative, suggesting that the amendment would result in the imposition of an excessive capital charge for foreign currency swaps. Another commenter opined that OFHEO's treatment would result in excessive capital charges for currency swaps and suggested establishing haircuts based on the net amount owed on the swap. Both Enterprises recommended that OFHEO reduce the haircuts applied to foreign currency swaps by 50 percent. They argued that the proposed approach, which bases the haircut on the amount paid by an Enterprise, rather than the net amount received, implicitly assumes that the U.S. dollar would depreciate by 100 percent. Historical data on dollar exchange rates with major currencies over the past three decades show that the largest sustained decline (average decline over a 10-year period, relative to the start of the 10-year period) in the dollar was slightly less than 50 percent—half the decline implicitly assumed in the proposed approach.

Although OFHEO has declined to project currency exchange rates during the stress period, the amended Rule produces the same result as an assumption that during the stress period the dollar will have depreciated 50 percent relative to the forward exchange values of all foreign currencies embodied in the currency swaps. (A 100 percent dollar depreciation would imply that the dollar value of net swap receipts would be infinite, as would any percentage haircut.) OFHEO agrees that the worst sustained dollar depreciation against a major currency in recent times was nearly 50 percent, which is consistent with the implied assumption about currency rates during the stress period. Accordingly, OFHEO has decided to adopt the proposed change to the Rule.

American Call Options

With respect to the modeling of nonmortgage instrument cash flows, the previous Rule did not attempt to provide a comprehensive explanation of the cash flows of all nonmortgage instruments utilized by the Enterprises. Consistent with this approach, OFHEO used a simplifying assumption in the previous Rule to model American call options. In the previous Rule, an American call option, which allows an issuer to exercise the call option at any time after a lockout period, was treated as a Bermudan call option. Bermudan options allow the owner to exercise the option only on certain specified dates before maturity, usually on coupon payment days. However, in the preamble to the previous Rule, OFHEO stated that it would be preferable to consider how options might be modeled more precisely.

Upon further evaluation, OFHEO has modified the stress test to evaluate American calls on the first option date in the exercise schedule and on subsequent monthly anniversaries of an instrument's first coupon date. This methodology will allow the stress test to model American call options according to their terms, resulting in a refinement that more closely ties capital to risk.

The comments supported OFHEO's proposed modifications to address American call options. Both Enterprises suggested additional improvements to the stress test could be achieved by incorporating changes designed specifically to model European call options.

Changes to the stress test treatment of European options may be appropriate. OFHEO will consider the desirability of implementing European call related recommendations in the future.

House Price Growth Factor Clarification

The Rule requires the use of OFHEO's most recent House Price Index as of the reporting date to determine the house price growth factor used to calculate current loan-to-value ratios. OFHEO has decided to expand the instructions in Section 3.6 to clarify, consistent with Section 3.7, that when a loan was originated since the publication of that report, a cumulative house price growth factor of one is used. No comments critical of this clarification were received.

Preferred Stock

In the Final Rule, OFHEO decided to include rules in the stress test to address share repurchases during the stress period. Although the Rule's effect was to treat the calling of preferred stock as a share repurchase, this result would not be clear to some readers. Accordingly, OFHEO is making a technical amendment to state in section 3.8.1[a]3 that "no preferred stock issued by the Enterprise will be called."

Technical Correction

OFHEO added a Prepayment Penalty Flag as an additional classification variable for multifamily loan groups. The Flag distinguishes loans with active prepayment penalties or yield maintenance provisions from those without in the calculation of prepayment penalty duration for loan groups.

F. Process Issues

Publication of Capital Numbers

Several commenters opined that OFHEO should have published results of model runs to demonstrate the impact of the proposed change on the Enterprises' capital requirements. One commenter stated that OFHEO should publish the capital requirements for the Enterprises under the previous version of the Rule and the modified Rule, so that the public can understand the impact of the changes.

In OFHEO's view, the comments received in response to the proposed changes demonstrate that the AmendNPR provided sufficient information for a full and informed discussion of the relevant issues. OFHEO considered each of the proposed changes on its own merits and those that were adopted were approved on the basis of sound theory, research and, where appropriate, statistical estimation, rather than simply the impact they might have on the capital of an Enterprise in a particular historical quarter. To the extent that OFHEO did runs to test the developmental computer code it had created for these changes, OFHEO did not rely upon those results as the rationale for its choices. Those runs were designed primarily to check for errors in the code or the algorithms on which the code was based. For these reasons, OFHEO has found the argument that results of runs are necessary to understand or evaluate the impact of the proposed changes to be unfounded.

OFHEO published a final Rule on September 13, 2001, which provided detailed specifications and working copies of the code to the Enterprises and other members of the public. As expected, when outside parties were able to examine the specifications in detail and begin to run portions of the code, OFHEO received numerous comments and requests for changes. Some of these changes OFHEO considered to be sufficiently significant that it was desirable to publish them for comment quickly in order to allow any of them found to be necessary to be finalized without delaying the implementation of the Rule and the September 2002 date when the Rule becomes enforceable. OFHEO expects that with the changes approved in this document, the Rule will better tie capital to risk. Accordingly, the risk-based capital numbers for the first quarter of 2002 will accurately portray the adequacy of the Enterprises' capital under the Rule that will be enforced. Earlier results would be based upon data that are now too old to indicate any useful information about the Enterprises' current condition.

Another important reason why OFHEO has delayed publishing risk-based capital numbers is that, in OFHEO's view, the 1992 Act intends that the Enterprises have a year to adjust their operations to the requirements of the Rule. These adjustments take a number of forms. First, the Enterprises have needed time to adjust their computer systems and data production systems to support the stress test. This has been a time-consuming and expensive process for them and for OFHEO, but is an essential part of making the entire capital scheme in the 1992 Act operational. Second, the one-year implementation period in the 1992 Act allows the Enterprises to adjust their businesses, including their lending and hedging strategies, to the stress test. Third, the implementation period allows the Enterprises to raise any additional capital that might be required by the Rule. Given the fact that the Enterprises are publicly traded companies, the economic condition of which could be affected greatly by premature disclosure of capital requirements, OFHEO will not disclose capital numbers until the Enterprises have had a reasonable opportunity to make at least a large portion of these adjustments and present to the public their plans to maintain capital compliance.

Use of Code by Parties Other Than OFHEO

Two commenters discussed the difficulties they have encountered in running the computer code released by OFHEO. They both expressed the view that OFHEO should not amend the Rule until they have had time to run the code and analyze the results or until OFHEO has published data regarding the capital impact of any proposed amendments. Instead they would have OFHEO enforce the previous Rule and continue to allow commenters to study the proposed changes. OFHEO disagrees with this approach. The changes that OFHEO adopted are each supportable on its own merits. OFHEO's goal is to have the best rule possible when the Rule becomes enforceable in September 2002. That goal would not be achieved if the changes were delayed until after that date. As a general matter, if OFHEO were to hold up any changes to the Rule until any parties who wished to run the model and test the impact of the changes were able to do so, the Rule would lose the flexibility it must have in order to be dynamic and meaningful. Although the good faith of these commenters in attempting to run the code is not questioned, their ability to do so, or the ability of any other interested party to do so, will not determine whether OFHEO proceeds with needed changes to the Rule.

Notwithstanding that OFHEO will not delay changes to the Rule to allow other parties (including the Enterprises) to be able to run the underlying computer code, OFHEO appreciates the extensive time and resources certain commenters have put into studying the code and attempting to run it. It is beneficial to OFHEO and to the regulatory process to obtain the well-informed and differing views that have resulted. OFHEO also appreciates the importance of the capital rules to parties other than the Enterprises and takes their views and the factual information they supply into consideration in determining the specifications for the stress test. As time and resources allow, OFHEO will continue to work with these parties to help them understand and run the models that underlie the stress test.

In order to assist interested parties with their continued efforts to replicate the model, and to maintain appropriate regulatory transparency, OFHEO intends to make the computer code associated with the Rule available to the public. The code will be available upon request after the Rule is published. OFHEO anticipates that the code will continue to evolve over time as additional efficiencies and technical adjustments are incorporated to enhance the functionality of the code. Consistent with OFHEO's need to address technical requirements or other contingencies that arise out of the operation of the code, the agency will continue to make code changes, without opportunity for public comment, as long as such changes are not inconsistent with the Rule. Any such changes to the code will be made available to the public.

Determination That the Amendments to the Rule Are Not "Economically Significant"

One commenter took issue with the determination by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) that the amendments to the Rule were not "economically significant" within the meaning of Executive Order 12866. OFHEO notes that this determination is entirely consistent with similar determinations made with regard to the capital rules of other federal financial regulatory agencies. As a practical matter, it is impossible to prove what economic impact a change in the Rule will have on the economy. However, OFHEO anticipates the effects on the Enterprises

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and the economy as a whole will be small.

Cost/Benefit Analysis

The same commenter suggested that OFHEO should have undertaken a more extensive cost/benefit analysis than was included in the AmendNPR. OFHEO disagrees for much the same reasons that it disagreed that these amendments should be considered an economically significant rule in the previous paragraph.

A detailed cost/benefit analysis such as that suggested by the commenter would begin with an analysis of the marginal capital impact of each change on each of the Enterprises. It would then require judgments to be made about whether and to what extent these marginal impacts would alter the behavior of the Enterprises in the marketplace and the financial impact of those changes on other market participants. With risk-based capital rules, these types of predictions of future behavior are speculative, at best, and analysis is most useful after the change is implemented and its actual impact can be studied. That is why risk-based capital rules tend to be changed relatively frequently and incrementally, as additional information comes to light and the behavior of the regulated entities and the markets in which they operate can be studied.

Comment Period Extension

In the AmendNPR, OFHEO proposed a comment period of thirty days. Two commenters each requested that the comment period be extended to give the public more time to analyze and provide meaningful comment about the proposal.

OFHEO contacted the commenters before the close of the comment period and explained that it decided to deny any request to extend the comment period because, as discussed above, OFHEO has determined that the comment period provided sufficient time for a full and informed discussion of relevant issues. Another reason that the extension was denied is the tight statutory timeframe within which Congress intended that the Rule should become fully enforceable. Specifically, the 1992 Act provides that the Rule becomes fully enforceable one year after the Rule is initially issued. It would be impracticable for OFHEO to meet this statutory timeframe if it were to extend the comment period any further.

To meet the one-year timetable, OFHEO needs to establish a firm baseline set of specifications for the Rule, which can be applied to first quarter, 2002, data from the Enterprises. Any delay in the effective date of these amendments could have caused a one quarter delay in applying that set of specifications. Applying the new specifications to new data from the Enterprises before the risk-based capital rule becomes fully enforceable in September 2002 will allow the Enterprises to adjust to the revised Rule and for OFHEO to study its effects.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

Today's final Rule amends OFHEO's risk-based capital rule, which was designated as a major rule by OMB. The amendment refines various aspects of that Rule to tie the capital more closely to risk. Although the impact of these refinements is not economically significant, OMB has reviewed the amendment to determine whether the changes may raise novel policy issues. OFHEO is not required to provide the type of regulatory impact analysis that is required for an economically significant rule. Nevertheless, in accordance with OMB's guidance that all regulatory actions should be consistent with the principles of E.O. 12866, OFHEO has determined, after review by agency economists, financial analysts, and attorneys, that the benefits of the changes to the Rule substantially outweigh any economic costs.

It is impossible to estimate precisely the particular benefits and costs associated with the risk-based capital requirement. Although OFHEO believes this group of enhancements and refinements to the stress test will not generally increase or decrease the amount of required capital for an Enterprise to any substantial degree, the effect in any particular quarter depends upon how well that Enterprise is hedged against the risks and conditions specified in the stress test. OFHEO cannot know whether or not hedges in place at an Enterprise at the beginning of any quarter would have been in place in the absence of specific provisions of the risk-based capital rule or were put in place because of the test. Speculating as to what the Enterprises would do in the absence of specific provisions in future quarters is even more difficult. Therefore, a detailed economic cost/benefit analysis is not practical.

Rather than trying to assess the costs and benefits of every change to the stress test, OFHEO looks to whether or not the changes make the Rule better reflect the risks faced by the Enterprises. Improving the Rule in this manner should reduce the potential for Enterprise insolvency by protecting better against interest rate, credit, and management and operations risk. By helping to ensure the safety and soundness of the Enterprises, the regulation allows them to continue to carry out their public purposes, which include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas.[15] In addition, the regulation helps ensure that the Enterprises will continue to provide benefits to the primary mortgage market, such as standardizing business practices.[16]

The amended Rule results in a capital requirement that corresponds more closely to capital levels that the marketplace would demand in the absence of the benefits afforded by the Government sponsorship of the Enterprises, leading to gains in overall economic efficiency. By improving the Rule's ability to reflect actual risks at the Enterprises, the amendment also may enhance investor confidence in the ability of the stress test to forewarn investors and regulators of financial weaknesses. This result would be consistent with a study by Standard & Poor's (S&P) that provided risk-to-the-government credit ratings for the Enterprises.[17] Although S&P had rated Fannie Mae A– and Freddie Mac A+ in 1991, the 1997 report upgraded the ratings of both Enterprises to AA–. S&P cited increased governmental oversight by OFHEO as an important factor in these higher ratings. It further noted that "OFHEO's regulatory oversight [of Freddie Mac] also gives comfort that appropriate interest rate risk mitigation steps would be taken as needed."[18]

OFHEO can identify no significant additional costs associated with implementing the amendments. No new reports are required, and net effects on required future capital likely will be very small. As explained above in response to comments, it is not practical to measure all the indirect impacts that each of these amendments might have on various sectors of the economy. OFHEO is convinced, however, that the amendments do improve, incrementally, the capital requirements applied to the Enterprises, as described in detail above and in the AmendNPR. In sum, the benefits to the public, including the Enterprises and other private-sector concerns, of improving the sensitivity of the stress test to risk far outweigh the already expended costs of implementing these improvements.

[15] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

[16] "Managing Risk in Housing Finance Markets: Perspectives from the Experiences of the United States of America and Mexico," *Mortgage Bankers Association of America* (June 11, 1998).

[17] *Report to OFHEO*, Standard & Poor's, Contract No. HE09602C (February 3, 1997).

[18] Report to OFHEO, at 10.

Paperwork Reduction Act

This regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO is amending 12 CFR part 1750 as follows:

PART 1750—RISK-BASED CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–1 in paragraph 3.1.1;

b. Revise Tables 3–2 through 3–4 in paragraph 3.1.2.1;

c. Revise Table 3–18 in paragraph 3.1.3.1 [c];

d. Revise paragraph 3.3.1 [b];

e. Revise paragraph 3.3.3 [a] 3.c.;

f. Revise Table 3–28 in paragraph 3.4.2;

g. Add new paragraph 3.5.3 [a] 2.d.;

h. Revise paragraph 3.5.3 [a] 3. and Table 3–31;

i. In sentence six of paragraph 3.6.1 [e], remove the comma after the words "Credit Losses", add the word "and" in its place; and remove the words "and the Float Income" after the words "Guarantee Fee";

j. Revise paragraph 3.6.3.4.3.1 [a] 2.a.;

k. Revise paragraph 3.6.3.4.3.1 [a] 3.a.;

l. Revise paragraph 3.6.3.5.1 [b];

m. Revise Table 3–38 in paragraph 3.6.3.5.2.;

n. Revise paragraph 3.6.3.5.3.1 [a] 2.;

o. In paragraph 3.6.3.5.3.1 [a] 4, remove the first equation: "$UWDCRF_m$ = 1 if $DCR_m < 1$ in month m" and add the equation "$UWDCRF_m = 1$ if $DCR_m < 0.98$ in month m" in its place;

p. Revise paragraph 3.6.3.5.3.2 [a] 1. and Table 3–39;

q. Revise paragraph 3.6.3.5.3.2 [a] 2.b.;

r. Revise paragraph 3.6.3.5.3.2 [a] 3.;

s. Revise Table 3–44 in paragraph 3.6.3.6.3.2;

t. In section 3.6.3.6.4.3, revise the four paragraphs: [a] 1., [a] 3.b., [a] 4.b. and [a] 5.;

u. Revise paragraph 3.6.3.7.3 [a] 9.b.;

v. Revise paragraph 3.7.3.1 [g] 1.;

w. In paragraphs 3.7.3.2 [a] 5. and 3.7.3.3 [a] 3., add the words ", as appropriate" at the end of the sentence in each paragraph;

x. In paragraph 3.7.4 [a] remove reference to "Table 3–55" and add "Table 3–61" in its place;

y. Redesignate Tables 3–65 through 3–70 as Tables 3–66 through 3–71;

z. After Table 3–64, add new paragraph 3.8.1 [f], new footnote 5, and new Table 3–65;

aa. In paragraphs 3.8.2 [a] and [b] remove references to "Table 3–65" and add "Table 3–66" in their place;

bb. Revise paragraphs 3.8.3.1 [a] 3.a. and 3.8.3.1 [a] 3.d.;

cc. Add new paragraph 3.8.3.1 [a] 3.e.;

dd. In paragraph 3.8.3.4 remove reference to "Table 3–66" and add "Table 3–67" in its place;

ee. In paragraphs 3.8.3.6.1 [e] 1. and [e] 2. remove both references to "Table 3–67" and add "Table 3–68" in their place;

ff. In paragraph 3.8.3.9, in redesignated Table 3–69 remove both references to "Table 3–65" and add "Table 3–66" in their place;

gg. Revise paragraphs 3.8.3.10 [a], [b] and [c];

hh. In paragraph 3.9.2 remove reference to "Table 3–69" and add "Table 3–70" in its place;

ii. In paragraph 3.10.2 [a] remove reference to "Table 3–70" and add "Table 3–71" in its place;

jj. Revise paragraphs 3.10.3.1 [b] 2. and [b] 3.;

kk. Revise paragraph 3.10.3.6.2 [a] 5.; and

ll. Revise the definition of *Enterprise Cost of Funds* in paragraph 4.0 Glossary.

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Text Methodology and Specifications

* * * * *

3.1.1 * * *

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.1.3, Public Data	3–19, Stress Test Single Family Quarterly House Price Growth Rates			F	
	3–20, Multifamily Monthly Rent Growth and Vacancy Rates			F	
3.2.2, Commitments Inputs	Characteristics of securitized single family loans originated and delivered within 6 months prior to the Start of the Stress Test	R			3.3.4, Interest Rates Outputs
3.2.3, Commitments Procedures	3–25, Monthly Deliveries as a Percentage of Commitments Outstanding (MDP)			F	

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.3.2, Interest Rates Inputs	3–18, Interest Rate and Index Inputs		P		
3.3.3, Interest Rates Procedures	3–26, CMT Ratios to the Ten-Year CMT			F	
3.4.2, Property Valuation Inputs	3–28, Property Valuation Inputs				3.1.3, Public Data 3.3.4, Interest Rates Outputs
3.5.3, Counterparty Defaults Procedures	3–30, Rating Agencies Mappings to OFHEO Ratings Categories		P		
	3–31, Stress Test Maximum Haircut by Ratings Classification			F	
3.6.3.3.2, Mortgage Amortization Schedule Inputs	3–32, Loan Group Inputs for Mortgage Amortization Calculation				3.3.4, Interest Rates Outputs
3.6.3.4.2, Single Family Default and Prepayment Inputs	3–34, Single Family Default and Prepayment Inputs	R		F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.4.3.3, Prepayment and Default Rates and Performance Fractions	3–35, Coefficients for Single Family Default and Prepayment Explanatory Variables			F	
3.6.3.5.2, Multifamily Default and Prepayment Inputs	3–38, Loan Group Inputs for Multifamily Default and Prepayment Calculations	R		F	
3.6.3.5.3.3, Default and Prepayment Rates and Performance Fractions	3–39, Explanatory Variable Coefficients for Multifamily Default			F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.2.6, Single Family Gross Loss Severity Inputs	3–42, Loan Group inputs for Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs
3.6.3.6.3.6, Multifamily Gross Loss Severity Inputs	3–44, Loan Group Inputs for Multifamily Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.4.8, Mortgage Credit Enhancement Inputs	3–46, CE Inputs for each Loan Group	R			3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.2.3, Single Family Gross Loss Severity Outputs 3.6.3.6.3.3, Multifamily Gross Loss Severity Outputs
	3–47, Inputs for each Distinct CE Combination (DCC)	R			
3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs	3–51, Inputs for Final Calculation of Stress Test Whole Loan Cash Flows	R			3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.5.6, Single Family and Multifamily Net Loss Severity Outputs
3.6.3.8.2, Whole Loan Accounting Flows Inputs	3–54, Inputs for Whole Loan Accounting Flows	R			3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
3.7.2, Mortgage-Related Securities Inputs	3–56, RBC Report Inputs for Single Class MBS Cash Flows	R			
	3–57, RBC Report Inputs for Multi-Class and Derivative MBS Cash Flows	R			
	3–58, RBC Report Inputs for MRBs and Derivative MBS Cash Flows	R			
3.8.2, Nonmortgage Instrument Inputs	3–66, Input Variables for Nonmortgage Instrument Cash flows	R			
3.9.2, Alternative Modeling Treatments Inputs	3–70, Alternative Modeling Treatment Inputs	R			

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.10.2, Operations, Taxes, and Accounting Inputs	3–71, Operations, Taxes, and Accounting Inputs	R			3.3.4, Interest Rates Outputs 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs 3.7.4, Mortgage-Related Securities Outputs 3.8.4, Nonmortgage Instrument Outputs
3.12.2, Risk-Based Capital Requirement Inputs		R			3.3.4, Interest Rates Outputs 3.9.4, Alternative Modeling Treatments Outputs 3.10.4, Operations, Taxes, and Accounting Outputs

* * * * * * * * *

3.1.2.1 * * *

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Reporting Date	The last day of the quarter for the loan group activity that is being reported to OFHEO	YYYY0331 YYYY0630 YYYY0930 YYYY1231
Enterprise	Enterprise submitting the loan group data	Fannie Mae Freddie Mac
Business Type	Single family or multifamily	Single family Multifamily
Portfolio Type	Retained portfolio or Sold portfolio	Retained Portfolio Sold Portfolio
Government Flag	Conventional or Government insured loan	Conventional Government
Original LTV	Assigned LTV classes based on the ratio, in percent, between the original loan amount and the lesser of the purchase price or appraised value	LTV<=60 60 <LTV<=70 70 <LTV<=75 75 <LTV<=80 80 <LTV<=90 90 <LTV<=95 95 <LTV<=100 100 <LTV
Current Mortgage Interest Rate	Assigned classes for the current mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Original Mortgage Interest Rate	Assigned classes for the original mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0

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TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
Mortgage Age	Assigned classes for the age of the loan	0<=Age<=12 12<Age<=24 24<Age<=36 36<Age<=48 48<Age<=60 60<Age<=72 72<Age<=84 84<Age<=96 96<Age<=108 108<Age<=120 120<Age<=132 132<Age<=144 144<Age<=156 156<Age<=168 168<Age<=180 Age>180
Rate Reset Period	Assigned classes for the number of months between rate adjustments	Period =1 1< Period <=4 4< Period <=9 9< Period <=15 15< Period <=60 60< Period <999 Period = 999 (not applicable)
Payment Reset Period	Assigned classes for the number of months between payment adjustments after the duration of the teaser rate	Period <=9 9< Period <=15 15< Period <999 Period = 999 (not applicable)
ARM Index	Specifies the type of index used to determine the interest rate at each adjustment	FHLB 11th District Cost of Funds. 1 Month Federal Agency Cost of Funds. 3 Month Federal Agency Cost of Funds. 6 Month Federal Agency Cost of Funds. 12 Month Federal Agency Cost of Funds. 24 Month Federal Agency Cost of Funds. 36 Month Federal Agency Cost of Funds. 60 Month Federal Agency Cost of Funds. 120 Month Federal Agency Cost of Funds. 360 Month Federal Agency Cost of Funds. Overnight Federal Funds (Effective). 1 Week Federal Funds 6 Month Federal Funds 1 Month LIBOR 3 Month LIBOR 6 Month LIBOR 12 Month LIBOR Conventional Mortgage Rate. 15 Year Fixed Mortgage Rate. 7 Year Balloon Mortgage Rate. Prime Rate 1 Month Treasury Bill 3 Month CMT 6 Month CMT 12 Month CMT 24 Month CMT 36 Month CMT 60 Month CMT 120 Month CMT 240 Month CMT 360 Month CMT
Cap Type Flag	Indicates if a loan group is rate-capped, payment-capped or uncapped	Payment Capped Rate Capped No periodic rate cap
OFHEO Ledger Code	OFHEO-specific General Ledger account number used in the Stress Test	Appropriate OFHEO Ledger Code based on the chart of accounts.

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Single Family Product Code	Identifies the mortgage product types for single family loans	Fixed Rate 30YR Fixed Rate 20YR Fixed Rate 15YR 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
		Adjustable Rate Step Rate ARMs Second Lien Other
Census Division	The Census Division in which the property resides. This variable is populated based on the property's state code	East North Central East South Central Middle Atlantic Mountain New England Pacific South Atlantic West North Central West South Central
Relative Loan Size	Assigned classes for the loan amount at origination divided by the simple average of the loan amount for the origination year and for the State in which the property is located. Average loan size for the appropriate quarter is provided by OFHEO based upon data from both Enterprises. It is expressed as a decimal	0<=Size<=.4 .4<Size<=.6 .6<Size<=.75 .75<Size<=1.0 1.0<Size<=1.25 1.25<Size<=1.5 Size>1.5

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	"New Book" is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No
Interest Only Flag	Indicates if the loan is currently paying interest only. Loans that started as I/Os and are currently amortizing should be flagged as "N"	Yes No
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR < 1.00 1.00 <=DCR<1.10 1.10 <=DCR<1.20 1.20 <=DCR<1.30 1.30 <=DCR<1.40 1.40 <=DCR<1.50 1.50 <=DCR<1.60 1.60 <=DCR<1.70 1.70 <=DCR<1.80 1.80 <=DCR<1.90 1.90 <=DCR<2.00 2.00 <=DCR<2.50 2.50 <=DCR<4.00 DCR >= 4.00
Prepayment Penalty Flag	Indicates if prepayment of the loan is subject to active prepayment penalties or yield maintenance provisions	Yes No

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3.1.3.1 * * *

[c] * * *

TABLE 3–18—INTEREST RATE AND INDEX INPUTS

Interest Rate Index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill Ticker: GB1M (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED01W (index)
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED06M (index)
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index)
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0001M (index)
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0003M (index)
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0006M (index)
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0012M (index)
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield, Ticker: AGDN030Y (index)
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield, Ticker: AGDN090Y (index)
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield, Ticker: AGDN180Y (index)
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield, Ticker: AGDN360Y (index)
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield, Ticker: AGAC02 (index)
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield, Ticker: AGAC03 (index)
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield, Ticker: AGAC05 (index)
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield, Ticker: AGAC10 (index)
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield, Ticker: AGAC30 (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate Ticker: FHCR1510 (index)
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed

* * * * *

3.3.1 * * *

[b] The process for determining interest rates is as follows: first, identify values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, 20- and 30-year CMTs; fourth, project non-Treasury Interest Rates, including the Federal Agency Cost of Funds Index; and fifth, project the Enterprises Cost of Funds Index, which provides borrowing rates for the Enterprises during the Stress Period, by increasing the Agency Cost of Funds Index by 10 basis points for the last 108 months of the Stress Test.

* * * * *

3.3.3 * * *

[a] * * *

3. * * *

c. *Enterprise Borrowing Rates.* In the Stress Test, the Federal Agency Cost of Funds Index is the same as the Enterprise Cost of Funds Index during the Stress Period, except that the Stress Test adds a 10 basis-point credit spread to the Federal Agency Cost of Funds rates to project Enterprise Cost of Funds rates for the last 108 months of the Stress Period.

* * * * *

3.4.2 * * *

TABLE 3–28—PROPERTY VALUATION INPUTS

Variable	Description	Source
$CMT10_m$	10-year CMT yield for months m = 1...120 of the Stress Test	section 3.3, Interest Rates
$ACMT_o$	Unweighted nine-month average of the ten-year CMT yield for the nine months immediately preceding the Stress Test. (Monthly rates are unweighted monthly averages of daily rates, bond equivalent yield)	section 3.3, Interest Rates
$HHPGR_q^{HSP}$	Quarterly single family historical house price growth rates computed from the HPI series for the Benchmark region and time period, unadjusted for inflation. The specific series is the West South Central Census Division for the years 1984–1993, as reported in OFHEO's Third Quarter, 1996 HPI Report	Table 3–19 of section 3.1.3, Public Data
RG_m^{HSP}	Multifamily Rent Growth Rates for months m = 1...120 of the Benchmark region and time period, unadjusted for inflation	Table 3–20 of section 3.1.3, Public Data
RVR_m^{HSP}	Multifamily Rental Vacancy Rates for months m = 1...120 of the Benchmark region and time period	Table 3–20 of section 3.1.3, Public Data

* * * * *

3.5.3 * * *

[a] * * *

2. * * *

d. The Stress Test will permit a higher rating to be used for an unrated seller-servicer who participates in a multifamily delegated underwriting and servicing program that requires a loss-sharing agreement when: (1) The loss sharing agreement is collateralized by a fully funded reserve account pledged to the Enterprise; and (2) the reserve account is in an amount that is equal to or exceeds the amount that OFHEO has determined to be adequate to support the seller-servicer's loss-sharing obligation under the program. Determinations of the reserve requirement and of the rating that will be permitted will be made on a program-by-program and Enterprise-by-Enterprise basis by the Director.

3. *Determine Maximum Haircuts.* The Stress Test specifies the Maximum Haircut (i.e., the maximum reduction applied to cash flows during the Stress Test to reflect the risk of loss due to counterparty (including security) default) by rating category and counterparty type as shown in Table 3–31.

a. The Maximum Haircut for a rating category is the product of its default rate and its loss severity rate. For all counterparties, the default rates are 5 percent for AAA, 12.5 percent for AA, 20 percent for A, 40 percent for BBB and 100 percent for Below BBB and Unrated. For non-derivative counterparties, the loss severity rate is 70 percent; for derivative counterparties, it is 10 percent. For all Below BBB and Unrated counterparties, the loss severity rate is 100 percent.

b. For periods prior to the implementation of netting, a separate set of Maximum Haircuts (set forth in Table 3–31) will be applied to derivative contract cash flows to approximate the impact of the net exposures to derivative contract counterparties (see section 3.8.3, Nonmortgage Instrument Procedures). After the implementation of netting, exposures will be netted as described in section 3.8.3 before the haircut is applied.

c. With the exception of haircuts for the Below BBB and Unrated category, haircuts for all counterparty categories are phased-in linearly over the 120 months of the Stress Period. The Maximum Haircut is applied in month 120 of the Stress Period. Haircuts for the Below BBB and Unrated category are applied fully starting in the first month of the Stress Test.

TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
Cash	0%	0%	0%	N/A
AAA	0.3%	0.5%	3.5%	120
AA	0.75%	1.25%	8.75%	120

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TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION—Continued

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
A	1.2%	2%	14%	120
BBB	2.4%	4%	28%	120
Below BBB and Unrated	100%	100%	100%	1

* * * * *

3.6.3.4.3.1 * * *

[a] * * *

2. Calculate $PNEQ_q$, the Probability of Negative Equity in quarter q:

$$PNEQ_q = N\left(\frac{ln LTV_q}{\sigma_q}\right),$$

where:

N designates the cumulative normal distribution function.

a. LTV_q is evaluated for a quarter q as:

$$LTV_{ORIG} \times \frac{\left(\begin{array}{l}\text{Ratio of current}\\ \text{Loan Group UPB}\\ \text{to Original UPB}\end{array}\right)}{\left(\begin{array}{l}\text{Ratio of current property}\\ \text{value (based on HPI in}\\ \text{quarter q) to original}\\ \text{property value (based on}\\ \text{HPI at Origination)}\end{array}\right)}$$

The HPI at Origination is updated to the beginning of the Stress Test using actual historical experience as measured by the OFHEO HPI; and then updated within the Stress Test using House Price Growth Factors from the Benchmark region and time period:

$$LTV_q = LTV_{ORIG} \times \frac{\left(\frac{UPB_{m=3_q-3}}{UPB_{ORIG}}\right)}{\left[CHPGF_0^{LG} \times exp\left(\sum_{k=1}^{q} HPGR_k\right)\right]}$$

Where:

$UPB_{m=3q-3}$ = UPB for the month at the end of the quarter prior to quarter q

$CHPGF_0^{LG} = 1.0$ if the loan was originated in the same quarter as or after the most recently available HPI as of the reporting date

* * * * *

3. * * *

a. Compare mortgage rates for each quarter of the Stress Test and for the eight quarters prior to the start of the stress test (q = −7, −6, ... 0, 1, ... 40):

* * * * *

3.6.3.5.1 * * *

[b] *Explanatory Variables for Default Rates.* Eight explanatory variables are used as specified in the equations in section 3.6.3.5.3.1, of this Appendix, to determine Default rates for multifamily loans: Mortgage Age, Mortgage Age Squared, New Book indicator, Not Ratio-updated ARM indicator, current Debt-Service Coverage Ratio, Underwater Current Debt-Service Coverage indicator, Loan-To-Value Ratio at origination/acquisition, and a Balloon Maturity indicator. Regression coefficients (weights) are associated with each variable. All of this information is used to compute conditional annual Default rates throughout the Stress Test. The annualized Default rates are converted to monthly conditional Default rates and are used together with monthly conditional Prepayment rates to calculate Stress Test Whole Loan Cash Flows. (*See* section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this appendix).

* * * * *

3.6.3.5.2 * * *

TABLE 3–38—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT CALCULATIONS

Variable	Description	Source
	Mortgage Product Type	RBC Report
A_o	Age immediately prior to start of Stress Test, in months (weighted average for Loan Group)	RBC Report
NBF	New Book Flag	RBC Report
RUF	Ratio Update Flag	RBC Report
LTV_{ORIG}	Loan-to-Value ratio at loan Origination	RBC Report
DCR_o	Debt Service Coverage Ratio at the start of the Stress Test	RBC Report
PMT_o	Amount of the mortgage Payment (principal and interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group)	RBC Report
PPEM	Prepayment Penalty End Month number in the Stress Test (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
RGR_m	Benchmark Rent Growth for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
RVR_m	Benchmark Vacancy Rates for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
PMT_m	Scheduled Payment for months m = 1... RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
OE	Operating expenses as a share of gross potential rents (0.472)	fixed decimal from Benchmark region and time period
RVR_o	Initial rental vacancy rate	0.10

* * * * *

3.6.3.5.3.1 * * *

[a] * * *

2. Assign product and ratio update flags (NBF, NRAF). *Note:* these values do not change over time for a given Loan Group.

a. New Book Flag (NBF):

NBF = 1 for Fannie Mae loans acquired after 1987 and Freddie Mac loans acquired after 1992, *except* for loans that were refinanced to avoid a Default on a loan originated or acquired earlier.

NBF = 0 otherwise.

b. Not Ratio-updated Arm Flag (NRAF):

NRAF = 1 if both ARMF = 1 and RUF = 0,

NRAF = 0 otherwise.

Where:

ARMF = 1 for ARMs (including Balloon ARMs)

ARMF = 0 otherwise, and

RUF = 1 if the LTV and DCR were calculated or delegated to have been calculated at origination or recalculated or delegated to have been recalculated at Enterprise acquisition according to current Enterprise standards.

RUF = 0 otherwise

* * * * *

3.6.3.5.3.2 * * *

[a] * * *

1. Compute the logits for multifamily Default using inputs from Table 3–38 and coefficients from Table 3–39. For indexing purposes, the Default rate for a period m is the likelihood of missing the m_{th} payment; calculate its corresponding logit ($X\delta_m$) based on Loan Group characteristics as of the period *prior* to m, i.e. *prior* to making the mth payment.

$$X\delta_m = \delta_{AY}AY_{m-1} + \delta_{AY^2}AY_{m-1}^2 + \delta_{NBF}NBF + \delta_{NRAF}NRAF + \delta_{DCR}ln(DCR_{m-1}) + \delta_{UWDCRF}UWDCRF_{m-1} + \delta_{LTV}ln(LTV_{ORIG}) + \delta_{BMF}BMF_{m-1} + \delta_0$$

TABLE 3–39—EXPLANATORY VARIABLE COEFFICIENTS FOR MULTIFAMILY DEFAULT

Explanatory Variable (V)	Default Weight (δ_v)
AY	0.5256
AY^2	0.0284
NBF	− 1.219
NRAF	0.4193
DCR	− 2.368
UWDCRF	1.220
LTV	0.8165
BMF	1.518
Intercept (δ_0)	− 4.553

* * * * *

2. * * *

b. For the down-rate scenario, $APR_m = 0$ percent during the Prepayment penalty period (i.e., when m ≤ PPEM)

APR_m = 25 percent after the Prepayment penalty period (i.e., when m > PPEM)

* * * * *

3. Convert annual Prepayment and Default rates to monthly rates (MPR and MDR) using the following formulas for simultaneous processes:

$$MPR_m = \frac{APR_m}{ADR_m + APR_m} \times \left[1 - (1 - ADR_m - APR_m)^{\frac{1}{12}}\right]$$

If both ARMF = 0 and RUF = 0, then

$$MDR_m = \left[\frac{ADR_m}{ADR_m + APR_m} \times \left[1 - (1 - ADR_m - APR_m)^{\frac{1}{12}}\right]\right] \times 1.2$$

otherwise,

$$MDR_m = \frac{ADR_m}{ADR_m + APR_m} \times \left[1 - (1 - ADR_m - APR_m)^{\frac{1}{12}}\right]$$

* * * * *

3.6.3.6.3.2 * * *

TABLE 3–44—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY

Variable	Description	Value or Source
	Government Flag	RBC Report
DR_m	Discount Rate in month m (decimal per annum)	6-month Enterprise Cost of Funds from Section 3.3, Interest Rates
MQ	Time during which delinquent loan interest is passed-through to MBS holders	4 for sold loans 0 otherwise
PTR_m	Pass Through Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
RHC	Net REO holding costs as a decimal fraction of Defaulted UPB	0.07
MF	Time from Default to completion of foreclosure (REO acquisition)	9 months
MR	Months from REO acquisition to REO disposition	15 months
RP	REO proceeds as a decimal fraction of Defaulted UPB	0.63

* * * * * * * *

3.6.3.6.4.3 * * *

[a] * * *

1. Determine Mortgage Insurance Payment (MI_m) for single family loans in the DCC, or Loss Sharing Payment (LSA_m) for multifamily loans in the DCC, as a percentage of Defaulted UPB, applying appropriate counterparty Haircuts from section 3.5., of this Appendix:

$$MI_m^{DCC} = \left(1 - MIExp_m^{LG}\right) \times C^{MI,DCC} \times CLM_m^{MI,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{MI,DCC}\right)\right]$$

$$LSA_m^{DCC} = C^{LSA,DCC} \times CLM_m^{LSA,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{LSA,DCC}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

$$MIExp_m^{LG} = 1 \text{ if } \left(LTV_{ORIG} \times \frac{UPB_m^{LG}}{UPB_{ORIG}^{LG}}\right) < 0.78$$

$MIExp_m^{LG} = 0$ otherwise.

0.78 (78%) = the LTV at which MI is cancelled if payments are current

* * * * * * * *

3. * * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C1,H} = PD_m^{DCC,C1} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C1}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

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4. * * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C2,H} = PD_m^{DCC,C2} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C2}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

* * * * * * * *

5. Convert Aggregate Limit First and Second Priority Contract receipts in Dollars for each DCC in month m to a percentage of DCC Defaulted UPB:

$$ALPD_m^{DCC} = \frac{\left(PD_m^{DCC,C1,H} \times ELPI^{DCC,C1}\right) + \left(PD_m^{DCC,C2,H} \times ELPI^{DCC,C2}\right)}{DEF_m \times UPB_{m-1}^{LG} \times P^{DCC}}$$

Where:

$ELPI^{DCC,C} = 0$ if $ELPF^{DCC,C}$ = Y (Yes, indicating that Contract C is an Enterprise Loss Position)

$ELPI^{DCC,C} = 1$ otherwise

* * * * * * * *

3.6.3.7.3. * * *

[a] * * *

9. * * *

b. Float Income (FI) received in month m

$$FI_m = \left(\left[\left[\left[\left(SPR_m + NIR_m - GF_m\right) \times \frac{FDS}{365}\right] + \left[PPR_m \times \frac{FDP}{365}\right]\right) \times FER_m\right] - PIS_m\right) \times (1 - FREP)$$

where: Prepayment Interest Shortfall (PIS) in month m is:

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{12}$$

if FDP ≥ 30

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{24}$$

if 15 ≤ FDP < 30

* * * * *

3.7.3.1 * * *

[g] * * *

1. Compute:

$$HctFac_m = \frac{m'}{120} \times MaxHct\,(R)$$

Where:

m′ = m, except for MBS credit rating below BBB where m′=120

R = MBS credit rating

* * * * *

3.8.1 * * *

[f] In a currency swap, the Enterprise receives payments that are denominated in a foreign currency and it makes payments in U.S. dollars. The main difference between currency swaps and the type of swaps discussed above is that in a currency swap principal amounts are actually exchanged between the two counterparties. Currency swaps are divided into two classes, as shown in Table 3–65.[5]

[5] *Ibid.*

TABLE 3–65—CURRENCY SWAP CONTRACT CLASSIFICATION

Classification	Description of Contract
Fixed-for-Fixed Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes fixed, US dollar-denominated payments
Fixed-for Floating Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes payments in US dollar based on a floating interest rate

* * * * * * * *

3.8.3.1 * * *

[a] * * *

3. When applying the option exercise rule:

a. For zero coupon and discount securities, instruments with European options, and zero coupon swaps, evaluate option exercise only on dates listed in the instrument's option exercise schedule. For Bermudan options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent coupon dates (coupon dates on the fixed-rate leg for swaps). For American options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent monthly anniversaries of the instrument's first coupon date.

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d. If the remaining maturity is greater than 360 months, use the equivalent-maturity Enterprise Cost of Funds as if the remaining maturity is 360 months.

e. In the Stress Test, no preferred stock issued by the Enterprise will be called.

* * * * * * * *

3.8.3.10 * * *

[a] Finally, the interest and principal cash flows received by the Enterprises for non-mortgage instruments other than swaps and foreign currency-related instruments are Haircut (i.e., reduced) by a percentage to account for the risk of counterparty insolvency, if a counterparty obligation exists. The amount of the Haircut is calculated based on the public rating of the counterparty and time during the stress period in which the cash flow occurs, as specified in section 3.5, Counterparty Defaults, of this Appendix.

[b] An Enterprise may issue debt denominated in, or indexed to, foreign currencies, and eliminate the resulting foreign currency exposure by entering into currency swap agreements. The combination of the debt and the swap creates synthetic debt with principal and interest payments denominated in U.S. dollars. The Haircuts for currency swaps are applied to the pay (dollar-denominated) side of the currency swaps, or to the cash outflows of the synthetic debt instrument. Therefore, the payments made by the Enterprise on a foreign currency contract are increased by the haircut amount. The Haircuts and the Phase-in periods for currency swaps are detailed in Table 3–31, under Derivative Contracts.

[c] Haircuts for swaps that are not foreign currency related are applied to the Monthly Interest Accruals (as calculated in section 3.8.3.8, of this Appendix) on the receive leg minus the Monthly Interest Accruals on the pay leg when this difference is positive. Use the maximum haircut from Table 3–31 for periods before and after the implementation of netting, as appropriate. After the implementation of netting, net the swap proceeds for each counterparty before applying the haircuts. The following example applies to an Enterprise having two swaps with the same counterparty. On the first swap, the Enterprise pays fixed and receives floating and on the second swap it pays floating and receives fixed. If the counterparty is a net payer to the Enterprise, the haircuts will be applied to the sum of the two receive legs net of the sum of the two pay legs.

* * * * * * * *

3.10.3.1 * * *

[b] * * *

2. In any month in which the cash position is negative at the end of the month, the Stress Test issues a mix of new short-term and long-term debt on the 15th day of that month. New short-term debt issued is six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, with interest accruing on a 30/360 basis. New long-term debt issued is five-year bonds not callable for the first year ("five-year-no call-one") with an American call at par after the end of the first year, semiannual coupons on a 30/360 basis with principal paid at maturity or call, and a coupon rate set at the five year Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, plus a 50 basis point premium for the call option. During the Stress Test, the call option for new long-term debt issued is not executed in the up-rate scenario and in the down-rate scenario follows the same call exercise rule as other debt. An issuance cost of 2.5 basis points is assessed on new short-term debt at issue and an issuance cost of 20 basis points is assessed on new long-term debt at issue. New long-term debt is issued to target a total debt mix of short- to long-term debt that is the same as the short- to long-term debt mix at the beginning of the Stress Test. Issuance fees for new debt are amortized on a straight line basis to the maturity of the appropriate instrument.

3. Given the Net Cash Deficit (NCD_m) in month m, use the following constants and method to calculate the amount of short-term and long-term debt to issue in month m:

a. Set the Issuance Cost on new short-term debt at issue (ISCOST):
ISCOST = 0.00025

b. Set the Issuance Cost on new long-term debt at issue (ILCOST):
ILCOST = 0.002

c. Calculate Net Short-term Debt Outstanding ($NSDO_0$) and Total Debt Outstanding (TDO_0) at the start of the Stress Test (m = 0) using the following methodology:

1) For each month m and each debt and swap instrument i (each swap leg is considered a separate instrument), determine the Month of Next Repricing (MNR_m) defined as the first month greater than m in which the instrument matures or repricing can occur whether or not the coupon rate actually changes. Set the Principal Balance (PB_m) to be:

a) The principal (or notional principal) outstanding if the instrument cash flows are paid by the Enterprise,

b) Minus the principal (or notional principal) outstanding if the instrument cash flows are received by the Enterprise.

c) Zero if m is less than or equal to the issue month or the month in which an option exercised during the stress test would begin accruing cash flows to or from the Enterprise.

d) Zero if m is greater than or equal to the maturity month or the month in which an option exercised during the stress test would cease further cash flows to or from the Enterprise.

2) Calculate $NSDO_m$ by summing $PB_{m,i}$ for all instruments where $MNR_{m,i}$ is less than or equal to m plus 12.

3) Calculate TDO_m by summing $PB_{m,i}$ for instruments where $MNR_{m,i}$ is greater than m.

d. Set the Maximum Proportion of Total Debt (MPD):

$$MPD = \frac{TDO_0 - NSDO_0}{TDO_0}$$

e. Calculate Discount Rate Factor (DRF_m):

$$DRF_m = \left(1 + \frac{CF_m}{12}\right)^6$$

Where: CF_m = six month Enterprise Cost of Funds for month m

f. Calculate the Adjustment Factor for Short-Term Debt Issuance Fees ($AFSIF_m$):

$$AFSIF_m = \frac{DRF_m}{1 - ISCOST \times DRF_m}$$

g. Calculate the Adjustment Factor for Long-Term Debt Issuance Fees ($AFLIF_m$):

$$AFLIF_m = \frac{1}{1 - ILCOST}$$

h. Calculate the Maximum Long-Term Issuance ($MLTI_m$):

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$$MLTI_m = NCD_m \times AFLIF_m$$

i. Calculate Net Short-Term Debt Outstanding ($NSDO_m$) and Total Debt Outstanding (TDO_m) for month m using the methodology described in paragraph 3.10.3.1.[b]3.c. of this appendix. *Note:* This calculation must reflect all new issuances, option exercises, and maturities between the beginning of the Stress Test and month m.

j. Calculate Interim Face Amount of Long-Term Debt to be issued this month ($IFALD_m$):

$$IFALD_m = \frac{((MPD - 1) \times TDO_m) + NSDO_m + (MPD \times AFSIF_m \times NCD_m)}{1 - MPD + \left(AFSIF_m \times \frac{MPD}{AFLIF_m}\right)}$$

k. Calculate Face Amount of Long-Term Debt to be issued ($FALD_m$):

$$FALD_m = min(MLTI_m, max(0, IFALD_m))$$

l. Calculate Face Amount of Short-Term Debt to be issued ($FASD_m$):

$$FASD_m = AFSIF_m \times max\left(0, NCD_m - \frac{FALD_m}{AFLIF_m}\right)$$

* * * * *

3.10.3.6.2 * * *

[a] * * *

5. *Fixed Assets.* 25 percent of fixed assets (net of accumulated depreciation) as of the beginning of the Stress Test remain constant over the Stress Test. The remaining 75 percent is converted to cash on a straight line basis over the ten-year Stress Period. Depreciation is included in the base on which operating expenses are calculated for each month during the Stress Period.

* * * * *

4.0 * * *

Enterprise Cost of Funds: Cost of funds used in computing the cost of new debt for the Enterprises during the Stress Test, as specified in section 3.3.3.[a]3.c., of this Appendix.

* * * * *

Dated: February 20, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–4417 Filed 3–14–02; 8:45 am]

BILLING CODE 4220–01–P

Federal Register

Friday,
March 15, 2002

Part VI

Small Business Administration

13 CFR Part 121 and 123
Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program; Interim Final Rule and Proposed Rule

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245–AE93

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: For purposes of eligibility for economic injury disaster loan assistance attributed to the September 11, 2001 terrorist attacks on the World Trade Center, New York, New York and the Pentagon, Arlington, VA, the SBA is increasing the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to $3 million from $1 million. This action applies to small business Travel Agencies located in and outside of the declared areas for that disaster. This interim final rule is published in conjunction with SBA's proposed rule elsewhere in this issue of the **Federal Register** that recommends increasing the size standard for Travel Agencies from $1 million to $3 million for all Federal small business assistance programs. SBA believes that this action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This rule also changes the time at which size status is determined for economic injury disaster loan assistance in connection with the September 11, 2001 attacks.

DATES: Effective Date: This rule becomes effective March 15, 2002.

Comment Date: Comments must be received on or before April 15, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via e-mail to *SIZESTANDARDS@sba.gov*. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

I. Justification for Increasing the Size Standard

SBA has received requests from firms and trade associations in the travel industry to increase the $1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the declining pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to $3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at *http:/www.sba.gov/library/soproom.html)* sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two "base or anchor size standards" that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the "typical industry."

The current size standard for Travel Agencies under NAICS code 561510 is $1 million, which is lower than the $6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry'average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firms at that size and smaller. For example, for Travel Agencies, firms of $2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the $6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this interim final rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the "four-firm concentration ratio"—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a $6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

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Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts. For example, Travel Agencies with $900 thousand or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of $3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES

[Data in Millions of Dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel agencies	$0.9	$2.2	$5.8	$27.1
Nonmanufacturing anchor group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the $6 million anchor size standard is appropriate. Also, that a size standard between $2 million to $3 million would represent a reasonable size standard for the Travel Agencies industry since these businesses capture approximately half of industry activity.

Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million $)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel agencies	$0.44	8.1	$0.188	16.3
Nonmanufacturing anchor group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of $2.5 to $3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start-up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms involved in leisure travel services. Corporate clients and the Federal government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to $160,000 to $200,000 on an average contract of approximately $8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This interim final rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for $4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than $545,000 in receipts. It's unlikely that an increase to the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately $7 billion on official travel per year. In addition, the Department of Defense awards contracts for leisure travel services, which are worth $5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agencies in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies services. For Fiscal Year 2000, $206,000 out of $25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through General Services Administration (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of tickets	Sales ($)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	$518,966,320	$24,423,055	$12,630,279	$33,647,038
Percentage of Total to Small Business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms to provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be $200,000 on an average contract of $8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than $1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $3 million size standard. Four out of the five factors support an increase to the current $1 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current $1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below an amended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the amended size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm $3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the amended size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from $1 million to $2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with $1 million and less in revenues have declined by more than one-third while Travel Agencies with more than $2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel

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Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than $2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least $2 million and as high as $3 million to $3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than $2 million should be considered.

SBA also contemplated as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the $1 million but lower than the anchor nonmanufacturing size standard.

II. Justification for Changing Date of Determination of Size Status

SBA is also changing the date as of which size status is determined for purposes of Economic Injury Disaster Loan (EIDL) applications related to the September 11, 2001, terrorist attacks. Existing sections 121.302(c), 123.300(b), and 123.601(b) require an applicant for an EIDL loan to be small as of the date the disaster commenced, as set forth in the disaster declaration. SBA is changing the date size status is determined for September 11 EIDL assistance to "the date SBA accepts the application for processing."

SBA believes that this change will have only a minimal impact on eligibility. Under the size regulations, the receipts size of a business is calculated as an average for the business' last three completed fiscal years.

For purposes of September 11 EIDL assistance, receipts after September 11 to the end of the business' fiscal year would influence its three-year average if it filed an application after the end of that fiscal year. Most businesses use the calendar year as their fiscal year. The short period of time between September 11 and December 31 would have a relatively minor impact on the number of new firms that could qualify as small as a result of changing the date of size status to the date of application. A worst case example using the proposed $3 million Travel Agencies size standard demonstrates why this would affect few businesses.

Example: A business that averages $3.33 million per year could become an eligible small business if it had no receipts for the period September 11 to December 31. For Year 3, $2.34 million represents $3.3 million in annualized receipts.

Year 1 $3.33 million
Year 2 $3.33 million
Year 3 + $2.34 million
Sum = $9.00 million
Average = $3.00 million

Based on SBA's analysis of the Travel Agencies' industry and discussions with members of the industry, SBA has concluded that this scenario is highly unlikely.

SBA also believes this change is necessary to assist Travel Agencies and other small businesses that should have been considered small for purposes of September 11, 2001 EIDL assistance.

On January 23, 2002, SBA increased its size standards to reflect the effects of inflation since 1994. Businesses recognized as small under that rule will be able to file applications for September 11, 2001 EIDL assistance. Moreover, of all the industries severely impacted by the September 11 attacks, the Travel Agencies industry is the only one that did not have its size standard adjusted on January 23, 2002, to reflect the effect of inflation. SBA did not increase the size standard for Travel Agencies at that time since SBA was already in the process of re-evaluating the Travel Agencies size standard to reflect changing industry conditions, as further described under "Justification for Increasing the Size Standard" in this preamble.

The combination of these unique circumstances necessitate changing the date of determination of size status for purposes of September 11 EIDL assistance only. SBA does not foresee the need to apply this approach in the future.

In addition, to avoid the burden of re-submitting an application, any previously submitted application which was pending or denied because of size status will be deemed to have been resubmitted on the effective date of this rule.

III. Justification for Publication as an Interim Final Rule

This interim final rule is specifically for EIDL assistance attributable to the September 11, 2001 terrorist attacks on the World Trade Center in New York, New York and the Pentagon in Arlington, Virginia. SBA is also publishing a separate proposed rule elsewhere in this issue of the **Federal Register** that addresses the Travel Agencies size standard for all other small business purposes.

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations might arise where an agency must issue a rule without public participation. On September 16, 2001, the President declared a national emergency as a result of the events of September 11, 2001. The events of that day have directly impacted Travel Agencies. The traveling public cancelled and rescheduled existing travel arrangements and many postponed further travel. Consequently, airlines rescinded travel agencies' commissions on flights cancelled or rescheduled due to the terrorist attacks. Thus, many small travel agencies have seen their business decline precipitously by 20% to 50% due the events of September 11, 2001. On January 23, 2002, SBA issued an inflation adjustment as an interim final rule which increased revenue based size standards by 15.8%. The interim final rule had an applicability date of September 11, 2001, for this adjustment for the purposes of eligibility for economic injury disaster loans assistance as a result of the terrorist attacks on small businesses located in the declared disaster areas. The Travel Agencies $1 million size standard was not increased because the SBA decided to handle this industry by this separate rulemaking. A proposed adjustment to the Travel Agencies size standard under NAICS Code 561510 was already under development at SBA when the tragic events of September 11, 2001 occurred. SBA now believes that any delay in the adoption of this size standard adjustment could cause serious harm to those Travel Agencies.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans available to businesses that should be considered small, but that do not qualify under SBA's existing size standards. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 USC 633(d). Pursuant to that authority, SBA has determined that it is in the public interest to give immediate effect to SBA's current determination of small size status and that it would be impracticable to delay such implementation. SBA also notes the failure to adopt this rule immediately would work to the detriment of many small Travel Agencies.

By changing the date of determination of the small business size status for purposes of EIDL assistance attributable to the September 11, 2001 attacks, SBA will be able to assist these small businesses before the deadlines for application of September 11, 2001 EIDL assistance. The application deadline for expanded EIDL assistance (under 13 CFR Part 123, subpart G, §§ 123.600–.606) is April 22, 2002. The application deadline for EIDL assistance (under 13 CFR part 123, subpart D, §§ 123.300–.303) to the declared disaster areas of New York and Virginia is June 11, 2002.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before April 15, 2002. SBA will consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule," 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in II, Justification For Publication As An Interim Final Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. SBA believes that this action is both in the public interest and does not tend to adversely affect any interested parties. SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule.

Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that the interim final rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is there a need for the regulatory action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel Agencies is needed to better define small businesses in this industry for purposes of EIDL resulting from the September 11, 2001 terrorist attacks.

ii. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for EIDL assistance resulting from the September 11, 2001 attacks. Under this rule, 723 additional Travel Agencies may obtain small business status and become eligible for this assistance. SBA estimates that $1.3 to $2.8 million in additional EIDL assistance may result from increasing the size standard for Travel Agencies. SBA also estimates an additional $2.3 million to $2.7 million in EIDL assistance to businesses that became eligible small businesses as a result of the recent inflation adjustment to monetary size standards. These estimates are based on participation rates and EIDL loan amounts of Travel Agencies and small businesses in the industries covered by the size standard inflation adjustment.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

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List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth in the preamble, amend parts 121 and 123 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, the table "Small Business Size Standards by NAICS Industry", under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Code	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
Subsector 561—Administrative and Support Services		
561510	Travel Agencies	[10] $1
EXCEPT	Travel Agencies applying for economic injury disaster loan assistance resulting from the September 11, 2001 Terrorist Attacks.	[10] $3

[10] NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

3. In § 121.302(c), add a new sentence at the end of the paragraph to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For economic injury disaster loan assistance under disaster declarations for the September 11, 2001 terrorist attacks or under subpart G of part 123 of this chapter, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before March 15, 2002, whether denied because of size status or pending, such applications shall be deemed resubmitted on March 15, 2002.

* * * * *

PART 123—DISASTER LOAN PROGRAM

4. The authority citation of part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Public Law 102–395, 106 Stat.1828, 1864; Public Law 103–75, 107 Stat. 739; and Public Law 106–50, 113 Stat. 245.

5. Revise § 123.300(b) to read as follow:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced (except disaster declarations for the September 11, 2001 terrorist attacks, for which size status is determined as of the date SBA accepts the application for processing and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002), you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

6. Revise paragraph § 123.601(b) to read as follows:

§ 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

* * * * *

(b) Economic injury disaster loans are available under this subpart only if you were a small business (as defined in part 121 of this chapter) on the date SBA accepts your application for processing (and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonable available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–6194 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE95

Small Business Size Standards; Travel Agencies

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to increase the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to $3 million from $1 million. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This proposed rule is published in conjunction with an interim final rule elsewhere in this issue of the **Federal Register** which makes the size standard change effective the date of its publication for purposes of SBA's Economic Injury Disaster Loan (EIDL) program as a result of the September 11, 2001 attacks in New York and Arlington, Virginia.

DATES: Comments must be submitted on or before April 15, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via-email to *SIZESTANDARDS@sba.gov*. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: This proposed rule covers all small business programs. SBA is publishing a separate interim final rule elsewhere in this issue of the **Federal Register** addressing the Travel Agencies size standard for purposes of economic injury disaster loan (EIDL) assistance attributed to the September 11 terrorist attacks.

SBA has received requests from firms and trade associations in the travel industry to increase the $1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to $3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at *http://www.sba.gov/library/soproom.html*) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two "base or anchor size standards" that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the "typical industry."

The current size standard for Travel Agencies under NAICS code 561510 is $1 million, which is lower than the $6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b). evaluation factors are listed which are the primary factors describing the structural characteristics of an industry—average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also

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examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firm at that size and smaller. For example, for Travel Agencies, firms of $2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the $6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the "four-firm concentration ratio"—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a $6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts. For example, Travel Agencies with $900 thousand or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of $3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES

[Data in millions of dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel Agencies	$0.9	$2.2	$5.8	$27.1
Nonmanufacturing Anchor Group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the $6 million anchor size standard is appropriate. Also, that a size standard between $2 million to $3 million would represent a reasonable size standard for the Travel Agencies industry since these businesses capture approximately half of industry activity.

Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million $)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel Agencies	$0.44	8.1	$0.188	16.3
Nonmanufacturing Anchor Group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of $2.5 to $3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms leisure travel services. Corporate clients and the Federal government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to $160,000 to $200,000 on an average contract of approximately $8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This proposed rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for $4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than $545,000 in receipts. It's unlikely that an increase to

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the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately $7 billion on official travel per year. In addition, the Department of Defense awards contracts for leisure travel services, which are worth $5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agents in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies Services. For Fiscal Year 2000, $206,000 out of $25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through the General Services Administration's (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of Tickets	Sales ($)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	$518,966,320	$24,423,055	$12,630,279	$33,647,038
Percent of total to small business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be $200,000 on an average contract of $8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than $1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $3 million size standard. Four out of the five factors support an increase to the $3 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current $1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the proposed size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm $3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from $1 million to $2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with $1 million and less in revenues have declined by more than one-third while Travel Agencies with more than $2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than $2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least $2 million and as high as $3 million to $3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than $2 million should be considered.

SBA also contemplated as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the $1 million but lower than anchor the nonmanufacturing size standard.

SBA welcomes public comments on its proposed size standard for the Travel Agencies industry. Comments supporting an alternative to the proposal, including the option of retaining the size standard at $1 million, should explain why the alternative would be preferable to the proposed size standard, how it would impact current small businesses, and how it would effectively assist small businesses. SBA also welcomes comments and additional information on start-up costs of travel agencies serving corporate and government clients.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).

The Office of Management and Budget (OMB) has determined that the proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel Agencies is needed to better define small businesses in this industry.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 723 additional firms may obtain small business status and become eligible for these programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses to evaluate the impact of size standards changes. In researching the Travel Agencies industry, SBA contacted representatives of the GSA and the DoD. These two agencies account for the largest proportion of Federal contracting for travel services. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would affect three groups. First, businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs. Second, growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that approximately $450,000 in new Federal loan guarantees could be made to these newly defined small businesses. This represents 10% of the $4.5 million in loans that were guaranteed by the SBA under this financial program to Travel Agencies in FY 2000. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in only a small increase in small business guaranteed loans to Travel Agencies, and the $450,000 estimated figure may overstate the actual impact.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $347 million in sales out of approximately $9 billion in total Federal travel expenditures under the small business set-aside program, the 8(a), Small Disadvantaged Business, and HUBZone programs, or unrestricted contracts. Since most of these travel dollars will pass through to airlines, hotels, and automobile rental companies, SBA estimates actual revenues to Travel Agencies will range between $25 million and $42 million (7% to 12% of the estimated $347 million in sales). This also represents approximately $36 million of additional Federal contracts that may be awarded to businesses becoming newly designated small businesses. These estimates reflect a 10% increase in the awards to small businesses that the Federal government expends for travel services.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open

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procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that 732 additional firms become active in Government programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business SBA's procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set-aside for small businesses or reserved for the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and loses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set-aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUZone or small disadvantaged businesses instead of large businesses since those two categories of small business are eligible for price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set-aside for all small businesses. The number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government would limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. As described above in the Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses in the Travel Agencies industry competing for Federal Government procurements reserved for small business, and small disadvantaged businesses and HUBZone businesses eligible for price adjustment, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Travel Agencies may be set-aside for small business as the pool of eligible small businesses expands.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with GSA and DoD regarding a possible increase to the Travel Agencies size standard. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What Is the Need for and Objective of the Rule?

The revision to the size standards NAICS code 561510 more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

(2) What is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Travel Agencies industry, 21,496 out of 22,687 businesses are small. Only a small proportion of businesses in this industry utilizes SBA programs. In SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 166 Travel Agencies are currently registered. In fiscal year 2000, 54 small business Travel Agencies received 7(a) or 504 guaranteed loans. Thus, the likely impact of this rule would be limited to 732 small businesses, based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. The following table shows these data for the Travel Agencies Industry.

TRAVEL AGENCIES INDUSTRY DATA

Category	Travel agencies
Total businesses	22,687
Small businesses	21,946
Small businesses registered in PRO-Net	166
Small businesses with 7(a) loans	54

SBA estimates 732 additional businesses out of 22,687 firms in the Travel Agencies activity would be considered small as a result of this rule, if adopted. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Businesses becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate approximately $1.0 billion out of a total of $10 billion in revenues. The small business coverage in the Travel Agencies would increase by 10% of total receipts.

(3) What are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(5) What Alternatives Will Allow the Agency to Accomplish its Regulatory Objectives While Minimizing the Impact on Small Entities?

SBA considered as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors show that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed, above, SBA believes the Travel Agencies characteristics support a size standard higher than the $1 million but lower than the nonmanufacturing size standard.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For reasons set forth in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, the table "Small Business Size Standards by NAICS Industry", under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
. . . . .	. . . . .	.
Subsector 561—Administrative and Support Services		

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
561510	Travel Agencies	[10] $3

Footnotes

10. NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–6195 Filed 3–14–02; 8:45 am]

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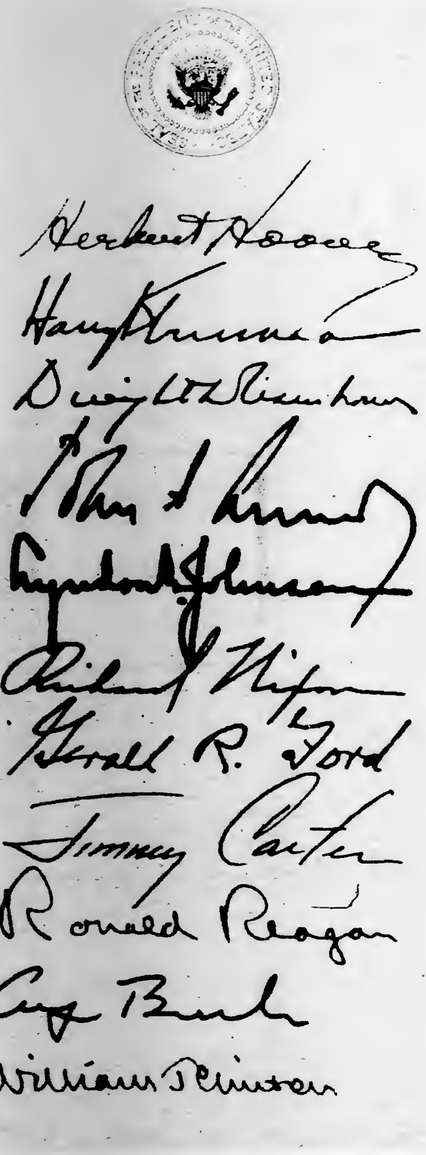
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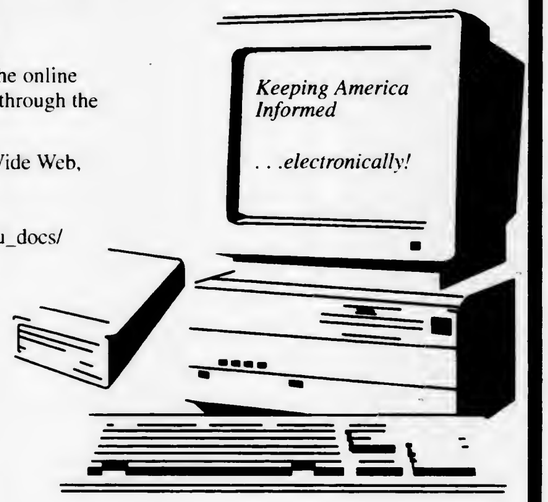
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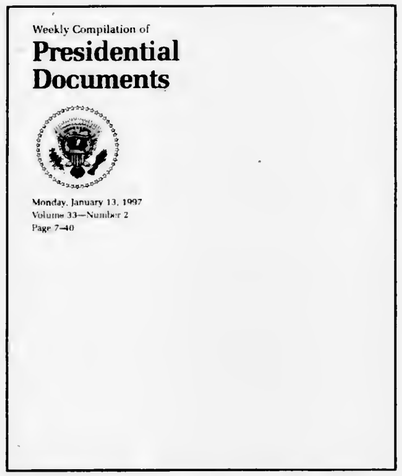
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM214, Special Conditions No. 25–198–SC]

Special Conditions: Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Garrett Aviation Services. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Electronic Primary Flight Display systems and dual Electronic Primary Attitude Source systems that perform critical functions. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 6, 2002. Comments must be received on or before April 17, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM214 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM214. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected airplanes. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this final action, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On January 10, 2002, Garrett Aviation Services, 1200 North Airport Drive—Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes approved under Type Certificate No. A7EU. The Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 are small transport category airplanes powered by two turbofan engines, with a maximum takeoff weight of 29,000 pounds. These airplanes operate with a 2-pilot crew and can hold up to 10 passengers. The modification incorporates the installation of a Rockwell Collins ProLine 21 Display System, consisting of dual Electronic Primary Flight Display systems which replace the existing Primary Flight Display systems, and a Rockwell Collins Attitude Heading Reference System, consisting of dual Electronic Primary Attitude Source systems. These systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A7EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes includes CAR 4b, dated December 1953, through Amendment 4b–12 and SR422B; and 14 CFR part 25, dated

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February 1, 1965, through Amendment 25–41, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A7EU.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b and 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Garrett Aviation Services will incorporate dual Electronic Primary Flight Display systems and dual Electronic Primary Attitude Source systems that will perform critical functions. The existing airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz-100 kHz	50	50
100 kHz-500 kHz	50	50
500 kHz-2 MHz	50	50
2 MHz-30 MHz	100	100
30 MHz-70 MHz	50	50
70 MHz-100 MHz	50	50
100 MHz-200 MHz	100	100
200 MHz-400 MHz	100	100
400 MHz-700 MHz	700	50
700 MHz-1 GHz	700	100
1 GHz-2 GHz	2000	200
2 GHz-4 GHz	3000	200
4 GHz-6 GHz	3000	200
6 GHz-8 GHz	1000	200
8 GHz-12 GHz	3000	300
12 GHz-18 GHz	2000	200
18 GHz-40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Garrett Aviation Services. Should Garrett Aviation Services apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Fan Jet Falcon, Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 6, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6365 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–21–AD; Amendment 39–12675; AD 2002–05–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. For certain airplanes, this action requires repetitive inspections for discrepancies of the rear spar attachments and cracks in the upper flange of the inboard track at the rear spar attachment of each outboard flap, and eventual rework of the flap track assembly and rear spar attachments, including replacement of the flap track with a new track, if necessary. For all airplanes, this action requires repetitive inspections for cracks in the upper flange of the inboard flap tracks at the rear spar attachments, and corrective action, if necessary. The actions specified by this AD are intended to find and fix discrepancies of the inboard tracks of the outboard flaps, which could result in loss of the outboard trailing edge flaps and consequent reduced controllability of the airplane. These actions are intended to address the identified unsafe condition.

DATES: Effective April 22, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Blilie, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 2, 2001 (66 FR 40162). That action proposed to expand the applicability and remove the optional terminating action of the proposed AD. For certain airplanes, that action proposed to require new repetitive inspections for discrepancies of the rear spar attachments and cracks in the upper flange of the inboard track at the rear spar attachment of each outboard flap, and eventual rework of the flap track assembly and rear spar attachments, including replacement of the flap track with a new track, if necessary. For all airplanes, that action proposed to require repetitive inspections for cracks in the upper flange of the inboard flap tracks at the rear spar attachments, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Clarify Compliance Time

Several commenters note that in paragraphs (a) and (c)(1) of the Supplemental NPRM, the phrase "whichever occurs later," is used when only one compliance time is given. They ask that the compliance time be clarified.

The FAA concurs that clarification is required and, accordingly, has deleted the phrase "whichever occurs later" from paragraphs (a) and (c)(1) of this final rule.

Request to Clarify Which Airplanes Are Subject to Paragraph (a) of the Supplemental NPRM

One commenter points out that paragraph (a) of the Supplemental NPRM is applicable to all Model 737 series airplanes with line numbers 1 through 1585, whereas the service bulletin cited is effective only for the Model 737–100, –200, and –200C series airplanes. The commenter requests clarification as to the applicability of paragraph (a) of the AD.

The FAA concurs that clarification is necessary. Our intent was to have paragraph (a) of this AD apply only to the Model 737–100, –200, and –200C series airplanes. Accordingly, we have inserted the phrase "[for] Model 737–100, –200, and –200C series [airplanes]" in paragraph (a) of this final rule to specify the correct applicability.

Another commenter suggests that the part of paragraph (a) of the Supplemental NPRM which reads "* * * and airplanes with [line numbers] L/N 870 through 1585 on which the original flap tracks have been replaced with certain tracks as specified in Boeing Service Bulletin 737–57A1249, Revision 1 * * *" could be interpreted in two different ways. The commenter requests clarification.

The FAA agrees that the sentence could be misunderstood and, accordingly, has revised the language in paragraph (a) of this final rule to read

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"* * * and those airplanes with L/Ns 870 through 1585 inclusive, which either still have their original flap tracks or which have had the original flap tracks replaced with certain tracks as specified in Boeing Service Bulletin 737–57A1249, Revision 1 * * *"

Request to Clarify Which Flap Tracks Are Affected

One commenter states that the Supplemental NPRM does not specify which flap tracks are affected by paragraph (a) of the AD. The commenter requests that specific part numbers and dash numbers be listed in the final rule.

The FAA does not concur. The intent of paragraph (a) of this AD is to include all flap tracks for Model 737–100, –200, and –200C series airplanes with L/Ns 1 through 1585, except for certain flap tracks which are specifically excluded in the effectivity of the service bulletin. Accordingly, no change has been made to the final rule in this regard.

Request to Correct Reference to Part of Accomplishment Instructions

One commenter indicates that paragraph (d) of the Supplemental NPRM, which requires repetitive inspections for cracking in the upper flange of the inboard track of each outboard flap at the rear spar attachments, should refer to Part I of the Accomplishment Instructions rather than Part II of those instructions.

The FAA concurs. The original reference in the Supplemental NPRM to Part II was an error. The language in paragraph (d) of this final rule has been changed accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,890 Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,100 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required inspections at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $264,000, or $240 per airplane.

It will take approximately 12 work hours per airplane to accomplish the required rework at an average labor rate of $60 per work hour. Required parts will cost approximately $532. Based on these figures, the cost impact of the required rework on U.S. operators is estimated to be $1,377,200, or $1,252 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–05–07 Boeing: Amendment 39–12675. Docket 99–NM–21–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category; EXCEPT airplanes on which any replacement flap tracks were installed according to Boeing Service Bulletin 737–57–1203, dated November 15, 1990, or production equivalent.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Airplanes modified according to Boeing Service Bulletin 737–57–1065 are subject to additional work as described in this AD and in Boeing Service Bulletin 737–57A1249, Revision 1, dated June 1, 2000.

To find and fix discrepancies of the inboard tracks of the outboard flaps, which could result in loss of the outboard trailing edge flaps and consequent reduced controllability of the airplane, accomplish the following:

Initial Inspections

(a) For Model 737–100, –200, and –200C series airplanes with line numbers (L/N) 1 through 869 inclusive, and those airplanes with L/Ns 870 through 1585 inclusive, which either still have their original flap tracks or which have had the original flap tracks replaced with certain tracks as specified in Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000: Within 6 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, according to Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000.

(1) Perform a detailed visual inspection for discrepancies (e.g., corrosion, or missing, damaged, or migrated anti-fret strips and tapered shims) of the rear spar attachments of the flap tracks.

(2) Perform detailed visual, high frequency eddy current (HFEC), and ultrasonic inspections for cracking in the upper flange of the inboard track of each outboard flap at the rear spar attachments.

Note 3: Inspections and rework accomplished according to Boeing Alert Service Bulletin 737–57A1249, including Appendix A, dated December 16, 1999, is considered acceptable for compliance with the applicable action specified in this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) For airplanes subject to paragraph (a) of this AD: If no discrepancy is found during any inspection required by paragraph (a) of this AD, thereafter, repeat the inspections specified in paragraph (a) of this AD at intervals not to exceed 9 months, until the actions required by paragraph (c) of this AD have been accomplished.

Rework

(c) For airplanes subject to paragraph (a) of this AD: At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, accomplish rework of the flap track assembly and aft flap track attachments (including removal of the flap track; a detailed visual inspection for a missing, damaged, or migrated anti-fret strip and tapered shim of the rear spar attachments of the flap track; replacement of the anti-fret strip with a new aluminum anti-fret strip (or installation of an aluminum strip if no strip is installed), as applicable; replacement of the tapered shim with a new shim (or installation of a shim if no shim is installed); eddy current and ultrasonic inspections for fatigue cracking of the flap tracks; a detailed visual inspection for corrosion of the flap tracks; and rework of attachment holes), including replacement of the flap tracks, as applicable, by accomplishing all actions specified in Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000. Do these actions according to that service bulletin, except as provided by paragraph (e) of this AD. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(1) If no discrepancy is found during any inspection required by paragraph (a) or (b) of this AD: Do the rework within 24 months after the effective date of this AD.

(2) If any discrepancy is found during any inspection required by paragraph (a) or (b) of this AD: Do the rework prior to further flight.

Repetitive Inspections

(d) *For all airplanes:* At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, and thereafter at least every 24 months, perform detailed visual, HFEC, and ultrasonic inspections for cracking in the upper flange of the inboard track of each outboard flap at the rear spar attachments according to Part I of the Accomplishment Instructions of Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000.

(1) For airplanes subject to paragraph (c) of this AD, do the inspections within 10 years after accomplishment of the rework according to paragraph (c) of this AD.

(2) For airplanes other than those identified in paragraph (d)(1) of this AD, do the inspections within 10 years since the airplane's date of manufacture, or within 6 months after the effective date of this AD, whichever occurs later.

Repair Instructions and Exception to Procedures in Service Information

(e) If any discrepancy is found during any action required by paragraphs (a), (b), or (c) of this AD, and the service bulletin specifies to contact Boeing for appropriate action; OR if any discrepancy is found during inspections according to paragraph (d) of this AD: Prior to further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (e) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 737–57A1249, Revision 1, including Appendix A, dated June 1, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on April 22, 2002.

Issued in Renton, Washington, on March 8, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6201 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–46–AD; Amendment 39–12674; AD 2002–05–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation Model S–76A helicopters that currently requires a service life limit on certain landing gear parts based on hours time-in-service (TIS). This amendment adds another method of calculating the life limit for certain landing gear parts based on cycles and requires the operator to choose and record the method of calculating the service life of each part in the rotorcraft history or equivalent record. This amendment also requires replacing the part based upon either the maximum hours TIS or the maximum cycles but not both. This amendment is prompted by the need to add flight cycles as a method of calculating the life limit for certain landing gear parts based on fatigue analyses. The actions specified by this AD are intended to add or revise the retirement life for certain landing gear parts to prevent fatigue failure of the landing gear and subsequent loss of control of the helicopter.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer,

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Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 86–09–11, Amendment 39–5298 (51 FR 17009, May 8, 1986), for Sikorsky Model S76A helicopters, was published in the **Federal Register** on October 12, 2001 (66 FR 52073). That action proposed retaining a life limit based on hours TIS but also allowing the life limit to be based on cycles for certain landing gear parts. That action also proposed selecting a method for calculating the life limit of the landing gear parts, recording that method in the rotorcraft history or equivalent records, and using only that method throughout the life of the part. A cycle is defined as one takeoff to a hover or other mode of flight and one landing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The manufacturer suggests removing all references to specific dates and pages in the maintenance manual because those references could change in future revisions and lead to confusion for the operators. The FAA agrees; however, that information was only included in the NPRM as part of the discussion and was not included in the regulatory text and is not included in the final rule.

That commenter also states that in Table 1 the correct part number for the main landing gear axle is 1945E85 and not 195E85, and the life limit for the main landing gear retraction actuator piston is 33,000 and not 33,300 hours TIS. The FAA agrees and has corrected this AD accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes are minor corrections and will only minimally increase the economic burden on operators and will not increase the scope of the AD.

The FAA estimates that 87 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,440.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5298 (51 FR 17009, May 8, 1986), and by adding a new airworthiness directive (AD), to read as follows:

2002–05–06 Sikorsky Aircraft Corporation: Amendment 39–12674. Docket No. 2000–SW–46–AD. Supersedes AD 86–09–11, Amendment 39–5298, Docket No. 86–ASW–12.

Applicability: Model S–76A helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failures of the main and nose landing gear parts and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), determine either the hours TIS or cycles accumulated on each part listed in Table 1 or Table 2 of this AD, as applicable. A cycle is a takeoff to a hover or other mode of flight and a landing.

(1) If neither the hours TIS nor cycles are known for an affected part, assume the rotorcraft's total hours TIS are the hours TIS for that part.

(2) If only one history is known for the part (either hours TIS or cycles), use that method for tracking the remaining life of that part.

(3) Thereafter, record in the rotorcraft history or equivalent record the selected method of calculating the life limit for each landing gear part, and record either the accumulated hours TIS or cycles for the selected method.

(b) Before further flight, remove from service each part listed in the following Table 1 of this AD on or before reaching the applicable life limit:

TABLE 1

Component	Part No.	Life limit hours TIS	Life limit cycles
(1) Main Landing Gear:			
(i) Cylinder	1945E2	30,300	136,350
(ii) Axle Support Fitting	1945C12	9,600	43,200
(iii) Pin, Universal to Cylinder	1945C29	23,800	107,100
(iv) Drag Brace Rod End	1945E35	38,200	171,900
(v) Upper Torque Arm	1945E46	37,900	170,550
(vi) Lower Torque Arm	1945C47	16,200	72,900

TABLE 1—Continued

Component	Part No.	Life limit hours TIS	Life limit cycles
(vii) Axle	1945E85	23,380	105,210
(viii) Rod End, Positioning Rod	1945E235	19,100	85,950
(ix) Retraction Actuator:			
(A) Outer Cylinder	1945E302,1945F302	7,100	31,950
(B) Piston	1945E314	33,000	148,500
(C) Piston Rod End	01–747–061	8,000	36,000
(2) Nose Landing Gear:			
(i) Fork	1944E60	42,500	191,250
(ii) Cylinder	1944C2,1944E2	18,500	83,250
(iii) Drag Brace Actuator:			
(A) Cylinder Terminal	1944D201	28,800	129,600
(B) Piston Rod	1944E204	22,000	99,000

(c) For helicopters modified by Supplemental Type Certificate (STC) SH568NE, before further flight, remove from service each part listed in the following Table 2 of this AD on or before reaching the applicable life limit:

TABLE 2

Component	Part No.	Life limit hours TIS	Life limit cycles
(1) Main Landing Gear:			
(i) Cylinder	1945E2, 2071–2	24,000	108,000
(ii) Piston	1945E4, 2071–4	28,600	128,700
(iii) Axle Support Fitting	1945C12, 2071–12	7,400	33,300
(iv) Pin, Universal to Cylinder	1945C29, 2071–29	16,000	72,000
(v) Pin, Positioning Rod to Upper Torque Arm	1945A32, 2071–32	25,000	112,500
(vi) Drag Brace Rod End	1945E35, 2071–35	23,864	107,388
(vii) Upper Torque Arm	1945E46, 2071–46	26,829	120,730
(viii) Lower Torque Arm	1945C47, 2071–47	11,928	53,676
(ix) Lower Drag Brace	1945E74, 2071–74	46,000	207,000
(x) Retraction Brace	1945E76A11, 1945E76A12 2071–76–11, 2071–76–12	41,000	184,500
(xi) Axle	1945E85, 2071–85	23,380	105,210
(xii) Rod End, Positioning Rod	1945E235, 2071–235	13,600	61,200
(xiii) Retraction Actuator:			
(A) Outer Cylinder	1945E302, 1945F302	7,100	31,950
(B) Piston	1945E314	33,000	148,500
(C) Piston Rod End	01–747–061	8,000	36,000
(2) Nose Landing Gear:			
(i) Axle	1944B85, 2070–85	49,833	224,248
(ii) Fork	1944E60, 2070–60	32,000	144,000
(iii) Piston	1944E4, 2070–4	35,878	161,451
(iv) Cylinder	1944C2, 1944E2, 2070–2	13,500	60,750
(v) Drag Brace Actuator:			
(A) Cylinder Terminal	1944D201, 2070–201	23,000	103,500
(B) Piston Terminal	1944E212B, 2070–212	40,000	180,000
(C) Piston Rod	1944E204	22,000	99,000

(d) This AD revises the Limitations section of the maintenance manual by establishing or revising the retirement lives for the affected parts shown in Tables 1 and 2 of this AD and establishing cycle counting as an additional method to determine retirement for the affected parts. Installing STC SH568NE affects the retirement life of certain parts.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on April 2, 2002.

Issued in Fort Worth, Texas, on March 5, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–6330 Filed 3–15–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 738, 740, 742, 743, 748, and 774

[Docket No. 020228044–2052–02]

RIN 0694–AC42

Correction to Rule Entitled: Implementation of the Wassenaar Arrangement List of Dual-Use Items Revisions: Computers; and Revisions to License Exception CTP

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 8, 2002 the Bureau of Export Administration (BXA) published a final rule revising the Commerce Control List to implement certain agreed changes in Category 4 (Computers) of the Wassenaar List of Dual-Use Goods and Technologies, specifically in the area of computers. This rule corrects an error in the rulemaking requirements section to indicate that this rule was determined by the Office of Management and Budget to be significant for purposes of Executive Order 12866.

DATES: This rule is effective March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Sharron Cook in the Office of Exporter Services, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 02–5563 published on March 8, 2002, (67 FR 10611), BXA makes the following correction. On page 10613, in the first column, under Rulemaking Requirements #1, revise the phrase "not significant" to read "significant."

Dated: March 12, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services, Export Administration.

[FR Doc. 02–6296 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 740, 742, 743, and 774

[Docket No. 020228045–2053–02]

RIN 0694–AC56

Corrections to Rule Entitled: Revisions to License Exception CTP: Implementation of Presidential Announcement of January 2, 2002

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 8, 2002 the Bureau of Export Administration (BXA) published a final rule revising License Exception CTP. This rule corrects errors in the rulemaking requirements section (to indicate that this rule was determined by the Office of Management and Budget to be significant for purposes of Executive Order 12866), authorities section, list of subjects, part listings, and an instruction to add a missing paragraph reference.

DATES: This rule is effective March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Sharron Cook in the Office of Exporter Services, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 02–5562 published on March 8, 2002, (67 FR 10608), BXA makes the following corrections.

—On page 10608, in the third column, add 743 to the listing of 15 CFR parts.

—On page 10610, in the first column, under Rulemaking Requirements #1, revise the phrase "not significant" to read "significant."

—On page 10610, in the second column, in the List of Subjects, revise "15 CFR Part 740" to read "15 CFR Parts 740 and 743."

—On page 10610, in the second column, under the List of Subjects, revise the phrase "Accordingly, parts 734, 740, 742, and 774" to read "Accordingly, parts 734, 740, 742, 743, and 774."

—On page 10610, in the second column, under the authority citation listings, following paragraph 4 insert a new paragraph 4a reading as follows:

4a. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* Pub. L. 106–508; 50 U.S.C. 1701 *et seq;* E.O. 13206, 66 FR 18397, April 9, 2001.

—On page 10610, in the third column, under part 742, revise "§ 740.12" to read "§ 742.12".

—On page 10610, in the third column, under part 742, in instruction 9, revise the phrase "in paragraph (b)(3)(iv)(A)" to read "in paragraphs (b)(3)(i)(B) and (b)(3)(iv)(A)."

Dated: March 12, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services, Export Administration.

[FR Doc. 02–6295 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738 and 742

[Docket No. 020215031–2031–01]

RIN 0694–AC–53

Revisions and Clarifications to the Export Administration Regulations: Czech Republic, Hungary and Poland

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Export Administration Regulations (EAR). This rule amends the EAR by removing the license requirements for certain regional stability items and for certain crime control items destined to the Czech Republic, Hungary and Poland to correctly reflect the status of those countries as NATO members.

DATES: This rule is effective: March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Acting Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–0171, E-mail: *jroberts@bxa.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) maintains controls on certain military related items, such as military vehicles and certain specially designed commodities to be used to manufacture military equipment. These controls ensure regional stability in support of foreign policy. BXA also maintains controls on certain crime control and detection instruments and equipment, and related technology and software as a matter of foreign policy, to promote the observance of human rights throughout the world. Countries to which exports and reexports of these items are controlled are identified in Supplement No.1 to part 738 of the EAR, the Commerce Country Chart, by an X in the regional stability (RS) column identifier RS 2; and crime control (CC) column identifiers: CC 1, CC 2, or CC 3. This rule amends the license requirements for certain crime control items destined to the Czech Republic, Hungary and Poland because these countries were recently admitted to NATO. The EAR is amended to correctly reflect the status of these countries as NATO members.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 738 and 742 Exports, Foreign trade.

Accordingly, Parts 738 and 742 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

1. The authority citation for 15 CFR Part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

2. The authority citation for 15 CFR 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

PART 738—[AMENDED]

3. Supplement No. 1 to part 738 is amended by revising the entries for "Czech Republic," "Hungary" and "Poland" to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for Control]

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Czech Republic	X					X	X	X	X							
Hungary	X					X	X	X	X							
Poland	X					X	X	X	X							

PART 742—[AMENDED]

4. Section 742.6 is amended by revising paragraph (a)(2) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination *except* countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), Czech Republic, Hungary, Iceland, New Zealand and Poland for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

* * * * *

Dated: March 8, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–6297 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–33–P

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FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to section 7A of the Clayton Act. The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in Federal court to prevent consummation. The rule amendments are necessary to address public comments regarding the proposed rules published February 1, 2001, and will increase the clarity and improve the effectiveness of the rules.

DATES: These final rules are effective on April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Karen E. Berg, Attorney, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION: On February 1, 2001, the Commission published in the **Federal Register** interim and proposed rules amending the Hart-Scott-Rodino rules ("HSR rules") contained in 16 CFR parts 801, 802 and 803. The interim rules took effect upon publication in the **Federal Register** and implemented amendments to section 7A of the Clayton Act enacted on December 21, 2000 ("2000 Amendments"). The proposed rules recommended other changes improving and updating the HSR rules and did not take effect upon publication. Both sets of rules invited public comments.

The Commission, with the concurrence of the Assistant Attorney General, is adopting the proposed rules, previously published on February 1, 2001, as final with certain further changes in response to the public comments, as described below. The Commission received eighteen public comments addressing either or both the interim rules (66 FR 8679–8721) and the proposed rules (66 FR 8723–8729). Fifteen of the eighteen public comments received pertained to the proposed rules.

The following provided public comments on the proposed rules to the Commission:

1. Baker & McKenzie (3/19/01)
2. Dockstader, Robert A. (3/19/01)
3. Ford Motor Company (Bolerjack, Stephen D.) (3/19/01)
4. Fulbright & Jaworski LLP (Wellington, Daniel L.) (3/19/01)
5. Jones, Day, Reavis & Pogue (Smith, Tom D.) (3/19/01)
6. McDermott, Will & Emery (Bloch, Ronald A.) (3/19/01)
8. National Association of Manufacturers (NAM) (3/29/01)
10. Otis, Steve (2/14/01)
11. Paul, Weiss, Rifkind, Wharton & Garrison (Malaquin, Didier) (3/1/01)
12. Gibson, Dunn & Crutcher (Pfunder, Malcolm R.) (3/19/01)
13. Section of Antitrust Law of the American Bar Association (3/19/01)
14. Shearman & Sterling (Prince, Kenneth S.) (3/19/01)
15. Skadden, Arps, Slate, Meagher & Flom, LLP (Stoll, Neal R. Esq., et al) (3/19/01)
16. Kirkland & Ellis (Sonda, James and Jachino, Dani) (3/19/01)
17. Willkie, Farr & Gallagher (Gartner, Steven J.) (3/19/01)

PART 801—COVERAGE RULES

No public comments were received concerning Part 801 of the proposed rules. These proposed changes include updating examples in §§ 801.4, 801.14 and 801.90; and amending § 801.15 to reflect the $50 million nexus with U.S. commerce threshold for foreign transactions and give proper reference to other rules sections. The Commission is adopting those proposed rules as final without change.

PART 802—EXEMPTION RULES

Section 802.2 Certain acquisitions of real property assets.

The proposed rules would amend § 802.2(g), mainly by removing "associated agricultural assets" from the agricultural real property exemption. Under the current rules, such assets are defined as assets that are integral to the agricultural business activities conducted on the property, including inventory (e.g., livestock, poultry, crops, fruit, vegetables, milk, eggs), structures that house livestock raised on the real property, fertilizer, and animal feed.

Comment 12 questioned the justification for removing the associated agricultural assets—particularly structures and inventories of crops, animal feed or fertilizer—from the exemption. The comment suggested that acquisitions of these assets would not potentially be of substantive antitrust interest.

The Commission has concluded that it is appropriate to remove associated agricultural assets from this real property exemption, as proposed. As the Statement of Basis and Purpose ("SBP") to the Proposed Rules states, doing so will eliminate whatever ambiguity may arguably exist in the definition of "associated agricultural assets." It also refocuses the rule on agricultural *real* property which was the initial intent of the exemption when promulgated. The more-than-threefold increase in the statutory size-of-transaction test to $50 million will continue to exempt acquisitions of agricultural property unless the additional assets being acquired—whether within or beyond the definition of "associated agricultural assets"—are valued in excess of $50 million. The Commission believes that the elimination of "associated agricultural assets" from the agricultural property exemption simplifies the rule without significantly limiting the applicability of that exemption. If a significant number of agricultural property transactions are reported under HSR because of the "associated agricultural assets" conveyed in the transaction, the Commission can revisit the language of § 802.2(g).

Section 802.6 Federal agency approval.

Proposed § 802.6(b) was revised to state a general rule regarding mixed transactions rather than one that is industry specific. No comments were received regarding this rule revision, therefore the Commission is adopting this Proposed Rule as final without change.

Section 802.8 Certain supervisory acquisitions.

Proposed § 802.8 corrected a typographical error. No comments were received regarding this rule revision, therefore the Commission is adopting this Proposed Rule as final without change.

Sections 802.50 and 802.51 Foreign acquisitions.

The Proposed Rules would restructure and amend the exemptions contained in §§ 802.50 and 802.51. The Commission received fifteen comments regarding these proposed rules. One proposed amendment to these rules increases the thresholds for measuring nexus with U.S. commerce to $50 million from $15 million and $25 million. No comments were received concerning the increase to $50 million of the $15 million and $25 million nexus with U.S. commerce

thresholds contained in these exemptions. Consequently, these increased thresholds will be implemented without change from the Proposed Rules.

The comments focused on five other aspects of the proposed rules: (1) The period used to determine sales in or into the U.S.; (2) the method of valuation used for assets located in the U.S.; (3) the elimination of the $110 million aggregate U.S. sales and assets exemption for transactions valued in excess of $200 million; (4) the elimination of the absolute exemption for acquisitions of assets located outside of the U.S. by a foreign person; and (5) the applicability of aggregation of the sales and assets of multiple foreign issuers from the same acquired person to both U.S. and foreign acquiring persons.

The Commission is adopting Proposed §§ 802.50 and 802.51 as final, with two changes in response to these public comments. First, the measure of sales in or into the U.S. will be sales of the most recent fiscal year, rather than the sum of the most recent fiscal year's sales and sales year-to-date, as proposed. The Commission believes that the burden on the parties of determining any measure of sales in or into the U.S. beyond the most recent fiscal year of the parties may well outweigh the benefit to the agencies in capturing transactions involving a recent upswing in U.S. sales. Second, § 802.51 will be amended to correct a drafting error which resulted in aggregation of sales in or into the U.S. and assets located in the U.S. being applicable only to foreign persons acquiring multiple foreign issuers from the same acquired person. This error was discovered shortly after publication and will be corrected with additional language in paragraph (a) of the rule. This correction makes it clear that this aspect of the rule is intended to apply to acquisitions by both U.S. and foreign acquiring persons. These provisions, as well as others addressed by the comments, are discussed below. Finally, in a technical correction, the reference to § 801.40(c)(2) in paragraphs 802.50(b)(3), 802.51(a)(1), 802.51(b)(1), and 802.51(c)(3), has been changed to § 801.40(d)(2) to reflect the renumbering of that section.

(1) The Measure of Sales in or Into the United States

Comments 1–6 and 10–17 criticized the proposed requirement that sales in or into the U.S. be calculated by adding those sales from the last fiscal year to such sales generated to date since the end of that fiscal year, calculated no more than sixty days prior to the filing of notification or if notification is not required, within sixty days prior to the consummation of the acquisition. This proposed change reflected the recognition that sales figures based on a party's most recent fiscal year may be several months out of date and was intended to ensure that where U.S. sales generated by foreign assets and voting securities trend steeply upward prior to the acquisition, a filing would be required if that trend resulted in over $50 million in U.S. sales. The comments expressed a variety of concerns and offered several alternatives.

Comment 1 stated that this proposed method of calculating combined sales would, in many transactions, remove all benefit of the increased $50 million threshold for U.S. sales. It further noted that the requirement to combine sales could result in a filing obligation even where U.S. sales have been stagnating or even declining. The comment suggested that the requirement would produce widely disparate results based solely on when the transaction closes (*i.e.*, transactions that propose to close later in the year will be less likely to be able to claim the exemption than those that close early in the year). The comment proposed that the agencies' goal could be accomplished by requiring the comparison of U.S. sales over a two year period, and determining the applicability of an exemption based on the greater of U.S. sales for a single year in that period.

Comments 2, 3, 13 and 15 addressed the same concerns and suggested an alternative approach of using the higher of the most recent fiscal year's sales or estimated sales for the current year-to-date. Comment 13 further predicted that the proposed change would substantially narrow the exemption previously available and increase the number of transactions that are reportable.

Comment 4 suggested that a more equitable method would be to determine sales in the twelve months prior to filing or closing the transaction, calculated within sixty calendar days prior to filing notification or, if no filing is required, within sixty calender days of closing.

Comment 5 stated that determining the value of sales in or into the U.S. is often extraordinarily complex and time-consuming and that the proposed revisions do not reduce that burden. It further noted that while corporations have methods for analyzing such data, these methods are generally geared toward quarterly and annual assessments and are virtually never performed on an *ad hoc* basis. Outside of the audit procedures currently in place, it suggested that it is not practical, and perhaps not even possible, to take a meaningful snapshot of current revenues. The comment recommended deleting the requirement that current year sales be analyzed.

Comment 6 observed that throughout the rules, the determination of sales is always on an annual basis and is found in the reporting person's last year-end, consolidated statement of operations. It further opined that there is no suggestion that anti-competitive mergers have escaped review because of sharp upward trends in U.S. sales.

Comment 10 questioned why the rules for a foreign exemption should be particularly concerned about changes to sales since the end of the last fiscal year, when § 801.11 (measuring net sales for the size-of-person test) is not. Comment 12 similarly questioned why the change seeks to address an issue (a recent increase in U.S. sales) which arises in both foreign and domestic transactions, and no similar change is proposed for dealing with domestic transactions. It also suggested the possible approach of using the greater of the previous year's sales or sales year-to-date, but noted that the approach would still suffer from inconsistency with other provisions in the rules and further observed that current information is often difficult to obtain from foreign entities.

Comments 11, 14, and 16 noted that requiring the aggregation of sales since the end of the preceding fiscal year will lead in certain cases to uncertainty as to whether or not a transaction is reportable and places on the parties to a transaction the added burden of monitoring the sales of a foreign target while negotiations are in progress. Comment 14 suggested two alternative methods of calculation. One method was to determine a twelve month average of sales by adding the last fiscal year to the sales year-to-date, dividing the total by the number of months included, and multiplying this figure by twelve. The second suggested method was to use the most recent twelve months calculated within sixty days of filing or closing.

Finally, Comment 17 asserted that the proposed change, setting forth the time in which the calculation must be made, is unclear and imposes undue burden upon the parties that could generate delays in transactions. It proposed an alternative test of considering the greater of sales in the most recent fiscal year or sales over the last four available fiscal quarterly periods. It further stated that the parties should be entitled to a consistent cut-off date for calculating sales in or into the U.S., regardless of whether the transaction proves to be subject to notification. The comment

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recommended that the parties measure these sales as of the end of the most recent quarterly period available as of the date the parties enter into an agreement, so long as no more than 135 days have elapsed since the end of that quarterly period. It suggested that this approach would provide the parties certainty; allow sufficient time to gather information that is not always readily available; minimize the burden imposed by requiring sales for a fiscal year that has not yet ended; properly take into account sales trends; and allow most parties to rely upon their existing reporting practices.

The Commission recognizes the burden on the parties in determining sales in or into the U.S. for any period of time other than the filing person's most recent fiscal year. The Commission also agrees with the observation that aggregating sales from the most recent fiscal year with those year-to-date may have the undesirable result of making acquisitions reportable where sales in or into the U.S. in the current year may be steady or even declining. The Commission considered the many alternative methods suggested in the comments (e.g., most recent four quarters, most recent twelve months, greater of two years, greater of year-to-date or last fiscal year, twelve-month average) but was unable to discern how any of these methods would be significantly less burdensome than the approach put forth in the Proposed Rules. All of these approaches would also require compilation of data that is not captured in the ordinary course of business by many persons filing notification. Consequently, in the Final Rules, the measure of sales in or into the U.S. for purposes of §§ 802.50 and 802.51 will be those of the most recently completed fiscal year.

(2) Valuation of Assets Located in the United States

Comments 1, 3, 6 and 13 objected to the proposed change from book value to fair market value for measuring assets located in the U.S. The Commission believes that this change is appropriate in order to reflect more accurately a foreign person's nexus with U.S. commerce, to harmonize these sections with the rest of the rules, and to address questions frequently asked of the PNO concerning the use of book value to make this determination. Specifically, intangible assets such as U.S. patents and other intellectual property were often not carried on the books of a foreign person, and the question has frequently arisen as to what value should be attributed to these intangible assets and what method should be used to determine their book value. In these instances, the PNO advised parties to use fair market value.

Comment 1 asserted that the Commission's proposal is inconsistent with the rest of the rules and that the implementation of a fair market value test would impose a new, substantial burden upon parties in voting securities transactions. It argued that the size-of-person test is based on an existing balance sheet, not on a market valuation, and that it is only for assets that are being acquired that the rules require a fair market valuation. The comment suggested that in a stock deal, the market value of assets is not easily determinable, and any excess over the book value of the assets of the acquired company is reflected as goodwill on the balance sheet of the acquired company, precisely in recognition of the difficulties of a market value appraisal. It further maintained that the competitive significance and impact on U.S. commerce of a proposed acquisition will likely not turn upon whether the value of the acquired company's assets located in the U.S. has increased since its last book value calculation.

Comment 3 also argued that an additional burden is placed on the parties to extract the specific U.S. assets and determine their fair market value. It states that fair market valuation may be subject to dispute by the agencies, thus subjecting the parties to possible penalties, while book value is a simple, readily available value and provides certainty to parties seeking to determine whether the exemption is available. Comment 13 agreed that an additional burden is imposed by fair market valuation and also complained that some measure of certainty is lost since the agencies could dispute that valuation.

Lastly, Comment 6 claimed that the Commission's stated justification for the proposed rule change appeared to lack a factual foundation, arguing that consistency throughout the rules requires that book value be retained as the measure of value. It further submitted that book value is readily available and that requiring the acquiring person to determine the fair market value of the acquired person's, and in some cases its own, U.S. property imposes an unreasonable new burden. The comment concluded that, absent compelling evidence that a significant number of anticompetitive transactions will escape premerger review without this change, the book value of U.S. assets should continue to govern.

The Commission recognizes that in some instances the requirement to calculate the fair market value of assets located in the U.S. may impose additional burden on the acquiring person. However, in the vast majority of cases it will be readily apparent that the value of the assets clearly is above or below the $50 million threshold, and determination of whether or not the exemption is applicable will require a minimal amount of effort by the acquiring person.

As to the alleged inconsistency with the methodology used in determining the size-of-person of a party, the Commission notes that the $50 million threshold in §§ 802.50 and 802.51 is not a size-of-person test, but rather a "size-of-nexus with the U.S." test. The fair market value of assets located in the U.S. is a far more accurate assessment of the true nexus with U.S. commerce at the present time. The book value may be out of date and may not reflect the true value, especially in the case of assets which constitute an ongoing business, since a portion of the value of those assets may be carried on the books as goodwill. Also, assets may be carried on the books showing significant depreciation that does not reflect their actual value.

For these reasons, the Commission believes that the potential burden on a small number of transactions is outweighed by the benefit to the agencies in requiring a current and meaningful measure of a transaction's nexus with U.S. commerce. Therefore, the Commission will adopt the proposed change to fair market value for calculating the value of assets located in the U.S.

(3) Elimination of the $110 Million Aggregate U.S. Sales and Assets Exemption for Transactions Valued in Excess of $200 Million

Comments 1 and 13 asserted that the elimination of this exemption for transactions valued in excess of $200 million is inappropriate. Comment 1 contended that there is no discussion in the 1978 SBP of the import now apparently attributed by the Commission to the overall value of a transaction in determining whether a transaction may have an anticompetitive impact on U.S. commerce. It argued that the result of this proposed change is not consistent with the original rationale for creating this exemption, and that the value of a transaction outside of the U.S. does not indicate in any way the transaction's potential anticompetitive effects in the U.S. Comment 13 states that the elimination of this portion of the exemption will greatly narrow its reach.

While this change may marginally narrow the exemptions, the general increase in the reporting threshold to over $50 million, together with the increase in the $15 million and $25 million nexus tests to $50 million, will significantly expand the number of exempt foreign transactions.

In the SBP for the Proposed Rules, the Commission referenced the 1978 SBP which explains that the $110 million threshold was adopted to approximate the size-of-person criteria of Section 7A(a)(2), as it seemed appropriate and consistent with congressional intent not to exempt a transaction involving two foreign persons with a U.S. presence similar in size to the general criteria of the act for all persons. 43 FR 33498 (July 31, 1978). Since the new legislation removes the size-of-person test for acquisitions valued at over $200 million, the Commission likewise believes that it is appropriate and consistent to require filings from foreign persons, regardless of the size of their U.S. presence, where the transaction is valued at over $200 million and the $50 million nexus test of these exemption rules is satisfied.

(4) Elimination of the Absolute Exemption for Acquisitions of Assets Located Outside of the U.S. by a Foreign Person

Comment 13 claimed that the Commission sets forth no explanation as to why such transactions are likely to raise competitive issues in the U.S. in order to justify removing the exemption. The Commission clearly stated in the SBP to the Proposed Rules that experience at both agencies has shown that foreign asset acquisitions can and do have a direct impact on the U.S. economy and that this is more likely to be true where the assets generate over $50 million in sales in or into the U.S. Thus, the Commission continues to believe that it is appropriate to require that their acquisition be reported where there is a substantial nexus to U.S. commerce. This approach makes the rule consistent with the treatment of U.S. acquiring persons.

(5) Applicability of Aggregation of the Sales and Assets of Multiple Foreign Issuers From the Same Acquired Person to Both U.S. and Foreign Acquiring Persons

Comments 11 and 17 correctly noted a section numbering error in § 802.51. The intent was to require the aggregation of sales and assets of multiple foreign issuers, which are being acquired from the same acquired person, by both foreign and U.S. acquiring persons. This numbering error was discovered shortly after publication of the Proposed Rules and is corrected by adding paragraph (a)(3) which reads: "If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether the $50 million thresholds are exceeded." This revision will make the intent of the rule clear. An example has been added to illustrate the aggregation requirement.

Section 802.52 Acquisitions by or from Foreign Governmental Corporations

The example in Section 802.52 has been amended to reflect the new $50 million threshold for measuring nexus with U.S. commerce.

Other Comments

In addition to the above noted comments, Comment 8 opposed all proposed changes to the foreign exemptions on the grounds that they narrowed the scope of the exemptions. It recommended broadening the exemptions instead, but offered no suggestions as to how this should be accomplished. This comment, as well as Comments 1 and 3, based its recommendation on the International Competition Policy Advisory Committee ("ICPAC") (Report to the Attorney General of the International Competiton Policy Advisory Committee (February 2000)) finding that there were far too many filings in fiscal year 1999 involving foreign transactions. The ICPAC report dealt with filings subject to the prior $15 million size-of-transaction threshold and does not take into consideration changes in the level of filings as a result of the 2001 Amendments to the statute. Despite the marginal narrowing of the exemption in the areas discussed above, the Commission believes that the increase in the statutory size-of-transaction threshold to $50 million and the increase in the dollar thresholds in §§ 802.50 and 802.51 will dramatically reduce the number of foreign transaction filings overall.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, the recent amendments to Section 7A of the Clayton Act, which these rule amendments implement, were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less. Further, none of the rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3518, requires agencies to submit requirements for "collections of information" to the Office of Management and Budget ("OMB") and obtain clearance prior to instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The HSR premerger notification rules and Form contain information collection requirements as defined by the PRA that have been reviewed and approved by OMB under OMB Control No. 3084–0005 (preceding the latest HSR amendments). Because the Final Rules would not affect the information collection requirements of the premerger notification program beyond those of the proposed rules, they are not being resubmitted to OMB for review pursuant to the PRA. The Supporting Statement accompanying the Request for OMB Review states that the total burden imposed on the members of the public subject to the requirements of the Act, including the final rules, is estimated to be 192,089 hours per year (based on fiscal year 2000 filings). This constitutes approximately a 47% reduction from what the burden estimate would be absent the final rules and based on the number of fiscal year 2000 filings. The Commission is seeking 3-year clearance with the requisite submissions to OMB.

List of Subjects in 16 CFR Parts 801 and 802

Antitrust, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR Parts 801 and 802 as follows:

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PART 801—COVERAGE RULES

1. The authority citation for Part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.4 by revising Example 5 in paragraph (b) to read as follows:

§ 801.4 Secondary acquisitions.

* * * * *

(b) * * *

Examples: * * *

5. In example 4 above, suppose the consideration paid by "A" for the acquisition of B is $60 million worth of the voting securities of "A." By virtue of § 801.2(d)(2), "A" is both an acquiring and acquired person; B is an acquired person and B's shareholders are acquiring persons. A will still be deemed to have acquired control of B, and therefore the resulting acquisition of the voting securities of X is a secondary acquisition. Although B's shareholders are now also acquiring persons, unless one of them gains control of "A" in the transaction, no B shareholder makes a secondary acquisition of stock held by "A." If the consideration paid by "A" is the voting securities of one of "A"s subsidiaries and a shareholder of B thereby gains control of that subsidiary, the shareholder will make secondary acquisitions of any minority holdings of that subsidiary.

* * * * *

3. Amend § 801.14 by revising Example 2 in paragraph (b) to read as follows:

§ 801.14 Aggregate total amount of voting securities and assets.

* * * * *

(b) * * *

Examples: * * *

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. "A" now looks to § 801.13(b)(2) and determines that the previously acquired assets are not treated "as part of the present acquisition" because the second acquisition is of voting securities and not assets; thus, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act since the value of the securities to be acquired does not exceed the $50 million size-of-transaction test.

4. Amend § 801.15 by revising the introductory text, paragraphs (a)(2) and (b), and Examples 1, 4, 5, 7, and 8 in paragraph (c), to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) * * *

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§ 802.3, 802.4, 802.50(a), 802.51(a), 802.51(b) and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) * * *

Examples: 1. Assume that acquiring person "A" is simultaneously to acquire $51 million of the convertible voting securities of X and $12 million of the voting common stock of X. Since the overall value of the voting securities to be acquired (§ 801.1 defines convertible voting securities as "voting securities") is greater than $50 million, "A" must determine whether it is obliged to file notification and observe a waiting period before acquiring the securities. However, because § 802.31 of this chapter is one of the exemptions listed in paragraph (a)(2) of this section, "A" would not hold the convertible voting securities as a result of this acquisition. Therefore, since as a result of the acquisition "A" would hold only the $12 million of common stock, the size-of-transaction tests of Section 7A(a)(2) would not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock. (Note, however, that the $51 million of convertible voting securities would be reflected in "A"'s next regularly prepared balance sheet, for purposes of § 801.11.)

* * * * *

4. Assume that acquiring person "B," a United States person, acquired from corporation "X" two manufacturing plants located abroad, and assume that the acquisition price was $160 million. In the most recent fiscal year, sales into the United States attributable to the plants were $40 million, and thus the acquisition was exempt under § 802.50(a) of this chapter. Within 180 days of that acquisition, "B" seeks to acquire a third plant from "X," to which United States sales of $12 million were attributable in the most recent fiscal year. Since under § 801.13(b)(2), as a result of the acquisition, "B" would hold all three plants of "X," and the $50 million limitation in § 802.50(a) of this chapter would be exceeded, under paragraph (b) of this rule, "B" would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, "B" would hold assets of "X" exceeding $50 million in sales in or into the United States, would not qualify for the exemption in § 802.50(a) of this chapter, and must observe the requirements of the act and file notification for the acquisition of all three plants before acquiring the third plant.

5. "A" acquires producing oil reserves valued at $400 million from "B." Two months later, "A" agrees to acquire oil and gas rights valued at $75 million from "B." Paragraph (b) of this section and § 801.13(b)(2) require aggregating the previously exempt acquisition of oil reserves with the second acquisition. If the two acquisitions, when aggregated, exceed the $500 million limitation on the exemption for oil and gas reserves in § 802.3(a), "A" and "B" will be required to file notification for the latter acquisition, including within the filings the earlier acquisition. Since, in this example, the total value of the assets in the two acquisitions, when aggregated, is less than $500 million, both acquisitions are exempt from the notification requirements. In determining whether the value of the assets in the two acquisitions exceeds $500 million, "A" need not determine the current fair market value of the oil reserves acquired in the first transaction, since these assets are now within the person of "A." Instead, "A" is directed by § 801.13(b)(2)(ii) to use the value of the oil reserves at the time of their prior acquisition in accordance with § 801.10(b).

* * * * *

7. In Example 6, above, assume that "X" acquired 30 percent of the voting securities of M and proposes to acquire 40 percent of the voting securities of N, another entity controlled by "Z." Assume also that M's assets at the time of "X's" acquisition of M's voting securities consisted of $90 million worth of producing coal reserves and non-exempt assets with a fair market value of $39 million, and that N's assets currently consist of $60 million worth of producing coal reserves and non-exempt assets with a fair market value of $28 million. Since "X" acquired a minority interest in M and intends to acquire a minority interest in N, and since M and N are controlled by "Z," the assets of M and N must be aggregated, pursuant to §§ 801.15(b) and 801.13, to determine whether the acquisition of N's voting securities is exempt or whether it is reportable pursuant to the terms of § 802.4(c) of this chapter. "X" is required to determine the current fair market value of M's assets. If the fair market value of M's coal reserves is unchanged, the aggregated exempt assets do not exceed the limitation for coal reserves under § 802.3(b) of this chapter. However, if the present fair market value of N's non-exempt assets also is unchanged, the present fair market value of the non-exempt assets of M and N when aggregated is greater than $50 million. Thus the acquisition of the voting securities of N is not exempt under § 802.4 of this chapter. If "X" proposed to acquire 50 percent or more of the voting securities of both M and N in the same acquisition, the assets of M and N must be aggregated to determine if the acquisition of the voting securities of both issuers is exempt. Since the fair market value of the aggregated non-exempt assets exceeds $50 million, the acquisition would not be exempt.

8. "A" acquired 49 percent of the voting securities of M and 45 percent of the voting securities of N. Both M and N are controlled by "B." At the time of the acquisition, M held rights to producing coal reserves worth $90 million and N held a producing coal mine worth $90 million. This acquisition was exempt since the aggregated holdings fell below the $200 million limitation for coal in § 802.3(b) of this chapter. A year later, "A" proposes to acquire an additional 10 percent of the voting securities of both M and N. In the intervening year, M has acquired coal reserves so that its holdings are now valued at $140 million, and the value of N's assets remained unchanged. "A's" second acquisition would not be exempt. "A" is required to determine the value of the exempt assets and any non-exempt assets held by any issuer whose voting securities it intends to acquire before each proposed acquisition (unless "A" already owns 50 percent or more of the voting securities of the issuer) to determine if the value of those holdings of the issuer falls below the limitation of the applicable exemption. Here, the holdings of M and N now exceed the $200 million exemption for acquisitions of coal reserves in § 802.3 of this chapter, and thus do not qualify for the exemption of voting securities provided by § 802.4(a) of this chapter.

5. Amend § 801.90 by revising Example 1 to read as follows:

§ 801.90 Transactions or devices for avoidance.

* * * * *

Examples: 1. Suppose corporations "A" and "B" wish to form a joint venture. "A" and "B" contemplate a total investment of over $100 million in the joint venture; persons "A" and "B" each has total assets in excess of $100 million. Instead of filing notification pursuant to § 801.40, "A" creates a new subsidiary, A1, which issues half of its authorized shares to "A." Assume that A1 has total assets of $3000. "A" then sells 50 percent of its A1 stock to "B" for $1500. Thereafter, "A" and "B" each contribute $53 million to A1 in exchange for the remaining authorized A1 stock (one-fourth each to "A" and "B"). "A"'s creation of A1 was exempt under § 802.30 of this chapter; its $1500 sale of A1 stock to "B" did not meet the size-of-transaction filing threshold in Section 7A(a)(2)(B); and the second acquisitions of stock in A1 by "A" and "B" were exempt under Sections 7A(c)(3) and (10), because "A" and "B" each already controlled A1, based on their holdings of 50 percent of A1's then-outstanding shares. Since this scheme appears to be for the purpose of avoiding the requirements of the act, the sequence of transactions will be disregarded. The transactions will be viewed as the formation of a joint venture corporation by "A" and "B" having over $10 million in assets. Such a transaction would be covered by § 801.40, and "A" and "B" must file notification and observe the waiting period.

* * * * *

PART 802—EXEMPTION RULES

6. The authority citation for Part 802 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

7. Revise § 802.2(g) to read as follows:

§ 802.2 Certain acquisitions of real property assets.

* * * * *

(g) *Agricultural property.* An acquisition of agricultural property and assets incidental to the ownership of such property shall be exempt from the requirements of the act. Agricultural property is real property that primarily generates revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs (activities within NAICS sector 11).

(1) Agricultural property does not include either:

(i) Processing facilities such as poultry and livestock slaughtering, processing and packing facilities; or

(ii) Any real property and assets either adjacent to or used in conjunction with processing facilities that are included in the acquisition.

(2) In an acquisition that includes agricultural property, the transfer of any assets that are not agricultural property or assets incidental to the ownership of such property (cash, prepaid taxes or insurance, rentals receivable and the like) shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

* * * * *

8. Amend § 802.6 by revising paragraph (b) and its Example to read as follows:

§ 802.6 Federal agency approval.

* * * * *

(b)(1) A mixed transaction is one that has some portion that is exempt under Section 7A (c)(6), (c)(7) or (c)(8) because it requires regulatory agency premerger competitive review and approval, and another portion that does not require such review.

(2) The portion of a mixed transaction that does not require advance competitive review and approval by a regulatory agency is subject to the act and these rules as if it were being acquired in a separate acquisition.

Example: Bank "A" acquires Bank "B", which owns a financial subsidiary engaged in securities underwriting. "A"'s acquisition of "B" requires agency approval by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or Federal Deposit Insurance Corporation (depending on whether "A" is a national bank, state member bank, or state non-member bank under section 18(c) of the FDI Act), and therefore is exempt from filing under Section 7A (c)(7). However, the acquisition of the financial subsidiary is subject to HSR reporting requirements, and "A" and "B" each must make a filing for that portion of the transaction and observe the waiting period if the act's thresholds are met.

9. Revise § 802.8(a) to read as follows:

§ 802.8 Certain supervisory acquisitions.

(a) A merger, consolidation, purchase of assets, or acquisition requiring agency approval under sections 403 or 408(e) of the National Housing Act, 12 U.S.C. 1726, 1730a(e), or under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, shall be exempt from the requirements of the act, including specifically the filing requirement of Section 7A(c)(8), if the agency whose approval is required finds that approval of such merger, consolidation, purchase of assets, or acquisition is necessary to prevent the probable failure of one of the institutions involved.

* * * * *

10. Revise § 802.50 to read as follows:

§ 802.50 Acquisitions of foreign assets.

(a) The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding $50 million during the acquired person's most recent fiscal year.

(b) Where the foreign assets being acquired exceed the threshold in paragraph (a) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than $110 million in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than $110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

Example to §802.50:

1. Assume that "A" and "B" are both U.S. persons. "A" proposes selling to "B" a manufacturing plant located abroad. Sales in or into the United States attributable to the plant totaled $13 million in the most recent fiscal year. The transaction is exempt under this paragraph (a) of this section.

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant totaled $38 million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days

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of the first plant, both plants would be considered assets of "A" held by "B" as a result of the second acquisition (see § 801.13(b)(2) of this chapter). Since the total sales in or into the United States exceed $50 million, the acquisition of the second plant would not be exempt under this paragraph (a) of this section.

3. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of $200 million. If "A" acquires only foreign assets of "B," and if those assets generated $50 million or less in sales in or into the United States, the transaction is exempt.

4. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States and assets located in the United Sates of less than $100 million. If "A" acquires only foreign assets of "B", and those assets generated in excess of $50 million in sales in or into the United States during the most recent fiscal year, the transaction is exempt from reporting if the assets are valued at $200 million or less, but is reportable if valued at greater than $200 million.

11. Revise § 802.51 to read as follows:

§ 802.51 Acquisitions of voting securities of a foreign issuer.

(a) *By U.S. persons.* (1) The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over $50 million; or made aggregate sales in or into the United States of over $50 million in its most recent fiscal year.

(2) If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either $50 million threshold is exceeded.

(b) *By foreign persons.* (1) The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over $50 million; or made aggregate sales in or into the United States of over $50 million in its most recent fiscal year.

(2) If controlling interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either $50 million threshold is exceeded.

(c) Where a foreign issuer whose securities are being acquired exceeds the threshold in paragraph (b)(1) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than $110 million in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than $110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

Example to § 802.51 1. "A," a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of $77 million in the most recent fiscal year. The transaction is not exempt under this section.

2. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of $200 million, and that "A" is acquiring 100% of the voting securities of "B." Included within "B" is U.S. issuer C, whose total U.S. assets are valued at $161 million. Since "A" will be acquiring control of an issuer, C, with total U.S. assets of more than $50 million, and the parties' aggregate sales in or into the U.S. in the relevant time period exceed $110 million, the acquisition is not exempt under this section.

3. "A," a foreign person, intends to acquire 100 percent of the voting securities of two wholly owned subsidiaries of "B" for a total of $65 million. BSUB1 is a foreign issuer with $10 million in sales into the U.S. in its most recent fiscal year and with assets of $10 million located in the U.S. $20 million of the acquisition price has been allocated to BSUB1. BSUB2 is a U.S. issuer with $60 million in U.S. sales and $60 million in assets located in the U.S. The remaining $45 million of the acquisition price is allocated to BSUB2. Since BSUB1 does not exceed the $50 million limitation for U.S. sales or assets in § 802.51(b), its voting securities are not held as a result of the acquisition (see § 801.15(b) of this chapter). Since the acquisition price for BSUB2 alone would not result in "A" holding in excess of $50 million of voting securities of the acquired person, the transaction is non-reportable in its entirety. Note that the U.S. sales and assets of BSUB1 are not aggregated with those of BSUB2 for purposes of determining whether the limitations in paragraph (b) of this section are exceeded. If BSUB2 were also a foreign issuer, such aggregation would be required under paragraph (b)(3) of this section, and the transaction in its entirety would be reportable.

12. Amend § 802.52 by revising the Example to read as follows:

§ 802.52 Acquisitions by or from foreign governmental agencies.

* * * * *

Example: The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is "A," a U.S. person. Regardless of the aggregate sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate sales were $50 million or less, the transaction would also be exempt under § 802.50.)

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–6251 Filed 3–15–02; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to section 7A of the Clayton Act. The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This rule amendment is necessary to address public comments regarding a previously published interim rule provision, and will increase the clarity and improve the effectiveness of the rule.

EFFECTIVE DATES: This final rule is effective on March 18, 2002 and will be applied retroactively to February 2, 2002, as explained in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Karen E. Berg, Attorney, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION: On February 1, 2001, the Commission published in the **Federal Register** and sought comment on Interim and Proposed Rules to amend the Hart-Scott-Rodino rules ("HSR rules") contained in 16 CFR parts 801, 802 and 803. *See* 66 FR 8679–8721. The Interim Rules took effect upon publication and implemented amendments to Section 7A of the Clayton Act enacted on December 21, 2000 ("2000 Amendments"). The Commission has decided that it needs more time to consider whether to make the Interim Rules final. A primary focus of this analysis is whether the Commission should make final the dollar-based reporting thresholds that were newly introduced by the Interim Rules. In light of the public comments, however, the Commission has determined to make final at this time an amendment to interim § 802.21(b), containing a transitional filing rule that was scheduled to expire on February 1, 2002, as explained below.

Background

Interim § 802.21 (Acquisitions of voting securities not meeting or exceeding greater notification threshold) contained paragraph (b), which addressed acquisitions of voting securities up to the next notification threshold by "transitional" filers, i.e., acquiring persons who filed using the 1978 notification thresholds and who have met or crossed the threshold for which they filed within a year of the waiting period's expiration, but whose five-year period for making additional acquisitions under § 802.21(a) had not expired as of February 1, 2001 (the effective date of the 2000 Amendments).

Section 802.21(b), as published in the Interim Rules, allowed these transitional filers until February 1, 2002 (one year from the effective date of the 2000 Amendments) to acquire up to what was the next reporting threshold at the time that they filed, and permitted them to do so without filing another notification, even though they might cross a new 2001 threshold. Thereafter, these acquiring persons, along with any other acquiring persons filing on or after February 1, 2001, were required to observe the 2001 thresholds contained in § 801.1(h). Interim § 802.21(b) was an effort to strike a balance between the reliance of transitional filers on rules that were in effect when they filed, and minimizing the agency's burden of administering two different sets of notification thresholds after February 1, 2001.

The Commission received five comments on this transition rule.[1] Comment 3 stated that any burden imposed on the Commission in maintaining two sets of thresholds is vastly outweighed by the burden on the parties who are required to prepare filings and pay additional filing fees, and the burden on the agencies in reviewing these additional filings, which were previously exempt for up to an additional four years. Comment 8 similarly claimed that the burden to the parties would outweigh the burden on the Commission and also expressed concern that the short notice prior to effecting the rule was unfair to parties who had filed recently with the good faith expectation that they would have five years to acquire additional securities. Comment 9 suggested that the transition rule remain unchanged, but that the full five-year period should be extended to acquisitions where a filing was made for an acquisition valued in excess of a 2001 threshold and the subsequent acquisition would not cross another 2001 threshold. For example, if "A" acquired $60 million of B's voting securities and filed indicating the $15 million notification threshold, "A" should be able to acquire up to $100 million of B's voting securities during the five-year period without a new filing. Comments 13 and 15 recommended elimination of the transition rule as an adjunct to restoring intermediate percentage notification thresholds.

The Commission agrees that any burden in administering two sets of notification thresholds for five years may well be outweighed by the burden to transitional filers. Therefore, the final rule restores to parties who filed prior to February 1, 2001, the full five-year period following expiration of the waiting period to acquire up to the next notification threshold that was in effect at the time of filing. With this modification, the change suggested by Comment 9 becomes unnecessary.

Administrative Procedure Act

The Commission has previously solicited public comment on this rule provision. Since the Commission believes that this final rule adequately addresses the commenters' concerns, the Commission finds that further public comment is unnecessary. *See* 5 U.S.C. 552(b)(3). Although the Commission believes this rule is strictly procedural in nature, to the extent, if any, that it is substantive, the Commission believes it grants or recognizes an exemption and relieves a restriction that would have taken effect upon expiration of the time period that was set forth in interim § 802.21(b). *See* 5 U.S.C. 553(b)(B). Accordingly, the Commission is adopting this rule as final and effective upon publication and will apply it retroactively to February 2, 2002, in order to ensure the continuity and clarity of the filing procedures that apply to transitional filers, as explained above.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Further, this rule amendment does not expand the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3518, requires agencies to submit requirements for "collections of information" to the Office of Management and Budget ("OMB") and obtain clearance prior to instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The HSR premerger notification rules and Form contain information collection requirements as defined by the PRA that have been reviewed and approved by OMB under OMB Control No. 3084–0005. This final rule implements amendments to sction 7A of the Clayton Act, which reduces the burden of the premerger reporting

[1] Ford Motor Company (Bolerjack, Stephen D.) (Comments 3, 3/19/01); National Association of Manufacturers (NAM) (Comment 8, 3/29/01); O'Melveny and Myers (Beddow, David T.) (Comment 9, 3/19/01); Section of Antitrust Law of the American Bar Association (Comment 13, 3/19/01); Skadden, Arps, Slate, Meagher & Flom, LLP (Stoll, Neal R., Esq., et al.) (Comment 15, 3/19/01).

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program by exempting all transactions valued at $50 million or less. Because this final rule does not affect the information collection requirements of the premerger notification program as implemented by the interim rules, it has not been resubmitted to OMB under the PRA for review.

List of Subjects in 16 CFR Part 802

Antitrust, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 802 as follows:

PART 802—EXEMPTION RULES

1. The authority citation for part 802 continues to read:

Authority: 15 U.S.C. 18a(d).

2. Amend § 802.21 by revising the text of paragraph (b) preceding the examples; by removing example 2; by redesignating examples 3 and 4 as examples 2 and 3 respectively; and by revising examples 1 and newly redesignated examples 2 and 3 to read as follows:

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

* * * * *

(b) *Year 2001 transition.* For transactions filed using the 1978 thresholds where the waiting period expired after February 1, 1996, an acquiring person may, during the five-year period following expiration of the waiting period, acquire up to what was the next percentage threshold at the time it made its filing without filing another notification, even if in doing so it crosses a 2001 notification threshold in § 801.1(h) of this chapter. However, after the end of that period, any additional acquisition will be the subject of a new notification if it meets or exceeds a 2001 threshold in § 801.1(h) of this chapter.

Examples: 1. Corporation A filed to acquire 20 percent of the voting securities of corporation B and indicated the 15 percent threshold. The waiting period expired on October 3, 1999. "A" acquired the 20 percent within the year following expiration of the waiting period. "A" has until October 3, 2004, to acquire additional securities up to 25 percent of "B"'s voting securities, and need not make another filing before doing so, even though such acquisition by "A" may cross the $50 million, $100 million or $500 million notification threshold in § 801.1(h) of this chapter. After October 3, 2004, "A" and "B" must observe the 2001 notification thresholds set forth in § 801.1(h) of this chapter.

2. Prior to February 1, 2001, "A" filed to acquire 12 percent of the voting securities of corporation B, valued at $120 million, and indicated the $15 million notification threshold. After February 1, 2001, "A" determines that it will make an additional acquisition which will result in its holding 16 percent of the voting securities of B, valued at $160 million. "A" is required to file notification at the $100 million notification threshold prior to making the acquisition since it is now crossing the next higher 1978 threshold (15 percent).

3. Prior to February 1, 2001, "A" filed to acquire 26 percent of the voting securities of "B" and indicated the 25 percent notification threshold. After the end of the five-year period following expiration of the waiting period, "A" will acquire additional shares of "B" which will result in its holding 30 percent of the voting securities of "B", valued at $125 million. "A" is required to file notification at the $100 million notification threshold prior to making the acquisition. "A" could, however, have reached this level (30 percent valued at $125 million) prior to the end of the five-year period without making an additional filing since it would not have crossed the next higher threshold at the time it filed (50 percent) and the acquisition would have been exempted by this § 802.21(b).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–6252 Filed 3–15–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–019; Order No. 587–N]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued March 11, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. Recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to rescheduled any bumped volumes, which is similar to the protection afforded interruptible shippers. This rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The rule also will enhance competition by freeing up capacity that otherwise would not be released and creating greater parity between scheduling of capacity release transactions and pipeline interruptible service.

DATES: 1. The rule becomes effective April 17, 2002.

2. Pipelines must make tariff filings by May 1, 2002, to become effective by July 1, 2002, to provide shippers with the ability to recall scheduled and unscheduled capacity at the Timely and Evening Nomination cycles and to recall unscheduled capacity at the two other standard nomination times.

3. Comments are to be filed by the North American Energy Standards Board and others by October 1, 2002, regarding standards for implementing partial day or flowing day recalls. Reply comments must be filed by October 15, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

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Federal Energy Regulatory Commission

Before Commissioners: Pat Wood, III Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

[Docket No. RM96–1–019; Order No. 587–N]

Standards for Business Practices of Interstate Natural Gas Pipelines; Final Rule

Issued March 11, 2002.

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12(c)(1)(ii) of its open access regulations to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the scheduling opportunities provided by interstate pipelines. Recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to rescheduled any bumped volumes, which is similar to the protection afforded interruptible shippers. This rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The rule also will enhance competition by freeing up capacity that otherwise would not be released and creating greater parity between scheduling of capacity release transactions and pipeline interruptible service.

2. Background

3. In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).[1] Under these regulations, releasing shippers were permitted to "release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release."[2] The regulation permits releasing shippers to impose terms for a release transaction under which the releasing shipper reserves the right to recall that capacity to use the capacity itself. As an example, a shipper might include a recall condition in the event that temperature drops below a pre-determined level.[3]

4. In July 1996, in Order No. 587,[4] the Commission incorporated by reference consensus standards approved by the Gas Industry Standards Board (now the North American Energy Standards Board (NAESB))[5] designed to standardize business practices and communication protocols of interstate pipelines in order to create a more integrated and efficient pipeline grid. NAESB is a private, consensus standards developer whose wholesale natural gas standards are developed by representatives from all segments of the natural gas industry.

5. One aspect of NAESB's standards adopted in Order No. 587 covered capacity release transactions. Of relevance here, two standards, 5.3.6 and 5.3.7, apply to recalls of capacity release transactions.

Standard 5.3.6: If the releasing shipper wishes to recall capacity to be effective for a gas day, the notice should be provided to the transportation service provider and the acquiring shipper no later than 8 a.m. Central Clock Time on nomination day.[6]

Standard 5.3.7: There should be no partial day recalls of capacity. Transportation service providers should support the function of reputting by releasing shippers.[7]

In this context, a partial day recall (also referred to as a flowing gas recalls)[8] refers to a recall condition that applies only to part of gas day, rather than the full gas day.[9]

6. In 1996, when NAESB first adopted these standards, NAESB's standards provided for one nomination, at 11:30 a.m. CCT[10] for the next gas day and only one intra-day nomination at an indeterminate time. In order to create a more standardized intra-day nomination schedule,[11] NAESB amended its standards to provide for three standardized intra-day nomination opportunities: an Evening nomination at 6 p.m. CCT to take effect at 9 a.m. CCT the next gas day, an Intra-Day 1 nomination at 10 a.m. CCT to take effect at 5 p.m. CCT on the same gas day, and an Intra-Day 2 nomination at 5 p.m. CCT to take effect at 9 p.m. CCT on the same gas day.[12]

	Nomination deadline	Effective time
Timely Nomination	11:30 a.m	9 a.m. next gas day.
Evening Nomination	6 p.m	9 a.m. next gas day.
Intra-Day 1	10 a.m	5 p.m. same gas day.
Intra-Day 2	5 p.m	9 p.m. same gas day.

[1] 18 CFR 284.8 (2001).

[2] 18 CFR 284.8(b).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,418 (Apr. 8, 1992).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996).

[5] The Commission is revising § 284.12 to reflect the name change. The Commission finds good cause for making such a change without notice and comment since the change is purely administrative. *See* 5 U.S.C. § 553(b)(A)&(B).

[6] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.6.

[7] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.7.

[8] Gulf South, in its comments, contends that the term "partial day recall" is somewhat of a misnomer, and that the more apt term is "flowing day recall." It states that the term partial day recall suggests the recall is for a specified portion of gas day when, in fact, the standard refers only to whether the recall occurs after gas has begun to flow. In this rule, the terms "partial day recall" and "flowing day recall" are used interchangeably to refer to recalls occurring during a gas day after gas has begun to flow, not to recalls between specified times.

[9] Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[10] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. *See* 18 CFR § 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[11] *See* Order No. 587–C, 62 FR at 10687, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050, at 30,585 (rejecting a proposed NAESB intra-day nomination standard for being vague and non-standardized and providing additional time for NAESB to develop a standardized intra-day nomination schedule).

[12] 18 CFR 284.12(b)(1)(i) (2001), Nominations Related Standard 1.3.2.

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NAESB, however, has not amended its capacity release recall standards to take into account its adoption of these standardized intra-day nomination opportunities.

7. In Order No. 637, the Commission adopted § 284.12(c)(1)(ii) of its regulations which requires interstate pipelines to "permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity." [13] The purpose of this regulatory change was to permit capacity release transactions to take place on an intra-day basis so that released capacity can compete with pipeline capacity on a comparable basis.[14] The adoption of § 284.12(c)(1)(ii) permits shippers to acquire released capacity and nominate using that capacity at any of the four intra-day nomination opportunities.[15]

8. On February 1, 2001, NAESB filed a report with the Commission, in Docket No. RM98–10–000, concerning its development of standards regarding partial day recalls of capacity. According to NAESB, some members believed that partial day recalls fell within the purview of the scheduling equality requirements of Order No. 637, while others did not. Some members, NAESB asserts, believed that partial day recalls are a valid business practice, irrespective of whether this practice is required by Order No. 637. Due to these disagreements, NAESB reports it has been unable to reach consensus on how to proceed.

9. On March 16, 2001, AGA filed a "Reply to February 1, 2001, Gas Industry Standards Board Report and Petition for Clarification and Directive from FERC Regarding Requirement for Capacity Release Scheduling Equality." AGA argued that the Commission should require pipelines to allow partial day recalls as part of their compliance with § 284.12(c)(1)(ii).

10. On October 12, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) [16] proposing to require pipelines to afford releasing shippers enhanced ability to recall released capacity by permitting them to use partial day recalls at any of the four nomination opportunities established by the NAESB standards.

11. Comments

12. Twenty-eight comments on the NOPR were filed.[17] The comments can roughly be divided into three categories: those that supported the proposal, those that either supported or did not object to the proposal, but sought clarifications principally regarding implementation details, and those opposing the proposal. The majority of comments support the proposal.[18] They contend it would provide greater flexibility to releasing shippers, enhance competition by freeing up capacity that otherwise would not be released, and better accommodate retail unbundling programs at the state level.[19] The local distribution companies (LDCs) maintain that under state unbundling mechanisms, they are frequently the suppliers of last resort and, therefore, need to recall capacity in the event marketers fail to deliver.

13. Those opposing the proposal [20] contend it would decrease the reliability of the pipeline grid by reducing (bumping) volumes of already scheduled gas and thereby reduce liquidity. They maintain that partial day recalls will reduce reliability because bumping a replacement shipper's scheduled volumes may affect scheduling on a number of pipelines, and bumped replacement shippers will be forced to try and reschedule their gas. Those opposing the proposal also are concerned partial day recalls will reduce the value of released capacity and create less competition between pipeline firm capacity and capacity release. NiSource maintains that partial day recalls may decrease reliability for LDCs that permit marketers (using other LDCs' released capacity) to bring capacity to their city-gates by permitting a diversion of gas from one LDC market to another.

14. A number of comments raise operational issues relating principally to partial or flowing day recalls occurring during the gas day after capacity has begun to flow. These include: the need for advance notice to pipelines and replacement shippers of capacity to be recalled, and whether the pipeline or releasing shipper should provide the notice; [21] allocating capacity as well as imbalances and penalties between releasing and replacement shippers when recalls take place during the gas day; [22] and ensuring that total volumes delivered do not exceed original contract MDQ.[23] Some comments suggest the Commission convene a technical conference to address these issues.[24]

15. Discussion

16. Overview

17. The Commission is revising § 284.12(c)(1)(ii) of its regulations to require pipelines to permit recalls of capacity at each nomination opportunity. Specifically, the Commission is requiring pipelines to permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity according to the notice and bumping provisions applicable to interruptible shippers.[25] Recalls of

[13] 18 CFR 284.12(c)(1)(ii) (2001).

[14] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156, 101–58–60 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297 (Feb. 9, 2000).

[15] Prior to Order No. 637, NAESB's capacity release nomination standards had not been amended to reflect the intra-day nomination standards. Thus, prior to Order No. 637, a replacement shipper acquiring released capacity had to acquire the capacity and notify the pipeline by 9 a.m. CCT in order to nominate at the Timely Nomination cycle (11:30 a.m. CCT) for the next gas day and could not make use of any intra-day nomination opportunities for the current gas day. With the changes made in § 284.12(c)(1)(ii), shippers will be able to acquire released capacity and submit a nomination at each intra-day nomination opportunity.

[16] Standards For Business Practices Of Interstate Natural Gas Pipelines, 66 FR 53134 (Oct. 19, 2001), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,556 (Oct. 12, 2001).

[17] The commenters and the abbreviations used in this order are listed on the Appendix.

[18] *E.g.*, AGA, APGA, APS/PWEC, Con Edison, Dominion LDCs, ENA, Kentucky, Keyspan, MLGW, PSCNY, PA OCA, Xcel.

[19] Xcel provides a succinct summary of the position:

The proposed rules would provide firm capacity holders, including the Xcel Energy utility operating companies, with increased flexibility in structuring capacity release transactions to best fit their business needs. The Xcel Energy utility operating companies could benefit from the potential increase in value of non-recallable capacity release and from the greater flexibility when a recall is necessary.

Comment at 2.

[20] *E.g.*, DETM, Dynegy, EIP, EPSA, NGSA, NiSource, Williston.

[21] See Comments by Algonquin/Texas Eastern; Dominion; Dynegy; ENA; Gulf South; INGAA; Kinder-Morgan; NiSource; Williston; Industrials.

[22] See Comments by Algonquin/Texas Eastern; Dynegy; Gulf South; ENA; INGAA; Kinder-Morgan; NiSource; Williston. As an example, a replacement shipper with capacity of 2400 Dth/day could nominate the entire 2400 Dth for the full gas day, but take 1200 Dth in the first five hours of the day, leaving only 1200 Dth remaining for the remainder of the gas day. If a releasing shipper sought to recall the full 2400 Dth at the Intra-Day 1 cycle taking, which would take effect at 5 p.m., the issue raised by the comments are how to allocate the 2400 Dth between the releasing and replacement shippers and how to determine imbalances and potential penalties. Williston also raises the issue of how to perform such an allocation when there are multiple capacity releases: e.g., a releasing shipper releases capacity to a single replacement shipper who re-releases that capacity to three other replacement shippers. If the initial releasing shipper recalls, the capacity, Williston requests clarification as to how the remaining daily quantity should be allocated among the three final replacement shippers.

[23] Williston.

[24] Comments by EPPG; ENA.

[25] The Commission is rescinding the incorporation by reference of NAESB standard 5.3.6 (which requires notice of capacity release recalls by 8 a.m. CCT) and the first sentence of NAESB Standard 5.3.7 (which prohibits partial day recalls of capacity). The Commission is retaining the portion of Standard 5.3.7 that requires transportation service providers to "support the function of reputting by releasing shippers." Reputting refers to the ability of a releasing shipper to include a condition in a release under which it can recall capacity when needed and, after the recall has ended, the capacity will revert (be reputted) to the replacement shipper, without the need for a new release.

[26] The use of partial day recall rights is voluntary. As with any other recall condition, releasing shippers are free to offer their capacity without partial day recall rights. Whether partial day recall rights are permitted depends on the terms of the releasing shipper's offer.

released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.[26]

18. The regulations adopted in this rule will be implemented in two phases. This two-phase approach will ensure an expeditious implementation of partial day recalls for recalls that do not raise the operational details addressed in the comments, while at the same time providing time for NAESB to further consider standards to address the operational issues raised. By May 1, 2002, each pipeline will be required to make a compliance filing, to be effective July 1, 2002, that will permit shippers to recall capacity at both the Timely Nomination cycle and the Evening Nomination Cycle and to recall capacity at any nomination time if the capacity has not been previously scheduled by the replacement shipper. To ease the compliance and review process, the Commission is establishing a standard tariff provision providing a notification schedule for these recalls.

19. Second, the Commission will provide NAESB six months in which to develop standards to apply to the operational details involved in allowing partial or flowing day recalls. NAESB should file a report with the Commission by October 1, 2002, detailing the standards it has adopted (or those it has considered) and all other material relevant to its consideration of such standards. Other industry members can also submit comments by October 1, 2002, and will have an additional 15 days from the filing of the NAESB information to file additional comments on the NAESB report. Upon the receipt of these comments, the Commission will issue a further order regarding implementation of Intra-Day 1 recalls.

20. Regulatory Changes

21. The regulations adopted in this rule will ensure consistency with the original intent of the Commission's capacity release regulations by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, by providing greater incentives for releasing shippers to release capacity, and by fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible service. At the same time, the regulations will afford replacement shippers whose capacity is recalled the same advance notice and protection from bumping as provided to interruptible shippers under the Commission's regulations.

22. In Order No. 636, the Commission established the capacity release mechanism to create competition with pipeline firm and interruptible transportation. [27] One of the fundamental tenets of the Commission's capacity release regulations is that releasing shippers have the opportunity to establish any recall conditions for their capacity.

23. When NAESB first considered recall standards, it established one notification time for all recalls (8 a.m. CCT) and did not permit partial or flowing day recalls. When NAESB adopted this standard, however, the standards provided for only one nomination a day, at 11:30 a.m. CCT and a single non-standardized intra-day nomination. But the circumstances under which the recall standards were developed have markedly changed as the number of nomination opportunities have now expanded to four nomination opportunities. At the same time, it is apparent from the comments in this rulemaking that the consensus supporting NAESB's existing recall standards no longer exists, and NAESB itself has recognized that it can no longer make progress in resolving this issue. Although the Commission places great reliance on NAESB's development of consensus standards,[28] the Commission has found it necessary to resolve disputes between industry segments when NAESB has been unable to reach consensus on issues concerning Commission policy, so that the standards development process can proceed in line with Commission policies.[29] In these circumstances (where consensus no longer exists on recall standards), the Commission must resolve the policy issue over whether to permit greater recall flexibility.

24. An examination of both past and current Commission policy supports allowing releasing shippers to recall capacity more frequently than currently permitted under NAESB's standards.

25. The Commission's general policy adopted in Order No. 636 would permit more extensive recall rights than those permitted by the NAESB standards. Section 284.8(b) of the Commission's regulations (adopted in Order No. 636) expressly permits shippers to "release their capacity in whole or in part, on a permanent or short-term basis, *without restriction on the terms and conditions of the release.*" [30] In Order No. 636–A, the Commission recognized that "a releasing shipper may include terms and conditions, such as recall rights, that will ensure it has adequate peak day capacity." [31] In *Texas Eastern Transmission Corporation*, for example, the Commission rejected a pipeline's proposed restriction on recall rights, stating "any provision relating to recall rights must not operate to impede the ability of releasing shippers to employ recall provisions as terms and conditions of their releases."[32] Thus, all recall conditions, including partial day recalls are consistent with the Commission's regulations.

26. Moreover, in Order No. 637, the Commission sought to create greater scheduling parity between capacity release transactions and pipeline services by enabling capacity release transactions to take place on an intra-day basis at each of the four scheduling opportunities.[33] While this regulatory change will enable shippers to release capacity at any nomination opportunity, the existing NAESB recall standards do not permit releasing shippers to take full advantage of the intra-day nomination opportunities by recalling the capacity and renominating that capacity at each of the four scheduling opportunities. Allowing partial day recalls is, therefore, consistent with the overall regulatory changes promulgated in Order Nos. 636 and 637.

[27] Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,556 (Aug. 3, 1992) ("competition between pipeline capacity and released capacity helps ensure that customers pay only the competitive price for the available capacity").

[28] Order No. 587, 61 FR at 39057 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,059.

[29] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30–668–72 (Apr. 16, 1998) (resolving dispute over bumping of interruptible service by firm service).

[30] 18 CFR 284.8(b) (emphasis added).

[31] Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,558 (Aug. 3, 1992).

[32] 62 FERC ¶ 61,015, at 61,104 (1993).

[33] 18 CFR 284.12(c)(1)(ii) (2001) (permitting shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity).

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27. Policy considerations further support enhanced recall rights. Permitting enhanced recall rights will provide firm shippers with added flexibility and will better enable releasing shippers to offer released capacity that competes with the pipelines' interruptible service. The current NAESB standards inhibit the ability of shippers to release capacity because releasing shippers cannot quickly reclaim capacity when they require it for their own use. For example, under the current NAESB standards, in order to recall capacity for the next gas day, a shipper must notify the pipeline by 8 a.m. the day before the recall can take effect and cannot use partial or flowing day recalls. By establishing an 8 a.m. deadline for recall notifications, the standard effectively precludes a releasing shipper from recalling capacity at the Evening Nomination cycle. In fact, a shipper that misses the 8:00 a.m. CCT recall notification time will miss four nomination opportunities and will be unable to have its volume flow until 48 hours after it submits the recall notification.[34]

28. As a result of such lengthy delays, releasing shippers may not be able to use their recall rights as effectively as possible to ensure that they can retain adequate peak day capacity for their own needs. The delay in rescheduling recalled capacity also can have an adverse competitive impact on the market by reducing the amount of capacity available for release. As AGA points out, if an LDC is a provider of last resort under a state unbundling initiative and is given notice that insufficient supply is being delivered to its city-gate, the LDC will need to recall released capacity for later in the same day or, at least, for the next day. Without the ability to recall capacity more frequently, a releasing shipper with supplier-of-last-resort obligations will be reluctant to release capacity at all since it will not be able to recall that capacity when it is needed. In that event, replacement shippers will have less capacity from which to choose and will have fewer alternatives to purchasing pipeline interruptible service.

29. Replacement shippers benefit from having a more open and competitive capacity market, with more capacity available to compete with pipeline interruptible transportation. As APS/PWEC states, "as a captive shipper on a fully subscribed pipeline, APS/PWEC supports any initiative that would free up excess capacity (even in the short run)."[35] Replacement shippers will not be required to purchase released capacity with partial day recalls, but will be able to choose the capacity with terms that best fits their needs. Releasing shippers will be able to release capacity without a partial day recall condition and will have an incentive to do so, because a release not subject to recall will be more valuable (and higher priced) than a release subject to recall. Replacement shippers will know the terms of releases upfront and can determine whether to purchase recallable capacity or seek more reliable capacity, and can take the recall conditions into account in determining how much the capacity is worth.

30. Under the regulations adopted in this rule, the releasing shipper will be able to recall unscheduled capacity at any of the four nomination cycles and can recall scheduled capacity so long as the replacement shipper has an opportunity to reschedule its gas. The replacement shipper will receive protection against loss of service similar to that interruptible shippers currently receive.

31. In Order No. 587–G, the Commission adopted a regulation stating that when an interruptible shipper's volumes are to be reduced as a result of a nomination by a firm shipper, the interruptible shipper must be provided with advanced notice of such reduction and must be notified whether penalties will apply on the day its volumes are reduced.[36] The Commission further determined that interruptible shippers could be bumped by firm intra-day nominations at the first three nomination opportunities, but could not be bumped at the third intra-day nomination opportunity (5 p.m. CCT) since they would not have an opportunity to reschedule their gas for that gas day. The Commission provided this protection against bumping to provide stability in the nomination system, so that shippers can be confident by late afternoon that they will receive their scheduled flows.[37]

32. This rationale applies equally to replacement shippers, which, under the regulations adopted in this rule, must be given advance notification of any recall and cannot have scheduled volumes reduced unless they have been given an opportunity to reschedule their gas. In addition, the Commission required pipelines to waive certain non-critical penalties for bumped interruptible shippers, and the same penalty waiver will be applied to bumped replacement shippers.[38]

33. The Commission recognizes that implementation of recalls at the Intra-Day 1 and 2 cycles can affect flowing gas and, as the comments point out, result in the need to allocate daily nominations (and potentially penalties) between releasing and replacement shippers. But these issues are not insurmountable and should not prevent implementation of partial day recalls. Some pipelines already have implemented partial day recalls on their systems.[39] Rather than having pipelines implement partial day recalls based on their own distinct processes for handling allocation and other operational issues, the Commission is providing an opportunity for NAESB to reach consensus on a set of standards that can be applied to all partial day recalls. Therefore, the Commission will postpone implementation of partial or flowing day recalls of scheduled gas at the Intra-Day 1 and Intra-Day 2 cycles, and provide NAESB with six months to develop standards governing recalls at these cycles that affect flowing gas. At the end of this period, NAESB should file with the Commission the standards it has developed or, if it is unable to reach consensus, a report outlining the standards considered, the voting records with regard to these standards, and the reasons for its inability to reach consensus. Other industry members can also submit comments and will have an additional 15 days from the filing of the NAESB information to file additional comments on the NAESB report. Since NAESB has already been working on the partial day recall issue, six months should provide a sufficient time period for developing standards. Once the Commission receives the report from NAESB and the comments, it will issue an order establishing the requirements for partial day recalls.

34. The Commission, however, sees no reason for delaying implementation of partial day recalls for the Evening Cycle and for recalls of unscheduled capacity. Recalls in these situations will not present allocation or other operational difficulties for the pipelines. Such recalls do not affect flowing volumes and, therefore, do not result in the need to allocate daily gas supplies between releasing and replacement shippers. In order to provide shippers more flexibility in their use of capacity, the Commission will require pipelines by May 1, 2002, to file tariff sheets, as discussed below, to implement partial day recalls for the Evening Cycle and for unscheduled capacity. These tariff sheets are to become effective by July 1, 2002.

[34] A releasing shipper that misses the 8 a.m. CCT notification time cannot renominate that capacity until 11:30 a.m. CCT the next day, a nomination under which gas will not flow until 9:00 a.m. CCT the day after.

[35] APS/PWEC Comment, at 3.

[36] 18 CFR 284.12 (c)(1)(i)(A).

[37] Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671–72.

[38] Order No. 587–G, 63 FR at 20078–79, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,672–73.

[39] Dominion Transmission, Inc., 95 FERC ¶ 61,316, at 62,080 (2001); National Fuel Gas Supply Corporation, 96 FERC ¶ 61,182, at 61,804 (2001).

35. Schedule for Implementation of Recalls for Evening Nomination Cycle and Unscheduled Capacity

36. The NOPR proposed that no advance notice of recalls would be provided, so that the recall and a renomination of the releasing shipper would be provided at each of the standard nomination cycles. For example, under the proposal in the NOPR, the releasing shipper would notify the pipeline at 6 p.m. CCT (Evening Nomination) that capacity is being recalled and would simultaneously submit a nomination at the same time. The replacement shipper would not be notified of the bump, under this proposal, until the deadline for reporting of scheduled volumes (10 p.m. CCT).

37. A number of comments, however, maintain that recall notices and nominations should not be simultaneous and that pipelines and replacement shippers need advance notice of recalls. Whether to establish an advance notification requirement for recalls, and how that notice should be provided, are issues NAESB needs to consider during its deliberations. The treatment of advance notification can determine whether recalls at the Intra-Day 2 cycle can bump scheduled volumes. If NAESB provides for advance notice of recalls to pipelines and replacement shippers, releasing shippers could be permitted to bump scheduled gas at the Intra-Day 2 cycle, since replacement shippers will have sufficient advance notice to reschedule bumped gas at the Intra-Day 2 cycle.[40] On the other hand, if advance notice is not provided, then, under this rule, recalls would not be permitted at the Intra-Day 2 cycle since the replacement shipper would not have an opportunity to reschedule its gas.

38. Since the Commission is implementing recalls of scheduled gas at the Evening Nomination cycle and recalls of unscheduled gas at the Intra-Day 1 and Intra-Day 2 cycles, pipelines will need to implement an interim schedule for implementing recalls for these cycles. In order to assure expeditious compliance with these requirements, the Commission is establishing, as discussed below, an interim timeline for recalls and will require each pipeline to include standard tariff language in its tariff providing for such recalls.

39. The fundamental precept of the interim schedule being adopted by the Commission is that releasing shippers must be provided with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall. Releasing shippers, such as LDCs, need to be aware of the scheduled volumes for their systems prior to determining whether they will need to recall capacity. Thus, the advance notification period should give releasing shippers the time to evaluate the scheduled quantities information before having to submit the recall notice.[41] Further, although the Commission is not convinced that the existing 3 ½ hour advance notice requirement for the Timely Nomination cycle[42] is necessary, the Commission will permit pipelines to continue to use this notification period for notification of recalls for the Timely Nomination cycle while NAESB considers the schedule for recalls.

40. Based on these precepts, the Commission is establishing the following interim schedule for notification to pipelines and replacement shippers of recalls of capacity at the Evening Nomination cycle and for recalls of unscheduled capacity.

Nomination cycle (all times in CCT)	Receipt of scheduled volumes (from prior nomination cycle)	Recall notification to pipeline	Pipeline notification to replacement shipper of recall	Nomination time (same day)
Timely	NA	8 a.m	9 a.m	11:30 a.m.
Evening	4:30 p.m. same day	5 p.m	6 p.m	6 p.m.
Intra-Day 1	10 p.m. CCT prior day	8 a.m	9 a.m	10 a.m.
Intra-Day 2	2 p.m. same day	3 p.m	4 p.m	5 p.m.

41. To ease the compliance and review burden on both pipelines and shippers, each pipeline is required to file standard tariff language to implement such recalls stating the following:

Releasing shippers may, to the extent permitted as a condition of the capacity release, recall released capacity (scheduled or unscheduled) at the Timely Nomination cycle and the Evening Nomination cycle, and recall unscheduled released capacity at the Intra-Day 1 and Intra-Day 2 Nomination cycles by providing notice to the Transporter by the following times for each cycle: 8 a.m. CCT for the Timely Nomination cycle; 5:00 p.m. CCT for the Evening Nomination Cycle; 8 a.m. CCT for the Intra-Day 1 Nomination cycle, and 3:00 p.m. for the Intra-Day 2 Nomination cycle. Notification to replacement shippers provided by Transporter within one hour of receipt of recall notification.

The Commission will revisit this schedule after NAESB has had an opportunity to develop standardized timelines for partial day recalls.

42. The Commission will address below those comments opposing or suggesting changes in the regulation or requesting clarification. Comments addressing procedural issues will not be addressed since NAESB will be considering those issues.

[40] If advance notice of recalls is provided, the bumping rules for recalled capacity may not need to be identical to those for interruptible shippers. Interruptible shippers cannot be bumped at the Intra-Day 2 cycle because, under current NAESB standards, they are not provided with advance notice of the bump and so cannot renominate at the Intra-Day 2 cycle. 18 CFR 284.12(b)(1)(1), Nominations Related Standards 1.3.2 (Intra-Day 2 nomination is received at 5 p.m. CCT with no advance notice to interruptible shippers of volumes to be bumped). In contrast, if advance notice of recalls is provided to replacement shippers, their scheduled capacity can be recalled at the Intra-Day 2 cycle because the replacement shipper will have sufficient notice to renominate at the Intra-Day 2 cycle.

[41] For example, under the Timely Nomination cycle, scheduled volumes are provided at 4:30 p.m. Releasing shippers need sufficient time to evaluate this information before determining whether to recall capacity for the 6 p.m. Evening Nomination cycle.

[42] Capacity Release Related Standards 5.3.6 (notice must be given by 8 a.m. CCT for recall effective at the 11:30 a.m. Timely Nomination cycle).

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43. Comments on Adoption of Partial Day Recall Requirement

44. Those opposing adoption of a regulation permitting partial day recalls contend that permitting any partial day recalls will operate to diminish the attractiveness of released capacity, and will, therefore, result in limiting competition between pipeline firm and released capacity. They further maintain that allowing partial day recalls will be harmful to replacement shippers, because replacement shippers will be unable to reschedule gas bumped by the partial day recall. DETM contends that, for better or worse, all gas transactions occur for a full gas day, and that this will create difficulties for replacement shippers trying to reschedule gas subject to partial day recalls. DETM further maintains that no data supports the proposition that the availability of partial day recalls will have any measurable impact on the availability of released capacity.

45. Since Order No. 636, the Commission's regulation of released capacity has proceeded from the presumption that the best way to improve access to capacity is to provide both releasing and replacement shippers as much flexibility as possible in structuring their capacity release transactions. In Order No. 637, for instance, the Commission required pipelines to permit releasing and replacement shippers to consummate capacity release transactions at each of the four intra-day nomination opportunities to ensure that replacement shippers could obtain capacity when they need it.[43] Similarly, allowing partial day recalls will provide releasing shippers with similar flexibility to structure capacity releases that fit their requirements. Indeed, as the gas market has been developing, shippers want more flexibility, not less, to adjust nominations on an intra-day basis.[44] Allowing partial day recalls is a step towards the Commission's, as well as the industry's, goal of providing shippers with enhanced scheduling opportunities so that they can adjust their gas nominations to accord with their market needs.[45]

46. Moreover, it is not clear that prohibiting partial day recalls would benefit replacement shippers in the long run. DETM and Dynegy appear to be assuming that without partial day recalls, firm shippers will release the same amount of capacity on a full day's basis as they would if partial day recalls are available. However, many of the comments point out that firm shippers that need capacity on short notice are reluctant to release their capacity at all if they are unable to recall that capacity in the event of changed circumstances, such as dropping temperatures or the failure of a marketer to deliver gas.[46] According to the comments, this is particularly true for LDCs with supplier-of-last-resort obligations that need to be able to recall capacity quickly if marketers fail to provide gas to the LDCs city-gate.[47] Allowing partial day recalls will remove this disincentive to release capacity, thereby making incremental capacity available and benefitting replacement shippers by providing them with more options, particularly on fully subscribed pipelines.[48]

47. Dynegy, DETM, and EPSA further assert that allowing partial day recalls may make capacity releases subject to such recalls less valuable to replacement shippers. In the first place, as noted above, the commenters are assuming such capacity will be available for release if partial day recall rights were not available to the releasing shipper, an assumption that other comments show is not necessarily correct. Released capacity available subject to partial day recall is certainly more valuable to replacement shippers than not having that capacity available at all.

48. Moreover, if replacement shippers find that released capacity with partial day recalls is too unreliable, they need not purchase that released capacity and can negotiate with the releasing shippers for conditions providing more reliable service. Under the regulations adopted here, releasing shippers are not required to include partial day recalls in their releases. Releasing shippers can release capacity on a full day basis (not subject to partial day recalls) and will have an incentive to do so, because a full day release will be more valuable (and higher priced) than a partial day recall release. The replacement shippers will know the terms of releases upfront and can determine whether to purchase that capacity, negotiate other terms with the releasing shipper, or seek more reliable capacity, and can take the recall conditions into account in determining how much the capacity is worth. In a fully functioning market, buyers and sellers negotiate over the terms of their deals so that the price and other components reflect terms that are mutually agreeable to both parties. Imposing artificial regulatory limits on the negotiating position of one party to the transaction, as proposed by those opposing partial day recalls, is the antithesis of fully functioning markets, and can only create a less efficient marketplace.

49. DETM and Dynegy also contend that permitting partial day recalls will reduce the reliability of the pipeline grid because replacement shippers are subject to losing their capacity and may be unable to reschedule capacity. These arguments are reminiscent of the arguments made in 1998 against allowing firm intra-day nominations to bump interruptible transportation on the grounds that interruptible shippers would have difficulty rescheduling their gas.[49] In that case, the Commission rejected such claims, finding that:

> Firm shippers are paying reservation charges for priority rights and those rights should include the right to have a nomination become effective as early as possible on the gas day following the nomination. Interruptible shippers voluntarily take the risk that their service will be interrupted and while they are entitled to advance notice of such interruption, they should not be able to prevent firm shippers from having their nominations take effect at the earliest possible time. Gas flows on the interstate grid 24-hours a day, and is consumed throughout the day, so interruptible shippers need to be prepared to adjust gas volumes even during non-business hours.[50]

50. In this instance, firm shippers paying reservation charges should similarly have the ability to control the use of their capacity by employing partial day recalls. Shippers purchasing released capacity subject to partial day recalls, like those purchasing interruptible transportation, are taking the risk that their scheduled quantities may be disrupted. As gas markets continue to develop, such adjustments will be increasingly necessary to provide those shippers holding firm capacity with the utmost flexibility in their use of the capacity for which they pay.

51. Moreover, like interruptible shippers, replacement shippers are protected, because bumping of scheduled volumes is only permitted if the replacement shipper has at least one opportunity to reschedule its gas. Replacement shippers also have tools available, such as pooling, gas package identifiers, and ranking, that they can use to manage their gas supplies in the event of a bump.[51]

52. WDG maintains that the Commission should not exempt the Intra-Day 2 nomination from a partial day recall. It argues that the replacement shippers have fair notice that their capacity is recallable, and therefore are not prejudiced by having a recall at the Intra-Day 2 cycle.

53. The regulation adopted in this rule does not prohibit all recalls at the Intra-Day 2 cycle. Recalls of unscheduled capacity can be made at the Intra-Day 2 cycle. As discussed earlier, NAESB is to consider establishing a notification schedule by which pipelines and replacement shippers are to be notified of recalls. Bumping at the Intra-Day 2 cycle may be permitted depending on whether the replacement shipper is given sufficient time to renominate any bumped gas at the Intra-Day 2 cycle.

54. DETM maintains that the partial day recall issue is not a policy dispute, but a business issue that should be left to NAESB to resolve. It argues that the Commission has historically deferred to the determinations of NAESB on business issues and, therefore, should not overturn the business decision by NAESB to prohibit partial day recalls.

55. The dispute here is not simply a question of business practices, but a question of regulatory policy regarding the relative rights of releasing and replacement shippers under the Commission's capacity release mechanism. Here, the Commission has determined that, under its regulations, releasing shippers should be given full rights to use their capacity flexibly by recalling that capacity on an intra-day basis, and that the contrary NAESB standards should no longer be incorporated by reference.

56. It is true that the Commission gives great weight to the standards adopted by NAESB, because these standards represent a consensus of the industry. In fact, the Commission initially adopted NAESB's consensus standards limiting capacity release recalls, even though the Commission's regulations (§ 284.8 (b)) would have permitted partial day recalls. Now, however, it is clear from the record of deliberations at NAESB, and the comments filed in this proceeding, that the existing NAESB standards on partial day recalls no longer command a consensus of the industry.[52] At this point, NAESB is stalemated, without being able to achieve a consensus in either direction. Since consensus no longer obtains, the Commission needs to resolve the policy dispute and has determined that allowing partial day recalls is consistent with the Commission's regulations, will provide incentives to release additional capacity, and will foster enhanced competition.

57. Requests for Clarification

58. A number of the comments ask for clarification of aspects of the regulations and the way in which partial day recalls will operate.

59. Applicability of Recall Conditions

60. NiSource maintains the Commission's regulation is vague and seems to imply that all released capacity is subject to partial day recalls. Williams and ENA similarly seek clarification that parties retain the flexibility to decide whether capacity is recallable on an intra-day basis. Williams further seeks clarification that the proposed rule is prospective only and does not affect previous capacity release contracts.

61. The Commission has revised its proposed regulation to make clear that pipelines need only provide releasing shippers with the opportunity to include partial day recalls as a condition in capacity release offers. Whether a partial day recall applies to a capacity release will depend upon the terms of the agreement between the releasing and replacement shipper. Because the terms of the agreement govern, the Commission agrees with Williams that implementation of this regulation is prospective only and will not change the terms of already negotiated capacity release transactions.

62. Schedule for Notification of Recalls for Timely Nomination Cycle and Reputs

63. The Industrials maintain that the Commission should not eliminate NAESB standard 5.3.6 which establishes 8 a.m. CCT as the deadline for notification of a recall applicable to the Timely Nomination cycle (11:30 a.m.). The Industrials are concerned that the elimination of this provision will force all recalls into the intra-day cycles or will mean that recall timing will be left either to the contract between the releasing and replacement shipper or to individual tariff provisions. The Industrials further request that the Commission consider a timeline for notification of reputs (in which recalled capacity reverts to the replacement shipper after a recall ends), or request NAESB to consider this issue.

64. The Commission recognizes that a standard timeline for recall notification is needed and is referring this issue to NAESB for consideration of a new standard. In the interim while NAESB is considering a new standard, the Commission is permitting pipelines to continue to use the notification period in current standard 5.3.6 for the Timely Nomination cycle, and, as described earlier, has established an interim notification schedule for the other nomination cycles. NAESB also should consider whether a schedule or timeline for reput notification is necessary.

65. Penalty Exposure

66. Dynegy and NGSA maintain that partial day recalls should not result in greater penalty exposure for shippers whose capacity has been recalled. As discussed earlier, the Commission in Order No. 587–G required pipelines to waive non-critical penalties for bumped interruptible shippers. Pipelines should apply the same waivers for gas bumped through partial day recalls.

67. Effect on Alternate Points

68. NiSource seeks clarification that partial day recalls will not permit the releasing shipper recalling capacity to change to an alternate point and bump firm capacity that is already scheduled (by a third party) at that point. The recall only permits the releasing shipper to displace gas scheduled by the replacement shipper. The Commission agrees that partial day recalls will not give the recalling shipper any greater scheduling rights vis a vis third parties.

69. Pipelines Offering Non-Standard Nomination Opportunities

70. Dominion requests clarification that pipelines offering more nomination opportunities than the four standard

[43] 18 CFR 284.12(c)(1)(ii).

[44] *See* Reliant Energy Gas Transmission Company, 93 FERC ¶ 61,141 (2000) (proposal for hourly nominations to meet customer needs for quick adjustment due,to demand changes).

[45] NAESB's standards recognize that the current nomination scheduling is merely "an interim step to continuous and contiguous scheduling." Nominations Related Standards 1.1.2.

[46] *See* Comments of Dominion LDCs, at 4 (partial day recalls "will free up capacity that would otherwise be held by LDCs and other shippers that cannot risk releasing it for an extended period"); Kentucky ("the inability to reschedule recalled capacity will result in the reduction of the amount of capacity available, thereby adversely impacting competition").

[47] *See* Comments of AGA, Dominion LDCs, APGA, Con Edison, Kentucky, KeySpan, PSCNY (partial day recalls crucial to retail access programs where recall is needed to ensure reliability).

[48] *See* Comment of APS/PWEC, at 3 (supporting partial day recalls as making incremental capacity available on fully subscribed pipelines).

[49] *See* Order No. 587–G, 63 FR at 20077–78, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,669–30,672.

[50] Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671.

[51] 18 CFR § 284.12 (b)(1)(i), Nominations Related Standards 1.3.18, 1.3.23, 1.3.24. Pooling together with ranking permit shippers to designate which supplies or markets should be cut first in the event scheduled volumes are reduced.

[52] Under NAESB's procedures, a consensus is required to approve standards, but equally a consensus is needed to change or remove a standard. For example, if NAESB's current partial day recall standards (5.3.6 and 5.3.7) were resubmitted for a vote today, the comments make clear that these standards would not command a consensus at NAESB.

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times provided in the NAESB standards, need not offer partial day recall at non-standard nomination times. Dominion maintains that it provides additional nomination times early in the morning (7:45 a.m. CCT) and late in the evening (8:45 p.m.), and states that its staffing, and that of shippers, at these times does not permit processing of recalls. In addition, Dominion contends that other pipelines are not equipped to coordinate recalls at those hours.

71. Pipelines are certainly free to provide for recalls at non-standard nomination periods. However, in implementing recalls during the interim period in which NAESB is considering standards, the Commission will require recalls to be processed only at the standard nomination periods; pipelines need not permit recalls at any non-standard nomination times. In considering standards for partial day recalls, NAESB should consider whether standards should be developed to permit recalls at certain non-standard nomination opportunities.

72. Effect on Already Accepted Partial Day Recall Programs

73. Dominion requests clarification that the final rule does not affect Dominion's settlement in its Order No. 637 proceeding in which it provides partial day recalls at certain nomination opportunities. For example, Dominion states that it currently does not permit recalls at the Intra-Day 1 cycle, although it does not object to permitting such recalls if required by the Commission.

74. All pipelines will be required to conform to the requirements of the Commission regulation, regardless of the terms of previous approved tariffs. The Commission is acting under section 5 of the Natural Gas Act in requiring pipelines to permit releasing shippers to use partial day recalls and is seeking to establish standards to apply to such recalls across the interstate grid. Accordingly, all pipelines with tariffs inconsistent with the Commission's regulation must comply with that regulation. Dominion, for instance, is required, as are the other pipelines, to permit recalls at the Intra-Day 1 cycle (to which it has no objection). Similarly, Dominion is required to permit recalls under the schedule established by the Commission in this rule for the interim period while NAESB is considering standards for partial day recalls, and will be required to comply with subsequent timeline NAESB develops and the Commission adopts.

75. Pipeline Capacity

76. EIP is concerned that partial day recalls are at odds with the NAESB standards requiring that all nominations be for daily quantities. EIP maintains that if partial day recalls are permitted for released capacity, pipelines should be permitted to sell their capacity for less than a full day as well.

77. EIP appears to be suggesting that a partial day recall refers to a sale of capacity for a time period of less than one day, whereas pipelines under the NAESB standards can only sell capacity for a full day's quantity. The Commission is not establishing different standards for pipeline capacity as compared to released capacity. As Gulf South explains in its comments, a partial day recall should not be viewed as a recall for a specific portion (number of hours) of a gas day. Rather, the recall is for a proportionate share of the total contract quantity. For example, if a capacity release is for a contract quantity of 2400 Dth, and the replacement shipper flowed 800 Dth during the first eight hours prior to recall, the releasing shipper would still have a contract quantity of 1600 Dth remaining on the contract for the remainder of the gas day. In the same way, pipelines can sell capacity at each of the intra-day nomination opportunities whenever capacity is available.[53]

[53] Indeed, Commission policy requires pipelines to sell capacity at the maximum tariff rate whenever that capacity is available, including on an intra-day basis. Tennessee Gas Pipeline Company, 91 FERC ¶ 61,053, at 61,190 (2000); 18 CFR 284.7 & 284.9 (must sell services without regard to duration of the service).

78. Notice of Use of Voluntary Consensus Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule identifying whether a voluntary consensus standard or a government-unique standard is being adopted. In this rulemaking, the Commission is issuing its own regulation and rescinding the incorporation by reference of NAESB standard 5.3.6 and part of 5.3.7, because the existing NAESB standard has not been revised to take into account changed circumstances, there is no longer consensus supporting this standard, and the existing standard fails to reflect Commission policy.

79. Information Collection Statement

80. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

81. The final rule will affect one existing data collection, FERC–545 "Gas Pipeline Rates: Rate Change (Non-Formal)" (OMB Control No. 1902–0154). The following burden estimates are related only to this rule and include the costs of complying with the tariff filing requirement. Since this final rule will be implemented in two phases, the number of responses per respondent has been increased from one, as proposed in the NOPR, to two because each respondent will need to make two tariff filings, one for phase one and one for phase two.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC–545	93	2	38	7,068

	FERC–545
Annualized Capital/Startup Costs	$397,714
Annualized Costs (Operations & Maintenance)	0
Total Annualized Costs	397,714

The cost per respondent is $4,276.00 (rounded off).

82. The Commission sought comments to comply with these requirements. Comments were received from twenty-eight entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed within the rule.

83. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and provide greater flexibility for capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The public also benefits by having greater competition across the pipeline grid as a result of firm capacity holders having increased flexibility in structuring their capacity release transactions.

84. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in the Final Rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

85. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, CI–1, (202) 208–1415, or mike.miller@ferc.fed.gov] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7318, or fax: (202) 395–7285.

86. Environmental Analysis

87. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. [54] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[55] The regulations adopted in this rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[56] Therefore, an environmental assessment is unnecessary and has not been prepared.

88. Regulatory Flexibility Act Certification

89. The Regulatory Flexibility Act of 1980 (RFA)[57] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

[54] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[55] 18 CFR 380.4.

[56] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[57] 5 U.S.C. 601–612.

90. Document Availability

91. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

92. From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

93. User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

94. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

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95. Implementation Dates

96. As discussed herein, interstate pipelines are required, by May 1, 2002, to make tariff filings, to become effective by July 1, 2002, to comply with the requirement to implement recalls of scheduled and unscheduled capacity for the Timely and Evening Nomination cycles and for recalls of unscheduled capacity. Each tariff filing must include the tariff language set forth at P. 41.

97. By October 1, 2002, NAESB should file comments with the Commission detailing the standards NAESB has adopted relating to partial day recalls or, if none has been adopted, those that were considered, as well as all other material relevant to NAESB's consideration of the standards. Other industry members also can submit comments by October 1, 2002, and will have until October 15, 2002 to file additional comments on the NAESB report.

98. Effective Date

99. These regulations are effective April 17, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended as follows:

a. The heading of paragraph (b) is revised by removing the word "GISB" and adding, in its place, the word "NAESB."

b. Paragraphs (b)(1) and (b)(2) are amended by removing the words "Gas Industry Standards Board" and adding, in their place, the words "North American Energy Standards Board."

b. Paragraph (b)(1)(v) is revised.

c. The heading of paragraph (c)(1)(ii) is revised, and the text of paragraph of (c)(1)(ii) is designated as (c)(1)(ii)(A).

d. Paragraph (c)(1)(ii)(B) is added.

The revised and added text reads as follows:

§ 284.12 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(v) Capacity Release Related Standards (Version 1.4, August 31, 1999), with the exception of Standard 5.3.6 and the first sentence of Standard 5.3.7.

* * * * *

(c) * * *

(1) * * *

(ii) Capacity release scheduling.

(A) * * *

(B) A pipeline must permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. Each replacement shipper must be provided with advance notice of such recall and must be notified whether penalties will apply on the day its volumes are reduced.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

COMMENTS FILED

[Docket No. RM96–1–019]

Commenter	Abbreviation
American Gas Association	AGA.
Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation	Algonquin/Texas Eastern.
American Public Gas Association	APGA.
Arizona Public Service Company and Pinnacle West Energy Corporation	APS/PWEC.
Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc	Con Edison.
Dominion Transmission, Inc	Dominion.
Duke Energy Trading and Marketing, LLC	DETM.
Dynegy Marketing and Trade	Dynegy.
East Ohio Gas Company, The Peoples Natural Gas Company, Hope Gas, Inc	Dominion LDCs.
El Paso Pipeline Group	EPPG.
Enron North America Corp	ENA.
Enron Interstate Pipelines	EIP.
Electric Power Supply Association	EPSA.
Gulf South Pipeline Company	Gulf South.
Interstate Natural Gas Association of America	INGAA.
Public Service Commission, Commonwealth of Kentucky	Kentucky.
KeySpan Delivery Companies	Keyspan.
American Gas Association	AGA.
Kinder Morgan Pipelines	Kinder Morgan.
Memphis Light, Gas and Water Division	MLGW.
Natural Gas Supply Association	NGSA.
Public Service Commission of New York	PSCNY.
NiSource, Inc	NiSource.
Pennsylvania Office of Consumer Advocate	PA. OCA.
Process Gas Consumers Group, American Forest & Paper Association, and Georgia Industrial Group	Industrials.
Williams Companies	Williams.
Williston Basin Interstate Pipeline Company	Williston.
Wisconsin Distributor Group	WDG.

COMMENTS FILED—Continued

[Docket No. RM96–1–019]

Commenter	Abbreviation
Xcel Energy Services, Inc	Xcel.

[FR Doc. 02–6239 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–475; Ref. Notice No. 924]

RIN: 1512–AC29

Addition of New Grape Variety Names for American Wines (2000R–322P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is adding four new names to the list of prime grape variety names for use in designating American wines: Albariño, Alvarinho, Black Corinth, and Fiano.

EFFECTIVE DATE: Effective May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301; telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) (FAA Act), wine labels must provide the consumer with adequate information as to the identity of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer.

To help carry out these statutory requirements, ATF has issued regulations, including those that designate grape varieties. Under 27 CFR 4.23(b) and (c), a wine bottler may use a grape variety name as the designation of a wine if at least 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties, and the percentage of the wine derived from each variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while alternative grape names temporarily authorized for use are listed at § 4.92. We believe the listing of approved grape variety names for American wines will help standardize wine label terminology and prevent consumer confusion.

How May New Varieties Be Added to the List of Prime Grape Names?

Under § 4.93, any interested person may petition ATF to add additional grape varieties to the list of prime grape names. The petitioner should provide evidence of the following:

- Acceptance of the grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

Documentation submitted with the petition may include:

- A reference to the publication of the variety's name in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape names. We will not approve a name:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term "Riesling."

The Director will not approve the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

Notice 924

In Notice 924, published on July 19, 2001, ATF proposed to add the names Albariño, Alvarinho, Black Corinth, and Fiano to the list of approved grape variety names in § 4.91. We based the proposal on the petitions and evidence described below. We received no comments to the notice. Because the petitioners provided sufficient evidence to support the requirements of § 4.93, we are adding the new names to the approved list.

Petitions

Petition for Albariño/Alvarinho

Havens Wine Cellars of Napa, California, petitioned ATF to add "Albariño" to the list of prime grape names approved for the designation of American wines. Grown for centuries in Spain and Portugal, Albariño, a white *Vitis vinifera* grape, is relatively new to the United States. In Portugal the grape is called "Alvarinho."

The petitioners stated that Albariño has long been recognized in Europe and in academic communities. As evidence of this, the petitioners submitted the following supporting documents provided by Professor Carole Meredith of the Viticulture and Enology Department at the University of California at Davis (UC Davis):

- European Union Regulation 3201/90: This regulation permits the use of the name "Albariño" on labels of Spanish wines, and the name "Alvarinho" on labels of Portuguese wines.
- Two scientific papers published in the American Journal of Enology and Viticulture: "Effects of Grapevine Leafroll-Associated Virus 3 on the Physiology and Must of Vitis vinifera L. cv. Albariño Following Contamination in the Field," (Vol. 50, 1999) which discusses a study conducted on Albariño grape vines, and "Contribution of Saccharomyces and Non-Saccharomyces Populations to the Production of Some Components of Albariño Wine Aroma," (Vol. 47, 1996) which describes a study conducted on Albariño musts.
- "The Genetic Resources of Vitis": This listing of international grape variety names and synonyms, published in 1988 by the German Federal Grape Breeding Institute, lists Alvarinho as the

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prime name for the grape varietal with Albariño as a synonym.

• An abstract of an article from the Journal of the American Society for Horticultural Science: "Molecular marker analysis of Vitis vinifera 'Albariño' and some similar grapevine cultivars," published September 1998, describing a DNA analysis conducted on Albariño grapevines.

The petitioner also submitted several wine literature articles from sources such as Wine Spectator and Wine Today, which mention Albariño/Alvarinho wine.

ATF contacted Professor Meredith and asked her if the name "Alvarinho" should be added to the list as a synonym of Albariño. She replied that both names are well established in Europe and are equally valid names for the grape. She stated that because the grape is relatively new to the U.S., she didn't know which name is most commonly used by U.S. winemakers. She noted that UC Davis has an example of the grapevine in its collection and uses the name "Alvarinho", most likely because the plant originally came from Portugal.

Havens Wine Cellar reported that it has 2½ acres of Albariño in production, with the first crop picked in 1999. We also know of two other California wineries and a Virginia winery that are growing Albariño. Since the evidence submitted satisfies the requirements of § 4.93, we are adding Albariño and Alvarinho to the list of prime grape names in § 4.91.

Petition for Black Corinth

Hallcrest Vineyards of Felton, California, petitioned ATF to add the grape variety Black Corinth to the list of prime grape names approved for the designation of American wines. Black Corinth grapes are widely grown in California, where the vast majority of them are dried into raisins and marketed under the name "Zante Currant."

As evidence of the grape's acceptance and use in California, Hallcrest Vineyards submitted the following statistical reports issued by the State of California:

• Final Grape Crush Report for the 1999 crop, issued by the California Department of Food and Agriculture.

• California Grape Acreage report for 1999, issued by the California Agricultural Statistics Service, in cooperation with the U.S. Department of Agriculture.

Both reports include statistical tables with the data broken down by grape varietal. Black Corinth is one of the listed varietals. The petitioner stated that this is clear evidence that the grape is grown in California and is recognized by the California Department of Food and Agriculture.

Other documentation included The Oxford Companion to Wine (Jancis Robinson, Oxford University Press, 1999), which states that Black Corinth is one of the most commonly used grape varieties in the world raisin industry, and is occasionally used in winemaking.

Hallcrest Vineyards stated it has made a fruity, blush dessert wine from the Black Corinth grape. We are aware of at least one other winery using the grape to produce a table wine. Because the evidence satisfies the requirements of § 4.93, we are adding Black Corinth to the list of prime grape names in § 4.91. Because we believe the name "Zante Currant" could mislead consumers into thinking the wine is made from currants and not grapes, we did not propose that name as a synonym.

Petition for Fiano

United Distillers and Vintners North America, Inc. (UDV) petitioned ATF to add the name "Fiano" to the list of prime grape names approved for the designation of American wines. UDV owns three wineries in California—Beaulieu Vineyards, Glenn Ellen Carneros Winery, and Blossom Hill.

Fiano is a white varietal, long grown in the Campania region of Italy where it is used to produce the *Denominazione di Origine Controllata* wine Fiano di Avellino. According to information submitted by the petitioner, Fiano is an old grape with a history dating back to the ancient Romans. Records show that Holy Roman Emperor Frederick II (1215–1250) placed an order for Fiano wine and that Charles d'Anjou (1227–1285) planted 16,000 Fiano vines. Modern reference sources referring to the Fiano grape include The New Sotheby's Wine Encyclopedia (Tom Stevenson, DK Publishing, Inc., 1997) and The Oxford Companion to Wine (Jancis Robinson, Oxford University Press, 1999).

As evidence of the grape's use in the United States, UDV submitted a price list from Herrick Grapevines in St. Helena, California, listing Fiano in its grapevine inventory. According to this inventory, the Fiano was planted in 1997 and was obtained from Duarte Nursery in Modesto, California. UDV further stated that Beaulieu Vineyard has produced two vintages of Fiano wine, and submitted evidence that at least three other California vineyards and one New York vineyard are also growing Fiano. The petitioner submitted a letter from Monterey Pacific, one of the California growers, stating that they have five years of experience with Fiano and find it to be a grape with distinctive varietal character.

Based on the evidence presented in the petition, we are adding the Fiano grape to the list of approved prime names in § 4.91.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule. This rule does not require winemakers to collect any additional information.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of new grape varietal names. We do not expect any negative impact on small entities. We are not imposing new requirements. Accordingly, the act does not require a regulatory flexibility analysis.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by adding the names "Albariño", "Alvarinho", "Black Corinth", and "Fiano" in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Albariño (Alvarinho)

* * * * *

Alvarinho (Albariño)

* * * * *

Black Corinth

* * * * *

Fiano

* * * * *

Signed: February 14, 2002.

Bradley A. Buckles,

Director.

Approved: February 24, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 02–6238 Filed 3–15–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–006]

Drawbridge Operation Regulations; Great Egg Harbor Bay, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Route 9/Beesleys Point Bridge across Great Egg Harbor Bay, mile 3.5, between Somers Point and Beesleys Point, in New Jersey. From March 11, 2002, through April 5, 2002, the bridge may remain in the closed position Monday through Friday from 7 a.m. to 5 p.m. However, on Saturday and Sunday the bridge will open on signal for marine traffic. This closure is necessary to conduct the emergency structural repairs to the bascule span.

DATES: This deviation is effective from 7 a.m. on March 11, 2002, until 5 p.m. on April 5, 2002.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard received a letter from the bridge manager, requesting a temporary deviation from the current operating schedule of the Route 9/Beesleys Point Bridge to undertake repairs. The draw currently is required to open on signal at all times. This requirement is included in the general operating regulations at 33 CFR 117.5. The work involves ironwork repairs to the bascule span of the bridge. To facilitate the repairs, the bascule span will be locked in the closed position so that concrete can undergo the curing process. This work requires completely immobilizing the operation of the bascule span. In the event of an emergency, openings of the span will be provided as quickly as possible, but may take up to 48 hours to accomplish. Requests for emergency openings can be made by calling the bridge manager at (609) 390–3190 or (609) 624–0949.

In accordance with 33 CFR 117.35, the District Commander approved the contractor's request for a temporary deviation from the governing regulations in a letter dated February 22, 2002.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The temporary deviation allows the Route 9/Beesleys Point Bridge across Great Egg Harbor, mile 3.5, between Somers Point and Beesleys Point, New Jersey to remain closed Monday through Friday from 7 a.m. on March 11, 2002, until 5 p.m. on April 5, 2002.

Dated: March 6, 2002.

Ann B. Deaton,

Chief, Bridge Administration Section, Fifth Coast Guard District.

[FR Doc. 02–6358 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–009]

Drawbridge Operation Regulations: Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, Mile 1059.0, Lauderdale-by-the-Sea, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations, request for comments.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a test deviation from the regulations governing the operation of the Commercial Boulevard (SR 870) bridge at Lauderdale-by-the-Sea across the Atlantic Intracoastal Waterway, mile 1059.0 in Lauderdale-by-the-Sea, Florida. This deviation allows the drawbridge to open on the hour, 20 minutes after the hour, and 40 minutes after the hour from 7 a.m. to 6 p.m. This action is intended to improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic. Comments on this test deviation are encouraged.

DATES: This rule is effective from April 17, 2002, until July 16, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131. Comments and material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–02–009] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to comment on this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice [CGD07–02–009], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Seventh Coast Guard District Bridge Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid in the Discussion of the Test Schedule, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Discussion of the Test Schedule

The existing regulations of the Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea allow the draw to open on signal, except that, from November 1 through May 15

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from 8 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter-hour, and from 8 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

The City of Fort Lauderdale requested on January 3, 2002, that the Coast Guard review the existing regulation of the Commercial Boulevard bridge as they believe the existing regulations are not meeting the needs of vehicle and vessel traffic. This test deviation will allow the draw to open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. We will utilize the data collected from this test deviation to determine if new operating regulations need to be created for this bridge to facilitate vehicle and vessel traffic movement.

The District Commander has granted a test deviation from the operating requirements listed in 33 CFR 117.261(ee) to evaluate the effect of this new schedule on vehicle and vessel traffic. Under this deviation, the Commercial Boulevard Bridge need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour from April 17, 2002, until July 16, 2002.

Dated: March 7, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–6360 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–005]

Drawbridge Operating Regulation; Pascagoula River, Mississippi

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the CSX Transportation railroad bascule span drawbridge across the Pascagoula River, mile 1.5 at Pascagoula, Mississippi. This deviation allows the draw of the railroad bascule span bridge to remain closed to navigation from 8 a.m. until 5 p.m. on March 18, 2002. This temporary deviation will allow for rewiring the electrical components of the operating mechanism.

DATES: This deviation is effective from 8 a.m. until 5 p.m. on Monday, March 18, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The CSX Transportation railroad bascule span drawbridge across the Pascagoula River, mile 1.5 at Pascagoula, Mississippi has a vertical clearance in the closed-to-navigation position of 0.8 feet above mean high water and 2.4 feet above mean low water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of small cargo ships, tugs with tows, fishing vessels and recreational craft including sailboats and power boats. Presently, the draw opens on signal.

CSX Transportation requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves replacement of the deficient wiring in the electrical system of the operating mechanism. This work is essential for continued operation of the draw span of the bridge and is expected to eliminate frequent breakdowns resulting in emergency bridge closures.

This deviation allows the draw of the CSX Transportation railroad bascule span drawbridge to remain closed to navigation from 8 a.m. until 5 p.m. on March 18, 2002.

Dated: March 8, 2002.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 02–6362 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Corpus Christi 02–001]

RIN 2115–AA97

Security Zone; Corpus Christi Inner Harbor, Corpus Christi, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone to ensure the security within the Corpus Christi Inner Harbor, Corpus Christi, TX, from the Inner Harbor Bridge to the Viola Turning Basin and all waters in between. The security zone is needed to protect personnel, vessels, waterfront facilities, and national security interests in this harbor from any and all subversive actions by any groups or individuals whose objective it is to destroy or disrupt maritime activities. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Corpus Christi.

DATES: This rule is effective from 8 a.m. on February 20, 2002 through 8 a.m. on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Corpus Christi 02–001] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, 78478 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG C. J. Bright, Chief, Waterways Section, Coast Guard Captain of the Port Corpus Christi, 555 N. Carancahua St. Suite 500, Corpus Christi, Texas, 78478, (361) 888–3162.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553 (d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the security risks associated with recreational, passenger, or commercial fishing vessels entering the Corpus Christi Inner Harbor.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary therefore, the Captain of the Port, Corpus Christi is establishing a temporary security zone within the Corpus Christi Inner Harbor.

The Port of Corpus Christi is the fourth largest petro-chemical port within the United States. A large number of these petro-chemical waterfront facilities are located within the Inner Harbor that serves as a major industrial channel. These petro-chemical waterfront facilities conduct business with both United States and foreign deep draft vessels. The Port of Corpus Christi is also designated as an alternate military strategic load-out port with docks and facilities located within the Inner Harbor. These docks and facilities are vital to the national security interest of the United States.

The Inner Harbor channel is approximately 8 miles long and 300-to-800 feet wide, and has a controlling depth of 45 feet. Restricting the access of recreational, passenger and commercial fishing vessels reduces potential methods of attack on a vessel or waterfront facility within the zone. This security zone is designed to limit the access of vessels that do not have business to conduct with facilities or structures within the Corpus Christi Inner Harbor. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Corpus Christi.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Recreational vessels, passenger vessels, and commercial fishing vessels do not frequent the Corpus Christi Inner Harbor. The Inner Harbor is an industrial area primarily used for bulk material transfers. Should a recreational vessel, passenger vessel, or commercial fishing vessel need to enter the Inner Harbor to conduct business with a small entity, such as a ship yard facility, there is no cost and little burden associated with obtaining permission from the Captain of the Port prior to entry.

If you are a small business entity and are significantly affected by this regulation please contact LTJG C. J. Bright, Chief Waterways Section, Coast Guard Captain of the Port Corpus Christi at (361) 888–3162.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effect

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–016 is added to read as follows:

§ 165.T08–016 Security Zone; Corpus Christi Inner Harbor, Corpus Christi, Texas.

(a) *Location.* The following area is a security zone: Corpus Christi Inner Harbor from the Inner Harbor Bridge to the Viola Turning Basin and all waters in between.

(b) *Effective dates.* This section is effective from 8 a.m. on February 20, 2002 through 8 a.m. on June 15, 2002.

(c) *Authority.* The authority for this section is 33 U.S.C. 1226, 33 U.S.C. 1231, 33 CFR 1.05–1(g), and 49 CFR 1.46.

(d) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter this security zone unless specifically authorized by the Captain of the Port Corpus Christi, or his designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into this security zone must request permission from the Captain of the Port Corpus Christi, or his designated representative. They may be contacted via VHF Channel 16 or via telephone at (361) 888–3162.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Corpus Christi and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: February 20, 2002.

William J. Wagner III,

Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.

[FR Doc. 02–6363 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 02–003]

RIN 2115–AA97

Safety Zone; Ouzinkie Harbor, Ouzinkie, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones in Ouzinkie Harbor, Ouzinkie, Alaska. One safety zone will surround the barge SWINOMOSH which will be conducting dredging and blasting operations in the navigable waters of Ouzinkie Harbor. The second safety zone will close all of Ouzinkie Harbor when the barge SWINOMOSH conducts blasting operations. The safety zones are necessary to protect vessels transiting the area from the potential hazards associated with the dredging and blasting operations conducted by the barge SWINOMOSH.

DATES: This rule is effective from 12:01 a.m. Alaska Standard Time (AST) March 13, 2002, until 9 p.m. AST April 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP Western Alaska 02–003) and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, Alaska between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Matt Jones, USCG Marine Safety Detachment Kodiak, at (907) 486–5918 or Lieutenant Commander Chris Woodley, USCG Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 31, 2002 we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Ouzinkie Harbor, Ouzinkie, Alaska" in the **Federal Register** (67 FR 4692). We did not receive any comments from the public. No public hearing was requested, and none was held.

Because we received the request late, we find that good cause exists, under 5 U.S.C. 553(d)(3), for making this rule effective less than 30 days after publication in the **Federal Register.**

Background and Purpose

The U.S. Army Corps of Engineers, through its contractor Western Marine Construction, Inc., will be conducting dredging and blasting operations on portions of Ouzinkie Harbor (Army Corps Of Engineers project number DACW85–01–C–0010). This dredging project will help maintain safe navigation within Ouzinkie Harbor. A 500-yard safety zone around the barge SWINOMOSH and a safety zone closing the harbor and evacuating all vessels from the harbor during blasting operations, is necessary to ensure the safety of the maritime community from the potential hazards associated with dredging and blasting operations.

Discussion of Comments and Changes

We did not receive any comments but we made a few technical and clarification changes to the rule. In paragraph (a) of section 165.T17–002, we changed the phrase "dredging and blasting operations" to "dredging or blasting operations," to clarify that the barge zone will be enforced when the barge SWINOMOSH was engaged in dredging alone. We changed the start date for the effective period in paragraph (b) to reflect a delay in the start of the dredging operations, and clarified that blasting and dredging operations will only occur in daylight hours. We also added the time zone in which this safety zone will occur. In paragraph(c) we added wording to clarify how the tug WALDO will notify vessels of blasting operations about to occur.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that the safety zone around the barge SWINOMOSH will not restrict vessels from transiting through the harbor. Also, the safety zone closing Ouzinkie Harbor during blasting operations will be announced well in advance so as to allow vessels ample time to plan ahead, and the actual blasting operations will be short in duration. The areas will not affect maritime vessel traffic transiting the shipping channel at Ouzinkie Narrows. Vessel traffic at this time of the year is minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of Ouzinkie Harbor during the time this zone is activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone area around the barge SWINOMOSH will not restrict vessels from transiting through Ouzinkie Harbor and vessels could pass safely around it. Also, the safety zone closing Ouzinkie Harbor during blasting operations will be announced well in advance so as to allow vessels ample time to plan ahead, and the actual blasting operations will be short in duration. Limited vessel traffic occurs in this area during these months. Before and during the effective period, we will issue a broadcast notice to mariners to warn maritime vessel traffic of the safety zones and operations occurring within the safety zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination with Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T17–002 to read as follows:

§ 165.T17–002 Safety Zone: Ouzinkie Harbor Dredging and Blasting Operations, Ouzinkie, Alaska.

(a) *Location.* The following areas are temporary safety zones:

(1) *SWINOMOSH Barge safety zone:* All navigable waters within a 500-yard radius of the barge SWINOMOSH while it is engaged in dredging or blasting operations.

(2) *Ouzinkie Harbor safety zone:* All waters in Ouzinkie Harbor, excluding the SWINOMOSH Barge safety zone,

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shoreward from a line drawn from 57°54′58″ N, 152°29′35″ W to 57°55′04″ N, 152°30′00″ W and ending at 57°55′12″ N, 152°30′10″ W.

(b) *Effective period.* This section is effective from 12:01 a.m. Alaska Standard Time (AST) March 13, 2002, until 9 p.m. AST April 30, 2002. Blasting and dredging operations will occur in daylight hours only during this effective period.

(c) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. The attending tug WALDO will broadcast a SECURITE message on VHF–FM channels 16 and 13 prior to each blasting operation and will be standing by on these channels for traffic advisory. All vessels must have permission of the Captain of the Port to enter the safety zones in this section and must monitor broadcasts by the tug WALDO while in the zones. All vessel traffic must be clear of Ouzinkie Harbor before blasting operations may occur.

Dated: February 27, 2002.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 02–6359 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–7159–8]

National Ambient Air Quality Standards for Ozone; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The purpose of this document is to announce that EPA has scheduled a public meeting to solicit comments on various options to implement the 8-hour ozone national ambient air quality standard (NAAQS). The options contain EPA's preliminary views and are intended to initiate a dialogue with the public on approaches for implementing the 8-hour ozone NAAQS. The EPA is interested in hearing the views from interested stakeholders on the options that we've developed and their ideas on how to best implement the 8-hour ozone NAAQS consistent with the Supreme Court's decision in *Whitman* v. *American Trucking Association.* An overarching issue that EPA would like public input on is how EPA should address the Supreme Court's holding that subpart 2 of part D of title I of the Clean Air Act (CAA) applies for purposes of classifying areas under a revised ozone NAAQS.

DATES: The one-day meeting will be held from 9:00 a.m. to 5:00 p.m. (MST) on Wednesday, April 3, 2002, in Tempe, Arizona.

ADDRESSES: The meeting will be held at: Fiesta Inn Resort, 2100 S. Priest Drive, Tempe, Arizona 85282–1192.

FOR FURTHER INFORMATION CONTACT: For general information on the meeting, contact: Denise M. Gerth, U.S. EPA, Office of Air Quality Planning and Standards, C539–02, Research Triangle Park, NC 27711, phone (919) 541–5550, or e-mail: *gerth.denise@epa.gov.* To register for the meeting, please contact: Barbara Bauer, E. H. Pechan and Associates, Durham, NC, phone (919) 493–3144, extension 188, or e-mail: *barbara.bauer@pechan.com.*

SUPPLEMENTARY INFORMATION: On July 18, 1997, EPA revised the ozone NAAQS (62 FR 38856). At that time, EPA indicated it would implement the 8-hour ozone NAAQS under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than more detailed requirements of subpart 2 requirements. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.[1] In May 1999, the Appeals Court remanded the ozone standard to EPA on the basis that EPA's interpretation of its authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc.* v. *EPA,* 175 F.3d 1027, *aff'd,* 195 F.3d 4 (D.C. Cir. 1999). In addition, the Court held that EPA improperly interpreted the statute to provide for implementation of the 8-hour standard under subpart 1, but also determined that EPA could not implement a revised ozone standard under subpart 2. The EPA sought review of these two issues by the U.S. Supreme Court. In February 2001, the Supreme Court upheld the constitutionality of the air quality standard setting. *Whitman* v. *American Trucking Assoc.,* 121 S. Ct. 903. In addition, the Supreme Court held that EPA has authority to implement a revised ozone standard but that EPA could not ignore subpart 2 when implementing the 8-hour standard. Specifically, the Court noted EPA could not ignore the provisions of subpart 2 that "eliminate[s] regulatory discretion" allowed by subpart 1. After determining that EPA could not ignore the provisions of subpart 2, the Court went on to identify several portions of the classification scheme that are "ill-fitted" to the revised standard, but left it to EPA to develop a reasonable approach for implementation. Any implementation approach that EPA develops must address the requirements of the CAA, as interpreted by the Supreme Court.

The EPA has initiated a process to obtain stakeholder feedback on options the Agency is developing for implementation of the 8-hour ozone NAAQS. The EPA plans to issue a final rule on the implementation strategy prior to designating areas for the 8-hour ozone NAAQS. The implementation rule will provide specific requirements for State and local air pollution control agencies and tribes to prepare implementation plans to attain and maintain the 8-hour NAAQS. States with areas that are not attaining the 8-hour ozone NAAQS will have to develop—as part of its State implementation plan (SIP)—emission limits and other requirements to attain the NAAQS within the time frames set forth in the CAA.[2] Tribal lands that are not attaining the 8-hour ozone standard may be affected, and could voluntarily submit a tribal implementation plan (TIP), but would not be required to submit a TIP. However, in cases where a TIP is not submitted, EPA would have the responsibility for planning in those areas.

The EPA is holding this meeting in order to obtain stakeholder feedback regarding the options that EPA has developed as well as to listen to any new or different ideas that stakeholders may be interested in presenting. The following topics will be covered at the meeting: (1) Classifications and attainment dates; (2) designations and transport; (3) attainment demonstration issues and transportation planning; and (4) other general SIP issues. New Source Review (NSR) programs that accompany nonattainment designations will not be the subject of this meeting since the EPA is currently considering whether and how to change the NSR program regulations in other contexts. The EPA has placed a variety of materials regarding implementation options, and which will be the focus of the meeting, on the website: *www.epa.gov/ttn/rto/ozonetech/o3imp8hr/o3imp8hr.htm.* Additional material will be placed on the website as they are developed.

[1] On July 18, 1997, EPA also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges.

[2] The CAA requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards.

Anyone interested in attending the meeting should check the website for new material on a regular basis prior to the meetings.

The materials that are available on the website are also available at: Air and Radiation Docket and Information Center, Docket Number A–2001–31, U.S. EPA, 401 M Street, SW., Room M–1500 (Mail Code 6102), Washington, DC 20460. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 02–6491 Filed 3–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA073–FON; FRL–7157–9]

Finding of Failure To Submit a Required State Implementation Plan for Particulate Matter, California—San Joaquin Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that California failed to make a particulate matter (PM–10) nonattainment area state implementation plan (SIP) submittal required for the San Joaquin Valley Planning Area under the Clean Air Act (CAA or Act). The San Joaquin Planning Area is a serious PM–10 nonattainment area. Under the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the PM–10 national ambient air quality standards (NAAQS) in areas classified as serious. The State of California submitted a serious area plan for the San Joaquin Valley in 1997. On February 26, 2002, prior to action on the plan by EPA, the State withdrew the submittal from the Agency's consideration. As a result of that withdrawal, EPA is today finding that California failed to make the PM–10 nonattainment area SIP submittal required for the San Joaquin Valley Planning Area under the Act.

This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield, U. S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4148.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Planning Requirements

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (1991). On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas, including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA codified the boundaries of the San Joaquin Valley PM–10 nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishing the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3334, 3337), EPA made such a determination and reclassified the San Joaquin Valley nonattainment area as serious.

In accordance with section 189(b)(2) of the Act, SIP revisions for the San Joaquin Valley addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act were required to be submitted by August 8, 1994 and 1994 and February 8, 1997.

The serious area PM–10 requirements, as they pertain to the San Joaquin Valley nonattainment area, include: [2]

(a) A comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant, here, PM–10 and its precursors (CAA section 172(c)(3));

(b) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA section 189(b)(1)(A)(i) and (ii));

(c) Quantitative milestones that are to be achieved every 3 years and that demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)); and

(d) Provisions to assure that the best available control measures (BACM), including best available control technology (BACT), shall be implemented no later than four years after the reclassification of the area to a serious nonattainment area (CAA section 189(b)(1)(B).

B. California's Serious Area PM–10 SIP Submittals for the San Joaquin Valley

The State of California submitted on October 12, 1994 the "San Joaquin Valley PM–10 BACM SIP Submittal" to EPA as a proposed revision to the California PM–10 SIP. On July 17, 1997, CARB submitted to EPA the serious area "PM–10 Attainment Demonstration Plan" (Serious PM–10 Plan). The 1997 Plan incorporated and superseded the 1994 San Joaquin Valley PM–10 BACM SIP (1997 Plan, p. 1–1).

II. EPA Actions Relating to the San Joaquin Valley PM–10 Nonattainment Area

As discussed further in section III below, EPA intended to propose to

[1] EPA revised the NAAQS for PM–10 on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

[2] EPA has concluded that certain moderate area PM–10 requirements continue to apply after an area has been reclassified to serious. For a more detailed discussion of the planning requirements applicable to the San Joaquin Valley and the relationship between the moderate area and serious area requirements after reclassification of the area to serious, see, e.g., 65 FR 37324 (June 14, 2000).

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disapprove the Serious PM–10 Plan for the San Joaquin Valley by March 1, 2002. However, just as the Agency was preparing the proposed disapproval notice for signature by the Regional Administrator and publication in the **Federal Register**, the State notified EPA that it had withdrawn the Plan from consideration by the Agency. See letter (with enclosures) from Michael Kenny, Executive Officer, California Air Resources Board, to Wayne Nastri, Regional Administrator, EPA Region 9, faxed to EPA on February 26, 2002. As a result, EPA is unable to move forward with its proposed plan disapproval.

The CAA establishes specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking because withdrawal of a plan is tantamount to failing to submit it.

If California has not made the required complete submittal (in this case resubmittal) within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the applicable serious area PM–10 requirements for the San Joaquin Valley.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

In a separate action, EPA is today also proposing to find that the San Joaquin Valley failed to attain the PM–10 NAAQS by the statutory deadline, December 31, 2001. EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date," and section 188(b)(2) is consistent with this requirement. Under CAA section 189(d), serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, "plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area."

III. Ongoing Planning Efforts in the San Joaquin Valley

As noted above, California now has an obligation to develop and submit a new PM–10 attainment plan for the San Joaquin Valley. In order to assist in these efforts, we outline below some of the bases on which we intended to disapprove the Serious PM–10 Plan:[4]

(a) The emissions inventory is neither accurate nor comprehensive because, among other reasons, it contains no emissions for ammonia, a PM–10 precursor that contributes to PM–10 exceedances; the inventory combines together in one category a number of sources that constitute 83% of the total primary PM–10 inventory; the inventory is not representative of a number of areas in the Valley; and there is no supporting documentation for the motor vehicle emissions;

(b) The Plan does not provide for attainment of the annual standard by December 31, 2001 as evidenced by NAAQS exceedances cited in our proposed finding of failure to attain. For the 24-hour standard, the State in the Plan sought an extension of the attainment deadline to December 31, 2006 pursuant to CAA section 188(e), but did not provide the supporting documentation required by that section;

(c) The Plan does not meet the requirements of CAA section 189(b)(1)(B) and EPA guidance for best available control measures (BACM): the Plan does not provide for BACM for each significant source category; it does not document the State's selection of BACM; and the Plan's BACM commitments are not being met; and

(d) The Plan does not provide for quantitative milestones to be achieved every three years until the area is redesignated attainment and does not demonstrate reasonable further progress (RFP) toward attainment by December 31, 2001.

Efforts are underway by the State and local air district to develop a plan that will bring clean air to Valley residents as quickly as possible. EPA is committed to working closely with the State and local regulators, the regulated community, and the public to ensure that such plan is technically sound and protective of public health.

IV. Final Action

A. Rule

EPA is today making a finding that the State of California failed to submit a SIP revision addressing the CAA's serious area PM–10 requirements to attain the 24-hour and annual PM–10 NAAQS for the San Joaquin Valley PM–10 nonattainment area.

B. Effective Date Under the Administrative Procedures Act

Today's action will be effective on February 28, 2002. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

[4] EPA's review of the 1997 Plan is based on section 189 of the CAA; EPA guidance, known as the "General Preamble," which describes EPA's preliminary views on how the Agency intends to review SIPs and SIP revisions submitted under title I of the Act, and an Addendum to the General Preamble ("Addendum") describing the Agency's preliminary views on how it intends to review SIPs and SIP revisions containing serious area PM–10 plan provisions. See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992) and "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

C. Notice-and-Comment Under the Administrative Procedures Act

This final agency action is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the

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aggregate, or to the private sector. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides a finding that California has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02-6270 Filed 3-15-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001, 1003, 1005 and 1008

RIN 0991-AB09

Medicare and Federal Health Care Programs: Fraud and Abuse; Revisions and Technical Corrections

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth several revisions and technical corrections to the OIG regulations pertaining to fraud and abuse in Federal health care programs. This rule contains revisions and clarifications with respect to the definition of the term "item or service," the reinstatement procedures relating to exclusions resulting from a default on health education or scholarship obligations, the factors considered in determining civil money penalty amounts for patient dumping violations, and several other matters. In addition, this rule makes a number of minor technical corrections to the current regulations in order to clarify various issues and inadvertent errors appearing in the OIG's existing regulatory authorities.

EFFECTIVE DATE: These regulations are effective on April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Counsel to the Inspector General, (202) 619-0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General's (OIG's) exclusion authorities are intended to protect the Federal health care programs and their beneficiaries from untrustworthy health care providers, i.e., individuals and entities whose behavior has demonstrated that they pose a risk to program beneficiaries or to the integrity of these programs. These authorities encompass both mandatory exclusions (section 1128(a) of the Social Security Act (the Act)) and permissive exclusions (section 1128(b) of the Act). The *mandatory* exclusion authorities require the OIG to exclude from program participation any individual or entity convicted of a "program-related" crime; patient abuse or neglect; or certain felonies related to health care delivery, governmental health care programs or controlled substances. Mandatory exclusions must be imposed for a minimum 5-year period. The *permissive* authorities do not require the imposition of an exclusion, and may either be (1) "derivative" exclusions that are based on actions previously taken by a court or other law enforcement or regulatory agencies, or (2) "non-derivative" exclusions that are based on OIG-initiated determinations of misconduct, e.g., poor quality care or submission of false claims for Medicare or Medicaid payment. With certain exceptions, there are no specified minimum periods of exclusion under these permissive authorities.

In addition, as an administrative remedy to remedy health care fraud and abuse, section 1128A of the Act allows the OIG to seek civil money penalties (CMPs), assessments and exclusions against those engaged in filing false claims (and certain other offenses) against the Department's programs and beneficiaries. Since enactment in 1981, the CMP provisions have been expanded to apply to numerous types of fraud and abuse activities related to Medicare and other Federal health care programs. Providers who may be subject to any of the OIG's administrative sanctions have full due process rights, including administrative hearings and appeals to the Federal courts.

On October 20, 2000, the OIG published a proposed rule in the **Federal Register** (65 FR 63035) that proposed several revisions and technical corrections to the OIG regulations codified in 42 CFR chapter V.

II. Summary of the Proposed Rule, Response to Public Comments and Provisions of the Final Rule

In response to the proposed rule, the OIG received a total of 6 timely-filed public comments from organizations, associations and other interested parties. Set forth below is a brief explanation of the intended revisions set forth in the proposed rule, a summary of the comments received and a response to those concerns, and a description of the final changes and

clarifications being made to 42 CFR chapter V as a result of this final rule.

A. Limitations Period for Exclusions

Proposed change: In response to questions raised as to whether a limitations period is applicable to the imposition of OIG program exclusions, the OIG proposed to clarify § 1001.1 to clarify that there is no time limitation on the imposition of a program exclusion. *In Wesley J. Hammer* v. *IG*, DAB 1693 (1999), the Departmental Appeals Board ruled that exclusion under section 1128(b)(7) of the Act, where such exclusion is based on an act which is described in section 1128A of the Act, is subject to the 6 year statute of limitations contained in section 1128A.

Comment/Response: The proposed rule stated that there would be no time limitation on the OIG's imposition of a program exclusion since no statute of limitations is specified in the Act with respect to exclusions under section 1128, and program exclusions are remedial in nature. Two commenters questioned this interpretation. The commenters suggested that if a program exclusion is based on the Secretary's determination that there has been a violation of another statute, the program exclusion action should be subject to the same limitations period that would apply to an action taken under the other statute. If not, the commenters believed that an individual or entity could be excluded for activities that occurred years before and that do not bear on their current trustworthiness or integrity. In addition, the commenters expressed concern that after the passage of significant time, evidence becomes difficult or impossible to gather and thus there is a need for a statute of limitations with respect to the imposition of program exclusions.

The comments raise concerns about exclusions under section 1128(b)(7) of the Act, the only exclusion authority that is based upon the Secretary's determination that there was an act committed that is a violation of another statute.[1] Based on the concerns raised by the commenters, the OIG has chosen not to finalize the proposed revision, but to leave the current regulation unchanged.

B. Actual Versus Reasonably Expected Loss

Proposed change: With regard to financial loss and threshold amounts with respect to exclusion actions, we proposed to revise §§ 1001.102(b)(1) and 1001.201(b)(2)(i) to increase the financial loss considered to be an aggravating factor from $1,500 to $5,000 to more properly reflect the current health care economy and establish a more reasonable threshold amount as a basis for lengthening a period of exclusion, and to reflect as an aggravating factor both the actual and intended loss to the programs associated with the conduct of the sanctioned individual or entity. The OIG received two public comments on this proposed revision.

Comment: Commenters objected to allowing "intended loss" to be considered as an aggravating factor, asserting that the concept of intent is subjective and allows for speculation and difficulty in questions of proof and defense. They indicated that while an objective approach is used to determine whether an actual loss has occurred, it is subjective to determine whether an individual or entity intended to cause a loss when no actual loss has occurred. One commenter indicated that an internal OIG decision should not carry the same weight as a decision that was adjudicated by a third party. Because the OIG would be able to consider "intended losses" based on "similar acts not adjudicated," commenters believed the OIG would have significant latitude to give weight to "unsubstantiated allegations, charges supported by inadmissible evidence, statements that have not been subject to cross-examination * * *" that would not be supported by the judicial process.

Response: We have clarified and amended the proposed change to this section to provide that the OIG will consider acts "that caused, or reasonably could have been expected to cause, a financial loss. * * *" The purpose of this provision is to consider the magnitude of the individual or entity's conduct when determining the appropriate length of exclusion. The trustworthiness of an individual or entity relates to the amount of loss their conduct reasonably could have been expected to cause, regardless of whether the conduct was discovered before or after the payment was made. For example, the fact that a Medicare contractor detected a false claim prior to payment, and therefore no loss was incurred by the program, does not reduce the culpability and untrustworthiness of those responsible for the submission of the false claim.

The OIG intends to consider "reasonably expected loss" only in those situations where there is adequate reliable evidence to discern the amounts that would have been paid as a result of the individual's or entity's false claim or other improper conduct had the conduct not been detected prior to the payment of the claims.

Comment: Regarding the proposed increase of the threshold amount for an aggravating factor to $5,000 (from $1,500), one commenter asked whether the $5,000 amount would also apply to intended loss as well as to actual loss. The commenter also questioned whether the higher threshold amount would mean that prosecution would not be pursued if the loss is less than $5,000.

Response: We will consider the total reasonably expected loss in assessing whether this $5,000 threshold has been met for the purpose of determining the length of exclusion. This threshold is only relevant to determine the length of exclusion and has no relationship with a prosecutor's decision or whether to pursue certain cases.

Final rule revision: We are revising the language in §§ 1001.102(b)(1) and 1001.201(b)(2)(i) to indicate that among the factors that may be considered to be aggravating and a basis for lengthening the period of exclusion are acts resulting in the conviction, or similar acts, "that caused, or reasonably could have been expected to cause, a financial loss" to a Government program or to one or more entities of $5,000 or more.

C. Expansion of the Scope of Exclusion to "all Federal Health Care Programs"

Proposed change: Section 4331(c) of the Balanced Budget Act (BBA) of 1997 extended the scope of all OIG exclusions beyond Medicare and State health care programs to all Federal health care programs. While several revisions to implement this expansion were made to the OIG exclusion regulations in the final rulemaking addressing BBA (July 22,1999; 64 FR 39420), conforming revisions were not made in §§ 1001.102(c), 1001.951 and 1001.952. We proposed to amend these regulatory sections to accurately reflect this expanded authority. The OIG received no public comments on this proposed change.

Final rule revision: We are revising §§ 1001.102(c), 1001.951 and 1001.952 to accurately reflect the scope of an OIG exclusion beyond the Medicare and State health care programs to all other Federal health care programs.

D. Clarification on Length of Exclusion in § 1001.102(b)(9)

Proposed change: The OIG proposed a minor technical change in § 1001.102 that would have involved inserting the word "even" before the limiting clause "if the adverse action is based on the

[1] Section 1128(b)(7) provides the authority to permissively exclude an individual or entity for fraud, kickbacks or other prohibited activities.

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same " * * * " in existing paragraph (b)(9) of this section.

Comment: One commenter believed that the effect of this change would be that the exclusion period could be lengthened based on an adverse action, whether or not the action served as the basis of the imposition of the exclusion.

Response: Upon further review, the OIG has decided not to make this change to § 1001.102(b)(9).

E. Discount Safe Harbor

Proposed change: We proposed several clarifying wording changes in the safe harbor discount provision, set forth in § 1001.952(h), to be consistent with similar context language used in the same paragraph, and clarifying the definition of the term "rebate" in paragraph (h)(4) of this section to make clear that a rebate is a price reduction after the time of sale.

Comment/Response: We received several comments regarding these proposed revisions and clarifications to § 1001.952(h) and other technical corrections to our other safe harbor regulations. The OIG is continuing to evaluate these comments and plans to address specific changes to § 1001.952 at a future date through separate rulemaking.

Final rule revision: As indicated above in section II.C., at this time we are only revising those portions of § 1001.952 to correct technical errors appearing in the regulations text to extend the scope of any OIG exclusion beyond the Medicare and State health care programs to all other Federal health care programs.

F. Reinstatement of Individuals as a Result of an Exclusion Based on Default of Health Education Loan or Scholarship Obligations

Proposed change: The current regulation at § 1001.1501 provides that an individual will be excluded until the Public Health Service (PHS) notifies the OIG that the obligations have been resolved to the PHS's satisfaction. Because the regulatory language is unclear as to exactly when a determination may be made that a default is cured or that the financial obligations have been adequately resolved, the proposed rule provided for exclusion "until such time as PHS notifies the OIG that . . . there is no longer an outstanding debt." Specifically, we proposed to revise paragraph (b) of this section to clarify that once an individual is excluded, he or she will be reinstated only (1) after the debt is repaid by the individual, or (2) where there is no longer an outstanding debt as determined by the PHS (e.g., the debt has been written off).

Comment: One commenter believed it was unclear what effect the changing of "right to request reinstatement" in the current rule to "right to apply for reinstatement" in the proposed rule will be. The commenter requested that any revision should minimize the administrative delay in reinstating such individuals once the PHS has concluded that there is no longer an outstanding debt.

Response: This is a minor revision concerning internal communications between PHS and the OIG that will cause no administrative delays in allowing individuals eligible to apply for reinstatement. All individuals who have been excluded under this authority must formally apply for such reinstatement in accordance with the procedures that are set forth in their exclusion letter and the applicable regulations.

Final rule revision: We are clarifying and revising § 1001.1501 to indicate that, with respect to an exclusion resulting from the default of a health education loan or scholarship obligations, an individual will be excluded until such time as PHS notifies the OIG that the default has been cured or that there is no longer an outstanding debt, and upon such notice, the OIG will inform the individual of his or her right to apply for reinstatement.

G. Waivers of Exclusions

Proposed change: We proposed to amend § 1001.1801 to permit any Federal health care program to request the waiver of an exclusion. This amendment was designed to conform the waiver provisions of section 1128 of the Act to statutory amendments that broadened the scope of an OIG program exclusion to all Federal health care programs.

Response: While the OIG received no public comments on this proposed change, we have determined that this revision would be more appropriately addressed through the legislative process. Although Congress expanded the OIG's exclusion authority in the Health Insurance Portability and Accountability Act (Pub. L. 104–191) to all "Federal health care programs," it did not make a corresponding change to the statutory waiver for exclusions (sections 1128(c)(3)(B) and 1128(d)(3)(B) of the Act), *i.e.*, only States are authorized to request such waivers. We now believe that legislative action, rather than a regulatory change, is necessary to address this issue.

H. Collateral Estoppel and Appeal of Exclusions

Proposed change: Section 1001.2007 has contained a provision that precludes the relitigation of the underlying determination in the administrative appeal of exclusions. We proposed to clarify in this section that a civil judgment rendered by a Federal, State or local court is an additional type of prior determination that may be given collateral estoppel effect in an exclusion action, and may not be relitigated in the exclusion proceeding. The OIG received no public comments on this proposed change.

Final rule revision: We are revising § 1001.2007(d) consistent with the language set forth in the earlier proposed rule.

I. Reversed or Vacated Decisions

Proposed change: With respect to appeals of exclusions, § 1001.3005 does not specify at what point in the appeal process reinstatement will occur where an OIG action is reversed or vacated on appeal. We proposed to amend this section to provide that when an exclusion action is reversed or vacated at any stage of an administrative appeal process, the OIG will reinstate the individual or entity at that time retroactive to the effective date of the underlying exclusion. The OIG received no public comments on this proposed change.

Final rule revision: We are amending § 1001.3005, Reversed or vacated decisions, by revising paragraph (a) and adding a new paragraph (e) to specify at what point in the appeal process retroactive reinstatement will occur.

J. Definition for "Item or Service"

Proposed change: To reflect the varying reimbursement systems and mechanisms in place, we proposed to modify the definition of the term "item or service" in § 1003.101 to clarify that, in addition to itemized claims or cost reports, the term also includes any item or service that is reimbursed through any health care payment mechanism, such as a prospective payment system. The OIG received no public comments on this revised definition.

Final rule revision: The OIG is adopting the change as proposed.

K. Calculation of Penalty Amount for Patient Dumping Violations

Proposed change: The existing language in § 1003.106(a)(4) allows the OIG to take into account a "prior history of offenses" with respect to patient dumping in determining the amount of CMP imposed for a patient dumping violation. We proposed an amendment to § 1003.106(a)(4)(iii) that would allow the OIG and the administrative law judge (ALJ) to consider other "instances"—and not just "offenses"—regardless of when they occurred, that is, not just "prior to" the matter conduct upon which the CMP action is based.

Comment: Commenters expressed the view that CMP amounts in patient dumping cases should be based only on judgments and other actions which have been adjudicated, such as convictions or administrative sanctions. The commenters believed that allowing the OIG the authority to "bypass" courts and the administrative appeals process would penalize physicians for alleged behavior that has not been ruled upon by a court or an ALJ. One commenter stated that in determining CMP amounts under this provision, the OIG should only be allowed to cite subsequent offenses to the same extent that the OIG now considers prior offenses. Without such limitation, the commenter believed that physicians' due process rights would be violated since they would not be able to contest the underlying alleged behavior.

Response: In assessing the appropriate CMP amount in a dumping case, we continue to believe that it is appropriate to include matters which occurred after the events that resulted in the OIG's issuance of a letter to a provider proposing a CMP. Specifically, with respect to the provider's "prior history," we have found instances, which may occur several years later between the time of the initial event and the initiation of litigation, where a provider has committed other acts similar in nature to the violation that is the basis for the proposed CMP. The OIG believes that those other similar acts should be considered so that an appropriate CMP can be determined and assessed. By considering not just "prior history" as a factor, an appropriate penalty may be higher, for example, for a party with multiple instances of problematic conduct, as compared to a party who has only one such instance.

With respect to amending the current reference of "offenses" to "instances," we believe that the current term restricts consideration of incidents that are relevant to the provider's culpability but have not resulted in convictions, or judicial or administrative decisions. Because these prior similar incidents generally become known during the administrative appeals process, we believe that the term "offenses" is too limiting, and that the revision in the regulations will allow the OIG and the ALJs a broader range of conduct and options to consider in their determinations. The primary concerns expressed by the commenter do not apply because the ALJ will be able to fully evaluate all evidence in the record in deciding the amount of a CMP and give appropriate weight to such evidence. When the OIG is able to consider subsequent instances of conduct by the provider, the ALJ, Departmental Appeals Board and the courts will still remain free to accept or reject this additional information and evidence in determining an appropriate CMP amount.

Final rule revision: We are amending § 1003.106 by adding a new paragraph (a)(4)(iii) to include as a factor in determining the amount of penalty for patient dumping violations any other instances where the respondent failed to provide appropriate emergency medical screening, stabilization and treatment of individuals coming to a hospital's emergency department, or to effect an appropriate transfer.

L. Time Frames Governing the Discovery Process

Proposed change: To ensure that the hearing process proceeds in an orderly and timely manner, and to allow parties a reasonable period of time to produce requested documents or object to a request, we proposed to expand the specified time frames set forth in § 1005.7(e)(1) from the current 15 days to 30 days. The OIG received no public comments on this proposed change.

Final rule revision: We are revising § 1005.7(e)(1) to expand the specified time frames governing the discovery process to 30 days.

M. Written Testimony of Experts

Proposed change: We proposed to amend § 1005.16 to give the ALJs discretion to admit prior written sworn expert testimony that has been subject to cross-examination. The OIG received no public comments on this proposed revision.

Final rule revision: We are revising paragraph (b) of § 1005.16, Witnesses, to specifically state that the ALJ may, at his or her discretion, admit prior sworn testimony of experts which has been subject to adverse examination, such as a deposition or trial testimony.

N. Admissibility of Evidence in Administrative Proceedings

Proposed change: In order to protect the credibility of witnesses from being inappropriately attacked through the introduction of evidence regarding bad character, we proposed to amend § 1005.17, Evidence, to require adherence to Rule 608 of the Federal Rules of Evidence (FRE) in administrative proceedings.

Response: While the OIG received no public comments on this proposed change, there is a concern that requiring ALJs to apply specific evidentiary rules in an administrative hearing would unnecessarily restrict the evidence the ALJ may consider. The OIG will continue to evaluate the scope of this amendment, and has chosen not to finalize the proposed revision to § 1005.17 at this time.

O. Additional Technical Revisions

Proposed changes: Minor technical errors in §§ 1003.100 and 1008.37 were also proposed for correction in the proposed rule. The OIG received no public comments on this proposed change.

Final rule revisions: We are making technical revisions to § 1003.100(b) to properly reflect the basis and purpose of the OIG's CMP and assessment authorities that were set forth in two different OIG rulemakings. Specifically, we are amending § 1003.100 by revising paragraphs (b)(1)(iv), (b)(1)(xii) and (b)(1)(xiii), and by adding paragraphs (b)(1)(xiv) and (b)(1)(xv) to accurate reflect the range of existing CMP and assessment authorities delegated to the OIG . In addition, we are correcting a typographical error appearing for a United States Code citation which appears in § 1008.37, as indicated in the proposed rule.

III. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Public Law 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any given year).

This is not a major rule as defined at 5 U.S.C. 804 (2), and it is not economically significant since it will not have a significant effect on program expenditures and there are no additional substantive costs to implement the resulting provisions. The revisions in this rule are either technical in nature or are designed to further

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clarify OIG statutory requirements. Specifically, these provisions are intended to clarify the scope of the OIG's existing authorities to exclude individuals and entities from Medicare, Medicaid and all other Federal health care programs, and to strengthen current legal authorities pertaining to the imposition of CMPs against individuals and entities engaged in prohibited actions and activities. We believe that any aggregate economic effect of these revised regulatory provisions will be minimal and will impact only those limited few who engage in prohibited behavior in violation of the statute. As such, we believe that the aggregate economic impact of these final regulations is minimal and would have no appreciable effect on the economy or on Federal or State expenditures.

The RFA, and the Small Business Regulatory Enforcement and Fairness Act of 1996 which amended the RFA, requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and Government agencies. Most hospitals (and most other providers) are considered to be small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less in any 1 year. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 604 of the RFA. While these provisions may have some impact on small entities and rural providers, we believe that the aggregate economic impact of this rulemaking will be minimal since it is the nature of the conduct and not the size or type of the entity that will result in a violation of the statute and the regulations. As a result, this rule should not have a significant impact on a substantial number of small entities, or a significant impact on the operations of a substantial number of small rural providers.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local or tribal Governments, in the aggregate, or by the private sector, of $110 million. We believe that there are no significant costs associated with these revisions that would impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure of $110 million or more (adjusted for inflation) in any given year.

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirements costs on State and local Governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this rule will not significantly effect the rights, roles and responsibilities of States or local Governments. The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866. In *Paperwork Reduction Act*—The provisions of these regulations impose no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs-health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR Part 1008

Administrative practice and procedure, Fraud, Grant programs-health, Health facilities, Health professions, Medicaid, Medicare, Penalties.

Accordingly, 42 CFR chapter V is amended as set forth below:

PART 1001—[AMENDED]

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.101 is amended by republishing the introductory text and by revising paragraph (c), introductory text, to read as follows:

§ 1001.101 Basis for liability.

The OIG will exclude any individual or entity that—

* * * * *

(c) Has been convicted, under Federal or State law, of a felony that occurred after August 21, 1996, relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

* * * * *

3. Section 1001.102 is amended by republishing the introductory text for paragraph (b) and revising paragraph (b)(1), and by republishing the introductory text for paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 1001.102 Length of exclusion.

* * * * *

(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(1) The acts resulting in the conviction, or similar acts, that caused, or were intended to cause, a financial loss to a Government program or to one or more entities of $5,000 or more. (The entire amount of financial loss to such programs or entities, including any amounts resulting from similar acts not adjudicated, will be considered regardless of whether full or partial restitution has been made);

* * * * *

(c) Only if any of the aggravating factors set forth in paragraph (b) of this section justifies an exclusion longer than 5 years, may mitigating factors be considered as a basis for reducing the period of exclusion to no less than 5 years. Only the following factors may be considered mitigating—

(1) The individual or entity was convicted of 3 or fewer misdemeanor offenses, and the entire amount of financial loss (both actual loss and intended loss) to Medicare or any other Federal, State or local governmental health care program due to the acts that resulted in the conviction, and similar acts, is less than $1,500;

* * * * *

4. Section 1001.201 is amended by republishing the introductory text for paragraphs (b) and (b)(2) and revising paragraph (b)(2)(i), and by republishing the introductory text for paragraph (b)(3) and revising paragraph (b)(3)(i) to read as follows:

§ 1001.201 Conviction relating to program or health care fraud.

* * * * *

(b) *Length of exclusion.* * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(i) The acts resulting in the conviction, or similar acts that caused,

or reasonably could have been expected to cause, a financial loss of $5,000 or more to a Government program or to one or more other entities, or had a significant financial impact on program beneficiaries or other individuals. (The total amount of financial loss will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made);

* * * * *

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The individual or entity was convicted of 3 or fewer offenses, and the entire amount of financial loss (both actual loss and reasonably expected loss) to a Government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts is less than **$1,5000**;

* * * * *

5. Section 1001.951 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 1001.951 Fraud and kickbacks and other prohibited activities.

* * * * *

(b) * * *

(1) * * *

(ii) The nature and extent of any adverse physical, mental, financial or other impact the conduct had on program beneficiaries or other individuals or the Medicare, Medicaid and all other Federal health care programs;

* * * * *

6. Section 1001.952 is amended as follows:

a. By republishing the introductory text;

b. Republishing the introductory text to paragraph (b), revising paragraph (b)(5), removing the undesignated paragraph following paragraph (b)(6), and adding a sentence at the end of paragraph (b)(6);

c. Republishing the introductory text to paragraph (c), revising paragraph (c)(5), removing the undesignated paragraph following paragraph (c)(6), and adding a sentence at the end of paragraph (c)(6);

d. Republishing the introductory text to paragraph (d) and revising paragraph (d)(5);

e. Republishing introductory text to paragraph (e)(1) and revising paragraph (e)(1)(ii);

f. Republishing introductory text to paragraph (e)(2) and revising paragraph (e)(2)(ii);

g. Republishing introductory text to paragraph (f) and revising paragraph (f)(2);

h. Revising introductory text to paragraph (h); introductory text to paragraph (h)(1) and introductory text to paragraph (h)(1)(iii); introductory text to paragraph (h)(2); introductory text to paragraph (h)(3) and introductory text to paragraph (h)(3)(iii); and paragraph (h)(5)(iii);

i. Revising paragraph (i);

j. Republishing the introductory text to paragraph (j), adding a sentence at the end of paragraph (j)(2), and removing the undesignated paragraph following paragraph (j)(2);

k. Republishing introductory text to paragraph (n) and revising paragraph (n)(6);

l. Republishing introductory text to paragraph (o) and revising paragraph (o)(5); and

m. Revising introductory text for paragraph (s).

The revisions to § 1001.952 read as follows:

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(b) *Space rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee to a lessor for the use of premises, as long as all of the following six standards are met—

* * * * *

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.

(6) * * * Note that for purposes of paragraph (b) of this section, the term *fair market value* means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid and all other Federal health care programs.

* * * * *

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee or equipment to the lessor of the equipment for the use of the equipment, as long as all of the following six standards are met—

* * * * *

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or all other Federal health care programs.

(6) * * * Note that for purposes of paragraph (c) of this section, the term *fair market value* means that the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value one party (either the prospective lessee or lessor) would attribute to the equipment as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.

(d) *Personal services and management contracts.* A used in section 1128B of the Act, "remuneration" does not include any payment made by a principal to an agent as compensation for the services of the agent, as long as all of the following seven standards are met—

* * * * *

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.

* * * * *

(e) *Sale of practice.* (1) As used in section 1128B of the Act, "remuneration" does not include any payment made to a practitioner by another practitioner where the former practice is selling his or her practice to the latter practitioner, as long as the following two standards are met—

* * * * *

(ii) The practitioner who is selling his or her practice will not be in a professional position to make referrals to, or otherwise generate business for, the purchasing practitioner for which payment may be made in whole or in

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part under Medicare, Medicaid or other Federal health care programs after 1 year from the date of the first agreement pertaining to the sale.

(2) As used in section 1128B of the Act, "remuneration" does not include any payment made to a practitioner by a hospital or other entity where the practitioner is selling his or her practice to the hospital or other entity, so long as the following four standards are met—

* * * * *

(ii) The practitioner who is selling his or her practice will not be in a professional position after completion of the sale to make or influence referrals to, or otherwise generate business for, the purchasing hospital or entity for which payment may be made under Medicare, Medicaid or other Federal health care programs.

* * * * *

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value between an individual or entity ("participant") and another entity serving as a referral service ("referral service"), as long as all of the following four standards are met—

* * * * *

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by either party for the referral service for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.

* * * * *

(h) *Discounts.* As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(5) of this section, on an item or service for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs for a buyer as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section; a seller as long as the seller complies with the applicable standards of paragraph (h)(2) of this section; and an offeror of a discount who is not a seller under paragraph (h)(2) of this section so long as such offeror complies with the applicable standards of paragraph (h)(3) of this section.

(1) With respect to the following three categories of buyers, the buyer must comply with all of the applicable standards within one of the three following categories—

* * * * *

(iii) If the buyer is an individual or entity in whose name a claim or request for payment is submitted for the discounted item or service and payment may be made, in whole or in part, under Medicare, Medicaid or other Federal health care programs (not including individuals or entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the buyer must comply with both of the following standards—

* * * * *

(2) The seller is an individual or entity that supplies an item or service for which payment may be made, in whole or in part, under Medicare, Medicaid or other Federal health care programs to the buyer and who permits a discount to be taken off the buyer's purchase price. The seller must comply with all of the applicable standards within one of the following three categories—

* * * * *

(3) The offeror of a discount is an individual or entity who is not a seller under paragraph (h)(2) of this section, but promotes the purchase of an item or service by a buyer under paragraph (h)(1) of this section at a reduced price for which payment may be made, in whole or in part, under Medicare, Medicaid or other Federal health care programs. The offeror must comply with all of the applicable standards within the following three categories—

* * * * *

(iii) If the buyer is an individual or entity in whose name a request for payment is submitted for the discounted item or service and payment may be made, in whole or in part, under Medicare, Medicaid or other Federal health care programs (not including individuals or entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the offeror must comply with the following two standards—

* * * * *

(5) * * *

(iii) A reduction in price applicable to one payer but not to Medicare, Medicaid or other Federal health care programs;

* * * * *

(i) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs. For purposes of paragraph (i) of this section, the term *employee* has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2).

(j) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include any payment by a vendor of goods or services to a group purchasing organization (GPO), as part of an agreement to furnish such goods or services to an individual or entity, as long as both of the following two standards are met—

* * * * *

(2) * * * Note that for purposes of paragraph (j) of this section, the term *group purchasing organization* (GPO) means an entity authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs, and who are neither wholly-owned by the GPO nor subsidiaries of a parent corporation that wholly owns the GPO (either directly or through another wholly-owned entity).

* * * * *

(n) *Practitioner recruitment.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value by an entity in order to induce a practitioner who has been practicing within his or her current specialty for less than 1 year to locate, or to induce any other practitioner to relocate, his or her primary place of practice into a HPSA for his or her specialty area, as defined in Departmental regulations, that is served by the entity, as long as all of the following nine standards are met—

* * * * *

(6) The amount or value of the benefits provided by the entity may not vary (or be adjusted or renegotiated) in any manner based on the volume or value of any expected referrals to or business otherwise generated for the entity by the practitioner for which payment may be made in whole or in part under Medicare, Medicaid or any other Federal health care programs.

* * * * *

(o) *Obstetrical malpractice insurance subsidies.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a hospital or other entity that is providing malpractice insurance (including a self-funded entity), where such payment is used to pay for some or all of the costs of malpractice insurance premiums for a practitioner (including a certified nurse-midwife as defined in section

1861(gg) of the Act) who engages in obstetrical practice as a routine part of his or her medical practice in a primary care HPSA, as long as all of the following seven standards are met—

* * * * *

(5) The amount of payment may not vary based on the volume or value of any previous or expected referrals to or business otherwise generated for the entity by the practitioner for which payment may be made in whole or in part under Medicare, Medicaid or any other Federal health care programs.

* * * * *

(s) *Referral arrangements for specialty services.* As used in section 1128B of the Act, "remuneration" does not include any exchange of value among individuals and entities where one party agrees to refer a patient to the other party for the provision of a specialty service payable in whole or in part under Medicare, Medicaid or any other Federal health care programs in return for an agreement on the part of the other party to refer that patient back at a mutually agreed upon time or circumstance as long as the following four standards are met—

* * * * *

7. Section 1001.1501 is amended by revising paragraph (b) to read as follows:

§ 1001.1501 Default of health education loan or scholarship obligations.

* * * * *

(b) *Length of exclusion.* The individual will be excluded until such time as PHS notifies the OIG that the default has been cured or that there is no longer an outstanding debt. Upon such notice, the OIG will inform the individual of his or her right to apply for reinstatement.

8. Section 1001.2007 is amended by revising paragraph (d) to read as follows:

§ 1001.2007 Appeal of exclusions.

* * * * *

(d) When the exclusion is based on the existence of a criminal conviction or a civil judgment imposing liability by Federal, State or local court, a determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the underlying conviction, civil judgment or determination is not reviewable and the individual or entity may not collaterally attack it either on substantive or procedural grounds in this appeal.

* * * * *

9. Section 1001.3005 is amended by revising paragraph (a) and by adding a new paragraph (e) to read as follows:

§ 1001.3005 Reversed or vacated decisions.

(a) An individual or entity will be reinstated into Medicare, Medicaid and other Federal health care programs retroactive to the effective date of the exclusion when such exclusion is based on—

(1) A conviction that is reversed or vacated on appeal;

(2) An action by another agency, such as a State agency or licensing board, that is reversed or vacated on appeal; or

(3) An OIG exclusion action that is reversed or vacated at any stage of an individual's or entity's administrative appeal process.

* * * * *

(e) If an action which results in the retroactive reinstatement of an individual or entity is subsequently overturned, the OIG may reimpose the exclusion for the initial period of time, less the period of time that was served prior to the reinstatement of the individual or entity.

PART 1003—[AMENDED]

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320a–7e, 1320b–10, 1395u(j), 1395u(k), 1395cc(g),1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraphs (b)(1)(iv), (b)(1)(xii) and (b)(1)(xiii); and by adding paragraphs (b)(1)(xiv) and (b)(1)(xv) to read as follows:

§ 1003.100 Basis and purpose.

* * * * *

(b) * * *

(1) * * *

(iv)(A) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60, or

(B) Are health plans and fail to report information concerning sanctions or other adverse actions imposed on providers as required to be reported to the Healthcare Integrity and Protection Data Bank (HIPDB) in accordance with section 1128E of the Act;

* * * * *

(xii) Offer inducements that they know or should know are likely to influence Medicare or State health care program beneficiaries to order or receive particular items or services;

(xiii) Are physicians who knowingly misrepresent that a Medicare beneficiary requires home health services;

(xiv) Have submitted, or caused to be submitted, certain prohibited claims, including claims for services rendered by excluded individuals employed by or otherwise under contract with such person, under one or more Federal health care programs; or

(xv) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act.

* * * * *

3. Section 1003.101 is amended by republishing the introductory text and by revising the definition for the term *item or service* to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Item or service includes—

(a) any item, device, medical supply or service provided to a patient (i) which is listed in an itemized claim for program payment or a request for payment, or (ii) for which payment is included in other Federal or State health care reimbursement methods, such as a prospective payment system; and

(b) in the case of a claim based on costs, any entry or omission in a cost report, books of account or other documents supporting the claim.

* * * * *

4. Section 1003.106 is amended by republishing the introductory text for paragraphs (a) and (a)(4) and by revising paragraphs (a) and (a)(4)(iii) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* * * *

(4) In determining the amount of any penalty in accordance with § 1003.102(c), the OIG takes into account—

(iii) Any other instances where the respondent failed to provide appropriate emergency medical screening, stabilization and treatment of individuals coming to a hospital's emergency department or to effect an appropriate transfer;

* * * * *

PART 1005—[AMENDED]

1. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

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2. Section 1005.7 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

* * * * *

3. Section 1005.16 is amended by revising paragraph (b) to read as follows:

§ 1005.16 Witnesses.

* * * * *

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. The ALJ may, at his or her discretion, admit prior sworn testimony of experts which has been subject to adverse examination, such as a deposition or trial testimony. Any such written statement must be provided to all other parties along with the last known address of such witnesses, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 1005.8.

* * * * *

PART 1008—[AMENDED]

1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 1320a–7d(b).

2. Section 1008.37 is revised to read as follows:

§ 1008.37 Disclosure of ownership and related information.

Each individual or entity requesting an advisory opinion must supply full and complete information as to the identity of each entity owned or controlled by the individual or entity, and of each person with an ownership or control interest in the entity, as defined in section 1124(a)(1) of the Social Security Act (42 U.S.C. 1320a–3(a)(1)) and part 420 of this chapter.

(Approved by the Office of Management and Budget under control number 0990–0213)

Dated: October 19, 2001.

Janet Rehnquist,

Inspector General.

Approved: November 23, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6350 Filed 3–15–02; 8:45 am]

BILLING CODE 4152–01–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

RIN 3145–AA39

Research Misconduct

AGENCY: National Science Foundation (NSF).

ACTION: Final rule.

SUMMARY: NSF is issuing a final rule that revises its existing misconduct in science and engineering regulations. These revisions implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000. They will enable NSF to continue to address allegations of research misconduct.

DATES: This rule is effective April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260–76264 ("the Federal policy"). The Federal policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct. The policy directs Federal agencies that support or conduct research to implement it within one year.

On January 25, 2002, NSF published a proposed rule to revise its existing misconduct regulations (45 CFR part 689) to make them fully consistent with the Federal policy. (67 FR 3666–3669). NSF invited public comment on the proposed rule. NSF received four comments that were supportive of the proposed rule.

Three of these commenters, however, expressed general concern for the protection of confidentiality of inquiries and investigations of alleged research misconduct. They suggested that NSF add language to the regulation that provides that to the extent permitted by law, NSF will protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act. The commenters noted that this language is consistent with the Federal policy.

NSF stated in the preamble to the proposed rule that, consistent with the Federal policy, we would continue to protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act, to the extent permitted by law. (67 FR 3666). In response to these comments, we will include this language in § 689.2 of the final rule.

One of the commenters also expressed concern over the preponderance of evidence standard of proof for a finding of research misconduct. The commenter expressed concern that this standard will increase the risk of a false finding of research misconduct, and recommended a higher standard of proof such as "clear and convincing evidence" or "beyond a reasonable doubt."

The Federal policy adopted the preponderance of evidence standard. In the preamble to the Federal policy, OSTP noted that this is the uniform standard of proof for most civil fraud cases and most Federal administrative proceedings, including debarment. (65 FR 76262). Awardee institutions have the discretion to apply a higher standard of proof in their internal misconduct proceedings. However, if a higher standard is used, and the awardee institution wishes for NSF to defer to its investigation, the awardee institution should also evaluate whether the allegation is proven by a preponderance of evidence.

Determinations

The Office of Management and Budget has reviewed this final rule under Executive Order 12866. The rule is not an economically significant rule or a major rule under the Congressional Review Act. The Congressional Review Act provides that agencies shall submit a report, including a copy of all final rules, to each House of Congress and the Comptroller General of the United States. The Foundation will submit this report, identifying this rule as non-major, prior to the publication of this rule in the **Federal Register**.

The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that

may result in annual expenditures of $100 million by State, local and Indian tribal governments, or by the private sector. As any final rule would not result in expenditures of this magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 689

Administrative practice and procedure, Fraud, Grant programs-science and technology, Investigations, Research, Science and technology.

Dated: March 7, 2002.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is revising part 689 of Title 45, Chapter VI of the Code of Federal Regulations, to read as follows:

PART 689—RESEARCH MISCONDUCT

Sec.

689.1 Definitions.
689.2 General policies and responsibilities.
689.3 Actions.
689.4 Role of awardee institutions.
689.5 Initial NSF handling of misconduct matters.
689.6 Investigations.
689.7 Pending proposals and awards.
689.8 Interim administrative actions.
689.9 Dispositions.
689.10 Appeals.

Authority: 42 U.S.C. 1870(a).

§ 689.1 Definitions.

The following definitions apply to this part:

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

(1) *Fabrication* means making up data or results and recording or reporting them.

(2) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research*, for purposes of paragraph (a) of this section, includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) *Research misconduct* does not include honest error or differences of opinion.

§ 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An "investigation" is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

(3) The allegation be proven by a preponderance of evidence.

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating or adjudicating the same allegation of research misconduct.

(e) Debarment or suspension for research misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.8 and 689.9, respectively. Severe research misconduct, as established under the regulations in this part, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees investigations of research misconduct and conducts any NSF inquiries and investigations into suspected or alleged research misconduct.

(g) The Deputy Director adjudicates research misconduct proceedings and the Director decides appeals.

(h) Investigative and adjudicative research misconduct records maintained by the agency are exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a) to the extent permitted by law and regulation.

§ 689.3 Actions.

(a) Possible final actions listed in this paragraph (a) for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) *Group I actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II actions.* (i) Totally or partially suspend an active award, or restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

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(3) *Group III actions.* (i) Terminate an active award.

(ii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(iii) Debar or suspend an individual or institution from participation in Federal programs for a specified period after further proceedings under applicable regulations.

(b) In deciding what final actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) The degree to which the misconduct was knowing, intentional, or reckless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(5) Other relevant circumstances.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Suspending eligibility for Federal awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending participation as an NSF reviewer, advisor, or consultant.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in the debarment and suspension regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.4 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

(b) If an institution wishes NSF to defer independent inquiry or investigation, it should:

(1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(2) Inform OIG immediately if an initial inquiry supports a formal investigation.

(3) Keep OIG informed during such an investigation.

(4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(5) Provide OIG with the final report from any investigation.

(c) NSF expects institutions to promptly notify OIG should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) NSF's resources, reputation, or other interests need protecting;

(3) There is reasonable indication of possible violations of civil or criminal law;

(4) Research activities should be suspended;

(5) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(6) The scientific community or the public should be informed.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to research misconduct, which should indicate when NSF should be notified.

§ 689.5 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

(c) If OIG determines that alleged research misconduct involves potential civil or criminal violations, OIG may refer the matter to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged research misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency; or

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 90 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.6 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG may proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with subjects or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the subject of the investigation to be heard.

(e) OIG may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report its recommendations, if any, to the Deputy Director within 180 days after initiating it.

§ 689.7 Pending proposals and awards.

(a) Upon learning of alleged research misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.6(c)).

(b) Neither a suspicion or allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Program Director may consult with OIG and, after further consultation with the Office of General Counsel, either defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

§ 689.8 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.3(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR part 620, and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation by NSF and modified as warranted. An interested party may request a review or modification by the Deputy Director of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

§ 689.9 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct—

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct—

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR part 620 and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report and recommended disposition will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) The notice of the debarring official's decision will include instructions on how to pursue an appeal to the Director.

(2) In all other cases—

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally 30 days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.3 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within 120 days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.10 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

[FR Doc. 02–6179 Filed 3–15–02; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–2001–10518]

RIN 2133–AB45

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: In an interim final rule published on August 31, 2001, the Maritime Administration ("MARAD," "we," "our," or "us") amended our

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regulations implementing the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 ("AFA"). MARAD's regulation, at 46 CFR part 356, contains the substantive requirements mandated by the AFA and procedural requirements established by MARAD for administration of the AFA. We promulgated an amendment that provides us with the ability to waive any procedural requirement, if there is good cause to do so and the waiver would not be inconsistent with the AFA and the intent of part 356. The waiver provision was effective, as an interim final rule, upon publication, but we are now publishing this waiver provision as a final rule.

DATES: The effective date of this final rule is March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Murray A. Bloom, Citizenship Approval Officer, Maritime Administration, MAR–222 Room 7228, 400 7th Street, SW, Washington, DC 20590. Telephone: (202) 366–5320.

SUPPLEMENTARY INFORMATION: The AFA imposes new citizenship requirements for the owners of vessels of 100 feet or greater in registered length which hold a fishery endorsement or for which a fishery endorsement is sought and for entities holding a preferred ship mortgage on such vessels. We are required by the AFA to "rigorously" scrutinize any transfer of ownership and control over fishing vessels, fish processing vessels and fish tender vessels. In so doing, we must pay particular attention to leases, charters, financing arrangements, mortgages, and other documents to determine if they constitute an impermissible conveyance of control to persons not eligible to own a vessel with a fishery endorsement.

MARAD's detailed regulations, 46 CFR part 356, were published in the **Federal Register** on July 19, 2000 (65 FR 44859), following notice and opportunity for submission of comments. The new citizenship requirements became effective on October 1, 2001. Vessel owners were directed to submit citizenship affidavits and other documents to us by June 1, 2001. We have provided information on the new requirements on MARAD's web site, http:/marad.dot.gov/afa.html, mailed information to owners of fishing industry vessels and conducted briefings open to the public.

The new regulations applied for the first time to a population of individuals who had not communicated or worked with MARAD. Therefore, we were concerned about circumstances and issues that were not anticipated by us or the public and that could not be resolved in the short period of time before October 1, 2001. In addition, we were concerned that some confusion may have arisen for the public because the U.S. Coast Guard will administer the AFA's citizenship requirements with regard to vessels under 100 feet in registered length under its own procedures. Our concerns were based on actual contacts between MARAD staff and the public that brought to our attention the potential for certain inequitable results that could stem from the implementation of the regulations if MARAD did not have the ability to waive certain procedural requirements. At that time, we expected to review about 500 affidavits along with underlying articles of incorporation, bylaws, charters, management agreements, sales agreements and other documents.

In the course of reviewing this large number of complicated business arrangements, it became apparent that there were circumstances, often not the fault of the vessel owner, that prevented us in several instances from making a complete citizenship finding by October 1, 2001. Our regulations provide the opportunity for the applicant to work with us to resolve matters prior to issuing a determination whether the applicant qualifies as a U.S. citizen. However, the AFA rule would have caused the vessel owner's fishery endorsement to be deemed invalid on October 1, 2001 if we had not issued a citizenship determination. Thus, there were times when a waiver of our procedures would have been appropriate to avoid this result. Accordingly, MARAD promulgated this amendment to 46 CFR part 356, on August 31, 2001 at 66 FR 45945, which allows us to waive procedural provisions of the rule not mandated by the AFA. The waiver provision is not applicable to the substantive requirements set out in the AFA and the rule. In addition, any waiver must be supported by good cause shown.

The waiver provision became effective as an interim measure immediately upon publication on August 31, 2001 so that it was in place before October 1, 2001, the date when MARAD was required to determine the U.S. citizenship status of 500–700 vessel owners and operators. The need to fairly administer the new and intricate requirements of the AFA within the stringent time constraints fully supports a finding of good cause, under the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), that the final rule should be effective upon publication.

Our practical experience with the waiver authority validated our original assumptions. More than a dozen waivers have been issued so far. Each waiver was well justified in that they allowed vessel owners some additional time to revise troublesome provisions of complicated vessel charters or corporate documents or provided needed time for us to resolve complex issues. Going forward, we expect the waiver provision to be used sparingly. However, there is still a need for the waiver provision, because vessel owners enter into new business arrangements constantly, and we need to ensure a thorough review of such arrangements.

We received no comments from the public either in favor or opposed to making the interim final rule a final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

After discussing compliance requirements with interested vessel owners, operators and mortgagees, we became aware of a need to have a waiver provision in the AFA regulations so that non-material discrepancies in a vessel's documentation would not arbitrarily cause a vessel owner to lose their fishery endorsement. The waiver provision will not entail any cost to vessel owners, mortgagees, charterers, or other parties regulated by 46 CFR part 356.

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. The economic impact, if any, should be minimal; therefore, no further analysis is necessary. This final rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979) as it merely allows waiver of administrative and procedural requirements.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rulemaking may reasonably be expected to affect small businesses or entities that currently own documented fishing vessels, fish processing vessels, or fish tender vessels, that have financed such vessels, or that are engaging in the fisheries of the United States with such vessels. The Small Business Administration defines businesses within the fishing industry that have annual receipts of $3 million or less as small businesses, 13 CFR 121.201. We believe that any cost to small business entities to comply with this final rule will be minimal, if any, because this final rule allows waiver of procedural (i.e., administrative) requirements that may cause a vessel owner to lose its fishery endorsement. Therefore, MARAD certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that clearly have no environmental impact.

Paperwork Reduction Act

This rulemaking does not establish any new requirement for the collection of information.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, Mortgages, Mortgage trustee, Penalties, Preferred mortgages, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, MARAD amends 46 CFR part 356 as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

1. The authority citation for 46 CFR part 356 is revised to read as follows:

Authority: 46 App. U.S.C. 12102; Public Law 105–277, Division C, Title II, Subtitle I, section 203 (46 App. U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; 49 CFR 1.66.

2. For the convenience of the reader, 3356.2 is republished to read as follows:

§ 356.2 Waivers.

In special circumstances and for good cause shown, we may waive the procedures prescribed in this part, provided the waiver is consistent with the requirements of the AFA and with the intent of this part.

Dated: March 11, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–6304 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000816233–1154–02; I.D. 050200A]

RIN 0648–AK23

Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Harvest Quotas, Definitions, Size Limits, Gear Restrictions, and Bed Classification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS has partially approved a regulatory amendment under the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region (FMP) submitted by the Western Pacific Fishery Management Council (Council) and is issuing a final rule that will implement gear restrictions, size limits, and definitions governing the harvest of precious coral resources managed under the FMP. Precious coral management measures that were published in the proposed rule that apply only to the Northwestern Hawaiian Islands (NWHI) are not being implemented by NMFS because they were determined to be inconsistent with certain provisions of Executive Order 13178 and Executive Order 13196, which together establish the NWHI Coral Reef Ecosystem Reserve (Reserve).

DATES: Effective April 17, 2002.

ADDRESSES: Copies of the background documents, including an environmental assessment/initial regulatory flexibility analysis/regulatory impact review (EA/IRFA/RIR) (March 2001) and an RIR/final regulatory flexibility analysis (FRFA), (March 2002) are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: On September 5, 2000, NMFS published a proposed rule (65 FR 53692) on regulatory adjustments governing the harvest of precious coral resources managed under the FMP. The rule contained eight measures intended to conserve and reduce the risk of overfishing the precious coral resource; promote optimal utilization of the resource and minimize waste; and

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protect the precious coral beds in the NWHI that provide foraging habitat for the endangered Hawaiian monk seal. In December 2000, and January 2001, President Clinton issued Executive Order 13178 and Executive Order 13196, respectively, which together established the Reserve. NMFS has determined that two of the proposed precious coral measures that apply only to precious coral beds around the NWHI are inconsistent with Executive Order 13178 and Executive Order 13196.

This final rule implements the following six measures: (1) Suspends the harvest of gold coral at Makapu'u Bed off the Island of Oahu; (2) redefines "dead precious coral" as coral that has no live coral polyps or tissue, and redefines "live precious coral" accordingly; (3) applies minimum size restrictions only to live precious corals; (4) prohibits the harvest of black coral unless it has attained a minimum stem diameter of 1 inch (2.54 cm) or a minimum height of 48 inches (122 cm), except in certain cases; (5) prohibits the use of non-selective fishing gear to harvest precious corals; and (6) applies the current minimum size restriction for pink coral to all permit areas.

Comment and Response

One letter was received commenting on the proposed rule.

Comment: The measures to define live coral as coral harboring living polyps and to apply size and quota restrictions to live coral only, mean that the harvest of dead gold coral will be unregulated. Unrestricted takes of dead gold coral may have negative impacts on live gold coral as there is some evidence from the NWHI that dead coral may be the preferred substrate for resettlement (i.e., seeding) of new gold coral colonies.

Response: NMFS shares this concern. The amount of information on the relationship between dead gold coral and the seeding of new colonies is limited at this time. NMFS however believes the concern is mitigated by restrictions imposed on commercial harvesting of precious corals, under Executive Order 13178 and Executive Order 13196 establishing the Reserve.

NMFS is not implementing two precious coral measures that would have (a) revised the boundaries of the Brooks Banks Bed, NWHI, reduced this bed's harvest quota for pink coral, and suspended the harvest quota (i.e., reduced to zero) for gold coral; and (b) established a NWHI precious coral permit area, French Frigate Shoals (FFS) Gold Pinnacles Bed, and classified this bed as a "conditional" bed with a zero harvest quota for all species of precious corals. The final rule is changed from the proposed rule because continued management of precious coral fisheries around the NWHI is inconsistent with Executive Order 13178 and Executive Order 13196. Specifically, the measures establishing pink and gold coral harvest quotas at NWHI Brooks Banks Bed are inconsistent with section 7(b)(5) of the Executive Order 13178 and Executive Order 13196. In this section, the Executive Order establishes zero harvest in the Reserve where the Brooks Banks Bed is located. Establishment of a quota for pink coral at Brooks Banks Bed also conflicts with the Executive Order 13178 and Executive Order 13196 since they generally prohibit the harvest of living and nonliving resources throughout the Reserve. Although creation of a new FFS Gold Pinnacles Bed and its classification as a "conditional" bed are not literally contrary to the E.O.s, a zero harvest quota duplicates restrictions in the E.O.s, and therefore is unnecessary.

Another change between the final rule and proposed rule is that § 660.86 (b)(2) has been revised to allow for expedient issuance of exemptions from black coral harvest size requirements. This change allows NMFS to streamline the exemption process by relying on a State of Hawaii precious corals database to determine eligible harvesters.

The final rule contains a technical correction to the location of the Wespac Bed, Permit Area R-1, by redefining the current position of 28°50.2′ N. lat. to 23°18′ N. lat.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA describing the impact of the action on small entities. The IRFA was summarized in the proposed rule published on September 5, 2000(65 FR 53692). None of the comments received on the proposed rule directly or indirectly addressed the results of the IRFA, which also provided analysis on the proposed measures that are not included in the final rule. The following is a summary of the FRFA (March 1, 2002).

The Council considered eight adjustments to management measures in the FMP. Six of those management measures are discussed below. The remaining two management measures, that involve the Reserve, were not approved by NMFS for the reasons stated above. This partial disapproval is not expected to have any economic impact because no commercial precious coral harvest is currently occurring in the Reserve.

Under Management Objective 1, (reduce the potential for overfishing of gold coral at the Makapu'u Bed), four alternatives were considered including the preferred alternative. Under the preferred alternative, the harvest quota for gold coral at the Makapu'u Bed will be suspended until further information on the impact of harvesting on subsequent recruitment of gold coral is available. A gold coral quota of zero would likely have some adverse economic impact on potential harvesters. However, the density of gold coral at the Makapu'u Bed is already very low. It is likely that any harvest effort occurring at Makapu'u bed will be directed mainly toward pink coral because this coral is relatively abundant at the bed and has a higher market value than gold coral ($440/kg for pink coral (C. secundum) vs. $330/kg for gold coral according to Maui Divers of Hawaii, Ltd.). A suspension of the quota is not expected to have an adverse economic impact on processors of precious corals in Hawaii. The fishery in the EEZ around Hawaii for deep-water species of precious coral, including pink, gold and bamboo coral, has been nearly dormant for two decades. Consequently, the processors of these corals in Hawaii have relied almost exclusively on imported material.

Three alternatives were considered and rejected for the first management objective. The first rejected alternative would have maintained the biennial gold coral quota of 600 kg (132 lb) at Makapu'u Bed. Maintaining the current biennial harvest quota of 600 kg (132 lb) for gold coral at Makapu'u Bed would continue to make available to prospective harvesters a quantity of gold coral worth $198,000 every two years ($99,000 annually) if the actual stock is of sufficient size to support such a harvest. However, a recent survey of the bed revealed that the current standing stock of gold coral is low and may not yield the current harvest quota. In addition, the adverse economic impacts over the long term would be significant if further harvesting diminishes the number of colonies to the point that no recovery is possible.

The second rejected alternative would have suspended the harvest quota for gold coral at all established and conditional beds until additional information is available on the impact of harvesting on subsequent recruitment of gold coral. The total harvest quota for gold coral at all established and conditional beds is 1,080 kg (238 lb) every two years, with an estimated dockside value of $356,400. However, the gold coral quota at the Makapu'u Bed accounts for more than half of this total. As noted above, the current standing stock of gold coral at the Makapu'u Bed may not yield the current biennial harvest quota of 600 kg (132 lb). If no gold coral is harvested from the Makapu'u Bed the amount of potential gross revenues foregone by suspending the harvest quota at all established and conditional beds is estimated to be about $158,400 every two years.

The third rejected alternative would have implemented a minimum size limit for gold coral at the Makapu'u Bed. This alternative was rejected because the calculation of an appropriate minimum size requires estimates of growth rates, mortality rates and size at reproductive maturity. These data estimates are lacking for gold coral. Without this information the size limit established may be too low, thereby insufficiently protecting the coral from overfishing and eventually leading to reduced economic returns, or may be too high, thereby resulting in an overly conservative size limit that unnecessarily reduces potential economic returns.

Under Management Objective 2 (reduce the potential for harvest of coral which has live coral polyps or tissue), three alternatives were considered including the preferred alternative. Under the preferred alternative, dead precious coral will be defined as precious coral that no longer has any live coral polyps or tissue, and live precious coral will be defined as precious coral that has live polyps or tissue. Only live coral will be counted toward the quotas limiting the amount of precious coral that may be taken in any permit area during the fishing year. It is possible that some of the coral at a given bed that was regarded as dead under the current definition would be regarded as live under the alternative definition, and therefore be subject to the harvest quota for that bed. However, the amount of additional coral that would be subject to the quota is likely to be small, as coral colonies that contain holes from borers or are discolored or encrusted generally no longer have any living polyps or tissue. There is insufficient information on the amount of coral meeting this definition at different beds to quantify this economic impact.

Two alternatives were considered and rejected for the second management objective. The first rejected alternative would have maintained the current definition of dead precious coral as any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed. This alternative was rejected because allowing the harvest of coral that is currently defined as dead and is believed to provide foraging habitat to the endangered Hawaiian monk seal may lead to emergency closures of specific sites or alterations of fishing operations. The economic impact of closures or other measures would depend on the length of time that these measures are in effect.

The second rejected alternative would have defined dead precious coral as precious coral that is no longer standing upright, and define live precious coral as precious coral that is standing upright. However, the amount of additional coral that would be subject to the quota is likely to be small, as coral colonies that contain holes from borers or are discolored or encrusted are often no longer standing upright. There is insufficient information on the amount of coral meeting this definition at different beds to quantify this economic impact.

Under Management Objective 3, (allow greater utilization of dead coral resources), two alternatives were considered including the preferred alternative. Under the preferred alternative, size limits will be applied only to live coral. This alternative will allow greater utilization of dead coral resources and thus increase potential income to harvesters. There is insufficient information on the quantity of dead coral at different beds to quantify this economic impact.

The rejected alternative would have maintained the application of minimum size limits to both live and dead coral. This alternative was rejected because it prohibits the harvest of dead coral that is below the minimum size limit despite the fact that the harvest of dead coral is not considered to be detrimental. There is insufficient information on the quantity of dead coral at different beds to quantify the economic impact.

Under Management Objective 4 (regulate the harvest of black coral), four alternatives were considered including the preferred alternative. Under the preferred alternative, the harvest of black coral will be prohibited unless it has attained either a minimum stem diameter of 1 inch (2.54 cm), measured no less than 1 inch (2.54 cm) from the top of the living holdfast, or a minimum height of 48 inches (122 cm), measured from the base to the greatest distal extremity of the colony. Persons who reported a landing of black coral to the State of Hawaii within 5 years before the effective date of the final rule may apply for an exemption which allows the hand harvest of black coral that has attained a 3/4 inch (1.905 cm) base diameter, measured on the widest portion of the skeleton at a location just above the holdfast.

Three alternatives were considered and rejected for this management objective. The first rejected alternative would have maintained the current situation of no restrictions on the harvest of black coral. This alternative was rejected because it would allow fishing pressure to increase in an uncontrolled manner and could lead to overfishing of black coral.

The second rejected alternative would have prohibited the harvest of black coral unless it has attained a minimum base diameter of 3/4 inch (1.905 cm), which is believed to inadequately protect black coral resources from overfishing.

The third rejected alternative would have established a weight quota for black coral and was rejected because a weight quota may not be as effective as a size limit in avoiding overfishing of the resource. Information on the standing stock and sustainable yield of managed species of black coral is limited. The use of minimum size limits based on knowledge of the reproductive biology of precious corals is the preferred basis for management of the fishery when selective harvesting is expected to be economically feasible as information on the standing stock and its sustainable yield in terms of weight is limited.

Under Management Objective 5 (protect precious coral resources and essential fish habitat (EFH) from the effects of ecologically destructive and wasteful harvest gear), three alternatives were considered including the preferred alternative. The preferred alternative will require that selective gear be used to harvest precious corals from all permit areas. The cost of purchasing an unmanned submersible (i.e., remotely operated vehicle) may be as low as $50,000, which is roughly equal to the capital investment in gear required to initiate a non-selective harvest operation using tangle nets. Although the capital and operating costs of manned submersibles may be high, they are not economically prohibitive, as is evidenced by the recent interest of two firms in using this type of selective gear to harvest precious corals in the waters around Hawaii. In addition, it is likely that some harvesters of precious coral will be able to defray the costs of using selective gear by finding other lucrative uses for the gear, such as salvage and research. The use of non-selective gear to harvest precious corals is an inefficient use of fishery resources. Non-selective gear tends to damage the precious coral trees as it harvests them, thereby greatly reducing the value of the

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coral. In contrast, selective gear harvests coral so that it retains its highest value.

Two alternatives were considered and rejected for the fifth management objective to protect precious coral resources and EFH from the effects of ecologically destructive and wasteful harvest gear.

The first rejected alternative would have maintained the current regulations requiring selective gear only at the Makapu'u, Keahole Point, and Kaena Point Beds. This alternative was rejected because the use of non-selective gear to harvest precious corals is not an efficient use of fishery resources. The value of precious coral colonies is dependent on its size, color and condition. Large, completely intact trees of coral have the greatest value. Non-selective gear such as dredges harvest pieces of broken coral knocked down by the dredge stone and entangled in the nets as the dredge is pulled along the sea floor. Breakage may reduce a coral's value by as much as 80 percent.

Allowing the continued use of this relatively inexpensive gear in exploratory areas may encourage the discovery and exploration of new beds. However, the use of non-selective gear is unlikely to provide sufficient data to develop reliable estimates of the standing stock and maximum sustained yield (MSY) for newly discovered beds because this gear cannot discriminate or differentiate between types, size, quality or characteristics of living or dead corals. Further, the degradation of precious coral beds may reduce monk seal foraging habitat. The economic impact of such adverse modifications would be likely to include emergency closures of specific sites, including Brooks Bank, or alteration of fishing operations. The specific cost of closures or other measures would depend on the length of time that these measures are in effect.

The second rejected alternative would have required that selective gear be used to harvest precious corals from all established and conditional beds. This alternative was rejected as it would fail to protect those precious coral resources located outside of these beds.

Under Management Objective 6 (reduce the potential for overfishing of pink coral at conditional beds and exploratory areas), three alternatives were considered including the preferred alternative. Under the preferred alternative, the current 10 inch size limit for pink coral will be applied to all established beds, conditional beds, and exploratory areas. The feasibility of this alternative is contingent on a prohibition on the use of non-selective gear to harvest precious corals for commercial purposes in all permit areas. Applying the size limit for pink coral to all permit areas is unlikely to have a significant negative economic impact because the potential financial return from harvesting colonies of pink coral that are less than 10 inches (25.4 cm) in height is low. According to Maui Divers of Hawaii, Ltd., harvesting colonies less than 10 inches (25.4 cm) is not economically practical, because the return does not justify the time spent harvesting.

Two alternatives were considered and rejected for the sixth management objective. The first rejected alternative would have maintained the application of the 10-inch (25.4 cm) size limit for pink coral at the established Makapu'u, Keahole Point, and Kaena Point Beds only, and was rejected because long-term negative impacts on harvest levels and gross revenues could be potentially large if the resources are overfished. Given the life-history characteristics of pink coral, such as slow growth and long generation time, overfishing could degrade the productivity of affected precious coral beds for many years.

The second rejected alternative would have applied the current 10–inch (25.4 cm) size limit for pink coral only to established and conditional beds. This alternative would have had economic impacts similar to the preferred alternative. However, it was rejected because it would not provide protection for the minimum sizes to pink corals located in exploratory areas.

This final rule could affect five to seven small businesses. There are three to five small-boat fishermen who harvest black coral using scuba gear in beds overlapping State of Hawaii and Federal waters, as well as two historical or potential operations targeting other precious corals. Between 1990 and 1997, the total annual harvest of black coral in Hawaii varied from a low of 864 lbs (391 kg) to a high of 6,017 lbs (272 kg), with a yearly average of 3,084 lbs (139 kg). The 415 lbs (188 kg) of black coral sold in 1997 had a dockside value of about $10,394, assuming a price of $25/lb. NMFS cannot determine the proportions of the harvest of black coral made in State and Federal waters based on the available information. Details on the harvest of other precious corals cannot be released due to confidentiality requirements as there have been less than three operations active in the past decade.

Due to the low level of participation in the western Pacific precious coral fishery, aggregate economic impacts resulting from the final rule will be minimal. The analysis, however, shows that prohibiting the harvest of gold coral at Makapu'u Bed could result in the loss of potential revenues of approximately $100,000 annually in the short term, if the actual stock is of sufficient size to support the current harvest quota. Establishment of a universal minimum harvest size for all pink coral management unit species could result in a positive economic impact in the form of long-term maintenance of MSYs. On the other hand, imposing a minimum harvest size for black corals could have a negative economic impact on fishery revenues, except for five harvesters expected to be exempt from the minimum harvest size requirement. A prohibition on the use of non-selective gear to harvest precious corals could result in additional costs for future participants. Hand-harvesters for black corals would be unaffected by this prohibition. The exact costs of selective gear technologies are unknown, although a remotely operated submersible coral harvester can now be obtained for $50,000, which may be approximately equal to the cost of setting up a non-selective harvest operation using tangle nets. The effective yield is higher for selective harvesting of precious corals using submersibles compared to the wasteful practice of harvesting precious corals using non-selective gear.

Due to a lack of information on the long term effects of alternative management measures on coral stocks, harvest effort or catch rates, a detailed quantitative analysis of the costs and benefits of alternative management measures is not possible at this time.

Although long-term data are unavailable, analysis of this fishery is ongoing, and may lead to simulation models capable of predicting the biological (and economic) effects of each alternative. From a conceptual point of view, the precious corals fishery represents a difficult economic analysis. Although standard bioeconomic theory suggests that the harvest rate should be no more than the growth rate of the coral population at its MSY (accounting for economic production cost relationships and the discount rate), the growth rate of coral is so slow that a mining approach might be considered preferable, i.e., that the resource might be allowed to be over-fished in the short-term, and then harvesting prohibited for the many years which would be required for it to be fully restored. However, this approach was rejected because it would be inconsistent, with National Standard 1 of the Magnuson-Stevens Act which prohibits overfishing. It is anticipated by NMFS that by allowing the coral populations to maintain their long-term sustainability, there will be a larger standing stock of corals which will optimize harvest rates and reduce the relative costs of harvesting (due to increased density). By limiting the harvest rates to those allowed by MSY, the likelihood that long-term benefits will exceed costs is increased. In addition, these restrictions may preclude new entry into the fishery, therefore improving social benefits (i.e., avoiding over-capacity). To the extent that these initial explorations are successful in identifying additional coral resources for harvesting, and as new economic information is acquired, a re-evaluation of the relative benefits and costs of these management measures would be warranted.

None of the alternatives considered is expected to have significant social impacts on fishery participants or Hawaii fishing communities in terms of employment, enjoyment of the fishery, vessel and crew safety, social or cultural activity in the fishery, or other social factors.

To minimize impact, this final rule removes size limits for dead corals. However, this revision could cause some risk to certain corals, such as gold corals, that may use dead corals for resettlement of new colonies.

This final rule does not contain any reporting or record- keeping requirements.

An informal consultation under the Endangered Species Act was conducted to determine whether this regulatory amendment was likely to affect any endangered or threatened species, including Hawaiian monk seals. This consultation was completed on December 20, 2000, and concluded that this regulatory amendment is not likely to adversely affect any endangered or threatened resources. The disapproval of the two NWHI measures does not affect that determination.

This final rule is consistent with Executive Order 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 12, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.12, the definitions of "Dead coral" and "Live coral" are revised, and under the definition of "Precious coral permit area", paragraph (3) is revised to read as follows:

§ 660.12 Definitions.

* * * * *

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

* * * * *

Live coral means any precious coral that has live coral polyps or tissue.

* * * * *

Precious coral permit area * **

* * * * *

(3) *Refugia.* Westpac Bed, Permit Area R-1, includes the area within a radius of 2.0 nm of a point at 23°18′ N. lat., 162°35′ W. long.

* * * * *

3. In § 660.82, paragraph (c) introductory text is revised to read as follows:

§ 660.82 Prohibitions.

* * * * *

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 660.86 unless:

* * * * *

4. Section 660.86 is revised to read as follows:

§ 660.86 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) *Black coral.* (1) Except as provided in paragraph (b)(2) of this section, live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

(2) The NMFS Pacific Islands Area Office will issue an exemption permitting hand-harvesting of live black coral that has attained a minimum base diameter of 3/4 inches (1.91 cm), measured on the widest portion of the skeleton at a location just above the holdfast, to any person who reported a landing of black coral to the State of Hawaii within 5 years before April 17, 2002.

5. Section 660.88 is revised to read as follows:

§ 660.88 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

6. Table 1 to Part 660 is revised to read as follows:

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TABLE 1 TO PART 660.—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years
Makapu'u	Established	P—2,000 kg	2
		G—Zero (0 kg)	n/a
		B—500 kg	2
Ke-ahole Point	Conditional	P—67 kg	1
		G—20 kg	1
		B—17 kg	1
Kaena Point	Conditional	P—67 kg	1
		G—20 kg	1
		B—17 kg	1
Brooks Bank	Conditional	P—17 kg	1
		G—133 kg	1
		B—111 kg	1
180 Fathom Bank	Conditional	P—222 kg	1
		G—67 kg	1
		B—56 kg	1
Westpac Bed	Refugium	Zero (0 kg)	n/a
Hawaii, American, Samoa, Guam, U.S. Pacific Island possessions.	Exploratory	X—1,000 kg (all species combined except black corals) per area	1

Notes:
1. Types of corals: P = Pink G = Gold B = Bamboo
2. No authorized fishing for coral in refugia

[FR Doc. 02–6468 Filed 3–15–02; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 52
Monday, March 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # CN–01–007]

Cotton Research and Promotion Program: Procedures for Conduct of Sign-up Period

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. The amendments would update various dates, name changes, addresses, and make other administrative changes.

DATES: Comments must be received on or before March 28, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, Agricultural Marketing Service, USDA, PO Box 23278, Washington, DC 20026–3278. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW, Washington, DC 20250–0224 during regular business hours. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW, Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or email at *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 et seq.], the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

There are currently approximately 30,000 producers, and approximately 10,000 importers that are subject to the order. The majority of these producers and importers are small businesses under the criteria established by the Small Business Administration.

Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 total valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This proposed rule would provide to those persons who are not in favor of the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements for producers and importers are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum, and for the 1997 sign-up period. The January 15 through April 14, 1997 sign-up period did not generate the required number of signatures to hold another referendum. The amendments proposed in this action would update various dates, name changes, addresses and make other miscellaneous changes. However, proxy or power of attorney participation would be prohibited.

The proposed sign-up procedures would not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility. The information collection requirements under the Paperwork Reduction Act are minimal.

Paperwork Reduction Act

The information collections proposed by this rule will be carried out under the Office of Management and Budget (OMB) Control Number 0581–0093. This rule will not add to the overall burden currently approved by OMB and assigned OMB Control Number 0581–0093 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This OMB Control Number is referenced in Section 1205.541 of the regulations.

Background

The 1991 amendments to the Cotton Research and Promotion Order (7 C.F.R 1205 *et seq.*) were implemented following the July 1991 referendum. The amendments were provided for in the

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Cotton Research and Promotion Act (7 U.S.C. 2101–2118) amendments of 1990. These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On January 14, 2002, USDA issued a determination based on its review, (67 FR 1714), not to conduct a referendum regarding the 1991 amendments to the Order. However, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum. The Act provides for a sign-up period during which eligible cotton producers and importers may request that USDA conduct a referendum on continuation of the 1991 amendments to the Order. Accordingly, USDA will provide all eligible Upland cotton producers and importers an opportunity to request a continuance referendum regarding the 1991 amendments to the Order.

The sign-up period will be provided for all eligible producers and importers. Eligible cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the county FSA office where their farm is located. If the producers land is in more than one county, the producer shall sign-up at the county office where FSA administratively maintains and processes the producer's farm records. Producers who choose not to visit the county FSA office in person may request a sign-up form in the mail from the same office.

USDA would mail sign-up information, including a written request form, to all known, eligible, cotton importers. Importers who favor the conduct of a continuance referendum would return their signed request forms to USDA, FSA, ORAS, Attention: William A. Brown, PO Box 23278, Washington, DC 20026–3278.

Importers who do not receive a request form in the mail by June 3, 2002, and who meet the eligibility requirements to participate in the sign-up, may submit a written, signed, request for a continuance referendum. Such request must be accompanied by a copy of the U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 2001. Requests and supporting documentation should be mailed to USDA, FSA, ORAS, Attention: William A. Brown, PO Box 23278, Washington, DC 20026–3278.

The sign-up period will be from June 3, 2002 through August 30, 2002. Producer and importer forms shall only be counted if received by USDA during the stated sign-up period.

Section 8(c)2 of the Act provides that if USDA determines, based on the results of the sign-up, that 10 percent or more of the total number of eligible producers and importers that voted in the most recent 1991 referendum (*i.e.*, 4,622) request a continuance referendum on the 1991 amendments, a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton. For example, when counting the requests, the AMS Cotton Program would determine the total number of valid requests from all cotton-producing states and from importers. Not more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent for 4,622 total signatures required to call for a referendum. If USDA determines that 10 percent or more of the number of producers and importers who voted in the most recent referendum favor a continuance referendum. A referendum will be held.

This proposed rule would amend the procedures for the conduct of the current sign-up period. The current rules and regulations provide for sections on definitions, supervision of the sign-up period, eligibility, participation in the sign-up period, counting requests, reporting results and instructions and forms. The Administrator designated all divisions in AMS as programs on September 18, 1997. Hence, this proposal has name, position title, address changes as well as other miscellaneous changes.

The term "Cotton Division" would be changed to "Cotton Program." The term "Director" would be replaced by "Deputy Administrator." In section 1205.18 the term "Producer" is further defined to ensure that all producers that planted cotton during 2001 will be eligible to participate in the sign-up period. In sections 1205.12 and 1205.26 the words "*de minimis* assessment" have been replaced with similar meaning language. In sections 1205.20, 1205.26, and 1205.27 "calendar year 1995" would change to "calendar year 2001." In section 1205.26 the term "limited partnership" has been added. In sections 1205.27, 1205.28, and 1205.29 sign-up period conduct dates, FSA reporting dates, and mailing addresses have been updated. In section 1205.26 a new subsection (g) is added to prohibit proxy or power of attorney participation. Section 1205.27 (c) that addresses producer participation in the sign-up period, is revised to reflect current Farm Service Agency procedures.

A 10-day comment period is determined to be appropriate because these proposed eligibility and participation requirements are substantially the same as the eligibility and participation requirements that were used in previous referenda and a sign-up period; participation is voluntary; and this rule, if adopted, should be made effective as soon as possible in order to best reflect applicable time frames in the Act.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.12, the last sentence is revised to read as follows:

§ 1205.12 Cotton.

* * * The term *cotton* does not include imported cotton for which the assessment is less than the value of $2.00 per line item entry as established by regulations.

3. Section 1205.18 is revised to read as follows:

§ 1205.18 Producer.

The term *producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

4. Section 1205.20 is revised to read as follows:

§ 1205.20 Representative Period.

The term *representative period* means the 2001 calendar year.

5. In § 1205.26, paragraphs (a)(1), (a)(2), and (d) are revised and a new paragraph (g) is added to read as follows:

§ 1205.26 Eligibility.

* * * * *

(a) * * *

(1) any person who was engaged in the production of Upland cotton during calendar year 2001; and

(2) any person who was an importer of Upland cotton and imported Upland cotton in excess of the value of $2.00 per line item entry during calendar year 2001.

* * * * *

(d) An officer or authorized representative of a qualified corporation, association, or limited partnership may submit a request on behalf of that corporation, association, or limited partnership.

* * * * *

(g) Participation in the sign-up by proxy or power of attorney is not authorized.

6. Section 1205.27 is revised to read as follows:

§ 1205.27 Participation in the Sign-up Period.

The sign-up period will be from June 3, 2002, through August 30, 2002. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by August 30, 2002.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, USDA shall mail a request form to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by June 3, 2002, may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 2001. Importers must submit their requests and supporting documents to USDA, FSA, ORAS, Attention: William A. Brown, PO Box 23278, Washington, DC 20026–3278. All requests and supporting documents must be received by the appropriate FSA office by August 30, 2002.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the "County FSA Office Sign-up Sheet." A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA–578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA–578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note "ineligible" in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by August 30, 2002.

7. In § 1205.28, the first sentence is revised to read as follows:

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Operations Review and Analysis Staff (ORAS), shall begin counting requests no later than September 3, 2002. * * *

8. Section 1205.29 is revised to read as follows:

§ 1205.29 Reporting Results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by September 10, 2002, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) ORAS shall prepare, by September 10, 2002, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by September 10, 2002, forward all county reports to ORAS. By September 17, 2002, ORAS shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton Program, AMS, Stop 0224, 1400 Independence Ave., SW, Washington, DC 20250–0224.

(d) The Chief of the Research and Promotion Staff, Cotton Program, shall prepare a report of the requests received, including the number of eligible persons who requested the conduct of a referendum, and the number of ineligible persons who made requests, to the Deputy Administrator of the Cotton Program, and shall maintain one copy of the report where it will be available for public inspection for a period of 5 years following the end of the sign-up period.

(e) The Deputy Administrator of the Cotton Program shall prepare and submit to the Secretary a report of the results of the sign-up period. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent (July 1991) referendum, but not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers in any one state or from importers of cotton. The Secretary shall announce the results of the sign-up period in a separate notice in the **Federal Register**.

Dated: March 12, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6513 Filed 3–14–02; 11:18 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–422–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposal would require replacing the existing pressure relief valve on the potable water tank with a new, improved pressure relief valve, which is made of stainless steel and is non-adjustable. For certain airplanes, this proposal would also require modification of certain piping to re-locate the pressure relief valve. This action is necessary to prevent rupture of the potable water tank during flight of the airplane, which could result in structural damage to the airplane and inability to sustain flight loads. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 2, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–422–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–422–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–422–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–422–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that there have been several occurrences of potable water tanks rupturing while the airplane was in flight. In one case the potable water tank relief valve was incorrectly located, so that the relief valve could not protect the tank from overpressurization. In other cases, the pressure relief valve on the water tank was correctly located, but malfunctioned, leading to rupture of the water tank with consequent structural damage to the airplane. Such malfunctioning has been found to be caused by corrosion or by inadvertent adjustment of the pressure relief valve. Malfunction of the pressure relief valve for the potable water tank or the incorrect location of that valve, if not corrected, could cause a rupture of the potable water tank during flight of the airplane, which could result in structural damage to the airplane and inability to sustain flight loads.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletins 737–38A1038, Revision 2, dated September 25, 1997, and 737–38A1047, Revision 1, dated September 27, 2001, which describe procedures for replacing the existing pressure relief valve in the potable water tank with a new stainless steel, non-adjustable pressure relief valve. In addition, the FAA has reviewed and approved Boeing Service Bulletin 737–38–1029, Revision 1, dated August 19, 1993, which describes procedures for modification of piping to re-locate the pressure relief valve so that the relief valve can protect the potable water tank against over-pressurization. Accomplishment of the actions specified in those service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and Proposed AD

One difference concerns the compliance times recommended in the service bulletins and those in the proposed AD. Boeing Service Bulletins 737–38A1038 and 737–38A1047 recommend that the replacement of the pressure relief valve on the potable water tank be done as soon as manpower and materials are available. Boeing Service Bulletin 737–38–1029 describes procedures for modification of the system to relocate the check valve and pressure relief valve but does not recommend a compliance time for that action. The proposed AD specifies a compliance time of 18 months after the effective date of the AD for replacement of the existing pressure relief valve with a new valve, so that the required actions can be done during an operator's regularly-scheduled "C" check.

Another change concerns re-installation of the existing pressure relief valve after the modification of the system which is required for certain airplanes listed in Boeing Service Bulletin 737–38–1029. The proposed AD specifies replacement of the existing pressure relief valve with a new, improved valve for these certain airplanes as well as for all other affected airplanes.

Cost Impact

There are approximately 2,221 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,208 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that of the 1,208 airplanes of U.S. registry, 2 would be affected by the proposed modification of piping to re-locate the pressure relief valve, that it would take approximately 6 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed modification of piping on U.S. operators is estimated to be $1,320, or $660 per airplane.

The FAA estimates that all of the 1,208 airplanes of U.S. registry would be affected by the proposed replacement of the pressure relief valve, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of the proposed replacement of the pressure relief valve on U.S. operators is estimated to be $507,360, or $420 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–422–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, line numbers 1 through 2696, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the potable water tank during flight of the airplane, which could result in structural damage to the airplane and inability to sustain flight loads, accomplish the following:

Modification and Replacement

(a) Within 18 months after the effective date of this AD, perform the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For those airplanes listed in the effectivity section of Boeing Service Bulletin 737–38–1029, Revision 1, dated August 19, 1993: Modify the potable water pressurization system in accordance with the service bulletin, but do not reinstall the existing pressure relief valve having part number (P/N) 520A–6DB–50. Prior to further flight, perform the requirements of paragraph (a)(2) of this AD.

Note 2: Modification of the potable water pressurization system, done in accordance with Boeing Service Bulletin 737–38–1029, dated June 6, 1991, is acceptable for compliance with paragraph (a)(1) of this AD.

(2) For those airplanes having line numbers 1 through 2523: Remove the existing pressure relief valve from the potable water tank, and replace the valve with a new pressure relief valve having part number P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1047, Revision 1, dated September 27, 2001.

Note 3: For those airplanes having line numbers 1 through 2523, installation of a new pressure relief valve having P/N RV05–362, done in accordance with Boeing Service Bulletin 737–38A1047, dated November 9, 2000, is acceptable for compliance with paragraph (a)(2) of this AD.

(b) For those airplanes having line numbers 2524 through 2696: Within 18 months after the effective date of this AD, remove the existing pressure relief valve from the potable water tank, and replace the valve with a new pressure relief valve having P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1038, Revision 2, dated September 25, 1997.

Note 4: For those airplanes having line numbers 2524 through 2696, installation of a new pressure relief valve having P/N RV05–362, done in accordance with Boeing Service Bulletin 737–38A1038, dated December 1, 1994, or Revision 1, dated February 2, 1995, is acceptable for compliance with paragraph (b) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that

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provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 11, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6332 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes, that currently requires an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. That AD also requires modification and reidentification of the attendants' work light assemblies of the aft cabin. This action would require revising the applicability of the existing AD to add certain airplanes and to remove certain other airplanes. The actions specified by the proposed AD are intended to prevent chafing of the ground wire against the positive contact of the lamp of the attendants' work light of the aft cabin, and consequent arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin. Such arcing or arcing damage could result in short circuits and consequent smoke and fire in the aft cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 2, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–36–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 28, 2001, the FAA issued AD 2001–24–15, amendment 39–12532 (66 FR 64133, December 12, 2001), applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes, to require an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. That AD also requires modification and reidentification of the attendants' work light assemblies of the aft cabin. The requirements of that AD are intended to prevent chafing of the ground wire against the positive contact of the lamp of the attendants' work light of the aft cabin, and consequent arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin. Such arcing or arcing damage could result in short circuits and consequent smoke and fire in the aft cabin area.

Explanation of Relevant Service Information

Since the issuance of that AD, the FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001. Revision 03 revises the effectivity of the service bulletin by adding certain airplanes and removing certain other airplanes. No additional work is required by Revision 03 for airplanes previously modified by prior issues of the service bulletin.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–24–15 to revise the applicability of the AD and to continue to require an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. The proposed AD also would continue to require modification and reidentification of the attendants' work light assemblies of the aft cabin.

Cost Impact

There are approximately 176 Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2001–24–15 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $16,680, or $60 per airplane.

This proposed AD does not add any new actions or requirements, and only revises the applicability of the AD by adding certain airplanes and removing certain other airplanes. Therefore, the estimated cost impact for this proposed AD is unchanged from the existing AD.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12532 (66 FR 64133, December 12, 2001), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2002–NM–36–AD. Supersedes AD 2001–24–15, Amendment 39–12532.

Applicability: Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes, equipped with an attendants'' work light in the aft cabin; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing or arcing damage to the wiring of the attendants' work light of the aft cabin due to chafing of the ground wire against the positive contact of the lamp of the attendants' work light and transformer of the aft cabin, which could result in short circuits and consequent smoke and fire in the aft cabin area, accomplish the following:

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) AD 2001–24–15, amendment 39–12532. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 2001–24–15 have already been accomplished, this AD does not require that those actions be repeated.

Restatement of AD 2001–24–15

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000: Within 1 year after January 16, 2002 (the effective date of AD 2001–24–15, amendment 39–12532), do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

Note 3: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

New Requirements of This AD

(b) For airplanes as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001: Within 1 year after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2002.

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(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

Note 4: Inspections, repairs, modifications, and reidentifications done before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–33–058, dated June 5, 1973; Revision 1, dated November 26, 1975; or Revision 02, dated January 27, 2000; are considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6331 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM02–7–000]

Accounting and Reporting of Asset Retirement Obligations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Informal Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) intends to hold a staff technical conference on May 7 and 8, 2002, at 9:00 A.M. in the Commission's offices, 888 First Street, NE., Washington, DC, to address the financial accounting and reporting implications related to asset retirement obligations associated with the retirement of tangible long-lived assets.

DATES: The staff technical conference will be held at 9 a.m. on May 7 and May 8, 2002. Persons who wish to participate in the conference should, no later than March 25, 2002, notify Raymond Reid by telephone at (202) 219–2928, or by facsimile at (202) 219–2632, or by E-Mail: *raymond.reid@ferc.gov* or Mark Klose by telephone at (202) 219–2595, or by facsimile at (202) 219–2632, or by E-mail: *mark.klose@ferc.gov*.

ADDRESSES: The informal technical conference will be held at the Commission's offices, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Technical Issues), Office of Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 219–2595; Fax: (202) 219–2632; E-Mail: *mark.klose@ferc.gov*.

Raymond Reid (Technical Issues), Office of Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 219–2928; Fax: (202) 219–2632; E-Mail: *raymond.reid@ferc.gov*.

Julia Lake (Legal Issues), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 208–2019; E-Mail: *julia.lake@ferc.gov*.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, it is available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426, during regular business hours and is posted on both the Commission's Issuance Posting System (CIPS) and the Records and Information Management Systems (RIMS), and may be viewed and printed remotely via the Internet through Commission's Home Page (*http://www.ferc.gov*).

Notice of Informal Technical Conference

March 8, 2002.

Take notice the Commission staff will hold an informal technical conference to discuss the financial accounting and reporting implications related to asset retirement obligations associated with the retirement of tangible long-lived assets. The conference will be held on Tuesday, May 7, 2002, and Wednesday, May 8, 2002, at 9:00 A.M. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The conference is being convened to enlist the participation of interested parties including among others, the Association of Oil Pipe Lines, Edison Electric Institute, Interstate Natural Gas Association of America, National Association of Regulatory Utility Commissioners, in the development of accounts and reporting requirements for tangible long-lived assets.

Participants may be assigned to a panel in order to establish a logical order of presentation and to facilitate an informal exchange of views. The informal technical conference is intended to be structured so that participants can discuss the financial accounting, and reporting implications related to obligations associated with the retirement of tangible long-lived assets and related matters. The goal of the conference is to identify how recognition of asset retirement obligations may affect the Commission's existing accounting and rate regulations.

Persons who wish to participate in the conference should, no later than March 25, 2002, notify Raymond Reid by telephone at (202) 219–2928, or by facsimile at (202) 219–2632, or by E-Mail: *raymond.reid@ferc.gov* or Mark Klose by telephone at (202) 219–2595, or by facsimile at (202) 219–2632, or by E-Mail: *mark.klose@ferc.gov*.

After reviewing the requests to participate, the Commission staff will issue a subsequent notice in the **Federal Register** specifying the time, and place and a proposed agenda. For additional information, interested persons may contact Raymond Reid by telephone at (202) 219–2928 (or by e-mail *raymond.reid@ferc.gov*) or Mark Klose by telephone at (202) 219–2595 (or by e-mail *mark.klose@ferc.gov*).

Magalie R. Salas,

Secretary.

[FR Doc. 02–6240 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 111

RIN 1515–AC81

User Fees

AGENCY: Customs Service, Department of the Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reflect various legislative amendments to 19 U.S.C. 58c, the Customs user fee statute, including those made by the Miscellaneous Trade and Technical Corrections Act of 1999 and the Tariff Suspension and Trade Act of 2000. The proposed regulations set forth the new fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, provide for application of a fee to ferries in limited circumstances, and clarify how Customs administers certain user fees. Also, minor conforming changes are proposed to the regulations pertaining to customs brokers.

DATES: Written comments must be received on or before May 17, 2002.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Concerning user fees applicable to commercial vessel and aircraft passengers under § 24.22(g): Edward Matthews at (202) 927–0552. Concerning the various fee payment and information submission procedures under § 24.22: Robert T. Reiley at (202) 927–1504.

SUPPLEMENTARY INFORMATION:

Background

This document proposes changes concerning user fees to parts 24 and 111 of the Customs Regulations (19 CFR Parts 24 and 111). The changes to Part 24 involve § 24.22 and have several bases: (1) Some changes derive from provisions of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), signed into law on June 25, 1999; (2) one change is based on a provision of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106–476, 114 Stat. 2101), signed into law on November 9, 2000; (3) some changes are based on other statutory provisions that have not previously been reflected in the regulations; (4) some changes are proposed to bring the regulations up to date with current administrative practices; (5) and one change is a technical correction. The changes to part 111 are intended to clarify administration of the annual user fee and the permit fees for customs brokers.

Proposed Changes Based on the Miscellaneous Trade and Technical Corrections Act of 1999

Section 2418 of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 19 U.S.C. 58c (section 58c), which established user fees for certain services performed by the Customs Service. These amendments to section 58c necessitate conforming amendments to the Customs Regulations.

On July 27, 1999, Customs issued a general notice in the **Federal Register** (64 FR 40648) that announced the statutory changes made by the Act and pointed out that these self-effectuating changes became effective on July 25, 1999. The notice also announced several other related changes affecting Customs administration of user fees. The notice indicated that appropriate amendments to the Customs Regulations would be published in due course. This document, issued as a notice of proposed rulemaking because the proposed changes include some that are not derived from self-effectuating statutory amendments, invites public comment on the proposed changes.

Prior Law

Under section 58c(a), Customs is authorized to collect specific fees charged for certain Customs inspectional services, including, in section 58c(a)(5), fees for passengers arriving in the United States aboard commercial vessels and aircraft. Under section 58c(d), the fees are collected from passengers by the companies that issue the ticket or travel document for transportation into the customs territory of the United States or that provide the actual transportation, and those companies remit the fees to Customs.

Immediately prior to enactment of the Act, section 58c(a)(5)(A) provided for a fee of $6.50 per passenger arriving in the United States aboard a commercial vessel or commercial aircraft from a place outside the customs territory of the United States. However, this fee provision applied only to fiscal years 1994 (effective on January 1, 1994) through 1997. Thus, after fiscal year 1997, the $6.50 fee was no longer in effect.

Immediately prior to enactment of the Act, section 58c(a)(5)(B), applicable to fiscal year 1998 and each following fiscal year, provided for a fee of $5 per passenger arriving in the United States aboard a commercial vessel or commercial aircraft from a place outside the United States other than a place referred to in section 58c(b)(1)(A)(i), that is, Canada, Mexico, a territory or a possession of the United States, or any adjacent island. (Section 24.22(g)(2)(i)(B) of the Customs Regulations (19 CFR 24.22(g)(2)(i)(B)) currently provides that the territories and possessions of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands and that adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands. However, this document includes discussion of a proposal to amend the provision concerning this list of adjacent islands.)

The effect of these provisions was to impose a fee structure as follows: (1) A fee of $6.50 on commercial vessel and aircraft passengers arriving from locations outside the customs territory of the United States through September 30, 1997, then, (2) commencing on October 1, 1997, a fee of $5 per commercial vessel and aircraft passenger arriving from a place outside the United States except for a passenger arriving from Canada, Mexico, a U.S. territory or possession, or an adjacent island. Thus, beginning with fiscal year 1998, there was no fee applicable under section 58c(a)(5) for commercial vessel or aircraft passengers arriving from Canada, Mexico, United States territories or possessions, or adjacent islands. (For Puerto Rico, this represented no change because Puerto Rico is part of the customs territory of the United States and thus no fee applied to Puerto Rico under section 58c(a)(5)(A).)

In addition, immediately prior to enactment of the Act, section 58c(b)(1)(A) provided that no fee may be charged under section 58c(a) in the case of the arrival of a passenger whose journey either originated in Canada, Mexico, a United States territory or possession, or an adjacent island or originated in the United States and was limited to Canada, Mexico, a United States territory or possession, or an adjacent island. (This prohibition was suspended during the period from January 1, 1994, through September 30, 1997 (under section 58c(b)(1)(C)).)

New Fee Structure

Paragraph (b)(1) of section 2418 of the Act amended sections 58c(a)(5)(A) and (B) to modify the above-discussed fee structure. The amendment accomplished two things: (1) It continued, in section 58c(a)(5)(A), the $5 fee per passenger arriving in the United States aboard a commercial

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vessel or aircraft from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island; and (2) it imposed, under section 58c(a)(5)(B), a fee of $1.75 per passenger arriving aboard a commercial vessel (not commercial aircraft) from Canada, Mexico, a United States territory or possession, or an adjacent island. Thus, under the amended statute, no fee applies in the case of passengers arriving aboard commercial aircraft from Canada, Mexico, a United States territory or possession, or an adjacent island.

Customs notes that the amendment of section 58c(b)(1)(A) enables collection of the $1.75 per passenger fee of amended section 58c(a)(5)(B). The amendment excepted that fee from the fee exemption provided by section 58c(b)(1)(A) that otherwise precludes application of a fee under section 58c(a)(5) in connection with the arrival of any passenger whose journey originated in Canada, Mexico, a United States territory or possession, or an adjacent island or which originated in the United States and was limited to those named places.

Customs proposes in this document to amend the Customs Regulations to conform to the new fee structure.

Procedures for Payment of the New Fees

Prior to the Act, only one fee applied to covered passengers under section 58c(a)(5), that is, $5 prior to January 1, 1994, $6.50 beginning on January 1, 1994, and $5 beginning on October 1, 1997. With the Act's amendment of section 58c(a)(5), there are now two passenger fees, that is, the $5.00 fee of section 58c(a)(5)(A) where applicable and the $1.75 fee of section 58c(a)(5)(B) where applicable. Thus, since enactment of the Act, Customs must administer and account for two fees rather than one. This new fee structure requires amendment of the Customs Regulations to conform the regulatory procedures to the new fee structure.

Under the current Customs Regulations, it is the responsibility of the carriers, travel agents, tour wholesalers, or other parties issuing tickets or travel documents to collect the fee from all passengers who are subject to the fee (19 CFR 24.22(g)(3)). These parties must make payment of the collected fees to Customs no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passengers (19 CFR 24.22(g)(4)). The regulation also provides (in § 24.22(g)(4)) that the quarterly fee payment must be accompanied by a statement that includes the name, address, and taxpayer identification number of the party remitting the payment and the calendar quarter covered by the payment.

This document proposes to amend § 24.22(g)(3) (redesignated in the proposed regulation as § 24.22(g)(4)) to make clear that the party responsible for collecting the fee must collect a fee when an infant travels without a ticket or travel document. This follows Customs consistent practice of treating infants as passengers for purposes of the passenger fees. In this regard, Customs proposes to clarify this by adding to § 24.22(g)(1) a definition of the term "passenger" making it clear that it includes infants even if the carrier does not charge for their transportation and even if the infant is carried by another passenger rather than occupying a seat.

The document also proposes to amend § 24.22(g)(4) (redesignated as § 24.22(g)(5)) to require the following additional information in the statement: The total number of tickets for which fees were required to be collected, including the total number of infants traveling without a ticket or travel document for which fees were required to be collected; the total amount of fees collected and remitted; with respect to vessel fees, the total number of tickets and non-ticketed infants for which fees were required to be collected and the total amount of fees collected; and a breakdown of vessel fees collected and remitted under section 58c(a)(5)(A) (the $5 per passenger fee) and section 58c(a)(5)(B) (the $1.75 per passenger fee). This additional information is necessary to enable Customs to properly account for the fees now provided for under section 58c(a)(5).

The Tariff Suspension and Trade Act of 2000

A recent amendment to section 58c was made by section 1457 of the Tariff Suspension and Trade Act of 2000. Under section 1457, section 58c(b)(1)(A)(iii) was amended to provide an exception to the fee limitation relative to ferries. Prior to this amendment, ferries were excepted from application of the fees under section 58c(a). With this self-effectuating amendment (effective on November 24, 2000), ferries whose operations began on or after August 1, 1999, and who operate south of 27 degrees latitude and east of 89 degrees longitude are now subject to the commercial vessel fee of section 58c(a)(1) (19 CFR 24.22(b)(1)) (provided the ferry is of 100 net tons or more) and the $1.75 commercial vessel passenger fee of section 58c(a)(5)(B) (proposed paragraph (g)(1)(ii) of 19 CFR 24.22). (Customs notes that the definition of "ferry" excludes vessels that provide transportation between places that are more than 300 miles apart. This requirement necessarily means that the $1.75 commercial vessel passenger fee would be applicable because a ferry operating within the specified coordinates will arrive in the United States from a place that qualifies as an adjacent island under paragraph (g)(1)(iii) of this section. See the definition of "ferry" in 19 U.S.C. 58c(c)(1) and 19 CFR 24.22(a)(4).) This amendment necessitates conforming amendments to §§ 24.22(b)(4)(iv) and 24.22(g)(1) of the Customs Regulations.

Proposed Changes Based on Other Statutory Provisions

This document also proposes to include provisions in § 24.22(g) to cover the fee exemption provision set forth in section 58c(b)(1)(A)(iv) and the "one-time only fee" set forth in section 58c(b)(4)(B). These two statutory provisions are not reflected in the current regulation.

The fee exemption provision under section 58c(b)(1)(A)(iv) provides that no fee under section 58c(a)(5) applies to passengers arriving aboard commercial vessels traveling only between ports that are within the customs territory of the United States. The one-time only fee provision of section 58c(b)(4)(B) applies where a fee under section 58c(a)(5) is applicable to passengers arriving aboard a commercial vessel and the voyage is a single voyage involving two or more United States ports (in other words, the vessel proceeds coastwise to one or more United States ports after its initial arrival from a place outside the United States). This provision ensures that in the described situation, the applicable fee is charged only once for each passenger.

Finally, under section 58c(b)(1)(A)(i)(I)(dd), the term "adjacent islands" is given meaning by reference to the definition of that term found at 8 U.S.C. 1101(b)(5). The adjacent islands are set forth under § 24.22(g)(2)(i)(B) of the current Customs Regulations. The document proposes to amend the regulation in order to bring it up to date with the language of 8 U.S.C. 1101(b)(5). (See proposed § 24.22(g)(1)(iii).) All islands found in the current regulation are covered in the proposed regulation (although not explicitly in every case).

Proposed Changes Regarding Administrative Practices

Section 24.22(b)(3) of the Customs Regulations concerns the procedure for prepayment of the fee for the arrival of commercial vessels (that is, vessels of

100 net tons or more as well as barges and other bulk carriers arriving from Canada or Mexico). Section 24.22(c)(3) concerns the procedure for prepayment of the fee for the arrival of commercial vehicles. Section 24.22(d) concerns the fee for the arrival of railroad cars and includes, in paragraph (d)(3), procedures for prepayment of the fee and, in paragraph (d)(4)(ii), procedures for monthly statement filing and fee remittance. In § 24.22(e), which concerns the fee for the arrival of private vessels and private aircraft, paragraph (e)(1) covers payment of the fee at the time of arrival and paragraph (e)(2) covers the procedure for prepayment of the fee. Section 22.24(g)(4) covers the procedure for payment of fees for the arrival of passengers aboard commercial vessels and commercial aircraft. Section 24.22(h) concerns the annual customs broker permit fee. Section 24.22(i) concerns procedures for remittance of, and for submitting information relative to, the fees provided for under § 24.22.

This document proposes to amend the above regulatory provisions to reflect current fee payment and other practices, including clarification of the proper addresses for the mailing of payments, requirements for the user fee decal, and use of electronic and credit card payment options.

Technical Correction

Upon routine review of the Part 24 texts, Customs discovered erroneous references to § 142.13(c) (19 CFR 142.13(c)) in paragraphs (a), (c)(2), and (d) of § 24.25, which pertains to statement processing and automated clearinghouse procedures. Section 142.13(c) is currently reserved, and the reference in the above paragraphs of § 24.25 should instead be to § 142.13(b), which pertains to special classes of merchandise.

This document proposes to correct these erroneous references.

Conforming Changes to Part 111

Part 111 of the Customs Regulations (19 CFR part 111) pertains to customs brokers and includes, in §§ 111.19 and 111.96, references to the payment of the annual customs broker permit user fee referred to in § 24.22(h). This document proposes amendments to §§ 111.19 and 111.96 to conform to the change to § 24.22(h) referred to above and to clarify the payment procedure in connection with a national permit application.

Comments

Before adopting these proposed amendments as a final rule, consideration will be given to any written comments timely submitted to Customs including comments on the clarity of the proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings; U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because the proposed amendments to the Customs Regulations concern collection of fees that are mandated by statute, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in § 24.22 have previously been approved by the Office of Management and Budget (OMB) under OMB control number 1515–0154 (User Fees). This notice of proposed rulemaking (NPRM) contains additional collections of information that have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that lacks a valid control number.

The additional collections of information in these proposed regulations are at § 24.22(g)(5)(iv) and (v), pertaining to information required in the statement that must accompany a quarterly fee payment relative to passenger fees. This information is necessary to allow Customs to track and account for the two passenger fees mandated in the Miscellaneous Trade and Technical Corrections Act of 1999. The estimated burden to the public resulting from the additional collections is as follows:

Estimated total annual reporting and/or recordkeeping burden: 100 hrs.

Estimated average annual burden per respondent/recordkeeper: 4 hrs.

Estimated number of respondents and/or recordkeepers: 25.

Estimated annual frequency of responses: 4.

Comments on the additional collections of information should be sent to the OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth in the "Address" section of this document.

Comments are invited on:

(a) Whether the additional collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the additional information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the additional information to be collected;

(d) Ways to minimize the additional information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide the additional information.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. Other personnel contributed in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, parts 24 and 111 of the Customs Regulations (19 CFR parts 24 and 111) are proposed to be amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. It is proposed to amend § 24.22 by:

a. Revising paragraphs (b)(3). (b)(4)(iv), and (c)(3);

b. In paragraph (d), revising the second sentence of paragraph (d)(3), adding a new sentence at the end of paragraph (d)(4)(ii), and, in the last sentence of paragraph (d)(5), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section"

c. Revising paragraphs (e)(1) and (e)(2);

d. In paragraph (g), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(7) as (g)(3) through (g)(8), adding new paragraph (g)(2), revising newly redesignated paragraphs (g)(3), (g)(4), and (g)(5), and, at the end of the last sentence of newly redesignated paragraph (g)(7), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section" and

e. Revising paragraphs (h) and (i).

The revisions read as follows:

§ 24.22 Fees for certain services.

* * * * *

(b) * * *

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a Customs port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* * * *

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) * * *

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay a fee of $100 to cover all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: U.S. Customs Service, Decal Program Administrator, PO Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at Customs website (*http://www.customs.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories. Once the prepayment has been made under this paragraph, a decal will be issued to be permanently affixed by adhesive to the lower left hand corner of the vehicle windshield or on the left wing window, and otherwise in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fee for individual arrivals during the applicable calendar year or any remaining portion of that year.

(d) * * *

(3) *Prepayment.* * * * The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, shall be mailed to: U.S. Customs Service, National Finance Center, Collections Section, PO Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(4) *Statement filing and payment procedures.* * * *

(ii) * * * Payment must be made in accordance with this paragraph and paragraph (i) of this section and must be sent by mail to the following address: U.S. Customs Service, National Finance Center, Collections Section, PO Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

* * * * *

(e) *Fee for arrival of a private vessel or private aircraft.*

(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to Customs and tender the sum of $25 to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. A properly completed Customs Form 339, Annual User Fee Decal Request, must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, and otherwise in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, along with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: U.S. Customs Service, Decal Program Administrator, PO Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at Customs website (*http://www.customs.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories.

* * * * *

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of $5 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States, other than Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, in either of the following circumstances:

(A) When the journey of the arriving passenger originates in a place outside the United States other than Canada, Mexico, one of the territories or possessions of the United States, or one of the adjacent islands; or

(B) When the journey of the arriving passenger originates in the United States and is not limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.75 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For purposes of this paragraph (g), the term "territories and possessions of the United States" includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and the term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term *passenger* means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term "commercial vessel" includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart.* The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for "Specified Location" and means Canada, Mexico, any territories and possessions of the United States, and any adjacent islands;

(ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place where journey originates (see (g)(1)(iv)):	Fee status for arrival from SL:		Fee status for arrival from other than SL:	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.75	(1)	(1)	(1)
Other than SL or U.S.	$1.75	(1)	$5	$5.
U.S.*	$1.75	(1)	N/A	N/A.
U.S.**	$1.75	(1)	$5	$5.

[1] No fee.

(3) *Exceptions.* The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/Customs Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom Customs inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation "Federal inspection fees" on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

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(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States which originates in and arrives from a place outside the United States other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, and the return arrival in the United States is from a place other than one of these specified places; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, is processed by Customs, and the journey does not originate in one of these specified places.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival in the United States is from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island and is processed by Customs.

(5) *Quarterly payment and statement procedures.* Payment to Customs of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made, in accordance with the procedures set forth in this paragraph and paragraph (i) of this section, by the party required to collect the fee under paragraph (g)(4)(1) of this section. Each quarterly fee payment must be sent to the following address: U.S. Customs Service, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278). Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to Customs. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, the total amount of fees collected and remitted to Customs, and a separate breakdown of the foregoing information relative to the $5 vessel passenger fee collected and remitted under paragraph (g)(1)(i) of this section and the $1.75 vessel passenger fee collected and remitted under paragraph (g)(1)(ii) of this section.

* * * * *

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each district permit and for a national permit held by an individual, partnership, association, or corporation, as provided in § 111.96(c) of this chapter. The annual fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual fee for a national permit must be submitted to the port through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies. All fee payments required under this section must be in the amounts prescribed and must be made in U.S. currency, or by check or money order payable to the United States Customs Service, in accordance with the provisions of § 24.1 of this part. Authorization for making payments electronically can be obtained by writing to the National Finance Center, Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Where payment is made at a Customs port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of payment being made. If payment is made by check or money order, the check or money order must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492; for prepayment of the maximum calendar year fee, class code 902. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5 fee for commercial vessel and commercial aircraft passengers): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.75 fee for commercial vessel passengers): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for district permits, class code 497; for national permits, class code 997. Payment location: see paragraph (h) of this section.

* * * * *

3. It is proposed to amend § 24.25 in paragraphs (a), (c)(2), and (d) by removing the reference "§ 142.13(c)" wherever it appears and adding, in its place, the reference "§ 142.13(b)".

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

2. It is proposed to amend § 111.19 by revising paragraphs (c) and (f)(4) to read as follows:

§ 111.19 Permits.

* * * * *

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the $100 fee specified in § 111.96(b) and the $125 fee specified in § 111.96(c) must be paid at the port through which the applicant's license was delivered (see § 111.15) prior to submission of the application. The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial district permit concurrently with the issuance of a license under paragraph (a) of this section.

* * * * *

(f) National permit. * * *

(4) Attach a receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

* * * * *

3. It is proposed to amend § 111.96 by revising paragraph (b); and in paragraph (c) by removing from the second sentence the words "or upon filing the application for the" and adding in their place the words "or in connection with the filing of an application for a"; and by removing from the same sentence the reference "§ 111.19(f)(4)" and adding in its place "§ 111.19(c)". The revision reads as follows:

§ 111.96 Fees.

* * * * *

(b) *Permit fee.* A fee of $100 must be paid in connection with each permit application under § 111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

* * * * *

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: March 13, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–6369 Filed 3–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–002]

RIN 2115–AA97

Security Zone; Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary security zone surrounding the City of Portland's Waterfront Park to include all waters of the Willamette River, from surface to bottom, between the Hawthorne and Steel bridges and underneath these bridges. Recent terrorist attacks against the United States necessitate this action to properly safeguard all vessels participating in the 2002 Portland Rose Festival from terrorism, sabotage, or other subversive acts. We anticipate the security zone will have limited effects on commercial traffic and significant effects on recreational boaters; ensuring timely escorts through this security zone is a high priority of the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard no later than May 2, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 901

RIN 0701–AA58

Appointment to the United States Air Force Academy

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of the Air Force had proposed to revise its regulation on processing nominations and appointments to the United States Air Force Academy. The proposed revision was never finally coordinated and is no longer current.

DATES: The proposed rule published on December 1, 1997 at 62 FR 63485 is withdrawn as of March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Colonel James W. Spencer, (719) 333–2251.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6340 Filed 3–15–02; 8:45 am]

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FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jeff Pile, c/o Captain of the Port, Portland Oregon at (503) 240–2585.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–02–002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office/Group Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This security zone is necessary to provide for the safety and security of vessels participating in the 2002 Portland Rose Festival in the navigable waters of the United States.

Discussion of Proposed Rule

This rule, for safety and security concerns, would control vessel movements in a regulated area surrounding vessels participating in the 2002 Portland Rose Festival. U.S. Naval Vessels are covered under 33 CFR 165 subpart G—Protection of Naval Vessels; however, the Portland Rose Festival is a major maritime event that draws many different vessels including Navy, Coast Guard, Army Corps of Engineers, and Canadian. It is crucial that the same level of security be provided to all participating vessels. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representatives. Commercial vessels that typically transit this section of the Willamette River will be pre-designated and will suffer only minor inconveniences.

Recreational vessels may suffer from extended delays and can anticipate a vessel inspection. Recreational vessels are encouraged to avoid this area. Recreational vessels will be allowed into the zone on a case-by-case basis following extensive security measures, and as operations permit. Coast Guard personnel will enforce this security zone and the Captain of the Port may be assisted by other federal, state, or local agencies.

Good cause exists to shorten the notice and comment period of this notice of proposed rulemaking. The normal 90 day comment period has been shortened to 45 days to allow the Coast Guard to evaluate all comments received, make appropriate modifications to the proposed rule, and publish the final rule at least 30 days prior to the implementation of the security zone. Although this annual event was known to the Coast Guard well in advance, this notice was not published earlier due to extensive additional considerations that needed to be addressed following the increased security measures necessary to properly safeguard military assets following the September 11, 2001 terrorist attacks on the United States.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This expectation is based on adequate resources allowing vessel approvals from the Captain of the Port or his designated representatives to transit through the regulated area. For the above reasons, the Coast Guard only anticipates minor economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this portion of the Willamette River. The likely impacts to small entities would include minor time delays, potential inspections, and possibly non-entrance if the Captain of the Port or his designated representatives sense the vessels participating in the Rose Festival are threatened. The security zone will not have a significant economic impact because adequate resources will allow vessels timely approval from the Captain of the Port or his designated representatives to transit through the regulated area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because the temporary security zone would not last longer than one week in duration. The temporary security zone would be established on Wednesday, June 5, 2002, with the arrival of the first vessel to the City of Portland's Waterfront Park and extend until the last vessel departs the Waterfront Park on Monday, June 10, 2002. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T13–002 to read as follows:

§ 165.T13–002 Security Zone; Portland Rose Festival on Willamette River.

(a) *Location.* The following area is a security zone: All waters of the Willamette River, from surface to bottom, between the Hawthorne and Steel bridges and underneath these bridges.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 (156.8 MHz) or VHF channel 22A (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) **Authority.** In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section is effective from Wednesday, June 5, 2002, through Monday, June 10, 2002.

Dated: March 1, 2002.

J. D. Spitzer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 02–6361 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Pittsburgh–02–005]

RIN 2115–AA97

Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, Pennsylvania

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a security zone encompassing all waters extending 200 feet from the shoreline of the left descending bank on the Ohio River, beginning from mile marker 34.6 and ending at mile marker 35.1. This security zone is necessary to protect the First Energy Nuclear Power Plant in Shippingport, Pennsylvania, from any and all subversive actions from any groups or individuals whose objective it is to cause disruption to the daily operations of the First Energy Nuclear Power Plant; Entry of vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port St. Louis or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 17, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA 15222–1371. Marine Safety Office Pittsburgh maintains the public docket for this rulemaking. Comments and

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material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Pittsburgh 02–005], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Pittsburgh at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To immediately enhance that security the Captain of the Port, Pittsburgh established a temporary security zone on the Ohio River in the vicinity of the First Energy Nuclear Power Plant, in Shippingport, PA. The temporary final rule was published March 4, 2002 in the **Federal Register** Volume 67, Number 42, page 9589 (67 FR 9589) and remains in effect until 8 a.m. on June 15, 2002.

Because the generalized high-level threat environment has persisted longer than expected, the Captain of the Port, Pittsburgh has determined that there is a need for this security zone to remain in effect indefinitely. This security zone will reduce the risk of a terrorist incident in this generalized high-level threat environment. It reduces the potential of a waterborne attack on the facility enhancing public health and safety, and common defense and security, at this location and surrounding areas.

The location of this security zone will limit access to only the waters immediately adjacent to the facility and will permit vessels to safely navigate around the facility. Navigation around the facility will not be hindered by the establishment of this security zone.

Discussion of Proposed Rule

A security zone is proposed for all water extending 200 feet from the shoreline of the left descending bank on the Ohio River from mile marker 34.6 to 35.1. This zone is designed to increase protection for the First Energy Nuclear Power Plant in Shippingport, PA. This security zone will reduce the risk of a terrorist incident in this generalized high-level threat environment. It reduces the potential of a waterborne attack on the facility enhancing public health and safety, and common defense and security, at this location and surrounding areas. All vessels are prohibited from entering the zone without the permission of the Captain of the Port Pittsburgh.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone and vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This security zone will not have an impact on a substantial number of small entities because this proposed rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.820 to read as follows:

§ 165.820 Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, Pennsylvania.

(a) *Location.* The following area is a security zone: The waters of the Ohio River, extending 200 feet from the shoreline of the left descending bank beginning from mile marker 34.6 and ending at mile marker 35.1.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Pittsburgh.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port Pittsburgh at telephone number 412–644–5808 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Pittsburgh or his designated representative.

(c) **Authority.** In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 5, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.

[FR Doc. 02–6364 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301220; FRL–6826–6]

RIN 2070–AC18

Allethrin; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke specific tolerances for residues of the insecticide allethrin because this pesticide is no longer registered on their associated food uses in the United States. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 60 tolerances and exemptions which would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301220, must be received on or before May 17, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301220 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703)

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308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301220. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301220 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301220. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any

needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke specific tolerances and exemptions for residues of allethrin in or on commodities listed in the regulatory text because allethrin is no longer registered under FIFRA for use on those commodities. Many food use registrations for allethrin were canceled in 1989 and 1991 due to non-payment of maintenance fees. (Only the following food uses remain: Barley, grain; corn; mushrooms; oats, grain; rye, grain; sorghum, grain; and wheat, grain). It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crops for which there are no active registered uses under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.113 for residues of allethrin in or on apples, blackberries, blueberries (huckleberries), boysenberries, cherries, crabapples, currants, dewberries, figs, gooseberries, grapes, guavas, loganberries, mangoes, muskmelons, oranges, peaches, pears, pineapples, plums (fresh prunes), raspberries, and tomatoes.

Also, EPA is proposing to revoke the exemption from the requirement of a tolerance in 40 CFR 180.1002 for residues of allethrin in or on apples, artichokes (Jerusalem), beans, beets, beets, sugar; broccoli, Brussels sprouts, cabbage, carrots, cauliflower, celery, chickory, Chinese cabbage, citrus, collards, endive, escarole, garlic, horseradish, kale, kohlrabi, leeks, lettuce, mustard greens, onions, parsley, parsnips, peaches, pears, peppers, potatoes, radishes, rutabagas, salsify, shallots, spinach, sweet potatoes, tomatoes, and turnips. In addition, the Agency is proposing to remove the exemption in 40 CFR 180.1002 for "sorghum (milo)" because that exemption is no longer needed since use of allethrin before harvest in the production of that commodity is covered by the existing exemption for "sorghum, grain."

For FQPA reassessment purposes, EPA counts "endive" and "escarole" in 180.1002 as one exemption "endive (escarole)" and expects in a final rule to count a total of 60 tolerances and exemptions as reassessed. EPA does not expect to count removal of the "sorghum (milo)" exemption as a reassessment in a final rule because the use will remain covered by the existing "sorghum, grain" exemption.

Moreover, in order to conform to current Agency practice, EPA is proposing to revise tolerance commodity terminology names in 40 CFR 180.113 as follows: for the grains "corn" to "corn, field, grain" and "corn, pop, grain;" "oats" to "oat, grain"; and "grain, sorghum, milo" to "sorghum, grain, grain." In addition, EPA is proposing to revise tolerance commodity terminology names in 40 CFR 180.1002 as follows: for "corn" to "corn, field" and "corn, pop;" and "mushrooms" to "mushroom."

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and

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the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

EPA is proposing that revocation of the tolerances and exemptions for allethrin become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing to delay the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. If you have comments regarding these tolerance revocations or the effective date of the revocations, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of March 7, 2002, EPA has reassessed over 3,910 tolerances. This document proposes to revoke 60 tolerances and exemptions which would be counted as reassessments in a final rule toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances and exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to EPA issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 8, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.113 is revised to read as follows:

§ 180.113 Allethrin (allyl homolog of cinerin I); tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide allethrin (allyl homolog of cinerin I) from post-harvest use in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	2.0
Corn, field, grain	2.0
Corn, pop, grain	2.0
Oat, grain	2.0
Rye, grain	2.0
Sorghum, grain, grain	2.0
Wheat, grain	2.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

3. Section 180.1002 is revised to read as follows:

§ 180.1002 Allethrin (allyl homolog of cinerin I); exemption from the requirement of a tolerance.

The insecticide allethrin is exempted from the requirement of a tolerance for residues when used before harvest in the production of the following raw agricultural commodities: Corn, field; corn, pop; mushroom; and sorghum, grain.

[FR Doc. 02–6487 Filed 3–15–02; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–1206–N]

RIN 0938–ZA31

Medicare Program; Town Hall Meeting on Payment for Certain Drugs, Biologicals, and Devices under the Hospital Outpatient Prospective Payment System for Calendar Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to discuss the payment for drugs, biologicals, and devices that are eligible for transitional pass-through payments under the hospital outpatient prospective payment system (OPPS) for calendar year 2003. Specifically, the meeting will focus on how the cost of drugs, (including radiopharmaceuticals), biologicals, and devices should be recognized under the hospital OPPS. Providers, physicians, hospitals, coding specialists, and other interested parties are invited to this meeting to present their views on these issues. We will consider the opinions and advice provided during this meeting as we prepare our annual proposed rule that would update the OPPS. The meeting is open to the public, but attendance is limited to space available.

DATE: *Meeting Date:* The town hall meeting announced in this notice will be held on Friday, April 5, 2002, from 9:30 a.m. to 3:30 p.m. (eastern standard time).

ADDRESSES: The town hall meeting will be held in the multipurpose room at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Roechel Kujawa, (410) 786–9111. You may also send inquiries about this meeting via e-mail to *outpatientpps@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997 (Pub. L. 105–33), enacted on August 5, 1997, amended the Social Security Act (the Act) by adding section 1833(t) to the Act. This section authorized the implementation of a hospital outpatient

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prospective payment system (OPPS) for hospital outpatient services.

The OPPS is comprised of ambulatory payment classification groups, relative weights, and payment rates. The Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), enacted on November 29, 1999, amended section 1833(t)(6) of the Act. This section authorized transitional pass-through payments for certain drugs, biologicals, and devices. These drugs, biologicals, and devices include those that were not being paid for as a hospital outpatient service as of December 31, 1996 and for which the cost is not insignificant in relation to the OPPS payment for the procedures associated with the drug, biological, or device. The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554), enacted on December 21, 2000, amended this provision to permit transitional pass-through payment for some older devices as well. By statute, transitional pass-through payment status extends at least 2 years, but no more than 3 years. Beginning January 1, 2003, almost all of the items that are eligible for transitional pass-through payments will reach the end of their eligibility for pass-through payments. Therefore, their costs must be recognized through other means under the OPPS. Participants at the town hall meeting are invited to share their opinions about how these items should be treated under the OPPS for calendar year (CY) 2003.

II. Meeting Format

The meeting will begin with an introduction of the OPPS, focusing on the treatment of transitional passthrough payments for drugs, biologicals, and devices under the OPPS for CY 2003. The remainder of the meeting will be reserved for statements from interested parties on this issue.

We will limit the time for participants to make a statement according to the number of registered participants. Individuals who wish to make a statement must contact Roechel Kujawa as soon as possible. Those individuals must subsequently mail their written submission no later than 5 p.m., Monday, April 1, 2002. Send written submissions to: Roechel Kujawa, Division of Outpatient Care, Center for Medicare Management, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C4–05–25, Baltimore, Maryland 21244. All written submissions must be received no later than 5 p.m., Monday, April 1, 2002, at the above address. Comments from individuals not registered to speak will be heard after scheduled statements, if time permits.

III. Registration Instructions

The Division of Outpatient Care is coordinating meeting registration. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must call Roechel Kujawa to register at least 72 hours in advance. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter the building. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Roechel Kujawa at least 10 days before the meeting.

Authority: Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6578 Filed 3–15–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–486; MM Docket No. 01–137; RM–10156]

Radio Broadcasting Services; Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of Katherine Pyeatt, dismisses the petition proposing the allotment of Channel 295C2 at Altus, Oklahoma, as the community's third local FM transmission service. *See* 66 FR 35768, July 9, 2001. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–137 adopted February 20, 2002 , and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6371 Filed 3–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–488; MM Docket No. 02–43, RM–10384]

Radio Broadcasting Services; Milan, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Don Davis proposing the allotment of Channel 270A at Milan, New Mexico, as the community's second local FM transmission service. Channel 270A can be allotted to Milan in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 270A Milan are 35–10–11 North Latitude and 107–53–24 West Longitude.

DATES: Comments must be filed on or before April 22, 2002, reply comments on or before May 7, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Don Davis, 809 Wellesley NE., Albuquerque, New Mexico 87106 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–43, adopted February 20, 2002, released March 1, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 270A at Milan.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6372 Filed 3–15–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 030702C]

RIN 0648–AM97

Fisheries of West Coast States and in the Western Pacific; Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) has submitted a Coral Reef Ecosystems Fishery Management Plan for the Western Pacific Region (CREFMP) for Secretarial review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CREFMP, an ecosystem-based plan, is intended to conserve and manage the coral reef ecosystems and associated habitats in the U.S. exclusive economic zones (EEZ) around American Samoa, Guam, Hawaii, Commonwealth of the Northern Mariana Islands (CNMI), and the remote U.S. Pacific island areas (PRIAs) in the Pacific Ocean. Its goal is to maintain sustainable coral reef fisheries while protecting stocks, habitat, protected species, and coral reef ecosystems from adverse impacts.

DATES: Comments on the CREFMP must be received no later than 5 p.m., Hawaii Standard Time May 17, 2002.

ADDRESSES: Written comments should be sent to Dr. Charles Karnella, Administrator, Pacific Islands Area Office, NMFS, 1161 Kapiolani Blvd, Suite 110, Honolulu, HI 96815. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, at (808) 522–8220. The CREFMP is available at the Council's website, www.wpcouncil.org.

SUPPLEMENTARY INFORMATION: As authorized under the Magnuson-Stevens Act, the Council has developed and submitted for Secretarial review a CREFMP and associated amendments to the fishery management plans for western Pacific bottomfish and seamount groundfish fisheries (Amendment 7), crustacean fisheries (Amendment 11), precious coral fisheries (Amendment 5,) and pelagic fisheries (Amendment 10). The CREFMP is an ecosystem-based fishery management plan that covers the coral reef ecosystems and adjacent marine habitats in the EEZ around American Samoa, Guam, Hawaii (main and Northwestern Hawaiian Islands or NWHI), CNMI, and the mostly uninhabited PRIAs. The PRIAs consist of Johnston and Palmyra Atolls, Kingman Reef, Jarvis, Howland, Baker and Wake Islands, and Midway Atoll. The vast majority of the total area covered by coral reefs under U.S. jurisdiction is located in the western Pacific region and would be covered by this FMP.

Development of the CREFMP began in 1996. The Council held scoping hearings in June 1999 to obtain public input on a new fishery management plan. On January 10, 2001, NMFS published a Notice of Availability (66 FR 1945) of a draft CREFMP. Public meetings and hearings were held on the draft CREFMP between January 16 and February 5, 2001. At its 110th meeting (June 21, 2001), the Council took final action on the FMP and approved its submission to NMFS for Secretarial review.

The conservation and management measures would: (1) Establish no-take marine protected areas (MPAs) (where the harvest of any management unit species listed under any FMP is prohibited) within Federal waters from 0-50 fathoms (fm) (0–50 91.5 m) (around French Frigate Shoals and Laysan Island (NWHI), Rose Atoll (American Samoa), the north half of Midway Atoll, Jarvis, Howland, and Baker Islands, and Kingman Reef (PRIAs), and from 0-10 fm throughout the remaining NWHI, except around Midway Atoll; (2) establish low-use MPAs (where the harvest of CREFMP management unit species is allowed on a case-by-case basis only after a review and determination that proposed activities would not harm the ecosystem) within Federal waters from 10–50 fm (18.3 m–91.5 m) around all other NWHI, and from 0–50 fm (0–91.5 m) around Palmyra, Johnston, and Wake, and the south half of Midway Atoll; (3) require special permits for the harvesting of any CREFMP management unit species in low-use MPAs, and for the harvesting of Potentially Harvested Coral Reef Taxa throughout the EEZ, except for (a) Incidental harvests by other western Pacific fisheries management plan permit holders and, (b) any harvest within three nautical miles (nm) of the CNMI; (4) restrict the use of fishing gear

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types to allow only the following gears for the directed harvest of any CREFMP management unit species throughout the EEZ: Hand harvest, spear, slurp gun, hand/dip net, hoop net for Kona crab, throw net, barrier net for aquarium fish, surround/purse net for targeted schools (e.g., akule, baitfish, weke) with a minimum of bycatch, hook-and-line (including powered and unpowered handlines, rod and reel, and trolling), traps (with conditions), and remote operating vehicles/submersibles; (5) prohibit nighttime spearfishing for CREFMP management unit species with SCUBA/hookah in the EEZ around the NWHI and PRIAs; (6) require that nets be attended at all times, except hoop nets for Kona crabs; (7) require that all traps on board a vessel must be permanently and legibly marked to identify the owner; (8) prohibit the take of live rock or live coral throughout the western Pacific EEZ, except for (a) incidental take by other fishery management plan permit holders, (b) take by indigenous people for traditional or ceremonial use, (c) use by aquaculture operations as seed stock, (d) science and management, and (e) bio-prospecting (note: takes of live coral or live coral under exceptions (b)-(e) require special permits); (9) require that all fishing vessels (including those permitted under fishery management plans for bottomfish/seamount ground fish, crustaceans, precious corals, pelagic) carry insurance as a condition for transiting or operating in all MPAs; (10) establish a no-anchoring zone on Guam's offshore Southern banks by fishing vessels greater than 50 ft (15.24 m) in length; (11) establish Federal reporting requirements (daily reports on catch, effort, discards, etc.) for special permit holders and transhipment permit holders, as well as notification requirements for vessel operators prior to entering any low-use MPA, or landing CREFMP management unit species harvested from these low-use MPAs; and (12) establish CREFMP framework procedures to facilitate implementation of future regulatory amendments.

The Council initially identified some measures for possible framework action: (a) Designating zones in the U.S. EEZ where mooring buoys will be installed to protect essential fish habitat (EFH) from anchor damage; (b) requiring fishing vessels to carry remote electronic vessel monitoring systems as part of an effective monitoring and enforcement system for State and Federal agencies; (c) requiring permits to fish for Currently Harvested Coral Reef Taxa throughout the EEZ, in the event that regional management is determined to be inadequate to protect the species and/or ecosystem; (d) transferring CREFMP management unit species from the Potentially Harvested Coral Reef Taxa list to the Currently Harvested Coral Reef Taxa list when sufficient information has been gathered; and (e) designating a percentage of low-use MPA waters for sole use by indigenous people.

The CREFMP also contains non-regulatory measures consistent with CREFMP objectives that would be undertaken by the Council outside of the regulatory regime. These include a process and criteria for EFH consultations; formal plan team coordination to identify and to address coral reef ecosystem impacts from existing fishery management plan fisheries; a system to facilitate consistent state and territorial level management; and research and education efforts.

[Note: Executive Order 13178 (December 4, 2000) and Executive Order 13196 (January 18, 2001) designated the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) in those ocean waters that lie within 50 nm of the NWHI, excluding state waters and waters within the boundaries of the Hawaiian Islands National Wildlife Refuge and the Midway Atoll National Wildlife Refuge. In compliance with Executive Order 13178 and Executive Order 13196, within the Reserve, NOAA is implementing a comprehensive management regime to govern fishing and protect coral reef resources. Because the CREFMP contains management measures governing activity in, among other areas, the same geographic area as the Reserve and several of those measures conflict with the management regime already existing pursuant to the NWHI Reserve established by Executive Order 13178 and Executive Order 13196, the Secretary of Commerce is likely to partially disapprove those parts of the CREFMP that govern fishing in the NWHI.]

Public comments on CREFMP must be received by May 17, 2002, to be considered by NMFS in the decision whether to approve the CREFMP. A proposed rule to implement CREFMP has been submitted for Secretarial review and approval. NMFS expects to publish and request comments on the proposed regulations to implement CREFMP in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6469 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 52

Monday, March 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–025–1]

Monsanto Co.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Cotton Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for cotton designated as Event 15985, which has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this cotton event presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 17, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comments (an original and three copies) to Docket No. 01–025–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 01–025–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–025–1" on the subject line.

You may read the petition, the environmental assessment, and any comments we receive on this notice of availability in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Plant Protection and Quarantine, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5141. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On December 7, 2000, APHIS received a petition (APHIS Petition No. 00–342–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum* L.) designated as Bollgard II CottonEvent 15985 (event 15985), which has been genetically engineered for resistance to certain lepidopteran insect pests. The Monsanto petition states that the subject cotton event should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, cotton event 15985 has been genetically engineered to express a Cry2Ab insecticidal protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (*Btk*). The petitioner states that the Cry2Ab protein is effective in providing protection from the feeding of lepidopteran insect pests such as tobacco budworm, pink bollworm, and cotton bollworm. The subject cotton event also expresses the β-D-glucuronidase (GUS) protein used as a selectable marker. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Particle acceleration technology was used to transfer the added genes into the recipient Delta and Pine Land Company variety 50B (DP50B). Cotton cultivar DP50B expresses a *Btk* Cry1Ac insecticidal protein and a NTPII selectable marker protein, and was developed from cotton event 531, which was deregulated by APHIS in 1995 (APHIS No. 94–308–01p).

Cotton event 15985 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This cotton event has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

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In section 403 of the Plant Protection Act (7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. Accordingly, Monsanto has submitted a request to EPA for registration of Cry2Ab as a plant-incorporated protectant.

When the use of the pesticide on the genetically modified plant would result in an increase in the residues in a food or feed crop for which the pesticide is currently registered, or in new residues in a crop for which the pesticide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. In response to the filing of Monsanto's pesticide petition, EPA has established a regulation for an exemption from the requirement of a tolerance for residues of *Btk* Cry2Ab and the genetic material necessary for its production in or on all raw agricultural commodities.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has begun consultation with FDA on the subject cotton event.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for Monsanto's cotton event 15985, an environmental assessment has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for determination of nonregulated status from interested persons for a period of 60 days from the date of this notice.

We are also soliciting written comments from interested persons on the environmental assessment prepared to examine any environmental impacts of the proposed determination for the subject cotton event 15985. The petition and the environmental assessment and any comments received are available for public review, and copies of the petition and the environmental assessment may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the environmental assessment and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's insect-resistant cotton event 15985 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6458 Filed 3–15–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Brown Darby Fuel Reduction Project EIS—Stanislaus National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to manage forest resources within and adjacent to the Darby Fire affected area, which burned 14,000 acres in September of 2001 (approximately 10,000 acres burned on lands administrated by the Forest Service). The project area is on the Calaveras Ranger District, Stanislaus National Forest, within Calaveras and Tuolumne Counties, California. The project area is located in the lower watersheds of the North and Middle Forks of the Stanislaus River, east of State Highway 4. It is bounded by private property on the east, west and north, the Middle Fork of the Stanislaus River on the south and the Calaveras Big Trees State park on the northeast.

DATES: Comments concerning the scope of the analysis should be received in writing on or before 10 days after publication of this notice in the **Federal Register.** While public participation in this analysis is welcome at any time, comments received within 10 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives. The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in April 2002.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** No date has yet been determined for filing the final EIS.

ADDRESSES: Send written comments to Rob Griffith, district Ranger, P.O. Box 500, Hathaway Pines, CA 95233 or call (209) 795–1381.

FOR FURTHER INFORMATION CONTACT: Kathy Aldrich, Planning Team Leader, (209) 795–1381; e-mail: *kaldrich@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Forest Service proposes to treat vegetative fuels on 3,620 acres within or adjacent to the Darby fire area. Treatments proposed include the removal of fire-damaged trees while they are merchantable and before they fall to the ground and accumulate to the point where the fuel loading is at an unacceptable level; thinning stands of live trees immediately adjacent to private property to remove undesirable fuels conditions such as fuel ladders; removal of brush that poses a fire hazard in areas adjacent to private property; removal of fire-killed trees and thinning of the remaining trees in 20 year old pine plantations; and prescribed burning to reduce fuel loading in areas with unacceptable fuel levels on the ground.

The purpose and need for the actions are to: (1) Reduce unacceptable vegetative fuel loading in the project area that current exists and remove sufficient vegetative material killed by the Darby Fire to prevent an unacceptable fuel buildup from fallen material; (2) provide for the rapid restoration of forest communities in areas that experienced a stand-replacing event by removing the fire-killed standing dead vegetation before it falls to the ground. Removal of this material while merchantable would allow for restoration activities to proceed quickly, meeting the goal of the Forest Plan to accelerate development of old forest characteristics; (3) contribute to a sustainable flow of products form these National Forest Lands; and (4) provide resource management in an economically efficient manner, i.e., minimize restoration costs in areas that experienced a stand-replacing event by minimizing the amount of fire-killed material that has deteriorated to the point that a service contract is necessary to have it removed to meet fuels objectives.

Preliminary issues and concerns include effects of treatments on water quality, wildlife habitat, soil quality, riparian areas, threatened/endangered species such as the red-legged frog, valley elderberry long-horn beetle and bald eagle, and Forest Service Sensitive species such as the California spotted owl and goshawk.

The EIS will tier to the Stanislaus National Forest Land and Resource Management Plan and EIS of 1991, as amended by the Sierra Nevada Forest Plan Amendment of 2001, which provide overall guidance for land management activities on the Stanislaus National Forest.

The Reviewers Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Responsible Official

The Responsible Official is the Forest Supervisor of the Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370. The Forest Supervisor will make a decision regarding this proposal considering the comments and response, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: March 12, 2002.

Daniel A. Young,

Acting Forest Supervisor—Stanislaus National Forest.

[FR Doc. 02–6379 Filed 3–15–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on April 15, 2002, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to agree on evaluation criteria, review project proposals, and select first projects.

DATES: The meeting will be held April 15, 2002, from 12:30 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Old business: meeting norms and roles; Committee administrative costs; (2) new business: subcommittee report out on format for project proposals and proposed evaluation criteria; review project proposals; vote on and select some projects; determine future subcommittee needs; (3) public comment; and (4) next meeting purpose. The meeting is open to the public. Those in attendance will be provided the opportunity to address the Committee.

Dated: March 11, 2002.

Ben Del Villar,

Forest Supervisor.

[FR Doc. 02–6380 Filed 3–15–02; 8:45 am]

BILLING CODE 3410–ED–M

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No.	Name, and location of stockyard	Date of posting
FL–103	Gainesville Livestock Market, Inc. Gainesville, Florida	March 1, 1960.
FL–106	Kissimmee Livestock Market, Inc. Kissimmee, Florida	Feb. 26, 1960.
FL–124	Tampa Horse Sales, Thonotosassa, Florida	May 13, 1977.
FL–137	John's Auction, Jacksonville, Florida	July 25, 1996.
GA–140	West Georgia Livestock Market, La Grange, Georgia	June 16, 1959.
GA–144	Metter Livestock Market, Metter, Georgia	May 13, 1959.
GA–145	Milan Livestock Market, Milan, Georgia	Aug. 27, 1959.
GA–155	Hub Junction Livestock Market, Covington, Georgia	June 1, 1959.
GA–158	Bulloch Stockyard, Statesboro, Georgia	May 14, 1959.
GA–209	Cordele Livestock, Inc., Cordele, Georgia	Jan. 25, 1991.
GA–210	Sandy Point Horse & Tack Auction, Lizella, Georgia	July 26, 1991.
GA–211	Thomson Stock & Auction Barn, Inc., Thomson, Georgia	Sep. 10, 1991.
GA–0217	Rocking Horse Ranch Livestock Auction, Poulan, Georgia	Oct. 24, 1996.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC, this 11th day of March 2002.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–6326 Filed 3–15–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 and A–580–816]

Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On September 11, 2001, the Department of Commerce ("Department") published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. The corrosion-resistant carbon steel flat products review covers four manufacturers and exporters of the subject merchandise, while the cold-rolled carbon steel flat products review covers three. The period of review for cold-rolled products is August 1, 1999 through December 31, 1999, and the period of review for corrosion-resistant products is August 1, 1999 through July 31, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (POSCO), Marlene Hewitt (Dongbu), Sara Ellerman (SeAH) and Mesbah Motamed (Union), or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3434 (Bolling), 202–482–1385 (Hewitt), 202–482–6134 (Ellerman), 202–482–1382 (Motamed) or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993. *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993). On August 16, 2000, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty orders for the 1999–2000 review period. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 65 FR 49962 (August 16, 2000). On August 31, 2000, respondents Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI")—(collectively, "the POSCO Group"), Dongbu Steel Co., Ltd ("Dongbu"), and Union Steel Manufacturing Co., Ltd. ("Union") requested that the Department conduct an administrative review of the antidumping duty orders on cold-rolled carbon steel flat products from Korea. In a separate letter on August 31, 2000, POSCO also requested partial revocation of the antidumping duty order of cold-rolled carbon steel flat products. On August 31, 2000, respondents Dongbu, Union, POSCO and SeAH Steel Corporation ("SeAH") requested that the Department conduct an administrative review of the antidumping duty orders on corrosion-resistant carbon steel flat products. On August 31, 2000, petitioners in the original less-than-fair-value ("LTFV") investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group, a Unit of USX Corporation) requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea: the cold-rolled respondents; Dongbu, POSCO, and Union; and the corrosion-resistant respondents; Dongbu, POSCO, SeAH, and Union. We initiated these reviews on September 26, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 58733 (October 2, 2000).

The Department revoked the antidumping order on cold-rolled carbon steel flat products from Korea pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i) of the Department's regulations, effective January 1, 2000. *See Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden*, 65 FR 78467 (December 15, 2000). The resulting POR for cold-rolled products is August 1, 1999 through December 31, 1999. The Department's revocation of the antidumping order for cold-rolled products renders POSCO's request for revocation moot.

On August 31, 2001, the Department issued the preliminary results of these administrative reviews. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review* 66 FR 47163, (September 11, 2001). The Department has completed these administrative reviews in accordance with section 751 of the Act.

On December 7, 2001 petitioners submitted case briefs for Union and Dongbu. Union, Dongbu, and SeAH also submitted case briefs on the same day. On December 14, 2001, petitioners submitted rebuttal briefs for Union and Dongbu, and Union and Dongbu submitted their own rebuttal briefs. On February 8, 2002, petitioners submitted comments for POSCO. POSCO submitted case briefs on the same day. On February 13, 2002, petitioners submitted rebuttal briefs for POSCO, and POSCO submitted its own rebuttal briefs.

Scope of the Reviews

The review of "certain cold-rolled carbon steel flat products" covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of "certain corrosion-resistant carbon steel flat products" covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and U.S.

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Customs purposes. The written descriptions remain dispositive.

Verification

From January 23 through January 25, 2002, the Department conducted a verification at the offices of POSCO in Pohang, Korea. For a description of the Department's findings, *see Memorandum from Catherine Bertrand to James Doyle*, dated February 5, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration to Faryar Shirzad, Assistant Secretary for Import Administration, dated March 11, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test for POSCO, Dongbu, and Union in these final results of review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov*. A summary of these adjustments is discussed below:

1. We adjusted respondents' indirect selling expense factors with respect to the deduction of imputed credit expense. *See* Comment 1 of the Decision Memo.

2. We additionally adjusted POSCO's indirect selling expense factor by disallowing its claimed long-term interest income offset. *See* Comment 2 of the Decision Memorandum.

3. We are excluding overruns from the calculation of Union's normal value. *See* Comment 7 of the Decision Memorandum.

Final Results of the Reviews

We determine that the following percentage weighted-average margins exist for the reviewed companies during the period August 1, 1999, through December 31, 1999 (for cold-rolled products) or August 1, 1999, through July 31, 2000 (for corrosion resistant products):

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-average margin
Dongbu	4.09
The POSCO Group	3.06
Union	1.05

CERTAIN CORROSION-RESISTANT CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-average margin
Dongbu	0.26
SeAH	0
The POSCO Group	0.64
Union	1.31

The Department shall determine, and the U.S. Customs Service ("Customs") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 17.70 percent (for certain corrosion-resistant carbon steel flat products). This rate is the "all others" rates from the LTFV investigation. *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993). As the Department revoked the anti-dumping order on cold-rolled carbon steel flat products from Korea pursuant to section 751(d)(2) of the Act, effective January 1, 2000, there is no longer suspension of liquidation or cash deposit requirements for entries of that merchandise.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Issues in Decision Memorandum

Comments and Responses

General Comments

1. Calculation of Indirect Selling Expenses.

Company-Specific Comments

Pohang Iron and Steel Co., Ltd. ("POSCO"), Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI") (collectively, "POSCO Group")

2. Long-term Interest Income Offset

3. Calculation of Total Sales in the Indirect Selling Expense Ratio Denominator

4. Home Market Credit

5. Overruns

Dongbu Steel Co., Ltd. ("Dongbu")

6. Allocation of U.S. Indirect Selling Expenses

Union Steel Manufacturing Co., Ltd. ("Union")

7. Inclusion of Overruns in the Calculation of Normal Value.

[FR Doc. 02–6474 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal from Brazil: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: We are amending our final results of the 1999–2000 administrative review of the antidumping duty order on silicon metal from Brazil, published on February 12, 2002 (67 FR 6488), to reflect the correction of ministerial errors made in the final results. The period covered by these amended final results of review is July 1, 1999 through June 30, 2000.

EFFECTIVE DATE: March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–5831.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background:

On August 6, 2001, the Department of Commerce (the Department) published the preliminary results of the 1999–2000 administrative review of the antidumping duty order on silicon metal from Brazil. The Department published the final results of review on February 12, 2002. See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002) (Final Results).

On February 25, 2002, we received timely allegations from Companhia Brasileira Carbureto de Calcio (CBCC) (a respondent) that the Department made ministerial errors in the final results of review regarding CBCC. On February 25, 2002, we received timely allegations from American Silicon Technologies and Elkem Metals Company (collectively petitioners) that the Department made ministerial errors in the final results of review regarding the "all others" rate. On March 4, 2002, we received a timely reply from petitioners regarding CBCC's ministerial error comments.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Amendment of Final Results

Comment 1: CBCC states that the Department erroneously applied adverse facts available (AFA) to the shipment date of one of its U.S. sales. CBCC contends that although the Department intended to use the date of the invoice to calculate the imputed U.S. credit expense for this sale, the Department erroneously applied AFA to the shipment date. CBCC urges the Department to correct this ministerial error.

Department's Position: After a review of CBCC's allegation, we agree with CBCC and have corrected this matter in the margin calculation program. See Memorandum to The File through Thomas F. Futtner from Maisha Cryor: Companhia Brasileira Carbureto De Calcio: Calculations for the Amended Final Results of the 1999–2000 Antidumping Duty Administrative Review of Silicon Metal From Brazil, March 11, 2002. We note that correcting this error has no effect on the outcome of CBCC's margin.

Comment 2: CBCC contends that the Department mistakenly used a simple interest formula to calculate CBCC's imputed credit expense in the home market. CBCC notes that although it is making this allegation, the comment is also applicable to the margin calculations of Rima Industrial SA (Rima), Companhia Ferroligas Minas Gerais – Minasligas (Minasligas) and Ligas de Aluminia S.A. (LIASA), the other respondents in this review. CBCC contends that where interest is calculated on a daily basis, a compound, not simple, interest formula should be used. CBCC argues that where the interest rate is high, such as in Brazil, only the compound interest formula yields the true cost of money and is the only method used in day-to-day commercial transactions. CBCC urges the Department to correct this matter in CBCC's, as well as the other respondents, home market credit calculations.

Petitioners disagree with CBCC. Petitioners argue that because the Department had no intention of applying a compound interest formula, the Department's use of a simple interest formula was a deliberate choice of methodology and not a ministerial error.

Department's Position: After a careful review of CBCC's allegation, we have concluded that it does not merit treatment as a ministerial error under sections 19 CFR 351.224(f) and (g) of the

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Department's regulations. Section 351.224(f) of the Department's regulations defines ministerial error as "* * * an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." Because the formula used in the Department's calculation of home market credit expense in the Final Results was intentional, CBCC's allegation does not fall under sections 19 CFR 351.224(f) and (g) of the Department's regulations. See Memorandum to The File through Thomas F. Futtner from Maisha Cryor: Companhia Brasileira Carbureto De Calcio: Calculations for the Final Results of the 1999–2000 Antidumping Duty Administrative Review of Silicon Metal From Brazil, February 4, 2002. Therefore, we have not amended the interest formula that was used to calculate home market credit expense in the Final Results.

Comment 3:

Petitioners contend that the Department published the wrong "all others" rate in the Final Results. Petitioners state that in the Final Results, the "all others" rate is 8.10%, while the "all others" rate in the antidumping duty order on silicon metal from Brazil is 91.06%. Petitioners assert that, pursuant to Policy Bulletin 93.1, the Department's policy holds that the "all others rate shall be the all others rate contained in the order."

Department's Position: We agree with petitioners that we mistakenly referred to the "all others" rate as 8.10 percent in the Final Results. Therefore, we have corrected the "all others" rate to reflect 91.06 percent, which is the "all others" rate from the less than fair value investigation.

Amended Final Results

We are amending the final results of the antidumping duty administrative review of silicon metal from Brazil to reflect the corrections of the above-cited ministerial errors. These corrections are in accordance with section 751(h) of the Act and 19 CFR 351.224 of the Department's regulations. These corrections did not change any of the company-specific margins published in the Final Results. We are also correcting the stated "all others" rate which is 91.06 percent.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6473 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Structural Steel Beams From the Republic of Korea: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On November 14, 2001, the Department of Commerce ("Department") published the notice of preliminary results of its changed circumstances review examining whether INI Steel Company ("INI") is the successor-in-interest to Inchon Iron & Steel Co., Ltd. ("Inchon") by virtue of its name change. *See Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Structural Steel Beams from the Republic of Korea*, 66 FR 57035 (November 14, 2001) ("*Preliminary Results*"). We have now completed this changed circumstances review in accordance with 19 CFR 351.216 and 351.221(c)(3).

As a result of this review, the Department finds that INI is the successor-in-interest to Inchon, and INI should retain the deposit rate assigned to Inchon by the Department for all entries of the subject merchandise produced or exported by INI.

EFFECTIVE DATE: March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2667 and (202) 482–4243, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2001, the Department initiated this changed circumstances review. *See Structural Steel Beams from the Republic of Korea: Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 49929 (October 1, 2001) ("*Notice of Initiation*"). On November 14, 2001, the Department published the preliminary results of its changed circumstances review in the above-named case. *See Preliminary Results* (66 FR 57035). We gave interested parties 21 days to comment on our preliminary results. However, no interested parties have provided comments and no request for a hearing was received by the Department.

Scope of the Review

The products covered by this review include structural steel beams that are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Successorship and Final Results of Review

On the basis of the record developed in this proceeding of the changed circumstances review, we determine INI to be the successor-in-interest to Inchon for purposes of determining antidumping duty liability. For a complete discussion of the basis for this decision see the *Preliminary Results* (66 FR 57035). Therefore, INI shall retain the antidumping duty deposit rate assigned to Inchon by the Department in the most recent administrative review of the subject merchandise.

This notice also serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6472 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 88–5A012.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to the National Tooling & Machining Association ("NTMA") on March 7, 2002. The original Certificate was issued on October 18, 1988 (53 FR 43140, October 25, 1988) and previously amended on December 4, 1989 (54 FR 51914, December 19, 1989); September 2, 1993 (58 FR 47868, September 13, 1993); May 3, 2000 (65 FR 30073, May 10, 2000); and April 5, 2001 (66 FR 21335, April 30, 2001).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

NTMA's Export Trade Certificate of Review has been amended so that the attached list will constitute the "Members" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)).

The effective date of the amended certificate is December 12, 2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 12, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

21st Century Tool & Die, Inc., Waynesboro, TN
3 M MTC, Petaluma, CA
4 Axis Machining, Inc., Denver, CO
A–1 Precision Metal Products, Phoenix, AZ
A & A Industries, Inc., Peabody, MA
A & A Machine Company, Inc., Southampton, PA
A & A Machine Shop, Inc., La Marque, TX
A & B Machine, Van Nuys, CA
A & B Machine Shop, Rockford, IL
A & B Tool & Manufacturing Corp., Toledo, OH
A & D Precision, Fremont, CA
A & E Custom Manufacturing, Technologies, Inc., Kansas City, KS
A & E Machine Shop, Inc., Lone Star, TX
A & G Machine, Inc., Auburn, WA
A & S Tool & Die Company, Inc., Kernersville, NC
A A Precisioneering, Inc., Meadville, PA
A B A Division, A B A–P G T, Inc., Manchester, CT
A B C O Tool & Engineering, Phoenix, AZ
A B Heller, Inc., Milford, MI
A B N Industrial Co., Inc., Buena Park, CA
A B R Enterprises Inc., South Pasadena, CA
A C Machine, Inc., Akron, OH
A E Cole Die & Engraving, Columbus, OH
A E Machine Works, Inc., Houston, TX
A F C Tool Company, Inc., Subsidiary of F C Industries, Dayton, OH
A I M Tool & Die, Grand Haven, MI
A M C Precision, Inc., N. Tonawanda, NY
A M Design, E. Canton, OH
A M Machine Company, Inc., Baltimore, MD
A Mfg., Redlands, CA
A S C Corporation, Owings Mills, MD
A-Line Tool & Die, Inc., Louisville, KY
A–G Tool & Die, Div. of Seilkop Industries, Inc., Miamitown, OH
A–RanD, Inc., Phoenix, AZ
A & B Aerospace, Inc., Azusa, CA
A. C. Grinding & Supply Co. Inc., Levittown, PA
A. C. Cut-Off, Inc., Azusa, CA
A+ Engineering, Ipswich, MA
Abbott Tool, Inc., Toledo, OH
Abbott Machine & Tool, Inc., Toledo, OH
Ability Tool Company, Rockford, IL
Able Wire EDM, Inc., Brea, CA
Abrams Airborne Manufacturing, Inc., Tucson, AZ
Absolute Turning & Machine, Tucson, AZ
Absolute Manufacturing, N. Chelmsford, MA
Absolute Grinding Co., Inc., Mentor, OH
Acadiana Hydraulic Works, Inc., New Iberia, LA
Accu-Roll, Inc., Rochester, NY
Accu Die & Mold Inc., Stevensville, MI
AccuCraft, New Haven, MO
Accudynamics, Inc., Middleboro, MA
Accudyne Aerospace & Defense, Palm Bay, FL
Accura Industries, Inc., Rochester, NY
Accurate Grinding & Mfg. Corp., & Accurate Fishing Products, Los Angeles, CA
Accurate Grinding Corp., Warwick, RI
Accurate Machine Co. Inc., Indianapolis, IN
Accurate Machining, Mukilteo, WA
Accurate Manufacturing Company, Glendale, CA
Accurate Products Co., Tucson, AZ
Accurate Marking Products, Inc., Pittsburgh, PA
Accurite Machine & Mfg. Inc., Louisville, KY
Accutronics, Inc., Littleton, CO
Ace Specialty Company, Inc., Tonawanda, NY
Ace Manufacturing Company, Cincinnati, OH
Ackley Machine Corporation, Moorestown, NJ
Acklin Stamping, Toledo, OH
Acme/Walton Machine & Tool, Inc., Louisville, KY
Acme Metal Works, Gilbert, AZ
ACMT, Inc. dba A C Tool & Machine, Co., Louisville, KY
Acraloc Corporation, Oak Ridge, TN
Acro Industries, Inc., Rochester, NY
Acro Tool & Die Company, Inc., Akron, OH
Actco Tool & Mfg. Co., Meadville, PA
Action Die & Tool Inc., Wyoming, MI
Action Mold & Tool Co., Anaheim, CA
Action Precision Grinding Inc., North Tonawanda, NY
Action SuperAbrasive Products, Brimfield, OH
Action Tool and Manufacturing, Inc., Rockford, IL
Action Machine L.L.C., Phoenix, AZ
Action E.D.M. & Tool Inc., Concord, NC
Acucut, Inc., Southington, CT

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Acutec Precision Machining Inc., Saegertown, PA
Ada Machine Company, Inc., Santa Clara, CA
Adams Engineering, Division of Manufacturing Technology, Inc., South Bend, IN
Adaptive Technologies Inc., Springboro, OH
Addison Precision Mfg. Corp., Rochester, NY
Adena Tool Corporation, Dayton, OH
Admill Machine Company, Newington, CT
Adron Tool Corporation, Menomonee Falls, WI
Advance Manufacturing Corp., Cleveland, OH
Advance Manufacturing Technology, Salt Lake City, UT
Advanced Ceramic Technology, Orange, CA
Advanced Composite Products & Technology, Inc. (ACPT Inc.), Huntington Beach, CA
Advanced Cutting Tools, Inc., Clio, MI
Advanced Machine Programming, Morgan Hill, CA
Advanced Machining Corporation, Salisbury, NC
Advanced Measurement Labs, Inc., Sun Valley, CA
Advanced Mold & Tooling Inc., Rochester, NY
Advanced Tooling Specialists Inc., Menasha, WI
Advanced Tooling Systems, Inc., Comstock Park, MI
Advanced Product Design Specialties, Riverside, CA
Advanced Machine Inc., Rochester, NY
Advanced Precision Engineering, Ipswich, MA
Advantage Mold & Design, Meadville, PA
Aero Comm Machining, Wichita, KS
Aero Design & Manufacturing Co., Phoenix, AZ
Aero Engineering & Mfg. Company, Valencia, CA
Aero Gear, Inc., Windsor, CT
Aero Machining Company, Garden Grove, CA
Aero Mechanical Engineering, Inc., Huntington Beach, CA
Aero-Tech Engineering, Inc., Wichita, KS
Aerofab, Inc., Tucson, AZ
Aerostar Aerospace Inc., Phoenix, AZ
Aetna Machine Company, Cochranton, PA
Aggressive Tool & Die, Inc., Buckner, KY
Aggressive Tool & Die, Inc., Coopersville, MI
Agrimson Tool Company, Brooklyn Park, MN
Ahaus Tool & Engineering, Inc., Richmond, IN
Aimco Precision, Inc., Phoenix, AZ
Airmetal Corporation, Jackson, MI
Ajax Tool, Inc., Fort Wayne, IN
Akro Tool Co., Inc., Cincinnati, OH
Akron Steel Fabricators Company, Akron, OH
Akron Tool & Die Company, Inc., Akron, OH
Alart Tool & Die, Inc., Houston, TX
Albert Seisler Machine Corp., Mohnton, PA
Albertson & Hein, Inc., Wichita, KS
Albion Machine & Tool Company, Albion, MI
Alco Manufacturing, Inc., Santa Ana, CA
Alfred Manufacturing Company, Denver, CO
Alger Machine Company, Inc., Rochester, NY
Alignment Engineering Co., Inc., Knoxville, TN
ALKAB Contract Manufacturing, Inc., New Kensington, PA
All Tool Company, Union, NJ
All Tools Company, Oklahoma City, OK
All Tools Texas, Inc., Houston, TX
All Weld Machine, Milpitas, CA
All-Tech Machine & Eng., Inc., San Jose, CA
All-Tech Machining, Inc., Wilmer, AL
All Five Tool Company, Inc., Bristol, CT
Allen Precision Industries, Inc., Asheboro, NC
Allen Precision Machining Co., Angleton, TX
Allen Randall Enterprises, Inc., Akron, OH
Allen Aircraft Products, Inc., Ravenna, OH
Alliance Machine Tool Co., Inc., Louisville, KY
Allied Screw Products, Inc., Mishawaka, IN
Allied Tool & Die Company, LLC, Phoenix, AZ
Allied Tool & Die, Inc., Cleveland, OH
Allied Tool & Machine Company, Kernersville, NC
Allied Tool & Machine, Inc., Saginaw, MI
Allied Tools Of Texas, Houston, TX
Allied Mechanical Products, Ontario, CA
Alloy Metal Products, Hayward, CA
Allstate Tool & Die, Inc., Rochester, NY
Almar Mfg. & Engineering, Inc., Garden Valley, CA
Alpha Mold, LLC, Huber Heights, OH
Alpha Precision Machining Inc., Kent, WA
Alpha Tool & Machine Company, Bellmawr, NJ
Alpha Tooling, Inc., Santa Fe Springs, CA
Alpha Mold West Inc., Broomfield, CO
Alpine Precision, Inc., North Billerica, MA
Alro Specialty Metals, St. Louis, MO
Alt's Tool & Machine, Inc., Santee, CA
Alton Products, Inc., Maumee, OH
Alves Precision Engineered, Products Inc., Watertown, CT
AMA Plastics, Corona, CA
Amatrol, Inc., Jeffersonville, IN
Ambel Precision Mfg. Corp., Bethel, CT
American Mfg. & Machining, Inc., Racine, WI
American Precision Machining, Inc., Phoenix, AZ
American Precision Technologies, Inc., San Fernando, CA
American Tool & Die, Inc., Toledo, OH
American Wire EDM, Inc., Orange, CA
American Metal Masters, Inc., Plantsville, CT
American Machine & Gundrilling, Co., Inc., Maple Grove, MN
Amerimold, Inc., Mogadore, OH
Ameritech Die & Mold, Inc., Mooresville, NC
Amity Mold Company, Tipp City, OH
AMS Production Machining Inc., Plainfield, IN
Anchor Tool & Die Company, Cleveland, OH
Anchor Lamina Inc., Madison Heights, MI
Anders Machine and Engraving, Div. of Ad-Tech Machine & Tool, Rochester, NY
Anderson Tool & Engineering Co., Inc., Anderson, IN
Andrew Tool Company, Inc., Plymouth, MN
Anglo-American Mold, Inc., Louisville, KY
Anmar Precision Components Inc., North Hollywood, CA
Anmark Machine, Tempe, AZ
Anoplate Corporation, Syracuse, NY
Apex Tool & Manufacturing, Inc., Evansville, IN
Apex Precision Technologies, Inc., Camby, IN
Apex Machine Company, Ft. Lauderdale, FL
Apex Machine Tool Company, Farmington, CT
Apollo Products Inc., Willoughby, OH
Apollo E.D.M. Company, Fraser, MI
Apollo Precision, Inc., Plymouth, MN
Applegate EDM, Inc., Dallas, TX
Applied Technology Manufacturing, Corp., Owego, NY
Applied Technology Manufacturing, Inc., Rochester, NY
Applied Engineering, Inc., Yankton, SD
AR Industries Inc., Cincinnati, OH
Aram Precision Tool & Die, Inc., Chatsworth, CA
Arc Drilling Inc., Garfield Heights, OH
Arca Systems, Tacoma, WA
Arco Metals Corporation, Baltimore, MD
Arco Industries, Inc., Dayton, OH
Ardekin Machine Company, Rockford, IL
Area Tool & Manufacturing, Inc., Meadville, PA
Aremco, Inc., Grand Rapids, MN
ARG Manufacturing Corp., Arlington, TX
Argo Tool Corporation, Twinsburg, OH
Aries Tool, Inc., New Berlin, WI
Arkansas Tool & Die, Inc., North Little Roc, AR
Arlington Machine & Tool Company, Fairfield, NJ
Arma Tool & Die Company, Inc., Ridgefield, CT
Armin Tool & Manufacturing Co., Inc., South Elgin, IL
Armstrong-Blum Mfg. Co., Mt. Prospect, IL
Armstrong Machine Works, Inc., Rogersville, TN
Armstrong Mold, Machining Div., East Syracuse, NY
Armstrong Technology, Inc., Sunnyvale, CA
Arnett Tool, Inc., New Paris, OH
Arnette Pattern Company/Midwest, Machining & Fabricating, Granite City, IL
Arrington Supply House, Inc., Tuscaloosa, AL
Arro Tool & Die, Inc., Lakewood, NY
Arrow Grinding, Inc., Tonawanda, NY
Arrow Diversified Tooling, Inc., Ellington, CT
Arrow Sheet Metal Products Co., Denver, CO
Arthur J. Evers Corporation, Riverton, NJ
Artisan Machining, Inc., Bohemia, NY
Artisan Associates, Detroit, MI
Ascension Industries, North Tonawanda, NY
Ash Machine Corporation, Pataskala, OH
Aspen Precision Technologies, Inc., Petaluma, CA
Associated Toolmakers, Inc., Keokuk, IA
Associated Technologies, Brea, CA
Associated Electro-Mechanics, Inc., Springfield, MA
Astley Precision Machine Co., Irwin, PA
Astro Machine Works Inc., Ephrata, PA
Astro Automation, Inc., Irwin, PA
Astrotronics Inc., Mesa, AZ
Atec Engineering, Phoenix, AZ
Athens Industries, Southington, CT
Atkins Tool Company, Riverton, NJ
Atlantic Tool & Die Company, Strongsville, OH
Atlantic Precision Products Inc., Sanford, ME
Atlas Tool, Inc., Roseville, MI
Atlas Machine & Supply, Inc., Louisville, KY
August Machine, Inc., Phoenix, AZ
Austin Machine Company Inc., O'Fallon, MO
Austro Mold Incorporated, Rochester, NY
Autocam Corporation, Kentwood, MI
Automated EDM Incorporated, Ramsey, MN
Automated Cells & Equipment, Inc., Painted Post, NY

Automatic Stamp Products, Inc., Cleveland, OH
Automation Technology, Inc., St. Louis, MO
Automation Tool & Die, Inc., Brunswick, OH
Automation Tool Company, Cookeville, TN
Avanti Engineering & Manufacturing, Inc., Greensburg, PA
Axian Technology, Phoenix, AZ
Axis Mfg. Inc., Tempe, AZ
Ay-Mac Precision, Inc., Yorba Linda, CA
Ay Machine Company, Ephrata, PA
b & b Tool Company, Inc., Rockford, IL
B & A Design Inc., Vernon, CT
B & B Machine & Grinding Service, Denver, CO
B & B Manufacturing Company, Largo, FL
B & B Precision Mfg., Inc., Avon, NY
B & E Tool Company, Inc., Southwick, MA
B & G Quality Machine & Tool, Company, Inc., Baltimore, MD
B & H Fabricators, Inc., Wilmington, CA
B & H Tool Co. Inc., San Marcos, CA
B & H Tool Works, Inc., of Rockcastle Co., Richmond, KY
B & K Engineering, Inc., Mountain View, CA
B & L Tool and Machine Company, Plainville, CT
B & M Machine Corporation of Racine, Racine, WI
B C D Metal Products Inc., Malden, MA
B J Williams Machining Co., Edinboro, PA
B–W Grinding Service, Inc., Houston, TX
B. Radtke & Sons, Inc., Round Lake Park, IL
Bachman Machine Company, Inc., St. Louis, MO
Bachmann Precision Machine, Products Corp., South El Monte, CA
Badge Machine Products, Inc., Canandaigua, NY
Bahrs Die & Stamping Company, Inc., Cincinnati, OH
Baker Hill Industries, Inc., Coral Springs, FL
Banner Machine Inc., Phoenix, AZ
Barberie Mold, Gardena, CA
Bardons & Oliver, Inc., Solon, OH
Barile Precision Grinding Inc., Cleveland, OH
Barnes Aerospace-Apex Mfg., Phoenix, AZ
Basic VI, San Jose, CA
Bass Machining Inc., Baltimore, MD
Bateman Manufacturing Co., Inc., Hayward, CA
Baumann Engineering, Claremont, CA
Bawden Industries, Inc., Romulus, MI
Baxter Machine Products, Inc., Huntingdon, PA
Bayport Machine, Inc., La Porte, TX
Beach Mold & Tool, Inc., New Albany, IN
Beacon Tool Company, Inc., Whittier, CA
Beaver Tool & Machine Company, Inc., Feasterville, PA
Bechler Cams, Inc., Anaheim, CA
Becker, Inc., Kenosha, WI
Beckett Gas, Inc., North Ridgeville, OH
Becksted Machine, Inc., Tucson, AZ
Bedard Machine, Inc., Brea, CA
Bel-Kur, Inc., Temperance, MI
Belco Tool & Mfg. Inc., Meadville, PA
Belgian Screw Machine Products, Inc., Concord, MI
Bell Engineering, Inc., Saginaw, MI
Bellco Precision Manufacturing, Inc., Melissa, TX
Beloit Precision Die Co. Inc., Beloit, WI
Benchmark Engineering, Inc., Chandler, AZ
Benda Tool & Model Works, Hercules, CA
Bendon Gear Machine, Rockland, MA
Bennett Tool & Die Company, Nashville, TN
Bennett Tool & Machine, Fremont, CA
Benning Inc., Blaine, MN
Bent River Machine Inc., Clarkdale, AZ
Berman Tool & Die, Waldorf, MD
Bermar Associates, Inc., Troy, MI
Bertram Tool & Machine Co., Inc., Farrell, PA
Bertrand Products, Inc., South Bend, IN
Best Tool & Manufacturing Co., Inc., Kansas City, MO
Best Way Stamping Inc., La Mirada, CA
Bestway Industries, Inc., Cleveland, OH
Beta Machine Co. Inc., Cleveland, OH
Beta Tool & Mold/Dyna-Tech, Wadsworth, OH
Bilar Tool & Die Corporation, Warren, MI
Billet Industries, Inc., York, PA
Bishop Steering Technology, Inc., Indianapolis, IN
Black Creek, Inc., Gadsden, AL
Blackburn Melton Mfg. Company, Houston, TX
Blackwood Grinding Inc., Hurst, TX
Blandford Machine & Tool Co., Inc., Louisville, KY
Blue Chip Mold, Inc., Rochester, NY
Blue Chip Tool Company, Inc., New Castle, PA
Bluegrass Forging, Tool & Die, Shelbyville, KY
bmc Industries, Bakersfield, CA
BMCO Industries Inc., Cranston, RI
Bob's Tool & Cutter Grinding, Inc., Indianapolis, IN
Boice Industrial Corporation, Ruffsdale, PA
Bolt Industries, LLC., Phoenix, AZ
Boring, Inc., Rockford, IL
Bosma Machine & Tool, Corporation, Tipp City, OH
Boss Tool and Manufacturing, Inc., Fremont, CA
Boston Centerless Inc., Woburn, MA
Bourdelais Grinding Co., Inc., Chatsworth, CA
Bowden Manufacturing Corp., Willoughby, OH
Boyce Machine, Inc., Cuyahoga Falls, OH
Boyle, Inc., Freeport, PA
BPS Industries Inc., Baltimore, MD
Bra-Vor Tool & Die Company, Inc., Meadville, PA
Bradford Machine Company Inc., Brattleboro, VT
Bradhart Products, Inc., Brighton, MI
Bramko Tool & Engineering, Inc., O'Fallon, MO
Bratt Machine Company Inc., No. Andover, MA
Brij Systems, Wichita, KS
Brimar Products, Inc., Fontana, CA
Brinkman Tool & Die, Inc., Dayton, OH
Britt Tool, Inc., Brazil, IN
Brittain Machine, Inc., Wichita, KS
Broadway Companies, Inc., Englewood, OH
Brogdon Tool & Die, Inc., Blue Springs, MO
Brookfield Machine, Inc., West Brookfield, MA
Brooklyn Scraping & Re-Machining, Inc., W. Lafayette, IN
Brooklyn Machine & Mfg. Co., Inc., Cuyahoga Heights, OH
Brown-Covey, Inc., Kansas City, MO
Brownes' Machining, LLC., Sharon, TN
Brownstown Quality Tool & Design, Brownstown, IN
BSB Products Corporation, Buffalo, NY
BT Laser, Inc., Santa Clara, CA
Budney Overhaul & Repair, LTD., Berlin, CT
Buerk Tool & Machine Corporation, Buffalo, NY
Buiter Tool & Die, Inc., Grand Rapids, MI
Bundy Manufacturing, Inc., El Segundo, CA
Burckhardt America, Inc., Greensboro, NC
Burco Precision Products, Inc., Denton, TX
Burger Engineering, Inc., Olathe, KS
Burgess Brothers, Inc., Canton, MA
Burton Industries, Inc., Mentor, OH
C & C Machine Company, Akron, OH
C & C Manufacturing Corporation, Englewood, CO
C & G Machine & Tool Co., Inc., Granby, MA
C & J Industries, Inc., Meadville, PA
C & M Machine Products, Inc., Willoughby, OH
C & R Manufacturing, Inc., Shawnee, KS
C & S Machine & Manufacturing Corporation, Louisville, KY
C A R Engineering & Mfg., Victor, NY
C B Enterprises, Division of Whiteledge, Inc., Manchester, CT
C B Kaupp & Sons, Inc., Maplewood, NJ
C B S Manufacturing Company, Inc., Windsor, CT
C D M Tool & Mfg. Co., Inc., Hartford, WI
C F A Company, Inc., Milford, CT
C J Winter Machine Technologies, Inc., Rochester, NY
C K Tool, Harborcreek, PA
C M Gordon Industries, Inc., Santa Fe Springs, CA
C M Industries, Inc., d/b/a Custom Marine, Inc., Old Saybrook, CT
C N C Machine & Engineering Corporation, Colorado Springs, CO
C N C Precision Machining, Inc., Comstock Park, MI
C T D Machines, Inc., Los Angeles, CA
C V Tool Company, Inc., Southington, CT
C–P Mfg. Corp., Van Nuys, CA
C & C Precision Machining Inc., Mesa, AZ
C-Axis Inc., Hamel, MN
C. G. Tech, Inc., Phoenix, AZ
C.N.C. Tool & Mold, Naples, FL
Caco Pacific Corporation, Covina, CA
Cadco Program & Machine, St. Charles, MO
Cal-Weld, Fremont, CA
Calder Machine Co. (C M C), Florence, SC
California Mold, Fullerton, CA
California Machine Specialties, Chino, CA
Calmax Technology, Inc., Santa Clara, CA
Cambridge Specialty Company, Inc., Kensington, CT
Cambridge Tool & Die Corp., Cambridge, OH
Cameron Machine Shop, Inc., Richardson, TX
Campbell Grinding & Machine, Inc., Lewisville, TX
Campro Manufacturing, Inc., Phoenix, AZ
CamTech Systems, Inc., Alhambra, CA
Canto Tool Corporation, Meadville, PA
Capitol Technologies, Inc., South Bend, IN
Capitol Tool & Die, L. P., Madison, TN
Carbi-Tech, Inc., Vandergrift, PA
Carbide Probes, Inc., Dayton, OH
Carboloy, Inc., Warren, MI
Cardinal Machine Company, Inc., Strongsville, OH
Carius Tool Co., Inc., Cleveland, OH
Carlin Machine Company, Inc., Southborough, MA
Carlson Capital Manufacturing Co., Rockford, IL

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Carlson Tool & Manufacturing Corp., Cedarburg, WI
Casale Engineering, Santa Fe Springs, CA
Cascade Mold & Die, Inc., Portland, OR
Cass Screw Machine Products Company, Brooklyn Center, MN
Catalina Tool & Mold, Inc., Tucson, AZ
Cates Machine Shop, Inc., Tyler, TX
Cavalry Precision Machine, Inc., Largo, FL
CB Quality Machining & Engineering Inc., Buffalo, MN
CDL Manufacturing, Inc., Rochester, NY
Cee-San Machine & Fabrication Co., Inc., Houston, TX
Centaur Tool & Die, Inc., Bowling Green, OH
Centennial Technologies, Inc., Saginaw, MI
Center Line Industries, Inc., West Springfield, MA
Center Line Machine Company, Lafayette, CO
Center Line Tool, Freeport, PA
Central Mass. Machine, Inc., Holyoke, MA
Central States Machine Service, Elkhart, IN
Central Tool & Machine Co., Inc., Bridgeport, CT
Central Tools, Inc., Cranston, RI
Century Die Company, Fremont, OH
Century Mold Company, Inc., Rochester, NY
Century Tool & Engr., Inc., Indianapolis, IN
Certified Grinding & Machine, Inc., Rochester, NY
Certified Industries, II, LLC, Phoenix, AZ
CG Manufacturing Company, Willoughby, OH
Chadakoin Interactive, Rochester, NY
Challenger Worldwide, Inc., Phoenix, AZ
Chalmers & Kubeck, Inc., Aston, PA
Chamtek Mfg., Inc., Rochester, NY
Chance Tool & Die Co., Inc., Cincinnati, OH
Chandler Tool & Design Inc., Rockford, IL
Chapman Engineering, Inc., Santa Ana, CA
Charmilles Technologies Corporation, Lincolnshire, IL
Chase Machine & Mfg. Co., Rochester, NY
Chelar Tool & Die, Inc., Belleville, IL
Cherokee Industries, Hampshire, IL
Cherry Valley Tool & Machine Inc., Belvidere, IL
Chicago Mold Engineering Co., Inc., St. Charles, IL
Chicago Grinding & Machine Co., Melrose Park, IL
Chickasha Manufacturing Company, Inc., Chickasha, OK
Chippewa Tool & Manufacturing Co., Woodville, OH
CHIPSCO, Inc., Meadville, PA
Chopper Guys Biker Products, Inc.,Vallejo, CA
Christie Manufacturing, Inc., Gainesville, TX
Christopher Tool & Manufacturing, Solon, OH
Cindex Industries Inc., Ludlow, MA
Circle-K-Industries, K-Form Inc., Sterling, VA
CitiCapital Dealer Finance, Kennesaw, GA
Clarion Tech. Caledonia Tool, Caledonia, MI
Clark-Reliance Corporation, Strongsville, OH
Clark Automation Manufacturing Company, Inc., Pleasanton, CA
Clarke Engineering, Inc., Clarke Gear Co., North Hollywood, CA
Class Machine & Welding, Inc., Akron, OH
Classic Tool, Inc., Macedonia, OH
Classic Tool, Inc., Saegertown, PA
Clay & Bailey Mfg. Co., Kansas City, MO
Cleveland Electric Laboratories Company, Inc., Twinsburg, OH
Clifton Automatic Screw. Machine Products, Inc., Lake City, PA
Cloud Company, San Luis Obispo, CA
CNC Precision Manufacturing, Inc., Farmers Branch, TX
Coast Cutters Company, Inc., South El Monte, CA
Coastal Machine Company, Branford, CT
Cobak Tool & Manufacturing Co., St. Louis, MO
Coffey Associates, Washington, DC
Coil Pro Machinery, Southington, CT
Colbrit Manufacturing Co., Inc., Chatsworth, CA
Collins Machine Works, Inc., Wellford, SC
Collins Machine & Tool Co., Inc., Madison, TN
Collins Instrument Company, Angleton, TX
Colonial Machine Company, Kent, OH
Colonial Machine & Tool Co., Inc., Coventry, RI
Colorado Surface Grinding, Inc., Denver, CO
Colorado Laser Marking, Inc., Colorado Springs, CO
Columbia Products, Inc., Dallastown, PA
Columbia Machine Works, Inc., Columbia, TN
Comac Manufacturing Corporation, Oroville, CA
Comet Tool, Inc., Hopkins, MN
Comfab, Inc., Spartanburg, SC
Command Tooling Systems, Ramsey, MN
Commerce Grinding, Inc., Dallas, TX
Commercial Grinding Services, Inc., Cleveland, OH
Commonwealth Machine Co., Inc., Danville, VA
Competition Tooling, Inc., High Point, NC
Competitive Engineering Inc., Tucson, AZ
Complete Tool & Die, Inc., St. James, MO
Complete Metal Fabrication, Jeffersonville, IN
Composidie, Inc., Apollo, PA
Compu Die, Inc., Wyoming, MI
Compumachine Incorporated, Wilmington, MA
Computech Manufacturing Co., Inc., North Kansas City, MO
Computerized Machining Service, Inc., Englewood, CO
Concept Tool & Die Company, Euclid, OH
Conco Systems, Inc., Verona, PA
Condor Engineering, Inc., Colorado Springs, CO
Connecticut Jig Grinding, Inc., New Britain, CT
Connelly Machine Works, Santa Ana, CA
Connolly Tool & Machine Co., Dallas, TX
Conroy & Knowlton, Inc., Los Angeles, CA
Consolidated Mold & Mfg. Inc., Kent, OH
Conti Tool & Die Company, Akron, OH
Conti Machine Tool Company, Inc., Haverhill, MA
Continental Tool & Manufacturing, Inc., Lenexa, KS
Continental Tool & Machine, Strongsville, OH
Continental Precision, Inc., Phoenix, AZ
Converse Industries, Inc., Kenosha, WI
Cook Technologies, Inc., Green Lane, PA
Cook Machine and Engineering Corporation, Gardena, CA
Coorstek, Livermore, CA
Coosa Machine Company, LLC, Rainbow City, AL
Corbitt Mfg. Company, St. Charles, MO
Cornerstone Screw Machine, Products, Burbank, CA
Cornerstone Design, Franksville, WI
Corning Gilbert, Inc., Glendale, AZ
Corrigan Manufacturing Co., Inc., Rockford, IL
Corrugated Roller & Machine, Inc., Santa Fe Springs, CA
Corry Custom Machine, Corry, PA
Cosar Mold, Inc., Brimfield, OH
Costa Machine, Inc., Akron, OH
Country Machine & Tool, Inc., Tipp City, OH
Covert Manufacturing, Inc., Galion, OH
Cox Tool Company, Inc., Excelsior Spring, MO
Cox Mfg. Co., Inc., San Antonio, TX
CPC Tooling Technologies, Columbus, OH
Craftsman Tool & Mold Company, Aurora, IL
Craig Machinery & Design, Inc., Louisville, KY
Creative Precision, West. Phoenix, AZ
Creative Machining & Mfg., Inc., St. Petersburg, FL
Creb Engineering, Inc., Pascoag, RI
Crenshaw Die & Manufacturing Corp., Irvine, CA
Crest Manufacturing Company, Lincoln, RI
Criterion Tool & Die, Inc., Brook Park, OH
Critical Operations, Inc., Santa Ana, CA
Crosrol, Inc., Greenville, SC
Cross Tool & Manufacturing, Inc., Flagstaff, AZ
Crossland Machinery, Kansas City, MO
CrossRidge Precision, Oak Ridge, TN
Crown Mold & Machine, Streetsboro, OH
Crown Machine, Inc., Rockford, IL
Crucible Materials Corporation, Camillus, NY
Crush Master Grinding Corp., Walnut, CA
Custom Mold & Design, Inc., Plymouth, MN
Custom Tool & Design, Inc., Erie, PA
Custom Tool & Grinding, Inc., Washington, PA
Custom Tool & Model Corp., Frankfort, NY
Custom Machine, Inc., Cleveland, OH
Custom Machine, Inc., Woburn, MA
Custom Gear & Machine, Inc., Rockford, IL
Custom Engineering, Inc., Evansville, IN
Custom Metal Cutting, Inc., Rockwall, TX
Cut-Right Tools Corporation, Willoughby, OH
Cutting Edge Manufacturing, Scottsdale, AZ
Czech Tool, Saegertown, PA
D & B Industries, Inc., Dayton, OH
D & H Manufacturing Company, Fremont, CA
D & J Precision Machining, Inc., Hayward, CA
D & K Industries, Inc., Chatsworth, CA
D & N Precision, Inc., San Jose, CA
D & R Precision Machining, San Jose, CA
D & S Manufacturing Corporation, Southwick, MA
D M E Company, Madison Heights, MI
D M Machine & Tool, Kennerdell, PA
D M Machine Company, Inc., Willoughby, OH
D P I, Inc., Huntingdon Vly, PA
D P Tool & Machine, Inc., Avon, NY
D S A Precision Machining, Inc., Livonia, NY
D S Greene Company, Inc., Wakefield, MA
D-Velco Manufacturing, Phoenix, AZ
D–K Manufacturing Corporation, Fulton, NY
D. F. O'Brien Precision Machining & Tooling, Santa Fe Springs, CA
Daca Machine & Tool, Inc., Dutzow, MO
DaCo Precision Manufacturers, Sandy, UT
Dadeks Machine Works Corporation, Houston, TX

Daily Industrial Tools, Costa Mesa, CA
Dan McEachern Company, Alameda, CA
Dan's Precision Grinding, and Thread Rolling, Sun Valley, CA
Danco Precision, Inc., Phoenixville, PA
Dane Systems, Inc., Stevensville, MI
Danly IEM, Div. of Connell Ltd. Partnership, Cleveland, OH
Data Mold & Tool, Inc., Walbridge, OH
Data Machine, Inc., Adamsburg, PA
Datum Industries, Kentwood, MI
David Engineering & Mfg., Corona, CA
Davis Machine & Manufacturing Company, Arlington, TX
Davken, Inc., Brea, CA
Dayton Reliable Tool & Mfg. Co., Dayton, OH
Dayton Progress Corporation, West Carrollton, OH
De Long Manufacturing Co., Inc., Santa Clara, CA
De-Lux Mold & Machine, Inc., Brady Lake, OH
Dearborn Precision Tubular, Products, Inc., Fryeburg, ME
Deck Brothers, Inc., Buffalo, NY
Deep Holdings, Inc., dba Deephole Machine, Houston, TX
Defiance Innovations Ltd., Company, Earth City, MO
Dekalb Tool & Die, Inc., Tucker, GA
DeKing Screw Products Inc., Burbank, CA
Delco Machine & Gear, No. Long Beach, CA
Delco Corporation, Akron, OH
Dell Tool, Penfield, NY
Delltronics, Inc., Englewood, CO
Delta Machining, Inc., Niles, MI
Delta Tech, Inc., Mentor, OH
Delta Machine & Tool Company, Cleveland, OH
Deltron Engineering, Burbank, CA
Demaich Industries, Inc., Johnston, RI
Dependable Tool & Manufacturing Co., Cleveland, OH
Dependable Machine Company, Inc., Indianapolis, IN
Desert Precision Mfg., Inc.,Tucson, AZ
Designs For Tomorrow, Inc., St. Louis, MO
Detroit Tool & Engineering Co., Lebanon, MO
Deutsch ECD, Hemet, CA
Devtek Engineering & Manufacturing, Colorado Springs, CO
Di-Matrix, Phoenix, AZ
Dial Machine Company, Andalusia, PA
Diamond Lake Tool, Inc., Anoka, MN
Diamond Machine Works, Inc., Seattle, WA
Diamond Tool & Die Co., Inc., Euclid, OH
Diamond Tool & Engineering, Inc., Bertha, MN
Die Cast Die and Mold, Inc., Perrysburg, OH
Die Dimensions, Kentwood, MI
Die Products Company, Minneapolis, MN
Die Quip Corp., Bethel Park, PA
Die Tech Industries, Ltd., Providence, RI
Die-Matic Corporation, Brooklyn Heights, OH
Die-Matic Tool and Die, Inc., Grand Rapids, MI
Die-Mension Corporation, Brunswick, OH
Die-Namic Inc., Taylor, MI
Die Solutions, Inc., Washington, MO
Die-Namic Tool & Mfg., Inc., Rockford, IL
Diemaster Tool & Mold, Inc., Macedonia, OH
Dietooling, Div. of Diemolding, Wampsville, NY
Digital Tool & Die, Inc., Grandville, MI
Dimac Manufacturing Co., Inc., Alexander, AR
Distefano Tool & Mfg. Company, Omaha, NE
Distinctive Machine Corporation, Grand Rapids, MI
Diversified Engraving Stamp, & Machine Company, Akron, OH
Diversified Manufacturing, Incorporated, Lockport, NY
Diversified Tool & Die,Vista, CA
Diversified Tool, Inc., Mukwonago, WI
Diversified Tooling Innovations, Inc., Racine, WI
Diversified Machine Products, LLC., Roebuck, SC
Dixie Tool & Die Co., Inc., Gadsden, AL
Dixon Automatic Tool, Inc., Rockford, IL
DJM Mfg., Sunnyvale, CA
Double D Machine & Tool Company, Fremont, OH
Douglas Machine & Engineering Co., Davenport, IA
Doyle Manufacturing, Inc., Holland, OH
Drabik Tool and Die Inc., Brook Park, OH
Drewco Corporation, Franksville, WI
Drill Masters Inc., Hamden, CT
DT Scheu & Kniss, Louisville, KY
Du-Well Grinding Company, Inc., Milwaukee, WI
Dugan Tool & Die, Inc., Cottage Hills, IL
Dugan Tool & Die Company, Toledo, OH
Dukowitz Machine Inc., Nikiski, AK
Dun-Rite Industries, Inc., Monroe, MI
Dunn & Bybee Tool Company, Inc., Sparta, TN
Duplicate Parts Company, Inc., San Marcos, CA
Dura-Metal Products Corporation, Irwin, PA
Durivage Pattern & Mfg. Co. Inc., Williston, OH
DuWest Tool & Die, Inc., Cleveland, OH
Dwyer Instruments Inc., W E Anderson Division, Grandview, MO
DynaGrind Precision, Inc., New Kensington, PA
Dynamic Tool & Design, Inc., Menomonee Falls, WI
Dynamic Machine & Fabricating, Phoenix, AZ
Dynamic Fabrication, Inc., Santa Ana, CA
Dynamic Engineering, Inc., Minneapolis, MN
Dysinger Incorporated, Dayton, OH
Dytran Instruments, Inc., Chatsworth, CA
E & S Precision Machine, LLC, Modesto, CA
E B & Sons Machine Inc., Aliquippa, PA
E C M Of Florida, Jupiter, FL
E J Codd Co. of Baltimore City &, Codd Fabricators & Boiler Co., Inc., Baltimore, MD
E K L Machine Company, Inc., Andalusia, PA
E R C Concepts Company, Inc., Sunnyvale, CA
E W Johnson Company, Inc., Lewisville, TX
E–M–Solutions, Inc., Fremont, CA
E-Fab, Inc., Santa Clara, CA
E. D. M. Exotics, Inc., Hayward, CA
E. T. Precision Optics Inc., Rochester, NY
Eagle Mold Company, Inc., Carlisle, OH
Eagle Technologies Group, St. Joseph, MI
Eagle Tool & Machine Company, Inc., Springfield, OH
Eagle Precision Tooling Inc., Erie, PA
Eason & Waller, Manufacturing & Grinding, Phoenix, AZ
East Coast Tool & Mfg., Inc., Orchard Park, NY
East Side Machine, Inc., Webster, NY
East Texas Machine Works, Inc., Longview, TX
Eaton Manufacturing, Inc., Fremont, CA
Ebway Corporation, Fort Lauderdale, FL
Eckert Enterprises Ltd., Tempe, AZ
Eckert Machining, Inc., San Jose, CA
Eclipse Mold, Inc., Clinton Township, MI
Eclipse Tool & Die, Inc., Wayland, MI
Edco, Inc., Toledo, OH
Edge-Tech, Inc., Redmond, WA
EDM Supplies, Inc., Downey, CA
Edwardsville Machine & Welding Company, Inc., Edwardsville, IL
Efficient Die & Mold Inc., Cleveland, OH
Egli Machine Company, Inc., Sidney, NY
Ehlert Tool Co., Inc., New Berlin, WI
Ehrhardt Tool & Machine Company, Granite City, IL
Eicom Corporation, Moraine, OH
EISC/CME, Toledo, OH
Ejay's Machine Co., Inc., Fullerton, CA
Elcam Tool & Die, Inc., Wilcox, PA
Electra Form Industries Inc., Vandalia, OH
Electric Enterprise Inc., Stratford, CT
Electro-Mechanical Products, Inc., Denver, CO
Electro-Tech Machining, Long Beach, CA
Electro-Freeto Manufacturing Co., Inc., Wayland, MA
Electro Form Corporation, Binghamton, NY
Electroform Co. Inc., Machesney Park, IL
Elite Tool & Machinery Systems, Inc., O'Fallon, MO
Elizabeth Carbide Die Co., Inc., McKeesport, PA
Elizabeth Carbide of North,Carolina, Inc., Lexington, NC
Elkhart Machine Group, Elkhart, IN
Elliot Tool & Manufacturing Co., St. Louis, MO
Elliott's Precision, Inc., Peoria, AZ
Ellis Tool & Machine, Inc., Tom Bean, TX
Ellis Machine and Fabrication Inc., Buffalo, NY
Ellison Machine Company, Laurens, SC
Elrae Industries, Alden, NY
Emig Machine and Tool, Warwick, PA
Emmert Welding & Manufacturing, Inc., Independence, MO
Empire Manufacturing Corporation, Bridgeport, CT
Empire Die Casting Co., Inc., Macedonia, OH
Engineered Pump Services, Inc., Pasadena, TX
Engineered Machine Tool, Inc., Wichita, KS
Entek Corporation, Norman, OK
Entela, Inc., Grand Rapids, MI
Enterprise Tool & Die, Brooklyn Heights, OH
Ephrata Precision Parts, Inc., Denver, PA
Epicor Software Corporation, Minneapolis, MN
Erca Tool Die & Stamping Company, Richmond Hill, NY
Erickson Tool & Machine Company, Rockford, IL
Erie Specialty Products, Inc., Erie, PA
Erie Shore Machine Co., Inc., Cleveland, OH
Ermco, Inc., Cleveland, OH
EROWA Technology Inc., Arlington Hts., IL
Estee Mold & Die, Inc., Dayton, OH
Esterle Mold & Machine Co., Stow, OH
Estul Tool & Manufacturing Co., Inc., Matthews, NC
Evans Tool & Die, Inc., Conyers, GA
Ever-Ready Tool, Inc., Largo, FL
Ever Fab, Inc., East Aurora, NY
Everett Pattern and Mfg., Inc., Middleton, MA

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Ewart-Ohlson Machine Company, Cuyahoga Falls, OH
EWT, Inc., Rockford, IL
Ex-Cel Machine & Tool, Inc., Louisville, KY
Exact Tool & Die, Inc., Brook Park, OH
Exact Cutting Service, Inc., Brecksville, OH
Exacta Tech Inc., Livermore, CA
Exacta Machine, Inc., Wichita, KS
Exacto, Inc. of South Bend, South Bend, IN
Excaliber Precision Machining, Peoria, AZ
Excalibur Precision Machine Co., Inc., Hampstead, NH
Excel Stamping & Manufacturing, Inc., Houston, TX
Excel Manufacturing, Inc., Valencia, CA
Excel Manufacturing Inc., Seymour, IN
Excel Machine Company, Philadelphia, PA
Excel Precision, Inc., Tempe, AZ
Executive Mold Corporation, Huber Heights, OH
Extreme Machine LLC, Phoenix, AZ
Ezell Precision Tool Company, Clearwater, FL
F & F Machine Specialties, Mishawaka, IN
F & G Tool & Die Company, Dayton, OH
F & L Tools Corporation, Corona, CA
F & S Tool, Inc., Erie, PA
F C Machine Tool & Design, Inc., Cuyahoga Falls, OH
F D T Precision Machine Co., Inc., Taunton, MA
F G A Inc., Baton Rouge, LA
F H Peterson Machine Corporation, Stoughton, MA
F K Instrument Co., Inc., Clearwater, FL
F M Machine Company, Akron, OH
F N Smith Corporation, Oregon, IL
F P Pla Tool & Manufacturing Co., Buffalo, NY
F S G Inc., Mishawaka, IN
F T T Manufacturing Inc., Geneseo, NY
F Tinker & Sons Company, Pittsburgh, PA
F W Gartner Thermal Spraying Co., Houston, TX
F-Squared, Inc., Tarentum, PA
F. S. Machining, Inc., Englewood, CO
Fab Lab, Inc., Maryland Heights, MO
Fabricast, Inc., So. El Monte, CA
Fairbanks Machine & Tool, Raytown, MO
Fairview Machine Company, Inc., Topsfield, MA
Fairway Molds, Inc., Walnut, CA
Faith Tool & Manufacturing, Inc., Willoughby, OH
Falcon Precision Machining Co., Inc., West Springfield, MA
Falls City Machine Technology, Louisville, KY
Falls Mold & Die, Inc., Stow, OH
Fame Tool & Manufacturing Co., Cincinnati, OH
FamPEC Technology LLC, Murfreesboro, TN
Fargo Machine Company, Inc., Ashtabula, OH
Farrar Corporation, Norwich, KS
Farzati Manufacturing Corp., Greensburg, PA
Fast Physics Inc., Phoenix, AZ
Faustson Tool Corp., Arvada, CO
Fay & Quartermaine Machining Corp., El Monte, CA
Fay Tool & Die, Inc., Orlando, FL
FCMP, Inc., Buffalo, NY
Feedall, Inc., Willoughby, OH
Feilhauer's Machine Shop Inc., Cincinnati, OH
Feller Tool Co., Inc., Elyria, OH
Fenton Manufacturing, Inc., Ashtabula, OH
Fenwick Machine & Tool, Piedmont, SC
Feral Productions LLC., Newark, CA
Ferriot Inc., Akron, OH
First International Bank, Hartford, CT
Fischer Precision Spindles, Inc., Berlin, CT
Fischer Tool & Die Corporation, Temperance, MI
Fitzwater Engineering Corp., Scituate, RI
Five Star Tool Company, Inc., Rochester, NY
Fleck Machine Company, Inc., Hanover, MD
Foresight Technologies, Tempe, AZ
Forster Tool & Mfg. Inc., Bensenville, IL
Fortner & Gifford, Inc., Prescott, AZ
Fostermation Inc., Meadville, PA
Four Pro Machine, Wichita, KS
Fox Valley Tool & Die, Inc., Kaukauna, WI
Franchino Mold & Engineering, Lansing, MI
Frasal Tool Co., Inc., Newington, CT
Frazier Aviation, Inc., San Fernando, CA
FRB Machine Inc., Emlenton, PA
Fre-Mar Industries, Inc., Brunswick, OH
Fredon Corporation, Mentor, OH
Free-MaDie Company, Kittanning, PA
Freeport Welding & Fabricating, Inc., Freeport, TX
Fries Machine & Tool, Inc., Dayton, OH
Frost & Company, Charlestown, RI
Fulton Industries, Inc., Rochester, IN
Furno Co. Inc., Pomona, CA
Future Tool & Die Company, Inc., Cleveland, OH
Future Tool & Die, Inc., Grandville, MI
Future Fabricators, Phoenix, AZ
Fyco Tool & Die, Inc., Houston, TX
G & G Tool Company, Inc., Sidney, OH
G & K Machine Company, Denver, CO
G & L Tool Corp., Agawam, MA
G B F Enterprises, Inc., Santa Ana, CA
G B Tool Company, Warwick, RI
G H Tool & Mold, Inc., Washington, MO
G M T Corporation, Waverly, IA
G R McCormick, Inc., Burbank, CA
G S G Tool and Manufacturing, Meadville, PA
G S Precision, Inc., Brattleboro, VT
Gadsden Tool, Inc., Gadsden, AL
Gainesville Machine Tools, Inc., Gainesville, TX
Galaxy Industries, Canton, MI
Gales Manufacturing Corporation, Racine, WI
Gambar Products Company, Inc., Warwick, RI
Garcia Associates, Arlington, VA
Gasaway Manufacturing LLC, Beasley, TX
Gatco, Inc., Plymouth, MI
Gauer Mold & Machine Company, Tallmadge, OH
Gaum, Inc., Robbinsville, NJ
Gear Manufacturing, Inc., Anaheim, CA
Gebhardt Machine Works, Inc., Portland, OR
Geiger Manufacturing, Inc., Stockton, CA
Gem City Engineering Company, Dayton, OH
Gene's Gundrilling Inc., Alahambra, CA
General Aluminium Forgings, Colorado Springs, CO
General Die Engraving, Inc., Twinsburg, OH
General Engineering Company, Toledo, OH
General Grinding, Inc., Oakland, CA
General Machine Shop, Inc., Cheverly, MD
General Machine-Diecron, Inc., Griffin, GA
General Tool & Die Company, Inc., Racine, WI
Genesee Manufacturing Company, Inc., Rochester, NY
Genesee Metal Stampings, Inc., West Henrietta, NY
Genesis Plastics & Engineering, LLC, Scottsburg, IN
Genesis Manufacturing, Glendale, AZ
Gentec Manufacturing Inc., San Jose, CA
Geometric Tool & Machine Co., Inc., Piedmont, SC
George Welsch & Son Company, Cleveland, OH
German Machine, Inc., Rochester, NY
Germantown Tool & Machine, Works, Inc., Huntingdon Valle, PA
Gibbs Die Casting Corporation, Henderson, KY
Gibbs Machine Company, Inc., Greensboro, NC
Gilbert Machine & Tool Company, Greene, NY
Gill Tool & Die, Inc., Grand Rapids, MI
Gillette Machine & Tool Co Inc., Rochester, NY
Gillilan Machine Co., Inc., Mt. Juliet, TN
Girard Tool & Die/Jackburn Mfg., Inc., Girard, PA
Gischel Machine Company Inc., Baltimore, MD
Givmar Precision Machining, Mountain View, CA
Glaze Tool & Engineering, Inc., New Haven, IN
Glendale Machine Company, Inc., Solon, OH
Glendo Corporation, Emporia, KS
Glidden Machine & Tool, Inc., North Tonawanda, NY
Global Mfg. & Assembly, Inc., Boyer Machine Tech LLC, Phoenix, AZ
Global Precision, Inc., Davie, FL
Global Shop Solutions, The Woodlands, TX
GMB Machining Company, Livermore, CA
Godwin—SBO, L.P., Houston, TX
Golis Machine, Inc., Montrose, PA
Goodwin-Bradley Pattern Co., Inc., Providence, RI
Graham Tech Inc., Cochranton, PA
Granby Mold, Inc., Walled Lake, MI
Grand Valley Manufacturing Company, Titusville, PA
Graybill's Tool & Die, Inc., Manheim, PA
Great Lakes E.D.M. Inc., Clinton Twp., MI
Great Lakes Metal Treating, Inc., Tonawanda, NY
Great Western Grinding & Eng., Inc., Huntington Beach, CA
Great Lakes Tooling Inc., Cleveland, OH
Grind All Precision Tool Co., Inc., Warren, MI
Grind-All, Inc., Cleveland, OH
GrindC/O Inc., Chelmsford, MA
Grinding Service & Mfg. Co., Bristol, CT
Grindworks Inc., Glendale, AZ
Grosmann Precision, Ballwin, MO
Grover Gundrilling, Inc., Norway, ME
Guill Tool & Engineering Co., Inc., West Warwick, RI
Gulf South Machine/Drilex Corp., Houston, TX
Gurney Precision Machining, Saint Petersburg, FL
Gustav's Tool & Die, Inc., Seguin, TX
H & H Machine Company, Whittier, CA
H & H Machine Shop of Akron, Inc., Akron, OH
H & H Machined Products, Inc., Erie, PA
H & K Machine Service Co. Inc., O'Fallon, MO
H & M Precision Machining, Santa Clara, CA
H & W Machine Company, Broomfield, CO

H & W Tool Company, Inc., Dover, NJ
H B Machine, Inc., Phoenix, AZ
H Brauning Company, Inc., Manassas, VA
H H Mercer, Inc., Mesquite, TX
H R M Machine, Inc., Costa Mesa, CA
H & L Tool Co., Erie, PA
H & M Machining Inc., Machesney Park, IL
Haberman Machine, Inc., St. Paul, MN
Hackett Precision Company, Nashville, TN
Hager Machine & Tool, Inc., Houston, TX
Haig Precision Mfg. Corp., Campbell, CA
Hal-West Technologies, Inc., Kent, WA
Hamblen Gage Corporation, Indianapolis, IN
Hamill Manufacturing Company, Trafford, PA
Hamilton Mold & Machine, Inc., Cleveland, OH
Hamilton Tool Company, Inc., Meadville, PA
Hamlin Steel Products, Inc., Akron, OH
Hammill Manufacturing Company, Toledo, OH
Hammon Precision Technologies, Hayward, CA
Hanks Pattern Company, Montrose, MN
Hanover Machine Company, Ashland, VA
Hans Rudolph, Inc., Kansas City, MO
Hansen Engineering, Harbor City, CA
Hansford Manufacturing Corp., Rochester, NY
Hanson Mold, St. Joseph, MI
Hardy Machine Inc., Hatfield, PA
Hardy-Reed Tool & Die Co., Manitou Beach, MI
Harley & Son, Inc., Yorba Linda, CA
Harris Machine/Finger Lakes Tool, Grinding LLC, Newark, NY
Harrison Enterprise, Inc., dba Accu-Tech, Phoenix, AZ
Haserodt Machine & Tool, Inc., Cleveland, OH
Haskell Machine & Tool, Inc., Homer, NY
Haumiller Engineering Company, Elgin, IL
Hawkeye Precision, Inc., Gilbert, AZ
Hawkins Machine Company, Inc., Coventry, RI
Hawkinson Mold Engineering Co., Alhambra, CA
Hayden Corporation, West Springfield, MA
Heatherington Machine Corp., Orlando, FL
Heinhold Engineering & Machine Co., Inc., Salt Lake City, UT
Heitz Machine & Manufacturing Co., Maryland Heights, MO
Hellebusch Tool & Die, Inc., Washington, MO
Helm Precision, Ltd., Phoenix, AZ
Henman Engineering & Machine, Muncie, IN
Hercules Machine Tool & Die, Warren, MI
Herman Machine, Inc., Tallmadge, OH
Herrick & Cowell Company, Hamden, CT
Hetrick Mfg., Inc., Lower Burrell, PA
Hewitt Machine & Tool, Inc., Hewitt, TX
Heyden Mold & Bench Company, Tallmadge, OH
Hi Tech Manufacturing, LLC, Greensboro, NC
Hi-Tech Machining & Engineering LLC. Tucson, AZ
Hi-Tech Tool Industries, Inc., Troy, MI
Hi-Tech Tool, Inc., Lower Burrell, PA
Hiatt Metal Products Company, Muncie, IN
Hickory Machine Company, Inc., Newark, NY
High Tech Turning Co., Watertown, MA
High-Tech Industries, Holland, MI
Highland Mfg. Inc., Manchester, CT
Hill Engineering, Inc., A Mestek Co., Villa Park, IL
Hillcrest Tool & Die, Inc., Titusville, PA
Hilton Tool & Die Corporation, Rochester, NY
Hittle Machine & Tool Company, Indianapolis, IN
HK Grinding, Phoenix, AZ
Hobson & Motzer, Inc., Durham, CT
Hodon Manufacturing Inc., Willoughby, OH
Hoercher Industries, Inc., East Rochester, NY
Hoffman Custom Tool & Die, Newport Beach, CA
Hoffstetter Tool & Die, Clearwater, FL
Holland Hitch Co., Wylie, TX
Hollis Line Machine Co., Inc., Hollis, NH
Holmes Manufacturing Corporation, Cleveland, OH
Homeyer Tool and Die Co., Marthasville, MO
Hoop's Machine & Welding, Inc., Denton, TX
Hoppe Tool, Inc., Chicopee, MA
Horizon Industries, Columbia, PA
Horizon Tool & Die Corp., Grandville, MI
Houston Cutting Tools, Inc., Houston, TX
Howard Tool Co. Inc., Bangor, ME
Howland Machine Corporation, Colorado Springs, CO
Hubbell Machine Company, Inc., Cleveland, OH
Hulme Products, Ltd., Ashland, OH
Humboldt Instrument Company, San Leandro, CA
Hunt Machine & Manufacturing Co., Tallmadge, OH
Hurricane Machine Company, L.L.C., McKinney, TX
Hyde Special Tools, Saegertown, PA
HydraWedge Corporation, El Segundo, CA
Hydrodyne Division of FPI, Inc., Burbank, CA
Hydromat, Inc., St. Louis, MO
Hygrade Precision Technologies, Inc., Plainville, CT
Hytron Manufacturing Company, Inc., Huntington Beach, CA
I T M, Inc., Shertz, TX
Ideal Grinding Technologies, Inc, Chatsworth, CA
Ideal Tool Co. Inc., Meadville, PA
ILM Tool, Inc., Hayward, CA
Imperial Machine & Tool Company, Wadsworth, OH
Imperial Machining Co., Denver, CO
Imperial Mfg., Santa Fe Springs, CA
Imperial Newbould, Meadville, PA
Imperial Tool & Manufacturing Co., Inc., Lexington, KY
Imperial Die & Manufacturing Co., Strongsville, OH
IMS, Inc., Decatur, AL
Independent Forge Company, Orange, CA
Indiana Tool & Die Company, Die Sets Inc., Indiana, PA
Industrial Grinding, Inc., Dayton, OH
Industrial Machine & Tool Co., Inc., Nashville, TN
Industrial Machine Company, Oklahoma City, OK
Industrial Machining Corporation, Santa Clara, CA
Industrial Maintenance & Electrical Corporation, Lavergne, TN
Industrial Mold + Machine, Twinsburg, OH
Industrial Molds, Inc., Rockford, IL
Industrial Precision Products, Inc., Oswego, NY
Industrial Precision, Inc., Westfield, MA
Industrial Tool & Machine Co., Cuyahoga Falls, OH
Industrial Tool, Die, & Engineering, Inc., Tucson, AZ
Industrial Tooling Technologies, Inc., Muskegon, MI
Industrial Custom Automatic Machine (ICAM), Dayton, OH
Industrial Babbitt Bearing Services, Inc., Gonzales, LA
Ingersoll Contract Manufacturing, Company, Loves Park, IL
Injection Mold & Machine Company, Akron, OH
Inland Tool & Manufacturing Co., Kansas City, KS
Inline Inc., Phoenix, AZ
Innex Industries, Inc., Rochester, NY
Innovative Systems Machine & Tool, Inc., Toledo, OH
Insulate Inc., Auburn, WA
Integrated Machine Systems, Bethel, CT
Integrated Fabrication and Machine, Sharpsville, PA
Integrated Aerospace, Santa Ana, CA
Integrity Mfg. L.L.C., Farmington, CT
International Tooling & Stamping, Inc., Mt. Juliet, TN
International Stamping Inc., Warwick, RI
Intrex Corporation, Louisville, CO
ISO Machining, Inc., Pleasanton, CA
ISYS Manufacturing, Inc., Concord, CA
Iverson Industries, Inc., Wyandotte, MI
J & A Tool Company, Inc., Franklin, PA
J & F Machine Inc., Cypress, CA
J & J Tool Co., Inc., Louisville, KY
J & L Development, Inc., Keithville, LA
J & L EDM, Sunnyvale, CA
J & M Machine, Inc., Fairport Harbor, OH
J & M Unlimited, Ashland City, TN
J & W Manufacturing, Phoenix, AZ
J B Tool Die & Engineering, Inc., Fort Wayne, IN
J B Tool, Inc., Placentia, CA
J C B Precision Tool & Mold, Inc., Commerce City, CO
J D Kauffman Machine Shop, Inc., Christiana, PA
J F Fredericks Tool Company, Inc., Farmington, CT
J I Machine Company, Inc., San Diego, CA
J K Tool & Die, Inc., Apollo, PA
J M Fabrication Corporation, Arlington, TX
J M Mold South, Easley, SC
J M Mold, Inc., Piqua, OH
J M P Industries, Inc., Cleveland, OH
J M S Mold & Engineering Co., Inc., South Bend, IN
J R Custom Metal Products, Inc., Wichita, KS
J Ross Miller & Sons, Inc., Kimberton, PA
J S Die & Mold, Inc., Byron Center, MI
J W Harwood Company, Cleveland, OH
J & J Machine and Engineering, Inc., Commerce, CA
J & G Machine & Tool Co., Inc., Walworth, NY
J. C. Milling Co., Inc., Rockford, IL
J.B.A.T. t/a Cherry Hill Precision, Cherry Hill, NJ
J2 Precision CNC, Inc., Phoenix, AZ
Jackman Machining, Corona, CA
Jackson & Heit Machine Company, Southampton, PA
Jacksonville Machine Inc., Jacksonville, IL
Jaco Tool & Die, Inc., Grand Rapids, MI
Jaco Engineering, Anaheim, CA
Jamison Mfg. Co., North Royalton, OH
Jasco Tools Inc., Cutting Tools Division, Rochester, NY

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Jason Tool & Engineering, Inc., Garden Grove, CA
Jatco Machine & Tool Company, Inc., Pittsburgh, PA
JBK Manufacturing & Development,Co., Dayton, OH
Jena Tool Corporation, Dayton, OH
Jenkins Machine, Inc., Bethlehem, PA
Jenn Manufacturing Company, Inc., Warminster, PA
Jennison Corporation, Carnegie, PA
Jergens, Inc., Cleveland, OH
Jergens Tool and Mold, Englewood, OH
Jeryco Industries, Inc., Denton, TX
Jesel, Inc., Lakewood, NJ
Jesse Industries, Inc., Sparks, NV
Jet Products Co., Inc., Phoenix, AZ
Jet Products, Inc., East Bridgewater, MA
Jewett Machine Mfg. Co., Inc., Richmond, VA
Jig Grinding Service Company, Cleveland, OH
Jirgens Modern Tool Corporation, Kalamazoo, MI
JMC Technology Group, Indianapolis, IN
Johnson Tool, Inc., Fairview, PA
Johnson Precision, Inc., Buffalo, NY
Johnson Engineering Company, Indianapolis, IN
Joint Venture Acquisition Co., LLC, Saegertown, PA
Joint Production Technology, Inc., Macomb, MI
Jonco Tool Company, Racine, WI
JRM Machine Company, St. Paul, MN
Juell Machine Company, Inc., Pomona, CA
JWP Manufacturing, Inc., Santa Clara, CA
K & A Tooling, Santa Ana, CA
K & E Mfg. Company, Lee's Summit, MO
K & H Mold & Machine Division, Akron, OH
K & H Precision Products, Inc., Honeoye Falls, NY
K & M Machine-Fabricating, Inc., Cassopolis, MI
K & S Tool & Die, Inc., Meadville, PA
K & S Tool & Mfg. Company, Inc., Jamestown, NC
K L H Industries, Inc., Germantown, WI
K L N Precision Machining & Sheetmetal Corp., Fremont, CA
K M F, Inc., Fairdale, KY
K M S Machine Works, Inc., Taunton, MA
K Mold & Engineering, Inc., Granger, IN
K V, Inc., Huntingdon Valley, PA
K-Form, Inc., Tustin, CA
K. D. K. Inc., Prescott, AZ
K.C.K. Tool & Die Co., Inc., Ferndale, MI
Ka-Wood Gear & Machine Company, Madison Heights, MI
Kahre Brothers, Inc., Evansville, IN
Kalman Machining, Richmond, CA
Kalman Manufacturing, Morgan Hill, CA
Kamashian Engineering Inc., Bellflower, CA
Kanis Machine & Manufacturing, Inc., Tewksbury, MA
Kansas City Screw Products Inc., Kansas City, MO
Karlee, Garland, TX
Karlson Machine Works, Inc., Phoenix, AZ
KARR Unlimited, Inc., Newaygo, MI
Karsten Precision, Phoenix, AZ
Kaskaskia Tool & Machine, Inc., New Athens, IL
Kaufhold Machine Shop, Inc., Lancaster, PA
Kearflex Engineering Company, Warwick, RI
Keck-Schmidt Tool & Die, South El Monte, CA
Kell-Strom Tool Company, Inc., Wethersfield, CT
Kellems & Coe Tool Corporation, Jeffersonville, IN
Keller Technology Corporation, Tonawanda, NY
Kelley Industries, Inc., Eighty Four, PA
Kelltech Precision Machining, Inc., San Jose, CA
Kelly & Thome, Pomona, CA
Kelm Manufacturing Company, Benton Harbor, MI
Kem-Mil-Co, Hayward, CA
Kemco Tool & Machine Company, Fenton, MO
Kenlee Precision Corporation, Baltimore, MD
Kennametal Inc., Latrobe, PA
Kennebec Tool & Die Co., Inc., Augusta, ME
Kennedy & Bowden Machine Company, La Vergne, TN
Kennick Mold & Die, Inc., Cleveland, OH
Kentucky Machine & Tool Company, Louisville, KY
Kern Special Tools Company, Inc., New Britain, CT
Ketcham Diversified Tooling Inc., Cambridge, PA
Kewill ERP, Inc., Edina, MN
Keyes Machine Works, Inc., Gates, NY
Keystone Machine, Inc., Littlestown, PA
Kimberly Gear & Spline, Inc., Phoenix, AZ
King Machine & Engineering Co., Inc., Indianapolis, IN
King-Tek EDM & Precion Machining, Inc., Fullerton, CA
Kipp Group, Ontario, CA
Kirca Precision, Rochester, NY
Klein Steel Service, Inc., Rochester, NY
Klix Tool Corporation, Syracuse, NY
Knight Industries Precision Machining,Inc., Corona, CA
Knowlton Manufacturing Company, Norwood, OH
Knust—S B O, Houston, TX
Kolar Inc., Ithaca, NY
Kordenbrock Tool & Die Company, Cincinnati, OH
Kovacs Machine & Tool Company, Inc., Wallingford, CT
Krause Tool, Inc., A-Z Corp. Div. of Krause Tool, Golden, CO
Kuester Tool & Die Co., Inc., Quincy, IL
Kuhn Tool & Die Co., Meadville, PA
Kurt J. Lesker Company, Clairton, PA
Kurt Manufacturing Company, Minneapolis, MN
L & L Machine, Inc., Ludlow, MA
L & L Tool & Die, Gardena, CA
L & P Machine, Inc., Santa Clara, CA
L A I Southwest, Inc., Phoenix, AZ
L H Carbide Corporation, Fort Wayne, IN
L P I Corporation, Hollywood, FL
L R G Corporation, Jeannette, PA
L R W Cutting Tools, Inc., Phoenix, AZ
L T L Company, Inc., Rockford, IL
L. P. Engineering Co., Carson, CA
Lake Manufacturing Co., Inc., Newburyport, MA
Lakeside Manufacturing Company, Stevensville, MI
Lamb Machine & Tool Company, Indianapolis, IN
Lamina, Inc., Farmington Hills, MI
Lampin Corporation,Uxbridge, MA
Lancaster Machine Shop, Lancaster, TX
Lancaster Metal Products Company, Lancaster, OH
Lancaster Mold, Inc., Lancaster, PA
Land Specialties Manufacturing, Co., Inc., Raytown, MO
Lane Enterprise, Rochester, NY
Lane Punch Corporation, Salisbury, NC
Laneko Engineering Company, Ft. Washington, PA
Laneko Roll Form, Inc., Hatfield, PA
Lange Precision, Inc., Fullerton, CA
Langenau Manufacturing Company, Cleveland, OH
Lansing Tool & Engineering Inc., Lansing, MI
Laron Incorporated, Kingman, AZ
Las Cruces Machine, Manufacturing & Engineering, Las Cruces, NM
Laser Automation, Inc., Chagrin Falls, OH
Laser Beam Technology, Hayward, CA
Laser Fabrication & Machine Co., Inc., Alexandria, AL
Laser Fare, Inc., Smithfield, RI
Laser Tool, Inc., Saegertown, PA
Lathrop Machine, Fremont, CA
Latva Machine, Inc., Newport, NH
Lavelle Machine,Westford, MA
Lavigne Manufacturing, Inc., Cranston, RI
Layke Incorporated, Phoenix, AZ
Layke Tool & Manufacturing, Inc., Meadville, PA
Lead/M, L.L.C., Tempe, AZ
Ledford Engineering Company, Inc., Cedar Rapids, IA
Lee's Grinding, Inc., Cleveland, OH
Leech Industries, Inc., Meadville, PA
Lees Enterprise, Chatsworth, CA
Leese & Co., Inc., Greensburg, PA
Leggett & Platt, Inc., Whittier, CA
Leicester Die & Tool, Inc., Leicester, MA
Lemco-Miller Corporation, Danvers, MA
Lenape Forge, Inc., West Chester, PA
Lenz Technology Inc., Mountain View, CA
Leonardi Manufacturing Co., Inc., Weedsport, NY
Lewis Aviation, Phoenix, AZ
Lewis Machine & Tool Co. Inc., Cuba, MO
Lewis Machine and Tool Company, Milan, IL
Liberty Precision Industries, Ltd., Rochester, NY
Libra Precision Machining, Tecumseh, MI
Light & Medium Fabricating, Inc., Willoughby, OH
Light Machines, Manchester, NH
Ligi Tool & Engineering, Inc., Pompano Beach, FL
Lilly Software Associates, Inc., Hampton, NH
Limmco, Inc., New Albany, IN
Lindberg Heat Treating, Paramount, CA
Linmark Machine Products, Inc., Union, MO
Little Rhody Machine Repair, Inc., Coventry, RI
Littlecrest Machine Shop, Inc., Houston, TX
Lloyd Company, Houston, TX
Lobart Company, Pacoima, CA
Loecy Precision Mfg., Mentor, OH
LOMA Automation Technologies, Inc., Louisville, KY
Lordon Engineering, Gardena, CA
Loud Engineering and Manufacturing, Inc., Ontario, CA
Louis C. Morin Co. Inc., N. Billerica, MA
Loyal Machine Company, Inc., Chelsea, MA
Luick Quality Gage & Tool, Inc., Muncie, IN
Lunar Tool & Mold, Inc., North Royalton, OH
Lunar Tool & Machinery Company, St. Louis, MO
Lunquist Manufacturing Corp., Rockford, IL
Lux Manufacturing, Inc., Sunnyvale, CA

Lynn Welding Co. Inc., Newington, CT
Lyons Tool & Die Company, Meriden, CT
M & D Loe Manufacturing, Inc., Benicia, CA
M & H Engineering Company, Inc., Danvers, MA
M & H Tool & Die, Inc., Gadsden, AL
M & J Grinding & Tool Co., Holland, OH
M & J Valve Services, Inc., Lafayette, LA
M C I Tool & Die, Inc., Saginaw, MI
M C Mold & Machine, Inc., Tallmadge, OH
M D F Tool Corporation, North Royalton, OH
M F Engineering Co. Inc., Bristol, RI
M J K Precision, Woodland Park, CO
M P E Machine Tool Inc., Corry, PA
M P Technologies, Inc., Brecksville, OH
M S Willett, Inc., Cockeysville, MD
M-Tron Manufacturing Company, Inc., San Fernando, CA
M-Ron Corporation, Glendale, AZ
M–C Fabrication, Inc., Olathe, KS
M H S Automation, Round Lake Beach, IL
M. R. Mold & Engineering Corp., Brea, CA
M. J. Machining, Inc., Morgan Hill, CA
Mac Machine and Metal Works, Inc., Connersville, IN
Mac-Mold Base, Inc., Romeo, MI
Machine Incorporated, Stoughton, MA
Machine Specialties, Inc., Greensboro, NC
Machine Tooling, Inc., Cleveland, OH
Machine Works, Inc., Phoenix, AZ
Machinist Cooperative, Gilroy, CA
MacKay Manufacturing, Spokane, WA
Madden Machine Works, Torrance, CA
Maddox Metal Works, Inc., Dallas, TX
Madgett Enterprises Inc., Atascadero, CA
Magdic Precision Tooling, Inc., East McKeesport, PA
Maghielse Tool Corporation, Grand Rapids, MI
Magna Machine & Tool Company, New Castle, IN
Magnum Manufacturing Center, Inc., Colorado Springs, CO
Magnus Mfg. Corp., Phelps, NY
Mahuta Tool Corp., Germantown, WI
Main Tool & Mfg. Co., Inc., Minneapolis, MN
Maine Machine Products, South Paris, ME
Mainline Machine, Inc., Broussard, LA
Majer Precision Engineering, Inc., Tempe, AZ
Major Tool & Machine, Inc., Indianapolis, IN
Makino, Mason, OH
Malmberg Engineering, Inc., Livermore, CA
Manda Machine Company, Inc., Dallas, TX
Manetek, Inc., Broussard, LA
Manheim Special Machine Shop, Manheim, PA
Mann Tool Company, Inc., Pacific, MO
Manufacturing Machine Corp., Pawtucket, RI
Manufacturing Service Corp., West Hartford, CT
ManufacturingQuote, Inc., Smyrna, GA
Marberry Machine, Inc., Houston, TX
Marco Manufacturing Company, Akron, OH
Marcy Machine, Inc., Grandview, MO
Mardon Tool & Die Company, Inc., Rochester, NY
Marini Tool & Die Company, Inc., Racine, WI
Marion Tool and Die, Inc., Terre Haute, IN
Maris Systems Design, Inc., Spencerport, NY
Markham Machine Co. Inc., Akron, OH
Marlin Tool, Inc., Cuyahoga Falls, OH
Marox Corporation, Holyoke, MA
Marquette Tool & Die Company, St. Louis, MO
Marshall Manufacturing Company, Minneapolis, MN
Martinek Manufacturing, Fremont, CA
Martinelli Machine, San Leandro, CA
Masco Machine, Inc., Cleveland, OH
Massachusetts Machine Works Inc., Westwood, MA
Massey Industries, Inc., Houston, TX
Master Cutting & Engineering, Inc., Santa Fe Springs, CA
Master Industries Inc., Piqua, OH
Master Precision Mold Technology, Greenville, MI
Master Precision Tool Corp., Sterling Heights, MI
Master Research & Manufacturing, Inc., Norwalk, CA
Master Tool & Die, Anaheim, CA
Master Tool & Mold, Inc., Grafton, WI
Master Machining & Manufacturing, Spokane, WA
Mastercraft Mold, Inc., Phoenix, AZ
Mastercraft Tool & Machine Co., Inc., Southington, CT
Mastercraft Tool Co., St. Louis, MO
MaTech Machining Technologies, Inc., Hebron, MD
Matrix Tool Company, Fraser, MI
Matthews Gauge, Inc., Santa Ana, CA
Maudlin & Son Manufacturing Co., Inc., Kemah, TX
May Tool & Die, Inc., North Royalton, OH
May Technology & Mfg., Inc., Kansas City, MO
Mayfran International, Cleveland, OH
McAfee Tool & Die, Inc., Uniontown, OH
McCurdy Tool & Machine Inc., Caledonia, IL
MCD Plastics & Manufacturing Inc, Piqua, OH
McFarland Machine and Engineering, Tempe, AZ
McGill Manufacturing Company, Flint, MI
McIvor Manufacturing, Inc., Buffalo, NY
McKee Carbide Tool Division, Olanta, PA
McKenzie Automation Systems, Inc, Rochester, NY
McNeal Enterprises, Inc., San Jose, CA
McNeil Industries, Inc., Willoughby, OH
McNeill Manufacturing Company, Oakland, CA
McSwain Manufacturing Corp., Cincinnati, OH
MCTD, Inc., Michigan City, IN
Meadows Manufacturing Co., Inc., Sunnyvale, CA
Meadville Plating Company, Inc., Meadville, PA
Meadville Tool Grinding, Meadville, PA
Mechanical Drive Components, Inc,Chicopee, MA
Mechanical Manufacturing Corp., Sunrise, FL
Mechanical Metal Finishing Co., Gardena, CA
Mechanized Enterprises, Inc., Anaheim, CA
Medal Industries, Mesa, AZ
Medved Tool & Die Company, Milwaukee, WI
Menegay Machine & Tool Company, Canton, OH
Mercer Machine Company, Inc., Indianapolis, IN
Mercier Tool & Die Company, Canton, OH
Merit Gage, Inc., St. Louis Park, MN
Merritt Tool Company, Inc., Kilgore, TX
Metal Cutting Specialists, Inc., Houston, TX
Metal Form Engineering, Redlands, CA
Metal Processors Inc., Stevensville, MI
Metal-Tek Machining Inc., Phoenix, AZ
Metalcraft, Inc., Tempe, AZ
Metallon, Inc., Thomaston, CT
Metals USA, Flagg Steel Co., Inc., St. Louis, MO
Metalsa—Perfek, Novi, MI
Metco Manufacturing Company, Inc., Warrington, PA
Metco L.L.C., Chatsworth, CA
Metplas, Inc., Natrona Heights, PA
Metric Machining, Monrovia, CA
Metro Manufacturing, Inc., Phoenix, AZ
Miami Tool & Die, Inc., Huntington, IN
Michigan Machining Inc., Mt. Morris, MI
Micro Chrome & Lapping, Inc., San Jose, CA
Micro Facture LLC, Mountville, PA
Micro Instrument Corporation, Rochester, NY
Micro Manufacturing, Caledonia, MI
Micro Matic Tool, Inc., Youngstown, OH
Micro Precision Company, Houston, TX
Micro Punch & Die Company, Rockford, IL
Micro Surface Engineering, Inc., Bal-tec Division, Los Angeles, CA
Micro Tool & Manufacturing, Inc., Meadville, PA
Micro-Tec, Chatsworth, CA
Micro-Tech Machine Inc., Newark, NY
Micro-Tronics, Inc., Tempe, AZ
Microfinish, Clayton, OH
Micropulse West, Inc., Tempe, AZ
Mid-Central Manufacturing, Inc., Wichita, KS
Mid-Continent Engineering, Inc., Minneapolis, MN
Mid-State Manufacturing, Inc., Milldale, CT
Mid-States Forging Die & Tool,Co., Inc., Rockford, IL
Mid-Conn Precision Manufacturing LLC, Bristol, CT
Middle River Machine Services, Inc., Baltimore, MD
Midland Precision Machining, Inc., Tempe, AZ
Midway Mfg. Inc., Elyria, OH
Midwest Tool & Die Corporation, Fort Wayne, IN
Midwest Tool & Engineering Co., Dayton, OH
Mikron Machine, Inc., Cranesville, PA
Mil-Tool & Plastics Inc., Zephyrhills, FL
Milco Wire EDM, Inc., & Milco Waterjet, Huntington Beach, CA
Millat Industries Corp., Dayton, OH
Miller Equipment Corporation, Richmond, VA
Miller Machine & Design, Inc., Charlotte, NC
Miller Mold Company, Saginaw, MI
Millrite Machine Inc., Westfield, MA
Milrose Industries, Cleveland, OH
Miltronics, Inc., Painesville, OH
Milwaukee Precision Corporation, Milwaukee, WI
Milwaukee Punch Corporation, Greendale, WI
Minco Tool & Mold Inc., Dayton, OH
Mission Tool & Manufacturing Co., Inc., Hayward, CA
Mitchell Machine, Inc., Springfield, MA
Mitchum Schaefer, Inc., Indianapolis, IN
Mittler Brothers Machine & Tool, Division-Mittler Corporation, Foristell, MO
MKR Fabricators, Saginaw, MI
Mod Tech Industries, Inc., Shawano, WI
Model Mold & Machine Company, Inc., Noblesville, IN
Model Machine Company, Inc., Baltimore, MD
Modern Machine Company, San Jose, CA
Modern Machine Company, Bay City, MI

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Modern Mold, Inc., Grand Rapids, MI
Modern Technologies Corp., Xenia, OH
Modern Industries Inc., Phoenix, AZ
Modular Mining Systems, Inc., Tucson, AZ
Mold Threads Inc., Branford, CT
Moldcraft, Inc., Depew, NY
Moldesign, Inc., Knoxville, TN
Monks Manufacturing Co., Inc., Wilmington, MA
Monroe Tool & Die Co., Rochester, NY
Monsees Tool & Die, Inc., Rochester, NY
Montgomery Machine Company, Houston, TX
Moon Tool & Die Inc., Conneaut Lake, PA
Moore Quality Tooling, Inc., Dayton, OH
Moore Gear Mfg. Co., Inc., Hermann, MO
Moore's Ideal Products, Covina, CA
Morlin Incorporated, Erie, PA
Morris Machine Co., Inc., Indianapolis, IN
Morris Machining, Inc., Oak Leaf, TX
Morton & Company, Inc., Wilmington, MA
Moseys' Production Machinists, Inc., Anaheim, CA
Moss Machine/Module, San Francisco, CA
Mound Laser and Photonics Center, Miamisburg, OH
Mountain States Automation, Inc., Englewood, CO
MPC Industries, Inc., Irvine, CA
MRC Technologies, Buffalo, NY
Mueller Machine & Tool Company, Berkeley, MO
Muller Tool Inc., Cheektowaga, NY
Multi-Tool, Inc., Saegertown, PA
Multi Dimensional Machining Inc., Englewood, CO
Mutual Tool & Die, Inc., Dayton, OH
Mutual Precision, Inc., West Springfield, MA
Myers Precision Grinding Company, Inc., Warrensville Hts, OH
Myers Industries, Akro-Mils Division, Akron, OH
Myles Tool Co., Inc., Sanborn, NY
N C Dynamics, Inc., Long Beach, CA
N D T Industries, Inc., New Deal Tool & Machine, Dayton, OH
N E T & Die Company, Inc., Fulton, NY
Nashville Machine Company, Inc., Nashville, TN
National Carbide Die, McKeesport, PA
National Jet Company, Inc., LaVale, MD
National Tool & Machine Co. Inc., East St. Louis, IL
National Tool & Manufacturing Co., Newburg Park, CA
Nationwide Precision Products, Corp., Rochester, NY
Nel-Mac Tool & Mfg. Inc., McKinney, TX
Nelson Bros. & Strom Co., Inc., Racine, WI
Nelson Engineering, Garden Grove, CA
Nelson Grinding, Inc., Fullerton, CA
Nelson Precision Drilling Co., Glastonbury, CT
Nemes Machine Co., Cuyahoga, OH
Nerjan Development Company, Stamford, CT
Neutronics, Inc., Phoenix, AZ
New Century Fabricators, Inc., New Iberia, LA
New Century Remanufacturing, Inc, Santa Fe Springs, CA
New Cov Fabrication Inc., Rochester, NY
New England Die Co., Inc., Waterbury, CT
New England Precision Grinding, Inc., Holliston, MA
New Standard Corporation, York, PA
Newman Machine Company, Inc., Greensboro, NC
Newtek Manufacturing, Sunnyvale, CA
Newton Tool & Manufacturing Co., Swedesboro, NJ
Niagara Punch & Die Corporation, Buffalo, NY
Nifty Bar, Inc., Penfield, NY
Niles Machine & Tool Works, Inc., Livermore, CA
Nixon Tool Co., Inc., Richmond, IN
Nordon Tool & Mold, Inc., Rochester, NY
Noremac Manufacturing Corp., Westboro, MA
Norman Noble, Inc., Cleveland, OH
Normike Industries, Inc., Plainville, CT
North Canton Tool Company, Inc., Canton, OH
North Central Tool & Die, Inc., Houston, TX
North Coast Tool & Mold Corp., Cleveland, OH
North Easton Machine Co., Inc., North Easton, MA
North Florida Tool Engineering, Inc., Jacksonville, FL
Northeast E D M, Newburyport, MA
Northeast Manufacturing Co., Inc., Stoneham, MA
Northeast Tool & Manufacturing, Co., Indian Trail, NC
Northern Machine Tool Company, Muskegon, MI
Northern Tool & Gage, Inc., North Royalton, OH
Northmont Tool & Gage Inc., Clayton, OH
Northwest Machine Works, Inc., Grand Junction, CO
Northwest Tool & Die Company, Inc., Grand Rapids, MI
Northwest Tool & Die, Inc., Neadville, PA
Northwood Industries, Inc., Perrysburg, OH
Norton Industries Inc., Hayward, CA
Norv's Molds, Inc., Nyssa, OR
Norwood Tool Company, Dayton, OH
Nova Manufacturing Company, North Hollywood, CA
Now-Tech Industries Inc., Lackawanna, NY
NRL & Associates, Inc., Stevensville, MD
Nu-Tech Industries, Grandview, MO
Nu-Tool Industries, Inc., North Royalton, OH
Numeric Machine, Fremont, CA
Numeric Machining Co., Inc., West Springfield, MA
Numerical Concepts, Inc., Terre Haute, IN
Numerical Precision, Inc., Wheeling, IL
Numerical Productions, Inc., Indianapolis, IN
Numet Machine, Stratford, CT
NuTec Tooling Systems, Inc., Meadville, PA
O & S Machine Company, Inc., Latrobe, PA
O–A, Inc., Agawam, MA
O E M Industries, Inc., Dallas, TX
O E M, Inc., Corvallis, OR
O-D Tool & Cutter Inc., Mansfield, MA
O'Keefe Ceramics, Woodland Park, CO
O'Neal Tool & Machine Co., Inc., DeSoto, MO
Obars Machine & Tool Company, Toledo, OH
Oberg Industries Inc., Freeport, PA
Oconee Machine & Tool Company, Inc., Westminster, SC
Oconnor Engineering Laboratories, Costa Mesa, CA
Ohio Gasket & Shim Company, Akron, OH
Ohio Transitional Machine & Tool, Inc., Toledo, OH
Ohlemacher Mold & Die, Strongsville, OH
Oilfield Die Manufacturing Co., Lafayette, LA
Okuma America Corporation, Charlotte, NC
Olson Mfg. & Distribution Inc., Shawnee, KS
Omax Corporation, Kent, WA
Omega One, Inc., Maple Heights, OH
Omega Tool, Inc., Menomonee Falls, WI
Omni Machine Works, Inc., Conyers, GA
Omni Tool, Inc., Winston Salem, NC
Optimized EDM, Santa Clara, CA
Orchard Machine, Inc., Byron Center, MI
Orenda National Aerospace, LLC, Glendale, AZ
ORIX Financial Services Inc., Charlotte, NC
Osborn Products, Inc., Phoenix, AZ
Osley & Whitney, Inc., Westfield, MA
Overland Bolling, Dallas, TX
Overton & Sons Tool & Die Co. Inc., Mooresville, IN
Overton Corporation, Willoughby, OH
P & A Tool & Die, Inc., Rochester, NY
P & N Machine Company, Inc., Houston, TX
P & P Mold & Die, Inc., Tallmadge, OH
P & R Industries, Inc., Rochester, NY
P-K Tool & Manufacturing Company, Chicago, IL
P & C Tool, Meadville, PA
P I A Group, Inc., Cincinnati, OH
P. Tool & Die Company, Inc., N. Chili, NY
Pacific Bearing Company, Rockford, IL
Pacific Precision Machine, Inc., San Carlos, CA
Pacific Tool & Die, Inc., Brunswick, OH
Pahl Tool Services, Cleveland, OH
Palma Tool & Die Company, Inc., Lancaster, NY
Palmer Manufacturing Company, Malden, MA
Palmer Machine Company Inc., Conway, NH
Pankl Aerospace Systems, Cerritos, CA
Pantera, Inc., Torrington, CT
Parallax, Inc., Largo, FL
Paramount Machine & Tool Corp., Fairfield, NJ
Park Hill Machine, Inc., Lancaster, PA
Parker Plastics Corporation, Pittsburgh, PA
Parr-Green Mold and Machine Co., North Canton, OH
Parris Tool & Die Company, Goodlettsville, TN
Parrish Machine, Inc., South Bend, IN
Pasco Tool & Die, Inc., Meadville, PA
Patco Machine & Fab, Inc., Houston, TX
Path Technologies, Inc., Mentor, OH
Patkus Machine Company, Rockford, IL
Patriot Machine, Inc., St. Charles, MO
Patten Tool & Engineering, Inc., Kittery, ME
Paul E. Seymour Tool & Die Co., North East, PA
PDQ Machine, Inc., Machesney Park, IL
PDS Industries, Inc., Irwin, PA
Peerless Precision, Inc., Westfield, MA
Pegasus/Triumph Manufacturing, Inc., East Berlin, CT
Peko Precision Products, Rochester, NY
Pell Engineering & Manufacturing, Inc., Pelham, NH
Penco Precision, Fontana, CA
Pendleton Tool Company, Inc., Erie, PA
Peninsula Screw Machine Products, Inc., Belmont, CA
Penn United Tech, Inc., Saxonburg, PA
Penn State Tool & Die Corp., North Huntingdon, PA
Pennoyer-Dodge Company, Glendale, CA
Pennsylvania Tool & Gages, Inc., Meadville, PA
Pennsylvania Crusher, Cuyahoga Falls, OH
Perfection Tool & Mold Corp., Dayton, OH
Perfecto Tool & Engineering Co., Anderson, IN

Perfekta, Inc., Wichita, KS
Performance Grinding & Manufacturing, Inc., Tempe, AZ
Performance Machining Inc., Irwin, PA
Perlos, Inc., Fort Worth, TX
Perry Tool & Research Inc., Hayward, CA
Petersen Precision Engineering, LLC, Redwood City, CA
Peterson Jig & Fixture, Inc., Rockford, MI
Petro-Chem Industries, Inc., Stafford, TX
Pettey Machine Works, Inc., Trinity, AL
Phil-Coin Machine & Tool Co., Inc., Hudson, MA
Philips Machining Company, Inc., Coopersville, MI
Phoenix Tool & Gage, Inc., Phoenix, AZ
Phoenix Metallics, Phoenix, AZ
Phoenix Grinding, Div. of Cal-Disc Grinding Co., Phoenix, AZ
Piece-Maker Company, Troy, MI
Pierce Products, Inc., Cleveland, OH
Pierson Precision Inc., Campbell, CA
Pinehurst Tool & Die, Conneaut Lake, PA
Pinnacle Precision Co., Glassport, PA
Pinnacle Engineering Co., Inc., Manchester, MI
Pinnacle Manufacturing Co., Inc., Chandler, AZ
Pioneer Tool & Die Company, Akron, OH
Pioneer Tool & Die, Inc., Meadville, PA
Pioneer Tool Die & Machine Co., Inc., Ivyland, PA
Pioneer Precision Grinding, Inc., West Springfield, MA
Pioneer Industries, Seattle, WA
Piper Plastics, Inc., Chandler, AZ
Pitt-Tex, Latrobe, PA
Plainfield Stamping Illinois, Inc., Plainfield, IL
Plano Machine & Instrument Inc., Gainesville, TX
PLASTECH, San Jose, CA
Plastic Mold Technology Inc., Grand Rapids, MI
Plastipak Packaging, Inc., Package Development Plant 67, Medina, OH
Pleasanton Tool and Manufacturing, Inc., Pleasanton, CA
Plesh Industries, Inc., Buffalo, NY
PMR, Inc., Avon, OH
Pol-Tek Industries, Ltd., Cheektowaga, NY
Polynetics, Inc., Fullerton, CA
Polytec Products Corporation, Menlo Park, CA
Ponderosa Industries, Inc., Denver, CO
Popp Machine & Tool, Inc., Louisville, KY
Port City Machine & Tool Company, Muskegon Heights, MI
Portage Knife Company, Inc., Mogadore, OH
Post Products, Inc., Kent, OH
Powers Bros. Machine, Inc., Montebello, CA
Powill Manufacturing & Engineering, Inc., Phoenix, AZ
PQ Enterprise, L.L.C., Grand Rapids, MI
PR Machine Works, Inc., Mansfield, OH
Practical Machine Company, Barberton, OH
Precise Tool Engineering, Tucson, AZ
Precise Tool & Die, Inc., Leechburg, PA
Precise Technologies Inc., Largo, FL
Precise Engineering, Lowell, MI
Precise Products Corporation, Minneapolis, MN
Precision Components Group, Inc., Fremont, CA
Precision Wire EDM Service Inc., Grand Rapids, MI
Precision Wire Cut Corporation, Waterbury, CT
Precision Aircraft Components, Inc., Dayton, OH
Precision Aircraft Machining Co., Inc. dba PAMCO, Sun Valley, CA
Precision Automated Machining, Englewood, CO
Precision Balancing & Analyzing Co., Mentor, OH
Precision Boring Company, Detroit, MI
Precision Die & Stamping Inc., Tempe, AZ
Precision Engineering & Mfg. Co., PEMCO, Haymarket, VA
Precision Engineering, Inc., Uxbridge, MA
Precision Gage & Tool Company, Dayton, OH
Precision Gage, Inc., Tempe, AZ
Precision Grinding & Mfg. Corp., Rochester, NY
Precision Grinding Inc., Phoenix, AZ
Precision Grinding, Inc., Birmingham, AL
Precision Identity Corporation, Campbell, CA
Precision Industries, Inc., Providence, RI
Precision Machine & Engineering, Inc., Phoenix, AZ
Precision Machine & Instrument Co., Houston, TX
Precision Machine & Tool Co., Longview, TX
Precision Machine Company, Lancaster, PA
Precision Machine Rebuilding, Inc., Rogers, MN
Precision Machine Works, Aiken, SC
Precision Manufacturing, Technologies, Inc., Grand Junction, CO
Precision Matters, Inc., San Francisco, CA
Precision Metal Crafters, Ltd., Greensburg, PA
Precision Metal Fabrication, Dayton, OH
Precision Metal Tooling, Inc., San Leandro, CA
Precision Mold & Engineering, Inc., Warren, MI
Precision Mold Base Corporation, Tempe, AZ
Precision Mold Welding, Inc., Little Rock, AR
Precision Mold, Inc., Kent, WA
Precision Piece Parts Inc., Mishawaka, IN
Precision Products Inc., Greenwood, IN
Precision Resource, California Division, Huntington Beach, CA
Precision Resource Tool & Machine, Division, Shelton, CT
Precision Resources, Hawthorne, CA
Precision Specialists, Inc., West Berlin, NJ
Precision Specialties, San Jose, CA
Precision Stamping & Tool, Inc., Irvine, CA
Precision Stamping, Inc., Farmers Branch, TX
Precision Tool & Mold, Inc., Clearwater, FL
Precision Tool Work, Inc., New Iberia, LA
Precon, Inc., Anaheim, CA
Preferred Tool Company, Inc., Seymour, IN
Preferred Tool & Die Co., Inc., Comstock Park, MI
Prescott Aerospace, Inc., Prescott Valley, AZ
Pressco Products, Kent, WA
Prestige Mold Incorporated, Rancho Cucamonga, CA
Price Products, Inc., Escondido, CA
Pride, dba Pride Industries, Brooklym Park, MN
Prima Die Castings, Inc., Clearwater, FL
Prime-Co Tool Inc., East Rochester, NY
Primeway Tool & Engineering Co., Div. of Cleary Developments, Inc., Madison Heights, MI
Prince Machine, Holland, MI
Pro-Mold, Inc., Rochester, NY
Pro-Tech Machine, Inc., Burton, MI
Process Equipment Company, Tipp City, OH
Product Engineering Company, Columbus, IN
Production Tool & Mfg. Co., Portland, OR
Production Saw Works, Inc., North Hollywood, CA
Production Machining & Mfg., Dallas, TX
Producto Machine Company, Bridgeport, CT
Profab Industries L.L.C., Phoenix, AZ
Professional Instruments Co., Inc., Hopkins, MN
Professional Machine & Tool Co., Gallatin, TN
Professional Machine & Tool, Inc., Valley Center, KS
Proficient Machining Co., Inc., Mentor, OH
Profile Grinding, Inc., Cleveland, OH
Proformance Manufacturing, Inc., Corona, CA
Progressive Metallizing & Machine Company, Inc., Akron, OH
Progressive Concepts Machining, Pleasanton, CA
Progressive Machine & Design, LLC, Victor, NY
Progressive Tool & Die, Inc., Meadville, PA
Progressive Tool Company, Waterloo, IA
Progressive Tool & Die, Inc., Gardena, CA
Promax Tool Co., Rancho Cordova, CA
ProMold, Inc., Cuyahoga Falls, OH
Prompt Machine Products, Inc., Chatsworth, CA
Proper Cutter, Inc., Guys Mills, PA
Proper Mold & Engineering, Inc., Center Line, MI
Proteus Manufacturing Co., Inc., Woburn, MA
Proto Machine & Manufacturing, Kent, OH
Proto-Design, Inc., Redmond, WA
Protonics Engineering Corp., Cerritos, CA
Prototype & Plastic Mold Co., Inc., Middletown, CT
Puehler Tool Company, Valley View, OH
Pullbrite, Inc., Fremont, CA
Punch Press Products, Inc., Los Angeles, CA
Punchcraft Company—Subsidiary of MascoTech, Inc., Warren, MI
Qualfab Machining, Lodi, CA
Quality Tool Company, Toledo, OH
Quality Machining, Inc., Waunakee, WI
Quality Precision, Inc., Hayward, CA
Quality Mold & Engineering, QME Inc., Baroda, MI
Quality Mold & Die, Inc., Santa Ana, CA
Quality Centerless Grinding Corp., Middlefield, CT
Quality Machining Technology, Inc., Oakdale, CA
Quality Machine Engineering, Inc., Santa Rosa, CA
Quality Grinding and Machine, Rainbow City, AL
Quality Grinding & Machining, Inc., Bridgeport, CT
Quality Engineering Services, Wallingford, CT
Quick Action Mfg. Co., St. Louis, MO
Quick-Way Stampings, Euless, TX
R W Machine, Inc., Houston, TX
R T R Slotting & Machine Inc., Cuyahoga Falls, OH
R S Precision Industries, Inc., Farmingdale, NY
R O C Carbon Company, Houston, TX
R Davis EDM, Anaheim, CA
R & S Redco, Inc., Rockland, MA
R M I, Van Nuys, CA

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R J S Corporation, Akron, OH
R G F Machining Technologies, Canon City, CO
R F Cook Manufacturing Co., Stow, OH
R E F Machine Company, Inc., Middlefield, CT
R & D Machine Shop, Dallas, TX
R & D Specialty/Manco, Phoenix, AZ
R & D Tool & Engineering, Lee's Summit, MO
R & G Precision Tool Inc., Thomaston, CT
R & H Manufacturing Inc., Kingston, PA
R & J Tool, Inc., Brookville, OH
R & M Machine Tool, Freeland, MI
R & M Manufacturing Company, Niles, MI
R & M Mold Manufacturing Co., Inc., Bloomsbury, NJ
R & R Precision Machine, Inc., Wichita, KS
R & S EDM, Inc., W. Springfield, MA
R & S Machining, Inc., Oakville, MO
R D C Machine, Inc., Santa Clara, CA
R. W. Smith Company, Inc., Dallas, TX
R. T. Callahan Machine Products, Inc., Harleysville, PA
Radiant Technologies, Phoenix, AZ
Rainbow Tool & Machine Co., Inc., Gadsden, AL
Raloid Corporation, Reisterstown, MD
Ralph Stockton Valve Products, Inc., Houston, TX
Ram Tool, Inc., Grafton, WI
Rapid-Line Inc., Grand Rapids, MI
Rapidac Machine Corporation, Rochester, NY
Ratnik Industries, Inc., Victor, NY
Rawlings Engineering, Macon, GA
Re-Del Engineering, Campbell, CA
Realco Diversified, Inc., Meadville, PA
Reardon Machine Co., Inc., St. Joseph, MO
Reata Engineering & Machine, Works, Inc., Englewood, CO
Reber Machine & Tool Company, Muncie, IN
RedSpark, Inc., San Francisco, CA
Reed Instrument Company, Houston, TX
Reese Machine Company, Inc., Ashtabula, OH
Reg-Ellen Machine Tool Corp., Rockford, IL
Reichert Stamping Company, Toledo, OH
Reitz Tool & Die Company, Inc., Walbridge, OH
Reitz Tool, Inc., Cochranton, PA
Reko International Sales, Inc., Troy, MI
Reliable EDM, Inc., Houston, TX
Remarc Manufacturing Inc., Hayward, CA
Remmele Engineering, Inc., St. Paul, MN
Remtex, Inc., Longview, TX
Reny & Company Inc., El Monte, CA
REO Hydro-Pierce Inc., Detroit, MI
Repairtech International, Inc., Van Nuys, CA
Repko Tool Inc., Meadville, PA
Republic-Lagun, Carson, GA
Republic Industries, Louisville, KY
Research Tool Inc., East Haven, CT
Reuther Mold & Manufacturing Co., Cuyahoga Falls, OH
Reward Manufacturing, Sun Valley, CA
Reynolds Manufacturing Co., Inc., Rock Island, IL
Rheaco Inc., Grand Prairie, TX
Rhode Island Centerless, Inc., Johnston, RI
Rich Tool & Die Company, Scarborough, ME
Richard Manufacturing Company, Inc., Milford, CT
Richard Tool & Die Corporation, New Hudson, MI
Richard's Grinding, Inc., Cleveland, OH
Richards Machine Tool Company, Inc., Lancaster, NY
Richsal Corporation, Elyria, OH
Rick Sanford Machine Company, San Leandro, CA
Rickman Machine Company, Wichita, KS
Rid-Lom Precision Tool Corp., Rochester, NY
Ridge Machine & Welding Company, Toronto, OH
Riggins Engineering, Inc., Van Nuys, CA
Right Tool & Die, Inc., Toledo, OH
Rima Enterprises, Huntington Beach, CA
Rite-Way Industries Inc., Louisville, KY
Riverview Machine Company, Inc., Holyoke, MA
Riviera Tool Company, Grand Rapids, MI
ROA Tool, Inc., Los Angeles, CA
Robb Machine Tool Co., Wyoming, MI
Robert C. Weisheit Co., Franklin Park, IL
Robert C. Reetz Company, Inc., Pawtucket, RI
Roberts Tool & Die Company, Chillicothe, MO
Roberts Tool Company, Inc., Chatsworth, CA
Robrad Tool & Engineering, Mesa, AZ
Rochester Precision Machine, Inc., Rochester, MN
Rochester Automated Systems, Inc., Rochester, NY
Rochester Gear, Inc., Rochester, NY
Rochester Manufacturing, Wellington, OH
Rockburl Industries Inc., Rochester, NY
Rockford Process Control, Inc., Rockford, IL
Rockford Tool & Manufacturing Co., Rockford, IL
Rockford Toolcraft, Inc., Rockford, IL
Rockhill Machining Industries Inc., Barberton, OH
Rockstedt Tool & Die, Brunswick, OH
Rocon Manufacturing Corporation, Rochester, NY
Rogers Associates Machine Tool, Corporation, Rochester, NY
Rogers Enterprises, Rochester, NY
Roll Kraft, Mentor, OH
Romac Electronics, Inc., Plainview, NY
Romold Inc., Rochester, NY
Ron Grob Company, Loveland, CO
Ronart Industries, Inc., Detroit, MI
Ronlen Industries, Inc., Brunswick, OH
Rons Racing Products, Inc., Tucson, AZ
Royal Wire Products, Inc., N. Royalton, OH
Royalton Manufacturing, Inc., Cleveland, OH
Royster's Machine Shop, LLC, Henderson, KY
Rozal Industries, Inc., Farmingdale, NY
RRR Development Co., Inc., North Canton, OH
RTS Wright Industries, Nashville, TN
Rubbermaid, Inc.—Mold Division, Wooster, OH
Runner Tool & Die Co., Inc., Akron, OH
Ruoff & Sons, Inc., Runnemede, NJ
Ryan Industries Inc., York, PA
S & R Tool Inc., Lakeville, NY
S & B Tool & Die Co., Inc., Lancaster, PA
S & P Machine & Tool Co., L.L.C., Toledo, OH
S & R CNC Machining, Arleta, CA
S C Manufacturing, Akron, OH
S D S Machine, Inc., Livermore, CA
S G S Tool Company, Munroe Falls, OH
S L P Machine, Inc., Ham Lake, MN
S P M/Anaheim, Anaheim, CA
S P S Technologies, Santa Ana, CA
S. C. Machine, Chatsworth, CA
S.M.G. LLC, Cheektowaga, NY
Sabre Machining Center, Inc., Dayton, OH
Saeilo Manufacturing Industries, Blauvelt, NY
Safety-Kleen, Columbia, SC
Sage Machine & Fabricating, Houston, TX
Sagehill Engineering, Inc., Menlo Park, CA
Saginaw Products Corporation, Saginaw, MI
Saint-Gobain Advanced Ceramics, Colorado Springs, CO
Saint-Gobain Semicon Equipment, Inc., San Jose, CA
Salamon Manufacturing Inc., Middletown, CT
Saliba Industries, Inc., Lake Forest, IL
Salomon Smith Barney, Washington, DC
Samax Precision, Inc., Sunnyvale, CA
San Diego Swiss Machining, Inc., Chula Vista, CA
San Jose Laser, San Jose, CA
Sanders Tool & Mould Company, Hendersonville, TN
Sandor Tool & Manufacturing Co., Lawrence, MA
Sandy Bay Machine, Rockport, MA
Santin Engineering, Inc., West Peabody, MA
Satran Technical Enterprises, Mayer, AZ
Sattler Machine Products, Inc., Sharon Center, OH
Savco Manufacturing Co. Inc., Union, MO
Sawing Services Co., Chatsworth, CA
Sawtech, Lawrence, MA
Schaffer Grinding Company, Inc., Montebello, CA
Schill Corp., Toledo, OH
Schlitter Tool, Warren, MI
Schmald Tool & Die Inc., Burton, MI
Schmiede Corporation, Tullahoma, TN
Schneider & Marquard, Inc., Newton, NJ
Schoitz Engineering, Inc., Waterloo, IA
Schuetz Tool & Die, Inc., Hiawatha, KS
Schulze Tool Company, Independence, MO
Schwab Machine, Inc., Sandusky, OH
Schwartz Industries, Inc., Warren, MI
Scientiam Machine Co., Harbor City, CA
Scott County Machine & Tool Co., Inc., Scottsburg, IN
Sebewaing Tool & Engineering Co., Sebewaing, MI
Sebra,Tucson, AZ
Seemcor Inc., Englewood, NJ
Select Tool and Die, Toledo, OH
Select Manufacturing Company, Rainbow City, AL
Select Tool & Eng., Inc., Elkhart, IN
Select Tool & Die—Tool Div., Dayton, OH
Select Industrial Systems Inc., Fairborn, OH
SelfLube, Coopersville, MI
Selzer Tool & Die, Inc., Elyria, OH
Sematool Mold & Die Co., Santa Clara, CA
Serrano Industries Inc., Santa Fe Springs, CA
Service Tool & Die, Inc., Henderson, KY
Service Manufacturing and Engineering, Anaheim, CA
Setters Tools, Inc., Piedmont, SC
Sharon Center Mold & Die, Sharon Center, OH
Shaw Industries, Inc., Franklin, PA
Shear Tool, Inc., Saginaw, MI
Sheets Tool & Manufacturing, Inc., Saegertown, PA
Shelby Engineering Company, Inc., Indianapolis, IN
Sherer Manufacturing Incorporated, Clearwater, FL
Sherlock Machine Company, Clearwater, FL
Sherman Tool & Gage, Erie, PA
Shiloh Industries, Wellington Die Division, Wellington, OH
Shookus Special Tools, Inc., Raymond, NH

Shop Tech Industrial Software Corp., Rocky Hill, CT
Sibley Machine & Foundry Corp., South Bend, IN
Sieger Engineering, Inc., S. San Francisco, CA
Sigma Precision Mfg., Inc., Aston, PA
Signa Molds & Engineering, Sylmar, CA
Signal Machine Company, New Holland, PA
Silicon Valley Mfg., Fremont, CA
Sipco Molding Technologies, Meadville, PA
Sirius Enterprises, Inc., Dallas, TX
Sirois Tool Co. Inc., Berlin, CT
Six Sigma, Louisville, KY
Ski-Way Machine Products Company, Euclid, OH
Skillcraft Machine Tool Company, West Hartford, CT
Skulsky, Inc., Gardena, CA
Skyline Manufacturing Corp., Nashville, TN
Skylon Mold & Machining, Sugar Grove, PA
Skyway Manufacturing Corporation, Phoenix, AZ
Smith-Renaud, Inc., Cheshire, CT
Smith's Machine, Cottondale, AL
Smithfield Manufacturing, Inc., Clarksville, TN
Snyder Systems, Benicia, CA
Solar Tool & Die, Inc., Kansas City, MO
Sonic Machine & Tool, Inc., Tempe, AZ
Sonoma Precision Mfg. Co., Santa Rosa, CA
Sonora Precision Molds, Inc., Mi Wuk Village, CA
South Paw Enterprises LLC, Phoenix, AZ
South Eastern Machining, Inc., Piedmont, SC
South Bend Form Tool Company, South Bend, IN
Southampton Manufacturing, Inc., Feasterville, PA
Southeastern Technology, Inc., Murfreesboro, TN
Southern Mfg. Technologies Inc., Tampa, FL
Southwest Mold, Inc., Tempe, AZ
Southwest Manufacturing, Inc., Wichita, KS
Space City Machine & Tool Co., Houston, TX
Spalding & Day Tool & Die Co., Louisville, KY
Spark Technologies, Inc., Schenley, PA
Spartak Products Inc., Houston, TX
Specialty Machine & Hydraulics, Pleasantville, PA
Speed Precision Machining, Phoenix, AZ
Spenco Machine & Manufacturing, Temecula, CA
Spex Precision Machine Technologies, Rochester, NY
Spike Industries, North Lima, OH
Spin Pro Inc., Sunnyvale, CA
Spiral Grinding Company, Culver City, CA
Springfield Manufacturing, LLC, Clover, SC
Springfield Tool & Die, Inc., Greenville, SC
Sprint Tool & Die Inc., Meadville, PA
Spun Metals, Inc., Phoenix, AZ
STADCO, Los Angeles, CA
Standard Die Supply of Indiana, Inc., Indianapolis, IN
Standard Welding & Steel, Products, Inc., Medina, OH
Standard Machine Inc., Cleveland, OH
Standard Jig Boring Service, Inc., Akron, OH
Stanek Tool Corporation, New Berlin, WI
Stanley Machining & Tool Corp., Carpentersville, IL
Star Tool & Engineering, Inc., Newark, CA
Star Tool & Die, Inc., Elkhart, IN
Star Precision Products, Willoughby, OH
Starn Tool & Manufacturing Co., Meadville, PA
State Industrial Products, Inc., Phoenix, AZ
Stauble Machine & Tool Company, Louisville, KY
Stedcraft Inc., Torrington, CT
Stelted Manufacturing, Inc., Tempe, AZ
Sterling Engineering Corporation, Winsted, CT
Sterling Tool Company, Racine, WI
Stevens Manufacturing Co., Inc., Milford, CT
Stewart Manufacturing Company, Phoenix, AZ
Stieg Grinding Corporation, Rockford, IL
Stillion Industries, Ann Arbor, MI
Stillwater Technologies, Inc., Troy, OH
Stines' Machine, Inc., Vista, CA
STM Manufacturing, Holland, MI
Stonewall Jackson Mold Inc., Annville, KY
Stoney Crest Regrind Service, Inc., Bridgeport, MI
Streamline Tooling Systems, Muskegon, MI
Strobel Machine, Inc., Worthington, PA
Stuart Tool & Die, Falconer, NY
Studwell Engineering, Inc., Sun Valley, CA
Subsea Ventures Inc., Houston, TX
Suburban Manufacturing Company, Eastlake, OH
Summit Precision, Inc., Phoenix, AZ
Summit Machine Company, Scottdale, PA
Sun Tool Company, Houston, TX
Sun EDM Inc., Gilbert, AZ
Sunbelt Plastics, Inc., Frisco, TX
Sunrise Tool & Die, Inc., Henderson, KY
Sunset Tool Inc., Saint Joseph, MI
Super Finishers II, Phoenix, AZ
Superbolt, Inc., Carnegie, PA
Superior Jig, Inc., Anaheim, CA
Superior Mold Company, Ontario, CA
Superior Gear Box Company, Stockton, MO
Superior Die Tool Machine Co., Columbus, OH
Superior Tool, Inc., Willow Street, PA
Superior Tool & Die Company, Inc., Elkhart, IN
Superior Tool & Die Company, Bensalem, PA
Superior Thread Rolling Company Inc, Arleta, CA
Superior Programming LLC, Clearwater, KS
Superior Die Set Corporation, Oak Creek, WI
Supreme Tool & Die Company, Fenton, MO
Surface Manufacturing, Auburn, CA
Swiss Wire E D M, Costa Mesa, CA
Swissco, Inc., Bell Gardens, CA
Swisstech Tooling & Manufacturing, Inc., Scottsdale, AZ
Synergis Technologies Group, Grand Rapids, MI
Synergy Machine, Inc., Kent, WA
Synertron, Inc., Middleboro, MA
Syst-A-Matic Tool & Design, Meadville, PA
Systems 3, Inc., Tempe, AZ
T & S Industrial Machining Corp., Woburn, MA
T–M Manufacturing Corporation, Sunnyvale, CA
T J Tool and Mold, Guys Mills, PA
T M Machine & Tool, Inc., Toledo, OH
T M S Inc., Technical Machining Services, Inc., Lincoln, RI
T R Jones Machine Company, Inc., Crystal Lake, IL
T–K & Associates, Inc., La Porte, IN
T. J. Karg Company, Inc., Akron, OH
TAE Corporation, d/b/a T & E Manufacturing, Kent, WA
Tag Engineering, Inc., Tucson, AZ
Tait Design & Machine Company Inc., Manheim, PA
Talbar, Inc., Meadville, PA
Talcott Machine Products, Inc., Meriden, CT
Talent Tool & Die, Inc., Berea, OH
Tana Corporation, Toledo, OH
Tanner Oil Tools Inc., Houston, TX
Target Precision, Meadville, PA
Taurus Tool & Engineering, Inc., Muncie, IN
TCI Precision Metals, Gardena, CA
TCI Aluminum North, Hayward, CA
Team Tooling and Design, Incorporated, Shawnee, OK
Tech-Machine, Inc., Colorado Springs, CO
Tech-Etch, Inc., Plymouth, MA
Tech Tool, Inc., Detroit, MI
Tech Tool & Mold, Inc., Meadville, PA
Tech Ridge, Inc., South Chelmsford, MA
Tech Mold, Inc., Tempe, AZ
Tech Industries, Inc., Cleveland, OH
Tech Manufacturing Company, Wright City, MO
Techmetals, Inc., Dayton, OH
Techni-Products, Inc., East Longmeadow, MA
Techni-Cast Corporation, South Gate, CA
Technics 2000 Inc., Olathe, KS
Technodic, Inc., Providence, RI
Tecno Troqueles Industries, Laredo, TX
TecoMetrix, LLC, Tempe, AZ
Tedco, Inc., Cranston, RI
Teke Machine Corp., Rochester, NY
Tell Tool, Inc., Westfield, MA
Temco Corporation, Danvers, MA
Tenk Machine & Tool Company, Cleveland, OH
Tennessee Metal Works, Inc., Nashville, TN
Tennessee Tool Corporation, Charlotte, TN
Terrell Manufacturing Inc., Strongsville, OH
Testand Corporation, Pawtucket, RI
Tetco, Inc., Plainville, CT
Teter Tool & Die, Inc., La Porte, IN
Texas Honing, Inc., Pearland, TX
Thaler Machine Company, Dayton, OH
The POM Group, Inc., Auburn Hills, MI
The Ryan Group, Franklin, NJ
The Will-Burt Company, Orrville, OH
The Metalworking Group, Inc., Cincinnati, OH
The United Plastics Group, Inc., Chicopee, MA
The Timken Company, Specialty Tooling & Rebuilding, Canton, OH
The Sullivan Corporation, Hartland, WI
The Foster Group, Rochester, NY
The Sherman Corporation, Inglewood, CA
The Goforth Corp., dba The Machine Shop, Fremont, CA
The Baughman Group, Louisville, KY
The Bechdon Company, Inc., Upper Marlboro, MD
The Budd Company, Shelbyville, KY
The Die Works Inc., Hillsboro, MO
Therm, Inc., Ithaca, NY
Thiel Tool & Engineering Co., Inc., St. Louis, MO
Thomas Machine Works, Inc., Newburyport, MA
Thornhurst Manufacturing, Inc., Zephyrhills, FL
Three-Way Pattern, Inc., Wichita, KS
ThreeCore, Inc., Danvers, MA
Time Machine & Stamping, Inc., Phoenix, AZ
Timon Tool & Die Co., Toledo, OH
Tipco Punch, Inc., Hamilton, OH

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Tipp Machine & Tool, Inc., Tipp City, OH
Titan, Inc., Sturtevant, WI
TLT-Babcock, Inc., Medina Ohio Facility, Akron, OH
TMI Industries, Inc., Temperance, MI
TMK Manufacturing Inc., Campbell, CA
TMX Engineering & Manufacturing, Santa Ana, CA
Toledo Blank, Inc., Toledo, OH
Toledo Molding & Die, Toledo, OH
Tolerance Masters, Inc., Circle Pines, MN
Tomak Precision, Lebanon, OH
Tomco Tool & Die, Inc., Belding, MI
TomKen Tool & Engineering, Inc., Muncie, IN
Tool-Matic Company, Inc., City Of Commerce, CA
Tool Technology, Inc., Danvers, MA
Tool Gauge & Machine Works, Inc., Tacoma, WA
Tool Mate Corporation, Cincinnati, OH
Tool Specialties Company, Hazelwood, MO
Tool Specialty Company, Los Angeles, CA
Tool Steel Service of California, Inc., Los Angeles, CA
Tool Tech Corporation, San Jose, CA
Tool Tech, Inc., Springfield, OH
Toolcomp Tooling & Components, Co., Toledo, OH
Toolcraft Products, Inc., Dayton, OH
Toolcraft of Phoenix, Inc., Glendale, AZ
Toolex, Inc., Houston, TX
Tooling Molds West, Inc., Tempe, AZ
Tools, Inc., Sussex, WI
Tools Renewal Company, Birmingham, AL
Top Tool Company, Minneapolis, MN
Top Tool & Die, Inc., Cleveland, OH
Toth Technologies, Pennsauken, NJ
Toth Industries, Inc., Toledo, OH
Tower Tool & Engineering, Inc., Machesney Park, IL
Trace-A-Matic Corporation, Brookfield, WI
Tracer Tool & Die Company Inc., Grand Rapids, MI
Trademark Die & Engineering, Belmont, MI
Tram Tek Inc., Phoenix, AZ
Tran Engineering, Garden Grove, CA
Trans-World Electric Inc., Port Arthur, TX
Transmatic Manufacturing, Tempe, AZ
Treblig, Inc., Greenville, SC
Trec Industries, Inc., Brooklyn Heights, OH
Tree City Mold & Machine Co., Inc., Kent, OH
Treffers Precision, Inc., Phoenix, AZ
Tresco Tool, Inc., Guys Mills, PA
Tri-M-Mold, Inc., Stevensville, MI
Tri Craft, Inc., Middleberg Heigh, OH
Tri J Machine Company, Inc., Gardena, CA
Tri-City Machine Products, Inc., Peoria, IL
Tri-City Tool & Die, Inc., Bay City, MI
Triad Plastic Technologies, Reno, NV
Triangle Tool Company, Erie, PA
Triangle Mold & Machine Co. Inc., Hartville, OH
Tribond Industries, Inc., Phoenix, AZ
Tricon Machine & Tool, Inc., Rochester, NY
Tricore Mold & Die, Machesney Park, IL
Tridecs Corporation, Hayward, CA
Trident Precision Manufacturing, Webster, NY
Trimac Manufacturing, Inc., Santa Clara, CA
Trimble Navigation Ltd. Engineering & Construction Division, Huber Heights, OH
Trimline Tool, Inc., Grandville, MI
Trinity Tools, Inc., North Tonawanda, NY
Trio Tool & Die, Inc., Hawthorne, CA
Triple-T Cutting Tools Inc., West Berlin, NJ
Triple Quality Tool & Die, Inc., Bell, CA
Triplett Machine, Inc., Phelps, NY
Triumph Precision, Inc., Phoenix, AZ
Trojan Mfg. Co. Inc., Piqua, OH
Trotwood Corporation, Trotwood, OH
Tru Form Manufacturing Corp., Rochester, NY
Tru Tool, Inc., Sturtevant, WI
Tru-Cut, Inc., Sebring, OH
Tru-Stop, Inc., Prescott Valley, AZ
True Cut EDM Inc., Garland, TX
True Position, Inc., Chatsworth, CA
True-Tech Corporation, Fremont, CA
Trueline Tool & Machine, Inc., Springfield, OH
Trust Technologies, Willoughby, OH
Trutron Corporation, Troy, MI
Tschida Engineering, Inc., Napa, CA
Tucker Engineering Inc., Peabody, MA
Tucker Machine Company, North Branford, CT
Turn-Tech, Inc., Pinehurst, TX
Turnkey Automation, Inc., Rockford, IL
Twin City Plating Company, Minneapolis, MN
Two-M Precision Co., Inc., Willoughby, OH
Tymar Precision Inc., Santa Clara, CA
U S Machine & Tool, Inc., Murfreesboro, TN
U M C, Inc., Hamel, MN
U C O Tool & Die, Inc., Union City, OH
U F E Incorporated, Stillwater, MN
UAB Manufacturing Co., Inc., Southampton, PA
Uddeholm, Santa Fe Springs, CA
Ugm, Inc., Santa Clara, CA
Ultima Nashua Industrial Corp., Nashua, NH
Ultra-Tech, Inc., Kansas City, KS
Ultra Tool Company, Grantsburg, WI
Ultra Tool & Manufacturing, Inc., Menomonee Falls, WI
Ultra Precision, Inc., Freeport, PA
Ultra Stamping & Assembly, Inc., Rockford, IL
Ultramation, Inc., Waco, TX
Ultron, Long Beach, CA
Uneco Manufacturing, Inc., Chicopee, MA
Unique Tool & Manufacturing, Randleman, NC
Unique Machine Company, Montgomeryville, PA
Unitech, Inc., Kansas City, MO
United States Fittings, Inc., Warrensville Hei, OH
United Tool & Engineering Co., South Beloit, IL
United Tool & Engineering, Inc., Mishawaka, IN
United Machine Co., Inc., Wichita, KS
United Centerless Grinding, East Hartford, CT
Universal Tools & Manufacturing Co., Springfield, NJ
Universal Precision Products Inc., Akron, OH
Universal Custom Process, Inc., Streetsboro, OH
Universal Brixius, Milwaukee, WI
Upland Fab, Inc., Ontario, CA
USAeroteam, Dayton, OH
USBX, Inc., Santa Monica, CA
UT Technologies, Inc., Los Angeles, CA
V R C, Inc., Berea, OH
V & S Die & Mold, Inc., Lakewood, OH
V I Mfg., Webster, NY
V Ash Machine Company, Cleveland, OH
V A Machine & Tools, Inc., Broussard, LA
V & M Tool Company, Inc., Perkasie, PA
V.A.W. of America, Inc., Phoenix, AZ
Val-Tech Mfg., Tempe, AZ
Valley Tool & Mfg., Inc., Orange, CT
Valley Tool Room, Inc., Phoenix, AZ
Valley Tool & Die, Inc., North Royalton, OH
Valley Machine Works, Inc., Phoenix, AZ
Valv-Trol Company, Stow, OH
Van-Am Tool & Engineering, Inc., St. Joseph, MO
Van Reenen Tool & Die Inc., Rochester, NY
Van Engineering, R Vandewalle, Inc., Cincinnati, OH
Van Os Machine Works, Inc., St. Louis, MO
Vanderveer Industrial Plastics, Inc., Placentia, CA
Vanpro, Inc., Cambridge, MN
Varco Systems, Orange, CA
Vaughn Manufacturing Company, Inc., Nashville, TN
Vektek, Inc., Emporia, KS
Venango Machine Products, Inc., Reno, PA
Ver-Sa-Til Associates, Inc., Chanhassen, MN
Versacut Ind. Inc., Morenci, MI
VersaTool & Die Machining and Engineering Inc., Beloit, WI
Vi-Tec Manufacturing Inc., Livermore, CA
Vico Louisville, Louisville, KY
Viking Tool & Engineering, Whitehall, MI
Viking Tool & Gage, Inc., Conneaut Lake, PA
Virtual Fund, Inc., Eden Prairie, MN
VirtualRFQ.cc, Auburn, WA
Vistek Precision Machine Company, Ivyland, PA
Vitron Manufacturing, Inc., Phoenix, AZ
Vitullo & Associates, Inc., Warren, MI
Vobeda Machine & Tool Company, Racine, WI
Vulcan Tool Corporation, Dayton, OH
W + D Machinery Company, Inc., Overland Park, KS
W & H Stampings & Fineblanking, Inc., Hauppauge, NY
W D & J Machine & Engineering Inc., Fullerton, CA
W E C Technologies Corporation, Amityville, NY
W G Strohwig Tool & Die, Inc., Richfield, WI
W W G, Inc., Indianapolis, IN
W. C. Kirby & Son, Inc., Noblesville, IN
W.A.C. Consulting/Coss Systems Inc., Northboro, MA
WADKO Precision, Inc., Houston, TX
Wagner Engraving Co., Kirkwood, MO
Wagner Engineering, Inc., Gilbert, AZ
Waiteco Machine, Acton, MA
Wajo Tool and Die, Inc., East Hampstead, NH
Walker Tool & Machine Company, Perrysburg, OH
Walker Corporation, Ontario, CA
Wallner Tooling/Expac, Inc., Rancho Cucamonga, CA
Waltco Engineering, Inc., Gardena, CA
Walter Waukesha, Inc., Waukesha, WI
Walter Tool & Mfg. Inc., Elgin, IL
Walz & Krenzer, Inc., Oxford, CT
Warmelin Precision Products, Hawthorne, CA
Waukesha Tool & Stamping Inc., Sussex, WI
Wayne Manufacturing, Inc., Boulder, CO
Webco Machine Products, Inc., Valley View, OH
Weco Metal Products, Ontario, NY
Wejco Instruments Inc., Houston, TX
Wemco Precision Tool, Inc., Meadville, PA
Wentworth Company, Glastonbury, CT
Werkema Machine Company, Inc., Grand Rapids, MI
Wes Products, Madison Heights, MI
West Valley Precision Inc., San Jose, CA
West Valley Milling, Inc., Chatsworth, CA
West Tool & Manufacturing, Inc., Cleveland, OH
West Pharmaceutical Services, Erie, PA
Western Tap Manufacturing Co., Inc., Buena Park, CA
Western Air Products, Tucson, AZ
Western Mass. MechTech, Inc., Ware, MA
Westfield Tool & Die, Inc., Westfield, MA
Westfield Manufacturing Corp., Westfield, IN
Westlake Tool & Die Mfg., Avon, OH
Westool Corporation, Temperance, MI
Westtool Inc., Phoenix, AZ
WGI Inc., Southwick, MA
Whatever Manufacturing, Santa Ana, CA
White Machine, Inc., North Royalton, OH
Whitehead Tool & Design, Inc., Guys Mills, PA
Wiegel Tool Works, Inc., Wood Dale, IL
Wiesen EDM, Inc., Belding, MI
Wightman Engineering Services, Inc., Santa Clara, CA
Wilco Die Tool Machine Company, Maryland Heights, MO
Wilkinson Mfg., Inc., Santa Clara, CA
Willer Tool Corporation, Jackson, WI
William Sopko & Sons Co., Inc., Cleveland, OH
Williams Machine, Inc., Lake Elsinore, CA
Williams Engineering & Manufacturing, Inc., Chatsworth, CA
Williams Tooling Inc., Dorr, MI
Windsor Tool & Die, Inc., Cleveland, OH
Wintech Industries Inc., Tempe, AZ
Winter's Grinding Service, Menomonee Falls, WI
Wire Tech E D M, Inc., Los Alamitos, CA
Wire Cut Company, Inc., Buena Park, CA
Wirecut Technologies Inc., Indianapolis, IN
WireCut E D M, Inc., Dallas, TX
Wiretec, Inc., Delmont, PA
Wisconsin Engraving Company/, Unitex, New Berlin, WI
Wisconsin Mold Builders, LLC, Waukesha, WI
Wise Machine Co., Inc., Butler, PA
Wolverine Tool Company, St. Clair Shores, MI
Wolverine Bronze Company, Roseville, MI
Wolverine Tool & Engineering, Belmont, MI
Woodruff Corporation, Torrance, CA
Wright-K Technology, Inc., Saginaw, MI
Wright Brothers Welding & Sheet Metal, Inc., Hollister, CA
Wright Industries, Inc., Gilbert, AZ
WSI Industries, Inc., Wayzata, MN
X-L Machine Company, Inc., Three Rivers, MI
XLI Corporation, Rochester, NY
Yarde Metals, Inc., Bristol, CT
Yates Tool, Inc., Medina, OH
Yoder Die Casting Corporation, Dayton, OH
Youngberg Industries, Inc., Belvidere, IL
Youngers and Sons Manufacturing Company, Inc., Viola, KS
Youngstown Plastic Tooling & Machinery, Inc., Youngstown, OH
Z & Z Machine Products Inc., Racine, WI
Z M D Mold & Die Inc., Mentor, OH
Zip Tool & Die Co., Inc., Cleveland, OH
Zip Products Inc., Rochester, NY
Zircon Precision Products, Inc., Tempe, AZ
Zuelzke Tool & Engineering, Milwaukee, WI

[FR Doc. 02–6346 Filed 3–15–02; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602H]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application to modify an existing scientific research/enhancement permit (1048) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for permit modifications from the Sonoma County Water Agency (SCWA) in Santa Rosa, CA. The modified permit would affect three Evolutionarily Significant Units (ESUs) of threatened salmonids identified in the **SUPPLEMENTARY INFORMATION** section. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on April 17, 2002.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment: For permit 1048: Daniel Logan, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (telephone, 707–575–6053, fax: 707–578–3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (telephone, 301–713–1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at 707–575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits or modifications are: (1) applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this document should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following three threatened salmonid ESUs: threatened California Coastal chinook salmon (*Oncorhynchus tshawytscha*), threatened Central California Coast coho salmon (*Oncorhynchus kisutch*), and threatened Central California Coast steelhead (*Oncorhynchus mykiss*).

Modification Request Received

SCWA requests a modification to permit 1048 for takes of adult and juvenile California Coastal chinook associated with population studies, carcass counts, redd surveys, genetic analyses, and habitat quality evaluation. SCWA proposed to develop and implement a monitoring program to identify long-term population trends and stock size estimates that can be used to assist in the restoration of salmonid populations in the Russian River basin. Presently, permit 1048 authorizes intentional takes of adult and juvenile Central California Coast coho salmon and Central California Coast steelhead for projects within the Russian River basin. This requested modification would add intentional takes of adult and juvenile California Coastal chinook salmon to the SCWA permit.

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Dated: March 11, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6312 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of the Initiation of Public Scoping for the Proposed Designation of the Northwestern Hawaiian Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve extends approximately 1200 nautical miles long and 100 nautical miles wide. Pursuant to this Act and the Executive Order, NOAA initiated the process to designate the Reserve as a national marine sanctuary by issuing a notice of intent on January 19, 2001 (66 FR 5509). This notice announces the beginning of public scoping pursuant to the National Environmental Policy Act.

The public scoping process, including public scoping meetings, is intended to solicit information and comments on the range and significance of issues related to the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary. The results of this scoping process will assist NOAA in formulating alternatives for a draft management plan and draft environmental impact statement for the proposed designation. A separate notice containing times, dates, and locations for scoping meetings will be published in the **Federal Register** (and in various local media throughout Hawaii) at a later date, at least fifteen days before the first scoping meeting.

DATES AND ADDRESSES: The public scoping process will start on March 18, 2002, and end on Friday, May 3, 2002. Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalaniana'ole Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 397–2662; or emailed to nwhi@noaa.gov. Comments will be available for public review at the office address above. Summaries of public comments from initial scoping meetings will be available at hawaiireef.noaa.gov. Scoping meetings are expected to be held in April.

FOR FURTHER INFORMATION CONTACT: 'Aulani Wilhelm, (808) 397–2657, nwhi@noaa.gov.

SUPPLEMENTARY INFORMATION: The National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce (Secretary) to designate discrete areas of the marine environment as national marine sanctuaries to protect their special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or esthetic qualities. The NMSA is administered by the National Oceanic and Atmospheric Administration (NOAA) through the National Marine Sanctuary Program (NMSP).

On May 26, 2000, the Secretaries of Commerce and the Interior were directed to develop recommendations, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fishery Management Council, for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area.

Public visioning sessions were held in Hawaii and in Washington, DC in July and August 2000. Over 430 individuals attended the visioning sessions; over 1,000 written comments were received. The results of the visioning sessions revealed a universally high regard for the NWHI, for a variety of reasons including values of biology, wilderness, culture, commerce/economy, scientific, education, and recreation. Threats that were identified included at-risk species, human intrusions and abuses, future intrusion and abuse, atmospheric and oceanic changes, invasive species, and extractive or invasive research.

In November 2000, the National Marine Sanctuaries Amendments Act of 2000 (Act), Public Law 106–513 was signed into law. Section 6(g) of the Act authorized the President, after consultation with the Governor of the State of Hawaii, to designate any Northwestern Hawaiian Islands coral reef or coral reef ecosystem as a coral reef reserve to be managed by the Secretary of Commerce. On December 4, 2000, Executive Order 13178 was issued establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), pursuant to the Act. The purpose of the Reserve is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resource and species of the Northwestern Hawaiian Islands. The Reserve extends approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundaries of the State of Hawaii and the Midway Atoll National Wildlife Refuge, and overlays the Hawaiian Islands National Wildlife Refuge to the extent that the Refuge extends beyond the seaward boundaries of the State of Hawaii. The Executive Order contains a number of conservation measures that restrict certain activities throughout the Reserve. As part of the establishment of the Reserve, the Executive Order also created fifteen Reserve Preservation Areas (RPAs) in which all consumptive or extractive uses are prohibited, with limited exceptions.

Subsequent to issuance of Executive Order 13178, a thirty-day public comment period was held. During the comment period, seven public hearings were held throughout the main Hawaiian Islands and in Washington, DC to accept written and oral comments. Approximately 8,400 comments were received and included both original (about 500 letters) and form letter comments from around the country with a wide range of opinions.

After close of the comment period, Executive Order 13196 was issued on January 18, 2001, which revised certain conservation measures and RPAs, and finalized establishment of the Reserve. (Executive Orders 13178 and 13196 will hereafter be referred to as the Executive Order).

The Reserve provides immediate added protection and coordinated management for the NWHI coral reef ecosystem and marine environment pending designation of the Reserve as a national marine sanctuary. The Act directs the Secretary, until the reserve is designated as a National Marine Sanctuary, to manage the Reserve consistent with the purposes and policies of the National Marine Sanctuaries Act (NMSA). The Executive Order directs the Secretary to develop a Reserve Operations Plan (ROP) to govern the management of the Reserve to address priority issues (e.g., marine debris, research and monitoring, education, enforcement). The ROP will govern NOAA's management of the Reserve pending designation of a marine sanctuary and will be incorporated into a long-term sanctuary management plan upon successful completion of the designation process.

The Act and Executive Order require the Secretary to initiate the process to designate the Reserve as a National Marine Sanctuary under the applicable provisions of section 303 and 304 of the NMSA (16 U.S.C. 1433 and 1434). Sections 303 and 304 provide specific procedures and requirements for designating a sanctuary, including requiring the preparation of an environmental impact statement pursuant to the National Environmental Policy Act (NEPA). Designation is an open, public process with numerous opportunities for public input. In designating and managing the sanctuary, the Secretary shall also consider the advice and recommendations of the Reserve/Sanctuary Advisory Council established in March, 2001, pursuant to the Act and Executive Order. As part of the process, NOAA shall, in consultation with the Governor of the State of Hawaii, determine whether State waters should be included as part of the sanctuary.

By this notice, NOAA, on behalf of the Secretary, announces the initiation of scoping for the proposed NWHI sanctuary designation. Scoping is the initial process intended to solicit information and comments on the range and significance of issues related to the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary. The results of this scoping process will assist NOAA in formulating alternatives for a draft management plan and draft environmental impact statement for the proposed designation.

NOAA encourages the public and interested parties to submit (via mail, e-mail, or fax) comments and to attend public scoping meetings, which will be held in April. Specific dates and locations for scoping meetings will be provided in separate notices at least 15 days before the first scoping meeting.

Authority: 16 U.S.C. Section 1431 *et seq.*, Pub.L. 106–513.

Dated: March 12, 2002.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–6470 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of the Draft Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve for Public Comment

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; request for public comment.

SUMMARY: On December 4, 2000, and January 18, 2001, Executive Orders 13178 and 13196 (hereinafter Executive Order) were issued, establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve extends approximately 1200 nautical miles long and 100 nautical miles wide. Pursuant to the Executive Order, NOAA has prepared a draft Reserve Operations Plan, which provides a guide for management of the Reserve during a designation process that will consider the Northwestern Hawaiian Islands as a National Marine Sanctuary. This notice announces the availability of the draft Reserve Operations Plan for public review. After the close of the comment period, NOAA will consider the comments received and make necessary changes. A final Reserve Operations Plan is expected to be issued by Summer 2002.

DATES AND ADDRESSES: Comments on the draft Reserve Operations Plan must be received no later than May 17, 2002. Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalaniana'ole Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 397–2662; or emailed to nwhi@noaa.gov. Comments will be available for public review at the office address above.

FOR FURTHER INFORMATION CONTACT: 'Aulani Wilhelm, (808) 397–2657, nwhi@noaa.gov.

SUPPLEMENTARY INFORMATION: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) was established by Executive Orders 13178 and 13196 (herein after Executive Order). Pursuant to the Executive Order, NOAA has prepared a draft Reserve Operations Plan, which provides a guide for management of the Reserve during a process that will consider the Northwestern Hawaiian Islands for designation as a National Marine Sanctuary. This notice announces the availability of the draft Reserve Operations Plan for public review.

The Executive Order directs that the draft Reserve Operations Plan "shall be directed at priority issues and actions." The Executive Order also directs that the Reserve Operations Plan should address such issues as coordinated management among the agencies with relevant jurisdiction in the Northwestern Hawaiian Islands, clean up and prevention of marine debris, restoration of degraded or injured resources, research and education, enforcement and surveillance, identification and coordination with Native Hawaiian interests on cultural uses and locations, and designation of the Reserve as a National Marine Sanctuary.

In response to the Executive Order, NOS has prepared the draft Reserve Operations Plan, following templates used for the management plans of the National Marine Sanctuary Program. The document is composed of a set of function- and issue-oriented (as identified in the Executive Order) action plans, with supporting documentation. Each action plan focuses on strategies, and outlines what, who, why, when, and how different activities will be conducted. Following is a list of the action plans contained in the draft Reserve Operations Plan:

- Operations: includes interagency coordination, activity and area identification, Reserve/Sanctuary Advisory Council operations, development of fishing caps and permitting procedures, and infrastructure development;
- Education: encompasses all education, outreach, and interpretive projects;
- Cultural Resources: consists of all projects related to Native Hawaiian culture, uses, and locations;
- Research and Monitoring: contains all projects related to research and monitoring;
- Mapping: covers all projects related to developing charts and maps of the NWHI;
- Restoration: contains projects related to restoration;
- Emergency Response and Damage Assessment: covers projects related to contingency planning and response;
- Marine Debris: consists of projects related to the removal of marine debris from the NWHI;
- Enforcement: includes air and sea support for existing enforcement operations and expansion of a vessel monitoring system; and
- Designation: comprised of all projects related to the Sanctuary designation process.

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The Reserve Operations Plan will provide a guide for management of the Reserve during a process that will consider the Northwestern Hawaiian Islands for designation as a National Marine Sanctuary. The designation process has been initiated (66 FR 5509). Information about the scoping process and its opportunities for public comment will be provided in a separate notice to the **Federal Register**.

Authority: Pub.L. 106–513; Executive Order 13178; and Executive Order 13196.

Dated: March 12, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–6471 Filed 3–15–02; 8:45 am]

BILLING CODE 3510–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 26 & 27 March 2002.

Time(s) of Meeting: 0900–1700, 26 March 2002, 0900–1300, 27 March 2002.

Place: SAIC.

1. The Acquisition and Technology Panel, Army Science Board FY02 Summer Study on "Affordability of the Objective Force" is holding a meeting on 26–27 March 2002. The meeting will be held at SAIC, 1710 SAIC Drive, McLean, VA. The meeting will begin at 0900hrs on the 26th and will end at approximately 1300hrs on th 27th. For further information, please contact Tom Conway—703–617–9438 or e-mail *Conway, Tom Civ AMCRDA01.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–6341 Filed 3–15–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 19 & 20 March 2002.

Time(s) of Meeting: 0830–1700, 19 March 2002, 0800–1600, 20 March 2002.

Place: Institute of Defense Analysis.

1. *Agenda:* The Operations and Training Panel, Army Science Board FY02 Summer Study on "Affordability of the Objective Force" is holding a meeting on 19–20 March 2002. The meeting will be held at the Institute for Defense Analysis' new building (4850 Mark Center Drive). The meeting will begin at 0830hrs on the 19th and will end at approximately 1600hrs on the 20th. For further information, please contact Maj. Coll S. Haddon—757–878–4694 or e-mail *HaddonC@atsc.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–6342 Filed 3–15–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 18 & 19 March 2002.

Time(s) of Meeting: 0800–1700, 18 March 2002. 0800–1700, 19 March 2002.

Place: Logistics Management Institute.

1. *Agenda:* The Logistics Panel of the Army Science Board FY02 Summer Study on "Affordability of the Objective Force" is holding a meeting on 18–19 March 2002. The meeting will be held at the Logistics Management Institute. The meeting will begin at 0800hrs on the 18th and will end at approximately 1700hrs on the 19th. For further information, please contact Mike Hendricks—703–617–7048 or e-mail. *Mike.hendricks@hqda.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–6343 Filed 3–15–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Opening Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 25 March 2002.

Time(s) of Meeting: 0800–1700.

Place: Institute for Defense Analysis.

1. *Agenda:* The Human Resources Panel of the Army Board FY02 Summer Study on "Affordability of the Objective Force" is holding a meeting on 25 March 2002. The meeting will be held at IDA, 4850 Mark Center Drive, Alexandria, VA 22311. The meeting will begin at 0800hrs and will end at approximately 1700hrs. For further information, please contact Dale Brazale—703–845–6800 or e-mail *DTIINT@AOL.COM.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–6344 Filed 3–15–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 8, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to

Internet address *Lauren.Wittenberg@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 13, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: State Plan Application for the McKinney-Vento Homeless Assistance Act.

Abstract: State Education Agencies will submit information for a single State application to the Department to be able to receive formula grant funds under Title X Part C of the No Child Left Behind Act of 2001 (NCLB). The purpose of the Education for Homeless Children and Youth Program is to improve the educational outcomes for children and youth in homeless situations. The statues for this program are designed to ensure all homeless children and youth have equal access to public school education and for States and local educational agencies (LEAs) to review and revise policies and regulations to remove barriers to enrolling, attendance and academic achievement.

Additional Information: The Department of Education requests emergency clearance due to an unanticipated event in the signing of the law. This delay required the Office of Elementary and Secondary Education (OESE) to take time to review the statutes and determine what programs, as required by law, should be reviewed under a consolidated State application and what programs should be under a single State plan application. The McKinney-Vento Homeless Assistance Act was not required to be included in the consolidated plan application packet and OESE determined that it would be best to require States to submit a separate application plan. On March 6, 2002, the Department published in the **Federal Register** (Vol. 67, No. 44) a notice for the OESE consolidated applications with an anticipated date of May 28, 2002 for States to submit applications. This would necessitate mailing applications to States no later than mid-April, 2002. Without emergency processing, States will not have sufficient time to submit the requested single State application by the end of May and would face a hardship if they must wait to implement the required provisions of the NCLB legislation identified in this single State plan document.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 54.

Burden Hours: 1,080.

Requests for copies of the proposed information collection request should be directed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, vivian.reese@ed.gov, or should be electronically mailed to the Internet address *OCIO_RIMG@ed.gov,* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6490 Filed 3–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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Dated: March 12, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities.

Frequency: On Occasion, Annually.

Affected Public: Not-for-profit institutions; Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,000.

Burden Hours: 152,500.

Abstract: The data collection proposed under this request is included in proposed regulations that would implement section 673(h) of the Individuals with Disabilities Education Act (IDEA) which requires that individuals who receive a scholarship through personnel preparation projects funded under the Act to subsequently provide special education and related services to children with disabilities (or, for leadership personnel, work in areas related to their preparation) for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy their service obligation must repay all or part of the cost of their assistance in accordance with regulations issued by the Secretary. These proposed regulations would implement requirements governing, among other things, the service obligation for scholars, oversight by grantees, repayment (or "payback") of scholarship, and procedures for obtaining deferrals or exemptions from service or repayment obligations. In order for the Federal government to justify the expenditure of public funds under this program, certain data collections, recordkeeping, and documentation are necessary to ensure that goals of the program are achieved.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her Internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6351 Filed 3–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 12, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: New.

Title: Experimental Sites Initiative—Data Collection Instrument.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 1,650.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of nine experiments. This effort will assist the U.S. Department of Education/Student Financial Assistance (ED/SFA) in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. The experiments cover major financial aid processes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6488 Filed 3–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 17, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 13, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL), Direct Loan, and Perkins Loan Discharge Applications.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 70,200.

Burden Hours: 35,100.

Abstract: These forms will serve as the means of collecting the information necessary to determine whether a FFEL or Direct Loan borrower qualifies for a loan discharge based on total and permanent disability, school closure, false certification of student eligibility, or unauthorized signature. The school closure discharge application may also be used by Perkins Loan borrowers applying for a closed school discharge.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6489 Filed 3–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Implementation of the Rehabilitation Act of 1973, as Amended

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of public meetings and request for written comments.

SUMMARY: The Assistant Secretary announces a series of public meetings and invites written comments on the programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Rehabilitation Act of 1973, as amended (the Act). During the public meetings and through the submission of written comments, we encourage individuals to comment on how well the objectives of the Act are being accomplished and on any barriers to the effective implementation of the Act. The purpose of these meetings and solicitation of written comments is to provide feedback to OSERS about the implementation of the Rehabilitation Act of 1973, as amended.

Public Meetings

DATES, TIMES, AND ADDRESSES: We will hold public meetings according to the following schedule:

1. Date: March 19, 2002, Time: 1 p.m. to 6 p.m., Location: Metropolitan Hotel, Lexington Avenue and 51st Street, New York City, NY.

2. Date: March 21, 2002, Time: 12:30 p.m. to 6:00 p.m., Location: Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, GA.

3. Date: March 25, 2002, Time: 10 a.m. to 5 p.m., Location: Holiday Inn O'Hare, 5440 North River Road, Rosemont, IL.

4. Date: April 18, 2002, Time: 12:30 p.m. to 5:30 p.m., Location: Elihu Harris State Office Building, 1st Floor Auditorium, 1515 Clay Street, Oakland, CA.

5. Date: May 9, 2002, Time: 12:30 p.m. to 6 p.m., Location: Bachman Therapeutic Recreation Center, 2750 Bachman Drive, Dallas, Texas.

6. Date: June 19, 2002, Time: 10 a.m. to 4 p.m., Location: U.S. Department of Education, Barnard Auditorium, 400 Maryland Ave, SW., Washington, DC.

Participants: Those who wish to present comments on the implementation of the Act at one of the public meetings must reserve time on the agenda for that meeting by contacting the individuals identified under **RESERVATIONS AND ADDITIONAL MEETING INFORMATION**. Reservations for presenting comments will be accepted on a first-come, first-served basis. Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible.

Participants will be allowed approximately 5 to 7 minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. At the meeting, participants also are encouraged to submit two written copies of their comments. **RESERVATIONS AND ADDITIONAL MEETING INFORMATION:** All individuals attending the public meetings, including those presenting comments, must make reservations by contacting the following individuals:

New York: Richard Anderson, U.S. Department of Education, Rehabilitation Services Administration, Region II, c/o NYC Board of Education, 65 Court Street, 12th Floor, Brooklyn, NY 11201; (voice) (718) 935–5650; (fax) (718) 935–5584; (Federal Information Relay

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Service) 1–800–877–8339; (e-mail) *richard.anderson@ed.gov.*

Atlanta: Diane McCuen, Assistant Regional Commissioner, U.S. Department of Education, Rehabilitation Services Administration, Region IV, 61 Forsyth Street, Atlanta, GA 30303; (voice) (404) 562–6330; (fax) (404) 562–6346; (TTY) (404) 562–6347; (e-mail) *diane.mccuen@ed.gov.*

Chicago: Kathleen Niemi, U.S. Department of Education, Rehabilitation Services Administration, 111 North Canal Street, Suite 1048, Chicago, IL 60606–7204; (voice) (312) 886–8623; (fax) (312) 353–8623; (Federal Information Relay Service) 1–800–877–8339; (e-mail) *kathleen.niemi@ed.gov.*

Oakland: Gilbert "Doc" Williams, Regional Commissioner, U.S. Department of Education, Rehabilitation Services Administration, Region IX, 50 United Nations Plaza, San Francisco, CA 94102–4987; (voice) (415) 556–4070; (fax) (415) 437–7848; (TTY) (415) 437–7845; (e-mail) *gilbert.williams@ed.gov.*

Dallas: Michael Evans, U.S. Department of Education, Rehabilitation Services Administration, Region VI, 1999 Bryan Street, Dallas, TX 75201–6817; (voice) (214) 880–4927; (fax) (214) 880–4931; (TTY) (214) 880–4933; (e-mail) *michael.evans@ed.gov.*

Washington, DC: Tammy Nelson, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 3214, Mary E. Switzer Building, Washington, DC 20202–2531; (voice) (202) 205–9005; (fax) (202) 260–7527; (TTY) (202) 205–5538; (e-mail) *tammy.nelson@ed.gov.*

In addition to making reservations, individuals attending any of the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting rooms and proceedings will be accessible to individuals with disabilities. In addition, when making reservations, anyone presenting comments at or attending a meeting who needs special accommodations, such as sign language interpreters, Braille materials, and communication access real-time transcription, should inform the previously listed individual of his or her specific accessibility needs. You should make requests for accommodations at least 10 working days prior to the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Request for Written Comments

In addition to soliciting input during the public meetings, we invite the public to submit written comments on the Act to assist OSERS in identifying issues relating to the effective implementation of the Rehabilitation Act of 1973, as amended.

DATES: We would like to receive your written comments on the Act by June 30, 2002.

ADDRESSES: Submit all comments to Joanne Wilson, Commissioner, Rehabilitation Services Administration, using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address: *http://www.ed.gov/offices/OSERS/RSA/Policy/Legislation/rehabact_comments.html.*

2. *Mail.* You may submit your comments to Commissioner Wilson at U.S. Department of Education, 400 Maryland Avenue, SW., room 3028 Mary E. Switzer Building, Washington, DC 20202–2531.

3. *Facsimile.* You may submit comments by facsimile at (202) 205–9252 (main OSERS fax).

Written and Public Comments

Participants in the public meetings and individuals submitting written comments to OSERS are encouraged to comment on any of the provisions of the Act—titles I, II, III, VI, VII, and section 509—for which OSERS is responsible. We are particularly interested in comments from persons with disabilities, their family members and advocates, and those entities and individuals serving persons with disabilities under the Act.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 3213, Mary E. Switzer Building, Washington, DC 20202–2550. Telephone (202) 205–8831 or via Internet: *beverlee.stafford@ed.gov.* If you use a telecommunications device for the deaf, you may call (202) 205–5538.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the previous paragraph.

Availability of Copies of the Act: You may obtain an electronic copy of the Act on the Internet at the following site: *http://www.ed.gov/offices/OSERS/RSA/Policy/Legislation/rehabact.doc.*

We encourage individuals who need copies of the Act to obtain copies via the Internet. However, for those individuals who are unable to access the Internet and are attending one of the public meetings, copies of the Act are available by contacting the appropriate individual identified under **RESERVATIONS AND ADDITIONAL MEETING INFORMATION.** Other individuals who are unable to access the Internet may obtain a copy of the Act by calling (202) 205–8299.

Individuals with disabilities may obtain a copy of the Act in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact number listed in the previous paragraph.

SUPPLEMENTARY INFORMATION

Background and Description of the Act

The Act (29 U.S.C. 701 *et seq.*) was reauthorized on August 7, 1998, as title IV of the Workforce Investment Act of 1998, Pub. L. 105–220. Section 2 of the Act specifies that the purposes of the Act are to—

• Empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through—statewide workforce investment systems (under title I of the Workforce Investment Act of 1998) that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation; independent living centers and services; research; training; demonstration projects; and the guarantee of equal opportunity; and

• Ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of those individuals with disabilities for meaningful and gainful employment and independent living.

The Act includes the following seven titles:

Title I of the Act establishes the State Vocational Rehabilitation Services Program, which supports the Federal-State partnership for providing vocational rehabilitation services to individuals with disabilities seeking to achieve employment in the integrated labor market. The Act requires that, in the event services cannot be provided to all eligible individuals with disabilities who apply, States must give priority to individuals with the most significant disabilities. Each State is required to determine which individuals are "individuals with the most significant disabilities" and, therefore, given a priority for services in that State.

Additionally, each State vocational rehabilitation agency that is not a consumer-controlled independent commission primarily concerned with rehabilitation is also required to establish a State Rehabilitation Council (SRC) to review, analyze, and advise the vocational rehabilitation agency regarding the performance of its responsibilities under the Act and to work in partnership with the vocational rehabilitation agency in, among other things, developing the vocational rehabilitation agency's goals and priorities and evaluating the effectiveness of the vocational rehabilitation program. Given the composition requirements of the SRC, the SRC ensures that individuals with disabilities and other stakeholders have input in the vocational rehabilitation agency's policies and practices.

Title I of the Act also includes the authorization for the Client Assistance Program and the American Indian Vocational Rehabilitation Services Program. The American Indian Vocational Rehabilitation Services Program provides discretionary grants to governing bodies of Indian Tribes to establish projects that serve American Indians with disabilities on or near reservations. The Client Assistance Program provides formula grants to States for information, referral, advice, and advocacy services to individuals with disabilities who are applying for or receiving services funded under the Act.

Title II of the Act establishes NIDRR and authorizes research and related activities. NIDRR administers a program of rehabilitation research, including rehabilitation research and training centers, rehabilitation engineering research centers, research and demonstration projects, field-initiated projects, utilization and dissemination projects, fellowships, and research training grants.

Title III authorizes personnel training programs and service projects. Training grants are authorized to assist in increasing the number and skills of qualified personnel who provide services to individuals with disabilities. The training program supports pre-service training at degree-granting institutions, experimental and innovative training, continuing education programs, in-service training for personnel of State vocational rehabilitation agencies, and training of interpreters for individuals who are deaf or hard-of-hearing and individuals who are deaf-blind.

Title III also authorizes projects for migrants and seasonal farmworkers, recreational programs for individuals with disabilities, parent training, client choice demonstrations, and special demonstration programs.

Title IV of the Act establishes the National Council on Disability. The National Council on Disability is an independent Federal agency whose duties include providing advice to Congress and the President on the development of programs under the Act and reviewing and evaluating, on a continuing basis, all policies and programs for individuals with disabilities conducted or assisted by the Federal Government.

Section 509 authorizes the Protection and Advocacy of Individual Rights Program, which supports a system in each State to protect the human and legal rights of individuals with disabilities who need services that are beyond the scope of the Client Assistance Program and who are not eligible for services from other protection and advocacy programs.

Title VI of the Act authorizes the Projects With Industry and Supported Employment State Grants programs. The primary goal of the discretionary Projects With Industry grant program is to expand job opportunities for individuals with disabilities in the competitive labor market. In order to develop a partnership between business, industry, labor, and the rehabilitation community, each project is required to have a Business Advisory Council to provide advice on available jobs and training requirements.

Supported Employment State Grants is a formula grant program to assist States in developing collaborative programs with public agencies and nonprofit organizations to provide training and other services leading to supported employment for individuals with the most significant disabilities.

Title VII of the Act authorizes funding in Chapter 1 for comprehensive services for independent living and independent living centers, and in Chapter 2 for independent living services for older persons who are blind or have a significant visual impairment. Each State must establish a State Independent Living Council that jointly prepares and submits the required State plan for Chapter 1 independent living services and the State's network of centers for independent living.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 701, *et seq.*

Dated: March 14, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. 02–6536 Filed 3–15–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket No. EA–186–A]

Application To Export Electric Energy; New England Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The New England Power Pool (NEPOOL) has applied for authority to transmit electric energy, on an emergency basis, from the United States to the Province of New Brunswick, Canada, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 17, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 26, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized NEPOOL, a collection of 215 electric utilities, power marketers, and other entities that are engaged in, or propose to engage in, the electric power business in New

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England, to export electric energy to Hydro Quebec, the provincial electric utility of the Province of Quebec. In Order EA–186, FE authorized NEPOOL to export electric energy to Hydro Quebec in response to emergency requests for electric supply by Hydro Quebec and only over the 345–kV (operated at 120–kV) facilities owned and operated by the Joint Owners of the Highgate Project located at Highgate, Vermont, and authorized by Presidential Permit PP–82.

On January 25, 2002, FE received an application from NEPOOL to transmit electric energy to the New Brunswick electric system using the existing 345,000-volt transmission line owned by Maine Electric Power Company (MEPCO) at Houlton, Maine. The construction, operation, maintenance, and connection of the MEPCO international transmission facilities was authorized on July 25, 1970, in Presidential Permit PP–43.

The request of NEPOOL for an authorization to make emergency deliveries of up to 700 MW to the New Brunswick system is not in response to a declared emergency situation. Rather, the NEPOOL request is intended to give NEPOOL the ability to respond without delay to any future requests for emergency assistance by New Brunswick. Should such a request for emergency assistance be made, NEPOOL proposes to transmit electric energy to Canada that is surplus to the New England region as determined by the New England Independent System Operator (ISO–NE) which is the Control Area Operator for New England and the entity responsible for scheduling transmission service over virtually all of the bulk power transmission facilities in New England.

In this proceeding, DOE specifically seeks comment on NEPOOL's request to export electric energy at a rate of transmission of up to 700 MW. Studies currently on file with DOE limit exports on the MEPCO transmission line to a transmission rate of 500 MW.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NEPOOL request to export to Canada should be clearly marked with Docket EA–186-A. Additional copies are to be filed directly with Paul B. Shortley, Chair, NEPOOL Reliability Committee, c/o ISO New England Inc., One Sullivan Road, Holyoke, MA 01040–2841 and David T. Doot, Esq., NEPOOL Sectetary, c/o Day, Berry & Howard, LLP, CityPlace I, Hartford, CT 0603–3499.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation" and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on March 11, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–6424 Filed 3–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 4, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Quarterly update by representative from the Colorado Department of Public Health and Environment.
2. Status report on plutonium disposition.
3. Presentation and discussion on surface soil contamination.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303)420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC, on March 13, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–6425 Filed 3–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Monday, April 15, 2002, 10:00 am to 5:30 pm and Tuesday, April 16, 2002, 9 a.m. 12:30 p.m.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone Number 202.586.0136, e-mail: *Norton.Haberman@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Monday, April 15, 2002

Welcome remarks.
Status of Nuclear Energy's FY 2003 Budget Request.
Report of Advanced Nuclear Transformation Technology Subcommittee.
Report of Subcommittee on Generation IV Technology Planning.
Report of Joint DOE/EPA Task Force on Nuclear Energy and Clean Air.

Tuesday, April 16, 2002

NASA's Nuclear Initiative.
Report of PNNL/University of Maryland CO_2 Studies.
Public comment period.

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW.. Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on March 13, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–6426 Filed 3–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 00–60–NG, 02–03–NG, 02–04–NG, 97–70–NG, and 02–05–NG]

Office of Fossil Energy; Dominion Exploration Canada Ltd., Domcan Boundary Corp., Petrocom Energy Group, Ltd., Enbridge Services Inc., Select Energy New York, Inc. (Formerly Niagara Mohawk Energy Marketing, Inc.), Gasoducto Rosarito, S. DE R.L. DE C. V.; Orders Granting and Amending Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during February 2002, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 12, 2002.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS
DOE/FE AUTHORITY

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1626–A	2–8–02	Dominion Exploration Canada Ltd. Domcan Boundary Corp., 00–60–NG.	.....	.....	Amendment to blanket import authority changing managing partner of the partnership.
1755	02–13–02	Petrocom Energy Group, Ltd., 02–03–NG.	7.3 Bcf, 7.3 Bcf	7.3 Bcf, 7.3 Bcf	Import and export natural gas from and to Canada, and import and export natural gas from and to Mexico, beginning on February 14, 2002, and extending through February 13, 2004.
1756	02–21–02	Enbridge Services Inc., 02–04–NG	200 Bcf	200 Bcf	Import and export natural gas from and to Canada, beginning on March 1, 2002, and extending thrgugh February 29, 2004.
1303–B	02–21–02	Select Energy New York, Inc. (Formerly Niagara Mohawk Energy Marketing, Inc.), 97–70–NG.	.....	.....	Amendment to blanket import and export authority reflecting name change.

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ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS—Continued
DOE/FE AUTHORITY

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1757	02–26–02	Gasoducto Rosarito, S. de C. V., 02–05–NG.	.....	155 Bcf	Export natural gas to Mexico, beginning on April 1, 2002, and extending through March 31, 2004.

[FR Doc. 02–6423 Filed 3–15–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–278–000]

Conectiv Bethlehem, Inc; Notice of Withdrawal of Filing

March 12, 2002.

Take notice that on January 7, 2002, Conectiv Bethlehem, Inc. (CBI) tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter withdrawing its Notice of Intent to No Longer Maintain Exempt Wholesale Generator Status. CBI has decided to maintain its Electric Wholesale Generator (EWG) status.

Copies of the filing were served upon the official service list in this proceeding and the affected state commissions, including the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at http://www.ferc.gov using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: March 22, 2002.

Magalie R. Salas,
Secretary.
[FR Doc. 02–6433 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–694–000]

Duke Energy Hot Spring, LLC; Notice of Issuance of Order

March 12, 2002.

Duke Energy Hot Spring, LLC (Duke Hot Spring) submitted for filing a tariff under which Duke Hot Spring will engage in the sales of energy, capacity and ancillary services at market-based rates and for the reassignment of transmission capacity. Duke Hot Spring also requested waiver of various Commission regulations. In particular, Duke Hot Spring requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Hot Spring.

On February 28, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Hot Spring should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Duke Hot Spring is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Duke Hot Spring, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Hot Spring's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 1, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,
Secretary.
[FR Doc. 02–6437 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–723–000]

Emera Energy Service, Inc.; Notice of Issuance of Order

March 12, 2002.

Emera Energy Service, Inc. (EES) submitted for filing a rate schedule under which EES will engage in the sale of electric energy and capacity at market-based rates. EES also requested waiver of various Commission regulations. In particular, EES requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EES.

On March 1, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EES should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, EES is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EES, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EES's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 1, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,
Secretary.
[FR Doc. 02–6438 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–783–000]

EPCOR Merchant and Capital (US) Inc.; Notice of Issuance of Order

March 12, 2002.

EPCOR Merchant and Capital (US) Inc. (EPCOR) submitted for filing a rate schedule under which EPCOR will engage in the sales of energy, capacity and certain ancillary services at market-based rates and for the reassignment of transmission capacity. EPCOR also requested waiver of various Commission regulations. In particular, EPCOR requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EPCOR.

On March 1, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EPCOR should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, EPCOR is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EPCOR, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EPCOR's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 1, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,
Secretary.
[FR Doc. 02–6440 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–852–000]

EPCOR Power Development, Inc.; Notice of Issuance of Order

March 12, 2002.

EPCOR Power Development, Inc. (EPCOR Power) submitted for filing a rate schedule under which EPCOR Power will engage in the sales of energy, capacity and certain ancillary services at market-based rates and for the reassignment of transmission capacity. EPCOR Power also requested waiver of various Commission regulations. In particular, EPCOR Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EPCOR Power.

On March 6, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EPCOR Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, EPCOR Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EPCOR Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EPCOR Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 5, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm*

(call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6441 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–855–000]

EPDC, Inc.; Notice of Issuance of Order

March 12, 2002.

EPDC, Inc. (EPDC) submitted for filing a rate schedule under which EPDC will engage in the sales of energy, capacity and certain ancillary services at market-based rates and for the reassignment of transmission capacity. EPDC also requested waiver of various Commission regulations. In particular, EPDC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EPDC.

On March 6, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EPDC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, EPDC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EPDC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EPDC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 5, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6442 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–737–000]

MxEnergy Inc.; Notice of Issuance of Order

March 12, 2002.

MxEnergy Inc. (MxEnergy), is a broker, marketer, and aggregator of natural gas for resale and it also engages in hedging activities required to fix the forward price of the gas it sells to customers. MxEnergy submitted for filing a rate schedule under which MxEnergy will engage in the sales of energy, capacity and ancillary services at market-based rates and for the reassignment of transmission capacity. MxEnergy also requested waiver of various Commission regulations. In particular, MxEnergy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MxEnergy.

On March 1, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MxEnergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, MxEnergy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MxEnergy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MxEnergy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 1, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6439 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–124–000 and ER02–124–001]

Rainy River Energy Corporation—Taconite Harbor; Notice of Issuance of Order

March 12, 2002.

Rainy River Energy Corporation—Taconite Harbor (Rainy River) submitted for filing a rate schedule under which Rainy River will engage in the sales of energy, capacity and certain ancillary services at market-based rates and for the reassignment of transmission capacity. Rainy River also requested waiver of various Commission regulations. In particular, Rainy River requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Rainy River.

On March 5, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates—Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Rainy River should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Rainy River is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Rainy River, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Rainy River's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 5, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6435 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–68–000]

Southern Minnesota Municipal Power Agency, Complainant, v. Alliant Energy Corporate Services, Inc., Respondent; Notice of Complaint

March 12, 2002.

Take notice that on March 11, 2002, Southern Minnesota Municipal Power Agency (SMMPA) tendered for filing with the Federal Energy Regulatory Commission (Commission) in the above-proceeding, a Complaint and Request for Designation of Claims for Settlement in Furtherance of Commission's Directives in Docket Number ER01–312–002.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 1, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 1, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6434 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–973–000]

UBS AG; Notice of Issuance of Order

March 12, 2002.

UBS AG (UBS) filed with the Commission, in the above-docketed proceeding, an application under section 205 of the Federal Power Act seeking authority to sell capacity, energy and ancillary services at market-based rates. UBS also requested certain waivers and authorizations. In particular, UBS requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by UBS. On March 7, 2002, the Commission issued an Order Conditionally Accepting Market-Based Rate Schedule (Order). The Commission's Order granted UBS' request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by UBS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, UBS is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of UBS, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of UBS' issuances of securities or assumptions of liabilities....

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 8, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE,

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Washington, DC 20426. The Order may also be viewed on the on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–6444 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–899–000]

Southwest Power Pool, Inc.; Notice of Filing

March 12, 2002.

Take notice that on January 30, 2002, Southwest Power Pool, Inc. (SPP) tendered for filing with the Federal Energy Regulatory Commission (Commission), 78 executed service agreements for Loss Compensation Service under the SPP Tariff.

SPP seeks an effective date of January 1, 2002, for each of these agreements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistanoe). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 22, 2002.

Magalie R. Salas,
Secretary.
[FR Doc. 02–6443 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File for New License

March 12, 2002.

a. *Type of Filing*: Notice of Intent to File an Application for New License.
b. *Project No.*: 7758–000.
c. *Date Filed*: February 27, 2002.
d. *Submitted By*: City of Holyoke Gas and Electric Department—current licensee.
e. *Name of Project*: Number 4 Hydroelectric Project.
f. *Location*: On the Holyoke Canal System of the Connecticut River, in the City of Holyoke, Hampden County, Massachusetts. The project does not occupy federal lands.
g. *Filed Pursuant to*: Section 15 of the Federal Power Act
h. *Licensee Contact*: Paul Ducheney, Hydro Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040 (413) 536–9340.
i. *FERC Contact*: Tom Dean, *thomas.dean@ferc.gov*, (202) 219–2778.
j. *Effective date of current license*: March 1, 1957.
k. *Expiration date of current license*: February 28, 2007.
l. *Description of the Project*: The project consists of the following existing facilities: (1) Two 76-foot-long, 7-foot-diameter penstocks drawing water from the first level canal of the Holyoke Canal System; (2) a powerhouse containing two generating units with a total installed capacity of 760 kW; (3) two 300-foot-long, 13-foot-wide tailraces discharging water into the second level canal; (4) a 25-foot-long, 4.8 kV transmission line; and (5) other appurtenances.
m. Each application for a license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2005.
n. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

Magalie R. Salas,
Secretary.
[FR Doc. 02–6445 Filed 3–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission
FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: March 11, 2002, 67 FR 10907
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 13, 2002, 10 a.m.
CHANGE IN THE MEETING: The following Docket No. and Company has been added to Item E–10 on the Commission Meeting of March 13, 2002.

Item No., Docket No., and Company

E–10—EL02–64–000, Northern California Power Agency v. Pacific Gas and Electric Company and the California Independent System Operator Corporation

Magalie R. Salas,
Secretary.
[FR Doc. 02–6554 Filed 3–14–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7159–7]

Privacy Act of 1974; System of Records

AGENCY: Environmental Protection Agency.
ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Environmental Protection Agency (EPA) publishes this notice of a new system of records entitled "Central Data Exchange-Customer Registration Subsystem (CDX–CRS)." The system will contain information on individuals who have registered and established accounts to access CDX, EPA's electronic compliance filing and environmental data exchange system. Individuals with CDX accounts may engage in electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA), and as required under appropriate environmental statutes. The information maintained by the CDX–CRS includes the individual's name and related identifiers, work contact information, supervisor's name and contact information, and information about the EPA program under which the individual plans to report electronically. The information will be used to protect and manage access to the individual's account on CDX.

DATES: Comments must be received no later than April 17, 2002. This new system of records will commence April 26, 2002 unless the Agency receives comments which would result in a contrary determination.

ADDRESSES: Persons wishing to submit comments should direct them to: Environmental Protection Agency, Office of Environmental Information, Collection Services Division, MS 2823, 1200 Pennsylvania Avenue, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Valerie Brecher Kovacevic at *brecher-kovacevic.valerie@epa.gov*, or 202–260–9488. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

EPA/CDX–CRS

SYSTEM NAME.

EPA Central Data Exchange—Customer Registration Subsystem (CDX–CRS)

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system will be operated and maintained by EPA or organizations under contract with the EPA (henceforth referred to as "EPA") at their place of business. The system is currently maintained at Logistics Management Institute, 2000 Corporate Ridge Drive, McLean, VA 22102–7805.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on all individuals that have either attempted to register or have registered to obtain an account to use CDX for electronically exchanging data with EPA. Registered users of EPA's CDX–CRS may include representatives of industry, government or laboratories exchanging information with EPA through CDX.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records including individual's name, self-assigned user name and security question, work title, work address and related work contact information (*e.g.*, phone and fax numbers, E-mail address), supervisor's name and related contact information, and information related to the EPA reporting program the individual is planning to electronically file or report under (*e.g.*, EPA program ID # and EPA program role) and the method of reporting (web browser, file exchange). The individual registering for CDX will also generate a self-assigned password that will be stored on the CDX–CRS, but it will only be accessible to the registering individual. The system will also store other system-generated data such as the registration date and time, digital certificate identifier, and other identifiers for internal tracking. Upon assignment of the password and ID code, the user may subsequently access the CDX system by entering these data and CDX will use this information to authenticate the individual's access to CDX.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

In accordance with the Government Paperwork Elimination Act (44 U.S.C. 3504), EPA's electronic compliance filing and environmental data exchange system will enable the "acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures." Section 3504(a)(1)(B)(vi) of Title 44, United States Code.

PURPOSE(S):

Central Data Exchange is EPA's portal for electronically exchanging environmental data with our external customers. Individual external users with CDX accounts may engage in secure, electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA), and as required under appropriate environmental statutes. CDX–CRS was developed to protect the EPA and CDX system users from individuals seeking to gain unauthorized access to user accounts on CDX.

The information contained in records maintained in the CDX–CRS system is used for the purposes of verifying the identity of the individual, informing users of the conditions and terms of using CDX, allowing individual users to establish an account on CDX, providing individual users access to their CDX account for electronically filing compliance data or exchanging other forms of environmental data, allowing individual users to customize, update or terminate their account with CDX, renewing or revoking an individual user's account on CDX, supporting the CDX help desk functions, investigating possible fraud and verifying compliance with program regulations, and initiating legal action against an individual involved in program fraud, abuse, or noncompliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CDX–CRS records will be used to facilitate registering CDX system users, issuing a username and password, and subsequently, verifying an individual's identity as he/she seeks to gain routine access to his/her account. In some cases the user verification process will require EPA to contact the employer, based on the registration information provided by the user. The system has secondary uses that include: using the established username to facilitate tracking service calls or e-mails from the user in the event that there is a change in registration status or a problem the user has with CDX, offering the user new CDX service options, and facilitating the retrieval of user actions (e.g., historical submissions and help tickets) and events while on the CDX system. The records may also be subsequently used for auditing or other internal purposes of the EPA, including but not limited to: instances where enforcement of the conditions of using CDX are necessary; investigation of possible fraud involving a registered user; litigation purposes related to information reported to the agency; contacting the individual in the event of a system modification; a change to CDX; or modification, revocation or termination of user's access privileges to CDX.

EPA may disclose information contained in a record in this system of records under the routine uses listed in this notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or under a computer matching agreement if the Agency has complied with the computer matching requirements of the Act.

The general routine uses for EPA's CDX are listed as follows:

Disclosure for Law Enforcement Purposes, Disclosure Incident to Requesting Information, Disclosure to a Requesting Agency, Disclosure to Congressional Offices, Disclosure to Department of Justice, Disclosure to the National Archives, Disclosure to

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Contractors, Grantees, and Others, Disclosure for Administrative Claims, Complaints, and Appeals, and Disclosure in Connection With Litigation.

A detailed description of these routine uses can be found in the **Federal Register**, Privacy Act of 1974: System of Records, Creation of Eleven New Privacy Act System of Records Notice (at 66 FR 49947 (2001)) and also on the National Archives and Records Administration website, Privacy Act Issuances—1999 Compilation at:*http://www.access.gpo.gov/su—docs/aces/PrivacyAct.shtml?desc015.html.*

In addition, the following routine uses may also apply:

PROGRAM DISCLOSURES:

The Agency may disclose information from this system to Federal, State, or local agencies, private parties such as relatives, present and former employers and business and personal associates, and hearing officials for the following purposes:

(a) To verify the identity of the individual;

(b) To enforce the conditions or terms of Agency program regulations;

(c) To investigate possible fraud and verify compliance with Agency program regulations;

(d) To prepare for litigation or to litigate collection service and audit;

(e) To initiate a limitation, suspension and termination (LS&T), debarment, or suspension action;

(f) To investigate complaints, update files, and correct errors.

LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION (ADR) DISCLOSURES:

(a) In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Agency may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Environmental Protection Agency, or any component of the Agency; or

(ii) Any Agency employee in his or her official capacity; or

(iii) Any Agency employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Agency employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Agency determines that the litigation is likely to affect the Agency or any of its components.

(b) Disclosure to the DOJ. If the Agency determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Agency may disclose those records as a routine use to the DOJ.

(c) Administrative Disclosures. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(d) Parties, counsels, representatives and witnesses. If the Agency determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Agency may disclose those records as a routine use to the party, counsel, representative or witness.

Research Disclosure: The Agency may disclose records to a researcher if an appropriate official of the Agency determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The CDX is a new system for which the Agency is in the process of establishing a records schedule. The CDX will be taking e-transactions and preserving them in accordance with applicable EPA and other Federal policy and regulations. The CDX currently stores records on magnetic and/or digital formats. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by the CDX user name, program ID number, or all or part of the individual's name.

SAFEGUARDS:

EPA has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. Physical access to the data system housed within the facility is controlled by a computerized badge reading system, and the entire complex is patrolled by security during non-business hours. The computer system offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained with the computer system control program. This system limits data access to EPA and contract staff on a need to know basis, and controls individuals ability to access and alter records with the system. All users of the system of records are given a unique user identification (ID) with personal identifiers. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

The EPA will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 20, Item 1.c. This schedule provides disposal authorization for electronic files and hard copy printouts created to monitor system usage, including but not limited to log-in files, audit trail files, system usage files, and cost-back files used to access charges for system use. Records will be deleted or destroyed when the Agency determines they are no longer needed for administrative, legal, audit, or other program purposes.

SYSTEM MANAGERS AND ADDRESS:

USEPA, Office of Environmental Information, (MS2823), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attn: Chief, Central Receiving Branch.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the USEPA, Office of Environmental Information, (MS2823), 1200 Pennsylvania Ave. NW., Washington, D.C. 20460, Attn: Chief, Central Receiving Branch. To send a fax request: 202–401–0182. To determine whether a record exists regarding you in the system of records, provide the system manager with your name and username. Requests must meet the requirements of the regulations at 40 CFR part 16.

RECORD ACCESS PROCEDURES:

A request for record access shall follow the directions described under Notification Procedure and will be addressed to the system manager at the address listed above.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager with the information described under Notification Procedure, identify the specific items you are contesting, and provide a written justification for each item.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who have had or seek to have their identity authenticated except that a password and a username are explicitly self-assigned by the user registering to gain access to CDX.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Kim Nelson,

Assistant Administrator and Chief Information Officer, Office of Environmental Information, EPA.

[FR Doc. 02–6486 Filed 3–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 11, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 17, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES Direct all comments to Judy Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jbherman@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, 47 CFR Part 64 (Sections 64.601–64.605.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal government.

Number of Respondents: 5,052.

Estimated Time Per Response: 5.31 hours (average hour per response).

Frequency of Response: On occasion, annual and every five year reporting requirements; third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 26,831 hours.

Total Annual Cost: N/A.

Needs and Uses: The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990. The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government play a central role in enforcing these standards on behalf of individuals with disabilities. Title IV of the ADA adds section 225 to the Communications Act of 1934. Section 225 requires the Commission to promulgate regulations that require all domestic telephone common carriers to provide telecommunications relay services (TRS). 47 CFR part 64, subpart F implements certain provisions of the ADA. It contains the operational technical, and functional standards required of all TRS providers and the procedures for state certification. In a Memorandum Opinion and Order (MO&O) issued in CC Docket No. 98–67, released December 21, 2001, the Commission adopted cost-recovery guidelines to telecommunications relay services (TRS), speech-to-speech relay services (STS), and video relay services (VRS). These guidelines are based, in part, on the recommendation of the Interstate TRS Advisory Council and the TRS Fund Administrator. Among other things, the Commission expanded TRS Data Request to capture separately STS costs and minutes include specific sections to capture separately VRS costs and minutes for this service. Other requirements approved under this control number and unaffected by the MO&O follow. Section 64.605 describes the state certification procedures by which states may apply to assert jurisdiction over the provisions of intrastate TRS. Section 64.604(c)(1) requires states to maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. Pursuant to section 64.604(c)(2) states must submit to the Commission a contact person or office for TRS consumer information and complaints about intrastate TRS. Pursuant to 47 CFR 64.604(b)(2), TRS providers must answer 85% of all relay calls within 10 seconds by a CA prepared to place the TRS call at the time. The calculation of whether a provider is in compliance with the "85–10 rule" must be performed on at least a daily basis.

Pursuant to 47 CFR 64.604(a)(2), STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. Pursuant to section 64.604(b)(6), relay providers shall electronically capture recorded messages and retain them for the length of the call. See 47 CFR0 64.604(b)(6). Section 64.604(c)(3) requires carriers, through publications in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Pursuant to section 64.604(c)(5)(B) carriers must complete and submit a Telecommunications Reporting Worksheet. Section 64.604(c)(iii)(5)(C) requires TRS providers to provide the

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administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. Pursuant to section 64.604(c)(iii)(5)(E), in addition to the data required under paragraph (c)(5)(ii)(C) all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. Section 64.604(c)(iii)(5)(F) lists TRS providers who are eligible for receiving payments from the TRS fund. These providers must notify the administrator of their intent to participate in the TRS Fund thirty days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS. Section 64.604(c)(6)(v)(3) requires TRS providers to file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Section 64.604(c)(7) requires that all future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Section 64.604(c)(6) establishes complaint procedures for TRS. All the collections of information are promulgated pursuant to section 225 of the ADA which requires that the Commission ensures that telecommunications relay services are available to persons with hearing and speech disabilities in the United States.

OMB Control No.: 3060–0972.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal government.

Number of Respondents: 8,059.

Estimated Time Per Response: 4.81 hours (average hours per response), burden hour range per response is .13 hours to 93 hours.

Frequency of Response: On occasion, quarterly, annual and one-time reporting requirements; and third party disclosure requirement.

Total Annual Burden: 38,760 hours.

Total Annual Cost: $228,000.

Needs and Uses: In the Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00–256, Fifteenth Report] and Order in CC Docket No. 96–45, and Report and Order in CC Docket Nos. 98–77 and 98–166, the Commission modified its rules to reform the interstate access charge and universal service support system for incumbent local exchange carriers subject to rate-of-return regulation (non-price cap or rate of return carriers). Following are brief summaries of the collections imposed on telecommunications carriers based on rules adopted in the Report and Order. Certain carriers are required to file projected common line revenue requirements for each study area they operate; rate of return carriers will be required to submit interstate common line cost data annually and updated cost data on a quarterly basis; rate of return carriers will be required to file line counts by disaggregation zone and customer class; competitive eligible telecommunication carriers will file their line counts by disaggregation zone and customer class on a quarterly basis; rate of return carriers that elect to disaggregate and target support will be required to submit maps; carriers electing Path One must submit a copy of certifications to a state commission or appropriate regulatory authority that they will not disaggregate and target support; carriers selecting Path Two must submit a copy of the order by the state commission or appropriate regulatory authority approving the disaggregation plan submitted, along with a copy of the disaggregation plan itself; carriers receiving Interstate Common Line Support and LTS must file a certification annually indicating that they will use that support in a manner consistent with section 254(e); all rate of return carriers are required to modify their access tariffs to comply with the new Subscriber Line Charge caps; rate of return carriers must also file tariffs to recover through a separate end-user charge the costs of ISDN line ports and line ports associated with other services that exceed the costs of a line port used for basis analog service; rate of return carriers may use 30 percent of local switching costs as a proxy in shifting line port costs to the common line category, or may conduct a cost study; each carrier that was not in the NECA pool during the tariff year ending on June 30, 2001 must determine its TIC limit and report it to NECA; rate-of-return carriers may, at their option, establish the following local switching and transport rate elements: A flat charge for dedicated trunk port costs, a flat charge for the costs of DS1/voice grade multiplexers associated with terminating dedicated trunks at analog switches, a per-minute charge for shared trunk ports and any associated DS1/voice grade multiplexer costs, a flat charge for the costs of trunk ports used to terminate dedicated trunks on the serving wire center side of the tandem switch; individual charges for multiplexer costs associated with tandem switches, and a per-message call setup charge; and, rate-of-return carriers that use general purpose computers to provide non-regulated billing and collection services are required to allocate a portion of their general purpose computer costs to the billing and collection category, which will require them to determine general purpose computer investment. The Commission will use the information collected to determine whether and to what extent non-price cap or rate-of-return carriers providing the data are eligible to receive universal service support. The Commission will use the tariff data to make sure that rates are just and reasonable, as required by section 201(b) of the Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6378 Filed 3–15–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–28; FCC 02–36]

Alee Cellular Communications

AGENCY: Federal Communications Commission.

ACTION: Notice; petition for reconsideration of application for block A cellular authorization.

SUMMARY: In this document, the Federal Communications Commission (the Commission) grants, in part, a petition for reconsideration filed by Alee Cellular Communications (Alee) of an application for the block A cellular authorization in the Texas 21 RSA, Market 672; reinstates that same application; and designates the application for hearing, for the purpose of determining whether the applicant is currently qualified to hold the authorization in light of its disqualification for the New Mexico 3 RSA (NM 3) cellular authorization.

FOR FURTHER INFORMATION CONTACT: Kathy Harris, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418–0609.

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order, Hearing Designation Order and Notice of Opportunity for Hearing* (MO&O and HDO) in WT Docket No. 02–28, FCC 02–36, adopted February 8, 2002 and released February 22, 2002. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The document is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2002/fcc02–36.pdf.*

Paperwork Reduction Act

1. This MO&O and HDO contains no proposed information collection.

Synopsis of the Memorandum Opinion and Order and Hearing Designation Order

I. Introduction

2. On March 16, 2000, Alee Cellular Communications (Alee) filed a petition for reconsideration of the dismissal of an application for the block A cellular authorization in the Texas 21 RSA, Market 672.[1] As discussed herein, there are substantial and material questions of fact as to whether Alee is qualified to hold the subject cellular authorization. The Commission previously held that Alee made false statements to the Commission, lacked the candor required of licensees, and accordingly was not qualified to hold a cellular license for the New Mexico 3 RSA (NM 3), block A, call sign KNKN271.[2] For the reasons discussed, the Commission is granting the petition for reconsideration in part, reinstating the above-referenced application, and designating the application for hearing, for the limited purpose of determining whether the applicant is currently qualified to hold the Texas 21 authorization in light of its disqualification for the NM 3 cellular authorization.

II. Background

3. The issue in this proceeding arises from the Commission's previous holding in the so-called *Algreg* proceeding. Specifically, Alee's NM 3 authorization was designated for hearing and possible revocation, along with additional RSA applications and licenses, in connection with participation in a risk-sharing arrangement at the time of filing of the applications.[3] In addition, the NM 3 license was designated due to alien ownership concerns and for lack of candor.[4] The Commission concluded that Alee's lack of candor in connection with the NM 3 authorization warranted revocation of the license.[5]

4. The Commission observed that Alee's NM 3 application was filed on August 12, 1988, and included a listing for Shafi M. Sharifan, a four percent general partner who was an alien. Under the policies then in effect, having a non-U.S. citizen or entity holding any general partnership interest was absolutely disqualifying.[6] Less than two months later, on September 23, 1988, Sharifan's interest was transferred to Amir R. Riahi-Shiraz (a U.S. citizen). Alee won the NM 3 lottery a few months later, and filed a section 1.65 amendment on January 9, 1989. That amendment, signed by Robert Bernstein (Alee's signing partner and largest equity holder at the time) and prepared by Alee's attorney, William Franklin, listed Sharifan (not Riahi-Shiraz) as a partner *and* inaccurately stated that all partners were U.S. citizens. More than a year later, on April 30, 1990, Alee filed a letter disclosing the errors in the application and a section 1.65 amendment—stating that Sharifan was not a U.S. citizen and that his partnership interest had been sold to a U.S. citizen several months before the section 1.65 amendment was signed and filed. All of Alee's applications and the NM 3 amendment were signed by Bernstein. The Commission further concluded, based on its independent review of the record,[7] that "[a] preponderance of the evidence establishes that Alee, understanding that this was a matter that could adversely affect the grant of the construction permit, intentionally concealed the presence of the alien partner."[8] The Commission further explained that "[t]he record in this case * * * reflects that Alee, aware that it had an alien partner, filed an amendment representing that all of its partners were United States citizens. Whether it did so on the advice of counsel, or its own initiative, and whether it understood the precise legal consequences of reporting false information (i.e., that lack of candor is absolutely disqualifying), Alee did not need to consult an attorney, let alone communications counsel, in order to appreciate that information filed with a federal agency should be truthful."[9] The Commission found that "the record establishes a sufficient likelihood of intentional concealment of relevant information * * *."[10]

5. Finally, the Commission was "unimpressed" by "Alee's "voluntary" reporting of this matter to the Commission in its April 30, 1990 letter to the FCC Secretary."[11] While the Commission acknowledged that Alee's letter was the basis for the specification of lack of candor and alien ownership issues against it, the Commission concluded that Alee both delayed reporting the matter and failed to make a full disclosure of the facts related to Mr. Sharifan and his replacement in the partnership.[12] The Commission found that "[t]he failure to fully disclose the facts involving Sharifan's participation in a timely manner, together with Bernstein's dubious testimony on this matter, significantly undercuts the claim that the 'voluntary' reporting of these matters belies any intent to deceive the Commission."[13]

6. The Commission rejected Alee's request for reconsideration regarding the finding of lack of candor and the revocation of Alee's NM 3 cellular license.[14] In addressing the request for reconsideration, the Commission found that Alee had presented no new

[1] Alee Cellular Communications Petition for Reconsideration, File No. 11025–CL–P–672–A–89 (filed Mar. 16, 2000) ("Alee TX21 Petition for Reconsideration"); *see also* In the Matter of Application of Alee Cellular Communications for Authorization to Construct Nonwireline Cellular System in Texas RSA 21 Market 672, *Memorandum Opinion and Order*, 15 FCC Rcd 2831 (2000) ("Texas 21 Dismissal Order").

[2] In re Applications of ALGREG Cellular Engineering, et al., *Memorandum Opinion and Order*, 12 FCC Rcd 8148, 8172–8181 (1997) (*Algreg I*), pet. for recon. denied, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524, 18533–18535 (1999) (*Algreg II*), aff'd, *Alee Cellular Communications* v. *FCC*, No. 99–1460 (D.C. Cir. Jan. 30, 2001), pet. for rehearing denied (D.C. Cir. Apr. 5, 2001), pet. for writ of cert. denied (S.Ct. Oct. 9, 2001).

[3] In re Applications of ALGREG Cellular Engineering, et al., *Hearing Designation Order*, 6 FCC Rcd 2921, 2928 (Com. Car. Bur. 1991).

[4] *Id.*

[5] *Algreg I*, 12 FCC Rcd at 8172–8181. The Commission also concluded that participation in the risk-sharing arrangement was not a basis for the denial of pending applications or the revocation of licenses, including that held by Alee in NM 3. *Id.* at 8157–8169. The foreign ownership issue also was determined not to provide a basis for revoking Alee's authorization in light of changes made to Section 310(b) by the Telecommunications Act of 1996. *Id.* at 8170–8171.

[6] In addition, the Commission's rules at that time explicitly prohibited precisely the type of transaction undertaken by Alee to replace its non-U.S. partner. *See id.* at 8175.

[7] *Id.* at 8175.

[8] *Id.* at 8176; *see id.* at 8176–8181.

[9] *Id.* at 8176.

[10] *Id.* at 8175.

[11] *Id.* at 8180–8181.

[12] *Id.*

[13] *Id.*

[14] *See Algreg II*, 14 FCC Rcd at 18533–18535.

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evidence that would warrant any reconsideration.[15] The Commission also distinguished Alee's situation from those of NextWave and PCS 2000, where the Commission did not revoke any licenses but allowed the applicant to undertake remedial action.[16]

7. Alee appealed the Commission's action to the DC Circuit Court of Appeals. After briefing and oral argument, the Court affirmed the Commission's action, "essentially for the reasons stated by the Commission." [17] The Court stated:

> Substantial evidence supported the Commission's determination that Alee Cellular Communications lacked candor in failing to reveal that it had an alien general partner and that there had been a change in its partnership structure. The Commission independently reviewed the record of the evidentiary hearing, examining both the testimony of the Alee witnesses and the significant documentary evidence. This evidence was sufficient to support the Commission's conclusion that Alee's partners knowingly and intentionally withheld relevant information from the Commission. *Algreg Cellular Eng'g*, 12 F.C.C.R. 8148, 8172–80 (1997). The Commission thus had ample basis to sanction Alee for its misconduct. The Commission's decision to revoke Alee's license for its lack of candor lies well within the agency's broad discretion to apply an appropriate sanction to licensee misconduct. *West Coast Media, Inc.* v. *FCC*, 695 F.2d 617, 622 (D.C. Cir. 1982), *cert. denied*, 464 U.S. 816 (1983).[18]

The DC Circuit denied Alee's petition for rehearing on April 5, 2001, and the Supreme Court denied Alee's petition for writ of certiorari on October 9, 2001.[19]

III. Discussion

8. Alee filed the application for the Texas 21 RSA on October 8, 1988, and was chosen as the tentative selectee on April 8, 1992, during a re-lottery of the market applications.[20] In the *Texas 21 Dismissal Order*, the Policy and Rules Branch of the Commercial Wireless Division of the Wireless Telecommunications Bureau denied Alee's application, finding that, "[b]ecause the Commission determined in *ALGREG* that Alee lacks the character qualifications required of licensees, we deny Alee's instant application for the same reasons." [21] The Branch also dismissed the petition to deny filed by Applicants Against Lottery Abuse as moot.[22]

9. Alee then filed the pending petition for reconsideration of the February 15, 2000 *Memorandum Opinion and Order*. Alee argued that: (1) Denial of the Texas 21 application was premature, since the *Algreg* finding is still subject to the appellate review process; [23] (2) the *Algreg* determination is limited to the NM3 license and should not be applied to the Texas 21 application; [24] and (3) "Alee is entitled to an opportunity to present any mitigating factors in support of the grant of the Texas 21 application before the Commission makes a final determination." [25]

10. Alee's first argument is moot, since the *Algreg* finding is no longer subject to appellate review and thus is a final order.[26] Regarding its second claim, Alee is incorrect that the *Algreg* findings are not applicable to the Commission's consideration of the Texas 21 application. The Commission has made clear that applicant and licensee candor is a fundamental character quality that goes to the overall qualifications of an entity to hold a license; it is not limited to the merits of a single application.[27] In *Algreg I and II*, the Commission conclusively determined that Alee lacked candor with respect to its application and related filings for the NM 3 authorization,[28] and the Commission is entitled to take that finding into account when assessing Alee's qualifications to hold another Commission license. Regarding Alee's third claim, however, the Commission grant Alee's TX21 Petition for Reconsideration in part and reinstates its application for the Texas 21 authorization, File No. 11025–CL–P–672–A–89, to pending status. Given that the Commission is unable to make the public interest determination required by Section 309(e) of the Act based on Alee's prior disqualification in a proceeding that did not involve Texas 21, the Commission designates Alee's application for an evidentiary hearing. This hearing will be limited to determining whether the finding of disqualifying lack of candor on the part of Alee in the *Algreg* proceeding also disqualifies Alee from being granted the Texas 21 authorization, or whether there has been subsequent and sufficient rehabilitation on the part of Alee in the interim to support grant of its Texas 21 application. The Commission underscores that this hearing shall not be used by Alee to relitigate the Commission's findings in *Algreg* concerning Alee's lack of candor, since those findings are fully binding on Alee at this time.

IV. Ordering Clauses

11. Pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, Alee's petition for reconsideration is GRANTED IN PART and OTHERWISE DENIED, to the extent explained above.

12. Alee's application for the Texas 21 RSA cellular authorization, File No. 11025–CL–P–672–A–89, is RETURNED to pending status.

13. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), Alee's application for the Texas 21 RSA cellular authorization, File No. 11025–CL–P–672–A–89 is designated for hearing in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues:

a. To determine, based on previously adjudicated lack of candor on the part of Alee in *Algreg I*,[29] whether Alee is qualified to be a Commission licensee in Texas RSA 21—Market 672A.

b. To determine, in light of the foregoing, whether Alee's pending application for an authorization to construct a nonwireline cellular system in Texas RSA 21—Market 672A should be granted.

14. To avail itself of the opportunity to be heard and to avail itself of the right to present evidence at a hearing in these proceedings, pursuant to § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), Alee shall, in person or by its attorneys, file, within 20 days of the mailing of this Hearing Designation Order, a written appearance stating that it will appear at the hearing and present evidence on matters specified in this Order. If a written notice of appearance is not timely filed on behalf of Alee within 20 days of the mailing of this Hearing Designation Order, the captioned application will be dismissed with prejudice. *See* 47 CFR 1.221.

15. The Enforcement Bureau is made a party to this proceeding.

16. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and § 1.254 of the Commission's rules, 47 CFR 1.254, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon Alee with respect to the issues designated under para. 13 above.

17. The Chief, Wireless Telecommunications Bureau shall send a copy of this Order via certified mail, return receipt requested, to Alee and its counsel at the following addresses:

David L. Hill, Audrey P. Rasmussen, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., Suite 700 North Building,1120 20th Street, NW, Washington, DC 20036–3406.

Philip J. Mause, Drinker Biddle & Reath LLP, 1500 K Street, NW, Suite 1100, Washington, DC 20005–1209.

Alee Cellular Communcations, 602–7 College Avenue, Clemson, SC 29631.

18. The Secretary of the Commission shall cause this Order or a summary thereof to be published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6226 Filed 3–15–02; 8:45 am]

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[15] *Id.* at 18534.

[16] *Id.* at 18535. *See also* NextWave Personal Communications, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 2030 (1997); PCS 2000, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 1681 (1997); PCS 2000, L.P., *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 1703 (1997).

[17] *Alee Cellular Communications* v. *FCC*, No. 99–1460, slip op. at 1 (D.C. Cir. Jan. 31, 2001).

[18] *Id.*

[19] Alee Cellular Communications, No. 01–15, pet. for writ of cert. denied (S.Ct. Oct. 9, 2001).

[20] *See* FCC Public Notice, *Common Carrier Mobile Services Information, Results of Cellular Lottery*, Rpt. No. CL–92–76 (rel. Apr. 9, 1992). The application, which was signed on August 6, 1988, identified Shafi M. Sharifan, who was not in 1988 a U.S. citizen, as a general partner in Alee. Alee's section 1.65 amendment, submitted following its selection as the tentative selectee in the 1992 re-lottery, indicated that Sharifin's interest in Alee had been assigned to a U.S. citizen as of September 23, 1988, and thus he was not a partner in Alee when the subject application was filed. The amendment also advised the Commission of the pending show cause proceeding (*ALGREG*) concerning Alee's NM 3 authorization and made other corrections.

[21] *Texas 21 Dismissal Order*, 15 FCC Rcd at 2831–2832.

[22] *Id.* at 2831 n.3.

[23] Alee TX21 Petition for Reconsideration at 4.

[24] *Id.* at 4–7.

[25] *Id.* at 7.

[26] *See supra*, ¶ 7.

[27] *See, e.g.*, Pass Word, Inc., 76 FCC Rcd 465 (1980), *aff'd per curiam Pass Word, Inc.* v. *FCC*, 673 F.2d 1363 (D.C. Cir. 1982).

[28] *Algreg I*, 12 FCC Rcd at 8172–8181; *Algreg II*, 14 FCC Rcd at 18533–18535.[29]; 12 FCC Rcd at 8172–8181.

[29] 12 FCC Rcd at 8172–8181.

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed Slightly Revised OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period,OGE plans to submit a slightly revised version of its OGE Form 450 for confidential financial disclosure reporting under its existing executive branch regulations for review and three-year extension of approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by June 3, 2002.

ADDRESSES: Comments should be sent to: Mary T. Donovan, Office of Administration and Information Management, Office of GovernmentEthics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's InternetE-mail address at*usoge@oge.gov*(for E-mail messages, the subject line should include the following reference—"OGE Form 450 Executive Branch Confidential Financial Disclosure Report Paperwork Comment").

FOR FURTHER INFORMATION CONTACT: Ms. Donovan at the Office of Government Ethics; telephone: 202–208–8000, ext. 1185; TDD: 202–208–8025; FAX: 202–208–8038. A copy of the proposed slightly revised Confidential Financial Disclosure Report form may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period a slightly revised (pending the minor change noted below) version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report for three-year extension of approval by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35. The OGE Form 450 (OMB control # 3209–0006) collects information from covered department and agency officials as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The OGE Form 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the Federal Government executive branch departments and agencies in order to allow ethics officials to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public financial disclosure under the Ethics in Government Act of 1978 (the "Ethics Act"), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act, 5 U.S.C. app. sec. 107(a), further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that appropriate executive agency employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." The current OGE Form 450, adopted in 1999, together with the underlying OGE 5 CFR part 2634 executive branchwide financial disclosure regulation, issued in 1992 and modified at various times since, constitute the basic form OGE has prescribed for such confidential financial disclosure in the executive branch.

The only changes to the OGE Form 450 that OGE is proposing at this time (as also referenced on the mark-up copy of the form) are updating the contact information to reflect recent OGE organizational changes, adding a continuation page to Part I, and the forthcoming adjustment to the thresholds for reporting of gifts and travel reimbursements for regular employee annual filers in Part V of the OGE Form 450. Currently these thresholds require the reporting of gifts and reimbursements totaling more than $260 from any one source during the annual reporting period, subject to a de minimis exclusion for any item valued at $104 or less (which is not counted toward the overall threshold). The thresholds will have to be adjusted sometime this year when the General Services Administration redefines "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342(a)(5), for the three-year period 2002–2004. Currently, foreign gifts minimal value is set at $260 or less pursuant to 41 CFR 102–42.10 of GSA's regulations. Under section 102(a)(2)(A) and (B) of the Ethics Act, 5 U.S.C. app. section 102(a)(2)(A) and (B), the public financial disclosure reporting thresholds are pegged to any adjustment of minimal value over $250 (at the same time and by the same amount percentage). The Office of Government Ethics has extended the statutory thresholds to confidential financial disclosure reporting for the executive branch. See 5 CFR 2634.907(a)(3), so incorporating the reporting of gifts and reimbursements specified in § 2634.304 for public reports but without amounts or values. Once GSA adjusts minimal value for foreign gifts, OGE will revise the gifts and reimbursements reporting thresholds of the OGE Form 450 and amend the underlying part 2634 regulation (public financial disclosure reporting would also be affected). The Office of Government Ethics will advise

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the departments and agencies of any such change and coordinate with OMB on the paperwork and rulemaking aspects of the revision.

The Office of Government Ethics will continue to make the OGE Form 450 available to departments and agencies and their reporting employees in paper and through the Forms, Publications & Other Ethics Documents section of OGE's Internet Web site (address: *http://www.usoge.gov*). The latter method allows employees two different options for preparing their report on a computer, although a printout and manual signature of the form are still required unless specifically approved otherwise by OGE. Moreover,OGE also permits departments and agencies to develop or utilize their own electronic versions of the OGE Form 450 provided they precisely duplicate the paper original to the extent technically possible. While OGE sees no legal bar to electronic filing and electronic signatures for the OGE Form 450, agencies must meet the requirements of the Government Paperwork Elimination Act (GPEA) and other applicable laws and issues such as security, verification, non-repudiation, etc. Those agencies seeking to develop or utilize an electronic version of the OGE Form 450, and who have not so informed OGE, are asked to advise OGE's Deputy Director for Administration and Information Management of their intentions to do so and to provide assurance of their adherence to the previously mentioned requirements.

Since 1992 various departments and agencies have developed, with OGE review/approval, alternative reporting formats, such as certificates of no conflict, for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes and in certain other circumstances when authorized by OGE. In 1997, OGE itself developed the new OGE Optional Form 450–A (Confidential Certificate of No New Interests (Executive Branch)) for possible agency and employee use in certain years, if applicable. That optional form continues in use at various agencies. However, the OGE Form 450 remains the uniform executive branch report form for most of those executive branch employees who are required by their agencies to report confidentially on their financial interests. The OGE Form 450 is to be filed by each reporting individual with the designated agency ethics official at the executive department or agency where he or she is or will be employed.

Reporting individuals are regular employees whose positions have been designated by their agency under 5 CFR 2634.904 as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities; under that section, all special Government employees (SGE) are also generally required to file. Agencies may, if appropriate under the OGE regulation, exclude certain regular employees or SGEs as provided in 5 CFR 2634.905. Reports are normally required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually in the fall if the employee serves for more than 60 days in the position. As indicated in § 2634.907 of the OGE regulation, the information required to be collected includes assets and sources of income, liabilities, outside positions, employment agreements and arrangements, and gifts and travel reimbursements, subject to certain thresholds and exclusions.

Most of the persons who file this report form are current executive branch Government employees at the time they complete their report. However, some filers are private citizens who are asked by their prospective agency to file a new entrant report prior to entering Government service in order to permit advance checking for any potential conflicts of interest and resolution thereof by agreement to recuse or divest, obtaining of a waiver, etc. Based on OGE's annual agency ethics program questionnaire responses for 1999 and 2000 (the 2001 responses have not yet been fully tabulated), OGE estimates that an average of approximately 268,450 OGE Form 450 report forms will be filed each year for the next three years throughout the executive branch. This estimate is based on average number of report forms filed branchwide for 1999 and 2000 as indicated in the Questionnaire responses, some 271,834 in 1999 and 265,053 in 2000, for a total of 536,887, with that number then divided in half and rounded to give the projected annual average of 268,450 reports. Of these reports, OGE estimates that no more than between 5% and 10%, or some 13,422 to 26,845 per year at most, will be filed by private citizens, those potential (incoming) regular employees whose positions are designated for confidential disclosure filing as well as potential special Government employees whose agencies require that they file their new entrant reports prior to assuming Government responsibilities. No termination reports are required for the OGE Form 450.

Each filing is estimated to take an average of one and one-half hours. The number of private citizens whose reports are filed each year with OGE itself is less than 10, but pursuant to 5 CFR 1320.3(c)(4)(i), the lower limit for this general regulatory-based requirement is set at 10 private persons (OGE-processed reports). This yields an annual reporting burden of 15 hours, the same as in OGE's current OMB inventory for this information collection. The remainder of the private citizen reports are filed with other departments and agencies throughout the executive branch.

Public comment is invited on the unrevised OGE Form 450 as set forth in this notice, including specifically views on the need for and practical utility of this proposed unmodified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, OGE's future request for OMB paperwork approval for the proposed slightly revised OGE Form 450. Any comments received will also become a matter of public record. After reviewing any comments and deciding on the proposed revisions to the form, OGE will publish a second paperwork notice in the **Federal Register** to inform the agencies and the public at the time it submitted the request for OMB paperwork approval.

Approved: March 12, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–6432 Filed 3–15–02; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC) will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–1494.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Proposed Project:* Application to the Board for Correction of Public Health Service (PHS) Commissioned Corps Records (PSC–54)—(OMB 0937–0095)—Extension.

An application is submitted by commissioned officers of the PHS Commissioned Corps, former officers, their spouses or heirs who appeal to the Board for Correction to request removal of an alleged error or injustice in an officer's record. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or injustice. An appeal cannot be considered without the information furnished on this form. *Respondents:* Individuals or households and Federal employees. *Total Number of Respondents:* ten per calendar year. *Number of Responses per Respondent:* one response per request. *Average Burden per Response:* four hours. *Estimated Annual Burden:* 40 hours.

Send comments to Irene S. West, PSC Reports Clearance Officer, Room 17A39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 7, 2002.

Curtis L. Coy,

Director, Program Support Center.

[FR Doc. 02–6420 Filed 3–15–02; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–R–284]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Medicaid Statistical Information System (MMIS).

Form No.: HCFA–R–0284 (OMB# 0938–0345).

Use: State data are reported by a Federally mandated process known as MSIS. These data are the basis for: Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and responding to requests for information from CMS components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (*e.g.*, pregnant women, and infants).

Frequency: Quarterly and Annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 53.

Total Annual Responses: 212.

Total Annual Hours: 2,120.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards,Attention: Julie Brown, CMS–R–284,Room N2–14–26,7500 Security Boulevard,Baltimore, Maryland 21244–1850.

Dated: March 1, 2002.

Julie Brown,

Acting Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–6347 Filed 3–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare and Medicaid Services

[CMS–R–211]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions: (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions.

Form No.: CMS–R–211 (OMB# 0938–0707).

Use: States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to

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section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The Model Application Template is used to assist States in submitting a State Child Health Plan and amendments to that plan.

Frequency: Once.

Affected Public: State, local, or tribal gov't.

Number of Respondents: 42.

Total Annual Responses: 42.

Total Annual Hours: 3,360.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 21, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–6348 Filed 3–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of West Virginia State Plan Amendment (SPA) 01–05

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to reconsider our decision to disapprove West Virginia SPA (01–05), on April 25, 2002 at 10 a.m.; Room 339; the Public Ledger Building; 150 SouthIndependence Mall West; Philadelphia, PA 19106–3499.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by April 2, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-HayesOffice of Hearings, Centers for Medicare & Medicaid Services, Suite L 2520 Lord Baltimore Drive, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove West Virginia SPA (01–05).

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish HHS procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid Services (CMS) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice. Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The primary issue in the hearing is whether West Virginia's SPA 01–05 complies with the requirement of section 1917(b)(3) of the Act governing criteria for establishing an undue hardship under which the provisions governing mandatory estate recovery will be waived. That provision requires the State to use criteria established by the Secretary for determining whether estate recovery constitutes an undue hardship: 1. In resolving this issue, the hearing will consider whether publication in the State Medicaid Manual meets the requirements for adopting standards governing a homestead of modest value for purposes of qualifying for the undue hardship exception section 1917(b)(3); 2. The hearing will also consider if properly adopted, whether the Secretary appropriately applied these standards in disapproving the amendment.

West Virginia initially submitted SPA 01–05 on March 13, 2001. Section 1917 (b)(3) of the Act requires the state agency to establish procedures and standards to waive estate recoveries when such recoveries would cause an undue hardship as determined on the basis of criteria established by the Secretary. The State Medicaid Manual (SMM) defines one basis for an undue hardship as "a homestead of modest value."

The SPA proposes to exempt homestead property based on a statewide arithmetic mean appraised value of a home that is to be updated yearly by the West Virginia Department of Tax and Revenue.

The CMS has informed West Virginia that it has provided standards for determining the maximum amount which can be excluded from estate recovery as a "homestead of modest value." Section 3810.C1 provides that states may not set the threshold for the market value of a homestead of modest value so high as to negate the intent of the estate recovery program. It specifically notes that "a homestead of 'modest value' can be defined as 50 percent or *less* of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death." Under West Virginia's amendment, in many counties, the $50,735 homestead of modest value exemption is greater than 100 percent of the average appraised value of homes in the county. In others it is twice that amount. Accordingly, CMS found the amendment did not comport with the standards for defining a homestead of modest value, which a state may exempt as part of its undue hardship exemption.

The CMS has noted that West Virginia's statewide homestead exemption was not included in the amendment as part of its "undue hardship" waiver of the mandatory estate recovery. The State included this exemption in the State plan as a separate item. Any homestead exempted must be excluded either on the basis of "undue hardship" or that it is not cost-effective for the State to recover.

The notice to West Virginia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Nancy V. Atkins, MSN, RNC, NP,
Commissioner, State of West Virginia,
Department of Health and Human Services,
Bureau for Medical Services, 350 Capitol
Street, Room 251, Charleston, West
Virginia 25301–3706

Dear Ms. Atkins:

I am responding to your request for reconsideration of the decision to disapprove West Virginia State Plan Amendment (SPA) 01–05.

The primary issue in the hearing is whether West Virginia's SPA 01–05 complies with the requirement of section 1917 (b)(3) of the Social Security Act (the Act) governing criteria for establishing an undue hardship

under which the provisions governing mandatory estate recovery will be waived. That provision requires the State to use criteria established by the Secretary for determining whether estate recovery constitutes an undue hardship: 1. In resolving this issue, the hearing will consider whether publication in the State Medicaid Manual meets the requirements for adopting standards governing a homestead of modest value for purposes of qualifying for the undue hardship exception Section 1917(b)(3); 2. The hearing will also consider if properly adopted, whether the Secretary appropriately applied these standards in disapproving the amendment.

West Virginia initially submitted SPA 01–05 on March 13, 2001. Section 1917 (b)(3) of the Act requires the State agency to establish procedures and standards to waive estate recoveries when such recoveries would cause an undue hardship as determined on the basis of criteria established by the Secretary. The State Medicaid Manual (SMM) defines one basis for an undue hardship as "a homestead of modest value."

The SPA proposes to exempt homestead property based on a statewide arithmetic mean appraised value of a home that is to be updated yearly by the West Virginia Department of Tax and Revenue.

The Centers for Medicare & Medicaid Services (CMS) has informed West Virginia that it has provided standards for determining the maximum amount which can be excluded from estate recovery as a "homestead of modest value." Section 3810.C1 provides that states may not set the threshold for the market value of a homestead of modest value so high as to negate the intent of the estate recovery program. It specifically notes that "a homestead of 'modest value' can be defined as 50 percent or *less* of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death." Under West Virginia's amendment, in many counties, the $50,735 homestead of modest value exemption is greater than 100 percent of the average appraised value of homes in the county. In others it is twice that amount. Accordingly, CMS found the amendment did not comport with the standards for defining a homestead of modest value, which a state may exempt as part of its undue hardship exemption.

The CMS has noted that West Virginia's statewide homestead exemption was not included in the amendment as part of its "undue hardship" waiver of the mandatory estate recovery. The State included this exemption in the State plan as a separate item. Any homestead exempted must be excluded either on the basis of "undue hardship" or that it is not cost-effective for the State to recover.

I am scheduling a hearing on your request for reconsideration to be held on April 25, 2002, at 10 a.m.; Room 339; The Public Ledger Building; 150 South Independence Mall West; Philadelphia, Pennsylvania 19106–3499.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

(Sect. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 7, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6349 Filed 3–15–02; 8:45 am]

BILLING CODE 4160–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0002]

Draft Guidance for Industry on Developing Drugs To Treat Inhalational Anthrax (Post-Exposure); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Inhalational Anthrax (Post-Exposure)—Developing Antimicrobial Drugs." This guidance focuses on the development of antimicrobial drugs for administration to persons who have inhaled aerosolized *Bacillus anthracis*, but who do not yet have the established disease. The treatment goal would be to prevent development of the infection in such persons.

DATES: Submit written or electronic comments on the draft guidance by May 17, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Renata Albrecht, Center for Drug Evaluation and Research (HFD–590), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2336.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Inhalational Anthrax (Post-Exposure)—Developing Antimicrobial Drugs." This guidance focuses on the development of antimicrobial drugs for administration to persons who have inhaled aerosolized *B. anthracis*, but who do not yet have the established disease. The treatment goal would be to prevent development of the infection in such persons.

In the fall of 2001, *B. anthracis*, the bacterium that causes anthrax, was used as a bioterrorism agent and sent through the U.S. mail, resulting in cases of cutaneous and inhalational anthrax in New York, New Jersey, the District of Columbia, Florida, and Connecticut. Ciprofloxacin hydrochloride tablets, ciprofloxacin intravenous (IV) solution, ciprofloxacin IV in 5 percent dextrose, ciprofloxacin IV in 0.9 percent saline, and ciprofloxacin oral suspension, which the agency had approved in August 2000 for use in the management of patients who have been exposed to aerosolized spores of *B. anthracis*, were used to treat the potentially infected persons.

Because of the bioterrorism incident, the agency is encouraging the development of additional antimicrobial agents to be used in the event of inhalational exposure to *B. anthracis*. This guidance provides recommendations on how to develop such agents. The guidance is intended to assist applicants who wish to plan, design, conduct, and appropriately monitor the studies, including clinical studies, for drugs to treat persons exposed to *B. anthracis*. Applications submitted to the agency based on studies conducted as recommended in this guidance should yield the information necessary for the agency to determine whether the antimicrobial under study is safe and effective for use

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in persons exposed to aerosolized *B. anthracis* who do not yet have established disease.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance by May 17, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 14, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6319 Filed 3–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1033]

Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions." The document provides guidance for industry on procedures for submitting protocol information to the Clinical Trials Data Bank established by section 113 of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). Section 113 of the Modernization Act creates a public resource for information on studies of drugs for serious or life-threatening diseases and conditions conducted under FDA's investigational new drug (IND) regulations.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBER–FAX. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments tohttp://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronicaccess to the guidance document.

FOR FURTHER INFORMATION CONTACT: Theresa Toigo, Office of Special Health Issues, Office of the Commissioner (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions." The agency has finalized the guidance after considering comments received on two draft guidance documents. In the **Federal Register** of March 29, 2000 (65 FR 16620), FDA published the notice of availability of a draft guidance entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank." The March 29, 2000, draft guidance provided recommendations for industry on the submission of protocol information to the clinical trials data bank. It included information on the types of clinical trials for which submissions are required under section 113 of the Modernization Act (42 U.S.C. 282) and on the content of those submissions.

Notice of the availability of the second draft guidance entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Implementation Plan," was published on July 9, 2001 (66 FR 35798). It addressed procedural issues, including how to submit required and voluntary protocol information to the Clinical Trials Data Bank through a Web-based Protocol Registration System (PRS) available at http://prsinfo.clinicaltrials.gov/.

This guidance, which is a combination of the informational and procedural draft guidances, was finalized after consideration of comments received on both draft guidances. The comments received addressed the following topics: (1) Scope of data requirements, (2) international trial sites, (3) voluntary information, (4) compliance, (5) timeframes, (6) procedural issues (e.g. contact names and intermediaries), and (7) burden estimate. Revisions made in the guidance are intended to clarify issues raised in the comments and to make the document clearer.

We note that Senate 1789, "Best Pharmaceuticals for Children Act" (Public Law 107–109), which was signed by the President on January 4, 2002, provides for a description of whether, and through what procedure, the manufacturer or sponsor of an IND will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the investigational drug, particularly in children. The agency intends to issue a revised guidance in the future to address this provision.

Along with the first draft guidance, FDA published a notice in the **Federal Register** of March 29, 2000, announcing a proposed collection of information. On November 9, 2000 (65 FR 67385), FDA published a notice stating that the proposed collection of information was submitted to the Office of Management and Budget (OMB) for review. The report considered comments received on the proposed collection of information. On March 23, 2001 (66 FR 16251), FDA announced OMB's approval of the agency's information collection activities for the program (OMB Control No. 0910–0459). This approval expires March 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This level 1 final guidance is being issued in accordance with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on compliance with section 113 of Modernization Act, i.e., submitting information on clinical trials for serious or life-threatening diseases and conditions to a Clinical Trials Data Bank developed by the National Library of Medicine, National Institutes of Health. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written or electronic comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cber/guidelines.htm, or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: March 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6421 Filed 3–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Uniform Data System (OMB No. 0915–0193)—Revision

This is a request for a revision of approval of the Uniform Data System (UDS), which contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Outreach and Primary Health Services for Homeless Children and Public Housing Primary Care, and Healthy Schools Healthy Communities. Authorizing Legislation is found in Public Law 104–299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

The Bureau of Primary Health Care collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The UDS includes two components: the Universal Report, completed by all grantees, provides data on services, staffing, and financing; and the Grant Report, completed by grantees funded under the Homeless, Public Housing Program or Health Schools Health Communities as well as one of the other programs, provides data on characteristics of users whose services fall within the scope of the Homeless, Public Housing Program, Healthy Schools Healthy Communities grant. Grantees are also asked to provide information on the charges, collections, bad debt write off and contractual disallowances by payor sources (Medicaid, Medicare, self pay and private insurance). In addition, grantees need to include categories to some of the lists (e.g., services, ICD codes, CPT codes) and annotating the forms to indicate which lines are subtotals and the lines to which they sum.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hours
Universal Report	757	24	18,168
Grant Report	114	16	1,824
Total	757		19,992

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 12, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–6422 Filed 3–15–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Internet Tools to Enhance Use of Online Health Resources.

Date: April 18, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892. 301/594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6385 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could dislose confidential trade secrets or commericial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Communication and Interactive Media Technology.

Date: April 18, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892. 301/594-1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6384 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: April 25, 2002.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8129, MSC 8328, Bethesda, MD 20892–8328. 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6386 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: March 21, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room D, 6130 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892. (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6394 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Children's Oncology Group Phase 1/Pilot Consortium.

Date: May 3, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8049, Rockville, MD 20852, 301/594–9582.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6395 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prognosis and Prediction.

Date: April 16–17, 2002.

Time: 5 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6395 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: April 24–25, 2002.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants

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Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, RM 8115, Bethesda, MD 20852, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6396 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 25, 2002.

Open: March 25, 2002, 8:30 a.m. to 10:30 a.m..

Agenda: Joint meeting of the NCI Board of Scientific Advisors and NCI Board of Scientific Counselors; Report of the Director, NCI; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Open: March 25, 2002, 10:30 AM to 5:00 PM.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Closed: March 25, 2002, 5 p.m. to 6 p.m.

Agenda: To review and evaluate personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8141, Bethesda, MD 20892, (301) 496–4218.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/bsa.htm, where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6410 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: April 3, 2002.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: D.G. Patel, Phd, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, Room 6018, Bethesda, MD 20892–7965, (301) 435–0824, dgpatel.@ncrr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6406 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposal and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 16, 2002.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director & other issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 2:45 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892. 301–496–6023.

Information is also available on the Institute's/Center's home page: www.ncrr.nih.gov/newspub/minutes.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6416 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: April 12, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6409 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Dosage Form Development".

Date: April 3, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547. (301) 435–1438.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Development of Science Education Materials".

Date: April 10, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547. (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6383 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 22, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd 5th Floor, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for

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Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6388 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: For Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865 for Mothers and Children; 93.929, Research Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office and Federal Advisory Committee Policy.

[FR Doc. 02–6389 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 18–19, 2002.

Time: 6:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6390 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: April 18, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Bethesda, MD 20852.

Contact Person: Melissa Stick, Phd, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8863.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6391 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Longitudinal Study of Environmental Effects on Child Health and Development.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact Person listed below in advance of the meeting.

Name of Committee: National Longitudinal Study of Environmental Effects on Child Health and Development.

Date: April 7–8, 2002.

Time: April 7, 2002, 11:30 a.m. to 2 p.m.

Agenda: To orient members and complete administrative business relevant to the establishment of the committee.

Place: Sheraton Premiere Hotel, 8661 Leesburg Pike, Vienna, VA.

Time: April 8, 2002, 8 a.m. to 5:30 p.m.

Agenda: Report of the Inter-agency Coordinating Committee, Discussion of Working Group membership, review of Working Group products.

Place: Sheraton Premiere Hotel 8661 Leesburg Pike, Vienna VA.

Contact Person: Peter M. Scheidt, MD, Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 7B03, Bethesda, MD 20892, (301) 451–6421, *ncs@nouk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865 Research for Mothers and Children; 93.929, Center for Medical Rehabilitation on Research National Institutes of Health, HHS)

Dated: March 8, 2002.

LaVerne Y. Stringfield,

Director Office of Federal Advisory Committee Policy.

[FR Doc. 02–6392 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: March 29, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 754, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 9, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 746, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel.

Date: April 23, 2002.

Time: 12:45 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6398 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 10–11, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 8777 Georgia Avenue, Silver Spring, MD 20910–3763.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research, 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6400 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, April 5, 2002, 8 a.m. to April 5, 2002, 5 p.m., Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814 which was published in the **Federal Register** on February 19, 2002, 67 FR 7385.

The meeting will be at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland. The meeting is closed to the public.

Dated: March 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6401 Filed 3–15–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel

Date: April 10, 2002.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ali A Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, DHHS, Bethesda, MD 20892–7180. (301) 496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6402 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, February 27, 2002, 3:30 p.m. to February 27, 2002, 5:30 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 which was published in the **Federal Register** on February 7, 2002, 67 FR 5838–9.

The meeting will be as a telephone conference on March 13, 2002, 2–4 p.m. at the Neuroscience Center. The meeting is closed to the public.

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6403 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 10, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Susan M. Matthews, Scientific Review Administrator, Division of Extramural Activities, National Institute Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892–9607. 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6404 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 21, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *jsherril@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Panel.

Date: March 25, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608. 301/443–7216. *hhaigler@mail.nih. gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of mental Health Special Emphasis Panel.

Date: April 8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *jsherril@mail.nih.gov..*

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 12, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–6470. *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6405 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institute of Health, Bethesda, MD 20892, (301) 594–8886.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Program Projects—Stem Cells and Signal Transduction.

Date: April 16, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institute of Health, Bethesda, MD 20892, (301) 594–7797, cannaughtonj@extra.niddk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: May 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1300 Concourse Drive, Linthicum, MD 21090.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institute of Health, Bethesda, MD 20892–6600, (301) 594–8894,

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6412 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Caloric Restriction RFA.

Date: March 25–26, 2002.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: April 2–3, 2002.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: April 7–8, 2002.

Time: 6:30 p.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Marriott BWI Airport, 1743 West Nursery Road, Linthicum, MD 21240.

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6413 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Clinical Trials Network.

Date: May 7–8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand, 2350 M Street, NW., Washington, DC 20039.

Contact Person: William C. Grace, PHD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547. (301) 443–2755

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientists Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6414 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institutes of Arthritis, Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892. (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6415 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meetings will be open to the public, with attendance limited to space available. Individuals who plant to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: May 6, 2002.

Time: 9:30 a.m. to 4 p.m.

Agenda: Program documents.

Place: National Library of Medicine, Board Room, Building 38, 2E09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contract Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: www.pubmedcentral.nih.gov/about/nac/html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6393 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 6–7, 2002.

Open: June 6, 2002, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine,8600 Rockville Pike,Board Room, 2nd Floor Mezzanine,Bethesda, MD 20894.

Closed: June 6, 2002, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine,8600 Rockville Pike,Board Room, 2nd Floor Mezzanine,Bethesda, MD 20894.

Closed: June 7, 2002, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine,8600 Rockville Pike,Board Room, 2nd Floor Mezzanine,Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS,Chief, Bibliographic Services Division,Division of Library Operations,National Library of Medicine,Building 38A, Room 4N419,8600 Rockville Pike,Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NID.

[FR Doc. 02–6399 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussions, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

Date: April 16, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6408 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Planning Subcommittee.

Date: May 13, 2000.

Open: 3 p.m. to 5 p.m.

Agenda: Program documents.

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: May 14, 2002.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Program documents.

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 14–15, 2002.

Open: May 14, 2002, 9 a.m. to 4:30 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: May 14, 2002, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room BLDG 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: May 14, 2002.

Closed: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg., 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html*, when an agenda and any additional information for the meeting will be posted when available.

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(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medicine Library Assistance, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6411 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1100, MSC 7848, Bethesda, MD 20892. (301) 451–8008.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 4:30 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892 (301) 435–0912. *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6382 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 19, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 20, 2002.

Time: 2 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 21, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 21, 2002.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 22, 2002.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 22–23, 2002.

Time: 2:00 p.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814 301/435–1743, *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 23, 2002.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 25, 2002.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 25, 2002.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Insitutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 25, 2002.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, 301 435–3553, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776. *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. OBM–1 Dental SBIR/STTR Review Panel.

Date: March 27, 2002.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.

Contact Person: J. Terrell Hoffeld, DDS, Ph.D, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

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Contact Person: Mariela Shirley, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor A. Fung, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *fungv@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *monseesd@drg.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1100, MSC 7848, Bethesda, MD 20892, (301) 451–8008.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27–29, 2002.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Best Western University Tower, 4507 Brooklyn Avenue N.E., Seattle, WA 98105.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 4 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge drive, Room 4118, MSC 7848, Bethesda, MD 20892, 301–435–3553, *shirleym@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333 Clinical Research, 93.333, 93.337 93.393–93,396, 93.837–93.844, 93.846–93.878, 93.892, 93.893 National Institutes of Health, HHS)

Dated: March 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6397 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, Ph.D, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 9 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Alec S. Liacouras, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A Oxman, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, 301/435–3565, *oxmanm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, Ph.D, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, Ph.D, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3553, *shirleym@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 29, 2002.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 29, 2002.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hilton Crystal City at Ronald Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 29, 2002.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 29, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775. *ngo@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine,

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93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–6407 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: "Cloning and Expression of cDNA for Human Dihydropyrimidine Dehydrogenase"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the inventions embodied in the international patent application WO96/08568 (PCT/US95/12016) related to DHHS reference No. E–157–94/3, entitled "Cloning and expression of cDNA for human dihydropyrimidine dehydrogenase," to Oncoscreen GmbH of Jena, Germany.

The prospective co-exclusive license territory may be limited to Europe and the field of use may be limited to *in-vitro* diagnostics.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before May 17, 2002, will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated co-exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3821; Telephone: (301) 496–7056, x224; Facsimile: (301) 402–0220; e-mail: *kiserm@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology relates to the DPD gene. Cancer patients having a DPD deficiency are at risk of a severe toxic reaction to the commonly used anticancer agent 5-fluorouracil (5–FU). Claimed are DPD genes from human and pig, methods for detecting the level of nucleic acids that encode DPD in patients, and nucleic acids that are useful as probes for this purpose. Also claimed are methods for expressing DPD in heterologous organisms. Expression vectors that employ a DPD nucleic acid as a selectable marker are also claimed.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 8, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–6417 Filed 3–15–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–09]

Notice of Submission of Proposed Information Collection to OMB; Management Reviews of Multifamily Housing Projects

AGENCY: Office of the Chief information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 17, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0178) be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddinis@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Management Reviews of Multifamily Housing Projects.

OMB Approval Number: 2502–0178.

Form Numbers: HUD–9834.

Description of the Need for the Information and its Proposed Use: HUD staff of HUD's agents (Contract Administrators) collect information during on-site reviews by interviewing owners/or management agents of insured and HUD-held projects. The information collected is used to evaluate the quality of management, determine causes of problems, devise corrective actions in order to safeguard the Department's financial interest and ensure that tenants are provided with decent, safe, and sanitary housing.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
1,120		1		4		4,480

Total Estimated Burden Hours: 4,480.

Status: Reinstatement, without change.

Authority: Sect. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–6336 Filed 3–15–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–10]

Notice of Submission of Proposed Information Collection to OMB; Relocation and Real Property Acquisition, Recordkeeping Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 17, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0121) be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Relocation and Real Property Acquisition, Recordkeeping Requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979.

OMB Approval Number: 2506–0121.

Form Numbers: None.

Description of the need for the information and its proposed use:

Agencies receiving HUD funding for projects involving relocation of owners or tenants displaced due to a project that includes rehabilitation, demolition, or acquisition of property are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Agencies are required to document their compliance with the requirements of the URA and applicable implementing and program regulations.

Respondents. State, Local or Tribal Government.

Frequency of Submission: Recordkeeping.

Reporting Burden:

Number of respondents	×	Frequency of Responses	×	Hours per response	=	Burden hours
2,000		40		3.25		260,000

Total Estimated Burden Hours: 260,000.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–6337 Filed 3–15–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–11

Notice of Submission of Proposed Information Collection to OMB; Optional Relocation Payment Claim Forms

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

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SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 17, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0016) be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Optional Relocation Payment Claim Forms.

OMB Approval Number: 2506–0016.

Form Numbers: HUD–40054, 40055, 40056, 40057, 40058, 40061, and 40072.

Description of the Need for the Information and Its Proposed Use: Application for displacement/relocation assistance for persons (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs.

Respondents: Individual or households, Business or other for-profit, Not for-profit institutions, Farms.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
12,800		3		0.8		31,000

Total Estimated Burden Hours: 31,000.

Status: Reinstatement, without change.

Authority: Sect. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–6338 Filed 3–15–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–01]

Notice of Planned Closing of Oakland, CA Post-of-Duty Station

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of Planned Closing of Oakland, California Post-of-Duty Station.

SUMMARY: This notice advises the public that the HUD Office of Inspector General is closing its Oakland, California post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In 1996, HUD's Office of Inspector General (HUD/OIG) established a two person post-of-duty station in Oakland, California, to give direct support to the Oakland, California office's Operation Safe Home (OSH) initiative to combat violent and drug-related crime in public and assisted housing in the city and nearby communities. Although the Oakland post-of-duty station is only about 10 miles from HUD/OIG's San Francisco Regional Office, nationwide experience since the initiation of OSH in 1994 had proven that the best results/impact could be obtained when HUD/OIG Special Agents were physically located in the target city. However, in accordance with the requirements of the Fiscal Year 2002 HUD Appropriations Act (Pub.L. 107–73, approved November 26, 2001), HUD/OIG is terminating OSH and re-deploying staff to focus on investigations involving single-family fraud and property flipping. This change eliminates the need to maintain a separate post-of-duty station in Oakland, California, and gives HUD/OIG the opportunity to generate cost savings associated with discontinuing an additional office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress

stated that "(t)his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations)." (See House Conference Report No. 95–1792, October 14, 1978 at 105–106.)

The two-person duty-station in Oakland, California, is a single purpose duty station, and the duty station is being closed based on workload rather than a reorganization of OIG field offices. Although notice of the closing of a duty station is not subject to the requirement of section 7(p), as supported by legislative history, OIG nevertheless prepared a cost-benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, OIG advises the public of the closing of the Oakland, California duty station and provides the cost-benefit analysis of the impact of the closure.

Impact of the Closure of the Oakland, California Post-of-Duty Station

HUD/OIG considered the costs and benefits of closing the Oakland, California post-of-duty, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area (*i.e.*, OSH activities, of course, will be impacted, but HUD/OIG has been directed to terminate these activities).

Cost-Benefit Analysis

A. Cost Savings

The Oakland, California post-of-duty currently costs $35,617 per year in lease expenses. Thus, closing the post-of-duty will result in an annual savings of at least $35,617. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises, nor will HUD/OIG incur costs associated with the lease or purchase of duplicative office equipment.

B. Additional Costs

There are no offsetting expenses anticipated. The Special Agents assigned to the Oakland, California post-of-duty will be reassigned to the San Francisco Regional Office, without need for relocation reimbursement. Further, there is adequate existing office space to accommodate the Special Agents within the San Francisco Regional Office.

C. Impact on Local Economy

The Oakland, California post-of-duty office space is located in government office space: The Federal Court House. Further, the post-of-duty comprises a mere 1290 square feet of space, which can easily be re-leased to other tenants. Moreover, the closure coincides with the normal expiration of HUD/OIG's lease. Thus, no appreciable impact on the local economy is anticipated.

D. Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services

The establishment of the Oakland, California post-of-duty was based entirely on the needs of the HUD/OIG to have Special Agents in closer proximity to OSH activities conducted in the Oakland area. These activities are being terminated. Further, as was the case prior to 1996, fraud investigations in the Oakland area can be cost-effectively addressed by agents assigned to the San Francisco Regional Office which is about 10 miles away.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Oakland, California post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: March 8, 2002.

David C. Williams,

Acting Inspector General.

[FR Doc. 02–6334 Filed 3–15–02; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–02]

Notice of Planned Closing of Tacoma, Post-of-Duty Station

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of planned closing of Tacoma, post-of-duty station.

SUMMARY: This notice advises the public that the HUD Office of Inspector General is closing its Tacoma, Washington post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In 1998, HUD's Office of the Inspector General (HUD/OIG) established a single person post-of-duty in Tacoma, Washington, to give direct support to the Tacoma, Washington office's Operation Safe Home (OSH) initiative to combat violent and drug-related crime in public and assisted housing in the city and nearby communities. Although Tacoma, Washington, is only about 30 miles from Seattle, Washington, where the HUD/OIG regional office is located, nationwide experience since the initiation of OSH in 1994 had proven that the best results/impact could be obtained when a HUD/OIG Special Agent was physically located in the target city. However, in accordance with the requirements of the Fiscal Year 2002 HUD Appropriations Act (Pub.L. 107–73, approved November 26, 2001), HUD/OIG is terminating OSH and re-deploying staff to focus on investigations involving single-family fraud and property flipping. This change eliminates the need to maintain a separate post-of-duty station in Tacoma, Washington, and gives HUD/OIG the opportunity to generate cost savings associated with discontinuing an additional office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that "[t]his amendment is not intended to [apply] to or restrict the

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internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations)." (See House Conference Report No. 95–1792, October 14, 1978 at 105–106.)

The one-person duty-station in Tacoma, Washington, is a single purpose duty station, and the duty station is being closed based on workload rather than a reorganization of OIG field offices. Although notice of the closing of a duty station is not subject to the requirement of section 7(p), as supported by legislative history, OIG nevertheless prepared a cost-benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, OIG advises the public of the closing of the Tacoma, Washington duty station and provides the cost-benefit analysis of the impact of the closure.

Impact of the Closure of the Tacoma, Washington Post-of-Duty Station

HUD/OIG considered the costs and benefits of closing the Tacoma, Washington office, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure with result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area (*i.e.*, OSH activities, of course, will be impacted, but HUD/OIG has been directed to terminate these activities).

Cost-Benefit Analysis

A. Cost Savings

The Tacoma, Washington post-of-duty currently costs $1,194 per month for the space rental and $45.39 per month for the telephone service. Thus, closing the post-of-duty will result in an annual savings of $14,783. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

B. Additional Costs

There are no offsetting expenses anticipated. The Special Agent assigned to the Tacoma, Washington post-of-duty will be reassigned to the Seattle Regional Office, without need for relocation reimbursement because the Special Agent actually resides closer to the Seattle Regional Office than to the Tacoma, Washington post-of-duty. Further, there is adequate existing office space to accommodate the Special Agent within the Seattle Regional Office.

C. Impact on Local Economy

The Tacoma, Washington post-of-duty office space is located in government office space: the Federal Court House. Further, the post-of-duty comprises a mere 354 square feet of space, which can easily be re-leased to other tenants or used by security staff (GSA Law Enforcement) who occupy the adjacent space. Thus, no appreciable impact on the local economy is anticipated.

D. Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services

The establishment of the Tacoma, Washington post-of-duty was based entirely on the needs of the HUD/OIG to have a Special Agent in closer proximity to OSH activities conducted in the Tacoma area. These activities are being terminated. Further, as was the case prior to 1998, fraud investigations in the Tacoma area can be more effectively addressed by agents assigned to the Seattle Regional Office which is about 30 miles away.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Tacoma, Washington post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: March 8, 2002.

David C. Williams,

Acting Inspector General.

[FR Doc. 02–6335 Filed 3–15–02; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4732–N–03]

Statutory Waiver Granted to New York State for Recovery From the September 11, 2001 Terrorist Attacks

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waiver granted.

SUMMARY: This notice advises the public of a waiver of statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements for this purpose. This notice lists the provisions being waived.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

Section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) provides for the use of Community Development Block Grant (CDBG) funds made available from the Emergency Response Fund by the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Pub. L. 107–38, approved September 18, 2001) to New York State for properties and businesses damaged by, and economic revitalization related to, the September 11, 2001, terrorist attacks on New York City. Section 434 authorizes the Secretary of HUD to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment.

The Defense Appropriations Act, 2002 (Pub. L. 107–117) made available an additional $2.0 billion in CDBG funds subject to section 434. It also stipulated that at least $500 million of the total be made available for individuals, nonprofits, or small businesses for economic losses from the September 11, 2001 terrorist attacks.

The Department finds that the following waiver is necessary to facilitate the use of at least $500 million of the $2.7 billion for economic loss, and that such use is not inconsistent with the overall purpose of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended. Readers are referred to the Notices published by the Department in the **Federal Register** of January 28, 2002 (67 FR 4164) and February 7, 2002 (67 FR 5845) that enumerated a list of waivers and alternative requirements that were necessary to facilitate the use of the initial disbursement of $700 million in CDBG funds made available from the Emergency Response Fund.

Description and Justification of Requirements Waived

1. *Waiver of eligibility limitation at Section 105 (a).* The limitation at section 105 (a) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5305 (a)) on eligible activities in the CDBG program is waived, in recognition of the requirements of Public Law 107–117, solely to treat "payment of compensation to an individual, nonprofit or small business for economic losses resulting from the September 11, 2001 terrorist attacks on New York City" as a distinct eligible activity. Accordingly, unless the grantee establishes limitations on the use of such payments by individuals, nonprofits or small businesses, CDBG and other crosscutting requirements generally would not apply to such use of payments.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73) requires HUD to publish this waiver in the **Federal Register** no later than five days before its effective date. The effective date of this waiver is March 25, 2002.

Dated: March 8, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–6333 Filed 3–15–02; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; FACA meeting.

SUMMARY: The Hanford Reach National Monument Federal Advisory Committee will conduct a meeting on Tuesday, March 19, 2002 from 12:30 pm to 4:30 p.m. at the United Way of Benton and Franklin Counties, 401 North Young Street, Kennewick, WA. The meeting is open to the public and media.

DATES: Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Officer for the Hanford Reach National Monument (HRNM) Federal Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) FAC; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: The Hanford Reach National Monument Federal Advisory Committee will review subcommittees formation, and consider examples of previous issues workbooks for the Comprehensive Conservation Plan. The Committee will break into subcommittee groups and begin preliminary discussions in those groups.

Dated: March 11, 2002.

Greg Hughes,

Project Leader, Hanford Reach National Monument.

[FR Doc. 02–6345 Filed 3–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Office of Indian Education Programs is seeking comments on the renewal of the Information Collection Request for the Johnson-O'Malley Program Annual Report Form, OMB No. 1076–0096, as required by the Paperwork Reduction Act of 1995.

DATES: Submit your comments and suggestions on or before May 17, 2002.

ADDRESSES: Written comments should be sent directly to Garry R. Martin, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street NW., Washington, DC 20240–0001. You may also send comments by facsimile to 202–219–9583.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection may be obtained by contacting Garry R. Martin, 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for Johnson-O'Malley programs as required by 25 CFR 273.50, Annual Reporting.

II. Request for Comments

Comments are invited on:

(a) Whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of the information on the respondents, including through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

It is our policy to make all comments available to the public for review during the hours of 9 a.m. to 3 p.m., Monday through Friday, except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

III. Data

Title: Johnson-O'Malley Program Annual Report Form.

OMB approval number: 1076–0096.

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Frequency: Annually.
Description of respondents: Tribes, tribal organizations, school district education program administrators.
Estimated completion time: 5 hours.
Number of Annual responses: 360.
Annual Burden hours: 1,800 hours.

Dated: February 21, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6354 Filed 3–15–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Irrigation Rate Adjustment, Colorado River Irrigation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Irrigation Operation and Maintenance Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) adjusted the excess water rates assessed to customers of the Colorado River Irrigation Project for the 2001 irrigation season. This rate will remain in effect for subsequent irrigation seasons or until we provide notice of a separate rate adjustment.

EFFECTIVE DATE: The new rates were effective July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Jeff Hinkins, Bureau of Indian Affairs, Colorado River Agency, Rt. 1, Box 9-C, Parker, AZ 85334; (928) 669–7111.

SUPPLEMENTARY INFORMATION: A notice of Proposed Rate Adjustment was published in the **Federal Register** on September 25, 2001 at 66 FR 49037. The public and interested parties were provided an opportunity to submit written comments during the 60-day period subsequent to September 25, 2001. No comments were received.

Where Can Information on the Regulatory and Legal Citations in This Notice Be Obtained?

You can contact the Colorado River Irrigation Project office at the location stated in **FOR FURTHER INFORMATION CONTACT** section or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

What Is the Purpose of This Notice?

This notice is to notify you that we adjusted the irrigation assessment rates for one of our irrigation projects. We are publishing this notice in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, specifically §§ 171.1(e) and 171.1(f) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations. These sections provide for the fixing and announcing of the rates for annual operation and maintenance assessments and related information for BIA irrigation projects.

What Authorizes Us to Issue This Notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs in accordance with part 209 of the Department of the Interior's Departmental Manual, Chapter 8.1A, and by memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to Assistant Secretaries and Heads of Bureaus and Offices.

When Does This Schedule Apply To Me?

The schedule applies to you if you irrigated lands within the Colorado River Irrigation Project for the 2001 irrigation season.

What Was the Irrigation Rate for the 2001 Irrigation Season?

The following table shows how we billed you:

Water delivered per acre	Rate for 2001 irrigation season
Up to 5.0 acre-feet	$37.00
5.0 to 5.5 acre-feet	7.40
Above 5.5 acre-feet	17.00

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The rate adjustment was developed in consultation between the irrigators, the BIA and the Tribal Irrigation Committee (Committee). The Committee was established by the Colorado River Indian Tribes (Tribes) and maintains a membership appointed by the Tribal Council. During the March 2001 Committee meeting, a budget subcommittee was appointed and tasked to specifically review the excess water rate and make recommendations to the Committee for proposed adjustments. The subcommittee developed a method and rate which would maintain an excess water rate consistent with the previously developed budget. The proposed rate was reviewed and approved by the Committee during their May 2001 meeting. On June 19, 2001, a meeting was held between the Tribes and the BIA. During the meeting the Tribes were informed of the proposed rate adjustment and the impacts associated with this adjustment. The Tribes agreed to the proposed adjustment to the excess water rate and a verifying letter was sent to the Tribes on July 3, 2001.

Throughout the process of reviewing the excess water rate the BIA has relied upon input and consultation with the Tribes through their Irrigation Committee and Water Resource Program activity, to develop an equitable rate for farmers, maximize water conservation and maintain sufficient funds for operation and maintenance of the project.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

This is a notice for a rate adjustment at a BIA owned and operated irrigation project. This rate adjustment had no significant adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) when the proposed rate adjustment was implemented.

Regulatory Planning and Review (Executive Order 12866)

This rate adjustment was not a significant regulatory action and did not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making was not a rule for the purposes of the Regulatory Flexibility Act because it was "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

This rate adjustment imposed no unfunded mandates on any governmental or private entity and was in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

Takings (Executive Order 12630)

The Department determined that this rate adjustment did not have significant "takings" implications. The rate adjustment did not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department determined that this rate adjustment did not have significant Federalism effects because it pertained solely to Federal-tribal relations and did not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor determined that this rule did not unduly burden the judicial system and met the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This rate adjustment did not affect the collection of information which had been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires November 30, 2002.

National Environmental Policy Act

The Department determined that this rate adjustment did not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement was required under the National Environmental Policy Act of 1969.

Dated: March 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6446 Filed 3–15–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of decision to vacate Final Agency Determination to take land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary—Indian Affairs vacates the Final Agency Determination that was published in the **Federal Register** on June 28, 1996, to take approximately 165 acres of land into trust for the Mashantucket Pequot Indian Tribe of Connecticut. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Deputy Director, Office of Trust Responsibilities, MS 4513 MIB, 1849 C Street, NW, Washington, DC 20240; Telephone 202–208–5831.

SUPPLEMENTARY INFORMATION: On May 22, 1996, the Assistant Secretary—Indian Affairs made a final decision to acquire approximately 165 acres of land into trust for the Mashantucket Pequot Indian Tribe of Connecticut. A Notice of Final Agency Determination was published in the **Federal Register** on June 28, 1996, 61 FR 33764. The notice provided for judicial review of the administrative decision and stated that the Secretary shall accept title in the name of the United States in trust for the Mashantucket Pequot Indian Tribe the five tracts of land described below no sooner than 30 days after the date of the notice. The Department has not accepted the land into trust due to ongoing litigation. By letter dated February 21, 2002, the Mashantucket Pequot Indian Tribe withdrew its application that requested the Secretary to accept title to the 165 acre parcel into trust.

At the request of the Tribe, our final decision of May 22, 1996, to acquire approximately 165 acres of land into trust for the Mashantucket Pequot Indian Tribe of Connecticut is withdrawn. Effective immediately, the Assistant Secretary—Indian Affairs vacates the Final Agency Determination that was issued on June 28, 1996, to accept title to the land described below into trust for the Mashantucket Pequot Indian Tribe of Connecticut.

New London County, Connecticut

Lot #101 Town of North Stonington
Lot #3 Town of North Stonington
Lot #30 Town of Ledyard
Lot #58 Town of Ledyard
Lot #72 Town of Ledyard
Lot #76 Town of Ledyard.
Lot #82 Town of Ledyard

Dated: March 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6462 Filed 3–15–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Cachuma Lake Resource Management Plan, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement (EIS).

SUMMARY: Pursuant to section 102(2) (c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (DEIS) for the Cachuma Lake Resource Management Plan (RMP). The RMP will be issued concurrent with the DEIS. Reclamation will be conducting a public scoping meeting to elicit comments on the scope and issues to be addressed in both the RMP and the DEIS. The date and time of the meeting is listed below. Reclamation is also seeking written comments, as noted below. The Draft RMP and DEIS are expected to be issued in late 2002.

DATES: The scoping meeting will be held on Wednesday, May 1, 2002 at 7 p.m. in Goleta, California.

Written comments on the scope of alternatives and impacts to be considered should be sent to Reclamation at the address below by May 15, 2002.

ADDRESSES: The meeting location is at the Goleta Community Center, 5679 Hollister Avenue, Goleta, California.

Written comments should be sent to Mr. Dan Holsapple, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or by telephone at (559) 487–5409; or faxed to (559) 487–5130 (TDD 559–487–5933).

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, at the above address, telephone: (559) 487–5409.

SUPPLEMENTARY INFORMATION: The Cachuma Project is located along the Santa Ynez River in northern Santa Barbara County, California. It was constructed in the early 1950's by Reclamation under contract with Santa Barbara County Water Agency on behalf of local water purveyors, called the Cachuma Member Units. The project consists of Bradbury Dam, Cachuma Lake, and associated conveyance facilities. The lake is about 3,000 acres in size, surrounded by about 6,500 acres of Federal land. The project is the primary water supply for the communities of Santa Ynez, Santa Barbara, Goleta, Carpinteria, and Montecito. Reclamation executed a contract with Santa Barbara County (County) in 1953 to manage recreation at the lake. The County has developed a 375-acre recreation area on the south shore of the lake with picnicking, boating, hiking, and camping.

Reclamation is preparing an RMP for the Cachuma Project. The RMP will specifically address the County recreation area, including the entire lake and all Government land surrounding the lake. The objective of an RMP is to establish management objectives, guidelines, and actions to be implemented by Reclamation directly, or through its recreation contract, that

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will protect the water supply and water quality functions of Cachuma Lake; protect and enhance natural and cultural resources in the Recreation Area, consistent with Federal law and Reclamation policies; and provide recreational opportunities and facilities consistent with the Cachuma Project purposes and Reclamation policies.

The development of the RMP will be performed within the authorities provided by the Congress through the Reclamation Act, Federal Water Project Recreation Act, Reclamation Recreation Management Act, and applicable agency and Department of the Interior policies.

The RMP will be developed based on a comprehensive inventory of environmental resources and Project facilities. It will include an analysis of all resources in the area, identification of land use suitability and capability, and development of management policies, objectives, responsibilities, guidelines, and plans. The overall purpose of an RMP is to foster stewardship of Reclamation lands. The RMP will enable managers to make land use and resource decisions that are consistent with the overall management objectives of Reclamation land and water areas, while meeting the needs of the public. The RMP will assist Reclamation in its efforts to minimize conflicts among the competing interests and types of use at Cachuma Lake.

The plan will be developed with input from other Federal agencies such as the U.S. Fish and Wildlife Service and the U.S. Forest Service, local involved agencies such as Santa Barbara County Parks and Recreation Department and the Cachuma Operations and Maintenance Board (representing the Project Member Units); and the general public. The plan will also be used to guide future recreational uses and administrative arrangements to be considered by Reclamation in its renewal of the recreation contract with Santa Barbara County, in a separate but related process.

The primary emphasis of the RMP will be protecting Cachuma Project water supplies, water quality, and natural resources, while enhancing recreational uses at and surrounding the lake. Specific issue areas to be addressed include (among others): recreational access to the north shore, body-contact recreation, protection of sensitive natural and cultural resources, and grazing practices.

The environmental impacts of the RMP and associated alternatives will be assessed in an EIS that will be prepared concurrent with the RMP. The environmental review will focus on the potential for management actions to cause adverse environmental impacts to natural and cultural resources such as water quality, endangered species, public safety, and historic resources. It will include an analysis of alternative land, recreation, and natural resource management approaches.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: February 28, 2002.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02–6381 Filed 3–15–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–439]

In the Matter of: Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same; Notice of a Commission Determination To Grant a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Tim Monaghan, Esq., telephone 202–205–3152, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server, *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 11, 2000, based on a complaint filed by PCTEL, Inc. ("PCTEL") of Milpitas, California. The complaint named Smart Link Ltd. of Netanya, Israel and Smart Link Technologies, Inc. of Watertown, Massachusetts (collectively "Smart Link") and ESS Technology, Inc. ("ESS") of Fremont, California as respondents. The complaint alleged that Smart Link and ESS had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain HSP modems, software and hardware components thereof, and products containing the same by reason of infringement of claims 1–2 of U.S. Letters Patent 5,787,305, claims 1–4, 7–8, and 11–15 of U.S. Letters Patent 5,931,950, claims 1, 2, 10, and 15–17 of U.S. Letters Patent 4,841,561, and claims 1, 6–7, 10–12, and 15–19 of U.S. Letters Patent 5,940,459. On June 28, 2001, the Commission determined not to review an ID on the merits terminating the investigation as to respondent Smart Link on the basis of a settlement agreement. On October 18, 2001, the ALJ issued his final ID in the investigation, and on December 6, 2001, the Commission determined to review portions of the final ID and to extend the target date for completion of the investigation by 45 days, to March 4, 2002. On Friday, February 22, 2002, complainant PCTEL and respondent ESS filed a joint motion to terminate the investigation based on a settlement agreement. On March 4, 2002, the Commission determined to extend the target date for completion of the investigation by 17 days, until March 21, 2002, to allow sufficient time for the Commission investigative attorney ("IA") to respond to the motion to terminate and for the Commission to rule on the motion. On March 6, 2002, the IA filed a response in support of the joint motion to terminate. This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.21 and 210.50 of the Commission's Rules of Practice and Procedure, (19 CFR 210.21 and 210.50)

By order of the Commission.

Issued: March 13, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6461 Filed 3–15–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AG Order No. 2565–2002]

Office of the Attorney General; Homeland Security Advisory System

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: The President has directed the Attorney General, in consultation and coordination with the Assistant to the President for Homeland Security, to seek the views of government officials at all levels, public interest groups, and the private sector, on a proposed Homeland Security Advisory System ("HSAS"). The HSAS would provide a comprehensive and effective means to disseminate information to Federal, State, and local authorities and to the American people regarding the risk of terrorist acts. Such a system would provide warnings in the form of a set of graduated "Threat Conditions" that change as the risk of the threat increases. The proposed system would establish five Threat Condition levels, each with a corresponding color, which is provided for clarity. They are, from lowest Threat Condition to highest: Low (Green); Guarded (Blue); Elevated (Yellow); High (Orange); and Severe (Red).

At each Threat Condition level, Federal agencies will implement a corresponding set of protective measures to reduce vulnerability or to increase response capability should a terrorist attack occur. State, local, and private sector parties are encouraged to take appropriate action.

DATES: Comments may be submitted through April 25, 2002.

ADDRESSES: Written comments may be sent to: Director, Federal Bureau of Investigation, Homeland Security Advisory System, Room 7222, 935 Pennsylvania Avenue, NW., Washington, DC 20535. Comments may also be submitted electronically to: *HSAScomments@fbi.gov*

FOR FURTHER INFORMATION CONTACT: John Collingwood, Federal Bureau of Investigation, Office of Public and Congressional Affairs at (202) 324–3691.

SUPPLEMENTARY INFORMATION: On March 11, 2002, as part of a series of initiatives to improve coordination and communication among all levels of government and the American public in the fight against terrorism, President Bush signed Homeland Security Presidential Directive 3 (HSPD–3), concerning the Homeland Security Advisory System.

The Attorney General is responsible for developing, implementing, and managing the system. In conjunction with the development of this new system, the Attorney General, at the direction of the President, is opening a 45-day comment period in order to seek the views of officials at all levels of government, law enforcement and the American public.

Ninety days after the conclusion of the comment period, the Attorney General, in coordination with the Director of the Office of Homeland Security, will present a final Homeland Security Advisory System to the President for approval.

The Attorney General specifically seeks comments on the following system.

The Homeland Security Advisory System

The purpose of the Homeland Security Advisory System is to provide a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to Federal, State, and local authorities, and to the American people. The HSAS is intended to create a common vocabulary, context, and structure for an ongoing national discussion with Federal, State and local authorities, private sector industries, and the people of the United States about the nature of the threats that confront the homeland and the appropriate measures that should be taken in response. It seeks to inform and facilitate decisions appropriate to different levels of government and to private citizens at home and at work.

The HSAS is binding on the executive branch. It is suggested, although voluntary, to other levels of government and the private sector.

There are five Threat Conditions, each identified by a description and corresponding color. From lowest to highest, the levels and associated colors are: Low (Green); Guarded (Blue); Elevated (Yellow); High (Orange); and Severe (Red). At each Threat Condition level, Federal departments and agencies will be expected to implement a corresponding set of "Protective Measures" to further reduce vulnerability or increase response capability during a period of heightened alert. The Threat Condition levels and accompanying Protective Measures are further described below.

The higher the Threat Condition, the greater the risk of a terrorist attack. Risk includes both the probability of an attack occurring and its potential gravity. Threat Conditions are to be assigned by the Attorney General, in consultation with the Assistant to the President for Homeland Security. Except in exigent circumstances, the Attorney General shall seek the views of the appropriate Homeland Security Principals or their subordinates, and other parties as appropriate, on the Threat Condition to be assigned. Threat Conditions may be assigned for the entire Nation, or they may be set for a particular geographic area or industrial sector. Assigned Threat Conditions shall be reviewed at regular intervals to determine whether adjustments are warranted.

For facilities, personnel, and operations inside the territorial United States, all Federal departments, agencies, and offices other than military facilities shall conform their existing threat advisory systems to this system and henceforth administer their systems consistent with the determination of the Attorney General with regard to the Threat Condition in effect.

The assignment of a Threat Condition shall prompt the implementation of an appropriate set of Protective Measures. Protective Measures are the specific steps an organization shall take to reduce its vulnerability or increase its ability to respond during a period of heightened alert. The authority to craft and implement Protective Measures rests with the Federal departments and agencies. It is recognized that departments and agencies may have several preplanned sets of responses to a particular Threat Condition to facilitate a rapid, appropriate, and tailored response. Department and agency heads are responsible for developing their own Protective Measures and other antiterrorism or self-protection and continuity plans, and resourcing, rehearsing, documenting, and maintaining these plans. Likewise, they retain the authority to respond, as necessary, to risks, threats, incidents, or events at facilities within the specific jurisdiction of their department or agency, and, as authorized by law, to direct agencies and industries to implement their own Protective Measures. They shall continue to be responsible for taking all appropriate proactive steps to reduce

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the vulnerability of their personnel and facilities to terrorist attack. Federal department and agency heads shall submit an annual written report to the President, through the Assistant to the President for Homeland Security, describing the steps they have taken to develop and implement appropriate Protective Measures for each Threat Condition. Governors, mayors, and the leaders of other organizations are encouraged to conduct a similar review of their organization's Protective Measures.

The decision whether to publicly announce Threat Conditions shall be made on a case-by-case basis by the Attorney General in consultation with the Assistant to the President for Homeland Security. Every effort shall be made to share as much information regarding the threat as possible, consistent with the safety of the Nation. The Attorney General shall ensure, consistent with the safety of the Nation, that State and local government officials and law enforcement authorities are provided the most relevant and timely information. The Attorney General shall be responsible for identifying any other information developed in the threat assessment process that would be useful to State and local officials and others and conveying it to them as permitted consistent with the constraints of classification. The Attorney General shall establish a process and a system for conveying relevant information to Federal, State, and local government officials and law enforcement authorities, and the private sector expeditiously.

The Director of Central Intelligence and the Attorney General shall ensure that a continuous and timely flow of integrated threat assessments and reports is provided to the President, the Vice President, Assistant to the President and Chief of Staff, the Assistant to the President for Homeland Security, and the Assistant to the President for National Security Affairs. Whenever possible and practicable, these integrated threat assessments and reports shall be reviewed and commented upon by the wider interagency community.

A decision on which Threat Condition to assign shall integrate a variety of considerations. This integration will rely on qualitative assessment, not quantitative calculation. Higher Threat Conditions indicate greater risk of a terrorist act, with risk including both probability and gravity. Despite best efforts, there can be no guarantee that, at any given Threat Condition, a terrorist attack will not occur. An initial and important factor is the quality of the threat information itself. The evaluation of this threat information shall include, but not be limited to, the following factors:

1. To what degree is the threat information credible?

2. To what degree is the threat information corroborated?

3. To what degree is the threat specific and/or imminent?

4. How grave are the potential consequences of the threat?

Threat Conditions and Associated Protective Measures

The world has changed since September 11, 2001. We remain a Nation at risk to terrorist attacks and will remain at risk for the foreseeable future. At all Threat Conditions, we must remain vigilant, prepared, and ready to deter terrorist attacks. The following Threat Conditions each represent an increasing risk of terrorist attacks. Beneath each Threat Condition are some suggested Protective Measures, recognizing that the heads of Federal departments and agencies are responsible for developing and implementing appropriate agency-specific Protective Measures:

1. Low Condition (Green). This condition is declared when there is a low risk of terrorist attacks. Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures they develop and implement:

(a) Refining and exercising as appropriate preplanned Protective Measures;

(b) Ensuring personnel receive proper training on the Homeland Security Advisory System and specific preplanned department or agency Protective Measures; and

(c) Institutionalizing a process to assure that all facilities and regulated sectors are regularly assessed for vulnerabilities to terrorist attacks, and all reasonable measures are taken to mitigate these vulnerabilities.

2. Guarded Condition (Blue). This condition is declared when there is a general risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Condition, Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

(a) Checking communications with designated emergency response or command locations;

(b) Reviewing and updating emergency response procedures; and

(c) Providing the public with any information that would strengthen its ability to act appropriately.

3. Elevated Condition (Yellow). An Elevated Condition is declared when there is a significant risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Conditions, Federal departments and agencies should consider the following general measures in addition to the Protective Measures that they will develop and implement:

(a) Increasing surveillance of critical locations;

(b) Coordinating emergency plans as appropriate with nearby jurisdictions;

(c) Assessing whether the precise characteristics of the threat require the further refinement of preplanned Protective Measures; and

(d) Implementing, as appropriate, contingency and emergency response plans.

4. High Condition (Orange). A High Condition is declared when there is a high risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Conditions, Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

(a) Coordinating necessary security efforts with Federal, State, and local law enforcement agencies or any National Guard or other appropriate armed forces organizations;

(b) Taking additional precautions at public events and possibly considering alternative venues or even cancellation;

(c) Preparing to execute contingency procedures, such as moving to an alternate site or dispersing their workforce; and

(d) Restricting threatened facility access to essential personnel only.

5. Severe Condition (Red). A Severe Condition reflects a severe risk of terrorist attacks. Under most circumstances, the Protective Measures for a Severe Condition are not intended to be sustained for substantial periods of time. In addition to the Protective Measures in the previous Threat Conditions, Federal departments and agencies also should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

(a) Increasing or redirecting personnel to address critical emergency needs;

(b) Assigning emergency response personnel and pre-positioning and

(c) Mobilizing specially trained teams or resources;

(d) Monitoring, redirecting, or constraining transportation systems; and

(e) Closing public and government facilities.

Dated: March 13, 2002.

Larry D. Thompson,

Acting Attorney General.

[FR Doc. 02–6565 Filed 2–15–02; 8:45 am]

BILLING CODE 4410–20–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 18, 2001, Chemic Laboratories, Inc., 480 Neponset Street, Building 7C, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture small quantities of cocaine derivative for a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 17, 2002.

Dated: March 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–6320 Filed 3–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 2, 2001, and published in the **Federal Register** on October 11, 2001, (66 FR 51970), LifePoint, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to use gram quantities of the listed controlled substances to manufacture drug abuse test kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of LifePoint, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–6322 Filed 3–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 9, 2001, and published in the Federal Register on August 10, 2001, (66 FR 42239), Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as bulk manufacturer of dextropropoxpyhene (9273), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture product for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 832(a) and determined that the registration of Lilly Del Caribe, Inc., to manufacturer dextropropoxphene is consistent with the public interest at this time. DEA has investigated Lilly Del Caribe, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0. 104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basis class of controlled substances listed above is granted.

Dated: March 7, 2002.

Laura M. Nagel,

Deputy Assistont Administrotor, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–6323 Filed 3–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 13, 2001, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine-N-oxide (9053)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Benzoylecgonine (9180)	II

The firm plans to manufacture the controlled substances as an analytical reference standard to be utilized

internally and for sale to other companies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Registered Representative (CCR), and must be filed no later than May 17, 2002.

Dated: December 28, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–6324 Filed 3–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 5, 2001, Roxane Laboratories, Inc., 1809 Wilson Road, PO. Box 16532, Columbus, Ohio 43216–6532, made application by renewal to the Drug Enforcement Administration to be registered as an importer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to import cocaine to manufacture topical solutions for distribution to customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 17, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–6321 Filed 3–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0072(2002)]

Hazard Communication Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the total burden hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by the Hazard Communication Standard (HCS) (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; 1928.21).[1] The HCS requires employers to establish written hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs.

DATES: Submit written comments on or before May 17, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0072(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Hazard Communication Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html*, and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e. employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.)

The information-collection requirements in the Hazard

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any manner, only to decrease the burden-hour estimate imposed by the existing paperwork requirements.

Communication Standard ensures that the hazards of all chemicals produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The Standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to established hazard communication programs, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs.

Implementation of these collection of information requirements will ensure all employees have the "right-to-know" the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illnesses and injuries.

II. Special Issues for Comment

OSHA has particularly interest in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting to decrease the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Standard. In this regard, the Agency is requesting to decrease the current burden hour estimate from 7,560,232 hours to 7,498,766 hours, a total decrease of 61,466 hours. Based on more recent data, the Agency reduced the number of establishments, shipped containers, and in-plant containers used to calculate the burden hour and cost estimates. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend its approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Hazard Communication Standard.

OMB Number: 1218–0072.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 6,035,925.

Frequency: On occasion.

Average Time per response: Varies from approximately 10 minutes for establishments to obtain and maintain material safety data sheets to 8 hours for manufacturers or importers to conduct a hazard determination.

Estimated Total Burden Hours: 7,498,766 hours.

Estimated Cost (Operation and Maintenance): $247,187.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on March 8, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–6449 Filed 3–15–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL3–92]

TUV Rheinland of North America, Inc., Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of the TUV Rheinland of North America, Inc. (TUV), for renewal of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

EFFECTIVE DATE: The renewal becomes effective on March 18, 2002 and will be valid until March 19, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet or Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal of recognition of TUV Rheinland of North America, Inc. (TUV), as a Nationally Recognized Testing Laboratory (NRTL). The NRTL's scope of recognition may be found in OSHA's informational web page for the NRTL (http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html).

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

TUV Rheinland of North America, Inc., is a privately held Product Safety and Quality Assurance Testing firm with offices throughout the United States and Canada. TUV is wholly owned by TUV Rheinland e. V. of Cologne, Germany. TUV is a U.S. corporation incorporated in the state of Delaware in 1983.

TUV received its recognition as an NRTL on August 16, 1995 (60 FR 42594), for a period of five years ending August 16, 2000. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. TUV submitted its renewal

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request on November 16, 1999 (see Exhibit 23), within the time allotted, and TUV retains its recognition pending OSHA's final decision in this renewal process.

In processing TUV's request, OSHA performed an on-site review of TUV's facility listed below. Following the on-site evaluation, NRTL Program staff recommended the renewal of TUV's recognition (see Exhibit 24).

OSHA published the required notice in the **Federal Register** on January 28, 2002 (67 FR 3913), to announce TUV's renewal request. This notice included a preliminary finding that TUV could meet the requirements in 29 CFR 1910.7 for renewal of its recognition and invited public comment by February 15. OSHA received no comments concerning this notice.

The previous notice published by OSHA for TUV's recognition covered a modification to its scope of recognition, which became effective on September 12, 2001 (66 FR 47505). The following **Federal Register** notices related to TUV's recognition have also been published by OSHA to address an expansion of its recognition for additional standards or programs: a request announced on March 2, 2000 (65 FR 11197), and granted on June 8, 2000 (65 FR 39946); and requests announced on December 12, 1997 (62 FR 65446), and January 8, 1998 (63 FR 1127), and granted on April 2, 1998 (63 FR 16280). The renewal incorporates all recognitions granted to TUV through the date of publication of the preliminary finding.

You may obtain or review copies of all public documents pertaining to the TUV application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL3–92, the permanent record of public information on the TUV recognition.

The current address of the TUV testing facility already recognized by OSHA is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

Programs and Procedures

The renewal of recognition includes TUV's continued use of the following supplemental programs and procedures, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized TUV for these programs, which are listed, as shown below, in OSHA's informational web page on the TUV recognition (*http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html*).

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Existing Condition

Currently, OSHA imposes the following condition on its recognition of TUV as an NRTL, and continues to impose the condition as part of the renewal. This condition applies solely to TUV's operations as an NRTL and is in addition to any other condition that OSHA normally imposes in its recognition of an organization as an NRTL. This condition is listed first under the "Conditions" section below and provides as follows:

TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that the TUV Rheinland of North America, Inc., has met the requirements of 29 CFR 1910.7 for renewal of its NRTL recognition. The renewal applies to the site listed above. In addition, it covers the test standards listed below, and it is subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of TUV, subject to these limitations and conditions.

Limitations

OSHA limits the renewal of recognition of TUV to the site listed above. OSHA further limits the renewal of recognition of TUV to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 22 Amusement and Gaming Machines
UL 48 Electric Signs
UL 67 Panelboards
UL 73 Motor-Operated Appliances
UL 82 Electric Gardening Appliances
UL 122 Photographic Equipment
UL 130 Electric Heating Pads
UL 136 Pressure Cookers
UL 141 Garment Finishing Appliances
UL 153 Portable Electric Lamps
UL 174 Household Electric Storage Tank Water Heaters
UL 197 Commercial Electric Cooking Appliances
UL 250 Household Refrigerators and Freezers
UL 298 Portable Electric Hand Lamps
UL 430 Waste Disposers
UL 469 Musical Instruments and Accessories
UL 471 Commercial Refrigerators and Freezers
UL 474 Dehumidifiers
UL 482 Portable Sun/Heat Lamps
UL 499 Electric Heating Appliances
UL 506 Specialty Transformers
UL 507 Electric Fans
UL 508 Industrial Control Equipment
UL 508C Power Conversion Equipment
UL 541 Refrigerated Vending Machines
UL 544 Electric Medical and Dental Equipment
UL 561 Floor Finishing Machines
UL 583 Electric-Battery-Powered Industrial Trucks
UL 621 Ice Cream Makers
UL 696 Electric Toys
UL 697 Toy Transformers
UL 745 1 Portable Electric Tools
UL 745 2 1 Particular Requirements of Drills
UL 745 2 2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745 2 3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745 2 4 Particular Requirements for Sanders
UL 745 2 5 Particular Requirements for Circular Saws and Circular Knives

UL 745 2 6 Particular Requirements for Hammers
UL 745 2 8 Particular Requirements for Shears and Nibblers
UL 745 2 9 Particular Requirements for Tappers
UL 745 2 11 Particular Requirements for Reciprocating Saws
UL 745 2 12 Particular Requirements for Concrete Vibrators
UL 745 2 14 Particular Requirements for Planers
UL 745 2 17 Particular Requirements for Routers and Trimmers
UL 745 2 30 Particular Requirements for Staplers
UL 745 2 31 Particular Requirements for Diamond Core Drills
UL 745 2 32 Particular Requirements for Magnetic Drill Presses
UL 745 2 33 Particular Requirements for Portable Bandsaws
UL 745 2 34 Particular Requirements for Strapping Tools
UL 745 2 35 Particular Requirements for Drain Cleaners
UL 745 2 36 Particular Requirements for Hand Motor Tools
UL 745 2 37 Particular Requirements for Plate Jointers
UL 749 Household Dishwashers
UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 775 Graphic Arts Equipment
UL 778 Motor Operated Water Pumps
UL 826 Household Electric Clocks
UL 858 Household Electric Ranges
UL 859 Household Electric Personal Grooming Appliance
UL 867 Electrostatic Air Cleaners
UL 875 Electric Dry Bath Heaters
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 935 Fluorescent-Lamp Ballasts
UL 961 Electric Hobby and Sports Equipment
UL 982 Motor-Operated Household Food Preparing Machines
UL 984 Hermetic Refrigerant Motor-Compressors
UL 987 Stationary and Fixed Electric Tools
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1012 Power Units Other than Class Two
UL 1017 Vacuum Cleaning Machines and Blower Cleaners
UL 1018 Electrc Aquarium Equipment
UL 1026 Electric Household Cooking and Food-Serving Appliances
UL 1028 Hair Clipping and Shaving Appliances
UL 1042 Electric Baseboard Heating Equipment
UL 1081 Swimming Pool Pumps, Filters and Chlorinators
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1230 Amateur Movie Lights
UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1240 Electric Commercial Clothes-Drying Equipment
UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
UL 1310 Class 2 Power Units
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1419 Professional Video and Audio Equipment
UL 1431 Personal Hygiene and Health Care Appliances
UL 1445 Electric Water Bed Heaters
UL 1459 Telephone Equipment
UL 1559 Insect-Control Equipment, Electrocution Type
UL 1561 Dry Type General Purpose and Power Transformers
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
UL 1564 Industrial Battery Chargers
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
UL 1598 Luminaries
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1727 Commercial Electric Personal Grooming Appliances
UL 1776 High-Pressure Cleaning Machines
UL 1786 Nightlights
UL 1795 Hydromassage Bathtubs
UL 1838 Low Voltage Landscape Lighting Systems
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 1995 Heating and Cooling Equipment
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 2601–1 Medical Electrical Equipment; Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 3121–1 Process Control Equipment
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements

At the time of preparation of the preliminary notice, some of the test standards for which OSHA currently recognizes TUV, and which are listed above, have been withdrawn or replaced by the standards developing organization. Under OSHA policy regarding such withdrawn or replaced test standards, OSHA can no longer recognize the NRTL for the test standards but the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar types of product testing. However, a number of other NRTLs also are recognized for these withdrawn or replaced standards. As a result, OSHA will publish a separate notice to make the appropriate substitutions for TUV and the other NRTLs that were recognized for these standards.

OSHA's recognition of TUV, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (e.g., UL 1004) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in the list of test standards found in OSHA's informational web page for the NRTL. Contact ANSI or the ANSI web site (*http://www.ansi.org*) and click "NSSN" to find out whether or not a test standard currently is ANSI-approved.

Conditions

TUV Rheinland of North America, Inc., must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

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TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products;

OSHA must be allowed access to the TUV facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUV has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUV must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUV agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUV must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUV will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUV will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 8th day of March, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–6448 Filed 3–15–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. NRTL4–93, NRTL2–93]

Underwriters Laboratories Inc., Applications for Renewal and Expansion of Recognition; Entela, Inc., Voluntary Withdrawal of Recognition of Site

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Underwriters Laboratories Inc. for renewal of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and the applications of Underwriters Laboratories Inc. for expansion of its recognition to include additional sites and test standards, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of these applications. In an unrelated matter, this notice also includes the voluntary withdrawal of recognition of the Entela, Inc., site in Taipei, Taiwan.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than April 2, 2002.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL4–93 or NRTL2–93 (as applicable), U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648. Submit request for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Underwriters Laboratories Inc. (UL) has applied for renewal and for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion requests cover the use of two additional sites and additional test standards. OSHA's current scope of recognition for UL may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA for UL's recognition covered an expansion of recognition to include additional sites, which became effective on December 7, 1999 (64 FR 68389). The other **Federal Register** notices related to UL's recognition that OSHA has published, since UL's previous renewal, addressed an expansion for additional standards, which was announced on November 21, 1997 (62 FR 62359), and granted on June 24, 1999 (64 FR 33913). The renewal would incorporate all of these recognitions granted to UL.

The current address of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, PO Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 N. W. Lake Road, Camas, Washington, 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District, Taipei City, Taiwan

UL International Demko A/S, Lyskaer 8, PO Box 514, DK–2730, Herlev, Denmark

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR, United Kingdom

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy; Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy

The current addresses of the two additional UL sites covered by the expansion request are:

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.–1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan

General Background on the Applicant and Applications

When OSHA published its regulations for the NRTL Program at 29 CFR 1910.7, it temporarily recognized UL as a nationally recognized testing laboratory for a five year period from June 13, 1988, through June 13, 1993 (see Appendix A to § 1910.7). In Appendix A, OSHA also required that UL apply for renewal of its OSHA recognition at the end of this temporary period. UL did apply for the renewal, which OSHA announced in March 29, 1995 (60 FR 16171). In its renewal application, UL stated that it was founded in 1894. It also stated that its "principal activity is investigating the safety of many kinds of products, including electrical and electronic equipment and products," and a number of other products and systems. The Agency granted UL's renewal for a period of five years ending on June 29, 2000.

Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. UL has submitted a request, dated September 17, 1999 (see Exhibit 23), to renew its recognition, within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process. UL's existing scope of recognition consists of the facilities listed above, and the test standards and supplemental programs, listed below under *Renewal of Recognition.*

UL also has submitted requests, dated June 6, and October 5, 2000 (see Exhibits 23–1 and 23–2), to expand its recognition to include the two additional sites listed above. Moreover, UL has submitted a request, dated March 29, 2001 (see Exhibit 23–3), to expand its recognition to include 142 additional test standards. The OSHA NRTL Program staff has determined that it can grant recognition for 64 test standards listed below under *Expansion of Recognition.* We could not approve the remaining test standards for various reasons, primarily because we determined that they did not meet our approval criteria or our requirements for "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing applications from any NRTL.

Renewal of Recognition

UL seeks renewal of its recognition for the ten sites that OSHA has previously recognized. The renewal of each of these sites is and would continue to be limited to performing testing only to the test standards for which the site has the proper capability and control programs and for which OSHA has recognized UL. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites.

In processing UL's renewal request, OSHA NRTL Program staff performed an on-site review of UL's Northbrook facility on July 16–20, 2001. In the on-site review report (see Exhibit 24), the program staff recommended a "positive finding," which means a positive recommendation to the Assistant Secretary regarding the renewal of recognition.

UL also seeks renewal of its recognition for testing and certification of products for demonstration of conformance to the following 638 test standards, which OSHA has previously recognized for UL. Except as explained below (see paragraph immediately following listing of standards), all these standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI C37.013 [1] AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis
ANSI C37.13 [1] Low Voltage AC Power Circuit Breakers Used in Enclosures
ANSI C37.14 [1] Low Voltage DC Power Circuit Breakers Used in Enclosures
ANSI C37.17 [1] Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers
ANSI C37.18 [1] Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery
ANSI C37.20.1 [1] Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI C37.20.2 [1] Metal-Clad and Station-Type Cubicle Switchgear
ANSI C37.20.3 [1] Metal-Enclosed Interrupter Switchgear
ANSI C37.21 [1] Control Switchboards
ANSI C37.29 [1] Low-Voltage AC Power Circuit Protectors Used in Enclosures
ANSI C37.38 [1] Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
ANSI C37.42 [1] Distribution Cutouts and Fuse Links
ANSI C37.44 [1] Distribution Oil Cutouts and Fuse Links
ANSI C37.45 [1] Distribution Enclosed Single-Pole Air Switches
ANSI C37.46 [1] Power Fuses and Fuse Disconnecting Switches
ANSI C37.47 [1] Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses
ANSI C37.50 [1] Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures
ANSI C37.51 [1] Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures
ANSI C37.52 [1] Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures
ANSI C37.53.1 [1] High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures
ANSI C37.54 [1] Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies-Conformance Test Procedures
ANSI C37.55 [1] Metal-Clad Switchgear Assemblies—Conformance Test Procedures
ANSI C37.57 [1] Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
ANSI C37.58 [1] Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Test Procedures
ANSI C37.60 [1] Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Fault Interrupters for AC Systems
ANSI C37.66 [1] Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements
ANSI C37.71 [1] Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
ANSI C37.72 [1] Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System
ANSI C37.90 [1] Relays and Relay Systems Associated with Electric Power Apparatus
ANSI C37.121 [1] Unit Substations—Requirements
ANSI C37.122 [1] Gas-Insulated Substations
ANSI C57.12.00 [1] Distribution, Power and Regulating Transformers—General Requirements
ANSI C57.12.13 [1] Liquid-Filled Transformers Used in Unit Installations including Unit Substations—Conformance Requirements
ANSI C57.12.20 [1] Overhead-Type Distribution Transformers, 500 kVA and Smaller

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ANSI C57.12.21[1] Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
ANSI C57.12.22[1] Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers with High Voltage Bushings; 2500 kVA and Smaller
ANSI C57.12.23[1] Underground-Type Self-Cooled, Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
ANSI C57.12.24[1] Underground-Type Three-Phase Distribution Transformers, 2500 kVA and Smaller
ANSI C57.12.25[1] Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
ANSI C57.12.26[1] Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers for use with Separable Insulated High-Voltage Connectors; 2500 kVA and Smaller
ANSI C57.12.27[1] Liquid-Filled Distribution Transformers Used in Pad-Mounted Installations, Including Unit Substations—Conformance Requirements
ANSI C57.12.28[1] Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
ANSI C57.12.40[1] Three Phase Secondary Network Transformers, Subway and Vault Types (Liquid Immersed); 2500 kVA and Smaller
ANSI C57.12.50[1] Ventilated Dry-Type Distribution Transformers, 1 to 500 kVA, Single-Phase; and 15 to 500 kVA, Three Phase
ANSI C57.12.51[1] Ventilated Dry-Type Power Transformers 501 kVA and Larger, Three-Phase
ANSI C57.12.52[1] Sealed Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
ANSI C57.12.55[1] Dry-Type Transformers in Unit Installations, Including Unit Substations—Conformance Requirements
ANSI C57.12.57[1] Ventilated Dry-Type Network Transformers 2500 kVA and Below, Three-Phase
ANSI C57.13[1] Instrument Transformers—Requirements
ANSI C57.15[1] Step-Voltage and Induction-Voltage Regulators
ANSI C57.21[1] Shunt Reactors Over 500 kVA
ANSI C62.1[1] Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
ANSI C62.11[1] Metal Oxide Surge Arresters for AC Power Circuits
ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
ANSI Z21.1b Household Cooking Gas Appliances
ANSI Z21.5.1 Gas Clothes Dryers—Type 1
ANSI Z21.5.2 Gas Clothes Dryers—Type 2
ANSI Z21.10.1 Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.10.2 Water Heaters—Sidearm Type Water Heaters
ANSI Z21.10.3 Water Heaters—Circulating Tank, Instantaneous and Large Automatic Storage Type Water Heaters
ANSI Z21.11.1 Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.11.2 Gas-Fired Room Heaters—Unvented Room Heaters
ANSI Z21.12 Listing Requirements for Draft Hoods
ANSI Z21.13 Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.14 Approval Requirements for Industrial Gas Boilers
ANSI Z21.15 Manually Operated Gas Valves
ANSI Z21.16 Gas Unit Heaters
ANSI Z21.17 Domestic Gas Conversion Burners
ANSI Z21.18 Gas Appliance Pressure Regulators
ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.20 Automatic Gas Ignition Systems and Components
ANSI Z21.21 Automatic Valves for Gas Appliances
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System
ANSI Z21.23 Gas Appliance Thermostats
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.29 Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.35 Gas Filters on Appliances
ANSI Z21.37 Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.40.1 Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42 Gas-Fired Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.47 Gas-Fired Gravity and Forced Air Central Furnaces
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.53 Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.55 Gas-Fired Sauna Heaters
ANSI Z21.56 Gas-Fired Pool Heaters
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
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UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Restrictions/Limitations on Recognition:

(1) These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded from the provisions of subpart S in 29 CFR part 1910 by § 1910.302(a)(2).

Note: —Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas")

At the time of preparation of this preliminary notice, some of the test standards for which OSHA currently recognizes UL, and which are listed above, have been withdrawn or replaced by the standards developing organization. Under OSHA policy regarding such withdrawn or replaced test standards, OSHA can no longer recognize the NRTL for the test standards but the NRTL may request recognition for comparable test standards, *i.e.*, other appropriate test standards covering similar types of product testing. However, a number of other NRTLs also are recognized for these withdrawn or replaced standards. As a result, OSHA will publish a separate notice to make the appropriate substitutions for UL and the other NRTLs that were recognized for these standards. However, see footnote (3) at the end of list of standards under the *Expansion of Recognition* section below.

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the Underwriters Laboratories (UL) test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (*e.g.*, UL 1004) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (http://www.ansi.org) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

Programs and Procedures

The renewal would include UL's continued use of the following supplemental programs and procedures, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized UL for these programs. See *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html*.

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Expansion of Recognition

Additional Sites

UL seeks recognition of the additional sites located in Tokyo, Japan, and in Ontario, Canada, as listed earlier in this notice. In processing UL's requests, OSHA NRTL Program staff performed an on-site review of the facility in Ontario on January 22–25, 2001, and a similar review of the facility in Tokyo on March 12–15, 2001. In the on-site review reports (see Exhibits 24–1 and 24–2), the program staff recommended a "positive finding," which means a positive recommendation on the expansion to the Assistant Secretary.

The application information that UL has submitted for these additional sites and the reports demonstrate the testing and certification capabilities at these sites. The sites are wholly owned or controlled by UL. Similar to the recognition of UL's other sites, OSHA's recognition of the additional sites would be limited to performing product testing only to the test standards for which the site has the proper capability and programs; and for which OSHA has recognized UL. As previously mentioned, this treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. In addition, OSHA would permit the sites to use all eight of the "supplemental" programs, listed earlier in this notice, and use of which OSHA already includes under UL's scope of recognition.

Additional Test Standards

UL also seeks recognition for testing and certification of products for demonstration of conformance to the following 64 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI/ASME—A17.5 Elevators and Escalator Electrical Equipment
ANSI/BHMA—A156.3 Exit Devices
ANSI C12.1 Code for Electricity Meters
ANSI Z21.1 Household Cooking Gas Appliances
ANSI/NFPA 11 Low Expansion Foam and combined Agent Systems
ANSI/NFPA 11A Medium- and High-Expansion Foam Systems
ANSI/NFPA 12 Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A Halon 1301 Fire Extinguishing Agent Systems
ANSI/NFPA 13 Installation of Sprinkler Systems
ANSI/NFPA 17 Dry Chemical Extinguishing Systems
ANSI/NFPA 20 Centrifugal Fire Pumps
ANSI/NFPA 72 Installation, Maintenance, and Use of Protective Signaling Systems
UL 6A Electrical Rigid Metal Conduit—Aluminum, Bronze, and Stainless Steel
UL 10C Positive Pressure Fire Tests of Door Assemblies
UL 198M Mine-Duty Fuses
UL 307A Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 497C Protectors for Coaxial Communications Circuits
UL 498A Current Taps and Adapters
UL 514D Cover Plates for Flush-Mounted Wiring Devices
UL 536 Flexible Metallic Hose
UL 606 Linings and Screens for Use with Burglar-Alarm Systems
UL 641 Type L Low-Temperature Venting Systems
UL 651B Continuous Length HDPE Conduit
UL 698A Industrial Control Panels Relating to Hazardous (Classified) Locations
UL 789 Indicator Posts for Fire-Protection Service
UL 797A Electrical Metallic Tubing—Aluminum
UL 896 Oil-Burning Stoves
UL 963 Sealing, Wrapping, and Marking Equipment
UL 1425 Cables for Non-Power Limited Fire-Alarm Circuits
UL 1434 Thermistor-Type Devices
UL 1482 Solid-Fuel Type Room Heaters
UL 1640 Portable Power Distribution Equipment
UL 1653 Electrical Nonmetallic Tubing
UL 1655 Community-Antenna Television Cables
UL 1681 Wiring Device Configurations
UL 1686 Pin and Sleeve Configurations
UL 1699 Arc-Fault Circuit-Interrupters
UL 1741 Power Conditioning Units for Use in Residential Photovoltaic Power Systems
UL 1887 Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics
UL 2017 General Purpose Signaling Devices and Systems (1)
UL 2089 Vehicle Battery Adapters (2)
UL 2125 Motor-Operated Air Compressors for Use in Sprinkler Systems
UL 2127 Inert Gas Clean Agent Extinguishing System Unit
UL 2166 Halocarbon Clean Agent Extinguishing System Units
UL 2200 Stationary Engine Generator Assemblies
UL 2202 Electric Vehicle (EV) Charging System Equipment (4)
UL 2227 Overfilling Prevention Devices
UL 3121–1 Process Control Equipment
UL 3101–2–20 Electrical Equipment for Laboratory Use, Part 2: Laboratory Centrifuges
UL 60950 Information Technology Equipment (3)
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automated Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Temperature Sensing Controls
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electric Actuators
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Motor-Compressors
UL 60730–1 Automatic Electrical Controls for Household and Similar Use, Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use,

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Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–4 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Thermal Motor Protectors for Motor-Compressors of Hermetic and Semi-Hermetic Type
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Automatic Electrical Water Level Operating Controls of the Float Type for Household and Similar Applications
UL 61058–1 Switches for Appliances

(1) Limited to electrical portions only.

(2) This standard is approved for testing and certification of products for use within recreational vehicles and mobile homes.

(3) This standard replaces UL 1950. Upon publication of the final notice for UL's renewal/expansion, the web page of all other NRTLs currently recognized for UL 1950 also will be updated to include UL 60950, due to earlier requests received from some of these other NRTLs for recognition of UL 60950.

(4) The Canadian Standards Association (CSA), another NRTL, had requested recognition for this standard in an expansion application, which OSHA granted on July 3, 2001 (66 FR 35271). However, the standard was mistakenly excluded from the notice but has been added to CSA's scope of recognition.

Preliminary Finding

UL has submitted acceptable requests for renewal and expansion of its recognition as an NRTL. As noted above, in processing these requests, OSHA has performed on-site reviews of certain UL facilities. UL has addressed the discrepancies noted by the assessor following the reviews, and the assessor has included the resolution in the on-site review reports (see Exhibits 24, 24–1, 24–2).

Following a review of the application files, the on-site review reports, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to UL: (1) the renewal for the 10 sites and the test standards and programs listed above, and (2) the expansion for the additional 2 sites and test standards, also listed above. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Underwriters Laboratories Inc. can meet the requirements as prescribed by 29 CFR 1910.7 for the renewal and expansion of its recognition. This preliminary finding does not constitute an interim or temporary approval of the applications for UL.

OSHA welcomes public comments, in sufficient detail, as to whether UL has met the requirements of 29 CFR 1910.7 for the renewal and expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**, no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESSES**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of UL's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL4–93, the permanent record of public information on UL's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant UL's renewal and expansion requests. The Assistant Secretary will make the final decision on granting the renewal and expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Notice of Voluntary Termination

With respect to Docket No. NRTL2–93, Entela, Inc., has requested that OSHA withdraw its recognition of the Entela site in Taipei, Taiwan (see Exhibit 22 in Docket NRTL2–93). This withdrawal is effective immediately, and OSHA will take no further action on it. OSHA recognized this site on May 22, 1997 (62 FR 28066). Under section II.D of Appendix A to 29 CFR 1910.7, OSHA must "inform the public of any voluntary termination by **Federal Register** notice." This action is unrelated to our preliminary finding on the UL renewal and expansion requests. We include it herein only for convenience in processing.

Signed at Washington, DC, March 7, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–6447 Filed 3–15–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10912, et al.]

Proposed Exemptions; Wyndham International, Inc. Employee Savings & Retirement Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this**Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at that hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wyndham International, Inc.; Employee Savings & Retirement Plan (the Plan) Located in Dallas, Texas

[Application No. D–10912]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past acquisition, holding, exercise by the Plan of certain stock purchase rights (the Rights),[1] which were issued by Wyndham International, Inc. (Wyndham) to all shareholders of record, as of September 30, 1999, of certain Wyndham common stock (the Common Stock) pursuant to a rights offering (the Rights Offering), provided that the following conditions were satisfied.

(a) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of Wyndham as a corporate entity;

(b) All holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; and

(c) All decisions regarding the disposition or exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts.

EFFECTIVE DATE: This exemption, if granted, will be effective for the period from November 9, 1999 to December 8, 1999.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan with a Code section 401(k) feature. Wyndham, the Plan sponsor, is in the business of buying, selling, leasing, and managing hotels. Wyndham is a Delaware corporation headquartered in Dallas, Texas. The Plan provides for individually directed accounts. As of December 31, 1999, the fair market value of the total assets of the Plan was approximately $71,963,560. As of May 26, 2000, the Plan had approximately 3,344 participants. The trustee of the Plan is CG Trust Company (the Trustee), located in Chicago, Illinois.

2. Among the assets of the Plan is Wyndham's Class A common Stock (i.e., the Common Stock), which is publicly traded on the New York Stock Exchange (NYSE). The applicant represents that, as of September 30, 1999 (the Record Date), there were issued and outstanding 168,132,832 shares of the Common Stock. As of that date, the Plan held 487,364 shares of the Common Stock, less than one-half of one percent of all outstanding shares. These shares were held in individual accounts and had been purchased pursuant to participant direction of investment under the terms of the Plan. As of September 29, 1999, the closing price of the Common Stock on the NYSE was $2.938 per share.

3. As background to the Rights Offering, Wyndham agreed to settle a class action lawsuit filed against it relating to a $1 billion equity investment in Wyndham's Series B Convertible Preferred Stock. On September 17, 1999,. Wyndham entered into a stipulation of settlement Agreement with the other parties to this litigation. On November 1, 1999, the Delaware Chancery Court issued an Order approving the stipulation of Settlement Agreement.

In accordance with the above-described settlement, all holders of the Common Stock, including the Plan, as well as the holders of certain units in partnerships related to Wyndham, were issued, on November 9, 1999, Rights to purchase shares of Wyndham's Series A Convertible Preferred Stock (the Preferred Stock) for a price of $100 per share. The applicant represents that it filed Form S–3 with the Securities and Exchange Commission, as well as the Prospectus, dated November 8, 1999, for the Rights Offering.

The applicant further represents that the Plan had no control over the terms of the settlement, including the decision to carry out the Rights Offering, and that the Plan was not involved in any capacity in the settlement negotiations. Thus, the Rights Offering was an independent act of Wyndham as a corporate entity, and all holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering.

4. Pursuant to the Rights Offering, each shareholder of the Common Stock was issued one Right for each share of the Common Stock held as of the Record Date. Each shareholder was entitled to purchase one share of the Preferred Stock for every 57 Rights issued to such shareholder. As previously noted, the Plan held 487,364 shares of the Common Stock as of the Record Date. Consequently, the Plan was issued a total of 487,364 Rights. All Rights were to expire at 5:00 PM, Eastern Standard Time, on December 8, 1999 (the Expiration Date), 30 days after their issuance, unless they were properly exercised, or sold, before that date.

[1] The applicant states that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

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5. The applicant represents that, in anticipation of the Rights Offering, the Plan was amended, as appropriate, to provide for the handling of the Rights. The Plan was also amended to establish a new Wyndham International, Inc. Series A Convertible Preferred Stock Fund (Preferred Stock Fund), similar to the fund that already held the Common Stock,, to hold all shares of Preferred Stock that were purchased.

6. The applicant represents that each Plan participant was notified of the terms of the Rights offering, as well as the number of rights that were to be issued to the individual account of such participant. Each participant received a packet of information that included: (i) A memorandum, dated November 8, 1999, that was specifically designed to instruct participants regarding the Rights Offering; (ii) a Preferred Stock purchase form; and (iii) the Prospectus, dated November 8, 1999, which was also distributed to all other shareholders entitled to participate in the Rights Offering.

7. Each participant was allowed to direct the Trustee to sell or exercise the Rights allocated to the participant's account. In order to exercise the Rights, each shareholder was required to properly fill out, execute, and deliver a subscription warrant, along with full payment of the $100 per share purchase price, to ChaseMellon Shareholder Services, LLC (ChaseMellon), the subscription agent, before the Expiration Date.

At the time of the Rights Offering, contributions could be invested, at the election of the participant, in one or more of the following investments: (i) CIGNA Guaranteed Long-Term Account; (ii) CIGNA Charter Large Company Stock Index Fund; (iii) Fidelity Puritan Account; (iv) Franklin Small Cap Growth A Account; (v) Franklin Mutual Qualified A Account; (vi) Wyndham International Common Stock Fund; (vii) Fidelity Advisor Growth Opportunities Account; (viii) INVESCO Dynamics Account; (ix) CIGNA Charter Small Company Stock Value I Fund; and (x) CIGNA Charter Foreign Stock II Fund. As set forth in the memorandum distributed to participants, a participant who elected to exercise his or her Rights was to authorize CIGNA Retirement & Investment Services (CIGNA), the Plan's third party administrator, to raise the purchase price for the Preferred Stock from the first six funds listed above. If insufficient, the participant was to authorize CIGNA to raise the amount from the next available fund in which the participant's account was invested.

The applicant represents that all decisions regarding the disposition or exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts. The Board of Directors made no recommendation about whether an individual shareholder should exercise any Rights. Moreover, no shareholder was required to exercise any Rights or otherwise take any action in response to the Rights Offering.

8. Beginning on November 16, 1999, the Trustee attempted to sell, in the over-the-counter (OTC) market, any unexercised Rights that were allocated to the account of a participant. Prior to expiration, the Rights were to be transferred or sold through a stockbroker or ChaseMellon. However, no market developed for the Rights.

Wyndham did not charge any fee or sales commission to issue the Rights or to issue the Preferred Stock to a shareholder who exercised the Rights. Shareholders who exercised Rights through a broker or other holder of their shares were responsible for paying any fees that person may have charged. The shareholder was also to be responsible for any fees or sales commissions that were applicable to a sale of any of the Rights.

9. The applicant represents that the following is a summary of the Rights Offering. A total of 31 participants, who each had at least 57 Rights issued to his or her account, elected to exercise their Rights to purchase a total of 174 shares of Preferred Stock for the Plan.[2] The rest of the Rights expired without value, since no market developed for the Rights.

The applicant also stated that no market has ever developed for the Preferred Stock.[3] Upon completion of the Rights Offering, the beneficial ownership of individual shareholders of the Common Stock who did not exercise their Rights declined when compared to other holders of the Common Stock or limited partnership units who did exercise their Rights. This result occurred because the Preferred Stock was convertible into Common Stock and, therefore, represented dilution of the ownership of Common Stock shareholders.

10. In summary, the applicant represents that the subject transactions satisfied the criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of Wyndham as a corporate entity; (2) all holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; (3) all decisions regarding the disposition or exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts; and (4) the Plan held less than one-half of one percent of all the Common Stock outstanding as of the Record Date.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

[2] The applicant states that the Preferred Stock is a "qualifying employer security" within the meaning of section 407(d)(5) of the Act. However, the Department expresses no opinion herein as to whether the Preferred Stock is a "qualifying employer security" under section 407(d)(5).

[3] The applicant represents that subsequent sales of the Preferred Stock will be done in accordance with the conditions of section 408(e) of the Act and the regulations thereunder [see 29 CFR 2550.408(e)]. However, the Department expresses no opinion herein as to whether any sales of the Preferred Stock comply with section 408(e) and the regulations thereunder.

Holt, Fleck & Free P.A. Profit Sharing Plan (the Plan) Located in Noblesville, Indiana

[Application No. D–11000]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan to a Plan fiduciary (the Applicant) of two parcels of improved real property (the Parcels). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of $165,000 or the fair market value of the Parcels as of the date of the Sale;

(c) The fair market value of the Parcels has been determined by an independent, qualified appraiser;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. Holt, Fleck & Romine, the sponsor of the Plan, is a law firm located in Noblesville, Indiana. The Plan is a profit sharing pension plan, which, as of May 30, 2001, had 15 participants. The Applicant, Steven Holt, the sponsor of the Plan, proposes to purchase the Parcels from the Plan. The Plan's assets have an aggregate fair market value of $921,549.

2. In September 1992, the Applicant purchased the Parcels from Hamilton General Corporation, an unrelated third party, for $145,000. At the time of the acquisition, the Parcels represented 53% of Plan assets. The Parcels have an estimated fair market value of $165,000 and constitute approximately 18% of the total value of Plan assets.

3. The Applicant represent that the Sale is in the interests of the Plan, and its participants and beneficiaries. The Applicant is seeking to purchase the Parcels from the Plan for cash, thus allowing the Plan to be in a more liquid financial status. There will be no commissions, costs or other expenses incurred by the Plan in connection with the Sale.

4. The Parcels consist of:

A 5,412 square foot parcel of improved real property located at 107 South 8th Street, Noblesville, Indiana (107 South); and

A 4,356 square foot parcel of improved real property located at 123 South 8th Street, Noblesville, Indiana (123 South). The Parcels have generated a minimal rate of return during the Plan's holding of the Parcels.[4]

5. The Parcels were appraised on July 16, 2001, by Therese Lattanzio and Stephen L. Cobb (the Appraisers) for Real Property Evaluations, Inc. located in Indianapolis, Indiana. Both Appraisers are Indiana state Certified General Appraisers. The Appraisers are independent of the Applicant.

The Appraisers determined that the best use and highest value of the Parcels was associated with valuing the Parcels in accordance with the so-called direct sales comparison method. In this method, sales of similar use land in the market area are compared to the subject to arrive at an indication of value. In arriving at final value conclusions, factors such as rights conveyed, financing terms, sale conditions, market conditions, location, and physical characteristics are taken into consideration. Therefore, based on the valuation procedure, the fair market value of the Parcels was determined as follows: (i) 107 South = $110,000; and (ii) 123 South = $55,000. Accordingly, the total fair market value of the Parcels is $165,000 as of July 16, 2001 ($110,000 + $65,000 = $165,000). The Plan will receive an amount equal to the greater of: (i) $165,000: or (ii) The fair market value of the Parcels at the time of the Sale.

6. In summary, the Applicant represent that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) The Sale will be a one-time transaction for cash;

(b) The Plan will not pay any commissions, costs or other expenses in connection with the Sale; and

(c) The Plan will receive an amount equal to the greater of:

(i) $165,000; or (ii) The fair market value of the Parcels at the time of the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**

For Further Informotion Contact: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinotions, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–6431 Filed 3–15–02; 8:45 am]

BILLING CODE 4510–29–M

[4] The Department expresses no opinion herein as to whether the acquisition and the holding of the Parcels by the Plan violated section 404(a) of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45536; File No. SR-Amex-2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the eQPriority Pilot Program for Six Months

March 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex has designed the proposed rule change as "non-controversial" under Rule 19b–4(f)(6),[3] thus rendering it immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to extend for an additional six months Commentary .03 to Amex Rule 126 to continue a pilot program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange ("eQPriority [sm]"). The text of the proposed rule change is available at the Office of the Secretary of the Exchange and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 12, 2000, the Commission approved Amex's eQPriority initiative on a six-month pilot basis.[4] The pilot program was extended for six months in March 2001[5] and again in August 2001.[6] Amex now seeks to extend the pilot for an additional six-month period.

eQPriority is intended to encourage persons to route marketable electronic orders to the Exchange by assuring them that orders sent to the specialist electronically will be filled either: (i) At the Amex Published Quote ("APQ") up to the displayed size at the time the order is announced, or (ii) at an improved price. Amex believes that the program provides orders for stocks sent to the floor electronically with the optimal combination of speed, certainty of execution, and price improvement opportunities. eQPriority applies only to orders for common stock admitted to dealings; it is not available for orders for options, Exchange Traded Funds, or other Amex-listed securities. It also does not apply to openings and reopenings and to block trades executed at a "clean-up" price pursuant to Amex Rule 155. The eQPriority pilot is scheduled to expire on March 12, 2002.

eQPriority works in the following manner. Once the specialist announces the electronic order, members may not withdraw or modify bids and offers incorporated into the APQ on the opposite side of the market from the incoming order *except* to provide price improvement. When an eQPriority order is executed in part at an improved price, the remainder of the order is executed at the APQ up to the number of shares then available (*i.e.*, the size of the APQ at the time the order was announced, less any shares that provided price improvement). The eQPriority order does not have to match with any other trading interest on the same side of the market. In the event that an eQPriority order is larger than the APQ at the time the order is announced, the order is filled up to the size of the APQ according to the eQPriority procedures, and the unexecuted balance is filled according to the Exchange's customary auction market processes.

The purpose of eQPriority is to provide incoming electronic orders with an execution at the displayed offer (or lower) in the case of an electronic buy order, or at the displayed bid (or higher) in the case of an electronic sell order. eQPriority is not intended to allow an incoming electronic order to obtain priority over orders that already have established priority in the market. Thus, an eQPriority order does not have priority over bids and offers that were announced prior to the time that the eQPriority order is represented. This arises only in situations where the market is quoted at the minimum fractional variation and is best illustrated by an example. Assume the market is quoted 20.00 to 20.01, 5,000 × 5,000, and the bid represents a limit order on the book. Further assume that the specialist announces an eQPriority order to buy 1,000 and that a broker in the crowd is willing to sell 1,000 at 20. In this example, the limit order to buy on the book had established a bid of 20 prior to the representation of the eQPriority order. The booked limit order, consequently, would buy the 1,000 shares sold by the broker at 20, and the eQPriority order would be filled at 20.01.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Amex also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex has stated that the proposed rule change would impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Amex has stated that, because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

Amex has requested that the Commission waive the 30-day pre-operative period under Rule 19b–4(f)(6)(iii). The Commission finds that waiving the pre-operative period is consistent with the protection of investors and the public interest. The Commission believes that the existing eQPriority pilot provides beneficial services to investors. Acceleration of the operative date will allow the pilot program to continue without interruption and ensure that the benefits of the program do not lapse. Accordingly, the Commission waives the 30-day pre-operative period, and the proposed rule change may become operative immediately.[11]

Rule 19b–4(f)(6) also requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). Amex also has requested that the Commission waive this five-day pre-filing requirement. For the same reasons that it is waiving the 30-day pre-operative period, the Commission also waives the five-day pre-filing period.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002–14 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6451 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 43284 (September 12, 2000), 65 FR 57410 (September 22, 2000).

[5] *See* Securities Exchange Act Release No. 44049 (March 7, 2001), 66 FR 14947 (March 14, 2001).

[6] *See* Securities Exchange Act Release No. 44702 (August 15, 2001), 66 FR 43925 (August 21, 2001).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45537; File No. SR–BSE–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. to Delete References to Fractional Pricing From BSE Rules

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 1, 2002, the BSE amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules to delete all references to fractional pricing increments in accordance with the decimals conversion in the equity marketplace. The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the following Rules to eliminate all references to fractional pricing increments in relation to equity securities: Chapter II, Section 41; Chapter XXIV, Section 5, Interpretations and Policies, Paragraph .10; Chapter XXIV–B, Section 5, Interpretations and Policies, Paragraph .01(e), and Paragraph .05; and Chapter XXXI, Section 3.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[4] in that it is designed to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

A. By order approve such proposed rule change, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* February 28, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE to Alton Harvey, Chief, Office of Market Watch, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the BSE asked that the proposed rule change be considered pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] 15 U.S.C. 78f(b)(5).

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B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR–BSE–2002–02 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6454 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45542; File No. SR–CBOE–2001–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange Inc. To Permit a Single Response From Market Makers to a Request To Execute a Large Order

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed an amendment to the proposed rule change on March 6, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.7 to permit a single response from market makers to a request to execute a large order. The text of the proposed rule change is set forth below. Additions are in italics.

CHAPTER VIII

Market-Makers, Trading Crowds and Modified Trading Systems Section A: Market-Makers

Rule 8.7 Obligations of Market Makers

(a)–(c) No change.

...Interpretations and Policies:

.01–.10 No change.

.11 *The obligation of Market-Makers to make competitive markets under Rule 8.7 does not preclude members in a trading crowd from discussing a request for a market that is greater than the RAES order eligibility size for that option class, for the purpose of making a single bid (offer) based upon the aggregate of individual bids (offers) by members in the trading crowd, but only when the member representing the order asks for a single bid (offer). Whenever a single bid (offer) pursuant to this paragraph is made, such bid (offer) shall be a firm quote and each member of the trading crowd participating in the bid (offer) shall be obligated to fulfill his portion of the single bid (offer) at the single price.*

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is submitting the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class * * *." Although market makers compete against each other and, when applicable, against the Designated Primary Market Maker ("DPM"), Lead Market Maker, or Supplemental Market Maker ("SMM"), the proposed new Interpretation and Policy .11 to CBOE Rule 8.7 would expressly provide for a limited situation where the CBOE believes that market makers necessarily are required to coordinate with each other.[5] Specifically, proposed Interpretation and Policy .11 to CBOE Rule 8.7 would permit market makers to coordinate in the limited situation where a member requests a single bid or offer from the trading crowd for an order that is greater in size than the Exchange's Retail Automatic Execution System ("RAES") order eligibility size for that option class, as determined by the Exchange's appropriate Floor Procedure Committee.

When a request to buy or sell a large number of options is submitted to a trading crowd, the CBOE believes that it is usually the case that the customer on whose behalf the request is made wants to know promptly at what single price all of the options represented by the request could be bought or sold. In the exercise of his fiduciary duty, the member representing such a large order is permitted to request a jointly made single bid or offer to ensure that his

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), dated March 4, 2002 ("Amendment No. 1"). Amendment No. 1 deletes a footnote from the original filing that stated that a member would be viewed as having requested a single bid or offer if the member expressed to a trading crowd that generally he or she expected a single bid or offer for any order of greater than the RAES order eligibility size, unless he or she requested otherwise in a specific circumstance.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] As set forth in CBOE Rules 8.80 and 8.85, respectively, the term "market-makers" includes DPMs and each DPM is obligated to fulfill all of the obligations of a market-maker under CBOE rules, in addition to fulfilling the specific obligations of a DPM.

customer's order is completely filled at the best price. Without asking for such a joint response, the member would assume a risk that the market would move substantially as the member attempts to execute the whole order in pieces against individual market makers at different prices.[6]

Proposed Interpretation and Policy .11 to CBOE Rule 8.7.11 would allow CBOE market makers to respond to a member's request for a quick and certain market. The proposed rule change would permit market makers jointly to discuss a request from a member for a single order that is greater in size than the RAES order eligibility size for that option class, in order to provide a single bid or offer, based upon the aggregate of individual bids or offers by members in the trading crowd. Such coordination would only be permitted in situations where the member representing the order requests a single bid or offer. When a single bid or offer made in response to a request results in the order being executed, the order will be apportioned among the market makers who participated in making the single bid or offer according to the number of contracts each market participant committed to trading, and each market maker shall be obligated to fulfill his portion of the single bid or offer at the single price.[7]

The CBOE believes that proposed Interpretation and Policy .11 to CBOE Rule 8.7 would enhance competition among markets. CBOE's market makers must be able to respond to requests for a single large order from a member in the face of competition from other exchanges that have specialists who are better able to provide a single response to large bids and offers. Moreover, because proposed Interpretation and Policy 8.7.11 would allow CBOE market makers to respond to a specific request, the CBOE believes it would enhance the ability of the Exchange to respond to requests for immediate executions at disseminated prices.

[6] Without asking for a joint response, a member may not know until it is too late whether he will have satisfied the customer's entire order if he fills the order in pieces against individual market-makers at different prices. The CBOE believes that a member who does not ask for a joint response takes a risk that the market will move substantially as the member executes the order in parts against different market-makers at different prices against whom he must mark up different order tickets or against whom he must make separate inputs into his electronic trading unit.

[7] The Exchange has submitted another proposed rule change (SR–CBOE–2002–08) relating to allocation of trades, including trades pursuant to proposed Interpretation and Policy .11 to CBOE Rule 8.7.11.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change, as amended, would provide for limited joint participation among competing CBOE market makers in a trading crowd in certain circumstances. The Exchange believes this limited joint participation is justified by the benefits to the marketplace from this proposal. According to the Exchange, the effect of this aggregate response proposal would be to allow the market maker trading crowds to compete more effectively for order flow with specialists from other options exchanges by providing enhanced opportunities for best execution of customer orders on the CBOE. As a result, the Exchange believes the limited joint activity described in this rule proposal is justified by and furthers the objectives of Section 11A(a)(1)(C)(ii) of the Act[10] by assuring fair competition among markets. The Exchange believes that the proposed rule also is consistent with and furthers the objectives of Section 6(b)(5) of the Act[11] in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2001–65 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6456 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45538;File No. SR–CSE–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Incorporated To Amend Trading Rules To Eliminate References to Fractional Price Variations

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2002, The Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to activate the provisions of CSE Rules 11.3(a) and (c) to eliminate Rules 11.3(a) and (c) upon the completion of decimal conversion. The text of the proposed rule change is below. Proposed deletions are in brackets.

Rule 11.3 Price Variations

[(a) Bids or offers in stocks traded on the Exchange at or above $1.00 per share shall not be made at a smaller variation than 1/8 of $1.00 per share; in stocks below $1.00 but at or above 1/2 of $1.00 per share, at a smaller variation than 1/16 of $1.00; in stocks below 1/2 of $1.00 per share, at a smaller variation than 1/32 of $1.00 per share; and in bonds at a smaller variation than 1/8 of 1% of the principal amount, except in the case of a dually or multiply-traded security where the principal exchange shall have a different rule or when the Board of Trustees of the Exchange shall provide otherwise. (Rule 11.3(a) will be eliminated upon completion of decimal conversion.)]

[(b)] Bids or offers in stocks traded on the Exchange shall not be made at a smaller variation than $.01 per share; and in bonds at a smaller variation than 1/8 of 1% of the principal amount.

[(c) Not withstanding (b) above, bids and offers in stocks not participating in the decimal pilot program and not converted to decimal pricing at or above $1.00 per share must be made in fractions at a minimum variation of 1/16 per share. The minimum variation of .01 described in (b) above is applicable to stocks that have been converted to decimal pricing. (Rule 11.3(c) will be eliminated upon completion of the decimal conversion.)]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE proposes to eliminate references to fractional price variations in stocks traded on the Exchange. In implementing the conversion to decimal pricing, the Exchange added provisions to Rules 11.3(a) and (c) that called for the elimination of said rules upon completion of the decimal conversion process.[3] With decimal pricing now fully implemented, the Exchange is now activating the previously approved clauses that eliminate 11.3(a) and (c). With regard to all equity securities, Rule 11.3 will reflect only decimal pricing upon approval of this proposed rule change.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular. The CSE believes the proposed rule change is consistent with Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to file No. SR–CSE–2002–02 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6455 Filed 3–15–02; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 43408 (October 3, 2000), 65 FR 60708 (October 12, 2000)(order approving CSE Rules that accommodate the implementation of decimal pricing).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45540; File No. SR–DTC–2001–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Technical Language Changes to Certain DTC Rules

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 31, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of technical language changes to DTC Rules 1, 18, 27, and 28. The language changes concern officer titles and the methods of amending DTC's procedures, services guides, and regulations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify DTC's Rules to eliminate references to officer titles that are obsolete and to clarify the method by which DTC's procedures, services guides, and regulations can be amended. The proposed rule change will also expand the term "procedures," as defined under Rule 1, to include service guides and regulations.

Rules 18 allows certain DTC officers and directors to waive or suspend rules and procedures and Rule 28 allows certain officers and directors to act under delegated authority from the board of directors on behalf of DTC. The proposed rule change would delete references to "Executive Vice President" and "Senior Vice President" as officers of DTC and add a reference to "Managing Director." At present, Rule 27 allows the board of directors to delegate authority to the chairman of the board to prescribe procedures for DTC. Under the proposed rule change, DTC's board also may extend this authority to any DTC officer referenced in the board's delegation resolution.

The proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder applicable to DTC because it would promote the prompt and accurate clearance and settlement of securities transactions because it would clarify and update DTC's Rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register**, or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–16 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6339 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45541; File No. SR–ISE–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to Minimum Pricing Increments

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2002, the International Securities Exchange LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to reaffirm its current minimum pricing increments for quotations as $.05 for options trading at less than $3.00 and $.10 for options trading at $3.00 or more.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In a release dated June 8, 2000, the Commission ordered the ISE, the other registered national securities exchanges, and the National Association of Securities Dealers, Inc. ("NASD") to submit to the Commission, by June 8, 2001, a study regarding the effects of decimal trading.[3] The Decimalization Order also required the exchanges and the NASD to submit proposed rule changes establishing minimum pricing increments for quotations in the securities they trade.

On September 10, 2001, the ISE submitted its decimalization study ("Study"). Because the ISE did not have significant empirical data regarding the effects of decimalization on its market, the Exchange based its study on responses to a questionnaire it had sent to its members. The Study concluded that decimalization had little effect on the ISE market.

The ISE also submitted its required rule change establishing minimum pricing increments for quotations.[4] The Exchange established minimum increments of $.05 for options trading at less than $3.00 and $.10 for options trading at $3.00 or more. Those were the same increments the Exchange had applied during its conversion to decimal pricing. The purpose of this proposed rule change is to reaffirm the pricing increments in the ISE's rule in light of the results of the Study. Because the Study indicated that the conversion to decimal pricing did not have a significant effect on the ISE's market, the ISE does not believe it is necessary or appropriate at this time to change its minimum pricing increments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[5] in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, removes impediments to and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–06 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6457 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) ("Decimalization Order"). The Commission extended the date by which the studies were due to September 10, 2001. Securities Exchange Act Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001)

[4] Securities Exchange Act Release No. 44349 (May 24, 2001), 66 FR 29617 (May 31, 2001).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45546; File No. SR–NYSE–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through May 13, 2002

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until May 13, 2002, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.[3] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[4] The Pilot has since been extended until January 11, 2002[5] and March 11, 2002.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) ("Original Pilot Approval Order").

[4] Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[7] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[8] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[9] The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[10] The Pilot was again extended until March 11, 2002 for the same reasons.[11]

The Exchange proposes to further extend the effectiveness of the Pilot until May 13, 2002 to provide additional time to evaluate the issues presented by the Pilot, in light of recently adopted requirements relating to disclosure of equity compensation plan information.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, ingeneral, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before March 11, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change to extend the Pilot through May 13, 2002, become operative on March 11, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.[18] The Commission also notes that many commenters were

[5] Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) ("2001 Extension Request").

[6] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[7] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) ("2000 Extension Request").

[8] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[9] *See* note 4 *supra*.

[10] *See* note 5 *supra*. One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request. *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors ("CII") to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See* note 12 *infra* below.

[11] *See* not 6 *supra*.

[12] Release Nos. 33–8048 and 34–45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* Original Pilot Approval Order, note 3 *supra*.

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critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change to extend the Pilot through May 13, 2002, become operative on March 11, 2002.[19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–14 and should be submitted by April 18, 2002.

[19] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6453 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45544; File No. SR–PCX–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Permanent Adoption of Decimal Pricing and the Establishment of a Minimum Price Variation for Quoting in Equity Securities and Options

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 15, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX fully implemented the Commission's order requiring it to convert prices in equity securities and options from fractions to decimals on a pilot basis. Having fully implemented decimal pricing and established the minimum price variation ("MPV") in each market for quoting equity securities and options, the Exchange submits this proposal to permanently adopt the changes that the Exchange has made to its rules. The Exchange is not making any changes to its rules; rather, the Exchange is permanently adopting the rule changes that were initially implemented on a pilot basis.[3]

The text of the proposed rule change is available at the PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43369 (September 27, 2000), 65 fr 59485 (October 5, 2000) (SR–PCX–2000–23); *see also* Securities Exchange Act Release No. 45077 (November 19, 2001), 66 FR 59280 (November 27, 2001) (SR–PCX–2001–39) (eliminating all references to fractional pricing from its rules).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 8, 2000, the Commission issued an order ("Order") that provided a framework for the national securities exchanges and the National Association of Securities Dealers, Inc. (collectively "Participants") to convert quotation pricing in equity securities and options from fractions to decimals.[4] The Order required that: (i) Participants submit studies analyzing how decimal conversion affects systems capacity, liquidity, and trading behavior; and (ii) Participants submit rule filings that individually establish the MPV for each market.

In complying with the Order, the Participants submitted to the Commission on July 26, 2000, the Decimals Implementation Plan for the Equities and Options Markets[5] and successfully completed the phasing-in of decimal pricing in all equity securities and options. In connection with the full implementation, the Exchange modified its rules to include pricing in decimal format with cross-references to fractional pricing. This was done to allow the Exchange to trade, during the phase-in, some securities in decimals and some in fractions. The Exchange also established an MPV scheme for each market (equities and options) and submitted its study of the results on September 10, 2001.[6] The Exchange completed its transition to decimal pricing by eliminating references to fractional pricing.[7] The Exchange now proposes to permanently adopt the rules, previously noticed by the Commission, with no change.

[4] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[5] *See* letter from Dennis L. Covelli, Vice President, New York Stock Exchange, Inc. to Annette Nazareth, Director, Division of Market Regulation, Commission, dated July 25, 2000.

[6] *See* The Pacific Exchange, Inc. Report on Decimal Trading (September 10, 2001).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principals of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-PCX–2002–04 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6450 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[7] *See supra* note 3.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45539; File No. SR–PHLX–2001–120]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Phlx Rule 237, "The eVWAP Morning Session"

March 12, 2002.

On December 26, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 237, "The eVWAP Morning Session," to: (1) Allow Exchange-Traded Fund Shares to be executed on the eVWAP System; (2) codify order increment size requirements; and (3) make minor technical amendments to Phlx Rule 237. On January 25, 2002, the Phlx made minor, technical amendments to the proposal.

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 1, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it will expand the number of securities eligible for eVWAP trading, as well as codify order and commitment size requirements.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (SR–PHLX–2001–120), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6452 Filed 3–15–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240. 19b–4.

[3] *See* Securities Exchange Act Release No. 45343 (January 28, 2002), 67 FR 5027.

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The U. S. Small Business Administration Advisory board will hold a public meeting on Wednesday March 27, 2002. The Wisconsin Advisory Council meeting will take place at the Plaza East office building located at 330 East Kilbourn Ave., 8th floor Milwaukee, Wisconsin. The time set forth is 12 noon to 1 pm. The purpose for this meeting will be to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present. For further information, please write or call Yolanda Staples-Lassiter, U. S. Small Business Administration, 310 West Wisconsin Ave., Suite 400 Milwaukee, Wisconsin 53202; Telephone (414) 297–1090. The public is invited.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–6418 Filed 3–15–02; 8:45 am]

BILLING CODE 8025–01–P

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB),Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503.

(SSA),Social Security Administration, DCFAM,Attn: SSA Reports Clearance Officer,1–A–21 Operations Bldg.,6401 Security Blvd.,Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to her at the address listed above.

1. Government Pension Questionnaire—0960–0160

The Social Security Act and Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefit amount reduced by two-thirds of the pension amount. The data collected on Form SSA–3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals who are receiving (or will receive) Social Security spouse's benefits and also receive their own Government pension.

Number of Respondents: 30,000.
Frequency of Response: 1.
Average Burden Per Response: 12.5 minutes.
Estimated Annual Burden: 6,250 hours.

2. Application for Benefits Under a U.S. International Social Security Agreement—0960–0448

The information collected on form SSA–2490 is used by SSA to determine a claimant's eligibility for U.S. Social Security benefits under the provisions of an international social security agreement. It is also used to take an application for benefits from a foreign country under an agreement. The respondents are individuals who are applying for benefits from either the United States and/or a foreign country with which the United States has an agreement. The United States currently has 17 such agreements.

Number of Respondents: 22,000.
Frequency of response: 1.
Average Burden per response: 30 minutes.
Estimated Annual Burden: 11,000 hours.

3. Request for Workers' Compensation/ Public Disability Information—0960–0098

Form SSA–1709 is used by SSA to request and/or to verify information about worker's compensation or public disability benefits given to Social Security disability insurance benefit recipients so that their monthly benefit adjustments are properly made. The respondents are State and local governments and/or businesses that administer workers' compensation or other disability benefits.

Number of Respondents: 140,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 35,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–0454, or by writing to her at the address listed above.

1. Authorization To Obtain Earnings Data From the Social Security Administration—0960–0602

The information requested on Form SSA–581 is necessary for identification of the earnings record, verification of the signature authorizing access to the earnings record and for disposition of the response. The respondents are individuals and various private/public organizations/agencies that need detailed earnings information.

Number of Respondents: 60,000.
Frequency of Response: 1.
Average Burden Per Response: 2 minutes.
Estimated Annual Burden: 2,000 hours.

2. Statement Regarding Contributions—0960–0020

Form SSA–783 is used to make a determination and obtain information about the source of support for a child applicant who must meet a dependency requirement for entitlement to benefits. The respondents are persons giving information about a child's sources of support for entitlement to child's benefits.

Number of Respondents: 30,000.
Frequency of Response: 1.
Average Burden Per Response: 17 minutes.
Estimated Annual Burden: 8,500 hours.

3. Online Authentication Information Collection Form—TEST—0960—NEW

Background

The Government Paperwork Elimination Act (GPEA) of 1998 directed federal agencies to develop electronic service delivery instruments as an alternative to traditional paper based methods. The Social Security Administration plans to expand its Internet services to enable citizens to complete the application process as well as to process their requests for post-entitlement transactions online. A major requirement for filing applications and for processing transactional requests is SSA's ability to adequately authenticate the citizen. SSA cannot disclose information unless it is under the provisions of the Freedom of Information Act and the Privacy Act of 1974. Because these transactions will be taking place online, SSA must authenticate citizens by asking for information that would positively identify the requester of the information as the proper party. This information will be validated against identifying information residing in databases outside of SSA. SSA will conduct a test of the Treasury Department's "Pay.Gov" authentication engine as a possible tool for out-of-band authentication.

The Collection

The Social Security Administration will use the data collected on the Online Authentication Information Collection Form—TEST, to evaluate the Treasury Department's Pay.Gov authentication engine as a possible tool for SSA to validate out-of-band online applicants. The respondents for this test are members of the general public who elect to complete the form for testing.

Number of Respondents: 161.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 13 hours.

Dated: March 11, 2002.

Liz Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–6234 Filed 3–15–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3914]

Advisory Committee on Law Applicable to Securities Intermediaries; Meeting Notice

The Study Group on International Securities Transactions of the State Department's Advisory Committee on Private International Law will hold a meeting on Tuesday, March 26, 2002, at the Federal Reserve Bank of New York on proposed multilateral treaty rules determining what laws are applicable to securities intermediaries, including the law applicable to dispositions of securities held through holding systems.

The drafting of such rules has been undertaken on a fast-track basis by the Hague Conference on Private International Law, an intergovernmental body on which the United States is represented. The meeting will provide an opportunity for public comment on the revised draft rules and will facilitate preparation of United States positions on whether to support a final meeting to conclude this process in the fall of 2002.

Subject to availability of time, the meeting will review relevant developments involving dematerialization and immobilization of securities, transfers of interest, and the role of multiple indirect and direct holding systems. A www site below contains the draft provisions. The proposed scope of the applicable law treaty regime is set out in Articles 2 and 3, rules on location relevant to determining applicable law in Article 4, rules deferring to insolvency law in Article 5, rules for countries with more than one system of law in Articles 9 and 16, and transition rules in Article 17.

Time permitting, the start up of a new project to be undertaken by UNIDROIT, a separate intergovernmental body, on the preparation of uniform substantive rules on transfer of interests by securities intermediaries, as well as clearance and settlement, will be discussed.

Documentation: The basic study by the Permanent Bureau of the Hague Conference, "Law applicable to disposition of securities held through indirect holding systems", and current revised draft rules are obtainable at *www.hcch.net*. Commentators unable to retrieve these documents may request them from the Office of the Assistant LegalAdviser for Private International Law (L/PIL) by contacting Rosie Gonzales at 202–776–8420, by fax 202–776–8482, or by e-mail at *pildb@his.com*.

Attendance: The public is invited to attend up to the capacity of the meeting room and may participate subject to the rulings of the chair. The meeting will take place at 10 a.m. to 4 p.m. at the New York Federal Reserve Bank, 33 Liberty Street. Since access to the building is controlled, persons wishing to attend must, prior to c.o.b. Friday, March 22, notify Audrey Watson, New York Federal Reserve Bank, of their name, address, contact numbers, and affiliation, at 212–720–8403, or by fax 212–720–1756. For additional information on the draft convention, contact Joyce Hansen, Sr. Vice President, New York Federal Reserve Bank at the above numbers, and for information on the law harmonization work of the Hague Conference and UNIDROIT, contact Harold Burman, Office of the Legal Adviser, 202–776–8421; fax 202 776–8482.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, Department of State.

[FR Doc. 02–6484 Filed 3–15–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2002–11831]

Establishment of the DOT Electronic Transmission and Storage of Drug Testing Information Advisory Committee

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation is establishing the Department of Transportation (DOT) Electronic Transmission and Storage of Drug Testing Information Advisory Committee. The purpose of the committee is to recommend to the Department the type and level of electronic security that should be used for the transmission and storage of drug testing information generated as part of the DOT drug and alcohol testing program regulated by 40 CFR part 40 (65 FR 79462). Additionally, the Committee may examine and provide advice to the DOT related to the format and methodology used in transmitting this type of information as well as the levels and procedures to use in implementing electronic signature technology within the context of the drug and alcohol program.

FOR FURTHER INFORMATION CONTACT: Don Shatinsky, Office of Drug and Alcohol Policy and Compliance (ODAPC), Office of the Secretary, Department of Transportation, (202) 366–3784, fax (202) 366–3897 or Roberta Fede, Committee Management Officer, Executive Secretariat, Department of Transportation, (202) 366–9764.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, notice is hereby given that on December 11, 2001, the Secretary of Transportation approved establishment of the Electronic Transmission and Storage of Drug Testing Information Advisory Committee. After consultation with the General Services Administration as required by section 9(a)(2) of FACA and 41 CFR 102–3.65, the Secretary certifies that he has determined that the establishment of the Committee is in the public interest in connection with the performance of duties imposed on the DOT by law and specifically by the Omnibus Transportation Employee Testing Act of 1991.

The committee will be composed of approximately 20 members appointed by the Secretary from interested parties within the public. The Committee's members will be chosen to ensure a fairly balanced membership to bring into account a diversity of viewpoints, expertise, and backgrounds. Representation will include the technical and computer industry, drug testing laboratories, medical review officers (MRO), labor, trade and labor associations, and employers. The Committee will provide advice and recommendations to the Department related to the level and type of electronic security that the Department should require in the use of electronic transmission and storage of drug testing information. Additionally, the

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Committee may look at the specific formats that may be required to provide consistency in the reporting process, the methodology used, *e.g.*, e-mail versus web based, and the application of electronic signatures in the overall process of reporting this sensitive information. Currently, there are approximately 8.3 million transportation workers in safety-sensitive positions requiring drug testing. All results of drug tests, including negative, positive, adulterated, substituted, and invalid are reported by laboratories directly to physicians (*i.e.*, MROs), who subsequently send final test results to employers. In the majority of cases, laboratory results and MRO verification results are sent by U.S. mail or courier, generating substantial paper work requirements.

To alleviate some of the paper work burden, when 49 CFR part 40 was revised on December 19, 2000, the use of faxed and electronic reporting of some of the drug testing results was authorized, provided that the laboratory and MRO ensured that the information is transmitted in such a manner as to prevent unauthorized access or release while it is transmitted or stored. However, no particular standards or guidelines were provided to ensure that laboratories and MROs used adequate, but secure, methods to transmit and store this sensitive information. The Committee will examine the current state of the art for electronic security and identify those methods which will adequately ensure security, but at the same time provide reasonable cost in its implementation.

Copies of the Committee's charter were filed with the appropriate committees of the Congress and with the Library of Congress in accordance with section 9(c) of the FACA, 5 U.S.C. Appendix 2. In accordance with requirements of the FACA, the DOT will keep records of all Committee meetings and will make them available to the public. Based on the charter of the Committee, it is envisioned that the Committee will meet approximately three times within the next year. Meeting times and places will be published in the **Federal Register**.

Dated: March 12, 2002.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance, Department of Transportation.

[FR Doc. 02–6357 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Hearings on the Draft Environmental Impact Statement for the Potomac Consolidated Terminal Radar Approach Control (TRACON) Airspace Redesign

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public hearings for Draft Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) has released a Draft Environmental Impact Statement (DEIS) for redesign of the airspace in the Baltimore-Washington area (67 FR 9019). A summary of the DEIS can be viewed on the Internet at *http://www.faa.gov/ats/potomac*. This Notice provides information on Public Hearings that will be held on the DEIS.

DATES: The hearings will be held from 3 to 4:30 p.m. and 7 to 9 p.m. at the following locations:

—April 9 at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, Tel: (703) 920–3230. The hotel is accessible from the Crystal City Metro Station through underground walkways. The hotel is located on S. Eads Street between 15th and 20th. A map and further directions may be obtained from *http://www.marriott.com/epp/map.asp?MarshaCode=WASGW*.

—April 10 at the Days Hotel and Conference Center, 2200 Centreville Road, Herndon, VA 20170, Tel: (703) 471–6700. The hotel is located on Centreville Road off Exit 10 (Herndon/Chantilly) from the Dulles Toll Road (Rt. 267). A map and further directions may be obtained from *http://www.dullesdaysinn.com/location.html*.

—April 11 at the Colony South Hotel and Conference Center, 7401 Surratts Road, Clinton, MD 20735, Tel: (301) 868–0315. The hotel is located on Route 5. To access it from I–95, take exit 7A to Route 5 (Branch Ave.) towards Waldorf. Stay on Route 5 for approx. 4.5 miles to the light at Surrats Road. Turn left onto Surratts Road and right into the first driveway. A map and further directions may be obtained from *http://www.colonysouth.com/directions.html*.

—April 23 at the Hilton, 620 Perry Parkway, Gaithersburg, MD 20877, Tel: (301) 977–8900. From I–270, take Exit 11 to Route 124 east, then right at the second light (Route 355 south) and right at the next light, onto Perry Parkway. The hotel is on the right after a roundabout. A map and further directions may be obtained from *http://www.hilton.com/en/hi/hotels/dirctions.jhtmp?ctyhocn=GAIGHHF*.

—April 25 at the BWI Airport Marriott, 1743 West Nursery Road, Baltimore, MD 21240, Tel: (410) 859–8300. Take I–95 to B/W Parkway (I–295) North to West Nursery Road (make a right turn off the exit ramp), hotel is one mile on left after the Courtyard by Marriott. A map and further directions may be obtained from *http://www.marriotthotels.com/dpp/Map.asp?marshacode–BWIAP*.

A separate meeting will be held from 1:30 to 3:30 p.m. primarily for Federal, State and local agency staff in accordance with NEPA coordination requirements. This meeting is also open to the public:

—April 24 at the Holiday Inn Capitol, 550 C Street, SW., Washington DC, 20024, Tel: (202) 479–4000. The hotel is close to the Air and Space Museum and accessible from the L'Enfant Plaza Metro stop. When exiting the Metro station, use the exit labeled 7th Street/Maryland Avenue/Smithsonian Museums. Come up the escalator and walk straight ahead half a block to 6th Street SW. Turn right on 6th Street and walk half a block to C Street SW. The Hotel in on the left, located on the corner of 6th & C Streets SW. Driving directions may be obtained from *http://www.holidayinncapitol.com/direction.html*.

SUPPLEMENTARY INFORMATION: Written comments on the DEIS will be accepted until May 23, 2002. Written comments may be sent to: FAA Potomac TRACON, Air Traffic 2400, Attention: Fred Bankert, 3699 Macintosh Drive, Warrenton, VA 20187. Oral or written comments may also be delivered at the public hearings addressed above.

If there is a demand and adequate interest from other areas that could be affected by the airspace redesign, additional meetings maybe scheduled. Additionally, for those unable to attend a meetings, written comments sent to the address shown above are invited.

FOR FURTHER INFORMATION CONTACT: Potomac Consolidated TRACON (800) 762–9531, E-mail: *9–AEA–PCT–Comments@faa.gov*, Internet *http://www.faa.gov/ats/potomac*.

Dated: March 8, 2002 in Washington, DC.

Barbara Jo Cogliandro,

Air Traffic Manager, Potomac Consolidated TRACON.

[FR Doc. 02–6368 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 2002, there were two applications approved. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 1010–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Duluth Airport Authority, Duluth, Minnesota.

Application Number: 01–05–C–00–DLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $541,256.

Earliest Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: April 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Non scheduled Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Duluth International Airport (DLH)

Brief Description of Projects Approved for Collection and Use:

Preparation of PFC application.

Upgrade surveillance camera system (phase II).

Repair and replace concrete panels for runway 9/27 and reconstruct a segment of taxiway A at the easterly connection with runway 3/21.

Reconstruct passenger terminal apron.

Improve runway 9 safety area (west end).

Install high intensity approach lighting system with sequenced flashing lights to serve runway 9.

Acquire 8.5 acres of wetland credits.

Improve runway safety area at the southwest end of runway 3821.

Construct a perimeter road around the southwest end of runway 3/21.

Install security/deer fence.

Brief Description of Disapproved Project: Design category II instrument landing system and midfield remote visual range to serve runway 9.

Determination: Disapproved. The FAA has determined that the activity levels under Category II conditions at DLH do not meet the criteria for FAA establishment of a Category II instrument landing system (ILS) for runway 9, based on a feasibility study (case number 98–AGL–1457–NRA) for the Category II ILS proposal that was conducted in 1998.

Decision Date: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Agency: Broome County Department of Aviation, Binghamton, New York.

Application Number: 02–05–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,445,438.

Earliest Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: October 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Binghamton Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment purchase.

Fire rescue equipment.

Runway 16/34 runway safety area engineered materials arresting systems design/construction.

Airport master plan update.

Brief Description of Projects Approved for Collection: Aircraft rescue and firefighting facility refurbishment.

Passenger boarding bridge purchase.

Runway 16/34 refurbishment design/construction.

Brief Description of Project Approved for Use: Maintenance building construction—construction phase.

Decision Date: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 227–3800.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*99–01–C–01–ABR, Aberdeen, SD	10/12/01	$677,809	$677,809	05/01/07	10/01/05
96–02–C–01–DAB, Daytona Beach, FL	11/08/01	4,318,671	8,254,367	02/01/05	09/01/07
*99–04–C–01–MOT, Minot, ND	11/19/01	757,551	757,551	02/01/04	04/01/03
01–07–C–01–MRY, Monterey, CA	01/09/02	381,935	463,166	03/01/02	08/01/02
*02–05–C–00–MSY, New Orleans, LA	01/10/02	211,200,626	148,665,172	03/01/10	04/01/05
*96–01–C–01–RDD, Redding, CA	01/11/02	1,195,000	920,000	06/01/05	07/01/02
*98–03–C–01–SJT, San Angelo, TX	01/16/02	946,651	921,993	07/01/06	12/01/04
00–04–U–01–SJT, San Angelo, TX	01/16/02	NA	NA	07/01/06	12/01/04
*98–03–C–01–SUX, Sioux City, IA	01/23/02	610,536	610,536	03/01/04	01/01/04
*97–06–C–01–CMH, Columbus, OH	01/28/02	40,005,400	41,322,417	01/01/04	06/01/04

Note.—The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Aberdeen, SD, this change is effective on January 1, 2002. For Minot, ND, this change is effective on February 1, 2002. For Sioux City, IA, this change is effective on March 1, 2002. For Redding, CA, New Orleans, LA, Columbus, OH, and San Angelo, TX, this change is effective on April 1, 2002.

Issued in Washington, DC. on March 7, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–6367 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11828]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AT EASE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 17, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11828. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* AT EASE. *Owner:* SALTWATER MARINE INC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Documented length: 45.9 feet; Breadth: 14.7 feet; Depth: 4.7 feet; Gross tons (per Certificate of Documentation): 21 tons; net tons (per Certificate of documentation): 16 Tons; Capacity: 6 persons"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Charter in South Texas Gulf Area."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1978. *Place of construction:* Kowloon, Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The proposed change is not expected to have any impact on existing passenger vessel operators which are involved in either fishing or sightseeing trips. Our intent is to provide an overnight cruising facility for a very limited number of passengers on a limited basis."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The proposed change of this waiver will not have any impact on U.S. shipyards."

Dated: March 12, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–6466 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11827]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MEMORY MAKER.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 17, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11827. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* MEMORY MAKER. *Owner:* Jim Moorhead.

(2) Size, capacity and tonnage of vessel. According to the applicant: Gross tons: 28; Net tons: 23; Length 48.; Breadth: 15.0; Depth: 6.0

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: We intend to cruise all navigable waters of the United States over the next several years. As a way to supplement our income, as we visit various places, we would like to offer pleasure boat rides to small parties, most likely six passengers maximum, but definitely under twelve."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* Unknown. *Place of construction:* Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Our intent is that we will be moving from port to port and would not be staying in any one place more than a couple of weeks, so the impact on other commercial vessels * * * would be negligible * * * We will most likely attract couples wishing to spend a few hours on a private yacht with no particular schedule, rather than the regimented timeframes most tour boats must work under."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "* * * the impact on other * * * boat yards, or builders, would be negligible * * *"

Dated: March 12, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–6465 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11830]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PHOENIX.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 17, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11830. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* PHOENIX. Owner: Thomas J. O'Grady.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross Tonnage 19GRT, Net Tonnage 17NRT, Length 46.1', Breadth 14.3', Depth 5.8'."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: I intend to use this vessel for educational purposes. As an adjunct associate professor of English and Poet-In-Residence at Hampton-Sydney College I plan to offer a course on "Literature of the Sea" which will entail using my boat as a classroom not only for discussing Literature but for teaching Seamanship. I may also use the vessel for paid excursions to various events along the Chesapeake bay and may use students, during future summers, to move the boat to Florida for upcoming winter sailing." "East Coast of the United States from inland waters to 100 miles out."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1982. *Place of construction:* Kaohsiung, Taiwan

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(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I am not aware of any school or person currently offering a course that combines the study of Literature and Sailing, at least not as I have devised such a program, although I know there are other Semester at Sea programs and some certified sailing schools. In any case, my passenger list will be very small and should not compete."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "None that I can imagine."

Dated: March 12, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–6463 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11826]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel REEL LUCKY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 17, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11826. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* REEL LUCKY. Owner: Karen A. Hoth.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Size: 29′ Capacity: 8, Tonnage: 9 Gross Tonnage, 7 Net Tonnage"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Small charter boat operation, for under 6 passengers, for half and full day fishing trips around the city of Marathon, Florida. Occasional use for brief charter trips to the Bahamas; occasional entry into fishing tournaments in waters in and around the Florida Keys."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1984. *Place of construction:* Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Reel Lucky is located on a slip at a marina in Marathon that has had successful charter boat business in the past. It is generally of shorter length than other charter vessels in the area, and the operation only includes one boat in the fleet. This waiver will have no negative impact on other charter business due to both of these factors"

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This vessel with minimal to no impact on US shipyards, other than an annual haul-out for maintenance and repair. There are several yards in the Marathon area that are equipped to handle this."

Dated: March 12, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–6464 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11829]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SKOL.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 17, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11829. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SKOL. Owner: Wilson S. Goodwin and Elizabeth Witt-Goodwin.

(2) Size, capacity and tonnage of vessel. According to the applicant: "* * * length, 50.8′; breadth, 14.0′; and depth 8.8′;. Her tonnage is gross, 31; net, 28."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of the vessel is in sailboat charter service on the Chesapeake Bay, initially operating out of Annapolis, MD. In the future, I would like to be able to offer SKOL for captained charters in South Florida waters and the USVIs."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1988. Place of construction: Taipei, Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact this waiver will have on other commercial passenger operators should be minimal. I say this because it will be a very small business, essentially a "one captain—one boat" charter operation, limited by my OUPV (Operator of Uninspected Passenger Vessel) license to 6 passengers."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The impact this waiver will have on U.S. shipyards, again given the very limited one boat charter operation I intend to pursue, should be insignificant."

Dated: March 12, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–6467 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 00–6985]

Insurance Cost Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the 2002 text and data that all car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information is intended to assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 10 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Chief, Consumer Programs Division, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 582, *Insurance Cost Information Regulation*, to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider Part 582 insofar as it requires all automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers. 59 FR 13630.

On March 24, 1995, NHTSA published a Final Rule to amend part 582 in a number of respects. 60 FR 15509. These changes included wording clarifications and a change in the availability date of the booklet.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA publishes the annual **Federal Register** document updating the Highway Loss Data Institute's (HLDI) December Insurance Collision Report. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge within 30 days from the date of the **Federal Register**.

NHTSA is mailing a copy of the 2002 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by [30 days after date of publication]. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Rosalind Proctor of NHTSA's Office of Planning and Consumer Programs (202) 366–0846 to receive a copy of the booklet and to be

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added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA web page at: *www.nhtsa.dot.gov/cars/problems/studies/InsCost.*

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: March 12, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–6355 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11778; Notice 1]

Bridgestone/Firestone North American Tire, LLC, Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North American Tire, LLC (Firestone), a Delaware Limited Liability Company, has determined that approximately 754 30x9.50 R15 LT Widetrack Baja A/T tires produced in the LaVergne, Tennessee plant are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Firestone has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

According to the application, "During weeks 38, 39 and 40 of the year 2001, the LaVergne, Tennessee plant of Firestone produced a number of tires that fail to comply with the tire marking requirements of FMVSS 119 S6.5(d).

The actual markings on the noncompliant tires are:

Max Load 350 Kg at 1985 kPa cold
Max Load 900 Lbs at 50 PSI cold

The correct markings are:

Max Load 900 Kg at 350 kPa cold
Max Load 1985 Lbs at 50 PSI cold

Firestone submits that the failure of the tires to comply with FMVSS 119 S6.5(d) should be deemed inconsequential to motor vehicle safety for the following reasons:

(1) All of the affected 30x9.50R15LT Widetrack Baja A/T tires meet all of the remaining requirements of 49 CFR, part 119.

(2) The maximum load as stated on the tire in both English and Metric units is actually less than the actual maximum load for these tires. Therefore, it is not likely the tires would be placed in an unsafe, overload situation as a result of the marking noncompliance. In fact, if the consumer relies on the markings, the load will be significantly less than the tire is capable of carrying.

(3) While the inflation pressure is incorrect in Metric units, the English inflation units are correct. Since the English units are correct and English units are the common usage for inflation in North America, it is highly unlikely that the subject tires would be over inflated as a result of the marking noncompliance.

(4) The subject tires are correctly marked Load Range "C" and Load Index 104. By Tire and Rim Association's data, the Load Range "C" and Load Index 104 define maximum load of 1985 pounds and 900 Kgs at 50 psi and 350 kPa.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 17, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 11, 2002.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–6356 Filed 3–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34176]

Western New York & Pennsylvania Railroad, LLC—Acquisition and Operation Exemption-Line of Northwest Pennsylvania Rail Authority

Western New York & Pennsylvania Railroad, LLC (WNYP), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 41.8 miles of rail line currently owned by Northwest Pennsylvania Rail Authority (Authority) and operated by Oil Creek & Titusville Lines, Inc. (OCTL).[1] The subject line extends between approximately milepost 102.3 at Meadville, PA, and approximately milepost 60.5 at Corry, PA, in Crawford and Erie Counties, PA. WNYP certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or after February 28, 2002, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34176, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: March 11, 2002.

[1] Pursuant to an agreement entered into between WNYP and OCTL, WYNP will simultaneously acquire OCTL's operating rights over the rail line. *See Oil Creek and Titusville Lines-Meadville Division-Operation Exemption,* STB Finance Docket No. 33371 (STB served Apr. 3, 1997) (notice of exemption for OCTL to operate the 41.8-mile rail line under an operating agreement with Authority).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6309 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720X, Amended Quarterly Federal Excise Tax Return.

DATES: Written comments should be received on or before May 17, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amended Quarterly Federal Excise Tax Return.

OMB Number: 1545–1759. Form Number: 720X.

Abstract: Form 720X is used to make adjustments to correct errors on Forms 720 filed for previous quarters. It can be filed by itself or it can be attached to any subsequent Form 720. Code section 6416(d) allows taxpayers to take a credit on a subsequent return rather than filing a refund claim. The creation of Form 720X is the result of a project to provide a uniform standard for trust fund accounting.

Current Actions: There are no changes being made to Form 720X at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 22,000.

Estimated Time Per Response: 4 hrs., 59 min.

Estimated Total Annual Burden Hours: 109,560.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6477 Filed 3–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–4–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–96 (TD 8743), Sale of Residence From Qualified Personal Residence Trust (§ 25.2702–5).

DATES: Written comments should be received on or before May 17, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sale of Residence From Qualified Personal Residence Trust.

OMB Number: 1545–1485.

Regulation Project Number: PS–4–96.

Abstract: Internal Revenue Code section 2702(a)(3) provides special favorable valuation rules for valuing the gift of a personal residence trust. Regulation section 25.2702–5(a)(2) provides that if the trust fails to comply with the requirements contained in the regulations, the trust will be treated as complying if a statement is attached to the gift tax return reporting the gift stating that a proceeding has been commenced to reform the instrument to comply with the requirements of the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 3 hours, 6 min.

Estimated Total Annual Burden Hours: 625 hours.

The following paragraph applies to all of the collections of information covered by this notice.

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An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6478 Filed 3–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041-A. U. S Information Return-Trust Accumulation of Charitable Amounts.

DATES: Written comments should be received on or before May 17, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet, *Larnice.Mack@irs.gov*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Information Return-Trust Accumulation of Charitable Amounts.

OMB Number: 1545–0094.

Form Number: 1041–A.

Abstract: Form 1–41–A. is used to report the information required in Internal Revenue Code section 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify the amounts for which a charitable deduction was allowed are used for charitable purposes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and individuals.

Estimated Number of Respondents: 18,000.

Estimated Time Per Respondent: 37 hrs., 33 min.

Estimated Total Annual Burden Hours: 675,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6479 Filed 3–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8823

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

DATES: Written comments should be received on or before May 17, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet, *Larnice.Mack@irs.gov*, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

OMB Number: 1545–1204.

Form Number: 8823.

Abstract: Under Internal Revenue Code section 42(m)(1)(B)(iii), state housing credit agencies are required to notify the IRS of noncompliance with the low-income housing tax credit provisions. A separate form must be filed for each building that is not in compliance. The IRS uses this information to determine whether the low-income housing credit is being correctly claimed and whether there is any credit recapture.

Current Actions: There are no changes being made to Form 8823 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State or local government housing credit agencies.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 8 hrs., 48 min.

Estimated Total Annual Burden Hours: 176,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6480 Filed 3–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–7–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–7–89 (TD 8684), Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders (§ 1.1254–4).

DATES: Written comments should be received on or before May 17, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, or through the Internet, Larnice.Mack@irs.gov, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

OMB Number: 1545–1493.

Regulation Project Number: PS–7–89.

Abstract: This regulation prescribes rules under Code section 1254 relating to the treatment by S corporations and their shareholders of gain from the disposition of natural resource recapture property and from the sale or exchange of S corporation stock. Section 1.1254–4(c)(2) of the regulation provides that gain recognized on the sale or exchange of S corporation stock is not treated as ordinary income if the shareholder attaches a statement to his or her return containing information establishing that the gain is not attributable to section 1254 costs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6481 Filed 3–15–02; 8:45 am]

BILLING CODE 4830–01–P

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8302

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8302, Direct Deposit or Refund of $1 Million or More.

DATES: Written comments should be received on or before May 17, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet, *Allan.M.Hopkins@irs.gov*, Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit or Refund of $1 Million or More.

OMB Number: 1545–1763.

Form Number: 8302.

Abstract: This form is used to request a deposit of a tax refund of $1 million or more directly into an account at any U.S. bank or other financial institution that accepts direct deposits.

Current Actions: There are no changes being made to Form 8302 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 2 hr., 27 min.

Estimated Total Annual Burden Hours: 988.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6483 Filed 3–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, March 25, 2002, through Wednesday, March 27, 2002, from 8:30 a.m. until 5 p.m. each day, at the VA Regional Office, 1120 Vermont Avenue, NW., Room 1001A, Washington, DC.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans; to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On March 25, the Committee will meet with the Secretary to receive his charge, and will receive an ethics briefing from the Office of General Counsel. The Committee will examine the results of the Secretary's VA Claims Processing Task Force, and will be briefed by the Task Force's Executive Secretary. They will also be briefed by the Acting Under Secretary for Benefits on adjudication reform and plans to implement Task Force's recommendations. The Committee will conduct subcommittee-working sessions in the afternoon.

On Tuesday, March 26, the Committee will focus on minority business access to government contracting and problems experienced by minority veteran-owned businesses. The President and Chief Executive Officer of the Veterans Entrepreneurial Corporation will address the Committee about the Corporation's progress and its impact on minority businesses. The Committee will meet with the Deputy Secretary in the afternoon.

On Wednesday, March 27, the Committee will be briefed about VA Readjustment Counseling services located on Indian Reservations. The topic of dust induced lung disease associated with Navy deck grinding will be discussed, and the Committee will begin drafting its annual report for fiscal year 2002.

These sessions will be open to the public. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues on the meeting agenda and other issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: March 11, 2002.

By Direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–6325 Filed 3–15–02; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
March 18, 2002

Part II

Department of Justice

Antitrust Division

United States v. Microsoft Corporation; Notices

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DEPARTMENT OF JUSTICE

Antitrust Division

***United States* v. *Microsoft Corporation*; Notice of Availability of Public Comments; Memorandum of the United States in Support of Entry of Proposed Final Judgment; Response of the United States to Public Comments on the Revised Proposed Final Judgment; Stipulation and Second Revised Proposed Final Judgment; and United States' Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment**

In *United States* v. *Microsoft Corp.*, Civil Action No. 98–1232, pending in the United States District Court for the District of Columbia, the United States hereby publishes: (1) Memorandum of the United States in Support of Entry of Proposed Final Judgment; (2) Response of the United States to Public Comments on the Revised Proposed Final Judgment; (3) Stipulation and Second Revised Proposed Final Judgment; and (4) United States' Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment.

The United States is concurrently publishing in the **Federal Register** a complete list of the names of all individuals or entities submitting public comments; the number of pages of each comment; a unique tracking number assigned to each comment so that each comment may be located on the Department of Justice's website; and an index to the comments organized by six categories based primarily on the level of detail of the comment.

In addition to the publication in the **Federal Register** of the materials published herein, electronic copies of all comments are available on the Department of Justice's website at *www.usdoj.gov/atr/cases/ms-comments.htm*. Interested persons may also request a copy of the one or more CD–ROMs containing the full text of the comments by contacting the Department of Justice in Washington, DC at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530, Telephone: (202) 514–2481, Fax: (202) 514–3763. The United States will provide free of charge one copy of this CD–ROM or set of CD–ROMs to each individual person and five copies to each library or other institution that requests it. The United States will provide, at cost, additional copies above these limits to individuals or institutions upon request. The United States has filed the comments on CD–ROM with the Clerk of the United States District Court for the District of Columbia.

Memorandum in Support of Entry of Proposed Final Judgment

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant; Memorandum of the United States in Support of Entry of the Proposed Final Judgment.

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002; Tunney Act Hearing.

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Renata B. Hesse,
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U.S. Department of Justice, Antitrust Division, 601 D Street NW., Suite 1200, Washington, DC 20530, (202) 514–8276.
Philip S. Beck,
Special Trial Counsel.

February 27, 2002.

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In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant; Memorandum of the United States in Support of Entry of the Proposed Final Judgment.

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002, Tunney Act Hearing.

The proposed final judgment, as revised and modified, represents the culmination of six years of investigation, litigation, appeals, and negotiation. It is a comprehensive remedy that puts into place meaningful, effective, and enforceable restrictions on Microsoft and, critically, comports with

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both the legal standards for relief in an antitrust case and the decision by the Court of Appeals in this case. Just as important, it provides relief effective *now*. Failure to enter the proposed final judgment would mean that Microsoft's anticompetitive practices likely would continue unabated for several more years, an eternity in this ever-changing market. Accordingly, in the United States' best judgment, entry of the proposed final judgment is in the public interest.

Background

1. On May 18, 1998, the United States filed a civil complaint alleging that Microsoft had engaged in anticompetitive conduct in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1, 2. At Microsoft's request, the case was consolidated with a similar action brought by twenty [1] states and the District of Columbia.[2] The United States and the States jointly presented the case in a 78-day bench trial that began on October 19, 1998, and ended on June 24, 1999. The court heard testimony from 26 witnesses and admitted depositions of 79 other witnesses and 2733 exhibits. On November 5, 1999, the court entered 412 findings of fact. *United States* v. *Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999) (*"Findings of Fact"*). On April 3, 2000, after the parties attempted unsuccessfully to settle the suit through months-long mediation before Judge Richard Posner,[3] the district court entered its conclusions of law. 87 F. Supp. 2d 30 (D.D.C. 2000) (*"Conclusions of Law"*). On June 7, 2000, after further proceedings on remedy, the district court entered its final judgment. 97 F. Supp. 2d 59 (D.D.C. 2000) ("Initial Final Judgment" (IFJ)).

Plaintiffs never contended that Microsoft unlawfully *obtained* its monopoly in Intel-compatible personal computer (PC) operating systems. Plaintiffs alleged, and the district court ruled, that Microsoft successfully had engaged in anticompetitive acts to *protect* and *maintain* that monopoly, in violation of Section 2 of the Sherman Act. *Conclusions of Law* at 37–44. The district court also ruled that Microsoft had attempted to monopolize the Internet Web browser market, in violation of Section 2, and had tied its Web browser, Internet Explorer (IE), to its Windows operating system, in violation of Section 1. *Id.* at 45–51. The district court rejected plaintiffs' claim that Microsoft's exclusive dealing contracts violated Section 1 of the Sherman Act. *Id.* at 51–54. To remedy the violations, the court ordered Microsoft to break up into separate operating system and applications businesses. Initial Final Judgment, 97 F. Supp. 2d at 64–65. The Initial Final Judgment also ordered transitional conduct restrictions until the structural relief became effective. *Id.* at 66–69.

Microsoft filed notices of appeal,[4] and the Court of Appeals, sua sponte, ordered that any proceedings before it be heard en banc. Order, No. 00–5212 (D.C. Cir., June 13, 2000). The district court certified the case for direct appeal to the Supreme Court pursuant to the Expediting Act of 1903, as amended, 15 U.S.C. 29(b), and stayed its judgment pending completion of the appellate process. Order (June 20, 2000). The Supreme Court declined to accept the appeal and remanded the case to the Court of Appeals. *Microsoft Corp.* v. *United States*, 530 U.S. 1301 (2000).

2. After extensive briefing and two days of oral argument, the en banc Court of Appeals issued a unanimous and comprehensive decision affirming in part, reversing in part, and remanding in part for proceedings before a different district judge. *United States* v. *Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (en banc) (per curiam) (*"Microsoft"*).

a. The Court of Appeals affirmed the district court's ruling that Microsoft maintained its operating system monopoly, in violation of Section 2 of the Sherman Act, by engaging in specific acts that impeded the emergence of two nascent "middleware" threats to that monopoly. *Id.* at 50–80.[5] "Middleware" is platform software that runs on top of an operating system but simultaneously exposes its own application programming interfaces (APIs) so that applications can run on the middleware itself. *Id.* at 53; *Findings of Fact*, ¶ 28. An application written to rely exclusively on a middleware program's APIs could run on all operating systems on which that middleware runs (i.e., would be "cross-platform"). The Court of Appeals found that middleware posed a potential threat to Microsoft's operating system monopoly because if enough applications developers (known as independent software vendors (ISVs)) wrote enough applications for widely used middleware, computer users no longer would be reluctant to choose a non-Windows operating system for fear that it would run an insufficient array of applications. *Microsoft*, 253 F.3d at 53. Over time, this widely used middleware might have the potential to erode the "applications barrier to entry" that protected Microsoft's Windows monopoly.

Microsoft's anticompetitive acts centered on two particular middleware threats: Netscape's Web browser (Navigator), and Sun Microsystem's Java technologies. Microsoft set out to ensure that its own Web browser, IE, gained dominant usage so that ISVs would continue to focus their efforts on the Windows platform rather than the Navigator platform. Microsoft took steps to constrict Netscape's access to the distribution channels that led most efficiently to browser usage: pre-installation by computer manufacturers (known as original equipment manufacturers (OEMs)), distribution by Internet access providers (IAPs), and the ISVs themselves. Through restrictions placed in its Windows licenses to OEMs, exclusive deals with IAPs and ISVs, and a combination of inducements to—and threats of retaliation against—other third-parties, Microsoft sought to impede the emergence of middleware as a potential threat to its operating system monopoly. *Id.* at 58–74.

Java technologies posed a middleware threat to Microsoft by enabling developers to write programs that could be ported to different operating systems with relative ease. In May 1995, Netscape announced that it would include a Sun-compliant Windows Java Virtual Machine (JVM), a key component of Java technologies, with every copy of Navigator, thereby creating the possibility that Sun's Java implementation would achieve the necessary ubiquity on Windows to pose a threat to the applications barrier to entry. *Id.* at 74. Thus, by limiting the usage of Navigator, Microsoft simultaneously would limit the distribution of Java. Microsoft, however, took additional steps directed specifically to interfere with the development, distribution, and use of cross-platform Java. Those steps included: (1) pressuring third parties not to support cross-platform Java (*id.* at 75); (2) seeking to extinguish the Java threat through technological means that maximized the difficulty with which applications written in Java could be ported from Windows to other platforms, and vice versa (*id.* at 74–75); and (3) other anticompetitive steps to

[1] One State later withdrew, and another settled in July 2001.

[2] On February 1, 2002, this Court de-consolidated the cases. Order at 3 (Feb. 1, 2002).

[3] At the time, Judge Posner was Chief Judge of the United States Court of Appeals for the Seventh Circuit.

[4] Plaintiffs did not cross-appeal the dismissal of their Section 1 claim alleging exclusive dealing.

[5] The Court of Appeals also rejected Microsoft's procedural challenges to the trail court proceedings, finding the district court's actions "comfortably within the bounds of its broad discretion to conduct trials as it sees fit." *Microsoft*, 253 F.3d at 98, 100–01.

discourage developers from creating Java applications compatible with non-Microsoft JVMs (*id.* at 75–78).

In affirming liability for monopoly maintenance, however, the Court of Appeals upheld 12 of the 20 district court findings that particular acts constituted bases for violations of Section 2. *See id.* at 59–78. In particular, the court rejected the findings that Microsoft had violated Section 2 by prohibiting OEMs from "automatically launching a substitute user interface upon completion of the boot process" (*id.* at 63); overriding the user's choice of browser in certain circumstances (*id.* at 67); giving away its Internet Explorer browser to IAPs and ISVs (*id.* at 67–68, 71–72); offering IAPs a bounty for each customer the IAP signs up for service using the IE browser (*id.* at 67–68); developing and giving away the Internet Explorer Access Kit (IEAK) (*id.* at 68); entering into exclusive agreements with Internet Content Providers (ICPs) (*id.* at 71); and creating a JVM that runs faster on Windows but lacks the cross-platform attributes that Sun's (hence Navigator's) JVM possesses (*id.* at 74–75). In addition, and importantly, the Court of Appeals expressly rejected the district court's conclusion that, "apart from Microsoft's specific acts, Microsoft was liable under § 2 based upon its general 'course of conduct.'" *Id.* at 78. The court found that the district court had failed to "point to any series of acts, each of which harms competition only slightly but the cumulative effect of which is significant enough to form an independent basis for liability." *Id.*

b. The Court of Appeals also reversed the district court's determination that Microsoft had attempted to monopolize the Web browser market in violation of Section 2. *Id.* at 80–84. The court found that plaintiffs had failed to define and prove a market for Web browsers, a necessary element of the claim. *Id.* at 81–82.

c. The Court of Appeals vacated the district court's judgment on the Section 1 tying claim as well, and remanded that claim to the district court for reconsideration under the rule of reason. *Id.* at 84–97. In so holding, the Court of Appeals held that the market for platform software presented unique issues under tying law. The "nature of the platform software market affirmatively suggests that per se rules might stunt valuable innovation" (1) because "the separate-products test is a poor proxy for net efficiency from newly integrated products; and (2) "because of the pervasively innovative character of platform software markets, tying in such markets may produce efficiencies that courts have not previously encountered and thus the Supreme Court had not factored into the per se rule as originally conceived." *Id.* at 92–93. The court directed that on remand, plaintiffs would be limited to proving that the anticompetitive effects from tying outweigh the benefits in the *tied* product market, not just that those effects outweigh the benefits overall. *Id.* at 95. In addition, plaintiffs would be "precluded from arguing any theory of harm that depends on a precise definition of browsers or barriers to entry . . . other than what may be implicit in Microsoft's tying arrangement." *Id.*

d. In light of its determination that it had "drastically" (*id.* at 105, 107) altered the district court's conclusions on liability, and its finding that an evidentiary hearing on remedy was necessary prior to the district court's imposting a remedy (*id.* at 101–103), the Court of Appeals vacated the final judgment and remanded the case to the district court for further proceedings. *Id.* at 107. The court also offered guidance "to advance the ultimate resolution of this important controversy." *Id.* at 105. Though recognizing that, "[a]s a general matter, a district court is afforded broad discretion to enter that relief it calculates will best remedy the conduct it has found to be unlawful," *id.*, the Court of Appeals directed this Court to "reconsider whether the use of the structural remedy of divestiture is appropriate with respect to Microsoft, which argues that it is a unitary company." *Id.*

Critically, the Court of Appeals admonished the district court on remand to bear in mind the role of causation when fashioning relief, directing this Court to "consider whether plaintiffs have established a sufficient causal connection between Microsoft's anticompetitive conduct and its dominant position in the [operating system] market." *Id.* at 106. Absent "clear[]" indication of a "*significant causal connection* between the conduct and creation or maintenance of the market power," Microsoft's unlawful behavior "should be remedied by 'an injunction against continuation of that conduct.'" *Id.* at 106 (quoting 3 Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 650a, at 67 (rev. ed. 1996) (*"Antitrust Law"*)) (emphasis added by Court of Appeals). The court emphasized that it had "found a causal connection between Microsoft's exclusionary conduct and its continuing position in the operating systems market only through inference," *id.* at 106–07, but that even the district court "expressly did *not* adopt the position that Microsoft would have lost its position in the [operating system] market but for its anticompetitive behavior." *Id.* at 107 (quoting *Findings of Fact*, ¶ 411) (emphasis added). The court concluded that the remedy should be "tailored to fit the wrong creating the occasion for the remedy." *Id.* at 107.

e. Finally, the Court of Appeals concluded that the district judge's contacts with the press violated the Code of Conduct for United States Judges and warranted disqualification under 28 U.S.C. 455(a). *Id.* at 107–118. The court vacated the remedy on the additional basis that the district judge's misconduct infected the remedial phase. *Id.* at 117.

3. After the Court of Appeals rejected Microsoft's petition for rehearing, Microsoft filed a petition for a writ of certiorari based on the Court of Appeals' failure to vacate the *Findings of Fact* and *Conclusions of Law*—and not just the remedy—in light of the district judge's misconduct. Petition for a Writ of Certiorari, No. 01–236 (Aug. 7, 2001) ("Cert. Petition"). Although Microsoft's petition was limited to the issue of judicial misconduct, it promised a future petition on several issues relating to liability when the case becomes final—after the remand to the district court and another appeal to the D.C. Circuit. *Id.* at 15. On October 9, 2001, the Supreme Court denied Microsoft's petition. *Microsoft Corp.* v. *United States*, 122 S. Ct. 350 (2001).

Meanwhile, on the same day it filed its petition for certiorari, Microsoft moved the Court of Appeals to stay its mandate pending disposition of the—petition by the Supreme Court. The Court of Appeals denied Microsoft's motion, *United States* v. *Microsoft Corp.*, 2001 WL 931170 (D.C. Cir. Aug. 17, 2001) (en banc) (per curiam), and issued its mandate on August 24, 2001. That same day, a random selection assigned the case to this Court.

4. On September 6, 2001, plaintiffs advised Microsoft that they did not intend to pursue the Section 1 tying claim on remand, and that they did not intend to pursue on remand the restructuring of Microsoft into two separate companies. As explained to the Court in the Joint Status Report filed on September 20, 2001, Plaintiffs' goal was to achieve the expeditious imposition of relief that would effectively remedy Microsoft's illegal conduct. Joint Status Report at 21 (Sept. 20, 2001).

5. On September 28, 2001, this Court ordered the parties to "concentrate all of their resources" on a new round of intense settlement negotiations and probable mediation. Order at 2–3 (Sept. 28, 2001). The Court emphasized the importance of these efforts in light of

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the passage of time—more than six years since plaintiffs" claims arose and more than four years of litigation, *id.* at 2. The Court expressly directed plaintiffs to "determine which portions of the former judgment remain appropriate in light of the appellate court's ruling and which portions are unsupported following the appellate court's narrowing of liability." Tr. 9/28/01 at 8. The Court also adopted a fast-track discovery and evidentiary hearing schedule in case the parties failed to settle. [6]

On November 2, 2001, following five weeks of intensive negotiation and mediation as ordered by the Court, the United States and Microsoft agreed on terms of a proposed final judgment. Stipulation at 1 (Nov. 2, 2001). Further negotiations with several of the plaintiff States resulted in submission on November 6, 2001, by the United States, the Settling States, [7] and Microsoft of the Revised Proposed Final Judgment (RPFJ). Pursuant to the requirements of Section 2 of the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. 16(b)–(h), the United States filed its Competitive Impact Statement (CIS) on November 15, 2001, and published the RPFJ, CIS, and description of the procedures for submitting public comments on the proposed decree in the **Federal Register** on November 28, 2001. 66 FR 59,452 (2001). The public comment period closed on January 28, 2002—with more than 30,000 comments submitted—and the United States" response to those comments is being filed concurrently with this Motion and supporting Memorandum. Under the Tunney Act, this Court must now determine whether the RPFJ is in the "public interest." 15 U.S.C. 16(e).

6. On January 30, 2002, the Court ordered the parties to address "whether, in response to the comments received by the Department of Justice in accordance with 15 U.S.C. 16(b), the United States and Microsoft are considering any modifications of the Proposed Final Judgment." Order at 1 (Jan. 30, 2002). Responding in a Joint Status Report filed on February 7, 2002, the parties stated that they were considering making modifications and would submit any proposed modifications to the Court on or before February 27, 2002. Joint Status Report at 7 (Feb. 7, 2002). Simultaneously with this Memorandum, the parties have filed a Second Revised Proposed Final Judgment (SRPFJ), which includes modifications to which the United States, Microsoft, and the Settling States have agreed. [8] This Memorandum is couched in terms of, and generally refers to, the proposed decree before modification (i.e., the RPFJ), addressing the modifications of the SRPFJ only as required. However, the decree the Court should enter is the *modified* version of the RPFJ—that is, the SRPFJ.

Discussion

I. The Tunney Act Governs the Court's Disposition of the Revised Proposed Final Judgment

By its express terms, the Tunney Act applies to "*[a]ny* proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws," 15 U.S.C. 16(b) (emphasis added), without regard to when the United States submits it. Moreover, the Court is required to make its Tunney Act public interest determination "[b]efore entering *any* consent judgment proposed by the United States under this section." *Id.* § 16(e) (emphasis added). The Revised Proposed Final Judgment on its face is a proposal for a consent judgment submitted by the United States for entry in a civil proceeding brought by the United States under the antitrust laws. By the plain and unambiguous statutory language, the Tunney Act applies and governs the Court's consideration of the RPFJ.

The Tunney Act applies even though the parties proposed the RPFJ after trial and after the Court of Appeals affirmed Microsoft's liability for monopoly maintenance. These circumstances [9] have led some to suggest, see AAI Tunney Act Comments, at 4–9 (MTC # 0030600); ProComp's Comments to the Proposed Final Judgment, at 1–2 (MTC # 0030608) ("ProComp Comments"); Memorandum of Points and Authorities in Support of the California Plaintiffs' Motion to Intervene at 18–21 (Jan. 23, 2002)) ("Cal. Plaintiffs" Br."), that the Tunney Act does not apply to some proposals for consent judgments submitted by the United States for entry in a civil proceeding brought by the United States under the antitrust laws, including the RPFJ, because of the stage at which they are proposed. It has been variously suggested that the Act does not apply to proposals that arise after the taking of testimony begins (*id.* at 10, 18–19 n.9); after litigation to judgment (*id.* at 11, 18), apparently whether or not that judgment is vacated on appeal; and after litigation through judgment and appeal (*id.* at 18), again apparently without regard to the result on appeal.

Because, then and now, most consent judgments in government antitrust cases are entered before trial, Congress undoubtedly focused on pre-trial consent judgments when it enacted the Tunney Act. But Congress knew that consent judgments could be proposed at later stages, *see* pages 15–16 below, and it did not exempt them from the Tunney Act. Even if Congress had failed to foresee later-arising proposals, in the face of an "unambiguous statutory text [such a failure] is irrelevant," *Pennsylvania Department of Corrections* v. *Yeskey*, 524 U.S. 206, 212 (1998), because application of an unambiguous statute "in situations not expressly anticipated by Congress" merely shows the statute's breadth. *Id.* (citation and internal quotation marks omitted).

The plain meaning of "[a]ny proposal for a consent judgment" is sufficient to support the conclusion that the Tunney Act applies here. But if one wants more support for reading "any" to mean "any," that support is readily at hand. First, nothing in the language of the Tunney Act suggests that the Act reaches only proposals for consent judgments in government civil antitrust cases that are submitted at some appropriate time.[10] And the context of the Tunney Act suggests a broad reading

[6] Indeed, the evidentiary hearing in *New York* v. *Microsoft Corp.*, No. 98–CV–1233 (CKK) (D.D.C), between the Non-Settling States and Microsoft is scheduled to begin on March 11, 2002. (Order at 2 (Oct. 2, 2001).

[7] New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin (the "Settling States")—each a party to *New York* v. *Microsoft Corp.*, No. 98–Cv–1233 (CKK) (D.D.C.)—have signed the Revised Proposed Final Judgment.

[8] The United States also filed, simultaneously with this Memorandum, a Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment. As explained briefly below, *see* Section II.G, page 34, the SRPFJ is a logical outgrowth of the RPFJ, its incremental modifications responding to the public comments, and the overall result further advances the public interest.

[9] The United States has never before initiated a Tunney Act proceeding so late in a lawsuit although the settlement in the AT&T case came after the trial court had "already heard what probably amounts to well over ninety percent of the parties's evidence." *United States* v. *AT&T*, 552 F. Supp. 131, 152 (D.D.C. 1982), *aff'd mem. sub. nom. Maryland* v. *United States*, 460 U.S. 1001 (1983). The AT&T court followed Tunney Act procedures without deciding that the Tunney Act applied to what the parties characterized as the modification of a consent decree in one case and the dismissal of a different case. *See id.* at 144–45.

[10] It has been suggested that the Tunney Act provision permitting a court to consider, as part of its public interest determination, "the public benefit, if any, to be derived from a determination of the issues at trial," 15 U.S.C. 16(e)(2), limits the reach of the Act to pre-trial settlements. *See* Cal. Plaintiffs' Br. at 18. But that subsection demonstrates only that a consent decree may be proposed prior to trial, not that the Act is limited to pre-trial proposals. Indeed, in this case, the alternative to entry of the RPFJ likely would be trial of outstanding remedy issues. Pursuant to the statute, the Court may properly consider "the public benefit, if any" of requiring determination of those issues at trial.

of the statute's coverage—at the very least, a reading not limited to consent judgments before testimony is taken.[11] The term "Tunney Act" refers to Sections 5(b)–(h) of the Clayton Act. Section 5(a), originally enacted in 1914 as Section 5, gives prima facie evidence effect to certain consent decrees, subject to the proviso that the section does not give that effect to "consent judgments or decrees entered before any testimony has been taken." 15 U.S.C. § 16(a). If Congress in 1914 had understood the words "consent judgments or decrees" to refer only to ones entered before any testimony had been taken, there would have been no need to draw the distinction, and the proviso would have been surplusage.[12] See *South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329, 347 (1998) ("the Court avoids interpreting statutes in a way that "renders some words altogether redundant"") (quoting *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 574 (1995)). Had Congress used the term "consent judgment" in Section 5(b) of the Clayton Act to mean something different than its meaning in Section 5(a), it surely would have said so. See *Commissioner* v. *Lundy*, 516 U.S. 235, 250 (1996) ("the normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning") (quoting *Sullivan* v. *Stroop*, 496 U.S. 478, 484 (1990), and *Sorenson* v. *Secretary of Treasury*, 475 U.S. 851, 860 (1986) (internal quotation marks omitted)).

Second, Congress clearly was aware that consent judgments could arise relatively late in the course of an antitrust case. Not only were there examples ready at hand involving well-known antitrust cases, *see, e.g., Fifth & Walnut, Inc.* v. *Loew's Inc.*, 176 F.2d 587, 592–93 (2d Cir. 1949) (consent decrees with some defendants entered on remand, after Supreme Court affirmed liability in part and reversed in part in *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131 (1948)),[13] but the legislative history contained prominent references to the possibility. Representative Hutchinson, then the ranking minority member of the House Judiciary Committee and of its Monopolies and Commercial Law subcommittee, inserted into the hearing record a statement plainly recognizing that circumstances arising during prosecution of a case might make settlement seem appropriate.[14] And Thomas Kauper, then Assistant Attorney General-Antitrust Division, specifically noted in his testimony that "a consent decree . . . may come after trial." The Antitrust Procedures & Penalties Act: Hearings on S. 782 & S. 1088 Before the Subcomm. on Antitrust & Monopoly of the Senate Committee on the Judiciary, 93d Cong. 117 (1973) ("Senate Hearings") (testimony of Thomas E. Kauper).

Finally, a reading of the statutory language that precludes its application at this stage would lead to anomalous results. Nothing plausibly explains why Congress would want a court to enter consent judgments in the later stages of government civil antitrust cases without following Tunney Act procedures—publication of the decree and CIS, a public comment period, and so forth. Nor is it plausible that Congress intended, sub silentio, to prohibit courts from entering consent judgments at certain stages of the litigation. Courts have long entered consent judgments reached after the taking of evidence, after determinations of liability, and even after affirmance of liability by the Supreme Court, as the *Paramount Pictures* history just cited demonstrates. Moreover, the Supreme Court has expressly acknowledged the authority of the Attorney General to settle cases at any stage. *See Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 136 (1967) (Court does "not question the authority of the Attorney General to settle suits after, as well as before, they reach here").

We do not, of course, suggest that this Court approach its public interest determination in this proceeding as if the RPFJ had been filed simultaneously with the complaint. The trial record, *Findings of Fact, Conclusions of Law*, and appellate decisions in this case all exist, and the Tunney Act does not require the Court to ignore them. But as we discuss below, *see* pages 39–42, the history of this case does not change the nature of the Court's public interest determination; it changes only the circumstances in and to which that standard is applied.

II. The United States Has Complied With All Tunney Act Procedural Prerequisites to the Court's Public Interest Determination

With the filing today of the public comments and the government's responses, the United States has completed all of the steps required of it before the Court enters a proposed consent judgment under the Tunney Act, 15 U.S.C. 16(b)–(d), except for the publication of those comments and responses. We expect to publish as required, in the manner described below in Section II.F, and we will promptly

[11] The United States has consistently maintained that Tunney Act procedures are not required with respect to judgments addressing only claims for civil penalties under the antitrust laws. The antitrust laws do not provide civil penalties for violation of their substantive, competition-regulating, provisions. There are civil penalties under the "antitrust laws" as defined in the Clayton Act, *see* 15 U.S.C. 12(a) (defining "antitrust laws"), only for failure to comply with provisions relating to premerger notification and waiting periods, *id.* § 18a(g), and for violation of certain orders issued by certain federal agencies (not including the Department of Justice), *id.* 21(*l*). Courts in this district have consistently entered agreed upon settlements for civil penalties under 15 U.S.C. 18a(g) without employing Tunney Act procedures; each such entered judgment states that its entry is in the public interest. *See, e.g., United States* v. *Input/Output, Inc.*, 1999–1 Trade Cas. (CCH) ¶ 72,528 (D.D.C. 1999); *United States* v. *Blackstone Capitol Partners II Merchant Banking Fund*, 1999–1 Trade Cas. (CCH) ¶ 72,484 (D.D.C. 1999); *United States* v. *Loewen Group Inc.*, 1998–1 Trade Cas. (CCH) ¶ 72,151 (D.D.C. 1998); *United States* v. *Mahle GmbH*, 1997–2 Trade Cas. (CCH ¶ 71,868 (D.D.C. 1997); *United States* v. *Figgie Int'l Inc.*, 1997–1 Trade Cas. (CCH) ¶ 71,766 (D.D.C. 1997); *United States* v. *Foodmaker, Inc.*, 1996–2 Trade Cas. (CCH) ¶ 71,555 (D.D.C. 1996); *United States* v. *Titan Wheel Int'l, Inc.*, 1996–1 Trade Cas. (CCH) ¶ 71,406 (D.D.C. 1996); *United States* v. *Automatic Data Processing, Inc.*, 1996–1 Trade Cas. (CCH) ¶ 71,361 (D.D.C. 1996); *United States* v. *Trump*, 1988–1 Trade Cas. (CCH) ¶ 67,968 (D.D.C. 1988). In each case, the United States noted the issue in a motion for entry of judgment, explaining to the court that it believed Tunney Act procedures were not required.

[12] As enacted in 1914, the prima facie evidence provision made even clearer congressional understanding that there could be consent judgments or decrees entered after testimony had been taken. The text included this additional proviso, rendered superfluous by the passage of time: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of tastimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Clayton Act, ch. 323, § 5, 38 Stat. 730, 731 (1914). This language not only clearly contemplates consent judgments or decrees entered after some testimony has been taken, but also gives prima facie evidence effect to some of them.

[13] *See also Utah Pub. Serv. Comm'n* v. *El Paso Natural Gas Co.*, 395 .S. 464, 467–68 (1969) (Supreme Court refers to a decree it had rejected (for failure to comply with its mandate) as a "consent decree" even though it had been agreed to following a trial on the merits and a Supreme Court determination of liability).

[14] "[S]uppose that during the prosecution of a case against an oil company the government decided to settle for less relief than it could win on the merits because of the adverse impact full relief might have on a recently intervening energy crisis." Consent Decree Bills: Hearings on H.R. 9203, H.R. 9947, and S. 782 Before the Subcomm. on Monopolies & Commercial Law of the House Comm. on the Judiciary, 93rd Cong. 41 (1973) ("House Hearings") (statement of Hon. Edward Hutchinson).

Similarly, Miles Kirkpatrick, who had recently stepped down as chairman of the FTC, testified at the same hearings about circumstances under which the government might file a proposed consent decree "with relief significantly different from that originally claimed." These circumstances included "the post complaint realization by the Antitrust Division that there are certain aspects of its case that do not have the strengths that were initially believed to be present: *that realization could come . . . after the partial trial of the case itself.*" *Id.* at 145 (statement of Miles W. Kirkpatrick) (emphasis added.)

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notify the Court when we have done so. The United States will then have complied completely with the requirements of the Act.[15]

A. Summary Of Compliance

On November 6, 2001, the United States (together with the Settling States and Microsoft) submitted to the Court the Revised Proposed Final Judgment. The United States filed its Competitive Impact Statement with the Court on November 15, 2001, and published the RPFJ and CIS in the **Federal Register** on November 28, 2001 (66 FR 59,452), as required by 15 U.S.C. 16(b); [16] *see also* Order at 2–3 (Nov. 8, 2001) ("Nov. 8 Order"). The CIS included each of the six required recitals, *see* 15 U.S.C. 16(b)(1)–(6),[17] as well as other material. Copies of the RPFJ and CIS were made available to the public at the Court's website.[18] The United States also made them available at the Department of Justice website. Because there were no "materials and documents which the United States considered determinative in formulating" the proposed judgment ("determinative documents"), 15 U.S.C. 16(b), the United States was not required to make copies of such documents available at the Court.[19] The United States furnished copies of the CIS to those who requested them.[20]

As required by 15 U.S.C. 16(c) and the Court's Order of November 8, 2001, the United States published in the *Washington Post* (November 16–22, 2001), the *San Jose Mercury News* (November 17–23, 2001), and the *New York Times* (November 17–23, 2001) a notice complying with the requirements of that statutory provision and the Order.[21]

On November 28, 2001, the United States published procedures for submitting comments on the RPFJ. 66 FR 59,452 (2001). The 60-day public comment period (*see* 15 U.S.C. 16(d)), began the same day and ended on January 28, 2002.[22] During that period, the United States received over 30,000 public comments. *See* Joint Status Report 3–4 (Feb. 7, 2002). The United States is filing those comments and its response to them, *see* 15 U.S.C. 16(b), (d),[23] simultaneously with the filing of this Memorandum. The United States believes that it will have completed all Tunney Act procedural requirements when it publishes the public comments and its response to these comments in the manner described below in Section II.F. The United States will notify the Court when publication occurs.

B. The United States Fully Complied With All Tunney Act Requirements Regarding the CIS

The CIS filed by the United States in this case fully satisfies all Tunney Act requirements. In enacting the Tunney Act, Congress sought, among other things, "to encourage additional comment and response by providing more adequate notice [concerning a proposed consent judgment] to the public," S. Rep. No. 93–298, at 5 (1973) ("Senate Report"); H.R. Rep. No. 93–1463, at 7 (1974) ("House Report"), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538; the CIS is the primary means by which Congress sought to do so. Introducing his bill, Senator Tunney explained that the six items of information required in a CIS would "explain to the public[,] particularly those members of the public with a direct interest in the proceeding, the basic data about the decree to enable such persons to understand what is happening and make informed comments o[r] objections to the proposed decree during the 60-day period." 119 Cong. Rec. 3452 (1973) (remarks of Sen. Tunney) ("Tunney Remarks").[24] The purpose could be achieved, Senator Tunney suggested, without adding greatly to the government's workload because the six prescribed items "do not require considerably more information than the complaint, answer and consent decree themselves would provide and, therefore, would not be burdensome requirements." Senate Hearings at 3 (statement of Sen. Tunney) ("Tunney Statement").

The CIS in this case succeeded beyond all expectations in achieving the

[15] Although the United States has fully complied with each Tunney Act requirement, even substantial compliance that fulfills the purposes of the statute would suffice, for a court should "decline to read the . . ." statute as making strict technical compliance with the [Tunney Act] a condition to final entry of the decree." *United States* v. *Bechtel Corp.*, 648 F.2d 660, 664 (9th Cir. 1981).

[16] "Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the **Federal Register** at least 60 days prior to the effective date of such judgment." 15 U.S.C. 16(b).

"Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the **Federal Register**, and thereafter furnish to any person upon request, a competitive impact statement." *Id.*

[17] Section 16(b) requires that the CIS "recite":

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) The remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) A description of the procedures available for modification of such proposal; and

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

15 U.S.C. 16(b).

[18] *See* 15 U.S.C. 16(b) (materials "shall also be made available to the public at the district court and in such other districts as the court may subsequently direct"). This Court did not direct that any materials be made available at any other district court.

[19] *See supra* note 18.

[20] *See supra* note 16.

[21] Section 16(c) provides:

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) A summary of the terms of the proposal for the consent judgment,

(ii) A summary of the competitive impact statement filed under subsection (b) of this section,

(iii) And a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

15 U.S.C. 16(c). The Court designated three newspapers, including one of general circulation in the District of Columbia. Nov. 8 Order at 2.

[22] Section 16(d) provides:

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest.

15 U.S.C. 16(d). The United States treated as Tunney Act comments various communications received between the first business day following submission of the initial Proposed Final Judgment to the Court and the beginning of the statutory comment period.

[23] "Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period." 15 U.S.C. 16(b).

"At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the **Federal Register** a response to such comments." 15 U.S.C. 16(d).

[24] Senator Tunney also noted that the need to file a CIS would help to focus the parties' attention during settlement negotiations. Tunney Remarks, 119 Cong. Rec. at 3452.

congressional goal.[25] As noted above, over 30,000 public comments were submitted, a number apparently beyond the wildest imaginings of the Tunney Act's sponsor in 1973, see House Hearings at 45 (testimony of Sen. Tunney) (predicting that "in the typical case, you will have [no public comments], but perhaps you will have 10 to 15 in a highly controversial case"). Indeed, the number of comments received on the RPFJ exceed the number received in the *AT&T* case by more than an order of magnitude, *see United States* v. *AT&T*, 552 F. Supp. 131, 135 (D.D.C. 1982) ("over six hundred comments"), *aff'd mem. sub. nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); 47 FR 21,214, 21,214–24 (1982) (listing name and address of each commentor on proposed *AT&T* decree, with length of comment in pages).[26]

Although many of the comments received are unlikely to contribute new insights concerning the RPFJ,[27] approximately 2,900—a number nearly five times the total number of comments in *AT&T*—contain "a degree of detailed substance concerning the RPFJ." Joint Status Report at 4 (Feb. 7, 2002). Although the Court has only just received the full set of comments, the United States provided the Court with an advance installment of 47 of the most extensive comments on February 14, 2002. The Court therefore is aware already of substantial evidence that the public did not lack the raw material for formulating "informed comments o[r] objections to the proposed decree" (Tunney Remarks, 119 Cong. Rec. at 3452).

Having established that the CIS in this case richly fulfilled the statutory purpose, we turn to whether its content met the formal requirements of the statute. In addressing that question, we proceed through the six recitals the statute specifies, and then address additional aspects of CIS content. As the statute requires, the CIS "recite[s]':

1. "The Nature and Purpose of the Proceeding"

Section I of the CIS, CIS at 2, describes the nature and purpose of the proceeding, as the statute requires. 15 U.S.C. 16(b)(1). We are aware of no suggestion that this description is inadequate or otherwise fails to satisfy the statutory requirement.

2. "A Description of The Practices Or Events Giving Rise to the Alleged Violation Of The Antitrust Laws"

Section III of the CIS, CIS at 5–17, describes the practices giving rise to Microsoft's antitrust violation.[28] We are aware of no suggestion that this recital is inadequate or otherwise fails to satisfy the statutory requirement.

3. "An Explanation of the Proposal for a Consent Judgment, Including An Explanation of Any Unusual Circumstances Giving Rise to Such Proposal or Any Provision Contained Therein, Relief To Be Obtained Thereby, and the Anticipated Effects on Competition of Such Relief"

Section IV of the CIS, CIS 17–60, the bulk of the document, explains the proposed consent judgment, provision by provision, in considerable detail. Subsection B, CIS 24–60, links the underlying theory of violation in the case ("[c]ompetition was injured in this case principally because Microsoft's illegal conduct maintained the applications barrier to entry . . . by thwarting the success of middleware that would have assisted competing operating systems"), *id.* at 24, to the primary remedial approach adopted ("the key to the proper remedy in this case is to end Microsoft's restrictions on potentially threatening middleware [and] prevent it from hampering similar nascent threats in the future" and thereby "restore the competitive conditions created by similar middleware threats"). *Id.* The remainder of the subsection explains how particular provisions contribute to this remedial strategy, and therefore to the anticipated competitive effect of the proposed judgment. *See, e.g., id.* at 33 (explaining role of required interface disclosures in overall remedial strategy and remedial impact).

Although, as commentors point out, e.g., Comments of the Progress & Freedom Foundation on the Revised Proposed Final Judgment and the Competitive Impact Statement, 16–17 (MTC # 0030606) ("P&FF Comment"), the 40-plus-page analysis offered in the CIS is less elaborated and detailed than might be required by Executive Order for a cost/benefit analysis of a major executive branch regulatory analysis, that is irrelevant because the analysis plainly satisfies the requirements of the Tunney Act. The CIS meets the statutory requirement and provides "the basic data about the decree to enable [members of the public] to understand what is happening and make informed comments o[r] objections to the proposed decree." Tunney Remarks, 119 Cong. Rec. at 3452.[29] There has been no sign that any alleged inadequacy handicapped potential commentors. P&FF, for example, was able to reach its conclusion—with which we disagree—that the RPFJ is not an adequate remedy despite these alleged inadequacies of the CIS. The Court will have ample information to conclude that entry of the decree is in the public interest.[30]

4. "The Remedies Available to Potential Private Plaintiffs Damaged by the Alleged Violation in the Event That Such Proposal for the Consent Judgment Is Entered in Such Proceeding"

Section 6 of the CIS, CIS at 63, identifies the remedies available to private plaintiffs, with concise reference to damage actions under the federal antitrust laws, which may provide some private plaintiffs with a remedy.[31] The proposed judgment does not itself provide any remedy that can be invoked

[25] We attribute this success not only to the CIS itself, but also to the Internet's contribution to making the CIS, the RPFJ, the decisions of this Court and the Court of Appeals, and a wealth of other material readily available to the American public, far more available than mere publication in the **Federal Register** and distribution of paper copies by the United States and through this Court and other district courts would have accomplished. *See* ABA Section of Antitrust Law, Report to the Council of the Section of Antitrust Law Re: Proposed "Antitrust Procedures and Penalties Act," *reprinted in* Senate Hearings at 427,431 (citing "the minimal attention which the average citizen devotes to the daily contents of the **Federal Register**"). The United States posted the RPFJ and the CIS on the Department of Justice website; they also were (and continue to be) available to PACER account holders at the Court's website; and they therefore are instantly available at any hour of day or night to anyone in the world with an Internet connection.

[26] By contrast, the Department's 1994 consent decree with Microsoft generated only five public comments. *See* 59 FR 59,426, 59,427 (1994).

[27] As previously noted, Joint Status Report at 3 (Feb. 7, 2002), over 1,000 comments were unrelated to this case or the RPFJ, nearly 3,000 are form letters, and nearly 20,000 contain an overall view of the RPFJ but no particularized discussion of it.

[28] Considerably more detail can be found in the *Findings of Fact, Conclusions of Law*, and the Court of Appeals' opinion, all readily available on the Internet.

[29] No Executive Order governs the content of a CIS, and the Tunney Act nowhere refers to cost/benefit analysis. We are also unaware of any requirement that a court, before imposing a remedy in a case litigated to final judgment or before entering a consent judgment, either itself perform such an analysis or insist that the parties do so.

[30] For purposes of its public interest determination, the Court, of course, is not limited to the information in the CIS, but instead has available as well the trial record, the Court of Appeals' decision, the public comments, and the United States' response to public comments. And the Court can easily obtain additional information, whether by requesting it from the parties, or through the flexible procedures specified in the Tunney Act, *see* 15 U.S.C. 16(f).

[31] The CIS does not address potential remedies available under state law or the laws of foreign countries. We do not believe that the Tunney Act plausibly can be read to require this. Indeed, requiring that the United States in effect provide legal advice regarding the laws of 50 states, let alone over a hundred foreign jurisdictions, would be unreasonably burdensome, take us far outside our area of expertise, and provide little or no benefit to anyone.

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by potential private plaintiffs who may have been damaged by violations alleged in this case, and so the CIS does not refer to any such remedy. The description complies with the terms of the statute, and there is no ground for requiring more.

It has been suggested that the CIS should go into more details with respect to private remedies and, specifically,[32] that it should address any impact the RPFJ might have on the collateral estoppel effect of the findings of fact and the conclusions of law in this case, and on the prima facie evidence effect of a final judgment under the Clayton Act, *see* 15 U.S.C. 16(a). But nothing in the language of the Tunney Act requires the United States to offer, in the CIS or elsewhere, its views about legal questions that may arise in subsequent litigation.[33] The Tunney Act does not direct the United States to discuss the effect of the proposed judgment on private litigation; rather, it requires only a recital of the remedies available to private plaintiffs. The evidentiary or collateral estoppel effect of determinations this Court makes is a question to be addressed by the courts in which future litigants might seek to use those determinations. *See AT&T*, 552 F. Supp. at 211 (declining to "enter any specific decision or finding regarding" applicability of prima facie evidence aspect of 16(a) because "the ultimate decision with respect to this issue must rest with the court in which such litigation may be brought"); *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 331 (1979) (granting trial courts broad discretion to determine whether offensive collateral estoppel should be applied in matters before them). It is not a question for this Court or for the United States to determine. The United States does not seek to inject itself into private litigation by making public statements in other forums, and its views with respect to matters contested in such cases carry no determinative legal effect.

[32] This point was raised, for example, in a lawsuit filed by one commentor, the American Antitrust Institute. *American Antitrust Institute* v. *Microsoft Corp.*, No. 02–CV–0138 (CKK) (D.D.C., filed Jan. 24, 2002) ("AAI"), and in a Memorandum filed in this Court and attached to a filed comment, Comments of Relpromax Antitrust Inc., Ex. 11, at 3 (MTC # 00030631).

[33] The United States did, however, discuss related issues recently. *See* Memorandum of Plaintiff United States in Response to the California Plaintiffs' Motion for Intervention, or in the Alternative, for Leave to File a Brief Amicus Curiae in the Tunney Act Settlement Proceedings Currently Pending in this Court, at 4–8 (Feb. 11, 2002).

5. "A Description of the Procedures Available for Modification of Such Proposal"

Section VII of the CIS, CIS at 63–65, notes that the United States may withdraw its consent to the RPFJ prior to its entry and informs the public of procedures for submitting written comments regarding the RPFJ. That describes the procedure available for modifying the proposal prior to entry of the judgment, as required. The section then describes, briefly, the procedure for modifying the judgment after entry. We are aware of no suggestion that this description is inadequate or otherwise fails to satisfy the statutory requirement.

6. "A Description and Evaluation of Alternatives To Such Proposal Actually Considered by the United States"

Section V of the CIS, CIS at 60–63, describes alternatives the United States considered and rejected,[34] and indicates the reasons why they were rejected. It explains why we viewed the RPFJ as a superior alternative to continued litigation. *See id.* at 60–61. It describes why, following remand, the United States decided not to continue to seek a break-up of Microsoft, a remedy that would have required further litigation and delay and would likely not have been achieved. *See id.* at 61; *see also* pages 63–65 below. The CIS explains the reasons for differences between the interim conduct provisions of the Initial Final Judgment (vacated by the Court of Appeals) and the provisions of the RPFJ. *See id.* at 61–62; *see also* pages 66–70 below. And it lists a number of other remedy proposals, the criteria used to evaluate them, and the results of that evaluation. *Id.* at 63.

To be sure, the description and the evaluations of alternatives presented are brief.[35] But they are consistent with Senator Tunney's purpose of providing "basic data about the decree to enable [members of the public with a direct interest] to understand what is happening and make informed comments o[r] objections to the proposed decree," Tunney Remarks, 119 Cong. Rec. at 3452, and with his understanding that the statutory requirements would not be burdensome. *See* Tunney Statement, Senate Hearings at 3. Indeed, the sheer volume and comprehensiveness of the comments received suggest that the level of detail was more than adequate to stimulate informed public comment about the proposed remedy and about the relative merits of alternative remedies.

A commentor contends, in separate litigation, that the CIS is inadequate because it "failed to explain adequately how alternative remedies (those not being pursued in the [R]PFJ) would have affected competition in the marketplace." *AAI*, Complaint ¶ 19. *See also* P&FF Comment, at 15 (criticizing CIS for failing to evaluate likely impacts on competition of alternative remedies). The Tunney Act, however, does not require any explanation of how alternative remedies would have affected competition in the marketplace. That is no accident. The version of Senator Tunney's bill reported out of the Senate Committee would indeed have required that CIS recitations include "the anticipated effects on competition of such alternatives." Senate Report at 9 (proposed 15 U.S.C. 16(b)(6)). But on the Senate floor, Senator Hruska offered an amendment to strike that requirement, stating:

> There is no reason . . . to require the staff of the Antitrust Division . . . to make a public prediction as to the competitive effects of various alternatives which it has considered. It is sufficient if the various alternatives are disclosed to the court and to the public.

119 Cong. Rec. 24,604 (1973).[36] Senator Tunney agreed with the amendment's "basic intent," and the Senate adopted it by voice vote. *Id.*

7. Including Information Not Required by the Tunney Act Cannot Result in a Noncompliant CIS

Several commentors contend that the CIS is inadequate because it contains material beyond that required by the statute and the additional material is incorrect or insufficient. That some commentors wish that the CIS contained more or different material, even though not required by statute, provides no basis for concluding that the CIS is deficient. Thus, Section VIII, CIS at 65–68, provides a brief discussion of the standards courts apply in determining whether entry of a proposed consent judgment is in the public interest.

[34] As the CIS makes clear, CIS at 63, it does not describe literally every remedial proposal considered, no matter how fleetingly, and rejected. The statute does not impose such a requirement, which would be unduly burdensome and serve no useful purpose. As Senator Tunney said, the CIS ought to provide "some of the alternatives that were considered by the Department." Senate Hearings at 108 (remarks of Sen. Tunney) (emphasis added).

[35] The CIS does not document the evaluative process, as might be suitable in a technical report or an article prepared for publication in a scholarly journal of economics. Instead, the CIS reports the "result of evaluating," Webster's Third International Dictionary 786 (1981) (defining "evaluation"), together with evaluative criteria.

[36] Senator Hruska explained that "[t]hese anticipated effects quite clearly can be speculated upon by the district court considering a proposed consent judgment or by other interested parties." 119 Cong. Rec. 24,604 (1973).

Intended to provide general information to the public, *cf.* pages 35–46 below (more substantial discussion of legal standard intended for the Court), Section VIII has been the target of several commentors. *E.g.*, Comments of Software & Information Industry Association on Proposed Final Judgment, at 11 (MTC # 0030614) ("SIIA Comments") (contending that legal standard commentor finds in CIS is "simply the wrong standard of review for the remedy in *this* case"). The Court will determine the standard of review it will apply and, as discussed below, *see* pages 35–46, the appropriate standard of review corresponds to the standard expressed in the CIS. But because there is no requirement that the CIS discuss the standard of review at all, any alleged shortcomings of that discussion in the CIS are no basis for finding that the CIS fails to satisfy the statutory requirements.

Similarly, the CIS contains two sentences explaining that the United States is not filing any determinative documents in this case because there are none within the meaning of the statute. CIS at 68. One commentor has alleged, in a separate lawsuit, that the CIS is deficient because the disclosure in this discussion is inadequate, AAI Complaint ¶ 27, and in particular because that discussion does not include our "definition or interpretation" of the word "determinative," *id.* ¶ 28. Because the CIS is not required to discuss determinative documents (and the statute does not require the United States to provide an interpretation or definition of the term "determinative"), this allegation provides no basis for concluding that the CIS fails to comply with the statute.

C. The United States Fully Complied With All Tunney Act Requirements Regarding Determinative Documents

The United States did not file any determinative documents with the Court, *see* 15 U.S.C. 16(b), did not otherwise make determinative documents available to the public, and did not list any determinative documents in the required newspaper notices, *see id.* § 16(c)(iii), for one simple reason: there are no such documents in this case. Moreover, although not required to do so, we stated as much in the CIS. *See* CIS at 68.

Commentors have nevertheless, and without any basis, questioned our compliance. One commentor, without further explanation, suggests we failed to comply with the statute because "no documents considered determinative in formulating the RPFJ throughout the negotiation process were disclosed as required by 15 U.S.C. 16(b)." Relpromax Comment, Ex. 11, at 3. As noted above, another, in a separate lawsuit, challenged our failure to provide a definition of "determinative" in the CIS, implying that under the commentor's preferred definition, there were in fact determinative documents. *See* Memorandum in Support of Motion for Preliminary Injunction and Expedited Hearing at 16–19 (Jan. 31, 2002), *AAI*.

There are no "determinative" documents in this proceeding. The Court of Appeals addressed the definition of "determinative documents" in a recent Tunney Act case. *See Mass. School of Law at Andover, Inc.* v. *United States*, 118 F.3d 776 (D.C. Cir. 1997) ("MSL"). The United States had argued that the statute referred to documents "that individually had a significant impact on the government's formulation of relief—i.e., on its decision to propose or accept a particular settlement." *Id.* at 784 (quoting brief of the United States). The court concluded that the statutory language "seems to point toward the government's view . . . and confines § 16(b) at the most to documents that are either 'smoking guns' or the exculpatory opposite." *Id.* The court added that "[t]he legislative history in fact supports the government's still narrower reading." *Id.* In this case, the United States did not consider *any* document to be a "smoking gun or its exculpatory opposite" with a significant impact on our formulation of our decision regarding the RPFJ, and so there were no determinative documents.[37]

[37] In the separate lawsuit it filed, a commentor relies on the concept of determinative documents applied in *United States* v. *Central Contracting Co.*, 537 F. Supp. 571, 575 (E.D. Va. 1982), under which, even if documents are individually not determinative, they can be determinative "in the aggregate." AAI Mem. at 17 n.10. We do not believe there are determinative documents in this case even under *Central Contracting*. But in any event, *Central Contracting's* broad definition of determinative documents has not been followed by any Tunney Act court, has been squarely repudiated by one district court, *United States* v. *Alex. Brown & Sons*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996) ("*Central Contracting's* broad definition of 'determinative documents' may conflict with Congress' intent to maintain the viability of consent decrees") (cited with approval in MSL, 118 F.3d at 785), *aff'd sub nom. United States* v. *Bleznak*, 153 F.3d 16 (2d Cir. 1998), and cannot be reconciled with decisions of this Circuit and the Second Circuit. *See MSL*, 118 F.3d at 784; *Bleznak*, 153 F.3d at 20 (citing MSL and quoting "'smoking gun' or exculpatory opposite" with approval). *Central Contracting* is simply not good law in this regard.

D. The United States Fully Complied With All Tunney Act Requirements Regarding Publication of Summaries in Newspapers

As noted above, the United States published notices in three newspapers for the periods required by the Tunney Act and this Court's Order of November 8, 2001. The notice (the text of which is attached as Appendix B) contained "a summary of the terms of the proposal for the consent judgment" as required by 16 U.S.C. 16(c)(i), and "a summary of the competitive impact statement" as required by 16 U.S.C. 16(c)(ii).[38] Although required to do so by neither statute nor Order, the notice also stated where copies of the complaint, the RPFJ, and the CIS could be viewed and obtained and where comments could be sent. Because there were no determinative documents, the notice did not list them. *See* 15 U.S.C. 16(c)(iii). The United States complied with the newspaper notice requirements of the Tunney Act, and no commentor has suggested otherwise.

E. The United States Has Fully Complied With the Tunney Act Requirement That It Respond to Public Comments

The Tunney Act requires that the United States respond to public comments and file its response with the Court "[a]t the close of the period during which such comments may be received." 15 U.S.C. 16(d). The statutory language allows the United States "some additional time after the end of [the comment period] to prepare and file responses," *United States* v. *Bechtel Corp.*, 648 F.2d 660, 664 (9th Cir. 1981), and this Court allowed 30 days. Nov. 8 Order at 3. The comment period closed on January 28, 2002, and we are filing our responses with the Court, concurrently with this Memorandum, on February 27, 2002, thereby complying with the requirement.

[38] The summary of the CIS included in the notice is brief, but sufficient to serve what we understand to be its purpose. The Senate Judiciary Committee added the newspaper provision to a bill that already included **Federal Register** publication of the CIS and proposed decree. Senate Report at 1–2 (Amendment No. 5). It did so "to enhance the degree of notice afforded the public," since "[p]ublication in the **Federal Register** alone was not felt to be meaningful public notice." *Id.* at 3. The notice in this case was plainly sufficient to put the public on notice of a proposed settlement of a major antitrust case potentially of interest; of the availability of additional information concerning that settlement; and of the opportunity to comment on the proposed judgment. Whatever else may be true of *United States* v. *Microsoft*, it is surely true that the proposed settlement has been amply noticed by the public at large.

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F. The United States Will Fully Comply With the Tunney Act Requirement That It Publish the Comments and Response

In light of the Court's Memorandum and Order of February 22, 2002, denying as non-justiciable at that time the United States' Motion for Leave of Court to Adopt an Alternative Procedure for Comment Publication ("Alternative Procedure Motion"), the United States will pursue two parallel approaches to compliance with the remaining requirement of the Tunney Act, publication of the public comments and our response thereto in the **Federal Register**. Approach 1 will consist of the steps set forth in our Alternative Procedure Motion and the United States' Supplement to Prior Motion for Leave of Court to Adopt an Alternative Procedure for Comment Publication ("Supplement"), filed February 21, 2002, with one difference in timing. Even with the additional demands of simultaneously pursuing Approach 2, described below, the posting of the full text of the 32,329 public comments described in the Alternative Publication Motion [39] on the Department of Justice's website will likely be accomplished by March 4, 2002. We estimate that all of the other steps described in our Alternative Procedure Motion and Supplement will be completed by March 15, 2002. In the view of the United States, completion of these steps will constitute full, and certainly no less than substantial,[40] compliance with the statutory requirement that comments be published in the **Federal Register**, for the reasons set forth in our Alternative Procedure Motion and Supplement.[41]

Approach 2, which we will pursue in addition to and simultaneous with Approach 1, consists of publication in the **Federal Register** of the full text of the public comments. We will begin the process of publication of the comments in their entirety by providing the full text to the **Federal Register** no later than March 1, 2002; the **Federal Register** will then commence its process of preparing the text for publication.[42] We estimate that publication of the full text of the comments in the **Federal Register**, if ultimately necessary, will occur approximately six weeks after submission to the **Federal Register**.

G. The Second Revised Proposed Final Judgment Needs No Separate Round of Public Comment and Response

The Tunney Act does not require a new round of publication and comment in light of the SRPFJ. The publication and comment provisions of the Act serve "to enable the district court to make" its public interest determination. *Hyperlaw, Inc.* v. *United States*, 1998 WL 388807, at *3, 159 F.3d 636 (D.C. Cir. 1998) (unpublished table decision). Accordingly, a "court should treat notice and comment under the Tunney Act as analogous to agency rulemaking notice and comment." *Id.* (quotation marks omitted). Applying that analogy, "there is no need for successive rounds of notice and comment on each revision," provided the final decree "is a 'logical outgrowth' of the proposed decree. . . . Further notice and comment should be required only if it 'would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its [proposal].'" *Id.* (quoting *American Water Works Ass'n* v. *EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1974)).

The proposed decree as modified is a logical outgrowth of the RPFJ and so requires no further notice and comment. As explained in the United States' Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment, each of the modifications clarifies decree language in response to public comments on the RPFJ. They thus are in fact a natural outgrowth of the notice and comment process. Taken separately or together, the modifications do not fundamentally change the RPFJ. All contribute to the public interest. The purpose of the notice and comment has thus been well satisfied, and further notice and comment would merely delay the court's public interest determination without sound reason.[43]

III. The Court Must Enter the Proposed Decree if It Is Within the Reaches of the Public Interest

Courts have long applied a public interest standard in determining whether to enter an antitrust consent decree. *See, e.g., United States* v. *RCA*, 46 F. Supp. 654, 655 (D. Del. 1942) (decision to enter a consent decree "involves a determination by the chancellor that it is equitable and in the public interest"), *appeal dismissed*, 318 U.S. 796 (1943). That standard is now embodied in the Tunney Act, 15 U.S.C. 16(e) ("the court shall determine that the entry of such judgment is in the public interest" before entering it); *see AT&T*, 552 F. Supp. at 149 n.74 (Tunney Act "represents an endorsement of the morningline of cases in which courts examined proposed consent decrees to determine whether they were in the public interest"); House Report at 11, 1974 U.S.C.C.A.N. at 6542 ("Preservation of antitrust precedent, rather than innovation in the usage of the phrase, 'public interest,' is, therefore, unambiguous").

The court of appeals in *United States* v. *Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995) ("Microsoft I"), set forth the factors that a Tunney Act court's public interest determination entails. That inquiry differs fundamentally from the inquiry a court conducts in resolving, by adjudicated judgment, a dispute between the litigants before it. Regardless of the stage at which the parties resolved their disputes and reached a settlement in this case, the Court's task is to determine whether it would be in the public interest to enter that settlement as a judgment, not to devise its own remedy.

A. Whether the Proposed Decree Is Within the Reaches of the Public Interest Is Determined by the Test of Microsoft I

In determining whether the proposed decree is in the public interest, [44] a district court properly considers whether "the remedies [are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft I*, 56 F.3d at 1461. In *Microsoft I*, and again in *MSL*, 118 F.3d at 783, the D.C. Circuit explained that this inquiry entails consideration of four specific factors:

> The district court must examine the decree in light of the violations charged in the complaint and should withhold approval only [1] if any of the terms appear ambiguous, [2] if the enforcement mechanism is inadequate, [3] if third parties will be positively injured, or [4] if the decree otherwise makes "a mockery of judicial power." See [*Microsoft I*, 56 F.3d] at 1462.

MSL, 118 F.3d at 783.

The inquiry with respect to the first two factors, ambiguity and enforceability, is straightforward and governed by a reasonableness standard, not a search for perfection. As the Court of Appeals explained, "the district judge who must preside over the implementation of the decree is certainly entitled to insist on that degree of precision concerning the resolution of known issues as to make his task, in resolving subsequent disputes, reasonably manageable." *Microsoft I*, 56 F.3d at 1461–62. Similarly, the Court's consideration of the "compliance mechanisms," *id.* at 1462—*see also* 15 U.S.C. 16(e)(1) ("provisions for enforcement")—is addressed to real and foreseeable problems relating to "actual compliance." *Microsoft I*, 56 F.3d at 1462.

The third factor a Tunney Act court properly considers is whether a decree would inflict "positive injury" on third parties, *id.* at 1461 n.9, 1462. In so doing, the Court must distinguish between positive injury and injury from a decree's "mere failure to secure better remedies for a third party" for whatever reason. *MSL*, 118 F.3d at 780. The Court "should not reject an otherwise adequate remedy simply because a third party claims it could be better treated." *Microsoft I*, 56 F.3d at 1461 n.9.

The heart of a district court's public interest determination, however, is whether the proposed remedy adequately meets the requirements for an antitrust remedy, *AT&T*, 552 F. Supp. at 153, or instead whether "the discrepancy between the remedy and undisputed facts of antitrust violations could be such as to render the decree 'a mockery of judicial power,'" *MSL*, 118 F.3d at 782 (quoting *Microsoft I*, 53 F.3d at 1462). The requirements of an antitrust remedy are familiar. As the Court of Appeals noted in remanding this case:

> A remedies decree in an antitrust case must seek to "unfetter a market from anticompetitive conduct, *Ford Motor Co.[v. United States]*, 405 U.S. [562,] 577 [(1972)], to "terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future," *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 250 . . . (1968); *see also United States v. Grinnell Corp.*, 384 U.S. 563, 577 . . . (1966).
>
> 253 F.3d at 103.

As the Court of Appeals also emphasized, however, the "'[m]ere existence of an exclusionary act does not itself justify full feasible relief against the monopolist to create maximum competition.'" *id.* at 106 (quoting 3 *Antitrust Law* ¶ 650a, at 67).. Thus, in *Microsoft I*, the Court of Appeals, while noting the familiar standard that an antitrust remedy should "pry open to competition a market that has been closed by defendants' illegal restraints," 56 F.3d at 1460 (quoting *Int'l Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947)), clearly required that the scope of the appropriate remedy be related to the anticompetitive effects of the illegal conduct. Although an antitrust conduct remedy is not limited to enjoining precisely the conduct found to be unlawful, *e.g., Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 409 (1945); *AT&T*, 522 F. Supp. at 150 n.80, nevertheless "the remedies must be of the 'same type or class'" as the violations, and the court is not at liberty to enjoin 'all future violations of the antitrust laws, however, unrelated to the violations found by the court.'" *Microsoft I*, 56 F.3d at 1460. [45]

This Court's assessment of the adequacy of the RPFJ also must take into account the risks and uncertainties of further litigation that would be required before there could be an adjudicated final judgment, safe from further challenge on appeal, that would remedy the anticompetitive harm attributable to conduct found to violate the Sherman Act. The Court of Appeals explained in *Microsoft I* that it is "inappropriate for the judge to measure the remedies in the decree as if they were fashioned after trial. Remedies which appear less than vigorous may well reflect an underlying weakness in the government's case, and for the district court to assume that the allegations in the complaint have been formally made out is quite unwarranted." *Id.* at 1461. [46]

This case differs from *Microsoft I* in that there have been both findings of fact and conclusions of liability affirmed on appeal. But the difference is one of degree, not kind. Although the Court of Appeals in this case affirmed the district court's judgment of liability for monopolization, it emphasized that neither it, nor the district court, had so far found "a causal connection between Microsoft's exclusionary conduct and its continuing position in the operating systems market," 253 F.3d at 106–07, sufficient to justify structural relief (although it did not rule out the possibility that this Court would find such a connection on remand). Absent such a causal connection, the court continued, only conduct relief is justified. [47] *Id.* at 106. Moreover, the Court of Appeals vacated the district court's judgment of liability with respect to tying, *id.* at 84 (leaving open the possibility of further litigation on remand using a more demanding standard); reversed as to attempted monopolization, *id.* at 80–84; and limited the scope of the conduct found to constitute illegal monopolization, *id.* at 67 (overriding of user's choice of default browser), 71 (deals with ICPs), 75 (development and promotion of a JVM), 78 (course of conduct considered separately). The remedy ultimately imposed on remand, the court directed, "should be tailored to fit the wrong creating the occasion for the remedy." *Id.* at 107.

In the absence of a settlement, therefore, the United States would face the prospect of extended litigation with respect to the numerous issues related to relief in this case. An appeal likely would follow the conclusion of the proceedings in this Court. Microsoft also might choose to seek Supreme Court review of the Court of Appeals' decision affirming its liability for monopoly maintenance. *See* Cert. Petition at 15 (listing issues for future petition). Despite the *Findings of Fact and Conclusions of Law*, and despite the Court of Appeals' affirmance of a number of the holdings, including liability for monopolization, the ultimate outcome of continued litigation is uncertain, and the path of litigated remedy proceedings would be both risky and costly in terms of resources that might otherwise be devoted to other antitrust enforcement concerns. [48]

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[39] *See* Alternative Publication Motion at 6 (descriptions of comments to be published and of a small category of wholly unrelated or duplicate comments that will not be published).

[40] See *supra* note 15.

[41] *See* Alternative Publication Motion at 2, 9–11; Supplemental at 2–3 & n.1.

[42] During approximately the first three to four weeks of this period before publication occurs, it would still be possible to terminate the remaining publication process and save a significant portion of the total cost of full publication.

[43] Entry of a decree following modification without a new round of notice and comment is conventional in Tunney Act practice. For example, after notice and comment in *AT&T*, the court said it would enter the decree as in the public interest if the parties agreed to a number of modifications, and the Court entered the modified decree without a new round of notice and comment. *AT&T*, 552 F. Supp. at 225–26; *see also MSL*, 118 F.3d at 778.

[44] The statute lists a number of factors a court "*may* consider," 15 U.S.C. 16(e) (emphasis added); *id.* § 16(e)(1)–)2) (listing factors), but consideration of these factors is entirely discretionary. Senate Report at 6.

[45] Nor may relief in a civil antitrust case be punitive. *See United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961); *United States* v. *Oregon State Med. Soc'y*, 343 U.S. 326, 333 (1952); *United States* v. *Nat'l Lead Co.*, 332 U.S. 319, 338 (1947).

[46] Congress intended that the statutory "public interest" concept encompass "compromises made for non-substantive reasons inherent in the process of settling cases through the consent decree procedure." House Report at 12, 1974 U.S.C.C.A.N. at 6542.

[47] Among the goals of an antitrust decree are "terminat[ing] the illegal monopoly" and "deny[ing] to the defendant the fruits of its statutory violation." *Microsoft*, 253 F.3d at 103 (internal quotation omitted). But plaintiffs never alleged, and neither this Court nor the Court of Appeals found, that Microsoft *acquired* its monopoly unlawfully. *See id.* at 58 (Microsoft "violated § 2 by engaging in a variety of exclusionary acts . . . to maintain its monopoly"); *see also Microsoft I*, 56 F.3d at 1452. Thus, whether, and to what extent, Microsoft now has an "illegal monopoly" depends on whether its unlawful conduct increased or extended Microsoft's monopoly—that is, whether the fruits of its statutory violations included increments to the magnitude or duration of its market power. Again, neither the district court nor the Court of Appeals found this direct causal connection between the conduct and the continuance of the monopoly.

[48] *See* Note, *The Scope of Judicial Review of Consent Decrees under the Antitrust Procedures and Penalities Act of 1974*, 82 Mich. L. Rev. 153, 175 n. 142 (1974) ("The legislative history of the [Tunney Act] should make the courts sensitive to the efficient allocation of the Department's

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Thus, although the litigation risks the United States faces here are not identical to the litigation risks it faces when it negotiates a settlement prior to trial, the teaching of *Microsoft I* remains applicable. This Court's evaluation of the RPFJ is properly informed by the public interest in a certain and timely remedy for Microsoft's unlawful conduct and must take account of the uncertainties and risks of further litigation, an inquiry that properly respects the realistic choices the United States faced in deciding to settle the case on the negotiated terms of the RPFJ.

Moreover, in making its determination, the Court properly accords significant weight to the United States' predictive judgments as to the efficacy of remedial provisions. Indeed, such deference is proper even outside the consent decree context. *See Ford Motor Co.* v. *United States*, 405 U.S. 562, 575 (1972) ("'once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor'") (quoting *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961)). Similarly, it is proper to defer to the United States as representative of the public interest when the parties are requesting entry of an agreed-upon judgment.[49]

As the Court of Appeals has explained, the degree of deference the trial court gives to "the government's predictions as to the effect of the proposed remedies" in a Tunney Act proceeding may vary with the extent of the court's familiarity with the market and other factors, *Microsoft I*, 56 F.3d at 1461. But, as the Court of Appeals also emphasized, even a court that has extensive relevant expertise should not lightly reject the government's predictions. For example, in the case of the AT&T decree—"a decree the oversight of which had been the business of a district judge for several years," *Microsoft I* at 1460—the court of appeals instructed that the district judge should not reject an agreed-upon modification of the decree unless it had "'exceptional confidence that adverse antitrust consequences [would] result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'" *Id.* (quoting *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993)).

Indeed, if courts do not give appropriate deference to the United States' views, Tunney Act proceedings will become equivalent to the proceedings that lead to adjudicated judgments with adjudicated remedies.

B. The Court's Task in Entering a Consent Decree Differs From Adjudicating a Remedy

The fact of settlement here determines the Court's role in this proceeding and the inquiry it must make. Because the parties to this case have agreed to the Revised Proposed Final Judgment, the Court now faces a task that differs fundamentally from the task the Court of Appeals envisioned when it remanded *United States* v. *Microsoft Corp.*[50] The Court of Appeals anticipated the necessity of "a relief-specific evidentiary hearing," providing a basis for "judicial resolution" of factual issues in dispute between the United States and Microsoft—although it recognized that no such hearing would be required if the parties did not dispute the facts. *Microsoft*, 253 F.3d at 101. Moreover, anticipating continued litigation between the parties over issues related to relief, the Court of Appeals contemplated that this Court would exercise its "broad discretion to enter that relief it calculates will best remedy the conduct it has found to be unlawful," *id.* at 105, in light of its findings as to the causal connection between that conduct and the maintenance of Microsoft's market power, *id.* at 103–07. That is, the Court of Appeals envisioned that this lawsuit would terminate in an "adjudicated judgment," with the wording of that judgment "determined by the judge, who may draft it, accept the draft proposed by the winning party, or adopt portions of draft language proposed by any of the parties," *Janus Films, Inc.* v. *Miller*, 801 F.2d 578, 581–82 (2d Cir. 1986), to achieve the result the Court views as appropriate—subject to review on appeal.

The parties, however, have chosen to forgo, at least conditionally, their rights to continue litigating to an adjudicated judgment, as well as their rights to further appellate review.[51] In order to achieve a prompt and certain resolution of this case (*see* CIS at 2, 60–61), they have chosen the alternative means of terminating litigation "by agreement of the parties," *Janus Films*, 801 F.2d at 581, a choice that is clearly permissible at this stage of the litigation. *See Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 136 (1967) (government antitrust case in which the Supreme Court noted that it did "not question the authority of the Attorney General to settle suits after, as well as before, they reach here"); *see also Fifth & Walnut, Inc.* v. *Loew's Inc.*, 176 F.2d 587, 592–93 (2d Cir. 1949) (consent decrees with some defendants entered on remand, while other defendants continued to litigate, after Supreme Court affirmed liability in part and reversed in part in *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131 (1948)).[52]

In these circumstances, the parties themselves have resolved their differences, and the Court therefore does not have the classic judicial task of "[r]esolving contested disputes" of fact, law, and remedy. Maimon Schwarzschild, *Public Law by Private Bargain: Title VII Consent Decrees and the Fairness of Negotiated Institutional Reform*, 1984 Duke L.J. 887, 903 (1984). Rather, the Court's task is only to determine whether to perform the "judicial act," *United States* v. *Swift &*

resources in making their public interest determinations.")

[49] *See, e.g., United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 177 (1948); *United States* v. *Borden Corp.*, 347 U.S. 514, 518 (1954); *Bechtel*, 648 F.2d at 666.

[50] Some of the States that are plaintiffs in *New York* v. *Microsoft Corp.*, No. 98–CV–1233, have settled with Microsoft on identical terms, while others have not settled and continue to litigate. We do not address here the nature of the task the Court now faces in *New York*.

[51] More particularly, each party has conditionally abandoned the right to seek from the Court a remedy order to which the other has not agreed; each has abandoned the right to seek appellate review of the remedy order; and Microsoft has abandoned the right to seek Supreme Court review of the liability determinations and factual findings in *this* case (No. 98–1232) that were affirmed by the Court of Appeals. *See United States* v. *Armour & Co.*, 402 U.S. 673,681 (1971) (parties to a consent decree "waive their right to litigate the issues involved in the case") These abandonments are conditional, because the United States has expressly reserved the right to withdraw its consent to the RPFJ prior to entry (Stipulation ¶1 (Nov. 6, 2001)), and the consent of both parties is contingent upon the Court's approval of the RPFJ (*id.*¶2).

[52] In principle, the parties could have simply agreed between themselves on a purely contractual version of the RPFJ and terminated the litigation, without the Court's further action, by stipulation of dismissal, *see* Fed. R. Civ. P. 41(a)(1)(ii); *Janus Films*, 801 F.2d at 582; Michigan Note, 83 Mich. L. Rev. at 168n.98 (as an alternative to a consent decree, government could "settle the case by contract with the defendant"); *see also In re IBM Corp.*, 687 F.2d 591, 600–03 (2d Cir. 1982) (Tunney Act does not apply to stipulations of dismissal). That alternative was unacceptable to the United States, which insisted, for various reasons including the availability of enforcement "by citation for contempt of court," that the agreement carry "the legal force and character of a judgment entered after a trial." *Local No. 93, Int'l Ass'n of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 518 (1986); *see Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992) (consent decree "is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees."). *Cf. United States* v. *United Artists Theatre Circuit, Inc.*, 1971 Trade Cas. (CCH) ¶73,751, at 91,183 (E.D.N.Y. 1971) (in case where government sought preliminary injunction, government advised the court "that it was its policy not to accept stipulations unless 'So Ordered'").

Co., 286 U.S. 106, 115 (1932), of entering the decree proposed by the parties for entry as the Court's decree.

In cases involving only private interests, the decision to enter settling parties' agreements as judgments requires little judicial attention. *See United States* v. *City of Miami*, 614 F.2d 1322, 1330 (5th Cir. 1980) ("In what can be termed "ordinary litigation," that is, lawsuits brought by one private party against another private party that will not affect the rights of any other persons, settlement of the dispute is solely in the hands of the parties. . . . [T]he court need not and should not get involved"); *Janus Films*, 801 F.2d at 582 ("court normally has only a limited role so long as the dispute affects only private interests"). But in considering whether it "should enter a consent decree affecting the public interest," *Adams* v. *Bell*, 711 F.2d 161, 170 n.40 (D.C. Cir. 1983) (en banc), "[t]he court has a larger role." *Janus Films*, 801 F.2d at 582. Most fundamentally, the reason for that larger role is that a court of equity must avoid letting its decree become "an instrument of wrong" to the public. *Swift*, 286 U.S. at 115.[53]

The Court's role in making a public interest determination differs from its role in formulating an adjudicated judgment. Because the Court "is evaluating a settlement, it is not as free to exercise its discretion in fashioning a remedy," *AT&T*, 552 F. Supp. at 151, as it would be in a case litigated to an adjudicated judgment. The Court is not "empowered to reject [the remedies sought] merely because [it] believe[s] other remedies [are] preferable." *Microsoft I*, 56 F.3d at 1460. In this procedural setting, the Court's "function is not to determine whether the resulting array of rights and liabilities 'is the one that will best serve society,' but only to confirm that the resulting settlement is "within the *reaches* of the public interest."'" *Id.* (quoting *United States* v. *Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990) (emphasis in original), in turn quoting Bechtel, 648 F.2d at 666, in turn quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)).

This standard reflects not only the proper role of a court of equity asked to lend its authority to the parties' agreement, but also the critical role that consent decrees play in effective public antitrust enforcement. *See* Senate Report at 5 ("the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere"); 119 Cong. Rec. 24,600 (1973) (Statement of Sen. Gurney) (Tunney Act "is designed to enhance the value and effectiveness of the consent decree as a tool of public policy"). A consent decree, such as the RPFJ, is the product of negotiation. The parties weigh the benefits of prompt and certain resolution of the case against the possibility that continued litigation might improve their respective positions. Settlements potentially offer the public the benefits of more timely and certain relief, as well as significant savings in judicial and prosecutorial resources. But if courts refused to enter any consent decree that did not match precisely the relief the court would have imposed in the absence of a settlement, "defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved." *AT&T*, 552 F. Supp. at 151.

Thus, even in the *AT&T* case, a case of unparalleled public importance in which the trial court had unusual familiarity with both the evidence and the legal arguments of the parties, *see id.* at 152, the court determined to approve the parties' settlement "[i]f the [proposed] decree meets the requirements for an antitrust remedy." *Id.* at 153. The court made clear that it intended to follow that standard whether or not the proposed decree corresponded to the decree the court itself would have imposed had the parties pushed forward to an adjudicated judgment. *See id.* at 166 n.147 (noting that if the case "were to proceed to final judgment and liability were found, the Court might determine that [certain measures not part of the proposed decree] are appropriate remedies, either as alternatives to the divestiture of the Operating Companies or in addition to such divestiture").

IV. Entry of the Revised Proposed Final Judgment Is in the Public Interest

The RPFJ is a sound and appropriate response to the violations found by the district court and affirmed by the court of appeals, recognizing, as it must, the substantial narrowing of the case that has taken place since its commencement in 1998. In fashioning appropriate relief, the United States was bound to confine its remedial proposals to the sole basis of liability sustained by the Court of Appeals—*i.e.*, specific acts by Microsoft to impede the emergence of middleware as a threat to the operating system monopoly. The United States also was mindful of the risks associated with tampering too greatly with market mechanisms or seeking to dictate some preferred view of how these markets should develop. While Microsoft's violations must be redressed, the purpose of an antitrust decree is to restore and preserve competition, not to displace competition with a regulatory regime.

The RPFJ meets the goals of public antitrust enforcement. First, it prohibits the conduct found by the court of appeals to be unlawful. The RPFJ contains specific affirmative prohibitions addressing each of the 12 practices the court determined to be acts of monopoly maintenance. This being a monopolization decree, the RPFJ then goes beyond the specific unlawful acts to provide fencing-in relief to address other practices that Microsoft might use to replicate the adverse effects of the offending conduct. For example, although there was no finding that Microsoft had priced its operating systems in an unlawful manner, the RPFJ requires uniform pricing and terms to the major OEM's to prevent retaliatory discrimination against those who might promote competing middleware products. Finally, the RPFJ takes affirmative steps to restore competition by creating favorable conditions under which competing middleware products can be developed and deployed. Among other things, the RPFJ requires the documentation and disclosure of applications interfaces and communications protocols to facilitate third-party development efforts and, in some instances, modifications of the operating system to accommodate competing middleware. Again, these restorative provisions go beyond the specific findings of unlawful behavior, with the goal of creating a forward-looking and comprehensive remedial scheme. Nothing in the RPFJ exempts Microsoft from the mandates of the antitrust laws; it continues to face antitrust exposure for conduct beyond that which has been litigated in this case.

Many commentors, especially many of Microsoft's competitors, urge the Court to withhold Tunney Act approval, advocating their own views of the public interest. Although many such commentors assert that alternatives to the RPFJ might advance their own private strategic and financial interests, such proposals typically lack a foundation in the court's liability findings and likely would be harmful to both competition and consumers. The most persistent complaint is that the

[53] *Cf. United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995) (analogizing public interest determination to decision on decree modification, where "a court should not reject an agreed-upon modification unless 'it has exceptional confidence that adverse antitrust consequences will result'") (citation omitted).

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fencing-in and restorative provisions are not absolute prohibitions on competitive activity by Microsoft or absolute requirements that Microsoft surrender its technology for the benefit of competitors. Characterizing the RPFJ's limitations as "loopholes," these commentors fail to recognize that the limitations merely permit Microsoft to compete through actions that are not prohibited by the antitrust laws, were never at issue in this case, or were challenged under theories of liability expressly rejected by the court of appeals.

Protecting competitors from legitimate competition from Microsoft is not a goal of public antitrust enforcement. The goal of the decree is not to secure specific advantages for particular competitors or to dictate for consumers which products or technologies will succeed. In fashioning the RPFJ, the United States has taken pains to remedy the violations without seeking to dictate market outcomes. We have had to balance certain competing interests, recognizing that provisions benefitting firms at one level in the chain of distribution have potential effects on firms at other levels. In striking such balances, the United States has remained faithful to the axiom that the U.S. antitrust laws protect competition not competitors. *E.g., Andrx Pharms., Inc.* v. *Biovail Corp. Int'l*, 256 F.3d 799, 812 (D.C. Cir. 2001) (quoting *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977), *petition for certiorari filed*, 70 U.S.L.W. 3465 (Jan. 11, 2002), (No. 01–1050). On that basis, the United States has concluded that further fencing-in or restorative relief based upon hypothetical concerns about Microsoft's behavior not only would be unnecessary and unwarranted, but also might be affirmatively harmful to competition.

Moreover, the RPFJ bears none of the infirmities that would justify the Court's withholding of approval. *See MSL*, 118 F.3d at 783 (listing factors that would justify withholding approval); *Microsoft I*, 56 F.3d at 1462 (same). The decree is comprehensive and complex, like the computer industry itself, but its terms are carefully defined and not ambiguous.[54] The enforcement mechanisms are creative and fully adequate. *See* pages 60–62 below.[55] No third party has demonstrated positive injury that would flow from entry of the RPFJ.

A. The Revised Proposed Final Judgment Satisfies the Goals of an Antitrust Remedy and Properly Addresses All Bases of Liability Affirmed by the Court of Appeals

The Revised Proposed Final Judgment provides stringent, effective, enforceable, and immediate relief that fully comports with the purposes of relief in antitrust cases and with Microsoft's degree of liability as affirmed by the Court of Appeals. Restoring competition is the "key to the whole question of an antitrust remedy," *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961). Competition was injured in this case principally because Microsoft's illegal conduct contributed to the applications barrier to entry into the personal computer operating system market by impeding the emergence of middleware products that had the potential to assist competing operating systems in gaining access to applications and other needed complements. Thus, the key to the proper remedy in this case is to end Microsoft's restrictions on potentially threatening middleware, prevent it from hampering similar nascent threats in the future, and restore competitive conditions like those that existed prior to the unlawful conduct. Moreover, in fashioning relief, the United States, as the public enforcer of the federal antitrust laws, must take care that the remedy not burden the economy or distort market outcomes through unnecessarily regulatory or otherwise inappropriate restraints. The RPFJ responds to these concerns; it imposes a series of requirements and carefully crafted prohibitions on Microsoft's conduct that are designed to accomplish the critical goals of an antitrust remedy without damaging the economy. *See* Sibley Decl. ¶¶ 86–90.

As instructed by the Court of Appeals and this Court (see Tr. 9/28/01 at 8), the United States fashioned its relief by focusing on the specific practices for which Microsoft's liability was affirmed. Significantly, and quite properly, the RPFJ does not seek to eliminate Microsoft's operating system monopoly, see Sibley Decl. ¶ 8, though many commentors suggest it should. There was never any allegation—let alone any finding—in this case that Microsoft acquired its position in operating systems unlawfully. Further, the district court and the Court of Appeals both determined that they could not conclude that, absent Microsoft's illegal actions, any middleware product or products would have succeeded in toppling the monopoly.

In fashioning the decree, the United States began with the district court's interim conduct remedies of June 2000. See Initial Final Judgment, 97 F. Supp. 2d at 66–69. As this Court recognized (Tr. 9/28/01 at 8), however, those remedies were based on a much wider range of liability findings than were affirmed on appeal. *See Microsoft*, 253 F.3d at 105 ("[t]his court has drastically altered the District Court's conclusions on liability"). Accordingly, the conduct restrictions of the Initial Final Judgment had to be tailored to the findings the Court of Appeals upheld. At the same time, however, because the interim conduct restrictions were designed to apply only as a stop-gap until the district court's structural remedy was implemented (Initial Final Judgment, 97 F. Supp. 2d at 66), they had to be broadened to address more fully the remedial objectives of arresting the anticompetitive conduct, preventing its recurrence, and restoring competitive conditions in the marketplace. No longer merely a stop-gap, the conduct restrictions now must stand on their own as full relief.

In addition, the remedies needed to be updated to strengthen their long-term effectiveness in the face of the rapid technological innovation that continues to characterize the computer industry. The Court of Appeals noted that the six years that had elapsed between Microsoft's initial anticompetitive conduct and the appeal was an "eternity" in this market, *Microsoft*, 253 F.3d at 49 (quoted by Order at 2 (Sept. 28, 2001)), and the facts bear that out. When the complaint was filed in May 1998, Microsoft's then-current operating system was Windows 95. Shortly thereafter, Microsoft revised and updated the operating system with Windows 98, which fully integrated Internet Explorer into Windows. In October 2001, just after the case was remanded to this Court, Microsoft introduced the latest generation of its operating system, Windows XP. The remedy crafted now must be relevant in the new world of Windows XP, and beyond. The RPFJ accomplishes these objectives by fundamentally changing—for the ultimate benefit of consumers—the way Microsoft deals with OEMs, IAPs, ISVs, and others in the computer industry.

[54] For a response to commentors' claims of specific ambiguities, see Response of the United States To Public Comments on the Revised Proposed Final Judgment, *passim*, *esp.* § III (Definitions) ("Response").

[55] For a response to commentors' claims of specific shortcomings of the enforcement mechanisms of the RPFJ, see Response, § VIII (Enforcement); *see also* Declaration of David S. Sibley ("Sibley Decl.") (attached as Appendix C).

1. The RPFJ Stops the Unlawful Conduct, Prevents Its Recurrence and Restores Competitive Conditions to the Market

The Court of Appeals affirmed the district court's ruling that Microsoft unlawfully maintained its operating system monopoly through various actions designed to protect the operating system from the potential threat posed by middleware. However, the court reversed the district court's finding that Microsoft was liable based upon its general "course of conduct," and limited liability to twelve specific anticompetitive acts out of twenty found violative by the district court. The RPFJ provides consumers with prompt, certain, and effective relief by stopping each of the specific acts found unlawful by the Court of Appeals, preventing their recurrence, and restoring competitive conditions in the market.

a. Stops the Unlawful Conduct

Each of the twelve acts found unlawful by the Court of Appeals is listed below with a brief description of the specific provisions of the RPFJ that effectively address the conduct.[56]

Agreements With Computer Manufacturers (OEMs)

1. *Prohibiting removal of desktop icons, folders or Start menu entries* (*see* 253 F.3d at 61)

Section III.H.1 of the RPFJ prevents Microsoft from engaging in this conduct by allowing end users or computer manufacturers to enable or remove access to each middleware product by displaying or removing icons, shortcuts, or menus in the Microsoft operating system in the same place they are normally displayed. *See* Sibley Decl. ¶ 24.

2. *Prohibiting alteration of initial boot sequence* (*see* 253 F.3d at 61)

Section III.C.3 prohibits Microsoft from restricting OEMs from launching middleware automatically at the end of the initial boot sequence or subsequent boot sequences. **Section III.C.4** prohibits Microsoft from restricting OEMs from offering users the option of launching a non-Microsoft operating system before Windows starts up. **Section III.C.5** prohibits Microsoft from preventing OEMs from presenting their own Internet access offer in the initial boot sequence. *See* Sibley Decl. ¶ 25.

3. *Prohibiting addition of icons or folders of different shape or size* (*see* 253 F.3d at 62)

Section III.C.1 prohibits Microsoft from preventing OEMs from installing and displaying middleware on the desktop. **Section III.C.2** prohibits Microsoft from preventing OEMs from distributing or promoting middleware by placing on the desktop shortcuts of any size or shape, as long as they do not impair the functionality of the user interface. **Section III.H.3** ensures that Microsoft's operating system does not automatically override the "default" settings to replace competing middleware products without first seeking confirmation from the user. *See* Sibley Decl. ¶¶ 26, 27.

4. *Prohibiting use of "Active Desktop" to promote others' products* (*see* 253 F.3d at 62)

This specific conduct is no longer at issue because Microsoft has discontinued the use of the Active Desktop. **Sections III.C.1** and **III.C.2** nevertheless broadly restrict Microsoft from preventing OEMs from promoting rival products. *See* Sibley Decl. ¶ 28.

Binding Internet Explorer to Windows

5. *Excluding Internet Explorer from the "Add/Remove" utility* (*see* 253 F.3d at 65)

Section III.H.1 requires Microsoft to allow end users and OEMs to enable or remove access to any Microsoft middleware product. *See* Sibley Decl. ¶ 29.

6. *Commingling code to prevent removal of Internet Explorer* (*see* 253 F.3d at 64–66)

Section III.C.1 prohibits Microsoft from preventing computer manufacturers from installing and displaying rival middleware products on the desktop.

Section III.H.1 requires Microsoft to allow end users and computer manufacturers to remove access to any Microsoft middleware product. *See* Sibley Decl. ¶ 30.

Agreements With Internet Access Providers (IAPs)

7. *Placement of IAP's product on desktop in return for its agreement to exclusively promote Internet Explorer (or to limit shipments of Navigator)* (*see* 253 F.3d at 68)

Section III.G.1 prohibits Microsoft from entering into any agreement with an IAP, ICP, ISV, or OEM that grants consideration on the condition that such entity distribute, promote, use, or support any Microsoft middleware or operating system exclusively or in a fixed percentage. **Section III.G.2** prohibits Microsoft from entering into any agreement with an IAP or ICP granting placement in Windows to the IAP or ICP on the condition that it refrain from distributing, promoting, or using any product competing with Microsoft middleware. *See* Sibley Decl. ¶ 31.

Agreements With Internet Content Providers, Independent Software Vendors, and Apple

8. *Agreement with ISVs to make Internet Explorer their default hypertext-based user interface* (*see* 253 F.3d at 71–72)

Section III.F.2 forbids Microsoft from conditioning the grant of consideration on an ISV's refraining from developing, using, distributing, or promoting software that competes with Microsoft's operating system or middleware. **Section III.G.1** prohibits Microsoft from entering into any agreement with an IAP, ICP, ISV, or OEM that grants consideration on the condition that such entity distributes, promotes, uses, or supports any Microsoft middleware or operating system exclusively or in a fixed percentage. See Sibley Decl. ¶ 32.

9. *Threat to end support of Apple Computer's Office product unless Apple bundled Internet Explorer with the Macintosh operating system and made Internet Explorer the default browser* (see 253 F.3d at 73)

Sections III.F.1 and **III.F.2**, discussed above, prohibit Microsoft from retaliating against ISVs and IHVs, including Apple, for supporting competing products and from offering consideration to such entities for refraining from supporting competing products. In addition, **Section III.G.1** prohibits such exclusive arrangements. Sibley Decl. ¶ 33.

Efforts To Exclude Sun's Java

10. *Contracts requiring ISVs to exclusively promote Microsoft's Java product* (see 253 F.3d at 75)

Section III.F.2 forbids Microsoft from conditioning the grant of consideration on an ISV's refraining from developing, using, distributing, or promoting software that competes with Microsoft's operating system or middleware. **Section III.G.1** prohibits Microsoft from entering into any agreement with an IAP, ICP, ISV, or OEM that grants consideration on the condition that such entity distribute, promote, use, or support any Microsoft middleware or operating system exclusively or in a fixed percentage. See Sibley Decl. ¶ 34.

11. *Deception of Java developers about Windows-specific nature of tools distributed to them* (see 253 F.3d at 76)

Section III.D addresses this conduct by requiring Microsoft to disclose certain APIs required for competing middleware to interoperate with its operating system. This makes the means

[56] For a fuller discussion of how the Court of Appeals addressed the twenty acts found by the district court to violate Section 2, see Appendix A (attached hereto), and Sibley Decl. ¶ 16 (Table One).

by which middleware producers interoperate with the operating system more transparent, and thus hinders Microsoft's ability to disadvantage these competitors. *See* Sibley Decl. ¶ 35.

12. *Coercion of Intel to stop assisting Sun in improving its Java technology* (*see* 253 F.3d at 77)

Sections III.F.1 and **III.F.2**, discussed above, prohibit Microsoft from retaliating against ISVs and IHVs, including Intel, for supporting competing products and from offering consideration to such entities for refraining from supporting competing products. *See* Sibley Decl., ¶ 36.

Thus, the RPFJ effectively stops each of the specific acts found unlawful by the Court of Appeals. *See* Sibley Decl. ¶ 40.

b. Prevents Recurrence of Unlawful Conduct

In addition to stopping and preventing the recurrence of the specific acts found unlawful by the Court of Appeals, the RPFJ guards against the broad range of potential strategies Microsoft might develop to impede the emergence of competing middleware products. *See* Sibley Decl. ¶¶ 41–51.

Middleware Definition. The various definitions of middleware within the RPFJ (*see* "**Microsoft Middleware**" (Section VI.J), "**Microsoft Middleware Product**" (Section VI.K) "**Non-Microsoft Middleware**" (Section VI.M), and "Non-Microsoft Middleware Product" (Section IV.N)) are broad. They cover not only the middleware products addressed by the Court of Appeals—Internet browsers or Java—but also additional current middleware products, such as email client software, networked audio/video client software, and instant messaging software, as well as future middleware products not yet in existence. *See* Sibley Decl. ¶¶ 41–42. To ensure inclusion of future products, the definitions set forth an objective test for products not yet existing; the definitions are qualified, however, in recognition that not all software that exposes APIs qualifies as competitively significant "middleware." Consequently, third-party software that, like Web browsers or Java, has the potential to create a competitive threat to Microsoft's operating system monopoly, will be covered in the future.

Non-Discrimination and Non-Retaliation. **Sections III.A, III.B,** and **III.F** impose broad prohibitions and obligations on Microsoft to ensure that it cannot implement new forms of exclusionary behavior against middleware. *See* Sibley Decl. ¶¶ 41–42, 51. **Section III.A** of the RPFJ ensures that OEMs have contractual and economic freedom to make decisions about distributing and supporting non-Microsoft middleware products without fear of coercion or retaliation by Microsoft, by broadly prohibiting retaliation against a computer manufacturer that supports or distributes alternative middleware or operating systems. Because the Court of Appeals agreed with the district court's conclusion that OEMs are a crucial channel of distribution for competing products (see 253 F.3d at 60–61), it is critical that OEMs are free to choose to distribute and promote competing middleware products without interference from Microsoft. **Section III.B** strengthens Section III.A further by requiring Microsoft to provide uniform licensing terms to the twenty largest and most competitively significant OEMs. Windows license royalties and terms are inherently complex, making it easy for Microsoft to use them to coerce OEM conduct. By eliminating the opportunity for Microsoft to use license terms as a club, the provision ensures that OEMs can make their own choices. **Section III.F** prohibits Microsoft from retaliating against ISVs and IHVs or conditioning consideration on a developer's refraining from developing, distributing, or writing to software that competes with Microsoft platform software. At the same time, it allows Microsoft to enter into lawful agreements with software developers that include provisions relating to Microsoft software, as long as the provisions are limited and reasonably necessary to effectuate the bona fide contractual relationship.

c. Restores Competitive Conditions to the Market

The RPFJ restores competitive conditions to the market by requiring Microsoft to, among other things: (1) Disclose APIs and license communications protocols that will give ISVs the opportunity to match Microsoft's middleware and server software functionality; and (2) allow OEMs and end users to replace Microsoft middleware and preserve "default" settings that will ensure that Microsoft's middleware does not override the selection of competing middleware products. *See* Sibley Decl. ¶ 52 & Table Two.

APIs and Communications Protocols. **Section III.D** of the RPFJ requires Microsoft to disclose all of the interfaces and related technical information, including APIs, that Microsoft's middleware uses to interoperate with the Windows operating system. This includes APIs and other information that Microsoft has not previously disclosed. This Section creates the opportunity for ISVs, IAPs, ICPs, and OEMs to develop new middleware products that compete directly with Microsoft on a function-by-function basis, assured that their products will interoperate with the Windows operating system.

Section III.E requires Microsoft to license the communications protocols that are necessary for software located on a computer server to interoperate with the Windows operating system. This means that ISVs will have full access to, and be able to use, the protocols that are necessary for software located on a server computer to interoperate with, and fully take advantage of, the functionality provided by the Windows operating system. The competitive significance of most non-Microsoft middleware, including the browser and Java technologies—against which much of Microsoft's illegal conduct was directed—was and will continue to be highly dependant on content, data, and applications residing on servers and passing over networks (such as the Internet or corporate networks) to that middleware running on personal computers. Section III.E prevents Microsoft from incorporating into Windows features or functionality with which only its own servers can interoperate, and then refusing to make available information about those features that non-Microsoft servers need in order to have the same opportunities to interoperate with the Windows operating system. Although plaintiffs presented limited evidence about servers at trial, and no server-related violations were alleged or found, the United States believed that the RPFJ's effectiveness would be undercut unless it addressed the rapidly growing server segment of the market.

Section III.I requires Microsoft to offer the necessary related licenses of the intellectual property that are required to disclose and license under the RPFJ. Section III.I ensures that Microsoft's obligations to disclose the technical information in Sections III.D and III.E are meaningful. This Section ensures that Microsoft cannot use its intellectual property rights in such a way that undermines the competitive value of its disclosure obligations, while at the same time permitting Microsoft to take legitimate steps to prevent unauthorized use of its intellectual property.

Section III.J permits Microsoft to take certain limited acts to address security-related issues that may arise from the broad disclosures required in Sections III.D and III.E. Section III.J provides a narrow exception for disclosure of APIs and other information for disclosures that would compromise system security. *See* Sibley Decl. ¶ 65.

Power to Replace Microsoft Middleware and Preserve Defaults. **Section III.H** further ensures that OEMs will be able to offer and promote, and consumers will be able to use, competing middleware products. **Section III.H.1** requires Microsoft to allow end users and OEMs to enable or remove access to each Microsoft middleware product. Thus, all middleware products will have equal opportunity for desktop placement. **Section III.H.2** requires Microsoft to allow end users, OEMs, and Non-Microsoft Middleware Products to designate non-Microsoft middleware to be invoked in place of the Microsoft middleware. This will allow competing programs to be launched automatically, as defaults, in numerous competitively significant instances.

2. The RPFJ Contains Stringent Enforcement Mechanisms

Sections IV, V, and VII of the RPFJ contain some of the most stringent enforcement provisions ever contained in any modern consent decree. **Sections IV and VII** provide that the United States' full enforcement powers are available to enforce the judgment. As with any other decree, the United States will have prosecutorial access powers to monitor compliance, and authority to bring: (1) Both civil and criminal contempt petitions; (2) petitions for injunctive relief to halt or prevent violations; (3) motions for declaratory judgment to clarify or interpret particular provisions; and (4) motions to modify the Final Judgment, as appropriate.[57] Though not required by the RPFJ, the United States has charged a core team of lawyers and economists experienced in the software industry with enforcing the RPFJ. Section IV also provides, as the United States typically requires, that Microsoft maintain an antitrust compliance program to help ensure compliance with the RPFJ. Microsoft is required to appoint an internal compliance officer responsible for supervising the review of Microsoft's activities to determine whether they comply with the RPFJ and for ensuring that Microsoft undertakes internal notification and education responsibilities as required.

But the enforcement provisions do not stop there; rather, they contain two other, aggressive features. First, the RPFJ establishes the Technical Committee, a full-time, on-site compliance team of software design and programming experts, with the means to hire its own staff and consultants, as needed. The Technical Committee will facilitate enforcement by monitoring compliance with the RPFJ and reporting violations to the United States. Additionally, the Technical Committee is available to mediate compliance issues in a manner that will not supplant legal enforcement by the United States. This dispute resolution function reflects the recognition that the market will benefit from rapid, consensual resolution of issues, whenever possible, more so than litigation under the United States' contempt powers. Dispute resolution complements, but does not supplant, the other methods of enforcement. Furthermore, should the United States bring an enforcement action against Microsoft, it will not have to start from scratch. Rather, it will have the Technical Committee's work product, findings, and recommendations to help start any investigation.

In order to fulfill these important responsibilities, the Technical Committee will have complete access to Microsoft's records, facilities, systems, equipment, and personnel. Significantly, this includes access to Microsoft's source code and related materials, which will assist in resolving or identifying any disputes relating to Microsoft's disclosure obligations. The Technical Committee will also have the benefit of written reports and data, which Microsoft must prepare.

Second, under **Section V**, the RPFJ is scheduled to terminate in five years, but may be extended by two years if the Court finds that Microsoft has engaged in a pattern of wilful and systemic violations. The five-year duration provides sufficient time for the remedies to take effect in this evolving market and to restore competitive conditions to the greatest extent possible. And, because Microsoft will have an incentive to get out from under the RPFJ's restrictions and affirmative obligations as soon as possible, the prospect that it might face a two-year extension will provide an extra incentive to comply.

3. The RPFJ Fully Addresses the Unlawful Conduct While Avoiding an Unnecessarily Regulatory Decree That Would Distort Market Outcomes

As discussed above, the United States carefully crafted the RPFJ to fully address the conduct found unlawful by the Court of Appeals. In doing so, the United States was mindful not to implement an overly broad, unnecessarily regulatory decree that would interfere with competitive conditions in the market. As discussed more fully in the Response to Comments, many commentors seek remedies that preordain market outcomes, require extensive on-going regulation, are vulnerable to manipulation by Microsoft's rivals, or are simply crafted to weaken Microsoft as a competitor.[58] Such remedies would create inefficiencies in the market and likely result in harm to consumer welfare. *See* Sibley Decl. ¶¶ 19–21, 86–88.

B. The Revised Proposed Final Judgment Compares Favorably to the Initial Final Judgment

In the Joint Status Report filed September 20, 2001, plaintiffs informed the Court that their proposal for relief would be modeled on the conduct restrictions in the Initial Final Judgment. Joint Status Report at 2 (Sept. 20, 2001). A week later, the Court admonished plaintiffs to determine which relief was no longer appropriate given the Court of Appeals' narrowing of the underlying liability. *See* Tr. 9/28/01 at 8. Although some commentors have argued that any relief short of the Initial Final Judgment is inadequate, that is contrary to the Court's statements, as well as the Court of Appeals' ruling.

The RPFJ parallels the Initial Final Judgment in many ways, provides for greater relief in some respects, and, in light of the Court of Appeals' decision, omits some provisions. A comparison of the two decrees highlights why the RPFJ is in the public interest.

1. The Revised Proposed Final Judgment Relies on Conduct Restrictions, Rather Than Structural Relief

The most significant difference between the Initial and Revised Proposed Final Judgment is that the

[57] Of course, each Settling State also has authority to enforce the RPFJ.

[58] For example, several commentors have urged that the RPFJ require Microsoft to distribute Sun-compatible Java products with each copy of the Windows operating system shipped by Microsoft. *E.g.*, SILA Comments, at 49–51; Comments of SBC Communications, Inc. on the Proposed Final Judgment at 145 (MTC #00029411) ("SBC Comment"); ProComp Comment, Att. A, at 18–19 (Declaration of Kenneth J. Arrow) ("Arrow Decl."). This remedy would go beyond restoring the competitive conditions existing prior to Microsoft's unlawful conduct—where Sun's Java product *competed* for space on Windows—and instead preordain the market outcome by ensuring Java placement on the operating system. *See* Sibley Decl. ¶ 80. As another example, a commentor proposes that Microsoft be required to offer, at a lower price, a separate, "stripped down" version of Windows that does not include Microsoft middleware products. SBC Comment, at 48–49. However, determining the appropriate discount for each of the middleware products stripped out of Windows, including an accounting for the shared costs between multiple projects, would result in a highly regulatory pricing apparatus susceptible to further litigation. *See* Sibley Decl. ¶¶ 71–74.

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former required a break-up of Microsoft while the latter does not. *See* IFJ §§ 1–2..Shortly after remand, plaintiffs informed Microsoft and this Court that, in light of the Court of Appeals' decision, we would no longer seek to break up the company. Joint Status Report 2 (Sept. 20, 2001). Thus, even if the United States had not entered into a negotiated settlement and instead litigated a remedy, we would not have sought structural relief. Plaintiffs abandoned the effort to break up Microsoft for both legal and practical reasons.

First, although the Court of Appeals merely vacated—but did not reverse—the Initial Final Judgment, it also made clear that it viewed structural relief in this case skeptically, at best. The court questioned whether plaintiffs had "established a sufficient causal connection between Microsoft's anticompetitive conduct and its dominant position in the [operating system] market" to justify divestiture. *Microsoft*, 253 F.3d at 106. The court continued that "[a]bsent such causation, the antitrust defendant's unlawful behavior should be remedied by "an injunction against continuation of that conduct." *Id.* (quoting 3 *Antitrust Law* ¶ 650a, at 67). The court also suggested that the necessary causation might be lacking, noting that even the district court "expressly did *not* adopt the position that Microsoft would have lost its position in the [operating system] market but for its anticompetitive behavior." *Id.* at 107 (quoting *Findings of Fact*, ¶ 411) (emphasis added). Moreover, the Court of Appeals accepted Microsoft's argument that divestiture is usually reserved for "dissolution of entities formed by mergers and acquisitions," and directed this Court to "reconsider" whether "divestiture is appropriate with respect to Microsoft, which argues that it is a unitary company." *Id.* at 105. And the court emphasized that, when fashioning a new remedy, the district court should bear in mind that the Court of Appeals had "drastically" altered the basis of liability (*id.* at 105, 107) and that the new remedy should reflect the "limited ground of liability" upheld on appeal. *Id.* at 107.

Second, if plaintiffs had pursued structural relief on remand, Microsoft would have been entitled to present evidence challenging a "wide range of plaintiffs' factual representations, including the feasibility of dividing Microsoft, the likely impact on consumers, and the effect of divestiture on shareholders." *Id.* at 101. This not only would have been time consuming—both in the district court and then, assuming this Court actually ordered structural relief anew, again in the Court of Appeals—but also would have permitted Microsoft to introduce a plethora of new evidence. Foregoing a structural remedy permitted plaintiffs to speed along the remand proceedings and obtain quicker relief and relief that was more likely to be affirmed on appeal.

2. Remedying Tying Is No Longer an Objective

The Revised Proposed Final Judgment also departs significantly from the Initial Final Judgment by omitting a prohibition on tying. *See* IFJ § 3.f ("Ban on Contractual Tying"). The Court of Appeals vacated Microsoft's liability on the tying claim (*Microsoft*, 253 F.3d at 84–97), and soon thereafter plaintiffs informed Microsoft and this Court that, in light of the appellate court's decision, we would no longer pursue allegations of tying. Joint Status Report 2 (Sept. 20, 2001). Thus, even if the United States had not entered into a negotiated settlement and instead continued its litigation, we would not have pursued the tying claim. As with structural relief, plaintiffs abandoned the tying claim for both legal and practical reasons.

The Court of Appeals vacated and remanded, rather than reversed, the tying claim, but left clear instructions on what it expected on remand. See *Microsoft*, 253 F.3d at 95–97. First, plaintiffs would have to pursue the claim under the rule of reason—with its rigorous proof requirements—rather than the per se rule, which obviates many difficult problems of proof. *Id.* at 89–95. Second, plaintiffs would be required to show that Microsoft's conduct "unreasonably restrained competition . . . in the tied good market," but would be "precluded from arguing any theory of harm that depends on a precise definition of browsers or barriers to entry . . . other than what may be implicit in Microsoft's tying arrangement." *Id.* at 95. Plaintiffs considered these to be significant legal hurdles.

Of course, pursuing the tying claim on remand also would have raised many of the same practical difficulties as discussed with respect to pursuing structural relief on remand. For example, continued pursuit of tying would have delayed the remand proceedings significantly, thereby further delaying any relief for consumers. Also, Microsoft would have been entitled to introduce a whole host of new evidence relating to its claimed procompetitive justifications for its actions. Thus, the decision to abandon the tying claim was a sound exercise of prosecutorial discretion.

The United States' decision to abandon the tying claim, coupled with the Court of Appeals' decision to reject the attempted monopolization count, had a significant impact on the scope of relief the United States could obtain. The tying and attempted monopolization claims were the only two considered by the Court of Appeals that asserted a direct anticompetitive impact in the market for Web browsers. The remaining count, monopoly maintenance, asserted an anticompetitive impact in the operating system market. The only connection that Web browsers had to this claim was that they were one of the nascent middleware threats that Microsoft had impeded. Therefore, without a claim asserting a direct impact in the Web browser market, the United States' was entitled to relief that restored nascent threats like those that Web browsers had presented, not relief that addressed some broader injury in the browser market.

3. The New Conduct Restrictions Compare Favorably to Those in the Initial Final Judgment

The Revised Proposed Final Judgment is based on the interim conduct restrictions of the Initial Final Judgment of June 7, 2000.

a. Substantive Provisions Included in Both the Initial Final Judgment and the Revised Proposed Final Judgment

Both decrees prohibit Microsoft from retaliating against OEMs that support non-Microsoft products. *Compare* IFJ § 3.a.i *with* RPFJ § III.A. Both decrees also require Microsoft to license its Windows operating system products to the 20 largest OEMs on uniform terms. *Compare* IFJ § 3.a.ii, *with* RPFJ § III.B. The Initial Final Judgment also afforded OEMs flexibility in product configuration, as does the Revised Proposed Final Judgment. *Compare* IFJ § 3.a.iii, *with* RPFJ § III.C. The Initial Final Judgment also barred Microsoft from prohibiting OEMs from automatically launching a substitute user interface upon completion of the boot process (IFJ § 3.a.iii(3)), but the Court of Appeals expressly rejected this basis for liability (*Microsoft*, 253 F.3d at 63), so the Revised Proposed Final Judgment has no equivalent provision. And both decrees require Microsoft to provide OEMs and consumers the means to remove access to any Microsoft middleware that comes with Windows so that rival middleware may be substituted. *Compare* IFJ§ 3.g.i, *with* RPFJ § III.H.

Section 3.b of the Initial Final Judgment required Microsoft to disclose to ISVs and OEMs all Windows APIs necessary for interoperation, including interoperation with servers; Sections III.D and III.E of the RPFJ accomplish the same result. The Initial Final Judgment also required Microsoft to establish a "secure facility" where ISVs, OEMs, and others could "study, interrogate and interact" with the Windows source code to help ensure interoperability. *See* IFJ § 3.b. The RPFJ omits this provision, but provides for affirmative disclosure of interfaces and protocols, and empowers the Technical Committee to ensure that those disclosures are being made. *See* RPFJ § IV.B. This approach strikes the appropriate balance by ensuring that developers will have the access they need, while protecting Microsoft's intellectual property from misappropriation.

Both decrees also comprehensively address Microsoft's relations with ISVs and IHVs to ensure that developers can create or use rival software. Both decrees accomplish this objective by broadly prohibiting Microsoft from threatening or retaliating against ISVs or IHVs' actual or contemplated action to develop, use, distribute, promote, or support software that competes with Microsoft middleware or operating system software. *Compare* IFJ §§ 3.d, 3.h, *with* RPFJ § III.F. Similarly, both decrees prohibit Microsoft from entering into exclusive agreements with third parties that would require them to refrain from distributing, promoting, using, or supporting rival software. *Compare* IFJ § 3.e, *with* RPFJ § III.G.

There are also similarities with respect to enforcement of the two decrees. For example, both decrees require Microsoft to maintain an internal antitrust compliance program (*compare* IFJ § 4, *with* RPFJ § IV.C), and both give plaintiffs access to Microsoft's source code, books, correspondence, personnel, etc. and the right to require Microsoft to submit written reports under oath. *Compare* IFJ § 5, *with* RPFJ § IV.A.2.

b. The RPFJ Contains Provisions Not Included in the Initial Final Judgment

Although the Initial Final Judgment required Microsoft to disclose its APIs to facilitate interoperation (IFJ § 3.b), the RPFJ goes further by requiring Microsoft to offer the necessary related licenses for the intellectual property that Microsoft must disclose. *See* RPFJ §§ III.I.1, III.I.4. This ensures that Microsoft cannot use its intellectual property rights to undermine the competitive value of its disclosure obligations.

The RPFJ also significantly enhances enforcement of the decree as compared to the Initial Final Judgment. As previously discussed (see page 60 above), the RPFJ establishes a Technical Committee—a full-time, on-site compliance team of computer experts, complete with its own staff and the power to hire consultants—to monitor compliance with the decree, report violations to the Department, and attempt to resolve technical disputes under the disclosure provisions. RPFJ §§ IV.B.8, IV.D.4. The Technical Committee will have complete access to Microsoft's source code (RPFJ § IV.B.8.c), records, facilities, and personnel. Its dispute resolution responsibilities (RPFJ § IV.D) reflect the recognition that the market will benefit from rapid, consensual resolution of issues whenever possible, more so than litigation under the Department's contempt powers. The dispute resolution process complements, but does not supplant, ordinary methods of enforcement. Complainants may still bring their inquiries directly to the Department, and need not go first to the Technical Committee (RPFJ § IV.D.1). The Technical Committee represents an innovation in consent decrees that the United States believes will improve the speed and quality of enforcing a decree in a field as technical and fast-paced as the computer industry.

The Revised Proposed Final Judgment provides for extending the decree's duration in the event Microsoft is found to have engaged in a "pattern of willful and systematic violations" of its terms. RPFJ § V.B. This potential threat is yet another means to ensure that Microsoft will comply with all of the decree's provisions, to the ultimate benefit of consumers.

Finally, the United States updated the RPFJ in several key ways to improve the clarity of the decree and account for changes in the industry since the IFJ was proposed. First, the RPFJ contains a new provision in Section III.H.3 that prohibits Microsoft from designing Windows to automatically alter an OEMs middleware configurations on the desktop without first seeking confirmation from the user no sooner than 14 days after the consumer has first booted the computer. This provision was included in response to Microsoft's inclusion of the Clean Desktop Wizard product in Windows XP that "sweeps" the unused icons that the OEM has chosen to place on the desktop. Second, the definition of middleware products in the RPFJ was updated by including the actual names of the current Microsoft middleware products—Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger and Outlook Express. (RPFJ § VI.K). This significantly improves the clarity of the decree because the IFJ had not explicitly indicated which current Microsoft products constituted middleware. The RPFJ's middleware definitions were also updated to account for the increased emphasis on downloading as a distribution mechanism in the market.

C. The Revised Proposed Final Judgment Creates Competitive Conditions

There can be no guarantee that consumers and industry participants will prefer rival middleware over Microsoft's software, or that rival middleware will ever displace—or facilitate the displacement of—Microsoft's monopoly position, but the RPFJ restores competitive conditions that foster such threats. Indeed, even the district court, in its extensive findings of fact and conclusions of law, expressly disclaimed the conclusion that but for Microsoft's anticompetitive acts, Netscape's browser and/or Sun's Java technologies necessarily would have eroded Microsoft's monopoly position. *See Findings of Fact*, ¶411; *Microsoft*, 253 F.3d at 107. Thus, consistent with the antitrust laws, the RPFJ refrains from picking winners and losers, and sticks to restoring the competitive conditions. Consumers benefit from competition, and the goal of the antitrust laws is to protect it, not weight it to a particular result.

V. The Court Should Make Its Public Interest Determination and Enter the Decree as Expeditiously as Possible

Time is of the essence. When the Court five months ago ordered the parties to "expend and concentrate all of their resources upon resolving these cases through a fair settlement for all parties," Order at 2 (Sept. 28, 2001), the Court recognized:

> The claims by Plaintiffs of anticompetitive conduct by Microsoft arose over six years ago, and these cases have been litigated in the trial and appellate court for over four years. As the Court of Appeals has noted, the relevant time frame for this dispute spans "an eternity in the computer industry."

Order at 2 (Sept. 28, 2001). The public has waited long enough. The Court should make a determination that entry of the proposed final judgment is in the public interest, and then enter it as expeditiously as possible.

A. The Court Should Not Hold an Evidentiary Hearing

As the Court has recognized, the Tunney Act does not require an

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evidentiary hearing as part of this proceeding,[59] Tr. at 20 (Feb. 8, 2002), although the Court left open the possibility that it will decide to hold one. *Id.* at 20–21. The question lies within the Court's sound discretion, guided by the principle that "the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible." Senate Report at 6; *accord* House Report at 8.

In our view, at the conclusion of the one- or two-day hearing the Court has ordered, Order (Feb. 15, 2002); *see* Tr. 2/15/02 at 5, at which the Court is considering allowing oral argument by third parties, *id.* at 9, the Court will have more than ample information on which to base its public interest determination. The Court should not hold an evidentiary hearing.

First, the very length and size of this case, to which some commentors point as justification for an evidentiary hearing, actually show that there is no need for one. The Court already has available to it a massive trial record—including testimony and thousands of exhibits—plus tens of thousands of comments (some including affidavits, technical reports, and other evidentiary presentations) submitted as part of the Tunney Act process. This record contains extensive information about the competitive structure of the industry and myriad other matters relevant to the public interest determination. Little if anything more would be learned from live witnesses and cross-examination than is already known from the record, comments, and the United States' responses to the comments.[60]

Second, the most analogous precedent, *AT&T*, does not support an evidentiary hearing. In that case, considering the entry of a decree that would massively restructure the entire telecommunications industry, Judge Greene held two days of hearings, permitting some organizations to "present[] oral argument" *AT&T*, 552 F. Supp. at 147 n.65. But the court "concluded that none of the issues before it require[d] an evidentiary hearing. That being so, there [was] obviously no need, nor indeed any occasion, for the presentation by a third party of its own witnesses or for the cross-examination of adverse witnesses." *Id.* at 219. *See also id.* at 188 n.233 (rejecting contention that "the Court should not assess the propriety of the restrictions without holding evidentiary hearings with regard to the need therefor").[61]

Third, it is clear that much of the impetus behind the call for an evidentiary hearing comes from commentors who want that hearing to inquire into the Department of Justice's decision to enter into a settlement. The drive to challenge the propriety of prosecutorial decisions provides no warrant for an evidentiary hearing, because "the district court is not empowered to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself." *Microsoft I*, 56 F.3d at 1459. *See also Maryland* v. *United States*, 460 U.S. 1001, 1005–06 (1983) (Rehnquist, J., dissenting) (considerations that led the Department of Justice to settle are not amenable to judicial review).

Fourth, an evidentiary hearing would further complicate the Tunney Act process and invite unwarranted delay in entering the RPFJ. Given the number of commentors and persons interested in participating in the Tunney Act process, it could prove difficult to manage an evidentiary hearing equitably without causing substantial delay. The public interest in achieving a prompt resolution of this case and rapid implementation of remedies[62] should not be frustrated absent a showing of very good cause.

B. The Court Should Not Delay Entry of the Decree Pending the Remedies Hearing in New York v. Microsoft

The remedies hearing in *New York* v. *Microsoft Corp.*, No. 98–CV–1233, is currently scheduled to begin on March 11, 2002. Some commentors have suggested that the Court delay its public interest determination in this case pending the results of that hearing, evidently so that the record, and perhaps the Court's adjudicated judgment, in *New York* can be imported into this Tunney Act proceeding. The suggestion that the Court link the two proceedings in this manner is legally flawed and ill-advised. Were the Court to follow the suggestion, it would undermine the foundations of the Tunney Act, bring into question the authority of the Department of Justice to settle lawsuits, threaten the viability of the consent decree as a tool of antitrust enforcement, and risk serious damage to federal/state cooperation in the prosecution of antitrust cases. It would be an unfortunate precedent for this Court to set.

1. Linking This Case to the Remedies Hearing in *New York* Would Be Bad Law and Bad Policy

Linking this case to the remedies hearing, and outcome, in *New York* would transform the nature of this proceeding in ways Congress did not intend and the law does not countenance. The Tunney Act establishes a complete framework for review and entry of a consent decree in a civil antitrust suit brought by the United States, a framework that does not encompass separate litigation brought by other plaintiffs. The Court's role in this case is to determine whether the judicial act of entering a proposed decree arrived at by agreement of the parties is "within the reaches of the public interest." *Microsoft I*, 56 F.3d at 1458 (quotation marks and emphasis omitted). In contrast, the role of the Court in *New York* is that of judicially resolving disputes between the parties—according to the applicable evidentiary standard—and ultimately imposing an adjudicated judgment. The Court's ability to play different roles in the two cases is not in doubt. But the Tunney Act does not provide for mixing those roles.

To the extent the Court delays this proceeding so as to rely on the *New York* record or result, the Court brings

[59] The various materials the Tunney Act does require, *see* 15 U.S.C. 16(b), together with any record created prior to settlement, will usually suffice. *See United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) ("Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); Senate Hearings at 152–53 (testimony of Hon. J. Skelly Wright) ("an experienced judge, who does have the facility of getting to the point and getting others to get to the point, can arrive at a public interest determination in most cases without using" additional tools); Senate Report at 6 ("[w]here the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized"). Even absent a settlement, no evidentiary hearing on relief is required where there are "no disputed factual issues regarding the matter of relief." *Microsoft*, 253 F.3d at 101.

[60] For example, commentor ProComp submitted a lengthy declaration from Professor Arrow, Arrow Decl., in opposition to the RPFJ, but fails to identify, in either its comments, ProComp Comment, or its filed memorandum, ProComp's Memorandum in Support of Its Motion for Limited Intervention or Tunney Act Participation (Feb. 7, 2002), anything specific that Professor Arrow would say at an evidentiary hearing beyond what already appears in his declaration. *Cf. American Can Co.* v. *Mansukhani* 814 F.2d 421, 425 (7th Cir. 1987) (defendants not entitled to a hearing on remedies because they failed "to explain to the district court what new proof they would present to show" that the proposed remedy was unwarranted).

[61] Judge Greene also denied all motions to intervene prior to the court's public interest determination. *AT&T*, 552 F. Supp. at 146 & n.61.

[62] Although Microsoft has agreed to be bound by much of the RPFJ pending its entry (Stipulation ¶ 2 (Nov. 6, 2001)), some important provisions become effective only after entry. *See, e.g.*, RPFJ § IV.B (Technical Committee must be created "[w]ithin 30 days of entry of this Final Judgment"); *id*, § IV.C (Microsoft's internal compliance program begins "within 30 days of entry").

adversary litigation, with all that entails, into the Tunney Act process, which is intended to be something quite different. The Tunney Act, intended "to encourage[] settlement by consent decrees as part of the legal policies expressed in the antitrust laws," *United States* v. *Alex. Brown & Sons*, 963 F. Supp. 235, 238–39 (S.D.N.Y. 1997) (quoting House Report at 6, 1974 U.S.C.C.A.N. at 6537), *aff'd sub nom. United States* v. *Bleznak*, 153 F.3d 16 (2d Cir. 1998), would become the continuation of litigation by other means.

Linking the two proceedings would also leave the United States with two equally improper alternatives. Either the United States would have to participate, through intervention or other means, in litigation in *New York* (where it is too late to participate in remedy-phase discovery), or if not, it would have to let the outcome of its own case turn on a litigation record to which it is a stranger. Each alternative effectively deprives the United States of its ability to resolve a case by consent decree. Each deprives the Department of Justice of its authority to settle cases, Supreme Court precedent to the contrary notwithstanding, *see Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 136 (1967) (Court does "not question the authority of the Attorney General to settle suits after, as well as before, they reach here"), because the case effectively continues in full litigation despite the settlement agreed to by the parties. The only difference between the alternatives left to the government is that the first continues to draw upon the resources a settlement should have freed up for use in other antitrust enforcement as the price of continued influence over the outcome of the government's own case, while the second provides a resource savings, but at the cost of that very influence.

Both the United States and antitrust defendants would have a substantially reduced incentive to settle cases at all if Tunney Act proceedings could be linked to other litigation. Why settle, if the entry of judgment in the "settled" case could be delayed pending the outcome of parallel litigation that remains unsettled, and if the result in the "settled" litigation could depend on what happens in the remaining litigation? That result may satisfy those who think government antitrust cases in general, or at least this government antitrust case in particular, should not be settled, but it is inconsistent with the Tunney Act policy favoring settlement as a viable tool in the antitrust enforcement arsenal.

The possibility of this linking comes about here only because the United States, 20 States, and the District of Columbia joined forces in a cooperative effort to challenge anticompetitive conduct by a monopolist. This case and *New York* were consolidated for all purposes, and the plaintiffs worked closely to bring the matter to a successful resolution.[63] Last November, the remaining plaintiffs reached a point where they could not all agree on the next step; the United States and nine States settled with Microsoft, while the other nine plaintiff States (including the District of Columbia) chose to continue litigating. If that fact means, as a result of linkage between the remedy phase of *New York* and this Tunney Act proceeding, that the United States effectively has been prevented from settling its own lawsuit, the United States surely will view the prospect of future such collaborative enforcement efforts in a less favorable light. Such a result would be exceedingly unfortunate for the future of antitrust enforcement.

Finally, of course, linkage inevitably would delay entry of a final judgment, thereby further thwarting the public interest in prompt resolution of this case. *Cf. AT&T*, 552 F. Supp. at 213 (deferring approval of the proposed decree "would be unfair to the parties and to the public;" delay "can only multiply the costs of uncertainty that have plagued the industry far too long").

2. The Claimed Benefits of Linkage Are Illusory

Perhaps these costs of linkage would be acceptable if the gains to be had were substantial. They are not.

Some argue that delaying this proceeding until after the remedies phase of *New York* will avoid the risk that the Court will prejudge that remedies phase by its determination here. But that risk is trivial. What the two cases share is one defendant (Microsoft), and a common record as of November 6, 2001. Two things principally set them apart. One is their different records from November 6 forward. The other, more important, distinction is that the Court faces two radically different tasks and addresses two radically different questions in the two proceedings. *See* pages 42–46, above. The Court's task here is to determine whether entry of a negotiated settlement is in the public interest according to a deferential standard of review; its task in *New York* is to enter an adjudicated judgment, perhaps devised by the Court itself, that the Court, in the exercise of its "broad discretion . . . [,] calculates will best remedy the conduct it has found to be unlawful," *Microsoft*, 253 F.3d at 105, in light of the facts proven before it. The risk that its determination here would lead the Court to prejudge the result in *New York* is therefore minuscule.

Some also suggest that delay here until a remedy is determined by adjudication in *New York* will avoid the risk of inconsistent remedies in the two cases. This risk, too, is small. Although it is quite possible that the remedy in *New York* might impose on Microsoft requirements not imposed here, or not impose on Microsoft requirements that are imposed here, that possibility need not give rise to inconsistency. Only if the two remedies actually conflict—for example, one remedy requires Microsoft to do something the other prohibits, or one remedy requires Microsoft to provide access to a facility the other takes away from Microsoft—is there a troubling inconsistency. There is no reason to expect such an inconsistency to arise, especially given that the Court will be well aware of the specific terms of the RPFJ when it eventually enters judgment in *New York*. If an inconsistency does arise, however, there are ample means to deal with it. *See, e.g.*, RPFJ § VII (Court retains jurisdiction to modify decree).

Finally, some have suggested that delaying the proceedings here would conserve judicial resources. But apart from study of the existing record, which is necessary for both cases, judicial resources in the two proceedings will be devoted primarily to the remedies trial in *New York* and to the review of the public comments and the United States' response in this matter. The Court could not properly reduce the resources it devotes to these two tasks whatever the sequence of the two proceedings. Moreover, the Tunney Act provides the Court broad latitude to streamline its review process, 15 U.S.C. § 16(f). Linking that review to separate litigation makes the Tunney Act review dependent on trials or hearings that are far less flexible, which can only complicate and delay the Tunney Act review.

Conclusion

The proposed final judgment satisfies all of the requirements of an antitrust remedy, complies with the decision of the court of appeals, and, most importantly, is in the public interest. Accordingly, the Court should enter the decree as soon as possible.

[63] Had the plaintiffs not embarked on this creative collaboration, it is highly unlikely that two cases against Microsoft would have gone forward, parallel but separate, with each reaching more or less the same result at more or less the same time.

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Dated: February 27, 2002.
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Appendix A to Memorandum in Support of Entry of Proposed Judgment

Comparison of Court of Appeals' Findings on Liability toProvisions of the Revised Proposed Final Judgment

I. Liability Findings Affirmed by the Court of Appeals

Agreements with Computer Manufacturers ("OEMs")

1. Microsoft prohibited OEMs from removing any desktop icons, folders, or "Start" menu entries, thereby "thwart[ing] the distribution of a rival browser by preventing OEMs from removing visible means of user access to IE." *United States* v. *Microsoft Corp.*, 253 F.3d 34, 61, 64 (D.C. Cir. 2001).

RPFJ Provisions:

• **Section III.H.1** requires Microsoft to "[a]llow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product . . . The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access . . . and altering default invocations . . . with regard to each such Microsoft Middleware Product . . . ."

2. Microsoft prohibited OEMs from "modifying the initial boot sequence . . ., thus prevent[ing] OEMs from using that process to promote the services of IAPs. . . ." 253 F.3d at 61–62, 64.

RPFJ Provisions:

• **Section III.C.3** prohibits Microsoft from restricting OEMs from "[l]aunching automatically, at the conclusion of the initial boot sequence or subsequent boot sequences, or upon connections to or disconnections from the Internet, any Non-Microsoft Middleware . . . ."

• **Section III.C.4** prohibits Microsoft from restricting OEMs from "[o]ffering users the option of launching other Operating Systems . . . or a non-Microsoft boot-loader or similar program. . . ."

• **Section III.C.5** prohibits Microsoft from restricting OEMs from "[p]resenting in the initial boot sequence its own IAP offer . . . ."

3. Microsoft prohibited OEMs from "adding icons or folders different in size or shape from those supplied by Microsoft," thereby preventing OEMs from "promot[ing] rival browsers, which keeps developers focused upon the APIs in Windows." 253 F.3d at 62, 64.

RPFJ Provisions:

• **Section III.C.1** prohibits Microsoft from restricting OEMs from "[i]nstalling, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware . . . on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed . . . ."

• **Section III.C.2** prohibits Microsoft from restricting OEMs from "[d]istributing or promoting Non-Microsoft Middleware by installing and displaying on the desktop shortcuts of any size or shape . . . ."

• **Section III.H.3** requires Microsoft to "[e]nsure that a Windows Operating System Product does not (a) automatically alter an OEM's configuration of icons, shortcuts or menu entries . . . pursuant to Section III.C of this Final Judgment without first seeking confirmation from the user and (b) seek such confirmation . . . until 14 days after the initial boot up of a new Personal Computer . . . ."

4. Microsoft prohibited OEMs from "using the 'Active Desktop' feature to promote third-party brands," thereby preventing OEMs from "promot[ing] rival browsers, which keeps developers focused upon the APIs in Windows." 253 F.3d at 62, 64.

RPFJ Provisions:

• **Section III.C.1** prohibits Microsoft from restricting OEMs from "[i]nstalling, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware . . . on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed . . . ."

• **Section III.C.2** prohibits Microsoft from restricting OEMs from "[d]istributing or promoting Non-Microsoft Middleware by installing and displaying on the desktop shortcuts of any size or shape . . . ."

Binding of Internet Explorer to Windows

5. Microsoft excluded IE from the "Add/Remove Programs" utility, thereby "reduc[ing] the usage share of rival browsers not by making Microsoft's own browser more attractive to consumers but, rather, by discouraging OEMs from distributing rival products." 253 F.3d at 65, 67.

RPFJ Provisions:

• **Section III.H.1** requires Microsoft to "[a]llow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product . . .. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access . . . and altering default invocations . . . with regard to each such Microsoft Middleware Product. . . ."

6. Microsoft "'plac[ed] code specific to Web browsing in the same files as code that provided operating system functions'" (253 F.3d at 65 (quoting *Findings of Fact* ¶ 161)), thus "deter[ring] OEMs from pre-installing rival browsers, thereby reducing the rivals' usage share and, hence, developers' interest in rivals' APIs as an alternative to the API set exposed by Microsoft's operating system." 253 F.3d at 66.

RPFJ Provisions:

• **Section III.C.1** prohibits Microsoft from restricting OEMs from "[i]nstalling, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware . . . on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed . . . ."

• **Section III.H.1** requires Microsoft to "[a]llow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product . . .. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access . . . and altering default invocations . . . with regard to each such Microsoft Middleware Product . . . ."

Agreements With Internet Access Providers ("IAPs")

7. Microsoft "agreed to provide easy access to IAPs" services from the Windows desktop in return for the IAPs' agreement to promote IE exclusively and to keep shipments of internet access software using Navigator under a specific percentage, typically 25%." 253 F.3d at 68. Such agreements ensure "that the "majority" of all IAP subscribers are offered IE either as the default browser or as the only browser. . . . ." *Id.* at 71.

RPFJ Provisions:

• **Section III.G.1** prohibits Microsoft from entering into any agreement with "any IAP, ICP, ISV, IHV, or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software . . . ."

• **Section III.G.2** prohibits Microsoft from entering into any agreement with "any IAP or ICP that grants placement on the desktop or elsewhere in any Windows Operating System Product to that IAP or ICP on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware."

Agreements With Internet Content Providers ("ICPs"), Independent Software Vendors ("ISVs") and Apple

8. In dozens of "First Wave" agreements, Microsoft "'promised to give preferential support, in the form of early Windows 98 and Windows NT betas, other technical information, and the right to use certain Microsoft seals of approval, to important ISVs that agree to certain conditions. One of these conditions is that the ISVs use Internet Explorer as the default browsing software for any software they develop with a hypertext-based user interface.'" 253 F.3d at 71–72 (quoting *Findings of Fact* ¶339). In so doing, Microsoft kept "rival browsers from gaining widespread distribution (and potentially attracting the attention of developers away from the APIs in Windows) . . . ." *Id.* at 72.

RPFJ Provisions:

• **Section III.F.2** prohibits Microsoft from "condition[ing] the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software. . . ."

• **Section III.G.1** prohibits Microsoft from entering into any agreement with "any IAP, ICP, ISV, IHV, or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software . . . ."

9. Microsoft agreed to continue development of Mac Office, a suite of business productivity applications needed by Apple, only when Apple agreed to make Internet Explorer the default browser on Apple's operating system and to refrain from positioning icons for non-Microsoft browsing software on the desktop of new Apple Macintosh computers or Mac OS upgrades. 253 F.3d at 73. "Microsoft's exclusive contract with Apple has a substantial effect in restricting distribution of rival browsers . . . ." *Id.* at 73–74.

RPFJ Provisions:

• **Section III.F.1** prohibits Microsoft from retaliating against any ISV or IHV because of that ISV's or IHV's "developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software."

• **Section III.F.2** prohibits Microsoft from "condition[ing] the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software. . . ."

• **Section III.G. 1.** prohibits Microsoft from entering into any agreement with "any IAP, ICP, ISV, IHV, or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software . . . ."

Efforts to Exclude Sun's Java

10. In dozens of "First Wave" agreements with ISVs, Microsoft "conditioned receipt of Windows technical information upon the ISVs" agreement to promote Microsoft's JVM [Java Virtual Machine] exclusively. . . ." 253 F.3d at 75. Such agreements "foreclosed a substantial portion of the field for JVM distribution and . . ., in so doing, they protected Microsoft's monopoly from a middleware threat . . . ." *Id.* at 76.

RPFJ Provisions:

• **Section III.F.2** prohibits Microsoft from "condition[ing] the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software. . . ."

• **Section III.G.1** prohibits Microsoft from entering into any agreement with "any IAP, ICP, ISV, IHV, or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software . . . ."

11. Microsoft "deceived Java developers regarding the Windows-specific nature" of Microsoft's Java software development tools. Thus, "developers who relied upon Microsoft's public commitment to cooperate with Sun and who used Microsoft's tools to develop what Microsoft led them to believe were cross-platform applications ended up producing applications that would run only on the Windows operating system." 253 F.3d at 76.

RPFJ Provisions:

• **Section III.D** requires Microsoft to disclose to all ISVs "the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product."

12. Microsoft threatened Intel, which was developing a high-performance cross-platform Windows-compatible JVM, that if Intel "did not stop aiding Sun on the multimedia front, then Microsoft would refuse to distribute Intel technologies bundled with Windows." 253 F.3d at 77.

RPFJ Provisions:

• **Section III.F.1** prohibits Microsoft from retaliating against any ISV because of that ISV's "developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software."

• **Section III.F.2** prohibits Microsoft from "condition[ing] the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software . . . ."

II. Liability Findings Rejected by the Court of Appeals

1. Microsoft prohibited OEMs from "causing any user interface other than the Windows desktop to launch automatically." 253 F.3d at 62. The court of appeals found that this restriction had an anticompetitive effect (*id.*), but does *not* violate Section 2 because "a shell that automatically prevents the Windows desktop from ever being seen by the user is a drastic alteration of Microsoft's copyrighted work, and outweighs the marginal anticompetitive effect of prohibiting the OEMs from substituting a different interface automatically upon

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completion of the initial boot process." *Id.* at 63.

2. Microsoft designed Windows 98 to "override the user's choice of a default browser in certain circumstances." 253 F.3d at 67. The court of appeals found that plaintiffs had failed to rebut Microsoft's proffered technical justification that such overriding was necessary in a "few" circumstances, e.g., invoking the Windows 98 Help system, Windows Update feature, or accessing the Internet through "My Computer" or "Windows Explorer." *Id.*

3. Microsoft offered Internet Explorer free of charge to IAPs and ISVs. The court of appeals held that "the antitrust laws do not condemn even a monopolist for offering its product at an attractive price, and we therefore have no warrant to condemn Microsoft for offering . . . IE . . . free of charge or even at a negative price." 253 F.3d at 68 (giving IE to IAPs); *see also id.* at 75 (giving IE to ISVs).

4. Microsoft offered "IAPs a bounty for each customer the IAP signs up for service using the IE browser." 253 F.3d at 67. The court of appeals held that "the antitrust laws do not condemn even a monopolist for offering its product at an attractive price, and we therefore have no warrant to condemn Microsoft for offering . . . IE . . . free of charge or even at a negative price." *Id.* at 68.

5. Microsoft developed the IE Access Kit (IEAK), a "software package that allows an IAP to 'create a distinctive identity for its service in as little as a few hours by customizing the [IE] title bar, icon, start and search pages,'" and offered the IEAK to IAPs for free. 253 F.3d at 68 (quoting *Findings of Fact* ¶ 249). The court of appeals held that "the antitrust laws do not condemn even a monopolist for offering its product at an attractive price, and we therefore have no warrant to condemn Microsoft for offering . . . the IEAK . . . free of charge or even at a negative price." *Id.*

6. Microsoft entered into exclusive dealings with ICPs, which develop websites, in exchange for the ICPs' agreement to distribute, promote, and rely on IE rather than Netscape's Navigator browser. 253 F.3d at 71. The court of appeals found that "plaintiffs failed to demonstrate that Microsoft's deals with the ICPs have a substantial effect upon competition. . . ." *Id.*

7. Microsoft developed a JVM that "allows Java applications to run faster on Windows than does Sun's JVM, . . . but a Java application designed to work with Microsoft's JVM does not work with Sun's JVM and vice versa." 253 F.3d at 74. The court of appeals held that "a monopolist does not violate the antitrust laws simply by developing a product that is incompatible with those of its rivals." *Id.* at 75.

8. The court of appeals reversed the district court's finding that Microsoft was liable based on its "general 'course of conduct'" apart from specific acts that violated Section 2. 253 F.3d at 78.

Appendix B to Memorandum in Support of Entry of Proposed Judgment

United States v. Microsoft Corp. — NEWSPAPER NOTICE; Department of Justice, Antitrust Division

Take notice that a revised proposed Final Judgment as to Microsoft Corporation has been filed in a civil antitrust case, *United States of America v. Microsoft Corporation,* Civil No. 98–1232. On May 18, 1998, the United States filed a Complaint alleging that Microsoft, the world's largest supplier of computer software for personal computers, restrained competition in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1–2. Following a 78-day trial in late 1998 and early 1999, the United States District Court for the District of Columbia found that Microsoft had violated both Sections 1 and 2 of the Sherman Act. On appeal, the United States Court of Appeals for the District of Columbia unanimously affirmed portions of the district court's finding and conclusion that Microsoft illegally maintained its operating system monopoly in violation of Section 2 of the Sherman Act, but reversed and remanded other portions of the district court's determinations. Specifically, the court of appeals reversed the district court's determination that Microsoft violated Section 2 by illegally attempting to monopolize the Internet browser market and remanded the district court's determination that Microsoft violated Section 1 of the Sherman Act by unlawfully tying its browser to its operating system. The court of appeals also vacated the district court's remedial order, including its order that Microsoft be split into separate operating systems and applications businesses, and remanded the case to a new district court judge for further proceedings. Following intensive mediation efforts, the United States and Microsoft subsequently reached the agreement embodied in the revised proposed Final Judgment, which would impose injunctive relief to enjoin continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the court of appeals.

The revised proposed Final Judgment, filed November 6, 2001, will stop recurrence of Microsoft's unlawful conduct, prevent recurrence of similar conduct in the future and restore competitive conditions in the personal computer operating system market by, among other things, prohibiting actions by Microsoft to prevent computer manufacturers and others from developing, distributing or featuring middleware products that are threats to Microsoft's operating system monopoly; creating the opportunity for independent software vendors to develop products that will be competitive with Microsoft's middleware products; requiring Microsoft to disclose interfaces in order to ensure that competing middleware and server software can interoperate with Microsoft's operating systems; ensuring full compliance with the revised proposed Final Judgment; and providing for swift resolution of technical disputes. A Competitive Impact Statement has been filed by the United States describing the Complaint, the revised proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, revised proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530 (please call 202–514–2481, for appointments only), on the Department of Justice Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Interested persons may address comments to Renata Hesse, Trial Attorney, Suite 1200, Antitrust Division, Department of Justice, 601 D Street, NW., Washington, DC 20530; (facsimile) 202–616–9937 or 202–307–1454; or (e-mail) *microsoft.atr@usdoj.gov* within 60 days of the date of publication of the revised proposed Final Judgment and Competitive Impact Statement in the **Federal Register**. While comments may also be sent by regular mail, in light of recent events affecting the delivery of all types of mail to the Department of Justice, including U.S. Postal Service and other commercial delivery services, and current uncertainties concerning when the timely delivery of this mail may resume, the Department strongly encourages, whenever possible, that comments be submitted via e-mail or facsimile.

Appendix C to Memorandum in Support of Entry of Proposed Judgment

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant; Declaration of David S. Sibley.

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002; Tunney Act Hearing.

I. Qualifications and Introduction

1. My name is David S. Sibley. I am the John Michael Stuart Centennial Professor of Economics at the University of Texas at Austin. I received the degree of B.A. in Economics from Stanford University in 1969 and a Ph.D. in Economics from Yale University in 1973. In addition to my current teaching responsibilities, I have taught graduate level courses in economics at the University of Pennsylvania and Princeton University. Prior to joining the University of Texas, I was Head of the Economics Research Group at Bell Communications Research. I have also served as a Member of the Technical Staff in economics at Bell Laboratories. During the last thirty years, I have carried out extensive research in the areas of industrial organization, microeconomic theory, and regulation. My publications have appeared in a number of leading economic journals, including the Journal of Economic Theory, Review of Economic Studies, Rand Journal of Economics, American Economic Review, Econometrica, and the International Economic Review, among others. I am also the co-author (with Steven J. Brown) of a leading textbook on monopoly pricing, The Theory of Public Utility Pricing, which was first published by Cambridge University Press in 1986.

2. I have consulted extensively for various firms and agencies, both in the United States and abroad, on antitrust and regulatory matters. In 1998, I was retained by the U.S. Department of Justice ("DOJ") to examine the competitive effects of contractual restrictions in agreements between Microsoft Corporation ("Microsoft") and personal computer original equipment manufacturers ("PC manufacturers" or "OEMs"), Internet access providers ("IAPs"), and Internet content providers ("ICPs"). The declaration that I filed in May 1998 on behalf of the Antitrust Division of the DOJ summarized my economic analysis.[1] Appendix A contains a copy of my *curriculum vitae.*

3. I have been asked by the DOJ to review the terms of its proposed settlement with Microsoft and to provide an opinion as an independent economist as to whether the antitrust remedy embodied in the settlement is in the "public interest." It is my understanding that key components of the public interest standard of the Tunney Act are satisfied when the antitrust remedy is sufficient to (1) stop the offending conduct, (2) prevent its reoccurrence, and (3) restore competitive conditions.[2]

4. In conducting this analysis, I examined the following documents: (1) the *Revised Proposed Final Judgment,*[1] the *Second Revised Proposed Final Judgment,* including the accompanying memorandum regarding modifications,[2] and the *Competitive Impact Statement* of the DOJ; [3] (2) the *Findings of Fact* and *Conclusions of Law* issued by Judge Jackson; [4] (3) the decision issued by the U.S. Court of Appeals for the D.C. Circuit in June of 2001; [5] (4) the record from the U.S. Senate Judiciary Committee's December 12, 2001, hearing regarding the proposed settlement, including the responses to follow-up questions posed to Assistant Attorney General Charles James; [6] (5) the DOJ's written response to questions regarding the proposed settlement raised by Senator Orrin Hatch; [7] (6) the Litigating States Proposed Final Judgment; (7) comments on the settlement filed by third parties, including declarations submitted by other economists; and (8) public documents and websites containing relevant information.

5. My conclusions are summarized as follows:

- Any economic analysis of the SRPFJ must have as its starting point a clear delineation of the conduct found to be unlawful. The remedy presently under consideration must therefore focus attention on and fully resolve the appellate court finding that Microsoft engaged in specific anticompetitive acts to maintain its operating system monopoly.
- In developing this remedy, it is necessary to balance two broad factors: (1) the need to impose constraints on Microsoft's current and future behavior so that the unlawful acts stop and do not recur, and competitive conditions are restored; and (2) the requirement that these constraints not be so intrusive and complex that they themselves distort market outcomes.
- The SRPFJ achieves the right balance. Broadly defined provisions banning exclusivity, discrimination, and retaliation fundamentally alter the way Microsoft does business, and eliminate the artificial entry barriers erected by Microsoft that are the source of competitive concern. At the same time, the SRPFJ does not create market distortions, such as over-extensive regulation of Microsoft that may invite inefficient rent-seeking by Microsoft's competitors, and make Microsoft a less efficient competitor.
- Microsoft erected artificial entry barriers to slow or halt the natural tendency of the marketplace to provide certain alternative technologies (known as "middleware") that have the potential to erode Microsoft's operating system monopoly. The proposed decree aims to restore and enhance competitive conditions by removing technical barriers between Microsoft and rival middleware suppliers. This is the appropriate conduct to be remedied, not the existence of the monopoly itself, or barriers which arise naturally in software markets.
- The proposals of other commentators fail to strike the right balance. In an attempt to eliminate all theoretical ways in which Microsoft could harm competition, they propose a complex regulatory program that is likely to be slow-moving, litigious, and vulnerable to manipulation by

[1] Declarations of David S. Sibley, *United States* v. *Microsoft Corp.*, Civ. Action No. 98–1232 (D.D.C. May 18, 1998) (hereinafter "May 1998 Sibley Decl."). *See also* David S. Sibley, Michael J. Doane, and Ashish Nayyar (2001), "Economic Issues in U.S. v. Microsoft," UWLA Law Review, Symposium: Cyber Rights, Protection, and Markets, 103–136.

[2] My declaration does not address the compliance and enforcement procedures contained in the proposed remedy.

[1] Revised Proposed Final Judgment, *United States* v. *Microsoft Corp.*, Civ. Action No. 98–1232 (CKK) (D.D.C. Nov. 6, 2001).

[2] Second Revised Proposed Final Judgment, *United States* v. *Microsoft Corp.*, Civ. Action No. 98–1232 (CKK) (D.D.C. to be filed Feb. 27, 2002) (hereinafter "SRPFJ"); United States' Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment, *United States* v. *Microsoft Corp.*, Civ. Action No. 98–1232 (CKK) (D.D.C. to be filed Feb. 27, 2002).

[3] Competitive Impact Statement, *United States* v. *Microsoft Corp.*, Civ. Action No. 98–1232 (CKK) (D.D.C. No. 15, 2001) (hereinafter "CIS").

[4] *See* Findings of Fact, *United States* v. *Microsoft Corp.*, 84 F. Supp.2d 9 (D.D.C. Nov. 5, 1999); Conclusions of Law, *United States* v. *Microsoft Corp.*, 87 F. Supp.2d 30 (D.D.C. Apr. 3, 2000).

[5] *United States* v. *Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. June 28, 2001).

[6] *See* United States Senate, Senate Committee on the Judiciary Documents for the December 12 Hearing on "The Microsoft Settlement: A Look to the Future"; Office of the Assistant Attorney General, United States Department of Justice, Response to written follow-up questions posed to Assistant Attorney General Charles James (Jan. 24, 2002).

[7] *See* Office of the Assistant Attorney General, United States Department of Justice, Response to Senator Hatch's letter of November 29, 2001 (Dec. 11, 2001).

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Microsoft's competitors, to say nothing of Microsoft itself.

• In analyzing the SRPFJ, I have had the benefit of reviewing a number of thoughtful and probing comments on the proposed decree. I found that most of the potential problems raised by the various commentators are, in fact, not problems at all, but are met by the SRPFJ upon careful analysis. My review of their criticisms reveals the potential loopholes that are theoretical possibilities are either unimportant, or rely on strategies that Microsoft would not have the incentive to undertake.

• In light of the above, in my opinion, the SRPFJ is in the public interest.

6. I have organized my declaration as follows: In Section II, I discuss the specific anticompetitive acts that are the focus of this inquiry and provide an overview of the proposed remedy embodied in the SRPFJ. This section also reviews the characteristics of software markets that are relevant to an economic analysis of the proposed decree. Section III presents my analysis of the SRPFJ and discusses why, in my opinion, the proposed decree meets the public interest requirement of the Tunney Act. Section IV addresses the main suggestions for additional remedy provisions discussed by various commentators. My conclusions are presented in Section V.

II. Microsoft's Unlawful Conduct and Proposed Remedy in the SRPFJ

7. Any economic analysis of the SRPFJ must have as its starting point a clear delineation of the conduct found to be unlawful. To be in the "public interest," an antitrust remedy must stop the offending conduct, prevent its recurrence, and restore competitive conditions. The remedy presently under consideration must therefore focus attention on and fully resolve the appellate court finding that Microsoft engaged in specific anticompetitive acts to maintain its monopoly position in the market for operating systems designed to run on Intel-compatible personal computers ("PCs").

8. To assess the remedial effectiveness of the SRPFJ, it is useful for two reasons to review the characteristics of software markets that gave rise to the Microsoft operating system ("OS") monopoly. First, as discussed below, certain economic forces can lead naturally to dominance by a single firm, even apart from anticompetitive conduct. It was alleged, and both the District Court and the Court of Appeals agreed, that Microsoft's conduct erected artificial entry barriers on top of those that occur naturally in software markets. These artificial entry barriers were added to slow or halt the adoption of alternative technologies (known as "middleware") that have the potential to erode Microsoft's OS monopoly. This is the conduct to be remedied, not the existence of the monopoly itself.

9. Second, there is widespread agreement that the middleware threat to the Microsoft operating system posed by the Netscape Web browser (i.e., Navigator) and the Java programming technology was a "nascent" one.[8] While there is no question that Microsoft's conduct was aimed at eliminating that threat, there is significant uncertainty regarding when Microsoft's OS monopoly would have been substantially eroded (if at all). Thus, the appropriate remedy in this case is to restore the potential threat that middleware provides, not to eliminate natural entry barriers that are not in themselves a cause for competitive concern. This point has been overlooked by those critical of the proposed decree who argue the appropriate antitrust remedy in this case calls for the elimination of the applications barrier to entry.

A. Characteristics of Software Markets

10. In many software markets, including OS markets, there are fundamental forces that may lead to one firm being dominant at a given time and that tend to create barriers to entry. These forces have been widely discussed in the economics and computing literature. The first is the presence of *scale economies*. For complex software such as an OS, the initial or "first-copy" costs to writing software are often very large, whereas the incremental cost of producing additional copies is small. Hence, average cost declines as the scale of output rises. The second is *increasing returns in consumption*. The larger the market share of a particular OS, the more independent software vendors ("ISVs") will tend to write applications for that OS. The more this happens, the more attractive will customers find that OS, further increasing its market share, which leads to the development of more new software applications, and so forth. Thus, increasing returns in consumption induce a series of feedback effects, which tend to make a dominant OS more dominant over time.[9]

11. Economies of scale and increasing returns to consumption give rise to a phenomenon that lies at the heart of antitrust analysis of network industries: monopoly tipping.[10] If a large set of users adopts a new network technology, then that technology becomes more attractive to everyone else as a result of increasing returns in consumption. As more users join, the technology becomes still more attractive until it becomes dominant; in economic terminology, the market has "tipped" to the new technology. Because users invest time and money in learning to use a given technology proficiently, for a newer technology to succeed, it would have to offer a substantial improvement in performance—i.e., enough of an improvement at least to overcome the switching costs associated with the change. In the normal course of markets and competition, such improvements do in fact occur. One example is the displacement of slide rules by pocket calculators.

12. The economic theory of network effects describes well the performance of the OS market. As an operating system gains popularity, the incentive to develop software for that operating system grows since the number of potential customers for the application developer is larger. This, in turn, increases the value of the operating system to end users (and likely its market share), which is determined by the quality and variety of software applications written for it. As the OS gains market share, software developers find it even more advantageous to produce additional applications for that system. This feedback effect explains why the number of complementary software applications and the installed base of these applications serve as natural barriers to entry, and also why alternative operating systems already in the market at a small scale are not effective competitors. This feature of software markets has become known as the applications barrier to entry.[11]

[8] *United States* v. *Microsft Corp.*, 253 F.3d 34, 79 (D.C. Cir. June 28, 2001).

[9] Increasing returns to consumption is often discussed as an important consequence of *network effects*. First formalized by Rohlfs, there is a network effect whenever the value to existing users of a network increases as the network expands with new users. *See* Jeffrey H. Rohlfs (1974), "A Theory of Interdependent Demands for Communications Service," 5 Bell Journal of Economics and Management Science 16–37. *See also* Michael Katz and Carl Shapiro (1985), "Network Externalities, Competition and Compatibility," 75 American Economic Review 424–440; Michael Katz and Carl Shapiro (1986), "Technology Adoption in the Presence of Network Externalities," 94 Journal of Political Economic 822–841.

[10] *See. e.g.*, Joseph Farrell and Garth Saloner (1986), "Installed Base and Compatibility: Innovation, Product Differentiation, and Predation," 76 American Economic Review 940–955; Joseph Farrell and Garth Saloner (1985), "Standardization, Compatibility, and Innovation," 16 Rand Journal of Economics 70–83.

[11] In my May 1998 Declaration, I argued that the application barrier to entry occurs naturally in certain software markets and is not, by itself, a source of antitrust concern. By contrast, I stated "[t]he bundling and other contractual browser restrictions that Microsoft insists upon in its agreements with OEMs, IAPs, and ICPs add artificial entry barriers to those that occur naturally, and are therefore a source of competitive concern." *See* 1998 Sibley Decl. at ¶ 19.

13. Microsoft's dominant market share was a predictable consequence of the applications barrier to entry. At trial, it was documented that Microsoft's market share in each period from 1991 to 1997 held consistently at about ninety percent. Further, it was documented that Microsoft's OS dominance was stable, that it had hardly fluctuated in the face of determined attempts at entry by rival operating systems, and that it was forecast to remain stable in the future.[12]

B. The Middleware Threat to the Microsoft OS

14. The above discussion suggests that, to enter with a product consumers would want installed on their PCs, OS vendors would have to create or induce others to create an extensive set of software applications to go with it. Alternatively, the product would have to emulate the Windows applications programming interfaces ("APIs") needed to run existing Windows applications. APIs permit software applications running on an OS to access the basic computing functions performed by that operating system, such as opening a file, executing a print command, drawing a box, etc. The Netscape Web browser was a new class of software—called middleware—that itself exposed a broad range of APIs to which software developers could write applications. This middleware product threatened Microsoft's OS dominance because the browser could serve as a software applications platform independent of the underlying OS.[13] Thus, a new entrant in the OS market would not have to create an installed base of software applications for its OS comparable in size and use to those of Microsoft in order to succeed. Instead, applications written to the browser platform (perhaps using the Java programming technology of Sun Microsystems, Inc. ("Sun")) would be accessible to a user using any OS supporting that browser. Application developers would have the incentive to write to these browser APIs because their applications would then run on Windows plus the operating systems that were previously unprofitable for these ISVs to write applications. This would ultimately make it less important for users to which operating systems were installed on their computers. As Bill Gates stated: "[t]hey [Netscape] are pursuing a multi-platform strategy where they move the key [APIs] into the client [browser] to commoditize the underlying operating system."[14]

15. As the evidence in this case demonstrates, Microsoft engaged in specific anticompetitive actions intended to displace the Netscape browser with its own Web browser, Internet Explorer ("IE"). In particular, the commingling and contractual browser restrictions that Microsoft insisted upon in its agreements with OEMs, IAPs, ICPs, and Independent Software Vendors ("ISVs") impeded the growth of the Netscape Web browser by adding artificial entry barriers to those that occur naturally. Such restrictions are therefore a source of competitive concern.

16. In challenging Microsoft's commingling and contractual practices, the plaintiffs' antitrust complaint alleged the following: (1) Microsoft engaged in a series of anticompetitive acts to maintain its OS monopoly; (2) Microsoft attempted to monopolize the Web browser market; (3) Microsoft illegally tied IE to its operating system; and (4) Microsoft entered into unlawful exclusive dealing arrangements. The District Court sustained claims (1) through (3). The appellate court, however, sustained only the monopoly maintenance claim, and with fewer anticompetitive actions than the District Court had found.[15] Thus, the focus of the SRPFJ is on remedying the twelve specific anticompetitive actions the appellate court found Microsoft to have taken to maintain its OS monopoly. (See Table One.) In addition, the SRPFJ includes measures designed to enhance the ability of rival middleware vendors to interoperate with the Microsoft OS. As addressed in Sections III and IV below, many critics of the proposed decree appear to have ignored the fact that the government's case had been significantly narrowed.

TABLE ONE—SUMMARY OF FINDINGS OF ANTICOMPETITIVE ACTS

Anticompetitive findings of district court	Appellate court
Agreements With OEMs	
1. Prohibition on OEM removing desktop icons, folders, or Start Menu entries	Yes.
2. Prohibition on OEM altering initial boot sequence	Yes.
3. Prohibition on OEM allowing alternative user interface to launch automatically	No.
4. Prohibition on OEM adding icons or folders in different size or shape	Yes.
5. Prohibition on OEM using Active Desktop to promote others' products	Yes.
Binding of IE to Windows	
6. Excluding IE from the "Add/Remove" utility	Yes.
7. Designing Windows to override users' choice of default browser other than IE	No.
8. Commingling code to eliminate OEM choice of removal of IE from Windows	Yes.
Agreements With IAPs	
9. Licensing IE for free	No.
10. Payment for use of IE with IAP service signup	No.
11. Developing IE Access Kits and offering them for free	No.
12. Placement of IAP's product on desktop in return for IE exclusivity (or limit to Navigator shipments)	Yes.

[12] Government Exhibit No. 1.

[13] *See* May 1998 Sibley Decl. at ¶¶ 18–19, 30, and 49–50.

[14] Government Exhibit No. 20, Email from Bill Gates to the Microsoft Executive Staff and Direct Reports (May 26, 1995).

[15] The appellate court reversed both the attempted monopolization and tying claims (remanding the tying claim for further hearing under the rule of reason standard) and vacated the Final Judgment that called for a structural remedy and interim conduct remedies.

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TABLE ONE—SUMMARY OF FINDINGS OF ANTICOMPETITIVE ACTS—Continued

Anticompetitive findings of district court	Appellate court
Agreements With ICPs, ISVs, and Apple	
13. Exclusive agreements with ICPs	No.
14. Agreements With ISVs to make IE the default hypertext interface	Yes.
15. Threat to end support of Office on MAC platform as "a club" to coerce Apple to use IE as default browser with MAC OS	Yes.
Efforts To Contain and Subvert Java	
16. Design of Java Virtual Machine ("JVM") that was incompatible with Sun's product	No.
17. Exclusive agreements to promote Microsoft's JVM	Yes.
18. Deceived Java developers about Windows-specific nature in Microsoft Java	Yes.
19. Coerced Intel to stop aiding Sun by threats to support Advanced Micro Devices, Inc. ("AMD")	Yes.
Course of Conduct	
20. Apart from specific acts, Microsoft's general course of conduct violated Section 2 of the Sherman Act	No.

C. Summary of SRPFJ Provisions

17. Given the appellate court findings, the SRPFJ focus is appropriately on middleware. Each of the twelve anticompetitive acts were directed toward eliminating the middleware threat to the Microsoft OS. However, by its nature, the proposed decree must be forward looking, and this requirement imposes challenges as to how middleware should be defined. As the appellate court noted, "[s]ix years has passed since Microsoft engaged in the first conduct plaintiffs alleged to be anticompetitive. And as the record in this case indicates, six years seems like an eternity in the computer industry." [16] The anticompetitive actions taken by Microsoft targeted the middleware threat posed by the Netscape Web browser and Java.[17] However, there is general agreement that Microsoft has won the "browser war." Relief focusing only on this threat is thus likely to be ineffective. Moreover, the characteristics of middleware products today focus not on access to the Internet but on the range of offerings that access to the Internet can provide. Thus, middleware is properly defined in the proposed decree to encompass present and future middleware threats. In particular, middleware is broadly defined in the SRPFJ to capture almost any software that exposes a range of APIs. For example, as defined, middleware captures Internet browsers, email client software, networked audio/video client software, and instant messaging software.

18. As shown in Table Two, to stop the unlawful conduct found by the appellate court, the SRPFJ targets Microsoft's business practices by broadly banning exclusive dealing, providing OEMs more control of the desktop and initial boot sequences, and prohibiting retaliatory conduct by Microsoft. The remedy for preventing recurrence of that conduct consists of provisions for non-discrimination and non-retaliation. With regard to lost competition, the SRPFJ seeks to restore the potential middleware threat. This is to be accomplished primarily through provisions requiring API disclosure and the licensing of communication protocols embedded in the OS. This will enable independent software developers to more effectively interoperate with Windows and thus compete with the middleware functionality offered by Microsoft. Middleware developers are also aided by (1) the requirement that Microsoft create and preserve default settings when Windows launches or invokes rival middleware in certain cases, and (2) the requirement that Microsoft create "add/delete" functionality that makes it easier for OEMs and users to replace end-user access to Microsoft Middleware functionality with rival middleware.

TABLE TWO—SUMMARY OF SRPFJ PROVISIONS

Provision	Section in SRPFJ
Remedy To Stop Offending Conduct	
Prohibits retaliatory conduct	III.A.1–3, III.F.1
Broadly bans exclusive dealing	II.F.2, III.G.1–2
Provides OEMs more control of desktop and initial boot sequence	III.C.1–6
Remedy To Prevent Recurrence	
Non-discrimination and non-retaliation provisions	III.A.1–3,
Remedy To Restore Competitive Conditions	
If Microsoft middleware products rely on an API, then that API must be disclosed	III.D, III.I
Microsoft required to create and preserve default settings, such that certain of	III.H.2
Microsoft required to create add/delete functionality that makes it easier for OEMs	III.H.1
Microsoft required to license communications protocols embedded in the OS, but	III.E, III.I

[16] *United States* v. *Microsoft Corp.*, 253 F.3d 34, 6 (D.C. Cir. June 28, 2001).

[17] *See, e.g.*, May 1998 Sibley Decl. at ¶¶ 18–19.

19. The difficult task is to create a balanced remedy that constrains anticompetitive behavior by Microsoft without limiting competition on the merits. Thus, in developing an antitrust remedy in this case, it is necessary to balance two broad factors: (1) the need to impose constraints on Microsoft's current and future behavior so that the unlawful business practices stop and do not recur, and competitive conditions are restored and (2) the requirement that these constraints not be so intrusive and complex that they themselves distort market outcomes.

20. By focusing on Microsoft's anticompetitive business practices, the provisions in the SRPFJ eliminate the artificial barriers to entry erected by Microsoft that are the source of competitive concern. The provisions in the proposed decree aim to deter conduct that (1) seeks exclusivity or (2) is backed by retaliatory threats. The SRPFJ also aims to restore and enhance competitive conditions by removing technical barriers to competition between Microsoft and rival middleware suppliers. As discussed above, from an economic standpoint, middleware is important because it can expose APIs and has the potential to become an applications platform distinct from the Windows OS.

21. At the same time, the SRPFJ does not attempt to preordain market outcomes or to weaken Microsoft as a legitimate competitor. Overly broad remedies can create socially wasteful costs by eliminating efficiencies, and remedies designed to "manage" the competitive process can indirectly reduce consumer welfare. In particular, over-extensive government regulation of Microsoft may result in inefficient rent-seeking by Microsoft's competitors,[18] and make Microsoft a less efficient competitor. As discussed below, in my opinion, the SRPFJ achieves the right balance.

III. Economic Analysis of the SRPFJ in Light of the Tunney Act Requirements

22. It is my understanding that key components of the public interest standard of the Tunney Act are satisfied when the antitrust remedy is sufficient to (1) stop the offending conduct, (2) prevent its recurrence, and (3) restore competitive conditions. In this section, I examine the extent to which the SRPFJ satisfies this three-part test. In so doing, I respond to many of the thoughtful comments on the proposed decree that were submitted during the public comment period recently concluded.

A. Does the SRPFJ Stop the Offending Conduct?

23. To answer this question it is first necessary to review both the specific acts of Microsoft that were held to be anticompetitive and the linkage between those acts and the provisions in the SRPFJ. Table Three identifies the twenty specific acts related to the monopoly maintenance claim that were found to be anticompetitive by the District Court and the twelve claims upheld by the appellate court. The right-hand column of Table Three presents the provisions in the SRPFJ that I believe likely would effectively prevent those acts from occurring. I begin my analysis by examining the acts of Microsoft found to be unlawful by the appellate court.

24. *Prohibition on OEM removing desktop icons, shortcuts, or Start Menu entries.* If the SRPFJ had been in effect when Microsoft imposed this requirement on OEMs, Microsoft would have been in violation of Section III.H.1.a of the proposed decree. This section of the SRPFJ specifically allows either end users or OEMs to enable or remove access to each Middleware Product by displaying or removing icons, shortcuts, or menu entries anywhere in a Windows Operating System Product that a list of icons, shortcuts, or menu entries is normally displayed. According to the SRPFJ, the mechanism that accomplishes this task must be readily accessible from the desktop or the Start Menu entries, and it must be available to OEMs using standard pre-installation kits.

TABLE THREE—PROVISIONS IN SRPFJ THAT ADDRESS ANTICOMPETITIVE ACTS

Anticompetitive findings of District Court	Appellate	Addressed in
Agreements With OEMs		
1. Prohibition on OEM removing desktop icons, folders, or Start	Yes	III.H.1
2. Prohibition on OEM altering initial boot sequence.	Yes	III.C.3–5
3. Prohibition on OEM allowing alternative user interface to	No	
4. Prohibition on OEM adding icons or folders in different size or	Yes	III.C.1–2
5. Prohibition on OEM using Active Desktop to promote others'	Yes	III.C.1–2
Binding of IE to Windows		
6. Excluding IE from the "Add/Remove" utility	Yes	III.H.1
7. Designing Windows to override users' choice of default	No	III.H.2
8. Commingling code to eliminate OEM choice of removal of IE	Yes	III.C.1
Agreements with IAPs		
9. Licensing IE for free	No	
10. Payment for use of IE with IAP service signup	No	
11. Developing IE Access Kits and offering them for free	No	
12. Placement of IAP's product on desktop in return for IE Exclusivity (or limit to Navigator shipments) .	Yes	III.G.1–2
Agreements With ICPs, ISVs, and Apple		
13. Exclusive agreements with ICPs	No	III.G.1–2
14. Agreements with ISVs to make IE the default hypertext user	Yes	III.F.2
15. Threat to end support of Office on MAC platform as "a club" to coerce Apple to use IE as default browser with MAC OS .	Yes	III.F.1–2 III.G.1

[18] Rent seeking involves the use of real resources to obtain favorable treatment or rules.

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TABLE THREE—PROVISIONS IN SRPFJ THAT ADDRESS ANTICOMPETITIVE ACTS—Continued

Anticompetitive findings of District Court	Appellate	Addressed in
Efforts To Contain and Subvert Java		
16. Design of Java Virtual Machine ("JVM") that was	No	
17. Exclusive agreements to promote Microsoft's JVM	Yes	III.F.2
18. Deceived Java developers about Windows-specific nature in	Yes	III.D
19. Coerced Intel to stop aiding Sun by threats to support AMD	Yes	
Course of Conduct		
20. Apart from specific acts, Microsoft's general course of conduct violated Section 2 of the Sherman Act	No	

25. *Prohibition on OEM altering the initial boot sequence.* This Microsoft prohibition would have violated Sections III.C.3–5 of the proposed decree. These sections require that OEMs be allowed to alter the initial boot sequence in certain ways to promote rival middleware. Section III.C.3 allows OEMs to launch rival middleware in place of a Microsoft Middleware Product at the end of the initial boot sequence. Section III.C.4 allows OEMs to offer machines that dual boot to two different operating systems. Section III.C.5 allows OEMs to present Internet access offers which may promote rival software.

26. *Prohibition on OEM adding icons or folders in different size or shape.* Microsoft began to impose this restriction, which was intended to prevent OEMs from pre-installing Netscape Navigator, in its first Windows 95 contracts. Under the proposed decree, the only restrictions that Microsoft would now be able to place on the icons, shortcuts, and menu entries placed by an OEM are those described in Section III.C.1–2. These sections state that Microsoft can restrict the OEM from placing such icons, shortcuts, and menu entries in any list in Windows that is described in the Windows documentation as being for particular types of functions. These provisions would, however, apply also to Microsoft's own placement of icons, menu entries, and shortcuts and do not restrict the OEM from choosing the size and shape of its shortcuts.[19]

27. I note that Section III.H.3 of the SRPFJ is also relevant with regard to Microsoft's prohibition against the addition of OEM-specified icons, shortcuts, and menu entries. This section states that Microsoft cannot alter an OEM's desktop configuration of icons, etc. without end-user actions, and, in any case, it cannot even ask the user to undertake such action for fourteen days after the initial boot. Based on my reading of the *Competitive Impact Statement* (which serves as an explanation of SRPFJ provisions) and on conversations with personnel from the DOJ, the only existing Microsoft technology to which this section refers is the Desktop Cleanup Wizard, which currently exists only on Windows XP. The Desktop Cleanup Wizard simply asks the end user if he or she wants to retain infrequently-used icons on the desktop, whether or not these icons refer to rival software. The SRPFJ requires that it treat Microsoft and Non-Microsoft icons in an unbiased manner.

28. *Prohibition on OEMs using Active Desktop to promote others' products.* It is my understanding that this prohibition is no longer a relevant concern because the Active Desktop is no longer significantly in use. Indeed, I note that the Microsoft pre-installation kit for Windows XP instructs the OEM not to activate the Active Desktop. However, should features similar to the Active Desktop exist in the future, Sections III.C.1–2 would prevent similar types of restrictions by providing OEMs more control and flexibility over the desktop.

29. *Exclusion of Internet Explorer from the "Add/Remove" utility.* This violation would clearly have been prevented by Section III.H.1 of the proposed decree. Section III.H.1 requires Microsoft to allow the removal of the means of access to Microsoft Middleware Products.

30. *Commingling of code to eliminate OEM choice of removal of IE from Windows.* This offense is addressed by Sections III.H.1 and III.C.1 of the proposed decree. Section III.H.1 requires Microsoft to allow the removal of the means of end-user access to Microsoft Middleware Products, which would include IE. Section III.C.1 allows the OEM to install and display icons, shortcuts, and menu entries that facilitate easy end-user access to middleware offered by Microsoft rivals. From the standpoint of most end-users, a software product, such as a browser, has been removed and is not present if there are no visible means to access it. Accordingly, Section III.C.1 and III.H.1 together enable the OEM or end user to select another browser as the default browser, without IE being visible to the end user. I do not interpret the appellate court decision as requiring that code internal to Windows be removed without regard to the competitive significance of its removal merely because it is also used in Web browsing. The appellate court stated that such removal of code would be needed if such removal was required to permit OEMs to remove the means of access to Microsoft products, since their inability to do so resulted in the exclusion of rival products. Thus, because the SRPFJ requires Microsoft to make it possible for OEMs effectively to remove Microsoft Middleware Products by removing access to them and to install rival products, the actual removal of code is not necessary.

31. *Placement of an IAP's product on the desktop in return for IE exclusivity (or limit to Navigator shipments).* This offense would have been prevented by Sections III.G.1 and III.G.2 of the proposed decree. With one exception, these sections prevent Microsoft from entering into an agreement with any IAP, ICP, ISV, independent hardware vendor ("IHV"), or OEM requiring either exclusivity for a Microsoft Middleware product or that such software be distributed in a fixed percentage, irrespective of consumer choice. The exception is that fixed percentage agreements that provide Microsoft preferential status are permitted under the SRPFJ as long as it is commercially feasible for the OEM, IAP, etc. to give equivalent treatment to rival middleware. When preferential status for Microsoft necessarily excludes rival middleware, Section III.G.1 implies that

[19] The size and shape of an icon is fixed and cannot be changed by the OEM or Microsoft Section III.C.2 prohibits Microsoft from restricting the OEM's selection of the size and shape of shortcuts, including shortcuts placed on the desktop.

preferential status from Microsoft cannot extend to more than fifty percent of the shipments of the OEM, IAP, etc. Also, Microsoft cannot grant an IAP or ICP placement on the desktop or any other favored place in Windows in return for the IAP or ICP refraining from distributing, promoting, or using any software that competes with Microsoft Middleware.

32. *Agreements with ISVs to make IE the default hypertext user interface.* Such exclusive agreements are ruled out by Sections III.F.2, and III.G.1. Section III.F.2 prevents Microsoft from rewarding ISVs for refraining from developing, promoting, or using software that competes with Microsoft middleware and operating systems. Provision III.G.1 prohibits Microsoft from entering into agreements which give Microsoft preferential status (e.g., fixed percentage agreements) when an ISV or IHV is unable to offer an equivalent status to a rival product. Fixed percentage agreements are permissible, however, when it is commercially feasible for the other party to the agreement to provide at least the same level of promotion to the rival middleware.

33. *Threat to end support of Office on MAC platform as "a club" to coerce Apple to use IE as default browser with MAC OS.* For the purpose of the SRPFJ, Apple is considered an ISV. One of the historical incidents involving Microsoft and Apple was that Microsoft threatened to end the support of Office on the MAC platform if Apple continued to promote Netscape's Web browser. Section III.F.1 forbids retaliation of the kind Microsoft threatened. This restriction would have rendered the threat itself ineffective. Microsoft also signed an agreement with Apple which ported Office to the MAC and made IE the default browser and relegated Netscape's browser to a folder. This agreement would have violated Section III.F.2 because it represented consideration in return for Apple's refraining from promoting the Netscape browser. Finally, because Apple could not have made both IE and Navigator the default browser on the MAC, the agreement would have violated Section III.G.1.

34. *Exclusive agreements to promote Microsoft's JVM.* These agreements between Microsoft and ISVs gave those ISVs advance information on new Microsoft APIs in return for writing to the Microsoft version of the Java Virtual Machine ("JVM"). Section III.F.2 would have prevented Microsoft from offering the ISV consideration, in the form of advance information, in return for promoting the Microsoft JVM over the Sun JVM. Section III.G.1 would also block such a transaction since the ISVs were being asked to promote the Microsoft JVM exclusively.

35. *Deception of Java developers regarding the Windows-specific nature of Microsoft Java.* To the extent that such deceit on the part of Microsoft involved the disclosure of additional APIs developed by Microsoft for its JVM that worked only on Windows, this behavior would have been blocked by the API disclosure requirement of Section III.D. However, I see nothing in the SRPFJ that speaks directly to the issue of deceit.

36. *Coerced Intel to stop aiding Sun by threats of support to AMD.* Microsoft's interaction with Intel in this regard contained a threat. Section III.F.1 forbids retaliation against an IHV, so that had the SRPFJ been available at the time, the threat of retaliation would have been without force. Section III.F.2 would have been invoked by the Microsoft offer of consideration, which essentially took the form of increased support for Intel's microprocessors. Thus, this conduct would have been prevented by the SRPFJ.

37. In addition to likely preventing the anticompetitive acts upheld as illegal by the appellate court, the SRPFJ also provides at least partial protection with regard to two Microsoft behaviors found to be unlawful by the District Court but not upheld as such on appeal. (See Table One, items 7, and 13.) In this regard, the SRPFJ addresses actions that go beyond the violations upheld by the appellate court.

38. *Designing Windows to override a user's choice of default browser other than IE.* Section III.H provides partial protection against this act. To restore this access would take positive action by the end user and could not be initiated and completed by Microsoft otherwise. Section III.H.2 allows end users and OEMs to select a Non-Microsoft Middleware Product to be launched automatically whenever the Microsoft Middleware would have been launched in a Top-Level Window and have displayed either all of the user interface elements or the trademark of the Microsoft Middleware Product.[20] This requirement forces Microsoft to have default in some circumstances and provides a "bright line" rule in a situation where previously Microsoft had complete discretion.

39. *Exclusive agreements with ICPs.* Although the appellate court did not find these agreements to be unlawful, Section III.G.1 of the proposed settlement prevents exclusive and "fixed percentage" agreements for Microsoft Middleware products with ICPs. In addition, Section III.G.2 outlaws an exchange of placement of the ICP's icon on the desktop for the ICP refraining from using, distributing, or promoting middleware offered by Microsoft's rivals.

40. Based on the above analysis, I conclude that the SRPFJ is likely to stop effectively the Microsoft conduct found to be unlawful by the appellate court. The proposed decree also is likely to address two areas that were originally found to be unlawful by the District Court but reversed on appeal.

B. Does the SRPFJ Prevent Recurrence of the Offending Conduct?

41. In addition to preventing the recurrence of acts similar to those that occurred in the past, the SRPFJ contains provisions to guard against future acts that differ substantially from those listed in Table Three but would also be anticompetitive. The SRPFJ identifies non-Microsoft products whose distribution and usage cannot be impeded by Microsoft's actions. Covered products, such as Microsoft Middleware Products, are described in terms of their general functionalities and not just with reference to specific products now commercially available.

42. In particular, "Microsoft Middleware Product" is broadly defined in the decree to cover the functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express, as well as their successors. In addition, new and yet-undreamed-of products in the general categories of Internet browsers, email client software, networked client audio/video client software, and instant messaging software are also covered. The SRPFJ also covers any new Microsoft Middleware distributed separately from a Windows Operating System Product that is similar to the functionality of a rival middleware product and is either trademarked or distributed by Microsoft as a major version of a Microsoft Middleware Product. In this last category, the new Microsoft Middleware Product need not even be something currently recognized as middleware. This definition is not perfectly general, and it is possible to imagine future Microsoft products that would not fall under this definition but nevertheless would still compete with rival middleware. However, the middleware definition does appear broad enough to capture the types of

[20] The term "Non-Microsoft Middleware Product" is used only in Section III.H of the SRPFJ, and my use of the term applies only in reference to that section of the proposed decree. Elsewhere, I use the term "rival middleware."

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middleware threats most likely to emerge during the term of the proposed decree. Similarly, provisions in the proposed decree regarding non-discrimination and non-retaliation (i.e., Sections III.A, III.B, and III.F) are broad and go beyond the specific acts found to be unlawful by the appellate court.

43. During the effective period of the decree, the Technical Committee and other compliance and enforcement measures set out in the SRPFJ should work to prevent a recurrence of the offending acts. However, before reaching a conclusion about the SRPFJ's compliance with this part of the Tunney Act's requirements, there remains the issue of possible "loopholes" and "overly-broad exclusions," which was commented upon in many thoughtful submissions provided during the public comment period just concluded. I will discuss below those comments pertaining to provisions in the SRPFJ that are intended to prevent recurrence of acts such as those described at trial, in the general areas of retaliation and exclusive dealing. (Potential loopholes in the general area of disclosure of APIs and other technical interfaces are discussed in Section III.C of this document.)

44. *Claimed Loopholes.* The SRPFJ contains various provisions (Sections III.A and III.F) that protect parties from retaliation by Microsoft in those cases involving a middleware product that competes with a Microsoft Middleware Product and operating system. These provisions do not address explicitly the possibility that Microsoft may have a competitive concern involving rival middleware that has no counterpart at present among Microsoft's suite of middleware products. In this situation, Microsoft might retaliate against an OEM, ISV, or IHV that supported the product in question, perhaps to prevent it from ever becoming a serious threat to its OS monopoly. However, there are several reasons why this is unlikely to occur.

45. First, this action would be blocked by Section III.A.1, which forbids Microsoft from retaliating against an OEM supporting, or contemplating supporting, any rival software that competes with Microsoft Platform Software whether or not Microsoft has a counterpart to the rival software. Section III.F.1 contains similar protection for ISVs and IHVs. While it is not possible at first glance to rule out the occurrence of such an event, further analysis suggests that such an event is unlikely to occur. This is because as discussed in Section II above, Microsoft's strength is derived from having an operating system that runs many applications, and, in the past, Microsoft has consistently supported applications that do not compete with its own applications. The Microsoft Software Developer's Network and the many developer seminars that Microsoft sponsors are evidence in support of this position. Second, if Microsoft were to adopt this strategy, the strategy itself would impose a cost on Microsoft in that the company would have to refrain from developing its own version of the threatening software. This would encourage other, non-Microsoft developers to produce another version of the competing product and end-users to use the non-Microsoft middleware product. Also, there remains the issue of exactly how Microsoft would retaliate and against whom.

46. Previously, Microsoft has retaliated against OEMs by charging uncooperative OEMs a higher price for Windows. However, this form of retaliation is ruled out by Section III.B, which requires that OEMs pay royalties pursuant to uniform license agreements that can be viewed by other OEMs and by the plaintiffs for monitoring purposes. If retaliation were to take the form of manipulation of other types of consideration (e.g., MDA discounts), such action would make it impossible for Microsoft to comply with Section III.B.3.a of the proposed decree, which states that such discounts must be offered to all covered OEMs, including OEMs that cooperate with Microsoft.

47. Based on Microsoft's past practices, Microsoft might withhold APIs, documentation, or access to communications and security protocols. Such behavior is likely to be an ineffective means of retaliation or control. There are thousands of published APIs, and the very existence of a Non-Microsoft Middleware Product that prompts retaliation implies such a product was built around published APIs and technologies, in addition to whatever its developer may have invented and embodied in the product. Attempting to manipulate these APIs would invariably harm products that are complementary to the Microsoft OS and enhance its value. For all these reasons, I believe that Microsoft's incentives would be not to retaliate against an ISV regarding a product without a Microsoft counterpart. In my opinion, reliance on incentives will be superior, in this instance, to detailed regulation.

48. A second possible loophole is that Microsoft could provide special treatment or discriminatory prices on other (non-middleware) products as rewards or retaliation, presumably for a third party's favoring or impeding a Non-Microsoft Middleware product. (See Declaration of Joseph Stiglitz and Jason Furman, hereafter "Stiglitz and Furman Decl." at 31, and Declaration of Kenneth J. Arrow, hereinafter "Arrow Decl.," at ¶ 41.) Regarding special treatment, I note that if such treatment refers to non-monetary consideration of some kind, this behavior would be ruled out by Section III.A.1 of the proposed decree. This section of the SRPFJ prohibits Microsoft from retaliating against or withholding newly developed forms of non-monetary compensation from an OEM because the OEM is developing, promoting, or using software that competes with Microsoft Platform Software.

49. I also consider the possibility that special treatment might take the form of monetary discounts on other Microsoft products, such as Microsoft Office. I will assume that the alleged discrimination takes the form of requiring the OEM to establish the Microsoft Middleware Product as the default on all of its computers. This action violates Section III.A.1 and III.A.3 because linking the price of Office to an OEM's promotion of rival middleware would represent an alteration in Microsoft's commercial relationship with that OEM in connection with that OEM's promotion of rival middleware, and the withholding of such a discount would occur because it was known to Microsoft that the OEM was exercising options provided for by Section III.H (e.g., making rival middleware the default). Furthermore, this would be a case of preferential treatment within the meaning of Section III.G. Since only one middleware product in a given category can by definition be the default on a given computer, the OEM could not represent that it was commercially feasible for it to give greater or equal distribution to the Non-Microsoft Middleware Product.

50. The third loophole cited in the comments pertains to Section III.A and the process that governs how Microsoft must proceed if it wants to terminate dealings with an OEM. In the past, Microsoft has had the ability to cancel an OEM's Windows license without prior notice. The SRPFJ adds constraints to Microsoft's ability to terminate an OEM. The SRPFJ requires that Microsoft provide any one of the top twenty OEMs (defined by volume) written notice of its intent to cancel, in which it must specify the deficiency prompting the cancellation, as well as a 30-day opportunity to cure the deficiency. Because Microsoft must provide a reason in the written notice and an opportunity for a cure, it obviously cannot terminate an OEM for conduct authorized under the SRPFJ. Again, Microsoft does not have to do this currently. Because Microsoft cannot terminate an OEM's license for conduct consistent with the SRPFJ, the presumption is that, if an OEM is terminated, the cause must be related to a normal commercial dispute. Viewed in this light, I do not agree with Stiglitz and Furman when they allege that Section III.A provides Microsoft "substantial leverage" to force an OEM to distort its choice among competing middleware products. (See Stiglitz and Furman Decl. at 31–32.) I do not believe that detailed regulation would achieve a better outcome.

51. This discussion has summarized the major comments on the SRPFJ Sections III.A, III.B, and III.F as they relate to retaliation and discrimination. On balance, I conclude that these provisions are likely to fulfill the Tunney Act requirement that the SRPFJ prevent a recurrence of the offending conduct.

C. Will the SRPFJ Restore Competitive Conditions?

52. As discussed above, the SRPFJ's focus is on restoring the competitive threat provided by middleware (see Table Two). This is accomplished by providing middleware developers the means to create competitive products through: (1) provisions for API disclosure; (2) provisions that require Microsoft to create and preserve default settings, such that Microsoft's integrated middleware functions will not be able to over-ride the selection of third-party middleware; (3) the creation of "add/delete" functionality that make it easier for OEMs and end-users to replace Microsoft middleware functionality with independently developed middleware; and (4) requirements for Microsoft to license communications protocols embedded in the OS while maintaining Microsoft's ability to deploy proprietary technology provided separately. These provisions are discussed more fully below.

53. The SRPFJ requires Microsoft to release certain types of technical information to rival middleware suppliers. This information is to be provided in order to enable rival software developers to configure their products so that they are able to use the same Windows capabilities that Microsoft Middleware uses. To better evaluate these provisions, recall from above that Microsoft has published thousands of APIs, which are used by software developers to allow their products to run on Windows. Microsoft rivals (e.g., RealNetworks) use those APIs to build products to run on Windows and compete with Microsoft products. Microsoft has many more APIs that it does not publish or otherwise make available to ISVs. Potentially, some of these unpublished APIs give Microsoft products capabilities or features that rival products cannot easily duplicate. When these APIs are used by Microsoft Middleware Products, the SRPFJ obliges Microsoft to disclose them to ISVs, IHVs, IAPs, ICPs, and OEMs meeting certain requirements. The same obligation applies to certain types of communications protocols and security features developed by Microsoft that are used in connection with its Window Operating System products. The sections of the SRPFJ dealing with technical disclosure are III.D, III.E, III.I, and III.J.

54. The API disclosure provisions of the SRPFJ have attracted perhaps more comments than any others in the proposed decree. Criticisms of these provisions generally follow two lines of argument: (1) The proposed decree provides too much latitude, enabling Microsoft to delay the release of APIs until a Microsoft product has a decisive first-mover advantage over the competition; and (2) Microsoft could evade the intent of the proposed decree and avoid releasing this information at all. I will first describe the relevant sections of the SRPFJ dealing with the API disclosure provisions and then evaluate their likely effectiveness.

1. API Disclosure and Communications Protocol Provisions

55. Section III.D of the proposed decree specifies the main process for releasing the APIs and the documentation used by Microsoft Middleware to interoperate with Windows. Starting with the release of Service Pack 1 for Windows XP or twelve months after the submission of the SRPFJ to the Court (whichever is earlier), Microsoft must disclose APIs and documentation used in association with Microsoft Middleware. Going forward, there are to be disclosures occurring in a "Timely Manner" whenever there is a new version of a Windows operating system product or a new major version of Microsoft Middleware.[21]

56. Section III.E pertains to the use of Microsoft's client-server communications protocols. It does not apply to the use of communications protocols between other types of Microsoft products. The basis for the client-server focus is that there is now a growing number of applications that run on servers, rather than on the desktop. I discussed this factor in my May 1998 Declaration.[22] It represents a strong source of competition to Microsoft in the business computing segment and may yet make a serious attack on the applications barrier to entry in the desktop PC market. Therefore, it is important that rival middleware be able to operate with Microsoft server operating systems. It is equally important that a non-Microsoft server be able to operate with Windows as efficiently as would a Microsoft server. Communications protocols are essential for that purpose and are just as necessary to rival middleware developers as is access to Windows APIs. By contrast, I have not yet seen an argument that clearly articulates why the applications barrier to entry would be threatened by the disclosure by Microsoft of communications between other types of Microsoft software.

57. Under Section III.E, starting nine months after the submission of the SRPFJ to the Court, Microsoft shall make available to qualifying third parties any communications protocol implemented in a Windows Operating System Product (on or after the date of SRPFJ submission), installed on a client and used to interoperate or communicate with a Microsoft server operating system product. This will have both of the effects discussed above. It will enable rival middleware to communicate with a Microsoft server and also will allow a non-Microsoft server operating system to communicate effectively with a Windows operating system. To protect Microsoft intellectual property rights, Microsoft may charge for the use of these protocols as long as it does so on "reasonable and non-discriminatory terms." (See SRPFJ at Section III.E.) Section III.E also references Section III.I, which says that Microsoft must offer to license any intellectual property that it owns and that is needed to allow ISVs, IHVs, IAPs, ICPs, or OEMs to exercise their rights under the SRPFJ. The SRPFJ also states that all terms governing payment must be reasonable and non-discriminatory.

58. Section III.J can be viewed as "carving out" exceptions to Section III.D and III.E. Section III.J.1 states that Microsoft cannot be required to disclose portions of APIs, documentation, or portions of communications protocols if disclosure would "compromise the security of a particular installation or

[21] The term "Timely Manner," which governs the release date of APIs pursuant to Section III.D, means the time Microsoft first releases a beta version of a Windows Operating System Product, either through the MSDN or with a distribution of 150,000 or more copies.

[22] See May 1998 Sibley Decl. at ¶ 19.

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group of installations" in the general areas of anti-piracy, anti-virus, software licensing, digital rights, encryption, or authentication systems, "including, without limitation, keys, authorization tokens or enforcement criteria." (See SRPFJ at Section III.J.1.) Section III.J.2 similarly allows Microsoft to condition the licensing of any API, documentation, or communications protocol relating to anti-piracy, anti-virus, license enforcement mechanisms, authentication/authorization security, or third party IP protection. Microsoft may require that a licensee: (a) have no history of software piracy, counterfeiting, etc.; (b) have a "reasonable business need" for the API, documentation, or communications protocol for a planned or shipped product; (c) meets "reasonable, objective standards" established by Microsoft for certifying the authenticity and viability of its business; and (d) agrees to have a third party verify that its product complies with the technical specifications for whatever Microsoft APIs or interfaces it may use.

59. Before evaluating these sections of the SRPFJ, one observation is in order. The API disclosure required under Section III.D is triggered by the existence of Microsoft Middleware, meaning that a version of a Microsoft Middleware Product is distributed apart from the operating system. Thus, if Microsoft bundles a piece of middleware with the operating system and does not distribute this middleware in some other way (e.g., by download), then Microsoft need not disclose the APIs used by that piece of middleware. There is a current example of this situation: Windows Media Player version 8.0 is available only with Windows XP. Therefore, Microsoft under the SRPFJ does not have to disclose the APIs applicable to Windows Media Player version 8.0. However, as discussed below, it would be impractical for Microsoft to affect competition in this way.

2. Comments Regarding API Disclosure and Communications Protocol Provisions

60. This group of decree provisions attracted a large number of thoughtful comments. Rather than address all of the commentators, I will discuss the major comments which tend to recur in the various submissions. As noted above, a potential loophole in the SRPFJ is that Microsoft's disclosure obligations only begin when it distributes a piece of middleware separately from the operating system. If Microsoft chooses to bundle this product and does not create a redistributable version, the APIs used by that product need not be disclosed. (See Stiglitz and Furman Decl. at 29–30, and Comment of Rebecca M. Henderson (hereinafter "Henderson Comment") at 5–6, and 9, and Comments of Software Information Industry Association at 26.) In theory, this feature of the SRPFJ could allow Microsoft to avoid disclosing APIs on new products and major new versions of current products.

61. In my opinion, this concern has little practical significance. If Microsoft were to follow such a strategy as a matter of broad policy to deter competition, it would come at a high price. First, none of the installed base of Windows users would have the new product, which alone would impose a large cost on Microsoft, if the product's use were at all competitively significant, as was the case in 1995 with the browser. Second, since competing providers would continue to innovate, as RealNetworks has done, at some point Microsoft would face the danger (since most users tend not to replace their operating system readily) that the Windows user's best option becomes obtaining the relevant piece of middleware from Microsoft's competition. Had Microsoft refrained from any separate distribution of IE in 1995, the effect would have been to solidify Netscape's hold on the browser market. Third, this problem is substantive only if the bundled Microsoft product uses an API that is not published. Even then, there are thousands of published APIs to which competing ISVs can and do write. RealNetworks, for example, has always written to these publicly available APIs, unless it could persuade Microsoft to produce or reveal a particular proprietary API. Based on the comments submitted by RealNetworks in this proceeding, its main API concern is not over unpublished APIs that only Windows Media Player 8.0 may use (if any), but about the Secure Audio Path API, sometimes called SAP. This API is used by a previous version of Windows Media Player that was distributed separately from the operating system, so Microsoft will have to disclose SAP under the SRPFJ. For these reasons, I do not believe that the ability of Microsoft to withhold API disclosure by a bundling-only strategy is likely to lead to significant competitive harm.

62. The definition of "Non-Microsoft Middleware Product" has also been criticized because of the requirement that the middleware product have had at least one million copies distributed in the previous year. For example, RealNetworks objected to this as "a huge number of copies . . . that will take a great deal of time, money and resources for most middleware companies to reach." (See Comments of RealNetworks, at 13, and Comments of SBC at 40–41.) The comments of RealNetworks also note that the above definition of "Non-Microsoft Middleware Product" does not state whether new versions are to be counted separately. My understanding is that the word "product" refers for this purpose to an aggregation of versions. Thus, if in the course of a single year, version 1 of a product had 200,000 copies distributed, version 2 had 300,000 copies distributed, and version 3 had 500,000 copies distributed, it is my understanding that the product would qualify. Furthermore, the term "distributed" should not be confused with "sold." Under my reading of the proposed decree, mass mailings of CDs (i.e., so-called "carpet-bombing") would constitute distribution for this purpose, as would "downloads." While one million distributed copies might have been significant in the early stages of the Internet, the recent explosive growth in the Internet and its use suggests that this requirement can be easily met by most, if not all, middleware vendors.[23]

63. It has been argued that the requirement that the million copy threshold must have been reached in the previous year is a further impediment, leading to the result that the "entrepreneur will begin to gain some of the settlement rights only a year after the widespread distribution of her product. She will be entitled to information about how this new product can interact with Windows only after Microsoft has imitated the innovation."[24] However, based on my reading of the SRPFJ, this concern is misplaced. The million copy requirement only comes into play in Section III.H, which is the only section in which the term "Non-Microsoft Middleware Product" is used. This section is solely concerned with the ability of the end user or OEM to have a Non-Microsoft Middleware Product launch automatically or be featured on the desktop. That is, it has nothing to do with the API disclosure requirement. Furthermore, it is my understanding that, once a particular Non-Microsoft Middleware Product meets the million

[23] It is worth noting that, even in 1995, within one year of the introduction of the Mosaic browser (the first browser with a graphical user interface) there were some two million users. *See* Gina Smith, "Inside Silcon Valley: A High Tech Top 10 Computers & Technology," *San Francisco Chronicle* (Jan. 1, 1995).

[24] *See* Timothy F. Brenisnahan, "A Remedy that Falls Short of Restoring Competition" ANTITRUST, at 69 (Fall 2001) (hereinafter "Bresnahan Article").

copy requirement and Microsoft has created a default setting, an OEM will be able to set as the default a competing product by another vendor, even if that competing product has not yet met the one million copy requirement. Thus, when RealNetworks asks, "Must [middleware distributors] accumulate one million distributions . . . before they are protected?", it betrays a misunderstanding of this section of the proposed decree.[25]

64. The proposed release schedule for APIs and documentation has also attracted criticism. (See, e.g., Bresnahan Article at 69; and Stiglitz and Furman Decl. at 30.) The requirement in Section III.D is that, once the initial disclosure for Windows XP has taken place, Microsoft must disclose new APIs no later than the date of the last major beta release, if the disclosures are triggered by new Microsoft middleware, or in a "Timely Manner," if the disclosure is triggered by a new Windows operating system product.[26] Whether this is too long a period of time or not appears to depend on the case at hand. For an API to be published by Microsoft, it must first be "hardened," which means that it must undergo an extensive testing procedure to make sure that it works in different programming environments and in the hands of developers who may not use it in the same way that Microsoft does. If an API has been developed for a Microsoft Middleware Product and has not been hardened, it may well take some period of time before it can usefully be disclosed to ISVs and others. On the other hand, if that Microsoft Middleware Product uses APIs that have been published or that have been hardened, then the process would likely be much shorter. Thus, the appropriate disclosure period would depend on the case at hand, and my own expertise as an economist does not qualify me to opine further. I note, however, that alternatives to the SRPFJ on this matter do not appear to represent a clear improvement. For example, one alternative would be for Microsoft to disclose APIs tentatively at an earlier stage, subject to the understanding that further testing might cause Microsoft to change them. In this case, a software developer, OEM or other party that uses Microsoft APIs may have earlier access to them but may well feel reluctant to make extensive use of a very preliminary list of APIs, knowing that Microsoft may make changes at a later date. From Microsoft's standpoint, to release APIs that are only preliminary could pose legitimate risks. If Microsoft were to release a tentative new API at the alpha testing stage and were to change the API at a later date, even a Microsoft disclaimer could leave Microsoft open to charges that it was changing APIs throughout the testing process in order to deceive and manipulate. Indeed, the disclaimer would almost indemnify Microsoft for such manipulation. Its precise reasons for changing the API would then lead to litigation. For these reasons, it is unclear that preliminary, earlier disclosure is an obvious improvement to the provisions currently embodied in the SRPFJ. Indeed, it would probably extend regulation into the testing process, which seems likely to reduce and distort innovation in APIs.

65. Other features of the proposed API disclosure process that have drawn comment include the limitations contained in Section III.J. For example, Professor Bresnahan states that the settlement "overbroadly exempts the most competitively important protocols such as security, authentication and identity protocols." (Bresnahan Article at 68.) The same concern is expressed by Stiglitz and Furman. (See Stiglitz and Furman Decl. at 30.) These fears are unfounded, based on my understanding of the SRPFJ. In particular, I observe that Section III.J.1 exempts from disclosure portions or layers of APIs, documentation, and protocols that, if disclosed, would compromise the security of a particular actual installation. The exemption, as described in the CIS, "is limited to specific end-user implementations of security items such as keys, authorization tokens or enforcement criteria." (See CIS at 51.) That is, the SRPFJ only limits disclosure of specific end-user implementation of security features. For example, Microsoft would not have to disclose the actual key used by an actual customer. It would not need to disclose an API written especially for an actual customer, and no other. These limits appear reasonable. APIs relating to general Microsoft technologies for security, etc. must be disclosed.

66. Apart from the disclosure of APIs, there is also the issue of the disclosure of the communications protocols between Windows installed on a client and a Microsoft server. Several commentators are of the opinion that this provision is very limiting and excludes, for example, communications between hand-held computers and servers.[27] As discussed above, it is not clear how including such communications (e.g., in Section III.E) would reduce Microsoft's monopoly power. I do not see a need to extend Section III.E to cover non-desktop products, as proposed by the litigating states. The Microsoft operating system monopoly has always been centered on the desktop. This is why Section III.E focuses on facilitating server-based applications, which provide indirect competition to Microsoft. There is no evidence that Microsoft has monopoly power in operating systems for handheld computers, set-top boxes, etc. Indeed, the operating system sold for use in these areas, Windows CE, has been characterized by poor performance since its inception and has been outperformed by Palm OS, Blackberry, and other such competing operating systems. Similarly, Microsoft is not dominant in the server market, and it currently faces competition from servers by Linux and others. I present data confirming these claims in Section IV below. For these reasons, I am convinced that Section III.E provides the right focus. To extend Section III.E to cover additional areas would, as I have discussed, certainly increase antitrust regulation with no clear rationale or benefit.

67. There does remain the issue of how Microsoft will decide what "reasonable and non-discriminatory" charges it will set for access to these communications protocols. This is a reasonable concern that has been raised by several commentators.[28] The basis for such license fees is apparently limited to intellectual property that Microsoft may have embedded in these protocols, as set out in Section III.I. Some guidance offered for what "reasonable and non-discriminatory" might mean is in the CIS, where it says that the "overarching goal of this Section is to ensure that Microsoft cannot use its intellectual property rights in such a way that undermines the competitive value of its disclosure obligations, while at the same time permitting Microsoft to take legitimate steps to prevent unauthorized use of its intellectual property." (CIS at 49.) Presumably, any charging mechanism that excluded substantial numbers of ISVs, IAPs, ICPs, or OEMs would violate this requirement. It is my understanding that previous DOJ antitrust consent decrees imply that the term "reasonable and non-discriminatory" is likely to be interpreted as not significantly excluding competitors. On this assumption, the lack of specific rate-

[25] *See* Comments of RealNetworks at 14.

[26] *See* definition VI.R in the SRPFJ.

[27] *See, e.g.*, Bresnahan Article at 68; and Henderson Comment at 3 and 5–6.

[28] *See e.g.*, Bresnahan Article at 69.

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setting guidance in Section III.I is not likely to be a severe problem.

68. Because Section III.B does not constrain the structure or levels of the royalty schedule beyond the uniformity requirement, some commentators have expressed the concern that Microsoft might be able to stay within the confines of this provision but still price in such a way as to be anticompetitive. For example, RealNetworks opines that Microsoft could "establish the price of versions of Windows without its middleware set as the default at some artificially high price and the actual price Microsoft wanted to receive as a cash incentive to carry Microsoft's middleware as the default application." (See RealNetworks Comments at 27.)

69. Contrary to RealNetwork's hypothetical, Section III.B.3.c states that Microsoft cannot discount the price of Windows based on any requirement that is inconsistent with the proposed decree. This means that Microsoft cannot offer discounts on Windows that are tied to OEMs foregoing such options as installing non-Microsoft icons pursuant to Section III.C, or setting defaults, or removing Microsoft Middleware Products pursuant to Section III.H. For instance, Microsoft cannot set the price of Windows at $500 but offer a cash discount of $450 if an OEM sets some Microsoft Middleware Product as the default. Alternatively, should Microsoft offer a direct payment based on the level of support for the Microsoft Middleware Product, this would be a case of preferential treatment within the meaning of Section III.G, so that the OEM could not give Microsoft preferential status more than fifty percent of the OEM shipments.

IV. Issues Not Addressed by the Proposed Decree

70. Many of the parties publicly commenting about asserted loopholes in the proposed decree also have been critical of claimed limitations to the remedy achieved by the settlement.[29] In this section, I address the main suggestions for additional remedies discussed by these commentators.

A. Unbundling of Microsoft Middleware From the OS.

71. An issue raised in this case is that, if Microsoft proceeds to bundle application software with the OS, an available "stripped down" version of the OS without the application in question should also be released.[30] Alternatively, when Microsoft releases a new operating system, it should continue to offer the previous version at the original price.

*72. This is a potentially important issue. If the OEM has to pay a positive price for a rival middleware product and pays a marginal price of zero for the same functionality bundled in the operating system, then the competitive battle is stacked against the competitor (see Arrow Decl. at ¶ 27). The critics also suggest that OEMs will not want to support more than one product with such functionality, even if icons were removed for the Microsoft Middleware version as permitted under the SRPFJ. With the underlying Microsoft Middleware code embedded in the system, the critics suggest that end users will still find this functionality being invoked and thus will have support concerns and needs, lessening the OEM interest in carrying the rival middleware. Further, the critics claim the availability of the commingled Microsoft Middleware code will further encourage ISVs to write applications to Microsoft products rather than to Non-Microsoft Middleware.[31] Thus, these commenting economists have urged the DOJ to require the unbundling of Microsoft Middleware from Windows Operating System Products.

73. However, on closer inspection, the requirement to have an unbundled operating system is highly regulatory and is likely to lead to more litigation. For example, to determine the appropriate discount for the unbundled operating system, the general approach would necessarily involve some estimate of the costs of the Microsoft Middleware Products that are to be removed from the bundled version. Such estimates, however, are likely to be arbitrary and complex to calculate. This is because software development efforts involve substantial shared costs between projects and benefit from common overhead expenditures. For example, suppose that a given server is used for ten development projects, both middleware and non-middleware; the cost of this server would have to be allocated between projects. But such cost allocation rules are inherently arbitrary.[32] Should corporate overhead be allocated between development projects for the purpose of pricing the unbundled operating system? If so, on which of the many accounting bases should it be done? How should the cost of a computer used by one individual on three different projects be allocated between them? To answer questions such as these, regulatory agencies (e.g., the Federal Communications Commission ("FCC") and the Federal Energy Regulatory Commission ("FERC")) evolved highly complex case law over a period of decades. Speaking as a regulatory economist with nearly three decades of experience, I can assert with confidence that such pricing of the unbundled operating system would be a regulatory quagmire at least equal in complexity to those that have kept regulatory bodies such as the FCC busy for years.

74. In its comments intended to support the notion of an unbundled operating system, SBC unintentionally discredits this proposal. In referring to the problem of pricing an unbundled version of Windows, SBC states:

> Several such mechanisms are possible. The Final Judgment provided that pricing be guided based on bytes of code. . . . .. SBC believes that it would be preferable to allocate costs between the operating system and the removed middleware based on measurement of "function point code." . . . Alternatively, SBC supports the use of a pricing mechanism based on the fully allocated product development costs for the operating system product and middleware products in questions. (See Comments of SBC at 143).

In this revealing passage, SBC makes it clear that because of the numerous and subtle common costs incurred in software development, each interested party would have wide scope to select and litigate for the (arbitrary) pricing mechanism that favored it the most.

75. In any case, it appears to be true that many applications on the desktop are not paid for by the OEM or (initially) by the end user. Indeed, all three of the current major Instant Messaging products are available without charge. I am aware of several instances in which third-party software applications are included by OEMs in their PC offerings, even though similar functionality is bundled by Microsoft in Windows XP. For example, Dell Computer offers photo imaging and CD "burning" software with Microsoft XP Home Edition-based PCs even though XP Home includes similar capabilities.[33] Dell includes Sierra Imaging's Image Expert 2000 software on some systems, pre-installing a premium version that is available to the end user for 60 days (an additional fee applies to retain premium features after this time limit).[34] Clearly, Microsoft's bundling does not eliminate the OEM's incentive to use such alternative applications when they are offered under desirable arrangements. Generally in such cases, the business model of an ISV is to provide the software to the OEM for free with hope for future fees from Web services (or other services) provided to end users through the software or from potential upgrade revenue when end users desire premium versions of the product. For example, RealNetworks is pursuing such a strategy and by August or September 2001 was enjoying usage rates approximately twice that of Windows Media Player.[35] RealNetworks' momentum has continued despite the fact that a version of Windows Media Player has been bundled with every version of Windows since Windows 95. RealNetworks appears to have competed well with products produced by Microsoft and bundled in Windows.[36]

B. Protections Concerning Microsoft Office Practices

76. Several commentators suggest it is necessary to require Microsoft to "port" Office to other operating systems, such as Apple MAC OS and Linux. For example, Stiglitz and Furman stated a concern that the proposed decree "does not address any issues relating to the pricing, distribution, or porting of Microsoft Office." (Stiglitz and Furman Decl. at 38.) Stiglitz and Furman and Litan et al. argue that the "porting" of Office is likely to reduce the applications barrier to entry (or at least reduce Microsoft's ability to raise them deliberately). (See Stiglitz and Furman Decl. at 42 and Litan et al. Comment at 71–72.) I agree that this remedy would be a more direct attack on the applications barrier to entry. However, Office has never been a significant part of the case brought against Microsoft. Where Office has been an issue, it relates to Microsoft's efforts to control middleware, such as the "club" used against Apple to harm Netscape, found to be anticompetitive by the District Court and upheld by the Court of Appeals. (See Opinion at 72–74.) The SRPFJ remedies directed at ensuring that rival middleware opportunities exist and can be freely pursued should be sufficient in this regard.[37]

C. Network Server, Handheld Computer and Web Services Issues

77. Some commentators would prefer the antitrust remedy to extend beyond middleware and the PC environment to cover such emerging product areas as servers, handheld devices, and Web services to insure Microsoft does not extend its monopoly to dominate additional markets and erect new barriers to entry. (See Stiglitz and Furman Decl. at 38–39; Comments of SBC Communications Inc. ("SBC") at 42–43; and Arrow Decl. at ¶¶ 55, 68–70.) Arrow, for instance, suggests that end users will access the Internet with server and handheld devices, and he concludes that the remedy should protect competing server operating systems and web services. Given Microsoft's anticompetitive practices, he concludes it is reasonable to require parity in access to APIs, protocols, and documentation for interoperability across product areas. (See Arrow Decl. at ¶¶ 55, 68–70). These remedies go well beyond the scope of the case brought against Microsoft (as well as the findings upheld by the appellate court) and also well beyond the desktop, where Microsoft has its proven monopoly. Hence, regulatory intervention is not called for in these areas, as is further addressed in the following assessment of certain specific issues raised relating to corresponding Litigating States proposals in these product areas.

1. Servers

78. Litan et al. point to the increasing importance of client-server networks and server-based computing and conclude that a new platform entrant must not only overcome the application advantages that Microsoft illegally obtained in the desk top OS, but must also provide compatibility with "servers which are increasingly relying on Microsoft's server operating systems" (see Litan et al. at 30.) This suggestion is at variance with the focus of the present antitrust case, which involves Microsoft's desktop monopoly, not the server market. In addition, there is no clear monopoly issue in the server market. Microsoft's share of server operating systems has grown from approximately 27 percent in 1996 to 41 percent in 2000. This gain has apparently come at the expense of other PC compatible network software providers (such as Novell), but not at the expense of competitors likely to be the more relevant factors in the future.[38] For example, according to a 1999 estimate issued by the International Data Corporation ("IDC"), Linux's server share more than doubled in 1998 to reach 17.2 percent.[39] More recently, IDC has reported that Linux's worldwide market share in 2000 of new and upgraded operating systems for servers had climbed to 27 percent, ranking it second behind Microsoft's share of 41 percent.[40] Litan et al. acknowledge that "the Linux OS has made significant inroads into the server market,"[41] while IDC confirms that, excepting Microsoft and Linux, "market share declined for other server systems, including Unix"

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[29] *See generally* Stiglitz and Furman Decl.; Comment of Robert E. Litan, Roger D. Noll, and William D. Nordhaus on the Revised Proposed Final Judgment (hereinafter "Litan et al.") Arrow Decl.; and Bresnahan Article.

[30] *See, e.g.*, Arrow Decl. at ¶ 26.

[31] Arrow asserts that permitting OEMs to remove Microsoft Middleware icons but not the underlying code would further undermine OEM incentives to carry Non-Microsoft Middleware. (*See* Arrow Decl. at ¶ 37.) Litan et al. at 44 claim that permitted commingling of code will be fatal to the proposed decree by ensuring universal distribution of Microsoft Middleware code, which when compared to partial distibution of Non-Microsoft Middleware code will encourage continued enhancement of the applications barrier to entry.

[32] *See, e.g.*, William J. Baumol, Michael F. Koehn, and Robert D. Willing (1987), "How Arbitrary is 'Arbitary'?—or Toward the Deserved Demise of Full Cost Allocation," 120 Public Utilities Fortnightly 16–21.

[33] Dell systems shipped with CD–RW capability come with Roxio Easy CD Creator, a CD burner software product. A recent article in *Computer Shopper* addresses Windows XP's CD mastering capabilities. See Computer Shopper, Feb. 2002, at 131. Another article—"Windows XP Tip: My Pictures Folder," TechTV, Oct. 26, 2001—reviews the photo managing capabilities Microsoft has bundled into XP. Microsoft also has a separate product, Microsoft Picture It 2002, that provides special effect and other enhanced photo management capabilities.

[34] Perhaps a more significant example is RealNetworks' RealOne media player product, comprising RealPlayer and RealJukebox, currently packaged by the OEM Sony in a Windows XP Home Edition Vaio Notebook system sold in the retail channel. In December 2001, it was also announced that Compaq will begin shipping these RealNetworks products as default media players in Presario desktop and notebook models designed for consumers. By mid-2002, compaq will be offering the newest RealOne Player, with a RealOne icon on the desktop and memberships to the RealOne subscription services. See EDP's Weekly It Monitor, Dec. 24, 2001. As discussed elsewhere, Windows XP bundles a similar media player product (Windows Media Player) in the operating system, and yet these OEMs provide the Non-Microsoft Middleware product as well.

[35] The *Wall Street Journal* reported (on Sep. 24, 2001) August 2001 usage figures: "28.8 million users accessed multimedia files on the Web in the RealNetworks format and 13 million did the same in Microsoft's format" (based on Internet measurement firm Netratings Inc. figures).

[36] *Ibid.*

[37] In light of the findings in this case overall and of the Court of Appeal's condemnation of Microsoft's conduct toward Apple regarding Office in particular, it is hard to imagine Microsoft attempting the use of the "club" again, let alone a party that would permit it without threats of litigation and complaints to regulators.

[38] See Stephen Shankland, *Linux Growth Underscores Threat to Microsoft*, CNET News.com (Feb. 28, 2001); Information Week, p. 86 (Apr. 21, 1997) (citing 1996 shares as reported by International Data Corp.).

[39] Steven Brody, *IDC Says Linux Likely to Lead OS Growth*, SunWorld (Mar. 31, 1999), *reproduced at* http://www.linuxworld.com/linuxworld/lw-1999-03/lw-03-idc.html.

[40] See Elise Ackerman, *Despite a Tough Road, Linux Has Never Been More Popular*, San Jose Mercury News (Nov. 25, 2001); Peter Galli, *Battle Brews Over Linux Server Shore*, EWEEK (June 10, 2001), *reproduced at* http://zdnet.com.com/2102-11-503810.html (citing also Gartner Dataquest estimates of Linux as having a share of server shipments of 6 to 8.6 percent share in third quarter 2000).

[41] Litan et al. at 25.

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over the past year.[42] For these reasons, I do not believe the server market by itself raises any monopoly power issues.

2. Handheld Computers and Web Services

79. Similarly, some commentators are concerned that Microsoft practices will lead to dominance in operating systems for handheld devices, removing a partial threat to at least some Windows-based personal computers. This leads them to assert that the proposed decree improperly ignores this segment of the computer industry. Again, this remedy seeks a penalty outside the scope of the case. No findings were found or upheld relating to Microsoft conduct directed at handheld devices or handheld competitors. Further, the Microsoft Windows CE operating system has not been gaining systematically on competing systems over the last several years, and there is little reason to divert the focus of the SRPFJ to this area.[43]

D. Restoring Java as a Competitive Threat

80. Some commentators have suggested that the proposed decree should require mandatory distribution of a Sun-compatible Java runtime environment with each copy of Windows (and IE) shipped by Microsoft. Critics of the proposed decree have suggested this provision is appropriate to attempt to compensate for Sun's lost position and lost momentum as Microsoft deceived developers and discouraged distribution and use of Sun-compliant Java. (See, e.g., Litan et al. at 25 and 71.) Stiglitz and Furman believe this would decrease the applications barrier to entry. (See Stiglitz and Furman Decl. at 42.) There is no question that the cross platform potential of Java was real, but there exists significant uncertainty as to the timing and impact that Java would have had absent Microsoft's unlawful conduct, as discussed in the *Findings of Fact*. Furthermore, if there is consumer demand for PCs that come with JVMs installed, the OEMs are free to meet that demand and are protected from retaliation by Microsoft under the SRPFJ if they do so. Therefore, in my opinion, this "must carry" provision is disproportionate and will improperly preordain market outcomes. Furthermore, other platforms or products, aided by the SRPFJ, will have an opportunity to serve as a carrier for Java distribution or otherwise provide alternative middleware platforms for future application developers.

E. Publishing IE Source Code

81. Similarly, critics have suggested that the proposed decree should force the open-source licensing of IE in order to reduce the applications barrier to entry and deny Microsoft one of the fruits (i.e., the dominant position of IE) of its anticompetitive conduct. (See Stiglitz and Furman at 41–42, and Litan et al. at 71.) Litan et al. claim that third parties will then "transform IE into a true independent middleware platform," ensuring that alternative middleware will be ubiquitous even if the SRPFJ anti-retaliatory and disclosure provisions are not enough to foster such an alternative.

82. This claim may well be true, but open-source licensing of IE will inflict economic harm on Microsoft by expropriating its intellectual property. This appears to be either an effort to collect damages from Microsoft or an exercise in competition policy well outside the confines of an antitrust case. If it is an attempt to collect damages from Microsoft, then it should be linked to an estimate of the damages caused by Microsoft's acts. I am not aware that such an estimate exists. Moreover, Microsoft is clearly subject to other punishment outside this case, as Netscape has recently filed suit seeking treble damages for losses associated with Microsoft's anticompetitive conduct aimed at eliminating Netscape's browser as a competitive threat.

F. Continued Licensing of the Predecessor Version of an Operating System

83. One proposal made by Litan et al. is that, whenever Microsoft makes a major release of a Windows Operating System Product, it must continue to license the predecessor version of the new product at its original price. Possibly, the objective is to limit Microsoft's ability to have customers upgrade to the new operating system by increasing the price of the predecessor version. Of course, there is nothing inherently anticompetitive about inducing customers to upgrade to a new major release of an operating system. However, based on my understanding of submission of Litan et al., this proposal is designed to correct a perceived loophole in the proposed decree. Litan et al. state:

> In the absence of this provision, Microsoft could frequently offer new, slightly modified versions of the OS that render the middleware based on the predecessor APIs unworkable with the new version. Middleware developers would be discouraged if they knew that Microsoft could raise their costs simply by slightly revising the operating system code in such a way that requires the middleware to be significantly modified. (Litan et al. at 72.)

84. It is not possible to assert that the SRPFJ prevents this from occurring, but it seems unlikely that Microsoft would find such a strategy profitable. First, it would appear to be difficult for Microsoft to limit the damage thus created to threatening middleware products. By changing APIs in the manner suggested by Litan et al., Microsoft would be requiring both ISVs and its own developers to rewrite their code substantially. Moreover, such a strategy would be counterproductive for Microsoft because it would serve to reduce the applications barrier to entry, since the new version of the OS would run fewer applications than its predecessor. This necessarily implies that Microsoft and its ISVs would have to rewrite, at least in part, the thousands of applications available prior to release and would have to coordinate the development schedule of these rewrites with each new release of the operating system. Microsoft's own spotty record in meeting and coordinating the release schedules for even one or two major products makes this outcome an unlikely event.

85. It may be that Microsoft would attempt a less extreme version of the Litan et al. scenario, in which only some of the APIs are changed between versions of Windows. However, there would still exist the problem of limiting the damage to only the middleware that Microsoft regards as threatening. Even moderate changes in APIs would likely lead to large failures of backward compatibility in Windows applications. Thus, to make this strategy work, Microsoft would need to reduce the number of published APIs by a significant amount each year. This action would certainly "discourage" software developers, as Litan et al. suggest, but at the same time it would also discourage ISVs from writing programs for the Windows desktop.

IV. Conclusions

86. The antitrust remedy in this case must focus attention on and fully resolve the appellate court finding that Microsoft engaged in specific anticompetitive acts to maintain its operating system monopoly. In developing this remedy, it is necessary to balance two broad factors. First, the remedy must place constraints on Microsoft's current and future behavior so that the unlawful acts stop and do not recur, and competitive conditions are restored. However, these constraints should not be so intrusive and complex that they themselves distort market outcomes. This potential distortion can take many forms, but two of the most important are (1) over-extensive government regulation of Microsoft that may result in inefficient rent-seeking by Microsoft's competitors, or (2) requirements that make Microsoft a less efficient competitor. Thus, the difficult task is to create a balanced remedy that constrains anticompetitive behavior by Microsoft without limiting competition on the merits.

87. In my opinion, the SRPFJ achieves the right balance. By focusing on Microsoft's anticompetitive business practices, its provisions eliminate the artificial barriers to entry erected by Microsoft that are the source of competitive concern. The provisions in the proposed decree are likely to deter conduct that (1) seeks exclusivity or (2) is backed by retaliatory threats. The SRPFJ also aims to restore and enhance competitive conditions by removing technical barriers to fair competition between Microsoft and rival middleware suppliers. From an economic standpoint, middleware is important because it can expose APIs and has the potential to become an applications platform distinct from the Windows OS. The SRPFJ does not attempt to preordain market outcomes or to weaken Microsoft as a legitimate competitor.

88. I have considered other proposals carefully, including that of the Litigating States. However, in my view, these proposals fail to achieve the right balance. In an attempt to erase all theoretical ways in which Microsoft could harm competition, these alternative proposals tend to require a complex regulatory program that is certain to be slow-moving, litigious, and vulnerable to manipulation by Microsoft's competitors. For example, the provision for how to price the proposed unbundled operating system invites arguments over cost allocations, and other ratemaking issues, that have the potential to slow down the competitive process.

89. Finally, in analyzing the SRPFJ, I have had the benefit of reviewing a number of thoughtful and probing comments on the proposed decree. As the discussion in Section III demonstrates, most of the potential problems raised by the various commentators are, in fact, not problems at all, but are met by the SRPFJ. However, at first glance there does appear to exist potential ways in which Microsoft could engage in behavior that reduces competition while claiming nonetheless that it satisfied the provisions of the SRPFJ. For example, some commentators have alleged Microsoft could (1) sell middleware only as bundled with the operating system, (2) set prices for access to its client-server communications protocols so high that they exclude competition, and (3) change large numbers of APIs frequently through numerous releases of new operating systems. Although these strategies may be theoretical possibilities, my analysis shows either that these acts would be unimportant or that Microsoft would lack the incentive to undertake such actions.

90. In sum, in my opinion, the SRPFJ focuses attention on and fully resolves the appellate court finding that Microsoft engaged in a series of anticompetitive acts to maintain its OS monopoly. The SRPFJ contains provisions that will stop the offending conduct, prevent its recurrence, and restore competitive conditions. In my opinion, in light of the above, the SRPFJ is in the public interest.

* * * * *

I declare under penalty of perjury that the foregoing is true and accurate. Executed on February 27, 2002 in Austin, Texas.

David S. Sibley.

Appendix A

Curriculum Vitae of Professor David S. Sibley

David S. Sibley, Department of Economics, University of Texas at Austin, Austin, TX 78712, Phone: (512) 475–8545, Fax: (512) 471–8899.

Education

1973 Ph.D. in Economics, Yale University

1969 B. A. in Economics, Stanford University

Teaching Fields

Industrial Organization, Economics of Information

Research Fields

Economics of asymmetric information, telecommunications policy, public utility pricing, models of firm's internal organization.

Professional Experience

March, 1992–Present: John Michael Stuart Centennial Professor of Economics, University of Texas at Austin.

August, 1991–March, 1992: Edward Everett Hale Centennial Professor of Economics, University of Texas at Austin.

September, 1983–August, 1991: Research Manager, Bell Communications Research, Morristown, NJ. Head of Economics Research Group.

September 1981–September 1983: Member of Technical Staff, Bell Laboratories, Murray Hill, NJ.

September 1980–September 1981: Adviser to the Chairman of the Civil Aeronautics Board.

January 1980–September 1980: Consultant, Civil Aeronautics Board, Washington, D.C.

September 1978–January 1980: Senior Staff Economist, Council of Economic Advisers, Executive Office of the President, Washington, D.C.

October 1973–September 1978: Member of Technical Staff, Bell Laboratories, Holmdel, NJ.

Teaching

September 1991–Present: Introductory Microeconomics, undergraduate and graduate Industrial Organization.

Fall 1989: Visiting Lecturer, Woodrow Wilson School of Public and International Affairs, Princeton University. Graduate course in regulation and public choice.

September 1983–December 1983: Adjunct Lecturer in Economics, University of Pennsylvania. Graduate course on regulation.

Publications

A. Journal Articles

"Pricing Access to a Monopoly Input," (with M. J. Doane, M. A. Williams, and S. Tsai), *Journal of Public Economic Theory*, 2001 (forthcoming).

"Exclusionary Restrictions in U.S. vs. Microsoft," (with M.J. Doane and A. Nayyar), *UWLA Law Review*, 2001.

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"Multiproduct Nonlinear Prices with Multiple Taste Characteristics," (with P. Srinagesh), *Rand Journal of Economics*, Winter 1997.
"Optional Two-Part Tariffs: Toward More Effective Price Discounting," (with R. Rudkin) in *Public Utilities Fortnightly*, July 1, 1997.
"A Bertrand Model of Pricing and Entry," (with W.W. Sharkey), *Economics Letters*, 1993.
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"A Note on the Concavity of the Mean-Variance Problem," *Review of Economic Studies*, July 1975.

B. Reports and Articles in Conference Volumes, and Other Publications

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"Optional Tariffs for Access in the FCC's Price Cap Proposal," (with D.P. Heyman and W.E. Taylor), in M. Einhorn (ed.), *Price Caps and Incentive Regulation in the Telecommunications Industry*, Kluwer, 1990.
Report to the Governor, The Task Force on Market-Based Pricing of Electricity. Co-authored with D.M. Sappington, Appendix III.
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"Deregulation and the Economic Theory of Regulation," (with W.W. Sharkey), in *Proceedings of the Eleventh Annual Telecommunications Policy Research Conference*, 1983.
"Antitrust Policy in the Airline Industry," (with S.B. Jollie), Civil Aeronautics Board, October 1982. Transmitted by the CAB to Congress as part of proposed sunset legislation.
"Optimal Non-Uniform Pricing for Electricity: Some Illustrative Examples," (with R.W. Koenker), in Sichel (ed.) *Public Utility Ratemaking in an Energy-Conscious Environment*, Praeger, 1979.
"The Dynamics of Price Adjustment in Regulated Industries," (with E.E. Bailey), in *Proceedings of IEEE Conference on Systems Control*, 1974.

C. Books:

Co-editor of *Telecommunications Demand Analysis: An Integrated View*, North-Holland, 1989.
The Theory of Public Utility Pricing, (with S.J. Brown), Cambridge University Press, 1986. Second printing 1986. Third printing 1989. Revised edition planned.

Current Research Areas

Telecommunications policy, especially access pricing and optional tariff design; Design of incentive mechanisms; Organizational slack/informational asymmetries.

Other Professional Activities

Associate Editor of the *Journal of Regulatory Economics*.
Consultant to the Governor of New Jersey's Task Force on Market-Based Pricing of Electricity.
Referee for National Science Foundation and numerous professional journals.
Consulting for Bell operating companies on a variety of pricing and public policy issues.
Memberships: American Economic Association; listed in Who's Who in the East 1990.

Response of United States to Public Comments on the Revised Proposed Final Judgment

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant;Response of the United States to Public Comments on the Revised Proposed Final Judgment.

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002; Tunney Act Hearing

Dated: February 27, 2002.
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In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant; Response of the United States to Public Comments on the Revised Proposed Final Judgment.

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002; Tunney Act Hearing.

1. Pursuant to the requirements of the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. 16(b)–(h), the United States hereby responds to the public comments received regarding the Revised Proposed Final Judgment (RPFJ) in this case.

2. Simultaneously with this Response, the parties have filed a Second Revised Proposed Final Judgment (SRPFJ), which includes modifications to which the United States, Microsoft, and the Settling States have agreed.[1] Because every comment addresses the RPFJ, this Response is couched in terms of, and generally refers to, the proposed decree before the modifications (i.e., the RPFJ), addressing the modifications of the SRPFJ only as required. However, the decree the Court should enter is the *modified* version of the RPFJ—that is, the SRPFJ.

Introduction[2]

3. The United States and Microsoft[3] filed the RPFJ on November 6, 2001, thereby proposing to end on mutually agreeable terms litigation that began on May 18, 1998. Pursuant to the requirements of the Tunney Act, the United States filed its Competitive Impact Statement (CIS) on November 15, 2001, and published the RPFJ, CIS, and a description of the procedures for submitting public comments on the proposed decree in the **Federal Register** on November 28, 2001. 66 FR 59452 (2001). The United States also posted information on those procedures on the Department of Justice website. See <http://www.usdoj.gov/atr/cases/ms-settle.htm>.

4. The 60-day public comment period began on November 28, 2001, and ended on January 28, 2002.[4] During that period, the United States received 32,329 public comments. This was by far the most comments ever received on any proposed decree under the Tunney Act. By comparison, the number of comments received on the RPFJ vastly exceeds the number received in the *AT&T* case—which completely restructured the telecommunications industry—by more than an order of magnitude. *United States* v. *AT&T*, 552 F. Supp. 131, 135 (D.D.C. 1982) ("over six hundred documents"), *aff'd mem. sub. nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); 47 FR 21214–24 (1982) (listing name and address of each commentor on proposed *AT&T* decree, with length of comment in pages).[5]

5. The large volume of comments in this case reflects, in part, the widespread use of electronic mail to submit comments (approximately 90–95% of the comments were submitted via e-mail, as opposed to approximately 5–10% via facsimile and fewer than 1% via hand delivery) and the fact that various groups, both opposed to and in favor of entry of the RPFJ, placed solicitations on their websites or sent mass electronic mailings urging submission of comments on the proposed settlement.[6]

6. Approximately 1,500 comments were unrelated to either the *United States* v. *Microsoft* case generally or the RPFJ specifically, or were merely duplicate copies of comments by the same individual or entity. A small number of these submissions are simply advertisements or, in at least one case, pornography. The United States has not filed these comments with the Court and does not intend to publish them. Approximately 1700 comments relate to other antitrust suits against Microsoft.[7] Most of these comments address only the proposed settlement of the private, class action against Microsoft, and not the RPFJ; erring on the side of over-inclusiveness, the United States has filed these latter unrelated comments with the Court and will publish them.

[1] The United States also filed, simultaneously with this Response, a Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment. The SRPFJ is a logical growth of the RPFJ, its incremental modifications responding to public comments, and the overall result further advances the public interest.

[2] A full description of the history of this litigation—both procedural and substantive—can be found in Memorandum Of the United States in Support Of Entry Of the Revised Proposed Final Judgment 1–11 (filed Feb. 27, 2002) ("U.S. Memorandum").

[3] In addition, nine State plaintiffs (the "Settling States") from *New York* v. *Microsoft Corp.*, No. 98–CV–1233 (D.D.C.) (CKK) ("*New York*"), agreed to settle their dispute with Microsoft under RPFJ. Ten other plaintiffs from *New York* (the "Litigating States") did not agree to the terms of the RPFJ and are continuing their suit in a separate proceeding.

[4] The United States also chose to accept and treat as Tunney Act comments various communications from members of the public commenting on the proposed settlement that were received by the Department of Justice beginning on November 5, 2001, the first business day following submission of the initial Proposed Final Judgment to the Court, even though the official 60-day comment period had not yet begun. *See* 15 U.S.C. 16(b) (60-day period begins upon publication in the **Federal Register**.)

[5] By contrast, the United States' 1994 consent decree with Microsoft generated only five public comments. *See* 59 FR 59,426, 59,427–29 (1994).

[6] *See, e.g.*, <http://www.salon.com/tech/col/rose/2002/01/16/competitor/index/html>.

[7] Porcher. The Response generally uses abbreviations to identify commentors. An index of comments cited, along with unique identifying numbers, is found in Appendix A to this Response.

7. Approximately 22,750 comments express an overall view of the RPFJ. Of these, roughly 5,700 do not, for example, attempt to analyze the substance of the RPFJ, do not address any of its specific provisions, and do not describe any particular strengths or shortcomings of it.[8] Approximately 16,700 comments can be characterized as containing some generally limited analysis of the RPFJ. These comments typically are one-to-two pages and contain limited discussion of issues related to the RPFJ.[9] The remaining 350 comments expressing an overall view can be characterized as containing a degree of detailed substance concerning the RPFJ. These comments range from one- or two-page discussions of some aspect of the RPFJ, to 100-plus-page, detailed discussions of numerous of its provisions or alternatives.[10] There is substantial overlap among these more substantial comments in terms of the issues and arguments that they address. Of these roughly 350 comments, the United States characterized 47 as "detailed" comments based on their length and the detail with which they analyze significant issues relating to the RPFJ.[11] There is also considerable duplication of the issues addressed and arguments raised among these "detailed" comments.

8. Of the total comments received, roughly 10,000 are in favor of or urge entry of the RPFJ, roughly 12,500 are opposed, and roughly 9,500 do not directly express a view in favor of or against entry. For example, a significant number of comments contain opinions concerning Microsoft generally (e.g., "I hate Microsoft"), or concerning this antitrust case generally (e.g., "This case should never have been brought"), but do not state whether they support or oppose entry of the RPFJ.

9. In the remainder of this Response, the United States responds to the various types of comments according to the issues that the comments raise. For example, we respond to comments that raise issues relating to the disclosure provisions of the RPFJ (Sections III.D and III.E) in one section, and we respond to comments that suggest that the United States should have pursued a structural remedy against Microsoft in another section. Although the United States has reviewed and categorized every comment individually, it is not responding to comments on an individual comment-by-comment basis; rather, it summarizes the issues raised by specific comments and provides references for locating these issues in specific comments. On each issue, the Response refers to some of the comments that raised it;[12] other comments may raise the same issue but are not identified in this Response.

I. General Comments

A. Should Never Have Brought Suit

10. Many comments complain about the legitimacy of the charges brought against Microsoft. These comments typically characterize the prosecution of Microsoft as an unjustified assault upon a successful business, and often refer to the benefits Microsoft has generated for the economy and shareholders. These comments object to the RPFJ as unnecessary relief.[13]

11. Comments challenging the validity of the United States' case, or alleging that it should not have been brought, are challenges to the initial exercise of the United States' prosecutorial discretion and are outside the scope of this proceeding. The purpose of this proceeding is not to evaluate the merits of the United States' case. A Tunney Act proceeding is not an opportunity for a "de novo determination of facts and issues," but rather "to determine whether the Department of Justice's explanations were reasonable under the circumstances" because "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (citations omitted). Courts consistently have refused to consider "contentions going to the merits of the underlying claims and defenses." *United States* v. *Bechtel*, 648 F.2d 660, 666 (9th Cir. 1981). Accordingly, those comments seeking to challenge the legitimacy of the United States' underlying case against Microsoft are beyond the purview of appropriate Tunney Act inquiry.

12. Nevertheless, the United States notes in response to these comments that, prior to filing the Complaint, the United States conducted an extensive and thorough investigation into specific Microsoft practices that unlawfully restrained competition in the PC operating system market. This investigation led the United States to conclude that Microsoft undertook several illegal actions to protect its market position. Both the District Court's decision and the unanimous, en banc Court of Appeals' decision "uphold[ing] the District Court's finding of monopoly power in its entirety," and affirming in part "the District Court's judgment that Microsoft violated § 2 of the Sherman Act by employing anticompetitive means to maintain a monopoly in the operating system market," *United States* v. *Microsoft Corp.*, 253 F.3d 34, 51, 46 (D.C. Cir. 2001) (en banc) (per curiam) ("*Microsoft*"), support the United States' conclusion.

B. Allegations of Political Influence

13. Certain commentors allege that the RPFJ resulted from improper influence exerted by Microsoft on the United States. They generally base their allegations on the fact and size of Microsoft's political contributions and assert that, because the RPFJ does not contain the relief that the commentors prefer, the RPFJ must be the result of malfeasance or corruption on the part of the United States.[14]

14. The commentors' allegations, however, lack any factual support. Commentors contend that Microsoft extensively lobbied both the legislative and executive branches of the federal government to bring an end to the litigation.[15] By citation to Microsoft's lobbying and political contributions, commentors apparently seek to raise an inference of impropriety on the part of representatives of the Antitrust Division of the Department of Justice. Commentors suggest that these representatives somehow were corrupted by Microsoft's general lobbying activities.

15. Allegations that the substance of the RPFJ reflects any kind of political corruption are meritless. Just as a judge should not accept conclusory allegations of bias or prejudice based upon mere opinions or rumors as the basis for disqualification,[16] so too must

[8] Reid; Karkess.

[9] Becker; Gallagher.

[10] Daly; Love.

[11] The United States provided copies of these detailed comments to the Court on February 14, 2002, and posted copies of these comments on the Department of Justice website on February 15, 2002. These comments may be found at <http://www.usdoj.gov/atr/cases/msmajor.htm>

[12] Thus, unless otherwise noted, citations to specific comments merely are representative of comments on that issue, and should not be interpreted as an indication that other comments were not reviewed.

[13] CMDC 1–11; Skinn 1; Wagstaff 1; Lloyd 1; Peterson 1; Bode 1; Poindexter 1; Williams 1.

[14] Relpromax 3–4, 18, 20–22, Ex. 10; CCIA 18–34 & Decl. Edward Roeder; ProComp 78–86.

[15] Commentors also allege that Microsoft has failed adequately to disclose lobbying contacts as required by the Tunney Act, 15 U.S.C. § 16(g). Pursuant to the Court's Order dated February 13, 2002, Microsoft will respond to allegations of deficiencies in its compliance with § 16(g).

[16] *See, e.g.*, *United States* v. *Haldeman*, 559 F.2d 31, 134 (D.C. Cir. 1976); *In re United States*, 666 F.2d 690, 695 (1st Circ. 1981) (a judge should ignore

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allegations of corruption on the part of Department of Justice attorneys be supported by something more than supposition and innuendo.[17] Actual evidence of corruption is required in order to support rejection of a consent decree. Mere speculation and conjecture are insufficient. Because there is simply no credible evidence of corruption in this case, there are no specific facts to which the United States can respond on this issue.

16. More generally, the comments on this issue ignore the indisputably neutral influences on the settlement process, such as (1) the decision of nine independent States to join the settlement, (2) the decision by the Court of Appeals in *Microsoft*, which significantly narrowed the scope of Microsoft's potential liability and cast substantial doubt on the legal viability of potential remedies, particularly divestiture, and (3) the interest in obtaining prompt implementation of remedies without the delay inherent in further litigation and appeals.

C. Removing the "Fruits" of Microsoft's Anticompetitive Conduct

17. Certain public comments suggest that the RPFJ does not sufficiently remove the "fruits" of Microsoft's illegal conduct,[18] and that the decree must go further than simply barring Microsoft from further bad behavior.[19] Such criticism is not well-taken. As the United States previously stated in the CIS (at 24), the restoration of competition is the "key to the whole question of an antitrust remedy." *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961). Competition was injured in this case principally because Microsoft's illegal conduct maintained the applications barrier to entry into the PC operating system market by thwarting the success of middleware that had the potential to erode that barrier. Thus, the key to the proper remedy in this case is to end Microsoft's restrictions on potentially threatening middleware, prevent it from hampering similar nascent threats in the future, and restore the competitive conditions created by similar middleware threats. In this context, the fruit of Microsoft's unlawful conduct was Microsoft's elimination of the ability of potentially threatening middleware to undermine the applications barrier to entry without interference from Microsoft. The RPFJ addresses and remedies precisely this issue.

18. Criticism of the RPFJ's alleged failure to remove the fruits of Microsoft's unlawful conduct falls into two general categories: (1) comments that define "fruits" consistently with the Court of Appeals' ruling, as described in the preceding paragraph, but claim that the RPFJ does not restore competitive conditions sufficiently that middleware has the potential to flourish without risk of interference from Microsoft; and (2) comments whose definition of "fruits" is inconsistent with either the claims alleged in this case, the Court of Appeals' decision, or both.

19. The first group argues that the RPFJ permits Microsoft to retain the fruits of its illegal conduct by allowing it "free rein to squash nascent, albeit unproven competitors at will,"[20] and does not sufficiently remove the applications barrier to entry.[21] In the phrasing of one commentor, as a result of its anticompetitive conduct toward Netscape, Microsoft allegedly is left with the freedom from a competitive environment in which threats could be nurtured.[22] As described in detail below (*see* Sections III–VII), however, the RPFJ protects the ability of middleware to compete by imposing a variety of affirmative duties and conditions on Microsoft. The RPFJ is devised to ensure that middleware developers have access to the necessary information—e.g., through disclosure of APIs and server communications protocols—to create middleware that can compete with Microsoft's products in a meaningful way.[23] It also restricts Microsoft's conduct toward OEMs and others, and thus opens the door for competing middleware to obtain necessary support, promotion, and distribution.

20. The second group of commentors sets forth a variety of different views regarding what the "fruit of the illegal conduct" is in this case. Many of these comments rely on assertions that exceed the scope of either the liability findings in this case, or the theory of the case generally, or both. For example, some comments define the fruit as Microsoft's enduring monopoly in its Windows operating system and suggest that an appropriate remedy must directly attack the operating system monopoly.[24] But the United States never alleged in this case that Microsoft illegally acquired its operating system monopoly. And neither the District Court nor the Court of Appeals adopted the view that Microsoft "would have lost its position in the OS market but for its anticompetitive behavior." *Microsoft*, 253 F.3d at 107; *see also United States* v. *Microsoft Corp.*, 84 F. Supp. 2d 9, 111 at ¶ 411 (D.D.C. 1999) ("*Findings of Fact*") ("There is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition in the market for Intel-compatible PC operating systems."). In keeping with the original framework of the case and the Court of Appeals' decision, the United States believes that there is no basis for imposing a remedy that seeks to strip Microsoft of its position in the operating system market.

21. Other commentors define the "unlawful fruit" as Microsoft's control of the browser market and contend that any remedy must prevent Microsoft from using similar conduct to gain control of services that rely on Internet Explorer.[25] Other criticism is directed toward the decree's failure to ban contractual tying.[26] A number of commentors, including the Litigating States, propose that Microsoft be required to offer open source licenses to Internet Explorer source code without royalty.[27] These commentors claim that, because Microsoft's intent in offering Internet Explorer as a free product was central to its unlawful conduct, the open source remedy may be appropriate to restore competition and deprive Microsoft of the fruits of its unlawful conduct.[28] Similarly, certain commentors propose that Microsoft be

"rumors, innuendos, and erroneous information published as fact in the newspapers"); *McClelland* v. *Gronwaldt*, 942 F. Supp. 297 (E.D. Tex. 1996).

[17] Lobbying activities by the defendant, even though "intensive and gross," are insufficient to establish corruption on the part of the United States. *See, e.g., United States* v. *Associated Milk Producers*, 394 F. Supp. 29, 39–40 (W.D. Mo. 1975), aff'd, 534 F.2d 113 (8th Cir. 1976).

[18] AOL 31; Henderson 10; Gifford 8; Litan 58–59; RealNetworks 10; SIIA 7–8, 44–48.

[19] Nader/Love 6.

[20] ProComp 29–30 (quoting *Microsoft*, 253 F.3d at 79). Similarly, CCIA complains that one of the chief advantages gained by Microsoft was the ability to control the browser, not just as a source of a alternate OS-neutral APIs, but specifically as the gateway to Internet computing. As such, this commentor defines the fruit as the "suppressed development of competitive threats," but criticizes the decree as not addressing this concern.

[21] Kegel 3.

[22] Catavault 9.

[23] Certain comments assert that erosion of the applications barrier to entry would be accomplished better through mandatory support of cross-platform Java. Litigating States 17; SIIA 49; Nader/Love 6. For a discussinn regarding the United States' decision to promote opportunities for all middleware, rather than a particular competitor, see the discussion of comments that propose a "Java Must Carry" provision, at ¶¶ 428–29 below.

[24] Sun 6.

[25] SILA 7–8; CCIA 42; Litigating States' Proposal § 17.

[26] AOL 31–32.

[27] CCC 19–20; Harris 15; Litigating States' Proposal 16–17 (§ 12); PFF 30; SSI 19, 45.

[28] CCC 19–20.

required to port Internet Explorer to other operating systems.[29]

22. Stripping Microsoft of its market position in the browser market or banning contractual tying, however, are remedies that are not warranted on the existing record. This case was not a monopoly leveraging case, and the Court of Appeals reversed the District Court's judgment as it related to attempted monopolization of the browser market, and vacated and remanded the District Court's judgment on the tying claim. *Microsoft*, 253 F.3d at 46. The remedy in this case must be evaluated in terms of the *viable claims* remaining after the Court of Appeals' decision; under that construct, remedial measures targeted at Internet Explorer are unsupportable.

23. In particular, neither open sourcing the Internet Explorer source code nor requiring Microsoft to port Internet Explorer to other operating systems would be an appropriate remedy. As one commentor notes, that remedy would benefit Microsoft's competitors rather than ensuring a level playing field for all participants in the software industry.[30] Most importantly for consumers, it would not significantly enhance those competitors' incentives or ability to develop new or better products. The disclosure provisions of the RPFJ instead provide middleware developers with access to sufficient information for interoperability that will allow them to create middleware—including browsers—that have the ability to compete with Microsoft's middleware in a meaningful way.[31] The goal of the RPFJ is to restore the opportunity for middleware of all types. The United States believes that this approach is consistent with the Court of Appeals' opinion and will sufficiently deprive Microsoft of the fruits of its unlawful conduct.

D. The Litigating States' Proposal

24. A number of comments suggest that the United States should have proposed a remedy similar to the proposal submitted by the Litigating States in their remedy proceeding with Microsoft in *New York*.[32] The United States' primary consideration when crafting the RPFJ was to focus on the practices engaged in by Microsoft that the Court of Appeals found unlawful. As explained in the CIS, elsewhere in this Response, and in the U.S. Memorandum, the United States believes that the RPFJ takes the correct approach toward addressing the anticompetitive conduct found by the Court of Appeals, preventing its recurrence, and restoring lost competitive conditions in the marketplace.[33]

25. Where relevant, we have addressed the differences between the Litigating States' proposals and their counterparts in the RPFJ and have responded to the comments that address these differences. The Litigating States' Proposal also contains several provisions that are not directly comparable to any of the provisions in the RPFJ. For the reasons described below, the United States believes that such provisions are not appropriate as a remedy for the violations found by the Court of Appeals.

E. Fines

26. Many comments criticize the RPFJ for not imposing monetary damages on Microsoft. According to these critics, the decree does not "include anything that would make Microsoft pay for its past misdeeds."[34] Others similarly complain that the proposed decree does not contain any provision for the disgorgement of illegal profits.[35] Still others complain that the decree should have required Microsoft to reimburse the United States for the attorneys' fees expended on this case.[36]

27. Monetary damages, including attorneys' fees, are not available to the United States in this case. This is a government civil action for injunctive relief, and monetary damages are not available in such actions. *See* 15 U.S.C. 4 (authorizing the United States "to institute proceedings in *equity* to prevent and restrain such violations") (emphasis added). *Cf.* 15 U.S.C. 15(a) (damages available to United States when it is "injured in its business or property"). Moreover, the goals of the remedy in this case are to enjoin the unlawful conduct, prevent its recurrence, and restore competitive conditions in the market affected by Microsoft's unlawful conduct. *See Nat'l Soc'y of Prof'l Eng'rs* v. *United States*, 435 U.S. 679, 697 (1978); *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961). The RPFJ accomplishes these goals. By contrast, punishment is not a valid goal.[37]

F. Senate Hearing

28. The Senate Judiciary Committee submitted a comment consisting of the record from its hearing on December 12, 2001, "The Microsoft Settlement: A Look to the Future." The hearing record consists of the following items: (1) A list of witnesses at the hearing; (2) a transcript of the hearing; (3) written statements of Senators Leahy, Hatch, Kohl, Durbin and Sessions; (4) written statements of Charles A. James (Assistant Attorney General—Antitrust Division, U.S. Department of Justice), Jay L. Himes (New York Attorney General's Office), Charles F. Rule (counsel to Microsoft), Professor Lawrence Lessig (Stanford Law School), Dr. Mark N. Cooper (Consumer Federation of America), Jonathan Zuck (Association for Competitive Technology), Matthew Szulick (Red Hat, Inc.), and Mitchell E. Kertzman (Liberate Technologies); (5) written statements submitted for the record of Ralph Nader and James Love (Consumer Project on Technology), Mark Havlicek (Digital Data Resources, Inc.), Jerry Hilburn (Catfish Software, Inc.), Lars H. Liebeler (Computing Technology Industry Association), and Dave Baker (EarthLink, Inc.); (6) the RPFJ; (7) News Statement of Citizens Against Government Waste; (8) letter from Senator Hatch to Assistant Attorney General James; (9) letter from Assistant Attorney General James to Senator Hatch; (10) letter from Robert H. Bork to Senators Leahy and Hatch; (11) letter from James L. Barksdale to Senators Leahy and Hatch; (12) letter from Vermont Attorney General William H. Sorrell to Steven A. Ballmer; (13) written questions of Senators Leahy, Hatch, Kohl, DeWine, Durbin, and McConnell; and (14) answers to written questions from Assistant Attorney General James, Professor Lawrence Lessig, Mitchell Kertzman, Matthew Szulik, Charles F. Rule, Jonathan Zuck, and Jay L. Himes.

[29] 19–20; Palm 13.

[30] CompTIA 17 (mandatory sharing of source code).

[31] Carroll 4 ("It's the external behavior that's important for interoperability, not the internal design.")

[32] *See* Plaintiff Litigating States' Remedial Proposals ("Litigating States' Proposal"). The Litigating States' Proposal is Exhibit B to the Litigating States' comment. Comments that advocate the Litigating States' Proposal include SBC 131–132; AOL 58–61; Litan 69–74; PFF 29–31; CFA 101; Davis; Pratt.

[33] We again note, as discussed in the U.S. Memorandum and elsewhere in this Response, that the Litigating States' Proposal and RPFJ are to be evaluated under different standards, and are properly addressed separately by the Court. We address the Litigating States' Proposal for the sole upurpose of responding to those commentors (including the Litigating States themselves) who contend that the United States should have adopted a remedy identical, or similar, to the proposal by the Litigating States.

[34] Nader/Love 6; Holland 1; Brinkerhoff 1; McWilliams 1; Lewis 1; Harris 2; Alexander 2.

[35] KDE 17; Maddux ¶ 2; Thomas 2–3.

[36] Philips; Wong.

[37] *See United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316 326 (1961); *United States* v. *Oregon State Med. Soc'y*, 343 U.S. 326, 333 (1952); *United States* v. *Nat'l Lead Co.*, 332 U.S. 319, 338 (1947).

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29. The materials submitted by the Senate Judiciary Committee constitute a self-contained record of the Committee's comments on the settlement (in the form of both questions and written and oral statements) submitted to the Department of Justice, and the Department's responses to those comments. As such, the United States does not respond again here to those comments specifically. The United States notes, however, that many of the Committee's comments on the settlement are identical to or overlap with other comments (including an individual comment from Senator Kohl), to which the United States does respond.

II. Tunney Act Issues

A. Adequacy Of The United States' Competitive Impact Statement

30. Several commentors claim that the CIS fails to comply with the Tunney Act.[38] Thus, one commentor contends that the CIS is deficient for failing to include substantive economic analysis.[39] Another contends that the CIS is too terse, and therefore does not meet the requirements of the statute, the standard set by the CIS filed by the United States in *AT&T* (47 FR 7170–01), or requirements of agency rulemakings.[40] Other commentors assert that the CIS is inadequate for failing to provide a detailed explanation for rejection of alternative remedies.[41] Still other commentors fault the CIS for allegedly misstating or adding terms to the RPFJ.[42] One commentor specifically criticizes the CIS' lack of explanation of (1) the use of a definition of "Middleware" in the RPFJ that differs from that used by the Court of Appeals; (2) the lack of a Java-related remedy; (3) the failure of the RPFJ to prohibit all forms of retaliation; and (4) the failure of the RPFJ to address all of the harms identified by the Court of Appeals.[43] Another comment also contends that the United States has failed to produce "determinative documents," as required by 15 U.S.C. 16(b).[44]

31. As this recitation shows, while the commentors couch their objections in terms of an alleged failure by the United States to comply with the Tunney Act, for the most part the objections are in substance comments on the RPFJ itself. Because the CIS fully complies with the Tunney Act requirements, none of the objections is well taken.

1. The CIS Complies With the Requirements of the Tunney Act

32. Congress enacted the Tunney Act, among other reasons, "to encourage additional comment and response by providing more adequate notice [concerning a proposed consent judgment] to the public," S. Rep. No. 93–298, at 5 (1973) ("Senate Report"); H.R. Rep. No. 93-1463, at 7 (1974) ("House Report"), *reprinted in 1974* U.S.C.C.A.N. 6535, 6538. The CIS is the primary means by which Congress sought to provide more adequate notice to the public. The Tunney Act requires that the CIS "recite':

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) The remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) A description of the procedures available for modification of such proposal; and

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

15 U.S.C. 16(b).

33. When Senator Tunney introduced the bill that became the Act, he explained that a purpose of the six items of information required in a CIS was to "explain to the public[,] particularly those members of the public with a direct interest in the proceeding, the basic data about the decree to enable such persons to understand what is happening and make informed comments o[r] objections to the proposed decree during the 60-day period." 119 Cong. Rec. 3452 (1973) (Remarks of Sen. Tunney) ("Tunney Remarks").[45] The purpose could be achieved, Senator Tunney suggested, without adding greatly to the United States' workload: the six prescribed items "do not require considerably more information than the complaint, answer and consent decree themselves would provide and, therefore, would not be burdensome requirements." The Antitrust Procedures and Penalties Act: Hearings on S. 782 and S. 1088 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 93d Cong. 3 (1973) ("Senate Hearings") (statement of Sen. Tunney) ("Tunney Statement"). In light of the more than 30,000 public comments concerning the RPFJ submitted to the United States, there can be little debate that the CIS contained sufficient information for the public to make "informed comments o[r] objections" relating to the RPFJ.

34. There is no serious dispute that the CIS satisfies the requirements of the Tunney Act with respect to items 1, 2, 4, and 5 listed above. Also as discussed above, most of the comments purporting to address item 3 (explanation of the proposed judgment) in fact are complaints about the substance of the RPFJ and not the sufficiency of the CIS. These comments are addressed in this Response according to the provision of the RPFJ to which they apply. To the extent that any comments intend to suggest that the explanation in the CIS itself is deficient, the United States believes that the CIS is more than adequate to its intended purpose of describing the proposed decree's provisions and eliciting public comments.

2. The CIS Recites "A Description And Evaluation Of Alternatives To Such Proposal Actually Considered By The United States"

35. Section V of the CIS (CIS at 60–63) describes alternatives the United States considered and rejected,[46] and describes the reasons why they were rejected. It explains why the United States viewed the RPFJ as a superior alternative to continued litigation; why the United States decided not to continue to seek a break-up of Microsoft; and the reasons for differences between the interim conduct provisions of the Initial Final Judgment (IFJ), *United States* v. *Microsoft Corp.*, 97 F. Supp. 2d 59, 66–69 (D.D.C. 2000), vacated, 253 F.3d 34, 46 (D.C. Cir. 2001) (en banc) (per curiam), and the provisions of the RPFJ. It also lists a number of other remedy proposals, the criteria used to evaluate them, and the results of that evaluation. The recitations contained in the CIS are fully consistent with providing "basic data about the decree to enable [members of the public with a direct interest] to understand what is happening and make informed comments o[r] objections to the proposed decree," 119 Cong. Rec. 3452 (1973) (Tunney Remarks), and with Senator Tunney's view that the statutory requirements should not be burdensome. See Tunney Statement. The number and nature of the comments themselves suggest that the level of analysis in the CIS was more than adequate to stimulate informed public comment about the proposed remedy and about the relative merits of alternative remedies. As the United States described recently in its response to AAI's lawsuit,[47] the recital complied with the statutory requirement and fulfilled its purpose.

B. The United States Fully Complied With All Tunney Act Requirements Regarding Determinative Documents

36. The Tunney Act requires the United States to make available to the public copies of "any other materials and documents which the United States considered determinative in formulating [the proposed final judgment]." 16(b). The CIS explained that the United States is not filing any determinative documents in this case because there are none within the meaning of the statute. One comment says that this disclosure is deficient,[48] but it is mistaken.

37. The United States did not file any determinative documents with the Court or disclose any in the CIS for the simple reason that there are no such documents in this case. The Court of Appeals has addressed the definition of "determinative documents" in a Tunney Act case. *Mass. Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776 (D.C. Cir. 1997) ("*MSL*"). In *MSL*, the court held that a third party was not entitled a wide range of documents from the government's files.[49] The United States there said the statute referred to documents "that individually had a significant impact on the government's formulation of relief—i.e., on its decision to propose or accept a particular settlement." *Id.* at 784 (quoting brief of the United States). The court concluded that the statutory language "seems to point toward the government's view . . . and confines § 16(b) at the most to documents that are either 'smoking guns' or the exculpatory opposite." *Id.* The court added that "[t]he legislative history in fact supports the government's still narrower reading." *Id.*; *see also United States* v. *Bleznak*, 153 F.3d 16, 20–21 (2d Cir. 1998) (only documents that were a "substantial inducement to the government to enter into the consent decree" need be disclosed). No court of appeals has said otherwise.[50]

38. Thus, the commentor who asserts that the United States must have failed to comply with the statute because it "cannot be accurate" that no determinative documents exist,[51] misapprehends the meaning of "determinative documents." The United States simply did not consider any document in this case to be a "smoking gun or its exculpatory opposite" with a significant impact on the formulation of its decision regarding the RPFJ.

C. Timing and Process of Hearing

39. Several comments say that an evidentiary hearing with third party participation is necessary and that the hearing should be held in conjunction with—or even after—the remedy hearing in *New York*. We disagree.

1. The Court Has Discretion To Determine the Nature and Format of the Tunney Act Proceedings

40. A court in a Tunney Act proceeding is vested with great discretion concerning the nature of any proceedings to review a proposed consent decree. Congress clearly intended that "the trial judge will adduce the necessary information through the least time-consuming means possible," *see* S. Rep. No. 298, 93d Cong. 6 (1973) ("Senate Antitrust Report"); H.R. Rep No. 93–1463, 93d Cong. Sess. 8 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6539 ("House Antitrust Report"), even though the court *may* take other steps as it may deem appropriate. 15 U.S.C. 16(f). The procedural devices enumerated in Section 16(f) are discretionary—the legislative history characterizes them as "tools available to the district court or [sic] its use, but use of a particular procedure is not required." 119 Cong. Rec. 3453 (Feb. 6, 1973) (Remarks of Sen. Tunney). Such procedures were made discretionary "to avoid needlessly complicating the consent decree process." *Id.*

41. The legislative history further indicates that Congress did not intend the Tunney Act to produce lengthy hearings on the merits and thereby undermine the incentives for the United States and defendants to reach settlements in civil antitrust cases. See Senate Antitrust Report at 3. Rather, Congress meant to retain the consent decree as a viable settlement option, calling it "a substantial antitrust enforcement tool." See Senate Antitrust Report at 6–7; House Antitrust Report at 8; *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1456 (D.C. Cir. 1995) ("*Microsoft I*").

2. An Evidentiary Hearing Is Not Required in This Case

42. Several commentors argue that the Court should conduct an evidentiary hearing given the complexity and importance of this case.[52] But the Tunney Act does not mandate a hearing or trial. *See United States* v. *Airline Tariff Publ'g Co.*, 836 F. Supp. 9, 11 n.2 (D.D.C. 1993); *United States* v. *NBC*, 449 F. Supp. 1127 (C.D. Cal. 1978). Indeed, such a hearing could largely defeat the principal considerations behind the RPFJ: to avoid the uncertainty of a trial and to obtain "prompt relief in a case in which illegal conduct has long gone unremedied." CIS at 60. The legislative history "clearly and expressly establishes that '[i]t [was] not the intent of the committee to compel a hearing or trial on the public interest issue.'" *NBC*, 449 F. Supp. at 1143–44 (*quoting* Senate Antitrust Report, quoted with approval in House Antitrust Report at 8–9).

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[38] These comments include ProComp 80–82; CCIA 33–34; AOL 53–56; PFF 10–17; AAI 12; Relpromax 8–9, Ex. 11. Similar issues also were raised in the complaint filed in *American Antitrust Institute* v. *Microsoft*, Civ. No. 02–CV–138 (D.D.C.) (CKK), and Motion Intervention filed by Relpromax Antitrust, Inc.

[39] Relpromax 8–9.

[40] PFF 10–17.

[41] AAI 12; PFF 15.

[42] ProComp 82; CCIA 33–34.

[43] AOL 53–56.

[44] Further explanation of the United States' compliance with its obligations under the Tunney Act is contained in the U.S. Memorandum, Part II.

[45] The other purpose, Senator Tunney explained, was to focus the attention of the parties during settlement negotiations. Tunney Remarks, 119 Cong. Rec. at 3452.

[46] As the CIS makes clear (CIS at 63), it does not describe literally every remedial proposal considered and rejected. The statute should not be interpreted to require that the CIS do so, for such a requirement would be unduly burdensome and serve no useful purpose. As Senator Tunney said, the CIS ought to provide "*some* of the alternatives that were considered by the Department." Senate Hearings at 108 (remark of Sen. Tunney) (emphasis added).

[47] United States' Motion to Dismiss, *AAI* v. *Microsoft Corp.*, No. 02–CV–138 (D.D.C.) (CKK), at 16–23 (Feb. 8, 2002) ("Br. Dismiss AAI"); *see also* U.S. Memorandum at 20–28.

[48] ProComp 81–82.

[49] See also Br. Dismiss AAI 19–21.

[50] ProComp cites *United States* v. *Central Contracting Co.*, 527 F. Supp. 1101, 1104 (E.D. Va. 1981), in which the court called "almost incredible" the United States' representation that no determinative documents existed. After further review, and acknowledging that in most cases a "smoking gun" document will not exist, the court adopted a broader standard under which, even if documents are individually not determinative, they can be determinative in the aggregate. *See United States* v. *Central Contracting Co.*, 537 F. Supp. 571, 575 (E.D. Va 1982). The United States does not believe that there are determinative documents in this case even under the standard of *Central Contracting*. But in any event, *Central Contracting*'s broad definition of determinative documents has not been followed by any Tunney Act court, has been squarely repudiated by one district court, *United States* v. *Alex. Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996) ("*Central Contracting*'s broad definition of 'determinative doucments' may conflict with Congress's intent to maintain the viability of consent decrees") (cited with approval in MSL, 118 F.3d at 785), *aff'd sub nom. United States* v. *Bleznak*, 153 F.3d 16 (2d Cir. 1998), and cannot be reconciled with decisions of the Court of Appeals for the District of Columbia Circuit and the Second Circuit. See MSL, 118 F.3d at 784; *Bleznak*, 153 F.3d at 20 (citing MSL and quoting "'smoking gun' or exculpatory opposite" with approval). *Central Contracting* is simply not good law in this regard.

[51] ProComp 81.

[52] AAI 12; AOL 55–58; Novell 34–35; ProComp 84.

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Instead, the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone." *United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000).

43. The court may, in its discretion, invoke additional procedures when it determines that such proceedings may assist in the resolution of issues raised by the comments. See id. But the legislative history indicates that "[w]here the public interest can be meaningfully evaluated simply on the basis of briefs and oral argument, this is the approach that should be utilized." House Antitrust Report at 8. "Only where it is imperative that the court should resort to calling witnesses for the purpose of eliciting additional facts should it do so." *Id.* Even in *AT&T*, which at the time was considered "the largest and most complex antitrust action brought since the enactment of the Tunney Act," the court concluded that "none of the issues before it require[d] an evidentiary hearing," and instead invited briefing from interested individuals and allowed participation through oral argument at the two-day hearing on the proposed modifications to the final judgment that were at issue. *AT&T*, 552 F. Supp. at 145, 219.

44. It is not imperative to hold an evidentiary hearing in this case because the Court has sufficient information to determine whether to approve a consent decree. *United States* v. *Associated Milk Producers*, 394 F. Supp. 29, 45 (W.D. Mo.), *aff'd*, 534 F.2d 113 (8th Cir. 1976); *United States* v. *G. Heileman Brewing Co.*, 563 F. Supp. 642, 650 (D. Del. 1983). In this case, the Court already has the benefit of a broad array of materials to assist in making the public interest determination. Over 30,000 public comments were submitted, including detailed comments from, among others, some of Microsoft's primary competitors and most vociferous critics (such as Sun Microsystems, AOL/Time Warner, and RealNetworks) as well as computer and software industry trade groups representing the interests of such firms (such as ProComp, CCIA, and SIIA). The Court also has this Response, as well as additional briefing submitted by the United States, Microsoft, and the Settling States. The Court has scheduled a two-day hearing on the RPFJ, during which the Court has indicated it will hear oral argument from the United States, Microsoft, and the Settling States, as well as pose questions to the parties. The Court has further indicated that it may hear brief oral argument from third parties during the hearing, although the precise nature of third-party participation, if any, is still under consideration. The Court will have access to a sufficient body of materials to determine whether the RPFJ is in the public interest without resorting to an evidentiary hearing that would both delay and unnecessarily complicate the evaluation of the RPFJ.

3. The Court Is Not Required To Permit any Third-Party Participation

45. Whether and to what extent to allow third parties to participate is left to the Court's discretion; the Tunney Act permits, but does not require, the Court to authorize third-party participation. 15 U.S.C. 16(f)(3). Courts usually deny third-party participation in Tunney Act proceedings both because the potential for delay outweighs the benefit from intervention (*see, e.g., United States* v. *IBM Corp.*, 1995 WL 366383 (S.D.N.Y. June 19, 1995)) and because interested third parties are heard through the comments process. *United States* v. *G. Heileman Brewing Co.*, 563 F. Supp. 642, 652 (D. Del. 1983); *United States* v. *Carrols Devel. Corp.*, 454 F. Supp. 1215, 1221–22 (N.D.N.Y. 1978). That is particularly true in this case, where a large number of highly interested and motivated third parties have taken full advantage of the opportunity to submit extensive comments that set forth their views of the RPFJ and whether the Court should enter it. As a result, although the Court ultimately may choose to hear from third parties,[53] they have already had a full and effective mechanism to present to the Court any arguments or concerns they believe it should address in its public interest determination.

4. Allowing Third-Party Participation Through an Evidentiary Hearing Would Unnecessarily Delay and Complicate These Proceedings

46. Insofar as commentors claim that third parties should be allowed to participate in an evidentiary hearing, doing so would serve only to complicate and delay these proceedings. Allowing third-party participation in an evidentiary hearing would delay the much-needed relief the United States seeks in the public interest. As the court in *IBM* wisely observed, "'[a]dditional parties always take additional time. Even if they have no witnesses of their own, they are a source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceedings a Donnybrook Fair.'" *IBM*, 1995 WL 366383, at *5 (*quoting Crosby Steam Gage & Valve Co.* v. *Manning, Maxwell & Moore, Inc.*, 51 F. Supp. 972, 973 (D. Mass. 1943)).

47. Much of the "evidence" that such commentors seek to present during an evidentiary hearing consists of materials that have been, or could have been, included in their public comment submissions[54] or that could be addressed through briefing and oral argument, should the Court choose to allow such third-party participation. Resubmitting such materials through the form of testimony would result only in delay and a waste of judicial resources. The commentors—who already have been given an opportunity fully to be heard—have not demonstrated that an evidentiary hearing would in any way advance the public interest or permit them to improve materially on the points made in the extensive comments already submitted.

5. The Tunney Act Proceedings Should Not Be Held in Conjunction With, or Rely Upon Evidence From, the Litigating States' Remedy Hearing

48. Finally, a number of comments propose that the Court consider the RPFJ either in conjunction with, or after, consideration of the Litigating States' proposed remedy in *New York*. Some argue that the Court should not make its determination regarding the RPFJ until after the Litigating States have presented their case, claiming that such an approach is necessary to avoid prejudicing the Litigating States' case.[55] Others assert that the Court should hold a hearing on the RPFJ, if at all, only after the Litigating States' hearing.[56] Finally, at least one commentor proposes that the Court hold a single hearing to evaluate all possible remedial options, including the Litigating States' proposal, the RPFJ, and major structural remedies.[57]

49. These proposals are ill-advised and unworkable for a number of reasons. *First*, the RPFJ and the Litigating States' proposed remedy are to be evaluated separately and under different standards. *See* U.S. Memorandum at 35–46. *Second*, it would be inappropriate to introduce evidence relating to *New York* in this Tunney Act proceeding. The United States is not a party to *New York*, has not participated in the discovery or other aspects of that case, has played no role in the development of the evidence related to that case, and will not participate in that hearing. Consideration of evidence from that case in this proceeding, therefore, would be inappropriate. *Cf.* Fed. R. Evid. 804(b)(1) (testimony given in another hearing in a different proceeding can be admitted against a party only "if the party against whom the testimony is now offered or . . . a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination").

50. Finally, proposals to have the two cases considered concurrently, or to postpone consideration of the RPFJ until after the remedial hearing in *New York*, unnecessarily would delay the Court's public interest determination regarding the RPFJ. *See* U.S. Memorandum at 74–78. The Litigating States' hearing is scheduled to begin on March 11, 2002. The parties there have proposed between 170 and 300 hours of total testimony in that case. *See* Joint Status Report 2, No. 98–CV–1233 (Feb. 13, 2002). Although the Court has indicated that the proposed length is far longer than it expected or believes is reasonably necessary, the Court has not yet determined the precise format or length of that hearing. *See* Tr. 2/15/02 at 26–27, No. 98–CV–1233. In all likelihood, the hearing could last several weeks.

51. All of these proposals stand to delay consideration, and entry of, the RPFJ by the Court. Delay of this nature, which will not result in the Court hearing more or better information about the settlement, is not only unnecessary but also subverts one of the primary goals of both the RPFJ and the Tunney Act—prompt relief.[58] The Court therefore should not postpone entry of the RPFJ.

D. Standard of Review Under The Tunney Act[59]

52. Numerous comments address the standard of review applicable under the Tunney Act to the RPFJ.[60] These comments range from brief references to the language of the Tunney Act[61] to lengthy discourses on the correct standard citing legislative history, case law, and treatises.[62]

53. These comments have at least three overriding themes. First, most agree, citing Microsoft, that the correct standard for relief is to unfetter a market from anticompetitive conduct, terminate the illegal monopoly, deny to the defendant the fruits of its illegal conduct, and ensure that no practices remain likely to result in monopolization in the future.[63] Second, most argue that, because of the procedural posture of the case, the judgment of the United States in agreeing to the RPFJ as an appropriate resolution of the charges it brought and the case it proved is due little or no deference.[64] And finally, many argue, again because of the procedural posture of the case, that the District Court is required to apply a more stringent review, and even entitled to fashion its own relief based upon an independent review of the record.[65] Although the commentors correctly identify the relevant standard of relief set forth by the Court of Appeals, they are incorrect in concluding that the procedural posture of the case eliminates any need for deference to the judgment of the United States or justifies a court-created remedy. In essence, these commentors argue that the Court of Appeals' mandate precluded the possibility of a negotiated settlement. It did not. The Court of Appeals recognized that even a litigated remedy should be "tailored to fit the . . . drastically altered scope of Microsoft's liability . . . ." *Microsoft*, 253 F.3d at 107. As explained in the U.S. Memorandum, and below in Sections IV through XII, the RPFJ fits that altered scope of liability.

1. The Tunney Act Requires That Entry of the RPFJ Be "In the Public Interest"

54. As noted by the United States in its CIS and by virtually all commentors remarking on the issue, the Tunney Act requires that the Court determine whether entry of the RPFJ is "in the public interest." 15 U.S.C. 16(e). In making that determination, the Court *may* consider:

> [1] the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> [2] the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id. (emphasis added). As is apparent from the permissive language of the statute, these factors for consideration are discretionary.[66]

55. In determining whether the RPFJ is in the public interest, the Court may properly consider whether "the remedies [are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995) ("*Microsoft I*") (internal citations omitted). In *Microsoft I*, and again in *Massachusetts School of Law at Andover, Inc.* v. *United States*, 118 F.3d 776 (D.C. Cir. 1997) ("MSL"), the D.C. Circuit explained that this inquiry entails consideration of four specific factors:

> The district court must examine the decree in light of the violations charged in the complaint and should withhold approval only [1] if any of the terms appear ambiguous, [2] if the enforcement mechanism is inadequate, [3] if third parties will be positively injured, or [4] if the decree otherwise makes "a mockery of judicial power." See [*Microsoft I*, 56 F.3d] at 1462.

MSL, 118 F.3d at 783.[67]

56. The requirements of an antitrust remedy are familiar. As the Court of Appeals noted in remanding this case:

> A remedies decree in an antitrust case must seek to "unfetter a market from anticompetitive conduct," *Ford Motor Co.[* v. *United States]*, 405 U.S. [562,] 577 [(1972)], to "terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future," *United States* v. *United Shoe Mach. Corp.*, 391 U.S. 244, 250 . . . (1968); *see also United States* v. *Grinnell Corp.*, 384 U.S. 563, 577 . . . (1966).

253 F.3d at 103.

57. The Court of Appeals also emphasized, however, that the "'[m]ere existence of an exclusionary act does not itself justify full feasible relief against the monopolist to create maximum competition.'" *Id.* at 103 (quoting 3 *Antitrust Law* ¶ 650a, at 67). The scope of the remedy must be clearly related to the anticompetitive effects of the illegal conduct. *Microsoft I*, 56 F.3d at 1460 (quoting *International Salt Co.*

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[53] CCC 2; ProComp 84–86.

[54] AOL 53; Litan 59–60; ProComp 84–86.

[55] AAI 11; SIIA 8–9.

[56] AOL 58–61; Litan 59–60; Novell 3, 34–35.

[57] PFF 4.

[58] Although Microsoft has agreed to be bound by much of thye RPFJ pending its entry (Stipulation ¶ 2 (Nov. 6, 2001)), some important provisions become effective only after entry. *See, e.g.*, RPFJ § IV.B (Technical Committee must be created "[w]ithin 30 days of entry of this Final Judgment"); *id.* § IV.C (Microsoft's internal compliance program beings "within 30 days of entry").

[59] The standard to be applied in this proceeding is discussed in U.S. Memorandum, Part II.

[60] RealNetworks 5–10; Red Hat 9–10; SBC 21–32; Litan 4–11, 31–42; Sen. Kohl 2; Kegel 3; KDE 1–2; Elhauge 5–6, 10, 13; Economides 4; CFA 2; CompTIA 4–5; CCIA 9–11, 18–41; AAI 2–13; ACT 2–18; SIIA 9–11; WLF 3–4; PFF 1–9; ProComp 1–25; Novell 30–37; AOL 1–9.

[61] WLF 3; CFA 2; Kegel 3; Sen. Kohl 2; KDE 1–2; CompTIA 4–5.

[62] ProComp 1–25; ACT 2–18; AAI 2–13; CCIA 9–11; Litan 4–11; SBC 21–32.

[63] CCIA 9, 34–38; Red Hat 9; ProComp 2, 16–20; Litan 34; AOL 2–8; Kegel 3; SIIA 9–10.

[64] ProComp 2, 12, 20–23 (no deference); AAI 5–9; CCIA 9–10, 19–33; SBC 30.

[65] Novell 30–37; RealNetworks 5–10; ProComp 15–23; AOL 4–9; Litan 33–36; SBC 29–32; AAI 4–13; CCIA 19–39.

[66] S.Rep. No. 93–298, at 6(1973).

[67] For further discussion of these factors, see U.S. Memorandum at 36–42.

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v. United States, 332 U.S. 392, 401 (1947)). Although an antitrust conduct remedy is not limited to enjoining precisely the conduct found to be *unlawful, e.g., United States v. Hartford-Empire Co. v. United States*, 323 U.S. 386, 409 (1945); AT&T, 522 F. Supp. at 150 n.80, nevertheless "the remedies must be of the "same type or class" as the violations, and the court is not at liberty to enjoin "all future violations of the antitrust laws, however unrelated to the violations found by the court.'" *Microsoft I*, 56 F.3d at 1460.[68]

2. The Court Should Grant Deference to the Judgment of the United States

58. Commentors assert that the current procedural posture of the case, after trial and affirmance on appeal, eliminates any need for deference to the judgment of the United States. Commentors urge the Court to undertake an independent review of the record, and even substitute a litigated remedy for that of the RPFJ. Such a result is inconsistent with the purposes and intent of the Tunney Act.

59. As explained in the U.S. Memorandum, the Court's assessment of the adequacy of the RPFJ must take into account the risks and uncertainties of further litigation that would be required before there could be an adjudicated final judgment, safe from further challenge on appeal, that would remedy the anticompetitive harm attributable to conduct found to violate the Sherman Act. *See* U.S. Memorandum at 45–46. The Court of Appeals explained in *Microsoft I* that it is "inappropriate for the judge to measure the remedies in the decree as if they were fashioned after trial. Remedies which appear less than vigorous may well reflect an underlying weakness in the government's case, and for the district court to assume that the allegations in the complaint have been formally made out is quite unwarranted." *Id.* at 1461.[69]

60. This case does differ from *Microsoft I* in that there have been both findings of fact and conclusions of liability affirmed on appeal. But the difference is one of degree, not kind. Although the Court of Appeals in this case affirmed the District Court's judgment of liability for monopoly maintenance, it emphasized that neither it, nor the District Court, had so far found "a causal connection between Microsoft's exclusionary conduct and its continuing position in the operating systems market," 253 F.3d at 106–07, sufficient to justify structural relief (although it did not rule out the possibility that the District Court would find such a connection on remand).[70] Moreover, the Court of Appeals vacated the District Court's judgment of liability with respect to tying, *id.* at 84 (leaving open the possibility of further litigation on remand), and reversed as to attempted monopolization, *id.* at 80–84; it also limited the scope of the conduct found to constitute illegal monopolization, reversing on 8 of the 20 acts found by the District Court. The remedy ultimately imposed on remand, the Court of Appeals directed, "should be tailored to fit the wrong creating the occasion for the remedy." *Id.* at 107.

61. In the absence of a settlement, therefore, the United States would face the prospect of extended litigation with respect to the numerous issues related to relief in this case. An appeal likely would follow the conclusion of the proceedings in the District Court. Microsoft also might choose to seek Supreme Court review of the Court of Appeals' decision affirming its liability for monopolization. See Petition for a Writ of Certiorari, No. 01–236 (listing issues for future petition). Despite the *Findings of Fact* and *Conclusions of Law*, and despite the Court of Appeals' affirmance of a number of the holdings, including liability for monopolization, the ultimate outcome of continued litigation is uncertain, and the path of litigation would be both risky and costly in terms of resources that might otherwise be devoted to other antitrust enforcement concerns.[71]

62. Thus, although the litigation risks the United States faces here are not identical to the litigation risks it faces when it negotiates a settlement prior to trial, the teaching of *Microsoft I* remains applicable. The District Court's evaluation of the RPFJ is properly informed by the public interest in a certain and timely remedy for Microsoft's unlawful conduct and must take account of the uncertainties and risks of further litigation, an inquiry that properly respects the realistic choices the United States faced in deciding to settle the case on the negotiated terms of the RPFJ.

63. Moreover, in making its determination, the District Court properly accords significant weight to the United States' predictive judgments as to the efficacy of remedial provisions. Indeed, such deference is proper even outside the consent decree context. See *Ford Motor Co*, v. *United States*, 405 U.S. 562, 575 (1972) ("once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor") (quoting *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961)). Similarly, it is proper to defer to the United States as representative of the public interest when the parties are requesting entry of an agreed-upon judgment.[72]

64. As the Court of Appeals has explained, the degree of deference the trial court gives to "the government's predictions as to the effect of the proposed remedies" in a Tunney Act proceeding may vary with the extent of the court's familiarity with the market and other factors. *Microsoft I*, 56 F.3d at 1461. But, as the Court of Appeals also emphasized, even a court that has extensive relevant expertise should not lightly reject the government's predictions. For example, in the case of the *AT&T* decree—"a decree the oversight of which had been the business of a district judge for several years," *Microsoft I* at 1460—the Court of Appeals instructed that the district court should not reject an agreed-upon modification of the decree unless the court had "'exceptional confidence that adverse antitrust consequences [would] result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'" *Id.* (quoting *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993)). Indeed, if courts do not give appropriate deference to the United States' views,

[68] Nor may relief in a civil antitrust case be punitive. *See* page 15 & n.37 above.

[69] Congress intended that the statutory "public interest" concept encompass "compromises made for non-substantive reasons inherent in the process of settling cases through the consent decree procedure." House Report at 12.

[70] Among the goals of an antitrust decree are "terminat[ing] the illegal monopoly" and "deny[ing] to the defendant the fruits of its statutory violation." *Microsoft*, 253 F.3d at 103 (internal quotation omitted). But plaintiffs never alleged, and neither the District Court nor the Court of Appeals found, that Microsoft *acquired* its monopoly unlawfully. *See id.* at 58 (Microsoft "violated § 2 by engaging in a variety of exclusionary acts . . . to maintain its monopoly"); *see also Microsoft I*, 56 F.3d at 1452. Thus, whether, and to what extent, Microsoft now has an "illegal monopoly" depends on whether its unlawful conduct increased or extended Microsoft's monopoly—that is, whether the fruits of its statutory violations included increments to the magnitude or duration of its market power. Again, neither the District Court nor the Court of Appeals found this direct causal connection between the conduct and the continuance of the monopoly.

[71] See Note, *The Scope of Judicial Review of Consent Decrees under the Antitrust Procedures and Penalties Act of 1974*, 82 Mich. L. Rev. 153, 175 n.143 (1974) ("The legislative history of the [Tunney Act] should make the courts sensitive to the efficient allocation of the Department's resources in making their public interest determinations.").

[72] *See, e.g., United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 177 (1948); *United States* v. *Borden Corp.*, 347 U.S. 514, 518 (1954); *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981).

Tunney Act proceedings will become equivalent to the proceedings that lead to adjudicated judgments with adjudicated remedies.

65. Commentors are also incorrect in their assertion that the procedural posture of the case requires the District Court to fashion and impose an adjudicated judgment. The District Court's role in making this public interest determination differs from its role in formulating an adjudicated judgment. Because the District Court "is evaluating a settlement, it is not as free to exercise its discretion in fashioning a remedy," *AT&T*, 552 F. Supp. at 151, as it would be in a case litigated to an adjudicated judgment. The District Court is not "empowered to reject [the remedies sought] merely because [it] believe[s] other remedies [are] preferable." *Microsoft I*, 56 F.3d at 1460. In this procedural setting, the District Court's "function is not to determine whether the resulting array of rights and liabilities "is the one that will best serve society," but only to confirm that the resulting settlement is "'within the reaches of the public interest.'" *Id.* (quoting *United States* v. *Western Elec. Co.*, 990 F.2d 283, 309 (D.C. Cir. 1990) ("*Triennial Review Opinion*") (emphasis in original), in turn quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), in turn quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)).

66. This standard reflects not only the proper role of a court of equity asked to lend its authority to the parties' agreement, but also the critical role that consent decrees play in effective public antitrust enforcement. *See* Senate Report at 5 ("the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere"); 119 Cong. Rec. 24,600 (1973) (Statement of Sen. Gurney) (Tunney Act "is designed to enhance the value and effectiveness of the consent decree as a tool of public policy"). A consent decree, such as the RPFJ, is the product of negotiation. The parties weigh the benefits of prompt and certain resolution of the case against the possibility that continued litigation might improve their respective positions. Settlements potentially offer the public the benefits of more timely and certain relief, as well as significant savings in judicial and prosecutorial resources. But if courts refused to enter any consent decree that did not match precisely the relief the court would have imposed in the absence of a settlement, "defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved." *AT&T*, 552 F. Supp. at 151.

67. Thus, even in the *AT&T* case, a case of unparalleled public importance in which the trial court had unusual familiarity with both the evidence and the legal arguments of the parties, *see id.*, the court determined to approve the parties' settlement "[i]f the [proposed] decree meets the requirements for an antitrust remedy." *Id.* at 153. The court made clear that it intended to follow that standard whether or not the proposed decree corresponded to the decree the court itself would have imposed had the parties pushed forward to an adjudicated judgment. *See id.* at 166 n.147 (noting that if the case "were to proceed to final judgment and liability were found, the Court might determine that [certain measures not part of the proposed decree] are appropriate remedies, either as alternatives to the divestiture of the Operating Companies or in addition to such divestiture").

E. Microsoft's Compliance With Section 16(g)

68. Several comments question whether Microsoft made adequate disclosures under 15 U.S.C. 16(g).[73] At the February 8, 2002, Status Conference, the Court directed Microsoft to brief the issue of its compliance with Section 16(g), and expressed its assumption that this issue was one that "the government isn't necessarily going to be commenting on, but it is something that is [Microsoft's] responsibility."[74] The United States therefore supplies the following information concerning the purpose of the disclosures required pursuant to Section 16(g), but does not respond to the substance of the comments that question Microsoft's compliance with the requirements of Section 16(g).

69. The Tunney Act treats disclosure requirements intended to inform public comment regarding a proposed consent judgment entirely separately from the other disclosure requirements set forth in the Act. To facilitate public comment on a proposed consent judgment in a government civil antitrust case, the Tunney Act provides, in a single subsection, that the proposed decree itself must be published in the **Federal Register**, along with a CIS, which the United States must furnish to any person requesting it. 15 U.S.C. 16(b). In addition, that same subsection requires the United States to file in the Tunney Act district court, and any other district court the Tunney Act court designates, copies of the proposed decree and "any other materials and documents which the United States considered determinative in formulating such proposal." *Id.* But the Tunney Act does not depend solely on the **Federal Register** to inform the public. The next subsection, 15 U.S.C. 16(c), requires the United States to publish, repeatedly, summaries of the proposal and the CIS, together with a list of the determinative documents made available for "meaningful public comment," in general circulation newspapers.

70. By contrast, the lobbying provision at issue here, Section 16(g), merely requires *defendants* in antitrust cases to file their disclosure statements with the Tunney Act court—there are no requirements of public notice, **Federal Register** publication, newspaper summaries, or distribution to other district courts. Moreover, the statutory provisions addressing disclosure of information supporting informed public comment (Sections 16(b), (c)), appear immediately before the provisions dealing with consideration of, and response to, public comment (Section 16(d)) and the court's public interest determination (Sections 16(e), (f)). The lobbying provision comes *after* all of those Sections. The statutory structure thus makes clear the different purposes of the two different kinds of disclosure provisions.[75] Thus, even if Microsoft failed to satisfy the requirements of Section 16(g), that would not provide any basis to begin the comment period anew and further delay entry of the RPFJ.[76]

III. Definitions

A. Definition of "ISV" (RPFJ § VI.I)

71. Several comments address Section VI.I, which defines "ISV" as "an entity other than Microsoft that is engaged in the development or marketing of software products." All of the comments concern the breadth of the definition.

[73] Relpromax 21–23; CCC 3; CCIA 26–32.

[74] Tr. 2/8/02 at 16–17.

[75] Although the statutory language is unambiguous, legislative history also bears out the distinction. The Senate Report notes that the "bill seeks to encourage additional comment and response by providing more adequate notice to the public," S. Rep. No. 93–298 at 5, and goes on to describe the provision of information to the public. As in the Tunney Act, the Report's description of the lobbying provision is separated from its treatment of the provision of information to the public by another topic entirely, the court's public interest determination. *See id.* at 6–7. The House Report is to the same effect. *See* H.R. Rep. No. 93–1463 at 6–7. (information provided to public through **Federal Register** and newspapers; *id.* at 9 (lobbying disclosures).

[76] For a fuller discussion, see Br. Dismiss AAI at 24–28.

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72. Several commentors misread the definition, contending that "ISV" inappropriately covers only companies creating software that runs on Windows Operating System Products.[77] The definition shows on its face that this concern is misplaced: any "software product" is covered, whether or not it runs on Windows.

73. Several commentors suggest expanding the definition of "ISV" explicitly to include developers of particular categories of products. One commentor worries that Microsoft could construe the definition to exclude developers or marketers of non-Microsoft operating systems, and suggests that the definition be modified to include them explicitly.[78] Another worries that the definition does not clearly encompass developers of software products designed to run on new versions of Windows or on other next-generation devices, and that it excludes vendors of competing servers.[79] These concerns are misplaced and, therefore, the proposed modifications are unnecessary. The RPFJ defines "ISV" to include developers or marketers of "software products," and that very broad category of products unambiguously includes operating systems (including server operating systems), operating system products (including server operating system products), and software designed to run on any platform on any device.

74. Other commentors express concern that individuals, particularly individual developers writing and trading code within the "open source" community, might not qualify as "entities" and so might not qualify as "ISVs" under Definition VI.I.[80] The RPFJ, however, sets no minimum size or organizational standard for an "entity." Any individual or group of individuals, whether incorporated or not, that otherwise meets the definition of "ISV" is considered to be an ISV within the meaning of the RPFJ.

B. "Microsoft Middleware" (RPFJ § VI.J)

75. Many commentors criticize the RPFJ definition of Microsoft Middleware. Occasionally, a commentor simply fails to realize which middleware definition, Microsoft Middleware Product or Microsoft Middleware, is used in a given section.[81] To review, Microsoft Middleware Product describes functionality and products, as an end user might perceive them. This definition is used in Sections III.C and III.H, as well as indirectly, via the Microsoft Platform Software definition, in Sections III.A, III.F and III.G.

76. In contrast, the Microsoft Middleware definition describes software code, and is only used in Sections III.D and III.G. Most commentors focus on its use in Section III.D concerning API disclosure. The reason Microsoft Middleware is directed at software code and not functionality is that it is difficult to take any given piece of functionality and identify exactly which pieces of software code correspond to that functionality. For instance, a word processor displays text on a screen, and that is a functionality that the end user associates with the word processor. The software code that draws characters on the screen, however, is driven largely by code that many would consider part of the operating system. The word processor uses some of its own software code and some of the operating systems services to make the functionality appear to the user. Therefore, to avoid confusion and disagreements over which software code corresponded to which functionality, the United States designed a software code-based definition for use in Section III.D.

77. In response to comments, two of the specific requirements of the Microsoft Middleware definition have been changed in the SRPFJ to more clearly reflect the parties' intent. Each requirement and any associated modifications are discussed individually below. For reference, the complete revised definition is as follows:

RPFJ Section VI.J. "Microsoft Middleware" means software code that

1. Microsoft distributes separately from a Windows Operating System Product to update that Windows Operating System Product;

2. is Trademarked or is marketed by Microsoft as a major version of any Microsoft Middleware Product defined in Section VI.K.1; and

3. provides the same or substantially similar functionality as a Microsoft Middleware Product.

Microsoft Middleware shall include at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.

Software code described as part of, and distributed separately to update, a Microsoft Middleware Product shall not be deemed Microsoft Middleware unless identified as a new major version of the Microsoft Middleware Product. A major version shall be identified by a whole number or by a number with just a single digit to the right of the decimal point.

1. Distributed Separately To Update a Windows Operating System Product

78. Some commentors argue that it is inappropriate for Microsoft Middleware to depend on separate distribution from a Windows Operating System Product.[82] They argue that there is no logical reason for such a distinction and that requiring separate distribution merely provides another way for Microsoft to avoid its disclosure requirements.

79. The definition requires separate distribution for two reasons. First, there must be a straightforward and enforceable way to determine which software code is implicated. Separate distribution provides a clear line between two segments of code. Moreover, interfaces between pieces of code that have never been distributed separately are more likely to be internal interfaces that are not tested or durable. In contrast, interfaces between separately distributed pieces of code are more often tested and durable, because there is always the risk that the other side of the interface will be a different version than expected. Interfaces that are not tested and durable may be unreliable, potentially resulting in malfunctions.

80. Second, the competitive significance of middleware products such as browsers and media players will be relatively small if they are never distributed in any form separate from a Windows Operating System Product. If Microsoft chooses only to distribute its programs by including them in Windows, then it will not be able to reach the large installed base of Windows machines. Instead, Microsoft will only be able to offer new versions when users choose to upgrade their operating system or buy new computers. Competing middleware products, in contrast, would not be limited to such methods of distribution and might offer many new versions over the course of the two to three year hardware upgrade cycle. Thus, while a competitor might offer three new versions of its program every year, Microsoft only would be able to offer a single version every two to three years. In the past, with programs such as Internet Explorer, Windows Media Player, and Windows Messenger, Microsoft always has offered separate versions available for download.

81. Commentors point to specific products that have never been distributed separately and argue that they should be included. Several commentors point out that Windows Media Player 8, sometimes referred to as Windows Media Player for Windows XP, is only included in Windows XP and that the interfaces between this player and the operating system will not be disclosed.[83] This is correct. However, the interfaces between Windows Media Player 7.1, the latest version available for download or redistribution, will be disclosed. While there may be some unique interfaces that Windows Media Player 8 uses to call on services in Windows XP, the United States is not aware of any such interfaces that are not also in Windows Media Player 7.1. Thus, for example, the API for a digital rights management technology called Secure Audio Path is a key interface used by Windows Media Player 7.1 and thus will be disclosed. Moreover, if Windows Media Player 8 is ever distributed separately in the future, then its interfaces would be disclosed.

82. Other commentors argue that Active Directory, a Microsoft directory service, should be Microsoft Middleware, but it does not qualify because it has never been distributed separately from a Windows Operating System Product.[84] As this commentor notes, however, directory services "have become competitively critical links between the desktop and network computing."[85] Accordingly, directory services are most protected under Section III.E, which addresses the licensing of Communications Protocols used natively by Windows Operating System Products to interoperate with Microsoft server operating system products. For instance, if Active Directory software is included natively in Windows XP and that software uses a Communications Protocol to communicate with a Windows 2000 server, then the Communications Protocol must be available for license. Thus, a competing active directory service could license and implement the Communications Protocol and communicate with Windows XP using the same method as Active Directory.

2. Trademarked or a Major Version of Any Microsoft Middleware Product

83. The second requirement for Microsoft Middleware is that the software code either be Trademarked or marketed by Microsoft as a major version of any Microsoft Middleware Product as defined in Section VI.K.1. This is a modification reflected in the SRPFJ that differs from the RPFJ version, which required that software satisfy the Trademark requirement in order to be considered Microsoft Middleware. The SRPFJ modification means that software can now satisfy this element of the definition by being either (1) Trademarked, or (2) marketed as a major version of any of the named Microsoft Middleware Products as defined in Section VI.K.1 (i.e., Internet Explorer, Microsoft's Java Virtual Machine, etc.).

84. Many commentors argue that the Trademarked requirement is inappropriate, or that at a minimum, many existing Microsoft Middleware Products would not have any corresponding Microsoft Middleware code.[86] Turning to the latter, several argue that products such as Internet Explorer, Windows Media Player, Microsoft's Java Virtual Machine, and Window Messenger arguably were not Trademarked as that term is defined in the RPFJ, or argue that the Trademarked requirement was not appropriate. The United States does not necessarily agree with any or all of these arguments concerning whether these particular products satisfied the definition of Trademarked. To clarify any issues surrounding the status of these products, however, the Microsoft Middleware definition was modified to include explicitly the software code that is marketed by Microsoft as a major version of any Microsoft Middleware Product under VI.K.1. The limitation in the modified language to a major version of a Microsoft Middleware Product is simply a restatement of the limitation in the last paragraph of the definition, discussed further below, which limits the covered software code to that identified as a major version of a Microsoft Middleware Product. This change should resolve many of the concerns raised. Under the revised definition, each Microsoft Middleware Product discussed by commentors has corresponding Microsoft Middleware.

85. Other commentors argue that inclusion of the Trademarked requirement has no relation to the function of the software code and should not be part of the Microsoft Middleware definition. The requirement that the software code satisfy the Trademarked definition is based on the business reality that Microsoft develops logos and names for marketing the technologies that it wishes developers and consumers to adopt. Software code that is not marketed under a distinctive logo or a name that satisfies the definition of Trademarked is unlikely to achieve the widespread usage needed for competitive significance. Additionally, this definition was not intended to capture security patches, minor "bug" fixes, or other small downloads that Microsoft makes available via Windows Update. Limiting the covered software code to that which is Trademarked or marketed as a major version of a Microsoft Middleware Product under Section VI.K.1 ensures that code not comprising a "product," as that term is generally understood by the public, will not be included.

3. Same or Substantially Similar Functionality

86. Some commentors opine that Microsoft Middleware should not be required to have the same or substantially similar functionality as a Microsoft Middleware Product. Microsoft Middleware Products, as defined, include only products distributed with a Windows Operating System Product. Commentors argue that software that comes under some concept of middleware should be included, regardless of whether it is the same or substantially similar to a Microsoft Middleware Product. For instance, some commentors argue that Microsoft Office should be Microsoft Middleware, and the interfaces between Office and a Windows Operating System Product should be disclosed.[87]

87. The focus of the plaintiffs' case was never Internet Explorer or middleware technologies that were only distributed separately; the focus was always on applications that were *both* integrated into Windows and distributed separately. One of the reasons that Microsoft's anticompetitive actions were able to have the effect that they did was that they covered multiple distribution channels. Internet Explorer and Microsoft's Java Virtual Machine were bundled with Windows, and they were included in the "First Wave" contracts with ISVs covering separately distributed products, and they were available for separate download.

88. The disclosure of interfaces between software that is not the same or substantially similar to functionality distributed with a Windows Operating System Product is beyond the scope of the case as it emerged from the Court of Appeals. For example, even assuming *arguendo* that Office has some characteristics that make it middleware, Office has never been integrated into Windows or referred to by Microsoft as

[77] Palm 10; Carroll 2.
[78] Red Hat 24.
[79] AOL, Klain, 9–10, 12.
[80] AAI 38; KDE 16; Wang 1.
[81] Henderson 5–6; Gifford 3.
[82] CCIA 65; AAI 20–21; ProComp 44; NetAction 12; Novell 9–10; Maddux ¶ 19; Kegel 5, 23; SIIA 18.
[83] CCIA 65; RealNetworks 12; Maddux ¶ 19.
[84] Novell 13–16.
[85] Novel 13.
[86] CFA 93–94; CCIA 65–67; AOL 49–50; AAI 21; ProComp 44–46; Palm 9–10; Novell 10; Maddux ¶ 19; Litan 51; KDE 16; Gifford 3; Sen. Kohl 2–3; Relpromax 14; SBC 36–38; Giannandrea 6; SIIA 27–28.
[87] Palm 9–10; Kegel 13; SBC 38–39; SIIA 17–20, 38–41, 62–64; Johnson 5.

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being part of a Windows Operating System Product. Office is a separate product that is purchased separately.

89. Finally, some commentors argue incorrectly that requiring Microsoft Middleware to have the same or substantially similar functionality as a Microsoft Middleware Product encourages commingling of software code.[88] Commingling of code, as discussed by the Court of Appeals and the District Court, is "placing code specific to Web browsing in the same files as code that provided operating system functions." *Microsoft*, 253 F.3d at 65. Products can be distributed with Windows and not have their code commingled with operating system functions. To the contrary, requiring software to be *both* distributed separately and substantially similar to software distributed with Windows encourages the opposite: because the code must be distributed separately, there must be a clear distinction between code that belongs to the Microsoft Middleware and code that belongs to the operating system. If all the code for a Microsoft Middleware Product is commingled into operating system files, then the separately distributed Microsoft Middleware version will be enormous and constitute a redistribution of the operating system. Clearly, such a separate distribution would be unworkable.

4. Includes at Least the Software Code That Controls Most or all of the User Interface

90. The RPFJ included a fourth requirement, that Microsoft Middleware must include at least the software code that controls most or all of the user interface elements of that Microsoft Middleware. This provision now has been clarified in the SRPFJ such that it is no longer the fourth required element, but is a separate paragraph at the end of the definition. This change reflects the fact that the first three requirements are sufficient to define Microsoft Middleware. The now-separate sentence always was intended to be a minimum size or "floor" as to the collection of software code that is included in a particular piece of Microsoft Middleware. This "floor" prevents Microsoft from arbitrarily breaking up into separate pieces the software code of what would otherwise be Microsoft Middleware, thereby omitting from the Microsoft Middleware definition certain critical or significant pieces of code that constitute the Microsoft Middleware. Some commentors read this provision to mean that Microsoft could create artificially small subsets of code containing only the user interface elements of Microsoft Middleware Products.[89] Commentors point out that the interfaces between user interface elements and the Windows Operating System Product are unlikely to be competitively significant.[90] This modification does not substantively change this definition, but instead makes clear that this provision governs the scope of what code must be included in the Microsoft Middleware.

5. Major Updates

91. The last paragraph of Microsoft Middleware discusses software code described as part of, and distributed separately to update, a Microsoft Middleware Product. That code shall be deemed Microsoft Middleware if it is identified by a new major version number, i.e., a whole number ("6.0") or a by a number with a single digit to the right of the decimal point ("7.1"). Several commentors argue that Microsoft can withhold interfaces simply by updating its products with version numbers such as "7.11" that do not qualify as major versions, and that the major version limitation is inappropriate.[91]

92. It was necessary to draw a line to include some code updates as Microsoft Middleware and exclude others. Per standard software engineering practices, Microsoft assigns every change to the code a new version number, and the importance of the change is designated by how far to the right the number is. For instance, a tiny change may be designated by an increase from 5.011 to 5.012; a slightly larger change is designated as going from 5.01 to 5.02, and a major version is designated as 5.1 to 5.2. Although Microsoft maintains these version numbers, they are not always advertised to the public because small changes are not advertised as new, improved, or updated products. Rather, products that are significant upgrades that will be promoted to the public are designated with new major version numbers.

93. The United States does not believe that requiring Microsoft continuously to review small changes to its Microsoft Middleware would yield significant competitive effects that would outweigh the costs to Microsoft. Significantly improved features, including those based on better APIs, are most likely to be designated by new major version numbers. Microsoft has little reason to develop a new feature based on improved services from the operating system, such as improved speed or better coordination with other operating system functions, and then not promote that feature to developers or consumers. Moreover, should Microsoft Middleware use a new API in an update that is not a new major version, then that API still will be disclosed, at a minimum, when the next new major version is released. The only way for Microsoft to hide an API indefinitely is to never release a new major version, which historically has not happened and is not likely to happen in the future.

C. "Microsoft Middleware Product" (RPFJ § VI.K)

94. A number of commentors address Section VI.K, which defines "Microsoft Middleware Product." This definition is referenced in Sections III.C (prohibiting Microsoft from imposing certain restrictions on OEM licensees) and III.H (ensuring OEM flexibility in product offerings) and, as subsumed by Section VI.L's definition of "Microsoft Platform Software," is also referenced in Sections III.A (prohibiting retaliation against OEMs), III.F (constraining Microsoft's relationships with ISVs), and III.G (prohibiting certain exclusionary contracts). "Microsoft Middleware Product" means either the functionality provided by one of a set of existing, named products (e.g., Internet Explorer) and their successors or, for products that do not now exist, the functionality that meets several specific conditions.

95. Contrary to the views of several commentors, the definition does not limit Microsoft Middleware Products to a set of products that now exist, and so does not fail to account for future development.[92] This critique ignores the second part of the definition, which explains what future technology will be considered Microsoft Middleware Products. Similarly, there are no limits in the definition on the kinds of products (in the commentor's words, "categories of applications") that may, in the future, be considered Microsoft Middleware Products.[93] It thus is inaccurate to state that the Litigating States' proposed definition (Provision 22(x)) of Microsoft Middleware Product applies to products to be developed in the future and the RPFJ does not.[94]

96. Although the Litigating States' proposed definition of Microsoft Middleware Product is somewhat broader than the definition in the RPFJ, the United States believes that its definition is clearer and therefore more enforceable. Unlike the Litigating States' list of current products, for example, the RPFJ's list (Section VI.K.1) consists solely of known named products; there is no room to debate, for instance, exactly what "systems and enterprise management software" (Litigating States Provision 22(c)i) is and is not covered.

97. Similarly, the RPFJ's restriction on future products to those that are Trademarked helps clearly to define the set of covered products and reflects the business reality that Microsoft often names and markets the technologies that it wishes developers and consumers to adopt. Microsoft has little incentive to bury its new products inside other applications in order to avoid having it meet the Trademark standard, as one commentor worries.[95] Some commentors claim that the Trademarked requirement would leave out many Microsoft products currently in the market, but the commentors do not identify any particular product.[96]

98. The Litigating States object that the definition of Microsoft Middleware Product, as it pertains to future products, excludes software that has not been distributed separately from a Windows Operating System Product or that is not similar to a competitor's product.[97] The nature of their concern is unclear, however, given that the Litigating States' own definition of Microsoft Middleware Product in their own Proposed Final Judgment contains very similar exclusions.[98]

99. Some commentors object to the omission of Microsoft Office from the list of existing products that are Microsoft Middleware Products within the meaning of the RPFJ, pointing to Office's status as middleware and its large market share among office suites.[99] Others object to the omission of other specific products or technologies, e.g., Microsoft Outlook, MSN Messenger, MSN RunTime, MSN Explorer, the MSN client software, Passport, Microsoft Exchange, Microsoft Visual Studio, Microsoft .Net, and software that synchronizes handheld devices with PCs.[100] The reasons for the omission of these products from the definition vary. Some of these products have never been part of a Windows Operating System Product, but only are installed separately and so logically should not be included in the list of Microsoft Middleware Products (e.g., Microsoft Office, Outlook, handheld synchronization software, Microsoft Visual Studio, Microsoft Exchange). Others, such as Microsoft .Net, are in fact covered as to the elements that products marketed under the .Net label are among the products named in the definition of Microsoft Middleware Product.[101] And some lack the competitive significance of the products that are included in the list of existing Microsoft Middleware Products (e.g., MSN Explorer, MSN Messenger).

100. The definition of Microsoft Middleware Product goes well beyond the Internet browser and Java technologies that, as threats to the Windows operating system against which Microsoft took anticompetitive actions, were at issue in this case. Further, this definition balances the desire to include future middleware products—the character of which no one can accurately predict—with the need for certainty in compliance and enforcement.

D. "Non-Microsoft Middleware" (RPFJ § VI.M)

101. The definition of Non-Microsoft Middleware is one of the most important definitions in the RPFJ, but it received very little criticism by commentors. Non-Microsoft Middleware is the term used most often to describe the products that the decree is intended to protect. Toward that end, it is one of the broadest definitions in the decree.

102. One criticism, which while serious was based on an inadvertent error, points out that due to the definition of API, on which Non-Microsoft Middleware depends, it might be impossible for any Non-Microsoft software to satisfy the definition.[102] These commentors point out that the API definition only includes Microsoft APIs, rendering the other definitions that use the term API nonsensical. This was an inadvertent error in the RPFJ, and it has been corrected in the SRPFJ. The previous definition of API has been inserted directly in Section III.D, which was the only section it was designed to address. A generic definition of API, which is intended to invoke the common usage of the term API, and not to be tied to Microsoft products, has been inserted as definition VI.A. The definition now reads: "'API' means application programming interface, including any interface that Microsoft is obligated to disclose pursuant to III.D." *See also* Section VII.(A)(2) below.

103. One commentor argues that certain important software categories such as web-based software and digital imaging software are not present in any of the middleware definitions.[103] This assertion is incorrect, because neither of the Non-Microsoft Middleware definitions use any categories at all; both cover any software functionality that otherwise meets the requirements. Given that these definitions provide the substance of what the decree protects, it would be inappropriate to place any category restrictions, such as digital imaging software, in the definition. In a somewhat similar fashion, one commentor argues that there is no longer any demand for Non-Microsoft Middleware, but bases his argument on browsers, failing to realize that Non-Microsoft Middleware can have any functionality.[104]

104. One commentor argues that the definition proposed by the Litigating States or the definition from the IFJ would be preferable, but offers no specific criticisms of Non-Microsoft Middleware.[105] Another commentor suggests that "non-Microsoft software product" be replaced with "non-Microsoft technology" but also states that the definition seems appropriate to define middleware.[106]

105. One commentor argues that the definition should not be limited to software that runs on Windows Operating System Products, because that limitation leaves Microsoft free to retaliate against middleware software that runs on other devices, such as servers and handhelds.[107] The intended meaning of this comment is unclear, because the retaliation section of the decree applicable to ISVs and IHVs, Section III.F, does not use the term Non-Microsoft Middleware.

106. Finally, the Non-Microsoft Middleware definition is criticized on the ground that Netscape 1.0 would not have satisfied it, because the earliest version of Netscape did not expose a range of functionality to ISVs through published APIs.[108] Nevertheless, the United States finds this definition completely appropriate, because it is the presence of APIs that allows middleware to threaten the applications barrier to entry. To remove the requirement for APIs from the definition would be to ignore the theory of the

[88] Novell 10; Palm 10; Maddux ¶ 19; Real Networks 11, 28; SBC 37, 39.

[89] CCIA 64; Pantin 32; Palm 10; Novell 10–11; Harris 11.

[90] CCIA 64; Harris 11.

[91] Pantin 12, 32; NetAction 10, 13; Kegel 5; Harris 11; Maddux ¶ 15.

[92] SBC 38; AOL 49; Henderson 6.

[93] SBC 39 n.7.

[94] SBC 158–59.

[95] AOL, Klain 6.

[96] Palm 10.

[97] Litigating States, Ex. A 18.

[98] Litigating States, Ex. B at 34–35.

[99] SBC 38 n.6; SIIA 18.

[100] AOL 49–50, Klain 13; Palm 9–10; SIIA 19.

[101] AOL, Klain 13; Palm 9–10; Kegel 6.

[102] AAI33–34; Giannandrea 7.

[103] Litigating States, Ex. B 17, 28.

[104] Gifford 8.

[105] SBC 158.

[106] Pantin Comment VI.5, VI.3.

[107] Palm 9.

[108] Giannandrea 7.

case.[109] Moreover, whether or not software has published APIs is completely within the control of the software developer.

E. "Non-Microsoft Middleware Product" (RPFJ § VI.N)

107. Several comments raise issues relating to the definition of Non-Microsoft Middleware Product.[110] The majority of these comments relate to subsection (ii) of the definition, which requires that "at least one million copies" of the product have been distributed in the United States within the previous year.[111] Other commentors complain that the definition does not include web-based software.[112] Finally, one commentor questions whether Netscape Navigator would have satisfied the definition of Non-Microsoft Middleware Product because it does not expose Microsoft APIs.[113]

108. The RPFJ's provisions apply generally not only to a wide range of currently marketed middleware products, but also to products that have not yet been developed. Certain of these provisions, of course, impose affirmative obligations on Microsoft to take actions vis-a-vis middleware products. To ensure that Microsoft can undertake these obligations in compliance with the RPFJ's provisions (and that the United State can enforce them), the characteristics of what products will be considered middleware in the future must be defined today according to objective criteria. The definition of Non-Microsoft Middleware Product relates and is incorporated into the portion of the definition of Microsoft Middleware Product that sets forth the characteristics that future products must meet to be considered Microsoft Middleware Products.

109. The one-million-copy limitation applies only to the affirmative obligations that Microsoft make public the APIs used in its own middleware products (as set forth in Section III.D), and redesign the operating system to provide a competing middleware product "default" status, i.e., the ability to override automatically Microsoft middleware functions integrated into the operating system (as set forth in Section H). The limitation strikes the proper balance between (1) the substantial costs associated with such documentation and redesign efforts, which these obligations require and (2) the competitive potential of products with fewer than one million copies distributed. In a nutshell, it prevents Microsoft from having to undertake documentation and redesign work any time an ISV has a concept for a product it decides to call "middleware." In a world of about 625 million PC users and software distribution via downloads and direct mail, distribution of only one million copies, rather than sales, installation or usage, is a relatively minor threshold in the software industry today. Indeed, almost ten years ago the Mosaic browser achieved distribution to over 2 million people in "just a year." Gina Smith, *Inside Silicon Valley, A High-Tech Top 10 Computers & Technology*, San Francisco Examiner, 1995 WL 4901748 (Jan. 1, 1995).

110. Web-based software and web-based services are not explicitly excluded from the definition of Non-Microsoft Middleware Product. Any portion of web-based software or services that runs on a Windows Operating System Product and otherwise meets the requirements of the definition could qualify as a Non-Microsoft Middleware Product. To the extent that any Microsoft software natively implemented in a Windows Operating System Product communicates natively with a Microsoft server operating system product, the Communications Protocols must be available for license pursuant to Section III.E.

111. Finally, the suggestion that Netscape Navigator could not satisfy the definition of Non-Microsoft Middleware Product in the RPFJ, because Navigator does not expose Microsoft APIs, is correct where the erroneous definition of API contained in the RPFJ is applied. Based on comments that correctly identified a flaw in the definition of API, however, the United States and Microsoft have agreed to modify the definition. See Section VII(A)(2) below. Under the new definition of API in the SRPFJ,[114] Netscape Navigator would qualify as a Non-Microsoft Middleware Product.

F. "Personal Computer" (RPFJ § VI.Q)

112. A few commentors raise concerns about the RPFJ's definition of "Personal Computer."[115] *See* RPFJ § VI.Q. This definition is referenced in RPFJ Sections III.A (prohibiting retaliation against OEMs) and III.H (ensuring OEM flexibility in product offerings), and in Definitions VI.H ("IHV"), VI.O ("OEM"), VI.P ("Operating System"), and VI.U ("Windows Operating System Product").

113. One commentor argues that the definitions of "Personal Computer" and "Windows Operating System Product" might, when read together, unintentionally exclude future Microsoft operating systems from the RPFJ's provisions. The commentor expresses concern that the restriction of "Personal Computer" to a computer "configured so that its primary purpose is for use by one person at a time" would, in combination with the restriction of "Windows Operating System Product" to software distributed "for use with Personal Computers," cause future Microsoft operating systems not to be covered by the RPFJ if Microsoft continues its evolution toward operating systems—like Windows XP—that facilitate shared or multiple-person use or that facilitate home networking.[116] This concern is unwarranted. What Windows XP allows is for different users of the same computer (e.g., members of the same family) to store individualized settings in the computer and access them through personal passwords. Whether or not a computer is configured primarily to facilitate use by different people at different moments in time is immaterial to whether it is configured primarily to be used by one person at a given moment in time—the relevant criterion for its designation as a Personal Computer in the RPFJ.

114. Several commentors question the exclusion of machines made by Apple Computer from the definition of "Personal Computer."[117] Apple's machines do not contain "Intel x86 compatible (or successor) microprocessors," and so do not fall within the meaning of the definition. Indeed, Apple computers were expressly excluded from the relevant market in which Microsoft was found to be a monopolist. *See Microsoft*, 253 F.3d at 52. The sole conduct that the United States alleged, and the Court of Appeals found, to be unlawful relating to Apple computers was the exclusive dealing arrangement that Microsoft imposed on Apple. *See id.* at 74. Section III.G.1 of the RPFJ fully addresses this conduct by prohibiting such exclusive arrangements with certain entities, including ISVs—a category that unquestionably includes Apple. Modifying the definition of Personal Computer to include Apple computers would improperly expand the scope of the RPFJ beyond the liability findings in this case.

115. Other commentors raise concern about the final sentence in Section VI.Q,[118] which reads: "Servers, television set top boxes, handheld computers, game consoles, telephones, pagers, and personal digital assistants are examples of products that are not Personal Computers within the meaning of this definition." One commentor appears to suggest that any such devices for which Microsoft eventually offers a version of a Windows Operating System Product should be considered Personal Computers for purposes of the RPFJ.[119] The United States disagrees with the commentors' views that any change to expand application of the RPFJ to software written for, for example, telephones and pagers, is justified by the Court of Appeals' decision in this case, which is limited to the illegal maintenance by Microsoft of its monopoly in operating systems for Intel-compatible PCs.[120] Moreover, such a change would be inconsistent with the intent of the RPFJ to identify Personal Computers with clarity because it would create unmanageable circularity: a Personal Computer would be a machine for which a Windows Operating System Product is available, and a Windows Operating System Product would be a product designed for use with a Personal Computer.

G. "Trademarked" (RPFJ § VI.T)

116. A number of commentors address the scope of the definition of "Trademarked" in the RPFJ.[121] Most of these commentors suggest that the definition is too broad and would permit Microsoft to evade its disclosure obligations under the RPFJ by manipulating its use of trademarks.[122] Several commentors complain that basing the determination of whether a product is either Microsoft Middleware or a Microsoft Middleware Product on whether the product has been Trademarked is inappropriate because it permits Microsoft to manipulate the application of the middleware definitions to its products.[123]

117. The definition of Trademarked is designed to ensure that the Microsoft Middleware and Microsoft Middleware Products that Microsoft distributes (either for free or for sale) to the market as commercial products are covered by the RPFJ. Thus, the definition of Trademarked correctly describes the manner in which businesses typically identify the source of the products that they distribute in commerce, while seeking to carve out from the definition products, such as "bug" fixes, that might be distributed under the Microsoft® or the Windows® names but that are not of commercial significance.

118. Several commentors argue that the exception for generic or descriptive terms contained in the Trademarked definition is a significant loophole that will permit Microsoft to exempt many products from coverage by the RPFJ.[124] The exception for generic and descriptive terms, however, simply reflects the reality that products distributed in commerce under such names may not be trademarked unless the names develop secondary meaning. Under the Trademarked definition, Microsoft simply announces in advance that it will not claim such terms as trademarks and, therefore, that such terms never will gain secondary meaning. It is for precisely this reason that any product distributed in commerce under, or identified by, marks that consist of any combination of generic or descriptive terms and a distinctive logo or other stylized presentation are not exempted from coverage as Trademarked, because such marks are inherently distinctive.

119. At least one commentor suggests that the portion of this definition relating to Microsoft's disclaimer of certain trademarks or service marks, and its abandonment of any rights to such trademarks or service marks in the future, conceivably operates to remove automatically trademark protection from marks that Microsoft already has registered but that also fall within this description.[125] But this portion of the definition of Trademarked does not operate in that manner. Instead, this clause is designed to ensure that, to the extent that Microsoft distributes a product in commerce under generic or descriptive terms or generic or descriptive terms in combination with either the Microsoft® or the Windows® name and claims on that basis that such product does not fall within the definition of Microsoft Middleware or Microsoft Middleware Product, it will be unable to claim trademark protection for such marks in perpetuity.

H. "Windows Operating System Product" (RPFJ§ VI.U)

120. Definition U defines "Windows Operating System Product" to mean "the software code . . . distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregcing. . . ." In general terms, the term refers to Microsoft's line of "desktop" operating systems, as opposed to its server or other operating systems. Windows Operating System Product applies to software marketed under the listed names and anything marketed as their successors, regardless of how that software code is distributed, whether the software code is installed all at once or in pieces, or whether different license(s) apply.

1. Microsoft's Discretion

121. Various comments address the final sentence of Definition U, which reads: "The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion." Some of the comments assert, incorrectly, that permitting Microsoft the discretion to determine what package of software is labeled as a "Windows Operating System Product" for purposes of the RPFJ will allow Microsoft to re-label as part of the "Windows Operating System Product" code that would otherwise be middleware and thereby avoid having that code constitute "Microsoft Middleware" or provide the functionality of a "Microsoft Middleware Product" under the RPFJ.[126] Microsoft could, these commentors hypothesize, essentially "decide for purposes of the decree obligations where the OS stops and where middleware begins," [127] and thereby evade the decree's technical

[109] Stockton 2 (argues that middleware has very little to do with exposing APIs).

[110] Thomas 5–6; Sen. Kohl 2; Palm 9; SBC 40–41, 159; ProComp 65–66; AOL 50; AOL, Klain 13–14; PFF 21; Litigating States, Ex. A 17–18; CCIA 85; Litan 50; RealNetworks 13–14; AAI 34; Giannandrea 7.

[111] Thomas 5–6; Sen. Kohl 2; Palm 9; SBC 40–41, 159; ProComp 65–66; AOL 50; AOL, Klain 13–14; PFF 21; Litigating States, Ex. A 17–18; CCIA 85; Litan 50; RealNetworks 13–14.

[112] Litigating States, Ex. A 18; AOL 50; AOL, Klain 14.

[113] AAI 34.

[114] Definition VI.A in the SRPFJ now reads: "'API' means application programming interface, including any interface that Microsoft is obligated to disclose pursuant to III.D."

[115] Clapes 22; Litigating States 35 (offering own definition); ProComp B–2 (offering own definition).

[116] SBC 43, n.10.

[117] Maddux ¶ 58; Giannandrea 7.

[118] Palm 8–9, 14–15

[119] Pantin 34.

[120] Maddux ¶ 58; Pantin 34; Alexander (unpaginated).

[121] KDE 15–16; Litan 51; ProComp 44–45; CCIA 65–67; SBC 38 n.5; Pantin 36; Giannandrea 6.

[122] For a discussion of issues relating to the intersection of the definition of Trademarked with the definitions of Microsoft Middleware and Microsoft Middleware Product, see Sections III(B) and III(C) above.

[123] ProComp 44–45; CCIA 65–67; Pantin 36; Giannandrea 6.

[124] ProComp 44–45; KDE 15–16; CCIA 65–67; SBC 38 n.5.

[125] *See* CCIA, at 66–67 ("Indeed, Microsoft could plausibly argue that the Windows Media* mark does not come within the 'Trademarked' definition as it is, since even that mark consist of no more than the Windows* mark in combination with the generic term 'media.' RPFJ § VI(T) may therefore embody Microsoft's disclaim[er of] any trademark rights in such descriptive or generic terms apart from the Microsoft* or Windows* trademarks.'").

[126] AOL 20 n.19; CCIA 53; Harris 12; KDE 12; Litan 43–44; ProComp 7; SBC 42; SIIA 26; TRAC 8.

[127] CCIA 53.

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provisions, including the disclosure provisions of Section III.D[128] or the removal provisions of Section III.H.

122. These comments are incorrect. Microsoft's discretion under Definition U as to its packaging decisions (i.e., what it chooses to ship labeled as "Windows") does not give it the ability to exclude software code from the application of any other relevant definition of the RPFJ. Thus, nothing in Definition U alters the fact that, under the RPFJ, software code that Microsoft ships labeled as "Windows" can also constitute "Microsoft Middleware" or a "Microsoft Middleware Product." So long as software code or the functionality it provides meets the requirements of any other definition(s) in the RPFJ, Microsoft's "discretion" under Definition U to call it part of a Windows Operating System Product will not change the result.[129] Thus, for example, Internet Explorer is both a Microsoft Middleware Product and part of a Windows Operating System Product.

123. A number of commentors also assert that the final sentence of Definition U might be read to transform what otherwise would be two separate products for antitrust purposes into one, or somehow to immunize Microsoft from potential liability for illegal tying.[130] Such a reading is untenable. Nothing in this provision, or in the RPFJ as a whole, purports to, or could, alter the application of the antitrust laws to Microsoft's conduct or its products. In particular, the RPFJ does not grant Microsoft any new rights or any immunity under the antitrust laws with respect to otherwise illegal tying or product integration. Similarly, Microsoft's decision to distribute certain software code as part of a Windows Operating System Product for purposes of this definition does not in any way affect the status or characterization of such code under the antitrust laws or the application of those laws to such code—e.g., whether software Microsoft says is part of the package it distributes as its "Windows Operating System Product" is or is not a separate "product" for antitrust purposes.

[128] Litan 9, 43; RealNetworks 11; SIIA 25–27.

[129] Indeed, this sentence in Definition U merely confirms what Microsoft already had the power to do—label the package of what it calls its own operating system products. The sentence does not narrow or alter the operative provisions of the RPFJ; those provisions principally rely on other definitions, such as Microsoft Middleware Product, regardless of how Microsoft labels its operating system.

[130] AAI 29; CCIA 53; RealNetworks 11.

2. Prior Windows Versions

124. A few commentors[131] suggest that Definition U. also should include—in addition to the software code Microsoft distributes as Windows 2000 Professional, Windows XP Home and Professional, and their successors—prior versions of Windows, including Windows 9x (Windows 95, Windows 98, Windows 98 Second Edition, and Windows ME) and Windows NT 4.0. These Microsoft operating systems were not included in the RPFJ's definition of Windows Operating System Product because their current commercial and competitive significance is significantly more limited than the operating systems included in the definition. For example, Windows 95, as its name suggests, was first shipped by Microsoft some seven years ago and is no longer actively distributed by Microsoft, while Windows 98 and 98 Second Edition will soon enter a phase of restricted availability.[132] Windows Millennium Edition (ME), though much more recent, has enjoyed only limited success and already has been supplanted as Microsoft's primary OS by Windows 2000 and Windows XP, both of which are covered by Definition U.

125. The OEM-related provisions of the RPFJ, including Sections III.A, III.B, III.C, and III.H, apply primarily to OEMs' ongoing shipments of Microsoft operating systems with their new PCs, not to the installed base, and the great majority of those shipments today and going forward will be Windows 2000, Windows XP, and successors. Further, the provisions of Sections III.D and III.H, which require certain technical or design changes by Microsoft to its Windows Operating System Products, are relevant largely to OEM and consumer choices regarding operating systems that will be shipped under the RPFJ, rather than the installed base of operating systems that have already been distributed. Finally, the disclosure provisions of Section III.D are likely to have the greatest competitive significance for Windows 2000 and Windows XP and their successors, because those operating systems represent the versions of Windows to which the great majority of developers are likely to write middleware or applications. Going forward, developers are unlikely to write middleware or applications to any significant degree to the older, 9x operating systems, because those versions are built on a different code base than that underlying Windows 2000, Windows XP, and future versions of Windows.

[131] Giannandrea 1–2; NetAction 2, 6–8; Pantin 36.

[132] Microsoft's product website indicates that Windows 95 was designated as being in the "Non-Supported phase" (where licenses may no longer be available and support is limited) on November 30, 2001; Windows 98, Windows 98 SE, and Windows 4.0 will all enter the "Extended" phase (where licenses may no longer be available to consumers and support is somewhat limited) on June 30, 2002. *See* <http://www.microsoft.com/windows/lifecycleconsumer.asp>.

3. Operating Systems for Other Devices

126. Finally, a few commentors suggest that Definition U should be broadened to include operating systems for non-desktop PCs and non-PC devices, such as tablet PCs and handheld devices,[133] and even operating systems used in "an extensive set of devices," most with little or no similarity to PCs, including, among others, smart phones, digital cameras, retail point of sale devices, automobile computing systems, industrial control devices, and smart cards.[134]

127. There is no basis in the Court of Appeals' opinion for such a sweeping definition and the sweeping scope of coverage of the RPFJ that would follow from it. Plaintiffs' case focused on Microsoft's anticompetitive use of its PC operating system monopoly to thwart emerging middleware threats to the applications barrier to entry into the PC OS market that protected that monopoly. The Court of Appeals affirmed the District Court's finding that Microsoft possessed a monopoly in a market for PC operating systems, and that it engaged in a variety of illegal actions to maintain that monopoly. Extending, as these commentors urge, each of the provisions of the RPFJ to a wide variety of non-PC devices—all of them outside of the relevant market proved at trial and upheld on appeal—is unwarranted and unrelated to any proper remedial goal in this case.

[133] Kegel 6; SBC 42–43.

[134] SBC 43.

IV. OEM Provisions

A. Overreliance on OEMs

128. Several commentors suggest that the RPFJ burdens OEMs with the responsibility of injecting competition into the operating system market, a burden that, in the view of these commentors, the OEMs are not financially or technically capable of bearing. Under this view, the low margins and fierce price competition in the OEM business will deter OEMs from undertaking the costs and risks of exercising their new flexibility, guaranteed by RPFJ Section III.H, to replace access to Microsoft Middleware Products with access to Non-Microsoft

Middleware Products.[135] To correct this perceived problem in the RPFJ, one commentor proposes to require Microsoft to license the binary code of its Windows Operating Systems Products to ISVs and system integrators at the lowest license fee that Microsoft charges to any OEM or other customer; the ISVs or system integrators would be allowed to repackage Windows with non-Microsoft middleware and applications and license the new package to interested OEMs or other consumers.[136]

129. The argument that competitive pressures constrain OEMs, and so will make them unwilling to load non-Microsoft middleware, ignores the fact that the OEMs will respond to competitive pressures in choosing what software to offer consumers. The low margins and fierce competition in the OEM industry make OEMs more sensitive to consumer preferences, not less. If an OEM believes it can attract more customers by replacing a Microsoft product with a non-Microsoft product, it will do so; if not, it will not. And, indeed, this is precisely the way that a market should work. Thus, the success of the RPFJ in ensuring competitive conditions should not be judged by which choices OEMs make; rather it should be judged by whether OEMs have the opportunity to make those choices, free from contractual restrictions and fear of retaliation.

130. Similarly, the likely competitive impact of the RPFJ cannot be evaluated by looking at how OEMs have responded to the limited freedom to replace Microsoft's desktop icons in Windows XP that Microsoft voluntarily offered to OEMs in a letter dated July 11, 2001. Several commentors leap from the observation that no OEM has so far chosen to remove Internet Explorer from the desktop to the assertion that therefore the RPFJ's provisions permitting the removal of end-user access to Microsoft Middleware Products will have no competitive effect.[137]

131. Such a leap is unwarranted for several reasons. *First*, the RPFJ will grant OEMs significantly greater flexibility to customize Windows compared to Microsoft's voluntary offer. An OEM's "experience" under Microsoft's July 11 letter does not equate to experience under the RPFJ. The United States believes that it is quite possible that OEMs will choose to take advantage of the RPFJ's flexibility even if they have not taken advantage of the very limited flexibility Microsoft has offered them so far. In fact, at least one OEM recently showed that it will replace Microsoft middleware when it believes other options are more profitable: Compaq announced, on December 12, 2001, that its main consumer line of PCs will ship with RealNetworks' RealOne Player, rather than Microsoft's Windows Media Player, set as the default media player.[138] *Second*, other OEMs may have been reluctant to start customizing their systems until a final judgment is in place and they know the precise contours of their options. *Third*, as explained above, even if an OEM chooses not to replace Microsoft products with non-Microsoft products, that does not detract from the value of providing the OEM with the flexibility to do so. The RPFJ is intended to protect the competitive process, not to impose particular competitive outcomes.

132. More broadly, the emphasis in the RPFJ on provisions to free OEMs' choices is entirely appropriate, given their importance in the case. The Court of Appeals found that OEM preinstallation was "one of the two most cost-effective methods by far" of distributing browsers, and that Microsoft used various license restrictions on OEMs to "prevent[] OEMs from taking actions that could increase rivals' share of usage." *Microsoft*, 253 F.3d at 60, 62. The RPFJ's provisions reflect that preventing Microsoft from defeating future middleware threats through restrictions and pressure on the OEM channel is essential to ensuring that there are no practices likely to result in monopolization in the future.

B. Non-Retaliation (RPFJ § III.A)

133. Section III.A of the RPFJ prohibits a broad range of retaliatory conduct by Microsoft. Specifically, Microsoft may not retaliate against an OEM based upon the OEM's contemplated or actual decision to support certain non-Microsoft software. This section assures OEMs the freedom to make decisions about middleware or other operating systems without fear of reprisal.

134. Commentors express several concerns about Section III.A.[139] Although some commentors congratulate the United States for provisions that are procompetitive, represent real benefits to consumers, and take the club out of Microsoft's hand,[140] others believe that this section is not broad enough. Some commentors propose, for example, that the section be expanded to cover: (1) all software, including Microsoft Office;[141] (2) entities other than OEMs;[142] (3) threats of retaliation;[143] (4) all forms of retaliation;[144] (5) retaliation for any lawful acts undertaken by an OEM;[145] (6) existing forms of non-monetary consideration and all monetary consideration;[146] and (7) shipping PCs without an operating system.[147] One commentor seeks to eliminate from Section III.A Microsoft's ability to enforce its intellectual property rights through patent infringement suits.[148] Commentors also believe that the Section does not protect OEMs from arbitrary termination of their Windows licenses.[149] Commentors further claim that the standard contained in Section III.A. of subjective, actual knowledge is too hard to meet,[150] and that Microsoft's ability to offer Consideration is too broad.[151] Finally, some commentors object to the RPFJ's failure to define "retaliation."[152]

1. Section III.A Is Sufficiently Broad

135. Section III.A is designed to prevent Microsoft from undertaking actions against OEMs that have the purpose and effect of impairing an OEM's ability freely to choose to distribute and support middleware that may threaten Microsoft's operating system monopoly.[153] *See also* CIS at 25.

[135] ProComp 56–57; CCIA 58–59; CCIA. Stiglitz & Furman 32–33; SIIA 56–60.

[136] SIIA 56–60.

[137] SIIA 16; CCIA 54–55; AOL 15–16; ProComp 60.

[138] *See* Compaq Press Release, Dec. 12, 2001, *http://www.compaq.com/newsroom/pr/2001/pr2001121204.html*.

[139] RealNetworks 24–25; AAI 25–34; SBC 91–100; Harris 4; Bast 2–3; Thomas 2–3; Red Hat 11–13, 16–18, 22–23; Alexander 2; KDE 13–14; CFA 88–89, 93–95; CompTIA 5; PFF 19; ProComp 55–60; Pantin 4–7; Palm 14–15; CCIA 85–87, and Stiglitz & Furman 31–32; AOL 34–38; AOL, Klain 2–3; Nader/Love 1–6; Maddux ¶¶ 2–4; Sen. Kohl 4; Lococo 1.

[140] Nader/Love 2; CompTIA 5.

[141] SBC 97; Sen. Kohl 3–4; Nader/Love 2; AOL, Klain 2; Pantin 4–7; ProComp 59; PFF 19; AAI 31–33.

[142] SBC 95–96, 99; Schulken 1; McBride 1 (should apply to Xbox).

[143] Palm 14; Red Hat 22–23; ACT 27.

[144] Sen. Kohl 4; Pantin 4–7; ProComp 59; CFA 88–89; Young 1.

[145] Pantin 6–7.

[146] RealNetworks 24–25; AOL, Klain 3.

[147] Pantin 4–7; Harris 4; Alexander 2; Godshall 1 (shipping PCs with a single non-Windows operating system); Miller 2; Hafermalz 1; Scala 1; Schulze 2; Peterson 3; Burke 2.

[148] Red Hat 11–13, 16–18, 22–23.

[149] AOL, Klain 3; CCIA 85–86; Pantin 6–7; Harris 4.

[150] SBC 97; ProComp 59; KDE 13.

[151] Maddux ¶ 5; AOL, Klain 3.

[152] SBC 96; Red Hat 16–17.

[153] Levy 1 (settlement adequate). This would include linking the price or terms of Office to the promotion of rival middleware. Doing so would represent an alteration in Microsoft's commercial relationship with that OEM because of that OEM's promotion of middleware.

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The Section is logically limited to retaliation against OEMs,[154] as no evidence was presented at trial to show that entities other than OEMs, ISVs, and IHVs have been subject to retaliation in the past, or that other entities are so dependent upon commercial relations with Microsoft (or Microsoft's Consideration) that they are susceptible to retaliation.

136. Comments suggesting that Section III.A is deficient because it fails to address threats of retaliation similarly are misplaced. Section III.A ensures that Microsoft cannot retaliate based upon the OEM's contemplated or actual decision to support certain non-Microsoft software. Threats of retaliation are empty when Microsoft cannot follow through on them.

137. Some commentors contend that Microsoft should be prohibited from all forms of retaliation, noting that Section III.A does not prohibit retaliation that is unrelated to middleware. Commentors urge the Court to expand Section III.A. to prohibit retaliation for any lawful act by an OEM. This position, however, misapprehends the case. This case dealt with Microsoft's actions with respect to middleware threats to Microsoft's operating system. The RPFJ prohibits Microsoft both from repeating those actions found to be illegal, and from undertaking other, similar acts that may protect its operating system monopoly from middleware threats.

138. The provision of Section III.A covering non-monetary Consideration[155] also drew comments. Commentors suggest that the provision be re-written to include monetary Consideration. In fact, Section III.A. already covers existing and successor forms of monetary Consideration, as Microsoft is expressly prohibited from retaliating by "altering . . . commercial relations with [an] OEM . . ." Dropping or changing monetary Consideration would alter commercial relations. Section III.A, however, does not prohibit Microsoft from competing by, for example, offering to pay OEMs for desktop placement. But Section III.A would prohibit Microsoft, in this example, from retaliating by altering its commercial relations with, or withholding non-monetary Consideration from, OEMs that choose to accept a third party's offer in lieu of Microsoft's.

139. Certain commentors also argue that limiting retaliation to withholding "newly introduced" forms of non-monetary Consideration somehow exempts existing forms of such Consideration from the reach of Section III.A. This is incorrect. As noted in the CIS (at 26), this clause specifically applies to "successor versions of existing forms of Consideration."

140. Finally, certain comments recommend that this Section expressly permit shipping a computer without a Microsoft operating system or no operating system at all. The United States notes, however, that such machines are already available in the market[156] and sees no reason for the RPFJ to address the question.[157]

2. Section III.A Properly Allows Microsoft To Enforce Intellectual Property Rights

141. Section III.A provides that nothing in the provision prohibits Microsoft from enforcing its intellectual property rights where doing so is not inconsistent with the RPFJ. A commentor suggests that Section III.A should, in fact, prohibit Microsoft from bringing or threatening lawsuits to enforce such rights. This suggestion is meritless. The commentor would force Microsoft to dedicate its intellectual property, effectively putting all of its patented and copyrighted material into the public domain. Although Microsoft's competitors would appreciate an ability to free-ride on Microsoft's investment in research and development, the antitrust laws do not require such a draconian remedy with its attendant destruction of incentives for innovation. The RPFJ seeks to draw a balance between preventing Microsoft from engaging in anticompetitive acts to protect its operating system monopoly while still encouraging it to compete and to innovate. Prohibiting Microsoft from enforcing its intellectual property rights would deter innovation unduly and encourage infringement without barring conduct found by the District Court and Court of Appeals to violate the antitrust laws.

3. Section III.A Protects OEMs From Arbitrary Termination of Their Licenses

142. Commentors are simply incorrect in their assertions that the terms of the RPFJ permit arbitrary termination of Covered OEMs' Windows licenses.[158] The RPFJ states expressly that Microsoft may not terminate a Covered OEM's license without first providing a written notice and opportunity to cure. It is only if the OEM has failed to cure the violation after the two letters that Microsoft then may terminate the OEM's license. If the OEM cures the violation, Microsoft cannot terminate for that violation. Microsoft cannot reasonably be barred from ever terminating an OEM's license, because there may be legitimate reasons for doing so (e.g., an OEM's failure to pay).

143. Section III.A.3 also protects OEMs from losing their Windows license in retaliation for exercising any option provided for in the RPFJ. Pursuant to those provisions, for example, Microsoft may not terminate a Windows license because an OEM has removed end-user access to any Microsoft Middleware Product.

4. Requiring Proof of Knowledge Is Necessary and Can Be Met

144. Certain commentors allege that requiring proof that Microsoft knew that an OEM was or was contemplating undertaking any of the enumerated actions before finding retaliation sets an impossible standard. In fact, such a requirement is reasonable because an inference of retaliation would be inappropriate unless Microsoft knows of the action that it is seeking to punish or prevent.

5. Microsoft's Permitted Use of "Consideration" Is Appropriate

145. The RPFJ permits Microsoft to provide Consideration to an OEM with respect to a Microsoft product or service, but only where the level of Consideration is commensurate with the OEM's contribution to the development, distribution, promotion, or licensing that particular product or service. This portion of Section III.A is designed to address permissible collaborations between an OEM and Microsoft to promote Microsoft products and services. In exchange for the OEM's assistance, Microsoft may provide a different level of consideration commensurate with that OEM's contribution—so that, for example, an OEM that collaborates with Microsoft on developing a particular product through extensive testing, or offers advertising or other promotion, may be compensated for its greater role through a higher level of Consideration for that product than one that is not developing or supporting that product. Similarly, this provision would permit Microsoft to provide different levels of Consideration to those OEMs buying larger quantities of product. The OEM buying one million copies of a product may be offered greater support than the OEM buying five copies. Microsoft may, however, base the level of Consideration only on the OEM's support for the same Microsoft product or service, and not on an OEM's agreement not to support or develop a competing product or to support or develop other Microsoft products.

6. The RPFJ Uses the Common Language Definition of "Retaliate"

146. Commentors also complain that the RPFJ fails to define "retaliate." In fact, no separate definition for the term is needed. The RPFJ prohibits Microsoft from retaliating by altering commercial relations with, or withholding newly-introduced forms of non-Monetary Consideration from, an OEM. In this context, "retaliate" does not require further elaboration.

C. Uniform Terms (RPFJ § III.B)

147. To ensure that the twenty Covered OEMs will be free from the threat of Microsoft retaliation or coercion, Section III.B requires that Microsoft's Windows Operating System Product licenses with those OEMs contain uniform terms and conditions, including uniform royalties. These royalties must be established by Microsoft and published on a schedule that is available to Covered OEMs and the Plaintiffs.

148. Windows license royalties and terms are inherently complex and easy for Microsoft to use to affect OEMs' behavior, including what software the OEMs will offer to their customers. Section III.B is intended to eliminate any opportunity for Microsoft to set or modify a particular OEM's royalty, or its other license terms or conditions, in order to induce that OEM not to promote non-Microsoft software or to retaliate against that OEM for promoting competing software.[159] By removing any mechanism for Microsoft to use such leverage, this provision will further permit OEMs to make their own independent choices without fear of retribution.

1. Top Twenty OEMs

149. Section III.B is limited to the twenty OEMs with the highest worldwide volume of licenses of Windows Operating System Products. Some commentors criticize this limitation, arguing that it leaves Microsoft free to retaliate against smaller OEMs, including regional "white box" OEMs.[160] The top twenty OEMs, however, together account for a substantial percentage, in excess of 75 percent in fiscal 2001, of all Windows licenses. Consequently, providing those key OEMs with the added guarantees of freedom to distribute and promote particular types of software that could erode Microsoft's monopoly—the purpose of Section III.B—is of extreme competitive significance. In any event, *all* OEMs are protected from retaliation by Section III.A of the RPFJ. Section III.B is intended to provide an additional layer of protection for these twenty OEMs that are likely to be of great significance.

150. At least one commentor would go much further and seek to require Microsoft to offer uniform terms not only to the top twenty OEMs, but also to all of the hundreds of OEMs, whatever their size, and even further to "all third party licensees."[161] There is no rational basis for treating every licensee of Windows, from the largest OEM to the smallest corporation, equally with respect to their Windows royalties and all the terms and conditions of their licenses. Certainly the intent to prevent Microsoft from discriminating or retaliating in response to competitive activities cannot begin to justify such a broad provision. In fact, such a requirement would be enormously inefficient and disruptive and would ignore vast differences between differently situated types or groups of licensees.

151. In any event, neither the antitrust laws generally, nor the Court of Appeals' decision specifically, require that even a monopolist like Microsoft treat all third parties equally. In fact, in many instances "unequal" treatment (e.g., collaboration between two companies that does not include other firms) evidences legitimate competition. Thus, Section III.B was crafted carefully to provide extra protection against improper rewards or retaliation involving the most significant OEMs, without precluding other conduct that could result in potentially procompetitive benefits.

2. MDAs Or Other Discounts

152. A number of commentors argue that Section III.B should forbid *all* market development allowances ("MDAs") or other discounts.[162] This approach would be unnecessarily overbroad and would discourage efficient behavior that has little or no potential to be used by Microsoft for anticompetitive purposes. There are a range of business activities involving Microsoft and OEMs, having nothing to do with operating system or middleware competition, where MDAs or other discounts would be procompetitive.

153. At the same time, Section III.B carefully guards against Microsoft misusing MDAs or other discounts to reward or retaliate against particular OEMs for the choices they make about installing and promoting Non-Microsoft Middleware or Operating Systems or for any other purpose that is inconsistent with the provisions of the RPFJ.[163] To avoid the risk of Microsoft misusing MDAs or other discounts to reward or retaliate against OEMs for competitive middleware activities, Section III.B provides that, if Microsoft utilizes MDAs or similar discounts, they must be available and awarded uniformly to the ten largest OEMs on one discount scale and separately to the ten next largest on the same or another discount scale. In addition, the discounts must be based on objective, verifiable criteria, and those criteria must be applied uniformly to the relevant OEMs.

154. The RPFJ does prohibit Microsoft from using MDAs or other discounts if they are inconsistent with any other provision in the RPFJ. This would include, for example, retaliation against computer manufacturers for using non-Microsoft middleware that is implemented through incentive payments for faster "boot up."

3. OEMs Should Be Able To Negotiate

155. Several commentors argue that there should be a limited exception to the requirement of uniform license

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relationship with that OEM because of that OEM's promotion of middleware.

[154] Section III.F addresses retaliation against ISVs and IHVs.

[155] "Consideration" is defined in Section VI.C. Briefly, Consideration includes such things as preferential licensing terms, support, product information, certifications, and permission to display trademarks, icons, or logos.

[156] The Internet site Yahoo! lists in its commercial directory a substantial number of retailers offering custom-built PCs, at least some of which will provide a computer without an operating system at a discounted price (for example, Discovery Computers). Many refurbished computers are offered without an operating system, as well. Moreover, component retailers offer replacement hard drives, also without an operating system.

[157] *See also*, RPFJ § III.C.

[158] "Covered OEM" is defined in Section VI.D.

[159] Economides 12 ("this restriction can help avoid possible retaliation of Microsoft, so in the present context, it may be in the public interest.")

[160] Kegel 9; Schulze 2; Francis 1.

[161] SBC 136.

[162] SBC 101, 136; Herrmann 1; Timlin 3; Mitchell 2; Weiller 2; Clapes 5.

[163] For example, several commentors raise the specter of Microsoft offering OEMs MDA discounts on Windows licenses based on the number of copies of Office shipped by the OEMs. Kegel 9; CFA 12. But such discounts would be barred by the final paragraph of Section III.A, which forbids Microsoft from paying consideration with respect to one product based on an OEM's distribution of a different Microsoft product. Section III.B.3 would then preclude an MDA for such a purpose, since it would be "otherwise inconsistent with any portion of this Final Judgment." Similarly, the AOL comment erroneously asserts that the MDA provision would allow OEMs that promote Microsoft products to receive MDA discounts that are denied to OEMs that deal with Microsoft's rivals. AOL 35–36.

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terms and conditions in Section III.B to permit OEMs to continue to negotiate with Microsoft concerning exceptions to certain intellectual property "non assertion covenants" or "non assertion of patents" provisions in their licenses with Microsoft.[164] In these covenants, which have been part of Windows license agreements with OEMs for years but which historically have been the subject of intense negotiation between Microsoft and OEMs, the OEMs agree not to assert certain patent claims against Microsoft.[165]

156. According to these commentors, the uniform licensing terms provision of Section III.B of the RPFJ appears to be preventing Microsoft from negotiating with OEMs about the latest non assertion provisions.[166] One of the commentors, Sony, urges a modification or clarification of the RPFJ that would permit it and other OEMs to negotiate with Microsoft for more favorable non assertion provisions than those contained in Microsoft's uniform terms and conditions, with any new terms obtained then required to be offered to all Covered OEMs on a non-discriminatory basis; individual OEMs could choose to accept or decline.[167]

157. The United States believes that such a modification is unnecessary. Currently, nothing in the RPFJ prevents Microsoft from negotiating with Covered OEMs prior to establishing its uniform terms and conditions. The RPFJ does not in any way require that Microsoft must unilaterally set those terms, without any advance negotiation with or input from the OEMs. Similarly, nothing in the RPFJ prevents Microsoft from agreeing with an OEM to provisions that depart from the uniform terms and conditions, so long as any term or condition resulting from that agreement then becomes the uniform term or condition, is included on the required schedule, and is offered on a non-discriminatory basis to all Covered OEMs. And certainly nothing in the RPFJ specifies what terms or conditions ultimately will become the uniform terms and conditions. Those terms and conditions may be set at a variety of levels determined either by Microsoft itself or through advance discussion and negotiation with the OEMs; the RPFJ specifies neither the process nor the resulting level.

158. The Litigating States also assert that Microsoft's view is that it is authorized to insist on uniform, and uniformly onerous, non assertion provisions by the terms of Section III.I.5. To the extent that anyone at Microsoft (or elsewhere) ever believed or conveyed to any OEM that Section III.I.5 of the RPFJ authorizes Microsoft to insist on broad patent non-assertion provisions, that belief was inaccurate. The cross-license provision in III.I.5 was extremely narrow and applied only in a particular, limited type of situation. In any event, in part in response to these comments, and to avoid any possibility that Section III.I.5 could be misinterpreted in a way that discourages any third party from taking advantage of options or alternatives offered under the RPFJ, the United States and Microsoft have agreed to delete Section III.I.5 from the SRPFJ. *See* Section VII(C)(3) below.

4. Volume Discounts

159. One commentor claims that the RPFJ should permit Microsoft to utilize volume discounts only if they are based on an independent determination of the actual volume of shipments, in order to avoid Microsoft manipulation of such discounts.[168] But such a regulatory mechanism is not necessary under the RPFJ. It requires that any volume discounts must be "reasonable" and based on the "actual volume" of Windows licenses. The RPFJ's enforcement mechanism will ensure that Microsoft does not misuse the calculation of such discounts.

5. Termination—Cause, Materiality, And Notice

160. Some commentors criticize Section III.B for not requiring Microsoft to demonstrate "good cause" before terminating a Covered OEM's license, and for not requiring even more notices and opportunities to cure before termination.[169] The commentors argue that Microsoft could abuse the notice provision and then terminate a disfavored OEM without any opportunity to cure.

161. First, any abuse of the opportunity to cure or termination provisions by Microsoft—e.g., through sham notices—would be a serious breach of its obligations under the RPFJ. Second, if the process is not misused, two previous notices and opportunities to cure during a single license term should provide ample protection against retaliation for OEMs that are dealing with Microsoft in good faith and ample protection for Microsoft against OEMs that fail to comply with their contractual obligations. Finally, a requirement that any termination be for "good cause" is unnecessary and overly regulatory; once again, any sham termination by Microsoft for anticompetitive purposes would constitute a serious breach of the RPFJ.

6. Servers Or Office

162. Section III.B requires that Microsoft employ uniform license agreements and uniform terms and conditions for the top twenty OEMs only with regard to its licensing of Windows Operating System Products. The provision is limited to Windows licenses because the relevant market in which Microsoft was found to have a monopoly consists of PC operating systems, and because the various illegal actions in which Microsoft engaged were undertaken to protect that monopoly, not other products.

163. Some commentors argue that Microsoft can evade the restrictions of Section III.B simply by shifting its retaliatory price discrimination to other key Microsoft products such as Office or server operating systems.[170] To the extent the commentors intend to assert that this limitation in Section III.B leaves Microsoft free to use discriminatory licensing terms or conditions for Office or other important Microsoft products in order to reward or punish OEMs for their actions regarding Microsoft and non-Microsoft Middleware, that assertion is wrong. Although Section III.B is limited to Windows Operating System licenses, the general anti-retaliation provisions of Section III.A are not so limited. See Section IV(B) above. Any attempt by Microsoft to alter the terms of any (not just the top twenty) OEM's license for Office or any other product (or any other commercial relationship with that OEM) because that OEM is working with rival Platform Software or any product or service that distributes or promotes non-Microsoft middleware will be prohibited by § III.A.

[164] Sony 2, 4. *See also* Litigating States' Motion for Limited Participation in Light of the Deposition of Mr. Richard Fade, filed February 19, 2002, at 6–7, 19 ("Litigating States' Motion"). In their Motion, the Litigating States seek an order that would permit them to participate in this Tunney Act proceeding for the limited purpose of submitting portions of the transcript of a Microsoft employee, Richard Fade, purportedly relating to the issues of Section III.B, the non assertion of patent provisions, and Section III.I.5. The United States' Response to the Litigating States' Motion did not object to participation in this one instance colely for the narrow purpose identified—adding the proffered information to the Litigating States' public comment—but did object to any broader or continued participation. Microsoft filed its Response ("Microsoft Response") on February 22, 2002, in which it did not oppose the participation and submission, and to which it attached a declaration of Richard Fade ("Fade Decl."). Because the Court has not yet ruled on the Motion, the United States will proceed to respond here to the substance of the information proffered in the Litigating States' Motion.

[165] Sony 2; Litigating States' Motion 6–7; Microsoft Response 4–5; Fade Decl. ¶¶ 11–16.

[166] Sony 4; Litigating States' Motion 7.

[167] Sony 4.

[168] SBC 102, 136.

[169] SBC 102–03; Drew 1.

[170] CCIA 87–88; Turk.

7. Key License Terms

164. One commentor argues that the RPFJ should require Microsoft to provide OEMs and other licensees with equal access to "licensing terms, discounts, technical, marketing and sales support, product and technical information, information about future plans, developer tools or support, hardware certification and permission to display trademarks or logos."[171] Otherwise, the commentor claims, Microsoft can keep such information secret and take advantage of licensees' ignorance about what terms are available.[172] With respect to the top twenty Covered OEMs, however, Microsoft already is required by Section III.B to offer all license terms and conditions on a uniform and non-discriminatory basis.

8. Prohibition On Enforcing Agreements Inconsistent With The RPFJ

165. One commentor urges that Microsoft should be forbidden from enforcing any contract term or agreement that is inconsistent with the decree.[173] But such a provision is both unwarranted and unnecessary. To the extent that a contract term or agreement seeks to bar someone from doing something that is required or permitted under the RPFJ, or requires someone to do something that Microsoft is forbidden from offering, the RPFJ already would prevent such action. In certain key areas, the RPFJ does include a provision prohibiting Microsoft from retaliating against an OEM for exercising any of its options or alternatives under the RPFJ (Section III.A.3) or from basing MDAs on any requirements that are inconsistent with the RPFJ (Section III.B.3.c). In the latter case, the provision is necessary to make clear that, by affirmatively authorizing Microsoft to do something (offer MDAs or other discounts), the RPFJ is not authorizing Microsoft to base those discounts on inappropriate criteria.

D. Freedom Of OEMs To Configure Desktop (RPFJ § III.C)

166. Section III.C of the RPFJ prohibits Microsoft from restricting by agreement any OEM licensee from exercising certain options and alternatives. A few comments argue that Microsoft should be prohibited from restricting OEMs by "other means" as well as by agreements.[174] The United States believes that the limitation to agreements is appropriate in this section.[175] The most obvious and effective means for Microsoft to restrict an OEM's conduct is by agreement, as reflected in the record in this case. In addition, as explained in the CIS, the RPFJ uses the term "agreement" broadly to include any contract, requirement, or understanding.[176] Use of other means by Microsoft to influence, limit, or reward the options of OEMs is appropriately covered in other provisions, such as Sections III.A, III.B, and III.G. Technical means of limiting the options of OEMs are addressed by Section III.H.

167. Looking at the products covered by this section, some comments argue that the provision should extend to any application, not just middleware, or at least to Microsoft Office.[177] The United States believes that the decree correctly focus on middleware, because that was the focus of Plaintiffs' case and of the courts' holdings. Section III.C provides broad protection for non-Microsoft Middleware as it is configured for use with Windows. Because this section focuses on OEM flexibility in configuring Windows Operating System Products, it would be illogical to consider products, such as Office, that are not part of the Windows Operating System Product.

168. It is important to remember that this section pertains to OEM configurations, and not to what users or Non-Microsoft Middleware itself can initiate if selected by a user. These provisions, in essence, control how the configuration will appear the first time the user boots the computer. After that first time, the user may take many actions, such as clicking on icons, rearranging the desktop, or making other program choices, that drastically alter the configuration of the computer. A user launching a program by clicking on an icon may change many of the configuration options of the computer, including whether the program will subsequently launch automatically or be displayed in a certain size or be the default application. Thus, Section III.C governs only OEM configuration, but not any subsequent configurations based on user choices.

1. Section III.C.1

169. Several comments suggest that, under Section III.C.1, OEMs should be given greater flexibility in configuring Windows, extending to such things as taskbars, toolbars, links, and default pages and similar end user features in Internet Explorer; features of Windows XP such as the My Photos, My Music, and similar operating system folders; and elimination or alteration of the Start Menu.[178]

170. Subsection III.C.1 strikes an appropriate balance between the interests of Microsoft and OEMs in order to allow promotion and installation of Non-Microsoft Middleware. In fact, the provision covers some of the features requested by commentors, such as quick launch bars and the Start Menu. As discussed in the CIS (at 30), "a list of icons, shortcuts or menu entries" includes a wide variety of access points in Windows Operating System Products, including the system tray, "right-click" lists, "open with" lists, lists that appear based on an action or event, such as connecting hardware or inserting an audio CD, and even lists within folders such as MyMusic or MyPhotos. This flexibility must be balanced against Microsoft's interest in presenting a user interface on its Windows products that has been well tested and is simple and intuitive for users. Windows is, after all, Microsoft's product. The United States believes that the provision allows for many opportunities for promotion and installation of Non-Microsoft Middleware without going so far as to allow OEMs to make drastic changes to Microsoft's user interface. *Cf. Microsoft*, 253 F.3d at 63 (Microsoft's restrictions on OEM reconfiguration of user interface did not violate Section 2).

171. Another commentor argues that the RPFJ merely codifies Microsoft's existing practices regarding flexibility of configuration and serves almost no remedial purpose.[179] To the contrary, Section III.C gives OEMs much greater flexibility than they have ever had. Even as late as summer 2001, Microsoft still was restricting the placement of icons in Windows. The flexibility OEMs receive under Section III.C, combined with the ability to remove access to Microsoft Middleware Products under Section III.H, will allow OEMs to offer many different configurations and promote Non-Microsoft Middleware in a variety of ways. That Microsoft voluntarily provides certain flexibility does not eliminate the need for relief requiring

[171] SBC 101–02, 136–37 (describing Litigating States' § 2(b)).

[172] SBC 136–37.

[173] SBC 136–37.

[174] Pantin 8; Maddux ¶ 5.

[175] Levy 1 (Section III.C adequately prohibits Microsoft from preventing OEMs and consumers form installing rival operating systems or removing Microsoft middleware products and installing rival middleware).

[176] CIS at 29.

[177] CFA 95; Nader/Love 2; Pantin III.13; Novell 8.

[178] SIIA 22–23, Pantin 9.

[179] ProComp 10, 67.

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that flexibility, as the Court of Appeals' decision mandates.

172. Commentors also note that the term "functionality" (*see* Section III.C.1) is not defined, that Microsoft is free to decide what categories qualify for display, and that Microsoft could exclude Non-Microsoft Middleware for which no Microsoft counterpart exists or otherwise restrict the meaning of functionality.[180] As explained in the CIS (at 30), "functionality" is intended to capture broad categories of products, and not to be used to discriminate against Non-Microsoft Middleware. Thus, for example, Microsoft may reserve a particular list for multimedia players, but cannot specify either that the listed player be its own Windows Media Player, or that the player be capable of supporting a particular proprietary Microsoft data format. Such non-generic specification, which would have the effect of restricting the display of competing Non-Microsoft Middleware, would not be non-discriminatory. Microsoft cannot prescribe the functionality so narrowly that it becomes, in effect, discriminatory.

173. Moreover, Microsoft cannot completely forbid the promotion or display of a particular Non-Microsoft Middleware Product on the ground that Microsoft does not have a competing product itself. To do so would be discriminatory; there must always be (and there always has been) a place for applications generally to be listed or their icons displayed. Without this functionality limitation, developers of Non-Microsoft Middleware with media player functionality could insist that it wants to be displayed with instant messaging services, making groupings of supposedly competitive products with the same or similar functionality meaningless and hopelessly chaotic for the user.

2. Section III.C.2

174. A few commentors argue that, under Section III.C.2, Microsoft has control over what non-Microsoft products may be promoted by an OEM because Microsoft could define what "impair[s] the functionality of the user interface."[181] Section III.C.2 applies only to shortcuts, but it allows those shortcuts to be of any size and shape. Potentially, these shortcuts could be so large as to cover key portions of the Windows user interface (for example, the Start Menu). As the Court of Appeals found, Microsoft has an interest in preventing unjustified drastic alterations of its copyrighted work. *Microsoft*, 253 F.3d at 63. The limitation preventing shortcuts from impairing the functionality of the user interface was designed to respect this interest, while still giving OEMs considerable freedom to promote Non-Microsoft Middleware.

3. Section III.C.3

175. There are many comments related to Section III.C.3. Some comments argue that this subsection gives Microsoft design control because Microsoft could set parameters for competition and user interface design via the limitation on "similar size and shape," which then leaves competing applications to conform to Microsoft's "look and feel."[182] This is not the intent or effect of this provision. *See* CIS at 31–32. For programs that are configured by the OEM to launch automatically, either in place of, or in addition to, Microsoft Middleware Products, the restriction limits whether applications can launch with their full user interface, no interface, or appear in the system tray or similar location. Thus, this provision addresses Microsoft's interest in preventing unjustified drastic alterations to its copyrighted work, as recognized by the Court of Appeals. *See* 253 F.3d at 63.

176. Some commentors argue that Microsoft retains control of desktop innovation because it can prevent OEMs from installing or displaying icons or other shortcuts to Non-Microsoft software or services if Microsoft does not provide the same software or service.[183] Others say that the middleware icon provisions of III.C.1 and III.C.3 apply only when Microsoft has a competing product, and Microsoft can limit the OEMs' ability to promote competing programs.[184] Still others criticize that Section III.C.3 limits automatic launches to the boot-up sequence or when the user connects to the Internet, thus limiting the options of OEMs.[185]

177. The majority of these comments are misplaced. Section III.C.1 does not prevent OEMs from installing or promoting Non-Microsoft Middleware, regardless of whether Microsoft has a competing product. At a minimum, Section III.C.2 allows for any Non-Microsoft Middleware to be installed and displayed on the desktop with a shortcut, completely independent of the existence or characteristics of any Microsoft product. The only issue is where else in the Windows interface the Non-Microsoft Middleware will be promoted. As discussed above (see Section IV(D)(1)), Microsoft has a valid interest in presenting an orderly user interface such that, for example, lists of what are supposed to be word processors do not clutter lists of media players. If the Windows interface has a space for listing, for example, Internet applications, then any Internet application can go there regardless of whether Microsoft has a competing application. If the Windows interface has no listing for a particular new category of application, then there will be, and always has been, a general place where applications can be listed, such as the desktop.

178. It is correct that, under Section III.C.3, Non-Microsoft Middleware cannot be configured to launch automatically unless a Microsoft Middleware Product would have otherwise launched. However, this governs only the original OEM configuration. If the user clicks on an icon or otherwise runs the Non-Microsoft Middleware, that application can itself set up to launch automatically on subsequent boot sequences, or at any number of other times, including but not limited to connections to the Internet. Section III.C.3's approach is a reasonable compromise with Microsoft's interest in having the computer boot up quickly the first time it is turned on, a characteristic that users value.

179. A few commentors believes it is inappropriate that Microsoft be allowed to decide what forms the user interface, e.g., a desktop with icons, may take.[186] The United States disagrees. Microsoft has a valid interest in developing its products, which some users actually prefer on the merits, and in preventing unjustified drastic alterations to its copyrighted work. The purpose of the remedy is not to strip Microsoft of the ability to design operating systems or compete on the merits.

4. Section III.C.4

180. Some commentors argue that Section III.C.4 does not prohibit Microsoft from deleting or interfering with competing boot loaders, does not allow OEMs to ship machines without any operating system, and otherwise does not assist the OEMs' ability to promote non-Microsoft operating systems.[187] The United States partially agrees and partially disagrees with these comments. Section III.C.4 provides for the option of launching other operating systems and prohibits Microsoft from attempting to delete or interfere with competing boot loaders that accomplish this task. This subsection does not enable OEMs to sell machines without an operating system, as that would not promote Non-Microsoft Middleware. However, Microsoft would run afoul of Section III.A if it attempted to restrict OEMs from shipping PCs with rival operating systems.

5. Section III.C.5

181. Some comments criticize Section III.C.5 for providing promotional flexibility only for IAP offerings, and even then only for an OEM's "own" IAP offer but not for other products.[188] At least one commentor notes that the Windows XP initial boot sequence offers a wide range of Microsoft products and services, including Passport, Hotmail, Instant Messenger, and Internet telephony.[189] Some commentors predict that Microsoft will use the "reasonable technical specifications" to unreasonably exclude competitors.[190]

182. Section III.C.5 permits OEMs to create and display a customized offer for the user to choose an IAP during the initial boot sequence. A user's IAP can be an important source of choices about a wide variety of Non-Microsoft Middleware. It is the OEM's "own" IAP in the sense that the OEM selects it, not necessarily that the OEM is itself an IAP. Microsoft is not permitted unreasonably to exclude competitors via the technical specifications for IAP offers. Microsoft previously and understandably has given such reasonable technical specifications to OEMs, and the United States does not expect Microsoft to deviate from its prior standards as to what is reasonable. After all, Microsoft has an interest in offering OEMs an operating system that works, and absent reasonable technical standards, performance might be degraded.

183. At least one commentor argues that there should be a provision allowing OEMs to replace the Windows desktop, and sees no explanation in the CIS as to why this provision, which the United States advocated before the District Court and on appeal, has been removed.[191] The simple answer to this question is that the Court of Appeals reversed the finding of liability on this point (*see Microsoft*, 253 F.3d at 63), and to provide for such a remedy would be inappropriate in this case.

6. Comparison To Litigating States' Proposal

184. Several commentors argue that the Litigating States' Provision 2.c ("OEM and Third-Party Licensee Flexibility in Product Configuration") should replace RPFJ Section III.C.[192] The United States believes that Provision 2.c is overbroad and largely unrelated to middleware competition that could threaten Microsoft's desktop operating system monopoly. Additionally, the Litigating States' Proposal appears to ignore the Court of Appeals' decision that Microsoft is entitled to prevent an unjustified drastic alteration of its copyrighted work, and to prohibit OEMs from substituting a different user interface automatically upon completion of the initial boot sequence. *Microsoft*, 253 F.3d at 63. Regardless of how broadly one reads this portion of the Court of Appeals decision, Provision 2.c would appear to allow an OEM to make the very "drastic alteration[s] [to] Microsoft's copyrighted work" that the Court of Appeals found Microsoft lawfully could prohibit. *See id.*

185. Provision 2.c essentially provides that Microsoft cannot restrict by contract, technical, or any other means a licensee from modifying any aspect of a Windows Operating System Product.[193] The breadth of this provision appears to require that Microsoft allow, and provide the information to accomplish, any modification to any portion of a Windows Operating System Product, no matter how unrelated to middleware. For example, this provision appears to allow licensees to change the manner in which Windows implements disk compression, the TCP/IP protocol, the calculator program, and the Windows Help system. These modifications apparently could be at any level of granularity, including very small segments of code.

186. Although Provision 2.c also identifies specific types of modifications—e.g., the boot sequence, desktop, or start page—these types of modifications are not limiting because the provision clearly allows for modification of any "other aspect of a Windows Operating System Product (including any aspect of any Middleware in that product)." Provision 2.c also provides five examples (¶¶ 2.c.i–v), but these are given "[b]y way of example, and not limitation." This Proposal thus appears to allow any and all modifications.

187. These types of broad modifications are not necessary to allow for vigorous competition in the middleware market. Indeed, it appears that the vast majority of these modifications have very little, if anything, to do with middleware and therefore are beyond the scope of the liability findings in this case.

E. Microsoft's Obligations To Provide Add/Remove Functionality And Automatic Invocations (RPFJ § III.H)

1. Obligation To Provide Add/Remove Functionality

188. Some commentors argue that Section III.H.1 allows Microsoft to force Non-Microsoft Middleware Products into an Add/Remove utility.[194] The United States believes that one of the primary goals of the RPFJ is to enable users to make choices on the merits about Microsoft and Non-Microsoft Middleware Products. In the current Add/Remove utilities available in Windows Operating System Products, Microsoft Middleware Products are often not present at all, or are presented as Windows components in a separate window. Non-Microsoft Middleware Products, which currently routinely add themselves into the Add/Remove utility upon installation, are in a different Add/Remove window. Without the RPFJ, there is no easy way for the user to realize that something labeled as a Windows system component can be replaced with a Non-Microsoft Middleware Product. This provision will alter Microsoft's current practice of creating an artificial distinction between these Non-Microsoft Middleware Products and Microsoft Middleware Products.

189. Other commentors point out that exclusivity cannot be provided to Non-Microsoft Middleware Products, that Microsoft does not have to compensate an OEM for the presence of its icons on the desktop, and that every computer shipped represents an expense to the non-Microsoft software and income via the Windows license to Microsoft.[195] It

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[180] SBC 51, 138–39; Maddux ¶ 6; Pantin 9–11; Litigating States, Ex. A 10; Elhauge 8–9; Clapes 5–6; PFF 20.

[181] SBC 52; CCIA 56; Maddux ¶ 7; Miller 2; Hofmeister 2.

[182] AOL 37; AOL, Klain 4; CFA 95; RealNetworks 23; Henderson 8–9; Litigating States, Ex. A 10; ProComp 64; CCIA, Stiglitz & Furman 28; Maddux ¶ 8; Pantin 9–11; Alexander 2–3; Giannandrea 3; Miller 2; Thiel 2; Schneider 2.

[183] Palm 14; AOL 37; AOL, Klain 4; CCIA 60; PFF 20; Pantin 9–11; RealNetworks 22; SBC 140; Waldman 3, 8; CCIA 59–60; Clapes 5; Schneider 1.

[184] Litan 46, 50; CFA 95; SBC 52; Litigating States, Ex. A 10; ProComp 64; CCIA, Stiglitz & Furman 28; Giannandrea 3; Waldman 3; Hammett 2.

[185] ProComp 64; Pantin 9–11; Giannandrea 3; Rovero 3.

[186] SBC 52, 140; Godshall 1; Schneider 1–2.

[187] KDE 14; Pantin 11–14; Harris 5, CFA 89; CompTIA 5 (supports); Akin 2; Hafermalz 1; Young 1.

[188] AOL 37–38, Klain 4; CCIA, Stiglitz & Furman 27.

[189] SBC 53; Akin 2.

[190] Maddux ¶ 9; SBC 52, 141; NetAction 10, 14; Schneider 2.

[191] SBC 53, 138.

[192] SBC 137.

[193] Litigating States' Provision 4 additionally requires that Microsoft disclose all the necessary APIs, Communications Protcols and Technical Information to accomplish such modifications.

[194] Palm 15; AOL, Klain 6; SBC 58; Thomas 6–7.

[195] SIIA 24; ProComp 62; Schneider 2.

is incorrect that exclusivity, at least as to icons and other visible means of end-user access, cannot be provided to Non-Microsoft Middleware Products. Non-Microsoft Middleware Products can have exclusive agreements with OEMs covering all the most significant means of promoting their products—through desktop icons, the Start Menu, and being set as the defaults. The only exception to this exclusivity of visible means of end-user access would be a listing of the non-Microsoft Middleware Products in the Add/Remove utility, which has never been Microsoft's means of promoting usage.

190. Furthermore, should Microsoft wish to promote its Microsoft Middleware Products, it is constrained by other provisions in the decree, particularly provisions regarding exclusive or fixed percentage agreements with OEMs. *See* discussion of Section III.G. As an example, Microsoft could not reach an agreement with an OEM that required the OEM to set the Microsoft product as the default on 100 percent of the OEM's machines. Non-Microsoft Middleware Products do not face this constraint. Additionally, because OEMs are free to remove Microsoft icons and free to negotiate exclusivity agreements with competitors, Microsoft will have to compensate OEMs for any promotional agreements regarding its icons, in addition to conforming its agreements with the other provisions of the RPFJ.

191. A few commentors raise concerns that "particular types of functionality" and "non-discriminatory" are not defined and could be used by Microsoft to unreasonably exclude competitors.[196] Functionality is intended only to capture broad categories of products and not to be used to discriminate against Non-Microsoft Middleware Products. Thus, for example, Microsoft may reserve a particular list for multimedia players, but cannot specify either that the listed player be its own Windows Media Player, or that the player be capable of supporting a particular proprietary Microsoft data format. Such a non-generic specification, which would have the effect of restricting the display of competing Non-Microsoft Middleware Products, would not be non-discriminatory and therefore would be prohibited under Section III.H.1.

192. Commentors also suggest that the portion of Section III.H.1 that requires Microsoft to offer "an unbiased choice with respect to enabling or removing access" would nevertheless permit Microsoft to include derogatory comments about competing products when offering such a choice.[197] This is incorrect. The concept of non-discriminatory includes the concept of non-derogatory; Microsoft cannot present a choice that is derogatory toward the Non-Microsoft Middleware Products without also by definition discriminating against that Product.

2. Obligation To Provide Automatic Invocations and Exceptions

a. Obligations To Provide Automatic Invocations

193. Section III.H.2 addresses situations where Microsoft must create the ability to designate programs for automatic invocation, commonly referred to as default settings. Many commentors point out that there will be few situations where Microsoft is obligated to provide a default setting. They say that Microsoft easily will be able to evade this provision,[198] simply by embedding its Microsoft Middleware Products in other portions of the Windows Operating System Product or other Microsoft Middleware Products. Similarly, some commentors suggest that Microsoft could engineer its middleware to launch without using all of the "Top-Level Window" components or with making the slightest variation on the user interface, and not have to create any defaults. Commentors further argue that the existence of defaults should not depend on the existence or behavior of Microsoft's Middleware Products.

194. Additionally, some commentors point out that OEMs will be required to support the Microsoft Middleware Products regardless of whether they have end-user access removed, because Microsoft is allowed to hard-wire their products in some cases.[199] More specifically, these commentors argue that this situation will create an insurmountable disparity between the Microsoft and Non-Microsoft Middleware Products, because the Microsoft product will always be available and will always launch in some situations, whether the end user has selected them or not or is even aware that the product is installed.

195. The Court of Appeals' decision must be the starting point for any discussion of default settings and of the ability of Microsoft to override user choices. There were no instances in which the Court of Appeals found that Microsoft's overriding of user choice was unlawful. *Microsoft*, 253 F.3d at 67. Thus, the Court of Appeals' decision does not require that Microsoft respect user's default choices in all circumstances. The issue of whether Microsoft simply could have no default settings at all was, however, not before the Court and accordingly the Court did not address it.

196. Section III.H.2 of the RPFJ nevertheless requires Microsoft to implement and respect default settings in some circumstances. These circumstances are limited to situations where the Microsoft Middleware Product would launch in a separate Top-Level Window and display either (i) all of the user interface elements, or (ii) the Trademark of the Microsoft Middleware Product. These limitations are tied to the Court of Appeals' opinion, which supported Microsoft's position that it did not have to respect default settings where Windows functionality enabled users to move seamlessly from one function to another in the same window. *Microsoft*, 253 F.3d at 67.

197. Moreover, these limitations are designed to ensure that access to defaults exists whenever the alternative Microsoft product would be launched as the full "product" (e.g., Internet Explorer as the Internet browser), rather than when just a portion of the product's underlying functionality is launched to perform functions in Windows itself (such as code also used by Internet Explorer being used to display part of the Windows user interface), or otherwise where the end user might not necessarily be aware that he or she is using a specific Microsoft Middleware Product.

198. One of the most important functions of this Section III.H.2 is to provide certainty and a bright line regarding when Microsoft is obligated to provide and respect a default setting. Previously, Microsoft was under no obligation to provide for automatic invocations of competing products in any circumstances; Microsoft at its option provided for automatic invocations in some circumstances and not in others. Although commentors allege that there are numerous cases where Microsoft will not have to provide a default setting, the RPFJ does provide a clear line and a requirement, that did not exist before, that in some cases defaults must exist and must be respected.

199. Several commentors allege that Non-Microsoft Middleware Products are subject to a requirement that the end-user confirm his/her choice, but the Microsoft Middleware Product is not,

[196] CFA 98; Maddux ¶ 23; Clapes 9.

[197] Maddux ¶ 24.

[198] AOL 49; AOL, Klain 6; Litigating States, Ex. A 10; Pantin III.24; Realnetworks 14, 17, 23; CCIA 55; KDE 14–15.

[199] Litan 45; ProComp 57–58; CCIA 55; AAI 15; Litigating States 10.

making it effectively harder for users to choose Non-Microsoft Middleware Products.[200] This is incorrect. Section III.H.1 clearly states that Microsoft must give end users "a separate and unbiased choice" with respect to altering default invocations in Section III.H.2. Section III.H.2 of the RPFJ provides that Microsoft shall "[a]llow . . . Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (*or vice versa*)." The parenthetical "or vice versa" applies to the entire phrase, meaning any mechanism which requires confirmation when switching in one direction will also require it in the other direction.

200. To respond to the concerns raised by commentors and to clarify that Microsoft must be unbiased with respect to Microsoft and Non-Microsoft products under Section III.H.2, this provision was revised to expressly state that such mechanisms and confirmation messages must be unbiased. The revised language of Section III.H.2 in the SRPFJ provides:

> Allow end users (via an *unbiased* mechanism readily available from the desktop or Start menu), OEMs (via standard OEM preinstallation kits), and Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user in an *unbiased* manner) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (or vice versa) . . . [Emphasis added]

This modification makes clear the parties' intention that the mechanism available to end users, as well as any confirmation message to the end user, must be unbiased with respect to Microsoft and non-Microsoft products.

201. This modification also addresses any concern that the phrase "at Microsoft's option" could be read to allow Microsoft to take biased action against competing products. Further, it addresses concerns that Microsoft's presentation of the confirmation message could include derogatory comments about competing products.[201]

b. Exceptions to the Obligation To Provide Automatic Invocations

202. In addition, the SRPFJ's two exceptions to Section III.H.2, which were previously listed after Section III.H.3 and numbered "1" and "2," but which by their plain language unmistakably modified Section III.H.2 ("Notwithstanding the foregoing, Section III.H.2 . . ."), have been moved to Section III.H.2 for clarification and have been renumbered (a) and (b).

203. Exception (a) allows a Windows Operating System Product to invoke a Microsoft Middleware Product when it would be invoked solely for use with a server maintained by Microsoft outside the context of general web browsing. Commentors allege that Microsoft can use the exception to communicate directly with its own competing middleware in the form of web based services such as Passport, MSN, .Net and Hotmail and to override the explicit choices made by consumers and OEMs.[202] At least one commentor misreads this exception to infer that any web server running Microsoft software is covered.[203]

204. Turning again to the Court of Appeals decision, this exception stems from the holding that the Windows Help system was allowed to override a user's browser choice. *Microsoft*, 253 F.3d at 67. The current Windows Help system, as well as other parts of the Windows interface, rely on interoperating with servers maintained by Microsoft. The "maintained by Microsoft" language in exception (a) is specifically designed to catch servers actually under Microsoft's control, and not to include servers that are merely running a Microsoft product, such as Internet Information Server (IIS). Microsoft is only allowed to use this exception outside the context of general web browsing, such as the Windows Help system or similar systems, not in situations where a user has knowingly launched a browser to view web pages. This exception is similar to the limitations in the main paragraph of Section III.H.2 that limit automatic invocation to those situations where a user has launched, in essence, the "full product."

205. Exception (b) allows a Windows Operating System Product to invoke a Microsoft Middleware Product when a designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement that is necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product. Several commentors argue that Microsoft will have exclusive control over when it must respect defaults through manipulation of the "reasonable technical requirement" clause.[204] Concern also is raised that Microsoft is not required to document the "reasonable technical requirement" in advance in MSDN.[205] Several commentors predict extreme and drastic results from the example of ActiveX.[206]

206. Again, this exception appears in the RPFJ because the Court of Appeals held that Microsoft was allowed to override a user's choice when it had "valid technical reasons." *Microsoft*, 253 F.3d at 67. The Court of Appeals pointed to three specific examples where features of a Windows Operating System Product depended on functionality not implemented by Navigator, and Microsoft was permitted to override Navigator in those cases. The Court of Appeals did not find any violation associated with these actions, including no violation regarding whether information was disclosed to Navigator to allow it to implement the functionality. Given this holding, the inclusion of an exception that permits Microsoft to override a user's choice when it has "valid technical reasons" was appropriate.

3. Microsoft's Ability To Change Configurations

207. Many commentors have significant concerns about Microsoft's ability to offer to alter a user's or OEM's configuration, as described in Section III.H.3.[207] Some commentors argue that Microsoft should not be able to "encourage" users to switch back to Microsoft Middleware that has been replaced by a third-party application. Concerns also are raised that Microsoft's presentation of the choice could include derogatory comments about competing products, and that the RPFJ contains no requirement that the request to the user be objective or non-discriminatory, or that the function not delete non-Microsoft code or change user defaults. Commentors express the view that a significant number of users likely would switch just to get rid of the annoying messages. Others suggest that the fact that Microsoft is permitted to seek confirmation from the end user for an automatic alteration of the OEM configuration after 14 days significantly devalues the desktop. At least one commentor argues that OEMs do the "initial boot" before shipping a PC and hence the 14-day period could have

[200] AOL, Klain 6; CFA 98–99 ("consumer must choose the Non-Microsoft product twice to make it the preferred option"); RealNetworks 18; Miller 3; Clapes 9–10.

[201] Maddux ¶ 25; Pantin III.24.

[202] RealNetworks 17–18; CCIA 56; Maddux ¶ 27; Giannandrea 2; Gifford 4.

[203] SBC 58; Harris 7, 8.

[204] NetAction 14; Maddux ¶ 27; Gifford 4, Giebel 1; Miller 3; Akin 3; Hammett 2; Youngman 4.

[205] Pantin III.26.

[206] SBC 59; CCIA 56; Schneider 2.

[207] Litan 45; RealNetworks 16; Henderson 9; CCIA 57; CCIA, Stiglitz & Furman28; KDE 16; AAI 17–18; Maddux ¶ 26; AOL, Klain 6; CFA 99; SBC 56; Litigating States, Ex. A 10; ProComp 63; SILA 18; Panlin III.25; Gifford 4; Giannandrea 3.

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largely expired by the time the user boots the PC for the first time.

208. In response to some of the concerns raised regarding Section III.H.3, the RPFJ has been modified. The following additional sentence now appears in SRPFJ Section III.H.3: "Any such automatic alteration and confirmation shall be unbiased with respect to Microsoft Middleware Products and Non-Microsoft Middleware." This sentence clarifies the parties' intention in drafting the RPFJ that Microsoft may not alter a configuration based on whether the products are Microsoft or Non-Microsoft products. Nor may Microsoft present a biased confirmation message, for instance a message that is derogatory with respect to Non-Microsoft products. Similarly, automatic alterations may not be based on a trigger or rule that is biased against Non-Microsoft Middleware or in favor of Microsoft Middleware Products.

209. Several commentors were confused regarding the "Clean Desktop Wizard," referenced in the CIS (at 48), and its relation to Section III.H.3. The "Clean Desktop Wizard" is a utility in Windows XP that offers users the ability to move unused or infrequently-used desktop icons into a folder on the desktop. The "Clean Desktop Wizard" is the only function in Windows XP that performs an automatic alteration of a configuration of icons, shortcuts or menu entries. Furthermore, Section III.H.3 forbids Microsoft from altering how a Windows Operating System Product performs automatic alterations except in a new version of a Windows Operating System Product. Thus, the "Clean Desktop Wizard" is the only functionality that currently falls under Section III.H.3, and it must remain the only such functionality until a new version of a Windows Operating System Product. The "Clean Desktop Wizard" only affects icons on the desktop, is unbiased with respect to Microsoft and Non-Microsoft icons, and is unbiased with regard to the messages presented to the user. It takes no action without confirmation from the user, and it can be turned completely off by the user so that it never runs again.

210. Microsoft designed this utility because it believed some users prefer a less cluttered desktop and would appreciate a utility that would monitor which icons have been recently used, and offer to move the unused icons into a folder. The United States agrees that some users would appreciate this utility. The United States also believes, however, that some users would not. To offer choices to users and to remove the potential for significant anticompetitive effects, Section III.H.3 was designed always to require confirmation from the user, and to be unbiased with regard to Microsoft and Non-Microsoft products. The United States does not agree with the commentors who argue that Microsoft should be prohibited from ever offering this kind of utility as part of its operating system.[208]

211. A number of comments criticize the 14-day delay.[209] The 14-day delay, after a new personal computer is booted up before any automatic alternation may occur, was determined to be a reasonable compromise between the need to use desktop icons to promote Non-Microsoft Middleware, and the needs of users who would prefer to be presented with the choice of moving unused icons to a folder. A significant factor in this analysis is that there are many ways of promoting Non-Microsoft Middleware, of which the desktop is only one. Non-Microsoft Middleware may be installed in the Start Menu, for instance, or in the quick launch bar or system tray. It may also be set as a default and automatically invoked in certain instances. It may be promoted in the initial boot sequence or set to launch automatically on connection or disconnection to the Internet. And, of course, should the user click on the desktop icon, the "Clean Desktop Wizard" would not consider it an unused icon and it would not be affected. Or, should the user respond that it does not want the "Clean Desktop Wizard" to move unused icons into a folder, they will not be moved. Finally, even if the user responds affirmatively to the "Clean Desktop Wizard"'s prompt, the icons merely will be moved into a folder, not removed.

212. One commentor argues that Microsoft frequently could create "new versions" of its Windows Operating System Products for the sole purpose of creating new mechanisms to remove competing icons.[210] The United States finds it unlikely that Microsoft would go to the lengths required to release a new version of its operating system just to remove icons, given that any such mechanism must be unbiased with regard to Microsoft and Non-Microsoft products. Historically, Microsoft has released versions of its operating systems on the order of years apart, and at much longer intervals than its releases of middleware.

4. Timing Issues

213. Some commentors argue that the 12-month delay before Microsoft has to implement Section III.H simply allows Microsoft more time to cement its control over the operating system.[211] Some commentors compare the 12-month delay to the less than 2 months it took Microsoft to remove the icons for Internet Explorer after the Court of Appeals' decision.[212]

214. Section III.H takes effect with the earlier of the release of Service Pack 1 for Windows XP, currently scheduled for August 2002, or November 6, 2002. The reason for this delay was to allow Microsoft sufficient time to modify its Windows Operating System Products to be in compliance with the specific provisions of Section III.H. Section III.H requires Microsoft to make numerous changes to Windows 2000 and Windows XP. For instance, a mechanism must be created that allows end users and OEMs to enable and remove end-user access to Microsoft and Non-Microsoft Middleware Products that is non-discriminatory with regard to those products and that presents a separate and unbiased choice. As noted above, the current Add/Remove utility in Windows XP is biased: it lists the Microsoft Middleware Products in a separate window labeled as system components. Moreover, the current Add/Remove utility includes only a subset of the Microsoft Middleware Products and does not remove all of the required means of end-user access, but only some limited subset of icons.

215. Additionally, in accordance with Section III.H.2, Microsoft must evaluate every invocation of a Microsoft Middleware Product and determine if it falls under Section III.H.2, whether it falls under exception (a) or (b), and whether there is already a default setting. If there is not a default setting, or if in some cases the Windows Operating System Product does not respect the default, then the Windows Operating System Product must be altered.

216. Commentors who point to the relatively small amount of time between the Court of Appeals' decision and Microsoft's limited allowance of flexibility as evidence that the delay in Section III.H is excessive are comparing very different situations. Microsoft made an extremely limited offer to OEMs to alter end-user access to Internet Explorer in the summer of 2001. Similarly, Microsoft's addition of Internet Explorer to the Add/Remove utility was not complete and did not remove many of the means of end-user access. To comply with the RPFJ, both

[208] SBC 57.
[209] Drew 1; Thiel 2; Miller 3.
[210] AAI 18.
[211] Litan 47; CCIA, Stiglitz & Furman 28; Maddux ¶21 (suggests 3 months); Giannandrea 1–2.
[212] ProComp 65; CCIA, Stiglitz & Furman 28.

in terms of the required means of end-user access and the number of Microsoft Middleware Products at issue, requires considerably more effort. In addition, Microsoft's offer in the summer of 2001 did not contain any changes regarding automatic invocations, which can require considerably more work than the creation of a revised Add/Remove utility.

217. Another commentor argues that Microsoft has no incentive to offer the Windows XP Service Pack until December 2002, that the 12-month delay renders the provision meaningless for a fifth of the lifespan of the decree, and that the provision is therefore meaningless as a vehicle for restoring competition.[213] The same commentor argues that, in contrast, the interim conduct provisions in the IFJ were superior because they required the removal of end-user access within six months of the entry of the Final Judgment.[214]

218. Many aspects of this comment are erroneous. First, the deadline for compliance is November 6, 2002, not December. Moreover, Microsoft has a strong incentive to release Service Pack 1 for Windows XP, because it is well-known in the industry that the first Service Pack to an operating system release fixes many of the bugs in the original release. More specifically, many corporations do not consider upgrading until the first Service Pack is released. Windows XP, based on the NT code base and being the upgrade to Windows 2000, is aimed directly at corporations as well as consumers, unlike releases such as Windows Millennium and other operating systems based on the "9x" code. In order to serve the corporate audience at which Windows XP is at least partially directed, release of the first Service Pack is critical. Thus, the United States remains convinced that Microsoft has a strong incentive to release the first Service Pack for XP as quickly as possible. The United States is aware, however, that the Service Pack has slipped from a planned late spring release to an August 2002 release.

219. Additionally, it is important to realize that the 12-month period started on November 6, 2001, and the five-year life span of the decree begins when the decree is entered, which will be at some point after March 6, 2002. Thus, even if the Court enters the decree on March 6, 2002, the maximum amount of time the delay can "cut into the life of the decree" is eight months, not twelve. If the Court waits to enter the decree, the overlap decreases. For example, should the Court enter the decree on May 6, 2002, then the provision will become effective no later than six months after the entry of the decree (precisely the same time period contained in the IFJ).

220. The possibility that the provision will become effective six months after the decree is entered is identical to the timing in the IFJ, which required that the removal of end-user access would occur six months after entry. Moreover, the IFJ had no provisions at all regarding the creation and respect for default settings. Thus, the IFJ would have possibly required less with the same amount of delay.

221. Finally, to argue that the timing of the Litigating States' proposals is superior is to ignore the reality of the litigation schedule. Even assuming the shorter of the two proposed litigation schedules, the Litigating States' trial will not end before June 2002. Assuming that the Court issues its ruling immediately, which is highly unlikely given the complexities of the case, the earliest the Litigating States' provision on removing end-user access would be applicable is December 2002. To argue that the RPFJ is "meaningless as a vehicle for restoring competition" because of the timing of Section III.H when, in fact, the RPFJ will with absolute certainty be in effect before the Litigating States' remedy, is to argue that there is no possibility of an effective remedy. That argument simply is wrong.

222. Other commentors allege that the requirement that the Microsoft Middleware Products must exist seven months before the last beta test version of a Windows Operating System Product is a loophole easily exploited by Microsoft.[215] These commentors suggest that specific products, such as Windows Media Player 8, were not in existence at the requisite time and therefore are not subject to Section III.H. At least one commentor proposes that the whole timing paragraph be deleted.[216]

223. The timing paragraph is necessary to give Microsoft sufficient time to design, implement and test the Windows Operating System Product, particularly the requirement for automatic invocations, in order to comply with the decree. Without the timing requirement, Microsoft conceivably could be required to redesign its products constantly. Moreover, it is important to understand how the requirement for automatic invocations will work in practice. Seven months before the last beta test release of a Windows Operating System Product, in every place where a Microsoft Middleware Product is invoked so as to require a default setting under Section III.H.2, the Windows Operating System Product will be modified so as to create and respect the default setting. However, once that setting is created, for instance for a default browser or a default media player, any competing product may register itself for the default. Moreover, if any version of a Microsoft Middleware Product can be invoked, then the setting must be created and respected. To be specific, if seven months prior to the last beta test release of Windows XP, Windows Media Player 8 does not exist, but *Windows Media Player 7 exists*, and the Windows Operating System Product can invoke version 7 as well as version 8, then the default must be created. Thus as a practical matter, when a default setting is created for media player, it is created for the whole category of media players, not just specific versions.

224. One commentor maintains that Section III.H.3 requires vendors of competing middleware to meet "reasonable technical requirements" seven months prior to new releases of Windows, yet it does not require Microsoft to disclose those requirements in advance.[217] This comment incorrectly commingles the seven-month timing requirement with exception (b) to Section III.H.2. The seven-month timing requirement relates solely to the issue of which Microsoft Middleware Products exist at a certain time; it does not have anything to do with whether any Non-Microsoft Middleware Products meet certain technical requirements. The seven-month timing requirement determines when a default setting is required to exist; exception (b) concerns the limited circumstances where, given that the default setting exists, the Windows Operating System Product may nevertheless ignore a designated Non-Microsoft Middleware Product.

F. Commingling of Operating System Code and Middleware Code

225. Sections III.C and III.H of the RPFJ remedy Microsoft's anticompetitive commingling of browser and Windows operating system code by requiring Microsoft to redesign its Windows Operating System Products to permit OEMs and end users effectively to remove access to Microsoft Middleware Products (Section III.H.1) and to allow competing middleware to be featured in its place (Section III.C).

[213] SBC 60.
[214] SBC 61–62.
[215] RealNetworks 16–17; Henderson 6; CCIA 56; PFF 21; Harris 7–8; Schulze 2.
[216] Pantin III.27.
[217] Kegell 5.

Section III.H also requires Microsoft to create a mechanism that permits rival middleware products to take on a default status that will, if the consumer chooses, override middleware functions Microsoft has included in the operating system in many cases (Section III.H.2).

226. A number of commentors assert that, in spite of these provisions, the RPFJ is deficient because it does not contain an express prohibition on Microsoft "commingling" the code of Middleware Products in the same files as the code for the operating system.[218] They note that the Court of Appeals upheld the District Court's liability determinations regarding both Microsoft's elimination of the Add/Remove capability for its browser and its commingling of browser code and operating system code. But the Court of Appeals did not hold that commingling of code alone, without regard to any anticompetitive effects it might have in a particular case, is anticompetitive or illegal. In fact, the United States challenged, and the Court condemned, Microsoft's practice of commingling operating system and Internet Explorer browser code for a specific reason: because the commingling in that instance had the purpose and effect of preventing OEMs and end users from removing access to the browser from Windows.

227. Some comments suggest that the lack of a ban on commingling in the RPFJ retreats from the position on commingling that the United States took in the prior remedy proceeding and that the District Court adopted in the IFJ. These commentors assert that the IFJ actually prohibited Microsoft from commingling code for middleware with code for the operating system.[219] In fact, however, the IFJ's anti-binding provision, Section 3.g, only required that Microsoft make available a version of Windows in which "all means of end-user access" to Microsoft Middleware Products could be removed by OEMs or end users. IFJ § 3.g.i (emphasis added).[220]

228. The United States has, throughout the remedy phases of this case (including before the District Court in June 2000), stated consistently that it did not seek to require Microsoft to remove commingled code from Windows. The United States' remedy briefs in the June, 2000 proceeding made clear our view that the competitive problems created by Microsoft's bundling of middleware would be addressed adequately by ensuring the ability to remove end-user access, and not the ability actually to remove code:

> Microsoft suggests that Section 3.g.'s requirement of removal of "end user access" dramatically increases the scope of what is a "Middleware Product." But only if a product first meets the definition of "Middleware Product" is Microsoft required to provide the means of removing access to it. . . . Similarly, Microsoft's statement that features like the user interface, HTML Help, and Windows Update would be "precluded" because they "are dependent on Internet Explorer" is erroneous. Section 3.g. requires that OEMs and end users be able to remove access only to the middleware product—in this case the browser—not to APIs or code. See Felten Declaration ¶¶ 92, 94; Findings ¶¶ 183–185."[221]

Plaintiffs' Reply Memorandum In Support of Proposed Final Judgment at 62 (filed May 17, 2000) (emphasis added).[222]

229. The reason for the United States' consistent position is that, under the facts proven at trial in this case, the competitive significance of Microsoft's commingling is the exclusion of competing middleware products caused by the visible presence and usage of Microsoft's Middleware Product, not by the mere presence of the underlying code. The Court of Appeals concluded that Microsoft's commingling had an anticompetitive effect and constituted exclusionary conduct because commingling "deters OEMs from pre-installing rival browsers, thereby reducing the rivals' usage share and, hence, developers' interest in rivals' APIs as an alternative to the API set exposed by Microsoft's operating system." Microsoft, 253 F.3d at 66. The Court of Appeals relied upon and upheld the District Court's findings, which reflect a concern primarily with the confusion and exclusion caused by the visible presence of Microsoft's middleware and rival middleware.[223] For example, in describing Microsoft's initial commingling in Windows 95, the District Court found:

> Although users were not able to remove all of the routines that provided Web browsing from OSR 2 and successive versions of Windows 95, Microsoft still provided them with the ability to uninstall Internet Explorer by using the "Add/Remove" panel, which was accessible from the Windows 95 desktop. The Add/Remove function did not delete all of the files that contain browsing specific code, nor did it remove browsing-specific code that is used by other programs. The Add/Remove function did, however, remove the functionalities that were provided to the user by Internet Explorer, including the means of launching the Web browser. Accordingly, *from the user's perspective, uninstalling Internet Explorer in this way was equivalent to removing the Internet Explorer program from Windows 95.*

Findings of Fact, ¶ 159 (emphasis added). The District Court went on to find that, even with commingling of code, "[i]f OEMs removed the most visible means of invoking Internet Explorer, and preinstalled Navigator with facile methods of access, Microsoft's purpose in forcing OEMs to take Internet Explorer—capturing browser usage share from Netscape—would be subverted." *Id.* ¶ 203.

[218] AA1 13–14; AOL 2–3, 17–24; CCIA 45–46; Sen. Kohl 4; Litan 42–45; ProComp 31–33; RealNetworks 20–21; SBC 46; TRAC 9.

[219] AOL 17, 20; SBC 45.

[220] Some commentors suggest the reason the IFJ did not require actual removal of middleware code from Windows was because the IFJ's conduct restrictions were intended to be merely transitional, until the breakup of Microsoft could be effectuated. As a result, the argument appears to go, the anti-binding provision did not need to be as extensive or invasive as it would have been in the absence of a structural remedy. But the commentors cite no support in the Plaintiff's prior remedy submissions or the IFJ itself for this claim. In fact, the need to remedy Microdoft's integration of middleware in Windows in a non-removable way was just as strong during the interim conduct remedy period of the IFJ as it is under the RPFJ.

[221] Professor Felten stated in part in the cited remedy declaration:

> To comply with the product Binding provision, Microsoft's future Windows Operating System Products must allow OEMs and end users *ready means for removing End-User Access* to any Middleware Product. I will use the term 'Unbinding' to refer to the development of the means of removing End-User Access to a Bound product. Declaration of Edward Felten ("Felten Decl.") ¶92 (filed April 28, 2000)(emphasis added).

[222] Various commentors also seek to draw contrasts between the RPFJ and the so-called "Mediator's Draft #18" from the Spring 2000 mediation process with Judge Posner. *See e.g.*, AOL" 17 & n.14. Such attempts at comparison or contrast are fundamentally flawed and therefore of no value in assessing the RPFJ. First, that mediation process was and remains confidential; there has been no authentication of any of the documents now available publicly that purport to represent mediation drafts. Second, the draft in question is itself styled as a "Mediator's Draft;" there is no basis on which to conclude, other than unsubstantiated newspaper articles cited in the comments, that it reflects an actual proposal approved or submitted by any party or that any party ever was willing to agree to it. Third, purported settlement positions from early 2000 indicate nothing about the adequacy of the RPFJ today. The litigation was at a fundamentally different stage. The District Court had issued extensive Findings of Fact that highly favored the United States' presentation of evidence, but the District Court had not yet issued its Conclusions of Law, let alone had the Court of Appeals reviewed and modified the District Court's liability determination.

[223] *See, e.g., Findings of Fact*, ¶159 ("the inability to remove Internet Explorer made OEMs less disposed to pre-install Navigator . . . Pre-installing more than one product in a given category . . . can significantly increase an OEM's support costs, for the redundancy can lead to confusion among novice users. In addition, pre-installing a second product in a given software category can increase an OEM's product testing costs.").

230. In spite of this clear basis for the District Court's and Court of Appeals' conclusions, some commentors assert that the mere fact of commingling itself deters OEMs from installing rival middleware.[224] Other commentors ignore the basis of the courts' commingling analyses and argue that the competitively significant component of Microsoft's integration is the resulting presence of middleware APIs on every PC on which Windows is installed, whether or not end-user access to the middleware product has been removed and, from the user's standpoint, that product is no longer present.[225] They argue that Microsoft's ability to obtain, through integration of middleware into Windows, ubiquitous distribution of its APIs without regard to the presence or absence of access to the product, will be competitively determinative, and that no rival middleware producer can overcome Microsoft's advantage and persuade developers to write to its products.[226] Usage is only a means to an end, they argue, with the end being the widespread presence of APIs on PCs.

231. These theories of competitive harm advanced by the commentors are not based on the facts proven by plaintiffs at trial, reflected in the District Court's findings, and upheld by the Court of Appeals. The basis for commingling liability, and remedy, in this case is the presence, from the user's perspective, of the product, and consequent confusion and other deterrents to installation of additional, rival middleware products; the mere presence of APIs is not enough. Indeed, although Microsoft argued vigorously in its defense during the liability phase that removing end-user access amounted to no more than "hiding" the middleware, an act of no competitive significance, that argument was never accepted.

232. Thus, a ban on commingling without regard to its competitive significance, as many commentors appear to seek, would impose a wholly unnecessary and artificial constraint on software design that could have adverse implications for consumers.[227] Moreover, changes to the operating system that would be required to implement such a blanket prohibition likely would have adverse effects not only upon Microsoft and its customers but also upon third parties that already have designed software to rely on the present operating system code. A flat prohibition on commingling in this particular case, without due regard to the competitive impact of that commingling, therefore likely would be harmful, not helpful.

233. Some commentors point out that, even if end-user access to a Microsoft Middleware Product has been removed by an OEM or end user pursuant to Section III.H.1, that product may still launch in certain default situations addressed by Section III.H.2 of the RPFJ, and therefore unacceptable end-user confusion will persist even after the access-removal remedy.[228] But this argument overlooks the Court of Appeals' decision, which held that certain instances of Microsoft's "hard-wiring" its browser so that it would launch in particular situations even where the user had designated another browser as the default were not unjustifiably anticompetitive. *Microsoft*, 253 F.3d at 67.

234. A number of commentors argue that, even with the ability to remove access to Microsoft Middleware, commingling Middleware code with Windows in a way that is non-removable actually diminishes the value and worsens the performance of Microsoft's products, by causing decreased reliability or increased susceptibility to security risks.[229] As one commentor correctly notes, however, this impact of commingling on the quality of Microsoft's products was not an apparent basis for the Court of Appeals' sustaining the liability determination for this conduct.[230] Rather, the exclusionary character of commingling in a non-removable fashion formed the basis for the court's ruling. *Microsoft*, 253 F.3d at 66.[231]

235. In arguing for complete removal of middleware code from the operating system, some commentors seek to extend the findings on commingling to a more direct attack upon Microsoft's practice of providing middleware functions in the Windows operating system. That practice was the subject of the tying claim and was part of the attempted monopolization claim, neither of which was sustained by the Court of Appeals. Requiring Microsoft completely to disintegrate middleware functions from the operating system might have been a more appropriate remedy for those claims, had they been sustained, than for the more limited claim of commingling of the browser and operating system code. In that sense, these commentors seek relief that exceeds the bounds of the monopoly maintenance finding that is the sole basis for relief at this stage of the case. Consistent with its position throughout the remedy phase of this litigation, the United States' concern with commingling is appropriately and fully addressed by the remedies proposed in the RPFJ.

236. Finally, at least one commentor complains that the RPFJ is deficient because it does not require Microsoft to license to OEMs versions of Windows from which the means of end-user access have been removed at lower royalty rates than the version of Windows that includes full access to Microsoft Middleware Products.[232] There is no basis for such a provision under the Court of Appeals' ruling in this particular case. First, the Court of Appeals indicated that the question of whether Microsoft price bundled, that is, charged more for Windows and IE together than it would have charged for Windows alone, has not yet been answered.[233] Second, the Court of Appeals noted that it had "no warrant to condemn Microsoft for offering either IE or the IEAK [Internet Explorer Administration Kit] free of charge or even at a negative price."[234]

V. Retaliation Against ISVs or IHVs (RPFJ § III.F)

237. Section III.F of the RPFJ prohibits Microsoft from retaliating against an ISV or IHV, or entering into agreements that condition the grant of consideration to an ISV, based on the firm's refraining from developing or other involvement with software that competes with Microsoft Platform Software or software that runs on such a competing platform. The provision provides limited exceptions.

A. Comments on Section III.F.1

238. Section III.F.1 prohibits Microsoft from retaliating against any ISV or IHV because of its development, usage, distribution, promotion, or

[224] AOL 22–23; Litan 45.

[225] Litan 44; RealNetworks 20–21.

[226] AAI 14–O15; AOL 21–22; CCIA 49–51; Litan 44; ProComp 61–62.

[227] Some comments correctly note that a flat ban on commingling might prevent Microsoft from adding new, innovative features to Windows, a result that would not be in the public interest. Economides 9; Johnson 3–4.

[228] AAI 15–16.

[229] CCC 22; Elhauge 1–2; Sen. Kohl 4.

[230] Elhauge 6.

[231] Moreover, as Professor Felten testified in his prior remedy declaration, requiring that end users and OEMs be able to remove end-user access to Microsoft Middleware Products would itself result in improvements in the efficiency and reliability of Window. Felten Decl. ¶ 97 ("Section 3.g would require Microsoft to undo the illegal product Binding in which it has already engaged, and to refrain from further Binding of Middleware Products to Operating Systems. This will lead to improvements in the efficiency and reliability of Windows.").

[232] SBC 48–49. SBC notes that IFJ § 3.g.ii contained a such a provision. Id.

[233] 253 F.3d at 96.

[234] Id. at 68.

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support of any software that competes with a Windows Operating System Product or a Microsoft Middleware Product or software that runs on any such competitive software.

239. Some commentors question the appropriateness of any anti-retaliation provision. One expresses skepticism that any injunctive provision can effectively constrain Microsoft's behavior and recommends the imposition instead of a structural remedy.[235] The United States believes that an injunction against retaliation effectively can deter Microsoft from anticompetitive behavior of the kinds found illegal by the Court of Appeals. The United States continues to believe that its decision not to seek structural relief in the current proceeding is appropriate in light of that appellate ruling.[236] Injunctive relief cannot turn back the clock, but it can meet the relevant remedial goal of restoring competitive conditions in the market.[237]

240. One commentor objects to the language used in Section III.F.1. It contends that "retaliate" is left undefined and that the RPFJ addresses only retaliation that occurs "because of" a firm's acts with competing software, leaving Microsoft free to argue in the future that some given act does not qualify as retaliation and was not caused by the other firm's acts.[238] But retaliation is not an unfamiliar, ambiguous, or technical term. It carries the clear meaning of taking adverse actions that the commentor recommends. Moreover, the commentor's preferred alternative to "because of"—"based directly or indirectly," the language used in IFJ § 3(d) and in the Litigating States' Proposal § 8—puts the same, appropriate, obligation to show that some adverse action by Microsoft toward an ISV or IHV was spurred by the ISV's or IHV's prior behavior. Indeed, without an obligation to show such adverse action, retaliation could be improperly read to cover withholding any benefit in response to an undesired action. For example, if Microsoft decided for valid business reasons that it no longer wanted to engage in a particular transaction, it could be accused of retaliating.

241. Commentors suggest several increases to the breadth of Section III.F.1's prohibition against retaliation. First, commentors contend that the ban should cover threats of retaliation by Microsoft rather than only acts of retaliation.[239] But because the RPFJ prohibits retaliation itself, any threat of retaliation is necessarily empty—and, if anything, likely to encourage reporting of perceived and ambiguous "threats." The United States therefore believes that prohibiting threats is unnecessary. In a related vein, one commentor contends that the ban should cover "coercion short of an agreement," apparently meaning instances in which firms undertake voluntary actions to prevent Microsoft from becoming displeased.[240] Such a provision would be inappropriately vague, making the legality of Microsoft's actions dependent in part on the perceptions of the "coerced" ISV or IHV.

242. Second, a commentor suggests that Section III.F.1 should prohibit Microsoft from threatening or bringing suit for infringement of Microsoft's intellectual property portfolio.[241] The United States disagrees. The purpose of the RPFJ is to allow competitors freedom to develop and market their own software to challenge Windows, not to allow them to appropriate Microsoft's intellectual property.[242]

243. Third, several commentors suggest Section III.F.1 should ban retaliation against firms other than ISVs and IHVs; Litigating States' Proposal § 8, for instance, additionally would bar acts of retaliation against IAPs, ICPs, OEMs, or Third-Party Licensees.[243] Such additions are unnecessary. The RPFJ already does ban retaliation by Microsoft against OEMs, in Section III.A. And Section III.G bans the kinds of pressure that Microsoft actually used against IAPs and ICPs in the past, and would be most likely to use again in the future absent the RPFJ. In covering ICPs, the RPFJ in fact goes beyond the Court of Appeals' ruling, which found that "the District Court's findings [with respect to the deals with ICPs] do not support liability." *Microsoft*, 253 F.3d at 71. The District Court did make factual findings about what Microsoft did to the ICPs, and nothing that the District Court or the Court of Appeals said about the lack of competitive effect of those actions negates the truth of their factual findings on them.

244. Fourth, commentors suggest the prohibition should ban retaliation related to a broader class of software than that contemplated in Section III.F.1.[244] They argue that Microsoft should be prohibited from retaliating against ISVs' and IHVs' actions with regard to any products or services that compete with any Microsoft products or services. This expansion is unnecessary to achieve the goal of the RPFJ, which is to ensure that firms can freely choose to promote the popularization of operating systems or middleware that might ultimately threaten Microsoft's operating system monopoly by lowering the applications barrier to entry. The RPFJ does so by protecting ISVs' and IHVs' right to distribute or otherwise promote "any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software." ISVs' and IHVs' activities with respect to Windows applications or Microsoft hardware, to take two examples raised by the commentors, are unlikely to affect the barrier to entry that protects Windows and so are outside the appropriate scope of the RPFJ.

245. Fifth, a commentor suggests that the RPFJ should prohibit Microsoft from retaliating against firms that make a good faith complaint against Microsoft for violating the RPFJ but whose complaint is ultimately either not brought forward to the court for action or is ruled by the court not to be a violation.[245] The RPFJ does, in fact, give firms such protection: Section III.A.3 (OEMs) and Section III.F.1.b (ISVs and IHVs) explicitly prohibit Microsoft from retaliating against firms for "exercising any of the options of alternatives provided for under this Final Judgment," including the right of complaint guaranteed by Section IV.D.1.

246. Finally, several commentors suggest that Section III.F.1 should explicitly prohibit Microsoft from retaliating against firms that have participated or cooperated with the Government in this litigation.[246] For a discussion of the merits of including a provision that prohibits retaliation for participation in this litigation, see Section XI(G) below.

[235] Relpromax 17–18; Economides 12 (disagrees with this concern).

[236] ACT 25, 29 (Section III.F adequately forbids retaliation against ISV's and IHVs).

[237] Sun 15–16.

[238] SBC 96–97; CCIA 87 (addressing only specific type of retaliation, e.g., Microsoft's threat to discontinue porting Office to Mac OS unless Apple stopped supporting Netscape).

[239] Palm 14; ProComp 34.

[240] ProComp 34.

[241] Red Hat 7–8, 10–13; see also the discussion of the concerns of the open source community, below.

[242] On a side note, the commentor is mistaken in asserting that Section III.F.3 expressly permits Microsoft to sue for infringement if an ISV or IHV takes any of the actions protected from retaliation under Section III.F.1. Red Hat 7. Section III.F.3 simply says that Microsoft may enforce agreements or intellectual property rights so long as by doing so it does not violate any provision in the RPFJ.

[243] Litigating States, Ex. A 13–14; SBC 95–96; Pantin 14–15.

[244] SBC 97; Pantin III.17; CCIA 86; PFF 18–19; Akin 3.

[245] Harris 6.

[246] SBC 99; Litigating States, Ex. A 16.

B. Comments On Section III.F.2

247. Section III.F.2 prohibits agreements relating to Windows Operating System Products that condition the grant of Consideration (a defined term in the RPFJ that encompasses both monetary and nonmonetary benefits) on an ISV's refraining from developing, using, distributing, or promoting the same kinds of software addressed in Section III.F.1—software that competes with a Windows Operating System Product or a Microsoft Middleware Product or software that runs on any such competitive software. A limited exception permits Microsoft to enter such agreements if they are "reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft."

248. Several commentors argue that the language of this exception is vague and subject to abuse by Microsoft, allowing it to prevent ISVs from entering partnership and other agreements with rival firms.[247] Microsoft, however, may only enter agreements that limit the ISV's activities with rival software to the extent that those limitations are reasonably related to a bona fide contractual relationship between Microsoft and the ISV. It is important to protect ISVs' opportunity to engage in legitimate, procompetitive arrangements with Microsoft. For example, Microsoft could enter into an agreement that provides an ISV with funds for the promotion of Microsoft software and prohibits the ISV from spending those funds to promote rival software. In contrast, contrary to the concerns of one commentor, Microsoft could not enter into an agreement that provides an ISV with assistance in promoting a Microsoft product on condition that the ISV not also distribute, use, or promote a rival product, because such a limitation would not be reasonably related to the ISV's obligation to promote the Microsoft product.[248]

249. One commentor argues that the language of the exception in Section III.F.2 is no more precise than a simple statement of the antitrust rule of reason, and, because it offers no guidance to the Court about how to distinguish between a "bona fide contractual obligation" and an anticompetitive exclusionary requirement, may establish a rule even more permissive than the rule of reason.[249] There is a necessary trade-off in an injunctive provision, and in exemptions from such a provision, between specificity and generality. The more specific the provision about the behavior that is permitted or prohibited, the greater the opportunity for the affected firm to tailor anticompetitive activities to avoid court supervision. The exemption in Section III.F.2, with its reliance on general but established legal terms such as "reasonable," "reasonably necessary," and "bona fide," allows the United States and the court to consider the substance and not the mere form of Microsoft's future agreements with ISVs. Absent this limited exception, Section III.F.2 would prohibit otherwise lawful collaborations, with no legal basis in the findings of this case.

250. One commentor objects that Section III.F.2, which begins with the words "Microsoft shall not enter into any agreement," grandfathers any existing agreements that would otherwise be impermissible.[250] It is correct that Section III.F.2 only applies to agreements signed after the date of entry of the RPFJ. This limitation should have little impact, however, because Microsoft must regularly rewrite its agreements with ISVs in order to encourage them to write to and redistribute Microsoft's newest APIs and technologies.

251. Finally, at least one commentor expresses concern that Section III.G does not contain language similar to Provision 3.h ("Agreements Limiting Competition") of the IFJ, and so would permit Microsoft to seek to enter market allocation agreements like those it proposed to Netscape and Intel.[251] The commentor's concern is addressed not in Section III.G, but here in Section III.F.2, which does in fact substantially prohibit agreements that limit competition. Under its terms, Microsoft may not "enter into any agreement relating to a Windows Operating System Product that conditions the grant of any Consideration" on an ISV's refraining from various forms of involvement with software that runs on, or itself is, software that competes with Microsoft Platform Software. To the extent that any agreements that limit competition are not covered by Section III.F.2, they can of course be addressed by other means: Microsoft could be prosecuted, at minimum under Sherman Act § 1, for any market allocation agreement that it reached with a competitor or competitors.

C. Comments On Section III.F.3

252. Section III.F.3 simply states that nothing in Section III.F shall prohibit Microsoft from enforcing any property right or any provision of an agreement with an ISV or IHV that is not inconsistent with the RPFJ.

253. Several commentors apparently misread Section III.F.3 as introducing a loophole or somehow granting Microsoft rights and powers that it does not now have.[252] Section III.F.3 merely states with clarity the intended limits of the remainder of Section III.F.

VI. Exclusionary Agreements (RPFJ § III.G)

254. Commentors raise a variety of concerns about Section III.G, which prohibits Microsoft from entering into a variety of exclusionary agreements. The objections generally fall into two categories: concerns about omissions from Section III.G, and concerns about Section III.G's exceptions.

A. Omissions

255. At least one commentor expresses concern that Section III.G does not contain language similar to Section 3.h ("Agreements Limiting Competition") of the Initial Final Judgment, and so would permit Microsoft to seek to enter market allocation agreements like those Microsoft proposed to Netscape and Intel.[253] Although Section III.G does not cover such agreements, Section III.F.2 does.

256. Some commentors object that the RPFJ does not contain a provision prohibiting Microsoft from granting consideration to a third party for agreeing not to use or distribute non-Microsoft products or services, a provision that the United States argued for in the earlier remedy proceeding and which was included in the IFJ (§ 3.e.i).[254] In a similar vein, one of the same commentors objects that RPFJ Section III.G.2, which prohibits Microsoft from granting placement in Windows to an IAP or ICP on condition that it refrain from distributing certain competing software, reflects phrasing supported by Microsoft and opposed by the United States in the previous proceeding.[255] Since the time of the June 2000 IFJ, of course, the Court of Appeals has ruled on liability—

[247] SBC 98; CFA 97; Maddux ¶ 1; Pantin III.17; CCIA 82; Akin 3.

[248] AAI 26–27, 35–36.

[249] Litan 47–48; see generally CCIA 88; Elhauge 12.

[250] Harris 6.

[251] SBC 98–99.

[252] SBC 98; also see the discussion in Section III.F.1, supra.

[253] SBC 98–99.

[254] SBC 105–06; 152; RealNetworks 30–31; Harris 7; Clapes 7.

[255] SBC 106–07, 153.

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narrowing the District Court's ruling and vacating the IFJ itself. The language of RPFJ Section III.G does prohibit the kinds of agreements—e.g., between Microsoft and IAPs—that the Court of Appeals found to be unlawful.[256]

257. Several commentors contend that, unlike the Litigating States' Proposal (§ 6), RPFJ Section III.G covers Microsoft's contracts with only named categories of trading partners and may omit others who are important, e.g., large corporate end-user purchasers.[257] Section III.G.1 does, however, cover contracts between Microsoft and any IAP, ICP, ISV, IHV, or OEM. Section III.G.1 thus achieves its desired goal of ensuring that Microsoft cannot use exclusive agreements to tie up key channels of distribution for competing middleware and operating systems—indeed all channels of distribution that were discussed at trial.[258] End users, including corporate end users, will be able freely to choose the software products they wish to use.

B. Exemptions

258. Commentors raise several issues regarding two exemptions in Section III.G. The first concerns the "commercially practicable" exemption to Section III.G.1; the second concerns the joint venture exception that applies to all of Section III.G.

259. Section III.G.1 does not apply to agreements if Microsoft obtains in good faith a representation from the contracting third party that it is "commercially practicable" for it to provide equal or greater distribution for competing non-Microsoft software, whether or not it actually distributes that non-Microsoft software.[259]

260. At least one commentor misreads the language of Section III.G.1, asserting that the provision permits Microsoft to demand distribution of its own software at what Microsoft deems to be a commercially practicable level.[260] The representation of "commercial practicability" by a third party contained in Section III.G.1 does not, however, refer to its distribution of Microsoft software, but of non-Microsoft software.

261. Nor does Section III.G.1 give Microsoft an affirmative right to demand that third parties carry its products, as another commentor claims.[261] The provision merely describes the terms that Microsoft is permitted to offer to a third party. Moreover, the provision does not give Microsoft any power to affect the circumstances that determine the acceptable terms: Microsoft cannot force or require a third party to make a representation about the commercial practicalities that it faces.

262. Some commentors contend that third parties are likely to make empty representations to Microsoft in exchange for preferential treatment. That is, a third party like an OEM is more likely to say that it could carry competing products than actually carry those products, because it would not want to distribute two similar products on a particular computer that it sells.[262] But this criticism misses the fact that the OEM may well choose to offer the non-Microsoft product on, for example, 50% of its product line, and the Microsoft product on the other 50%, thus allowing the consumer to choose freely among differentiated computer/software bundles. The United States believes that, contrary to the concern raised by at least one commentor, this provision will prevent Microsoft from guaranteeing that rival technology will not become broadly available.[263] Further, the "good faith" requirement ensures both that Microsoft cannot make a representation of commercial practicability a standard part of its license agreements and that Microsoft could not rely on this exemption where it knows that a representation of commercial practicability is not legitimate.

263. A number of commentors contend that Microsoft will be able to obtain representations of commercial practicability from third parties simply by paying them sufficiently.[264] Section III.G.1, however, makes it logically impossible for Microsoft to seek—much less get—any form of exclusive distribution, promotion, use, or support on all of a third party's products, no matter how much Microsoft is willing to pay. Microsoft cannot, for instance, pay an ICP to make its content available in a format readable only by Windows Media Player, because it is logically impossible for that ICP to represent that it could also simultaneously make that content available only in a format readable only by some non-Microsoft media software.

264. Commentors also raise issues about Section III.G's exemption for certain joint venture and joint development or services arrangements, under which a third party can be prohibited from competing with the object of the joint arrangement for a reasonable period of time.

265. One commentor in this group complains that the standard enunciated in Section III.G for an agreement to qualify for this exemption is nothing more than a restatement of the traditional antitrust rule of reason.[265] This contention, however, overlooks the exemption's careful limitations. The exemption applies only to bona fide joint ventures and to other joint agreements for certain specific productive activities, and only those in which both Microsoft and the other party contribute significant resources. Further, these commentors overlook that nothing in the Court of Appeals' decision warrants denying Microsoft the ability to enter into joint arrangements, which may have procompetitive benefits for the market.

266. The requirement that a joint development or services agreement must create either a new product, service, or technology, or a material value-add to one that already exists addresses the concerns raised by several commentors that Microsoft could use Section III.G to block competition with joint activities that create nothing more than routine alterations to Microsoft or non-Microsoft products.[266]

267. Some commentors question whether Microsoft could manipulate its interpretation of, for instance, "significant developer or other resources" in order to invoke the exemption to cover activities that are not truly joint.[267] What constitutes a "significant" resource is not spelled out in the RPFJ because it is a familiar term and concept in antitrust enforcement. For example, the Antitrust Guidelines for Collaborations Among Competitors issued jointly by the Federal Trade Commission and Department of Justice in April 2000 describe the contribution of "significant capital, technology, or other complementary assets" as a hallmark of efficiency-enhancing collaborations between firms. (FTC/DOJ Antitrust Guidelines for Collaborations Among Competitors, 8).

268. The United States, of course, retains power to evaluate and seek enforcement of the RPFJ against sham joint arrangements. Microsoft cannot, as some commentors suggest, take the identical distribution agreements found unlawful at trial and exempt them from Section III.G merely by characterizing the agreements as "joint" activities.[268] As the Court of Appeals found (Microsoft, 253 F.3d at 72), Microsoft's exclusionary agreements with ISVs, to take just one example, had no procompetitive justification; they cannot be considered legitimate joint activities to produce new or improved products, technologies, or services, and so would not be exempted from Section III.G.

269. Another commentor notes[269] that the United States objected in June 2000 to Microsoft's proposal for a joint-venture exception to Section 3.h of the Initial Final Judgment("Ban on Agreements Limiting Competition"). The exception in RPFJ Section III.G, however, is narrower than the broad exception Microsoft proposed, and it is tailored to permit only joint activities that are genuinely procompetitive, those that are not mere shams for market allocation agreements but require firms legitimately to share significant resources to create new or improved opportunities for consumers. A non-compete clause with a legitimate joint venture is not, contrary to one commentor's view, necessarily inappropriate merely because Microsoft is one of the parties to the joint venture.[270] Both the United States and the courts consistently have noted that such procompetitive joint ventures do exist and that Microsoft should be permitted to engage in them, see, e.g., IFJ § 3.a.ii (exception for "bona fide joint development efforts").

270. Finally, some commentors raise similar concerns about whether Microsoft could abuse the exception in Section III.G for agreements "in which Microsoft licenses intellectual property in from a third party."[271] The exception permits Microsoft, in licensing new technology from an ISV for incorporation into a Microsoft product, to ensure that the ISV will not also license the same technology to a competitor who hopes to "free ride" on Microsoft's popularization of the technology. It therefore provides Microsoft with appropriate incentives to invest in such popularization. If Microsoft entered into an agreement with an ISV, or other third party, in which the licensing-in of such intellectual property is nothing more than a pretext for otherwise impermissible exclusionary terms, the United States would review the legitimacy of such an agreement under Section III.G.

VII. Disclosure Provisions (RPFJ §§ III.D, III.E)

A. Disclosure of APIs (RPFJ § III.D)

271. Many commentors raise issues concerning the disclosure of APIs in RPFJ Section III.D. The issues will be discussed in the following categories: First, issues concerning the products between which the APIs are disclosed will be discussed. Next, API issues, focusing on the substance of the disclosure, and the definitions of "API" and "Documentation," will be discussed. Third, timing issues, including analysis of the definition of "Timely Manner," will be addressed.

1. Product Issues

272. Section III.D calls for certain disclosures between Microsoft Middleware and a Windows Operating System Product. Many commentors argue that the definitions of Microsoft Middleware and Windows Operating System Product can be evaded easily; that products other than Microsoft Middleware should be included; or that products other than Windows Operating System Product should be included. Each of these will be addressed in turn. For a discussion of Microsoft Middleware itself, see Section III(B) above.

c. Microsoft's Ability To Manipulate the Definitions To Avoid Disclosure

273. Several commentors state that the API disclosure provisions are completely within Microsoft's control and that Microsoft can evade the provisions simply by labeling Microsoft Middleware as part of a Windows Operating System Product.[272] Some misunderstand the interaction between the Windows Operating System Product and Microsoft Middleware definitions, arguing, for example, that interfaces between Internet Explorer and a Windows Operating System Product are not covered if Microsoft chooses to label Internet Explorer as part of Windows. This is incorrect. These comments fail to realize that a product can be both included in a Windows Operating System Product and still have code that qualifies as Microsoft Middleware. It does not matter if Microsoft labels Internet Explorer as part of Windows; what matters is that there is a separate distribution of Internet Explorer, and that the interfaces between this separate distribution and a Windows Operating System Product must be disclosed. For example, Internet Explorer 6.0 is distributed separately and included in Windows XP. Under the RPFJ, the code that is distributed separately is Microsoft Middleware regardless of whether Microsoft also calls Internet Explorer a part of Windows. Concerns that Microsoft can relabel code as being part of Windows and thus evade the disclosure provisions are unfounded; it is the separate distribution that matters, not the Windows label.

274. Another commentor argues that Microsoft can evade disclosure by removing the APIs from a Windows Operating System Product.[273] This is illogical. If the APIs are not in Windows, then they cannot be used by any software, whether that software be Microsoft Middleware or competing products. At a basic level, it is important to remember that Microsoft chooses which APIs to develop and make part of Windows in the first instance. Microsoft controls which software products it develops and which it does not, and Section III.D is about disclosure of certain APIs within those products.

b. Products Other Than Microsoft Middleware

275. Some commentors argue that Section III.D should require Microsoft to disclose interfaces between Windows Operating System Products and products other than Microsoft Middleware.[274] Some argue that all Microsoft applications that run on Windows, for instance, Office, should

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[256] One commentor's concern appears to reflect a misunderstanding of the purpose of Section III.G.2. Observing that the provision prohibits Microsoft from granting placement to an IAP or ICP on the condition that the IAP or ICP refrain from activities with any software "that competes with" Microsoft Middleware, the commentor questions whether the provision would have protected Netscape's Navigator during the period before Microsoft introduced Internet Explorer. See PFF 19–20. By implication, the commentor questions whether Section III.G.2 adequately will protect future nascent middleware. But Section III.G.2. prohibits certain conditioned contracts; if Navigator did not compete with IE because IE did not exist, then Microsoft would have no reason to give an IAP benefits on the condition that the IAP not use Navigator. And that is what the historical record shows: Microsoft did not impose the unlawful IAP contracts in the early, pre-IE days of Navigator, but rather started to impose them in late 1996 at a time when Microsoft was trying to build IE's usage share. See Findings of Fact, ¶¶ 256–62. The current wording of Section III.G.2 adequately prohibits Microsoft from taking action against threatening products.

[257] SBC 104–05, 151–52; CCIA 59 n.12.

[258] Economides 11.

[259] SBC 107; Litigating States, Ex. A 12 (point 14).

[260] CFA 97.

[261] SBC 152.

[262] AAI 26; Harris 7.

[263] Pantin 16.

[264] CCIA 89.

[265] Litan 48.

[266] CCIA 88–89; AOL 36; AOL, Klain 5.

[267] CFA 98; Litigating States, Ex. A 12 (point 14); RealNetworks 30–31.

[268] ProComp 67–88; SBC 53; Maddux, Point 20; Harris 6.

[269] SBC 107.

[270] Pantin 17.

[271] SBC 153; RealNetworks 31; Pantin 17–18; Giannandrea 5; Harris 6.

[272] Litan 51; NetAction 12; ProComp 42–43; CFA 96; RealNetworks 11; CCIA, Stiglitz & Furman 30; CCIA 63.

[273] AAI 20.

[274] Alexander 3, 4; Carroll 4; Johnson 5; Gifford 5, 9; Litan 51; Kegel 18; Pantin 12; PFF 20; ProComp 38; CCIA 62.

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be covered.[275] Others argue that software that never has been distributed separately should be covered. Still others phrase the argument in terms of disclosing "all Windows APIs."[276] Others find the limitation to Microsoft Middleware to be appropriate.[277]

276. Disclosure of the interfaces between all Microsoft applications that run on Windows Operating System Products is considerably broader than the violations found by the Court of Appeals would justify, for several reasons. First, the word "applications" does not have a specific meaning, and could refer to almost any software code. The term is not limited to software of any particular size or purpose and could be interpreted to include the smallest pieces of software. Nor does the term have any relation to whether the software exposes any APIs or could ever be used as Platform Software itself. Thus, for instance, a clock, a solitaire program, and Microsoft's Flight Simulator and Age of Empires games all would be included. The cost to Microsoft of hardening and documenting the interfaces between all these pieces of software would be substantial, and the United States does not see how it would increase materially the ability of competing middleware to threaten Microsoft's operating system monopoly.

277. As phrased by one commentor, the goal is to "allow competitive products to interoperate with Microsoft software on an equal basis as Microsoft's own products."[278] The United States views Non-Microsoft Middleware as competing for usage with Microsoft Middleware, and thus this provision seeks to ensure that Non-Microsoft Middleware will not be disadvantaged. The United States believes that the most competitively significant APIs are those used by the competing products, not those used by completely different types of software, such as games.

278. Moreover, as some commentors recognize, Microsoft already discloses thousands of APIs and has a strong incentive to disclose APIs.[279] Microsoft's disclosure of APIs is what allows applications to be written to the Windows platform, and creates and sustains the applications barrier to entry. Section III.D is designed to require disclosure of APIs in those cases where Microsoft may have a strategic interest in withholding APIs that outweighs Microsoft's natural incentive to disclose them—namely, where Microsoft's own middleware is competing with rival middleware that threatens the applications barrier to entry.

279. Commentors who posit that "Windows APIs" should be disclosed fail to recognize the need for a clear line between which facets of Windows are disclosed and which are not. Windows, like most software, is comprised of modular blocks of code that "interface" to one another. Disclosing every interface in Windows is to disclose most of the source code. "Windows APIs" is simply not a defined set of APIs that appropriately can be subject to disclosure.

280. Some commentors argue that limiting disclosure to APIs used by Microsoft Middleware forces other applications merely to follow in the footsteps of Microsoft products and discourages new products.[280] To the contrary, there is no requirement that any Non-Microsoft Middleware use the same APIs as the Microsoft Middleware; nor is there any indication that the only way to accomplish a particular function will be to use the Microsoft Middleware APIs. For instance, early web browsers such as Mosaic in 1994 clearly did not have to use the same APIs as Internet Explorer, because Internet Explorer did not exist. Yet Mosaic was developed and gained widespread popularity, all by using the thousands of Windows APIs that were already published.

c. Products Other Than Windows Operating System Products

281. Some commentors argue that Section III.D should require Microsoft to disclose the interfaces between Microsoft Middleware and products other than Windows Operating System Products.[281] Specifically, some opine that interfaces to other devices, such as handhelds or set-top boxes, should be covered. These comments are addressed under Section III.E.

282. Other commentors argue that the disclosure should be to the benefit of competing operating system vendors.[282] For instance, some commentors argue that the disclosure should be for any purpose, and not just "for the sole purpose of interoperating with a Windows Operating System Product."[283] Some focus on the potential use of these APIs by other operating system developers. Several commentors go farther and propose that Microsoft be required to define the APIs that a competing operating system must provide to run Windows applications, or to implement a "Windows Application Environment" on other operating systems.[284]

283. The violations proven and upheld in this case focused on middleware as the mechanism that threatened to lower the applications barrier to entry and therefore make other operating systems better substitutes for Windows. The intent of Section III.D is to ensure that future middleware threats will have the information about Windows they need in order not to be disadvantaged relative to Microsoft's own middleware. That is, the disclosure is not intended to permit misappropriation of Microsoft's intellectual property for other uses. Rather, the focus of the remedy, as of the Court of Appeals' ruling, remains restoring the competitive conditions to permit nascent threats to emerge.

2. API Issues

a. Definition of "API"

284. Several commentors criticize the definition of "API." Significantly, one commentor points out that the definition only includes Microsoft APIs, rendering the other definitions that use the term API potentially meaningless.[285] Specifically, the definitions of Non-Microsoft Middleware, Non-Microsoft Middleware Product and Operating System arguably fail to function as intended if the definition of "APIs" is limited to Microsoft APIs. This definition, as originally drafted, was intended to apply to Section III.D, and the definition of API has been modified in the SRPFJ to reflect the intention of the parties in drafting this definition. The RPFJ's definition of API has thus been inserted directly in Section III.D. A generic definition of API that is not tied to Microsoft products has been inserted as definition VI.A in the SRPFJ. The meaning of API in the definitions of Non-Microsoft Middleware, Non-Microsoft Middleware Product and Operating System is now defined according to this generic definition, thereby resolving any concerns about their reliance on an API definition that is specifically tied to Microsoft products. In the SRPFJ, the revised sections are as follows (*new language underlined*):

Section III.D. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final

[275] KDE 13.
[276] AAI 19; CCIA 62; CCIA, Stiglitz & Furman 29; SIIA 31–32.
[277] Economides 11.
[278] ProComp, Arrow A–29.
[279] CCIA 60–61.
[280] CCIA 62; ProComp 38; CFA 96.
[281] Litigating States, Ex. A 8; Palm 6–7; Pantin 12–13; ProComp 39; AOL 39–40; CCIA, Stiglitz & Furman 43.
[282] Giannandrea 2; Moglen 3–4.
[283] Moglen 2; Kegel 8; Maddux ¶ 11; ProComp 39.
[284] CCC 11; Kegel 14–18.
[285] AAI 34.

Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. *For purposes of this Section III.D., the term APIs means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.* In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new ver sion of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

Section VI.A. *"API" means application programming interface, including any interface that Microsoft is obligated to disclose pursuant to III.D.*

285. Commentors argue that the definition of API (now as contained in Section III.D) is too narrow.[286] In particular, several argue that it should include file and document formats. As the CIS explained, "interfaces" is used broadly to include any interface, protocol or other method of information exchange used when Microsoft Middleware calls upon a Windows Operating System Product. CIS at 33–34. One commentor argues that this means that APIs simply are the interfaces between two products.[287] In general, this is correct " the definition was designed to be read broadly to include any way in which Microsoft Middleware calls upon the services of a Windows Operating System Product. Thus, whatever Microsoft Middleware uses to request services from a Windows Operating System Product, whether it includes something that could arguably be called a "file format" or not, is the subject of disclosure. To the extent that these comments actually relate to whether applications such as Office should be considered Microsoft Middleware, those concerns are addressed above in the discussion of Products Other than Microsoft Middleware. See also Section VII(E) below.

286. Some commentors believe that APIs should include calls from a Windows Operating System Product to Microsoft Middleware, instead of the other way around.[288] For instance, one commentor argues that the "Play All" and "Burn CD" interfaces in Windows XP should be disclosed.[289] These concerns are more appropriately addressed under the default provisions in Section III.H. The disclosure provisions in Section III.D and the default provisions in Section III.H address different aspects of the relationship between Microsoft Middleware and a Windows Operating System Product. In simple terms, when Microsoft Middleware calls upon functionality in a Windows Operating System Product for services, that interface is subject to analysis under Section III.D (one can think of this as middleware "calling down" into the operating system for functionality). On the other hand, when a Windows Operating System Product invokes a Microsoft Middleware Product or a Non-Microsoft Middleware Product to perform a function, those invocations are analyzed under Section III.H (one can think of this as an operating system "calling up" to the middleware for functionality). The specific functions of "Play All" and "Burn CD" in Windows XP are examples of the latter, not the former. Similarly, issues of "hardwiring" are more appropriately addressed under Section III.H.[290]

b. Definition of "Documentation"

287. Some commentors note that, in contrast to the IFJ, there is no definition of "technical information" and that instead the RPFJ uses the term "Documentation." The commentors believe that the IFJ's definition of technical information was superior or that Documentation should be broader.[291] Despite the many comments on this issue, the United States believes the definitions are very similar and produce largely similar results. To the extent there are differences, the United States believes they are due largely to problems and ambiguity in the IFJ's technical information definition.

288. The IFJ's definition of technical information was "all information regarding the identification and means of using APIs and Communications Interfaces that competent software developers require to make their products running on any computer interoperate effectively with Microsoft Platform Software running on a Personal Computer." There then followed a list of examples of the type of information that might be provided in different circumstances. Some interpret the list as requiring the specified information in all circumstances; for instance, that for every interface a reference implementation and algorithms must be disclosed. This was never the intent of the definition, as any quick review will show, because some of the listed items only make sense for certain types of interfaces. The ambiguity and lack of clarity on this point was one of the reasons the definition was changed.

289. The controlling parts of the IFJ's technical information definition were intended to be "all information regarding the identification and means of using APIs . . . that competent software developers require." The intent behind the previous definition was to ensure that if a competent software developer required it, it had to be provided, whether that be a reference implementation, an algorithm, or any other facet of the interface.

290. In the RPFJ, the first sentence of the definition of Documentation reads "all information regarding the identification and means of using APIs that a person of ordinary skill in the art requires to make effective use of those APIs." The phrase "competent software developer" from the IFJ definition has been replaced with "a person of ordinary skill in the art" because the latter is clearer and more easily enforced, but the general intent is the same: if the information is needed by a person of the requisite skill, it must be provided.

291. The Documentation term also was defined to accommodate the RPFJ's separation of API disclosure and Communications Protocol licensing into two separate provisions and the greater specificity given to the API definition (now as used in Section III.D). Additionally, the second sentence of Documentation was added to clarify the level of specificity, precision and detail to be provided. However, the second sentence does not change the meaning of the first sentence: "all information . . . that a person of ordinary skill in the art requires to make effective use" of the APIs must be disclosed.

292. One commentor argues that Microsoft should not be allowed to disclose via MSDN because Microsoft allegedly has made its websites incompatible with non-Microsoft web browsers.[292] Taking the opposite approach, another commentor argues that Microsoft only should be allowed to

[286] Kegel 5, 8, 12; Maddux ¶ 12; Litigating States, Ex. B 31; Carroll 2, 4, 5; Johnson 2, 5–6l SBC 78; KDE 13; Pantin 30.
[287] ProComp 46.
[288] Kegel 18; SIIA 30–31.
[289] RealNetworks 27.
[290] Palm 10 (hardwiring); AOL, Klain 4 (handwiring).
[291] Litigating States, Ex. A 7, 9, Ex. B 36; Pantin 12; SIIA 29–30; SBC 79; RealNetworks 15; CCIA 70–71; PRoComp 47; AOL, Klain 5.
[292] Maddux ¶ 13 (Microsoft should be required to publish on Slashdot (slashdot.org) and Freshmeat (www.freshmeat.org).

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disclose via MSDN.[293] MSDN at present is widely used by developers who wish to develop for Microsoft platforms, and it is an efficient mechanism for distributing disclosures to developers, although other efficient mechanisms could also be developed.

293. A few commentors raise concerns regarding completeness—either that there is no incentive for the Documentation to be complete or accurate, or that there is no way to tell whether it is sufficient.[294] The United States believes that the enforcement mechanisms of the RPFJ are sufficient to address this issue. In particular, as discussed below, the Technical Committee will have full access to the source code and any other necessary information to resolve disputes concerning sufficiency of Documentation.

294. Finally, some commentors argue that the Litigating States' definition of technical information is superior. The Litigating States' definition contains one striking change from the IFJ definition: it requires information on implementing the APIs as well as on using them. The addition of this word appears to require Microsoft to provide information on how to implement functions in third-party products, such as how to implement the APIs, not so they can be used by the middleware, but so that those interfaces can be offered to others. This appears to be aimed at allowing competing operating system vendors to clone Windows APIs. The Litigating States' definition extends well beyond remedying the violations that the Court of Appeals sustained.

c. Source Code Access

295. Commentors raise several issues regarding disclosure of source code. First, the United States does not agree that an appropriate remedy in this case requires Microsoft to disclose and publish all of its source code for Windows Operating System Products, because that would be a disproportionate appropriation of Microsoft's intellectual property.[295] Several other commentors complain that the RPFJ provides no access to source code for competitors, as was previously contained in the interim conduct remedies in the form of a "secure facility" provision.[296] Instead, source code access is granted to the Technical Committee, accomplishing the same enforcement purpose without the same security concerns. When technical issues, such as whether Microsoft has disclosed all required APIs, are brought to the attention of the Technical Committee it is expected that they will consult the source code as necessary to resolve any issues. Additionally, unlike the secure facility, the Technical Committee supports anonymous complaints and can work with an industry participant without their identity being disclosed to Microsoft. Under the prior provision only "qualified representatives" had access, and the process of becoming a "qualified representative" could have required disclosure of the representatives' identity to Microsoft.

296. Moreover, it is important to note that the stated purpose of the "secure facility" provision was to facilitate compliance and monitoring. The United States believes that compliance and monitoring assessments are best performed by the United States, with assistance from the Technical Committee. To allow competitors source code access to facilitate compliance and monitoring is to place an inappropriate responsibility on competitors, who might have reasons to place their own interests above those of the U.S. public generally. Accordingly, the RPFJ calls for source code access to be available to the Technical Committee and the United States and puts the responsibility for compliance and monitoring on the United States.

297. Additionally, the removal of the secure facility provision does not change the amount of required disclosure under Section III.D. Disclosure still must be sufficient to provide "all the information . . . that a person of ordinary skill in the art requires to make effective use of those [disclosed] APIs." This can include reference implementations or any other disclosure required to meet the requirement. If the documentation provided by Microsoft is not sufficient, then it must be revised until it satisfies the requirement. The United States maintains that it, with assistance from the Technical Committee, remains best suited to address these issues, for instance through RPFJ's voluntary dispute resolution procedures.

d. Intellectual Property Issues

298. A few commentors raise concerns that Microsoft is permitted to retain certain intellectual property rights over its interfaces.[297] These commentors argue, for instance, that Microsoft still can patent or have other exclusive legal rights that prevent competing software developers from developing on other platforms. Another suggestion is that Microsoft be required to announce the subject matter of its patents, such that developers can tell which interfaces can be used without risk of patent infringement. These issues are addressed in Section XII(E) below.

3. Timing Issues

299. Several commentors raise issues concerning the timing of the API disclosures. These issues can be divided into three categories: when the first disclosures shall occur; when disclosures will be triggered by a new version of Microsoft Middleware; and when disclosures will be triggered by a new version of a Windows Operating System Product.

a. First Disclosures: Windows XP Service Pack 1 or No Later Than November 2002

300. The RPFJ calls for API disclosure to occur first at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of the RPFJ to the court, i.e., November 6, 2002. Currently, Service Pack 1 is scheduled to be released in August 2002. Several commentors argue that there is no reason for this delay, and that the APIs should be released immediately, or at any rate sooner than November 2002.[298]

301. This delay was necessary to allow Microsoft time to stabilize, modify as needed, test and document the disclosed interfaces. This is not a trivial task. Interfaces that were designed to be used by only a certain small number of other pieces of code are not designed, tested, or documented to the level that Microsoft customarily provides for published interfaces. Interfaces must be stabilized, in that they must be fixed at a configuration that can be maintained. The interfaces will need to be modified to add error correction or other functions to handle unexpected behavior. The interfaces must be tested to work with a great many other applications and system configurations. Finally, the interfaces must be documented to accurately describe what the interfaces do and how to use them. If any of these steps are not performed, or not performed well, then third-party products might find the interfaces to be unreliable and therefore unusable.

302. In general, there is a trade-off between immediate publication of interfaces and delayed publication of interfaces with a higher degree of certainty that the interfaces will be well-tested and documented. The United States believes that the appropriate balance is to publish the interfaces with Windows XP Service Pack 1. One of the rationales for choosing Service Pack 1 is that a majority of corporate users, and even some consumers, prefer to wait to purchase until the first Service Pack of a new operating system is released. This is because the first Service Pack fixes many of the "bugs" or unintended behavior of a new operating system. In addition, many more applications are updated or modified to be compatible with a new operating system after its initial release. For corporate users, there is often a significant lag time of at least a year between when they begin testing and working with a new operating system and when it is deployed or "rolled out" to corporate users. All of these factors contributed to the decision to focus on Service Pack 1 as striking the correct balance for timing of the interface disclosure.

303. Commentors raise concerns that the delay allows Microsoft time to modify the interfaces and put "key interfaces" into the operating system. Part of this concern stems from a misreading of the Windows Operating System Product and Microsoft Middleware definitions. This confusion is addressed in discussion of those definitions. *See* Section III(H) above. Because Microsoft Middleware must be distributed separately, by definition there will be a set of interfaces between the Microsoft Middleware code and the Windows Operating System Product—the interfaces are between the bits of code that are distributed separately and what comes in the box labeled Windows. It is possible that Microsoft could-move code around between the operating system and the Microsoft Middleware. But it is important to keep in mind that one of the main reasons the code is distributed separately is to provide more frequent updates of the Microsoft Middleware than the operating system, and to distribute the Microsoft Middleware to the large installed base of existing Windows users. To start hiding interfaces would involve a large backward compatibility problem, involving changes to the operating system as well as Microsoft Middleware code.

304. Finally, it is worthwhile to examine the timing of the expected first disclosure under the Litigating States' proposed remedy. The Litigating States' proposed remedy does not have any delay before the first disclosures, which means they could occur potentially as soon as a Litigating State's judgment was entered, giving Microsoft no time to harden, test, and document the APIs. The Litigating States' remedy hearing is expected to take a minimum of 12 weeks from the beginning of trial on March 11, 2002 through closing arguments. Even assuming the Court rules within 30 days, the decree would not be entered until July 2002. Microsoft undoubtedly would argue for a stay pending appeal and possibly appeal all the way to the Supreme Court. In light of such unavoidable litigation risks and delays, the United States believes the certainty of disclosure occurring between August and November 2002 is acceptable and indeed preferable.

b. Triggered by New Version of Microsoft Middleware: Last Major Beta Test Release

305. The meaning of "new major version" is covered above in the discussion of Microsoft Middleware. Section III.D calls for disclosures to occur no later than the last major beta test release of the new major version of the Microsoft Middleware. Based on data available to the United States, the last major beta test release for various Microsoft Middleware Products has occurred anywhere from two to seven months prior to the commercial release of the product, with the majority being three to four months prior. While some commentors are unfamiliar with the term,[299] the phrase "last major beta test" has a specific meaning to Microsoft in terms of its testing and release schedule.

306. Commentors argue that this is insufficient notice for new APIs, and some argue that disclosure should be provided as soon as Microsoft developers receive the information.[300] As a practical matter, such early disclosure is not feasible. The time when a Microsoft developer first receives information about a new API may be considerably before the API is finalized, tested and documented. Such information may be in the form of an informal e-mail or a hallway conversation. In fact, the Microsoft developer may have to make numerous changes to her own product as the API is changed. Alternatively, the Microsoft developer may be part of the testing cycle and may be required to work extensively with the Windows Operating System Product developer to write the interface. To release APIs before they are finalized will not be efficient. The United States believes that requiring the API to be fully published and documented at the last beta test release provides a reasonable trade-off between timely disclosure to ISVs and the need for Microsoft to finish the development of the APIs.

c. Triggered by New Version of Windows Operating System Product: Timely Manner (RPFJ § VI.R)

307. A number of commentors question Section VI.R's definition of "Timely Manner," the term that defines when Microsoft must meet its disclosure obligations under Section III.D. *See* RPFJ § VI.R. In the RPFJ, "Timely Manner" is defined as "the time that Microsoft first releases a beta test version of a Windows Operating System Product that is distributed to 150,000 or more beta testers." Some comments address the numerical threshold of "150,000 . . . beta testers." Other comments address timing—Microsoft's ability to control when it reaches this threshold.

308. Several commentors contend that 150,000 beta testers is too high a threshold to trigger Section III.D's disclosure requirement, arguing that for past Windows Operating System Products, Microsoft may have distributed 150,000 beta *copies* but probably did not *ever* distribute them to 150,000 individual beta *testers*. These commentors therefore are concerned that the threshold will never be reached, resulting in no required disclosure before a new Windows Operating System Product is released.[301]

309. The parties' intention in drafting this definition was not to distinguish between beta copies and beta testers with respect to the 150,000 requirement. The parties originally chose the 150,000 beta tester distribution level based on the approximate current MSDN subscription base. In response to the foregoing concerns about the definition of Timely Manner, however, the United States has proposed, and Microsoft and the Settling States have agreed, to modify the definition in Section VI.R of the SRPFJ to read:

> "Timely Manner" means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is made available via an MSDN subscription offering or of which 150,000 or more beta copies are distributed.

This modification clarifies the parties' intention that Timely Manner should be triggered by the *distribution* of 150,000 or more beta copies, regardless of whether those copies are distributed to individuals who are considered "beta testers." Moreover, the inclusion of distribution via an MSDN subscription

[293] Pantin 11–13.
[294] Johnson 6; Novell 18.
[295] Maddux ¶ 12.
[296] Litigating States' Proposal § 4; Litan 53; CCIA 76.
[297] KDE 13; Waldman 5; Kegel 8.
[298] SBC 81; Kegel 7–8; Sen. Kohl 5; Litan 57; Maddux ¶ 10; Litigating States, Ex. A 8–9; Palm 13; ProComp 51–52; Alexander 2; AAI 23; CCIA 83; CCIA, Stiglitz & Furman 30; CFA 96; RealNetworks 29–30.
[299] ProComp 48.
[300] AAI 22; Litan 50; Kegel 7–8; Pantin 12; NetAction 10, 13; Alexander 3; Novell 19; Maddux ¶ 14; SBC 81–82; CFA 96.
[301] AOLI, Klain 14; AAI22; ProComp 48; SIIA 31; Litan 50; CCIA 84; CFA 96; Giannandrea 7.

offering as a trigger for this definition ensures that, even if the level of MSDN subscribers decreases substantially, it will still trigger Microsoft's disclosure obligations under Section III.D. Therefore, although this modification clarifies, and in fact may slightly broaden, Microsoft's disclosure obligations, it does not substantively differ from the RPFJ's definition of Timely Manner.

310. A number of commentors contend that Microsoft may in the future choose to distribute to fewer beta testers and thereby evade its disclosure obligations.[302] Microsoft, however, continues to have a strong incentive to beta-test extensively any forthcoming Windows Operating System Product to ensure favorable consumer reaction, and the United States believes it is not realistic to suggest that Microsoft will diminish its beta-testing to avoid the RPFJ's disclosure requirements. If Microsoft's beta-testing practices change materially after imposition of the RPFJ, the United States would consider whether the change warrants a possible contempt action.

311. Several commentors express concern that triggering disclosure under Section III.D pursuant to the Timely Manner definition will permit Microsoft's own applications and middleware developers to continue receiving access to APIs and related Documentation before third-party developers receive access, thereby giving Microsoft's developers a head start in writing new applications and middleware.[303] Some note that the slow release of Windows 95 APIs to Netscape is precisely how the district court found that Microsoft retaliated against Netscape for refusing Microsoft's market division proposal in 1995.[304] In the extreme, at least one commentor contends that Microsoft could delay disclosure until after the deadline for third-party developers to demonstrate to Microsoft that their own products are compatible with the operating system and so qualify for a logo or other certification of compatibility.[305]

312. Several factors should mitigate these concerns. Microsoft simply cannot delay the disclosure of information to an ISV until well after the release of a new Windows Operating System Product, as it did against Netscape in 1995 (*Findings of Fact*, ¶ 91), because disclosure in a "Timely Manner" would have to occur when the Windows Operating System Product is released. And, as discussed above, Microsoft cannot put third-party developers at a substantial disadvantage without impairing the attractiveness of its new Operating System Product to consumers by reducing the range of available applications and middleware. Microsoft certainly has no incentive to send a new operating system into a market in which there are no applications available that are certified as compatible with it. On the other hand, premature disclosure of APIs—before Microsoft has had adequate opportunity to test and finalize an API—actually could hurt ISVs that wrongly rely on an interface that ultimately is not implemented.

B. Disclosure Of Communications Protocols (RPFJ § III.E)

313. Section III.E requires Microsoft on a continuing basis to make available to third parties, through licensing on reasonable and non-discriminatory terms, the Communications Protocols that are implemented natively, without additional software, in a Windows Operating System Product and are used by a Microsoft server operating system product to interoperate or communicate with the Windows Operating System Product, without the addition of other software to the client computer. In general, the comments raise questions about which software products or features are covered by this provision, what protocols are covered, the meaning of "interoperate," and timing issues.

1. Product Issues

314. Several comments raise concerns about which software products on the client or server are covered. These comments suggest that the terms used in Section III.E are undefined and insufficient, and that the licensing should apply to a broader range of products on both the client and server.

a. Windows Operating System Product

315. Many comments argue that the term "Windows Operating System Product" does not encompass Microsoft Middleware Products such as Internet Explorer, and thus there is no required licensing of Communications Protocols between IE and Microsoft server operating system products.[306] This is incorrect. Section III.E encompasses Communications Protocols used natively by any portion of a Windows Operating System Product, including any software that can also be considered Microsoft Middleware or a Microsoft Middleware Product. As explained in more detail elsewhere, see Section III(H) above, software code can be both Microsoft Middleware and part of a Windows Operating System Product.

316. Moreover, Windows Operating System Products such as Windows XP also contain functionality often associated with Microsoft server operating system products, such as Internet Information Services (IIS). As long as these functionalities are included natively in a Windows Operating System Product, any Communications Protocols used by these functionalities to communicate to a Microsoft server operating system product must be licensed. Some of these Communications Protocols will capture peer-to-peer communications, a concern raised by one commentor.[307]

317. Another commentor argues that licensing should be provided for products that are not part of a Windows Operating System Product, particularly Microsoft Office.[308] Such licensing is outside the scope of this case and the Court of Appeals' ruling. The ability of Office, which is not part of the desktop PC monopoly, to communicate with Microsoft server products, which are also not part of the client PC monopoly, is not an appropriate subject for injunctive relief, given that Microsoft's liability was based solely on maintenance of the desktop PC monopoly.

d. Microsoft Server Operating System Product

318. Many comments observe that the phrase "Microsoft server operating system product" is undefined, and therefore might be narrowly interpreted to exclude many Microsoft server products.[309] The RPFJ's phrase "Microsoft server operating system product" was a change from the November 2, 2001 Proposed Final Judgment ("November 2 PFJ"), which read "Windows 2000 Server or products marketed as its successors installed on a server computer." The intent and effect of this change was to *broaden* the coverage of this provision. The previous language referred only to a specific Microsoft product, Windows 2000 Server,[310] and its successors. And although it was intended to encompass all software functionality that was shipped within the Windows 2000 Server product, including such software as IIS and Active Directory, arguably it might not have extended to other products in the Windows 2000 Server product family, such as Windows 2000 Datacenter Server or Windows 2000 Advanced Server. The November 2 language also appeared not to cover any new server products that Microsoft may develop that were not successors to Windows 2000 Server.

319. By contrast, the RPFJ covers every Microsoft product that is now or in the future could be a server operating system product. It still includes Windows 2000 Server, but now also indisputably includes Windows 2000 Datacenter Server and Windows 2000 Advanced Server. Moreover, the decree now includes the .Net Servers,[311] a much broader class of server products. By using the terms in their common and normal sense, rather than tying them to specific products, the phrase intentionally was given a broader meaning.

320. Furthermore, "Microsoft server operating system product" still includes all software code that is identified as being incorporated within the product and/or is distributed with the product, whether or not its installation is optional or is subject to supplemental license agreements. This includes, for instance, functionality such as Internet Information Services (a "web server") and Active Directory (a "directory server").

e. Non-Microsoft Client Operating Systems

321. Some comments argue that Section III.E should also cover licensing of communications protocols for use with non-Microsoft client operating systems, for example in enabling interoperability between a Microsoft server and a Linux desktop operating system.[312] Interoperability and communications between a Microsoft server and non-Microsoft client platforms, however, was an issue outside the scope of the litigated case. There has been no proof in this case that Microsoft has a monopoly in *server* operating system products, or that communications difficulties between non-Microsoft platforms and Microsoft servers somehow played a role in the maintenance of Microsoft's desktop monopoly. Thus, the RPFJ properly does not reach questions of interoperability between Microsoft servers and non-Microsoft platforms.

322. Nor is it appropriate for the remedy to focus on competing operating systems vendors, given that the focus of the case was on middleware threats, not direct threats from operating system competitors. The licensing in Section III.E is limited to being "for the sole purpose of interoperating with a Windows Operating System Product" because the purpose is to enable server-based middleware threats to interoperate with Windows Operating System Products. Several commentors argue that the licensing should be unrestricted and not for any particular purpose, but this would not be consistent with the theory of the case and the rationale behind client-server disclosures.[313]

323. Rather, the intent of Section III.E is to ensure that ISVs and others will have full access to the communications protocols that a Microsoft Windows Operating System Products uses to interoperate or communicate natively with its own server operating system products. Much Non-Microsoft Middleware, including the Netscape browser and Java Virtual Machines, depend on content, data, and applications residing on servers and passing over networks such as the Internet or corporate networks. Under Section III.E, this Non-Microsoft Middleware will have the opportunity to interoperate with a Microsoft server operating system product in the same way as Microsoft Middleware.

f. Server-to-Server Communications

324. Some commentors argue that Section III.E should be extended to cover communications solely between one server and another server.[314] Pure server-to-server interoperability issues, however, are well beyond the scope of the case. As noted above, there is no record proof in this case that Microsoft has monopoly power in server markets. Inter-computer communications that do not implicate Microsoft's desktop operating system monopoly are properly outside the scope of the RPFJ.

g. Other Devices

325. Some commentors argue that communications between a Windows Operating System Product and other devices, such as handheld devices, should be included in Section III.E.[315] For all of the reasons discussed above concerning server-to-server communications, and communications to non-Microsoft client operating systems, communications to devices such as handhelds are outside the scope of the case.

2. Communications Protocols, Disclosure And Licensing

326. Several comments raise issues regarding "Communications Protocols" as used in Section III.E, as well as related issues concerning the substance of the licensing. These comments include questions about the definition of Communications Protocols, the "natively" requirement, the meaning of "interoperate," and whether Microsoft can evade the provision by moving Communications Protocols to other products. These issues concern the substance of what will be licensed for use by third parties, not the server and client software products between which the Communications Protocols operate.

a. Definition of "Communications Protocols" (RPFJ § VI.B)

327. Some comments criticize the definition of "Communications Protocols," opining that it (1) does not encompass certain types of information transmission, (2) addresses formats but not semantics, and (3) fails to address more than predefined tasks, or does not adequately define sub-elements, such as "formats."[316] Several comments appear to focus on the previous definition in the November 2 PFJ, or perhaps even in the June 2000 IFJ, and not the RPFJ definition.[317]

328. The RPFJ broadly defines Communications Protocols as the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a Microsoft server operating system product connected through any type of network, including but not limited to, a local area network, wide area network, or the Internet. The definition includes both the rules for information exchange and transmittal ("format, timing, sequencing and error control") as well as the meaning of the information contained within the protocol ("semantics"). By definition, Communications Protocols must be predefined tasks, because if the tasks were not predefined, the client and server would not know how to perform them or communicate about them. Every protocol at any layer of the communications stack that is implemented natively in a Windows Operating System Product and that is used to interoperate with a Microsoft server operating system product must be made available for license by third

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[302] ProComp 48; Palm 13; SIIA 31; Novell 19; Relpromax 12; RealNetworks 12.

[303] Henderson 6–7; Novell 19; Litan 50; Palm 13; CFA 96; CCIA 84–85; AAI 22; Litigating States, Ex. A 7–9; Alexander 3.

[304] AOL, Klain 14; Litigating States, Ex. A 7–8.

[305] Kegel 12–13; Burke 1; Peterson 2.

[306] AAI 36–37; SBC 72–73; Giannandrea 4; Alexander 003; Palm 7; ProComp 54.

[307] Alexander 003.

[308] KDE 10–11.

[309] ProComp 54; SIIA 34; CFA 96–97; CCIA 69–70; AAI 37.

[310] See <*http://www.microsoft.com/windows2000/server/default.asp*>.

[311] See <*http://www.microsoft.com/server/*>.

[312] ProComp 52; Palm 5.

[313] Moglen 2–3; Kegel 15; Maddux ¶ 16.

[314] AOL, Klain 9–10; SBC 76.

[315] CCIA, Stiglitz & Furman 43; Litigating States, Ex. A 8; SBC 77; Palm 6–7.

[316] CCIA 69; ProComp 53; SIIA 33; AOL, Klain 9; Alexander 4; Giannandrea 4, 6; CCC 17–18; Maddux ¶ 17.

[317] AOL, Klain 9 (limited to Windows 2000 server, excludes the Internet); Maddux ¶ 16 (remote administration protocols excluded).

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parties. This definition is sufficiently broad to capture all native communications from a Windows Operating System Product to a Microsoft server operating system product.

b. The Meaning of "Interoperate"

329. Several comments note that the word "interoperate" in Section III.E. is not defined and argue that this will allow Microsoft to evade this provision.[318] Specifically, one commentor points to Microsoft's definition of "interoperate" proffered in the pending European Union investigation of Microsoft and contend that that definition and associated declarations are different and arguably narrower than the intended definition in Section III.E.[319]

330. The United States is aware of Microsoft's submissions to the European Union concerning the definition of "interoperate" and has discussed this issue at length with Microsoft with respect to this provision. Microsoft and the United States believe they have a meeting of the minds regarding the meaning of "interoperate" in Section III.E and its effect in that provision. If a communications protocol is implemented in a Windows Operating System Product installed on a client computer and used to "interoperate, or communicate, natively" with a Microsoft server operating system product, then it must be disclosed. Nonetheless, to alleviate concerns stemming from Microsoft's submissions to the European Union, the United States and Microsoft have agreed to a limited modification in Section III.E.

331. The United States believes that, as used in the RPFJ, Section III.E clearly reflects the parties' intention that this provision will allow for the possibility of seamless two-way interoperability between Windows Operating System Products and non-Microsoft servers. Although the United States believes the meaning of "interoperate" is clear, in response to the public comments, the United States has proposed, and Microsoft and the Settling States have agreed, to supplement the term "interoperate" with "or communicate," so that Section III.E in the SRPFJ now reads:

> Starting nine months after the submission of this proposed Final Judgment to the Court, Microsoft shall make available for use by third parties, for the sole purpose of inter operating or *communicating* with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate, or *communicate*, natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product. (New language underlined.)

By adding "or communicate" after "interoperate," the parties have added further clarity to this provision. This revision clarifies the parties' intent in drafting Section III.E, thus removing any potential for confusion or ambiguity regarding the scope of this provision as it relates to the meaning of "interoperate."

332. Section III.E will protect opportunities for the development and use of Non-Microsoft Middleware by ensuring that competing, non-Microsoft server products on which such Middleware can be hosted and served will have the same access to and opportunity to interoperate with Windows Operating System Products as do Microsoft's server operating system products. This is not to say that all competing servers will behave exactly identically to Microsoft servers, because the competing implementations will differ. However, as to the Communications Protocols themselves, the competing servers will have the ability via license to appear identical to a Microsoft server operating system product.

c. License for Use

333. Several commentors point out that there is no discussion of disclosure in Section III.E and that lack of disclosure may defeat the purpose of the license.[320] Because the Communications Protocols must be licensed "for use" by third parties, the licensing necessarily must be accompanied by sufficient disclosure to allow licensees fully to utilize all the functionality of each Communications Protocol. Simply put, Microsoft is not permitted to design interoperability between its server operating system products and its Windows Operating System Products in a way that cannot be replicated under license by third parties whose products replace functionality on either the server or client side of the communication.[321]

d. The Meaning of "Natively"

334. Section III.E requires Microsoft to license the Communications Protocols "used to interoperate natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product." One commentor raises concerns regarding the change in the "natively" requirement from the November 2 PFJ to the November 6 RPFJ, suggesting that the RPFJ no longer covers Communications Protocols implemented on a server.[322] This is incorrect. The parenthetical expression that begins with "i.e." is an explanation of the word "natively," and nothing else.

335. The November 2 PFJ stated "used to interoperate natively (i.e., without the addition of software code to the client or server operating system products)." The parenthetical expression explained that the word "natively" meant the software that is included with the Windows Operating System Product and the Microsoft server operating system product without the addition of any other products or software code.

336. In the November 6 RPFJ, the phrase was changed expressly to remove the requirement for "native" operation on the server. This was done by removing the words "or server." The RPFJ reads "i.e., without the addition of software code to the client operating system product." This change means that the native requirement is only on the Windows Operating System Product on the client. In other words, "natively" now simply means all software code implemented in a Windows Operating System Product on the client. For the server side, it no longer matters if software code is added from some other product. When combined with the change to the broader "Microsoft server operating system product," discussed above, the net result is a significant expansion of the disclosure and licensing obligation from the November 2 PFJ to the RPFJ.

337. Currently, the only way Microsoft can avoid licensing under this provision is to implement *new* protocols (i.e., not in use on November 6, 2001), and then not implement those new protocols in any Windows Operating System Product. These new protocols would have to be distributed with other products or reach the desktop in some fashion other than by inclusion in a Windows Operating System Product. Because these Communications Protocols would in effect be completely separate from the desktop operating system monopoly, they are correctly not encompassed within Section III.E, despite several comments to the contrary.[323]

e. Licensing On "Reasonable And Non-Discriminatory Terms"

338. Section III.E allows Microsoft to license its Communications Protocols on reasonable and non-discriminatory terms consistent with Section III.I. Several commentors argue that Microsoft should not be able to charge a royalty for its Communications Protocols.[324] Allowing Microsoft to charge a royalty is appropriate. Historically, Microsoft has been less willing to disclose Communications Protocols than APIs, and when it does license Communications Protocols, it charges a royalty or otherwise receives Consideration. It has designed and developed its Communications Protocols with the expectation that they would not be given away.

3. Timing Issues

339. Comments raise two basic issues with respect to the effective date for implementation of the requirements of Section III.E. A few comments misread Section III.E as excluding Windows 2000 and Windows XP, on the erroneous assumption that only server operating system products or communications protocols that come into existence after November 6, 2001 are covered.[325] To the contrary, Section III.E covers in part "any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer. . . ." In other words, Communications Protocols implemented in any Windows Operating System Product as of November 6, 2001 are expressly covered—including Windows 2000, Windows XP Home, and Windows XP Professional. This language simply ensures that if Microsoft for whatever reason changed the Communications Protocols between the time the RPFJ was submitted to the Court and the effective date of this Section III.E nine months later, the changed Communications Protocols would not be outside the scope of the provision. Thus, all Communications Protocols in existence on November 6, 2001 must still be covered on August 6, 2002, the latest date on which they must be available for use by third parties, regardless of whether Microsoft has changed them in the interim.

340. Several comments also raise concerns about the initial nine-month delay before the Communications Protocols are licensed.[326] The purpose of this delay is to allow Microsoft to identify the Communications Protocols and define a licensing program so that they can be made available for use by third parties. Unlike its APIs for its Windows Operating System Products, for which Microsoft has always had an extensive disclosure program via the MSDN, Microsoft historically has licensed or disclosed relatively few of its Communications Protocols. And unlike the APIs that must be disclosed if they are used by Microsoft Middleware, which is a relatively finite set of products, Communications Protocols must effectively be available for license by third parties if they are implemented natively in a Windows Operating System Product and they are used to interoperate or communicate with any Microsoft server operating system product, including cases where extra software code is added to the server operating system product. This opens up what is potentially a very broad universe of new disclosure and licensing obligations for Microsoft. Microsoft needs time to set up programs to meet these obligations.

341. One commentor points out that the time to negotiate the required license may provide even further delays.[327] Although this might be true in some cases, the effect is lessened here because of the requirement that Microsoft license on reasonable and non-discriminatory terms. The license provision is reasonable because Microsoft's protocols are protected intellectual property.

342. Still others argue that the nine-month delay cuts heavily into the five-year term of the RPFJ.[328] This criticism is largely incorrect in that the nine months began running as of November 6, 2001, meaning that the disclosure and licensing must occur by not later than August 6, 2002. Thus, licensing is in fact likely to begin shortly after the decree's 5-year term begins to run upon entry by the Court.

343. Lastly, at least one commentor points out that there is no timing requirement after the initial licensing begins, and argues that Microsoft is under no obligation to offer Communications Protocols for license in a prompt manner.[329] To the contrary, the lack of a specific timing trigger requires Microsoft to make continuing and rolling offers to license as new Communications Protocols are implemented in Windows Operating System Products. In many other provisions of the RPFJ there are a variety of specialized triggers; the absence of one here is not accidental.

C. Compulsory Licensing (RPFJ § III.I)

344. Section III.I requires Microsoft to offer necessary licenses for the intellectual property that Microsoft is required to disclose or make available under the RPFJ.[330] The goal of this Section is to ensure that Microsoft cannot use its intellectual property rights to undermine the competitive value of its obligations in Sections III.D and III.E, while at the same time to permit Microsoft to take legitimate steps to prevent unauthorized use of its intellectual property.

345. Several comments address Section III.I. One group of commentors suggests that permitting Microsoft to charge a "reasonable" royalty for licenses to its intellectual property is inappropriate.[331] Another group of commentors takes issue with Section III.I.3's restrictions on sublicenses.[332] Many commentors raise concerns relating to Section III.I.5 and Microsoft's ability to require a cross-license of certain intellectual property rights pursuant to that subsection.[333] Several

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[318] CCIA 69; SIIA 34; Sn 26–30; Palm 10.

[319] Sun 28–29.

[320] Litigating States, Ex. A9.

[321] The CIS sets forth some non-exhaustive examples where Communications Protocols must be made available to permit seamless interoperability, including the Communications Protocols used between Microsoft Internet Information Services web server or Active Directory directory server and Internet Explorer or other functionality in the Windows Operating System Product; between server networking services such as Windows server message block protocol/common Internet file system protocol, and the Windows Operating System Product; and between server-hosted code and a runtime environment in the Windows Operating System Product, such as Java virtual machines or Microsoft's common language runtime. It also permits interoperability between Microsoft servers and the digital rights management and other security mechanisms utilizing Microsoft's implementation of Kerberos in the Windows Operating System Product, subject to a narrow exception in Section III.J.1.a, permitting limited withholding of information necessary to protect particular installations (e.g., keys and tokens particular to a given installation). *See* CIS at 38–40; *see also* discussion of Section III.J.1.a, *infra*.

[322] SBC 70–72.

[323] ProComp 52–53; Harris 6.

[324] Thomas 4–5; Waldman 5; Maddux ¶ 16.

[325] ProComp 55; Giannandrea 1; SIIA 35.

[326] Palm 13; Litan 57; Litigating States, Ex. A 8–9; RealNetworks 29; Maddux ¶ 15; CCIA 83–84; Sun 36.

[327] Sun 36–37.

[328] CCIA 83–84.

[329] Litan 53.

[330] *See e.g.*, RPFJ §§ III.D and III.E.

[331] SBC 85–86; Litigating States, Ex. A 15; CCIA 81; Sun 35; Giannandrea 5; Moglen 2; Waldman 4.

[332] AOL, Klain 7; CCIA 81; Moglen 2; Giannandrea 5; Harris 8.

[333] Henderson 8; SBC 87–88; CFA 88; ProComp 51; AOL, Ex, B. at 7; SIIA 36–37; Litigating States 15; AA1 28–29; CCIA 81–82; Sun 38; RealNetworks 29; Giannandrea 5; Alexander 3; Harris 8; Maddux ¶ 10.

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commentors also argue, to varying degrees, that the scope of Microsoft's intellectual property rights should be limited.[334]

1. Reasonable And Non-Discriminatory Royalty

346. Subsection III.I.1 requires that any licenses granted pursuant to this Section be made on reasonable and non-discriminatory terms, and then permits Microsoft to charge a reasonable royalty in connection with licenses it grants pursuant to Section III.I. One commentor contends that Microsoft should not be permitted to charge any royalty at all, and that permitting it to do so in effect rewards Microsoft for maintaining illegally its operating system monopoly.[335]

347. One commentor asserts that royalty-bearing licenses are anticompetitive in the context of this remedy because such licenses give Microsoft the opportunity to use a "royalty charge" to control crucial technical information. This commentor[336] notes that in June 2000, when litigating the IFJ, the United States rejected Microsoft's contention that it should be permitted to charge a reasonable royalty for the APIs, Communications Interfaces, and Technical Information (as such terms were defined in the IFJ).[337] See Summary Response to Microsoft's Comments on the Proposed Final Judgment at 14 (June 5, 2000). Under the RPFJ, disclosure of APIs in the manner that Microsoft typically does it (e.g., through MSDN and not via a license) would not implicate Section III.I and would occur at no cost.[338]

348. The United States does not believe that the scaled-back liability that the Court of Appeals upheld justifies requiring Microsoft to give away its valuable intellectual property. To the extent that Section III.I.1 of the RPFJ permits Microsoft to charge a reasonable royalty for intellectual property rights provided under other provisions of the RPFJ, the United States believes that the terms of the RPFJ strike the appropriate balance between mandating that Microsoft provide certain licenses and not frustrate the interoperability provisions of the RPFJ, while still permitting Microsoft to charge a reasonable and nondiscriminatory royalty for access to its intellectual property.

2. Restriction On Sublicenses

349. Several commentors suggest that the restrictions on sublicenses contained in Section III.I.3 are inappropriate.[339] These comments suggest that the restriction on sublicenses may have the effect of inhibiting the ability of ISVs, IHVs, IAPs, ICPs, or OEMs to partner with other entities. In particular, two commentors suggest that the restriction on sublicenses could in practice preclude a licensee of Microsoft's technology under the RPFJ from reselling or distributing the products that it develops using Microsoft's licensed technology.[340] Another commentor suggests that not allowing sublicenses under certain circumstances (e.g., where the licensee is involved in an acquisition) is a form of discrimination.[341]

350. These comments misconstrue the purpose and effect of the restriction on sublicenses contained in Section III.I.3. First, entities to which a licensee of Microsoft's technology under the RPFJ wishes to sell or distribute products using that licensed technology would not need a sublicense to Microsoft's intellectual property. Similarly, the United States does not believe that a sublicense would be required in the circumstances of an acquisition and, even if one were, that Microsoft would be likely to preclude sublicensing in such circumstances.

351. In general, the United States recognizes that Microsoft has a legitimate interest in limiting its intellectual property licensing to those licenses that are properly related to the terms of the RPFJ. Subsection III.I.3 is designed to address this issue by permitting Microsoft to preclude the assignment, transfer or sublicensing of rights granted by Microsoft pursuant to Section III.I, provided that Microsoft's preclusion is reasonable and non-discriminatory as required by subsection III.I.1. This provision does not permit Microsoft to restrict the right to sublicense where doing so would be unreasonable, discriminatory, or otherwise would be inconsistent with the terms of the RPFJ. See Section III.I.4.

3. Cross-Licenses

352. A number of commentors suggest that Section III.I.5 of the RPFJ, which permitted Microsoft to require cross-licenses from persons or entities who wished to take advantage of the disclosure provisions of the RPFJ if such licenses were necessary for Microsoft to provide the disclosures, was inappropriate.[342] The United States and Microsoft have agreed to delete this subsection from the RPFJ. See U.S. Memorandum at 10–11; SRPFJ § III.I.5. The purpose of Section III.I.5 was to enable Microsoft to fully comply with the terms of the RPFJ without creating infringement liability based on actions taken in order to comply with those terms.

4. Scope of Intellectual Property Rights

353. Several commentors make suggestions concerning Section III.I that generally relate to the scope of Microsoft's intellectual property rights. One commentor suggests that Microsoft should be required "to clearly announce which of its many software patents protect the Windows APIs . . ..;"[343] Another commentor objects to the portion of Section III.I.2 that clarifies the scope of any license granted under Section III.I and expressly provides that "the scope of any such license . . . shall not confer any rights to any Microsoft intellectual property rights infringed by" the licensee's technology.[344] This commentor suggests that Microsoft should be precluded from bringing infringement suits against an entity that

[334] Kegel 8; Maddux ¶ 9.

[335] Sun 35–36.

[336] SBC 85–86.

[337] SBC 86.

[338] The other allegedly inconsistent prior statements cited by this commentor (SBC 86) do not withstand scrutiny. These statements concerning royalty-free licenses all were made in the narrow context of providing divested entities access to necessary technical information. *See* United States Reply Memo at 27–29 (discussing Western Electric for the proposition that was precedent to support the United States' divestiture request; relying on AT&T as an example of a prior structural remedy in a monopolization case that did not involve mergers); *United States* v. *Western Elec. Co.*, 569 F. Supp. 1057, 1118 (D.D.C. 1983), *aff'd sub nom. California* v. *United States*, 464 U.S. 1013 (1983) (discussion of royalty-free licenses centered around effectuating the divestiture of the Regional Bell Operating Companies and ensuring that the divestitures did not result in "balkanized regional networks" and "fragmentation" to the "detriment of all users"); *United States* v. *General Electric*, 115 F. Supp. 835, 844 (D. N.J. 1953) ("General Electric's attempt to maintain control over the lamp industry has been largely by way of extending its basic patents on lamps and lamp parts. To compel the completely free use of these patents is not to impose upon General Electric and other defendants penalties for misuse of patents and violation of the antitrust laws, but rather to check the intrusion of advantages thereby gained into the mechanics of competition in the lamp industry."). Here, the United States does not believe that the circumstances support royalty-free licensing. Compulsory licensing, but with a reasonable royalty, will be sufficient to achieve the remedial goal of ensuring access to necessary information for interoperability.

[339] AOL, Klain 7; CCIA; Moglen 2; Ginnandrea 5; Harris 8; Pantin 22.

[340] Giannandrea 5; Harris 8.

[341] Pantin 22.

[342] Henderson 8; SBC 87–88; CFA 88; ProComp 51; AOL Ex. B at 7; SIIA 36–37; Litigating States 15; AAI 28–29; CCIA 81; Sun 38; RealNetworks 29; Giannandrea 5; Alexander 3; Harris 8; Maddux ¶ 10.

[343] Kegel (unpaginated).

[344] Red Hat 11–12.

licenses Microsoft intellectual property under the RPFJ, even when that licensee infringes other Microsoft intellectual property to which the entity does not have a license.[345] Finally, one commentor expresses skepticism that Microsoft actually would license the intellectual property that is required for interoperation and suggests that Microsoft should be required to license all of its intellectual property rights.[346]

354. The United States believes that preventing Microsoft from protecting its intellectual property is unwarranted and inappropriate. Allowing competitors to expropriate Microsoft's intellectual property in order to compete with Microsoft would deter Microsoft from investing in innovation and simultaneously deter rival developers from coming up with different, new, potentially better technologies to build into their own products. Nothing in the solutions suggested by these commentors would benefit consumers.

5. Comparison to Litigating States' Proposal

355. Provision 15 of the Litigating States' Proposal is a corollary to—and substantially the same as—Section III.I of the SRPFJ. The major differences between them are (a) Provision 15 provides for a royalty-free license, while the RPFJ permits Microsoft to charge a reasonable and non-discriminatory royalty; and (b) Provision 15(b) provides that licenses granted pursuant to it "shall not be conditional on the use of any Microsoft software, API, Communications Interface, Technical Information or service."[347]

356. As set forth above, the United States believes that it would be inappropriate and unwarranted to require Microsoft to license its intellectual property at no cost. In addition, the United States and Microsoft have agreed to delete the cross-license provision of Section III.I. Finally, the Litigating States' Provision 15(b) appears to be an attempt to preclude Microsoft from using the granting of licenses pursuant to the November 2, 2001 Proposed Final Judgment as leverage to induce certain types of entities to use other Microsoft software. Section III.G of the RPFJ similarly prohibits this type of conduct by Microsoft.

D. Security Carve-Outs (RPFJ § III.J)

357. Many commentors argue that the security provisions in RPFJ Section III.J are inappropriate or overbroad. Section III.J has two subsections. The first defines situations in which Microsoft has no obligation under the RPFJ to make disclosures that are otherwise required by the RPFJ. The second permits Microsoft to withhold security-related information from certain persons or entities.

1. Limitation on Obligations to Document, Disclose or License

358. Section III.J.1 identifies two situations in which Microsoft is not obligated to document, disclose or license certain materials to third parties. The first situation is where the disclosure would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption, or authentication systems. These situations include but are not limited to the disclosure of keys, authorization tokens or enforcement criteria.

359. Many commentors complain that this provision is too broad and will allow Microsoft to withhold security-related APIs and Communications Protocols.[348] Commentors argue that such APIs and Communications Protocols are critically important to many middleware applications and that this provision amounts to exempting from coverage by the RPFJ software and services that are the future of computing. Other commentors point out that the CIS language is significantly more defined and specific than the RPFJ. Still other commentors point to specific protocols that the CIS says will be provided, such as Secure Audio Path and Kerberos, and argue that notwithstanding the CIS, Section III.J.1 actually exempts those protocols. Still others point out that "layers of protocols" is significantly broader than the user-specific data described in the CIS.

360. Secure software systems can be designed in many different ways, and at any given time, is often some critical information can compromise that security. For instance, secure software often uses the term "keys" to refer to specific data that is used to authenticate or authorize a user to perform certain functions. Often the keys, or other user-specific data, must be kept secure because, if unauthorized people have them, they can be used to compromise the security of the system. These software keys can be thought of as being similar in some ways to regular keys: having the key to the front door compromises the house's security, and keeping control of the keys is critical to keeping the house secure.

361. Sometimes software systems are built not around keys but around keeping actual parts of the system hidden or unknown. Continuing with the house analogy, this is similar to keeping the existence of the door a secret, but once you know where the door is and what it does, you do not need a key. Sometimes such systems are referred to, unfavorably, as employing "security through obscurity." Many software systems employ combinations of these security techniques.

362. The intent of Section III.J.1 is to allow Microsoft to keep secret those pieces of security-related systems the disclosure of which would compromise particular installations or groups of installations. The phrase "particular installations" is designed to indicate end-user installations or a specific, narrowly-prescribed subset of installations. It does not mean, for instance, all the installations that use Windows Media Player, nor does it mean all the installations that use Windows Media Player in conjunction with the Secure Audio Path functionality. Moreover, the disclosure actually must compromise the security of the particular installation. The disclosure cannot be withheld simply because Microsoft prefers that others not have it, or because it is valuable. Thus, for instance, if Microsoft previously has withheld an algorithm or format used in its Communications Protocols for business reasons, but the security of the system actually is dependent on other features such as keys, then Microsoft has no authority to withhold the disclosure or format.

363. Some commentors suggest that the CIS differs from the language of the RPFJ. The United States believes that the CIS reflects the parties' agreement as to the meaning of the RPFJ, including Section III.J.1. Moreover, the United States agrees with the many commentors who note that security-related features will be critically important to Non-Microsoft Middleware, and that overbroad withholding of security-related information could limit drastically the ability of such products to pose threats to the operating system monopoly. Section III.J.1, however, is not overly broad.

364. The second situation under Section III.J.1 in which Microsoft is not

[345] Id.

[346] Maddux ¶ 9.

[347] Litigating States' Proposal § 15(b).

[348] AAI 22; AOL 40–41; AOL, Klain 7–8, 10; Catavault 12–13; CCIA 16, 72–77; CCIA, Stiglitz & Furman 30; CFA 99; Elhauge 12; Red Hat 25–28; SBC 88–89; SIIA 35–36; Sun 32–33; Alexander 3; Giannandrea 4; Gifford 5; Harris 8–9; Johnson 8; Moglen 4–5; Waldman 6; KDE 14; Litan 52; Litigating States, Ex. A 16, Ex. C 18; Nader/Love 2–5; Maddux ¶ 30; NetAction 11; Novell 20–21; ProComp 49–50, 55.

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obligated to document, disclose or license is when Microsoft is so directed by a governmental agency of competent jurisdiction. One commentor argues that this provision appears to be a "big brother type deal between government and Microsoft to suppress information from the public."[349] Another commentor notes that this restriction is written more broadly than the CIS's "lawful orders" language.[350] This section is appropriate and important for public security purposes, and limited to cases in which a government agency of competent jurisdiction directs Microsoft not to document, disclose or license specified information.

2. Conditioning Licenses on Certain Requirements

365. Section III.J.2 allows Microsoft to condition the license of security-related APIs, Documentation or Communications Protocols on four requirements. These four requirements for the licensee are: (a) No history of software counterfeiting or piracy or willful violations of intellectual property rights; (b) a reasonable business need for the information for a planned or shipping product; (c) meets reasonable and objective standards for the authenticity and viability of its business; and (d) programs verified by a third party to ensure compliance with Microsoft specifications for use of the information.

.366. Many commentors argue that the provisions of Section III.J.2 can be used by Microsoft to withhold unfairly information from competing companies, and in particular from open source developers.[351] One commentor, in contrast, finds that Microsoft's legitimate security concerns, which the commentor argues are shared by all of its major business rivals, are addressed appropriately under Section III.J.2, and therefore the restrictions of Section III.J.1 are unnecessary.[352]

367. As was explained in the CIS, the requirements of this subsection cannot be used as a pretext for denying disclosure and licensing, but instead are limited to the narrowest scope of what is reasonable and necessary. These requirements focus on screening out only individuals or firms that should not have access to or use the specified security-related information because they have a history of engaging in unlawful conduct related to computer software, do not have any legitimate basis for needing the information, or are using the information in a way that threatens the proper operation and integrity of the systems and mechanism to which they relate.

368. With regard to requirement (a) concerning software piracy, some commentors argue that it unjustly could exclude any company that ever has been sued for patent infringement and lost. The requirement was not intended to extend this far, because legitimate businesses do lose patent lawsuits on occasion. Rather, application of this requirement is to be guided by the phrase "history of software counterfeiting or piracy" and will not be interpreted to extend to otherwise reputable companies that are involved in intellectual property disputes.

369. Many commentors focus on requirements (b) and (c) and argue that they improperly will exclude the entire open source movement and require start-up companies to submit their business plans to Microsoft. First, it is appropriate to note that the "open source movement" is not composed of a single type of organization or software developer. Rather, large companies such as IBM are strong supporters of products such as Linux and of other open source solutions. Smaller companies such as Red Hat are also reputable firms focused on the open source movement. The United States expects that such firms will have little trouble satisfying requirements (b) and (c). That is not to say that all open source organizations, or individual developers, will be able to pass these requirements. The United States believes that Microsoft has a legitimate interest in protecting the security of its systems and that requirements (b) and (c), properly interpreted, are a reasonable balancing of Microsoft's interests and the needs of competition.

370. Finally, requirement (d) allows Microsoft to condition the granting of a license on the submission of any computer program using the licensed API, Documentation or Communications Protocol to third-party verification. Some commentors incorrectly have read this requirement to mandate the submission of the computer program to Microsoft. To the contrary, this requirement is structured specifically so that Microsoft will not be able to gain access to another's intellectual property. Rather, an independent third party will test and verify the computer program against specifications provided by Microsoft. These specifications must relate to the proper operation and integrity of the systems under test, and cannot relate to any other business-related factors. Finally, some commentors argue that it is inappropriate for this testing to be at the licensee's expense rather than at Microsoft's expense. The United States understands that with other third-party testing programs in the software industry, the cost usually is borne by the organization submitting the program. The United States sees no reason to deviate from that practice.

E. Disclosure of File Formats

371. Many commentors argue that Microsoft should be required to disclose file formats.[353] Some of these commentors make the request generally, while others make reference to specific file formats such as those for Microsoft Office programs (e.g., Word, Excel, Outlook).[354] A file format, generally speaking, is the structure of a file, showing how the file organizes and stores data. File formats can be either proprietary or open. File formats are sometimes associated with three-letter file extensions at the end of a file name; for instance, "file.wpd" is usually a file in Word Perfect format, while "file.doc" is usually a file in Microsoft Word format.

372. File formats are covered to a limited extent under Sections III.D and III.E, which deal with disclosure and licensing. Section III.D calls for the disclosure of APIs that Microsoft Middleware uses to call on a Windows Operating System Product, while Section III.E calls for the licensing of certain Communications Protocols implemented in a Windows Operating System Product and used to communicate natively with a Microsoft server operating system product. To the extent either the APIs or Communications Protocols encompass "file formats," then those structures are covered.

373. However, the major comments concerning file formats request disclosure of the file formats of Microsoft products such as Office. Office does not meet the definition of Microsoft Middleware, and so it does not fall under Section III.D. Nor is Office implemented natively in a Windows Operating System Product, so it does not fall under Section III.E. Thus, the file formats for Office will not be disclosed or licensed pursuant to the RPFJ.

374. Commentors argue that the file formats for Office should be disclosed because Office is a significant part of the applications barrier to entry that protects the Windows monopoly. Disclosure of the file formats would allow other office productivity applications, such as word processors, to exchange files with Office. Allowing the exchange of files would allow consumers to change word processors, and potentially change operating systems, without concern that they could not exchange files with the dominant applications in Office.

375. The scope of the case as decided by the Court of Appeals does not extend to non-middleware or to Office or other applications that are not distributed with Windows. Whatever impact generally the disclosure of file formats might have on the applications barrier to entry that protects Windows, such disclosure was not among the conduct charged as illegal by the plaintiffs or upheld by the Court of Appeals, nor is it of the same type or class as Microsoft's attack on potentially threatening middleware. Thus, it would be inappropriate for file formats for Office to be part of the remedy.

VIII. Enforcement

376. Numerous comments criticize various aspects of the compliance and enforcement procedures set forth in Section IV of the RPFJ. Many of these comments take issue with the composition and duties of the Technical Committee ("TC") (RPFJ § IV.B) and the supplemental dispute resolution provisions (RPFJ § IV.D), some suggesting that the enforcement scheme should be based on an entirely different, more draconian, model. In several cases, these comments misunderstand the purposes underlying the RPFJ's supplemental enforcement mechanisms. In others, they imply that the RPFJ somehow dilutes the United States' and the Court's traditional judgment construction and enforcement powers, or that Microsoft arguably has an undue amount of control over the process.[355] These allegations are meritless.

377. The additional monitoring and dispute resolution mechanisms of the RPFJ are intended to enhance the likelihood of efficient resolution of compliance issues that may arise, without undue delay or the necessity of extensive prosecutorial or judicial involvement. They in no way prohibit or impede traditional judicial construction or enforcement of the RPFJ. With the limited exception of giving Microsoft a reasonable opportunity first to cure violations of Sections III.C, III.D, III.E, and III.H (see RPFJ § IV.A.4)—which is intended to encourage the voluntary remediation of alleged violations by Microsoft—the United States retains the full ability, in appropriate instances, immediately and directly to request that the Court bring to bear its full arsenal of enforcement and declaratory construction powers on any alleged violations or interpretative disputes.

A. The Enforcement Powers of Plaintiffs and the Court

378. Section IV.A grants the United States (and the Settling States collectively) all of the investigatory and enforcement powers customarily found in antitrust final judgments in cases brought by the United States in recent decades. *See, e.g.*, AT&T, 552 F. Supp. at 230–31 ("Visitorial Provisions"). The RPFJ grants Plaintiffs the power to inspect Microsoft documents and computer source code, to interview or depose Microsoft employees, and to require the production of written reports, in the form of interrogatory responses or otherwise. *See* RPFJ § IV.A.2. Plaintiffs may seek any appropriate orders relating to the enforcement of the RPFJ, including the ability to file petitions for orders to show cause why Microsoft should not be held in criminal or civil contempt, petitions for injunctive relief to restrain or prevent violations, motions for declaratory judgment to clarify or interpret particular provisions, and motions to modify the RPFJ. *See* RPFJ § IV.A.4.

379. Likewise, the Court retains full jurisdiction to issue orders necessary to construe, carry out, modify, and enforce the RPFJ, and to punish violations thereof. *See* RPFJ §§ IV.A.4, VII. The Court's inherent powers include the power to construe or modify the decree, to compel Microsoft's compliance or remedy noncompliance through civil contempt, and to punish willful non-compliance through criminal contempt. *See McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 191–95 (1949); 18 U.S.C. 401(3). Nothing in the RPFJ diminishes any of these rights and powers.

380. Some comments criticize the provision in Section IV.A.4 that allows Microsoft a reasonable opportunity to cure alleged violations of Sections III.C, D, E, and H before Plaintiffs may seek an enforcement order, as simply giving Microsoft a mechanism for delay.[356] To the contrary, the limited opportunity to cure is intended to encourage rapid, consensual resolution of issues arising under some of the provisions governing Microsoft's relations with third parties, without the necessity of prosecutorial or judicial intervention. Section IV.A.4 expressly prohibits Microsoft from using its efforts to cure as a defense to enforcement actions designed to punish violations (such as willful violations subject to criminal contempt[357]), or systematic violations that may require additional prospective RPFJ modifications in order to prevent recurrences.

B. The Technical Committee

381. In addition to all traditional decree enforcement rights and powers, the RPFJ adds a number of additional mechanisms to assist in achieving and maintaining compliance short of formal litigation. These additional mechanisms provide unprecedented enhancement to the United States' traditional enforcement powers. The most important of these mechanisms is the Technical Committee (TC). The TC, which remains under the control of the United States, itself has broad information-gathering powers to monitor Microsoft's compliance, evaluate third-party complaints, and propose ways to cure violations. The TC's ongoing monitoring duties will help ensure that Microsoft remains compliant with its obligations under the RPFJ, and that if it fails to comply, violations promptly will be detected and brought to Plaintiffs' attention. The TC, however, is not a law enforcement body. Rather, traditional prosecutorial powers remain with the United States and plaintiff States, while traditional compulsory, remedial, and enforcement powers remain with the Court.

1. Technical Committee Powers

382. Because several comments criticize the powers of the TC as

[349] Alexander 3.

[350] Harris 9.

[351] AAI 23; CCIA 77–81; CFA 100; Henderson 7–8; Red Hat 28–29; SBC 88–91; SIIA 36; Alexander 3; Giannandrea 4–5; Carrol 2; Harris 9; Moglen 4–5; Waldman 6; KDE 12; Sen. Kohl 3; Litan 52; Litigating States, Ex. A 16–17; Nader/Love 2–5; Maddux ¶ 31; Pantin III.33–34; ProComp 50–51.

[352] AOL 41–42

[353] Kegel 8; Naver/Love 1; Pantin 12; SBC 79; CCC 21; Johnson 2; Alexander 5; Carroll 4; Maddux ¶ 14.

[354] CCC 17; SIIA 38, 39.

[355] CCIA 89–92; AOL 50–53; ProComp 75–77; Litan 54–55; RealNetworks 31–32; Red Hat 30–31; Nader 5; Waldman 5, Sen. Kohl 5; SBC 111–13, 157–58.

[356] AAI 42; Maddux ¶ 35.

[357] The RPFJ's discussions of additional factors such as "systematic" or "knowing" violations are not intended to change the scienter or other elements that must be shown in actions to enforce the RPFJ through contempt charges. See, e.g., United States v. NYNEX Corp., 8 F.3d 52, 54–55 (D.C. Cir. 1993) (setting forth the elements of contempt, applied to antitrust decree). In particular, it is clear that a party to a decree may be found guilty of criminal contempt if its contumacious behavior was "willful." Willful intent for purposes of contempt may be shown by proof that a defendant "acted with deliberate or reckless disregard of [its] obligation under the" order. United States v. Young, 107 F.3d 903, 909 (D.C. Cir. 1997); see also United States v. Greyhound Corp., 508 F.2d 529, 532 (7th Cir. 1974) (in context of antitrust decree, holding that willful element can be proven by evidence of either deliberate or reckless conduct).

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inadequate,[358] a detailed explanation of the TC's powers is in order. The TC has a number of purposes.

383. First, the TC provides in-depth, ongoing monitoring of Microsoft's activities as they relate to compliance with the RPFJ. This will permit rapid detection and reporting of potential violations to the United States and the plaintiff States, after which Plaintiffs can, in the exercise of their prosecutorial discretion, bring such enforcement action as is appropriate to the situation. As part of this function, the TC has broad powers to obtain information from Microsoft. The TC may require Microsoft to make available records and documents, and to provide physical access to Microsoft facilities, systems and equipment. Microsoft must also make its personnel available for interviews on essentially the same terms as they are available to the United States and plaintiff States in their enforcement investigations and actions.[359] The TC even has the right to unfettered access to Microsoft's software source code, subject only to standard confidentiality protections. See RPFJ § IV.A.8.

384. The TC has the authority to receive and evaluate complaints from third parties, from Microsoft's Compliance Officer, and from Plaintiffs. RPFJ §§ IV.A.8.d; D.4.a, b. The TC may keep the identity of complainants anonymous, and Microsoft will not have the right under the RPFJ to obtain the identity of the complainant. This should encourage information flow to the TC, even from those who might fear Microsoft retaliation. RPFJ § IV.D.4.e. Further, the TC has an obligation to report to Plaintiffs, both at regular intervals and immediately upon discovery of an apparent violation. RPFJ §§ IV.A.8.e, f. Finally, the TC has the right to report back to third parties who have made complaints or inquiries as to how they might be resolved with Microsoft, subject only to the TC's overall confidentiality obligations. See RPFJ §§ IV.8.f, 8.c, 9, 10.[360]

385. Some comments criticize the restriction on direct use of the TC's reports and conclusions in enforcement actions.[361] This direct use restriction has two purposes: First, by ensuring that Microsoft's and third parties' communications will not be used directly against Microsoft, the TC will benefit from heightened candor and information disclosure by Microsoft employees and others. Second, and equally important, the TC cannot be expected to develop evidence for use in adversary proceedings with the necessary level of rigor that law enforcement or legally trained personnel could muster. Those criticizing the restriction on direct use of the TC's output overlook the fact that Plaintiffs remain free to make full derivative use of all the TC's work in enforcement—such as pursuing leads to build solid enforcement actions based on admissible evidence. In this sense, the TC's work will prove invaluable.

386. A second purpose of the TC is to facilitate the resolution of potentially complex and technologically nuanced disputes between Microsoft and others over the practical workings of the RPFJ. The TC is not intended to have independent enforcement authority; that authority remains with Plaintiffs and the Court. *See* CIS at 55.[362] Rather, the TC has a "dispute resolution" role, intended to facilitate the rapid, consensual resolution of issues where possible. As noted above, the TC complements, but does not supplant, Plaintiffs' and the Court's traditional methods and powers of decree enforcement. It is thus intended to provide an additional mechanism for the efficient voluntary resolution of what otherwise could be time-consuming, costly, and frustrating disputes to all concerned. Viewed in this light, rather than as being a surrogate prosecutor or judge, both the TC's procedures and substantive powers make eminent sense.

387. Some comments question why the TC is not given an explicit mandate to also have business or legal expertise to facilitate the review of Microsoft's non-technical business or legal decisions.[363] The RPFJ sets forth a baseline of technical expertise because it is essential that the TC have "experts in software design and programming," to do its job. RPFJ § IV.B.2. Nothing in the RPFJ, however, limits the expertise of TC members, staff, and consultants to only these areas. In short, the TC can and should have available to it expertise broader than purely technical matters and will be expected to address and report on business and other issues that come to its attention in connection with its monitoring of Microsoft's compliance with the RPFJ. Furthermore, the United States, the plaintiff States, and the Court routinely confront complex economic and business strategy issues, and clearly have the capability to address such issues as they affect enforcement matters.

2. Composition and Control of the Technical Committee

388. Some comments take issue with the manner in which the TC will be constituted, object to Microsoft playing any role in selecting its members, and generally imply that the TC will lack independence.[364] Many of these comments fail to appreciate that Plaintiffs, not Microsoft, control the TC.

389. The TC is composed of three members who are to be "experts in software design and programming." RPFJ § IV.B.2. Plaintiffs and Microsoft will each nominate one member, who must meet strict conflict-of-interest standards, to ensure that they perform their duties in a "fair and unbiased manner" (RPFJ § IV.B.2), and have the right to object to the other's proposed appointee. Any unresolvable disputes about TC membership are decided by the Court, which retains the ultimate ability to appoint the members. After the first two members are appointed, they will propose a third member; again, the Court will decide disputes and approve or reject this member. *See* RPFJ § IV.B.3. Having all parties play a role in selecting the TC ensures that it will not have an overall bias for or against one party. Furthermore, there remain safeguards against bias even after the TC is chosen. If, for example, the TC member nominated by Microsoft fails to behave in an unbiased manner or otherwise does not act in accord with the purposes of the RPFJ, the United States has the right to insist that the member be replaced (RPFJ § IV.B.5); Microsoft, however, has no corresponding right.

390. Further, as noted critically by a few comments,[365] TC members are subject to employment restrictions that preclude them from having served as expert witnesses in this or other cases involving Microsoft, and impose prohibitions on being employed by Microsoft or its competitors for a limited time before, during and after their service on the TC. Such limited, ancillary employment restriction covenants are also intended to ensure that TC members will not have or develop biases, or be able to trade on confidential, competitively sensitive business information learned while serving on the TC. In appropriate cases, however, these requirements may be waived by the agreement of the parties to the RPFJ. RPFJ § IV.B.2.

391. Microsoft is responsible for paying all costs of the TC. RPFJ §§ IV.B.6, 7, 8.h. It is wholly reasonable that the defendant in this case, rather than the taxpayer, defray the potentially substantial cost of supporting the TC. Microsoft will not be able to manipulate the activities of the TC through any "power of the purse," however, as it will have the burden of demonstrating the unreasonableness of any TC expense, and the Court has the authority to compel payment in the event of a dispute. RPFJ § IV.B.8.i. The TC will have offices on Microsoft's corporate campus, RPFJ § IV.B.7, which will greatly enhance its ability to carry out its duties; however, Microsoft cannot exercise any control over the TC's activities by virtue of its location. The comments expressing concern that Microsoft somehow can control the TC, either through funding or geographic proximity, are unfounded.[366]

392. Most importantly, the TC remains under the express control of Plaintiffs, not Microsoft. It is Plaintiffs, not Microsoft, that apply to the Court for the appointment of the TC members. RPFJ § IV.B.3.b, d. The United States, not Microsoft, contracts with the TC for its services, and defines the basic parameters of that agreement. RPFJ § IV.B.6. The United States, but not Microsoft, has the right to remove any TC member if it determines that the member has failed to act diligently and consistently with the purposes of the RPFJ. RPFJ § IV.B.4. The TC files its reports with Plaintiffs, not Microsoft. RPFJ § IV.B.8.e, f.[367] The hiring of additional staff or consultants by the TC is subject to approval by Plaintiffs; Microsoft is entitled only to prior notice of such hiring, and is obligated to pay for such hires. RPFJ § IV.B.8.h. Plaintiffs, not Microsoft, approve the TC's expenses. If Microsoft brings an objection to the Court concerning the TC's expenses, Microsoft bears the burden of proving that they are unreasonable, and has to pay all costs and attorneys' fees incurred by the TC by virtue of such challenge. RPFJ § IV.9.

C. Internal Compliance

393. Several commentors expressed their preference for the Litigating States' Proposal regarding internal compliance measures. The RPFJ and the Litigating States' Proposal both provide for a Compliance Officer ("CO") inside Microsoft who will be responsible for developing and supervising internal programs to ensure Microsoft's compliance with the antitrust laws and any final judgment. The Litigating States' proposal largely tracks the RPFJ with respect to the role that the CO is supposed to play to ensure compliance with the terms of the decree. For example, both proposals contemplate that the CO will supervise the review of Microsoft's activities during the term of the decree and will be responsible for ensuring that the relevant company representatives are aware of and have agreed to comply with the decree. Both proposals charge the CO with similar briefing and record-keeping duties.

394. There are, however, certain differences between the two proposals. The RPFJ requires the CO to maintain the procedures for submitting complaints on Microsoft's website, whereas the Litigating States propose that the Special Master handle this particular responsibility. Both approaches achieve the same result. The United States, however, believes that it is more efficient for the CO, who will be a Microsoft employee and therefore in a better position effectively to monitor the website, to handle this task.

395. The Litigating States' Proposal also includes certain provisions that are similar to provisions contained in the IFJ, but that the United States believes are either unnecessary or more effectively addressed in the manner proposed in the RPFJ. For example, the Litigating States' Proposal establishes a Compliance Committee ("Committee"), the only responsibility of which appears to be appointment and removal of the CO. The United States considered this approach but ultimately decided that an independent Technical Committee would be more effective than the Committee contemplated by the States.

396. The Litigating States also propose a confidential reporting mechanism that Microsoft employees can use to report potential violations of the decree or the antitrust laws. One comment suggests that the RPFJ should explicitly permit Microsoft employees to submit anonymous information to the TC.[368] The RPFJ provides the TC with the ability to receive and evaluate complaints, including anonymous complaints, and the United States believes that the scope of this authority is broad enough to protect Microsoft employees in appropriate cases.

397. Several comments note that the Litigating States' Proposal requires the CO to disseminate the decree (and related materials) to platform software developers and other Microsoft employees involved in working with OEMs, ISVs, IHVs and third-party licensees, whereas the RPFJ requires dissemination only to Microsoft's officers and directors.[369] See RPFJ § IV.C.3; Litigating States' Proposal § 17. Although a provision similar to the Litigating States' Proposal appeared in the IFJ, the United States ultimately decided that dissemination to officers and directors—who would then be responsible for disseminating additional instructions and advice to lower-level employees—would sufficiently ensure that Microsoft's policymakers, who are responsible for establishing the strategic and technical direction of the company, are on actual notice of the RPFJ's requirements. To require such procedures for all employees would be a significant additional burden, and is unlikely materially to improve either Microsoft's level of compliance or its corporate culpability in the event of violations. Although such education and certification requirements are not unique in antitrust decrees, many antitrust consent decrees entered into by the United States, including the 1994 Microsoft decree (No. 94–CV–1564), do not impose any continuing education

[358] CCIA 89–92; AOL 50–52; ProComp 75–77; Litan 54–55; RealNetworks 32; Palm 15–16; Red Hat 30–31; Nader/Love 5; Waldman 5; Sen. Kohl 5; TRAC 9–10; Drew 1; Young 3; Clabaugh 1; Schulken 2.

[359] One comment erroneously implies that permitting Microsoft to have counsel present when its employees are questioned by the TC somehow would allow Microsoft to thwart the discovery of violations. See Nader/Love 5. To the contrary, this right is also present in conjunction with informal interviews or "on the record" depositions by Plaintiffs; is a standard part of all such provisions in antitrust conseot decrees in recent years; protects against impermissible ex parte contacts; and protects Microsoft's legitimate privileges and basic principles of due process.

[360] As some comments point out, the TC cannot share confidential Microsoft information with third parties. E.g., Gifford 5; Gianndrea 6. This will prevent third parties from using the TC as a way to in essence improperly expand Microsoft's disclosure obligations under the RPFJ. For example, the TC will have access to all of Microsoft's source code, including source code for software products not directly at issue in the case, and will be able to evaluate all APIs, even those not necessarily related to middleware. If the TC was free to disclose such items to third parties, it would in essence permit the wholesale looting of Microsoft's intellectual property, thus changing the fundamental nature of the carefully limited, negotiated settlement that led to the submission of the RPFJ to the Court.

[361] CCIA 91; AOL 51; Litan 55; ProComp 76; Harris 10; Gifford 5; Alexander 4; Waldman 5; Clapes 19; Godshall 2; Hammett 1.

[362] As one commenter supporting the RPFJ noted in observing that the TC will "also have the authrity [sic] to resolve disputes about Microsoft's compliance," "this panel should not be used as a regulatory body." Economides 11.

[363] CCIA 90; Red Hat 30.

[364] Nader/Love 5; Litan 55; AOL 51; Alexander 4; Gifford 6; Young 3; Morrissey 2; Clabaugh 1; Cheetham 1; Spotswood 1; Akin 4; Godshall 1–2.

[365] Harris 9–10; Gifford 5.

[366] Nader/Love 5 (suggesting that the TC might be "playing golf" with Microsoft executives instead of investigating anticompetitive activities); Young 3.

[367] One comment (Gifford 6) questions whether, in the event of disagreement on the TC as to whether violations have occurred or been adequately cured, an individual member could submit dissenting views to Plaintiffs. The RPFJ does not require that the TC's reports be unanimous or reflect only the majority's views and conclusions. Further, there is no bar to an individual TC member communicating directly with Plaintiffs at any time.

[368] Palm 16.

[369] SBC 158; Clapes 18.

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and certification requirements on the defendant whatsoever.

398. In sum, although the Litigating States' proposal and the RPFJ may differ to some degree in the manner in which they define the scope of authority and responsibility given to the CO, both proposals achieve essentially the same result of vigorous internal compliance that will play a crucial role in the effectiveness of the proposed decrees. The United States believes, however, that the procedures for the TC set forth in the RPFJ, when viewed in conjunction with the responsibilities of the TC and the United States' existing enforcement authority, provide the most effective approach to enforcement.

D. Voluntary Dispute Resolution

399. The RPFJ sets up an even more informal, entirely optional, voluntary dispute resolution mechanism that permits third parties or Plaintiffs to first submit complaints to Microsoft's internal Compliance Officer, which Microsoft then can attempt to resolve within 30 days. RPFJ § IV.D.3. Some comments describe this provision as simply a delay mechanism.[370] In many instances, however, it will be in both Microsoft's and the third party's clear interest to resolve issues quickly and informally, without the expenditure of time, money, and management distraction attendant with more formal investigations and enforcement actions. This provision permits Microsoft and third parties to do so. Further, no person is required to first submit issues to Microsoft's internal Compliance Officer—the process is entirely optional. Any person concerned about delay or Microsoft's good faith may complain to the TC or directly to Plaintiffs.

E. Proposals for a Special Master

400. Some comments argue that the TC should be replaced with a special master similar to that proposed in New York.[371] Compare RPFJ § IV.B.8, with Litigating States' Proposal § 18. Specifically, the commentors suggest that this type of enforcement regime would provide both a more effective means of ensuring Microsoft's compliance with the final judgment and a vehicle for the speedy resolution of complaints from plaintiffs, state attorneys general, and independent third parties. We disagree on both counts.

401. To some degree, the RPFJ's TC and the States' special master would perform the same functions. Significantly, however, the authority the States propose giving the special master represents an unprecedented, radical, and unwarranted removal of prosecutorial discretion from the United States that would weaken the mechanisms for compliance with the decree.

402. Both the special master and the TC would have the power and authority to monitor Microsoft's compliance with its obligations under the final judgment and would have access to the information, personnel, systems, equipment, premises, and facilities necessary to fulfill their respective responsibilities. Each would be required to receive complaints from a Microsoft Antitrust Compliance Officer, third parties, and the plaintiffs; submit reports every six months regarding Microsoft's compliance with the final judgment; and report any non-compliance at any time. In addition, both the special master and TC would be paid by Microsoft and would be permitted to hire advisors, and such other staff as is necessary, at Microsoft's expense.

403. But the Litigating States' proposal also calls for the appointed special master, with the assistance of an "advisory committee," to act as prosecutor, witness, and judge. The scope of the special master's authority apparently extends without limitation to all "technical, economic, business" and other aspects of the decree. Litigating States' Proposal §§ 18.d, f. The special master would have unfettered discretion to receive complaints, decide whether to investigate the complaints, conduct the investigation, hold hearings, make factual findings, and issue proposed enforcement orders. Litigating States' Proposal § 18.f. Further, the special master would be bound to act within extremely tight deadlines, regardless of the complexity of the issue, the ability of the parties to marshal evidence within an extraordinarily short 14-day deadline, or the ability of the special master to evaluate the evidence and reach conclusions within a mandatory 15-day post-hearing deadline. Id. The special master's findings—and even its recommendations, apparently whether accepted by the Court or not—would be admissible in any action, and the special master expressly would be permitted to testify in any action, including apparently private litigation. Litigating States' Proposal § 18.h.

404. The United States is aware of no previous antitrust decree to which it has been a party that appoints a special master for general decree enforcement. Rather, in every case in which an action to enforce an antitrust final judgment was necessary, the United States has been permitted to exercise its traditional role as prosecutor.[372] Likewise, no court has successfully delegated its inherent powers of antitrust judgment enforcement as completely as proposed here.[373] The comments supporting this radical deviation from established practice cite no compelling reason for such a remarkable course of action.[374]

405. Some comments express concern about "delay" occasioned by the TC dispute resolution process, suggesting that the tight time deadlines and apparent binding authority of a special master would resolve matters more swiftly.[375] The TC and other supplemental dispute resolution processes, however, are not mandatory; they in no way constrain the ability of the United States and the State Plaintiffs from proceeding directly to court for interpretative and enforcement action when, in their exercise of prosecutorial discretion, it is appropriate to do so.

406. Moreover, the special master's findings are neither binding nor non-appealable. Thus, although both proposed decrees provide for a different review process for complaints of illegal behavior made against Microsoft, prompt and effective relief is no more certain under one than the other where the parties to the complaint are unwilling to reach a resolution in the absence of a court order. In light of this, the United States, while reserving for Plaintiffs the right to seek court intervention when necessary, believes the model for the resolution of complaints contained in the RPFJ best promotes prompt and effective relief.

F. Proposed Reporting Requirements

407. Some commentors argue that the RPFJ should include special transaction reporting requirements, as the Litigating States' Proposal does. In New York, the Litigating States propose to mandate government oversight of transactions related to the software industry and other related areas by requiring Microsoft to disclose such transactions to the plaintiffs, along with the type of transaction-related materials and information that is typically required in filings with the federal government under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"), where such transactions would not otherwise be subject to the disclosure requirements of the Act.[376]

408. The United States believes that such a provision is not an appropriate remedy for the violations found by the District Court and sustained by the Court of Appeals. Foremost among the United States' considerations when negotiating the RPFJ was the recognition that the remedy must be consistent with the liability findings of the case, none of which relates to the use of acquisitions by Microsoft as a tool to maintain its operating system monopoly.

409. Furthermore, but no less important, requiring the disclosure of transactions that fall below the HSR threshold would require the United States to engage in purely regulatory behavior without providing any substantial likelihood of assisting in the remedial goal of restoring competitive conditions to the market at issue. The United States strives to enact enforcement tools that are closely targeted to remedying the harm found and restoring competition. The imposition of additional reporting obligations on Microsoft—obligations greater than those deemed appropriate by Congress—would create burdens on Microsoft, the potential acquired parties, and the United States, without adding a significant likelihood of achieving any corresponding increase in the detection of anticompetitive transactions. Moreover, to the extent that the review process unnecessarily delays those transactions that pose no competitive concerns, the reporting obligation runs the risk of having a negative impact on consumers. The United States' standard investigative authority should sufficiently ensure that the United States is aware of—and able to seek more information about—transactions in which Microsoft is involved that might pose a competitive threat.

IX. Termination

410. A number of comments argue that the five-year term in Section V.A (or seven years when including the possible two-year extension under Section V.B) is too short for the RPFJ to remedy the competitive harm.[377]

411. The five-year period provides sufficient time for the conduct remedies contained in the RPFJ to take effect in this evolving market and to restore competitive conditions to the greatest extent possible.[378] As the Court of Appeals noted, the characteristics of the market in this case make it conducive to rapid change. *See Microsoft*, 253 F.3d at 79 ("So a company like Netscape founded in 1994 can be by the middle of 1995 clearly a potentially lethal competitor to Windows because it can supplant its position in the market because of the characteristics of these markets.") (quoting counsel for Microsoft); *id.* at 49 (six years is an "eternity" in this market). To be sure, there is no scientific way to determine the optimal term of a consent decree, which is the product of negotiation. The United States' position on the term of a decree is a matter of judgment informed by experience. Ultimately, the United States concluded that a five-year term (extendable by two years) is an appropriate and reasonable predictive judgment in this case.

412. Some comments take the position that the length of Microsoft's anticompetitive conduct should have determined the length of the decree,[379] but that would have provided an unreliable measuring stick for evaluating the amount of time necessary to restore competitive conditions. Other comments urge the United States merely to adopt the term length from prior recent cases, quoting the Antitrust Division Manual's general guidance that "staff should not negotiate any decree of less than 10 years" duration although decrees of longer than 10 years may be appropriate in certain circumstances."[380] *Antitrust Division Manual* at IV–54 (3d ed. Feb. 1998). But, as the Manual also states at the outset of its discussion of negotiating and entering consent decrees, "[t]he theory behind equitable relief is that it should be fashioned to fit the particular facts of the case at issue." Id. at IV–50. The longer a decree's duration, particularly if it no longer fits the facts of the case, the more the decree becomes regulatory in nature. The United States has imposed five-year terms in numerous past decrees,[381] including in industries, like this one, that are characterized by rapid technological change.[382] In this case, in an evolving market, the five-year term, particularly as augmented by a potential two-year extension, is long enough.[383] Because Microsoft will be eager to be released from the decree as soon as possible, the prospect of an extension should deter any violations and provide an extra incentive to comply.[384] Moreover, wholly apart from

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[370] RealNetworks 32.

[371] SBC 112–13; AOL 51–53; TRAC 9; Novell 30; RealNetworks 32; Red Hat 30–31; SBC 157.

[372] See, e.g., United States v. Smith Int'l, 2000–1 Trade Cas. (CCH) ¶ 72,763 (D.D.C. 2000) (criminal and civil contempt); United States v. Microsoft Corp., 147 F.3d 935 (D.C. Cir. 1998) ("Microsoft II") (civil contampt and preliminary injunction in enforcement of earlier Microsoft decree, inter alia, finding nonconsensual referral to special master to be abuse of discretion); United States v. NYNEX Corp., 814 F. Supp. 133 (D.D.C.) (criminal contempt of AT&T decree) rev'd, 8 F.3d 52 (D.C. Cir. 1993); United States v. Twentieth-Century Fox Film Corp. 1990–1 Trade Cas. (CCH) ¶ 69,060 (S.D.N.Y. 1990) (criminal contempt); United States v. Western Elec. Co., 1989–1 Trade Cas. (CCH) ¶ 68,421 (D.D.C. 1989) (civil enforcement consent order to resolve allegations of AT&T decree violations in lieu of contempt).

[373] Indeed, it is not clear from the Litigating States' Proposal whether the delegation to the special master of fact-finding powers its sufficiently circumscribed. Cf. Microsoft II, 147 F.3d at 953–56 (mandamus appropriate for court's overbroad special master referral violative of both U.S. Const. Art. III and Fed. R. Civ. P. 53(b)).

[374] Novell 30; Nader/Love 5; Sen. Kohl 5.

[375] RealNetworks 32; ProComp 76; Litan 55; AOL 50–53; AAI 40–41 (generally).

[376] Specifically, the Litigating States' Proposal requires Microsoft to provide 60-days written notice of direct or indirect acquisitions or investments by Microsoft or any of its subsidiaries, as well as notice of any exclusive intellectual property licenses granted to Microsoft or any of its subsidiaries. The requirement applies to transactions involving businesses of which Microsoft did not own 33% or more prior to December 1, 2001, and which fall into one of several categories related to computer software and equipment, computer systems design, telecommunications, and network industries. *See* Litigating States' Proposal § 20.

[377] CCC 26; CCIA 83; Giannandrea 6; Litigating States, Ex. A 18; Nader/Love; Relpromax 15; SBC 157; Thomas 2, 5.

[378] Some commentors agree with this proposed term. ACT 31; Economides 5–6.

[379] AAI 39; CCIA 83; Nader/Love 5; Pantin 28.

[380] CCIA 83 n.17; SBC 157; Young 3; Hammett 1.

[381] See, e.g. United States v. Delta Dental Plan of Ariz., Inc., 1995–1 Trade Cas. (CCH) ¶ 71,048, 1995 WL 454769 (D. Ariz. 1995) (health care); United States v. Topa Equities, "Public Comments and Response on Proposed Final Judgment," 60 FR 28,168, 28,170 (May 30, 1995) (noting that industry characteristics made quick entry likely), entered by, 1995–2 Trade Cas. (CCH) ¶ 71,061, 1995 WL 481368 (D. V.I. July 14, 1995); Oregon v. Mulkey, 1997–1 Trade Cas. (CCH) ¶ 71,859, 1997 WL, 599410 (D. Or. June 16, 1997) (commercial crab fishing); United States v. Motor Vehicle Mfr. Ass'n, 1982 Trade Cas. (CCH) ¶ 65,175, 1982 WL 1934 (C.D. Cal. Oct. 28, 1982) (modifying judgment in decree regarding development and installation of motor vehicle emission control devices).

[382] See, e.g., United States v. Tele-Communications, Inc., "Comment and Response on Proposed Final Judgment," 59 Fed. Reg. 39,783, 39,784 (Aug. 4, 1994) (recognizing that the telecommunications industry is "one that has experienced major changes in MTSD technologies that are ongoing"); United States v. Agri-Mark, Inc., "Competitive Impact Statements and Proposed Consent Judgments," 45 Fed. Reg. 79,186, 79,189 (Nov. 28, 1980) (arguing that "the dairy industry is constantly evolving as a result of technological changes").

[383] We note that the suggestion of an open-ended decree, subject to review after five years (see Gifford 9; Litan 73), or contingent upon Microsoft's market share decreasing (see Thomas 6), would create undesirable uncertainty in the market and would be contrary to the United States' mission to enforce the federal antitrust laws and to remedy specific violations thereof.

[384] Several comments argue that the two-year extension does not provide a meaningful check on Microsoft's behavior. AAI 40; Alexander 4; CCC 27; CFA 84; Gifford 9; Harris 11, 14; Litigating States, Ex. A 17; Litan 55; Maddux ¶ 17; ProComp 76; Schneider 1; RealNetworks 32; TRAC 11. Some argue that the United States should have included sanctions for violations similar to those contained in the Litigating States' proposed remedy. SBC 157. The Litigating States' proposed remedy spells out a series of possible penalties that may be imposed if Microsoft violates the decree, including source code licensing, additional conduct remedies, and civil penalties. See Litigating States' Proposal § 19. The Litigating States' proposal also provides that if Microsoft brings or threatens to bring a groundless claim of intellectual property infringement for the purpose of impairing interoperability of non-Microsoft products, Microsoft may be enjoined from asserting or enforcing any intellectual property

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seeking the two-year extension, the United States may seek civil and criminal contempt sanctions against Microsoft and its personnel if violations of the decree warrant that action.[385] See RPFJ § IV.A. Nothing in the RPFJ undermines or erodes the United States' existing and powerful contempt and enforcement authority.[386] Therefore, in the event that additional steps are necessary to secure compliance or to punish Microsoft for violations of the decree, the United States will not lack the necessary enforcement tools.

413. Some of the comments regarding this issue also express concern that certain key disclosure requirements may not be triggered until as late as one year into the term of the decree, which renders those provisions effective for only four years.[387] At least one commentor complains that Microsoft has relied upon this provision as the basis for not yet disclosing certain APIs.[388] We note foremost that Microsoft's obligations under the disclosure provisions are triggered from the date of submission of the RPFJ to the Court on November 6, 2001, not its entry by the Court. See RPFJ §§ III.D–E. The RPFJ will be in place for five years from the date of entry; as such, those commentors who claim that the disclosure provisions will be in effect only for four years have ignored the fact that the clock is already running for Microsoft to implement its disclosure obligations. Moreover, although certain disclosure provisions may not become effective until up to one year after the submission of the decree to the Court (see, e.g., RPFJ § III.H), absent the decree, Microsoft would be under no obligation to provide such information. Giving Microsoft a limited amount of time to implement its duties under these provisions is necessary to ensure that they are properly implemented, and it is the overall impact of the various decree provisions working together over the course of the five-year term that will restore competitive conditions in the market.

X. Comparing the RPFJ to the IFJ

A. Structural Relief vs. Conduct Restrictions

414. A number of commentors suggest that the United States should have pursued a restructuring of Microsoft into separate companies,[389] arguing that "divestiture remains the most effective remedy for Microsoft's wide-ranging unlawful practices."[390]

415. Shortly after remand, plaintiffs (the United States and all of the plaintiff States) informed Microsoft and the Court that, in light of the Court of Appeals' decision, they no longer would seek to break up Microsoft. Joint Status Report 2 (Sept. 20, 2001). Thus, even if the United States had litigated a remedy, it would not have sought structural relief, just as the Non-Settling States do not seek it in their litigated case.

416. This unanimity among the government parties not to seek divestiture reflects a sound view of the legal landscape created by the Court of Appeals, which viewed structural relief in this case skeptically, at best. The Court of Appeals questioned whether plaintiffs had "established a sufficient causal connection between Microsoft's anticompetitive conduct and its dominant position in the [operating system] market" to justify divestiture. *Microsoft*, 253 F.3d at 106. The Court of Appeals continued that "[a]bsent such causation, the antitrust defendant's unlawful behavior should be remedied by 'an injunction against continuation of that conduct.'" *Id.* (quoting *3 Antitrust Law* ¶ 650a, at 67). The Court of Appeals also suggested that the necessary causation might be lacking here, noting that even the District Court "expressly did not adopt the position that Microsoft would have lost its position in the [operating system] market but for its anticompetitive behavior." Id. at 107 (quoting *Findings of Fact*, ¶ 411) (emphasis added). Moreover, the Court of Appeals observed that divestiture by and large has been directed at "entities formed by mergers and acquisitions," and told the District Court to "reconsider" whether "divestiture is appropriate with respect to Microsoft, which argues that it is a unitary company." *Id.* at 105. And the Court of Appeals emphasized that, when fashioning a new remedy, the District Court should bear in mind that the Court of Appeals had "drastically" altered the basis of liability (*Id.* at 105, 107) and that the new remedy should reflect the "limited ground of liability" upheld on appeal. *Id.* at 107.

417. Second, if plaintiffs had pursued structural relief on remand, Microsoft would have been entitled to present evidence challenging a "wide range of plaintiffs" factual representations, including the feasibility of dividing Microsoft, the likely impact on consumers, and the effect of divestiture on shareholders." *Id.* at 101. This process not only would have been time consuming—both in the District Court and then, assuming the District Court actually ordered structural relief anew, again in the Court of Appeals—but also would have permitted Microsoft to introduce a plethora of new evidence. Foregoing a structural remedy permitted plaintiffs to speed along the remand proceedings and obtain relief (1) sooner and (2) that more likely would be affirmed on appeal.

B. Anti-Tying Provisions

418. The Court of Appeals vacated and remanded the District Court's judgment that Microsoft's contractual tying of its Internet Explorer web browser with its Windows operating system was per se unlawful under Section 1 of the Sherman Act. See U.S. Memorandum at 6–7, 64–66. Given the Court of Appeals' imposition of a more rigorous legal standard on this claim, including additional and difficult factual proof requirements, and given the plaintiffs' interest in achieving expeditious relief in this case, plaintiffs (including the Litigating States) made a judgment that they would not litigate the Section 1 tying claim on remand and so informed Microsoft on September 6, 2001. At that point, the tying claim disappeared from the case. And so, although two commentors[391] and the Litigating States urge that the Court impose a remedy directed toward banning contractual tying, there is no legal basis for a remedy on an issue where Microsoft was not found liable and where the plaintiffs had valid grounds for choosing not to pursue the claim.

C. Intentionally Disabling Rival Software

419. Some comments complain that the RPFJ does not "prohibit Microsoft from intentionally disabling or adversely affecting the operation of competing products."[392] They argue that such a restriction is necessary to prevent Microsoft from thwarting "the effectiveness of the disclosure requirements by altering the interfaces or other information on which non-Microsoft products rely."[393] And they correctly observe that the IFJ contained an interim provision expressly prohibiting Microsoft from "tak[ing] any action it knows will interfere with or degrade the performance of any non-Microsoft Middleware when interoperating with any Windows Operating System Product" without notifying the supplier ahead of time that it intends to take such action and any ways known by Microsoft to avoid or reduce the interference with the performance of the rival software.[394] One comment also criticizes the RPFJ for omitting a provision similar (or identical) to Provision 5.of the Litigating States' Proposal ("Notification of Knowing Interference with Performance").[395]

420. The United States, upon re-evaluation, chose not to include a provision modeled on Section 3.c of the IFJ because that provision could have been read to allow Microsoft to take steps to change its operating system in order to interfere with the ability of rival middleware to interoperate *as long as* Microsoft informed the third party of the change and what, if anything, could be done to fix the problem. This effectively would have given Microsoft a license to interfere with competing middleware as long as it simply notified the competing developer. In addition, this provision would have been difficult for the United States to enforce because of the constant changes that Microsoft makes to its operating system, which while potentially procompetitive, may have the unintentional consequence of affecting a competing product's interoperability. The result would have been unnecessary compliance disputes.

421. Provision 5 of the Litigating States' Proposal is similar to, though substantially broader than, Section 3.c of the IFJ. Provision 5 is overbroad and sweeps in conduct that should not reasonably be considered anticompetitive. Thus, for example, in the normal course of the development of its software, Microsoft may take actions that have the unintended, but nevertheless known, consequence of interfering with or degrading the performance or compatibility of some non-Microsoft middleware. The United States does not believe that such actions either should be prohibited or subject Microsoft to any additional notice or disclosure requirements. In addition, determining when Microsoft, as a corporate entity, has, or reasonably should have, such knowledge is exceedingly difficult to determine.

422. Moreover, the type of conduct at issue (e.g., actions undertaken for the express purpose of degrading the software of a developer of software that competes with Microsoft Platform Software or software that runs on software that competes with Microsoft Platform Software) would be prohibited by Section III.F of the RPFJ and/or likely would expose Microsoft to statutory, tort, or other legal sanctions apart from the RPFJ.

423. Instead of including a provision similar to Section § 3.c of the IFJ or Section 5 of the Litigating States' Proposal, the RPFJ restrictions and requirements ensure ease in third-party interoperability. Thus, the RPFJ requires Microsoft to disclose those APIs that its middleware products use to interoperate with the operating system. See RPFJ § III.D. This disclosure will make it harder for Microsoft to interfere with competing middleware. Further, to the extent that computer industry standards are implemented in communications protocols, Microsoft must license these protocols (see RPFJ § III.E), including any modifications or alterations to industry-standard protocols. When the industry standard is implemented between a Microsoft middleware product, such as its Java Virtual Machine, and the operating system, Microsoft must disclose that interface.

D. Agreements Limiting Competition

424. Section 3.h of the IFJ included a provision relating to agreements entered into by Microsoft that have the effect of limiting competition.[396] The United States initially proposed this provision in the IFJ based on Findings of Fact, ¶¶ 80–132, which described five different incidents in which Microsoft attempted to use agreements to limit support for competing middleware: (1) Microsoft's attempt to dissuade Netscape from developing a browser for Windows that could serve as an independent applications platform; (2) Microsoft's attempt to dissuade Intel from developing NSP (video) software for Windows 95; (3) Microsoft's attempt to dissuade Apple from developing multimedia QuickTime playback capability for Windows; (4) Microsoft's agreement with RealNetworks to have RealNetworks abandon the media playback business on the Windows desktop; and (5) Microsoft's offer of incentives to IBM to abandon promotion of OS/2 and Lotus Smartsuite.

425. The primary goal of Section 3.h was to "prohibit naked bargains to not compete" in the platform space.[397] The RPFJ seeks this same goal, but also expressly recognizes that under settled antitrust law, agreements that limit competition sometimes are properly ancillary to: (1) Pro-competitive joint development agreements; (2) discussions relating to the coordination of the development of complementary products; or (3) Microsoft contracting with third parties to develop technologies for use and distribution with its Windows operating system. Rather than using broad language that could be construed to prohibit all agreements that place limits on competition—and risk prohibiting even those agreements that have procompetitive justification—the United States therefore opted for a more targeted approach in the RPFJ. Sections III.F.2 and III.G of the RPFJ thus are designed to prevent Microsoft from entering into any contract relating to the Windows operating system that conditions consideration on an ISV not supporting software that competes with a Microsoft platform product, requiring any firm to promote exclusively a Microsoft Platform Software, or conditioning placement of an IAP or ICP on the Windows desktop on that firm refraining from supporting any product that competes with a Microsoft Middleware Product.[398]

XI. Other Proposed Remedies

A. Restrictions On Software Development Tools

426. At least two comments express concern that the RPFJ does not address Microsoft's alleged market power with respect to its line of software development tools. One commentor apparently seeks to compel Microsoft to grant the commentor access to a

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rights in related APIs, communications interfaces or technical information.

Contrary to these commentors' assertions, the possibility of the two-year extension of the RPFJ's requirements and prohibitions will help dissuade Microsoft from violating its terms and conditions. The United States believes that this potential sanction, which is supplemented by its traditional enforcement and contempt authority, will provide a significant incentive for Microsoft to comply.

[385] In addition, the RPFJ requires an independent, full-time, on-site compliance team that will monitor compliance with the decree, report violations, and attempt to resolve technical disputes under the disclosure provisions. This ongoing supervision provides added assurance that Microsoft will comply with the obligations and restrictions imposed by the decree and that competitive conditions will be restored to the greatest extent possible during the five-year term of the proposed RPFJ.

[386] Waldman 6–7.

[387] CCIA 83; Elhauge 13; Sen. Kohl 5; RealNetworks 29–30.

[388] RealNetworks 30.

[389] PFF 24–29; Litan 65–69; ProComp 77–78.

[390] ProComp 77.

[391] SIIA 22–25; AOL 24–31; Matthewson & Winter 25–26.

[392] SIIA 8, 64.

[393] Palm 14.

[394] IFJ § 3.c.

[395] SIIA 64–65; SBC 45–46.

[396] The Litigating States proposes a very-similar provision. Section 11 of the Litigating States' Proposal provides: "Microsoft shall not offer, agree to provide, or provide any consideration to any actual or potential platform software competitor in exchange for such competitor's agreeing to refrain or refraining in whole or in part from developing, licensing, promoting or distributing any Operating System Software Product or any Middleware produce competitive with any Windows Operating System Product or Microsoft Middleware Product."

[397] See Plaintiffs' Reply Memorandum in Support of Proposed Final Judgment at 64 (May 17, 2000).

[398] At least two comments express concern that the RPFJ does not contain language similar to that of Section 3.h of the IFJ. RealNetwork 30–31; SBC 98–99. For a complete discussion of how Sections III.F and III.G address this concern, see Sections V and VI, above.

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Microsoft partnership program that would more easily allow the commentor to incorporate development tools for its alternate platform with Microsoft's Visual Studio development environment. The comment alleges that Microsoft could apply discriminatory criteria, denying alternate platform vendors posing a potential threat to Microsoft's monopoly the ability to integrate their platform development tools with Microsoft's Visual Studio development suite, while allowing other vendors who do not pose a threat to have that access. According to the comment, without a software development environment common to the one used for the dominant Microsoft platform, ISVs and others would be much less likely to write software for alternate platforms, a circumstance that would help preserve Microsoft's applications barrier to entry.[399]

427. The second comment alleges that Microsoft's license restrictions require ISVs that write software applications that take advantage of the "redistributable components" found in Microsoft's Visual Studio development suite to use such "redistributable" code only on applications written for Microsoft operating system products. This comment argues that this restriction prohibits, as a practical matter, the porting of such applications to other platforms, thereby increasing the applications barrier to entry protecting Microsoft's operating system monopoly. This commentor seeks elimination of this license restriction from Microsoft's Visual Studio license.[400]

428. The relief sought by these commentors would go well beyond the scope of this case. The evidence that related to Microsoft's misuse of development tools involved specific deceptive practices regarding Microsoft's own development tools for the Java platform. Microsoft in essence failed adequately to disclose that its version of Java development tools contained various Windows-specific features that made it difficult to use or port Java programs written with Microsoft tools to other Java virtual machines or operating systems. *See* Microsoft, 253 F.3d at 76–77. There is nothing in either the allegations made in these comments or in the trial record to suggest that Microsoft's refusal to allow any competing platform vendor to integrate its development tools with Microsoft's Visual Studio development suite, or its license restrictions that prohibit ISVs from porting applications containing Microsoft redistributable code to other platforms, somehow will deceive ISVs into developing applications that run only on a Microsoft platform.

429. Further, the remedy suggested by these comments could have the effect of retarding innovation, to the detriment of consumers. Requiring Microsoft affirmatively to support allowing competing platform vendors to use Microsoft's Visual Studio development suite to host competing development tools or create applications for non-Microsoft platforms using Microsoft-developed redistributable code may create a significant disincentive for Microsoft to continue to invest heavily in further development of its tools suites or redistributable code, because that investment would redound at least in part to the benefit of Microsoft's competitors. Moreover, software tool developers would lose their incentive to innovate if they were permitted simply to free-ride on Microsoft. That result would not benefit either ISVs or, ultimately, their customers.

B. Java Must-Carry

430. In *New York*, the Litigating States propose to require Microsoft to include a free copy of Sun Microsystems' Java technology with all copies of its Windows Operating System Products and Internet Browser for a period of ten (10) years. See Litigating States' Proposal § 13. Several comments echo this type of "must-carry" proposal.[401] The commentors correctly note that the Court of Appeals upheld Microsoft's liability under Section 2 of the Sherman Act for exclusionary conduct aimed at extinguishing the "middleware threat" posed by Java and other middleware. *See Microsoft*, 253 F.3d at 75–77. The comments suggest that requiring Microsoft to distribute Non-Microsoft Middleware such as Java would not only deny Microsoft the fruits of its violation, but also would begin to erode the applications barrier to entry.

431. The United States considered a "must-carry" provision but rejected it for at least two reasons: (1) it is not the proper role of the government to bless one competitor over others, or one potential middleware platform over others, nor is the government in the best position to do so; and (2) mandatory distribution of a particular product likely would lead to a decrease in innovation and improvement in that product because its developer will have no incentive to make it better. The United States thus believes that the promotion of consumer choice and the product innovation that comes along with that choice, i.e., the promotion of competition and not specific competitors, is the goal of the antitrust laws and this antitrust remedy, while mandatory distribution of a particular product is the antithesis of this goal. Unlike the "must-carry" provision proposed by the Litigating States, the affirmative requirements imposed on Microsoft and the prohibitions against anticompetitive conduct contained in the RPFJ, and the subsequent freedom this structure promotes among ISVs, IHVs, IAPs, ICPs, and OEMs, will give all middleware technologies, including but not limited to Java, an equal opportunity to succeed in the market.

C. Porting Microsoft Office

432. Several comments suggest that Microsoft should be required to port or continue to port its Office Suite of software applications to competing operating systems, including but not limited to the Macintosh OS, as a means to erode the applications barrier to entry.[402] The Litigating States also have advanced this proposal,[403] but the proposal is unwarranted.

433. First, the United States did not allege that Microsoft monopolized or attempted to monopolize a software market in which Office competes, or that Microsoft engaged in anticompetitive conduct intended to encourage the use of Office rather than rival software applications that compete with Office.[404] Second, the imposition of such a porting requirement is substantially outside the scope of the underlying case.[405] Any remedy must be tailored to the violations found. *See Microsoft*, 253 F.3d at 104–07. The only claim sustained by the Court of Appeals was that Microsoft illegally maintained its PC operating system monopoly by taking specific acts that impeded middleware products that had the potential to erode the applications barrier to entry. The Court of Appeals did not find that Microsoft's unlawful actions created the barrier to entry. The United States crafted the RPFJ to restore the competitive conditions in the market that were impeded by Microsoft's actions, allowing

[399] Palm 11–12.

[400] Kegel 9–10.

[401] SIIA 49; Nader/Love 6.

[402] CCC 13–17; SIIA 49–51; ProComp 30; ProComp, Arrow 20–21; PFF 30–31; SBC 135; Hargraves 9; CCIA 38; CFA 11; Ltan 71–72.

[403] Litigating States' Proposal § 14, *see also* Litigating States, Ex. A 14–15.

[404] Indeed, the plaintiff States originally alleged that Microsoft engaged in unlawful monopolization, the violation of Section 2, with respect to Microsoft Office. However, the States dropped this claim prior to the trial.

[405] CompTIA 19 (porting Office would interfere with natural market forces); ACT 24 (porting Office requirement beyond the scope of the case).

consumers, software developers, OEMs, and others to make decisions based on the competitive merit of their options. In this way, the market will determine whether particular products will erode the applications barrier to entry. The commentors' and Litigating States' proposal, however, goes far beyond the violations found by imposing on the market a porting requirement for Office that substitutes for competition on the merits and preordains the market outcome.

D. Licensing of Predecessor Versions of Windows

434. A few commentors propose that the United States adopt the Litigating States' remedy proposal requiring Microsoft to continue to license and support immediately prior versions of the Windows Operating System Product.[406] Others object to this proposal, arguing that it would impose unnecessary costs on Microsoft that would be passed on to consumers, that it would fragment the Windows standard, and reduce incentives for Microsoft to innovate.[407] The Litigating States' Proposal mandates support and licensing of predecessor versions for five years after release of a major Windows Operating System Product on the same terms and conditions as previously offered. In addition, Microsoft must license and support Windows 98SE for three years after entry of the Final Judgment.

435. The Litigating States cite the District Court's findings on discriminatory and restrictive licensing as support for this provision. The provision purports to cure these practices by permitting customization of Windows (including earlier versions) to incorporate Microsoft or competitive middleware. Commentors assert that requiring licensing of predecessor versions would provide a lower-priced operating system alternative;[408] offer a version of Windows that has less Microsoft middleware and greater reliance on industry standards;[409] and provide greater incentives for Microsoft to innovate, because it would have to offer a substantially better operating system in order to sell new releases.[410] Commentors also argue that requiring Microsoft to license predecessor versions would permit customization of Windows (including earlier versions) to incorporate Microsoft or competitive middleware.

436. The United States believes that the RPFJ adequately addresses the restrictive and discriminatory licensing practices engaged in by Microsoft and found unlawful by the Court of Appeals. Thus, under the RPFJ, OEMs and end users are free to replace Microsoft middleware, choose between competing middleware, and, with minimal limitations, configure the desktop.[411] OEMs also are able to make decisions about distributing and supporting non-Microsoft software products without fear of reprisal.[412] A provision mandating the licensing of predecessor versions of Windows is therefore unnecessary and would do little or nothing to enhance these goals.

E. Industry Standards

437. Several commentors express concern that the RPFJ imposes no requirement on Microsoft to support industry standards for interoperability.[413] By industry standards, the commentors generally mean industry-wide technical specifications for communication between pieces of software. Such standards often are approved and supervised by international standards-setting organizations (e.g., the World Wide Web Consortium (W3C), which oversees HTML, the language used to create Web pages). In addition to these *de jure* standards, some specifications for interaction remain under the control of the firms that invent them, but obtain sufficiently wide usage to be considered standards in a less formal sense. An example of this less official category of standards is Sun's Java programming language.

438. Several commentors propose provisions that would constrain Microsoft's behavior with respect to industry standards. Generally, these commentors argue the importance of prohibiting Microsoft from corrupting or "polluting" open standards by extending or altering them with proprietary code to cause them to interoperate better, or solely, with Microsoft software than with rival software.[414] The commentors correctly point out that the Court of Appeals found that Microsoft undermined the threat posed by Sun's Java middleware by deceiving ISVs into believing that software written with Microsoft's Java developer tools would run on platforms other than Windows (Microsoft, 253 F.3d at 75–77), and they argue that Microsoft continues to adopt but subvert public standards by inserting proprietary elements into the implementation of the Kerberos standard that is built into Microsoft products.

439. One commentor proposes that Microsoft be enjoined from modifying, altering, sub-setting, or super-setting any industry-standard communications interface or security protocol in any way that is not approved by an international industry standards-setting body.[415] The United States believes this proposal is likely to be ineffective at promoting interoperability and unlikely to benefit consumers. It would not prevent Microsoft from inserting proprietary elements into industry standards that are designed to allow such extensions (for instance, the Kerberos security standard).[416] Nor would it constrain in any way Microsoft's actions with respect to industry standards like Java that are not under the supervision of an international standards body. It would simply deter Microsoft from introducing potentially beneficial extensions to industry standards, since Microsoft would have to work through the approval process at a standards body before it could introduce its innovation.

440. The Litigating States propose a range of provisions to encourage Microsoft to adhere to industry standards.[417] Litigating States Provision 16.a ("Compliance with Standards") would require Microsoft to comply with any standard that has been approved by or submitted to "any organization or group that sets standards," if Microsoft publicly claims that it is compliant with the standard. If Microsoft extends or modifies that standard, it must continue also to implement the standard in its unextended or unmodified version, until either Microsoft disclaims that it implements the standard or the standard goes out of force at the industry body. Microsoft may not require third parties to use or adopt Microsoft's version of the standard and must support the nonproprietary industry version in its operating systems. The United States considered a provision substantially similar to Litigating States Provision

[406] PFF 30; SBC 143; CCIA, Stiglitz & Furman 40–41.

[407] ACT 29; CompTIA 16.

[408] PFF 30; SBC 143.

[409] SBC 143.

[410] CCIA, Stiglitz & Furman 40–41.

[411] *See* discussion of RPFJ § III.C at Section IV(D). above.

[412] *See* discussion of Section III.A (Section IV(B), above); *see also* Sections III.D. and VI.U, which require Microsoft to provide actual and potential competitors with full access to the same APIs and related information as Microsoft middleware has to interoperate with the current, and future Windows operating systems, offering the potential of a seamless fit and greater possibility for incorporation of competing middleware.

[413] SIIA 61; Novell 5; Sun 23–24.

[414] AAI 25; Novell 25; SBC 146; ProComp 35, 74.

[415] SIIA 61–62.

[416] SIIA 61–62 (Kerberos); Johnson 5 (Kerberos).

[417] Litigating States' Proposal § 16; ProComp 35 (referring to Litigating States' Proposal).

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16.a for the RPFJ, but ultimately decided it was likely to be both unwieldy and ineffective.[418]

441. This type of standards requirement likely would prove unwieldy because of the complexity of the institutions, technologies, and behavior being regulated here. Which among the multitude of existing standards-setting bodies, or bodies that might be established after, and possibly because of, this decree, would be considered legitimate under Provision 16.a? (What if Microsoft sponsors a new standards body, for instance?) Is it even technically possible or desirable, in all covered circumstances, for Microsoft to meet the requirements of the provision by supporting the industry standard of a technology at the same time it supports its own extended version?

442. The Litigating States' provision also is likely to be ineffective. It substantially regulates Microsoft's speech rather than its actions. If Microsoft publicly claims to be supporting its own implementation of a standard (e.g., "Microsoft Technology A") and does not publicly claim to be supporting the standard itself (e.g., "Technology A"), it would be in full compliance with the provision and yet would not have any obligation to adhere to the "Technology A" standard. It is difficult to see a provision that operates in this manner as imposing a competitively meaningful constraint. Moreover, to the extent that the provision regulates actions, it appears to be internally contradictory. It requires Microsoft, as a condition of being permitted to introduce a proprietary version of the standard, to implement the industry version until either Microsoft disclaims support for it or until the standard is rescinded by the governing body. But it also explicitly requires Microsoft's operating systems to continue to support the industry standard, apparently without time limit, as a condition of being permitted to introduce Microsoft's own proprietary version.

443. Litigating States' Provision 16.b ("Compliance with De Facto Standards") modifies Provision 16.a to permit Microsoft, upon notification and consent of the States' enforcement authorities, to meet its compliance obligations by implementing a variant of the standard "to the extent that industry custom and practice recognizes compliance with the Standard to include variations from the formal definition." The need for this provision highlights the unwieldiness of Provision 16.a: what is truly "standard" in the industry is not necessarily what a standards body formally has adopted. Further, and fatally for those who justify the Litigating States' Provision 16 as a response to Microsoft's illegal Java deception, no part of that section actually would have prohibited Microsoft from pursuing its illegal acts.[419] Throughout most of its history, Sun's Java has neither been a technical standard approved by, submitted to, or under consideration by a standard-setting body (the criterion for protection under Provision 16.a) nor a "variation" from such a standard (the criterion under Provision 16.b), but rather a widely-used proprietary technology under the control of its owner, Sun.

F. Protection for Large End Users

444. A few commentors lament the lack of special protection in the RPFJ for large end user purchasers of Microsoft products.[420] These commentors express several concerns regarding large corporations, universities, or federal, state, or local government purchasers: (1) Microsoft may retaliate against end users purchasing competing middleware;[421] (2) Microsoft continues to charge license fees to these purchasers for all machines capable of running a Microsoft operating system (a "per processor fee"), thereby removing incentives to purchase competing operating systems;[422] (3) Microsoft imposes other coercive licenses directed at end users;[423] and (4) Microsoft, without some restraint, can undo all of the RPFJ provisions applying to OEMs upon the first license renewal with an end user.[424]

445. The commentors' proposed relief is outside the scope of the underlying case. The United States did not allege, or prove, that Microsoft engaged in anticompetitive conduct involving its large end user customers. Although the United States proved that Microsoft illegally maintained its PC operating system monopoly through actions directed at eliminating the middleware threat, it presented no evidence—and the District Court made no finding—that purchasers large and sophisticated enough to deal directly with Microsoft were in need of special protection.

446. Nevertheless, certain provisions of the RPFJ do apply to end users. Pursuant to Section III.H.1–2, end users are able (1) to configure the desktop to enable or remove access to each Microsoft Middleware Product as described, and (2) to designate a Non-Microsoft Middleware Product to be invoked in place of a Microsoft Middleware Product as described. And, pursuant to Section III.H.3, Microsoft cannot alter those configurations without permission from the end user.

G. Non-Retaliation for Participation in Litigation

447. At least one comment[425] has advocated inclusion of the Litigating States' proposal specifically to prohibit retaliation by Microsoft against those who participated in litigation in either of the now de-consolidated actions.[426] Such a provision is unnecessary because the Court retains ample authority, regardless of whether such a provision is included in the RPFJ, to sanction such conduct if and when it arises.

448. Thus, should retaliation of the sort described by the comment arise, the United States may petition the Court to exercise its continuing jurisdiction to issue "further orders as may be necessary or appropriate to carry out or construe this Final Judgment . . . to modify . . . any of its provisions, to enforce compliance, and to punish violations thereof." RPFJ § VII. Under both its inherent powers and Section VII of the RPFJ, the Court could take whatever action is necessary to prevent, halt, and remedy any such retaliation against participants in this litigation. Further, depending on the facts of any such retaliation, Microsoft also could face criminal liability under a number of statutes. *See, e.g.*, 18 U.S.C. 1503 ("whoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due administration of justice . . ."); 18 U.S.C. 1512 (witness tampering, generally). A specific anti-retaliation provision of the sort proposed here is therefore unnecessary and unwarranted.

XII. Miscellaneous Comments

A. Microsoft's ".Net" Initiative

449. Some comments[427] argue that the RPFJ fails effectively to constrain Microsoft's diverse set of announced and emerging web services initiatives, grouped generally under the ".Net" trademark.[428] The comments claim that Microsoft, having vanquished the nascent cross-platform distributed computing threat posed by the Java architecture, is now implementing its own closed system that will require Microsoft operating system products on both the server side of the network and on the client side (i.e., Windows Operating System Products). Under such a scenario, argue the commentors, neither server nor client software competitors of Microsoft will be able to interoperate with the .Net technologies. The suggested remedies for this situation, according to the comments, range from mandatory transparency of all Microsoft APIs, Communications Interfaces, and other technical information, regardless of whether the disclosures touch on either Microsoft's desktop operating system monopoly or middleware, to mandatory porting of the basic .Net architecture (the ".Net Framework") to several alternate server and client platforms. These criticisms are not well taken.

450. First, whether .Net is, in fact, likely to have an anticompetitive effect, or what its competitive significance might be in general, is not yet clear. The very concept of "web services" is still evolving as new ways to use networking and the Internet are discovered. Many parts of .Net, and even some of the detailed plans for .Net, have not yet been released, and therefore cannot fully be evaluated. Similarly, announced (but not yet released) alternate web services frameworks, such as the multi-vendor "Liberty Alliance"[429] founded by Sun Microsystems, are not fully developed and do not have actual products in the market. It would be difficult, if not impossible, to draw conclusions about the competitive impact of such pre-nascent initiatives that have sufficient reliability to warrant additional remedies or restrictions.

451. Second, the remedies proposed by the commentors, including mandatory transparency of Microsoft technical information, regardless to whether such disclosures relate to middleware or Microsoft's operating system, reach beyond the scope of the case as sustained by the Court of Appeals. Any remedy must focus on addressing the specific conduct by Microsoft to impede the nascent middleware threat to its operating system.

452. Third, to the extent .Net might implicate middleware or Microsoft's platform monopoly as developed in this case, it can, of course, fully be evaluated within the context of the RPFJ and this case. Thus, availability of Communications Protocols as provided for in Section III.E of the RPFJ provides a continuing obligation for Microsoft to make available, through licensing on reasonable and non-discriminatory terms, the Communications Protocols utilized by the .Net Framework to the extent these Communications Protocols are used by a Microsoft server operating system product to interoperate with the Windows Operating System Product. *See* discussion at Section III(B)(1)(d)–(2)(e), above. The practical effect of this provision is that, if Microsoft puts client/server interfaces for the .Net framework in its monopoly Windows Operating System Product, these interfaces will be available for use by third parties. Indeed, the United States understands that various Microsoft technologies, including the Active Directory services model, the Kerberos security model, and the Common Language Runtime analog to Java virtual machines, are core components of the .Net Framework that the comments complain about and are already covered by the RPFJ. *See* CIS at 37–39.

B. Course of Conduct

453. A commentor criticizes the United States for taking the position that the Court of Appeals failed to uphold Microsoft's course of conduct as an independent violation of Sherman Act § 2.[430] Yet, it is difficult to see how the Court of Appeals could have made its position any clearer:

> the District Court did not point to any series of acts, each of which harms competition only slightly but the cumulative effect of which is significant enough to form an independent basis for liability. The "course of conduct" section of the District Court's opinion contains, with one exception, only broad, summarizing conclusions. See, e.g., Conclusions of Law, at 44 ("Microsoft placed an oppressive thumb on the scale of competitive fortune. . . ."). The only specific acts to which the court refers are Microsoft's expenditures in promoting its browser, see id. ("Microsoft has expended wealth and foresworn opportunities to realize more. . . ."), which we have explained are not in themselves unlawful. Because the District Court identifies no other specific acts as a basis for "course of conduct" liability, we reverse its conclusion that Microsoft's course of conduct separately violates § 2 of the Sherman Act.

Microsoft, 253 F.3d at 78.

454. The comment disagrees that the net effect of the Court of Appeals's substantial narrowing of the findings of liability, including its rejection of the District Court's "course of conduct" finding, was to curtail the available remedies. Again, the Court of Appeals made clear that "[w]hile we do not undertake to dictate to the District Court the precise form that relief should take on remand, we note again that it should be tailored to fit the wrong creating the occasion for the remedy." Id. at 107; see also id. ("we have drastically altered the scope of Microsoft's liability, and it is for the District Court in the first instance to determine the propriety of a specific remedy for the limited ground of liability which we have upheld"). In light of the Court of Appeals' decision, the wrong creating the occasion for remedy—the limited ground of liability upheld—is Microsoft's specific practices, and not any alleged course of conduct undertaken to protect the operating system monopoly.

C. Restoring Java/Netscape Threats

455. Several commentors[431] suggest that the RPFJ does nothing to restore Netscape Navigator and Java as competitive threats to Microsoft. This criticism ignores what the RPFJ does do: it restores the ability of middleware, including browsers like Navigator and other middleware like Java, to threaten the applications barrier to entry protecting Microsoft's operating system monopoly. The RPFJ not only enjoins Microsoft from continuing the anticompetitive conduct that it directed against Netscape and Java but also, as detailed elsewhere, imposes affirmative obligations on Microsoft that will give middleware providers the opportunity to develop as threats to Microsoft's operating system monopoly. The United States believes that this restoration of the opportunity for middleware of all types, present and future—and not limited to Web browsers and Java—to erode Microsoft's operating system monopoly is the appropriate goal for a remedy in this case.

456. As an initial matter, some comments presuppose that, had Microsoft not engaged in its unlawful conduct, both Netscape and Java would have succeeded in eroding Microsoft's operating system monopoly. In fact, however, even the District Court concluded that "there is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition" in the PC operating system market. *Findings of Fact*, ¶ 411; see also id., ¶ 69 (threat posed by Netscape was only a "potential" threat); id., ¶ 77 (Netscape and Java had "a long way to go before they might imperil the

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[418] CIS at 62.

[419] Litigating States, Ex. A 15.

[420] CCIA 59 n.12; Kegel 27–28; KDE 13; Novell 26–29; CFA 90.

[421] KDE 13.

[422] Kegel 27–28.

[423] Novell 26–29.

[424] CCIA 59 n.12.

[425] SBC 99.

[426] Litigating States' Proposal § 9.

[427] SIIA 41–44; CFA 55–65; Palm 7–8; Catavault 3–11; KDE 9–10.

[428] *See* generally *[http://www.microsoft.com/net/]*; Huwalt 3.

[429] *See* generally *http://www.sun.com/software/sunone/liberty/*.

[430] CCIA 39–41.

[431] ProComp 26–29; ProComp, Arrow ¶¶4, 32–34; AOL 45; Elhauge 4, 10; SIIA 44–51; Litan 58–59; Henderson 4, 10; Litigating States, Ex. A 13–14; CCIA 10, 35–36, 42–44; Gifford 8; Pantin 37.

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applications barrier to entry"). And similarly, the Court of Appeals did not adopt the view that Microsoft "would have lost its position in the OS market but for its anticompetitive behavior." *Microsoft*, 253 F.3d at 107. Thus, the emphasis that these comments place on the restoration of Java and Netscape as "threats" is misplaced.

457. The United States believes that the relief contained in the RPFJ, which applies to a broad range of middleware functionality and not just to Web browsers and Java, achieves the overriding goal that these comments also desire: the restoration of competitive conditions so that consumers have choices and collectively can determine competitors' respective fates. The relief will allow for Navigator, Java, and other current middleware products to fulfill whatever capability they have as threats to Microsoft's operating system monopoly and for other new and as-of-yet unanticipated forms of middleware to evolve as potential threats to Microsoft's monopoly.

D. Microsoft's Responses to the Litigating States' RFAs

1. Meeting of the Minds

458. Two commentors say that Microsoft's responses to Requests for Admission (RFAs) in New York show that the United States and Microsoft failed to reach a meeting of the minds on the essential terms of the RPFJ.:[432] Because these commentors mischaracterize Microsoft's responses, however, they mistakenly see disagreement where agreement exists.

459. The Litigating States in *New York* propounded 51 RFAs, pursuant to Fed. R. Civ. P. 36(a), some of which sought Microsoft's interpretation of the terms of the RPFJ and cited or quoted (and on occasion mis-quoted) the CIS.[433] In response, Microsoft objected to these and other RFAs on the basis that they call for a legal conclusion. The mere fact that Microsoft asserted legal objections to this discovery carries no significance in this case, because it does not constitute evidence of anything at all about the meeting of the minds of the parties to the settlement.

460. In response to a limited number of RFAs, however, Microsoft did deny that it shares the opinion of the United States as set forth in the CIS.[434] But none of the selected portions of the CIS quoted addresses an interpretation of the terms of the RPFJ. Rather, the cited portions of the CIS contain expressions of the United States' views regarding the competitive significance of the RPFJ: "the key to the proper remedy in this case" (RFA No. 2); that OEMs are a crucial distribution channel (RFA No. 3); that it is critical that OEMs are free to distribute and promote non-Microsoft middleware (RFA No. 4); that Windows license royalties and terms are complex and easy for Microsoft to use to affect OEMs' behavior (RFA No. 10), and that the competitive significance of middleware is highly dependent on certain factors (RFA No. 32). Microsoft's disagreement with the United States' opinion in these matters has no bearing on the parties' interpretation of essential terms of the RPFJ.

2. Objections to Language in the CIS As "Vague and Ambiguous"

461. In response to other RFAs, Microsoft identifies certain terms (all used by the United States in the CIS) as "vague and ambiguous" and objects to the RFAs on that basis.[435] Microsoft also identifies as "vague and ambiguous" a sentence in the RFA referring to Section III.J.1.a (RFA No. 45 (quoting terms from CIS at 39 (discussing RPFJ Section III.J.1.a))).

462. In response to concerns raised by commentors regarding the interpretation of Section III.E, the United States and Microsoft have agreed to the modification of the language of Section III.E described in Section VII(B) above. For a discussion of the terms of Section III.J, see Section VII(D) above.

E. "Open Source" Community

463. Commentors raise a variety of concerns about how the RPFJ may affect the "open source" community. Generally, "open source" software is distinguished from traditional, proprietary software by who writes it, how (or whether) they are compensated, and the terms under which it is licensed to users and other developers. Open source software often is written by collections of individuals not affiliated within the framework of a firm, who may or may not be compensated for their work, and generally is distributed under licenses that grant greater rights to create and distribute derivative works than is typical of licenses for traditional, proprietary software.[436] The Linux operating system, for example, is open source software.

464. Several commentors express concern that Microsoft somehow may claim that an open source developer, or a network of open source developers, or a marketer of open source software, should not be considered to meet Section VI.J's definition of an "ISV" and so should not receive the benefits and protections given to ISVs by the RPFJ.[437] The United States believes this concern is groundless. *See* the discussion in Section III(A), above.

465. A number of commentors are concerned that Microsoft will deny disclosure of APIs and Documentation (as required by Section III.D), or licensing of Communications Protocols (as required by Section III.E), to open source developers on the grounds that the developers do not meet the "reasonable business need" or "authenticity and viability of [ ] business" criteria of Section III.J.2.[438] The United States believes that the requirements in Section III.J.2 are no broader than is necessary to prevent misuse or misappropriation of intellectual property. *See* the discussion at Section VII(D), above.

466. One commentor in the open source community contends that the RPFJ fails to restore competitive conditions because the RPFJ does not prohibit Microsoft from bringing infringement suits to protect its extensive patent portfolio. The commentor recommends requiring Microsoft to license all of its intellectual property that would otherwise potentially be infringed by products that threaten Microsoft's operating system monopoly, including competing operating systems, middleware, or other software and hardware.[439] The United States believes that preventing Microsoft from protecting its intellectual property is unwarranted and inappropriate. Section III.I requires Microsoft to license to OEMs, ISVs, IAPs, and others "any intellectual property rights" necessary for those entities to exercise any of their options or alternatives under the RPFJ. But allowing rivals otherwise to expropriate Microsoft's intellectual property in order to compete with Microsoft would deter Microsoft from investing in innovation and simultaneously deter rival developers from inventing different, new, potentially better technologies to build into their own products. Nothing in this "solution" would benefit consumers.

467. In a similar but less extreme vein, another commentor suggests that the RPFJ should require Microsoft to list which software patents protect

[432] Sun 7; Litigating Sates, Ex. C at 1.

[433] *See, e.g.*, Litigating States, Ex. C at RFAs 2, 5, 10, 12–13, 23, 28–35, 39–45.

[434] RFAs 2–4, 10, 32.

[435] Litigating States, Ex. C at RFAs 34, 39, 40, 41, 42, 43, 45.

[436] Red Hat 3–4.

[437] Red Hat 24; AAI 37–38; CCIA 77–82; Waldman 5.

[438] Red Hat 28–29; Henderson 7–8; Alexander 3–4; Carroll 2–3; Harris 9; Moglen 3, 5; Waldman 6; Litan 52; Pantin 24–25; AAI 23; Waldman 6.

[439] Red Hat 7–21.

Windows APIs, so that vendors of other operating systems can avoid infringing Microsoft's patents accidentally and reassure users that those operating systems are not infringing.[440] While avoiding infringement is a laudable goal, it is not the purpose of the RPFJ to reduce the legal and technical efforts necessary for competitors to build products that they may lawfully market.

468. Several commentors complain that the RPFJ does not eliminate license terms that prohibit open source and other developers from finding ways to make Windows applications run on non-Windows operating systems. The issues these commentors raise appear to concern both terms in the licenses for Microsoft Office and terms in the licenses for Windows APIs and tools.[441] The Litigating States' Provision 6.b addresses the same point; it would prohibit agreements that "restrict Microsoft redistributable code from use with non-Microsoft Platform Software." Such provisions are far outside the scope of this case, and in any event are unlikely to benefit consumers. If Microsoft could not prevent people from expropriating and modifying its applications or middleware products—that is, its "redistributable code"—to turn them into complements to non-Microsoft operating systems, Microsoft would have a significantly reduced incentive to invest in developing and marketing attractive applications and middleware for Windows users.

469. One comment contends that Microsoft should be prohibited from retaliating against an OEM that ships computers loaded with only a non-Microsoft operating system, rather than (as in Section III.A.2) prohibited only from retaliating against an OEM that ships a computer with Microsoft and non-Microsoft operating systems or one that ships a computer that will "dual-boot" with more than one operating system.[442] Neither the District Court nor the Court of Appeals held Microsoft liable because it prevented OEMs from producing PCs with non-Microsoft operating systems; thus, there is no basis for redressing such conduct. The absence of such a provision, however, is not problematic. If the OEM ships no machines with Windows, then presumably it ships no machines with Windows applications, either; thus, Microsoft would have few ways to "retaliate" against that OEM for its decision not to ship Windows.

F. "Reasonableness" Standard

470. A handful of comments express concerns about the use of a "reasonableness" standard in various provisions of the RPFJ.[443] The commentors assert that use of a reasonableness standard for measuring certain of Microsoft's conduct offers little practical guidance, and injects ambiguity into the decree, rendering it virtually unenforceable.[444] Commentors also assert that the adoption of a reasonableness standard turns the RPFJ into nothing more than an admonition to Microsoft to comply with the law.[445]

471. Contrary to these comments' assertions, measuring a defendant's conduct against a reasonableness standard does not render the RPFJ impermissibly vague. Inclusion of the term "reasonable" is common in antitrust decrees. *See, e.g., United States* v. *Enova Corp.*, 107 F. Supp.2d 10, 21, 27 (D.D.C. 2000) (defendant required to use "reasonable best efforts" to obtain approvals and "all reasonable efforts" to maintain assets in a decree entered by the Court); *United States* v. *3D Sys. Corp.*, 66 FR 49200–01 (D.D.C. 2001) (defendant to provide "reasonable access to personnel," "reasonable efforts" by trustee to sell assets); *United States* v. *Premdor*, Inc., 66 FR 45326–01 (D.D.C. 2001) (defendant to use "reasonable efforts" to maintain assets, provide "reasonable levels of transitional support," provide "reasonable access" to personnel, trustee to receive "reasonable compensation"); *United States* v. *Electronic Payment Servs., Inc.*, 1994–2 Trade Cas. (CCH) ¶ 70,796, 1994 WL 730003 at *4 (D. Del. 1994) (third-party processor is qualified if it meets "reasonable and nondiscriminatory technical, financial and operating criteria"; defendant may charge "reasonable set-up fees"); *United States* v. *Pilkington PLC*, 1994–2 Trade Cas. (CCH) ¶ 70,842 1994, WL 750645 at * 4 (D. Ariz. 1994) (permitting charges of "commercially reasonable and non-discriminatory Fees for the use or sublicensing of Float Technology . . .").[446]

472. Certain commentors urge that the RPFJ reject the reasonableness standard and, instead, adopt bright-line prohibitions against Microsoft engaging in various activities.[447] Such absolute prohibitions might benefit Microsoft's rivals, but they also would reduce choice and thus not be in the interest of competition and consumers overall.[448] Moreover, bright-line rules tend to require elaborate definitions that can render an agreement unduly complex. The inclusion of the reasonableness standard represents a recognition of the necessity for terms to be sufficiently flexible to allow for a multitude of future possibilities without requiring excess verbiage.[449]

473. Commentors are also incorrect in their insistence that including a reasonableness standard simply engrafts the rule of reason into the RPFJ,[450] turning it into an instruction to Microsoft to comply with the law—effectively to "go forth and sin no more." In fact, the RPFJ goes beyond eliminating illegal practices and preventing recurrence of the same or similar practices in the future. The RPFJ also takes affirmative steps to restore the competitive threat that middleware posed prior to Microsoft's unlawful undertakings. So, for example, Microsoft is required to disclose and license its proprietary technology—although the Court of Appeals did not sustain any allegation that a failure to do so constituted monopoly maintenance.

[440] Kegel 8–9.

[441] Kegel 11; Koppe 1; Tilwalli 1; Kasten 5; Carroll 3; Johnson 2.

[442] Kegel 9; CompTIA 5 (pro-settlement); Pantin 5–6.

[443] See CCIA 41–42; AOL 1, Klain 8–9; Litan 47–49; WLF 6; Waldman 4; ProComp 74–77; Sun 36–37. The RPFJ measures Microsfoft's conduct against this standard in, for example, Section III.B.2 ("reasonable volume discounts"), Section III.C.5 ("reasonable technical specifications"), Section III.E ("reasonable and non-discriminatory terms"), Section III.F.2 ("limitations reasonably necessary to and of reasonable scope and duration"), and Section III.G ("reasonable period of time").

[444] CCIA 41–42; ProComp 74–77; Litan 49; AOL, Klain 8–9.

[445] AOL 1; Litan 47.

[446] Thus, for example, the defendant in United States v. First Multiple Listing Service, Inc., 1998 WL 417, at *1–*2 (N.D. Ga. 1984), was enjoined from refusing to provide services to any person who agrees to pay "reasonable set-up costs," a "reasonable security deposit," and "reasonable and non-discriminatory fees . . . reflecting reasonable expenses . . . provid[ing] for a reasonable minimum annual fee . . . [and] reflecting a reasonable approximation of the cost[s]." The final judgment there further provided that "[n]othing in this final judgment shall prohibit Defendant from (i) imposing delivery or service charges . . . reflecting reasonable approximations of actual costs, including reasonable deposits for keys or books . . .." Id. at *2.

[447] See, e.g., Litan 47–49; CCIA 41–42.

[448] See, e.g., Response to Comments on Sections III.B.2, III.F.2, III.G.2.

[449] An order need not list the components of a term which is understood by common parlance, particularly when considering the persons to whom the order is directed. *United States* v. *PATCO*, 678 F.2d 1, 3 (1st Cir. 1982), citing *Village of Hoffman Estates* v. *Flipside*, 455 U.S. 489, 495 n.7 (1982) ("[t]he rationale is evident: to sustain such a challenge, the complainant must prove that the enactment is vague 'not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all'" (quoting *Coates* v. *City of Cincinnati*, 402 U.S. 611, 614 (1971)).

[450] Litan 47–49.

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Similarly, the RPFJ ensures access to, and use of, Microsoft's proprietary server-related protocols, even though the word "server" does not appear in the complaint and appears only in passing in the *Findings of Fact*. An instruction simply to obey the law would have taken the form of a decree saying only that Microsoft is enjoined "from future violations of the antitrust laws," in stark contrast to the detailed and specific prohibitions in the RPFJ.

474. Finally, commentors suggest that the inclusion of a reasonableness standard will require a court to interpret the RPFJ, with an attendant delay in enforcement. That a decree may require interpretation is not and cannot be a basis for rejection; otherwise, no decree would remain.

G. Computers for Schools

475. Many comments refer to or discuss the proposed settlement in the private, class actions against Microsoft, whereby Microsoft would donate $1 billion worth of computer hardware and software to needy schools. *See In re Microsoft Corp. Antitrust Litig.*, 2002 WL 99709 (D. Md. Jan. 11, 2002) (proposed settlement in MDL No. 1332).

476. There is no relationship between the settlement of the United States' antitrust lawsuit against Microsoft and the settlement of the private, class action against the company. Because these comments relate to the settlement of an entirely different proceeding, in which the United States played no role, we do not believe these comments can be appropriately construed as comments on the RPFJ and therefore do not respond to them.

477. To the extent that comments mean that the RPFJ is deficient because it does not require Microsoft to make charitable donations, that cannot be a legal basis for rejecting a consent decree. Requiring charitable donations is not a proper remedy in a government civil antitrust case.

Respectfully submitted,
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Philip S. Beck,
Special Trial Counsel.

February 27, 2002.

Appendix A

Comments Cited in the Response

1. Allen Akin ("Akin")—MTC–00002904
2. Mark Alexander ("Alexander")—MTC–00002572
3. America Online/Time Warner ("AOL")—MTC–00030615
4. The American Antitrust Institute ("AAI")—MTC–0030600
5. Declaration of Kenneth J. Arrow, submitted as Attachment to ProComp ("ProComp, Arrow")—MTC–00030608
6. Association for Competitive Technology ("ACT")—MTC–00027806
7. Joseph L. Bast ("Bast")—MTC–00013362
7. John Becker ("Becker")—MTC–00031674
8. Jim Bode ("Bode")—MTC–00003974
9. Kris Brinkerhoff ("Brinkerhoff")—MTC–00013542
9. Matthew M. Burke ("Burke")—MTC–00024360
10. John A. Carroll ("Carroll")—MTC–00008557
11. Catavault—MTC–00033650
12. Center for the Moral Defense of Capitalism ("CMDC")—MTC–00028833
13. Robert Cheetham ("Cheetham")—MTC–00004982
14. Jerry Clabaugh ("Clabaugh")—MTC–00004870
15. Tony Clapes ("Clapes")—MTC–00004159
16. Computer & Communications Industry Association ("CCIA")—MTC–00030610
17. Computing Technology Industry Association ("CompTIA")—MTC–00028726
18. Consumer Federation of America ("CFA")—MTC–00028565
19. Consumers for Computing Choice and Open Platform Working Group ("CCC") —MTC–00033613
20. Tim Daly ("Daly")—MTC–00000307
21. Jerry Davis ("Davis")—MTC–00004860
22. David Demland ("Demland")—MTC–00007735
23. Sean Drew ("Drew")—MTC–00014368
24. Nicholas S. Economides ("Economides")—MTC–00022465
25. Einer Elhauge ("Elhauge")—MTC–00027209
26. Scott Francis ("Francis")—MTC–00021847
27. Sean Gallagher ("Gallagher")—MTC–00012695
28. John Giannandrea ("Giannandrea")—MTC–00030193
29. Tom Giebel ("Giebel")—MTC–00018241
30. Jonathan Gifford ("Gifford")—MTC–00028546
31. David Godshall ("Godshall")—MTC–00002260
32. Eberhard Hafermalz ("Hafermalz")—MTC–00009260
33. Wayne Hammett ("Hammett")—MTC–00002009
34. Derek Harkess ("Harkess")—MTC–00022874
35. Norman Harman ("Harman")—MTC–00022721
36. Jeffrey E. Harris ("Harris")—MTC–00027387
37. Rebecca Henderson ("Henderson")—MTC–00030602
38. Jim Herrmann ("Herrmann")—MTC–00010686
39. Phillip Hofmeister ("Hofmeister")—MTC–00004548
40. Art Holland ("Holland"—MTC–00000643
41. Joe Huwaldt ("Huwaldt")—MTC–00004162
42. Paul Johnson ("Johnson")—MTC–00012543
43. KDE League, Inc. ("KDE")—MTC–00028738
44. Dan Kegel ("Kegel")—MTC–00028571
45. Ronald A. Klain, Benjamin G. Bradshaw, Jessica Davidson Miller, *A Detailed Critique of the Proposed Final Judgment in U.S.* v. *Microsoft*, submitted as Attachment B to AOL (AOL; Klain)—MTC–00030615
46. The Honorable Herb Kohl, U.S. Senator ("Sen. Kohl")—MTC–00030603
47. Brian Koppe ("Koppe")—MTC–00018682
48. Robert Levy ("Levy")—MTC–00004804
49. Scott Lewis ("Lewis")—MTC–00026511
50. Robert E. Litan, Roger D. Noll, and William D. Nordhaus ("Litan et al.")—MTC–00013366
51. Litigating States—MTC–00030607
52. Chris M. Lloyd ("Lloyd")—MTC–00011255
53. Mike Lococo ("Lococo")—MTC–00004717
54. Kevin Lowe ("Lowe")—MTC–00017163
55. Daniel Maddux ("Maddux")—MTC–00021587
56. Frank Mathewson and Ralph A. Winter, *Microsoft's Tying Strategies to Maintain Monopoly Power in its Operating System*, submitted as Attachment A to AOL ("AOL, Mathewson & Winter")—MTC–00030615
57. John McBride ("McBride")—MTC–00004731
58. Garrett McWilliams ("McWilliams")—MTC–00019950
59. Andrig T. Miller ("Miller")—MTC–00003096
60. David Mitchell ("Mitchell")—MTC–00017643
61. Eben Moglen ("Moglen")—MTC–00027626
62. David Morrissey ("Morrissey")—MTC–00004525
63. Ralph Nader and James Love ("Nader/Love")—MTC–00028313
64. NetAction and Computer Professionals for Social Responsibility ("NetAction")—MTC–00030604
65. The New York Times ("NYT")—MTC–00029783
66. Novell, Inc. ("Novell")—MTC–00029523
67. Palm, Inc. ("Palm")—MTC–0030613
68. Ramon G. Pantin ("Pantin")—MTC–00029685
69. Theresa Peterson ("Peterson")—MTC–00019410
70. Larry Poindexter ("Poindexter")—MTC–00000493
71. R.D. Porcher ("Porcher")—MTC–00015938
72. Vince Pratt ("Pratt")—MTC–00004691
73. The Progress & Freedom Foundation ("PFF")—MTC–00030606
74. Project to Promote Competition & Innovation in the Digital Age ("ProComp")—MTC–00030608
75. RealNetworks, Inc. ("RealNetworks")—MTC–00029305

76. Red Hat, Inc. ("Red Hat")—MTC–00030616
77. Ray Reid ("Reid")—MTC–00022393
78. Relpromax Antitrust, Inc. ("Relpromax")—MTC–00030631
79. Declaration of Edward Roeder, submitted as Attachment to CCIA ("CCIA, Roeder")—MTC–00030610
80. P.J. Rovero ("Rovero")—MTC–00002180
81. SBC Communications, Inc. ("SBC")—MTC–00029411
82. Robert L. Scala ("Scala")—MTC–00016177
83. Joel Schneider ("Schneider")—MTC–00022882
84. Bion Schulken ("Schulken")—MTC–00002254
85. Bob Schulze ("Schulze")—MTC–00018164
86. David Skinn ("Skinn")—MTC–00031409
87. Software and Information Industry Association ("SIIA")—MTC–00030614
88. Sony Corporation ("Sony")—MTC–00030605
89. Robert Spotswood ("Spotswood")—MTC–00000604
90. Declaration of Joseph E. Stiglitz and Jason Furman, submitted as Attachment to CCIA ("CCIA, Stiglitz & Furman")—MTC–00030610
91. Sun Microsystems, Inc. ("Sun")—MTC–00030609
92. The Telecommunications Research and Action Center, National Black Chamber of Commerce, and National Native Americans Chamber of Commerce ("TRAC")—MTC–00028893
93. Stuart Thiel ("Thiel")—MTC–00012095
94. Mason Thomas ("Thomas")—MTC–00030468
95. Nikkil Tilwalli ("Tilwalli")—MTC–00016984
96. Robert Timlin ("Timlin")—MTC–00011156
97. The Honorable John V. Tunney, Former U.S. Senator ("Sen. Tunney")—MTC–00032065
98. Nicholas Turk ("Turk")—MTC–00016312
99. U.S. Senate—MTC–00033734
100. Lee Wagstaff ("Wagstaff")—MTC–00014376
101. Steven Waldman ("Waldman")—MTC–00025808
102. Michael Wang ("Wang")—MTC–00003256
103. Washington Legal Foundation ("WLF")—MTC–00030601
104. Robert Weiler ("Weiler")—MTC–00017967
105. Tim Williams ("Williams")—MTC–00000491
106. Chris Young ("Young")—MTC–00014037
107. Anthony W. Youngman ("Youngman")—MTC–00010202

Stipulation and Second Revised Proposed Final Judgment

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant; Stipulation.

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002; Tunney Act Hearing

Plaintiff United States of America ("United States"), the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin (collectively, the "Settling States") and Defendant Microsoft Corporation ("Microsoft"), by and through their respective attorneys, having agreed to the entry of this Stipulation, it is hereby stipulated and agreed that:

1. A Final Judgment in the form attached hereto ("second revised proposed Final Judgment") may be filed and entered by the Court in this action and as to the Settling States only in *State of New York, et al.* v. *Microsoft* (Civil Action No. 98–1233(CKK)), upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the second revised proposed Final Judgment by serving notice thereof on Microsoft and by filing that notice with the Court.

2. Microsoft's prior obligations to comply with the revised proposed Final Judgment, submitted to the Court on November 6, 2001, shall continue uninterrupted under this Stipulation and the second revised proposed Final Judgment (except as modified by the second revised proposed Final Judgment) as if the second revised proposed Final Judgment was in full force and effect. Unless otherwise provided in the second revised proposed Final Judgment, Microsoft shall immediately begin complying with the second revised proposed Final Judgment as if it was in full force and effect. Where the second revised proposed Final Judgment provides that the timing of Microsoft's obligations are calculated from the date of submission to the Court of the second revised proposed Final Judgment, the time shall be calculated from November 6, 2001, the date of submission to the Court of the revised proposed Final Judgment. Subject to the foregoing, Microsoft agrees to be bound by the provisions of the second revised proposed Final Judgment pending its entry by the Court. If the United States withdraws its consent, or if (a) the second revised proposed Final Judgment is not entered pursuant to the terms of the Stipulation, (b) the time has expired for all appeals of any Court ruling declining to enter the second revised proposed Final Judgment, and (c) the Court has not otherwise ordered continued compliance with the terms and provisions of the second revised proposed Final Judgment, then all of the parties shall be released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

3. Once the requirements for compliance with 15 U.S.C. 16, as set forth in the Stipulation filed by the parties on November 6, 2001, have been satisfied, the United States will file with the Court a certificate of compliance and a Motion for Entry of Second Revised Proposed Final Judgment, unless it withdraws its consent to entry of the second revised proposed Final Judgment pursuant to paragraph 2, above. At any time thereafter, and at the conclusion of any further proceedings ordered by the Court pursuant to 15 U.S.C. 16(f), the Court may then enter the second revised proposed Final Judgment, provided that the Court determines that entry of the second revised proposed Final Judgment will serve the public interest.

Dated this 27th day of February, 2002.

For Plaintiff the United States of America:
Deborah P. Majoras,
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For Plaintiffs the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin:
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For Defendant Microsoft Corporation:
Charles F. Rule,
Fried, Frank, Harris, Shriver & Jacobson, 1001 Pennsylvania Avenue, NW., Suite 800, Washington, DC 20004, (202) 639–7300.

Second Revised Proposed Final Judgment

WHEREAS, plaintiffs United States of America ("United States") and the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin and defendant Microsoft Corporation ("Microsoft"), by their respective attorneys, have consented to the entry of this Final Judgment;

And whereas, this Final Judgment does not constitute any admission by any party regarding any issue of fact or law;

And whereas, Microsoft agrees to be bound by the provisions of this Final

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Judgment pending its approval by the Court;

Now Therefore, upon remand from the United States Court of Appeals for the District of Columbia Circuit, and upon the consent of the aforementioned parties, it is hereby ordered, adjudged, and decreed:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the person of Microsoft.

II. Applicability

This Final Judgment applies to Microsoft and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III. Prohibited Conduct

A. Microsoft shall not retaliate against an OEM by altering Microsoft's commercial relations with that OEM, or by withholding newly introduced forms of non-monetary Consideration (including but not limited to new versions of existing forms of non-monetary Consideration) from that OEM, because it is known to Microsoft that the OEM is or is contemplating:

1. developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware;

2. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System; or

3. exercising any of the options or alternatives provided for under this Final Judgment.

Nothing in this provision shall prohibit Microsoft from enforcing any provision of any license with any OEM or any intellectual property right that is not inconsistent with this Final Judgment. Microsoft shall not terminate a Covered OEM's license for a Windows Operating System Product without having first given the Covered OEM written notice of the reasons for the proposed termination and not less than thirty days' opportunity to cure. Notwithstanding the foregoing, Microsoft shall have no obligation to provide such a termination notice and opportunity to cure to any Covered OEM that has received two or more such notices during the term of its Windows Operating System Product license.

Nothing in this provision shall prohibit Microsoft from providing Consideration to any OEM with respect to any Microsoft product or service where that Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that Microsoft product or service.

B. Microsoft's provision of Windows Operating System Products to Covered OEMs shall be pursuant to uniform license agreements with uniform terms and conditions.

Without limiting the foregoing, Microsoft shall charge each Covered OEM the applicable royalty for Windows Operating System Products as set forth on a schedule, to be established by Microsoft and published on a Web site accessible to the Plaintiffs and all Covered OEMs, that provides for uniform royalties for Windows Operating System Products, except that:

1. the schedule may specify different royalties for different language versions;

2. the schedule may specify reasonable volume discounts based upon the actual volume of licenses of any Windows Operating System Product or any group of such products; and

3. the schedule may include market development allowances, programs, or other discounts in connection with Windows Operating System Products, provided that:

a. such discounts are offered and available uniformly to all Covered OEMs, except that Microsoft may establish one uniform discount schedule for the ten largest Covered OEMs and a second uniform discount schedule for the eleventh through twentieth largest Covered OEMs, where the size of the OEM is measured by volume of licenses;

b. such discounts are based on objective, verifiable criteria that shall be applied and enforced on a uniform basis for all Covered OEMs; and

c. such discounts or their award shall not be based on or impose any criterion or requirement that is otherwise inconsistent with any portion of this Final Judgment.

C. Microsoft shall not restrict by agreement any OEM licensee from exercising any of the following options or alternatives:

1. Installing, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware or any product or service (including but not limited to IAP products or services) that distributes, uses, promotes, or supports any Non-Microsoft Middleware, on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict an OEM from displaying icons, shortcuts and menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products.

2. Distributing or promoting Non-Microsoft Middleware by installing and dis playing on the desktop shortcuts of any size or shape so long as such shortcuts do not impair the functionality of the user interface.

3. Launching automatically, at the conclusion of the initial boot sequence or subsequent boot sequences, or upon connections to or disconnections from the Internet, any Non-Microsoft Middleware if a Microsoft Middleware Product that provides similar functionality would otherwise be launched automatically at that time, provided that any such Non-Microsoft Middleware displays on the desktop no user interface or a user interface of similar size and shape to the user interface displayed by the corresponding Microsoft Middleware Product.

4. Offering users the option of launching other Operating Systems from the Basic Input/Output System or a non-Microsoft boot-loader or similar program that launches prior to the start of the Windows Operating System Product.

5. Presenting in the initial boot sequence its own IAP offer provided that the OEM complies with reasonable technical specifications established by Microsoft, including a requirement that the end user be returned to the initial boot sequence upon the conclusion of any such offer.

6. Exercising any of the options provided in Section III.H of this Final Judgment.

D. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. For purposes of this Section III.D, the term APIs means the interfaces, including any associated

callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

E. Starting nine months after the submission of this proposed Final Judgment to the Court, Microsoft shall make available for use by third parties, for the sole purpose of inter operating or communicating with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate, or communicate, natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product.

F. 1. Microsoft shall not retaliate against any ISV or IHV because of that ISV's or IHV's:

a. developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, or

b. exercising any of the options or alternatives provided for under this Final Judgment.

2. Microsoft shall not enter into any agreement relating to a Windows Operating System Product that conditions the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, except that Microsoft may enter into agreements that place limitations on an ISV's development, use, distribution or promotion of any such software if those limitations are reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft.

3. Nothing in this section shall prohibit Microsoft from enforcing any provision of any agreement with any ISV or IHV, or any intellectual property right, that is not inconsistent with this Final Judgment.

G. Microsoft shall not enter into any agreement with:

1. any IAP, ICP, ISV, IHV or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software, except that Microsoft may enter into agreements in which such an entity agrees to distribute, promote, use or support Microsoft Platform Software in a fixed percentage whenever Microsoft in good faith obtains a representation that it is com mercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with Microsoft Platform Software, or

2. any IAP or ICP that grants placement on the desktop or elsewhere in any Windows Operating System Product to that IAP or ICP on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware.

Nothing in this section shall prohibit Microsoft from entering into (a) any bona fide joint venture or (b) any joint development or joint services arrangement with any ISV, IHV, IAP, ICP, or OEM for a new product, technology or service, or any material value-add to an existing product, technology or service, in which both Microsoft and the ISV, IHV, IAP, ICP, or OEM contribute significant developer or other resources, that prohibits such entity from competing with the object of the joint venture or other arrangement for a reasonable period of time.

This Section does not apply to any agreements in which Microsoft licenses intellectual property in from a third party.

H. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall:

1. Allow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product or Non-Microsoft Middleware Product by (a) displaying or removing icons, shortcuts, or menu entries on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict the display of icons, shortcuts, or menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products; and (b) enabling or disabling automatic invocations pursuant to Section III.C.3 of this Final Judgment that are used to launch Non-Microsoft Middleware Products or Microsoft Middleware Products. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access (as described in this subsection III.H.1) and altering default invocations (as described in the following subsection III.H.2) with regard to each such Microsoft Middle ware Product or Non-Microsoft Middleware Product and may offer the end-user a separate and unbiased choice of enabling or removing access and altering default configurations as to all Microsoft Middleware Products as a group or all Non-Microsoft Middleware Products as a group.

2. Allow end users (via an unbiased mechanism readily available from the desktop or Start menu), OEMs (via standard OEM preinstallation kits), and Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user in an unbiased manner) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (or vice versa) in any case where the Windows Operating System Product would otherwise launch the Microsoft Middleware Product in a separate Top-Level Window and display either (i) all of the user interface elements or (ii) the Trademark of the Microsoft Middleware Product.

Notwithstanding the foregoing Section III.H.2, the Windows Operating System Product may invoke a Microsoft Middleware Product in any instance in which:

(a) that Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing), or

(b) that designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement (e.g., a requirement to be able to host a particular ActiveX control) that is

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necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, provided that the technical reasons are described in a reasonably prompt manner to any ISV that requests them.

3. Ensure that a Windows Operating System Product does not (a) automatically alter an OEM's configuration of icons, shortcuts or menu entries installed or displayed by the OEM pursuant to Section III.C of this Final Judgment without first seeking confirmation from the user and (b) seek such confirmation from the end user for an automatic (as opposed to user-initiated) alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer. Any such automatic alteration and confirmation shall be unbiased with respect to Microsoft Middleware Products and Non-Microsoft Middleware. Microsoft shall not alter the manner in which a Windows Operating System Product automatically alters an OEM's configuration of icons, shortcuts or menu entries other than in a new version of a Windows Operating System Product.

Microsoft's obligations under this Section III.H as to any new Windows Operating System Product shall be determined based on the Microsoft Middleware Products which exist seven months prior to the last beta test version (i.e., the one immediately preceding the first release candidate) of that Windows Operating System Product.

I. Microsoft shall offer to license to ISVs, IHVs, IAPs, ICPs, and OEMs any intellectual property rights owned or licensable by Microsoft that are required to exercise any of the options or alternatives expressly provided to them under this Final Judgment, provided that

1. all terms, including royalties or other payment of monetary consideration, are reasonable and non-discriminatory;

2. the scope of any such license (and the intellectual property rights licensed thereunder) need be no broader than is necessary to ensure that an ISV, IHV, IAP, ICP or OEM is able to exercise the options or alternatives expressly provided under this Final Judgment (e.g., an ISV's, IHV's, IAP's, ICP's and OEM's option to promote Non-Microsoft Middleware shall not confer any rights to any Microsoft intellectual property rights infringed by that Non-Microsoft Middleware);

3. an ISV's, IHV's, IAP's, ICP's, or OEM's rights may be conditioned on its not assigning, transferring or sublicensing its rights under any license granted under this provision; and

4. the terms of any license granted under this section are in all respects consistent with the express terms of this Final Judgment.

Beyond the express terms of any license granted by Microsoft pursuant to this section, this Final Judgment does not, directly or by implication, estoppel or otherwise, confer any rights, licenses, covenants or immunities with regard to any Microsoft intellectual property to anyone.

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.

2. Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product to any person or entity on the requirement that the licensee: (a) Has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.

IV. Compliance and Enforcement Procedures

A. Enforcement Authority

1. The Plaintiffs shall have exclusive responsibility for enforcing this Final Judgment. Without in any way limiting the sovereign enforcement authority of each of the plaintiff States, the plaintiff States shall form a committee to coordinate their enforcement of this Final Judgment. A plaintiff State shall take no action to enforce this Final Judgment without first consulting with the United States and with the plaintiff States' enforcement committee.

2. To determine and enforce compliance with this Final Judgment, duly authorized representatives of the United States and the plaintiff States, on reasonable notice to Microsoft and subject to any lawful privilege, shall be permitted the following:

a. Access during normal office hours to inspect any and all source code, books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Microsoft, which may have counsel present, regarding any matters contained in this Final Judgment.

b. Subject to the reasonable convenience of Microsoft and without restraint or interference from it, to interview, informally or on the record, officers, employees, or agents of Microsoft, who may have counsel present, regarding any matters contained in this Final Judgment.

c. Upon written request of the United States or a duly designated representative of a plaintiff State, on reasonable notice given to Microsoft, Microsoft shall submit such written reports under oath as requested regarding any matters contained in this Final Judgment.

Individual plaintiff States will consult with the plaintiff States' enforcement committee to minimize the duplication and burden of the exercise of the foregoing powers, where practicable.

3. The Plaintiffs shall not disclose any information or documents obtained from Microsoft under this Final Judgment except for the purpose of securing compliance with this Final Judgment, in a legal proceeding to which one or more of the Plaintiffs is a party, or as otherwise required by law; provided that the relevant Plaintiff(s) must provide ten days' advance notice to Microsoft before disclosing in any legal proceeding (other than a grand jury proceeding) to which Microsoft is not a party any information or documents provided by Microsoft pursuant to this Final Judgment which Microsoft has identified in writing as material as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure.

4. The Plaintiffs shall have the authority to seek such orders as are necessary from the Court to enforce this Final Judgment, provided, however, that the Plaintiffs shall afford Microsoft a reasonable opportunity to cure alleged violations of Sections III.C, III.D, III.E and III.H, provided further that any action by Microsoft to cure any such violation shall not be a defense to enforcement with respect to any knowing, willful or systematic violations.

B. Appointment of a Technical Committee

1. Within 30 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a three-person Technical Committee ("TC") to assist in enforcement of and compliance with this Final Judgment.

2. The TC members shall be experts in software design and programming. No TC member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. Without limitation to the foregoing, no TC member (absent the agreement of both parties):

a. shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall she or he be so employed during his or her term on the TC;

b. shall have been retained as a consulting or testifying expert by any person in this action or in any other action adverse to or on behalf of Microsoft; or

c. shall perform any other work for Microsoft or any competitor of Microsoft for two years after the expiration of the term of his or her service on the TC.

3. Within 7 days of entry of this Final Judgment, the Plaintiffs as a group and Microsoft shall each select one member of the TC, and those two members shall then select the third member. The selection and approval process shall proceed as follows.

a. As soon as practicable after submission of this Final Judgment to the Court, the Plaintiffs as a group and Microsoft shall each identify to the other the individual it proposes to select as its designee to the TC. The Plaintiffs and Microsoft shall not object to each other's selection on any ground other than failure to satisfy the requirements of Section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of selection.

b. The Plaintiffs shall apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to Section IV.B.3.a above. Any objections to the eligibility of a selected person that the parties have failed to resolve between themselves shall be decided by the Court based solely on the requirements stated in Section IV.B.2 above.

c. As soon as practical after their appointment by the Court, the two members of the TC selected by the Plaintiffs and Microsoft (the "Standing Committee Members") shall identify to the Plaintiffs and Microsoft the person that they in turn propose to select as the third member of the TC. The Plaintiffs and Microsoft shall not object to this selection on any grounds other than failure to satisfy the requirements of Section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of the selection and shall be served on the other party as well as on the Standing Committee Members.

d. The Plaintiffs shall apply to the Court for appointment of the person selected by the Standing Committee Members. If the Standing Committee Members cannot agree on a third member of the TC, the third member shall be appointed by the Court. Any objection by Microsoft or the Plaintiffs to the eligibility of the person selected by the Standing Committee Members which the parties have failed to resolve among themselves shall also be decided by the Court based on the requirements stated in Section IV.B.2 above.

4. Each TC member shall serve for an initial term of 30 months. At the end of a TC member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the TC member in the same manner as provided for in Section IV.B.3.a above. In the case of the third member of the TC, that member shall be re-appointed or replaced in the manner provided in Section IV.B.3.c above.

5. If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a replacement member in the same manner as provided for in Section IV.B.3.

6. Promptly after appointment of the TC by the Court, the United States shall enter into a Technical Committee services agreement ("TC Services Agreement") with each TC member that grants the rights, powers and authorities necessary to permit the TC to perform its duties under this Final Judgment. Microsoft shall indemnify each TC member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the TC's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the TC member. The TC Services Agreements shall include the following.

a. The TC members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The TC Services Agreement shall provide that each member of the TC shall comply with the limitations provided for in Section IV.B.2 above.

7. Microsoft shall provide the TC with a permanent office, telephone, and other office support facilities at Microsoft's corporate campus in Redmond, Washington. Microsoft shall also, upon reasonable advance notice from the TC, provide the TC with reasonable access to available office space, telephone, and other office support facilities at any other Microsoft facility identified by the TC.

8. The TC shall have the following powers and duties:

a. The TC shall have the power and authority to monitor Microsoft's compliance with its obligations under this final judgment.

b. The TC may, on reasonable notice to Microsoft:

(i) interview, either informally or on the record, any Microsoft personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Microsoft;

(ii) inspect and copy any document in the possession, custody or control of Microsoft personnel;

(iii) obtain reasonable access to any systems or equipment to which Microsoft personnel have access;

(iv) obtain access to, and inspect, any physical facility, building or other premises to which Microsoft personnel have access; and

(v) require Microsoft personnel to provide compilations of documents, data and other information, and to

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submit reports to the TC containing such material, in such form as the TC may reasonably direct.

c. The TC shall have access to Microsoft's source code, subject to the terms of Microsoft's standard source code Confidentiality Agreement, as approved by the Plaintiffs and to be agreed to by the TC members pursuant to Section IV.B.9 below, and by any staff or consultants who may have access to the source code. The TC may study, interrogate and interact with the source code in order to perform its functions and duties, including the handling of complaints and other inquiries from non-parties.

d. The TC shall receive complaints from the Compliance Officer, third parties or the Plaintiffs and handle them in the manner specified in Section IV.D below.

e. The TC shall report in writing to the Plaintiffs every six months until expiration of this Final Judgment the actions it has undertaken in performing its duties pursuant to this Final Judgment, including the identification of each business practice reviewed and any recommendations made by the TC.

f. Regardless of when reports are due, when the TC has reason to believe that there may have been a failure by Microsoft to comply with any term of this Final Judgment, the TC shall immediately notify the Plaintiffs in writing setting forth the relevant details.

g. TC members may communicate with non-parties about how their complaints or inquiries might be resolved with Microsoft, so long as the confidentiality of information obtained from Microsoft is maintained.

h. The TC may hire at the cost and expense of Microsoft, with prior notice to Microsoft and subject to approval by the Plaintiffs, such staff or consultants (all of whom must meet the qualifications of Section IV.B.2) as are reasonably necessary for the TC to carry out its duties and responsibilities under this Final Judgment. The compensation of any person retained by the TC shall be based on reasonable and customary terms commensurate with the individual's experience and responsibilities.

i. The TC shall account for all reasonable expenses incurred, including agreed upon fees for the TC members' services, subject to the approval of the Plaintiffs. Microsoft may, on application to the Court, object to the reasonableness of any such fees or other expenses. On any such application: (a) the burden shall be on Microsoft to demonstrate unreasonableness; and (b) the TC member(s) shall be entitled to recover all costs incurred on such application (including reasonable attorneys' fees and costs), regardless of the Court's disposition of such application, unless the Court shall expressly find that the TC's opposition to the application was without substantial justification.

9. Each TC member, and any consultants or staff hired by the TC, shall sign a confidentiality agreement prohibiting disclosure of any information obtained in the course of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than Microsoft, the Plaintiffs, or the Court. All information gathered by the TC in connection with this Final Judgment and any report and recommendations prepared by the TC shall be treated as Highly Confidential under the Protective Order in this case, and shall not be disclosed to any person other than Microsoft and the Plaintiffs except as allowed by the Protective Order entered in the Action or by further order of this Court.

10. No member of the TC shall make any public statements relating to the TC's activities.

C. Appointment of a Microsoft Internal Compliance Officer

1. Microsoft shall designate, within 30 days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Microsoft with responsibility for administering Microsoft's antitrust compliance program and helping to ensure compliance with this Final Judgment.

2. The Compliance Officer shall supervise the review of Microsoft's activities to ensure that they comply with this Final Judgment. He or she may be assisted by other employees of Microsoft.

3. The Compliance Officer shall be responsible for performing the following activities:

a. within 30 days after entry of this Final Judgment, distributing a copy of the Final Judgment to all officers and directors of Microsoft;

b. promptly distributing a copy of this Final Judgment to any person who succeeds to a position described in Section IV.C.3.a above;

c. ensuring that those persons designated in Section IV.C.3.a above are annually briefed on the meaning and requirements of this Final Judgment and the U.S. antitrust laws and advising them that Microsoft's legal advisors are available to confer with them regarding any question concerning compliance with this Final Judgment or under the U.S. antitrust laws;

d. obtaining from each person designated in Section IV.C.3.a above an annual written certification that he or she: (i) has read and agrees to abide by the terms of this Final Judgment; and (ii) has been advised and understands that his or her failure to comply with this Final Judgment may result in a finding of contempt of court;

e. maintaining a record of all persons to whom a copy of this Final Judgment has been distributed and from whom the certification described in Section IV.C.3.d above has been obtained;

f. establishing and maintaining the website provided for in Section IV.D.3.b below.

g. receiving complaints from third parties, the TC and the Plaintiffs concerning Microsoft's compliance with this Final Judgment and following the appropriate procedures set forth in Section IV.D below; and

h. maintaining a record of all complaints received and action taken by Microsoft with respect to each such complaint.

D. Voluntary Dispute Resolution

1. Third parties may submit complaints concerning Microsoft's compliance with this Final Judgment to the Plaintiffs, the TC or the Compliance Officer.

2. In order to enhance the ability of the Plaintiffs to enforce compliance with this Final Judgment, and to advance the parties' joint interest and the public interest in prompt resolution of issues and disputes, the parties have agreed that the TC and the Compliance Officer shall have the following additional responsibilities.

3. Submissions to the Compliance Officer.

a. Third parties, the TC, or the Plaintiffs in their discretion may submit to the Compliance Officer any complaints concerning Microsoft's compliance with this Final Judgment. Without in any way limiting its authority to take any other action to enforce this Final Judgment, the Plaintiffs may submit complaints related to Sections III.C, III.D, III.E and III.H to the Compliance Officer whenever doing so would be consistent with the public interest.

b. To facilitate the communication of complaints and inquiries by third parties, the Compliance Officer shall place on Microsoft's Internet website, in a manner acceptable to the Plaintiffs, the procedures for submitting complaints. To encourage whenever possible the informal resolution of complaints and inquiries, the website shall provide a mechanism for communicating complaints and inquiries to the Compliance Officer.

c. Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, and will then promptly advise the TC of the nature of the complaint and its disposition.

4. Submissions to the TC.

a. The Compliance Officer, third parties or the Plaintiffs in their discretion may submit to the TC any complaints concerning Microsoft's compliance with this Final Judgment.

b. The TC shall investigate complaints received and will consult with the Plaintiffs regarding its investigation. At least once during its investigation, and more often when it may help resolve complaints informally, the TC shall meet with the Compliance Officer to allow Microsoft to respond to the substance of the complaint and to determine whether the complaint can be resolved without further proceedings.

c. If the TC concludes that a complaint is meritorious, it shall advise Microsoft and the Plaintiffs of its conclusion and its proposal for cure.

d. No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment.

e. The TC may preserve the anonymity of any third party complainant where it deems it appropriate to do so upon the request of the Plaintiffs or the third party, or in its discretion.

V. Termination

A. Unless this Court grants an extension, this Final Judgment will expire on the fifth anniversary of the date it is entered by the Court.

B. In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, the Plaintiffs may apply to the Court for a one-time extension of this Final Judgment of up to two years, together with such other relief as the Court may deem appropriate.

VI. Definitions

A. "API" means application programming interface, including any interface that Microsoft is obligated to disclose pursuant to III.D.

B. "Communications Protocol" means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a server operating system product connected via a network, including, but not limited to, a local area network, a wide area network or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network.

C. "Consideration" means any monetary payment or the provision of preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos.

D. "Covered OEMs" means the 20 OEMs with the highest worldwide volume of licenses of Windows Operating System Products reported to Microsoft in Microsoft's fiscal year preceding the effective date of the Final Judgment. The OEMs that fall within this definition of Covered OEMs shall be recomputed by Microsoft as soon as practicable after the close of each of Microsoft's fiscal years.

E. "Documentation" means all information regarding the identification and means of using APIs that a person of ordinary skill in the art requires to make effective use of those APIs. Such information shall be of the sort and to the level of specificity, precision and detail that Microsoft customarily provides for APIs it documents in the Microsoft Developer Network ("MSDN").

F. "IAP" means an Internet access provider that provides consumers with a connection to the Internet, with or without its own proprietary content.

G. "ICP" means an Internet content provider that provides content to users of the Internet by maintaining Web sites.

H. "IHV" means an independent hardware vendor that develops hardware to be included in or used with a Personal Computer running a Windows Operating System Product.

I. "ISV" means an entity other than Microsoft that is engaged in the development or marketing of software products.

J. "Microsoft Middleware" means software code that:

1. Microsoft distributes separately from a Windows Operating System Product to update that Windows Operating System Product;

2. is Trademarked or is marketed by Microsoft as a major version of any Microsoft Middleware Product defined in section VI.K.1; and

3. provides the same or substantially similar functionality as a Microsoft Middleware Product.

Microsoft Middleware shall include at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.

Software code described as part of, and distributed separately to update, a Microsoft Middleware Product shall not be deemed Microsoft Middleware unless identified as a new major version of that Microsoft Middleware Product. A major version shall be identified by a whole number or by a number with just a single digit to the right of the decimal point.

K. "Microsoft Middleware Product" means:

1. the functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product, and

2. for any functionality that is first licensed, distributed or sold by Microsoft after the entry of this Final Judgment and that is part of any Windows Operating System Product:

a. Internet browsers, email client software, networked audio/video client software, instant messaging software or

b. functionality provided by Microsoft software that—

i. is, or in the year preceding the commercial release of any new Windows Operating System Product was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product;

ii. is similar to the functionality provided by a Non-Microsoft Middleware Product; and

iii. is Trademarked.

Functionality that Microsoft describes or markets as being part of a Microsoft Middleware Product (such as a service pack, upgrade, or bug fix for Internet Explorer), or that is a version of a Microsoft Middleware Product (such as Internet Explorer 5.5), shall be considered to be part of that Microsoft Middleware Product.

L. "Microsoft Platform Software" means (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.

M. "Non-Microsoft Middleware" means a non-Microsoft software product running on a Windows Operating System Product that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System.

N. "Non-Microsoft Middleware Product" means a non-Microsoft software product running on a Windows

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Operating System Product (i) that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System, and (ii) of which at least one million copies were distributed in the United States within the previous year.

O. "OEM" means an original equipment manufacturer of Personal Computers that is a licensee of a Windows Operating System Product.

P. "Operating System" means the software code that, *inter alia*, (i) controls the allocation and usage of hardware resources (such as the microprocessor and various peripheral devices) of a Personal Computer, (ii) provides a platform for developing applications by exposing functionality to ISVs through APIs, and (iii) supplies a user interface that enables users to access functionality of the operating system and in which they can run applications.

Q. "Personal Computer" means any computer configured so that its primary purpose is for use by one person at a time, that uses a video display and keyboard (whether or not that video display and keyboard is included) and that contains an Intel x86 compatible (or successor) microprocessor. Servers, television set top boxes, handheld computers, game consoles, telephones, pagers, and personal digital assistants are examples of products that are not Personal Computers within the meaning of this definition.

R. "Timely Manner" means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is made available via an MSDN subscription offering or of which 150,000 or more beta copies are distributed.

S. "Top-Level Window" means a window displayed by a Windows Operating System Product that (a) has its own window controls, such as move, resize, close, minimize, and maximize, (b) can contain sub-windows, and (c) contains user interface elements under the control of at least one independent process.

T. "Trademarked" means distributed in commerce and identified as distributed by a name other than Microsoft® or Windows® that Microsoft has claimed as a trademark or service mark by (i) marking the name with trademark notices, such as ® or *TM*, in connection with a product distributed in the United States; (ii) filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (iii) asserting the name as a trademark in the United States in a demand letter or lawsuit. Any product distributed under descriptive or generic terms or a name comprised of the Microsoft® or Windows® trademarks together with descriptive or generic terms shall not be Trademarked as that term is used in this Final Judgment. Microsoft hereby disclaims any trademark rights in such descriptive or generic terms apart from the Microsoft® or Windows® trademarks, and hereby abandons any such rights that it may acquire in the future.

U. "Windows Operating System Product" means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named "Longhorn" and "Blackcomb" and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

VII. Further Elements

Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling either of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. Third Party Rights

Nothing in this Final Judgment is intended to confer upon any other persons any rights or remedies of any nature whatsoever hereunder or by reason of this Final Judgment.

United States Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant;

United States' Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment

[Civil Action No. 98–1232 (CKK)]

Next Court Deadline: March 6, 2002; Tunney Act Hearing.

Plaintiff United States of America submits the following memorandum regarding modifications to the Revised Proposed Final Judgment ("RPFJ"). These modifications are reflected in the new, Second Revised Proposed Final Judgment ("SRPFJ"), which is being filed concurrently with this memorandum,[1] along with a new stipulation signed by representatives of the United States, the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin (collectively the "Settling States") and Microsoft Corporation ("Microsoft").[2]

Introduction

On November 6, 2001, the United States, the Settling States and Microsoft submitted the RPFJ to the Court. Pursuant to §§ 16(b) and (d) of the Tunney Act, 15 U.S.C. §§ 16(b)–(h), the United States received public comments submitted on the RPFJ between November 5, 2001, and January 28, 2002.[3] The United States received over 30,000 comments during that period, which it has reviewed and considered as required by 15 U.S.C. § 16(d). Concurrently with this Memorandum, the United States is filing the Response of the United States to Public Comments on the Revised Proposed Final Judgment and a Memorandum in Support of Entry of the Proposed Final Judgment. The United States will also file the public comments themselves (on CD–ROM only).

Discussion

The Tunney Act contemplates that the United States should evaluate the public comments that it receives and, if appropriate, consider modifications of the proposed consent decree in response to the issues raised by those comments. *See* 15 U.S.C. 16(b) and (d).[4] On a

[1] For the Court's convenience, the United States also submits a red-lined version of the SRPFJ, attached hereto as Exhibit A, which compares the SRPFJ to the RPFJ.

[2] The Settling States also agreed to the RPFJ. Following the submission of the RPFJ to the Court on November 6, 2001, the Court deconsolidated United States v. Microsoft Corp. from New York, et al. v. Microsoft Corp., in which the Settling States, nine other states and the District of Columbia are parties.

[3] The public comment period officially ran from November 28, 2001, the date that the RPFJ and the United States' Competitive Impact Statement ("CIS") were published in the **Federal Register**. 66 F.R. 59,452 (Nov. 28, 2001). Out of an abundance of caution, the United States also chose to accept and treat as Tunney Act comments various communications from members of the public commenting on the proposed settlement that were received by the DOJ beginning on November 5 2001, the first business day following submission of the initial Proposed Final Judgment to the Court.

[4] Of course, the United States retains the right to withdraw its consent to the proposed decree at any time prior to entry, based on the public comments or otherwise. Stipulation, November 6, 2001, at 1; Stipulation, February 27, 2002, at 1.

number of past occasions, the United States has modified proposed consent decrees as a result of public comments.[5] In response to the Court's Order dated January 30, 2002,[6] the parties reported in their Joint Status Report ("JSR") filed February 7, 2002, that they were "considering whether, in response to the public comments, to submit to the Court proposed modifications to the RPFJ." JSR at 7.

I. In Response to Public Comments, the Parties Have Agreed on Certain Modifications to the Terms of the RPFJ

Having fully reviewed and considered all public comments it received regarding the RPFJ, the United States proposed several modifications to the RPFJ. Microsoft and the Settling States have agreed to the modifications that are reflected in the SRPFJ. While the United States believes that the RPFJ as originally filed with the Court effectively remedied the violations sustained by the Court of Appeals and would be in the public interest, it believes that the modifications contained in the SRPFJ effectively respond to specific concerns raised in the public comments and that entry of the SRPFJ is in the public interest.

Each modification clarifies the language of the RPFJ in provisions about which public commentors have indicated concerns regarding the precise meaning of the language. Each modification is an outgrowth of specific concerns raised in the public comments and does not fundamentally change the RPFJ. With one exception,[7] these modifications refine the language in the RPFJ, and are intended to clarify the parties' shared intentions in drafting the RPFJ. The following sections explain the modifications, as well as the rationale for making these refinements.

A. Section III.D and Definition VI.A—API

Section III.D. requires the disclosure of APIs (application programming interfaces) and other documentation for the purpose of ensuring interoperability between competing middleware and Windows Operating System Products. At least one commentor noted that in the RPFJ, the definition of API (Definition VI.A) includes only Microsoft APIs, thus rendering the other definitions that use the term API in the context of Non-Microsoft software potentially meaningless. Specifically, the definitions of Non-Microsoft Middleware, Non-Microsoft Middleware Product and Operating System arguably fail to function as intended if the definition of APIs is limited solely to Microsoft APIs. This definition of API, as originally drafted, was intended to apply only to Section III.D, but this limitation was not reflected in the text of the RPFJ. To correct this problem, the original definition of API has, in the SRPFJ, been inserted directly into Section III.D, so that Section III.D of the SRPFJ now reads:

> Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. For purposes of this Section III.D, the term APIs means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner. (New language in bold).

A generic definition of API that is not tied to Microsoft products has been inserted as Definition VI.A to apply throughout the SRPFJ except in Section III.D:

> "API" means application programming interface, including any interface that Microsoft is obligated to disclose pursuant to III.D.

The meaning of API in the definitions of Non-Microsoft Middleware, Non-Microsoft Middleware Product and Operating System is now defined, as intended, according to this generic definition, thereby resolving any potential concerns regarding their reliance on a definition of API that is specifically tied to Microsoft products. The modification does not change Microsoft's obligations under Section III.D.

B. Section III.E

Section III.E requires Microsoft to disclose all Communications Protocols that a Windows Operating System Product uses to interoperate natively with a Microsoft server operating system product. It ensures that non-Microsoft servers will be able to interoperate with a Windows Operating System Product using the same protocols the Microsoft server operating system product uses. Several commentors argued, however, that because the word "interoperate" in Section III.E is not defined, its meaning is unclear, potentially making it possible for Microsoft to evade this provision. The United States believes that, as interoperate is used in this Section III.E, its meaning clearly reflects the parties' intention that this provision presents the opportunity for seamless interoperability between Windows Operating System Products and non-Microsoft servers. Although the United States believes that the meaning of interoperate as included in Section III.E of the RPFJ is clear, in response to the public comments, the United States proposed, and Microsoft and the Settling States agreed, to supplement the term "interoperate" with "or communicate," so that Section III.E of the SRPFJ now reads:

> Starting nine months after the submission of this proposed Final Judgment to the Court, Microsoft shall make available for use by third parties, for the sole purpose of interoperating or communicating with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate, or communicate, natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product. (New language in bold).

The addition of the phrase "or communicate" after "interoperate" brings further clarity to this provision. This revision clarifies the parties' intent in drafting Section III.E and thus removes any potential for confusion or ambiguity regarding the scope of the

[5] See, e.g., United States v. Allied Waste Indus., Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Judgment, 65 F.R. 36,224 (June 7, 2000) (parties modified divestiture requirements as a result of objections raised in comments); United States v. Thomson Corp., 949 F. Supp. 907, 915 (D.D.C. 1996) (parties proposed modifications to final judgment in response to public comment, among other things); see also Antitrust Procedures and Penalties Act: Hearings on S. 782 and S. 1088 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 93rd Cong., 1st Sess. 146 (1973) (Testimony of the Hon. J. Skelly Wright) ("The Department itself has modified consent decrees on a number of occasions as a result of public comment").

[6] The Order stated, inter alia, that "the parties shall address . . . whether, in response to the comments received by the Department of Justice in accordance with 15 U.S.C. section 16(b), the United States and Microsoft are considering any modifications" to the RPFJ. Order at 1.

[7] *See* Section II.E., *infra* at 8–9, discussing Section III.I.5. of the RPFJ.

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provision based on the meaning of interoperate.

C. Section III.H.2

Section III.H.2 requires Microsoft to provide points in its Windows Operating System Products for automatically launching competing middleware, commonly referred to as default settings, in certain circumstances. Although Section III.H.1 states that Microsoft must give end users "a separate and unbiased choice" with respect to altering default invocations in Section III.H.2, there was a concern that the requirement that Microsoft implement Section III.H.2 in a wholly unbiased manner was not entirely clear. To clarify that Microsoft must be unbiased with respect to Microsoft and Non-Microsoft products under Section III.H.2, this provision was revised to expressly state that such mechanisms and confirmation messages must be unbiased. The revised language of Section III.H.2 in the SPRFJ provides:

> Allow end users (via an unbiased mechanism readily available from the desktop or Start menu), OEMs (via standard OEM preinstallation kits), and Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user in an unbiased manner) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (or vice versa) . . . (New language in bold).

This modification makes clear the parties' intention that the mechanism available to end users, as well as any confirmation messages to the end user, must be unbiased with respect to Microsoft and Non-Microsoft products.

This modification also addresses any concern that the phrase "at Microsoft's option" in Section III.H.2 could be read to allow Microsoft to take biased action against competing products. It also addresses concerns that Microsoft's presentation of the confirmation message could include derogatory comments about competing products.

In addition, the two exceptions (Sections III.H.2(a) and (b)) that previously followed Section III.H.3, but by their plain language modified III.H.2 ("Notwithstanding the foregoing Section III.H.2 . . ."), have been moved, so that they now follow Section III.H.2, and renumbered accordingly for clarification.

D. Section III.H.3

Section III.H.3 prohibits Microsoft from designing its Windows Operating System Products to alter automatically an OEM's configuration choices without seeking user confirmation and without waiting 14 days from the initial boot. In response to concerns raised regarding Microsoft's ability to change configurations pursuant to Section III.H.3, the following sentence has been added:

> Any such automatic alteration and confirmation shall be unbiased with respect to Microsoft Middleware Products and Non-Microsoft Middleware.

This sentence clarifies the parties' intention in drafting the RPFJ that Microsoft may not alter a configuration based on whether the middleware products are Microsoft or Non-Microsoft products. Similarly, Microsoft may not present a biased confirmation message (such as a message that is derogatory with respect to Non-Microsoft products). Nor may automatic alterations take actions based on a trigger or rule that is biased against Non-Microsoft Middleware or in favor of Microsoft Middleware Products. This modification makes clear, as intended by the parties in the RPFJ, that any action taken under Section III.H.3 must therefore be independent of whether the affected products are Microsoft or Non-Microsoft products.

E. Section III.I.5

Several commentors raised concerns regarding Section III.I.5, under which an ISV, IHV, IAP, ICP, or OEM could be required to grant Microsoft a license, on reasonable and nondiscriminatory terms, to any intellectual property relating to that ISV's, IHV's, IAP's, ICP's or OEM's exercise of the options or alternatives provided by the RPFJ, if such a cross-license were necessary for Microsoft to provide the options or alternatives set forth in the RPFJ and exercised by the particular ISV, IHV, IAP, ICP or OEM. These concerns ranged from the general concern that the imposition of a cross-licensing requirement was inappropriate to more specific concerns, such as hypothesizing that the cross-licensing provision would reduce the likelihood that persons or entities would take advantage of the RPFJ's disclosure provisions.

As the United States pointed out in its CIS, Section III.I.5 was an extremely narrow provision designed to ensure that Microsoft would be able fully to comply with the terms of the RPFJ without creating greater indirect infringement liability for itself than it would otherwise have. See CIS at 50. In response to the concerns about this provision raised in the public comments, however, the United States proposed, and Microsoft and the Settling States agreed, that the provision should be deleted. Accordingly, Section III.I.5 does not appear in the SRPFJ. This modification does not alter Microsoft's existing obligations to comply fully with the terms of the SRPFJ.

F. Definition VI.J—Microsoft Middleware

Many commentors suggested that Definition VI.J, Microsoft Middleware, which required that software code be Trademarked, as that term is defined, could potentially exclude current products such as Internet Explorer, Windows Media Player, Microsoft's Java Virtual Machine, and Window Messenger because at least some such products, the commentors claimed, did not satisfy the definition of Trademarked. To clarify any issues surrounding the status of the software code associated with these products, the Microsoft Middleware definition has been modified to include explicitly the software code that is marketed by Microsoft as a major version of any of the named Microsoft Middleware Products listed in Section VI.K.1. With this change, software code can qualify as Microsoft Middleware in part by being either (1) Trademarked or (2) marketed as a major version of any of the named Microsoft Middleware Products (i.e., Internet Explorer, etc.), even if it does not satisfy the definition for Trademarked. The limitation to a major version of a Microsoft Middleware Product is simply a restatement of the limitation in the last paragraph of the Microsoft Middleware definition, which limits the covered software code to that identified as a major version of a Microsoft Middleware Product.

In addition, the previous subsection (4) now modifies the entire definition and has been revised to read:

> Microsoft Middleware shall include at least the software code that controls most or all of the user interface elements of the Microsoft Middleware.

This change is intended to clarify that this provision of the definition is not a required element and therefore somehow intended to narrow or limit the definition; rather, the first three requirements are sufficient to define Microsoft Middleware. The purpose of this last provision is essentially to specify a minimum size or "floor" as to the collection of software code that is included in a particular piece of Microsoft Middleware, preventing the situation in which Microsoft could arbitrarily break up into separate pieces the software code of what would otherwise be Microsoft Middleware, thereby omitting from the Microsoft Middleware definition certain critical or significant pieces of code that constitute that Microsoft Middleware. This modification does not substantively change this definition but instead makes clear that this provision governs the scope of what code must be included in Microsoft Middleware.

B. Definition VI.R—Timely Manner

A number of commentors question Section VI.R's definition of Timely Manner, the term that defines when Microsoft must meet its disclosure obligations under Section III.D. Several commentors contend that 150,000 beta testers is too high a threshold to trigger Section III.D's disclosure requirement, arguing that for past Windows Operating System Products, Microsoft may have distributed 150,000 beta copies but may not have distributed them to 150,000 individual beta testers. These commentors are concerned that the threshold will never be reached, resulting in no required disclosure before a new Windows Operating System Product is released. Similarly, a number of commentors contend that Microsoft may in the future choose to distribute to fewer beta testers and thereby evade its disclosure obligations.

The parties' intention in drafting this definition was not to distinguish between beta copies and beta testers with respect to the 150,000 requirement. The parties originally chose the 150,000 beta tester distribution level based on the approximate current Microsoft Developer Network ("MSDN") subscription base. In response to the foregoing concerns about the definition of Timely Manner, however, the United States proposed, and Microsoft and the Settling States agreed, to modify the definition to read:

> Timely Manner" means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is made available via an MSDN subscription offering or of which 150,000 or more beta copies are distributed.

This modification clarifies the parties' intention that Timely Manner should be triggered by the distribution of 150,000 or more beta copies, regardless of whether those copies are distributed to individuals who are considered to be "beta testers." The modification adds a provision such that Timely Manner can also be triggered by distribution via an MSDN subscription offering. The inclusion of distribution via an MSDN subscription offering as a trigger for this definition ensures that, even in the event that the level of MSDN subscribers decreases substantially, Microsoft's disclosure obligations under Section III.D will still be triggered. Therefore, while this modification clarifies, and in fact may slightly broaden, Microsoft's disclosure obligations, it does not substantively differ from the original definition of Timely Manner in the RPFJ.

II. A New Round of Publication and Comment Is Not Warranted Because the Proposed Modifications Are a Logical Outgrowth of the RPFJ.

The foregoing modifications directly respond to concerns raised in the public comments and are the result of the United States' review and consideration, as part of its compliance with the Tunney Act, of the public comments submitted on the RPFJ. The Tunney Act does not require a new round of publication and comment as a result of the modifications contained in the SRPFJ. The publication and comment provisions of the Act serve "to enable the district court to make" its public interest determination. *HyperLaw, Inc.* v. *United States*, 1998 WL 388807, at *3, 159 F.3d 636 (D.C. Cir. 1998) (unpublished table decision). Accordingly, a "court should treat notice and comment under the Tunney Act as analogous to agency rulemaking notice and comment." Id. (quotation marks omitted). Applying that analogy, "there is no need for successive rounds of notice and comment on each revision," provided the final decree "is a "logical outgrowth" of the proposed consent decree. . . .. Further notice and comment should be required only if it "would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its [proposal]." *Id. (quoting Am. Water Works Ass'n* v. *EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994)).

The proposed decree as modified is a logical outgrowth of the RPFJ and requires no further notice and comment. As explained above, each modification responds to public comments on the RPFJ and clarifies language based upon those comments. Without question, each is a natural and logical outgrowth of the notice and comment process. Taken separately or together, the modifications do not fundamentally change the RPFJ. All contribute to benefitting the public interest (and certainly have no adverse effect on the public interest). The purpose of the notice and comment has thus been well-satisfied, and further notice and comment would merely delay the Court's public interest determination without good cause.[8]

[8] Entry of a decree following modification without a new round of notice and comment is conventional in Tunney Act practice. For example, After notice and comment in AT&T, the court said it would enter the decree as in the public interest if the parties agreed to a number of modifications, and the Court entered the modified decree without a new round of notice and comment once the parties did so. *United States* v. *AT&T*, 552 F. Supp. 131, 225–26 (D.D.C. 1982); *see also Mass. Sch. of Law* v. *United States*, 118 F.3d 776, 778 (D.C. Cir. 1997).

Conclusion

For the reasons described herein, the United States hereby submits the SRPFJ to the Court. In our separate Memorandum in Support of Entry of the Proposed Final Judgment and Response of the United States to Public Comments on the Revised Proposed Final Judgment, both of which are also being filed today, we set forth the reasons why the SRPFJ is in the public interest. Upon completion of the Tunney Act requirements, we will respectfully move the Court to enter the judgment.

Dated: February 27, 2002.

Respectfully submitted,
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(Editorial Note: Certain conventions have been used by the Office of the **Federal Register** to highlight changes in the Second Revised Proposed Final Judgment. New language is shown in boldface, while language that was removed is set off with brackets.)

Exhibit A

Second Revised Proposed Final Judgment (Red-Lined Version)

Whereas, plaintiffs United States of America ("United States") and the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin and defendant Microsoft Corporation ("Microsoft"), by their respective attorneys, have consented to the entry of this Final Judgment;

And whereas, this Final Judgment does not constitute any admission by any party regarding any issue of fact or law;

And whereas, Microsoft agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now therefore, upon remand from the United States Court of Appeals for the District of Columbia Circuit, and upon the consent of the aforementioned parties, it is hereby ordered, adjudged, and decreed:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the person of Microsoft.

II. Applicability

This Final Judgment applies to Microsoft and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III. Prohibited Conduct

A. Microsoft shall not retaliate against an OEM by altering Microsoft's commercial relations with that OEM, or by withholding newly introduced forms of non-monetary Consideration (including but not limited to new versions of existing forms of non-monetary Consideration) from that OEM, because it is known to Microsoft that the OEM is or is contemplating:

1. developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware;

2. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System; or

3. exercising any of the options or alternatives provided for under this Final Judgment.

Nothing in this provision shall prohibit Microsoft from enforcing any provision of any license with any OEM or any intellectual property right that is not inconsistent with this Final Judgment. Microsoft shall not terminate a Covered OEM's license for a Windows Operating System Product without having first given the Covered OEM written notice of the reasons for the proposed termination and not less than thirty days' opportunity to cure. Notwithstanding the foregoing, Microsoft shall have no obligation to provide such a termination notice and opportunity to cure to any Covered OEM that has received two or more such notices during the term of its Windows Operating System Product license.

Nothing in this provision shall prohibit Microsoft from providing Consideration to any OEM with respect to any Microsoft product or service where that Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that Microsoft product or service.

B. Microsoft's provision of Windows Operating System Products to Covered OEMs shall be pursuant to uniform license agreements with uniform terms and conditions. Without limiting the foregoing, Microsoft shall charge each Covered OEM the applicable royalty for Windows Operating System Products as set forth on a schedule, to be established by Microsoft and published on a web site accessible to the Plaintiffs and all Covered OEMs, that provides for uniform royalties for Windows Operating System Products, except that:

1. the schedule may specify different royalties for different language versions;

2. the schedule may specify reasonable volume discounts based upon the actual volume of licenses of any Windows Operating System Product or any group of such products; and

3. the schedule may include market development allowances, programs, or other discounts in connection with Windows Operating System Products, provided that:

a. such discounts are offered and available uniformly to all Covered OEMs, except that Microsoft may establish one uniform discount schedule for the ten largest Covered OEMs and a second uniform discount schedule for the eleventh through twentieth largest Covered OEMs, where the size of the OEM is measured by volume of licenses;

b. such discounts are based on objective, verifiable criteria that shall be applied and enforced on a uniform basis for all Covered OEMs; and

c. such discounts or their award shall not be based on or impose any criterion or requirement that is otherwise inconsistent with any portion of this Final Judgment.

C. Microsoft shall not restrict by agreement any OEM licensee from exercising any of the following options or alternatives:

1. Installing, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware or any product or service (including but not limited to IAP products or services) that distributes, uses, promotes, or supports any Non-Microsoft Middleware, on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict an OEM from displaying icons, shortcuts and menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products.

2. Distributing or promoting Non-Microsoft Middleware by installing and displaying on the desktop shortcuts of any size or shape so long as such shortcuts do not impair the functionality of the user interface.

3. Launching automatically, at the conclusion of the initial boot sequence or subsequent boot sequences, or upon connections to or disconnections from the Internet, any Non-Microsoft Middleware if a Microsoft Middleware Product that provides similar functionality would otherwise be launched automatically at that time, provided that any such Non-Microsoft Middleware displays on the desktop no user interface or a user interface of similar size and shape to the user interface displayed by the corresponding Microsoft Middleware Product.

4. Offering users the option of launching other Operating Systems from the Basic Input/Output System or a non-Microsoft boot-loader or similar program that launches prior to the start of the Windows Operating System Product.

5. Presenting in the initial boot sequence its own IAP offer provided that the OEM complies with reasonable technical specifications established by Microsoft, including a requirement that the end user be returned to the initial boot sequence upon the conclusion of any such offer.

6. Exercising any of the options provided in Section III.H of this Final Judgment.

D. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. **For purposes of this Section III.D, the term APIs means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.** In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

E. Starting nine months after the submission of this proposed Final Judgment to the Court, Microsoft shall make available for use by third parties, for the sole purpose of interoperating **or communicating** with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate, **or communicate,** natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product.

F. 1. Microsoft shall not retaliate against any ISV or IHV because of that ISV's or IHV's:

a. developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, or

b. exercising any of the options or alternatives provided for under this Final Judgment.

2. Microsoft shall not enter into any agreement relating to a Windows Operating System Product that conditions the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, except that Microsoft may enter into agreements that place limitations on an ISV's development, use, distribution or promotion of any such software if those limitations are reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft.

3. Nothing in this section shall prohibit Microsoft from enforcing any provision of any agreement with any ISV or IHV, or any intellectual property right, that is not inconsistent with this Final Judgment.

G. Microsoft shall not enter into any agreement with:

1. any IAP, ICP, ISV, IHV or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software, except that Microsoft may enter into agreements in which such an entity agrees to distribute, promote, use or support Microsoft Platform Software in a fixed percentage whenever Microsoft in good faith obtains a representation that it is commercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with Microsoft Platform Software, or

2. any IAP or ICP that grants placement on the desktop or elsewhere in any Windows Operating System Product to that IAP or ICP on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware.

Nothing in this section shall prohibit Microsoft from entering into (a) any bona fide joint venture or (b) any joint development or joint services arrangement with any ISV, IHV, IAP, ICP, or OEM for a new product, technology or service, or any material value-add to an existing product, technology or service, in which both Microsoft and the ISV, IHV, IAP, ICP, or OEM contribute significant developer or other resources, that prohibits such entity from competing with the object of the joint venture or other arrangement for a reasonable period of time.

This Section does not apply to any agreements in which Microsoft licenses intellectual property in from a third party.

H. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall:

1. Allow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product or Non-Microsoft Middleware Product by (a) displaying or removing icons, shortcuts, or menu entries on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict the display of icons, shortcuts, or menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products; and (b) enabling or disabling automatic invocations pursuant to Section III.C.3 of this Final Judgment that are used to launch Non-Microsoft Middleware Products or Microsoft Middleware Products. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access (as described in this subsection III.H.1) and altering default invocations (as described in the following subsection III.H.2) with regard to each such Microsoft Middleware Product or Non-Microsoft Middleware Product and may offer the end-user a separate and unbiased choice of enabling or removing access and altering default configurations as to all Microsoft Middleware Products as a group or all Non-Microsoft Middleware Products as a group.

2. Allow end users (via [a] **an unbiased** mechanism readily available from the desktop or Start menu), OEMs (via standard OEM preinstallation kits), and Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user **in an unbiased manner**) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (or vice versa) in any case where the Windows Operating System Product would otherwise launch the Microsoft Middleware Product in a separate Top-Level Window and display either (i) all of the user interface elements or (ii) the Trademark of the Microsoft Middleware Product.

Notwithstanding the foregoing Section III.H.2, the Windows Operating System Product may invoke a Microsoft Middleware Product in any instance in which:

(a) that Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing), or

(b) that designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement (e.g., a requirement to be able to host a particular ActiveX control) that is

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necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, provided that the technical reasons are described in a reasonably prompt manner to any ISV that requests them.

3. Ensure that a Windows Operating System Product does not (a) automatically alter an OEM's configuration of icons, shortcuts or menu entries installed or displayed by the OEM pursuant to Section III.C of this Final Judgment without first seeking confirmation from the user and (b) seek such confirmation from the end user for an automatic (as opposed to user-initiated) alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer. **Any such automatic alteration and confirmation shall be unbiased with respect to Microsoft Middleware Products and Non-Microsoft Middleware.** Microsoft shall not alter the manner in which a Windows Operating System Product automatically alters an OEM's configuration of icons, shortcuts or menu entries other than in a new version of a Windows Operating System Product.

[Notwithstanding the foregoing Section III.H.2, the Windows Operating System Product may invoke a Microsoft Middleware Product in any instance in which:

1. that Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing), or

2. that designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement (e.g., a requirement to be able to host a particular ActiveX control) that is necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, provided that the technical reasons are described in a reasonably prompt manner to any ISV that requests them.]

Microsoft's obligations under this Section III.H as to any new Windows Operating System Product shall be determined based on the Microsoft Middleware Products which exist seven months prior to the last beta test version (i.e., the one immediately preceding the first release candidate) of that Windows Operating System Product.

I. Microsoft shall offer to license to ISVs, IHVs, IAPs, ICPs, and OEMs any intellectual property rights owned or licensable by Microsoft that are required to exercise any of the options or alternatives expressly provided to them under this Final Judgment, provided that

1. all terms, including royalties or other payment of monetary consideration, are reasonable and non-discriminatory;

2. the scope of any such license (and the intellectual property rights licensed thereunder) need be no broader than is necessary to ensure that an ISV, IHV, IAP, ICP or OEM is able to exercise the options or alternatives expressly provided under this Final Judgment (e.g., an ISV's, IHV's, IAP's, ICP's and OEM's option to promote Non-Microsoft Middleware shall not confer any rights to any Microsoft intellectual property rights infringed by that Non-Microsoft Middleware);

3. an ISV's, IHV's, IAP's, ICP's, or OEM's rights may be conditioned on its not assigning, transferring or sublicensing its rights under any license granted under this provision; **and**

4. the terms of any license granted under this section are in all respects con sistent with the express terms of this Final Judgment[; and.]

[5. an ISV, IHV, IAP, ICP, or OEM may be required to grant to Microsoft on reasonable and nondiscriminatory terms a license to any intellectual property rights it may have relating to the exercise of their options or alternatives provided by this Final Judgment; the scope of such license shall be no broader than is necessary to insure that Microsoft can provide such options or alternatives.]

Beyond the express terms of any license granted by Microsoft pursuant to this section, this Final Judgment does not, directly or by implication, estoppel or otherwise, confer any rights, licenses, covenants or immunities with regard to any Microsoft intellectual property to anyone.

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.

2. Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product to any person or entity on the requirement that the licensee: (a) Has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.

IV. Compliance and Enforcement Procedures

A. Enforcement Authority

1. The Plaintiffs shall have exclusive responsibility for enforcing this Final Judgment. Without in any way limiting the sovereign enforcement authority of each of the plaintiff States, the plaintiff States shall form a committee to coordinate their enforcement of this Final Judgment. A plaintiff State shall take no action to enforce this Final Judgment without first consulting with the United States and with the plaintiff States' enforcement committee.

2. To determine and enforce compliance with this Final Judgment, duly authorized representatives of the United States and the plaintiff States, on reasonable notice to Microsoft and subject to any lawful privilege, shall be permitted the following:

a. Access during normal office hours to inspect any and all source code, books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Microsoft, which may have counsel present, regarding any matters contained in this Final Judgment.

b. Subject to the reasonable convenience of Microsoft and without restraint or interference from it, to interview, informally or on the record, officers, employees, or agents of Microsoft, who may have counsel present, regarding any matters contained in this Final Judgment.

c. Upon written request of the United States or a duly designated representative of a plaintiff State, on reasonable notice given to Microsoft, Microsoft shall submit such written reports under oath as requested regarding any matters contained in this Final Judgment.

Individual plaintiff States will consult with the plaintiff States' enforcement committee to minimize the duplication and burden of the exercise of the foregoing powers, where practicable.

3. The Plaintiffs shall not disclose any information or documents obtained from Microsoft under this Final Judgment except for the purpose of securing compliance with this Final Judgment, in a legal proceeding to which one or more of the Plaintiffs is a party, or as otherwise required by law; provided that the relevant Plaintiff(s) must provide ten days' advance notice to Microsoft before disclosing in any legal proceeding (other than a grand jury proceeding) to which Microsoft is not a party any information or documents provided by Microsoft pursuant to this Final Judgment which Microsoft has identified in writing as material as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure.

4. The Plaintiffs shall have the authority to seek such orders as are necessary from the Court to enforce this Final Judgment, provided, however, that the Plaintiffs shall afford Microsoft a reasonable opportunity to cure alleged violations of Sections III.C, III.D, III.E and III.H, provided further that any action by Microsoft to cure any such violation shall not be a defense to enforcement with respect to any knowing, willful or systematic violations.

B. Appointment of a Technical Committee

1. Within 30 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a three-person Technical Committee ("TC") to assist in enforcement of and compliance with this Final Judgment.

2. The TC members shall be experts in software design and programming. No TC member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. Without limitation to the foregoing, no TC member (absent the agreement of both parties):

a. shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall she or he be so employed during his or her term on the TC;

b. shall have been retained as a consulting or testifying expert by any person in this action or in any other action adverse to or on behalf of Microsoft; or

c. shall perform any other work for Microsoft or any competitor of Microsoft for two years after the expiration of the term of his or her service on the TC.

3. Within 7 days of entry of this Final Judgment, the Plaintiffs as a group and Microsoft shall each select one member of the TC, and those two members shall then select the third member. The selection and approval process shall proceed as follows.

a. As soon as practicable after submission of this Final Judgment to the Court, the Plaintiffs as a group and Microsoft shall each identify to the other the individual it proposes to select as its designee to the TC. The Plaintiffs and Microsoft shall not object to each other's selection on any ground other than failure to satisfy the requirements of Section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of selection.

b. The Plaintiffs shall apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to Section IV.B.3.a above. Any objections to the eligibility of a selected person that the parties have failed to resolve between themselves shall be decided by the Court based solely on the requirements stated in Section IV.B.2 above.

c. As soon as practical after their appointment by the Court, the two members of the TC selected by the Plaintiffs and Microsoft (the "Standing Committee Members") shall identify to the Plaintiffs and Microsoft the person that they in turn propose to select as the third member of the TC. The Plaintiffs and Microsoft shall not object to this selection on any grounds other than failure to satisfy the requirements of Section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of the selection and shall be served on the other party as well as on the Standing Committee Members.

d. The Plaintiffs shall apply to the Court for appointment of the person selected by the Standing Committee Members. If the Standing Committee Members cannot agree on a third member of the TC, the third member shall be appointed by the Court. Any objection by Microsoft or the Plaintiffs to the eligibility of the person selected by the Standing Committee Members which the parties have failed to resolve among themselves shall also be decided by the Court based on the requirements stated in Section IV.B.2 above.

4. Each TC member shall serve for an initial term of 30 months. At the end of a TC member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the TC member in the same manner as provided for in Section IV.B.3.a above. In the case of the third member of the TC, that member shall be re-appointed or replaced in the manner provided in Section IV.B.3.c above.

5. If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a replacement member in the same manner as provided for in Section IV.B.3.

6. Promptly after appointment of the TC by the Court, the United States shall enter into a Technical Committee services agreement ("TC Services Agreement") with each TC member that grants the rights, powers and authorities necessary to permit the TC to perform its duties under this Final Judgment. Microsoft shall indemnify each TC member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the TC's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the TC member. The TC Services Agreements shall include the following.

a. The TC members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The TC Services Agreement shall provide that each member of the TC shall comply with the limitations provided for in Section IV.B.2 above.

7. Microsoft shall provide the TC with a permanent office, telephone, and other office support facilities at Microsoft's corporate campus in Redmond, Washington. Microsoft shall also, upon reasonable advance notice from the TC, provide the TC with reasonable access to available office space, telephone, and other office support facilities at any

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other Microsoft facility identified by the TC.

8. The TC shall have the following powers and duties:

a. The TC shall have the power and authority to monitor Microsoft's compliance with its obligations under this final judgment.

b. The TC may, on reasonable notice to Microsoft:

(i) interview, either informally or on the record, any Microsoft personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Microsoft;

(ii) inspect and copy any document in the possession, custody or control of Microsoft personnel;

(iii) obtain reasonable access to any systems or equipment to which Microsoft personnel have access;

(iv) obtain access to, and inspect, any physical facility, building or other premises to which Microsoft personnel have access; and

(v) require Microsoft personnel to provide compilations of documents, data and other information, and to submit reports to the TC containing such material, in such form as the TC may reasonably direct.

c. The TC shall have access to Microsoft's source code, subject to the terms of Microsoft's standard source code Confidentiality Agreement, as approved by the Plaintiffs and to be agreed to by the TC members pursuant to Section IV.B.9 below, and by any staff or consultants who may have access to the source code. The TC may study, interrogate and interact with the source code in order to perform its functions and duties, including the handling of complaints and other inquiries from non-parties.

d. The TC shall receive complaints from the Compliance Officer, third parties or the Plaintiffs and handle them in the manner specified in Section IV.D below.

e. The TC shall report in writing to the Plaintiffs every six months until expiration of this Final Judgment the actions it has undertaken in performing its duties pursuant to this Final Judgment, including the identification of each business practice reviewed and any recommendations made by the TC.

f. Regardless of when reports are due, when the TC has reason to believe that there may have been a failure by Microsoft to comply with any term of this Final Judgment, the TC shall immediately notify the Plaintiffs in writing setting forth the relevant details.

g. TC members may communicate with non-parties about how their complaints or inquiries might be resolved with Microsoft, so long as the confidentiality of information obtained from Microsoft is maintained.

h. The TC may hire at the cost and expense of Microsoft, with prior notice to Microsoft and subject to approval by the Plaintiffs, such staff or consultants (all of whom must meet the qualifications of Section IV.B.2) as are reasonably necessary for the TC to carry out its duties and responsibilities under this Final Judgment. The compensation of any person retained by the TC shall be based on reasonable and customary terms commensurate with the individual's experience and responsibilities.

i. The TC shall account for all reasonable expenses incurred, including agreed upon fees for the TC members' services, subject to the approval of the Plaintiffs. Microsoft may, on application to the Court, object to the reasonableness of any such fees or other expenses. On any such application: (a) the burden shall be on Microsoft to demonstrate unreasonableness; and (b) the TC member(s) shall be entitled to recover all costs incurred on such application (including reasonable attorneys' fees and costs), regardless of the Court's disposition of such application, unless the Court shall expressly find that the TC's opposition to the application was without substantial justification.

9. Each TC member, and any consultants or staff hired by the TC, shall sign a confidentiality agreement prohibiting disclosure of any information obtained in the course of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than Microsoft, the Plaintiffs, or the Court. All information gathered by the TC in connection with this Final Judgment and any report and recommendations prepared by the TC shall be treated as Highly Confidential under the Protective Order in this case, and shall not be disclosed to any person other than Microsoft and the Plaintiffs except as allowed by the Protective Order entered in the Action or by further order of this Court.

10. No member of the TC shall make any public statements relating to the TC's activities.

C. Appointment of a Microsoft Internal Compliance Officer

1. Microsoft shall designate, within 30 days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Microsoft with responsibility for administering Microsoft's antitrust compliance program and helping to ensure compliance with this Final Judgment.

2. The Compliance Officer shall supervise the review of Microsoft's activities to ensure that they comply with this Final Judgment. He or she may be assisted by other employees of Microsoft.

3. The Compliance Officer shall be responsible for performing the following activities:

a. within 30 days after entry of this Final Judgment, distributing a copy of the Final Judgment to all officers and directors of Microsoft;

b. promptly distributing a copy of this Final Judgment to any person who succeeds to a position described in Section IV.C.3.a above;

c. ensuring that those persons designated in Section IV.C.3.a above are annually briefed on the meaning and requirements of this Final Judgment and the U.S. antitrust laws and advising them that Microsoft's legal advisors are available to confer with them regarding any question concerning compliance with this Final Judgment or under the U.S. antitrust laws;

d. obtaining from each person designated in Section IV.C.3.a above an annual written certification that he or she: (i) has read and agrees to abide by the terms of this Final Judgment; and (ii) has been advised and understands that his or her failure to comply with this Final Judgment may result in a finding of contempt of court;

e. maintaining a record of all persons to whom a copy of this Final Judgment has been distributed and from whom the certification described in Section IV.C.3.d above has been obtained;

f. establishing and maintaining the website provided for in Section IV.D.3.b below.

g. receiving complaints from third parties, the TC and the Plaintiffs concerning Microsoft's compliance with this Final Judgment and following the appropriate procedures set forth in Section IV.D below; and

h. maintaining a record of all complaints received and action taken by Microsoft with respect to each such complaint.

D. Voluntary Dispute Resolution

1. Third parties may submit complaints concerning Microsoft's compliance with this Final Judgment to the Plaintiffs, the TC or the Compliance Officer.

2. In order to enhance the ability of the Plaintiffs to enforce compliance with this Final Judgment, and to advance the parties' joint interest and the public interest in prompt resolution of issues and disputes, the parties have agreed that the TC and the Compliance Officer shall have the following additional responsibilities.

3. Submissions to the Compliance Officer.

a. Third parties, the TC, or the Plaintiffs in their discretion may submit to the Compliance Officer any complaints concerning Microsoft's compliance with this Final Judgment. Without in any way limiting its authority to take any other action to enforce this Final Judgment, the Plaintiffs may submit complaints related to Sections III.C, III.D, III.E and III.H to the Compliance Officer whenever doing so would be consistent with the public interest.

b. To facilitate the communication of complaints and inquiries by third parties, the Compliance Officer shall place on Microsoft's Internet website, in a manner acceptable to the Plaintiffs, the procedures for submitting complaints. To encourage whenever possible the informal resolution of complaints and inquiries, the website shall provide a mechanism for communicating complaints and inquiries to the Compliance Officer.

c. Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, and will then promptly advise the TC of the nature of the complaint and its disposition.

4. Submissions to the TC.

a. The Compliance Officer, third parties or the Plaintiffs in their discretion may submit to the TC any complaints concerning Microsoft's compliance with this Final Judgment.

b. The TC shall investigate complaints received and will consult with the Plaintiffs regarding its investigation. At least once during its investigation, and more often when it may help resolve complaints informally, the TC shall meet with the Compliance Officer to allow Microsoft to respond to the substance of the complaint and to determine whether the complaint can be resolved without further proceedings.

c. If the TC concludes that a complaint is meritorious, it shall advise Microsoft and the Plaintiffs of its conclusion and its proposal for cure.

d. No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment.

e. The TC may preserve the anonymity of any third party complainant where it deems it appropriate to do so upon the request of the Plaintiffs or the third party, or in its discretion.

V. Termination

A. Unless this Court grants an extension, this Final Judgment will expire on the fifth anniversary of the date it is entered by the Court.

B. In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, the Plaintiffs may apply to the Court for a one-time extension of this Final Judgment of up to two years, together with such other relief as the Court may deem appropriate.

VI. Definitions

A. ["Application Programming Interfaces (APIs)"] "**API**" means [the interfaces] **application programming interface**, including any [associated callback interfaces,] **interface** that Microsoft [Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product] **is obligated to disclose pursuant to III.D.**

B. "Communications Protocol" means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a server operating system product connected via a network, including, but not limited to, a local area network, a wide area network or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network.

C. "Consideration" means any monetary payment or the provision of preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos.

D. "Covered OEMs" means the 20 OEMs with the highest worldwide volume of licenses of Windows Operating System Products reported to Microsoft in Microsoft's fiscal year preceding the effective date of the Final Judgment. The OEMs that fall within this definition of Covered OEMs shall be recomputed by Microsoft as soon as practicable after the close of each of Microsoft's fiscal years.

E. "Documentation" means all information regarding the identification and means of using APIs that a person of ordinary skill in the art requires to make effective use of those APIs. Such information shall be of the sort and to the level of specificity, precision and detail that Microsoft customarily provides for APIs it documents in the Microsoft Developer Network ("MSDN").

F. "IAP" means an Internet access provider that provides consumers with a connection to the Internet, with or without its own proprietary content.

G. "ICP" means an Internet content provider that provides content to users of the Internet by maintaining Web sites.

H. "IHV" means an independent hardware vendor that develops hardware to be included in or used with a Personal Computer running a Windows Operating System Product.

I. "ISV" means an entity other than Microsoft that is engaged in the development or marketing of software products.

J. "Microsoft Middleware" means software code that

1. Microsoft distributes separately from a Windows Operating System Product to update that Windows Operating System Product;

2. is Trademarked; **or is marketed by Microsoft as a major version of any Microsoft Middleware Product defined in section VI.K.1; and**

3. provides the same or substantially similar functionality as a Microsoft Middleware Product; [and.]

[4. includes at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.]

Microsoft Middleware shall include at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.

Software code described as part of, and distributed separately to update, a Microsoft Middleware Product shall not be deemed Microsoft Middleware unless identified as a new major version of that Microsoft Middleware Product. A major version shall be identified by a whole number or by a number with just a single digit to the right of the decimal point.

K. "Microsoft Middleware Product" means

1. the functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product, and

2. for any functionality that is first licensed, distributed or sold by Microsoft after the entry of this Final Judgment and that is part of any Windows Operating System Product

a. Internet browsers, email client software, networked audio/video client software, instant messaging software or

b. functionality provided by Microsoft software that—

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i. is, or in the year preceding the commercial release of any new Windows Operating System Product was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product;

ii. is similar to the functionality provided by a Non-Microsoft Middleware Product; and

iii. is Trademarked.

Functionality that Microsoft describes or markets as being part of a Microsoft Middleware Product (such as a service pack, upgrade, or bug fix for Internet Explorer), or that is a version of a Microsoft Middleware Product (such as Internet Explorer 5.5), shall be considered to be part of that Microsoft Middleware Product.

L. "Microsoft Platform Software" means (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.

M. "Non-Microsoft Middleware" means a non-Microsoft software product running on a Windows Operating System Product that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System.

N. "Non-Microsoft Middleware Product" means a non-Microsoft software product running on a Windows Operating System Product (i) that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System, and (ii) of which at least one million copies were distributed in the United States within the previous year.

O. "OEM" means an original equipment manufacturer of Personal Computers that is a licensee of a Windows Operating System Product.

P. "Operating System" means the software code that, inter alia, (i) controls the allocation and usage of hardware resources (such as the microprocessor and various peripheral devices) of a Personal Computer, (ii) provides a platform for developing applications by exposing functionality to ISVs through APIs, and (iii) supplies a user interface that enables users to access functionality of the operating system and in which they can run applications.

Q. "Personal Computer" means any computer configured so that its primary purpose is for use by one person at a time, that uses a video display and keyboard (whether or not that video display and keyboard is included) and that contains an Intel x86 compatible (or successor) microprocessor. Servers, television set top boxes, handheld computers, game consoles, telephones, pagers, and personal digital assistants are examples of products that are not Personal Computers within the meaning of this definition.

R. "Timely Manner" means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is [distributed to] **made available via an MSDN subscription offering or of which** 150,000 or more beta [testers]**copies are distributed.**

S. "Top-Level Window" means a window displayed by a Windows Operating System Product that (a) has its own window controls, such as move, resize, close, minimize, and maximize, (b) can contain sub-windows, and (c) contains user interface elements under the control of at least one independent process.

T. "Trademarked" means distributed in commerce and identified as distributed by a name other than Microsoft® or Windows® that Microsoft has claimed as a trademark or service mark by (i) marking the name with trademark notices, such as ® or ™, in connection with a product distributed in the United States; (ii) filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (iii) asserting the name as a trademark in the United States in a demand letter or lawsuit. Any product distributed under descriptive or generic terms or a name comprised of the Microsoft® or Windows® trademarks together with descriptive or generic terms shall not be Trademarked as that term is used in this Final Judgment. Microsoft hereby disclaims any trademark rights in such descriptive or generic terms apart from the Microsoft® or Windows® trademarks, and hereby abandons any such rights that it may acquire in the future.

U. "Windows Operating System Product" means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named "Longhorn" and "Blackcomb" and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

VII. Further Elements

Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling either of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. Third Party Rights

Nothing in this Final Judgment is intended to confer upon any other persons any rights or remedies of any nature whatsoever hereunder or by reason of this Final Judgment.

Dorothy Fountain,

Deputy Director of Operations.

[FR Doc. 02–5354 Filed 3–15–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States V. Microsoft Corporation

List of Individuals and Entities Submitting Public Comments

The United States hereby publishes a complete list of the names (as provided in the comment) of all individuals or entities submitting Tunney Act public comments on the Revised Proposed Final Judgment in the matter of United States v. Microsoft Corp., Civil Action No. 98–1232, pending in the United States District Court for the District of Columbia; the approximate number of pages of each comment; a unique tracking number assigned to each comment so that each comment may be located on the Department's website; and an index to the comments organized by six categories based primarily on the level of detail of the comment. The United States' response to the comments is being published concurrently with this list. To view the comments referenced herein and/or copies of the comments, please follow the instructions provided below.

Electronic copies of all comments identified herein are available on the Department of Justice's Web site at www.usdoj.gov/atr/cases/ms-comments.htm. Interested persons may also request CD–ROM(s) containing the full text of the comments by contacting the Department of Justice in Washington, D.C. at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530, Telephone: (202) 514–2481, Fax: (202) 514–3763. The United States will provide free of charge one copy of this CD–ROM or set of CD–ROMs to each individual person and five copies to each library or other institution that requests it. The United States will provide, at cost, additional copies above these limits to individuals or institutions upon request.

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carol1335@aol.com	0001	MTC–00028129
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cartath@juno.com	0001	MTC–00010433
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Fixemar, Jeremy	0002	MTC–00023484
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petitjim@ juno.com	0001	MTC–00028217
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Roache, Bill	0001	MTC–00025403
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Roathe, Lane	0001	MTC–00002101
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Robbins, Denise K.	0002	MTC–00004220
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Robert, Constance	0001	MTC–00030200
Robert, Dale	0001	MTC–00020867
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robert@ sherwing.com	0001	MTC–00014653
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Roberts, Adami	0001	MTC–00001150
Roberts, Betty J.	0001	MTC–00007828
Roberts, Bob	0001	MTC–00023196
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Veditz, Dan	0001	MTC–00027431
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Znamierowski, Craig	0001	MTC–00016566
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Zyphur, Mike	0002	MTC–00024478
Zyskowski, Mike	0001	MTC–00008199

In addition to the alphabetical list of public comments received by the United States in the matter of United States v. Microsoft Corp., below is a list of these comments organized into six categories. These categories are, comments that: (1) Wholly unrelated to the Revised Proposed Final Judgment or the Microsoft case in general; (2) Do not related to the Revised Proposed Final Judgment, but relate to the Microsoft case; (3) Express an overall view of the Revised Proposed Final Judgment, but offer no analysis; (4) Express an overall view of the Revised Proposed Final Judgment and offer a limited degree of substantive analysis; (5) Express an overall view of the Revised Proposed Final Judgment and offer more substantial analysis, and; (6) Detailed comments provided to to the Court on February 14, 2002. The United States emphasizes that this list is intended only as an aid to the reader in identifying comments that may be of particular interest.

1. Wholly Unrelated to the Revised Proposed Final Judgment or the Microsoft Case in General

Name	Number of pages	Unique number
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Abrams, Robert	0001	MTC–00019583
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Ackermans, Alexandre	0001	MTC–00009991
Acurio, Hugo	0001	MTC–00001954
Adam, Michael	0001	MTC–00002829
Adams, Jason	0001	MTC–00003102
Adams, Shirley	0001	MTC–00013094
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Adelfson, Robert	0001	MTC–00026602
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Agnew, Bob	0002	MTC–00009752
Agreda, Victor, Jr.	0001	MTC–00013443
Alayon, Marc	0001	MTC–00001503
Alex, Alegado	0001	MTC–00019702
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Cummings, Ed	0001	MTC–00011248
Cunneen, Greg	0001	MTC–00004946
Current, Andy	0001	MTC–00002125
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Davis, Charles W.	0001	MTC–00032239
Davis, Chuck	0001	MTC–00000121
Davis, Heath	0002	MTC–00013283
Davis, Rick	0001	MTC–00002513
Davis, Tom	0001	MTC–00015921
Day, William	0001	MTC–00019876
dbyrd@ mcomposites.com	0001	MTC–00028167
de los Santos, Richard	0001	MTC–00020514
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2. Do Not Related to the Revised Proposed Final Judgment, But Relate to the Microsoft Case

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William, Peggy	0001	MTC–00024361
williamandgwenfisk@ msn.com .	0001	MTC–00028133
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4. Express a View of the Revised Proposed Final Judgment and Offer a Limited Degree of Substantive Analysis

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CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
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Complete set (one-time mailing)		247.00	1999

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5]No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7]No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained..

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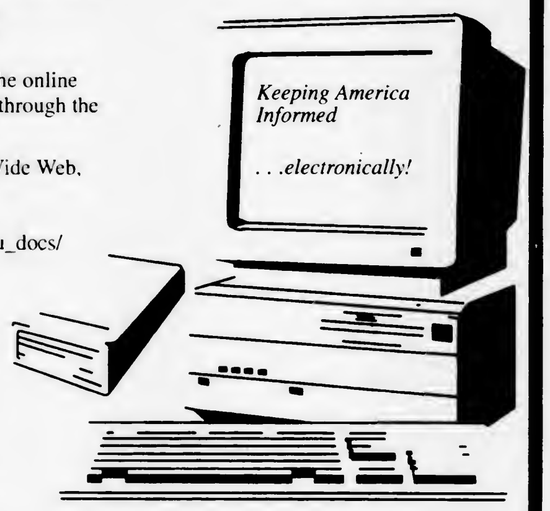
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Presidential Documents

Title 3—

The President

Proclamation 7532 of March 14, 2002

National Poison Prevention Week, 2002

By the President of the United States of America

A Proclamation

In 1961, the Congress established the annual observance of National Poison Prevention Week. Forty-one years later, this event continues to educate Americans about the dangers of childhood poisonings and to promote measures that help prevent such poisonings. These measures and other poison awareness efforts have helped reduce deaths from childhood poisonings by more than 90 percent since 1962.

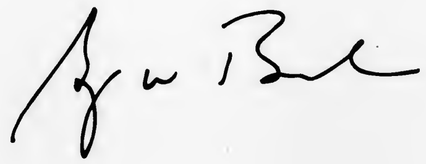
According to the American Association of Poison Control Centers, more than 1 million children each year are exposed to potentially poisonous medicines and household chemicals. In an effort to put an end to tragic accidents, the United States Consumer Product Safety Commission requires child-resistant packaging for many medicines and household chemicals. But this special packaging is "child-resistant," not "child-proof." For this reason, it is essential to keep potential poisons locked up and away from children.

Members of the Poison Prevention Week Council, representing 36 national organizations, work every year to organize events during this special week to raise awareness of unintentional poisonings, as well as to illustrate the steps that can be taken to prevent them. Coalition members believe every poisoning is preventable. Group members encourage Americans to use and properly reclose child-resistant packaging, keep poisonous substances secured and out of the reach of children, and keep the poison center telephone number, 1–800–222–1222, nearby in case of an emergency. This new nationwide number connects callers to medical experts that provide immediate treatment advice for poison emergencies. These centers are open 24 hours a day, 7 days a week.

To encourage Americans to learn more about the dangers of unintentional poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March each year as "National Poison Prevention Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 17 through 23, 2002, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–6718
Filed 3–18–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Exemption Amendments Under 18 U.S.C. 208(b)(2)

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: The Office of Government Ethics is issuing a final rule to amend the regulation that describes financial interests that are exempt from the prohibition in 18 U.S.C. 208(a). These final rule amendments revise the existing exemption regulation by: creating a new exemption for sector mutual funds; raising the de minimis exemption for matters affecting interests in securities from $5,000 to $15,000; and creating an exemption that permits an employee to act in certain particular matters that affect an entity in which the employee owns securities, where the entity is not a party to the matter.

EFFECTIVE DATE: April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Thomas, Associate General Counsel, Office of Government Ethics; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

Section 208(a) generally prohibits employees of the executive branch from participating in an official capacity in particular matters in which they or certain others specified in the statute have a financial interest. Section 208(b)(2) of title 18 permits OGE to promulgate regulations describing financial interests that are exempted as being too remote or inconsequential to warrant disqualification pursuant to section 208(a). The Office of Government Ethics' executive branchwide section 208 regulations, including such exemptions, are codified at 5 CFR part 2640.

On September 6, 2000, OGE published a set of proposed amendments to the regulation, proposing to revise some existing exemptions as well as to add some new exemptions. See 65 FR 53942–53946. The proposed rule provided a 90-day comment period. The Office of Government Ethics received 13 comment letters on the proposed rule. After carefully considering all comments and making appropriate modifications, OGE is publishing this final rule after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674, as modified by E.O. 12731. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this final rule.

II. Analysis of Comments and Revisions

Of the thirteen comments submitted, ten were from executive branch Departments or agencies, one was from a professional association, and two were from individuals. Overall, the comments to the proposed rule were positive. Many commenters had specific suggestions pertaining to one or more components of the proposed rule. Two commenters expressed the view that the OGE Form 450 and SF 278 reporting requirements should be revised to no longer require a filer to disclose on his form assets which are exempt under 5 CFR part 2640. These reporting issues are separate and distinct from the issue of whether an exemption is warranted under section 208(b)(2). Although OGE will not address specific reporting issues in this rulemaking, comments relating to financial disclosure requirements have been considered as part of OGE's separate proposed revision of the Ethics in Government Act, as amended.

The analysis below focuses on changes from the proposed amendments, either as recommended by the commenters or which OGE believes are otherwise appropriate. Many of the amendments proposed are being adopted as final without change in this rulemaking document.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

Section 2640.201 Exemptions for Interests in Mutual Funds, Unit Investment Trusts, and Employee Benefit Plans

Sector Mutual Funds

Several commenters recommended that OGE revise the proposed exemption for sector mutual funds to provide a total, rather than a $50,000 de minimis exemption. Two commenters suggested raising the de minimis amount. The Office of Government Ethics believes that the $50,000 de minimis exemption amount proposed is appropriate and is adopting it as final in § 2640.201(b) as revised. Establishing a total exemption for all employees would be difficult in light of the legal standard that the exempted interest be "remote and inconsequential." The $50,000 exemption being adopted is reasonably considered remote and inconsequential for all employees and is consistent with the de minimis exemption for particular matters of general applicability in existing paragraph (b) of § 2640.202, which is being redesignated as paragraph (c) thereof (see below).

This final rule contains one technical correction of the wording in the proposed rule. In the proposed rule, OGE inadvertently proposed limiting the existing exemption for sector mutual funds at § 2640.201(b) by restricting the exemption to disqualifying financial interests arising from the ownership by the employee, his spouse or minor children of an interest in the fund. Consistent with the original exemption for sector mutual funds, OGE intended that the new exemption would include interests held by an employee and all the others whose financial interests are imputed to him under 18 U.S.C. 208. This is reflected in the final rule by tracking the reference in the existing paragraph (b) of § 2640.201 prior to this amendment. The wording and structure of the exemption also have been modified somewhat in this final rule to clarify its meaning.

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Section 2640.202 Exemptions for Interests in Securities

De Minimis Exemption for Matters Involving Parties

Several commenters were pleased with the proposed increase (now being adopted as final) in the de minimis exemption amount for securities in particular matters involving specific parties from $5,000 to $15,000, under § 2640.202(a) as proposed for revision. However, one commenter stated that the increase in the de minimis amount would lead to greater intrusion into the privacy of filers, by reducing the number of reported assets, but probing further into the values of assets not previously required to be reported on the OGE Form 450. As an initial matter, raising the de minimis amount will not affect the OGE Form 450 filer's reporting requirements. In addition, as mentioned earlier, the reporting requirements for both the OGE Form 450 and the SF 278 are separate matters from the focus of this rulemaking, which addresses whether certain financial interests are too remote or inconsequential under section 208(b)(2) to warrant disqualification under 18 U.S.C. 208(a).

De Minimis Exemption for Matters Affecting Nonparties

The Office of Government Ethics received varied comments in response to proposed new § 2640.203(m). Under that section, as proposed, an employee would have been able to participate in certain matters in litigation involving specific parties in which the employee had a disqualifying financial interest of up to $25,000 in securities issued by a nonparty affected by the litigation. Two commenters were generally satisfied with the proposed rule. Of those who expressed some dissatisfaction with the proposed rule, two recommended broadening the rule to encompass any particular matter affecting nonparties, rather than limiting the rule to matters in litigation. Two commenters recommended including an example or definitions.

The Office of Government Ethics' original proposed part 2640 regulations, published for comment in the **Federal Register** on September 11, 1995, included a proposed exemption for disqualifying interests arising from ownership of securities issued by a nonparty. See 60 FR 27228. In the comments to that proposed rule, some agencies expressed a concern that this specific proposed exemption would be too complex. As a result, OGE decided not to include the exemption in its final version of 5 CFR part 2640. Over the years, however, some agencies have continued to express a need for such an exemption. The strongest advocate stressed the need for an exemption for matters in litigation affecting nonparties, so OGE included this exemption in the proposed regulation published on September 6, 2000. As noted, two commenters to the proposed amendments supported broadening this exemption, essentially recommending that OGE establish in this final rule the exemption as proposed in September 1995. After additional consideration, OGE has decided to adopt in revised § 2640.202(b) of this final rule a broader exemption than that proposed, so as to include any particular matter involving specific parties, not just matters in litigation. Because of its broadened scope, this new exemption is being moved to the primary section for interests in securities at § 2640.202. The broader rule will be more useful to a greater range of agencies and will simplify the exemption by eliminating the need for determining whether a matter constitutes "litigation."

Moreover, to address the commenters' recommendations and to clarify the rule, OGE is adding an example to the exemption. One commenter requested that OGE define "nonparty" and offer guidance on how to identify nonparties and determine if they are affected by a matter. Because each situation may vary to such a degree that the question is best addressed on a case-by-case basis, OGE will not define "nonparty" in this rulemaking. The Office of Government Ethics believes that the example now provided will promote a clearer understanding of the application of this exemption.

In the proposed rule, OGE proposed to revise Example 2 after § 2640.203(f), relating to interests in mutual insurance companies, to suggest that the proposed § 2640.203(m) for matters in litigation could apply in the situation described in the example. Upon reflection, that suggestion was incorrect because the interests of a policy holder with a mutual insurance company would not fall within the definition of "security" at § 2640.102(r). Accordingly, this final rule does not contain any amendment to that example.

The rule as proposed for particular matters affecting nonparties will be revised as described above and redesignated as new paragraph (b) of § 2640.202. Existing paragraphs (b) through (e) of current § 2640.202 are being redesignated as paragraphs (c) through (f), respectively, of that section.

In addition, several existing examples in part 2640 are being revised (as proposed) to reflect the new de minimis exemption amounts.

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2640

Conflicts of interests, Government employees.

Approved: November 16, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

2. Section 2640.102 is amended by revising paragraph (r) to read as follows:

§ 2640.102 Definitions.

* * * * *

* * * * *

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes "mutual fund" for purposes of § 2640.202(e) and (f) and §2640.203(a).

* * * * *

3. Section 2640.103 is amended by revising Example 1 following paragraph (a)(2) to read as follows:

§ 2640.103 Prohibition.

(a) * * *

(2) * * *

Example 1 to paragraph (a)(2): An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns $20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial" as defined in the statute.

* * * * *

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

4. Section 2640.201 is amended by:

a. Revising the heading of Example 1 and revising Example 2 following paragraph (a);

b. Revising paragraph (b); and

c. Revising the heading of Example 1 and adding new Examples 2 and 3 following new paragraph (b)(2)(ii).

The revisions and additions read as follows:

§ 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

(a) * * *

Example 1 to paragraph (a): * * *

Example 2 to paragraph (a): A nonsupervisory employee of the Department of Energy owns shares valued at $75,000 in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is a part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act.

(b) *Sector mutual funds.* (1) An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

(2)(i) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund and the aggregate market value of interests in any sector fund or funds does not exceed $50,000.

(ii) For purposes of calculating the $50,000 de minimis amount in paragraph (b)(2)(i) of this section, an employee must aggregate the market value of all sector mutual funds in which he has a disqualifying financial interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

Example 1 to paragraph (b): * * *

Example 2 to paragraph (b): A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Departmentwide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns $35,000 worth of shares in the XYZ Health Sciences Fund, a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. The health scientist administrator may participate in the recommendations.

Example 3 to paragraph (b): The spouse of the employee in the previous Example owns $40,000 worth of shares in ABC Specialized Portfolios: Healthcare, a sector mutual fund that also concentrates its investments in health-related companies. The two funds focus on the same sector and both contain holdings that may be affected by the particular matter. Because the aggregated value of the two funds exceeds $50,000, the employee may not rely on the exemption.

* * * * *

5. Section 2640.202 is amended by:

a. Revising paragraph (a)(2);

b. Revising the heading of Example 1 and revising Examples 2 and 3 following paragraph (a)(2);

c. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

d. Adding a new paragraph (b);

e. Adding new Example 1 following new paragraph (b)(2); and

f. Revising the heading of Example 1 and removing Example 2 following redesignated paragraph (c)(2).

The revisions and additions read as follows:

§ 2640.202 Exemptions for interests in securities.

(a) * * *

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed $15,000.

Example 1 to paragraph (a): * * *

Example 2 to paragraph (a): In the preceding example, the employee and his spouse each own $8,000 worth of stock in XYZ Corporation, resulting in ownership of $16,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds $15,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3 to paragraph (a): An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than $15,000. During the time the contract is being performed, however, the value of the employee's stock increases to $17,500. When the employee knows that the value of his stock exceeds $15,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds $15,000. This can be

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accomplished through a standing order with his broker to sell when the value of the stock exceeds $15,000.

(b) *De minimis exemption for matters affecting nonparties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under paragraph (a) of this section) does not exceed $25,000.

Example 1 to paragraph (b): A Food and Drug Administration advisory committee is asked to review a new drug application from Alpha Drug Co. for a new lung cancer drug. A member of the advisory committee owns $20,000 worth of stock in Mega Drug Co., which manufactures the only similar lung cancer drug on the market. If approved, the Alpha Drug Co.'s drug would directly compete with the drug sold by the Mega Drug Co., resulting in decreased sales of its lung cancer drug. The committee member may participate in the review of the new drug.

(c) * * *

Example 1 to paragraph (c): * * *

* * * * *

6. Section 2640.204 is amended by revising Example 1 which follows the section to read as follows:

§ 2640.204 Prohibited financial interests.

* * * * *

Example 1 to § 2640.204: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at $2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than $15,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

[FR Doc. 02–6617 Filed 3–18–02; 8:45 am]
BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AG20

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) amends the regulations with respect to the Noninsured Crop Disaster Assistance Program (NAP). This interim rule amends the NAP regulations to remove area requirements, announce new requirements regarding the filing of applications, payment of service fees, and reporting of crop acreage, yield, and production. These regulatory amendments are designed to improve the overall operation of the program and to conform the regulations with changes to the program made in recent legislation.

DATES: The rule is effective March 19, 2002. Comments must be received by April 18, 2002, to be assured of consideration.

ADDRESSES: Comments should be addressed to Steve Peterson, Chief, Noninsured Assistance Programs Branch (NAPB); Production, Emergencies, and Compliance Division (PECD); Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; e-mail *Steve_Peterson@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Peterson, Chief, Noninsured Assistance Programs Branch (NAPB); Production, Emergencies, and Compliance Division (PECD); Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–5172; facsimile (202) 690–3646; e-mail *StevePeterson@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the Cost-Benefit Assessment follows the Background section.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, subpart V, published at 49 FR 29115 (June 24, 1983). Unfunded Mandates Reform Act of 1995 (UMRA)

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This rule amends current regulations to reference changes to NAP made by amendments to section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The Paperwork Reduction Act generally requires a 60-day public comment period and OMB review of the information collections before regulations may be promulgated. However, section 161 of the 1996 Act provided that the Secretary issue regulations without regard to the Paperwork Reduction Act. A separate notice announcing a 60-day comment period will be published and OMB approval sought under the provisions of 44 U.S.C. chapter 35.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparations of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Background

This rule re-writes, in their entirety, the Noninsured Crop Disaster Assistance Program (NAP) regulations to improve the overall administration of the program and to conform with statutory amendments to section 196 of the Federal Agriculture Improvement and Reform Act of 1996 made in section 109 of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224; June 20, 2000) ("ARPA 2000"). Section 171(b)(2)(g) of ARPA 2000 specified that the amendments to NAP would not be effective until the 2001 crop year. Also, prior to enactment of ARPA 2000, section 101 of the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113; November 29, 1999) provided that beginning with the 1999 crop year CCC should provide up to $20 million to eligible producers without regard to the regulatory requirement for area crop losses. CCC put into place procedures to identify and provide assistance to producers who would have been eligible for assistance if not for the area crop loss requirement.

The changes made to NAP by ARPA 2000 were significant and involved major changes in the way producers will qualify or retain eligibility for NAP. There, the NAP statute was amended to remove the area crop loss requirement entirely. In addition, the statute has been amended to require an application and collection of a service fee. Producers now must apply for NAP no later than the application closing date announced by the Secretary. Additionally, producers must now pay a service fee of $100 per crop per administrative county, or $300 per producer per administrative county, up to a maximum, for all counties for the producer, of $900. Service fees for limited resource producers may be waived. CCC will use the definition of limited resource farmer provided in FCIC regulations found at 7 CFR 457.8 for the purpose of defining limited resource producers. Typically, under current regulations, limited resource producers have an annual gross income of $20,000 or less from all sources for the last 2 years, or farm less than 25 acres with most of their income of $20,000 or less per year coming from farming. This criteria, for NAP purposes, is subject to change as 7 CFR 457.8 is amended. Because of the timing involved, for certain 2001 and 2002 crops, special time periods have been created for submission of the application for NAP coverage and service fees. To maintain eligibility for 2001 and 2002 crops, producers who otherwise would be late in filing the application must apply and pay the service fee within 30 days of publication of this rule. NAP continues to require crop reporting as a condition of eligibility. Every year producers must provide records of crop acreage, yields, and production.

As a condition of eligibility, NAP benefits are earned only when a loss or prevented planting occur as a result of an eligible loss condition (disaster) as opposed to some other reason. It is a producer's responsibility to show that the producer's claimed loss or prevented planting was the result of an eligible cause. Accordingly, for clarification purposes, this rule better describes (without any change to policy) those loss conditions and crops for which benefits under this part might be exacted. For example, a definition of "controlled environment" has been added; the definition of "natural disaster" has been removed and the term is discussed under § 1437.9 "Causes of Loss;" sections were added discussing several crops for which coverage is available; and generally, language in various sections have been amended for clarity. Effective for the 2002 and succeeding crop years the exclusion of unseeded forage on Federal- and State-owned land as an eligible crop is removed.

Cost-Benefit Assessment

NAP expenditures for crop years 1996 through 1998 averaged about $43 million per year. Outlays generally occur in the fiscal year following the crop year. The President's budget baseline (prior to enactment of Public Law 106–224) assumed the NAP program would cost $90 million each year. Outlays have never reached that expectation, in part due to generally favorable weather conditions throughout the U.S. and to the reluctance of producers to report acreage and production when the area loss threshold had not been triggered. But that very reluctance to report makes it difficult for the area loss threshold to trigger.

The 2000 Act, by removing the area trigger requirement, removed this impediment. That is, if a producer has the requisite crop loss (50 percent or more), the producer will be eligible to receive NAP benefits. The producer no longer has to farm in an area where the yield for the crop had to fall below 65 percent of the expected area yield to receive a payment.

Participation in the 1999 Crop Disaster Program (CDP) provides some insight into the cost of the NAP program. The CDP provided payments to producers who suffered a 35-percent crop loss. Eligible crops include insurable crops (crops eligible for crop insurance) and non-insurable crops (crops eligible for NAP). Total claims for the CDP program were about $2 billion (before application of the payment limit and before the national factor). Out of the $2 billion, about $375 million was paid out for crops that are eligible for NAP; the remaining funds went to crops that were eligible for crop insurance.

The CDP paid producers for quantity losses in excess of 35 percent at 65 percent of the market price. The NAP program pays producers for quantity losses in excess of 50 percent at 55 percent of the market price. When the CDP applications were screened for those producers meeting the more restrictive loss requirements and adjustments were made in the payment rates, the $375 million in benefits for non-insured crops under CDP dropped to about $150 million under the NAP.

The number of NAP participants ranged from a low of about 6,500 in 1997 to a high of over 25,000 in 1996. More than 50,000 producers received CDP benefits for crops eligible for NAP. Each producer received, on average, payments for about two crops. If 75,000 producers were to enroll in the new NAP, averaging two crops per producer, about $15 million would be collected annually in service fees.

The total cost of NAP would be $147 million annually ($162 million in benefits less the $15 million in service fees). Compared with projected NAP outlays in the President's Budget of $90 million, CCC outlays would increase by $57 million annually. Compared with average NAP outlays of $43 million in fiscal years 1997 to 1999, CCC outlays would increase by $104 million annually. The outlays would partially offset lower income due to the weather-related crop losses. Farm income would increase by a like amount.

The above cost projections assume that unseeded forage on Federal and State lands is eligible for NAP benefits.

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It is estimated that 62 million acres of unseeded forage on Federal and State lands would become eligible under the new rule. If 10 percent of these acres could not be grazed due to a natural disaster, CCC outlays would increase by $12 million.

This rule is issued as an interim rule and will be effective while comments are being received. As this rule implements provisions of the Federal Agriculture Improvement and Reform Act of 1996, section 161 of that Act exempts this rule from prior comment. Likewise section 172 of ARPA 2000 suggests quick implementation. Delay in implementing the new statutory law would be contrary to the public interest and law. Likewise, as to 5 U.S.C. 808 it has been determined for the same reasons that a lay-over for Congressional review would be contrary to public interest. Similarly, for those amendments not compelled by recent statutory changes, the improvement of the program should benefit the overall administration of the program and corrections based on comments can be made as needed. Accordingly, it has been determined that it would be contrary to the public interest to withhold those changes and those changes likewise are made effective immediately. All of the corrections and amendments are set out in the full text of 7 CFR part 1437 in this interim rule. Comments, favorable and unfavorable, are solicited on all aspects of the rule.

List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster Assistance, Reporting and record keeping requirements.

For the reasons set out above, 7 CFR part 1437 is revised to read as follows:

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.

1437.1 Applicability.
1437.2 Administration.
1437.3 Definitions.
1437.4 Eligibility.
1437.5 Coverage period.
1437.6 Application for coverage and service fee.
1437.7 Records.
1437.8 Unit division.
1437.9 Causes of loss.
1437.10 Notice of loss and application for payment.
1437.11 Average market price and payment factors.
1437.12 Crop definition.
1437.13 Multiple benefits.
1437.14 Payment and income limitations.
1437.15 Miscellaneous provisions.

Subpart B—Determining Yield Coverage Using Actual Production History

1437.101 Actual production history.
1437.102 Yield determinations.
1437.103 Determining payments for low yield.
1437.104 Honey.
1437.105 Maple sap.
1437.106–1437.200 [Reserved]

Subpart C—Determining Coverage for Prevented Planted Acreage

1437.201 Prevented planting acreage.
1437.202 Determining payments for prevented planting.
1437.203–1437.300 [Reserved]

Subpart D—Determining Coverage Using Value

1437.301 Value loss.
1437.302 Determining payments.
1437.303 Aquaculture, including ornamental fish.
1437.304 Floriculture.
1437.305 Ornamental nursery.
1437.306 Christmas tree crops.
1437.307 Mushrooms.
1437.308 Ginseng.
1437.309 Turfgrass sod.
1437.310–1437.400 [Reserved]

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

1437.401 Forage.
1437.402 Carrying capacity.
1437.403 Determining payments.
1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

Authority: 15 U.S.C. 714 *et seq.*; and 7 U.S.C. 7333.

Subpart A—General Provisions

§ 1437.1 Applicability.

(a) The Noninsured Crop Disaster Assistance Program (NAP) is intended to provide eligible producers of eligible crops coverage equivalent to the catastrophic risk protection level of crop insurance. NAP is designed to help reduce production risks faced by producers of commercial crops or other agricultural commodities. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or where producers are prevented from planting an eligible crop.

(b) The provisions contained in this part are applicable to eligible producers and eligible crops for which catastrophic coverage under section 508(b) the Federal Crop Insurance Act (7 U.S.C. 1508(b)), as amended, or its successors, is not available.

(c) The regulations of this part are applicable to the 2001 and subsequent crop years.

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Executive Vice-President, CCC (who also serves as Administrator, Farm Service Agency), and shall be carried out by State and county FSA committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice-President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines (except statutory deadlines) in cases where lateness to file does not adversely affect operation of the program.

§ 1437.3 Definitions.

The definitions and program parameters set out in this section shall be applicable for all purposes of administering the Noninsured Crop Disaster Assistance Program provided for in this part. Although the terms defined in part 718 of this title and part 1400 of this chapter shall also be applicable, the definitions set forth in this section shall govern for all purposes of administering the Program.

Actual Production History (APH) means the farm's operative production history established in accordance with subpart B of this part.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

Animal Unit Days (AUD) means an expression of expected or actual stocking rate for pasture or forage.

Application Closing Date means the last date, as determined by CCC, producers can submit an application for coverage for noninsured crops for the specified crop year.

Catastrophic coverage means a catastrophic risk protection (CAT) level of crop insurance available in accordance with section 508(b) of the Federal Crop Insurance Act, as amended.

Catastrophic loss means—

(1) Loss, as the result of an eligible cause of loss, that entails as determined by CCC:

(i) Prevented planting of greater than 35 percent of the intended crop acreage; a yield loss of greater than 50 percent of the approved yield; or value loss of greater than 50 percent of the pre-disaster value; or

(ii) AUD loss of greater than 50 percent of the expected AUD.

(2)The quantity will not be reduced for any quality consideration unless a zero value is established.

Controlled environment means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water, soil, or nutrients) by the producer, is in fact controlled by the producer.

Crop year means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

Fiber means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by CCC.

Final planting date means the date which marks the end of the planting period for the crop and in particular the last day, as determined by CCC, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

Food means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by CCC.

Good farming practices means the cultural practices generally used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. These practices are normally those recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

Industrial crop means a commercial crop, or other agricultural commodity utilized in manufacturing. Industrial crops include caster beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame and other crops specifically designated by CCC.

Intended Use means for a crop or a commodity, the end use for which it is grown and produced.

Multiple planted means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by CCC.

Normal harvest date means the date harvest of the crop is normally completed in the administrative county, as determined by CCC.

Seed crop means propagation stock commercially produced for sale as seed stock for eligible crops.

Seeded forage means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

T-Yield means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than four years of actual, assigned, or appraised yields are available in the APH data base.

Transitional yield means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.

§ 1437.4 Eligibility.

(a) Noninsured crop disaster assistance for low yield or prevented planting is available to producers of eligible commercial crops or other agricultural commodities, as determined by CCC, for which:

(1) Catastrophic coverage is not available; or

(2) Catastrophic coverage is available in the administrative county, however, the eligible commercial crop or other agricultural commodity is affected by an eligible cause of loss, as determined by CCC, that is not covered by the catastrophic coverage.

(b) Noninsured crop disaster assistance for low yields or prevented planting is available only when loss of the crop occurs as a result of an eligible cause of loss, as determined by CCC.

(c) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their by-products;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops; except for the 2001 and preceding crop years assistance for forage produced on Federal- and State-owned lands is available only for seeded forage.

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Industrial crops; and

(vii) Seed crops.

§ 1437.5 Coverage period.

(a) The coverage period is the time during which coverage is available against loss of production of the eligible crop as a result of natural disaster.

(b) The coverage period for annual crops, including annual forage crops, begins the later of 30 calendar days after the date the application for coverage is filed; or the date the crop is planted, not to exceed the final planting date; and ends on the earlier of the date harvest is complete; the normal harvest date of the crop in the area; the date the crop is abandoned; or the date the crop is destroyed.

(c) Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins 30 calendar days after the application closing date; and ends as determined by CCC.

(d) Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including

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floriculture and mushrooms begins 30 calendar days after the application closing date; and ends the last day of the crop year, as determined by CCC.

(e) The coverage period for honey begins 30 calendar days after the application closing date and ends the last day of the crop year, as determined by CCC.

(f) The coverage period for maple sap begins 30 calendar days after the application closing date and ends on the earlier of the date harvest is complete; or the normal harvest date.

(g) For biennial and perennial forage crops the coverage period begins the later of 30 calendar days after the application closing date; for first year seedings, the date the crop was planted; or the date following the normal harvest date. The coverage ends on the normal harvest date of the subsequent year.

§ 1437.6 Application for coverage and service fee.

(a) With respect to each crop, commodity or acreage, producers must file an application for coverage under this part no later than the application closing date.

(b) The service fee must be paid at the time of the application. The service fee is $100 per crop per administrative county, up to $300 per producer per administrative county, but not to exceed $900 per producer.

(c) The service fee will be applied per administrative county by crop definition and planting period, as determined by CCC.

(d) Limited resource farmers may request that the service fee be waived and must request such a waiver prior to, or at the same time the application for coverage is filed. For this purpose, a "limited resource farmer" shall be given the meaning assigned by 7 CFR 457.8.

(e) For 2001 and 2002 crops for which the application closing date would normally have been established prior to March 19, 2002, or established within 60 calendar days after March 19, 2002, producers must within 30 calendar days after March 19, 2002:

(1) Submit a 2001 or 2002 crop application for coverage, as applicable, and pay the applicable service fee; and

(2) Certify the 2000 and 2001 crop year production for the crop, if applicable.

(f) For 2001 and 2002 crops which have suffered damage or loss, producers must, in addition to paragraph (e)(1) of this section, have complied with all requirements of this part prior to its revision on March 19, 2002, (and contained in the 7 CFR, parts 1200 to 1599, edition revised as of January 1, 2002) including having filed a timely:

(1) Report of acreage;

(2) Notice of loss; and

(3) Application for payment.

§ 1437.7 Records.

(a) Producers must maintain records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with § 1437.5. For those crops or commodities for which it is impractical, as determined by CCC, to maintain crop acreage, yields or production, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D and E, of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with § 1437.6. Producers may be selected on a random or targeted basis and be required to provide records acceptable to CCC to support the certification provided. For each crop for which producers file an application for payment in accordance with § 1437.10 that is harvested, producers must provide documentary evidence of production, acceptable to CCC, and the date harvest was completed. Such documentary evidence must be filed not later than the application closing date for the crop in the subsequent crop year. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the application closing date for the crop in the current crop year. Production data provided after the application closing date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by CCC. Records of production acceptable to CCC may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the eligible crop has been fed to livestock, or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC. If the crop will be disposed of through retail sales, such as: roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the unit acreage prior to harvest of the crop acreage.

(b) Producers must provide verifiable evidence, as determined by CCC, of:

(1) An interest in the commodity produced or control of the crop acreage on which the commodity was grown at the time of disaster; and

(2) The authority of the applicable individual to execute program documents.

(c) Reports of acreage planted or intended but prevented from being planted must be provided to CCC at the administrative FSA office for the acreage no later than the date specified by CCC for each crop and location. Reports of acreage filed beyond the date specified by CCC for the crop and location may, however, be considered timely filed if all the provisions of 7 CFR 718.103 are met. In the case of a crop-share arrangement, all producers will be bound by the acreage report filed by the landowner or operator unless the producer files a separate acreage report prior to the date specified by CCC for the crop and location. Reports of acreage planted or intended and prevented from being planted must include all of the following information:

(1) Number of acres of the eligible crop in the administrative county (for each planting in the event of multiple planting) in which the producer has a share;

(2) Zero acres planted when the producer's crop for which an application for coverage was filed, is not planted;

(3) The producer's share of the eligible crop at the time an application for coverage was filed;

(4) The FSA farm serial number;

(5) The identity of the crop, practices, intended uses, and for forage crops, the predominant species or type and variety of the vegetation;

(6) The identity of all producers sharing in the crop;

(7) The date the crop was planted or planting was completed, including the age of the perennial crops; and

(8) The acreage intended but prevented from being planted.

(d) Producers receiving a guaranteed payment for planted acreage, as opposed to receiving a payment only upon delivery of the production must provide documentation of any written or verbal contract or arrangement with the buyer to CCC. Net production, as determined by CCC, may be adjusted upward by the amount of production corresponding to the amount of the contract payment received.

(e) Producers must provide documentation of any salvage value received by or made available for the quantity of the crop or commodity that cannot be marketed or sold in any market, as determined by CCC and any value received by or made available for a secondary use of the crop or commodity.

(f) Producers requesting payment under this part must maintain records which substantiate gross revenue for the tax year preceding the crop year for which coverage is requested.

(g) Producers requesting a waiver of service fees as a limited resource producer must maintain records which substantiate annual gross income for the two tax years preceding the crop year for which coverage is requested.

§ 1437.8 Unit division.

Except as determined by CCC, a unit shall be all acreage of the eligible crop in the administrative county operated by the same producer(s). In cases where the owners of land are also producers, units shall be further divided based on ownership interest of the land.

§ 1437.9 Causes of loss.

(a) To be eligible for benefits under this part, crops must be damaged or prevented from being planted by drought, flood or other natural disasters and conditions related thereto. Not all named perils are eligible causes of loss for all crops. Eligible causes of loss include:

(1) Damaging weather occurring prior to or during harvest, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;

(2) Adverse natural occurrence occurring prior to or during harvest, such as earthquake, flood, or volcanic eruption; and

(3) A related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest, that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

(b) Ineligible causes of loss include but are not limited to:

(1) Factors or circumstances that are not the result of an eligible cause of loss affecting specific crop or commodity;

(2) The negligence or malfeasance of the producer;

(3) The failure of the producer to reseed to the same crop in those areas and under such circumstances where it is customary to reseed;

(4) Failure of the producer to follow good farming practices, as determined by CCC;

(5) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(6) Failure or breakdown of irrigation equipment or facilities; or

(7) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year;

(8) A loss of inventory (or yield as applicable) of aquiculture (including ornamental fish), floriculture or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason;

(9) Any failure to provide a controlled environment or exercise good nursery practices where such controlled environment or practices are a condition of eligibility under this part.

§ 1437.10 Notice of loss and application for payment.

(a) At least one producer having a share in the unit must provide a notice of loss to CCC in the administrative FSA office for the unit, within:

(1) For prevented planting claims, 15 calendar days after the final planting date,

(2) For low yield claims and allowable value loss, the earlier of:

(i) 15 calendar days after the damaging weather or adverse natural occurrence, or date loss of the crop or commodity becomes apparent for low yield claims; and

(ii) 15 calendar days after the normal harvest date.

(b) For each crop for which a notice of loss is filed, producers must provide the following information:

(1) Crop by type or variety, as applicable;

(2) The cause of the crop damage;

(3) Date the loss occurred, as applicable;

(4) Date the damage or loss became apparent;

(5) The existence of a guaranteed payment through a contract or agreement for planted acreage as opposed to delivery of production, if one exists;

(6) Type of crop loss occurred, e.g. prevented planting or low yield;

(7) Practices employed to grow the crop, e.g. irrigated or non-irrigated;

(8) For prevented planting:

(i) Total acreage intended to be planted to the crop in the administrative county;

(ii) Total acreage planted by the producer to the crop in the administrative county;

(iii) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, etc; and

(iv) What and when land preparation measures, e.g. cultivation, etc. were completed and indicate what has been done or will be done with the acreage, e.g. abandoned, replanted, etc.

(9) For low yield:

(i) Total acreage planted by the producer to the crop in the administrative county;

(ii) Total acreage of the crop in the administrative county affected;

(iii) What and when land preparation measures and practices, e.g. cultivation, planting, irrigated, etc. were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, e.g. harvested, destroyed and replanted to a different crop, abandoned, etc.

(10) Any such other information requested by CCC to establish the loss.

(c) A notice of loss provided beyond the time specified in paragraph (a) of this section may be considered timely filed if, at the discretion of CCC, provided at such time to permit an authorized CCC representative the opportunity to:

(1) Verify the information on the notice of loss by inspection of the specific acreage or crop involved; and

(2) Determine, based on information obtained by inspection of the specific acreage or crop involved, that an eligible cause of loss, as opposed to other circumstance, caused the claimed damage or loss.

(d) Crop acreage that will not be harvested, i.e. acreage that is to be abandoned or destroyed or in the case of forage acreage intended to be mechanically harvested but grazed, must be left intact and producers must request, in the administrative FSA office for the acreage, a crop appraisal and release of crop acreage by a FCIC- or CCC-approved loss adjustor:

(1) Prior to destruction or abandonment of the crop acreage; or

(2) No later than the normal harvest date, as determined by CCC.

(e) Producers must apply for payments prior to the earlier of the:

(1) Date an application for coverage is filed for the crop for the subsequent crop year; or

(2) Application closing date for the crop for the subsequent crop year.

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§ 1437.11 Average market price and payment factors.

(a) An average market price will be used to calculate assistance under this part and will be:

(1) A dollar value per the applicable unit of measure of the eligible crop;

(2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by CCC;

(3) Comparable with established FCIC prices; and

(4) Determined, as practicable, for each intended use of a crop within a State for a crop year.

(b) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(c) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted or planted but not harvested, as determined by CCC.

(d) An adjusted market price will be calculated based on the provisions in this section and others as may apply. A final payment price will be determined by multiplying, as appropriate, the average market price by the applicable payment factor (i.e. harvested, unharvested, or prevented planting) by 55 percent or, by multiplying the applicable AUD (as adjusted, if adjusted) by 55 percent.

§ 1437.12 Crop definition.

(a) For the purpose of providing benefits under this part, CCC will, at its discretion, define crops as specified in this section.

(b) CCC may separate or combine types and varieties as a crop when specific credible information as determined by CCC is provided showing the crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by CCC.

(c) CCC may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC, and all crops are recognized by CCC as able to achieve the expected yield, as determined by CCC.

(d) CCC may consider crop acreage that is harvested more than once during the same crop year from the same plant as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(e) CCC may consider each planting period of multiple planted acreage as a separate crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(f) CCC may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(g) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.

(h) Forage acreage intended to be mechanically harvested may be defined as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses, as determined by CCC, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of production for any other intended use of the crop improbable.

§ 1437.13 Multiple benefits.

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits in paragraph (a) of this section shall not apply in any respect to Emergency Loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 *et seq*).

(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

§ 1437.14 Payment and income limitations.

(a) NAP payments shall not be made in excess of $100,000 per person per crop year under this part.

(b) NAP payments shall not be made to a person who has qualifying gross revenues in excess of $2 million for the most recent tax year preceding the year for which assistance is requested. Qualifying gross revenue means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income for the taxable year from all sources.

(c) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

(d) Rules set out in 7 CFR part 1400 shall apply in implementing the restrictions of this section.

§ 1437.15 Miscellaneous provisions.

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of § 718.11 of this title, providing for ineligibility for benefits for offenses involving controlled substances, shall apply.

(c) A person shall be ineligible to receive assistance under this part for the crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by CCC to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to CCC together with interest and other amounts as determined appropriate to the circumstances by CCC.

(e) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U. S. C. 3729.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

Subpart B—Determining Yield Coverage Using Actual Production History

§ 1437.101 Actual production history.

Actual production history will be used, except as otherwise indicated in this part, as the basis for providing noninsured crop disaster assistance.

§ 1437.102 Yield determinations.

(a) Payments based on yields shall be made on "approved yields", which shall be calculated based on the producer's APH for that period up to ten years for which, of the first time such a yield is calculated, there are consecutive years, beginning with the most recent completed year, of actual production history for the producer. If there are not four such consecutive years of history (excluding years when the crop was out of rotation), then such first "approved yield" shall be constructed by creating a four year history as provided for in this part. After the first such approved yield is constructed, years will be added to that history in the manner provided for in this section, dropping, as needed, previous years from the history to the extent that the current history would be a history or base of ten years. For the first approved yield, as needed to construct a four-year history, history will be supplied using T-yields, as set out in paragraph (b) of this section.

(b) The county expected yield:

(1) Is the "T-yield" for the crop, and is the Olympic average (disregarding the high and low yields) of yields in the county the 5 consecutive crop years immediately preceding the previous crop year. (Example: For the 2001 crop year, the base period would be 1995 through 1999).

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(c) Available historical information will be used to establish the county expected yields. Historical information is available from sources including, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Data, credible non-government studies, yields in similar areas, and reported actual yield data. Such yields will be based on the acreage intended for harvest.

(d) County expected yields may be adjusted for:

(1) Yield variations due to different farming practices in the administrative county such as: irrigated, nonirrigated, and organic practices; and

(2) Cultural practices, including the age of the planting when such practices are different from those used on acreage to establish the yield.

(e) A T-yield will be used in the actual production history database when less than four consecutive crop years of actual, assigned, or zero yields, as applicable, are available. For those producers who have land physically located in multiple counties and administered out of one county office, the T-yield for all land for the producer will be based on the administrative county's expected yield for that crop. Where a four-year base must be constructed for the producer's first approved yield because the producer does not have at least four consecutive years of actual history starting with the most recent year, then:

(1) If an approved yield had not previously been calculated for the crop and there are no production records available for the most recent crop year, or if there is no formula provided for the producer under paragraphs (e)(2) through (4) of this section, then the approved yield for the current crop year will be calculated on the simple average of 65 percent of the applicable T-yield for each of the four years of the constructed base;

(2) If certified acceptable production records are available for only the most recent crop year and there are no zero (credited) or assigned yields in the producer's history, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-Yield for the missing crop years.

(3) If certified acceptable production records are available for only the two most recent crop years and there are no zero (credited) or assigned yields in the APH database, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the missing years.

(4) If certified acceptable production records are available for only the three most recent crop years and there are no zero (credited) or assigned yields in the APH database, the approved yield will be calculated on the simple average of

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the three actual yields plus 100 percent of the applicable T-Yield for the missing year.

(f) CCC will reduce unadjusted T-yields placed in the actual production history database when, as determined by CCC, an unadjusted T-yield does not accurately reflect the productive capability of specific crop acreage.

(g) An actual yield includes the total amount of harvested and appraised production on a per acre, or other basis, as applicable.

(h) Once an approved yield has been calculated for any year, then thereafter an assigned yield will be used to update or extend the producer's actual production history (or base) database when producers fail to certify a report of production after the approved yield was calculated and the following standards shall apply:

(1) The assigned one-year yield will be equal to 75 percent of the approved yield calculated for the most recent crop year for which producers do not certify a report of production.

(2) Producers may have only one assigned yield in the actual production history database.

(3) Producers may replace an assigned yield with an actual yield by providing a certification of production and production records for the applicable crop year in accordance with § 1437.7.

(4) If the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by CCC, producers may not receive an assigned yield and will receive a zero credited yield, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If CCC determines those records are inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) Notwithstanding paragraph (h)(4) of this section an assigned yield may be used if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to CCC, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and such recommendation is approved by CCC.

(6) A zero credited yield will be used to the extent provided for in paragraph (i) of this section.

(i) A zero credited yield will be placed in the actual production history database for each crop year, following the crop year containing an assigned yield, for which producers do not certify a report of production. A zero credited yield may be replaced with an actual yield by providing a certification of production and production records for the applicable crop year in accordance with § 1437.7.

(j) An approved yield is calculated as the simple average of a minimum of four, not to exceed a maximum of 10 consecutive crop year yields for the crops, or as determined by CCC and as provided in this section.

(1) If, for one or more actual production history crop years used to establish the approved yield, the actual or appraised yield is less than 65 percent of the current crop year T-yield due to losses incurred in a disaster year, as determined by CCC, producers may request CCC replace the applicable yield with a yield equal to 65 percent of the current crop year T-yield.

(2) If approved yields were calculated for any of the 1995 through 2000 crop years, and subsequently in that period production was not certified, producers may request CCC replace the missing yields for such years with yields equal to the higher of 65 percent of the current crop year T-yield or the missing crop years actual yield.

(3) If producers add land in the farming operation and do not have available production records for the added land CCC will calculate an approved yield for the new unit by utilizing the actual production history yields for the existing unit. In the event the crop suffers a loss greater than 50 percent of the initial approved yield for the crop year and unit acreage has increased by more than 75 percent of the historical average acreage, CCC may adjust the approved yield, as determined by CCC.

(k) If a producer is a new producer, the approved yield may be based on unadjusted T-Yields or a combination of actual yields and unadjusted T-Yields. A new producer is a person who has not been actively engaged in farming for a share of the production of the eligible crop in the administrative county for more than two APH crop years. Formation or dissolution of an entity which includes individuals with more than two APH crop years of production history during the base period does not qualify the new entity as a new producer for APH determination purposes.

(l) If producers qualify as a new producer and have produced the crop for 1 or 2 crop years, producers must provide to CCC at the administrative FSA office serving the area in which the crop is located, a certification and records of production for those crop years.

(m) Further adjustments may be made as necessary to accomplish the purposes of this program.

§ 1437.103 Determining payments for low yield.

(a) Except to the extent that the loss calculation provisions of other subparts apply, and subject to limitations set out elsewhere in this part and in this title and to the availability of funds, payments under this part shall be made on eligible crops with eligible losses by:

(1) Multiplying the total eligible acreage planted to the eligible crop by the producers share, and subject to provisions for specific crops provided elsewhere in this part;

(2) Multiplying the product of paragraph (a)(1) of this section by 50 percent of the approved yield per acre for the commodity for the producer.

(3) Subtracting net production of the total eligible acreage from the product of paragraph (a)(2) of this section;

(4) Multiplying the difference calculated under paragraph (a)(3) of this section by the final payment price calculated under § 1437.11, and then

(5) Subtracting the value of salvage and secondary use.

(b) Further adjustments may be made as needed to accomplish the purposes and goals of the program.

§ 1437.104 Honey.

(a) Honey production eligible for benefits under this part includes table and non-table honey produced commercially.

(b) All of a producer's honey will be considered a single crop, regardless of type or variety of floral source or intended use.

(c) The crop year for honey production is the calendar year, January 1 through December 31.

(d) In addition to filing a report of acreage in accordance with § 1437.7, honey producers must provide a record of colonies to CCC. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies shall include:

(1) The address of the producer's headquarters and FSA farm serial number, if available;

(2) Names and shares of each person sharing in the honey produced from the unit;

(3) The number of all colonies of bees belonging to the unit;

(4) The names of counties in which colonies of bees are located as of the date of the report; and

(5) A certification of the number of colonies reported including all colonies from which production is expected.

(e) The honey unit shall consist of all the producer's bee colonies, regardless of location.

(f) Producers must designate a FSA office as the control office for the honey operation. Producers must complete the following actions only in the control office:

(1) File an application for coverage;

(2) File a report of colonies;

(3) Report total unit production; and

(4) Request to change a unit's control office.

(g) Actions that may be taken in any Administrative FSA office includes:

(1) Designating or selecting another control office; or

(2) Filing a notice of loss in accordance with § 1437.10.

(h) Producers must notify the control office designated in accordance with paragraph (f) of this section within 30 calendar days of the date of:

(1) Any changes in the total number of colonies; and

(2) The movement of any colonies into any additional counties.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

§ 1437.105 Maple sap.

(a) NAP assistance for maple sap is limited to maple sap produced on private property for sale as sap or syrup. Eligible maple sap must be produced from trees that:

(1) Are located on land the producer controls by ownership or lease;

(2) Are managed for production of maple sap;

(3) Are at least 30 years old and 12 inches in diameter; and

(4) Have a maximum of 4 taps per tree according to the tree's diameter.

(b) The crop year for maple sap production is the calendar year, January 1 through December 31.

(c) If producers file an application for coverage in accordance with § 1437.6, tree acreage containing trees from which maple sap is produced or is to be produced must be reported to CCC no later than the beginning of the crop year.

(d) In addition to the applicable records required under § 1437.7, producers must report the:

(1) Total number of eligible trees on the unit;

(2) Average size and age of producing trees; and

(3) Total number of taps placed or anticipated for the tapping season.

(e) A maximum county-expected-yield for maple sap shall be 10 gallons of sap per tap per crop year unless acceptable documentary evidence, as determined by CCC, is available to CCC to support a higher county-expected-yield.

(f) The average market price for maple sap must be established for the value of the sap before processing into syrup. If price data is available only for maple syrup, this data must be converted to a maple sap basis. The wholesale price for a gallon of maple syrup shall be multiplied by 0.00936 to arrive at the average market price of a gallon of maple sap.

(g) The actual production history for maple sap shall be recorded on the basis of gallons of sap per tap.

(h) The unit's expected production is determined by:

(1) Multiplying the number of taps placed in eligible trees; by

(2) The approved per tap yield as determined in accordance with § 1437.102.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

§§ 1437.106–1437.200 [Reserved]

Subpart C—Determining Coverage for Prevented Planted Acreage

§ 1437.201 Prevented planting acreage.

(a) Prevented planting is the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by CCC.

(b) The eligible cause of loss that prevented planting must have:

(1) Occurred after a previous planting period for the crop and

(2) Before the final planting date for the crop in the applicable crop year or in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Generally affected other producers in the area, as determined by CCC.

(c) Producers must be prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop and in the case of multiple planting, more than 35 percent of the total eligible acres intended to be planted within the applicable planting period.

(d) Eligible prevented planting acreage will be determined on the basis of the producer's intent to plant the crop acreage, and possession of, or access to, resources to plant, grow, and harvest the crop, as applicable.

(e) Acreage ineligible for prevented planting coverage includes, but is not limited to:

(1) Acreage which planting history or conservation plans indicate would remain fallow for crop rotation purposes; and

(2) Acreage used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs.

§ 1437.202 Determining payments for prevented planting.

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment for prevented planting will be determined by:

(1) Multiplying the producer's total eligible acreage intended for planting to the eligible crop by the producer's share;

(2) Multiplying the product of paragraph (a)(1) of this section by 65 percent;

(3) Subtracting the total acres planted from the product of paragraph (a)(2) of this section;

(4) Multiplying the product of paragraph (a)(3) of this section by 50 percent of the producer's approved yield;

(5) Multiplying the product of paragraph (a)(4) of this section by the final payment price for the producer's crop as calculated by the agency under § 1437.11.

(b) Yields for purposes of paragraph (a) of this section shall be calculated in the same manner as for low-yield claims.

§§ 1437.203–1437.300 [Reserved]

Subpart D—Determining Coverage Using Value

§ 1437.301 Value loss.

(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities which do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. The agency shall determine which crops shall be treated as value-loss crops, but unless otherwise announced, such crops shall be limited to those identified in §§ 1437.303 through 1437.309 as value loss crops. Lost productions of value loss crops shall be compensable only under this subpart.

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(b) The crop year for all value loss crops is October 1 through September 30.

(c) Producers must file an application for coverage in accordance with § 1437.6, and must:

(1) Provide a report of the crop, commodity, and facility to CCC for the acreage or facility, in a form prescribed by CCC, no later than the beginning of the crop year.

(2) Maintain a verifiable inventory of the eligible crop throughout the crop year; and

(3) Provide an accurate accounting of the inventory, as required by CCC.

§ 1437.302 Determining payments.

Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:

(a) Multiplying the field market value of the crop before the disaster by 50 percent;

(b) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a)(1) of this section;

(c) Multiplying the result from paragraph (a)(2) of this section by the producer's share;

(d) Multiplying the result from paragraph (a)(3) of this section by 55 percent plus whatever factor deemed appropriate to reflect savings from non-harvesting of the damaged crop or other factors as appropriate;

(e) Multiplying the salvage value by the producer's share;

(f) Subtracting the result from paragraph (a)(5) of this section from the result from paragraph (a)(4) of this section.

§ 1437.303 Aquaculture, including ornamental fish.

(a) Aquaculture is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible aquacultural species shall only include:

(1) Any species of aquatic organisms grown as food for human consumption as determined by CCC.

(2) Fish raised as feed for other fish that are consumed by humans; and

(3) Ornamental fish propagated and reared in an aquatic medium.

(b) The aquacultural facility must be:

(1) A commercial enterprise on private property;

(2) Owned or leased by the producer, with readily identifiable boundaries; and

(3) Managed and maintained using good aquacultural growing practices.

(c) Producers must:

(1) Ensure adequate and proper flood prevention, growing medium, fertilization or feeding, irrigation and water quality, predator control, and disease control; and

(2) Have control of the waterbed.

(d) Eligible aquacultural species must be:

(1) Placed in the facility and not be indigenous to the facility; and

(2) Kept in a controlled environment; and

(3) Planted or seeded in containers, wire baskets, net pens, or similar device designed for the protection and containment of the seeded aquacultural species.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the aquacultural species are produced in a facility in accordance with paragraphs (b), (c) and (d) of this section.

§ 1437.304 Floriculture.

(a) Floriculture, except for seed crops as specified in paragraph (d) of this section, is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible floriculture shall be limited to commercial production of:

(1) Field-grown flowers, including flowers grown in containers or other growing medium maintained in a field setting according to industry standards, as determined by CCC; and

(2) Tubers and bulbs, for use as propagation stock of eligible floriculture plants; and

(3) Seed for propagation of eligible floriculture plants.

(b) Floriculture does not include flowering plants indigenous to the location of the floriculture facility or acreage.

(c) Eligible floriculture must be grown in a region or controlled environment conducive to the successful production of flowers, tubers, and bulbs, as determined by CCC.

(d) Claims on losses on the production of flower seed for propagation of eligible floriculture plants will not be treated under "value loss" rules, but under the rules for normal production low yield crops under subpart B of this part.

(e) The facility or acreage for eligible floriculture must be managed and maintained using good floriculture growing practices. At a minimum, producers are responsible for providing a controlled environment and must ensure adequate and proper fertilization, irrigation, weed control, insect and disease control, and rodent and wildlife control.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the floriculture is produced in accordance with paragraph (e) of this section.

(g) Flowers having any dollar value shall be counted as having full value for loss calculations. Damaged plants that are determined able to rejuvenate or determined to be merely stunted shall be counted as worth full value.

§ 1437.305 Ornamental nursery.

(a) Eligible ornamental nursery stock is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible ornamental nursery stock is limited to field-grown and containerized decorative plants grown in a controlled environment for commercial sale.

(b) The property upon which the nursery stock is located must be owned or leased by the producer.

(c) The eligible nursery stock must be placed in the ornamental nursery facility and not be indigenous to the facility.

(d) The facility must be managed and cared for using good nursery growing practices for the geographical region. At a minimum producers must provide a controlled environment and ensure adequate and proper flood prevention, growing medium, fertilization, irrigation, insect and disease control, weed control, rodent and wildlife control, and over-winterization storage facilities.

(e) An ornamental plant having any value as an ornamental plant, or a damaged ornamental plant that may rejuvenate and re-establish value as a ornamental plant, shall be considered as worth full value based on the age or size of the plant at the time of disaster.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ornamental nursery is maintained in accordance with this section.

§ 1437.306 Christmas tree crops.

(a) A Christmas tree is a value loss crop and may generate a claim for benefits under this part only if the tree was grown exclusively for commercial use as a Christmas tree, and only if other requirements of this section are met.

(b) The unit of measure for all Christmas tree crops is a plant.

(c) A Christmas tree having any value as a Christmas tree, or a damaged Christmas tree that may rejuvenate and re-establish value as a Christmas tree, shall be considered as worth full value based on the age of the tree at the time of disaster.

§ 1437.307 Mushrooms.

(a) Eligible mushrooms is a value loss crop and is only compensable in accord with the restrictions of this section. To be eligible, the mushrooms must be grown as a commercial crop in a facility with a controlled environment utilizing good mushroom growing practices. The facility must be located on private property either owned or leased by the producer.

(b) The controlled environment for eligible mushrooms must include primary and backup systems for:

(1) Temperature and humidity controls;

(2) Proper and adequate lighting; and

(3) Positive air pressurization and filtration.

(c) The growing medium must consist of a substrate (a habitat and nutrient base) sterilized by heat treatment.

(d) Good mushroom growing practices must be used, and they consist of proper and adequate insect and disease control and the maintenance of a sterile environment. Maintaining a sterile environment includes at a minimum:

(1) Adequate hygiene;

(2) Overall cleanliness;

(3) Isolation or minimum contact procedures;

(4) Use of footpaths; and

(5) Availability and frequent utilization of wash-down facilities.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the mushrooms are maintained in accordance with this section.

§ 1437.308 Ginseng.

(a) Ginseng is a value loss crop and is compensable only as allowed in this section. Ginseng is eligible only if:

(1) The ginseng includes stratified seeds for use as propagation stock in a commercial ginseng operation or rootlet for commercial sale that are grown in a controlled, cultivatable environment on private property either owned or leased by the producer; and

(2) The ginseng is grown using good ginseng growing practices with all plant needs supplied and under control of the producer;

(b) Ginseng will not be eligible to generate benefits under this part if it:

(1) Is indigenous to the facility;

(2) Is grown solely for medicinal purposes; and

(3) Includes wild ginseng rootlet that is harvested and transplanted from woodland grown ginseng.

(c) Good ginseng growing practices must be followed, and include, but are not limited to:

(1) Adequate drainage;

(2) Proper and adequate shade;

(3) Accurate pH level;

(4) Adequate and timely fertilization, including an adequate supply to ensure nutrient reserves to the ginseng plants and customary application equipment;

(5) Adequate pest control, including but not limited to, weed, rodent, and wildlife control; and

(6) Disease control.

(d) Ginseng producers must:

(1) Provide a report of inventory of all ginseng, as determined by CCC;

(2) Provide production and sales records necessary to determine the value of eligible ginseng;

(3) Allow a CCC-certified loss adjustor to verify loss, including physically removing representative samples;

(4) Maintain and provide, as determined by CCC, adequate records of fertilization, and pest and disease controls used or put into place during the crop year; and

(5) Possess a valid food processing licence issued by the applicable State Department of Agriculture or equivalent and subject to food regulations administered by the Food and Drug Administration.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ginseng was produced in accordance with this section.

§ 1437.309 Turfgrass sod.

(a) Turfgrass sod is a value loss crop and is the upper stratum of soil bound by mature grass and plant roots into a thick mat produced in commercial quantities for sale.

(b) Specific species, types or varieties of grass intended for turfgrass sod will be considered a separate crop without regard to other intended uses.

(c) The unit of measure for all turfgrass sod shall be a square yard.

(d) Turfgrass sod having any value shall be considered as worth full value.

(e) In addition to the records required in § 1437.7, producers seeking payment must provide information to CCC regarding the average number of square yards per acre and all unharvested areas.

§§ 1437.310–1437.400 [Reserved]

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

§ 1437.401 Forage.

(a) Forage eligible to generate benefits under this part is limited to vegetation produced for animal consumption in a commercial operation using acceptable farming, pasture and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest. Forage to be mechanically harvested shall be treated under the rules for low-yield crops as calculated under § 1437.103. Claims on forage for grazing benefits will, contrariwise, be determined under this subpart. However, the provisions in this subpart shall govern for all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in § 1437.7, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must, in the administrative FSA office for the unit, request an appraisal prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to FSA as intended to be mechanically harvested which is subsequently completely grazed will be considered for crop definition purposes as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage shall be considered separate crops and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in § 1437.7 producers must specify whether the intended forage crop is intended for fall/winter, spring, or total season forage. In addition to other eligibility requirements, CCC will consider other factors, such as, water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) CCC will establish forage losses of acreage intended to be grazed on the basis of:

(1) For improved pasture, as determined by CCC, a similar percentage of loss of mechanically harvested forage acreage on the farm, or similar farms in the area; or

(2) For native pasture, as determined by CCC, the percentage of loss as determined by two independent assessments of pasture conditions.

§ 1437.402 Carrying capacity.

(a) CCC will establish a carrying capacity for all grazed forage present in the county for purposes of

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administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) CCC may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, CCC may adjust the expected AUD for the specific forage acreage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by CCC, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

§ 1437.403 Determining payments.

Subject to payment limits, availability of funds, and other limits as may apply, payments for losses of forage reported to FSA as intended to be grazed will be determined by:

(a) Multiplying the eligible acreage by the producer's share;

(b) Dividing the result from paragraph (a) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific acreage, as determined by CCC;

(c) Multiplying the result from paragraph (b) of this section by the number of days established as the grazing period;

(d) Adding adjustments of AUD for practices and production to the product of paragraph (c) of this section;

(e) Multiplying the result from paragraph (d) of this section by the applicable percentage of loss established by CCC;

(f) Multiplying the amount of AUD lost to other causes, as determined by CCC, by the producer's share;

(g) Subtracting the result from paragraph (f) of this section from the result from paragraph (e) of this section;

(h) Multiplying the result from paragraph (d) of this section by 0.50;

(i) Subtracting the result from paragraph (h) of this section from the result from paragraph (g) of this section; and

(j) Multiplying the result from paragraph (i) of this section by the AUD value established in accordance with § 1437.11, and then by 55 percent.

§ 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the regulation in this part is 0560–0175.

Signed at Washington, DC, on March 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6212 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AF78

Farm Loan Programs Account Servicing Policies—Servicing Shared Appreciation Agreements

AGENCY: Farm Service Agency, USDA.

ACTION: Correcting amendment.

SUMMARY: On August 18, 2000, the Farm Service Agency (FSA) published a final rule at 65 FR 50401–50405, which reduced the term of future Shared Appreciation Agreements (SAA), lowered the interest rate on amortized SAA recapture, and deducted the value of certain capital improvements from the shared appreciation recapture calculation. This document contains a correction to the final rule.

DATES: Effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, telephone (202) 690–4014; electronic mail: *mike_cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: FSA published a final rule in the **Federal Register** on August 18, 2000, (65 FR 50401–50405) amending 7 CFR part 1951. The final rule revised 7 CFR 1951.914 to reduce the term of all future SAAs from 10 years to 5 years. However, a conforming revision to Exhibit A, Attachment 1 was omitted inadvertently. This document corrects the inconsistency between 7 CFR 1951.914 and Exhibit A, Attachment 1. In addition, the authority citation is being revised to add a reference previously omitted.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs-Agriculture, Loan programs-Housing and community development

Accordingly, 7 CFR part 1951 is corrected by making the following correcting amendments:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480

Subpart S—Farm Loan Programs Account Servicing Policies

2. Revise Exhibit A, Attachment 1, Section II, paragraph entitled "Conditions of the New Agreement if You Qualify" to read as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

* * * * *

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 5 years. Under the terms of the agreement:

(1) You must repay a part of the sum written down.

(2) The amount you must repay depends on how much your real estate collateral increases in value.

During the 5 years, FSA will ask you to repay part of the debt written down if you do one of the following:

(1) Sell or convey the real estate;

(2) Stop farming; or

(3) Pay off the entire debt

If you do not do one of these things during the 5 years, FSA will ask you to repay part of the debt written down at the end of the 5 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last year, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

* * * * *

Signed in Washington, DC, on March 1, 2002.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 02–6210 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–05–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 741

Prompt Corrective Action; Requirements For Insurance

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: NCUA is revising its rule concerning financial and statistical reports to require all federally-insured credit unions to file quarterly Financial and Statistical Reports with NCUA. Currently, only federally-insured credit unions with assets over $50 million must file these reports quarterly. All other federally-insured credit unions are required to file these reports semi-annually. The final amendment is a necessary component of NCUA's examination program that will use a risk-focused approach to examinations and extend the examination cycle for credit unions that meet certain criteria. In conjunction with this change, we are making two conforming changes to NCUA's prompt corrective action rule.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Majka, Data Analysis Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2001, the NCUA Board requested comment on a proposed change to § 741.6(a), the provision governing the filing of quarterly Financial and Statistical Reports, also known as call reports or 5300 Reports. 66 FR 40642 (August 3, 2001). In conjunction with this change, the NCUA Board proposed revising its prompt corrective action rule to eliminate the requirement of written notice to NCUA of net worth changes and the option of filing a call report for the first and third quarter for credit unions that file call reports semi-annually. 12 CFR part 702.

NCUA received 65 comments regarding the proposed changes from 34 federal credit unions, 14 federally-insured state chartered credit unions, one non-federally-insured state chartered credit union, one unidentified credit union, one individual, nine credit union leagues, three credit union trade associations, one bank trade association, and one state supervisory authority (SSA).

Summary of Comments

Quarterly Call Reports

Forty-four of the commenters generally supported the revision to § 741.6(a), of which 11 agreed with one or more conditions stipulated. Twenty-one commenters objected to the proposed change. Overall, many of the commenters expressed concern regarding the additional burden quarterly reporting would place on credit unions, especially smaller credit unions. Several commenters provided suggestions for reducing the additional burden.

The 33 commenters that supported the changes without qualification believed the proposal would: (1) Result in an offsetting time savings for credit unions through the Risk Based Examination Scheduling Program; (2) help NCUA and the SSAs to identify emerging problems in a timely manner; and, (3) permit NCUA and the SSAs to concentrate their supervisory resources on those credit unions that represent a risk.

Negative and qualified commenters expressed concern with the additional time and resource burden on credit unions. Thirty of the commenters are particularly concerned with the effect on small credit unions. Seven commenters noted that smaller credit unions have to work harder to compete. They noted that smaller credit unions usually have a limited number of staff members and believe the limited resources of smaller credit unions could be better used to increase assets and services.

Ten commenters generally did not believe it was necessary for credit unions rated a CAMEL Code 1 and 2 to file quarterly call reports. Several of the commenters did not believe a credit union's financial condition would deteriorate in a 3 to 6 months time frame. Two commenters noted that the burden of completing two more call reports was more detrimental than having a yearly examination; one of which believed examiners and auditors were effective in correcting problems and providing guidance. Four of the commenters suggested that CAMEL Code 1 and 2 credit unions and those credit unions with a long-term trend of stability that have been in existence for more than a few years should be required to file call reports on a semi-annual basis. Three commenters who opposed the proposal noted that the proposed rule will result in the additional collection of information for a small percentage of the industry's credit union assets and therefore is not necessary.

The NCUA Board believes the requirement for filing quarterly call reports is a key element in implementing the Risk Based Examination Scheduling and Risk Focused Examination programs. CAMEL Code 1 and 2 credit unions, no matter the asset size, could be eligible for deferral under the Risk Based Examination Program for one examination cycle. Quarterly filing enhances NCUA's ability to allocate its resources effectively and focus its supervisory efforts on risk regardless of a credit union's asset size. NCUA's 2002 operating budget included a reduction of approximately 33 full-time equivalent staff positions. The deferral of examinations for approximately 1,500 federal credit union with assets under $50 million and the implementation of the Risk Based Examination Scheduling Program were contributing factors to the budgeted staff reductions. In addition, quarterly call reports also provide credit unions, the SSAs, and NCUA with the ability to monitor trends and expeditiously address emerging concerns in an ever-changing economic environment. Overall, the NCUA Board believes the benefits and efficiencies derived from the Risk Based Examination Scheduling and Risk Focused Examination programs outweigh the burden of two additional call reports.

Several commenters believe the proposal places a burden on state-chartered credit unions without providing a corresponding benefit. They noted that the state regulator sets their exam cycle and that this rule may have no effect on their examination cycle or their supervisory fees. Two additional commenters stated that the additional call reports would put a strain on the SSAs' supervisory resources. They urge NCUA to be sensitive to the SSAs' budgetary restraints and work with the

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SSAs to implement quarterly reporting in a manner compatible with their budgetary processes.

Many SSAs are reviewing the possibility of including NCUA's Risk Based Examination Scheduling and Risk Focused Examination programs in their supervisory programs. The NCUA Board believes a key benefit of the Risk Based Examination Scheduling Program is the ability to delay examinations for one examination cycle for the well-run, financially strong credit unions. The program, if adopted by the SSAs, should assist the SSAs in focusing their supervisory resources on areas of risk regardless of the credit unions' asset size.

In addition, as manager of the NCUSIF, NCUA needs quarterly financial information from all federally-insured credit unions in order to assess risk to the NCUSIF on a timely and ongoing basis.

Currently, seven state regulators require quarterly call reports and some state regulators have NCUA process their credit unions' call reports. Each SSA could contact their respective Regional Director for assistance, if needed, in gathering and uploading the call reports. NCUA will continue to remain sensitive to the SSA's budgetary restraints. As noted previously, the NCUA Board, primarily through its adoption of the Risk Based Examination Scheduling Program, has been able to reduce its staffing needs by approximately 33 full-time equivalent positions.

One commenter did not believe that the benefit the Central Liquidity Facility (CLF) would receive from more frequent reporting justifies the implementation of quarterly call reports due to the CLF's loan volume. The NCUA Board noted in the proposal that the CLF would have the most recent financial information to help evaluate a credit union's CLF loan request. The NCUA Board did not consider this a primary reason for proposing quarterly call reports. The Board recognizes that the CLF's loan volume is low. However, the CLF's main purpose is to provide emergency liquidity to the credit union system as quickly as possible when other traditional liquidity sources are unavailable. The Board believes quarterly call reports will expedite the loan evaluation process. The ability to quickly provide liquidity under emergency circumstances benefits all credit unions.

Twenty-five commenters suggested NCUA develop a shorter version of the call report for credit unions. Most of the commenters recommended that credit unions with various asset thresholds ranging from under $500,000 to $50 million be permitted to file a short version of the call report. Two commenters in support of an abbreviated form for smaller credit unions suggested that, if a more complex version is needed during the 5300 process, NCUA could e-mail or FAX a copy to the credit unions. Seven commenters suggested requiring an abbreviated version of the 5300 for the first and third quarters.

Four commenters opposed the development of a short version of the call report. One or more of these commenters stated: (1) A short version would not provide timely and complete information for identifying emerging trends; (2) a short version is unnecessary; and (3) only one format should exist in order to avoid confusion and the need for NCUA to provide follow-up for additional information.

Several years ago, NCUA redesigned the call report with small credit unions in mind. NCUA developed a core call report, with supporting schedules that provided more detail if required. The NCUA Board remains sensitive to this issue. Upon further review and the comments received, the NCUA Board has decided to develop a short form 5300 that does not compromise NCUA's and the SSAs' ability to provide adequate supervision. Credit unions with assets of less than $10 million will be required to file the complete version of the Form 5300 for the second and the fourth quarters of the year and may file either the short version or the long version of the 5300 for the first and third quarters of the year.

Five commenters emphasized the need to minimize the frequency of changes to the call report format. One commenter suggested that the call report be color coded to provide guidance to credit unions in preparing those sections of the call report that apply to their operations.

The NCUA Board remains committed to requiring the minimum information needed to provide adequate supervision. The Board believes NCUA has a process that works to assure unnecessary information is not requested on the call report. NCUA's 5300 Working Group, which includes an SSA representative, generally reviews changes to the call report once a year. However, changes may need to be made more frequently due to regulatory changes. Before implementation, any recommended changes go through a review process that considers the burden a change would place on credit unions versus the benefit to be gained.

Several commenters made suggestions regarding the use of technology. One commenter stated that quarterly call reporting would not be a burden to credit unions if their data systems were automated and suggested that NCUA and the credit union industry provide support to unautomated filers such as discounts to purchase personal computers. With this support, NCUA should establish a timetable to discontinue manual remittance of the call report. The NCUA Board does not believe it is necessary to impose upon credit unions a requirement to file electronic versions of the call report. During the June 30, 2001, call report cycle, 9,686 federally-insured credit unions, out of 10,415, filed their call reports using the PC 5300 automated system. Credit unions need to evolve towards understanding the benefits and responsibilities associated with using automated data systems within the scope of their operations. Furthermore, the Board believes it would be more appropriate for another party, such as a credit union trade association, to seek discounts on the purchase of computers for credit unions.

Two commenters suggested that NCUA alleviate the burden of submitting call reports by initiating uploads of call reports to its database. Currently, NCUA offers credit unions the ability to e-mail an electronic version of their completed call report to their examiner or SSA for uploading. NCUA staff plans to develop improved methods for filing call reports as NCUA's technological capabilities improve.

One state-chartered credit union commenter suggested the burden for credit unions could be reduced by automating the Reserve Sheet into a schedule versus a separate remittance sheet. The Reserve Sheet is a supplemental schedule required by the credit union's SSA. This suggestion should be provided to the credit union's state examiner for consideration.

One commenter questioned to what extent NCUA's AIRES (Automated Integrated Regulatory Examination System) Program duplicates the call report program. The commenter suggested that an AIRES download be created each quarter and the call report be used simply to fill in information not available through AIRES. The NCUA Board does not believe this is a viable alternative. AIRES only has the capacity to download certain financial information from a credit union's data system. Any download performed would require an examiner to go on-site or receive a diskette that requires an additional download into the call report system. Effective September 1, 2002, an examiner will be able to download the most recent call report information into AIRES for an examination. This will help reduce the amount of time needed for an examiner to be on-site.

One commenter made two suggestions to mitigate the potential financial impact on small credit unions. The first recommendation is that NCUA should work with data processors to develop a standard report format consistent with available software. The NCUA Board believes the credit union industry needs to address this matter with its vendors. NCUA can provide the specifications to the vendors upon their request and has done so in the past.

The second recommendation is that NCUA delay the March 2002 quarterly reporting implementation date until the data processing standard report format previously discussed is complete. NCUA is in the process of developing a shortened version of the 5300 for use during the first and third quarters of the year for credit unions with assets of less than $10 million. This short form will not be available until the September 2002 reporting cycle, so the NCUA Board is delaying the effective date of the final rule to July 1, 2002.

One commenter suggested that NCUA develop an electronic worksheet to reduce the preparation time. The Board does not believe a worksheet would assist credit unions in preparing the call report. The call report is in an electronic format. The current call report format includes detailed summary schedules regarding various general operational matters for all credit unions. The Board believes credit unions would be best served by requesting their data processing vendors to develop any detailed summary reports of the information they need to complete the call report.

Five commenters made suggestions regarding a phase-in process for NCUA's implementation of the proposal to help alleviate the burden on credit unions not currently required to file quarterly call reports. Two suggested that quarterly reporting should be phased in over two or three years; one of which suggested that NCUA initially consider only those credit unions for the Risk Based Examination Scheduling Program that are currently required to file quarterly call reports. One suggested that credit unions under $50 million in assets have the option of filing on a quarterly basis. In both cases, those credit unions filing on a quarterly basis would be considered for an extended examination cycle. One commenter suggested that the implementation of quarterly reporting should be delayed to allow sufficient time to adjust staff and operations.

Although the Board is delaying effective date of the regulation, the Board does not believe the extensive delays suggested by the commenters are viable options. The suggestions would delay a smooth transition towards the risk-focused approach to supervising credit unions. In addition, the savings currently reflected in NCUA's 2002 operating budget may not be fully realized if the suggestions were adopted.

Three commenters suggested excluding credit unions with assets of $10 million or less from quarterly reporting for five years. After five years, smaller credit unions should have access to electronic record keeping and should be better able to handle the additional record keeping requirements.

The NCUA Board does not agree with these suggestions. The Board notes that a credit union must file a quarterly call report to qualify for a deferred examination under the Risk Based Examination Scheduling Program. Any qualifying credit union would be excluded from receiving the benefit of a delayed examination. Reducing the number of credit unions qualifying for the program would impact the staff reductions projected in NCUA's approved 2002 budget. In addition, quarterly call reports are intended to reveal emerging problems through quarterly trend analysis so any noted concerns can be addressed in an expeditious manner. This applies to all credit unions no matter what their asset size, capital position, or CAMEL Code. As previously explained, in an effort to ease the burden, the NCUA Board will have staff develop a short form 5300 for credit unions with assets of less than $10 million that does not compromise NCUA's and the SSAs ability to provide adequate supervision for use during the first and third quarters of the year.

Two commenters believed that, instead of quarterly reporting, the burden of collecting any needed additional information should be shifted to the regulator. One suggested that more on-site contacts be scheduled; the other suggested that the regulators receive monthly financial statements.

The NCUA Board does not believe these are viable alternatives. These suggestions diminish the economies that will result from implementing the Risk Based Examination Scheduling Program. In all likelihood, NCUA's current projected reduction in staffing levels may not be fully realized if these suggestions were adopted.

Four commenters conditioned their support of the proposal on the implementation of the Risk Based Examination Scheduling Program. Another commenter, who agreed with the proposal, voiced the concern that, once quarterly call reporting was implemented, the Risk Based Examination Scheduling Program may stop and the credit unions would still have to file quarterly call reports. The NCUA Board has adopted the program through the approval of the 2002 NCUA budget. However, quarterly call reporting has benefits other than the potential deferral of examinations over one examination cycle. Quarterly reporting provides both the credit unions and the regulators the ability to timely detect emerging concerns in an ever-changing economic environment. NCUA, in cooperation with the SSAs, reviews call report requirements at least annually and makes adjustments to the reporting requirements after weighing the benefit gained versus the burden that additional reporting places on the credit unions.

Notice of Requirement To Report Under Prompt Corrective Action

Six commenters provided comments regarding the proposed change eliminating the requirement of § 702.101(c) for written notice from a credit union when its net worth decreases. Four of the commenters agreed with the change; two did not agree. The two objecting commenters did so because they objected to the proposed rule as a whole.

The NCUA Board recognizes that the filing of quarterly call reports obviates the need for written notice and it is deleting this requirement from the rule.

Final Change

Based on the comments received, the NCUA Board is modifying the proposed changes to § 741.6(a). The NCUA Board will have staff develop a short form 5300 that may be used by credit unions with assets under $10 million for the first and third quarters of each year. In addition, the NCUA Board will make the final rule's effective date July 1, 2002. This effective date will provide NCUA staff with sufficient time to develop the short version of the 5300 for use during the year 2002's third quarter call report cycle and the first and third quarters' reporting cycles for each year thereafter.

Currently, this section requires all federally-insured credit unions with assets in excess of $50 million to file a quarterly call report with NCUA. All other federally-insured credit unions file semiannually. The final amendment will require all federally-insured credit unions to file quarterly call reports. Credit unions with assets of less than $10 million will be required to file the complete version of the Form 5300 for

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the second and the fourth quarters of the year and may file either the short or the complete version of the 5300 for the first and third quarters of the year.

This amendment is a necessary component of NCUA's revised examination program. The revised examination program has two new features. The first is risk-based examination scheduling that will result in an extended examination cycle program for credit unions meeting certain risk criteria. Approximately 1,500 federal credit unions under $50 million will participate in the extended examination cycle program during the 2002 NCUA budget year. Requiring those credit unions to file quarterly call reports is an essential part of their participation. The credit unions' financial condition must be monitored over the examination cycle to identify emerging trends that may impact the safety and soundness of the credit unions' operations.

The second is a risk-focused approach for all examinations. The risk-focused approach will focus the examination process on those operational areas that represent the greatest risk to the credit union. The process includes evaluating the credit union's financial trend information and management's ability to identify and adapt to changing economic, competitive, technological, and other factors.

These two features will permit NCUA to adjust the examination process for a select number of credit unions based on workload demands in relation to available resources and the risk the credit unions represent to the National Credit Union Share Insurance Fund. Both features will result in better use of available resources and reduce the amount of NCUA on-site contact time needed to assess the overall financial health of federally-insured credit unions. Quarterly financial information will provide NCUA the ability to administer these approaches successfully through off-site review of a credit union's financial trends to detect emerging problems.

In conjunction with the change to § 741.6(a), the Board is making a technical correction to § 741.6(b) by deleting the reference to semi-annual reporting and revising the prompt corrective action rule to eliminate the requirement of written notice to NCUA and the option of filing a call report for the first and third quarter for credit unions that file call reports semi-annually. 12 CFR 702.101(c), 702.103(b).

Regulatory Procedures

Paperwork Reduction Act

The NCUA Board has determined that the final rule to require all federally-insured credit unions to file call reports on a quarterly basis is covered under the Paperwork Reduction Act. NCUA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review. The OMB Control Number for the call report is 3133–0004.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. Although no commenters specifically commented on the paperwork requirements, their comments on the proposed rule indirectly addressed some of the issues.

The NCUA Board estimated in the proposal that it takes a federally-insured credit union six hours on average to complete a call report. The proposal, using the six-hour call report average, estimated the rule would result in an additional 100,272 hours of call report preparation. Sixteen commenters' reported an average of 10 hours to complete a call report. Three of the commenters were credit union trade associations that surveyed their membership. NCUA has determined, based on the comments and its own research that a more accurate average for call report preparation is eight hours. This eight hour average does not take into account the fact that the proposed amendments only apply to credit unions under $50 million. NCUA's research and the comments indicate that the time to prepare a call report decreases with the size of the credit union. In addition, the proposal did not include a short form option for credit unions under $10 million. This will affect 5,864 federally-insured credit unions. Since the final amendments only apply to credit unions under $50 million and a short form is being created for credit unions under $10 million, NCUA concludes that its original net burden estimate may have overestimated the additional hours resulting from the rule change.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612)(RFA) requires, subject to certain exceptions, that NCUA publish an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. See 12 CFR § 791.8(a) and NCUA's Interpretive Ruling and Policy Statement, No. 87–2. NCUA's final rule will apply to approximately 1,489 small credit unions, out of 10,316 federally-insured credit unions. Of these 1,489 small credit unions, approximately 55 of the federally-insured state chartered credit unions are already required to file quarterly call reports by their respective SSAs.

At the time of issuance of the proposed rule, NCUA could not make such a determination for certification. Therefore, NCUA issued an IRFA pursuant to section 603 of the Regulatory Flexibility Act. After reviewing the comments submitted in response to the proposed rule, NCUA believes it does not have sufficient information to determine whether the final rule would have a significant economic impact on a substantial number of small credit unions. Therefore, pursuant to section 604 of the Regulatory Flexibility Act, NCUA provides the following FRFA.

The FRFA incorporates NCUA's initial findings, as set forth in its IRFA, addresses the comments submitted in response to the IRFA, and describes the steps NCUA plans to take to minimize the impact on small entities. Currently, all federally-insured credit unions, no matter their asset size, are required to file call reports semi-annually. The current call report contains explicit instructions for completing the report. NCUA will continue this practice for the two additional call reports required from credit unions with assets under $50 million. We believe the instructions meet the requirement to provide guidance to small credit unions in complying with this rule, under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104–121).

1. Statement of Need

The final amendment will provide NCUA and the SSAs with timely and complete financial data to be used in supervising their credit unions as discussed in the Final Change section above. The adoption of the final amendment to § 741.6(a) of the NCUA's regulations will account for all of the economic impact on small credit unions.

2. Statement of Objectives and Legal Basis

The Final Change section above contains this information. The legal basis for the final rule is in the Federal Credit Union Act. 12 U.S.C. 1756 and 1782.

3. Burdens and Cost Upon Small Credit Unions with the Adoption of this Rule

In general, the commenters were concerned with the additional time and resource burden that would be placed on credit unions if the amendment to the rule were adopted. Thirty of the commenters were specifically concerned with the burden that would be placed on small credit unions. Seven of the commenters noted that smaller credit unions have a limited number of staff members. Several commenters provided various opinions as to what credit union asset size they considered as "small". The asset sizes noted varied within the range of less than $500,000 to less than $50 million in assets.

As noted previously, the combined credit union surveys calculated eight hours as the average for all credit unions to complete a call report. For credit unions with assets of $10 million or less, the average time was five hours. One credit union league commenter surveyed mostly small credit unions. The league reported six hours as the average time to complete a call report. We could not determine from the comments provided the average hours calculation for credit unions with assets less than one million dollars. However, NCUA calculated three hours as the average for credit unions with assets less than two million dollars based on its own research. The commenters did not provide any specific dollar cost estimates associated with quarterly call reporting.

4. Discussion of Significant Alternatives To Alleviate Burden

In the proposal, NCUA considered the following alternative approaches in reducing the burden on smaller credit unions:

a. Federally-Insured Credit Unions With Assets Less Than $10 Million

NCUA considered revising the regulation to require only federally-insured credit unions with assets greater than $10 million to file quarterly call reports. This alternative was not pursued due to the changes in NCUA's examination program. Although the NCUA Board has not been persuaded to change its original determination, as discussed below, the Board has made some adjustments to the requirements to reduce the burden on these credit unions. The NCUA Board has adopted the new examination program through its approval of NCUA's 2002 Budget. Approximately 950 federal credit unions with assets less than $10 million have been considered in NCUA's 2002 Budget for examination deferral under the Risk Based Examination Scheduling Program. Of these 950 federal credit unions, approximately 120 have assets less than one million dollars. The program permits deferral of an examination for every other examination cycle. The NCUA Board believes quarterly reporting is necessary to monitor the credit union's financial trends during the deferral period. The NCUA Board believes the burden of the additional hours it takes a credit union to prepare two additional call reports is outweighed by the advantages outlined in the Final Change section.

b. 5300 Short Form

NCUA originally considered the alternative of requiring a credit union with assets of less than $10 million to file a short version of the call report during the March and September cycles. The short form would reduce the burden for those credit unions. The NCUA Board was initially concerned that this alternative may result in insufficient trend information when compared to the full semi-annual call report. However, upon further review and the comments received, the NCUA Board will have staff develop a short form 5300 that does not compromise NCUA's and the SSAs' ability to provide adequate supervision for use during the first and third quarters of the year.

5. Proposed Reporting, Record Keeping, and Other Compliance Requirements

The information collection requirements imposed by the final rule are discussed above in the section on the Paperwork Reduction Act.

6. General Requirements

The proposed rule will require all federally-insured credit unions to file quarterly call reports. The call reports are based on financial and other information relevant to a federally-insured credit union's operations. Federally-insured credit unions with assets of $50 million or more are already required to file quarterly reports. A final short version of the call report will be developed for credit unions with assets of $10 million or less. Staff anticipates the short form will be available for September 2002 call report cycle. Credit unions meeting the asset size requirements will be permitted to use the short form during the first and third quarters of each year.

Requiring quarterly call reports is a sound business practice that would provide: (1) A more cost effective supervisory effort when coupled with NCUA's proposed examination approaches; and (2) a quarterly operational monitoring tool for the credit unions.

7. Identification of Duplicative, Overlapping, or Conflicting Federal Rules.

NCUA is unable to identify any federal statutes or rules that duplicate, overlap or conflict with the proposed rule; however, NCUA has identified seven states that already require their state-chartered federally-insured credit unions to file quarterly call reports. Although the final rule duplicates those state's requirements, it does not impose any significant, additional burden on those federally-insured credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntary complies with the executive order. The final rule will not have substantial direct effect on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that, for purposes of SBREFA, this is not a major rule.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

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Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burdens. The regulatory change is understandable and imposes minimal regulatory burden. NCUA requested comments on whether the proposed rule change was understandable and minimally intrusive if implemented as proposed. No comments were received.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and record keeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on March 13, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA is amending 12 CFR parts 702 and 741 as follows:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790(d).

2. Amend § 702.101 by revising paragraph (c) to read as follows:

§ 702.101 Measures and effective date of net worth classification.

* * * * *

(c) *Notice by credit union of change in net worth category.* (1) When filing a Call Report, a federally-insured credit union need not otherwise notify the NCUA Board of a change in its net worth ratio that places the credit union in a lower net worth category; and

(2) Failure to timely file a Call Report as required under this section in no way alters the effective date of a change in net worth classification under this paragraph (b) of this section, or the affected credit union's corresponding legal obligations under this part.

3. Amend § 702.103 by removing and reserving paragraph (b).

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

5. Amend § 741.6 by revising paragraph (a) and removing the words "or semiannually" from paragraph (b) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union must file with the NCUA a quarterly Financial and Statistical Report on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30), and October 22 (as of the previous September 30) of each year. Insured credit unions with assets of $10 million or greater must file all quarterly reports on Form NCUA 5300. Insured credit unions with assets of less than $10 million must file their first (due April 22) and third (due October 22) quarter reports on Form NCUA 5300SF or Form NCUA 5300 and their second (due July 22) and fourth (due January 22) quarter reports on Form NCUA 5300.

(b) *Consistency with GAAP.* The accounts of financial statements and reports required to be filed quarterly under paragraph (a) of this section must reflect GAAP if the credit union has assets of $10 million or greater, but may reflect regulatory accounting principles other than GAAP if the credit union has total assets of less than $10 million (except that a federally-insured state-chartered credit union may be required by its state credit union supervisor to follow GAAP regardless of asset size).

* * * * *

[FR Doc. 02–6512 Filed 3–18–02; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–32–AD; Amendment 39–12678; AD 2002–06–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes. This action requires repetitive inspections for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, and repair, if necessary. This action is necessary to find and fix such cracking, which could lead to reduced structural capability of the horizontal stabilizer center section, and result in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 3, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–32–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report that a 3.5-inch crack was found in the upper skin of the horizontal stabilizer center section on a Boeing Model 747SR series airplane. The crack ran forward from the rear spar at left buttock line (LBL) 37.8. While the area where the crack was found is subject to inspections per a certain Supplemental Structural Inspection Document (SSID), the airplane on which the crack was found was not an SSID candidate. Such cracking, if not fixed, could lead to reduced structural capability of the horizontal stabilizer center section, which could result in loss of controllability of the airplane.

The subject area on all Model 747 series airplanes is similar to that on the affected Model 747SR series airplane. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002, which describes procedures for repetitive detailed and high frequency eddy current (HFEC) inspections for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord. The procedures include a detailed visual inspection for cracking of the upper horizontal skin and of the vertical and horizontal flanges of the rear spar upper chord, and an HFEC inspection for cracking of the vertical flange of the upper chord where a detailed visual inspection is impeded by stiffeners, brackets, or sealant. The service bulletin specifies to contact Boeing for repair of any crack that is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, which could lead to reduced structural capability of the horizontal stabilizer center section, and result in loss of controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–32–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–02 Boeing: Amendment 39–12678. Docket 2002–NM–32–AD.

Applicability: All Model 747 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

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alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, which could lead to reduced structural capability of the horizontal stabilizer center section, and result in loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 24,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later: Do detailed and high frequency eddy current (HFEC) inspections, as applicable, for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, according to the Work Instructions and Figure 1 of Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002. (The inspection procedures include a detailed inspection for cracking of the upper horizontal skin and of the vertical and horizontal flanges of the rear spar upper chord, and an HFEC inspection for cracking of the vertical flange of the upper chord where a detailed inspection is impeded by the presence of stiffeners, brackets, or sealant.) After doing the initial inspections, repeat the inspections every 1,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(b) If any cracking is found during any inspection per paragraph (a) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 3, 2002.

Issued in Renton, Washington, on March 11, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6329 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–356–AD; Amendment 39–12679; AD 2002–06–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. This action requires measurement of clearance between a certain retention bracket for the elevator power control unit (PCU) and a quadrant on the inboard side of the right elevator PCU, inspection for loose fasteners in certain retention bracket assemblies for the left and right elevator PCUs, and corrective action, if necessary. This action is necessary to prevent jamming of the elevator flight controls, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 3, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–356–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–356–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Fairhurst, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of loose fasteners in certain retention bracket assemblies for the left and right elevator power control units (PCUs) on certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. Such loose fasteners could separate from the bracket and interfere with adjacent systems, including the elevator flight controls. A loose bracket could also cause such interference. Also, operators have found inadequate clearance between a particular retention bracket for the elevator PCU and a quadrant on the inboard side of the right elevator PCU. These conditions, if not corrected, could result in jamming of the elevator flight controls, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1234, dated March 27, 2000, and Revision 1, dated August 10, 2000. Both service bulletins describe procedures for measurement of clearance between a certain retention bracket for the elevator PCU and a quadrant on the inboard side of the right elevator PCU, and rework of the bracket, if necessary. The service bulletins also describe procedures for a visual inspection for loose fasteners in certain retention bracket assemblies for the left and right elevator PCUs, and torquing of the fasteners, if necessary. The visual inspection for loose fasteners consists of inspecting for inadequate thread protrusion, gaps between the fastener heads and brackets, or loose brackets. Revision 1 differs from the original issue of the service bulletin in that the effectivity listing of Revision 1 includes airplanes not listed in the original issue of the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent jamming of the elevator flight controls, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously.

The FAA acknowledges that many operators have already accomplished the actions required by this AD on their fleets in accordance with the original issue or Revision 1 of Boeing Alert Service Bulletin 737–27A1234, which had a recommended compliance time of 10 days after receipt of the service bulletin. No further action is necessary for those airplanes on which the actions in the referenced service bulletins have been accomplished. However, the FAA finds that issuance of an AD is warranted at this time to ensure that the actions in the service bulletin are accomplished and the identified unsafe condition is addressed on all affected airplanes.

Difference Between This AD and the Service Bulletin

The service bulletin described previously identifies only Boeing Model 737–600, –700, and –800 series airplanes as being affected by the actions therein. However, we find that the effectivity listing of the service bulletin also includes Model 737–700C series airplanes. Therefore, this AD applies to certain Model 737–700C series airplanes in addition to certain Boeing Model 737–600, –700, and –800 series airplanes.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–356–AD." The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–03 **Boeing:** Amendment 39–12679. Docket 2001–NM–356–AD.

Applicability: Model 737–600, –700, –700C, and –800 series airplanes; as listed in Boeing Alert Service Bulletin 737–27A1234, Revision 1, dated August 10, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the elevator flight controls, which could result in reduced controllability of the airplane, accomplish the following:

Measurement of Clearance and General Visual Inspection

(a) Within 10 days after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD, according to Boeing Alert Service Bulletin 737–27A1234, dated March 27, 2000, or Revision 1, dated August 10, 2000.

(1) Measure the clearance between a certain retention bracket for the elevator power control unit (PCU) and a quadrant on the inboard side of the right elevator PCU. If clearance is less than 0.10 inch, before further flight, accomplish rework according to the service bulletin.

(2) Perform a one-time general visual inspection for loose fasteners or brackets in certain retention bracket assemblies for the left and right elevator PCUs. If any loose fastener or bracket is found, before further flight, torque affected fasteners, according to the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1234, dated March 27, 2000, or Boeing Alert Service Bulletin 737–27A1234, Revision 1, dated August 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 3, 2002.

Issued in Renton, Washington, on March 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6328 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM01–7–000; Order No. 624]

Policy on Certificates of Public Convenience and Necessity for Gas Transmission Facilities in the Off-shore Southern Louisiana Area; Final Rule

Issued March 13, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is removing from its regulations the general statement of policy with respect to the issuance of certificates of public convenience and necessity for the construction and operation of pipeline transmission facilities in the Louisiana off-shore area. The Commission announced a new policy with respect to pipeline construction in the off-shore Louisiana area in *ANR Pipeline Company (ANR)*.[1] Since the old policy has changed, we are removing it from the regulations.

DATES: This final rule is effective upon the date of issuance.

FOR FURTHER INFORMATION CONTACT: Cecilia Desmond, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2280.

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

[Docket No. RM01–7–000; Order No. 624]

Policy on Certificates of Public Convenience and Necessity for Gas Transmission Facilities in the Off-shore Southern Louisiana Area; Final Rule

Issued March 13, 2002.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is removing 18 CFR § 2.65 from its regulations. Section 2.65 sets out a general policy with respect to the issuance of certificates of public convenience and necessity for the construction and operation of pipeline transmission facilities in the Louisiana off-shore area. The Commission's predecessor agency, the Federal Power Commission (FPC), announced the policy on June 4, 1968, in Order No. 363, to maximize the use of off-shore Louisiana facilities and to ensure that off-shore facilities were properly sized.[1] In *ANR Pipeline Company (ANR)*, the Commission confirmed that § 2.65 no longer reflects its policy with respect to pipeline construction in the off-shore Louisiana area.[2] Since the Commission's policy with respect to construction of off-shore facilities has changed, we are removing § 2.65 from the regulations.

II. Discussion

In promulgating § 2.65 in Order No. 363, the FPC noted the increasing importance of off-shore Louisiana as a source of natural gas for the nation and the much higher cost of installing off-shore pipeline facilities compared to on-shore facilities. Taking this into account, the FPC announced a policy under which it would review applications for construction of pipelines in the Louisiana off-shore area in the Gulf of Mexico on both a joint and individual company basis. The FPC intended to promote joint use arrangements and wanted pipeline companies to develop gas exchange procedures to minimize cross-hauls. The FPC believed that this would assure both timely and cost-effective full utilization of large capacity facilities in the Gulf of Mexico and development of the off-shore gas reserves.

Thus, the policy outlined in § 2.65 states that a pipeline applying for a certificate of public convenience and necessity for the construction and operation of off-shore pipeline facilities should include certain information in its application: (1) A detailed description of the applicant's efforts to transport its gas using another pipeline's existing or proposed off-shore facilities (§ 2.65 (a)(1)); (2) a demonstration that it consulted with other pipelines about using the applicant's proposed facilities to transport their gas to onshore facilities (§ 2.65 (a)(2)); (3) that the applicant will install 30-inch or larger diameter pipe or demonstrate the feasibility of a smaller proposed line (§ 2.65 (a)(3)); and (4) a demonstration that its proposed facilities will be used at a minimum annual load factor of 60 percent of the annual capacity available by the end of a 12-month period following construction, or seek a waiver of this requirement (§ 2.65(a)(4)). Section 2.65 also states that the Commission intends to enforce the 60 percent load factor requirement by permitting off-shore pipeline facilities to be included in the applicant's cost-of-service in future rate proceeedings at an average unit cost predicated on load factors of not less that 60 percent (§ 2.65(b)).

Section 2.65 also states that pipelines should file applications for off-shore facilities by September 1 of the year immediately preceding the proposed installation of the facilities. This would allow staff to review all applications, on a joint and individual company basis, at the same time. In 1976, for example, in *High Island Offshore System (HIOS)*, the Commission convened public conferences to discuss a possible alternative joint approach to three competitive applications requesting authorization to construct off-shore pipeline facilities.[3] The three competing applicants ultimately amended and unified their applications to propose one system rather than the three originally proposed, as anticipated by § 2.65.

In 1996, a number of interstate pipeline companies, including ANR and Nautilus Pipeline Company (Nautilus), filed applications requesting authorization to construct pipeline facilities in the Gulf of Mexico in response to significant new deepwater gas reserves being developed in several off-shore Louisiana producing regions. ANR argued that § 2.65 of the Commission's regulations required the Commission to consolidate ANR's application for authority to construct pipeline facilities in the Gulf of Mexico with Nautilus' similar application for off-shore facilities and to hold a joint hearing to consider the two applications.[4] Citing changed circumstances since the FPC adopted the policy announced in Order No. 363, the Commission confirmed that its policy with respect to off-shore facilities has changed and denied ANR's request for consolidation.[5]

ANR appealed the Commission's order, arguing that the Commission had violated its own regulation since § 2.65 required the Commission to hold a comparative hearing on its and Nautilus' applications.[6] In denying ANR's appeal, the court stated that, since § 2.65 is a policy statement, not a regulation, it is not binding on the Commission. Noting that an agency may not depart from prior policy without explanation, the court stated that the Commission's explanation in *ANR* adequately explained how changed circumstances justified a new policy. In response to the court's suggestion that the Commission should amend § 2.65 to reflect its new policy,[7] we are issuing this rule.

As explained in *ANR*, since the 1968 issuance of Order No. 363, both off-shore natural gas production and the Commission's regulatory approach to the construction of pipeline infrastructure have undergone significant changes that have affected the Commission's policy with respect to interstate pipeline construction in the Gulf of Mexico. The Gulf of Mexico, considered a few years ago to be a mature producing area, contains significant newly discovered deep water reserves of natural gas. In recent years, the Commission's regulatory approach has been to encourage the operation of market forces and competition wherever possible to determine what pipeline facilities are constructed.

Thus, rather than allocating limited production in the Gulf of Mexico among a limited number of pipelines as set out in Order No. 363 and § 2.65, the Commission now seeks to encourage an interstate pipeline infrastructure capable of transporting natural gas from newly developed production areas in the Gulf of Mexico. This market-oriented approach allows for the most efficient, cost effective, and timely development of new off-shore reserves and transportation facilities.

In *ANR*, the Commission determined that application of the evaluation standards reflected in § 2.65 to decide which project would meet off-shore capacity requirements could needlessly delay construction of the necessary pipeline infrastructure, delay production plans, and retard further exploration and development in the area. Instead, the Commission stated that the market should determine which projects are best suited to serve the area's infrastructure needs.

Since § 2.65 no longer accurately describes the Commission's policy and the Commission no longer wishes to codify in the regulations its policy on constructing infrastructure in the Gulf of Mexico, the Commission is removing § 2.65.

III. Administrative Findings

The Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, the APA exempts general statements of policy from its notice and comment requirements.[8] Therefore, since § 2.65 is a policy statement rather than a substantive rule, we are removing it from our regulations without a period for public comment.

IV. Effective Date and Congressional Notification

The APA exempts general statements of policy from the requirement that rules become effective only after thirty days' notice.[9] Therefore, this final rule will be effective upon the date of its issuance. The Commission has determined, with the concurrence of the

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[1] 78 FERC ¶61,326 (1997); *reh'g denied* 85 FERC ¶61,056 (1998); *appeal denied* ANR Pipeline Co. v. FERC, 205 F.3d 403 (D.C. Cir. 2000).

[1] Order No. 363,39 FERFC ¶925 (1968).

[2] 78 FERC ¶61,326 (1997); *reh'g denied* 85 FERC ¶61,056 (1998); *appeal denied* ANR Pipeline Co. v. FERC, 205 F.3d 403 (D.C. Cir. 2000).

[3] 55 FPC 2674 (1976)(the three applicants were Texas Offshore Pipeline System, Inc., Amtex Offshore Pipeline Co., and Natural Gas Pipeline Co. of America).

[4] 78 FERC ¶61,326 (1997).

[5] *Id.* at 62,407.

[6] ANR Pipeline Co. v. FERC, 205 F.3d 403 (D.C. Cir. 2000).

[7] *Id.* at n. 2.

[8] 5 U.S.C. 553(b).

[9] 5 U.S.C. 553 §(d)(2).

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Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that the removal of this policy statement is not a major rule within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[10] The Commission is submitting this final rule to both houses of Congress and to the Comptroller General.

V. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[11] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[12] Since removing an outdated policy statement from the regulations falls within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, no environmental assessment or environmental impact statement is necessary.[13]

VI. Regulatory Flexibility Impact Statement

The Regulatory Flexibility Act of 1980 (RFA)[14] generally requires a description and analysis of proposed rules that will, if promulgated, have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect.[15]

The Commission does not believe that the removal of § 2.65 from its regulations would have such an impact on small entities. The removal would have an impact only on interstate pipelines, which generally do not fall within the RFA's definition of small entity.[16] Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that the removal of § 2.65 will not have a significant economic impact on a substantial number of small entities.

[10] 5 U.S.C. § 804(2).

[11] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), *codified at* 18 CFR Part 380.

[12] 18 CFR 380.4.

[13] *See* 18 CFR 380.4(a)(2)(ii).

[14] 5 U.S.C. 601–612.

[15] 5 U.S.C. 605(b).

[16] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operations.

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[17] However, this Final Rule contains no information reporting requirements, and therefore is not subject to OMB approval.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.fed.us)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

[17] 5 CFR Part 1320.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric Power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

For the reasons set forth in the foregoing, the Commission is removing § 2.65 of Part 2, Chapter 1, Title 18, Code of Federal Regulations, as follows.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Remove § 2.65.

§ 2.65 [Removed]

[FR Doc. 02–6555 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for the subcutaneous administration of oxytetracycline (OTC) injectable solution in cattle.

DATES: This rule is effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed a supplement to approved ANADA 200–123 that provides for the use of MAXIM 200 (oxytetracycline) Injection as treatment for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the subcutaneous administration of OTC injectable solution in beef cattle, nonlactating dairy cattle, and calves, including preruminating (veal) calves. The supplemental application is approved as of December 28, 2001, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in the second sentence in paragraph (d)(1)(iii) by removing "Sponsors 000010 and 053389," and adding in its place "Sponsors 000010, 053389, and 059130".

Dated: February 28, 2002.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–6492 Filed 3–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8981]

RIN 1545–BA40

Disallowance of Deductions and Credits for Failure To File Timely Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations that were published in the **Federal Register** on Thursday, January 29, 2002 (67 FR 4173) relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations that fail to file a timely U.S. income tax return.

DATES: This correction is effective January 29, 2002.

FOR FURTHER INFORMATION CONTACT: Nina E. Chowdhry, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction is under sections 874 and 882 of the Internal Revenue Code.

Need for Correction

As published, the TD 8981 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of TD 8981, that was the subject of FR Doc. 02–2044, is corrected as follows:

§ 1.874–1T [Corrected]

On page 4175, column 1, § 1.874–1T(b)(3), *Example 1.*, line 28, the language "paragraph § 1.874–1(a) from claiming any" is corrected to read "§ 1.874–1(a) from claiming any".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–6476 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53, 301, and 602

[TD 8978]

RIN 1545–AY65

Excise Taxes on Excess Benefit Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, January 23, 2002 (67 FR 3076) relating to the excise taxes on excess benefit transactions.

DATES: This correction is effective January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 4958 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8978), that were the subject of FR Doc. 02–985, is corrected as follows:

1. On page 3078, column 1, in the preamble under the paragraph heading "*Definition of Applicable Tax-Exempt Organization*", line 6 from the top of the column, the language "to the efficient administration of the" is corrected to read "for the efficient administration of the".

2. On page 3082, column 3, in the preamble under the paragraph heading "*Final Regulatory Flexibility Analysis*", first paragraph, line 13, the language "REP. 104–506 at 56–7, March 28, 1996)" is corrected to read "REP. 506, 104th Congress, 2d SESS. (1996), 53, 56–7)".

3. On page 3083, column 1, in the preamble under the paragraph heading "*Final Regulatory Flexibility Analysis*", first full paragraph, line 1, the language "The objective for the rebuttable" is corrected to read "The objective of the rebuttable".

§ 53.4958–4 [Corrected]

4. On page 3091, column 3, § 53.4958–4(a)(3)(vii), *Example 1*, line 12, the language "T (see § 53.4958–3(a)). Under the initial" is corrected to read "T (see § 53.4958–3(c)(3)). Under the initial".

5. On page 3095, column 2, § 53.4958–4(c)(4), *Example 2*, line 10, the language "D fails to report the bonus on his individual" is corrected to read "D fails to report the bonus on D's individual".

§ 301.7611–1 [Corrected]

6. On page 3099, column 2, in A–19, line 1, the language "A–19: See § 53.4958–7(b) of this" is corrected to read "A–19: See § 53.4958–8(b) of this".

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–6475 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA62

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Interim final rule; administrative corrections.

SUMMARY: On October 23, 2000 (65 FR 63202), the Department of Defense published a final rule concerning the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) TRICARE Dental Program. This document is published to correct an administrative error in those rules for clarity.

EFFECTIVE DATE: This rule is effective April 1, 2001.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, Office of the Assistant Secretary of Defense (Health Affairs), telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION: The final rule had an effective date that began during the Presidential Moratorium on Rules, therefore, the rule was republished on March 1, 2001 (66 FR 12855), exactly as previously published, to change the effective date to April 1, 2001. In the interval between publication and republication of the final rule on TRICARE Dental Program, on February 9, 2001 (66 FR 9651), the Department of Defense also published an interim final rule concerning, among other issues, partial implementation of the Pharmacy Benefits Program and amended 32 CFR part 199 by adding a new section 199.21, Pharmacy Benefits Program to replace the previously reserved section 199.21. On February 15, 2001 (66 FR 10367) and March 26, 2001 (66 FR 16400), DoD published corrections to the interim final rule changing the effective date to April 1, 2001, and making other administrative changes. Unfortunately, republication of the TRICARE Dental Program final rule on March 1, 2001, amending 32 CFR part 199 to remove section 199.21 (thereby intending to remove section 199.21, TRICARE Selected Reserve Dental Program, as stated in the Supplemental Information section of the final rule) resulted in a technical error removing section 199.21, Pharmacy Benefits Program which was added by the Pharmacy Benefits Program interim final rule to become effective April 1, 2001.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55

2. Section 199.21 is added to read as follows:

§ 199.21 Pharmacy Benefits Program.

(a) *In general.*—(1) *Statutory authority.* 10 U.S.C. 1074g requires that the Department of Defense establish an effective, efficient, integrated Pharmacy Benefits Program for the Military Health System. This law is independent of a number of section of title 10 and other laws that affect the benefits, rules, and procedures of CHAMPUS/TRICARE, resulting in changes to the rules otherwise applicable to TRICARE Prime, Standard, and Extra. Among these changes is an independent set of beneficiary co-payments for prescription drugs.

(2) *Partial implementation during interim period.* Beginning April 1, 2001, 10 U.S.C. 1074g is partially implemented to coincide with the start of the TRICARE Senior Pharmacy Program and substantial cost sharing changes for active duty dependents enrolled in Prime. Some authorities and requirements of Section 1074g, such as the classification of drugs as formulary or non-formulary under a "uniform formulary of pharmaceutical agents," are not yet implemented. In this section, references to "interim implementation period" mean the period beginning April 1, 2001.

(b) *Program benefits.* During the interim implementation period, prescription drugs and medicines are available under the otherwise applicable rules and procedures for military treatment facility pharmacies, TRICARE Prime, Standard, and Extra, and the Mail Order Pharmacy Program. There is not during this interim implementation period a "uniform formulary" of drugs and medicines available in all of these parts of the system. All cost sharing requirements for prescription drugs and medicines are established in this section for pharmacy services provided throughout the Military Health System.

(c) *Providers of pharmacy services.* There are four categories of providers of pharmacy services: military treatment facilities (MTFs), network retail providers, non-network retail providers, and the mail service pharmacy program. Network retail providers are those non-MTF pharmacies that are a part of the network established for TRICARE Prime under § 199.17. Non-network pharmacies are those non-MTF pharmacies that are not part of such a network.

(d) *Classifications of drugs and medicines.* During the interim implementation period, a distinction is made for purposes of cost sharing between generic drugs and non-generic (or brand name) drugs.

(e) TRICARE Senior Pharmacy Program. Section 711 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654) established the TRICARE Senior Pharmacy Program for Medicare eligible beneficiaries effective April 1, 2001. These beneficiaries are required to meet the eligibility criteria as prescribed in § 199.3. The benefit under the TRICARE Senior Pharmacy Program includes the Basic Program pharmacy benefits as found under § 199.4(d) and the pharmacy benefit and cost sharing as found under this part. The TRICARE Senior Pharmacy Program applies to prescription drugs and medicines provided on or after April 1, 2001.

(f) *Cost sharing.* Beneficiary cost sharing requirements for prescription drugs and medicines are based upon the generic/non-generic status and the point of sale (i.e., MTF, network pharmacy, non-network pharmacy, mail service pharmacy) from which they are acquired. For this purpose, a generic drug is a non-brand name drug. A non-generic drug is a brand name drug. In the case of a brand name drug for which there is no generic equivalent, the non-generic cost share applies.

(1) *Military treatment facilities.* There are no cost sharing requirements for drugs and medicines provided by MTF pharmacies.

(2) *Retail pharmacy network program.* There is a $9.00 co-pay per prescription required under the retail pharmacy network program for up to a 30-day supply of a non-generic drug or medicine, and a $3.00 co-pay for up to a 30-day supply of a generic drug or medicine. There is no annual deductible for drugs and medicines provided under the retail pharmacy network program.

(3) *Mail service pharmacy program.* There is a $9.00 co-pay per prescription required under the mail service pharmacy program for up to a 90-day supply of a non-generic drug or medicine, and a $3.00 co-pay for up to a 90-day supply of a generic drug or medicine. There is no annual deductible for drugs and medicines provided under the mail service pharmacy program.

(4) *Non-network retail pharmacies.* There is a 20 percent or $9.00 (whichever is greater) co-pay per prescription required for up to a 30-day supply of a drug obtained from a non-network pharmacy. A point of service cost-share of 50 percent applies in lieu of the 20 percent copay for TRICARE Prime enrollees who obtain their prescriptions from a non-network retail pharmacy without proper authorization. In addition, these TRICARE Prime enrollees are subject to higher deductibles as provided in § 199.17(m)(1)(i) and (m)(2)(i). For prescription drugs acquired from non-network retail pharmacies, beneficiaries other than Prime enrollees (including TRICARE Senior Pharmacy Program beneficiaries) are subject to the $150.00 per individual or $300.00 maximum per family (or for dependents of sponsors in pay grades below E–5, $50 per individual or $100 per family) annual fiscal year deductible.

(g) *Effect of other health insurance.* The double coverage rules of § 199.8 are applicable to services provided under the Pharmacy Benefits Program. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be the primary payor.

(h) *Procedures.* The Director, TRICARE Management Activity shall establish procedures for the effective operation of the Pharmacy Benefit Program. Such procedures may include restrictions of the quantity of pharmaceuticals to be included under the benefit, encouragement or requirement of the use of generic drugs, implementation of quality assurance and utilization management activities, and other appropriate matters.

Dated: March 13, 2002.

L.M. Bynum,
Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 02–6542 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ23

Information Collection Needed in VA's Flight-Training Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are amending our educational assistance and educational benefit regulations concerning flight-training courses for which the Department of Veterans Affairs (VA) pays eligible students. In this regard, we are requiring that flight schools offering such flight-training courses maintain records regarding students to whom VA makes payments. This rule is intended to provide information to VA for determining compliance with requirements for VA payments to students for pursuing flight-training courses. Also, when VA, rather than a separate State entity, is the approving agency, this rule is intended to provide information to VA for determining whether to approve a flight-training course.

EFFECTIVE DATE: *Effective date:* This final rule is effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 3, 2000 (65 FR 17477), we proposed to amend VA's educational assistance and educational benefit regulations concerning flight-training courses for which VA makes payments. In this regard, we proposed to add 38 CFR 21.4263(h)(3) to provide that flight schools offering approved flight-training courses must maintain records as set out in the text portion of the document. We also proposed to amend VA's educational assistance and educational benefit regulations by making technical changes for purposes of clarification.

Comments were sought during a 60-day period. Only one comment was received and it was highly supportive of the proposed rule. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule except that we are making non-substantive changes for purposes of clarity and are adding a statement following § 21.4263 to reflect the approval by the Office of Management and Budget (MB) of the collection of information requirements contained in this rule.

Paperwork Reduction Act

OMB has approved under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) the information collection requirements contained in this rule (in 38 CFR 21.4263(h)(3)) and has assigned them OMB control number 2900–0613.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information requirements in this rule is displayed at the end of the affected section of the regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will have a minuscule monetary effect if any, on affected entities. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate,or by the private sector, of $100 million or more in any given year.

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This rule will have no consequential effect on State, local or tribal governments.

Catalog of Federal Domestic Assistance

the Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims Colleges and universities, Conflict of Interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subparts D and L) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34,35, 36, unless otherwise noted.

§ 21.4152 [Amended]

2. In § 21.4152, the introductory text of paragraph (b) is amended by removing "on VA." and adding, in its place, "on VA" and pargraph (b)(4) is amended by removing "§ 21.4209." and adding, in its place "§ § 21.4209 and 21.4263."

3. Section 21.4263 is amended by:

A. Removing the authority citation at the end of paragraph (h).

B. Adding paragraph (h)(30.

C. Adding the information collection requirements parenthetical at the end of the section.

The additions read as follows:

§ 21.4263. Approval of flight training courses.

* * * * *

(h) *Nonaccredited courses.* * * *

(3) A flight school must keep at a minimum the following records for each eligible veteran, servicemember, or reservist pursuing flight training:

(i) A copy of his or her private pilot certificate;

(ii) Evidence of completion of any prior training that may be a prerequisite for the course;

(iii) A copy of the medical certificate required by paragraph (a)(2) of this section for the courses being pursued and copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction received at the current school;

(iv) A daily flight log or copy thereof;

(v) A permanent ground school record;

(vi) A progress log;

(vii) An invoice of flight changes for individual flights or flight lessons for training conducted on a flight simulator or advanced flight training device;

(viii) Daily flight sheets identifying records upon which the 85–15 percent ratio may be computed;

(ix) A continuous meter record for each aircraft;

(x) An invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft, and aircraft identification number;

(xi) An accounts receivable ledger;

(xii) Individual instructor records;

(xiii) Engine log books;

(xiv) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under 14 CFR part 61, part 63, part 141, or part 142;

(xv) Records of tuition and accounts which are evidence of tuition charged and received from all students; and

(xvi) If training is provided under 14 CFR part 141, the records required by that part, or if training is provided under 14 CFR part 142, the records required by that part.

(Authority: 38 U.S.C. 3671, 3672, 3676, 3690(c))

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0613)

Subpart L—Educational Assistance for Members of the Selected Reserve

4. The authority citation for subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

§ 21.7807 [Amended]

5. Section 21.7807 is amended by removing "§ 21.4209" and adding, in its place, "§ § 21.4209 and 21.4263".

[FR Doc. 02–6540 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NV 074–CORR; FRL–7159–6]

Designations of Areas for Air Quality Planning Purposes; State of Nevada; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is clarifying and correcting the tables in the Code of Federal Regulations that identify the Agency's designations and classifications of nonattainment, attainment, and unclassifiable areas for criteria pollutants within the State of Nevada. Specifically, EPA is clarifying the tables for Nevada to indicate the specific geographic areas that comprise the attainment and unclassifiable areas in the State and to reflect changes in the Agency's regulations implementing the prevention of significant deterioration program. EPA is also correcting the table that shows the classification of the Las Vegas Valley nonattainment area for the National Ambient Air Quality Standard for carbon monoxide.

EFFECTIVE DATE: This action is effective on March 19, 2002.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Permits Office of the Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region 9, (415) 972–3971 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us", or "our" are used, we mean the Environmental Protection Agency (EPA).

This section contains additional information about our final rulemaking, organized as follows:

I. Clarification of the TSP, SO_2, and NO_2 tables.

II. Clarification of the PM_{10} table.

III. Correction of the CO table.

IV. EPA's final action.

V. Effective date of EPA's final action.

I. Clarification of the TSP, SO_2, and NO_2 Tables

EPA's designations of nonattainment, attainment, and unclassifiable areas pursuant to section 107(d) of the Clean Air Act are contained in part 81 of title 40 of the code of federal regulations (40 CFR part 81). Our designations for such areas in the State of Nevada are located in 40 CFR 81.329 and are presented separately for each of the criteria pollutants.[1] All of the applicable tables in 40 CFR 81.329 contain the term "rest of state" or "entire state" to describe the attainment or unclassifiable areas within Nevada. We are aware that the term "rest of state" or "entire state" in these tables at 40 CFR 81.329 could be misinterpreted as designating a single attainment or unclassifiable area. However, based on the regulatory history summarized below, dating back to our initial area designations in 1978, the terms "rest of state" and "entire state" in the applicable section 81.329 tables actually refer to more than 250 individual section 107(d) attainment or unclassifiable areas.

In 1977, pursuant to section 107(d) of the Clean Air Act Amendments of 1977, the State of Nevada submitted their recommendations to EPA for nonattainment, attainment and unclassifiable areas for TSP (total suspended particulate), SO_2 (sulfur dioxide), and NO_2 (nitrogen dioxide) within the State.[2] Dated November 25, 1977, the State's letter containing the recommendations cites hydrographic areas (delineated by the Nevada Division of Water Resources) as the geographic unit for such areas in Nevada, specifically noting that, "the name and definition of Nevada's water basins are now being utilized as the reference unit for air basins." The letter with the State's 1977 submission indicated that there were 253 such air basins in the State. A careful review of the air basins listed in the documentation provided with the 1977 letter indicates that the State had identified 254 such areas. These areas are referred to herein as "section 107(d) areas."

In 1978, we designated section 107(d) areas based on the State's recommendations (contained in the November 1977 letter described above) with certain modifications (that are not relevant for the purposes of this action) and codified these areas in 40 CFR part 81.329. See 43 FR 8962, 9012 (March 3, 1978). In our 1978 rule, we noted: "In some instances, the descriptions of the designated areas submitted by the States were so lengthy as to prohibit their publication in the limited space available in the tables presented below. Exact descriptions of all areas designated are available at the appropriate Regional Offices or the State in question." See 43 FR 8962, 8964 (March 3, 1978). Nevada was one of those States which submitted a lengthy description of section 107(d) areas. In the tables published in the **Federal Register** and codified in 40 CFR 81.329, the short-hand notation "rest of state" and "entire state" were used to refer to attainment and unclassifiable areas in the State of Nevada, in lieu of the lengthy description of 254 hydrographic areas submitted by the State. Thus, our 1978 rule, despite the use of the short-hand notation in the CFR, approved the hydrographic areas as the attainment or unclassifiable areas (for TSP, SO_2, and NO_2) in the State of Nevada.

Since our 1978 rule, we have twice taken action under section 107(d) of the Clean Air Act to increase the number of designated section 107(d) areas in the State of Nevada. In 1980, we approved a division of hydrographic area 101 (Carson Desert) into two section 107(d) areas for TSP: 101 (a smaller area referred to as Carson Desert); and 101A (referred to as Packard Valley). See 45 FR 46807 (July 11, 1980). In 1982, we approved a division of hydrographic area 179 (Steptoe Valley) into three areas for SO_2: central; northern; and southern. See 47 FR 20772 (May 14, 1982). Upon the effective date of our 1982 rule (June 14, 1982), there have been a total of 256 section 107(d) areas in the State of Nevada for SO_2, 255 section 107(d) areas for TSP, and 254 section 107(d) areas for NO_2.

Therefore, in this action, we are clarifying 40 CFR 81.329 to indicate clearly that the term "rest of state" or "entire state" in the Nevada tables for TSP, SO_2, and NO_2 refers to the hydrographic areas designated by EPA in 1978, revised for TSP in 1980, and then revised for SO_2 in 1982.

II. Clarification of the PM_{10} Table

In 40 CFR 81.329, there are two tables that list the nonattainment, attainment, and unclassifiable areas in the State of Nevada for particulate matter: one relates to TSP and the other relates to PM_{10}. Today's action clarifies the PM_{10} table to reflect the relationship between that table and the TSP area designations table for the purposes of implementing the PSD program.[3]

In 1991, pursuant to the Clean Air Act Amendments of 1990, the State of Nevada submitted their recommendations concerning nonattainment areas for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) (PM_{10} replaced TSP as the criteria pollutant for particulate matter.) Dated March 15, 1991, the State's letter containing their recommendations did not refer to PM_{10} attainment or unclassifiable areas, instead focussing solely on the identification of nonattainment areas. Later in 1991, based on the State's recommendations, we revised the nonattainment areas under section 107(d) for PM_{10}. See 56 FR 56694 (November 6, 1991). Our 1991 rule did not identify attainment or unclassifiable areas for PM_{10}.

In 1992, we recognized that we had neglected to identify attainment or unclassifiable areas for PM_{10} in our 1991 rule and thus added the designation "unclassifiable" for the areas not otherwise designated nonattainment for PM_{10}, using the term "rest of state." See 57 FR 56762 (November 30, 1992). In this context, the use of the term "rest of state" in the PM_{10} table in section 81.329 was only identifying the portion of the State that EPA had not designated nonattainment for PM_{10}.

Unfortunately, the use of the term "rest of state" in the PM_{10} table could lead members of the public to conclude that there is a single unclassifiable PM_{10} area in the State for the purposes of the prevention of significant deterioration (PSD) program. However, based on the regulatory history described below, for PSD baseline purposes, the term "rest of state" in the PM_{10} table for the State of Nevada refers to hydrographic areas, and in this action, we are clarifying the PM_{10} table accordingly to avoid further confusion.

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[1] 40 CFR 81.329 does not contain a table for lead. The entire State of Nevada is in attainment with the national ambient air quality standard for lead.

[2] The state also submitted recommendations for carbon monoxide and oxidant (subsequently replaced by ozone). Today's action does not address area designations in Nevada for either of these two pollutants, with the exception of a correction in the classification shown in 40 CFR 81.329 for Las Vegas Valley as a carbon monoxide nonattainment area.

[3] Although EPA indicated that we would delete the TSP designations in 40 CFR part 81 when EPA approves a State's revised PSD program containing the PM_{10} increments, promulgates the PM_{10} increments into a State's SIP where the State chooses not to adopt the increments on their own, or approves a State's request for delegation of PSD responsibility under 40 CFR 52.21(u) (See 58 FR 31622, 31635 (June 3, 1993)), we are not deleting any section 81.329 TSP designations in today's action, because of the significance of the designations to the implementation of the PSD program for PM_{10}. EPA believes this is a reasonable approach given the confusion that has arisen in the State of Nevada regarding implementation of the PSD program for PM_{10}.

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In 1980, EPA revised the regulations implementing the PSD program to define "baseline areas" in terms of the attainment or unclassifiable areas listed in 40 CFR part 81, i.e., the section 107(d) areas. 45 FR 52676 (August 7, 1980). In 1987, we revised the National Ambient Air Quality Standard (NAAQS) for particulate matter (52 FR 24634), replacing TSP as the indicator for particulate matter with PM_{10}, and in 1993, we revised our PSD regulations to address the revision in the NAAQS for particulate matter from TSP to PM_{10}. Among other changes in our 1993 rule related to PSD, we decided to retain the TSP baseline areas as part of the program for implementing the newly-promulgated PM_{10} increments. See 58 FR 31622, 31630 (June 3, 1993). The TSP baseline areas had been defined as the section 107(d) areas, and in the State of Nevada, as discussed in the previous section, the section 107(d) areas for TSP are comprised of hydrographic areas. Thus, the effect of our 1993 rule was to retain the hydrographic areas as PM_{10} baseline areas for the purposes of implementing the PM_{10} increments in the State of Nevada. Today's action clarifies the PM_{10} table in 40 CFR 81.329 to indicate, in accordance with EPA's 1993 rule, that for PSD baseline area purposes, the term "rest of state" refers to the hydrographic areas that had been approved by EPA as TSP baseline areas in the State of Nevada.

III. Correction of CO Table

On October 2, 1997, we published a final rule that found that the Las Vegas Valley carbon monoxide (CO) nonattainment area did not attain the NAAQS for CO by the applicable attainment date. Our final rule reclassified the area from "moderate" to "serious" nonattainment under section 186(b)(2) of the Act. See 62 FR 51604 (October 2, 1997). However, we inadvertently failed to codify this final action in the CO table for Nevada in 40 CFR 81.329. The CO table in 40 CFR 81.329 currently lists the prior classification ("Moderate > 12.7 ppm") for Las Vegas Valley Hydrographic Area 212. In this action, we are therefore correcting the CO table so that the classification of Las Vegas Valley Hydrographic Area 212 is correctly identified as "serious," effective November 3, 1997, reflecting our final action published on October 2, 1997 in the **Federal Register**.

IV. EPA's Final Action

In this action, we are clarifying and correcting the tables in 40 CFR 81.329 that identify nonattainment, attainment, and unclassifiable areas designated by EPA under the Clean Air Act within the State of Nevada. Specifically, we are clarifying the TSP, SO_2, and NO_2 tables to identify exactly which geographic areas comprise the attainment or unclassifiable areas in the State of Nevada consistent with our final rules published in the **Federal Register** on March 3, 1978 (43 FR 8962); July 11, 1980 (45 FR 46807); and May 14, 1982 (47 FR 20772). We are also clarifying the PM_{10} table consistent with our final rule related to PSD published in the **Federal Register** on June 3, 1993 (58 FR 31622). Lastly, we are correcting the table showing the classification of the Las Vegas Valley nonattainment area for the NAAQS for CO consistent with our final rule published in the **Federal Register** on October 2, 1997 (62 FR 51604). In so doing, we are not revising any area designations or classifications in the State of Nevada nor are we changing the underlying method used by the State of Nevada in implementing the PSD program in that State. (The State has been implementing the PSD program on the basis of hydrographic areas consistent with our designations of such areas in 1978.) Rather, we are aligning the contents of the tables in 40 CFR 81.329 with the effective results of prior EPA rules that did establish or revise the area designations or classifications.

V. Effective Date of EPA's Final Action

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is clarifying and correcting the section of the CFR that lists designations and classifications under the Clean Air Act to reflect prior EPA rules rather than promulgating new or revised designations or classifications. These prior rules had been subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Also, because the contents of the existing tables of section 107(d) areas in 40 CFR 81.329 have lead to confusion, particularly in the context of implementing the PSD program in Nevada, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act and making today's final action immediately effective. See 5 U.S.C. 553(d)(3).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see section V., above), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction does not contain technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 19, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: March 8, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. Section 81.329 is amended by:

a. Revising the tables for "Nevada—TSP" and "Nevada—SO_2".

b. In the table for "Nevada—Carbon Monoxide" by revising the entry for Las Vegas Area.

c. Revising the tables for "Nevada—PM–10" and "Nevada—NO_2".

The revisions read as follows:

§ 81.329 Nevada.

NEVADA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Las Vegas Valley (212) (15–24S, 56–64E)	X			
Carson Desert (101) (15–24.5N, 25–35E)	X			
Packard Valley (101A) (24.5–28N, 31–34E)				X
Winnemucca Segment (70) (34–38N, 34–41E)	X			
Lower Reese Valley (59) (27–32N, 42–48E)		X		
Gabbs Valley			X	
Fernley Area (76) (19–21N, 23–26E)	X			
Truckee Meadows (87) (17–20N, 18–21E)	X			
Mason Valley (108) (9–16N, 24–26E)	X			
San Emido Desert (22) (27–32N, 22–24E)			[1] X	
Colorado River Valley (213) (22–33S, 63–66E)			[1] X	
Steptoe Valley (179) (10–29N, 61–67E)			[1] X	
Clovers Area (64) (32–39N, 42–46E)		X		
Rest of State [2]				X

[1] EPA designation replaces State designation.

[2] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

NEVADA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Steptoe Valley (179)(10–29N, 61-67E):				
Central	X			
Northern (area which is north of Township 21 North and within the drainage basin of the Steptoe Valley)			X	
Southern (area which is south of Township 15 North and within the drainage basin of the Steptoe Valley)			X	

NEVADA—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Rest of State [1]				X

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

NEVADA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Las Vegas Area:				
Clark County (part):				
Las Vegas Valley Hydrographic Area 212		Nonattainment	11/03/97	Serious.

* * * * *

NEVADA-PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washoe County:				
Reno planning area	11/15/90	Nonattainment	02/07/01	Serious.
Hydrographic area 87				
Clark County:				
Las Vegas planning area	11/15/90	Nonattainment	02/08/93	Serious.
Hydrographic area 212				
Rest of State [1]	11/15/90	Unclassifiable		

[1] For PSD baseline area purposes, "rest of state" refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), as revised to include a division of Carson Desert (area 101) into two areas, a smaller area 101 and area 101A.

NEVADA—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Entire State [1]		X

[1] Entire State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

[FR Doc. 02–6613 Filed 3–18–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7159–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of the direct final notice of deletion amendment.

SUMMARY: On November 28, 2001, EPA published a notice of intent to delete (66 FR 59393) and a direct final notice of deletion (66 FR 59363) for the Compass Industries Landfill Superfund Site from the National Priorities List. The EPA is removing the direct final notice of deletion amendment due to adverse comments that were received during the public comment period and restores the regulatory text that existed prior to the direct final notice of deletion.

EFFECTIVE DATE: This action is effective as of March 19, 2002.

ADDRESSES: Comprehensive information on the Site, as well as the comments that were received during the comment period are available at: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF-LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Tulsa City-County Library, 400 Civic Center, Tulsa, Oklahoma, 74103, (918) 596–7977, Monday through Friday 9:00 a.m. to 9:00 p.m.; Friday and Saturday 9:00 a.m. to 5:00 p.m.; Sunday, September through mid-May 1:00 p.m. to 5:00 p.m.; Oklahoma Department of Environmental Quality, Contact: Eileen Hroch, 5th floor file room, 707 N. Robinson, P.O. Box 1677, Oklahoma City, Oklahoma, 73101, (405) 702–5100, Monday through Friday 8:30 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Katrina Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 1, 2002.

Lawrence E. Starfield,

Acting Deputy Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

2. Table 1 of appendix B is amended under Oklahoma ("OK") by adding an entry, in alphabetical order, for "Compass Industries Landfill (Avery Drive)" to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
OK	Compass Industries Landfill (Avery Drive)	Tulsa.	

[FR Doc. 02–6485 Filed 3–18–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2134–N]

RIN 0938–AL05

Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals: Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Delay of effective date of a final rule.

SUMMARY: This document delays the effective date of the final rule entitled "Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals," published in the **Federal Register** on January 18, 2002 (67 FR 2603).

As published, the rule was to be effective March 19, 2002. We are postponing the effective date of the rule to April 15, 2002.

DATES: The effective date of the final rule, Medicaid Program: Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals, which amended 42 CFR part 447 and published in the **Federal Register** on January 18, 2002, at 67 FR 2602 is delayed until April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marge Lee, (410) 786–4361.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 15, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6713 Filed 3–18–02; 8:45 am]
BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed

BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alaska	
Anchorage (Municipality) Anchorage Division, (FEMA Docket No.B–7415)	
Alyeska Creek:	
At Mount Hood Drive	*121
Approximately 970 feet upstream of Olympic Circle Entrance	*335
Maps are available for inspection at 4700 South Bagall Street, Anchorage, Alaska.	
Oklahoma	
City of Yukon, (FEMA Docket No. B–7421)	
North Canandian River, Tributary A:	
Approximately 3000 feet below Jon Elm Place	*1,260
Approximately 500 feet downstream of U.S. Highway 66	*1,285
Just above Landmark Drive	*1,300
Main Stem Turtle Creek:	
Approximately 35000 feet downstream of U.S. Highway 66	*1,271
Just upstream of U.S. Highway 66	*1,286
At confluence of West Branch Turtle Creek and Middle Branch Turtle Creek	*1,293
Middle Branch of Turtle Creek:	
At confluence with Main Stem Turtle Creek	*1,293
Just downstream of Vandament Avenue	*1,310
Approximately 1,500 feet upstream of Vandament Avenue	*1,318
Approximately 3,800 feet upstream of Vandament Avenue	*1,332
East Branch of Turtle Creek:	
At confluence with Main Stem Turtle Creek	*1,277
At confluence of Cornwell Branch	*1,288
Just downstream of Chicago Rock Island and Pacific Railroad	*1,297
Approximately 300 feet upstream of Vandament Avenue	*1,322
West Branch of Turtle Creek:	
At confluence with Main Stem Turtle Creek	*1,293
Just upstream of Yukon Avenue	*1,311
Approximately 1,500 feet upstream of Yukon Avenue	*1,321
Cornwell Branch of East Branch Turtle Creek:	
At confluence with East Branch Turtle Creek	*1,288
At intersection of Yukon Avenue and Czech Hall Road	*1,298
Approximately 270 feet upstream of the intersection of Bass Avenue and Czech Hall Road	*1,319
Holly Branch of Middle Branch Turtle Creek:	
At confluence with Middle Branch Turtle Creek	*1,314
Approximately 1,400 feet upstream of Holly Avenue	*1,338
North Canadian River:	
Approximately 900 feet downstream of Main Street (U.S. Highway 66)	*1,286
Approximately 1,350 feet downstream of Main Street (U.S. Highway 66)	*1,297
North Canadian River, Tributary B, West Branch:	
At confluence with North Canadian River Tributary B	*1,291
Approximately 1150 feet upstream of confluence with North Canadian River Tributary B	*1,302
North Canadian River, Tributary C:	
Approximately 1,100 feet downstream of Main Street (U.S. Highway 66)	*1,286
Approximately 3,200 feet upstream of Main Street (U.S. Highway 66)	*1,309
North Canadian River, Tributary C, West Branch 1:	
At confluence with North Canadian River Tributary C	*1,289
Just downstream of Oil Field Road	*1,322
North Canadian River, Tributary C, West Branch 2:	
At confluence with North Canadian River Tributary C	*1,306
Just downstream of Church Hill Road	*1,332
Maps are available for inspection at 528 West Main Street, Yukon, Oklahoma.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Iowa		
FEMA Docket No. (B–7423)		
Iowa River:		
Approximately 10,000 feet upstream of the confluence with Snyder Creek	*636	Johnson County, City of Iowa City, City of Coralville.
Just downstream of U.S. Highway 6	*644	
Approximately 4,000 feet upstream of Coralville Dam	*657	
Ralston Creek:		
Just upstream of the North Branch Ralston Creek Detention Dam	*700	City of Iowa City, Johnson County.
Approximately 500 feet upstream of Scott Boulevard	*731	
South Branch Ralston Creek:		
Just upstream of Scott Boulevard	*723	City of Iowa City, Johnson County.
Approximately 3,700 feet upstream of Scott County Boulevard	*727	
North Branch Snyder Creek:		
Approximately 4,500 feet downstream of U.S. Route 6	*650	City of Iowa City, Johnson County.
Approximately 2,050 feet upstream of Chicago Rock Island and Pacific Railroad.	*668	
Clear Creek:		
At confluence with Iowa River	*654	Johnson County, City of Iowa City, City of Tiffin.
Approximately 4,100 feet upstream of Camp Cardinal Road	*668	
Approximately 5,300 feet downstream of Interstate 80	*672	
Willow Creek:		
At confluence with Iowa River	*642	City of Iowa City, Johnson County.
Approximately 650 feet upstream of U.S. Route 218	*721	
West Branch Snyder Creek:		
At confluence with North Branch Snyder Creek	*662	Johnson County, City of Iowa City.
Approximately 900 feet upstream of the West Spur Railroad	*673	
Middle Branch Willow Creek:		
At confluence with Willow Creek	*677	City of Iowa City.
Approximately 300 feet upstream of Mormon Trek Boulevard	*690	

Addresses

Johnson County and Unincorporated Areas

City of Iowa City, Iowa:

Maps are available for inspection at the County Courthouse, P.O. Box 325, Allison, Iowa.

City of Tiffin, Iowa:

Maps are available for inspection at Tiffin City Hall, 211 Main Street, Tiffin, Iowa.

City of Coralville:

Maps are available for inspection at the Coralville City Hall, 1512 17th Street, Coralville, Iowa.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Communities affected
Missouri		
FEMA Docket No. (B–7421)		
Joachim Creek:		
Approximately 3,500 feet downstream of the New State Highway 110 bridge	*474	City of De Soto.
Approximately 550 feet upstream of Highway E	*525	
Joachim Creek:		
Approximately 3,000 feet downstream of the New Highway 110 bridge	*474	Jefferson County (Uninc. Areas).
Approximately 1,700 feet upstream of the County Highway E	*528	

Addresses

City of De Soto

Maps are available for inspection at City Hall, 17 Boyd Street, De Soto, Missouri.

Jefferson County and Unincorporated Areas

Maps are available for inspection at Jefferson County, Building and Zoning Commission, 300 2nd Street, Hillsboro, Missouri.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Nebraska		
FEMA Docket No. (B–7420)		
Shell Creek:		
Approximately 800 feet downstream of County Bridge located at the west section-line of the southwest 1/4 of Section 9, T17N, R4E.	*1,331 *1,348	Colfax County (Uninc. Areas), City of Schuyler.
Approximately 2,000 feet downstream of State Highway 30	*1,368	
Approximately 4,600 feet downstream of State Highway 15	*1,445	
At County Bridge on Colfax/Platte County boundary located approximately 300 feet south of middle of west section Line of Section 19.		

Addresses

Colfax County and Unincorporated Areas

Maps are available for inspection at the Community Map Repository, 411 East 11th Street, Schuyler, Nebraska.

City of Schuyler

Maps are available for inspection at 1103 B Street, Schuyler, Nebraska.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Oklahoma		
FEMA Docket No. (B–7404)		
Chisholm Creek:		
Approximately 3,900 feet downstream of Danforth Street	*1,052	
Just upstream of Memorial Road	*1,124	
Just downstream of Hefner Road	*1,167	
Chisholm Creek Tributary 3(Pond Creek):		
At confluence with Chisholm Creek	*1,049	
Just upstream of Danforth Road	*1,074	City of Edmond, City of Oklahoma City.

Addresses:

City of Edmond

Maps are available for inspection at 100 East First Street, Edmond, Oklahoma.

City of Oklahoma City

Maps are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Utah		
FEMA Docket No. (B–7421)		
Jordan River:		
Approximately 3,100 feet downstream of the Golf Cart Bridge at Camp Williams Military Reservation.	*4,491	
At Cedar Fort Road	*4,493	
Approximately 1,400 feet upstream of Saratoga Road	*4,494	Utah County (Uninc. Areas).
Approximately 3,100 feet downstream of Saratoga Road	*4,493	
Approximately 1,400 feet upstream of Saratoga Road	*4,494	City of Saratoga Springs.
Approximately 3,100 feet downstream of the Golf Cart Bridge at Camp Williams Military Reservation.	*4,491	
Approximately 1,500 feet downstream of Saratoga Road	*4.493	City of Lehi.

Addresses:

Utah County and Unincorporated Areas:

Maps are available for inspection at the County Public Works Building, 2855 South State Street, Provo, Utah.

City of Saratoga Springs:

Maps are available for inspection at City Hall, City Manager's Office, 2015 South Redwood, Lehi, Utah.

City of Lehi:

Maps are available for inspection at the Building and Planning Department, 99 West Main Street, Lehi, Utah.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Washington		
FEMA Docket No. (B–7421)		
Wenatchee River:		
At confluence with Chumstick Creek	*1,078	
At confluence with Icicle Creek	*1,111	Chelan County (Uninc. Areas).
Wenatchee River:		
At confluence with Chumstick Creek	*1,079	
At confluence with Icicle Creek	*1,111	City of Leavenworth.

Addresses

Chelan County and Unincorporated Areas

Maps are available for inspection at Community Map Repository, County Planning Department, 411 Washington Street, Wenatchee, Washington.

City of Leavenworth:

Maps are available for inspection at City Hall, Department of Community Development, 700 Highway 2, Leavenworth, Washington.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6574 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; DA 02–607]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule; deadlines for filing oppositions to petitions for reconsideration and replies to oppositions to petitions for reconsideration.

SUMMARY: This document gives notice of petitions for reconsideration of the Report and Order in GN Docket No. 01–74, FCC 01–364, concerning the reallocation and service rules for the 698–746 MHz spectrum band (Television Channels 52–59), and sets an expedited schedule for filing oppositions to the petitions for reconsideration and replies to such oppositions.

DATES: Oppositions are due on or before March 25, 2002, and replies are due on or before April 1, 2002.

ADDRESSES: Oppositions and replies may be filed by paper or electronically. If filed by paper by hand delivery, documents should be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. If filed by overnight delivery service (other than U.S. Postal Service Express and Priority Mail), filings must be received at the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554; those deliveries will then be diverted to the Commission's Capitol Heights facility. Oppositions and replies filed electronically (by email or by facsimile) should be done as set forth in this document. In addition, one copy of each opposition and reply must be delivered to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, by facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*.

FOR FURTHER INFORMATION CONTACT: G. William Stafford, Wireless Telecommunications Bureau, at (202) 418–0563, email: *wstaffor@fcc.gov;* Michael Rowan, Wireless Telecommunications Bureau, at (202) 418–1883, email: *mrowan@fcc.gov;* or Jamison Prime, Office of Engineering and Technology, at (202) 418–1883, email: *jprime@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 14, 2001. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center (CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893. It is also available on the Commission's web site at *http://www.fcc.gov*.

1. Notice is hereby given that the parties listed have petitioned the Commission for reconsideration and clarification of the Report and Order in GN Docket No. 01–74, FCC 01–364, 67 FR 5491 (February 6, 2002). In the Report and Order, the Commission adopted allocation and service rules for the 698–746 MHz spectrum band ("Lower 700 MHz Band"), currently comprising television Channels 52–59, in order to reclaim and license this spectrum in accordance with statutory mandate. This spectrum is being reclaimed for new commercial services as part of the transition of television broadcasting from analog to digital transmission systems. The Communications Act of 1934, as amended, requires the Commission to assign spectrum reclaimed from

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broadcast television using competitive bidding, and envisions that the Commission will conduct an auction of this spectrum by September 30, 2002.

2. In light of the upcoming auction of licenses in the Lower 700 MHz band at 698–746 MHz (Auction No. 44), which is scheduled to commence on June 19, 2002, good cause exists in this instance to alter the periods specified in § 1.429 of the Commission's rules, 47 CFR 1.429, for the filing of oppositions to petitions for reconsideration and replies to oppositions. The petitions filed by the parties listed seek reconsideration or clarification of a number of the policies and procedures adopted in the Report and Order, which are relevant to the transition of the 698–746 MHz band from broadcasting to new services. An expedited schedule will give the Commission an opportunity to provide timely guidance regarding these issues to prospective bidders and incumbent broadcasters in advance of Auction No. 44. Accordingly, oppositions to petitions for reconsideration of the Report and Order shall be filed no later than March 25, 2002, and replies to oppositions will be due no later than April 1, 2001.

Procedural Matters

4. Parties submitting oppositions or replies should address the issues raised in the petitions for reconsideration in light of the relevant statutory requirements, procedures, and public interest considerations. All responsive filings should reference the docket number of this proceeding, i.e., GN Docket No. 01–74.

5. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200(a), 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must reflect the substance of the presentations and not merely list the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

6. Parties may obtain copies of the Report and Order and petitions for reconsideration at the FCC website, *http://www.fcc.gov/e-file/ecfs.html*. The petitions are also available for public inspection and copying in the Reference Center, Room CY A257, 445 12th Street, SW., Washington, DC 20554. Copies of the petitions are also available from Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at *qualexint@aol.com*.

7. Oppositions to petitions for reconsideration and replies may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Oppositions and replies filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Each filing should be submitted into the following docket: GN Docket No. 01–74. In completing the transmittal screen, parties should include their full name and Postal Service mailing address. Parties may also submit an electronic filing by Internet e-mail. To get filing instructions for e-mail filings, parties should send an e-mail message to *ecfs@fcc.gov*, including "get form to <your e-mail address>" in the body of the message. A sample form and directions will be sent in response.

8. Due to the threat of contamination that resulted in the disruption of regular mail, the Commission released on November 29, 2001, an Order, temporarily amending certain procedural rules on an emergency basis. Oppositions to petitions for reconsideration and replies thereto must be filed electronically (i.e., by e-mail or facsimile), or by hand delivery to the Commission's Massachusetts Avenue location.

9. If filed electronically by e-mail, oppositions to petitions for reconsideration and replies thereto shall be filed at the following e-mail address: *WTBSecretary@fcc.gov*. Please also copy (CC) G. William Stafford at *wstafford@fcc.gov*, Michael J. Rowan at *mrowan@fcc.gov*, and Jamison Prime at *jprime@fcc.gov*. For security purposes, we recommend that documents filed via electronic mail be converted to PDF format.

10. If filed by facsimile, oppositions to petitions for reconsideration and replies thereto shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number and, if available, an e-mail address. In addition to the official filing, please also fax copies to G. William Stafford, Room 4-A124, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Michael J. Rowan, Room 4–A131, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, and Jamison Prime, Room 4–A734, Office of Engineering and Technology, at (202) 418–7447.

11. If filed by hand delivery, documents shall be delivered to 236 Massachusetts Avenue, NE, Suite 110, Washington DC 20002. Please address documents to the Secretary, and copies thereof to the attention of G. William Stafford, Room 4-A124, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Michael J. Rowan, Room 4-A131, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, and Jamison Prime, Room 4-A734, Office of Engineering and Technology.

12. If filed by overnight delivery service (other than U.S. Postal Service Express and Priority Mail), filings must be received at the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. As noted in the October 17 and October 18, 2001 public notices, the Commission will divert those deliveries to the Capitol Heights facility.

13. In addition, one copy of each opposition to petitions for reconsideration and each reply thereto must be delivered to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (202) 863–2893, by facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*.

14. Listed are the parties filing petitions for reconsideration and clarification of the Report and Order in GN Docket No. 01–74:

Spectrum Clearing Alliance (by Paxson Communications Corporation) (February 5, 2002); Supplement to Petition (March 8, 2002).

KM Communications, Inc. (March 6, 2002).

Office of the Chief Technology Officer, Government of the District of Columbia (March 8, 2002).

Access Spectrum, LLC (March 8, 2002).

Spectrum Exchange Group, LLC and Allen & Company Incorporated (March 8, 2002).

The WB Television Network (March 8, 2002).

Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC (Joint Petition) (March 8, 2002).

Univision Television Group, Inc. (March 8, 2002).

Federal Communications Commission.

William W. Kunze,

Chief, Wireless Telecommunications Bureau, Commercial Wireless Division.

[FR Doc. 02–6621 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–248, FCC 02–45]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rule revisions that would enable it to issue satellite and earth station licenses with 15-year license terms, rather than the 10-year license terms permitted under the current rules. These rule revisions are intended to reduce the administrative burdens of satellite licensees and earth station licensees.

DATES: Effective April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, (202) 418–1539.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order adopted February 14, 2002 and released February 28, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY-B402, Washington, DC 20554.

Paperwork Reduction Act

The rule revisions adopted in this First Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and do not contain new and/or modified information collections subject to Office of Management and Budget review.

Regulatory Flexibility Analysis

In this First Report and Order, the Commission extends the license term of all space station and earth station granted after the effective date of these rules from 10 years to 15 years. The effect of these rule revisions is to reduce the number of times space station and earth station licensees will be required to renew their licenses. This will reduce the administrative burdens of space station and earth station licensees. We expect that this change will be minimal and positive. Therefore, we certify that the requirements of this First Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the First Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

Summary of First Report and Order

Currently, Part 25 of the Commission's rules provides for issuing earth station licenses, space station licenses, and receive-only earth station registrations with a maximum of 10-year license terms. In this First Report and Order, the Commission revises Part 25 to allow for earth station licenses, space station licenses, and receive-only earth station registrations with 15-year license terms.

Ordering Clauses

Pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), this First Report and Order is hereby adopted.

Part 25 of the Commission's rules *is amended* as set forth in the Rule Changes.

The rule revisions adopted in this First Report and Order will be effective 30 days after a summary of this Order is published in the **Federal Register**.

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this First Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

2. Section 25.121 is amended by revising paragraphs (a), (b), and (d)(2) to read as follows:

§ 25.121 License term and renewals.

(a) *License term.* Licenses for facilities governed by this part will be issued for a period of 15 years.

(b) The Commission reserves the right to grant or renew station licenses for less than 15 years if, in its judgment, the public interest, convenience and necessity will be served by such action.

* * * * *

(d) * * *

(2) For non-geostationary satellite orbit satellites, the license term will begin at 3 a.m. EST on the date that the licensee certifies to the Commission that its initial space station has been successfully placed into orbit and that the operations of that satellite fully conform to the terms and conditions of the space station system authorization. All space stations launched and brought into service during the 15-year license term shall operate pursuant to the system authorization, and the operating authority for all space stations will terminate upon the expiration of the system license.

* * * * *

3. Section 25.131 is amended by revising paragraph (h) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(h) Registration term: Registrations for receive-only earth stations governed by this section will be issued for a period of 15 years from the date on which the application was filed. Applications for renewals of registrations must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days before the expiration date of the registration.

* * * * *

[FR Doc. 02–6524 Filed 3–18–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-490]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC. 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 266C3 and adding Channel 266C0 at Lake Havasu City.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 235C2 and adding Channel 235C3 at Coushatta.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 299A and adding Channel 299C3 at Stockton.

5. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 224C3 and adding Channel 224C2 at Ely and by removing Channel 284A and adding Channel 284C1 at Moapa Valley.

6. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 284A and adding Channel 284C3 at Ponca City.

7. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 229A and adding Channel 229C3 at Atwood.

8. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 269A and adding Channel 269C3 at Stowe.

9. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 240C3 and adding Channel 240C2 at Quincy.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02-6375 Filed 3-18-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 031402A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Vessels 60 Ft (18.3 m) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 ft (18.3 m) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2002 total allowable catch (TAC) of Pacific cod allocated to vessels using pot gear in this area.

DATES: *Dates*: Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2002, until 1200 hrs, A.l.t., June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear in the BSAI was established in an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) as a directed fishing allowance of 10,305 metric tons. See § 679.20 (c)(3)(iii), § 679.20 (c)(7), and § 679.20 (a)(7)(i)(A)&(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 ft (18.3 m) LOA and longer using pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20 (e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 14, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-6566 Filed 3-14-02; 4:33 pm]

BILLING CODE 3510-22-S

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Proposed Rules

Federal Register
Vol. 67, No. 53
Tuesday, March 19, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO–368–A30, AO–380–A18; DA–01–08]

Milk in the Pacific Northwest and Western Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the proposed rule that appeared in the **Federal Register** of March 4, 2002, (67 FR 9622), which gave notice of a public hearing being held to consider proposals that would amend certain pooling and related provisions of the Pacific Northwest and Western Federal milk marketing orders. The document was published with an inadvertent error regarding the date of the public hearing. This docket corrects the error to show the public hearing will begin on April 16, 2002.

DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20250–0231, (202) 690–1366, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: In the proposed rule beginning on page 9622 of the **Federal Register** for Monday, March 4, 2002, the hearing date in the second column on page 9622 is corrected in both the **DATES** and **SUPPLEMENTARY INFORMATION** sections to read as follows:

DATES: The hearing will convene at 8:30 a.m. on Tuesday, April 16, 2002.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116–2891, (801) 539–1515 (voice), (801) 539–1113 (fax), beginning at 8:30 a.m., on Tuesday, April 16, 2002, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas.

Dated: March 14, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6657 Filed 3–15–02; 11:53 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG86

Incorporation by Reference of ASME BPV and OM Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference certain American Society of Mechanical Engineers (ASME) Code Cases which the NRC has reviewed and found acceptable for use. These code cases provide alternatives to requirements in the ASME Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) pertaining to inservice inspection and inservice testing, operation and maintenance, and design, construction and materials. This action would incorporate by reference the current versions of NRC-developed Regulatory Guides which address NRC review and approval of ASME-published code cases. In connection with this action, the NRC published a notice of the issuance and availability of the current versions of the three proposed regulatory guides addressing NRC approval of ASME BPV Code Cases and the OM Code Cases (66 FR 67335; December 28, 2001) for public comment. As a result of these related actions, NRC-approved code cases would be accorded the same legal status as the corresponding requirements in the ASME BPV Code and OM Code which are already incorporated by reference in the NRC's regulations.

DATES: Submit comments by June 3, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Comments may be hand delivered to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of the public comments received on this proposed rule will be available for public inspection or copying in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21.

Public comments may be provided via the NRC's interactive rulemaking website at *http://ruleform.llnl.gov*. Through use of this site, the public may upload comments as files (in any format), provided that the web browser used supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher at (301) 415–5905, e-mail *cag@nrc.gov*.

The NRC maintains an Agencywide Documents Access Management System (ADAMS) which provides text and image files of NRC's public documents. Publicly available documents pertaining to this rulemaking may be accessed through the NRC's Public Electronic Reading Room (PERR) on the Internet at *http:www.nrc.gov/reading-rm/adams.html*. If ADAMS access is not available or difficulty is encountered in its use, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737, or through the PDR's e-mail address at *pdr@nrc.gov*. Further information about obtaining documents relevant to this rulemaking, including a list of ADAMS accession numbers, can be found in the "Availability of Documents" Section below, under the **SUPPLEMENTARY INFORMATION** heading.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092, e-mail *hst@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate the ASME Code editions and addenda by reference. Section 50.55a was last amended on September 22, 1999 (64 FR 51370), to incorporate by reference the 1995 edition of these codes, up to and including the 1996 addenda. The ASME also publishes code cases for Section III and Section XI quarterly, and code cases for the OM Code yearly. Code cases are generally alternatives to the requirements of the ASME BPV Code and the OM Code. It has been the NRC staff's practice to review these code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These code cases are then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to 10 CFR 50.55a refers to the RGs listing code cases determined by the staff to be "suitable for use." The publication dates and version numbers of the RGs are not specified in Footnote 6. In the past, these RGs have not been approved by the Director of the Office of the Federal Register (OFR) for incorporation by reference in the Code of Federal Regulations.

Discussion

The NRC has identified a concern with the practice of generally referencing the RGs addressing ASME Code Cases in Footnote 6 to 10 CFR 50.55a. The notice and comment provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), as amended, arguably are not satisfied by this practice. To address this matter, the NRC is proposing that the use of ASME Code Cases be approved through a rulemaking incorporating the applicable RGs by reference into Title 10 of the Code of Federal Regulations.

Over the past several years, NRC licensees have expressed concern that the NRC process for reviewing and approving code cases is protracted and, therefore, they have borne the additional burden of submitting relief requests to use code cases not yet approved. To improve the efficiency of the process for endorsement of ASME Code Cases, the NRC plans to proceed as follows for future updates. First, the NRC will review code cases and revise the RGs periodically to indicate code cases approved for use by NRC licensees. This is simply a continuation of past practice. The NRC will issue the draft RGs for comment prior to issuance of the final RGs. At approximately the time each set of final guides are issued, the NRC intends to also issue the next set of proposed guides so that the time lapse between code case publication and NRC incorporation by reference may be diminished. Second, the NRC will conduct rulemakings to incorporate the revised RGs by reference into 10 CFR 50.55a. The NRC will complete each rulemaking within a short time of the issuance of the applicable final RGs. Where these rulemakings do not involve significant questions of policy, they will be authorized in accordance with the rulemaking authority delegated to the NRC's Executive Director for Operations under NRC Management Directives 6.3 and 9.17. To expedite the issuance of subsequent rules, the NRC will conduct such rulemakings without preparing a rulemaking plan. The need to conduct these rulemakings will be determined strictly by the schedule for revision of the associated RGs. These actions should expedite the NRC process for reviewing and approving ASME Code Cases.

Paragraph-By-Paragraph Discussion

The proposed rule would add a new paragraph (i) to 10 CFR 50.55a that identifies the RGs (including their revision numbers) to be incorporated by reference into Title 10 of the Code of Federal Regulations. In addition, the text of the existing Footnote 6 to § 50.55a would be deleted and references to Footnote 6 in 10 CFR 50.55a would be revised to state that optional ASME Code Cases are incorporated by reference in paragraph (i). In the proposed rule, the NRC has added the new language governing incorporation by reference of ASME Code Cases to paragraph (i) of §50.55a. However, the NRC is considering two alternatives for placement of this language: (1) Placing the relevant code case language of approval into paragraph (b) of Section 50.55a; and (2) redesignating paragraph (h), which currently sets forth the endorsement of the IEEE Std. 603–1991 and IEEE Std. 279, as paragraph (i), and placing the code case language of approval in paragraph (h). The NRC requests public comment on these alternatives.

1. Current references to Footnote 6 in §§ 50.55a(c)(3), (d)(2), and (e)(2) would be removed and text would be added indicating that the optional ASME Code Cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(i).

2. The current references to Footnote 6 contained in §§ 50.55â(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii) would be removed and text would be added indicating that the optional ASME Code Cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(i). Note that these requirements do not specify that optional ASME Code Cases may be applied; this language would be added.

3. Paragraph (i) would be added to § 50.55(a). This paragraph would contain the language of incorporation by reference and identify each RG by title and revision number and would contain implementation requirements for each RG incorporated by reference.

Footnote 6 to 10 CFR 50.55a states that ASME Code Cases suitable for use are listed in RGs 1.84, 1.85, and 1.147. Footnote 6 also states that the use of other code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3). The new paragraph (i) would specify the applicable RGs for incorporation by reference. Further, the NRC regulations in § 50.55a(a)(3) allow requests for the use of alternatives (including code cases not listed in the RGs). Therefore, providing this information in Footnote 6 will no longer be necessary. In particular, paragraph (i) would incorporate by reference proposed revisions to RGs 1.84 and 1.147 as well as a new proposed RG entitled "Operation and Maintenance Code Case Acceptability—ASME OM Code," temporarily designated DG-(1089). These RGs list code cases applicable to Section III of the ASME BPV Code, Section XI of the ASME BPV Code, and the ASME OM Code, respectively, that have been accepted unconditionally, or with conditions and limitations specified by the NRC, as alternatives to specific code provisions.

Paragraph (i) would also require that licensees initially applying a code case which is listed in one of the RGs as acceptable use the most recent published version of the code case. If a licensee is applying a particular version of an approved code case, and a later version is incorporated into the applicable RG as acceptable, the licensee may continue to apply the earlier version of the code case unless the RG specifies a limitation or condition on its application or, for Section XI and OM Code Cases, until the next 120-month inservice inspection or test interval, as applicable.

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Paragraph (i) would also note that the NRC will revise the RGs to delete code cases annulled by ASME. A licensee implementing a code case that is subsequently annulled may continue to apply that code case until the licensee updates its Section III code of record or until the beginning of its next inservice inspection or test interval, as applicable, unless the regulations specifically prohibit application of the code case. Licensees may request approval to apply annulled code cases through the provisions of 10 CFR 50.55a(a)(3).

4. Footnote 6 would be removed from 10 CFR 50.55a and the footnote number would be reserved.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR)

The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web)

The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Website.

The NRC's Public Electronic Reading Room (PERR)

The NRC's public electronic reading room is located at *www.nrc.gov/reading-rm/adams.html*.

The NRC Staff Contact (NRC Staff)

Single copies of the **Federal Register** Notice, the Draft Regulatory Analysis, the Draft Environmental Assessment, and the proposed Regulatory Guides may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tovmassian at (301) 415–3092, or via e-mail at: *hst@nrc.gov*.

Document	PDR	Web	PERR	NRC staff
Draft Environmental Assessment	x	x	ML020160281	x
Draft Regulatory Analysis	x	x	ML020160302	x
Public Comments Received	x	.....	.....	x
Draft Regulatory Guide DG–1089—ASME OM Code Case Acceptability	x	.....	ML013120051	x
Draft Regulatory Guide DG–1090—ASME BPV, Section III Code Case Acceptability.	x	.....	ML013120011	x
Draft Regulatory Guide DG–1091—ASME BPV, Section XI, Division 1 Code Case Acceptability.	x	.....	ML013120019	x

Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's documents be written in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule, specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption above.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is proposing to amend its regulations to incorporate by reference three RGs that list ASME BPV and OM Code Cases which have been approved unconditionally, approved with conditions, or annulled. The ASME Code is a national consensus standard developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate.

In a Staff Requirements Memorandum dated September 10, 1999, the Commission directed the NRC staff to identify all portions of an adopted voluntary consensus standard which are not adopted by the staff and to provide a justification for not adopting such portions. The NRC staff periodically revises the RGs in which the acceptability of the ASME-approved code cases is addressed. In doing so, it provides a justification for conditionally approving or disapproving certain ASME Code Cases and offers the public an opportunity to comment on its findings. Thus, the Commission's September 10, 1999, direction has been satisfied in the staff's treatment of these voluntary consensus standards.

In accordance with the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget (OMB) Circular A–119, the NRC is requesting public comment regarding whether other national or international consensus standards could be endorsed as alternatives to the ASME BPV Code Cases and the ASME OM Code Cases.

Finding of No Significant Environmental Impact: Availability

The Commission has determined, in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. This proposed rule would amend NRC's regulations to incorporate by reference three RGs that list ASME Code Cases approved by the NRC and the conditions, if any, on such approvals. Some ASME Code Cases endorsed in these RGs are interpretive of the requirements in the applicable sections of the ASME BPV Code or OM Code that are incorporated by reference in § 50.55a(b) or explain methods of compliance with the code requirements. Other code cases provide alternatives to specific ASME Code requirements. These alternatives may involve the use of advanced technology or procedures, or use new information not available when the code editions or addenda were approved. Thus, the use of code cases as alternatives to ASME Code requirements can enhance safety or reduce the probability of radiation exposure to the public. Although some code cases represent a relaxation of code

requirements, the NRC does not believe that the proposed rulemaking would increase the probability or consequences of accidents; affect the types of effluents that might be released off-site; increase occupational exposure; or increase public radiation exposure. Therefore, the NRC does not expect significant radiological impacts associated with the proposed action.

The determination of the environmental assessment associated with this proposed rule is that there would be no significant off-site impact to the public from this action. However, the public should note that the NRC is committed to complying with Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994, in all its actions. The NRC has determined that there are no disproportionately high adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions related to the proposed rule. The NRC defines "environmental justice" as "the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption above. Copies of the environmental assessment may be obtained via the Internet or from the NRC's Public Document Room as described under the **ADDRESSES** caption above. The NRC has sent a copy of this proposed rule, including copies of the aforementioned environmental assessment, to the State Liaison Officers and requested their comments.

Paperwork Reduction Act Statement

This proposed rule decreases the burden on licensees for recordkeeping and reporting requirements related to examinations, tests, and repair and replacement activities during refueling outages. The annual public burden reduction for this information collection is estimated to average 136 hours for each of an estimated 69 requests. Because the burden reduction for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The ASME Code Cases contained in the draft RGs provide voluntary alternatives to the provisions in the ASME BPV Code and OM Code for construction, inservice inspection, and inservice testing of specific structures, systems, and components used in nuclear power plants. Implementation of these code cases is not required. NRC-approved ASME Code Cases all represent some form of burden reduction or additional operational flexibility to NRC licensees which would be difficult for the NRC to provide independent of the ASME Code publication process without a considerable additional resource commitment. The NRC has prepared a draft regulatory analysis addressing the qualitative benefits of the alternatives considered in this rulemaking and compared the cost implications associated with each. The regulatory analysis is available for inspection in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21. Single copies of the analysis may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415–3092 or by e-mail at *hst@nrc.gov*.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The provisions of this proposed rule would permit licensees to voluntarily make use of NRC-approved ASME Code Cases in lieu of the requirements in the ASME BPV Code and OM Code incorporated by reference in the NRC's regulations. Licensees are at liberty to continue to comply with these codes if they wish. These proposed amendments do not involve any provision that would constitute a backfit as defined in 10 CFR Chapter 50.109(a)(1). Thus, the NRC has determined that the Backfit Rule does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 66 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by—

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(a) Revising paragraphs (c)(3), (d)(2), (e)(2), (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i) and (g)(3)(ii);
(b) Adding paragraph (i); and
(c) Removing the text of Footnote 6 and reserving the footnote number.

§ 50.55a Codes and standards.

* * * * *

(c) * * *

(3) The Code Edition, Addenda, and optional ASME Code Cases to be applied to components of the reactor coolant pressure boundary must be determined by the provisions of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda applied to a component must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the pressure vessel may be dated no earlier than the Summer 1972 Addenda of the 1971 Edition;

(iii) The ASME Code provisions applied to piping, pumps, and valves may be dated no earlier than the Winter 1972 Addenda of the 1971 Edition; and

(iv) The optional code cases applied to a component must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

* * * * *

(d) * * *

(2) The Code Edition, Addenda, and optional ASME Code Cases to be applied to the systems and components identified in paragraph (d)(1) of this section must be determined by the rules of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional code cases must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

(e) * * *

(2) The Code Edition, Addenda, and optional ASME Code Cases to be applied to the systems and components identified in paragraph (e)(1) of this section must be determined by the rules of paragraph NCA–1140, subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional code cases must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases incorporated by reference in paragraph (i) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases that are listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) in effect six months prior to the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular component.

* * * * *

(i) Approved ASME Code Cases.

(1) NRC Regulatory Guide 1.84, Revision 32, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III;" NRC Regulatory Guide 1.147, Revision 13, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1;" and Regulatory Guide [temporarily designated DG–1089], "Operation and Maintenance Code Case Acceptability, ASME OM Code," have been approved for incorporation by reference by the Director of the Office of the Federal Register. These Regulatory Guides list ASME Code Cases which the NRC has approved for use. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**.

(i) The use of other code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

(ii) Copies of the incorporated material are available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738. Copies are also available at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC.

(iii) Requests for single copies of regulatory guides should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, OCIO; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(2) Design, Fabrication, and Materials Code Cases. Licensees may implement the ASME Boiler and Pressure Vessel Code Cases listed in NRC Regulatory Guide 1.84, Revision 32, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies.

(iii) If a code case is incorporated by reference into § 50.55a and later is annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide 1.84 to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case until the licensee updates its Section III Code of record unless § 50.55a or Regulatory Guide 1.84 specifically prohibits continued application of the annulled code case.

(3) Inservice Inspection Code Cases. Licensees may implement the ASME Boiler and Pressure Vessel Code Cases listed in Regulatory Guide 1.147, Revision 13, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section during the licensee's present inservice inspection interval, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies. A licensee choosing to continue to apply the code case during the subsequent 120-month inservice inspection interval shall implement the latest version of the code case incorporated by reference in this section.

(iii) If a code case is incorporated by reference into § 50.55a and is later annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide 1.147 to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case through the end of the present inservice inspection interval unless 10 CFR 50.55a or Regulatory Guide 1.147 specifically prohibits continued use of the annulled code case. An annulled code case may not be applied in a subsequent inservice inspection interval unless implemented as an approved alternative under 10 CFR 50.55a(a)(3).

(4) Operation and Maintenance Code Cases. Licensees may implement the ASME Operation and Maintenance Code Cases listed in Regulatory Guide [temporarily designated DG–1089] without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section during the licensee's present inservice testing interval, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies. A licensee choosing to continue to apply the code case during the subsequent 120-month inservice testing interval shall implement the latest version of the code case incorporated by reference in this section.

(iii) If a code case is incorporated by reference into § 50.55a and later is annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide [temporarily designated DG–1089] to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case through the end of the present inservice testing interval unless 10 CFR 50.55a or Regulatory Guide [temporarily designated DG–1089] specifically prohibits continued use of the annulled code case. An annulled code case may not be applied in a subsequent inservice testing interval unless implemented as an approved alternative under 10 CFR 50.55a(a)(3).

* * * * *

Dated at Rockville, Maryland, this 1st day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6495 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–137519–01]

RIN 1545–BA09

Consolidated Returns; Applicability of Other Provisions of Law; Non-Applicability of Section 357(c); Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to consolidated returns; applicability of other provisions of law; non-applicability of section 357(c).

DATES: The public hearing originally scheduled for Thursday, March 21, 2002, at 10 a.m is cancelled.

FOR FURTHER INFORMATION CONTACT: Donna Poindexter of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001 (66 FR 57021), announced that a public hearing was scheduled for March 21, 2002, at 10 a.m., in Room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under section 357(c) of the Internal Revenue Code. The public comment period for these proposed regulations expired on February 28, 2002.

The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of February 28, 2002, no one has requested to speak. Therefore, the public hearing scheduled for March 21, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–6607 Filed 3–15–02; 10:08 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112991–01]

RIN 1545–AY82

Credit for Increasing Research Activities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing relating to the computation of the research credit. This document was published in the **Federal Register** on December 26, 2001 (66 FR 66362).

FOR FURTHER INFORMATION CONTACT: Lisa J. Shuman (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under sections 41(c) and and 41(d) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations REG–112991–01, contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations REG–112991–01, which is the subject of FR. Doc. 01–31007, is corrected as follows:

§ 1.41–3 [Corrected]

1. On page 66368, column 1, § 1.41–3, paragraph (e), line 3, the language "ending on or after the date December 21" is corrected to read "ending on or after December 26".

§ 1.41–4 [Corrected]

2. On page 66369, column 1, § 1.41–4, paragraph (a)(8), paragraph (i) of *Example 2.*, line 3 from the bottom of paragraph, the language "tests the nozzles to ensure that to ensure that" is corrected to read "tests the nozzles to ensure that'.

3. On page 66369, column 1, § 1.41–4, paragraph (a)(8), paragraph (ii) of *Example 2.*, line 2 the language "painting process is a separate business" is corrected to read "painting process relate to a separate business'.

4. On page 66369, column 3, § 1.41–4, paragraph (a)(8), paragraph (i) of *Example 6.*, lines 5 through 8 from the bottom of the paragraph, the language "X conducts extensive and complex scientific or laboratory testing to determine if the current model vehicle meets X's requirements." is removed.

5. On page 66370, column 3, § 1.41–4, paragraph (c)(6), line 2 of the paragraph heading, the language "years beginning on or after the" is corrected to read "years beginning on or after'.

6. On page 66371, column 2, § 1.41–4, paragraph (c)(6)(iv)(C), line 1 of the column, the language "leased, licensed or otherwise marketed" is corrected to read "leased, licensed, or otherwise marketed'.

7. On page 66371, column 2, § 1.41–4, paragraph (c)(6)(vi)(C), line 2 from the bottom of the paragraph, the language "paragraphs (c)(6)(v)(A) and (B) of this" is corrected to read "paragraphs (c)(6)(vi)(A) and (B) of this'.

8. On page 66371, column 3, § 1.41–4, paragraph (c)(6)(viii), paragraph (i) of *Example 2.*, line 3, the language "order to create an improved reserve valuation" is corrected to read "order to create the improved reserve valuation'.

9. On page 66372, column 3, § 1.41–4, paragraph (c)(6), paragraph (ii) of *Example 7.*, line 1, the language "(li) *Conclusion.* X's software is software" is corrected to read "(ii) *Conclusion.* X's software is".

10. On page 66375, column 1, § 1.41–4, paragraph (c)(10), paragraph (i) of *Example 6.*, line 1 the language "*Example 6.* (i) *Facts.* X manufacturer and" is corrected to read "*Example 6.* (i) *Facts.* X manufacturers and".

11. On page 66375, column 2, § 1.41–4, paragraph (c)(10), paragraph (1) of *Example 7.* is correctly designated § 1.41–4, paragraph (c)(10), paragraph (i) of *Example 7.*

12. On page 66375, column 2, § 1.41–4, paragraph (c)(10), newly designated paragraph (i) of *Example 7.*, line 9, the language "purchases the existing robotic equipment for" is corrected to read "purchases existing robotic equipment for'.

13. On page 66375, column 3, § 1.41–4, paragraph (e), line 4, the language "December 26, 2002." is corrected to read "December 26, 2001.".

§ 1.41–8 [Corrected]

14. On page 66375, column 3, § 1.41–8, paragraph (b)(4), line 4, the language "December 26, 2002." is corrected to read "December 26, 2001.".

Cynthia E. Grigsby.

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–6608 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7425]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4.*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Washington	City of Anacortes, Skagit County.	Burrows Bay	Along shoreline to Fidalgo Head including Burrows Pass.	None	*7
		Guemes Channel	Along shoreline from Shannon Point to Fidalgo Bay.	None	*9
		Fidalgo Bay	Along shoreline to Guemes Channel	None	*7
		Rosario Strait	Along shoreline from Fidalgo Head to Shannon Point.	None	*9
Depth in feet above ground Maps are available for inspection at City Hall, 904 6th Street, Anacortes, Washington. Send comments to The Honorable Dean Maxwell, Mayor, City of Anacortes, P.O. Box 547, Anacortes, Washington 98221.					
Wyoming	Town of Dubois, Freemont.	Wind River	Approximately 3,380 feet upstream of State Highway 26.	None	+6,882
			Approximately 450 feet upstream of Soda Springs Drive.	None	+6,983
		Horse Creek	At confluence with Wind River	None	+6,912

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,950 feet upstream of Clendenning Street.	None	+6,953

Depth in feet above ground
Maps are available for inspection at Town Hall, 712 Meckem Street, Dubois, Wyoming.
Send comments to The Honorable Bob Baker, Mayor, Town of Dubois, Town Hall, P.O. Box 555, Dubois, Wyoming 82513

	Freemont County ..	Wind River	Approximately 2,400 feet upstream of State Highway 26.	None	+6,878
			Approximately 2,200 feet upstream of Soda Springs Drive.	None	+6,993
		Horse Creek	Approximately 2,000 feet upstream of Clendenning Street.	None	+6,954
			Approximately 1,950 feet upstream of Clendenning Street.	None	+6,955

Depth in feet above ground
Maps are available for inspection at the Planning Department, 450 North 2nd Street, Room 360, Lander, Wyoming.
Send comments to The Honorable Scott Lander, Chairman, Freemont County Commissioners, 450 North 2nd Street, Lander, Wyoming 82520.

Flooding source(s)	Location of referenced elevation	Elevation in feet (*NGVD)		Communities affected
		Effective	Modified	
KANSAS **Sedgwick County, Kansas and Incoporated Areas**				
Middle Fork Chisholm Creek	Approximately 100 feet downstream of Oliver Street ..	None	*1,363	City of Kechi.
	Just upstream of Kechi Road	None	*1,372	

Depth in feet above ground

ADDRESSES
City of Kechi:
Maps are available for inspection at 200 West Kechi Road, Kechi, Kansas.
Send comments to The Honorable Ed Parker, Mayor, City of Kechi, 200 West Kechi Road, Kechi, Kansas.

Arkansas River	Approximately 4,400 feet upstream of Washington Street.	None	*1,252	City of Derby.
Cowskin Creek	Approximately 3,500 feet downstream of State Highway 42.	None	*1,297	City of Wichita.
	Approximately 800 feet downstream of State Highway 42.	None	*1,300	
	Approximately 3,400 feet downstream Kansas Southwest Railroad.	None	*1,279	Sedgewick County.
	Just downstream of 21st Street	None	*1,345	
	Approximately 1,550 feet downstream of 53rd Street	*1,370	*1,370	
	Approximately 1,500 feet downstream of 53rd Street	*1,370	*1,370	City of Colwich.
Dry Creek North (of Cowskin Creek).	Approximately 300 feet upstream of 21st Street	None	*1,346	Sedgewick County.
	Just downstream of 167th Street	None	*1,386	
Dry Creek South (of Cowskin Creek).	Approximately 3,500 downstream of Ridge Road	None	*1,292	Sedgewick County.
	Just downstream of 103rd Street	None	*1,316	
Little Arkansas River	Just downstream of 5th Street	None	*1,339	Sedgewick County.
	Just downstream of 125th Street	*1,374	*1,372	
Middle Fork Chisholm Creek	Approximately 450 feet downstream of State Highway 254.	None	*1,360	Sedgewick County.
	Approximately 100 feet upstream of Oliver Street	None	*1,367	
Spring Creek	Approximately 2,850 feet downstream of Atchinson, Topeka, and Santa Fe Railroad.	*1,242	*1,241	Sedgewick County.
	Approximately 350 feet upstream of Woodlawn Boulevard.	*1,258	*1,258	
Spring Creek	Approximately 1,550 feet upstream of Rock Road	None	*1,270	Sedgewick County.
	Just downstream of 63rd Street	None	*1,304	

Depth in feet above ground

ADDRESSES:
Sedgwick County and Unincorporated Areas:
Maps are available for inspection at 1250 South Seneca, Wichita, Kansas.

Flooding source(s)	Location of referenced elevation	Elevation in feet (*NGVD)		Communities affected
		Effective	Modified	

Send comments to The Honorable Ben Sciortino, Chairman, Board of Commissioners, 525 North Main, Suite 320, Wichita, Kansas 67203.
City of Derby:
Maps are available for inspection at 611 Mulberry Road, Derby, Kansas.
Send comments to The Honorable Richard Standrich, Mayor, City of Derby, 611 North Mulberry Road, Derby, Kansas 67037.
City of Colwich:
Maps are available for inspection at P.O. Box 158, Colwich, Kansas.
Send comments to The Honorable Lavina Keiter, Mayor, City of Colwich, 310 South Second Street, Colwich, Kansas 67030.
City of Wichita:
Maps are available for inspection 455 North Main Street, 8th Floor, Wichita, Kansas.
Send comments to The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, 13th Floor, Wichita, Kansas 67202.

MISSOURI
Gasconade County, Missouri and Incorporated Areas

Frene Creek	At the confluence with the Missouri River	None	*518	City of Hermann.
	Approximately 3,400 feet upstream of High School Driveway.	None	*530	
	Approximately 2,100 feet upstream of High School Driveway.	None	*527	Gasconade County.
	Approximately 3,500 feet upstream of High School Driveway.	None	*531	

Depth in feet above ground

ADDRESSES:
Gasconade County and Unincorporated Areas:
Maps are available for inspection at City Hall, 207 Schiller Street, Hermann, Missouri.
Send comments to The Honorable Doris Binkholder, Mayor, City of Hermann, 207 Schiller Street, Hermann, Missouri 65041.
City of Hermann:
Maps are available for inspection at 119 East First Street, Hermann, Missouri.
Send comments to The Honorable Charles Schlottach, Presiding Commissioner, 119 East First Street, Room 2, Hermann, Missouri 65041.

OREGON
Clatsop County, Oregon and Incorporated Areas

Beerman Creek	Confluence with Necanicum River	None	*17	Clatsop County
	Approximately 5,000 feet upstream of Beerman Creek Road.	None	*115	
Neawanna Creek	Just downstream of 12th Avenue	*12	*12	Clatsop County.
	Approximately 1,400 feet downstream of Broadway Drive.	*13	*13	
	Approximately 1,200 feet South of intersection with U.S. 101 and Old Railroad Grade.	*16	*17	
Necanicum River	Approximately 1,100 feet downstream of Avenue U ...	*13	*14	Clatsop County.
	Just upstream of Howard Johnson Road	*34	*35	
	Approximately 1,600 feet downstream of Big Driveway Road.	*44	*44	
	Approximately 4,000 feet upstream of Big Driveway Road.	*58	*61	
Necanicum River Overflow ...	Just upstream of Rippett Road	None	*31	Clatsop County.
	Approximately 1,000 feet North of the intersection of Oregon Coast Highway and U.S. 26.	None	*41	
Upper Neawanna Creek	Confluence with Neawanna Creek	None	*15	Clatsop County.
	Approximately 860 feet upstream of Wahanna Road ..	None	*26	
Neawanna Creek	Just upstream of 12th Avenue	*12	*12	City of Seaside.
	Just upstream of Brodway Drive	*12	*14	
	Approximately 1,500 feet upstream of Avenue S	None	*16	
Necanicum River	Just downstream of 12th Avenue	*11	*11	City of Seaside.
	Just downstream of Avenue G	*12	*13	
	Approximately 450 feet downstream U.S. Route 101 ..	*28	*28	
Necanicum River Overflow ...	Just downstream of Rippett Road	None	*31	City of Seaside.

Depth in feet above ground

ADDRESSES:
Clatsop County and Unincorporated Areas:
Maps are available for inspection at City Hall, 749 Commercial Street, Astoria, Oregon.
Send comments to The Honorable George Kiepke, Chairman, Clatsop County, Board of Commissioners, City Hall, 749 Commercial Street, Astoria, Oregon 97103.

Flooding source(s)	Location of referenced elevation	Elevation in feet (*NGVD)		Communities affected
		Effective	Modified	

City of Seaside:

Maps are available for inspection at the Public Works Building, 1387 Avenue U, Seaside, Oregon.

Send comments to The Honorable Rosemary Baker-Monaghan, Mayor, City of Seaside, City Hall, 989 Broadway, Seaside, Oregon 97138.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6573 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 02–34 and 00–248, FCC 02–45]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission invites comment on two alternatives for revising the satellite licensing process, both of which are intended to enable the Commission to issue satellite licenses more quickly. One alternative is the first-come, first-served approach. The other alternative is to streamline the current processing round approach. In addition, the Commission seeks comment on adopting several rule revisions regardless of whether it adopts a first-come, first-served approach or streamlines the current procedure.

DATES: Comments are due on or before June 3, 2002. Reply comments are due on or before July 2, 2002. Written comments by the public on the proposed information collections are due April 18, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before May 20, 2002.

ADDRESSES: All filings must be sent to the Commission's Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jbHerman@fcc.gov and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to jthornto@mb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite and Radiocommunication Division, International Bureau, (202) 418–1539. For additional information concerning the information collection(s) contained in this document, contact Judy Boley Herman at 202–418–0214, or via the Internet at jbHerman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted February 14, 2002 and released February 28, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW, Room CY–B402, Washington, DC 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paperwork Reduction Act

This NPRM contains proposed new and modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 18, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX (new collection).

Title: Streamlining and Other Revisions of part 25 of the Commission's

Form No.: FCC Form 312 Schedule S.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 146.

Estimated Time Per Response: 2–18 hours.

Frequency of Response: On occasion.

Total Annual Burden: 1,436 hours.

Total Annual Costs: $193,500.

Needs and Uses: The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. The Commission would therefore be unable to fulfill its statutory and responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Summary of Notice of Proposed Rulemaking

Currently, the Commission uses processing rounds to review satellite applications. Under this process, when an application is filed, the commission establishes a cut-off date—that is, a deadline for other applicants to file mutually exclusive applications to be considered together with the lead application. If sufficient spectrum is not available to accommodate all the applicants, the Commission requests them to negotiate a way to accommodate all of their proposed systems. These negotiations can be long, and can cause substantial delay in licensing satellites.

The Commission seeks comment on two options for revising the satellite licensing process. One option is a first-come, first-served approach. Under this approach, the commission would initially focus its attention on the lead application. Subsequently filed mutually exclusive applications would be included in a queue according to their date and time of filing. If for any reason the Commission could not grant the lead application, it would dismiss it and begin consideration of the next application in the queue. The Commission would continue this process until it could grant an application.

The other option is modifying the current processing round procedure. The Commission seeks comment on placing a 60-day time limit on negotiations during processing rounds. The Commission also invites comment on criteria for selecting among applicants if they cannot reach agreement within 60 days. As an alternative to the proposed selection criteria, the Commission invites comment on dividing the available spectrum evenly among the qualified applicants participating in the processing round.

The Commission also seeks comment on adopting several rule revisions regardless of whether it adopts a first-come, first-served approach or streamlines the current procedure. First, the Commission seeks comment on revising the satellite license information requirements. In particular, the Commission invites comment on expanding the proposed "Schedule S," which would be an attachment to the current Form FCC 312 satellite license filing form. The Commission initially proposed Schedule S in the Notice of Proposed Rulemaking in IB Docket No. 00–248, 66 FR 1283. In addition to seeking comment on revising the satellite license information requirements, the Commission invites comment on (1) eliminating financial qualifications; (2) strengthening milestone requirements; (3) eliminating the anti-trafficking rules; (4) requiring electronic filing for satellite license applications; and (5) streamlining the procedures for replacement satellite applications.

Finally, the Commission solicits comment on revising the procedure for non-U.S.-licensed satellite operators to request access to the U.S. market. Some of the proposed revisions would codify certain procedural requirements currently applicable to non-U.S.-licensed satellite operators. The rest of the proposals in this Notice of Proposed Rulemaking are intended to make the procedures applicable to non-U.S.-licensed satellite operators consistent with the procedure applicable to U.S. satellite operators.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided above. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need for, and Objectives of, the Proposed Rules

The objective of the proposed rules is to enable the Commission to process applications for satellite licenses more quickly than it can under its current rules. These rule revisions are needed because delays in the current satellite licensing process may impose economic costs on society, and because recent changes in the International Telecommunication Union procedures require us to issue satellite licenses more quickly in order to meet U.S. international treaty obligations. In addition, the current satellite licensing process is not well suited to some satellite systems employing current technology. Finally, revision of the satellite licensing process will facilitate the Commission's efforts to meet its spectrum management responsibilities.

B. Legal Basis

The proposed action is supported by sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not

[2] 5 U.S.C. 603(b)(3).

[3] Id. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

[5] Small Business Act, 15 U.S.C. 632 (1996).

dominant in its field."[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules proposed in this Notice of Proposed Rulemaking would affect satellite operators, if adopted. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[11] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[12] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[13]

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate of the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

With few exceptions, none of the proposed rules in this notice are expected to increase the reporting, record keeping and other compliance requirements of any telecommunications carrier. The exceptions are as follows: (1) We propose requiring space station applicants to provide the antenna gain pattern contour diagrams in the .gxt format required in submissions to the ITU. (2) We propose requiring space station applicants to specify power flux density (PFD) values at angles of arrival equal to 5, 10, 15, 20 and 25 degrees. (3) We propose expanding Schedule S so that space station license applicants can provide information on polarization isolation, polarization switching, and alignment of polarization vectors relative to the equatorial plan. (4) We propose mandating that applicants certify that they will comply with the service area requirements of 47 CFR 25.143, 25.145, and 25.208, and the out-of-band emission requirements of 47 CFR 25.202.

These proposed increased reporting requirements are necessary because we also propose substantially decreasing the administrative burdens associated with the current satellite licensing process. Specifically, there are two options proposed in this Notice of Proposed Rulemaking for reforming the satellite licensing process. Under one of the options, the first-come, first-served approach, there may be an increased incentive to apply for a satellite license merely to sell it. In addition, under both options, we invite comment on eliminating our current method of preventing speculation, the anti-trafficking rule. Therefore, more detailed reporting requirements will be needed in the event that we adopt these proposed license procedure reforms to help us determine whether an applicant is seeking a satellite license merely for speculative purposes. The anti-trafficking rule is more administratively burdensome than the proposed increased data collections.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

We have attempted not to foreclose any option. One alternative we have not embraced is the need to adopt any filing window in the event that we adopt a first-come, first-served procedure.[14] We believe that the alternative of a first-come, first-served satellite licensing procedure without a filing window better serves the interests of all possible applicants, including small entity applicants. For instance, for some applicants, the first-come, first-served procedure may be less expensive than maintaining an application throughout the longer processing round procedure under the Commission's current rules.[15] A filing window in a first-come, first-served satellite licensing procedure would tend to duplicate some of the delay inherent in the processing round procedure under the Commission's current rules.[16]

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), this Notice of Proposed Rulemaking is hereby *Adopted.*

The Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6525 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

[6] 5 U.S.C. 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[10] Id.

[11] "This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

[12] 13 CFR 120.121, NAICS code 513340.

[13] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, "Establishment and Firm Size," Table 4, NAICS 513340 (Issued Oct. 2000).

[14] See Notice of Proposed Rulemaking at paragraph 44.

[15] See Notice of Proposed Rulemaking at paragraph 41.

[16] See Notice of Proposed Rulemaking at paragraph 44.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–487; MM Docket No. 02–42; RM–10382]

Radio Broadcasting Services; Chester and Westwood, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Tom F. Huth, permittee of Station KTOR(FM), Channel 259A, Chester, California, requesting the reallotment of Channel 259A from Chester to Westwood, California, and modification of its authorization accordingly, pursuant to the provisions of section 1.420(i) of the Commission's rules. The coordinates for requested Channel 259A at Westwood, California are 40–14–21 NL and 121–1–52 WL.

Petitioner's reallotment proposal complies with the provisions of section 1.420(i) of the Commission's rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 259A at Westwood, California, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before April 22, 2002, and reply comments on or before May 7, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Law Office of Dennis J. Kelly; Post Office Box 6648; Annapolis, Maryland 21401–0648.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–42, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 259A at Chester and adding Westwood, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6374 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–489; MM Docket No. 01–242; RM–10248]

Radio Broadcasting Services; Highland, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: Charles Crawford filed a petition for rule making proposing the allotment of Channel 236A at Highland, Michigan, as the community's first local aural transmission service. *See* 66 FR 49593, September 28, 2001. On November 2, 2001, petitioner filed a motion for dismissal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, at the request of petitioner, we dismiss the instant proposal.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–242, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6373 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2002–03 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Flyway Council meetings, and describes proposed changes to the regulatory alternatives for the 2002–03 duck hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded

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lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2002–03 duck hunting seasons by May 1, 2002. You must submit comments for proposed early-season frameworks by July 30, 2002, and for proposed late-season frameworks by August 30, 2002. Tribes should submit proposals and related comments by June 1, 2002.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest or egg" of migratory game birds can take place and to adopt regulations for this purpose. These regulations must be written based on "the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and must be updated annually. This responsibility has been delegated to the Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing waterfowl. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing management techniques for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory bird hunting regulations, located at 50 CFR 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly though, the biological cycle of migratory birds controls the timing of data-gathering activities and thus the date on which results are available for consideration. The process includes two separate regulations-development schedules, based on early- and late-hunting season regulations. Early seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (i.e., dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. The early season generally begins prior to October 1. Late seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early- or late-hunting seasons. For each cycle, Service biologists gather, analyze, and interpret survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. Factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding, wintering habitat, the number of hunters, and the anticipated harvest are considered to determine the appropriate frameworks for each species.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2002–03 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2002–03 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2002–03

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the

rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons.

Major steps in the 2002–03 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2002–03 duck hunting seasons in early June. We will publish proposed early-season frameworks in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 2002, and those for late seasons on or about September 15, 2002.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this April. Although agendas are not yet available, these meetings usually commence at 8:00 a.m. on the days indicated. All meetings will be held April 2, 2002, at the Hyatt Regency at Reunion Center, 300 Reunion Boulevard, Dallas, Texas.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2002–03 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2001–02 frameworks and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks. We seek additional information and comments on the recommendations in this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached

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agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2002–03 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2002–03 hunting season should submit their proposals as soon as possible, but no later than June 1, 2002. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin

the process of developing a new EIS for the migratory bird hunting program. This issue is discussed below under "Proposed 2002–03 Migratory Game Bird Hunting Regulations."

Endangered Species Act Consideration

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/30/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs.

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Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: February 1, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. With the exception of modifying the framework opening and closing dates within the regulatory alternatives, we are proposing no change from the final 2001–02 frameworks of August 21 and September 27, 2001 (66 FR 44010 and 49478). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We recommend the continued use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2002–03 season. The current AHM protocol is used to evaluate five alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks and pintails). The regulatory alternative in the Mississippi, Central, and Pacific Flyways is prescribed based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50 and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). The recommended regulatory alternative for the Atlantic Flyway is based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region) and, thus, may differ from that in the remainder of the country. A specific regulatory alternative for each of the Flyways during the 2002–03 season will be proposed after survey information becomes available in late summer.

Last year, the AHM Working Group (an interagency, technical advisory committee) identified a number of concerns with the current AHM protocol for mallards. These concerns focused on the models of population dynamics used to evaluate various regulatory options, and include: (1) Evidence that all models of mallard population dynamics may predict biased annual growth rates; (2) indications that the current method of comparing predicted and observed population sizes may unrealistically inflate the rate at which we can identify the most accurate population model; and (3) the need for improved survival and reproductive models that more effectively capture the range of possible population dynamics and effects of harvest. These concerns have important management implications, and we expect to propose remedial measures for the 2002–03 hunting season. Our proposals will be based on consultations with the AHM Working Group and the Flyway Councils, and will be made available for public comment later in the year.

Finally, we expressed our desire last year to begin the process of developing a new Environmental Impact Statement for migratory bird hunting (66 FR 21302). We reiterate the need to focus on three key themes:

(1) Goal setting—AHM can produce optimal regulatory decisions in the face of uncertainty, if and only if, there is agreement about the goals and objectives of harvest management. Clearly, the goals of duck harvest management extend well beyond simple measures of hunter success and population size, and many of the difficulties in duck harvest management today probably relate more to ambiguity in objectives, rather than to uncertainty about biological impacts. Disagreement about management objectives poses a serious threat to the long-term viability of AHM.

(2) Limits to system control—There are both theoretical and practical limits to our ability to predict, control, and measure the size of waterfowl populations and harvest and, as a consequence, operational constraints on short-term hunting opportunity and on the learning needed to increase long-term performance. The waterfowl management community needs to better explore, understand, and acknowledge these limits, and to develop regulatory alternatives and strategies that avoid the most undesirable consequences of those limits, while meeting reasonable demands for hunting opportunity.

(3) Management scale—The history of duck harvest management has been characterized by efforts to account for increasingly more spatial, temporal, and taxonomic variability in waterfowl demographics in a continuing effort to maximize hunting opportunity. We have begun to question the wisdom of this approach, given the inevitable tradeoff between harvest benefits and the direct and indirect costs of managing at progressively finer scales. The level of resolution that ultimately will be most appropriate in the AHM process remains to be seen, but we are increasingly concerned about what we see as unrealistic expectations for accommodating small-scale variation in waterfowl population dynamics.

We look forward to exploring these and other duck-harvest management issues with the Flyway Councils, other stakeholders, and the general public during the coming year.

B. Regulatory Alternatives

The Service regulates the earliest and latest dates within which States can select duck-hunting seasons. Historically, these dates have been approximately October 1 to January 20. The effects of extending these dates so that seasons could open earlier and/or later have been the subject of extensive debate within the waterfowl management community. Biological impacts and impacts on harvest resulting from such changes remain uncertain.

In 1998, Congress specified that the 1998–99 hunting season in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee could

extend to January 31, with a 9-day reduction from the 60-day season established for other States. The 9-day reduction was intended to offset the anticipated increase in harvest that was expected to occur. Since 1998, Alabama, Mississippi, and Tennessee chose to use this extended closing date (January 31) with the 9-day offset. We have continued to monitor duck harvests in these States but do not yet have sufficient data to determine definitively whether the magnitude of season-length reduction is accomplishing its intended purpose.

In August 2000, the Flyway Council Consultants to the Service Regulations Committee requested that the Service evaluate the projected impacts of extending the framework opening date for duck hunting from the Saturday nearest October 1 to the Saturday nearest September 24 and extending the closing date from the Sunday nearest January 20 to the last Sunday in January. The evaluation, completed in January 2001, was based on a canvassing of all Flyways to determine which States would use the extension. The principal conclusion of this review reaffirmed earlier assessments that nationwide use of framework-date extensions might significantly reduce the frequency of more liberal duck hunting seasons. This is primarily a result of greater uncertainty in our ability to predict the impacts of such fundamental changes in the regulations.

In 2001, the National Flyway Council (NFC) submitted a letter signed by the Atlantic, Central, and Pacific Flyway Councils, and the Lower-Region Regulations Committee of the Mississippi Flyway Council, that formally recommended an experimental framework opening date of the Saturday nearest September 24 and a framework closing date of the last Sunday in January, with no offsets, in the "moderate" and "liberal" regulatory packages, for the 2001–03 duck seasons. The letter further recommended that the framework dates be applicable either Statewide or in zones and that the Service use an evaluation of the framework date extensions for the next 3 years as a basis for establishing future framework dates.

We considered the recommendation, but declined to offer any changes to existing framework dates for duck hunting in the 2001–02 hunting season (66 FR 38498) due to a number of unresolved issues. Among those were: (1) Uncertainty about changes in mallard harvest rates that might occur with implementation of framework-date extensions; (2) the need for a reliable monitoring program for estimating realized harvest rates of mallards, i.e., current estimates of band-reporting rates; (3) the potential for adverse biological impacts to species other than mallards, such as wood ducks, and especially those below objective levels (e.g., pintails, scaup); and (4) certain administrative and procedural issues involved in extending framework dates, particularly the timing of key meetings, publication of proposed and final rules, and the availability of adequate public notice and opportunity for comment. Other long-standing concerns were: (1) Changes in distribution of the harvest both within and among Flyways; (2) the need to maintain stability of regulatory packages; and (3) the potential impact of late-season extensions on ducks returning to the breeding grounds in the spring. We also emphasized that any uncertainty surrounding the impact of framework-date extensions on mallard numbers could be addressed most effectively using an adaptive management approach. This approach would not only help identify the effects of framework-date extensions but also ensure that we can account for uncertainty associated with harvest and population impacts in each regulatory decision.

On October 11, 2001, upon reconsideration of the previously established "liberal" regulatory alternative, we proposed (66 FR 51919) a framework opening date of September 29 and a closing date of January 31, with no reduction (offset) in season length, for the 2001–02 hunting season in the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. This proposal was in contrast to framework-date extensions existing since 1998 in Alabama, Mississippi, and Tennessee, of a closing date of January 31, accompanied by a 9-day reduction in season length.

The vast majority of comments received during the comment period were strongly opposed to this proposal. Consequently, we withdrew the proposal on November 23, 2001 (66 FR 58707) and stated that we would begin immediately to work with the Flyway Councils to develop a resolution to the framework-date issue prior to the 2002–03 duck hunting season.

On December 2, 2001, we met in Wichita, Kansas, with a newly formed working group of the International Association of Fish and Wildlife Agencies (IAFWA). This group, comprised of State representatives, including representatives from each Flyway Council, was formed to facilitate early coordination with the Flyway Councils and States. The discussion focused on the original 2001 recommendation submitted through the NFC and how the current regulations-setting process and schedule would need to be changed in order to accommodate changes in frameworks dates should such a proposal be adopted through the usual regulatory process. This early coordination was considered necessary since meetings throughout the process, which are scheduled well in advance, might have to be changed. It was concluded that changes to the current process could be made to allow for earlier and later season extensions as proposed by the Flyway Councils.

Based on discussions with Flyway Council representatives, and using the above recommendation to extend season dates, we propose the following: (1) To modify the current set of regulatory alternatives changing the framework opening date from the Saturday nearest October 1 to the Saturday nearest September 24 and change the closing date from the Sunday nearest January 20 to the last Sunday in January, with no offset in days or bag limits, in the "moderate" and "liberal" regulatory alternatives; (2) to keep these changes to framework dates in place for 3 years to allow for a reasonable opportunity to monitor the impacts of these extensions on harvest distribution and rates of harvest prior to considering any subsequent use; (3) to make any changes to frameworks within the context of AHM; and (4) to hold the Flyway Technical Committee and Council meetings and the Service Regulations Committee meeting for late-season hunting proposals approximately 1 week earlier than normally scheduled to accommodate administrative and procedural requirements.

Based on our recent assessment, "Framework-date Extensions for Duck Hunting in the United States: Projected Impacts & Coping With Uncertainty (January 2001)", we expect this proposal to result in some redistribution of the harvest, increases in harvest of mallards and perhaps other species, and potentially less frequent liberal regulations. These impacts were summarized in the June 14, 2001, **Federal Register** (66 FR 32297).

Regarding administrative and procedural issues, the Service underscores the need to proceed carefully with modifications to the existing timetable for regulations development. That is, if additional changes to the schedule become necessary, beyond those already proposed to accommodate early-season framework extensions, significant problems could arise. Included in these concerns would be the availability of

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survey information prior to the development of regulatory proposals.

In light of the uncertainty about the impacts of extended framework dates, we support the recommendation of the Flyway Councils that changes must be accomplished within the context of AHM. Several years ago (April 1999), the AHM Working Group considered an adaptive approach to framework-date extensions and developed a set of principles and general guidelines, which we continue to support. Those principles are: (1) The need for stability in regulatory alternatives so that associated levels of duck harvest can be estimated reliably; (2) the advisability of framework-date proposals with minimal complexity (i.e., few, if any, special cases or dispensations); (3) the specification of framework regulations that are uniform within Flyways; (4) the need for improved resource monitoring to provide necessary feedback; and (5) a cautionary statement that regulatory changes far beyond the realm of experience undermine our ability to make data-based predictions about harvest impacts and, thus, undermine the integrity of the AHM process.

In light of these concerns, we are requesting the AHM Working Group to evaluate the framework-date proposal contained herein, and to recommend appropriate changes to the current AHM technical protocol. At a minimum, we believe that the AHM Working Group should: (1) Review and update the predictions of mallard harvest rates under the current regulatory alternatives (without framework-date extensions); (2) determine how we will account for the uncertainty about the impacts of extended framework dates; (3) recommend changes to resource monitoring programs that will be necessary to permit an evaluation of framework-date extensions; and (4) provide guidelines for assessing impacts to species other than mallards (especially those species below objective levels). Finally, in evaluating the current framework-date proposal, we urge all interested parties to consider how improvements to resource monitoring programs would be funded, whether the risk of more restrictive hunting seasons (i.e., shorter season lengths and smaller bag limits) is acceptable, and whether some re-distribution of duck harvest to more northerly and more southerly States is desirable.

In conclusion, the Service re-emphasizes its commitment to monitoring the impacts of these proposed extensions of framework dates over a 3-year period, particularly with regard to any effects on harvest distribution and rates of harvest. It is essential, therefore, that improvements to existing monitoring programs, such as the need to estimate the rate at which hunters voluntarily report band encounters (band reporting rate), be in place during this evaluation period. Resulting improvements in the estimation of harvest rates of mallards and other duck species, along with other elements of ongoing survey activities, will play a major role in the evaluation effort. Any decision to continue these framework extensions, or implement more restrictive hunting seasons, will be contingent on the outcome of this assessment.

Thus, as indicated above, for the 2002–03 season, we are proposing to modify the four regulatory alternatives used last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives in early June. Public comments will be accepted until May 1, 2002, and should be sent to the address under the caption **ADDRESSES.**

D. Special Seasons/Species Management

iv. Canvasbacks

Since 1994, the Service has followed a canvasback harvest strategy such that, if population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while attaining a spring population objective of 500,000 birds, the season on canvasbacks should be opened. Otherwise, the season on canvasbacks should be closed nationwide. Lat spring, the estimate of canvasback abundance was 580,000 birds and the number of ponds in Prairie Canada in May (2.7 million) was 20% below the long-term average. The size of the spring population, together with natural mortality and below-average expected production due to the relatively dry conditions, was insufficient to offset expected mortality associated with a canvasback season lasting the entire length of the "liberal" regulatory alternative and still attain the population objective of 500,000 canvasbacks in the spring of 2002.

While we continued to support the harvest strategy and the model adopted in 1994, despite the reduced numbers and below-average production forecast last year, we believed there was still some opportunity to allow a limited harvest last fall without compromising the population's ability to reach 500,000 canvasbacks this spring. Thus, we allowed a very restrictive, shortened canvasback season for 2001–02. In the Atlantic and Mississippi Flyways, the season length was 20 days, in the Central Flyway, 25 days, and in the Pacific Flyway, 38 days. Our objective was to provide some hunting opportunity while still maintaining the spring population above the 500,000 objective level.

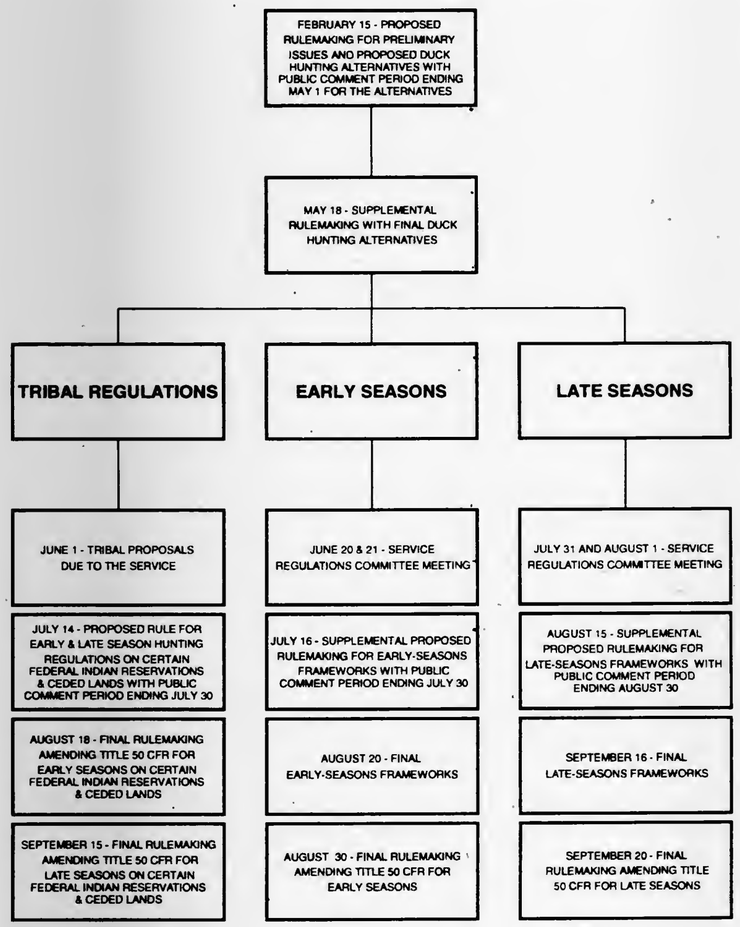
We also expressed a willingness to revisit the guidelines outlined in the strategy and asked that any proposed changes have broad-based support and reflect the interests of all stakeholders. In addition, we urged the Flyway Councils to begin internal discussions regarding species-specific restrictions in the existing AHM framework. In 2002, we will again consider the size of the spring population and model-based predictions of production and harvest in development of regulations proposals for canvasbacks. However, absent the broad-based support by the Flyway Councils to revise the strategy, we intend to follow the 1994 model-based prescriptions originally developed for canvasbacks.

v. Pintails

We presently utilize an interim strategy to manage the harvest of pintails. In the current strategy, the determination of appropriate bag limits is based, in part, on the harvest predicted by a set of models that were developed from historical data relating harvest to bag limit and season length. However, since the interim strategy was implemented in 1997, the predicted harvest has consistently been lower than the estimated harvest from the U.S. and Canadian Federal harvest surveys. We will work with the Flyway Councils to review the current method of determining bag limits with the intent of making appropriate adjustments to the strategy to better reflect the realized harvest of pintails.

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2002 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2002-03 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	VERY RES	RES	MOD	VERY RES	RES	MOD	VERY RES	RES	MOD	VERY RES	RES	MOD
Beginning Shooting Time	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct 1	Oct 1	Sat. nearest Sept. 24	Sat. nearest Oct 1	Sat. nearest Oct 1	Sat. nearest Sept. 24	Sat. nearest Oct 1	Sat. nearest Oct 1	Sat. nearest Sept. 24	Sat. nearest Oct 1	Sat. nearest Oct 1	Sat. nearest Sept. 24
Closing Date	Jan. 20	Jan. 20	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.
Season Length (in days)	20	30	45	60	30	45	60	39	60	25	38	86	107
Daily Bag/ Possession Limit	3/6	3/6	6/12	6/12	3/6	6/12	6/12	3/6	6/12	6/12	4/8	7/14	7/14
Species/Sex Limits within the Overall Daily Bag Limit													
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	4/1	5/1	3/1	5/2	3/1	3/1	5/2	7/2
Pintail	← ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY →												
Black Duck	1	1	1	1	1	1	1	-	-	-	-	-	-
Scaup (d)	← TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION →												
Canvasback	← 0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY →												
Redhead	2	2	2	2	1	2	2	1	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	1	1	-	-	-	-

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive, 5; restrictive, 12; moderate, 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 02–6527 Filed 3–18–02; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 67, No. 53
Tuesday, March 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program Store Applications, Form Numbers FNS–252 and FNS–252–2

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision, with change of two application forms approved under the Office of Management and Budget (OMB) No. 0584–0008, Form FNS–252, Food Stamp Application for Stores and Form FNS–252–2, Meal Service " Application. Together, these two forms are used by all retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants who wish to apply to FNS for authorization to participate in the Food Stamp Program and are used to determine whether or not the firms or services continue to meet eligibility requirements. Previously, Form FNS–252R, Food Stamp Application for Stores—Reauthorization was approved under this same OMB Number. FNS has eliminated the need for Form FNS–252R and this submission to OMB reflects this change.

DATES: Comments on this notice must be received by May 20, 2002 to be assured of consideration.

ADDRESSES: Send comments to Karen J. Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302.

Pursuant to the Paperwork reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become matter of public record.

FOR FURTHER INFORMATION CONTACT: Karen J. Walker, (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program—Store Applications.

OMB Number: 0584–0008.

Expiration Date: June 30, 2002.

Type of Request: Revision of a currently approved information collection, with changes.

Abstract: FNS is the Federal Agency responsible for the Food Stamp Program (FSP). Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 et. seq.) requires that FNS provide for the submission of applications for approval by retail food establishments and meal service programs that wish to participate in the FSP, review the application in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

The following three forms are currently approved under OMB No. 0584–0008: Form FNS–252, Food Stamp Application for Stores; Form FNS–252–2, Meal Service-Application, and Form FNS–252–R, Food Stamp Application for Stores—Reauthorization. For this submission to OMB, FNS is seeking approval of two forms, FNS–252 and FNS–252–2. FNS has eliminated the use of the third form, FNS–252–R, so it is not part of this information collection package. Without the use of Forms FNS–252 and FNS–252–2, no vehicle would exist for FNS to determine the qualification of those applicants whose participation will effectuate the purposes of the FSP.

The burden associated with these forms are determined from information available in our Store Tracking and Redemption System (STARS) database based on information available as of July 2001. For burden estimates associated with the number of applications received and processed for initial authorization, we used as our base the number of stores (all types) newly authorized/approved as reflected in data in year-end data maintained in STARS. We examined year-end data for Fiscal Year (FY) 1996–2000. Year-end data for FY 2001 is not yet available. In our analysis, historical data reflected an average decline of approximately 1,500 authorized retailers each year. However, in comparing the number of new firms entering the FSP in July 2000 vs. July 2001, we noticed a slight increase in the number of authorizations. As of July 2001, approximately 15,069 firms were newly authorized/approved. We do not think it is realistic to assume that this number will remain constant for the remainder of the fiscal year, therefore, we are estimating a 10% increase from the STARS data available as of July 2001. We estimate that the number of stores newly authorized in FY 2001 will be around 16,576 (15,069 + 10% = 16,575.9), rounded to 16,500. We have further inflated the base number of 16,500 applications by 7% (1,155) to account for applications received and processed, but denied or are incomplete at the time of submission. Thus, the total number of applications expected to be received and processed is estimated to be 17,655 annually. It is estimated that 98% (17,301) of the 17,655 applications expected to be received would be on Form FNS–252 and 2% (353) would be on Form FNS–252–2. As currently approved by OMB, the hourly burden rate per response for Form FNS–252 is 20 to 68 minutes, with the

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average being 27 minutes. Hourly burden time per response varies by the type of application used, and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application and submit the form and documentation to FNS. The hourly burden time for users of Form FNS–252–2 is estimated to be 10 to 20 minutes, with the average time being 12 minutes.

For burden estimates associated with applications for *reauthorization*, we used the total number of stores (all types) authorized (155,950) as of July 2001. Generally, authorized stores are subject to reauthorization at least once every 5 years. Using the number of authorized stores (155,950) as of July 2001 as our base, it is estimated that 20% (31,190) of all authorized stores are subject to reauthorization performed annually. As mentioned previously, since our last information collection package, FNS has eliminated the use of Form FNS 252–R, Food Stamp Application for Stores—Reauthorization, and the hourly burden time associated with this form. As a result of this procedural change, we estimate that 3% (936) of the 31,190 firms subject to reauthorization will be completed using Form FNS–252 and 2% (624) will be on Form FNS–252–2. The remaining 95% (29,630) of the 31,190 firms subject to reauthorization will not have to complete any forms in order to be reauthorized. Reauthorization for those firms will involve a documented store visit either by Agency personnel or by an agent of the Agency.

Using the two remaining forms (FNS–252 and FNS 252–2), we estimate the number of program respondents to be 19,215. The computation is provided below:

FNS–252

New Authorizations 17,302 (17,655 x 98%); Reauthorizations 936 (155,950 x 20% x 3%) = 18,238

FNS–252–2

New Authorizations 353 (17,655 x 2%) Reauthorizations 624 (155,950 x 20% x 2%) = 977; Total Responses = 19,215 (18238 + 977).

We estimate the annual burden hours to be 8,553 hours. The computation is provided below:

FNS–252 8,358 (18,238 x .4583 hours)

FNS–252–2 *195*; Total Annual Hours 8,553.

Affected Public: Retail food stores, wholesale food concerns, and meal service programs.

Estimated Number of Respondents: 19,215.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 19,215.

Estimate of Burden: 8,553.

Estimated Total Annual Burden: 8,553.

Dated: February 5, 2002.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–6589 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Waivers Under Section 6(o) of the Food Stamp Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. Section 6(o) of the Food Stamp Act of 1977, as amended by Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines "that the area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals." As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that the United States Department of Agriculture (USDA) can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit.

DATES: Written comments must be received on or before May 20, 2002.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Patrick Waldron, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Mr. Waldron at (703) 305–2486. The Internet address is: Patrick.Waldron@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 812.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Waldron at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Waiver Guidance for Food Stamp Time Limits.

OMB Number: 0584–0479.

Form Number: Not a form.

Expiration Date: 2/28/02.

Type of Request: Reinstatement with a change of a previously approved collection for which approval has expired.

Abstract: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L.104–193, 110 Stat. 2323 amended Section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o)) to establish a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines "that the area in which the individuals reside has an unemployment rate of over 10 percent; or (ii) does not have a sufficient number of jobs to provide employment for the individuals." As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that USDA can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit. During the last three years, the Food and Nutrition Service (FNS) has received on average 74 requests for waivers from an average of 40 State agencies. Each request submitted by a State agency to exempt individuals residing in specified areas is considered by FNS to be a separate request, since the requested exemptions may be based on different criteria, are submitted at different times, and require separate analysis. For the above reasons a significant number of State agencies may submit multiple requests. Since these waivers must be renewed on an annual basis and new ones may be submitted to reflect changing labor market conditions, FNS anticipates receipt of approximately the same number of waiver requests every year.

Affected Public: State and Local governments.

Estimated Number of Respondents: 40.

Estimated Number of Responses: 74.

Estimated Number of Responses per Respondent: 1.85.

Estimated Time per Response: 20 hours.

Estimated Total Burden: 1480 hours.

Dated: March 4, 2002.

George Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–6590 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on March 25, 2002, from 3:00 p.m. to 6:00 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approval of the minutes of the February meeting; (2) apply Criteria to Submitted Proposals; (3) Select Projects that best meet the Evaluation Criteria; (4) Recommend Projects; and (5) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 11, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–6579 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will hold its third meeting.

DATES: The meeting will be held on April 11, 2002, and will begin at 9:00 a.m. and end at approximately 12:00 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, PDC Room, 1135 Lincoln Street, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; EMAIL *ggaddini@fs.fed.us*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) By-laws, (2) Project Selection Criteria. (3) List Projects by Category. (4) How to Apply Criteria to Projects, (5) Watershed and Roads, (6) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 13, 2002.

Michael Brenner,

Acting Forest Supervisor.

[FR Doc. 02–6588 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent to Seek Approval to Collect Information

AGENCY: Agricultural Research Service, National Agricultural Library, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection relating to existing nutrition education and training materials targeting low-income persons. This voluntary form would give Food Stamp nutrition education providers the opportunity to share resources that they have developed or used.

DATES: Comments on this notice must be received by May 23, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Alicie H. White, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, Comments may be sent by facsimile to (301) 504–6053, or fax (301) 504–6409.

Submit electronic comments to *awhite@nal.usda.gov*

FOR FURTHER INFORMATION CONTACT: Alice H. White, (301) 504–6053.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Nutrition Connection Resource Sharing Form.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection from Food Stamp nutrition education providers.

Abstract: This voluntary "Sharing Form" would give Food Stamp nutrition education providers the opportunity to share information about resources that they have developed or used. Data collected using this form will help the Food and Nutrition Information Center (FNIC) identify existing nutrition education and training resources for review and inclusion in an online database. Educators can then search this database via the Food Stamp Nutrition Connection web site < *http://www.nal.usda.gov/fnic/foodstamp/* > . In 2001, the United States Department of Agriculture's (USDA) Food and Nutrition Service established the Food

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Stamp Nutrition Connection to improve access to Food Stamp Program nutrition resources. Educators nationwide can use this site to identify curricula, lesson plans, research, training tools and participant materials. Developed and maintained at the National Agricultural Library's FNIC, this resource system helps educators find the tools and information they need to provide quality nutrition education for low-income audiences.

The Sharing Form will be available for completion online at the Food Stamp Nutrition Connection web site. Individuals may also print the form and return it via fax or mail. The form consists of four parts. These various sections include: Part 1 consisting of three questions about the responder; Part 2 with nine questions about the resource; Part 3 with five questions about resource development; and Part 4 with six questions about ordering/obtaining the resource. Responders are asked to complete only relevant sections of the form. Instructions about which sections to complete, based on one's relationship to the resource, are provided in Part 1. For instance, those that use resource but are neither it's developer nor distributor would only complete Parts 1 and 2.

This form will enable FNIC to inform nutrition educators of existing nutrition education and training materials targeting low-income Americans. This identification of existing materials will help educators spend their monies wisely in the development of needed educational resources.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.7 minutes per response.

Respondents: Food Stamp nutrition education providers.

Estimated Number of Respondents: 50 per year.

Estimated Total Annual Burden on Respondents: 16 hrs.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: February 18, 2002.

Caird E. Rexroad,

Acting Associate Administrator.

[FR Doc. 02–6591 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section III of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Washington State

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section III of the FOTG. NRCS is also seeking review and comments to proposed changes.

SUMMARY: It is the intention of NRCS in Washington State to issue new and revised resource management system (RMS) quality criteria. Quality criteria identify the minimum level of treatment necessary to achieve a resource management system. Quality criteria are established that will protect soil, water, air, plant, and animal resources. These quality criteria are applicable to all land uses and to various operating units.

DATES: Comments will be received for a period of 30 days following the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: Raymond L. Hughbanks, State Conservationist, Natural Resources Conservation Service, 316 W. Boone Avenue, Suite 450, Spokane, Washington 99201–2348. Phone: 509–323–2900. Fax: 509–323–2909. Copies of these standards will be made available upon written request. You may submit your electronic requests and comments to: *Marty.seamons@wa.usda.gov*

Dated: February 14, 2002.

Frank R. Easter,

Acting State Conservotionist.

[FR Doc. 02–6605 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification Program: Application.

Agency Form Number: ITA–4100P.

OMB Approval Number: 0625–0130.

Type of Request: Regular submission.

Burden Hours: 900.

Number of Respondents: 90.

Average Hours Per Response: 10.

Needs and Uses: Private trade show organizers, trade associations, U.S. agents of foreign fair authorities, and other entities use this form to apply for certification of their ability to organize and manage a U.S. pavilion at a foreign trade show. The Department of Commerce uses information from the form to evaluate if both the show and the organizer meet the Department's high standards in areas such as recruiting, delivering show services, attracting small and medium size firms, booth pricing, and an appropriate marketing venue for U.S. firms. The form asks organizers to respond to 23 questions ranging from simple name and address to pricing options to outlining their experience and marketing plans. Potential exhibitors look to trade fair certification to ensure they are participating in a viable show with a reliable organizer. The form also includes information on where to apply, procedures, and commitment by the applicant to abide by the terms set forth for program participation.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *Mclayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6518 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Certified Trade Mission: Application for Status.

Agency Form Number: ITA–4127P.

OMB Approval Number: 0625–0215.

Type of Request: Regular submission.

Burden Hours: 60.

Number of Respondents: 60.

Average Hours Per Response: 1.

Needs and Uses: Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of state and local governments, chambers of commerce, regional groups and other export-oriented groups. The Certified Trade Mission-Application for Status form is the vehicle by which individual firms apply, and if accepted, agree to participate in the Department of Commerce's trade promotion events program, identify the products or services they intend to sell or promote, and record their required participation fees. This submission only renews use of the form; no changes are being made. The form is used to (1) collect information about the products/services that a company wishes to export; (2) evaluate applicants' mission goals and the marketability of product categories/industry in the local market, and (3) to develop meeting schedules appropriate to these.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *Mclayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6519 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Marketing Data Form.

Agency Form Number: ITA–466P.

OMB Approval Number: 0625–0047.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 4,000.

Average Hours Per Response: 45 minutes.

Needs and Uses: There is a need to have proper information about companies participating in U.S. exhibitions, trade missions and Matchmaker Trade Delegations and their products in order to publicize and promote participation in these trade promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories, to arrange appointments and to prospect calls on behalf of the participants with key prospective buyers, agents, distributors or government officials. Specific information is also requested relating to the participants' objectives regarding agents, distributors, joint venture or licensing partners, and any special requirements for prospective agents, for example, physical facilities, technical capabilities, financial strength, staff, representation of complementary lines, etc.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6520 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Mission/Exhibition Evaluation.

Agency Form Number: ITA–4075P.

OMB Approval Number: 0625–0034.

Type of Request: Regular submission.

Burden Hours: 167.

Number of Respondents: 2,000.

Average Hours Per Response: 5 minutes.

Needs and Uses: The U.S. Department of Commerce (DOC) and DOC-certified trade missions and exhibitions are overseas events planned, organized and led by government and non-government export promotion agencies such as industry trade associations, agencies of federal, state and local governments; chambers of commerce; regional consortia; and other export oriented groups. This form is used to: (1) Evaluate the effectiveness of DOC or

DOC-certified overseas trade events through the collection of information relating to required performance measures; (2) document the results of participation in DOC trade events; (3) evaluate results reported by small to mid-sized, new-to-exports/new-to-market U.S. companies; (4) document the successful completion of trade promotion activities conducted by overseas DOC offices; and (5) identify strengths and weaknesses of DOC trade promotion programs in the interest of improving service to the U.S. business community. This request is being submitted to extend OMB authority for this information collection form to enable participants to continue to address whether or not their overall objective(s) were met by participating in a particular trade mission or exhibition.

Affected Public: Business or other for profit organizations, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6521 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Product Characteristics—Design Check-Off Lists.

Agency Form Number: ITA–426P.

OMB Approval Number: 0625–0035.

Type of Request: Regular submission.

Burden Hours: 1,000.

Number of Respondents: 2,000.

Average Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration (ITA) sponsors up to 120 overseas trade fairs each fiscal year. Trade fairs involve U.S. firms exhibiting their goods and services at American pavilions at internationally recognized events worldwide. The Product Characteristics-Design Check-Off List seeks from participating firms information on the physical nature, power (utility) and graphic requirements of the products and services to be displayed, and to ensure the availability of utilities for active product demonstrations. This form also allows U.S. firms to identify special installation instructions that can be critical to the proper placement and hookup of their equipment and/or graphics. Without the timely and accurate submission of Form ITA–426P, Product Characteristics-Design Check-Off List, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of U.S. participants. The anticipated result would be diminished program productivity, then declining participation by U.S. firms. A second possible result would be reduced private sector funds and possibly the discontinuation of this type of U.S. international trade event program.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary; required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6522 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, June 2002 Fertility Supplement.

Form Number(s): None (The CPS is conducted by interviewers using laptop computers and an automated survey instrument).

OMB Approval Number: 0607–0610.

Type of Review: Regular submission.

Burden Hours: 250.

Number of Respondents: 30,000.

Average Hours Per Response: 30 seconds.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June 2002 Current Population Survey (CPS). The Census Bureau sponsors the supplement questions, which were previously collected in June 2000, and have been asked periodically since 1971.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have documented profound changes to historical patterns that have occurred in fertility rates, family structures, premarital births, and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single-parent households, can be estimated using CPS characteristics matched with fertility data.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6611 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 6 of the 2001 Panel

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 20, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as expenses related to work, health care, and child support. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided this type of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2003. The total annual burden for the 2001 Panel SIPP interviews would be 118,125 hours in FY 2003.

The topical modules for the 2001 Panel Wave 6 collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)
- Work Related Expenses and Child Support Paid
- Assets, Liabilities, and Eligibility

Wave 6 interviews will be conducted from October 2002 through January 2003. A 10-minute re-interview of 2,500 people is conducted at each wave to ensure accuracy of responses. Re-interviews would require an additional 1,253 burden hours in FY 2003.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing. The test targets SIPP items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,750 people per wave.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 120,428.

Estimated Total Annual Cost to the Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

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or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6517 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations; Meeting

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee advises the Acting Director, Census Bureau, on the full range of Census Bureau programs and activities in relation to its areas of expertise.

DATES: The meeting will convene on April 18–19, 2002. On April 18, the meeting will begin at 8:30 a.m. and adjourn at 5:15 p.m. On April 19, the meeting will begin at 9 a.m. and adjourn at 12:15 p.m.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Chief, Conference and Travel Management Services Branch, Department of Commerce, U.S. Census Bureau, Room 1647, Federal Building 3, Washington, DC 20233. Her phone number is (301) 457–2308, TDD (301) 457–2540.

SUPPLEMENTARY INFORMATION: The agenda for the meeting on April 18, which will begin at 8:30 a.m. and adjourn at 5:15 p.m., is as follows:

- Introductory Remarks by the Acting Director and the Principal Associate Director for Programs, U.S. Census Bureau
- Census Bureau Responses to Committee Recommendations
- 2010 Census Update
- Within and Between Changes in Human Capital, Technology, and Productivity
- Creating Brand Awareness: What We Do the Other Nine Years
- Data Availability in the Research Data Centers
- Census 2000 Product Evaluation Update
- Coverage of Population in Census 2000: Results from Demographic Analysis
- Computer Security Survey: Status on Questionnaire Development Efforts to Measure the Nature of Computer-Related Crime
- Marketing Foreign Trade Statistics
- Language Guidelines for Survey Methods
- Overview of FY 2003 Economic Program Budget Initiatives
- Census Bureau Centennial Celebration
- Survey of Income and Program Participation Methods Panel
- The Use of Meditate to Support the 2002 Economic Census
- North American Product Classification System: What's Been Done, What's Being Done, What's Next

The agenda for the meeting on April 19, which will begin at 9 a.m. and adjourn at 12:15 p.m., is as follows:

- Chief Economist Update
- Marketing in the Federal Sector: Developing the Culture and Core Competencies
- Administrative Records Applications for Master Address File Improvements

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Chief, Conference and Travel Management Services Branch, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis. Individuals wishing additional information or minutes regarding this meeting may contact the Chief, Conference and Travel Management Services Branch as well. Her address and phone number are identified under this notice's **FOR FURTHER INFORMATION CONTACT** heading.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Chief, Conference and Travel Management Services Branch.

Dated: March 13, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–6580 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 13, 2001, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. On January 15, 2002, the Department published a notice of extension of final results. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 1999, through July 31, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations to 19 CFR part 351 (April 2000).

Background

On September 13, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. See *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 66 FR 47632 (September 13, 2001) (*Preliminary Results*). On January 15, 2002, the Department published a notice of extension of final results. See *Gray Portland Cement and Clinker from Mexico; Notice of Extension of Final Results of Antidumping Duty Administrative Review*, 67 FR 1962 (January 15, 2002).

We invited parties to comment on our Preliminary Results. In October 2001, we received case and rebuttal briefs from the petitioner, the Southern Tier Cement Committee, and from the respondents, CEMEX, S.A. de C.V. (CEMEX), and GCC Cemento, S.A. de C.V. (GCCC). The Department has conducted this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. The Decision Memorandum is on file in Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly from the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have corrected certain programming and clerical errors in our preliminary results, where applicable. These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the weighted-average margin for the collapsed parties, CEMEX and GCCC, for the period August 1, 1999, through July 31, 2000 is 50.98 percent.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment value. Because we found that the respondents had constructed export price (CEP) sales, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the collapsed entity's importers' entries under the relevant order during the review period (see 19 CFR 351.212(a)).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for CEMEX/GCCC will be 50.98 percent; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the "all others" rate in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico*, 55 FR 29244 (July 18, 1990). The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 12, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

1. Adverse Facts Available
2. Regional Assessment
3. Revocation
4. Bag vs. Bulk
5. Sales-Below-Cost Test
6. Arm's-Length Test
7. Model Match
8. Financing Cash Deposits
9. Cash-Deposit Methodology
10. Packing Expenses
11. Export-Price Sales
12. Unit Conversions
13. Early-Payment Discounts
14. Arm's-Length Test

[FR Doc. 02–6600 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe From Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (OCTG) from Korea. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 46999 (September 10, 2001) (Preliminary Results). This review covers one manufacturer/exporter of OCTG, SeAH Steel Corporation ("SeAH"), and the period August 1, 1999 through July 31, 2000. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have made certain changes in these final results. These changes are discussed in the section on "Interested Party Comments" below.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236 or Scott Lindsay at (202) 482–0780, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on oil country tubular goods, other than drill pipe, (OCTG) from Korea (60 FR 41057). On August 31, 2000, the Department received a timely request from SeAH to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on OCTG on October 2, 2000 (65 FR 58733).

The Department determined it was not practicable to complete the review within the standard time frame, and extended the deadline for completion of the preliminary results for this antidumping duty administrative review. *See Oil Country Tubular Goods from Korea: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 66 FR 23232 (May 8, 2001). On September 10, 2001, the Department published the preliminary results of this administrative review.

The Department subsequently determined that it was not practicable to complete the review within the initial time limits mandated by section 751(a)(3)(A) of the Act and extended the deadline for completion of the final results for this antidumping duty administrative review. *See Notice of Extension of Time Limit for Final Results of Administrative Antidumping Review: Oil Country Tubular Goods, Other Than Drill Pipe, From Korea*, 66 FR 66402, (December 26, 2001).

Scope of Review

The products covered by this order are oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Period of Review

This review covers the period August 1, 1999 through July 31, 2000.

Analysis of Comments Received

All issues raised in the briefs filed by parties to this administrative review are addressed in the *Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: Issues and Decision Memo for the Final Results of the Antidumping Adminstrative Review of Oil Country Tubular Goods, Other Than Drill Pipe From Korea*, dated March 11, 2002 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes to the margin calculation.

We modified our margin calculation so that we no longer deduct both freight revenue (FRTREVU) and inland freight from the warehouse to the customer expense (INLFWCU) from total gross unit price (TGRSUPRU). Instead we added FRTREVU to GRSUPRU to calculate TGRSUPRU and then deducted INLFWCU as part of U.S. movement expenses. However, we also modified our margin calculation so that TGRSUPRU does not include FRTREVU for sales for which SeAH did not report a corresponding INLFWCU.

Final Results of Review

We determine that the following weighted-average margin exists for the period August 1, 1999 through July 31, 2000:

Manufacturer/exporter	Margin (percent)
SeAH Steel Corporation	1.56

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* assessment rates for SeAH based on entered values. We will direct the Customs Service to assess the *ad valorem* assessment rate against the entered customs value for each entry of subject merchandise from SeAH during the review period. For customs purposes only, this case is identified using case number A–580–215.

Cash Deposit Requirements

The following deposit requirements shall be effective for all shipments of the subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for SeAH Steel Corporation will be the rate established above in the "Final Results of Review" section; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 12.17 percent, the all others rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Freight Revenue and U.S. Price
2. Constructed Export Price Selling Expenses in Korea
3. Date of Sale for SeAH's Third Country Sales
4. SeAH's G&A and Interest Expense
5. SeAH's Warranty Expenses

[FR Doc. 02–6599 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms from Chile: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review for the period of December 1, 2000, through November 30, 2001.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2001).

Background

On December 3, 2001, the Department published in the **Federal Register** (66 FR 60183) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from Chile for the period December 1, 2000, through November 30, 2001. On December 28, 2001, the Department received a timely request from the petitioner [1] that we conduct an administrative review of the above-referenced antidumping duty order for the period December 1, 2000, through November 30, 2001, for the following companies: Nature's Farm Products (Chile) S.A., Ravine Foods and Compania Envasadora del Atlanitco. On January 29, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 4236.

Rescission of Review

On February 27, 2002, the petitioner timely withdrew its request for an administrative review of these companies' sales during the above-referenced period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the petitioner withdrew its request for review within the 90-day period. We have received no other submissions regarding the petitioner's withdrawal of its request for review. Therefore, we are rescinding this review of the antidumping duty order on certain preserved mushrooms from Chile for the period of December 1, 2000, through November 30, 2001. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

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Dated: March 13, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6602 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration. Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review of stainless steel sheet and strip in coils from France.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81 [1], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6". [6]

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Amendment of Final Results

On February 12, 2002, the Department of Commerce ("the Department") issued its final results for stainless steel sheet and strip in coils from France for the January 4, 1999 through June 30, 2000 period of review. *See Stainless Steel Sheet and Strip From France; Final Results of Antidumping Duty Administrative Review* ("*Final Results*"), 67 FR 6493 (February 12, 2002).

On February 12, 2002, respondent Ugine, S.A. ("Ugine") timely filed an allegation that the Department made ministerial errors in the final results, pursuant to 19 CFR 351.224(c). Petitioners did not submit any comments in reply to this ministerial error allegation.

Ugine's Allegation of Ministerial Errors by the Department

Ugine contends that the Department, in its *Final Results*, inadvertently used the wrong indirect expenses to calculate the commission offset. Specifically, the offset was calculated using the amount of indirect selling expenses in the United States incurred in connection with the matched U.S. sales. According to Ugine, this results in double-counting of those selling expenses, since they had already been deducted in calculating the constructed export price.

Ugine also argues that the Department understated the total amount of the entered value of the reported U.S. sales by a factor of 2.2046 when it multiplied the per-unit U.S. entered value amount by U.S. sales quantity to obtain the denominators in its assessments rate calculation of each importer. Specifically, the Department failed to convert the entered value of the subject merchandise to dollars per kilogram. Petitioners did not comment on either of these issues.

Department's Position

We agree with Ugine on both points. Our *Final Results* determined that, for those home market sales matched to U.S. sales where no commission was paid, home market commissions should be offset by indirect selling expenses. We agree with the respondent that our *Final Results* erroneously applied the incorrect indirect expenses to calculate the commission offset. Our *Final Results* erroneously applied the indirect selling expenses incurred in the United States to calculate the commission offset. We have changed our margin program calculation and corrected this error by applying the indirect selling expenses incurred in the country of manufacture.

In our *Final Results* we calculated assessment rates for each importer. However, our *Final Results* erroneously underestimated the total amount of the entered value by not converting the entered value of the subject merchandise to dollars per kilogram. We agree with Ugine that in the assessment rate portion of calculation, we should have converted the entered value amount by U.S. sales quantity to obtain a denominator in dollars per kilogram. Accordingly, we have applied the correct exchange rate and have calculated the entered value in dollars per kilogram.

Therefore, we are amending the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils from France to reflect the correction of the above-cited ministerial error. The weighted-average dumping margin is as follows:

Producer/manufacturer exporter	Final weighted-average margin (percent)	Amended final weighted average margin (percent)
Ugine, S.A.	3.11	3.00

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We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6601 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833, C–122–841, C–428–833, C–274–805, C–489–809]

Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of alignment with antidumping duty Determinations.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller (Brazil and Trinidad and Tobago) at (202)482–0116; Sally Hastings (Canada) at (202)482–3464; Melanie Brown (Germany) at (202)482–4987; and Jennifer Jones (Turkey) at (202)482–4194. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230.

SUPPLEMENTARY INFORMATION: On February 11, 2002, the petitioners [1] in the above-referenced proceedings submitted a letter requesting that the Department of Commerce align the final determinations in these investigations with the earliest final determination in the concurrent antidumping duty investigations of carbon and certain alloy steel steel wire rod.

The carbon and certain alloy steel wire rod antidumping investigations and countervailing duty investigations were initiated on the same date and have the same scope. *See Notice of Initiation of Countervailing Duty Investigations: Carbon and Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey,* 66 FR 49931 (October 1, 2001) and *Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 66 FR 50164 (October 2, 2001). Therefore, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), we are aligning the final determinations in these investigations with the earliest final determination in the concurrent antidumping duty investigations of carbon and certain alloy steel wire rod.

The U.S. International Trade Commission is being advised of this alignment, in accordance with section 705(d) of the Act. This notice is published in accordance with section 705(a)(1) of the Act and 19 CFR section 351.210(b)(4) of the Department's regulations.

Dated: March 12, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6603 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. Nucor Corporation is a supporter of the petitions.

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–16A04.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to The Association for Manufacturing Technology ("AMT") on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, at telephone (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001 *et seq.*) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00004, was issued to The Association for Manufacturing Technology on May 19, 1987 (52 FR 19371, May 22, 1987) and last amended on March 6, 2001 (66 FR 15841, March 21, 2001).

AMT's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): The Beckwood Press Company, Fenton, Missouri; Ultra Tech Machinery, Inc., Cuyahoga Falls, Ohio; ATS Michigan, Brighton, Michigan; ATS Southwest, Tucson, Arizona; ATS Carolina, Rock Hill, South Carolina; Advanced Machine & Engineering Co., Rockford, Illinois; The Gem City Engineering Company, Dayton, Ohio; ATS Systems Oregon Inc., Corvallis, Oregon; and DeVlieg Bullard II, Inc., Machesney Park, Illinois.

2. Delete the following companies as "Members" of the Certificate: American Pfauter Limited Partnership; Anorad Corporation; Automatic Design Concepts; Belden Inc.; Benchmaster Products, Inc.; Boston Digital Corporation; Buffalo Machine Tools of Niagara, Inc.; Clearing Niagara; Columbus McKinnon for the activities of its CM Positech Division; D&H Machinery, Inc.; Davenport Machine—A Dover Industries Company; Elox Corporation; Esterline Technologies; GEC Alsthom Cyril Bath Company; Harper Surface Finishing System, Inc.; Hayes-Lemmerz Process Control Automation, Inc.; Jesse Engineering Co.; Jewett Automation; Lumonics Corporation; MG Industries; Machine Tool Research, Inc.; MHI Machine Tool USA, Inc.; New Monarch Machine Tool Company; Olofsson Corporation; O.S. Walker Company, Inc.; PMC Industries; P.R. Hoffman Machine Products; Pacific Roller Die Co., Inc.; Parker-Majestic Inc.; The Producto Machine Company; RD & D Corporation; Rendas Tool & Die, Inc.; R. Howard Strasbaugh, Inc.; Teledyne; Themac, Inc.; Tree Machine Tool Co., Inc.; Tyler Machinery Co.; U.S. Amada, Ltd.; Unison Corporation; Utilase Systems, Inc.; Vermont—USA Machine Tool Group; Versa-Mil Inc./Phillips Corporation; Weldun Flexible Assembly Company; W.J. Savage Company, Inc.; and Wisconsin Automated Machinery, and

3. Change the listing of two existing Members as follows: "Kleer-Flo Industries" to "Kleer-Flo Company" and "LeBlond Makino Machine Tool Company" to "Makino Inc."

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: March 13, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–6507 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability and Initiation of Review of Draft Revised Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary; Notice of Public Meetings

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice of availability; Notice of public meetings.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary was Congressionally designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA) on November 4, 1992 (Subtitle C of Public Law 102–587, the Oceans Act of 1992). On Friday, March 28, 1997, the final regulations were published in the **Federal Register** (62 FR 14799), and became effective on June 6, 1997.

At the time of designation, NOAA made a commitment to the State of Hawaii that five years after the management plan and regulations had become effective, NOAA, in consultation with the State of Hawaii, would evaluate the progress made toward implementing the management plan, regulations, and goals for the Sanctuary. NOAA also agreed that after the evaluation was complete, NOAA would then re-submit the management plan and regulations in their entirety, as far as they affect State waters, to the Governor for his approval. The revised management plan is the result of the five-year evaluation and will be submitted to the Governor.

The review process is composed of four major stages: information collection and characterization; preparation and release of a draft revised management plan; public review and comment; and preparation and release of a final management plan.

In reviewing the original management plan in preparation for the five-year review by the NMSP and the State of Hawaii, it became clear that although a completely rewritten management plan was not necessary, some restructuring and revising of the document would be beneficial. First, the Sanctuary has accomplished many of the tasks outlined for it in the original management plan that can be removed. Second, the goals and objectives originally outlined needed to be revised to reflect the current and future direction of the Sanctuary, and the 2000 amendments of the National Marine Sanctuaries Act (NMSA). Finally, the structure of the original management plan does not follow the formats developed in the last three years for ongoing management plan reviews at other Sanctuaries. The NMSP and the State of Hawaii decided to revise certain parts of the original management plan and reformat the document, during the five-year review. The draft revised management plan does not propose any regulatory or boundary changes.

The draft revised management plan has been completed and is now available for public review. NOAA will conduct public meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types, and significance of issues related to the Sanctuary's draft revised management plan. Written comments may also be sent to the address below or via e-mail at *hihumpbackwhale@noaa.gov.* The public review period will run from March 19, 2002 until May 24, 2002. The public meetings are scheduled for May 1–May 9, 2002, as detailed below.

DATES: Written comments should be received on or before May 24, 2002. Public meetings will be held on May 1 on Oahu, May 2 on Maui, May 3 on Kauai, and May 8 and 9 on the Big Island of Hawaii (Kona and Hilo respectively).

ADDRESSES: Written comments may be sent to the Naomi McIntosh, Hawaiian Islands Humpback Whale National Marine Sanctuary (Management Plan Review), 6700 Kalanianaole Highway, Suite 104, Honolulu, Hawaii 96825. Comments will be available for public review at the same address.

Public meetings will be held at:

(1) Wednesday, May 1, 6 to 9 p.m., Tokai University Auditorium, 2241 Kapiolani Boulevard, Honolulu, Hawaii.

(2) Thursday, May 2, 6 to 9 p.m., Kihei Community Center, Lipoa Street at the corner of Piilani Highway, Kihei, Maui, Hawaii.

(3) Friday, May 3, 6 to 9 p.m., Radisson Kauai Beach Resort, Ginger Room, 4331 Kauai Beach Drive, Lihue, Kauai, Hawaii.

(4) Wednesday, May 8, 6 to 9 p.m., King Kamehameha's Kona Beach Hotel, Kamakahonu Ballroom, Rooms 1 & 2, 75–5660 Palani Road, Kailua-Kona, Hawaii (Big Island).

(5) Thurday, May 9, 6 to 9 p.m., Naniloa Hotel, Hoomalimali Room (ground floor beside the Sandalwood Dining Room) 93 Banyan Drive, Hilo, Hawaii (Big Island).

FOR FURTHER INFORMATION CONTACT: Anne Reisewitz, MPR Coordinator, by phone at (808) 397–2651 or via e-mail at *Annelore.Reisewitz@noaa.gov.*

Authority: 16 U.S.C. Section 1431 et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 11, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 02–6265 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the 2002 limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs

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website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 2002 import limits for textile products, produced or manufactured in China and exported during the period January 1, 2002 through December 31, 2002 were published on December 28, 2001 (see 66 FR 67229). That directive implemented stages one, two and three of integration and agreed annual growth, but did not apply accelerated growth. This directive amends these import limits for the application of accelerated growth, as provided by the Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67229, published on December 28, 2001.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), this directive amends, but does not cancel, the directive issued to you on December 20, 2001. You are directed to prohibit, effective on March 19, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239pt.[1], 300/301, 313–315, 317/326, 331pt.[2], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C[3], 359–V[4], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt.[5], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C[6], 659–H[7], 659–S[8], 666pt.[9], 845 and 846, as a group.	1,170,457,405 square meters equivalent.
Sublevels in Group I	
200	813,577 kilograms.
218	11,948,064 square meters.
219	2,634,635 square meters.
226	11,963,162 square meters.
237	2,227,977 dozen.
300/301	2,402,897 kilograms.
313	44,735,541 square meters.
314	53,877,550 square meters.
315	140,495,013 square meters.
317/326	23,782,544 square meters of which not more than 4,550,068 square meters shall be in Category 326.
331pt.	2,192,728 dozen pairs.
333	109,278 dozen.
334	342,206 dozen.
335	394,746 dozen.
336	188,676 dozen.
338/339	2,372,699 dozen of which not more than 1,801,137 dozen shall be in Categories 338–S/339–S[10].
340	813,136 dozen of which not more than 406,569 dozen shall be in Category 340–Z[11].
341	704,576 dozen of which not more than 422,746 dozen shall be in Category 341–Y[12].
342	278,256 dozen.
345	129,886 dozen.
347/348	2,362,066 dozen.
351	621,579 dozen.
352	1,672,806 dozen.
359–C	674,171 kilograms.
359–V	951,145 kilograms.
360	8,644,386 numbers of which not more than 5,896,306 numbers shall be in Category 360–P[13].
361	4,688,174 numbers.
362	7,737,506 numbers.
363	22,707,363 numbers.
410	1,032,404 square meters of which not more than 827,584 square meters shall be in Category 410–A[14] and not more than 827,584 square meters shall be in Category 410–B[15].
433	21,197 dozen.
434	13,554 dozen.
435	24,893 dozen.
436	15,336 dozen.
438	26,838 dozen.
440	38,341 dozen of which not more than 21,909 dozen shall be in Category 440–M[16].
442	40,587 dozen.
443	131,123 numbers.
444	213,825 numbers.
445/446	288,998 dozen.
447	71,789 dozen.
448	22,647 dozen.
611	5,885,543 square meters.
613	8,328,038 square meters.
614	13,086,915 square meters.
615	27,244,580 square meters.
617	19,035,513 square meters.
631pt.	319,220 dozen pairs.
633	61,815 dozen.
634	672,503 dozen.
635	709,375 dozen.
636	570,965 dozen.
638/639	2,518,205 dozen.
640	1,409,591 dozen.
641	1,335,296 dozen.
642	368,281 dozen.
643	543,550 numbers.
644	3,621,177 numbers.
645/646	830,540 dozen.
647	1,623,261 dozen.
648	1,159,809 dozen.
651	834,261 dozen of which not more than 146,877 dozen shall be in Category 651–B[17].
652	3,087,762 dozen.
659–C	441,666 kilograms.
659–H	3,087,149 kilograms.
659–S	677,928 kilograms.
666pt.	518,981 kilograms.
845	2,475,770 dozen.
846	185,087 dozen.
Group II	
332, 359–O[18], 459pt.[19] and 659–O[20], as a group.	40,821,172 square meters equivalent.

Category	Twelve-month limit
Group III	
201, 220, 224–V[21], 224–O[22], 225, 227, 369–O[23], 400, 414, 469pt.[24], 603, 604–O[25], 618–620 and 624–629, as a group.	48,213,146 square meters equivalent.
Sublevels in Group III	
224–V	3,963,954 square meters.
225	6,838,577 square meters.
Group IV	
852	373,334 square meters equivalent.
Levels not in a Group	
369–S[26]	617,889 kilograms.
863–S[27]	8,805,437 numbers.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[5] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[10] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[11] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[12] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[18] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[19] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

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[23] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[24] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 369–S: only HTS number 6307.10.2005.

[27] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

D. Michael Hutchinson,
Acting Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6595 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59581, published on November 29, 2001.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on March 19, 2002, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	192,242 dozen.
335/635	371,705 dozen.
338/339	771,289 dozen.
340/640	371,705 dozen.
341/641	278,778 dozen.
647/648	525,506 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6596 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the 2002 limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 2002 import limits for textile products, produced or manufactured in Taiwan and exported during the period January 1, 2002 through December 31, 2002 were published on December 28, 2001 (see 66 FR 67232). That directive implemented stages one, two and three of integration and agreed annual growth, but did not apply accelerated growth. This directive amends these import limits for the application of accelerated growth, as provided by the Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), this directive amends, but does not cancel, the directive issued to you on December 20, 2001. You are directed to prohibit, effective on March 19, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [1], 369–O [2], 400–414, 469pt [3], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [4], as a group.	206,161,651 square meters equivalent.
Sublevels in Group I	
218	23,479,835 square meters.
225/317/326	41,676,644 square meters.
226	7,562,980 square meters.
300/301	1,788,159 kilograms of which not more than 1,500,487 kilograms shall be in Category 300; not more than 1,500,487 kilograms shall be in Category 301.
363	12,345,797 numbers.
611	3,384,364 square meters.
613/614/615/617	20,989,490 square meters.
619/620	15,427,600 square meters.
625/626/627/628/629	20,074,952 square meters.
Group I subgroup 200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	153,919,331 square meters equivalent.
Within Group I subgroup	
200	758,678 kilograms.
219	17,266,759 square meters.
313	68,854,714 square meters.
314	30,756,676 square meters.
315	23,567,452 square meters.
361	1,524,018 numbers.
369–S	493,149 kilograms.
604	240,280 kilograms.
Group II 237, 239pt [5], 331pt. [6], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [7], 659–H [8], 359pt. [9], 433–438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [10], 631pt. [11], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [12], 659pt. [13], 846 and 852, as a group.	622,375,380 square meters equivalent.
Sublevels in Group II	
237	741,238 dozen.
239pt.	1,352,222 kilograms.
331pt.	144,176 dozen pairs.
336	126,286 dozen.
338/339	834,601 dozen.
340	1,123,696 dozen.
345	131,954 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W [14].
352/652	3,350,496 dozen.
359–C/659–C	1,447,633 kilograms.
659–H	2,354,480 kilograms.
433	15,743 dozen.
434	10,933 dozen.
435	25,959 dozen.
436	5,169 dozen.
438	29,173 dozen.
440	5,651 dozen.
442	43,883 dozen.
443	44,079 numbers.
444	62,778 numbers.
445/446	138,335 dozen.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	777,133 dozen.
643	524,564 numbers.
644	804,130 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W [16].
659–S	1,601,702 kilograms.
Group II Subgroup 333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group.	72,708,382 square meters equivalent.
Within Group II Subgroup	
333/334/335	324,897 dozen of which not more than 175,987 dozen shall be in Category 335.
341	345,508 dozen.
342	215,840 dozen.
351	359,087 dozen.
447/448	21,512 dozen.
636	396,193 dozen.
641	733,473 dozen of which not more than 256,716 dozen shall be in Category 641–Y [17].
651	450,319 dozen.
Group III Sublevel in Group III	
845	854,853 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
633/634/635	34.1
638/639	12.5

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6597 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63037, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on March 19, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group 219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group	233,420,974 square meters of which not more than 57,314,241 square meters shall be in Category 219; not more than 70,050,738 square meters shall be in Category 313–O; not more than 40,756,793 square meters shall be in Category 314–O; not more than 54,766,944 square meters shall be in Category 315–O; not more than 57,314,241 square meters shall be in Category 317–O; not more than 6,368,247 square meters shall be in Category 326–O, and not more than 38,209,497 square meters shall be in Category 617.
Limits not in a group 338/339/638/639	7,978,335 dozen of which not more than 7,180,503 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
347/348	7,253,032 dozen of which not more than 2,714,584 dozen shall be in Categories 347–T/348–T [8].
351/651	1,300,674 dozen.
352/652	4,202,252 dozen.
361	2,735,067 numbers.
448	45,505 dozen.
604	3,427,698 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6598 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 20, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver, (POSA) ATTN: Mr. Dan Wagle, 6760 East Irvington Place, Denver, CO 80279–3000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Dan Wagle, 303–676–3372.

Title, Associated Form, and OMB Number: Waiver/Remission of Indebtedness Application, DD Form 2789; OMB License 0730–0009.

Needs and Uses: Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995.

Affected Public: Individuals.

Annual Burden Hours: 23,000 hours.

Number of Respondents: 11,500.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The referenced United States Code sections on waivers provide for an avenue of relief for individuals who owe debts to the United States which resulted from erroneous payments. Criteria for waiver of a debt includes a determination that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual owing the debt or any other person interested in obtaining a waiver. Information obtained through the proposed collection is needed in order to adjudicate the waiver request under the law.

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Dated: March 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6543 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service Announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 20, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver, ATTN: Ms. Sue Debevec, DFAS–PDSA/DE, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Sue Debevec, 303–676–8880.

Title, Associated Form, and OMB Number: Child Annuitant's School Certification, DD Form 2788; OMB Number 0730–0001.

Needs and Uses: In accordance with 10 U.S.C. 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

Affected Public: Individuals.

Annual Burden Hours: 720 hours.

Number of Respondents: 3,600.

Responses per Respondent: 1 each semester.

Average Burden per Response: 12 minutes.

Frequency: Once each semester of full time school, ages 18 to 22.

SUPPLEMENTARY INFORMATION: The Child Annuitant's School Certification form is submitted to the child for completion and return to this agency. The child will certify as to his or her intent for future enrollment and a school official must certify on the past or present school enrollment of the child. By not obtaining school certification, overpayment of annuities to children would exist. This information may be collected from some schools which are nonprofit institutions such as religious institutions. If information is not received after the end of each school enrollment, over-disbursements of an annuity would be made to a child who elected not to continue further training or study.

Dated: March 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6544 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to Delete and Amend Systems of Records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is deleting and amending systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 18, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 13, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

B0901–08

SYSTEM NAME:

Civilian Employee Drug Abuse Testing Program Records (July 13, 1995, 60 FR 36124).

REASON:

NIMA now maintains these records under the Government-wide Privacy Act system of records, OPM/GOVT–10, Employee Medical File System Records.

B0228–04

SYSTEM NAME:

Historical Photographic Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Public Affairs Office, National Imagery Mapping Agency, GC (D–39), 4600 Sangamore Road, Bethesda, MD 20816–5003.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations'.

* * * * *

STORAGE

Delete entry and replace with 'Prints and negatives filed in cabinets, and on electronic storage devices'.

* * * * *

B0228–04

SYSTEM NAME:

Historical Photographic Files.

SYSTEM LOCATION:

Public Affairs Office, National Imagery Mapping Agency, GC (D–39), 4600 Sangamore Road, Bethesda, MD 20816–5003.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual or VIP visitor photographed at NIMA functions or activities, i.e., award ceremonies, sporting events, retirement ceremonies, etc., that is of historical interest to NIMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Photographs and negatives taken at any NIMA function or activity, i.e., award ceremonies, sporting events, retirement ceremonies, etc., that is of historical interest to NIMA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To furnish copies of photographs to organizations that requested photographs to be taken, to obtain the background information regarding events, ceremonies, awards, sports, retirements at NIMA for input to newspapers and magazine articles to recognize accomplishments and publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To News Media for Public Relations and Community Affairs Matters and to organizers of testimonials, banquets and parties for the purpose of obtaining background information regarding events, ceremonies, awards, sports, and retirements at NIMA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prints and negatives filed in cabinets, and on electronic storage devices.

RETRIEVABILITY:

Retrieved by name and/or event.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are Permanent. Records will be retired to Washington National Records Center on discontinuance of the installation.

SYSTEM MANAGER(S) AND ADDRESS:

NIMA Historian, National Imagery Mapping Agency, Mail Stop D–54, 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Photographs taken at awards ceremonies; sporting events; retirement parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0502–03

SYSTEM NAME:

Master Billet/Access Record (April 20, 1995, 60 FR 19742). B0502–03

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All National Imagery and Mapping Agency (NIMA) employees and contractor personnel who have been indoctrinated for access to Sensitive Compartmented Information (SCI). In addition, employees of other government agencies are included for the period during which their security clearance or SCI access status is permanently certified to NIMA.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File may contain name, rank/grade, military component or civilian status, Social Security Number, SCI billet number and title, SCI accesses authorized and held, date background investigation completed, date indoctrinated, date and state of birth.'

B0502–03

SYSTEM NAME:

Master Billet/Access Record.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE, Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All National Imagery and Mapping Agency (NIMA) employees and contractor personnel who have been indoctrinated for access to Sensitive Compartmented Information (SCI). In addition, employees of other

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government agencies are included for the period during which their security clearance or SCI access status is permanently certified to NIMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may contain name, rank/grade, military component or civilian status, Social Security Number, SCI billet number and title, SCI accesses authorized and held, date background investigation completed, date indoctrinated, date and state of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 12958, Classified National Security Information; NIMA Instruction 5205.1R1 Protection of Sensitive Compartmented Information, NIMA Instruction 5210.8 Physical Security, NIMA Instruction 5201.5R1 Serious Incident Reporting; and E.O. 9397 (SSN).

PURPOSE(S):

To identify and verify NIMA personnel authorized access to SCI in order to control access to secure areas for use of classified information, for periodic re-indoctrination (re-briefing) of employees for SCI access, for periodic security education and training, and for control and reissue of identification badges.

To certify personnel SCI access status to the Defense Intelligence Agency for updating the Security Management Information System.

To verify visit approval and/or access to classified material through Security Specialists/Assistants, NIMA Security Police and other contract security guards at NIMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal agencies for the purpose of certifying and verifying an individual's SCI access status.

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Files are retrieved by name and at least one other personal identifier, such as a date of birth, place of birth, Social Security Number or military service number. Files may also be retrieved by billet number.

SAFEGUARDS:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained. Transmission of system data between NIMA components is by secure mail channels. Access to the database is password-protected.

RETENTION AND DISPOSAL:

Destroy two years after transfer, reassignment or separation of the individual from NIMA.

SYSTEM MANAGER(S) AND ADDRESS:

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Security Specialist, National Imagery and Mapping Agency, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Security Specialist, National Imagery and Mapping Agency, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Security Specialist, National Imagery and Mapping Agency, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, Social Security Number, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual concerned through completion of Standard From 86, "Questionnaire For National Security Positions". The basis for billet entries are security clearance or access approval messages or correspondence from the Defense Intelligence Agency; bases for incumbent entries are indoctrination oaths executed by incumbents at time of indoctrination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0502–15

SYSTEM NAME:

Security Compromise Case Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Documents relating to investigations of alleged security violations/incidents such as missing documents, unauthorized disclosure of information, unattended open security containers, documents not properly safeguarded, and matters of a similar nature."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace "5 U.S.C. 301, Departmental regulations; E.O. 12958, Classified National Security Information; NIMA Instruction 5205.1R1 Protection of Sensitive Compartmented Information; NIMA Instruction 5210.8 Physical Security, NIMA Instruction 5201.5R1 Serious Incident Reporting."

* * * * *

STORAGE:

Delete entry and replace with "Paper records."

* * * * *

B0502–15

SYSTEM NAME:

Security Compromise Case Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE, Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may have violated NIMA security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to investigations of alleged security violations/incidents such as missing documents, unauthorized disclosure of information, unattended open security containers, documents not properly safeguarded, and matters of a similar nature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; E.O. 12958, Classified National Security Information; NIMA Instruction 5205.1R1 Protection of Sensitive Compartmented Information; NIMA Instruction 5210.8 Physical Security, NIMA Instruction 5201.5R1 Serious Incident Reporting.

PURPOSE(S):

To protect records relating to investigations conducted into alleged and/or actual security violations by Security Office personnel and appointed investigating officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Retrieved by last name of individual.

SAFEGUARDS:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Files relating to alleged violations of a sufficiently serious nature that they are referred to the Departments of Justice or Defense for prosecutive determination, exclusive of files held by Department of Justice for Defense offices responsible for making such determinations are destroyed 5 years after close of case.

All other files, exclusive of papers placed in official personnel folders are destroyed 2 years after completion of final action or when no longer needed, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Information National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reporting organization or official.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–02

SYSTEM NAME:

Security Identification Accountability Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records and on electronic storage media.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Transfer to Records Holding Area after last card or badge number entered has been accounted for. Hold for three years and destroy.'

* * * * *

B0503–02

SYSTEM NAME:

Security Identification Accountability Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist Mission Support, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any civilian employee.

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CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the application, supporting materials and the number of the identification badges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations and E.O. 12958, Classified National Security Information.

PURPOSE(S):

To maintain accountability for various identification cards/badges issues and identify to whom issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name.

SAFEGUARDS:

Access to database restricted to authorized user name and password to agency server. Paper records are stored in locked safes inside a limited access office.

RETENTION AND DISPOSAL:

Transfer to Records Holding Area after last card or badge number entered has been accounted for. Hold for three years and destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's badge request and personnel forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–03

SYSTEM NAME:

Firearms Authorization Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental regulations; DoD Directive 5210.56, Use of deadly force and the carrying of firearms by DoD personnel engaged in law enforcement and security duties; NIMA Policy Directive 5200R2, Operational Security; NIMA Instruction 5210.2R2, Use of force.'

* * * * *

B0503–03

SYSTEM NAME:

Firearms Authorization Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Security guards that have been issued firearms and ammunition.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents authorizing NIMA civilian guards to carry firearms. Included are firearms authorization cards and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; DoD Directive 5210.56, Use of deadly force and the carrying of firearms by DoD personnel engaged in law enforcement and security duties; NIMA Policy Directive 5200R2, Operational Security; NIMA Instruction 5210.2R2, Use of force.

PURPOSE(S):

To maintain required firearms annual qualifications records, weapons serial numbers and firearms authorization cards issued to each assigned Security Police.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Retrieved by last name of employee.

SAFEGUARDS:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Destroy upon expiration of authorization.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject individual to whom the firearm is issued, home address and telephone number, weapon serial number, and authorization card issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–05

SYSTEM NAME:

Vehicle Registration and Driver Record File (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any person privileged to operate a motor vehicle on a military installation or NIMA leased properties and who has been involved in a chargeable traffic accident or whose commission of a moving traffic violation has been verified."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "50 U.S.C. 797, Security Regulations and Orders; Penalty for Violation; 5 U.S.C. 301, Departmental Regulations; and NIMA Instruction 4540.1R3, Parking and Vehicular Traffic."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Access to electronic file or locked filing cabinet is limited to authorized individuals or with valid user name and password."

* * * * *

B0503–05

SYSTEM NAME:

Vehicle Registration and Driver Record File.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist Mission Support, MSNS N–55, Building 213, 1200 First Street, SE, Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person privileged to operate a motor vehicle on a military installation or NIMA leased properties and who has been involved in a chargeable traffic accident or whose commission of a moving traffic violation has been verified.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a record of issuance of decal and of all traffic offenses/incidents and actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 50 U.S.C. 797, Security Regulations and Orders; Penalty for Violation; and NIMA Instruction 4540.1R3, Parking and Vehicular Traffic.

PURPOSE(S):

To record traffic offenses, incidents and actions taken, and to track parking permits issued to agency personnel and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Retrieved by last name of individual.

SAFEGUARDS:

Access to electronic file or locked filing cabinet is limited to authorized individuals or with valid user name and password.

RETENTION AND DISPOSAL:

Destroy one year after revocation or expiration.

SYSTEM MANAGER(S) AND ADDRESS:

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Security Specialist, National Imagery and Mapping Agency, Mission Support,

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MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Report of traffic violation from Security police.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–09

SYSTEM NAME:

Key Accountability Files (February 22, 1993, 58 FR 10189).

CHANGES:

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RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual's key requests and personnel forms."

* * * * *

B0503–09

SYSTEM NAME:

Key Accountability Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and National Imagery and Mapping Agency, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with keys to a secure area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation relating to the issue, return and accountability for keys to secure areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; NIMA Instruction 5210.8 Physical Security; and E.O. 12958, Classified National Security Information.

PURPOSE(S):

To maintain documentation on periodic inspections, key accountability, reference checks and daily use records and investigations into loss or destruction of secure areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Retrieved by individual's last name.

SAFEGUARDS:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Files relating to keys to restricted security areas are destroyed 3 years after turn-in of key or on discontinuance, whichever is first.

Files relating to keys to other areas are destroyed 6 months after turn-in of key or on discontinuance, whichever is first.

SYSTEM MANAGER(S) AND ADDRESS:

National Imagery and Mapping Agency, ATTN: Locksmith, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Locksmith, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Locksmith, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Locksmith; MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Requests from individuals should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Requests from individuals should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's key requests and personnel forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0614–01

SYSTEM NAME:

Military Personnel Information Files (July 13, 1995, 60 FR 36124).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "National Imagery Mapping Agency, Executive Directory Military Personnel (D–84), 4600 Sangamore Road, Bethesda, MD 20816–5003."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental regulations.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief of Military Personnel Division, National Imagery Mapping Agency, Executive Directory Military Personnel (D–84) 4600 Sangamore Road, Bethesda, MD 20816–5003."

* * * * *

B0614–01

SYSTEM NAME:

Military Personnel Information Files.

SYSTEM LOCATION:

National Imagery Mapping Agency, Executive Directory Military Personnel (D–84), 4600 Sangamore Road, Bethesda, MD 20816–5003.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel assigned to NIMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of Army, Air Force, Navy, or Marine Corps qualification records and assignment orders. Copies of leave requests, biographies, evaluation/fitness reports, security information, completed decoration documents, and finance action forms. Routine correspondence regarding assignment actions, duty assignments, extension of NIMA tour, requests for training, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations.

PURPOSE(S):

To determine the acceptability of an individual nominated by the parent service for a NIMA position: to be used in the preparation of efficiency/fitness/effectiveness reports, award recommendations, and other personnel actions. Documents used to assist HRM personnel in serving as liaison between the individual, NIMA, and the servicing Military Personnel offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by name of individual.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Retain until departure of individual from NIMA. Hold one year and destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Military Personnel Division, National Imagery Mapping Agency, Executive Directory Military Personnel (D–84) 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number, service number on all correspondence received from this office.

For personal visits, the individual should be able to provide some acceptable identification, such as, drivers license, employing office's identification cards, and give some verbal information that could be verified. Visits are limited to normal working hours.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual's Service Military Personnel Center, the individual's rating official within the NIMA and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B1202–17

SYSTEM NAME:

Contracting Officer Designation Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations.'

* * * * *

STORAGE:

Delete 'and/or Kardex book' from entry.

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by name of contracting officer.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in a secured area with access limited to authorized personnel whose duties require access. The database can only be accessed via a correct user ID and password.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Certificate of Appointment and background information on education, training, experience, Standard Form 1402, and specific information on procurement authorities delegated."

* * * * *

B1202–17

SYSTEM NAME:

Contracting Officer Designation Files.

SYSTEM LOCATION:

NIMA Contracting Officers are located at NIMA Headquarters in Bethesda, MD; Reston, VA; Washington Navy Yard, Washington, DC; and NIMA St. Louis, MO. Official mailing addresses are published as an appendix to NIMA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employee designated Contracting Officer and Contracting Officer Representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting the designation and rescission of Contracting Officers and Contracting Officers representative which includes the specific procurement authorities delegated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To maintain documents showing individual designated as Contracting Officers; to include data reflecting limitations, restrictions on authority, and background information for use in other contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic medium.

RETRIEVABILITY:

Information is retrieved by name of contracting officer.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access. The database can only be accessed via a correct user ID and password.

RETENTION AND DISPOSAL:

Records are temporary. NIMA destroys these records upon the transfer, reassignment or termination of the contracting officer.

SYSTEM MANAGER(S) AND ADDRESS:

Procurement Technician, National Imagery Mapping Agency, PCP (D–15), 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Certificate of Appointment and background information on education, training, experience, Standard Form 1402, and specific information on procurement authorities delegated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6546 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

MTMC Pam 55–4, "How To Do Business in the DOD Personal Property Program."

AGENCY: Department of the Army, Military Traffic Management Command (MTMC), DoD.

ACTION: Notice; final policy.

SUMMARY: MTMC has established new qualifying procedures to be able to participate in the Department of Defense (DOD) Personal Property Program (hereafter referred to as "The Procedures"). These procedures were finalized after review of comments received in response to our proposal published in the **Federal Register** (66 FR 56084), on November 6, 2001. Details of these comments are at the end of this notice, under "Background." MTMC, as Program Manager of the DOD Personal Property Shipment and Storage Program (hereafter referred to as "The Program") has streamlined and strengthened the carrier qualification process. All present and future participants (commercial carriers) in the Domestic and International Personal Property Programs are required to use our streamlined qualification process using the web, email and/or fax, and meet the new financial requirements as further discussed in this document.

EFFECTIVE DATES: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker, HQ Military Traffic Management Command, ATTN: MTPP–HQ, Room 10N67, Hoffman Bldg II, 200 Stovall St., Alexandria, VA 22332–5000, telephone (703) 428–2982, fax (703) 428–3321 or email walkersylvia@mtmc.army.mil

SUPPLEMENTARY INFORMATION: To further DoD's goal of making the Personal Property Qualification Program stronger and more streamlined, changes are being implemented to:

a. Simplify and reduce paperwork involved in the carrier qualification process.

b. Shorten the approval processing time.

c. Meet MTMC's legal obligation to conduct business with responsible commercial carriers only.

d. Assess any financial risk to the Government.

e. Improve Program performance and quality assurance.

f. Incorporate suggestions made by the carrier industry.

MTMC's intent is to incorporate common commercial business practices, and take advantage of efficiencies gained from the use of technology to streamline and strengthen the carrier qualification process. These changes, and the new requirements, supersede the current "How To Do Business MTMC Pamphlet 55–4." "The Procedures" will be updated and available for your use on the MTMC home page at *www.mtmc.army.mil* on the Internet. Carriers currently participating in "The Program" must submit requested documentation

between April 15–May 15, 2002. New carriers must comply with the new procedures upon application. New applications will be accepted after the moratorium is lifted.

Note: On November 6, 2001, MTMC imposed a 1-year moratorium on accepting new carrier qualification applications.

If a carrier currently participating in "The Program" does not meet the new requirements, and approval is revoked, the carrier may re-apply as a "new" carrier only after the moratorium is lifted.

1. The new procedures are as follows:

a. *Requirements for Documentation:* Carriers currently in the program are required to submit four (4) qualification forms during April 15–May 15, 2002. All forms must be received no later than midnight (EST) on May 15, 2002. The forms are as follows:

(1) Electronic Tender of Service Signature Sheet (ETOSSS).

(2) Certificate of Cargo Liability Insurance (MTHQ Form 49–R).

(3) Performance Bond (that is effective 2002 Winter Cycle).

(4) List of Countries and Codes of Service (LOCCS).

These forms must be submitted electronically via the Internet or by fax to (703) 428–3321. Carriers should have internal capability to access the Internet, but we do not mandate this requirement. A carrier may elect to use a third party vendor to electronically submit qualification documentation, but assumes all responsibility for all documents arriving within the established time-frame. You can access the forms by going to *www.mtmc.army.mil*, click on Personal Property, click on Carrier Approval, click on Carrier Qualification Home Page, and Carrier Qualification Registration Page. There you will find instructions for completing all the documents. Instructions for accessing the forms will also be included in "the Procedures," which is also located at *www.mtmc.army.mil* on MTMC's web site.

Documentation will be reviewed on a first come, first served basis. The submission date will be determined by the electronic date on the Electronic Tender of Service Signature Sheet received in MTMC's database via electronic means. After completing all required documentation, the MTMC computer will send back a dated response saying that we have received all the required documentation. It will be the carrier's responsibility to ensure any electronic or faxed documentation has been submitted to MTMC by the required deadline. MTMC will not accept late submissions after midnight (EST) on May 15, 2002.

During the transition period while documents are being processed, carriers currently participating may continue to do business with DoD. Before filing rates for the IW02/DW02 cycles, carriers should consider the contents of this exam **Federal Register** notice to make sure they comply with the new requirements. Upon MTMC's review of each submission, carriers not meeting the qualification requirements will have 21 calendar days from the date of notification from MTMC, to provide additional information. If approval is revoked, the carrier's rates will be administratively removed. New carriers must submit previously listed forms at time of application.

b. *Financial Ratios:* For carriers currently participating, a quick ratio of 1:1 or better is required and a debt to equity ratio of 4:1 is desired. New carriers (those applying after the moratorium is lifted) must meet the 1:1 and 4:1 at the time of application.

For carriers currently participating, the status of their debt to equity ratio will be determined upon submission of their 2002 financial statements as detailed in paragraph C of this document. Carriers currently participating that do not meet the desired ratio will not be automatically removed from MTMC's program, as they are not intended to be "pass/fail" standards. Rather, those not meeting the 4:1 ratio must provide an explanation of the reason why in writing. If the explanation is acceptable, carriers will be allowed to stay in the program, but will be re-evaluated within one year. If the explanation is not acceptable, MTMC will require additional information to be provided so that a financial risk assessment can be performed. As always, MTMC reserves the right to convene a Carrier Review Board, if it deems necessary. The carrier will not lose their approval status until the financial risk assessment has been completed.

The purpose of the desired ratio, and the possible requirement for additional information, is to assess the risk the government assumes in doing business with individual carriers. MTMC's goal is to deal with only financially viable companies. MTMC realize that sometimes those with the greatest debt load are those making the effort to invest in the future of their company, to better serve our military customers. And, they are seen as the best credit risks to lend money to. However, this is not always the case, and we must weed out those that don't fall into this category.

The following definitions are provided for clarification purposes only. If there are further questions on the definitions, or how to best present financial data, carriers should consult their own accountants.

Quick Ratio (1:1). The quick ratio, measures the ability of a business to meet their current bills. Quick ratio is cash plus receivables divided by current liability. This is similar to current ratio with the exception that inventory and prepaids are subtracted from the total current assets prior to making the computation. These items are deleted prior to computing the ratio because inventory and prepaids are not easily converted to cash to pay debts. Further, if a company needs to liquidate inventory or prepaids to pay bills, they are in liquidation process and not really a going concern. MTMC recognizes the industry's uniqueness in that many transportation related costs are incurred and paid after the military shipment is picked-up from the member and prior to delivery or placement in SIT. This lag time causes a mismatch between revenues and expenses. If the expenses are included in the financial statements and identifed separately as prepaid transportation expenses or unbilled receivables, MTMC will consider them in the Quick Ratio analysis.

Debt to Equity Ratio (4:1). Debt to equity is total liabilities divided by the company's equity.

c. *Financial Statement Requirements:* Annually, carriers must provide audited financial statements with an auditor's report, or reviewed financial statements with an accountant review report. Financial statements must be prepared according to generally accepted accounting principles using the accrual basis, including balance sheets and profit/loss statements. Financial statements, audit, or review memorandums must include all referenced footnotes. A carrier may voluntarily provide company tax returns in addition to the financial statements, if they do desire. Statements must be transmitted electronically or via fax to (703) 428–3321, reflecting the signature of the company's executive stating that they are correct to the best of their knowledge. These statements and other factors will be evaluated by MTMC to determine the need for any additional actions.

Carriers currently participating in the program are not required to provide financial statements during the April 15–May 15, 2002, timeframe. Year 2002 statements must be submitted within 120-calendar days, of year-end, normally defined as December 31, 2002. Under this scenario, the financial

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statements would be submitted no later than May 1, 2003. If a company closes their books on a fiscal year basis (or other than December 31, 2002), then financial statements and reports should be submitted within 120 calendar days of that date. For example, a carrier currently participating in the program closing out their books October 31, 2002, would be required to submit the financial statements no later than March 1, 2003. Companies desiring to change their report dates must coordinate this with the Chief of MTMC's Internal Review Office at (703) 428–3205.

Once the moratorium is lifted, new carriers applying for initial approval must submit their most recent financial statements to MTMC at the time of application. These statements must meet at least our minimum requirements. Upon approval, these new carriers must submit annual financial statements electronically or by fax, in accordance with when they close their books (as stated in the previous paragraph).

The financial statements must document the business operations of the single business entity or organization that seeks to qualify to do business with the DOD. Combined or consolidated statements that embed the finances of other companies will not be accepted. Letters of guarantee from a parent company will also not be accepted. However, for reporting purposes, a carrier may submit one document that reflects several companies separate financial information, as long as the financial information is reported in each individual company's name and reflects that company's account information. Each individual company must comply with desired ratio minimums, as detailed in paragraph b. New companies must meet required ratio minimums at time of application. In other words, MTMC wants to see the health of the individual companies. MTMC will not accept truly consolidated reports where there is no separation from one company to another.

Additional Information: If MTMC does not receive financial statements within the 120 calendar day time-frame, the company may be placed in nonuse due to non-compliance with program requirements. No *pro forma* statements will be accepted in lieu of actual financial statements. Additionally, MTMC reserves the right to obtain services from an independent third party source to conduct financial risk analysis of carrier's financials. This analysis will compare the company with appropriate industry norms. This information may be used in a carrier review board action to assist in the determination of financial risk to the government.

d. *Cargo Liability Insurance:* For Domestic and International programs, the cargo liability minimum amount per shipment will be $22,500. The aggregate amount will remain $150,000. The Certificate of Cargo Liability Insurance form (MTHQ Form 49R) located on MTMC's website, must reflect a signature of the insurance representative as proof of insurance. No other forms will be accepted.

e. *Performance Bonds:* Performance Bonds are required in both the international and domestic interstate programs. The bond requirement does not apply to domestic intrastate carriers at this time.

For the International program, the bond requirement will remain at $100,000 or 2.5%, of the international revenue based on previous year revenue, whichever is greater. International carriers must submit (electronically or by fax) a "continuous, until cancelled," bond, that reflects signatures of the surety representative and a carrier representative listed on the ETOSSS. MTMC will review the international bond amount semi-annually. If it is determined the bond needs to be increased, the carrier will be notified in writing and provided 30 days to submit a bond or a rider to the bond on file reflecting the updated amount. MTMC will entertain written requests for an additional 30 days to increase the bond amount on a case-by-case basis. Since all international carriers currently participating already have a bond in place, no submission is required at this time. The current bond will remain in effect until you are notified that there is a requirement to increase the bond. Future international carriers must have the bond in place 1 month before the cycle begins in which they wish to participate.

For the domestic interstate program, the bond must be $50,000 and have an effective date of November 1, 2002. Domestic interstate carriers currently participating in the program must submit a "continuous until cancelled" bond that reflects signatures of the surety representative and a carrier representative listed on the ETOSSS, electronically or by fax, in the amount of $50,000, effective winter cycle 2002. In future years, the bond will be 2.5% of your domestic interstate personal property revenue based on the previous year or $50,000, whichever is greater. MTMC will review this annually. If it is determined the bond needs to be increased, the carrier will be notified in writing and provided 30 days to submit a bond or a rider to the bond on file reflecting the updated amount. MTMC will entertain written requests for an additional 30 days to increase the bond amount on a case-by-case basis. Future domestic carriers must have the bond in place 1 month before the cycle in which they wish to participate begins.

f. *Experience Requirements:* The company must have 3 years Government and/or commercial experience in the movement of Personal Property. MTMC will use the date on the operating authority, or if the state is deregulated, the date on the state's Articles of Incorporation for determining the 3-year experience. MTMC will require proof at time of application of the 3-year experience (such as, bills of lading, letters of reference, etc. of personal property movement). Carriers currently participating in the program are exempt from this requirement. However, new carriers must comply with the 3-year experience rule, and provide the proof at the time of application.

Additionally, carriers must continually have two (2) key employees (i.e. involved in the management of the company) with at least three years experience. the names of these individuals are required to be included on the ETOSSS.

g. *Notification Requirements:* All carriers are required to notify MTMC within 45 calendar days of a change of ownership, a change of corporate name, or change of key personnel.

(1) Change of Ownership: When a company changes ownership, a novation agreement must be submitted to MTMC. Approval will be based on a review of the sales agreement and evidence to show that the carrier complies with all carrier qualification requirements. The new asset owner (transferee) must assume all obligations of the carrier as if they were the original owner.

(2) Change of Name: When a company changes their name, they must submit a change of name notification.

(3) Change of Key Personnel: When a company changes key personnel they must submit an updated ETOSSS.

Detailed instructions on the novation process, change of name notification and change of key personnel can be located in the "How to do Business in the DOD Personal Property Program" pamphlet located at *www.mtmc.army.mil* on MTMC's website.

2. MTMC will use the Department of Transportation (DOT) SAFER system to obtain a carrier's safety rating, verify operating authority, and note any safety infractions. This safety rating may be used when carriers are seeking initial/ additional approval or in Carrier Review Board actions.

3. Though nothing changes in the Common Financial and/or Administration Control (CFAC) arena as a result of this streamlining and strengthening initiative, domestic and international carriers are reminded of the continuing requirement to declare CFAC (affiliate) relationships with other participating carriers in accordance with the Tender of Service. This declaration will continue to be accomplished on the ETOSSS and will be submitted electronically to MTMC (as stated previously). Please note we do intend to reduce the incentive for paper companies in our future program.

CFAC (affiliates) means associated business concerns or individuals directly or indirectly, where (a) either one controls or can control the other(s) or where (b) a third party controls or can control them both. All currently participating carriers in the International Program and new international carriers will continue to be required to refrain from competing, i.e. submitting rates, in the same code of service/channel combinations served by any of their affiliates. Carriers failing to disclose CFAC (affiliate) relationships may be removed from the Program for a period of up to 2 years and may be prosecuted for filing a false official statement in violation of 18 USC 1001.

Background

A notice of proposed implementation to establish new procedures to participate in the Department of Defense Personal Property Program was published in the **Federal Register,** 66 FR 56084, Tuesday, November 6, 2001. In response to this notice, the carrier associations and individual carriers and agents submitted numerous comments. The comments were all carefully considered and were the subject of discussion at various meetings. Listed below are the comments and MTMC's response:

Comment 1: Electronic qualification procedures. Could smaller carriers utilize the services of a third party to accomplish the required electronic submission, if necessary? Also there was a comment on declaring Common Financial and/or Administrative Control (CFAC) using the ETOSSS form.

Response: While we prefer carriers to have internal capability to access the Internet, we do not mandate this requirement. A carrier may elect to use a third party vendor to submit qualification documentation electronically via the Internet. The CFAC statement declaring international CFAC and domestic CFAS is on the ETOSSS form.

Comment 2: Application for re-qualification. There was a concern with using the term "Re-apply" for qualification for current participants.

Response: We will not use the terminology "re-apply." Instead, we will use "comply with" when referring to all current participants. Current carrier participants must comply with all new requirements, as detailed in this document.

Comment 3: MTMC should consider staggering the application process in stages and should consider the impact on the rate cycle to allow carriers to incorporate any additional costs in their rate submission.

Response: We decided to accept electronic applications April 15–May 15, 2002, on a first-come, first-served basis. By doing this, carriers will be able to incorporate any additional expenses in their rates for Winter 2002.

Comment 4: Carriers do not want to be placed in nonuse due to not meeting the new standard, without the opportunity to address the issues.

Response: Once documentation is submitted, we will review them for compliance with our program rules. if we find the company does not meet the minimum requirements, they will not be placed in immediate nonuse and will be afforded the opportunity to address our concerns within 21 calendar days of notification.

Comment 5: Carriers do not want to meet a debt to equity requirement. They cited problems in classifying the purchase of new equipment and being properly credited for when a shipment has been picked up but not delivered, so they could bill.

Response: While we decided to have a Debt to Equity requirement, it is not a pass/fail system. We are allowing for flexibility in the financial ratios, as long as the carrier shows continued improvement, or shows evidence justifying that satisfies MTMC. Additionally, the Debt to Equity requirement was made less stringent (4:1 versus 2:1) and we removed the requirement for a current ratio. The objective is to encourage participating carriers to manage debt in a responsible manner consistent with industry norms.

Comment 6: Carriers did not want to submit copies of their company income tax returns.

Response: We are not requiring copies of the income tax returns, but a carrier may voluntarily provide them in addition to the financial statements, if they so desire.

Comment 7: The $315,000 aggregate limit seems quite high when compared to the $22,500 shipment cargo liability minimum. The likelihood of 14 shipments at risk at one time is remote. The amount per shipment limit of $22,500 would present no problem, as the "average" mover in the program carries a $50,000 per shipment limit.

Response: The amount per aggregate minimum of $150,000 will not be increased. The amount per shipment on cargo liability is increased to $22,500.

Comment 8: There were concerns regarding the bond in the Domestic program. The heaviest burden of the bonding costs will fall on carriers that do not perform very many moves per year to recoup the added cost of the bond. This is especially true for intrastate carriers, where there may only be a handful of moves per year within a given state.

Response: The bond is protection for the Government in the event of a carrier's failure to move the shipment. The purpose of this performance bond requirement is to ensure that the DOD is compensated for reprocurement costs caused by the carrier's failure to perform agreed upon services. We excluded intrastate carriers from the bond requirement.

Comment 9: Comments indicated that 5 years company experience was too long and some were against any minimum experience requirement. Also, MTMC's proposal to measure this experience from either the date shown on the operating authority or the date reflected on the Articles of Incorporation does not accomplish measurement of experience. Some suggested incorporating measurement by the experience of personnel.

Response: We want to do business with companies that have already weathered start up costs, etc. However, we reduced the carrier experience requirement to three years. The only way to determine this experience is the date shown on the operating authority or the date reflected on the Articles of Incorporation. We also exempted carriers currently participating from this requirement. In addition, we added the requirement for carriers to continually have two (2) key employees (responsible fro the management of the company) with at least 3 years experience in the movement of household goods.

Comment 10: Carriers are concerned that the information in the SAFER system is not correct.

Response: We plan to still use the SAFER system as a source for information. However, if necessary, the carrier will be given the opportunity to provide documentation that counters those findings for further consideration.

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Comment 11: There was a concern regarding the seller of a company being held responsible for a period of time when a company has been sold.

Response: We removed the requirement for the seller to have responsibility after the sale. MTMC will require the new owner to certify their acceptance of the carrier's liabilities and obligations.

Comment 12: Carriers want to submit a combined or consolidated financial statement.

Response: We will only accept stand-alone financial statements in the name of the company that holds the approval. MTMC continues to believe that carriers should qualify on their own strength and merit (*i.e.*, company, can stand independently). However, for reporting purposes, a carrier may submit one document that reflects several companies separate financial information, as long as the financial information is reported on each individual company's name and reflects that company's account information. Each individual company must meet the ratio minimums as detailed in this document. In other words, we want to see the health of the individual companies. MTMC will not accept truly consolidated reports where there is no separation from one company to another.

Paperwork Reduction Act.

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because no new information requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

Regulatory Flexibility Act.

This change is related to public contracts and is designed to streamline and strengthen the DOD personal property carrier qualification program. This change is not considered rule-making within the meaning of the Regulatory Flexibility Act, 5, U.S.C. 601–612.

Patricia K. Hunt,

Col. USAF, DCS, Passenger and Personal Property.

[FR Doc. 02–6582 Filed 3–18–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent application number 09/961,405 filed September 25, 2001, and PCT application number PCT/US01/29848 filed September 25, 2001, entitled "Critical Care Platform for Litters" to Impact Instrumentation, Inc. with its principal place of business at 27 Fairfield Pl., West Caldwell, NJ 07006.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license has to file written objections along with supporting evidence, if any, by April 3, 2002. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Maryland 21702–5012.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–6581 Filed 3–18–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974.

DATES: This proposed action will be effective without further notice on April 18, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 13, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–8 ARPC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System (December 23, 1997, 62 FR 67055).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Members of the U.S. Army Reserve in the categories of Individual Ready Reserve, Standby and Retired Reserve assigned to a reserve unit and not serving on extended active duty in an entitled reserve status.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Military occupational specialty data; qualification records, application for appointments, voluntary reduction; award recommendations, academic reports; retirement points, transcripts of military records efficiency reports; change of name; birth certificates, citizenship statements and status; absence without leave and desertion records; FBI reports; transcripts of military records; waiver of disqualifications, efficiency appeals; promotions, reductions, recommendations, approvals and declinations, announcements, notifications, pay entitlements, and other military service data.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 135–18, The Active Guard Reserve (AGR) Program; Army Regulation 135–91, Service Obligations, Methods of Fulfillment Participation Requirements and Enforcement Procedures; Army Regulation 135–100, Appointment of Commissioned and Warrant Officers of the Army; Army Regulation 135–133, Ready Reserve Screening Qualification Records System, and Change of Address Reports; Army Regulation 135–155, Promotion of Commissioned Officers and Warrant Officers other than General Officers; Army Regulation 135–75, Separation of Officers; Army Regulation 140–10, Assignments, Attachments, Details and Transfers; Army Regulation 140–111, U.S. Army Reserve Reenlistment Programs; Army Regulation 140–158, Enlisted Personnel Classification, Promotion and Reduction; Army Regulation 140–185, Training and Retirement Point Credits and Unit Level Strength Accounting Records; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Optical digital imagery, computer output microfiche, computer magnetic tapes and discs, selected data stored on platters, disc fiche and electronic storage media.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records or maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in place and periodically reviewed and updated to prevent unwarranted access."

RETENTION AND DISPOSAL:

Delete entry and replace with 'Reserve component evaluations, reserve officer promotion eligibility rosters, reserve officer and enlisted centralized and semi-centralized selection board reporting files destroy after 2 years. Reserve enlisted promotion eligibility rosters destroy after 1 year. Reserve officer numerical promotion lists destroy upon separation of soldier or when superseded or obsolete. Active duty for special work files maintain until funds are disbursed or when no longer needed. Reserve officer nominations and confirmation files are permanent. Equivalent training authorization approvals maintain for 5 years then destroy. Reserve officer career management files are forwarded to the appropriate personnel section if, individual transfers within the Army Reserves, enters on active duty or the National Guard, upon final separation from the Army Reserves destroy."

* * * * *

A0600–8 ARPC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve in the categories of Individual Ready Reserve, Standby and Retired Reserve assigned to a reserve unit and not serving on extended active duty in an entitled reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military occupational specialty data; qualification records, application for appointments, voluntary reduction; award recommendations, academic reports; retirement points, transcripts of military records efficiency reports; change of name; birth certificates, citizenship statements and status; absence without leave and desertion records; FBI reports; transcripts of military records; waiver of disqualifications, efficiency appeals; promotions, reductions, recommendations, approvals and declinations, announcements, notifications, pay entitlements, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 135–18, The Active Guard Reserve (AGR) Program; Army Regulation 135–91, Service Obligations, Methods of Fulfillment Participation Requirements and Enforcement Procedures; Army Regulation 135–100, Appointment of Commissioned and Warrant Officers of the Army; Army Regulation 135–133, Ready Reserve Screening Qualification Records System, and Change of Address Reports; Army Regulation 135–155, Promotion of Commissioned Officers and Warrant Officers other than General Officers; Army Regulation 135–75, Separation of Officers; Army Regulation 140–10, Assignments, Attachments, Details and Transfers; Army Regulation 140–111, U.S. Army Reserve Reenlistment Programs; Army Regulation 140–158, Enlisted Personnel Classification, Promotion and Reduction; Army Regulation 140–185, Training and Retirement Point Credits and Unit Level Strength Accounting Records; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain personnel data on members assigned to individual ready, standby, and retired Army Reserves; to select and order individuals to military active duty training, to identify personnel for promotion; to determine those not qualified for retention in the reserve forces; to issue annual statement of retirement credits; to select qualified members for potential assignment to active Army units and reserve component units in the event of mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Optical digital imagery, computer output microfiche, computer magnetic tapes and discs, selected data stored on platters, disc fiche and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records or maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in place and periodically reviewed and updated to prevent unwarranted access.

RETENTION AND DISPOSAL:

Reserve component evaluations, reserve officer promotion eligibility rosters, reserve officer and enlisted centralized and semi-centralized selection board reporting files destroy

after 2 years. Reserve enlisted promotion eligibility rosters destroy after 1 year. Reserve officer numerical promotion lists destroy upon separation of soldier or when superseded or obsolete. Active duty for special work files maintain until funds are disbursed or when no longer needed. Reserve officer nominations and confirmation files are permanent. Equivalent training authorization approvals maintain for 5 years then destroy. Reserve officer career management files are forwarded to the appropriate personnel section if, individual transfers within the Army Reserves, enters on active duty or the National Guard, upon final separation from the Army Reserves destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the Official Military Personnel File and the Military Personnel Records Jacket.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6545 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Final Environmental Impact Statement, Portland District, Columbia and Lower Willamette Rivers Federal Navigation Channel Improvements, Oregon and Washington

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Portland District, intends to prepare a supplement to the Final Integrated Feasibility Report/ Environmental Impact Statement (IFR/ EIS Supplement) for the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington. The final IFR/EIS, which was published in 1999, identified a plan of action to deepen the Columbia and Lower Willamette Federal navigation project by 3 feet, and construct ecosystem restoration features. This supplement will address new information that has been developed since the 1999 report, including information that resulted from the Endangered Species Act consultation with National Marine Fisheries Service and US Fish and Wildlife Service and for water quality certification.

The IFR/EIS is being supplemented to add new information that has been generated since the final report in 1999. It will include information from the recently transmitted biological assessment prepared by the Corps for the National Marine Fisheries Service and US Fish and Wildlife Service. Several additional ecosystem restoration features are proposed to be implemented to benefit the recovery of listed threatened and endangered fish. As a result of these actions the lower river disposal plan will be re-evaluated to shift from ocean disposal at the Deep Water disposal site to creation of ecosystem restoration features in the estuary. The construction volumes will also be updated utilizing December 2001 and January 2002 hydrographic surveys. Other items will be updated from a cost perspective due to new information collected since 1999, including a reduction in rock excavation and utility relocations. Project economics will be re-examined to evaluate the sensitivity of the fleet and commodity forecasts in the EIS When the costs and benefits are re-examined the benefit-to-cost ratio will be reevaluated.

The alternatives under consideration are the same as those measures evaluated in the 1999 IFR/EIs. Elements of the plan of action may include dredging of sands, rock removal by mechanical means as well as blasting, disposal of material at in-water, shoreline and upland disposal sites, and ecosystem restoration features. Information updates will include the disposal plan in the lower river, and new ecosystem restoration proposals. This plan will shift disposal material from ocean disposal at the Deep Water disposal site to creation of the restoration features in the estuary.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Robert E. Willis, Chief, Environmental Resources Branch, US Army Corps of Engineers, Portland District, CENWP–PM–E, PO Box 2946, Portland, OR 92708–2946, phone (503) 808–4760.

SUPPLEMENTARY INFORMATION: The proposed action is being considered under the authority of resolution of the House of Representatives, Committee on Public Works and Transportation, adopted August 3, 1989. The action ultimately may involve some measures similar to those selected in 1999. The Supplement will identify a plan of action which (1) evaluates the specific engineering, environmental, and economic effects of proposed alternatives for improving the authorized channel as compared to the without-project condition (no action alternative); (2) identifies a plan which maximizes National Economic Development (NED) benefits while protecting environmental resources in accordance with Federal laws and statutes; (3) recommends a plan for construction if economic, environmental, and engineering justification is met and the plan is supported by the sponsor. Alternatives being considered to the proposed action are the same as those analyzed in the 1999 report. The Supplement will consider information gained from the expert panel held during the consultation process and data collection for smelt and sturgeon conducted in conjunction with the Federal and State resource agencies. Based on preliminary consideration to date, the following have been some of the significant issues requiring analysis in the Supplement: smelt, sturgeon, Dungeness crab concerns, wetlands and mitigation required due to wetland losses. The Corps welcomes input to the Supplement from affected Federal, State and local agencies, Indian tribes, and other interested organizations and parties. The Environmental Protection Agency, Region 10, was a cooperating agency to the IFR/EIs, and will also act as a cooperating agency in the Supplement.

The normal range of environmental review and consultation shall apply to the proposed action.

Scoping was completed in 1994. The Corps plans to conduct a series of public meetings after release of the draft Supplement. Meeting times will be announced later. The draft IFR/EIS Supplement is tentatively scheduled for release to the public and agencies for review in May 2002.

Randall J. Butler,

Colonel, EN, Commanding.

[FR Doc. 02–6583 Filed 3–18–02; 8:45 am]

BILLING CODE 3710–AR–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Large Scale Biology, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Large Scale Biology, Inc., a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent No. 5, 599,703, entitled "In Vitro Amplification/Expansion of CD34+ Stem and Progenitor Cells" issued February 4, 1997, and its PCT serial number US94/12385 in the field of PMVEC/Hematopoietic stem cell co-culture conditioned media system.

DATE: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428 or E–Mail at *schlagelc@nmrc.navy.mil.*

Dated: March 12, 2002.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–6528 Filed 3–18–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

Student Financial Assistance; Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs

ACTION: Notice of deadline dates for request and supporting documents for funding or waivers for the remainder of the 2001–2002 award year.

SUMMARY: The Secretary announces deadline dates for an institution of higher education to submit various requests and documents under the Campus-Based programs for the remainder of the 2001–2002 award year (January 1, 2002 through June 30, 2002). The Department believes it is more customer friendly and helpful for an institution to have one annual notice, rather than several, for an award year.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Campus-Based Operations, Student Financial Assistance, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5453. Telephone: (202) 377–3174.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: There are three programs that we refer to as the Campus-Based programs: The Perkins Loan Program encourages institutions to make low-interest, long term loans to needy undergraduate and graduate students to help pay for their cost of education.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their cost of education and encourages these students to participate in community service activities. An institution may use part of its FWS funds to locate and develop jobs for students under the Job Location and Development Program. An eligible institution that meets the definition of a "Work-College" may participate in the Work-Colleges Program.

The Federal Perkins Loan, FWS, and FSEOG Programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

The Department will still refer to these individual deadline dates in its "Dear Partner" Letters that relate to each process we post on the Information for Financial Aid Professionals (IFAP) Web site.

DEADLINE DATES: The following table provides the deadline dates for the Campus-Based programs for the remainder of the current award year. In July 2002 we shall publish a notice for the 2002–2003 award year. Please note that an institution must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

AWARD YEAR 2002

What does an institution submit?	Where does the institution submit this?	What is the deadline for submission?
1. Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2002–2003 award year.	Work-Colleges Program Campus-Based Operations, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5453.	April 26, 2002
2. Request for a Waiver of the Minimum Expenditure Requirement for Community Service in the FWS Program for the 2002–2003 award year.	FWS Community Service Waiver Request Campus-Based Operations, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5453.	June 28, 2002

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Proof of Delivery of Request and Supporting Documents

If you submit your documents by mail or by a non-U.S. Postal Service courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the request and documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on these Requests

A more detailed discussion of each request for funds or waiver is provided in a specific "Dear Colleague" letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Financial Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension Nonprocurement and Government Requirement for Drug-Free Workplace (Grants), 34 part 85.

(9) Drug-Free Schools and Campuses, 34 CFR part 86.

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To use the PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gov/nara/index.html*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 13, 2002.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 02–6548 Filed 3–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Student Financial Assistance; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for Award Year 2002–2003 funds.

SUMMARY: This is a notice of the closing date for receipt of State applications for Award Year 2002–2003 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under Title IV, Part A, Subpart 4 of the Higher Education Act of 1965 as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To receive an allotment under the LEAP and SLEAP programs for Award Year 2002–2003, applications submitted electronically must be received by 11:59 p.m. (Eastern time) May 31, 2002. Paper applications must be received by May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Student Financial Assistance, 830 First Street, NE., Room 111H1, Washington, DC 20202. Telephone: (202) 377–3304.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2001–2002, 47 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the LEAP Program. Additionally, 37 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the SLEAP Program.

On-Line Application Submitted Electronically

The Financial Partners Channel within Student Financial Assistance has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants are strongly encouraged to use the web-based form (Form 1288–E OMB 1845–0028) which is available on the FMS LEAP on-line system at the following Internet address: *http://fms.sfa.ed.gov.*

Paper Application Delivered by Mail

States or territories may request a paper version of the application (Form 1288 OMB 1845–0028) by calling Mr. Greg Gerrans, LEAP Program Manager, at (202) 377–3304. A paper version will be mailed to you. An application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Student Financial Assistance, 830 First Street, NE., Room 111H1, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. Applications that are mailed must be received by the Department no later than May 24, 2002.

A late applicant cannot be assured that its application will be considered for Award Year 2002–2003 funding.

Paper Applications Delivered by Hand

Applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Student Financial Assistance, 830 First Street, NE., Room 111H1, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations

The following regulations are applicable to the LEAP and SLEAP programs:

(1) The LEAP and SLEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses) and part 99 (Family Educational Rights and Privacy Act).

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Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: March 13, 2002.

Greg Woods,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 02–6549 Filed 3–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–22; Integrated Assessment of Climate Change Research

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for the Integrated Assessment of Climate Change Research Program. This notice is a follow on to previous notices published in the **Federal Register**. The program funds research that contributes to integrated assessment of climate change, and in particular, research to develop and improve methods and tools that focus on specialized topics of importance to integrated assessments. The research program supports the Administration's Climate Change Research activities and the U.S. Global Change Research Program goals to understand, model, and assess the effects of increasing greenhouse gas concentrations in the atmosphere. The program supports research to evaluate the economic costs and predicted responses to options that would mitigate the long-term increase in carbon dioxide and other greenhouse gases.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is suggested to allow time for meaningful dialogue.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., May 14, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002 and early Fiscal Year 2003.

ADDRESSES: Preapplications, referencing Program Notice 02–22, should be sent E-mail to *john.houghton@science.doe.gov.*

Formal applications, referencing Program Notice 02–22, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–22. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: *john.houghton@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice 02–22, is available via the World Wide Web using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: An integrated assessment of climate change is defined here as the analysis of the human (including economics), physical, and biological aspects of climate change from the cause, such as greenhouse gas emissions, through impacts, such as changes to unmanaged ecosystems, sea level rise, and altered growing conditions for crops. The primary

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emphasis is to represent all three aspects in such a way that actions to mitigate climate change may be evaluated. Integrated assessments are commonly based on predictions using a computer model.

A description of integrated assessment may be found in volume 3 of the report "Intergovernmental Panel on Climate Change (IPCC) Third Assessment Report: Climate Change 2001". The reference is: Ferenc Toth, Mark Mwandosya, John Christiansen, Jae Edmonds, Brian Flannery, Carlos Gay-Garcia, Hoesung Lee, Klaus Meyer-Abich, Elena Nikitina, Atiq Rahman, Richard Richels, Ye Riqui, Arturo Villavicencio, Yoko Wake, and John Weyant, "Decision-Making Frameworks," Chapter 10 in *Climate Change 2001: Mitigation*, Cambridge University Press, 2001, (http://www.ipcc.ch/pub/reports.htm). A Special Issue of The Energy Journal entitled "The Costs of the Kyoto Protocol: A Multi-Model Evaluation", 1999, [ISSN 0195–6574] presents analyses from several integrated assessment models of predicted costs to meet various target emission scenarios. The web site for the Energy Modeling Forum *(http://www.stanford.edu/group/EMF/home/index.htm)* contains further background information.

The policy community uses integrated assessment models to evaluate specific policy options. This notice solicits research intended to provide a sound scientific foundation for predicting and analyzing benefits and costs of climate change, and possible policy options to mitigate it, some of which are not measured monetarily. The research funded as a result of this solicitation will be judged in part on its potential to develop and improve methods and models needed to support policy development. Policy analysis itself will not be funded.

The program will concentrate support on the topics described below. Applications that involve development of analytical models and computer codes will be judged partly on the basis of whether they include proposed tasks to document and make the models and model codes available to the community. The following is a list of topics that are high priority. Topics proposed by principal investigators that fall outside this list will need strong justification to be considered for funding. Research projects in these elements are intended to fill critical gaps in current integrated assessments.

A. Technology Innovation and Diffusion

This is a primary focus of the Integrated Assessment of Climate Change Research Program. Assumptions regarding technology innovation and diffusion are some of the most important contributors to overall uncertainty in predicting future emissions of greenhouse gases. A key area of interest is research to improve the ability of the integrated assessment models to represent technological change as a function of variables that are determined by the model ("endogenizing technological change") rather than postulated as static input to the model.

One particular difficulty in modeling technological change is in representing the penetration of new technologies. Over the 21st century, the typical timeframe of the integrated assessment models, technologies need to be invented, innovated upon, and diffused to the sectors in which they are used. Several questions need to be addressed, such as: How rapidly do these technological changes take place? What influences the rates? If the model assigns a price for a new technology that is lower than competing technologies, how should the dynamic adoption of the technology be modeled? What can be learned from historical precedents that would lead to better understanding of the processes and therefore to better modeling?

The rate and nature of technology diffusion from the more-developed nations to developing nations is not well understood. Predicting economic structural change in developing nations is also problematical. Much of the uncertainty in integrated assessment models comes from the difficulty in predicting the response of the energy sector and greenhouse gas emissions in developing nations to both regulation and technological innovations in more-developed nations. How can historical precedents be used to understand and model the future movement of technologies across national borders?

This research will help provide tools to address other policy-relevant questions such as the following, as they relate to greenhouse gas emissions:

What effect would various policy options have on "carbon leakage", the movement of emissions of greenhouse gases away from nations with relatively regulated emissions to ones with relatively unregulated emissions?

How can the impact of research and development on invention, innovation, and adoption be simulated and modeled quantitatively?

How do innovation and/or diffusion relate to measurable parameters of research and development, such as public and private research and development, investments, or regulations?

B. Evaluation of Scenarios Used to Drive Integrated Assessment Models

The Intergovernmental Panel on Climate Change recently published a Special Report on Emission Scenarios (SRES) (http://www.ipcc.ch/pub/reports.htm#sprep). These scenarios describe various possible directions for future development and are used as input into the Integrated Assessment models. The scenarios include projections of economic growth, population dynamics, and technology development that vary by time and locale.

This notice solicits research to evaluate the existing SRES scenarios. Some combinations of values, for instance high per capita income growth and high population growth, are less likely than other combinations. Research should investigate which combinations of values are important enough to be represented by a particular scenario. The research would investigate whether the scenarios selected by the SRES adequately represent the underlying uncertainty. Would it be beneficial to add scenarios or is it possible to reduce the number? Research into demography per se, such as population dynamics and predictions of age distribution, is not being solicited. The research proposed under this topic should rely primarily on existing demographic data and evaluate that data in the context of demographic scenarios used in integrated assessment.

Program Funding

It is anticipated that up to $1,000,000 will be available for multiple awards to be made in Fiscal Year 2002 and early Fiscal Year 2003 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs. Annual budgets are expected to range from $30,000 to $150,000 total costs. Funds for this research will come from the Integrated Assessment Research program.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.science.doe.gov/production/grants/Colab.html.*

Preapplications

A brief preapplication is strongly encouraged (but not required) prior to submission of a full application. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Integrated Assessment of Climate Change Research Program. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. All collaborators should be listed with the abstract or summary. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

Related Funding Opportunities: Investigators may wish to obtain information about the following related funding opportunities:

National Oceanic and Atmospheric Administration (NOAA)

Within the context of its Human Dimensions of Global Change Research Program, the Office of Global Programs of the National Oceanic and Atmospheric Administration will support research that identifies and analyzes how social and economic systems are currently influenced by fluctuations in climate, and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. The program is particularly interested in learning how advanced climate information on seasonal to yearly time scales, as well as an improved understanding of current coping mechanisms, could be used for reducing vulnerability and providing for more efficient adjustment to these variations. Notice of this program is included in the Program Announcement for NOAA's Climate and Global Change Program, which is published each spring in the **Federal Register**. The deadline for proposals to be considered in Fiscal Year 2002, is expected to be in summer 2002. Information will also be available on our website: *http://www.ogp.noaa.gov/mpe/csi/econhd/index.htm.* For further information, contact: Nancy Beller-Simms Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 180; Internet: *nancy.beller-simms@ogp.noaa.gov* or Caitlin Simpson; Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 152; Internet: *simpson@ogp.noaa.gov.*

National Science Foundation (NSF)

As in Fiscal Year 2001, NSF will support research and related activities associated with the dynamics of coupled natural and human systems through its Biocomplexity special competition. The Biocomplexity 2002 announcement can be accessed at *http://www.nsf.gov/pubs/2002/nsf02010/nsf02010.html.* The deadline for submission of proposals for the Fiscal Year 2002, competition was January 24, 2002. NSF staff expect the competition to continue in future fiscal years, although deadlines may be earlier in the fiscal year and the focus may change somewhat. (The Fiscal Year 2003 deadline may be as early as October 2002.) Potential applicants should consult the NSF Web site for updates.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, March 11, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–6547 Filed 3–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–669–000]

Bayswater Peaking Facility, LLC; Notice of Issuance of Order

March 12, 2002.

Bayswater Peaking Facility, Inc. (Bayswater) submitted for filing a rate schedule under which Bayswater will engage in the sales of energy, capacity and ancillary services at market-based rates. Bayswater also requested waiver of various Commission regulations. In particular, Bayswater requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Bayswater.

On February 27, 2002, pursuant to delegated authority, the Director, Office

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of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Bayswater should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Bayswater is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Bayswater, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Bayswater's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 29, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6436 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–795–000]

Duke Energy Washington, LLC; Notice of Issuance of Order

March 13, 2002.

Duke Energy Washington, LLC (Duke Washington) submitted for filing a rate schedule under which Duke Washington will engage in the wholesale sale of electric energy, capacity and certain ancillary services at market-based rates and for the sale, assignment or transfer of transmission capacity. Duke Washington also requested waiver of various Commission regulations. In particular, Duke Transmission requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Washington.

On March 11, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Washington should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Duke Washington is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Duke Washington, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Washington's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6561 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–103–000]

Florida Gas Transmission Company; Notice of Abandonment Application

March 13, 2002.

On March 5, 2002, Florida Gas Transmission Company (Florida), 1400 Smith Street, Houston, Texas 77002, filed an application in Docket No. CP02–103–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, by sale to Crosstex Energy Services, Ltd. (Crosstex), the South of MOPS Facilities, consisting of 70.25 miles of 20-inch diameter pipeline, Florida's Compressor Station No. 2 (consisting of two units for a total of 4,000 horsepower), and various measurement facilities with appurtenances, all located in San Patricio, Refugio, and Nueces Counties Texas. The application also requests that the Commission determine that, upon abandonment and sale of such facilities, the South of MOPS Facilities will be intrastate transportation facilities under section 2(16) of the NGPA, and exempt from jurisdiction of the Commission under the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from follow the instructions (call (202)208–2222 for assistance).

Any questions regarding this application should be directed to Stephen T. Veatch, Director of Certificates & Regulatory Reporting, Florida Gas Transmission Company, P.O. Box 1188, Houston, Texas 77251, at (713) 853–6549 or Frazier King, Senior Counsel at (713) 853–7228.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before April 3, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6559 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1149–001]

ISO New England Inc.; Notice of Filing

March 13, 2002.

Take notice that on March 12, 2002, ISO New England Inc. submitted an amendment to its February 27, 2002 Market Rule filing in the above docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 20, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6563 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–309–000 and ER02–309–001]

MEP Clarksdale Power, LLC; Notice of Issuance of Order

March 13, 2002.

MEP Clarksdale Power, LLC (MEP Clarksdale) submitted for filing a rate tariff under which MEP Clarksdale will engage in the sales of energy and capacity at market-based rates. MEP Clarksdale also requested waiver of various Commission regulations. In particular, MEP Clarksdale requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MEP Clarksdale.

On March 11, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MEP Clarksdale should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, MEP Clarksdale is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MEP Clarksdale, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MEP Clarksdale's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm*

(call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6560 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Soda Project No. 20–019, Grace-Cove Project No. 2401–007, Oneida Project No. 472–017]

PacifiCorp—Bear River Projects, Caribou and Franklin Counties, Idaho; Notice

March 13, 2002.

John Ramer, of the Commission's Office of Energy Projects, (202) 219–2833, has been assigned to assist with any questions that may involve the merits of the projects in the above-captioned proceedings. He has been separated from, and will not participate as, advisory staff in these proceedings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6564 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–814–000]

Thoroughbred Generation Company, LLC; Notice of Issuance of Order

March 13, 2002.

Thoroughbred Generation Company, LLC (TCC) submitted for filing a rate schedule under which TCC will engage in the sales of energy and capacity at market-based rates. TCC also requested waiver of various Commission regulations. In particular, TCC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by TCC.

On March 11, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TCC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, TCC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of TCC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TCC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6562 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–99–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

March 13, 2002.

Take notice that on February 28, 2002, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas 77056, through its agent, Williams Energy Marketing & Trading Company (Williams) (formerly Williams Energy Services Company), One Williams Center, Suite 4100, Tulsa, Oklahoma 74172, tendered for filing an abbreviated application for authority pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's Regulations, to abandon a portion of its existing individually certificated Rate Schedule FS service for Eastern Shore Natural Gas Company (Eastern Shore) and to assign a portion of the abandoned Rate Schedule FS service to two customers of Eastern Shore, all as more fully set forth in the application , which is on file and open to public inspection. Transco further asserts that no abandonment of any facility is proposed. The application may be viewed on the Web at *www.ferc.gov using the "RIMS"* link, select "Docket #" from the RIMS menu and follow the instructions (call (202) 208–2222 for assistance).

Any person desiring to be heard or to protest these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, by or before April 3, 2002, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room.Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Any question concerning this application should be directed to Mr. David Richins, Williams Energy Marketing & Trading Company, One Williams Center, Suite 4100, Tulsa, Oklahoma 74172 at (918) 573–1469.

Take notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own

motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6558 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–102–000, et al.]

Bastrop Energy Partners. L.P., et al.; Electric Rate and Corporate Regulation Filings

March 12, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Bastrop Energy Partners, L.P.

[Docket No. EG02–102–000]

Take notice that on March 8, 2002, Bastrop Energy Partners, L.P. (the Applicant), with its principal office at 125 Old Bastrop Highway, Cedar Creek, Texas 78612, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited partnership engaged directly and exclusively in the business of constructing and operating an approximately 536 MW gas-fired generating facility to be located in Bastrop County, Texas. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment Date: April 1, 2002.

1. Soyland Power Cooperative, Inc.

[Docket No. ER02–598–001]

Take notice that on March 6, 2002, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (the Commission) a revised Schedule A, designated as Supplement No. 5 to its Rate Schedules, in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order dated February 5, 2002.

Comment Date: March 27, 2002.

2. Duke Energy Hot Spring, LLC

[Docket No. ER02–694–001]

Take notice that on March 6, 2002, Duke Energy Hot Spring, LLC (Duke Energy Hot Spring) tendered for filing with the Federal Energy Regulatory Commission (Commission), a notice of status change in connection with the Commission's order authorizing a change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc. (98 FERC ¶ 61207(2002)).

Copies of the filing were served upon all parties on the official service list in this proceeding.

Comment Date: March 27, 2002.

3. RWE Trading Americas Inc.

[Docket No. ER02–1252–000]

Take notice that on March 5, 2002, RWE Trading Americas Inc. (RWE Trading) filed with the Commission for acceptance RWE Trading's admission as a member in the Western Systems Power Pool (WSPP). In addition, RWE Trading requests a Commission order granting an amendment to the WSPP Agreement to include RWE Trading as a participant.

A March 6, 2002 effective date has been requested.

RWE Trading states that copies of this filing were sent to the members of the WSPP Executive Committee and the General Counsel to the WSPP.

Comment Date: March 26, 2002.

4. Northeast Utilities Service Company

[Docket No. ER02–1253–000]

Take notice that on March 5, 2002, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Firm Point-To-Point Transmission Service to AES New Energy, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to AES New Energy, Inc.

NUSCO requests that the Service Agreement become effective March 29, 2002.

Comment Date: March 26, 2002.

5. Commonwealth Edison Company

[Docket No. ER02–1254–000]

Take notice that on March 5, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated executed Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT). The executed Service Agreement and associated executed DSA replace the unexecuted Service Agreement and unexecuted DSA between ComEd and Exelon which were previously filed with the Commission on February 28, 2002, designated as Docket No. ER02–1183–000.

ComEd requests an effective date of March 1, 2002 for both the executed Service Agreement and the associated executed DSA, which is the same effective date that ComEd requested for the unexecuted Service Agreement and associated unexecuted DSA with Exelon filed in Docket No. ER02–1183–000. Accordingly, ComEd requests waiver of the Commission's notice requirements.

A copy of this filing was served on Exelon and ORMET Corporation.

Comment Date: March 26, 2002.

6. PPL Electric Utilities Corporation

[Docket No. ER02–1255–000]

Take notice that on March 5, 2002, PPL Electric Utilities Corporation (PPL Electric) and Citizens' Electric Company of Lewisburg (Citizens' Electric) filed an Interconnection Agreement between PPL Electric and Citizens' Electric.

PPL Electric and Citizens' Electric request an effective date of February 1, 2002 for the Interconnection Agreement.

Comment Date: March 26, 2002.

7. Hermiston Power Partnership

[Docket No. ER02–1257–000]

Take notice that on March 5, 2002, Hermiston Power Partnership (the Applicant) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 546 megawatt electric generation facility located in Umatilla County, Oregon. Applicant also submitted for filing a power marketing agreement for which it requests privileged and confidential treatment.

Comment Date: March 26, 2002.

8. New England Power Company

[Docket No. ER02–1259–000]

Take notice that on March 6, 2002, New England Power Company (NEP), on behalf of Massachusetts Electric Company, submitted for filing Original Service Agreement No. 211 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second

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Revised Volume No. 9 between NEP and Paxton Municipal Light Department.

NEP states that a copy of this filing has been served upon Paxton and regulators in the State of Massachusetts.

Comment Date: March 27, 2002.

9. Michigan Electric Transmission Company

[Docket No. ER02–1260–000]

Take notice that on March 6, 2002, Michigan Electric Transmission Company (METC) tendered for filing executed Service Agreements for Network Transmission Service (Agreements) with Nicor Energy, L.L.C. and Wolverine Power Marketing Cooperative (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 155 and 156 under that tariff.

METC is requesting effective dates of March 1, 2002 and February 4, 2002, respectively, for the Agreements. Copies of the Agreements were served upon the Michigan Public Service Commission, ITC and the Customers.

Comment Date: March 27, 2002.

10. Vermont Electric Power Company, Inc.

[Docket No. ER02–1261–000]

Take notice that on March 5, 2002, Vermont Electric Power Company, Inc. (VELCO) filed a revised transmission agreement among VELCO, the electric utilities serving the state of Vermont and the Vermont Department of Public Service, designated by the Commission as VELCO's FERC Rate Schedule No. 246.

VELCO seeks an effective date of May 1, 2002 for the revised transmission agreement and, accordingly, seeks waiver of the Commission's notice requirements to the extent necessary. Copies of the filing have been served on all customers under the agreement and on the Vermont Public Service Board.

Comment Date: March 26, 2002.

11. Southwest Reserve Sharing Group

[Docket No. ER02–1262–000]

Take notice that on March 6, 2002, Tucson Electric Power Company tendered for filing on behalf of the members of the Southwest Reserve Sharing Group an amendment to the Southwest Reserve Sharing Group Participation Agreement.

Comment Date: March 27, 2002.

12. Cabrillo Power I LLC, Cabrillo Power II LLC

[Docket No. ER02–1264–000]

Take notice that on March 5, 2002, Cabrillo Power I LLC and Carbillo Power II LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an informational filing and other revisions to their Reliability Must-Run Service Agreements with the California Independent System Operator Corporation.

A copy of the filing has been served on the California Independent System Operator Corporation, the California Electricity Oversight Board and San Diego Gas & Electric Company.

Comment Date: March 26, 2002.

13. Entergy Services, Inc.

[Docket No. ER02–1265–000]

Take notice that on March 7, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Calcasieu Development Company, L.L.C. (Enron Calcasieu), and a Generator Imbalance Agreement with Enron Calcasieu.

Comment Date: March 28, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1266–000]

Take notice that on March 6, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing its First Amended and Restated Rate Schedule FERC No. 204 with the Power Authority of the State of New York (the Power Authority).

Copies of the filing have been served on counsel for the City of Jamestown Board of Public Utilities, the Power Authority, the New York Independent System Operator, Inc., the New York State Public Service Commission, the New York State Electric Cooperative Association and the Municipal Electric Utilities Association of New York.

Comment Date: March 27, 2002.

15. Desert Power, L.P.

[Docket No. ER02–1267–000]

Take notice that on March 4, 2002, Desert Power, L.P. tendered for filing Service Agreement No. 3, Original Volume 1 with Northern States Power Company effective January 30, 2002.

Comment Date: March 25, 2002.

16. Desert Power, L.P.

[Docket No. ER02–1268–000]

Take notice that on March 4, 2002, Desert Power, L.P. tendered for filing Service Agreement No. 2, Original Volume 1 with Public Company of Colorado, effective date January 30, 2002.

Comment Date: March 25, 2002.

17. The Dayton Power and Light Company

[Docket No. ER02–1269–000]

Take notice that on March 5, 2002, The Dayton Power and Light Company (Dayton) submitted to the Federal Energy Regulatory Commission (Commission) service agreements The Dayton Power and Light Company Energy Services Department as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Dayton also requests waiver of the Commission's notice requirements. Copies of this filing were served upon The Dayton Power and Light Company Energy Services Department and the Public Utilities Commission of Ohio.

Comment Date: March 26, 2002.

18. Northeast Utilities Service Company

[Docket No. ER02–1270–000]

Take notice that on March 5, 2002, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Firm Point-To-Point Transmission Service to AES New Energy, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective March 29, 2002.

NUSCO states that a copy of this filing has been mailed to AES New Energy, Inc.

Comment Date: March 26, 2002.

19. Cinergy Services, Inc.

[Docket No. ER02–1271–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) and Conoco Power Marketing, Inc., are requesting a cancellation of Service Agreement No 110, under Cinergy Operating Companies, FERC Market-Based Power Sales, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of October 29, 1997.

Comment Date: March 27, 2002.

20. Cinergy Services, Inc.

[Docket No. ER02–1272–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) and Conoco Power Marketing, L.L.C. requested a cancellation of Service Agreement No. 33 under Cinergy Operating Companies, FERC Electric Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 27, 2002.

Comment Date: March 27, 2002.

21. Cinergy Services, Inc.

[Docket No. ER02–1273–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) and Conoco Power Marketing, Inc. are requesting a cancellation of Service Agreement No 110, under Cinergy Operating Companies, FERC Cost-Based Power Sales, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of October 29, 1997.

Comment Date: March 27, 2002.

22. Cinergy Services, Inc.

[Docket No. ER02–1274–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from Aquila Energy Marketing Corporation to Aquila Merchant Services, Inc. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Aquila Merchant Services, Inc.

Comment Date: March 27, 2002.

23. Florida Power & Light Company

[Docket No. ER02–1275–000]

Take notice that on March 6, 2002, Florida Power & Light Company tendered for filing with the Federal Energy Regulatory Commission a letter of agreement with El Paso Merchant Energy as a service agreement under its Open Access Transmission Tariff. A copy of the filing has been served on El Paso Merchant Energy and the Florida Public Service Commission.

Comment Date: March 27, 2002.

24. Illinois Power Company

[Docket No. ER02–1276–000]

Take notice that on March 6, 2002, Illinois Power Company (Illinois Power), filed a First Revised Interconnection Operating Agreement entered into with Piatt Midwest Statutory Trust II, assignee of Aquila Piatt County Power, L.L.C., and subject to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of February 12, 2002 for the First Revised Interconnection Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Piatt Midwest Statutory Trust II.

Comment Date: March 27, 2002.

25. Central Maine Power Company

[Docket No. ER02–1277–000]

Take notice that on March 7, 2002, Central Maine Power Company (Central Maine) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed S.D. Warren Somerset Entitlement Agreement. In addition, Central Maine requested confidential treatment for certain competitively sensitive material contained in the agreement.

Comment Date: March 28, 2002.

26. Michigan Electric Transmission Company

[Docket No. ER02–1278–000]

Take notice that on March 7, 2002, Michigan Electric Transmission Company (METC) tendered for filing executed Service Agreements for Network Transmission Service (Agreements) with Nicor Energy, L.L.C. and Wolverine Power Marketing Cooperative (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 155 and 156 under that tariff.

METC is requesting effective dates of March 1, 2002 and February 4, 2002, respectively, for the Agreements. Copies of the Agreements were served upon the Michigan Public Service Commission, ITC and the Customers.

Comment Date: March 28, 2002.

27. West Texas Utilities Company

[Docket No. ER02–1279–000]

Take notice that on March 7, 2002, West Texas Utilities Company (WTU) submitted for filing a revised service agreement with the City of Brady, Texas (Brady) under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU seeks an effective date of April 1, 2002 and, accordingly, seeks waiver of the Commission's notice requirements. WTU states that a copy of this filing has been served on Brady and the Public Utilities Commission of Texas.

Comment Date: March 28, 2002.

28. The Detroit Edison Company

[Docket No. ER02–1280–000]

Take notice that on March 7, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Nicor Energy, LLC.

Comment Date: March 28, 2002.

29. Maine Electric Power Company

[Docket No. ER02–1281–000]

Please take notice that on March 7, 2002, Maine Electric Power Company (MEPCO) tendered for filing an Executed Service Agreement for "Umbrella" Non-Firm Point-to-Point Transmission Service with Emera Energy Services, Inc., designated as FERC Electric Tariff, Volume No. 1, as supplemented, Service Agreement No. 68.

Comment Date: March 28, 2002.

30. Virginia Electric and Power Company

[Docket No. ER02–1282–000]

Take notice that on March 8, 2002, Virginia Electric and Power Company, d/b/a Dominion Virginia Power, tendered for filing a Notice of Cancellation and a revised cover sheet to cancel an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Tractebel North America Services, Inc. (Tractebel).

Dominion Virginia Power requested an effective date of March 9, 2002. Copies of the filing were served upon Tractebel and the Virginia State Corporation Commission.

Comment Date: March 29, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the

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instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6556 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–5–000, et al.]

Vermont Yankee Nuclear Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 11, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Vermont Yankee Nuclear Power Corporation

[Docket Nos. EC02–5–000 and ER02–211–002]

Take notice that on March 4, 2002, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing with the Federal Energy Regulatory Commission (Commission), FERC Electric Rate Schedule, First Revised Volume No. 12, in compliance with the Commission's order issued on February 1, 2002 in Docket Nos. EC02–5–000 and EL02–53–000.

Comment Date: March 25, 2002.

2. International Transmission Company

[Docket No. EC02–28–001]

Take notice that on March 4, 2002, International Transmission Company (International Transmission) tendered a filing in compliance with an order of the Federal Energy Regulatory Commission (Commission) issued on January 31, 2002, in the above-referenced docket, International Transmission Company, 98 FERC ¶ 61,078 (2002). In the order, the Commission directs International Transmission to submit a final updated list of all service agreements under the joint open access transmission tariff.

Comment Date: March 25, 2002.

3. Michigan Electric Transmission Company

[Docket No. ER02–540–001]

Take notice that on March 5, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a Notice of Cancellation of a Generator Interconnection and Operating Agreement (which is designated as Service Agreement No. 30 under METC's FERC Electric Tariff No. 1) to be effective February 22, 2002 or as soon thereafter as allowed by the Commission.

A copy of the Notice was served on the Generator, Tallmadge Generation Company, L.L.C.

Comment Date: March 26, 2002.

4. Central Maine Power Company

[Docket No. ER02–720–001]

Take notice that on March 5, 2002, in compliance with the Commission=s letter order dated February 20, 2002, Central Maine Power Company (Central Maine) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, executed, unredacted copies of the following service agreements: (1) System Contract Entitlement Agreement; (2) Renewable and Eligible Resource Entitlement Agreement; (3) Nuclear Entitlement Agreement (collectively, Entitlement Agreements). In addition, CMP tendered for filing executed, unredacted copies of the Comprehensive Credit Support and Final Settlement Calculation Agreement (Credit Support Agreement), which pertains to security of respective obligations in the entitlement agreements listed above. CMP further designated these agreements in accordance with Order No. 614, FERC Stats. & Regs. 31,096 (2000).

CMP originally filed the agreements on January 8, 2002, requesting confidential treatment for certain material contained in the agreements that Constellation Power Source, Inc. considered to be competitively sensitive business information. The Commission denied this request for confidentiality by letter order dated February 20, 2002, and requested CMP to re-file the agreements on a non-confidential basis within 15 days of the letter order. See Letter Order, Docket No. ER02–720–000 (Feb. 20, 2002). In addition, the Commission requested CMP to designate the agreements in accordance with Order No. 614.

Comment Date: March 26, 2002.

5. Great Plains Power Incorporated

[Docket No. ER02–725–001]

Take notice that on March 5, 2002, Great Plains Power Incorporated (GPPI) tendered for filing revised tariff sheets in support of its application for authorization to sell power at market-based rates.

Comment Date: March 21, 2002.

6. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1237–000]

Take notice that on March 4, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 375 to add RWE Trading Americas Inc. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date under the Service Agreement is March 1, 2002 or a date ordered by the Commission.

Copies of the filing have been provided to all parties of record.

Comment Date: March 25, 2002.

6. MPC Generating, LLC

[Docket No. ER02–1238–000]

Take notice that on March 4, 2002, MPC Generating, LLC (MPC) tendered for filing a Notice of Succession pursuant to sections 35.16 and 131.51 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.16 and 131.51. Effective February 1, 2002, MPC succeeded to the FERC Electric Tariff, Original Volume 1, of Monroe Power Company, pursuant to an assignment approved by order of the Commission in Progress Energy, Inc., 97 FERC ¶ 62,192 (2001).

Comment Date: March 25, 2002.

7. Pennsylvania Electric Company

[Docket No. ER02–1239–000]

Take notice that on March 4, 2002, Pennsylvania Electric Company submitted for filing a letter agreement (Agreement) between Penelec and its affiliate, FirstEnergy Solutions Corp. (FE Solutions). Under the Agreement, FE Solutions has agreed to the operational and financial responsibilities set forth in the Manuals in connection with FE Solutions becoming the Load Serving Entity for the Pennsylvania Borough of East Conemaugh. Copies of the filing were served upon FE Solutions, PJM and regulators in the Commonwealth of Pennsylvania.

Comment Date: March 25, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02–1240–000]

Take notice that on March 4, 2002, Virginia Electric and Power Company (the Company) respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to Sempra Energy Trading Corp., designated as Service Agreement No. 1 under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002.

The Company requests an effective date of February 1, 2002, as requested by the customer. Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: March 25, 2002.

9. Southern California Edison Company

[Docket No. ER02–1241–000]

Take notice that on March 4, 2002, Southern California Edison Company, (SCE) submitted a Letter Agreement between SCE and the City of Industry Public Utilities Commission (Industry). The Letter Agreement provides for SCE to commence with construction of interconnection facilities and to extend a distribution circuit in order to provide wholesale distribution service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: March 25, 2002.

10. West Texas Utilities Company

[Docket No. ER02–1242–000]

Take notice that on March 4, 2002, West Texas Utilities Company (WTU) filed with the Federal Energy Regulatory Commission (Commission) revisions to a service agreement between WTU and the City of Weatherford, Texas (Weatherford) under WTU's market-based rate power sales tariff. Effective February 1, 2002, the revision replaces the formula used to compute the fuel charge for sales to Weatherford under the service agreement with a fixed fuel charge.

WTU seeks an effective date of February 1, 2002 for the revised service agreement and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Weatherford and on the Public Utility Commission of Texas.

Comment Date: March 25, 2002.

11. PPL Brunner Island, LLC

[Docket No. ER02–1243–000]

Take notice that on March 4, 2002, PPL Brunner Island, LLC (PPL Brunner Island), filed with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Brunner Island and Brunner Island Services, LLC under PPL Brunner Island's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1.

PPL Brunner Island requests an effective date of February 1, 2002 for the Power Sales Agreement. PPL Brunner Island states that a copy of this filing has been provided to Brunner Island Services, LLC.

Comment Date: March 25, 2002.

12. PPL Montour, LLC

[Docket No. ER02–1244–000]

Take notice that on March 4, 2002, PPL Montour, LLC (PPL Montour), filed with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Montour and Montour Services, LLC under PPL Montour's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1.

PPL Montour requests an effective date of February 1, 2002 for the Power Sales Agreement. PPL Montour states that a copy of this filing has been provided to Montour Services, LLC.

Comment Date: March 25, 2002.

13. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER02–1245–000]

Take notice that on March 4, 2002, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Aquila Energy Marketing Corporation (AQUILA), dated March 1, 2002. This Service Agreement specifies that AQUILA has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and AQUILA to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 1, 2002 for the Service Agreement. GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 25, 2002.

14. The Dayton Power and Light Company

[Docket No. ER02–1246–000]

Take notice that on March 4, 2002, The Dayton Power and Light Company (Dayton) submitted to the Federal Energy Regulatory Commission (Commission) service agreements establishing NRG Power Marketing Inc., as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon NRG Power Marketing Inc., and the Public Utilities Commission of Ohio.

Comment Date: March 25, 2002.

15. The Dayton Power and Light Company

[Docket No. ER02–1247–000]

Take notice that on March 4, 2002, The Dayton Power and Light Company (Dayton) submitted service agreements establishing The Dayton Power & Light Company (Energy Services) as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon The Dayton Power & Light Company (Energy Services) and the Public Utilities Commission of Ohio.

Comment Date: March 25, 2002.

16. The Dayton Power and Light Company

[Docket No. ER02–1248–000]

Take notice that on March 4, 2002, The Dayton Power and Light Company (Dayton) submitted service agreements establishing NRG Power Marketing Inc. as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon NRG Power Marketing Inc. and the Public Utilities Commission of Ohio.

Comment Date: March 25, 2002.

17. Mississippi Power Company

[Docket No. ER02–1249–000]

Please take notice that Mississippi Power Company on March 5, 2002, tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume Number 1. The proposed changes would increase revenues from jurisdictional sales and service by $10.537,835 based on the 12-month period ending December 31, 2002. add an energy cost management clause to

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the tariff, change the formula for the fuel adjustment clause and restate the tariff, all in accordance with a settlement agreement between Mississippi Power Company and all its customers who take service under the tariff.

Copies of the filing were served upon South Mississippi Electric Power Association, East Mississippi Electric Power Association, Coast Electric Power Association, Pearl River Valley Electric Power Association, Singing River Electric Power Association, Dixie Electric Power Association, Southern Pine Electric Power Association, the City of Collins, Mississippi, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment Date: March 26, 2002.

18. West Georgia Generating Company, L.L.C.

[Docket No. ER02–1250–000]

Take notice that on March 5, 2002, West Georgia Generating Company, L.L.C. (West Georgia) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the First Amended and Restated Negotiated Contract for the Purchase of Firm Capacity and Energy between West Georgia Generating Company, L.L.C. and Georgia Power Company (Negotiated Contract), as First Revised Service Agreement No. 4 under West Georgia's market-based rate tariff. West Georgia requested confidential treatment for the unredacted copy of the Negotiated Contract.

Comment Date: March 26, 2002.

19. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1251–000]

Take notice that on March 5, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed Interconnection Agreements (Agreements) with Allegheny Energy Supply Company, LLC—Albright (Service Agreement No. 376), Allegheny Energy Supply Company, LLC—Armstrong (Service Agreement No. 377), Allegheny Energy Supply Company, LLC—Fort Martin (Service Agreement No. 378), Allegheny Energy Supply Company, LLC—Harrison (Service Agreement No.379), Allegheny Energy Supply Company, LLC—Hatfield (Service Agreement No. 380), Allegheny Energy Supply Company, LLC—Lake Lynn (Service Agreement No. 381), Allegheny Energy Supply Company, LLC—Mitchell (Service Agreement No. 382), Allegheny Energy Supply Company, LLC—Pleasants (Service Agreement No.383), Allegheny Energy Supply Company, LLC—Rivesville (Service Agreement No. 384), Allegheny Energy Supply Company, LLC—Willow Island (Service Agreement No. 385) and Allegheny Energy Supply Company, LLC—R. Paul Smith (Service Agreement No. 386) under Allegheny Power's Open Access Transmission Tariff. The proposed effective date under the Agreements is March 6, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: March 26, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6508 Filed 3–18–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–52–000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Eastern Long Island Expansion Project and Request for Comments on Environmental Issues

March 13, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Eastern Long Island Expansion Project (ELI Project) involving construction and operation of facilities by Iroquois Gas Transmission System, L.P. (Iroquois) in Fairfield and New Haven Counties, Connecticut, and Dutchess and Suffolk Counties, New York.[1] These facilities would consist of about 29.1 miles of 20-inch-diameter pipeline, including 17.1 miles offshore in Long Island Sound; and 20,000 horsepower (hp) of compression. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice that Iroquois provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site, *www.ferc.gov*.

[1] Iroquois' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Iroquois wants to expand the capacity of its natural gas facilities in Connecticut and New York to transport an additional 175,000 dekatherms per day of firm transportation service to expanding markets on Long Island, New York. Iroquois seeks authority to construct and operate:

- 29.1 miles of 20-inch-diameter pipeline in New Haven County, Connecticut, and Suffolk County, New York;
- a new meter station along the proposed ELI pipeline at about milepost (MP) 29.1;
- ancillary facilities including a marine tap interconnection and facilities for the attachment of a pig launcher in Long Island Sound in Connecticut state waters; three mainline valves (MPs 17.5, 22.7, and 29.1), and one pig receiving facility housed within the meter station layout at the project terminus at MP 29.1;
- a new 20,000 horsepower compressor station at Iroquois' existing mainline valve site in Milford, Fairfield County, Connecticut;
- new piping, compressor and piping modifications, and ancillary facilities to accept natural gas from the Algonquin Gas Transmission (AGT) Company's AGT System at a proposed new Iroquois compressor station in Brookfield, Fairfield County, Connecticut (note: Iroquois is currently pursuing a separate FERC Certificate for the compressor station under Docket No. CP96–687–000);
- a discharge gas cooler to be added to the proposed new compressor station in Dover, Duchess County, New York (note: Iroquois is pursuing a separate FERC Certificate for the compressor station under Docket No. CP00–232–000); and
- temporary pipe and storage yards, staging areas, access roads, etc., to be used only during construction of the proposed facilities.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 369.0 acres of land, including 140.4 acres onshore and 228.6 acres offshore. This includes about 3.9 acres to construct the proposed aboveground facilities. Following construction, about 135.1 acres would be maintained as permanent/operational right-of-way (ROW). This includes about 72.9 acres onshore (including 0.2 acres for new aboveground facilities), and 62.2 acres for offshore ROW. The remaining 233.9 acres of land used only temporarily during construction would be restored and allowed to revert to its former use.

Iroquois proposes to use a 75-foot-wide ROW to construct most of its onshore pipeline, including 50 feet that would be maintained as permanent ROW. About 90 percent of the 12 miles of onshore construction would be within or adjacent to existing ROW. For offshore construction, Iroquois proposes to use a ROW that would be either 100, 200, or 300 feet wide for specific segments, and would include 30 feet to be maintained as permanent ROW.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EIS. Depending on the comments received during the scoping process, the EIS may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EIS is published. We will consider all comments on the EIS before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Iroquois. This preliminary list of issues may be changed based on your comments and our analysis.

- FERC is currently evaluating another project known as the Islander East Pipeline Project (Docket numbers CP01–384–000 and CP01–387–000), that would involve construction and operation of facilities proposed by Islander East Pipeline Company, L.L.C. (Islander East), and related facilities to be constructed and operated by Algonquin Gas Transmission Company (Algonquin). The facilities proposed within Suffolk County, New York would be within the same ROW proposed for use by Islander East.[4]
- About 17.1 miles of Long Island Sound would be crossed, with potential impacts to shellfish resources, sediments and benthic organisms, and potential essential fish habitat (EFH) for

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Although Iroquois believes its proposed ELI Project facilities could replace and are superior to the facilities proposed by Islander East, we note that the filed applications have different proposed customers. This means these projects could potentially serve mutually exclusive needs, and we must evaluate them each on their own merits. It is equally possible that the Commission could issue a Certificate for only one proposal, or it could approve both of them. Therefore, if you are a potentially affected landowner on Long Island, there is a possibility that both projects could be built, and the proposed ELI Project facilities would require permanent ROW in addition to what is proposed by Islander East. This issue will be described and evaluated in the EIS we prepare for the ELI Project.

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up to 37 federally managed species with designated EFH.

- Seven residences would be located within 50 feet of the construction work area.
- About 79.1 acres of the Central Pine Barrens would be disturbed, with 53.0 acres retained as permanent ROW.
- A total of 2 perennial and 1 intermittent waterbodies would be crossed.
- About 1.8 acres of wetlands would be disturbed during construction, with about 1.2 acres maintained as permanent ROW.
- About 78.4 acres of upland forest would be cleared during construction, including about 26.9 acres that would be maintained as permanent ROW.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or facility sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas 2.
- Reference Docket No. CP02–52–000.
- Mail your comments so that they will be received in Washington, DC on or before April 12, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website, www.ferc.gov, using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6557 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51984; FRL–6826–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 24, 2002 to February 12, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. This notice also includes a correction for a PMN from March 29, 2000. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51984 and the specific PMN number, must be received on or before April 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51984 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations"," Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/...

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51984. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51984 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51984 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 24, 2002 to February 12, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that

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may be available. This notice also includes a correction for PMN P–00–0685, from March 29, 2000, which corrects the Chemical Name. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 01/24/02 TO 02/12/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0685	03/29/00	06/27/00	CBI	(G) Additive for plastics	(G) Butadiene, alkylacrylate, alkyl methacrylate, co-polymer
P–02–0285	01/23/02	04/23/02	R. T. Vanderbilt Company, Inc.	(S) Functional filler for polymer systems	(S) Silane, trimethoxy[3-oriranylmethoxy]propyl-, reaction products with wollastonite (ca(sio3)
P–02–0286	01/23/02	04/23/02	CIBA Specialty Chemicals Corporation, textile effects	(G) Textile dye	(G) Naphthalenedisulfonic acid, amino halo alkyl sulfonyl alkyl amino-1,3,5-triazin sulfophenyl azo hydroxy substituted phenyl azo sodium salt
P–02–0287	01/23/02	04/23/02	BASF Corporation	(S) Processing aid for leather tanning	(G) Ethoylated alkyl alcohol
P–02–0288	01/23/02	04/23/02	CBI	(G) Dehydration and demulsification agent	(G) Alkoxylated fatty acid esters
P–02–0289	01/23/02	04/23/02	UBE America Inc.	(S) Raw material of polyurethane	(S) Carbonic acid, dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0290	01/24/02	04/24/02	PRC-Desoto International,PPG Industries Company	(S) Polymer for Adhesives and sealants	(G) Alkoxysilane terminated polyurethane polymer
P–02–0291	01/24/02	04/24/02	Sony Magnetic Products Inc. of America	(G) Binder resin	(S) Peroxydisulfuric acid ([ho)s(o) subscript 2] subscript 2 o subscript 2), dipotassium salt, reaction products with 2-(2-propenyloxy)ethanol-[(2-propenyloxy)methyl]oxirane-vinyl chloride polymer
P–02–0292	01/24/02	04/24/02	CBI	(G) Component of lubricating composition for finishing product of fiber and yarn	(G) Fatty acid, polyoxyethylene-alkyl ether, ester
P–02–0293	01/23/02	04/23/02	CBI	(G) Open, non-dispersive use.	(G) Acrylic polymer
P–02–0294	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0295	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0296	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0297	01/24/02	04/24/02	CBI	(S) Binder for nonwovens	(G) Functionalized styrene-butadiene-acrylonitrile copolymer
P–02–0298	01/25/02	04/25/02	Westvaco Corporation - Chemical Division	(S) Component in asphalt emulsifier	(G) Glycerides, animal, reaction products with polyamines
P–02–0299	01/24/02	04/24/02	CBC (America) Corporation	(S) Adhesive resin for adhesive tape to be used in the process of paper manufacturing	(S) 2-propenoic acid, polymer with ethyl 2-propenoate, potassium salt
P–02–0300	01/25/02	04/25/02	Westvaco Corporation - Chemical Division	(S) Asphalt emulsifier salt	(G) Glycerides, animal, reaction products with polyamines, hydrochlorides
P–02–0301	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,4-cyclododecanediol
P–02–0302	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,5-cyclododecanediol
P–02–0303	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,6-cyclododecanediol
P–02–0304	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyester monomer; fragrance intermediate; polyurethane monomer	(S) 1,12-dodecanediol
P–02–0305	01/29/02	04/29/02	Clariant ISM (America) Inc.	(S) Intermediate for manufacture of photo developing chemicals	(G) Benzyl ethoxy imidazoldine derivative

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 01/24/02 TO 02/12/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0306	01/28/02	04/28/02	Lamberti USA, Inc.	(S) Photoinitiator for uv-curable pigmented inks; photoinitiator for photoresists, optical fibers and printing plates; photoinitiator for uv-curable powder coatings; photoinitiator for uv-curable adhesives and other coatings; open/non-dispersive use	(S) 1-propanone, 1-[4-[(4-benzoylphenyl)thio]phenyl]-2-methyl-2-[(4-methylphenyl)sulfonyl]-
P–02–0307	01/29/02	04/29/02	Clariant LSM (America) Inc.	(S) Intermediate for production of photo development chemicals	(G) Bromo m anilide ester derivative
P–02–0308	01/29/02	04/29/02	Clariant LSM (America) Inc.	(S) Photo chemical intermediate	(G) Hydantoinyl m-anilide ester
P–02–0309	01/29/02	04/29/02	Clariant LSM (America) Inc.	(S) Raw material for manufacture of photo development chemicals	(G) Benzoic acid ester derivative
P–02–0310	01/31/02	05/01/02	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic polyisocyanate
P–02–0311	01/31/02	05/01/02	NOF America Corporation	(G) Impact modifier for use in engineering plastics	(G) Acrylic copolymer
P–02–0312	01/31/02	05/01/02	Eastman Chemical Company	(S) Size for processing textile fibers	(G) Poly(ester-ether)
P–02–0313	01/31/02	05/01/02	Eastman Chemical Company	(S) Size for processing textile fibers	(G) Poly(ester-ether)
P–02–0314	01/31/02	05/01/02	Eastman Chemical Company	(S) Size for processing textile fibers	(G) Poly(ester-ether)
P–02–0315	01/31/02	05/01/02	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic urethane acrylate
P–02–0316	01/31/02	05/01/02	The Dow Chemical Company	(S) Curing agent for epoxy resin formulations	(G) Branched phenolic hardener
P–02–0317	01/31/02	05/01/02	The Dow Chemical Company	(S) Curing agent for epoxy resin formulations	(G) Branched phenolic hardener
P–02–0318	01/31/02	05/01/02	The Dow Chemical Company	(S) Curing agent for epoxy resin formulations	(G) Branched phenolic hardener
P–02–0319	02/01/02	05/02/02	Degussa Corporation	(S) Automotive fuel lines	(G) Imine modified polyamide
P–02–0320	02/01/02	05/02/02	CBI	(S) Tackifying resin for adhesives formulations	(G) Polymer of phenol and substituted benzenes
P–02–0321	02/01/02	05/02/02	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household Products	(G) Ethoxy alkene
P–02–0322	02/04/02	05/05/02	Osram Sylvania Products Inc.	(G) Chemical intermediate (destructive use)	(S) Zinc, [ethandioato(2-)-.kappa.01,.kappa.02]-
P–02–0323	01/29/02	04/29/02	Solutia Inc.	(S) Defoamer for water based industrial coatings	(G) Modified fatty acid ester
P–02–0324	01/28/02	04/28/02	Lobeco Products, Inc.	(G) Coating additive for open, non-dispersive use	(G) Naphthalenesulfonic acid, alkyl derivs., sodium salt
P–02–0325	02/01/02	05/02/02	3M	(G) Coating	(G) Polyurethane prepolymer
P–02–0326	02/05/02	05/06/02	CBI	(S) Chemically reacted intermediate	(S) Benzenamine, 2-nitro-4-(trifluoromethyl)-
P–02–0327	02/05/02	05/06/02	CBI	(S) A polyol for making polyurethanes	(S) Soybean oil, epoxidized, reaction products with methanol
P–02–0328	02/04/02	05/05/02	Hercules Incorporated	(G) Water stable concrete and cement additive; scale control agent for water treatment	(G) Acrylate copolymer
P–02–0329	02/05/02	05/06/02	CBI	(G) Pigment dispersant	(G) Fatty acid polyethyleneimine condensate polymer
P–02–0330	02/05/02	05/06/02	Amfine Chemical Corporation	(G) Thickening agent	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0331	02/05/02	05/06/02	CBI	(S) Automotive base coates	(S) 1,3-benzenedicarboxylic acid, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, hexanedioic acid, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis [4-isocyanatocyclohexane], compd. with n,n-diethylethanamine
P–02–0332	02/05/02	05/06/02	CBI	(G) Surface coating resin	(G) Epoxy siloxane resin

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I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 01/24/02 TO 02/12/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0333	02/06/02	05/07/02	Aoc L.L.C.	(S) Polyester component for gelcoat resin for spray up of fiberglass reinforced and non-reinforced plastic parts	(S) 1,3-isobenzofurandione, hexahydro-, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,2-propanediol, 2-ethylhexyl ester
P–02–0334	02/05/02	05/06/02	Solutia Inc.	(S) Tire cord adhesion promoter	(G) Modified phenolic resin
P–02–0335	02/05/02	05/06/02	CBI	(S) Resin for coatings, inks and adhesives	(S) 2-propenoic acid, 2-methyl-, polymer with n-(1,1-dimethyl-3-oxobutyl)-2-propenamide, ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt
P–02–0336	02/05/02	05/06/02	Wise Technical Marketing, Inc.	(S) Anti-corrosive pigment for solvent based paints and coatings	(G) Organic complexes comprising alkaline earth metals and phosphates
P–02–0337	02/08/02	05/09/02	CBI	(G) Open, non-dispersive use	(G) Aromatic alkanoate
P–02–0338	02/11/02	05/12/02	CBI	(G) Leather dyestuff	(G) Copper azo dye
P–02–0339	02/12/02	05/13/02	CBI	(G) Amine synergists for coatings and inks	(G) Amino acrylate
P–02–0340	02/11/02	05/12/02	Solutia Inc.	(S) Crosslinker for paper coatings	(G) Modified melamine formaldehyde resin
P–02–0341	02/11/02	05/12/02	CBI	(G) Reaction modifier	(G) Partially propoxylated trifunctional polyamine
P–02–0342	02/11/02	05/12/02	Solutia Inc.	(S) Curing resin for industrial coatings	(G) Polyester resin
P–02–0343	02/11/02	05/12/02	CBI	(G) Open, non-dispersive use	(G) Aromatic acid diesters
P–02–0344	02/12/02	05/13/02	Daychem Laboratories, Inc.	(S) Monomers used for making specialty polymers	(S) Silane, trichloro[(4-methoxyphenyl)methyl]-
P–02–0345	02/12/02	05/13/02	CBI	(G) Textile lubricant	(G) Polyalkoxylated fatty acids
P–02–0346	02/12/02	05/13/02	CBI	(G) An open non-dispersive use	(G) Alkyd resin
P–02–0347	02/12/02	05/13/02	Custochem, Inc.	(S) Fiber lubricant denim finishing	(S) Fatty acids, C_{16-18}-unsatd., branced and linear, esters with high-boiling C_{6-10} alkene hydroformylation Products

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 36 NOTICES OF COMMENCEMENT FROM: 01/24/01 TO 02/12/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0341	01/30/02	12/19/01	(G) Urethane acrylate
P–00–0721	01/28/02	11/23/01	(G) Flexible acrylic polymer
P–00–1032	01/30/02	12/20/01	(G) Acrylated silica
P–00–1150	01/24/02	10/27/01	(G) Poly(ester-ether)
P–00–1184	02/06/02	10/25/01	(G) Phenol, polymer with formaldehyde, glycidyl ether, reaction Products with carbomonocylic carboxylic acid and hydroxy alkanoic acid homopolymer
P–01–0062	02/12/02	12/18/01	(G) Substituted bicyclic olefin
P–01–0334	01/30/02	10/24/01	(G) Polyether functional acrylic polymer
P–01–0424	01/28/02	10/11/01	(G) Benzopyranone
P–01–0456	01/25/02	01/22/02	(G) Inorganic layer polymer
P–01–0485	01/28/02	12/04/01	(G) Acrylic solution polymer
P–01–0555	01/25/02	12/26/01	(G) Hexanedioic acid, polymer with 1,4-butanediol, 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, oxyalkylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-alkylcyclohexane, compounded with triethylamine
P–01–0574	01/24/02	10/16/01	(G) Polycarbonate, polymer with polyester, substituted propanoic acid, a diamine and a diisocyanate, compounded with an amine
P–01–0676	02/05/02	11/07/01	(G) Polyalkoxylated aromatic chromophore
P–01–0680	02/05/02	11/13/01	(G) Polyalkoxylated intermediate
P–01–0689	01/28/02	11/16/01	(G) Substituted alkyl ester acid
P–01–0710	02/05/02	10/14/01	(G) Chromophore substituted polyoxyalkylene
P–01–0712	01/30/02	01/11/02	(G) Chromophore substituted polyoxyalkylene tint
P–01–0720	02/12/02	11/27/01	(G) Acrylic polymer resin
P–01–0729	01/31/02	01/17/02	(G) Aminopolyamide wet strength resin
P–01–0736	02/12/02	01/18/02	(G) Fatty alkylamines, reaction product with sodium chloracetate
P–01–0737	01/23/02	12/18/01	(G) Aminopolyamide
P–01–0757	02/08/02	01/30/02	(G) Alkyl carboxylic acid amine salt
P–01–0760	02/08/02	10/24/01	(G) Tetraisopropyl titanate, polymer with ketone resin and amyl acid phosphate

II. 36 NOTICES OF COMMENCEMENT FROM: 01/24/01 TO 02/12/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0811	01/29/02	11/26/01	(G) Modified hydrogenated rosin
P–01–0847	01/30/02	01/02/02	(G) Styrene, polymer with alky methacrylates and an alkanedioic acid diester
P–01–0865	02/12/02	02/07/02	(G) Ethylene amine aromatic epoxide adduct
P–01–0897	02/05/02	01/02/02	(G) Phosphated polyester
P–01–0898	01/31/02	01/16/02	(G) Grafted mercaptosiloxane(s)
P–01–0899	01/31/02	01/16/02	(G) Grafted mercaptosiloxane(s)
P–01–0935	02/04/02	01/12/02	(G) Aromatic thiophene derivative
P–02–0020	02/01/02	01/12/02	(G) Ester wax
P–02–0033	02/04/02	01/25/02	(G) Sodium salt of methacrylic acid, methylacrylate copolymer
P–98–0101	02/12/02	10/16/01	(S) 7-oxabicyclo[4.1.0]heptane-3-carboxylic acid, methyl ester
P–98–1212	01/25/02	01/17/02	(G) N-butyl, 2-ethylhexyl acrylate copolymer
P–99–0256	01/24/02	09/25/01	(G) Phtalic anhydride, polymer with diethyleneglycol, aliphatic alcohol esters
P–99–0621	02/07/02	11/28/01	(G) Isocyanate-functionalized prepolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 5, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–6616 Filed 3–18–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7159–1]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Burgess Inc. Site in Freeport, Illinois, which was signed by the Director of the Superfund Division, EPA Region 5, on January 9, 2002. The settlement resolves an EPA claim under section 107(a) of CERCLA against Gould Electronics Inc. The settlement requires the settling party to pay $107,500 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Freeport Public Library, 314 W. Stephenson St., Freeport, Illinois and EPA Offices, 7th Floor, 77 W. Jackson Blvd., Chicago, Illinois.

DATES: Comments must be submitted on or before April 18, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 7th Floor Superfund File Room, 77 W. Jackson Blvd., Chicago, Illinois. A copy of the proposed settlement may be obtained from Gaylene Vasaturo at (312) 886–1811. Comments should reference the Burgess Inc. Site, Freeport, Illinois and EPA Docket No. V–W–02–C–673 and should be addressed to Gaylene Vasaturo (C–14J), 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gaylene Vasaturo (C–14J), 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886–1811.

Dated: March 5, 2002.

William E. Muno,

Director, Superfund Division.

[FR Doc. 02–6614 Filed 3–18–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 21, 2002, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

I. Approval of Minutes

- February 14, 2002 (Open and Closed)

II. Reports

- FCS Building Association's Quarterly Report
- OFI Lending and Alternative Funding Mechanisms
- GAO–02–304: Farm Credit Administration—Oversight of Special Mission to Serve Young, Beginning, and Small Farmers Needs to Be Improved

III. New Business—Regulations

- Termination of Farm Credit Status—Draft Final Rule
- Electronic Commerce—Draft Final Rule

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Dated: March 15, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–6732 Filed 3–15–02; 2:16 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–570]

Commission Seeks Comment on BT North America, Inc.'s Expedited Petition for Clarification of the Contribution Obligations of Video Distribution Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on BT North America, Inc. Petition for Clarification of the universal service contribution obligations of non-common carrier video distribution service providers. Specifically, BT North America asks the Commission to clarify that similarly situated entities transmitting video programming on a non-common carrier basis, that do not compete with common carriers, should be exempted from contributing on the basis of revenues derived from these services.

DATES: Comments are due on or before April 9, 2002. Reply comments are due on or before April 19, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On February 6, 2002, BT North America, Inc. (BT North America) filed a Petition for Clarification of the universal service contribution obligations of non-common carrier video distribution service providers. Specifically, BT North America asks the Commission to clarify that similarly situated entities transmitting video programming on a non-common carrier basis, that do not compete with common carriers, should be exempted from contributing on the basis of revenues derived from these services. Universal service contributions are based on a contributor's interstate and international revenues derived from domestic end users for telecommunications or telecommunications services. The Commission has previously stated that, consistent with section 254(d) of the Act, open video systems, cable leased access, and direct broadcast satellite (DBS) providers must contribute to universal service for revenues derived from the provision of interstate telecommunications services, but are not required to contribute for revenues derived from interstate telecommunications. We also note that broadcasters are not required to contribute to universal service.

BT North America asserts that the Commission's rationale for these exemptions should apply equally to its operations as well as other similarly situated entities. BT North America's Broadcast Division provides "occasional use" and "full time" broadcast services, including uplink, downlink, and transport portions of video transmission services. BT North America asserts that it does not compete with common carriers. Rather, BT North America argues that its competitors include other providers of satellite video transmission, broadcasters, DBS operators, and cable operators. We seek comment on this petition.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments are due on or before April 9, 2002 and reply comments are due on or before April 19, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 24121, May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Dated: March 13, 2002.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 02–6526 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 1, 2002:

Harmon County for Public Assistance.

Payne and Woodward Counties for Categories C through G under Public Assistance (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance at 75 percent Federal funding under Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–6575 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1405–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1405–DR), dated March 12, 2002, and related determinations.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 12, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from a severe winter storm with high winds on February 7–8, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Coos, Curry, Douglas, Lane, and Linn Counties for Public Assistance.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–6576 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–04]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under the National Family Caregiver Support Program it will hold a competition to fund grant awards for up to seven (7) projects at a federal share of approximately $150,000–$200,000 per year for a project period of up to two (2) years.

Purpose of Grant Awards: The purpose of these projects is to develop services and systems to sustain the efforts of families and other informal caregivers of older individuals, and grandparents or older individuals who are relative caregivers of children.

Eligibility for Grant Awards and Other Requirements: Applications for funding under this program announcement are limited to organizations with demonstrated expertise in aging and caregiving and the ability to provide the proposed assistance nationwide. Public and private non-profit organizations, including faith-based and community-based organizations, are eligible to apply for these grant awards.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is May 10, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for Community-Based Services, 330 Independence Ave., SW, Washington, DC 20201, by calling 202/619–2575, or online at *www.aoa.gov/egrants/.* Applications must be mailed or hand-delivered to the Office of Grants Management at the same address, or submitted online at *www.aoa.gov/egrants/.*

Dated: March 13, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–6619 Filed 3–18–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–03]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging (AoA) announces that under this program announcement it will hold a competition for "Senior Medicare Patrol Projects" for up to 33 projects at a federal share of approximately $160,000 per year for a period of three years.

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Purpose of Grant Awards: The purpose of these projects is to test the best ways of using the skills of retired nurses, doctors, accountants and other professionals to train seniors to serve as expert resources to detect and stop health care error, fraud and abuse.

Eligibility for Grant Awards and Other Requirements: Eligibility for grant awards is limited to public state and local agencies or nonprofit agencies, organizations and institutions in the following states and jurisdictions: Alaska, Alabama, Arkansas, Arizona, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Massachusetts, Maine, Michigan, Montana, New Mexico, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Texas, Utah, Vermont, Virginia, and Washington—to carry out cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in combating health care error, fraud, and abuse. Faith-based organizations are eligible to apply from the states and jurisdictions listed above.

Grantees are required to provide a 25 percent non-federal match.

DATES: The deadline date for the submission of applications is May 3, 2002.

ADDRESSES: Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, 330 Independence Avenue, SW, Room 4278 Washington, DC 20201. For further information, please contact Doris Summey or Barbara Lewis, at (202) 619–3775 or (202) 619–1351. Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Applicants should notify AoA by email or fax when the application is mailed. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants*

Dated: March 13, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–6618 Filed 3–18–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following teleconference meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant (PGDP) Workers, Program Announcement OH–99–143.

Times and Dates: 2 p.m.–2:15 p.m., March 26, 2002 (Open), 2:20 p.m.–4 p.m., March 26, 2002 (Closed).

Place: Teleconference number: 513.841.4560.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of the application received under the Memorandum of Understanding between the Department of Energy and the Department of Health and Human Services.

Note: Due to programmatic issues that had to be resolved, this **Federal Register** Notice is being published less than fifteen days before the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, M/S R–6, Cincinnati, Ohio 45226, telephone 513–841–4560.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–6656 Filed 3–15–02; 11:53 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0062]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit written or electronic comments on the collection of information by May 20, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. New Dietary Ingredient Premarket Notification—21 CFR 190.6 (OMB Control No. 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides that a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA (as delegate for the Secretary of Health and Human Services) upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient. FDA's regulations at part 190, subpart B (21 CFR part 190, subpart B) implement these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutritional Products, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include: (1) The complete name and address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplements that contain the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from unsafe dietary supplements. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
190.6	35	1	35	20	700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act will require a burden of approximately 20 hours of work per submission.

This estimate is based on the annual average number of premarket notifications FDA received during the last 3 years (*i.e.*, 1999–2001), which was 23. Twenty-three represents 12 more notifications than the agency received as an annual average during the previous 3-year period (*i.e.*, 1996–1998). Therefore, FDA anticipates a similar upward trend will be seen in the annual average number of notifications it receives during 2002–2004, which is estimated to be 35 (23 + 12 = 35).

Dated: March 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6493 Filed 3–18–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on scientific issues related to FDA's regulatory responsibilities.

Date and Time: The meeting will be held on April 4, 2002, from 9 a.m. to 6 p.m. and April 5, 2002, from 8:30 a.m. to 2 p.m.

Location: Marriott Hotel, Grand Ballroom, 6400 Ivy Lane, Greenbelt, MD, 301–441–3700.

Contact Person: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

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Agenda: The purpose of this meeting is to discuss general scientific principles related to quality factors for infant formula. The committee will also be asked to discuss the scientific issues related to the generalization of findings from a clinical study using preterm infant formula consumed by preterm infants to a term infant formula intended for use by term infants.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 1, 2002. Oral presentations from the public will be scheduled on April 4, 2002, between approximately 1 p.m. and 6 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Catherine M. DeRoever at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 14, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–6620 Filed 3–14–02; 4:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–05]

Notice of Proposed Information Collection: Comment Request; Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 20, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Officer of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requirements for Single Family Mortgage Instruments.

OMB Control Number, if applicable: 2502–0404.

Description of the need for the information and proposed use: The single-family mortgage instruments are the documents used to record the mortgage (or deed of trust) and the mortgage note (or deed of trust note). These are public documents used to protect the interests of the mortgagor and mortgagee.

Agency form number, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number hours needed to prepare the information collection is 250,000, the estimated number of respondents is 9,000, the frequency of response varies according to business activity, but generates an estimated 1,000,000 responses per year, and the amount of time needed is 0.25 hours per response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 12, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–6553 Filed 3–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on February 7, 2002, a proposed Partial Consent Decree ("Decree") in *United States of America* v. *AlliedSignal Inc., et al.*, Civil Action No. 95–CV–0950–C(Sc), and *United States of America* v. *Niagara Frontier Transportation Authority, Inc., et al.*, Civil Action No. 96–CV–0219C(Sc), was lodged with the United States District Court for the Western District of New York.

In these consolidated actions, the United States sought reimbursement of response costs incurred by the United States in connection with clean up activities at the Bern Metals and Universal Iron and Metals Superfund Sites located in the City of Buffalo, Erie County, New York. The proposed Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., on behalf of the United States Environmental Protection Agency ("EPA") against defendants AlliedSignal Inc. (now Honeywell International, Inc.), General Motors Corporation, National Fuel Gas Distribution Corporation, New York State Electric and Gas Corporation, Niagara Frontier Transportation Authority, and Niagara Frontier Transit Metro System, Inc. relating to the Sites. The settling defendants are alleged to be liable as generators, or sucessors to generators, who arranged for the disposal of hazardous substances at the Sites, pursuant to section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3). The Decree provides that the settling defendants will collectively pay $2,745,585 to the United States in reimbursement of EPA's past response costs incurred at the Sites ($2,002,904.62 for EPA's past response costs at the Bern Metals Site and $742,680 for EPA's past response costs at the Universal Iron and Metals Site).

The Department of Justice will receive, for a period of thirty (30) days from the date of this application, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AlliedSignal Inc., et al.*, D.J. Ref. No. 90–11–2–1147, and *United States* v. *Niagara Frontier Transportation Authority, Inc., et al.*, D.J. Ref. No. 90–11–3–1571.

The Decree may be examined at the Office of the United States Attorney, Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202, and at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–6279 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on February 7, 2002, a proposed Partial Consent Decree ("Decree") in *United States of America* v. *AlliedSignal Inc., et al.*, Civil Action No. 95–CV–0950–C(Sc), and *United States of America* v. *Niagara Frontier Transportation Authority, Inc., et al.*, Civil Action No. 96–CV–0219C(Sc), was lodged with the United States District Court for the Western District of New York.

In these consolidated actions, the United States sought reimbursement of response costs incurred by the United States in connection with clean up activities at the Bern Metals and Universal Iron and Metals Superfund Sites located in the City of Buffalo, Erie County, New York, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607. The Decree provides that the settling defendant, Consolidated Rail Corporation ("Conrail"), alleged to be liable under section 107(a)(2) of CERCLA as an owner of a portion of the Bern Metals Site, will deposit into an interest-bearing escrow account, within 30 days of receiving notice of lodging of the Decree, $300,000 in reimbursement of EPA's past response costs incurred at the Bern Metals Site. Within 20 days after receiving notice of entry of the Decree, Conrail shall withdraw and pay to the United States all principal and accrued interest from the designated escrow account.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Allied Signal Inc., et al.*, D.J. Ref. No. 90–11–2–1147, and *United States* v. *Niagara Frontier Transportation Authority, Inc., et al.*, D.J. Ref. No. 90–11–3–1571.

The Decree may be examined at the Office of the United States Attorney, Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202, and at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–6280 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree, Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Angus Macdonald, et al.*, Civil Action No. 3:01CV00101, was lodged with the United States Court for the Western District of Virginia on March 1, 2002.

The consent decree resolves claims pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for past response costs of more than $3,493,000 incurred for response activities to address the release at the Everdure, Inc. Superfund Site, located in Orange County near Rapidan, Va. The United States filed a complaint in this matter in October, 2001, against four current and former owner/operators at the Site: Amy B. Macdonald, deceased, a former owner of the Site; her son, Angus Macdonald; Majorie T. Macdonald; and Glengary Development Corporation ("GDC"), a corporate entity that currently owns all but 9 acres of the Site. The proposed decree settles that case, and requires the Defendants to sell the GDC property and to pay sixty percent (60%) of the net proceeds from any sale of all or part of that property into a Site Special Account for future work at the Site or reimbursement of the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. As a result of the discovery of anthrax contamination at

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the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the United States Postal Service has been disrupted. Consequently, comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, and sent (1) c/o Patti Miller, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, United States Department of Justice, 1425 New York Avenue, NW 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Angus Macdonald, et al.*, DOJ # 90–11–3–06957.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, VA; and the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States* v. *Angus Macdonald, et al.*, DOJ # 90–11–3–06957, to the first-class mail address at EPA Region III or the overnight mail address at DOJ, 1425 New York Avenue, listed above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–6499 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—COVA Technologies Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), COVA Technologies Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are COVA Technologies, Inc., Colorado Springs, CO; and Celis Semiconductor Corporation, Colorado Springs, CO. The nature and objectives of the venture are to conduct research on ferroelectric nonvolatile memory technologies that will enable dense, ferroelectric memory products based on one-transistor ferroelectric memory cells.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–6500 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ace Wholesale & Trading Co.; Revocation of Registration

On March 16, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Ace Wholesale & Trading Company (Ace), located in Lakewood, Washington, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for *inter alia* the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Ace's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Ace and is owner, Sung Won Hwang (Hwang) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004652ALY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Ace that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On March 23, 2001, a copy of the OTSC was served upon Hwang as he was being processed for arrest for Federal offenses relating to the unlawful distribution of pseudoephedrine and conspiracy to manufacture methamphetamine. Since that time, no request for a hearing or any other response was received by DEA from Ace or Hwang nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Ace is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows: List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A "regulated person" is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A "regulated transaction" is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time ACE became registered with the DEA on December 20, 1999, as a distributor of the List I chemicals pseudoephedrine and phenylpropanolamine, Hwang was personally served with the DEA notices informing him that pseudoephedrine and other List I chemicals are diverted for use in clandestine methamphetamine laboratories, and served as well with the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to

manufacture a controlled substance is a violation of the Controlled Substances Act. DEA investigators explained to Hwang the information contained in the notices, and Hwang indicated that he understood.

On or about October 21, 1998, DEA and the Pierce County Sheriff's Department, Lakewood, Washington, initiated an investigation of a retail outlet (Retail Outlet) located in Lakewood, Washington, selling drug-related paraphernalia and List I chemical products containing pseudoephedrine. As set forth below, Ace and Hwang on an unknown number of occasions distributed large quantities of pseudoephedrine products to the Retail Outlet. The DEA investigation revealed that Ace and Hwang consistently failed to keep records of these regulated transactions.

On May 19 and May 30, 2000, undercover DEA investigators purchased a total of 429 bottles of 120 count 60 mg. pseudoephedrine tablets (51,480 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. An August 9, 2000, administrative inspection of Ace conducted by DEA revealed this pseudoephedrine had originated from Ace. This same administrative inspection revealed Ace had no records indicating it had ever supplied pseudoephedrine to the Retail Outlet.

On July 1, 2000, the Evergreen State College Police Department of Olympia, Washington, discovered a clandestine methamphetamine laboratory dump site. Several empty bottles of 60 mg. pseudoephedrine recovered from the Dump site were traced back to Ace.

On July 21, 2000, DEA investigators made an undercover purchase of 494 boxes of 48 count 60 mg. pseudoephedrine (23,712 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. The August 9, 2000, administrative inspection revealed this pseudoephedrine also originated from Ace.

During the August 9, 2000, inspection, Hwang admitted that a portion of his List I chemical inventory was stored at his residence, because he did not have enough room to store it at his registered address. Hwang's residence is not a registered address, according to DEA's records.

Also during the August 9, 2000, inspection, a DEA investigator obtained Ace's purchase and sales records for a particular lot number of 60 mg. Pseudoephedrine product for the period from July 2000 through close of business on the date of the inspection. A closing inventory of Ace on August 9, 2000, revealed no pseudoephedrine on hand reflecting this lot number. Examination of Ace's records, however, revealed that there should have been an inventory under this lot number of ten cases and 104 boxes (74,112 dosage units) of pseudoephedrine. Thus, Ace could not account for the disposition of this pseudoephedrine. DEA's investigation, however, showed that the lot number of the unaccounted-for pseudoephedrine matched that of the above-referenced July 21, 2000, 494 box undercover purchase from the Retail Outlet.

On August 15, 2000, a clandestine methamphetamine laboratory was discovered in Eatonville, Washington. Empty pseudoephedrine bottles recovered from the site were traced back to Ace.

On September 29, 2000, undercover DEA investigators purchased 240 bottles of 120 count 60 mg. pseudoephedrine tablets (28,800 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. The DEA investigation revealed substantial evidence that this pseudoephedrine was provided by Ace.

The review of Ace's records by DEA investigators during the August 9, 2000, inspection showed no List I chemical sales by Ace during the period from December 20, 1999, to August 9, 2000. The DEA investigation revealed, however, at least four separate distributions of pseudoephedrine to a firm not registered with DEA to handle List I chemicals. On May 22, 2000, on June 22, 2000, on July 14, 2000, and on July 28, 2000, Ace distributed 72 bottles of 120 count 60 mg. pseudoephedrine tablets (totaling 288 bottles/34,560 dosage units). The two July distributions combine to exceed the monthly cumulative threshold for pseudoephedrine, and therefore are considered regulated transactions. 21 CFR 1310.04. Each of these distributions was made to a firm that was not registered with DEA to handle List I chemicals.

The DEA investigation revealed Ace was distributing quantities of pseudoephedrine to retail establishments far in excess of legitimate demand. For example, Ace supplied a small retail convenience store with 144 boxes of 48 count 60 mg.pseudoephedrine tablets (6,912 dosage units) per month between July 1, 2000, and September 2, 2000. Thereafter, commencing October 1, 2000, Ace doubled the supply to the convenience store until a State criminal search warrant was served upon the convenience store November 9, 2000. While these do no appear to have been regulated transactions, they are indicative of Ace's excessive distribution practices. During the execution of this warrant, a post-dated sales receipt for pseudoephedrine from Ace was discovered, as well as a falsified Ace sales invoice.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Ace's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Ace's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as wound render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See, e.g. Energy Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422(1989)

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Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Ace and Hwang participated in the illegal diversion of pseudoephedrine having reasonable cause to believe it would be asked to manufacture methamphetamine. The DEA investigation showed Ace was distributing large quantities of pseudoephedrine to the Retail Outlet and other establishments that appeared far in excess of legitimate demand. In addition, Ace failed to follow recordkeeping requirements, as evidenced by its lack of records reflecting numerous regulated distributions to the Retail Outlet and its failure to account for 74,112 dosage units of pseudoephedrine during the August 9, 2000, inspection, in violation of 21 U.S.C. 842(a)(10); 830(a)(1); and 21 CFR 1310.03 (failure to keep required records); and the July 14 and July 28, 2000, 72 bottle distributions to the firm not registered with DEA to handle List I chemicals, in violation of 21 U.S.C. 842(a)(9); 830(a)(3); and 21 CFR 1310.07 (failure to obtain proof of identity). Therefore, the Administrator finds Ace and Hwang failed to maintain effective controls against the diversion of pseudoephedrine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that Ace significantly violated applicable Federal law pertaining to recordkeeping and identification of parties to regulated transactions, as set foth in factor one, above. In addition, Ace failed to make required reports of suspicious listed chemical transactions pursuant to 21 U.S.C. 830(b)(1)(A), in that it was distributing pseudoephedrine to convenience stores in quantities that appeared far in excess of legitimate demand.

Ace and Hwang were notified regarding the dangers of List I chemical diversion by DEA investigators both orally and *via* written official notices. Therefore, these series of excessive distributions also were in violation of 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)), since Ace and Hwang had reasonable cause to believe the pseudoephedrine would be diverted to the manufacture of methamphetamine.

The Administrator also finds the November 9, 2000, search of the convenience store revealed substantial evidence that Ace participated in falsifying documents in an attempt to conceal the frequency and quantity of pseudoephedrine it was distributing to the convenience store referenced above. The post-dated Ace sales receipt and the falsified Ace sales invoice seized during the search are evidence of violations of 21 U.S.C. 843(a)(4)(A) and 830(a) and 21 CFR 1310.03.

Finally, the investigative file reflects that Hwang was arrested March 23, 2001 in Seattle, Washington, by the Federal Bureau of Investigation on charges involving the illegal distribution of pseudoephedrine and conspiracy to manufacture methamphetamine.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Ace or Hwang has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Hwang failed to maintain adequate controls in handling and distributing the List I chemical pseudoephedrine, and actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in the first and second factors, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds the November 9, 2000, search of the convenience store revealed substantial evidence that Ace participated in falsifying documents in an attempt to conceal the frequency and quantity of pseudoephedrine it was distributing to the convenience store referenced above, in violation of 21 U.S.C. 843(a)(4)(A) and 830(a) and 21 CFR 1310.03. The Administrator finds this willingness to falsify records, taken together with Ace's and Hwang's demonstrated disregard of the statutory law and regulations concerning the distribution and recordkeeping requirements pertaining to List I chemicals, makes questionable Ace's and Hwang's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 FR 35459 (2001); Terrence E. Murphy, 61 FR 2841 (1996).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 004652ALY, previously issued to Ace Wholesale & Trading company, be, and it hereby is revoked; and any pending applications for renewal or modification of said registration be and hereby are, denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6568 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Aqui Enterprises; Denial of Application

On or about November 6, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Socorro Keenan, Aqui Enterprises (Aqui), of Las Vegas, Nevada, notifying her of an opportunity to show cause as to why the DEA should not deny her application, dated July 22, 1997, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine, and also deny her request for modification of her application, dated September 25, 1997, and also revoke her exemption to distribute such List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Aqui that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received by Aqui on or about November 21, 2000, and DEA received on December 12, 2000, a written response with attachments from Ms. Keenan dated November 21, 2000. This response contained various objections to the allegations set forth in the OTSC. The response neither requested nor waived Aqui's right to a hearing.

By letter dated December 19, 2000, an Administrative Law Judge (ALJ) sent a letter to Aqui requesting that it clarify whether or not it was exercising its right to a hearing, and granting until January 14, 2001, to respond.

On January 24, 2001, the ALJ issued an "Order Terminating Proceedings" indicating that Aqui had not responded to the December 19, 2000, letter and referring the matter to the Administrator for final decision without a hearing.

Therefore, the Administrator of the DEA, finding that no response having been received to the ALJ's December 19, 2000, letter, concludes that Aqui has waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. Aqui's letter and attachments received December 12, 2000, will be considered as "a written statement regarding [Aqui's] position on the matter of fact and law . . . and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein." 21 CFR 1316.49.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A "regulated person" is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38) A "regulated transaction" is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The Administrator finds that during a preregistration inspection conducted by DEA investigators September 25, 1997, the investigators discovered that Aqui's proposed registered address was a mail box. When the investigators informed Ms. Socorro Keenan (Ms. Keenan), sole owner and operator of Aqui, that the proposed registered address would be insufficient to comply with DEA security requirements, Keenan submitted a written modification dated the same day requesting to change the proposed registered address on Aqui's application. An inspection of the modified proposed registered location by DEA investigators revealed that this location was a small office with no room for storage of listed chemical products and no adequate security as required by 21 CFR 1309.71. Ms. Keenan stated to investigators that she did not feel she needed secure storage, because she planned to distribute the List I chemical products immediately upon receipt.

During the September 25, 1997, preregistration inspection, DEA investigators informed Ms. Keenan *via* both written and oral notice that pseudoephedrine is often diverted to the illicit manufacture of methamphetamine.

On or about October 10, 1997, Aqui sold approximately 60 cases of pseudoephedrine to an individual who paid cash and who took delivery of the chemical in a rented U–Haul truck. In addition, Aqui failed to keep required records of this regulated transaction.

On or about November 5, 1997, Aqui sold approximately 20 cases of pseudoephedrine to an individual who paid cash and who took delivery of the chemical in a rented U–Haul truck. Aqui failed to keep required records of this regulated transaction.

On or about November 11, 1997, Aqui purchased 20 cases of pseudoephedrine, and stored the chemical at an unregistered location with inadequate security.

On or about November 12, 1997, Aqui again purchased 20 cases of pseudoephedrine and attempted to store the chemical at an unregistered location without adequate security.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

The Administrator finds factors one, two, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements at the modified proposed registered location for the storage of listed chemical products, in that Aqui had no facility for storage of List I chemical products, and no security system. During the September 25, 1997, pre-registration inspection, in response to DEA investigator concerns about security, Ms. Keenan stated she had no need for storage, since she would distribute the chemicals immediately upon receipt. The Administrator finds this dubious proposition unacceptable, for obvious security concerns. Regardless of the feasibility of this scheme, Ms. Keenan had previously just told DEA investigators that Aqui had no customers.

On November 12, 1997, DEA investigators seized a total of 40 cases of pseudoephedrine from Ms. Keenan at a previously undisclosed storage unit in Las Vegas. She had already placed 20 cases of pseudoephedrine into the storage unit, and was in the act of unloading an additional 20 cases when the seizure occurred. The storage unit was not a DEA registered location, nor was it listed on Aqui's application. Moreover, the storage unit was not a secure location for the storage of List I chemicals. The DEA investigators noted that Ms. Keenan used counter-surveillance driving techniques when delivering the additional 20 cases of pseudoephedrine to the storage unit. When asked by DEA investigators what she intended to do with the 40 cases of pseudoephedrine, Ms. Keenan stated that, while she had no customers at the time, she was "building a supply." In response to further questioning, however, Ms. Keenan admitted the money for the purchase of the pseudoephedrine was provided by an individual to whom she had already sold at least 80 cases of pseudoephedrine, who paid cash and picked up the pseudoephedrine in a rented U–Haul truck. Ms. Keenan never properly verified the identity of this individual, but the DEA investigation revealed that the business address given by this individual was nothing but a mail drop. Ms. Keenan admitted she had never visited the purported business. DEA's investigation further revealed the address was the same as that of another business involved in a separate DEA investigation resulting in the seizure of 287 cases pseudoephedrine. DEA

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investigators also discovered Aqui had an order pending with a chemical distributor for an additional 60 cases of pseudoephedrine.

Ms. Keenan stated to investigators that she met this individual at a trade show in August, 1997, and at that same show, she was approached by a friend of this individual, who gave her a cashier's check for $7,000 for a future purchase of pseudoephedrine.

Information in the investigative file reveals that Aqui purchased at least 160 cases of pseudoephedrine in an approximately 14 week period, while Ms. Keenan state to DEA investigators on several separate occasions that Aqui had no customers. The DEA investigation revealed Aqui failed to keep required records of these regulated transactions.

Based on this evidence, the Administrator finds Aqui and Ms. Keenan failed to maintain and exercise effective controls against the diversion of pseudoephedrine.

Regarding factor two, compliance by the applicant with applicable Federal, State, and local law, the Administrator finds Aqui and Ms. Keenan violated applicable Federal law in the following primary instances.

The DEA investigation revealed Aqui and Ms. Keenan failed to keep required records of regulated transactions, in violation of 21 U.S.C. 830(a) and 21 CFR 1310.03(a). The investigation showed that on at least eight occasions, Aqui had cumulatively purchased at least 160 cases of 60 mg. 60 count bottled pseudoephedrine tablets in twenty case increments between July 30 and November 12, 1997. One case contains 144 bottles for a dosage unit total of 8640 per case and 172,800 per 20 case order. Each purchase was a regulated transaction, for which Aqui and Ms. Keenan failed to keep required records.

Aqui and Ms. Keenan also violated 21 CFR 1310.07 by failing to properly identify other parties to regulated transactions. Ms. Keenan stated to DEA investigators she had sold 80 cases of pseudoephedrine to an individual she met at a trade show. She stated that he approached her and asked if she could obtain pseudoephedrine for him. He had no apparent interest in any other of the usual convenience store products. As previously set forth in the discussion of the first factor, above, this individual paid cash for his purchases and picked up the pseudoephedrine in a rented U-Haul truck. The local business address provided by this individual was only a mail drop, and, as set forth above, another purported business using this same address was involved in a DEA investigation that culminated in the seizure of 287 cases of pseudoephedrine. Ms. Keenan admitted to investigators that she had never visited this purported business. In addition, at the same trade show a friend of this individual gave Ms. Keenan a $7,000 cashier's check for a future purchase of pseudoephedrine.

The Administrator finds the circumstances surrounding the distributions set forth above to be extremely suspicious, and therefore concludes that Ms. Keenan and Aqui also violated 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1) by failing to report a suspicious method of payment and delivery.

The Administrator finds also that Aqui and Ms. Keenan violated 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)) in that she distributed a listed chemical having reasonable cause to believe that the chemical would be used to manufacture a controlled substance, to wit, methamphetamine. Information in the investigative file reveals that, on at least three separate occasions, Ms. Keenan received a written official DEA notice warning of the dangers of diversion of pseudoephedrine to the illicit manufacture of methamphetamine. The first notice was provided at the time of the pre-registration inspection, September 25, 1997. At this time, DEA investigators also provided oral notice of the dangers of diversion, as well as a discussion of all recordkeeping and reporting requirements pertaining to listed chemical handlers, and Ms. Keenan stated at that time that she understood. A second written notice was provided by certified mail October 30, 1997. A third notice was provided at the time of the November 12, 1997, seizure of the 40 cases from the unregistered, undisclosed storage unit. The Administrator finds the suspicious circumstances concerning Aqui's distribution of pseudoephedrine set forth above provided Ms. Keenan reasonable cause to believe that the chemicals were being diverted to the illicit manufacture of methamphetamine.

The Administrator also finds that Aqui and Ms. Keenan violated 21 CFR 139.23 by storing pseudoephedrine in an unregistered location (and which location was not set forth in her application). On November 12, 1997, DEA investigators seized 40 cases of pseudoephedrine from a previously undisclosed storage unit, as set forth in factor one, above.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Aqui and Ms. Keenan have violated applicable Federal law and regulations relating to the handling and distribution of listed chemicals, as set forth in factor two, above.

Regarding factor five, other factors relevant to and consistent with the public safety, the DEA investigators charged with investigating Aqui's application reported that Ms. Keenan was not cooperative in providing necessary information to properly investigate the application. For instance, despite repeated requests by the investigators, Ms. Keenan failed to provide customer and supplier lists. When she finally provided a customer list (in response to the November 12, 1997 seizure, in the opinion of the DEA investigators), a telephone call to one or two customers per every page of the 69-page list revealed that none of those called were in fact customers of Aqui, or had ever heard of Aqui or Ms. Keenan. Ms. Keenan also refused to provide the quantities of List I chemical products, she previously has purchased, and further refused to provide any information concerning the recipients of these chemicals.

Additionally, the Administrator finds substantial evidence that Ms. Keenan was not being candid with investigators concerning her handling and distribution of pseudoephedrine. On November 12, 1997, 40 cases of pseudoephedrine were seized from Ms. Keenan by DEA from a previously undisclosed storage unit. DEA investigators noted that Ms. Keenan used counter-surveillance driving techniques when delivering additional pseudoephedrine to the storage unit. At the time of this seizure, she repeated her earlier statements that she had no customers, and was just "building a supply." Yet, upon further questioning, Ms. Keenan admitted she already had distributed 80 cases of pseudoephedrine to the individual she met at the trade show, as set forth above. As previously stated, the Administrator finds the circumstances of these distributions extremely suspicious. Additionally, also at the time of this seizure, DEA investigators noted that the storage unit contained only pseudoephedrine and old furniture. Since Ms. Keenan described Aqui as a supplier of novelty items to convenience stores, the investigators queried Ms. Keenan regarding the whereabouts of her stock of convenience store items. Ms. Keenan stated that she had some samples, but had given them away. The Administrator finds Ms. Keenan's explanation suspicious, and furthermore finds scant evidence in the investigative file that Aqui did in fact supply convenience stores with novelty items.

Therefore, the Administrator finds substantial evidence in the investigative file that Ms. Keenan exhibited a lack of candor regarding her handling and distribution of the List I chemical pseudoephedrine. The Administrator finds this lack of candor, taken together with Aqui's and Ms. Keenan's demonstrated disregard of the statutory law and regulations concerning the distribution, reporting, and recordkeeping requirements of List I chemicals, makes questionable Aqui's and Ms. Keenan's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division*, 66 FR 35459 (2001); *Terrence E. Murphy*, 61 FR 2841 (1996).

The Administrator further finds that Ms. Keenan's letter dated November 21, 2000, in response to the OTSC contained only unsupported allegations, and pursuant to 21 CFR 1309.53(b), the Administrator concludes that this evidence is entitled to little, if any, weight. The gist of the letter appeared to concern the November 12, 1997, seizure of the 40 cases of pseudoephedrine. Ms. Keenan requested DEA "to return the cash value in today's market for what was taken from the secured/locked location on November 12, 1997." She then referenced two DEA case and seizure numbers. Documentation in the investigative file indicates that the seized pseudoephedrine is undergoing forfeiture proceedings pursuant to 21 U.S.C. 881. The Administrator finds that the forfeiture proceedings will allow Ms. Keenan sufficient due process to assert whatever legitimate interest she may have in the seized pseudoephedrine, and furthermore, that such a determination is beyond the scope of this Final Order.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Aqui.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration and also the request for modification of the application dated September 25, 1997, submitted by Aqui Enterprises, be denied; and furthermore that the exemption of Aqui Enterprises to distribute List I chemicals is hereby revoked. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6572 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David W. Linder; Denial of Application

On or about June 27, 2001, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to David Linder (Linder), residing in Bullhead City, Arizona, notifying him of an opportunity to show cause as to why the DEA should not deny his application, dated May 14, 2000, for a DEA Certificate of Registration as a distributor of the List I chemical gamma-butrolactone (GBL), pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Linder that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked "Unclaimed." The OTSC was re-mailed to Linder *via* first class mail. This letter was also returned to DEA, marked "Return to Sender—Attempted—Not Known—No Forwarding Address." Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no request for a hearing having been received, concludes that Linder is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). The List I chemical GBL has industrial uses as a solvent. GBL is also a precursor chemical and is readily synthesized into the Schedule I controlled substance GBH. Schedule I controlled substances have no accepted medical use, and are highly subject to abuse. 21 U.S.C. 812(b)(1).

The Administrator finds that during the June 29, 2000, pre-registration inspection, Linder stated to DEA investigators that he intended to distribute GBL to computer companies for use as an organic cleaner. Linder further stated he was engaged in pond construction. Linder failed to indicate that he had any knowledge of or experience in the manufacturing, handling, or distributing of listing chemicals. Linder also stated he desired the DEA registration in part because he wished to recover a quantity of GBL previously seized from him by the State of Arizona.

During a follow-up interview on August 3, 2000, Linder was unable to provide DEA investigators with a list of prospective customers, or any method of identifying potential customers. He also stated he was not sure what percentage of his business would involve GBL. Linder stated he used GBL to clean computer parts and in making artificial ponds.

Also at the August 3, 2000, interview, Linder stated he does not advertise and does not operate any Web sites. On August 31, 2000, a DEA investigator spoke with a Las Vegas, Nevada, Narcotics Detective, who stated Linder was arrested in Las Vegas for possession of 350 gallons of GBL and GHB. The Detective also stated Linder sells nationwide on the internet, and that Linder is linked to the overdose death of a girl in Long Beach, California. The Detective further stated that, at the arrest of a suspected GBH trafficker, some of Linder's chemicals were found in the arrestee's residence. DEA investigators subsequently learned that Linder does in fact maintain a web site, called "AE—Alternative Entropy" wherein he *inter alia* advertises as "novelty items" and "for research purposes only" various allegedly psychedelic and hallucinogenic substances.

The DEA investigative file further reveals that on May 16, 1975, Linder was convicted by a Federal Court of Distribution of a Controlled Substance and Sale of Dangerous Drugs, as the result of the illegal sale to an undercover DEA agent of approximately one ounce of MDMA and in excess of one pound of hashish. Linder was sentenced to six years imprisonment for his conviction.

In addition, on March 23, 2000, Linder was arrested by the Bullhead City, Arizona, Police Department on three State felony drug charges, including Dangerous Drug Manufacturing, a Dangerous Drug violation, and a Drug Paraphernalia violation. When questioned concerning

this arrest, Linder states to DEA investigators that the listed chemical product seized from him by State law enforcement officers was for use in "artificial rock making."

Linder was previously arrested on or about October 28, 1999, in Laughlin, Nevada, for distribution of GHB and other charges. GBL and other chemicals were seized at that time of this arrest and during the subsequent search of a storage shed. Linder was also involved in the distribution of GHB kits (containing the ingredients for GHB and instructions for preparation) and other allegedly psychedelic substances.

During a June 29, 2000, conversation with a DEA investigator concerning his pending application, Linder stated concerning his 1975 felony drug conviction that he had "learned his lesson" and that he "has never done anything illegal since that time." The DEA investigation reveals, however, that Linder's law enforcement record includes, in addition to the 1975 Federal drug felony conviction, seven arrests and two convictions for various offenses, spanning the time period from 1994 up to the March 23, 2000, Bullhead City Police Department arrest for three State felony drug charges.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See e.g. Energy Outlet*, 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Administrator finds factors two, three, four, and five relevant to this application.

Regarding factor two, compliance by the applicant with applicable Federal, State, and local law, the Administrator finds substantial evidence in the DEA investigative file that Linder has violated applicable Federal and State law. First, Linder was convicted on May 16, 1975, of Distribution of a Controlled Substance and Sale of a Dangerous Drug, and sentenced to six years imprisonment. In addition, the DEA investigative file contains substantial evidence that Linder violated Nevada State law by manufacturing GBL, resulting in his related arrest on or about October 28, 1999. The DEA investigative file also contains substantial evidence that Linder violated Arizona State law in that he operated a clandestine laboratory for manufacturing GBL at his residence and also possessed a quantity of GBL that was seized by law enforcement officials, resulting in Linder's March 23, 2000, arrest by the Bullhead City, Arizona, Police Department for Dangerous Drug Manufacturing, a Dangerous Drug Violation, and a Drug paraphernalia Violation.

Regarding factor three, any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law, the Administrator finds Linder was convicted May 16, 1975, in a Federal Court for Distribution of a Controlled Substance and Sale of a Dangerous Drug, and sentenced to six years imprisonment.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed substantial evidence that Linder violated Nevada and Arizona State law related to his handling of listed chemicals, as set forth in factor two, above.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that during a June 29, 2000, conversation with a DEA investigator concerning his pending application, Linder stated concerning his 1975 felony drug conviction that he had "learned his lesson" and that he "has never done anything illegal since that time." The DEA investigation reveals, however, that Linder's record includes in addition to the 1975 Federal drug felony conviction, seven arrests and two convictions for various offenses, spanning the time period from 1994 up to the March 23, 2000, Bullhead City, Arizona, Police Department arrest for three State felony drug charges. The Administrator finds this lack of candor, taken together with Linder's Federal controlled substance-related criminal conviction and his apparent disregard of Arizona and Nevada State laws regarding the handling of listed chemicals, makes questionable Linder's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division*, 66 FR 35459 (2001); *Terrence E. Murphy*, 61 FR 2841 (1996).

In addition, despite repeated requests from DEA investigators, Linder was unable or unwilling to supply a proposed customer list for distribution of GBL, and thus failed to provide any evidence purporting to show a legitimate market for his distribution of this product.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Linder.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by David W. Linder be denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6571 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Seaside Pharmaceutical Co.; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Seaside Pharmaceutical Company (Seaside), located in Fort Lauderdale, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for *inter alia* the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Seaside's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Seaside and its owner/president and sole employee Thomas Narog (Narog) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004422SMY, and deny any pending applications for renewal or modification of such registration, and further deny its application dated March 28, 2000, as an exporter of List I chemicals, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Seaside that, should not request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On July 31, 2000, a DEA Special Agent served the OTSC upon Narog's attorney as Narog made his initial appearance before a U.S. Magistrate Judge in connection with charges related to his handling of List I chemicals. Since that time, no request for a hearing or any other response was received by DEA from Seaside or Narog nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Seaside is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals commonly used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.22(a). Pseudoephedrine, ephedrine, and phyenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance, or amphetamine, a Schedule III controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A "regulated person" is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A "regulated transaction" is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(3). The Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation revealed as follows. During an interview with DEA investigators April 17, 2000, Narog, in the presence of his then-counsel, stated that on four occasions since July, 1999, he shipped 60 mg. pseudoephedrine tablets to Israel. Per Narog, each of the four shipments contained at least 100,000 bottles of 60 count 60 mg. pseudoephedrine tablets. In response to questions from DEA investigators, Narog stated he had no domestic customers, and that all of his pseudoephedrine product "went out to Israel." Narog was informed that these exportations were illegal, and he was provided with official DEA notices concerning the dangers of diversion and statutes and regulations pertaining to the handling of List I chemicals. In addition, evidence obtained by DEA indicates that at least on one subsequent occasion, in or around July, 2002, a number of boxes containing pseudoephedrine shipped by Seaside to Israel were seized by the Israeli police. DEA records indicate Seaside never has been authorized by DEA to export pseudoephedrine.

On April 17, 2000, Narog stated to DEA investigators that Seaside had no domestic customers. Yet, on March 21, 2000, over 5,000 bottles of pseudoephedrine product manufactured exclusively for Seaside were seized from two individuals in California. Both individuals have been charged with criminal offenses related to the unlawful possession of pseudoephedrine.

Narog further stated to DEA investigators that Seaside had no domestic customers prior to June, 2000. Yet the DEA investigation revealed Narog made numerous shipments of pseudoephedrine to an individual located in Los Angeles, California. On several occasions in March and April, 2000, DEA investigators conducted surveillance at the Shurgard Storage Center (Shurgard) where Seaside maintained its DEA registered location. The investigators observed Narog and others load boxes of pseudoephedrine into U-Haul trucks. All of the pseudoephedrine was subsequently diverted to the illicit market.

On one occasion, DEA surveillance of Shurgard on March 27, 2000, showed Narog and a U-Haul truck arriving separately at warehouse unit 1352. Narog and two other individuals loaded boxes of pseudoephedrine into the back of the U-Haul truck. The U-Haul truck was driven to a Home Depot parking lot, where it met another truck, and both trucks then proceeded to another storage facility, where the pseudoephedrine was unloaded into another storage unit. The next day, March 28, 2000, other individuals loaded several large, unmarked boxes from the storage unit into a vehicle that was eventually followed by surveillance to the Orlando International Airport. The boxes were then shipped to Los Angeles, California, listed as "grocery supplies." While at the airport, an undercover DEA agent posing as an employee of the shipping company met with the individual shipping the pseudoephedrine, who invited the agent to join him in the criminal trafficking of pseudoephedrine. Following continued surveillance, the pseudoephedrine was seized and a number of individuals arrested.

Also on March 28, 2000, DEA investigators observed Narog receive three pallets containing 480 boxes of pseudoephedrine at Shurgard. The shipment was packaged at 48 bottles per box, with 60 60mg. tablets per bottle, for a total of 1,382,000 dosage units of pseudoephedrine. On April 4, 2000, Narog and another individual were observed loading the 480 boxes of pseudoephedrine into a rented U-Haul truck. The truck was driven to another self storage facility and the pseudoephedrine was unloaded into a storage unit at that location. The next day, April 5, 2000, DEA investigators observed an individual load the 480 boxes of pseudoephedrine into another U-Haul truck, that was observed to deliver the pseudoephedrine to the Orlando International Airport. An undercover DEA agent, posing as a shipping company employee, spoke with the individual who was shipping this load of pseudoephedrine. This individual was the same individual who had shipped the March 28, 2000, shipment described above. The individual stated to the undercover DEA agent that he was worried that an arrest that had occurred in California was related to the individual's distribution of pseudoephedrine. The individual further stated that "the FDA, cops and FBI" had gone to his residence in California and seized $20,000. When this shipment reached California, surveillance and investigation of the recipients resulted in seven arrests and the seizure of 2,200 pounds of pseudoephedrine and $25,000.

In April, 2000, Narog provided DEA investigators with copies of purchase records for Seaside for the period from September 1, 1999, to March 22, 2000. The records revealed Seaside had received in excess of 17 million dosage units of 60 mg. pseudoephedrine. Narog had stated to DEA investigators that he had no domestic customers prior to

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June, 2000, and Seaside never has been authorized to export List I chemicals.

During a July 13, 2000, interview with DEA investigators, Narog stated that the Shurgard unit 1352 at his DEA registered address was the only warehouse unit that he or Seaside leased at the time. The investigation revealed, however, that Narog also leased 206/207, which is a double unit measuring approximately 22 by 33 feet. DEA surveillance revealed thousands of pounds of pseudoephedrine being placed into 206/207. Narog further stated to investigators that, as the sole owner, president, director, and employee of Seaside, he was the only individual with access to unit 1352. DEA surveillance revealed, however, several different individuals accessing both 1352 and 206/207 without Narog, and removing pseudoephedrine that eventually was sent to California or seized in Florida.

The DEA investigation revealed that approximately 36,000 gross pounds of pseudoephedrine was delivered to Seaside's DEA registered address between September 8, 1999, and June 30, 2000.

On August 1, 2000, a seven count indictment was filed against Narog and others, alleging inter alia possession and distribution of the List I chemical pseudoephedrine, knowing and having reasonable cause to believe that the listed chemical would be used to manufacture methamphetamine, in violation of 21 U.S.C. 841(d)(2) and 846.

At the August 8, 2000, pre-detention hearing for Narog and another individual, both Narog and the other individual were denied bail because the judge found they both posed flight risks and were dangers to the community because of the large volume of drugs involved.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Seaside's DEA Certification of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Seaside's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Seaside and Narog actively participated in the illegal diversion of pseudoephedrine, knowing and having reasonable cause to believe it would be used to manufacture methamphetamine. Narog admitted to DEA investigators that he exported hundreds of thousands of bottles of pseudoephedrine to Israel, without being registered to do so. Moreover, Narog was storing thousands of pounds of pseudoephedrine in an unregistered storage unit location that he purposely attempted to conceal from DEA investigators. Narog stated to investigators that he had sole access to the DEA registered storage unit. The investigation revealed, however, that multiple individuals would access both Narog's DEA registered storage unit as well as his other, undisclosed storage unit. The investigation showed pseudoephedrine stored in both units was diverted to the illicit manufacture of methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that Seaside significantly violated applicable Federal law in the following primary instances. Narog and Seaside exported hundreds of thousands of bottles of List I chemicals to Israel without being registered to do so, in violation of 21 U.S.C. 843(a)(9); 957(a)(2); and 960(a)(1) and 21 CFR 1309.22.

In addition, although Narog stated to DEA investigators during an April 17, 2000, interview that he had no domestic customers, over 5,000 bottles of a List I chemical pseudoephedrine product manufactured exclusively for Seaside were seized on March 21, 2000, from two individuals in California, who were subsequently charged with criminal offenses relating to the unlawful possession of pseudoephedrine. DEA surveillance also revealed Narog and others were shipping large quantities of pseudoephedrine to individuals located in California, who were diverting the chemical to the illicit manufacture of methamphetamine. The Administrator finds this substantial evidence that Narog and Seaside violated 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)).

The investigation further revealed Narog was concealing thousands of pounds of pseudoephedrine product in an unregistered storage unit, and this pseudoephedrine was being directly diverted to the manufacture of methamphetamine, in violation of 21 CFR 1309.23.

Finally, Narog was charged in an August 1, 2000, seven count indictment, each count charging Narog with violations of 21 U.S.C. 841(d)(2) (since redesignated as 841(c)(2)) relating to the distribution of pseudoephedrine knowing or having reasonable cause to believe the chemical would be used to illicitly manufacture methamphetamine.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Seaside or Narog has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Narog failed to maintain adequate controls in distributing the List I chemical pseudoephedrine, and actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in the first and second factors, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence in the investigative file that Narog cannot be trusted with the responsibilities of a DEA registrant. Narog stated during the July 13, 2000, interview with DEA investigators that the Shurgard unit 1352 at his DEA registered address was the only warehouse unit that he or Seaside leased at the time. The investigation revealed, however, that Narog also leased an additional storage unit 206/207. Narog intentionally concealed the existence of this additional storage until from DEA investigators. DEA surveillance revealed thousands of pounds of pseudoethedrine being placed into 206/207. Narog further stated to investigators that, as the sole owner, president, director, and employee of Seaside, he was the only individual with access to unit 1352. DEA surveillance revealed, however, several different individuals accessing both 1352 and 206/207 without Narog, and removing pseudoephedrine that eventually was diverted to California or seized in Florida.

The Administrator finds this lack of candor, taken together with Seaside's and Narog's demonstrated cavalier disregard of the statutory law and regulations concerning the distribution, handling, and exportation requirements pertaining to List I chemicals, makes questionable Seaside's and Narog's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 Fed. Reg. 35459 (2001); Terrence E. Murphy, 61 FR 2841 (1996).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 1.014, hereby order that DEA Certificate of Registration 004422SMY, previously issued to Seaside Pharmaceutical Company, be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration, be, and hereby are, denied. Furthermore, the application of Seaside Pharmaceutical Company dated March 28, 2000, for registration as an exporter of List I chemicals is also hereby denied.

The order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6569 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Southern Illinois Wholesale, Inc.; Denial of Application

On or about June 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Southern Illinois Wholesale, Inc. (SIW), located in Dongola, Illinois, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated December 3, 2000, for a DEA Certificate of Registration as a distributor of the List 1 chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified SIW that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received July 16, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that SIW is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance, or amphetamine, a Schedule III controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about December 3, 2000, an application was submitted by and on behalf of SIW, by George W. Howard (Howard) for DEA registration as a distributor of the above-referenced List I chemicals.

During the February 23, 2001, pre-registration inspection, Howard informed DEA investigators that he proposed to sell various products from his parent's home, including List I chemical products. Howard states he had started out two yeas before, operating bubble gum vending machines, and had recently arranged through an internet consulting company to sell novelty items to retailers. He further stated that some small retail stores in the Southern Illinois and Cape Girardeau, Missouri, area would buy his other products only if he could provide List I chemical products. Howard alleged to DEA investigators that retailers in general would only do business with him if he could provide listed chemical products. He stated he wished to compete in the market that Four Seasons and Heartland held. Both of these distributors previously held DEA registrations that were surrendered during DEA actions against the companies. The DEA investigations into those companies revealed the markets they served had histories or ordering listed chemical products in quantities far greater than legitimate demand would require. DEA took action against the registrations of those two companies because the investigations showed a substantial amount of this pseudoephedrine was being diverted to the illicit manufacture of methamphetamine.

During the pre-registration inspection, Howard was unclear regarding what licenses he needed to conduct business in either Illinois or Missouri. He further stated he was using his parent's basement for storage of his products. DEA investigators noted that Howard had a tendency to delete telephone messages left for him before listening to the entire message; this resulted in a number of miscommunications between Howard and the local DEA office. In addition, at the preregistration inspection Howard was unable to locate information previously sent to him by DEA investigators concerning the responsibilities of a listed chemical registrant. He admitted that he had not been taking the registration process very seriously. Howard stated he wanted to handle List I chemical products because his competition does; and also because he wanted to recoup the cost of obtaining a DEA registration.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors he considered:

(1) Maintenance by the applicant of effective controls against diversion of

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listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Administrator finds factors four and five relevant to this application.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Howard has no previous experience in handling listed chemicals or distributing listed chemical products. Moreover, he has limited experience in the retailing business, having begun his business about two years previously to his application.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that due to the applicant's lack of experience in handling listed chemicals, his desire to distribute to a market that prior DEA investigations show has a history of excessive distributions, his desire to distribute to customers who's primary interests appear to be List I chemical products, and his apparent unpreparedness to take on the responsibilities of a listed chemical registrant, the Administrator concludes it would be inconsistent with the public interest to grant this application.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Southern Illinois Wholesale be denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6570 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day Notice of Information Collection Under Review; Guidelines on Producing Master Exhibits for Asylum Applications.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Guidelines on Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number; File No. OMB–04. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. Master Exhibits are a means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard. A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW, Suite 1600, Washington, DC 20530.

Dated: March 13, 2002.

Richard A. Sloan,

Director, Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6503 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Extension of Existing Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Emergency Federal Law Enforcement Assistance.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number; (File No. OMB–06). Office of General Counsel, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Nationality Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW, Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 13, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6504 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Freedom of Information/Privacy Act Request; Form G–639.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide date necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 Minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance

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Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 12, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6505 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Data Relating to Beneficiary of Private Bill; Form G–79A.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–79A. Investigations Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 Hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 12, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6505 Filed 3–19–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates is $21,601.

EFFECTIVE DATE: March 19, 2002.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' obligation (excluding activation costs) by the number of inmate-days incurred for preceding fiscal year, and then by multiplying the quotient by 365 (or, since 2000 was a leap year, by 366).

Under § 505.2, the Director of the Bureau of Prisons has reviewed the amount of the fee and has determined that, based upon fiscal year 2000 data, the fee to cover the average cost of incarceration for Federal inmates is $21,601.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

[FR Doc. 02–6592 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–038)]

NASA Advisory Council, Aerospace Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aerospace Technology Advisory Committee, Aviation Safety Reporting System Subcommittee (ASRSS) meeting.

DATES: Tuesday, April 9, 2002, 9 a.m. to 5 p.m.; and Wednesday, April 10, 2002, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/960–6059.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Special security arrangements must be made through Ms. Connell one week prior to the meeting. Agenda topics for the meeting are as follows:

—Report on Aviation Safety Reporting System

—New Emerging Safety Issues

—NASA Future Flight Central

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6496 Filed 3–18–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–039)]

NASA Advisory Council, Aerospace Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC).

DATES: Wednesday, April 17, 2002, 8:30 a.m. to 5 p.m.; and Thursday, April 18, 2002, 8:30 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aerospace Technology Enterprise Overview

—Revolutionize Aviation

—Advanced Space Transportation

—Pioneer Revolutionary Technology

—Commercial Technology

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6497 Filed 3–18–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–040)]

NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration, (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Tuesday, April 9, 2002, 8:30 a.m. to 5 p.m., and Wednesday, April 10, 2002, 8:30 to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Conference Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of the Space Science Enterprise

—Structure and Evolution of the Universe Overview:

—Budget, Ongoing Programs, Future Activities

—Structure and Evolution of the Universe Roadmap and Strategic Planning

—Structure and Evolution of the Universe Missions Update

—Plans for the Structure and Evolution of the Universe Working Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6498 Filed 3–18–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Draft Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment To Increase the Maximum Thermal Power Level

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC has prepared a draft environmental assessment (EA) and finding of no significant impact as its evaluation of a request by Entergy Operations, Inc. (Entergy or the licensee) for a license amendment to increase the maximum thermal power level at Arkansas Nuclear One, Unit 2 (ANO–2) from 2815 megawatts thermal (MWt) to 3026 MWt. This represents a power increase of approximately 7.5 percent for ANO–2. As stated in the NRC staff's February 8, 1996, position paper on the Boiling-Water-Reactor Extended Power Uprate Program, the NRC staff will prepare an environmental impact statement if it believes an extended power uprate (EPU) will have a significant impact on the environment. The staff did not identify a significant environmental impact from the licensee's proposed EPU at ANO–2; therefore, the NRC staff is documenting its environmental review in an EA and finding of no significant impact. Also, in accordance with the February 8, 1996, staff position paper, the draft EA and finding of no significant impact is being published in the **Federal Register** for a 30-day public comment period.

DATES: The comment period expires April 18, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only of comments that are received on or before April 18, 2002.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6 D69,

Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland 20852, from 7:45 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be available electronically at the NRC's Public Electronic Reading Room (PERR) link on the NRC Homepage, *http://www.nrc.gov*, through the Agencywide Documents Access and Management System (ADAMS) or at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas W. Alexion, Office of Nuclear Reactor Regulation, at Mail Stop O–7 D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at (301) 415–1326, or by e-mail at *twa@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Entergy for the operation of ANO–2, located in Pope County, Arkansas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow Entergy, the operator of ANO–2, to increase its electrical generating capacity at ANO–2 by raising the maximum reactor core power level from 2815 MWt to 3026 MWt. This change is approximately 7.5 percent above the current maximum licensed power level for ANO–2. The change is considered an EPU because it would raise the reactor core power level at least 7 percent above the original licensed power level. ANO–2 has not submitted a previous power uprate application. The EPU is accomplished by increasing the heat output of the reactor, thereby increasing the steam flow to the turbine for which increased feedwater flow is needed. As a result, more heat will be rejected to the circulating water and cooling tower complex. Increased heat load to the cooling tower will cause evaporative losses to increase. Therefore, cooling tower makeup, supplied from Lake Dardanelle, will increase due the increased evaporative losses.

The proposed action is in accordance with Entergy's application for amendment dated December 19, 2000, as supplemented by letters dated May 30, June 20, 26 (two letters), 27, and 28, July 3 and 24 (two letters), August 7, 13, 21, 23, and 30, September 14, October 1, 12 (two letters), 17, 30 (two letters), and 31, November 9, 16 (three letters), and 17, and December 5, 6 (two letters), 10, and 20, 2001, and January 14, 15, and 31, February 7 (two letters), and March 1, 2002.

The Need for the Proposed Action

The purpose and need for the EPU for ANO–2 is to provide an option that allows for power generation capability beyond the current nuclear power plant operating license to meet future system generating needs, as such needs may be determined by State, utility, and where authorized, Federal (other than NRC) decisionmakers. The ANO–2 steam generators were replaced in 2000 due to primary water stress corrosion cracking (PWSCC). In evaluating the options for the replacement steam generators (RSGs), Entergy determined that the RSGs would be capable of supporting a 7.5 percent thermal uprate which would increase the licensed core thermal power level to 3026 MWt. The proposed action to increase the licensed core thermal power level to 3026 MWt is based on Entergy's operational goal of increasing electrical generating capacity. According to Entergy, summer peak temperatures in the South challenge the ability of Entergy and other power producers to meet peak load demands, and nuclear power has been shown to be a reliable energy source during these peak periods.

In addition, Entergy states that there is an ongoing need for existing Entergy system generating capacity, including that provided by ANO–2. Entergy also states that load growth is expected to further increase the system's resource requirements. In view of the foregoing, Entergy determined that the EPU for ANO–2 would provide an economically sound choice with no significant impact to the environment.

Environmental Impacts of the Proposed Action

The effects of an ANO–2 EPU have been comprehensively evaluated by the NRC staff. The NRC staff, as set forth below, has concluded that the increase in the rated core thermal power can be accomplished without significant impact on the environment.

The environmental impacts of ANO–2 have been described in (1) the Final Environmental Statement (FES), dated June 1977 (NUREG–0254); (2) the Power Uprate Licensing Report (PULR), which is Enclosure 5 to the EPU application dated December 19, 2000, as supplemented; and (3) the June 26 and December 10, 2001, and January 15, 2002, responses to NRC requests for additional information (RAI). On January 31, 2000, Entergy submitted a supplement to its environmental report supporting the license renewal of Arkansas Nuclear One, Unit 1 (ANO–1), which resides adjacent to ANO–2. Responses to NRC RAIs regarding the environmental report for license renewal were submitted on June 26, July 31 and September 21, 2000. The staff evaluation of that action was documented in NUREG–1437, Supplement 3, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Arkansas Nuclear One, Unit 1," September 2000 (Supplement 3). Supplement 3 addresses many balance-of-plant site features that are common to ANO–1 and ANO–2. Supplement 3 was cited in Enclosure 5 of the December 19, 2000, license application in instances where site characteristics common to both ANO–1 and ANO–2 are unchanged by the EPU.

The original operating license for ANO–2 allowed a maximum reactor power level of 2815 MWt. Based upon on its independent analyses of the non-radiological and radiological impacts, as described in more detail below, the staff has determined that the environmental impacts of the proposed EPU are essentially unchanged from the environmental impacts previously evaluated in the staff's FES and, as common to both units, Supplement 3. The EPU does not involve extensive changes to plant systems that directly or indirectly interface with the environment. Additionally, no changes are necessary to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Arkansas Department of Environment Quality (ADEQ), formerly the Arkansas Department of Pollution Control and Ecology.

Non-Radiological Impacts

The following contains the NRC staff's analysis of the non-radiological environmental impacts of the proposed EPU on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, and social and economic conditions at ANO–2.

Land Use Impacts

The proposed EPU would not modify land use at the site or have impacts on lands with historic or archeological significance. The licensee states that it has no plans to construct any new facilities or alter the land around existing facilities, including buildings, access roads, parking facilities, laydown areas, onsite transmission and distribution equipment, or power line rights-of-way in conjunction with the proposed EPU. The EPU would not significantly affect the storage of materials, including chemicals, fuels, and other materials stored above or under the ground. The EPU would not alter the aesthetics of the site. Therefore, the conclusions in Supplement 3 for impacts on land use, that are common to ANO–1 and ANO–2, and the conclusions on land use impacts in FES Section 5–2 augmented by information in the PULR and the June 26 and December 10, 2001, and January 15, 2002, RAI responses, will remain valid under the proposed EPU conditions.

Noise was not addressed in the FES. However, FES Section 5.2 notes that Arkansas Nuclear One (ANO) is located on 1,164 acres and FES Section 2.2.2 states that the "* * * station has altered the land use in Pope County, primarily through the conversion of 430 acres to an industrial site. Only 150 acres actually are being disturbed. * * * The total acreage of the land affected by the construction and operation of ANO is extremely small. Most of the changes in land use have occurred with the construction and operation of Unit 1 * * *" Supplement 3, Section 2.1 states that "[t]he ANO site is located on a peninsula formed by Lake Dardanelle, and three sides of the site are surrounded by lake water." The two nearest residences are "* * * approximately 3 and 1.2 miles, respectively, from the Unit 2 containment building centerline * * *." (ANO–2 Environmental Report (ER) Section 2.2.3.2. The ANO–2 ER was submitted on March 1, 1974, and amended on July 11 and December 13, 1974, June 13, October 6 and December 19, 1975, and June 21 and September 8, 1976.) The EPU will not change the character, sources, or energy of noise generated at ANO–2. Modified structures, systems and components (SSCs) necessary to implement the proposed EPU will be installed within existing plant buildings and no noticeable increase in ambient noise levels within the plant is expected.

Water Use Impacts

The following is the NRC staff's evaluation of ground and surface water use as environmental impacts of water usage at ANO–2. Ground and surface water use impacts are also discussed in the "Radiological Impacts" section below.

Groundwater Use

As stated in the RAI response to the NRC staff dated June 26, 2001, ANO–1 and ANO–2 do not use any groundwater. Therefore, the EPU will have no non-radiological effects on groundwater.

Surface Water Use

The EPU is accomplished by increasing the heat output of the reactor, thereby increasing the steam flow to the turbine for which increased feedwater flow is needed. The licensee has stated that, as a result, more heat will be rejected to the circulating water and cooling tower complex. Increased heat load to the cooling tower will cause a slight increase in evaporative losses. Therefore, cooling tower makeup, supplied from Lake Dardanelle, will slightly increase due the increased evaporative losses.

While the EPU will require increased water use, the licensee has stated that ANO–2 will not use more water from the lake than permitted. ANO–2 has a contract with the U.S. Corps of Engineers that allows water to be withdrawn from the lake at an average rate of 22 ft^3/sec; withdrawals can exceed this average without an adverse environmental impact. An average evaporation rate of 22 ft^3/sec (9,900 gpm) and maximum evaporation rate of 27 ft^3/sec (11,900 gpm) was analyzed in FES Section 5.3.4. PULR Section 10.4.1.2, stated that the maximum cooling tower make-up for evaporation will increase from 12,180 (27.1 ft^3/sec) to 13,020 gpm (29.0 ft3/sec) under EPU conditions. However, by allowing the cooling tower cycles of concentration to increase from 3.5 to 3.8, still a low concentration value, cooling tower evaporation at design conditions will be about 11,600 gpm (25.8 ft^3/sec). (While water will also be withdrawn from the lake at a rate of 4,150 gpm (9.2 ft^3/sec) to satisfy blowdown needs, this water is returned to the lake.) Cooling tower design conditions continue to be 81.0 °F wet bulb temperature (Wbt) and 37.0 percent relative humidity. These are conservative values. The meteorological worst day on record, July 17, 1934, reflects a worst average 4-hour Wbt and relative humidity of 82.4 °F and 59.20 percent, respectively. The Wbt during this worst 4-hour period exceeds the tower design temperature by only 1.4 °F and the relative humidity was 22.2 percent higher than design.

The limits on withdrawal (*i.e.*, consumption via evaporation) from Lake Dardanelle are based on economics. By withdrawing from the lake, less stream flow is available to flow through Corps of Engineers' hydroelectric generation plants. The licensee compensates the Corps of Engineers for reduction of the flow of the stream (Lake Dardanelle), and the resultant power generation losses to its hydroelectric projects (see FES Section 5.3.4), and will continue to do so for any additional water withdrawal from Lake Dardanelle as a result of the EPU under the terms of the contract.

Surface water hydrology is discussed in ER Sections 2.5.1 and 5.1.3, and FES Section 2.3.2. The EPU results in no increase in the water use permitted. In addition, any changes would be subject to approval by the ADEQ and subject to the NPDES permit. Accordingly, the NRC staff finds that the licensee's conclusions that ANO–2 "cooling water facilities will have no adverse effects on the local environment, agriculture, housing, roads, airports, and other facilities," and that "* * * measures are being provided to control the formation of slime and algae in the circulating water system, without causing unnecessary harm to aquatic life and biota," remains true for the EPU. In addition, FES Section 2.3.2 statements remain unaffected by the EPU. See the discussion below on drift regarding replacing chlorination with bromination at ANO–2.

Waste Discharge Impacts

The NRC staff evaluated the environmental impacts such as cooling tower fogging, icing, drift, noise, chemical discharges to surface water, sanitary waste discharges, blowdown, thermal plume spread, temperature of the lake, cold shock to aquatic biota, hazardous waste effluents, and air emissions that were presented in the FES. The NRC staff, as set forth below, finds that the proposed EPU causes no significant change to the FES evaluations and conclusions relating to waste discharge.

Cooling Tower Fogging, Icing, Drift

The ANO–2 cooling tower is discussed extensively in FES Section 5.4. Entergy's predecessor prepared the ANO–2 ER and submitted its seventh and final amendment attached to a September 8, 1976, letter. As stated in Section 10.1 of the ER, several types of cooling systems such as a cooling pond, a spray pond, a mechanical draft cooling tower, and dry cooling towers were evaluated before a natural draft cooling tower was selected as the best option.

Fogging, Icing and Drift

The licensee has stated in ER Section 10.1.6.3.C, that based on studies done at the Keystone Station in Pennsylvania, "[f]logging and icing were not problems in the area surrounding these towers." This ER section also noted that " * * * the physical conditions at the Arkansas

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Nuclear One site were comparable to the installation at Pennsylvania, and the winters less severe." The NRC staff found that fogging and icing caused by cooling tower evaporation and drift has either a "minimal" or no effect on ground transportation, air transportation, and water transportation, and is not affected by the EPU.

In Section 10.4.1.2 of the PULR, the increase in circulating water makeup rate is approximately 840 gpm (1.87 ft^3/sec) due to increased evaporation. As stated above, makeup due to evaporation will increase. However, PULR Section 10.4.1.4 states that the circulating water flow rate actually decreased slightly after the condenser was refurbished during a recent refueling outage (2R13). Since drift is a function (*i.e.*, is some fractional amount) of circulating water flow rate, the NRC staff finds that the drift due to the proposed EPU will not exceed that evaluated in the FES.

FES Section 5.4.1.1 assesses cooling tower drift. In this section, the licensee states that "[c]hlorides were selected by the staff as the primary component of TDS [total dissolved solids] which may cause potential vegetation damage above certain deposition rates." The chlorination system for biological control was revised to include a bromination process for the circulating water systems on both ANO–1 and ANO–2 in early 1990. Chlorination was abandoned in 1991 in lieu of the preferred bromination process. This approach was discussed in a follow-up ANO response to Generic Letter 89–13, "Service Water System Problems Affecting Safety-Related Equipment," in 1992.

Since drift has not increased and the evaporation increase is relatively small, the NRC staff finds that the conclusions of the ER and FES regarding fogging, icing, and drift are not altered due to the proposed EPU.

Chemical and Sanitary Discharges:

Surface water and wastewater discharges are regulated by the ADEQ. The NPDES permit is periodically reviewed and reissued by the ADEQ. The present NPDES permit for ANO–2 authorizes discharges from nine outfalls, only one of which will be affected by the EPU. The one affected outfall is the cooling tower blowdown that is addressed below.

The use of chemicals and their subsequent discharge to the environment will not change significantly as a result of the EPU. The cooling tower concentration cycle will remain a low concentration value (3.8). Therefore, the NRC staff concludes that concentration of pollutants in the effluent stream will remain low.

Sanitary wastes are described in ER Section 3.7.1 and ANO–2 Safety Analysis Report Section 9.2.4.2. Sanitary wastes from ANO–2 are discharged directly to the ANO–2 sewage treatment plant in accordance with a permit issued by the ADEQ. Since there is no increase in the ANO staff as a result of the EPU, there is no increase in sanitary waste. Therefore, the EPU requires no changes to the sanitary waste systems or to the parameters regulated by the NPDES permit.

Blowdown

The NRC staff evaluated blowdown, which is discussed in PULR Section 10.4.1.2. As discussed in the ANO–2 Safety Analysis Report Section 10.4.5, Circulating Water, the cooling tower blowdown system, which discharges through the Unit 1 discharge flume, maintains the concentration of the circulating water below the solubility limit of calcium sulfate, thereby preventing condenser tube scale precipitation.

FES Section 5.3.2 evaluated the concentrating effect of evaporation of cooling tower water. The FES states that "[s]ubstances brought into the circulating water system with the makeup will be concentrated by a factor which will range from 3 to 14 due to evaporation of the water in the cooling tower." The licensee states that the EPU will not increase the number of cooling tower concentration cycles beyond this range. Cycles of concentration will remain at the lower end of the range cited, as discussed below. Therefore, the NRC staff concludes that current water appropriation limits are maintained and the conclusions in the FES will remain valid under the EPU conditions.

As stated in the section above, additional cooling tower evaporation will require a small (1.87 ft^3/sec) increase in cooling tower makeup rate. However the blowdown rate will only increase slightly or be kept at the current rate. With blowdown rate at the current rate, cooling tower cycles of concentration will increase by about 0.3 from approximately 3.5 to 3.8. The effect is negligible with either maintaining the current blowdown rate by increasing cycles of concentration or with increasing blowdown. This is because the blowdown is normally mixed with the ANO–1 circulating water system discharge, which has a flow rate of 383,000 gpm (853 ft^3/sec) with two of the four circulating water pumps in operation. Mixing of the blowdown with the Unit 1 circulating water is discussed in FES summary and conclusion paragraph 3.b and Section 5.3.2.

There are no blowdown flow limitations established in ANO NPDES Permit Number AR0001392, issued by ADEQ. Other parameters such as pH, free available chlorine, and total zinc will continue to be monitored in accordance with the permit to ensure that State water quality standards are met.

Thermal Plume Spread and Temperature of Lake Dardanelle

These two topics are discussed in PULR Section 10.4.1.3. As stated above, the ANO–2 cooling tower makeup rate will increase by 840 gpm (1.87 ft^3/sec) from 12,180 (27.1 ft^3/sec) to 13,020 gpm (29.0 ft^3/sec), but blowdown will remain at essentially the current rate. As stated above, this blowdown is normally mixed into the ANO–1 circulating water system discharge, which has a greater flow rate. Since the blowdown temperature will increase by less than 1°F due to the EPU, the effect of the EPU on thermal plume spread and Lake Dardanelle temperature is negligible.

Cold Shock

Cold shock to an aquatic biota occurs when the warm water discharge from a plant abruptly stops because of an unplanned shutdown, resulting in a rapid temperature drop of the discharge water to the lake and possible adverse impact on aquatic biota. The FES does not discuss cold shock caused by an unplanned trip of ANO–2 and the likelihood of an unplanned shutdown is independent of a power uprate. As stated above, the ANO–2 blowdown is normally mixed with the much larger ANO–1 circulating water discharge. An unplanned shutdown of ANO–1 can cause cold shock as evaluated in Supplement 3. However, even if the ANO–1 circulating water pumps are not in service, the amount of ANO–2 blowdown flow into Lake Dardanelle at the ANO–1 circulating water discharge, even at EPU conditions, is too small to cause cold shock. The NRC staff concludes that the risk of aquatic biota mortality by cold shock is not applicable to ANO–2 even at the proposed EPU conditions. Therefore, the discussion in FES Section 5.4.2 regarding winter lake water temperature effects on shad (FES pages 5–8 and 5–9) remains unchanged.

Hazardous Waste Generation and Air Emissions

As stated in PULR Section 10.4.1.4, ANO holds an Air Permit that was issued and is monitored by the ADEQ Air Division. This permit identifies emission sources at ANO. These sources include, but are not limited to, emergency diesel generators, plant heating boilers, cooling tower, start-up boiler, and bulk storage tanks.

ANO generates hazardous waste from routine plant operations. ANO has a hazardous waste generator's identification number assigned by the ADEQ Solid Waste Division. ANO files Annual Hazardous Waste Reports to the ADEQ.

The EPU has no impact on the quality or quantity of effluents from these sources, and operation under EPU conditions will not reduce the margin to the limits established by the applicable permits.

Terrestrial Biota Impacts

The licensee states that the EPU will not change the previously evaluated land use at ANO and will not disturb the habitat of any terrestrial plant or animal species. There are no significant increases in previously evaluated environmental impacts from cooling tower operation at EPU conditions.

According to a 1999 review by the Arkansas National Heritage Commission documented in Supplement 3, Section 4.6, there are no known rare or endangered plant species within the area of the site boundary. As stated in Supplement 3, Section 4.6, the Arkansas Natural Heritage Commission and the U.S Fish and Wildlife Service have recently (June 2000) stated that no endangered species have been identified at the ANO site or along the transmission rights-of-way. This is consistent with the subsection on "Fishes" in FES Section 2.5.1. (See the first paragraph after FES Table 2.4.)

As stated in the June 2001 environmental impact RAI response, the EPU will not disturb land, and land use will remain unchanged. The EPU will not adversely impact the habitat of any terrestrial plant or animal species. There are no deleterious effects on the diversity of biological systems or the sustainability of species due to the EPU, and it does not involve additional changes to the stability or integrity of ecosystems. Therefore, the NRC staff has concluded that the description of the impact on terrestrial ecology, including endangered and threatened plant and animal species, will remain valid for the EPU.

Aquatic Biota Impacts

ANO–1 has a traveling water screen system that protects the suction to both its large circulating water pumps and the much smaller safety-related service water pumps. This same traveling water screen system is used for ANO–2, only for its safety-related service water pumps. The licensee indicates that the EPU does not require larger service water pumps and the pumps were evaluated at their permitted flowrate as part of the NPDES permit. Therefore, the EPU will have no increased impact on the traveling water screen system. The effect of the proposed EPU on the impingement and entrainment of organisms is unchanged and, therefore, remains insignificant. Therefore, the NRC staff conclusions regarding impingement, entrainment, and endangered and threatened aquatic species as discussed in FES Sections 2.5.1 and 5.4.2, and Supplement 3 Section 4.1.1 will remain valid for the EPU. The EPU does not affect ANO's compliance with Sections 316(a) or 316(b) of the Federal Water Pollution Control Act.

Transmission Facility Impacts

Environmental impacts, such as exposure to electromagnetic fields (EMFs) and shock, could result from a major modification to transmission line facilities. However, the licensee states that no change is being made to the existing transmission line design or operation as a result of the EPU. As stated in the licensee's letter dated October 30, 2001, main transformer capacity is adequate to deliver the additional power to the offsite grid. Grid stability is addressed in PULR Section 2.2.1, which cites ANO procedure changes to avoid grid instability with either the Mablevale or Pleasant Hill 500 kV line out of service or during minimum load conditions. These modifications are consistent with Entergy's program of maintaining grid stability. Therefore, the NRC staff concludes that no significant environmental impacts from any changes in transmission facility design and equipment are expected, and the conclusions of FES Sections 3.3, 4.2, and 5.2 remain valid.

The generator output associated with the EPU will slightly increase the current and the EMFs in the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, ANO-controlled boundary of the plant, and neither members of the public nor wildlife are expected to be affected. Exposure to EMFs from the offsite transmission system is not expected to increase significantly, and any such increase is not expected to change any conclusion in FES Section 5.4.1.3 that no significant biological effects are attributable to EMFs from high voltage transmission lines.

ANO–2 transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code and the EPU will not cause the transmission line design to deviate from these provisions. Therefore, the NRC staff concludes that the expected increase in current attributable to the EPU does not change the conclusion in FES Section 5.4.1.3 (*i.e.*, adequate protection is provided against hazards from electrical shock).

Social, Economic, and Physical Impacts

The NRC staff has reviewed information provided by the licensee regarding the social, economic, and physical impacts associated with the EPU. ANO employs more than 1000 people and is a major contributor to the local tax base. The EPU will not significantly affect the size of the ANO workforce and will have no material effect on the labor force required for future outages. Because the plant modifications needed to implement the EPU will be minor, any increase in sales taxes and local and national business revenues will be negligible relative to the large amount of taxes paid by ANO. It is expected that improving the economic performance of ANO–2 through cost reductions and lower total bus bar costs per kilowatt hour will enhance the value of ANO–2 as a generating asset and lower the probability of early plant retirement.

Early plant retirement would have a negative, long-term impact upon the local economy and the community as a whole by reducing public services, employment, income, business revenues, and property values. Conclusions in FES Section 10 and Supplement 3 regarding social and economic impacts and benefits from ANO remain valid under EPU conditions for ANO–2.

The potential for direct physical impacts of the EPU, such as vibration and dust from construction activities, has been considered. The EPU will be accomplished primarily by changes in station operation and few physical modifications to the facility. These limited modifications will be accomplished without physical changes to transmission corridors, access roads, other offsite facilities, or additional project-related transportation of goods or materials. Therefore, the NRC staff concludes that no significant additional construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are anticipated, and the conclusions in FES Sections 4.1 and 5.2 remain valid.

Summary

In summary, the NRC staff has concluded that EPU will not result in a significant change in non-radiological impacts on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, or social and economic factors, and will have no non-radiological environmental impacts other than those evaluated in the FES. Table 1 provides a tabular summary of the non-radiological results.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS OF POWER UPRATE

Land Use Impacts	No change in land use or aesthetics; will not impact lands with historic or archeological significance. No significant impact due to noise.
Water Use Impacts	
Groundwater Use	No groundwater use.
Surface Water Use	There is only a small increase in water withdrawal (i.e., for consumption) rate from the lake. The maximum consumption rate will remain at 27 ft³/sec which is within permitted levels.
Waste Discharge Impacts	
Cooling Tower Fogging, Icing, Drift	Fogging evaluated as minimal in ER Table 10.1–2. Remains minimal for EPU. No significant change in icing. Icing evaluated as minimal in ER Table 10.1–2. Remains minimal for EPU. No significant change in cooling tower drift per PULR 10.4.1.4.
Chemical and Sanitary Discharges	No expected change to chemical use and subsequent discharge, or sanitary waste systems; cooling towers will operate in the current cycle range. No changes to sanitary waste discharges.
Blowdown	Increase in blowdown discussed in PULR Section 10.4.1.2. Maximum 9.2 ft³/sec blowdown normally mixed with 853 ft³/sec circulating water system discharge from ANO–1's once-through cooling system. Blowdown remains within permitted limits.
Thermal Plume Spread and Temperature of Lake Dardanelle.	Negligible and unnoticeable increase in thermal plume size. No discharge temperature increase; lake temperature primarily affected by ANO–1 once-through cooling system; remains in NPDES limit.
Cold Shock	Risk of aquatic biota mortality by cold shock is not applicable to ANO–2; discussed in FES Section 5.4.2.
Hazardous Waste Generation and Air Emissions.	No changes to hazardous waste sources or air emissions.
Terrestrial Biota Impacts	No change in terrestrial biota impacts; no known threatened or endangered species within the site boundary.
Aquatic Biota Impacts	No change in aquatic biota impacts; no known threatened or endangered species in the area of surface water intake or discharge.
Transmission Facility Impacts	No change to transmission line design or operation; main transformer capacity to deliver additional power is unchanged; no significant change in exposure to EMFs.
Social, Economic, and Physical Impacts.	No significant change in the local economy. Few modifications to physical station facility.

Radiological Impacts

The NRC staff has evaluated radiological environmental impacts on waste streams, in-plant and offsite doses, accident analyses, and fuel cycle and transportation factors. The following is a general description of the waste treatment streams at ANO–2 and an evaluation of the environmental impacts. The NRC finds that the proposed EPU will not cause any radiological effects to surface water in the station environs. Even though there is no discussion in the ANO–2 FES regarding radiological impacts on surface water, ER Table 10.1–2 states that the impact on groundwater due to chemical, radionuclides or "other" impacts is "NA", *i.e.*, not applicable. As stated in ER Section 2.5.2, Ground Water Hydrology, "[c]ontamination of underground water by radioactivity presupposes the discharge of radioactive liquids from a leaking or ruptured tank into the general environs of the plant site."

As discussed in ER Section 7.1, the liquid released by the rupture of any tank in the Boron Management System or Waste Management System will be contained within the Auxiliary Building and safely processed. This statement remains true for the EPU as does the FES statements regarding the refueling water tank.

Radiological Waste Stream Impacts

ANO–2 uses waste treatment systems designed to collect, process, and dispose of radioactive gaseous, liquid, and solid waste in accordance with the requirements of 10 CFR part 20 and 10 CFR part 50, Appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion "As Low As Is Reasonably Achievable" for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents." These radioactive waste treatment systems are discussed in the FES. The proposed EPU will not affect the environmental monitoring of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed EPU does not result in any changes in operation or design of equipment in the gaseous, liquid, or solid waste systems. The proposed EPU will not introduce new or different radiological release pathways and will not increase the probability of an operator error or equipment malfunction that will result in an uncontrolled radioactive release. The NRC staff evaluated the changes in the gaseous, liquid, and solid waste streams for radiological environmental impact of the proposed EPU, which are set forth below.

Gaseous Radioactive Waste Impacts

During normal operation, the gaseous effluent systems control the release of gaseous radioactive effluents to the site environs, including small quantities of noble gases, halogens, particulates, and tritium. Routine offsite releases from station operation remain below the limits of 10 CFR part 20 and Appendix I to 10 CFR part 50 (10 CFR part 20 includes the requirements of 40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations"). The gaseous waste management systems include the offgas system and various building ventilation systems. The EPU results in an increase in the release rate that is assumed to be linearly proportional to the power increase. An increase in gaseous effluents is, therefore, assumed to occur. The resultant effluent increases in noble gas and iodine-131 activity are 4.98E–02 μCi per second and 0.00E+00 μCi per second, respectively. A release rate of zero is assumed for iodine because no iodine has been released over the past three years. The estimated dose values will be below 10 CFR part 50, Appendix I requirements after the EPU. These dose levels are very small and have no significant impact on human health.

Therefore, the conclusions in the FES will remain valid under EPU conditions. Averaging ANO–2's dose for the three most recent years and adding the effect of the EPU on gamma in air and beta in air results in EPU dose rates of 6.92E–04 and 2.15E–03 millirad per year (mrad/yr), respectively. Comparing these dose rates to same-type dose rates in FES Table 5.7 demonstrates that ANO–2 is not only far below the RM–50–2 [1] design objective values of 10 and 20 mrad/yr for gamma and beta, but that the EPU dose rates for gamma and beta are about 86 and 884 times lower, respectively, than the calculated dose for gamma (0.06 mrad/yr) and beta (1.9 mrad/yr) listed in the FES table. A 3-year average allows averaging with and without refueling outages.

Similarly, the 3-year average plus projected EPU dose rate for iodine, tritium, and particules (ITP) is 1.56E–02 millirem per year (mrem/yr). Again, this EPU ITP dose rate is not only far below the RM–50–2 design objective dose rate of 15 mrem/yr, but is also about 192 times lower in dose consequence than the 3.0 mrem/yr calculated dose for ITP in the FES table.

These low dose rates projected for the EPU, when combined with the most recent 3-year average, clearly demonstrate that ANO–2 has been successful in maintaining a very low exposure to plant personnel and the public of both gaseous and liquid (see below) effluent doses. The NRC staff has evaluated the information provided by the licensee and concludes that the estimated dose values for gaseous radioactive wastes will be below Appendix I requirements after the EPU.

Liquid Radioactive Waste Impacts

The liquid radwaste system is designed to process and recycle, to the extent practicable, the liquid waste collected. Annual radiation doses to individuals are maintained below the guidelines in 10 CFR part 20 and 10 CFR part 50, Appendix I. As set forth below, the NRC staff expects that there will be no change in the release policy as a result of the EPU.

The licensee has stated that EPU conditions will not result in significant increases in the volume of fluid from sources flowing into the liquid radwaste system. The reactor will continue to be operated within its present pressure control band. Valve packing leakage volume into the liquid radwaste system is not expected to increase. There will be no changes in reactor cooling pump seal flow or the flow of any other normal equipment drain path. In addition, there will be no impact on the dirty radwaste or chemical waste subsystems of the liquid radwaste system as a result of the EPU, since the operation and the inputs to these subsystems are independent of the power uprate. No significant dose increase from the liquid pathway will result from the EPU. Therefore, the conclusions in the FES are expected to remain valid under EPU conditions, as demonstrated by the following comparison.

Averaging ANO–2's dose for the three most recent years and adding the effect of the EPU on the liquid effluents dose rate to the total body, or any organ, for all pathways results in a calculated dose of 1.04E–2 mrem/yr. Comparing this dose to the liquid effluent doses in FES Table 5.7 demonstrates that ANO–2 is not only far below the RM–50–2 design objective of 5 mrem/year but that the EPU dose rate is about 30 times lower than the calculated dose of 0.31 mrem/yr listed in the FES.

Solid Radioactive Waste Impacts

The solid radioactive waste system collects, monitors, processes, packages, and provides temporary storage facilities for radioactive solid wastes prior to offsite shipment and permanent disposal. Entergy has implemented procedures to assure that the processing and packaging of wet and dry solid radioactive waste and irradiated reactor components at ANO–2 are accomplished in compliance with regulations. Entergy continually tracks the volume of solid radioactive waste generated at ANO; however, the total is not isolated by unit (*i.e.*, ANO–1 or ANO–2). From 1995 to the present, ANO–1 and ANO–2 generated 78,787 ft)³ of low-level radioactive waste for an average of about 12,097 ft³ per year. In 2000, ANO generated a peak volume of 25,107 ft³ of low-level radioactive waste. The majority of the waste was generated as a result of the ANO–2 outage involving replacement of the steam generator.

Wet Waste: The largest volume contributors to radioactive solid wet waste are low-specific-activity spent secondary resins. Historically, this has accounted for more than 50 percent of the total volume of wet radioactive waste generated annually. Since the completion of the ANO–2 steam generator replacement outage, no secondary resin has been found to be radioactive. This should not change appreciably with the EPU. The remainder of the wet waste is primary resins, filters, and oil and sludge from various contaminated systems. The EPU will not involve changes in either reactor water cleanup flow rates or filter performance. Therefore, the NRC staff concludes that implementation of the proposed EPU will not have a significant impact on the volume or activity of wet radioactive solid waste at ANO–2.

Dry Waste: Entergy states that it continually tracks the volume of dry radioactive waste generated and continually looks for new ways to minimize the volume of waste generated. Dry waste consists primarily of air filters, contaminated paper products and rags, contaminated clothing, tools and equipment parts that cannot be effectively decontaminated, and solid laboratory wastes. The activity of much of this waste is low enough to permit manual handling. Dry waste is collected in containers located throughout the plant, packaged, and removed to a controlled area for temporary storage. Because of its low activity, dry waste can be stored until enough is accumulated to permit economical transportation to an offsite processing facility for volume reduction or a burial ground for final disposal.

The licensee has stated that the majority of waste generated at ANO is compactible dry active waste (DAW). In light of Entergy's continuing efforts to reduce radioactive wastes at ANO, any projected increase in solid waste generation under the EPU conditions described above would not be significant and is not sufficient to reverse the continuing downward trend in the production and activity of dry wastes. Moreover, due to the nature of the materials in this waste stream, it is not expected to change significantly as a result of the EPU.

Irradiated Reactor Components: Irradiated reactor components such as in-core detectors and fuel assemblies, must be disposed of after the life of the component. The volume and activity of waste generated from spent control element assemblies and in-core detectors may increase slightly under

[1] Guides on Design Objectives proposed by the NRC staff on February 20, 1974; considers doses to individuals from all units on site. From "Concluding Statement of Position of the Regulatory Staff," Docket No. RM–50–2. Feb. 20, 1974, pp. 25–30, U.S. Atomic Energy Commission, Washington, DC.

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the higher flux conditions associated with EPU conditions.

Entergy plans to load 80 fresh fuel bundles in the initial refueling of ANO–2 to commence operation under the proposed EPU. This is 12 fresh bundles more than required for the current refueling cycle. The number of irradiated fuel assemblies discharged from the reactor should not increase during subsequent reloads for comparable energy requirements. Accordingly, the NRC staff concludes that implementation of the EPU will not have a significant impact on the volume or activity of the irradiated reactor components at ANO.

Given the information above, NRC staff concludes that the environmental impact due to generation of solid reactor system waste from the proposed EPU is not significant.

Dose Impacts

The NRC staff evaluated in-plant and offsite radiation levels as part of the environmental impacts of the proposed EPU.

In-plant Radiation

Increasing the rated power at ANO–2 may increase the radiation levels in the reactor coolant system (RCS). However, ongoing physical plant improvements and administrative controls, such as shielding, RCS chemistry, and the plant radiation protection program, compensate for these potential. increases. Over the past 7 years, Entergy has continued to decrease the occupational dose to workers at ANO–2. In years with refueling outages, the total dose decreased by 55 percent from 175 rem in 1995 to 79 rem in 1999. As a result of the length and scope of the steam generator replacement outage in 2000, doses were higher than in a typical year. Non-outage year doses at ANO–2 illustrate a downward trend from 49 rem in 1996 to 35 rem in 1998 to 9 rem in 2001. The licensee stated that it expects to continue this trend while operating under the EPU conditions.

The plant radiation protection program will maintain individual doses consistent with as-low-as reasonably achievable (ALARA) requirements and well below the established limits of 10 CFR part 20. Routine plant radiation surveys required by the radiation protection program will identify increased radiation levels in accessible areas of the plant and radiation zone postings, and job planning will be adjusted, if necessary. Time within radiation areas is monitored and controlled under the radiation protection program. Administrative limits are provided for occupational dose at levels well below the 10 CFR part 20 limits.

These administrative limits provide a significant margin to regulatory dose limits under normal operating and outage conditions. Administrative dose limits at ANO–2 have not been routinely exceeded under present power conditions.

Offsite Doses

The slight increase in normal operational gaseous activity levels under the EPU will not significantly affect the large margin below the offsite dose limits established by 10 CFR part 20. In addition, doses from liquid effluents, currently low, will remain low under EPU conditions.

The ANO–2 Technical Specifications implement the guidelines of 10 CFR part 50, Appendix I, which are within the 10 CFR part 20 limits. Adjusting current values for projected EPU increases, the offsite dose at EPU conditions is estimated to be 6.92E–04 millirads for noble gas gamma air, 2.15 E–03 millirads for noble gas beta air, and 1.56E–02 millirem to the thyroid for particulates and iodine. Appendix I limits are 10 millirads, 20 millirads, and 15 millirem to the thyroid, respectively. The licensee stated that the offsite dose will continue to be within the technical specification dose limits.

The EPU will not involve significant increases in an offsite dose from noble gases, airborne particulates, iodine, or tritium. Radioactive liquid effluents are not routinely discharged from ANO–2. In addition, as stated by the Radiological Environmental Monitoring Program for ANO–2, radiation exposure from shine dose is not now a significant exposure pathway, and it will not be significantly affected by the EPU.

Therefore, the NRC staff concludes that the estimated doses from both the liquid and gaseous release pathways resulting from EPU conditions are within the design objectives specified by 10 CFR part 50, Appendix I, and the limits of 10 CFR part 20.

Accident Analysis Impacts

The NRC staff reviewed the licensee's analyses and performed confirmatory calculations to verfy the acceptability of the licensee's calculated doses under accident conditions. Based on these calculations, the staff concludes that the proposed EPU would not significantly increase the probability or consequences of accidents and would not result in a significant increase in the radiological environmental impact of ANO–2 under accident conditions. If the license amendment request is approved, the result of the staff's analyses will be presented in the safety evaluation issued with the license amendment.

Severe Accidents

The environmental effects of severe accidents outside the design basis of protection and engineered safety systems were not evaluated in the ANO–2 ER. The NRC staff finds that the EPU will not significantly increase the probability or consequences of accidents and will not result in a significant increase in the radiological environmental impact of ANO–2 under accident conditions.

Fuel Cycle and Transportation Impacts

The EPU will involve an increase in the average enrichment of the fuel bundle. The environmental impacts of the fuel cycle and of transportation of fuel and wastes are described in 10 CFR part 51, Tables S–3 and S–4, specifically at 10 CFR 51.51 and 10 CFR 51.52, respectively. ANO–2 FES Section 5.5.3 discusses the uranium fuel cycle and transportation impact of the fuel at original issuance of the operating license. An NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycles. The assessment concluded that there is no significant change in environmental impacts for fuel cycles with uranium enrichments up to 5.0 weight-percent U–235 and burnups up to 60 gigawatt-days per metric ton of uranium (GWd/MTU) from the parameters evaluated in Tables S–3 and S–4. In Operating License Amendment 178 dated January 14, 1997, the NRC granted Entergy's request to increase the fuel enrichment from 4.1 percent to 5.0 percent at ANO–2. The environmental effects of this fuel enrichment increase were considered at that time. Since the fuel enrichment for the EPU will not exceed 5.0 weight-percent U–235, and the rod average discharge exposure will not exceed 60 GWd/MTU, the environmental impacts of the proposed EPU will remain bounded by these conclusions and is not expected to be significant.

Summary

The NRC staff concludes that the proposed EPU will not significantly increase the probability or consequences of an accident, will not introduce any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposures, and will not result in significant additional fuel cycle environmental impacts. Accordingly, the NRC staff concludes that no significant radiological environmental impacts are associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the EPU.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS OF POWER UPRATE

Surface Water	No change in radiological impact to surface water.
Groundwater	No change in radiological impact to ground water.
Radiological Waste Stream Impacts	No changes in design or operation of waste streams.
Gaseous Radioactive Waste Impacts	An increase in release rate that is linearly proportional to the power increase will be expected.
Liquid Radioactive Waste Impacts	No change in ANO–2 liquid release policy.
Solid Radioactive Waste Impacts:	
Wet Waste	No appreciable change in radioactive secondary resins expected due to EPU.
Dry Waste	No significant changes in dry waste foreseen.
Irradiated Reactor Components	No significant changes in irradiated components foreseen.
Dose Impacts:	
In-plant Radiation	Even though some elevated RCS activity levels, in-plant exposures are controlled to mitigate worker exposures.
Offsite Doses	Slight increase in gaseous activity levels possible, but doses will remain ALARA and within 10 CFR Part 20 limits.
Accident Analysis Impacts	No increase in the probability of an accident. Some increase in consequences of an accident but still within NRC acceptance limits.
Fuel Cycle and Transportation Impacts	Increase in bundle average enrichment; impacts will remain within the conclusions of Table S–3 and Table S–4 of 10 CFR Part 51.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

The estimated cost of the increase in generating capacity is approximately half the cost projected for purchasing the power and one-third the cost of producing the power by constructing a new combined-cycle, natural-gas-fueled facility with the attendant environmental impacts of construction and operation. The licensee concluded that increasing ANO–2 capacity would be an economical and environmentally sound option for increasing power supply. Furthermore, unlike fossil fuel plants, ANO–2 does not routinely emit sulfur oxides, nitrogen oxides, particulate, matter carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Alternative Use of Resources

This action does not involve the use of any resources different than those previously considered in the FES for ANO–2, dated June 1977 (NUREG–0254).

Agencies and Persons Consulted

In accordance with its stated policy, on March 1, 2002, the NRC staff consulted with Division of Radiation Control and Emergency Management of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comment.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the following: The environmental impacts of ANO–2 have been described in (1) the FES, dated June 1977 (NUREG–0254), (2) the PULR, which is Enclosure 5 to the EPU application dated December 19, 2000, and (3) the June 26 and December 10, 2001, and January 15, 2002, RAI responses. On January 31, 2000, as supplemented by letters dated June 26, July 31, and September 21, 2000, Entergy submitted its ER supporting the license renewal of ANO–1. The staff Environmental Impact Statement has been issued as NUREG–1437, Supplement 3. Supplement 3 addresses many balance-of-plant site features that are common to ANO–1 and ANO–2. Supplement 3 was cited in Enclosure 5 of the December 19, 2000, license application in instances where site characteristics common to both ANO–1 and ANO–2 are unchanged by the EPU. Documents may be examined and/or copied for a fee at the NRC's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, or 301–415–2737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of March 2002.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6535 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop on New Reactor Licensing Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) has scheduled a public workshop to inform the public of preliminary staff positions presented in SECY–01–0207, "Legal and Financial Issues Related to Exelon's Pebble Bed Modular Reactor (PBMR)," dated November 20, 2001 (ML012850139), and to provide an opportunity for stakeholders, including members of the public, to provide feedback on these positions.

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DATES: March 27, 2002, from 1 p.m.–5 p.m.

ADDRESSES: The workshop will be held in the NRC's Auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

FOR FURTHER INFORMATION: Contact Amy Cubbage, Mail Stop O–11D17, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Members of the public may pre-register for this meeting by contacting Amy Cubbage at (800) 368–5642, ext. 2875, or by Internet at *aec@nrc.gov* by March 21, 2002.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/Index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

SUPPLEMENTARY INFORMATION: By letter dated December 5, 2000, Exelon Generation Company expressed an interest in pre-application activities for the pebble bed modular reactor (PBMR). The staff began its pre-application review at a meeting with Exelon on April 30, 2001. As part of the meeting, Exelon discussed legal and financial issues that they believe merit special consideration due to the unique features of the modular facility, the gas-cooled reactor design and their intention to operate the PBMR as a merchant plant. By letter dated May 10, 2001 (ML011420393), Exelon submitted nine white papers on these legal and financial issues and requested an agency response. The nine white papers addressed requirements associated with operator staffing; fuel cycle impacts; financial qualifications; decommissioning funding; minimum decommissioning costs; antitrust review; number of licenses; annual fees; and financial protection.

In addition to issues discussed in the white paper proposals, the staff identified the following related issues to Exelon's proposals that may affect the PBMR application: License life for one combined license for multiple reactors; duration of design approval under a combined license (COL) for multiple reactors; commencement of annual fees; and testing of new design features for a COL.

SECY–01–0207, "Legal and Financial Issues Related to Exelon's Pebble Bed Modular Reactor (PBMR)," dated November 20, 2001 (ML012850139), presents preliminary positions related to the staff's assessment of Exelon's proposals on legal and financial issues and additional staff-identified licensing-related issues that may affect the Exelon application. The staff committed to hold a workshop to apprise Exelon and other stakeholders on the positions presented in the paper and receive their feedback. Based on this feedback, the staff will amend its positions, as necessary, and make recommendations on policy issues related to the legal and financial issues for Commission approval later this year.

For each of the issues discussed above, the NRC staff will provide a brief summary of the issue. This will be followed by an open discussion and opportunity for all stakeholders, including members of the public, to provide feedback on the preliminary staff positions presented in SECY–01–0207. Comments on SECY–01–0207 may also be submitted in writing by April 10, 2002. Comments should be addressed to Amy Cubbage, U. S. Nuclear Regulatory Commission, Mail Stop O–11–D–17, Washington, DC 20555–0001.

A final agenda and schedule will be published on the NRC Web site when it is available: *http://www.nrc.gov/public-involve/public-meetings/meeting-schedule.html*.

Dated at Rockville, Maryland, this 12th day of March 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6494 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of March 18, 25, April 1, 8, 15, 22, 2002.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and closed.

Matters To Be Considered

Week of March 18, 2002

Tuesday, March 19, 2002

9:30 a.m.—Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, March 20, 2002

9:25 a.m.—Affirmation Session (Public Meeting), (If needed).

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of March 25, 2002—Tentative

Monday March 25, 2002

1:00 p.m.—Discussion of Intergovernmental Issues (Closed).

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002.

Week of April 8, 2002—Tentative

Friday, April 12, 2002

9:25 a.m.—Affirmation Session (Public Meeting), (If needed).

Week of April 15, 2002—Tentative

There are no meetings scheduled for the Week of April 15, 2002.

Week of April 22, 2002—Tentative

There are no meetings scheduled for the Week of April 22, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of a) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georgians Against Nuclear Energy's Petition for Interlocutory Review and Request for Stay Pending Review and b) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Review of LBP–02–08 (February 22, 2002)" be held on March 7, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 14, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–6655 Filed 3–15–02; 10:48 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 22, 2002 through March 7, 2002. The last biweekly notice was published on March 5, 2002 (67 FR 10006).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 18, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

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bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: December 19, 2001.

Description of amendment request: The proposed amendment provides clarifications and substantive changes to the decay heat removal (DHR) Technical Specifications (TSs). It is intended, in part, to fulfill a commitment made by the licensee to the NRC during a pre-decisional enforcement conference on April 23, 1999. Specifically, the proposed changes would: (1) define and clarify the emergency feedwater (EFW) flowpath redundancy as described in the Bases; (2) provide operability requirements for the redundant steam supply paths to the turbine-driven EFW pump; (3) provide a 72-hour allowed outage time (AOT) with any EFW pump or flowpath inoperable; (4) provide a 24-hour AOT with one steam supply path to the turbine-driven EFW pump and one motor-driven EFW pump inoperable; (5) provide a requirement to initiate action to immediately restore at least 2 EFW pumps and one flowpath to each once-through steam generator (OTSG) if more than one EFW pump or both flowpaths to either OTSG were inoperable; (6) provide a statement suspending actions requiring shutdown or changes in reactor operating conditions until at least 2 EFW pumps and one EFW flowpath to each OTSG are restored to operable status; and (7) revise, relocate and clarify EFW pump and flowpath operability requirements during surveillance testing. Minor administrative and editorial changes are also proposed, including relocation of some requirements for clarity. A note is added to TS 4.9.1.1 and its related Bases to indicate that the surveillance is not applicable to the turbine driven EFW pump until 24 hours after exceeding 750 psig. A change to TS Table 3.5–2 and the Bases for TS 3.5.5, "Accident Monitoring Instrumentation," regarding the description of the pressurizer level instrument channels to reflect the replacement of Bailey transmitters was also included. Unrelated editorial changes to the Table of Contents were also included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This change incorporates the concept of EFW flowpath redundancy throughout the TS[s], which takes into consideration the redundancy provided by the EFW System modifications made in the mid-1980s after the accident at TMI–2 [Three Mile Island Nuclear Station, Unit 2]. This change incorporates appropriate Limiting Conditions of [for] Operation (LCOs) and required action times and clarifies the design basis of the EFW System technical specification requirements in the LCOs and Surveillance Standards. These changes will not result in any change to the configuration of the EFW System as described in the SAR [Safety Analysis Report] or used in plant specific analyses. The reliability of EFW System components is unaffected. With less than the minimum EFW capability, this change incorporates the STS [standard technical specification] requirement to initiate action immediately to restore EFW components and suspend all actions requiring shutdown or changes in reactor operating conditions. The seriousness of this condition requires that action be started immediately to restore EFW components to operable status prior to power reductions that could result in a plant trip with no safety related means for conducting a cooldown. This change will not significantly affect any accident initiation sequence or the off site dose consequences of accidents that have been analyzed.

The current surveillance standard contains EFW flowpath operability requirements being moved to the Limiting Conditions of [for] Operation (LCO) section in Chapter 3 and combined with the notes to define the EFW System operability requirements for EFW pumps and flowpaths during surveillance testing. The revised specification incorporates consideration of EFW flowpath redundancy consistent with HSPS [heat sink protection system] train operability requirements and continues to require that compensatory measures be implemented to promptly restore components if EFW is needed during surveillance testing when more than one pump or both flowpath[s] to an OTSG are inoperable. The intent of this surveillance standard has been retained, which assures that the minimum number of EFW flowpaths to the OTSGs will be available with minimal operator action. The addition of a note, currently provided in the Standard Technical Specifications which permits a delay in performing the surveillance of the turbine-driven EFW Pump is needed to assure sufficient main steam pressure is available for performance of the test and does not significantly affect the reliability of the pump or the consequences of accidents previously evaluated.

This change provides further assurance that EFW System design basis requirements will be met and does not affect EFW system configuration, setpoints, or reliability. These changes will not affect any accident initiation sequence and do not affect off site dose consequences of accidents that have been analyzed. The revised Accident Monitoring Instrumentation specification for the EFW flow instruments is needed to reflect the revised flowpath definition and does not change the intent or interpretation of this specification. The editorial changes included in this LCA [license change application] are intended to improve the clarity, consistency and readability of the TS[s], [and] do not change the intent or interpretation.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As a result of this change, no additional hardware is being added; and there will be no affect on EFW System design, operation as described in the SAR, or assumptions used in plant specific analyses. The requirement for three EFW Pumps and [associated] flowpaths to be operable for continuous plant operation is not affected by this change. Events involving the EFW System operation have been reviewed and determined to have no impact from these changes. The additional operability requirements, revised LCOs and surveillance standards, clarifications and changes to define EFW flowpath redundancy ensures minimum EFW component operability as credited in plant analyses. There are no changes included that could affect the plant beyond those accidents that have been evaluated. The editorial changes included in this LCA are intended to improve the clarity, consistency, and readability of the TS[s] and Bases, [and] do not change the intent or interpretation.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. This change does not affect EFW System design or instrumentation setpoints. The requirement for three operable EFW pumps and associated flowpaths is not affected by this change. This change revises the Limiting Conditions of [for] Operation (LCOs) for the EFW System, revises the required actions, impose[s] additional required action times, and provide[s] clarification of the LCO and Surveillance Standards. The revised LCO requires that at least one flowpath to each OTSG must be operable. The 8 hour action time currently allowed for pump inoperability during surveillance testing is also applied to flowpath inoperability during testing. The revised LCO continues to require compensatory measures during EFW testing when HSPS is required to be operable and an OTSG is isolated, retaining the provision that EFW flowpath valves can be realigned promptly from their test mode to their operational alignment if EFW flow is needed. None of these changes affect a margin of safety. The revised Accident Monitoring Instrumentation specification for the EFW flow instruments is needed to reflect the revised flowpath definition and does not change the intent or interpretation of this specification. The editorial changes included in this LCA are intended to improve the clarity, consistency, and readability of the TS[s], [and] do not change the intent or interpretation.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Joel T. Munday, Acting.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: November 19, 2001.

Description of amendment request: The amendment would revise the Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of Unit 2 steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The steam generator replacement activities do not affect the containment structure or the actual containment liner. Access for the replacement steam generators as well as removal of the old steam generators will be through the equipment hatch. However, the outer shell of the steam generators, the inside containment portions of the main steam line, the feedwater lines, the auxiliary feedwater lines, and the steam generator blowdown lines are all part of the primary reactor containment boundary that will be impacted by the replacement activities.

Calvert Cliffs Nuclear Power Plant Technical Specification 5.5.16 states, "A program shall be established to implement the leakage testing of the containment as required by 10 CFR 50.54(o) and 10 CFR Part 50, Appendix J, Option B. This program shall be in accordance with the guidelines contained in Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," dated September 1995, including errata." Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," endorses Nuclear Energy Institute (NEI)94–01, Revision 0 for methods acceptable to comply with the requirements of Option B. Prior to returning the Containment to operation, NEI 94–01 requires leakage rate testing (Type A testing or local leakage rate testing), following repairs and modification that affect the containment leakage integrity.

The affected area of the primary containment boundary is also part of the pressure boundary of an American Society of Mechanical Engineers (ASME) Class 2 component/piping system and, as such, the planned replacement of the steam generators are subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface examination, volumetric examination, and system pressure test requirements are more stringent than the Appendix J, Option B testing requirements. The acceptance criteria for ASME Section XI system pressure testing of welded joints in "zero leakage." In addition, the test pressure for the system pressure test will be approximately 17 times that of Appendix J, Option B test.

The objective of the Type A test is to assure the leak-tight integrity of the area affected by the modification. Although the leak test is in a direction reverse to that of the design basis accident environment, the ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Appendix J, Option B with the exception of secondary side access manways. Section 9.2.1, NEI 94–01, Revision 0 allows reverse testing if justified. Section XI pressure test applies a sealing pressure to the secondary manway due to the inward door swing configuration. Hence, a Type B local leak rate test will be performed for the secondary

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manways. For all other affected components, reverse testing is justified since the acceptance criteria for ASME Section XI system pressure testing of welded joints is "zero leakage," and the test pressure for the system pressure test will be approximately 17 times that of Type A test. Hence, the probability or consequences of design basis accidents previously evaluated are unchanged.

Therefore, the proposed revision to Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of Unit 2 steam generators will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed revision does not involve a physical change to the plant and there are no changes to the operation of the plant that could introduce a new failure mode. As described above in Item 1, the objective of the Appendix J, Option B test is to assure the leak-tight integrity of the area affected by the modification. The ASME Section XI inspection and testing requirements are more stringent than the Appendix J, Option B testing requirements.

Therefore, the proposed revision to Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment leakage integrated rate testing following replacement of Unit 2 steam generators will not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

As described above in Item 1, the ASME Section XI surface examination, volumetric examination, and system pressure test requirements are more stringent than the Appendix J, Option B testing requirements. The acceptance criteria for ASME Section XI system pressure testing of welded joints is "zero leakage." In addition, the test pressure for the system pressure test will be approximately 17 times that of Appendix J, Option B test.

Therefore, the proposed revision to Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of Unit 2 steam generators does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Joel Munday, Acting.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: January 31, 2002.

Description of amendments request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation (LCO), following a missed surveillance. The delay period would be extended from the current limit of "... up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "...up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated January 31, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Joel Munday, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendments would revise the Technical Specification (TS) 3.3.2, Engineered Safety Feature Actuation System (ESFAS) Instrumentation, and TS 3.3.5, Loss of Power Diesel Generator Start Instrumentation for Catawba Nuclear Station, Units 1 and 2. These amendments would modify the subject TS as summarized below.

1. Add a new MODE 3 operability requirement within ESFAS Function 5 (Turbine Trip and Feedwater Isolation) as shown on TS Table 3.3.2–1; reformat TS Table 3.3.2–1 in regard to ESFAS Function 5; modify identified Conditions and Required Actions applicable within ESFAS Function 5; and modify the content and footnotes applicable to ESFAS Functions 5 and 6 (Auxiliary Feedwater).
2. Delete ESFAS Functions 5e (Dog House Water Level—High High) and 5f (Turbine Trip and Feedwater Isolation, Trip of all Main Feedwater Pumps).
3. Modify the Conditions and Required Actions for ESFAS Function 6d (Auxiliary Feedwater, Loss of Offsite Power).
4. Modify the Conditions and Required Actions for ESFAS Function 6e (Auxiliary Feedwater, Trip of all Main Feedwater Pumps).
5. Modify the Conditions and Required Actions for ESFAS Function 6f (Auxiliary Feedwater, Auxiliary Feedwater Pump Train A and Train B Suction Transfer on Suction Pressure—Low).
6. Make an editorial change to ESFAS Function 8 (ESFAS Interlocks, T_{avg}—Low Low, P–12).
7. Add a new TS Surveillance Requirement (SR 3.3.2.12) for ESFAS Function 10 (Nuclear Service Water Suction Transfer—Low Pit Level).
8. Add a note to Condition A of TS 3.3.5 which allows one channel per bus to be bypassed for surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences. For the proposed changes to Technical Specifications (TS) 3.3.2, Engineered Safety Features Actuation System (ESFAS); and 3.3.5, Loss of Power Diesel Generator Start Instrumentation; the equipment referenced in these TS is not accident initiating equipment. Therefore, there will be no impact on any accident probabilities caused by the NRC approval of this amendment. Additionally, since the design of the equipment is not being adversely modified by these proposed changes, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of the NRC approval of this license amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators; therefore, no new accident types are being created.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The equipment referenced in the proposed change to TS 3.3.2 and 3.3.5 will remain capable of performing as designed. No safety margins will be impacted.

Conclusion

Based upon the preceding discussion, Duke Energy Corporation has concluded that this proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 6, 2002.

Description of amendment request: The proposed amendment would remove the requirement for Main Steam Isolation Valve isolations on certain area temperatures from Technical Specifications Section 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no credit taken in any licensing basis analysis for the main steam line isolation valve (MSIV) closure on the turbine area high temperature and there are no calculations that credit the subject isolation function as a mitigative feature. A review of Chapters 5, 6, 11, 12, and 15 of the USAR [Updated Safety Analysis Report] confirmed that the subject isolation function was not credited in any analysis for mitigating fuel cladding damage, mitigating challenges to vessel integrity, or mitigating dose to plant staff or the general public. This conclusion is consistent with the discussion of the function in the current Technical Specification [TS] Bases (B 3.3.6.1). Removing this requirement from the TS will allow the licensee to make changes to the design or function of the instrumentation provided the changes meet the 10 CFR 50.59 criteria. Entergy intends to make changes that will reduce unwarranted challenges to the MSIVs, associated isolation and actuation logic, and minimize the likelihood of an unwarranted plant transient due to increased ambient temperatures for reasons other than a steam leak. Therefore, the proposed change does not involve a

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significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change removes the automatic MSIV isolation function associated with high temperatures in certain Turbine Building areas from the requirements of the Technical Specifications. Relocating requirements for this isolation function to licensee control does not introduce any new failure mechanisms or introduce any new accident precursors. Any subsequent changes to the design or function of the instrumentation must meet the criteria of 10 CFR 50.59.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no credit taken in any licensing basis analysis for the main steam line isolation (MSIV closure) on the turbine area high temperature. Therefore, since the MSIV isolation function on the Turbine Building Area High Temperature is not credited as a mitigating feature in any analysis which establishes thermal limits, evaluates peak vessel pressure, evaluates peak containment/drywell pressure, or evaluates radiological consequences (on and off site), there is no adverse impact on any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Entergy concludes that the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 31, 2002.

Description of amendment request: **The proposed amendment would modify the Arkansas Nuclear One, Unit 2 (ANO–2) Facility Operating License (FOL) and Technical Specifications (TSs) to reorganize the Administrative Controls section (Section 6.0) to be consistent with NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants" and provide consistency with the Arkansas Nuclear One, Unit 1 (ANO–1) TS Section 6.0. This change would result in moving several surveillance requirements, currently contained in the Surveillance Requirements section of the ANO–2 TSs, and programs contained in the FOL, to Section 6.0. The change would also result in the deletion of several TSs currently contained in Section 6.0. A Bases Control Program would also be added to Section 6.0. The TS actions related to the Control Room Ventilation System would also be modified as part of the proposed amendment. The ventilation system (emergency and air conditioning system) for the control room is shared with ANO–1 and, thus, the TSs for this system are maintained consistent between the units where appropriate.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the Administrative Controls section of the ANO–2 TSs to be consistent with NUREG–1432. [The requirements of] 10 CFR 50.36, "Technical Specifications" defines the Administrative Controls section as follows: "Administrative controls are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner." Therefore, by definition the specifications contained in the Administrative Controls section are not specifications related to systems that are used to mitigate any types of accidents. The proposed changes to the Administrative Controls section therefore do not impact the ability of a plant system to perform its intended function.

The proposed changes to the Control Room Ventilation System specifications do not result in any type of plant modification to this system. The system's intended function is to provide heating, ventilation, and air conditioning to ensure a suitable environment for equipment and station operator comfort and safety.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will re-organize the ANO–2 Administrative Controls section and modify the actions related to the Control Room Ventilation System. The changes to the Administrative Controls section by definition of the type of specifications, which are included in the Administrative Controls section, will not create any new or different types of accidents.

The modifications to the Control Room Ventilation System specifications result in providing clarity to existing actions and the addition of new actions. The addition of the new actions results in consistency between the ANO–1 and ANO–2 TSs. No design changes are proposed to the Control Room Ventilation System.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes result in the relocation of several surveillance requirements to the Administrative Controls section as well as the re-organization of the Administrative Controls Section of the ANO–2 TSs. In addition, clarification is added to the Control Room Ventilation System action statements that result in consistency between the ANO–1 and ANO–2 TSs. These changes do not affect the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 20, 2002.

Description of amendment request: **The proposed amendment would revise Section 3.6.5 of the St. Lucie Unit 1 and 2 Technical Specifications (TS) to extend the allowed outage time for the Containment vacuum relief lines from 4 hours to 72 hours, in order to facilitate compliance with the Inservice Testing Program without placing the plants at risk for unnecessary shutdowns. The extended allowed outage time would provide sufficient time to perform the required surveillance tests and make any required adjustments on the Containment vacuum relief valves. The proposed changes are consistent with NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants."** *Basis for proposed no significant hazards consideration determination:* **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not create any new system interactions and have no impact on operation or function of any system or equipment in a way that could cause an accident. The primary containment to annulus vacuum relief valves are part of the containment vacuum relief system and are not initiators of any events nor affect any accident initiators of any events previously analyzed in Chapters 6 or 15 of the UFSAR [Updated Final Safety Analysis Report].

The primary containment to annulus vacuum relief valves are designed to mitigate the consequences of an inadvertent containment spray system actuation during normal plant operation. The UFSAR analysis determined that with one of the two containment vacuum lines failed, the resultant peak calculated external pressure load on the containment was less than the design external pressure loading of 0.7 psi. These proposed changes do not affect any of the assumptions used in the analysis. Hence, the consequences of the design basis accident previously evaluated do not change.

Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design, configuration, or method of operation of the plant. There is no change being made to the parameters within which the plant is operated. The setpoints at which the protective or mitigating actions are initiated are unaffected by this change. As such, no new failure modes are being introduced that would involve any potential initiating events that would create any new or different kind of accident.

Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not affect the bases used in or the results of the analysis to establish the margin of safety. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are impacted by the proposed change. The proposed change is acceptable because it assures at least one vacuum relief line will remain available in the event of a single failure. This further assures the ability to actuate upon demand for the purpose of mitigating the consequences of the design basis accident (inadvertent actuation of the containment spray system during normal operation). The remaining vacuum relief line provides sufficient vacuum relief capacity to prevent exceeding the design external pressure loading on containment of 0.7 psi.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: February 22, 2002.

Description of amendment requests: **The proposed amendments would relocate technical specifications (TSs) 3/4.9.6, "Refueling Operations—Manipulator Crane Operability" and TSs 3/4.9.7, "Refueling Operations—Crane Travel—Spent Fuel Storage Pool Building," with associated Bases to the D. C. Cook updated final safety analysis report (UFSAR).**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed changes are administrative in nature in that they result in relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases, to the CNP UFSAR. Changes to the UFSAR are controlled by 10 CFR 50.59. Regulation 10 CFR 50.59 requires that NRC approval be obtained prior to any change to the UFSAR that would result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving unapproved increases in the probability of occurrence of an accident. The relocation of the requirements of TS 3/4.9.6 and 3/4.9.7 would not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of CNP or the manner in which it is operated. Therefore, the proposed change does not significantly increase the probability of occurrence of an accident previously evaluated.

The proposed change to relocate TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR does not impact the consequences of an accident because there is no effect on the structures, systems and components that mitigate the effects of an accident, or the manner in which they are operated. In accordance with 10 CFR 50.59, if any proposed change to the UFSAR results in more than a minimal increase in the consequences of an accident previously evaluated, NRC review and approval is required prior to the change being made. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving unapproved increases in the probability of in the consequences of an accident. Therefore, the relocation of requirements will not affect offsite doses, and the consequences of an accident previously evaluated are not significantly increased.

The format changes improve the appearance of the affected pages but do not affect any requirements.

Therefore, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to relocate TS 3/4.9.6 and 3/4.9.7, with associated Bases, to the CNP UFSAR does not create new accident causal mechanisms. Plant operation will not be affected by the proposed change and no new failure modes will be created. Regulation 10 CFR 50.59 requires that NRC approval be obtained prior to any change to the UFSAR that would create the possibility of a new or different kind of accident from any accident previously evaluated. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving new or different kinds of accidents.

The format changes improve the appearance of the affected pages but do not affect any requirements.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to relocate the requirements from the TS to the UFSAR does not impact equipment design or operation and no changes are being made to the TS

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required safety limits, safety system settings, or any safety margins associated with TS 3/4.9.6 and 3/4.9.7. Changes to the UFSAR are controlled under the 10 CFR 50.59 process, which requires a safety evaluation to be performed. If any proposed change to the UFSAR results in a design basis limit for a fission product barrier, as described in the UFSAR, being exceeded or altered or results in a departure from a method of evaluation described in the UFSAR used in establishing the design bases or in the safety analyses, NRC review and approval will be required prior to the change being made. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving a reduction in the margin of safety. The format changes improve the appearance of the affected pages but do not affect any requirements.

Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting Section Chief.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: August 16, 2001.

Description of amendment request: **The proposed amendment would terminate license jurisdiction for a portion of the Maine Yankee Atomic Power Station (Maine Yankee) site, thereby releasing these lands from Facility Operating License No. DPR–36. In part, the release of these lands will facilitate the donation of a portion of this property to an environmental organization pursuant to a Federal Energy Regulatory Commission approved settlement between Maine Yankee Atomic Power Company and its ratepayers. The lands donated will be used to create a nature preserve and an environmental education center.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment involves release of land presently considered part of the Maine Yankee plant site under license DPR–36. The land in question is not used for any licensed activities. No radiological materials have historically been used on this land and the land will not be used to support ongoing decommissioning operations and activities.

Most of the land to be released is outside the Exclusion Area Boundary and therefore is not affected by the consequences of any postulated accident. A small portion of the land is within the Exclusion Area Boundary. Maine Yankee will retain sufficient control over activities performed within this land through rights granted in the legal land conveyance documents to ensure that there is no impact on consequences from postulated accidents. Therefore, the release of the land from the [10 CFR] Part 50 license will not increase the probability or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested amendment involves release of land presently considered part of the Maine Yankee plant site under license DPR–36. The land is not used for any licensed activities or decommissioning operations. The proposed action does not affect plant systems, structures or components in any way. The requested release of the land does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety defined in the statements of consideration for the final rule on the Radiological Criteria for License Termination is described as the margin between the 100 mrem/yr public dose limit established in 10 CFR 20.1301 for licensed operation and the 25 mrem/yr dose limit to the average member of the critical group at a site considered acceptable for unrestricted use. This margin of safety accounts for the potential effect of multiple sources of radiation exposure to the critical group. Additionally, the State of Maine, through legislation, has imposed a 10 mrem/yr all pathways limit, with no more than 4 mrem/yr attributable to drinking water sources. Since the area is non-impacted, there will be no additional dose to the average member of the critical group. Furthermore, the survey results described in Attachment III [of the August 16, 2001, application] demonstrate that residual radioactivity, if any, in the area is indistinguishable from background. Therefore, this proposed license change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Joe Fay, Esquire, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, Maine 04578.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 21, 2002.

Description of amendment request: **The proposed amendment would relocate specific pressure, differential pressure, and flow values, as well as specific test methods, associated with certain Engineered Safeguards Features (ESF) pumps from the Technical Specifications to the Seabrook Station Technical Requirements Manual.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the specific ESF pump pressure and flow criteria in the aforementioned Technical Specifications surveillance requirements to the Seabrook Station Technical Requirements Manual are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which it is operated. The proposed changes do not alter or prevent the ability or structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Seabrook Station Updated Final Safety Analysis Report (UFSAR).

The subject surveillance requirement criteria relocated to the Seabrook Station Technical Requirements Manual will continue to be administratively controlled. The Seabrook Station Technical Requirements is a licensee-controlled document, which contains certain technical requirements and is the implementing manual for the Technical Specification Improvement Program. Changes to these requirements are reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7.1.i, and as outlined in the Seabrook Station Technical Requirements Manual.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. There are no changes to the source term or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. The proposed changes have no adverse impact on component or system interactions. The proposed changes will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSAR. The proposed changes are administrative in nature and do not change the level of programmatic and procedural details of assuring operation of the facility in a safe manner. Since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not reduce the level of programmatic or procedural controls associated with the activities presently performed via the aforementioned surveillance requirements.

Future changes to the subject technical requirements will be reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7, and as outlined in North Atlantic [Energy Service Corporation]'s programs. Specifically, changes to the Seabrook Station Technical Requirements Manual require an evaluation pursuant to the provisions of 10 CFR 50.59 and review and approval by the Station Operation Review Committee (SORC) prior to implementation.

Therefore, relocation of the specific pump pressure and flow criteria contained in the aforementioned Technical Specifications Surveillance Requirements to the Seabrook Station Technical Requirements Manual does not involve a significant reduction in the margin of safety provided in the existing specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William J. Quinlan, Esq., Assistant General Counsel, Northeast Utilities Service Company, PO Box 270, Hartford CT 06141–0270.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 11, 2002.

Description of amendment request: **The proposed amendments would revise Technical Specification (TS) 3.6.4, "Containment Pressure," to reduce the maximum allowable pressure from 3 pounds per square inch gauge (psig) to 2 psig. The licensee requests these proposed amendments to address a non-conservatism that was identified during reviews of the Point Beach, Units 1 and 2, accident analyses.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:**

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The operability of containment ensures that radionuclides are contained within allowable limits during and following all credible accident conditions. The inoperability or failure of containment is not a design basis accident initiator or precursor. Therefore, the probability of an accident previously evaluated will not be significantly increased as a result of the proposed change. Because design limitations continue to be met and the integrity of the containment system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. In addition, the radiological consequence analysis for the main steam line break (MSLB) is performed assuming the MSLB is outside of the containment. Therefore, the operability of the containment structure does not affect the results of the offsite dose or control room dose consequences.

Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes, therefore, do not cause the initiation of any new or different accident nor create any new failure mechanisms.

Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The containment functions to mitigate the effects of accidents. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed modification will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other SSCs [structures, systems, and components] important to safety. Reducing the maximum allowed containment pressure limit is conservative in that it reduces the peak containment pressure that could result in the event of an accident. Therefore, reducing the maximum allowed containment pressure limit will not reduce the margin of safety. The added conservatism provides improvement to the design pressure margin resulting from the proposed change and will enhance protection against conditions resulting from a design basis accident, which will therefore provide a net benefit to radiological health and reactor safety.

Conclusion

Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of any accident previously analyzed; will not result in a new or different kind of accident from any accident previously analyzed; and, does not result in a significant reduction in any margin of safety. Therefore, operation of PBNP [Point Beach Nuclear Plant] in accordance with the proposed amendments does not result in a significant hazards determination.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: William Reckley, Acting.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: February 13, 2002.

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Description of amendment requests: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated February 13, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: February 22, 2002.

Description of amendment requests: The proposed amendment would revise technical specifications (TSs) for San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 relating to spent fuel storage. Specifically, TS 3.7.17, "Fuel Storage Pool Boron Concentration", TS 3.7.18, "Spent Fuel Assembly Storage", and TS 4.3, "Fuel Storage" would be revised to remove credit for use of Boraflex, and to take credit for soluble boron, and to increase the required concentration of soluble boron in the spent fuel storage pool. Additionally, new TS 5.5.2.16, "Fuel Storage Program" would be added to create a TS to control the Fuel Storage Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pool when assuming a complete loss of the Boraflex panels in the spent fuel pool racks and considering the presence of soluble boron in the spent fuel pool water for criticality control.

The presence of soluble boron in the spent fuel pool water for criticality control does not increase the probability of a fuel assembly drop accident. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks has no affect on the probability of such a drop accident.

Southern California Edison (SCE) has performed a criticality analysis which shows that the consequences of a fuel assembly drop accident in the spent fuel pool are not affected when considering a complete loss of the Boraflex in the spent fuel racks and the presence of soluble boron. The rack K_{eff} remains less than or equal to 0.95.

Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel racks when assuming a complete loss of the Boraflex panels and considering the presence of soluble boron in the pool water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification Section 5.5.2.16, "Fuel Storage Program," which will specify spent fuel rack storage configuration limitations.

There is no increase in the consequences of the accidental misloading of a spent fuel assembly into the spent fuel racks. The criticality analysis, performed by SCE, demonstrates that the pool K_{eff} will be maintained less than or equal to 0.95 following an accidental misloading by the boron concentration of the pool. The proposed Technical Specification 3.7.17 will ensure that an adequate spent fuel pool boron concentration is maintained.

Significant Change in Spent Fuel Pool Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when assuming a complete loss of the Boraflex panels and considering the presence of soluble boron in the spent fuel pool water. A high concentration [> 2000 parts per million (ppm)] of soluble boron has always been maintained in the spent fuel pool water. The proposed minimum boron concentration of 2000 ppm in Technical Specification 3.7.17 will ensure that an adequate spent fuel pool concentration is maintained in the spent fuel pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density, and when coupled with the assumption of a complete loss of Boraflex, may result in a positive reactivity addition. However, the additional negative reactivity provided by the boron concentration limit in the proposed Technical Specification 3.7.17 will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling. Because adequate soluble boron will be maintained in the spent fuel pool water to maintain K_{eff} less than or equal to 0.95, the consequences of a loss of normal cooling to the spent fuel pool will not be increased.

A decrease in pool water temperature causes an increase in water density and may result in an increase in reactivity when the Boraflex panels are present in the racks. However, the additional negative reactivity provided by the boron concentration limit in the proposed Technical Specification 3.7.17, determined based on the conservative assumption of a complete loss of the Boraflex, will compensate for the increased reactivity which could result from a decrease in pool water temperature.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

Criticality accidents in the spent fuel pool are not new or different. They have been analyzed in the Updated Final Safety Analysis Report (UFSAR) and in previous submittals to the Nuclear Regulatory Commission (NRC). Specific accidents considered and evaluated include fuel assembly drop, fuel assembly misloading in the racks, and spent fuel pool water temperature changes.

The possibility for creating a new or different kind of accident is not credible. Neither Boraflex or soluble boron are accident initiators. The proposed change takes credit for soluble boron in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility. However, this accident was not considered credible. For this proposed amendment, SCE performed a spent fuel pool dilution analysis, which demonstrated that a dilution of the boron concentration in the spent fuel pool water which could increase the rack K_{eff} to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain boron concentration in the spent fuel pool water for reactivity control will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration. This new requirement will not result in the installation of any new equipment or modification of any existing equipment.

Therefore, the proposed change will not result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No.

The Technical Specification changes proposed by this License Amendment request and the resulting spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 plant specific analysis performed in accordance with a methodology previously approved by the NRC.

The proposed change takes partial credit for soluble boron in the spent fuel pool. SCE's analyses show that spent fuel storage requirements meet the following NRC acceptance criteria for preventing criticality outside the reactor:

(1) The neutron multiplication factor, K_{eff}, including all uncertainties, shall be less than 1.0 when flooded with unborated water, and,

(2) The neutron multiplication factor, K_{eff}, including all uncertainties, shall be less than or equal to 0.95 when flooded with borated water.

The criticality analysis utilized credit for soluble boron to ensure K_{eff} will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 K_{eff} calculation to ensure that the spent fuel rack will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining K_{eff} less than or equal to 0.95 including uncertainties, tolerances and accident conditions in the presence of spent fuel pool soluble boron. The loss of a substantial amount of soluble boron from the spent fuel pool water which could lead to K_{eff} exceeding 0.95 has been evaluated and shown to not be credible.

Also, the spent fuel rack K_{eff} will remain less than 1.0 with the spent fuel pool flooded with unborated water.

Decay heat, radiological effects, and seismic loads are unchanged by the absence of Boraflex.

Therefore, the proposed change does not involve a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 28, 2002.

Description of amendment request: The proposed amendment revises Technical Specifications (TS) 4.4.5.3a, "Steam Generator Surveillance Requirements," inservice inspection frequency requirements for Unit 1 immediately after the first refueling outage (1RE09) and Unit 2 after the second refueling outage (2RE10). The change would allow a 40-month inspection interval after one inspection resulting in C–1 classification, rather than two consecutive inspection resulting in C–1 classification. The change is proposed to eliminate steam generator inspections, which will result in significant dose, schedule and cost savings.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no direct increase in SG [steam generator] leakage because the proposed change does not alter the plant design. The scope of inspections performed during 1RE10, the first refueling outage following SG replacement, exceeded the TS requirements for the first two refueling outages after

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replacement combined. That is, more tubes were inspected than were required by TS. Currently, South Texas Project Unit 1 does not have an active SG damage mechanism and will meet the current industry examination guidelines without performing inspections during the next refueling outage. The results of the Condition Monitoring Assessment after 1RE10 demonstrated that all performance criteria were met during 1RE10. The results of the 1RE10 Operational Assessment show that all performance criteria will be met over the proposed operating period. The results from 2RE10 inspections are expected to be the same. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of inspections performed during 1RE10 and planned for 2RE10, the first refueling outage for each unit following SG replacement, significantly exceed the TS requirements for the scope of the first two refueling outages after SG replacement combined.

The proposed change does not affect the design of the SGs, the method of operation, or reactor coolant chemistry controls. No new equipment is being introduced and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension to the SG tube inservice inspection frequency, and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant system or components. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Steam generator tube integrity is a function of design, environment, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. Inspections conducted prior to placing the SGs into service (pre-service inspections) and inspection during the first refueling outage following SG replacement demonstrate that the SGs do not have fabrication damage or an active damage mechanism. The scope of those inspections significantly exceeded those required by the TS. These inspection results were comparable to similar inspection results for the same model of RSGs (replacement steam generators) installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement SGs also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Morgan Lewis, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 18, 2002.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3/4.6.1.7, "Containment Ventilation System," to extend the intervals between operability tests of the normal and supplementary containment purge valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operability and leakage control effectiveness of the containment purge isolation valves have no effect on whether or not an accident occurs. Consequently, increasing the interval between surveillances of isolation valve effectiveness does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a non-isolated reactor containment building at the time of a fuel-handling accident or LOCA [loss-of-coolant accident] is release of radionuclides to the environment. Analyses have conservatively assumed that a purge system line is open at the time of an accident, and release to the environment continues until the isolation valves are closed. In addition, LOCA analyses assume containment leakage of 0.3 percent per day for the first 24-hours and 0.15 percent per day thereafter. Consequently, increasing the interval between surveillances of isolation valve effectiveness does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. The function of the containment purge systems is not altered by this change. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

This proposed change only increases the interval between surveillance tests of the containment purge valves. Analyses have conservatively assumed that the normal purge valves are open at the time of a fuel handling accident, and that purging by the supplementary purge system is in progress at the time of a loss of coolant accident. In addition, LOCA analyses assume containment leakage of 0.3 percent per day for the first 24-hours and 0.15 percent per day thereafter. The radiological consequences of both a fuel handling accident and a LOCA are unchanged and remain within the 10 CFR 100 limits. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Morgan Lewis, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 21, 2001, as supplemented on February 8, 2002.

Description of amendment request: This amendment request proposes to revise the control rod block instrumentation requirements contained in Technical Specification (TS) 2.1.B, Figure 2.1.1, and Tables 3.2.5 and 4.2.5. Some of the control rod block trip functions are being relocated to the Vermont Yankee Technical Requirements Manual and some of the requirements for the retained trip functions are being clarified. Two trip functions are added to the TSs and Note 9 to Table 3.2.5 is changed to reflect one or two Rod Block Monitor channels inoperable. This proposed no significant hazards consideration determination replaces in its entirety the notice published in the **Federal Register** on July 25, 2001 (66 FR 38769).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocated trip functions are not assumed as initial conditions for, nor are they credited in the mitigation of, any design basis accident or transient previously evaluated. Since reactor operation with these revised and relocated Specifications is fundamentally unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events, or the analyzed mitigation of design basis accident or transient events.

More stringent requirements that ensure operability of equipment and purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event. The addition of remedial actions to address a condition when both channels of the Rod Block Monitor (RBM) are inoperable also ensures that the RBM function is met. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created since plant operation is unchanged in that required protective features remain operable. No safety-related equipment or safety functions are altered as a result of these changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This change does not impact plant equipment, nor does it involve operation with loss of any safety function. There are no changes being made to safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. Since the changes have no effect on any safety analysis assumptions or initial conditions, the margins of safety in the safety analyses are maintained. In addition, administrative changes that do not change technical requirements or meaning, and the imposition of more stringent or equivalent remedial requirements to ensure operability, have no negative impact on margins of safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated:

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: September 11, 2001.

Brief description of amendments: The amendments revise Technical Specification Section 3.9.5, "Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level," by adding a note that allows one SDC loop to be inoperable for a period of 2 hours provided the other loop is operable while in Mode 6.

Date of issuance: March 1, 2002.

Effective date: March 1, 2002, and shall be implemented within 45 days of the date of issuance.

Amendment Nos.: Unit 1–139, Unit 2–139, Unit 3–139.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59501).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 19, 2001.

Brief description of amendments: The amendments authorized revisions to the Calvert Cliffs Nuclear Power Plant Updated Final Safety Analysis Report to incorporate revisions to the loss of feedwater flow analysis.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented in conformance with the scheduling requirements specified in 10 CFR 50.71e.

Amendment Nos.: 248, 224.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised Appendix C of the licenses.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 925).

The Commission's related evaluation of these amendments is contained in a

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Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 20, 2000, as supplemented on July 12, 2001.

Brief description of amendments: The amendments revise the Technical Specifications to incorporate changes required to support operation with replacement steam generators.

Date of issuance: March 1, 2002.

Effective date: As of the date of issuance and shall be implemented prior to restart following replacement of the steam generators.

Amendment Nos.: 249 and 225.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13799).

The July 12, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 1, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 27, 2001.

Brief description of amendments: The amendments modify the conditions and required actions for the control room emergency ventilation system (CREVS) and control room emergency temperature system (CRETS) of Technical Specifications (TS) 3.7.8 and 3.7.9. A Note is added to TS 3.7.8 and the Note for TS 3.7.9 is revised to specify train operability requirements during the movement of irradiated fuel assemblies.

Date of issuance: March 4, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 250, 226.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46475).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, (CNS) Units 1 and 2, York County, South Carolina

Date of application for amendments: August 6, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) by decreasing the CNS Unit 1 Overtemperature Delta Temperature Allowable Value and the CNS Units 1 and 2 Overpower Delta Temperature Allowable Values in TS Table 3.3.1–1. In addition, the amendments make two minor editorial changes in the TS Table of Contents and Bases Page 3.3.1–10.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 195/188.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2920). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket No. 50–287, Oconee Nuclear Station, Unit 3, Oconee County, South Carolina

Date of application of amendments: March 5, 2001, as supplemented by letter dated September 4, 2001.

Brief description of amendments: The amendment revised the Technical Specifications to allow a one-time extension to the interval for conducting the 10 CFR part 50, Appendix J containment integrated leak rate test.

Date of Issuance: February 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 321.

Renewed Facility Operating License No. DPR–55: Amendment revised the Technical Specification.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50466). The supplement dated September 4, 2001, provided clarifying information that did not change the scope of the March 5, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: January 31, 2002.

Brief description of amendment: The amendment revised the Technical Specifications by replacing the peak linear heat rate safety limit with a peak fuel centerline temperature safety limit.

Date of issuance: March 4, 2002.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 238.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 11, 2002 (67 FR 6279). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 10, 2001, as supplemented by letter dated December 20, 2001.

Brief description of amendment: Technical Specification (TS) Surveillance Requirement (SR) 4.8.1.1.2.e requires certain emergency diesel generator (EDG) surveillances be performed during shutdown. This change modifies this SR to allow performance of specific surveillances during any mode of plant operation. This provides the flexibility in the scheduling of testing activities consistent with online maintenance activities and improves EDG availability during plant shutdown periods.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 180.

Facility Operating License No. NPF–38: The amendment revised the TS.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44168).

The December 20, 2001, supplemental letter contained clarifying information that did not change the scope of the July 10, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 31, 2002.

Brief description of amendment: The amendment replaces the Technical Specification (TS) Safety Limit 2.1.1.2, "Peak Linear Heat Rate," (PLHR) with a Peak Fuel Centerline Temperature Safety Limit and updates the Index accordingly. The associated TS Bases changes have been made to appropriately reflect the proposed new Safety Limit.

Date of issuance: March 5, 2002.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 181.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 11, 2002 (67 FR 6281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: May 14, 2001.

Brief description of amendments: The amendments deleted Technical Specification (TS) Figures 5.1–1, "Site Area Map"; and 5.1–2, "Plant Area Map"; and replaced TS 5.1, "Site," with a site location description. Conforming changes also deleted TS 5.1.1, "Exclusion Area"; TS 5.1.2, "Low Population Zone"; and TS 5.1.3, "Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents"; from TS 5.1 and the TS Index.

Date of issuance: February 12, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 219 and 213.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34284). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 18, 2001.

Brief description of amendments: The amendments revised Turkey Point Units 3 and 4 Technical Specifications, Section 6.0, "Administrative Controls." The revision consists of changing the title of the corporate executive responsible for overall nuclear plant safety from "President—Nuclear Division" to "Chief Nuclear Officer."

Date of issuance: February 21, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 220 and 214.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41622). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: November 1, 2001.

Brief description of amendments: The amendments revise technical specification (TS) surveillance requirements (SR) 4.8.2.3.2.c.2 and 4.8.2.5.2.c.2 and associated TS bases concerning the safety-related batteries to make them more consistent with the Westinghouse Standard TSs.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 266 and 247.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64296). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: October 5, 2001, as revised on January 4, 2002.

Brief description of amendment: The amendment imposes a new license condition in Operating License NPF–69 to approve a change in the licensing basis regarding post-safety-injection hydrogen monitoring. Specifically, the amendment changes the permissible delay from 30 minutes to 90 minutes.

Date of issuance: February 25, 2002.

Effective date: As of the date of issuance to be implemented during Refueling Outage 8.

Amendment No.: 102.

Facility Operating License No. NPF–69 Amendment revises the the operating license.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2925). The staff's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 29, 2001, as supplemented October 30, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TS), Section 3.8.5, "DC [Direct Current] Sources—Shutdown," restoring the operability requirement to what it was before the TS was converted to the Improved Standard Technical Specifications format (i.e., Amendment No. 91).

Date of issuance: March 1, 2002.

Effective date: As of the date of issuance, to be implemented prior to Refueling Outage 8.

Amendment No.: 103.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29359).

The licensee's October 30, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The staff's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2002.

No significant hazards consideration comments received: No.

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Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 15, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TS) to extend the channel calibration surveillance frequency for the automatic depressurization system timers from 18 months to 24 months.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 245.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50469). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 2, 2001, as supplemented March 29, September 14, and December 27, 2001.

Brief description of amendment: The amendment changes the Technical Specifications to increase the limits on stored fuel enrichments and provide other more flexible fuel loading constraints for the storage racks for new and spent fuel.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 207.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 1, 2001 (66 FR 29844). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 21, 2001.

Brief description of amendment: The amendment adds three topical report references to Technical Specification (TS) 5.9.5, "Core Operating Limits Report."

Date of issuance: March 4, 2002.

Effective date: March 4, 2002, to be implemented within 60 days from the date of issuance.

Amendment No.: 203.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66471).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 18, 2001, as supplemented February 5, 2002.

Brief description of amendments: The amendments revised the Technical Specifications surveillance requirement 3.4.3.1 for testing of the main steam safety relief valves to permit the setpoint tolerance for "as-found" testing to be changed from ±1 percent to ±3 percent. An editorial change will also be made to remove a note regarding an associated relief request.

Date of issuance: March 7, 2002.

Effective date: As of the date of issuance, and shall be implemented during the spring 2002, and spring 2003, refueling and inspection outages for Units 1 and 2, respectively.

Amendment Nos.: 201, 175.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59511).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 5, 2001, as supplemented on December 17, 2001.

Brief description of amendment: The amendment revises License Condition 2.E in the Facility Operating License (FOL) to reflect Nuclear Regulatory Commission (NRC) staff approval of a change to the Salem-Hope Creek Security Plan and the Salem-Hope Creek Security Training and Qualification Plan. The specific change reviewed and approved by the NRC staff will allow illumination levels to be maintained at a minimum of 0.2 footcandle in the isolation zone while allowing lighting in the remainder of the protected area to be sufficient as determined by the licensee, rather than requiring a minimum 0.2 footcandle illumination level in the entire protected area.

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 138.

Facility Operating License No. NPF–57: This amendment revised the FOL.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36343). The letter dated December 17, 2001, withdrew a portion of the March 5, 2001, application which would have changed the escort requirements for vehicles in the protected area. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 5, 2001, as supplemented on December 17, 2001.

Brief description of amendments: The amendments revise License Condition 2.E in each of the respective Facility Operating Licenses (FOLs) to reflect Nuclear Regulatory Commission (NRC) staff approval of a change to the Salem-Hope Creek Security Plan and the Salem-Hope Creek Security Training and Qualification Plan. The specific change reviewed and approved by the NRC staff will allow illumination levels to be maintained at a minimum of 0.2 footcandle in the isolation zone while allowing lighting in the remainder of the protected area to be sufficient as determined by the licensee, rather than requiring a minimum 0.2 footcandle illumination level in the entire protected area.

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 250 and 230.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised each of the respective FOLs.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34288). The letter dated December 17, 2001, withdrew a portion of the March 5, 2001, application which would have changed the escort requirements for vehicles in the protected area. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 19, 2001.

Brief description of amendment: This amendment revises V. C. Summer Technical Specification 3.4.6.2.f by increasing the allowable operational leakage rate for 23 of the 35 reactor coolant system pressure isolation valves listed in TS Table 3.4–1. This change implements a size-dependent allowable leakage rate of 0.5 gallon per minute per nominal inch of valve diameter, up to a maximum of 5 gallons per minute per valve.

Date of issuance: February 14, 2002.

Effective date: February 14, 2002.

Amendment No.: 154.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41626). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 19, 2001.

Brief description of amendment: This amendment revises Technical Specifications (TS) Table 3.7–1 by lowering the maximum allowable power range neutron flux high setpoints when one or more main steam line safety valves are inoperable. The Bases for TS 3/4.7.1.1 is also revised to include the algorithm used for determining the new allowable values.

Date of issuance: February 21, 2002.

Effective date: February 21, 2002.

Amendment No.: 155.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57125).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: August 20, 2001.

Brief description of amendment: This amendment revises the Technical Specifications by adding a footnote to Table 3.3–3 regarding the Steam Line Isolation and Engineered Safety Feature Actuation System (ESFAS) functions. This revision will allow V.C. Summer to exclude ESFAS steam line isolation instrumentation operability in Mode 3 when the main steam isolation valves, along with associated bypass valves, are closed and disabled, and eases the restriction of Specification 3.0.4 when performing reactor coolant system resistance temperature device cross calibrations at temperatures below the ESFAS P–12 Interlock for Low-Low T_{avg}.

Date of issuance: March 5, 2002.

Effective date: March 5, 2002.

Amendment No.: 156.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64301). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 11, 2001.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air," to support the use of California Diesel fuel rather than the existing Environmental Protection Agency Clear diesel fuel, and reflect a change in the diesel generator load profile in Modes 1 through 4.

Date of issuance: March 5, 2002.

Effective date: March 5, 2002, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—183; Unit 3—174.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 932). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: August 31, 2001, supplemented January 24, 2002.

Brief description of amendment: The amendment revised the Technical Specifications to allow a one-time deferral of the Type A Containment Integrated Leak Rate test based on the risk-informed guidance in Regulatory Guide 1.174.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 226.

Facility Operating License No. DPR–57: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52802). The supplement dated January 24, 2002, provided clarifying information that did not change the scope of the August 31, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 31, 2001, supplemented November 15, 2001, and February 21, 2002.

Brief description of amendments: The amendments revised the Technical Specifications on a one-time basis to extend from 7 days to 14 days the completion time for the required actions associated with restoration of the 1B emergency diesel generator (EDG). The NRC review of the August 31, 2001, amendment request to extend the completion times for all of the EDGs to

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14 days on a permanent basis is ongoing.

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 227/169.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52803). The supplemental letters dated November 15, 2001, and February 21, 2002, provide clarifying information that did not change the scope of the August 31, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 14, 2001.

Brief Description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: March 6, 2002.

Effective date: As of the date of issuance and shall be implemented by August 1, 2002.

Amendment Nos.: 153/145.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications and associated Bases.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2928). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 10, 2001, as supplemented February 11, 2002.

Description of amendment request: The amendments revised Technical Specification 3.9.1, "Refueling Equipment Interlocks," to allow in-vessel fuel movement to continue with inoperable refueling equipment interlocks, provided (1) control rod withdrawals are blocked and (2) all control rods are verified to be inserted.

Date of issuance: March 6, 2002.

Effective date: March 6, 2002.

Amendment Nos.: 242, 274, and 232.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57126). The February 11, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 20, 2001, as supplemented October 29, 2001, and November 14, 2001.

Brief description of amendment: Amends the Final Safety Analysis Report by changing the spent fuel pool (SFP) cooling analysis methodology to increase the evaluated heat removal capacity of the SFP cooling system.

Date of issuance: February 21, 2002.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 30 days.

Amendment No.: 37.

Facility Operating License No. NPF–90: Amendment does not revise the operating license or its appendices.

Date of initial notice in ***Federal Register:*** December 17, 2001 (66 FR 64998). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 10, 2000, as supplemented by letters dated September 18, 2000, August 22, 2001, November 8, 2001, and January 15, 2002.

Brief description of amendment: The amendment incorporates new requirements into the Technical Specifications (TS) associated with steam generator (SG) tube inspection and repair, establishing an alternate voltage-based SG tube repair criteria.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented prior to startup following the Cycle 4 refueling outage.

Amendment No.: 38.

Facility Operating License No. NPF–90: Amendment revises the TS.

Date of initial notice in ***Federal Register:*** May 31, 2000 (65 FR 34751). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2001.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 92 and 92.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2931). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 11, 2001.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a limiting condition for operation following a missed SR from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: March 4, 2002.

Effective date: March 4, 2002, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 143.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 935). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of March 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6230 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Briefing on Regulatory Developments

AGENCY: Postal Rate Commission.

ACTION: Notice of regulatory briefing.

SUMMARY: A delegation from Britain's Postal Services Commission (Postcomm), the independent regulator of Consignia (formerly the British Post Office), will present a briefing on Wednesday, March 27, 2002, beginning at 10 a.m., in the Postal Rate Commission's hearing room. The topic is recent regulatory developments in the United Kingdom. The briefing is open to the public.

DATES: March 27, 2002, 10 a.m.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW., Washington, DC 20268–0001, suite 300.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, Postal Rate Commission, 202–789–6820.

Steven W. Williams,

Secretary.

[FR Doc. 02–6534 Filed 3–18–02; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27497]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 12, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 8, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 8, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

E.ON AG, et al. (70–9985)

E.ON AG ("E.ON"), a German company; E.ON's subsidiary companies, E.ON UK Verwaltungs GmbH ("E.ON UK"), E.ON UK plc, E.ON US Verwaltungs GmbH ("E.ON US"), E.ON Holdco (if formed) all located at E.ON-Platz 140479, Düsseldorf, Germany; Fidelia, Inc. ("Fidelia"), a finance company subsidiary organized in Delaware; E.ON North America Inc. ("E.ON NA"); Powergen plc ("Powergen"), a U.K. registered holding company; Powergen's direct and indirect wholly owned registered holding company subsidiaries, Powergen US Holdings Limited ("Powergen US Holdings"), Powergen US Investments, Powergen Luxembourg sarl, Powergen Luxembourg Holdings sarl, Powergen Luxembourg Investments sarl, Powergen US Investments Corp.("PUSIC" and together, "Powergen Intermediate Companies"); Powergen US Funding LLC ("Powergen US Funding"), a financing vehicle for Powergen US Holdings, all located at 53 New Broad Street, London EC2M 1SL, United Kingdom; LG&E Energy Corp. ("LG&E Energy"), a Kentucky holding company exempt from registration under section 3(a)(1) of the Act, located at 220 West Main Street, Louisville, Kentucky 40232; LG&E Energy's utility subsidiaries Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU" and together, "Utility Subsidiaries"), One Quality Street, Lexington, Kentucky 40507; and LG&E Energy's nonutility companies located at 220 West Main Street, Louisville, Kentucky 40232 ("LG&E Nonutilities," together with LG&E Energy and the Utility Subsidiaries, "LG&E Energy Group" and collectively, "Applicants") have filed an application ("Application") under sections 6(a), 7, 9(a), 10, 12, 13 of the Act and rules 45, 46, 52, 53, 54, 90 and 91 under the Act. Applicants request authority for various financing transactions and service agreements related to the acquisition by E.ON of Powergen and its subsidiaries ("Acquisition"). The Commission published a notice describing the application for the Acquisition ("Acquisition Application") on December 21, 2001.[1] Following the Acquisition, E.ON intends to register under section 5 of the Act. Applicants intend that the LG&E Energy Group be transferred from the Powergen intermediate holding companies ("Powergen Intermediate Holding Companies") and held indirectly by

[1] *See* E.ON AG plc, et al. HCAR No. 27482 (December 21, 2001).

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E.ON US and its subsidiary holding companies ("Intermediate Companies").[2]

I. Summary of Financing Proposals

Applicants seek Commission authorization for certain financing activities of E.ON and its subsidiaries ("E.ON Group") through May 31, 2005 ("Authorization Period"). In summary, Applicants request authority for: (i) Various financings by E.ON, including the issuance of common stock and American Depositary Shares ("ADRs"), preferred stock, short and long-term debt, currency and interest rate swaps and guarantees; (ii) certain financings by (a) the direct and indirect holding company parents of LG&E Energy, (b) the LG&E Energy Group and (c) E.ON UK plc; (iii) the continuation by LG&E and KU of their respective receivables factoring programs; (iv) the creation of money pools and certain intercompany financing arrangements; (v) the payment of dividends out of capital or unearned surplus; (vi) the LG&E Energy Group tax allocation agreement; (vii) changing the terms of any wholly-owned E.ON Group company's authorized capital stock, the issuance of additional shares, or alteration of the terms of any then existing authorized security; (viii) the formation of and the issuance by financing entities of securities otherwise authorized to be issued and sold under this Application or applicable exemptions under the Act; (ix) authorization for Powergen, Powergen US Holdings and Powergen US Funding to issue certain debt securities; (x) authorization to invest in exempt wholesale generators ("EWGs"), as defined in section 32 of the Act and foreign utility companies ("FUCOs"), as defined in section 33 of the Act and (xi) authorization to invest in energy-related companies.

II. General Financing Parameters

Applicants represent that the proposed transactions will be subject to the following general terms and conditions ("Financing Parameters") during the Authorization Period:

- The aggregate amount of external debt, equity and guarantees issued by E.ON under the authorizations requested in this Application will not exceed $75 billion at any one time outstanding ("External Financing Limit"). Within the External Financing Limit, Applicants propose that no more than $25 billion will consist of equity securities ("Equity Sublimit"), no more than $40 billion will consist of debt securities ("Debt Sublimit") and no more than $40 billion will consist of guarantees ("Guarantees").
- The External Financing Limit represents investments in the following areas, generally: (i) $25 billion of investments in EWGs and FUCOs, (ii) $35 billion of investments in EWGs and FUCOs financed by bridge loans ("Bridge Loans") pending the receipt of proceeds from the divestiture of certain non-energy related companies ("TBD Subsidiaries"),[3] (iii) $5.5 billion for investments in TBD Subsidiaries pending divestiture, and (iv) $10 billion for investments in energy related subsidiaries. In addition to the capital expenditure program described above, as of September 30, 2001, E.ON and Powergen had debt securities outstanding in the amount of approximately $12.9 billion and $7.4 billion, respectively. Funds raised under the External Financing Limit will be used to refinance, repay, redeem or refund some of such debt over the course of the Authorization Period.
- The aggregate amount of short-term external debt issued by LG&E Energy under the authorizations requested in this Application will not exceed $400 million at any one time outstanding.
- Each of E.ON, LG&E, and KU commit that all long-term debt and preferred stock issued by it to unaffiliated parties under the authorization requested in this Application will, when issued, be rated investment grade by a nationally recognized statistical rating organization.
- E.ON and LG&E Energy, each on a consolidated basis, and LG&E and KU, individually, will maintain common stock equity as a percentage of total capitalization of at least thirty percent, as reflected in their most recent annual or semiannual report, in the case of E.ON, and, with respect to LG&E Energy, LG&E and KU, quarterly or other periodic earnings report, prepared in accordance with United States Generally Accepted Accounting Principles ("US GAAP").
- The effective cost of money on debt financings by E.ON, LG&E Energy and the Utility Subsidiaries will not exceed the competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.
- The maturity of debt issued by E.ON will not exceed fifty years.
- The dividend rate on preferred stock or other types of preferred securities issued by E.ON will not exceed, at the time of issuance, the rate generally obtainable for preferred securities having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality, as determined by competitive capital markets.

III. Existing Financing Arrangements

A. E.ON's Current Capital Structure

Applicants state that E.ON shares are listed on all German stock exchanges, the Swiss Stock Exchange and as ADRs on the New York Stock Exchange. E.ON's financial statements are maintained in accordance with U.S. GAAP. As of December 31, 2001, E.ON had 692.0 million common shares issued and approximately 687.3 million outstanding shares. E.ON recently completed the repurchase of 76.3 million shares, approximately ten percent of the company's capital stock and is authorized by its shareholders to repurchase up to ten percent of its common stock through October 31, 2002. E.ON has cancelled 71.3 million of the repurchased shares.

IV. E.ON External Financing

Applicants propose that E.ON issue and sell securities and guarantee the obligations of its subsidiaries in an aggregate amount not to exceed the External Financing Limit outstanding at any one time during the Authorization Period. Securities would include common stock, preferred stock, options, warrants, unsecured long and short-term debt including commercial paper, convertible/exchangeable securities, lease financing, bank borrowings and securities with call or put options.

A. Equity Securities

Applicants request authorization for E.ON to issue and sell, from time to time during the Authorization Period, common stock: (a) Through underwritten public offerings; (b) in private placements; (c) in exchange for securities or assets being acquired from other companies; (d) under its dividend reinvestment, stock-based management incentive and employee benefit plans; (e) through subscription rights or (f) through non-underwritten offerings. Applicants also propose that E.ON issue and sell options, warrants or other stock purchase rights. The authorization to issue and sell common stock would also apply to the issuance of common stock directly or through the ADR program and, for purposes of this request, the ADRs would not be considered separate securities from the underlying common stock.

Common stock and other equity instruments may be sold through underwriting agreements of a type generally standard in the industry in Europe or the U.S. Public distributions, if underwritten, may be through private negotiation with underwriters, dealers or agents, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All sales of common stock and other equity instruments will be at rates or prices and under conditions negotiated, based upon or otherwise determined by competitive capital markets.

Applicants request authority for E.ON to use its common stock as consideration for acquisitions authorized under the Act such as the exchange of equity securities for securities of the company being acquired to provide the seller with certain tax advantages. The E.ON ordinary shares to be exchanged may, among other things, be purchased on the open market or may be original issue. E.ON ordinary shares used to fund an acquisition of a company would be valued at market value based upon the closing price on XETRA, Germany's official electronic trading system, on the day before the execution of a definitive agreement or, in the case of a tender offer, on the day of commencement of the offer.

Applicants also request that E.ON use its common stock and other equity instruments to fund employee benefit plans and in connection with dividend reinvestment plans currently in existence or that may be formed during the Authorization Period. E.ON currently maintains various stock-based compensation plans, including some that issue stock appreciation rights.

B. Preferred Stock

Applicants request authority for E.ON to issue preferred stock from time to time during the Authorization Period in accordance with the applicable Financing Parameters. Preferred stock would have dividend rates or methods of determining the same, redemption provisions, conversion or put terms and other terms and conditions as E.ON may determine at the time of issuance.

C. Debt Securities

1. Long-Term Debt

Applicants request authority for E.ON to issue and sell long-term debt securities from time to time during the Authorization Period in accordance with the applicable Financing Parameters. E.ON may also maintain and establish long-term bank lines of credit. Subject to the Financing Parameters, any long-term debt security would have the maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, and other terms and conditions as E.ON may determine at the time of issuance.

2. Short-Term Debt

Applicants request authority for E.ON to engage in short-term financing generally available to borrowers with comparable credit ratings, as it may deem appropriate in light of its needs and market conditions at the time of issuance. Specifically, Applicants request authority for E.ON to issue and sell bank lines of credit, institutional borrowings, commercial paper and bid notes. Issuance of short-term debt will be in accordance with the applicable Financing Parameters and will have maturities of less than one year from the date of each borrowing.

D. Interest Rate and Currency Risk Management Devices

1. E.ON

Applicants request authority for E.ON to enter into, perform, purchase, and sell financial instruments intended to manage the volatility of interest rates and currency exchange rates, including but not limited to swaps, caps, floors, collars, and forward agreements or any other similar agreements ("Hedging Instruments").

In addition, Applicants request authority for E.ON to enter into Hedging Instruments with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges may include: (i) A forward sale of U.S. or European Economic Area ("EEA") Treasury futures contracts; U.S. or EEA Treasury obligations and/or a forward swap (each a "Forward Sale"); (ii) the purchase of put options on U.S. or EEA Treasury obligations ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on U.S. or EEA Treasury obligations ("Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of U.S. or EEA Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to structured notes, caps, and collars, appropriate for the Anticipatory Hedges.

E. Guarantees

Applicants request authorization for E.ON to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support ("Guarantees") with respect to the obligations of the E.ON Group companies as may be appropriate or necessary to enable these companies to carry on in the ordinary course of their respective businesses. Guarantees, together with other securities issued by E.ON, will not exceed the External Financing Limit in an aggregate amount outstanding during the Authorization Period. All debt guaranteed will comply with the Financing Parameters. Included in this amount are Guarantees entered into by E.ON that were previously issued for the benefit of the E.ON Group companies.

Certain Guarantees may be in support of obligations that are not capable of exact quantification. Applicants state that E.ON will in these cases determine the exposure under a Guarantee for purposes of measuring compliance with the External Financing Limit by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. E.ON proposes to charge each E.ON Group company a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of the liquidity necessary to perform the Guarantee and the credit risk assumed by E.ON. As of December 31, 2000, E.ON had issued and outstanding Guarantees on behalf of E.ON Group companies in an aggregate amount of approximately $0.4 billion.

F. Profit and Loss Transfer Agreements

E.ON has entered into profit and loss transfer agreements ("Profit and Loss Transfer Agreements") with certain subsidiaries organized in Germany under provisions of the German Stock Corporation Act. A Profit and Loss Transfer Agreement automates the

[2] The acquisition and transfer of Powergen and the LG&E Energy Group are more fully described in the notice to the Acquisition Application. Prior to the transfer, Powergen US Holdings, Powergen US Investments, Powergen Luxembourg, Powergen Luxembourg Holdings, Powergren Luxembourg Investments and Powergen US Investments Corp. are referred to as the "Powergen Intermediate Holding Companies." After the transfer of PUSIC and the LG&E Energy Group to E.ON US and its subsidiaries, Powergen US Holdings, Powergen US Funding and the subsidiaries of Powergen US Holdings will be referred to as the "Powergen Financing Entities." The Intermediate Companies will consist of E.ON US, PUSIC and E.ON Holdco, if formed.

[3] E.ON will divest certain businesses which are not energy related and use the proceeds of this divestiture to pay down debt issued in the interim to finance additional investment in energy related companies or utility purchases authorized in separate future applications. E.ON's business objective is more fully described in the Acquisition Application. E.ON's retainable nonutility companies will be referred to as the "Retained Nonutility Subsidiaries."

transfer of profits as well as the balancing of losses between the participating companies. Profit and Loss Transfer Agreements are commonly done by German companies for tax optimization and are required to establish a tax group for German corporate income tax purposes. The Profit and Loss Transfer Agreements allow E.ON to direct the management of the subsidiaries and to cause the subsidiaries to distribute their profits or to hold them as retained earnings. If the subsidiaries have losses, E.ON assumes the losses. Like consolidated tax sharing agreements among U.S. corporate groups, the profit and loss transfer agreements permit income from one company to be offset by losses from another, thereby reducing the taxes of the group.

Applicants request authority for E.ON and the E.ON subsidiaries organized in Germany to continue the Profit and Loss Transfer Agreements. Applicants propose that the net exposure of E.ON and the E.ON subsidiaries organized in Germany under the Profit and Loss Transfer Agreements be treated as Guarantees under the External Financing Limit. Since the exposure under the Profit and Loss Transfer Agreements is not capable of exact quantification, Applicants will determine E.ON and the E.ON subsidiaries organized in Germany's aggregate exposure under these agreements for purposes of measuring compliance with the External Financing Limit by estimation of exposure based on prior experience or projected potential payment amounts.

V. E.ON Subsidiary Company Financing

A. TBD Subsidiaries and Retained Nonutility Subsidiaries

E.ON business strategy is to become a pure energy and utility company. As a part of this strategy, E.ON plans to divest the TBD Subsidiaries. Pending divestiture, Applicants propose that E.ON continue to invest in the TBD Subsidiaries in an aggregate amount not to exceed $5.5 billion in order to preserve and protect shareholder value and to prevent any diminution in the value or the prospects of the business until such time as a sale or other exit strategy can be implemented.

Additionally, Applicants request authorization for the E.ON Group, other than the LG&E Energy Group, to finance the TBD Subsidiaries and the Retained Nonutility Subsidiaries at market rates where required by German law. Where the law does not require market rate financing, the E.ON Group, other than the LG&E Energy Group, would finance the TBD Subsidiaries and the Retained Nonutility Subsidiaries at the lending company's cost of capital. Where market rate financing is required, E.ON would determine the appropriate market rate for loans to each TBD Subsidiary or Retained Nonutility Subsidiary or among such entities in much the same manner practiced by an independent bank. E.ON would review the nature of each subsidiary's business, evaluate its capital structure, the particular risks to which it is subject, and generally prevailing market conditions. E.ON would also evaluate and take into account information from third parties such as banks that would indicate the prevailing market rates for similar businesses. In particular, E.ON will obtain information on the range of rates used by one or more banks for loans to similar businesses. Such independent third-party information would serve as an index against which an appropriate market rate could be determined. This analysis is referred to as the "Market Rate Method."

B. Powergen Financing Entities

As a result of the legal requirements relating to the Acquisition and certain tax considerations, it may be necessary or desirable following the consummation of E.ON's Acquisition of Powergen for E.ON to delay the transfer of the LG&E Energy Group to the Intermediate Companies ("Interim Period").[4] During the Interim Period, Powergen and the Powergen Intermediate Holding Companies will retain a voting interest in the LG&E Energy Group companies and remain registered holding companies. Applicants request that during the Interim Period, Powergen and the Powergen Intermediate Holding Companies continue to have the financing authority presently granted to Powergen in its order authorizing the acquisition and financing of the LG&E Group.[5]

Upon the transfer of the LG&E Energy Group companies to the Intermediate Companies, Powergen will continue to own the Powergen Financing Entities. Since the Powergen Financing Entities will no longer own voting securities in the LG&E Energy Group companies, the Powergen Financing Entities will no longer be holding companies under the Act and will de-register as holding companies. Because of financial and tax considerations, Powergen US Holdings, directly or through its financing subsidiary Powergen US Funding, will have external debt outstanding. Additionally, Powergen US Holdings will continue to have a loan outstanding from Powergen UK.[6]

Applicants request that the Powergen Financing Entities be authorized to maintain, repay, refund and otherwise refinance the facilities in place as of the date of the transfer of the LG&E Energy Group companies to the Intermediate Companies ("Transfer Date"), so long as the aggregate principal amount thereof does not at any time exceed the amount available under the facilities as of the Transfer Date. Applicants further request that the Powergen Financing Entities be authorized to loan any proceeds from the facilities to any of the Intermediate Companies and LG&E Energy.

Each of the Powergen Financing Entities requests authorization to issue and sell securities to the other Powergen Financing Entities, Powergen, E.ON UK, E.ON UK plc, and E.ON, and to acquire securities from the other Powergen Financing Entities, the Intermediate Companies and LG&E Energy. Each of the Powergen Financing Entities also seeks authority to issue guarantees and other forms of credit support to the other Powergen Financing Entities, the Intermediate Companies and LG&E Energy. The Powergen Financing Entities would not acquire voting securities of LG&E Energy, its subsidiaries or the Intermediate Companies.

The Powergen Financing Entities proposed financings would be used to finance the capital requirements of the LG&E Energy Group and any exempt or subsequently authorized activity acquired in the future. The Powergen Financing Entities financing will not be used by the Powergen Financing Entities to carry on business activities within the Powergen Financing Entities.

PUSIC, the U.S. parent of the LG&E Energy Group companies, will be transferred by the Powergen Intermediate Holding Companies to E.ON US in exchange for cash and/or a note.[7] Applicants request the authority for E.ON US to issue this note, expected to be in an amount not to exceed the fair

[4] Applicants state that the Interim Period may be up to twelve months.

[5] See Powergen plc, et al., HCAR No. 27291 (December 6, 2000). ("Powergen Order").

[6] Powergen UK is a subsidiary company of Powergen which holds Powergen's foreign interests. Powergen UK acquired a note from Powergen US Holdings to effect the financing of Powergen's purchase of LG&E Energy Group. This transaction is more fully described in the Powergen Order.

[7] Applicants state that the consideration to be paid for PUSIC will depend on the result of a fair value study that will allocate the Powergen purchase price among Powergen and its subsidiaries. The study will be conducted subsequent to the completion of the Acquisition.

market value of PUSIC, bear interest at a market-based rate and in compliance with the cost of money, maturity and issuance expense provisions of the Financing Parameters.

Applicants request that Powergen, E.ON UK plc and E.ON UK be authorized to issue and sell securities to E.ON and to their direct and indirect parent companies. Applicants also propose that Powergen, E.ON UK plc and E.ON UK receive authorization to acquire securities from their subsidiaries, including the Powergen Financing Entities, issue guarantees and provide other forms of credit support to or for the benefit of their subsidiaries. Powergen and E.ON UK would not issue securities to third parties.

Applicants request that E.ON UK plc issue and sell debt securities, in particular, medium-term notes, to third parties to finance the authorized or permitted activities of the Powergen Group. Debt issued by E.ON UK plc may be guaranteed by E.ON. Financing the Powergen Group through debt issued by E.ON UK plc is expected to be more cost effective due to tax considerations than financing capital needs through E.ON or another E.ON subsidiary and then lending the funds to E.ON UK plc. Any third party debt issued by E.ON UK plc would comply with the cost of money, maturity and issuance expense provisions of the Financing Parameters and would be consolidated into E.ON's consolidated financial statements and would count against the External Financing Limit and the Debt Sublimit.

C. Intermediate Companies

Applicants propose that E.ON hold its interest in LG&E Energy through E.ON US and PUSIC; Intermediate Companies that would be registered holding companies under the Act. Each of the Intermediate Companies requests authorization to issue and sell securities to the other Intermediate Companies and E.ON, and to acquire securities from their direct or indirect Intermediate Company subsidiaries, E.ON NA and LG&E Energy. Each of the Intermediate Companies also seeks authority to issue guarantees and other forms of credit support to or for the benefit of direct and indirect Intermediate Company subsidiaries, E.ON NA and LG&E Energy. In no case would the Intermediate Companies borrow, or receive any extension of credit or indemnity, from any of their respective direct or indirect subsidiary companies.

Upon consummation of the reorganization of the E.ON Group and the transfer of PUSIC to E.ON US, E.ON or one of the Intermediate Companies may be required to guarantee certain of the debt issued by the Powergen Financing Entities according to the terms of the applicable debt instruments. Applicants seek authority for the Intermediate Companies to issue guarantees and other forms of credit support to or for the benefit of the Powergen Financing Entities. Any guarantees issued by E.ON and the Intermediate Companies will count against the Guarantee Limit.

Each of the Intermediate Companies is intended to function as a financial conduit to facilitate E.ON's U.S. investments. For reasons of economic efficiency, the terms and conditions of any securities issued by the Intermediate Companies would be market-based determined under the Market Rate Method. The Intermediate Company financings would be used to finance the capital requirements of E.ON NA and the LG&E Energy Group and any exempt or subsequently authorized activity that is hereafter acquired. The Intermediate Company financing will not be used by the Intermediate Companies to carry on business or investment activities within the Intermediate Companies.

D. Hedging Transactions

The Intermediate Companies, the Powergen Intermediate Holding Companies and the Powergen Financing Entities propose to enter into hedging transactions with E.ON or other Intermediate Companies, Powergen Intermediate Holding Companies and Powergen Financing Entities to hedge interest rate or currency exposures. These transactions would be on market terms and on the same terms applicable to E.ON in section IV.D above.

VI. LG&E Energy Group Companies.

A. Loans from E.ON Group Companies

After the Acquisition, E.ON will restructure its holding in E.ON NA, a wholly owned subsidiary, so that it will be held as a direct subsidiary of PUSIC. After the restructuring, E.ON NA will be a sister company to LG&E Energy. E.ON NA owns Fidelia, a finance company subsidiary organized in Delaware. Applicants propose that funds held by Fidelia be used to finance the capital needs of the LG&E Energy Group.

E.ON proposes to finance all or a portion of the capital needs of the LG&E Energy Group companies directly or through other E.ON Group companies as described above, including the Intermediate Companies. Applicants request authority for the LG&E Energy Group companies to borrow funds from E.ON Group companies that may have available surplus funds. These borrowings would only occur if the interest rate on the loan would result in an equal or lower cost of borrowing than the LG&E Energy Group company could obtain in a loan from E.ON or in the capital markets on its own. Consequently, all borrowings by an LG&E Energy Group company from an associate company would be at the lowest of: (a) E.ON's effective cost of capital; (b) the lending associate's effective cost of capital (if lower than E.ON's effective cost of capital); and (c) the borrowing LG&E Energy Group company's effective cost of capital determined by reference to the effective cost of a direct borrowing by the company from a nonassociate for a comparable term loan that could be entered into at the time.

1. LG&E Energy

Applicants request authorization for LG&E Energy to obtain funds externally through sales of short-term debt securities and to have outstanding at any time during the Authorization Period external short-term debt in an aggregate amount of up to $400 million.

LG&E Energy may engage in short-term financing as it deems appropriate in light of its needs and market conditions at the time of issuance. Financing could include commercial paper sold in established U.S. or European commercial paper markets, lines of credit with banks or other financial institutions and debt securities issued under an indenture or a note program. All transactions will be at rates or prices, and under conditions, negotiated under, based upon or otherwise determined by, competitive market conditions. Any securities issued by LG&E Energy will comply with the Financing Parameters.

2. Utility Subsidiaries

Applicants request authorization for the Utility Subsidiaries to undertake the following financings.

(a) Short-Term Financing. Applicants request authorization for LG&E and KU to issue debt with maturities of two years or less to one or more associate or nonassociate companies in an aggregate principal amount at any one time outstanding during the Authorization Period of up to $400 million in the case of LG&E and $400 million in the case of KU. Short-term financing may include commercial paper sold in established U.S. or European commercial paper markets, lines of credit with banks or other financial institutions and debt securities issued under an indenture or a note program. All transactions will be at rates or prices, and under conditions negotiated under, based upon, or

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otherwise determined by, competitive market conditions.

(b) Receivables Factoring Program. LG&E and KU propose to continue their receivables factoring program, authorized by the Powergen Order. LG&E formed and made capital contributions to LG&E Receivables, LLC ("LG&E Receivables") and KU has formed and made capital contributions to KU Receivables, LLC ("KU Receivables"). Applicants request authorization for LG&E Receivables and KU Receivables to pay dividends or other distributions to the extent the dividends or other distributions may be considered to be paid out of capital or unearned surplus. Applicants also request that the Commission authorize the intercompany notes issued by LG&E Receivables and KU Receivables to LG&E and KU, respectively.

(c) Guarantees. The Utility Subsidiaries seek authorization to guarantee the obligations of their subsidiaries (other than EWGs, exempt telecommunications companies as defined under section 34 of the Act ("ETCs") or FUCOs) to the extent not exempt under rule 45 under the Act. Guarantees would not exceed $200 million in the case of LG&E and $200 million in the case of KU. Certain guarantees may be in support of obligations that are not capable of exact quantification. The Utility Subsidiaries will in these cases determine the exposure under a guarantee for purposes of measuring compliance with the above limits by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. The Utility Subsidiaries propose to charge each subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of the liquidity necessary to perform the guarantee and the credit risk assumed by the Utility Subsidiary. Guarantees issued by the Utility Subsidiaries would not be secured by any utility assets.

(d) Hedging Instruments. The Utility Subsidiaries request authorization to enter into Hedging Instruments and Anticipatory Hedges on the same terms applicable to E.ON in section IV.D above.

3. Intercompany Loans Among the LG&E Energy Group

The activities of LG&E Energy and its nonutility subsidiaries ("Nonutility Subsidiaries") are financed, in part, through intercompany loans. The source of funds for the operations of LG&E Energy and the Nonutility Subsidiaries include internally generated funds and proceeds of external financings.

Applicants request authorization for LG&E Energy and the Nonutility Subsidiaries to loan funds to the Nonutility Subsidiaries in a net principal amount at any one time outstanding during the Authorization Period not to exceed $1 billion. The authorization for intrasystem financing requested in this paragraph excludes financing that is exempt under rules 45(b) and 52. LG&E Energy will not borrow funds from its subsidiary companies. Terms and conditions of intercompany loans available to the Nonutility Subsidiaries will be materially no less favorable than the terms and conditions of loans available to the borrowing company from third-party lenders. The interest rate on intercompany loans payable by the borrower will be equal to the lending company's cost of capital. All intercompany loans will be payable on demand or have a maturity of less than fifty years from the date of issuance.

4. LG&E Energy Group Guarantees

The LG&E Energy Group has in place certain guarantees and other credit support arrangements and request authority for these arrangements to remain in place following the Acquisition. These guarantees and credit support arrangements, described fully in the Application, have been previously authorized by order or are permitted under the Act and rules under the Act.

Applicants request authorization for LG&E Energy and the Nonutility Subsidiaries to enter into guarantees, extend credit, obtain letters of credit, enter into guaranty-type expense agreements and otherwise to provide credit support for the obligations from time to time of the LG&E Energy Group companies during the Authorization Period. Guarantees issued by LG&E Energy would not exceed an aggregate principal amount of $1.5 billion and Guarantees issued by the Nonutility Subsidiaries would not exceed an additional aggregate principal amount of $1.5 billion, in each case based on the amount at risk, outstanding at any one time, exclusive of any guarantees or credit support arrangements existing on the date of the Acquisition and exclusive of guarantees that may be exempt under rule 45(b). The request for Guarantee authorization is separate from E.ON's External Financing Limit or E.ON's Guarantee Limit and is also separate from the guarantee authorization sought by the Utility Subsidiaries. Any securities issued by the LG&E Energy Group companies which are guaranteed or otherwise covered by credit support arrangements, will either be issued pursuant to a Commission order or under an applicable exemption under the Act.

Any Guarantees or other credit support arrangements outstanding at the end of the Authorization Period shall continue until expiration or termination in accordance with their terms. The amount of Guarantees outstanding at any one time shall not be counted against the aggregate respective limits applicable to external financings or the limits on intra-system financing requested elsewhere herein. The guarantor will not charge a fee for any Guarantee that would exceed the guarantor's cost of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding and the credit risk assumed by the guarantor. To the extent that the exposure under any Guarantee is not capable of exact quantification, the guarantor will estimate its exposure based on loss experience or projected potential payment amounts.

5. Money Pools

Applicants request authorization to operate three money pools. The utility money pool ("Utility Money Pool") would include only the Utility Subsidiaries as borrowers from, and lenders to, the pool. E.ON, E.ON NA, Fidelia and LG&E Energy may be additional members of the Utility Money Pool, but they would participate only as lenders to the pool. LG&E Energy Services Inc. ("LG&E Services") will act as the administrator of the Utility Money Pool.

The U.S. nonutility money pool ("U.S. Nonutility Money Pool") would include the Nonutility Subsidiaries as borrowers from and lenders to the pool. E.ON, E.ON NA, Fidelia and LG&E Energy would be additional members of the U.S. Nonutility Money Pool, but they would participate only as lenders to the pool. LG&E Services, the service company subsidiary of LG&E Energy, will act as the administrator of the U.S. Nonutility Money Pool.

The Utility Subsidiaries and certain of the Nonutility Subsidiaries currently participate in money pools approved by the Commission in the Powergen Order. Applicants request that the Commission authorize the existing money pools through December 31, 2003, to provide a period of time to implement the new money pools.

Applicants also request authorization to form and operate an E.ON nonutility money pool ("E.ON Nonutility Money Pool") on the terms described herein. The E.ON Nonutility Money Pool may include all E.ON Group companies as

borrowers from and lenders to the pool, except E.ON, the Intermediate Companies, the Powergen Intermediate Holding Companies and the LG&E Energy Group companies. E.ON, the Intermediate Companies and the Powergen Intermediate Holding Companies would participate only as lenders to the E.ON Nonutility Money Pool.

The daily outstanding balance of all borrowings from the Utility Money Pool during any month will accrue interest at the rate, as published in the Wall Street Journal on the last business day of the prior calendar month for high grade 30-day commercial paper issued by major corporations and sold through dealers ("WSJ Rate") plus an at-cost allocation of LG&E Services" cost of managing the money pool. The interest rate paid on loans to the Utility Money Pool would be the weighted average of the WSJ Rate earned on loans to pool participants and the interest rate earned by the pool on surplus deposits invested in high-quality short-term readily marketable instruments.

LG&E Services would administer the Utility Money Pool on an "at cost" basis and maintain the records for the pool. The determination of whether a participant in a money pool has surplus funds to lend to the pool or should borrow from the pool would be made by each participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in that participant's sole discretion. No party would be required to effect a borrowing through a money pool if it is determined that it could (and had the authority to) effect a borrowing at a lower cost directly from banks or through the sale of its own commercial paper.

The Utility Subsidiaries' borrowings from the Utility Money Pool would be counted against their overall short-term borrowing limits stated above. The U.S. Nonutility Money Pool will be operated on substantially the same terms and conditions as the Utility Money Pool.

The E.ON Nonutility Money Pool would be administered by E.ON at no charge or by E.ON NA or its special purpose subsidiary at cost. The interest rate charged by the pool would be set according to the Market Rate Method and surplus funds would be invested in the same manner proposed for the Utility Money Pool. The interest rate paid on deposits to the E.ON Nonutility Money Pool will be a weighted average of the rates charged borrowers and the money pool investment rate.

VII. Acquisition, Redemption, or Retirement of Securities

The Applicants request authorization for each company in the E.ON Group other than EWGs, FUCOs, and ETCs to acquire, redeem, or retire its securities or those of its direct and indirect subsidiaries, which securities may be either outstanding presently or issued and sold in the future from time to time during the Authorization Period. These transactions will be undertaken at either the competitive market prices for the securities or at the stated price for those securities, as applicable.

VIII. Financing Entities

Applicants request authorization for the E.ON Group companies, except the EWGs, FUCOs and ETCs, to organize new, or use existing, corporations, trusts, partnerships, or other entities created for the purpose of facilitating financings through their issuance to third parties of income preferred securities or other securities authorized or issued under an applicable exemption. Request is also made for these financing entities ("E.ON Financing Entities") to issue these securities to third parties in the event the issuances are not exempt under rule 52. Additionally, Applicants request authorization with respect to (a) the issuance of debentures or other evidences of indebtedness to an E.ON Financing Entity in return for the proceeds of the financing; (b) the acquisition of voting interests or equity securities issued by the E.ON Financing Entity to establish ownership of or to return funds to the financing entity and (c) the guarantee of the E.ON Financing Entity's obligations in connection with the securities issued. Applicants also request authority for E.ON Group Companies to enter into expense agreements with their respective E.ON Financing Entity under section 13 of the Act and to pay all expenses of the entity. All expense reimbursements would be at cost.

Any amounts issued by an E.ON Financing Entity to third parties under the authority requested in this Application would be counted against the External Financing Limit or any other applicable limit for the immediate parent of the E.ON Financing Entity. The underlying intra-system mirror debt and parent guarantee will not, however, count against the applicable financing or guarantee limits.

IX. Changes in Capital Stock of Subsidiaries

The portion of a subsidiary's aggregate financing to be effected through the sale of equity securities to a direct or indirect parent company during the Authorization Period cannot be determined at this time. The proposed sale of capital securities may in some cases exceed the capital stock of a given subsidiary authorized at the date of the Merger, in which case the limit will be increased. In addition, a subsidiary may choose to use other forms of capital securities including common stock, ordinary shares, preferred stock, other preferred securities, options and/or warrants convertible into common or preferred stock rights and similar securities. Applicants request authority to increase the amount or change the terms of any wholly owned subsidiary's authorized capital securities, as needed to accommodate the sale of additional equity, without additional Commission approval. The terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. Applicants state that the Financing Parameters will continue to be satisfied following the change in terms of any capital security issued by a subsidiary.

X. Tax Allocation Agreement

Applicants ask the Commission to approve the agreement among certain E.ON Group companies to file a consolidated tax return ("Tax Allocation Agreement"). Approval is necessary because the Tax Allocation Agreement provides for the retention by the U.S. parent of the US tax filing group (i.e., PUSIC or certain of its subsidiaries) of certain tax attributes resulting from payments it has made, rather than the allocation of these losses to the subsidiaries in the U.S. tax filing group without compensation as would otherwise be required by rule 45(c)(5). In this matter, PUSIC is seeking to retain only the benefit of tax losses that have been generated by it in connection with financing the acquisition of LG&E Energy.

XI. Payment of Dividends Out of Capital or Unearned Surplus

Applicants will use the purchase method of accounting for the Acquisition. Under this method of accounting, the premium to be paid to acquire Powergen will result in a substantial amount of goodwill for the E.ON Group. Goodwill will not be amortized but will be subject to annual impairment tests and will reduce future consolidated net income. In addition, accounting rules require that the premium paid in an acquisition utilizing the purchase method of accounting be "pushed down" to the books of the acquired company, which

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in this case would be the Powergen Group. The effect of a "push down" is to eliminate the retained earnings of the acquired company and to increase its additional paid-in capital. However, under applicable exceptions to the general rule, the premium paid in the acquisition will be "pushed down" to LG&E Energy, but will not be pushed down to the Utility Subsidiaries or any other subsidiary of LG&E Energy.

Applicants request authorization for the E.ON subsidiaries other than EWGs, FUCOs, ETCs, and Utility Subsidiaries, to pay dividends with respect to its common stock or fund the redemption or repurchase of stock out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law from time to time through the Authorization Period.

XII. Nonutility Reorganizations

Applicants propose to restructure E.ON's nonutility holdings, including those in the LG&E Energy Group, from time to time as may be necessary or appropriate in the furtherance of the E.ON Group's authorized nonutility activities and to maintain and support investment in the E.ON TBD Subsidiaries pending divestiture. To that end, E.ON requests authorization to acquire, directly or indirectly, the equity securities of one or more intermediate subsidiaries ("Development Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future nonutility subsidiaries. Development Subsidiaries may also provide management, administrative, project development and operating services to these entities.

Restructuring could involve the acquisition of one or more new special-purpose subsidiaries to acquire and hold direct or indirect interests in any or all of the TBD Subsidiaries and the E.ON Group's existing or future authorized nonutility businesses. Restructuring could also involve the transfer of existing subsidiaries, or portions of existing businesses, among the E.ON Group companies and/or the reincorporation of existing subsidiaries in a different jurisdiction. This would enable the E.ON Group to consolidate similar businesses, to participate effectively in authorized nonutility activities, and to position the E.ON TBD Subsidiaries appropriately for eventual sale without the need to apply for or receive additional Commission approval.

The nonutility restructuring authorization sought herein works together with the authorization to invest up to $5.5 billion in the TBD Subsidiaries. For example, E.ON's German subsidiary Viterra has a portfolio of primarily low-income housing properties. To put Viterra in a better position to be sold, it may be desirable to package certain existing properties into one or more corporations for a separate sale and also to acquire selected commercial or upscale residential properties that complement Viterra's existing holdings. A more balanced portfolio of properties may be more attractive to a potential purchaser and increase the likelihood of structuring a successful sale.

Development Subsidiaries may be corporations, partnerships, limited liability companies or other entities in which E.ON, directly or indirectly, might have a 100% interest, a majority equity or debt position, or a minority debt or equity position. Development Subsidiaries would engage only in businesses to the extent the E.ON Group is authorized, whether by statute, rule, regulation or order, to engage in those businesses (including the businesses of the E.ON TBD Subsidiaries pending divestiture). E.ON commits that the reorganization authorization requested in this Application will not result in the entry by the E.ON Group into a new, unauthorized line of business.

Development Subsidiaries would be organized for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, subsidiaries exempt under rule 58 ("Rule 58 Subsidiaries"), energy related subsidiaries ("Energy Related Subsidiaries"), ETCs or other non-exempt nonutility subsidiaries. Development Subsidiaries may also engage in development activities ("Development Activities") and administrative activities ("Administrative Activities") relating to the permitted businesses of the nonutility subsidiaries.

Development Activities will include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage E.ON's investments in nonutility subsidiaries.

A Development Subsidiary may be organized, among other things, (a) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Subsidiary, Energy Related Subsidiary, ETC or other non-exempt nonutility subsidiary; (b) after the award of the bid proposal, to facilitate closing on the purchase or financing of the acquired company; (c) at any time subsequent to the consummation of an acquisition of an interest in any company in order, among other things, to effect an adjustment in the respective ownership interests in business held by E.ON and non-affiliated investors; (d) to facilitate the sale of ownership interests in one or more acquired nonutility companies; (e) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (f) as a part of financial optimization or tax planning to limit E.ON's exposure to German, U.S. and foreign taxes or (g) to further insulate E.ON and its utility subsidiaries from operational or other business risks that may be associated with investments in nonutility companies.

Development Activities will be funded in accordance with rules 45(b) and 52(b) under the Act or as authorized in this Application. To the extent that E.ON provides funds or guarantees directly or indirectly to a Development Subsidiary that are used for the purpose of making an investment in any EWG, FUCO or Rule 58 Subsidiary, the amount of these funds or guarantees will be included in E.ON's "aggregate investment" in these entities, as calculated in accordance with rules 53 or 58, under the Act as applicable.

To the extent these transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, Applicants request that authorization for the Development Subsidiaries to provide management, administrative, project development and operating services to direct or indirect subsidiaries at cost in accordance with section 13 of the Act and the rules, including rules 90 and 91 under the Act. Applicants also propose, however, that under certain circumstances Development Subsidiaries would provide services and sell goods at fair market prices, under an exemption from the at-cost standard of section 13(b) of the Act and rules 90 and 91 under the Act, when the company receiving the goods or services is:

(1) A FUCO or foreign EWG that does not derive any income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States;

(2) An EWG that sells electricity to nonassociate companies at market-based rates approved by the Federal Energy Regulatory Commission ("FERC");

(3) A "qualifying facility" under the Public Utility Regulatory Policy Act of 1978 ("PURPA") that sells electricity to industrial or commercial customers for their own use at negotiated prices or to electric utility companies at their "avoided cost," as defined under PURPA;

(4) A domestic EWG or "qualifying facility" that sells electricity to nonassociate companies at cost-based rates approved by FERC or a state commission; and

(5) A Rule 58 Subsidiary or any other authorized subsidiary that: (a) Is partially owned, provided that the ultimate purchaser of the goods or services is not an associate public utility company or an associate company that primarily provides goods and services to associate public-utility companies; (b) is engaged solely in the business of developing, owning, operating and/or providing goods and services to nonutility companies described in items (1) through (4), above or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

XIII. Energy Related Subsidiaries

E.ON is in the process of a significant program of divestiture of its nonutility businesses. E.ON expects to receive proceeds from business divestitures in excess of $20 billion within the next five years, including the proceeds of sales already made. Applicants propose that E.ON invest the divestiture proceeds to build its existing, permitted nonutility businesses, and acquire additional interests in EWGs, FUCOs and permitted nonutility businesses located primarily outside of the United States.

XIV. EWG/FUCO-Related Financings

E.ON requests authorization to issue and sell securities in an aggregate amount of up to $25 billion for the purpose of financing investments in EWGs and FUCOs in the Acquisition Application. E.ON also proposes to invest an additional $35 billion in EWGs and FUCOs available from the divestiture of the TBD Subsidiaries. Both of these amounts are included within the External Financing Limit.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6551 Filed 3–18–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25461; 812–10806]

Putnam American Government Income Fund, *et al.*; Notice of Application

March 13, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of Application: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

Applicants: Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds (on behalf of its portfolio series: Putnam Asset Allocation: Growth Portfolio, Putnam Asset Allocation: Balanced Portfolio and Putnam Asset Allocation: Conservative Portfolio), Putnam Balanced Retirement Fund, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Florida Tax Exempt Income Fund, The Putnam Fund for Growth and Income, Putnam Funds Trust (on behalf of is portfolio series: Putnam Asia Pacific Fund II, Putnam Equity Fund 98, Putnam Equity Fund 2000, Putnam Financial Services Fund, Putnam Growth Fund, Putnam High Yield Trust II, Putnam International Fund 2000, Putnam International Growth and Income Fund, Putnam International Core Fund, Putnam Mid Cap Fund 2000, Putnam New Century Growth Fund, Putnam Technology Fund and Putnam U.S. Core Fund), The George Putnam Fund of Boston, Putnam Global Equity Fund, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Global Natural Resources Fund, Putnam Health Sciences Trust, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Fund, Putnam International Growth Fund, Putnam Investment Funds (on behalf of its portfolio series: Putnam Balanced Fund, Putnam Capital Opportunities Fund, Putnam Emerging Markets Fund, Putnam Global Aggressive Growth Fund, Putnam Global Growth and Income Fund, Putnam Growth Opportunities Fund, Putnam International Fund, Putnam International Blend Fund, Putnam International Large Cap Growth Fund, Putnam International New Opportunities Fund, Putnam International Voyager Fund, Putnam Mid-Cap Value Fund, Putnam New Value Fund, Putnam Research Fund and Putnam Small Cap Value Fund), Putnam Investors Fund, Putnam Massachusetts Tax Exempt Income Fund, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Income Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Preferred Income Fund, Putnam Strategic Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Income Trust (on behalf of its portfolio series: Putnam Tax-Free High Yield Fund and Putnam Tax-Free Insured Fund), Putnam Tax Smart Funds Trust (on behalf of its portfolio series: Putnam Tax Smart Equity Fund), Putnam U.S. Government Income Trust, Putnam Utilities Growth and Income Fund, Putnam Variable Trust (on behalf of its portfolio series: Putnam VT American Government Income Fund, Putnam VT Asia Pacific Growth Fund, Putnam VT Capital

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Appreciation Fund, Putnam VT Diversified Income Fund, Putnam VT The George Putnam Fund of Boston, Putnam VT Global Asset Allocation Fund, Putnam VT Global Growth Fund, Putnam VT Growth and Income Fund, Putnam VT Growth Opportunities Fund, Putnam VT Health Sciences Fund, Putnam VT High Yield Fund, Putnam VT Income Fund, Putnam VT International Growth Fund, Putnam VT International Growth and Income Fund, Putnam VT International New Opportunities Fund, Putnam VT Investors Fund, Putnam VT Money Market Fund, Putnam VT New Opportunities Fund, Putnam VT New Value Fund, Putnam VT OTC & Emerging Growth Fund, Putnam VT Research Fund, Putnam VT Small Cap Value Fund, Putnam VT Technology Fund, Putnam VT Utilities Growth and Income Fund, Putnam VT Vista Fund, Putnam VT Voyager Fund and Putnam VT Voyager Fund II), Putnam Vista Fund, Putnam Voyager Fund, Putnam Voyager Fund II, Putnam California Investment Grade Municipal Trust, Putnam Convertible Opportunities and Income Trust, Putnam High Income Convertible and Bond Fund, Putnam High Yield Municipal Trust, Putnam Investment Grade Municipal Trust, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Municipal Bond Fund, Putnam Municipal Opportunities Trust, Putnam New York Investment Grade Municipal Trust, Putnam Premier Income Trust, Putnam Tax-Free Health Care Fund (collectively, the "Funds"), and Putnam Investment Management, LLC (the "Adviser").

Filing Dates: The application was filed on October 6, 1997 and amended on February 26, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o John R. Verani, Putnam Investment Management, LLC, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Massachusetts business trust, are registered under the Act as open-end or closed-end management investment companies (referred to as "Open-end Funds" and "Closed-end Funds," respectively). The Adviser, registered under the Investment Advisers Act of 1940, serves as the investment adviser for each Fund. The Adviser is a wholly-owned subsidiary of Putnam Investments, LLC, which is owned by Putnam Investments Trust, a subsidiary of Marsh & McLennan Companies, Inc. Applicants request that any relief granted pursuant to the application also apply to any other existing or future registered management investment companies, or series thereof, for which the Adviser or a company controlling, controlled by, or under common control with the Adviser, acts as investment adviser ("Future Funds").[1]

2. Certain of the Open-end Funds have entered into a line of credit with a syndicate of banks (the "Banks") under which the Banks are obligated to lend money to the Open-end Funds for temporary or emergency purposes. In addition, certain of the Funds may lend money to the Banks or other parties by entering into repurchase agreements or purchasing other short-term instruments. When Open-end Funds borrow from the Banks, they pay a rate of interest significantly higher than the rate of interest earned by the Funds that have entered into repurchase agreements. The interest rate difference represents the Bank's profit for serving as "middleman" between borrowers and lenders.

3. The Funds seek to reduce the middleman function of the Banks by entering into a master loan agreement with each other (the "Credit Facility") that would permit the Funds to lend money directly to, and borrow from, each other to meet the temporary or emergency borrowing needs of the borrowing Open-end Funds ("Interfund Loans").

4. Applicants state that the Credit Facility would reduce substantially an Open-end Fund's borrowing costs and to enhance a Fund's ability to earn higher rates of interest on its short-term lending. Although the Credit Facility would substantially reduce the Funds' reliance on bank credit arrangements, the Funds may continue to maintain bank loan facilities.

5. Applicants anticipate that the Credit Facility would provide a borrowing Open-end Fund with savings when the cash position of the Fund is insufficient to meet cash requirements. This situation typically arises when shareholder redemptions exceed anticipated volumes and the Open-end Fund has insufficient cash on hand to satisfy the redemptions. Although all transactions are required to be settled within three business days, the Open-end Fund may require a source of immediate, short-term liquidity to meet redemption requests pending settlement of the sale of portfolio securities.

6. Although bank borrowings are available to provide liquidity, the rate charged under the Credit Facility will be below that charged by commercial lenders for short-term loans. Likewise, a Fund making a cash loan directly to another Fund would earn interest at a rate higher than it otherwise could obtain from investing its cash in short-term repurchase agreements. Thus, applicants believe that the Credit Facility would benefit both those Funds that are borrowers and those that are lenders.

7. The interest rate to be charged on Interfund Loans (the "Interfund Rate") would be determined daily and would generally be the average of (i) the higher of the "OTD Rate" and the "Repo Rate" and (ii) the "Bank Loan Rate" (each as defined below). The OTD Rate on any day would be the highest interest rate available to the Funds from investment in overnight time deposits. The Repo Rate on any day would be the highest interest rate available to the Funds from investment in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated according to a formula, established by the board of trustees of each Fund ("Board"), intended to approximate the lowest interest rate at which short-term bank loans are available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds rate plus 25 basis points) and would vary with that rate to reflect changing bank loan rates. The initial formula and any subsequent modifications would be subject to the approval of the Board of each Fund. In addition, each Fund's Board periodically would review the continuing appropriateness of reliance on the publicly available rate used to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates available to the Funds.

8. The Adviser would administer the Credit Facility as part of its duties under its investment management agreement with each Fund and would receive no additional fee as compensation for its services. The Adviser will make an Interfund Loan available to a borrowing Fund only if the Interfund Rate is more favorable to the lending Fund than both the Repo Rate and the OTD Rate and more favorable to the borrowing Fund than the Bank Loan Rate. Closed-end Funds and money market Funds will participate in the Credit Facility only as lending Funds.

9. On each business day the Adviser would collect data on the uninvested cash balances and borrowing requirements of all participating Funds. The Adviser would allocate borrowing demand and cash available for lending among the Funds on a basis believed by it to be equitable, subject to certain administrative procedures applicable to all Funds, such as the time a decision is made that a particular Fund would participate, minimum loan sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each single Interfund Loan may be allocated to minimize the number of participants necessary to complete that Interfund Loan transaction. No Fund would be able to direct that its cash balance be loaned to any particular Fund or otherwise intervene in the Adviser's allocation of Interfund Loans. After allocating cash for Interfund Loans, the Adviser would invest any remaining cash in accordance with the investment guidelines of the Funds. The method of allocation and related administrative procedures would be established by each Fund's Board, including a majority of independent trustees who are not interested persons of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

10. The Adviser would (i) monitor the interest rates charged and the other terms and conditions of the Interfund Loans, (ii) ensure compliance with each Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the Credit Facility and the Interfund Loan Rates.

11. No Fund would be permitted to participate in the Credit Facility unless (i) it had fully disclosed all material information concerning the Credit Facility in its prospectus or statement of additional information, (ii) it had obtained necessary shareholder approval, and (iii) the Fund's participation in the Credit Facility was consistent with its investment policies and restrictions and its Agreement and Declaration of Trust.

12. In connection with the Credit Facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Funds that are advised by the same entity are "affiliated persons" of each other under section 2(a)(3)(C) of the Act by reason of being under common control. Applicants state that the Funds may be under common control by virtue of having the same Adviser and substantially the same Board and officers and therefore, under sections 17(a)(3) and 21(b), would be prohibited from participating in the Credit Facility.

2. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission may exempt a transaction from the prohibitions of section 17(a) provided that the terms of the transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants contend that the Credit Facility is consistent with the overall purposes of sections 17(a)(3) and 21(b). These sections are intended to prevent a party with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly benefit that party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed transactions do not raise such concerns because (i) the Adviser would administer the program as a disinterested fiduciary, (ii) the Interfund Loans would not involve a degree of risk greater than that of short-term repurchase agreements or comparable short-term instruments, (iii) the lending Fund would earn interest at a rate higher than it could obtain through similar other investments, and (iv) the borrowing Fund would pay interest at a rate no greater than otherwise available to it under its bank loan agreements, if any. Moreover, the proposed conditions would effectively preclude the possibility of any undue advantage.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the Credit Facility may be deemed to involve transactions

[1] All existing investment companies that presently intend to rely on the order are named as applicants. Any Future Funds that subsequently rely on the order will comply with the terms and conditions in the application.

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by affiliated persons of the Funds. Applicants also state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) of the Act permits the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from the provisions of section 12(d)(1), if and to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons set forth below.

5. Applicants submit that the Credit Facility does not involve the type of abuse at which section 12(d)(1) was directed. That section was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees that are generated by multiple layers of investments. Applicants state that the entire purpose of the Credit Facility is to provide economic benefits for all participating Funds. Applicants state that there would be no duplicative costs or fees to the Funds or their shareholders, and that the Adviser would administer the Credit Facility under its existing agreements with the Funds and would not receive additional compensation for its services.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a registered company may borrow from any bank so long as immediately after the borrowing there is asset coverage of at least 300% for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Credit Facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds under the Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participating Funds.

9. Applicants submit that the purpose of section 17(d) is to avoid self-dealing between investment companies and insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore state that each Fund's participation in the Credit Facility will be on terms that are no different from or less advantageous than those of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the Credit Facility will be the average of (i) the higher of the OTD Rate and the Repo Rate and (ii) the Bank Loan Rate.

2. The Adviser on each business day will compare the Bank Loan Rate with the Repo Rate and the OTD Rate and will make cash available for Interfund Loans only if the Interfund Rate is (i) more favorable to the lending Fund than both the Repo Rate and the OTD Rate and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings from any bank, then any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that required collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event more than seven days) and (iv) will provide that if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Loan. This event of default will entitle the lending Fund to call the Interfund Loan and exercise all rights with respect to the collateral, if any. Such call will be made if the lending bank or banks exercise their rights to call their loan under an agreement with the Fund.

4. A Fund may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that required collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Credit Facility only on a secured basis. A Fund could not borrow through the Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or shareholder redemptions), the Fund will within one business day thereafter (i) repay all of its outstanding Interfund Loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets or (iii) secure each outstanding Interfund Loan by a pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) will no longer be required. Until each Interfund Loan that is outstanding at a time that a Fund's total outstanding borrowings exceed 10% is repaid, or until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at a level equal to at least 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may loan funds through the Credit Facility if the loan would cause its aggregate outstanding loans through the Credit Facility to exceed 15% of its current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of the Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition (8).

9. Unless the Fund has a policy that prevents it from borrowing for other than temporary or emergency purposes, the Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to that Fund, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails, in each case, for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the Credit Facility must be consistent with its investment policies and limitations and the Fund's Agreement and Declaration of Trust.

12. The Adviser will calculate total Fund borrowing and lending demand through the Credit Facility, and allocate Interfund Loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Adviser will not solicit cash for the Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Adviser will invest amounts remaining after satisfaction of borrowing demand in accordance with the investment guidelines of the Funds.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of the Funds concerning the Funds' participation in the Credit Facility and the terms and other conditions of any extensions of credit under the Credit Facility.

14. Each Fund's Board, including a majority of the Independent Trustees: (i) Will review no less frequently than quarterly the Fund's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (ii) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review no less frequently than annually the continuing appropriateness of such Bank Loan Rate formula; and (iii) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Credit Facility.

15. If an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Loan Agreement, the Adviser promptly will refer such loan for arbitration to an independent arbitrator who has been selected by the Board of any Fund involved in the loan and who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of the Funds setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve written records of all transactions under the Credit Facility, setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions (13) and (14). These records will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction involving the Fund occurred under the Credit Facility. For the first two years of this six-year period, the maintenance and preservation of these records will be in an easily accessible place.

17. The Adviser will prepare and submit to the Board for review an initial report describing the operations of the Credit Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the Credit Facility commences operations, the Adviser will report to the Board quarterly on the operations of the Credit Facility. In addition, for two years following the commencement of the Credit Facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates the Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (i) That the Interfund Rate will be higher than both the Repo Rate and the OTD Rate but lower than the Bank Loan Rate; (ii) compliance with the collateral requirements described in the application; (iii) compliance with the percentage limitations on interfund borrowing and lending; (iv) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (v) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

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For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6509 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25462; 812–12312]

Financial Investors Trust, et al.; Notice of Application

March 13, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Armada Funds ("Armada"), The Armada Advantage Fund ("Armada Advantage"), Financial Investors Trust on behalf of The United Association S&P 500 Index Fund ("United Association", and together with Armada and Armada Advantage, the "Trusts") and any registered open-end management investment company or series thereof that is currently, or in the future advised by National City Investment Management Company ("IMC") or any entity controlling, controlled by, or under common control with IMC (together with IMC, the "Adviser")(collectively, the Trusts and their series, such investment companies and their series, the "Funds.")

Filing Dates: The application was filed on October 20, 2000, and amended on March 4, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, Armada, One Freedom Valley Drive, Oaks, PA 19456; Armada Advantage, One Freedom Valley Drive, Oaks, PA 19456; United Association S&P 550 Index Fund, PMB 606, 303 16th Street, Suite #016, Denver, CO 80202–5657; IMC, 1900 East Ninth Street, Cleveland, OH 44114.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Nadya Roytblat, Assistant Director at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Armada and Armada Advantage are Massachusetts business trusts registered under the Act as open-end management investment companies. Financial Investors Trusts is a Delaware business trust registered under the Act as an open-end management investment company. Collectively, the Trusts consist of 36 Funds.[1] The Funds, other than the money market Funds ("Money Market Funds"), invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. The Money Market Funds comply with rule 2a-7 under the Act. The Adviser is a wholly-owned subsidiary of National City Corporation, a publicly-held bank holding company, and is registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. Applicants state that certain Funds ("Investing Funds") have, or may be expected to have, uninvested cash ("Uninvested Cash") held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. The Investing Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with "Uninvested Cash," "Cash Balances".)

3. Applicants request an order to permit each of the Investing Funds to invest its Cash Balances in one or more of the Money Market Funds, and to permit each of the Money Market Funds to sell its shares to, and redeem its shares from, the Investing Funds, and the Adviser to effect such purchases and sales. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Investing Fund's investment objectives, restrictions, and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of section 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund would not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investment Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's ("NASD") Conduct Rules) or if such shares are subject to any such sales load, redemption fees, distribution fee or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of the investment. In connection with approving any advisory contract for an Investing Fund, the Investing Fund's board of trustees (the "Board") including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the investment of Uninvested Cash in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act, in pertinent part, defines an "affiliated person" of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling, or holding with power to vote 5% or more of the other person. Applicants state that because the Funds share a common Adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, applicants state that because an Investing Fund may acquire 5% or more of a Money Market Fund, the Investing Fund may be deemed to be an affiliated person of the Money Market Fund. As a result, section 17(a) would prohibit the sale of shares of a Money Market Fund to the Investing Funds, and the redemption of shares by the Money Market Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b). Applicants note that shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as a principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Fund, by participating in the proposed transactions, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

8. Rule 17d-1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which participation by the registered investment company is on a basis different from, or less advantageous than, that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Money Market Funds would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the NASD) or if such shares are subject to any such sales load, redemption fee, distribution fee or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of an Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the

[1] Each Fund that currently intends to rely on the order has been named as an applicant. Another Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund and series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund and Money Market Fund that may rely on the requested order shall be advised by the Adviser.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the securities lending program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Fund's participation in the securities lending program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6550 Filed 3–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45548; File No. SR–GSCC–2002–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Alter Trade Data Submission Requirements for Netting and Comparison-Only Members

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 11, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is proposing to amend its rules to alter trade data submission requirements for Netting and Comparison-Only members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its rules to alter trade data submission requirements for both Netting[3] and Comparison-Only[4] members. Based on an analysis conducted by GSCC to discover the cause of lower-than-desired buy/sell comparison rates, GSCC has determined that changes to its trade submission requirements would boost GSCC's trade comparison rates and thereby should decrease risk exposure for members and should allow market participants to more effectively settle non-netting eligible trades outside GSCC.[5]

In the course of its analysis, GSCC discovered that while comparison rates for repo transactions approached 97 percent, comparison rates for buy/sell transactions were consistently lower at 95 percent. GSCC determined that there were four main reasons for this trend. First, many trades submitted to GSCC are not submitted as originally executed between members. Many trades are either "bunched" or "broken down" resulting in some trades not being compared.[6] While GSCC employs certain tolerances for required data fields in order to aid comparison, these trade scenarios fall outside of GSCC's par summarization tolerances.[7]

The second reason for uncompared trades is when GSCC members fail to notify GSCC of their intent to submit trades for Executing Firms.[8] GSCC keeps over 400 Executing Firms and their corresponding symbols on a master list which is available to all members. GSCC should be notified in advance of a member's intent to submit trade data on behalf of an Executing Firm so that the master list can be updated. However, member firms often fail to so notify GSCC, they submit trade data without the proper Executing Firm symbol, or they fail to submit Executing Firm data completely. These trades may show up in GSCC's systems as uncompared.

A third reason for uncompared trades is that GSCC does not currently require its members to submit to it all types of trade data. As a result, some firms do not submit trades that are executed and settled on the same day (cash trades) to GSCC for comparison. The fourth reason for uncompared trades occurs because Comparison-Only members, who do not settle their trades through GSCC, do not submit their trade data to GSCC on a consistent basis.

The proposed rule changes would increase comparison rates by effectively eliminating the situations described above. Specific proposed rules changes would apply to both buy-sell and repo transactions as follows:

(i) Each Comparison-Only member would be required to submit data to GSCC on all buy-sell or repo trades executed by such member with any other Comparison-Only or Netting member of GSCC.

(ii) Each Netting member would be required to submit data to GSCC on all buy-sell or repo trades executed by such member with any other Comparison-Only member.[9]

(iii) Each GSCC member would be required to submit data to GSCC on all trades with other GSCC members executed and settled on the same day.

(iv) Each GSCC member would be required to submit trade data exactly as executed, up to a $50 million dollar cap. Trades for over $50 million could be submitted in $50 million pieces with a "tail" for any remainder.[10]

(v) Each GSCC member would be required to inform GSCC of all Executing Firms on whose behalf they submit trade data for placement on GSCC's master list and to submit to GSCC all trades executed on behalf of an Executing Firm on GSCC's master list with the appropriate symbol. In addition, each GSCC member would be required to inform GSCC of those Executing Firms that should be deleted from the master list.

In the event that a member does not comply with the new trade submission rules, GSCC would be granted certain rights to enforce compliance. GSCC would have the right to: (a) Place the member on surveillance status; (b) increase the required Clearing Fund deposit of a member; and/or (c) notify the member's appropriate regulatory authority of its non-compliance with GSCC's rules. GSCC expects to submit a rule filing at a later date giving GSCC the authority to assess fees to members who do not comply with the trade data submission requirements outlined in these rules.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[11] and the rules and regulations thereunder applicable to GSCC because it would improve GSCC's operational efficiency and thereby limit market exposure and risk for Netting members and thereby would enable members and market participants to more effectively settle non-netting eligible trades outside GSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR–GSCC–2002–02 and should be submitted by April 9, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6511 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45554; File No. SR–NASD–2001–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of Interval Delays in Nasdaq's SuperMontage System

March 13, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] A Netting member is a member of GSCC that is a member of both the Comparison System and the Netting System. The Comparison System performs trade comparison which consists of the reporting, validating, and in some cases, matching by GSCC of the long and short sides of a securities trade, including a repo transaction, to ensure that the details of such trade are in agreement between the parties. Trade detail comparison is the first step in the clearance and settlement process for securities transactions. The Netting System is a system for aggregating and matching offsetting obligations resulting from trades, including repo transactions, submitted by or on behalf of netting members.

[4] A Comparison-Only Member is a member of GSCC that is a member only of the Comparison System.

[5] Comparison rates are derived by dividing the total number of buy/sell trades compared by the total number of buy/sell trades submitted.

[6] For example, Firm A submits one trade for $30 million, and Firm B "breaks down" the trade into three $10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth $10 million. Firm A submits each trade separately while Firm B "bunches" the five trades into one $50 million piece. In both of these examples, the trades will not be compared.

[7] GSCC, in the event of a mismatch of final money, has established trade tolerances which allow for differentials in trade values (or par summarization) submitted by members on each side of one transaction. For a trade to be compared, par summarization must be on a 2:1 or 2:2 ratio. For example, where Firm A submits a trade in one piece of $50 million, and Firm B submits two pieces of $25 million each, this transaction would fall within the 2:1 par summarization tolerance. If Firm A were to submit two pieces of $25 million and Firm B submitted two pieces of $20 million and $30 million, this would fall within GSCC's 2:2 par summarization tolerance. Assuming that the final money matches, both of these trades will be compared by GSCC.

[8] An Executing Firm is a firm that is not a member of GSCC whose trade data is submitted to GSCC by a GSCC member.

[9] GSCC Rule 11 already requires Netting members to submit all trade data for transactions with other Netting members.

[10] GSCC does not accept trade data for transactions over $50 million except for GCF Repo transactions.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 7, 2002, the Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4710(b)(1)(D) to remove delays between executions across price levels in SuperMontage. Nasdaq will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing.

Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4710. Participant Obligations in NNMS

(a) No Change

(b)(1)(A) through (b)(1)(C) No Change

[(D) Interval Delay—After the NNMS system has executed all Displayed Quotes/Orders and Reserve Size interest at a price level, the following will occur:

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a "sweep order," the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.]

[E] *D* All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS Users Guide, as published from time to time by Nasdaq.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage,[4] Nasdaq is engaging in a continuing review of the system's functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to eliminate system delays between executions at different price levels in SuperMontage.[5]

Currently, the rules of the SuperMontage system provide for immediate executions of Non-Directed Orders across the best inside price and next two best trading increments away from that inside price. If a Non-Directed Order cannot be executed in full against the combined displayed and reserve size amounts at those three increments, the system will pause 5 seconds before moving to price increments further away. If during this delay, additional share amounts appear in the system at any of the previous three price increments, the system will immediately execute against those shares.[6]

In response to concerns raised by market participants about the increased potential for the queuing of orders caused by system delays between executions, Nasdaq has determined to eliminate all interval delays in the SuperMontage system. In Nasdaq's view, removal of all interval delays will result in improved price discovery and a smoother functioning market. In addition, elimination of interval delays between executions will make the operation of this aspect of SuperMontage consistent with Nasdaq's current SuperSOES automatic execution functionality that likewise has no such delays.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A(b)(6)[8] of the Act, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 6, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made some technical corrections to the proposed rule text and to the proposed rule change. In addition, Nasdaq added a footnote to clarify that the 5-second interval delay will be retained for odd-lot executions against the same market maker. Nasdaq further deleted sentences referring to "sweep orders." Nasdaq explained that the concept is no longer a part of Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage") because with the removal of interval delays, all SuperMontage orders will have the ability to immediately execute across multiple price levels without delay between those price intervals if the terms of the order and quote/orders it interacts with will allow it.

[4] See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (order approving SuperMontage).

[5] Nasdaq will retain the 5 second interval delay between odd-lot executions against the same market maker contained in NASD Rule 4710(e)(2)(E). See Amendment No. 1, *supra* note 3.

[6] SuperMontage also would have allowed sweep orders, which would have immediately executed an order against the three best prices in the system before pausing. Nasdaq explained that the concept is no longer a part of SuperMontage because with the removal of interval delays, all SuperMontage orders will have the ability to immediately execute across multiple price levels without delay between those price intervals if the terms of the order and quote/orders it interacts with will allow it. See Amendment No. 1, *supra* note 3.

[7] See Securities Exchange Act Release No. 44504 (July 2, 2001), 66 FR 36022 (July 10, 2001).

[8] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–97 and should be submitted by April 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6510 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 3947]

Designations of Terrorists and Terrorist Organizations Pursuant to Executive Order 13224 of September 23, 2001

AGENCY: Office of the Coordinator for Counterterrorism, State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the designation by the Secretary of State of foreign persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001. These designations comprise 8 individuals and 29 organizations determined to meet the criteria set forth under subsection 1(b) of Executive Order 13224.

DATES: These determinations were made by the Secretary of State on October 12, 2001, October 31, 2001, December 18, 2001, and December 31, 2001, in consultation with the Secretary of the Treasury and Attorney General.

FOR FURTHER INFORMATION CONTACT: Frederick W. Axelgard, Office of the Coordinator for Counterterrorism, Department of State; telephone: (202) 647–9892; fax: (202) 647–0221.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons (defined as including individuals or entities) who, *inter alia*, commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). The property and interests in property of an additional 33 individuals and 6 entities were blocked pursuant to determinations by the Secretary of State and the Secretary of the Treasury (effective October 12, 2001), referenced in a **Federal Register** Notice published by the Office of Foreign Assets Control, Department of the Treasury (66 FR 54404, October 26, 2001). Further determinations made by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, on November 7, 2001, and December 4, 2001, December 20, 2001, January 9, 2002, February 26, and March 11 are addressed in a separate notice published elsewhere in this issue of the **Federal Register**.

Pursuant to subsection 1(b) of the Order, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined to date that 8 foreign individuals and 29 foreign organizations have been determined to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States. The Secretary of State's determination that each of these individuals and organizations meets the criteria set forth under subsection 1(b) of the Order subjects each of these individuals and organizations to sanctions. 23 of the organizations determined on October 31, 2001 and December 18, 2001 to meet the criteria set forth under subsection 1(b) of the Order are also subject to sanctions imposed pursuant to their designation as a Foreign Terrorist Organization pursuant to section 219 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1189.

Pursuant to the determination made by the Secretary of State under subsection 1(b) of the Order, all property and interests in property of any listed person that are in the United States, that come within the United States, or that come within the possession or control of United States persons, including their overseas branches, are blocked. All transactions or dealings by U.S. persons or within the United States in property or interests in property of any listed person are prohibited unless licensed by the Department of the Treasury's Office of Foreign Assets Control or exempted by statute.

The determinations of the Secretary of State were effective on October 12, 2001, October 31, 2001, December 18, 2001, and December 31, 2001.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President therefore determined that for these measures to be effective in addressing the national emergency declared in the Order, no prior notification of a listing or determination pursuant to the Order need be provided to any person who might have a constitutional presence in the United States.

The property and interests of property of the following persons are blocked and may not be transferred, paid, exported.

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withdrawn or otherwise dealt in except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise:

Designations by the Secretary of State on October 12, 2001

ADBELKARIM HUSSEIN MOHAMMED AL-NASSER
AHMAD IBRAHIM AL-MUGHASSIL
ALI SAED BIN ALI EL-HOORIE
IBRAHIM SALIH MOHAMMED AL-YACOUB
ALI ATWA
HASAN IZZ-AL-DIN
IMAD FAYEZ MUGNIYAH
KHALID SHAIKH MOHAMMED

Designations by the Secretary of State on October 31, 2001

ABU NIDAL ORGANIZATION
- a.k.a. ANO;
- a.k.a. BLACK SEPTEMBER
- a.k.a. FATAH REVOLUTIONARY COUNCIL
- a.k.a. ARAB REVOLUTIONARY COUNCIL
- a.k.a. ARAB REVOLUTIONARY BRIGADES
- a.k.a. REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS

AUM SHINRIKYO
- a.k.a. A.I.C. COMPREHENSIVE RESEARCH INSTITUTE
- a.k.a. A.I.C. SOGO KENKYUSHO
- a.k.a. ALEPH
- a.k.a. AUM SUPREME TRUTH

BASQUE FATHERLAND AND LIBERTY
- a.k.a. ETA
- a.k.a. EUZKADI TA ASKATASUNA

GAMA'A AL-ISLAMIYYA
- a.k.a. GI
- a.k.a. ISLAMIC GROUP
- a.k.a. IG
- a.k.a. AL-GAMA'AT
- a.k.a. ISLAMIC GAMA'A
- a.k.a. EGYPTIAN AL-GAMA'AT AL-ISLAMIYYA

HAMAS
- a.k.a. ISLAMIC RESISTANCE MOVEMENT
- a.k.a. HARAKAT AL-MUQAWAMA AL-ISLAMIYA
- a.k.a. STUDENTS OF AYYASH
- a.k.a. STUDENT OF THE ENGINEER
- a.k.a. YAHYA AYYASH UNITS
- a.k.a. IZZ AL-DIN AL-QASSIM BRIGADES
- a.k.a. IZZ AL-DIN AL-QASSIM FORCES
- a.k.a. IZZ AL-DIN AL-QASSIM BATTALIONS
- a.k.a. IZZ AL-DIN AL QASSAM BRIGADES
- a.k.a. IZZ AL-DIN AL QASSAM FORCES
- a.k.a. IZZ AL-DIN AL QASSAM BATTALIONS

HIZBALLAH
- a.k.a. PARTY OF GOD
- a.k.a. ISLAMIC JIHAD
- a.k.a. ISLAMIC JIHAD ORGANIZATION
- a.k.a. REVOLUTIONARY JUSTICE ORGANIZATION
- a.k.a. ORGANIZATION OF THE OPPRESSED ON EARTH
- a.k.a. ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE
- a.k.a. ORGANIZATION OF RIGHT AGAINST WRONG
- a.k.a. ANSAR ALLAH
- a.k.a. FOLLOWERS OF THE PROPHET MUHAMMED

KAHANE CHAI
- a.k.a. COMMITTEE FOR THE SAFETY OF THE ROADS
- a.k.a. DIKUY BOGDIM
- a.k.a. DOV
- a.k.a. FOREFRONT OF THE IDEA
- a.k.a. JUDEA POLICE
- a.k.a. KACH
- a.k.a. KAHANE LIVES
- a.k.a. KFAR TAPUAH FUND
- a.k.a. KOACH
- a.k.a. REPRESSION OF TRAITORS
- a.k.a. STATE OF JUDEA
- a.k.a. SWORD OF DAVID
- a.k.a. THE JUDEAN LEGION
- a.k.a. THE JUDEAN VOICE
- a.k.a. THE QOMEMIYUT MOVEMENT
- a.k.a. THE WAY OF THE TORAH
- a.k.a. THE YESHIVA OF THE JEWISH IDEA

KURDISTAN WORKERS' PARTY
- a.k.a. HALU MESRU SAVUNMA KUVVETI (HSK)
- a.k.a. PARTIYA KARKERAN KURDISTAN
- a.k.a. PKK
- a.k.a. THE PEOPLE'S DEFENSE FORCE

LIBERATION TIGERS OF TAMIL EELAM
- a.k.a. LTTE
- a.k.a. TAMIL TIGERS
- a.k.a. ELLALAN FORCE

MUJAHEDIN-E KHALQ
- a.k.a. MUJAHEDIN-E KHALQ ORGANIZATION
- a.k.a. MEK
- a.k.a. MKO
- a.k.a. NLA
- a.k.a. ORGANIZATION OF THE PEOPLE'S HOLY WARRIORS OF IRAN
- a.k.a. PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN
- a.k.a. PMOI
- a.k.a. SAZEMAN-E MUJAHEDIN-E KHALQ-E IRAN
- a.k.a. THE NATIONAL LIBERATION ARMY OF IRAN

NATIONAL LIBERATION ARMY
- a.k.a. ELN
- a.k.a. EJERCITO DE LIBERACION NACIONAL

PALESTINE ISLAMIC JIHAD—SHAQAQI FACTION
- a.k.a. ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL-MAQDIS
- a.k.a. AL-AWDAH BRIGADES
- a.k.a. AL-QUDS BRIGADES
- a.k.a. AL-QUDS SQUADS
- a.k.a. ISLAMIC JIHAD IN PALESTINE
- a.k.a. ISLAMIC JIHAD OF PALESTINE
- a.k.a. PALESTINIAN ISLAMIC JIHAD
- a.k.a. PIJ
- a.k.a. PIJ-SHALLAH FACTION
- a.k.a. PIJ-SHAQAQI FACTION
- a.k.a. SAYARA AL-QUDS

PALESTINE LIBERATION FRONT—ABU ABBAS FACTION
- a.k.a. PALESTINE LIBERATION FRONT
- a.k.a. PLF
- a.k.a. PLF-ABU ABBAS

POPULAR FRONT FOR THE LIBERATION OF PALESTINE—GENERAL COMMAND
- a.k.a. PFLP-GC

REAL IRA
- a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE
- a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT
- a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION
- a.k.a. REAL IRISH REPUBLICAN ARMY
- a.k.a. REAL OGLAIGH NA HEIREANN
- a.k.a. RIRA

REVOLUTIONARY ARMED FORCES OF COLOMBIA
- a.k.a. FARC

REVOLUTIONARY NUCLEI
- a.k.a. POPULAR REVOLUTIONARY STRUGGLE
- a.k.a. EPANASTATIKOS LAIKOS AGONAS
- a.k.a. REVOLUTIONARY POPULAR STRUGGLE
- a.k.a. REVOLUTIONARY PEOPLE'S STRUGGLE
- a.k.a. JUNE 78
- a.k.a. ORGANIZATION OF REVOLUTIONARY INTERNATIONALIST SOLIDARITY
- a.k.a. ELA
- a.k.a. REVOLUTIONARY CELLS
- a.k.a. LIBERATION STRUGGLE

REVOLUTIONARY ORGANIZATION 17 NOVEMBER
- a.k.a. 17 NOVEMBER
- a.k.a. EPANASTATIKI ORGANOSI 17 NOEMVRI

REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT
- a.k.a. DEVRIMCI HALK KURTULUS PARTISI-CEPHESI
- a.k.a. DHKP/C;
- a.k.a. DEVRIMCI SOL
- a.k.a. REVOLUTIONARY LEFT
- a.k.a. DEV SOL
- a.k.a. DEV SOL SILAHLI DEVRIMCI BIRLIKLERI
- a.k.a. DEV SOL SDB
- a.k.a. DEV SOL ARMED REVOLUTIONARY UNITS

SHINING PATH
- a.k.a. SENDERO LUMINOSO
- a.k.a. SL
- a.k.a. PARTIDO COMUNISTA DEL PERU EN EL SENDERO LUMINOSO DE JOSE CARLOS MARIATEGUI (COMMUNIST PARTY OF PERU ON THE SHINING PATH OF JOSE CARLOS MARIATEGUI)
- a.k.a. PARTIDO COMUNISTA DEL PERU (COMMUNIST PARTY OF PERU)
- a.k.a. PCP
- a.k.a. SOCORRO POPULAR DEL PERU (PEOPLE'S AID OF PERU)
- a.k.a. SPP
- a.k.a. EJERCITO GUERRILLERO POPULAR (PEOPLE'S GUERRILLA ARMY)
- a.k.a. EGP
- a.k.a. EJERCITO POPULAR DE LIBERACION (PEOPLE'S LIBERATION ARMY)
- a.k.a. EPL

UNITED SELF-DEFENSE FORCES OF COLOMBIA
- a.k.a. AUC
- a.k.a. AUTODEFENSAS UNIDAS DE COLOMBIA

Designation by the Secretary of State on December 18, 2001

LASHKAR-E-TAIBA
- a.k.a. LASHKAR E-TAYYIBA
- a.k.a. LASKAR E-TOIBA
- a.k.a. ARMY OF THE RIGHTEOUS

Designations by the Secretary of State on December 31, 2001

CONTINUITY IRA (CIRA)

LOYALIST VOLUNTEER FORCE (LVF)

ORANGE VOLUNTEERS (OV)

RED HAND DEFENDERS (RHD)

ULSTER DEFENCE ASSOCIATION/ULSTER FREEDOM FIGHTERS (UDA/UFF)

FIRST OF OCTOBER ANTIFASCIST RESISTANCE GROUP (GRAPO)

Dated: March 13, 2002.

Francis X. Taylor,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–6577 Filed 3–14–02; 3:48 pm]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct several inadvertent errors and omissions in the Annex to Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553) so that the intended tariff treatment is provided.

EFFECTIVE DATE: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, Proclamation 7529 established increases in duty and a tariff-rate quota (safeguard measures) pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) on imports of certain steel products described in paragraph 7 of that proclamation. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modifies the HTS so as to provide for such increased duties and a tariff-rate quota. The annex to this notice makes technical corrections to the HTS to remedy several technical errors and omissions introduced through the annex to Proclamation 7529, so that the intended tariff treatment is provided. In particular, the annex to this notice corrects (1) errors in the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures and (2) errors regarding the exclusion of products of certain developing country WTO Members from the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

Peter F. Allgeier,

Deputy United States Trade Representative.

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified as set forth in this annex, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002. The following provisions supersede matter now in the HTS:

(1) United States note 11(b) to subchapter III of chapter 99 of the HTS is modified as follows: (a) In subdivision (b)(xi), the expression "ASTM 345 method A" is deleted and "ASTM E45 method A" is inserted in lieu thereof; (b) in subdivision (b)(xii), the expression "Charpy-notch" is deleted and "Charpy V-notch" is inserted in lieu thereof; (c) in subdivision (b)(xiv), the expression "measuring over 4.75 mm in thickness, not in coils," is inserted after "steel products", and the expression "manufactured to" is deleted and "suitable for use in the manufacture of line pipe of" is inserted in lieu thereof; (d) in subdivision (b)(xvi)(A) the unit of measure "4.55" is deleted and "1.91" is inserted in lieu thereof; (e) in the first line of subdivision (b)(xvii), the expression "or dual phase" is inserted after "(TRIP)"; and in subdivisions (b)(xvii)(A) through (C), inclusive, the following modifications are made at each appearance: "2000 mm to 2499" is deleted and "2.000 mm to 2.499" is inserted in lieu thereof, "2500 mm to 3249" is deleted and "2.500 mm to 3.249" is inserted in lieu thereof, "3250 mm to 3999" is deleted and "3.250 mm to 3.999" is inserted in lieu thereof, and "4000 mm to 6000" is deleted and "4.000 mm to 6.000" is inserted in lieu thereof; (f) in subdivision (b)(xix)(B), the expression "aluminum of 0.015 percent TV" is deleted and "aluminum of 0.04 percent typical value (TV)" is inserted in lieu thereof; (g) in subdivision (b)(xxii)(B), the expression "vanadium 0.15 percent," is inserted after "phosphorus 0.010 percent,"; (h) in the opening language of subdivision (b)(xxiv), the word "hot-rolled" is inserted before "flat-rolled", the expression, "in coils," is inserted after "products", the parenthetical reference is deleted, and the unit of measure "17.8" is deleted and "19.65" is inserted in lieu thereof; (i) in subdivision (b)(xxv), the parenthetical expression "(per mm of width)" is modified to read "(per 25.4 mm of width)"; (j) in subdivision (b)(xxvi), subdivisions (A) and (B) and their subordinate paragraphs are deleted and the following new provisions inserted in lieu thereof:

"(A) uncoated flat products, less than 4.75 mm in thickness, not further worked than cold-rolled, comprising either—

(I) certain uncoated cold-rolled flat-rolled products (of Grade C80M), of a width less than 300 mm and a thickness exceeding 0.25 mm, produced with following chemistries (in percent by weight): carbon content greater

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than or equal to 0.74 percent but less than or equal to 0.80 percent; silicon content greater than or equal to 0.10 percent but less than or equal to 0.25 percent; manganese content greater than or equal to 0.30 percent but less than or equal to 0.60 percent; phosphorus content less than or equal to 0.025 percent; sulfur content less than or equal to 0.015 percent; chromium content greater than or equal to 0.40 percent but less than or equal to 0.55 percent; copper content less than or equal to 0.15 percent; nickel content less than or equal to 0.15 percent; aluminum content greater than or equal to 0.02 percent but less than or equal to 0.05 percent; oxide content less than or equal to 0.0012 percent; titanium content less than or equal to 0.002 percent; and tin content less than or equal to 0.008 percent;

(II) certain uncoated cold-rolled flat-rolled products (of Grade 16MnCr5M2), of a width less than 300 mm and a thickness exceeding 0.25 mm, produced with following chemistries (in percent by weight): carbon content greater than or equal to 0.12 percent but less than or equal to 0.16 percent; silicon content less than or equal to 0.10 percent; manganese content greater than or equal to 0.95 percent but less than or equal to 1.05 percent; phosphorus content less than or equal to 0.020 percent; sulfur content less than or equal to 0.005 percent; combined phosphorus and sulfur content of less than or equal to 0.020 percent; chromium content greater than or equal to 0.75 percent but less than or equal to 0.85 percent; copper content less than or equal to 0.10 percent; nickel content less than or equal to 0.10 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.008 percent; aluminum content greater than or equal to 0.02 percent but less than or equal to 0.07 percent;

(B) bonderized (phosphate coated) cold-rolled flat-rolled products, less than 4.75 mm in thickness, comprising—

(I) C15M bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.12 percent but less than or equal to 0.15 percent; silicon content less than or equal to 0.12 percent; manganese content greater than or equal to 0.50 percent but less than or equal to 0.70 percent; phosphorus content less than or equal to 0.030 percent; sulfur content less than or equal to 0.025 percent; chromium content greater than or equal to 0.20 percent but less than or equal to 0.40 percent; copper content less than or equal to 0.20 percent; nickel content greater than or equal to 0.20 percent but less than or equal to 0.40 percent; and aluminum content greater than or equal to 0.07 percent but less than or equal to 0.12 percent;

(II) MRST443 bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.06 percent but less than or equal to 0.09 percent; silicon content less than or equal to 0.05 percent; manganese content greater than or equal to 0.55 percent but less than or equal to 0.75 percent; phosphorus content less than or equal to 0.03 percent; sulfur content less than or equal to 0.02 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.006 percent; and aluminum content greater than or equal to 0.09 percent but less than or equal to 0.16 percent;

(III)16MnCr5M bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.14 percent but less than or equal to 0.18 percent; silicon content less than or equal to 0.10 percent; manganese content greater than or equal to 1.0 percent but less than or equal to 1.2 percent; phosphorus content less than or equal to 0.02 percent; sulfur content less than or equal to 0.008 percent; combined phosphorus and sulfur content of less than or equal to 0.02 percent; chromium content greater than or equal to 0.85 percent but less than or equal to 1.05 percent; copper content less than or equal 0.10 percent; nickel content less than or equal to 0.10 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.008 percent; and aluminum content greater than or equal to 0.020 percent but less than or equal to 0.07 percent; or

(IV) C16M bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.145 percent but less than or equal to 0.194 percent; silicon content less than or equal to 0.10 percent; manganese content greater than or equal to 0.75 percent but less than or equal to 1.0 percent; phosphorus content less than or equal to 0.02 percent; sulfur content less than or equal to 0.01 percent; combined phosphorus and sulfur content less than or equal to 0.025 percent; chromium content greater than or equal to 0.55 percent but less than or equal to 0.70 percent; copper content less than or equal to 0.10 percent; nickel content less than or equal to 0.10 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.008 percent; and aluminum content greater than or equal to 0.02 percent but less than or equal to 0.07 percent;

(k) in subdivision (b)(xxxi), the expression "4.75 mm or greater" is deleted and "less than 4.75 mm" is inserted in lieu thereof; and the second appearance of the expression "ASTM B753" is modified to read "ASTM A753"; (l) in subdivision (b)(xxvii)(B), the expression "certain flat products for battery cell flat products" is deleted and the expression "certain battery cell flat-rolled products" is inserted in lieu thereof; (m) in subdivision (b)(xxxii)(B)(IV), the expression "elongation 15–28 percent;" is deleted and "elongation 17–28 percent" is inserted in lieu thereof; (n) in subdivisions (b)(xxxii)(B)(I) through (XV), inclusive, the expression "silicon maximum 0.010 percent by weight" is deleted and "sulfur maximum 0.010 percent by weight" is inserted in lieu thereof; (o) in subdivision (b)(xxxii)(C), the expression "0.048 mm and widths from 76.2 mm to 152.4 mm" is deleted and "0.48 mm and widths from 762 mm to 1524 mm" is inserted in lieu thereof; (p) in subdivision (b)(xxxiii), ".0127" is deleted and "0.0127" is inserted in lieu there, and the language (as just modified) after "decarburization: 0.0127 mm maximum;" is deleted and the following language is inserted in lieu thereof: "thickness of 0.5964 mm and gauge tolerance of +/ − 0.0127 mm, thickness of 0.431 mm and gauge tolerance of +/ − 0.0127 mm o· thickness of 0.888 mm and gauge tolerar ce of +/ − 0.025 mm:" (q) in subdivision (b)(xxxiv)(D), the expression "width range 93.36 mm–11.98 mm" is deleted and "width range 7.01 mm − 11.98mm" is inserted in lieu thereof; (r) in subdivision (b)(xxxv)(A) the word "nickle" is deleted and "nickel" is inserted in lieu thereof; (s) in the opening language of subdivision (b)(xxxix), the expression "heat shrinkable (HS) band products designated as X–142, as described below:" is deleted and "heat shrinkable (HS) band products (subdivisions A–E) and other galvanized products (subdivision F), designated as X–142, as described below:" is inserted in lieu thereof; (t) in subdivision (b)(xxxix)(A), the expression "zinc 7 g/m²" is deleted and "zinc 17 g/m²" is inserted in lieu thereof; (u) in subdivision (b)(xxxix)(F), the expression "from 0.03 percent to 0.6 percent carbon" is deleted and "from 0.03 percent to 0.06 percent carbon" is inserted in lieu thereof, and the expression "a thickness over 0.312 mm but not over 0.38 mm;" is deleted and "a thickness of 0.35 mm with tolerance of +/ − 0.038 mm;" is inserted in lieu thereof; (v) in subdivision (b)(xl)(C), the expression "μ = 800" is deleted and "μ greater than or equal to 800" is inserted in lieu thereof, and the expression "maximum deviation from horizontal flat surface of 5 mm or more;" is deleted and "maximum deviation from horizontal flat surface of 5 mm maximum:" is inserted in lieu thereof; (w) in subdivision (b)(xl)(D), the expression "μ = 500" is deleted and "μ greater than or equal to 500" is inserted in lieu thereof; (x) in the opening language of subdivision (b)(xlviii), the word "line" is inserted after "welded", and in subdivision (b)(xlviii)(B) the unit of measure "914.4" is deleted and "762" is inserted in lieu thereof; (y) in subdivision (b)(xlviii)(B), the unit of measure "22.3" is deleted and "22.2" is inserted in lieu thereof, and the expression "grades X52 through X5" is deleted and "grades X52 through X56" is inserted in lieu thereof; (z) in subdivision (b)(xlviii)(C), the unit of measure "22.3" is deleted and "22.2" is inserted in lieu thereof; and

(aa) In subdivision (b)(xiviii)(F), the unit of measure "20.57" is deleted and "22.86" is inserted in lieu thereof; and (bb) by adding at the end of subdivision (b)(xlviii) the following new subparagraph (H):

".(H) products having an outside diameter measuring 1625.6 mm or greater;".

(2) U.S. note 11(d) to subchapter III of chapter 99 of the HTS is modified as follows: (a) in subdivision (d)(ii)(A), the expression "9903.72.30 through 9903.73.39" is deleted and "9903.72.30 through 9903.73.23" is inserted in lieu thereof; and (b) in subdivision (d)(ii)(C), the expression "9903.73.74 through 9903.73.86" is deleted and "9903.73.74 through 9903.73.95" is inserted in lieu thereof.

(3) The superior text to subheadings 9903.72.30 through 9903.72.48, inclusive, is modified by deleting the language "(other than stainless steel or tool steel), of rectangular cross section, having a width measuring two or more times the thickness (provided for in subheading 7207.12.00, 7207.20.00 or 7224.90.00)" and by inserting "(other than stainless steel, tool steel, or high-nickel alloy steel), of rectangular cross section, having a width measuring two or more times the thickness, if provided for in subheading 7207.12.00 or 7207.20.00, or having a width measuring four or more times the thickness if provided for in 7224.90.00" in lieu thereof.

(4) The superior text to subheadings 9903.72.65 through 9903.72.82 is modified by inserting "7208.25.60," after 7208.25.30,".

(5) The superior text to subheadings 9903.72.85 through 9903.73.04, inclusive, is modified by deleting the expression "if in coils" and by inserting "if not in coils" in lieu thereof.

(6) The superior text to subheadings 9903.73.07 through 9903.73.23 is modified by inserting "7225.99.00," after "7225.92.00,".

(7) The superior text to subheadings 9903.73.26 through 9903.73.39, inclusive, is modified by deleting "(except products of Brazil)".

(8) The superior text to subheadings 9903.73.74 through 9903.73.86, inclusive, is modified by deleting the expression "of steel, not of a kind" and by inserting "of steel (other than stainless or tool steel), not of a kind" in lieu thereof.

(9) Subheading 9903.73.77 is modified by deleting "note 11(b)(xlvii)" and by inserting "note 11(b)(xlviii)" in lieu thereof.

(10) Subheading 9903.73.78 is modified by deleting "note 11(b)(li)" and by inserting "note 11(b)(xlix)" in lieu thereof.

(11) The superior text to subheadings 9903.73.88 through 9903.73.95, inclusive, is modified by deleting "India and Romania" and by inserting "India, Romania and Thailand" in lieu thereof.

(12) The superior text to subheadings 9903.74.08 through 9903.74.16, inclusive, is modified by deleting "and having a diameter of less than 19 mm" and by inserting "having a diameter of 19 mm or more" in lieu thereof.

[FR Doc. 02–6735 Filed 3–15–02; 3:31 pm]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments Regarding the Doha Multilateral Trade Negotiations and Agenda in the World Trade Organization (WTO)

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments on general U.S. negotiating objectives as well as country and item-specific priorities for the negotiations and work program launched at the WTO's Fourth Ministerial Conference in November 2001. WTO Trade Ministers at their Fourth Ministerial Meeting in Doha, Qatar approved: (1) A declaration launching new global trade negotiations and a work program; (2) a declaration on Intellectual Property Protection (TRIPS) and Access to Medicines and Public Health; and (3) a Decision on Implementation-Related Issues and Concerns raised by Developing Countries. Negotiations will be conducted at the WTO's headquarters in Geneva, Switzerland. The WTO General Council and the Trade Negotiations Committee will oversee the negotiations and work program of the WTO. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives for U.S. participation in the negotiations and discussions on the WTO's agenda.

DATES: Public comments are due by May 1, 2002.

ADDRESSES: Office of the U.S. Trade Representative, 1724 F Street, NW, Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: General inquiries should be made to the USTR Office of WTO and Multilateral Affairs at (202) 395–6843; calls on individual subjects will be transferred as appropriate. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. Further information on the WTO and the declarations agreed at the Fourth Ministerial can be obtained via Internet at the WTO Web site *www.wto.org*, the Office of the U.S. Trade Representative at *www.ustr.gov*. Attention is also drawn to the President's Annual Report on the Trade Agreements Program, which is available on the USTR Internet site and contains extensive information on the WTO, the Doha Ministerial Meeting and the work underway in the WTO.

SUPPLEMENTARY INFORMATION: The TPSC invites written comments from the public on issues to be addressed in the course of the negotiations launched at the WTO's Fourth Ministerial Conference, in Doha, Qatar in November 2001. The TPSC sought comments in three earlier solicitations prior to the Doha Ministerial: (1) Public Comments on Preparations for the Fourth Ministerial Conference of the World Trade Organization, November 9–13, 2001 in Doha, Qatar, published in 66 FR 18142, April 5, 2001; (2) Public Comments for Mandated Multilateral Trade Negotiations on Agriculture and Services in the WTO and Priorities for Future Market Access Negotiations on Non-Agricultural Products, published in 65 FR 16450, March 28, 2000; and (3) Solicitation of Public Comments on Institutional Improvements to the World Trade Organization (WTO), Particularly With Respect to the Transparency of its Operations and Outreach to Civil Society, which included a solicitation of comments regarding the WTO's dispute settlement operations and was published in 65 FR 36501, June 8, 2000. Supplementary or new submissions on these topics are welcome, but comments submitted pursuant to the earlier notice need not be resubmitted. The TPSC will review supplemental or new comments together with earlier submissions in developing positions.

The Doha Development Agenda agreed to at the WTO's Fourth Ministerial Meeting establishes a negotiating agenda that is to conclude within three years (not later than 1 January 2005), and sets out a certain number of issues to be considered further at the next ministerial meeting of the WTO in 2003. In addition to the mandated negotiations in agriculture and services, the negotiation of a multilateral system of notification and registration of geographical indications for wine and spirits, and the negotiation of improvements to the Dispute Settlement Understanding (DSU), negotiations at Doha were launched on market access for non-agricultural products; WTO rules (on antidumping, subsidies, fisheries subsidies, and regional trade agreements); and negotiations on limited aspects of the relationship between WTO and multilateral environmental agreements. The Doha agenda foresees further work on the so-called Singapore issues of Trade and Competition, Trade and Investment, Transparency in Government Procurement, and Trade Facilitation, leading to decisions on negotiations by the time of the WTO's Fifth Ministerial Meeting in 2003. In

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addition, the Doha agenda focuses on a variety of issues relating to the regular work program of the WTO which have a bearing on the negotiations, including: further work on implementation of the existing Agreements; integration of developing countries into the multilateral trade system; trade-related technical assistance and capacity building; small economies; special and differential treatment; treatment of least-developed countries; electronic commerce; trade, debt and finance; trade and technology, and the work of the Committee on Trade and Environment (CTE).

Comments are welcome with as much specificity as the respondent can provide on general or commodity-specific negotiating objectives; country and product-specific export interests or barriers; and experience with particular foreign measures that impede U.S. market access. An indication or estimation of the anticipated benefits from liberalization of the identified barriers would be helpful. Since trade-related technical assistance and capacity building for developing countries will be prominent in discussions, an indication of what private sector technical assistance and capacity building activities are under way or planned in each negotiating area would also be welcome. An initial task in many of these subject areas will be for governments to identify appropriate negotiating methods to achieve the desired liberalization. Comments on these methodology questions would therefore also be appropriate.

The U.S. International Trade Commission has provided to the TPSC the public comments received on agricultural and non-agricultural products as part of its investigation (Investigation No. 332–405), Probable Economic Effects on Reduction or Elimination of U.S. Tariffs (November 1999 (Confidential report)). On February 11, 2002 the U.S. Trade Representative requested that the ITC update its investigation. The ITC instituted its investigation (Investigation No. 332–440, Probable Effect of the Reduction or Elimination of U.S. Tariffs) on February 28, 2002 and published its Notice of Institution in 67 FR 10576, March 8, 2002. The ITC will again provide the public comments received as part of its investigation so these comments need not be resubmitted separately to the TPSC.

By separate notice, and pursuant to Executive Order 13141, USTR will be initiating an environmental review of the negotiations launched by the Doha Declaration and requesting public comment on the scope of the environmental review.

For ease of submission, the TPSC has identified the following headings under which comments may be submitted. Submissions should identify the relevant subject area or areas to which comments apply. These include:

(1) WTO Built-in Agenda Negotiations

(A) Agriculture. Supplementary comments are invited on the negotiations currently underway on agriculture pursuant to the terms of the Uruguay Round Agreements and the Doha Declaration. The mandated negotiations in agriculture address agricultural goods from Chapters 1–24, except fish and fish products; 2905.43 (mannitol); 2905.44 (sorbitol); 3301 (essential oils); 3501–3505 (albuminoidal substances, modified starches, glues); 3809.10 (finishing agents); 3823.60 (sorbitol n.e.p.); 4101–4103 (hides and skins); 4301 (raw furskins); 5001–5003 (raw silk and silk waste); 5101–5103 (wool and animal hair); 5201–5203 (raw cotton, waste and cotton carded or combed); 5301 (raw flax); and 5302 (raw hemp), as specified by the Agreement on Agriculture. The Uruguay Round Agreement on Agriculture stipulates in Article 20 that a continuation of the reform process begin "one year before the end of the implementation period," i.e., the beginning of 2000. The Doha Declaration outlines the objectives of the agriculture negotiations: substantial improvements in market access; reduction, with a view to phasing out, all forms of export subsidies; and, substantial reductions in domestic support. The areas for negotiation are market access, such as tariffs, tariff-rate quotas, tariff administration, and import state trading enterprises; domestic support, including trade-distorting support and non-trade distorting support; and export competition, such as export subsidies, export credits, export state trading enterprises, and export taxes and restrictions. Comments on sectoral initiatives and rules and disciplines affecting trade in agricultural goods are welcome. Respondents are requested to provide as much specificity as possible on a commodity and country-specific level focusing on trade interests and barriers. To the maximum extent possible, these should be identified by the Harmonized System nomenclature at the 6-digit level and for specific markets of interest. The Doha Declaration calls for agreement on modalities for the negotiations to be reached by March 31, 2003, and the submission of initial schedules by the WTO Fifth Ministerial meeting, likely to be held by mid-2003. A helpful supplement to the written statement would be the provision of a disk containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each tariff line in a separate cell. This disk should be labeled and should clearly identify the software used and the respondent.

As noted above, a solicitation of public comments was published on March 28, 2000. New comments are welcome, but comments submitted pursuant to the earlier notice need not be resubmitted.

(B) Services. Supplementary comments are invited on the negotiations currently underway on trade in services pursuant to the terms of the Uruguay Round Agreements and the Doha Declaration. The General Agreement on Trade in Services (GATS) provides, in Article XIX, "Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement," *i.e.*, the beginning of 2000. For services, topics for negotiating objectives include removal or reduction of barriers to U.S. services exports under existing GATS disciplines; establishment of new GATS disciplines to ensure effective market access, *e.g.*, proposed disciplines on domestic regulations on services, possibly addressing transparency and necessity; and clarification of sectoral definitions in the Agreement. The Doha Declaration calls for the submission of initial requests for specific commitments by June 30, 2002 and initial offers by March 31, 2003.

Services sectors under consideration in the negotiations include: (1) Business services (including professional and related services such as legal, accounting, auditing and bookkeeping, taxation, medical, dental, veterinary, engineering, architectural, and urban planning services), computer and related services, research and development services, real estate services, rental and leasing services, and advertising and management services; (2) communication services (including telecommunications services, audiovisual services, express delivery services); (3) construction and related engineering services; (4) distribution services (including wholesale, retail, and franchising services); (5) educational and training services; (6) environmental services; (7) energy services; (8) financial services, including insurance and insurance-related services, banking and securities services; (9) health-related and social services; (10) tourism and travel-related services; (11) recreational, cultural and sporting services; and (12) transport services.

Comments on services in response to this notice should include, wherever appropriate, sector-specific export priorities by country. A helpful supplement to the written statement would be the provision of a disk containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each services sector in a separate cell. This disk should be labeled and should clearly identify the software used and the respondent.

As noted above, a solicitation of public comments was published on March 28, 2000. New comments are welcome, but comments submitted pursuant to the notice need not be resubmitted.

(C) Trade-Related Aspects of Intellectual Property Rights. The Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS), pursuant to Article 23.4 of the TRIPS Agreement, has been deliberating on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits. At Doha, it was agreed that these negotiations should be concluded by the WTO's Fifth Ministerial Conference.

Specific issues to address include: (1) The features that should be included or excluded in a multilateral system of notification and registration of geographical indications for wines and spirits, with justification; (2) how, if at all, such a system should address competing rights in trademarks and geographical indications; (3) how, if at all, the system should address competing rights in other geographical indications; (4) how the provisions of the system should relate to Article 6 ter of the Paris Convention (which prohibits the registration of flags and other official state emblems); (5) how the provisions relate to the U.S. Federal system of notifications; and (6) the legal effect of a notification, both with respect to trademarks and to other geographical indications.

While no other negotiations were agreed at Doha, the TRIPS Council work program was strengthened in terms of its work on issues of interest to Members, including on implementation, the examination of a possible extension of protection of geographical indications for products other than wine and spirits, and the issue of access to medicines, which was the subject of a separate declaration at Doha.

(2) Non-agricultural or industrial market access. Supplementary comments are invited on the negotiations launched on market access. Comments are welcome with as much specificity as the respondent can provide on general negotiating objectives and/or targets; country- and product-specific export interests or barriers; and particular measures that might be improved in the context of the new negotiations, including both tariffs and non-tariff measures (NTMs). With regard to NTMs, any available details on the foreign laws or regulations that lie behind the barrier would also be helpful. To the maximum extent possible, these should be identified by Harmonized System nomenclature at the 6-digit level, (or preferably 8-digit level or higher, where available) and should specify markets of interest. The United States will work with trading partners to reach agreement on negotiating modalities concurrent with the schedule established for agriculture modalities, by March 31, 2003. Specific comments on possible approaches to negotiations are invited (*i.e.*, sectoral initiatives such as zero-for-zero or harmonization approaches, request/offer and formula methodologies, and approaches that address the interests of small- and medium-sized enterprises). Comments should encompass the priorities and methodologies for the negotiation of environmental goods identified in the Doha Declaration under the heading of Trade and the Environment. A helpful supplement to the written statement would be the provision of a disk containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each tariff line in a separate cell. This disk should be labeled and should clearly identify the software used and the respondent.

(3) WTO Rules. Ministers established a carefully-balanced mandate for negotiations dealing with rules in four specific areas: antidumping; subsidies and countervailing measures; fisheries subsidies and regional trade agreements. The mandate calls for an identification of issues in the initial phase and subsequent negotiations aimed at improving and clarifying disciplines. Comments are invited on U.S. objectives for these negotiations, bearing in mind that there is agreement to preserve the basic concepts, principles and effectiveness of the Antidumping and Subsidies Agreements and their instruments and objectives. In particular, respondents may wish to address ways to enhance disciplines on trade distorting practices that lead to unfair trade, as well as the due process, transparency and judicial review provisions of the Agreements. (Respondents may wish to review the articles dealing with "Evidence," Public Notice and Explanation of Determinations and Judicial Review) and may also wish to focus on the linkages between the rules issues and the operation of the Dispute Settlement Understanding (DSU).

With respect to the negotiations related to fisheries disciplines, respondents should focus on the nature and scope of negotiations on the specific issues of fisheries subsidies, particularly those that lead to overcapacity and overfishing. With respect to the negotiations on regional trade agreements, attention is drawn to the work of the Committee on Regional Trade Agreements (CRTA) in the WTO, including the systemic issues that have been identified in the CRTA work program. Respondents should focus on the objectives that the U.S. should pursue in discussions aimed at revising the rules in these areas in the light of current practice.

(4) Dispute Settlement. The mandate calls on Members to complete their negotiations to improve and clarify WTO rules on dispute settlement procedures by May 2003. The United States welcomes the opportunity to refine the dispute settlement system based on the experiences of Members over the past six years. The United States has pursued a more open and transparent set of procedures which achieve effective and timely results. Comments are welcome on the objectives that the United States should be pursuing in this critical area of negotiations.

(5) Trade and the Environment. At Doha, Ministers agreed on a package of environmental elements that demonstrates the WTO's commitment to sustainable development and to simultaneously advancing trade, environment, and development interests. These mandates enable U.S. negotiators to pursue an affirmative agenda, focusing on the reduction/elimination of environmentally harmful subsidies in fisheries and export subsidies in agriculture as well as on improved market access for environmental goods and services; and encouraging capacity-building for developing Members, including in connection with environmental reviews of trade agreements. The role of the Committee on Trade and Environment (CTE) was strengthened and emphasis placed on the win-win aspects of market access, relevant provisions of TRIPs, and labeling requirements for environmental purposes, with a mandate to identify any need to clarify

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relevant rules. The Members also agreed to enhance the mutual supportiveness of multilateral environmental agreements (MEAs) and the WTO rules by developing procedures for regular information exchange between WTO committees and MEA secretariats, and by further exploring the relationship between existing WTO rules and specific trade obligations set out in MEAs, and by reducing or eliminating tariff and non-tariff barriers to environmental goods and services. This work on MEAs will be conducted by the CTE meeting in Special Session. Comments are welcome on U.S. objectives in all the areas identified above, recognizing that in certain cases, such as fisheries subsidies and liberalization of environmental goods resources, the actual negotiations will take place in other relevant negotiating groups.

(6) Singapore Issues. At the 1996 Singapore Ministerial Meeting, Ministers agreed to work programs in the areas of: (1) Trade and competition; (2) trade and investment; (3) trade facilitation; and (4) transparency in government procurement. Comments are welcome on all of these issues and U.S. objectives for these issues which shall be considered further at the Fifth Ministerial Meeting.

A. Interaction Between Trade and Competition Policy

The working group has been assigned a modest program of work aimed at identifying core principles, with further decisions at the next (Fifth) Ministerial. In the first stage, the WTO will focus on clarification of "core principles," including transparency, non-discrimination and procedural fairness, and provisions on hard-core cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. At the Fifth Ministerial, a decision will be taken on the timing and specific content of negotiations.

B. Investment

The existing WTO working group on investment will clarify issues, such as scope, transparency, non-discrimination, modalities for making commitments, exceptions, and government-to-government dispute settlement. At the Fifth Ministerial, a decision will be taken on the time and specific content of the negotiations. Comments would also be welcome regarding the relationship of any potential WTO investment provisions with existing bilateral or regional investment agreements.

C. Trade Facilitation

Ministers outlined a focused program leading to negotiations aimed at meeting the needs for transparency and efficiency of the fast-paced global economy. Ministers agreed to provide for work on new WTO rules to make procedures at international borders more transparent and efficient. Negotiations will take place after the Fifth Ministerial on the basis of a decision to be taken at that Ministerial on modalities of negotiations. At that time, negotiations will be launched on WTO rules for expediting the movement and clearance of goods crossing borders, building on relevant GATT Articles (Articles V (transit), VIII (formalities), and X (transparency)).

We are also interested in identification of country-specific problems that U.S. exporters are having in terms of further expediting the movement, release and clearance of goods including goods in transit, non-transparent procedures, and requirements for certificates of origin for non-preferential trade.

D. Transparency in Government Procurement

Building on the Working Group's excellent preparatory work to date, Ministers agreed to a focused program that will lead to disciplines on government purchases, making an important contribution to combating corruption. Ministers agreed to negotiate an agreement providing for enhanced transparency in WTO Member government procurement procedures, to be launched at the Fifth Ministerial. The negotiations will not incorporate new market access commitments, meaning Members' preferential procurement programs will not be involved. The process will include a focused preparatory phase and a program of capacity building and technical assistance for developing countries.

(7) Development and related issues. The Doha Declaration focuses extensively on development, in particular the provision of technical assistance and capacity building support to trading partners. Comments are requested on ways to facilitate the participation of poorer, less-advanced and least-developed countries in the WTO, including making the WTO more responsive to development concerns. Comments should take into account work that has been conducted to integrate the technical assistance provided by various international organizations, including the WTO. Areas for comment could include provision of additional capacity building and market access opportunities, the possible graduation of countries from preference programs, the integration of trade into the poverty reduction strategies of other institutions, and improving the interplay between the work of the WTO and that of other international institutions such as the IMF, IBRD, UNCTAD, ILO and UNDP, to be more responsive to the development needs of WTO members. Respondents are encouraged to provide information on relevant technical assistance provided by their organization.

(8) Systemic Issues/Institutional Reform. Comments are requested on the important institutional issues raised about the WTO in terms of its openness and accountability, including its outreach to citizens. The United States continues to seek institutional improvements to the WTO, while preserving its intergovernmental nature. For example, the United States has consistently called for the WTO to build upon past progress by (i) expanding the range and improving the timeliness of WTO documents available to the public; (ii) strengthening the guidelines for consultations with non-governmental organizations (NGOs); (iii) enhancing the WTO's program of symposia and consultations on specific topics of mutual interest; (iv) expanding and improving the use of Internet facilities to reach more stakeholders in more creative ways; and (v) broadening the range of WTO meetings and events that would be open to the public. Another area of interest relates to the operation of the WTO and its relations among Members, and internal consultative processes and improvements, including the establishment of new institutional arrangements within the WTO that would build upon the general practice of operating on the basis of consensus of all members.

(9) Implementation. The separate decision on implementation agreed to at Doha, along with paragraph 12 of the Doha declaration, focus on the implementation concerns that have been an issue for many WTO members over the past several years. At Doha, Members addressed a wide range of developing country concerns regarding implementation of previous WTO agreements, primarily through clarifying existing provisions and seeking further work in WTO committees. Issues that remain outstanding were assigned to the WTO work program, or addressed in negotiations where they have been specifically mandated. Comments are invited on the work on implementation, recognizing that by the end of 2002 that the TNC will receive reports from Members in line with paragraph 12(b) of the main declaration.

(10) Other issues. Comments are welcome on other issues that respondents believe would be appropriate to raise with respect to the negotiations and work program of the WTO, including the work assigned to the General Council regarding the subjects of trade, debt and finance, and transfer of technology, the Work Program on Electronic Commerce, as well as on environmental or labor issues relevant to the formulation of U.S. objectives for the negotiations and work program. The TPSC's aim is to be as inclusive as possible in providing opportunity for public comments.

Written Submissions. Comments should state clearly the objective(s) and should contain detailed information supporting the objective(s). Submissions should clearly indicate the general topic (i.e., agriculture, services or non-agricultural products). Persons submitting written comments should provide twenty (20) copies no later than noon May 1, 2002, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street NW, Washington, DC 20508. Where possible, respondents should also submit comments in electronic form by providing a disk together with the required twenty hard copies. An electronic submission alone will not be considered. The disk should be labeled and should clearly identify the software used and the respondent. As noted in the sections on services, agriculture and industrial market access, the provision of supplemental technical information would be helpful. This information should be provided in spreadsheet or table format in Microsoft Word, Word Perfect, Excel, Quatro Pro or MS Access.

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Office of the United States Trade Representative. An appointment to review the file may be made by calling 202–395–6186. The Reading Room is open to the public from 10:00 a.m. to 12:00 noon, and from 1:00 p.m. to 4:00 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Business Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–6606 Filed 3–18–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2001–35.1–R0]

Notice of Policy for Parts Manufacturer Approval (PMA) for Critical Propeller Parts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance; policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for a uniform approach for Aircraft Certification Offices (ACOs) to evaluate PMA applications for both critical and life-limited propeller parts.

DATES: The FAA issued policy statement number ANE–2001–35.1–R0 on December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov;* telephone: (781) 238–7116; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/enginepolicyby.htm.* If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on August 23, 2001 (66 FR 44431) that announced the availability of the proposed policy and invited interested parties to comment.

Background

This policy establishes a uniform approach for Aircraft Certification Offices (ACOs) to evaluate PMA applications for both critical and life-limited propeller parts. This policy does not establish new requirements.

(**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on December 17, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6127 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice to Rescind Notice of Intent To Prepare an Environmental Impact Statement: Macon County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the notice of intent (NOI) to prepare an environmental impact statement (EIS) for improvements that were proposed to the transportation system in Macon County, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald L. Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101; Telephone (573) 636–7104 or Mr. Dave Nichols, Director of Project Development, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), is rescinding the NOI to prepare an EIS for a project that has been proposed to improve the transportation system in Macon County, Missouri. The NOI is being rescinded because FHWA and MoDOT have determined that the project will have no significant impacts and is not controversial so an environmental assessment will be appropriate for this project.

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and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 1, 2002.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 02–6501 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Consent of Surety.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Consent of Surety.

OMB Number: 1512–0078.

Form Number: ATF F 1533 (5000.18).

Abstract: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. The bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden Hours: 2,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2002.

William T. Earle,

Associate Director (Management) CFO.

[FR Doc. 02–6584 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit For Importation of Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Derek O. Ball, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit For Importation of Firearms, Ammunition and Implements of War.

OMB Number: 1512–0017.

Form Number: ATF F 6 (5330.3A) Part 1.

Abstract: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The form is used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces must complete this form.

Current Actions: There are no changes to this information and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 11,000.

Estimated Total Annual Burden Hours: 5,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–6585 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Environmental Information and Supplemental Information on Water Quality Considerations Under 33 U.S.C. 1341 (a).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Linda Wade-Chapman, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Environmental Information and Supplemental Information on Water Quality Considerations Under 33 U.S.C. 1341 (a).

OMB Number: 1512–0100.

Form Number: ATF F 5000.29 and ATF F 5000.30.

Abstract: The environmental forms are necessary in order to comply with the provisions of the National Environmental Policy Act, 42 U.S.C. 4332 (ATF F 5000.29) and the Clean Water Act, 33 U.S.C. 1341 (a) (ATF F 5000.30). Information regarding solid and liquid waste, air pollution, noise, etc. as collected on ATF F 5000.29 is evaluated to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. The environmental type information is collected from manufacturers, namely distilled spirits plants, wineries, breweries, and tobacco products factories. ATF F 5000.30 is also submitted by manufacturers but only those who discharge a solid or liquid effluent into navigable waters. Applicants are required to describe any biological, chemical, thermal, or other characteristic of the discharge as well as any methods or equipment used to monitor the condition of the discharge. Based upon this data, ATF makes a determination as to whether a certification or waiver by the applicable State water quality agency is required. Should a manufacturer be required to submit both forms (ATF F 5000.29 and ATF F 5000.30) they may incorporate by reference any redundant information especially regarding solid and waste. The record retention period for this information collection is 15 years after discontinuance of business for distilled spirits plants having production facilities. All others, 4 years after discontinuance of business.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Total Annual Burden Hours: 4,400.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–6586 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rosa M. Jeter, Market Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8123.

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

OMB Number: 1512–0418.

Form Number: ATF F 5000.12.

Abstract: The application to practice before the Bureau of Alcohol, Tobacco and Firearms is necessary so that the Bureau may evaluate the qualification of applicants in order to assure only competent, reputable persons are authorized to represent claimants. There is no recordkeeping requirement for the respondent.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

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Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden Hours: 2.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–6587 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: Notice is hereby given of the designation of additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designations by the Secretary of the Treasury of additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 were variously effective on November 7, 2001, December 4, 2001, December 20, 2001, or January 9, 2002, as reflected in the separate lists set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). The property and interests in property of an additional 33 individuals and 6 entities were blocked pursuant to determinations by the Secretary of State and the Secretary of the Treasury effective October 12, 2001, referenced in a **Federal Register** document published by the Office of Foreign Assets Control, Department of the Treasury (66 FR 54404, October 26, 2001).

Further Additional Determinations. Pursuant to subsections 1(c) and 1(d) of the Order, further additional persons have been determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General: to be owned or controlled by, or to act for or on behalf of, persons listed in the annex to the Order or designated pursuant to subsection 1(b), 1(c), or 1(d)(i) of the Order; to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, acts of terrorism or persons listed on the annex or designated pursuant to the Order; or to be otherwise associated with persons listed on the annex to the Order or designated pursuant to subsection 1(b), 1(c), or 1(d)(i) of the Order. These additional determinations are set forth in the lists below. In addition, further determinations made on October 31, 2001, December 18, 2001, and December 31, 2001, by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, under subsection 1(b) of the Order, are addressed in a separate notice published elsewhere in this issue of the **Federal Register**.

All property and interests in property of any listed person that are in the United States, that come within the United States, or that are or come within the possession or control of United States persons, including their overseas branches, are blocked, and may not be transferred, paid, exported, withdrawn or otherwise dealt in, and all transactions by U.S. persons or within the United States in property or interests in property of any listed person are prohibited unless otherwise authorized by the Office of Foreign Assets Control or exempted by statute.

The designations by the Secretary of the Treasury of further additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 were variously effective on the relevant date of determination (November 7, 2001, December 4, 2001, December 20, 2001 or January 9, 2002), as reflected under separate headings in the lists below.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects that opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The lists of additional designations follow:

Designations of November 7, 2001 (Entities)

AARAN MONEY WIRE SERVICE INC., 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota.

AL BARAKA EXCHANGE L.L.C., P.O. Box 3313, Deira, Dubai, United Arab Emirates; P.O. Box 20066, Dubai, United Arab Emirates.

AL-BARAKAAT, Mogadishu, Somalia; Dubai, United Arab Emirates.

AL-BARAKAAT BANK, Mogadishu, Somalia.

AL-BARAKAAT BANK OF SOMALIA (BBS) (a.k.a. BARAKAAT BANK OF SOMALIA), Mogadishu, Somalia; Bossaso, Somalia.

AL-BARAKAAT GROUP OF COMPANIES SOMALIA LIMITED (a.k.a. AL-BARAKAT FINANCIAL COMPANY), P.O. Box 3313, Dubai, United Arab Emirates; Mogadishu, Somalia.

AL-BARAKAAT WIRING SERVICE, 2940 Pillsbury Avenue, Suite 4, Minneapolis, Minnesota 55408.

AL-BARAKAT FINANCE GROUP, Dubai, United Arab Emirates; Mogadishu, Somalia.

AL-BARAKAT FINANCIAL HOLDING COMPANY, Dubai, United Arab Emirates; Mogadishu, Somalia.

AL-BARAKAT GLOBAL TELECOMMUNICATIONS (a.k.a. BARAKAAT GLOBETELCOMPANY), P.O. Box 3313, Dubai, United Arab Emirates; Mogadishu, Somalia; Hargeysa, Somalia.

AL-BARAKAT INTERNATIONAL (a.k.a. BARACO CO.), Box 2923, Dubai, United Arab Emirates.

AL-BARAKAT INVESTMENTS, P.O. Box 3313, Deira, Dubai, United Arab Emirates.

AL TAQWA TRADE, PROPERTY AND INDUSTRY COMPANY LIMITED (f.k.a. AL TAQWA TRADE, PROPERTY AND INDUSTRY) (f.k.a. AL TAQWA TRADE, PROPERTY AND INDUSTRY ESTABLISHMENT) (f.k.a. HIMMAT ESTABLISHMENT), c/o Asat Trust Reg., Altenbach 8, 9490 Vaduz FL, Liechtenstein.

ASAT TRUST REG., Altenbach 8, 9490 Vaduz FL, Liechtenstein.

BANK AL TAQWA LIMITED (a.k.a. AL TAQWA BANK) (a.k.a. BANK AL TAQWA), P.O. Box N–4877, Nassau, Bahamas; c/o Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas.

BARAKA TRADING COMPANY, P.O. Box 3313, Dubai, United Arab Emirates.

BARAKAAT BOSTON, 266 Neponset Avenue, Apt 43, Dorchester, Massachusetts 02122–3224.

BARAKAAT CONSTRUCTION COMPANY, P.O. Box 3313, Dubai, United Arab Emirates.

BARAKAAT ENTERPRISE, 1762 Huy Road, Columbus, Ohio 43224–3550.

BARAKAAT GROUP OF COMPANIES, P.O. Box 3313, Dubai, United Arab Emirates; Mogadishu, Somalia.

BARAKAAT INTERNATIONAL, Hallbybacken 15, 70 Spanga, Sweden.

BARAKAAT INTERNATIONAL COMPANIES (BICO), Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAAT INTERNATIONAL FOUNDATION, Box 4036, Spanga, Stockholm, Sweden; Rinkebytorget 1, 04 Spanga, Sweden.

BARAKAAT INTERNATIONAL, INC., 1929 South 5th Street, Suite 205, Minneapolis, Minnesota, U.S.A.

BARAKAAT NORTH AMERICA, INC., 925 Washington Street, Dorchester, Massachusetts; 2019 Bank Street, Ottawa, Ontario, Canada.

BARAKAAT RED SEA TELECOMMUNICATIONS, Bossaso, Somalia; Nakhiil, Somalia; Huruuse, Somalia; Raxmo, Somalia; Ticis, Somalia; Kowthar, Somalia; Noobir, Somalia; Bubaarag, Somalia; Gufure, Somalia; Xuuxuule, Somalia; Ala Aamin, Somalia; Guureeye, Somalia; Najax, Somalia; Carafaat, Somalia.

BARAKAAT TELECOMMUNICATIONS COMPANY LIMITED (a.k.a. BTELCO), Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia; Kievitlaan 16, T'veld, Noord-Holland, The Netherlands.

BARAKAAT TELECOMMUNICATIONS COMPANY SOMALIA, LIMITED, P.O. Box 3313, Dubai, United Arab Emirates.

BARAKAT BANKS AND REMITTANCES, Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAT COMPUTER CONSULTING (BCC), Mogadishu, Somalia.

BARAKAT CONSULTING GROUP (BCG), Mogadishu, Somalia.

BARAKAT GLOBAL TELEPHONE COMPANY, Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAT POST EXPRESS (BPE), Mogadishu, Somalia.

BARAKAT REFRESHMENT COMPANY, Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAT WIRE TRANSFER COMPANY, 4419 South Brandon Street, Seattle, Washington.

BARAKO TRADING COMPANY LLC, P.O. Box 3313, Dubai, United Arab Emirates.

GLOBAL SERVICE INTERNATIONAL, 1929 5th Street, Suite 204, Minneapolis, Minnesota.

HEYATUL ULYA, Mogadishu, Somalia.

NADA MANAGEMENT ORGANIZATION SA (f.k.a. AL TAQWA MANAGEMENT ORGANIZATION SA), Viale Stefano Franscini 22, CH–6900 Lugano TI, Switzerland.

PARKA TRADING COMPANY, P.O. Box 3313, Deira, Dubai, United Arab Emirates.

RED SEA BARAKAT COMPANY LIMITED, Mogadishu, Somalia; Dubai, United Arab Emirates.

SOMALI INTERNATIONAL RELIEF ORGANIZATION, 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota.

SOMALI INTERNET COMPANY, Mogadishu, Somalia.

SOMALI NETWORK AB (a.k.a. SOM NET AB), Hallybybacken 15, 70 Spanga, Sweden.

YOUSSEF M. NADA, Via Riasc 4, CH–6911 Campione d'Italia I, Switzerland.

YOUSSEF M. NADA & CO. GESELLSCHAFT M.B.H., Kaerntner Ring 2/2/5/22, 1010 Vienna, Austria.

Designations of November 7, 2001 (Individuals)

ABDULLKADIR, Hussein Mahamud, Florence, Italy.

ADEN, Abdirisak; Skaftingebacken 8, 163 67 Spanga, Sweden; DOB 01 June 1968.

ALI, Abbas Abdi, Mogadishu, Somalia.

ALI, Abdi Abdulaziz, Drabantvagen 21, 177 50 Spanga, Sweden; DOB 01 January 1955.

ALI, Yusaf Ahmed, Hallbybacken 15, 70 Spanga, Sweden; DOB: 20 November 1974.

AWEYS, Dahir Ubeidullahi, Via Cipriano Facchinetti 84, Rome, Italy.

AWEYS, Hassan Dahir (a.k.a. ALI, Sheikh Hassan Dahir Aweys) (a.k.a. AWES, Shaykh Hassan Dahir), DOB: 1935; Citizen: Somalia.

HIMMAT, Ali Ghaleb, Via Posero 2, CH–6911 Campione d'Italia, Switzerland; DOB: 16 June 1938; POB: Damascus, Syria; Citizen: Switzerland and Tunisia.

HUBER, Albert Friedrich Armand (a.k.a. HUBER, Ahmed), Mettmenstetten, Switzerland; DOB: 1927.

HUSSEIN, Liban, 925 Washington Street, Dorchester, Massachusetts; 2019 Bank Street, Ottawa, Ontario, Canada.

JAMA, Garad (a.k.a. NOR, Garad K.) (a.k.a. WASRSAME, Fartune Ahmed), 2100 Bloomington Avenue, Minneapolis, Minnesota; 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota; DOB: 26 June 1974.

JIM'ALE, Ahmed Nur Ali (a.k.a. JIMALE, Ahmad Ali) (a.k.a. JIM'ALE, Ahmad Nur Ali) (a.k.a. JUMALE,

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Ahmed Nur) (a.k.a. JUMALI, Ahmed Ali), P.O. Box 3312, Dubai, United Arab Emirates; Mogadishu, Somalia.

KAHIE, Abdullahi Hussein, Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia.

MANSOUR, Mohamed, (a.k.a. AL-MANSOUR, Dr. Mohamed), Ob. Heslibachstr. 20, Kusnacht, Switzerland; Zurich, Switzerland; DOB: 1928; POB: Egypt or United Arab Emirates.

MANSOUR-FATTOUH, Zeinab, Zurich, Switzerland.

NADA, Youssef, (a.k.a. NADA, Youssef M.) (a.k.a. NADA, Youssef Mustafa), Via Arogno 32, 6911 Campione d'Italia, Italy; Via Per Arogno 32, CH-6911 Campione d'Italia, Switzerland; Via Riasc 4, CH-6911 Campione d'Italia I, Switzerland; DOB: 17 May 1931 or 17 May 1937; POB: Alexandria, Egypt; Citizen: Tunisia.

Designations of December 4, 2001

AL-AQSA ISLAMIC BANK (a.k.a. AL-AQSA AL-ISLAMI BANK), P.O. Box 3753 al-Beireh, West Bank; Ramallah II 970, West Bank.

BEIT EL-MAL HOLDINGS (a.k.a. ARAB PALESTINIAN BEIT EL-MAL COMPANY; a.k.a. BEIT AL MAL HOLDINGS; a.k.a. BEIT EL MAL AL-PHALASTINI AL-ARABI AL-MUSHIMA AL-AAMA AL-MAHADUDA LTD.; a.k.a. PALESTINIAN ARAB BEIT EL MAL CORPORATION, LTD.), P.O. Box 662, Ramallah, West Bank.

HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT (f.k.a. OCCUPIED LAND FUND), 525 International Parkway, Suite 509, Richardson, Texas 75081, U.S.A.; P.O. Box 832390, Richardson, Texas 75083, U.S.A.; 9250 S. Harlem Avenue, Bridgeview, Illinois, U.S.A.; 345 E. Railway Avenue, Paterson, New Jersey 07503, U.S.A.; 12798 Rancho Penasquitos Blvd., Suite F, San Diego, California 92128 U.S.A.; Hebron, West Bank; Gaza; and other locations within the United States; U.S. FEIN: 95-4227517.

Designations of December 20, 2001 (Entity)

UMMAH TAMEER E-NAU (UTN), (a.k.a. Ummah Tameer I-Nau; a.k.a. Ummah Tamir I-Nau; a.k.a. Ummah Tamir E-Nau; a.k.a. Reconstruction of the Muslim Ummah; a.k.a. Reconstruction of the Islamic Community; a.k.a. Foundation for Construction; a.k.a. Reconstruction Foundation; a.k.a. Nation Building; a.k.a. Ummat Tamir-I-Pau; a.k.a. Ummat Tamir E-Nau), Street 13, Wazir Akbar Khan, Kabul, Afghanistan; 60-C, Nazim Ud Din Road, F 8/4 Islamabad, Pakistan.

Designations of December 20, 2001 (Individuals)

MAHMOOD, Sultan Bashir-Ud-Din (a.k.a. MAHMOOD, Sultan Bashiruddin; a.k.a. MEHMOOD, Dr. Bashir Uddin; a.k.a. MEKMUD, Sultan Baishiruddin), Street 13, Wazir Akbar Khan, Kabul, Afghanistan; alt. DOB 1937; alt. DOB 1938; alt. DOB 1939; alt. DOB 1940; alt. DOB 1941; alt. DOB 1942; alt. DOB 1943; alt. DOB 1944; alt. DOB 1945; nationality Pakistani.

MAJEED, Abdul (a.k.a. MAJEED, Chaudhry Abdul; a.k.a. MAJID, Abdul); DOB 15 April 1939; alt. DOB 1938; nationality Pakistani.

TUFAIL, Mohammed (a.k.a. TUFAIL, S.M.; a.k.a. TUFAIL, Sheik Mohammed); nationality Pakistani.

Designations of January 9, 2002 (Entities)

AFGHAN SUPPORT COMMITTEE (ASC) (a.k.a. AHYA UL TURAS; a.k.a. JAMIAT AYAT-UR-RHAS AL ISLAMIA; a.k.a. JAMIAT IHYA UL TURATH AL ISLAMIA; a.k.a. LAJNAT UL MASA EIDATUL AFGHANIA) Grand Trunk Road, near Pushtoon Garhi Pabbi, Peshawar, Pakistan; Cheprahar Hadda, Mia Omar Sabaqah School, Jalalabad, Afghanistan.

REVIVAL OF ISLAMIC HERITAGE SOCIETY (RIHS) (a.k.a. JAMIA IHYA UL TURATH; a.k.a. JAMIAT IHIA AL-TURATH AL-ISLAMIYA; a.k.a. REVIVAL OF ISLAMIC SOCIETY HERITAGE ON THE AFRICAN CONTINENT) Pakistan office; Afghanistan office; (office in Kuwait is NOT designated).

Designations of January 9, 2002 (Individuals)

AL-JAZIRI, Abu Bakr; Peshawar, Pakistan; nationality Algerian (individual).

AL-LIBI, Abd al-Mushin (a.k.a. ABU BAKR, Ibrahim Ali Muhammad) (individual).

Dated: January 15, 2002.

Loren L. Dohm,

Acting Director, Office of Foreign Assets Control.

Approved: January 23, 2002.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02-3291 Filed 3-14-02; 3:48 pm]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209673-93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-209673-93 (TD 8700), Mark to Market for Dealers in Securities (§§ 1.475(b)-4, and 1.475(c)-1).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622-3179, or through the internet *(Larnice.Mack@irs.gov.)* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Mark to Market for Dealers in Securities.

OMB Number: 1545-1496.

Regulation Project Number: REG-209673-93.

Abstract: Under section 1.475(b)-4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayers' books and records. Also, under section 1.475(c)-1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,400.

Estimated Time Per Respondents: 52 minutes.

Estimated Total Annual Burden Hours: 2,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-6482 Filed 3-18-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday, March 20, 2002.

ADDRESSES: Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1-888-912-1227 or 718-488-3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday, March 20, 2002, 6 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1-888-912-1227 or 718-488-3555. The public is invited to make oral comments from 9 p.m. to 9:20 p.m. on Wednesday, March 20, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 718-488-3555, or write Eileen Cain, CAP Office, PO Box R, Brooklyn, NY 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cindy Vanderpool,

Program Manager, TAS.

[FR Doc. 02-6298 Filed 3-18-02; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0024]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize VA to make deductions to pay premiums, loans and/or liens.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 20, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900-0024" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Insurance Deduction Authorization (For Deduction from Benefit Payments), VA Form 29-888.

OMB Control Number: 2900-0024.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by insureds to authorize VA to make deductions from benefits payments to pay premiums, loans and/or liens on his or her insurance contract.

Affected Public: Individuals or households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

Dated: March 7, 2002.

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By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–6537 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 18, 2002.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0606" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0606."

SUPPLEMENTARY INFORMATION:

Title: Regulation for Submission of Evidence (Title 38 CFR 17.1C1(a)(2).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: The purpose of this regulation is to authorize VA to bill "reasonable charges" instead of "reasonable cost" for medical care or services provided or furnished to a veteran for a non-service connected disability.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2002, at pages 2013–2014.

Affected Public: Business or other, Individuals or households, Not-for-profit institutions, Farms, and State, Local or Tribal government.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: March 4, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–6538 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 18, 2002.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0120" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0120."

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment by Attending Physician, VA FL 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from an attending physician to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 24, 2002, at pages 3533–3534.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: March 4, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–6539 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 53

Tuesday, March 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0032]

Guidance for Industry; Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No. 107–76 § 755(2001) Regarding Common or Usual Names for Catfish; Availability

Correction

In notice document 02–2753 beginning on page 5604, in the issue of Wednesday, February 6, 2002 make the following correction:

On page 5605, in the first column, in the first line, the web address, "*http://www.cfsan.fda.gov/dms/guidance/html*" should read "*http://www.cfsan.fda.gov/–dms/guidance/html*".

[FR Doc. C2–2753 Filed 3–18–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

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March 19, 2002

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 368 and 387

Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 368 and 387

[Docket No. FMCSA–98–3297]

RIN 2126–AA33

Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises its regulations and form that relate to the issuance of Certificates of Registration to those Mexico-domiciled motor carriers (of property) that want to operate in the United States only within the municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California and within the commercial zones of such municipalities ("border zones"). This rule also revises FMCSA's regulations governing financial responsibility of motor carriers to accurately reflect the requirements placed on these Mexico-domiciled motor carriers. Other types of carriers that currently hold a Certificate of Registration (such as exempt carriers that operate beyond the border zones) must now apply under separate FMCSA regulations that we are issuing in an interim final rule published elsewhere in today's **Federal Register**. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States. They will ensure that the FMCSA receives adequate information to assess a new applicant's safety program and its ability to comply with U.S. safety standards before it is registered to operate in the United States. The FMCSA will evaluate current certificate holders who re-file under these regulations to determine if they meet U.S. safety standards and should be permitted to continue operations within the border zones. As a result of these changes, the agency also will be better able to maintain an accurate census of registered carriers. Additionally, the regulations have been updated to reflect the transfer of motor carrier regulatory functions from the Federal Highway Administration (FHWA) to FMCSA.

EFFECTIVE DATE: This final rule is effective April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Joanne Cisneros, (909) 653–2299, Transborder Office, FMCSA, P.O. Box 530870, San Diego, CA 92153–0870. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since 1982, significant limitations have been in place concerning operations by Mexico-domiciled motor carriers in the United States. A moratorium has existed on grants of operating authority under the jurisdiction of the former Interstate Commerce Commission (ICC). Access has been allowed only for certain motor carriers that fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP–2 under the provisions of what is now 49 CFR part 368. Until the effective date of this rulemaking, Mexico-domiciled carriers eligible for Certificates of Registration were those operating solely within the border zones and certain motor private carriers and carriers of exempt goods who operated beyond the border zones.

Summary of the NPRM

The FMCSA published the notice of proposed rulemaking (NPRM) for this action on May 3, 2001 (66 FR 22328). We proposed to use the Form OP–2 (with substantial changes) and the issuance of Certificates of Registration only for those carriers whose operations are limited to the border zones. The FMCSA believes that despite the opportunity for Mexico-domiciled carriers to operate beyond the border zones, there are a substantial number of carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area.

We additionally proposed that all current holders of Certificates of Registration be required to file new forms with the FMCSA. Those carriers who wish to continue operating only in the border zones would file the Form OP–2 in accordance with the procedures in part 368. All other current holders of Certificates of Registration who want to operate beyond the border zones would file Form OP–1(MX) like all other Mexico-domiciled property carriers seeking the ability to operate under the implementation of the NAFTA entry provisions.

The FMCSA proposed to modify parts 368 and 387 and Form OP–2 as part of our implementation of the NAFTA cross-border access provisions. We asked for comments on our proposal to reissue all existing Certificates of Registration and to require current holders of Certificates of Registration to submit additional safety information about their operations.

The NPRM was one of three proposals related to carriers operating or seeking to operate between Mexico and the United States published in the May 3, 2001, **Federal Register**. The FMCSA made a conscious decision to propose retaining two different application forms and processes, the OP–2 and the OP–1(MX), under 49 CFR part 368 and part 365, respectively. We solicited comments on the need to maintain the Certificate of Registration process. A separate NPRM (66 FR 22371) proposed and sought comments on changes to Form OP–1(MX) and 49 CFR part 365. The third NPRM (66 FR 22415) explained the proposed safety monitoring system for Mexico-domiciled carriers operating in the United States. These three proposals are part of a coordinated effort to assess and monitor the safety performance of Mexico-domiciled carriers before and as they operate in the United States.

Discussion of Comments to the NPRM

In response to the three NPRMs relating to NAFTA implementation, the FMCSA received over 200 comments from motor carrier associations, safety advocates, environmental interest groups, law enforcement agencies, motor carriers, labor groups, State and local government agencies, economic and community development associations, and private citizens. More than 90 percent of the comments opposed the proposed safety monitoring system or the border opening. Most of the comments focused on the proposed safety monitoring system (66 FR 22415) and will be fully discussed elsewhere in today's **Federal Register**. It should be noted, however, that these and other comments urging a delay in the implementation of NAFTA assume that the regulations published today "open the border" or lift the current moratorium on the grant of operating authority. The regulations do neither. The President, not the FMCSA, has that authority pursuant to 49 U.S.C. 13902. The President has announced that the United States will comply with its NAFTA obligations regarding Mexico-domiciled motor carrier access in a manner that will not weaken motor carrier safety. The regulations help ensure motor carrier safety and provide an application process for Mexico-domiciled carriers seeking to operate within the United States.

A large percentage of the commenters addressed all three rules together in a single submission that was filed in one

or all three public dockets. We have carefully considered them and have revised the OP–2 application form and the regulations governing the application process as noted in the preamble sections titled "Discussion of the Final Rule" and "Final Revisions to the Form OP–2." In this section, FMCSA discusses the comments that directly relate to the proposed changes in parts 368 and 387, as well as some comments that related to all the proposals.

The Friends of the Earth, Natural Resources Defense Council, Sierra Club, and Center for International Law (Friends of the Earth *et al.*) jointly commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and Executive Order 13045 (62 FR 19885, April 23, 1997), concerning the protection of children from environmental and health and safety risks. The International Brotherhood of Teamsters (Teamsters) also expressed this viewpoint. The Friends of the Earth *et al.* believe that 40 CFR 1501.3(b) requires that if DOT is not certain that an environmental impact statement is required, then it must first prepare an environmental assessment. Regarding compliance with Executive Order 13045, the Friends of the Earth *et al.* believe that this action presents increased pollution and safety concerns that pose a disproportionate risk to children.

The FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). The FMCSA has conducted a programmatic environmental assessment (PEA) of the three rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings and the FMCSA's responsibilities under E.O. 13045 is presented later in the preamble under "Regulatory Analyses and Notices." A copy of the PEA is in the docket to this rulemaking.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a "conformity determination" pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 USC 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP (a "conformity determination"), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

We have reviewed our obligations under the CAA and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements and that no conformity determination is required.

The Laredo (Texas) Chamber of Commerce, the City of Laredo, and the Laredo Development Foundation all submitted comments that specifically addressed the proposed regulations for Mexico-domiciled carriers that operate solely within the border zones. They are concerned that no additional requirements be put in place to slow down traffic through the border entry facilities. The City of Laredo believes that requiring drayage operations drivers, who operate solely within the border zones, to speak English, as well as understand English signage, is unnecessary.

The FMCSA believes that all motor carriers and drivers under its jurisdiction must meet all applicable motor carrier safety regulations when operating within the United States, regardless of the nature of operations. Since many of the Mexican short-haul or "drayage" drivers have been operating within the border zones for some time, most of them already comply with the English language proficiency requirements established for all commercial drivers operating in the United States under 49 CFR 391.11.

The Chamber of Commerce (COC) and Teamsters support the proposal to maintain a separate application form and procedures for Mexico-domiciled carriers that operate solely within the border zones. The COC does not want the Mexican short-haul operations to be identified together with long-haul operations operating beyond the border zones.

On the other hand, the Commercial Vehicle Safety Alliance (CVSA), the Camara Nacional del Autotransporte de Cargo (CANACAR) and American Trucking Associations, Inc. (ATA) recommend a single application form and procedures. CVSA recommends combining the OP–2 and OP–1(MX) forms because they are virtually identical. CANACAR believes that the proposed rules, in creating a distinction between applicants who seek to operate only in the border zones and those that seek to operate beyond the border zones, are in conflict with the implementation schedule established in the annex to NAFTA Chapter XII. The fourth phase of the implementation schedule was to allow Mexico-domiciled property carriers to operate from anywhere in Mexico to any point in the United States. CANACAR believes that the proposals set forth in the NPRM to this action appear to violate this principle.

The FMCSA is maintaining a separate registration system for Mexico-domiciled drayage operations, in part, so that we can maintain a more accurate census of these carriers, better assess their safety trends and operational characteristics, and track the impact of opening the border on dedicated drayage operations. Maintaining a separate Certificate of Registration will also enable those Mexico-domiciled carriers who wish to continue limited operations within the border zones to do so without incurring extra expenses for such things as mandatory continuous insurance coverage and additional fees for beyond border zone operations. This rule does not violate the fourth phase of the NAFTA implementation schedule

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because it does not prohibit current holders of Certificates of Registration from requesting the broader operating authority available to Mexico-domiciled carriers under part 365 (as provided in an interim final rule published elsewhere in today's **Federal Register**).

The Teamsters support the proposal to require all current holders of Certificates of Registration to re-register, but believe that the one-year time period in which current holders of Certificates of Registration must re-file an OP–2 is too long. The Teamsters acknowledge the need to allow currently operating carriers sufficient time to prepare the application form but recommend that the re-registration period be shortened to 6 months.

The FMCSA believes that a longer re-registration period is required to permit border-zone carriers to continue operating within the border zones while modifying their vehicle fleets to comply with an FMCSA proposed rule published elsewhere in today's **Federal Register**. This rule would require that all commercial vehicles operated in the United States display labels certifying compliance with the Federal Motor Vehicle Safety Standards (FMVSS). However, to avoid disrupting existing border zone operations, the rule would allow border-zone carriers to operate vehicles within the border zone without a certification label for 24 months after the effective date of the rule, provided these vehicles were operated within the border zones before the rule's effective date. The expanded registration period will also provide adequate time to process the large number of applications anticipated. Thus, the final rule provides for an 18-month re-registration requirement.

The Owner-Operator Independent Drivers Association (OOIDA) commented in favor of the current system for Certificates of Registration that does not include publication of applications in the FMCSA Register.

However, the Teamsters oppose proposed § 368.6(f), which states that FMCSA will not provide notice of OP–2 filings in the **Federal Register** or FMCSA Register or permit comments, protests, or public hearings regarding such filings. This section is essentially a recodification of the last three sentences in former § 368.3(a). Applications for Certificates of Registration have not been subject to a public notice and protest requirement since procedures for handling such applications were first established by the ICC in 1985. The predecessor to part 368, 49 CFR part 1171, expressly prohibited public protests and oral hearings. Only the Department of Transportation was permitted to challenge an application. When the authority to issue Certificates of Registration was transferred to DOT effective January 1, 1996, part 1171 was adopted by the Federal Highway Administration and redesignated as part 368 without substantive change, except that the DOT intervention provision was removed as no longer necessary.

Based on 16 years experience in administering the border zone registration procedures, we are not convinced that providing a new right of public protest will measurably impact public safety. Operations under these rules will be confined to a limited geographical territory and we will be carefully scrutinizing border zone carriers through the application process and during the 18-month provisional operating period following issuance of the Certificate of Registration. Under these circumstances, we do not believe that it is necessary to change the regulations to accommodate the Teamsters' concerns.

The Citizens for Reliable and Safe Highways (CRASH) commented that safety audits of all Mexico-domiciled carriers must be conducted before they are allowed to operate in the United States. FMCSA received the same comment from many private citizens who identified themselves as allied with CRASH. The CVSA, Automobile Association of America (AAA), American Association of Motor Vehicle Administrators (AAMVA), Public Citizen, Transportation Consumer Protection Council, and Advocates for Highway and Auto Safety (AHAS) all commented that a paper-based system for allowing Mexican vehicles to cross the border was insufficient and recommended safety audits before allowing Mexico-domiciled carriers to operate in the United States.

The FMCSA does not agree that pre-operating safety audits are a necessary addition to the on-going process of issuing Certificates of Registration. Mexico-domiciled carriers have been conducting drayage operations within the border zones for more than 19 years. They are already familiar with U.S. motor carrier safety standards. The FMCSA will verify the information provided by OP–2 applicants using information from Mexican and U.S. government databases. In addition, OP–2 applicants will also be subject to a safety monitoring program, including a safety audit conducted within the 18-month provisional operating period (as fully described in an interim final rule published elsewhere in today's **Federal Register**).

On the other hand, long-haul operations within the United States by Mexico-domiciled carriers have not been authorized for some time. Mexico-domiciled applicants for long-haul authority will likely accrue more vehicle miles over a larger geographical territory than drayage operators and are less familiar with U.S. safety standards. For these reasons, section 350 of the 2002 DOT Appropriations Act (Pub. L. 107–87) requires FMCSA to subject long-haul carriers, but not border-zone carriers, to pre-authority safety examinations before being granted provisional operating authority to begin operations within the United States.

A company that rents recyclable pallets and plastic containers (CHEP USA), Free Trade-San Antonio, and The National Private Truck Council commented in favor of the proposed regulations.

United Parcel Service (UPS) commented that the application and regulations for Mexico-domiciled carriers requesting Certificates of Registration should identify express delivery as a separate kind of carrier operation. UPS explains that this distinction would enable the United States to accelerate the timeline for lifting the moratorium for express delivery services, without awaiting action on general trucking.

We do not see the need at this time for the rules to distinguish between express delivery services and general trucking services. We do not expect that the moratorium will be lifted for express delivery services before the lifting of the moratorium on general trucking. In addition, the United States maintains a reservation under the NAFTA on the transportation of goods other than international cargo between points in the United States, and the reservation covers both express delivery services and other motor carrier services.

In response to comments about the need for ensuring that vehicles operated by Mexico-domiciled motor carriers comply with the applicable FMVSSs, the FMCSA has published elsewhere in today's **Federal Register** an NPRM that would require all motor carriers operating in the United States to use commercial motor vehicles that display a label certifying compliance with all applicable FMVSSs in effect on the date of manufacture. The FMCSA will enforce these safety standards through pre-authorization safety examinations of Mexican long-haul carriers and roadside inspections of all Mexico-domiciled carriers, including inspections at the border. The FMCSA's State partners will accomplish enforcement through roadside and border inspections.

Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSSs in effect on the date the vehicle was manufactured.

Title 49 CFR part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs) currently includes cross-references to most of the FMVSSs applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. The FMCSA also has the option of imposing civil penalties for violations of 49 CFR part 393. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If the FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action for making a false certification on the application for operating authority.

In conjunction with our NPRM that would require all commercial motor vehicles operating in the United States to have FMVSS certification labels, NHTSA is taking three separate actions relating to the certification label. The first action is publication of a draft policy statement that will permit vehicle manufacturers to retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured. NHTSA recognizes that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale and use in Canada or Mexico. NHTSA will, therefore, permit retroactive certification, but only if the manufacturer has sufficient basis for doing so.

NHTSA is also publishing two NPRMs relating to FMVSS certification requirements. One proposes recordkeeping requirements for foreign manufacturers that retroactively certify vehicles; the other proposes to codify, in 49 CFR part 591, NHTSA's long-standing interpretation of the term "import," as used in the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563, to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

Discussion of the Final Rule

The FMCSA has made changes in the final rule to the proposed revisions to part 368, based on the comments, section 350 of the 2002 DOT Appropriations Act, and our own review of the proposal.

First, § 368.3 has been revised to allow both hard-copy and electronic submission of required information on designation of process agents (Form BOC–3) as part of the application process. The FMCSA currently allows only process agent services to electronically file the Form BOC–3. If a carrier elects to use a process agent service, it must include a letter to that effect with the Form OP–2 and ensure that the service electronically files the Form BOC–3 with the FMCSA. Otherwise, the hardcopy Form BOC–3 must accompany the application. The carrier may not begin operations until the Form BOC–3 has been filed with the FMCSA.

Second, the wording of § 368.5 has been revised to make clear that a current Certificate of Registration remains valid only until the FMCSA acts on an application for re-registration in the same manner that it will act on new applications.

The FMCSA has revised the title of § 368.6 in both the table of sections and the regulatory text to "FMCSA action on the application" to accurately reflect how the FMCSA will consider and act on each application. The section now provides that the FMCSA will validate all data and certifications in an application with information in its own databases and in the appropriate databases of the Mexican Government to which it has access as part of the NAFTA implementation process. The FMCSA will issue a provisional Certificate of Registration if it determines that the application is consistent with the FMCSA's safety fitness policy. We will also assign a distinctive USDOT Number that distinguishes the carrier as a Mexico-domiciled carrier authorized to operate solely within the border zones. The provisional Certificate of Registration cannot become permanent for at least 18 months, until the carrier has successfully completed the safety monitoring program, including a safety audit.

Section 368.7 has been modified to require that the copy of the Certificate of Registration carried on board the vehicle be made available upon request to authorized inspectors and enforcement officers.

Finally, the FMCSA has revised § 387.7 to more accurately describe those Mexico-domiciled carriers excepted from certain financial responsibility requirements. These carriers operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities may obtain insurance coverage for periods of 24 hours or longer rather than continuous coverage.

Final Revisions to the Form OP–2

The final rule reflects numerous typographical corrections and adjustments to the OP–2 application form to make it consistent with the OP–1(MX) form. All requests for supplemental information that must accompany the application are in bold typeface so that they are conspicuous to the applicant. The substantive revisions are discussed below.

The OP–2 application instructions have been revised to discontinue the requirement that applicants submit Internal Revenue Service (IRS) Form 2290, Schedule 1 (Schedule of Heavy Highway Vehicles) with the OP–2 application. Unlike the OP–2 registration procedure, taxes imposed by 26 U.S.C. 4481 are assessed annually. The IRS Form 2290 would only provide evidence of compliance for the current year. However, the applicant must still certify compliance with 26 U.S.C. 4481 under Section VII of the application.

The instructions clarify the definition of "applicant" for purposes of determining who must sign the various Certifications and the Section VIII Application Oath.

The instructions caution applicants to enter only the city code and telephone numbers when listing Mexican telephone numbers on the form because previous applicants often submitted invalid or incomplete telephone numbers.

Insurance instructions notify applicants that they must carry a current DOT MCS–90 and evidence of insurance on board the vehicle when operating within the United States.

The information on how to receive additional assistance in completing the

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Forms OP–2 and MCS–150 was revised to list a toll-free telephone number accessible from Mexico. We also updated the information for obtaining assistance with hazardous materials registration procedures and regulations.

The form instructions state that applicants that use a process agent service to designate multiple agents for service of process must attach a letter to the application informing the FMCSA of this option. The applicant must also ensure that the service electronically files the Form BOC–3 with the FMCSA within 90 days of the submission of the OP–2 application. The applicant is also notified that it may not begin operations until the Form BOC–3 has been filed with FMCSA.

The FMCSA has added two questions in Section IA regarding whether an applicant has held provisional operating authority or a provisional Certificate of Registration that was revoked. If the applicant answers yes to this question, the applicant must explain how it has corrected the deficiencies that resulted in the revocation, explain what effectively functioning basic safety management systems it now has in place, and provide all information and documents that support its case.

The FMCSA has corrected references in Section IA, and in the corresponding instructions, to an "SCT registration number." An applicant must be registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) to be issued a Certificate of Registration. However, the SCT does not issue an SCT registration number. It uses the RFC number, a Mexican Federal Taxpayer Registration identifier issued by a separate Government agency, to track the carrier's information in the SCT database. A company is issued a Registro Federal de Contribuyente; individuals are issued a Registro Federal de Causante. The applicant must complete Question 5a under Section IA based upon the applicant's form of business: (1) If the applicant is a sole proprietorship, enter the Registro Federal de Causante; (2) all other business forms should complete Question 5a using the Registro Federal de Contribuyente.

We have deleted a redundant question regarding the applicant's domicile from Section IA and Ownership and Control information from Section II. This information was used to substantiate claims that a carrier was U.S.-owned or controlled and therefore, eligible to operate beyond the border zones under a Certificate of Registration. With the implementation of NAFTA's access liberalization provisions, Mexico-domiciled carriers applying to operate beyond the border zones will no longer file the OP–2 form.

Several safety certifications have been modified or added to Section V. We have added a single safety certification for applicants that are exempt from the Federal Motor Carrier Safety Regulations because of the weight of their vehicles and because they will not transport hazardous materials (as was discussed in the proposed form instructions but inadvertently omitted from the proposed form). These applicants must certify that they will observe safe operating practices and comply with applicable State, local and tribal safety laws.

Under Driver Qualifications, applicants must certify, consistent with 49 CFR 391.23, that they will investigate their drivers' 3-year employment and driving histories. The certification statement concerning the need for carriers to establish a system and instructions for drivers to report criminal convictions has been removed. Current regulations only require domestic drivers to report violations of motor vehicle traffic laws and ordinances. The certification statement relating to the use of properly licensed drivers has been modified to require that the driver's Licencia Federal de Conductor is registered in the SCT database.

The four certification statements proposed under certification section V.8, pertaining to requirements that must be in place once operations within the United States have begun, have been modified to emphasize that the requirements apply only after the Mexico-domiciled carrier has begun operations within the United States and have been integrated into the Hours of Service, Driver Qualifications, and Vehicle Condition certification sections, as appropriate.

In response to comments from ATA, Teamsters, OOIDA, and the Transportation Trades Department of the AFL–CIO, we have extensively revised the Hazardous Materials (HM) and Cargo Tank certification statements. The HM training certification was modified to cite the relevant HM training regulations (49 CFR part 172, subpart H and 49 CFR 177.816) and the specific hazardous materials safety compliance information that must accompany the application.

We reworded the certification statement regarding the establishment of a system and procedures for inspecting, repairing and maintaining "vehicles for HM transportation in a safe condition." The Hazardous Materials Regulations (HMR) require a system and procedures for inspection, repair and maintenance of reusable hazardous materials packages in a safe condition. The vehicle inspection, repair and maintenance requirement is covered in the Vehicle Condition certification statements.

We added a new certification statement requiring carriers to ensure that all HM trucks are marked and placarded in compliance with 49 CFR part 172, subparts D and F.

The HM registration certification statement, which is not restricted to Cargo Tank carriers, has been corrected and moved to the Hazardous Materials section.

The Section VII—Compliance Certification statement concerning process agent(s) has been modified to replace the phrase "judicial filings and notices" with "filings and notices." A new Compliance Certification statement has been added to ensure those Mexico-domiciled carriers whose registration has been suspended or revoked from operating any motor vehicle in the United States are not reapplying for operating authority or a Certificate of Registration during the period of suspension or sooner than 30 days after the date of revocation. A signature line has been placed beneath the Compliance Certification statements, consistent with Section V—Safety Certifications and Section VI—Household Goods Arbitration Certifications.

Certain other changes were made to the Section—VII Compliance Certifications after discussions with the U.S. Department of Labor and the U.S. Environmental Protection Agency. The proposed Form OP–2 included a certification that the applicant is willing and able to comply with United States labor laws. Although the certification is included in a section that is prefaced by the direction "All applicants must certify as follows:", the instructions for the form, after first stating that FMCSA considers compliance with labor laws to be "extremely important," then indicate that "registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such [DOL and OSHA] requirements * * *." The FMCSA has removed those certification statements and the accompanying instructions. We have added new language that compliance with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor and environmental laws, is mandatory. Such compliance includes producing requested records for review and inspection, and that inspectors of the Immigration and Naturalization Service at the port of entry must determine the driver of the vehicle meets the requirements under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* The statements do not require certification—they are informational in nature—and have been placed after the signature line.

The Filing Fee Policy and Computation Box that formerly appeared in the form instructions have been moved to the back of the form because a carrier cannot provide filing fee information until completing Section III—Types of Registration. The fee policy also discloses that the FMCSA will place a 30-day hold on the application if the filing fee is paid by personal check.

Finally, FMCSA will translate the form into Spanish for applicants to understand what each question asks and what types of answers they need to provide.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget. However, it is anticipated that the economic impact of the revisions in this rulemaking would be minimal. The new or revised Form OP–2 is intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexico-domiciled carriers.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large.

The Regulatory Evaluation analyzes the costs and benefits of this final rule and the two companion NAFTA-related interim final rules published elsewhere in today's **Federal Register**. Because these rules are so closely interrelated, we did not attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with carrying out safety monitoring, including safety audits, during the 18-month period when Mexico-domiciled motor carriers hold provisional Certificates of Registration and the loss of a Mexico-domiciled carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over ten years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of this and the companion application rule for long-haul carriers, is the requirement that Mexico-domiciled carriers operating in the United States must complete a Form MCS–15—Motor Carrier Identification Report, and must update their Form OP–1(MX)—Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border or Form OP–2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902 when their situation changes. This will allow the FMCSA to better monitor these carriers and to quickly determine whether their safety or OOS record changes.

The more stringent oversight procedures established in our safety monitoring interim final rule, RIN 2126–AA35, will also allow the FMCSA to respond more quickly when safety problems emerge. Required safety audits for short-haul carriers, and compliance reviews and CVSA inspections for long-haul carriers, will provide the FMCSA with more detailed information about Mexico-domiciled carriers, and allow the FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to enhance the safety of Mexico-domiciled carriers operating in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications and the pre-authorization safety audit for long-haul carriers are means of ensuring that: (1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the United States are conducted in accordance with their application certifications and the conditions of their registrations.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the

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OP–1(MX) and OP–2 application forms. All Mexico-domiciled carriers will have to undergo some type of safety audit after they receive provisional registration; those granted provisional operating authority for transportation beyond the border zones must demonstrate continuous compliance with motor vehicle safety standards through display of a valid CVSA inspection decal and compliance reviews. We presented three growth scenarios in the regulatory evaluation: a high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System (MCMIS) census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile had only 15 trucks or buses.

These rules should not have any impact on small U.S.-domiciled motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these rules. Applicants for both the OP–1(MX) and OP–2 will also have to submit the Form MCS–150 and the Form BOC–3-Designation of Agent for Service of Process. In addition, Mexico-domiciled carriers will have to notify the FMCSA of any changes to certain information.

The MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC–3 Form merely requires the name, address and other information for a domestic agent to receive legal notices on behalf of the motor carrier. The rules also include other modest changes in the OP–1(MX) and OP–2 forms.

None of these forms requires any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules that duplicate, overlap with, or conflict with these rules.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Mexico-domiciled carriers applying to operate solely within the border zones will be required to spend two extra hours to complete the relevant forms. They also must undergo one safety audit during the 18-month period while holding provisional Certificates of Registration at four hours each and have their trucks inspected more frequently. The Part 385 rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of all Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority of Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small U.S.-domiciled carriers already have to comply with the paperwork requirements in Part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the Part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in guaranteeing the safety of Mexico-domiciled carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

Therefore, the FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The Federal Government reimburses inspectors, funds facilities, and provides support through the MCSAP grant program.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children.

The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental assessment as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB Control Number 2126–0019.

The information collection associated with the Form OP–2 has been approved by the OMB under the control number 2126–0019, titled "Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers." This current approval covers Form OP–2 and totals 2,000 burden hours (1,000 respondents per year @ 2 hours each) to complete the form.

Revisions to OP–2 Baseline: A PRA review normally involves determining the information collection impacts of a recordkeeping requirement imposed on a person, comparing those impacts with the current regulation (baseline) and measuring the resulting change. The FMCSA finds it necessary to amend the baseline: (1) To be consistent with updated demographic data concerning the number of Mexico-domiciled carriers operating in the U.S. as set forth in the programmatic environmental assessment (PEA) and Regulatory Flexibility Analysis to this rule, and (2) to take into account an imminent Presidential action that is not subject to PRA review—the issuance of a Presidential Order lifting the moratorium on grants of operating authority to Mexico-domiciled motor carriers to operate within the United States beyond the border commercial zones. The PEA and Regulatory Flexibility Analysis to this rule project high, medium, and low estimates for the number of Mexico-domiciled motor carriers now operating within the United States. The PRA review is based on the medium estimate (9,500) because we believe it is the most accurate estimate (rather than the high estimate of 11,787 used in the NPRM). The medium estimate was also used in the PEA and the Regulatory Flexibility Analysis. Therefore, the revised baseline assumes: (1) The medium scenario is used; (2) the moratorium is lifted; and (3) Mexico-domiciled carriers are filing the existing OP–2 application form. It is estimated that 75 percent of new applicants each year will file the OP–2 (with 25 percent filing the OP–1(MX)). The number of new applicants in the baseline assumes a 10 percent increase over the current 1,300 (1,430).

Adjusted burden hour calculation for completion of the currently approved IC under the medium scenario. The FMCSA estimates that 5,823 Mexico-domiciled carriers will request OP–2 certificates of registration in year one (includes half of the 9,500 Mexican carriers (4,750) plus 75 percent of 1,430 new applicants (1,073)); and 1,073 Mexico-domiciled carriers will apply in subsequent years. The existing form takes approximately 2 hours to complete. Since Mexico-domiciled carriers currently are not required to update carrier identification information, there would be zero updates received in year one or subsequent years. The revised baseline medium scenario is calculated as follows:

OP–2 filings 11,646 hours [5,823 × 2 hours per form] (year one)
OP–2 filings 2,146 hours [1,073 × 2 hours per form] (subsequent years)

The revised baseline medium scenario results in the following annual adjusted burden hour estimate for completion of Form OP–2 pursuant to OMB Control Number 2126–0019:

Year One: 11,646
Subsequent Years: 2,146

Impact of the final rule and adjusted burden hour calculation for completion of Form OP–2 under the revised baseline medium scenario. This action proposes to amend 49 CFR part 368 and revise Form OP–2. We propose to use the amended Form OP–2 and the issuance of certificates of registration only for those carriers whose operations are limited to the border commercial zones. The FMCSA believes that despite the opportunity for Mexico-domiciled carriers to operate beyond the border commercial zones, there are a substantial number of carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area. Under the revised Form OP–2, the FMCSA will require the applicant motor carrier to certify the safety of its operations; this information is not collected on the current form. In addition, all certificates of registration issued under the revised form would be conditioned upon the carrier's successful completion of an 18-month safety monitoring program (established in an interim final rule published elsewhere in today's **Federal Register**), including a safety audit. For these reasons, the FMCSA anticipates that the number of carriers would be lower than the revised baseline. The FMCSA estimates that 5,774 Mexico-domiciled carriers would apply for OP–2 certificates of registration in year one (includes half of the 9,500 Mexican carriers (4,750) plus 75 percent of the 1,365 new applicants (1,024)); and 1,024 carriers thereafter. Due to the additional information requested on the form, the FMCSA estimates that it will take 4 hours to complete, rather than the current estimate of 2 hours.

The FMCSA must be notified in writing of certain key changes in the information on the form within 45 days of the change. For changes and updates, the agency anticipates that annually approximately one quarter of those granted certificates of registration will update their applications. It will take approximately 30 minutes to complete the updates. For simplicity's sake, we based the number of individuals granted certificates of registration on the estimated total number of first-year applicants.

Mexico-domiciled carrier filings of the Form OP–2:
50 percent of 9,500 carriers in 1st year (4,750) × 4 hours per form = 19,000
75 percent of 1,365 new applicants in 1st year (1,024) × 4 hours = 4,096
75 percent of 1,365 new applicants in future years (1,024) × 4 hours = 4,096
Total burden hours for revised Form OP–2/Year 1 = 23,096
Total burden hours for revised Form OP–2/Future Years = 4,096

OP–2 Updates/Changes:
25 percent of 4,750 carriers filing in 1st year (1,188) × 30 minutes = 594
25 percent of 1,024 filings for new carriers in 1st year (256) × 30 min. = 128
25 percent of 1,024 filings for new carriers in future years (256) × 30 min. = 128
Total burden hours for updates/changes in 1st year = 722
Total burden hours for updates/changes in future years = 128

Therefore, the FMCSA estimates that the final rule will adjust the annual burden hour estimate for the information collection associated with the Form OP–2 as follows:

In the first year: The total burden hours for this information collection in the first year is 23,818 hours [(19,000 hours + 4,096 + 722 hours)]; and in subsequent years: 4,224 hours [4,096 hours + 128].

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OMB Control Number: 2126–0019

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

Respondents: Mexico-domiciled motor carriers.

Estimated Annual Hour Burden for the Information Collection: Year 1 = 23,818; subsequent years = 4,224.

You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by April 18, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application and instructions of the Form OP–2. We believe that this action complies with the principles enunciated in the Executive Order.

List of Subjects

49 CFR Part 368

Administrative practice and procedure, Motor carriers.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons set forth in the preamble, the FMCSA amends 49 CFR, Chapter III as follows:

1. Revise part 368 to read as follows:

PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES.

Sec.
368.1 Certificate of registration.
368.2 Definitions.
368.3 Applying for a certificate of registration.
368.4 Requirement to notify FMCSA of change in applicant information.
368.5 Re-registration of certain carriers holding certificates of registration.
368.6 FMCSA action on an application.
368.7 Requirement to carry certificate of registration in the vehicle.
368.8 Appeals.

Authority: 49 U.S.C. 13301 and 13902; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

§ 368.1 Certificate of registration.

(a) A Mexico-domiciled motor carrier must apply to the FMCSA and receive a Certificate of Registration to provide interstate transportation in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A).

(b) A certificate of registration permits only interstate transportation of property in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. A holder of a Certificate of Registration who operates a vehicle beyond this area is subject to applicable penalties and out-of-service orders.

§ 368.2 Definitions.

Interstate transportation means transportation described at 49 U.S.C. 13501, and transportation in the United States otherwise exempt from the Secretary's jurisdiction under 49 U.S.C. 13506(b)(1).

Mexico-domiciled motor carrier means a motor carrier of property whose principal place of business is located in Mexico.

§ 368.3 Applying for a certificate of registration.

(a) If you wish to obtain a certificate of registration under this part, you must submit an application that includes the following:

(1) Form OP–2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902;

(2) Form MCS–150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The FMCSA will only process your application for a Certificate of Registration if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate and complete in accordance with the instructions to the Form OP–2, Form MCS–150 and Form BOC–3;

(3) The application must include all the required supporting documents and applicable certifications set forth in the instructions to the Form OP–2, Form MCS–150 and Form BOC–3;

(4) The application must include the filing fee payable to the FMCSA in the amount set forth in 49 CFR 360.3(f)(1); and

(5) The application must be signed by the applicant.

(c) If you fail to furnish the complete application as described under paragraph (b) of this section your application may be rejected.

(d) If you submit false information under this section, you will be subject to applicable Federal penalties.

(e) You must submit the application to the address provided in the instructions to the Form OP–2.

(f) You may obtain the application described in paragraph (a) of this section from any FMCSA Division Office or download it from the FMCSA web site at: *http://www.fmcsa.dot.gov/factsfigs/formspubs.htm.*

§ 368.4 Requirement to notify FMCSA of change in applicant information.

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP–2 or the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or while you have a Certificate of Registration. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke the Certificate of Registration until you meet those requirements.

§ 368.5 Re-registration of certain carriers holding certificates of registration.

(a) Each holder of a certificate of registration that permits operations only in municipalities in the United States along the United States-Mexico international border or in commercial zones of such municipalities issued before April 18, 2002, who wishes to continue solely in those operations must submit an application according to procedures established under § 368.3 of this part, except the filing fee in paragraph (b)(4) of that section is waived. You must file your application by October 20, 2003.

(b) The FMCSA may suspend or revoke the certificate of registration of any registrant that fails to comply with the procedures set forth in this section.

(c) Certificates of registration issued before April 18, 2002, remain valid until the FMCSA acts on the OP–2 application filed according to paragraph (a) of this section.

§ 368.6 FMCSA action on the application.

(a) The Federal Motor Carrier Safety Administration will review the application for correctness, completeness, and adequacy of information. Non-material errors will be corrected without notice to the applicant. Incomplete applications may be rejected.

(b) If the applicant does not require or is not eligible for a Certificate of Registration, the FMCSA will deny the application and notify the applicant.

(c) The FMCSA will validate the accuracy of information and certifications provided in the application against data maintained in databases of the governments of Mexico and the United States.

(d) If the FMCSA determines that the application and certifications demonstrate that the application is consistent with the FMCSA's safety fitness policy, it will issue a provisional Certificate of Registration, including a distinctive USDOT Number that identifies the motor carrier as permitted to provide interstate transportation of property solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities.

(e) The FMCSA may issue a permanent Certificate of Registration to the holder of a provisional Certificate of Registration no earlier than 18 months after the date of issuance of the Certificate and only after completion to the satisfaction of the FMCSA of the safety monitoring system for Mexico-domiciled carriers set out in subpart B of part 385 of this subchapter.

(f) Notice of the authority sought will not be published in either the **Federal Register** or the FMCSA Register. Protests or comments will not be allowed. There will be no oral hearings.

§ 368.7 Requirement to carry certificate of registration in the vehicle.

A holder of a Certificate of Registration must maintain a copy of the Certificate of Registration in any vehicle providing transportation service within the scope of the Certificate, and make it available upon request to any State or Federal authorized inspector or enforcement officer.

§ 368.8 Appeals.

An applicant has the right to appeal denial of the application. The appeal must be in writing and specify in detail why the agency's decision to deny the application was wrong. The appeal must be filed with the Director, Office of Data Analysis and Information Systems within 20 days of the date of the letter denying the application. The decision of the Director will be the final agency order.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

2. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101,13301,13906, 14701, 31138, and 31139; and 49 CFR 1.73.

3. In § 387.7, revise the first sentence of paragraph (b)(3) introductory text to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(b) * * *

(3) Exception. A Mexico-domiciled motor carrier operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities with a Certificate of Registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. * * *

* * * * *

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

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U.S. Department of Transportation

Form Approved
OMB No. 2126-0019

Federal Motor Carrier Safety Administration

Instructions for Completing Form OP-2 Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-2 is required to be filed by Mexico-domiciled for-hire motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities.

This form is also required to be utilized by Mexico-domiciled for-hire and motor private carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before April 18, 2002, with a territorial scope of operations limited to municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities and are required to supplement the information in their original applications by completing and re-filing the revised Form OP-2.

This form should not be used for registration by Mexico-domiciled for-hire and motor private carriers to perform transportation in the United States beyond the commercial zones of municipalities on the international border. To register or reregister to conduct operations beyond commercial zones, an applicant should instead complete and file Form OP-1(MX).

This form should not be filed by U.S.-domiciled enterprises owned or controlled by Mexican nationals. Such enterprises must complete and file Form OP-1 or OP-1(P), for property or passengers, respectively.

Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-2, Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-2, and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. A filing fee of $300 for **each** type of registration requested in Section III, payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."
- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.
- The application must be completed in English.
- The completed certification statements and oath must be signed by the applicant only. For example:
    - If the company is a sole proprietorship, the owner must sign.
    - If the company is a partnership, one of the partners must sign.
    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

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- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-2 form or Attachment page on which the question or response appears and the item number of the question.

- Include only the city code and telephone number for Mexican telephone phone numbers. **Do not** include the Mexico international access code (011-52).

ADDITIONAL ASSISTANCE

FORM OP-2 OR MCS-150

Call 001 (800) 832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MX) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 001 (800) 832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Research and Special Programs Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be the applicant's full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business in Mexico. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. Please include the Mexican "colonia" or "barrio."

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application. Do not include the "colonia" or "barrio" unless the address is in Mexico.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their provisional Certificate of Registration.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants cannot obtain a Certificate of Registration unless registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT). Therefore, if the applicant is in the process of obtaining an SCT registration, indicate the date that the applicant applied. When the applicant receives its SCT registration, it must supplement this OP-2 application with that information, including its RFC Number (Registro Federal de Contribuyente if the applicant is a company. Registro Federal de Causante, if applicant is an individual), before the FMCSA will issue a Certificate of Registration. If the applicant currently holds a valid Certificate of Registration and is updating this application as required by 49 CFR 368.5, the SCT Registration information, including the RFC Number, is also required. FMCSA will not suspend an existing Certificate of Registration while an applicant is applying for SCT registration.

SECTION II – AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and a motor private carrier is an entity that is transporting its own goods, including an entity that is not a for-hire carrier but is providing interstate transportation under an agreement or contract with a shipper or other business.

A separate filing fee is required for each type of registration requested.

If the applicant is re-registering, do not complete Section III unless applicant is requesting a new type of authority. Please refer to the following for a description of the commercial zones:

COMMERCIAL ZONES
UNITED STATES/MEXICO PORTS OF ENTRY

Commercial zones, unless otherwise defined, are determined through a formula dependant upon the population of the municipality (49 CFR 372, Subpart B). The commercial zones for all United States/Mexico ports of entry allow for transportation from the corporate limits of the municipality as follows:

Location		Population	Commercial Zone
Limits			
Arizona			
	Douglas	13,270	4 miles
	Lukeville	65	3 miles
	Naco	1,000	3 miles
	Nogales	19,745	4 miles
	San Luis	6,405	4 miles
	Sasabe	37	3 miles
California			
	Andrade	20	3 miles
	Calexico	22,246	4 miles
	Otay Mesa	Unknown	20 miles
	San Diego	1,110,500	20 miles
	Tecate	212	20 miles**

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

	Location	Population	Commercial Zone
Limits			
New Mexico			
	Columbus	**N/A**	**+++**
	Santa Teresa	**Unknown**	**+++**
Texas			
	Brownsville	**266,600+**	*
	Del Rio	**30,705**	**6 miles**
	Eagle Pass	**20,651**	**4 miles**
	El Paso	**592,400**	**15 miles**
	Fabens	**1,599**	**3 miles**
	Hidalgo	**384,800++**	*
	Laredo	**126,300**	**8 miles**
	Presidio	**3,072**	**4 miles**
	Progresso	**1,951**	*
	Rio Grande City	**9,891**	*
	Roma	**8,059**	*

***Cameron, Hidalgo, Starr and Willacy Counties, Texas**
Transportation within a zone comprised of Cameron, Hidalgo, Starr and Willacy Counties, Texas, by motor carriers of property, in interstate or foreign commerce, not under common control, management, or arrangement for shipments to or from points beyond such zone, is partially exempt from regulation under 49 U.S.C. §13506.

To the extent that commercial zones of municipalities within the above four counties extend beyond the boundaries of such commercial zones, they shall be considered to be part of the zone and partially exempt from regulation under 49 U.S.C. §13506.

****Considered a part of the San Diego commercial zone.**
+Population based upon Brownsville-Harlingen metropolitan area.
++Population based upon McAllen-Edinburg-Mission metropolitan area.
+++The area comprised of Dona Ana and Luna counties.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business applicant will be conducting.

If applicant is applying for motor property carrier registration and operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.

If applicant operates only vehicles with a gross vehicle weight rating under 10,000 pounds, applicant must maintain $300,000 minimum liability coverage. If applicant operates only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, applicant must maintain $5 million minimum liability coverage.

The FMCSA does not furnish copies of insurance forms. Applicant must contact its insurance company to obtain all required insurance forms.

Applicant does not have to submit evidence of insurance with the application. If applicant is issued a Certificate of Registration, the following must be on each of its vehicles when crossing the border:

- a current DOT Form MCS-90, and
- evidence of insurance. The evidence of insurance must show either trip insurance coverage (24 hours or more coverage), or evidence of continuing insurance.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. Applicant should check the "YES" response only if it can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

If applicant is exempt from the U.S. DOT safety fitness regulations because applicant operates only vehicles with a gross vehicle weight rating under 10,001 pounds, and it will not transport any hazardous materials, applicant must certify that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages referring to the appropriate Sections and items in the application or Attachment pages. If applicant is exempt from the U.S. DOT safety fitness regulations, applicant must complete all relevant attachment pages to demonstrate its willingness and ability to comply with general operational safety fitness guidelines and applicable State, local and tribal laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

For-hire carriers of property operating entirely in commercial zone areas that intend to transport household goods as defined in 49 U.S.C. 13102 (10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

Applicants are required to certify that they are not now disqualified from operating a commercial motor vehicle in the U.S. pursuant to the Motor Carrier Safety Improvement Act of 1999.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION VIII - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if applicant will operate only in commercial zones along the U.S./Mexico border that are located in CA and AZ, applicant must designate an agent in each of those States; if applicant will operate only in one State, an agent must be designated only in that specific State. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application, unless applicant uses a Process Agent Service. If applicant opts to use a Process Agent Service, applicant must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

MAILING INSTRUCTIONS:

To file for registration applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

FOR RE-APPLICATION (NO PAYMENT REQUIRED)
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

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Form OP-2
Revised March 2002

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U.S. Department of Transportation

Form Approved
OMB No. 2126-0019

Federal Motor Carrier Safety Administration

FORM OP-2
Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902

This application is for all Mexico-domiciled for-hire motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; and for Mexico-domiciled for-hire and motor private carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before April 18, 2002, authorizing operations in the border commercial zones and that are required to file the revised Form OP-2.

For FMCSA Use Only

Docket No. MX_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME:_____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

BUSINESS ADDRESS: (Actual Street Address):

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

(Name and title, position, or relationship to applicant)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia – Mexican addresses only)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

U.S. DOT NUMBER (If available) _____

FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where applicant operates and the ports of entry utilized.

_____

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

3. Does applicant presently hold, or has it ever applied for, regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke applicant's provisional operating authority or provisional Certificate of Registration after April 18, 2002, because applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems it has in place, and provide any information and documents that support its case. (If applicant requires more space, **attach the information to this application form**.

_____

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_____

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4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____

5. Is the applicant registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the SCT, the applicant's RFC Number, and the place where the SCT Registration was issued.

_____

_____

_____

_____

_____

_____

5b. If no, indicate the date the applicant applied with SCT.

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA).

(If applicant requires more space, **attach the information to this application form**.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under Section 219 of the MCSIA?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for each type of registration requested (for each checked box). **If applicant will operate beyond the commercial zone, applicant is not eligible for a Certificate of Registration. Please use Form OP-1(MX) to apply for such authority.**

Applicant seeks to provide the following transportation service:

FOR-HIRE MOTOR CARRIER

- ☐ Service as a **for-hire motor carrier of property (except household goods)**, between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies). Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
- ☐ Service as a **for-hire motor carrier of household goods** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).

MOTOR PRIVATE CARRIER

- ☐ Service as a **motor private carrier of property** (handling applicant's own goods) between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to and commercially a part of the municipality(ies).

SECTION IV – INSURANCE INFORMATION

- ☐ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ☐ Non-hazardous commodities ($750,000)
  - ☐ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ☐ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ☐ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ☐ Any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ☐ Commodities other than those listed above ($300,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____
Address: _____
_____
Maximum Insurance Amount: _____
Policy Number: _____
Date Issued: _____
Insurance Effective Date: _____
Insurance Expiration Date: _____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

☐ Yes ☐ No

SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

_____Yes _____No

If applicant answered yes, it must complete the following single safety certification, skip to the end of this section, sign the certification, and complete questions 1 and 2 under the next section – **Safety and Compliance Information and Attachments to Section V.**

Applicant certifies that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

_____Yes

If applicant answered No, it must complete the remaining questions in Section V, sign the certification, and **complete the Safety and Compliance Information and Attachments for Section V.**

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and

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Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Licencia Federal de Conductor (LFC) and that the driver's LFC is registered in the SCT database.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substances testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing services that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier's vehicles were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

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The carrier will ensure, once operations in the United States have begun, that all vehicles operated in the United States are inspected on an annual basis.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

The carrier is including as **an attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

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7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____

Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

_____

_____

_____

_____

_____

_____

_____

Form OP-2
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ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
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ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

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ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing services that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

ATTACHMENT FOR SECTION V, NO. 4,
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ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S (49 CFR 391.25 and 391.27).

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ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

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ATTACHMENT FOR SECTION V, NO. 7A, FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM)(49 CFR part 180, Subpart E):

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

If applicant will be transporting household goods between Mexico and border commercial zones, it must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

_____
Signature

SECTION VII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____ Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Service (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

  _____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999.

  _____ Yes

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➢ Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

_____ Yes

_____
Signature

All motor carriers operating within the United States, including Mexico-domiciled motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA State plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

SECTION VIII – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED AND SIGNED BY APPLICANT

I, _____,
(First Name) Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. § 521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____
(Signature) (Date)

_____
(Relationship to applicant, e.g., President or Owner)

FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 11 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS WHO OPERATE ONLY IN MUNICIPALITIES IN THE U.S. ON THE U.S.-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES AND ARE ONLY UPDATING THEIR APPLICATION INFORMATION**. However, if applicant is expanding the territorial scope of its current operations beyond this area, it must submit a new application using Form OP-1(MX), and a $300 filing fee. The application will be processed as a new application.

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FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-2. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

Form OP-2
Revised March 2002

[FR Doc. 02–5890 Filed 3–14–02; 8:45 am]
BILLING CODE 4910–EX–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Tuesday,
March 19, 2002

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 365
Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 365

[Docket No. FMCSA–98–3298]

RIN 2126–AA34

Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FMCSA revises its regulations and form, OP–1(MX), governing applications by Mexico-domiciled carriers who want to operate within the United States beyond the municipalities adjacent to Mexico in Texas, New Mexico, Arizona and California and beyond the commercial zones of such municipalities ("border zones"). This interim rule includes requirements that were not proposed in the NPRM, but which are necessary to comply with the Fiscal Year 2002 DOT Appropriations Act enacted into law in December 2001. This action is taken in anticipation of a presidential order lifting the current statutory moratorium on authorizing such operations. The form requires additional information about the applicant's business and operating practices to help the FMCSA to determine if the applicant will be able to meet the safety standards established for operating in interstate commerce in the United States. Carriers that previously submitted an application to operate beyond the border zones must submit the updated form. Any Mexico-domiciled motor carrier (of property) that wants to operate within the United States solely within the border zones must apply under separate FMCSA regulations that we are issuing elsewhere in today's **Federal Register**. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States and implement the 2002 DOT Appropriations Act. This action will ensure that FMCSA receives adequate information to assess an applicant's ability to comply with U.S. safety standards. It requires that all Mexico-domiciled carriers subject to this rule undergo a safety audit before receiving provisional authority to operate in the United States. Therefore, the FMCSA is publishing this action as an interim final rule and is delaying the effective date in order to consider additional public comments regarding pre-authorization safety audits before grants of provisional authority. These changes will result in the FMCSA being able to better maintain an accurate census of Mexico-domiciled carriers operating beyond the border zones.

DATES: This interim final rule is effective May 3, 2002. We must receive comments by April 18, 2002.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit*. You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Joanne Cisneros, (909) 653–2299, Transborder Office, FMCSA, P.O. Box 530870, San Diego, CA 92153–0870. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Before 1982, Mexico-domiciled motor carriers could apply for authority to operate within the United States by filing an application for such authority with the former Interstate Commerce Commission (ICC). Under the Bus Regulatory Reform Act of 1982 (the Act), Congress imposed a 2-year moratorium on the issuance of new grants of U.S. operating authority to motor carriers domiciled in a contiguous foreign country, or owned or controlled by persons of a contiguous foreign country. The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. The Act was developed in response to complaints that neither Mexico nor Canada were permitting U.S. motor carriers the same access to their markets as Mexican and Canadian motor carriers had to U.S. markets. While the trade issues with Canada were resolved quickly, resulting in the moratorium being lifted for Canada-domiciled motor carriers, the trade issues with Mexico were not addressed until the North American Free Trade Agreement (NAFTA) was negotiated in the early 1990s. Legislative and executive extensions have maintained the moratorium for Mexico-domiciled motor carriers since 1982.

A number of Mexico-domiciled motor carriers have been permitted to operate in the United States because they are not covered by the moratorium. The moratorium only applies to new grants of operating authority. Thus, the operations of Mexico-domiciled motor carriers that had obtained unrestricted operating authority before the moratorium was enacted were unaffected by the moratorium. Additionally, access has been allowed for certain motor carriers whose operations fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP–2 under the provisions of what is now 49 CFR part 368. These carriers include those that operate solely within the border zones. Also included among these are certain types of carriers whose operations are not restricted to the border zones: U.S.-owned, Mexico-domiciled private carriers; U.S.-owned, Mexico-domiciled carriers of exempt goods; and Mexico-domiciled carriers that only traverse the United States to deliver or pick up cargo or passengers in Canada.

The terms of NAFTA, Annex I, provide that the United States would incrementally lift the moratorium on licensing Mexico-domiciled motor carriers to operate beyond the border zones. Pursuant to the first phase of NAFTA, on January 1, 1994, the President modified the moratorium and the ICC began accepting applications from Mexico-domiciled passenger carriers to conduct international charter and tour bus operations in the United States. In December 1995, ICC promulgated a rule and a revised application form for the processing of Mexico-domiciled property carrier applications. These rules anticipated the implementation of the second phase of NAFTA, providing Mexico-domiciled property carriers with access to the four U.S. States bordering Mexico, and the third phase, providing access throughout the United States. The ICC designated the revised application form OP–1(MX).

Through the ICC Termination Act of 1995 (ICCTA), Congress authorized the President to remove or modify the moratorium upon the President's determination that such action is consistent with United States obligations under a trade agreement or with United States transportation policy. The ICCTA also dissolved the ICC and transferred the authority to issue new grants of U.S. operating authority for motor carriers and some other of its regulatory functions to the Secretary of Transportation, who delegated this authority to the Office of Motor Carriers (OMC) of the Federal Highway Administration (FHWA).

On December 15, 1995, the International Brotherhood of Teamsters (Teamsters) sought an emergency stay of the ICC rule in the United States Court of Appeals for the District of Columbia. The Teamsters contended that the ICC rule was arbitrary and capricious because it failed to address concerns regarding the safe operation of Mexico-domiciled motor carriers. In their comments on the ICC rule, the Teamsters had requested the ICC to add additional safety questions to the applications filed by Mexico-domiciled carriers to ensure that the applicants were willing and able to comply with applicable safety regulations.

On December 18, 1995, the Secretary of Transportation announced an indefinite delay in implementing the NAFTA motor carrier access provisions. The Court of Appeals subsequently denied the Teamsters' request for an emergency stay of the ICC rule, which became an FHWA regulation upon the termination of the ICC, and set the case for briefing and argument. After the Teamsters' case was briefed and argued, the court ordered the case held in abeyance until the Department decided to commence processing applications of Mexico-domiciled motor carriers seeking authority to operate beyond the border zones. Approximately 190 Mexico-domiciled carriers have filed OP–1(MX) applications with the Department.

Mexico filed complaints against the United States under NAFTA's dispute resolution provisions, challenging the United States' decision to deny further trucking, investment, and bus access. An arbitration panel comprised of five individuals with international trade expertise chosen by the United States and Mexico met in May 2000 to hear the trucking and investment case. The parties engaged in extensive pre- and post-hearing briefing on safety and legal issues.

The panel issued a final report on February 6, 2001, that unanimously concluded that the blanket refusal to process applications of Mexico-domiciled motor carriers seeking U.S. operating authority out of concerns over the carriers' safety was in breach of NAFTA obligations of the United States, specifically NAFTA's provisions ensuring national treatment and most-favored-nation treatment for cross-border services. The panel also unanimously decided that the United States' refusal to permit Mexican nationals to invest in U.S. enterprises that provide transportation of international cargo within the United States violated the United States' NAFTA obligations. In June 2001, the President lifted this part of the moratorium.

With respect to its decision on the U.S. refusal to implement NAFTA's truck access provisions, the panel stated that it did not disagree that truck safety is a legitimate regulatory objective and that it was not limiting U.S. application of its truck safety standards to Mexican carriers operating in the United States provided that they are applied in a manner that is consistent with the United States' NAFTA obligations. The panel noted that compliance with NAFTA obligations did not require the granting of operating authority to Mexican trucking companies that might be unable to comply with U.S. safety regulations. The panel observed that the United States might not be required to treat applications for operating authority from Mexican trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as the applications are reviewed on a case-by-case basis. The panel stated that to the extent that Mexican licensing and inspection requirements might not be like U.S. requirements, the United States might be justified in using methods to ensure Mexican carrier compliance with the U.S. regulatory regime that differ from those used for U.S. and Canadian carriers, provided that such different methods are used in good faith to address legitimate safety concerns and fully conform with all relevant NAFTA provisions.

It is important to note that this interim final rule and the two related rules published elsewhere in today's **Federal Register** represent only part of the FMCSA's effort to ensure the safe operation of Mexico-domiciled motor carriers in the United States. For example, Mexico-domiciled motor carriers, their vehicles, and their drivers operating in the United States have been and will continue to be subject to all of FMCSA's safety requirements, inspection procedures, enforcement mechanisms, and fines and out-of-service orders. In addition to being subject to the various safety audits and compliance reviews contained in these rules, these carriers and their vehicles and drivers will continue to be subject to roadside vehicle inspections performed at the border and throughout the United States by FMCSA inspectors and their State partners. FMCSA has received additional funding from Congress to enhance its inspection capabilities at the border. The FMCSA is also conducting seminars in Spanish for Mexican carriers to help ensure that they understand U.S. safety requirements. FMCSA personnel also expect to continue their cooperative efforts with their Mexican Government counterparts toward enhancing Mexico's motor carrier regulatory regime.

The DOT's Research and Special Programs Administration (RSPA) has made considerable progress in harmonizing the hazardous materials standards of the United States and Mexico. Though Mexican hazardous materials standards are not as comprehensive as U.S. standards, those in place are compatible with U.S. standards.

RSPA has also made significant strides in educating Mexico-domiciled hazardous materials shippers and carriers in hazardous materials safety. In 1993, it translated the U.S. Emergency Response Guide into Spanish. Since then, Mexican emergency response information requirements have been harmonized with existing U.S. emergency response information requirements. The U.S., Mexican and Canadian Governments now jointly issue an Emergency Response Guide. RSPA has also translated various hazardous materials brochures and pamphlets into Spanish as well as identified free hazardous materials industry resources to assist the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) in providing hazardous materials and

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emergency response training for its inspectors.

Section 350 of the 2002 DOT Appropriations Act, Public Law 107–87 (Act), prohibits the Secretary of Transportation from obligating or expending funds for reviewing or processing applications of Mexico-domiciled motor carriers for authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico international border until the FMCSA and DOT complete several enumerated actions. Many of the requirements of the Act have been incorporated into this interim final rule and the two companion rules published elsewhere in today's **Federal Register**. Under this interim final rule FMCSA will: (1) Conduct safety examinations or audits on Mexico-domiciled carriers seeking authority to operate beyond the border zones encompassing the nine areas of inquiry required by section 350(a)(1)(B); (2) assign a distinctive U.S. DOT number to each Mexico-domiciled motor carrier operating beyond the border zones, in accordance with section 350(a)(4); (3) require Mexico-domiciled motor carriers operating beyond the border zones to certify that they will have their vehicles inspected by Commercial Vehicle Safety Alliance (CVSA)-certified inspectors every three months, in accordance with section 350(a)(5); and (4) require Mexico-domiciled carriers to provide proof of valid insurance issued by an insurance company licensed in the United States before granting them authority to operate beyond the border zones, in accordance with section 350(a)(8).

FMCSA invites comments about how the interim final rule incorporates these new section 350 provisions into the application and approval process.

Summary of Notice of Proposed Rulemaking (NPRM)

The FMCSA proposed changes to its regulations and application procedures for Mexico-domiciled motor carriers desiring to operate within the United States under the NAFTA liberalized access provisions in the May 3, 2001 **Federal Register** (66 FR 22371). Applicants wanting to conduct transportation services within the United States beyond the border zones would submit a redesigned Form OP–1(MX). The proposed application solicited information to indicate the nature of the operation, demonstrate the applicant's knowledge of the basic requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) and describe how it intended to comply with these regulations. Furthermore, we proposed to require each applicant to make specific certifications of compliance, such as requiring an applicant to submit verification from the Mexican Government that it is a registered Mexico-domiciled carrier authorized to conduct motor carrier operations up to the United States-Mexico border and that all drivers who operate in the United States have a valid Licencia Federal de Conductor (LFC) issued by the Government of Mexico. The applications would also be subject to the other procedures set forth in part 365 for applications in the OP–1 series (e.g., protests and publication in the FMCSA Register).

Discussion of Comments to the NPRM

In response to the three NPRMs relating to NAFTA implementation, the FMCSA received over 200 comments. Over 90 percent of the comments opposed the safety monitoring system or the border opening. Most of the comments focused on the proposed safety monitoring system (66 FR 22415) and will be fully discussed elsewhere in today's **Federal Register**. A large percentage of the commenters addressed all three rules together in a single submission that may have been filed in one or all three public dockets. We have carefully considered them and have revised the Form OP–1(MX) application form and the regulations governing the application process as noted in the preamble sections titled "Discussion of the Interim Final Rule" and "Final Revisions to Form OP–1(MX)." In this section, FMCSA responds to the comments on Form OP–1(MX) (and common elements to Form OP–2) and part 365.

The Friends of the Earth, Natural Resources Defense Council, Sierra Club, and Center for International Law (Friends of the Earth *et al.*) jointly commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) and Executive Order 13045, concerning the protection of children from environmental and health and safety risks. The International Brotherhood of Teamsters (Teamsters) also expressed this viewpoint. The Friends of the Earth *et al.* believe that 40 CFR 1501.3(b) requires that if DOT is not certain that an environmental impact statement is required, then it must first prepare an environmental assessment. Regarding compliance with Executive Order 13045, the Friends of the Earth *et al.* believe that this action presents increased pollution and safety concerns that pose a disproportionate risk to children.

The FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). The FMCSA has conducted a programmatic environmental assessment (PEA) of the three rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings and the FMCSA's responsibilities under E.O. 13045 is presented later in the preamble under "Regulatory Analyses and Notices." A copy of the PEA is in the docket to this rulemaking.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a "conformity determination" pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 U.S.C. 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP (a "conformity determination"), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

We have reviewed our obligations under the CAA, and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve

FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements, and that no conformity determination is required.

The American Insurance Association (AIA) commented that the OP–1(MX) form does not make clear the fact that layered insurance filings (primary and excess securities) are acceptable. The AIA suggested modifying the form to make it clear. The FMCSA does not find this modification to be necessary because the acceptability of layered insurance filings is clearly explained in 49 CFR part 387, subpart C.

The International Brotherhood of Teamsters (Teamsters) commented that the financial responsibility section of the form should be modified to make clear that we would not grant provisional operating authority until we receive the appropriate filings for financial responsibility and service of process agents from the applicant and its financial responsibility agent(s). The AFL–CIO's Transportation Trades Department (TTD) commented that various statements and certifications could be made more understandable. The FMCSA will verify that a carrier has the necessary financial responsibility as part of the pre-authorization safety audit. However, there will be no DOT number issued at that time under which a filing may be made. Therefore, we will permit insurance companies to file evidence of insurance with FMCSA after provisional authority is granted. However, provisional operating authority will not be valid, and the carrier may not operate under that authority, until an insurance filing is made with, and accepted by, the agency. This is consistent with the procedure applicable to U.S. and Canadian carriers required to obtain operating authority under 49 U.S.C. 13901. In a similar vein, we are giving applicants the option of including with the application a notification that a process agent service will electronically file the necessary process agent information within 90 days. As is the case with U.S. and Canadian carriers subject to 49 U.S.C. 13901, a Mexico-domiciled carrier may not operate in the United States until the process agent filing is made with, and accepted by, the agency.

United Parcel Service (UPS) commented that the application and regulations for Mexico-domiciled carriers requesting operating authority should identify express delivery as a separate kind of carrier operation. UPS explains that this distinction would enable the United States to accelerate the timeline for lifting the moratorium for express delivery services, without awaiting action on general trucking.

We do not see the need at this time for the rules to distinguish between express delivery services and general trucking services. We do not expect that the moratorium will be lifted for express delivery services before the lifting of the moratorium on general trucking. In addition, the United States maintains a reservation under the NAFTA on the transportation of goods other than international cargo between points in the United States, and the reservation covers both express delivery services and other motor carrier services.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) and the California Trucking Association (CTA) recommended that the form specify the additional U.S. laws to which Mexico-domiciled carriers would be subject. The OOIDA commented that since NAFTA requires Mexico-domiciled carriers to comply with U.S. laws and all applicable State laws when operating within the United States, the FMCSA should set forth the particular U.S. laws to which applicants are subject. They believe form references to other laws are too vague and should be more fully enumerated. The CTA recommends modifying the form to require an applicant to certify that it will comply with the laws of other U.S. agencies.

The FMCSA believes that it is beyond the scope of this rulemaking to provide an exhaustive listing and explanation on the OP–1(MX) form of all Federal and State laws to which carriers are subject when operating within the United States. However, we are conducting information sessions for potential applicants where, among other things, we discuss additional information provided by other Federal agencies and State registration requirements. This information will also be on the FMCSA web site.

We have worked closely with other Federal agencies, including the U.S. Department of Labor (DOL), U.S. Environmental Protection Agency (EPA) and others, in drafting and clarifying the statement that appears after the signature line of Section VIII—Compliance Certifications. This statement underscores the importance of complying with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor, environmental, and immigration laws. Such compliance includes producing requested records for review and inspection. It also includes compliance by drivers who must meet the requirements under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, and pass inspection by inspectors of the Immigration and Naturalization Service at the port of entry.

The American Trucking Associations, Inc. (ATA), OOIDA, the Teamsters, and the TTD expressed concern that the hazardous materials requirements listed in the safety certification statements were incomplete, suggesting a more comprehensive listing of requirements, including the hazardous material registration requirement. They suggested additional hazardous materials documentation to be submitted with the application. The Transportation Lawyers Association (TLA) believes that the current and proposed application procedures have a loophole regarding identification of hazardous materials carriers. It contends that the "check the block" system, and the fact that none of the information described in the hazardous materials certification statements must be submitted with the application, enable the hazardous materials transporter to escape detection. Neither the form nor application procedures require a carrier who later decides to transport hazardous materials to notify the FMCSA or provide evidence of knowledge of hazardous materials standards—only to increase the amount of insurance carried.

We have corrected and modified the hazardous material certifications in response to these comments. The hazardous materials certification statements have been revised to more thoroughly reference applicable hazardous materials requirements and request the supplemental information required by the Hazardous Materials Regulations. Please reference the section "Final Revisions to the Form OP–1(MX)" for a detailed discussion of revisions to the certification statements. Information regarding hazardous materials operations will be verified during the pre-authorization safety audit established in this interim final rule pursuant to section 350 of the DOT Appropriations Act.

Section 350 of the Act prohibits Mexico-domiciled motor carriers from transporting hazardous materials in a placardable quantity beyond the border zones until the United States has completed an agreement with the Government of Mexico ensuring that

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drivers of such placardable quantities of hazardous materials meet substantially the same requirements as U.S. drivers carrying such materials. Section 1012(b) of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (USA PATRIOT Act) [Pub. L. 107–56, October 26, 2001] amended the Hazardous Materials Transportation Act (49 U.S.C. 5101–5127) and the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31301–31317) by placing limitations on the issuance or renewal of hazardous materials licenses. (The DOT interprets the term "hazardous materials licenses" to mean a hazardous materials endorsement for a commercial driver's license because of the reference to section 31305 in section 1012(b).) The OP–1(MX) form will require additional information regarding cargo tank certification, hazardous materials training, and persons responsible for ensuring compliance with the Hazardous Materials Regulations.

The CTA commented that the FMCSA should distribute an applicant's Single State Registration System (SSRS) filing to the appropriate SSRS members. The FMCSA does not have the resources to coordinate the SSRS filings for Mexico-domiciled carriers. We have also removed specific references to the SSRS from the form instructions (although the requirement still remains), because it is one of many State requirements. We do not wish to imply that the SSRS requirement is the sole State requirement for Mexico-domiciled carriers or that it has greater importance than other laws or regulations.

The TLA commented that the definition of private carrier in the instructions to the application form includes a phrase that has historically described a for-hire carrier and suggests that the form be modified. In Section III of the instructions, a motor private carrier is defined as an entity that is "transporting its own goods, including an entity that is performing such operations under an agreement or contract with a U.S. shipper or other business."

This definition is an attempt to rephrase, in plain language, the text of 49 U.S.C. 13102(7). Section 13102(7) defines foreign motor private carrier to include persons (except motor carriers of property or motor private carriers) that provide interstate transportation of property by motor vehicle under agreements or contracts with persons who are not motor carriers of property or motor private carriers. The form instructions may be confusing because they do not reference the for-hire motor carrier exclusion in defining a private carrier. Therefore, we have modified the form to provide clarity.

Camara Nacional del Autotransporte de Cargo (CANACAR) commented that we must more fully explain the need for a process agent in the United States and link this requirement directly to safety and NAFTA. CANACAR believes we should require only one process agent in the United States. It commented that requiring more than one would violate NAFTA.

Contrary to CANACAR's suggestion, nothing in the NAFTA limits the rights of the United States to require firms to designate more than one process agent. Requiring Mexico-domiciled carriers to comply with 49 CFR part 366 would not violate NAFTA because the same requirement applies to U.S. and Canadian motor carriers. A process agent service may be used to maintain service of process agents in multiple States, thus eliminating the need for carriers themselves to retain agents in each State. A process agent service is an association or corporation that files with the FMCSA a list of process agents for each State in which the carrier intends to operate.

CANACAR believes that FMCSA must remove registration requirements for agricultural, private, and exempt carriers, because we do not require U.S. and Canadian agricultural, private, and exempt carriers to register under 49 U.S.C. chapter 139.

The Motor Carrier Safety Act of 1984, Public Law 98–554, 98 Stat. 2832, required Mexican motor carriers conducting operations otherwise exempt from the economic regulation requirements (i.e., for-hire carriers of exempt commodities, agricultural and private carriers) to register with the Interstate Commerce Commission to conduct operations in the United States. These requirements are an important element of FMCSA's effort to ensure the safe operation of Mexican motor carriers on U.S. highways. From a safety standpoint, there is no distinction between agricultural, private, and exempt carriers and the Mexican carriers that would otherwise be required to register.

CANACAR also believes that the OP–1(MX) and OP–2 form questions about affiliates will violate section 219 of the Motor Carrier Safety Improvement Act (MCSIA), which it interprets to mean that "once NAFTA is implemented" questions about affiliates would no longer be needed. CANACAR commented that section 219 of MCSIA only applies to "carriers" and not "nationals."

The FMCSA will continue to require OP–1(MX) applicants to submit information on affiliations because it is useful in deterring operations by disqualified carriers. Section 219 of MCSIA authorizes FMCSA to penalize and disqualify foreign motor carriers for operating beyond the border zones before the implementation of NAFTA, but it does not prohibit enforcement after NAFTA's implementation (nor the collection of information on a foreign carrier's affiliations). FMCSA requires similar information from U.S. and Canadian applicants to ensure that unsafe carriers do not evade out-of-service orders or registration suspensions by continuing operations under a different identity.

The Free Trade Alliance San Antonio recommends that we provide a sample completed OP–1(MX) form, including attachments, as a guide to applicants. The FMCSA will address this comment in training materials and in our workshops for potential applicants.

The TLA commented that the proposed forms require a carrier operating "small vehicles (GVWR under 10,000 pounds)" to certify that "it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations * * *." The TLA believes that the certification does not accurately reflect the accompanying instructions stating that an "exempt" carrier "must certify that [it is] familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles." The TLA further commented that the safety certification mentioned in the instructions was originally authored by the ICC in response to comments filed by it in Ex Parte No. 55 (Sub-No. 94), *Revision of Application Procedures and Corresponding Regulation*, 10 ICC 2d 386, 398–399 (1994). The TLA commented that certification that a carrier who is exempt from the FMCSRs, "will observe" applicable Texas State Law is meaningless. The TLA believes that local law has no ability to influence a carrier's adherence to good highway safety practices beyond its extremely limited reach.

Carriers that are exempt from direct DOT oversight-because they operate smaller vehicles which generally operate only locally and do not pose a significant enough public threat to warrant Federal involvement-are nonetheless subject to State safety oversight. Many MCSAP States have not fully exempted smaller vehicles from their safety oversight and are not required to exempt them under MCSAP. Consistent with the Congressional

mandate that safety is our highest priority, the FMCSA will require that OP–1(MX) applicants certify their willingness to inform themselves concerning any State, local and tribal safety laws to which they are subject and to pledge to abide by them.

The Teamsters commented that instead of the check boxes on the form, we should require narratives describing systems and procedures that the applicant now uses or intends to use in the future. They contend that all applicants should be required to submit accident records with the applications and that "* * * (A)ny responsible carrier would have the information required to compile such a record at the time the application is prepared" even if it had not been maintaining an accident record as such. The TLA recommends that we require a narrative response about the content of an applicant's household goods arbitration program.

The FMCSA will evaluate information provided in the OP–1(MX) form and will conduct a safety audit of each carrier before deciding to grant provisional operating authority and allowing it to commence operations in the United States. Requests for additional narrative descriptions have been restricted to information necessary to evaluate an applicant's willingness and ability to comply with our safety standards and are not meant to be overly burdensome. The FMCSA will not burden Mexico-domiciled carriers with a requirement to provide a narrative description of their household goods arbitration programs because it is not critical to the safety mission of the agency and can be evaluated during the pre-authorization safety audit.

The Teamsters and Public Citizen commented that applicants should complete a proficiency exam testing their knowledge of the FMCSRs as a part of the application procedure, as allowed by MCSIA. The FMCSA does not find it necessary to require a proficiency exam at this time given the detailed requirements of this interim final rule. These detailed requirements include the application, including safety certifications, the pre-authorization safety audit, and the requirement in the Act that Mexico-domiciled commercial vehicles be inspected at each border crossing during the time they hold provisional authority and until they hold permanent authority for three consecutive years, unless the vehicles have a current CVSA inspection sticker affixed to the vehicle. Identifying the appropriate company individual to take the proficiency test would be problematic as well. In addition, it is not clear that a proficiency exam requirement would meaningfully enhance safety because it would only test the "proficiency" of a single carrier employee.

The Teamsters also commented that we should require financial reporting based on the Mexico-domiciled applicant's prior year revenue. Since the nature of a Mexico-domiciled carrier's business within Mexico may be unrelated to planned operations within the United States, that information might not be valid for the purpose of evaluating its fitness to operate within the United States. FMCSA also believes this suggestion is outside of the scope of this rulemaking and FMCSA jurisdiction.

Public Citizen believes the proposed application process for Mexico-domiciled trucks will not ensure compliance for several reasons. First, the SCT database to be used in evaluating a Mexico-domiciled carrier's safety fitness is "unpopulated" and "currently lacks the basic information necessary to process applications or to perform a safety review." It proposes as a precondition for granting operating authority that FMCSA set minimum levels of inspection, crash, and other performance and enforcement data to be amassed for an applicant. For example, there must be sufficient data to calculate a score in Safestat(tm), the information system used to determine a domestic carrier's safety fitness. Public Citizen also believes that information reported on the form may be distorted through error or fraud, and the driver's safety records may not be available. It commented that insurance and proof of insurance requirements are dangerously inadequate to protect other drivers on public highways.

The SCT database inquiry is but one component of the planned safety evaluation of OP–1(MX) applicants. The FMCSA will use information in its own databases and will conduct a pre-authorization safety audit to validate an applicant's responses and assess its safety fitness. Furthermore, the insurance requirements for Mexico-domiciled carriers are identical to those applicable to domestic and Canadian carriers. Minimum levels of financial responsibility are set forth in 49 CFR part 387. The FMCSA will verify proof of financial responsibility during the pre-authorization safety audit. Furthermore, a Mexico-domiciled carrier will be unable to operate in the United States beyond the border zones unless evidence of adequate financial responsibility is filed with the FMCSA by an insurance company licensed in the United States. Evidence of insurance must also be maintained on the motor vehicle when operating within the United States and border inspectors will verify proof of financial responsibility electronically by checking the FMCSA's insurance database.

The CTA commented that applicants should file proof of insurance with the application, rather than after FMCSA grants the applicant operating authority. Current 49 CFR part 387 requires the insurer, not the applicant, to make insurance filings with the FMCSA. This requirement allows insurance companies to retain control of the insurance certification documents, thereby significantly decreasing opportunities for fraudulent activity. Section 350(a)(8) of the Act, however, requires the FMCSA to verify proof of financial responsibility with a financial responsibility provider licensed in the United States during the pre-authorization safety audit. Although FMCSA will independently verify a Mexico-domiciled motor carrier applicant's proof of financial responsibility during the pre-authorization audit, the carrier will not have been issued a DOT number under which a filing may be made. Therefore, we will not require actual filing of the insurance at the time of the audit. However, once the carrier is granted provisional operating authority, it must have evidence of acceptable insurance on file with the FMCSA before it may operate within the United States.

A number of parties, including OOIDA, Public Citizen, and the Teamsters, urged that Mexico-domiciled motor carriers should not be allowed to operate beyond the border zones at this time, citing what they view as an inadequate Mexican Government motor carrier safety infrastructure, inadequate inspection facilities at border crossings, and other factors. The Teamsters, for example, note that for these reasons full implementation of NAFTA's motor carrier access provisions is premature and urge FMCSA to "postpone the border opening."

FMCSA believes that the regulations being published today, and the other safety measures the agency is taking with respect to Mexico-domiciled motor carriers operating outside the border zone, will give the agency sufficient assurance that these carriers are capable of complying with U.S. safety standards, notwithstanding any shortcomings in the Mexican Government's motor carrier safety infrastructure. FMCSA also believes that, in conjunction with its State partners, it will be able to maintain an adequate safety inspection program at the border. It should be noted, however, that these and other

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comments urging a delay in the implementation of NAFTA assume that the regulations published today "open the border" or lift the current moratorium on the granting of operating authority. The regulations do neither. The President, not the FMCSA, has that authority pursuant to 49 U.S.C. 13902. The President has announced that the United States will comply with its NAFTA obligations regarding Mexico-domiciled motor carrier access in a manner that will not weaken motor carrier safety. The regulations help ensure motor carrier safety in anticipation of presidential action lifting the moratorium.

In addition, section 350(c)(1) of the Act requires the DOT Inspector General (OIG) to conduct a comprehensive review of FMCSA border operations before the FMCSA may spend any Federal funds to review or act on OP–1(MX) applications. The OIG must assess whether the statutory requirements have been met to ensure the opening of the border does not pose an unacceptable safety risk to the American public. Section 350(c)(2) also requires the Secretary of Transportation to certify in writing in a manner addressing the Inspector General's findings that the opening of the border does not pose an unacceptable safety risk to the American public before the FMCSA may spend any Federal funds to review or act on OP–1(MX) applications.

ABA and Greyhound urge that we not implement our motor carrier-related NAFTA obligations until Mexico reciprocates by implementing its motor carrier-related NAFTA obligations. Again, none of the regulations published today "open the border" or lift the current moratorium on the grant of operating authority. In any event, NAFTA itself provides procedures to ensure that each party fulfills its obligations under the Agreement.

In response to comments about the need for ensuring that vehicles operated by Mexico-domiciled motor carriers comply with the applicable Federal Motor Vehicle Safety Standards (FMVSS), we note that enforcement of these safety standards by FMCSA and its State partners will be accomplished through roadside inspections, including inspections at the border. Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSSs in effect on the date the vehicle was manufactured.

Title 49 CFR part 393 of the FMCSRs currently includes cross-references to most of the FMVSSs applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or cause a mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. The FMCSA also has the option of imposing civil penalties for violations of 49 CFR part 393. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If the FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action for making a false certification on the application for operating authority.

The FMCSA and NHTSA are initiating several regulatory actions (published elsewhere in today's **Federal Register**) to ensure that labeling requirements of the FMVSSs are enforced against motor vehicles entering the United States. The FMCSA is proposing to amend the FMCSRs to require that all motor carriers ensure that their CMVs have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer. United States motor carriers typically would only have access to vehicles that meet the applicable FMVSSs and have a certification label that meets the requirements of 49 CFR part 567, but Mexico-domiciled and Canada-domiciled carriers purchasing vehicles for operation within their respective countries may be using vehicles which have not been certified as FMVSS-compliant.

The FMCSA is proposing that U.S. motor carriers comply with the certification label proposal on the effective date of the FMVSS certification rule. The agency is also proposing that foreign motor carriers that begin operations in the United States on or after the effective date of the certification label rule, or expand their operations to go beyond the border zones for the first time, ensure that all CMVs used in the new or expanded operations have the necessary certification label before entering the United States. All other Canada and Mexico-domiciled motor carriers operating in the United States prior to the effective date of the interim final rule would be allowed 24 months to bring their vehicles into compliance with the certification requirements.

NHTSA is taking three separate actions relating to the certification label. The first action is publication of a policy statement that addresses commercial motor vehicles that were not originally manufactured for sale in the United States, and thus were not required at the time of manufacture to be certified as complying with the FMVSSs, but are subsequently sought to be imported into the United States. The statement provides that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured.

NHTSA recognizes that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale in Canada or Mexico. NHTSA is proposing two additional actions related to the FMVSS and foreign-domiciled motor carriers. The first would establish recordkeeping requirements for foreign manufacturers that retroactively certify vehicles. The second would codify, in 49 CFR Part 591, its long-standing interpretation of the term "import," as used in the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563, to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

Discussion of the Interim Final Rule

The FMCSA has made changes in this interim final rule to the proposed revisions to part 365, based on the comments, section 350 of the 2002 DOT Appropriations Act, and our own review of the proposal.

Section 365.503 has been revised to allow both hard copy and electronic submission of required information on designation of process agents (Form BOC–3) as part of the application process. The FMCSA currently allows only process agent services to electronically file the Form BOC–3. If a carrier elects to use a process agent service, it must include a letter to that effect with the Form OP–1(MX) and ensure that the service electronically files the Form BOC–3 with the FMCSA.

Otherwise, the hard copy Form BOC–3 must accompany the application. The carrier may not begin operations until the Form BOC–3 has been filed with the FMCSA.

Section 365.505 has been revised to extend to 18 months the deadline for filing Form OP–1(MX) by carriers holding a Certificate of Registration issued before April 18, 2002, authorizing operations beyond the municipalities along the U.S.-Mexico border and beyond the commercial zones of such municipalities. These carriers, as well as those carriers who filed the previous version of the OP–1(MX) application form, do not need to submit another fee when filing a new OP–1(MX) application. The FMCSA may suspend or revoke the Certificate of Registration of any carrier that fails to comply with this re-registration requirement and 18-month deadline. Certificates of Registration issued before April 18, 2002, will remain valid until the FMCSA acts on the newly submitted OP–1(MX) application.

The FMCSA has revised the heading of § 365.507 in both the table of sections and the regulatory text to "FMCSA action on the application" to accurately reflect how the FMCSA will consider and act on each application. The section now provides that the FMCSA will validate all data and certifications in an application with information in its own databases, in the appropriate databases of the Mexican Government to which it has access as part of the NAFTA implementation process, and with information discovered during a pre-authorization safety audit. The FMCSA will grant provisional operating authority if it determines that the application and the results of the safety audit are consistent with the FMCSA's safety fitness policy. The safety fitness criteria published in new Appendix A to part 365 for the pre-authorization safety audit is similar to the safety fitness criteria for post-operational safety audits for Mexico-domiciled carriers in new Appendix A to part 385 that is being published elsewhere in today's **Federal Register**. We will also assign a distinctive USDOT Number that distinguishes the carrier as a Mexico-domiciled carrier authorized to operate beyond the border zones.

In the companion rule establishing a safety monitoring system for new entrant Mexico-domiciled carriers (published elsewhere in today's **Federal Register**), FMCSA will require commercial motor vehicles to have a valid CVSA inspection decal denoting a successful inspection of the commercial motor vehicle at all times while operating under provisional operating authority in the United States beyond the border zones. Provisional authority to operate beyond the border zones cannot become permanent for at least 18 months, until the carrier has successfully completed an 18-month safety monitoring program, including a compliance review resulting in the assignment of a Satisfactory safety rating as required by § 350(a)(2) of the 2002 DOT Appropriations Act.

Section 365.511 has been added in response to the 2002 DOT Appropriations Act. This section will require that a Mexico-domiciled carrier must continue to seek out and have CVSA inspectors perform CVSA Level I inspections for the first three consecutive years after being granted permanent operating authority.

We have made conforming amendments to §§ 365.101(h) and 365.105(a). We revised § 365.101(h) to reflect the expanded scope of operations authorized by the Form OP–1(MX)-from Mexico to all points in the United States. The previous reference to the four border States was originally designed to register applicants to operate from Mexico to points only within the border States of California, Texas, Arizona and New Mexico.

There are three revisions to § 365.105(a). First, we have specified that household goods carriers and motor passenger carriers are required to submit the OP–1(MX) when applying to operate within the United States beyond the border zones. The previous regulations generally required motor property carriers to use the form. Next, we removed an obsolete reference to Form OP–1(W) because we do not have authority to register water carriers. Finally, we updated the cross-reference to filing fee requirements to reflect the recodification of these requirements in 49 CFR part 360.

Revisions to Form OP–1(MX)

The interim final rule reflects numerous typographical corrections and adjustments to the OP–1(MX) application form to make it consistent with the OP–2 form. All requests for supplemental information that must accompany the application are in bold typeface so that they are conspicuous to the applicant. The substantive revisions are discussed below.

The OP–1(MX) application instructions have been revised to discontinue the requirement that applicants submit Internal Revenue Service (IRS) Form 2290, Schedule 1 (Schedule of Heavy Highway Vehicles) with the OP–1(MX) application. Unlike the OP–1(MX) application procedure, taxes imposed by 26 U.S.C. 4481 are assessed annually. The IRS Form 2290 would only provide evidence of compliance for the current year. However, the applicant must still certify compliance with 26 U.S.C. 4481 under Section VIII of the application.

The instructions clarify the definition of "applicant" for purposes of determining who must sign the various certifications and the Section IX—Application Oath.

Next, applicants are cautioned to enter only the city code and telephone numbers when listing Mexican telephone numbers on the form because previous applicants often submitted invalid or incomplete telephone numbers.

Under the Insurance Instructions, we emphasize that although evidence of coverage is not required at the time the application is submitted, a carrier has up 90 days after filing an OP–1(MX) application to submit proof of financial responsibility.

The information on how to receive additional assistance in completing the Forms OP–1(MX) and MCS–150 was revised to list a toll-free telephone number accessible from Mexico. We also updated the information for obtaining assistance with hazardous materials registration procedures and regulations.

The instructions also state that applicants that use a process agent service to designate multiple agents for service of process must attach a letter to the application informing the FMCSA of this option. The applicant must also ensure that the service electronically files the Form BOC–3 with the FMCSA within 90 days after submitting the application. The applicant is also notified that it may not begin operations in the United States until the Form BOC–3 has been filed with FMCSA.

The FMCSA has modified Section IA to add a question asking applicants whether they previously held provisional operating authority that was revoked. If that is the case, the applicant must show how it has corrected the deficiencies that resulted in the revocation, explain what effectively functioning basic safety management systems it now has in place, and provide any information and documents that support its arguments.

The FMCSA has corrected references in Section IA, and in the corresponding instructions, to an "SCT registration number." An applicant must be registered with SCT to be issued operating authority. However, the SCT does not issue an SCT registration number. It uses the RFC number, a Mexican Federal Taxpayer Registration identifier issued by a separate

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Government agency, to track the carrier's information in the SCT database. A company is issued a Registro Federal de Contribuyente; individuals are issued a Registro Federal de Causante. The applicant must complete Question 5a under Section IA based upon the applicant's form of business: (1) if the applicant is a sole proprietorship, enter the Registro Federal de Causante; (2) all other business forms should complete Question 5a using the Registro Federal de Contribuyente.

We have deleted a redundant question regarding the applicant's domicile from Section IA and Ownership and Control information from Section II. This information was used to substantiate claims that a carrier was U.S.-owned or controlled and therefore eligible to operate beyond the border zones under a Certificate of Registration. With the implementation of NAFTA's access provisions, Mexico-domiciled carriers applying to operate beyond the border zones will no longer file the OP–2 form. They must file an OP–1(MX), and ownership and control information will not be the basis for granting authority.

Several safety certifications have been modified or added to Section V. The safety certification for applicants that are exempt from the Federal Motor Carrier Safety Regulations because of the weight of their vehicles and because they will not transport hazardous materials (as was discussed in the proposed form instructions but inadvertently omitted from the proposed form) has been restored. These applicants must certify that they will observe safe operating practices and comply with applicable State, local and tribal safety laws.

Under Driver Qualifications, applicants must certify, consistent with 49 CFR 391.23, that they will investigate their drivers' 3-year employment and driving histories. The certification statement concerning the need for carriers to establish a system and instructions for drivers to report criminal convictions has been removed. Current regulations only require domestic drivers to report violations of motor vehicle traffic laws and ordinances. The certification statement relating to the use of properly licensed drivers has been modified to require that the driver's Licencia Federal de Conductor be registered in the SCT database.

The four certification statements proposed under certification section V.8, pertaining to requirements that must be in place once operations within the United States have begun, have been modified to emphasize that they are post-operational requirements and have been integrated into the Hours of Service, Driver Qualifications, and Vehicle Condition certification sections, as appropriate.

In response to comments from the ATA, Teamsters, OOIDA, and the TTD, we have extensively revised the Hazardous Materials (HM) and Cargo Tank certification statements. The HM training certification was modified to cite the relevant HM training regulations (49 CFR part 172, subpart H and 49 CFR 177.816) and the specific hazardous materials safety compliance information that must accompany the application.

We reworded the certification statement regarding the establishment of a system and procedures for inspecting, repairing and maintaining "vehicles for HM transportation in a safe condition." The Hazardous Materials Regulations (HMR) require a system and procedures for inspection, repair and maintenance of reusable hazardous materials packages in a safe condition. The vehicle inspection, repair and maintenance requirement is covered in the Vehicle Condition certification statements.

We added a new certification statement requiring carriers to ensure that all HM vehicles are marked and placarded in compliance with 49 CFR part 172, subparts D and F.

The HM registration certification statement, which is not restricted to Cargo Tank carriers, has been corrected and moved to the Hazardous Materials section.

The Section VIII—Compliance Certification statement concerning process agent(s) has been modified to replace the phrase "judicial filings and notices" with "filings and notices." Two new Compliance Certification statements have been added. In the first, responsive to section 350(a)(5) of the DOT Appropriations Act, the applicant must certify it is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified CVSA inspector and have decals affixed attesting to satisfactory compliance with Level I CVSA Inspection criteria. This provision will require a Mexico-domiciled motor carrier to seek out a qualified CVSA inspector to conduct a CVSA inspection at least every 90 days until it has operated under permanent authority for at least 3 consecutive years. Mexico-domiciled carriers should seek out and have Mexico-domiciled CVSA inspectors perform such inspections in Mexico before the carrier sends its vehicles to United States ports of entry. This will help the carriers to minimize disruptions to the efficient use of their vehicles, minimize time in the U.S. ports of entry, and provide a more efficient border crossing enroute to its U.S. and Canadian destinations.

The second compliance certification added to Section VIII is designed to ensure that Mexico-domiciled carriers whose registration has been suspended or revoked are not reapplying for operating authority while under suspension or sooner than 30 days after the date of revocation, as prohibited in part 385 subpart B. A signature line also has been placed beneath the Compliance Certification statements, consistent with Section V—Safety Certifications and Section VI—Household Goods Arbitration Certifications.

Certain other changes were made to the Section VIII—Compliance Certifications after discussions with the U.S. Department of Labor and the U.S. Environmental Protection Agency. The proposed Form OP–1(MX) included a certification that the applicant is willing and able to comply with U.S. labor laws. Although the certification is included in a section that is prefaced by the direction "All applicants must certify as follows:", the instructions for the form, after first stating that FMCSA considered compliance with labor laws to be "extremely important," then indicated that "registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such [DOL and OSHA] requirements * * *." The FMCSA has removed those certification statements and the accompanying instructions. We have added new language that compliance with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor and environmental laws, is mandatory. Such compliance includes producing requested records for review and inspection, and that inspectors of the Immigration and Naturalization Service at the port of entry must determine the driver of the vehicle meets the requirements under the Immigration and Nationality Act. The statements do not require certification—they are informational in nature—and thus have been placed after the signature line.

The Filing Fee Policy and Computation Box that formerly appeared in the form instructions have been moved to the back of the form because a carrier cannot provide filing fee information until completing Section III—Types of Registration. The fee policy also discloses that the FMCSA will place a 30-day hold on the application if the filing fee payment is made by personal check.

Finally, FMCSA will translate the form and instructions into Spanish to help applicants understand what each question asks and what types of answers they need to provide.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget under Executive Order 12866. However, it is anticipated that the economic impact of the revisions in this rulemaking will be minimal. The new or revised Form OP–1(MX) is intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexico-domiciled carriers.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States has generated considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation has been of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. The 2002 DOT Appropriations Act includes specific requirements FMCSA must complete to begin reviewing and processing the application Form OP–1(MX) under this interim final rule.

The Regulatory Evaluation analyzes the costs and benefits of this rule and the two companion NAFTA-related rules published elsewhere in today's **Federal Register**. Pursuant to Executive Order 12866, because these rules are so closely interrelated, we did not attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with conducting pre-authorization safety audits, compliance reviews within 18-months of a carrier's receiving provisional operating authority, and the loss of a carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over 10 years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of this rule and the companion application rule for border-zone carriers is the requirement that Mexico-domiciled carriers operating in the United States must complete a Form MCS–150-Motor Carrier Identification Report, and must update their Form OP–1(MX)-Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border or Form OP–2-Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902 when their situation changes. This will allow the FMCSA to better monitor these carriers and to quickly determine whether their safety or out-of-service record changes.

The more stringent oversight procedures established in our safety monitoring interim final rule, RIN 2126–AA35, will also allow the FMCSA to respond more quickly when safety problems emerge. Required safety audits, compliance reviews and CVSA inspections will provide the FMCSA with more detailed information about Mexico-domiciled carriers, and allow the FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to help ensure the safe operation of Mexico-domiciled carriers in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications, and the pre-authorization safety audit are means of ensuring that: (1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the United States are conducted in accordance with their application certifications and the conditions of their registrations.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the OP–1(MX) and OP–2 application forms. Mexico-domiciled carriers subject to this rule will also have to undergo pre-authorization safety audits and demonstrate continuous compliance with motor vehicle safety standards by undergoing compliance reviews and displaying valid CVSA inspection decals on their vehicles. We presented three growth scenarios in the regulatory evaluation: A high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the

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baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile had only 15 trucks or buses.

These rules should not have any impact on small U.S.-based motor carriers.

The Regulatory Evaluation includes a description of the recordkeeping and reporting requirements of these rules. Applicants filing both the OP–1(MX) and OP–2 will also have to submit the Form MCS–150 and the Form BOC–3–Designation of Agent for Service of Process. In addition, Mexico-domiciled carriers will have to notify the FMCSA of any changes to certain information.

The MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC–3 form merely requires the name, address and other information for a domestic agent to receive legal notices on behalf of the motor carrier. The rules also include other modest changes in the OP–1(MX) and OP–2 forms.

None of these forms require any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules that duplicate, overlap with, or conflict with these rules.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Most covered carriers will be required to spend two extra hours to complete the relevant forms, undergo a safety audit and a compliance review or one safety audit (depending on the type of authority they apply for) at four to six hours each and display a valid CVSA inspection decal. The part 385 rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority or Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small U.S.-based carriers already have to comply with the paperwork requirements in part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in guaranteeing the safety of Mexico-domiciled carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

Therefore, the FMCSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes effected by this rulemaking would not have an impact of $100 million or more in any one year. The Federal Government reimburses inspectors, funds facilities, and provides support through the MCSAP grant program.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children.

The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental assessment as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the form OP–1(MX) application and instructions. We believe that this action complies with the principles enunciated in the Executive Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB No. 2126–0016.

The information collection requirements of Form OP–1(MX) have been approved by the OMB under the control number 2126–0016, titled "Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations." This approval includes forms OP–1(MX), OP–1(P), OP–1(FF), and OP–1 and totals 40,060 burden hours. Of that amount, 2,060 annual burden hours was estimated as the OP–1(MX) baseline (1,030 respondents per year @ 2 hours each to complete the form).

Carriers anticipating that the moratorium on new grants of operating authority to Mexico-domiciled carriers would be lifted filed 190 applications, but soon ceased to file applications when it became evident that the forms were not being processed due to a delay in implementing the NAFTA agreement. For this reason, OP–1(MX) filings fell well below the 1,000 respondent estimate.

Revisions to OP–1(MX) Baseline: A PRA review normally involves determining the information collection impacts of a rulemaking, comparing those impacts with the current regulation (baseline) and measuring the resulting change. The FMCSA finds it necessary to amend the baseline (1) to be consistent with updated demographic data on Mexico-domiciled carriers from the PEA and Regulatory Flexibility Analysis to this rule, and (2) to take into account an imminent Presidential action that is not subject to PRA review-the issuance of a Presidential Order lifting the moratorium on grants of operating authority to Mexico-domiciled motor carriers to operate within the United States beyond the border zones. The Regulatory Evaluation to this rule projects a high, medium and low estimate for the number of Mexico-domiciled carriers now operating within the United States. The PRA review is based on the medium estimate of 9,500 active carriers. Therefore, the revised baseline assumes that the moratorium is lifted and that Mexico-domiciled carriers are filing the existing OP–1(MX) application form. The agency is revising the form title to "Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border."

The FMCSA estimates that 5,108 Mexico-domiciled carriers will request OP–1(MX) operating authority in year one (includes half of the 9,500 active Mexico-domiciled carriers (4,750) plus 25 percent of 1,430 new applicants (358)), and 358 Mexico-domiciled carriers will apply in subsequent years. The existing form takes approximately 2 hours to complete. Since Mexico-domiciled carriers currently are not required to update carrier identification information, there would be zero updates received in year one and subsequent years. The revised baseline is calculated as follows:

OP–1(MX) filings (year one): 10,216 hours [5,108 × 2 hours per form]

OP–1(MX) filings (subsequent years): 716 hours [358 × 2 hours per form]

The revised baseline results in the following annual burden hour estimate for control no. 2126–0016:

Year One: 48,216 hours [38,000 + 10,216]

Subsequent Years: 38,358 [38,000 + 358]

Impact of the interim final rule. This action proposes to amend 49 CFR part 365 and revise Form OP–1(MX). Under the amended regulations, Mexico-domiciled motor carriers seeking to operate within the United States beyond the border zones, including carriers that previously filed pending Form OP–1(MX) applications, would be required to submit the revised Form OP–1(MX). Under the revised Form OP–1(MX), the FMCSA will collect more detailed information on an applicant motor carrier's size, operations, and history than can be collected using the current form. In addition, all grants of operating authority issued under the revised form would be conditioned upon the carrier's successful completion of a pre-operational safety audit and an 18-month safety monitoring program (established in an interim final rule published elsewhere in today's **Federal Register**), including a compliance review. For these reasons, the FMCSA anticipates that the number of carriers would be lower than the revised baseline. The FMCSA estimates that 5,091 Mexico-domiciled carriers would apply for OP–1(MX) authority in year one, and 341 carriers thereafter. Due to the additional information requested on the form, the FMCSA estimates that it will take 4 hours to complete.

The FMCSA must be notified in writing of certain key changes in the information on the form within 45 days of the change. For changes and updates, the agency anticipates that annually approximately one quarter of those granted authority will update their applications. It will take approximately 30 minutes to complete the updates. For simplicity's sake, we based the number of individuals granted authority on the estimated total number of first-year applicants.

OP–1(MX) Updates/Changes:

(In year one): 1,273 = (5,091 × .25 = 1272.75 rounded)

(In subsequent years): 1,358 (5,091 + 341 = 5,432 × .25)

Therefore, the FMCSA estimates that the interim final rule will adjust the annual burden hour estimate for the OP–1(MX) as follows:

Mexico-domiciled carrier filings of the Form OP–1(MX):

(In first year): 20,364 hours [5,091 × 4 hours per form]

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(In subsequent years): 1,364 hours [341 × 4 hours per form]

Updates/Changes:

(In first year): 1,273 × .50 hour per form = 637 hours (rounded)

(In subsequent years): 1,358 × .50 hour per form = 679 hours

The total burden hours for this information collection in the first year is 59,001 hours [(38,000 hours + 20,364 hours + 637 hours)] and in subsequent years is 40,043 hours [38,000 hours + 1,364 hours + 679 hours].

OMB Control Number: 2126–0016

Title: Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.

Respondents: Mexico-domiciled motor carriers.

Estimated Annual Hour Burden for this Interim Final Rule: Year 1 = 59,001 hours; Subsequent years = 40,043 hours.

You may submit any additional comments on the information collection burden addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by April 18, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

List of Subjects in 49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the FMCSA amends 49 CFR part 365 as follows:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

2. In § 365.101, revise paragraph (h) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between Mexico and all points in the United States. Under NAFTA Annex I, page I–U–20, a Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

3. In § 365.105, revise paragraph (a) to read as follows:

§ 365.105 Starting the application process: Form OP–1.

(a) All applicants must file the appropriate form in the OP–1 series, effective January 1, 1995. Form OP–1 for motor property carriers and brokers of general freight and household goods; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders of household goods; and Form OP–1(MX) for Mexico-domiciled motor property carriers, including household goods and motor passenger carriers. A separate filing fee in the amount set forth at 49 CFR 360.3(f)(1) is required for each type of authority sought in each transportation mode.

* * * * *

4. Add a new subpart E to part 365 to read as follows:

Subpart E—Special Rules for Certain Mexico-Domiciled Carriers

Sec.

365.501 Scope of rules.
365.503 Application.
365.505 Re-registration and fee waiver for certain applicants.
365.507 FMCSA action on the application.
365.509 Requirement to notify FMCSA of change in applicant information.
365.511 Requirement for CVSA inspection of vehicles during first three consecutive years of permanent operating authority.
Appendix A to Subpart E of Part 365—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Mexico-Domiciled Motor Carriers

Subpart E—Special Rules for Certain Mexico-domiciled Carriers

§ 365.501 Scope of rules.

(a) The rules in this subpart govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border.

(b) A Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

§ 365.503 Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form OP–1 (MX)—Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border;

(2) Form MCS–150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The Federal Motor Carrier Safety Administration (FMCSA) will only process your application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP–1 (MX), Form MCS–150, and Form BOC–3;

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1); and

(4) The application must be signed by the applicant.

(c) You must submit the application to the address provided in Form OP–1(MX).

(d) You may obtain the application forms from any FMCSA Division Office or download it from the FMCSA website at: *http://www.fmcsa.dot.gov/factsfigs/formspubs.htm.*

§ 365.505 Re-registration and fee waiver for certain applicants.

(a) If you filed an application using Form OP–1(MX) before May 3, 2002, you are required to file a new Form OP–1(MX). You do not need to submit a new fee when you file a new application under this subpart.

(b) If you hold a Certificate of Registration issued before April 18, 2002, authorizing operations beyond the municipalities along the United States-Mexico border and beyond the commercial zones of such municipalities, you are required to file an OP–1(MX) if you want to continue those operations. You do not need to submit a fee when you file an application under this subpart.

(1) You must file the application by November 4, 2003.

(2) The FMCSA may suspend or revoke the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(3) Certificates of Registration issued before April 18, 2002, will remain valid unbytil the FMCSA acts on the OP–1(MX) application.

§ 365.507 FMCSA action on the application.

(a) The FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) The FMCSA will validate the accuracy of information and certifications provided in the application by checking data maintained in databases of the governments of Mexico and the United States.

(c) *Pre-authorization safety audit.* Every Mexico-domiciled carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant provisional operating authority to operate in the United States. The safety audit is a review by the FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. The FMCSA will evaluate the results of the safety audit using the criteria in Appendix A to this subpart.

(d) If a carrier successfully completes the pre-authorization safety audit and the FMCSA approves its application submitted under this subpart, FMCSA will publish a summary of the application as a preliminary grant of authority in the FMCSA Register to give notice to the public in case anyone wishes to oppose the application, as required in § 365.109(b) of this part.

(e) If the FMCSA grants provisional operating authority to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate beyond the municipalities in the United States on the U.S.-Mexico international border and beyond the commercial zones of such municipalities. In order to operate in the United States, a Mexico-domiciled motor carrier with provisional operating authority must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by § 387.301 of this subchapter;

(2) File a hard copy of, or have its process agent(s) electronically submit, Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter; and

(3) Comply with all provisions of the safety monitoring system in subpart B of part 385 of this subchapter, including successfully passing CVSA Level I inspections at least every 90 days and having decals affixed to each commercial motor vehicle operated in the United States as required by § 385.103(c) of this subchapter.

(f) The FMCSA may grant permanent operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted and only after successful completion to the satisfaction of the FMCSA of the safety monitoring system for Mexico-domiciled carriers set out in subpart B of part 385 of this subchapter. Successful completion includes obtaining a satisfactory safety rating as the result of a compliance review.

§ 365.509 Requirement to notify FMCSA of change in applicant information.

(a) A motor carrier subject to this subpart must notify the FMCSA of any changes or corrections to the information in parts I, IA or II submitted on the Form OP–1(MX) or the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or after having been granted provisional operating authority. The carrier must notify the FMCSA in writing within 45 days of the change or correction.

(b) If a carrier fails to comply with paragraph (a) of this section, the FMCSA may suspend or revoke its operating authority until it meets those requirements.

§ 365.511 Requirement for CVSA inspection of vehicles during first three consecutive years of permanent operating authority.

A Mexico-domiciled motor carrier granted permanent operating authority must have its vehicles inspected by Commercial Vehicle Safety Alliance (CVSA)-certified inspectors every three months and display a current inspection decal attesting to the successful completion of such an inspection for at least three consecutive years after receiving permanent operating authority from the FMCSA.

Appendix A to Subpart E of Part 365—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Mexico-Domiciled Motor Carriers

I. General

(a) Section 350 of the Fiscal Year 2002 DOT Appropriations Act (Pub. L. 107–87) directed the FMCSA to perform a safety audit of each Mexico-domiciled motor carrier before the FMCSA grants the carrier provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border.

(b) The FMCSA will decide whether it will conduct the safety audit at the Mexico-domiciled motor carrier's principal place of business in Mexico or at a location specified by the FMCSA in the United States, in accordance with the statutory requirements that 50 percent of all safety audits must be conducted onsite and on-site inspections cover at least 50 percent of estimated truck traffic in any year. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

(3) Verification of the carrier's system of compliance with hours-of-service rules in part 395 of this subchapter, including recordkeeping and retention;

(4) Verification of proof of financial responsibility;

(5) Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the Federal Motor Carrier Safety Regulations, parts 382 through 399 of this subchapter, and the Federal Hazardous Material Regulations, parts 171 through 180 of this title;

(6) Inspection of available commercial motor vehicles to be used under provisional operating authority, if any of these vehicles have not received a decal required by § 385.103(d) of this subchapter;

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(7) Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(8) Verification of drivers' qualifications, including confirmation of the validity of the Licencia de Federal de Conductor of each driver the carrier intends to assign to operate under its provisional operating authority; and

(9) An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

(d) To successfully complete the safety audit, a Mexico-domiciled motor carrier must demonstrate to the FMCSA that it has the required elements in paragraphs (c)(2), (3), (4), (7), and (8) above and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. The FMCSA developed a "safety audit evaluation criteria," which uses data from the safety audit and roadside inspections to determine that each applicant for provisional operating authority has basic safety management controls in place.

(e) The safety audit evaluation process developed by the FMCSA is used to:

(1) Evaluate basic safety management controls and determine if each Mexico-domiciled carrier and each driver is able to operate safely in the United States beyond municipalities and commercial zones on the United States-Mexico international border; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA grants the carriers provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. The FMCSA developed this tool to assist auditors and investigators in assessing the adequacy of a Mexico-domiciled carrier's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled motor carrier's operation and is used to:

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;

(2) Meet the requirements of Section 350 of the DOT Appropriations Act; and

(3) In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Overall Determination of the Carrier's Basic Safety Management Controls

(a) The carrier will not be granted provisional operating authority if the FMCSA fails to:

(1) Verify a controlled substances and alcohol testing program consistent with part 40 of this title;

(2) Verify a system of compliance with hours-of-service rules of this subchapter, including recordkeeping and retention;

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify drivers' qualifications of each driver the carrier intends to assign to operate under such authority, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver's Licencia de Federal de Conductor.

(b) If the FMCSA confirms each item under II (a)(1) through (5) above, the carrier will be granted provisional operating authority, except if FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part III below. If FMCSA makes such a determination, the carrier's application for provisional operating authority will be denied.

IV. Evaluation of Regulatory Compliance

(a) During the safety audit, the FMCSA gathers information by reviewing a motor carrier's compliance with "acute" and "critical" regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called "factors." The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383 and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) *Vehicle Factor.* (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor.

(ii) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(2) Over two million inspections occur on the roadside each year in the United States. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) *Accident Factor.* (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

(k) *Factor Ratings*

(1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier's level of basic safety management controls with each factor is determined as follows:

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

(vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

(2) For paragraphs III (k)(1)(i) through (v) (Factors 1 through 5), if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

(3) For paragraphs III (k)(1)(vi), if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(l) Notwithstanding FMCSA verification of the items listed in part II (a)(1) through (5) above, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in part III, the carrier's application for provisional operating authority will be denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive provisional operating authority because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors.

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 4910–EX–P

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U.S. Department of Transportation

Form Approved
OMB No. 2126-0016

Federal Motor Carrier Safety Administration

Instructions for Completing Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-1(MX) is required to be filed by Mexico-domiciled for-hire motor carriers of passengers or property and motor private carriers who wish to register to transport property or passengers in the United States beyond U.S. municipalities on the United States-Mexico border and the commercial zones of such municipalities.

This form is also required to be utilized by those Mexico-domiciled persons or entities who had previously filed applications for registration and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

This form should not be used for registration by Mexico-domiciled carriers to perform transportation only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. To apply for such registration, complete and file Form OP-2.

This form should not be filed by U.S.-domiciled enterprises owned or controlled by Mexican nationals. Such enterprises must complete and file Form OP-1 or OP-1(P), for property or passengers, respectively.

Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-1(MX), and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. A filing fee of $300 for **each** type of registration requested in Section III, payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order, or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

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- The completed certification statements and oath must be signed by the applicant only. For example:
    - If the company is a sole proprietorship, the owner must sign.
    - If the company is a partnership, one of the partners must sign.
    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

  The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

- Include only the city code and telephone number for Mexican telephone phone numbers. **Do not** include the Mexico international access code (011-52).

ADDITIONAL ASSISTANCE

FORM OP-1(MX) OR MCS-150

Call 001 (800) 832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MX) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 001 (800) 832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of

Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Research and Special Programs Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be its full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. Please include the Mexican "colonia" or "barrio."

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions

concerning this application. Do not include the "colonia" or "barrio" unless the address is in Mexico.

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their provisional operating authority.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants cannot obtain Operating Authority unless registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT). Therefore, if the applicant is in the process of obtaining an SCT registration, indicate the date that the applicant applied. When the applicant receives its SCT registration, the applicant must supplement this OP-1(MX) application with that information, including its RFC Number (Registro Federal de Contribuyente if the applicant is a company. Registro Federal de Causante if applicant is an individual), before the FMCSA will issue Operating Authority. If the applicant currently holds a valid Certificate of Registration and is applying to operate beyond the U.S.-Mexico border area as required by 49 CFR 365.505, the SCT Registration information, including the RFC Number, is also required. The FMCSA will not suspend an existing Certificate of Registration while an applicant is applying for SCT registration.

SECTION II - AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999.

SECTION III – TYPE (S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. For purposes of this application, a motor private carrier is an entity that is transporting its own goods, including an entity that is not a for-hire carrier but is providing interstate transportation under an agreement or contract with a shipper or other business.

A separate filing fee is required for each type of registration requested.

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business the applicant will be conducting.

If the applicant is applying for motor passenger carrier registration, check the box that describes the seating capacity of its vehicles. If all the vehicles the applicant operates have a seating capacity of 15 passengers or fewer, the applicant must maintain $1,500,000 minimum liability coverage. If any one of the vehicles the applicant operates has a seating capacity of 16 passengers or more, the applicant must maintain $5,000,000 minimum liability coverage.

If the applicant is applying for motor property carrier registration and it operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, the applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.

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If the applicant operates only vehicles with a gross vehicle weight rating less than 10,000 pounds, the applicant must maintain $300,000 minimum liability coverage. If the applicant operates only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, the applicant must maintain $5 million minimum liability coverage.

Minimum levels of cargo insurance must be maintained by all motor common carriers in the amount of $5,000 for loss of or damage to property carried on any one motor vehicle, and $10,000 for loss of or damage to property occurring at any one time and place.

Applicant does not have to submit evidence of insurance with the application. However, applicant will be required to present acceptable evidence of necessary insurance coverage to the FMCSA as part of a pre-authorization safety audit. Appropriate insurance forms must be filed within **90 days** after the date that notice of the application is published in the *DOT/FMCSA Register*: Form BMC-91 or BMC-91X for bodily injury and property damage; Form BMC-34 for cargo liability (common property carriers only).

The FMCSA does not furnish copies of insurance forms. The applicant must contact its insurance company to arrange for the filing of all required insurance forms.

If an application is granted by the FMCSA and an MX number is issued, operating authority is still not effective and operations under that authority may not begin unless an insurance filing has been made with and accepted by the FMCSA as required under 49 CFR 387.301. A current DOT Form MCS-90 and evidence of continuing insurance coverage must also be on each of the applicant's vehicles when it crosses the border. This policy also applies to Mexico-domiciled motor private carriers and exempt carriers registering to operate within the United States beyond the border area.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. The applicant should check the "YES" response only if the applicant can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

If the applicant is exempt from the U.S. DOT safety fitness regulations because it operates only vehicles with a gross vehicle weight rating under 10,001 pounds, and it will not transport any hazardous materials, the applicant must certify that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages identifying the applicant on each supplemental page and referring to the section and item number in the application for each response. If the applicant is exempt from the U.S. DOT safety fitness regulations, the applicant must complete all relevant attachment pages to demonstrate the applicant's willingness and ability to comply with general operational safety fitness guidelines and applicable State, local and tribal laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

Applicants for household goods registration as defined in 49 U.S.C. 13102(10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT

Applicant must indicate, by checking one or more boxes, the description(s) of the registration(s) for which application is being made.

SECTION VIII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Applicants are required to certify that they are not now disqualified from operating a commercial motor vehicle in the U.S. pursuant to the Motor Carrier Safety Improvement Act of 1999.

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION IX - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if the applicant will operate only in California and Arizona, it must designate an agent in each of those States; if the applicant will operate in only one State, an agent must be designated for that State only. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application, unless the applicant uses a Process Agent Service. If the applicant opts to use a Process Agent Service, it must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after the applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

MAILING INSTRUCTIONS:

To file for registration an applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

FOR RE-APPLICATION (NO PAYMENT REQUIRED)
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

U.S. Department of Transportation

Form Approved
OMB No. 2126-0016

Federal Motor Carrier Safety Administration

FORM OP-1(MX)
Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border

This application is for all Mexico-domiciled carriers requesting to register to operate as motor carriers of passengers or property in interstate commerce between Mexico and points in the United States **beyond** the municipalities and commercial zones adjacent to the border, and for all Mexican persons or entities who had previously filed applications for registration under NAFTA provisions and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

For FMCSA Use Only

Docket No. MX_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME:_____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

BUSINESS ADDRESS: (Actual Street Address):

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

_____
(Colonia)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

_____
(Colonia)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

_____
(Name and title, position, or relationship to applicant)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

_____
(Colonia – Mexican addresses only)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

US DOT NUMBER (If available) _____

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FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does the applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where the applicant operates and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

3. Does the applicant presently hold, or has it ever applied for, regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety, or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke the applicant's provisional operating authority or provisional Certificate of Registration after April 18, 2002, because the applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined the applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If the applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems the applicant has in place, and provide any information and documents that support its case. (If the applicant requires more space, **attach the information to this application form**.)

_____

_____

_____

_____

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4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____.

5. Is the applicant registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the SCT, the applicant's RFC Number, and the place where SCT Registration was issued.

_____

_____

_____

_____

_____

5b. If no, indicate the date the applicant applied with SCT.

_____

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to the applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA). (If the applicant requires more space, **attach the information to this application form**.)

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under Section 219 of the MCSIA?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for each type of registration requested (for each checked box).

Applicant seeks to provide the following transportation service:

PASSENGER REGISTRATION

- ☐ Service as a **common carrier** of passengers between Mexico and the United States.
- ☐ Service as a **contract carrier** between Mexico and the United States, under continuing contract(s) with persons or organizations requiring passenger transportation service.

PROPERTY REGISTRATION

- ☐ **Motor Common Carrier of Property (except Household Goods).** Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
- ☐ **Motor Contract Carrier of Property (except Household Goods).** Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
- ☐ **Motor Common Carrier of Household Goods.**
- ☐ **Motor Contract Carrier of Household Goods.**
- ☐ **Motor Private Carrier.**

SECTION IV – INSURANCE INFORMATION

MOTOR PASSENGER CARRIER APPLICANTS

All motor passenger carriers operating in the United States, including Mexico-domiciled carriers, must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use (*check only one*):

- ❑ Any vehicle has a seating capacity of 16 passengers or more ($5,000,000)
- ❑ All vehicles have seating capacities of 15 passengers or fewer only ($1,500,000)

MOTOR PROPERTY CARRIER APPLICANTS *(including Household Goods Carriers)*

NOTE: Refer to **SECTION IV** under the *Instructions to the Form OP-1(MX)* for information on cargo insurance filing requirements for motor common carriers.

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; and quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1; Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ❑ Commodities other than those listed above ($300,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____
Address: _____
_____
Maximum Insurance Amount: _____
Policy Number: _____
Date Issued: _____
Insurance Effective Date: _____
Insurance Expiration Date: _____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

☐ Yes ☐ No

SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

_____Yes _____No

If applicant answers yes, it must complete the following single safety certification, skip to the end of this section, sign the certification, and complete questions 1 and 2 under the next section - **Safety and Compliance Information and Attachments to Section V.**

Applicant certifies that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

_____Yes

If applicant answers No, it must complete the remaining questions in Section V, sign the certification, and complete the **Safety and Compliance Information and Attachments for Section V.**

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and

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Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Licencia Federal de Conductor (LFC) and that the driver's LFC is registered in the SCT database.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing service that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier's vehicles were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

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The carrier will ensure that all vehicles operated in the United States are inspected at least every 90 days by a certified Commercial Vehicle Safety Alliance inspector in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection, as defined in 49 CFR 350.105, once operations in the United States begin and until such time as the carrier has held permanent operating authority from the FMCSA for at least 36 consecutive months. After the 36-month period expires, the carrier will ensure that all vehicles operated in the United States are inspected in accordance with 49 CFR 396.17 at least once every 12 months thereafter.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

The carrier is including as an **attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

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The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____
Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

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ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

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ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs.

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing service that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

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ATTACHMENT FOR SECTION V, NO. 4, Intentionally Left Blank

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ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S. (49 CFR 391.25 and 391.27).

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ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

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ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

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ATTACHMENT FOR SECTION V, NO. 7A, (FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM) (49 CFR part 180, Subpart E):

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

Household Goods Motor Common and Contract Carrier Applicants must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

Signature

SECTION VII – SCOPE OF OPERATING REGISTRATION SOUGHT

1. Applicant seeks to provide the following transportation service in foreign commerce:

   ☐ For a Mexican carrier to transport property between the United States–Mexico international border and all points in the United States (except under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo).

   ☐ For Mexican passenger carriers, charter and tour bus operations between the U.S.-Mexico international border and points in the United States.

   ☐ For Mexican passenger carriers, service as a common carrier over regular routes. (Regular route passenger carrier authority to perform regularly scheduled service only over named roads or highways.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

   Applicants requesting registration to operate over regular routes – On a **separate sheet of paper attached to the application**, describe the specific route involved in applicant's passenger carrier service description(s). Applicant must also furnish a map clearly identifying each regular route involved in its passenger carrier service description(s).

2. Indicate the principal border crossing points which applicant intends to utilize.

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SECTION VIII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____ Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Service (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

  _____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified Commercial Vehicle Safety Alliance inspector and have decals affixed attesting to satisfactory compliance with Level I CVSA Inspection criteria. This requirement will end after applicant has held permanent operating authority from FMCSA for three consecutive years.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999.

  _____ Yes

- Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

  _____ Yes

_____
Signature

All motor carriers operating within the United States, including Mexico-domiciled motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA state plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

SECTION IX – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED (SIGNED) BY APPLICANT

I, _____,
(First Name) (Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. §521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____
(Signature) (Date)

_____
(Applicant's Title, e.g., President or Owner)

FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 10 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR APPLICANTS WHO SUBMITTED A FORM OP-1(MX) BEFORE MARCH 19, 2002.**

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Revised March 2002

FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-1(MX). Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

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[FR Doc. 02–5891 Filed 3–14–02; 8:45 am]
BILLING CODE 4910–EX–C

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Federal Register

Tuesday,
March 19, 2002

Part IV

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 385

Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–98–3299]

RIN 2126–AA35

Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT).

ACTION: Interim final rule (IFR); request for comments.

SUMMARY: The FMCSA implements a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled motor carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. This rule includes requirements that were not proposed in the NPRM, but which are necessary to comply with the Fiscal Year 2002 DOT Appropriations Act enacted into law in December 2001. The rule also establishes suspension and revocation procedures for provisional Certificates of Registration and operating authority and incorporates criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. Therefore, the FMCSA is publishing this action as an interim final rule and is delaying the effective date in order to consider additional public comments regarding the safety monitoring system for Mexico-domiciled carriers. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States.

DATES: This interim final rule is effective May 3, 2002. We must receive comments by April 18, 2002.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit*. You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lamm, (202) 366–9699, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

FMCSA published the notice of proposed rulemaking (NPRM) for this action on May 3, 2001 (66 FR 22415) along with two related NPRMs proposing changes to the forms and procedures for Mexico-domiciled motor carriers to apply to operate in the United States. FMCSA is publishing one interim final rule and one final rule for those two NPRMs concurrently with this action. The preambles to those rules set out the background and history of the NAFTA issues and are not repeated here.

On December 18, 2001, the President signed into law the Fiscal Year 2002 DOT Appropriations Act, Public Law 107–87 (the Act). Section 350 of the Act prohibits the expenditure of appropriated funds for reviewing or processing applications by Mexico-domiciled carriers to operate beyond the commercial zones of municipalities in the United States located on the Mexican border (Mexico-domiciled long-haul carriers) until FMCSA and DOT take several specified actions. These actions include conducting pre-authorization safety examinations on Mexico-domiciled long-haul carriers, and complying with certain inspection, staffing, rulemaking and reporting requirements. As pertinent to this rulemaking proceeding, Section 350(a)(2) of the Act requires that FMCSA conduct a full safety compliance review on Mexico-domiciled long-haul carriers within 18 months after the carrier is granted provisional operating authority. Section 350(a)(5) requires mandatory inspection of Mexico-domiciled long-haul commercial vehicles that do not display a valid Commercial Vehicle Safety Alliance (CVSA) decal, unless the carrier has been granted permanent operating authority for three consecutive years. Accordingly, we are revising the proposed rule to implement the compliance review requirement. We are also imposing a requirement that all long-haul Mexico-domiciled carriers entering the United States display a valid CVSA sticker on their vehicles while operating under provisional status.

Summary of Parties Submitting Comments

The agency received over 200 comments. Many comments were submitted to one or all three dockets for the May 3 NPRMs. The following discussion addresses substantive comments relevant to the safety monitoring and oversight system.

The commenters may be categorized as follows:

(1) Ten United States Senators: Senators Max Baucus, Evan Bayh, Jeff Bingaman, Thomas A. Daschle, Richard J. Durbin, Tom Harkin, Edward M. Kennedy, John F. Kerry, John Kyl, and Ron Wyden, submitted one unified set of comments to the President, who forwarded their comments to the docket.

(2) More than 180 private citizens. One hundred sixteen of these citizens submitted an "Urgent Action Alert" form letter compiled and distributed by Citizens for Reliable and Safe Highways (CRASH) or alluded to recommendations in the form letter. The CRASH suggestions are discussed later in this document. Comments were also received from 20 Tucson/Green Valley, Arizona citizens.

(3) Four Mexican associations: the Asociacion Nacional De Transporte Privado (a national private motor carrier association), Camara Nacional Del Autotransporte De Carga A.C. (CANACAR) (a national trucking association), Asociacion De Agentes Aduanales De Nuevo Laredo (a customs broker association), and Central de Servicos de Carga de Nuevo Laredo (CenSeCar) (a local trucking association of Nuevo Laredo).

(4) Four labor organizations: the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), the Amalgamated Transit Union (ATU), the International Brotherhood of Teamsters (Teamsters), and the AFL–CIO's Transportation Trades Department representing 33 unions (TTD). The TTD submitted separate comments from the AFL–CIO, its parent organization.

(5) Four motor carrier associations: the American Bus Association (ABA), American Trucking Associations, Inc., (ATA), the California Trucking Associations (CTA), and the Owner-Operator Independent Drivers Association (OOIDA).

(6) Three Texas transportation associations: the San Antonio Free Trade Alliance, Association of Laredo Freight Forwarding Agents, and Laredo Transportation Association.

(7) Four safety advocacy groups: CRASH, Public Citizen, the American Automobile Association (AAA), and Advocates for Highway and Auto Safety (AHAS).

(8) Four environmental groups that submitted one unified response: Friends of the Earth, the Sierra Club, the Natural Resources Defense Council and the Center for International Environmental Law.

(9) Three law enforcement agencies: the California Attorney General, the California Highway Patrol, and the Arizona Department of Public Safety.

(10) Two associations representing State enforcement and licensing agencies: the Commercial Vehicle Safety Alliance (CVSA) and the American Association of Motor Vehicle Administrators (AAMVA).

(11) Three motor carriers: United Parcel Service (UPS), Greyhound Lines and Transportes Quintanilla S.A. de C.V.

(12) The Transportation Lawyers of America, Air Courier Conference of America, Transportation Consumer Protection Council, the Laredo Chamber of Commerce, the National Association of Independent Insurers (NAII), and the American Insurance Association (AIA) each submitted one comment.

Discussion of Comments to the NPRM

The municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California and the commercial zones of such municipalities will be referred to as "border zones" for the purposes of this document.

United States Senators

Senators Baucus, Bayh, Bingaman, Daschle, Durbin, Harkin, Kennedy, Kerry, Kyl and Wyden believe that the Mexican government does not have a domestic truck safety system equivalent to that provided under U.S. law. They state that Mexico does not have hours-of-service laws and has only recently proposed the use of logbooks to record driving history. Therefore, they believe that cross-border truckers could easily enter U.S. highways fatigued. They note the DOT Inspector General has stated repeatedly that "fatigue is a major factor in commercial vehicle crashes."

The Senators believe that a "lack of sufficient inspection resources at the border and the proposed 18-month delay between the approval of general cross-border trucking applications and actual safety enforcement means that trucks may easily enter the United States over federal weight and size limits, a condition both inherently more dangerous to travelers and more stressful to our roadways."

The Senators urged the President to not grant operating certificates until the administration completes onsite compliance reviews and ensures the safety of the American traveler.

CRASH "Urgent Action Alert" Form Letter and Excerpts

One hundred sixteen individuals submitted comments repeating one or more of three standard phrases suggested by CRASH's "Urgent Action Alert". These phrases are as follows:

(1) Allowing Mexican carriers to operate for up to 18 months before a safety audit is done by U.S. officials is totally unacceptable. Safety audits must be done before Mexican carriers are allowed to enter the U.S.

(2) Application forms and processes are important and necessary but as a member of CRASH and a concerned highway safety advocate, the U.S./Mexico border should remain closed to increased NAFTA cross-border trucking until meaningful safety standards and significantly increased compliance oversight are in place on both sides of the border.

(3) Not one human life should be sacrificed on the alter [sic] of NAFTA cross-border trucking.

Individuals

Al Feuer wrote that the border should be opened to truck traffic. He also believes safety inspections/audits should not be required before allowing Mexican trucks into the United States. Mr. Feuer reasoned that advance auditing would be unfair and statistically impractical because many Mexican drivers would be unable to read road signs and markings printed in English. He believes "it would be unfair to make Mexican truck drivers meet the same safety standards as American truck drivers—who can read English." Mr. Feuer believes advance auditing would not be cost effective, but it would be more cost effective to allow Mexico-domiciled motor carriers onto our highways for 18-months and then audit the results. Mr. Feuer writes "FMCSA could easily glean accident investigation data by tapping into computers at various local and State law enforcement agencies. Then it would simply be a matter of adding the number of Americans killed and injured by unsafe Mexican truck drivers. Those who caused more deaths and injuries than United States truck drivers could be banned from United States highways; those who caused fewer deaths and injuries than United States truck drivers could continue driving in the United States. There's your audit."

Mark Pizenche, a Land Line magazine reader, believes the requirements are good, if they can be enforced. He suggests having a sign in clear sight identifying Mexican trucks, such as a flag on a plate.

Green Valley, Arizona Residents

Elmer Silaghi, a Green Valley resident, is concerned about the safety of highway conditions along Interstate 19 near Green Valley, a retirement community located between Nogales and Tucson, Arizona. He believes that implementation of the NAFTA access provisions will exacerbate the community's existing commercial vehicle traffic congestion. The docket also received 19 comments from Tucson and Green Valley residents referring to Mr. Silaghi's letter or stating identical concerns.

Mexican Associations

Camara Nacional Del Autotransporte De Carga A.C. (CANACAR) (a Mexican Trucking Association representing the Mexican trucking industry) opposes the proposal. It believes the proposed entrance requirements are too difficult. It states that "consciously or unconsciously, all three of FMCSA's proposals unfortunately are permeated with anti-Mexican sentiments * * * disguised in the form of concern for highway safety * * * based on false assumptions." CANACAR believes Mexican trucks are safer than those operated by the U.S. trucking industry. To support this position, CANACAR stated that the out-of-service rate for U.S. and Mexican drayage companies are not very different.

Asociacion De Agentes Aduanales De Nuevo Laredo and Central de Servicos de Carga de Nuevo Laredo (CenSeCar) had similar comments. Each believes imposing inspections on short-haul carriers at the border would impact the efficient flow of traffic as well as be an unfair practice compared with the northern border. The two borders are different, they assert, and a single cookie cutter approach should not be applied. They are also concerned that all government agencies on the border

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are grossly understaffed. They believe that imposing unfunded mandates and new procedures without regard to staffing is categorically wrong and shortsighted.

Labor Organizations

The AFL–CIO, ATU, TTD, and the Teamsters argued that opening the border is premature because of deficiencies in Mexico's internal safety standards for motor vehicles, and that a stronger implementation plan approved by the DOT Office of Inspector General is needed. The ATU fully supports and agrees with comments submitted by the AFL–CIO. It also concurs in Greyhound's comments, with one minor exception: ATU opposes the proposal to allow up to 18 months before a safety audit is conducted on a Mexico-domiciled carrier. The common viewpoints of ATU and Greyhound are outlined as follows:

(1) Mexican buses should not be authorized to operate in the United States absent reciprocal treatment of U.S. buses by Mexico.

(2) Mexican buses must be certified as safe before the first day they are authorized to operate in the United States.

(3) FMCSA must develop and implement an effective enforcement plan before opening the border.

(4) U.S. subsidiaries of Mexican companies must be subject to the same standards and reviews as their Mexican parent companies.

(5) Application and oversight rules must be applied to small passenger carrying vehicle operations (9 to 15 passengers), as well as cross-border bus operations.

(6) Application forms must require detailed explanations of compliance measures to ensure a full understanding of the applicable laws.

Motor Carrier Associations

American Bus Association (ABA)

The American Bus Association believes there is too little inspection of buses at the border and that FMCSA should do more border inspections. It believes FMCSA should enforce compliance with the Federal Motor Vehicle Safety Standards (FMVSS) maintained and enforced by the National Highway Traffic Safety Administration.

The ABA believes a final rule imposing the Federal Motor Carrier Safety Regulations (FMCSR) on 9-to 15-passenger vans is necessary, alleging that the poor safety record of these small passenger carrying vehicle operations must be a part of FMCSA's enforcement plan.

ABA argues that the proposed safety monitoring system is inadequate to protect passengers because the rule would only apply to operators providing cross border services. It believes FMCSA should provide the same scrutiny to Mexican-owned, U.S.-domiciled carriers as it does to Mexican-owned, Mexico-domiciled carriers. ABA contends that these Mexican-owned companies providing domestic service in the United States will probably have a greater impact in the United States than any other type of service. ABA believes that it is critical for these operations to be included in the safety evaluation process. Although such operations are subject to the FMCSRs, they are not subject to the safety monitoring system described in this action or the two NAFTA-related rulemakings published elsewhere in today's **Federal Register**. ABA believes that the NAFTA Arbitral Panel provided FMCSA with the discretion to apply a heightened level of scrutiny and enforcement measures toward Mexican companies operating within the United States—regardless of whether they are based in Mexico or in the United States. According to ABA, "the rules and oversight for Mexican-owned companies providing domestic U.S. service should be at least as stringent as the rules for Mexican companies providing international service." Accordingly, ABA believes that FMCSA must expedite a rulemaking that would put into place a procedure that ensures the safety of new entrants to the U.S. market, regardless of whether they are based in the United States or Mexico, and whether or not they are Mexico-or U.S.-owned.

ABA believes that conducting an onsite review of a motorcoach company before the issuance of operating authority would be beneficial, notwithstanding the lack of complete U.S. compliance data. ABA suggests there are several items that could be checked during an initial review, including the Mexican driver's compliance with licensing and medical certification procedures. Vehicles could also be checked to ensure that they comply with the FMVSS. ABA believes that, given the lack of safety data and history for Mexican carriers, FMCSA should consider establishing procedures that include an expeditious and comprehensive onsite review of each applicant's safety program. ABA argues that an expedited safety review procedure conducted by Federal or State enforcement personnel would do far more to ensure safety than a simple review of submitted information and the monitoring of data generated by roadside inspections that may or may not occur. ABA suggests that the educational "Safety Review" procedure established during the late 1980s could be used as a template for trucking operations, as it afforded an opportunity for motor carrier personnel to interact directly with enforcement personnel to explain regulatory requirements, and answer questions. However, ABA does not believe that this procedure will adequately ensure the safety of passengers.

ABA contends that our rulemaking will do nothing to ensure that the cross-border provisions of NAFTA are implemented in a reciprocal manner. It argues the proposed rule outlined how Mexican operators and drivers will be treated while in the United States, but gave no assurance that the Mexican government would implement identical policies. For example, ABA argues the Mexican government has taken the position that it will grant cross-border service authority for U.S. carriers to serve only one point in Mexico, and that it will not allow U.S. carriers to own or operate bus terminals in Mexico. ABA also states that the Mexican government has indicated that it will not authorize U.S. carriers to provide incidental package service as part of their cross-border trips. ABA believes that finalizing the cross-border access proposal without assurances of reciprocal treatment of U.S. companies by Mexico would result in unequal treatment in clear violation of both the letter and spirit of NAFTA.

American Trucking Associations, Inc. (ATA)

The ATA recommended that FMCSA provide specific guidelines for establishing safety monitoring systems, including defining a "poorly performing driver". The ATA recommends that FMCSA investigate the possibility that Mexico may consider the proposed safety review program an "extraterritorial application of United States law." In light of that possibility, the ATA recommends that FMCSA work jointly with the Secretaria de Comunicacianos y Transportes (SCT) to establish a joint safety review program for Mexico-domiciled motor carriers.

Owner Operator Independent Drivers Association (OOIDA)

OOIDA believes there is a lack of Mexican infrastructure, resources, and the will to promulgate and enforce compatible safety regulations in Mexico. It contends there is no true equivalent to the 49 CFR Part 383 commercial drivers licensing regulations in Mexico.

OOIDA cites the DOT OIG report that there is a link between Mexican truck condition and the level of inspection resources. OOIDA believes FMCSA must have a minimum of 80 new safety inspectors to do border crossing inspections and 40 safety investigators to conduct compliance reviews before granting authority. OOIDA believes the FMCSA goal of more inspectors is correct, but the plans do not include enough personnel.

OOIDA believes FMCSA's proposal to review Mexico-domiciled carriers within 18 months after granting them authority is unrealistic and dangerous. It recommends that FMCSA conduct onsite reviews in Mexico and verify whether a Mexico-domiciled motor carrier has been placed out-of-service in Mexico, has had hazardous material incidents in Mexico, has a drug and alcohol testing program, and maintains valid proof of financial responsibility.

California Trucking Association (CTA)

CTA supports the rules as "well-thought [out] applications and safety entry standards for Mexico-domiciled motor carriers," but sees a need for more resources to accomplish FMCSA goals. CTA believes the safety monitoring period should be shorter than 18 months and the program should include State and local law enforcement agencies in the review teams. It recommends involving FMCSA field offices in safety reviews because it believes the field offices know their local carriers. It also recommends promulgating review standards before the initial review period. CTA predicates its support of the three NAFTA rulemakings upon four conditions, including establishing "a level playing field for all motor carriers through the application of the same laws and regulations."

Safety Advocacy Groups

The safety advocacy groups believe FMCSA should conduct a safety audit before it allows a Mexico-domiciled motor carrier to operate in the United States and that FMCSA must have more U.S. inspection sites and more safety inspectors.

American Automobile Association (AAA)

The AAA's comments are generally representative of the safety groups. The AAA believes FMCSA must:

(1) Conduct safety audits *before* Mexico-domiciled trucks cross the border.

(2) Follow California's incentive to Mexico-domiciled motor carriers to display a valid CVSA decal on their trucks entering the United States. If one is not apparent, FMCSA should, like California, conduct the most rigorous CVSA, or equivalent, inspection at the border.

(3) Work closely with AAMVA to see that proper licensing procedures are in place and enforceable.

(4) Weigh trucks at the border.

(5) Demand proof of financial responsibility for every vehicle in every fleet at the border. Drivers should have to carry an insurance document unique to their particular vehicle.

(6) Ensure that every one of the 27 U.S.-Mexico border crossing points has resources to monitor compliance with the FMCSRs.

Public Citizen

Public Citizen contends the proposed rule fails to acknowledge the inadequacy of the existing enforcement structure and will not protect the public from unsafe trucks crossing into the United States. It believes unsafe trucks will inevitably escape detection and travel freely throughout the United States, endangering motorists and risking a trade-related debacle.

Public Citizen contends the penalties for Mexico-domiciled carriers under the safety monitoring program would be weaker than those currently applicable to U.S.-domiciled carriers. It argues that the serious infractions listed in proposed § 385.23 would only result in a carrier receiving a safety review—a review to which it would have to submit anyway—or a deficiency letter instructing the carrier to notify FMCSA that the problem has been corrected.

Public Citizen argues that the consequences of such violations for U.S. carriers are considerably more severe, including civil and criminal fines or even jail time. It believes allowing Mexican carriers to receive weak penalties for serious violations fails to communicate the seriousness of these violations to carriers and will not prepare them to comply with these regulations at the end of the safety oversight program.

Public Citizen also believes FMCSA omitted some serious violations from the list of violations that would trigger an expedited safety review or deficiency letter. Under the proposal, an accident resulting in a hazardous materials incident prompts the expedited safety review or deficiency letter process, but an accident resulting in death, or a violation of the hours-of-service limit, does not. Public Citizen believes potential hours-of-service violations are of particular concern because Mexican carriers require their workers to drive for much longer periods than the U.S. hours-of-service limit, and Mexican laws do not include hours-of-service rules. It believes we should add hours-of-service infractions to the list in proposed § 385.23 and publish a plan for enforcing hours-of-service limits for drivers crossing the border who are not subject to any time controls while in Mexico.

Public Citizen notes the NPRM does not specify a time limit for carriers to respond to deficiency letters before their provisional registration is suspended. Public Citizen believes it is also unclear how soon an expedited safety review would take place after a serious violation is discovered and how long a carrier can be suspended without taking corrective action before its registration is revoked. It contends that without time limits, an unsafe carrier could operate indefinitely before any limitations are placed on it. It believes we must revise the NPRM to provide definite time restrictions to ensure that non-compliant carriers do not slip through the cracks.

Public Citizen also believes that FMCSA suspension or revocation of provisional registration will not change a carrier's ability to send trucks across the border. It cites a November 1999 DOT Inspector General report finding that carriers were able to retain their certificates of registration in their vehicles and continue operating across the border even after these certificates were revoked. It believes no information would be available to inspectors to verify that a certificate of registration is valid, or to verify that a driver has a certificate of registration if he or she is not able to present it upon request.

Environmental Groups

Friends of the Earth, the Natural Resources Defense Council, the Sierra Club and The Center for International Law commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) and Executive Order 13045, concerning the protection of children.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a "conformity determination" pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 U.S.C. 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP

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(a "conformity determination"), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

Commercial Vehicle Safety Alliance (CVSA)

CVSA believes the rules will not sufficiently reassure the public. It makes eight recommendations for strengthening the monitoring program as key to its support of this rulemaking. CVSA's recommendations include:

(1) Perform "case studies" on Mexico-domiciled motor carriers. Case studies would facilitate a collaborative safety culture and provide objective, uniform and quantitative data upon which to base policy decisions. They would be similar to the proposed safety review, except case studies would: (a) Be completed before granting operating authority; (b) be conducted at the motor carrier's place of business; (c) include both regulatory evaluation and educational components; (d) include a representative sample of CVSA Level V inspections; and (e) adopt a collaborative approach that includes U.S., Canadian and Mexican officials. CVSA believes these case studies should initially be conducted on all carriers applying for authority to operate beyond the border zones, then on a sampling of carriers who wish to operate solely within the border zones.

(2) Require all motor carriers and drivers to renew their valid Licencia Federal de Conductor and be entered into the Mexican commercial drivers' licensing database before being granted operating authority in the United States.

(3) Work with CVSA and the States to develop the necessary legislative and policy changes for providing States the ability to enforce operating authority requirements.

(4) Investigate the equipment manufacturing standards in Mexico and report how they differ from those required in the United States, specifically with respect to compliance with the FMVSS. CVSA thinks this is particularly important to the roadside inspection program and weight enforcement.

(5) Provide clear policy direction on how to address the language issue in the field. CVSA wants us to apply a reasonable standard to determine whether a driver "can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, to respond to official inquiries and to make entries on reports and records."

(6) Coordinate outreach and training programs that are delivered to Mexican motor carriers, drivers, and enforcement personnel. CVSA believes a clear and consistent message is important to the education and learning process.

(7) Make sure appropriate modifications are made to software and information systems in a timely manner and adequate time and resources are provided for training enforcement officials for all changes that are promulgated in the final rule.

(8) Explore multiple technology options (hardware, software, and communications), conduct the necessary due diligence and pilot test potential solutions for facilitating throughput at the borders and performing safety assessments on motor carriers. CVSA wants us to consider various types of incentives for safe operators and to encourage technology adoption.

American Association of Motor Vehicle Administrators (AAMVA)

AAMVA believes that Mexico-domiciled motor vehicles should be inspected for conformance to Federal motor carrier safety regulations before they are allowed to operate in the United States. Specifically, it supports periodic motor vehicle safety inspections similar to the CVSA inspections.

It also suggests conducting complete safety audits of carriers in Mexico before approving applications for operating authority. It believes a safety audit and inspection of vehicles before approval of operating authority will ensure that any vehicle entering the United States from Mexico comports with applicable safety standards and does not pose undue risk to citizens on the nation's roadways.

Transportation Consumer Protection Council

The Transportation Consumer Protection Council, representing 500 shippers and receivers of freight, believes FMCSA should require truck inspections before carriers are allowed into the United States.

National Association of Independent Insurers (NAII)

The NAII believes DOT was unable to do much to prepare for the beginning of true cross-border trucking during the previous administration. It believes that preparations must be our top priority and that we need more people and resources to handle the workload than were requested for fiscal year 2002. It believes the most pressing need to keep American roads safe when the border opens is for us to have a detailed plan showing who will do what and where.

American Insurance Association (AIA)

The AIA alleges that the proposed rules fail to provide for safety and are inconsistent with law, citing 49 U.S.C. 113(a) as providing for safety as the "highest priority." It believes follow-up inspections should be done earlier than 18 months. The AIA also believes conducting compliance reviews under § 385.13(a) that apply the criteria for evaluating safety management controls described in § 385.7 would not be sufficient. It recommends requiring safety reviews to occur on the Mexico-domiciled motor carrier's premises.

The AIA states that different procedures are expressly permissible under NAFTA and believes FMCSA could have proposed more stringent motor carrier safety procedures on Mexican carriers.

FMCSA Response to Comments

The DOT Appropriations Act

The most common recommendation made in the comments was that Mexico-domiciled carriers undergo a safety review by FMCSA before being allowed to operate in the United States. This concern was addressed in § 350(a)(1) of the DOT Appropriations Act. The FMCSA's companion rule amending our part 365 application procedures will require that Mexico-domiciled long-haul carriers receive a safety audit before receiving provisional operating authority. This pre-authorization safety audit will include verification of performance data, safety management programs (including hours-of-service compliance, vehicle inspection and maintenance and drug and alcohol testing programs) and financial responsibility. The audit will also entail vehicle inspections, verification of driver qualifications and an interview with carrier officials to review safety management controls and evaluate written safety oversight policies and practices.

FMCSA intends to provide all Mexico-domiciled carriers educational and technical assistance when they apply for provisional operating authority or a provisional Certificate of Registration. The education and technical assistance package will consist of material designed to assist the Mexico-domiciled applicant in

complying with the FMCSRs and Hazardous Materials Regulations (HMRs) and establishing good safety management practices. It will include information on driver qualifications; controlled substances and alcohol use testing; commercial drivers licenses; minimum levels of financial responsibility; accident reports; requirements applicable to the driving of motor vehicles; vehicle inspection, repair and maintenance; hours of service and records of duty status of drivers; and requirements applicable to the transportation of hazardous materials. These materials will help long-haul carriers prepare for the pre-authorization safety audit.

We are not extending the pre-authorization audit requirement to carriers seeking to operate solely within the border zones under Certificates of Registration. Border zone operations have been permitted for nearly 20 years without a pre-authorization audit requirement. The most serious safety concerns, as evidenced by the provisions of § 350 of the Act and reflected in the comments to the NPRM, involve Mexico-domiciled carriers who will be operating vehicles beyond the border zones in long-haul service. We believe that the informational and certification requirements added to the revised OP–2 form in our companion rule and the post-operational audit required by this rule will be sufficient to protect public safety in the border zones.

Section 350(a)(2) of the Act requires FMCSA to conduct a full compliance review of Mexico-domiciled long-haul carriers within 18 months after issuance of provisional operating authority. This review will be consistent with our existing safety fitness evaluation procedures set forth in subpart A of part 385 and will result in the assignment of a safety rating. As required by section 350(a)(2), the compliance review must result in a "Satisfactory" safety rating before the carrier is granted permanent operating authority to operate beyond the border zones. We have incorporated these requirements into this interim final rule. In accordance with section 350(a)(2), at least 50 percent of these compliance reviews will be conducted onsite, including any compliance review conducted on a Mexico-domiciled carrier with four or more commercial vehicles that did not undergo an on-site safety audit before receiving provisional authority.

This rule also addresses the section 350(a)(5) requirement that any Mexico-domiciled vehicle operated in the United States beyond the border zones receive a Level 1 inspection if it does not display a valid CVSA inspection decal, unless the carrier has held permanent authority for at least three consecutive years. In order to reduce the burden on State and Federal inspection officials, at least during the 18-month provisional operating period covered by this rule, we will require all commercial vehicles operated by Mexico-domiciled long-haul carriers to display a valid CVSA inspection decal when entering the United States.

Vehicle Size and Weight Issues

In response to the Senators' concern about oversize and overweight vehicles, section 350(a)(7)(A) of the DOT Appropriations Act requires FMCSA to:

(1) Equip all United States-Mexico commercial border crossings with scales suitable for enforcement action;

(2) Equip five of the ten highest volume commercial vehicle traffic crossings with weigh-in-motion systems before reviewing or processing applications by Mexico-domiciled carriers to operate beyond the border zones;

(3) Equip the remaining five of the ten highest volume crossings with weigh-in-motion systems within 12 months; and

(4) Require inspectors to verify the weight of each Mexico-domiciled carrier's commercial vehicle entering the United States at each weigh-in-motion equipped high volume border crossing.

The FMCSA will comply with these requirements and work with the Federal Highway Administration and States to assure the effective use of the weigh-in-motion equipment as part of an effective enforcement program. Enforcement of size and weight requirements is a State function, under the oversight of the Federal Highway Administration.

Driver Hours-of-Service

In response to the Senators' comments regarding Mexican hours-of-service laws (also discussed by Public Citizen), we note that the use of the record of duty status, commonly known as a logbook, is the tool the FMCSA uses for enforcing compliance with U.S. hours-of-service requirements. Upon entering the United States, each driver must either: (a) Have in his/her possession a record of duty status current on the day of the examination showing the total hours worked for the prior seven consecutive days, including time spent outside the United States; or, (b) demonstrate that he/she is operating as a "100 air-mile (161 air-kilometer) radius driver" under § 395.1(e).

In addition, section 350(a)(9) of the DOT Appropriations Act requires Mexico-domiciled carriers to only enter the United States at commercial border crossings: (1) Where and when a certified motor carrier safety inspector is on duty; and (2) where adequate capacity exists to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of these meaningful safety inspections. The examination of drivers resulting from the section 350(a)(9) vehicle inspection requirements would allow inspection of each Mexico-domiciled carrier's drivers upon entry and would allow certified motor carrier safety inspectors to review the driver's logbooks and discover whether hours-of-service violations have occurred.

Similarity of Regulatory Treatment

In response to the comments of the Mexican trade associations, FMCSA believes the regulatory requirements imposed in this rule are within the standards set out in the NAFTA Arbitral Panel Report, a copy of which is in the docket. The Panel noted that:

(1) The United States is not required to treat applications from Mexico-domiciled trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as they are reviewed on a case by case basis; and

(2) Given the different enforcement mechanisms in place in the United States and Mexico, it may not be unreasonable for the United States to address legitimate safety concerns. Similarly, the Panel found it might be reasonable for the United States to implement different procedures with respect to service providers from another NAFTA country if necessary to ensure compliance with its own local standards by these service providers. Although CANACAR believes Mexican trucks are safer based on out-of-service rates for U.S. and Mexican drayage companies, the fact remains that Mexico's motor carrier safety regulatory system lacks several of the components that are central to the U.S. system. As the Panel found, the United States is responsible for the safe operation of motor carriers within U.S. territory, regardless of the carriers' country of origin, and FMCSA believes we must ensure each carrier is safe to protect U.S. highway users. This rule, in conjunction with the other rules pertaining to Mexican motor carriers published elsewhere in today's **Federal Register**, will provide FMCSA with the necessary level of assurance, in a manner consistent with the Panel's findings, that Mexican motor carriers seeking U.S. operating authority are capable of complying with the U.S. safety regulatory regime.

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ABA, AHAS, and other commenters cite language from the NAFTA Arbitral Panel's Final Report to support their comments favoring more stringent safety measures with regard to Mexico-domiciled carriers. The Panel stated, among other things, that to the extent that Mexican licensing and inspection requirements may differ from U.S. requirements, the United States might be justified in using methods to ensure Mexico-domiciled carrier compliance with the U.S. regulatory regime that differ from those used for U.S. and Canadian carriers, provided that those methods are used in good faith to address legitimate safety concerns and fully conform with all relevant NAFTA provisions. FMCSA believes that the more stringent measures in the rules published today fulfill its statutory obligation to ensure the safe operation of motor carriers in the United States in a manner that is consistent with the Panel's construction of NAFTA.

Reciprocal Treatment

ABA urged us not to publish final rules permitting Mexico-domiciled carriers to operate beyond the border zones until the government of Mexico guarantees that U.S. carriers operating in Mexico will receive the same regulatory treatment afforded to Mexican carriers operating in that country. These regulations are intended to establish procedures to ensure that Mexico-domiciled carriers operate safely while traveling in the United States, not to police compliance with the terms of NAFTA. The NAFTA contains specific procedures designed to resolve disputes over whether the parties are fulfilling their obligations under the agreement.

Mexican-Owned, U.S.-Domiciled Motor Carriers

In response to comments by ABA, ATU, and Greyhound urging us to subject Mexican-owned, U.S.-domiciled passenger carriers to the same procedures applicable to Mexican-owned, Mexico-domiciled passenger carriers, we note that President Bush, in June 2001, issued a Memorandum that, among other things, allows a Mexican citizen to establish a U.S.-based passenger carrier to provide point-to-point transportation within the United States under the same procedures applicable to U.S.-owned, U.S.-domiciled passenger carriers. Mexican nationals may establish a passenger carrier operation in the United States by either purchasing an existing motor carrier or establishing a new motor carrier. Such carriers, as Greyhound itself points out, must use U.S. citizens or resident aliens to provide passenger service in the United States. The drivers they employ must possess a Commercial Drivers License issued in the United States. In addition, these carriers are subject to the same safety requirements, inspection procedures, enforcement mechanisms, and fines and out-of-service orders that apply to any other U.S. carrier. Thus, there is no basis to treat these carriers any differently from U.S.-owned, U.S.-domiciled carriers based solely on the owner's nationality. All U.S.-domiciled carriers, regardless of the owner's nationality, will be subject to an interim final rule establishing application procedures and safety monitoring requirements for new entrant carriers, which we expect to publish in the near future.

Small Passenger Carrying Vehicle Operations

With respect to the small passenger carrying vehicle issues raised by the ABA, the FMCSA published a Notice of Proposed Rulemaking on January 11, 2001 (66 FR 2767) that proposed to apply most of the FMCSRs (except for CDL and drug and alcohol testing requirements) to certain passenger carriers operating vehicles designed or used to transport between 9 and 15 passengers. The FMCSA's final small passenger carrying vehicle rule, which will be published in the near future, will address the safety issues regarding this type of operation.

Environmental Issues

Friends of the Earth, the Natural Resources Defense Council, the Sierra Club and The Center for International Law commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) and Executive Order 13045, concerning the protection of children from environmental health and safety risks. FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). FMCSA has conducted a programmatic environmental assessment (PEA) of the three NAFTA-related rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings is presented later in the preamble under "Regulatory Analyses and Notices." A copy of the PEA is in the docket to this rulemaking. Executive Order 13045 is addressed in the Regulatory Analyses and Notices section of this preamble.

We have reviewed our obligations under the CAA, and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements, and that no conformity determination is required.

Penalties

We believe Public Citizen did not understand the full range of penalties available to FMCSA when it made its comments that the penalties for Mexico-domiciled carriers under the safety monitoring program would be weaker than those that currently apply to U.S.-domiciled carriers. In addition to the procedures established by this rule, Mexico-domiciled carriers are fully subject to the full range of enforcement actions and sanctions faced by U.S. and Canadian carriers, including civil and criminal fines and jail time.

Expedited Action Criteria

Although violations of the hours-of-service limits are not specifically included in the list of violations prompting an expedited safety or compliance review or demand for corrective action, hours-of-service violations will be taken into account as part of a carrier's out-of-service rate, which is a triggering factor for expedited action under § 385.105(a)(7).

Although a fatal accident is not included on the list of violations that would trigger an expedited safety audit or compliance review or a demand for corrective action, Mexico-domiciled motor carriers will be subject to existing FMCSA policy regarding crashes. Under this policy, FMCSA conducts a basic Crash Inquiry on any motor carrier having a crash involving two or more fatalities, two or more injuries, or a combination of fatalities and injuries. This review policy also includes any crash that may result in the agency acquiring detailed knowledge that would be beneficial for any unusual post-crash public interest. The Crash Inquiry would include crashes involving motor coaches, unqualified drivers, explosions, and substantial fire.

FMCSA policy automatically expands the basic Crash Inquiry into a full compliance review as soon as practicable when the motor carrier is not in good standing with FMCSA. A motor carrier is not in good standing with FMCSA when it is does not have a safety rating (which would generally be the case for new entrant Mexico-domiciled carriers prior to the performance of a compliance review), the safety rating is less than satisfactory, or the carrier is on FMCSA's Safety Status Measurement System (SafeStat) with a SafeStat category of A, B, C, or D. For more information about SafeStat, see the FMCSA web page at: *http://www.fmcsa.dot.gov/factsfigs/safetstat.htm.*

The Mexico-domiciled motor carrier's application will create a new record attached to its new USDOT identification number without any safety rating attached to it. The lack of a safety rating for a Mexico-domiciled motor carrier coupled with a multiple fatality or injury crash will result in the Mexico-domiciled motor carrier being subject to a full compliance review as soon as practicable. This procedure is identical to the current treatment of new entrant U.S.-or Canada-domiciled motor carriers lacking a safety rating.

Procedural Time Limits

In response to Public Citizen's concern that the rule did not propose specific time limits for carriers to address identified problems and respond to letters demanding corrective action, we have added a provision that failure to respond within 30 days will result in the suspension of the carrier's provisional registration. Public Citizen also raised a question concerning the status of an uninsured carrier operating while the agency performs a safety review or processes a demand for corrective action. FMCSA has authority, under 49 CFR 387.31(g), to deny entry to any Mexico-domiciled carrier not carrying the required evidence of financial responsibility in its vehicles. The agency also has authority, under 49 U.S.C. 14702, to obtain a court order enjoining a carrier from operating without insurance independent of the safety monitoring process. Finally, Mexico-domiciled carriers operating beyond the border zones will be required to file evidence of insurance with FMCSA as a condition for retaining their provisional operating authority. As is the case for U.S. and Canada-domiciled carriers, failure to have a current insurance filing will result in revocation of authority under existing FMCSA procedures.

Public Citizen's concerns about the timeliness of an expedited safety review are valid. The agency will strive to conduct the review as soon as possible and will give priority in assigning resources to conduct these reviews. We believe § 385.111 of the final rule adequately addresses Public Citizen's concerns about the length of time a carrier can be suspended without taking corrective action before its registration is revoked. An agency suspension of any carrier's authority to operate means the carrier cannot operate legally until it corrects its deficiencies and has received written notice from FMCSA allowing it to resume operating. The suspension order will provide for revocation of the provisional registration if necessary corrective action is not taken within 30 days.

The violations requiring expedited action are warning signs that a carrier may not have the necessary basic safety management controls in place, thus generating an immediate response in the form of a corrective action demand letter, safety audit or compliance review. FMCSA will take these violations seriously, but they do not necessarily establish that the carrier is unfit to operate. If the carrier demonstrates that it has taken steps to correct the identified problems and that it is otherwise exercising the necessary basic safety management controls, it does not present a danger to public safety and should be allowed to continue to operate.

FMCSA is developing a database that will indicate whether a carrier has had its authority suspended or revoked. Unregistered carriers and carriers whose registration has been suspended or revoked will be denied entry into the United States. Use of this data will also help to ensure that enforcement personnel can place out-of-service at the roadside those carriers that continue to operate commercial motor vehicles within the United States after registration has been suspended or revoked.

Compliance With Federal Motor Vehicle Safety Standards (FMVSS)

FMCSA and its State partners will continue to enforce the FMVSS through roadside inspections, including inspections at the border. Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSS in effect on the date the vehicle was manufactured.

Part 393 of the FMCSRs currently includes cross-references to most of the FMVSS applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or a mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSS, we could also take appropriate enforcement action for making a false certification on Form OP–1(MX) or OP–2.

To further strengthen FMVSS enforcement, FMCSA and NHTSA are initiating several regulatory actions in today's **Federal Register** to ensure that all commercial vehicles operated in the United States, including those operated by Mexican and Canadian carriers, display a NHTSA-required label certifying compliance with the FMVSS. FMCSA is publishing a Notice of Proposed Rulemaking proposing to incorporate the labeling requirement into part 393 and NHTSA is publishing two NPRMs and one policy statement relating to the certification label.

Many commercial motor vehicles owned by Mexican and Canadian carriers may comply with the FMVSSs in effect at the time of their manufacture. However, because these vehicles were not originally manufactured for use in the United

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States, they are not likely to have FMVSS certification labels. The NHTSA policy statement permits a vehicle manufacturer to retroactively apply a label to a commercial motor vehicle certifying, if it has sufficient basis for doing so, that the vehicle complied with all applicable FMVSS in effect at the time it was originally manufactured. In connection with this policy statement, NHTSA is proposing recordkeeping requirements for foreign manufacturers that choose to retroactively certify vehicles.

In the third NHTSA document published in today's **Federal Register**, NHTSA is proposing to codify, in 49 CFR part 591, its longstanding interpretation of the term "import" as including bringing commercial vehicles into the United States for the purpose of transporting cargo or passengers.

Staffing Issues

Several parties expressed concern about whether there are adequate resources available to conduct the necessary inspections and safety reviews. Section 350(a)(9) of the Act prohibits Mexico-domiciled motor carriers from entering the United States at any border crossing where a certified motor carrier inspector is not on duty or where there is not adequate capacity to conduct either a sufficient number of meaningful vehicle safety inspections or accommodate vehicles placed out-of-service as a result of safety inspections. Congress has appropriated $57.8 million for FMCSA to handle its responsibilities in connection with implementing the NAFTA access provisions for Mexico-domiciled carriers. FMCSA intends to hire over 200 people for this purpose, most of whom will be conducting vehicle inspections, pre-authorization safety audits and 18-month safety audits. We believe this significant augmentation of our existing staff at the southern border will enable us to fully comply with our safety monitoring responsibilities.

Responses to Other Comments

The individuals who submitted form comments provided by CRASH did not elaborate on what they considered to be "meaningful safety standards and significantly increased compliance oversight." We have addressed those concerns in this and the companion rulemakings published elsewhere in today's **Federal Register**.

We recognize the concerns of the Green Valley, Arizona residents along Interstate 19, but any increase in traffic along this route will not result from the implementation of this rule and its two companion rules. These rules do not open the border to Mexico-domiciled trucks, they impose safety certification and monitoring requirements on Mexico-domiciled motor carriers operating in the United States under the provisions of NAFTA.

In response to Mr. Pizenche's comments, 49 CFR 390.21 currently requires that all motor vehicles, including foreign vehicles, must have the carrier's name and USDOT number on each side of the power unit, and must be readable from 50 feet. In addition, our companion rule establishing application requirements for Mexico-domiciled long-haul carriers published elsewhere in today's **Federal Register**, requires that FMCSA issue a new USDOT identification number to each Mexico-domiciled motor carrier applicant intending to operate beyond the United States-Mexico border zones. This new USDOT identification number will have a suffix that will denote the type of authority held by the Mexico-domiciled motor carrier and allow FMCSA to monitor the carrier's performance by inspecting crash and roadside inspection reports.

Section-by-Section Summary

We have changed the section numbers as they appeared in the NPRM. The sections are now numbered 385.101 through 385.119.

Section 385.101

This section contains the definitions of terms used in new subpart B. These include:

(1) Provisional certificate of registration, the registration issued to Mexico-domiciled border zone carriers;

(2) Provisional operating authority, the registration issued to Mexico-domiciled long-haul carriers; and

(3) Safety audit, the review conducted by FMCSA on a border zone carrier during the 18-month provisional period to determine whether the carrier exercises basic safety management controls. Because we will be conducting compliance reviews on Mexico-domiciled long-haul carriers during the 18-month provisional period, we have also added a reference to the existing definition of compliance review in § 385.3.

Section 385.103

This section describes the elements of the safety monitoring system, which include roadside monitoring, safety audits for border zone carriers and compliance reviews for long-haul carriers. FMCSA has added a requirement that all Mexico-domiciled motor vehicles operating beyond the border zones display a valid CVSA inspection decal throughout the 18-month provisional operating authority period. A CVSA inspection is only valid for three months from the date of inspection. Consequently, Mexico-domiciled long-haul carriers will need to get a CVSA inspection for their vehicles every three months. FMCSA will work with CVSA to ensure that this requirement is operational when the President lifts the moratorium on granting operating authority to Mexico-domiciled motor carriers.

Section 385.105

Section 385.105(a) lists the serious violations or infractions that will result in an expedited safety audit or compliance review or, in the alternative, a demand that the carrier demonstrate in writing that it has taken immediate corrective action. The infractions listed are essentially identical to those proposed in the NPRM. We have added clarifying language regarding what constitutes a valid Licencia Federal. The type of action taken by FMCSA in response to the violations will depend upon the specific circumstances of the violations.

Sections 385.105(b) provides that failure to respond to a request for a written response demonstrating corrective action within 30 days will result in suspension of provisional registration until the required showing of corrective action is made.

Section 385.105(c) clarifies that a carrier that successfully responds to a demand for corrective action still must undergo a safety audit or compliance review during the provisional period if it has not already done so.

Section 385.107

This section describes the safety audit and what follow-up action will be taken by the agency. Safety audits on Mexico-domiciled carriers operating only in the border zones under provisional Certificates of Registration will be conducted by an FMCSA safety specialist, usually onsite, although FMCSA reserves the right to conduct the audit at an alternate site. The safety audit will assess the adequacy of the carrier's basic safety management controls in accordance with the criteria established in new Appendix A. Appendix A does not specifically reference Mexico-domiciled motor carriers because we are considering adopting it eventually for all new entrants, except for Mexico-domiciled long-haul carriers, who must undergo compliance reviews.

The audit will consist of a review of the Mexico-domiciled carrier's safety data, a review of requested motor carrier

documents, and an interview session with the Mexico-domiciled carrier by the FMCSA safety specialist. The objective of the safety audit is both to educate the carrier on compliance with the FMCSRs and HMRs and to determine areas where the carrier might be deficient in terms of compliance. Areas covered include: financial responsibility; commercial driver's license standards; qualification of drivers; controlled substances and alcohol use and testing; transporting and marking hazardous materials; requirements applicable to driving a motor vehicle; hours of service; and vehicle inspection, repair, and maintenance. A safety audit is different than a compliance review in that it focuses on providing safety management and technical assistance and is not intended to result in a safety fitness determination. However, if the audit demonstrates that the carrier fails to establish and/or exercise basic safety management controls, FMCSA will ensure that the necessary corrective action is taken or else the carrier will not be allowed to continue operating in the United States.

FMCSA Division Administrators or State Directors will make the initial determination about the adequacy of a Mexico-domiciled carrier's basic safety management controls and whether necessary corrective action has been taken.

If the safety audit demonstrates that the carrier is exercising the necessary basic safety management controls, the carrier will retain its provisional status and will continue to be closely monitored until the expiration of the 18-month safety monitoring period. At that time, the provisional designation will be removed from its registration, provided its safety record remains in good standing.

FMCSA anticipates that the basic safety management practices of the large majority of Mexico-domiciled carriers will prove to be adequate based on the combined effect of:

(1) Providing educational material to the carrier in the application process;

(2) Requiring the carrier to certify how it will comply with the FMCSRs;

(3) Requiring long-haul carriers to successfully complete a pre-authority safety audit; and

(4) Providing notice to the carrier of what items will be covered in the safety audit or compliance review conducted during the provisional registration period.

If the safety audit reveals that the Mexico-domiciled carrier's basic safety management practices are inadequate, FMCSA will initiate a suspension and revocation proceeding. The carrier will be required to remedy the deficiencies or else its provisional Certificate of Registration will be revoked.

Section 385.109

Section 350(a)(2) of the Act requires the compliance review of Mexico-domiciled long-haul operations to be conducted consistent with our existing safety fitness evaluation procedures in part 385 and that the carrier receive a Satisfactory safety rating before receiving permanent operating authority. Therefore, an FMCSA safety specialist will conduct compliance reviews of Mexico-domiciled long-haul carriers applying the evaluation criteria in Appendix B to part 385, the same criteria now in use for U.S and Canadian carriers. These criteria provide for the assignment of one of three proposed safety ratings upon completion of a compliance review: Satisfactory, Conditional, or Unsatisfactory.

A carrier receiving a Satisfactory rating will continue to operate under provisional status until the expiration of the 18-month safety monitoring period. At that time, the provisional designation will be removed from its registration, provided its safety record remains in good standing.

The consequences of an Unsatisfactory rating are similar to those attached to a safety audit in which it is determined that a carrier does not have adequate safety management controls. The carrier's provisional operating authority will be suspended and the FMCSA will notify the carrier that it is required to take action to improve its practices. Failure to make the necessary changes to remedy inadequate basic safety management controls will result in revocation of a carrier's provisional operating authority.

A Conditional rating is indicative of deficiencies in a carrier's safety management controls which raise concerns about its ability to operate safely but are not of sufficient magnitude to declare the carrier unfit. Because the Act requires Mexico-domiciled long-haul carriers to achieve a Satisfactory rating in order to retain their provisional operating authority, a revocation proceeding will be initiated following the assignment of a Conditional rating. However, because our existing safety rating procedures do not equate a conditional rating with unfitness and permit conditional-rated carriers to continue operating, provisional operating authority will not be suspended at the time a revocation proceeding is initiated.

Section 385.111

In response to comments, we have added procedures incorporating specific time frames for suspension and revocation of provisional operating authority and Certificates of Registration. These procedures are designed to balance the need to protect the public from potentially unsafe carriers while preserving the carrier's due process rights.

Mexico-domiciled carriers will have 10 days following notification of an Unsatisfactory rating or an unsuccessful safety audit to demonstrate that the FMCSA committed material error. If they fail to do so, the FMCSA will suspend the carrier's provisional operating authority or provisional Certificate of Registration on the 15th day, thus placing it out of service. If the carrier fails to demonstrate that it has taken necessary corrective action within 30 days from the date of suspension, FMCSA will revoke the carrier's provisional operating authority or provisional Certificate of Registration.

Carriers assigned a Conditional rating will not have their provisional operating authority suspended, but will still need to demonstrate that necessary corrective action has been taken to prevent their authority from being revoked.

Section 385.111(e) provides for suspension of provisional registration when the carrier does not provide documents necessary for the completion of a safety audit or compliance review or does not submit sufficient evidence of corrective action in response to a written demand under § 385.105. The suspension will remain in effect until the necessary documents are produced and the carrier:

(1) Successfully completes the safety audit;

(2) Receives a Satisfactory or Conditional safety rating; or

(3) Demonstrates that it has taken the necessary corrective action in response to a § 385.105 demand. Although the assignment of a Conditional rating will be sufficient to lift the suspension, the carrier will still need to upgrade its rating to Satisfactory in order to keep its provisional operating authority.

Section 385.111(f) is intended to address the problem of recidivism, i.e., carriers who, after taking corrective action resulting in the lifting of a suspension during the provisional operating or registration period, commit one of the serious safety infractions listed in § 385.105(a). In these circumstances, the suspension will be automatically reinstated and the carrier's provisional operating authority or Certificate of Registration will be

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revoked unless it demonstrates it did not commit the infraction.

In a similar vein, § 385.111(g) provides for the initiation of a revocation proceeding upon receipt of credible evidence that a carrier operated in violation of a suspension order, even if that suspension order was eventually lifted. A Mexico-domiciled motor carrier that operates a commercial motor vehicle in violation of a suspension or out-of-service order will also be subject to the penalties provided in 49 U.S.C. 521(b)(2)(A), not to exceed $10,000 for each offense.

Section 385.113

Under this section, a Mexico-domiciled carrier may request FMCSA to conduct an administrative review if it believes the agency has committed an error in assigning a safety rating or determining that its basic safety management controls are inadequate. The carrier's request must explain the error it believes FMCSA committed and include a list of all factual and procedural issues in dispute. In addition, the carrier must include any information or documents that support its argument. Following the administrative review, which will be conducted by the FMCSA's Associate Administrator for Enforcement, the agency will notify the carrier of its decision, which will constitute the final action of the agency. Administrative review under this section will be completed in no more than 10 days after the request is received.

Section 385.115

This section prohibits a Mexico-domiciled carrier whose registration has been revoked from reapplying for provisional operating authority or a Certificate of Registration for at least 30 days after the date of revocation. A Mexico-domiciled carrier reapplying for provisional registration will have to demonstrate to FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation of its registration and that it otherwise has effectively functioning basic safety management systems in place. Long-haul carriers will again be required to undergo a pre-authorization safety audit. FMCSA is obtaining information regarding revocations by inserting appropriate questions on the application forms developed in the companion rules amending parts 365 and 368 published elsewhere in today's **Federal Register**.

Section 385.117

This section provides that at the end of the 18-month period, the Mexico-domiciled carrier will receive permanent DOT operating authority or a Certificate of Registration if it has successfully met the requirements of the most recent safety audit or has received a Satisfactory rating, and is not currently under a notice from FMCSA to remedy its basic safety management practices. Thereafter, it will be treated like any other non-new-entrant motor carrier. If the Mexico-domiciled carrier is under a notice to remedy its basic safety management practices, its provisional designation will continue until FMCSA determines the carrier is complying with the Federal safety regulations or revokes its registration under § 385.111.

If a compliance review or safety audit has not been conducted on a Mexico-domiciled carrier within the 18-month oversight period, the provisional designation will continue until such time as FMCSA completes and evaluates a review or audit.

Compliance reviews and safety audits will normally begin within 90 to 120 days after the grant of provisional operating authority or a provisional Certificate of Registration, so that sufficient records will be available to review. FMCSA will work to ensure that all Mexico-domiciled carriers will be scheduled for an audit or compliance review within the 18-month period.

Section 385.119

This section clarifies that although FMCSA's NAFTA implementation rules will include a pre-authorization safety audit for long-haul Mexico-domiciled carriers and at least one post-operational compliance review or safety audit, this is not the exclusive safety oversight that FMCSA will apply to Mexico-domiciled carriers. FMCSA will also apply the full range of oversight and enforcement actions currently applicable to all non-new-entrant motor carriers, including civil penalties and the suspension and revocation of registration or operating authority due to persistent violations of DOT regulations governing motor carrier operations in interstate commerce.

Appendix A to Part 385

Appendix A is being added to inform Mexico-domiciled motor carriers what the evaluation criteria will be that FMCSA will use during a safety audit to rate a carrier's compliance with the FMCSRs and applicable HMRs, assess its operational safety, and assess its basic management safety management controls. The safety audit evaluation criteria are similar to the current safety rating methodology. The safety audit evaluation criteria looks at the same list of critical and acute violations as in the safety rating methodology and both use the same six factors: (1) *General:* Parts 387 and 390; (2) *Driver:* Parts 382, 383, and 391; (3) *Operational:* Parts 392 and 395; (4) *Vehicle:* Parts 393, 396, and inspection data for the last 12 months; (5) *Hazardous Materials:* Parts 171, 177, 180 and 397; and (6) Recordable Accident Rate per Million Miles. All Mexico-domiciled motor carriers who have a provisional Certificate of Registration will receive a safety audit. These carrier's safety audits will be subject to the safety audit evaluation criteria in Appendix A to part 385. All Mexico-domiciled motor carriers who receive a compliance review will be subject to the safety rating methodology detailed in Appendix B to part 385.

The safety audit evaluation criteria are based on 49 CFR 385.5 (Safety fitness standard) and § 385.7 (Factors to be considered in determining a safety rating). The FMCSA will use the evaluation process to ensure that Mexico-domiciled motor carriers have basic safety management controls in place. The evaluation process will also enable the FMCSA to focus its limited resources on examining the operations of carriers needing improvement in their compliance with the FMCSRs and the applicable HMRs.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget. However, it is anticipated that the economic impact of the revisions in this rulemaking will be minimal.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which FMCSA carries out its safety oversight responsibilities with respect to this cross-border motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large.

The Regulatory Evaluation analyzes the costs and benefits of this rule and the two companion NAFTA-related rules published elsewhere in today's **Federal Register**. Because these rules are so closely interrelated, we did not attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with conducting pre-authorization safety audits, safety audits within 18 months of a carrier's receiving provisional Certificate of Registration, compliance reviews within 18 months of a carrier's receiving provisional operating authority, and the loss of a carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over ten years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)(Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of FMCSA's three companion NAFTA-related rules is the requirement that Mexico-domiciled carriers operating in the United States complete a Form MCS–150 -Motor Carrier Identification Report, and update the information submitted in the appropriate application form (OP–1(MX) or OP–2) when key information changes. This will allow FMCSA to better monitor these carriers and to quickly determine whether their safety or OOS record changes.

The more stringent oversight procedures will also allow FMCSA to respond more quickly when safety problems emerge. The safety audits, compliance reviews and CVSA inspections will provide FMCSA with more detailed information about Mexico-domiciled carriers, and allow FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to enhance the safety of Mexico-domiciled carriers operating in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, combined with the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications and the pre-authorization safety audit of Mexico-domiciled carriers seeking to operate beyond the border zones, are a means of ensuring that:

(1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply);

(2) Mexico-domiciled applicants conduct operations in the United States in accordance with their application certifications and the conditions of their registrations; and

(3) The safety performance of Mexico-domiciled applicants is at least equal to that of United States and Canadian carriers operating in the United States.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to FMCSA has been increased; and we estimate that they will spend two additional hours gathering data for the OP–1(MX) and OP–2 application forms. Mexico-domiciled carriers will also have to undergo safety audits, an increased number of CVSA roadside inspections and compliance reviews, if they operate beyond the border zones. We presented three growth scenarios in the regulatory evaluation: a high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System (MCMIS) census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile carrier had only 15 trucks or buses.

These rules should not have any impact on small United States based motor carriers.

FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Most covered carriers will be required to spend two extra hours to complete the relevant forms, undergo at least one safety audit at four hours each, have their trucks inspected more frequently and, if they obtain long-haul authority, undergo a compliance review taking six hours. This part 385 interim final rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority or Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small United States carriers already have to comply with the paperwork requirements in part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the part 385 provisions, FMCSA believes the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in assuring the safety of Mexico-domiciled carriers

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operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

The part 385 requirements include performance standards. A Mexico-domiciled carrier will need to complete a safety improvement plan if its performance demonstrates that it is not operating safely, either through a high OOS rate or other problems.

Therefore, FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes proposed in this rulemaking would not have an impact of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children. The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045.

This rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. This rule also does not concern an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Nonetheless, the agency has conducted a programmatic environmental assessment as discussed later in this preamble.

Executive Order 12630 (Taking of Private Property)

This final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor or require through regulations. FMCSA has determined that this regulation does not constitute an information collection with the scope or meaning of the PRA.

FMCSA performs safety compliance assessments and enforcement activities as required by statutes and the FMCSRs. Implementation of this proposal would create no additional paperwork burden on Mexico-domiciled carriers that comply with the FMCSRs. Any safety data that FMCSA solicits from individual motor carriers regarding deficiency and/or non-compliance is not considered a collection of information because this type of response is required of such carriers as part of the usual and customary compliance and enforcement practice under the FMCSRs. Accordingly, FMCSA has determined that this action would not affect any requirements under the PRA.

National Environmental Policy Act

FMCSA is a new administration within the Department of Transportation (DOT). FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). FMCSA expects the draft Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

FMCSA invites comments on the programmatic environmental assessment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FMCSA amends 49 CFR part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5113, 13901–13905, 31136, 31144, 31148, and 31502; Section 350 of Public Law 107–87; and 49 CFR 1.73.

2. Sections 385.1 through 385.19 are designated as Subpart A-General, and a new Subpart B is added consisting of new §§ 385.101 through 385.119 to read as follows:

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

Sec.

385.101 Definitons.
385.103 Safety monitoring system.
385.105 Expedited action.
385.107 The safety audit.
385.109 The compliance review.
385.111 Suspension and revocation of Mexico-domiciled carrier registration.
385.113 Administrative review.
385.115 Reapplying for provisional registration.
385.117 Duration of safety monitoring system.
385.119 Applicability of safety fitness and enforcement procedures.

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

§ 385.101 Definitions

Compliance Review means a compliance review as defined in § 385.3 of this part.

Provisional certificate of registration means the registration under § 368.6 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation of property within the United States solely within the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant does not demonstrate that it is exercising basic safety management controls during the safety monitoring period established in this subpart.

Provisional operating authority means the registration under § 365.507 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

§ 385.103 Safety monitoring system.

(a) *General.* Each Mexico-domiciled carrier operating in the United States will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) *Roadside monitoring.* Each Mexico-domiciled carrier that receives provisional operating authority or a provisional Certificate of Registration will be subject to intensified monitoring through frequent roadside inspections.

(c) *CVSA decal.* Each Mexico-domiciled carrier granted provisional operating authority under part 365 of this subchapter must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector.

(d) *Safety audit.* The FMCSA will conduct a safety audit on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier a provisional Certificate of Registration under part 368 of this subchapter.

(e) *Compliance review.* The FMCSA will conduct a compliance review on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this subchapter.

§ 385.105 Expedited action.

(a) A Mexico-domiciled motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety audit or compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor. An invalid Licencia Federal de Conductor includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in § 173.403 of this title;

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in § 173.50 of this title; or

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in §§ 173.115, 173.132, or 173.133 of this title.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or compliance review, as appropriate, during the provisional registration period.

§ 385.107 The safety audit.

(a) The criteria used in a safety audit to determine whether a Mexico-domiciled carrier exercises the necessary basic safety management controls are specified in Appendix A to this part.

(b) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier has adequate basic safety management controls, the FMCSA will provide the carrier written notice of this finding as soon as practicable, but not later than 45 days after the completion of the safety audit. The carrier's Certificate of Registration will

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remain provisional and the carrier's on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier's basic safety management controls are inadequate, it will initiate a suspension and revocation proceeding in accordance with § 385.111 of this subpart.

(d) The safety audit is also used to assess the basic safety management controls of Mexico-domiciled applicants for provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border under § 365.507 of this subchapter.

§ 385.109 The compliance review.

(a) The criteria used in a compliance review to determine whether a Mexico-domiciled carrier granted provisional operating authority under § 365.507 of this subchapter exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) *Satisfactory Rating.* If the FMCSA assigns a Mexico-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, the FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's operating authority will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) *Conditional Rating.* If the FMCSA assigns a Mexico-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with § 385.111 of this subpart. The carrier's provisional operating authority will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory Rating.* If the FMCSA assigns a Mexico-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with § 385.111 of this subpart.

§ 385.111 Suspension and revocation of Mexico-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under this subpart, or a safety audit conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, the FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review or safety audit contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(c) If the carrier demonstrates that the compliance review or safety audit contained material error, its registration will not be suspended. If the carrier fails to show a material error in the safety audit, the FMCSA will issue an Order:

(1) Suspending the carrier's provisional operating authority or provisional Certificate of Registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its provisional operating authority or provisional Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of subparagraphs (a) through (c) of this section will apply, except that its provisional registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a safety audit or compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by § 385.105 of this subpart, the FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) A safety audit determines that the carrier exercises basic safety management controls necessary for safe operations;

(2) The carrier is rated Satisfactory or Conditional after a compliance review; or

(3) The FMCSA determines, following review of the carrier's response to a demand for corrective action under § 385.105, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the violations specified in § 385.105(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. The FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged violation(s). If the carrier fails to demonstrate that it did not commit the violation(s), the FMCSA will issue an Order revoking its provisional operating authority or provisional Certificate of Registration.

(g) If the FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its provisional operating authority or provisional Certificate of Registration should not be revoked. If the carrier fails to make the necessary showing, the FMCSA will revoke its registration.

(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed $10,000 for each offense.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§ 385.113 Administrative review.

(a) A Mexico-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

(c) The carrier's request must explain the error it believes the FMCSA committed in assigning the safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration and include any information or documents that support its argument.

(d) The FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final agency action.

§ 385.115 Reapplying for provisional registration.

(a) A Mexico-domiciled motor carrier whose provisional operating authority or provisional Certificate of Registration has been revoked may reapply under part 365 or 368 of this subchapter, as appropriate, no sooner than 30 days after the date of revocation.

(b) The Mexico-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit if it applies for provisional operating authority under part 365 of this subchapter.

§ 385.117 Duration of safety monitoring system.

(a) Each Mexico-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its provisional Certificate of Registration or provisional operating authority, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the FMCSA has not been able to conduct a safety audit or compliance review, the carrier will remain in the safety monitoring system until a safety audit or compliance review is conducted. If the results of the safety audit or compliance review are satisfactory, the carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's provisional operating authority or provisional Certificate of Registration is suspended under § 385.111(a) of this subpart, the carrier will remain in the safety monitoring system until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's provisional operating authority or provisional Certificate of Registration under § 385.111(c) of this subpart.

§ 385.119 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexico-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

3. Part 385 is amended by adding a new Appendix A to read as follows:

Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria

I. General

(a) Section 210 of the Motor Carrier Safety Improvement Act (49 U.S.C. 31144) directed the Secretary to establish a procedure whereby each owner and each operator granted new authority must undergo a safety review within 18 months after the owner or operator begins operations. The Secretary was also required to establish the elements of this safety review, including basic safety management controls. The Secretary, in turn, delegated this to the FMCSA.

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A "safety audit evaluation criteria" was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for a provisional operating authority or provisional Certificate of Registration has basic safety management controls in place. The term "safety audit" is the equivalent to the "safety review" required by Sec. 210. Using "safety audit" avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

(c) The safety audit evaluation process developed by the FMCSA is used to:

1. Evaluate basic safety management controls and determine if each owner and each operator is able to operate safely in interstate commerce; and

2. Identify owners and operators who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before they are granted permanent registration.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. This tool was developed to assist auditors and investigators in assessing the adequacy of a new entrant's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled motor carrier's operation and is used to:

1. Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;

2. Meet the requirements of Section 350 of the DOT Appropriations Act; and

3. In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in the driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Determining if the Carrier Has Basic Safety Management Controls

(a) During the safety audit, the FMCSA gathers information by reviewing a motor carrier's compliance with "acute" and "critical" regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called "factors." The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are:

1. Factor 1—General: Parts 387 and 390;

2. Factor 2—Driver: Parts 382, 383 and 391;

3. Factor 3—Operational: Parts 392 and 395;

4. Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

5. Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

6. Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

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A. Vehicle Factor

(a) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (Part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

1. If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor; and

2. If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(b) Over two million inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. The Accident Factor

(a) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(c) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the national average accident rate in Fiscal Years 1994, 1995, and 1996.

(d) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

C. Factor Ratings

For Factors 1 through 5, if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

If the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

IV. Overall Determination of the Carrier's Basic Safety Management Controls

If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its provisional operating authority or provisional Certificate of Registration revoked.

For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

In this example, the carrier scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors. FMCSA will require corrective action in order to avoid having the carrier's provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–5892 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Tuesday,
March 19, 2002

Part V

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 385

Certification of Safety Auditors, Safety Investigators, and Safety Inspectors; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 385

[Docket No. FMCSA–2001–11060]

RIN 2126–AA64

Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FMCSA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) by designating the current safety fitness regulations and adding Certification of Safety Auditors, Safety Investigators, and Safety Inspectors regulations. Section 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) requires that a certified motor carrier safety auditor perform any safety audit or compliance review conducted after December 31, 2002. This rule establishes procedures to certify and maintain certification for auditors and investigators. In addition, it requires certification for State or local government Motor Carrier Safety Assistance Program (MCSAP) employees performing driver/vehicle roadside inspections.

DATES: This rule is effective June 17, 2002. We must receive your comments by May 20, 2002.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The fax number is (202) 493–2251. Comments to the web site (*http://dmses.dot.gov/submit*) may be typed on-line. You must include the docket number that appears at the heading of this document in your comments. You may examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You may also review the docket on the Internet at *http://dms.dot.gov*. If you want notification of receipt of comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgement page.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Office of Bus & Truck Standards and Operations, (202) 366–4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159). Section 211 of the MCSIA requires the Secretary of Transportation to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors to conduct safety inspection audits and reviews. The legislation also gives the Secretary oversight responsibility for the motor carrier auditors and investigators it certifies, including the authority to decertify them. As enacted by Section 211(a), 49 U.S.C. 31148(b) and (c) read as follows:

(b) *Certified Inspection Audit Requirement.*—Not later than 1 year after completion of the Rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 313, or 315 of this title and performed after December 31, 2002, shall be conducted by—

(1) A motor carrier safety auditor certified under subsection (a); or

(2) A Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

(c) *Extension.*—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

The FMCSA is implementing Section 211 by establishing three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside inspections. FMCSA or State or local government MCSAP employees qualified to perform compliance reviews on December 9, 1999, are grandfathered by 49 U.S.C. 31148(b)(2) and are not required to be certified under this rule.

The FMCSA is also grandfathering Federal, or State or local MCSAP, employees who had not been hired, or had not yet completed their normal training on December 9, 1999, but were fully trained and performing compliance reviews or roadside inspections before June 17, 2002, when we are closing the grandfather period.

We believe this complies with congressional intent, since these employees received the same kind of training as those statutorily grandfathered on December 9, 1999. Moreover, requiring these employees to repeat such training would impose unnecessary costs on their agencies and burdensome time constraints on the employees themselves, keeping them from performing their important, safety-related functions.

Grandfathered employees are treated as though they had been certified through the procedures described in this rule. As such, they are also required to maintain their virtual certification by completing the required training updates.

The FMCSA is augmenting its procedures for assessing the safety performance of motor carriers by adding a new tool, a safety audit. The agency is treating the term "safety inspection audit or review " used in Section 211 as equivalent to the "safety review" of new entrants into the motor carrier industry which is mandated by Sec. 210 of the MCSIA. The two provisions are closely related. Under Section 210, the Secretary is required to "establish the elements of the safety review," which implies that it may be something less than a full compliance review pursuant to Part 385. The safety review is to be phased in "in a manner that takes into account the availability of certified motor carrier safety auditors" (49 U.S.C. 31144(c)(3), enacted by Section 210). Section 211 contemplates the use of certified auditors to perform the "safety inspection audits and reviews" that are "required by, or based on the authority of (chapter 311) or chapter 5, 313, or 315 of" title 49, United States Code. FMCSA expects that such audits will be performed by FMCSA employees or by State inspectors. The language of section 211 authorizes non-government personnel to conduct the safety review required of new entrants. FMCSA seeks comments on the advisability of certifying non-government employees that meet all training and experience criteria to conduct safety reviews as provided in the IFR. In the interest of simplicity, the FMCSA will use the single term "safety audit" in the remainder of this document, and in a subsequent rulemaking to implement Section 210.

The term "safety audit" avoids any possible confusion with the safety reviews previously conducted by the agency, which were discontinued on September 30, 1994. A safety audit will provide educational and technical assistance to new entrant motor carriers and gather critical safety data needed to make an assessment of these carriers' safety performance and basic safety management controls. It will only be used to review carriers identified as new entrants, i.e., those registering for a USDOT identification number.

Currently, the FMCSA relies on the compliance review, an in-depth review, to assess a carrier's safety performance and compliance with the FMCSRs and applicable hazardous materials regulations (HMRs). They are typically performed only on motor carriers with poor performance, high accident rates, high vehicle or driver out-of-service rates, past poor compliance, or those against which non-frivolous complaints have been lodged. A compliance review performed on a motor carrier's operations usually results in a determination whether the carrier meets FMCSA's safety fitness standard.

Compliance reviews are performed on shippers of hazardous materials, but do not result in a safety rating, as shippers of hazardous materials are not subject to the FMCSRs.

The compliance review also provides recommendations to assist the carrier or hazardous materials shipper to attain full compliance with the regulations. Approximately 30% of compliance reviews result in enforcement actions.

The compliance review will retain its current procedures, report format, and purpose—to evaluate a motor carrier's safety fitness—and may trigger enforcement action. The FMCSA or the State MCSAP agency will certify Federal or State personnel to conduct compliance reviews and safety audits.

All individuals who conduct safety audits, compliance reviews, or driver/vehicle roadside inspections will be required to maintain their certification by performing a specific number of safety audits, compliance reviews, or inspections annually, with acceptable quality, and by successfully completing any required training. Failing to successfully complete training, or to demonstrate proficiency in conducting audits, reviews, or inspections, requires the individual to repeat the requirements established by the FMCSA for conducting safety audits, compliance reviews, or inspections.

The FMCSA is amending the MCSAP regulations to require that each State or local government participating in MCSAP certify that its employees performing safety audits, compliance reviews, and driver/vehicle roadside inspections meet minimum Federal training, experience, and proficiency standards (see 49 CFR 350.211(17)). These standards will be posted on the FMCSA website (*www.fmcsa.dot.gov*). This certification process is appropriate in that participating MCSAP States and local agencies already determine if their employees are qualified based on Federal standards. It also relieves them of the potential burden of requiring State or local government employees to travel out of state to be trained or to maintain their certifications to perform compliance reviews, safety audits, or roadside inspections.

The FMCSA is not including specific training requirements in this regulation. The agency needs flexibility to modify course content quickly to match changes in the FMCSRs and HMRs, or to adapt other elements of the training process to changed circumstances. Codification would make the program inflexible and difficult to manage.

The certification requirements, however, will be posted on the FMCSA website (*www.fmcsa.dot.gov*) and available in hard copy at its Washington, DC, headquarters. These requirements will include the successful completion of a training course covering the FMCSRs and HMRs. Certification and maintenance requirements will be updated as necessary to reflect changes in the safety regulations. The training course will thus remain current. FMCSA will work with the States and other stakeholders as we consider and develop any amendments to the training requirements.

This interim final rule is effective on June 17, 2002. Under the fiscal year 2002 DOT Appropriations Act (Public Law 107–87; December 18, 2001), Congress directed that as a precondition to processing applications of Mexico-domiciled carriers for authority to operate beyond the commercial zone, FMCSA must issue an interim final rule on this statutory requirement. This regulation only imposes a requirement to be certified as provided for in the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Pub. L. 106–159). Certification of Federal safety investigators and State or local government employees participating in MCSAP who perform compliance reviews or driver/vehicle roadside inspections, means that these officials have successfully completed certain training programs. These training requirements have been in effect for a number of years, and the rule imposes no new burdens on such officials. The rule also creates a new kind of review—the "safety audit"—and a corresponding certification, but the training required to be certified as a safety auditor is simply a less comprehensive version of that required to conduct compliance reviews and driver/vehicle roadside inspections. Because of Congress' direction and the limited impact of the regulations, FMCSA finds that there is good cause that notice and comment are contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. The subject of requirements for certification of safety auditors, investigators and inspectors will likely generate considerable public interest within the meaning of Executive Order 12866. We have classified the rule as significant because of the high level of public and congressional interest in the program.

The IFR establishes the safety certification process for persons who conduct safety audits, compliance reviews, and safety inspections. This IFR will have minimal or no economic impact. The FMCSA has developed training material and requirements for the three types of certifications to ensure uniform implementation with respect to all persons who must comply with the rule. To maintain certification, individuals must conduct a minimum number of safety activities (i.e., audits, reviews, or inspections) per year. The FMCSA may develop other specific standards regarding initial certification or maintaining certification. However, Federal and State employees who

currently conduct compliance reviews and safety inspections will not have to undergo any additional training to comply with this rule. They would only be required to meet the new standards regarding maintenance of certification. States will be required to certify that their employees meet minimal Federal standards as part of their continued participation in the Motor Carrier Safety Assistance Program (MCSAP).

Currently, Federal employees who perform compliance reviews (CRs) or roadside inspections undergo an extensive training program, such as a six-week academy training class for safety investigators and a variety of refresher courses for those performing CRs. State employees who conduct these reviews or inspections under the Motor Carrier Safety Assistance Program have training requirements that are comparable to, or as effective as, the Federal program. The agency believes that the training required for initial certification of new Federal or State employees assigned to conduct safety activities will be similar to the training that these individuals currently undergo. While there may be some additional training material developed and taught due to regulatory or program changes, it is unlikely that there will be any measurable increase in the amount of time trainees must spend in class. Any extra material would most likely be offset by reduction in the amount of time spent on topics that require less classroom instruction to master the concepts. Accordingly, we do not believe that this rule will impose any new costs on Federal or State employees who undergo training. If there are costs imposed on State agencies, those expenses are eligible expenses under the MCSAP program and as such would be paid through the program as opposed to being paid by the States.

Although the benefits of this IFR cannot be quantified at this time, we believe this rulemaking will ensure greater uniformity and consistency in the quality of safety audits, compliance reviews, and roadside inspections, than would otherwise exist. Under the IFR, Federal or State employees will have to complete a minimum number of safety activities (safety audits, compliance reviews, roadside inspections) to maintain their certifications. This should ensure consistency in the quality of the reviews and inspections, and thereby increase the likelihood that enforcement officials identify unsafe motor carriers, drivers, and vehicles during safety activities. The ultimate result should be a reduction in crashes, injuries and fatalities. (See OMCHS Safety Program Performance Measures: Assessment of Initial Models and Plans for Second Generation Models, 1999, for an analysis of the safety impact of compliance reviews. A copy of this analysis is available in the docket described above under **ADDRESSES**).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities. This rule is directed at certifying federal and state safety auditors, investigators, and inspectors. Federal and State employees who currently conduct compliance reviews and safety inspections will not have to undergo any additional training to comply with this rule. Therefore, we have determined that there would be minimal or no economic impact on motor carriers, including small entities. We therefore certify that it would not have a significant impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal does not contain new collection of information requirements for the purpose of the PRA.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it sets standards for personnel who want to serve as safety auditors and has no direct relation to energy consumption. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects

49 CFR Part 350

Highway safety, Motor carriers, and Commercial Motor Carrier Safety Assistance Program.

49 CFR Part 385

Highway safety, Motor carriers, and Safety fitness procedures.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 350 is amended as set forth below:

1. The authority citation for Part 350 is revised to read as follows:

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31144, 31148, 31161, 31310–31311, 31502; and 49 CFR 1.73.

2. Amend § 350.211 by adding (17).

§ 350.211 What is the format of the certification required by § 350.209?

* * * * *

(17) The State or a local recipient of MCSAP funds will certify that it meets the minimum Federal standards set forth in 49 CFR part 385, Subpart C, for training and experience of employees performing safety audits, compliance reviews, or driver/vehicle roadside inspections.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 385 is amended as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

3. The authority citation for Part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5113, 13901–13905, 31136, 31144, 31148, and 31502; Section 350 of Public Law 107–87; and 49 CFR 1.73.

4. Amend paragraph 2 in the definition of *Reviews* in § 385.3 to read as follows:

§ 385.3 Definitions.

Reviews. For the purposes of this part:

* * * * *

(2) *Safety Audit* means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

6. Part 385 is amended by adding a new Subpart C to read as follows:

Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

Sec.

385.201 Who is qualified to perform a review of a motor carrier?
385.203 What are the requirements to obtain and maintain certification?
385.205 How can a person who has lost his or her certification be re-certified?

§ 385.201 Who is qualified to perform a review of a motor carrier?

(a) An FMCSA employee, or a State or local government employee funded through MCSAP, who was qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit or roadside inspection if he or she complies with § 385.203(b).

(b) A person who was not qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit or roadside inspection after complying with the requirements of § 385.203(a).

§ 385.203 What are the requirements to obtain and maintain certification?

(a) After June 17, 2002, a person who is not qualified under § 385.201(a) may not perform a compliance review, safety audit, or roadside inspection unless he or she has been certified by FMCSA or a State or local agency applying the FMCSA standards after successfully completing classroom training and examinations on the FMCSRs and HMRs as described in detail on the FMCSA website (*www.fmcsa.dot.gov*). These employees must also comply with the maintenance of certification/qualification requirements of paragraph (b) of this section.

(b) *Maintenance of certification/qualification.* A person may not perform a compliance review, safety audit, or roadside inspection unless he or she meets the quality-control and periodic re-training requirements adopted by the FMCSA to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs. These maintenance of certification/qualification requirements are described in detail on the FMCSA website (*www.fmcsa.dot.gov*).

(c) The requirements of paragraphs (a) and (b) of this section for training, performance and maintenance of certification/qualification, which are described on the FMCSA website (*www.fmcsa.dot.gov*), are also available in hard copy from the Office of Professional Development and Training, FMCSA, 400 7th Street, SW., Washington, DC 20590.

§ 385.205 How can a person who has lost his or her certification be re-certified?

He or she must successfully complete the requirements of § 385.203(a) and (b).

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–5894 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–EX–P

VOL
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ISS
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MR
19
2002
UMI

Federal Register

Tuesday,
March 19, 2002

Part VI

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 393

Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs); Proposed Rule

VOL
67
ISS
53
MR
19
2002
UMI

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–01–10886]

RIN 2126–AA69

Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) so that motor carriers ensure that each commercial motor vehicle (CMV) they operate in interstate commerce displays a label certifying that the vehicle complies with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect on the date of manufacture. This rulemaking ensures that all motor carriers operating CMVs in the United States use only vehicles that were certified by the manufacturer as meeting all applicable Federal safety performance requirements.

DATES: Comments must be received on or before May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments electronically at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

Background

Part 567 of title 49 of the Code of Federal Regulations (49 CFR part 567) requires that manufacturers of motor vehicles built for sale or use in the United States must affix a label certifying that the motor vehicle meets the applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect on the date of manufacture.[1] Part 567 provides detailed requirements concerning the location at which the label must be placed and the minimum information that must appear on the label. These requirements are applicable to manufacturers of motor vehicles produced for use in the United States and the label must be affixed prior to the first sale of the vehicle.

The National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") (49 U.S.C. 30101, *et seq.*) expressly prohibits vehicles from being imported into the United States unless the vehicles—

(a) Comply with all applicable FMVSSs in effect on the date of manufacture, and

(b) Bear a label certifying compliance with the FMVSSs and applied to the vehicle either by a manufacturer at the time of manufacture or by a registered importer after the vehicle has been brought into compliance.[2]

This statutory requirement is currently codified at 49 U.S.C. 30112. The regulations implementing the statute, including 49 CFR parts 567 and 571, are issued and enforced by the National Highway Traffic Safety Administration (NHTSA).

Effect of the Vehicle Safety Act on U.S.-Based Motor Carrier Operations

Generally, U.S.-based motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce only have access to vehicles that were either originally manufactured domestically for use in the United States and have the required certification label, or vehicles that were imported into the United States in accordance with the applicable NHTSA importation regulations, including requirements for certification documentation. Vehicles imported into the United States must have the required certification label certifying compliance with the applicable FMVSSs. Therefore, from a practical standpoint, almost all vehicles operated by U.S.-based motor carriers have certification labels that meet the requirements of 49 CFR part 567.[3]

Effect of the Vehicle Safety Act on Canada and Mexico-Based Motor Carriers

Commercial motor vehicles operated in the United States by Canada and Mexico-based motor carriers must also comply with the FMVSSs and bear a certification label. NHTSA issued an interpretation letter in 1975 stating that the statutory prohibition against importing vehicles that do not meet the FMVSSs and bear a certification label (49 U.S.C. 30112) is applicable to foreign-based CMVs used in the United States. Therefore, the commercial use of CMVs to transport passengers or cargo into the United States constitutes importation of the vehicle into the United States.

This means that Canada and Mexico-based motor carriers are responsible for taking the necessary actions to comply with the Vehicle Safety Act before operating CMVs in the United States. The Department of Transportation advised Mexico and Canada-based motor carriers about this requirement in its November 1995 Motor Carrier Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a North American Free Trade Agreement (NAFTA) conference held in San Antonio, TX on November 14–16, 1995.

In a companion notice of proposed rulemaking published in today's **Federal Register**, NHTSA proposes to codify its interpretation of the definition of import for the purpose of enforcing the requirements of 49 U.S.C. 30112 with respect to operators of CMVs transporting cargo and passengers.

[1] These standards are codified in 49 CFR part 571. Most, but not all, of the FMVSSs are cross-referenced in existing requirements of part 393.

[2] An individual or business registered with NHTSA as a registered importer may import non-complying motor vehicles into the United States if NHTSA has determined that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. The registered importer must provide the Federal Government with a bond at least equal to the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before the vehicle may be sold and the bond released.

[3] The FMVSSs and the certification label requirement are not applicable to vehicles or items of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformance with contract specifications (49 CFR 571.7). Therefore, when a motor carrier purchases surplus equipment from the Armed Forces for subsequent use in interstate commerce, the vehicle may not have a certification label. However, because the FMCSRs cross-reference most of the FMVSSs, the motor carrier would be required to ensure that the vehicle was retrofitted to meet the referenced standards as well as all applicable motor carrier regulations.

Safety Concerns About Vehicles Operated by Foreign Motor Carriers

With the implementation of the motor carrier-related provisions of the North American Free Trade Agreement (NAFTA), much more attention has been focused on the safety of commercial motor vehicles operated by Canada and Mexico-based carriers. Representatives of the U.S. motor carrier industry have expressed concerns to the Department of Transportation that vehicles operated by foreign motor carriers were not manufactured to meet all the applicable U.S. safety requirements; specifically, all the FMVSSs in effect on the date of manufacture of the vehicles.

Canada-Based Commercial Motor Vehicles

The vehicles operated by Canada-based motor carriers are manufactured to comply with the Canadian Motor Vehicle Safety Standards (CMVSSs) that are, to a large extent, comparable to the U.S. safety requirements. In many instances, provisions of the CMVSSs are identical to requirements in the FMVSSs. Manufacturers of vehicles sold for use in Canada must certify compliance with the CMVSSs and the vehicles must bear a Canadian certification label.

Generally, commercial motor vehicles operated by Canada-based motor carriers in the United States would not have a certification label that meets the requirements of 49 CFR part 567. Although these vehicles do not have certification labels that meet U.S. requirements, the vehicles meet most, if not all, U.S. safety requirements because of the similarities between the two sets of safety standards.

Despite the similarity between U.S. and Canadian vehicle manufacturing standards, the operation of commercial motor vehicles into the United States by Canada-based carriers does constitute an import. Thus, a Canadian carrier that uses vehicles that do not bear a certification of compliance with the FMVSSs would be required to obtain a certification label for each vehicle under this proposed rule.

Mexico-Based Commercial Motor Vehicles

The vehicles operated by Mexico-based motor carriers are manufactured to comply with safety requirements established by the Mexican government. Currently, Mexico does not have a series of motor vehicle safety standards similar to those of the United States and Canada. Therefore, commercial motor vehicles operated by Mexico-based motor carriers in the United States typically would not have a certification label that meets the requirements of 49 CFR part 567 unless the manufacturer built the vehicle to meet the FMVSSs and voluntarily affixed a label certifying compliance with the U.S. requirements. It is unclear how many vehicles produced for use in Mexico meet all applicable U.S. safety requirements.

Since the operation of commercial motor vehicles into the United States by Mexico-based carriers constitutes importation, a Mexican carrier using vehicles that do not bear a certification of compliance with the FMVSSs would be required to obtain a certification label for each vehicle under this proposed rule.

U.S. Consultations With Canada and Mexico About the Vehicle Safety Act

NHTSA and FMCSA personnel met with representatives of the Mexican and Canadian governments and Mexican manufacturers and trucking industry associations in Mexico City on June 20, 2001. NHTSA and FMCSA staff were told by Mexican vehicle manufacturers that most Mexican commercial vehicles built since 1994 were built to meet the FMVSSs. Currently, there are approximately 400,000 trucks and buses that operate on the Federal roads in Mexico. About 130,000 of those vehicles were built since 1994 and may comply with the FMVSSs. Most of these 130,000 trucks and buses, however, do not have a FMVSS certification label because it is not required for vehicles manufactured for sale and use in Mexico.

NHTSA, FMCSA, the United States Customs Service (USCS), and the Environmental Protection Agency (EPA) conducted a follow-up seminar in Mexico on August 2–3, 2001, to advise representatives of Mexican vehicle manufacturers and the motor carrier industry about U.S. requirements. During the seminar, the Mexican vehicle manufacturers, most of which are affiliated with U.S. and European vehicle manufacturers that build vehicles for the U.S. market, indicated that, if permitted to do so, they would consider applying a certification label retroactively depending on the results of their review of vehicle test data, and their ability to make a determination that a particular vehicle or group of vehicles met all applicable FMVSSs in effect on the date of manufacture.

Although FMCSA's safety regulations require that all motor carriers operating in the United States meet the same safety requirements, without exception, the FMCSRs do not currently include a requirement that vehicles have a label certifying compliance with the FMVSSs. The FMCSRs include numerous cross-references to specific FMVSSs that have the effect of requiring all motor carriers to ensure that their vehicles are equipped with most of the safety features/equipment required by the FMVSSs. However, FMCSA's rules do not currently require that motor carriers' CMVs carry a label to verify that the vehicle manufacturer followed the FMVSS self-certification process.

The absence of an FMCSA rule to require motor carriers to comply with 49 U.S.C. 30112 means that motor carriers could use uncertified commercial vehicles that may not meet all of the applicable FMVSSs, and not be subject to effective enforcement action by the Department of Transportation. The Department believes this is an unacceptable situation and that FMCSA should exercise its statutory authority over motor carrier operational safety to require motor carriers to comply with 49 U.S.C. 30112.

FMCSA's Regulatory Authority

NHTSA and the FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA's responsibility generally covers the design and safety compliance testing of motor vehicles, and the motor vehicle manufacturers and others responsible for those activities. FMCSA's responsibility concerns the safe operation of CMVs in interstate and foreign commerce, the motor carriers conducting the operations, and the CMV drivers.

Generally, enforcement of the FMVSSs by FMCSA and its State partners would be accomplished through roadside inspections. Under current roadside inspection enforcement procedures, if violations or deficiencies of the FMCSRs are serious enough to meet the current out-of-service criteria, the vehicle is placed out of service. The roadside inspection procedure is the same for all CMVs operated in the United States, regardless of the motor carrier's country of domicile.

If FMCSA adopts the proposed rule requiring that motor carriers ensure that their vehicles display a valid certification label, the agency and its State partners would then be able to enforce the section 30112 prohibition against the use or importation of non-compliant CMVs by citing motor carriers that fail to display the required certification label on their CMVs operated in the United States. Enforcement action would be taken in a manner consistent with the FMCSA's existing policies and programs as they relate to assuring compliance with other

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vehicle-oriented regulations under 49 CFR part 393.[4] As it does with other FMCSR violations, the agency will compile data regarding uncertified vehicles and determine whether there are patterns of non-compliance by specific foreign motor carriers.

Discussion of Proposal

The FMCSA is proposing to amend the FMCSRs to require that motor carriers ensure that their CMVs have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer. As explained above, U.S. motor carriers typically would only have access to vehicles that meet the applicable FMVSSs and have a certification label that meets the requirements of 49 CFR part 567. Therefore, it is not expected that they would have to change the way they operate to comply with the requirements being proposed today. However, the rule would place upon them the responsibility for maintaining the label affixed by the manufacturer or registered importer.

In a companion document published in today's **Federal Register**, NHTSA is announcing its policy concerning the retroactive application of a certification label to vehicles that complied with the FMVSSs when they were built, or that subsequently had been modified to comply with the FMVSSs. This policy provides guidance to manufacturers that would make the determination whether the vehicles manufactured for use by Canada and Mexico-based motor carriers were originally built to meet the applicable FMVSSs, or whether the vehicles have been modified appropriately to meet U.S. standards.

Canada and Mexico-based motor carriers would have to contact the manufacturers of their vehicles to determine whether the vehicle meets U.S. safety standards for those cases in which the vehicle does not have a certification label. If the vehicle manufacturer has sufficient vehicle performance test data and is willing to provide a certification label, then the motor carrier would use that label to satisfy the requirements of the proposed rules.

If the vehicle manufacturer were unable or unwilling to provide certification labels, motor carriers would have the option of contacting a registered importer in the United States. The registered importer would then determine, in accordance with NHTSA's rules, whether the vehicle is eligible for importation into the United States, and what modifications, if any, are necessary before the vehicle could be certified as meeting the FMVSSs.

Proposed Effective Date and Compliance Date

The FMCSA is proposing that U.S. motor carriers comply with the certification label rule beginning on the effective date of the final rule. The agency is also proposing that foreign motor carriers that begin operations in the United States on or after that date, or expand their operations to go beyond the southern border zones, ensure that all CMVs used in the new or expanded operations have the necessary certification label prior to entering the United States. Among the foreign motor carriers included would be all Mexico-based motor carriers operating beyond the border zones for the first time. All other Canada and Mexico-based motor carriers operating in the United States prior to the effective date of the final rule would be allowed 24 months to bring their vehicles into compliance with the requirements, provided those vehicles were operated in the United States before the effective date.[5] This 24-month phase-in period would not apply to vehicles introduced into service in the United States on or after the effective date of the final rule. Those vehicles would have to display the necessary certification label if they enter the United States.

The FMCSA stresses that all motor carriers operating in the United States must comply with all applicable FMCSRs, including those that cross-reference FMVSSs. Through our cross-references to FMVSSs, we require motor carriers to ensure that their CMVs are equipped with specific safety devices and systems that NHTSA requires on newly manufactured vehicles, and that they are maintained to ensure their continued performance. The roadside inspection program, particularly the Level 1 inspection, will ensure that this is the case, to the greatest extent practicable. For purposes of roadside enforcement, the FMVSS label would be prima facie evidence of compliance with the proposed rule. Its presence, combined with having passed a thorough inspection by trained safety enforcement officials, would ensure that CMVs comply with U.S. motor carrier safety regulations. The 24-month timetable would not relieve these motor carriers from their responsibility for complying with the FMCSRs, including the FMVSSs cross-referenced therein.

This 24-month timetable would be compatible with FMCSA's NAFTA-related rulemakings published in today's **Federal Register**. Current Mexico-based holders of Certificates of Registration will be required to file new registration applications within 18 months in order to continue to operate in the border zones. These motor carriers will operate under provisional authority and be subjected to a new safety oversight program for an 18-month period after the new registration application is granted. If FMCSA determines a motor carrier has adequate safety-management controls, its provisional authority will become permanent at the end of the 18-month period. *See* the FMCSA's final rule concerning authority to operate in the border zones, and the agency's Interim Final Rule concerning the safety oversight program for Mexico-domiciled carriers, published in today's **Federal Register**.

The proposed implementation strategy would allow motor carriers currently operating CMVs in the United States that do not currently carry FMVSS certification labels sufficient time to rearrange or supplement their existing fleets to meet the requirement that all vehicles on the U.S. roadways have a FMVSS certification label. During this grace period, foreign-based CMVs would still be subject to all other FMCSA requirements, including those based on the FMVSSs cross-referenced in the FMCSRs. FMCSA requests public comments on the implementation strategy in general, and the 24-month grace period for Canada and Mexico-based motor carriers that are currently operating in the United States.

Rulemaking Analyses And Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this proposed regulatory action is significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT because of the level of public interest in rulemakings related to the motor carrier-related provisions of NAFTA.

This proposed rule would require that all CMVs bear a label certifying that the vehicle meets all applicable FMVSSs in effect on the date of manufacture. Based on the information presented here, FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. It is extremely unlikely that any U.S.-based motor carriers would be operating CMVs that do not already carry the FMVSS certification label. Most foreign-based motor carriers are probably aware of the requirement that the vehicles they operate in the United States must comply with the applicable safety regulations. Under FMCSA's NAFTA-related rulemakings mentioned above, all Mexico-based motor carriers operating CMVs in the United States would need to certify on the form OP–1 (MX) or OP–2 that the CMVs they operate comply with the FMVSSs. This proposed rule would simply add the requirement that the FMVSS certification label attesting to the compliance of each vehicle be affixed to the vehicle. Since many of the CMVs manufactured in the past several years comply with the most complex elements of the FMVSSs, the FMCSA believes that relatively little effort may be required to bring the vehicles into full compliance, and that motor carriers will be interested in doing so. The monetary penalties associated with non-compliance with the requirements of this rule are likely to be significantly more than the potential cost of complying.[6] Thus, the FMCSA believes that the entities involved would take steps to achieve compliance with the lower cost alternative.

The Vehicle Safety Act requires that vehicles be certified to meet all applicable FMVSSs. However, because of the lack of enforcement of this certification requirement against motor carriers, it is likely that some motor carriers have been importing uncertified vehicles into the United States. Some of these carriers may now be compelled to either reduce the number of vehicles operated or else lease or purchase certified equipment. Others may find that, although their vehicles comply with the FMVSSs, they do not carry a certification label attesting to that fact. The costs of retrofitting such vehicles with certification labels would presumably be relatively small. This uncertainty complicates the task of separately determining the impact of this rule. The agency is interested in any information that will help to determine the economic impact of this proposed rule on motor carrier transportation and any additional impacts on industry customers.

Based upon its analyses, the FMCSA believes that the vast majority of motor carriers affected by this proposal would be able to comply with its terms. This proposed rule would only affect the operations of the small number of motor carriers that might elect not to bring their CMVs into compliance with the FMVSSs and ensure that they are labeled accordingly.

This rulemaking imposes no requirements that would generate new costs for motor carriers. Those entities would see no change to their operations, provided they ensure that their vehicles comply with the FMVSSs and have the appropriate certification label attached. Based upon the small number of motor carriers projected to be affected, and the minimal cost of attaching a certification label once the vehicle has been certified by the manufacturer or registered importer to meet the FMVSSs requirements, the agency believes that the overall adverse economic effects of this rulemaking would be minimal. This rulemaking, if adopted, would simply require that a CMV be labeled, providing readily-identifiable documentation of a CMV's compliance with the FMVSSs, a cornerstone of vehicle safety.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. The FMCSA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this proposed rulemaking on small entities. As indicated above, U.S.-based motor carriers would not be subject to any new requirements under this proposal. Generally, they would only have access to vehicles that comply with the FMVSSs and bear a certification label.

The motor carriers that would be economically impacted by this rulemaking would be Canada and Mexico-based motor carriers that do not elect to operate CMVs that comply with the FMVSSs and thus would not carry a certification label, and those carriers whose CMVs comply but have not ensured that their CMVs are labeled to document their compliance.

Foreign-based motor carriers can avoid the consequences of this proposed rule simply by operating FMVSS-compliant CMVs that carry the certification label required under 49 CFR 567. In companion documents in today's **Federal Register**, NHTSA has published: (1) A notice announcing its policy concerning retroactive certification of vehicles; (2) a notice of proposed rulemaking establishing record retention requirements in connection with such certifications; and (3) a notice of proposed rulemaking codifying its interpretation of the term "import" as used in the Vehicle Safety Act. FMCSA's rulemaking is intended to ensure that motor carriers comply with the Act, as interpreted by the Department of Transportation. Motor carriers would work with vehicle manufacturers to comply with the proposed retroactive certification policy. Alternatively, a motor carrier could have its vehicles certified by a registered importer under existing NHTSA requirements.

Therefore, the FMCSA hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of domestic small entities. The FMCSA invites public comment on this determination.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its

[4] In other words, failure to display a certification label could result in a citation and fine during a roadside inspection, or a civil penalty as a result of a compliance review. Under the current out-of-service criteria, it would not constitute grounds to place a vehicle out of service in the absence of vehicle defects meeting those criteria.

[5] In addition to carriers operating in the border commercial zones, this includes a relatively small number of Mexico-based carriers that currently operate CMVs beyond the border commercial zones, such as: (1) Carriers who received ICC operating authority before the 1982 moratorium on granting authority beyond the border zones; (2) Mexico-based carriers owned by U.S. citizens or companies; (3) carriers transporting shipments between Mexico and Canada through the United States; and (4) Mexico-based bus companies that received authority to operate vehicles beyond the border zones following the modification of the moratorium to allow cross-border charter or tour bus service in January 1994.

[6] Non-recordkeeping violations of part 393 are subject to civil penalties of up to $10,000 per violation.

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environmental health or safety effects on children.

The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental assessment (PEA) as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Executive Order 12630 (Taking of Private Property)

This proposed rule would implement a regulation applicable to CMVs used in interstate commerce that would complement NHTSA's regulation, applicable to all vehicles used on U.S. highways, which requires that the vehicles comply with all applicable FMVSSs in effect on the date of manufacture, and that they bear a certification label to document their compliance.

Motor carriers can avoid all of the implications of this mandate by operating CMVs that are in compliance with the FMVSSs and that bear a label documenting that fact. FMCSA believes that a large number of CMVs manufactured in Canada and Mexico already comply with the FMVSSs. However, many of these vehicles do not have certification labels that meet the requirements of 49 CFR part 567. No new action is required on the part of those motor carriers that currently operate or plan to operate on U.S. highways FMVSS-compliant vehicles that currently bear the certification label.

Motor carriers planning to operate FMVSS-compliant CMVs on U.S. highways, but whose vehicles do not currently bear the certification label, will be required to obtain certification labels in order to comply with the requirements of the NHTSA and the proposed rule. Again, once the CMVs bear the label to document their compliance, no further action is required in order to comply with this proposed FMCSA rule. However, if a motor carrier is operating or plans to operate on U.S. highways CMVs that do not comply with the FMVSSs, the motor carrier must take action to ensure that its vehicles are brought into compliance and are labeled to document that compliance. The action required would depend on the specific parts of the FMVSSs that the CMV does not comply with. For example, a CMV might comply with all of the FMVSSs with the exception of the portion of 49 CFR 571.119, New Pneumatic Tires for Vehicles Other Than Passenger Cars. The cost and complexity of bringing the CMV into compliance would be relatively low. On the other hand, if a CMV were not in compliance with 49 CFR 571.121, Air Brake Systems, because it was manufactured after the effective date of that regulation but was not equipped with antilock brakes, it may not be possible to bring it into compliance. The FMCSA stresses that the cost of bringing a CMV into compliance, or the cost to the user of not being able to operate a non-FMVSS-compliant CMV on U.S. highways, is a cost that would need to be borne in order to comply with existing Federal law. Once the vehicle is brought into compliance, and so labeled, the FMCSA requires no additional action on the motor carrier's part.

The FMCSA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although the States are required to adopt part 393 as a condition for receiving Motor Carrier Safety Assistance Program grants, the additional training and orientation that would be required for roadside enforcement officials would be minimal, and it would be covered under the existing grant program. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this proposal under the NEPA and DOT Order 5610.1C, and has issued a Finding of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this proposal.

List of Subjects in 49 CFR Part 393

Highway and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, subchapter B, Chapter III, part 393 as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Sec. 1041(b) of Public Law 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Add § 393.8 to read as follows:

§ 393.8 Vehicle Manufacturer's Certification Label

(a) On or after [the effective date of the final rule], each commercial motor vehicle must have a label:

(1) Affixed by the vehicle manufacturer certifying that the vehicle was built to meet all applicable Federal Motor Vehicle Safety Standards (FMVSSs) (codified in 49 CFR part 571) in effect on the date of manufacture; or

(2) Affixed by a registered importer, as defined in 49 CFR part 592, certifying that the vehicle has been modified in order to conform with all applicable FMVSSs in effect on the date of manufacture.

(b) The certification labels required by this section must comply with the requirements of 49 CFR part 567.

(c) *Exception for Vehicles Operated by Canada and Mexico-based Motor Carriers Conducting Operations in the United States Before [effective date of the final rule].* Commercial motor vehicles added to a Canada or Mexico-based motor carrier's fleet on or after [effective date of the final rule], or introduced into service in the United States on or after that date, must comply with paragraphs (a) and (b) of this section. Commercial motor vehicles that are part of these carriers' existing fleets of vehicles operated in the United States before [effective date of the final rule] may be operated without a certification label that meets the requirements of 49 CFR part 567, until [date 24 months after the effective date of the final rule]. Such vehicles must still comply with all other requirements of part 393.

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–5893 Filed 3–14–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part VII

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 567

Retroactive Certification of Commercial Vehicles by Motor Vehicle Manufacturers; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA 02–11594; Notice 1]

RIN 2127–AI59

Retroactive Certification of Commercial Vehicles by Motor Vehicle Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed policy statement; request for comments.

SUMMARY: NHTSA seeks comment on a draft policy statement. The policy is part of the Department of Transportation's efforts to ensure that the interests of safety are protected as the United States takes the steps necessary to comply with its obligations under the North American Free Trade Agreement regarding the access of Mexico-domiciled motor carriers to the United States.

The policy statement is being issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, codified at 49 U.S.C. Chapter 301, which provides for the issuance of Federal Motor Vehicle Safety Standards (FMVSSs), requires all vehicles imported into the United States or introduced into interstate commerce to have been manufactured in compliance with those standards, and requires that a label bearing a statement certifying that compliance be attached to each vehicle. These requirements apply to new motor vehicles that vehicle manufacturers produce for sale in the United States. New or used motor vehicles imported into the United States that were not originally manufactured in compliance with all applicable FMVSSs must also be certified after they have been brought into compliance with those standards. NHTSA has long interpreted "import" to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

The policy statement addresses commercial motor vehicles that were not originally manufactured for sale in the United States, and thus were not required at the time of manufacture to be certified as complying with the FMVSSs, but are subsequently sought to be imported into the United States. The statement provides that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured.

The purpose of this policy statement is to facilitate compliance by motor carriers domiciled in other countries, primarily those in Mexico and Canada, with the above statute and a companion notice of proposed rulemaking by the Federal Motor Carrier Safety Administration (FMCSA). In its document, FMCSA will be proposing to promote the effective enforcement of that statute by requiring that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs in effect when they were built. NHTSA has been advised that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale in Canada or Mexico. In two separate documents, NHTSA will be proposing recordkeeping requirements for foreign manufacturers that retroactively certify vehicles, and proposing to codify its interpretation of the term "import," as used in the statute, by incorporating that interpretation into its primary regulation concerning the importation of vehicles.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments by e-mail at *http://dms.dot.gov*.

You may call Docket Management at (202) 366–9324, or you may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–5291; telefax (202) 366–1024.

For legal issues: Ms. Rebecca MacPherson, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; telefax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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Text to be added to the Code of Federal Regulations

I. Background

A. NAFTA Provisions for Cross Border Operation of Commercial Motor Vehicles

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following Congressional approval, the Agreement entered into force on January 1, 1994.

Since 1982, a statutory moratorium in the United States on the issuance operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border ("border zone"). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

Because of concerns about safety, the United States postponed implementation with respect to Mexico-domiciled truck and scheduled bus service and continued its blanket moratorium on processing applications

by these Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

B. Implementation of the NAFTA Provisions in a Manner Consistent With Safety

The Department of Transportation (DOT) is now preparing for the implementation of these NAFTA provisions. The Department's NHTSA and FMCSA are committed to taking the steps necessary to ensure that the NAFTA provisions are implemented in a manner consistent with the interests of safety.

1. NHTSA

While NHTSA does not have any enforcement authority over motor carriers, it does administer a statute that affects the operations in the United States of motor carriers domiciled in other countries. The statute requires that motor vehicles manufactured for sale in the United States or imported into the United States, i.e., vehicles that are driven on the public roads and highways of the United States, be manufactured so as to reduce the likelihood of motor vehicle crashes and of deaths and injuries when crashes do occur. That statute is the National Traffic and Motor Vehicle Safety Act of 1966 ("Vehicle Safety Act") (codified as 49 U.S.C. 30101, *et seq.*).

One of the agency's most important functions under that Act is to issue and enforce the FMVSSs. Many of these standards specify safety performance requirements for motor vehicles, while others do so for items of motor vehicle equipment. Manufacturers of motor vehicles must certify compliance with all applicable safety standards and permanently affix a label to each vehicle stating that the vehicle complies with all applicable FMVSSs.[1]

The Vehicle Safety Act specifies that:

> A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with the applicable motor vehicle safety standards prescribed under this chapter. A person may not issue a certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle.

(49 U.S.C. 30115.)

The Vehicle Safety Act further provides that, subject to specific exemptions,[2]

> a person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112.)

Since 1975, NHTSA has interpreted this provision of section 30112 as applying to all vehicles entering the United States. In a letter from the NHTSA Administrator to the Canadian Trucking Association, the agency stated that commercial vehicles transporting cargo into and within the United States are imports within the context of 49 U.S.C. 30112 and must be certified.[3] Although the 1975 letter did not address the issue of Mexico-domiciled motor carriers, its rationale applied equally to those carriers.

In 1995, DOT publicized this interpretation in connection with its efforts to prepare for the implementation of NAFTA. DOT did so by incorporating the interpretation in a NAFTA Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a North American Free Trade Agreement (NAFTA) conference held in San Antonio, TX on November 14–16, 1995. The handbook stated that all commercial vehicles entering the United States must have been manufactured in compliance with all applicable FMVSSs and must bear a label certifying such compliance. A list of the FMVSSs that are applicable to commercial motor vehicles, as well as a brief synopsis of those standards, may be found in the appendix to the preamble of this document. (We have placed a copy of the relevant portions of the Handbook in the docket for this document.)

Following the decision of the NAFTA panel in February of this year, NHTSA reviewed its 1975 interpretation. As noted below in the section on "Companion NHTSA actions," after consulting with the Office of Regulations and Rulings of the United States Customs Service (USCS), NHTSA has reaffirmed that interpretation and is seeking public comment on codifying it in the Code of Federal Regulations.

2. FMCSA

FMCSA is the agency within the Department of Transportation that is responsible for oversight of commercial motor carriers. It regulates the operation of vehicles used to transport both cargo (primarily on heavy trucks and trailers) and passengers (primarily in heavy buses). Its regulations address both the commercial motor vehicles and drivers of those vehicles. The regulations also require commercial motor carriers, i.e., those businesses that engage in the transport of cargo or passengers, to meet specified operating requirements.

The condition of safety equipment and features on commercial motor vehicles is governed by 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation. The Federal Motor Carrier Safety Regulations (FMCSRs) in Part 393 currently cross-reference most of the FMVSSs applicable to heavy trucks and buses. (Part 393 does not currently require that commercial motor vehicles have a FMVSS certification label.) The FMCSRs require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain much of the safety equipment and features that NHTSA requires vehicle manufacturers to install.

Generally, enforcement of the FMVSSs incorporated in the FMCSRs by FMCSA and its Motor Carrier Safety Assistance Act grant partners is accomplished through roadside inspections. If the violations are discovered during a roadside inspection, a citation may be issued under Part 393 or conforming State laws and regulations. If violations are serious enough to meet the out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause a crash or cause the vehicle to break down), the vehicle would be placed out of service until the necessary repairs are made. The roadside inspection procedure is the same for all commercial motor vehicles operated in the United States, regardless

[1] The Vehicle Safety Act requires that motor vehicle manufacturers certify the compliance of motor vehicles with the FMVSS before introducing them into interstate commerce, offering them for sale or selling them. Vehicles are not subject to pre-introduction, pre-offer, or pre-sale approval by NHTSA.

[2] For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary for research, investigations, demonstration, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic service of another country or to an international organization (49 CFR Part 591, Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.)

[3] See letter dated May 9, 1975 from NHTSA Administrator James B. Gregory to M. C. Carruth, Docket No. NHTSA–02–11594.

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of the country in which a motor carrier is domiciled. The FMCSA also has the option of imposing civil penalties for violations of Part 393. Any violations of the FMVSSs that also constitute violations of Part 393 could subject motor carriers to a maximum civil penalty of up to $10,000 per violation. FMCSA has the statutory authority to prohibit the operation of commercial motor vehicles by motor carriers that fail to pay civil penalties for violations of the FMCSRs.

If the FMCSA determines that a Mexico-domiciled carrier is operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action against the carrier for making a false certification on its application under 49 CFR Part 365, Rules Governing Applications for Operating Authority, for a Certificate of Registration or operating authority. Such action could include suspension or even revocation of such registration or authority.

FMCSA is issuing four final rules to ensure that the interests of safety are protected in granting authority for Mexico-domiciled motor carriers to operate within the United States. Two of the final rules revise FMCSA's regulations and the forms governing applications by those carriers for such authority. The forms require additional information about each applicant's business and operating practices to help FMCSA to determine if the applicant is capable of meeting the safety requirements established for operating in interstate commerce in the United States. Among other things, a carrier must certify on its application form that its vehicles were manufactured in compliance with the applicable FMVSSs. The third final rule, being issued on an interim basis, establishes a safety monitoring system and compliance initiative to further aid FMCSA in determining whether Mexico-domiciled carriers applying to operate anywhere in the United States have the capability to comply with applicable safety regulations and conduct safe operations. The fourth final rule, also being issued on an interim basis, establishes procedures to certify and maintain certification for auditors and investigators.

II. FMCSA Proposal To Require All Commercial Motor Vehicles Have a FMVSS Certification Label

FMCSA is taking steps to help enforce the prohibition against importing into this country motor vehicles that do not have labels certifying their compliance with the FMVSSs. Specifically, FMCSA is proposing to amend Part 393 to require that all commercial motor vehicles operating within the United States, including those operated by Canada- and Mexico-domiciled carriers, bear a FMVSS certification label. As with all existing requirements in Part 393, the new requirement would apply to all commercial motor vehicles engaged in transporting passengers or cargo in the United States, regardless of where they are domiciled. If Part 393 is ultimately amended to include a requirement that each commercial motor vehicle have a FMVSS certification label, civil penalties could be assessed against a motor carrier operating a vehicle without a FMVSS certification label. However, FMCSA would not place a commercial motor vehicle out of service solely because it lacks a FMVSS certification label, since such a violation would not meet the out-of-service criteria established by that agency.

III. NHTSA Draft Policy Statement on Retroactive Certification of Commercial Motor Vehicles With the FMVSSs

NHTSA has been advised that many of the vehicles currently operated by Mexico- and Canada-domiciled motor carriers may meet all applicable FMVSSs even if they were manufactured for use in Mexico and Canada and thus were not required to, and do not, bear a FMVSS certification label. In general, these are vehicles that were built at the same assembly plants and according to the same design specifications as vehicles manufactured for sale in the United States and certified to the FMVSSs. They may bear a label certifying compliance to Canadian standards or, in the instance of vehicles manufactured for the Mexican market, may bear no certification label at all. If these vehicles were manufactured to comply with the FMVSSs, they could be as safe as vehicles manufactured for sale in the United States. Nevertheless, it would be a violation of the Vehicle Safety Act to bring these vehicles into the United States because they do not bear a FMVSS certification label.

The agency already has an informal policy in place that addresses a similar situation. Since 1999, NHTSA has allowed, in certain circumstances, Canadian vehicle manufacturers to place certification labels retroactively on previously leased passenger cars and light trucks that would have met all applicable FMVSSs after minor modifications, such as changing the odometer from mph to km/h. These leased vehicles were essentially identical to ones manufactured for sale in the United States by the same manufacturers.

We note that only those manufacturers that have produced vehicles for sale in the United States are likely to have generated the type of data and analysis necessary to enable them to certify their vehicles to the FMVSSs, whether contemporaneously or retroactively.

NHTSA and FMCSA representatives met with representatives of the Mexican and Canadian governments, and Mexican manufacturers and trucking industry associations, in Mexico City on June 20, 2001. NHTSA and FMCSA were told then by Mexican vehicle manufacturers that many Mexican commercial vehicles built since 1994 were built in conformity with applicable FMVSSs. NHTSA was advised that of the approximately 400,000 trucks and buses that operate on the Federal roads in Mexico, about 130,000 may comply with all applicable FMVSSs. Most of these 130,000 trucks and buses, however, do not have a FMVSS certification label because it is not required for vehicles manufactured for sale in Mexico.

NHTSA, FMCSA, USCS, the Environmental Protection Agency and Transport Canada conducted a follow-up seminar in Mexico on August 2–3, 2001, to tell representatives of Mexican vehicle manufacturers and the motor carrier industry about the requirements of the United States. During the seminar, the Mexican vehicle manufacturers indicated that they would consider affixing a certification label retroactively, depending on the results of their review of vehicle test data, and on their ability to make a determination that a particular vehicle or group of vehicles met all applicable FMVSSs in effect on the date of manufacture.

NHTSA tentatively concludes that extending the agency's policy on retroactive certification to vehicles that are engaged in the transport of goods or passengers across Canadian or Mexican borders would facilitate the compliance of Mexico- and Canada-domiciled motor carriers with the requirement for operating FMVSS-certified vehicles in the United States, without any adverse effects on safety, while also helping the United States to meet its obligations under NAFTA. Absent such an extension, Mexico- and Canada-domiciled carriers could not use any of their existing vehicles lacking a FMVSS certification label in the United States, even those that complied with the FMVSSs at the time of their manufacture.

Under NHTSA's draft policy statement, a manufacturer wishing to certify a commercial motor vehicle retroactively and affix a FMVSS certification label to that vehicle would have to assure itself that the vehicle did, in fact, comply with all applicable FMVSSs in effect at the time of original manufacture or that it could be readily modified so that the vehicle, as modified, would have met the standards in effect at the time the vehicle was originally manufactured.

In order to certify compliance retroactively, it is likely that the manufacturer would engage in a multi-step evaluation process. In most, if not all, cases, it would need to identify a substantially similar vehicle ("paired vehicle") that it certified, at the time of manufacture, as complying with all applicable FMVSSs and then determine whether there are any design, production, or other differences between the paired vehicle and the candidate vehicle. This determination would likely include an assessment of whether the component parts of the two vehicles are substantially similar. A manufacturer would then need to determine whether any of those differences preclude the candidate vehicle from being in compliance with all applicable FMVSSs. If modifications were needed to bring the vehicle into compliance with applicable FMVSSs, the manufacturer would have to make those modifications. Likewise, if either NHTSA or the manufacturer had decided, subsequent to the certification of the paired vehicle, that that vehicle did not comply with one or more applicable FMVSSs, the manufacturer would have to correct any similar noncompliances in the candidate vehicle before certifying compliance.

Once the evaluation process is complete and the manufacturer has made any necessary repairs or modifications, it may apply the retroactive certification label to the commercial motor vehicle. The label must be applied by the manufacturer because the certification responsibility belongs to the vehicle manufacturer under the Vehicle Safety Act. The label cannot be applied by other parties such as owner, lessee, or operator of the vehicle. The label must meet the requirements of Part 567. It must state the month and year of original manufacture of the vehicle. It must also state the month and year in which it was affixed to the vehicle.

NHTSA anticipates that the need for retroactive certification of commercial vehicles will eventually disappear. The expanded policy is intended to be a short-term solution to a short-term problem. In the long run, the simplest course of action for Mexico- and Canada-domiciled motor carriers would be to buy or lease vehicles certified at the time of manufacture as complying with all applicable FMVSSs. Likewise, the simplest course of action for Mexican and Canadian vehicle manufacturers would be to place FMVSS certification labels on any FMVSS compliant vehicles at the time of manufacture even if they are not certain whether the vehicles will be used in cross-border operations. NHTSA believes that manufacturers will quickly be able to determine whether vehicles they are currently manufacturing comply with all applicable FMVSS, and to bring them into compliance promptly if they are not. Thus, the opportunity under the expanded policy to certify commercial vehicles retroactively would be limited to vehicles manufactured before August 31, 2002. Additionally, NHTSA believes manufacturers do not need an unlimited amount of time to determine whether existing vehicles complied with all applicable safety standards in effect at the time of manufacture. Likewise, motor carriers do not need an unlimited amount of time to determine whether they need to request a manufacturer to retroactively certify a particular vehicle. Accordingly, NHTSA is proposing to terminate this policy of allowing retroactive certification for commercial vehicles on September 1, 2005.

If a motor carrier wishes to use a heavy truck or bus manufactured after August 31, 2002 in its operations within the United States, the vehicle would be required to comply with the applicable FMVSS and have a FMVSS certification label applied by the vehicle manufacturer at the time of manufacture. If the carrier does not intend to operate the vehicle in the United States, then there would, of course, be no requirement that the vehicle bear a FMVSS certification label.

Vehicle manufacturers would not be required to retroactively certify the compliance of a motor vehicle and in many instances would be unable to do so. This inability would stem from the fact that the certification of a vehicle would in most, if not all, cases be based on data that the manufacturer generated at the time the vehicle was originally built. As a practical matter, only those manufacturers that produced and certified substantially similar vehicles for sale in the United States at the same time that the non-certified vehicle was manufactured are likely to have generated this information.

Should a vehicle manufacturer decline to certify a motor carrier's vehicle retroactively, the carrier may be able to have the vehicle certified by a registered importer. An individual or business registered with NHTSA as a registered importer under 49 CFR Part 592, Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards, may import non-complying motor vehicles into the United States. However, a registered importer may do so only if NHTSA has determined under 49 CFR Part 593, Determinations that a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation, that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. As of this date, NHTSA has not made any such determination regarding any vehicle that would be covered by the draft policy statement.

Furthermore, the registered importer must provide the Federal Government with a bond equal to 1.5 times the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before any vehicle may be sold or released for highway use and the bond released. For detailed information on NHTSA's registered importer program, please refer to *http://www.nhtsa.dot.gov/cars/rules/maninfo/*.

IV. Companion NHTSA Actions

As noted above, in two separate documents, NHTSA will be proposing recordkeeping requirements for manufacturers that retroactively certify vehicles, and to codify its interpretation of the term "import," as used in the Vehicle Safety Act. The first document will propose requiring that manufacturers that retroactively certify their vehicles maintain information sufficient to identify those vehicles. This information would include any vehicle identification number (VIN) on each vehicle, or comparable information if the vehicle does not have a VIN. The other document will discuss the basis for our 1975 interpretation of the term "import" as including bringing commercial vehicles into the United States for the purpose of transporting cargo or passengers, and propose to codify that interpretation in Part 591.

V. Request for Comments

This draft policy statement is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(A)).

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Nevertheless, NHTSA is seeking public comment on the draft statement before publishing a final version.

(1) Please comment on whether a termination date of August 31, 2005 would provide sufficient time to accommodate the needs of the Mexico- and Canada-domiciled motor carriers.

(2) Please comment on whether retroactive certification should be permitted in instances in which the vehicle must be modified significantly, such as modifications that would entail additional testing by the manufacturer to assure that the vehicle, as modified, would have complied with the FMVSSs in effect when the vehicle was originally manufactured.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this draft policy statement under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This draft policy statement was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action is not "significant" under the Department of Transportation's regulatory policies and procedures.

This draft policy statement would not mandate compliance with any new requirements or the expenditure of any resources. Instead, it would facilitate compliance with the requirement in the Vehicle Safety Act for imported vehicles to be certified as complying with all applicable FMVSS and with a proposal that FMCSA will issue to require that all commercial motor vehicles operating in the United States to be so certified.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this draft policy statement under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The statement would primarily affect manufacturers of motor vehicle, and secondarily affect motor carriers. Few motor vehicle manufacturers qualify as small businesses.

The Small Business Administration's regulations define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR part 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer. SIC Code 3714 "Motor Vehicle Parts and Accessories" has a small business size standard of 750 employees or fewer.

As noted above, this draft policy statement would not mandate compliance with any new requirements or the expenditure of any resources. Instead, it would facilitate compliance with the requirement in the Vehicle Safety Act for imported vehicles to be certified as complying with all applicable FMVSS and with a proposal that FMCSA will issue to require that all commercial motor vehicles operating in the United States to be so certified.

C. National Environmental Policy Act

NHTSA has analyzed this draft policy statement for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this draft policy statement in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it would not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The statement would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11=1.09). The assessment may be included in conjunction with other assessments.

This draft policy statement would not mandate any expenditures by State, local or tribal governments.

VII. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

On that page, click on "search."

On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Appendix to Preamble—FMVSS Applicable to Commercial Motor Vehicles

The following table sets forth the FMVSSs that are applicable to heavy trucks, heavy buses (other than school buses), and trailers. A brief synopsis of each standard is presented after the table. All three vehicle classifications apply to vehicles with a gross vehicle weight rating greater than 4,536 kg. While there may be some commercial motor vehicles that are not classified as a heavy truck, heavy bus, or trailer, the vast majority of commercial motor vehicles will fit into one of these categories.

FMVSS	Title	Heavy trucks	Heavy buses	Trailers
101	Controls and displays	yes	yes	no.
102	Transmission shift lever device	yes	yes	no.
103	Windshield defrosting and defogging	yes	yes	no.
104	Windshield wiping and washing	yes	yes	no.
105	Hydraulic and electric brake systems	yes *	yes*	no.
106	Brake hoses	yes	yes	yes.
108	Lamps, reflective devices, and associated equipment	yes	yes	yes.
111	Rearview mirrors	yes	yes	no.
113	Hood latch systems	yes	yes	no.
116	Hydraulic brake fluids	yes *	yes *	yes.
119	New pneumatic tires for vehicles other than passenger cars	yes	yes	yes.
120	Tire selection and rims for vehicles other than passenger cars	yes	yes	no.
121	Air brake systems	yes**	yes**	yes. **
124	Accelerator control systems	yes	yes	no.
205	Glazing materials	yes	yes	no.
206	Door locks and retention systems	yes	no	no.
207	Seating systems	yes	yes	no.
208	Occupant crash protection	yes	yes	no.
209	Seat belt assemblies	yes	yes	no.
210	Seat belt assembly anchorages	yes	yes	no.
217	Bus emergency exits and window retention	no	yes	no.
223	Rear impact guards	no	no	yes.
224	Rear impact protection	no	no	yes.
302	Flammability of interior materials	yes	yes	no.
304	CNG tanks	yes+ +	yes+ +	no.

*If equipped with hydraulic brakes.
**If equipped with air brakes.
+ + If engine is powered by CNG.

Synopsis of FMVSSs Applicable to Heavy Trucks, Buses and Trailers

FMVSS No. 101, Controls and Displays

Effective date: September 1, 1972.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: If equipped with a control listed in the standard, shall meet the requirements for the location, identification, and illumination of the control. No requirements exist for displays, e.g., hazard warning telltale. Examples of controls: Turn signal, windshield defroster, and heating and air conditioning system.

Location: Controls must be operable by the driver wearing his/her seat belt.

Identification: Symbol, if listed in the standard; wording if stated in the standard.

Illumination: For the controls listed in the standard with some exceptions, e.g., controls that are foot operated or located on the floor, floor console, or steering column, or in the windshield header area. Brightness must be adjustable.

FMVSS No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

Effective date: September 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: If equipped with an automatic transmission, must have a transmission braking effect, starter interlock, and identification of shift lever positions. If equipped with a manual transmission, must identify the shift pattern. Automatic transmission shift lever identification: The position selected, e.g., drive, and other positions, e.g., neutral, in front of and in clear view of the driver. Manual transmission shift pattern: All except 3-speed, H pattern, in driver's view.

FMVSS No. 103, Windshield Defrosting and Defogging Systems

Effective date: January 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: A defrosting and defogging system.

FMVSS No. 104, Windshield Wiping and Washing Systems

Effective date: January 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: Power driven windshield wipers and washer system.

FMVSS No. 105, Hydraulic and Electric Brake Systems

Effective date: September 1, 1983.
Recent amendments: Brakes must have automatic adjustment, October 20, 1993.

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Antilock brake system equipment requirement, effective March 1, 1999.

Requirements for new heavy trucks and buses:

Equipment: Service brakes on all wheels, automatic adjusters (drum type brakes), and an antilock brake system that directly controls the wheels of at least one front and rear axle.

FMVSS No. 106, Brake Hoses

Effective date: January 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks, trailers, and buses:

Equipment: Aftermarket hoses must be labeled according to the standard.

FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment

Effective date: January 1, 1968.
Recent amendments: Conspicuity systems: trailers must be equipped with retroreflective sheeting and/or reflectors, December 1, 1993; truck tractors, July 1, 1997.
Requirements for new heavy trucks, trailers, and buses:

Equipment: As shown in the wall poster, the lamps, reflective devices, and associated equipment, e.g., retroreflective strips and/or reflex reflectors for the rear of trailers and truck tractors and the side of trailers, must be located as specified in the standard.

FMVSS No. 111, Rearview Mirrors

Effective date: January 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: Outside mirrors of unit magnification, each with not less than 323 sq cm of reflective surface, on both sides of the vehicle, adjustable both in the horizontal and vertical directions to view the rearward scene.

FMVSS No. 113, Hood Latch Systems

Effective date: January 1, 1969.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: Each hood must have a hood latch system; a front opening hood that could obstruct the driver's view must have a second latch.

FMVSS No. 116, Hydraulic Brake Fluid

Effective date: January 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks, buses, and trailers, if equipped with hydraulic brakes:

Equipment: Fluid used in these vehicles must have been manufactured and packaged according to the requirements in the standard.

FMVSS No. 119, New Pneumatic Tires for Vehicles Other Than Passenger Cars.

Effective date: March 1, 1975.
Recent amendments: None.
Requirements for new heavy trucks, trailers, and buses:

Equipment: Tires on these vehicles must have required markings, e.g., the symbol DOT certifying that the tire complies with applicable FMVSS, tire identification number, tire size designation, maximum load rating and corresponding inflation pressure, any speed restriction, the number of plies and ply composition, the words "tubeless" or "tube type," "regroovable," and "radial," as applicable, and the letter designating load range.

FMVSS No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

Effective date: August 1, 1976.
Recent amendments: None.
Requirements for heavy trucks, trailers, and buses:

Equipment: Sum of tire load ratings of tires on an axle must be equal to or greater than the axle's GAWR; rims must be permanently marked including size, e.g., 20 x 5.5 (inches) and DOT; a label on the vehicle must display, for each axle, a tire size and inflation pressure appropriate for the GAWR.

FMVSS No. 121, Air Brake Systems

Effective date: January 1, 1975; **Note:** stopping distance requirements rescinded effective August 9, 1979, but reinstated as shown below.
Recent amendments:

Equipment: Brakes must have automatic adjustment, October 20, 1994. Antilock brake system including malfunction indicator required for truck tractors, March 1, 1997, and for trucks and buses, March 1, 1998. Vehicles that tow another air-braked vehicle shall have an electrical circuit for the other vehicle's ABS. Towing vehicles shall have an electrical circuit for indicating a malfunction in the other vehicle's ABS, March 1, 2001. ABS on trailers and malfunction signal, March 1, 1998, and external malfunction indicator lamp, from March 1, 1998 through end of February 2009.
Requirements for new heavy trucks and buses:

Equipment: Compressor, reservoirs, towing vehicle protection, pressure gauge, warning signal, ABS with malfunction indicator, brakes on all wheels, automatic brake adjustment with indicator.
Requirements for new trailers with air brakes:

Equipment: Reservoirs, ABS with malfunction signal and external lamp, brakes on all wheels, automatic brake adjustment with indicator.

FMVSS No. 124, Accelerator Control Systems

Effective date: September 1, 1993.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: At least two sources of energy returning throttle to idle.

FMVSS No. 205, Glazing Materials

Effective date: January 1, 1968.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: Must be labeled as to type, e.g., windshields must be marked "AS–1."

FMVSS No. 206, Door Locks and Door Retention Components

Effective date: January 1, 1972.
Recent amendments: None.
Requirements for new heavy trucks:

Equipment: Side doors must have a fully latched and a secondary latched position.

FMVSS No. 207, Seating Systems

Effective date: January 1, 1972.
Recent amendments: None.
Requirements for new heavy trucks (all seating positions) and buses (driver's seat only):

Equipment: Vehicle must have a driver's seat; a hinged or folding seat must have a self-locking device.

FMVSS No. 208, Occupant Crash Protection

Effective date: January 1, 1972.
Recent amendments: None.
Requirements for heavy trucks (all seats) and buses (driver's seat only):

Equipment: Each seat shall be equipped with a Type 1 (lap) or Type 2 (lap and shoulder) seat belt assembly that conforms to FMVSS 209. Seat belt assembly includes either an emergency locking retractor or automatic locking retractor. If an automatic locking retractor is used on a suspension seat, it must be attached to the seat structure.

FMVSS No. 209, Seat Belt Assemblies

Effective date: March 1, 1967.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: Each seat belt assembly shall be for use by one person and must be adjustable to fit a range of occupant sizes from 5th percentile females to 95th percentile males; labeled as to date of manufacture, model No., and trademark of manufacturer, distributor, or importer.

FMVSS No. 210, Seat Belt Assembly Anchorages

Effective date: July 1, 1971.
Recent amendments: None.
Requirements for new heavy trucks (all seating positions) and buses (driver's seat only):

Equipment: Anchorages located in the vehicle must be within the dimensions and angles stated in the standard, referenced from the seating reference point; anchorages for each seat belt assembly shall be at least 165 mm apart.

FMVSS No. 217, Bus Emergency Exits and Window Retention and Release

Effective date: September 1, 1973.
Recent amendments: None.
Requirements for new heavy buses other than school buses:

Equipment: Total emergency exit area (unobstructed openings for emergency exits) in sq cm must be at least 432 times the number of designated seating positions on the bus; at least 40 percent of the total area shall be on each side of the bus; no single exit is credited with more than 3,458 sq cm; each bus shall have a rear exit unless the bus configuration precludes one, then the bus shall have a roof exit in the rear half of the bus; emergency exits can have one or two release mechanisms, and at least one must be operated in a different direction from the motion to open the exit by 90–180 degrees; each exit shall be labeled emergency exit or emergency door and provide operating instructions.

FMVSS No. 223, Rear Impact Guards

Effective date: January 26, 1998.
Recent amendments: None.
Requirements for new trailers:

Equipment: Guard shall be permanently labeled, e.g., manufacturer's name and address, month and year of manufacture, and must be certified by the symbol DOT, and located as specified in the standard; installation instructions shall be provided specifying the vehicles on which it can be installed and the method to properly install it.

FMVSS No. 224, Rear Impact Protection

Effective date: January 26, 1998.
Recent amendments: None.
Requirements for new trailers:

Equipment: Rear impact guard meeting FMVSS 223 shall be installed. Location and dimensional requirements are specified. Some trailers are excluded.

FMVSS No. 302, Flammability of Interior Materials

Effective date: September 1, 1972.
Recent amendments: None.
Requirements for new heavy trucks and buses:

Equipment: Any single or composite material located within 13 mm of the occupant compartment air space shall meet performance requirements.

FMVSS No. 304, Compressed Natural Gas Fuel Container Integrity

Effective date: March 27, 1995.
Recent amendments: None.
Requirements for new heavy trucks and buses if operated using CNG:

Equipment: Each CNG fuel container shall be labeled with the manufacturer's name, address, and telephone number, month and year of manufacture, service pressure, and other informational statements. It must also be certified with the symbol DOT.

List of Subjects in 49 CFR Part 567

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 567 as follows:

PART 567—CERTIFICATION

1. The authority citation for Part 567 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, and 33109; delegation of authority at 49 CFR 1.50.

2. Add Appendix A to 49 CFR Part 567 to read as follows:

Appendix A to Part 567—Statement of Policy: Retroactive Certification of Commercial Motor Vehicles

I. *Agency policy on retroactive certification.* It is the policy of the National Highway Traffic Safety Administration to allow a vehicle manufacturer to retroactively apply a label to a used commercial motor vehicle that it originally manufactured, certifying the compliance of that motor vehicle with all applicable Federal motor vehicle safety standards that were in effect when the vehicle was originally manufactured.

II. *Application.* This policy applies to commercial motor vehicles that were manufactured for sale in Mexico or Canada before August 31, 2002 and were not certified at the time that they were originally manufactured as complying with all applicable Federal motor vehicle safety standards. Any commercial motor vehicle certified pursuant to this policy statement must be certified on or before August 31, 2005.

III. *Conditions.* A vehicle manufacturer may retroactively certify the compliance of a commercial motor vehicle with the Federal motor vehicle safety standards if the manufacturer meets the following conditions:

A. Determines that the vehicle complied with all applicable Federal motor vehicle safety standards in effect at the time the vehicle was originally manufactured, or has been modified such that it complies with those standards.

B. Affixes a certification label meeting the requirements of 49 U.S.C. § 30115 and 49 CFR Part 567. Such label shall state the month and year of original manufacture and the month and year of the retroactive certification.

C. Maintains any records required by NHTSA in 49 CFR Part 576, Subpart B.

D. Provides, upon request, any records required by 49 CFR Part 576, Subpart B.

Issued on: March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5897 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–59–P

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Federal Register

Tuesday,
March 19, 2002

Part VIII

Department of Transportation

National Highway and Traffic Safety Administration

49 CFR Part 576
Recordkeeping and Record Retention; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 576

[Docket No. NHTSA 02–11592; Notice 1]

RIN 2127–AI60

Recordkeeping and Record Retention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This is one of three documents that NHTSA is issuing as part of efforts by the United States to comply with its obligations under the North American Free Trade Agreement (NAFTA) regarding the access of Mexican-domiciled motor carriers to the United States. The first NHTSA document is a draft policy statement allowing fabricating manufacturers to retroactively certify vehicles they originally manufactured for sale in countries other than the United States. The purpose of the proposed policy statement is to facilitate compliance by Mexico- and Canada-domiciled motor carriers with the National Traffic and Motor Vehicle Safety Act of 1966, recodified at 49 U.S.C. Chapter 301, which provides for the issuance of Federal motor vehicle safety standards (FMVSSs), requires the compliance of motor vehicles (including imported motor vehicles) with those standards, and requires that a label bearing a statement certifying that compliance be attached to each vehicle. The draft policy statement also facilitates compliance with a companion notice of proposed rulemaking by the Federal Motor Carrier Safety Administration (FMCSA). In its document, FMCSA will be proposing to promote the effective enforcement of NHTSA's statute by requiring that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs.

The second NHTSA document proposes an amendment that would define the term "import," as used in the statute. In 1975, NHTSA issued an interpretation stating that the importation prohibition applies to the bringing into the United States of foreign-domiciled commercial vehicles that transport cargo. We are proposing a definition of the term "import" that would codify this interpretation in the Code of Federal Regulations.

This third document proposes to require vehicle manufacturers who retroactively apply compliance certification labels to make and retain records identifying the vehicles they have so certified.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. Alternatively, you may submit your comments by e-mail at http://dms.dot.gov.

You may call Docket Management at (202) 366–9324, or you may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT:
For technical issues: Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–5291; telefax (202) 366–1024.
For legal issues: Ms. Rebecca MacPherson, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; telefax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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A. NAFTA provision for cross border operation of commercial motor vehicles
B. Steps to provide for the safe implementation of the NAFTA provision for cross border operation of commercial motor vehicles
II. Request for comments
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IV. Submission of comments

I. Background

A. NAFTA Provisions for Cross Border Operation of Commercial Motor Vehicles

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following approval by Congress, NAFTA entered into force on January 1, 1994.

Since 1982, a statutory moratorium in the United States on the issuance of operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border ("border zone"). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were to have been permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

Because of concerns about safety, the United States postponed implementation of NAFTA with respect to Mexico-domiciled truck and scheduled bus service and continued its blanket moratorium on processing applications by Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute-resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

B. Steps To Provide for the Safe Implementation of the NAFTA Provision for Cross Border Operation of Commercial Motor Vehicles

The Department of Transportation (DOT) is now preparing for the implementation of NAFTA's provisions for cross border operation of commercial motor vehicles. However, in doing this, the Department must assure that cross border operation of commercial vehicles will be conducted in a safe manner. To that end, NHTSA and FMCSA are issuing a series of notices.

NHTSA is issuing its series of notices under 49 U.S.C. 30101 *et seq.* (Vehicle Safety Act). The purpose of the Act is to reduce the number of motor vehicle crashes and deaths and injuries resulting from such crashes.

One of NHTSA's primary concerns under the Vehicle Safety Act is to ensure that the vehicles operated in the United States by Mexico-domiciled motor carriers were manufactured or modified to comply with the Federal motor vehicle safety standards (FMVSSs) issued under that Act that were in effect at the time the vehicles were manufactured.

The Vehicle Safety Act specifies that, subject to certain exemptions:[1]

[1] For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary for research, investigations, demonstrations, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic service of another country or to an international organization. (49 CFR Part 591, *Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.*)

> A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or *import into the United States*, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard. * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.
>
> (49 U.S.C. 30112; emphasis added.)

Thus, in general, the FMVSSs apply to new motor vehicles that vehicle manufacturers manufacture for sale in the United States. They also apply to new or used motor vehicles that anyone presents for importation into the United States, whether for sale, resale or other purposes. This includes all motor carriers, regardless of where they are domiciled. The Vehicle Safety Act also requires manufacturers to certify that their vehicles comply with all applicable safety standards.[2] The vehicles must bear a permanent label that is affixed by the vehicle manufacturer that certifies that the vehicles, at the time of manufacture, complied with all applicable safety standards.[3] 49 U.S.C. 30115.

As discussed in the draft policy statement that is a companion to this document, NHTSA has had a policy of allowing fabricating vehicle manufacturers to retroactively certify their vehicles in limited circumstances. The agency believes that extending that policy to vehicles that are engaged in the transport of goods or passengers in interstate commerce across the Canadian or Mexican borders is the best way to ensure the safety of the driving public while also meeting our treaty obligations. Accordingly, NHTSA is requesting comment on the policy of allowing fabricating manufacturers of vehicles produced for sale in Mexico or Canada that do not have a U.S. certification label to apply such labels retroactively to vehicles if they complied with all applicable U.S. standards in effect at the time of original manufacture.[4] The proposed policy statement would be limited to commercial motor vehicles manufactured on or before August 31, 2002 and would require that they be retroactively certified by September 1, 2005.

We are proposing in this document to require vehicle manufacturers to make and retain a list identifying all commercial vehicles to which they retroactively affix a certification label. We believe this is appropriate because of the risk that unauthorized parties could apply a certification label in an effort to allow non-compliant vehicles to be imported into the United States. Only fabricating vehicle manufacturers and, subject to the requirements of 49 U.S.C. 30141 and 49 CFR part 591, registered importers may retroactively certify compliance with the FMVSS. The proposed list would provide a means to check whether a particular retroactive certification label has been affixed by a fabricating vehicle manufacturer.

The manufacturer would be required to maintain a list of its retroactively certified vehicles, identified by the vehicle identification number (VIN), or if the vehicle does not have a VIN that meets the requirements of 49 CFR part 565, with alternative information that uniquely identifies each vehicle, including the vehicle make, model, and year. We are also proposing to require the manufacturers to record the month and year of original manufacture of each vehicle to which it has retroactively applied a certification label and the month and year in which the retroactive certification label was affixed. Manufacturers would be required to maintain these records for five years after the date on which the retroactive certification label was affixed.

This rule would not apply to registered importers. Rather, registered importers would be required to meet all the applicable conditions of 49 U.S.C. 30141, *et seq.* and 49 CFR part 591. NHTSA does not intend this series of rulemakings to affect how the registered importer program currently operates.

Only those fabricating manufacturers who decide to retroactively affix certification labels to one or more vehicles would be subject to the proposed recordkeeping and retention requirements. Vehicle manufacturers are not required to retroactively certify compliance and in many instances will be unable to do so. This is because many vehicles manufactured for sale in Mexico did not comply with all applicable FMVSSs at the time of original manufacture and cannot be readily modified by the manufacturer to comply with those standards. As a practical matter, only those manufacturers who produced and certified substantially similar vehicles for sale in the United States at the same time that the non-certified vehicle was manufactured would likely be able to certify a vehicle retroactively, since only those manufacturers would have the information needed to assure that the vehicle in fact complied.

We are not proposing to require these manufacturers to retain the factual and analytical information that they rely on to certify compliance. Currently, we do not require any certifying manufacturer to do so. However, it is in their best interest to retain that information in the event that an issue arises as to whether a vehicle complied with an applicable safety standard. Although manufacturers of vehicles sold in the United States develop and retain testing and other information that supports their certification that their vehicles comply, we recognize that the circumstances surrounding retroactive certification are somewhat different, since the vehicle manufacturer may be relying on data that are at least several years old.

[2] Under the Vehicle Safety Act, NHTSA does not certify that a vehicle complies with all applicable safety standards. That obligation rests with the manufacturer of the vehicle.

[3] A vehicle imported into the United States by a registered importer pursuant to 49 U.S.C. 30141, *et seq.* and 49 CFR Part 591 is not required to have a certification label affixed to the vehicle prior to entry into the U.S. However, it must have a certification label affixed by the registered importer before it can be sold or released for highway use.

[4] In some instances, minor modifications may be necessary to bring the vehicle into compliance with the safety standards in effect at the time of manufacture. For example, a manufacturer may need to add an indicator that the odometer readings are in km/h.

II. Requests for Comments

(1) Please comment on whether vehicle manufacturers should document and retain information in addition to a unique vehicle identifier, and the dates of original manufacture and retroactive certification. If so, what additional information should be required, and why?

(2) Please provide information on what types of unique vehicle identifiers are used to identify vehicles manufactured for sale in Canada or Mexico.

(3) Please comment on whether the records described in this notice should be maintained for a period of time other than five years after the date of retroactive certification.

III. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review," provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of

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Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered a significant regulatory action under section 3(f) of the Executive Order 12866. Consequently, this rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document would amend 49 CFR part 576 by adding new recordkeeping requirements for vehicle manufacturers that retroactively affix U.S. certification labels to vehicles that were originally manufactured for sale outside of the United States. The cost of maintaining such records would be minor and the required retention of such records would not raise any novel legal or policy issues.

Executive Order 13132

Executive Order 13132 requires NHTSA to develop an accountable process to "ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various local levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rulemaking that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. This proposed rule, if adopted, would not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule if it is adopted. This proposed rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal would merely impose minor recordkeeping obligations on vehicle manufacturers that decide to retroactively apply a certification label. The application of such a label is voluntary.

National Environmental Policy Act

We have analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The proposed rule would require vehicle manufacturers who retroactively apply certification labels to maintain a list of all vehicles so certified. NHTSA is currently working on obtaining a valid OMB control number.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

No voluntary consensus standards were used in developing the proposed requirements because no voluntary standards exist that address the subject of this rulemaking.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

The proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rulemaking does not meet the definition of a Federal mandate because it would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

IV. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).
- On that page, click on "search."
- On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 576

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 576 as follows:

PART 576—RECORD RETENTION

1. The authority citation for part 576 continues to read as follows:

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Authority: 49 U.S.C. 30112, 30115, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Designate §§ 576.1 through 576.8 as Subpart A—"General".

3. Revise §§ 576.1 through 576.4 to read as follows:

§ 576.1 Scope.

This subpart establishes requirements for the retention by motor vehicle manufacturers of complaints, reports, and other records concerning motor vehicle malfunctions that may be related to motor vehicle safety.

§ 576.2 Purpose.

The purpose of this subpart is to preserve records that are needed for the proper investigation, and adjudication or other disposition, of possible defects related to motor vehicle safety and instances of nonconformity to the motor vehicle safety standards and associated regulations.

§ 576.3 Application.

This subpart applies to all manufacturers of motor vehicles, with respect to all records generated or acquired after August 15, 1969.

§ 576.4 Definitions.

All terms in this subpart that are defined in the Act are used as defined therein.

4. Revise § 576.6 to read as follows:

§ 576.6 Records.

Records to be retained by manufacturers under this subpart include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax, or other electronic means, that are related to work performed under, or claims made under, warranties; service reports or similar documents, including electronic submissions, from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

5. Revise § 576.8 to read as follows:

§ 576.8 Malfunctions covered.

For purposes of this subpart, "malfunctions that may be related to motor vehicle safety" shall include, with respect to a motor vehicle or item of motor vehicle equipment, any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causitive factor in, or aggravate, an accident or an injury to a person.

6. Add subpart B to read as follows:

Subpart B—Recordkeeping and Retention by Manufacturers That Retroactively Certify Compliance With Federal Motor Vehicle Safety Standards

Sec.
567.21 Scope
576.22 Purpose
576.23 Application
576.24 Requirements
576.25 Records
576.26 Form of retention

Subpart B—Recordkeeping and Retention by Manufacturers that Retroactively Certify Compliance with Federal Motor Vehicle Safety Standards

576.21 Scope.

This subpart establishes requirements for the generation and retention by motor vehicle manufacturers, other than registered importers, of information related to motor vehicles that are retroactively certified as complying with all applicable Federal motor vehicle safety standards, to permit the importation of those vehicles into the United States.

§ 576.22 Purpose.

The purpose of this subpart is to facilitate determining whether a vehicle manufactured for sale in a country other than the United States, but being used in the United States, has a valid certification of compliance with all applicable Federal motor vehicle safety standards.

§ 576.23 Application.

This subpart applies to manufacturers that originally manufactured motor vehicles for sale in a country other than the United States and that retroactively certify that one or more of those vehicles comply with all Federal motor vehicle safety standards that were applicable to those vehicles at the time of their original manufacture.

§ 576.24 Requirements.

Each manufacturer of motor vehicles described in § 576.23 must retain all records described in § 576.25, in the manner described in § 576.26, for a period of five years from the date on which the certification label was retroactively affixed to the vehicle.

§ 576.25 Records.

Each manufacturer required by this subpart to maintain records must generate and retain records that identify all vehicles that have been retroactively certified by the vehicle manufacturer. The records retained must include, at a minimum, the following information for each vehicle:

(a) The vehicle identification number (VIN) issued in accordance with Part 565 of this chapter or, if the vehicle does not have such a VIN, another unique vehicle identifier which provides the means to identify the vehicle make, model, and model year;

(b) The month and year of original manufacture; and

(c) The month and year the retroactive certification label was affixed to the vehicle.

§ 576.26 Form of retention.

Information may be reproduced or transferred from one storage medium to another (e.g., from paper files to computer disks) as long as no information is lost in the reproduction or transfer.

Issued on: March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5895 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Tuesday,
March 19, 2002

Part IX

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 591

Importation of Commercial Motor Vehicles; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. NHTSA 02–11593; Notice 1]

RIN 2127–AI64

Importation of Commercial Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to add a definition of the term "import" to our regulation on the importation of motor vehicles. A 1966 statute that we administer prohibits the manufacture of new motor vehicles for sale in the United States unless, at the time of manufacture, they complied with the Federal motor vehicles safety standards (FMVSS) then in effect and bear a label certifying that compliance. The statute also prohibits the importation of new or used motor vehicles into the United States unless they were manufactured to conform with, or are brought into conformity with, those standards and are so certified. In 1975, NHTSA issued an interpretation stating that the importation prohibition applies to the bringing into the United States of foreign-domiciled commercial vehicles. We are proposing a definition of the term "import" that would codify this longstanding interpretation in the Code of Federal Regulations.

This document is one of several being issued by this agency and the Federal Motor Carrier Safety Administration (FMCSA) to ensure that the interests of safety are protected as the United States takes the steps necessary to comply with its obligations under the North American Free Trade Agreement regarding the access of Mexico-domiciled motor carriers to the United States.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments by e-mail at *http://dms.dot.gov*.

You may call Docket Management at (202) 366–9324, or you may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–5291; telefax (202) 366–1024.

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; telefax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following approval by Congress, the Agreement entered into force on January 1, 1994.

Since 1982, a statutory moratorium on the issuance of operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border ("border zone"). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

However, the United States postponed implementation with respect to Mexico-domiciled truck and scheduled bus service due to concerns about safety, continuing its blanket moratorium on processing applications by these Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

The Department of Transportation is now in the process of preparing for the implementation of these NAFTA provisions. NHTSA and FMCSA are taking the steps necessary to ensure that the provisions are implemented in a manner consistent with the interests of safety. One of NHTSA's primary concerns is to ensure that the vehicles used in the United States complied with the Federal Motor Vehicle Safety Standards (FMVSSs) in effect at the time that they were manufactured.

NHTSA issues FMVSSs under a statute originally known as the National Traffic and Motor Vehicle Safety Act. That statue has been codified at 49 U.S.C. 30101, *et seq.* (In the interest of simplicity, we will refer to that statute by as the Vehicle Safety Act.) The purpose of the Vehicle Safety Act is to reduce the number of crashes and deaths and injuries resulting from crashes.

The Vehicle Safety Act specifies that, subject to certain exemptions: [1]

> A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or *import into the United States*, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Thus, the FMVSSs apply to new motor vehicles that vehicle manufacturers manufacture for sale in the United States. They also apply, subject to certain exemptions, to new or used motor vehicles that anyone presents for importation, whether for sale, resale or other purposes, into the United States. The Vehicle Safety Act requires manufacturers to certify that their vehicles comply with all applicable safety standards. The vehicles must bear a permanent label that is applied by the vehicle manufacturer and certifies that the vehicles complied with all applicable safety standards. 49 U.S.C. 30115.

1975 Interpretation

In 1975, NHTSA addressed the issue of whether Canadian-domiciled commercial vehicles being operated in the United States were subject to the FMVSSs. Mr. J.C. Carruth, President of the Canadian Trucking Association, wrote to the Department seeking relief from the above statutory prohibition because it prevented the operation in the United States of Canada-based commercial vehicles that were not manufactured in accordance with FMVSS No. 121, Air brake systems. To provide that relief, Mr. Carruth sought to have those vehicles temporarily excluded from the Standard.

In a May 9, 1975 letter replying to Mr. Carruth, signed by NHTSA's Administrator, the agency concluded that this statutory prohibition applies to these Canada-based commercial vehicles. The agency recited the prohibition and noted that the Vehicle Safety Act provided that non-complying motor vehicles shall be refused admission to the United States under joint regulations issued by the Secretary of the Treasury and the Secretary of Transportation. The agency also noted that the Act provided that the two Secretaries may, by joint regulations, permit the temporary importation of a noncomplying motor vehicle, after the first purchase of it in good faith for purposes other than resale, i.e., after the vehicle had been purchased by an end user and thus was no longer new. However, while joint regulations had been issued to permit the temporary importation of a noncomplying motor vehicle for personal use, none had been issued to permit importation for commercial use on the highways of the United States. NHTSA concluded that any exclusion of Canadian-domiciled vehicles operating in the United States from the requirements of FMVSS No. 121 would be "an evasion of the Vehicle Safety Act's prohibition on importation of noncomplying vehicles." Although the 1975 letter did not address the issues of commercial buses or of Mexico-domiciled commercial vehicles, its rationale applied equally to them.

In 1995, the Department of Transportation publicized this interpretation in connection with its efforts to prepare for the implementation of NAFTA. It did so by incorporating the interpretation in a NAFTA Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a NAFTA conference held in San Antonio, TX on November 14–16, 1995. The handbook stated that all commercial vehicles entering the United States must have been manufactured in compliance with all applicable FMVSSs and must bear a label certifying such compliance.

[1] For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary for research, investigations, demonstrations, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic services of another country or to an international organization. (49 CFR part 591, Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.)

Review and Reaffirmation of 1975 Interpretation

Following the decision of the NAFTA panel in February of this year, NHTSA reviewed its 1975 interpretation. After consulting with the Office of Regulations and Rulings of the United States Customs Service (USCS), NHTSA has tentatively reaffirmed that interpretation and is proposing to codify it in the Code of Federal Regulations.

We begin by noting that while Congress has codified the Vehicle Safety Act since the 1975 interpretation, and modified many of the Act's provisions relating to importation of vehicles, no changes have been made that affect the 1975 interpretation. The Vehicle Safety Act continues to specify that, subject to certain exemptions:

> A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or *import* into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard. * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Neither the statute nor any agency regulation exempts commercial vehicles domiciled in Canada or Mexico from the requirement that the vehicles must have been manufactured to meet the FMVSSs in order to be imported into the United States.

Several other factors also lead us to tentatively reaffirm the 1975 interpretation.

First, the interpretation is consistent with the plain meaning of the word "import," which the dictionary defines as meaning "to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, reexport, or services" (Random House Compact Unabridged Dictionary, Special Second Edition).

Second, the interpretation is consistent with the purposes of the Vehicle Safety Act. The stated purpose of the Act is "to reduce traffic accidents and deaths and injuries resulting from traffic accidents." The fact that a commercial vehicle is domiciled in Canada or Mexico is of no consequence as to its safety when it is being operated on United States highways.

Third, while courts have sometimes interpreted the term "import" in narrower ways, the use of the term in the Vehicle Safety Act is similar to its use in statutes where the term has been construed broadly. In particular, we believe that the Vehicle Safety Act's prohibition on the importation of noncomplying vehicles is analogous to contraband laws that prohibit the importation of dangerous items. The Vehicle Safety Act prohibits the importation of noncomplying vehicles because such vehicles pose greater safety risks than compliant vehicles.

We note that the Department of Transportation, including representatives from NHTSA and FMCSA, met with the Office of Regulations and Rulings of the United States Customs Service on March 8, 2001 to discuss enforcement of the importation prohibition against foreign-domiciled commercial motor vehicles. At that meeting, representatives of the Office of Regulations and Rulings agreed with NHTSA's 1975 interpretation that the bringing of a commercial vehicle into the United States constituted an importation of the vehicle under the Vehicle Safety Act.

We are placing in the docket a copy of our 1975 interpretation, as well as a legal memorandum that was prepared then in support of that interpretation.

To codify our 1975 interpretation in the Code of Federal Regulations, we are proposing to add a definition of the term "import" to 49 CFR Part 591, "Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards." This part does not currently include any definition for this term. Therefore, any definition we add must reflect not only the 1975 interpretation but also represent a complete definition of the term. We are proposing the following definition:

> Import means bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or passengers into the United States.

We note that, under Part 591, a person may not import a motor vehicle into the United States unless the person files one of several specified declarations. One of the declarations that provides a basis for the vehicle to be imported, set forth at § 591.5(b), is that the vehicle complies with all applicable FMVSSs and bears a certification label to that effect permanently affixed by the original manufacturer.

If the driver of a complying Canada- or Mexico-domiciled commercial vehicle were stopped at the border by USCS and asked to file a declaration, the driver would simply need to file the one set forth at § 591.5(b). (In order for the driver to be able to file that declaration, the vehicle would, of course, need to comply with all applicable FMVSSs in effect at the time of original manufacture and bear a

certification label to that effect). As a practical matter, however, drivers of such vehicles would ordinarily not be asked to file a declaration. This is because USCS interprets its regulations to provide that commercial motor vehicles engaged in international commerce are "instruments of international traffic" and, as such, are not subject to the process of formal entry.

Companion Actions by NHTSA and FMCSA

This document is one of several related actions by NHTSA and FMCSA as part of the Department of Transportation's efforts to ensure that the interests of safety are protected as the United States takes the steps to implement the provisions in NAFTA regarding access of Mexico-domiciled motor carriers to the United States.

FMCSA is issuing four final rules to ensure that the interests of safety are protected in granting authority for Mexico-domiciled motor carriers to operate within the United States. Two of the final rules revise FMCSA's regulations and forms governing applications by those carriers for such authority. The forms require additional information about each applicant's business and operating practices to help FMCSA to determine if the applicant is capable of meeting the safety requirements established for operating in interstate commerce in the United States. Among other things, a carrier must certify on its application form that the vehicles it will use in the United States were manufactured in compliance with the applicable FMVSSs. The third final rule, being issued on an interim basis, establishes a safety monitoring system and compliance initiative to further aid in determining whether Mexico-domiciled carriers applying to operate anywhere in the United States have the capability to comply with applicable safety regulations and conduct safe operations. The fourth final rule, also issued on an interim basis, establishes procedures to certify and maintain certification for auditors and investigators.

Other actions include (1) an NPRM issued by FMCSA proposing to require that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs in effect when they were built, (2) a draft policy statement issued by NHTSA providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time of manufacture, and (3) an NPRM issued by NHTSA proposing recordkeeping requirements for foreign manufacturers that retroactively certify vehicles.

We request comments on this proposed definition.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This proposed rule was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action is not "significant" under the Department of Transportation's regulatory policies and procedures.

This proposed rule would not impose any new requirements or mandate the expenditure of any resources. Instead, it would improve the clarity of the agency's regulation on imports by codifying a longstanding intepretation concerning the meaning of the term "import."

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

As noted above, the proposed rule would not impose any new requirements or mandate the expenditure of any resources, but would instead improve the clarity of the agency's regulation on imports by codifying a longstanding interpretation concerning the meaning of the term "import."

C. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it would not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

This proposed rule would not mandate any expenditures by State, local or tribal governments, or by the private sector.

Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

On that page, click on "search."

On the next page *(http://dms.dot.gov/search/)*, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 591.

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 591 as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: 49 U.S.C. 322(a), 30112, 30114; Pub. L. 100–562, 102 Stat. 2824; Pub. L. 105–178, 12 Stat. 469; delegations of authority at 49 CFR 1.50 and 501.8.

2. Section 591.2 is revised to read as follows:

§ 591.2 Purpose.

The purpose of this part is to ensure that:

(a) Motor vehicles and motor vehicle equipment permanently imported into the United States conform with theft prevention standards issued under part 541 of this chapter and that they conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and bumper standards issued under part 581 of this chapter;

(b) Foreign-domiciled commercial motor vehicles that are brought into the United States were manufactured to conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and any applicable theft prevention and bumper standards; and

(c) Nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

3. Section 591.4 is amended by adding a definition in alphabetical order to read as follows:

§ 591.4 Definitions.

* * * * *

Import means bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or passengers into the United States.

* * * * *

Issued on March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5896 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–59–P

VOL
67
ISS
53
MR
19
2002
UMI

Federal Register

Tuesday,
March 19, 2002

Part X

Department of Housing and Urban Development

24 CFR Parts 3280 and 3282
Manufactured Home Construction and Safety Standards: Smoke Alarms; Final Rule

VOL
67
ISS
53
MR
19
2002
UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR–4552–F–02]

RIN 2502–AH48

Manufactured Home Construction and Safety Standards: Smoke Alarms

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Federal Manufactured Home Construction and Safety Standards to revise the requirements for the location and placement of smoke alarms. The purposes of these amendments are to improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and to reduce the rate of fire fatalities in new manufactured housing.

EFFECTIVE DATE: September 16, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 16, 2002. Manufacturers are not required to modify their floor plans and wiring diagrams and obtain DAPIA approval until March 19, 2003. In those cases where modified DAPIA-approved designs are not available, IPIAs will use this rule, rather than DAPIA-approved designs, to inspect smoke alarm placement and interconnection until March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Acting Director, Office of Consumer and Regulatory Affairs, Room 9156, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 2000, the Department published a proposed rule to amend the Federal Manufactured Home Construction and Safety Standards (Standards) to revise the requirements for location and placement of smoke alarms. The amendments will improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and, as a result, reduce the rate of fire fatalities in new manufactured housing.

One of the most significant factors in reducing fire-related fatalities in manufactured homes, from the perspective of fire safety, is the requirement in the Standards for the installation of permanently wired smoke detectors in manufactured homes (24 CFR 3280.208). The enforcement program for this requirement is designed to ensure that a manufactured home is not labeled or shipped without such smoke alarms. Nevertheless, fire data studies conducted for HUD by the National Fire Protection Association (NFPA) have continued to indicate that in about 35–40% of manufactured home fires occurring in post-standard manufactured homes, smoke alarms were not present or operational.

This fact suggests a high rate of occupant disabling of smoke alarms. This may be a result of frequent false and nuisance alarms caused, for example, by the close proximity of these devices to cooking appliances. In addition, findings from the National Smoke Detector Project conducted by the Consumer Product Safety Commission (CPSC) indicated that for all homes investigated only about 70% of the smoke alarms were working. For permanently wired smoke alarms, the type used in HUD code manufactured homes, the CPSC study estimated the number of working smoke detectors to be approximately 85%.

The NFPA also reported that the rate of fire fatalities for all manufactured homes was cut nearly in half when alarms were operational. This emphasizes the importance of reducing the occupant-disabling problem and improving the reliability and effectiveness of smoke alarms.

HUD had previously designated the NFPA to undertake a consensus process to develop recommendations for revising and updating the manufactured housing standards. The Department has received a proposal (TIA 97–1) and the NFPA 501 Standard (1999, 2000 editions) developed through that process. The proposal and relevant provisions in NFPA 501 contain recommendations to revise the present smoke alarm requirements in HUD's Standards. The Department also commissioned the National Institute of Standards and Technology (NIST) to evaluate the adequacy of the current requirements for smoke alarms in the Standards and to recommend alternatives that are consistent with national fire safety standards for other types of housing and that would reduce the incidence of nuisance alarms.

The findings and recommendations from the NFPA and NIST evaluations are compatible, and together with comments received from the public have formed the basis for the revised smoke alarm requirements contained in this final rule.

As a result of the implementation of the final rule, the percentage of manufactured homes without smoke alarms or without functioning smoke alarms is expected to gradually reduce over time, as homes complying with the new requirements replace older homes in the inventory. The Department projects that it will take between 20–32 years to replace all occupied manufactured homes in the existing inventory. (Based on the 1999 American Housing Survey, there are approximately 8 million occupied manufactured homes; the estimate of 20–32 years assumes between 250,000–400,000 manufactured homes produced annually and that homes are being replaced at approximately the same rate as they are entering the inventory.) The increased presence of working smoke alarms resulting from the final rule is expected to save as many as 30 lives annually, when the current inventory of homes has been replaced.

The above is based on an estimate of 100 fire deaths a year in HUD code homes of which 60%, or 60, fatalities occur in fires without functioning smoke alarms. The presence of functioning smoke alarms reduces the chances of dying in a fire by 50%. The likelihood that about 1 out of 6 smoke alarms may not be working or functioning has already been accounted for in these estimates. Hence an estimate of 30 lives saved annually by the full implementation of the final rule.

The revisions made in the final rule are also consistent with the revised purposes of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Act), including "to protect the quality, durability, safety, and affordability of manufactured homes;" and "to provide for the establishment of practical, uniform, and to the extent possible, performance-based Federal construction standards for manufactured homes;" (42 U.S.C. 5401).

II. Analysis of Public Comments

The Department received 18 comments in response to the proposed rule. The commenters can generally be characterized as follows:

Home manufacturers (2)
Industry groups (3)
DAPIA (1)
Governmental agencies (3)
Individuals (1)
Fire officials (4)
Housing authorities (2)
Private standards groups (1)
National Associations (1)

All of the comments were generally supportive of the need to update and revise the Standards to improve smoke alarm performance in manufactured homes. However, many of the commenters did suggest changes to the proposed rule, a number of which are incorporated in this final rule. Some of the following comments were submitted by multiple commenters:

Comment: The prescriptive aspects of the proposed rule should be replaced with performance requirements.

Response: The prescriptive aspects of the proposed rule have been removed from the final rule where it was possible to do so without compromising the desired effect of the requirement. For example, HUD has replaced specific restrictions on locating alarms with performance-oriented criteria in § 3280.208(b)(3); thus the rule no longer needs to specify that locations within 3 feet of a door to a kitchen or a door to a bathroom are prohibited. In addition, locations for mounting a smoke alarm in a stairway are more general, requirements for visible and tactile appliances no longer specify location within 16 feet of a pillow, and the prohibition on location in specified extreme temperatures and climates has been replaced with a reference to the terms of the listing for the smoke alarm. Finally, the rule does not specify locations for smoke alarms within a room unless needed for proper operation, such as when they are mounted on a peaked sloping or a shed sloping ceiling.

Comment: HUD should consider adopting the NFPA 501 provisions for smoke alarms.

Response: As explained in the preambles of the proposed rule and this rule, the Department has considered and largely based the final rule on the provisions of the NFPA 501 Standard. In addition, as a result of comments provided by NFPA, the final rule updates proposed referenced standards in § 3280.208(a); clarifies stairway location requirements for smoke alarms for upper stories and basements; adds provisions in § 3280.208(b) for the installation of a junction box for basement designs; and requires smoke alarms to be tested operationally in § 3280.208(f) and, if the alarm does not function as designed, to be replaced if it does not function properly in the first retest. A further suggestion of the NFPA—to incorporate by reference the UL 1971 (Signaling Devices for Hearing Impaired, 1995) standard—will be referred to the Consensus Committee mandated by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–569, approved December 27, 2000). Although HUD agrees with the value of establishing such a standard, it cannot be included as part of the final rule because no such standard had been proposed for comment previously.

Comment: The term "living room" should be changed to "living area" to avoid confusion about where the smoke alarm is to be located when no specific living room is designated adjacent to a kitchen, e.g., when a kitchen is located between two living areas such as a "great room" and a family room. Also, clarify that only one smoke alarm is required to protect the "combined" living area and kitchen space, when this design configuration occurs.

Response: HUD has revised the final rule to reference "living area." Because the rule now reads as requiring at least one alarm to protect the location that includes both the living area and kitchen space, HUD believes it is clear that only one smoke alarm is required to protect these areas. Whenever possible, the alarm should be located in the living area remote from the kitchen and cooking appliances.

Fires that cause fatalities in residential and manufactured homes frequently start in the living and kitchen areas. HUD is interested in continuing to receive comments on whether a smoke alarm should be installed in both the kitchen and living area when those areas are separated or isolated from each other by full-height doors and walls. For example, if the smoke alarm is installed in the living room and a door is closed between the kitchen and living room, the alert time of an unattended fire in the kitchen may be delayed. In these configurations, manufacturers should consider if the effectiveness of the alarm is impaired, and if an additional smoke alarm should be installed to protect the kitchen area. Any comments on this issue will be referred to the Consensus Committee for its consideration.

Comment: Manufacturers do not know if rooms not designed for sleeping are actually used as bedrooms, and should only be accountable for installing smoke alarms in rooms designed for sleeping.

Response: HUD agrees, and the requirement for installing smoke alarms has been revised in § 3280.208(b)(1)(ii) to read "in each room designed for sleeping."

Comment: The cost analysis did not include costs to revise designs and modify production lines, costs to replace or repair alarms that do not function, increased installation costs to purchasers, and increased enforcement costs. Breaker and crossover provisions could also result in additional costs.

Response: The cost analysis for the final rule does consider increased costs for updating floor plans and electrical wiring diagrams. However, the Department does not agree that other considerations mentioned in the comments result in significant changes to current production practices by manufacturers or inspections by IPIAs. The Department also believes any additional breaker or crossover costs will be offset by permitting more than one smoke alarm to be installed on an electrical circuit. The section of the preamble entitled "Impact on Small Entities" also addresses comments on the cost analysis.

Comment: Do not eliminate the requirement to also have a smoke alarm in hallways that lead to sleeping rooms.

Response: The Department recognizes that an additional alarm in the hallway areas leading to bedrooms may provide more protection, but believes that the requirement for installing an alarm in each bedroom that is also interconnected provides appropriate enhanced protection for sleeping occupants.

Comment: Manufacturers need adequate lead time to redesign floor plans for the new smoke alarm requirements.

Response: The effective date of the final rule extends the period of time for revising floor plans and electrical wiring diagrams and for obtaining DAPIA approval. Manufacturers have up to 1 year from the date of publication of today's rule before they must modify their current designs.

Comment: The rule should permit multiple alarms to be placed on the same electrical circuit.

Response: The final rule clarifies that multiple alarms may be placed on the same circuit, in § 3280.208(d)(2).

Comment: Ten-year batteries with an interconnection feature may never be available and may, in fact, have to be designed for additional service life because of the interconnection requirement. The present batteries are barely capable of lasting 10 years even without considering the added circuitry required for interconnection of alarms. Testing has been going on for about 7 years and has only been conducted on ionization chamber-type alarms; therefore, it is premature to mandate the use of battery-type alarms.

Response: HUD agrees that batteries are likely to have to be designed for additional shelf life for interconnection requirements. But HUD also believes that making this alternative available

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will encourage the development of the technology.

Comment: Smoke alarms for homes designed to be installed over a basement should be permitted to be shipped loose.

Response: HUD agrees, and § 3280.208(b) has been revised accordingly in the final rule.

Comment: If a sales contract entered into with a purchaser is for a home on display at a retail sales lot, a manufacturer would not be aware at the time of production of any special needs for visible and tactile appliances.

Response: HUD agrees, and the final rule has been revised to require the manufacturer to install visible and tactile devices only if notified by the purchaser or retailer before the home enters the first stage of production at the factory.

Comment: The location in the proposed rule for providing the smoke alarm manufacturers' instructions is ambiguous and should be replaced with a requirement for the instructions to be temporarily mounted to a cabinet or countertop in the kitchen.

Response: The final rule requires that the information be provided in the same manner and location as the consumer manual required by 24 CFR § 3282.207. While it is not required, manufacturers may incorporate the information into the consumer manual.

Comment: Washing dirty smoke alarms will prevent false alarms.

Response: Each smoke alarm manufacturer determines appropriate maintenance recommendations to include in its instructions.

Comment: HUD should consider applying the new rule for smoke alarms to existing homes, including those covered by HUD's Section 8 Program.

Response: HUD's authority under the Act does not extend to establishing regulations for used manufactured homes. However, this comment will be forwarded to the Section 8 Housing Office at HUD for consideration under its operating authority.

Comment: The home manufacturer should be allowed to recess mount the detector in the ceiling or wall so that it is flush with the ceiling or wall, making it more difficult to tamper with.

Response: This rule does not prohibit recess mounting of alarms if such mounting is permitted by the terms of the listing and does not impair the alarm's effectiveness.

Comment: HUD is encouraged to disseminate the "Guide for Proper Use of Residential Smoke Alarms".

Response: HUD does not require, but encourages dissemination of this guide, which was developed by the National Electrical Manufacturers Association, in conjunction with other fire service organizations. NEMA can be contacted at 1300 N. 17th Street, Suite 1847, Rosslyn, VA 22209. Telephone: (703) 841–5900.

Comment: Manufacturers of smoke alarms should be encouraged to produce combined smoke alarms, weather alert radios, and home intrusion sensor alarms.

Response: This suggestion will be forwarded to the Consensus Committee for its consideration when the committee has been established.

III. Section-by-Section Revisions

The final rule changes the current requirements as follows:

(a) The location of where smoke alarms are to be located is changed from outside the bedroom areas to inside each room designed for sleeping;

(b) A dedicated smoke alarm to specifically protect the living and kitchen area is now required;

(c) The smoke alarm must be of the photoelectric type or incorporate a temporary silencing feature if mounted within 20 feet of a cooking appliance;

(d) A smoke alarm must be provided at a stairway to an upper level or basement;

(e) Mounting and location requirements for smoke alarms in rooms with sloping or peaked ceilings are changed to be consistent with other model and fire code requirements for single family housing;

(f) Smoke alarms must be interconnected so that activation of one alarm causes all alarms to be activated;

(g) Provisions for special devices for hearing and visually impaired persons are added;

(h) Manufacturers must operationally test each smoke alarm at the factory, provide installers with instructions on how to inspect and retest each alarm during installation of the home, and provide homeowners with operating and testing information from the alarm manufacturer; and,

(i) Each smoke alarm must be both permanently wired and be provided with battery back-up to operate in the event of a power outage.

The following is a summary of the major changes from the proposed rule and revisions to the existing requirements being made in the final rule:

1. Section 3280.202 replaces the term "smoke detector" with the term "smoke alarm". While these terms are commonly used interchangeably, other housing codes generally define a "smoke detector" as a device that detects visible or invisible particles of combustion but does not include an alarm. By contrast, a "smoke alarm" is a self-contained unit that is responsive to smoke and incorporates a sensor, controls, and an alarm-sounding device. A conforming change is made in § 3280.112. The rule also deletes the definition of "single-station alarm device" because the term is not necessary. Additionally, the rule defines a "tactile notification appliance" in § 3280.202 as "a notification appliance that alerts by the sense of touch or vibration."

2. The standards proposed to be incorporated in § 3280.208(a) have been updated to refer to the most recent version of the incorporated standard.

3. Section 3280.208(b)(1)(i) now clarifies that manufacturers are required to install at least one smoke alarm to protect the living and kitchen areas, whether the areas are separate or combined. If a smoke alarm is installed within 20 feet of a cooking appliance, the rule also requires either that the smoke alarm include a temporary silencing feature (hush button) to provide consumers with a mechanism to shut off the alarm temporarily, usually for about 15–20 minutes (e.g., if the alarm sounds frequently during periods of cooking), or that the smoke alarm be of a photoelectric-type, which is less sensitive to cooking fumes. Whenever possible, the alarm should be located in the living area remote from the kitchen and cooking appliances.

4. Section 3280.208(b)(1)(ii) clarifies that manufacturers are to install a smoke alarm in each room "designed for sleeping", rather than outside each bedroom area, because occupants are most vulnerable when asleep.

5. Section 3280.208(b)(1)(iii) permits, exclusive of the basement, the required stairway smoke alarms in multistory homes to be installed on the ceiling near the top of a stairway or above the stairway, for the field installation and interconnection of the required smoke alarm. A separate requirement is established in § 3280.208(b)(2) for basement alarms.

6. Section 3280.208(b)(2) requires each manufacturer to provide, but not necessarily to install, a smoke alarm for every home designed to be placed over a basement. In addition, the manufacturer must install at the factory an electrical junction box that accommodates the installation and interconnection of the basement smoke alarm. The instructions and information provided by the manufacturer for the installer and homeowner must make it clear that a smoke alarm should be installed on the basement ceiling near the stairway.

7. Section 3280.208(b)(3) omits some of the specific locations in which smoke alarms could not be placed under the proposed rule, in favor of performance-oriented requirements.

8. Section 3280.208(c)(1) permits manufacturers to mount smoke alarms on ceilings. This helps manufacturers to avoid other locations that may be more vulnerable to false alarms and is consistent with locations permitted by model residential fire and building codes.

9. Sections 3280.208(c)(2) and (3) include mounting and location requirements for smoke alarms located on sloping ceilings, and distinguish between peaked sloping and shed sloping ceilings. The revisions from the proposed rule are needed to maximize the effectiveness and proper operation of smoke alarms mounted in these locations and are consistent with requirements of model residential fire and building codes.

10. Sections 3280.208(d)(1)(i) and (ii) require each smoke alarm to be powered by the home's electrical system and be provided with a battery back-up, or, alternatively, to be powered by a battery with a 10-year life.

11. Section 3280.208(d)(2) clarifies that more than one smoke alarm may be placed on the same electrical circuit.

12. Section 3280.208(d)(3) requires that the mandated smoke alarms be interconnected so that the operation of any one of those alarms activates all other required alarms in the home.

13. Section 3280.208(e) now requires manufacturers to provide visible and tactile notification appliances, in addition to the smoke alarms otherwise required, but only if ordered by the purchaser or retailer before the home enters the first stage of production. A proposed prescriptive requirement for the location of a visible notification appliance in a room designed for sleeping has been deleted as unnecessary.

14. In order to avoid damaging smoke alarms, § 3280.208(f)(1) now provides that operational tests are to be performed after dielectric testing is conducted. The rule also clarifies that retesting is required when an alarm does not function, and provides that an alarm must be replaced if it still does not function properly after being retested.

15. Section 3280.208(f)(3) requires that the smoke alarm manufacturer's information describing the operation, maintenance, and testing of the alarm be provided in the same manner and location as the consumer manual required under 24 CFR § 3282.207.

16. A conforming change is made in terminology used in 24 CFR part 3282, substituting "alarms" for "detectors".

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0253. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. HUD will publish a separate Notice with the OMB approval number, when issued.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or on the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule revises HUD's existing regulations for the placement and installation of smoke alarms in new manufactured housing. The new requirements ensure that smoke alarms installed in new homes will be more effective in warning of the presence of smoke. This is accomplished primarily by changing the location requirements to ensure that smoke alarms operate more effectively. Because home manufacturers are already required to provide working smoke alarms in manufactured homes, the costs associated with complying with the new requirements would be minimal.

HUD has conducted a material and labor cost impact analysis for this rule including both small and large entities. For the purposes of this analysis, HUD is using the SBA definition of a small entity of 500 or fewer employees. On this basis, HUD is categorizing manufacturers with 3 or fewer production facilities as small entities in preparing this analysis.

The potential cost impact for material and labor, based on a per-home cost, does not vary significantly between the two types of entities. HUD is also aware that certain costs to revise existing floor plans and acquiring DAPIA approval are anticipated. The Department surveyed several manufacturers for design-revision cost estimates without successfully determining a dollar cost. In consultation with a third-party representative, estimated costs were determined.

The potential cost impact of material and installation labor on small entities, based on a per-home cost, estimated to be $32.50 multiplied by 50,000 homes produced in a year (assuming conservatively that no manufacturer currently uses AC smoke alarms with battery back-up), is $1.625 million annually. Material and labor constitutes a cost impact of about $32,500 ($1,625,000/50 manufacturers) per small entity per year.

In addition to the above costs, there is also a cost associated with revising designs to comply with the new requirements for smoke alarms. The design cost consists of an initial cost of revising all existing plans and the costs for preparing new designs which have been averaged over a 5-year period. The per-home cost for small entities is estimated to be $9.00, yielding a total cost of $450,000 ($9.00 × 50,000 homes) annually to small entities. The design impact constitutes a cost of about $9,000 per small entity per year for the 5-year period. Cost estimate calculation for small entities: 100 designs in first year × 4 hours per design × $50 per hour + 25 new designs each year × 5 years × 4 hours per design × $50 per hour = $45,000. $45,000/5-year period = $9,000 per manufacturer per year. The per-home cost is based on 1000 homes per small entity per year (50,000 homes/50 manufacturers).

Therefore, a total cost of approximately $2.08 million ($41.50 × 50,000 homes) annually is projected for

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small entities. On average, the entire cost impact represents an estimated cost increase of about $41,500 ($32,500 + $9,000) per small entity per year (based on approximately 50 small entities within the industry). Although 50% of manufactured home producers may be classified as small entities, their home production comprises about 17% of the industry's annual home production. An analysis of this cost impact as a percentage of profits was not completed, as profit information was not available for small entities.

The potential cost impact of material and installation labor on large entities, based on a per-home cost, estimated to be $31.40 multiplied by 250,000 homes produced in a year (assuming conservatively that no manufacturer currently uses AC smoke alarms with battery back-up), is $7.85 million annually. Material and labor constitutes a cost impact of about $157,000 ($7.85 million/50 manufacturers) per large entity per year.

In addition to the above costs, there is also a cost associated with revising designs to comply with the new requirements for smoke alarms. The design cost consists of an initial cost of revising all existing plans and the costs for preparing new designs which have been averaged over a 5-year period. The per-home cost for large entities is estimated to be $6.00, yielding a total cost of $1.5 million ($6.00 × 250,000 homes) annually to large entities. The design impact constitutes a cost of about $30,000 per large entity per year for the five-year period. Cost estimate calculation for large entities: 500 designs in first year × three hours per design × $50 per hour + 100 new designs each year × five years × three hours per design × $50 per hour = $150,000. $150,000/five-year period = $30,000 per large entity per year. The per-home cost is based on 5000 homes per manufacturer (250,000 homes/50 manufacturers).

Therefore, a total cost of approximately $9.35 ($7.85 million + $1.5 million) million annually is projected for large entities. On average, the entire cost impact represents an increase of about $187,000 ($9.35 million/50 manufacturers) per large entity per year (based on approximately 50 large entities within the industry).

As a result, the total annual estimated cost impact is $11.43 million for all small and large manufacturers ($9.35 million + $2.08 million). The following charts provide a comparison of, and estimates for all costs, based on HUD's existing regulation and this final rule, for small and large entities.

Cost factor	Current rule requirements	New rule requirements	Change in cost	Cost impact
Impact on Small Entities				
Smoke Alarm	2 × $5.50=$11.00 (2 AC powered smoke alarms).	4 × $8.75=$35.00 (4 AC+battery back-up smoke alarms).	$35.00–11.00	$24.00
Wiring	50′ × $0.065=$3.25 (14–2 Wire)	70′ × $0.075=$5.25 (14–3 Wire)	$5.25–3.25	2.00
Installation Labor	$6.50	$13.00	$13.00–6.50	6.50
Design-revision	$0	$9.00	$9.00–0	9.00
Total				41.50
Impact on Large Entities				
Smoke Alarm	2 × $5.50=$11.00 (2 AC powered smoke alarms).	4 × $8.50=$34.00 (4 AC+battery back-up smoke alarms).	$34.00–11.00	$23.00
Wiring	50 × $0.06=$3.00 (14–2 Wire)	70 × $0.07=$4.90 (14–3 Wire)	$4.90–3.00	1.90
Installation Labor	$6.50	$13.00	$13.00–6.50	6.50
Design-revision	$0	$6.00	$6.00–0	6.00
Total				37.40

In estimating costs under the current regulation and new regulation, HUD used the following assumptions (1) an average home (28′ ×60′) contains three bedrooms; (2) the home has a smoke alarm in each bedroom and one in the common area (all smoke alarms have battery backup); (3) installation under the current rule involves about 50 feet of 14–2 wiring for two smoke detectors, an additional 20 feet of wiring for the required alarms in each bedroom (total of 70′ of 14–3 wire); (4) the cost of 14–2 wiring=$0.06 per lineal foot for large entities, and the cost for small entities=$0.065 per lineal foot; (5) the cost of 14–3 wiring=$0.07 per lineal foot for large entities and the cost for small entities=$0.075 per lineal foot; (6) the installation labor costs are average lump sum costs obtained from a spectrum of manufactured home builders; (7) the prices reflected in the table were obtained from manufactured home producers representing small and large entities; (8) costs obtained from smoke alarm manufacturers are generally higher than costs paid by home producers as large quantity discounts are not included; (9) an estimated 100 designs for each small entity and approximately 500 designs for each large entity are in need of revision; (10) industry production is estimated at 300,000 homes annually.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a "significant regulatory action" as defined in section (3)(f) of the Order, although not an economically significant regulatory action under the Order. As discussed under the heading, "Impact on Small Entities," above, the rule is estimated to have an annual cost impact of only $11.43 million. However, as also discussed above in this preamble, the full implementation of this rule is estimated to result in 30 lives saved annually. Any changes made to this rule as a result of review under the Order are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 ("Federalism") prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of Executive Order 13132.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.171.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 3280 and 3282 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

§ 3280.112 [Amended]

2. Section 3280.112 is amended by removing the word "detectors" and adding in its place the word "alarms".

3. Section 3280.202 is amended by removing the definition of "Single-station alarm device" and the definition of "Smoke detector", and by adding the definition of "Smoke alarm" and "Tactile Notification Appliance" to read as follows:

§ 3280.202 Definitions.

* * * * *

Smoke alarm: An alarm device that is responsive to smoke.

Tactile notification appliance: A notification appliance that alerts by the sense of touch or vibration.

4. Section 3280.208 is revised to read as follows:

§ 3280.208 Smoke alarm requirements.

(a) *Labeling.* Each smoke alarm required under paragraph (b) of this section must conform with the requirements of UL 217, Single and Multiple Station Smoke Alarms, dated January 4, 1999 (incorporated by reference, see § 3280.4), or UL 268, Smoke Detectors for Fire Protective Signaling Systems, dated January 4, 1999 (incorporated by reference, see § 3280.4), and must bear a label to evidence conformance.

(b) *Required smoke alarm locations.* (1) At least one smoke alarm must be installed in each of the following locations:

(i) To protect both the living area and kitchen space. Manufacturers are encouraged to locate the alarm in the living area remote from the kitchen and cooking appliances. A smoke alarm located within 20 feet horizontally of a cooking appliance must incorporate a temporary silencing feature or be of a photoelectric type.

(ii) In each room designed for sleeping.

(iii) On the ceiling of the upper level near the top or above each stairway, other than a basement stairway, in any multistory home completed in accordance with this part or part 3282 of this chapter. The alarm must be located so that smoke rising in the stairway cannot be prevented from reaching the alarm by an intervening door or obstruction.

(2) For each home designed to be placed over a basement, the manufacturer must provide a smoke alarm for the basement and must install at the factory an electrical junction box for the installation of this smoke alarm and for its interconnection to other smoke alarms required by this section. The instructions for installers and information for homeowners required in paragraph (f) of this section must clearly indicate that a smoke alarm should be installed and is to be located on the basement ceiling near the stairway.

(3) A smoke alarm required under this section must not be placed in a location that impairs its effectiveness or in any of the following locations:

(i) Within 3 feet horizontally from any discharge grille when a home is equipped or designed for future installation of a roof-mounted evaporative cooler or other equipment discharging conditioned air through a ceiling grille into the living space; and

(ii) In any location or environment that is prohibited by the terms of its listing, except as permitted by this section.

(c) *Mounting requirements.* (1) Except in rooms with peaked sloping or shed sloping ceilings or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either:

(i) On the ceiling at least 4 inches from each wall; or

(ii) On a wall with the top of the alarm not less than 4 inches below the ceiling, and not farther from the ceiling than 12 inches or the distance from the ceiling specified in the smoke alarm manufacturer's listing and instructions, whichever is less.

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with peaked sloping ceilings, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from the peak of the ceiling; at least 4 inches, measured horizontally, below the peak of the ceiling; and at least 4 inches from any projecting structural element.

(3) Except as permitted pursuant to paragraph (e) of this section, in rooms with shed sloping ceilings, smoke alarms must be mounted within 3 feet of the high side of the ceiling, and not closer than 4 inches from any adjoining wall surface and from any projecting structural element.

(d) *Connection to power source.* (1) Each smoke alarm must be powered from:

(i) The electrical system of the home as the primary power source and a battery as a secondary power source; or

(ii) A battery rated for a 10-year life, provided the smoke alarm is listed for use with a 10-year battery.

(2) Each smoke alarm whose primary power source is the home electrical system must be mounted on an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. More than one smoke alarm is permitted to be placed on the same electrical circuit. The wiring circuit for the alarm must not include any switches between the over-current protective device and the alarm, and must not be protected by a ground fault circuit interrupter.

(3) Smoke alarms required under this section must be interconnected such that the activation of any one smoke alarm causes the alarm to be triggered in all required smoke alarms in the home.

(e) *Visible and tactile notification appliances.* (1) In addition to the smoke alarms required pursuant to this section, the manufacturer must provide visible and listed tactile notification appliances if these appliances are ordered by the purchaser or retailer before the home enters the first stage of production. These appliances are required to operate from the primary power source, but are not required to operate from a secondary power source.

(2) A visible notification appliance in a room designed for sleeping must have a minimum rating of 177 candela, except that when the visible notification appliance is wall-mounted or

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suspended more than 24 inches below the ceiling, a minimum rating of 110 candela is permitted.

(3) A visible notification appliance in an area other than a room designed for sleeping must have a minimum rating of 15 candela.

(f) *Testing and maintenance.* (1) Each required smoke alarm installed at the factory must be operationally tested, after conducting the dielectric test specified in § 3280.810(a), in accordance with the alarm manufacturer's instructions. A smoke alarm that does not function as designed during the test and is not fixed so that it functions properly in the next retest must be replaced. Any replacement smoke alarm must be successfully tested in accordance with this paragraph.

(2) Home manufacturers must provide specific written instructions for installers on how to inspect and test the operation of smoke alarms during installation of the home. These instructions must indicate that any smoke alarm that does not meet the inspection or testing requirements needs to be replaced and retested.

(3) Home manufacturers must provide the homeowner with the alarm manufacturer's information describing the operation, method and frequency of testing, and proper maintenance of the smoke alarm. This information must be provided in same manner and location as the consumer manual required by § 3282.207 of this chapter, but does not have to be incorporated into the consumer manual. No dealer, distributor, construction contractor, or other person shall interfere with the distribution of this information.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

5. The authority citation for 24 CFR part 3282 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5424.

§ 3282.203 [Amended]

6. Section 3282.203(b)(4) is amended by removing the word "detectors" and adding in its place the word "alarms".

§ 3282.203(b)(4) [Amended]

Dated: January 2, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–6026 Filed 3–18–02; 8:45 am]

BILLING CODE 4210–27–P



Federal Register

Tuesday,
March 19, 2002

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–4]

RIN 2120–AH55

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes Special Federal Aviation Regulation (SFAR) 92–3, which was published on January 15, 2002, to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and certain operational rules associated with the modifications. It allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action also mandates these modifications on airplanes in certain passenger and cargo carrying operations. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective from March 19, 2002, until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Martineau, Certification Procedures Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9568; e-mail address: *9-awa-avr-design@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last five digits of the docket number shown at the beginning of this document. Click on "search."

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nrpm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a job by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of SFAR number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAAs jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAAs web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov*.

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

On November 6, 2001, Congress enacted the Aviation and Transportation Security Act, Public Law 107–71. Section 104(a)(1)(B) of the Act requires the FAA to issue an order requiring the strengthening of the flightdeck door and locks on certain passenger carrying aircraft.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in an manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and

flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made.

In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alternations (§ 121.379(b)). Besides the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that data must be in accordance with approved data, and whatever the operator installs in the short term must ultimately be brought into full regulatory compliance.

The Original SFAR 92 Provisions

Original SFAR 92 was published on October 9, 2001, and allowed all part 121 passenger carrying operators to install fligthcrew compartment door improvements and prohibited the possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It was very broad and allowed maximum short-term flexibility in crafting enhanced door security measures. It allowed the doors to be modified and airplanes to be operated with modified doors.

The FAA established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expected this would give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR required operators to submit a report to the FAA that detailed the specific modifications they made to the flightcrew compartment door. This allowed the FAA to monitor what had been installed and take action if the installation created an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR required a report by April 22, 2002, that describes how the operator will meet regulatory compliance for egress and venting.

We also expected that airframe manufacturers and modifiers would produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents do not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by the SFAR also applied to manufacturers and other persons that applied for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understood that some operators might rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers are subjected to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR 21.303. However, to facilitate reinforcement of these doors, the SFAR included a provision that overrode the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, the SFAR temporarily relieved the operator of having to obtain prior approval of the data. As soon as the design data is submitted, the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under the SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flighcrew compartment doors against intruders, the FAA also believed it was prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, the SFAR temporarily changed the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, would have flightcrew compartment keys during flight. This lessened the opportunity for gaining unauthorized access and reduced the likelihood of attacks on cabin crewmembers to obtain keys on airplanes where the flightdeck door does not have an internal locking device.

First Revision to SFAR 92—SFAR 92–1

SFAR 92 has remained substantially as originally written. However, modifications have been issued to change the scope of the rule and to clarify provisions. SFAR 92 originally authorized only part 121 passenger carrying operators to make the quick modifications to the flightdeck doors. Because of the risk posed by having other than flightcrew members onboard the airplane as allowed in § 121.583, FedEx petitioned the FAA to allow it to install additional door security measures in accordance with the provisions of SFAR 92. The FAA determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes. SFAR 92–1 was published on October 17, 2001, and expanded the modification authority to all part 121 operators.

Second Revision to SFAR 92—SFAR 92–2

As originally published, SFAR 92 temporarily changed section 121.313(g) to prohibit the possession of flightdeck keys by non-flightdeck crewmembers. Since initial issuance of the SFAR, internal locking devices that render the key useless for flightdeck access have been installed on many air carrier airplanes. Since the keys have multiple uses in the airplane beyond the flightdeck door, prohibiting possession of the flightdeck door keys by non-flight crewmembers on these airplanes is only an inconvenience to the crew and not a deterrent to terrorist activity.

Allowing non-flight crewmembers access to the keys is acceptable when the internal locking device is in use on the airplane. "In use" contemplates that the device is locked from the inside by the flightdeck crew. If a flightdeck crewmember must exit the flightdeck for some reason, either the remaining

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flightdeck crewmember, or a cabin crewmember that enters the flightdeck, will immediately lock the internal device behind the exiting flightdeck crewmember. This provision may also reduce the opportunity for coercion, since the flight attendant can safely hand over the key.

As a result, when SFAR 92–2 was published on November 21, 2001, it added a phrase to the end of § 121.313(a)(ii) that allowed possession of the key under certain circumstances. The limitations on keys did not apply to cargo operators because flight attendants are only required on passenger airplanes; nor did they apply to part 129 operators because part 121 regulations do not apply to them. This change to 121.313(g) will expire with this SFAR.

SFAR 92–2 also replaced the 90 day and 180 day reporting and termination time frames with specific dates, January 15, 2002, and April 22, 2002, respectively. Since SFAR 92 was republished more than once, insertion of specific dates eliminated confusion in calculating these dates.

Third Revision to SFAR 92—SFAR 92–3

When SFAR 92 was originally issued, and subsequently revised, it was the expectation of the FAA that flightdeck modifications would be made as soon as possible. While this was the case for the substantial majority of operators, not all had accomplished the short-term modifications. Because of the FAA's original expectation, SFAR 92 did not contain a provision mandating the internal door modifications. Therefore, the FAA determined that a mandate was necessary to assure that all part 121 passenger-carrying airplanes required to have flightdeck doors were modified. The FAA also considered the issue of airplanes that carried only cargo, but are permitted to also carry certain persons as defined in § 121.583 as discussed in SFAR 92–1. Provisions of the regulations did not ensure that a person who is intent on using an airplane as a weapon is unable to board an all-cargo airplane in accordance with § 121.583. Therefore, in cases where these airplanes already have flightdeck doors, the FAA determined that the door should also be modified to improve security.

Pub. L. 107–71 directed the Administrator of the FAA to issue an order that required the strengthening of flightdeck doors and locks. SFAR 92–3 was issued and required the installation of internal locking devices on flightdeck doors within 45 days of publication of the SFAR. The airplanes covered by this provision are passenger-carrying airplanes operated under part 121 that are required to have flightdeck doors and all-cargo airplanes that have flightdeck doors installed. Given the large number of modifications already made on a large variety of airplanes within the fleet, the FAA believed that 45 days should provide operators who have not made the relevant modifications with sufficient time to do so.

This revision to the SFAR expanded the modification authority to U.S. registered, transport category airplanes that are operated under part 129, foreign operations. Because these airplanes are U.S. registered, the FAA must issue any authorization to modify the airplanes. The FAA has received several inquires from such operators that requested authorization to make modifications as authorized in SFAR 92. SFAR 92–3 has provided such authorization.

The FAA recognized that mandating the reinforcing modifications for part 121 operators and authorizing part 129 operators to make modifications may not enable some to make the January 15, 2002, reporting requirements in SFAR 92–2. As a result, this revision extended the reporting date to February 15, 2002. Finally, this revision also made it clear that all operators that must strengthen their flightdeck doors in accordance with the new provisions of § 121.313 (discussed below) must submit a plan for accomplishing those modifications by April 22, 2002. This requirement applies regardless of when an operator installs an interim modification, as required by the SFAR.

This Revision to SFAR 92—SFAR 92–4

To date, the SFAR 92 authority to return airplanes to service without previously approved data in the case of major alterations will terminate on April 22, 2002. Since installation of the internal locking devices was originally voluntary, the purpose of this time limit was to encourage rapid installation of the devices. SFAR 92–3 required the installation of locking devices on or before March 1, 2002 (45 days after the January 15, 2002, publication of SFAR 92–3). Since installation of an internal locking device is now required, the April 22, 2002, date is no longer needed as an incentive.

Further, termination of that portion of the modification authority on that date will inhibit conversion and use of airplanes brought into an operator's fleet after April 22, 2002, such as airplanes that are either newly delivered or re-activated from retirement. As a result, this SFAR removes the April 22, 2002, limitation on approval for return to service without approved data. Such approvals will be limited only by the time limit applied to other provisions of the SFAR, the expiration date of April 9, 2003.

The SFAR 92–3 requirement for modification of flightdeck doors on certain airplanes has triggered a potential conflict with requirements to have the door open during take-off and landing for emergency evacuation purposes. In weighing the competing safety risk between emergency egress and terrorist threat, the FAA has determined that for the duration of the SFAR, the terrorist threat is a greater risk. As a result, this revision to the SFAR explicitly states that operational requirements in sections 121.313(h) and 121.583(b)(1) and (2) are waived if a conflict exists when internal locks are installed and used. The introductory language of paragraph 2 is revised to reflect this change.

The introductory language of paragraph 2 is further revised to include reference to § 121.153(c), in order to address airplanes that are registered in another country, but are operated by a part 121 certificate holder. These airplanes would otherwise be required to meet all airworthiness requirements.

Paragraph 2(a)(ii) of the current SFAR has an April 22, 2002, reporting requirement. The report must include a schedule for reaching full compliance with all applicable airworthiness requirements. As structured, this provision only applies to airplanes modified using technical data not previously approved by the Administrator. SFAR 92–3 required all affected airplanes to install internal locking devices. Further, the companion rule described below requires installation of reinforced doors on or before April 9, 2003. As a result, this version of the SFAR changes the reporting requirement in paragraph 2(a)(ii).

Paragraph 2(a)(ii) is deleted. Instead, a new paragraph 3 is added to require operators of all affected airplanes to report what modifications will be made and to provide a modification schedule for full compliance with the April 9, 2003, retrofit requirement.

Finally, paragraph 6 is revised to require that cargo airplanes, on which flightdeck doors are installed after January 15, 2002, are also subject to the strengthening requirement. This was the intent of SFAR 92–3, but that final rule only explicitly applied to cargo airplanes on which flightdeck doors were installed on January 15, 2002.

Other Rulemaking

In parallel with SFAR 92–3, the FAA issued an immediately adopted rule (IAR) which adopts new design standards for flightdeck doors in part 25 of the Code of Federal Regulations. Generally speaking, these new standards will enhance resistance to blunt force and ballistic intrusion. Also, the IAR requires all airplanes required to have a door under section 121.313(f), as well as all-cargo airplanes that have flightdeck doors installed, to have a door meeting the new design standard. The stronger doors must be installed not later than April 9, 2003, the expiration date of this SFAR. In essence, the doors meeting the new design standards will replace the doors reinforced under this SFAR.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

Additionally, with respect to the provisions requiring modifications to strengthen the flightdeck doors and locks, Public Law 107–71 authorized the Administrator to issue an order without regard to the provisions of chapter 5 of Title 5 of the United States Code. The modification to section 121.313 contained in this SFAR is within the scope of this authority and is adopted without public notice and a prior opportunity to commend.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package. OMB granted an emergency clearance and assigned OMB control number 2120–0674. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Following is a description of the information collection burden associated.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA by February 15, 2002, that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002, that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121 and 129.

Burden: The burden associated with this SFAR is 6480 hours.

Regulatory Evaluation

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11(g) of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the final rule. At this time, the FAA is not able to assess whether this final rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory evaluation of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTICS, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92–3 [Removed]

2. Remove Special Federal Aviation Regulation No. 92–3.

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3. Add Special Federal Aviation Regulation (SFAR) 92–4 to read as follows:

Special Federal Aviation Regulations No. 92–4 Flightcrew Compartment Access and Door Designs

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under 14 CFR part 119 and that conduct operations under this part 121 and to operators of U.S. registered transport category aircraft operated under 14 CFR part 129, except paragraph 5 of this SFAR does not apply to cargo operations and 14 CFR part 129 operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modification.

2. *Regulatory Relief.* Contrary provisions of this part 21, and §§ 121.313(h), 121.153(a)(2), 121.153(c), 121.379(b), 121.583(b)(1) and (2) and 14 CFR 129.13 notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data for previously approved by the Administrator, subject to the following conditions:

(i) Not later than February 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplanes that have been accomplished before that date to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) If, upon reviewing the data submitted in paragraph 2(a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Report of Modifications.* Not later than April 22, 2002, all operators who are required to install flightdeck door modifications in accordance with § 121.313(j) must submit a report to the Director, Aircraft Certification Service. The report must describe the modifications to be made and provide a schedule for the changes necessary to restore compliance with all applicable airworthiness requirements and to meet the requirements of § 121.313(j). The schedule may not extend beyond the termination data of this SFAR.

4. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

5. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exist must be identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

6. *Door Modification Requirement.* After March 1, 2002, for each airplane required under § 121.313(f) to have a door between the passenger and pilot compartments, and for transport category all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, such door must be equipped with an internal locking device installed, operative, and in use. Such internal locking device has to be designed so that it can only be unlocked from inside the flightdeck.

7. *Termination.* This SFAR terminates on April 9, 2003.

Issued in Washington, DC, on March 12, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–6366 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Tuesday,
March 19, 2002

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, et al.
Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, 45, 61, 65, and 91

[Docket No. FAA–2001–11133; Notice No. 02–07]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of on-line public forum.

SUMMARY: On February 5, 2002, the FAA published a Notice of Proposed Rulemaking (NPRM), which proposes requirements for the certification, operation, and maintenance of light-sport aircraft (67 FR 5368, notice No. 02–03). The comment period closes on May 6, 2002. To supplement the traditional comment period, we are announcing an on-line public forum, allowing you to answer specific questions we will ask on the Internet. We are offering the forum to assist us in providing a clear and comprehensive final rule. You can continue to submit comments to the docket during the public forum, as outlined below and in the NPRM.

DATES: You may access the on-line public forum beginning April 1, 2002, at 9 a.m. DST until April 19, 2001, at 4:30 p.m. DST.

ADDRESSES: You may access the on-line public forum at *www.rulemakingpublicforum.com.*

If you are unable to participate in the on-line public forum and wish to submit written comments, address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–11133 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to *http://dms/dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Gardner at 202/267–5008 for questions regarding airman certification and operational issues (14 CFR parts 1, 43, 45, 61, 65, and 91). For questions regarding aircraft certification (14 CFR part 21), call Steve Flanagan at 202/267–5008. Due to the large volume of questions we expect from this proposal, please leave a message and we will answer your questions within 3 days. Please use this phone number for questions only.

SUPPLEMENTARY INFORMATION:

On-Line Public Forum

We are soliciting on-line discussion and written comments on the questions below. You will be able to read the questions on-line and submit your answers and comments electronically. We will monitor your responses throughout the 3-week forum and may ask you clarifying questions. While we have selected topics that we are particularly interested in (especially related to assumptions we made to develop the proposal), we still welcome all of your comments and suggestions. We will not make any commitments or draw any conclusions while the docket is open for public comment.

On-Line Questions

The questions that will appear on the Internet for the on-line public forum are as follows:

(1) In general, do you agree or disagree with the FAA's proposal?

(2) Please comment on the FAA's assessment of potential safety benefits that the proposed rule would generate, considering the number of light aircraft accidents contained in the NTSB's historical record for primarily U.S.-registered aircraft. This can be found in Section IX—Analysis of Benefits. Do you believe that most accidents over the past 10 years involving non-U.S.-registered light-sport aircraft were reported to the NTSB?

(3) The FAA is proposing to require sport pilot certificate applicants to hold an airman medical certificate or to possess a valid and current driver's license. You can find the reasons for this proposal in Section VI—Section By Section Analysis of the Proposal under the heading "Part 61 SFAR No. 89," proposed section 15. Do you agree with this proposed requirement? Why? Why not?

(4) The FAA is proposing a make and model endorsement for a pilot exercising sport pilot privileges. The FAA believes that this requirement to acquire particular aircraft familiarization is appropriate for aircraft that are generally simple to operate, but that are not known to be designed to any widely accepted design standard. Do you believe this is appropriate? Why? Why not?

(5) The FAA is proposing that the three exemptions issued for training under 14 CFR part 103 be rescinded 3 years after the effective date of the final rule. The FAA believes that this training (for compensation or hire) should be conducted with aircraft meeting the requirements of a special, light-sport category aircraft airworthiness certificate. Also, the FAA believes 3 years is sufficient for instructors conducting that training to obtain a flight instructor certificate with a sport pilot rating. Do you believe that rescinding the exemptions after 3 years is appropriate? If not, why not?

(6) The FAA is proposing to require 80 hours of training for a repairman certificate for maintaining and inspecting special light-sport aircraft used for rental and training. Do you think 80 hours of training is appropriate for this purpose?

(7) In the proposed definition of "light-sport aircraft," the FAA limited the speed to 115 knots in straight and level flight at maximum continuous engine power (V_H). The FAA proposed this because V_H is a measure of the speed and power (or kinetic energy) of the aircraft, and it is relatively easy to measure. Do you believe the FAA should consider a different method of limiting the kinetic energy of a light-sport aircraft? Why or Why not? What alternative would you propose?

(8) The FAA excluded gyroplanes from being eligible for a "special; light-sport category aircraft airworthiness certificate" because of the complexity inherent in the design of rotary-winged aircraft. In addition, experimental gyroplanes lack standardized, recognized design, performance and handling criteria. Do you believe the FAA should reconsider including gyroplanes for that certificate? If so, please include any data to support your reasons.

(9) The FAA proposes that the ready-to-fly and kits for light-sport aircraft comply with an industry-developed consensus airworthiness standard in lieu of incorporating these standards into the regulations. This permits the light-sport aircraft industry to demonstrate that it has reached a significant technical level of maturity by developing and publishing its own aircraft design and production standards. By participating in the industry sponsored consensus standards group, the FAA supports developing and updating an effective set of standards with minimum impact on FAA resources. Do you believe the FAA should incorporate the standards into 14 CFR? Why or Why not? What alternative would you propose?

(10) The FAA is proposing that the manufacturer of ready-to-fly or kit light-sport aircraft comply with the consensus standard and attest to that fact on a manufacturer's statement of compliance. The proposal does not limit a manufacturer's ability to have an independent third-party organization audit this compliance. Do you believe the FAA should be making the findings of compliance? Why or Why not? What alternative would you propose?

(11) In the proposal, the FAA has stated that, for ready-to-fly or kit light-sport aircraft where there is a safety-of-flight issue that is not being remedied by the manufacturer (or their successor), certificate action could be taken against the individual aircraft owner (*i.e.* the aircraft could lose it's airworthiness certificate). The FAA would have to do this because of its responsibility to the public to maintain safety in air commerce. Do you agree with this approach of holding the individual aircraft owner responsible for the airworthiness of the aircraft? Why or Why not? What alternative would you propose?

(12) While the FAA made an assessment of the potential cost of compliance of the proposed rule, the FAA requests comments on the validity of its assumptions. These can be found in two sections of the proposed rule: Section VII—Paperwork Reduction Act; and Section IX—Regulatory Evaluation Summary. Do you believe the FAA made accurate estimates of the number of existing and new sport pilots impacted, the number of sport pilots who would become a Repairman with a maintenance rating for commercial purposes, the number of delivered new light-sport aircraft (by category, such as fixed-wing, powered parachutes, trikes, etc.), and the number of flight instructors with a sport pilot rating, over the next 10 years? Please provide data in support of your comments.

(13) Is the FAA's assumption of the average price of light-sport aircraft potentially impacted by the proposed rule accurate?

(14) In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. The FAA drafted this proposal using plain language writing techniques. Is the style of this document clear and did you find it easy to understand?

(15) Do you have any other issues that you think should be addressed related to Light-Sport Aircraft policy?

Issued in Washington, DC, on March 14, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–6643 Filed 3–15–02; 10:40 am]

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S.J. Res. 32/P.L. 107–152

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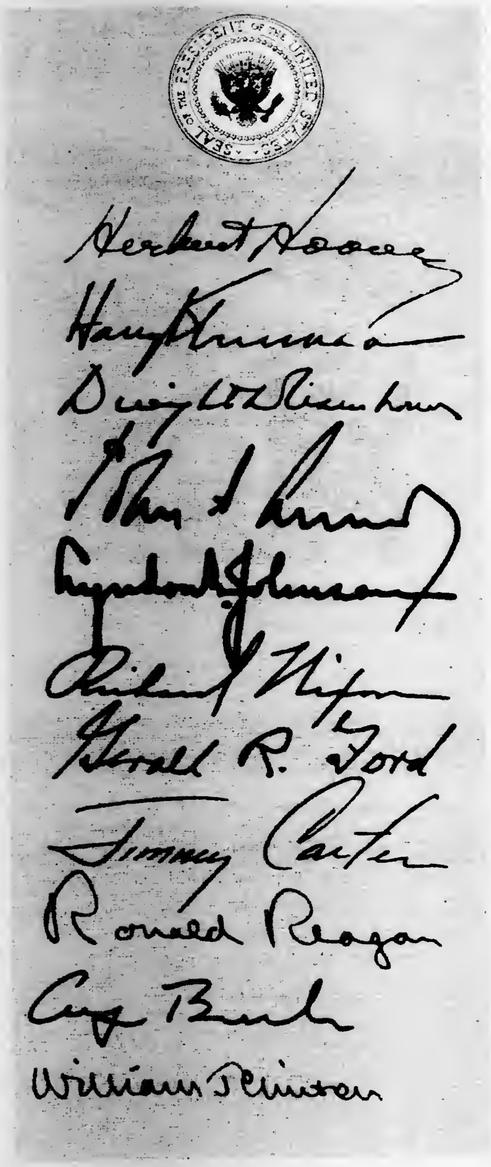
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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AG61

Tobacco Loss Assistance Program 2001

AGENCY: Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements agricultural market assistance provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, that relate to tobacco. This rule will mitigate the reduction in the tobacco quotas of the eligible producers.

DATES: Effective March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Agricultural Program Specialist, Tobacco Branch, FSA, USDA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0540, Telephone: (202) 720–2715.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 774 of Pub. L. 107–76 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 107–76 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. This rule relates to tobacco assistance and implements the provisions of Subtitle A.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been designated as "not significant."

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies is:

10.452—Disaster Reserve Assistance.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the United States Department of Agriculture (USDA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This rule does not impact the information collection requirements of 7 CFR 1464 approved by OMB and assigned OMB control numbers 0560–0047 and 0560–0076.

Discussion of Final Rule

This Final Rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2002 (Pub. L. 107–76), which relate to agricultural market assistance for agricultural producers. Section 774 of Pub. L. 107–76 authorizes the Secretary of Agriculture (the Secretary) to use funds of the Commodity Credit Corporation (CCC) to make payments to eligible persons who own, control or grow tobacco on a farm for which a basic quota or allotment for eligible tobacco was established for the 2001 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938. This eligibility is not affected by temporary transfers or undermarketed tobacco.

Outlays under the programs implemented by this rule will total approximately $5 million. Most tobacco operations are small family-owned affairs and to the extent that the $5 million payment to producers and quota-holders defrays tobacco production costs, the Tobacco Loss Assistance Program 2001 (TLAP01) will enhance their solvency. In the short-term, the cost to the government roughly equals the benefits paid to the producers. In the longer term, to the extent that these disaster payments protect producers from bankruptcy, the payments may stabilize the small farm economy and thereby help achieve the public policy objective of the tobacco program.

A March 1 effective date for this rule was chosen to provide flexibility in the event of a delay in publication of the rule.

List of Subjects in Part 1464

Tobacco Loans, Warehouse Losses, Reporting and record keeping requirements.

Accordingly, Title 7, Part 1464 is amended as follows:

PART 1464—TOBACCO

5. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

6. Add subpart F to read as follows:

Subpart F—Tobacco Loss Assistance Program 2001

Sec.
1464.500 [Reserved]
1464.501 Applicability and basic terms for payment.
1464.502 Administration.
1464.503 Definitions.
1464.504 Eligibility.
1464.505 Signup.
1464.506 [Reserved]
1464.507 Benefits.
1464.508 [Reserved]
1464.509 Offsets and assignments.

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1464.510 Misrepresentation and scheme or device.
1464.511 [Reserved]
1464.512 Cumulative liability.
1464.513 Estate, trusts, and minors.
1464.514 Death, incompetence, or disappearance.
1464.515 Appeals.

§ 1464.500 [Reserved]

§ 1464.501 Applicability and basic terms for payment.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program 2001 (TLAP01), authorized by Pub. L. 107–76, which provides that funds of the Commodity Credit Corporation (CCC) be made available to certain persons whose farms had established marketing quotas or allotments for the 2001 crop year.

(b) Subject to the availability of funds, payments for this program shall be divided among eligible persons as follows: 33⅓ percent of the payments will be made to quota owners; 33⅓ percent of the payments will be made to controllers; and 33⅓ percent of the payments will be made to growers.

§ 1464.502 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President, CCC (Administrator, FSA) and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee that is not in accordance with the regulations of this part.

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

§ 1464.503 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Tobacco Loss Assistance Program of this subpart. The terms defined in §§ 718.2 or 723.104 of this title shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Controller means, taking into account temporary transfers, that person or entity who, as determined by the Deputy Administrator, controls the land used to actually produce the eligible tobacco and shares in the risk of production.

Eligible person means with respect to payments under this part, a person who owns, controls, or grows tobacco on a farm for which a marketing quota or allotment was established under the Agricultural Adjustment Act of 1938 for the 2001 crop year.

Eligible tobacco means each of the following kinds of tobacco: fire-cured tobacco, comprising types 22 and 23; dark air-cured tobacco, comprising types 35 and 36; and Virginia sun-cured tobacco, comprising type 37.

Grower means person(s) or entities who provide labor to produce tobacco and share in the risk of production during the relevant period taking into account temporary transfers.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Quota owner means the person or entity who, for the relevant period, owns the land for which a quota is established under the Agricultural Adjustment Act of 1938, as amended, irrespective of temporary transfers or undermarketings.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop, which share is conditional upon the success of that marketing. Farm owners who lease their farm land to a tobacco grower for the right to grow tobacco on that land and receive a cash payment for such right, regardless of whether or not a tobacco crop is marketed, are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing of the tobacco crop are not considered to be sharing in the risk of production.

TLAP01 means the Tobacco Loss Assistance Program, for the 2001 crop, which is provided for in this subpart.

§ 1464.504 Eligibility

For a person to be considered an "eligible person" under this subpart, such person must own, control, or grow eligible tobacco on a farm with an established "eligible tobacco" marketing quota or allotment for the 2001 crop year.

§ 1464.505 Sign up.

(a) Eligible persons who wish to apply for TLAP01 funds, must file an application with the county FSA office by the date established by CCC. However, an application filed late because of hardship may be accepted. Acceptance of such applications must be approved by the Deputy Administrator, subject to the availability of funds.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.506 [Reserved]

§ 1464.507 Benefits.

(a) TLAP01 payments shall be made to eligible persons not later than March 31, 2002 as follows:

(1) All fire-cured, dark air-cured and Virginia sun-cured tobacco funds will be distributed one-third to quota owners; one-third to the controller; and one-third to growers.

(2) The allocated funds will be disbursed to quota owners based on the 2001 crop year basic acreage allotment multiplied by National Agricultural Statistics Service (NASS) yield, and to controllers and growers based on the 2001 crop effective allotment multiplied by the yields as specified in the authorizing legislation.

(b) The payment amount for each kind of eligible tobacco shall be equal to 10 cents per eligible payment pound distributed ⅓ to the eligible owner, ⅓ to the eligible controller (if any), and ⅓ to the eligible grower (if any). Persons who fit more than one category can accumulate shares.

(c) In the case where a payment to a farm is disputed CCC may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to that farm until any such disputes are resolved. Also, so that payments may be made expeditiously in a manner that is administratively efficient, CCC may in its sole discretion exclude payments to a person who does not file a timely claim.

§ 1464.508 [Reserved]

§ 1464.509 Offsets and assignments.

(a) Any payment or portion thereof made to any person under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the related crop, or proceeds thereof. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to payments made under this part.

(b) Eligible persons may assign TLAP01 payments as provided in part 1404 of this chapter.

§ 1464.510 Misrepresentation and scheme or device.

(a) A producer who erroneously represents any fact affecting a program determination made in accordance with this part shall not be entitled to payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to CCC all payments received under this subpart, plus interest determined in accordance with part 1403 of this chapter. The subject producer's interest in all applications shall be terminated.

§ 1464.511 [Reserved]

§ 1464.512 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.513 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.514 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance, of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1464.515 Appeals.

The appeal, reconsideration, or review of determinations made under this part must be in accordance with parts 11 and 780 of this title. The eligibility provisions for kinds of tobacco under this subpart are not subject to appeal rights.

Signed at Washington, DC, on March 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6711 Filed 3–18–02; 9:46 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–131–1]

Change in Disease Status of Finland Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Finland to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that country. Finland has been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in Finland and meat, meat products, and certain other products of ruminants that have been in Finland. This action is necessary in order to update the disease status of Finland regarding bovine spongiform encephalopathy.

DATES: This interim rule was effective December 7, 2001. We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 20, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–131–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–131–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–131–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including

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bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraph (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Finland has been among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on December 7, 2001, a case of BSE was confirmed in a native-born animal in Finland. Therefore, in order to update the disease status of Finland regarding BSE, we are amending the regulations by removing Finland from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding Finland to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants that have been in Finland, meat, meat products, and certain other products and byproducts of ruminants that have been in Finland. We are making these amendments effective retroactively to December 7, 2001, which is the date that BSE was confirmed in a native-born animal in Finland.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of Finland regarding BSE. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Finland to the list of regions where BSE exists because the disease has been detected in a native-born animal in that region. Finland has been listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Finland regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Finland.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to December 7, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the word "Finland,".

b. In paragraph (a)(2), by removing the word "Finland,".

Done in Washington, DC, this 14th day of March, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6692 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–004–1]

Change in Disease Status of Austria Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Austria to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that country. Austria has been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in Austria. This action is necessary in order to update the disease status of Austria regarding bovine spongiform encephalopathy.

DATES: This interim rule was effective December 13, 2001. We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 20, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–004–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–004–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–004–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, were to be imported into the United States and fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE were imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States.

Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraph (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Austria has been among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on December 13, 2001, a case of BSE was confirmed in a native-born animal in Austria. Therefore, in order to update the disease status of Austria regarding BSE, we are amending the regulations by removing Austria from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding Austria to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants, meat, meat products, and certain other products and byproducts of ruminants that have been Austria. We are making these amendments effective retroactively to December 13, 2001, which is the date that BSE was confirmed in a native-born animal in Austria.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of Austria regarding BSE. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Austria to the list of regions where BSE exists because the disease has been detected in a native-born animal in that region. Austria has been listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Austria regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Austria.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to December 13, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the word "Austria,".

b. In paragraph (a)(2), by removing the word "Austria,".

Done in Washington, DC, this 14th day of March, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6693 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, and 109

[Notice 2002–3]

Independent Expenditure Reporting

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to implement statutory changes to the deadlines for filing certain reports of independent expenditures. Under the new law, reports of last minute independent expenditures ("24-hour reports") must be actually received by the Commission or the Secretary of the Senate's office within 24 hours of the time the independent expenditure was made. To assist those who must meet this new reporting deadline, the revised rules allow reports of last minute independent expenditures to be filed by facsimile machine or electronic mail, unless the filer participates in the Commission's electronic filing program. Electronic filers must continue to file all reports of independent expenditures (24-hour reports as well as regularly scheduled reports) using the Commission's electronic filing system. Further information is provided in the supplementary information that follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days. 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Cheryl Fowle, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is issuing revised regulations at 11 CFR 100.19, 104.4, 104.5, 104.14, 104.18, 109.1 and 109.2. These revised rules implement Public Law 106–346 (Department of Transportation and Related Agencies Appropriations Act, 2001, 114 Stat. 1356 (2000)), which amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, ("the Act" or "FECA"). Paragraphs (b) and (c) of 2 U.S.C. 434 require political committees and other persons making independent expenditures to file reports or statements if their independent expenditures exceed $250. In addition, if independent expenditures of $1,000 or more are made less than twenty (20) days but more than twenty-four (24) hours before the day of an election, an additional statement must be filed within 24 hours. Public Law 106–346 required, *inter alia*, the Commission to issue rules requiring that reports of independent expenditures made less than twenty (20) days but more than twenty-four (24) hours before an election ("24-hour reports") be *received* by the Commission or the Secretary of the Senate, as appropriate,[1] within 24 hours of the time the independent expenditure was made. The statutory change permits those who must file 24-hour reports to do so using facsimile machines or electronic mail, except for those required to file electronically (*see* 11 CFR 104.18). In addition to their 24-hour reports, persons other than political committees may file by fax or e-mail other reports of independent expenditures in accordance with the regular filing schedule (*see* 11 CFR 104.5). Public Law 106–346 also requires the Commission to provide methods of verification of documents (other than requiring a signature on the document) for all purposes, including submission under penalty of perjury. These new filing methods are intended

[1] The Secretary of the United States Senate Office of Public Records is the proper recipient of reports of independent expenditures that either support or oppose only candidates for the United States Senate. 11 CFR 104.4(c)(2).

to speed up disclosure and to provide political committees and other filers with more flexibility in choosing methods of compliance with reporting requirements. The new law requires these methods to be in place for elections occurring after January 1, 2001, subject to regulations to be promulgated by the Commission.

In addition to the amendments regarding independent expenditures, the new law also requires the Commission to amend its regulations to exclude from the definition of "contribution" loans that candidates receive from brokerage accounts, lines of credit, or other credit instruments as long as the loans were made under commercially reasonable terms and were from a source that provides such loans in the normal course of business. That topic is being addressed in a separate rulemaking. *See* Notice of Proposed Rulemaking, 65 **Federal Register** 38576 (Wednesday, July 25, 2001).

Before final promulgation of any rules or regulations to carry out the provisions of Title 2 of the United States Code, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty legislative day review period. 2 U.S.C. 438(d). These rules on independent expenditure reporting were transmitted to Congress on March 15, 2002.

Explanation and Justification

The Commission published a Notice of Proposed Rulemaking ("NPRM") in the **Federal Register** on May 9, 2001, 65 FR 23628 (May 9, 2001). The NPRM contained proposed rules at 11 CFR 100.19, 104.4, 104.5, 104.15, 109.1 and 109.2 regarding, *inter alia*, when 24-hour reports are considered filed, the filing of 24-hour reports by facsimile machine or electronic mail, and a definition of when an independent expenditure is made. Additionally, the NPRM explicitly recognized that authorized committees may file reports of last-minute contributions (48-hour notices) using facsimile machines or the Commission's web site.

The comment period ended on June 8, 2001. The Commission received one written comment from the James Madison Center for Free Speech ("Madison Center").

Section 100.19 File, filed or filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define *file, filed,* and *filing*. The introductory text of this section states that a document is considered filed if it is: (a) Delivered to the appropriate filing office of the appropriate office, (b) sent by registered or certified mail and postmarked by midnight of the prescribed filing date—except for pre-election reports, or (c) electronically filed, and received and validated by the Commission's electronic filing system on or before 11:59 p.m. eastern time on the prescribed filing date. For clarification, the Commission has added a definition of "document" which mirrors the definition in the electronic filing regulations (11 CFR 104.18). A document is any report, statement, notice or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

Paragraph (a) of this section states that a document is timely filed upon delivery to the Commission or Secretary of the Senate, as appropriate, by the close of the prescribed filing date. As explained below, revised paragraph (a) clarifies that the definition of "timely filed" is different for paper filers and electronic filers.

Under paragraph (b) of section 100.19 of the previous regulations, 24-hour reports were considered timely filed if they were deposited at a Post Office and were postmarked for certified or registered mail within 24 hours of the time the independent expenditure was made. Under Public Law 106–346 and the revised regulations at paragraph (b), 24-hour reports will only be considered timely filed if they are received by the Commission or Secretary of the Senate within 24 hours of the time the expenditure was made. Thus, sending 24-hour reports by mail will no longer be a viable option because it is unlikely that these reports will be received by the Commission within 24 hours of the making of the expenditure.

New paragraph (d) of section 100.19 defines "timely filed" with regard to 24-hour reports of independent expenditures. The new paragraph states that such reports are timely filed when they are received by the Commission or the Secretary of the Senate after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for the independent expenditure, but no later than 24 hours from the time the independent expenditure is made. The new paragraph also states that such 24-hour reports may be filed by facsimile machine or electronic mail, in addition to other permissible means of filing (*e.g.*, hand delivery or overnight courier).

New paragraph (e) expressly incorporates the Commission's practice of allowing authorized committees to file their reports of contributions of $1,000 or more made less than twenty (20) days but more than forty-eight (48) hours before the day of an election (48-hour reports) using a fax machine or the Commission's web site. This change does not stem from Pub. L. 106–346. Rather, the Commission has for some time allowed authorized committees (if they are not electronic filers) to file these reports by facsimile machine in addition to other permissible filing methods. *See* Advisory Opinion ("AO") 1988–32. In the fall of 2000, the Commission began allowing all authorized committees who file with the Commission (including electronic filers) to file 48-hour reports on-line through the Commission's web site. Note that 48-hour reports filed with the Secretary of the Senate cannot be filed using the on-line program at the Commission's web site. They can, however be filed by fax to the Secretary of the Senate. New paragraph (e) of 11 CFR 100.19 specifically incorporates those filing methods in the regulations. The Commission received no comments on this section.

Note that the final rules differ from the rule proposed in the NPRM with regard to the web based filing of 48-hour reports. The proposed rule stated that only those who do not file electronically could use the Web based filing system implemented in the autumn of 2000. The Commission currently allows electronic filers to file 48 hour reports using either the electronic filing program or on the Commission's web site. Thus the final rules allow all authorized committees (including those who participate in the electronic filing program) to file their 48-hour notices using the Commission's web site.

Section 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(c))

The Commission's regulations at 11 CFR 104.4 set forth the requirements for political committees reporting independent expenditures. Paragraph (b) of this section is being revised in three respects. First, this paragraph is being revised to state that 24-hour reports must be *received* by the appropriate officers (the Commission or Secretary of the Senate) within 24 hours of the time the independent expenditure is made. Such reports were previously timely if they were postmarked as certified or registered mail within 24 hours of the making of the independent expenditure.

Second, to enable filers to meet the new deadline, amended paragraph (b) of section 104.4 permits political committees to file 24-hour reports by facsimile machine or electronic mail, as

long as the filer is not part of the electronic filing program under 11 CFR 104.18.

Third, section 104.4(b) is being modified to make it easier for political committees to certify the independence of the expenditures falling under this paragraph. Schedule E contains a notarized certification under penalty of perjury as to whether the committee's expenditures were "coordinated" with any candidate, authorized committee or agent thereof, and, if the independent expenditures were made by a corporation, that the maker is a qualified nonprofit corporation (see 11 CFR 114.10). No other campaign finance reports filed with the Commission or the Secretary of the Senate need to be notarized.

Public Law 106–346 at § 502(a) requires the Commission to create methods, other than by requiring a signature on the document, of verifying the independent expenditure certification on 24-hour reports for all purposes, including penalties of perjury. Consequently, the revised regulations allow the 24-hour report filer to verify the report using self-verification. This means that Schedule E no longer needs to be notarized. Instead, the political committee must self-verify the document using either a handwritten signature of the treasurer on a paper document or by typing the treasurer's name on e-mailed documents. The Commission intends to make the appropriate conforming amendments to Schedule E after the promulgation of these rules. This will extend self-verification to all reports of independent expenditures, including those made before the 20th day before the election and those that exceed $250 but are under $1000.

New paragraphs (b) (1) and (2) of 11 CFR 104.4 set forth two methods for verifying 24-hour reports of independent expenditures. Paper reports (e.g., filed by hand delivery or fax machine), must be verified by the filer's signature under the certification of independence. Reports filed by electronic mail must be verified by the filer typing his or her name under the certification.

As an alternative to self-verification, the NPRM sought comments on retaining the notarization requirement for faxed reports and requiring electronic notarizations for e-mailed reports. Additionally, the Commission sought comments on using digital signatures verified by a "Trusted Third Party" for e-mailed reports. Digital signatures utilize a Public Key Infrastructure. That structure uses Public and Private Keys to encode a message and to provide a method of positively identifying the sender. The Commission received no comments addressing this topic or offering other possible methods of verification.

The revised regulations remove the notarization requirement for several reasons. First, the statute simply requires verification, not notarization. Second, no other reports filed with the Commission require notarization. Third, the statement that the filer must sign carries the penalty for perjury if falsely made.

The Commission decided not to institute electronic notarization or digital signatures because they, as relatively new technologies, are not widespread enough to ensure access to everyone who might make an independent expenditure. For example, only a handful of states have electronic notarization statutes, effectively leaving citizens of other states without means of verification. Digital signatures must be purchased and, generally, require the purchaser to have a computer on which the private key (a computer generated string of digits) resides. The Commission is concerned that such a requirement would unduly burden the making or reporting of independent expenditures by those who do not have access to these means of verification.

Section 104.5 Filing Dates (2 U.S.C. 434(a)(2))

Section 104.5 sets forth the required filing dates for each type of political committee and other individuals. The Commission is revising paragraph (f) of this section to follow new paragraph (e) of 11 CFR 100.19 discussed above.

Revised paragraph (g) of 11 CFR 104.5 states that 24-hour reports of independent expenditures must be received by the appropriate officers within 24 hours of the making of the independent expenditure. Previously, 24-hour reports were considered timely filed when they were postmarked to be sent by registered or certified mail. This change conforms to the amendments to 11 CFR 100.19 and 104.4(b) discussed above.

The Commission received no comments on the amendments to this section.

Section 104.14 Formal Requirements Regarding Reports and Statements

Under 11 CFR 104.14, reports and statements must be signed. Two conforming amendments are being made to paragraph (a) of this section. First, new paragraph (a)(1) provides that reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR 104.4(b) or 11 CFR 109.2 must be verified in accordance with those sections. Secondly, new paragraph (a)(2) states that reports, designations or statements filed electronically under 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g). The Commission received no comments on this section.

Section 104.18 Electronic Filing of Reports (2 U.S.C. 432(d) and 434(a)(11))

Under the previous regulations at 11 CFR 104.18(h), those participating in the Commission's electronic filing program (either mandatory or voluntary) were required to file FEC Form 5 or Schedule E electronically accompanied by a paper copy in order to file a notarized document.

Public Law 106–346 does not allow electronic filers to use fax machines or electronic mail to file their independent expenditures reports. In order to afford all electronic filers the ability to comply with the new requirement that 24-hour reports be received by the appropriate office within 24 hours, the Commission is removing Schedule E and FEC Form 5 from the list in paragraph (h) of reports that require a paper follow-up. Instead, the revised rules require those in the electronic filing program to verify all reports of independent expenditures using the same process they use in filing any other report. Paragraph (h) is being reorganized to clarify which paper documents must accompany electronically filed reports, and when those paper copies must be filed.

The Commission's electronic filing software, FECFile, currently creates Schedule E for electronic filing by political committees. The Commission's electronic filing system accepts FEC Form 5 if created by another entity using the Commission's specifications (available on the FEC web site, www.fec.gov), but FECFile does not currently create Form 5. The Commission intends to make FEC Form 5 available in the FECFile software package. Note that this software is available for free from the Commission.

Further, the Commission is adding to the list of electronic filings that require paper follow-up Schedule C–P–1, used by Presidential candidates to report loans and lines of credit from lending institutions. Like Schedule C–1 (used by non-Presidential committees), Schedule C–P–1 requires the lending institution agent's signature.

On July 25, 2001, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking on Brokerage Loans and Lines of Credit (65 FR 38576 (July 25, 2001)) which sought comments on further revisions to 11

CFR 104.18(h). Thus, additional changes to this section may be promulgated at a later time as part of that separate rulemaking.

Section 109.1 Definitions (2 U.S.C. 432(17))

Section 109.1 of the Commission's regulations contains definitions relevant to independent expenditures. Public Law 106–346 and the revised regulations at 11 CFR 100.19(d), 104.4(b), 104.5(g), and 109.2(b) require 24-hour reports to be received by the Commission or the Secretary of the Senate within 24 hours of the time the independent expenditure is made.

The NPRM sought comments on a three-pronged definition of when an independent expenditure is *made* that would apply to all independent expenditures, not just those reported on a 24-hour basis. That definition was taken from the statutory and regulatory definitions of "independent expenditure" (2 U.S.C. 431(17) and 11 CFR 100.8(a)(2)) and "expenditure" (2 U.S.C. 431(9)(A) and 11 CFR 109.1). Proposed new paragraph (f) of 11 CFR 109.1 stated that an independent expenditure is made at the earliest of three possible times: (1) The date on which a written contract, including a media contract, promise or agreement to make an independent expenditure is executed; (2) the first date on which the communication is printed, broadcast, or otherwise publicly disseminated; or (3) the date on which the person making the independent expenditure pays for it.

The sole commenter on this rulemaking objects to proposed paragraph (f) for several reasons. First, the commenter argues that the definition is a substantive change to the current provisions of the FECA and is, therefore, outside the Commission's regulatory authority. The commenter also asserts that the definition is illogical and that an independent expenditure is not made until the communication is disseminated to the public. Thus, the commenter argues, prong number one of the definition is incorrect.

The Commission believes that a legal basis arguably would exist for the first prong of its definition of "made". Language in the FECA states that an "independent expenditure is an expenditure" (2 U.S.C. 431(17)). An expenditure includes a "written contract, promise, or agreement to make an expenditure" (2 U.S.C. § 431(9)(A)(ii)). Thus, independent expenditures necessarily include written contracts, promises or agreements to make an expenditure for a communication. Nonetheless, here the Commission is called upon to define when an independent expenditure should be considered "made" for purposes of reporting. Some practical and policy considerations come into play.

The Commission is dropping from the final rules the first prong of the test (the date on which a written contract, including a media contract, promise or agreement to make an independent expenditure, is executed). This will simplify the reporting rules, address the practical problem of reporting such transactions as independent expenditures and ensure that the relatively detailed rules on reporting debts at 11 CFR 104.11 apply only to political committees. Those latter rules require a debt (which includes a written contract debt) to be reported only if it exceeds $500 or is for any amount that has been outstanding for more than 60 days.

The commenter also objects to the second prong of the proposed rule at 11 CFR 109.1(f)(2), which stated that an independent expenditure would be made "on the first date on which the communication is printed, broadcast or otherwise publicly disseminated." The commenter objects to the word "printed" on the grounds that fliers could be printed and sit in a garage for months, and thus not being publicly disseminated. The Commission is changing the word "printed" to "published" in the final rules to remove any confusion as to when a communication for an independent expenditure is made.

The commenter further objects to what it believes to be a consequence of the revised regulation which would, in some instances, require disclosure before publication of the communication. The commenter expresses concern that this could lead to mischievous interference with communications from opposing campaigns. The commenter argues that such disclosure would allow incumbents the advantage of knowing when independent expenditures have been made on behalf of their opponents, thus giving them the opportunity to convince broadcasters not to run the advertisements in question.

While the Commission does not necessarily agree with the commenter's legal analysis, the Commission is dropping the third prong of the proposed definition. New paragraph (f) of the final regulations states that an independent expenditure is made on the first date on which the communication is published, broadcast or otherwise publicly disseminated. New language in 11 CFR 104.4(b), 104.5(g) and 109.2(b) would, however, allow persons to report an independent expenditure before the underlying communication is publicly disseminated, notwithstanding other regulations (11 CFR 104.11(b) or 104.3(b)) that could fairly be read to require earlier disclosure. The statutory change for 24-hour reports reflects Congressional intent to emphasize and ensure timely disclosure of independent expenditures. Consequently, the final rules will enhance timely disclosure by requiring that independent expenditures be reported after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure but no later than 24 hours after the time they are first publicly disseminated. Note that independent expenditures that are mailed to their intended audiences are publicly disseminated at the time that they are relinquished to the U.S. Post Office.

Examples for Political Committees

In some situations, a political committee will not make payment or incur a reportable debt before the communication underlying the independent expenditure is publicly disseminated. If the communication is both publicly disseminated and paid for in the same reporting period, then the committee reports the independent expenditure on Schedule E for that reporting period. If the communication is aired in one reporting period (e.g., during the 24-hour reporting period) and payment is made in a later reporting period (e.g., during the post-general election period), then the committee reports the independent expenditure as a memo entry on Schedule E during the reporting period in which the communication is publicly disseminated and reports it again as a positive entry on Schedule E in the reporting period in which payment is made.

In other situations, however, a political committee may pay the production and distributions costs associated with an independent expenditure in one reporting period, but not publicly disseminate it until a later reporting period. In this case, the committee reports the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly disseminated, the committee files a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The committee also reports the disbursement for the independent expenditure as a negative entry on Schedule B so the total

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disbursements are not inflated. Alternatively, if the committee wishes to disclose the independent expenditure before the communication is publicly disseminated, it could report the independent expenditure on Schedule E for the reporting period in which the payment is made, with no further reporting obligation at the time the communication is disseminated.

Obligations incurred but not yet paid (that are reportable debts), must be reported on Schedule D. When, in a subsequent reporting period, the communication is publicly disseminated, the committee must file a Schedule E referencing the debt on Schedule D. The committee must continue to report the debt on Schedule D (and any payment on it on Schedule E), until the debt is extinguished.

Example 1: Committee A makes a $10,000 payment on October 5 for a newspaper ad urging the defeat of Candidate X, where the ad will run on the 10th day before the November general election (i.e., during the 24 hour reporting period). The committee reports the payment on Schedule B for Operating Expenditures for its pre-general election report. The committee must file a 24-hour report on Schedule E no later than 24 hours after the ad was first published. Further, on its post-general election report, the committee must report the independent expenditure on Schedule E and report the disbursement for the independent expenditure as a negative entry on Schedule B for Operating Expenditures. Alternatively, the committee could report the independent expenditure on Schedule E for its pre-general election report with no further reporting obligation during the 24-hour and post-general reporting periods.

Example 2: In September, Committee B, a quarterly filer, enters a contract, but does not pay, for a mailing containing an independent expenditure supporting candidate X. The cost of the mailing is $450. Because the debt is less than $500, and has been outstanding for less than 60 days, it is not reportable on Schedule D of the committee's third quarter report. The mailing is delivered to a U.S. Post Office on October 5 (during the pre-general reporting period). Committee B reports the independent expenditure on a 12-day pre-general election report as a Memo Schedule E, using October 5 as the date. Payment is made on November 1. No 24-hour report is needed, because the independent expenditure was distributed before the 20 day before the general election. On the post-general election report, Committee B reports the payment as a positive entry on Schedule E and includes a cross-reference to the Memo Schedule E entry on the 12-day pre-general report.

Example 3: Committee C, a monthly filer, contracts in August for airtime to begin on October 31, five days before the November 5 general election. The costs of producing the ads and the airtime will exceed $500, but no payment is actually made during the August, September, or pre-general reporting periods. These amounts are reportable as debts on Schedule D. The ads run from October 31 through November 2. Payment is made on November 1. Committee C files a 24-hour report of independent expenditures on Memo Schedule E to be received by the Commission or the Secretary of the Senate, as appropriate, within 24 hours of the first time the ad ran on October 31. This Memo Schedule E uses October 31 as the date of the independent expenditure and includes the committee's best estimate of the total cost as the amount. (In this case, the exact amount would be known as of November 1.) The committee, on its post-general election report, shows the November 1 payment to extinguish the debt on Schedule D and also reports the independent expenditure payment as a positive disbursement on Schedule E so the line totals on the Detailed Summary Page will be accurate.

Examples for Persons Other Than Political Committees

Persons other than political committees simply report their independent expenditures on FEC Form 5 or by letter (if they are not required to file electronically). If the independent expenditure is first distributed during the 24-hour reporting period (less than 20 days but more than 24 hours before an election), it must be reported no later than 24 hours after the first time the ad is distributed. If the independent expenditure is first publicly disseminated outside the 24-hour reporting period, it must be reported no later than by the end of the regular reporting period during which the ad is first distributed.

Example 4: Mr. Jones takes out a newspaper ad supporting Candidate X. The ad runs October 4th through October 7th in an election year. Mr. Jones must report the independent expenditure no later than 24 hours after the time the ad first runs on October 4th.

Section 109.2 Reporting of Independent Expenditures by Persons Other Than a Political Committee (2 U.S.C. 434(c)).

Section 109.2 of the Commission's regulations requires persons other than political committees to report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information about the person who made the independent expenditure and about the nature of the expenditure itself. Under the previous regulations, regardless of whether the filer reported the independent expenditure on Form 5 or in a signed statement, the report had to be notarized. As discussed in the Explanation and Justification for 11 CFR 104.4 above, the revised regulations no longer require notarization of reports of independent expenditures, but do require filers to self-verify their reports. Accordingly, the introductory text of paragraphs (a) and (a)(1) of section 109.2 is being revised to change the signature requirement on reports of independent expenditures to the verification of reports of independent expenditures. To implement the self-verification, the amendments to 11 CFR 109.2(a)(1)(v) require that persons other than political committees continue to include a prescribed statement of certification as to the independence of the expenditure. The Commission intends to make conforming amendments to FEC Form 5 at a later point.

The NPRM proposed adding new paragraph (a)(1)(vi) to section 109.2 (and renumbering paragraph (a)(1)(vi) as (a)(1)(vii)). Proposed paragraph (a)(1)(vi) would have required those who file a statement instead of FEC Form 5 to certify that the expenditure was not made to finance, disseminate, distribute or republish campaign materials prepared by a candidate or a candidate's agent or authorized committee. This statement is in addition to the statement of independence required in 11 CFR 109.2(a)(1)(v), discussed above. While this "republication statement" has long been included in the certification on FEC Form 5 (and on Schedule E, filed by political committees), it has not been required of those who file by letter. The NPRM further noted, that, on the other hand, the statutory certifications required by 2 U.S.C. 434(b)(6)(B)(iii) and (c)(2)(A) do not address distribution of candidate-prepared materials. Consequently, comments were requested on not adding the certification statement to paragraph (a)(1)(vi) and removing that part of the certification from FEC Form 5 and Schedule E. The commenter did not address this issue.

The Commission has decided to remove the "republication statement" from FEC Form 5 and Schedule E, and to not include it in revised 11 CFR 109.2. A statement regarding republication of candidate materials is not specifically mentioned in 2 U.S C. 434(b)(6)(B)(iii) or (c)(2). Corresponding changes will be made to FEC Form 5 and Schedule E.

Conforming changes are being made to paragraph (b) of section 109.2 to indicate that 24-hour reports must be received after a disbursement is made for an independent expenditure, but no later than 24 hours from the time the independent expenditure is made.

New paragraph (c) of 11 CFR 109.2 sets forth the acceptable methods of verification for both e-mailed and paper reports. Note that faxed reports are considered to be filed on paper and must contain the certification statement required by 11 CFR 109.2(a)(i) and new paragraph (a)(vi) followed by the signature of the filer. Electronically mailed reports must contain the certification statements and information required by 11 CFR 109.2(a)(i) through (a)(vii) followed by the typewritten name of the filer. The Commission received no comments on these amendments.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that these final rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the Commission is providing most filers with less than $50,000 of activity with additional means of complying with the law, thereby increasing the filers' flexibility by allowing them to choose the most convenient and cost effective filing method. These additional filing methods will likely reduce costs for small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the *Code of Federal Regulations* is amended to read as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), 434(c) and 438(a)(8).

2. Section 100.19 is revised to read as follows:

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

With respect to documents required to be filed under 11 CFR parts 101, 102 104, 105, 107, 108 and 109, and any modifications or amendments thereto, the terms *file, filed,* and *filing* mean one of the actions set forth in paragraphs (a) through (e) of this section. For purposes of this section, document means any report, statement, notice or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) Except for documents electronically filed under paragraph (c) of this section, a document is timely filed upon delivery to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463; or the Secretary of the United States Senate, Office of Public Records, 119 D Street NE., Washington, DC 20510 as required by 11 CFR part 105, by the close of business on the prescribed filing date.

(b) A document other than a 24-hour report of an independent expenditure under 11 CFR 104.4(b) or 109.2(c) is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission at or before 11:59 p.m., Eastern Standard/Daylight Time, on the filing date.

(d) A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c) after a disbursement is made, or, in the case of a political committee, a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours from the time the independent expenditure was made. In addition to other permissible means of filing, a 24-hour report may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

(e) In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. All authorized committees that file with the Commission, including electronic filers, may use the Commission's web site's on-line program to file 48-hour notifications of contributions. See 11 CFR 104.5(f).

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b) and 439a.

4. Section 104.4 is amended by revising paragraph (b) to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).

* * * * *

(b) *24-hour reports.* Reports of any independent expenditures aggregating $1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, shall be received by the appropriate officers listed in paragraph (c) of this section after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours after such independent expenditure is made. Such report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a 24-hour report may be filed using a facsimile machine or electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18. Such report shall be verified by one of the methods stated in paragraph (b)(1) or (b)(2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by 11 CFR 104.3(b)(3)(vii) shall be immediately followed by the handwritten signature of the treasurer of the political committee that made the independent expenditure and who certifies, under penalty of perjury, its independence.

(2) For reports filed by electronic mail, the certification required by 11 CFR 104.3(b)(3)(vii) shall be immediately followed by the typewritten name of the treasurer of the political committee that made the independent expenditure and who certifies, under penalty of perjury, its independence.

* * * * *

5. Section 104.5 is amended by revising paragraphs (f) and (g) to read as follows:

§ 104.5 Filing Dates (2 U.S.C. 434(a)(2)).

* * * * *

(f) *48-hour notification of contributions.* If any contribution of $1,000 or more is received by any

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authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be filed in accordance with 11 CFR 100.19. The notification shall be in addition to the reporting of these contributions on the post-election report.

(g) *24-hour report of independent expenditures.* Statements disclosing any independent expenditures aggregating $1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, must be received by the appropriate officers listed in 11 CFR 104.4(c) after a disbursement is made, or in the case of a political committee, a debt reportable under 11 CFR 104.11(b) is incurred, but no later than 24 hours after such independent expenditure is made. Such statement shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

* * * * *

6. Section 104.14 is amended by revising paragraph (a) to read as follows:

§ 104.14 Formal Requirements Regarding Reports and Statements.

(a) Each individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement except that:

(1) Reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR 104.4(b) or 11 CFR 109.2 must be verified in accordance with those sections; and

(2) Reports, designations, or statements filed electronically under 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g).

* * * * *

7. Section 104.18 is amended by revising paragraph (h) to read as follows:

§ 104.18 Electronic Filing of Reports (2 U.S.C. 432(d) and 434(a)(11)).

* * * * *

(h) *Schedules and forms with special requirements.*

(1) The following are schedules and forms that require the filing of additional documents and that have special signature requirements:

(i) Schedules C–1 and C-P–1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d)); and

(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

(2) If a person files a report electronically by submitting a diskette to the Commission and is required to file any of the schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy of the required schedule or form with the electronic submission, or a digitized version as a separate file in the electronic submission, by the close of business on the prescribed filing date.

(3) If a person files a report electronically by uploading the data to the Commission's electronic filing system and is required to file any schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy or a digitized version of the required schedule or form by the close of business on the prescribed filing date.

* * * * *

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

8. The authority for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(a)(11) and (c), 438(a)(8), and 441d.

9. Section 109.1 is amended by adding new paragraph (f) to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

* * * * *

(f) Notwithstanding 11 CFR 100.8(a)(2) and 104.11(b), an independent expenditure is made on the first date on which the communication is published, broadcast or otherwise publicly disseminated. For purposes of this section, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

10. Section 109.2 is amended by revising the introductory text in paragraphs (a) and (a)(1), by revising paragraphs (a)(1)(v), (a)(2), and (b), and adding new paragraph (c) to read as follows:

§ 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of $250 in a calendar year shall file a verified statement or report on FEC Form 5 with the Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

(1) If a verified statement is submitted, the statement shall include:

* * * * *

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or any authorized committee or agent thereof; and

* * * * *

(2) Reports or statements filed under this section shall be filed at the end of the reporting period (quarterly, pre-election, post-election, semi-annual or annual) (See 11 CFR 104.5)) during which any independent expenditure which aggregates in excess of $250 is made and in any reporting period thereafter in which additional independent expenditures are made.

(b) Reports of independent expenditures aggregating $1,000 or more made by any person after the twentieth day, but more than 24 hours before 12:01 a.m. of the day of an election must be received by the appropriate officers as listed in paragraph (c) of this section after a disbursement is made for an independent expenditure, but no later than 24 hours after such independent expenditure is made. Such report or statement shall contain the information required by paragraph (a) of this section indicating whether the independent expenditure is made in support of, or in opposition to, a particular candidate.

(c) Verification of independent expenditure statements and reports: For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by paragraph (a)(1)(v) of this section must be immediately followed by the handwritten signature of the person who made the independent expenditure and who certifies, under penalty of perjury, its independence. For reports filed by electronic mail, the certification required by paragraph (a)(1)(v) of this section must be immediately followed by the typewritten name of the person who made the independent expenditure and who certifies, under penalty of perjury, its independence.

Dated: March 15, 2002.

David. M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–6719 Filed 3–19–02; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2002–05]

RIN 3069–AB12

Technical Amendments to Federal Housing Finance Board Regulations

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is making various technical amendments to its regulations in order to complete the reorganization and modernization of the regulations that was begun with the regulatory reorganization rule published in February 2000. This rule will consolidate into one part the definitions of common terms used throughout the regulations; correct mistaken cross-references and other oversights remaining from the reorganization rule; delete obsolete provisions; and make certain changes to better conform to the stylistic conventions of the Code of Federal Regulations. None of the amendments are intended to effect any substantive change to any regulation.

EFFECTIVE DATE: This final rule is effective on March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Arnold Intrater, Acting General Counsel, (202) 408–2536; or Eric Raudenbush, Senior Attorney-Advisor, (202) 408–2932, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On February 18, 2000, the Finance Board published a final rule that reorganized and renumbered the agency's existing regulations, deleted obsolete regulations and made various technical amendments to the reorganized regulations. *See* 65 FR 8253 (Feb. 18, 2000) (Reorganization Rule). The amendments set forth in the Reorganization Rule were intended to implement a more logical, efficient and modern presentation of the regulations governing the Federal Housing Finance Board and Federal Home Loan Bank System, as well as to achieve greater consistency in terminology and greater conformity with current stylistic conventions of the Code of Federal Regulations (CFR).

Because the changes implemented by the Reorganization Rule were so comprehensive, there were a number of mistakes and oversights (*e.g.*, mistaken cross-references and obsolete terminology that was not amended) that remained to be corrected even after the rule became effective. In addition, since the publication of the Reorganization Rule, the Finance Board has completed a number of major rulemakings that have either added substantial amounts of text to its regulations, or significantly altered the text that existed prior to February of 2000. Although these major rulemakings were anticipated and taken into consideration in the drafting of the Reorganization Rule, their subsequent adoption has resulted in the need for some minor technical amendments in order to integrate fully the new material into the streamlined regulatory format. This final rule corrects the mistakes resulting from, and oversights remaining from, the Reorganization Rule and makes changes to integrate recently-adopted major regulations fully and cleanly into the overall structure of the regulations. None of the amendments contained in the rule are intended to effect any substantive change to any regulation.

A significant portion of the amendments set forth in the final rule involve the consolidation of definitions of terms that are used frequently throughout the regulations into part 900, which is the first part that appears in the regulations as codified in the CFR. Prior to the enactment of the Reorganization Rule, there were numerous examples throughout the regulations of terms that were defined many times over in separate parts of the regulations, and of synonymous terms that were variously used to describe the same concept in different parts of the regulations (*e.g.*, "Finance Board," "Board" and "Federal Housing Finance Board" were used in different parts of the regulations to refer to the same agency). To remedy these problems, the Reorganization Rule established a new part 900 wherein terms that were used often throughout the regulations could be defined once without further repetition.

Because several major rulemakings were anticipated at the time that the Reorganization Rule was drafted, only a few definitions were moved into part 900 as part of that rule. Several more definitions were added to part 900 in subsequent rulemakings. The Finance Board has now completed a thorough review of the regulations and has selected all of the terms that it believes should logically appear in part 900. Generally, the rule would consolidate into part 900 the definitions of all terms: (1) That are used in more than two parts of the regulations; and (2) whose definition does not set forth a substantive standard. Definitions that set forth substantive standards continue to appear in the definitional sections of the parts in which the term is used, regardless of the number of times that the definition must be repeated throughout the regulations. For example, the term "investment grade" is used in parts 932 (capital requirements), 956 (investments) and 960 (standby letters of credit) of the regulations, but its definition has been left in each of the appropriate definitional sections because it sets forth a substantive standard that is integral to those regulations.

The remaining amendments, which are scattered throughout the regulations, either: correct mistaken cross-references or other typographical errors; change citations or paragraph headings and numbering to conform to current standards of the CFR; or make conforming changes related to the consolidation of definitions into part 900, discussed above.

Finally, because all of the amendments that would be implemented by this rule are technical and nonsubstantive, the Finance Board has adopted the rule in final form without the usual notice-and-comment process.

Regulatory Flexibility Act

This is a technical rule that reorganizes the Finance Board's regulations without substantive change. The rule will not impose any regulatory requirements on small entities. Thus, in accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Parts 900 Through 997

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, under the authority of section 2B(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1422b(a), chapter IX of title 12 of the Code of Federal Regulations is amended as follows:

1. Revise part 900 to read as follows:

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PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

Sec.

900.1 Basic terms relating to the Finance Board, the Bank System and related entities.
900.2 Terms relating to Bank operations, mission and supervision.
900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

Authority: 12 U.S.C. 1422b(a).

§ 900.1 Basic terms relating to the Finance Board, the Bank System and related entities.

As used throughout this chapter, the following basic terms relating to the Finance Board, the Bank System and related entities have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section, or paragraph:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Act (12 U.S.C. 1432).

Bank System means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

Board of Directors, written in title case, means the Board of Directors of the Federal Housing Finance Board; the term *board of directors*, written in lower case, has the meaning indicated in context.

Chairperson means the Chairperson of the Board of Directors of the Finance Board.

Finance Board means the Federal Housing Finance Board established by section 2A of the Act (12 U.S.C. 1422a).

Financing Corporation or *FICO* means the Financing Corporation established and supervised by the Finance Board under section 21 of the Act (12 U.S.C. 1441) and part 995 of this chapter.

Housing associate means an entity that has been approved as a housing associate pursuant to part 926 of this chapter.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 925.20 or 925.24(b) of this chapter.

Office of Finance or *OF* means the Office of Finance, a joint office of the Banks referred to in section 2B of the Act (12 U.S.C. 1422b) and established under part 985 of this chapter.

Resolution Funding Corporation or *REFCORP* means the Resolution Funding Corporation established by section 21B of the Act (12 U.S.C. 1441b) and addressed in parts 996 and 997 of this chapter.

Secretary to the Board means the Executive Secretary to the Board of Directors, an officer within the Office of the Managing Director of the Finance Board.

§ 900.2 Terms relating to Bank operations, mission and supervision.

As used throughout this chapter, the following terms relating to Bank operations, mission and supervision have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section or paragraph:

Acquired member assets or *AMA* means those assets that may be acquired by a Bank under part 955 of this chapter.

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 950 of this chapter.

Affordable Housing Program or AHP means the Affordable Housing Program, the CICA program that each Bank is required to establish pursuant to section 10(j) of the Act (12 U.S.C. 1430(j)) and part 951 of this chapter.

Capital plan means the capital structure plan required for each Bank by section 6(b) of the Act, as amended (12 U.S.C. 1426(b)), and part 933 of this chapter, as approved by the Finance Board, unless the context of the regulation refers to the capital plan prior to its approval by the Finance Board.

CIP means the Community Investment Program, an advance program under CICA required to be offered pursuant to section 10(i) of the Act (12 U.S.C. 1430(i)).

Community Investment Cash Advance or *CICA* means any advance made through a program offered by a Bank under section 10 of the Act (12 U.S.C. 1430) and parts 951 and 952 of this chapter to provide funding for targeted community lending and affordable housing, including advances made under a Bank's Rural Development Funding (RDF) program, offered under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)); a Bank's Urban Development Funding (UDF) program, offered under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)); a Bank's Affordable Housing Program (AHP), offered under section 10(j) of the Act (12 U.S.C. 1430(j)); a Bank's Community Investment Program (CIP), offered under section 10(i) of the Act (12 U.S.C. 1430(i)); or any other program offered by a Bank that meets the requirements of part 952 of this chapter.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions (as defined in § 925.1 of this chapter), purchasing or funding small business loans, small farm loans or small agri-business loans (as defined in § 950.1 of this chapter).

Consolidated obligation or *CO* means any bond, debenture, or note authorized under part 966 of this chapter to be issued jointly by the Banks pursuant to section 11(a) of the Act, as amended (12 U.S.C. 1431(a)), or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), on which the Banks are jointly and severally liable.

Financial Management Policy or *FMP* means the Financial Management Policy For The Federal Home Loan Bank System approved by the Finance Board pursuant to Finance Board Resolution No. 96–45 (July 3, 1996), as amended by Finance Board Resolution No. 96–90 (Dec. 6, 1996), Finance Board Resolution No. 97–05 (Jan. 14, 1997), and Finance Board Resolution No. 97–86 (Dec. 17, 1997).

§ 900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

As used throughout this chapter, the following terms relating to other entities and concepts used throughout 12 CFR chapter IX have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section or paragraph:

Appropriate Federal banking agency has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally-insured credit unions, means the NCUA.

Appropriate state regulator means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a particular institution.

Fannie Mae means the Federal National Mortgage Association established under authority of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716, *et seq.*).

FDIC means the Federal Deposit Insurance Corporation.

FRB means the Board of Governors of the Federal Reserve System.

Freddie Mac means the Federal Home Loan Mortgage Corporation established under authority of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451, *et seq.*).

Generally Accepted Accounting Principles or *GAAP* means accounting principles generally accepted in the United States.

Ginnie Mae means the Government National Mortgage Association established under authority of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716, *et seq.*).

HUD means the United States Department of Housing and Urban Development.

NCUA means the National Credit Union Administration.

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

OCC means the Office of the Comptroller of the Currency.

OTS means the Office of Thrift Supervision.

SBIC means a small business investment company formed pursuant to section 301 of the Small Business Investment Act (15 U.S.C. 681).

State means a state of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

PART 905—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

2. Revise the authority citation for part 905 to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a), 1423.

§ 905.1 [Removed and Reserved]

3. Remove and reserve § 905.1.

4. Amend § 905.2 by revising paragraphs (b) and (c) to read as follows:

§ 905.2 General statement and statutory authority.

* * * * *

(b) The members of the Board of Directors are individually referred to as Directors. The heads of the various administrative units, called offices, are also called Directors.

(c) The Finance Board administers the Act and is authorized to issue rules, regulations and orders affecting the Bank System. The Finance Board performs all such duties and responsibilities as may be required by statute. As required by section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)), it also conducts a monthly survey of all major lenders to calculate a national average for interest rates on mortgages for one-family homes, on behalf of the Fannie Mae. As required by section 305(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(b)), it conducts a similar survey for the Freddie Mac.

5. Revise § 905.4 to read as follows:

§ 905.4 Duties of the Finance Board.

(a) *Bank System.* The Finance Board supervises and regulates the Banks and the Office of Finance. Specifically, its duties are:

(1) To ensure that the Banks operate in a safe and sound manner;

(2) To supervise all business operations of the Banks, which may include:

(i) Prescribing conditions upon which Banks may advance funds to their members and housing associates;

(ii) Prescribing rules and conditions under which a Bank may borrow funds, pay interest on those funds, or issue obligations;

(iii) Requiring examinations of the Banks; and

(iv) Appointing the public interest members of the boards of directors of the Banks;

(3) To ensure that the Banks fulfill their housing finance and community lending mission;

(4) To ensure that the Banks remain adequately capitalized; and

(5) To ensure that the Banks are able to raise funds in the capital markets.

(b) *Financing Corporation.* The Finance Board also oversees the operations of the Financing Corporation, including its issuance of obligations.

§ 905.5 [Removed]

6. Remove § 905.5.

Appendix A to Subpart A of Part 905—[Amended]

7. Amend Appendix A to subpart A of part 905 by:

a. Removing the words "One World Trade Center, 103rd Floor, New York, NY 10048" and adding, in their place, the words "200 Park Avenue, New York, NY 10166–4193";

b. Removing the words "One Riverfront Center, 20 Stanwix Street, Pittsburgh, PA 15222–4893" and adding, in their place, the words "601 Grant Street, Pittsburgh, PA 15219–4455"; and

c. Removing the words "2400 Atrium Two, 221 East Fourth Street, Cincinnati, OH 45202" and adding, in their place, the words "221 East Fourth Street, Suite 1000, Cincinnati, OH 45201–0598".

Subpart C—[Removed]

8. Remove subpart C from part 905.

Subpart D—[Redesignated]

9. Redesignate subpart D as subpart C.

10. In the heading for newly designated subpart C, remove the word "Procedures" and, in its place, add the word "Miscellaneous".

§§ 905.50, 905.52, 905.53 [Removed]

11. Remove §§ 905.50, 905.52, 905.53.

§§ 905.51, 905.54 [Redesignated]

12. Redesignate § 905.51 as § 905.25 and § 905.54 as § 905.26.

§ 905.25 [Amended]

13. Amend newly designated § 905.25 by removing the words "(see § 905.3)" from the introductory text.

14. Revise newly designated § 905.26 to read as follows:

§ 905.26 Official logo and seal.

This section describes and displays the logo adopted by the Board of Directors as the official symbol representing the Finance Board. It is displayed on correspondence and selected documents. This logo also serves as the official seal used to certify and authenticate official documents of the Board of Directors.

(a) *Description.* The logo is a disc with its center consisting of three polygons arranged in an irregular line partially overlapping—each polygon drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof—encircled by a designation scroll having an outer and inner border of plain heavy lines and containing the words "FEDERAL HOUSING FINANCE BOARD" in capital letters with serifs, with two mullets on the extreme left and right of the scroll.

(b) *Display.* The Finance Board's official seal and logo appears below:



PART 906—OPERATIONS

15. Revise the authority citation for part 906 to read as follows:

Authority: 12 U.S.C. 1422b, 1438(b).

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§ 906.1 [Amended]

16. Amend § 906.1 by removing the definitions of the terms "Bank System" and "Chairperson".

§ 906.2 [Amended]

17. Amend paragraph (b)(3) of § 906.2, in the last sentence, by removing the words "*pro rate*" and, in their place, adding the words "*pro rata*".

§ 906.4 [Amended]

18. Amend § 906.4:

a. In the first sentence of paragraph (a) by:

i. Removing the words "United States Code," and adding, in their place the words "United States Code (31 U.S.C. 9701)"; and

ii. Removing the words "(31 U.S.C. 9701)".

b. In paragraph (b)(2) by:

i. Removing the word "will" and adding, in its place, the word "must"; and

ii. Removing the words "Housing Finance Directorate" and, in their place, adding the words "Finance Board".

c. In paragraph (b)(3) by removing the word "analyist" and, in its place, adding the word "analyst".

§ 906.5 [Amended]

19. Amend § 906.5:

a. In paragraph (b)(1) by removing the word "Administration" and, in its place, adding the words "the Office of Resource Management".

b. In paragraph (c)(2)(iv) by adding, after the semi-colon, the word "or".

PART 907—PROCEDURES

20. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

21. Amend part 907 by removing the word "intervener" and "interveners" wherever they appear and adding, in their place, respectively, the words "intervenor" and "intervenors".

§ 907.1 [Amended]

22. Amend § 907.1:

a. In the introductory text by removing the words "For purposes of" and, in their place, adding the words "As used in"; and

b. By removing the definitions of the terms "Board of Directors", "Chairperson" and "Secretary to the Board".

§ 907.6 [Amended]

23. Amend paragraph (b)(2) of § 907.6 by removing the words "Board of Directors" (in title case) and, in their place, adding the words "board of directors" (in lower case).

PART 910—FREEDOM OF INFORMATION ACT REGULATION

24. Revise the authority citation for part 910 to read as follows:

Authority: 5 U.S.C. 552.

25. In § 910.1, revise the introductory text and the definitions of the terms "Agency" and "Financial Regulatory Agency" to read as follows:

§ 910.1 Definitions.

As used in this part:

Agency has the meaning set forth in 5 U.S.C. 552(f)(1).

* * * * *

Financial regulatory agency means the FRB, OCC, FDIC, OTS, NCUA, Farm Credit Administration, or a state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a financial institution, including an insurance company.

* * * * *

§ 910.4 [Amended]

26. Amend paragraph (d)(2) of § 910.4 by removing the words "paragraph (c)(1)" and, in their place, adding the words "paragraph (d)(1)".

§ 910.9 [Amended]

27. Amend paragraph (d)(3)(i) of § 910.9, in the introductory paragraph, by removing the words "paragraph (b)(3)" and, in their place, adding the words "paragraph (d)(3)".

PART 911—AVAILABILITY OF UNPUBLISHED INFORMATION

28. The authority citation for part 911 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1422b(a)(1).

§ 911.1 [Amended]

29. Amend the introductory paragraph to § 911.1 by removing the words "For purposes of" and, in their place, adding the words "As used in".

§ 911.3 [Amended]

30. Amend paragraph (d) of § 911.3 by removing the words "Federal Home Loan Bank" wherever they appear and, in their place, adding the word "Bank".

PART 912—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD

31. The authority citation for part 912 continues to read as follows:

Authority: 5 U.S.C. 552b.

§§ 912.1, 912.2 [Redesignated]

32. Redesignate §§ 912.1 and 912.2 as §§ 912.2 and § 912.1, respectively.

33. Amend newly designated § 912.1 by removing the definition of the term "Executive secretary", by adding, in proper alphabetical sequence, a definition for the term "Secretary to the Board", and by revising the introductory text and the definitions of the terms "Chairperson" and "Sunshine Act", to read as follows:

§ 912.1 Definitions.

As used in this part:

* * * * *

Chairperson includes the Acting Chairperson.

* * * * *

Secretary to the Board includes the Acting Secretary if the position of Secretary is vacant.

Sunshine Act means the Government in the Sunshine Act (5 U.S.C. 552b).

§ 912.2 [Amended]

34. Amend paragraph (a) of newly designated § 912.2, in the first sentence, by removing the words "Government in the Sunshine Act (5 U.S.C. 552b), that" and, in their place, adding the words "Sunshine Act, which".

§ 912.4 [Amended]

35. Amend § 912.4:

a. In paragraph (a)(3), introductory text, by removing the word *"Provided"* and adding, in its place, the italicized word *"provided"*; and

b. In paragraph (a)(8) by removing the concluding period and adding, in its place, a semi-colon.

§ 912.5 [Amended]

36. Amend § 912.5:

a. By removing the words "Executive Secretary" wherever they appear and adding, in their place, the words "Secretary to the Board";

b. In the first sentence of paragraph (a)(5), by removing the words "paragraphs (a) (5), (6), or (7) of § 912.4" and adding, in their place, the words "§ 912.4(a)(5), (6), or (7)";

c. In paragraph (a)(6)(ii) by:

i. Removing the words "paragraph (a) of § 912.4" and adding, in their place, the words "§ 912.4(a)"; and

ii. Adding, after the words "determined by the Board", the words "of Directors";

d. Removing, in paragraph (b)(1), the words "paragraphs (a) (4), (8), (9)(i) or (10) of § 912.4" and adding, in their place, the words "§ 912.4(a)(4), (8), (9)(i) or (10)"; and

e. Removing, in paragraph (c)(2), the words "paragraphs (a) (8), (9)(i) or (10)

of § 912.4" and adding, in their place, the words "§ 912.4(a)(8), (9)(i) or (10)".

§ 912.6 [Amended]

37. Amend § 912.6:

a. In paragraph (a)(1) by removing the words "paragraph (a) of § 912.4" and adding, in their place, the words "§ 912.4(a)";

b. In paragraph (a)(1) by removing the words "paragraph (a) of § 912.5" and adding, in their place, the words "§ 912.5(a)";

c. In paragraph (a)(2) by removing the words "paragraph (b) of § 912.5" and adding, in their place, the words "§ 912.5(b)";

d. In the first sentence of paragraph (b) by:

i. Removing the words "paragraph (a) of § 912.5" and adding, in their place, the words "§ 912.5(a)"; and

ii. Removing the words "Executive Secretary" and adding, in their place, the words "Secretary to the Board"; and

e. In paragraph (c) by removing the words "paragraph (a) of § 912.5" and adding, in their place, the words "§ 912.5(a)".

PART 913—PRIVACY ACT PROCEDURES

38. The authority citation for part 913 continues to read as follows:

Authority: 5 U.S.C. 552a.

PART 913—[AMENDED]

39. In part 913, remove the words "Executive Secretary" wherever they appear and add, in their place, the words "Secretary to the Board".

§§ 913.1, 913.2 [Redesignated]

40. Redesignate §§ 913.1 and 913.2 as §§ 913.2 and § 913.1, respectively.

§ 913.3 [Amended]

41. Amend paragraph (b) of § 913.3 by adding the word "in" between the words "system of records shall be" and the words "writing, shall contain".

§ 913.5 [Amended]

42. Amend § 913.5:

a. In paragraph (b)(2)(vi), by removing the concluding period and adding, in its place, a semi-colon; and

b. In paragraph (c), by adding the heading "*Accounting.*".

§ 913.9 [Amended]

43. Amend § 913.9:

a. In paragraph (c)(1)(iii), by removing the words "as amended, 5 U.S.C. App. 3" and adding, in their place, the words "as amended (5 U.S.C. App. 3)";

b. In paragraph (c)(2)(v), by removing the words "as amended, 5 U.S.C. App. 3" and adding, in their place, the words "as amended (5 U.S.C. App. 3)"; and

c. In paragraph (d), in the introductory text, by removing the words "comprised of" and, in their place, adding the word "comprising".

PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT AND ELECTIONS

44. Revise the authority citation for part 915 by revising it to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, 1432.

PART 915—[AMENDED]

45. Amend part 915 by removing the words "docket number" wherever they appear and adding, in their place, the words "FHFB ID number".

§ 915.1 [Amended]

46. Amend § 915.1:

a. In the definition of "Discretionary directorship", by removing the words "section 7(a) of the Act" and adding, in their place, the words "section 7(a) of the Act (12 U.S.C. 1427(a))";

b. In the definition of "Guaranteed directorship", by removing the words "section 7(b) of the Act" and adding, in their place, the words "section 7(b) of the Act (12 U.S.C. 1427(b))"; and

c. In the definition of "Voting state", by removing the words "part 933" and adding, in its place, the words "part 925".

§ 915.3 [Amended]

47. Amend § 915.3:

a. In paragraph (a), fourth sentence, by:

i. Removing the words "Section 7(d) of the Act" and adding, in their place, the words "section 7(d) of the Act (12 U.S.C. 1427(d))"; and

ii. Removing the word "chapter" and, in its place, adding the word "part";

b. In paragraph (b)(4) by adding, after the words "section 7(e) of the Act", the words "(12 U.S.C. 1427(e))";

c. In paragraph (b)(5), in the first sentence, by adding, after the words "section 7(a) of the Act", the words "(12 U.S.C. 1427(a))"; and

d. In paragraph (d) by:

i. Adding, preceding the text, the heading "Location of member."; and

ii. Adding after the words "section 7(c) of the Act", the words "(12 U.S.C. 1427(c))".

§ 915.5 [Amended]

48. Amend paragraph (c) of § 915.5, in the second sentence, by removing the words "Section 7(b) of the Act" and adding, in their place, the words "section 7(b) of the Act (12 U.S.C. 1427(b))".

§ 915.7 [Amended]

49. Amend § 915.7:

a. In paragraph (b)(2):

i. In the first sentence, by removing the words "A bona fide resident of the Bank district or an" and adding, in their place, the word "An"; and

ii. In the first sentence, by removing the words "appropriate federal regulator" and, in their place, adding the words "appropriate Federal banking agency";

b. By removing the second sentence;

c. In paragraph (c)(1), by redesignating paragraphs (c)(1)(i) and (c)(1)(ii) as paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), respectively;

d. By redesignating paragraphs (c)(1), (c)(2) and (c)(3) as paragraphs (c)(1)(i), (c)(1)(ii) and (c)(1)(iii), respectively;

e. By designating the introductory text of paragraph (c) as paragraph (c)(1) introductory text;

f. By redesignating paragraph (c)(4) as paragraph (c)(2);

g. In newly designated paragraph (c)(1)(i)(B), by removing the word "Act." and adding, in its place, the words "Act (12 U.S.C. 1427(d));";

h. In newly designated paragraph (c)(1)(ii), by removing the period and, in its place, adding the word "; or";

i. In newly designated paragraph (c)(2), by removing the words "Section 7(d) of the Act" and adding, in their place, the words "section 7(d) of the Bank Act (12 U.S.C. 1427(d))"; and

j. In paragraph (d)(2), by removing the words "Section 7(f) of the Bank Act" and adding, in their place, the words "section 7(f) of the Act (12 U.S.C. 1427(f))".

§ 915.8 [Amended]

50. Amend paragraph (b) of § 915.8 by adding, before the period at the end of the second sentence, the words "of this section".

§ 915.10 [Amended]

51. Amend paragraph (b) of § 915.10:

a. In both the first and second sentences, by removing the words "Section 7(d) of the Act" and adding, in their place, the words "section 7(d) of the Act (12 U.S.C. 1427(d))"; and

b. In the second sentence, by removing the word "Part" both places that it appears and, in its place, adding the word "part".

§ 915.12 [Amended]

52. Amend paragraph (a) of § 915.12, in the parenthetical following the first sentence, by removing the words "12 CFR 905.51" and adding, in their place, the words "§ 905.25 of this chapter".

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§ 915.15 [Amended]

53. Amend § 915.15, in the first sentence, by removing the word "Act" and adding, in its place, the words "Act (12 U.S.C. 1427(c))".

§ 915.16 [Amended]

54. Amend paragraph (e) of § 915.16, in the second sentence, by removing the words "Section 7(d) of the Bank Act" and adding, in their place, the words "section 7(d) of the Act (12 U.S.C. 1427(d))".

§ 915.17 [Amended]

55. Amend paragraph (a)(1) of § 915.17, in the second sentence, by removing the words "Section 7(a) of the Bank Act" and adding, in their place, the words "section 7(a) of the Act (12 U.S.C. 1427(a))".

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

56. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), 1440.

§ 917.1 [Amended]

57. Amend § 917.1:

a. By removing the definition of "Capital structure plan"; and

b. In paragraph (4) of the definition of "Contingency liquidity", by removing the words "a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission" and adding, in their place, the words "an NRSRO".

§ 917.3 [Amended]

58. Amend paragraph (b)(3)(i) of § 917.3 by removing the word "and" that appears after the semi-colon.

§ 917.4 [Amended]

59. Amend paragraph (a)(1) of § 917.4 by adding, between the words "advances," and "letters of credit", the word "standby".

§ 917.5 [Amended]

60. Amend § 917.5:

a. In paragraph (a) introductory text, by removing the words "90 days after the effective date of this section" and, in their place, adding the words "on July 30, 2000";

b. In paragraph (a)(4), by adding a hard (paragraph) return after the word "and" and

c. In paragraph (c) by designating as a heading (italicizing) the words "Report to Finance Board".

§ 917.6 [Amended]

61. Amend paragraph (c) of § 917.6, in the introductory text, by adding a comma after the words "paragraph (a)(1) of this section".

§ 917.7 [Amended]

62. Amend paragraph (e)(8) of § 917.7 by removing the words "implementation of with the Bank's" and, in their place, adding the words "implementation of the Bank's".

PART 918—BANK DIRECTOR COMPENSATION AND EXPENSES

63. The authority citation for part 918 continues to read as follows:

Authority: 12 U.S.C. 1422b(a), 1427.

§ 918.3 [Amended]

64. Amend paragraph (a)(1) of § 918.3 by removing the words "Act, as amended, 12 U.S.C. 1427(i)" and adding, in their place, the words "Act (12 U.S.C. 1427(i))".

§ 918.5 [Amended]

65. Amend § 918.5 by removing the words "Act, as amended" and adding, in their place, the words "Act (12 U.S.C. 1427(i))".

§ 918.7 [Amended]

66. Amend § 918.7 by removing the words "Act, as amended" and adding, in their place, the words "Act (12 U.S.C. 1427(i))".

§ 918.9 [Amended]

67. Amend § 918.9 by adding the word "former" between the words "officers and employees in" and the words "12 CFR 932.19".

PART 925—MEMBERS OF THE BANKS

68. The authority citation part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

69. Revise § 925.1 to read as follows:

§ 925.1 Definitions.

For purposes of this part:

Adjusted net income means net income, excluding extraordinary items such as income received from, or expense incurred in, sales of securities or fixed assets, reported on a regulatory financial report.

Aggregate unpaid loan principal means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts and similar obligations.

Allowance for loan and lease losses means a specified balance-sheet account held to fund potential losses on loans or leases, that is reported on a regulatory financial report.

Appropriate regulator means a regulatory entity listed in § 925.8, as applicable.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community financial institution or *CFI* means an institution:

(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*); and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in total assets, based on an average of total assets over three years, which shall be calculated by the Bank based on the average of total assets drawn from the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters.

Community financial institution asset cap means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by the **Federal Register** of the CPI-adjusted cap.

Composite regulatory examination rating means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (Issued by the Federal Financial Institutions Examination Council; for availability contact the Federal Housing Finance Board, FOIA Office, 1777 F Street, NW., Washington, DC 20006), including a CAMEL rating, a MACRO rating, or other similar rating, contained in a written regulatory examination report.

Consolidation includes a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

Dwelling unit means a single room or a unified combination of rooms designed for residential use.

Enforcement action means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator, but does not include a board of directors resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

Funded residential construction loan means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

Home mortgage loan means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition.

Insured depository institution means an insured depository institution as defined in section 2(12) of the Act (12 U.S.C. 1422(12)).

Long-term means a term to maturity of five years or greater.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Multifamily property means:

(1) Real property that is solely residential and includes five or more dwelling units;

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

Nonperforming loans and leases means the sum of the following, reported on a regulatory financial report:

(1) Loans and leases that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing;

(2) Loans and leases on a nonaccrual basis; and

(3) Restructured loans and leases (not already reported as nonperforming).

Nonresidential real property means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

One-to-four family property means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

Other real estate owned means all other real estate owned (i.e., foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

Regulatory examination report means a written report of examination prepared by the applicant's appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMEL rating, a MACRO rating, or other similar rating.

Regulatory financial report means a financial report that an applicant is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the appropriate regulator on a computer on-line database.

Residential mortgage loan means any one of the following types of loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (1) through (4) of this definition at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (1) through (4) of this definition; or

(iii) Mortgage debt securities as defined in paragraph (6) of this definition;

(6) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, substantially all of the loans meet the requirements of paragraphs (1) through (4) of this definition;

(ii) Securities that meet the requirements of paragraph (5) of this definition; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (1) through (5) of this definition;

(7) Home mortgage loans secured by a leasehold interest, as defined in

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paragraph (1)(ii) of the definition of "home mortgage loan," except that the period of the lease term may be for any duration; or

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the CIP established under section 10(i) of the Act (12 U.S.C. 1430(i)), or the regulatory requirements established for any CICA program.

Total assets means the total assets reported on a regulatory financial report.

§ 925.3 [Amended]

70. Amend paragraph (c) of § 925.3, in the last sentence, by removing the words "Executive Secretary" and adding, in their place, the words "Secretary to the Board".

§ 925.4 [Amended]

71. Amend paragraph (c)(2) of § 925.4 by:

a. Removing the reference to "§ 925.25(d)(1)(i)" and adding, in its place, a reference to "§ 925.24(b)(4)(i)"; and

b. Removing the reference to "§§ 925.25(d)(2)(i), (e) and (f)" and adding, in its place, a reference to "§ 925.24(c) and (d)".

§ 925.5 [Amended]

72. Amend paragraph (a)(2) of § 925.5 by removing the words "Executive Secretary" and adding, in their place, the words "Secretary to the Board".

§ 925.7 [Amended]

73. Amend § 925.7 by adding the words "(12 U.S.C. 1424(a)(1)(A))" between the words "of the Act" and the words "and § 925.6(a)(1)".

§ 925.8 [Amended]

74. Amend § 925.8 by:

a. Adding the words "(12 U.S.C. 1424(a)(1)(B))" between the words "of the Act" and the words "and § 925.6(a)(2)"; and

b. Removing the words "Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision" and, in their place, adding the words "FDIC, FRB, NCUA, OCC, OTS".

§ 925.9 [Amended]

75. Amend § 925.9 by adding the words "(12 U.S.C. 1424(a)(1)(C))" between the words "of the Act" and the words "and § 925.6(a)(3)".

§ 925.10 [Amended]

76. Amend § 925.10 by:

a. Adding the words "(12 U.S.C. 1424(a)(2)(A))" between the words "of the Act" and the words "and § 925.6(b)"; and

b. Removing the words "§ 925.1(bb)(6)" and, in their place, adding the words "paragraph (6) of the definition of 'residential mortgage loan' set forth in § 925.1".

§ 925.11 [Amended]

77. Amend § 925.11:

a. In paragraph (a), by adding the words "(12 U.S.C. 1424(a)(2)(B))" between the words "of the Act" and the words "and § 925.6(a)(4)";

b. In paragraph (b), introductory text, by adding the words "(12 U.S.C. 1424(a)(2)(B))" between the words "of the Act" and the words "and § 925.6(a)(4)";

c. In paragraph (b)(3), by removing the words "was '1;' or, was '2' or" and adding, in their place, the words "was '1;' or was '2' or"; and

d. In paragraph (c), by adding the words "(12 U.S.C. 1424(a)(2)(B))" between the words "of the Act" and the words "and § 925.6(a)(4)".

§ 925.12 [Amended]

78. Amend the introductory text of § 925.12 by adding the words "(12 U.S.C. 1424(a)(2)(C))" between the words "of the Act" and the words "and § 925.6(a)(5)".

§ 925.13 [Amended]

79. Amend paragraph (a) of § 925.13 by adding the words "(12 U.S.C. 1424(a)(2)(C))" between the words "of the Act" and the words "and § 925.6(a)(6)".

80. Revise § 925.14 to read as follows:

§ 925.14 De novo insured depository institution applicants.

(a) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant whose date of charter approval is within three years prior to the date the Bank receives the applicant's application for membership in the Bank (de novo applicant) is deemed to meet the requirements of §§ 925.7, 925.8, 925.11 and 925.12.

(b) *Makes long-term home mortgage loans requirement.* A de novo applicant shall be deemed to make long-term home mortgage loans as required by § 925.9 if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(c) *10 percent requirement.* (1) *One-year requirement.* A de novo applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act (12 U.S.C. 1424(a)(2)(A)) and § 925.6(b) shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 925.10.

(2) *Conditional approval.* A de novo applicant shall be conditionally deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act (12 U.S.C. 1424(a)(2)(A)) and § 925.6(b). A de novo applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 925.20 and the advances provisions of part 950 of this chapter.

(3) *Approval.* A de novo applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 925.6(b) upon receipt by the Bank from the applicant, within one year after commencement of the applicant's initial business operations, of evidence acceptable to the Bank that the applicant satisfies the 10 percent requirement.

(4) *Conditional approval deemed null and void.* If the requirements of paragraph (c)(3) of this section are not satisfied, a de novo applicant shall be deemed to be in noncompliance with the 10 percent requirement of section 4(a)(2)(A) of the Act (12 U.S.C. 1424(a)(2)(A)) and § 925.6(b), and its conditional membership approval is deemed null and void.

(5) *Treatment of outstanding advances and Bank stock.* If a de novo applicant's conditional membership approval is deemed null and void pursuant to paragraph (c)(4) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 925.29.

(d) *Home financing policy requirement.* (1) *Conditional approval.* A de novo applicant that has not received its first formal, or, if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, shall be conditionally deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act (12 U.S.C. 1424(a)(2)(C)) and § 925.6(a)(6), if the applicant has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 925.20 and the advances provisions of part 950 of this chapter.

(2) *Approval.* A de novo applicant that has been granted conditional approval under paragraph (d)(1) of this section shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act (12 U.S.C. 1424(a)(2)(C)) and § 925.6(a)(6) upon receipt by the Bank of evidence from the applicant that it received a CRA rating of "Satisfactory" or better on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(3) *Conditional approval deemed null and void.* If the de novo applicant's first such CRA rating is "Needs to Improve" or "Substantial Non-Compliance," the applicant shall be deemed to be in noncompliance with the home financing policy requirement of section 4(a)(2)(C) of the Act (12 U.S.C. 1424(a)(2)(C)) and § 925.6(a)(6), subject to rebuttal by the applicant under § 925.17(f), and its conditional membership approval is deemed null and void.

(4) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (d)(3) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 925.29.

§ 925.16 [Amended]

81. Amend § 925.16 by adding the words "(12 U.S.C. 1424(a)(2)(B))" between the words "of the Act" and the words "and § 925.6(a)(4)".

§ 925.17 [Amended]

82. Amend § 925.17:

a. In paragraph (a) by removing the words "of the Act and § 925.6 (a)" and adding, in their place, the words "of the Act (12 U.S.C. 1424(a)) and § 925.6(a)";

b. In paragraph (b) by removing the words "of the Act and § 925.6(a) (2)" and adding, in their place, the words "of the Act (12 U.S.C. 1424(a)) and § 925.6(a)(2)"; and

c. In the heading to paragraph (f), by removing the words "925.13, 925.14(a)(4), and 925.14(b)(3)" and, in their place, adding the words "925.13 and 925.14(d)".

§ 925.18 [Amended]

83. Amend paragraph (e) of § 925.18 by removing the words "of the Act or §§ 925.26, 925.27, and 925.28" and, in their place, adding the words "of the Act (12 U.S.C. 1426) or §§ 925.26 and 925.27".

§ 925.22 [Amended]

84. Amend § 925.22:

a. In paragraph (b)(2), by removing the word "Board" wherever it appears and adding, in its place, the words "Finance Board"; and

b. In paragraph (c) by removing the words "of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e)" and adding, in their place, the words "of the Act (12 U.S.C. 1426(b), 1430(c), 1430(e))".

§ 925.24 [Amended]

85. Amend § 925.24:

a. In paragraph (b)(5), in the first sentence, by adding the words "(12 U.S.C. 1426)" immediately preceding the period;

b. In paragraph (c) by removing the word "Chapter" and adding, in its place, the word "chapter"; and

c. In paragraph (d), by removing the words "of the Act, 12 U.S.C. 1426(f)" and adding, in their place, the words "of the Act (12 U.S.C. 1426(f))".

§ 925.26 [Amended]

86. Amend paragraph (d) of § 925.26 by removing the words "requirements under 12 U.S.C. 1441b(f)(2)(C)" and, in their place, adding the words "requirements under section 21B(f)(2)(C) of the Act (12 U.S.C. 1441b(f)(2)(C))".

§ 925.31 [Amended]

87. Amend § 925.31:

a. In paragraph (a), by removing the word "Board" and adding, in its place, the words "Finance Board"; and

b. In paragraph (b), by removing the word "Board" and adding, in its place, the words "Finance Board".

PART 926—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

88. The authority citation for § 926.1 continues to read as follows:

Authority: 12 U.S.C. 1422b(a), 1430b.

§ 926.1 [Amended]

89. Amend § 926.1 by removing the definitions of the terms "Advance" and "HUD".

§ 926.4 [Amended]

90. Amend § 926.4:

a. In paragraph (a) by adding the words "(12 U.S.C. 1430b(a))" between the words "of the Act" and the words "and § 926.3(a)(1)";

b. In paragraph (c)(1), by adding the words "(12 U.S.C. 1430b(a))" between the words "of the Act" and the words "and § 926.3(a)(3)"; and

c. In paragraph (d), in the first sentence, by adding the words "(12 U.S.C. 1430b(a))" between the words "of the Act" and the words "and § 926.3(a)(4)".

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

91. The authority citation for part 930 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

92. Amend § 930.1 by:

a. Removing the definitions of the terms "Capital plan" and "GAAP"; and

b. Revising the definitions of the terms "Contingency liquidity", "Credit risk", "Market risk" and "Operations risk" to read as follows:

§ 930.1 Definitions.

As used in this subchapter:

* * * * *

Contingency liquidity means the sources of cash a Bank may use to meet its operational requirements when its access to the capital markets is impeded, and includes:

(1) Marketable assets with a maturity of one year or less;

(2) Self-liquidating assets with a maturity of seven days or less;

(3) Assets that are generally accepted as collateral in the repurchase agreement market; and

(4) Irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by an NRSRO.

* * * * *

Credit risk means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in creditworthiness.

* * * * *

Market risk means the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

* * * * *

Operations risk means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

* * * * *

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

93. The authority citation for part 932 continues to read as follows:

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Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 932.4 [Amended]

94. Amend paragraph (g)(1)(i) of § 932.4 by adding a hard (paragraph) return after the word "or".

PART 940—CORE MISSION ACTIVITIES

95–96. The authority citation for part 940 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, 1431.

97. Revise § 940.1 to read as follows:

§ 940.1 Definitions.

As used in this part:

Targeted income level has the meaning set forth in paragraphs (1) and (2) of the definition of "targeted income level" in § 952.1 of this chapter.

§ 940.2 [Amended]

98. Amend § 940.2:

a. In the introductory text, by:

i. Removing the word "associates" and adding, in its place, the words "housing associates"; and

ii. Removing the words "members" and associates' financing of" and adding, in their place, the words "members" and housing associates"; and

b. In paragraph (a) of § 940.2 by removing the word "Housing" and adding, in its place, the words "Financing of housing".

PART 944—COMMUNITY SUPPORT REQUIREMENTS

99. Revise the authority citation for part 944 to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1430(g).

100. Revise § 944.1 to read as follows:

§ 944.1 Definitions.

For purposes of this part:

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Act (12 U.S.C. 1430(j)(11)) and part 951 of this chapter.

CRA means the Community Reinvestment Act of 1977, as amended (12 U.S.C. 2901, et seq.).

CRA evaluation means the public disclosure portion of the CRA performance evaluation provided by a member's appropriate Federal banking agency.

Displaced homemaker means an adult who has not worked full-time, full-year in the labor force for a number of years and, during that period, worked primarily without remuneration to care for a home and family, and currently is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

First-time homebuyer means:

(1) An individual and his or her spouse, if any, who has had no present ownership interest in a principal residence during the three-year period prior to purchase of a principal residence.

(2) A displaced homemaker who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (1) of this definition.

(3) A single parent who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (1) of this definition.

Long-term advance means an advance with a term to maturity greater than one year.

Restriction on access to long-term advances means a member may not borrow long-term advances or renew any maturing advance for a term to maturity greater than one year.

Single parent means an individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

Targeted community lending has the meaning set forth in § 952.1 of this chapter.

§ 944.2 [Amended]

101. Amend § 944.2:

a. In paragraph (b)(2) introductory text, by adding the word "to" immediately preceding the colon; and

b. In paragraph (b)(2)(i), by removing the words "To each" and adding, in their place, the word "Each".

§ 944.3 [Amended]

102. Amend § 944.3:

a. In paragraph (b)(2), second sentence, by removing the words "federal financial supervisory agency" and adding, in their place, the words "Federal banking agency";

b. In paragraph (c)(1)(i), by removing the word "or";

c. In paragraph (c)(1) (ii)(B), by adding the word "or" immediately following the semi-colon;

d. In paragraph (c)(1)(ii)(C), by removing the word "or" that immediately follows the semi-colon; and

e. In paragraph (c)(2) of § 944.3, in the third sentence, by removing the word "§ 936.5" and adding, in their place, the word "§ 944.5".

§ 944.5 [Amended]

103. Amend § 944.5:

a. In paragraph (b), by removing the comma following the word "advances" and adding, in its place, a colon;

b. In paragraph (d)(1)(i) of § 944.5:

i. In the third sentence, by removing the words "federal financial supervisory agency, or the National Credit Union Administration for a federally insured credit union member, or the member's *appropriate state regulator*" and, in their place, adding the words "Federal banking agency, or the member's appropriate state regulator"; and

ii. By removing the last sentence; and

c. In paragraph (d)(3), by removing the comma following the words "paragraph (d)" and adding, in its place, a colon.

§ 944.6 [Amended]

104. Amend § 944.6:

a. In paragraph (a)(3) by removing the word "and" that immediately follows the semi-colon;

b. In paragraph (a)(4), by adding the word "and" immediately following the semi-colon; and

c. In paragraph (a)(5)(iii), by removing the words "nonmember borrowers" and adding, in their place, the words "housing associates".

§ 944.7 [Amended]

105. Amend § 944.7 by adding the words "(12 U.S.C. 1430(j)(11))" between the words "of the Act" and the words "shall include".

PART 950—ADVANCES

106. Revise the authority citation for part 950 to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

107. Amend § 950.1 by:

a. Removing the definitions of the terms "Advance", "Affordable Housing Program or AHP", "Appropriate Federal banking agency", "Community Investment Cash Advance or CICA", "FDIC", "GAAP", "HUD", "OCC", "OTS", and "State"; and

b. Adding, in correct alphabetical sequence, definitions for the terms "CFI member" and "Credit Union" and revising the definitions for the terms "Depository institution", "Dwelling unit", "Insurer", "Long-term advance", "Multi-family property", "Nonresidential real property", "Small business loans", "State housing finance agency or SHFA" and "Tangible capital" to read as follows:

§ 950.1 Definitions.

As used in this part:

* * * * *

CFI member means a member that is a Community Financial Institution, as defined in § 925.1 of this chapter, except that, for purposes of this part, the member's average of total assets over three years shall be calculated by the Bank:

(1) Based on the average of total assets drawn from the institution's regulatory financial reports (as defined in § 925.1 of this chapter) filed with its appropriate regulator (as defined in § 925.1 of this chapter) for the three most recent calendar year-ends; and

(2) Annually, and shall be effective April 1 of each year.

Credit union means a credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Depository institution means a bank, savings association, or credit union.

Dwelling unit means a single room or a unified combination of rooms designed for residential use by one household.

* * * * *

Insurer means the FDIC for insured depository institutions, as defined section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)), and the NCUA for federally-insured credit unions.

Long-term advance means an advance with an original term to maturity greater than five years.

* * * * *

Multifamily property means:

(1)(i) Real property that is solely residential and which includes five or more dwelling units; or

(ii) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.

(2) Multifamily property as defined in this section includes nursing homes, dormitories and homes for the elderly.

Nonresidential real property means real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Finance Board in its discretion.

* * * * *

Small business loans means commercial and industrial loans that are within the legal lending limit of the reporting CFI member and that are reported on either: Schedule RC–C, Part I, item 1.e or Schedule RC–C, Part I, item 4 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

* * * * *

State housing finance agency or *SHFA* has the meaning set forth in § 926.1 of this chapter.

* * * * *

Tangible capital means:

(1) Capital, calculated according to GAAP, less "intangible assets" except for purchased mortgage servicing rights to the extent such assets are included in a member's core or Tier 1 capital, as reported in the member's Thrift Financial Report for members whose primary federal regulator is the OTS, or as reported in the Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the FRB.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members that are not regulated by the OTS, the FDIC, the OCC, or the FRB; provided that a Bank shall include a member's purchased mortgage servicing rights to the extent such assets are included for the purpose of meeting regulatory capital requirements.

§ 950.2 [Amended]

108. Amend the heading to paragraph (d) of § 950.2 by removing the words "Approval—By the Bank's board of directors" and, in their place, adding the words "Form of applications and agreements".

§ 950.4 [Amended]

109. Amend § 950.4:

a. In paragraph (e)(1), by removing the word "monthly" and, in its place, adding the word "quarterly";

b. In paragraph (e)(2), by removing the word "monthly" and, in its place, adding the word "quarterly";

c. In paragraph (g)(2)(i), by removing the word "950.4(b)(2)" and, in its place, adding the word "950.2(b)(2)"; and

d. In paragraph (g)(2)(ii), by removing the word "950.4(a)" and, in its place, adding the word "950.2(a)".

110. Amend § 950.7 by revising paragraphs (a)(1)(ii)(D), (a)(2)(i) and (e)(3) to read as follows:

§ 950.7 Collateral.

(a) * * *

(1) * * *

(ii) * * *

(D) Such other high-risk securities as the Finance Board in its discretion may determine.

(2) * * *

(i) Mortgage-backed securities issued or guaranteed by Freddie Mac, Fannie Mae, Ginnie Mae, or any other agency of the United States Government;

* * * * *

(e) * * *

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(e) of the Act (12 U.S.C. 1430(e)).

* * * * *

§ 950.8 [Amended]

111. Amend paragraph (a) of § 950.8 by removing the words "such member" and adding, in their place, the words "a member".

§ 950.9 [Amended]

112. Amend paragraph (a)(1) of § 950.9 by removing the words "950.4(c)" and adding, in their place, the words "950.2(c)".

§ 950.11 [Amended]

113. Amend § 950.11, in the first sentence of paragraph (b)(1), by adding the words "(12 U.S.C. 1426(b)(1))" between the words "6(b)(1) of the Act" and the words "is maintained".

§ 950.14 [Amended]

114. Amend § 950.14 by revising paragraphs (b)(2)(i)(A), (b)(2)(i)(C), (c)(2)(i), (c)(2)(ii), (e)(2) and (e)(3) to read as follows:

§ 950.17 Advances to housing associates.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The collateral described in § 950.7(a)(1) or (2).

(B) * * *

(C) The other real estate-related collateral described in § 950.7(a)(4), provided that such collateral comprises mortgage loans on one-to-four family or multifamily residential property.

* * * * *

(c) * * *

(2) *Advance pricing.* (i) A Bank shall price advances to housing associates in accordance with the requirements for pricing advances to members set forth in § 950.3(b). Wherever the term "member" appears in § 950.3(b), the term shall be construed also to mean "housing associate."

(ii) A Bank shall apply the pricing criteria identified in § 950.5(b)(2) equally to all of its member and housing associate borrowers.

* * * * *

(e) * * *

(2) *Verification of eligibility.* A Bank may, from time to time, require a housing associate to provide evidence that it continues to satisfy all of the

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eligibility requirements of the Act, this subpart and part 926 of this chapter.

(3) *Loss of eligibility.* A Bank shall not extend a new advance or renew an existing advance to a housing associate that no longer meets the eligibility requirements of the Act, this subpart and part 926 of this chapter until the entity has provided evidence satisfactory to the Bank that it is in compliance with such requirements.

§ 950.25 [Amended]

115. Amend paragraph (b) of § 950.25 by removing the words "debtor/creditor" and adding, in their place, the words "creditor/debtor".

PART 951—AFFORDABLE HOUSING PROGRAM

116. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

117. Amend § 951.1:

a. By removing the definitions of the terms "Advance", "AHP or Program", "CIP", "HUD" and "State"; and

b. By revising the definition of the word "Habitable" and adding, in correct alphabetical sequence, a definition for the word "Program" to read as follows:

§ 951.1 Definitions.

As used in this part:

* * * * *

Habitable means suitable for occupancy, taking into account local health, safety and building codes.

* * * * *

Program means the Affordable Housing Program.

* * * * *

§ 951.4 [Amended]

118. Amend paragraph (g) of § 951.4 by removing the words "Council members" and adding, in their place, the words "Council members".

§ 951.5 [Amended]

119. Amend § 951.5:

a. In paragraph (b)(2)(i)(A) of by adding a comma immediately following the words "other sources";

b. In paragraph (b)(7)(i), by removing the words "951.13 (c)(4)" and adding, in their place, the words "951.3(c)(4)"; and

c. In paragraph (b)(7)(ii), by removing the words "951.13 (c)(5)" and adding, in their place, the words "951.3(c)(5)".

§ 951.9 [Amended]

120–121. Amend § 951.9, in the introductory text, by removing the words "*Modification procedure.*".

§ 951.10 [Amended]

122. Amend paragraph (c)(1) of § 951.10, in the introductory text, by italicizing (designating as a heading) the words "Owner-occupied projects".

§ 951.12 [Amended]

123. Amend paragraph (h) of § 951.12 by removing the words "Procedures for Review of Disputed Supervisory Determinations" and adding, in their place, the words "procedures for review of disputed supervisory determinations set forth in § 907.9 of this chapter".

§ 951.16 [Amended]

124. Amend § 950.16, in the first sentence, by adding the words "(12 U.S.C. 1430(j))" between the words "of the Act" and the words "and the provisions".

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

125. Amend the authority citation for part 952 by revising it to read as follows:

Authority: 12 U.S.C. 1422b(a)(1), 1430.

§§ 952.1, 952.2, 952.3 [Redesignated]

126. Redesignate §§ 952.1, 952.2 and 952.3 as §§ 952.2, 952.3 and 952.1, respectively.

§ 952.1 [Amended]

127. Amend newly designated § 952.1:

a. By removing the definitions of the terms "Advance", "AHP", "CICA", "CIP" and "HUD";

b. By moving the definition of "Targeted community lending" into the correct alphabetical sequence; and

c. In the definition of "CICA program or Community Investment Cash Advance program", by removing both references to "§ 952.3" and adding, in its place, references to "§ 952.1".

§ 952.2 [Amended]

128. Amend newly designated § 952.2:

a. In the first sentence, by adding the words "(12 U.S.C. 1430(j)(10))" between the words "of the Act" and the words "authorizes the Banks"; and

b. By removing the words "(See 12 U.S.C. 1430(j)(10))" that immediately follow the first sentence.

129. Revise newly designated § 952.3 to read as follows:

§ 952.3 Purpose.

The purpose of this part is to identify targeted community lending projects that the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer Rural Development Funding (RDF) or Urban Development Funding (UDF) programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in § 952.1, without prior Finance Board approval. A Bank also may offer other CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those specified in § 952.1, established by the Bank with the prior approval of the Finance Board. In addition, a Bank shall offer CICA programs under section 10(i) of the Act (12 U.S.C. 1430(i)) (Community Investment Program (CIP)) and section 10(j) of the Act (12 U.S.C. 1430(j)) (Affordable Housing Program (AHP)). A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 952.5 [Amended]

130. Amend § 952.5:

a. In paragraph (a)(3), by removing the reference to "§ 952.3" and adding, in its place, a reference to "§ 952.1";

b. In paragraph (a)(4), by removing the reference to "§ 952.3" and adding, in its place, a reference to "§ 952.1";

c. In paragraph (d)(1), by removing the reference to "§ 950.6" and adding, in its place, a reference to "§ 950.5";

d. In paragraph (d)(4)(ii), by removing the reference to "§ 950.24" and adding, in its place, a reference to "§ 950.17"; and

e. In paragraph (d)(6)(i), by removing the word "fund" and adding, in its place, the words "Discount Fund".

PART 955—ACQUIRED MEMBER ASSETS

131. The authority citation for part 955 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, 1431.

132. Revise § 955.1 to read as follows:

§ 955.1 Definitions.

As used in this part:

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.

Expected losses means the base loss scenario in the methodology of an NRSRO applicable to that type of AMA asset.

Residential real property has the meaning set forth in § 950.1 of this chapter.

§ 955.3 [Amended]

133–134. Amend § 955.3 by:

a. In paragraph (b)(2)(ii), by removing the word "and" that follows the semi-colon; and

b. In paragraph (b)(3), by adding the word "and" immediately following the semi-colon.

PART 956—INVESTMENTS

135. The authority citation for part 956 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1429.

136. Revise § 956.1 to read as follows:

§ 956.1 Definitions.

As used in this part:

Deposits in banks or trust companies has the meaning set forth in § 965.1 of this chapter.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit contracts, and any other instruments that pose similar risks.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

Repurchase agreement means an agreement between a seller and a buyer whereby the seller agrees to repurchase a security or similar securities at an agreed upon price, with or without a stated time for repurchase.

§ 956.2 [Amended]

137. Amend § 956.2:

a. In paragraph (c), by removing the words "the Federal National Mortgage Association or the Government National Mortgage Association" and adding, in their place, the words "Fannie Mae or Ginnie Mae"; and

b. In paragraph (d), by removing the words "the Federal Home Loan Mortgage Corporation pursuant to 12 U.S.C. 1454 or 1455" and adding, in their place, the words "Freddie Mac pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455)".

§ 956.3 [Amended]

138. Amend paragraph (a)(4)(iii) of § 956.3 by removing the words "a NRSRO" and adding, in their place, the words "an NRSRO".

§ 956.4 [Amended]

139. Amend the introductory text of § 956.4 by removing the words "a NRSRO" and adding, in their place, the words "an NRSRO".

§ 956.5 [Amended]

140. Amend § 956.5:

a. In paragraph (b), by removing the words "12 CFR part 961" and adding, in their place, the words "part 960 of this chapter"; and

b. In paragraph (e), by removing the word "Commitment" and adding, in its place, the words "Commitments".

PART 960—[REMOVED]

141. Under the authority of 12 U.S.C. 1422b(a), part 960 is removed.

PART 961—[REDESIGNATED]

142. Part 961 is redesignated as part 960.

PART 960—STANDBY LETTERS OF CREDIT

143. The authority citation for newly designated part 960 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

144. Amend newly designated § 960.1 by adding, in correct alphabetical sequence, a definition for the term "Investment grade" to read as follows:

§ 960.1 Definitions.

* * * * *

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

* * * * *

§ 960.2 [Amended]

145. Amend paragraph (b) of newly designated § 960.2 by removing the reference to "§ 961.4(a)(2)" and adding, in its place, a reference to "§ 960.4(a)(2)".

§ 960.4 [Amended]

146. Amend paragraph (c) of newly designated § 960.4 by adding the words "(12 U.S.C. 1430, 1430b)" between the words "of the Act" and the words "and part 950".

§ 960.5 [Amended]

147. Amend paragraph (b)(1) of newly-designated § 960.5 by removing the words "961.2 or 961.3" and adding, in their place, the words "960.2 or 960.3".

PART 965—SOURCES OF FUNDS

148. Revise the authority citation for part 965 to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431.

§ 965.1 [Amended]

149. Amend the definition of "Deposits in banks or trust companies" in § 965.1:

a. In paragraph (3)(ii) by removing the words "Federal Deposit Insurance Corporation" and adding, in their place, the word "FDIC"; and

b. In paragraph (3)(iii) by removing the words "Board of Governors of the Federal Reserve System" and adding, in their place, the word "FRB".

§ 965.2 [Amended]

150. Amend the paragraph (b) of § 965.2 by removing the words "950.24(b)(2)(i)(B), 950.24(d) or 961.4(a)(1)" and adding, in their place, the words "950.17(b)(2)(i)(B), 950.17(d) or 960.4(a)(1)".

PART 966—CONSOLIDATED OBLIGATIONS

151. Revise the authority citation for part 966 to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431.

152. Revise § 966.1 to read as follows:

§ 966.1 Definitions.

As used in this part:

Non-complying Bank means a Bank that has failed to provide the liquidity certification as required under § 966.9(b)(1).

§ 966.2 [Amended]

153. Amend § 966.2:

a. In paragraph (a), in the last sentence, by removing the words "of the Finance Board" that follow the words "Board of Directors"; and

b. In paragraph (b)(2) by removing the words "part 985" and, adding, in thier place, the words "part 985 of this chapter".

§ 966.3 [Amended]

154–155. Amend paragraph (a)(1) of § 966.3, in the last sentence, by removing the words "12 U.S.C. 1431(g)" and adding, in their place, the words "section 11(g) of the Act (12 U.S.C. 1431(g))".

§ 966.8 [Amended]

156. Amend paragraph (a) of § 966.8 by removing the word "OF" and adding, in its place, the words "Office of Finance".

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§ 966.10 [Amended]

157. Amend § 966.10 by adding the words "(12 U.S.C. 1431)" between the words "of the Act" and the words "and pursuant to this part".

PART 975—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

158. The authority citation for part 975 continues to read as follows:

Authority: 12 U.S.C. 1430, 1431.

159. Redesignate §§ 975.1 and 975.2 as §§ 975.2 and 975.1, respectively.

160. Revise newly designated § 975.1 to read as follows:

§ 975.1 Definitions.

(a) Unless otherwise defined in this part, the terms used in this part shall conform, in the following order, to: Regulations of the Finance Board, the Uniform Commercial Code, regulations of the Federal Reserve System, and general banking usage.

(b) As used in this part:

Account processing includes charging, crediting, and settling of member or eligible institution accounts, excluding individual customer accounts.

Assets includes furniture and equipment, leasehold improvements, and capitalized start-up costs.

Data communication means transmitting and receiving of data to or from Banks, Federal Reserve offices, clearinghouse associations, depository institutions or their service bureaus, and other direct sending entities, arrangement for delivery of information; and telephone inquiry service.

Data processing includes capture, storage, and assembling of, and computation of, data from payment instruments received from Federal Reserve offices, Banks, clearinghouse associations, depository institutions, and other direct lending entities.

Eligible institution means any institution that is eligible to make application to become a member of a Bank under section 4 of the Act (12 U.S.C. 1424), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution (as defined in section 2(12) of the Act (12 U.S.C. 1422(12))), regardless of whether the institution applies for or would be approved for membership.

Issuance of forms means the designation and distribution of standardized forms for use in collection, processing, and settlement services.

Presentment means a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder, and may involve the use of electronic transmission of an instrument or item or transmission of data from the instrument or item by electronic or mechanical means.

Statement packaging includes receiving statement information from members or eligible institutions or their service bureaus on respective customer cycle dates; printing statements; matching customer account statements; packaging the statements with appropriate items and informational materials, as authorized by individual members and eligible institutions, for distribution to their customers; sending the packages to the members or eligible institutions or mailing the packages directly to their customers.

Storage services includes filing, storage, and truncation of items.

Transportation of items includes transporting items from Federal Reserve offices, other Banks' clearinghouse associations, depository institutions, and other direct sending entities to a Bank; forwarding items to financial institutions after sorting and forwarding cash items or return items to Federal Reserve offices and other sending entities.

§ 975.2 [Amended]

161. Amend newly designated § 975.2:

a. In paragraph (a) by removing the words "(12 U.S.C. 1431(e)(2)) (Bank Act)" and adding, in their place, the words "(12 U.S.C. 1431(e)(2))"; and

b. In paragraph (b) by:

i. Removing the words "Bank Act" and adding, in their place, the word "Act"; and

ii. Adding the words "(12 U.S.C. 1431(e)(2))" between the words "of the Act" and the words "shall be governed".

162–163. Revise § 975.3 to read as follows:

§ 975.3 General provisions.

The Banks are authorized to:

(a) Engage in, be agents or intermediaries for, or otherwise participate or assist in, the processing, collection, and settlement of checks, drafts, or any other negotiable or nonnegotiable items and instruments of payment drawn on eligible institutions or Bank members; and

(b) Be drawees of checks, drafts, and other negotiable and nonnegotiable items and instruments issued by eligible institutions or Bank members.

§ 975.4 [Amended]

164. Amend § 975.4, in the introductory text, by removing the words ", as defined in § 975.2".

PART 978—BANK REQUESTS FOR INFORMATION

165. The authority citation for part 978 continues to read as follows:

Authority: 12 U.S.C. 1422b(a), 1442.

166. Amend § 978.1 by revising the definition of "Financial regulatory agency" to read as follows:

§ 978.1 Definitions.

* * * * *

Financial regulatory agency means any of the following:

(1) The Department of the Treasury, including either the OCC or the OTS;

(2) The FRB;

(3) The NCUA; or

(4) The FDIC.

* * * * *

§ 978.2 [Amended]

167. Amend § 978.2 by removing the words "of the Act, 12 U.S.C. 1442" and adding, in their place, the words "of the Act (12 U.S.C. 1442)".

§ 978.4 [Amended]

168. Amend § 978.4, in the second sentence, by removing the words "of the Act, 12 U.S.C. 1442, as amended," and adding, in their place, the words "of the Act (12 U.S.C. 1442)".

§ 978.7 [Amended]

169. Amend § 978.7 by removing the words "of the Act, 12 U.S.C. 1440" from paragraph (d)(1) and adding, in their place, the words "of the Act (12 U.S.C. 1440)".

PART 980—NEW BUSINESS ACTIVITIES

170. The authority citation for part 980 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1431(a), 1432(a).

§ 980.3 [Amended]

171. Amend § 980.3:

a. In paragraph (a)(3)(iii), by adding the word "and" immediately after the semi-colon; and

b. In paragraph (a)(3)(iv), by removing the word "and" that immediately follows the semi-colon.

PART 985—THE OFFICE OF FINANCE

172. An authority citation for part 985 is added to read as follows:

Authority: 12 U.S.C. 1422b(b)(2), 1431(a), 1431(c), 1432(a).

173. Revise § 985.1 to read as follows:

§ 985.1 Definitions.

As used in this part:

Chair means the chairperson of the board of directors of the Office of Finance.

Managing Director means the managing director of the Office of Finance.

§ 985.3 [Amended]

174. Amend paragraph (d) of § 985.3 by removing the word "(REFCorp)" and adding, in its place, the word "(REFCORP)".

§ 985.6 [Amended]

175. Amend paragraph (d) of § 985.6 by removing the words "Nationally Recognized Statistical Rating Organizations" and adding, in their place, the words "NRSROs".

§ 985.8 [Amended]

176. Amend paragraph (d)(4)(i) of § 985.8 by removing the reference to "§ 917.6" and adding, in its place, a reference to "§ 917.7".

PART 987—BOOK-ENTRY PROCEDURE FOR CONSOLIDATED OBLIGATIONS

177. The authority citation for part 987 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431, 1435.

178. Amend § 987.1 by:

a. Removing the definition of the word "State"; and

b. Revising the introductory text and the definition of the term "Office of Finance" to read as follows:

§ 987.1 Definitions.

As used in this part, unless the context otherwise requires or indicates:

* * * * *

Office of Finance means the Office of Finance acting as agent of the Banks in all matters relating to the issuance of Book-entry consolidated obligations and in the performance of all other necessary and proper functions relating to Book-entry consolidated obligations, including the payment of principal and interest due thereon.

* * * * *

§ 987.5 [Amended]

179. Amend paragraph (a) of § 987.5, in the second sentence, by removing the word "a" that appears between the words "Security Entitlement or to" and the words "Book-entry consolidated obligations".

PART 989—FINANCIAL STATEMENTS OF THE BANKS

180. Revise the authority citation for part 989 to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1431, 1440.

181. Amend § 989.1 by revising the introductory text and the definition of "Audit" to read as follows:

§ 989.1 Definitions.

As used in this part:

Audit means an examination of the financial statements by an independent accountant in accordance with Generally Accepted Auditing Standards for the purpose of expressing an opinion thereon.

* * * * *

PART 995—FINANCING CORPORATION OPERATIONS

182. Revise the authority citation for part 995 to read as follows:

Authority: 12 U.S.C. 1441(b)(8), (c), (j).

183. Revise § 995.1 to read as follows:

§ 995.1 Definitions.

As used in this part:

Administrative expenses:

(1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

BIF-assessable deposit means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)).

Custodian fees means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Act (12 U.S.C. 1441(g)(2)), and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

Directorate means the board established under section 21(b) of the Act (12 U.S.C. 1441(b)) to manage the Financing Corporation.

Exit fees means the amounts paid under sections 5(d)(2)(E) and (F) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(E) and (F)), and regulations promulgated thereunder (12 CFR part 312).

Insured depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Issuance costs means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

Non-administrative expenses means custodian fees, issuance costs, and interest on Financing Corporation obligations.

Obligations means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21(c)(3) and (e) of the Act (12 U.S.C. 1421(c)(3) and (e)).

Receivership proceeds means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act (12 U.S.C. 1821a) from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund established under section 21B of the Act (12 U.S.C. 1441b).

SAIF-assessable deposit means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act, including a deposit that is treated as a deposit insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)).

§ 995.3 [Amended]

184. Amend § 995.3, in the first sentence, by adding the words "(12 U.S.C. 1441(g))" between the words "of the Act" and the period.

§ 995.4 [Amended]

185. Amend paragraph (b) of § 995.4:

a. In the first sentence, by removing the word "securities" and, in its place, adding the words "consolidated obligations"; and

b. In the second sentence, by removing the reference to "part 912" and, in its place, adding a reference to "part 987".

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§ 995.7 [Amended]

186. Amend paragraph (b) of § 995.7, in the first sentence, by adding the words "(12 U.S.C. 1441(b)(7)(B))" between the words "of the Act" and the period.

§ 995.8 [Amended]

187. Amend § 995.8:

a. In paragraph (b)(2)(i), by adding the words "(12 U.S.C. 1441(f)(2))" between the words "of the Act" and the words "and paragraph (b)(1)";

b. In paragraph (b)(3)(i), by adding the words "(12 U.S.C. 1441(f)(2))" between the words "of the Act" and the words "and paragraph (b)(1)";

c. In paragraph (b)(3)(ii), by adding the words "(12 U.S.C. 1441(f)(2))" between the words "of the Act" and the words "and paragraph (b)(1)";

d. In paragraph (c)(1), by adding the words "(12 U.S.C. 1441(f)(3))" between the words "of the Act" and the period; and

e. In paragraph (d)(1), by adding the words "(12 U.S.C. 1815(d)(2)(E))" between the words "Federal Deposit Insurance Act" and the words "or as otherwise".

§ 995.10 [Amended]

188–190. Amend § 995.10 by adding the words "(12 U.S.C. 1441)" between the words "of the Act" and the words "and this part".

PART 996—AUTHORITY FOR BANK ASSISTANCE OF THE RESOLUTION FUNDING CORPORATION

191. The authority citation for part 996 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b.

192a. Redesignate §§ 996.1 and 996.2 as §§ 996.2 and 996.3, respectively; and

192b. Add and reserve a new § 996.1.

§ 996.2 [Amended]

193. Amend newly designated § 996.2 by:

a. Adding the words "(12 U.S.C. 1441b(b))" between the words "of the Act" and the words ", officers, employees, or agents"; and

b. Adding the words "(12 U.S.C. 1441b(c)(6)(B))" between the words "of the Act" and the period.

§ 996.3 [Amended]

194. Amend newly designated § 996.3 by:

a. Removing the words "("SAIF member")"; and

b. Adding the words "(12 U.S.C. 1441b(e)(7))" between the words "of the Act" and the period.

PART 997—RESOLUTION FUNDING CORPORATION OBLIGATIONS OF THE BANKS

195. Revise the authority citation for part 997 to read as follows:

Authority: 12 U.S.C. 1422b(a) and 1441b(f).

§ 997.1 [Amended]

196. Amend § 997.1:

a. In the definition of "Quarterly present-value determination", by removing the words "requirements of 12 U.S.C. 1441b(f)(2)(C)(ii)" and adding, in their place, the words "requirements of section 21B(f)(2)(C)(ii) of the Act (12 U.S.C. 1441b(f)(2)(C)(ii))"; and

b. By removing the definition of "REFCORP".

Dated: February 13, 2002.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 02–5462 Filed 3–19–02; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–09–AD; Amendment 39–12681; AD 2002–03–52]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and EC130 B4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–03–52, sent previously to all known U.S. owners and operators of Eurocopter France (ECF) helicopters by individual letters. This AD requires checking for a gap between the adhesive bead and the metal bushing bonded on each STARFLEX star arm end (arm end) and, if a gap is found, replacing the STARFLEX with an airworthy part. This AD is prompted by reports of bonding failure between the metal bushing and the arm end that led to severe vibrations resulting in several emergency landings. The actions specified in this AD are intended to detect bonding failure between the metal bushing and each arm end, severe lateral vibrations, and subsequent loss of control of the helicopter.

DATES: Effective April 4, 2002.

Comments for inclusion in the Rules Docket must be received on or before April 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–09–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On February 6, 2002, the FAA issued Emergency AD (EAD) 2002–02–51, which required checking for a gap between the adhesive bead and the metal bushing on each arm end and, if a gap was found, replacing the STARFLEX. After issuing that EAD, we discovered the inadvertent omission of a STAFFLEX part number (P/N) from the applicability. That omission created an undue economic burden to the owners and operators of a significant percentage of the affected helicopters. That omission could have also created confusion to the personnel checking this flight critical part because there are a number of different STARFLEX configurations installed on the affected model helicopters. This condition, if not corrected, could have resulted in failure of the operators to properly conduct the check, failure to detect a gap between the adhesive bead and the metal bushing on the arm end, severe lateral vibrations, and subsequent loss of control of the helicopter. Therefore, to eliminate any confusion, the FAA issued superseding EAD 2002–03–52 on February 8, 2002, which contains the same requirements as EAD 2002–02–51 but limits the applicability of this AD to those helicopters that have STARFLEX, P/N 350A31–1916–00, installed.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on these helicopter models. The DGAC advises of several occurrences of rapid bonding failure of the metal bushing installed on the arm ends, severe vibrations, and some emergency landings.

ECF has issued Alert Telex Nos. 05.00.38, 05.00.37R1, and 05.A.001R1, dated November 13, 2001 (Telex). The Telex specifies checking for a gap between the adhesive bead and the metal bushing bonded on each arm end. ECF is currently analyzing modifications to this assembly. The DGAC classified this Telex as mandatory and issued AD Nos. 2001–557–086(A) R1, 2001–558–064(A) R1, and 2001–559–002(A) R1, all dated November 28, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the FAA issued Emergency AD 2002–03–52 to require, at specified intervals, checking for a gap between the adhesive bead and the metal bushing bonded on each of the arm ends and, if a gap is found, before further flight, replacing any STARFLEX with an airworthy part.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, checking for a gap between the adhesive bead and the metal bushing is required before each start of the engines and thereafter at intervals not to exceed 4 hours time-in-service, and this AD must be issued immediately.

An owner/operator (pilot) may perform the visual check required by paragraph (a) of this AD and must enter compliance with this AD into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). This AD allows a pilot to perform this check because it involves only a visual check for a gap between the adhesive bead and the metal bushing on each arm end and can be performed equally well by a pilot or a mechanic.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD immediately effective by individual letters issued on February 8, 2002, to all known U.S. owners and operators of these helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 30 helicopters will be affected by this AD, that it will take approximately 0.1 work hour to inspect the adhesive bead of the metal bushing bonded on each arm end, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6 per helicopter and $180 for one inspection of the fleet. Assuming 10 additional inspections per week for all helicopters, the fleet cost per year will be $93,600.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–09–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–03–52 Eurocopter France: Amendment 39–12681. Docket No. 2002–SW–09–AD. Supersedes Emergency AD 2002–02–51, Docket No. 2002–SW–02–AD.

Applicability: Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and EC130 B4 helicopters, with STARFLEX, part number 350A31–1916–00, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability

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provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before each start of the engines and thereafter at intervals not to exceed 4 hours time-in-service.

To detect bonding failure between the metal bushing and each STARFLEX star arm end (arm end), which could result in severe lateral vibrations and subsequent loss of control of the helicopter, accomplish the following:

(a) Check for a gap between the adhesive bead and the metal bushing bonded on each of the three arm ends.

Note 2: Alert Telex Nos. 05.00.38, 05.00.37 R1, and 05.A.001 R1, dated November 13, 2001, pertain to the subject of this AD.

(b) An owner/operator (pilot) may perform the visual check required by paragraph (a) of this AD and must enter compliance with this AD into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). This AD allows a pilot to perform this check because it involves only a visual check for a gap between the adhesive bead and the bushing on each arm end and can be performed equally well by a pilot or a mechanic.

(c) If you find a gap between the adhesive bead and the metal bushing, replace the STARFLEX with an airworthy part before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on April 4, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2001–557–086(A) R1, 2001–558–064(A) R1, and 2001–559–002(A) R1, all dated November 28, 2001.

Issued in Fort Worth, Texas, on March 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–6627 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–20–AD; Amendment 39–12680; AD 2002–06–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for specified Eurocopter France (ECF) helicopters that requires replacing the tail rotor hub pitch change plate "SNR" bearing (bearing). This amendment is prompted by fatigue cracks found in the bearings. The actions specified by this AD are intended to prevent seizure of the bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

DATES: Effective April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters was published in the **Federal Register** on November 28, 2001 (66 FR 59375). That action proposed replacing each bearing with an airworthy bearing at specified intervals. Also, that action noted that transferring a bearing from one model to another is permissible by complying with the transfer rules described in the Master Servicing Recommendations Chapter 05.99.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 514 helicopters of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $90 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $200,460.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–06–04 Eurocopter France: Amendment 39–12680. Docket No. 2001–SW–20–AD.

Applicability: Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, with tail rotor hub pitch change plate "SNR" bearing (bearing) part number (P/N) 6010F234M16 (Eurocopter France P/N 704A33–651–190), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent seizure of the bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model AS350B3 and AS355N helicopters, replace each bearing with an airworthy bearing as follows:

(1) Within 30 hours time-in-service (TIS) for each bearing that has 270 or more hours TIS as of the effective date of this AD.

(2) Before reaching 300 hours TIS for each bearing that has less than 270 hours TIS as of the effective date of this AD.

(3) Thereafter, replace each bearing at intervals not to exceed 300 hours TIS.

(b) For all other Model AS350 or AS355 helicopters, replace each bearing with an airworthy bearing as follows:

(1) Within 50 hours TIS for each bearing that has 1150 hours or more TIS as of the effective date of this AD.

(2) Before reaching 1200 hours TIS for each bearing that has less than 1150 hours TIS as of the effective date of this AD.

(3) Thereafter, replace each bearing at intervals not to exceed 1200 hours TIS.

Note 2: Eurocopter France Alert Telex Nos. 01.00.46 and 01.00.48, both dated February 22, 2001, pertain to the subject of this AD.

(c) When transferring a bearing from one model helicopter to another (refer to the equipment log card), adhere to the transfer rules described in the applicable master servicing recommendations. Remove each bearing from service at or before the service life limits given in paragraphs (a)(3) and (b)(3) of this AD.

Note 3: The Master Servicing Recommendations for the affected helicopters, Chapter 05.99, pertain to the subject of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2001–073–061(A) and 2001–074–081(A), both dated March 21, 2001.

(f) This amendment becomes effective on April 4, 2002.

Issued in Fort Worth, Texas, on March 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–6626 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–20; Amendment 39–12641; AD 2002–02–13]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–5 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–02–13, applicable to CFM International, S.A. CFM56–5 series turbofan engines that was published in the **Federal Register** on February 14, 2002 (67 FR 6850). The Amendment number is incorrect and this document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: March 21, 2002.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to CFM International, S.A. CFM56–5 series turbofan engines, was published in the **Federal Register** on February 14, 2002 (67 FR 6850). The following correction is needed:

On page 6850, in the first column, the Amendment No. in the fifth line of the Heading is corrected to read "Amendment 39–12641."

PART 39—[CORRECTED]

§ 39.13 [Corrected]

On page 6851, in the third column, in the heading of the AD, in the second line, correct "Amendment 39–12461" to read "Amendment 39–12641".

Issued in Burlington, MA, on March 12, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6530 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–02; Amendment 39–12640; AD 2002–02–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524G and –524H Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–02–12, applicable to Rolls-Royce plc (RR) RB211–524G and –524H series turbofan engines that was published in the **Federal Register** on February 14, 2002 (67 FR 6859). The Amendment number is incorrect and this document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744 fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Rolls-Royce plc (RR) RB211–524G and –524H series turbofan engines, was published in the **Federal Register** on February 14, 2002 (67 FR 6859). The following correction is needed:

On page 6859, in the first column, the Amendment No. in the fifth line of the Heading is corrected to read "Amendment 39–12640."

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PART 39—[CORRECTED]

§ 39.13 [Corrected]

On page 6860, in the third column, in amendatory instruction 2, in the fifth line, and in the heading of the AD, beginning in the first line, correct "Amendment 39–12460" to read "Amendment 39–12640".

Issued in Burlington, MA, on March 12, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6531 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

[T.D. 02–12]

RIN 1515–AD07

Payment of Duties on Certain Steel Products

AGENCY: Customs Service, Department of the Treasury.

ACTION: Temporary rule.

SUMMARY: This is a temporary rule that requires importers of the steel products described in the Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products published in the **Federal Register** (67 FR 10553) on March 7, 2002, to defer until April 19, 2002, the deposit of the estimated Customs duties described in the Proclamation on those products entered, or withdrawn from warehouse for consumption in the Customs territory of the United States on or after 12:01 a.m., EST, March 20, 2002 and up to April 4, 2002. This temporary rule implements an instruction of the President regarding the Presidential Proclamation.

EFFECTIVE DATE: This temporary rule is effective at 12:01 a.m. EST, March 20, 2002, and expires on April 20, 2002. This temporary rule applies to those steel products described in Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products published in the **Federal Register** (67 FR 10535) on March 7, 2002, that are entered or withdrawn from warehouse for consumption in the Customs territory of the United States on or after 12:01 a.m., EST, March 20, 2002 and up to April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Millie Gleason, Office of Field Operations (202) 927–0625.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2002, President George W. Bush signed Presidential Proclamation 7529, a proclamation to facilitate positive adjustment to competition from imports of certain steel products. The Proclamation, which was issued under the President's authority under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253), established increases in duty and a tariff-rate quota on imports of certain steel products. These safeguard measures were taken by the President to facilitate efforts by the domestic industry to make positive adjustment to import competition and provide greater economic and social benefits than costs. In the Proclamation, the President provides that if he determines within 30 days of the Proclamation that consultations between the United States and other World Trade Organization (WTO) members pursuant to Article 12.3 of the WTO Agreement on Safeguards have revealed a compelling reason to reduce, modify, or terminate a safeguard measure, he shall proclaim a corresponding reduction, modification, or termination of the safeguard measure.

In conjunction with the Proclamation, President Bush also sent a memorandum dated March 5, 2002, to the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative requiring action under section 203 of the Trade Act of 1974 (19 U.S.C. 2253). In that memorandum, the President instructed the Secretary of the Treasury, pursuant to section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)), to prescribe by regulation a date no later than 45 days after the date of the memorandum at which estimated duties for the steel products described in the Proclamation that are entered or withdrawn from warehouse for consumption on or after 12:01 a.m., EST, March 20, 2002, and up to the 30th day after the signing of the memorandum shall be deposited. The purpose of this deferral of duty is to facilitate consultations between the United States and its foreign trading partners concerning the President's determination in accordance with Article 12.3 of the World Trade Organization Agreement on Safeguards.

The Proclamation and the Memorandum for the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative were published in the **Federal Register** (67 FR 10553, 67 FR 10593) on March 7, 2002. The effective date of the Proclamation is March 20, 2002.

This document sets forth the temporary regulation that the President instructed the Secretary of the Treasury to prescribe. It is noted that, pursuant to the regulation set forth below, only deposit of the duties required pursuant to Presidential Proclamation 7529 is deferred. The deferral of deposit of duties is not applicable to regular duties, including antidumping and countervailing duties, that are owed on the entry of products covered by the Proclamation.

Administrative Procedure Act, Regulatory Flexibility Act and Executive Order 12866

This regulation implements a direction of the President of the United States pursuant to his authority under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253) to take all appropriate and feasible action within his power which he determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. Accordingly, there is good cause that notice and public procedure are contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reason, and because this temporary rule relieves importers from the obligation to deposit estimated duties, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(1) and (3). Moreover, because this temporary rule facilitates consultations between the United States and its foreign trading partners concerning the President's determination in accordance with Article 12.3 of the World Trade Organization Agreement on Safeguards, this rule involves a foreign affairs function of the United States that is exempt from notice and public procedure, as well as a delayed effective date, pursuant to 5 U.S.C. 553(a)(1).

Because no notice of proposed rulemaking is required, this temporary rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Nor is this temporary rule a "significant regulatory action" for purposes of E.O. 12866.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

Amendment to the Regulations

Part 141, Customs Regulations (19 CFR part 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 and the specific authority citation for subpart G continue to read, and a new specific authority for § 141.102(f) is added in appropriate numerical order to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Subpart G also issued under 19 U.S.C. 1505;

* * * * *

Section 141.102(f) also issued under Presidential Proclamation 7529;

* * * * *

2. Section 141.102 is amended by adding a new paragraph (f) to read as follows:

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

* * * * *

(f) *Steel products described in Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products.* An importer of the steel products described in Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products published in the **Federal Register** (67 FR 10553) on March 7, 2002, must defer until April 19, 2002, the deposit of the estimated Customs duties described in the Proclamation on those products entered, or withdrawn from warehouse for consumption in the Customs territory of the United States on or after 12:01 a.m., EST, March 20, 2002, and up to April 4, 2002.

Robert C. Bonner,

Commissioner of Customs.

Approved: March 18, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–6807 Filed 3–18–02; 11:05 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 710

[FHWA Docket No. FHWA–2001–8624]

RIN 2125–AE82

Right-of-Way and Real Estate; Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the right-of-way regulations for federally assisted transportation projects to clarify that financial assistance provided by the FHWA may participate in relocation assistance benefits, provided by State and local agencies pursuant to State law, that are in addition to the relocation benefits prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended.

DATES: This final rule is effective April 19, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Ware, Office of Real Estate Services, HEPR, (202) 366–2019, or Mr. Reid Alsop, Office of Chief Counsel, HCC–30, (202) 366–1371, FHWA 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA provides funds to the States and other organizations to reimburse them for the costs they have incurred in constructing highways and other transportation related projects pursuant to title 23, United States Code. These projects frequently involve the acquisition of real property or the displacement of persons, businesses and farms. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended (42 U.S.C. 4601 *et seq.*) ensures the fair and equitable treatment of persons whose real property is acquired or who are displaced as a result of a Federal or federally-assisted project. The FHWA regulations dealing with reimbursement, and the acquisition and management of real property, are contained in 23 CFR part 710.

On May 9, 2001, we published a notice of proposed rulemaking (NPRM) at 66 FR 23636, to propose amending our right-of-way regulations for federally assisted transportation projects to provide clarification. The NPRM described the development of the current regulation, which revised FHWA's policy on participation in costs incurred by States in the acquisition of real property. Basically, the FHWA now participates in any acquisition costs that are required by State law. In the NPRM, we proposed to revise the regulations to clarify that Federal financial assistance, provided by the FHWA pursuant to title 23, U.S.C., may be applied to relocation assistance benefits provided by State and local agencies, pursuant to State law, that are in addition to the relocation benefits prescribed by the Uniform Act.

The FHWA believes that its participation in such relocation payments is permissible based on the FHWA's general authority to participate in the costs of "construction," which is defined in 23 U.S.C. 101(a)(3) to include both costs of right-of-way acquisition and relocation assistance. We believe that the broad language in 23 CFR 710.203(b)(1) allows for this type of assistance; however, we received several inquiries regarding the FHWA's participation in relocation payments made by some States, pursuant to State law, that are in addition to those required by the Uniform Act. Therefore, in the NPRM we proposed amending section 710.203(b)(2) to clarify this matter.

Discussion of Comments

We received two written comments and one oral comment to the docket. The three commenters were from the Oregon, Washington, and Wisconsin State departments of transportation. The Washington DOT supported the proposed revision noting that the current Uniform Act benefits are inadequate for businesses. The Wisconsin DOT provided several technical comments. It noted that the

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change would allow Federal participation in some increased payments provided by State law, but was also concerned that more local governments might avail themselves of Federal funds thereby increasing its oversight responsibilities.

The Oregon DOT provided a verbal comment that questioned whether the proposed clarification would allow the FHWA to participate in relocation payments to aliens not lawfully present in the United States (illegal aliens). While the intent of this clarification is to emphasize that States have the flexibility in using the FHWA funds to participate in relocation payments required by State law, in addition to those payments mandated by the Uniform Act, we do not believe that the FHWA should permit the participation of Federal funds in such relocation payments to persons who Congress has specifically excluded from Uniform Act coverage. The Congress stated specifically in section 4605(a) of the Uniform Act that, with limited exceptions, a person not lawfully present in the United States is not eligible to receive relocation assistance under the Uniform Act (42 U.S.C. 4605(a)).

The Congress clearly stated that displaced persons shall not be eligible to receive relocation payments or any other assistance under the Uniform Act if they are not lawfully present in the United States. Consistent with that prohibition we have provided in this final rule that the FHWA will not participate in relocation assistance and payments provided by States to aliens not lawfully present in the United States.

We have adopted the change proposed with a slight modification, as discussed above, to deny Federal participation in relocation assistance and payments provided to illegal aliens. The primary reason for this change remains the same as stated in the NPRM, to make it clear that FHWA participation policies concerning both State acquisition costs and State relocation costs are the same. That is, the FHWA will participate in those acquisition and relocation costs that are required by State law (except for relocation costs to illegal aliens).

This basic participation policy promotes program streamlining. It gives States flexibility in the use of Federal aid funds available to the States. Further, it eliminates administrative burdens that would result if it were necessary to analyze all acquisition and relocation costs and categorize them as either participating or nonparticipating for purposes of Federal assistance.

Finally, if the NRPM were not adopted uncertainty would remain as to whether acquisition costs required by State law and relocation costs required by State law should be treated differently for purposes of Federal participation.

While we are aware of the Wisconsin DOT's concern regarding possible increased oversight, we note that one of the primary purposes of this change is to increase the ability of States to effectively manage their acquisition and relocation programs. In the absence of any further comments, we believe that the promulgation of this final rule is necessary to advance the important program streamlining objectives noted above.

Rulemaking Analyses and Notice

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory policy and procedure. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be a significant regulatory action because this rule clarifies existing requirements relating to FHWA reimbursement for certain expenditures that are required by State law. Neither the individual or cumulative impact of this action is significant because this action would not alter the funding levels available to the states for Federal or federally assisted programs covered by title 23, U.S. Code.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action would merely clarify existing procedures.

Environmental Impact

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the human environment.

Executive Order 13132 (Federalism)

The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule clarifies that greater flexibility is placed at the State or local level in the use of Federal funds in recognition of State laws. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48), the FHWA must prepare a budgetary impact statement on any proposal or final rule that includes a Federal mandate that may result in estimated annual costs to State, local or tribal government of $100 million or more. The FHWA has determined that this rule will not result in estimated costs of $100 million or more to State, local, or tribal governments. This action simply clarifies existing requirements. Accordingly no additional costs to State, local or tribal governments are anticipated as a result of this action.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Paperwork Reduction Act

This proposal contains no new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 710

Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

Issued on: March 13, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, Chapter 1, by revising Part 710 as set forth below:

PART 710—[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

2. Revise § 710.203(b)(2) to read as follows:

§ 710.203 Funding and reimbursement.

* * * * *

(b) * * *

(2) *Relocation assistance and payments.* Usual costs and disbursements associated with the following:

(i) Relocation assistance and payments required under 49 CFR part 24, and

(ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.

* * * * *

§ 710.409 [Amended]

3. Amend § 710.409(a) by revising the reference "§ 710.403(c)" to read "§ 710.403(d)".

[FR Doc. 02–6760 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8985]

RIN 1545–AY02

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the character of gain or loss from hedging transactions. The regulations reflect changes to the law made by the Ticket to Work and Work Incentives Improvement Act of 1999. The regulations affect businesses entering into hedging transactions.

DATES: *Effective Date:* These regulations are effective March 20, 2002.

Applicability Dates: For dates of applicability of these regulations, see the discussion in the Dates of Applicability paragraph in the Supplementary Information portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Elizabeth Handler, (202) 622–3930 or Viva Hammer at (202) 622–0869 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1480. Some responses to these collections of information are mandatory, and others are required to obtain the benefit of the separate-entity election.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent or recordkeeper varies from .1 to 40 hours, depending on individual circumstances, with an estimated average of 5.9 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR Part 1 under section 1221 of the Internal Revenue Code (Code). Prior to amendment in 1999, section 1221 generally defined a capital asset as property held by the taxpayer other than: (1) Stock in trade or other types of assets includible in inventory; (2) property used in a trade or business that is real property or property subject to depreciation; (3) certain copyrights (or similar property); (4) accounts or notes receivable acquired in the ordinary course of a trade or business; and (5) U.S. government publications.

In 1994, the IRS published in the **Federal Register** (59 FR 36360) final Treasury regulations under section 1221 providing for ordinary character treatment for certain business hedges. The regulations generally apply to transactions that reduce risk with respect to ordinary property, ordinary obligations, and borrowings of the taxpayer and that meet certain identification requirements. (§ 1.1221–2). In 1996, the IRS published in the **Federal Register** (61 FR 517) final regulations on the character and timing of gain or loss from hedging transactions entered into by members of a consolidated group. In this preamble, the final regulations published in 1994 and 1996 are referred to collectively as the Treasury regulations.

On December 17, 1999, section 1221 was amended by section 532 of the Ticket to Work and Work Incentives Improvement Act of 1999 (113 Stat 1860) to provide ordinary gain or loss treatment for hedging transactions and consumable supplies. Section 1221(a)(7) provides ordinary treatment for hedging transactions that are clearly identified as such before the close of the day on which they were acquired, originated, or entered into.

The statute defines a hedging transaction as a transaction entered into by the taxpayer in the normal course of business primarily to manage risk of interest rate, price changes, or currency fluctuations with respect to ordinary property, ordinary obligations, or borrowings of the taxpayer. Sections 1221(b)(2)(A)(i) and (ii). The statutory

definition of hedging transaction also includes transactions to manage such other risks as the Secretary may prescribe in regulations. Section 1221(b)(2)(A)(iii). Further, the statute grants the Secretary the authority to provide regulations to address the treatment of nonidentified or improperly identified hedging transactions, and hedging transactions involving related parties (sections 1221(b)(2)(B) and (b)(3), respectively). The statutory hedging provisions are effective for transactions entered into on or after December 17, 1999. Congress intended that the hedging rules be the exclusive means through which the gains and losses from hedging transactions are treated as ordinary. S. Rep. No. 201, 106th Cong., 1st Sess. 25 (1999).

Section 1221(a)(8) provides that supplies of a type regularly consumed by the taxpayer in the ordinary course of a taxpayer's trade or business are not capital assets. That provision is effective for supplies held or acquired on or after December 17, 1999.

A notice of proposed rulemaking (REG–107047–00, 2001–14 I.R.B. 1002) was published in the **Federal Register** (66 FR 4738) on January 18, 2001. On May 16, 2001, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. In response to these comments, the proposed regulations were modified and as so modified are adopted as final regulations. The principal changes to the proposed regulations are discussed below.

Explanation of Provisions

Coordination With International Provisions of the Code

The provisions of these regulations generally apply to determine the character of gain or loss from transactions that are also subject to various international provisions of the Code. Paragraph (a)(4) of the regulations, however, provides that the character of gain or loss on section 988 transactions is not determined under these regulations because gain or loss on those transactions is ordinary under section 988(a)(1). In addition, no implication is intended as to what constitutes "risk management" or "managing risk" for purposes of proposed or final regulations under section 482.

Paragraph (a)(4) of the proposed regulations provided that the definition of a hedging transaction under § 1.1221–2(b) of the proposed regulations would apply for purposes of certain other international provisions of the Code only to the extent provided in regulations issued under those provisions. Technical changes have been made in the final regulations to eliminate references to proposed regulations as well as Code sections for which the relevant regulations have not been issued in final form. Subsequent regulations will specify the extent to which the rules relating to hedging transactions that are contained in § 1.1221–2 will be applicable for purposes of those other regulations and related Code sections.

Risk Management Standard

Several commentators noted that the proposed regulations used risk reduction as the operating standard to implement the risk management definition of hedging introduced by section 1221(b)(2)(A). These commentators found that risk reduction is too narrow a standard to encompass the intent of Congress which defined hedges to include transactions that manage risk of interest rate, price changes or currency fluctuations. They urged the IRS and Treasury to adopt a broader definition of hedging to reflect Congress' intent. With one exception, the commentators did not suggest a definition of risk management.

In response to these comments, the final regulations have been restructured to implement the risk management standard. No definition of risk management is provided, but instead, the rules characterize a variety of classes of transactions as hedging transactions because they manage risk. Risk reducing transactions still qualify as one class of hedging transactions, but there are also others. In addition, specific provision is made for the recognition of additional types of qualifying risk management transactions through published guidance or private letter rulings. Under the final regulations, as under the proposed regulations, transactions entered into for speculative purposes will not qualify as hedging transactions. See S. Rep. No. 201, 106th Cong., 1st Sess. 24 (1999).

Application on the Basis of Separate Business Units

The proposed regulations provided that a taxpayer has risk of a particular type only if it is at risk when all of its operations are considered. That is, risk must exist on a "macro" basis. For this purpose, under the proposed regulations, a taxpayer has to show that hedges of particular assets or liabilities, or groups of assets or liabilities, are reasonably expected to reduce the overall risk of the taxpayer's operations.

Commentators pointed out that this entity-based approach to hedging is no longer uniform business practice. Instead, businesses often conduct risk management on a business unit by business unit basis. In response to these comments, the final regulations permit the determination of whether a transaction manages risk to be made on a business unit basis provided that the business unit is within a single entity or consolidated return group that adopts the single-entity approach. An example was added to the final regulations in which for one taxpayer, the determination of whether hedging activities reduce risk is made at the business unit level. In the example, the conduct of risk management activities within separate business units is undertaken as part of a program to reduce the overall risk of the taxpayer's operations.

Fixed-to-Floating Interest Rate Hedges

Paragraph (c)(1) of the proposed regulations recognized that a transaction that economically converts an interest rate or price from a fixed rate or price to a floating rate or price may manage risk. Commentators suggested that the rule in the proposed regulations provides insufficient guidance in that it states only that fixed-to-floating interest rate or price hedges may be hedging transactions. In response to these comments, the regulations have been restructured to separately address interest rate hedges and price hedges.

Commentators suggested that in the case of interest rate conversions, a taxpayer may choose to convert from a floating to a fixed rate to fix the amount payable on the obligation. However, a taxpayer could also elect to convert from a fixed to a floating rate to insure that the value of the liability remained relatively constant. In response to these comments, the final regulations provide that a transaction that converts an interest rate from a fixed rate to a floating rate or from a floating rate to a fixed rate manages risk. With respect to fixed-to-floating price hedges, the final regulations adopt the proposed rules without change.

Transactions Not Entered Into Primarily To Manage Risk

Paragraph (c)(3) of the proposed regulations provided that the purchase or sale of certain assets will not qualify as a hedging transaction if the assets are not acquired primarily to manage risk. This rule was illustrated by the example of a taxpayer that has an interest rate risk from a floating rate borrowing and that acquires debt instruments bearing a comparable floating interest rate.

Although the taxpayer's interest rate risk from the floating rate borrowing may be reduced by the purchase of the floating rate debt instruments, the proposed regulations provided that the acquisition of the debt instruments is not made primarily to reduce risk and, therefore, is not a hedging transaction.

The IRS and Treasury understand that some employers may invest in assets (such as shares of a mutual fund) that are used as a reference investment for purposes of computing their liability to employees under a nonqualified deferred compensation plan. A question may arise whether such an investment may constitute a hedging transaction and, if so, whether income from the investment may be deferred by the employer until payments of deferred compensation are made to employees. See § 1.446–4(b); but compare *Albertson's, Inc.* v. *Commissioner*, 42 F.3d 537 (9th Cir. 1994).

The rule in the proposed regulations is based on § 1.1221–2(c)(1)(vii). The rule has been restated in the final regulations to refer specifically to investments in debt instruments, equity securities, and annuity contracts so as to provide greater certainty in its application. For this purpose certain transactions in instruments that are not themselves debt instruments may include a debt investment. See, *e.g.*, § 1.446–3(g)(4). Further, the final regulations provide that the IRS may identify by future published guidance specified transactions that are determined not to be entered into primarily to manage risk. An example has been added to the final regulations to illustrate that an investment in mutual fund shares in the case described in the preceding paragraph does not qualify as a hedging transaction. A similar example is added with respect to an investment in an annuity contract.

Hedging Risks Other Than Interest Rate or Price Changes, or Currency Fluctuations

Paragraph (c)(8) of the proposed regulations provided that the Commissioner may, by published guidance, provide that hedging transactions include transactions entered into to manage risks other than interest rate or price changes, or currency fluctuations.

The notice of proposed rulemaking solicited comments regarding the expansion of the definition of hedging transactions to include transactions that manage risks other than interest rate or price changes, or currency fluctuations with respect to ordinary property, ordinary obligations or borrowings of the taxpayer. Some comments were received in response to that request. Because the comments described hedging transactions that related to the general operating results of a business (such as gross sales) rather than specific ordinary property, ordinary obligations or borrowings of the taxpayer, the implementation of rules respecting such hedges would present a number of issues not easily dealt with by the rules contained in the final regulations. Thus, the expansion of the scope of operation of the hedging rules is not being proposed at this time, so as not to delay the publication of guidance on the matters that are covered by the final regulations. However, the IRS is continuing to consider whether to expand the definition of hedging transactions to cover hedges of such other risks. The IRS and Treasury invite comments on the types of risks that should be covered, including specific examples of derivative transactions that may be incorporated into future guidance, as well as the appropriate timing of inclusion of gains and losses with respect to such transactions. Send submissions to: CC:ITA:RU (REG–107047–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

"Gap" Hedges

The status of so-called gap hedges was not separately addressed in the proposed regulations and is not covered in the final regulations. Insurance companies, for example, sometimes hedge the gap between their liabilities and the assets that fund them. Under the final regulations, a hedge of those assets would not qualify as a hedging transaction if the assets are capital assets. Whether a gap hedge qualifies as a liability hedge is a question of fact and depends on whether it is more closely associated with the liabilities than with the assets.

Identification Requirement

A rule has been added specifying additional information that must be provided for a transaction that counteracts a hedging transaction.

Dates of Applicability

The regulations generally apply to all transactions entered into on or after March 20, 2002. However, the IRS will not challenge any transaction entered into on or after December 17, 1999, and before March 20, 2002, that satisfies the provisions of either § 1.1221–2 of REG–107047–00, published in the **Federal Register** (66 FR 4738) on January 18, 2001, or the provisions of this final regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that very few small businesses enter into hedging transactions due to their cost and complexity. Further, those small businesses that hedge enter into very few hedging transactions because hedging transactions are costly, complex, and require constant monitoring and a sophisticated understanding of the capital markets. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Elizabeth Handler, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.1221–2 to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1221–2 also issued under 26 U.S.C. 1221(b)(2)(A)(iii), (b)(2)(B), and (b)(3); 1502 and 6001. * * *

Par. 2. In the list below, for each location indicated in the left column,

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remove the language in the middle column from that section, and add the language in the right column.

Affected section	Remove	Add
1.446–4(d)(2), first sentence	1.1221–2(e)	1.1221–2(f).
1.446–4(d)(2), last sentence	1.1221–2(e)(2)	1.1221–2(f)(2).
1.446–4(d)(3), first sentence	1.1221–2(e)	1.1221–2(f).
1.446–4(d)(3), first sentence	1.1221–2(a)(4)(i)	1.1221–2(a)(4).
1.446–4(e)(7), first sentence	1.1221–2(c)(2)	1.1221–2(d)(4).
1.446–4(e)(9)(ii), first sentence	1.1221–2(d)(2)	1.1221–2(e)(2).
1.446–4(e)(9)(ii), last sentence	1.1221–2(d)(2)(ii)	1.1221–2(e)(2)(ii).
1.475(b)–1(d)(2)	1.1221–2(e)	1.1221–2(f).
1.954–2(a)(4)(ii)(A), first sentence	1.1221–2(a) through (c).	1.1221–2(a) through (d).
1.954–2(a)(4)(ii)(B), first sentence	1.1221–2(e)	1.1221–2(f).
1.954–2(g)(2)(ii)(B)(*2*), last sentence	1.1221–2(c)(7)	1.1221–2(c)(3).
1.954–2(g)(3)(i)(B), last sentence	1.1221–2(c)(7)	1.1221–2(c)(3).
1.1256(e)–1(b), first and last sentences	1.1221–2(e)(1)	1.1221–2(f)(1).
1.1256(e)–1(c), first sentence	1.1221–2(e)(1)	1.1221–2(f)(1).
1.1256(e)–1(c), last sentence	paragraph (f)(1)(ii) of § 1.1221–2.	1.1221–2(g)(1)(ii).

Par. 3. Section 1.1221–2 is revised to read as follows:

§ 1.1221–2 Hedging transactions.

(a) *Treatment of hedging transactions*—(1) *In general.* This section governs the treatment of hedging transactions under section 1221(a)(7). Except as provided in paragraph (g)(2) of this section, the term capital asset does not include property that is part of a hedging transaction (as defined in paragraph (b) of this section).

(2) *Short sales and options.* This section also governs the character of gain or loss from a short sale or option that is part of a hedging transaction. Except as provided in paragraph (g)(2) of this section, gain or loss on a short sale or option that is part of a hedging transaction (as defined in paragraph (b) of this section) is ordinary income or loss.

(3) *Exclusivity.* If a transaction is not a hedging transaction as defined in paragraph (b) of this section, gain or loss from the transaction is not made ordinary on the grounds that property involved in the transaction is a surrogate for a noncapital asset, that the transaction serves as insurance against a business risk, that the transaction serves a hedging function, or that the transaction serves a similar function or purpose.

(4) *Coordination with section 988.* This section does not apply to determine the character of gain or loss realized on a section 988 transaction as defined in section 988(c)(1) or realized with respect to any qualified fund as defined in section 988(c)(1)(E)(iii).

(b) *Hedging transaction defined.* Section 1221(b)(2)(A) provides that a hedging transaction is any transaction that a taxpayer enters into in the normal course of the taxpayer's trade or business primarily—

(1) To manage risk of price changes or currency fluctuations with respect to ordinary property (as defined in paragraph (c)(2) of this section) that is held or to be held by the taxpayer;

(2) To manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer; or

(3) To manage such other risks as the Secretary may prescribe in regulations (see paragraph (d)(6) of this section).

(c) *General rules*—(1) *Normal course.* Solely for purposes of paragraph (b) of this section, if a transaction is entered into in furtherance of a taxpayer's trade or business, the transaction is entered into in the normal course of the taxpayer's trade or business. This rule includes managing risks relating to the expansion of an existing business or the acquisition of a new trade or business.

(2) *Ordinary property and obligations.* Property is ordinary property to a taxpayer only if a sale or exchange of the property by the taxpayer could not produce capital gain or loss under any circumstances. Thus, for example, property used in a trade or business within the meaning of section 1231(b) (determined without regard to the holding period specified in that section) is not ordinary property. An obligation is an ordinary obligation if performance or termination of the obligation by the taxpayer could not produce capital gain or loss. For purposes of this paragraph (c)(2), the term termination has the same meaning as it does in section 1234A.

(3) *Hedging an aggregate risk.* The term hedging transaction includes a transaction that manages an aggregate risk of interest rate changes, price changes, and/or currency fluctuations only if all of the risk, or all but a de minimis amount of the risk, is with respect to ordinary property, ordinary obligations, or borrowings.

(4) *Managing risk*—(i) *In general.* Whether a transaction manages a taxpayer's risk is determined based on all of the facts and circumstances surrounding the taxpayer's business and the transaction. Whether a transaction manages a taxpayer's risk may be determined on a business unit by business unit basis (for example by treating particular groups of activities, including the assets and liabilities attributable to those activities, as separate business units), provided that the business unit is within a single entity or consolidated return group that adopts the single-entity approach. A taxpayer's hedging strategies and policies as reflected in the taxpayer's minutes or other records are evidence of whether particular transactions were entered into primarily to manage the taxpayer's risk.

(ii) *Limitation of risk management transactions to those specifically described.* Except as otherwise determined by published guidance or by private letter ruling, a transaction that is not treated as a hedging transaction under paragraph (d) does not manage risk. Moreover, a transaction undertaken for speculative purposes will not be treated as a hedging transaction.

(d) *Transactions that manage risk*—(1) *Risk reduction transactions*—(i) *In general.* A transaction that is entered into to reduce a taxpayer's risk, manages a taxpayer's risk.

(ii) *Micro and macro hedges*—(A) *In general.* A taxpayer generally has risk of a particular type only if it is at risk when all of its operations are considered. Nonetheless, a hedge of a particular asset or liability generally will be respected as reducing risk if it reduces the risk attributable to the asset or liability and if it is reasonably expected to reduce the overall risk of the taxpayer's operations. If a taxpayer hedges particular assets or liabilities, or groups of assets or liabilities, and the hedges are undertaken as part of a program that, as a whole, is reasonably expected to reduce the overall risk of the taxpayer's operations, the taxpayer generally does not have to demonstrate that each hedge that was entered into pursuant to the program reduces its overall risk.

(B) *Example.* The following example illustrates the rules stated in paragraph (d)(1)(ii)(A) of this section:

Example. Corporation X manages its business operations by treating particular groups of activities, including the assets and liabilities attributable to those assets, as separate business units. A separate set of books and records is maintained with respect to the activities, assets and liabilities of separate business unit *y*. As part of a risk management program that Corporation X reasonably expects to reduce the overall risks of its business operations, Corporation X enters into hedges to reduce the risks of separate business unit *y*. Corporation X may demonstrate that the hedges reduce risk by taking into account only the activities, assets and liabilities of business unit *y*.

(iii) *Written options.* A written option may reduce risk. For example, in appropriate circumstances, a written call option with respect to assets held by a taxpayer or a written put option with respect to assets to be acquired by a taxpayer may be a hedging transaction. See also paragraph (d)(3) of this section.

(iv) *Fixed-to-floating price hedges.* Under the principles of paragraph (d)(1)(ii)(A) of this section, a transaction that economically converts a price from a fixed price to a floating price may reduce risk. For example, a taxpayer with a fixed cost for its inventory may be at risk if the price at which the inventory can be sold varies with a particular factor. Thus, for such a taxpayer a transaction that converts its fixed price to a floating price may be a hedging transaction.

(2) *Interest rate conversions.* A transaction that economically converts an interest rate from a fixed rate to a floating rate or that converts an interest rate from a floating rate to a fixed rate manages risk.

(3) *Transactions that counteract hedging transactions.* If a transaction is entered into primarily to offset all or any part of the risk management effected by one or more hedging transactions, the transaction is a hedging transaction. For example, if a written option is used to reduce or eliminate the risk reduction obtained from another position such as a purchased option, then it may be a hedging transaction.

(4) *Recycling.* A taxpayer may enter into a hedging transaction by using a position that was a hedge of one asset or liability as a hedge of another asset or liability (recycling).

(5) *Transactions not entered into primarily to manage risk*—(i) *Rule.* Except as otherwise determined in published guidance or private letter ruling, the purchase or sale of a debt instrument, an equity security, or an annuity contract is not a hedging transaction even if the transaction limits or reduces the taxpayer's risk with respect to ordinary property, borrowings, or ordinary obligations. In addition, the Commissioner may determine in published guidance that other transactions are not hedging transactions.

(ii) *Examples.* The following examples illustrate the rule stated in paragraph (d)(5)(i) of this section:

Example 1. Taxpayer borrows money and agrees to pay a floating rate of interest. Taxpayer purchases debt instruments that bear a comparable floating rate. Although taxpayer's interest rate risk from the floating rate borrowing may be reduced by the purchase of the debt instruments, the acquisition of the debt instruments is not a hedging transaction, because the transaction is not entered into primarily to manage the taxpayer's risk.

Example 2. Taxpayer undertakes obligations to pay compensation in the future. The amount of the future compensation payments is adjusted as if amounts were invested in a specified mutual fund and were increased or decreased by the earnings, gains and losses that would result from such an investment. Taxpayer invests funds in the shares of the mutual fund. Although the investment in shares of the mutual fund reduces the taxpayer's risk of fluctuation in the amount of its obligation to employees, the investment was not made primarily to manage the taxpayer's risk. Accordingly, the transaction is not a hedging transaction.

Example 3. Taxpayer provides a nonqualified retirement plan for employees that is structured like a defined contribution plan. Based on a schedule that takes into account an employee's monthly salary and years of service with the taxpayer, the taxpayer makes monthly credits to an account for each employee. Each employee may designate that the account will be treated as if it were used to pay premiums on a variable annuity contract issued by the M insurance company with a value that reflects a specified investment option. M offers a number of investment options for its variable annuity contracts. Taxpayer invests funds in M company variable annuity contracts that parallel the investment options selected by the employees. The investment is not made primarily to manage the taxpayer's risk and is not a hedging transaction.

(6) *Hedges of other risks.* The Commissioner may, by published guidance, determine that hedging transactions include transactions entered into to manage risks other than interest rate or price changes, or currency fluctuations.

(7) *Miscellaneous provision*—(i) *Extent of risk management.* A taxpayer may hedge all or any portion of its risk for all or any part of the period during which it is exposed to the risk.

(ii) *Number of transactions.* The fact that a taxpayer frequently enters into and terminates positions (even if done on a daily or more frequent basis) is not relevant to whether these transactions are hedging transactions. Thus, for example, a taxpayer hedging the risk associated with an asset or liability may frequently establish and terminate positions that hedge that risk, depending on the extent the taxpayer wishes to be hedged. Similarly, if a taxpayer maintains its level of risk exposure by entering into and terminating a large number of transactions in a single day, its transactions may nonetheless qualify as hedging transactions.

(e) *Hedging by members of a consolidated group*—(1) *General rule: single-entity approach.* For purposes of this section, the risk of one member of a consolidated group is treated as the risk of the other members as if all of the members of the group were divisions of a single corporation. For example, if any member of a consolidated group hedges the risk of another member of the group by entering into a transaction with a third party, that transaction may potentially qualify as a hedging transaction. Conversely, intercompany transactions are not hedging transactions because, when considered as transactions between divisions of a single corporation, they do not manage the risk of that single corporation.

(2) *Separate-entity election.* In lieu of the single-entity approach specified in paragraph (e)(1) of this section, a consolidated group may elect separate-entity treatment of its hedging transactions. If a group makes this separate-entity election, the following rules apply:

(i) *Risk of one member not risk of other members.* Notwithstanding paragraph (e)(1) of this section, the risk of one member is not treated as the risk of other members.

(ii) *Intercompany transactions.* An intercompany transaction is a hedging transaction (an intercompany hedging transaction) with respect to a member of

a consolidated group if and only if it meets the following requirements—

(A) The position of the member in the intercompany transaction would qualify as a hedging transaction with respect to the member (taking into account paragraph (e)(2)(i) of this section) if the member had entered into the transaction with an unrelated party; and

(B) The position of the other member (the marking member) in the transaction is marked to market under the marking member's method of accounting.

(iii) *Treatment of intercompany hedging transactions.* An intercompany hedging transaction (that is, a transaction that meets the requirements of paragraphs (e)(2)(ii)(A) and (B) of this section) is subject to the following rules—

(A) The character and timing rules of § 1.1502–13 do not apply to the income, deduction, gain, or loss from the intercompany hedging transaction; and

(B) Except as provided in paragraph (g)(3) of this section, the character of the marking member's gain or loss from the transaction is ordinary.

(iv) *Making and revoking the election.* Unless the Commissioner otherwise prescribes, the election described in this paragraph (e)(2) must be made in a separate statement saying "[Insert Name and Employer Identification Number of Common Parent] HEREBY ELECTS THE APPLICATION OF SECTION 1.1221–2(e)(2) (THE SEPARATE-ENTITY APPROACH)." The statement must also indicate the date as of which the election is to be effective. The election must be signed by the common parent and filed with the group's Federal income tax return for the taxable year that includes the first date for which the election is to apply. The election applies to all transactions entered into on or after the date so indicated. The election may be revoked only with the consent of the Commissioner.

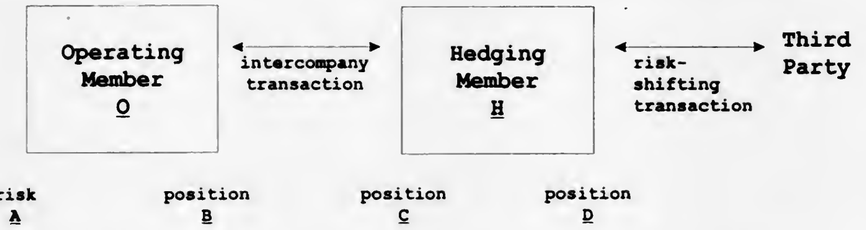
(3) *Definitions.* For definitions of consolidated group, divisions of a single corporation, group, intercompany transactions, and member, see section 1502 and the regulations thereunder.

(4) *Examples. General Facts.* In these examples, *O* and *H* are members of the same consolidated group. *O*'s business operations give rise to interest rate risk "*A*," which *O* wishes to hedge. *O* enters into an intercompany transaction with *H* that transfers the risk to *H*. *O*'s position in the intercompany transaction is "*B*," and *H*'s position in the transaction is "*C*." *H* enters into position "*D*" with a third party to reduce the interest rate risk it has with respect to its position *C*. *D* would be a hedging transaction with respect to risk *A* if *O*'s risk *A* were *H*'s risk. The following examples illustrate this paragraph (e):

Example 1. Single-entity treatment—(i) General rule. Under paragraph (e)(1) of this section, *O*'s risk *A* is treated as *H*'s risk, and therefore *D* is a hedging transaction with respect to risk *A*. Thus, the character of *D* is determined under the rules of this section, and the income, deduction, gain, or loss from *D* must be accounted for under a method of accounting that satisfies § 1.446–4. The intercompany transaction *B–C* is not a hedging transaction and is taken into account under § 1.1502–13.

(ii) *Identification. D* must be identified as a hedging transaction under paragraph (f)(1) of this section, and *A* must be identified as the hedged item under paragraph (f)(2) of this section. Under paragraph (f)(5) of this section, the identification of *A* as the hedged item can be accomplished by identifying the positions in the intercompany transaction as hedges or hedged items, as appropriate. Thus, substantially contemporaneous with entering into *D*, *H* may identify *C* as the hedged item and *O* may identify *B* as a hedge and *A* as the hedged item.

Example 2. Separate-entity election; counterparty that does not mark to market. In addition to the *General Facts* stated above, assume that the group makes a separate-entity election under paragraph (e)(2) of this section. If *H* does not mark *C* to market under its method of accounting, then *B* is not a hedging transaction, and the *B–C* intercompany transaction is taken into account under the rules of section 1502. *D* is not a hedging transaction with respect to *A*, but *D* may be a hedging transaction with respect to *C* if *C* is ordinary property or an ordinary obligation and if the other requirements of paragraph (b) of this section are met. If *D* is not part of a hedging transaction, then *D* may be part of a straddle for purposes of section 1092.



Example 3. Separate-entity election; counterparty that marks to market. The facts are the same as in *Example 2* above, except that *H* marks *C* to market under its method of accounting. Also assume that *B* would be a hedging transaction with respect to risk *A* if *O* had entered into that transaction with an unrelated party. Thus, for *O*, the *B–C* transaction is an intercompany hedging transaction with respect to *O*'s risk *A*, the character and timing rules of § 1.1502–13 do not apply to the *B–C* transaction, and *H*'s income, deduction, gain, or loss from *C* is ordinary. However, other attributes of the items from the *B–C* transaction are determined under § 1.1502–13. *D* is a hedging transaction with respect to *C* if it meets the requirements of paragraph (b) of this section.

(f) *Identification and recordkeeping—*(1) *Same-day identification of hedging transactions.* Under section 1221(a)(7), a taxpayer that enters into a hedging transaction (including recycling an existing hedging transaction) must clearly identify it as a hedging transaction before the close of the day on which the taxpayer acquired, originated, or entered into the transaction (or recycled the existing hedging transaction).

(2) *Substantially contemporaneous identification of hedged item—*(i) *Content of the identification.* A taxpayer that enters into a hedging transaction must identify the item, items, or aggregate risk being hedged. Identification of an item being hedged generally involves identifying a transaction that creates risk, and the type of risk that the transaction creates. For example, if a taxpayer is hedging the price risk with respect to its June purchases of corn inventory, the transaction being hedged is the June purchase of corn and the risk is price movements in the market where the taxpayer buys its corn. For additional rules concerning the content of this identification, see paragraph (f)(3) of this section.

(ii) *Timing of the identification.* The identification required by this paragraph (f)(2) must be made substantially contemporaneously with entering into the hedging transaction. An identification is not substantially contemporaneous if it is made more than 35 days after entering into the hedging transaction.

(3) *Identification requirements for certain hedging transactions.* In the case of the hedging transactions described in this paragraph (f)(3), the identification under paragraph (f)(2) of this section must include the information specified.

(i) *Anticipatory asset hedges.* If the hedging transaction relates to the anticipated acquisition of assets by the taxpayer, the identification must include the expected date or dates of acquisition and the amounts expected to be acquired.

(ii) *Inventory hedges.* If the hedging transaction relates to the purchase or sale of inventory by the taxpayer, the identification is made by specifying the type or class of inventory to which the transaction relates. If the hedging transaction relates to specific purchases or sales, the identification must also include the expected dates of the purchases or sales and the amounts to be purchased or sold.

(iii) *Hedges of debt of the taxpayer—*(A) *Existing debt.* If the hedging transaction relates to accruals or payments under an issue of existing debt of the taxpayer, the identification must specify the issue and, if the hedge is for less than the full issue price or the full term of the debt, the amount of the issue price and the term covered by the hedge.

(B) *Debt to be issued.* If the hedging transaction relates to the expected issuance of debt by the taxpayer or to accruals or payments under debt that is expected to be issued by the taxpayer, the identification must specify the following information: the expected date of issuance of the debt; the expected maturity or maturities; the total expected issue price; and the expected interest provisions. If the hedge is for less than the entire expected issue price of the debt or the full expected term of the debt, the identification must also include the amount or the term being hedged. The identification may indicate a range of dates, terms, and amounts, rather than specific dates, terms, or amounts. For example, a taxpayer might identify a transaction as hedging the yield on an anticipated issuance of fixed rate debt during the second half of its fiscal year, with the anticipated amount of the debt between $75 million and $125 million, and an anticipated term of approximately 20 to 30 years.

(iv) *Hedges of aggregate risk—*(A) *Required identification.* If a transaction hedges aggregate risk as described in paragraph (c)(3) of this section, the identification under paragraph (f)(2) of this section must include a description of the risk being hedged and of the hedging program under which the hedging transaction was entered. This requirement may be met by placing in the taxpayer's records a description of the hedging program and by establishing a system under which individual transactions can be identified as being entered into pursuant to the program.

(B) *Description of hedging program.* A description of a hedging program must include an identification of the type of risk being hedged, a description of the type of items giving rise to the risk being aggregated, and sufficient additional information to demonstrate that the program is designed to reduce aggregate risk of the type identified. If the program contains controls on speculation (for example, position limits), the description of the hedging program must also explain how the controls are established, communicated, and implemented.

(v) *Transactions that counteract hedging transactions.* If the hedging transaction is described in paragraph (d)(3) of this section, the description of the hedging transaction must include an identification of the risk management transaction that is being offset and the original underlying hedged item.

(4) *Manner of identification and records to be retained—*(i) *Inclusion of identification in tax records.* The identification required by this paragraph (f) must be made on, and retained as part of, the taxpayer's books and records.

(ii) *Presence of identification must be unambiguous.* The presence of an identification for purposes of this paragraph (f) must be unambiguous. The identification of a hedging transaction for financial accounting or regulatory purposes does not satisfy this requirement unless the taxpayer's books and records indicate that the identification is also being made for tax purposes. The taxpayer may indicate that individual hedging transactions, or a class or classes of hedging transactions, that are identified for financial accounting or regulatory purposes are also being identified as hedging transactions for purposes of this section.

(iii) *Manner of identification.* The taxpayer may separately and explicitly make each identification, or, so long as paragraph (f)(4)(ii) of this section is satisfied, the taxpayer may establish a system pursuant to which the identification is indicated by the type of transaction or by the manner in which the transaction is consummated or recorded. An identification under this system is made at the later of the time that the system is established or the time that the transaction satisfies the terms of the system by being entered, or by being consummated or recorded, in the designated fashion.

(iv) *Principles of paragraph (f)(4)(iii) of this section illustrated.* Paragraphs (f)(4)(iv)(A) through (C) of this section illustrate the principles of paragraph (f)(4)(iii) of this section and assume that the other requirements of this paragraph (f) are satisfied.

(A) A taxpayer can make an identification by designating a hedging transaction for (or placing it in) an account that has been identified as containing only hedges of a specified item (or of specified items or specified aggregate risk).

(B) A taxpayer can make an identification by including and retaining in its books and records a statement that designates all future transactions in a specified derivative product as hedges of a specified item, items, or aggregate risk.

(C) A taxpayer can make an identification by designating a certain mark, a certain form, or a certain legend as meaning that a transaction is a hedge of a specified item (or of specified items or a specified aggregate risk). Identification can be made by placing the designated mark on a record of the transaction (for example, trading ticket, purchase order, or trade confirmation) or by using the designated form or a record that contains the designated legend.

(5) *Identification of hedges involving members of the same consolidated group—*(i) *General rule: single-entity approach.* A member of a consolidated group must satisfy the requirements of this paragraph (f) as if all of the members of the group were divisions of a single corporation. Thus, the member entering into the hedging transaction with a third party must identify the hedging transaction under paragraph (f)(1) of this section. Under paragraph (f)(2) of this section, that member must also identify the item, items, or aggregate risk that is being hedged, even if the item, items, or aggregate risk relates primarily or entirely to other members of the group. If the members of a group use intercompany transactions to transfer risk within the group, the requirements of paragraph (f)(2) of this section may be met by identifying the intercompany transactions, and the risks hedged by the intercompany transactions, as

hedges or hedged items, as appropriate. Because identification of the intercompany transaction as a hedge serves solely to identify the hedged item, the identification is timely if made within the period required by paragraph (f)(2) of this section. For example, if a member transfers risk in an intercompany transaction, it may identify under the rules of this paragraph (f) both its position in that transaction and the item, items, or aggregate risk being hedged. The member that hedges the risk outside the group may identify under the rules of this paragraph (f) both its position with the third party and its position in the intercompany transaction. Paragraph (e)(4) *Example 1* of this section illustrates this identification.

(ii) *Rule for consolidated groups making the separate-entity election.* If a consolidated group makes the separate-entity election under paragraph (e)(2) of this section, each member of the group must satisfy the requirements of this paragraph (f) as though it were not a member of a consolidated group.

(6) *Consistency with section 1256(e)(2).* Any identification for purposes of section 1256(e)(2) is also an identification for purposes of paragraph (f)(1) of this section.

(g) *Effect of identification and non-identification*—(1) *Transactions identified*—(i) *In general.* If a taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (f)(1) of this section, the identification is binding with respect to gain, whether or not all of the requirements of paragraph (f) of this section are satisfied. Thus, gain from that transaction is ordinary income. If the transaction is not in fact a hedging transaction described in paragraph (b) of this section, however, paragraphs (a)(1) and (2) of this section do not apply and the character of loss is determined without reference to whether the transaction is a surrogate for a noncapital asset, serves as insurance against a business risk, serves a hedging function, or serves a similar function or purpose. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself make loss from the transaction ordinary.

(ii) *Inadvertent identification.* Notwithstanding paragraph (g)(1)(i) of this section, if the taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (f) of this section, the character of the gain is determined as if the transaction had not been identified as a hedging transaction if—

(A) The transaction is not a hedging transaction (as defined in paragraph (b) of this section);

(B) The identification of the transaction as a hedging transaction was due to inadvertent error; and

(C) All of the taxpayer's transactions in all open years are being treated on either original or, if necessary, amended returns in a manner consistent with the principles of this section.

(2) *Transactions not identified*—(i) *In general.* Except as provided in paragraphs (g)(2)(ii) and (iii) of this section, the absence of an identification that satisfies the requirements of paragraph (f)(1) of this section is binding and establishes that a transaction is not a hedging transaction. Thus, subject to the exceptions, the rules of paragraphs (a)(1) and (2) of this section do not apply, and the character of gain or loss is determined without reference to whether the transaction is a surrogate for a noncapital asset, serves as insurance against a business risk, serves a hedging function, or serves a similar function or purpose.

(ii) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (f) of this section, the taxpayer may treat gain or loss from the transaction as ordinary income or loss under paragraph (a)(1) or (2) of this section if—

(A) The transaction is a hedging transaction (as defined in paragraph (b) of this section);

(B) The failure to identify the transaction was due to inadvertent error; and

(C) All of the taxpayer's hedging transactions in all open years are being treated on either original or, if necessary, amended returns as provided in paragraphs (a)(1) and (2) of this section.

(iii) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies all the requirements of paragraph (f) of this section but the taxpayer has no reasonable grounds for treating the transaction as other than a hedging transaction, then gain from the transaction is ordinary. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (b) of this section but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the taxpayer's identification of similar transactions as hedging transactions.

(3) *Transactions by members of a consolidated group*—(i) *Single-entity approach.* If a consolidated group is under the general rule of paragraph (e)(1) of this section (the single-entity approach), the rules of this paragraph (g) apply only to transactions that are not intercompany transactions.

(ii) *Separate-entity election.* If a consolidated group has made the election under paragraph (e)(2) of this section, then, in addition to the rules of paragraphs (g)(1) and (2) of this section, the following rules apply:

(A) If an intercompany transaction is identified as a hedging transaction but does not meet the requirements of paragraphs (e)(2)(ii)(A) and (B) of this section, then, notwithstanding any contrary provision in § 1.1502–13, each party to the transaction is subject to the rules of paragraph (g)(1) of this section with respect to the transaction as though it had incorrectly identified its position in the transaction as a hedging transaction.

(B) If a transaction meets the requirements of paragraphs (e)(2)(ii) (A) and (B) of this section but the transaction is not identified as a hedging transaction, each party to the transaction is subject to the rules of paragraph (g)(2) of this section. (Because the transaction is an intercompany hedging transaction, the character and timing rules of § 1.1502–13 do not apply. See paragraph (e)(2)(iii)(A) of this section.)

(h) *Effective date.* The rules of this section apply to transactions entered into on or after March 20, 2002.

Par. 4. Section 1.1256(e)–1 is revised to read as follows:

§ 1.1256(e)–1 Identification of hedging transactions.

(a) *Identification and recordkeeping requirements.* Under section 1256(e)(2), a taxpayer that enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction.

(b) *Requirements for identification.* The identification of a hedging transaction for purposes of section 1256(e)(2) must satisfy the requirements of § 1.1221–2(f)(1). Solely for purposes of section 1256(f)(1), however, an identification that does not satisfy all of the requirements of § 1.1221–2(f)(1) is nevertheless treated as an identification under section 1256(e)(2).

(c) *Consistency with § 1.1221–2.* Any identification for purposes of § 1.1221–2(f)(1) is also an identification for purposes of this section. If a taxpayer satisfies the requirements of § 1.1221–2(f)(1)(ii), the transaction is treated as if it were not identified as a hedging transaction for purposes of section 1256(e)(2).

(d) *Effective date.* The rules of this section apply to transactions entered into on or after March 20, 2002.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (b) is amended by removing the entries for "1.1221–2," "1.1221–2(d)(2)(iv)," "1.1221–2(e)(5)," "1.1221–2(g)(5)(ii)," "1.1221–2(g)(6)(ii)," "1.1221–2(g)(6)(iii)," and "1.1221–2T(c)" and adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.1221–2	1545–1480
. . . . .	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: March 14, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–6622 Filed 3–15–02; 8:54 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–003]

RIN 2115–AE46

Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the St. Mary's Seahawk Sprint, a marine event to be held on the waters of the St. Mary's River, St. Mary's City, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the St. Mary's River during the event.

DATES: This rule is effective from 7 a.m. to 4 p.m. eastern time on April 13, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–003 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will occur on April 13, 2002, and numerous spectator craft are anticipated. Because of the danger posed to spectators and participants by other vessels transiting through the event area, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

St. Mary's College of Maryland will sponsor the St. Mary's Seahawk Sprint on April 13, 2002. The St. Mary's Seahawk Sprint consists of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the St. Mary's River. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard will temporarily restrict vessel movement in the event area during the crew races.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the St. Mary's River. The temporary special local regulations will be in effect from 7 a.m. to 4 p.m. eastern time on April 13, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the regulated area between races, when it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this regulation prevents traffic from transiting a portion of the St. Mary's River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of St. Mary's River during the event.

Although this regulation prevents traffic from transiting a portion of the St. Mary's River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add a temporary section, § 100.35–T05–003 to read as follows:

§ 100.35–T05–003 St. Mary's River, St. Mary's City, Maryland.

(a) *Definitions:*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10′05″ North, and bounded to the north by a line at latitude 38°12′00″ North. All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates.* This section is in effect from 7 a.m. to 4 p.m. eastern time on April 13, 2002.

Dated: March 8, 2002.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–6646 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–003]

RIN 2115–AA97

Safety Zone; Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a temporary safety zone in the navigable waters of Long Beach, California, for the National Water Ski Racing Association (NWSRA) Water Ski Race from 8 a.m. to 5 p.m. (PST) on March 23, 2002 and from 8 a.m. to 5 p.m. on March 24, 2002. This safety zone is necessary to provide for the safety of the crew and participants of the race and to protect the participating vessels. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port or his or her designated representative.

DATES: This rule is effective from 8 a.m. (PST) on March 23, 2002, to 5 p.m. on March 24, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02–003 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/ Group Los Angeles-Long Beach, 1001 S. Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Boatswain's Mate Second Class Jessica Walsh, Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 19, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Long Beach, CA" in the **Federal Register** (67 FR 7321). We received no letters from the public commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting 30 days after publication would delay the effective date of this safety zone beyond the event date of March 23, 2002, and that would be contrary to the need for public safety during this event.

Background and Purpose

This temporary safety zone provides for the safety of National Water Ski Racing Association (NWSRA) water ski race participants and spectators on March 23 and 24, 2002, from 8 a.m. to 5 p.m. both days. Persons and vessels are prohibited from entering into or transiting through this zone unless authorized by the Captain of the Port or his or her designated representative. By prohibiting persons and vessels from entering the waters surrounding the racecourse, the risk of high-speed collision will be significantly reduced. The U.S. Coast Guard will enforce this safety zone with assistance from the U.S. Coast Guard Auxiliary and event staff.

The following area is safety zone: All waters encompassed by lines connecting the following points, beginning at latitude 33°45′50″ N, longitude 118°10′48″ W; thence to 33°44′00″ N, 118°10′05″ W; thence to 33°44′00″ N, 118°09′26″ W; thence to 33°45′28″ N, 118°09′00″ W, and thence returning to the point of origin (North American Datum of 1983). This area is approximately 3,000 yards wide and 2,500 yards long and is centered near the oil islands off Long Beach, California.

Discussion of Comments and Changes

We received no letters from the public commenting on the proposed rule. We made one editorial change from the proposed rule to clarify that the rule will be enforced during the hours listed in paragraph (b).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this safety zone will encompass a small portion of the waterway for limited periods of time and vessel traffic can pass safety around the affected area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We expect that this rule will affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in a small portion of the port of Long Beach. The impact to these entities would not, however, be significant since this zone will encompass a small portion of the waterway for limited periods of time.

We received no letters from the public commenting on the proposed rule's impact to small entities and no changes to the proposed rule were made.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance to small entities were received.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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We received no letters commenting on the proposed rule implications for federalism and no changes to the proposed rule were made.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

We received no letters commenting on the proposed rule and no changes to the proposed rule were made.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

We received no letters commenting on the proposed rule effecting a taking of private property and no changes to the proposed rule were made.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

We received no letters commenting on the proposed rule complying with Civil Justice Reform and no changes to the proposed rule were made.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

We received no letters commenting on the proposed rule environmental risks to children and no changes to the proposed rule were made.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We received no letters commenting on the proposed rule implications for tribal governments and no changes to the proposed rule were made.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We received no letters commenting on the proposed rule effect on energy and no changes to the proposed rule were made.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it is a safety zone in effect for only 2 days. A "Categorical Exclusion Determination" is not required.

We received no letters commenting on the proposed rule environmental impact and no changes to the proposed rule were made.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 8 a.m. on March 23, 2002, to 5 p.m. on March 24, 2002, add § 165.T11–063 to read as follows:

§ 165.T11–063 Safety Zone; Long Beach, CA.

(a) Location. The following area is a safety zone: All waters encompassed by lines connecting the following points, beginning at latitude 33°45′50″ N, longitude 118°10′48″ W; thence to 33°44′00″ N, 118°10′05″ W; thence to 33°44′00″ N, 118°09′26″ W; thence to 33°45′28″ N, 118°09′00″ W; and thence returning to the point of origin. (NAD83)

(b) Enforcement period. This section will be enforced from 8 a.m. to 5 p.m. (PST) on March 23, 2002 and from 8 a.m. to 5 p.m. (PST) on March 24, 2002.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

Dated: March 6, 2002.

J. M. Holmes,

Captain, U. S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 02–6647 Filed 3–19–02 8:45am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7160–3]

Protection of Stratospheric Ozone: Removal of Restrictions on Certain Fire Suppression Substitutes for Ozone-Depleting Substances; and Listing of Substitutes; Correction

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule, correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of January 29, 2002, a direct final rule related to the Significant New Alternatives Policy (SNAP) program. A couple of typographical errors in chemical formulas were made inadvertently. This document identifies and corrects these errors.

DATES: These corrections are effective on April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2141, by e-mail at *sheppard.margaret@epa.gov*, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC, 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at *www.epa.gov/ozone/title6/snap/*.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published in the **Federal Register** of January 29, 2002 (66 FR 4185), a Direct Final Rule related to the Significant New Alternatives Policy (SNAP). In FR Doc. 02–1495, published on January 29, 2002, a couple of typographical errors to chemical formulas were made inadvertently. This document identifies and corrects these errors.

In FR Doc. 02–1495, published on January 29, 2002 (66 FR 4185), make the following corrections:

1. On page 4191 in the last paragraph of the third column, correct the formula "C_4H_{10}" to read "C_4F_{10}."

2. On page 4200 in the third column, amendatory instruction 3a. is corrected to read as follows:

a. Revising the table entitled "Fire Suppression and Explosion Protection—Acceptable Subjects to Use Conditions: Total Flooding Agents" by removing the entries "C_3F_8", "CF_3I" and "Gelled Halocarbon/Dry Chemical Suspension".

Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this correction is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this correction is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this correction does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This correction also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This correction also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This correction does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This correction also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the rule for the Removal of Restrictions on Certain Fire Suppression Substitutes for Ozone-Depleting Substances; and Listing of Substitutes.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 1, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the correction in the **Federal Register**. This correction is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: February 25, 2002.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 02–6722 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301224; FRL–6828–5]

2070–AB78

Isoxadifen-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, (CAS No. 163520–33–0), and its metabolite: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid, in or on corn commodities. Aventis CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective March 20, 2002. Objections and requests for hearings, identified by docket control number OPP–301224, must be received by EPA on or before May 20, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301224 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration

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Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6304; and e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301224. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 30, 2000 (65 FR 40632) (FRL–6592–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the FQPA of 1996 (Public Law 104–170) announcing the filing of a pesticide petition (PP 0E6162) for a tolerance by Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Aventis CropScience, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.570 be amended by establishing a tolerance for the combined residues of the inert ingredient, herbicide safener isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, (CAS No. 163520–33–0), and its metabolite: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid, in or on corn, grain at 0.10 part per million (ppm); corn, forage at 0.30 ppm; and corn, stover 0.50 (ppm). The Agency determined that the tolerance levels should be changed (lowered) and that the corn commodities should be expressed as in the Food and Feed Vocabulary; therefore, the tolerance levels are corn, field, grain and corn, field, forage both at 0.10 ppm and corn, field, stover at 0.20 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, (CAS No. 163520–33–0), and its metabolite: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid, on corn commodities.

EPA's assessment of exposures and risks associated with establishing the above tolerances was published in the **Federal Register** of June 21, 2001 (66 FR 33179) (FRL–6786–1), when the time-limited tolerances (expiring June 21, 2004) for combined residues of isoxadifen-ethyl for rice commodities were established. The assessment that was discussed in the above final rule considered both corn and rice. All risks were less than the Agency's level of concern. The corn tolerances were not established at that time, since the enforcement method for corn had not yet been validated. For a complete description of the toxicological profile and endpoints, the uncertainty factors, the exposure assessment which includes dietary exposure for both food and drinking water, the safety factor for infants and children, and aggregate risk for isoxadifen-ethyl see the final rule of June 21, 2001.

Based on the previous published assessment, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, (CAS No. 163520–33–0), and its metabolite: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid, on corn, field, grain and corn, field, forage both at 0.10 ppm and corn, field, stover at 0.20 ppm.

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner submitted the results of an Independent Laboratory Validation (ILV) for isoxadifen-ethyl and its major metabolites. The method is gas chromotography using ion trap mass selective detection. The ILV reported that overall the method worked well. There is thus a practical method suitable to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/MRLs for isoxadifen-ethyl residues.

C. Conditions

The following data gap has been identified for isoxadifen-ethyl in/on corn: storage stability data. Preliminary results only have been submitted as the study is still on-going. The Agency believes that the available data and risk assessment support the determination that there is a reasonable certainty of no harm and the establishment of permanent tolerances for isoxadifen-ethyl in/on corn. The registration of a formulation containing isoxadifen-ethyl will be time-limited and conditional upon submission of this information.

V. Conclusion

Therefore, tolerances are established for residues of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, (CAS No. 163520–33–0), and its metabolite: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid, on corn, field, grain and corn, field, forage both at 0.10 ppm and corn, field, stover at 0.20 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301224 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 20, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301224, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your

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request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (October 4, 1993 58 FR 51735). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* May 22, 2001 (66 FR 28355). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* February 16, 1994, (59 FR 7629) or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 11, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.570 is amended by revising paragraph (a) to read as follows:

§ 180.570 Isoxadifen-ethyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, (CAS No. 163520–33–0), and its metabolite: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid, when used as an inert ingredient (safener) in or on the following raw agricultural commodities when applied at an annual application rate of 0.08 pound of safener per acre.

Commodity	Parts per million
Corn, field, grain	0.10
Corn, field, forage	0.10
Corn, field, stover	0.20

(2) Tolerances that expire as indicated in the table below are established for residues of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate, CAS No. 163520–33–0) and its metabolites: 4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid and β-hydroxy-β-benezenepropanenitrile when in the commodities listed below. This safener will be used only in conjunction with the active ingredient fenoxaprop-*p*-ethyl, at a rate of 0.17 pound of safener per acre.

Commodity	Parts per million	Expiration/Revocation Date
Rice, bran	0.80	6/21/04
Rice, grain	0.10	6/21/04
Rice, hulls	0.50	6/21/04
Rice, straw	0.25	6/21/04

* * * * *

[FR Doc. 02–6727 Filed 3–19–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50644A; FRL–6817–8]

RIN 2070–AB27

Modification of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 5(a)(2) of the Toxic Substances Control Act (TSCA) and 40 CFR 721.185, EPA is amending three significant new use rules (SNURs) to allow certain uses without requiring a significant new use notice (SNUN). EPA is amending these rules based on review of new toxicity test data on one chemical and review of SNUNs for the other two chemicals. The amended SNURs would continue to require a SNUN for new uses that may involve significant changes in human or environmental exposure.

DATES: This rule is effective May 20, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50644A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during

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an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

The Agency proposed the modification of these SNURs in the **Federal Register** of October 30, 2001 (66 FR 54742) (FRL–6798–7). The background and reasons for the modification of each individual SNUR are set forth in the preamble to the proposed SNUR modification. The comment period closed on November 29, 2001. EPA received no comments regarding these SNURS. Therefore, EPA is issuing the modified SNURs.

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) and 40 CFR part 721 authorize EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA promulgates a rule designating "significant new uses" for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

Section 5(a)(1) of TSCA (15 U.S.C. 2604(a)(1)) and its implementing regulations at 40 CFR parts 720 and 721 require that any person intending to manufacture a new chemical substance, or to manufacture or process any chemical substance for a significant new use, must give EPA 90-days advance written notice in the form of a pre-manufacture notice (PMN) or SNUN, respectively.

Upon reviewing those notices, if EPA makes certain determinations regarding potential exposures and risks that may be presented by the activities associated with the chemical, EPA may regulate the chemical by issuing an order under TSCA section 5(e) and/or a SNUR under TSCA section 5(a)(2) and 40 CFR part 721. The TSCA section 5(e) order governs only the entity who submitted the PMN, whereas the section 5(a)(2) SNUR applies to all manufacturers and processors of the same chemical.

EPA may respond to SNUNs by issuing or modifying a TSCA section 5(e) consent order and/or amending the SNUR promulgated under TSCA section 5(a)(2). Amendment of the SNUR will often be necessary to allow companies other than the SNUN submitter to engage in the newly authorized use(s), because even after a manufacturer submits a SNUN and the review period expires, processors of the same substance still must submit a SNUN before engaging in the significant new use. Provisions regarding EPA's authority to modify or revoke SNUR requirements appear at 40 CFR 721.185.

EPA responded to PMN P–95–1411 by issuing a TSCA section 5(e) consent order and TSCA section 5(a)(2) SNUR to address concerns for both human health and the environment. Based on data from a 90-subchronic oral toxicity study in rats, submitted pursuant to the terms of the 5(e) consent order, EPA however, no longer concludes that the PMN substance may present an unreasonable risk to human health. Therefore, EPA has revoked the section 5(e) consent order entirely and, pursuant to TSCA section5(a)(2) and 40 CFR 721.185, is amending the SNUR to remove the human health related notice requirements, leaving only the notification requirements related to environmental releases.

EPA responded to PMNs P–97–520/521 by issuing a TSCA section 5(e) consent order requiring certain testing based on expected substantial human and environmental exposures and promulgating a TSCA section 5(a)(2) SNUR to address concerns for human health. In response to SNUNs S–00–397/398 by the same manufacturer proposing new uses for the same chemicals, EPA modified the section 5(e) consent order to allow certain new uses, but with restrictions to mitigate potential risks to human health. Accordingly, pursuant to TSCA section 5(a)(2) and 40 CFR 721.185, EPA is hereby amending the corresponding SNURs to modify the significant new uses consistent with the terms of the modified section 5(e) consent order and to provide EPA an opportunity to assess the potential for significant changes in human or environmental exposure.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the final rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the final rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not

significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 276755, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 10175 do not apply to this rule either. Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Pub. L. 104–113 section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 900 SNURs, the Agency has received fewer than 25 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

This rule is not subject to Executive Order 13211, "*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

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Dated: March 1, 2002.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.4589 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By removing and reserving paragraph (a)(2)(ii).

d. By removing paragraphs (a)(2)(iii), (a)(2)(iv), and (b)(3).

§ 721.4589 Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI).

(a) * * * (1) The chemical substance identified as propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI) (PMN P–95–1411; CAS No. 147783–69–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

3. Section 721.6175 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By adding paragraphs (a)(2)(ii), (a)(2)(iii), and (b)(3).

§ 721.6175 2-Piperdinone, 1,3-dimethyl-,.

(a) * * * (1) The chemical substance identified as 2-Piperdinone, 1,3-dimethyl-, (PMN P–97–520 and SNUN 00–397; CAS No. 1690–76–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use or processing other than: in enclosed systems (such as hydrocarbon extraction, polymer synthesis, wire enamel resin); electronic industry cleaning solvent; and other precision industry cleaning (such as automobile manufacturing, aerospace, and optics)), (o), and (q).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this substance.

4. Section 721.6176 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By adding paragraphs (a)(2)(ii), (a)(2)(iii), and (b)(3).

§ 721.6176 2-Piperdinone, 1,5-dimethyl-,.

(a) * * * (1) The chemical substance identified as 2-Piperdinone, 1,5-dimethyl-, (PMN P–97–521 and SNUN 00–398; CAS No. 86917–58–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use or processing other than: in enclosed systems (such as hydrocarbon extraction, polymer synthesis, wire enamel resin); electronic industry cleaning solvent; and other precision industry cleaning (such as automobile manufacturing, aerospace, and optics)), (o), and (q).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this substance.

[FR Doc. 02–6726 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50642A; FRL–6819–5]

RIN 2070–AB27

Modification of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 5(a)(2) of the Toxic Substances Control Act (TSCA) and 40 CFR 721.185, EPA is amending two significant new use rules (SNURs) to allow certain uses without requiring a significant new use notice (SNUN). EPA is amending these rules based on review of new toxicity and exposure data. The amended SNURs would continue to require a SNUN for new uses that may involve significant changes in human or environmental exposure

DATES: This final rule is effective on May 20, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially

affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50642A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

The Agency proposed the modification of these SNURs in the **Federal Register** of August 16, 2001 (66 FR 42978) (FRL–6557–8). The background and reasons for the modification of each individual SNUR are set forth in the preamble to the proposed SNUR modification. The comment period closed on September 17, 2001. EPA received no comments regarding the SNUR for P–89–769 codified at 721.9480. Therefore EPA is issuing the modified SNUR.

EPA received one comment from the PMN submitter of P–95–4, who provided particle size data that was the basis for the proposed elimination of reporting requirements for respiratory protection when the particle size of the PMN substance is 250 microns or greater. The commenter stated that when the particle size of the substance is 250 microns or greater, exposed workers are not reasonably likely to be exposed to significant amounts of the PMN substance and that SNUR reporting provisions should not apply. EPA reviewed the available dermal toxicity data and determined that when the particle size of the substance is 250 microns or greater dermal exposures would not result in significant changes in human exposure. This determination was based on the fact that the dermal LD_{50} of the substance is greater than 2,000 milligram/kilogram (mg/kg), the skin irritation study in rabbits for the substance showed no skin irritation and had a Draize irritation score of 0, indicative of a compound with no irritation potential to the skin, the skin sensitization study for the substance showed no reactions, and no dermal absorption of particles greater than 250 microns is expected. Therefore, EPA is issuing a modified final SNUR where no SNUR reporting requirements apply when the particle size of the substance is greater than 250 microns.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

During review of the PMNs submitted for the chemical substances that are the subject of this rule, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent order might result in significant changes in human or environmental exposure as described in section 5(a)(2) of TSCA. Based on these findings, SNURs were promulgated.

EPA has revoked the TSCA section 5(e) consent order for P–89–769 and has determined that modifying these SNURs would not result in significant changes in human or environmental exposure. The modification of SNUR provisions for these substances designated herein is consistent with the provisions of the TSCA section 5(e) consent order.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the

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activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001 do not apply to this rule. Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

This rule is not subject to Executive Order 13211, "*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 1, 2002.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.1925 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1) and (a)(2)(iii).

c. By removing paragraph (b)(3).

§ 721.1925 Substituted carboheterocyclic butane tetracarboxylate (generic).

(a) * * * (1) The chemical substance identified generically as substituted carboheterocyclic butane tetracarboxylate (PMNs P–90–440 and P–95–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply when particle sizes of the chemical substance is greater than 250 microns.

(2) * * *

* * * * * *

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

* * * * * *

3. Section 721.9480 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By removing and reserving paragraph (a)(2)(ii).

d. By removing paragraphs (a)(2)(iii), (a)(2)(iv), (a)(2)(v), and (b)(3).

§ 721.9480 Resorcinol, formaldehyde substituted carbomonocycle resin (generic).

(a) * * * (1) The chemical substance identified generically as resorcinol, formaldehyde substituted carbomonocycle resin (PMN P–89–769) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * * *

[FR Doc. 02–6725 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 35

RIN 1090–AA80

Change of Address for Office of Hearings and Appeals; Correction

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule; correction.

SUMMARY: In the January 30, 2002, **Federal Register**, the Department of the Interior published a revision to its regulations governing administrative appeals to reflect a change of address for the Office of Hearings and Appeals (OHA). One of the sections for revision was erroneously cited. This document corrects that citation.

DATES: Effective on March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Charles E. Breece, Principal Deputy Director, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203, telephone 702–235–3810.

SUPPLEMENTARY INFORMATION: The Department of the Interior published a final rule in the **Federal Register** of January 30, 2002, revising several parts of 43 CFR to reflect a change of address for OHA. 67 FR 4367. One of the sections for revision was erroneously cited as 43 CFR 35.1(g). There is no paragraph (g) in § 35.1. The correct citation is 43 CFR 35.2(g).

In rule FR Doc. 02–2188 published on January 30, 2002 (67 FR 4367), make the following correction: On page 4369, in the first column, change the section heading and instruction 25 to read as follows:

§ 35.2 [Amended]

25. In § 35.2(g), revise "4015 Wilson Boulevard" to read "801 North Quincy Street".

Dated: March 11, 2002.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 02–6658 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 020131023–2056–02; I.D. 030702B]

RIN 0648–AP80

Pacific Halibut Fisheries; Catch Sharing Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule; annual management measures for Pacific halibut fisheries and approval of catch sharing plans.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures, promulgated as regulations by the IPHC and approved by the Secretary of State, governing the

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Pacific halibut fishery. The AA also announces the approval of modifications to the Catch Sharing Plan (CSP) for Area 2A and implementing regulations for 2002. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC).

DATES: Effective March 18, 2002, through the **Federal Register** publication of the 2003 specification management measures.

ADDRESSES: NMFS Alaska Region, 709 West 9th St., P.O. Box 21668, Juneau, AK 99802–1668 (http://www.fakr.noaa.gov); or NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115–0070 (http://www.nwr.noaa.gov).

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or Yvonne deReynier, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2002, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2002 IPHC annual management measures are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements for harvesting Pacific halibut.

The IPHC held its annual meeting in Seattle, WA, on January 22–25, 2002, and adopted regulations for 2002. The substantive changes to the previous IPHC regulations (66 FR 15801, March 21, 2001) include:

1. New catch limits for all areas;
2. Opening dates for the Area 2A commercial directed halibut fishery;
3. Specification of which commercial fishing regulations apply to the commercial treaty Indian fishery in Area 2A–1;
4. Revision of the definition of illegal possession of halibut such that a person is not required to know that they are in contravention of the IPHC regulations to be in illegal possession of halibut;
5. Allowance of fishing vessels carrying crab pots and operating off Alaska to have halibut heads, skins, bones and entrails on board provided they have documentation of legally acquiring the halibut body parts;
6. Recognition of the customary and traditional use of halibut (i.e. subsistence halibut) in Alaska; and
7. Removal of the expiration date of regulations allowing fishermen using Community Development Quota (CDQ) in Area 4E to retain halibut for personal use that are shorter than the minimum commercial size limit and also extension of this allowance to Area 4D CDQ fishermen.

In addition, this action implements the CSP for regulatory Area 2A. The CSP was developed by the PFMC under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention and to adopt such regulations as may be necessary to implement the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the PFMC to allocate halibut catches should such allocation be necessary.

Catch Sharing Plan for Area 2A

The PFMC's Area 2A CSP allocates the halibut catch limit for Area 2A among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in and off Washington, Oregon, and California. Under the CSP, 35 percent of the Area 2A total allowable catch (TAC) is allocated to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent is allocated to non-treaty fisheries in Area 2A. Treaty fisheries are divided into commercial fisheries, and ceremonial and subsistence fisheries. The allocation to non-treaty fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The non-treaty commercial allocation is further divided between a directed longline fishery (85 percent) and an incidental catch allowance in the salmon troll fishery (15 percent). The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon and California. North of Point Chehalis, WA (46°53'18" N. lat.) halibut may be retained by longline vessels participating in the limited entry, primary sablefish fishery. Under applicable regulations, incidental halibut retention in the primary sablefish fishery is only allowable when the overall Area 2A TAC is above 900,000 lb (408.2 mt,) which it is in 2002. The CSP also divides the sport fisheries into seven geographic areas, each with separate allocations, seasons, and bag limits.

For 2002, PFMC recommended changes to the CSP to modify the Pacific halibut sport fisheries in Area 2A in 2002 and beyond pursuant to recommendations from the Washington Department of Fish and Wildlife and the Oregon Department of Fish and Wildlife. These changes to the CSP will separate the Puget Sound sub-area of the Washington State sport fisheries into two regions with two separate season start dates and will allow Oregon anglers to retain up to two halibut on land.

A complete description of the PFMC recommended changes to the CSP, notice of a draft Environmental Assessment and Regulatory Impact Review (EA/RIR), and proposed sport fishery management measures were published in the **Federal Register** on February 11, 2002 (67 FR 6220) with a request for public comments by February 22, 2002. No public comments were received. Therefore, NMFS has approved the changes to the CSP as proposed, made a finding of no significant impact, and finalized the EA/RIR. Copies of the complete CSP for Area 2A as modified and the final EA/RIR are available from the NMFS Northwest Regional Office (see **ADDRESSES**).

In accordance with the CSP, the Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW) held public workshops (after the IPHC set the Area 2A quota) in early February 2002, to develop recommendations on the opening dates and weekly structure of the sport fisheries. The WDFW and ODFW sent letters to NMFS discussing the outcome of the workshops and provided the following recommendations on the opening dates and season structure for the sport fisheries.

WDFW recommended a May 9 to July 12 season for eastern Puget Sound and a May 23 to July 27 season for western Puget Sound, 5 days per week (closed Tuesday and Wednesday). The recommended number of fishing days is based on an analysis of past harvest patterns in this fishery and meets the requirements of the CSP for the overall Puget Sound sport fishery subarea. For the Washington North Coast subarea, WDFW has recommended a season opening May 1 and continuing until the May-June sub-quota is taken, 5 days per week (closed Sunday and Monday), and a second season for July 1–4, with a possibility of re-opening this subarea if sufficient quota remains after July 4. WDFW also recommended extending the southern boundary of the North Coast subarea's closed area by four miles, in accordance with paragraph (f)(1)(ii) of the CSP. This modest increase in the size of the closed area is intended to lengthen the fishing season by reducing access to an area of higher halibut abundance, known as a halibut "hot spot." For the Washington South Coast subarea, WDFW has recommended a season opening May 1 and continuing until the quota is taken, 5 days per week (closed Friday and Saturday) in the offshore area and 7 days per week in the nearshore area. WDFW recommendations for both the North Coast and South Coast Washington subareas meet the requirements of the CSP.

Both WDFW and ODFW have recommended opening the Columbia River subarea on May 1 and continuing the season until the quota has been reached, 7 days per week. This recommended season meets the requirements of the CSP.

ODFW recommended starting the nearshore fishery in the Oregon Central Coast and South Coast subareas on May 1 and continuing the season until the sub-quota for that fishery is taken, 7 days per week. For the all-depth fisheries in those subareas, ODFW recommended a 4–day season of May 10, 11, 17, and 18, based on an analysis of past harvest rates, which indicated an increasing annual trend in this sport fishery. ODFW further recommended a 2 day August all-depth season of August 2 and 3. If the May season does not take the entire May sub-quota for these subareas, ODFW recommended these additional potential opening dates: June 7, 8, 21, 22. If the August season does not take the entire August sub-quota for these subareas, ODFW recommended these additional potential opening dates: August 23, 24, September 20, 21. These recommendations meet the requirements of the CSP for these subareas.

For the southernmost subarea, south of Humbug Mountain, Oregon, ODFW recommended opening this subarea on May 1 and continuing the season until the quota has been reached, 7 days per week. This recommended season meets the requirements of the CSP.

NMFS has implemented sport fishing management measures in Area 2A based on recommendations from the states in accordance with the CSP.

Annual Halibut Management Measures

The annual management measures that follow for the 2002 Pacific halibut fishery are identical to those recommended by the IPHC and approved by the Secretary of State.

2002 Pacific Halibut Fishery Regulations

Regulations Respecting the Convention Between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 21 apply to commercial fishing for halibut.

(4) Section 22 applies to the United States treaty Indian fishery in subarea 2A–1.

(5) Section 23 applies to customary and traditional fishing in Alaska.

(6) Section 24 applies to sport fishing for halibut.

(7) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

3. Interpretation

(1) In these Regulations,

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) *Authorized clearance personnel* means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) *Commercial fishing* means fishing, other than treaty Indian ceremonial and subsistence fishing as referred to in section 22, and customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to National Marine Fisheries Service regulations published at 50 CFR part 300, the resulting catch of which is sold or bartered; or is intended to be sold or bartered;

(e) *Commission* means the International Pacific Halibut Commission;

(f) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) *Fishing period limit* means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) *Land or Offload with respect to halibut*, means the removal of halibut from the catching vessel;

(j) *License* means a halibut fishing license issued by the Commission pursuant to section 4;

(k) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) *Operator*, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(m) *Overall length of a vessel* means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(n) *Person* includes an individual, corporation, firm, or association;

(o) *Regulatory area* means an area referred to in section 6;

(p) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(q) *Sport fishing* means all fishing other than commercial fishing, treaty Indian ceremonial and subsistence

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fishing as referred to in section 22, and customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to National Marine fisheries Service regulations published in 50 CFR part 300;

(r) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

(3) In these Regulations all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both.

(a) The directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 and the incidental commercial fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(b) the incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) A license issued in respect of a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery or the incidental commercial fishery during the sablefish fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, CFR part 904.

5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

(a) Closed areas;
(b) Fishing periods;
(c) Fishing period limits;
(d) Gear restrictions;
(e) Recreational bag limits;
(f) Size limits; or
(g) Vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, Provincial fishery officials, and the media.

6. Regulatory Areas

The following areas shall be regulatory areas for the purposes of the Convention (see Figure 1):

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″N. lat., 136°38′18″W. long.) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″N. lat.;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat..

7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to December 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed fishery[1] shall begin at 0800 hours and terminate at 1800 hours local time on June 26, July 10, July 24, August 7, August 21, September 4, and September 18 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery[2] is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by National Marine Fisheries Service (NMFS).

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by the National Marine Fisheries Service (NMFS).

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 18 and terminate at 1200 hours local time on November 18, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 18.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved referred to in paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

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PACIFIC HALIBUT FISHERY REGULATIONS 2001

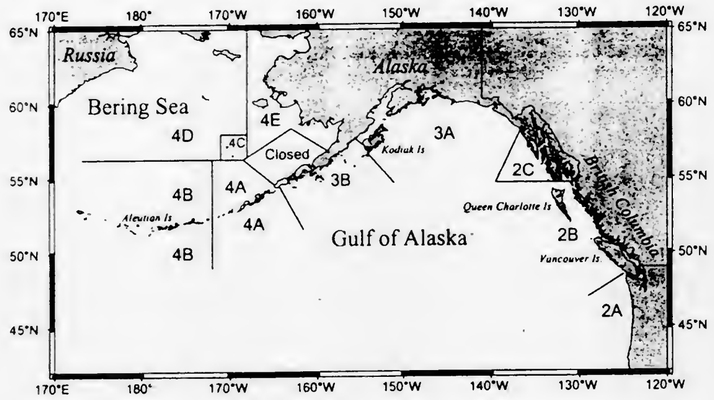


Figure 1. Regulatory areas for the Pacific halibut fishery.

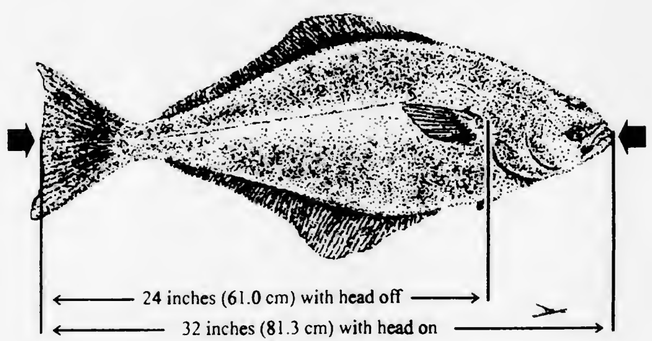


Figure 2. Minimum commercial size

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10. Closed Area

All waters in the Bering Sea north of 55°00′00″N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″N. lat. and 54°49′00″N. lat. are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory Area	Catch Limit in Pounds	Catch Limit in Metric Tons
2A: directed commercial, and incidental commercial during salmon troll fishery	262,000	118.8
2A: incidental commercial during sablefish fishery	88,389	40.1
2B	11,750,000	5,328.8
2C	8,500,000	3,854.9
3A	22,630,000	10,263.0
3B	17,130,000	7,768.7
4A	4,970,000	2,254.0
4B	4,180,000	1,895.7
4C	2,030,000	920.6
4D	2,030,000	920.6
4E	390,000	176.9

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 18, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all Individual Fishing Quotas and all Community Development Quotas issued by the National Marine Fisheries Service have been taken, or November 18, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10–hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on

(a) the vessel's overall length in feet and associated length class;

(b) the average performance of all vessels within that class; and

(c) the remaining catch limit.

(6) Length classes are shown in the following table:

Overall Length	Vessel Class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that

(a) with the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

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(b) with the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person shall possess on board a vessel a halibut filleted or a halibut that has been mutilated, or otherwise disfigured in any manner that prevents the determination of whether the halibut complies with the size limits specified in this section, except that this paragraph shall not prohibit the possession on board a vessel:

(a) Of halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR part 679; and

(b) Of fillets from halibut that have been offloaded in accordance with section 17 may be possessed on board a vessel in the port of landing up to 1800 hours local time on the calendar day following the offload.[3]

(3) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by

(a) hook straightening;

(b) cutting the gangion near the hook; or

(c) carefully removing the hook by twisting it from the halibut with a gaff.

15. Vessel Clearance in Area

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs 5, 8, and 9, the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more, than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, but must comply with the following requirements:

(a) The operator of the vessel must obtain a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator must obtain a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that is used to fish for halibut only in Areas 4D or 4E and lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations in the Groundfish/Individual Fishing Quota (IFQ) Daily Fishing Longline and Pot Gear Logbook provided by NMFS, or Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association, or the Alaska Department of Fish and Game (ADF&G) longline-pot logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the state vessel number (ADF&G) or Washington Department of Fish and Wildlife or Oregon Department of Fish and Wildlife or California Department of Fish and Game vessel number);

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be

(a) maintained on board the vessel;

(b) updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) retained for a period of two years by the owner or operator of the vessel;

(d) open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Halibut Fishery logbook provide by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the Department of Fisheries and Ocean's vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be

(a) maintained on board the vessel;

(b) updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) retained for a period of two years by the owner or operator of the vessel;

(d) open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(e) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(f) mailed to the Department of Fisheries and Oceans (white copy) within seven days of offloading; and

(g) mailed to the IPHC (yellow copy) within seven days of the final offload if not collected by an International Pacific Halibut Commission employee.

(8) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24–hours of offloading.

(9) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut from a United States vessel that does not have on board the license required by section 4.

(2) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(3) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(4) A registered buyer (as that term is defined in regulations promulgated by the NMFS and codified at 50 CFR part 679) who receives halibut harvested in Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on Federal catch reports: date of offload; name of vessel; vessel number; scale weight obtained at the time of offloading, including the weight (in pounds) of halibut purchased by the registered buyer, the weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the weight of halibut (in pounds) retained for personal use or for future sale, and the weight (in pounds) of halibut discarded as unfit for human consumption.

(5) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on state fish tickets: the date of offload, vessel number, total weight obtained at the time of offload including the weight (in pounds) of halibut purchased, the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits, the weight of halibut (in pounds) retained for personal use or for future sale, and the weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date, locality, name of vessel, the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of individual vessel quotas; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(7) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (4), (5), and (6) of section 17.

(8) A copy of the fish tickets or catch reports referred to in paragraphs (4), (5), and (6) shall be

(a) retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) open to inspection by an authorized officer or any authorized representative of the Commission.

(9) No person shall possess any halibut taken or retained in contravention of these Regulations.

(10) When halibut are delivered to other than a commercial fish processor the records required by paragraph (5) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (8).

(11) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in Regulatory Areas 2C, 3A, and 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

[3] DFO has more restrictive regulations therefore section 13(2)b does not apply to fish caught in Area 2B or landed in British Columbia.

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(a) Has a NMFS-certified observer on board when required by NMFS regulations[4] published at 50 CFR 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel when in compliance with paragraph (3) and if halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear.

(2) No person shall possess halibut taken with any gear other than hook and line gear.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's name;

(b) The vessel's state license number; or

(c) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be

(a) floating and visible on the surface of the water; and

(b) legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72–hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72–hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72–hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72–hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain and possess, but not sell or barter, halibut taken with trawl gear only as authorized by Prohibited Species Donation regulations of the National Marine Fisheries Service.

20. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) May be retained for personal use; or

(b) May be sold if it complies with the provisions of section 13.

21. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. lat. and east of 125°44′00″ W. long., and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs 7 and 8 of section 19, apply to commercial fishing for halibut in subarea 2A–1 by the treaty Indian tribes.

(3) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 18 through November 18, or until 467,500 pounds (212.0 metric tons) is taken, whichever occurs first.

(4) Ceremonial and subsistence fishing for halibut in subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 16,000 pounds (7.3 metric tons).

23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by the National Marine Fisheries Service and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

(3) Section 23 is in effect only when National Marine Fisheries Service publishes subsistence (customary and traditional use) regulations in 50 CFR part 300.

24. Sport Fishing for Halibut

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) In all waters off Alaska:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(3) In all waters off British Columbia:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(4) In all waters off California, Oregon, and Washington:

(a) The total allowable catch of halibut shall be limited to

(1) 214,110 pounds (97.1 mt) in waters off Washington and

(2) 262,001 pounds (118.8 mt) in waters off California and Oregon;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in Section 24. All sport fishing in Area 2A (except for fish caught in the North Washington coast area and landed into Neah Bay) is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17′30″ N. lat., 124°23′70″ W. long. north to 48°24′70″ N. lat., 124°23′10″ W. long., there is no quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26 mt).

(A) The fishing season in eastern Puget Sound (east of 123°49′30″ W. long.) is May 9 through July 12 and the fishing season in western Puget Sound (west of 123°49′30″ W. long.) is May 23 through July 26, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (4)(b)(i) of this section and north of the Queets River (47°31′42″ N. lat.), the quota for landings into ports in this area is 108,030 lb (49 mt). Landings into Neah Bay of halibut caught in this area will be governed by this paragraph.

(A) The fishing seasons are:

(*1*) Commencing May 1 and continuing 5 days a week (Tuesday through Saturday) until 70,030 lb (31.8 mt) are estimated to have been taken and the season is closed by the Commission, or until June 30, whichever occurs first.

(*2*) From July 1 through July 4, and continuing thereafter for 5 days a week (Tuesday through Saturday) until the overall area quota of 108,030 lb (49 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°00′00″ N. lat., 125°11′00″ W. long.; and, 48°00′00″ N. lat., 124°59′00″ W. long.

(iii) In the area between the Queets River, WA, and Leadbetter Point, WA (46°38′10″ N. lat.), the quota for landings into ports in this area is 42,739 lb (19.4 mt).

(A) The fishing season commences on May 1 and continues 5 days a week (Sunday through Thursday) in all waters, and commences on May 1 and continues 7 days a week in the area from Queets River south to 47°00′00 N. lat. and east of 124°40′00″ W. long., until 42,739 lb (19.4 mt) is estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(iv) In the area between Leadbetter Point, WA, and Cape Falcon, OR (45°46′00″ N. lat.), the quota for landings into ports in this area is 11,188 lb (5.1 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 11,188 lb (5.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.), the quota for landings into ports in this area is 230,639 lb (104.6 mt).

(A) The fishing seasons are:

(*1*) The first season commences May 1 and continues every day through September 30, in the area inside the 30–fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until the combined subquotas of the north central and south central inside 30–fathom fisheries (19,797 lb (9.0 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(*2*) The second season is open on May 10, 11, 17, and 18. The projected catch for this season is 156,835 lb (71.1 mt). If sufficient unharvested catch remains for an additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: June 7, 8, 21, 22. If a decision is made inseason by NMFS to allow fishing on either of these additional dates, notice of the opening will be announced on the NMFS hotline 206–526–6667 or 800–662–9825. No halibut fishing will be allowed on the additional dates unless the opening date is announced on the NMFS hotline.

(*3*)The third season is open on August 2 and/or 3 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 229,103 lb (103.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An inseason announcement will be made in mid-July as to whether the fishery will be open on August 2 and/or 3. If the harvest during this opening does not achieve the 229,103 lb (103.9 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: August 23, 24, September 20, 21. If a decision is made inseason to allow fishing on one or more of these dates, notice of the reopening date will be announced on the NMFS hotline 206–526–6667 or 800–662–9825.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and Humbug Mountain, Oregon (42°40′30″ N. lat.), the quota for landings into ports in this area is 18,261 lb (8.3 mt).

(A) The fishing seasons are:

(*1*) The first season commences May 1 and continues every day through September 30, in the area inside the 30–fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until the combined subquotas of the north central and south central inside 30–fathom fisheries (19,797 lb (9.0 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(*2*) The second season is open on May 10, 11, 17, and 18. The projected catch for this season is 14,609 lb (6.6 mt). If

sufficient unharvested catch remains for an additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: June 7, 8, 21, 22. If a decision is made inseason by NMFS to allow fishing on either of these additional dates, notice of the opening will be announced on the NMFS hotline 206–526–6667 or 800–662–9825. No halibut fishing will be allowed on the additional dates unless the opening date is announced on the NMFS hotline.

(3) The third season is open on August 2 and/or 3 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 229,103 lb (103.9 mt) are estimated to have been taken, and the area is closed by the Commission, whichever is earlier. An inseason announcement will be made in mid-July as to whether the fishery will be open on August 2 and/or 3. If the harvest during this opening does not achieve the 229,103 lb (103.9 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: August 23, 24, September 20, 21. If a decision is made inseason to allow fishing on one or more of these dates, notice of the reopening date will be announced on the NMFS hotline 206–526–6667 or 800–662–9825.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(vii) In the area south of Humbug Mountain, OR (42°40′30″ N. lat.) and off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 7,860 lb (3.6 mt).

(A) The fishing season will commence on May 1 and continue every day through September 30.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(c) The Commission shall determine and announce closing dates to the public for any area in which the subquotas in this Section are estimated to have been taken.

(d) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(5) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(6) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(7) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(8) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

(9) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(10) The possession limit for halibut on land in Area 2A is two daily bag limits.

(11) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(12) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(13) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(14) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(15) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

25. Flexible Inseason Management Provisions in Area 2A

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after making the following determinations.

(a) The action is necessary to allow allocation objectives to be met.

(b) The action will not result in exceeding the catch limit for the area.

(c) If any of the sport fishery subareas north of Cape Falcon, OR, are not projected to use their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to a Washington sport subarea projected to have the fewest number of sport fishing days in the calendar year.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(a) Modification of sport fishing periods;

(b) Modification of sport fishing bag limits;

(c) Modification of sport fishing size limits; and

(d) Modification of sport fishing days per calendar week.

(3) Notice procedures.

(a) Actions taken under this section will be published in the **Federal Register**.

(b) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206–526–6667 or 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF—FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(a) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the **Federal Register**, whichever is later.

(b) NMFS will invite public comment on any inseason action filed with the Office of the **Federal Register**. If the Regional Administrator determines, for good cause found pursuant to 5 U.S.C. 553(b)(B), that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(c) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA.

26. Fishery Election in Area 2A

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The sport fishery under Section 23;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 8 and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.323(a)(2); or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(2) No person shall fish for halibut in the sport fishery in Area 2A under Section 23 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 in Area 2A.

27. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, the notice-and-comment and delay-in-effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553, do not apply to this notice of the effectiveness and content of the IPHC regulations, 5 U.S.C. 553(a)(1). Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Catch Sharing Plan for Area 2A

An Environmental Assessment/Regulatory Impact Review was prepared on the proposed changes to the CSP. NMFS has determined that the proposed changes to the CSP and the management measures implementing the CSP contained in these regulations will not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(C) of the National Environmental Policy Act or its implementing regulations. At the proposed rule stage, the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis has been prepared. The Assistant Administrator for Fisheries, NOAA, finds that it is contrary to the public interest to delay the effective date of this rule for 30 days. This rule must be made effective for the opening of the 2002 Pacific halibut fishing season on March 18, 2002. NOAA's implementation of changes to the CSP could not begin until after January 2002 when the IPHC passed its annual measures setting quotas for 2002.

This action has been determined to be not significant for purposes of E.O. 12866.

Authority: 16 U.S.C. 773–773k.

Dated: March 13, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–6567 Filed 3–15–02; 10:57 am]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 54
Wednesday, March 20, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture ("USDA") proposes to amend its regulations implementing the Equal Access to Justice Act ("EAJA"). The proposed amendments incorporate modifications enacted in the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: In order to be considered, comments should be submitted by May 20, 2002.

ADDRESSES: Comments should be directed to Barbara Good, Attorney Advisor, Room 3311 South Building, Office of the General Counsel, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1400.

FOR FURTHER INFORMATION CONTACT: Barbara S. Good, Attorney Advisor, Room 3311 South Building, Office of the General Counsel, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1415; telephone (202) 720–8045.

SUPPLEMENTARY INFORMATION: In the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104–121, Title II, Mar. 29, 1996, 100 Stat. 857 to 874, Congress amended EAJA in two significant respects with regard to administrative proceedings.

First, Congress amended 5 U.S.C. 504(a) by adding a new basis for recovery under EAJA. Under prior law, only a "prevailing party" other than the United States in an adversary adjudication before an agency was eligible for recovery of fees and expenses. 5 U.S.C. 504(a)(1). Pursuant to new paragraph (a)(4), a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement may be entitled to reimbursement of fees and expenses. In such enforcement cases, where the demand by the agency is "substantially in excess" of the decision of the adjudicative officer and is "unreasonable" when compared with such decision under the facts and circumstances of the case, the agency adjudicative officer is directed to award to an eligible party the fees and other expenses related to defending against the excessive demand. Award is qualified if the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

SBREFA further amended Section 504(b)(1) to add new subparagraph (F), which defines the term "demand" as "the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount."

SBREFA also added, in 5 U.S.C. 504(b)(1)(B), a new category of applicants eligible for fees based on a claim of excessive demand. In addition to the other categories of eligible applicants, a small entity as defined in 5 U.S.C. 601 will be eligible for reimbursement with respect to a claim of excessive demand in a regulatory or statutory enforcement action.

The second major change, in 5 U.S.C. 504(b)(1)(A), increased from $75 per hour to $125 per hour the maximum rate for fees awardable. The qualifying language "unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorney or agents for the proceeding involved justifies a higher fee" remains. Departmental rules at 7 CFR 1.186 currently implementing EAJA attorney fees set a cap of $75 per hour. It is appropriate to amend 7 CFR 1.186 to reflect the statutory increase to $125 per hour.

In view of these statutory changes, the Department is proposing conforming amendments to its regulations. In addition, the Department is making minor changes to modify obsolete provisions related to effective dates, and to correct minor errors, and to make minor stylistic changes.

The Department retains its stance concerning the applicability of EAJA to National Appeals Division proceedings as set forth in the preamble to the final rule for National Appeals Division rules of procedure at 64 FR 33367, June 23, 1999.

This proposed rule has been reviewed under Executive Order No. 12866 and has been determined that it is not a "significant regulatory action" since it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities. This proposed rule will not create any serious inconsistencies, or otherwise materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or principles set forth in E.O. 12866. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget.

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534, as amended (5 U.S.C. 601 *et seq.*).

USDA has determined that the provisions of the Paperwork Reduction Act as amended, 44 U.S.C. chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action involving an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

Accordingly, 7 CFR, Subtitle A, Part 1, Subpart J is proposed to be revised to read as follows:

PART 1—[AMENDED]

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act In Proceedings Before the Department

Authority: 5 U.S.C. 504(c)(1).

General Provisions

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General Provisions

§ 1.180 Definitions.

(a) The definitions contained in § 1.132 of this part are incorporated into and made applicable to this subpart.

(b) *Adjudicative Officer* means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by EAJA.

(c) *Agency* means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) *Agency* counsel means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) *Days* means calendar days.

(f) *Department* means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "EAJA" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. Alternatively, an eligible party may receive an award in connection with an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement where the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Department will use to make awards.

§ 1.182 When EAJA applies.

EAJA applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which is effective on or after October 21, 1986. In addition, the provisions of § 1.185(b) relating to award for excessive demand apply only to adversary adjudications commenced on or after March 29, 1996. Changes in maximum rates for attorney fees are effective as of [the effective date of the final rule].

§ 1.183 Proceedings covered.

(a)(1) The rules in this subpart apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by the Department under 5 U.S.C. 554 in which the position of the Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding,

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by EAJA. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

The proceedings covered include adversary adjudications under the following statutory provisions.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Laws (21 U.S.C. 104, 117, 122, 127, 134e, and 135a)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Protection Act (7 U.S.C. 2279e, 7734(b), 7736)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of the Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must meet one of the following conditions:

(1) The applicant must be a prevailing party to the adversary adjudication for which it seeks an award; or

(2) The applicant must be a party to an adversary adjudication arising from an agency action to enforce the party's

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compliance with a statutory or regulatory requirement in which the demand by the agency was substantially in excess of the decision of the adjudicative officer and the demand is unreasonable when compared with such decision under the facts and circumstances of the case.

(b) In addition to the criteria set out in paragraph (a) of this section, a party seeking an award must be one of the following:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (2 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and nor more than 500 employees;

(6) For purposes only of paragraph (a)(2) of this section, a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated: Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) In interpreting the criteria set forth in paragraph (b) of this section, the following apply:

(1) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(2) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(3) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other person or entity that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) *Prevailing party.* (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency.

(2) An award to a prevailing applicant will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(b) *Excessive demand.* (1) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

(2) "Demand" means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty:

(i) In the administrative complaint, or

(ii) Elsewhere when accompanied by an express demand for a lesser amount.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under the rules in this subpart may exceed $125.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special

circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $125 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with § 1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer, except as otherwise delegated, authority to take final action on matters pertaining to EAJA in proceedings covered by the rules in this subpart. The Secretary by order or regulation may delegate authority to take final action on matters pertaining to EAJA in particular cases or categories of cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

Information Required From Applicants

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation; or

(2) Show that the demand by the Department in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application also shall, as appropriate, include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes the Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of the Department under the Freedom of Information Act (§§ 1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who

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perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in § 1.193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part or in accordance with any delegation made pursuant to § 1.189 of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145(b) through (i) and 1.146(b) of this part, or

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: February 25, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02–6516 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM211; Notice No. 25–02–03–SC]

Special Conditions: Airbus Industrie, Model A340–500/–600 Airplanes; Ground Loads and Conditions for Center Landing Gear With Four Wheels and Braking Capability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Airbus Industrie Model A340–500 and –600 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is associated with the landing gear, in the form of a four-wheeled center landing gear, installed under the fuselage, which functions like a main landing gear in all respects, including the ability to brake. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 19, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM211, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM211. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tim Backman, FAA, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2797; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal for special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 14, 1996, Airbus Industrie applied for an amendment to U.S. type certificate (TC) A43NM to include the new models A340–500 and –600. These models are derivatives of the A340–300, which is approved under the same TC.

The Model A340–500 fuselage is a 6-frame stretch of the Model A340–300 and is powered by 4 Rolls Royce Trent 553 engines, each rated at 53,000 pounds of thrust. The airplane has interior seating arrangements for up to 375 passengers, with a maximum takeoff weight (MTOW) of 820,000 pounds. The Model 340–500 is intended for long-range operations and has additional fuel capacity over that of the model A340–600.

The Model A340–600 fuselage is a 20-frame stretch of the Model A340–300 and is powered by 4 Rolls Royce Trent 556 engines, each rated at 56,000 pounds of thrust. The airplane has interior seating arrangements for up to 440 passengers, with a MTOW of 804,500 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus Industrie must show that the Model A340–500 and –600 airplanes

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meet the applicable provisions of the regulations incorporated by reference in TC A43NM or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC A43NM are 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–63, and Amendments 25–64, 25–65, 25–66, and 25–77, with certain exceptions that are not relevant to these proposed special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model A340–500 and –600 airplanes must be shown to comply with Amendments 25–1 through 25–91 to part 25, with certain FAA-allowed reversions for specific part 25 regulations to the part 25 amendment levels of the original type certification basis.

Airbus has also chosen to comply with part 25 as amended by Amendments 25–92, –93, –94, –95, –97, –98, and –104.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Airbus Industrie Model A340–500 and –600 because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Industrie Model A340–500 and –600 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Airbus Models A340–500 and –600 will incorporate the following novel or unusual design feature: a four-wheel center landing gear with braking ability.

Discussion

The basic A340 included a two-wheel center landing gear which did not have brakes. The purpose of the center landing gear was to assist the main landing gear during ground handling conditions for heavy airplane weights. This center landing gear was not intended for energy absorption during landing, even if it could participate in the impact under certain conditions. Therefore, to provide additional taxi, takeoff, and landing criteria for this arrangement, Special Conditions 25–ANM–69 was issued.

The Model A340–500 and –600 airplanes have a four-wheel center landing gear which functions in all respects like a main landing gear, including braking capabilities. Because the speeds and weights of the Models A340–500 and –600 are greater than that of the basic A340, redesign of the center landing gear was necessary. As a result, the current rules, applying to the original two-wheel center landing gear, are inadequate.

Applicability

As discussed above, these special conditions are applicable to the Airbus Models A340–500 and –600. Should Airbus Industries apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features of the center landing gear on the Model A340–500 and A340–600 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A340–500 and A340–600 airplanes.

The following special conditions are proposed in lieu of the previously issued special conditions, "Ground Load Conditions for Center Landing Gear," recorded as item 10 of Special Conditions: Airbus Industrie Model A340 Series Airplanes [Docket No. NM–75, Special Conditions No. 25–ANM–69]:

1. *Ground Load Conditions for Center Landing Gear.* Notwithstanding § 25.477, the requirements of § 25.473 and §§ 25.479 through 25.485 apply, except as noted:

(a) In addition to the requirements of § 25.473, "Landing load conditions and assumptions," and § 25.479, "Level landing conditions," landing should be considered on a level runway and on a runway having a convex upward shape that may be approximated by a slope of 1.5 percent at main landing gear stations. The maximum loads determined from these two conditions must be applied to each main landing gear and to the center landing gear.

(b) In addition to the requirements of § 25.483, "One gear landing conditions," the condition represented by Figure 1 also applies:

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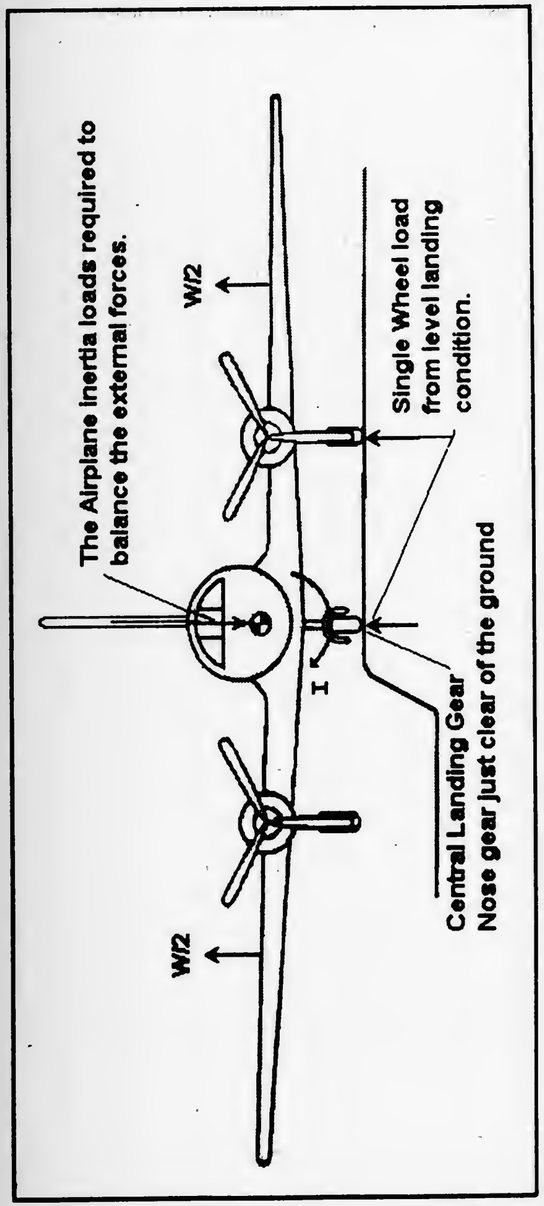


Figure 1. Center gear landing Condition

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(c) In lieu of the requirements of § 25.485, "Side load conditions," the following apply:

(1) The airplane is considered to be in the level attitude with only the main and center wheels contacting the ground.

(2) Vertical reactions of one-half of the maximum vertical reaction obtained at each main and center gear in the level landing conditions should be considered. The vertical loads must be combined with side loads as follows: for the main gear, 0.8 of the vertical reaction (on one side) acting inward and 0.6 of the vertical reaction (on the other side) acting outward; for the center gear, 0.7 of the vertical reaction acting in the same direction as main gear side loads. These loads are assumed to be applied at the ground contact point and to be resisted by the inertia of the airplane. The drag loads may be assumed to be zero.

(d) In addition to § 25.489, "Ground handling conditions," the airplane should be considered to be on a level runway and on a runway having a convex upward shape that may be approximated by a slope of 1.5 percent at main landing gear stations. The ground reactions must be distributed to the individual landing gear units in a rational or conservative manner.

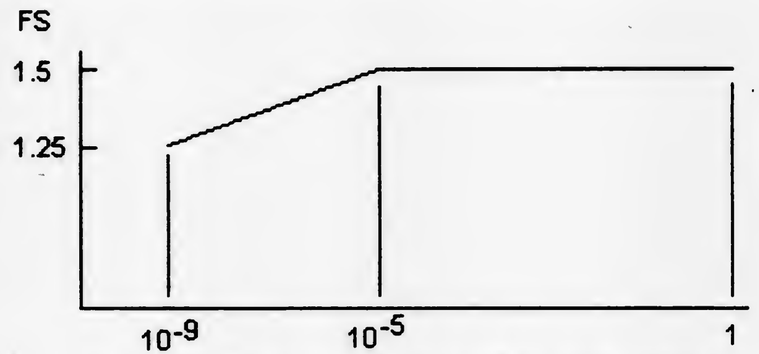
(e) In addition to the requirements of § 25.493(d), "Braked roll conditions," the sudden application of maximum braking effort must be defined taking into account the behavior of the braking system. Failure conditions of the braking system not shown to be extremely improbable must be analyzed in accordance with the following criteria:

(1) At the time of occurrence. A realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 2.

Figure 2

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (e)(1)(i).

(iii) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

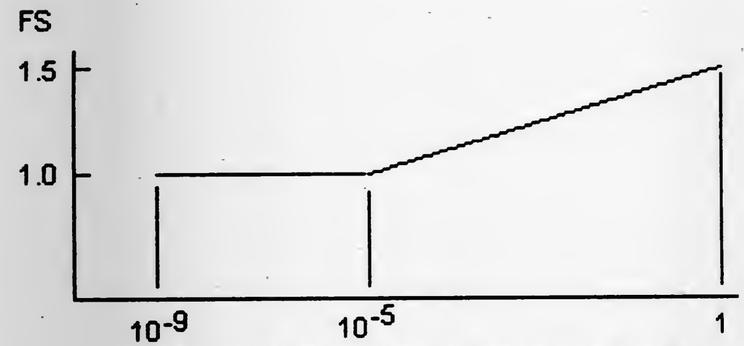
(2) Consideration of certain failure conditions may be required by other sections of part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(3) Warning considerations. For system failure detection and warning, the system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(4) Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figure 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour."

Figure 3

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

(f) In lieu of the requirements of § 25.495, "Turning," the following apply:

(1) The airplane is assumed to execute a steady turn by nose gear steering, or by application of sufficient differential power, so that the limit load factors applied at the center of gravity are 1.0 vertically and 0.5 laterally.

(2) The airplane must be designed for the condition prescribed in paragraph (f)(1), taking into account:

(i) The effects of tire characteristics on the sharing of lateral loads on each tire of the landing gear system, and

(ii) The effect of airframe and landing gear flexibility on the sharing of loads on the different legs of the landing gear system.

(g) In lieu of the requirements of § 25.503, "Pivoting," the following apply:

(1) The main and center gear units and supporting structure must be designed for the scrubbing or torsion loads, or both, induced by pivoting during ground maneuvers produced by:

(i) Towing at the nose gear, no brakes applied, and

(ii) Application of symmetrical or unsymmetrical forward thrust to aid pivoting and with or without braking by pilot action on the pedals.

(2) The airplane is assumed to be in static equilibrium, with the loads being applied at the ground contact points.

(3) The limit vertical load factor must be 1.0, and:

(i) For wheels with locked brakes applied by pilot action on the pedals, the coefficient of friction must be 0.8.

(ii) For wheels with brakes not applied, the ground tire reactions must be based on reliable tire data.

(4) The failure conditions must be analyzed in accordance with paragraph (e) of these Special Conditions.

(h) In lieu of paragraph (b) of § 25.723 "Shock absorption tests," the center landing gear should not fail in a test demonstrating its reserve energy absorption capacity at design landing weight, assuming airplane lift no greater than the airplane weight acting during a 12-feet-per-second airplane landing impact, taking into account both main and center gear acting during the impact. Landing should be considered on a level runway or a runway having a convex upward shape that may be approximated by a slope of 1.5 percent with the horizontal at main landing gear stations, whichever is the most critical.

Issued in Renton, Washington, on February 28, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–5876 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–307–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. This proposal would require various modifications of the airstair (main passenger) door. This action is necessary to prevent failure of the airstair door to open after a landing, which could result in a blocked escape route during an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–307–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2000–NM–307–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCCA has received numerous reports of malfunctioning airstair (main passenger) doors on affected airplanes. During these malfunctions, crewmembers had difficulty opening or closing the door, or were completely unable to open the door from inside or outside. The airstair door is a "Type I" exit, which is essential for evacuation during an emergency. Causes of a failed airstair door include a malfunctioning inflation valve used for the door seal, bending of the gas springs (gas struts), and jamming and/or breaking of the door balance cable. Failure of the airstair door to open after a landing, if not corrected, could result in a blocked escape route during an emergency evacuation.

Explanation of Relevant Service Information

Bombardier has issued the service bulletins described in the following table:

Procedures for—	Are described in Service Bulletin—	Revision level—	Dated—
Replacing the inflation valve with a new valve of an improved design..	8–52–46	Original	September 30, 1998.
Reworking the airstair door cable balance assembly	8–52–38	Original	October 10, 1995.
		'A'	September 19, 1997.
Modifying the cable guard system by replacing the upper cable guards with new, improved cable guards.	8–52–57	Original	February 23, 2000.
		'A'	July 28, 2000.
		'B'	November 14, 2000.

Procedures for—	Are described in Service Bulletin—	Revision level—	Dated—
Modifying the airstair balance system by manufacturing and installing a support bracket assembly.	8–52–56	'C'	March 10, 2000.
		'D'	May 18, 2000.
		'E'	July 20, 2000.
		'F'	August 29, 2000.
		'G'	November 7, 2000.
Replacing the airstair door gas springs with new gas springs.	8–52–59	Original	September 18, 2000.
		'A'	January 3, 2001.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. TCCA classified Service Bulletins 8–52–46, 8–52–38, and 8–52–57 as mandatory; mandated accomplishment of either Service Bulletin 8–52–56 or 8–52–59 (and allowed accomplishment of both); and issued Canadian airworthiness directive CF–2000–19R1, dated January 22, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA provides the following cost estimates for the actions specified by this proposed AD:

Action per Service Bulletin	Workhours per airplane	Labor rate per hour	Parts cost per airplane	Number of U.S. airplanes affected	Per-airplane cost	Fleet cost
8–52–46	3	$60	$297	194	$477	$92,538
8–52–38	4	60	1,930	130	2,170	282,100
8–52–57	1	60	0	194	60	11,640
8–52–56	4	60	0	194	240	46,560
8–52–59	3	60	0	194	180	34,920

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2000–NM–307–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes; certificated in any category; serial numbers 003 through 550 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

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modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the airstair door to open after a landing, which could result in a blocked escape route during an emergency evacuation, accomplish the following:

Modifications

(a) Modify the airplane as specified by the following table:

TABLE—MODIFICATION REQUIREMENTS

For Model—	Modify the airstair door by—	Within—	In accordance with the Accomplishment Instructions of Bombardier Service Bulletin—
(1) DHC–8–102, –103, –106, –201, 202, 301, –311, and –315 series airplanes; serial numbers 003 through 522 inclusive.	Replacing the inflation valve with a new valve of an improved design (Modsum 8Q100185).	6 months after the effective date of this AD.	8–52–46, dated September 30, 1998.
(2) DHC–8–102, –103, –106, –301, –311, and –315 series airplanes; serial numbers 003 through 400 inclusive.	Reworking the airstair door cable balance assembly (Modsum 8/2205).	6 months after the effective date of this AD.	8–52–38, dated October 10, 1995; or 8–52–38, Revision 'A,' dated September 19, 1997.
(3) DHC–8–102, –103, –106, –201, –202, –301, 311, and –315 series airplanes; serial numbers 003 through 550 inclusive.	Replacing the upper cable guards on the airstair door with new, improved cable guards (Modsum 8Q101093).	6 months after the effective date of this AD, but after the modification required by paragraph (a)(2) of this AD.	8–52–57, dated February 23, 2000; or 8–52–58, Revision 'A,' dated July 28, 2000; or 8–52–57, Revision 'B,' dated November 14, 2000.
(4) DHC–8–102, 103, 106, 201, 202, 301, 311, and 315 series airplanes; serial numbers 003 through 550 inclusive.	(i) Manufacturing and installing a support bracket assembly (Modsum 8Q101086); and/or.	6 months after the effective date of this AD.	8–52–56, Revision 'C,' dated March 10, 2000; or 8–52–56, Revision 'D,' dated May 18, 2000; or 8–52–56, Revision 'E,' dated July 20, 2000; or 8–52–56, Revision 'F,' dated August 29, 2000; or 8–52–56, Revision 'G,' dated November 7, 2000.
	(ii) Replacing the airstair door gas springs with new gas springs (Modsum 8Q101074).	6 months after the effective date of this AD.	8–52–59; dated September 18, 2000; or 8–52–59; Revision 'A,' dated January 3, 2001.

Note 2: Modsum 8Q101093 (paragraph (a)(3) of this AD) cannot be accomplished before Modification 8/2205 (paragraph (a)(2) of this AD), because Modsum 8Q101093 introduces a redesigned cable guard that replaces a cable guard that is part of Modification 8/2205.

Note 3: Modification as specified by either paragraph (a)(4)(i) or (a)(4)(ii)—or both—of this AD is acceptable for compliance with the requirements of paragraph (a)(4) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–19R1, dated January 22, 2001.

Issued in Renton, Washington, on March 13, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6630 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. ADC–85, ADC–85A, ADC–850D, and ADC–850F Air Data Computers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Rockwell Collins, Inc. (Rockwell) ADC–85, ADC–85A, ADC–850C, and ADC–850F air data computers that are installed on airplanes. The earlier NPRM would have required you to replace any affected air data computer (ADC) with one that has a reprogrammed and tested central processing unit (CPU) circuit card and circuit card assemblies. The earlier NPRM resulted from a flight test that showed that these ADCs could display an unwarranted ADC flag in response to the airplane's "Normal/Alternate Air" static source selection capability. Revised service information revealed the need to change the applicability of the affected ADC units that are installed on airplanes. In addition, evaluation of the public comments on the NPRM reveals the need to change the number and models of airplanes that could have the affected ADC units installed. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 17, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2000–CE–76–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast,Cedar Rapids, Iowa 52498; telephone: (319) 295–2512; facsimile: (319) 295–5064. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail address: *Roger.Souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–14–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The air data computer (ADC), as part of its monitoring process, tests for errant sensor behavior such as unreasonable jumps in altitude and unreasonably high vertical speed. When the ADC detects an errant sensor behavior, the ADC displays a flag for 5.5 seconds plus the time it takes for the sensor to settle within the limits for another 5.5-second period. This results in a minimum ADC flag display of 11 seconds.

Testing of certain Rockwell Collins ADCs reveals the ADC could display unwarranted flags on aircraft where you can select the "Normal/Alternate Air" static source. When there is a significant difference between normal and alternate/revisionary static air sources, you can exceed the ADC monitor thresholds and the ADC would display flags.

If the flight crew used the undesirable ADC flag displays to deselect the alternate static air source before the initial 11-second display period, a valid air source may have been deselected. Confusion could result when the previously unflagged normal static air source is reselected. This may also result in the ADC displaying a flag for the first 11 seconds. The affected ADCs include:

Unit	Part No.	Applicable to serial No.
ADC–85 (Incorporating Rockwell Collins Service Bulletin No. 58)	622–8051–002 622–8051–003	All units.
ADC–85A (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0370–113 822–0370–123 822–0370–139 822–0370–404 822–0370–408	All units.
ADC–850D (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0389–133	All up to and including 3DGW (except for 1P6D, 22RC–22RF, and 23WK–3DGP).
ADC–850F	822–1036–406 822–1036–418	All Units.

What Are the Consequences If the Condition Is Not Corrected?

If these situations were to occur while the flight crew were making critical flight decisions, this unwarranted ADC flag could distract the crew, and the lack of attention to the critical actions could result in an unsafe operating condition.

Is There Service Information That Applies to This Subject?

Rockwell has issued Service Bulletin No. 62 (ADC–85/85A/850C/850D/850E/

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850F–34–62), Revision 2, dated March 7, 2000, and Service Bulletin No. 62 (ADC–85/85A/850C/850F–34–62), dated October 25, 1999. Service Bulletin 62, Revision 2, reflects the addition of ADC–850D to the list of affected units and the removal of ADC–850C from the list of affected units.

What Are the Provisions of This Service Information?

These service bulletins contain procedures for replacing or reprogramming applicable parts or circuit card assemblies on central processing unit (CPU) circuit cards in the ADC and testing the modified ADC.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Rockwell Collins, Inc. (Rockwell) ADC–85, ADC–85A, ADC–850C, and ADC–850F air data computers that are installed on airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 2, 2000 (65 FR 58678). The NPRM proposed to require you to:

—Remove the ADC from the airplane;
—Replace or reprogram applicable parts or Circuit Card Assemblies on the CPU Circuit Card;
—Test the modified ADC; and
—Install the modified ADC in the airplane.

You would have to accomplish the proposed actions in accordance with Rockwell Service Bulletin No. 62 (ADC–85/85A/850C/850F–34–62), dated October 25, 1999.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Remove Dassault Aviation Model F2000 From the Applicable Airplane Model List

What Is the Commenter's Concern?

A commenter states that, even though fitted with the subject ADC, the Dassault Aviation Model F2000 airplane is not designed with the ability to use alternate static sources.

What Is FAA's Response to the Concern?

We concur that the airplane is not designed with the ability to use alternate static sources. Therefore, we are removing the Dassault Aviation Model F2000 from the applicable airplane model list.

Comment Issue No. 2: Modify the Estimate of the Number of Airplanes Affected on the U.S. Registry

What Is the Commenter's Concern?

A commenter states that more aircraft are affected than the 245 listed in the NPRM. The commenter notes that the ADC is installed in additional aircraft and is installed on at least 329 airplanes.

What Is FAA's Response to the Concern?

The number of airplanes affected by this AD could exceed 245. We have no way of determining the exact number that have the affected ADCs installed. Our best estimate in the NPRM was 245 airplanes. Further research indicates that at least 329 airplanes could have the ADC installed. Therefore, we will change the cost impact to represent an estimate of 329 airplanes instead of 245 airplanes.

Comment Issue No. 3: Modify the List of Applicable Raytheon Airplanes

What Is the Commenter's Concern?

A commenter states that the list of affected airplanes is incorrect for Raytheon airplane models. The list incorrectly identifies two of the Raytheon airplane models as 250 and 350. The commenter states that these are marketing designators and not part of FAA's model identity. For the ADC–85/ADC–85A units, the commenter states that the correct models are Raytheon B200, B300, and 1900D, and that the Model C90A airplanes should be added to the list.

What Is FAA's Response to the Concern?

We concur with these comments and are changing this proposed rule accordingly.

Comment Issue No. 4: Add a Placard for Temporary Information Regarding the Unsafe Condition

What Is the Commenter's Concern?

A commenter states that the pilot should have some kind of indication of the problem if the actions specified in the service bulletin are not yet incorporated on the airplane (*e.g.*, during the 12 calendar month time before mandatory compliance). This commenter suggests that FAA should require the operators to install a placard until the modification is incorporated.

What Is FAA's Response to the Concern?

The FAA does not concur. We evaluated the nature of the unsafe condition against the time proposed for compliance when preparing the NPRM. Rockwell Collins did issue Operator Bulletin 99–7, dated August 1999, which provides information on such a placard. Although it is a good idea to incorporate the actions of this operator bulletin, we have determined that the modification as proposed, including the compliance time, addresses the unsafe condition.

We will include a note in the proposed AD recommending compliance with Rockwell Collins Operator Bulletin 99–7, dated August 1999.

Comment Issue No. 5: Recommend the Effective Date of the AD to Accommodate Production Aircraft

What Is the Commenter's Concern?

A commenter recommends that FAA establish the effective date of the AD to accommodate incorporation of the AD into production aircraft. The commenter suggests May 1, 2001, or later, as the effective date of the AD.

What Is FAA's Response to the Concern?

The FAA will take this into consideration when establishing the effective date.

Comment Issue No. 6: Make Reference to a Later Service Bulletin for a More Complete List of Affected Units

What Is the Commenter's Concern?

A commenter states that Rockwell Collins Service Bulletin No. 62 (ADC–85/85A/850C/850D/850E/850F–34–62), Revision 2, dated March 7, 2000, contains a more complete list of affected units. The commenter recommends the incorporation of this service bulletin into the AD.

What Is FAA's Response to the Concern?

The FAA concurs that Revision 2 of the service bulletin contains a more complete list of affected ADC units. Revision 2 reflects the removal of ADC–850C from the affected list and adds ADC–850D to the affected list. However, Service Bulletin No. 62, dated October 25, 1999, is acceptable for ADC–85/85A/850F units. Service Bulletin No. 62, Revision 2, dated March 7, 2000, is acceptable for ADC–85/85A/850D/850F units. We will incorporate this bulletin into the proposed AD and change the proposed AD applicability accordingly.

The FAA's Determination

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition exists or could develop on airplanes equipped with all ADC units identified in the E. Compliance section of Rockwell Collins Service Bulletin No. 62, Revision 2, dated March 7, 2000.
—The NPRM should be expanded to include these additional units; and
—AD action should be taken in order to correct this unsafe condition.

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Proposing that the NPRM apply to certain ADC–850D air data computers that are installed on airplanes presents actions that go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

What Are the Provisions of the Supplemental NPRM?

This proposed AD would require you to replace any affected ADC with one that has a reprogrammed and tested CPU circuit card and circuit card assemblies

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects more than 329 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed removal, installation, reprogramming, and testing of the ADC in each airplane:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$680	$1040	$342,160

For units that are still under warranty, Rockwell will provide the parts and labor at no charge.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Rockwell Collins, Inc.: Docket No. 2000–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Rockwell Collins air data computers (ADC) that are installed in, but not limited to the airplanes that are listed below:

(1) Affected ADCs:

Unit	Collins part No. (CPN)	Applicable to serial No.
ADC–85 (Incorporating Rockwell Collins Service Bulletin No. 58)	622–8051–002 622–8051–003	All units.
ADC–85A (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0370–113 822–0370–123 822–0370–139 822–0370–404 822–0370–408	All units.
ADC–850D (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0389–133	All up to and including 3DGW (except for 1P6D, 22RC–22RF, and 23WK–3DGP).
ADC–850F	822–1036–406 822–1036–418	All units.

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(2) List of airplanes where the affected ADC could be installed. This is not a comprehensive list and airplanes not on this list that have the ADC installed through field approval or other methods are still affected by this AD:

Unit	Airplane model
ADC–85/ADC–85A	Astra AIA. Chinese Y7 and Y8. Czech LET–610. DC–8. Falcon 20F. Piaggio P–180. Raytheon B200, B300, C90A and 1900D. Saab 340.
ADC–850D	Lear 60.
ADC–850F	Falcon 20, 50, and 50EX.

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane that uses one of the above referenced Rockwell Collins air data computers must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent an unwarranted display of the ADC flag when switching static air sources. This could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Perform the following, unless already accomplished:. (i) Remove any affected ADC from the airplanes (ii) As applicable, replace or reprogram parts or circuit card assemblies on central processing unit (CPU) circuit cards (iii) Test the ADC (iv) Install the modified ADC in the airplanes	Within the next 12 calendar months after the effective date of this AD.	In accordance with Rockwell Collins Service Bulletin No. 62 (ADC–85/85A/850C/850D/850E/850F–34–62), Revision 2, dated March 7, 2000, or Service Bulletin No. 62, dated October 25, 1999, as applicable, the applicable Collins Computer Component Maintenance Manual, and Collins Avionics Standard Shop Practices Instruction Manual.
(2) Do not install on any airplane one of the affected ADCs unless the modification and test required by paragraphs (d)(ii) and (d)(iii) of this AD are accomplished.	As of the effective date of this AD	In accordance with Rockwell Collins Service Bulletin No. 62 (ADC–85/85A/850C/850D/850E/850F–34–62), Revision 2, dated March 7, 2000, or Service Bulletin No. 62, dated October 25, 1999, as applicable.

Note 1: Rockwell Collins Operator Bulletin 99–7, dated August 1999, contains information about an operational placard to install until accomplishment of the actions of this AD. While not necessary to address the unsafe condition in this AD, FAA highly recommends that you incorporate this placard.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407, e-mail: *Roger.Souter@faa.gov.*

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 12, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6629 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–76–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Model AT–802 and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Air Tractor, Inc. (Air Tractor) Model AT–802 and AT–802A airplanes. This proposed AD would require you to replace the rudder control cables and fairleads with parts of improved design. This proposed AD is the result of a report that a rudder control cable broke because of wear at the aft fairlead. The actions specified by this proposed AD are intended to prevent wear of the rudder control cables at the fairlead, which could cause the rudder control cable to break and result in loss of rudder control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 17, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–76–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2000–CE–76–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Garry D. Sills, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5154; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–76–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA received reports of the rudder control cables wearing at the aft fairlead area on Air Tractor Model AT–802 and AT–802A airplanes. In one instance the rudder cable broke on a Model AT–802 airplane.

The manufacturer has designed a new cable that incorporates a stainless steel sleeve that is crimped to the cable in the fairlead area. The stainless steel sleeve is intended to prevent wear of the new cable in that area.

What Are the Consequences if the Condition Is Not Corrected?

If this condition is not corrected, rudder control cables may wear and break at the fairlead area. Broken rudder control cables could result in loss of rudder control.

Is There Service Information That Applies to This Subject?

Air Tractor has issued Snow Engineering Company Service Letter # 199, dated May 30, 2000.

What Are the Provisions of This Service Bulletin?

The service bulletin includes procedures for installing the improved design rudder control cables and fairleads.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Air Tractor Model AT–802 and AT–802A airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to install the improved design rudder control cables and fairleads.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 81 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	$300	$420	$34,020

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Air Tractor, Inc.: Docket No. 2000–CE–76–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model AT–802 and AT–802A airplanes, serial numbers 802–0001 through 802–0081, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wear of the rudder control cables at the fairlead, which could cause the rudder control cable to break and result in loss of rudder control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the rudder control cables and fairlead with part numbers 70524–10–500 or 70524–6–500, and 70122–1, as specified in the service letter.	Within the next 500 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	Accomplish the replacements in accordance with Snow Engineering Company Service Letter # 199, dated May 30, 2000, and applicable drawing number 70523 of the replacement kit, as specified in the service letter.
(2) Do not install any rudder control cable that does not have a stainless steel sleeve crimped to the cable in the fairlead area.	Not Applicable	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Garry D. Sills, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5154; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 12, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6628 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Regulatory Options for Addressing Upholstered Furniture Flammability; Public Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) will conduct a public meeting June 18–19, 2002 to discuss options for addressing upholstered furniture flammability. The meeting is not a Commission hearing. The focus of the discussions will be the supporting information and draft upholstered furniture flammability standard developed by CPSC staff included in the October 30, 2001 briefing package entitled "Upholstered Furniture Flammability: Regulatory Options," the progress of outside groups in addressing the same problem, and recent developments in related flammability issues.[1] The Commission invites written comments and oral presentations from individuals, associations, firms, and government agencies with information or comments related to the briefing package. The Commission will evaluate these submissions in its deliberations on the flammability hazards associated with upholstered furniture.

DATES: The meeting will begin at 10:00 a.m. on June 18, 2002, and continue on June 19, 2002. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the CPSC Office of the Secretary no later than May 20, 2002. Persons making presentations at the meeting should provide an additional 50 copies for dissemination on the date of the meeting. Written submissions that are in place of, or in addition to oral presentations, must be received by the Office of the Secretary no later than July 18, 2002. Ten copies should be provided.

Presentation texts and other written submissions should identify the author's affiliation with, or employment or sponsorship by, any entity with an interest in the upholstered furniture proceeding. Any data, analyses or studies should include substantiation and citations. The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations.

ADDRESSES: The meeting will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, MD. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Upholstered Furniture Flammability Proceeding" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments, requests, and texts of oral presentations may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting contact Dale R. Ray, Project Manager, Directorate for Economic Analysis, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0962, extension 1323; fax (301) 504–0109; e-mail *dray@cpsc.gov.* For information about the schedule for submission of written comments, requests to make oral presentations, and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, extension 1232; fax (301) 504–0127; e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In 1994, the Commission initiated a regulatory proceeding to address the hazard of small open flame ignitions of upholstered furniture by publication of an advance notice of proposed rulemaking (ANPR). 59 FR 30735 (June 15, 1994). Small open flame sources include, for example, cigarette lighters, matches, and candles. The CPSC staff work indicates that a small open flame performance standard for upholstered furniture could reduce the risk of death, injury, and property loss.

Following issuance of the ANPR, CPSC staff developed a draft performance standard and a test method to evaluate the small open flame performance of upholstered furniture. In October 1997, the staff forwarded a briefing package to the Commission concluding that a small open flame standard was feasible and could effectively reduce the risks to consumers, including risks from both small open flame and cigarette ignitions. Since 1997, the staff has continued to develop the small open flame standard.

The standard that the staff has drafted contains performance requirements for small open flame ignition resistance of seating areas and dust covers of upholstered furniture. It also includes an optional seating barrier test that would allow the use of fire-retardant barriers, or interliners, instead of FR cover fabrics. The seating barrier test is intended to preserve consumer choice among many existing upholstery fabrics. CPSC staff believes that this would give manufacturers flexibility in achieving compliance, and would reduce the potential economic burden of the performance standard, especially for small businesses.

In the 1997 briefing package, the staff recommended that the CPSC gather additional scientific information to ensure that flame retardant (FR) upholstery fabric treatments that manufacturers might use would not result in adverse health effects. In 1998, the Commission held a public hearing on FR chemical issues. Representatives of government, industry, fire safety organizations, and other interested parties testified at the May 5–6, 1998 public hearing, or submitted information about FR chemicals following the hearing. The staff incorporated the information submitted pursuant to the public hearing and all other available scientific data into the FR chemical risk assessment in the October 30, 2001 briefing package. That assessment concluded that four of the eight FR chemicals selected for risk assessment would clearly not be considered hazardous to consumers under the Federal Hazardous Substances Act (FHSA). The assessment also identified one chemical as unlikely to be hazardous, one as hazardous, and two for which additional data were needed.

In the CPSC Fiscal Year 1998 appropriation bill, Congress directed the Commission to sponsor an independent study by the National Academy of Sciences (NAS) of potential health risks from FR chemicals that might be used to meet a flammability standard. The final NAS report was published in July 2000. The NAS study concluded that 8 of the 16 FR chemicals reviewed would present a minimal risk, even under "worst case" exposure assumptions. The NAS recommended further study for the remaining 8 chemicals.

B. The Public Meeting

The purpose of the public meeting is to provide a forum for dialog between Commission staff and interested parties on the work performed to date by the staff in developing a draft small open flame ignition standard for upholstered furniture, the related information developed during that effort, the progress of efforts by outside organizations to address the risk, and recent developments in related flammability issues. The meeting is not a Commission hearing.

Participation in the meeting is open. The CPSC staff will notify specific representatives of identified interest groups such as industry sectors (furniture, fabrics, foam, chemicals), fire safety and government (national, state/local, international), and consumer interests of the meeting. The meeting will be conducted in an open discussion format. Participants may be organized into panels to address specific topics. See the **DATES** section of this notice for information on making requests to give oral presentations at the meeting and on making written submissions.

[1] Briefing memorandum from Dale R. Ray, Project Manager, Directorate for Economic Analysis, to the Commission, "Upholstered Furniture Flammability: Regulatory Options," October 30, 2001. The document may be obtained from the CPSC web site at www.cpsc.gov or from the CPSC Office of the Secretary. The document is also available for inspection at the Commission's Public Reading Room, 4330 East-West Highway, room 419, Bethesda, Maryland 20814. For further information call the Office of the Secretary at (301) 504–0800.

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C. Meeting Topics

To assist interested parties in deciding on whether and how to participate in the public meeting, or to submit written comments on the staff briefing package, the Commission is providing the following list of topics.

- Fire data & analysis
- Standards development & laboratory testing
- The CPSC staff's draft small open flame standard
- FR chemical testing, analysis & risk assessment
- Economic analysis
- Other standards/harmonization
  - —California TB–117
  - —United Kingdom regulations
  - —Voluntary standards activities
- Industry efforts to develop safer products & materials
- Regulatory alternatives

As indications of interest in making presentations and otherwise participating in the meeting are received, the Commission will revise and update the list of topics.

Dated: March 14, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–6633 Filed 3–19–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 01N–0458]

RIN 0910–AA19

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the voluntary nutrition labeling regulations by updating the names and the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States. We are taking this action because current regulations require the agency to publish proposed updates (or a notice that the data sets have not changed from the previous publication) at least every 4 years. We also propose to revise the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish to make necessary changes resulting from the updated nutrition information and to provide further clarification of the guidelines. Availability of the updated nutrition labeling values in retail stores and on individually packaged raw produce and fish will enable consumers to make better purchasing decisions to meet their dietary needs.

DATES: Submit written or electronic comments on this proposal by June 3, 2002. See section IX of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Lori LeGault, Center for Food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1791, or e-mail: LLegault@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In response to requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–135), which amended the Federal Food, Drug, and Cosmetic Act (the act), we published final regulations in the **Federal Register** of November 27, 1991 (56 FR 60880) (the 1991 final rule), and corrections in the **Federal Registers** of March 6, 1992 (57 FR 8174), and March 26, 1992 (57 FR 10522) that: (1) Identified the 20 most frequently consumed raw fruits, vegetables, and fish in the United States, which are those varieties purchased raw but not necessarily consumed raw; (2) established guidelines for the voluntary nutrition labeling of these foods; and (3) set the criteria for food retailers to meet substantial compliance with these guidelines. The 1991 final rule also required us to publish proposed updates of the nutrition labeling data for the 20 most frequently consumed raw fruits, vegetables, and fish (or a notice that the data sets have not changed) at least every 2 years (56 FR 60880 at 60888 and 60891).

Next, we published a proposed rule on the voluntary nutrition labeling program in the **Federal Register** of July 18, 1994 (59 FR 36379) (the 1994 proposed rule), and a correction in the **Federal Register** of July 21, 1994 (59 FR 37190). The 1994 proposed rule proposed to: (1) Update the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States; and (2) revise the guidelines for the voluntary nutrition labeling of these foods to reflect the 1993 mandatory nutrition labeling final rules.

Finally, in the **Federal Register** of August 16, 1996 (61 FR 42742), we published a final rule entitled "Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed; and Policy for Data Base Review for Voluntary and Mandatory Nutrition Labeling" (the 1996 final rule). In the 1996 final rule, among other actions, we revised: (1) The nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States, and (2) the guidelines for the voluntary nutrition labeling of these foods. We also modified the guidelines in § 101.45(b) (21 CFR 101.45(b)), in response to comments, to state that we would publish every 4 years (rather than 2 years) proposed updates of the nutrition data or a notice that the data sets have not changed from the previous publication (comment 12, 61 FR 42742 at 42746 and 42760).

We are now proposing to update the listing of the 20 most frequently consumed raw fruits, vegetables, and fish and their nutrition labeling values based on new data submitted or made available to the agency. This will enable consumers to have more accurate and up-to-date nutrition information for these foods.

II. Guidelines for Presentation of the Nutrition Labeling Values

A. Background and Proposed Revisions

To provide clarity and consistency in the voluntary nutrition labeling of raw fruits, vegetables, and fish, we propose to: (1) Divide current § 101.45(a)(3)(iii) into two parts (i.e., into §§ 101.45(a)(3)(iii) and 101.45(a)(3)(iv)) so that § 101.45(a)(3)(iii) pertains only to raw fruits and vegetables and § 101.45(a)(3)(iv) pertains only to raw fish, and (2) revise the wording for consistency and increased readability. In § 101.45(a)(3)(iii), we also propose to change the portion of the footnote about the saturated fat content of avocados from "* * * avocados provide 1 gram (g) of saturated fat per ounce (oz)" to "* * * avocados provide 0.5 g of saturated fat per oz." This decrease in saturated fat content is based on the most recent nutrient data provided by the California Avocado Commission (Ref. 1), which is discussed in section IV.B.1 of this document.

In the 1996 final rule, we modified the language in § 101.45(a)(3)(iii) for raw fruits and vegetables but, inadvertently, failed to do the same for raw fish. In order to provide parallel provisions for raw fish, we are now proposing: (1) To remove that portion of § 101.45(a)(3)(iii) which currently states "* * * When the nutrition labeling information for raw fish is provided on a chart, the listings for dietary fiber and sugars may be omitted if the following footnote is used 'Fish provide negligible amounts of dietary fiber and sugars'" and (2) to add new § 101.45(a)(3)(iv) to read as follows: "When retailers provide nutrition labeling information for more than one raw fish on signs or posters or in brochures, notebooks, or leaflets, the listings for dietary fiber and sugars may be omitted from the charts or individual nutrition labels if the following footnote is used 'Fish provide negligible amounts of dietary fiber and sugars'."

Currently, appendices C and D to part 101 (21 CFR part 101) provide the nutrition labeling values in a chart format with horizontal and vertical columns. Due to space constraints, we are presenting the nutrition labeling values in a chart format (proposed appendices C and D); however, we encourage retailers to display quantitative nutrition information for raw produce and raw fish as a compilation of nutrition labels in the Nutrition Facts format, with allowance for the shortened footnote shown in figure 1 at the bottom of the sign, poster, brochure, notebook, or leaflet. We are continuing to include the optional nutrient, potassium, in proposed appendices C and D because many raw fruits, vegetables, and fish are good sources of this nutrient. The nutrition label for raw apple shown in figure 1 displays the preferred format. However, as § 101.45(a)(4) indicates, when nutrition labeling is provided for individual raw fruits, vegetables, or fish on packages or in brochures, notebooks, or leaflets (i.e., other than on signs and posters), the full footnote required in § 101.9(d)(9) should be presented within the Nutrition Facts box.

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Figure 1

Apple

Nutrition Facts

Serving Size 1 medium (154g/5.5 oz)

Amount Per Serving	
Calories 80	Calories from Fat 0
	% Daily Value*
Total Fat 0g	**0%**
Saturated Fat 0g	**0%**
Cholesterol 0mg	**0%**
Sodium 0mg	**0%**
Potassium 170mg	**5%**
Total Carbohydrate 22g	**7%**
Dietary Fiber 5g	**20%**
Sugars 16g	
Protein 0g	
Vitamin A 2% •	Vitamin C 8%
Calcium 0% •	Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet.

B. Impact of the Trans Fatty Acids Proposed Rule

FDA has issued a proposed rule for *trans* fatty acids (also called "*trans* fat") in nutrition labeling (64 FR 62746, November 17, 1999) which, if finalized, will apply to the voluntary nutrition labeling program as well. *Trans* fatty acids are unsaturated fatty acids that have hydrogen atoms attached on opposite sides of a double bond ("*trans*" means "across" in Latin). This

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configuration is primarily the result of the hydrogenation process used to harden oils, although *trans* fatty acids are found naturally in some animal products. Thus, *trans* fatty acids would not be expected to be present in raw produce. Accordingly, if the November 17, 1999, proposed rule is finalized to require mandatory labeling of *trans* fat, the agency tentatively concludes that the footnote required in proposed § 101.45(a)(3)(iii) for raw fruits and vegetables should be revised to state: "Most fruits and vegetables provide negligible amounts of saturated fat, *trans* fat, and cholesterol; avocados provide 0.5 g of saturated fat per oz." We invite comments that provide data on the trans fat content of raw fish (or cooked fish without the addition of any ingredients, e.g., fat, breading, or seasoning).

III. Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish in the United States

A. Fruits and Vegetables

FDA is not proposing any changes in the list of the 20 most frequently consumed raw fruits and vegetables in § 101.44 because we are not aware of any new information suggesting that the listing be modified. Nevertheless, for ease of use and to be consistent with the food names in appendix C to part 101, we are proposing to revise § 101.44(a) and (b) by listing the items in alphabetical order and by using the plural form of the food name when the serving size is more than one unit. Thus, we are proposing to revise § 101.44(a) to read as follows: "The 20 most frequently consumed raw fruits are: Apple, avocado (California), banana, cantaloupe, grapefruit, grapes, honeydew melon, kiwifruit, lemon, lime, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, tangerine, and watermelon." We are proposing to revise § 101.44(b) to read as follows: "The 20 most frequently consumed raw vegetables are: Asparagus, bell pepper, broccoli, carrot, cauliflower, celery, cucumber, green (snap) beans, green cabbage, green onion, iceberg lettuce, leaf lettuce, mushrooms, onion, potato, radishes, summer squash, sweet corn, sweet potato, and tomato."

B. Fish

FDA is proposing to make three changes to the listing of the 20 most frequently consumed raw fish. In the previous voluntary nutrition labeling rules, we used information provided by the National Fisheries Institute (NFI) to identify the most frequently consumed species of fish in the United States (59 FR 36379 at 36384 and 61 FR 42742 at 42743). However, we have obtained more recent information from various industry and government sources indicating that mackerel is sold in the United States primarily as bait and catfood rather than as fresh fish for human consumption (Ref. 2). Furthermore, NFI has reported to us that the consumption of fresh tuna and tilapia in the United States has surpassed the consumption of mackerel and whiting (Refs. 3 and 4). Thus, we are proposing to remove mackerel and whiting from the listing of the 20 most frequently consumed raw fish and to add tuna and tilapia to the list.

Next, we are proposing to collapse the three subspecies of salmon into two subspecies based on similar nutrient profiles (Refs. 5 and 7). In current appendix D to part 101, salmon is divided into three subspecies: Atlantic/coho, chum/pink, and sockeye. This was due primarily to differences in total fat content (i.e., 6 to 7 grams (g) of fat in Atlantic and coho, 4 g of fat in chum and pink, and 9 g of fat in sockeye) (59 FR 36379 at 36383). For this proposed rule, however, we have used updated data from the U.S. Department of Agriculture (USDA), National Nutrient Data Bank (NNDB) (Ref. 6), which is described in section IV.A.2 of this document, and determined that the nutrient profiles for Atlantic, coho, and sockeye salmon are very similar. Specifically, the data show a total fat content of 10 g for Atlantic and sockeye salmon and 9 g for coho salmon. Therefore, we are proposing to combine Atlantic, coho, and sockeye into one subgroup of salmon. Because the data show that chum and pink salmon maintain similar nutrient profiles, we are proposing to keep chum/pink as a second subgroup of salmon.

We are proposing to revise § 101.44(c) based on the changes discussed above and by listing the fish in alphabetical order to read as follows: "The 20 most frequently consumed raw fish are: Blue crab, catfish, clams, cod, flounder/sole, haddock, halibut, lobster, ocean perch, orange roughy, oysters, pollock, rainbow trout, rockfish, salmon (Atlantic/coho/sockeye, chum/pink), scallops, shrimp, swordfish, tilapia, and tuna."

IV. Updating the Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

We are proposing to revise the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish (proposed appendices C and D to part 101) to reflect newer or additional data for these foods that have been submitted or made available to the agency. FDA has considered whether this updated nutrition labeling information, as proposed, could be used on an interim basis prior to completion of the rulemaking. Because the agency believes that the proposed nutrition labeling values would not be misleading, we do not object to firms using these values prior to issuance of a final rule, provided that the nutrition information is presented in a manner consistent with this proposal. However, firms should be aware that a final rule on this issue may differ from this proposed rule.

Reference 7 provides complete documentation of the derivation of each nutrition labeling value for the fruits, vegetables, and fish covered in this proposal. The following sections (IV.A through IV.C) explain the specific proposed updates.

A. FDA Analysis of the Data

FDA considered the data from all of the sources identified in sections IV.B and IV.C of this document and used these data as the basis for deriving the proposed nutrition labeling values. To the extent possible (i.e., for those nutrients where sufficient data were available), we used the statistical methodology recommended in the "FDA Nutrition Labeling Manual—A Guide for Developing and Using Data Bases" (Ref. 8) to produce the nutrition labeling values. The recommended statistical method uses compliance calculations that take into account the variation of nutrients in foods. The nutrient content of foods varies according to inherent, environmental, and processing factors, and some nutrients are more variable than others. The FDA compliance calculations are based on one-sided 95 percent prediction intervals. Thus, the resulting nutrient values are less likely than mean values to overestimate class II nutrients (naturally occurring vitamins, minerals, protein, total carbohydrate, dietary fiber, unsaturated fat, and potassium) (§ 101.9(g)(4)(ii)), or to underestimate third group nutrients (calories, sugars, total fat, saturated fat, cholesterol, and sodium) (§ 101.9(g)(5)). In other words, the calculated values provide with 95 percent probability that the levels of class II nutrients will be at least 80 percent of the label value and that the levels of third group nutrients will not be more than 120 percent of the label value, as required by the compliance criteria in § 101.9(g)(4)(ii) and (g)(5).

Nevertheless, we frequently found in our analyses of the data that the mean nutrient value and the value derived from compliance calculations rounded to the same nutrition labeling value. We also found, however, that when the sample size was small (e.g., three or fewer analytical data points), the values derived from compliance calculations sometimes resulted in a minimal amount or a complete absence of a nutrient in the food. In these cases, the mean value is more likely to represent the nutrient level. Thus, when it was more appropriate, we propose to use the mean nutrient value rather than the value derived by applying 95 percent prediction intervals, which is noted in the documentation (Ref. 7).

1. Nutrients Not Present in Particular Foods

No analytical data were available for some nutrients due to several well-known principles of food composition. As stated in the 1996 final rule (61 FR 42742 at 42756) and in the 1993 mandatory nutrition labeling final rules (58 FR 2079 at 2109, January 6, 1993), analysis is not needed for nutrients where reliable databases or scientific knowledge establish that a nutrient is not present in the product. Thus, for this proposal, as in the previous voluntary nutrition labeling rules (59 FR 36379 at 36383), we have assumed a zero value for the following nutrients: (1) Cholesterol in fruits and vegetables because cholesterol is found only in animal tissues, (2) saturated fat in all fruits and vegetables that have a zero total fat content because saturated fat is a component included in total fat, (3) dietary fiber in fish because dietary fiber is found only in plant materials, and (4) sugars in fish because sugars are not found (or are very low) in fish.

2. Data From USDA

When using USDA data to update the nutrition labeling values for this proposal, we obtained data directly from the NNDB, where possible (Ref. 6). The NNDB provides raw data that include a collection of statistical parameters representing either a single measurement or multiple measurements for nutrients in foods. USDA has compiled these data from various sources (e.g., government, academic, industry, and private laboratories). From these data, we can identify the number of samples, mean nutrient values, and estimates of variance that are necessary to complete compliance calculations in deriving the nutrition labeling values.

However, every food item in the NNDB does not always have a complete nutrient profile. When the NNDB did not have adequate data for nutrients needed for updating the nutrition labeling values, we used the values in the USDA Nutrient Database for Standard Reference (SR) (Ref. 9). The SR provides aggregated mean values for nutrients, which are primarily derived from data in the NNDB. For some foods, the SR presents a mean value for a nutrient, but the sample size is zero. In these cases, USDA has imputed the nutrient value from other sources, such as, from data for foods with a similar nutrient profile. For fish, when we were not able to obtain new or adequate data for a specific nutrient (e.g., vitamin A and vitamin C), either on the cooked or raw basis, we used the value from the SR for the appropriate cooked fish. The SR includes all the food composition data published in the 21 volumes of Agriculture Handbook No. 8 (USDA, 1976–1988) and its 4 supplements (USDA, 1990–1993). Since 1992, USDA has been publishing updated SR data electronically, which became accessible on the Internet for searching or downloading in 1996. However, the printed Agriculture Handbook No. 8 sections provide more extensive details on specific foods. For example, we have used information on the cooking procedure and yields of cooked fish contained in the 1991 supplement to Agriculture Handbook No. 8–15, "Composition of Foods: Finfish and Shellfish Products; Raw, Processed, Prepared" (Ref. 10), which is discussed in section IV.C.1 of this document.

3. Outlier Screening

For this proposed rule, we have completed outlier screening of the data using the Grubb's outlier screening method (Ref. 11). Outliers are unusually extreme data points in a distribution of data that are much lower or higher than the majority of the other data points. They are called "influential observations" because an outlier or outliers in a data set will skew the distribution of data so that the mean will be lower (with low outlier values) or higher (with high outlier values) than it would be for the majority of the data. In addition, the range (as a measure of distance) may give a very distorted picture of the variability of the data if outliers are included. Although some outlying observations may be legitimate values that are extreme, an outlier may be the result of imprecise measurement or an error in data entry. In developing our proposed nutrient values, we have taken a conservative approach to outliers and deleted those data points identified through outlier screening.

4. Calories, Calories From Fat, Sugars, and Total Carbohydrate

In developing our proposed nutrient values, we calculated calories and calories from fat based on the Atwater system for determining energy values for individual foods or food groups (i.e., specific factors) rather than using the general factors of 4, 4, and 9 calories per g for protein, total carbohydrate, and total fat, respectively. The Atwater energy factors are outlined in USDA Handbook No. 74, "Energy Value of Foods—Basis and Derivation" (Ref. 12). These specific factors take into account the physiological availability of energy for the basic food, and therefore, are more accurate. This is the method referred to in § 101.9(c)(1)(i)(A) for calculating the caloric content of foods. It is the same method used in the previous voluntary nutrition labeling rules (Ref. 5 to the 1996 final rule, 61 FR 42742) except that we are correcting a slight error in the food factors used for green onion and in the carbohydrate factor used for potato. The specific Atwater factors used for calculating calories and calories from fat for the fruits, vegetables, and fish in this proposal are as follows:

Food	Calories per gram		
	Protein	Carbohydrate	Fat
All fruits (except lemon, lime)	3.36	3.60	8.37
Lemon, lime	3.36	2.48	8.37
Mushroom	2.62	3.48	8.37
Potato, sweet potato	2.78	4.03	8.37
Carrot, onion, radish	2.78	3.84	8.37
Other vegetables	2.44	3.57	8.37
Finfish	4.27	NA	9.02
Shellfish	4.27	4.11	9.02

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After publication of the 1996 final rule, industry expressed to us that the calorie values for some of the fruits and vegetables appeared to be inconsistent with the label values for total fat, total carbohydrate, and protein. Upon review, we found slight errors in the sugars, total carbohydrate, calories, and calories from fat values in a few fruits and vegetables (as explained below) that are reflected in current appendix C to part 101.

First, we derived most of the sugars values for the fruits and vegetables in current appendix C to part 101 from the USDA Home Economics Research (HER) Report No. 48, "Sugar Content of Selected Foods: Individual and Total Sugars" (Ref. 13) because no other sugars data were available to us. While reviewing the values for this proposed update, we discovered an error in the total sugars value for cantaloupe, sweet cherries, tangerine, and celery in current appendix C to part 101. This error was due to an apparent miscalculation in converting the sugars per 100 g of product (as in HER Report No. 48) to the sugars per gram weight of the serving size for the product (as in current appendix C to part 101). Therefore, based on the corrected conversions, we are proposing to change the sugars value for cantaloupe from 11 g to 12 g, for sweet cherries from 19 g to 20 g, for tangerine from 12 g to 8 g, and for celery from 0 g to 1 g.

Second, after correcting the sugars value for cantaloupe and sweet cherries, we found that the sugars value was high compared with the total carbohydrate and dietary fiber values (i.e., the sugars value when added to dietary fiber exceeded total carbohydrate). Because sugars and dietary fiber are components of total carbohydrate, the value for total carbohydrate must be greater than or equal to the sum of the values for sugars and dietary fiber. The apparent discrepancies are because the values for total carbohydrate and dietary fiber were derived from different analytical samples than those used to derive the value for sugars. Therefore, we are proposing to adjust the total carbohydrate value for cantaloupe (from 12 g to 13 g) and sweet cherries (from 22 g to 23 g) to reflect the sum of the values for sugars and dietary fiber (Ref. 7). We consider this adjustment to be appropriate because the values for sugars and dietary fiber are determined by laboratory analysis, and therefore, are more accurate than the value for total carbohydrate, which is determined "by difference" (i.e., the weight remaining after subtracting the sum of the protein, fat, moisture, and ash from the total weight of the food (§ 101.9(c)(6))).

Third, the total carbohydrate value for tangerine, reflected in the current regulation, was based on the sum of the values for sugars (12 g) and dietary fiber (3 g), i.e., the total carbohydrate value was adjusted from 13 g (the original value, rounded) to 15 g (the sum of the values for sugars and dietary fiber) (Ref. 5 to the 1996 final rule, 61 FR 42742). However, because the sugars value for tangerine should have been 8 g (as explained previously in this section), the total carbohydrate value should not have been adjusted. Thus, we are proposing to change the total carbohydrate value for tangerine to the original value of 13 g (rounded) based on data submitted to the agency in 1992 by the Produce Marketing Association (Ref. 12 to the 1996 final rule, 61 FR 42742).

Fourth, we previously stated the following in the 1996 final rule:

> In order to have calories from fat consistent for a given total fat value, FDA derived calories from fat for fruits and vegetables from the rounded, rather than unrounded, total fat label value. The caloric equivalent for fat is 8.37 calories per g for fruits and vegetables. Thus, 0.5 g of fat is equivalent to 4.19 calories, and according to § 101.9(c)(1)(ii), "* * * amounts less than 5 calories may be expressed as zero." As a result, Appendix C consistently lists 0 calories for 0.5 g of total fat. (61 FR 42742 at 42750).

However, in our current review of the calorie values, we found that this action (i.e., calculating calories from the rounded total fat label value) conflicts with § 101.9(c)(1)(i), which states,

> * * * Where either specific or general food factors are used, the factors shall be applied to the actual amount (i.e., before rounding) of food components (e.g., fat, carbohydrate, protein, or ingredients with specific food factors) present per serving.

Therefore, in addition to calculating calories on the unrounded basis for the foods for which we obtained new data (as described in sections IV.B and C of this document), we recalculated calorie values for all the remaining foods covered by this proposal based on the unrounded values for total fat, total carbohydrate, and protein (Ref. 7). As a result of these recalculations, we are proposing changes to the calorie or calories from fat values for orange, strawberries, tangerine, watermelon, asparagus, green (snap) beans, and tomato as shown in table 1 in section IV.B.9 of this document.

Reference 7 contains the complete documentation of the nutrition labeling values for each of the fruits, vegetables, and fish covered in this proposal. The documentation includes the actual (unrounded) values for total fat, total carbohydrate, and protein used to calculate calories and calories from fat for each food. For some foods in proposed appendices C and D, the label value for total fat may be the same quantitative amount, yet the value for calories from fat may differ (e.g., for a total fat label value of 0.5 g, the value for calories from fat may be 0 or 5). The reason for the discrepancy, as explained above in this section, is that we calculated calories from fat based on the unrounded amount of total fat, as required by § 101.9(c)(1)(i), rather than on the rounded label value for total fat.

B. Proposed Updates to the Nutrition Labeling of Raw Fruits and Vegetables

1. Avocado

The nutrition labeling values for avocado provided in the current regulations are based on 1989-1990 data from the Produce Marketing Association and 1993–1994 data for potassium, protein, and vitamin C from the California Avocado Commission (CAC). In proposed appendix C to part 101, we have used new data on the composition of avocados that the CAC compiled from 1993 to 1997 and submitted to the agency. These data are the most current available to the agency and the sampling design is the same for each of the 5 years, whereas it differs in the other data collections. Thus, we are proposing to update the nutrition labeling values for avocado by using the 1993–1997 CAC data, which we have subjected to FDA compliance calculations based on 95 percent prediction intervals (Ref. 1). Table 1 of this document shows the proposed changes in the nutrient values for avocado compared with those in the current regulations.

2. Grapefruit

In the 1994 proposed rule, we declared the serving size for grapefruit as "1/2 medium (154 g/ 5.5 oz)" (59 FR 36379 at 36391). We adopted the same serving size in the 1996 final rule; however, the oz equivalent was incorrectly printed as 5.3 oz (61 FR 42742 at 42761). Also, current appendix C to part 101 contains this misprint. Thus, we are proposing to correct this error and declare the serving size for grapefruit as "1/2 medium (154 g/5.5 oz)."

3. Grapes

The nutrition labeling values for grapes that we originally provided in the 1991 final rule were based on data from the NNDB for "American-type" grapes. However, after publication of the 1991 final rule, USDA informed us that the grapes described as "American-type" include varieties, such as concord, that are not generally consumed without processing and that the grapes described as "European-type" are the most common types of raw grapes consumed in the United States (59 FR 36379 at 36381). USDA stated further that it would be more appropriate for FDA to use data for "European-type" grapes as the type most frequently consumed. Therefore, in the 1996 final rule, we derived the nutrition labeling values based on data in the NNDB for "European-type" grapes, which we had subjected to FDA compliance calculations based on 95 percent prediction intervals.

Then in 1998, industry raised questions about the published serving size for raw grapes (i.e., 1 1/2 cups (138 g/4.9 oz)) and the corresponding nutrient values. Industry noted that a 138 g serving size for European grapes would fall between 3/4 cup and 1 cup, rather than equate to 1 1/2 cups. When FDA investigated these inquiries, we found that the nutrient data for European grapes were correctly used to calculate the nutrition labeling values, but we had inadvertently used the weight for American grapes to derive the serving size. According to the SR, the density of European grapes is 160 g per cup and the density of American grapes is 92 g per cup (Ref. 9). Based on these densities, the 1 1/2 cup-serving size is equivalent to 240 g for European grapes and 138 g for American grapes. Thus, the current regulatory serving size, which is supposed to reflect the weight of European grapes, is incorrect.

In proposed appendix C to part 101, we have used 1998 data on the composition of grapes that Fleishman-Hilliard, Inc., submitted to the agency on behalf of the California Table Grape Commission (CTGC) (Ref.14). Because the CTGC submission provides newer data, the serving size that we are proposing for grapes is based on the average g weight of the 12 samples in this submission (i.e., 168.2 g per cup), rather than on the density of 160 g per cup provided in the SR. Following the principles in § 101.9(b)(2)(iii) regarding bulk products, the serving size must be the amount in a household measure that most closely approximates the reference amount for the appropriate product category in § 101.12(b). Grapes fit in the product category "All other fruits (except those listed as separate categories), fresh, canned, or frozen" with a reference amount of 140 g. Based on the data for the 12 samples, the average weight of 1 cup is 168.2 g and the average weight of 3/4 cup is 126.15 g (Ref. 14). Because 126.15 g (3/4 cup) is closer than 168.2 g (1 cup) to the 140-g reference amount, we are proposing a new serving size of 3/4 cup (126 g/4.5 oz) for grapes. We have subjected the CTGC data to FDA compliance calculations based on 95 percent prediction intervals and used these data in deriving the proposed nutrition labeling values (Ref. 14). Table 1 of this document shows the proposed changes to the serving size and nutrient values for grapes compared with those in the current regulations.

4. Nectarine, Peach, and Plums

In the 1996 final rule, we derived the nutrition labeling values for nectarine, peach, and plums from data in the NNDB, which we had subjected to FDA compliance calculations based on 95 percent prediction intervals. In proposed appendix C to part 101, we have used 1998 data on the composition of nectarines, peaches, and plums that Fleishman-Hilliard, Inc., submitted to the agency on behalf of the California Tree Fruit Agreement (CTFA). The CTFA data were comprised of three composite samples for peaches, three composite samples for plums, and four composite samples for nectarines. However, each of the composite samples represents between 2 and 14 different varieties and a different share of the market for that particular fruit. Due to the small number of composite samples, the varying number of varieties in each composite sample, and the differences in how the samples represent the market, we chose to analyze the data for each of the three types of fruit by weighting the samples according to their market share and to use the resulting mean nutrient values (Ref. 15).

CTFA also provided information on the edible portion weights of peaches and plums that represent the majority of the market (Ref. 16). Based on this information, we are proposing to change the serving size for peach from "1 medium (98 g/3.5 oz)" to "1 medium (147 g/5.3 oz)" and for plums from "2 medium (132 g/4.7 oz)" to "2 medium (151 g/5.4 oz)." We are not proposing any change to the serving size for nectarine (i.e., "1 medium (140 g/5.0 oz)") because the CTFA data supported the current serving size.

Table 1 of this document shows the proposed changes in the nutrient values for these fruits and the proposed changes to the serving size for peach and plums compared with those in the current regulations.

5. Sweet Cherries

The nutrition labeling values for sweet cherries provided in the current regulations are based on 1990 data from PMA. In proposed appendix C to part 101, we have used 1996 data on the fat composition of raw sweet cherries that Technical Assessment Systems, Inc. (TAS), submitted to the agency on behalf of the California Cherry Advisory Board. Based on these newer data, which included 12 analytical samples that measured the total fat content of sweet cherries, TAS requested that the nutrition labeling value for total fat be changed from 0.5 g to 0 g. We reviewed the TAS data, confirmed that the suggested label value was derived correctly by using compliance calculations based on 95 percent prediction intervals, and used the TAS data in determining the proposed label value of 0 g for total fat (Ref. 17). We also propose to revise the total carbohydrate and sugars values as explained in section IV.A.4 of this document. Table 1 shows the proposed changes to the nutrient values for sweet cherries compared with those in the current regulations.

6. Carrot

In current appendix C to part 101, the serving size for carrot is declared as "7" long, 1 1/4" diameter (78 g/2.8 oz)." To be consistent with § 101.9(b)(2)(i) for products in discrete units and consistent with § 101.9(b)(5)(iv) in describing the individual unit, we are proposing to include "1 carrot" as part of the serving size statement, i.e., "1 carrot, 7" long, 1 1/4" diameter (78 g/2.8 oz)."

7. Green Onion, Sweet Corn, and Sweet Potato

In the 1996 final rule, we derived the nutrition labeling values for raw green onion, sweet corn, and sweet potato by using the NNDB data available at that time. In proposed appendix C to part 101, we have used updated nutrient data from the NNDB for these raw vegetables to derive the proposed nutrition labeling values using compliance calculations based on 95 percent prediction intervals (Ref. 18). Table 1 of this document shows the proposed changes in the nutrient values for green onion, sweet corn, and sweet potato compared with those in the current regulations.

We also are proposing a correction to the serving size for sweet potato. In current appendix C to part 101, the serving size for sweet potato is declared as "medium, 5" long, 2" diameter (130 g/4.6 oz)." Consistent with § 101.9(b)(2)(i) for products in discrete units, we are proposing to include the number of units in the serving size statement for sweet potato (i.e., "1 medium, 5" long, 2" diameter (130 g/4.6 oz).")

8. Potato

The nutrition labeling values for potato that we provided in the 1996 final rule were based on 1983-1984 data from PMA. In proposed appendix C to part 101, we have used 2000 market basket data on the composition of potatoes that Ketchum submitted to the agency on behalf of the National Potato Promotion Board (NPPB). The NPPB nutrient data were comprised of three composite samples for each variety of red, russet, and white potatoes. However, according to the NPPB, each of these potato varieties represents a different proportion of the market (i.e., 12 percent for red, 70 percent for russet, and 18 percent for white (Ref. 19). Thus, NPPB requested and we agreed that the data should be weighted by the market share in deriving the nutrient values. After weighting the data, we subjected the values to FDA compliance calculations based on 95 percent prediction intervals to determine the proposed nutrition labeling values (Ref. 19). Table 1 of the document shows the proposed changes in the nutrient values for potato compared with those in the current regulations.

9. Summary of Proposed Changes for Fruits and Vegetables

Table 1 of this document shows a summary of the proposed changes to the nutrition labeling values for 19 raw fruits and vegetables and to the serving size for grapefruit, grapes, peach, plums, carrot, and sweet potato, as compared with those in the current regulations. We are not proposing any changes to the other values in current appendix C to part 101.

TABLE 1.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR RAW FRUITS AND VEGETABLES

Food and Nutrient	Current Values		Proposed Values	
		% Daily Value		% Daily Value
Avocado, California:				
Calories	55		50	
Total Fat	5 g	8%	6 g	9%
Saturated Fat	1 g	5%	0.5 g	3%
Potassium	170 mg	5%	160 mg	5%
Total Carbohydrate	3 g	1%	2 g	1%
Dietary Fiber	3 g	12%	1 g	4%
Cantaloupe:				
Total Carbohydrate	12 g	4%	13 g	4%
Sugars	11 g		12 g	
Grapefruit:				
Serving Size	1/2 medium (154 g/5.3 oz)		1/2 medium (154 g/5.5 oz)	
Grapes:				
Serving Size	1 1/2 cups (138 g/4.9 oz)		3/4 cup (126 g/4.5 oz)	
Calories from Fat	10		0	
Total Fat	1 g	2%	0 g	0%
Sodium	0 g	0%	15 mg	1%
Potassium	270 mg	8%	240 mg	7%
Total Carbohydrate	24 g	8%	23 g	8%
Sugars	23 g		20 g	
Protein	1 g		0 g	
Vitamin A		2%		0%
Vitamin C		25%		2%
Iron		2%		0%
Nectarine:				
Total Fat	0.5 g	1%	0 g	0%
Potassium	300 mg	9%	290 mg	8%
Total Carbohydrate	16 g	5%	17 g	6%
Dietary Fiber	2 g	8%	1 g	4%
Sugars	12 g		13 g	
Vitamin A		4%		8%
Orange:				
Calories	70		80	
Peach:				
Serving Size	1 medium (98 g/3.5 oz)		1 medium (147 g/5.3 oz)	
Calories	40		70	
Potassium	190 mg	5%	260 mg	7%
Total Carbohydrate	10 g	3%	18 g	6%
Sugars	9 g		14 g	
Vitamin A		2%		8%
Vitamin C		10%		15%
Iron		0%		2%

TABLE 1.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR RAW FRUITS AND VEGETABLES—Continued

Food and Nutrient	Current Values		Proposed Values	
		% Daily Value		% Daily Value
Plums:				
Serving Size	2 medium (132 g/4.7 oz)		2 medium (151 g/5.4 oz)	
Calories from Fat	10		0	
Total Fat	1 g	2%	0 g	0%
Potassium	220 mg	6%	250 mg	7%
Total Carbohydrate	19 g	6%	21 g	7%
Sugars	10 g		13 g	
Vitamin A		6%		8%
Vitamin C		20%		10%
Iron		0%		2%
Strawberries:				
Calories	45		50	
Sweet Cherries:				
Total Fat	0.5 g	1%	0 g	0%
Total Carbohydrate	22 g	7%	23 g	8%
Sugars	19 g		20 g	
Tangerine:				
Calories from Fat	0		5	
Total Carbohydrate	15 g	5%	13 g	4%
Sugars	12 g		8 g	
Watermelon:				
Calories	80		100	
Asparagus:				
Calories	25		20	
Carrot:				
Serving Size	7″ long, 1 1/4″ diameter		1 carrot, 7″ long, 1 1/4″ diameter	
Celery:				
Sugars	0 g		1 g	
Green (snap) Beans:				
Calories	25		20	
Green Onion:				
Sodium	5 mg	0%	10 mg	0%
Calcium		0%		2%
Potato:				
Calories	100		40	
Sodium	0 mg	0%	10 mg	0%
Potassium	720 mg	21%	650 mg	19%
Total Carbohydrate	26 g	9%	7 g	2%
Dietary Fiber	3 g	12%	4 g	16%
Sugars	3 g		2 g	
Protein	4 g		3 g	
Vitamin C		45%		40%
Iron		6%		8%
Sweet Corn:				
Calories	80		90	
Calories from Fat	10		20	
Total Fat	1 g	2%	2.5 g	4%
Potassium	240 mg	7%	250 mg	7%
Total Carbohydrate	18 g	6%	16 g	5%
Dietary Fiber	3 g	12%	2 g	8%
Protein	3 g		4 g	

TABLE 1.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR RAW FRUITS AND VEGETABLES—Continued

Food and Nutrient	Current Values		Proposed Values	
		% Daily Value		% Daily Value
Sweet Potato:				
Serving Size	medium, 5" long, 2" diameter		1 medium, 5" long, 2" diameter	
Calories	130		140	
Potassium	350 mg	10%	340 mg	10%
Total Carbohydrate	33 g	11%	32 g	11%
Iron		2%		4%
Tomato:				
Calories from Fat	0		5	

C. Proposed Updates to the Nutrition Labeling of Raw Fish

For this proposal, we obtained new data for cooked Atlantic salmon and rainbow trout and for the following raw fish: Catfish (only on fat content), flounder/sole, orange roughy, coho and sockeye salmon, shrimp, swordfish, tilapia, and tuna. We also obtained new information on the cooking yield for mollusks, discovered a slight error in the raw weight used to calculate the nutrient values for finfish and crustaceans, and obtained new data on nutrient retention factors (described below). Therefore, in addition to updating the nutrient values based on new data, we reanalyzed the data for the remaining fish, when we used data for raw fish, and adjusted the nutrient values accordingly (Ref. 7).

1. Corrections for Cooking

a. Cooking yield for raw fish. The nutrition labeling values for fish provided in current appendix D to part 101 are based on the cooked edible portion (i.e., 84 g/3 oz) in accordance with § 101.45(a)(2). However, most of the nutrient data used to derive the nutrient values were available only for raw fish. When using data for raw fish, we first had to determine the raw fish weight that would yield 84 g (3 oz) of cooked fish. This adjusted raw fish weight would provide the basis upon which to derive the nutrient values. We calculated the raw weight by dividing the cooked weight (3 oz) by the appropriate cooking yield (i.e., a 75 percent cooking yield for finfish (based on dry heat cooking) and crustaceans (based on moist heat cooking) and a 60 percent cooking yield for mollusks (based on dry heat cooking)) (Refs. 10 and 20).

Therefore, we used data for 4 oz of raw finfish and crustaceans (3 oz ÷ 0.75) and 5 oz of raw mollusks (3 oz ÷ 0.60) to derive the nutrient values for 3 oz of cooked fish (59 FR 36379 at 36382 and 36383).

Since publication of the 1996 final rule, NFI has informed us that oysters are cooked predominately by dry heat while clams and scallops are cooked predominantly by moist heat (Ref. 21). Therefore, based on the cooking procedure and yields of cooked fish provided in Agriculture Handbook No. 8–15 (Ref. 10) for mollusks, we used a 50 percent cooking yield for clams and scallops (moist heat cooking) to determine the correct raw weights on which to base the nutrient data for this proposed rule. We continued to use a 60 percent cooking yield for oysters (dry heat cooking).

We also discovered in the previous data analyses for finfish and crustaceans that instead of using the precise raw weight of 112 g (84 g cooked weight ÷ 0.75 cooking yield) to calculate the nutrient values, we used an approximate raw weight of 110 g. We have corrected this error in proposed appendix D to part 101. Thus, when we used nutrient data for raw fish, we used 4 oz (112 g) of raw finfish and raw crustaceans (blue crab and shrimp), 5 oz (140 g) of raw oysters, and 6 oz (168 g) of raw clams and scallops to obtain nutrition labeling values for 3 oz (84 g) of cooked fish (Refs. 5 and 7).

b. *Nutrient retention factors.* In 1998, USDA issued an updated table of nutrient retention factors that is a major source of nutrient retention data for U.S. food composition databases (Ref. 22). The nutrient retention factors for the type of fish and corresponding cooking procedure are as follows:

Cooking Procedure/ Type of Fish	Nutrient Retention Factors			
	Potassium	Vitamin A	Vitamin C	Iron
Dry Heat:				
Finfish:				
Less than 5% fat	100%	90%	80%	100%
More than 5% fat	100%	85%	80%	100%
Shellfish:				
Oysters	100%	95%	85%	100%
Moist Heat:				
Shellfish (except oysters)	90%	90%	80%	90%

The NNDB and SR provide data for both cooked and raw varieties of fish, but for most varieties, vitamins A and C have very little data (0 to 3 analytical samples). Rather than apply nutrient retention factors to such small samples of data for raw fish, we have used vitamin A and vitamin C values from the SR, adjusted to the appropriate serving size, for cooked finfish (except catfish and tilapia) and cooked shellfish (except scallops) in proposed appendix D to part 101. Because we are using the vitamin A and vitamin C values for these cooked fish, the nutrient retention factors do not need to be applied. For catfish, application of the nutrient retention factors to vitamins A and C does not change the current value of 0 percent DV. For tilapia, we used data obtained from industry on the raw fish and applied the appropriate nutrient retention factors (Ref. 23). The only SR data that were available for cooked scallops were for breaded and fried, a cooking method that greatly affects the nutrient profile of the fish. Thus, we used data for raw scallops and applied the appropriate nutrient retention factors for potassium, vitamin A, vitamin C, and iron. For blue crab, clams, and shrimp, we used data for the raw fish and applied the appropriate nutrient retention factors for potassium and iron.

2. Catfish

In proposed appendix D to part 101, we have used 1997 data on the fat composition of raw farm-raised catfish that ABC Research Corp. submitted to the agency on behalf of NFI. The nutrition labeling values that we provided for farm-raised catfish in the 1996 final rule were based on values derived from information published in "Nutrients and Chemical Residues in One-to-Two Pound Mississippi Farm-Raised Channel Catfish," by Joyce Nettleton et al. (61 FR 42742 at 42753). For this proposal, we reviewed the newer NFI data consisting of 30 analytical samples that measured the total fat content of farm-raised catfish. We completed compliance calculations based on 95 percent prediction intervals and used these data in determining the proposed label value of 6 g for total fat (Ref. 24). We also have recalculated the values for calories (130) and calories from fat (60) based on the newer data for total fat. Table 2 of this document shows the proposed changes in the nutrient values for catfish compared with those in the current regulations.

3. Flounder/Sole, Rainbow Trout, Orange Roughy, Oysters, Salmon (Atlantic/Coho/Sockeye), Shrimp, and Swordfish

In proposed appendix D to part 101, we have used updated nutrient data from the NNDB for the following fish: Flounder/sole (raw); rainbow trout (cooked, dry heat, farmed); orange roughy (raw); oysters (raw); Atlantic salmon (cooked, farmed); coho salmon (raw, farmed); sockeye salmon (raw); shrimp (raw); and swordfish (raw). We subjected the data to FDA compliance calculations using 95 percent prediction intervals and used these data in deriving the proposed nutrition labeling values for these fish (Ref. 5).

4. Tilapia

In proposed appendix D to part 101, we have used 1999 data on the nutrient composition of raw tilapia that Southern Testing & Research Laboratories, Inc., submitted to the agency on behalf of the American Tilapia Association. The results of analytical testing done by Southern Testing & Research Laboratories, Inc., provided all the required nutrients but not potassium, which may be declared voluntarily. We completed compliance calculations based on 95 percent prediction intervals and determined that the mean values better represent the nutrient levels because of the small number of samples (n=3) analyzed (Ref. 23). To be consistent with our decision to include the optional nutrient, potassium, we have used data published in the journal article entitled "Comparison of Processing Yield and Nutrient Composition of Cultured Nile Tilapia (Oreochromis niloticus) and Channel Catfish (Ictalurus punctatus)" by Clement and Lovell to derive the potassium content of tilapia (Ref. 25).

5. Tuna

In proposed appendix D to part 101, we have used data from the NNDB and SR (Refs. 6 and 9) for yellowfin tuna. We selected yellowfin because the Tuna Research Foundation informed us that the species of tuna most commonly eaten fresh is yellowfin (Ref. 26). We subjected the data to FDA compliance calculations using 95 percent prediction intervals and used these data in deriving the proposed nutrition labeling values for tuna (Ref. 5).

6. Summary of Proposed Changes for Fish

Table 2 of this document shows the proposed changes in the nutrition labeling values for fish compared with those in the current regulations. As explained in section III.B of this document, the proposed changes include removal of mackerel and whiting and the addition of tilapia and tuna.

TABLE 2.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR COOKED FISH

Food and Nutrient	Current Values		Proposed Values	
		% Daily Value		% Daily Value
Blue Crab:				
Cholesterol	90 mg	30%	95 mg	32%
Sodium	320 mg	13%	330 mg	14%
Potassium	360 mg	10%	300 mg	9%
Vitamin C		0%		4%
Calcium		8%		10%
Catfish:				
Calories	140		130	
Calories from Fat	80		60	
Total Fat	9 g	14%	6 g	9%
Clams:				
Calories	100		110	
Cholesterol	55 mg	18%	80 mg	27%
Potassium	530 mg	15%	470 mg	13%
Total Carbohydrate	0 g	0%	6 g	2%
Protein	22 g		17 g	
Calcium		6%		8%
Iron		60%		30%

TABLE 2.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR COOKED FISH—Continued

Food and Nutrient	Current Values	% Daily Value	Proposed Values	% Daily Value
Cod:				
Calories from Fat	0		5	
Total Fat	0.5 g	1%	1 g	2%
Cholesterol	45 mg	15%	50 mg	17%
Sodium	60 mg	3%	55 mg	2%
Potassium	450 mg	13%	460 mg	13%
Vitamin C		0%		2%
Flounder/Sole:				
Calories from Fat	14		15	
Saturated Fat	0.5 g	3%	0 g	0%
Cholesterol	60 mg	20%	55 mg	18%
Sodium	90 mg	4%	100 mg	4%
Potassium	290 mg	8%	400 mg	11%
Protein	21 g		19 g	
Calcium		2%		0%
Iron		2%		0%
Haddock:				
Cholesterol	80 mg	27%	70 mg	23%
Sodium	85 mg	4%	75 mg	3%
Vitamin A		0%		2%
Halibut:				
Calories	110		120	
Calories from Fat	20		15	
Potassium	490 mg	14%	500 mg	14%
Vitamin A		2%		4%
Iron		4%		6%
Lobster:				
Vitamin A		0%		2%
Calcium		4%		6%
Ocean Perch:				
Saturated Fat	0 g	0%	0.5 g	3%
Vitamin C		0%		2%
Orange Roughy:				
Calories from Fat	10		5	
Potassium	330 mg	9%	340 mg	10%
Vitamin A		0%		2%
Calcium		0%		4%
Iron		0%		2%
Oysters:				
Total Fat	3.5 g	5%	4 g	6%
Cholesterol	115 mg	38%	80 mg	27%
Sodium	190 mg	8%	300 mg	13%
Potassium	390 mg	11%	220 mg	6%
Total Carbohydrate	4 g	1%	6 g	2%
Vitamin C		0%		6%
Pollock:				
Calories	90		100	
Potassium	360 mg	10%	370 mg	11%
Vitamin A		0%		2%
Rainbow Trout:				
Cholesterol	60 mg	20%	55 mg	18%
Protein	21 g		20 g	
Calcium		6%		8%
Rockfish:				
Calories from Fat	20		15	
Total Fat	2 g	3%	1.5 g	2%
Potassium	430 mg	12%	440 mg	13%
Calcium		0%		2%

TABLE 2.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR COOKED FISH—Continued

Food and Nutrient	Current Values	% Daily Value	Proposed Values	% Daily Value
Salmon, Atlantic/Coho/Sockeye:	Atlantic & Coho/Sockeye		Atlantic/Coho/Sockeye	
Calories	160/ 180		190	
Calories from Fat	60/ 80		90	
Total Fat	7 g/ 9 g	11%/ 14%	10 g	15%
Saturated Fat	1 g/ 1.5 g	5%/ 8%	2 g	10%
Cholesterol	50 mg/ 75 mg	17%/ 25%	65 mg	22%
Sodium	50 mg/ 55 mg	2%/ 2%	65 mg	3%
Potassium	490 mg/ 320 mg	14%/ 9%	320 mg	9%
Protein	22 g/ 23 g		24 g	
Vitamin A		0%/ 4%		2%
Vitamin C		0%/ 0%		2%
Calcium		0%/ 0%		2%
Iron		4%/ 2%		2%
Salmon, Chum/Pink:				
Potassium	410 mg	12%	420 mg	12%
Calcium		0%		2%
Iron		2%		4%
Scallops:				
Calories	120		140	
Cholesterol	55 mg	18%	60 mg	20%
Sodium	260 mg	11%	310 mg	13%
Potassium	280 mg	8%	430 mg	12%
Total Carbohydrate	2 g	1%	5 g	2%
Protein	22 g		27 g	
Vitamin A		0%		2%
Vitamin C		0%		6%
Calcium		2%		4%
Shrimp:				
Calories	80		100	
Total Fat	1 g	2%	1.5 g	2%
Cholesterol	165 mg	55%	170 mg	57%
Sodium	190 mg	8%	250 mg	10%
Potassium	140 mg	4%	220 mg	6%
Protein	18 g		21 g	
Vitamin A		0%		4%
Vitamin C		0%		4%
Calcium		2%		6%
Iron		15%		6%
Swordfish:				
Calories	130		120	
Calories from Fat	35		50	
Total Fat	4.5 g	7%	6 g	9%
Saturated Fat	1 g	5%	1.5 g	8%
Protein	22 g		16 g	
Tilapia:				
Calories			110	
Calories from Fat			20	
Total Fat			2.5 g	4%
Saturated Fat			1 g	5%
Cholesterol			75 mg	25%
Sodium			30 mg	1%
Potassium			360 mg	10%
Total Carbohydrate			0 g	0%
Dietary Fiber			0 g	0%
Sugars			0 g	
Protein			22 g	
Vitamin A				0%
Vitamin C				2%
Calcium				0%
Iron				2%

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TABLE 2.—PROPOSED CHANGES TO THE NUTRITION LABELING INFORMATION FOR COOKED FISH—Continued

Food and Nutrient	Current Values	Proposed Values
	% Daily Value	% Daily Value
Tuna:		
Calories		130
Calories from Fat		15
Total Fat		1.5 g 2%
Saturated Fat		0 g 0%
Cholesterol		50 mg 17%
Sodium		40 mg 2%
Potassium		480 mg 14%
Total Carbohydrate		0 g 0%
Dietary Fiber		0 g 0%
Sugars		0 g
Protein		26 g
Vitamin A		2%
Vitamin C		2%
Calcium		2%
Iron		4%

V. Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of these proposed guidelines as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation also is considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that these proposed guidelines are not a significant regulatory action as defined by Executive Order 12866.

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year." The current inflation-adjusted statutory threshold is $115 million. FDA has determined that this proposed rule containing nutrition labeling guidelines does not constitute a significant rule under the Unfunded Mandates Reform Act.

A. Costs of These Guidelines

The costs of a labeling regulation are the incremental administrative, analytical, redesign, and label inventory disposal costs associated with the regulatory action. Because FDA is providing nutrition values that retailers must use, we expect no analytical or other information costs. The typical sign, the most common means of labeling raw products, has an expected useful life of 6 months. This is well within the compliance period, so we also expect little to no inventory disposal costs.

Administrative and redesign costs depend on retail store behavior. The 1996 final rule had a 1-year compliance period. These guidelines propose compliance at the next applicable uniform compliance date (UCD), which is no sooner than 1 year after the final rule is published in the **Federal Register**. The redesign cost due to this proposed guidance depends crucially on the length of the compliance period: FDA assumes that, all other things equal, the longer the compliance period the lower the cost of implementing the proposed guidelines. Retail stores periodically redesign signs and displays. FDA has information that a normal redesign cycle of a product label is 2 years. This cycle may not apply to retail level signs, but it provides a basis on which to estimate the lifecycle of a display. We assume that some of the retail stores would have redesigned their displays before the effective date of compliance, lowering the redesign cost attributed to these proposed guidelines. FDA invites comments on the normal length of redesign time and cost associated with retail level signs or posters.

The most likely timeline of these guidelines is that they will be published during 2002. Therefore, the effective compliance date of these guidelines would be the next UCD of January 1, 2004, or between 1 and 2 years after the publication of the final guidelines. FDA will modify this analysis if the actual publication date differs from the one described here.

If the final compliance period is 18 months and companies redesign normal labels every 2 years, then 75 percent of companies could be expected to normally redesign their labels during the compliance period. FDA assumes that an informational display will be redesigned with less frequency than a product label since it has a smaller potential impact on the profitability of the food product. We assume a median display redesign cycle of 3 years, which implies that 50 percent of retailers would have redesigned their store displays between their publication and when the new guidelines take effect. A normal redesign still will incur cost associated with verifying that the design conforms to the new guidelines. FDA estimates an average cost of a complete redesign of $100 per store, and estimates that the partial redesign cost allocated to changing the values on the informational signs will be $50 per store, allocated evenly among the years 2002 and 2003.

Approximately 83,000 grocery stores fall under these compliance guidelines. This estimate is based on a Dunn and Bradstreet database search, where the total of 197,000 grocery stores was decreased by the 110,000 stores exempted by Congress since they have annual sales of less than $500,000. Seven thousand six hundred of the remaining stores did not have sales data available. Since 42 percent of the stores that have sales data had sales over $500,000, we assign 42 percent of the stores without sales data to the population subject to compliance. According to the last (1996) compliance survey, approximately 72 percent of stores (73.0 percent for raw fruits and vegetables and 71.2 percent for raw fish) adequately displayed acceptable signs. Although slightly down from the previous (1994) survey, compliance is still well over the 60 percent threshold that would trigger a mandatory rule proposal. FDA assumes that 72 percent or 59,923 stores—the same percentage as the most recent compliance survey—will continue to choose to follow the guidelines.

Table 3 of this document presents the total cost estimates based on the number of stores and the effect of the compliance date. The present value (as of January 2002) cost of complying with the guidelines (the sum of the values in row e in table 3) would be $4,066,000. Firms incur this cost every 4 years (if the nutrient values are revised). If the rate of increase in the cost of redesigning a sign is equal to the 7 percent discount rate used in this analysis, then the present value cost of each redesign would be the same. Because of the uncertainty in nutrition science, the effect of the UCD, the percent of stores following the guidelines, and the rate of cost increase, FDA does not estimate the cost of future guideline updates.

TABLE 3.—COMPLIANCE SCHEDULE AND COST

(a) Adoption Year	2002	2003	2004
(b) Number of Stores	14,980	14,980	29,962
(c) Cost ($) per Store	$50	$50	$100
(d) Total Cost ($) [b x c]	$749,025	$749,025	$2,996,200
(e) Present (Year 2002) Value, 7% discount rate	$749,025	$700,023	$2,616,997

B. Benefits of These Guidelines

In the Regulatory Impact Analysis (RIA) of the Proposed Rules to Amend the Food Labeling Regulations (56 FR 60856, November 27, 1991), FDA stated that the benefit of labeling of raw fruits, vegetables, and fish is a change in purchase behavior that would happen if the information presented was new to some consumers and was important to their consumption decisions. Since a majority of retail stores have displayed this type of information for several years, any incremental change from a single update of the list of foods affected or nutritional values is likely to be small and unmeasurable.

However, these guidelines as amended in the proposed rule would be voluntary; grocery stores would probably not choose to display signs with the updated nutrition information if they felt the information would have no impact. In addition, informational signs must be truthful, and without periodic updates the incremental errors that would build up might eventually erode the ability of these signs to help consumers choose products. This guidance is designed not to create an effective label, but to preserve the effectiveness of existing nutrition labels.

Truthful signs and placards can have an impact on consumer behavior. One of the studies used to estimate the impact of product information on consumer choice for the 1991 RIA was the Special Diet Alert study, or SDA. The SDA is relevant to this analysis because the mode of disseminating truthful and accurate nutrition information in the study, based in retail grocery stores in Baltimore and Washington, DC, was a store display similar to the ones recommended in these guidelines. According to SDA, the presence of a sign displaying nutrition information caused a modest switch by consumers to products with relatively large positive attributes (vitamins and minerals) and a modest switch away from products with relatively large negative attributes (fat and cholesterol). If these guidelines are not periodically revised in light of the best available nutrient data, FDA believes the modest beneficial effect they have on consumer behavior may steadily diminish.

VII. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of these proposed guidelines as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that these proposed guidelines would not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) defines a grocery store as small if its annual sales are under $20 million. In the Dunn and Bradstreet search of grocery stores, 98 percent of stores with sales data available meet this definition. Not all stores must follow the guidelines: Stores with sales of $500,000 or less are exempt. Very small non-exempt stores (those of annual sales between $500,000 and $2,000,000) are not in compliance as a group in any of the compliance surveys. However, the percentage of very small non-exempt stores in compliance jumped over 5 percent for fruits and vegetables and just over 1 percent for fish in the latest (1996) survey.

Table 4 of this document presents the store-count percentage levels for stores of varying size. The 1996 compliance survey was not designed to discriminate between stores with sales over $20 million annually and stores with sales between $2 million and $20 million. However, the percentages in the second row are probably very good estimates for the compliance rate of stores considered small by the SBA standard, since so few stores have annual sales over $20 million.

The cost per store in the final column of table 4 of this document takes into account the percent compliance in each category and the varying date of compliance. For all categories, the average cost for a store that complies with the guidelines is $67.85, which is

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the present value weighted average of the three different possible time periods and the either $50 or $100 in compliance costs. The average of the two compliance rates is 49.6 percent for stores in the smallest category (table 4, row 1), so the average cost per store for this group is $33.65 (.496 x 67.85). The equivalent average cost per store for table 4, row 2 is $51.70 (.762 x 67.85).

TABLE 4.—COMPLIANCE PERCENTAGES BY STORE SIZE AND COST PER STORE

Annual Sales ($)	Fruit and Vegetable Percent	Raw Fish Percent	Cost per Store
$500,000–$2 million	48.6%	50.5%	$33.65
Greater than $2 million	78.5%	73.9%	$51.70

In addition, the maximum cost for any one firm is $87.34, which is $100 discounted back 2 years at 7 percent for stores which wait until the latest possible date to comply with the guidelines. The smallest firm that could incur this cost is a single location store with sales of $500,000.01. The maximum cost per firm of this guidance is therefore, at most, 0.017 percent of annual revenue.

Both the per store averages and the maximum possible cost of the guidance for a single firm are very small, and will not impose a significant cost on even the smallest non-exempt grocery stores. FDA, therefore, certifies that these guidelines would not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed nutrition labeling would be a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

IX. Effective Date

FDA periodically establishes, by final rule in the **Federal Register**, uniform effective dates for compliance with food labeling regulations (see, e.g., the **Federal Register** of December 23, 1998 (63 FR 71015)). We are proposing that any final rule that may issue based on this proposal become effective in accordance with the uniform effective date for compliance with food labeling requirements, which is not sooner than 1 year following publication of the final rule. However, FDA will not object to voluntary compliance immediately upon publication of the final rule.

X. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by June 3, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Identify all comments with the docket number found in brackets in the heading of this document. You may review public dockets containing comments to this proposal in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. O'Neill, K. R., "Statistical Derivation of Raw Avocado Nutrition Label for Appendix C to Part 101: Nutrition Facts for Raw Fruits and Vegetables," Center for Food Safety and Applied Nutrition, FDA, August 14, 2001.
2. Memorandum to file, Tom O'Brien, FDA, February 21, 1996.
3. Memorandum of phone conversation between Lee Weddig, National Fisheries Institute and Susan J. Brecher, FDA, June 9, 1997.
4. Letter from Lee J. Weddig, National Fisheries Institute to Susan Brecher, FDA, June 12, 1997.
5. O'Neill, K. R., "Statistical Derivation of Nutrition Labeling from USDA Data for Appendix D to Part 101: Nutrition Facts for Cooked Fish," Center for Food Safety and Applied Nutrition, FDA, May 9, 2001.
6. U.S. Department of Agriculture, National Nutrient Data Bank, maintained at the Nutrient Data Laboratory, Agricultural Research Service, Beltsville Human Nutrition Research Center, Beltsville, MD.
7. LeGault, L. A. and S. J. Brecher, "Documentation for the Proposed Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish," Center for Food Safety and Applied Nutrition, FDA, August 2001.
8. Bender, M. M., J. I. Rader, and F. D. McClure, "Guidance for Industry, FDA Nutrition Labeling Manual—A Guide for Developing and Using Databases," Center for Food Safety and Applied Nutrition, FDA, 1998, available on the Internet at http://vm.cfsan.fda.gov/dms/nutrguid.html.
9. U.S. Department of Agriculture, Agricultural Research Service, USDA Nutrient Database for Standard Reference, Release 14, 2001, available on the Internet at USDA's Nutrient Data Laboratory Home Page, http://www.nal.usda.gov/fnic/foodcomp.
10. U.S. Department of Agriculture, "Composition of Foods: Finfish and Shellfish Products: Raw, Processed, Prepared," Agriculture Handbook No. 8–15, 1991 Supplement, pp. 10–11.
11. Grubbs, F. E., "Procedures for Detecting Outlying Observations in Samples," Technometrics, vol. 11, no.1, pp. 1–21, 1969.
12. Merrill, A. L. and B. K. Watt, "Energy Value of Foods—Basis and Derivation," Agriculture Handbook No. 74, U.S. Department of Agriculture, revised 1973, pp. 24–25, available on the Internet at http://www.nal.usda.gov/fnic/foodcomp/Data/Classics/index.html.
13. Matthews, R. H., P. R. Pehrsson, and M. Farhat-Sabet, "Sugar Content of Selected Foods: Individual and Total Sugars," Home Economics Research Report No. 48, U.S. Department of Agriculture, September 1987, available on the Internet at http://www.nal.usda.gov/fnic/foodcomp/Data/index.html#sugar.
14. O'Neill, K. R., "Statistical Derivation of Raw Grapes Nutrition Label for Appendix C to Part 101: Nutrition Facts for Raw Fruits and Vegetables," Center for Food Safety and Applied Nutrition, FDA, August 6, 2001.
15. O'Neill, K. R., "Statistical Derivation of Nutrition Mean Values from California Tree Fruit Agreement Data for Raw Nectarines, Peaches, and Plums," Center for Food Safety and Applied Nutrition, FDA, May 9, 2001.
16. Memorandum to file, Lori A. LeGault, FDA, April 26, 2001.
17. Letter from F. Edward Scarbrough, FDA, to Tom Tjerandsen, representative of the California Cherry Advisory Board, June 18, 1997.
18. O'Neill, K. R., "Statistical Derivation of Raw Vegetable Nutrition Labels from USDA Data for Appendix C to Part 101: Nutrition Facts for Raw Fruits and Vegetables," Center for Food Safety and Applied Nutrition, FDA, April 18, 2001.
19. O'Neill, K. R., "Statistical Derivation of Raw Potato Nutrition Label for Appendix C to Part 101: Nutrition Facts for Raw Fruits and Vegetables," Center for Food Safety and Applied Nutrition, FDA, August 8, 2001.
20. Memorandum of phone conversation between Jacob Exler, U.S. Department of Agriculture, and FDA, March 1, 1993.
21. Memorandum of phone conversation between Richard Gutting, National Fisheries Institute, and Susan J. Brecher, FDA, October 2, 1998.
22. U.S. Department of Agriculture, USDA Table of Nutrient Retention Factors, Release 4, 1998, available on the Internet at http://www.nal.usda.gov/fnic/foodcomp/Data/index.html.
23. O'Neill, K. R., "Statistical Derivation of Raw Tilapia Nutrition Label for Appendix D to Part 101: Nutrition Facts for Cooked Fish," Center for Food Safety and Applied Nutrition, FDA, April 18, 2001.
24. O'Neill, K. R., "Nutrition Label Values for Total Fat, Calories and Calories From Fat in Farm-Raised Catfish," Center for Food Safety and Applied Nutrition, FDA, May 14, 2001.
25. Clement, S. and R. T. Lovell, "Comparison of Processing Yield and Nutrient Composition of Cultured Nile Tilapia (Oreochromis niloticus) and Channel Catfish (Ictalurus punctatus)," Aquaculture, 119:299–310, 1994.
26. Memorandum of phone conversation between Randi Thomas, Tuna Research Foundation, and Susan J. Brecher, FDA, February 11, 1998.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 101 as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.44 is revised to read as follows:

§ 101.44 What are the 20 most frequently consumed raw fruits, vegetables, and fish in the United States?

(a) The 20 most frequently consumed raw fruits are: Apple, avocado (California), banana, cantaloupe, grapefruit, grapes, honeydew melon, kiwifruit, lemon, lime, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, tangerine, and watermelon.

(b) The 20 most frequently consumed raw vegetables are: Asparagus, bell pepper, broccoli, carrot, cauliflower, celery, cucumber, green (snap) beans, green cabbage, green onion, iceberg lettuce, leaf lettuce, mushrooms, onion, potato, radishes, summer squash, sweet corn, sweet potato, and tomato.

(c) The 20 most frequently consumed raw fish are: Blue crab, catfish, clams, cod, flounder/sole, haddock, halibut, lobster, ocean perch, orange roughy, oysters, pollock, rainbow trout, rockfish, salmon (Atlantic/coho/sockeye, chum/pink), scallops, shrimp, swordfish, tilapia, and tuna.

3. Amend § 101.45 by revising the section heading and paragraph (a)(3)(iii) and by adding paragraph (a)(3)(iv) to read as follows:

§ 101.45 What are the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish?

(a) * * *

(3) * * *

(iii) When retailers provide nutrition labeling information for more than one raw fruit or vegetable on signs or posters or in brochures, notebooks, or leaflets, the listings for saturated fat and cholesterol may be omitted from the charts or individual nutrition labels if a footnote states that most fruits and vegetables provide negligible amounts of these nutrients, but that avocados contain 0.5 gram (g) of fat per ounce (e.g., "Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 0.5 g of saturated fat per ounce"). The footnote also may contain information about the polyunsaturated and monounsaturated fat content of avocados.

(iv) When retailers provide nutrition labeling information for more than one raw fish on signs or posters or in brochures, notebooks, or leaflets, the listings for dietary fiber and sugars may be omitted from the charts or individual nutrition labels if the following footnote is used, "Fish provide negligible amounts of dietary fiber and sugars."

* * * * *

4. Appendixes C and D to part 101 are revised to read as follows:

* * * * *

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Appendix C to Part 101.–Nutrition Facts for Raw Fruits and Vegetables

Nutrition facts [1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total Fat		Saturated Fat		Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	%DV	(g)	%DV	(mg)	%DV	(mg)	%DV	(mg)	%DV	(g)	%DV	(g)	%DV	(g)	(g)	%DV	%DV	%DV	%DV
Apple, 1 medium (154 g/5.5 oz)	80	0	0	0	0	0	0	0	0	0	170	5	22	7	5	20	16	0	2	8	0	2
Avocado, California, 1/5 medium (30 g/ 1.1 oz)	50	45	6	9	0.5	3	0	0	0	0	160	5	2	1	1	4	0	1	0	4	0	0
Banana, 1 medium (126 g/4.5 oz)	110	0	0	0	0	0	0	0	0	0	400	11	29	10	4	16	21	1	0	15	0	2
Cantaloupe, 1/4 medium (134g/4.8 oz)	50	0	0	0	0	0	0	0	25	1	280	8	13	4	1	4	12	1	100	80	2	2
Grapefruit, 1/2 medium (154g/5.5 oz)	60	0	0	0	0	0	0	0	0	0	230	7	16	5	6	24	10	1	15	110	2	0
Grapes, 3/4 cup (126 g/4.5 oz)	90	0	0	0	0	0	0	0	15	1	240	7	23	8	1	4	20	0	0	2	2	0
Honeydew Melon, 1/10 medium melon (134 g/4.8 oz)	50	0	0	0	0	0	0	0	35	1	310	9	13	4	1	4	12	1	2	45	0	2
Kiwifruit, 2 medium (148 g/5.3oz)	100	10	1	2	0	0	0	0	0	0	480	14	24	8	4	16	16	2	2	240	6	4
Lemon, 1 medium (58 g/2.1 oz)	15	0	0	0	0	0	0	0	5	0	90	3	5	2	1	4	1	0	0	40	2	0
Lime, 1 medium (67 g/2.4 oz)	20	0	0	0	0	0	0	0	0	0	75	2	7	2	2	8	0	0	0	35	0	0
Nectarine, 1 medium (140 g/5.0 oz)	70	0	0	0	0	0	0	0	0	0	290	8	17	6	1	4	13	1	8	15	0	2
Orange, 1 medium (154 g/5.5 oz)	80	0	0	0	0	0	0	0	0	0	260	7	21	7	7	28	14	1	2	130	6	2
Peach, 1 medium (147 g/5.3 oz)	70	0	0	0	0	0	0	0	0	0	260	7	18	6	2	8	14	1	8	15	0	2
Pear, 1 medium (166 g/5.9 oz)	100	10	1	2	0	0	0	0	0	0	210	6	25	8	4	16	17	1	0	10	2	0
Pineapple, 2 slices, 3" diameter, 3/4" thick (112 g/4 oz)	60	0	0	0	0	0	0	0	10	0	115	3	16	5	1	4	13	1	0	25	2	2
Plums, 2 medium (151 g/5.4 oz)	80	0	0	0	0	0	0	0	0	0	250	7	21	7	2	8	13	1	8	10	0	2
Strawberries, 8 medium (147g/5.3 oz)	50	0	0	0	0	0	0	0	0	0	270	8	12	4	4	16	8	1	0	160	2	4
Sweet cherries, 21 cherries; 1 cup (140 g/ 5.0 oz)	90	0	0	0	0	0	0	0	0	0	300	9	23	8	3	12	20	2	2	15	2	2
Tangerine, 1 medium (109 g/3.9 oz)	50	5	0.5	1	0	0	0	0	0	0	180	5	13	4	3	12	8	1	0	50	4	0
Watermelon, 1/18 medium melon; 2 cups diced pieces (280 g/10.0 oz)	100	0	0	0	0	0	0	0	10	0	230	7	27	9	2	8	25	1	20	25	2	4

Appendix C to Part 101.–Nutrition Facts for Raw Fruits and Vegetables–Continued

Nutrition facts [1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total Fat		Saturated Fat		Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	%DV	(g)	%DV	(mg)	%DV	(mg)	%DV	(mg)	%DV	(g)	%DV	(g)	%DV	(g)	(g)	%DV	%DV	%DV	%DV
Asparagus, 5 spears (93 g/3.3 oz)	20	0	0	0	0	0	0	0	0	0	230	7	4	1	2	8	2	2	10	15	2	2
Bell pepper, 1 medium (148 g/5.3 oz)	30	0	0	0	0	0	0	0	0	0	270	8	7	2	2	8	4	1	8	190	2	2
Broccoli, 1 medium stalk (148 g/5.3 oz)	45	0	0.5	1	0	0	0	0	55	2	540	15	8	3	5	20	3	5	15	220	6	6
Carrot, 1 carrot, 7" long, 1 1/4" diameter (78 g/2.8 oz)	35	0	0	0	0	0	0	0	40	2	280	8	8	3	2	8	5	1	270	10	2	0
Cauliflower, 1/6 medium head (99 g/3.5 oz)	25	0	0	0	0	0	0	0	30	1	270	8	5	2	2	8	2	2	0	100	2	2
Celery, 2 medium stalks (110 g/3.9 oz)	20	0	0	0	0	0	0	0	100	4	350	10	5	2	2	8	1	1	2	15	4	2
Cucumber, 1/3 medium (99 g/3.5 oz)	15	0	0	0	0	0	0	0	0	0	170	5	3	1	1	4	2	1	4	10	2	2
Green (snap) beans, 3/4 cup cut (83 g/3.0 oz)	20	0	0	0	0	0	0	0	0	0	200	6	5	2	3	12	2	1	4	10	4	2
Green cabbage, 1/12 medium head (84 g/ 3.0 oz)	25	0	0	0	0	0	0	0	20	1	190	5	5	2	2	8	3	1	0	70	4	2
Green onion, 1/4 cup chopped (25 g/0.9 oz)	10	0	0	0	0	0	0	0	10	0	70	2	2	1	1	4	1	0	2	8	2	0
Iceberg lettuce, 1/6 medium head (89 g/ 3.2 oz)	15	0	0	0	0	0	0	0	10	0	120	3	3	1	1	4	2	1	4	6	2	2
Leaf lettuce, 1 1/2 cups shredded (85 g/ 3.0 oz)	15	0	0	0	0	0	0	0	30	1	230	7	4	1	2	8	2	1	40	6	4	0
Mushrooms, 5 medium (84 g/3.0 oz)	20	0	0	0	0	0	0	0	0	0	300	9	3	1	1	4	0	3	0	2	0	2
Onion, 1 medium (148 g/5.3 oz)	60	0	0	0	0	0	0	0	5	0	240	7	14	5	3	12	9	2	0	20	4	2
Potato, 1 medium (148 g/5.3 oz)	40	0	0	0	0	0	0	0	10	0	650	19	7	2	4	16	2	3	0	40	2	8
Radishes, 7 radishes (85 g/3.0 oz)	15	0	0	0	0	0	0	0	25	1	230	7	3	1	0	0	2	1	0	30	2	0
Summer squash, 1/2 medium (98 g/3.5oz)	20	0	0	0	0	0	0	0	0	0	260	7	4	1	2	8	2	1	6	30	2	2
Sweet corn, kernels from 1 medium ear (90g/ 3.2 oz)	90	20	2.5	4	0	0	0	0	0	0	250	7	16	5	2	8	5	4	2	10	0	2
Sweet Potato, 1 medium, 5" long, 2"diameter (130 g/ 4.6 oz)	140	0	0	0	0	0	0	0	45	2	340	10	32	11	4	16	7	2	440	30	2	4
Tomato, 1 medium (148 g/5.3 oz)	35	5	0.5	1	0	0	0	0	5	0	360	10	7	2	1	4	4	1	20	40	2	2

[1] Raw, edible weight portion. Percent Daily Values (%DV) are based on a 2,000 calorie diet.

Appendix D to Part 101.–Nutrition Facts for Cooked Fish

Nutrition facts [1] fish (84 g/3 oz)	Calories		Total Fat		Saturated Fat		Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars		Protein		Vitamin A		Vitamin C		Calcium		Iron	
		Calories from fat	(g)	%DV	(g)	%DV	(mg)	%DV	(mg)	%DV	(mg)	%DV	(g)	%DV	(g)	%DV	(g)		(g)	%DV	%DV		%DV		%DV		%DV	
Blue crab	100	10	1	2	0	0	95	32	330	14	300	9	0	0	0	0	0		20		0		4		10		4	
Catfish	130	60	6	9	2	10	50	17	40	2	230	7	0	0	0	0	0		17		0		0		0		0	
Clams, about 12 small	110	15	1.5	2	0	0	80	27	95	4	470	13	6	2	0	0	0		17		10		0		8		30	
Cod	90	5	1	2	0	0	50	17	55	2	460	13	0	0	0	0	0		20		0		2		2		2	
Flounder/sole	100	15	1.5	2	0	0	55	18	100	4	400	11	0	0	0	0	0		19		0		0		0		0	
Haddock	100	10	1	2	0	0	70	23	75	3	340	10	0	0	0	0	0		21		2		0		2		6	
Halibut	120	15	2	3	0	0	35	12	60	3	500	14	0	0	0	0	0		23		4		0		4		6	
Lobster	80	0	0.5	1	0	0	60	20	320	13	300	9	1	0	0	0	0		17		2		0		6		2	
Ocean perch	110	20	2	3	0.5	3	50	17	95	4	290	8	0	0	0	0	0		21		0		2		10		6	
Orange roughy	80	5	1	2	0	0	20	7	70	3	340	10	0	0	0	0	0		16		2		0		4		2	
Oyster, about 12 medium	100	35	4	6	1	5	80	27	300	13	220	6	6	2	0	0	0		10		0		6		6		45	
Pollock	100	10	1	2	0	0	80	27	110	5	370	11	0	0	0	0	0		20		2		0		'o		2	
Rainbow trout	140	50	6	9	2	10	55	18	35	1	370	11	0	0	0	0	0		20		4		4		8		2	
Rockfish	100	15	1.5	2	0	0	40	13	70	3	440	13	0	0	0	0	0		21		4		0		2		2	
Salmon, Atlantic/Coho/Sockeye	190	90	10	15	2	10	65	22	65	3	320	9	0	0	0	0	0		24		2		2		2		2	
Salmon, Chum/Pink	130	35	4	6	1	5	70	23	65	3	420	12	0	0	0	0	0		22		2		0		2		4	
Scallops, about 6 large or 14 small	140	10	1	2	0	0	60	20	310	13	430	12	5	2	0	0	0		27		2		6		4		2	
Shrimp	100	10	1.5	2	0	0	170	57	250	10	220	6	0	0	0	0	0		21		4		4		6		6	
Swordfish	120	50	6	9	1.5	8	40	13	100	4	310	9	0	0	0	0	0		16		2		2		0		4	
Tilapia	110	20	2.5	4	1	5	75	25	30	1	360	10	0	0	0	0	0		22		0		2		2		2	
Tuna	130	15	1.5	2	0	0	50	17	40	2	480	14	0	0	0	0	0		26		2		2		2		4	

[1] Cooked, edible weight portion. Percent Daily Values (%DV) are based on a 2,000 calorie diet.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6709 Filed 3–19–02; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

Development of a Munitions Response Site Prioritization Protocol

AGENCY: Office of the Deputy Under Secretary of Defense (Installations & Environment), DoD.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: In response to Section 311 of the Fiscal Year 2002 National Defense Authorization Act, the Office of the Deputy Under Secretary of Defense (Installations & Environment), U.S. Department of Defense (DoD), announces its intention to develop a proposed site prioritization protocol for assigning to each defense site (hereinafter, munitions response site) a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents. Section 311 lists specific factors to be included in the protocol. DoD is requesting input from interested parties on: These factors; any additional factors to consider in developing a site prioritization protocol; how the proposed protocol should incorporate such factors as they relate to safety and environmental hazards; and recommendations on any existing prioritization methods, models, or tools that should be evaluated. DoD will also request comments on the proposed site prioritization protocol when it is available for review later this year.

DATES: Suggestions are requested through May 20, 2002.

ADDRESSES: Written suggestions on factors to consider in the development of the site prioritization protocol should be sent to: United States Department of Defense, Office of the Deputy Under Secretary of Defense (I&E)/CL, ATTN: Proposed Site Prioritization Protocol, 3400 Defense Pentagon, Room 3C765, Washington, DC 20301–3400.

This address must be used when submitting input by U.S. Postal Service Express Mail. Input will also be accepted via electronic e-mail at *https://www.denix.osd.mil/MMRP.*

FOR FURTHER INFORMATION CONTACT: Patricia Ferrebe, 703–695–6107.

Information regarding the schedule for developing the proposed site prioritization protocol, along with relevant background information, is available on the DENIX web site at *https://www.denix.osd.mil./MMRP.*

SUPPLEMENTARY INFORMATION: Section 311 of the Fiscal Year 2002 National Defense Authorization Act requires the DoD to develop, in consultation with representatives of the States and Indian Tribes, a proposed and final protocol for assigning to each defense site (munitions response site) a relative priority for response activities based on the overall conditions at each site. Section 311 provides for public notice and comment on the proposed protocol; requires that the proposed protocol be available for public comment on or before November 30, 2002; and directs DoD to issue a final protocol to be applied to defense sites listed in the Department's munitions response site inventory. As an initial step in developing the protocol, DoD seeks public input early in the development process prior to the public's opportunity to review and comment on the proposed protocol in November. DoD will also seek input from State, Tribal, EPA, and Federal Land Managers. DoD will consider this input during development of the proposed protocol.

Based on the requirements above, DoD intends to accomplish the following overall objectives with respect to development of a site prioritization protocol for munitions response sites:

- Prepare, in consultation with the States, and Indian Tribes, a proposed and final protocol per the requirements in Section 311 of the Fiscal Year 2002 National Defense Authorization Act.
- Publish the proposed protocol and provide a formal 60-day public comment period.
- Apply the final protocol to munitions response sites listed on its inventory.

Section 311 lists specific factors that may be considered when assigning a relative priority to munitions response sites. These factors may include:

- Whether there are known, versus suspected, unexploded ordnance, discarded military munitions, or munitions constituents on all or any portion of the defense site and the types of unexploded ordnance, discarded military munitions, or munitions constituents preset or suspected to be present.
- Whether public access to the defense site is controlled, and the effectiveness of these controls.
- The potential for direct human contact with exploded ordnance, discarded military munitions, or munitions constituents at the defense site and evidence of people entering the site.
- Whether a response action has been or is being undertaken at the defense site under the Formerly Used Defense Sites program or other program.
- The planned or mandated dates for transfer of the defense site from military control.
- The extent of any documented incidents involving unexploded ordnance, discarded military munitions, or munitions constituents at or from the defense site, including incidents involving explosions, discoveries, injuries, reports, and investigations.
- The potential for drinking water contamination or the release for munitions constituents into the air.
- The potential for destruction of sensitive echo systems and damage to natural resources. To better understand public concerns with regard to munitions response sites, DoD is soliciting early public input on:
- Additional factors to be considered.
- Existing prioritization methods.
- Other comments for developing the prioritization protocol.

Background

To ensure their readiness to protect and defend our nation, our Military forces conduct live-fire training and testing with weapon systems at ranges throughout the United States. As a result, some properties that DoD has historically used to meet its live-fire training and testing requirements have been found or are suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents. This is the situation on many properties where DoD no longer plans to use military munitions.

DoD's challenge on these munitions response sites is to: (1) Protect human health and the environment; (2) identify where and how much of this material is present at munitions response sites; (3) set priorities for conducting response actions at these sites; and (4) conduct necessary response actions for these sites. To address these and other challenges, DoD is developing a comprehensive program to address munitions—response sites.

Relevant Definitions

Section 311 defines key term that delineate DoD's program to address munitions response sites. These terms are:

"Defense site" applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does

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not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

"Discarded military munitions" includes military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.

"Military munitions" consists of all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosive and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

"Munitions constituents" means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

"Munitions response sites" means defense sites that contain unexploded ordnance, discarded military munitions, and munitions constituents.

"Unexploded ordnance" includes military munitions that—

- Have been primed, fused, armed, or otherwise prepared for action;
- Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and
- Remain unexploded either by malfunction, design, or any other cause.

Dated: March 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6419 Filed 3–19–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[COTP Honolulu 02–001]

RIN 2115–AA97, 2115–AA98

Anchorages and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of six months. These security zones and a related amendment to regulations for anchorage grounds in Mamala Bay are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature and will extend from the surface of the water to the ocean floor. This proposed rule is similar to a previous rule published January 31, 2002, creating security zones in these areas until April 19, 2002. Entry into the proposed zones would be prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: Comments and related material must reach the Coast Guard on or before April 15, 2002.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813. Marine Safety Office Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Honolulu between 7 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG E. G. Cantwell, U. S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Honolulu 02–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

The deadline to submit comments is less than sixty days from the publication of the notice of proposed rules (NPRM) in the **Federal Register**. This short comment period will permit the Coast Guard to publish a temporary final rule before the expiration of the existing temporary security zone, and thus help ensure public safety and security. To provide additional notice, we will place a notice of our proposed rule in the local notice to mariners. You may request a copy of this notice via facsimile by calling (808) 522–8260.

In our final rule, we will include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If, as we expect, we will make the final rule effective in less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Recent terrorist incidents in New York and Washington, D.C. have called for the implementation of additional measures to protect national security.

National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This proposed rule is similar to a rule published January 31, 2002 (67 FR 4656), creating security zones in these areas until April 19, 2002.

Discussion of Proposed Rule

The Coast Guard proposes designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of six-months. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature. In addition to creating security zones, this proposed rule would also amend an anchorage grounds regulation by adding the requirement that permission of the Captain of the Port be obtained before entering anchorage grounds in Mamala Bay.

These proposed security zones extend from the surface of the water to the ocean floor.

Entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI. Representatives of the Captain of the Port Honolulu will enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies. Periodically, by Broadcast Notice to Mariners, the Coast Guard will announce the existence or status of the temporary security zones in this proposed rule.

These temporary proposed security zones are intended to provide for the safety and security of the public, maritime commerce, and transportation, by creating security zones in designated harbors, anchorages, facilities, and adjacent navigable waters of the United States.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic zone affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer assistance to small entities in understanding the rule.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

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does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 6 a.m. April 19, 2002, until 4 p.m. October 19, 2002, in § 110.235 add a new paragraph (c) to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii (Datum: NAD 83).

* * * * *

(c) Before entering in the anchorage grounds in this section you must first obtain permission from the Captain of the Port Honolulu.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

4. A new § 165.T14–069 is temporarily added to read as follows:

§ 165.T14–069 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI.

(a) *Location.* The following areas are security zones:

(1) All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of the following coordinates: The shoreline at 21°17.68′ N, 157°52.0′ W; thence due south to 21°16.0′ N, 157°52.0′ W, thence due west to 21°16.0′ N, 157°55.58′ W, thence due north to Honolulu International Airport Reef Runway at 21°18.25′ N, 157°55.58′ W.

(2) The waters around the Tesoro Single Point Mooring extending 1,000 yards in all directions from position 21°16.2′ N, 158°05.3′ W.

(3) The waters extending 1,000 yards in all directions around vessels moored at the Chevron Conventional Buoy Mooring at approximate position 21°16.7′ N, 158°04.2′ W.

(4) The Kahului Harbor and Entrance Channel, Maui, HI consisting of all waters shoreward of the COLREGS DEMARCATION line. (See 33 CFR 80.1460).

(5) All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1450).

(6) All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1440).

(7) Hilo Harbor and Entrance Channel, Hawaii, HI consisting of all waters shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1480).

(8) The waters extending out 500 yards in all directions from cruise ship vessels anchored within 3 miles of:

(i) Lahaina Small Boat Harbor, Maui, between Makila Point and Puunoa Point.

(ii) Kailua-Kona Small Boat Harbor, Hawaii, between Keahulolu Point and Puapuaa Point.

(9) All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°19.5 N, 158°07.3 W.

(b) *Designated representative.* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior Coast Guard boarding officer on each vessel enforcing the security zone.

(c) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the temporary security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section is 33 U.S.C. 1226; 49 CFR 1.46.

(e) *Effective dates.* This section is effective from 6 a.m. HST April 19, 2002, until 4 p.m. HST October 19, 2002.

Dated: March 12, 2002.

T.L. Rice,

Captain, U.S. Coast Guard, Commander, Fourteenth Coast Guard District, Acting.

[FR Doc. 02–6733 Filed 3–15–02; 4:10 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[PAC AREA–02–001]

RIN 2115–AG23

Protection of Naval Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations for the safety and security of U.S. naval vessels in the navigable waters of the United States. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of many U.S. naval vessels in the navigable waters of the United States.

DATES: Comments and related material must reach the Coast Guard on or before May 6, 2002.

ADDRESSES: You may mail comments and related material to Commander (Pmt), Coast Guard Pacific Area, Coast Guard Island, Bldg. 50–6, Alameda, CA 94501–5100. Commander (Pmt) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [PAC AREA 02–001] and are available for inspection or copying at Commander (Pmt), at the address listed above between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Steve Danscuk,

Commander (Pmt), Coast Guard Island, Bldg. 50–6, Alameda, CA 94501–5100; telephone number (510) 437–2943.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [PAC AREA 02–001], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (Pmt), Coast Guard Pacific Area, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These zones are necessary to provide for the safety and security of United States naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. On September 21, 2001, the Coast Guard published temporary final rules entitled "Protection of Naval Vessels" in the **Federal Register** (66 FR 48779). Prior to issuing this temporary final rule, no regulation existed implementing 14 U.S.C. 91. The temporary final rule is in effect until June 15, 2002. No public hearing has been requested, and none has been held.

On February 21, 2002, Commander (Amr), Coast Guard Atlantic Area published a Notice of Proposed Rulemaking in the **Federal Register** (67 FR 7992) proposing to establish a permanent Subpart G to 33 CFR part 165 and setting out general provisions pertaining to that subpart. The general provisions of proposed Subpart G are discussed in the preamble to the Atlantic Area proposed rule and would apply to Pacific Area NVPZs. Our proposed rule would only add a new § 165.2030 to parallel Atlantic Area's proposed § 165.2025.

We have determined that a continuing need exists for the protection of naval vessels. Therefore, we are proposing a permanent rule that will replace the temporary rule by June 15, 2002. Based on our experience with the temporary final rule, we have made some changes that are detailed at length in the "Discussion" section of this preamble.

Discussion of Proposed Rule

This proposed rule, for safety and security concerns, controls vessel movement in a regulated area surrounding many U.S. naval vessels. All vessels within 500 yards of such a U.S. naval vessel shall operate at the minimum speed necessary to maintain a safe course, unless required by the Navigation Rules to maintain speed, and shall always proceed as directed by the Coast Guard, the senior naval officer present in command, or the official patrol. No vessel or person is allowed within 100 yards of a U.S. naval vessel greater than 100 feet in length unless authorized by the Coast Guard, the senior naval officer present in command, or the official patrol.

Only larger U.S. naval vessels are surrounded by a naval vessel protection zone to minimize this rule's effect on the public. Only U.S. naval vessels over 100 feet in length overall would be "large U.S. naval vessels."

The proposed rule contains several additional provisions to limit public impact. Vessels that need to pass within 100 yards of a large U.S. naval vessel may contact the Coast Guard, the senior naval officer present in command, or the official patrol on VHF–FM channel 16 to obtain the necessary permission.

Additionally, the Coast Guard, senior naval officer present in command, or the official patrol should permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules.

Similarly, commercial vessels anchored in a designated anchorage area should be permitted to remain at anchor within 100 yards of a passing large U.S. naval vessel when consistent with security requirements. As illustrated by the attack on the U.S.S. Cole, all vessels are potentially a security threat; therefore, vessels may, at times, be required to move. From a pure security perspective, all anchored vessels should be required to move. We believe, however, that security must be balanced with the burden on mariners and encourage enforcement officials to limit the impact on larger vessels, which are the most expensive and difficult to move.

In the proposed rule, we added language to address the situation where a naval vessel protection zone around a moored or anchored U.S. naval vessel effectively shuts down a narrow waterway. This situation could arise when a U.S. naval vessel makes a temporary port visit away from its normal homeport. In this situation, the Coast Guard, senior naval officer present in command, or the official patrol should permit transiting vessels to pass within 100 yards of the moored U.S. naval vessel with the minimal delay consistent with security requirements. This proposed rule does not intend to block narrow waterways from public use for extended periods of time. Mariners should anticipate some delay due to security needs. However, by including this new language in the regulation text, we want to make it clear that the Coast Guard, senior naval officer present in command, or the official patrol should, when appropriate, allow transiting vessels within the 100-yard exclusionary zone as needed to safely pass through a navigable channel or waterway. While maintaining security is paramount, avoiding extended delays in normal traffic is also very important.

We also added language that the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice on VHF–FM channel 16 of all movements by large U.S. naval vessels once security concerns permit publicizing the movement. The goal is to give as much advance notice as possible. In most cases, however, this notice will probably be no more than an hour or two. These notifications should, to some extent, help mariners adjust their navigation plans accordingly or obtain early permission to enter into a naval vessel protection zone.

Violations of these regulations are punishable as a class D felony (imprisonment for not more than 6 years and a fine of not more than $250,000), a civil penalty, and may result in rem liability against the vessel.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory

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policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation restricts access to the regulated area, the effect of this proposed regulation will not be significant because: (i) Individual naval vessel protection zones are limited in size; (ii) the Coast Guard, senior naval officer present in command, or official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will only effect a given geographical location for a limited time; and (iv) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly. Further, the Coast Guard received no comments related to economic impact following implementation of the temporary final rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of U.S. naval vessels in the navigable waters of the United States.

This proposed regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual naval vessel protection zones are limited in size; (ii) the official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will only affect a given geographic location for a limited time; and (iv) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly. Further, the Coast Guard received no comments related to small entity impact following implementation of the temporary final rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**. Further, the Coast Guard received no comments related to environmental impact following implementation of the temporary final rule.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Protection of naval vessels, Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

SUBPART G—PROTECTION OF NAVAL VESSELS

1. The authority citation for part 165 subpart G continues to read as follows:

Authority: 14 U.S.C 91 and 633; 49 CFR 1.45.

2. Add § 165.2030 to read as follows:

§ 165.2030 Pacific Area.

(a) This section applies to any vessel or person in the navigable waters of the United States within the boundaries of the U.S. Coast Guard Pacific Area, which includes the Eleventh, Thirteenth, Fourteenth, and Seventeenth U.S. Coast Guard Districts.

Note to paragraph (a): The boundaries of the U.S. Coast Guard Pacific Area and the Eleventh, Thirteenth, Fourteenth, and Seventeenth U.S. Coast Guard Districts are set out in 33 CFR part 3.

(b) A naval vessel protection zone exists around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States, whether the large U.S. naval vessel is underway, anchored, moored, or within a floating drydock, except when the large naval vessel is moored or anchored within a restricted area or within a naval defensive sea area.

(c) The Navigation Rules shall apply at all times within a naval vessel protection zone.

(d) When within a naval vessel protection zone, all vessels shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard, the senior naval officer present in command, or the official patrol. When within a naval vessel protection zone, no vessel or person is allowed within 100 yards of a large U.S. naval vessel unless authorized by the Coast Guard, the senior naval officer present in command, or official patrol.

(e) To request authorization to operate within 100 yards of a large U.S. naval vessel, contact the Coast Guard, the senior naval officer present in command, or the official patrol on VHF–FM channel 16.

(f) When conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should:

(1) give advance notice on VHF–FM channel 16 of all large U.S. naval vessel movements; and

(2) permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(3) permit commercial vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of passing large U.S. naval vessels; and

(4) permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored large U.S. naval vessel with minimal delay consistent with security.

Note to paragraph (f): The listed actions are discretionary and do not create any additional right to appeal or otherwise dispute a decision of the Coast Guard, the senior naval officer present in command, or the official patrol.

Dated: March 12, 2002.

E.R. Riutta,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 02–6766 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–006]

RIN 2115–AA97

Safety Zone; Mystic Places Offshore Grand Prix, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Mystic Places Offshore Grand Prix, off Ocean Beach, New London, CT. This action is necessary to provide for the safety of life on navigable waters during this May 3-to-5, 2002 event. This action is intended to restrict vessel traffic in a portion of Long Island Sound in the vicinity of Ocean Beach, New London, CT.

DATES: Comments and related material must reach the Coast Guard on or before April 19, 2002.

ADDRESSES: You may mail comments and related material to Marine Events, Coast Guard Group/Marine Safety Office Long Island Sound, Command Center, 120 Woodward Ave., New Haven, CT 06512. Coast Guard Group/Marine Safety Office Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Boatswain's Mate Second Class (BM2) Ryan Peebles, Group Operations Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone for the Mystic Places Offshore Grand Prix off Ocean Beach in Long Island Sound. The proposed safety zone prevents vessels from transiting a portion of Long Island

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Sound. It is needed to protect boaters from the hazards associated with power boat races being conducted within the boundaries of the safety zone.

The comment period was abbreviated in order to allow for the promulgation of a temporary rule in advance of the scheduled power boat races. The proposed rule is unlikely to engender public controversy. The safety zone encompasses a modest area and is of limited duration. Our previous rulemaking experience in cases of a similar nature suggests that we are unlikely to receive any adverse comments.

Discussion of Proposed Rule

The proposed safety zone encompasses all waters of Long Island Sound within the boundaries of a line beginning at 41°18′00″ N, 072°05′58″ W; then to 41°18′20″ N, 072°05′40″ W; then to 41°18′20″ N, 072°04′58″ W; then to 41°18′00″ N, 072°04′58″ W (NAD 1983); and then returning to the point of origin. The proposed safety zone will be enforced from 1 p.m. until 3 p.m. each day from May 3, 2002 through May 5, 2002. Only race officials and participants will be allowed inside the boundaries of the proposed zone during these periods. All other marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory planning and review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone would temporarily close a portion of Long Island Sound to vessel traffic. However, the impact of this regulation is expected to be minimal for the following reasons: the event is of limited duration; vessels are not precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories will be made to the maritime community; and marine traffic may still transit around the zone during the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound during the time this zone is activated. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the event is of limited duration; vessels are not precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories will be made to the maritime community; and marine traffic may still transit around the zone during the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, Operations Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 1 p.m. on May 3, 2002 through 3 p.m. on May 5, 2002, add temporary § 165.T01–006 to read as follows:

§ 165.T01–006 Safety Zone: Mystic Places Offshore Grand Prix, New London, CT.

(a) Location. The following area is a safety zone: All waters off Ocean Beach in Long Island Sound, within the boundaries of a line beginning at 41°18′00″N, 072°05′58″W; then to 41°18′20″N, 072°05′40″W; then to 41°18′20″N, 072°04′58″W; then to 41°18′00″N, 072°04′58″W (NAD 1983); and then returning to the point of origin.

(b) Enforcement period. This section will be enforced from 1 p.m. until 3 p.m. each day from May 3, 2002 through May 5, 2002.

(c) Regulations. (1) Vessels not participating in the event, swimmers and personal watercraft of any nature are prohibited from entering or moving within the safety zone unless authorized by the Captain of the Port. (2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 27, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–6765 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–026]

RIN 2115–AA97

Safety Zone; Lynn Fourth of July Celebration, Nahant Bay, Lynn, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Lynn Fourth of July Celebration on July 3, 2002, in Lynn, MA. The safety zone would temporarily close all waters of Nahant Bay within a 500-yard radius of the launch platform located in approximate position 42°27′48″ N, 70°55′38″ W. The safety zone would prohibit entry into or movement within this portion Nahant Bay during the fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before May 1, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 A.M. and 3 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–026), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

We propose to establish a safety zone within a 500-yard radius of the fireworks barge located at position 42°27′48″ N, 070°55′38″ W. The safety zone would be in effect from 5 p.m. until 10:30 p.m. on Monday, July 3, 2002.

The zone would restrict movement within this portion of Nahant Bay for

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the fireworks display and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Nahant Bay during the effective period, the effects of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, vessels may safely transit outside of the safety zone, and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Nahant Bay between 5 p.m. and 10:30 p.m. on July 3, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the effective period, the safety zone is limited in duration, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Michael Popovich at the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–026 to read as follows:

§ 165.T01–026 Safety Zone: Lynn Fourth of July Celebration, Lynn, Massachusetts.

(a) *Location.* The following area is a safety zone:

All waters of Nahant Bay within a 500-yard radius of the fireworks launch platform located in approximate position 42°27′48″ N, 070°55′38″ W.

(b) *Effective date.* This section will be effective from 5 p.m. until 10:30 p.m. on July 3, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: March 1, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–6762 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore 02–002]

RIN 2115–AA97

Security Zone; Potomac River, Washington Channel, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary security zone in the waters of Washington Channel on the Potomac River off Fort Lesley J. McNair, Washington, DC, during the May 30, 2002, U.S. Coast Guard Commandant's Change of Command ceremony. The security zone is necessary to provide for the security and safety of life and property of event participants, spectators and mariners on U.S. navigable waters during the event. Entry into this zone is prohibited unless authorized by the Captain of the Port, Baltimore, Maryland, or designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 19, 2002.

ADDRESSES: You may mail comments and related material to the Port Safety, Security and Waterways Management Branch, at Commander, U.S. Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland, 21226–1791. U.S. Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald L. Houck, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Baltimore–02–002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, U.S. Coast Guard Activities Baltimore at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard will conduct a Change of Command ceremony along the Potomac River at Washington, DC. A security zone is needed to protect dignitaries taking part in the high-level military ceremony from potential threats posed by waterborne acts of sabotage or other subversive acts. The purpose of the proposed regulation is to promote maritime safety and protect participants and spectators during the event. These regulations will impact the movement of all vessels operating in the specified area on the Washington Channel at Washington, DC.

Discussion of Proposed Rule

The U.S. Coast Guard Commandant's Change of Command ceremony will be held at Fort Lesley J. McNair, Washington, DC, on May 30, 2002. The event will consist of a background comprised of three U.S. Coast Guard vessels anchored adjacent to Fort McNair on the confined waters of the Washington Channel, on the Potomac River. A security zone is needed from 11 a.m. to 4 p.m. on May 30, 2002 to safeguard event participants and spectators. U.S. Coast Guard patrol vessels will be provided to prevent the movement of persons and vessels in an area approximately 200 yards wide and 450 yards long within Washington Channel. Entry into this zone is prohibited unless authorized by the Captain of the Port or his or her designated representative. The Captain of the Port will notify the public of changes in the status of the zone by a Marine Safety Radio Broadcast.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This temporary rule affects a limited area for approximately five hours, and will not completely close the navigable channel. Therefore, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposal will only be in effect for a limited amount of time, and extensive advisories will be made to

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the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this proposal to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ronald L. Houck, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2674.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because of the limited duration and scope of the regulation. A "Categorical Exclusion Determination" is available in the docket where indicted under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T05–006 to read as follows:

§ 165.T05–006 Security Zone; Potomac River, Washington Channel, Washington, D.C.

(a) *Location.* The following area is a security zone: all waters of the Washington Channel, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°52′03″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′16″ W, thence to 38°51′50″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′07″ W. These coordinates are based upon NAD 1983.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland, or his or her designated representative. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (410) 576–2693 or on VHF channel 16 (156.8 MHz) or VHF channel 22 (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section will be effective from 11 a.m. through 4 p.m. on May 30, 2002.

Dated: March 4, 2002.

R.B. Peoples,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–6764 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–104–1–7401b; FRL–7160–1]

Approval And Promulgation of Implementation Plans; Texas; Revisions to General Rules and Regulations for Control of Air Pollution by Permits for New Sources and Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The EPA is reopening the public comment period for a proposed approval of revisions to the Texas State Implementation Plan (SIP) published in the **Federal Register** on September 24, 2001.

DATES: Written comments must be received by EPA on or before April 19, 2002.

ADDRESSES: Written comments on this action should be addressed to Mr. David W. Neleigh, Chief, Air Permits Section (6PD–R), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell, Air Permits Section at (214) 665–7212 or at *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: In response to a request from the public, EPA is reopening the comment period for a proposed rule published in the **Federal Register** on September 24, 2001 (66 FR 48850), for approval of revisions to the Texas Natural Resource Conservation Commission (TNRCC) General Rules and TNRCC Regulations for Control of Air Pollution by Permits for New Sources and Modifications in the Texas SIP. These revisions were submitted by the Governor of Texas on August 31, 1993, and July 22, 1998. See the information provided in the direct final rule (66 FR 48796) located in the final rules section and the proposed rule (66 FR 48850) located in the proposed rules section of the September 24, 2001, **Federal Register.** The direct final rule was withdrawn November 23, 2001 (66 FR 58667).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 11, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 02–6721 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7161–4]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–38, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste streams, characterization systems and processes at INEEL to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of April 8, 2002. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before April 19, 2002.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Mail Code 6102, Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m..

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–260–4400; e–mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our website at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

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On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of INEEL's waste characterization systems and processes for TRU waste in accordance with Conditions 2 and 3 of the WIPP certification. Specifically, we will inspect the performance of new equipment " the Waste Assay Gamma Spectrometer (WAGS) system, SWEPP Gamma Ray Spectrometer (SGRS) system, and Data Review Expert System (DXRS) for NDA validation. In addition, solidified organic waste streams at INEEL will be examined for NDA characterization and certification. The inspection is scheduled to take place the week of April 8, 2002.

EPA has placed a number of documents pertinent to the inspection in the public docket described in **ADDRESSES.** The documents are listed as Item II–A2–38 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed waste streams, processes, systems, and equipment at INEEL adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship TRU waste to WIPP using the approved characterization processes. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: March 13, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–6844 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50646; FRL–6820–7]

RIN 2070–AB27

Proposed Revocation of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke significant new use rules (SNURs) for eight substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent orders for these chemical substances may result in significant changes in human or environmental exposure.

DATES: Comments, identified by docket control number OPPTS–50646 must be received on or before April 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50646 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed revocation. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50646. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50646 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50646. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed revocation.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

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II. Background

A. What Action is the Agency Taking?

In the **Federal Register** referenced for each substance, OPPTS–50601, September 23, 1992 (57 FR 44068), OPPTS–50620, March 1, 1995 (60 FR 11044) (FRL–4868–4), and OPPTS–50623, December 2, 1996 (61 FR 63737) (FRL–4964–3), establishing significant new uses for the substances, EPA issued a SNUR. Because of additional data EPA has received for these substances, EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the TSCA section 5(e) consent order for the substance, and the CFR citation. Further background information for the substances is contained in Unit I.B.2 of this document.

PMN Number P–89–764

Chemical name: Neodecaneperoxoic acid, 1,1,3,3-tetramethylbutyl ester.

CAS number: 51240–95–0.

Federal Register *publication date and reference:* September 23, 1992 (57 FR 44068).

Docket number: OPPTS–50601.

Basis for revocation of SNUR: EPA issued a TSCA section 5(e) consent order between EPA and the PMN submitter for this substance based on a potential unreasonable risk of cancer by analogy to structurally similar peroxides. Based on the results of test data developed by an industry consortium to address potential toxicity of peroxides, EPA has concluded that available information does not support identification of peroxides as potential carcinogens. Therefore, EPA determined that it could no longer conclude that the manufacturing, processing, and use of P–89–764 may present an unreasonable risk under section 5(e) of TSCA and has, therefore, revoked the consent order for P–89–764. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

CFR citation: 40 CFR 721.8170.

PMN Numbers P–94–1634/1635/1636/1637/1638/1639

Chemical name: Fatty acids, C(14-18)-unsaturated, branched and linear, methyl and butyl esters.

CAS number: Not available.

Federal Register *publication date and reference:* December 2, 1996 (61 FR 63737).

Docket number: OPPTS–50623.

Basis for revocation of SNUR: EPA issued a consent order between EPA and the PMN submitter requiring submission to EPA of certain human health toxicity testing before manufacturing a specified amount of the PMN substances based on the fact that the PMN substances would be produced in substantial quantities, and that there might be significant or substantial human exposure to the PMN substances. Based on the results of these studies, potential exposures, and the toxicity of the compounds the PMN substance will replace, EPA determined that it could no longer conclude that the manufacturing, processing, and use of P–93–193 may present an unreasonable risk under section 5(e) of TSCA and has, therefore, revoked the consent order for P–93–193. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

CFR citation: 40 CFR 721.5300.

PMN Number P–93–193

Chemical name: Propanol, [2-(1,1-dimethylethoxy)methylethoxy]-.

CAS number: 132739–31–2.

Federal Register *publication date and reference:* March 1, 1995 (60 FR 11044).

Docket number: OPPTS–50620.

Basis for revocation of SNUR: EPA issued a consent order between EPA and the PMN submitter requiring submission to EPA of certain human health and environmental toxicity testing before manufacturing a specified amount of the PMN substance based on the fact that the PMN substance would be produced in substantial quantities, and that there might be significant or substantial human exposure to the PMN substance. Based on the results of these studies, potential exposures, and the toxicity of the compounds the PMN substance will replace, EPA determined that it could no longer conclude that the manufacturing, processing, and use of P–93–193 may present an unreasonable risk under section 5(e) of TSCA and has, therefore, revoked the consent order for P–93–193. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

CFR citation: 40 CFR 721.8170.

PMN Numbers P–94–1634/1635/1636/1637/1638/1639

Chemical name: Fatty acids, C(14-18)-unsaturated, branched and linear, methyl and butyl esters.

CAS number: Not available.

Federal Register *publication date and reference:* December 2, 1996 (61 FR 63737).

Docket number: OPPTS–50623.

Basis for revocation of SNUR: EPA issued a consent order between EPA and the PMN submitter requiring submission to EPA of certain human health toxicity testing before manufacturing a specified amount of the PMN substances based on the fact that the PMN substances would be produced in substantial quantities, and that there might be significant or substantial human exposure to the PMN substances. EPA revoked the consent order based on the PMN submitter's commitment to sponsor the substances under EPA's High Production Volume (HPV) Challenge Program and the expectation that the information and/or test data developed by the company pursuant to its HPV commitment will satisfy EPA's information needs for the PMN substances. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

CFR citation: 40 CFR 721.3628.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

During review of the PMNs submitted for the chemical substances that are the subject of this proposed revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent order might result in significant changes in human or environmental exposure as described in section 5(a)(2) of TSCA. Based on these findings, SNURs were promulgated.

EPA has revoked the TSCA section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is proposing to revoke the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Regulatory Assessment Requirements

This proposed rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "*Regulatory Planning and Review*" (58 FR 51735, October 4, 1993).

Since this proposed rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Nor does it require any prior consultation as specified by Executive Order 12875, entitled "*Enhancing the Intergovernmental Partnership*" (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled "*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*" (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled "*Protection of Children from Environmental Health Risks and Safety Risks*" (62 FR 19885, April 23, 1997).

On August 4, 1999, President Clinton issued a new executive order on "*Federalism*," Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts.

This proposed rule is not subject to Executive Order 13211, "*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 1, 2002.

William H. Sanders, III,

Office Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.3628, 721.5300, and 721.8170 [Removed]

2. By removing §§ 721.3628, 721.5300, and 721.8170.

[FR Doc. 02–6724 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–495, MM Docket No. 99–282, RM–9710]

FM Broadcasting Services; Littlefield, AZ

AGENCY: Federal Communications Commission.

ACTION: Petition denial; dismissal of application for review.

SUMMARY: This document dismisses, at the request of Mountain West Broadcasting, its application for review of a *Memorandum Opinion and Order* in this proceeding, 65 FR 69693, published November 20, 2000.[1] *The Memorandum Opinion and Order* affirmed an earlier *Report and Order* in this proceeding, 65 FR 25463, published May 2, 2000, which had denied Mountain West's request to allot Channel 265C to Littlefield, Arizona.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order, MM Docket 99–282, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6377 Filed 3–19–02; 8:45 am]

BILLING CODE 6712–01–P

[1] This document inadvertently appeared in the Rules section. It should have appeared in the Proposed Rules section.

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1511

[Docket No. TSA–2002–11334]

RIN 2110–AA02

Aviation Security Infrastructure Fees

AGENCY: Transportation Security Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period on the Transportation Security Administration's (TSA) Aviation Security Infrastructure Fee interim final rule. TSA has decided to grant, in part, a request for an extension of the comment period and will extend the comment period for fifteen (15) days. The comment period will now end on April 2, 2002.

DATES: The comment period is being extended from March 18, 2002, to April 2, 2002.

ADDRESSES: Submit written, signed comments to TSA Docket No. 2002–11334 , the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard on which the following statement is made: "Comments to Docket No. TSA–2002–11334." The post card will be date stamped and mailed to the sender. Comments also may be sent electronically to the Dockets Management System (DMS) at: *http://dms.dot.gov* at any time. Those who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: For guidance involving technical matters: Randall Fiertz, Deputy Director, Cost and Performance Management, Federal Aviation Administration, c/o Department of Transportation (DOT), Office of the Secretary, Office of the Assistant Secretary for Budget and Programs, 400 Seventh St., SW., Room 10101, Washington, DC 20590; telephone (202) 366–9192. For other matters: Rita M. Maristch, Department of Transportation, Office of the General Counsel, Office of Environmental, Civil Rights and General Law, 400 Seventh St., SW., Room 10102, Washington, DC 20590; telephone (202) 366–9161. Office hours are from 9:00 a.m. to 5:30 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of the Interim Final Rule and Comments Received

An electronic copy of this document and the interim final rule may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov*.

Internet users can access this document and all other documents and comments received by TSA through DOT's docket management system web site, *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Comment Period Extension

On March 11, 2002, the Air Carrier Association of America (ACAA), the Cargo Airline Association (CAA), the National Air Carrier Association (NACA) and the Regional Airline Association (RAA), filed a petition for a thirty (30) day extension of the comment period on TSA's Aviation Security Infrastructure Fee interim final rule (see 67 FR 7926, February 20, 2002). Although TSA believes that the comment period is adequate, TSA has decided to grant, in part, the petitioners' request for an extension and will extend the comment period for fifteen (15) days. The comment period will now end on April 2, 2002. This extension will allow the commercial airline industry and other interested entities or individuals additional time to complete their comments on the interim final rule.

Issued in Washington, DC, on March 18, 2002.

John W. Magaw,

Under Secretary of Transportation for Security.

[FR Doc. 02–6852 Filed 3–18–02; 1:59 pm]

BILLING CODE 4910–62–P

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Notices

Federal Register
Vol. 67, No. 54
Wednesday, March 20, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment Regarding the Management of Wherry and Capehart Era Army Family Housing

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to issue program comment on Capehart and Wherry Era army family housing.

SUMMARY: The Army is formulating its plan on how to manage its inventory of Capehart and Wherry Era housing. In order to better meet its Federal historic preservation responsibilities in managing these properties, the Army has requested the Advisory Council on Historic Preservation to comment on the overall management of such properties, as opposed to submitting each individual undertaking under such management to a separate review. The Council has drafted such a comment. It now seeks public input on that draft.

DATES: Submit comments on or before April 19, 2002.

ADDRESSES: Address all comments concerning this proposed program comment to Dave Berwick, Army Affairs Coordinator, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. You may submit electronic comments to: *dberwick@achp. gov.*

FOR FURTHER INFORMATION CONTACT: Dave Berwick, (202) 606–8505.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation ("Council") a reasonable opportunity to comment with regard to such undertakings. The Council has issued the regulations that set forth the process through which Federal Agencies comply with these duties. Those regulations are codified under 36 CFR part 800 ("Section 106 regulations").

Under § 800.14(e) of those regulations, agencies can request the Council to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.6. An agency can then meet its Section 106 responsibilities for those undertakings by taking into account the Council's Program Comment and by following the steps set forth in those comments.

The Army has requested such a Program Comment to cover management of its Capehart and Wherry Era housing. A copy of the draft Program Comment can be found at the end of this notice. Once the public input resulting from this notice is considered, the Council will decide whether to issue a final Program Comment to the Army.

Background on the Capehart and Wherry Army Family Housing Program

Military housing constructed during the 1949–1962 period is commonly called Capehart and Wherry Era housing after the two United States Senators who sponsored national military housing construction programs to address inadequate and substandard military family housing at military installations across the nation. Senator Wherry's program, implemented 1949–1955, allowed developers to construct, own, and maintain military housing on Department of Defense ("DoD") (in this case Army) lands with FHA-insured mortgages. DoD guaranteed occupancy, agreed to long-term leases, and discounted utility rates in exchange for the developer's agreement to established set rental rates and preferential leases for military families. Senator Capehart's program, implemented 1955–1962, called for DoD to purchase the new housing constructed by developers, and to purchase the developer-owned housing previously constructed under the Wherry housing program. DoD remained responsible for operation, maintenance and repair of this housing. Approximately 19,036 buildings constructed during the Capehart-Wherry Era remain in the Army's inventory of family housing.

Approximately 52% of the Army's entire military family housing stock remain from those built during the Capehart and Wherry military family housing construction program between 1949 and 1962. Structures associated with this family housing include detached garages, carports and storage buildings, and the landscape features (including but not limited to the overall design and layout of the Capehart and Wherry Era communities, including road patterns, plantings and landscaping, open spaces, playgrounds, parking areas, signage, site furnishings, views into and out of the community, lighting, sidewalks, setbacks and all other associated cultural landscape features). A small percentage of buildings and structures constructed during this time period were not constructed with funds provided through the Capehart and Wherry funding programs, but are similar in all other respects, and are therefore included as part of this action.

Capehart and Wherry Era buildings were largely constructed from off-the-shelf commercially available plans and specifications and range from single-family detached houses, to multi-unit row houses, duplexes, four-plexes, and multi-story apartment buildings. Brick, frame, cement block, and stucco were typical building materials. While architectural styles were largely consistent, there was some variation including elements of International style and Colonial Revival style. Developers, consistent with principles guiding civilian neighborhood design at the onset of the "baby boom," paid attention to comprehensive neighborhood planning and design. Overall, the Army's Capehart and Wherry Era housing, associated structures, and landscape features reflect the ubiquitous, nation-wide suburban subdivision construction trends of this period.

The Army anticipates that all of it's Capehart-Wherry Era family housing, associated structures and landscape features will be subject to the following categories of undertakings: Maintenance and repair, rehabilitation, renovation, layaway and mothballing, demolition and replacement, and transfer, sale or lease out of government control. The Army is requesting that the Council provide a Program Comment on these categories of undertakings for Army

Capehart Wherry Era family housing, associated structures and landscape features.

The Army is requesting a Program Comment as an Army-wide Section 106 compliance action related to management of Capehart and Wherry era housing, associated structures and landscape features. This programmatic approach will facilitate management actions for privatization and transfer out of federal agency ownership, substantial alteration through renovation, and demolition and replacement of Capehart and Wherry Era housing, associated structures and landscape features that are listed or eligible for listing on the National Register of Historic Places. Therefore, there is the potential for adverse effects to historic properties.

The following is the full text of the draft Program Comment:

Program Comment for Capehart and Wherry Era Army Family Housing

I. Introduction

This Program Comment provides the Department of the Army (Army) with an alternate way to comply with its responsibilities under Section 106 of the National Historic Preservation Act with regard to the following actions in the management of the Capehart and Wherry Era Army family housing: privatization and transfer out of federal agency ownership, substantial alteration through renovation, and demolition and replacement of Capehart and Wherry Era housing, associated structures and landscape features that may be eligible for listing on the National Register of Historic Places.

II. Treatment of Capehart and Wherry Properties

a. Eligibility

The Army has conducted a historic context of its Capehart and Wherry properties. It is documented in a report entitled *For Want of a Home: A Historic Context for Wherry and Capehart Military Family Housing.* On May 22, 2001, the Army sponsored a symposium on Capehart and Wherry Era housing management as it relates to historic preservation. The symposium was attended by preservation experts, including the National Trust for Historic Preservation (Trust), the National Conference of State Historic Preservation Officers (NCSHPO), the Advisory Council on Historic Preservation, and nationally recognized experts in the field of historic preservation from academia and industry. Symposium participants recommended a programmatic approach to complying with Section 106, which is presented in the treatment section outlined below. The Army considers its inventory of Capehart and Wherry properties, including any associated structures and landscape features, to be eligible for the National Register of Historic Places for the purposes of Section 106 compliance.

b. Treatment

The Army has requested a Program Comment as an Army-wide Section 106 compliance action related to management of Capehart and Wherry Era housing, associated structures and landscape features. This programmatic approach will facilitate management actions for privatization and transfer out of Federal agency ownership, substantial alteration through renovation, and demolition and replacement of Capehart and Wherry Era housing, associated structures and landscape features. Such actions present a potential for adverse effects to historic properties.

Based on recommendations coming out of the symposium and follow-up meetings between the Council, the Trust and NCSHPO, the Army has proposed the following three step approach to the treatment of its Capehart and Wherry properties:

(i) The Army will expand and revise the existing historic context, *For Want of a Home: A Historic Context for Wherry and Capehart Military Family Housing.* Consistent with issues identified during the symposium on Capehart and Wherry Housing held by the Army in May 2001, and public review, the historic context will be expanded to address a number of important issues. It will explore changing Army family demographics following the end of the World War II and their impact on housing needs and responsive programs. The context will also focus on post-World War II suburbanization, housing trends and affordable housing programs in the civilian sector. In addition, the context will be expanded to consider the importance of historically important builders, developers and architects that may have been associated with design and construction of Capehart and Wherry Era housing developments at specific Army installations. In addition to addressing the housing units, the context will discuss associated structures, and landscape features. Finally, the context will describe the inventory of Capehart and Wherry Era Housing, providing information on the various types of buildings and architectural styles and the quantity of each.

(ii) The Army will develop Capehart and Wherry Era Neighborhood Design Guidelines. The scoping process identified landscape features as an important attribute of Capehart and Wherry Era land-use planning and development. Neighborhood Design Guidelines would address this issue and be distributed Army-wide. In this manner, Capehart and Wherry Era landscape features would be considered as the Army manages military family housing.

(iii) The Army will document Capehart and Wherry Era housing, associated structures and landscape features through preparation of a video. The video will document representative structural types and landscape features at three installations, and explain the relationship of this housing construction program to topics researched for the expanded historic context. The video will be distributed for educational purposes, and archived by the Army.

The Council believes that this three step approach will ensure that the Army takes into account the effects of management of its Capehart and Wherry Era housing.

III. Applicability

This Program Comment does not apply to the following properties that are listed, or eligible for listing, on the National Register of Historic Places: (a) Archeological sites, (b) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations, or (c) historic properties other than Army Capehart and Wherry Era housing, associated structures and landscape features.

IV. Effect of Program Comment

By following this comment and outlined three step approach, the Army will have met its responsibilities for compliance under Section 106 regarding management of its Capehart and Wherry Era housing. Accordingly, installations will not have to follow the case-by-case Section 106 review process for each individual management action.

The Army may carry out management actions prior to the completion of all of the three treatment steps outlined above, so long as such management actions do not preclude the eventual successful completion of those three steps.

If the Council determines that the consideration of Capehart and Wherry properties is not being carried out in a manner consistent with this Program Comment, the Council may withdraw this comment. Following such

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withdrawal, the Army would comply with the requirements of 36 CFR §§ 800.3 through 800.7 for each individual management action.

Authority: 36 CFR 800.14(e).

Dated: March 15, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–6706 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–02–335]

United States Standards for Grades of Apple Juice from Concentrate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed notice to create a new United States Standard for Grades of Apple Juice from Concentrate is reopened and extended.

DATES: Comments may be submitted on or before April 19, 2002.

ADDRESSES: Written comments may be submitted to: Lydia E. Berry, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *lydia.berry@usda.gov*. Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours and on the Internet.

The draft of the United States Standards for Grades of Apple Juice from Concentrate is available either through the address cited above or by accessing the AMS Home Page on the Internet at: *www.ams.usda.gov/fv/ppb.html*. Any comments received, regarding this proposed standard will also be posted on that site.

FOR FURTHER INFORMATION CONTACT: Lydia E. Berry at (202) 720–5021 or e-mail at lydia.berry@usda.gov.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (66 FR 58430 to 58431; November 21, 2001) requesting comments on a proposal to create a United States Standard for Grades of Apple Juice From Concentrate. The action would create grade standards for apple juice from concentrate that will include a description of the product, style, grades, ascertaining the grade by sample, and ascertaining the grade by lot. The proposed standard would provide a common language for trade, a means of measuring value in the marketing of apple juice from concentrate, and provide guidance in the effective utilization of apple juice from concentrate.

Congressional representatives representing a major apple producing area requested that additional time be provided for interested persons to comment on the proposed standard. The Congressmen believe that extending the comment period will enable the many growers and processors in their districts that have voiced their concern to their offices to respond to our solicitation for comments.

After reviewing the request, the Department is reopening and extending the common period in order to allow sufficient time for all interested persons to file comments.

This notice provides for a 30 day comment period for interested parties to comment on changes to the standards.

Dated: March 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Services.

[FR Doc. 02–6691 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lost Cabin Mine, Medicine Bow-Routt National Forests, Carbon County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of lode and placer exploration at the Lost Cabin Mine. The Lost Cabin Mine is located in Township 14 North, Range 86 West, Sections 1 and 12 in Carbon County, Wyoming. Mining operations would include repairing three existing shafts and obtaining ore samples from four un-patented lode claims. A small loader and track-hoe would be used to obtain the samples, and samples would be crushed on-site and transported from the area using four-wheel and six-wheel all terrain vehicles (ATV's). Approximately 1.6 miles of an existing, closed road (Way 4170) that historically accessed the mine area would need to be widened and repaired to allow access to the site. Roughly ⅛ mile of road would also need to be constructed to link the four un-patented lode claim sites.

An historical search of Government Land Office plats indicate that a "wood road" accessed the mine site as early as 1899. By 1901, an "improved road" that accessed Vulcan Mountain from Saratoga, Wyoming was in place. This road also provided a direct link with the Southern Wyoming Tramway which carried mined ore to a smelter in Encampment, Wyoming. It further provided access to other major mining communities in the near vicinity. Although the road is depicted on Forest Service maps through 1956, more recent maps do not indicate that it is still a part of the Forest Transportation System.

The Lost Cabin Mine is located in the Mowry Peak inventoried roadless area, as described in Appendix G to the Final EIS for the Medicine Bow National Forest Land and Resource Management Plan. If the project is approved as proposed, the proponent would be allowed to widen and repair two miles of an existing, closed road and construct roughly ⅛ mile of road within the roadless area boundary. The EIS will comply with the requirements of the National Environmental Policy Act (42 U.S.C. sections 4321–4370a), the National Forest Management Act (16 U.S.C. 1600–1614), and the U.S. Mining Laws (30 U.S.C. 21–54), and their implementing regulations.

PROJECT PURPOSE: The purpose of the Lost Cabin Mine analysis is to determine how the surface use connected with operations authorized by the United States mining laws (30 U.S.C. 21–54), which grant a statutory right to enter upon public lands to search for mineral deposits, shall be conducted to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of the analysis to determine management of mineral resources. The responsibility for that determination lies with the Secretary of the Interior.

DATES: Comments concerning the proposal and the scope of the analysis will be accepted and considered at any time after publication of this notice in the **Federal Register** and prior to a decision being made. All comments and suggestions are welcome.

ADDRESSES: Send written comments to Melissa Martin, Medicine Bow-Routt National Forest Supervisor's Office, 2468 Jackson Street, Wyoming 82070. Electronic mail (e-mail) may be sent to *mmmartin@fs.fed.us* and FAX may be sent to (307) 745–1398. Telephone: (307) 745–2371.

FOR FURTHER INFORMATION CONTACT: Tom Florich, Recreation and Lands Program Manager, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming, 82070. Telephone: (307) 745–2435.

SUPPLEMENTARY INFORMATION:

Decision To Be Made

The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will include a determination as to where and under what terms and conditions the proponent may access the Lost Cabin Mine while also protecting the surface natural resources in the area and providing for public safety.

Responsible Official

Rick Cables, Regional Forester, USDA Forest Service, Rocky Mountain Region, 740 Simms Street, Golden, Colorado 80401 is the official responsible for making the decision on this action. He will document his decision and rationale in a Record of Decision.

Preliminary Issues

Proposed construction/reconstruction of access roads to the lode sites could alter the character of the Mowry Peak roadless area.

Public Involvement

Public scoping describing the Plan of Operations associated with the Lost Cabin Mine was initiated on January 7, 2002, and 17 comment letters were received. All comments received from the January 7, 2002 scoping effort will be combined with comments received as a result of this Notice of Intent. Comments from both scoping efforts will be reviewed to identify potential issues for this analysis. Since the previously received comments will be incorporated into this analysis, individuals who responded to the January 7, 2002 scoping request need to provide comments at this time only if they wish to provide additional information to what they previously submitted. While comments are welcome at any time, comments received within 30 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. As previously mentioned, comments may be sent by electronic mail (e-mail) to *mmmartin@fs.fed.us*. Written comments may be mailed to the Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming 82070, attention: Melissa Martin. Please reference the *Lost Cabin Mine EIS* on the subject line. The name and mailing address of the commenter should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during July, 2002. At that time, the EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is important that those interested in the management of this area to comment at that time. The final EIS is expected to be available in October 2002. In the final EIS, the Forest Service will respond to any comments received during the public comment period that pertain to the environmental analysis. Those comments and the Forest Service responses will be disclosed and discussed in the final EIS and will be considered when the final decision about this proposal is made.

Release of Names

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27 (d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

The Public's Obligation To Comment

The Forest Service believes it is important to give reviewers an early notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised during the draft EIS stage, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). As a result of these previous court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on this draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points. Please note that any comments that are submitted in relation to this draft EIS will be considered public information.

Dated: March 12, 2002.

Rick Cables,

Regional Forester.

[FR Doc. 02–6674 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Shawnee National Forest (Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Saline, Williamson, and Union Counties, IL)

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare Environmental Impact Statement (EIS).

SUMMARY: The USDA Forest Service intends to prepare an EIS for revising the Shawnee National Forest Land and Resource Management Plan (Forest Plan) pursuant to 16 U.S.C. 1604(f)(5) and USDA Forest Service National Forest System Land and Resource Management Planning regulations. The revised Forest Plan will supersede the Forest Plan, which the Regional Forester approved November 24, 1986, and the significant amendment approved May 14, 1992. This Notice describes the focus areas of change, the estimated dates for filing the EIS, the information concerning public participation, and the names and addresses of the responsible agency official and the individual who can provide additional information.

DATES: We need to receive your comments on this Notice of Intent (NOI) in writing within 60 days after this notice is published in the **Federal Register**. The Draft EIS should be available for public review by December 2003. The Final EIS and revised Forest Plan should be completed by September 2004.

ADDRESSES: Send written comments to: NOI–FP Revision, Shawnee National Forest, 50 Hwy. 145 South, Harrisburg, IL 62946. Or direct electronic mail to *mlross@fs.fed.us* Attn: Forest Plan Revision.

FOR FURTHER INFORMATION CONTACT: Forest Planner, at 618–253–7114. TDY 618–253–1070, or direct electronic mail to: *mlross@fs.fed.us* or access the Forest web page at *www.fs.fed.us/r9/shawnee*.

RESPONSIBLE OFFICIAL: Regional Forester, Eastern Region, 310 W. Wisconsin Ave, Milwaukee, Wisconsin 53203.

SUPPLEMENTARY INFORMATION: The Regional Forester for the Eastern Region gives notice of the agency's intent to prepare an EIS to revise the Shawnee National Forest Plan. The Regional Forester approved the original Shawnee National Forest Plan in November 1986. In May 1992, the Regional Forester approved a significant amendment that substantially replaced the 1986 Forest Plan. This plan guides the overall management of the Shawnee National Forest. We make six primary decisions in the Forest Plan:

1. Forest-wide multiple-use goals and objectives;
2. Forest-wide management requirement;
3. Management area direction;
4. Lands suited and not suited for resource use and production (timber management, etc.);
5. Monitoring and evaluation requirements; and
6. Recommendations to Congress (such as wilderness), if any.

By the requirements of the National Forest Management Act, national forests must revise the Forest Plan every 10–15 years (U.S.C. 1604(f)(5)). At this time, there are three reasons to revise the 1986 and 1992 Amended Forest Plans: (1) The National Forest Management Act of 1976 requires that such plans be revised every 10–15 years (the Regional Forester approved the original Shawnee National Forest Plan in November 1986 and approved the Amended Shawnee National Forest Plan in May 1992); (2) Court direction for additional analysis of certain portions of the 1992 Amended Forest Plan; and (3) agency goals and objectives, along with other national guidance for strategic plans and programs, have changed; The agency Government Performance and Results Act Strategic Plan (2000) has shifted the course of agency program emphasis to sustainability.

In many southern Illinois communities, people value the opportunities public forests provide for enjoying recreation, solitude, nature study, and scenic beauty. People also expect important products from managed forests, such as game species for hunting, commercial recreation events, wood products, and minerals. The Shawnee National Forest is integral to the sense of place for communities across southern Illinois. When making decisions in the revised plan, we would examine economic and social impacts to local communities and at a broader regional level, as well as biological impacts.

We propose to focus our analysis on topics identified as being most critically in need of change. These were identified through public comment and monitoring and evaluation.

Plan Opportunities, Goals and Objectives: We propose changing the Forest Plan's opportunities, goals and objectives by changing the timber resource management goal to a goal for promoting forest ecosystem health and sustainability. This would also result in changes to Forest Plan objectives and standards and guidelines related to timber resource management.

Revision Topics:

1. Watershed Resources,
2. Biological Diversity and Wildlife/Aquatic Habitat;
3. Recreation Management;
4. Forest Ecosystem Health and Sustainability;
5. Mineral Resources;
6. Wilderness, Roadless Areas, Wild and Scenic Rivers; and
7. Land Ownership Adjustment.

Additional detail on the revision topics is available on request, in the form of the document titled "Need for Change, Description of Proposal for Revising the Forest Plan of the Shawnee National Forest". You are encouraged to review this additional document before commenting on the NOI. You may request the additional information by calling the phone number listed above, by writing or e-mailing to the addresses listed in this notice, or by accessing the Forest web page at *www.fs.fed.us/r9/shawnee*.

We propose the following direction or actions for each topic:

1. Watershed Resources:
- Develop a management prescription 6.2 and standards and guidelines for Inahgeh lands and other lands on the historic Mississippi River floodplain;
- Develop a management prescription 6.1 for priority watersheds that provide local drinking water supplies;
- Establish criteria for prioritizing watershed protection and restoration; and
- Review and update the riparian area filterstrip standards and guidelines (6.3 management prescription).

2. Biological Diversity, Wildlife and Aquatic Habitat:
- Refine management direction for forest interior birds;
- Create a 6.7 management prescription for large openland habitat;
- Review Forest-wide standards and guidelines for wildlife opening management;
- Revise standards and guidelines for threatened and endangered species and other species of concern;
- Identify and protect ecosystems at risk of loss or degradation;
- Develop criteria for control of invasive species that are presently degrading native ecosystems;
- Modify current list of Management Indicator Species to represent all communities;
- Develop management area prescriptions and standards and guidelines for habitat restoration in Inahgeh lands;
- Adjust the boundary of the 1.3 management area at Oakwood Bottoms Greentree Reservoir to include recently acquired adjacent forested lands;
- Revise the standards and guidelines pertaining to pesticide use for fish and wildlife management purposes; and
- Review list of species of recreation interest.

3. Recreation Management:
- Expand recreation management goal to include providing a comprehensive system of designated trails that are marked, mapped, designed, and maintained for all season use;
- Restrict equestrian use to system trails and to roads open to vehicular travel;
- Eliminate the Amended Forest Plan map pertaining to ATV/OHM travelways and hiker/equestrian trail corridors;
- Allow ATV/OHM use for access to National Forest land on selected Forest System roads (primarily lower standard local system roads) and close those roads to use by vehicles over 50 inches wide;
- The ATV Access Permit for people with disabilities will be discontinued because all users will be allowed to access the Forest using ATV/OHM's on certain roads;
- Allow mountain bike use on open roads and on designated trails, and provide for links to the rails-to-trails system, where available;
- Revise recreation goal statement to include both developed and dispersed recreation management, emphasizing increased benefits to the public and cost-effective operation. Provide direction to evaluate continued operation of low use or high unit cost recreation areas, and provide direction for new recreation developments; and
- Convert visual management direction from the Visual Management System to the new national Scenery Management System.

4. Forest Ecosystem Health and Sustainability:
- Replace the timber resource management goal with a goal to provide for and enhance forest ecosystem health and sustainability;
- The land base suitable for timber production and the associated allowable sale quantity will be re-evaluated;
- Revise timber management objectives and standards and guidelines;
- Maintain a dominance of oak-hickory in management areas 1.3, 2.1, and 6.6. Add an oak-hickory objective for other management areas based on historic occurrence and ecological landtypes;
- Drop objective for range management except for research purposes;
- Subdivide the 2.1 and 6.6 management areas to reflect differences along ecological boundaries;
- Change management area designation of Fountain Bluff and Iron Mountain from 8.3 to 6.6, to allow for active vegetation management, while providing for protection of heritage resources;
- Revise the standards and guidelines pertaining to pesticide use; and
- Address the control of invasive species and noxious weeds through Forest-wide standards and guidelines.

5. Mineral Resources:
- Decide on suitability and availability regarding oil and gas leasing. No decision will be made on consent to lease at the Forest Plan level; and
- With regard to other direction on oil, gas, and other minerals, no change will be made in the Amended Plan.

6. Wilderness, Roadless Areas, Wild and Scenic Rivers:
- Based on the results of a Forest-wide roadless area analysis, recommendations to Congress for wilderness may be developed;
- Develop appropriate management prescriptions for the Camp Hutchins area and the inventoried roadless area known as Burke Branch and other roadless areas if they are not recommended for wilderness designation;
- Modify standards and guidelines for 5.1 management prescription based on the physical and social issues regarding wilderness, as identified during the Forest Plan revision process;
- Delete 5.2 management area designations;
- Increase the allowable system trail densities in wilderness to a maximum of 2 miles of trail per square mile.
- Formulate management area standards and guidelines for cemetery access and maintenance in wilderness; and
- Complete the classification process of the six streams eligible for study as part of the Wild and Scenic River System, and revise the 9.2 management prescription standards and guidelines to reflect the results of the classification process. If any additional rivers are identified for potential wild and scenic river designation, we will determine their eligibility and highest potential classification.

7. Land Adjustment:
- Revise prioritization list standard and guideline for surface ownership to include the 6.6 management prescription, remove the 5.2 management prescription, and incorporate other management prescriptions that may be identified;
- Recommend a boundary adjustment that incorporates portions of the Mississippi River floodplain into the proclamation boundary and eliminates portions of the proclamation boundary where additional acquistion is not likely;
- Eliminate the Forest Consolidation Map;
- Emphasize acquisition of all available property rights in each land adjustment case; and
- Provide recommendation for statutory boundary adjustment.

New Planning Regulations: The Department of Agriculture published new planning regulations in November of 2000. Concerns regarding the ability to implement these regulations prompted a review with probable revision of these regulations. On May 10, 2001 USDA Secretary Veneman signed an interim final rule extending for one year the May 9, 2001 date by which all land and resource management plan amendments and revisions will be subject to the requirements of the new planning rule adopted November 9, 2000. The interim rule provides that May 9, 2002 a responsible official may elect to continue or to initiate new plan amendments or revisions under the 1982 planning regulations or that the responsible official may initiate amendments or revisions under the new planning rule. The Shawnee National Forest will proceed under the 1982 planning regulations.

Range of Alternatives: We will consider a range of alternatives when revising the Forest Plan. The alternatives will address different options to resolve issues over the focus areas of change listed above and to fulfill the purpose and need. A "no-action alternative" is required, meaning that management would continue under the existing Forest Plan. Alternatives will provide different ways to address and respond to issues identified during the scoping process.

The alternatives will display different mixes of recreation opportunities and experiences. Alternatives will display different mixes of wildlife habitats across the forest. The mix will vary by the objectives of the particular alternative, though each alternative will strive to provide habitat necessary to maintain viable populations of plant and animal species. We will analyze alternatives that examine different levels of vegetation management, including more and less timber harvest. Management of roadless areas will vary by the objectives of any particular alternative, physical criteria for

evaluating each individual roadless area, and public input.

We may make other minor changes, particularly in the guidance chapter of the Forest Plan, to reflect changes made when addressing the above revision topics.

Inviting Public Participation: We are now soliciting comments and suggestions from federal agencies, state and local governments, individuals, and organizations on the scope of the analysis to be included in the DEIS for the revised Forest Plan (40 CFR 1501.7). Comments should focus on: (1) The proposal for revising the Forest Plan; (2) possible alternatives for addressing issues associated with the proposal; and (3) identify any possible impacts associated with the proposal based on an individual's civil rights (race, color, national origin, age, religion, gender, disability, political beliefs, sexual orientation, marital or family status). We will encourage public participation in the environmental analysis and decision-making process.

In spring 2002 we are releasing our NOI and proposal. We will have many types of public involvement including 60-day formal comment period, public meetings, written comments, website, and e-mail.

Following publication of this NOI, the Forest Service will host a series of public meetings to (1) Establish multiple opportunities for the public to generate ideas, concerns, and alternatives, (2) present and clarify proposed changes to the Forest Plan; (3) describe ways that individuals can respond to this NOI; and (4) accept comments from the public on this proposal for revising the Forest Plan.

In the year 2002 we will work on alternative development and issue validation. We will have many types of public involvement including: public workshops, collaborative meetings, written comments, website, and e-mail.

In the year 2003 we will release our proposed revised Forest Plan and DEIS. We will have many types of public involvement including 90-day formal comment period, public meetings, and written comments.

During 2004 we will release the decision, final revised Forest Plan, EIS, and Record of Decision. We will have informational meetings to explain the decisions on the final Forest Plan.

We will provide the public with general notice on opportunities to participate through mailings, news releases, public meetings, and website (www.fs.fed.us/r9/shawnee). In addition to formal opportunities for public comment, we will consider comments received at any time throughout the revision process.

The Shawnee National Forest will host five open house meetings to (1) answer specific questions relative to the NOI and (2) provide information on how to comment on the NOI and to accept written comments from the public. All information shared by the Forest Service will be identical at each meeting. Following is a schedule of the meetings.

April 2, 2002: 2:00–7:00 p.m	Eddyville Community Center, Eddyville, IL 62928.
April 3, 2002: 2:00–7:00 p.m	Ralph Metcalf Federal Building, 77 West Jackson Blvd., Chicago, IL 60404.
April 4, 2002: 2:00–7:00 p.m	Fisher's Hotel and Conference Center, 2100 West Main St., Belleville, IL 62226.
April 10, 2002: 2:00–7:00 p.m	Executive Inn Evansville, 600 Walnut St., Evansville, IN 47708.
April 11, 2002: 2:00–7:00 p.m	Travelodge & Convention Center, 2600 West DeYoung, Marion, IL 62959.

Availability of Public Comment

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record for this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. However, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 or 217.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and when the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Release and Review of the DEIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in 2003. At that time, the EPA will publish a Notice of Availability in the **Federal Register.** The comment period on the DEIS will be 90 days from the date the EPA publishes the Notice of Availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to reviewer's position and contentions [*Vermont Yankee Nuclear Poser Corp.* v. *NRDS, 435 U.S. 519, 553 (1978)*]. Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 90-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Federal Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council of Environmental Quality Regulations (*http://ceq.eh.doe.gov/nepa/nepanet.htm*) for implementing the procedural provision of he National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 12, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–6678 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

West Bear Vegetation Management Project; Wasatch-Cache National Forest, Summit County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Supervisor of the Wasatch-Cache National Forest gives notice of the agency's intent to prepare an environmental impact statement on a proposal to manage forest vegetation in the Bear River drainage. The headwaters of this drainage are located on the west end of the Evanston Ranger District and are located in Utah about 35 miles south of Evanston, Wyoming in the Uinta Mountain Range. The portion of this drainage this is National Forest land and is being considered for treatment contains approximately 13,000 acres, primarily in the West Fork of the Bear River drainage.

The proposed action was developed to address some of the opportunities identified in the West Fork Bear River Assessment. It includes silvicultural treatments to restore forest age class diversity, species composition, and forest stand structure. These proposed treatments included the use of prescribed fire as well as timber harvest. New roads would be constructed to provide access for timber harvest in portions of the area. The volume of timber and amount of new road construction will likely vary among alternatives. The proposal also includes reconstruction or relocation of some poorly located existing roads and improvement or rehabilitation of some existing dispersed recreation sites in the area.

The purpose of and need for this proposal includes the following:

1. To restore forest age class diversity, species composition, and forest stand structure that were likely to have occurred historically in this drainage. Fire suppression and past timber harvesting have resulted in prevalence of mature and old forest in portions of the area, forest succession from seral species to subalpine fir, and dense forest stand conditions not consistent with the historic range of conditions. These conditions have adverse effects on habitat for some wildlife species as well increasing the risk of forest insect epidemics. The project would restore balance to forest conditions reducing the effects of past human activities on some species of wildlife and maintain or rector properly functioning conditions to forest lands in the area.

2. To reduce adverse environmental effects of the existing road system. Many of the roads in this drainage constructed or developed prior to the 1970's are poorly located and designed. Portions need to be relocated or redesigned to reduce sediment delivery to stream channels.

3. To provide timber for harvest from suitable lands contributing opportunities for industry and communities in Utah and Wyoming that are dependent on national forest timber for a portion of their supply and economy.

4. To improve and maintain or/rehabilitate existing dispersed campsites. Some of the dispersed campsites that have developed over the years are on poor locations with poor access roads. There is a need to harden or redesign some sites and to close and rehabilitate other sites and decommission improperly located access roads to reduce damage to soils, vegetation, and streams.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. The first public "scoping" open house is scheduled for March 28, 2002, in Evanston, Wyoming, at the Historic Railroad Depot on front Street in Evanston, Wyoming, from 4:00 to 7:00 P.M. The purpose of this open house is to learn what issues members of the public or interested agencies believe are involved in the proposal. Knowledge of the issues will help establish the scope of the Forest Service environmental analysis and define the kind and range of alternatives to be considered. Forest Service officials wild describe and explain the proposed actions and the process of environmental analysis and disclosure to be followed in evaluating this proposal. The Forest Service welcomes any public comments on the proposal.

DATES: Comments concerning the scope of the analysis should be received in writing by April 19, 2002.

ADDRESSES: Send written comments to Stephen Ryberg, District Ranger, Evanston, WY 82930.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Environmental Planner, (307) 789–3194, or Kent O'Dell, Timber Management Coordinator, (307) 782–6555.

SUPPLEMENTARY INFORMATION: The proposal to manage forest vegetation in the Bear River drainage includes timber harvesting, prescribed burning, construction and reconstruction of roads, and hardening, rehabilitating or relocating dispersed campsites and their access roads. There are a variety of forest cover types in this drainage, including spruce/fir, mixed conifer, lodgepole pine, mixed conifer and aspen, and pure aspen. Proposed silvicultural prescriptions include selective management in the spruce/fir and mixed conifer, thinning and small patch cuts in the lodgepole pine, and conifer removal combined with prescribed fire in the mixed conifer/aspen and pure aspen forest cover types.

Proposed new road construction would be limited to that needed for access for management activities. Most of these roads would be closed or decommissioned following management activities. Several of these roads may be opened for public use to replace existing roads that would be decommissioned. There is no proposed road construction in inventoried roadless areas.

Proposed reconstruction or relocation of existing roads would emphasize improving design of the roads near stream crossings and relocating or improving drainage where the roads are near stream channels.

Proposed hardening, redesign, or relocation of dispersed campsites and their access roads would be emphasized where these sites or their access roads are resulting in soil erosion, especially near water bodies.

The decision to be made is whether to implement the proposed activities listed above.

The Wasatch-Cache National Forest Land and Resource Management Plan provides standards and guides for forest and road management. This direction is located in Chapter IV under the Whitney Management Area and under Forest-wide Standards and Guides. The proposed action is consistent with the Forest Plan.

A U.S. Army Corps of Engineers "404 Permit" for dredging and filling waters

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and/or wetlands will be required for any road work in stream channels or riparian areas. A determination of effects on Canada lynx will be required from the U.S. Fish and Wildlife Service. The Forest Service will request the U.S. Army Corps and U.S. Fish and Wildlife Service to cooperate in the environmental analysis, and may request cooperation from other State or Federal agencies.

The Deciding Official will be Tom Tidwell, Forest Supervisor, Wasatch-Cache National Forest, 8236 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

A draft environmental impact statement is expected to be published in 2002, with public comment on the draft material requested for a period of 45 days, and completion of a final environmental impact statement later in 2002.

The 45 day public comment period on the draft environmental impact statement will commence on the day the Environmental Protection Agency publishes a "Notice of Availability" in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposed so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on the draft environmental impact statement will be regarded as public information.

Dated: March 14, 2002.

Tom Tidwell,

Forest Supervisor.

[FR Doc. 02–6677 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, April 1, 2002. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include the following topics:

Discussion of the decision for the Opal Creek SRA Environmental Analysis;
Transition of the Council membership in accordance with provisions of the Council Charter;
Creating a to-do list of future topics the Council will deal with;

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the April 1 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: March 14, 2002.

Y. Robert Iwamoto,

Acting Forest Supervisor.

[FR Doc. 02–6673 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast provincial Advisory Committee (PAC) will meet on April 11, 2002. The meeting will begin at 9 a.m., in the Cape Perpetua Visitor's Center, 2400 Highway 101, Yachats, Oregon. Agenda items, with a theme of "aquatic issues," will include: FS/BLM process to establish priority watersheds; locations of priority watersheds; restoration results on the BLM Nestucca and FS Knowles Creek projects; pre-commercial thinning obstacles; barriers to upland restoration; local jobs created through thinning; and round robin information sharing. A fifteen-minute public comment period is scheduled at approximately 1:45 p.m. The committee welcomes the publics' written comments on committee business at any time. The meeting should end around 3 p.m. Interested citizens are encouraged to attend. Lunch will be provided.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541/750–7075 or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

Dated: March 14, 2002.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 02–6676 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, March 27, at the Gifford Pinchot National Forest Headquarters, located at 10600 NE 51st Circle, Vancouver, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. The purpose of the meeting is to learn about: (1) The possibilities of meth labs in the forest, (2) how special interest groups interpret mature and old growth protection and forest restoration, (3) an overview of the strategy for protection of the Columbia River and basin-wide habitat recovery, (4) the water quality restoration plan for the Wind and Upper Cispus Rivers, and (5) provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: March 14, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–6675 Filed 3–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On December 19, 2001, in response to a request made by Hysla, S.A. de C.V. ("Hylsa"), the Department of Commerce ("the Department") published in the Federal Register (66 FR 65470) a notice announcing the initiation of an administrative review of the antidumping duty order on circular welded non–alloy steel pipe from Mexico. The review period is November 1, 2000 to October 31, 2001. This review has now been rescinded because Hylsa has withdrawn its request for review.

EFFECTIVE DATE: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: John Drury, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0195.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Scope of the Review

The products covered by these orders are circular welded non–alloy steel pipes and tubes, of circular cross–section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load–bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load–bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Background

On November 30, 2001, Hylsa (a producer and exporter of subject merchandise) requested an administrative review of the antidumping duty order on circular welded non–alloy steel pipe from Mexico published in the Federal Register on November 2, 1992 (57 FR 49453). On December 17, 2001, hylsa withdrew its request for review. On December 19, 2001, the Department published in the Federal Register (66 FR 65470) a notice of "Initiation of Antidumping and Countervailing Duty Administrative Reviews" initiating the administrative review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Given that Hylsa was the only party to request the administrative review, and the withdrawal request is timely, we find it reasonable to accept the withdrawal request. Therefore, we are rescinding

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this review of the antidumping duty order on circular welded non–alloy steel pipe from Mexico covering the period November 1, 2000 through October 31, 2001.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 5, 2002.

Joseph A. Spetrini,

Dèputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–6741 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Notice of Initiation of Antidumping Duty Investigation: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigation.

EFFECTIVE DATE: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Paige Rivas at (202) 482–6320 and (202) 482–0651, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petition

On February 21, 2002, the Department received a petition filed in proper form by Anvil International, Inc., and Ward Manufacturing Inc. (collectively, the petitioners). The Department received information supplementing the petition on March 5, 2002 and March 11, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of non–malleable cast iron pipe fittings and ductile cast iron pipe fittings that have the same physical characteristics as non–malleable cast iron pipe fittings (pipe fittings) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate (*see* the *Determination of Industry Support for the Petition* section below).

Scope of Investigation

For purposes of this investigation, the products covered are finished and unfinished non–malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or un–threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as cast iron pipe fittings or gray iron pipe fittings. These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or Push On ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications–AWWA C110 or AWWA C153 are not included.

Imports of covered merchandise are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See, Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (May 19, 1997). The Department encourages all parties to submit such comments within 20 days from the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The scope comment period is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

[1] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, the petitioners do not offer a definition of domestic like product distinct from the scope of these investigations. Thus, based on our analysis of the information presented to the Department by the petitioners, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigation* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Information contained in the petition demonstrates that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. *See, Petition for Imposition of Antidumping Duties: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China (Pipe Fittings Petition)*, dated February 21, 2002, at page 3. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. *See, Import Administration AD Investigation Checklist*, dated March 13, 2002 (*Initiation Checklist*) (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See, Initiation Checklist.* Thus, the requirements of section 732(c)(4)(A)(ii) are met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See, Initiation Checklist.*

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production (FOP) are detailed in the *Initiation Checklist.*

The anticipated period of investigation (POI) for the PRC, a non–market economy (NME) country, is July 1, 2001 through December 31, 2001. Regarding an investigation involving an NME country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of the investigation of pipe fittings from the PRC, all parties will have the opportunity to provide relevant information related to the issue of the PRC's status and the granting of separate rates to individual exporters.

Export Price

The petitioners identified the following three companies as producers and/or exporters of pipe fittings from the PRC: Eathu Casting & Forging Co., Ltd., GMS Pipe Fittings Industries, and ShenYang Metalcast Co., Ltd. To calculate export price (EP), the petitioners provided the average unit value (AUV) calculated from import statistics released by the Census Bureau. The petitioners calculated the AUV using the quantity and value of imports during the POI of pipe–fittings from the PRC, entered under HTSUS subheadings 7307.11.00.30 and 7307.11.00.60, the two HTSUS numbers covering non–malleable cast iron pipe fittings.

The petitioners calculated a net U.S. price by deducting from the AUV foreign inland freight. *See Initiation Checklist.*

Normal Value

The petitioners assert that the PRC is an NME country and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is an NME. *See, Steel Concrete Reinforcing Bars from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value (Re–Bars from China)*, 66 FR 33522 (June 22, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China (Foundry Coke from China)*, 66 FR 39487 (July 31, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

For normal value (NV), the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. pipe fittings producer for non–malleable cast iron pipe fittings. The petitioners assert that information regarding the Chinese producers' consumption rates is not available, and have therefore assumed, for purposes of the petition, that producers in the PRC use the same inputs in the same quantities as the petitioners use, except where a variance from the petitioners' cost model can be justified on the basis of available information. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national product (GNP). Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Raw materials were valued based on Indian import values, as published by *Monthly Statistics of the Foreign Trade of India* (*Indian Import Statistics*) for February

Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

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2001. Because these values are from a period preceding the POI, the petitioners inflated the value to December 2001 levels where appropriate, using the Indian Wholesale Prices Index (as published in the *International Financial Statistics* of the International Monetary Fund).

Labor was valued using the Department's regression–based wage rate for the PRC, in accordance with past Department practice. *See, Pipe Fittings Petition* at 14 and citations discussed therein. Electricity was valued using the 1997 Indian electricity prices for industry as published in the fourth quarter 2001 issue of *Energy Prices and Taxes*, published by the Organization for Economic Cooperation and Development's International Energy Agency. To inflate the price to December 2001 levels, the petitioners multiplied the computed amount by an inflation factor. *See, Pipe Fittings Petition* at 15 and 16.

Foundry coke was valued using Indian Import Statistics for February 2001. To inflate the price to December 2001 levels, the petitioners multiplied the computed amount by an inflation factor, and adjusted for price differences between U.S. foundry coke and blast furnace coke prices in the first quarter of 2001. *See, Pipe Fittings Petition* at 14 and 15.

We find the petitioners' calculation of foundry coke to be inappropriate because there is no evidence based on the actual Indian data that: (1) the data included the import value for both blast furnace coke and foundry coke, as claimed in the petition, and (2) the majority of Indian imports was of blast furnace coke. Accordingly, we have recalculated the surrogate value for foundry coke based on the figures in the *Indian Import Statistics* without any further adjustments.

The petitioners derived the surrogate value for natural gas from a price the Department utilized in the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183 (May 3, 2001). To convert to the unit of measurement used in the production factors of the U.S. surrogate, the petitioners multiplied the amount by 1,000. To inflate the price to December 2001 levels, the petitioners multiplied the computed amount by a U.S. inflation factor because it was denominated in U.S. dollars. *See, Pipe Fittings Petition* at 16. For overhead, depreciation, selling general and administrative (SG&A) expenses, the petitioners applied rates derived from the fiscal year financial statements as of December 31, 2000, of an Indian pipe fittings producer that the petitioners believe to produce iron and steel castings, including cast iron pipes and fittings. The Indian pipe fittings producer did not make any profits in both 2000 and 2001; therefore, the petitioners calculated the profit ratio using the financial statements of another Indian steel producer using the financial statements of that company as of March 31, 2001. *See, Pipe Fittings Petition* at 17. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation.

The petitioners did not include packing materials in its computation because it was unable to obtain information on this expense. The petitioners valued packing labor using the direct labor rate published on the Department's website. *See, Pipe Fittings Petition* at 17.

Based upon the comparison of EP to NV, the estimated dumping margin is 38.25 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of pipe fittings from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than NV. The volume of imports from the PRC, using the latest available data, exceeded the statutory threshold of seven percent for a negligibility exclusion. See, section 771(24)(A)(ii) of the Act. The petitioners contend that the industry's injured condition is evidenced in the declining trends in operating income, decreased U.S. market share, and increasing Chinese imports. The allegations of injury and causation are supported by relevant evidence including U.S. Customs' import data, domestic consumption, and domestic production information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See, Initiation Checklist.*

Initiation of the Antidumping Investigation

Based on our examination of the petition on pipe fittings, and the petitioners' response to our supplemental questionnaire clarifying the petition, and additional independent data, we find that the petition meets the requirements of section 732 of the Act. *See, Initiation Checklist.* Therefore, we are initiating the antidumping duty investigation to determine whether imports of pipe fittings from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than April 8, 2002 whether there is a reasonable indication that imports of pipe fittings from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 13, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–6739 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

Background

On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on persulfates from the People's Republic of China. The period of review is July 1, 2000 through June 30, 2001. The review covers one exporter of the subject merchandise to the United States.

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. Due to the complexity of selecting surrogate values to value factors of production, the large numbers of the surrogate values, and the fact that the Department shall conduct verification in this proceeding, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751 (a)(3)(A) of the Act, we have fully extended the deadline until July 31, 2002.

Dated: March 13, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6740 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector and Functional Advisory Committees for Trade Policy Matters (ISACs and IFACs); Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Notice of charter renewal and opportunity to nominate candidates for vacancies on the ISACs and IFACs.

SUMMARY: On March 18, 2002, the Secretary of Commerce and the United States Trade Representative (USTR) renewed the charters of the 17 Industry Sector and four Industry Functional Advisory Committees on Trade Policy Matters for a two-year term to expire March 18, 2004. The Industry Sector and Functional Advisory Committees (ISACs and IFACs) advise the United States Trade Representative and the Secretary of Commerce on trade matters. There are currently opportunities for membership on each of these Committees, including opportunities to serve as environmental representative on three of the Committees: ISAC 3 (Chemicals and Allied Products), ISAC 10 (Lumber and Wood Products), and ISAC 12 (Paper and Paper Products). Nominations will be accepted for current vacancies and those that occur throughout the remainder of the charter term, which expires on March 18, 2004. In order to be considered for appointment to the ISACs and IFACs, a nominee must be a U.S. citizen who is not a full-time employee of a governmental entity, is not registered with the Department of Justice under the Foreign Agents Registration Act, and represents a U.S. entity that trades internationally or an association of such entities (an environmental nominee must represent a U.S. entity with an interest in environmental issues relevant to the work of these Committees). Priority will be given to manufacturing establishments and firms that are outside of the Washington, DC area. U.S.-based subsidiaries of foreign companies, non-government organizations (except environmental organizations applying to ISAC 3, ISAC 10, and ISAC 12), and academic institutions do not qualify for representation on a Committee.

Recruitment: Vacancies may occur throughout the charter period and new appointments are made on a rolling basis. Recruitment information is available on the International Trade Administration website at: *www.ita.doc.gov/icp*. Further inquiries may be directed to Ingrid V. Mitchem, Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 2015–B, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix 2), the Secretary of Commerce (the Secretary) and the United States Trade Representative (USTR) have renewed the charters of seventeen ISACs and four IFACs. The Secretary and USTR welcome nominations for the Industry Sector Advisory Committees for Trade Policy Matters (ISACs) and the Industry Functional Advisory Committees for Trade Policy Matters (IFACs) listed below:

- Industry Sector Advisory Committees for Trade Policy Matters (ISAC) on:

Aerospace Equipment (ISAC 1);
Capital Goods (ISAC 2);
Chemicals and Allied Products (ISAC 3);
Consumer Goods (ISAC 4);
Electronics and Instrumentation (ISAC 5);
Energy (ISAC 6);
Ferrous Ores and Metals (ISAC 7);
Footwear, Leather, and Leather Products (ISAC 8);
Building Products and Other Materials (ISAC 9);
Lumber and Wood Products (ISAC 10);
Nonferrous Ores and Metals (ISAC 11);
Paper and Paper Products (ISAC 12);
Services (ISAC 13);
Small and Minority Business (ISAC 14);
Textiles and Apparel (ISAC 15);
Transportation, Construction, Mining, Agricultural Equipment (ISAC 16);
Wholesaling and Retailing (ISAC 17); and

- Industry Functional Advisory Committees on Trade Policy Matters on:

Customs (IFAC 1);
Standards (IFAC 2);
Intellectual Property Rights (IFAC 3); and
Electronic Commerce (IFAC 4).

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Background

In section 135 of the Trade Act of 1974 (1974 Trade Act, 19 U.S.C. 2155), as amended, Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) directs the President to

> Seek information and advice from representative elements of the private sector and the non-federal governmental sector with respect to—
>
> (A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the Trade Act of 1974 and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];
>
> (B) The operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and
>
> (C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States * * *

Section 135(c)(2) of the 1974 Trade Act provides that—

> (2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—
>
> (A) Consult with interested private organizations; and
>
> (B) Take into account such factors as—
>
> (i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,
>
> (ii) the character of the non-tariff barriers and other distortions affecting such competition,
>
> (iii) the necessity for reasonable limits on the number of such advisory committees,
>
> (iv) the necessity that each committee be reasonably limited in size, and
>
> (v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, DC. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings.

The Secretary of Commerce and the USTR co-chair the seventeen ISACs and IFACs.

Functions

The duties of the ISACs and IFACs are to provide the President with advice on objectives and bargaining positions for multilateral trade negotiations, bilateral trade negotiations, and other trade-related matters. The Committees provide bipartisan, industry input in the development of trade policy objectives. The Committees' efforts result in strengthening the U.S. negotiating position by enabling the United States to display a united front when it negotiates trade agreements with other nations.

The ISACs provide advice and information on issues that affect specific sectors of U.S. industry. The ISACs address market-access problems; barriers to trade; tariff levels; discriminatory foreign procurement practices; information, marketing, and advocacy needs of their sector; and other important trade issues.

The IFACs focus on cross-cutting issues that affect all industry sectors, such as customs matters, product standards, and intellectual property rights. Other functional issues, such as government procurement and subsidies, are handled in ad hoc meetings. Each ISAC may also select a member to serve on each IFAC so that a broad range of industry perspectives is represented.

Committees meet an average of four times a year, in Washington, DC. Members are responsible for all travel expenses incurred to attend the meetings.

Membership

ISAC and IFAC members are appointed jointly by the Secretary of Commerce and the USTR. Appointments are made at the rechartering of each Committee and periodically throughout the two-year charter period. Members serve at the discretion of the Secretary and USTR. Appointments to an ISAC or IFAC expire at the end of the Committee's charter. However, members may be re-appointed, should the Committee's charter be renewed, if the member proves to work effectively with the committee and his/her participation is still needed.

Each Committee is made up of approximately 30–50 members, based on the charter of each Committee. Each Committee elects a chairperson from the membership of the Committee.

Eligibility

Eligibility for membership on any Committee is limited to U.S. citizens who are not full-time employees of a governmental entity, are not registered with the Department of Justice under the Foreign Agents Registration Act, and represent a U.S. entity that (a) is directly engaged in the import or export of goods or that sells its services abroad, (b) is an association of such entities, or (c) with respect to environmental representatives serving on ISACs 3, 10 or 12, has an interest in environmental issues relevant to the work of the Committee. For purposes of the preceding sentence, a "U. S. entity" is an organization incorporated in the United States (or if unincorporated, having its headquarters in the United States:

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) At least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Nominees are considered based upon their ability to carry out the goals of section 135 of the Trade Act of 1974, as amended. Secondary criteria are ensuring that the Committees are balanced in terms of points of view, demographics, geography, and company size. Appointments to all ISACs and IFACs are made without regard to political affiliation.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, DC 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: March 13, 2002.

Linda M. Conlin,

Assistant Secretary for Trade Development.

[FR Doc. 02–6660 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020213030–2030–01; I.D. No. 012202C]

Announcement of Funding Opportunity to Submit Proposals for the Monitoring and Event Response for Harmful Algal Blooms (MERHAB) Program

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of funding availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this document is to advise the public that CSCOR/COP is soliciting proposals for two types of projects: targeted research and regional intensive monitoring.

CSCOR/COP is soliciting targeted research proposals for one to three years of research and development of tools, approaches and technologies that could be included as routine components of existing Harmful Algal Bloom (HAB) monitoring programs. CSCOR/COP is also soliciting proposals from regional multi-investigator partnerships of one to five years for intensive monitoring of HABs that build the capacity of existing local, state, tribal, or regional coastal monitoring programs to provide early warning of HAB events to coastal communities and increase regional ability to rapidly respond to HAB events. Funding is contingent upon the availability of Federal appropriations. Projects funded under this announcement are anticipated to have a September 1, 2002, start date.

DATES: The deadline for receipt of proposals at the CSCOR/COP office is 3 p.m., e.s.t., April 25, 2002. Note that late-arriving applications provided to a delivery service on or before April 24, 2002, with delivery guaranteed before 3 p.m., e.s.t., on April 25, 2002, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed prior to the specified closing date and time and, in any event, the proposals are received in the CSCOR/COP office by 3 p.m. e.s.t., no later than two business days following the closing date.

ADDRESSES: Submit the original and 19 copies of your proposal to (MERHAB02) Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI2), SSMC No. 4, 8th Floor, Station 8243, 1305 East-West Highway, Silver Spring, MD 20910. NOAA and Standard Form Applications with instructions are accessible on the CSCOR/COP Internet site http://www.cop.noaa.gov under the COP Grants Information Section, Part D, Application Forms for Initial Proposal Submission. For application forms, see Budget and

Application forms section. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures. If you are unable to access this information, you may call CSCOR/COP at 301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT:

Technical Information. Marc Suddleson, MERHAB 2002 Program Manager, CSCOR/COP, 301–713–3338/ext 162, Internet: marc.suddleson@noaa.gov

Business Management Information. Leslie McDonald, COP Grants Administrator, 301–713–3338/ext 155, Internet: Leslie.McDonald@noaa.gov

SUPPLEMENTARY INFORMATION: The following web sites furnish supplementary information from reports dealing with harmful algal blooms: Boesch et.al Feb 1997, Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control and Mitigation, Silver Spring, MD at http://www.cop.noaa.gov/pubs/das/das10.html; and Anderson *et.al.* Sept 2000, Estimated Annual Economic Impact from Harmful Algal Blooms (HABs) in the U.S. WHOI at http://www.redtide.whoi.edu/hab pertinentinfo /Economics—Report.pdf).

Information on the Harmful Algal Bloom and Hypoxia Research and Control Act and the 2000 National Assessment of HABs in U.S. Waters, National Science and Technology Council Committee on Environment and Natural Resources (CENR), Washington, DC, can be located at http://www.habhrca.noaa.gov.

Details about ongoing MERHAB projects currently funded by the CSCOR/COP MERHAB Program are found at

http://www.cop.noaa.gov/Fact—Sheets/MERHAB.htm. Hard copies of these resources can be obtained from the CSCOR/COP office.

Background

Program Description

For complete program description and other requirements for CSCOR/COP, see the General Grant Administration Terms and Conditions annual notification in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page.

In spite of a growing list of affected resources and coastal communities, our ability to prevent, control, and mitigate the impacts of HABs remains limited. Acting on the findings of a 1996 NOAA and DOI Report, Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control and Mitigation, the research agenda of the Ecology and Oceanography of Harmful Algal Bloom (ECOHAB) program for the past five years has focused on building a scientific understanding about the cause and behavior of HABs. ECOHAB continues to support research that develops understandings of the linkages between the biology, ecology, physiology, and behavior of harmful species and the physics, chemistry, bathymetry, and meteorology of the surrounding environment. ECOHAB research is developing the capabilities to forecast bloom landfall, evaluate toxicity, and provide mitigation strategies that might ameliorate the impact of blooms along U.S. coasts. ECOHAB is also producing new state-of-the art HAB technologies, such as detection assays and molecular probes.

With the maturation of ECOHAB and other HAB research programs, more effort is needed to adapt their research products into regionally and locally tested tools that can be used to prevent, control, or mitigate the impact of HABs. The 1996 NOAA and DOI Report noted that knowledge about the basic information on the causes and behavior of HABs would ultimately lead to the development of prevention, control, and mitigation (PCM) strategies. The plan called for Federal and state agencies with responsibilities for resource management, environmental protection, and public health to support PCM research.

While prevention of HABs is the preferred management option, effort to enhance the current abilities to reduce the incidence and extent of harmful algal blooms (before they begin) requires additional research and face legislative hurdles. For example, more research is needed to determine whether a cause-and-effect relationship exists between increased pollution and nutrient loading and an incidence of some HAB species (e.g., Pfiesteria, Pseudo-nitzchia, cyanobacteria). Further, a national regulatory strategy to effectively control polluted run off and nutrient loading is under development; but more research is required to educate decision makers.

Efforts to control HABs are also being explored, but these too face serious scientific and policy hurdles. Attempts to use chemicals to directly control HAB

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cells encounter many logistical problems and environmental objections. Chemicals are likely to be nonspecific, indiscriminately targeting all co-occurring algae and other organisms along with the target algal species. Chemical application and other options, such as flocculants or biological controls need additional research to determine their wider impacts to the coastal ecosystem.

Strategies to mitigate or minimize human health risks, ecosystem damage, fisheries losses, and declines in tourism due to algal blooms are currently the best option for coastal management of the HAB problem. Many different types of actions can be taken to mitigate the impact of HABs, including forecasting bloom development and movement, monitoring HAB cells and toxins, and responding rapidly to HAB events.

Monitoring combined with rapid response to HAB events has been identified as the most effective way to mitigate the impact of HABs (CENR . 2000). A number of coastal states have existing HAB monitoring programs designed to prevent human illness from shellfish poisoning syndromes and to monitor the environment for blooms and forecast their development and movement. State shellfish monitoring programs detect toxins in different fisheries species either to provide advance warning of outbreaks or to delineate areas that require harvest restrictions. State environmental monitoring programs for plankton and fish in coastal estuaries and bays provide early warning of blooms.

Many states supplement their HAB monitoring activities with rapid response teams that are deployed to assess suspected HAB events. HABs have the potential to develop rapidly, and often the observable event may be short-lived. Rapid response is essential to ensure that the appropriate sampling is done to determine whether a HAB event is in progress. Regions also have established communication networks to distribute information about outbreaks to researchers, managers, and the public. Providing rapid and accurate information is critical to assess the risks to resources and human health and to avoid public misconceptions about the safety of coastal resources. Such misconceptions have caused severe economic impacts to regions not directly affected by HAB events. A study completed by Woods Hole Oceanographic Institute in September 2000 calculated the total estimated annual cost from HABs on public health, commercial fisheries, recreation and tourism, and monitoring and management in the United States to be $49 million. This estimate was noted by the authors to be highly conservative and sensitive to single events that equal or exceed the total estimated economic impact.

Many coastal communities experiencing HABs are not covered by regular public or private monitoring programs for HABs, and many do not receive adequate information about outbreaks. State monitoring programs have not kept pace with the expansion of the HABs problem. Tight state budgets and the need to monitor for more toxins in more organisms over larger areas have left many monitoring programs underfunded. Further, support of state monitoring efforts through the Federal Clean Water Program has not specifically addressed the need for increased HAB monitoring. The problem is exacerbated by managers' inability to quantify the benefits to human health, commercial fisheries, recreation and tourism of controlling HABs and to compare these to the costs of mitigation strategies.

CSCOR/COP Program Interest

Through the MERHAB program, CSCOR/COP intends to build capabilities of local, state, tribal, and private sector for regular and intensive measurement of HAB parameters. This will make existing monitoring programs more efficient while providing better coverage in time and space. MERHAB will enable rigorous field testing of state-of-the-art technology through targeted projects and will incorporate the new methods of detecting and tracking HABs into existing monitoring programs through regional, intensive monitoring projects. MERHAB will also develop event-response capabilities within affected regions to ensure trained and equipped personnel are able to mobilize quickly, conduct appropriate sampling and testing, and communicate effectively during HAB events.

With faster, less expensive, and more reliable detection methods for HAB cells and toxins, and stronger mechanisms in place to respond to outbreaks, programs will be better able to mitigate the impact of HABs on vital resources and will protect public health. As a result, managers will be able to better address the expanding HAB problems facing their coastal regions and, therefore, they will be better positioned to request long-term support from Federal and state agencies or from other funding entities.

Goal

The primary goal of the MERHAB program is to incorporate products generated from past or ongoing HAB research programs into operational components of existing monitoring programs in HAB-impacted coastal regions. MERHAB is not intended to provide long-term support for routine monitoring efforts.

A. MERHAB-Targeted Research Projects

(1) Objectives: (a) Develop a technology that will enhance HAB monitoring activities in U.S. coastal waters; and (b) incorporate that technology into existing HAB monitoring programs.

(2) Characteristics: (a) Should rigorously field-test new technologies to detect algal species, toxin, or toxicity and/or monitor the environmental conditions that support HABs. New technologies may include, but are not limited to, rapid field assays for shellfish, improved diagnostic techniques for in situ detection of HAB cells, and remote sensing technology to help target sampling efforts; (b) May be led either by an individual or by small investigative team; and (c) Must address specified research needs of the HAB community.

Investigators should include in their work plans efforts to build support for the incorporation of technology into one or more existing HAB monitoring programs. (See Part II: Further Supplementary Information Section (11) "Project Funding Priorities.")

B. MERHAB-regional, Intensive Monitoring Projects

(1) Objectives: (a) Develop new or increase existing regional capabilities for HAB monitoring; (b) Incorporate new tools for HAB measurement into existing monitoring efforts; (c) Include local, state, regional, Federal, or non-governmental entities as active partners in identifying environmental measurements and their importance to managing coastal resources and protecting human health (i.e. generating public advisories) in the area; (d) Determine long-term local and regional support that will assume financial responsibility for resulting enhancements in HAB monitoring once NOAA support has ended; and (e) Develop local and/or regional capabilities to respond to HAB events.

(2) Characteristics: (a) Include a suite of annual studies and involve a multi-disciplinary, collaborative team of investigators. The team should represent groups with strong interests in improved HAB monitoring, including, but not limited to, the natural and social science research community, existing monitoring programs, communities dependent upon affected resources, industry, and non-profit organizations; (b) Provide evidence that local, state, tribal, regional, and Federal representatives were consulted in the development of the proposal to ensure appropriate economic, regulatory, and management issues are addressed; (c) Include a plan for continued consultation with these representatives to facilitate the incorporation of research results into existing monitoring programs and to identify means to continue HAB monitoring efforts after MERHAB project funding has ended; (d) Form a management team with a designated chairperson serving as the main point of contact with the MERHAB Program Manager.

In similar CSCOR research programs (i.e. ECOHAB), management teams provide strong leadership and solid partnerships among principal investigators and collaborators. Teams serve to interpret results collected from the expanded suite of pilot studies, permitting acceptance or rejection of the approaches, techniques, or tools explored during each annual budget period. MERHAB management teams will also analyze results for application under local conditions and assess effectiveness under specific constraints so that application to other coastal systems or species may be determined.

Shared Research Project Characteristics

The following characteristics are shared by both MERHAB-Targeted projects and MERHAB-regional, intensive monitoring projects.

(1) Project results will be distributed to stakeholders via scientific, peer-reviewed articles, synthesis documents, briefings, electronic web sites, and any other means defined by the proposers.

(2) Project proposals should clearly identify a timetable of accomplishments and major program elements that will lead to specific interim and final assessments of applicability and effectiveness of a number of monitoring approaches.

Continuation of funding will be contingent upon the determination by the awarding agency that the selected project is on course to provide both interim and final products that will improve HAB monitoring capabilities in the local or national coastal environment impacted by HABs.

Expected Products and Outcomes

A. MERHAB-Targeted Projects

(1) Development and testing of new HAB monitoring tools;

(2) Demonstration of effective application of technology in an existing monitoring program; and

(3) Comprehensive data analysis and integration that advances the state of science and management (i.e. technical reports, peer-reviewed publications, databases, numerical and conceptual models, etc.).

B. MERHAB-regional, Intensive Monitoring Projects

(1) Include regional stakeholder input and participation through means that may include, but are not limited to, annual workshops, management and technical advisory committees that involve a broad spectrum of regional interests and training in use of new technology;

(2) Provide recommendations to management of the parameters to be measured in a region and the types of instruments that should be developed or adapted into existing monitoring programs;

(3) Deploy new HAB monitoring tools in existing monitoring programs;

(4) Conduct comprehensive data analysis and integration that advances the state of science and management. (i.e. technical reports, peer-reviewed publications, data bases, numerical and conceptual models; regional case studies with explicit applications to important management issues; risk analysis of management scenarios; regional economic valuation of direct and indirect costs associated with HAB events; and region-specific management recommendations based on study results);

(5) Accept commitments from one or more local, state, tribal, regional, or Federal organizations for continued, long-term support of expanding HAB monitoring capabilities;

(6) Develop real-time, scientific response capability during HAB outbreaks for the region that includes, but is not limited to, the use of local experts, establishing local academic-government- NGO-private partnerships for providing immediate analytical and sampling capacities, and expanding local abilities for transferring samples to analytical services outside the region; and

(7) Outreach to improve awareness of HAB outbreaks and their environmental and societal costs, and to mitigate their impact on vital natural resources, public health and local/regional economies.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 19 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients must follow the instructions in the preparation of the CSCOR/COP application forms included in Part II: Further Supplementary Information, (10) Application forms and kit. Each proposal must also include the following nine elements or it will be returned to sender without further consideration:

(1) *Standard Form 424.* At time of proposal submission, all applicants shall submit the Standard Form, SF–424 (Rev 7–97), "Application for Federal Assistance," to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Signed summary title page.* The title page should be signed by the Principal Investigator (PI). The Summary Title page identifies the project's title starting with the acronym MERHAB 2002, a short title (less than 50 characters), the lead PI's name and affiliation, and complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-investigator proposals must include the names and affiliations of each investigator on the title page. Multi-institution proposals must also identify the lead investigator from each fiscal year for each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are required on the title page from the additional institutions. Lead investigator and separate budget information is not requested on the title page for institutions that are proposed to receive

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funds through a subcontract to the lead institution.

(3) *One-page abstract/project summary.* The Project Summary (Abstract) Form, submitted with the application, must include summaries of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed CSCOR/COP format for the Project Summary Form can be found on the CSCOR/COP Internet site under the CSCOR/COP Grants Information section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(4) *Statement of work/project description.* The statement of the proposed work/project must be complete and include: identification of the problem, scientific objectives, proposed methodology, relevance to the MERHAB 2002 program goals, and its scientific priorities. For MERHAB-Targeted project proposals, the project description (including relevant results from prior support) should not exceed 15 pages. For MERHAB-regional, intensive monitoring project proposals, the project description (including relevant results from prior support) should not exceed 20 pages. Both page limits are inclusive of figures, other visual materials, and letters of endorsement, but are exclusive of references, a milestone chart, and letters of collaboration from unfunded collaborators.

This section should clearly identify project management with a description of the functions of each PI within a team. It should provide a full scientific justification for the research, rather than simply reiterating justifications presented in this document. It should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals;

(d) Potential coordination with other investigators; and,

(5) *References cited.* Reference information is required. Each reference must include the names of all authors in the same sequence they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15–page MERHAB-Targeted project or the 20–page MERHAB-regional project descriptions.

(6) *Milestone chart.* It should provide time lines of major tasks covering the duration of the proposed project.

(7) *Budget and Application Forms* Both NOAA and CSCOR/COP-specific application forms may be obtained at the CSCOR/COP Grants website. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP. If applicants are unable to access this information, they may call the CSCOR/COP grants administrator previously listed in the section entitled **FOR FURTHER INFORMATION CONTACT**. At time of proposal submission, all applicants must submit the Standard Form, SF–424 (Rev 7–97) Application for Federal Assistance, to indicate the total amount of funding proposed for the whole project period. Applicants must also submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a Summary Proposal Budget Form for each institution. Use of this budget form will provide for a detailed annual budget and for the level of detail required by the CSCOR/COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with CSCOR/COP and can be found on the CSCOR/COP home page under COP Grants Information, Part D. All applications must include a budget narrative and a justification to support all proposed budget categories. The SF–424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award.

Ship time needs should be clearly identified in the proposed budget. The investigator is responsible for requesting ship time and for meeting all requirements to ensure the availability of requested ship time. Copies of relevant ship time request forms should be included with the proposal.

(8) *Biographical sketch.* With each proposal, the following must be included: abbreviated curriculum vitae, up to two pages per investigator; a list of up to five publications most closely related to the proposed project and up to five other significant publications; and a list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months must be included. If no collaborators exist this should be so indicated. Students, post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information is used to help identify potential conflicts of interest or bias in the selection of reviewers.

(9) *Proposal format and assembly.* The original proposal should be clamped in the upper left-hand corner, but left unbound. The 19 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) at the top, bottom, left, and right, and the typeface standard 12–point size must be clear and easily legible. Proposals should be single spaced.

Part II: Further Supplementary Information

(1) *Program authorities.* For a list of all program authorities for the Coastal Ocean Program, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (66 FR 63019, December 4, 2001) and at the CSCOR/COP home page. Specific authority cited for this announcement is 16 U.S.C. 1442 and Pub.L. 105–383, title VI, Nov. 13, 1998, 112 Stat. 3447.

(2) *Catalog of Federal Domestic Assistance (CFDA) number.* The CFDA number for the Coastal Ocean Program is 11.478.

(3) *Program description.* For complete CSCOR/COP program descriptions, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (66 FR 63019, December 4, 2001).

(4) *Funding availability.* Funding is contingent upon receipt of fiscal years 2002 - 2006 Federal appropriations. Approximately $2,000,000 per fiscal year will be available for supporting studies proposed by submissions to this announcement. Support in out years after FY 2002 is contingent upon the availability of funds. It is anticipated that three to five MERHAB-Targeted research projects will be funded at approximately $100,000 per year for up to three years and that two to three MERHAB-regional, intensive monitoring proposals will be funded at approximately $600,000 per year for up to five years.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective

funding in connection with that award in subsequent years. Continuation of an award to increase funding or extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agency. Priority for these funds will be given to proposals that promote balanced coverage of the science objectives stated under this announcement.

Publication of this document does not obligate the CSCOR/COP to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements.* None.

(6) *Type of funding instrument.* Either project grants or cooperative agreements will be used for non-Federal applicants. Interagency transfer agreements or other appropriate mechanisms other than project grants or cooperative agreements will be used for Federal applicants.

(7) *Eligibility criteria.* For complete eligibility criteria for the CSCOR/COP, see CSCOR/COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (66 FR 63019, December 4, 2001) and the CSCOR/COP home page. Eligible applicants are institutions of higher education, not-for-profit institutions, state, local and Indian tribal governments and Federal agencies. CSCOR/COP will accept proposals that include foreign researchers as collaborators with researchers who are affiliated with a U.S. academic institution, Federal agency, or other non-profit organization.

Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals from NOAA employees selected for funding shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer.

NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

(8) *Award period.* Full proposals for targeted projects can cover a project period of up to three years, and full proposals for regional, intensive monitoring projects can cover a project period of up to five years. Multi-year project period funding may be funded incrementally on an annual basis, but, once awarded, multi-year projects will not compete for funding in subsequent years. Each annual award shall require an Implementation Plan and statement of work that can be easily divided into annual increments of meaningful work representing solid accomplishments (if prospective funding is not made available, or is discontinued).

(9) *Indirect costs.* Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of: (a) the line item amount for the Federal share of indirect costs contained in the approved budget of the award; or (b) the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

(10) *Application forms and kit.* For complete information on application forms for the CSCOR/COP, see CSCOR/COP's annual General Grant Administration Terms and Conditions Document in the **Federal Register** (66 FR 63019, December 4, 2001) at the CSCOR/COP home page and the information given under Required Elements, paragraph (7) Budget.

(11) *Project funding priorities.* For description of project funding priorities, see CSCOR/COP's annual General Grant Administration Terms and Conditions Document in the **Federal Register** (66 FR 63019, December 4, 2001) and the CSCOR/COP home page.

(12) *Evaluation criteria.* For complete information on evaluation criteria, see CSCOR/COP's annual General Grant Administration Terms and Condition Document in the **Federal Register** (66 FR 63019, December 4, 2001) and the CSCOR/COP home page.

(13) *Selection procedures.* For complete information on selection procedures, see CSCOR/COP's annual General Grant Administration Terms and Conditions Document in the **Federal Register** (66 FR 63019, December 4, 2001) and the CSCOR/COP home page. All proposals received under this specific Document will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or panel review. No consensus advice will be given by the independent peer mail review or the review panel.

(14) *Other requirements.* (a) For a complete description of other requirements, see CSCOR/COP's annual General Grant Administration Terms and Conditions Document in the **Federal Register** (66 FR 63019, December 4, 2001) and the CSCOR/COP home page. NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center (see section 16, Data Archiving).

(b) the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** (66 FR 49917, October 1, 2001) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See Building and Construction Trades Department v. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

(c) Please note that NOAA is developing a policy on internal overhead charges; NOAA scientists considering submission of proposals should contact the appropriate CSCOR/COP Program Manager for the latest information.

(15) *Intergovernmental review.* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(16) *Data archiving.* Any data collected in projects supported by CSCOR/COP must be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NODC, and Program

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Officer. It is the responsibility of the funded institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by CSCOR/COP are encouraged to be made available to the general research community at no or a modest handling charge (to be determined by the institution, Program Officer, and DOC). For more details, refer to CSCOR/COP data policy posted at the COP home page.

(17) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384: a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these requirements and the burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to leslie.mcdonald@noaa.gov. Copies of these forms and formats can be found on the CSCOR/COP home page under Grants Information sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 11, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–6747 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030602F]

Atlantic Highly Migratory Species; Advisory Panel Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of Advisory Panel meetings.

SUMMARY: NMFS will hold joint meetings of the Atlantic Highly Migratory Species Advisory Panel (HMS AP) and the Atlantic Billfish Advisory Panel (Billfish AP), April 1 through 3, 2002, in Silver Spring, MD. The intent of these meetings is to consider alternatives for the conservation and management of highly migratory species.

DATES: The joint HMS-Billfish AP meetings will be held from 1 p.m. to 5 p.m. on Monday, April 1; from 8 a.m. to 5 p.m. on Tuesday, April 2; and from 8 a.m. to 3:30 p.m. on Wednesday, April 3, 2002.

ADDRESSES: The AP meetings will be held in the Holiday Inn, 8777 Georgia Ave. (Rt. 97), Silver Spring, MD 20910. Phone: 301–589–0800.

An agenda and materials related to the AP meeting are available from Othel Freeman, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald G. Rinaldo, 301–713–2347.

SUPPLEMENTARY INFORMATION: The actions to be discussed by the APs are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, for the conservation and management of highly migratory species.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Rinaldo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meetings.

Authority: 16 U.S.C. 961 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: March 13, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6712 Filed 3–15–02; 5:02 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031402D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meeting of its Groundfish and Monkfish Oversight Committees in April, 2002. Recommendations from these committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held between April 9 and 11, 2002. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in New London, CT and Warwick, RI. *See* **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: *Tuesday, April 9, 2002 at 9:30 a.m.*–Groundfish Oversight Committee Meeting.

Location: Radisson Hotel, 35 Governor Winthrop Blvd, New London, CT 06320; telephone: (860) 443-7000.

The Groundfish Oversight Committee will continue development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Amendment 13 will end overfishing and establish rebuilding schedules for overfished stocks. At a meeting on February 27, 2002, the New England Council decided to develop groundfish management measures for five broad areas and one user group: inshore Gulf of Maine, offshore Gulf of Maine, eastern Georges Bank, western Georges Bank, Southern New England/Mid Atlantic, and recreational/charter/party. This meeting will focus on commercial fishing for groundfish in the Southern New England/Mid-Atlantic area, the boundaries for this area will be determined at the March 27, 2002 Groundfish Committee meeting. Interested parties will be consulted to identify management measures that will achieve specific biological, economic, and social objectives identified by the Council. Such measures may include, but are not limited to, trip or possession limits, changes to the days-at-sea program, year-round or seasonal closed areas, or gear changes. The committee will consider these suggested measures and will develop a recommendation that will be reviewed by the Council at a later date. After Council approval, the measures will be analyzed and included in a draft supplemental environmental impact statement. The committee may also consider alternatives to this area management approach if technical advice received at the March 19, 2002 Council meeting suggests it is not feasible.

Wednesday, April 10, 2002 at 9:30 a.m. and Tuesday, April 11, 2002 at 8:30 a.m.–Monkfish Oversight Committee Meeting.

Location: Radisson Airport Hotel Providence; 2081 Post Road, Warwick, RI 02886; telephone: (401) 739-3000.

The Committee will review information provided by the Advisory Panel, Plan Development Team and/or Councils' staffs and continue development of Amendment 2 management alternatives. Measures that may be included or adjusted in Amendment 2 include, but are not limited to, permit qualification for vessels fishing south of 38° N, trip limits, days-at-sea allocations, closed areas, minimum fish size, minimum mesh size, and area-specific management programs for the Northern and Southern Fishery Management Areas, as well as for the offshore fishery in the Southern Area. Amendment 2 will also implement revisions to the monkfish overfishing definitions. Measures to be considered in Amendment 2 will be designed to achieve fishing mortality targets as well as to minimize bycatch, interactions with protected species and fishery impacts on essential fish habitat.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6749 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031102B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for bocaccio and canary rockfish will hold a work session which is open to the public.

DATES: The bocaccio and canary rockfish STAR Panel will meet beginning at 9 a.m., April 15, 2002. The meeting will continue on April 16, 2002 beginning at 8 a.m. through April 19, 2002. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The Pacific bocaccio and canary rockfish STAR Panel meeting will be held at NMFS Northwest Fisheries Science Center, Auditorium, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer; 503–326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.). A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agenda may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: March 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6750 Filed 3–19–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reconfirmation of a Previous Directive Concerning Visa and Quota Requirements for Textiles and Textile Products Entered as Sets

March 15, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reconfirming a previous directive.

EFFECTIVE DATE: March 18, 2002.

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FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice and letter to the Commissioner of Customs published in the **Federal Register** on August 24, 1989 (54 FR 35223), CITA directed the U.S. Customs Service to apply all otherwise applicable visa and quota requirements to textiles and textile products which are classified as components of a set. This directive applied to all items which, if imported separately, would have required a visa and the reporting of quota. Recently, there has been uncertainty concerning the continuing applicability of this directive. The letter published below reconfirms the previously published directive.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

This letter reconfirms the directive of August 18, 1989 that clarified the intent of the Committee for the Implementation of Textile Agreements on the applicability of visa requirements and quota reporting of textiles and textile products entered as components of sets under General Rule of Interpretation (GRI) 3 of the Harmonized Tariff Schedule (HTS).

Effective on March 18, 2002, the directive of August 18, 1989 is reissued as follows:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended; all applicable visa and quota requirements will apply for textiles and textile products which are classified as components of a set. This rule applies to all items which, if imported separately, would have required a visa and the reporting of quota.

Effective on March 18, 2002, you are directed to prohibit entry for consumption or withdrawal from warehouse for consumption into the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) of any textile item for which classification is claimed as sets under GRI 3 of the HTS, where a separate textile category currently exists or comes into existence requiring separate reporting of the components forming those sets.

Entry shall be permitted if all visa and quota requirements are met.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–6804 Filed 3–18–02; 9:54 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Task Force on the Threat of Asymmetric Attack. The purpose of the meeting is to allow the SAB and study leadership to review their progress on strategies for the conduct of asymmetric warfare. This meeting will be closed to the public.

DATES: April 1, 2002.

ADDRESSES: Frost & Associates, 660 Southpointe Court, Suite 210, Colorado Springs, CO 80906.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ripperger, Air Force Scientific Advisory Board Secretariat, 1180 AirForce Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6679 Filed 3–19–02; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of Environmental Impact Statement (EIS) for Military Training Activities at Makua Military Reservation, Oahu, Hawaii

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Army proposed to resume consistent military training activities at Makua Military Reservation (MMR), Oahu, Hawaii, to provide for company level, modified live-fire exercises. In accordance with the Settlement Agreement and Stipulated Order between Malama Makua and the United States Department of Defense, filed 4 October 2001 (the "Settlement Agreement"), the Army will conduct a limited number of live-fire training exercises during the term specified within for the preparation of the subject EIS. The Army needs to conduct a minimum of 18 company-level, combined arms, live-fire exercises per year. Other military components that have used Makua in the past include the Marine Corps, Army Reserves, and the Hawaii Army National Guard, which further increases the total number of required company combined-arms live-fire exercises (CALFEXs) per year. Conducting the required number of company CALFEXs is critical to maintaining the readiness of all military units assigned or stationed in Hawaii. Training at the company level is one of the key building blocks in the Army's progressive training doctrine where smaller units first train as smaller units and then train collectively as part of a larger unit. The training that a new infantry company commander receives during a company-level CALFEX is invaluable in teaching him the skills required to coordinate the combined arms support provided by helicopter, artillery, mortar, and combat engineer support teams when attacking an objective. These communication and coordination skills are essential later when several companies join together and train/fight as a battalion under the control of a battalion commander. The EIS will address, among other things, the potential direct, indirect and cumulative environmental impacts associated with the proposal to continue military training activities at MMR. The EIS development process will be conducted in accordance with the aforementioned Settlement Agreement and Stipulated Order.

ADDRESSES: Written comments may be forwarded to Mr. Calvin K. Mashita, U.S. Army Corps of Engineers, Honolulu Engineer District, Programs and Project Management Division, ATTN: CEPOH–PP–E (Mashita), Building 230, Fort Shafter, Hawaii 96858–5440.

FOR FURTHER INFORMATION CONTACT:

Makua training activities: Colonel William E. Ryan III, (808) 656–1289, fax (808) 656–1259; email *William.ryaniii@usace.army.mil* or by writing to Director of Public Works, U.S. Army Garrison Hawaii (USAG–HI), Schofield Barracks, Hawaii 96857–5013.

EIS information: Mr. Calvin K. Mashita, (808) 438–8417; fax (808) 438–8865; email *calvin.k.mashita@poh01.usace.army.mil* or by writing to Mr. Mashita at the above address.

SUPPLEMENTARY INFORMATION: Proposed alternatives to be considered may include, but not be limited to, the following:

(1) *Alternative 1:* Modified Live-Fire Training at Makua Military Reservation (Proposed Action). The Army would conduct company CALFEXs at MMR but with certain restrictions. In particular, the Army would eliminate the use of TOW missiles, incendiary munitions, and tracers. Under this alternative, the Army will not be limited to the current number of CALFEXs specified in the Settlement Agreement.

(2) *Alternative 2:* No action. The Army will not conduct live-fire training exercises at MMR, except for the limited number of modified CALFEXs authorized by the Settlement Agreement.

(3) *Alternative 3:* Conduct CALFEX Training at an Alternate Site. Personnel and equipment required for CALFEX Training would be transported to one of the following alternate sites:

(a) *Alternative 3A:* Pohakuloa Training Area (PTA) on the Big Island of Hawaii.

(b) *Alternative 3B:* Continental United States (CONUS).

(c) *Alternative 3C:* A replacement training facility at another Army installation on Oahu. The Army would construct another facility on Oahu that could accommodate the company CALFEXs.

(4) *Alternative 4:* Return to Training Less Restrictive Than the Proposed Action. The Army would train with less restrictions on the types of weapon systems and the numbers of training exercises. For example, the Army would resume the use of tracer ammunition.

(5) *Alternative 5:* Conduct Non-Live Fire Training at MMR. The Army would conduct training exercises at MMR but without any live firing of weapons or devises otherwise of an incendiary nature.

Scoping Process: Federal, state and local agencies, and the public are invited to participate in the scoping process for the completion of this EIS. The scoping process will help identify potential impacts and key issues to be analyzed in the EIS. Individuals or organizations wishing to participate in the scoping process are invited to participate in a scoping meeting to be held in the Waianae District, on the island of Oahu. Notification of the time and location for the scoping meeting will be published in local newspapers. Additionally, written comments on the scope of analysis are invited and will be accepted within 15 days after the scoping meeting.

Dated: March 15, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 02–6687 Filed 3–19–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

[Docket No. EA–260]

Application To Export Electric Energy; EPCOR Merchant and Capital (US) Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: EPCOR Merchant and Capital (US) Inc. (EPCOR) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 4, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 7, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from EPCOR to transmit electric energy from the United States to Canada. EPCOR is a Delaware corporation with its principal place of business in Calgary, Alberta, Canada. EPCOR is a power marketer and will have title to any electricity exported to Canada.

EPCOR will purchase the power to be exported from electric utilities and federal power marketing agencies within the United States and arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by EPCOR, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

EPCOR has requested that the Department of Energy (DOE) expedite the processing of this application so that EPCOR may assist in alleviating unexpected power shortages in the Canadian Providence of Alberta.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the EPCOR application to export electric energy to Canada should be clearly marked with Docket EA–260. Additional copies are to be filed directly with Rob Imbeau, EPCOR Merchant and Capital (US) Inc., c/o EPCOR Merchant and Capital L.P., 505 2nd Street, SW, 8th Floor, Calgary, Alberta T2P 1N8 Canada AND Timothy J. Moran, Victor A. Contract, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW, Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

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Issued in Washington, DC, on March 13, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–6686 Filed 3–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Worker Advocacy Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Worker Advocacy Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that notice of this meeting be published in the **Federal Register**.

DATES: Thursday, April 4, 2002, 12:30–5:30 p.m. and Friday, April 5, 2001, 8:00 a.m.–12:30 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Judy Keating, Executive Administrator, Worker Advocacy Advisory Committee, U.S. Department of Energy, EH–8, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone Number 202–586–7551, E-mail: judy.keating@eh.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Worker Advocacy of the Department of Energy on plans, priorities, and strategies for assisting workers who have been diagnosed with work-related illnesses.

Tentative Agenda

Welcome and Introductions
Organization of the Office of Worker Advocacy
Status of Interagency Work
Discussion of Subcommittee Topics, including claims processing, and Insurer and Contractor Relations
Public Comment
Next Steps/Path Forward

Public Participation: This two-day meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Judy Keating at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on March 15, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–6763 Filed 3–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–6–001]

Colorado Interstate Gas Company; Notice of Amendment to Application

March 14, 2002.

Take notice that on March 4, 2002, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations in Docket No. CP02–6–001 an amendment to its pending application in Docket No. CP02–6–000 to modify the proposed expansion of its existing interstate pipeline system by reducing the lengths of the proposed loop line segments, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

In its application in Docket No. CP02–6–000, CIG stated that it proposed to construct and operate facilities necessary to transport additional volumes of approximately 57.8 MMcf per day (55 MDth per day) of natural gas out of the Raton Basin Area in Colorado and New Mexico. In addition, CIG stated that it proposed to construct and operate facilities south of its Keyes Compressor Station to allow Raton Basin shippers to deliver incremental quantities of gas to interconnections with the interstate pipeline systems of El Paso Natural Gas Company and Northern Natural Gas Company. To accomplish this, CIG proposed to construct two loop line segments along its Campo Lateral and a loop of a portion of its existing Line 3A south of the existing Keyes Compressor Station.

CIG states that, subsequently, one of the shippers holding rights to a portion of the proposed incremental capacity on the Raton Basin 2002 Expansion Project was unable to meet the terms set forth in its Transportation Precedent Agreement with CIG, resulting in the termination of this agreement. CIG states that, as a result of the termination of the agreement, it now proposes to amend its application in this proceeding to revise the facilities to be constructed. Specifically, CIG states that it plans to reduce the lengths of the proposed pipeline loop segments, as follows:

(1) Reduce the length of 16-inch diameter pipeline loop of CIG's existing Campo Lateral from 25.61 miles to 22.10 miles; this loop line would extend from the outlet of the CIG's Trinidad Compressor Station in Section 25, Township 32 South, Range 63 West to a point west of Trinchera Creek in Section 21, Township 33 South, Range 59 West, all in Las Animas County, Colorado.

(2) Reduce the length of 16-inch diameter pipeline loop of CIG's existing Campo Lateral from 28.14 miles to 24.20 miles; this loop line would extend from the outlet of CIG's Kim Compressor Station in Section 31, Township 32 South, Range 54 West, Las Animas County, Colorado to a point east of County Road 1 in Section 29, Township 32 South, Range 50 West, Baca County, Colorado.

(3) Reduce the length of 20-inch diameter pipeline loop of CIG's existing Line 3A from 14.40 miles to 7.67 miles, this loop line would extend from the outlet of CIG's Keyes Compressor Station in Section 17, Township 5 North, Range 7 East to Gate 9/Keyes Meter Station in Section 23, Township 4 North, Range 7 East, all in Cimarron County, Oklahoma.

CIG states that the revised Campo Lateral loop line segments will increase the take-away capacity from the Raton Basin Area by approximately 47.3 MMcf per day (45 MDth per day). CIG further states that the 3A loop line will facilitate the delivery of incremental volumes to points on the southern end of its transmission system.

CIG estimates that the proposed cost of the expansion will be $22,070,400. Further, CIG states that the combination of existing and revised incremental entitlements represent 100 percent of CIG's capacity out of the Raton Basin Area through the Campo Lateral.

Any questions regarding this amendment should be directed to Robert T. Tomlinson; Director, Regulatory Affairs; at (719) 520–3788; Colorado Interstate Gas Company; P.O. Box 1087; Colorado Springs, Colorado 80944. process.

Any person desiring to be heard or to make any protest with reference to said document should, on or before April 4, 2002, file with the Federal Energy Regulatory Commission; 888 First Street, NE., Washington, DC 20426 a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered; a person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by Commenters or those requesting intervenor status.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper copies. See 18 CFR 385.2001(a) (1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6696 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–197–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 14, 2002.

Take notice that on March 11, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1,Thirty-Sixth Revised Sheet No. 7 and Thirty-Sixth Revised Sheet No. 8, with a proposed effective date of April 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6705 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–052]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

March 14, 2002.

Take notice that on March 8, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing contracts between Gulf South and the following companies for disclosure of recently negotiated rate transactions. As shown on the contracts, Gulf South requests an effective date of April 1, 2002.

Special Negotiated Rate Between—

Gulf South Pipeline Company, LP and The Utilities Board of the City of Bay Minette, Contract #14483
Gulf South Pipeline Company, LP and The City of Pascagoula, Contract #27272

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6701 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–151–001]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

March 14, 2002.

Take notice that on March 7, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective February 25, 2002:

Substitute Second Revised Sheet No. 306
Substitute Original Sheet No. 307

Gulf South states that the above tariff sheets have been filed to comply with the Order issued February 22, 2002, 98 FERC ¶ 61,186. In its original filing, Gulf South proposed provisions concerning the allocated market and regulatory risks between Gulf South and its No Notice Service (NNS) Customers. The Commission directed Gulf South to remove the 90-day prior notice written provision and to file revised tariff sheets reflecting a more reasonable notice period. The compliance filing incorporates this change.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6703 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–66–000]

Minnesota Municipal Power Agency, Complainant, v. Southern Minnesota Municipal Power Agency, Respondent; Notice of Complaint

March 14, 2002.

Take notice that on March 11, 2002, the Minnesota Municipal Power Agency (the MMPA) filed a Complaint against the Southern Minnesota Municipal Power Agency (SMMPA), for improperly charging the MMPA for losses under SMMPA's Open Access Transmission Tariff.

Pursuant to requirements set forth in 18 CFR 385.206, MMPA has served a copy of the complaint and supporting documents upon SMMPA.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 1, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 1, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6697 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–014]

Overthrust Pipeline Company; Notice of Report of Refunds

March 14, 2002.

Take notice that on March 11, 2002, Overthrust Pipeline Company tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 2001.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85–60–000 and –002. Overthrust explains that Article V of the settlement, as modified, requires Overthrust to file an annual report 60 days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6700 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–618–013]

PG&E Gas Transmission, Northwest Corporation; Notice of Annual Report

March 14, 2002.

Take notice that on January 28, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing its "Annual Report on Deferred Revenue Recovery Mechanism and Revenue Reconciliation for the Year Ending October 31, 2001" for its Medford, Oregon Extension FTS–1 (E–2).

GTN asserts that the purpose of this filing is to comply with the Commission's Order of January 12, 1995 in Docket Nos. CP93–618, *et al.* That Order requires GTN to file an annual report concerning its deferred revenue recovery mechanism and detailing the cost of service for GTN's Medford Extension and the status of its deferred revenue recovery mechanism.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies, as well as the Official Service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6694 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–196–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 14, 2002.

Take notice that on March 8, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2002:

Ninth Revised Sheet No. 5
Ninth Revised Sheet No. 6
Tenth Revised Sheet No. 7
First Revised Sheet No. 15

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to Sections 27 and 28 of its General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6704 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–129–002]

Southern LNG Inc.; Notice of Compliance Filing

March 14, 2002.

Take notice that on March 1, 2002, Southern LNG Inc., (Southern) hereby supplements its December 21, 2001 limited Section 4 filing pursuant to the Commission's January 31, 2002 order.[1]

Southern states that the supplements consists of additional information in support of increased costs to recommission and modify the Elba Island liquefied natural gas terminal in Docket Nos. CP99–580.

Southern states that copies of the filing has been served to all customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6702 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Southern LNG Inc., 98 FERC ¶ 61,088 (2002).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–2114–106]

Yakama Nation, Complainant, v. Public Utility District No. 2 of Grant County, Washington, Respondent; Notice of Complaint

March 14, 2002.

Take notice on March 8, 2002, the Yakama Nation (Complainant) filed with the Federal Energy Regulatory Commission (Commission) a document entitled "Complaint of the Yakama Nation and Request for Fast-Track Processing." The Complainant requests, pursuant to 18 CFR 385.206 of the Commission's regulations, that the Commission find Public Utility District No. 2 of Grant County, Washington to be in violation of its license for the Priest Rapids Hydroelectric Project (Project), FERC Project No. 2114, Federal law authorizing the development of the Project, as well as Sections 10, 19, and 20 Federal Power Act due to discriminatory and anticompetitive provisions contained in wholesale power contracts required under the Project license. The Complainant requests that the Commission require the Licensee to correct these violations and to provide remedies designed to alleviate some of the harms that the violations have inflicted on the Yakama Nation.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 28, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 28, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary

[FR Doc. 02–6698 Filed 3–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–55–000, et al.]

Trans-Elect, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 13, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Trans-Elect, Inc., Michigan Transco Holdings, Limited Partnership, Michigan Electric Transmission Company LLC

[Docket No. EC02–55–000]

Take notice that on March 8, 2002, Trans-Elect, Inc. (Trans-Elect) and Michigan Transco Holdings, Limited Partnership (Michigan Transco Holdings LP), on behalf of Michigan Electric Transmission Company (Michigan Transco LLC) (collectively, Trans-Elect Applicants) submitted an application for approval of the transfer of operational control over the jurisdictional transmission facilities to be acquired by Michigan Transco LLC to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and for transfer of certain related transmission service agreements to the Midwest ISO.

Copies of this filing were served on all affected state utility commissions.

Comment Date: March 29, 2002.

2. Alliance Companies, et al. and National Grid USA

[Docket No. EL02–65–000]

Take notice that on March 6, 2002, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Ameren Services Company (on behalf of Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.), FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company), Illinois Power Company, and Northern Indiana Public Service Company (collectively, the Alliance Companies), and National Grid USA, tendered for filing a petition for the Commission to issue an order finding that the proposed policy resolutions contained in the petition provide an appropriate basis for the participation of Alliance GridCo in the Midwest Regional Transmission Organization (RTO).

Alliance GridCo is the Alliance Transmission Company LLC that will be formed with National Grid USA as managing member, provided the Alliance business model can be successfully accommodated within an RTO. Through this petition, the Alliance Companies and National Grid USA attempt to find a way to accommodate Alliance GridCo as a viable transmission business underneath the Midwest ISO umbrella. Should the Commission believe its policy goals would best be served by having Alliance GridCo operate underneath the Midwest ISO umbrella, and the Commission grants the petition, the Alliance Companies and National Grid USA anticipate that Alliance GridCo would be operational by October 1, 2002.

Comment Date: March 28, 2002.

3. Pacific Gas and Electric Company

[Docket No. ER01–833–000]

Take notice that on March 6, 2002 Pacific Gas and Electric Company filed an amendment to its February 28, 2002 filing for Further Request for Deferral of Consideration of the unexecuted Wholesale Distribution Tariff (WDT) Service Agreement and Interconnection Agreement between Pacific Gas and Electric Company and Modesto Irrigation District (MID).

PG&E requests that the Commission defer consideration of the proceedings filed in ER01–833–000 to August 26, 2002, 180 days beyond the last request for Deferral in order that the parties may finalize and executed the Agreements.

Copies of this filing have been served upon MID, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: March 27, 2002.

4. Southern California Edison Company

[Docket No. ER02–1286–000]

Take notice that on March 8, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff, an Interconnection Facilities Agreement, and a Reliability Management System Agreement (Agreements) between SCE and Ridgewood Olinda, LLC (Ridgewood).

SCE respectfully requests the Agreements become effective on March 11, 2002.

These Agreements specify the terms and conditions under which SCE will interconnect Ridgewood's generating facility to its electrical system and provide Distribution Service for up to 2.4 MW of power produced by the generating facility. Copies of this filing were served upon the Public Utilities Commission of the State of California and Ridgewood.

Comment Date: March 29, 2002.

5. Rainy River Energy Corporation-Taconite Harbor

[Docket No. ER02–1258–000]

Take notice that on March 5, 2002, Rainy River Energy Corporation-Taconite Harbor (RR-TH) file with the Federal Energy Regulatory Commission (Commission) a Power Sales Agreement for short term power sales.

Comment Date: March 26, 2002.

6. Generation Power, Inc.

[Docket No. ER02–894–001]

Take notice that on March 7, 2002, Generation Power, Inc. amended its filing of January 30, 2002, which petitioned the Federal Energy Regulatory Commission (Commission) Commission for acceptance of Generation Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Generation Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. Generation Power is not in the business of generating or transmitting electric power. Generation Power does not have any affiliates as defined at 18 CFR 161.2.

Comment Date: March 28, 2002.

7. American Transmission Company LLC

[Docket No. ER01–1107–002]

Take notice that on March 7, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a refund report in accordance with the Federal Energy Regulatory Commission's January 30, 2002 letter order in the above-referenced proceeding.

Copies of the refund report have been served on parties to the service list, the Public Service Commission of Wisconsin, the Illinois Commerce Commission, and the Michigan Public Service Commission.

Comment Date: March 28, 2002.

8. Conectiv Energy Supply, Inc.

[Docket No. ER00–1770–004]

Take notice that on March 11, 2002, Conectiv Energy Supply, Inc. (CESI) tendered for filing its triennial market power analysis in support of its market-based rate authority in compliance with the Commission's April 25, 2000, order accepting CESI's updated market-based tariff and Code of Conduct. Conectiv Energy Supply, Inc., 91 FERC ¶ 61,076 (2000). In that proceeding, CESI committed to update its market power analysis within three years of March 10, 1999.

Comment Date: April 1, 2002.

9. UGI Development Company

[Docket No. ER99–2817–001]

Take notice that on March 11, 2002, UGI Development Company (UGID) tendered for filing its triennial market power update.

Comment Date: April 1, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–1283–000]

Take notice that on March 8, 2002, Commonwealth Edison Company (ComEd) submitted for filing two Form of Service Agreements for Firm Point-To-Point Transmission Service and the corresponding Network Upgrade Agreements between ComEd and Madison Gas and Electric Company (Madison) and one Form of Service Agreement for Firm Point-To-Point Transmission Service and the corresponding Network Upgrade Agreement between ComEd and MPEX (collectively, Service Agreements) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 5, 2002, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing was served on Madison and MPEX.

Comment Date: March 29, 2002.

11. Xcel Energy Services, Inc.

[Docket No. ER02–1284–000]

Take notice that on March 11, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP) submitted for filing a Form of Service Agreement with South Plains Electric Cooperative, Inc. (South Plains), which is in accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP Companies FERC Electric Tariff, Original Volume No. 6). XES requests that this agreement become effective on March 1, 2002.

Comment Date: April 1, 2002.

12. Cinergy Services, Inc.

[Docket No. ER02–1285–000]

Take notice that on March 8, 2002, that Cinergy Services, Inc. (Cinergy) tendered for filing a proposed Notice of Cancellation with Narrative Statement and revisions to Cinergy's Open Access Transmission Tariff (Cinergy OATT), FERC Electric Tariff, Second Revised Volume No. 5.

Cinergy states that its proposed revisions are intended to cancel the Forms of Service Agreement for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Network Transmission Service, as well as certain transmission-related services with respect thereto, which are no longer necessary due to the start-up of Midwest Independent Transmission System Operator, Inc. and its Open Access Transmission Tariff on February 1, 2002.

Cinergy states that it has served copies of its filing by placing a copy of same in the United States mail, first-class postage prepaid, addressed to all customers under the Cinergy OATT.

Comment Date: March 29, 2002.

13. Entergy Services, Inc.

[Docket No. ER02–1287–000]

Take notice that on March 8, 2002, Entergy Services, Inc. (Entergy Services) submitted for filing on behalf of Entergy Arkansas, Inc. (EAI) a 2002 Wholesale Formula Rate Update (Update) in accordance with: (1) The Power Coordination, Interchange and Transmission Service Agreements (PCITA) between EAI and the Cities of Conway, West Memphis and Osceola Arkansas (Arkansas Cities); the cities of Campbell and Thayer, Missouri (Missouri Cities); and the Arkansas Electric Cooperative Corporation (AECC); (2) the Hydroelectric Power Transmission and Distribution Service Agreement between EAI and the City of North Little Rock, Arkansas (North Little Rock); (3) the Transmission Service Agreement (TSA) between EAI and the City of Hope, Arkansas (Hope); (4) the TSA between EAI and the Louisiana Energy & Power Authority (LEPA); (5) the Wholesale Power Service

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Agreement (WPSA) between EAI and the City of Prescott, Arkansas (Prescott); and (6) the WPSA between EAI and the Farmers Electric Cooperative Corporation (Farmers). Entergy Services states that the Update redetermines the formula rate charges and the Transmission Loss Factor in accordance with: (1) the above agreements; (2) the 1994 Joint Stipulation between EAI and AECC accepted by the Commission in Docket No. ER95–49–000, as revised by the 24th Amendment to the AECC PCITA on March 26, 1996 in Docket No. ER96–1116; (3) the formula rate revisions accepted by the Commission on February 21, 1995 in Docket No. ER95–393–000, as applicable to the Arkansas Cities, the Missouri Cities, Hope and North Little Rock; (4) the formula rate revisions applicable to LEPA accepted by the Commission on January 10, 1997 in Docket No. ER97–257–000; and (5) the Settlement Agreement accepted by the Commission on July 2, 1999 in Docket No. ER98–2028–000 (the 1998 Formula Rate Update proceeding).

Comment Date: March 29, 2002.

14. PPL Electric Utilities Corporation

[Docket No. ER02–1288–000]

Take notice that on March 8, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing an Interconnection Agreement between PPL Electric Utilities and the Mt. Carmel Cogen, Inc.

Comment Date: March 29, 2002.

15. Midwest Independent Transmission System Operator, Inc., Trans-Elect, Inc., Michigan Transco Holdings, Limited Partnership and Michigan Electric Transmission Company LLC

[Docket No. ER02–1289–000]

Take notice that on March 8, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and Trans-Elect, Inc. and Michigan Transco Holdings, Limited Partnership, on behalf of Michigan Electric Transmission Company LLC (Michigan Transco LLC) (collectively, Trans-Elect Applicants), filed pursuant to section 205 of the Federal Power Act for Commission approval or acceptance of certain changes to the Midwest ISO's open access transmission tariff (Midwest ISO Tariff) to recognize Michigan Transco LLC's participation as a transmission owner in the Midwest ISO and to establish rates for the Michigan Transco LLC pricing zone. The Midwest ISO and Trans-Elect Applicants also filed a supplemental agreement to establish certain conditions for Michigan Transco LLC's participation in the Midwest ISO.

Copies of this filing were served on all affected state utility commissions and transmission customers, as well as on all members of the Midwest ISO.

Comment Date: March 29, 2002.

16. Central Power and Light Company

[Docket No. ER02–1290–000]

Take notice that on March 8, 2002, Central Power and Light Company (CPL) submitted for filing First Revised Rate Schedule No. 70 with the City of Robstown, Texas (Robstown).

CPL seeks an effective date of April 1, 2002 and, accordingly, seeks waiver of the Commission's notice requirements. CPL states that a copy of this filing has been served on Robstown and the Public Utilities Commission of Texas.

Comment Date: March 29, 2002.

17. Entergy Services, Inc.

[Docket No. ER02–1293–000]

Take notice that on March 8, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and NRG Power Marketing Inc.

Comment Date: March 29, 2002.

18. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1294–000]

Take notice that on March 8, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Williams Energy Marketing & Trading Company.

Ameren Energy seeks Commission acceptance of these service agreements effective February 22, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: March 29, 2002.

19. Progress Energy Inc. on Behalf of Progress Ventures, Inc.

[Docket No. ER02–1295–000]

Take notice that on March 8, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, Aquila Energy Marketing Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of March 6, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: March 29, 2002.

20. Puget Sound Energy, Inc.

[Docket No. ER02–1296–000]

Take notice that on March 8, 2002, Puget Sound Energy, Inc. (PSE), tendered for filing a Port Townsend Area Transmission Agreement by Public Utility District No. 1 of Clallam County (Clallam), Port Townsend Paper Corporation (Port Townsend Paper), and PSE. A copy of the filing was served upon Clallam and Port Townsend Paper.

Comment Date: March 29, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6653 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–439–000]

Columbia Gas Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed Delaware Valley Energy Expansion Project

March 14, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Columbia Gas Transmission Corporation (Columbia) in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the environmental effects of the construction and operation of the proposed facilities in Chester and Delaware Counties, Pennsylvania and Gloucester, County, New Jersey. These facilities would consist of the abandonment of 8.84 miles of 10-inch-diameter pipeline and 0.30 mile of 14-inch-diameter pipeline and replacement with 24-inch-diameter pipeline in Chester County, Pennsylvania. Columbia would construct 5.10 miles of 20-inch-diameter loop in Delaware County, and 9.62 miles of 20-inch-diameter pipeline and a meter station in Gloucester County, New Jersey. Columbia would also install a 6,000 horsepower compressor at both its existing Eagle and Downingtown Compressor Stations in Chester County, Pennsylvania.

The facilities would supply 165,000 dekatherms per day of gas to the Mantua Creek Power Plant presently under construction in Gloucester County, New Jersey.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

1. Send two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

2. Label one copy of the comments for the attention of the Gas 1, PJ–11.1;

3. Reference Docket No. CP01–439–000; and

4 Mail your comments so that they will be received in Washington, DC on or before April 12, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account".

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select

"Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6695 Filed 3–19–02; 8:45 am]

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[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis, Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 14, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amended application for new license.

b. *Project No.:* 1354–005.

c. *Date filed:* July 28, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Crane Valley.

f. *Location:* On Willow Creek, North Fork Willow Creek, South Fork Willow Creek, Chilkoot Creek, and Chiquito Creek within the San Joaquin River Basin. The project is in Madera and Fresno counties near the town of Oakhurst, California.

The project includes 738.11 acres of federal lands within the Sierra National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. James Holeman (415) 973–6891 or Mr. Nicholas Markevich, 245 Market Street, P.O. Box 770000, San Francisco, CA 94177, (415) 973–5358.

i. *FERC Contact:* Jim Fargo at (202) 219–2848; e-mail *james.fargo@ferc.fed.us*

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j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *(http://www.ferc.gov)* under the "e-Filing" link.

k. Status of environmental analysis: This application has been accepted for filing and is now ready for environmental analysis. At this time we do not anticipate the need for preparing a draft EA. We intend to prepare a supplement to the environmental document issued in 1992. The supplemental EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. Recipients will have 45 days to provide the Commission with any comments on that document. All comments on the EA, filed with the Commission, will be considered in the licensing decision. However, should substantive comments requiring re-analysis be received on the NEPA document, we would consider preparing a subsequent NEPA document before the licensing decision.

1. The Crane Valley—with 26.7 megawatts (MW) of normal operating capacity—has storage, diversion, water conveyance, and power production facilities.

- The Crane Valley reservoir (Bass Lake) with a maximum storage capacity of 45,410 acre-feet (ac-ft) and Chilkoot reservoir, upstream of Crane Valley, with a maximum capacity of 310 ac-ft
- A small diversion on a tributary to the West Fork Chiquito Creek that brings water to Chilkoot reservoir
- A conveyance system—including three diversion dams, three forebays, one afterbay, and about 14 miles of canals, tunnels and flumes—linking these five powerhouses:
  - —Crane Valley, with 0.9 MW of normal operating capacity
  - —San Joaquin No. 3, with 3.4 MW of normal operating capacity
  - —San Joaquin No. 2, with 3.2 MW of normal operating capacity
  - —San Joaquin No. 1A, with 0.4 MW of normal operating capacity
  - —Wishon, with 18.8 MW of normal operating capacity

Historically, the Project produces 123.3 gigawatthours (GWh) of electrical energy annually and has a dependable capacity of 8.4 MW.

m. Locations of the Application: Copies of the application are available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–2326. The applications may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–6699 Filed 3–19–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7160–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR-Media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): "Hazardous Remediation Waste Management Requirements (HWIR-Media)," EPA ICR Number 1775.03; OMB Control Number 2050–0161; Expiration Date 06/30/2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 20, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–2002–MH2P–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305W) United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.gov*. Comments in electronic format should also be identified by the Docket Number F–2002–MH2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above in this section).

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Mailcode 5303W, Washington, DC, 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page.

This notice and the supporting documents that detail the Reporting and Record keeping Requirements for the Hazardous Remediation Waste Management Requirements (HWIR-Media) Final Rule ICR are also available.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking contact Mike Fitzpatrick by phone at (703) 308–8411, by facsimile at (703) 308–8609, by mail at the Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Mailcode 5303W, Washington, DC, 20460 or e-mail at *fitzpatrick.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those owners or operators of facilities that wish to voluntarily clean up contamination of their site.

Title: "Hazardous Remediation Waste Management Requirements (HWIR-Media)" OMB Control No. 2050–0161; EPA ICR No. 1775.03 expiring 06/30/02.

Abstract: All information collection activities required by this rule are authorized by sections 3004 and 3005 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (SHWA), 42 U.S.C. 6912(a), 6921, 6924, 6925, 6926, and 6927. EPA believes the information collection for this rule is necessary to balance streamlined regulations of remediation wastes with the Agency's responsibility to protect human health and the environment. The respondents are primarily owners or operators of facilities that wish to voluntarily clean up contamination of their site.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA believes that the previous ICR (ICR Number 1775.02) overestimated the number of respondents reading the regulations, since ICRs need only burden respondents for reading the regulations in association with the collection of information. Given this, the current ICR assumes that 176 respondents will perform the paperwork requirements and hence will read the regulations. This is consistent with all other ICRs in the Office of Solid Waste. For hazardous remediation waste management sites that wish to utilize the flexibility provided by the optional requirements of the HWIR-media Rule, the estimated total annual hour burden for this information collection is 4,959 hours, which is about 29,000 hours lower than the previous ICR's burden estimate. The estimated total annual cost burden for this information collection is $334,886, which includes labor, capital, operations and maintenance, and purchased service costs. The total burden over the three year period of this ICR is estimated to be 14,877 hours and $1,004,658.

EPA estimates that, on average, 30 sites will be subject to the requirements in 40 CFR 264.1(j) and part 270, subpart H (i.e., the requirements for sites with RAPs) over the three-year period of this ICR. Note that this ICR addresses only non-permitted sites under 40 CFR 264.1(j) and part 270, subpart H. A site may conduct cleanup through a RAP, permit, or other specified mechanism. Permitted facilities would obtain a RAP by modifying their permit. These activities are already addressed in "Part B Permit Application, Permit Modifications, and Special Permits," ICR Number 1573. Therefore, this ICR addresses only non-permitted sites under the RAP requirements.

EPA also estimated the number of owners/operators of hazardous remediation waste management sites subject to the 40 CFR 264.554 requirements for staging piles. Based on the Biennial Reporting System (BRS) data, EPA estimates that, currently, there are 87 existing hazardous remediation waste management sites with staging piles. Additionally, EPA estimates that, each year, 59 owners/operators of non-permitted hazardous remediation waste management sites will seek a new staging pile designation.

EPA estimates that 176 owners/operators of hazardous remediation waste management sites (i.e., 30 + 87 + 59 = 176) will be subject to the requirements in this ICR and will, therefore, read the regulations each year.

For owners/operators of hazardous remediation waste management sites subject to the 40 CFR 264.1(j) and part 270, subpart H requirements, the reporting burden is estimated to be 27.33 hours per respondent per year. This hourly burden includes time for preparing and submitting a RAP application, information to modify a RAP, and information to transfer a RAP. The recordkeeping burden is estimated to be 42.13 hours per respondent per year. This hourly burden includes time for reading the regulations and maintaining documentation (e.g., waste analyses results, contingency and emergency plan, file of RAP documents) on site.

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For owners/operators of hazardous remediation waste management sites subject to the 40 CFR 264.554 requirements for staging piles, the reporting burden is estimated to be 7.08 hours per year per respondent. This hourly burden includes time for preparing and submitting information for a staging pile designation and documentation supporting a staging pile extension. The recordkeeping burden is estimated to be 12.61 hours per respondent per year. This hourly burden includes time for reading the regulations and complying with the recordkeeping requirements in section 264.554(d)(1)(iii).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 11, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02-6723 Filed 3-19-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[PF-1070; FRL-6824-4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF-1070, must be received on or before April 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-1070 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-9423; e-mail address: harris.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF-1070. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-1070 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF-1070. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Syngenta Crop Protection and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection

PP 7F4845

EPA has received a pesticide petition (7F4845) from Syngenta Crop Protection, Inc. (formerly Novartis Crop Protection, Inc.), P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of emamectin benzoate, 4'-epi-methylamino- 4'-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4'-epi- methylamino-4'-deoxyavermectin B_1a, and a maximum of 10% 4'-epi-methlyamino- 4'-deoxyavermectin B_1b benzoate), and its metabolites 8,9 isomer of the B_1a and B_1b component of the parent insecticide in or on the raw agricultural commodities fruiting vegetables (except cucurbits) group at 0.02 parts per million (ppm), brassica leafy vegetables group at 0.025 ppm, turnip, tops at 0.025 ppm, leafy vegetables (except brassica) group at 0.1 ppm, cottonseed at 0.025 ppm, cotton gin byproducts at 0.5 ppm. This notice is an update to a notice of filing originally published on August 29, 1997 (62 FR 45804) (FRL-5738-2). This new notice represents an amendment to the original petition (7F4845) which only included the fruiting vegetables (except cucurbits) group. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of emamectin benzoate in plants has been studied in lettuce, cabbage, and sweet corn. The major portion of the residue is parent compound and its delta 8,9- photoisomer. The metabolism of emamectin has also been investigated in goats and poultry to characterize the fate of residues that may be present in animal feed items.

2. *Analytical method.* Adequate analytical methods (HPLC-fluorescence methods) are available for enforcement purposes.

3. *Magnitude of residues.* The appropriate number of residue trials have been conducted for cotton, tomatoes, peppers, leaf lettuce, spinach, head lettuce, celery, and mustard greens. These trials were conducted in the major U.S. growing areas for these crops. Processing studies were conducted to provide tomato product, cottonseed hull, meal, and refined oil samples for analysis.

B. Toxicological Profile

A full description of the studies describing the toxicity, animal metabolism, metabolite toxicology, and endocrine disruption of emamectin benzoate can be found in the posting for its first tolerances in the**Federal Register** of May 19, 1999 (64 FR 27192) (FRL-6079-7).

C. Aggregate Exposure

1. *Dietary exposure.* Emamectin benzoate tolerances have been established for head lettuce, celery, and head and stem brassica vegetables. Syngenta assessed chronic exposure by using the mean of the field trial residue values and projected market share values. The acute exposure assessment was performed as a Tier 3, 5000 iteration, Monte Carlo analysis. Actual field trial residue values were utilized along with market share for each crop.

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i. *Food.* Chronic dietary exposure to emamectin benzoate is negligible. Exposure calculations made from conservative residue values generated from field trials conducted at maximum application rates and minimum pre-harvest intervals show that chronic exposure is only 1.1% of the population adjusted dose (PAD) for the most sensitive subpopulation (non-black/non-white/non-hispanics). The second most sensitive subpopulation is children (1–6 years old) with an exposure of 1.0% of the chronic PAD. The chronic PAD is based on a no observable adverse effect level (NOAEL) of 0.075 milligrams/kilogram body weight/day (mg/kg bwt/day) based on a 15-day neurotoxicity study in mice and an uncertainty factor of 900. This uncertainty factor is due to a 100–fold safety factor for interspecies and intraspecies variation and an additional 9–fold safety factor for use of a toxicological study of short duration (3x) plus a FQPA safety factor (3x).

Acute exposure for the most sensitive subpopulation is 26.8% of the acute PAD (aPAD) for non-nursing infants <1 year). The exposure to the U.S. population is 16.7% of the aPAD. These exposures were compared to the same toxicological endpoint as described above for the chronic assessment except an uncertainty factor of 300 was assumed (100–fold for interspecies and intraspecies variation and a 3–fold FQPA safety factor.

ii. *Drinking water—a. Chronic exposure.* The estimated maximum concentrations of emamectin benzoate in surface and ground water are 0.00137 parts per billion (ppb) (Day 56 EEC/3 from GENEEC) and 0.00600 ppb (SCI-GROW), respectively. The chronic PAD for emamectin benzoate is 0.000083 mg/kg bwt/day. From the chronic dietary exposure analysis, an exposure estimate of 0.0000006 mg/kg bwt/day was determined for the U.S. population and 0.0000007, 0.0000008, and 0.0000009 mg/kg/day for the females (13+/nursing), children (1–6 years) and non-hispanic/non-white/non-black subgroups, respectively. Based on EPA's "Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments" document (December 2, 1997), chronic drinking water levels of comparison (DWLOC) for emamectin benzoate were calculated to be 3 ppb for the U.S. population and 2, 1, 3 ppb for the females (13+/nursing), children (1–6 years), and non-hispanic/non-white/non-black subgroups, respectively. Based on this analysis, emamectin benzoate estimated environmental concentrations (EECs) do not exceed the calculated chronic DWLOCs.

b. *Acute exposure.* The estimated maximum concentrations of emamectin benzoate in surface and ground water are 0.09688 ppb (peak EEC from GENEEC) and 0.00600 ppb (SCI-GROW), respectively. The aPAD for emamectin benzoate is 0.00025 mg/kg bwt/day. From the acute dietary exposure analysis, the highest acute food exposure from the uses of emamectin benzoate was 0.000042 mg/kg/day at the 99.9th percentile for the U.S. population and 0.000058 and 0.000067 mg/kg/day for the children (1–6 years) and non-nursing infants (<1 yr) subgroups, respectively. Using this information, acute DWLOCs for emamectin benzoate were calculated to be 7 ppb for the U.S. population and 2 ppb and 2 ppb for the children (1–6 years), and non-nursing infants (<1 yr) subgroups, respectively. Based on this analysis, emamectin benzoate EECs do not exceed the calculated acute DWLOCs.

2. *Non-dietary exposure.* No products containing emamectin benzoate have yet been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for any non-food use. No significant non-dietary, non-occupational exposure is anticipated.

D. Cumulative Effects

Emamectin benzoate is synthetically derived from avermectin, which is derived from *Streptomyces avermitilus*, which produces the insecticide avermectin, which is a mixture of two homologs, avermectin B_1a and B_1b, which have equal biological activity. Currently, the only other member of this class that is registered for agricultural uses is abamectin. Abamectin and ivermectin are structurally similar to emamectin. EPA does not have at this time available data to determine whether emamectin benzoate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based upon a common mechanism, emamectin benzoate does not appear to produce a toxic metabolite produced by other substances. For the purpose of this tolerance action, therefore, Syngenta has not assumed that emamectin benzoate has a common mechanism of toxicity with these other substances.

E. Safety Determination

1. *U.S. population—i. Acute risk.* Exposure to emamectin benzoate residues in food will occupy no more than 16.7% of the aPAD for adult population subgroups and no more than 26.8% of the aPAD for infant/children subgroups. Residue levels used for food-source dietary risk assessments were highly refined and did incorporate percent of crop treated information. Acute dietary exposure estimates were for the 99.9th percentile. Estimated concentrations of emamectin residues in surface and ground water are lower than the DWLOCs. Therefore, Syngenta does not expect acute aggregate risk to emamectin benzoate residues from food and water sources to exceed the level of concern for acute dietary exposure.

ii. *Chronic risk.* The chronic dietary exposure to emamectin residues in food will occupy no more than 0.7% of the chronic RfD for adult population subgroups and no more than 1.0% PAD for children, 1–6 years old, subgroups. Residue levels used for food-source dietary risk assessments were highly refined and did incorporate percent of crop treated information, as indicated above. The estimated concentrations of emamectin residues in surface and ground water are lower than the DWLOCs. The expected chronic aggregate risk to emamectin residues from food and water sources would not be expected to exceed the level of concern for chronic dietary exposure.

2. *Infants and children.* For emamectin benzoate, the Agency has determined the tenfold safety factor for the protection of infants and children should be reduced to 3x. The rationale for reducing the FQPA safety factor is as follows: No increased susceptibility was demonstrated in rats or rabbits following *in utero* and/or postnatal exposure to emamectin. However, increased susceptibility was demonstrated in a developmental neurotoxicity study in rats.

Although, increased susceptibility was demonstrated in a developmental neurotoxicity study in rats, EPA determined that the 10x factor should be reduced to 3x based on the following weight-of-the-evidence considerations in the developmental neurotoxicity study: (1) The lowest observed adverse effect level (LOAEL) was based on a single effect/end point (i.e., decrease in open field motor activity); (2) the effect at the LOAEL was seen only on postnatal day 17 and was not seen either on earlier day 13 or later day 21 evaluations, whereas, at the high dose (3.6/2.5 mg/kg/day), this effect was seen on postnatal days 13 and 17; (3) the effect at the LOAEL was not accompanied with other toxicity whereas, at the high dose tremors and hind limb splay were also seen; (4) the decreased performance was lower only when compared to the concurrent control; and (5) there was limited (only two studies) historical control data available for comparison.

Syngenta believes the clinical signs of avermectin-family neurotoxicity seen in neonatal rats are unlikely to be useful predictors of human risk. Young rats are considerably more sensitive to avermectin-type compounds than either adult rats or humans and other primates. (In neonatal rats, unlike humans, the P-glycoprotein levels are only a small fraction of the levels seen in adult rats.) Moreover, data from clinical experience with ivermectin, a related human drug, and studies on ivermectin and abamectin, a related pesticide, demonstrate that both the neonatal rat and the CF–1 mouse overpredict the toxicity of the avermectin-type compounds to humans and to non-human primates.

3. *Conclusion.* There is a complete toxicity data base for emamectin benzoate and exposure data are complete or are conservatively estimated based on data that reasonably account for potential exposures. Based on these risk assessments, Syngenta concludes that, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to emamectin benzoate residues.

F. International Tolerances

No Codex maximum residue levels have been established for residues of emamectin benzoate.

[FR Doc. 02–6615 Filed 3–19–02; 8:45 am]

BILLING CODE 6560–50–S

EXECUTIVE OFFICE OF THE PRESIDENT

Information Collection Activities and Request for Comments

AGENCY: Office of National Drug Control Policy, Executive.

ACTION: Notice.

SUMMARY: The National Youth Anti-Drug Media Campaign is a program within the Office of National Drug Control Policy (ONDCP). To generate anti-drug awareness, the Media Campaign has partnered with the Advertising Council to create an advertising campaign that encourages local community coalitions to engage in drug prevention activities. In addition, the partnership proposes to collect information from interested adults to determine whether public service advertising increases participation in local coalition activities, the usefulness of local public service announcements, and community response to public service announcements. ONDCP invites comments on the (a) information necessary to accurately measure partnership efforts; (b) quality, utility and clarity of the information; (c) methods that minimize the burden of information collection techniques; and (d) accuracy of the estimated burden of information collection.

FOR FURTHER INFORMATION CONTACT: Gem Benoza (202) 395–4625.

Dated: March 13, 2002.

Don Maple,

Media Campaign Deputy Director.

[FR Doc. 02–6716 Filed 3–19–02; 8:45 am]

BILLING CODE 3180–02–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011793.

Title: Maersk Sealand/Great Western Asia-U.S. West Coast Slot Charter Agreement.

Parties: A.P. Moller-Maersk Sealand, Great Western Steamship Company.

Synopsis: Under the proposed agreement, Great Western will charter container slots from Maersk Sealand in the trade between U.S. West Coast ports and ports in Asia. The parties request expedited review.

Agreement No.: 011794.

Title: COSCON/KL/YMUK/Hanjin/Senator Asia & Europe/U.S. Atlantic & Gulf Coast Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited, Hanjin Shipping Co., Ltd., Kawasaki Kisen Kaisha, Ltd., Senator Lines GmbH, Yangming (UK) Ltd.

Synopsis: Under the proposed agreement, the parties will be selling or exchanging container slots and coordinating their services in the trades between U.S. Atlantic and Gulf ports and ports in Asia, Central America, and Europe.

Agreement No.: 201087–001.

Title: Oakland-International Transportation Marine Terminal Agreement.

Parties: City of Oakland, Board of Port Commissioners, International Transportation Service, Inc.

Synopsis: The proposed amendment foresees the replacement of cranes with resultant changes in the breakpoint level and the minimum annual guarantee as well as a change in the extent of the premises covered by the agreement. The agreement continues to run through June 30, 2003.

Agreement No.: 201131.

Title: NY/NJ-Maher Lease Agreement.

Parties: The Port Authority of New York and New Jersey, Maher Terminals, Inc.

Synopsis: The agreement covers the lease of a marine terminal at the port authority's Elizabeth Marine Terminal. The agreement runs through September 30, 2030.

Agreement No.: 201132.

Title: NY/NJ-Port Newark Container Terminal LLC Lease Agreement.

Parties: The Port Authority of New York and New Jersey, Port Newark Container Terminal LLC.

Synopsis: The agreement covers the lease of a marine terminal at the port authority's Newark Marine Terminal. The agreement runs through November 30, 2030.

Dated: March 15, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6746 Filed 3–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Request for Additional Information

The Commission gives notice that it has requested that the parties to the below listed agreement provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1705(d). The Commission has determined that further information is necessary to evaluate the impact of the proposed Reefer Trade Management Program. This action prevents the agreement from becoming effective as originally scheduled.

The Commission also gives notice that it has determined to hold an oral hearing at which interested parties may present information and views on the likely effects of the proposed Reefer Trade Management Program on competition, transportation services, and transportation costs for shippers of refrigerated cargo. The Commission will establish the date, specific issues to be heard, and procedures for this hearing by further notice.

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Agreement No.: 011325–027.
Title: Westbound Transpacific Stabilization Agreement.
Parties: American President Lines, Ltd., APL Co. PTE, A.P. Miller-Maersk Sealand, COSCO Container Lines, Evergreen Marine Corporation, Hanjin Shipping Company, Ltd., Hapag-Lloyd Container Linie GmbH, Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P&O Nedlloyd B.V., P&O Nedlloyd Limited, Yangming Marine Transport Corp.

By Order of the Federal Maritime Commission.

Dated: March 15, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6744 Filed 3–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16183N.
Name: AJ International Shipping/ Logistics, Inc.
Address: 4548 Mundy Road, Jacksonville, FL 32207.
Date Revoked: February 6, 2002.
Reason: Failed to maintain valid bond.

License Number: 4088F.
Name: Able Freight Services, Inc.
Address: 5340 W. 104th Street, Los Angeles, CA 90045.
Date Revoked: February 10, 2002.
Reason: Failed to maintain valid bond.

License Number: 4503F
Name: Aimar USA, Inc.
Address: 7500 W. 18th Lane, Hialeah, FL 33014.
Date Revoked: February 11, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3202F.
Name: BWI Transworld Illinois, Inc.
Address: 765 Route 83, Suite 112, Bensenville, IL 60106.
Date Revoked: February 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 506F.
Name: DBM Logistics, Inc.
Address: 5130 Franklintown Road, Baltimore, MD 21207.
Date Revoked: February 16, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4425F.
Name: Esprit International Shipping Combined Transport, Inc. dba Capital Freight Management.
Address: 701 S. Atlantic Blvd., Suite 200, Monterey Park, CA 91754.
Date Revoked: February 13, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15791N.
Name: Fast Service Inc.
Address: 206 Warren Street, Harrison, NJ 07029.
Date Revoked: February 17, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3968F.
Name: Flamingo Freight Forwarders, Inc.
Address: 9921 NW 80th Avenue, Bay 1–Q, Hialeah Gardens, FL 33016.
Date Revoked: February 22, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17080N.
Name: General Cargo & Logistics.
Address: 4261 182nd Street, Suite J, Torrance, CA 90504.
Date Revoked: February 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3886NF.
Name: Goodship International, Inc.
Address: 1058 Tower Lane, Bensenville, IL 60106.
Date Revoked: February 27, 2002.
Reason: Surrendered license voluntarily.

License Number: 16421N.
Name: Korea Express Atlanta, Inc. dba Korea Freight Line, Inc.
Address: 5559 New Peachtree Road, Chamblee, GA 30341.
Date Revoked: February 16, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3217F.
Name: Kremer International Transport, Inc.
Address: 3501 Watson Road, St. Louis, MO 63139.
Date Revoked: February 13, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4547NF.
Name: Millennium Shipping Company.
Address: 4100 East 51st Street, Suite 104, Tulsa, OK 74135.
Date Revoked: February 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15292N.
Name: Moon Beam International, Inc.
Address: 2740 Tonawanda Creek Road, Amherst, NY 14228.
Date Revoked: February 13, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1739F.
Name: Ronald D. Stribling dba Ronald D. Stribling Company.
Address: 4110 NE 122nd Avenue, Suite 140, Portland, OR 97230.
Date Revoked: February 13, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13490N.
Name: Sotby Transocean Line, Inc.
Address: 1630 Bath Avenue, Brooklyn, NY 11214.
Date Revoked: January 18, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16655N.
Name: Vayer L.A., Inc.
Address: 11755 Sheldon Street, Sun Valley, CA 91352.
Date Revoked: February 22, 2002.
Reason: Failed to maintain a valid bond.

Ronald D. Murphy,

Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–6743 Filed 3–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
17090N	Inter-Connect Transportation, Inc., 8901 S. La Cienega Blvd., Suite 210, Inglewood, CA 90301.	December 8, 2001.
6313N	Puerto Rico Freight Systems, Inc., P. O. Box 9081, Building 11, International Mercantile Center, Guaynabo P.R. 00908.	October 19, 2001.
4134F	World Exchange, Inc., 8840 Bellanca Avenue, Los Angeles, CA 90045.	August 18, 2001.

Ronald D. Murphy,

Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–6745 Filed 3–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Plumas Bancorp, Quincy, California; to become a bank holding company by acquiring 100 percent of the voting shares of Plumas Bank, Quincy, California.

Board of Governors of the Federal Reserve System, March 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6637 Filed 3–19–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–36]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 487–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The CDC/ATSDR Educational Loan Repayment Program (ELRP)—New—Office of the Director, Human Resources Management Office, Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry (CDC/ ATSDR).

The Centers for Disease Control and Prevention (CDC) intends to implement an Educational Loan Repayment Program (ELRP) authorized under 42 U.S.C. Sect. 247b-7 as a recruitment and retention incentive for highly qualified health professionals in hard-to-fill positions. The ELRP will be implemented on a pilot basis with up to fifteen (15) loans.

Under the ELRP, a maximum of $35,000 a year (plus 39 per cent of total loan repayment for tax credit as loan repayment benefits represent taxable income) may be repaid toward a participant's outstanding eligible educational debt. The participant is responsible for a loan repayment equal to a total of 10 percent of his/her annual CDC base salary, while the ELRP will repay at a rate of one-third (1/3) of the remaining repayable debt (up to the maximum allowable) for each of the three (3) years. The participant must sign a contract agreeing to remain employed by CDC for a period of not less than three years. Failure to complete the minimum three-year service agreement period will be considered a breach of contract and will subject the ELRP participant to assessment of monetary penalties and damages. Actual loan repayment amounts are based on the proportion of a participant's qualifying debt relative to his/her beginning CDC base salary.

Overall ELRP eligibility requirements:

a. Be a citizen of the United States;

b. Hold a relevant Doctoral degree or equivalent;

c. Have been selected for a vacant position or is currently assigned to a covered hard-to-fill health professional occupational series at CDC/ATSDR; and,

d. Have a qualifying educational debt in excess of 20 percent of their annual CDC base salary.

There are no costs to respondents.

Respondents	Number of respondents	Responses/ respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Supervisor	15	1	15/60	4
Applicant	15	1	15/60	4
Lender	45	1	30/60	23
Total				31

Dated: March 14, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6680 Filed 3–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee/ Vaccine Supply Conference Call

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal Advisory Committee meeting.

Name: National Vaccine Advisory Committee (NVAC) Vaccine Supply Conference Call.

Time and Date: 11 a.m.–1 p.m., April 1, 2002.

Place: Audio Conference Call.

Status: This meeting is open to the public, telephone lines are limited. The public can join the meeting by Audio Conference Call by calling (888) 398–1687 and providing the following information:

Pass code: Peter.

Leaders Name: Dr. Georges Peter.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: To discuss recommendations from the NVAC Workshop on Strengthening the Vaccine Supply.

Agenda items are subject to change as priorities dictate.

Public comments will be permitted at the end of the NVAC meeting on April 1, 2002.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4770 Buford Highway, M/S K–77, Atlanta, Georgia 30341, telephone (770)488–2040.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 12, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–6681 Filed 3–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Criteria for Selecting New Environmental Chemicals or Categories of Chemicals for Analytic Development and for Inclusion in Future Releases of the National Report on Human Exposure to Environmental Chemicals

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Requests public comment on CDC's proposed criteria for selecting new environmental chemicals or categories of chemicals for analytical method development and for selecting additional environmental chemicals or categories of chemicals tc appear in future releases of the "National Report on Human Exposure to Environmental Chemicals" (the "Report"). The proposed criteria for choosing new environmental chemicals or categories of chemicals for analytic development and for including chemicals or categories of chemicals in future editions of the "Report" are as follows: (1) Independent scientific data which suggest that the potential for exposure of the U.S. population to a particular chemical is changing or persisting; (2) seriousness of health effects known or suspected to result from exposure to the chemical (for example, cancer and birth defects); (3) the proportion of the U.S. population likely to be exposed to levels of chemicals of known or potential health significance; (4) the need to assess the efficacy of public health actions to reduce exposure to a chemical in the U.S. population or a large component of the U.S. population (for example, in children); (5) the existence of an analytic method that can measure the chemical or its metabolite in blood or urine with adequate accuracy, precision, sensitivity, specificity, and speed; and (6) the incremental analytical cost (in dollars and personnel) to perform the analyses (preference is given to chemicals that can be added readily to existing analytical methods). After reviewing and incorporating public comments from this announcement, CDC will publish the criteria in their final form in the **Federal Register** along with a general notice requesting public nominations of new chemicals that satisfy the new criteria. The criteria will be used by experts to prioritize the nominated chemicals for analytical method development and for eventual inclusion in the "Report."

DATES: Submit comments on or before April 19, 2002.

ADDRESSES: Address all comments concerning this notice to Dorothy Sussman, Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Laboratory Sciences, Mail Stop F–20, 4770 Buford Highway, Atlanta, Georgia 30341.

FOR FURTHER INFORMATION CONTACT: Technical Information: Dr. Richard Wang, Telephone 770–488–7950

SUPPLEMENTARY INFORMATION: The "Report" provides an ongoing assessment of the exposure of the U.S. population to environmental chemicals using biomonitoring. (The "Report" is published by CDC under the authoritities 42 U.S.C. 241 and 42 U.S.C. 242k). For the "Report," an environmental chemical means a chemical compound or chemical element present in air, water, soil, dust, food, or other environmental media. Biomonitoring is the assessment of human exposure to chemicals by measuring the chemicals or their breakdown products in human specimens, such as blood or urine. The "Report" provides this exposure information about participants in an ongoing national survey known as the National Health and Nutrition Examination Survey (NHANES). This survey is conducted by CDC's National Center for Health Statistics; measurements are conducted by CDC's National Center for Environmental Health. The first "Report," published in March 2001, gave information about levels of 27 chemicals found in the U.S. population. The "Report" can be obtained at the following: *www.cdc.gov/nceh/dls/report/*; email *ncehdls@cdc.gov* or Telephone 1–866–670–6052. In addition to those chemicals in the first "Report," the following categories or classes of environmental chemicals will be in the second "Report:" polycyclic aromatic hydrocarbons (PAHs), co-planar and non-planar polychlorinated biphenyls (PCBs), persistent organochlorine pesticides, carbamate pesticides, dioxins, and furans.

Future editions of the "Report" will provide detailed assessments of exposure levels among different population groups defined by sex, race/ethnicity, age, urban /rural residence, education level, income, and other characteristics. Over time, CDC will be able to track trends in exposure levels. Future editions may also include additional exposure information for special-exposure populations (*e.g.*, children) from studies of people through localized or point sources and from studies of adverse health effects resulting from exposure to varying levels of environmental chemicals.

Dated: March 12, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–6624 Filed 3–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–74]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Income and Eligibility Verification System (IEVS) and Supporting Regulations in 42 CFR 435.940–435.965.

Form No.: CMS–R–74 (OMB# 0938–0467).

Use: Section 1137 of the Social Security Act requires Medicaid State agencies and other federally funded welfare agencies to request income and resource data from certain federal agencies, State wage information collection agencies, and State unemployment compensation agencies through an IEVS. The purpose of the IEVS is to ensure that only eligible individuals receive benefits.

Frequency: Annually.

Affected Public: State, local, or tribal government.

Number of Respondents: 54.

Total Annual Responses: 54.

Total Annual Hours: 131,390.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–R–74, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 12, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–6751 Filed 3–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–416]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60.

Form No.: CMS–416 (OMB# 0938–0354).

Use: States are required to submit an annual report on the provision of EPSDT services to CMS pursuant to section 1902(a)(43) of the Social Security Act. These reports provide CMS with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and

determining a State's results in achieving its participation goal.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56;

Total Annual Responses: 56.

Total Annual Hours: 1,568.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–416, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 12, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–6752 Filed 3–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1880/1882]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Request for Certification as Supplier of Portable X-ray Services under the Medicare/Medicaid Program for Portable X-ray Survey Report and Supporting Regulations in 42 CFR 486.100—486.110.

Form No.: CMS–1880/1882 (OMB# 0938–0027).

Use: The Medicare program requires portable X-ray suppliers to be surveyed for health and safety standards. The CMS–1880 is used by the surveyor to determine if a portable X-ray applicant meets the eligibility requirements. It also promotes data reduction or introduction, and retrieval from the Online Survey Certification and Reporting (OSCAR) System by the CMS Regional Offices. The CMS–1882 is the survey form that records survey results. The form is primarily a coding work sheet designed to facilitate data reduction and retrieval into the OSCAR system at the CMS Regional Offices.

Frequency: On occasion.

Affected Public: Business or other for profit.

Number of Respondents: 655.

Total Annual Responses: 98.

Total Annual Hours: 172.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–1880/1882, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 12, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–6753 Filed 3–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–299]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: A Project to Develop an Outcome-Based Continuous Quality Improvement System and Core Outcome and Comprehensive Assessment Data Set for PACE.

Form No.: CMS–R–299CMS—(OMB# 0938–0791).

Use: The purpose of this project is to develop an outcome-based continuous quality improvement (OBCQI) system and core comprehensive assessment data set for the PACE program by (a) developing and testing a set of data items for core outcome and comprehensive assessment (COCOA), (b) testing risk-adjustment methods so each site's outcomes can be

appropriately evaluated, (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner, and (d) testing the usefulness of the data items for assessment and care planning. A three-phase field test will result in the refinement of the draft COCOA data items and protocols as needed. Findings from the project are intended to guide the possible implementation of a national approach for OBCQI and core comprehensive assessment for PACE.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions and individuals or households.

Number of Respondents: 8,298.

Total Annual Responses: 90,070.

Total Annual Hours: 22,503.77.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 12, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–6756 Filed 3–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1542]

Draft Guidance for Industry on Electronic Records; Electronic Signatures, Time Stamps; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Time Stamps." The draft guidance describes the agency's current thinking on issues pertaining to the use of computer generated time stamps in computer systems subject to part 11 (21 CFR part 11) requirements, to ensure that electronic records and electronic signatures are trustworthy, reliable, and compatible with FDA's public health responsibilities. The use of the computer generated time stamps is a requirement of part 11 of title 21 of the Code of Federal Regulations.

DATES: Submit written or electronic comments on the draft guidance by June 18, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Compliance Information and Quality Assurance (HFC–240), Office of Enforcement, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1060, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Office of Enforcement (HFC–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0383, e-mail: pmotise@ora.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Time Stamps." In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published a regulation providing criteria under which the agency considers electronic records and electronic signatures to be trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper (part 11). The preamble to part 11 stated that the agency anticipated issuing supplemental guidance documents and would afford all interested parties the opportunity to comment on draft guidance documents.

The draft guidance addresses issues pertaining to computer generated time stamps in computer systems used to create, modify, maintain, archive, retrieve, or transmit electronic records and electronic signatures subject to part 11. Part 11 requires persons subject to the regulation to implement time stamps in audit trails and signature manifestations, and the draft guidance is intended to assist people who must meet this requirement; it may also assist FDA staff who apply part 11 to persons subject to the regulation.

The draft guidance provides specific information on key principles and practices, and it addresses some frequently asked questions. However, it is not intended to cover every aspect of time stamps.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the agency's current thinking on computer generated time stamps used in computer systems subject to part 11. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/ora/compliance_ref/Part11/default.htm.

Dated: March 12, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6623 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Grants for the Community Access Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of funding to assist communities and their safety net providers in developing integrated health care delivery systems that serve the uninsured and underinsured with greater efficiency and improved quality of care. This funding is part of the $105 million appropriated for the Community Access Program (CAP) under the fiscal year 2002 Health and Human Services Appropriations Act. Up to $20 million will be available as 1-year CAP grants with the possibility of supplemental funding depending on performance and funding availability. Current annual awards to communities average about $900,000 per award, and range from approximately $150,000 to $1.2 million. Applicants are encouraged to propose total budgets in this range.

The purpose of this program is to assist communities and consortia of health care providers, faith-based organizations and others to support the infrastructure necessary to fully develop or strengthen integrated health systems of care that coordinate health services for the uninsured and underinsured. The goals are to increase access to care, generate system-wide efficiency and cost savings, and improve health in targeted populations. The coordination of services through the CAP grant will allow the uninsured and underinsured to receive more efficient and higher quality care and gain entry into a comprehensive system of care. The system will be characterized by effective collaboration, information sharing, and clinical and financial coordination among all levels of care in the community network.

DATES: The timeline for application submission, review and award is as follows:

Application kits and additional guidance are available through the HRSA Grants Application Center (GAC).

May 7, 2002—Applications due.

June–2002—Applications reviewed.

July–August—Site visits to selected applicants.

September 2002—Grant awards announced.

ADDRESSES: To receive a complete application kit (i.e., application instructions, necessary forms, and application review criteria), contact the HRSA GAC at:

Health Resources and Services Administration Grants Application Center COMMUNITY ACCESS PROGRAM: CFDA #93.252, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, Phone: 1–877—HRSA–123, Fax: 1–877–HRSA–345. E-mail: *hrsagac@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: Community Access Program Office, Health Resources and Services Administration, 4350 East West Highway, 3rd Floor, Bethesda, Maryland 20854, Phone: 301–443–0536, Fax: 301–443–0248. E-mail: *capcentral@hrsa.gov*.

SUPPLEMENTARY INFORMATION:

Program Description

The program has been in existence since FY 2000 with 136 projects funded to date. Many communities supported by earlier grants have already taken action to meet the health needs of all their residents. There are many exciting, dynamic models. Each of the existing CAP communities has created a project that addresses its own needs. We are interested in funding new communities that plan to generate better health for more people at less cost.

There is no one successful model that we are trying to replicate. Some successful communities:

- Have a project design that builds on its current capacities and strengths.
- Build coalitions that include the major players in the political and health delivery systems.
- Use Federal funds to plan a transition to an expanded approach that will be competitive within its own market.
- Have a plan for sustainability after Federal funds expire.
- Have a coalition that works with its county board, city council, State legislature and State health programs to ensure coordination and efficient use of all available resources.

CAP requires a coalition/collaboration of partners that includes primary, secondary and preventive care. The coalition/collaboration should include the providers of safety net services who currently serve the community. Many existing CAP coalitions have:

- Coordinated the provision of care through public hospitals, public health departments, and Federally Qualified Health Centers and existing other federally funded programs like Healthy Start and Ryan White;
- Included a strong linkage with social service organizations and faith-based programs.
- Linked hospital and clinic services using state of the art information technology.
- Developed management systems that allow transitions between Medicaid, uninsured, and insured status for low income populations to reduce administrative burden on providers.
- Created networks to ensure a primary care home for uninsured persons and distributed the caseloads among all providers.
- Linked mental health and substance abuse services to primary care.
- Ensured partnership with the local business community.
- Addressed service gaps by expanding health centers.

Although there are many models emerging, these are not really common characteristics but are "issues frequently addressed." They are:

- Common enrollment systems.
- Standardized financial eligibility.
- Agreement about sliding fee scales.
- Coordination of services among providers.
- Ensured primary care or medical homes.
- Provision of specialty services.
- Automated appointment systems.
- Case management services.
- Strategies for affordable pharmaceutical services.
- Disease management programs across the array of community providers.
- Outreach to hard-to-enroll populations.
- Information systems to implement the desired strategies.
- Included use of local taxing authorities and redirected funds within the system to provide for sustainability.

These communities are demonstrating that these changes are possible and they are reporting the results of their efforts across the Nation. They are communities with clear goals, an operational plan for meeting these goals, a history of commitment to serving indigent populations, and a track record to indicate a reasonable chance of success.

Eligible Applicants

To encourage the development of different models, this program seeks a variety of applicants representing all types of communities. Applicants who receive funding may be large health care systems or small organizations. Applications are encouraged from urban areas, rural communities, tribal organizations, and faith-based communities.

Applications may be submitted by public and private non-profit entities that demonstrate a commitment to and experience with providing a coordinated continuum of care to uninsured individuals. Each applicant must represent a community-wide coalition that is committed to the project and includes safety net providers (where they exist) who have traditionally provided care to the community's uninsured and underinsured regardless of ability to pay. The community-wide coalition must consist of partners from all levels of care and partners who represent a range of services (*e.g.*, mental health and substance abuse treatment, maternal and child health care, oral health, HIV/AIDS care) to a wide variety of populations. Coalitions are encouraged to include partners from private industry, faith-based organizations, and other organizations within communities.

Examples of eligible applicants which may apply on behalf of the community-wide coalition include, but are not limited to:

- A consortium or network of providers (*e.g.*, public and charitable hospitals; community, migrant, homeless, public housing, and school-based health centers; rural health clinics; free health clinics; teaching hospitals and academic institutions).
- Local government agencies (*e.g.*, local public health departments with service delivery components).
- Tribal governments.
- Managed care plans or other payers (*e.g.*, HMOs).
- Agencies of State government, multi-State health systems, or other groups may submit applications on behalf of multiple communities if they demonstrate the ability to coordinate community health care delivery systems and bring resources to the community.

Existing CAP grantees are not eligible to apply for this funding.

Application Review and Funding Criteria

Each of the applications that has passed an eligibility and conformance review by Federal staff will be assigned to members of an Objective Review Committee (ORC) for review. Members of the ORC will use the following evaluation criteria in their review of applications:

1. *Community Needs Assessment*—Evidence that the target population has significant need (20 Points).

2. *Business Plan to Produce Defined Results*—Clarity and scope of projected results in terms of increased access to culturally competent care and/or health status for the target population, and alignment of these projected results with organizational capacity, a clear and accountable set of activities, operational plan and budget (30 Points).

3. *Service Integration Strategy & Readiness*—Integration of appropriate health and other services across the community of providers and organizations, readiness, evidence of progress towards developing an integrated system of care for the target population, and scope and quality of services (25 Points).

4. *Sustainability*—Demonstration of existing and sustainable public or private funding sources or cost-savings to be generated and reinvested in the system of care (15 Points).

5. *Evaluation*—Robust self-evaluation plan, specific performance measures, and strong commitment to participation in a national evaluation (10 Points).

A Validation Site Visit will be conducted prior to final award decisions of those applicants recommended by the ORC for funding. Site visits are expected to occur in the July/August timeframe.

Use of Grant Funds

Funding provided through this program may NOT be used to substitute for or duplicate funds currently supporting similar activities. Grant funds may support costs such as:

- Project staff salaries.
- Consultant support.
- Management information systems (*e.g.*, hardware and software).
- Project-related travel.
- Replication activities and travel to support peer-to-peer learning communities.
- Other direct expenses necessary for the integration of administrative, clinical, information system, or financial functions.
- Program evaluation activities.
- Case management and disease management activities that are not reimbursable services.

With appropriate justification on why funds are needed to support the following costs, up to a total of 15 percent in total of grant funds applied for may be used for any combination of the following:

- Alteration or renovation of facilities.
- Primary care site development.
- Service expansions or direct patient care.

(Direct patient care is defined as provision of services or supplies that are ordinarily reimbursable, *e.g.*, exams, therapy sessions, pharmaceuticals.)

- Capital equipment used for reimbursable services (e.g., radiology equipment, ambulances).

Grant funds may NOT be used for:

- Construction.
- Reserve requirements for state insurance licensure.

Expected Results

The integration and coordination of services among a community's safety net providers are expected to result in:

- Increased access to culturally competent care in terms of measures such as: numbers of vulnerable people served, the scope and continuity of provided services, the number of new access points such as health center expansions or new sites, and other;
- Improved health status in the target population;
- A sustainable system that provides coordinated care to the target population; and,
- Elimination of unnecessary, duplicate functions in service delivery and administrative functions, resulting in cost savings to reinvest in the system.

Dated: March 12, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–6707 Filed 3–19–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue a Final Comprehensive Conservation Plan, Associated Environmental Assessment, and Finding of No Significant Impact for Balcones Canyonlands National Wildlife Refuge in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a Final Comprehensive Conservation Plan (CCP), associated Environmental Assessment (EA), and a Finding of No Significant Impact (FONSI) for the Balcones Canyonlands National Wildlife Refuge, north of Austin, Texas, pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations. The Regional Director, Southwest Regional Office, upon issuing a FONSI, considered a reasonable range of management framework alternatives, and has selected Alternative 2, found in the EA, to be the Service's proposed alternative.

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Approval of the Balcones Canyonlands NWR CCP formalizes 8 goals which will result in:

- Restoration and enhancement of threatened and endangered species habitat on Refuge lands. (Goal 1)
- Protection and enhancement of habitat for a diversity of wildlife including other migratory birds. (Goal 2)
- Restoration of watershed health to minimize sheet runoff and siltation, enhance seasonal stream flow, and maximize ground and surface water recharge. (Goal 3)
- Development of interpretive programs that enable the public to (1) enjoy the fish and wildlife resources found on the refuge, (2) understand these resources and issues related to them, and (3) act to promote fish and wildlife conservation. (Goal 4)
- Protection of habitat within approved Refuge boundaries by fee acquisition or conservation easement. (Goal 5)
- Accurate, up-to-date data on roads, other physical infrastructure, habitats and wildlife, and plant species.(Goal 6)
- Compliance with historic and archeological resource protection laws and regulations. (Goal 7)
- Efficient Administration that Supports Refuge Objectives Accomplishments. (Goal 8)

Some of the specific changes to the existing program changes include but are not necessarily limited to the following objectives:

- Restore and enhance 500 acres of black-capped vireo habitat within 10 years.
- Maintain brown-headed cowbirds parasitism on black-capped vireo nests below 10%.
- Protect existing golden-cheeked warbler habitat on Refuge lands and enhance additional areas for golden-cheeked warbler where appropriate.
- Within five years design and begin to implement a plan to locate and map caves and other karst features, monitor changes occurring in them, and take actions as needed to protect them.
- Continue to support and promote the conservation of the golden-cheeked warbler and black-capped vireo in their migration and wintering areas through coordination with Central American ornithologists and participation in the Nature Conservancy's International Program.
- Within 10 years restore and manage at least 1,000 acres of existing and former native grassland and savannah habitat on the Refuge and increase the amount and diversity of native annual and perennial grasses and forbs on the refuge.
- Within ten years, design and implement a plan to restore wetlands and riparian corridors.
- Within ten years rehabilitate and improve existing wells for wildlife water sources for public viewing sites using wind and solar power.
- Control invasive species (e.g. second-growth juniper, prickly pear and false-willow) on at least 50 acres per year to improve ground cover and plant diversity.
- Reduce the Refuge white-tailed deer herd to achieve and maintain a density of one deer per 20 or more acres within five years to reduce adverse effects on Refuge habitat.
- Maintain and increase herbarium collection and print a Refuge Plant list within three years. Identify native plant and wildlife species that are unique to the Balcones Canyonlands region for potential restoration and enhancement on the Refuge.
- Control feral, exotic and domestic animals that can compete with native wildlife and damage its habitat (e.g. dogs, cats, feral hogs, emu, etc.). Complete hog control plan within three years.
- Restore native plant growth on eroded and disturbed sites to increase water holding capacity of the soils. Restore 50 acres per year.
- Through increasing visitation to 5,000 visitors per year, provide public opportunities to view and learn about Refuge wildlife species and representative habitat characteristics of the Texas Hill Country, and to promote a conservation ethic.
- Provide compatible wildlife dependent outdoor recreational opportunities for the public on the Refuge to include wildlife viewing access, while striving for a balance between conflicting user groups. Annually evaluate hunting program to include newly acquired tracts.
- Within five years develop a public outreach program to aid in the understanding of Refuge purposes, issues specific to Balcones Canyonlands National Wildlife Refuge.
- Within five years develop a public outreach program to aid in the understanding of Refuge purposes, issues specific to Balcones Canyonlands National Wildlife Refuge.
- Within five years design and implement Partnership and Volunteer programs to facilitate meeting Refuge management objectives.
- Improve five miles of public or administrative roads per year to improve access to the Refuge for public and administrative use.
- Annually review and update the land protection plan priorities. Acquire lands according to revised priorities.
- Meet with five private owners of lands within the Refuge per year to exchange information and provide assistance on management of wildlife populations and endangered species habitat.
- Within five years map roads, inspect ponds, map and monitor Refuge habitats and species distributions.
- Within three years, create and maintain a database of Refuge biological resources for use in making management decisions and documenting changes in habitat and wildlife composition.
- Maintain files on all archeological and cultural resource sites. Annually inspect all sites and record condition.
- Within three years complete plans for implementation of objectives and strategies in this comprehensive conservation plan.
- Within five years increase Refuge staff to meet minimal needs for implementation of Refuge objectives and strategies identified in this comprehensive conservation plan.
- Conduct, encourage and support research and management studies that will increase scientific data available for use in making Refuge management decisions.
- Within five years obtain adequate equipment and storage facilities to implement management strategies to meet objectives identified in this management plan.
- Within five years plan acquisition, remodeling and/or construction of a permanent Refuge Office and Visitor Contact Station to be located on Refuge lands.

The implementation of the above management approaches among others and employment of strategies associated with those approaches should assist in the achievement of the refuge's broad goals.

Based on a review and evaluation of the information contained in the CCP and EA for the Balcones Canyonlands National Wildlife Refuge, the Regional Director, Southwest Region, U.S. Fish and Wildlife Service, has selected Alternative 2 detailed in the EA. Consequently the Regional Director has determined that the approval of the individual or cumulative approaches reflected in Alternative 2 the Proposed Alternative and CCP Goals, Objectives and Strategies, is not deemed to constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2) (c) of the National Environmental Policy Act (NEPA). Therefore, an Environmental Impact Statement is not required. However, it is the intent of the Service to revisit questions of potential significant environmental consequences in accordance with NEPA upon consideration of the implementation of site specific proposals called for and discussed in the final plan document.

ADDRESSES: A paper copy and/or a Compact Disk copy may be obtained by writing to: Mr. John Slown, Natural Resource Planner, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of these documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service considered comments and advice generated in response to draft documents issued in November 1998. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of the availability of the final documents.

Dated: March 8, 2002.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 02–6768 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 19, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: San Diego Wild Animal Park, Escondido, California, PRT–047997.

The applicant requests a permit to import one male and one female captive-born Asian wild asses (*Equus kiang holdereri = E. hemionus*) and one female captive-born Somali wild ass (*Equus africanus somalicus*) from Tierpark Berlin-Friedrichsfelde, Germany for the purpose of enhancement of the survival of the species.

Applicant: Wheeling Park Commission, Ogelbay's Good Zoo, Wheeling, WV, PRT–053684.

The applicant request a permit to acquire through interstate commerce one male captive-born Komodo monitor (*Varanus komodoensis*) for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia, PRT–691650.

The applicant requests renewal of a permit for five years to import and export any endangered or threatened species for the explicit purpose of investigations and other law enforcement activities in order to enhance the survival of the species in the wild.

Applicant: Director, National Fish and Wildlife Forensics Laboratory, U.S. Fish and Wildlife Service, Ashland, Oregon, PRT–053639.

The applicant requests renewal of a permit for five years to import and export any endangered or threatened species for the explicit purpose of forensics activities which will directly or indirectly enhance the survival of the species in the wild.

Applicant: John Newton Walker, Dallas, TX, PRT–053503.

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT–053363.

The applicant request a permit to import two captive-born female Bornean orangutans (*Pongo pygmaeus pygmaeus*) from the Hong Kong Zoological and Botanical Gardens, Hong Kong, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT–053606.

The applicant request a permit to import captive-born male Amur leopard (*Panthera pardus orientalis*) from Jungle Cat World, Orono, Ontario, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: John F. Wilhelm, Mill Valley, CA, PRT–053629.

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Southern Beaufort Seapolar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093.

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Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 1, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–6729 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*). The U.S. Fish and Wildlife Service solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–052307

Applicant: Marck Menke, San Fransisco, California.

The applicant requests a permit to take (collect) *Eriodictyon altissimum* (Indian Knob Mountain Balm) and *Eriodictyon capitatum* (Lompoc Yerba Santa) in conjunction with evolutionary plant studies in San Luis Obispo and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–797233

Applicant: Entomological Consulting Services, Ltd., Pleasant Hill, California.

The permittee requests a permit amendment to take (survey by pursuit) the Palos Verdes blue butterfly *(Glaucopsyche lygdamus palosverdesensis)* and the Smith's blue butterfly *(Euphilotes enoptes smithi)*, and take (harass by survey and collect) the Ohlone tiger beetle *(Cicindela ohlone)* in conjunction with life history studies in Los Angeles, Monterey, Santa Cruz, and San Luis Obispo Counties, California for the purpose of enhancing their survival.

Permit No. TE–040555

Applicant: Steven L. Jessup, Ashland, Oregon.

The applicant requests a permit to take (collect tissue samples, flowers, and leaves) *Fritillaria gentneri* (Gentner's fritillary) in conjunction with genetic plant studies in Jackson and Josephine Counties, Oregon for the purpose of enhancing its survival.

Permit No. TE–051582

Applicant: William Goggin, San Leandro, California.

The applicant requests a permit to: take (harass by survey) the California clapper rail *(Rallus longirostris obsoletus)* and the southwestern willow flycatcher *(Empidonax traillii extimus)*; and take (capture) the California tiger salamander *(Ambystoma californiense)*, the California freshwater shrimp *(Syncaris pacifica)*, the Alameda whipsnake *(Masticophis lateralis euryxanthus)*, the salt marsh harvest mouse *(Reithrodontomys raviventris)*, and the San Francisco garter snake *(Thamnophis sirtalis tetrataenia)* throughout the range of each species in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–787484

Applicant: Kathleen M. Keane, Long Beach, California.

The permittee requests a permit amendment to take (locate and monitor nests) the California least tern *(Sterna antillarum browni)* in Santa Barbara and San Luis Obispo Counties, California in conjunction with monitoring activities for the purpose of enhancing its survival.

Permit No. TE–702631

Applicant: Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests a permit amendment to take the Carson wandering skipper *(Pseudocopaeodes eunus obscurus)* and the Columbia Basin distinct population segment of the pygmy rabbit *(Brachylagus idahoensis)*. Take activities will be conducted throughout the range of the species in conjunction with recovery efforts for the purpose of enhancing their propagation and survival.

Permit No. TE–052744

Applicant: Shannon Hickey, Davis, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp *(Branchinecta conservatio)*, the longhorn fairy shrimp *(Branchinecta longiantenna)*, the San Diego fairy shrimp *(Branchinecta sandiegonensis)*, the vernal pool tadpole shrimp *(Lepidurus packardi)*, and the Riverside fairy shrimp *(Streptocephalus wootoni)* throughout the range of each species in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–812206

Applicant: Robin Church, La Mesa, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher *(Empidonax traillii extimus)* in San Diego, Orange, and Riverside Counties, California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–052847

Applicant: Mike D. Taylor, Irvine, California

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in Los Angeles, Orange, and Riverside Counties, California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–052953

Applicant: Oregon Department of Forestry, Salem, Oregon.

The applicant requests a permit to take (harass by survey) the Oregon chub (*Oregonichthys crameri*) in Baker, Benton, Clackamas, Crook, Deschutes, Gilliam, Grant, Lake, Lane, Linn, Hood River, Jackson, Jefferson, Klamath, Marion, Multnomah, Polk, Umatilla, Union, Wasco, Washington, Wheeler, and Yamhill Counties, Oregon in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–052747

Applicant: Edward J. Stanton, Sun City, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with vegetation management activities in Riverside County, California for the purpose of enhancing its survival.

Permit No. TE–051248

Applicant: Paul M. Lemons, La Jolla, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout the range of the species in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–051250

Applicant: Kamarul Muri, Encinitas, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout the range of the species in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–051230

Applicant: Michele Balk, Encinitas, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout the range of the species in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–053020

Applicant: Andrew Pigniolo, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in San Diego and Riverside Counties, California, in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–053018

Applicant: Environmental Science & Assessment, Portland, Oregon.

The applicant requests a permit to take (survey, mark, recapture) the Oregon chub (*Oregonichthys crameri*) in Marion and Linn Counties, Oregon, in conjunction with surveys for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received within 30 days of the date of publication of this notice.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 24, 2002.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–6683 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Jeanne A. Mortimer/ University of Florida, Gainesville, FL, PRT–811272.

The applicant requests re-issuance of a permit to import biological samples obtained from green sea turtles (*Chelonia mydas*) and hawksbill sea turtles (*Eretmochelys imbricata*) located on beaches or in waters on/around the Republic of Seychelles and Chagos Island, British Indian Ocean Territory, for scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: Clifford G. McGehee, Jacksonville, FL, PRT–053223.

The applicant request a permit to import the sport-hunted trophy of one male bontebok (Damaliscus pygargus dorcas) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Anthony Gioffre, Dublin, OH, PRT–053326.

The applicant request a permit to import the sport-hunted trophy of one male bontebok (Damaliscus pygargus dorcas) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Savannah River Ecology Laboratory/University of Georgia, Aiken, SC, PRT–051521.

The applicant requests a permit to export biological samples from wood stork (*Mycteria americana*) collected in the wild in the United States, to the Universidade Federal de Sao Carlos, San Carlos, Brazil, for scientific research.

Applicant: Bonnie Ringo, Cave Junction, OR, PRT–049054.

The applicant requests a permit to export five captive-born white tigers (*Panthera tigris*) to the Zion Wildlife Gardens, Kerikeri, New Zealand, for the purpose of enhancement of the survival of the species.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: February 22, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–6731 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Status of the Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Re-opening of the comment period for the Rio Grande cutthroat trout candidate status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce a re-opening of the comment period for the candidate status review for the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*). We are re-opening the comment period to allow interested parties additional time to submit information to us for our consideration in determining whether the Rio Grande cutthroat trout should be a candidate for listing. On December 28, 2001 (66 FR 67289), we published a notice opening a comment period to obtain information on the status of the Rio Grande Cutthroat Trout. That comment period

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closed on February 26, 2002. On or before June 4, 2002, we will make a determination concerning the results of this review for the Rio Grande cutthroat trout and, shortly thereafter, we will publish this determination in the **Federal Register**. We will accept information at any time on the status of the Rio Grande cutthroat trout; however, information must be received by March 29, 2002, in order for us to be able to consider it in our June 4, 2002, determination of candidate status.

DATES: Comments and information from all interested parties for our use in the status review will be accepted until March 29, 2002.

ADDRESSES: Questions and comments concerning this status review should be sent to Joy Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna Rd. NE, Albuquerque, NM 87113. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, (see **ADDRESSES** section), telephone (505) 346–2525.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1998, we received a petition from Kieran Suckling, of the Southwest Center for Biological Diversity requesting that the Service add the Rio Grande cutthroat trout (*Onchorynchus clarki virginalis*) to the list of threatened and endangered species. The petition addressed the range-wide distribution of the Rio Grande cutthroat trout that included populations in Colorado and New Mexico.

The Rio Grande cutthroat trout is the southernmost of 14 subspecies of cutthroat trout (Behnke 1967, 1972, 1992; Sublette *et al.* 1990). There are two phenotypic forms of the subspecies, one in the Rio Grande and one in the Pecos River (Behnke 1992). The species derives its name from the distinctive red or orange slashes beneath the lower jaw. The general body coloration is yellowish green to grayish brown; the abdomen is creamy white. Variably-sized black spots cover the upper body and are more numerous posteriorly; dorsal, adipose, and caudal fins carry black spots (Koster 1957, Behnke 1992, Sublette et al. 1990). Although the historical distribution of the Rio Grande cutthroat trout is not known with certainty, it is likely that the subspecies occurred not only in all waters in the upper Rio Grande, Pecos, and Canadian River Basins that are currently capable of supporting trout, but also in other stream reaches within these watersheds that formerly provided the habitat requisites of coldwater species.

Section 4(b)(3)(B) of the Act requires that we make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action is—(a) not warranted; (b) warranted; or (c) warranted but precluded from immediate proposal by other pending listing proposals of higher priority. We subsequently published a notice of a 90-day finding in the **Federal Register** (63 FR 49062) on September 14, 1998. In the 90-day finding we concluded that the petition did not present substantial information indicating that listing of the Rio Grande cutthroat trout may be warranted.

Our finding recognized that livestock grazing, road construction, and logging were primary factors in the constriction of the Rio Grande cutthroat trout's historical range, and continue to impact streams and riparian habitats where measures to limit those impacts are lacking. The Service concluded that the management objectives of both States, set forth in respective management plans formulated for the Rio Grande cutthroat, would provide for the continued management, conservation, and stability of this subspecies and its habitats.

On June 9, 1999, a complaint was filed by the Southwest Center for Biological Diversity challenging the September 14, 1998, 90-day petition finding as violating the Act and the Administrative Procedures Act. Recently, while the litigation was pending, we received some information (particularly related to the presence of whirling disease in hatchery fish and in the wild) that led us to believe that further review of the status of the species was warranted.

On November 8, 2001, a settlement agreement executed by both parties (the Service and the Southwest Center for Biological Diversity) was filed with the court. The settlement stipulates that we will initiate a candidate status review for the Rio Grande cutthroat trout. The settlement also stipulates that on or before June 4, 2002, we will make a determination concerning the results of this review and, shortly thereafter, we will publish our determination in the **Federal Register**. The agreement also states that we will not vacate our previous determination in the interim.

Request for Information

Our determination of candidate status for the Rio Grande cutthroat trout shall be based upon the best available scientific and commercial data, as required under section 4(b)(1)(A) of the Act. We request you submit any further information on the Rio Grande cutthroat trout. We are particularly interested in any information concerning the following:

(1) Current population numbers and trends for each of the populations of the Rio Grande cutthroat trout;

(2) Whether there are documented increases in those populations or their habitat;

(3) The status of remaining habitat areas;

(4) The current threats and future threats to those populations and remaining habitat areas; and

(5) Other regulatory mechanisms that address those threats; and the success of those mechanisms to date.

References Cited

A complete list of all references cited is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this document is New Mexico Ecological Services Field Office staff (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(1)(A) of the Endangered Species Act, 16 U.S.C. 1533.

Dated: February 28, 2002.

Pat A. Langley,

Acting Regional Director.

[FR Doc. 02–6682 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

On December 17, 2001, a notice was published in the **Federal Register** (66 FR 64986), that an application had been filed with the Fish and Wildlife Service by Jeffrey L. Meyerl for a permit (PRT–050657) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on February 19, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: March 1, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–6728 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On October 31, 2001, a notice was published in the **Federal Register** (66 FR 55003), that an application had been filed with the Fish and Wildlife Service by The Newark Museum for a permit (PRT–042580) to import one polar bear skin (as a full mount) and skull taken from the Southern Beaufort Sea population, Canada, for public display.

Notice is hereby given that on February 12, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 15, 2001, a notice was published in the **Federal Register** (66 FR 57474), that an application had been filed with the Fish and Wildlife Service by Sherman J. Silber, MD for a permit (PRT–049529) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use. The notice mistakenly omitted that the trophy was taken prior to April 30, 1994.

Notice is hereby given that on February 4, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: February 22, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–6730 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Battle of Midway National Memorial Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Battle of Midway National Memorial Advisory Committee will hold its first meeting by teleconference on Thursday, April 4, 2002, from 2:00 p.m. to 4:00 p.m. Eastern Standard Time. During this teleconference, the committee will review its purpose as identified by Congress and the Secretary of the Interior, a list of objectives for the committee will be developed, and planning for the 60th anniversary celebration of the Battle of Midway will be initiated. A portion of the meeting will focus on the organization and functioning of a Federal Advisory Committee.

DATES: April 4, 2002, 2:00 p.m. to 4:00 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia, room 500 or by teleconference.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Barbara Maxfield, External Affairs Chief for the Fish and Wildlife Service's Pacific Islands Office, Box 50088, Honolulu, HI 96850; telephone (808) 541–2749; fax (808) 541–2756 no later than February 15, 2002. You may obtain copies of the draft meeting agenda from the same source.

SUPPLEMENTARY INFORMATION: As directed by Congress, the Secretary of the Interior established the Battle of Midway National Memorial Advisory Committee to facilitate development of a strategy for the dedication and management of this National Memorial. Members of the public are welcome to participate in any of its meetings.

Members of the public in the Washington, DC, area may attend the meeting in person in the U.S. Fish and Wildlife Service's Washington Office at 4401 N. Fairfax Drive, Arlington, Virginia, in room 500. Members of the public may also participate by teleconference, however, teleconference lines are limited. Please call Barbara Maxfield (808) 541–2749 if you are interested in participating in the call and to obtain the dial-in number. Seating in room 500 of the Fish and Wildlife Service's Arlington Square office is limited and is available on a first come, first served basis.

We will distribute written comments submitted to the Fish and Wildlife Service at the Honolulu address above to committee members prior to the meeting if we receive them in sufficient time to allow distribution. We will provide an opportunity for oral comments from the public during this teleconference meeting as well.

Dated: February 19, 2002.

Jerry F. Leinecke,

Project Leader, Hawaiian and Pacific Islands National Wildlife Refuge Complex.

[FR Doc. 02–6734 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Navajo Nation Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Navajo Nation Liquor Ordinance. The Ordinance is enacted as an amendment to the Navajo Nation Code § 412. The Ordinance regulates the control, possession, and sale of liquor on the Navajo Nation Indian trust lands, in conformity with the laws of the State of Arizona, where applicable and necessary. Although the Ordinance was adopted on July 20, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the Ordinance may result in criminal charges.

DATES: This Ordinance is effective on March 20, 2002.

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FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Navajo Nation Liquor Ordinance, which amends the Navajo Nation Code § 412, as authorized by Resolution No. CJY–62–01, was duly adopted by the Navajo Nation Council on July 20, 2001. The Navajo Nation, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Navajo Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. CJY–62–01, the Navajo Nation Liquor Ordinance, amending the Navajo Nation Code § 412, was duly adopted by the Navajo Nation Council on July 20, 2001.

Dated: March 11, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Navajo Nation Liquor Ordinance, amending the Navajo Nation Code § 412, reads as follows:

Amendment to Navajo Nation Code § 412

1. The Navajo Nation Council hereby amends 17 N.N.C. § 412 in the following manner:

(c) It shall not be unlawful for any person, Indian or non-Indian, to sell, deliver, transport or consume intoxicating liquor in that part of the Navajo Nation covered by the Antelope Point Resort and Marina Business Site Lease provided that the transportation, sale, delivery and consumption of alcoholic beverages is in conformity with applicable state regulatory liquor law, specifically excluding any state regulatory liquor laws which would require the Navajo Nation and/or its Lessee to be licensed by the State of Arizona, or to be in any way subject to the administrative, executive, judicial or legislative jurisdiction of the State of Arizona, and that all sales of alcoholic beverages be at prices no less than the prices charged for similar products in adjoining areas of the State of Arizona. The Economic Development Committee of the Navajo Nation Council is hereby authorized to approve such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages within the area of the Antelope Point Business Site Lease.

2. The Navajo Nation Council further stipulates that at the end of the term of the Antelope Point Resort and Marina Business Site Lease, and any options granted thereto, this legislation shall be subject to review and reauthorization by the Navajo Nation Council.

[FR Doc. 02–6738 Filed 3–19–02; 8:45 am]

BILLING CODE 4310–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

CORRECTION—Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA

AGENCY: National Park Service, Interior

ACTION: Correction

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains and associated funerary objects. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

On March 9, 2001, the National Park Service published a Notice of Inventory Completion in the Federal Register for 15 Native American human remains and 3 associated funerary objects in the possession of Effigy Mounds National Monument. The notice incorrectly listed 12 human remains and 3 associated funerary objects recovered from Mound #57 as culturally affiliated with the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Ho-Chunk Nation of Wisconsin; Winnebago Tribe of Nebraska; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; and Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota. Based on additional information, the superintendent of Effigy Mounds National Monument determined that the 12 human remains and 3 associated funerary objects recovered from Mound #57 are culturally unidentifiable.

The Notice of Inventory Completion published by Effigy Mounds National Monument on March 9, 2001 (Federal Register Document 01-5944, pages 14201-14203) is corrected as follows:

The third paragraph is deleted.

The first sentence of the ninth paragraph is corrected to read: "Based on the above-mentioned information, the Effigy Mounds National Monument superintendent has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry."

The second sentence of the ninth paragraph is deleted.

This correction has been sent to officials of the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Ho-Chunk Nation of Wisconsin; Sac and Fox Tribe of the Mississippi in Iowa; Sac and Fox Nation of Missouri in Kansas and Nebraska; Sac and Fox Nation, Oklahoma; Winnebago Tribe of Nebraska; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; Shakopee Mdewakanton Sioux Community of Minnesota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; and Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota.

Repatriation of the three other human remains listed in the March 9, 2001, Notice of Inventory Completion is not affected by this correction.

Dated: September 12, 2001

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–6634 Filed 3–19–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Visa Waiver Program Carrier Agreement; Form I–775.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Visa Waiver Program Carrier Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–775. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The agreement between a transportation company and the United States is needed to ensure that the transportation company will remain responsible for the aliens it transports to the United States under the Visa Waiver Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 400 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 800 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 14, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6717 Filed 3–19–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP–1402]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This is the initial meeting of the Public Safety Officer Medal of Valor Review Board. This Board is charged with recommending recipients of the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer. The purpose of this meeting is to conduct preliminary business of the Board.

DATES: The meeting will be held on Tuesday, March 26, 2002, at 10 a.m.

ADDRESSES: The meeting will be held in the Assistant Attorney General's Conference Room (Room 6403), Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Tracy A. Henke, Principal Deputy Assistant Attorney General, Office of Justice Programs, 810 7th Street, NW., Washington, DC, 20531; Telephone: 202–307–5933. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board is authorized to carry out its advisory function under 42 U.S.C. section 15202. (42 U.S.C. section 15201 authorizes the President to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.)

This meeting will be open to the public.

Deborah J. Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–6639 Filed 3–19–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJJDP)–1401]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coalition of Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President, and the Congress about state perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention.

DATES: The meeting dates are:

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1. Thursday, April 18, 2002, 10 a.m. to 6 p.m. (ET).
2. Friday, April 19, 2002, 8 a.m. to 5 p.m. (ET).
3. Saturday, April 20, 2002, 8 a.m. to 5 p.m. (ET)
4. Sunday, April 21, 2002, 8 a.m. to 5 p.m. (ET).

ADDRESSES: All meetings will be held at the Wyndham Hotel, 1400 M Street NW., Washington, DC 20005; Telephone: 202–429–1700; Fax: 202–728–0530.

FOR FURTHER INFORMATION CONTACT: For information about how to attend this meeting (or to submit written questions (optional)), contact Freida Thomas, 810 7th Street, NW., Washington, DC 20531; Telephone: 202–307–5924 [This is not a toll-free number]; Fax: 202–307–2819; E-mail: *Freida@ojp.usdoj.gov*.

SUPPLEMENTARY INFORMATION: The Coalition of Juvenile Justice, established pursuant to section 9 of the Federal Advisory Committee Act, (5 U.S.C. App. II), is meeting to carry out its advisory functions under section 5601 of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C., as amended.

This meeting will be open to the public.

Dated: March 14, 2002.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–6638 Filed 3–19–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,624; Nedec America Corp./ Power General, Canton, MA
TA–W–40,362; American Tissue Mills of Maine, Augusta, ME
TA–W–40,434; Imperial Carbide, Inc., Meadville, PA
TA–W–40,583; Mocaro Dyeing and Finishing, Inc., Statesville, NC
TA–W–40,704; Texfi Industries, Inc., Jefferson, GA
TA–W–40,597; Huhtamaki Food Service Div. Formerly Known as Packaging Mt. Carmel, PA
TA–W–40,750; Meridian Automotive Systems, Portland, OR
TA–W–40,804 & A; Cabinet Works LLC, Jefferson City, TN and Distinctive Woodworks LLC, Jefferson City, TN
TA–W–40,718; Bilco Manufacturing Corp., Macon, GA
TA–W–40,174; Diamond Tool and Die, Townville, PA
TA–W–39,422; Leatex Chemical Co., Philadelphia, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,870; Porex Technologies, Porous Products Group, A Div. Of Webmd Corp., College Point, NY
TA–W–40,809; Cascade General, Inc., Portland, OR
TA–W–39,704 Trico Products Corp., Buffalo, NY
TA–W–39,829; Acme Pattern Works, Inc., Chicago Heights, IL
TA–W–39,989; Crouse-Hinds, Div. Of Cooper Industries, Inc., Syracuse, NY
TA–W–40,135; GKN Aerospace North America, Carson, CA
TA–W–40,695; Nolato Shieldmate, Inc., Ilasca, IL
TA–W–40,721; Englehard Corp., McIntyre, GA
TA–W–40,765; Becton Dickinson, Hancock, NY

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–40,770; Tree Machine Tools, Inc., Franklin, WI
TA–W–40,812; GeoComm Corp., El Paso, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,443; James Hamilton Construction Co., Employed at Chico Mines Project, Silver City, NM

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,573; Nortel Networks, Bohemia, NY: November 7, 2000.
TA–W–40,754; Molycorp, Inc., A Subsidiary of Unocal, Washington, PA: January 21, 2001
TA–W–39,735; Atchison Products, Inc., Boonville, MO: June 14, 2000.
TA–W–39,748; Engel Machinery, Inc., York, PA: August 6, 2000.
TA–W–40,037; Glad Rags, Inc., Buchanan, VA: August 31, 2000.
TA–W–40,106; Haskell—Senator International, Verona, PA: September 7, 2000.
TA–W–40,192; Camoplast Accufab, Inc., A Div. Of Camoplast, Ltd, Chillicothe, OH: September 26, 2000.
TA–W–40,284; The Carbide/Graphite Group, Inc., Niagara Falls, NY: September 24, 2000.
TA–W–40,308; Nachi Machining Technology Co., Machine Department, Macomb, MI: October 15, 2000.
TA–W–40,372; Square D Company, Schneider Electric North America, Middletown, OH: November 15, 2000.
TA–W–40,374; Osan Manufacturing, Boyertown, PA: November 16, 2000.
TA–W–40,705; ITT Industries, Newton, MA: December 18, 2000.
TA–W–40,463; Dunham-Bush, Inc., Harrisonburg, VA: October 31, 2000.
TA–W–40,500; Swift Spinning Mills, Inc., Marubeni Denim Div., Columbus, GA: December 19, 2000.
TA–W–40,561; Thermal Industries, Inc., Vinylium Corp., Pittsburgh, PA: October 19, 2000.

TA–W–40,722; Willow Creek Apparel, Inc., Jonesville, NC: January 7, 2001.
TA–W–40,783; Intertape Polymer Group, Inc., Central Products Company, Richmond, KY: December 21, 2000.
TA–W–40,841: FCI USA, Inc., Emigsville, PA: January 7, 2001.
TA–W–40,713; SDS Lumber Co., Plywood Div., Bingen, WA: January 9, 2001.
TA–W–40,618; Acordis Industrial Fibers, Inc., Scottsboro, AL: November 30, 2000.
TA–W–40,559; Maysville Garment, Inc., Maysville, NC: December 8, 2000.
TA–W–40,542; Vision Metals, Inc., Gulf States Tube Div., Rosenburg, TX: December 8, 2000.
TA–W–40,483, & A; Sumitomo Electric Wiring Systems, Inc., Wiring Harness Div., Edmonton, KY and Morgantown, KY: December 12, 2000.
TA–W–40,428; Sunlite Casual Furniture, Paragould, AR: December 4, 2000.
TA–W–40,377 & A; Dexter Shoe Co., Dexter, ME and National Sales Office, West Newton, MA: November 20, 2000.
TA–W–40,327; Storaenso North America, A Div. Of Storaenso OJY, Niagara, WI: October 29, 2001.
TA–W–40,257; H.R. Jones Veneer, Inc., Grand Ronde, OR: September 28, 2000.
TA–W–40,138; Cross Creek Apparel, LLC, Div of Russell Corp., Mount Airy, NC: March 12, 2001.
TA–W–39,717; Trio Tool and Die Manufacturing, Inc., Meadville, PA: July 17, 2000.
TA–W–39,532; Power Conversion Products, LLC, Crystal Lake, IL: June 18, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations.

There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05507; Dana Corp., Victor Reinz Div., Robinson, IL
NAFTA–TAA–05510; Corning Asahi Video, Inc., A Div. of Corning Asohi Video, State College, PA
NAFTA–TAA–05836; Tyco Electronics Corp., Jacobus, PA
NAFTA–TAA–05702; Meridian Automotive Systems, Portland, OR
NAFTA–TAA–05741; Cooper Industries, Western Power Products, Hood River, OR
NAFTA–TAA–05765; Prudential Steel, Inc., A Div. of Maverick Tube Co., Longview, WA
NAFTA–TAA–05785; Symbol Technologies, Inc., Houston Manufacturing, Houston, TX
NAFTA–TAA–05220; Trico Products Corp., Buffalo, NY
NAFTA–TAA–05236; J and J Tool, Guys Mills, PA
NAFTA–TAA–05293; Acme Pattern Works, Inc., Chicago Heights, IL
NAFTA–TAA–05558; Mocaro Dyeing and Finishing, Inc., Statesville, NC
NAFTA–TAA–05560; Fine Tech, Inc., d/b/a/ Daeduck International, RTP Div., Durham, NC
NAFTA–TAA–05597; Dana Corp., Spicer Driveshaft Manufacturing, Inc., Lima, OH
NAFTA–TAA–05670; Greenwood Mills, Durst Plant, Greenwood, SC

The workers firm does not produce an article as required for certification under Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–05617; Plexus Corp., Electronic Assembly Corp., Neehah, WI
NAFTA–TAA–05752; Cascade General, Inc., Portland, OR
NAFTA–TAA–05805; GeoComm Corp., El Paso, TX
NAFTA–TAA–05607; ANR Pipeline Co., Detroit, MI

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05217; Amphenol Corp., Sine Systems, Mt. Clemens, MI: July 30, 2000.
NAFTA–TAA–05594; Square D Co., Schneider Electric North America,
NAFTA–TAA–05677; Swift Spinning Mills, Inc., Marubeni Denim Div., Columbus, GA: December 19, 2000.
NAFTA–TAA–05718; Iris Graphics, Inc., Billerica, MA: January 7, 2001.
NAFTA–TAA–05769; Materials Processing, Inc., Coatings Div., Riverview, MI: January 8, 2001
NAFTA–TAA–05807; Angelica Corp., Angelica Apparel, Savannah, TN: January 23, 2001
NAFTA–TAA–05812; 3M Bedford Park, Industrial Tape and Specialty Div., Bedford Park, IL: January 25, 2001.
NAFTA–TAA–05406; H.R. Jones Veneer, Inc., Grand Ronde, OR: October 8, 2000.
NAFTA–TAA–05486; Dixon Ticonderoga Co., Sandusky, OH: October 22, 2000.
NAFTA–TAA–05570; Arris Corp. a/k/a Antex Corp., Arris Network Plastics, El Paso, TX and Arris Consolidated Warehouse, El Paso, TX: November 20, 2000.
NAFTA–TAA–5635 & A; Sumitomo Electric Wiring Systems, Inc., Wiring Harness Div., Edmonton, KY and Morgantown, KY: December 12, 2000.
NAFTA–TAA–05651; Bourns, Inc., Networks/Sensors Controls Div., Logan, UT: December 2, 2000.
NAFTA–TAA–05666; Spicer Manufacturing, Inc., A Subsidiary of Dana Corp., Department 92, Pottstown, PA: December 5, 2000.
NAFTA–TAA–05730; SDS Lumber Co., Plywood Div., Bingen, WA: January 9, 2001.
NAFTA–TAA–05768; Ultrafem, Missoula, MT: January 14, 2001.
NAFTA–TAA–05778; Tyco Electronics, Georgetown Plant, Georgetown, KY: January 22, 2001.
NAFTA–TAA–05784; Ferraz Shawmut, Inc., Newburyport, MA: January 24, 2001

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NAFTA–TAA–05814; Tyco International LTD, Tyco Electronics Corp., Arab, AL: January 28, 2001
NAFTA–TAA–05180; Paxar Corp., Formerly US Label Artistic, Including Workers of SDS Service, Inc., Liberty, KY: August 8, 2000.

I hereby certify that the aforementioned determinations were issued during the month of February, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 2000 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 4, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–6672 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,157 & A; The Steel Group, The Steel Co., Chicago, IL and Midwest Annealing and Processing Corp., East Chicago, IN
TA–W–40,436 & A; Dometic Corp., Awning Line, LAGrange, IN
TA–W–39,747; Precision Flame, Inc., Bourbonnais, IL
TA–W–40,672; Trio Dyeing and Finishing Co., Inc., Paterson, NJ
TA–W–40,453; Penley Corp., West Paris, ME

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,773; S–B Power Tool Co., Walnut Ridge, AR
TA–W–40,720 & A; Rohm Device USA LLC, 760 Kifer Road, Sunnyvale, CA, Rohm Device USA LLC, 760 Kifer Road, Sunnyvale, CA and Rohm Device USA LLC, 611 N. Pastoria Avenue, Sunnyvale, CA
TA–W–40,550; Nokia, Inc., Nokia Networks, Product Operation, Fort Worth, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–40,497; Lundeen's Inc., North Platte, NE
TA–W–40,444; Purcell Tire and Rubber Co., Santa Rita, NM
TA–W–39,282 & A,B,C,D,E; Standard Corp., Integrated Logistics, Wilmington, NC, Leland, NC, Kinston, NC, Grifton, NC Charleston, SC and Moncks Corner, SC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,684; Independent Tool and Manufacturing, Inc., Meadville, PA
TA–W–40,610; The Goodyear Tire and Rubber Co., Gadsden, AL

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,268; Whemco, Machine Shop, Homestead, PA: April 27, 2000
TA–W–39,269; Whemco, Midland, PA: April 27, 2000
TA–W–39,790; Vishay Intertechnologies, Inc., Vishay Cera-Mite Div., Oconto, WI: July 24, 2000
TA–W–40,149; Alphabet Engineer-Design Center, A Div. of Stoneridge, Inc., Cortland, OH: September 1, 2000
TA–W–40,270; Solectron Corp., Research Triangle Park, NC: October 9, 2000
TA–W–40,311; Buckeye Steel Castings Co., Columbus, OH: October 17, 2000
TA–W–40,382; Corning Asahi Video, A Div. of Corning, Inc., State College, PA: October 25, 2000. Chillicothe, OH: September 26, 2000
TA–W–40,409; Bogner of America, Inc., Newport, VT: November 21, 2000
TA–W–40,674 & A; B.B. Walker Co., Asheboro, NC and Bender Shoe Co., Somerset, PA: January 28, 2001
TA–W–40,475; New Holland North America, Inc., CNH Global N.V., Belleville, PA: January 4, 2001
TA–W–40,874; 3M Bedford Park, Industrial Tape and Specialty Div., Bedford Park, IL: January 25, 2001
TA–W–40,930; Prudential Steel, Inc., A Div. of Maverick Tube Co., Longview, WA: February 25, 2001
TA–W–40,436; Dometic Corp., Air Conditioning Line, LaGrange, IN: November 12, 2000
TA–W–40,814; Master Lock Co., A Subsidiary of Fortune Brands, Inc., Milwaukee, WI: January 25, 2001
TA–W–40,792; American Drew, A Div. of Ladd Furniture, Inc., North Wilkesboro, NC: December 5, 2000
TA–W–40,791; Lea Industries, A Div. of Ladd Furniture, Inc., Waynesville, NC: December 5, 2000
TA–W–40,739; Molycorp., Inc., A Subsidiary of Unocal, Questa, NM: January 8, 2001
TA–W–40,683; Vic's Custom Raft Frames, Inc., Grants Pass, OR: December 26, 2000
TA–W–40,648; Domino Amjet, Inc., Gurnee, IL: November 20, 2000
TA–W–40,681; Biokyowa, Inc., A Subsidiary of Kyowa Hakko Kogyo, Ltd, Cape Girardeau, MO: December 12, 2000
TA–W–40,664; Ferro Corp., Cesco Plant, Crooksville, OH: December 6, 2000
TA–W–40,633; Morrison Berkshire, Inc., North Adams, MA: January 15, 2001
TA–W–40,626; Allegheny Tool and Manufacturing Co., Inc., Meadville, PA: November 27, 2000
TA–W–40,625; Crane Pumps and Systems, Decatur, IL: September 26, 2000
TA–W–40,611; Hammond Power Solutions, Inc., Baraboo, WI: January 11, 2001
TA–W–40,571; Moon Tool and Die Co., Inc., Conneaut Lake, PA: October 22, 2000
TA–W–40,565; Environ, Inc., d/b/a Forrester's, Portland, OR: October 26, 2000
TA–W–40,384; K S Bearings, Inc., Greensburg, IN: November 16, 2000
TA–W–40,267; Lamb Technicon, A Div. of Unova, Warren, MI: October 12, 2000
TA–W–40,062; Tradewinds Cleaning Systems, Inc., Neosho, MO: September 4, 2000
TA–W–39,238; Amtec Precision Products, Inc., St. Clair Shores, MI: April 23, 2000
TA–W–40,563A & B; Bestform, Inc., Johnstown Distribution Center, Johnstown, PA and Windber Sewing Facility, Windber, PA: December 14, 2000
TA–W–40,563; Bestform, Inc., Broad Street Sewing Facility, Johnstown, PA: December 22, 2001
TA–W–40,508; Lexington Home Brands, Plant 16, Spruce Pines, NC: October 23, 2000
TA–W–49,442; Sohnen Enterprises, Inc., Santa Fe Springs, CA: May 25, 2000
TA–W–40,413; Mikes, Inc., Rod Shop, South Roxana, IL: November 13, 2000

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat or separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05612A; Dometic Corp., Awning Line, LaGrange, IN
NAFTA–TAA–05379; Diamond Tool and Die, Townville, PA
NAFTA–TAA–05399; Shirts Plus II, Inc., Loretto, TN
NAFTA–TAA–05543; Nokia, Inc., Nokia Networks, Product Operations, Fort Worth TX
NAFTA–TAA–05715; Bilco Manufacturing Corp., Macon, GA
NAFTA–TAA–05372; New Era Textile Parts Co. Ltd, Gastonia, NC
NAFTA–TAA–05874; Bestform, Inc., Windber Cutting Facility, Windber, PA
NAFTA–TAA–05134; Precision Flame, Inc., Bourbonnais, IL

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05174; Engel Machinery, York, PA: July 6, 2000
NAFTA–TAA–05612; Dometic Corp., Air Conditioning Line, LaGrange, IN: November 12, 2000
NAFTA–TAA–04929; Sohnen Enterprises, Inc., Santa Fe Springs, CA: May 10, 2000
NAFTA–TAA–05018; Michigan Rivet Corp., Div. of McLaughlin Co., Petoskey, MI: June 20, 2000
NAFTA–TAA–05478; Conectl Corp., formerly Preco New Products, Boise, ID: September 19, 2000
NAFTA–TAA–05532; Flextronics International, Palm Habor, FL: November 7, 2000
NAFTA–TAA–05650; Holland Binkley Co., Axle Products Div., Delphos, OH: November 3, 2000
NAFTA–TAA–05744; Hayworth Inc., Holland Wood Plant, Holland, MI: December 4, 2000
NAFTA–TAA–05770; Kolenda Tool and Die, Inc., Wyoming, MI: January 23, 2001
NAFTA–TAA–05818; S–B Power Tool Co., Walnut Ridge, AR: January 28, 2001
NAFTA–TAA–05846; Evy of California, Bakersfield, CA: January 22, 2001
NAFTA–TAA–5860; Arlee Home Fashions, Leachville, AR: February 18, 2001

I hereby certify that the aforementioned determinations were issued during the month of March, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 8, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–6670 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,354]

International Paper Company, Erie, Pennsylvania; Including Contract Employees of Honeywell, Inc. Employed at International Paper Company Erie, Pennsylvania Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 4, 2002, applicable to workers of International Paper Company, Erie, Pennsylvania. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9326).

At the request of Honeywell, Inc., the Department reviewed the certification for workers of the subject firm.

Information provided by the company shows that some workers at International Paper, Erie, Pennsylvania were contracted from Honeywell, Inc. to maintain and operate automated control systems required for the production of hardwood pulp and writing, text and cover paper produced at the Erie, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending the

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certification to include contract workers of Honeywell, Inc., employed at International Paper Company, Erie, Pennsylvania.

The intent of the Department's certification is to include all workers at International Paper Company, Erie, Pennsylvania, adversely affected by imports.

The amended notice applicable to TA–W–40,354 is hereby issued as follows:

All workers of International Paper Company, Erie, Pennsylvania including contract workers of Honeywell, Inc. engaged in employment related to the maintenance and operation of automated control systems required for the production of hardwood pulp and writing, text and cover paper at International Paper Company, Erie, Pennsylvania who became totally or partially separated from employment on or after November 2, 2000, through February 4, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 1st day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–6668 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 1, 2002.

Interested persons are invited to submit written comments regrading the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 1, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 2000 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 28th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 01/28/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,634	LTV Steel (USWA)	Hennepin, IL	12/18/2001	Cold Rolled Sheet, Strip.
40,635	LTV Steel (USWA)	Warren, OH	12/04/2001	Coke and Coke By-Products.
40,636	King Manufacturing (Wkrs)	Corinth, MS	09/23/2001	Telephones.
40,637	Steelcraft, Inc. (Wkrs)	Warren, OH	11/27/2001	New Parts Supplied to Steel Companies.
40,638	Hayes Lemmerz Int'l (Wkrs)	Petersburg, MI	11/30/2001	Intake Manifolds.
40,639	Cooper Bussmann (Wkrs)	Goldsboro, NC	11/27/2001	Circuit Protection Devices—Fuses.
40,640	Timken Company (The) (USWA)	Canton, OH	11/29/2001	Bearings and Components.
40,641	Mobil Oil (Wkrs)	Dallas, TX	11/14/2001	Accounting Services.
40,642	Imerys Pigments (Wkrs)	Dry Branch, GA	11/27/2001	Kaolin Clay.
40,643	Robbins Witt (Wkrs)	Warren, AR	11/07/2001	Wood for Flooring.
40,644	Kraft Foods (Comp)	Minneapolis, MN	11/21/2001	Breakfast Cereals.
40,645	Star Specialty Knitting (Comp)	Laconia, NH	10/24/2001	Athletic Activewear.
40,646	GE Superabrasives (Comp)	Worthington, OH	11/28/2001	Superabrasives, Industrial Diamonds.
40,647	Biltwell Clothing (Comp)	Farmington, MO	11/29/2001	Warehousing, Distribution.
40,648	Domino Am Jet, Inc. (Comp)	Gurnee, IL	11/20/2001	Printers.
40,649	Steven Bank (Wkrs)	New York, NY	11/12/2001	Hospital Garments.
40,650	Signal Transformer Co. (Comp)	Inwood, NY	11/07/2001	Power Transformers.
40,651	Electron Corp. (The) (Wkrs)	Blockwell, OK	11/30/2001	Iron Castings.
40,652	VF Jeanswear Limited (Wkrs)	Springfield, MO	12/13/2001	Jeans and Pants.
40,652A	VF Jeanswear Limited (Wkrs)	Lebanon, MO	12/13/2001	Jeans and Pants.
40,653	Welland Chemical (USWA)	Newell, PA	12/13/2001	Mixed Acids.
40,654	In Vogue Apparel (Wkrs)	West Hazleton, PA	12/03/2001	Ladies' Slacks.
40,655	Fujitsu Microelectronics (Wkrs)	Gresham, OR	12/21/2001	Flash Memory Devices (Wafers).
40,656	Vanity Fair Intimates (Comp)	Monroeville, AL	12/10/2001	Ladies' Intimate Apparel.
40,656A	Vanity Fair Intimates (Comp)	Atmore, AL	12/10/2001	Ladies' Intimate Apparel.
40,657	Agilent Technologies (Wkrs)	Fort Collins, CO	11/27/2001	Silcon Wafers.
40,658	Polaroid Corporation (Comp)	Waltham, MA	12/08/2001	Film Packs.
40,659	Georgia Pacific (Wkrs)	Conway, NC	12/13/2001	Hardboard.
40,660	Mettler Toledo Process (Comp)	Woburn, MA	12/03/2001	PH Electrodes.
40,661	Osley and Whitney (Wkrs)	Westfield, MA	12/03/2001	Plastic Injection molds.
40,662	Rivers West Apparel (Wkrs)	Manti, UT	01/22/2001	Outdoor Apparel (Vests, Jackets).
40,663	Greenwood Mills—Liberty (Wkrs)	Liberty, SC	12/18/2001	Finished Denim Fabric.
40,664	Ferro Corporation (Wkrs)	Crooksville, OH	12/03/2001	Ceramics.
40,665	P and H Mining Equipment (Wkrs)	Milwaukee, WI	12/12/2001	Electric Mining Shovels.

APPENDIX—Continued

[Petitions Instituted on 01/28/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,666	Loren Casting (Wkrs)	Hollywood, FL	12/04/2001	Rings, Pendants, and Earrings.
40,667	Leech Tool and Die Works (Wkrs)	Meadville, PA	12/19/2001	Plastic Molds and Dies.
40,668	Ray Fabricating Corp (Comp)	Athens, TN	12/06/2001	Steel Fabricated Fittings.
40,669	Great Lakes Chemical (Comp)	Nitro, WV	12/14/2001	Flame Retardant & Fluid Phosphate Esters.
40,670	Knitcraft, Inc. (Comp)	Belmont, NC	12/17/2001	Unfinished Knit Goods.
40,671	Isola Laminate Systems (Comp)	LaCrosse, WI	12/10/2001	Laminate Base Materials.
40,672	Trio Dyeing and Finishing (Wkrs)	Paterson, NJ	12/14/2001	Textiles.
40,673	Stanley Fastening Systems (Wkrs)	E. Greenwich, RI	12/05/2001	Pneumatic nailers.
40,674	Bender Shoe (Comp)	Somerset, PA	12/17/2001	Western Boots.
40,675	Titan Plastic Group (Wkrs)	El Paso, TX	12/17/2001	Plastic Components.
40,676	Tyco Electronics (Wkrs)	Greensboro, NC	12/03/2001	Electronic Components.
40,677	Purcell Tire (Comp)	Silver City, NM	12/03/2001	Mining Tires.
40,678	Active Transportation (IBT)	Portland, OR	12/17/2001	Provide Trucking Service.
40,679	Eaton Corporation (Wkrs)	Sanford, NC	12/13/2001	Thermal Expansion Valve.
40,680	Pan Am Shoe Co. (Comp)	Camuy, PR	12/21/2001	Shoes.
40,681	Biokyowa, Inc. (Comp)	Cape Girardeau, MO	12/12/2001	Amino Acid Feed Supplements—Animals.
40,682	World Kitchen, Inc. (Comp)	Martinsburg, WV	12/20/2001	Glass Ceramic Cookware.
40,683	Vic's Custom Raft Frames (Wkrs)	Grants Pass, OR	12/26/2001	Hunting Blinds.
40,684	Independent Tool and Mfg. (Comp)	Meadville, PA	12/11/2001	Internal Parts—Plastic Mold Industry.
40,685	Ingersoll Rand (IAMAW)	Mayfield, KY	10/31/2001	Centrifugal Air Compressors.
40,686	AutoDie International (Comp)	Grand Rapids, MI	11/30/2001	Tool and Die—Auto Industry.
40,687	Goodyear Dunlop Tires (USWA)	Huntsville, AL	11/28/2001	Radial Tires.
40,688	Sanmina (Wkrs)	Clinton, NC	10/18/2001	Electronics.
40,689	Motor Coils Manufacturing (IUE)	St. Louis, MO	11/02/2001	Motor Coils.
40,690	Indiana Knitwear Corp (Comp)	Lyford, TX	11/09/2001	Active Wear.
40,691	Double Eagle Mfg. (Comp)	Tallassee, AL	11/05/2001	Children's Clothing.
40,692	VarTec CRM, Inc (Wkrs)	Waco, TX	11/30/2001	Provide Customer Relations Management.
40,693	Intervet, Inc (Comp)	Gainesville, GA	11/20/2001	Poultry Vaccines.
40,693A	Intervet, Inc. (Comp)	State College, PA	11/20/2001	Poultry Vaccines.
40,694	Commercial Warehouse (Wkrs)	El Paso, TX	11/18/2001	Surgical Blankets.
40,695	Nolato Shieldmate (Comp)	Itasca, IL	11/27/2001	Plastic Housing for Cellular Phones.
40,696	National Mills (Wkrs)	Dayton, TN	11/16/2001	Tee Shirts.
40,697	First Source Furniture (Wkrs)	Halls, TN	10/24/2001	Office Furniture.
40,698	3M San Marcos (Comp)	San Marcos, CA	01/02/2001	Packs, Bags, Rod Tubes—Fly Fishing.
40,699	AA Precisioneering (Comp)	Meadville, PA	10/24/2001	Tool and Die Makers.
40,700	Cmac Quartz Crystals (Wkrs)	Mechanicsburg, PA	10/22/2001	Electronic Oscillators.
40,701	Internet Arena (Wkrs)	Portland, OR	10/18/2001	Technical Support for Internet use.
40,702	Design and Cut, Inc. (Wkrs)	Cartersville, GA	10/18/2001	Sheat Shirts and Pant.
40,703	Liberty Fabrics (Comp)	New York, NY	11/19/2001	Fabrics.
40,704	Texfi Industries (Comp)	Jefferson, GA	10/22/2001	Apparel Fabric.
40,705	ITT Industries (Wkrs)	Newton, MA	12/18/2001	Electromechanical Switches.

[FR Doc. 02–6662 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,523]

Parallax Power Components LLC, MagneTek, Inc., Goodland, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 23, 2002, applicable to workers of Parallax Power Components LLC, Goodland, Indiana. The notice was published in the **Federal Register** on February 5, 2002 (67 FR 5294).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of transformers. New information shows that Parallax Power Components purchased the Goodland, Indiana location of MagneTek, Inc. on June 29, 2001.

Information also shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Parallax Power Components LLC, MagneTek, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Parallax Power Components LLC, Goodland, Indiana who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,523 is hereby issued as follows:

"All workers of Parallax Power Components LLC, MagneTek, Inc., Goodland, Indiana who became totally or partially separated from employment on or after December 17, 2000, through January 23, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 6th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–6667 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,574]

SGL Carbon Group, Morganton, North Carolina; Notice of Revised Determination on Reconsideration

By letter of November 5, 2001, the International Chemical Workers Union, AFL–CIO, Local 427, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on September 21, 2001, based on the finding that imports of graphite electrodes and specialty graphite products did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on October 11, 2001 (66 FR 51973).

To support the request for reconsideration, the International Chemical Workers Union, AFL–CIO, Local 427 provided additional information indicating that a sister plant (SGL Carbon Corporation, Carbon and Graphite Unit, Niagara Falls, New York) was certified for TAA. The applicant further stated that the subject plant produced the same products, shared the same customers and conducted interplant shipments with the sister facility.

A review of the allegation and information provided by the company shows that a meaningful portion of subject plant production was in direct support of the SGL Carbon Corporation, Carbon and Graphite Unit, Niagara Falls, New York plant. That facility was certified TA–W–39,053) on August 31, 2001.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at SGL Carbon Group, Morganton, North Carolina, contributed importantly to the decline in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of SGL Carbon Group, Morganton, North Carolina, who became totally or partially separated from employment on or after March 29, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Dated: Signed in Washington, DC this 28th day of February 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–6669 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38, 811 and TA–W–38, 811b]

Universal Furniture Limited, Morristown, and Universal Furniture Limited Corporate Office, High Point, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 2001, applicable to workers of Universal Furniture Limited, Morristown, Tennessee. The notice was published in the **Federal Register** on May 18, 2001 (66 FR 27690).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of bedroom and dining room furniture.

Information shows that worker separations occurred at the Corporate Office, High Point, North Carolina location of the subject firm. The workers provide administrative support functions and purchasing for the subject firm's production facilities including Morristown, Tennessee.

Accordingly, the Department is amending the certification to included workers of the Universal Furniture Limited, Corporate Office, High Point, North Carolina.

The intent of the Department's certification is to include all workers of Universal Furniture Limited adversely affect by increased imports.

The amended notice applicable to TA–W–38,811 is hereby issued as follows:

All workers of Universal Furniture Limited, Morristown, Tennessee (TA–W–38, 811) and Universal Furniture Limited, Corporate Office, High Point, North Carolina (TA–W–38, 811B) who became totally or partially separated from employment on or after March 10, 2000, through April 30, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–6665 Filed 3–19–02; 8:45 am]

BILLING CODE 9510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance at the address shown below, not later than April 1, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance at the address shown below, not later than April 1, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of February, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 02/04/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,706	Valley City Steel (Wkrs)	Valley City, OH	01/24/2002	Pickling and Slitting Hot Rolled Steel.
40,707	AG Simpson Automotive (UAW)	Sterling Height, MI	01/23/2002	Automotive Bumpers.
40,708	Cannon County Knitting (Wkrs)	Smithville, TN	01/07/2002	Knit Apparel.
40,709	Agilent Technologies (Wkrs)	Santa Clara, CA	01/25/2002	Cad Library Parts.
40,710	Alpha Carb Enterprises (Wkrs)	Leechburg, PA	01/11/2002	Steel and Tungsten Carbide.
40,711	Carolina Glove Co (Comp)	Conover, NC	01/09/2002	Work Gloves.
40,712	Xerox Corp. (Wkrs)	Webster, NY	01/08/2002	Copiers—Digital.
40,713	SDS Lumber Co. (Comp)	Bingen, WA	01/09/2002	Plywood.
40,714	Ferraz Shawmut, Inc. (Wkrs)	Newburyport, MA	01/21/2002	Semi-Conductor Fuses.
40,715	Stewart and Stevenson (Comp)	Albuquerque, NM	01/14/2002	Provide Diesel Engine Services.
40,716	Hathaway/Waterville Shirt (UNITE)	Waterville, ME	01/02/2002	Shirts.
40,717	DyStar LP (Comp)	Coventry, RI	01/09/2002	Specialty Chemicals.
40,718	Bilco Manufacturing Corp (Comp)	Macon, GA	01/07/2002	Wooden Shell Rolls (Wooden Cores).
40,719	Associated Spring (Wkrs)	Dallas, TX	01/22/2002	Tractor Power Bake and Springs.
40,720	Rohm Device USA, Inc. (Comp)	Sunnyvale, CA	01/14/2002	Semiconductors.
40,721	Engelhard Corp (Comp)	McIntyre, GA	01/18/2002	Paper Coating and Filling—Kaolin.
40,722	Willow Creek Apparel (Wkrs)	Jonesville, NC	01/07/2002	Loungewear Apparel.
40,723	FC Meyer Packaging (Wkrs)	St. Louis, MO	12/11/2001	Shoe Cartons.
40,724	LTV Steel, Inc. (Wkrs)	Independence, OH	12/14/2001	Steel.
40,725	TI Group Automotive (Wkrs)	Coldwater, MI	12/07/2001	Machine Tooling.
40,726	Liberty Manufacturing (Wkrs)	Liberty, SC	12/18/2001	Denim Fabric.
40,727	Wells Lamont (Wkrs)	Eupora, MS	12/21/2001	Work Gloves.
40,728	Mikan Group, Inc. (UNITE)	Long Island Cty, NY	12/05/2001	Sportswear—Pants, Skirts.
40,729	Liz Claiborne, Inc. (UNITE)	Mt. Pocono, PA	12/14/2001	Men's and Ladies' Clothing.
40,730	Mears Tool and Die, Inc (Comp)	Cochranton, PA	12/14/2001	Bag Racks for Retail Stores.
40,731	Fufflex of Virginia (Comp)	Stuart, VA	12/10/2001	Rubber Tapes and Threads.
40,732	LM Services (Wkrs)	Cumberland, MD	12/04/2001	Distribute Sportswear.
40,733	Blauer Manufacturing Co (Comp)	Chatom, AL	12/18/2001	Outerwear and Rainwear.
40,734	Modular Mining Systems (Comp)	Tucson, AZ	12/10/2001	Hardware and Software.
40,735	VF Jeanswear Limited (Comp)	Jackson, TN	11/27/2001	Ladies' and Men's Jeans.
40,735A	VF Jeanswear Limited (Comp)	Prague, OK	11/27/2001	Ladies' and Men's Jeans.
40,735B	VF Jeanswear Limited (Comp)	Seminole, OK	11/27/2001	Ladies' and Men's Jeans.
40,736	VF Jeanswear Limited (Comp)	Shenandoah, VA	11/28/2001	Ladies' and Men's Jeans.
40,736A	VF Jeanswear Limited (Comp)	Madison, VA	11/28/2001	Ladies' and Men's Jeans.
40,736B	VF Jeanswear Limited (Comp)	Luray, VA	11/28/2001	Ladies' and Men's Jeans.
40,737	VF Jeanswear Limited (Wkrs)	El Paso, TX	01/16/2001	Jeans and Pants.
40,737A	VF Jeanswear Limited (Wkrs)	Fabens, TX	01/16/2001	Jeans and Pants.
40,738	DW Manufacturing (Comp)	White City, OR	12/18/2001	Service Provider—Electronic related.
40,739	Molycorp, Inc. (Comp)	Questa, NM	12/06/2001	Molybdenum.
40,740	Corning, Inc. (Comp)	Greenville, OH	12/27/2001	Corning Products.
40,741	Leavitt Communications (Wkrs)	Lincolnshire, IL	12/06/2001	Pagers.
40,742	Huhtamaki Foodservice (Comp)	Waterville, ME	12/11/2001	Plates, Bowls, Platters.
40,743	Hewlett Packard (Wkrs)	Colorado Spring, CO	09/26/2001	Computers.
40,744	Wabash Aluminum Alloys (Comp)	Richmond, VA	12/13/2001	Deox.
40,745	New Holland North America (Wkrs)	Belleville, PA	12/13/2001	Loaders and Various Hay Tools.
40,746	Saint-Gobain Crystals (Comp)	Washougal, WA	12/07/2001	Crystals.
40,747	Bose Corp. (Wkrs)	Hillsdale, MI	12/13/2001	Automotive Loudspeakers.
40,748	Felix Schoeller Technical (PACE)	Pulaski, NY	12/18/2001	Photo and Speciality Paper.
40,749	Trinity Industries (Wkrs)	Longview, TX	12/18/2001	Railcars.
40,750	Mid America Building (Comp)	Hurley, NM	12/21/2001	Janitorial Services.
40,751	Meridian Automotive (Wkrs)	Portland, OR	12/20/2001	Truck Hoods.
40,752	Cooper Standard Auto (Wkrs)	Fairview, MI	11/27/2001	Automotive Fluid Systems.
40,753	Tresco Tool, Inc (Comp)	Guys Mills, PA	11/06/2001	Plastic Injection Molds, Dies.
40,754	Molycorp, Inc. (USWA)	Washington, PA	01/21/2001	Ferromolybdenum.
40,755	Crompton Corp., Uniroyal (USWA)	Naugatuck, CT	11/02/2001	Chemicals.
40,756	MRC Bearings, SKF USA (UAW)	Jamestown, NY	11/27/2001	Ball and Roller Bearings.
40,757	Sony Electronics (Wkrs)	Mt. Pleasant, PA	10/10/2001	TV's, Tubes and Components.
40,758	R and M Dress/Old Friends (Wkrs)	Lebanon, PA	10/26/2001	Ladies' Sportswear.
40,759	Jordana, Inc. (Comp)	Medley, FL	10/29/2001	Ladies' Apparel.
40,760	Sew Special, Inc. (Comp)	Randleman, NC	10/30/2001	Ladies' Apparel.
40,761	Lou Levy and Sons (UNITE)	New York, NY	01/15/2002	Ladies' Coats.
40,762	Presto Products Mfg (Wkrs)	Alamo Gordo, NM	01/14/2002	Small Electric Appliances.
40,763	R.C.M. Manufacturing Co (Comp)	Fall River, MA	10/15/2001	Ladies' Coats.
40,764	Fit Rite Headwear, Inc. (Comp)	Wilkes, Barre, PA	10/30/2001	Sew Safety Products.
40,765	Becton Dickinson (Comp)	Hancock, NY	01/09/2001	Disposable Surgical Blades.
40,766	Harper-Wyman Co (Comp)	Princeton, IL	12/05/2001	Top Burners and Oven Burners.
40,767	Uniroyal Goodrich Tire (USWA)	Tuscaloosa, AL	11/30/2001	Radial Tires.

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APPENDIX—Continued

[Petitions Instituted on 02/04/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,768	Borg Warner Automotive (Wkrs)	Coldwater, MI	01/03/2002	Damper Assemblies.
40,769	JBI LP (Comp)	Osseo, WI	12/17/2001	Paint Line Equipment.
40,770	Tree Machine Tool, Inc (IAMAW)	Franklin, WI	12/01/2001	Marketing of Machine Tools.
40,771	3M Company (Comp)	Bristol, PA	12/27/2001	Sealing, Packaging Tape.

[FR Doc. 02–6664 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5829]

Chambersburg Engineering Co., Chambersburg, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on February 4, 2002, in response to a petition filed by a company official on behalf of workers at Chambersburg Engineering Co., Chambersburg, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of February, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–6671 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05013]

Outboard Marine Corporation (OMC), Delavan, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 20, 2001, in response to a petition filed on behalf of all workers at Outboard Marine Corporation (OMC), Delavan, Wisconsin.

The company filed Chapter 7 bankruptcy for all the locations of the Outboard Marine Corporation, including the subject facility. The trustee was unable to locate the records of the company to provide the Department the information necessary to issue a determination regarding the worker group eligibility requirements under paragraph (a)(1)(A) or (a)(1)(B) of Section 250 of the Trade Act of 1974, as amended. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–6663 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. NAFTA–05682]

Parallax Power Components LLC, Magnetek, Inc., Goodland, IN; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 16, 2002, applicable to workers of Parallax Power Components LLC, Goodland, Indiana. The notice was published in the **Federal Register** on January 31, 1002 (67 FR 4751).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of transformers. New information shows that Parallax Power Components purchased the Goodland, Indiana location of MagneTek, Inc., on June 29, 2001.

Information also shows that some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account for Parallax Power Components LLC, MagneTek, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Parallax Power Components LLC, Goodland, Indiana who were adversely affected by company imports from Mexico and a shift in production of transformers.

The amended notice applicable to NAFTA—05682 is hereby issued as follows:

All workers of Parallax Power Components LLC, MagneTek, Inc., Goodland, Indiana who became totally or partially separated from employment on or after December 14, 2000, through January 16, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–6666 Filed 3–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension Welfare Benefits Administration

[Application No: D–10936]

Proposed Amendment to Prohibited Transaction Exemption 96–62 (PTE 96–62) To Permit Certain Authorized Transactions Between Plans and Parties in Interest

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendment to PTE 96–62.

SUMMARY: This document contains a notice of pendency before the Department of a proposed amendment to PTE 96–62 (61 FR 39988, July 31, 1996). PTE 96–62 permits certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to two individual exemptions granted by the Department within the 60 month period ending on the date of filing of a written submission seeking authorization for the transaction. If adopted, the proposed amendment would affect plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before May 6, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably, at least three copies) should be addressed to: U.S. Department of Labor, Office of Exemption Determinations, Attention: D–10936, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Ave., NW, Washington, DC 20210. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or fax. Any such comments should be sent either by e-mail to *padamsa@pwba.dol.gov* or by fax at (202) 219–0204 by the end of the scheduled comment period. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Ave., NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8540 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 96–62. PTE 96–62 provides relief from a restriction described in sections 406(a) and 406(b) of the Employee Retirement Income Security Act (ERISA or the Act) or a parallel restriction described in section 8477(c)(2) of the Federal Employees' Retirement Systems Act (FERSA), and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code. The Department is proposing this amendment to PTE 96–62, on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

Background

The rules set forth in section 406 of ERISA prohibit various transactions between employee benefit plans covered by Title I of ERISA and certain related parties, unless a statutory or administrative exemption applies to the transaction. These related parties, such as plan fiduciaries, sponsoring employers, unions and service providers are defined as parties in interest in section 3(14) of ERISA, and, in the absence of an exemption, may not engage in transactions described in section 406 of ERISA with a plan.

Specifically, section 406(a)(1) prohibits a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect: sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services or facilities between the plan and a party in interest; transfer to, or use by or for the benefit of a party in interest of any assets of the plan or acquisition on behalf of the plan of any employer security or real property in violation of section 407(a) of ERISA. Section 406(a)(2) provides that no fiduciary who has authority or discretion to control or manage plan assets shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a) of ERISA. Section 406(b) prohibits a fiduciary, with respect to a plan, from dealing with the assets of the plan in his own interest or for his own account; acting in his individual capacity or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or interests of the participants or beneficiaries; and receiving any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan. In addition, such transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to taxation under section 4975 of the Code. Lastly, the restrictions of section 8477(c)(2) of FERSA parallel section 406(b) of ERISA.

The Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the restrictions imposed by section 406 of ERISA where it has been able to find that the statutory criteria have been met.[2] This process has been helpful in providing exemptive relief for transactions which were prohibited, but were otherwise in the interests of the plans, participants and beneficiaries.

The Department has promulgated an exemption procedure[3] which provides, among other things, that an exemption will not be granted until a notice of pendency has been published in the **Federal Register**, and interested persons have been given an opportunity to comment on the proposed transaction. Following consideration of the entire record, the Department then makes its final determination whether to grant the exemption. If the Department contemplates not granting the requested exemption, the procedure also provides an applicant with the right to a conference.

Based on its experience in considering exemption applications, the Department has observed that many of the applications present routine transactions involving terms, conditions and circumstances which are substantially similar to those described

[1] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless a finding is made that such exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries of such plan and protective of the rights of participants and beneficiaries of such plan.

[3] See 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

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in previously granted individual exemptions. In fact, many exemption applicants have made it a practice to consult previously granted exemption files in the preparation of their submissions. Such applicants often submit applications containing nearly identical transactions, terms and conditions to those previously granted. Since the enactment of ERISA, the Department has exempted a large number of recurring transactions, including loans, leases and sales of real property. As a result, standard terms and conditions have developed over time which assure that the transaction is protective of the plan's interest.

The Department granted PTE 96–62 in 1996, in an effort to reduce regulatory burdens associated with processing individual exemptions from the prohibited transaction provisions of ERISA. Effective July 31, 1996, PTE 96–62 provides a mechanism for expediting consideration of those routine transactions which are similar to those that have been previously considered by the Department in prior exemption proceedings, without sacrificing the interests of the plan participants and beneficiaries. Accordingly, the exemption is available to a party proposing to engage in a prohibited transaction, if the party can demonstrate to the Department that such transaction and the material terms, conditions and representations therein are substantially similar to at least two individual exemptions previously granted by the Department.

Section I of PTE 96–62 provides relief from certain of the restrictions described in section 406(a) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, for a transaction between a plan and a party in interest with respect to such plan, provided the conditions of the exemption are met. Under section II, additional relief is provided from certain of the restrictions described in section 406(b) of ERISA and the parallel restrictions described in section 8477(c)(2) of FERSA, as well as from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F). Sections I(a) and II(a) require that the transaction be substantially similar (as defined in section IV(a) of PTE 96–62) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60-month period ending on the date of filing of the written submission.[4]

As a result of the program's success, the number of requests for individual exemptions relating to routine transactions has decreased. Thus, the Department is concerned that, in the near future, parties wishing to seek authorization for transactions pursuant to PTE 96–62 will not be able to find two substantially similar individual exemptions which were granted by the Department within the required 60-month time period.[5] Accordingly, in order to assist parties who in the future wish to utilize the exemptive relief provided by PTE 96–62, the Department is proposing to expand Sections I(a) and II(a) to permit parties to either base their submission on substantially similar transactions described in two individual exemptions granted within the past 60-months; or on one individual exemption granted within the past 120-months and one transaction which received final authorization by the Department under PTE 96–62 within the past 60-months (the Authorized Transaction). The Department believes that the alternate method for satisfying the requirements of sections I(a) and II(a) will continue to ensure that the transactions that the party compares to its proposed transaction reflect the current policies of the Department.

As of November 2001, over 160 transactions have been authorized by the Department under PTE 96–62. The Department maintains, on its website (*www.dol.gov/dol/pwba/public/programs/oed/oednew20.htm*) a list of Authorized Transactions. This list includes the following information: the final authorization numbers, the name of the applicants, a description of the transactions, and the grant numbers and **Federal Register** citations of the exemptions on which the submissions were based. Parties wishing to base their submission on an Authorized Transaction will be able to refer to the submission previously filed by parties under PTE 96–62 and to the two granted individual exemptions identified as substantially similar for additional information regarding the subject transactions.[6]

The Department notes that all other conditions contained in PTE 96–62 must continue to be satisfied with respect to those parties seeking to base their submission on an Authorized Transaction rather than on two substantially similar individual exemptions. Accordingly, these parties should submit, among other things, a comparison of the proposed transaction with the Authorized Transaction and the transaction which was the subject of the individual exemption, including an explanation as to why any differences should not be considered material.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption, if granted does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before any exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan(s) and of participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan(s);

(3) This proposed amendment is supplemental to and not in derogation of any other provisions of ERISA or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) If granted, the proposed amendment will be applicable to a transaction only if the transaction satisfies the conditions specified in the class exemption.

Written Comments and Requests for Hearing

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address or the fax number noted above within the time period set forth above. All comments received will made a part of the record of this proceeding and will be available for public inspection.

Proposed Amendment

Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend PTE 96–62 as set forth below:

(1) Section I(a) is amended to read "The transaction is substantially similar (as defined in section IV(a) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));"

(2) Section II(a) is amended to read "The transaction is substantially similar (as defined in section IV(a) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));"

(3) Section III(a)(4) is amended to read "a comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department, or an individual exemption granted by the Department and an Authorized Transaction, and an explanation as to why any differences should not be considered material for purposes of this exemption;"

(4) Section IV(b)(6) is amended to read "the Federal Register citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related Federal Register citations for the prior exemptions cited therein)identified by the party as substantially similar to the contemplated transaction."

(5) Section IV(g) is added to read: "The term Authorized Transaction means a transaction that has received final authorization pursuant to PTE 96–62 within a 60-month period ending on the date of the filing of the written submission referred to in section III(a)."

Signed at Washington, DC this 15th day of March 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–6770 Filed 3–19–02; 8:45 am]

BILLING CODE 4520–29–P

[4] Section IV(a) defines the term "substantially similar" to mean alike in all material respects as determined by the Department, in its sola discretion.

[5] In this regard, transactions which are authorized pursuant to PTE 96–62 cannot be relied on by parties wishing to engage in similar transaction pursuant to PTE 96–62 because that exemption is limited to those transactions which were the subject of individual exemptions granted in accordance with the Department's exemption procedure.

[6] All files are available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Ave., NW, Washington, DC 20210.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities; Extension of Currently Approved Information Collection; Comment Request; Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the Institute), part of the Morris K. Udall Foundation, is planning to submit to the Office of Management and Budget (OMB) a request for an extension for the currently approved information collection (ICR), OMB control Number 2010–0030: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals ("National Roster of ECR Practitioners"), currently operating pursuant to Terms of Clearance issued July 29, 1999. Before submitting the extension to OMB for review and approval, the Institute is soliciting comments regarding the information collection (see section C. below entitled "Questions to Consider in Making Comments"). This document provides information on the continuing need for the Roster of ECR Practitioners Application and the information recorded in the application.

DATES: Comments must be submitted on or before May 20, 2002.

ADDRESSES: Direct comments and requests for information, including copies of the ICR to: Joan C. Calcagno, Roster Manager: U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. Fax: 520–670–5530. Phone: 520–670–5299. E-mail: *roster@ecr.gov*

FOR FURTHER INFORMATION CONTACT: Joan C. Calcagno, Roster Manager: U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. Fax: 520–670–5530. Phone: 520–670–5299. E-mail: *roster@ecr.gov*

SUPPLEMENTARY INFORMATION:

A. Title for the Collection of Information

Application for National Roster of Environmental Dispute Resolution and Consensus Building Professionals ("National Roster of ECR Practitioners").

B. Potentially Affected Persons

You are potentially affected by this action if you are a dispute resolution or consensus building professional in the environmental or natural resources field who wishes to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.

C. Questions To Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution requests your comments to any of the following questions related to collecting information for the extension of the Application for the National Roster of ECR Practitioners:

(1) Is the continued use of the application ("collection of information") necessary for the proper performance of the functions of the agency, including whether the information has practical utility?

(2) Is the agency's estimate of the time spent completing the application ("burden of the proposed collection of information") accurate, including the validity of the methodology and assumptions used?

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(3) Can you suggest ways to enhance the quality, utility, and clarity of the information collected?

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology?

D. Abstract

The U.S. Institute for Environmental Conflict Resolution plans to continue collecting information from environmental dispute resolution and consensus building neutral professionals who desire to become members of the National Roster of ECR Practitioners, from which those involved in environmental, natural resource, or public lands disputes may locate providers of neutral services. Responses to the collection of information (the application) are voluntary, but required to obtain a benefit (listing on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.) An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Background Information: U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution was created in 1998 by the Environmental Policy and Conflict Resolution Act (P.L. 105–156). The U. S. Institute is a federal program established by the U. S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains the National Roster of ECR Practitioners, a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate neutral. The Institute accomplishes most of its work by partnering, contracting with, or referral to, experienced practitioners.

The Need for and Use of the Information Collected in the Application for the Roster of ECR Practitioners

Roster of ECR Practitioners Application: The application can be viewed on-line from the Institute's website: www.ecr.gov (simply register in the system to access and review an application). A hardcopy application may also be obtained from the Institute for those without web access. (see contact information above.)

Background Information: The information collected in the application for the National Roster of ECR Practitioners is the basis for an on-line database, searchable by a combination of 10 criteria designed to locate appropriate practitioners by matching desired characteristics with the information in the application. The application was first available in September 1999 and remains available on a continuous basis. The Roster of ECR Practitioners first became operational in February 2000 with 60 members and currently includes over 190 members from 40 states, the District of Columbia, and 2 Canadian provinces. They represent a broad cross-section of 31 different professional backgrounds and a broad distribution of case experience across 39 types of case issues. Each member has documented experience which meets the roster entry criteria, and each has experience as a neutral in some or all of the following: mediation, facilitation, consensus building, process design, conflict assessment, system design, neutral evaluation/fact finding, superfund allocation, and/or regulatory negotiation.

The specific entry criteria and applicable definitions are available from the Institute's web site: *www.ecr.gov.* Generally stated, the entry criteria require that an applicant has:

(1) Served as the lead neutral in a collaborative process (e.g., mediation, consensus building, conflict assessment) for at least 200 case hours in two to ten environmental cases, and

(2) Accumulated a total of 60 points across three categories: additional case experience and complex case experience; experience as a trainer or trainee; and substantive work/volunteer/educational experience in fields related to Alternative Dispute Resolution/Environmental Conflict Resolution, such as law, science, public administration.

Use of the National Roster of ECR Practitioners: The roster search and referral service is accessible through the Institute. The Institute uses the roster (specifically the information collected in the application) as a resource when making referrals to those searching for neutral ECR professionals with specific experience, backgrounds, or expertise (external referrals). The Institute also uses the roster as a resource when locating appropriate ECR neutral professionals with whom to partner/sub-contract for projects in which the Institute is involved (internal referrals). The roster referral system is enhanced through cooperation with existing programs and networks of environmental dispute-resolution and consensus-building practitioners familiar with the issues in their respective states and regions. Twenty-one EPA ADR Specialists also have direct, electronic access to search the roster. Next, it is anticipated that other federal agencies will gain direct access over the next year. Eventually, the roster will be available to the public through the internet.

Federal agencies are not required to select from the roster. Professionals not on the roster remain fully eligible to serve as ECR practitioners in disputes involving federal agencies. Finally, being listed on the roster does not guarantee additional work for the practitioner.

Development and Need for the National Roster of ECR Practitioners: The roster was developed with the support of the Environmental Protection Agency (EPA). Based on a 1997 study concerning the potential of a national roster of qualified practitioners, EPA decided to support the development of such a roster through the Institute.

To develop the project, the EPA and the Institute brought together a work group consisting of EPA dispute resolution professionals and contracting officers, state dispute resolution officials, private dispute resolution practitioners and academics. Informed in part by ideas from this group, the EPA and the Institute proposed roster entry qualifications and draft application, which were published in the **Federal Register** in November 1998. Before the entry criteria and application were finalized, the comments received in response to the **Federal Register** notice were reviewed. Outreach continued through meetings and newsletter articles, as well as individual communications to professional associations, state and federal government agencies, dispute resolution firms, individual practitioners, professional associations of attorneys, environmental and citizen groups.

The roster was created, and continues to be needed, for several reasons. The use of Alternative Dispute Resolution (ADR) in the environmental and public policy arena has grown markedly over the last two decades. In this context, ADR processes now include techniques ranging from conflict prevention, such as consensus building and facilitation of public policy dialogues, to specific dispute resolution through assisted negotiations and mediation. The number of environmental conflict resolution (ECR) practitioners has grown as the field has gained prominence and professionals from a variety of disciplines have become attracted to its advantages and opportunities.

An essential step in any dispute resolution process occurs when parties select a practitioner. Parties making the selection rightfully expect that the practitioner will be qualified to provide the service sought and has experience and style matched well to the nature of the issues and to the parties. Thus, the Roster of ECR Practitioners is designed to advance the interests of the growing field of dispute resolution, reflect the evolving standards of best practice, and help direct the expenditure of public funds for quality services.

Over the last fifteen years of using ADR, EPA found that parties to a dispute or controversy will generate a list of desired characteristics, such as experience with specific types of issues, cases or disputes, location, and other factors, that will be used in an attempt to identify the right person to assist them. Locating practitioners meeting these criteria can be a "hit-or-miss" experience depending on the resources, available time, and experience of the parties with locating appropriate neutrals.

Although the EPA operates a national service contract that manages major cases through a list of experienced providers, it is limited in scope and membership, and as a consequence it can be burdensome to use for identifying neutrals for small or localized cases. Most other Federal agencies have no vehicle or information available to assist in this important first step to conducting a good dispute resolution process.

More specifically, the National Roster of ECR Practitioners is necessary for the proper performance of the Institute's goals: to resolve Federal environmental disputes in a timely and constructive manner; to increase the appropriate use of environmental conflict resolution; to improve the ability of Federal agencies and other interested parties to engage in ECR effectively; and to promote collaborative problem-solving and consensus-building during the design and implementation of Federal environmental policies so as to prevent and reduce the incidence of future environmental disputes.

In addition, the U.S. Institute's enabling legislation directs the Institute to work with practitioners located near the conflict whenever practical. Consistent with this mandate, the Institute must be able to identify appropriate experienced dispute resolution and conciseness building professionals in an efficient manner.

Finally, the Administrative Dispute Resolution (AADR@) Act of 1996 (5 U.S.C. 571, et. seq.) authorizes the Federal government to contract with dispute resolution professionals (e.g., facilitators or mediators) to assist it and other parties to disputes or issues in controversy in reaching an agreement, settlement, or consensus. The ADR Act authorizes the government to take steps to make identifying and contracting with neutrals easier (cf. 5 U.S.C. 573(c)).

Thus, the goal of the National Roster of ECR Practitioners and the referral system is to improve access to qualified environmental dispute resolution and consensus building professionals for the Institute and others sponsoring or engaging in environmental conflict resolution processes. The roster expedites the identification of appropriate professionals, shortens the time needed to complete contracting documents, and helps refer parties to practitioners, particularly practitioners in the locale of the dispute.

More specifically, the roster and the referral system provide an efficient, credible and user-friendly source from which to systematically identify experienced environmental neutral professionals; increase the use of collaborative processes by providing a useful tool for locating appropriate practitioners; and provide users with a detailed Practitioner Profiles, reflecting information contained in the application, to be used as a helpful first step in the process of selecting an appropriate neutral.

E. Burden Statement

The application compiles data available from the resumes of dispute resolution and consensus building professionals into a format that is standardized for efficient and fair eligibility review, database searches, and retrievals. A professional needs to complete the form only one time. Once the application is approved, the roster member has continual access to his or her on-line account to update information, on a voluntary basis. The burden includes time spent to review instructions, review resume information, and enter the information in the form.

Likely Respondents: Environmental dispute resolution and consensus building professionals (new respondents); existing roster members (for updating)

Proposed Frequency of Response: one, with voluntary updates approximately once per year.

Estimated Number of New Respondents (first extension year): 30.

Estimated Number of Existing Respondents—for updating (first extension year): 125.

Estimated Number of New Respondents (per year for succeeding year): 30.

Estimated Number of Existing Respondents-for updating (per year for succeeding year): 125.

Respondent Time Burden Estimates

Estimate Time per New Response: 150 minutes (2.5 hours).

Estimated Number of Updates (per year): 1, for 125 existing respondents.

Estimated Time for Update: 15 minutes.

Estimated Total First Extension Year Burden: 4500 minutes (75 hours) (30 new respondents); 1875 minutes (31.25 hours)(125 updates).

Estimated Total Subsequent Year Annual Burden: 4500 minutes (75 hours) (30 new respondents); 1875 minutes (31.25 hours)(125 updates).

Respondent Cost Burden Estimates (at $150. per hour)

No Capital Or Start-Up Costs

Estimated Cost per Respondent (first extension year): $375 (new respondents); 38 (update).

Estimated Cost per Respondent (subsequent year): $375 (new respondents); 38 (update).

Estimated Total First Extension Year Burden: $11,250 (new respondents); $4,750 (updates).

Estimated Total Subsequent Year annual Bur $11,250 (new respondents); $4,750 (updates).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing

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and providing information and transmitting information.

(Authority: 20 U.S.C. Sec. 5601–5609)

Dated the 14th day of March, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 02–6684 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 6, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Office of the Secretary (N1-AFU–02–1, 2 items, 1 temporary item). Electronic copies created using electronic mail and word processing of appointment books, daily schedules, and telephone logs of the Secretary of the Air Force, November 1997 to January 2001. Recordkeeping copies of these files are proposed for permanent retention.

2. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–6, 132 items, 59 temporary items). Facilitative records relating to operations, planning, and command and control matters accumulated by the Joint Staff and combatant commands. Included are reports, correspondence, summaries, case files, background papers, drafts, transcripts, publications, minutes of meetings, and other files pertaining to such matters as military readiness, special and regular operations, exercises, plans, codewords, crisis incidents, reconnaissance, surveillance, war games, alerts, strategic weapons failures, space and satellite operations, aerospace, and antiterrorism. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of such files as operations and readiness policies and reports, directives, lessons learned, crisis incident action books, emergency planning policies and procedures, and publications are proposed for permanent retention.

3. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–7, 51 items, 33 temporary items). Records relating to logistics, supply services, and budget matters accumulated by the Joint Staff and combatant commands. Included are reports, correspondence, case files, background papers, drafts, transcripts, publications, minutes of meetings, and other records pertaining to such matters as routine logistics and mobilization activities, general budget and financial management, payroll, procurement, space management, travel, transportation, and safety and maintenance activities. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of files relating to such matters as policies and procedures, oversight and assessments, and high-level budget activities are proposed for permanent retention.

4. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–10, 61 items, 46 temporary items). Records relating to general administration and management accumulated by the Joint Staff and combatant commands. Included are such records as reports, correspondence, summaries, case files, background papers, drafts, transcripts, publications, and minutes of meetings. Files pertain to such matters as general office operations, standard operating procedures, the preparation of reports and plans, publications, forms management, investigations, audits and surveys, routine studies, agreements, and records management. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of such files as indexes to permanent records, official studies, schedules of high officials, significant investigations, audiovisual records, administrative orders, and meeting/conference records are proposed for permanent retention.

5. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–11, 44 items, 43 temporary items). Records relating to information technology accumulated by the Joint Staff and combatant commands. Included are reports, correspondence, directives, plans, memorandums, case files, background papers, drafts, transcripts, publications, minutes of meetings, and other files pertaining to such matters as the planning, procurement, testing, security, operation, and maintenance of information technology systems. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of technical documentation relating to records scheduled for transfer to the National Archives are proposed for permanent retention.

6. Department of State, Bureau of Human Resources (N1–59–00–12, 12 items, 10 temporary items). Project working papers, legislative files, and labor management case files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are personnel policy historical files and reports relating to personnel policy and planning.

7. Department of State, Office of the Legal Advisor (N1–59–02–1, 2 items, 1 temporary item). Electronic copies of subject and country files of the Assistant Legal Advisor for Nonproliferation created using electronic mail and word processing. Recordkeeping copies of the files are proposed for permanent retention.

8. Environmental Protection Agency, Office of Prevention, Pollution, and Toxics (N1–412–01–5, 3 items, 2 temporary items). Paper records that relate to reporting information on chemicals or chemical mixtures under Section 8 of the Toxic Substances Control Act and have been microfilmed. Also included are electronic copies of documents created using electronic mail and word processing. Microfilm copies and paper records that have not been filmed, consisting of such documents as health studies, forms, and reports, are proposed for permanent retention.

9. Executive Office of the President, Office of National Drug Control Policy (N1–429–01–1, 43 items, 20 temporary items). Electronic copies of documents created using word processing. Proposed for permanent retention are the recordkeeping copies of such records as subject files of the director, deputy director, and other agency offices, the director's correspondence files and a related tracking system, and audio and video recordings.

10. Inter-American Foundation, Agency-wide (N1–454–02–1, 9 items, 7 temporary items). Records relating to activities of the Board of Directors and the President of the Foundation, including such files as copies of meeting minutes, correspondence, reports, public notices to Congress of grants under consideration by the Foundation, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of minutes of meetings of the Board of Directors and Board of Directors policy files.

11. Inter-American Foundation, Office of the General Counsel (N1–454–02–2, 6 items, 6 temporary items). Records relating to activities of the Office of the General Counsel. Included are grant summaries, records of in-country legal assistance in support of grantees, and records of General Counsel participation in congressional budget hearings. Also included are electronic copies of documents created using electronic mail and word processing.

12. Inter-American Foundation, Office of Programs (N1–454–02–3, 3 items, 3 temporary items). Case files pertaining to grants awarded under the Foundation's Field Research Fellowship Program and U.S. Graduate Study Fellowship Program for Latin American and Caribbean Citizens. Also included are electronic copies of documents created using electronic mail and word processing.

13. Inter-American Foundation, Office of Budget and Financial Controls (N1–454–02–4, 4 items, 3 temporary items). Records relating to the administration of funding received from the Social Progress Trust Fund, including electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of budget formulation and submission files.

14. Nuclear Regulatory Commission, Regional Offices (N1–431–00–20, 132 items, 96 temporary items). Electronic records in the Commission's Agencywide Document Access and Management System (ADAMS) accumulated by agency Regional Offices, including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. Records proposed for disposal include electronic recordkeeping copies of records related to committees and conferences for which the agency is not the sponsor, enforcement case files that lack historical significance, fuel facilities docket case files, routine correspondence accumulated below the regional administrator level, operator licensing examination packages, licensee mismanagement files, nuclear material accountability worksheets, personnel exposure files, and radiation protection program records. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include recordkeeping copies of such files as emergency planning records, significant enforcement actions, selected fuel facilities docket case files, program correspondence accumulated at the regional administrator level, inspection and enforcement case files, and regulatory history files for proposed and final rulemaking.

15. Office of Personnel Management, Office of Administrative Law Judges (N1–478–02–2, 4 items, 4 temporary items). Electronic copies of administrative law judge qualifications files created using electronic mail and

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word processing. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

Dated: March 8, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–6636 Filed 3–19–02; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S. C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make these materials described in this notice available to the public beginning May 6, 2002. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before April 19, 2002.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on May 6, 2002, consist of 54 cubic feet. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files in this opening.

Subject Category

Volume: 8 cubic feet.

Federal Government (FG)
FG 93 President's Commission on Income Maintenance Program
FG 94 Commission on Marine Service, Engineering, and Resources
FG 106 District of Columbia
FG 150 Interstate Commerce Commission
FG 151 Joint Commission on Aging
FG 153 National Advisory Commission on Civil Disorders
FG 154 National Advisory Commission on Health Facilities
FG 155 National Advisory Committee on Libraries
FG 156 National Advisory Commission on Low Income Housing
FG 157 National Advisory Council on Adult Basic Education
FG 163 National Advisory Council on Vocational Education
FG 165 National Alliance of Businessmen
FG 222 Tax Court of the United States
FG 223 Temporary Commission on Pennsylvania Avenue
FG 224 Tennessee Valley Authority

In accordance with the provisions of Executive Order 12958, several series within the National Security Council files have been systematically reviewed for declassification and will be made available. In addition, a number of documents which were previously withheld from public access have been re-reviewed for release and or declassified under the provisions of Executive Order 12958, or in accordance with 36 CFR 1275.56 (Public Access Regulations).

National Security Council Files series:

Volume: 45 cubic feet.

A number of documents which were previously withheld from public access have been reviewed and/ or declassified under the Mandatory Review provisions of Executive Order 12958 and will be made available.

Previously restricted materials:

Volume: 1 cubic foot.

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: March 13, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–6635 Filed 3–19–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Teleconference

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ teleconference for NCD's Youth Advisory Committee, Notice of this meeting is required under section 10 (a)(1)(2) of the Federal Advisory Committee Act (Pub L. 92–463).

Youth Advisory Committee: The purposes of NCD's youth Advisory Committee is to provide input into NCD acitivites consistent with the values and goals of the Americans with Disabilities Act.

DATES: April 10, 2002, 4:00 p.m. EDT.

For youth advisory committee information, contact: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW, Suite 850, Washington, DC. 20004; 202–272–20004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the Untied States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We currently have a membership reflecting our nation's diversity and representing a variety of disabling conditions from across the United States.

Open Meeting: This advisory committee meeting/teleconference of the National Council on Disability will be open to the public. Those interested

in participating in the meeting/ teleconference should contact the appropriate staff member listed above. Due to limited resources, only a few telephone lines will be available.

Records will be kept of all Youth Advisory Committee meetings/ teleconferences and will be available after the meeting for public inspection at the National Council on Disaiblity.

Signed in Washington, DC, on March 15, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–6737 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its February 27, 2001, application for proposed amendment to Facility Operating License No. DPR–64 for the Indian Point Nuclear Generating Unit No. 2 (IP2), located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications (TSs) to change the mode applicability for certain engineered safety features and auxiliary electrical systems from the point of time when the reactor is made critical to when the average reactor coolant temperature is heated above 350 °F. The amendment would also have changed the associated action that must be taken when the TS conditions cannot be met to require a plant cooldown to below 350 °F.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 4, 2001 (66 FR 17965). However, by letter dated February 27, 2002, the licensee withdrew the proposed change.

Further details with respect to this action, see the application for amendment dated February 27, 2001, and the licensee's letter dated February 27, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of March 2002.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Sr. Project Manager, Section 1, Project Directorate, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6689 Filed 3–19–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on April 23, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss General Electric proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: *Tuesday, April 23, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittee will begin review of the application of the Carolina Power and Light Company for a core power uprate for the Brunswick Steam Electric Plant, Units 1 and 2. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Carolina Power and Light Company, General Electric Nuclear Energy, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: March 14, 2002.

Sher Bahadur,

Associate Director, for Technical Support.

[FR Doc. 02–6688 Filed 3–19–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Eliminate Post Accident Sampling Requirements for Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application relating to the elimination of post accident sampling requirements for Boiling Water Reactors. The purpose of this model is to permit the NRC to efficiently process amendments that propose to remove requirements for Post Accident Sampling Stations (PASS) from

Technical Specifications (TS). Licensees of nuclear power reactors to which the model applies may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (66 FR 66949, December 27, 2001) which provided a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to elimination of requirements for PASS for BWRs. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to eliminate requirements for post accident sampling. The staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to eliminate PASS-related TS. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H4, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1161.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the elimination of requirements for PASS and related administrative controls in TS for BWRs. This proposed change was proposed for incorporation into the STS by the BWR Owners Group (BWROG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–413. TSTF–413 is supported by the NRC staff's SE dated June 12, 2001, for the BWROG topical report NEDO–32991, "Regulatory Relaxation for BWR Post Accident Sampling Stations (PASS)," which was submitted to the NRC on November 30, 2000. The BWROG request followed the staff's approval of similar requests for elimination of PASS requirements from the Combustion Engineering Owners Group (CEOG) and the Westinghouse Owners Group (WOG). TSTF–413 can be viewed on the NRC Web site, www.nrc.gov.

Applicability

This proposed change to remove requirements for PASS from TS (and other elements of the licensing bases) is applicable to BWRs.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–413 using the CLIIP to address the following plant-specific verifications and regulatory commitments. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. In making the requested regulatory commitments, each licensee should address: (1) That the subject capability exists (or will be developed) and will be maintained; (2) where the capability or procedure will be described (*e.g.*, severe accident management guidelines, emergency operating procedures, emergency plan implementing procedures); and (3) a schedule for implementation. The amendment request need not provide details about designs or procedures.

Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain):

a. Contingency plans for obtaining and analyzing highly radioactive samples from the reactor coolant system, suppression pool, and containment atmosphere;

b. A capability for classifying fuel damage events at the Alert level threshold (typically this is 300 μCi/ml dose equivalent iodine). This capability may use a normal sampling system or correlations of radiation readings to coolant concentrations; and

c. an I–131 site survey detection capability, including an ability to assess radioactive iodines released to offsite environs, by using effluent monitoring systems or portable sampling equipment.

Public Notices

In a notice in the **Federal Register** dated December 27, 2001 (66 FR 66949), the staff requested comment on the use of the CLIIP to process requests to delete post-accident sampling requirements from BWRs. The staff had previously issued a notice of availability (65 FR 65018, October 31, 2000) on the use of the CLIIP to process requests to delete post-accident sampling requirements from plants with Westinghouse and Combustion Engineering designs. The notice of availability for Westinghouse and Combustion Engineering plants followed the staff's disposition of comments received in response to a notice requesting comment (65 FR 49271, August 11, 2000). Each request to eliminate PASS requirements by licensees for Westinghouse and CE plants using the CLIIP has also included notices prior to issuance of the subject license amendments and upon issuance.

TSTF–413, as well as the NRC staff's safety evaluation and model application, may be examined, and/or copied for a fee, at the NRC/s Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The staff did not receive comments following the notice soliciting comments about modifying the TS requirements regarding post accident sampling for BWRs. The staff has made some minor changes to the model safety evaluation as a result of internal reviews. A specific change involves the paragraph that read:

> The staff notes that redundant, safety-grade, containment hydrogen concentration monitors are required by 10 CFR 50.44(b)(1), are addressed in NUREG–0737 Item II.F.1 and Regulatory Guide 1.97, and are relied upon to meet the data reporting requirements of 10 CFR part 50, Appendix E, Section VI.2.a.(ii)(3). The staff concludes that during the early phases of an accident, the safety-grade hydrogen monitors provide an adequate capability for monitoring containment hydrogen concentration. The staff sees value in maintaining the capability to obtain grab samples for complementing the information from the hydrogen monitors.
> * * *

The revised paragraph reads as follows:

> The staff notes that containment hydrogen concentration monitors are required by 10 CFR 50.44 and are relied upon to meet the data reporting requirements of 10 CFR part 50, Appendix E, Section VI.2.a.(ii)(3). The staff concludes that these hydrogen monitors provide an adequate capability for monitoring containment hydrogen concentration during the early phases of an accident. The staff sees value in maintaining the capability to obtain grab samples for complementing the information from the hydrogen monitors. * * *

The change was made to reflect a likely revision to the requirements in 10 CFR 50.44 and does not significantly affect the technical basis of the staff's findings or revise the verifications and commitments identified in the model SE.

As described in the model application prepared by the staff, licensees may reference in their plant-specific applications to eliminate PASS-related TS the SE (as revised above), NSHC determination, and environmental assessment previously published in the **Federal Register** (66 FR 66949, December 27, 2001).

Dated at Rockville, Maryland, this 13th day of March 2002.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6690 Filed 3–19–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

A.C.L.N. Ltd.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission ("Commission"), based on information provided to the Commission staff, that there is a lack of adequate and accurate information concerning the management, business practices and results of operations of A.C.L.N. Ltd. ("ACLN"), of Limassol, Cyprus and Antwerp, Belgium. The securities of ACLN are registered with the Commission pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Its common stock is listed for trading on the New York Stock Exchange under the symbol ASW, and its options are traded through the Amex system. Information has been provided to the Commission staff raising concerns as to the adequacy and accuracy of ACLN's publicly disseminated information concerning, among other things, the following:

- The bases for ACLN's financial and other disclosure, as contained in its annual report on Form 20–F for the fiscal year ended December 31, 2000 ("2000 Form 20–F"), report on Form 6–K for the quarter ending September 30, 2001 and other public statements, concerning the revenue and income obtained by ACLN from its new car wholesale business, the volume of that business and the source of the cars sold;
- The bases for ACLN's financial and other public disclosure in its 2000 Form 20–F and in its December 21, 2001 press release concerning the ownership of the shipping vessel, the Sea Atef, and the bases under generally accepted accounting principles for claiming it as a $5.5 million asset, even though documents of title indicate that the vessel is jointly owned by persons or entities other than ACLN;
- The bases for ACLN's financial and other disclosure in its report on Form 6–K for the quarter ending September 30, 2001 concerning the revenue and income ACLN obtained from arranging the transportation of used cars, including its reported increase of approximately $60 million in revenue for the first nine months of 2001 over the same period of 2000;
- The bases for the statements in ACLN's February 5, 2002 press release announcing that it had acquired a majority interest in five companies, each of which owns a "pure car and truck carrier vessel;"
- The business relationship and the nature of all financial transactions between ACLN and Matina Forwarding and Trading, also known as MFT;
- The source and subsequent use of funds claimed by ACLN as a corporate asset on its financial statements for the fiscal year ending December 31, 2000 and the fiscal quarter ending September 30, 2001, and deposited at the BNP Paribas Bank, Luxembourg; and
- The bases for the nondisclosure in any Commission filing the warrant issued by Tunisian authorities for the arrest of Abderrazak Labiadh, ACLN's President, CEO, and Managing Director, for allegedly misappropriating funds from a Tunisian company he founded.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of ACLN.

Therefore, it is ordered that, pursuant to section 12(k) of the Exchange Act, trading in the securities of ACLN is suspended for the period from 9:30 a.m. EST, March 18, 2002, through 11:59 p.m. EST, on April 1, 2002.

The Commission cautions broker-dealers and current and prospective holders of ACLN securities that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by ACLN.

Further, brokers and dealers should be aware of the requirements of Rule 15c2–11 under the Exchange Act to the initiation of quotations at the termination of the trading suspension. Any broker or dealer having any questions as to whether or not the rule applies or whether the broker or dealer has complied with the rule should not enter any quotation but immediately contact the staff of the Securities and Exchange Commission in Washington, D.C.

Any broker or dealer uncertain as to what is required by Rule 15c2–11, should refrain from entering quotations relating to the securities of ACLN until such time as that broker or dealer is familiar with the rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation for the stock of ACLN that is in violation of the rule, the Commission will consider the need for prompt enforcement action.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–6819 Filed 3–18–02; 11:42 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45543; File No. SR–CBOE–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Permanent Adoption of Decimal Pricing and the Establishment of Minimum Price Variations for Quoting in Equity Securities and Options

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

14, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to establish minimum price variations ("MPVs"). The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 25, 2001, the Commission issued an order requiring the securities exchanges and the NASD to submit their own respective rule filings to establish MPVs for quoting equity securities and options by January 14, 2002.[3] The CBOE now proposes to formally adopt the MPVs currently in place on the Exchange.

As part of the industry conversion to decimal pricing and pursuant to the Decimals Implementation Plan for the Equities and Options Markets submitted to the Commission on July 26, 2000 (the "Plan"),[4] the Exchange adopted the following MPV schedule for quoting: a five cent MPV for option issues quoted under $3 a contract; a ten cent MPV for option issues quoted at $3 a contract or greater; and a one cent MPV for the quoting of CBOE's equity products. The Plan, including the MPVs adopted under the Plan, remains in effect until the Commission approves rules submitted by each exchange and the NASD designating each market's MPVs. The Exchange seeks to designate the MPVs utilized under the Plan as its minimum increments.

The proposed rule change also provides that future changes to the Exchange's MPVs would be handled as they were handled before the conversion to decimal pricing, namely that the CBOE Board of Directors may determine to change the minimum increments and that the Exchange will designate any such change as a stated policy, practice, or interpretation with respect to the administration of the CBOE minimum increment rule for bids and offers (CBOE Rule 6.42) within the meaning of section 19(b)(3)(A) of the Exchange Act[5] and will file a rule change for effectiveness upon filing with the Commission. Lastly, the Exchange also seeks to formally eliminate CBOE Rule 15.11 (Mandatory Year 2000 Testing) and CBOE Rule 15.22 (Mandatory Decimal Pricing Testing), both of which have expired.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–CBOE–2002–02 and should be submitted by April 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6642 Filed 3–19–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001).

[4] *See* letter from Dennis L. Covelli, Vice President, New York Stock Exchange, Inc. to Annette Nazareth, Director, Division of Market Regulation, Commission, dated July 25, 2000.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45562; File No. SR–MSRB–2001–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Official Communications, Pursuant to MSRB Rules G–15 and G–8

March 14, 2002.

On November 6, 2001, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–2001–08) (the "proposed rule change") relating to official communications under Rules G–15 and G–8. The MSRB submited the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b–4 thereunder.[1]

The Commission published the proposed rule change for comment in the **Federal Register** on February 8, 2001.[2] The Commission received no comment letters regarding the forgoing proposal. This order approves the proposal.

I. Description of the Proposed Rule Change

The MSRB's proposed rule change amended Rule G–15 on confirmation, clearance and settlement of transactions with customers and Rule G–8 on books and records. The proposed rule change requires brokers, dealers and municipal securities dealers (collectively "dealers") that safekeep municipal securities to retransmit official documents about municipal securities issues to their safekeeping clients under certain conditions. The amendment to Rule G–15 provides that, upon request for retransmission, dealers who serve as safekeeping agents must undertake "reasonable efforts" to retransmit "official communications'[3] to their safekeeping clients. For their retransmission efforts, the amendment provides that dealers receive "adequate compensation'.[4] Without an offer of adequate compensation, dealers are not required to effect the retransmission.

The proposed amendment includes a "compensation threshold". For retransmission where the total compensation sought will be less than $500, the dealer should begin retransmitting immediately and ask for the calculated compensation concurrently. For retransmission where the total compensation sought will be greater than $500, the dealer may chose instead to promptly contact the party offering compensation, inform it of the amount of compensation required, obtain specific agreement on the amount of compensation and wait for receipt of such compensation prior to proceeding with the retransmission.

In addition, the amendment allows dealers in certain circumstances to send to the party requesting an official communication retransmission a list of beneficial owners who do not object to the disclosure of their name, contact information and security positions ("non-objecting beneficial owners") in lieu of retransmitting documents. The customer account information amendment to Rule G–8 ensures that dealers retain an official record of a customer's written authorization, if any, as to the customer's status as a non-objecting beneficial owner.

The MSRB realizes that some dealers today retransmit documents to their customers voluntarily, or under specific terms of their safekeeping agreements, and in many cases do so without compensation from the party requesting retransmission. It is not the intent of the proposed rule change to discourage retransmissions of official communications in these cases. Rather, the purpose of the proposed rule change is to ensure that parties needing to transmit official communications to beneficial owners may rely on dealers undertaking reasonable efforts, under the explicit terms of Rules G–15 and G–8, to retransmit such official communications and maintain appropriate records.

II. Discussion

The MSRB believes that the proposed rule filing, relating to official communications, will promote just and equitable principles of trade and fosters an open market for municipal securities. Additionally, the MSRB believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it applies equally to all dealers in municipal securities.

The Commission must approve a proposed MSRB rule change if the Commission finds that the MSRB's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that govern the MSRB.[5] The language of Section 15(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.[6]

After careful review, the Commission finds that the MSRB's proposed rule change relating to official communications meets this standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act that the proposed rule change (File No. SR–MSRB–2001–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6715 Filed 3–19–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] *See* Release No. 34–45363 (January 30, 2002), 67 FR 6067.

[3] The proposed rule change defines an "official communication" as a document or collection of documents addressed to beneficial owners that was prepared or authorized by an issuer of municipal securities, a trustee for an issue of municipal securities, a state or federal tax authority or a custody agent for a stripped coupon municipal securities program in its capacity as custody agent. *See* Release No. 34–45363 (January 30, 2002), 67 FR 6067.

[4] Rule G–15 does not provide specific guidance to define adequate compensation; however, the proposed rule change references the rates of compensation for transmittal of documents detailed in NASD interpretation IM–2260, on Suggested Rates of Reimbursement, relating to forwarding of proxy and other materials. *See id.*; *see also NASD Manual* (CCH) ¶ 4233. As under NASD Rule 2260, compensation under Rule G–15 is intended to reimburse a dealer for its out of pocket expenses, including reasonable clerical expenses, associated with the particular retransmission. *See NASD Manual* (CCH) ¶ 4231.

[5] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–4(b)(2)(c).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45547; File No. SR–NYSE–2002–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Eliminate References to Quoting in Fractions

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its rules to eliminate references to fractional pricing increments and to make such rules compatible with quoting in decimals. The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to change references to fractional pricing increments to decimal pricing of equities as described herein. This submission is in accordance with the Commission's order[3] requiring self-regulatory organizations to submit rule filings regarding decimal pricing pursuant to section 19(b)(2) of the Act.[4] The Commission previously reviewed the Exchange's filing proposing amendments to Exchange rules to accommodate phasing in the quoting of decimals commencing August 28, 2000.[5] The Exchange completed the conversion to quoting all listed stocks in decimals on January 29, 2001.

In SR–NYSE–2000–22,[6] the Exchange proposed a Minimum Price Variation ("MPV") of one cent (0.01) for equities. The Exchange proposes to continue the MPV for equities of one cent (0.01). The rule changes proposed herein, therefore, primarily delete references to quoting in fractions that were retained in Exchange rules to accommodate securities that continued quoting in fractions during the phase in of full decimalization.

Summary of Rule Amendments: Other rules proposed to be amended are summarized below.

Rule 15 (ITS and Pre-Opening Application). The changes to Rule 15 remove references to fractions in the sections dealing with Intermarket Trading System procedures for openings.

Rule 64 (Bonds, Rights and 100 Share-Unit Stocks). Floor Official approval must be obtained for a non-regular way trade that is 2/16 or .10 away from the regular way bid or offer. For trades during the last calendar week of the year, the approval level is ¼ or .25. The fractional references will be removed.

Rule 72(b) (Clean Agency Cross). Decimals will replace fractions used in the two examples.

Rule 79A.30 (Miscellaneous Requirements on Stock and Bond Market Procedures). Examples in fractions will be deleted.

Rule 105 (Guidelines For Specialists' Specialty Stock Option Transactions Pursuant to Rule 105). References to fractions in the example will be deleted.

Rule 123A.30 (Percentage Orders). Percentage orders may be converted on a destabilizing tick if the order meets certain requirements of size (10,000 shares or more or $500,000 in market value) and the execution price of the converted percentage order is no more than ¼ or .25 point away from the last sale. Percentage orders may also be converted on a destabilizing tick to narrow a quotation spread as long as the bid is no more than ⅛ or .10 higher than the last sale. The ⅛ and ¼ parameters will be removed.

Rule 123A.40 (Stop Orders). Floor Official approval must be obtained when a specialist's transaction for his or her own account elects stop orders and the transaction is more than 2/16 or .10 away from the previous transaction. The 2/16 parameter will be removed.

Rule 192 (Part-Paid Securities). Examples in fractions will be deleted.

Rule 440B.15 (Short Sale Rule Interpretations). The examples in the last paragraph that delineate the prices at which short sales may be made are amended to show a one cent MPV for stocks.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) of the Act,[7] which requires an exchange to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–NYSE–2002–12 and should be submitted by April 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6641 Filed 3–19–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001).

[4] 15 U.S.C. 78s(b)(2).

[5] See Securities Exchange Act Release No. 43230 (August 30, 2000), 65 FR 54589 (September 8, 2000) (SR–NYSE–2000–22).

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Teleconferences

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Teleconferences.

DATES: Wednesday April 3, 2002 and Tuesday April 9, 2002.

TELECONFERENCES: Wednesday April 3, 2002, 1:30 PM to 3:30 PM and Tuesday April 9, 2002, 1:30 PM to 3:30 PM.

Ticket To Work and Work Incentives Advisory Panel Conference Calls

Call-in number: 888–603–9224.
Pass code: 11212.
Leader/Host: Sarah Wiggins Mitchell.

SUPPLEMENTARY INFORMATION:

Type of meeting: These teleconference meetings are open to the public. The interested public is invited to participate by calling into the teleconference at the number listed above. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will deliberate on the implementation of TWWIIA and conduct administrative business. Topics of discussion on April 3, 2002 will include a briefing and discussion on issues related to forthcoming regulatory packages on certain provisions of TWWIIA, including Protection & Advocacy, Expedited Reinstatement, Continuing Disability Review Protection and referrals to Vocational Rehabilitation. Topics of discussion on April 9, 2002 and will include deliberations on the Panel's Annual Report and Progress Report on the Ticket to Work Program. The agenda for these meetings will posted on the Internet at *http://www.ssa.gov/work/panel/* one week prior to each teleconference or can be received in advance electronically or by fax upon request.

Contact Information: Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024;
- telephone contact with Kristen Breland at (202) 358–6430;
- fax at (202) 358–6440;
- or e-mail to *TWWIIAPanel@ssa.gov*

Dated: March 14, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–6816 Filed 3–19–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3949]

Determination: Assistance for the Implementation Monitoring Committee To Implement the Burundi Peace Process

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended, (the "Act") (22 U.S.C. 2261) and section 1–100 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $1,000,000 in FY 2001 funds made available under Chapter 4 of Part II of the Act, in order to provide assistance authorized by Part I of the Act to support the Implementation Monitoring Committee provided for in the August 2000 Arusha Peace and Reconciliation Agreement for Burundi to help implement the Burundi peace agreement.

This Determination shall be reported to Congress promptly and published in the **Federal Register**.

Dated: March 11, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–6720 Filed 3–19–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–16]

Petitions for Exemption

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 14, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulation.

Disposition of Petitions

Docket No.: FAA–2002–11494.
Petitioner: Segrave Aviation, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Segrave to operate certain aircraft under part 135

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without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 02/14/2002, Exemption No. 7723.

Docket No.: FAA–2002–11493
Petitioner: Central Copters. Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Central Copters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on the aircraft.
Grant, 02/14/2002, Exemption No. 7724.

Docket No.: FAA–2002–11497
Petitioner: Eagle Aviation Academy.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Eagle Aviation Academy to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on the aircraft. *Grant, 02/14/2002, Exemption No. 7725.*

Docket No.: FAA–2002–11553.
Petitioner: Air One Express, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air One to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on the aircraft.
Grant, 02/14/2002, Exemption No. 7726.

Docket No.: FAA–2002–11560.
Petitioner: Global Air Charter, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Global Air Charter to operate certain aircraft under part 135 without a TSO–C–112 (Mode S) transponder installed on the aircraft.
Grant, 02/14/2002, Exemption No. 7722.

Docket No.: FAA–2002–11499.
Petitioner: Mr. Randy L. Bailey.
Section of 14 CFR Affected: 14 CFR § 91.109 (a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Mr. Bailey to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.
Grant, 02/25/2002, Exemption No. 7734.

Docket No.: FAA–2002–11591.
Petitioner: Aircraft Owners and Pilots Association.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Aircraft Owners and Pilots Association member pilots to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention program requirements of part 135. *Grant, 02/28/2002, Exemption No. 7112B (Previously Docket No. 29648).*

Docket No.: FAA–2001–11090.
Petitioner: Army Aviation Heritage Foundation.
Section of 14 CFR Affected: 14 CFR §§ 91.319, 119.5(g), and 119.25(b).
Description of Relief Sought/ Disposition: To permit the Army Aviation Heritage Foundation to operate its former military UH–1H helicopter that holds an experimental airworthiness certificate for the purpose of carrying passengers on local educational flights. *Grant, 03/04/2002, Exemption No. 7736.*

Docket No.: FAA–2002–11355.
Petitioner: Embry Riddle Aeronautical University.
Section of 14 CFR Affected: 14 CFR § 61.71(a).
Description of Relief Sought/ Disposition: To permit the commercial pilot certification practical tests that two Embry Riddle students successfully completed to be valid although the completion dates of the exams exceeded the required 60-day period from their graduation date due to the flight restrictions put in place after the events that took place on September 11, 2001.
Grant, 02/27/2002, Exemption No. 7733.

Docket No.: FAA–2002–11608.
Petitioner: Palmyra Flying Club, Inc.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.251, 135.255, and 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Palmyra to conduct local sightseeing flights at Palmyra Airport for the fly-in breakfast on June 16, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 02/28/2002, Exemption No. 7730.*

Docket No.: FAA–2002–11504.
Petitioner: DeKalb Peachtree Airport.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit DeKalb Peachtree Airport to conduct local sightseeing flights for its Good Neighbor Day Open House/Airshow on June 1, 2002, and June 7, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse presentation requirements of part 135. *Grant, 02/28/2002, Exemption No. 7731.*

[FR Doc. 02–6649 Filed 3–19–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–17]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 14, 2002.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–11458.
Petitioner: Northern Air Fuel, Inc.
Section of 14 CFR Affected: 14 CFR 91.9(a).
Description of Relief Sought/ Disposition: To permit Northern Air Fuel to operate its DC–6A and DC–6B aircraft at a 5 percent increased zero fuel and landing weight for the purpose of operating all-cargo aircraft to provide supplies to people in isolated villages in Alaska.
Grant, 02/06/2002, Exemption No. 7709

Docket No.: FAA–2001–8828.
Petitioner: Ayres Corporation.
Section of 14 CFR Affected: 14 CFR 61.31(a)(1).
Description of Relief Sought/ Disposition: To permit Ayres pilots when operating an Ayres Model S2R–T660 aircraft (S2R–T660) to act as pilot

in command (PIC) without holding a type rating for that aircraft.
Grant, 01/25/2002, Exemption No. 7708.

Docket No.: FAA–2002–11559.
Petitioner: Brim Equipment Leasing, Inc. dba Brim Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Brim Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 02/19/2002, Exemption No. 7176A (Previously Docket No. 29902)

Docket No.: FAA–2002–11557.
Petitioner: Bemidji Aviation Services, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Bemidji to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 02/25/2002, Exemption No. 6110C (Previously Docket No. 28173)

Docket No.: FAA–2002–11554.
Petitioner: Adeletom Aviation. LLC.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Adeletom to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 02/25/2002, Exemption No. 7201A (Previously Docket No. 29911).

Docket No.: FAA–2002–11508.
Petitioner: Premier Jets, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Premier Jets to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 02/14/2002, Exemption No. 7160A (Previously Docket No. 29195).

Docket No.: FAA–2002–11655.
Petitioner: IHC Health Services, Inc. dba IHC Life Flight.
Section of 14 CFR Affected: 14 CFR 133.45(e)(1).
Description of Relief Sought/ Disposition: To permit IHC to conduct Class D rotorcraft-load combination rescue operations with an Agusta A 109K–2 helicopter certificated in the normal category under 14 CFR part 27.
Grant, 02/25/2002, Exemption No. 7118A (Previously Docket No. 29732).

Docket No.: FAA–2002–11485.
Petitioner: Southwest Airlines Company.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Southwest to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and landing when completing initial or upgrade training as specified in § 121.424.
Grant, 02/25/2002, Exemption No. 7132A (Previously Docket No. 29836).

Docket No.: FAA–2002–11352.
Petitioner: Continental Micronesia Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.291(b)(1) and 121.291(d).
Description of Relief Sought/ Disposition: To permit Continental Micronesia Airlines to operate Boeing 737–800 airplanes without conducting a partial demonstration of emergency evacuation procedures upon the initial introduction of a type and model of airplane into passenger/carrying operations, and without showing by simulated ditching that it has the ability to efficiently carry out its ditching procedures.
Denial, 02/22/2002, Exemption No. 7718.

Docket No.: FAA–2002–11556.
Petitioner: Grant Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Grant to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 02/19/2002, Exemption No. 7221A (Previously Docket No. 3008)

Docket No.: FAA–2002–11491.
Petitioner: Grant Aircraft Company.
Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2).
Description of Relief Sought/ Disposition: To permit Cessna to allow certain qualified pilots of Cessna Citation Model 550, S550, 552, or 560 aircraft to operate those aircraft without a pilot who is designated as second in command.
Grant, 02/25/2002, Exemption No. 4050L (Previously Docket No. 23771)

Docket No.: FAA–2001–10555.
Petitioner: DHL Airways, Inc.
Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii) and 121.441 (a)(1) and (b)(1), and, appendix F to part 121.
Description of Relief Sought/ Disposition: To permit DHL to combine recurrent flight and ground training and proficiency checks to DHL's flight crewmembers into a single annual training and proficiency evaluation program.
Grant, 02/20/2002, Exemption No. 6727B (Previously Docket No. 28808)

Docket No.: FAA–2002–11458.
Petitioner: Northern Air Fuel, Inc.
Section of 14 CFR Affected: 14 CFR 91.9(a).
Description of Relief Sought/ Disposition: To permit Northern Air Fuel to operate its DC–6A and DC–6B aircraft at a 5 percent increased zero fuel and landing weight for the purpose of operating all-cargo aircraft to provide supplies to people in isolated villages in Alaska.
Grant, 02/25/2002, Exemption No. 7709A

Docket No.: FAA–2002–11563.
Petitioner: Better Living Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Better Living Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 02/19/2002, Exemption No. 7206A (Previously Docket No. 29956)

[FR Doc. 02–6650 Filed 3–19–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Aviation Administration's Government/Industry Aeronautical Charting Forum to discuss informational content and design of aeronautical charts.

DATES: The meeting will be held from April 29, 2002 to May 2, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the National Aeronautical Charting Office, Silver Spring Metro Center, Building 4, 1305 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Richard V. Powell, FAA, Air Traffic Airspace Management, ATA–100, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8790, fax: (202) 493–4266.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). notice is hereby given of a meeting of the Government/Industry

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Aeronautical Charting Forum to be held from April 29, 2002 to May 2, 2002, from 9 a.m. to 4:30 p.m. at the National Aeronautical Charting Office, Silver Spring Metro Center, Building 4, 1305 East-West Highway, Silver Spring, Maryland 20910. The agenda will include:

1. Opening Remarks.
2. Committee Administration.
3. Old Business—Review minutes of last forum 01–02.
4. Aeronautical Charting Forum working groups reports, project reports.
5. Status of outstanding charting topics.
6. New charting topics.
7. Presentations.
8. Closing remarks.
9. Discussion of future meeting dates, locations, activities and plans.
10. Adjourn

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 3, 2002, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Public statements will only be considered if time permits.

Issued in Washington, DC, on March 14, 2002.

Richard V. Powell,

Chair, Government/Industry, Aeronautical Charting Forum.

[FR Doc. 02–6652 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–09–U–00–CLE To Use the Revenue From a Passenger Facility Charge (PFC) at Cleveland Hopkins International Airport (CLE) and Burke Lakefront Airport (BKL), Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cleveland Hopkins International Airport and Burke Lakefront Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael Konicek, Cleveland Hopkins International Airport at the following address: Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Cleveland Hopkins International Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7283). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cleveland Hopkins International Airport and Burke Lakefront Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 5, 2002, the FAA determined that the application to use the revenue from a PFC submitted by Cleveland Hopkins International Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than May 31, 2002.

The following is a brief overview of the application.

Actual charge effective date: June 1, 1999.

Estimated charge expiration date: November 1, 2002.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,410,400.

Brief description of proposed projects: Analex Office Building Demolition (CLE); Installation of Instrument Landing System (ILS) on Runway 6L/24R (BKL).

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: air taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135.

Issued in Des Plaines, Illinois on March 12, 2002.

Mark A. McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–6651 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lubbock International Airport, Lubbock, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark N. Earle Manager of Lubbock International Airport at the following address: Director of Aviation, Route 3, Box 389, Lubbock, Texas 79403.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 11, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 19, 2002.

The following in a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2002.

Proposed charge expiration date: November 1, 2004.

Total estimated PFC revenue: $3,220,308.

PFC application number: 02–04–C–00–LBB.

Brief Description of Proposed Project(s)

Projects To Impose and Use PFC's

1. Construct ARFF Training Facility
2. Upgrade Airside Guidance Signs
3. Acquire 150-Gallon ARFF Vehicle
4. Update Airport Master Plan
5. Improve General Aviation Apron
6. Install Blast Wall

Project To Impose PFC's

1. Acquire Development Land

Projects To Use PFC's

1. Improve Westport Apron
2. Construct Taxiway B–1
3. Acquire ADA Aircraft Access Equipment

Proposed Class or Classes of Air Carriers To Be Exempted From Collecting PFC's

1. FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.
2. Air Carriers Filing RSPA form 298C, Schedule E1 or Schedule T1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programing Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lubbock International Airport.

Issued in Fort Worth, Texas on March 11, 2002.

William J. Flanagan,

Acting Manager, Airports Division.

[FR Doc. 02–6648 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Louis Armstrong New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Louis Armstrong New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roy A. Williams Manager of Louis Armstrong New Orleans International Airport at the following address: Director of Aviation, P.O. Box 20007, New Orleans, LA 70141.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610. (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Louis Armstrong New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 13, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 17, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2005.

Proposed charge expiration date: January 1, 2011.

Total estimated PFC revenue: $148,375,724.

PFC application number: 02–06–C–00–MSY.

Brief Description of Proposed Project(s)

Project to Impose and Use PFC's

1. Acquire Aircraft Loading Bridges
2. Upgrade Airfield Electrical System
3. Airfield Safety Improvements
4. Improve Apron Drainage
5. Conduct Benefit Cost Analysis
6. Reconstruct Concourse C
7. Conduct EIS for New Air Carrier Runway
8. Expand Terminal D
9. Upgrade Access Control and Security System
10. Replace ARFF Facility
11. Rehabilitate Runway 1/19 and Taxiway S
12. Rehabilitate Runway 10/18
13. Relocate Rotating Beacon
14. Acquire Land For Development—Lafon
15. Rehabilitate Terminal Apron
16. Rehabilitate Terminal HVAC
17. Acquire Land For Development—West Cargo Area

Proposed class or classes of air carriers to be exempted from collecting PFC's:

1. FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

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Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Louis Armstrong New Orleans International Airport.

Issued in Fort Worth, Texas on March 13, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–6759 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Waukesha County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for transportation improvements in the State Trunk Highway (STH) 83 corridor between County Trunk Highway (CTH) "NN" at the north limits of the Village of Mukwonago and STH 16, Waukesha County, Wisconsin. The north terminus was extended since the notice of intent was published in the **Federal Register** on March 26, 2001 (66 FR 16520).

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Field Operations Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Madison, Wisconsin 53719–2814; telephone: (608) 829–7510. You may also contact Ms. Carol Cutshall, Director, Bureau of Environment, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin 53707–7965; telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Offices' Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Offices' database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare a Draft Environmental Impact Statement (EIS) on a proposal to provide safety, operational and capacity improvements on an approximate 27 kilometer (17 mile) section of STH 83 between CTH "NN" at the north limits of the Village of Mukwonago and STH 16, Waukesha County.

This notice is supplementary to the notice of intent, which was published in the **Federal Register** on March 26, 2001 at 66 FR 16520. The purpose of the supplemental notice of intent is to extend the project limits about 6 kilometers (4 miles) at the north terminus. The previous north terminus was Interstate Highway 94. The revised north terminus is STH 16.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 12, 2002.

Philip E. Barnes,

Acting Division Administrator, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 02–6631 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration.

Environmental Impact Statement: Weber County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in Weber County, Utah.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Garcia, Federal Highway Administration, 2520 W. 4700 S. Suite 9A, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0182; E-mail: *sandra.garcia@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation (UDOT), will prepare an environmental impact statement (EIS) on a proposal to improve Riverdale Road, Utah State Route 26 (SR–26) from I–15 to Washington Boulevard, in Ogden, Utah. The proposed improvement will involve the reconstruction of the existing SR–26 through the cities of Roy, Riverdale, South Ogden and Ogden for a distance of about 5.3 kilometers (3.3 miles).

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands. Also, included in this proposal is the replacement of the existing Riverdale Road Interchange bridges over I–84 and I–15. Alternatives under consideration include (1) taking no action, (2) using alternate travel modes, (3) traffic signal and lane striping modifications, and (4) widening the existing 4 lane roadway to 6 lanes.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the proximity of the project starting April 2002. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 14, 2002.

William R. Gedris,

Structural/Environmental Engineer, Salt Lake City, Utah.

[FR Doc. 02–6685 Filed 3–15–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Programmatic Environmental Impact Statement for Passenger Rail Improvements to the Los Angeles to San Diego Rail Corridor

AGENCY: Federal Railroad Administration, (FRA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA will join the California Department of Transportation (Department) in the preparation of a program level environmental impact statement (EIS) and program environmental impact report (EIR) for passenger rail improvements to the Los Angeles to San Diego (LOSSAN) rail corridor. FRA is also issuing this notice to solicit public and agency input into the development of the scope of the EIR/EIS and to advise the public that outreach activities conducted by the Department and its representatives will be considered in the preparation of the EIR/EIS. Alternatives to be evaluated and analyzed in the Program EIR/EIS include (1) take no action (No-Project or No-Build); (2) construction of passenger rail improvements in the LOSSAN rail corridor; and (3) modal alternatives that would include a combination of air and highway improvements. Possible environmental impacts include displacement of commercial and residential properties; disproportionate impacts to minority and low-income populations; community and neighborhood disruption; increased noise along the rail corridor or at airports and along highways; traffic impacts associated with stations or airports; effects to historic properties or archaeological sites; impacts to parks and recreation resources; visual quality effects; exposure to seismic and flood hazards; impacts to water resources, wetlands, and sensitive biological species and habitat; land use compatibility impacts; energy use; and impacts to agricultural lands.

FOR FURTHER INFORMATION CONTACT: For further information regarding the programmatic environmental review, please contact: Mr. Patrick Merrill, Manager, California Department of Transportation, Division of Rail, MS 74, PO Box 942874, Sacramento, CA 94274–0001, (telephone 916–654–7543) or Mr. David Valenstein, Environmental Program Manager, Office of Passenger Programs, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington, DC 20590, (telephone 202–493–6368).

SUPPLEMENTARY INFORMATION: The Department has determined that improvements to the existing LOSSAN rail corridor may be necessary to meet the expected growth in population and resulting increases in intercity travel demand between Los Angeles and San Diego. As a result of this growth in travel demand, there will be increases in travel delays from the growing congestion on California's highways and at airports. In terms of passenger volumes, the LOSSAN corridor is the second-busiest intercity rail corridor in the nation, after the Northeast Corridor connecting Washington DC, New York and Boston. Amtrak uses the LOSSAN rail corridor for the Pacific Surfliner Service between Los Angeles and San Diego that is supported by the Department. The Southern California Regional Rail Authority also uses the LOSSAN rail Corridor for their Metrolink commuter rail service between Los Angeles and Oceanside and the North County Transit District uses it for their Coaster commuter rail service between Oceanside and San Diego. Finally, the Burlington Northern Santa Fe also uses the LOSSAN rail corridor for freight service.

The California High Speed Rail Authority (Authority) has designated the LOSSAN rail corridor as a potential component of the proposed statewide high speed rail system that the Authority is studying. FRA and the Authority are preparing a separate program EIR/EIS for the proposed statewide train system. The Authority will be considering shared use of the LOSSAN rail corridor and tracks in the program EIR/EIS for the statewide system. The Department has decided to coordinate the public review of proposed improvements to the LOSSAN rail corridor with the Authority's environmental review of the statewide system. The Authority and the Department will share the results of technical studies related to the LOSSAN rail corridor.

Alternatives

An initial system alternatives evaluation will consider all reasonable system alternatives at a broad level of analysis. This analysis will be followed by a more detailed consideration of the most practical and feasible alternatives in the Program EIR/EIS. The alternatives will include:

No-Build Alternative

The take no action (No-Project or No-Build) alternative is defined to serve as the baseline for comparison of all alternatives. The No-Build Alternative represents the state's transportation system (highway, air, and rail) as it exists, and as it would exist after completion of programs or projects currently being implemented. The No-Build Alternative would draw upon the following sources of information:

- State Transportation Improvement Program (STIP)
- Regional Transportation Plans (RTPs) for all modes of travel
- Airport plans
- Passenger rail plans

Passenger Rail Alternative

The LOSSAN Rail Corridor improvements are incremental rail upgrades to the LOSSAN corridor. The upgrade of the LOSSAN rail corridor was previously studied in the Amtrak 20-Year Passenger Transportation Plan issued in March of 2001, which identified major improvements that could be undertaken between San Juan Capistrano and the Santa Fe Depot in downtown San Diego. The improvements to be discussed in the program EIR/EIS include:

- Completion or substantial completion of a second main track in the LOSSAN corridor;
- The consideration of alternative profiles (e.g. trenches, tunnels, viaducts) and/or deviations from the existing LOSSAN corridor in:
- San Juan Capistrano
- San Clemente
- Encinitas
- Del Mar
- Miramar Hill;
- Curve realignment at the Fullerton Junction, the Orange Junction and Dana Point;
- The increase to four main tracks in the corridor between Commerce and Fullerton; and
- Possible alternative profiles (e.g. trenches, tunnels, viaducts), deviations from the existing LOSSAN corridor and/or additional grade-separations as potential mitigation treatments in Orange-Santa Ana, Oceanside and Carlsbad.

FRA and the Department will consider all stations for the existing State-supported Amtrak Surfliner service in the development of LOSSAN rail corridor improvements. These are:

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LA Union Station, Fullerton, Anaheim, Santa Ana Transportation Center, Irvine Transportation Center, San Juan Capistrano, Oceanside Transportation Center, Solana Beach, and San Diego Santa Fe Depot. Additional stations and improvements to existing stations will be determined based on ridership potential, system-wide needs, and local planning constraints/conditions. Station needs will be coordinated with local and regional planning agencies, and seamless connectivity with other modes of travel will be emphasized. Potential new station locations will be evaluated in the Program EIR/EIS including: San Diego Airport, and University Town Center (La Jolla).

Other Modal Alternatives

There are currently three main options for intercity travel between the major urban areas of San Diego and Los Angeles: vehicles on the highway system, commercial air service, and conventional passenger trains (Amtrak). The FRA and the Department will evaluate a set of Modal/System Alternatives consisting of expansion of highways and airports at a similar level of investment serving the markets identified for the Passenger Rail Alternative, with no substantial change to intercity and commuter rail systems. The modal alternatives will be defined by assigning the expected incremental travel demand forecasted for the 20-year horizon to the state's transportation infrastructure, then identifying alternatives for accommodating that travel demand without passenger rail improvements.

Scoping and Comments

FRA encourages broad participation in the EIR/EIS process during scoping and subsequent review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be the potential for significant impacts identifiable at a program level. Public agencies with jurisdiction are requested to advise the FRA and the Department of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed improvements.

Scoping meetings will be advertised locally and are planned for the following major cities along the LOSSAN rail corridor at the dates and times indicated:

- *Los Angeles:* April 2, 1:30 to 3:30 pm, MTA Bldg, Union Station Room, One Gateway Plaza
- *San Clemente:* April 2, 6:00 to 8:00 pm, San Clemente Inn, 2600 Avenida de Presidente
- *Anaheim:* April 3, 10:00 am to 12:00 pm, City Hall West, Gordon Hoyt Conference Center, 201 S. Anaheim Blvd.
- *Carlsbad:* April 3, 6:00 to 8:00 pm, Carlsbad Senior Center, 799 Pine Street

Persons interested in providing comments on the scope of the program EIR/EIS should do so by April 17, 2002. Comments can be sent in writing to Mr. David Valenstein at the FRA address identified above. Comments may also be addressed to Mr. Patrick Merrill of the Department at their address identified above. Information regarding the environmental review process will also be made available through the Department's rail services Internet site: *http://www.amtrakcalifornia.com/*. Information and documents regarding technical studies will be made available though the Authority's Internet site: *http://www.cahighspeedrail.ca.gov/*.

Issued in Washington DC, on March 14, 2002.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 02–6644 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepath, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on March 13, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	05/31/2002
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	05/31/2002
12353–N	Monson Companies, South Portland, ME	4	05/31/2002
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	04/30/2002
12406–N	Occidental Chemical Corporation, Dallas, TX	4	03/29/2002
12412–N	Great Western Chemical Company, Portland, OR	4	03/29/2002
12434–N	Salmon Air, Salmon, ID	4	04/30/2002

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
12440–N	Luxfer Inc., Riverside, CA	4	05/31/2002
12456–N	Baker Hughes, Houston, TX	4	05/31/2002
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	03/29/2002
12588–N	El Dorado Chemical Co., Creve Ceour, MO	4	05/31/2002
12630–N	Chemetall GmbH Gesellschaft, Langelsheim, DE	4	03/29/2002
12634–N	Norman International, Los Angeles, CA	4	05/31/2002
12648–N	Stress Engineering Services, Inc., Houston, TX	4	05/31/2002
12661–N	United Parcel Service (UPS), Atlanta, GA	4	05/31/2002
12690–N	Air Liquide America Corporation, Houston, TX	4	04/30/2002
12701–N	Fuel Cell Components & Intergrators, Inc., Hauppauge, NY	1	04/30/2002
12706–N	Raufoss Composites AS, Raufoss, NO	4	05/31/2002
12716–N	Air Liquide America Corporation, Houston, TX	4	04/30/2002
12718–N	Weldship Corporation, Bethlehem, PA	4	04/30/2002
12741–N	Thunderbird Cylinder Inc., Phoenix, AZ	4	03/29/2002
12751–N	Defense Technology Corporation, Casper, WY	4	03/29/2002
12753–N	Praxair, Inc., Danbury, CT	4	04/30/2002
12800–N	Department of Energy (DOE), Washington, DC	4	04/30/2002
12815–N	FMC Corporation, Opelousas, LA	4	04/30/2002
12820–N	Trinity Manufacturing Hamlet, NC	4	05/31/2002
12844–N	Delphi Automotive Systems, Troy, MI	4	03/29/2002

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4884–M	Matheson Tri-Gas, East Rutherford, NJ	4	03/29/2002
6805–M	Air Liquide America Corporation, Houston, TX	4	03/29/2002
7007–M	Allied Universal Corp, Miami, FL	4	03/29/2002
7060–M	Federal Express, Memphis, TN	4	04/30/2002
7277–M	Structural Composites Industries, Pomona, CA	4	04/30/2002
8162–M	Structural Composites Industries, Pomona, CA	4	05/31/2002
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	04/30/2002
8308–M	American Courier Express Corporation, Miramar, FL	4	04/30/2002
8554–M	Orica USA, Inc., Englewood, CO	4	04/30/2002
8718–M	Structural Composites Industries, Pomona, CA	4	04/30/2002
9401–M	Societe National de Wagon-Reservoirs, 79009 Paris, FR	4	03/29/2002
9884–M	Puritan Bennett Corp. (Div. of Tyco Healthcare), Indianapolis, IN	4	03/29/2002
10019–M	Structural Composites Industries, Pomona, CA	4	04/30/2002
10832–M	Autoliv ASP, Inc., Ogden, UT	4	04/30/2002
11327–M	Phoenix Services, Inc., Pasadena, MD	4	04/30/2002
11379–M	TRW Automotive Occupant Safety Systems, Washington, MI	4	04/30/2002
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	05/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	04/30/2002
11769–M	Great Western Chemical Company, Portland, OR	4	04/30/2002
11769–M	Hydrite Chemical Company, Brookfield, WI	4	05/31/2002
11791–M	The Coleman Company, Inc., Wichita, KS	4	04/30/2002
11850–M	Air Transport Association, Washington, DC	4	05/31/2002
11911–M	Transfer Flow, Inc., Chico, CA	4	05/31/2002
12065–M	Petrolab Company, Latham, NY	4	04/30/2002
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	03/29/2002
12599–M	Voltaix, Inc., North Branch, NJ	4	05/31/2002

[FR Doc. 02–6761 Filed 3–19–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34175]

Canadian National Railway Company and Wisconsin Central Ltd.—Trackage Rights Exemption—Wisconsin & Southern Railroad Company

Wisconsin & Southern Railroad Company (WSOR), pursuant to a written trackage rights amendment agreement entered into between WSOR and Canadian National Railway Company (CN) (for CN and on behalf of Wisconsin Central Transportation Corporation (WCTC) and WCTC's wholly owned subsidiary Wisconsin Central Ltd. (WCL)),[1] has agreed to grant

[1] CN has been authorized to control WCTC and WCTC's subsidiaries, which include WCL and Fox Valley & Western Ltd. (FVW). *See Canadian*

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nonexclusive overhead trackage rights to WCL over WSOR's main line between milepost 115.9 at Slinger, WI, and milepost 93.2 [2] at North Milwaukee, WI, including trackage rights connecting with FVW's main line at DBR Junction milepost 103.1, and connecting with WCL's Plymouth Sub at North Milwaukee (joint trackage), a distance of approximately 22.7 miles.[3]

The transaction was scheduled to be consummated on or soon after March 7, 2002, the effective date of the exemption (7 days after the notice was filed).

The proposed amendment to the trackage rights would grant CN and WCL the right to use the joint trackage for the operation of its freight trains, locomotives, cabooses and rail cars (including business cars) and roadway equipment in its account over the subject line with WSOR and other carriers that may be permitted to use all or any part of the subject line for, among other things, the purpose of interchanging cars between WCL and Canadian Pacific and Union Pacific Railroad Company, and between WCL and FVW, as well as connecting various WCL and FVW lines and trackage rights.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34175, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., 455 North Cityfront Plaza Drive, Chicago, IL 60211–5317.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*"

Decided: March 13, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6593 Filed 3–19–02; 8:45 am]

BILLING CODE 4915–00–P

National Railway Company, Grand Truck Corporation, and WC Merger Sub, Inc.—Control—Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd., STB Finance Docket No. 34000 (STB served Sept. 7, 2001).

[2] This is the point where WSOR ownership ends and Canadian Pacific Railway Company (Canadian Pacific) ownership begins.

[3] The trackage rights amend and expand rights already in place between milepost 112.6 at Rugby Junction and milepost 93.4 at North Milwaukee. *See Wisconsin Central Ltd.—Trackage Rights Exemption—Wisconsin & Southern Railroad Company*, STB Finance Docket No. 33600 (STB served June 2, 1998).

DEPARTMENT OF THE TREASURY

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting March 31, 2002, and ending September 30, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products;

(3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On October 10, 2001, Customs published a Notice in the **Federal Register** (66 FR 51734) which identified 13 (thirteen) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending March 30, 2002, Customs has identified 10 (ten) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no new entities and three removals to the 13 entities named on the list published on October 10, 2001. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 10 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 10 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (10/99)

Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10–16, 4/F, Yuen Long, New Territories, Hong Kong. (10/99)

BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yeun Long, New Territories, Hong Kong. (10/99)

Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (10/99)

Everlite Manufacturing Company, P.O. Box 90936, Tsimshatsui, Kowloon, Hong Kong (3/01).

Fabrica de Artigos de Vestuario E-Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A–D, Macau. (10/99)

Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Morais, S/N 14 B–C, Centro Ind. Keck Seng (Torre 1), Macau. (10/99)

Fairfield Line (HK) Co. Ltd., 60–66 Wing Tai Commer., Bldg. 1/F, Sheung Wan, Hong Kong (3/01).

G.P. Wedding Service Centre, Lee Hing Industrial Building, 10 Cheung Yue Street 11th Floor, Cheung Sha Wan, Kowloon, Hong Kong. (10/00)

Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (10/99)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Additional Foreign Entities

In the October 10, 2001, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 5 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 5 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

In this document, a new list is being published which contains the names and last known addresses of 3 entities. This reflects the removal of two entities from the list of 5 entities published on October 10, 2001.

Customs is soliciting information regarding the whereabouts of the following 3 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (10/99)

Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2–4 Sheung Hei Street, San Po

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Kong, Kowloon, Hong Kong. (10/99)
Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1–F, Yuen Long, New Territories, Hong Kong. (3/00)

If you have any information as to a correct mailing address for any of the above 3 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: March 14, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–6659 Filed 3–19–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 20, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Savings and Loan Holding Company Registration Statement—H–(b)10.

OMB Number: 1550–0020.

Form Number: H–(b)10.

Regulation requirement: 12 CFR 584.

Description: This information collection is used to determine a savings and loan holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 72.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 8 hours.

Estimated Totol Burden: 576 hours.

Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 13, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–6640 Filed 3–19–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, Public law 92–463, that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held March 25 and 26, 2002. The meeting will take place at the offices of the Servicemembers Opportunity Colleges, 1307 New York Avenue, Washington, DC. On Monday, March 25, the meeting will begin at 9 a.m. and end at 4 p.m. On Tuesday, March 26, the meeting will begin at 9 a.m. and end at 12 p.m. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommend needed programs and services.

On March 25, the meeting will begin with opening remarks and an overview by Dr. Steve Kime, Committee Chairman. The Committee will discuss the Partnership for Veterans' Education and recent legislation, including new standards and guidelines to be created. In the afternoon, the Committee will receive briefings on the Veterans' Claims Processing Task Force's report; GAO Study 02–368, Veterans' Education Benefits Comparison of Federal Assistance Awarded to Veterans and Nonveterans Students; and Access and Technology, Web Portal Concept. On March 26, the Committee will review major issues addressed by the Committee in the past and their current status and any new issues they feel should be introduced. The meeting will conclude with a discussion regarding developing the Committee's report.

The meeting is open to the public. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m., Tuesday, March 26, 2002. Those wishing to attend or file written statements should contact Mr. Michael Yunker, Education Strategy Development (224B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, phone (202) 273–7187.

Dated: March 13, 2002.

By Direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–6769 Filed 3–19–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to continue a recurring computer program matching Social Security Administration (SSA) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income and employment status as reported to VA with wage records maintained by SSA.

VA plans to match records of veterans, surviving spouses and children who receive pension, and parents who receive DIC, with SSA income tax return information as it relates to earned income. VA will also match records of veterans receiving disability compensation at the 100 percent rate based on unemployability with SSA income tax return information as it relates to earned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income and employment status.

Records To Be Matched: VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22). The SSA records will come from the Earnings Recording and Self-Employment Income System, SSA/OSR, 60–0059.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

DATES: The match will start no sooner than April 19, 2002, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, NW, Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: March 5, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–6632 Filed 3–19–02; 8:45 am]

BILLING CODE 8320–01–P

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Federal Register

Wednesday,
March 20, 2002

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 2, et al.
Federal Acquistion Circular and Regulations; Final Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–06; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–06. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–06 and specific FAR case number(s). Interested parties may also visit our website at *http://www.arnet.gov/far.*

Item	Subject	FAR Case	Analyst
I	Commercial Items—Standard Form 1449	2000–012	Moss.
II	Definitions for "Contract Action" and "Contracting Action"	2000–402	Moss.
III	Definitions for Sealed Bid and Negotiated Procurements	2000–403	DeStefano.
IV	Procurement Integrity Rewrite	1998–024	DeStefano.
V	Acquisition of Helium	2000–008	Nelson.
VI	HUBZone Program Applicability	2001–003	Cundiff.
VII	Application of Labor Clauses	1999–612	Nelson.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–06 amends the FAR as specified below:

Item I—Commercial Items SF 1449 (FAR Case 2000–012)

Standard Form 1449, Solicitation/Contract/Order for Commercial Items, is prescribed by the FAR for the acquisition of commercial items. This final rule makes several minor revisions to the form, including the addition of a block to indicate that the acquisition is a HUBZone set-aside, the substitution of a NAICS code for the SIC code, the notation that award is made only on the offeror's items specifically listed in block 29, and the addition of several blocks in the area of the form used as a receiving report by the Government. All of the changes involve blocks that are completed by the Government.

Item II—Definitions for "Contract Action" and "Contracting Action" (FAR Case 2000–402)

This final rule amends the FAR to provide for consistent use of the term "contract action." The rule changes the term "contracting action" to "contract action" throughout the FAR and makes other editorial changes to clarify the text.

Item III—Definitions for Sealed Bid and Negotiated Procurements (FAR Case 2000–403)

This final rule amends the FAR to clarify definitions that are used for sealed bid and negotiated procurements. The final rule—

- Moves the definitions of "bid sample" and "descriptive literature" from FAR Part 14 to FAR 2.101 because the definitions apply to more than one FAR part, *e.g.*, Parts 14 and 15;
- Amends those definitions and the definition of "offer" in accordance with plain language guidelines;
- Revises applicable provisions in FAR Part 52 to conform with the new definitions;
- Adds a new definition for "solicitation" at FAR 2.101; and
- Provides definitions for "bid" and "bidder" in FAR Part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions.

The rule clarifies terminology used in FAR 15.201(f), 15.609(e), and 35.007(g). Where we mean an entity that is actively seeking a contract, we use the term "prospective offeror." However, those cites describe processes that are set up to ensure fair and open competition. Therefore, any interested party is able to participate, including parties that the Government has not yet identified. Therefore, the rule uses the more general term "potential offeror."

Item IV—Procurement Integrity Rewrite (FAR Case 1998–024)

This final rule amends FAR parts 2, 3, 4, 9, 15, and 52 to rewrite the procurement integrity coverage (the implementation of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (more commonly referred to as the Procurement Integrity Act)) in plain language.

FAR 3.104 implements prohibitions, restrictions, and other requirements of the Procurement Integrity Act that are placed on certain agency officials that participate in Federal agency procurements. However, other statutes and regulations also govern the conduct of Government employees. While specific guidance pertaining to the Procurement Integrity Act at FAR 3.104 does not implement these other statutes and regulations, the rule does add guidance to alert these agency officials that they should seek advice from agency ethics officials before engaging in certain activities that could have serious consequences, including criminal prosecution.

These revisions to FAR 3.104 do not change either the requirements of the Procurement Integrity Act or change, in any manner, who is covered by, or the activities covered in, Office of Government Ethics regulations interpreting conflict of interest statutes.

Item V—Acquisition of Helium (FAR Case 2000–008)

This final rule revises FAR Subpart 8.5 and the clause at 52.208–8 to implement the Department of the Interior final rule regarding helium contracts that was published in the **Federal Register** at 63 FR 66760, December 3, 1998. The final rule—

- Changes the definitions;
- Eliminates the requirement for certain contractors and subcontractors to submit helium forecasts; and
- Establishes the requirement that contractors and subcontractors under contracts with a major helium requirement must report purchases of helium from Federal helium suppliers.

Item VI—HUBZone Program Applicability (FAR Case 2001–003)

The HUBZone Act of 1997 expanded the applicability of the HUBZONE Program to all agencies covered by the FAR after September 30, 2000, and is currently reflected in the FAR. This rule amends the FAR to simplify the existing language at FAR Parts 12, 19, and 52.

Item VII—Application of Labor Clauses (FAR Case 1999–612)

This final rule affects all contracting officers who use the FAR. The rule—

- Moves the Prohibition of Segregated Facilities clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 and clarifies the existing requirements of 41 CFR 60–1.8, promulgated by the Department of Labor under E.O. 11246. The Prohibition of Segregated Facilities clause must be included in contracts whenever the Equal Opportunity clause (FAR 52.222–26) is included.
- Moves the Equal Opportunity clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 because the clause must be included in almost all contracts, even those under $10,000, in accordance with the requirements at FAR 22.802(a)(1) and 22.807(b). Even though included, the clause is inapplicable unless the aggregate value of contracts and subcontracts awarded to the contractor exceeds $10,000 in a year.
- Makes other revisions to the clause at FAR 52.222–26, Equal Opportunity, to include a definition of "United States" and incorporate the exception for work performed outside the United States.

Item VIII—Technical Amendments

These amendments update sections and make editorial changes at FAR 1.404, 5.207, 6.302–5, 9.104–3, 31.101, 52.219–19, and 52.219–20.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–06 are effective April 4, 2002.

Dated: March 4, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: March 4, 2002.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: March 1, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–5819 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 53

[FAC 2001–06; FAR Case 2000–012; Item I]

RIN 9000–AJ31

Federal Acquisition Regulation; Commercial Items—Standard Form 1449

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–06, FAR case 2000–012.

SUPPLEMENTARY INFORMATION:

A. Background

Standard Form 1449, Solicitation/Contract/Order for Commercial Items, is prescribed by the FAR for the acquisition of commercial items. This final rule makes several minor revisions to the form, including the addition of a block to indicate that the acquisition is a HUBZone set-aside, the substitution of a NAICS code for the SIC code, the notation that award is made only on the offeror's items specifically listed in block 29, and the addition of several blocks in the area of the form used as a receiving report by the Government. None of the changes involve blocks that are completed by the public.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 1 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–06, FAR case 2000–012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0136. The previous edition of the form indicated that the public reporting burden related to the form had been cleared under OMB No. 9000–0136. That statement has been removed from this edition because OMB Clearance 9000–0136 covers information collections unique to commercial item acquisition. It does not cover the information required by this form. This form is primarily completed by the Government. The contractor/offeror fills in only its name, address, and proposed prices. Those pieces of information do not require clearance in the FAR under

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the Paperwork Reduction Act. Office of Management and Budget Number 9000-0136 remains valid for the other information collection requirements related to the acquisition of commercial items.

List of Subjects in 48 CFR Parts 1 and 53

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 53 as set forth below:

1. The authority citation for 48 CFR parts 1 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table by removing the FAR segment "SF 1449" and its corresponding OMB Control Number "9000–0136".

PART 53—FORMS

53.212 [Amended]

3. Amend section 53.212 by removing "(*OCT 1995*)" and adding "(Rev. 4/02)" in its place.

53.213 [Amended]

4. Amend section 53.213 in paragraph (a) and the introductory text of paragraph (f) by removing "(*10/95 Ed.*)" and adding "(Rev. *4/02*)" in its place.

5. Revise section 53.301–1449 to read as follows.

53.301–1449 Solicitation/Contract/Order for Commercial Items.

BILLING CODE 6820–EP–P

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER	PAGE 1 OF

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICIATION ISSUE DATE

7. FOR SOLICITATION INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER *(No collect calls)*	8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY CODE	10. THIS ACQUISITON IS	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED	12. DISCOUNT TERMS
	☐ UNRESTRICTED ☐ SET ASIDE: % FOR ☐ SMALL BUSINESS ☐ HUBZONE SMALL BUSINESS ☐ 8(A) NAICS: SIZE STANDARD:	☐ SEE SCHEDULE ☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION ☐ RFQ ☐ IFB ☐ RFP	

15. DELIVER TO CODE	16. ADMINISTERED BY CODE

17a. CONTRACTOR/ OFFEROR CODE / FACILITY CODE	18a. PAYMENT WILL BE MADE BY CODE
TELEPHONE NO.	
☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	(Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA — 26. TOTAL AWARD AMOUNT *(For Govt. Use Only)*

☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED
☐ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED ADDENDA ☐ ARE ☐ ARE NOT ATTACHED

☐ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

☐ 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR	31a. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*

30b. NAME AND TITLE OF SIGNER *(Type or print)*	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER *(Type or print)*	31c. DATE SIGNED

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449 (REV. 4/2002)
Prescribed by GSA - FAR (48 CFR) 53.212

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32f. TELPHONE NUMBER OF AUTHORZED GOVERNMENT REPRESENTATIVE 32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
PARTIAL FINAL			☐ COMPLETE ☐ PARTIAL ☐ FINAL	
38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY		

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (Print)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER / 41c. DATE	42b. RECEIVED AT (Location)
	42c. DATE REC'D (YY/MM/DD) / 42d. TOTAL CONTAINERS

STANDARD FORM 1449 (REV. 4/2002) BACK

[FR Doc. 02–5820 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 6, 8, 17, 19, 32, and 52

[FAC 2001–06; FAR Case 2000–402; Item II]

RIN 9000–AI76

Federal Acquisition Regulation; Definitions for "Contract Action" and "Contracting Action"

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to amend the Federal Acquisition Regulation (FAR) to provide for consistent use of the term "contract action" and to make other editorial changes to clarify the text.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–06, FAR case 2000–402.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to provide for consistent use of the term "contract action." The rule changes the term "contracting action" to "contract action" throughout the FAR and makes other editorial changes to clarify the text.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on May 31, 2000 (65 FR 34894). One respondent submitted comments on the proposed rule. Based on those comments, the rule was changed to provide for more consistent use of the term "contract action" and to place definitions in the proper FAR sections.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because we are not substantively changing procedures for award and administration of contracts. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on May 31, 2000 (65 FR 34894).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 5, 6, 8, 17, 19, 32, and 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 6, 8, 17, 19, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 6, 8, 17, 19, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Revise section 1.403 to read as follows:

1.403 Individual deviations.

Individual deviations affect only one contract action, and, unless 1.405(e) is applicable, may be authorized by the agency head. The contracting officer must document the justification and agency approval in the contract file.

3. Revise the introductory paragraph of section 1.404 to read as follows:

1.404 Class deviations.

Class deviations affect more than one contract action. When an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision, if appropriate. Civilian agencies, other than NASA, must furnish a copy of each approved class deviation to the FAR Secretariat.

* * * * *

1.701 [Amended]

4. Amend the first sentence of section 1.701 by removing the word "contracting" and adding "contract" in its place.

1.703 [Amended]

5. Amend section 1.703 in paragraph (a) by removing the word "contracting" each time it appears (3 times) and adding "contract" in its place.

6. Amend section 1.705 by revising paragraph (b) to read as follows:

1.705 Supersession and modification.

* * * * *

(b) The contracting officer need not cancel the solicitation if the D&F, as modified, supports the contract action.

PART 5—PUBLICIZING CONTRACT ACTIONS

7. Revise section 5.001 to read as follows:

5.001 Definition.

Contract action, as used in this part, means an action resulting in a contract, as defined in subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

PART 6—COMPETITION REQUIREMENTS

6.502 [Amended]

8. Amend section 6.502 in paragraph (b)(1)(iv) by removing the word "contracting" and adding "contract" in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

9. Revise section 8.102 to read as follows:

8.102 Policy.

When practicable, agencies must use excess personal property as the first source of supply for agency and cost-reimbursement contractor requirements. Agency personnel must make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating a contract action.

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PART 17—SPECIAL CONTRACTING METHODS

17.104 [Amended]

10. Amend section 17.104 in the second sentence of paragraph (b) by removing the words "contracting action" and adding "contract" in their place.

11. Amend section 17.503 by revising the introductory text of paragraph (b) to read as follows:

17.503 Determinations and findings requirements.

* * * * *

(b) If the Economy Act order requires contract action by the servicing agency, the D&F must also include a statement that at least one of the following circumstances applies:

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.302 [Amended]

12. Amend section 19.302 in the first sentence of paragraph (h)(4) by removing the words "contracting action" and adding "contract action" in their place.

13. Amend section 19.505 by revising paragraph (c) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

* * * * *

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate—

(1) Within 1 working day, the SBA procurement center representative may request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA—

(i) May appeal to the Secretary of the Department concerned; and

(ii) Must notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it is deemed that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary was not taken.

* * * * *

PART 32—CONTRACT FINANCING

14. Revise the introductory paragraph of section 32.000 to read as follows:

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This part addresses—

* * * * *

15. Amend section 32.001 by revising the definition "Contract action" to read as follows:

32.001 Definitions.

* * * * *

Contract action means an action resulting in a contract, as defined in subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

* * * * *

32.703–2 [Amended]

16. Amend section 32.703–2 in the first sentence of the introductory text of paragraph (a) by removing the words "contracting action" and adding "contract action" in their place; by removing the semicolon after the word "available" and adding a comma in its place; and by removing the comma after the word "provided".

17. Amend section 32.705–1 by revising paragraph (a) to read as follows:

32.705–1 Clauses for contracting in advance of funds.

(a) Insert the clause at 52.232–18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 52.232–18 by revising the introductory text to read as follows:

52.232–18 Availability of Funds.

As prescribed in 32.705–1(a), insert the following clause:

* * * * *

[FR Doc. 02–5821 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 14, 15, 28, 35, and 52

[FAC 2001–06; FAR Case 2000–403; Item III]

RIN 9000–AI84

Federal Acquisition Regulation; Definitions for Sealed Bid and Negotiated Procurements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for sealed bids and negotiated procurements.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–06, FAR case 2000–403.

SUPPLEMENTARY INFORMATION:

A. Background

The rule clarifies definitions that are used in the FAR for sealed bid and negotiated procurements. The rule—

- Moves the definitions of "bid sample" and "descriptive literature" from FAR part 14 to FAR 2.101 because the definitions apply to more than one FAR part;
- Amends those definitions and the definition of "offer" in accordance with plain language guidelines;
- Revises applicable provisions in FAR part 52 to conform with the new definitions;
- Adds a new definition for "solicitation" at FAR 2.101; and
- Provides definitions for "bid" and "bidder" in FAR part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions.

We also reviewed every instance where the terms "offeror," "prospective offeror," and "potential offeror" are used in the FAR. The rule clarifies terminology used in FAR 15.201(f), 15.609(e), and 35.007(g). Where we mean an entity that is actively seeking a contract, we use the term "prospective offeror." However, those cites describe processes that are set up to ensure competition. Therefore, any interested party is able to participate, including parties that the Government has not yet identified. Therefore, the rule uses the more general term "potential offeror."

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 42852, July 11, 2000. Four respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule. A summary of the substantive comments is provided:

- *Comment:* Under 52.214–20, paragraph (c), change the second sentence to read "The Government will reject the bid when the sample fails" for clarity.

Response: Accepted.

- *Comment:* Under FAR 2.101, the definition of an "offer" does not include a "quotation." The definition of a "solicitation" includes a "quotation." Both definitions should be consistent.

Response: Not accepted. The definition of "offer" is not all-inclusive. It does not include "quotations." A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. See FAR 13.004.

- *Comment:* The proposed language under FAR 14.202–5(e) should cite FAR 14.202–4(f) in lieu of (g).

Response: Accepted.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes for clarity and consistency, we have not substantively changed procedures for award and administration of contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, 14, 15, 28, 35, and 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 2, 3, 14, 15, 28, 35, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 2, 3, 14, 15, 28, 35, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Bid sample" and "Descriptive literature"; revising the definition "Offer"; and by adding the definition "Solicitation" to read as follows:

2.101 Definitions.

* * * * *

Bid sample means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.*, balance, facility of use, or pattern).

* * * * *

Descriptive literature means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

* * * * *

Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations", not offers. For unsolicited proposals, see subpart 15.6.

* * * * *

Solicitation means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called "invitations for bids." *Solicitations* under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Amend section 3.302 by revising the definition "Line item" to read as follows:

3.302 Definitions.

* * * * *

Line item means an item of supply or service, specified in a solicitation, that the offeror must separately price.

PART 14—SEALED BIDDING

4. Amend section 14.201–6 by—

a. Revising paragraph (a);

b. Removing paragraphs (b)(1) and (b)(2) and redesignating paragraphs (b)(3) and (b)(4) as (b)(1) and (b)(2);

c. Revising the introductory text of paragraph (o)(2) and paragraph (o)(3); and

d. Removing from paragraph (p)(3) "14.202–5(e)(2)" and adding "14.202–5(d)(2)" in its place. The revised text reads as follows:

14.201–6 Solicitation provisions.

(a) The provisions prescribed in this subsection apply to preparation and submission of bids in general. See other FAR parts for provisions and clauses related to specific acquisition requirements.

* * * * *

(o)(1) * * *

(2) If it appears that the conditions in 14.202–4(e)(1) will apply and the contracting officer anticipates granting waivers and—

* * * * *

(3) See 14.202–4(e)(2) regarding waiving the requirement for all bidders.

* * * * *

14.202–4 [Amended]

5. Amend section 14.202–4 by removing paragraph (a); redesignating paragraphs (b) through (h) as (a) through (g), respectively; and by removing the word "of" from the heading of newly designated paragraph (g).

6. Revise section 14.202–5 to read as follows:

14.202–5 Descriptive literature.

(a) *Policy.* Contracting officers must not require bidders to furnish descriptive literature unless it is needed before award to determine whether the

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products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) *Justification.* The contracting officer must document in the contract file the reasons why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c) *Requirements of invitation for bids.* (1) The invitation must clearly state—

(i) What descriptive literature the bidders must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see 14.201–6(p).

(d) *Waiver of requirement for descriptive literature.* (1) The contracting officer may waive the requirement for descriptive literature if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the contracting officer waives the requirement, see 14.201–6(p)(2).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the contracting officer must include a statement in the invitation that, despite the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) *Unsolicited descriptive literature.* If descriptive literature is furnished when it is not required by the invitation for bids, the procedures set forth in 14.202–4(f) must be followed.

14.404–4 [Amended]

7. Amend section 14.404–4 in the first sentence by removing "14.202–5(a)" and adding "2.101" in its place; and in the last sentence by removing "14.202–5(f)" and adding "14.202–5(e)" in its place.

PART 15—CONTRACTING BY NEGOTIATION

8. Amend section 15.201 by removing the undesignated paragraph at the end of the section and revising paragraph (f) to read as follows:

15.201 Exchanges with industry before receipt of proposals.

* * * * *

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer must be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a potential offeror in response to its request must not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and is protected under 3.104 or subpart 24.2. When conducting a presolicitation or preproposal conference, materials distributed at the conference should be made available to all potential offerors, upon request.

9. Amend section 15.609 by revising paragraph (e) to read as follows:

15.609 Limited use of data.

* * * * *

(e) Use the notice in paragraph (d) of this section solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, do not use this notice to justify withholding of a record, or to improperly deny the public access to a record, where an obligation is imposed by the Freedom of Information Act (5 U.S.C. 552). An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

* * * * *

PART 28—BONDS AND INSURANCE

10. Revise section 28.000 to read as follows:

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against losses under contracts that result from the use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance.

11. Amend section 28.001 by adding, in alphabetical order, the definitions "Bid" and "Bidder" to read as follows:

28.001 Definitions.

* * * * *

Bid means any response to a solicitation, including a proposal under a negotiated acquisition. See the definition of "offer" at 2.101.

* * * * *

Bidder means any entity that is responding or has responded to a solicitation, including an offeror under a negotiated acquisition.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

12. Amend section 35.007 by revising paragraph (g) to read as follows:

35.007 Solicitations.

* * * * *

(g) The contracting officer should ensure that potential offerors fully understand the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the contracting officer should provide potential offerors an opportunity to comment on the details of the requirements as contained in the work statement, the contract Schedule, and any related specifications. This may be done at a preproposal conference (see 15.201).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–1 [Reserved]

13. Remove and reserve section 52.214–1.

52.214–3 [Amended]

14. Amend section 52.214–3 in the prescription by removing "14.201–6(b)(3)" and adding "14.201–6(b)(1)" in its place.

52.214–4 [Amended]

15. Amend section 52.214–4 in the prescription by removing "14.201–6(b)(4)" and adding "14.201–6(b)(2)" in its place.

16. Amend section 52.214–20 by revising the introductory paragraph, date of the provision, and paragraphs (a), (b), and the introductory text of paragraph (c); and by removing from Alternates I and II "14.202–4(f)(1)" and adding "14.202–4(e)(1)" in its place. The revised text reads as follows:

52.214–20 Bid Samples.

As prescribed in 14.201–6(o)(1), insert the following provision:

Bid Samples (Apr 2002)

(a) *Bid sample* means a product sample required to be submitted by a bidder to show those characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (e.g., balance, facility of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The Government must receive the bid samples by the time specified in the invitation for bids. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the sample fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

* * * * *

(End of provision)

* * * * *

17. Revise section 52.214–21 to read as follows:

52.214–21 Descriptive Literature.

As prescribed in 14.201–6(p)(1), insert the following provision:

Descriptive Literature (Apr 2002)

(a) *Descriptive literature,* as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

(1) Design;

(2) Materials;

(3) Components;

(4) Performance characteristics; and

(5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, shall be—

(1) Identified to show the item(s) of the offer to which it applies; and

(2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the Government will reject the bid.

(End of provision)

Alternate I (Apr 2002). As prescribed in 14.201–6(p)(2), add the following paragraphs (f) and (g) to the basic provision:

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number _____

Date of prior contract _____

Contract line item number of product supplied _____

Name and address of Government activity to which delivery was made _____

Date of final delivery product supplied _____

(g) Bidders shall submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids, The Government will disregard a bidder's request for a waiver under paragraph (f) if that bidder has submitted the descriptive literature requested under this solicitation.

[FR Doc. 02–5822 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 9, 15, and 52

[FAC 2001–06; FAR Case 1998–024; Item IV]

RIN 9000–AI61

Federal Acquisition Regulation; Procurement Integrity Rewrite

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to rewrite procurement integrity coverage in plain language.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–06, FAR case 1998–024.

SUPPLEMENTARY INFORMATION:

A. Background

Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is more commonly referred to as the Procurement Integrity Act (hereinafter referred to as the Act). FAR 3.104 implements prohibitions, restrictions, and other requirements of the Act that are placed on certain agency officials that participate in Federal agency procurements.

Other statutes and regulations also govern the conduct of Government employees. In particular, the Office of Government Ethics regulations provide interpretive guidance on the prohibitions in 18 U.S.C. 207 and 208 that also apply to Government employees that participate in procurement activities during the conduct of a Federal agency procurement. While FAR 3.104 does not implement these other statutes and regulations, it is very important for agency employees to be aware, not only of the prohibitions and restrictions in the Act, but also those contained in other statutes and regulations that deal with the same or related prohibited conduct. Criminal and administrative penalties can result if an employee violates the restrictions or otherwise engages in prohibited conduct.

It became apparent that we could improve FAR 3.104 by reorganizing and simplifying the text. Moreover, we clarify 3.104 to alert agency officials that even if their participation does not meet the definition in FAR 3.104 of participating personally and substantially, they are precluded from participating in a Federal agency procurement if they engage in certain conduct otherwise prohibited by other statutes and regulations. We added this guidance in FAR 3.104–2(b), 3.104–3(c), and 3.104–5(a) to alert these agency officials that they should seek advice from agency ethics officials before engaging in certain activities that could have serious consequences, including

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criminal prosecution. These revisions to FAR 3.104 do not change either the requirements of the Act or change, in any manner, who is covered by, or the activities covered in, Office of Government Ethics regulations interpreting conflict of interest statutes.

To avoid possible violations of 18 U.S.C. 208, agency employees need to be aware that while their participation in a Federal agency procurement may not be considered "participating personally and substantially in a Federal agency procurement" for purposes of certain requirements in the Act, nevertheless, there will be instances where the employee will be considered to be participating personally and substantially for purposes of 18 U.S.C. 208. We have added these revisions to FAR 3.104 to alert agency officials that, while participating in a Federal agency procurement, they must be aware of and comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606.

These revisions also may assist agency ethics officials in advising agency officials participating in a Federal agency procurement. Certain conduct by an agency official during the conduct of a Federal agency procurement requires the official's disqualification from participation irrespective of whether or not the official's participation meets the definition of participating personally and substantially for purposes of the Act.

A proposed rule was published in the **Federal Register** at 65 FR 16758, March 29, 2000. Seven sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule. A summary of the substantive comments is provided.

• *Comment:* Additional clarification should be added that merely signing appointment letters for source selection evaluation panels, boards is not "participating personally and substantially participation in a Federal agency procurement."

Response: Not accepted. The definition of "participating personally and substantially in a Federal agency procurement" is already quite detailed and more clarification is unnecessary.

• *Comment:* The standards identified in FAR 3.104–3(d) concerning prohibition on a former official's acceptance of compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor should be made more restrictive.

Response: Not accepted. The regulatory coverage tracks the statutory language.

• *Comment:* A definition of "must" should be added.

Response: The definition of "must" was added to FAR 2.101 under another final rule and is currently in the FAR.

• *Comment:* Does the definition of "source selection information" include quotations in FAR Subpart 13.5, Test Program for Certain Commercial Items, that are over the simplified acquisition threshold, normally over $100,000.

Response: No. Bids and proposals are addressed in the Act. Bids and proposals are terms of art to distinguish methods of contracting (bids under sealed bidding and proposals under negotiation). A quotation is not a bid or a proposal.

• *Comment:* The references to "procurement" in the rule should be changed to read "acquisition."

Response: Not accepted. The Act and its implementation in FAR 3.104 apply only to a "Federal agency procurement." The term "Federal agency procurement" is defined in both the Act and FAR 3.104. The definition is different from the definition of "acquisition" in FAR 2.101.

• *Comment:* Head of the contracting activity delegation restrictions in FAR 3.104–7(g) should be relaxed.

Response: Not accepted. The issues being addressed are very significant, *i.e.*, violations or possible violations of the Act; therefore, relaxation of the restriction is not appropriate.

• *Comment:* Informing acquisition employees that some post-employment restrictions are not tied to "personal and substantial participation" should be added in the rule.

Response: Accepted. See discussion under Supplementary Information, Background, above.

• *Comment:* Suggest retaining current FAR definition at FAR 3.104–1, "Participating personally and substantially in a Federal agency procurement," as applied to the OMB Circular A–76, paragraph (4). The proposed rule contains an expanded definition.

Response: Accepted. The 1996 amendments to the Act limit the application of the post-employment restrictions to designated positions; therefore, the participation of most personnel in these activities would not place them at risk of losing any right of first refusal. See paragraph (4)(iv) of FAR 3.104–1, "Participating substantially".

• *Comment:* Clarify what constitutes a "contact" under the Act. Response: An explanation of "contact" was added to the rule at FAR 3.104–3(c)(2). The addition gives the suggested guidance.

• *Comment:* A clarification that employment contacts through agents are subject to disqualification needs to be added at FAR 3.104–5(a).

Response: Accepted. The added language makes a clear statement that an employment contact through agents is subject to disqualification under this final rule.

• *Comment:* The number of individuals required to receive the disqualification notice directly from the agency official disqualifying herself/himself should be reduced.

Response: Partially accepted. The requirement for a notice of disqualification to the head of the contracting activity was deleted, but the requirements for notice to the contracting officer, source selection official, and immediate supervisor were retained. In an attempt to reduce the number of officials required to be notified, it was determined that the head of the contracting activity could be deleted. The Act places an affirmative responsibility on the agency official to disqualify herself/himself.

• *Comment:* Clarify that satisfying the requirement of 18 U.S.C 208 does not automatically authorize the disqualified official to resume participation in the procurement.

Response: The wording of the first sentence of 3.104–5(c) was revised to clarify that the conditions for resumption of participation in 3.104–3(c)(1)(ii) are statutorily mandated and that reinstatement is not necessarily automatic after those conditions have been met.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the clarification only applies to individuals that are Government officials.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, 4, 9, 15, and 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 4, 9, 15, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 4, 9, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Offeror" and "Source selection information" to read as follows:

2.101 Definitions.

* * * * *

Offeror means offeror or bidder.

* * * * *

Source selection information means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as "Source Selection Information—See FAR 2.101 and 3.104" based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Remove sections 3.104–10 and 3.104–11 and revise sections 3.104 through 3.104–9 to read as follows:

3.104 Procurement integrity.

3.104–1 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104–6 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

Compensation means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215–1(e).

Decision to award a subcontract or modification of subcontract means a decision to designate award to a particular source.

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

In excess of $10,000,000 means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Official means—

(1) An officer, as defined in 5 U.S.C. 2104;

(2) An employee, as defined in 5 U.S.C. 2105;

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or

(4) A special Government employee, as defined in 18 U.S.C. 202.

Participating personally and substantially in a Federal agency procurement means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) *Participating personally* means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) *Participating substantially* means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory

involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.

(iii) Clerical functions supporting the conduct of a particular procurement.

(iv) For procurements to be conducted under the procedures of OMB Circular A–76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

3.104–2 General.

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act) (41 U.S.C. 423) referred to as "the Act"). Agency supplementation of 3.104, including specific definitions to identify individuals who occupy positions specified in 3.104–3(d)(1)(ii), and any clauses required by 3.104 must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201 and 10 U.S.C. 2207. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353 and 5 CFR part 2635;

(2) Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment,"(see subpart F of 5 CFR part 2636 and 3.104–3(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also may require an employee's disqualification from participation in the acquisition even if the employee's duties may not be considered "participating personally and substantially," as this term is defined in 3.104–1;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641, that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee's official responsibility;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905;

(5) Release of information both before and after award (see 3.104–4) may be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

3.104–3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104–4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required when an agency official contacts or is contacted by an offeror regarding non-Federal employment (subsection 27(c) of the Act).* (1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must—

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104–5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because—

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as "seeking employment" in 5 CFR 2635.603(b). In addition, unsolicited communications from offerors regarding possible employment are considered contacts.

(3) Agencies must retain reports of employment contacts for 2 years from the date the report was submitted.

(4) Conduct that complies with subsection 27(c) of the Act may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. See 3.104–2(b)(2).

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).* (1) A former official of a Federal agency may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to—

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(C) Approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of $10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date—

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the "source selection information" definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend "Source Selection Information—See FAR 2.101 and 3.104." Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with 52.215–1(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor's justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404(h).

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is

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contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See 3.104–2(b)(5) and subpart 24.2.)

3.104–5 Disqualification.

(a) *Contacts through agents or other intermediaries.* Employment contacts between the employee and the offeror, that are conducted through agents, or other intermediaries, may require disqualification under 3.104–3(c)(1). These contacts may also require disqualification under other statutes and regulations. (See 3.104–2(b)(2).)

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104–3(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104–3(c)(1)(ii) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The official must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with 3.104–3(c)(1)(ii).

(2) After the conditions of 3.104–3(c)(1)(ii)(A) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) Government officer or employee must also comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives—

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization in accordance with the requirements of subpart F of 5 CFR part 2635.

3.104–6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104–3(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official before accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under 3.104–3(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d)(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104–7 Violations or possible violations.

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see 3.104–3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual must promptly forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph(d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either—

(*1*) Exchanging the information covered by the subsections for anything of value; or

(*2*) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending or debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104–8 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct that violates the Act (see 3.104–3). See 33.102(f) for special rules regarding bid protests. See 3.104–7 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104–3 is subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of 3.104–3, knowing that the official has not complied with 3.104–3(c)(1), is subject to the criminal, civil, or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see 3.104–5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

3.104–9 Contract clauses.

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at—

(a) 52.203–8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity.

3.704 [Amended]

4. Amend section 3.704 in paragraph (c)(1) by removing "3.104–10" and adding "3.104–7" in its place.

PART 4—ADMINISTRATIVE MATTERS

5. Amend section 4.802 in paragraphs (a)(1), (a)(2), and (a)(3) by removing ", which shall document" and adding "that documents" in their place; in the introductory text of paragraph (c) by removing "shall" the first time it appears and adding "must" in its place, and removing "shall" the second time it appears; in the first sentence of paragraph (d) by removing "shall" and adding "must" in its place; and by revising paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 2.101 must be protected from disclosure to unauthorized persons (see 3.104–4).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.105–3 [Amended]

6. Amend section 9.105–3 in paragraph (c) by removing "and/or" and adding "or" in its place, and by removing "3.104–3" and adding "3.104–4" in its place.

9.505 [Amended]

7. Amend section 9.505 in paragraph (b)(2) by removing "3.104–3" and adding "2.101" in its place.

PART 15—CONTRACTING BY NEGOTIATION

8. Amend section 15.404–2 by revising paragraph (a)(5) to read as follows:

15.404–2 Information to support proposal analysis.

(a) * * *

(5) Field pricing information and other reports may include proprietary or source selection information (see 2.101). This information must be appropriately identified and protected accordingly.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–8 [Amended]

9. Amend section 52.203–8 in the introductory paragraph by removing "in solicitations and contracts".

[FR Doc. 02–5823 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 52

[FAC 2001–06; FAR Case 2000–008; Item V]

RIN 9000–AJ09

Federal Acquisition Regulation; Acquisition of Helium

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Helium Privatization Act of 1996 (Pub. L. 104–273) and associated changes to the Department of the Interior's regulations regarding its helium program.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–06, FAR case 2000–008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR Subpart 8.5 and the clause at 52.208–8 to implement the Department of Interior final rule regarding helium contracts that was published in the **Federal Register** at 63 FR 66760, December 3, 1998. The final rule—

- Changes the definitions;
- Eliminates the requirement for certain contracts and subcontractors to submit helium forecasts; and
- Establishes the requirement that contractors and subcontractors under contracts with a major helium requirement must report purchases of helium from Federal helium suppliers.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 2752, January 11, 2001. One source, the Department of Interior, submitted a comment in response to the proposed rule, recommending that the Councils add "Amarillo Field Office" to the address provided in the definition of "Bureau of Land Management" at FAR 8.501 and the clause at 52.208–8(a). The Councils concurred with the change and included it in the final rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule eliminates the information requirement for submitting helium forecasts and replaces it with a similar information requirement to report helium purchases. We estimate that the net change is zero.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0113.

List of Subjects in 48 CFR Parts 8 and 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 52 as set forth below:

1. The authority citation for 48 CFR parts 8 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Revise subpart 8.5, consisting of sections 8.500 through 8.505, to read as follows:

Subpart 8.5—Acquisition of Helium

8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167, *et seq.*) concerning the acquisition of liquid or gaseous helium by Federal agencies or by Government contractors or subcontractors for use in the performance of a Government contract (also see 43 CFR part 3195).

8.501 Definitions.

As used in this subpart—

Bureau of Land Management means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, 801 South Fillmore Street, Suite 500, Amarillo, TX 79101–3545.

Federal helium supplier means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at *http://www.nm.blm.gov/www/amfo/amfo_home.html.*

Major helium requirement means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

8.502 Policy.

Agencies and their contractors and subcontractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

8.503 Exception.

The requirements of this subpart do not apply to contracts or subcontracts in which the helium was acquired by the contractor prior to award of the contract or subcontract.

8.504 Procedures.

The contracting officer must forward the following information to the Bureau of Land Management within 45 days of the close of each fiscal quarter:

(a) The name of any company that supplied a major helium requirement.

(b) The amount of helium purchased.

(c) The delivery date(s).

(d) The location where the helium was used.

8.505 Contract clause.

Insert the clause at 52.208–8, Required Sources for Helium and Helium Usage Data, in solicitations and contracts if it is anticipated that performance of the contract involves a major helium requirement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise the clause heading and section 52.208–8 to read as follows:

52.208–8 Required Sources for Helium and Helium Usage Data.

As prescribed in 8.505, insert the following clause:

Required Sources for Helium and Helium Usage Data (Apr 2002)

(a) *Definitions.*

Bureau of Land Management, as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101–3545.

Federal helium supplier means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

Major helium requirement means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) *Requirements*—(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

(End of clause)

[FR Doc. 02–5824 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 19, and 52

[FAC 2001–06; FAR Case 2001–003; Item VI]

RIN 9000–AJ32

Federal Acquisition Regulation; HUBZone Program Applicability

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule that amends the Federal Acquisition Regulation (FAR) to simplify current FAR language that expands the applicability of the HUBZone Program to all agencies covered by the FAR after September 30, 2000.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2001–06, FAR case 2001–003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends and simplifies language at FAR Parts 12, 19, and 52. Current FAR language expands the applicability of the HUBZone Program to all agencies covered by the FAR after September 30, 2000. Initially, procurements under the HUBZone Program applied to a limited list of Federal agencies. Under Section 602(b) of the HUBZone Act of 1997 (Title VI of Pub. L. 105–135), this initial limited applicability expired on September 30, 2000.

The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole-source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 12, 19, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–06, FAR case 2001–003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12, 19, and 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 12.301 by revising the introductory text of paragraph (b) and (b)(2) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

* * * * *

(2) *The provision at 52.212–3, Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4. Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a). Use the provision with its Alternate II in solicitations for acquisitions for which small disadvantaged business procurement mechanisms are authorized on a regional basis;

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PART 19—SMALL BUSINESS PROGRAMS

19.307 [Amended]

3. Amend section 19.307 by removing paragraph (a)(2); by redesignating paragraph (a)(3) as (a)(2); in the newly designated paragraph (a)(2) by removing "Alternate II" and adding "Alternate I" in its place; and in paragraph (c) by removing "and contracts".

4. Revise section 19.1302 to reads as follows:

19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212–3 by revising the date of the provision; by adding paragraph (c)(10); by revising the introductory text of Alternate I; by redesignating paragraph (c)(10) of Alternate I as (c)(11); and by removing Alternate III. The revised and added text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Apr 2002)

* * * * *

(c) * * *

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating on the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:*_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

Alternate I (Apr 2002). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

* * * * *

6. Amend section 52.219–1 by revising the date of the provision; by adding paragraph (b)(6); by removing Alternate I and redesignating Alternate II as Alternate I; and by revising the introductory text of the newly designated Alternate I to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Apr 2002)

* * * * *

(b) * * *

(6) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents, as part of its offer, that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:*_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

Alternate I (Apr 2002). As prescribed in 19.307(a)(2), add the following paragraph (b)(7) to the basic provision:

* * * * *

[FR Doc. 02–5825 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–06; FAR Case 1999–612; Item VII]

RIN 9000–AI95

Federal Acquisition Regulation; Application of Labor Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the clause, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), to clarify the application of labor clauses below the simplified acquisition threshold. The Councils also revised the Equal Opportunity clause to incorporate the exception for work performed outside the United States.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–06, FAR case 1999–612.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule—

1. Moves the Prohibition of Segregated Facilities clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 and clarifies the existing requirements of 41 CFR 60–1.8, promulgated by the Department of Labor under E.O. 11246. The Prohibition of Segregated Facilities clause must be included in contracts whenever the Equal Opportunity clause (FAR 52.222–26) is included.

2. Moves the Equal Opportunity clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 because the clause must be included in almost all contracts, even those under $10,000, in accordance with the requirements at FAR 22.802(a)(1) and 22.807(b). Even though included, the clause is inapplicable unless the aggregate value of contracts and subcontracts awarded to the contractor exceeds $10,000 in a year.

3. Makes other revisions to paragraphs (b)(1)(i), (b)(1)(v), and (b)(1)(vii) of the clause at FAR 52.213–4, and paragraph (a) of the clause at FAR 52.222–26, relating to geographic applicability of labor clauses, to comply with the current regulations at FAR 22.603, 22.807(b)(2), 22.1001, 22.1003–2, and 22.1408(a)(1).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 64298, October 26, 2000. Two respondents submitted public comments. One respondent is in favor of the rule, while the other commenter believes the 52.222–36 clause change creates a double standard, strongly favoring Americans, while making non-Americans working outside the United States susceptible to abuses by contractors. The Councils believe that the comment is outside the scope of the rule. The clause at 52.222–36 does not apply to employees recruited outside the United States for work performed outside the United States. This has been in the FAR since this FAR subpart was written in 1984. It is in the Department of Labor regulation which is the source of the FAR subpart (see 41 CFR 60–741.4(a)(4)). The concept is that the country in which the work is performed has the sovereignty to write its own laws regarding affirmative action of those disabled workers. This case confirms that this long-standing exception applies to items whether commercial or noncommercial. Accordingly, the comments resulted in no change to the rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only clarifies the existing requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.213–4 by—

a. Revising the date of the clause;

b. Redesignating paragraphs (a)(1)(ii) and (a)(1)(iii) as (a)(1)(iv) and (a)(1)(v), respectively, and adding new paragraphs (a)(1)(ii) and (a)(1)(iii);

c. Removing paragraphs (b)(1)(ii) and (b)(1)(iii), and redesignating paragraphs (b)(1)(iv) through (b)(1)(xiii) as (b)(1)(ii) through (b)(1)(xi), respectively; and

d. Revising paragraph (b)(1)(i) and newly designated paragraphs (b)(1)(iii) and (b)(1)(v).

The added and revised text reads as follows:

52.213–4 Terms and Conditions Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Apr 2002)

(a) * * *

(1) * * *

(ii) 52.222–21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).

(iii) 52.222–26, Equal Opportunity (Apr 2002) (E.O. 11246).

* * * * *

(b) * * *

(1)

(i) 52.222–20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35–45) (Applies to supply contracts over $10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

* * * * *

(iii) 52.222–36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over $10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

* * * * *

(v) 52.222–41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over $2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

* * * * *

3. Amend section 52.222–26 by—

a. Revising the date of the clause;

b. Removing the paragraph designation and the introductory text of paragraph (b);

c. Redesignating paragraph (a) as paragraph (b) and revising the introductory text; and

d. Adding a new paragraph (a).

The added and revised text reads as follows:

52.222–26 Equal Opportunity.

* * * * *

Equal Opportunity (Apr 2002)

(a) *Definition. United States,* as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

* * * * *

[FR Doc. 02–5826 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 6, 9, 31, and 52

[FAC 2001–06; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

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ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

DATES: *Effective Date:* April 4, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2001–06, Technical Amendments.

List of Subjects in 48 CFR Parts 1, 5, 6, 9, 31, and 52

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 6, 9, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 6, 9, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.404 [Amended]

2. Amend section 1.404 in paragraph (c) by removing "Associate" and adding "Assistant" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

3. Amend section 5.207(c)(4) in paragraph 6. of "Format Item and Explanation/Description of Entry" by removing "5.207(g)" and adding "5.207(h)" in its place.

PART 6—COMPETITION REQUIREMENTS

6.302–5 [Amended]

4. Amend section 6.302–5 in paragraph (b)(2) by removing the word "Handicapped" and adding "Disabled" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.104–3 [Amended]

5. Amend section 9.104–3 in paragraph (c) by removing "(see *Affiliates* and *Concerns* in 19.101)" and adding "(see *Concern* in 19.001 and *Affiliates* in 19.101)" in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.101 [Amended]

6. Amend section 31.101 in the next-to-the-last sentence by removing "Associate" and adding "Assistant" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–19 [Amended]

7. Amend section 52.219–19 in the introductory text by removing "19.1007(a)" and adding "19.1008(a)" in its place.

52.219–20 [Amended]

8. Amend section 52.219–20 in the introductory text by removing "19.1007(b)" and adding "19.1008(b)" in its place.

[FR Doc. 02–5827 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–06 which amend the FAR. An asterisk (*) next to a rule indicates that a Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–06 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–06

Item	Subject	FAR case	Analyst
I	Commercial Items—Standard Form 1449	2000–012	Moss.
II	Definitions for "Contract Action" and "Contracting Action"	2000–402	Moss.
III	Definitions for Sealed Bid and Negotiated Procurements	2000–403	DeStefano.
IV	Procurement Integrity Rewrite	1998–024	DeStefano.
V	Acquisition of Helium	2000–008	Nelson.
VI	HUBZone Program Applicability	2001–003	Cundiff.
VII	Application of Labor Clauses	1999–612	Nelson.
VIII	Technical Amendments.		

Item I—Commercial Items—SF 1449 (FAR Case 2000–012)

Standard Form 1449, Solicitation/Contract/Order for Commercial Items, is prescribed by the FAR for the acquisition of commercial items. This final rule makes several minor revisions to the form, including the addition of a block to indicate that the acquisition is a HUBZone set-aside, the substitution of a NAICS code for the SIC code, the notation that award is made only on the offeror's items specifically listed in block 29, and the addition of several blocks in the area of the form used as a receiving report by the Government. All of the changes involve blocks that are completed by the Government..

Item II—Definitions for "Contract Action" and "Contracting Action" (FAR Case 2000–402)

This final rule amends the FAR to provide for consistent use of the term "contract action." The rule changes the term "contracting action" to "contract action" throughout the FAR and makes other editorial changes to clarify the text.

Item III—Definitions for Sealed Bid and Negotiated Procurements (FAR Case 2000–403)

This final rule amends the FAR to clarify definitions that are used for sealed bid and negotiated procurements. The final rule—

- Moves the definitions of "bid sample" and "descriptive literature" from FAR Part 14 to FAR 2.101 because the definitions apply to more than one FAR part, e.g., parts 14 and 15;
- Amends those definitions and the definition of "offer" in accordance with plain language guidelines;
- Revises applicable provisions in FAR Part 52 to conform with the new definitions;
- Adds a new definition for "solicitation" at FAR 2.101; and
- Provides definitions for "bid" and "bidder" in FAR Part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions.

The rule clarifies terminology used in FAR 15.201(f), 15.609(e), and 35.007(g). Where we mean an entity that is actively seeking a contract, we use the term "prospective offeror." However, those cites describe processes that are set up to ensure fair and open competition. Therefore, any interested party is able to participate, including parties that the Government has not yet identified. Therefore, the rule uses the more general term "potential offeror."

Item IV—Procurement Integrity Rewrite (FAR Case 1998–024)

This final rule amends FAR parts 2, 3, 4, 9, 15, and 52 to rewrite the procurement integrity coverage (the implementation of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (more commonly referred to as the Procurement Integrity Act)) in plain language.

FAR 3.104 implements prohibitions, restrictions, and other requirements of the Procurement Integrity Act that are placed on certain agency officials that participate in Federal agency procurements. However, other statutes and regulations also govern the conduct of Government employees. While specific guidance pertaining to the Procurement Integrity Act at FAR 3.104 does not implement these other statutes and regulations, the rule does add guidance to alert these agency officials that they should seek advice from agency ethics officials before engaging in certain activities that could have serious consequences, including criminal prosecution.

These revisions to FAR 3.104 do not change either the requirements of the Procurement Integrity Act or change, in any manner, who is covered by, or the activities covered in, Office of Government Ethics regulations interpreting conflict of interest statutes.

Item V—Acquisition of Helium (FAR Case 2000–008)

This final rule revises FAR Subpart 8.5 and the clause at 52.208–8 to implement the Department of the Interior final rule regarding helium contracts that was published in the **Federal Register** at 63 FR 66760, December 3, 1998. The final rule—

- Changes the definitions;
- Eliminates the requirement for certain contractors and subcontractors to submit helium forecasts; and
- Establishes the requirement that contractors and subcontractors under contracts with a major helium requirement must report purchases of helium from Federal helium suppliers.

Item VI—HUBZone Program Applicability (FAR Case 2001–003)

The HUBZone Act of 1997 expanded the applicability of the HUBZONE Program to all agencies covered by the FAR after September 30, 2000, and is currently reflected in the FAR. This rule amends the FAR to simplify the existing language at FAR parts 12, 19, and 52.

Item VII—Application of Labor Clauses (FAR Case 1999–612)

This final rule affects all contracting officers who use the FAR. The rule—

- Moves the Prohibition of Segregated Facilities clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 and clarifies the existing requirements of 41 CFR 60–1.8, promulgated by the Department of Labor under E.O. 11246. The Prohibition of Segregated Facilities clause must be included in contracts whenever the Equal Opportunity clause (FAR 52.222–26) is included.
- Moves the Equal Opportunity clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 because the clause must be included in almost all contracts, even those under $10,000, in accordance with the requirements at FAR 22.802(a)(1) and 22.807(b). Even though included, the clause is inapplicable unless the aggregate value of contracts and subcontracts awarded to the contractor exceeds $10,000 in a year.
- Makes other revisions to the clause at FAR 52.222–26, Equal Opportunity, to include a definition of "United States" and incorporate the exception for work performed outside the United States.

Item VIII—Technical Amendments

These amendments update sections and make editorial changes at FAR 1.404, 5.207, 6.302–5, 9.104–3, 31.101, 52.219–19, and 52.219–20.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–5828 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

VOL
67

ISS
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MR
20

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Federal Register

Wednesday,
March 20, 2002

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 31, 47, and 52
Federal Acquisition Regulation; Miscellaneous Cost Principles; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 47, and 52

[FAR Case 2001–029]

RIN: 9000–AJ33

Federal Acquisition Regulation; Miscellaneous Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to delete the cost principle concerning transportation costs, and to revise the cost principles concerning cost of money, other business expenses, and deferred research and development costs.

DATES: Interested parties should submit comments in writing on or before May 20, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2001–029@gsa.gov*. Please submit comments only and cite FAR case 2001–029 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Jeremy Olson, at (202) 501–3221. Please cite FAR case 2001–029.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils are proposing the following changes related to the cost principles at FAR 31.205–10, Cost of money; FAR 31.205–28, Other business expenses; FAR 31.205–45, Transportation costs; and FAR 31.205–48, Deferred research and development costs:

1. *Cost of money.* Revise the cost principle by deleting—

a. Portions of the current FAR 31.205–10(a)(i) and (a)(ii) that duplicate 48 CFR 9904.414, Cost Accounting Standard-Cost of Money as an Element of the Cost of Facilities Capital;

b. FAR 31.205–10(a)(2)(ii), (a)(3), and (b)(3), because these paragraphs duplicate the recordkeeping requirements at 31.201–2(d); and

c. The definitions of "Cost of capital committed to facilities" and "facilities capital" from FAR 31.001, Definitions, since these terms are not used elsewhere in the FAR. In addition, add a definition to FAR 2.101, Definitions, for the term "facilities capital cost of money" which is used in several places in the FAR.

2. *Other business expenses.* Delete the term "when allocated on an equitable basis" from FAR 31.205–28. It is unnecessary to repeat the requirement for allocation in this cost principle since it is already addressed at FAR 31.201–4, Determining allocability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs.

3. *Transportation.* Delete this cost principle in its entirety since an affirmative statement of allowability is unnecessary, and the allocation statement is already addressed at FAR 31.201–4, 31.202, and 31.203.

4. *Deferred research and development.* Delete the word "deferred" from the title to provide a more accurate description of the scope of this cost principle. Costs that are unallowable under this cost principle are unallowable regardless of whether they are charged in the current accounting period or deferred to a future accounting period.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most—contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 31, 47, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 31, 47, and 52

Government procurement.

Dated: March 8, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 31, 47, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 31, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101 add the definition, in alphabetical order, "Facilities capital cost of money" to read as follows:

2.101 Definitions.

* * * * *

Facilities capital cost of money means "cost of money as an element of the cost of facilities capital" as used at 48 CFR 9904.414, Cost accounting standard-cost of money as an element of the cost of facilities capital.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.001 [Amended]

3. In section 31.001, remove the definitions "Cost of capital committed to facilities" and "facilities capital."

4. Revise section 31.205–10 to read as follows:

31.205–10 Cost of money.

(a) *General.* Cost of money—

(1) Is an imputed cost that is not a form of interest on borrowings (see 31.205–20);

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable provided—

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or 48 CFR 9904.417, as applicable;

(2) The requirements of 31.205–52, which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

5. In section 31.205–28, revise the introductory text to read as follows:

31.205–28 Other business expenses.

The following types of recurring costs are allowable:

* * * * *

31.205–45 [Reserved]

6. Remove and reserve section 31.205–45.

31.205–48 Research and development costs.

7. Revise the section heading of section 31.205–48, as set forth above; and remove "section" and add "subsection" in its place.

PART 47—TRANSPORTATION

8. In section 47.300, revise the introductory text of paragraph (b) to read as follows:

47.300 Scope of subpart.

* * * * *

(b) If a special requirement exists for application of any of these terms and conditions to other types of contracts; *e.g.*, cost-reimbursement contracts, for which transportation arrangements are normally the responsibility of the contractor and transportation costs are allowable, the contracting officer must use the terms and conditions prescribed in this subpart as a guide for—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. In section 52.215–16, revise the date of the provision and paragraph (a) to read as follows:

52.215–16 Facilities Capital Cost of Money.

* * * * *

Facilities Capital Cost of Money (May 2002)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205–10(b) are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

* * * * *

[FR Doc. 02–6107 Filed 3–19–02; 8:45 am]

BILLING CODE 6820–EP–P

VOL
67
ISS
54
MR
20
2002
UMI

Federal Register

Wednesday,
March 20, 2002

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items; Proposed Rule

VOL
67
ISS
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2000–009]

RIN 9000–AJ34

Federal Acquisition Regulation; Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to update the clause regarding contract terms and conditions required to implement statute or Executive orders—commercial items.

DATES: Interested parties should submit comments in writing on or before May 20, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW. Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2000–009@gsa.gov*. Please submit comments only and cite FAR case 2000–009 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC., 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 2000–009.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355). The regulations became effective on October 1, 1995. Several areas have been identified that need updating and clarification. This rule addresses some of those changes.

The list of contract terms and conditions required to implement statutes or Executive orders in the clause at FAR 52.212–5 is amended to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 52 set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212–5 by revising the date of the clause and paragraphs (a), (b), (c), and (e) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Commercial Items (Date)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233–3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[*Contracting Officer check as appropriate.*]

__ (1) 52.203–6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
__ (2) 52.219–3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
__ (3) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
__ (4)(i) 52.219–5, Very Small Business Set-Aside (Mar 1999) (Pub. L. 103–403, section 304, Small Business Reauthorization and Amendments Act of 1994).
__ (ii) Alternate I to 52.219–5 (Mar 1999).
__ (iii) Alternate II to 52.219–5 (Mar 1999).
__ (5)(i) 52.219–6, Notice of Total Small Business Set-Aside (Jul 1996) (15 U.S.C. 644).
__ (ii) Alternate I to 52.219–6 (Oct 1995).
__ (6)(i) 52.219–7, Notice of Partial Small Business Set-Aside (Jul 1996) (15 U.S.C. 644).
__ (ii) Alternate I to 52.219–7 (Oct 1995).
__ (7) 52.219–8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)).
__ (8)(i) 52.219–9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637(d)(4)).
__ (ii) Alternate I to 52.219–9 (Oct 2001).
__ (iii) Alternate II to 52.219–9 (Oct 2001).
__ (9) 52.219–14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
__ (10)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (May 2001) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
__ (ii) Alternate I to 52.219–23 (Oct 1998).
__ (11) 52.219–25, Small Disadvantaged Business Participation Program Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).
__ (12) 52.219–26, Small Disadvantaged Business Participation Program Incentive Subcontracting (Oct 2000) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).
__ (13) 52.222–3, Convict Labor (Aug 1996) (E.O. 11755).
__ (14) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Dec 2001) (E.O. 13126).
__ (15) 52.222–21, Prohibition of Segregated Facilities (Feb 1999).
__ (16) 52.222–26, Equal Opportunity (Feb 1999) (E.O. 11246).
__ (17) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).
__ (18) 52.222–36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
__ (19) 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).
__ (20)(i) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
__ (ii) Alternate I to 52.223–9 (Aug 2000) (42 U.S.C. 6962(i)(2)(C)).
__ (21) 52.225–1, Buy American Act—Balance of Payments Program—Supplies (Feb 2002) (41 U.S.C. 10a–10d).
__ (22)(i) 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (Feb 2002) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
__ (ii) Alternate I to 52.225–3 (Feb 2000).
__ (iii) Alternate II to 52.225–3 (Feb 2000).
__ (23) 52.225–5, Trade Agreements (Feb 2002) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
__ (24) 52.225–13, Restriction on Certain Foreign Purchases (Jul 2000) (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
__ (25) 52.225–15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).
__ (26) 52.225–16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).
__ (27) 52.232–29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
__ (28) 52.232–30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
__ (29) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999) (31 U.S.C. 3332).
__ (30) 52.232–34, Payment by Electronic Funds Transfer Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).
__ (31) 52.232–36, Payment by Third Party (May 1999) (31 U.S.C. 3332).
__ (32) 52.239–1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
__ (33)(i) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Jun 2000) (46 U.S.C. Appx 1241).
__ (ii) Alternate I to 52.247–64 (Apr 1984).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

Contracting Officer check as appropriate.

__ (1) 52.222–41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, *et seq.*).
__ (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
__ (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
__ (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
__ (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, *et seq.*).

* * * * *

(e) The following clauses must be included in subcontracts:

(1) 52.219–8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(2) 52.222–26, Equal Opportunity (Feb 1999) (E.O. 11246).

(3) 52.222–35, Equal Opportunity for Disabled Special Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a)).

(4) 52.222–36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(5) 52.222–41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, *et seq.*).

(6) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Jun 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

While not required, a prime contractor may include in its subcontracts a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

* * * * *

[FR Doc. 02–6514 Filed 3–19–02; 8:45 am]

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 25 and 52
Federal Acquisition Regulation; Prohibited Sources; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAR Case 2001–015]

RIN: 9000–AJ35

Federal Acquisition Regulation; Prohibited Sources

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and other regulations of the Department of the Treasury that enforce economic sanctions imposed by the President.

DATES: Interested parties should submit comments in writing on or before May 20, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2001–015@gsa.gov*. Please submit comments only and cite FAR case 2001–015 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2001–015.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Subpart 25.7 and the clause at 52.225–13, Restrictions on Certain Foreign Purchases, to implement Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and other regulations of the Department of the Treasury that enforce economic sanctions imposed by the President.

This proposed rule removes Serbia from the list of prohibited sources at FAR 25.701; slightly modifies the restrictions relating to acquisition of supplies or services from Cuba, Iran, Iraq, Libya, North Korea, Sudan, and the territory of Afghanistan controlled by the Taliban; and requires authorization by the Department of the Treasury for any exceptions to these prohibitions, even when purchased overseas for use overseas. In addition, the rule expands the prohibition against acquisition from entities controlled by the Government of Iraq or other specially designated nationals to include all blocked persons, and provides the Department of Treasury website for access to the list of Specially Designated Nationals and Blocked Persons.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed amendments will only affect acquisitions from prohibited sources. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601; *et seq.* (FAR case 2001–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Revise section 25.701 to read as follows:

25.701 Restrictions.

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, agencies and their contractors and subcontractors must not acquire any supplies or services, if any Executive order administered by OFAC, or the Foreign Assets Control regulations set forth at 31 CFR chapter V would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Most transactions involving Cuba, Iran, Iraq, Libya, Sudan and the Taliban-controlled regions of Afghanistan are prohibited, as are most imports into the United States from North Korea. In addition, lists of proscribed entities and individuals are included in OFAC's list of Specially Designated Nationals and Blocked Persons. More information about these restrictions is available in the Foreign Assets Control regulations at 31 CFR chapter V and on OFAC's website at *http://www.treas.gov/ofac.*

25.702 [Amended]

3. Amend section 25.702 by removing "622–2520" and adding "622–2490" in its place.

25.1103 [Amended]

4. Amend section 25.1103 in paragraph (a) by removing "with a value exceeding $2,500".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

5. Amend section 52.212–5 by redesignating paragraph (b)(20) as (b)(21) and redesignating paragraph (b)(21) as (b)(20), and in newly designated paragraph (b)(21) by removing "13121,".

52.213–4 [Amended]

6. Amend section 52.213–4 in paragraph (a)(1)(ii) by removing "13121,".

7. Amend section 52.225–13 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.225–13 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (Date)

(a) Except as authorized by the Office of Foreign Assets Control in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services, if any Executive order administered by the Office of Foreign Assets Control, or the Foreign Assets Control regulations set forth at 31 CFR chapter V would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Most transactions involving Cuba, Iran, Iraq, Libya, Sudan and the Taliban-controlled regions of Afghanistan are prohibited, as are most imports into the United States from North Korea. Lists of proscribed entities and individuals are included in OFAC's list of Specially Designated Nationals and Blocked Persons. More information about these restrictions is available in the Foreign Assets Control regulations at 31 CFR chapter V and on OFAC's website at http://www.treas.gov/ofac.

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[FR Doc. 02–6515 Filed 3–19–02; 8:45 am]

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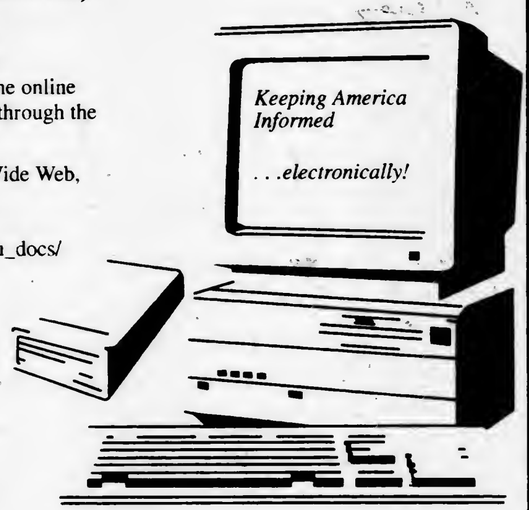
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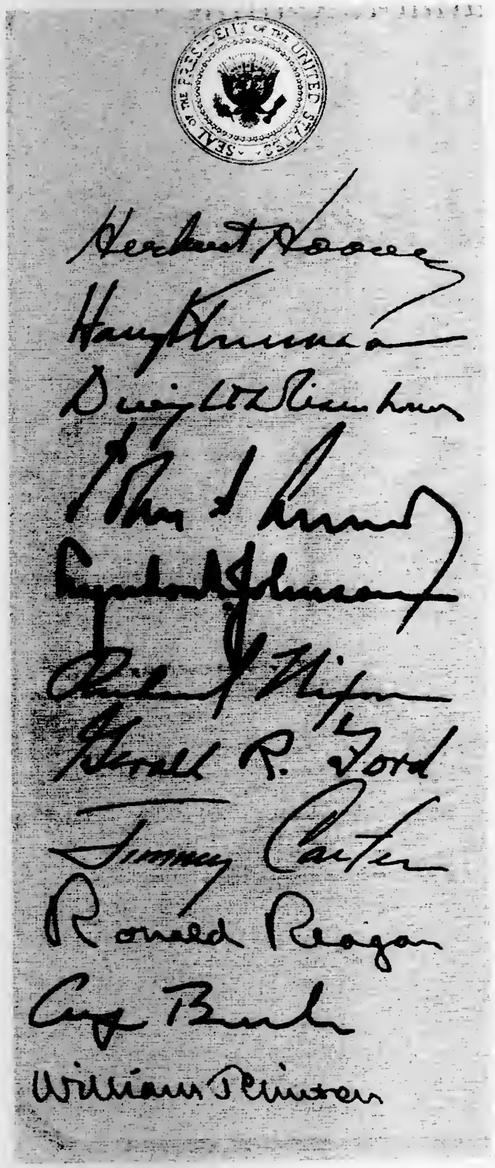
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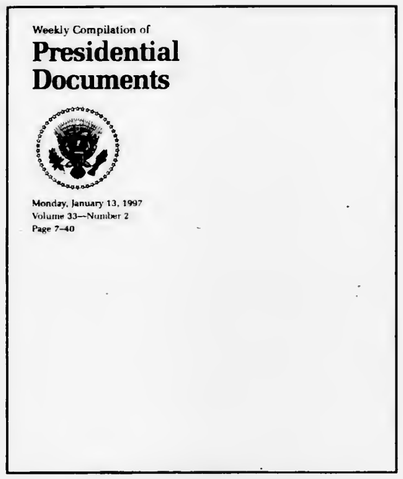
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–018–1]

Citrus Canker; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations by removing a portion of Hillsborough County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the quarantined area in Hillsborough County, FL, has been free of citrus canker since December 1999. This rule removes restrictions on the interstate movement of regulated articles from that portion of Hillsborough County, FL.

DATES: This interim rule is effective March 21, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 20, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–018–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–018–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–018–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–16 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75–4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years.

A portion of Hillsborough County, FL, has been free of citrus canker since December 1999, and has thus met the requirement for declaration of eradication—that an area be free from citrus canker for a period of at least 2 years. In this case, regular and complete surveys have been conducted on an approximately monthly basis since the infestation was first detected, including surveys of all citrus trees located in both commercial groves and at residential properties. In addition, any wild citrus present in the area has also been surveyed.

Therefore, we are amending the citrus canker regulations by removing the portion of Hillsborough County, FL, from the list of quarantined areas. This action removes restrictions on the interstate movement of regulated articles from the portion of Hillsborough County, FL, that we are removing from the list of quarantined areas. With the removal of this area, there are no longer any quarantined areas within Hillsborough County, FL.

Immediate Action

Immediate action is warranted to remove restrictions on the interstate movement of regulated articles from the portion of Hillsborough County, FL, that we are removing from the list of quarantined areas based on its freedom from citrus canker for a period of at least 2 years. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the citrus canker regulations by removing a portion of Hillsborough County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the quarantined area in Hillsborough County, FL, has been free of citrus canker since December 1999. This rule removes restrictions on the interstate movement of regulated articles from that portion of Hillsborough County, FL.

Commercial citrus production in Hillsborough County accounts for only a small portion of the total citrus production in the State of Florida (see table 1 below).

TABLE 1.—HILLSBOROUGH COUNTY CITRUS PRODUCTION, 2000–2001 SEASON

	Boxes of citrus	Percentage of Florida total
All Round Oranges	8,759,000	3.9
All Grapefruit	224,000	0.48
All Citrus	9,179,000	3.3

While producers in the area that we are removing from the list of quarantined areas will benefit from removal of movement restrictions, it is unlikely that the benefit will be big enough to measure statistically. This action does not impose any costs on producers or on government entities.

The Regulatory Flexibility Act requires agencies to consider the economic impacts of their rules on small entities. The entities most likely to be affected by this rule are citrus producers in and around the area in Hillsborough County, FL, that we are removing from the list of quarantined areas. The Small Business Administration defines a firm engaged in agriculture as "small" if it has less than $750,000 in annual receipts. All of the four citrus grove firms in Hillsborough County, FL, qualify as small entities.

Citrus producers in the area that we are removing from the list of quarantined areas will benefit from having a greater choice of where to market their fruit. It is unlikely, however, that producer income or expenses would be affected in a measurable way.

It is difficult to quantify the benefits of removing an area from quarantine. While producers will have greater choice of where to market their citrus crops, most of the trees in the quarantined area have been destroyed. It is unlikely that the removal of the quarantine will have any measurable effect on producers or consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.75–4 [Amended]

2. In § 301.75–4, paragraph (a), the entry for Hillsborough County is removed.

Done in Washington, DC, this 18th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6839 Filed 3–20–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS–2001–003a]

RIN 0580–AA79

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing certain fees by approximately 4.6 percent; i.e., contract and non-contract hourly rates, certain unit rates, and the administrative tonnage fee. These fees apply only to official inspection and weighing services performed by GIPSA in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.6 percent January 2002 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $703,000 in additional revenue.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *Dorr@gipsadc.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. Using the most current financial data available for FY 2002, December 2001, GIPSA's operating costs were $6,923,247 with revenue of $7,131,883 that resulted in a positive margin of $208,247. However, the current reserve negative balance of $2,882,270 is well below the desired 3–month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The approximate general and locality salary increase averages 4.6 percent for GIPSA employees, effective January 2002, will increase GIPSA's costs by approximately $703,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the increased salary and benefit costs, along with the revised projected FY 2002 workload of 79 million metric tons. Based on the review, GIPSA has concluded that the approximate 4.6 percent salary increase will have to be recovered through increases in fees.

The fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.6 percent increase in the cost of official inspection and weighing services. This increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On January 2, 2002, GIPSA proposed in the **Federal Register** (67FR25) to increase fees for official inspection and weighing services performed under the USGSA (7 U.S.C. 71 *et seq.*) by approximately 4.6 percent. The USGSA authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on July 9, 2001 (66 FR 35751), and became effective on August 8, 2001. GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. Using the most current financial data available for FY 2002, December 2001, GIPSA's operating costs were $6,923,247 with revenue of $7,131,883 that resulted in a positive margin of $208,247. However, the current reserve negative balance of $2,882,270 is well below the desired 3–month reserve of approximately $6 million. Employee salaries and benefits costs, which account for approximately 84 percent of GIPSA's total operating budget, have risen significantly over the years. GIPSA's average cost per hour in FY 1996 was $20.83 and has risen to $26.60 in FY 2001, a 27.7 percent

increase. Since FY 1996, GIPSA has increased fees six times to recover the Congressionally mandated salary increases each year as well as other pay and benefit increases such as longevity pay. The six fee increases have raised fees by approximately 22 percent over the FY 1996 levels.

While individual salary and benefit costs have increased since 1996, GIPSA has reduced overall salary and benefits costs by 12.8 percent through greater utilization of part-time and intermittent employees and improved program efficiencies. GIPSA has also reduced non-employee costs such as rent, utilities, and Departmental overhead by 1.4 percent.

The January 2002 salary increase averaged 4.6 percent for GIPSA employees, which equates to an estimated $703,000 increase. GIPSA has reviewed the financial position of the inspection and weighing program and concluded that fee increases are necessary to recover the estimated $703,000 increase in program costs. An average increase of 4.6 percent to hourly, certain unit fees, and the administrative tonnage fee is needed.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime	Holidays
1–year contract	$27.40	$29.80	$38.60	$46.40
6–month contract	30.20	32.00	41.00	53.00
3–month contract	34.40	35.60	44.60	55.40
Non-contract	40.00	42.00	51.00	62.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, which contain direct labor costs and require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 4.6 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.6 percent to the administrative tonnage fee.

Comment Review

GIPSA received 1 comment during the 30–day comment period from a grain trade association. The trade association stated that it consists of 1,000 grain, feed, processing, and grain-related companies, 70 percent of which are small entities. The commentor did not support the proposed rule. A summary of the comment and GIPSA's response is as follows:

The commentor opposed the fee increase and suggested that the proposed fee increase be offset through improved operating efficiencies and additional reductions in overhead. In addition, the commentor suggested GIPSA aggressively seek ways to reduce direct employee expenses through increased automation and contracting for official services so future mandated Federal pay increases will have less impact on the cost of providing official services. The commentor also stated that the agency should determine what programs could be terminated, scaled back, or consolidated to reduce administrative overhead.

The USGSA requires GIPSA to maintain a workforce of sufficient size and experience to meet the inspection and weighing needs of its applicants. GIPSA views its employees as valuable resources that facilitate the marketing of grain. Whenever possible, GIPSA has replaced vacant full-time permanent positions with part-time and intermittent employees to reduce administrative overhead costs related to employee salaries and benefits. Since FY 1996, GIPSA has decreased headquarters paid hours of overhead by 14.44 percent and other obligations by 1.4 percent. However, these reductions have not been enough to offset the increases in salaries and benefits. Further, GIPSA is constantly reviewing the inspection and weighing programs to assess service delivery and demand. Whenever, possible, available employees are used for temporary duty assignments within other Federal programs to further reduce administrative overhead costs. This action allows GIPSA the ability to temporarily downsize while maintaining an experienced workforce available for duty when service demands increase. GIPSA is continuing to review the issue of contracting for official services when appropriate. Efforts to contain and reduce costs have and will continue to be a high priority issue with GIPSA. GIPSA has and will continue to take action to reduce inspection and weighing costs whenever possible.

Final Action

Accordingly, GIPSA is applying an approximate 4.6 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee, as proposed in 7 CFR 800.71: Table 1–Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2–Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3, Miscellaneous Services.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY[1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime[2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1–year contract	$28.60	$31.20	$40.40	$48.60
6–month contract	31.60	33.40	42.80	56.00
3–month contract	36.00	37.20	46.60	58.00
Non-contract	41.80	44.00	53.40	65.40
(2) Additional Tests (cost per test, assessed in addition to the hourly rate)[3]				
(i) Aflatoxin (other than Thin Layer Chromatography)				$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)				20.00
(iii) Corn oil, protein, and starch (one or any combination)				1.50
(iv) Soybean protein and oil (one or both)				1.50
(v) Wheat protein (per test)				1.50
(vi) Sunflower oil (per test)				1.50
(vii) Vomitoxin (qualitative)				12.50
(viii) Vomitoxin (quantitative)				18.50
(ix) Waxy corn (per test)				1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container				.30
(2) Railcar				1.25
(3) Barge				2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).				
(i) All outbound carriers (per-metric-ton)[4]				
(a) 1–1,000,000				$0.1152
(b) 1,000,001–1,500,000				0.1051
(c) 1,500,001–2,000,000				0.0568
(d) 2,000,001–5,000,000				0.0420
(e) 5,000,001–7,000,000				0.0230
(f) 7,000,001 +				0.0105

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY[1] [2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$19.25
(b) Railcar (per carrier)	28.90
(c) Barge (per carrier)	185.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	11.50
(b) Warehouseman inspection (per sample)	19.50
(c) Factor only (per factor—maximum 2 factors)	5.15
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	12.80
(f) Class X Weighing (per hour per service representative)	55.00
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.00
(b) Aflatoxin (per test—TLC method)	110.00
(c) Corn oil, protein, and starch (one or any combination)	8.80
(d) Soybean protein and oil (one or both)	8.80
(e) Wheat protein (per test)	8.80

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY[1] [2]—Continued

(f) Sunflower oil (per test)	8.80
(g) Vomitoxin (qualitative)	30.50
(h) Vomitoxin (quantitative)	37.50
(i) Waxy corn (per test)	10.00
(j) Canola (per test—00 dip test)	10.00
(k) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1..	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	79.50
(a) Factor only (per factor—max 2 factors)	41.80
(b) Sampling service for Appeals additional (hourly rates from Table 1).	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	29.50
(b) Aflatoxin (TLC)	118.00
(c) Corn oil, protein, and starch (one or any combination)	16.80
(d) Soybean protein and oil (one or both)	16.80
(e) Wheat protein (per test)	16.80
(f) Sunflower oil (per test)	16.80
(g) Vomitoxin (per test—qualitative)	40.00
(h) Vomitoxin (per test—quantitative)	45.00
(i) Vomitoxin (per test—HPLC Board Appeal)	136.00
(j) Pesticide Residue Testing[3].	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1..	
(iii) Review of weighing (per hour per service representative)	79.20
(3) Stowage examination (service-on-request)[3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship).	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1–1/2 times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES[1]

(1) Grain grading seminars (per hour per $55.00 service representative)[2]	$55.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative)[2]	55.00
(3) Special weighing services (per hour per service representative)[2]	
(i) Scale testing and certification	55.00
(ii) Evaluation of weighing and material handling systems	55.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	55.00
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	55.00 110.00
(v) Mass standards calibration and reverification	55.00
(vi) Special projects	55.00
(4) Foreign travel (per day per service representative)	490.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.60
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $55.00 per hour.

[2] Regular business hours-Monday through Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Gerald E. Grinnell,
Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–6835 Filed 3–20–02; 8:45 am]
BILLING CODE 3410–EN–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–14–AD; Amendment 39–12676; AD 2002–03–09 R1]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) LTS101 Series Turboshaft and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines. The existing AD will become effective on March 27, 2002, and requires a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers installed on LTS101 series turboshaft and LTP101 series turboprop engines. This amendment requires the same inspections, and in addition, allows installation of impellers that pass those inspections. This revision to the existing AD is prompted by an inadvertent omission in the existing AD to include allowance of installation of impellers that pass inspections required by the AD. The actions specified by this AD are intended to prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure.

DATES: Effective March 27, 2002. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of March 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–14–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Honeywell International Inc. Aerospace Services Attn.: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On February 5, 2002, the FAA issued AD 2002–03–09, Amendment 39–12650 (67 FR 7609, February 20, 2002), to require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers installed on LTS101 series turboshaft and LTP101 series turboprop engines. That action was prompted by a report of a machining discrepancy that may have occurred during manufacture of the affected impellers. That AD will become effective on March 27, 2002.

In this revision the FAA has added to paragraph (c) the authority to allow the reinstallation of impellers P/N's 4–101–052–57 or 4–101–052–62 that pass the required inspections. In all other respects, the AD remains the same as currently published. The FAA is therefore making this revision effective on March 27, 2002, in order to reduce the paperwork burden on operators.

Manufacturer's Service Information

Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) has issued AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, and Honeywell International SB LT 101–72–30–0186, Revision 1, dated April 25, 2000, that specify a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers.

Differences Between This AD and the Manufacturer's Service Bulletins

To assure that the unsafe condition is addressed in a timely fashion, this amendment will require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of impellers part numbers (P/N's) 4–101–052–57/–62 within 900 gas generator (Ng) cycles after the effective date of this AD.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines of the same type design, this AD is being issued to prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

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and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–14–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12650 (67 FR 7609, February 20, 2002) and by adding a new airworthiness directive, Amendment 39–12676, to read as follows:

2002–03–09 R1 Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming): Amendment 39–12676. Docket No. 2000–NE–14–AD. Revises AD 2002–03–09, Amendment 39–12650.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines with the following centrifugal compressor impeller part numbers (P/N's) installed: 4–101–052–57 and 4–101–052–62, except those with a P/N or serial number (SN) listed in paragraphs 1.A.(1) through 1.A.(3) of AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000. These engines are installed on, but not limited to Aerospatiale AS350, Eurocopter MBB–BK117 and HH–65A, Bell 222, Air Tractor AT–302, Piaggio P.166–DL3, Riley International R421, and Pacific Aero 08–600 aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure, do the following:

(a) Within 900 gas generator (Ng) cycles after the effective date of this AD, conduct a one-time visual inspection for surface finish and fluorescent penetrant inspection of impellers P/N 4–101–052–57 and 4–101–052–62 for cracks in accordance with paragraphs 3.A through 3.F. of the Accomplishment Instructions of AlliedSignal SB LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

(b) Replace all impellers that exceed the acceptable limits of the Accomplishment Instructions of AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000, with a serviceable impeller.

(c) After the effective date of this AD, do not install impeller P/N's 4–101–052–57 or 4–101–052–62, except those with an impeller P/N or SN listed in paragraphs 1. A.(1) through 1. A.(3) of AlliedSignal SB LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000, and except those impellers that pass the inspection requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(f) The inspections must be done in accordance with the following SB's:

Document No.	Pages	Revision	Date
AlliedSignal SB LT 101–72–30–0186	All	Original	Oct. 1, 1999.
Total pages: 7			
Honeywell International Inc., SB LT 101–72–30–0186	1	Original	Oct. 1, 1999.
	2	1	Apr. 25, 2000.
	3–6	Original	Oct. 1, 1999.
	7	1	Apr. 25, 2000.
Total pages: 7			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International Inc. Aerospace Services Attn.: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on March 27, 2002.

Issued in Burlington, Massachusetts, on March 8, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6502 Filed 3–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 020308050–2050–01]

RIN 0694–AC59

License Exception CIV Eligibility for Certain "Microprocessors" Controlled by ECCN 3A001

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements based on their characteristics. Consistent with technological changes, this final rule makes License Exception CIV available for certain microprocessors controlled by Export Control Classification Number (ECCN) 3A001 when they have a composite theoretical performance (CTP) of equal to or greater than 6,500 million theoretical operations per second (MTOPS), but less than or equal to 12,000 MTOPS. License Exception CIV authorizes exports and reexports to civil end-users for civil end-uses in Country Group D:1, except North Korea. CIV may not be used for exports or reexports to military end-users or end-uses.

This revision will decrease the number of license applications submitted to the Department of Commerce, which will decrease the burden to both the exporting community and the Department of Commerce.

DATES: This rule is effective March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Bernie Kritzer, Acting Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–5953.

SUPPLEMENTARY INFORMATION:

Background: This rule implements the announcement made by President Bush on January 2, 2002 that the license exception level for exports of general purpose microprocessors would be raised from 6,500 MTOPS to 12,000 MTOPS. Such microprocessors are controlled in subsection a.3.a. of Export Control Classification Number (ECCN) 3A001 on the Commerce Control List, Supplement No. 1 to part 774 of the Export Administration Regulations (EAR). This rule amends ECCN 3A001 to provide that microprocessors in subsection a.3.a. with a composite theoretical performance up to 12,000 MTOPS are eligible for License Exception CIV (section 740.5 of the EAR). License Exception CIV authorizes exports and reexports to civil end-users for civil end-uses in Country Group D:1 (see Supplement No. 1 to part 740), except North Korea.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025 (August 22, 2001)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections have been approved by the Office of Management and Budget under control numbers 0694–0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement," which carries a burden hour estimate of 5 minutes to record the information for each export and 1 minute to submit the report twice a year to BXA; and 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

PART 774—AMENDED

Supplement No. 1 to Part 774—Amended

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is

amended by revising the License Exceptions section to read as follows:

3A001 Electronic Components, as Follows (see List of Items Controlled)

* * * * *

License Exceptions

LVS: N/A for MT
Yes for:
$1500: 3A001.c
$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
$5000: 3A001.a, and .b.4 to b.7
GBS: Yes for 3A001.a.1.b, a.2 to a.12, b.2, and b.8.
CIV: Yes for 3A001.a.3.a (for processors with a CTP less than or equal to 12,000 MTOPS), a.3.b, a.3.c, a.4, a.7, and a.11.

* * * * *

Dated: March 15, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–6875 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

[T.D. 02–7]

RIN 1515–AD03

Andean Trade Preference Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Temporary rule; correction.

SUMMARY: On February 15, 2002, a temporary rule was published in the **Federal Register** as T.D. 02–07 (67 FR 7070–7071). Effective on February 15, 2002, this temporary rule permits importers of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. The purpose of this document is to correct and clarify the wording of two sentences in the preamble of the temporary rule document. The substantive text of the temporary rule is unchanged.

EFFECTIVE DATE: This temporary rule remains effective on February 15, 2002, and expires on May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, 202–927–3271.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2002, a temporary rule was published in the **Federal Register** (67 FR 7070–7071) as T.D. 02–07. Effective on February 15, 2002, this temporary rule permits importers of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. This document corrects and clarifies the wording of two sentences in the preamble of the temporary rule document. The substantive text of the temporary rule is unchanged.

Corrections

The document published in the **Federal Register** as T.D. 02–7 on February 15, 2002 (67 FR 7070) is corrected as set forth below:

1. Beginning on page 7070, on the bottom of the third column, and continuing on page 7071 in the first column, the last sentence of the first paragraph of the "Summary" is removed and the following two sentences are added in its place to read as follows:

The Administration anticipates that the duty-free treatment accorded to merchandise under the provisions of the ATPA will be restored and made retroactive to the date of the initial termination of such duty-free treatment (December 4, 2001). There will be no extension of this extraordinary action.

2. On page 7071, in the "Background" portion of the document, in the second column, in the fourth paragraph, the last sentence is corrected to read as follows:

Accordingly, a one-time interim deferral of estimated duties and fees in anticipation of Congressional re-enactment of ATPA within the next 90 days is appropriate to further the national security interest in combating narcotic production and trafficking and related criminal and terrorist activities.

Approved: March 15, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–6808 Filed 3–20–02; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7161–2]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule on January 24, 2002, to relax the federal gasoline volatility standard that applies to gasoline supplied to the Denver/Boulder area from June 1st to September 15th (the ozone control season) of each year. However, we received an adverse comment during the 30 day comment period and are now withdrawing that direct final rule.

DATES: As of March 21, 2002, EPA withdraws the direct final rule published at 67 FR 3435, on January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the direct final rule for "Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area." We published the direct final rule on January 24, 2002 (67 FR 3435), that would have approved the State of Colorado's request to relax the federal Reid Vapor Pressure ("RVP") gasoline standard that applies to gasoline supplied to the Denver/Boulder area from June 1st to September 15th (the ozone control season) of each year. That action would have amended our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch ("psi") to 9.0 psi. We stated in that **Federal Register** document that if we received adverse comment by February 25, 2002, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received an adverse comment. We will address the comment in a subsequent final action based on the parallel proposal also published on January 24, 2002 (67 FR 3468). As stated in the parallel proposal, we will not institute a second comment period on this action.

Dated: March 15, 2002.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–6846 Filed 3–20–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

Extension of Application Period for Temporary Housing Assistance

CFR Correction

In Title 44 of the Code of Federal Regulations, revised as of October 1, 2001, on page 411, in § 206.101, paragraph (e)(1) is revised to read as follows:

§ 206.101 Temporary housing assistance.

* * * * *

(e) * * *

(1) *Application period.* The standard FEMA application period is the 60 days following the date the President declares an incident a major disaster or an emergency. The Regional Director may, however, extend the application period, when we anticipate that we need more time to collect applications from the affected population or to establish the same application deadline for contiguous Counties or States. After the application period has ended, FEMA will accept and process applications for an additional 60 days only from persons who can provide an acceptable explanation (and documentation to substantiate their explanation) for why they were not able to contact FEMA before the application period ended.

* * * * *

[FR Doc. 02–55507 Filed 3–20–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 0 to 19, revised as of October 1, 2001, in § 2.106, on page 442, page 45 of the Table of Frequency Allocations is a duplicate of page 54. The correct page 45 reads as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

1610-1670 MHz (UHF)

International Table			United States Table	
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.372 5.371 5.372 5.376	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.355 5.364 5.366 5.367 5.368 5.370 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-Satellite (Earth-to-space) 5.341 5.355 5.359 5.366 5.367 5.368 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US206	
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION 5.149 5.341 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.369 5.370 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.149 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US206	
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.355 5.359 5.363 5.364 5.366 5.366 5.367 5.368 5.369 5.371 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.366 5.367 5.368 5.369 5.372 US206	

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[FR Doc. 02-55510 Filed 3-20-02; 8:45 am]
BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96-45; FCC 99-396]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (47 CFR 54.313) published in the **Federal Register** on December 30, 1999 (64 FR 73427). *See* FR Doc. 99-33766. The regulation related to the state certification of support for universal service funds. Inadvertently, two paragraphs were removed from 47 CFR 54.313. This document corrects that error.

DATES: Effective March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Webber, Assistant Division Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418-7400.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1999, the Federal Communications Commission (FCC) published in the **Federal Register** (64 FR 73427), a document amending § 54.313(c) of its rules. Inadvertently, paragraphs (c)(2) and (c)(3) were removed from that section. Subsequently, the Commission adopted a new rule, which added a new paragraph (b) and redesignated paragraphs (b) and (c) as paragraphs (c) and (d) of § 54.313. *See* FR Doc. 01-14008 (66 FR 30080). Because of the revision of this rule, the affected paragraph is now paragraph (d) of § 54.313. This document now corrects paragraph (d) of that rule.

Accordingly, 47 CFR part 54 is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows

Authority: 47 U.S.C. 1, 4(I), 201, 205, 214, and 254 unless otherwise noted.

2. Revise paragraph (d) of § 54.313 to read as follows:

* * * * *

(d) *Filing Deadlines.* In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

(1) *First Program Year (January 1, 2000–December 31, 2000).* During the first program year (January 1, 2000–December 31, 2000), a carrier in a particular State shall receive support pursuant to § 54.311. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to § 54.309 shall receive such support pursuant to the following schedule:

(i) *Certifications filed on or before April 1, 2000.* Carriers subject to certifications that apply to the first and second quarters of 2000, and are filed on or before April 1, 2000, shall receive support pursuant to § 54.309 for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to section 54.311 for the first or second quarters of 2000.

(ii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July 1, 2000, shall receive support pursuant to § 54.309 for the fourth quarter of 2000 in the fourth quarter of 2000.

(iii) *Certifications filed after July 1, 2000.* Carriers subject to certifications filed after July 1, 2000, shall not receive support pursuant to § 54.309 in 2000.

(2) *Second program year (January 1, 2001–December 31, 2001).* During the second program year (January 1, 2001–December 31, 2001), a carrier in a particular State shall not receive support pursuant to §§ 54.309 or 54.311 until such time as the State files the certification described in this section. Upon the filing of the certification described in this section, support shall be provided pursuant to the following schedule:

(i) *Certifications filed on or before October 1, 2000.* Carriers subject to certifications filed on or before October 1, 2000 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first, second, third, and fourth quarters of 2001.

(ii) *Certifications filed on or before January 1, 2001.* Carriers subject to certifications filed on or before January 1, 2001 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the second, third, and fourth quarters of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first quarter of 2001.

(iii) *Certifications filed on or before April 1, 2001.* Carriers subject to certifications filed on or before April 1, 2001 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the third and fourth quarters of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first or second quarters of 2001.

(iv) *Certifications filed on or before July 1, 2001.* Carriers subject to certifications filed on or before July 1, 2001 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the fourth quarter of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first, second, or third quarters of 2001.

(v) *Certifications filed after July 1, 2001.* Carriers subject to certifications filed after July 1, 2001 shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in 2001.

(3) *Subsequent program years (January 1–December 31).* During the program years subsequent to the second program year (January 1, 2001–December 31, 2001), a carrier in a particular State shall not receive support pursuant to § 54.309 or § 54.311 until such time as the State files the certification described in this section. Upon the filing of the certification described in this section, support shall be provided pursuant to the following schedule:

(i) *Certifications filed on or before October 1.* Carriers subject to certifications filed on or before October 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first, second, third, and fourth quarters of the succeeding year.

(ii) *Certifications filed on or before January 1.* Carriers subject to certifications filed on or before January 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the second, third, and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first quarter of that year.

(iii) *Certifications filed on or before April 1.* Carriers subject to certifications filed on or before April 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the second, third, and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first or second quarters of that year.

(iv) *Certifications filed on or before July 1.* Carriers subject to certifications filed on or before July 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, beginning in the fourth quarter of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first, second, or third quarters of that year.

(v) *Certifications filed after July 1.* Carriers subject to certifications filed after July 1 shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in that year.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02-6370 Filed 3-20-02; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

Hazardous Materials Regulations: General Information, Regulations, and Definitions

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 100 to 185, revised as of October 1, 2001, on page 83, in § 171.8, the definitions of *Psi*, *Psia*, and *Psig* are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Psi means pounds per square inch.

Psia means pounds per square inch absolute.

Psig means pounds per square inch gauge.

* * * * *

[FR Doc. 02-55505 Filed 3-20-02; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH73

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; re-opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

DATES: We will accept public comments until October 15, 2002.

ADDRESSES: *Comment Submission:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.

2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, Susan Moore, at the above address (telephone 916/414-6600; facsimile 916/414-6713).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (hereafter splittail) represents the only extant species in its genus in North America. For a detailed description of the species, see the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes (Service 1996), references within that plan, and Moyle *et al.* (2001 in prep.).

Splittail are endemic to certain waterways in California's Central Valley, where they were once widely distributed (Moyle 1976). Splittail presently occur in Suisun Bay, Suisun Marsh, the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary), the Estuary's tributaries (primarily the Sacramento and San Joaquin rivers), the Cosumnes River, the Napa River and Marsh, and the Petaluma River and Marsh. The splittail no longer occurs throughout a significant portion of its former range.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the splittail was listed as a threatened species on February 8, 1999 (64 FR 5963). In this previous listing determination, we found that changes in water flows and water quality resulting from export of water from the Sacramento and San Joaquin rivers, periodic prolonged drought, loss of shallow water habitat, and the effects of agricultural and industrial pollutants were significant factors in the splittail's decline.

Subsequent to the publication of the final rule, plaintiffs in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* commenced action in Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). We, as directed by the court, and pursuant to the Act, provided notice of the opening of a comment period regarding the threatened status for the splittail, from January 12, 2001, to February 12, 2001 (66 FR 2828). In addition, we re-opened the comment period on two additional occasions; from May 8, 2001, to June 7, 2001 (66 FR 23181), and from August 17, 2001, to October 1, 2001 (66 FR 43145). We are now re-opening the comment period for a fourth time to obtain peer-review and public comment on the statistical analysis used to analyze the abundant data available for splittail, and to seek public comment on the status of the species (as first solicited in 66 FR 2828). Upon the close of this comment period, we will make our determination whether the splittail warrants the continued protection of the Act.

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The approach currently used by us to analyze the best scientifically and commercially available splittail abundance data differs from methods employed previously. In the February 8, 1999, final rule and the January 12, 2001, and May 8, 2001, re-openings of the comment periods, we relied primarily on the unstratified Mann-Whitney U-test approach utilized by Meng and Moyle (1995), first published in the *Transactions of the American Fisheries Society*. See 66 FR 2828 for a complete description of the Meng and Moyle (1995) method. In the August 17, 2001, re-opening of the comment period, we employed permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests to analyze data derived from the Meng and Moyle (1995), Sommer *et al.* (1997), and California Department of Fish and Game (CDFG) methodologies. We also employed a polynomial regression model and a crude exponential decay analysis in the August 17, 2001, comment period. See 66 FR 43145 for a complete description of the revised methods.

Statistical Analysis of Multiple Linear Regression Model

We have carefully considered all comments and responses. In regard to the analysis of splittail population trends, we now employ a statistical analysis of an abundance index and Multiple Linear Regression (MLR) model jointly developed and submitted by the CDFG (Rempel 2001) and the United States Bureau of Reclamation (USBR) (Michny 2001). The model is hereafter referred to as the CDFG/USBR MLR model and provides the most sound basis, to date, for statistically evaluating temporal trends of splittail abundance data.

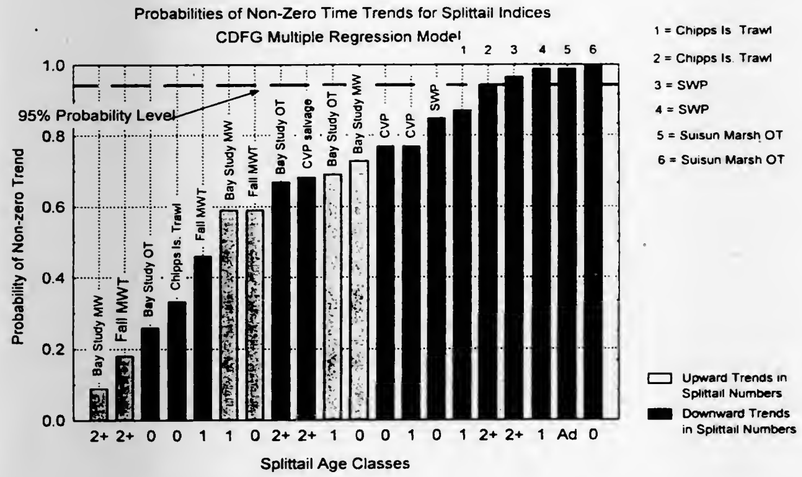
The CDFG/USBR MLR model includes HYDROLOGY and TIME (year) as independent variables and ABUNDANCE INDICES as the dependent variable. It also incorporates corrected splittail abundance data (Rempel 2001). We consider this statistical approach superior to the previous practice of using unstratified Mann-Whitney U-tests (Meng and Moyle 1995; Sommer *et al.* 1997) because it does not require arbitrarily dividing an inherently continuous data set into "before" and "after" categories (see previous discussion of this issue in 66 FR 43145). We also consider the CDFG/USBR MLR model superior to the permutation-based, exact calculations of p-values for stratified Mann-Whitney U-tests discussed in 66 FR 43145 because of substantive scientific issues raised by Rempel (2001), Michny (2001) and others, specifically, that such an analysis inappropriately combines results from differing survey methods (i.e. midwater trawl, otter trawl, beach seine, salvage) and considers primarily adult age class splittail. We further consider the CDFG/USBR MLR model superior to the polynomial regression model presented in 66 FR 43145 because existing abundance index monitoring programs have not been conducted for a sufficient duration to provide for reasonably conclusive application of the polynomial model (as concluded in 66 FR 43145). We also support use of the CDFG/USBR MLR model because of the facility with which it can be applied to all sets of splittail age class data from all seven abundance monitoring data sets (a total of 20 discrete sets of age-specific abundance monitoring data). Lastly, we have omitted the exponential decay model found in 66 FR 43145 because: (1) It was found by respondents to be insufficient to describe interactions in a complex aquatic ecosystem; and (2) the CDFG Mann-Whitney U-test results upon which the exponential decay calculation was based have since been superceded by the CDFG/BOR MLR model.

The CDFG/USBR MLR model explicitly controls for potential confounding effects of hydrological year type, the factor that is nearly unanimously viewed as the single strongest predictor of splittail year class strengths (e.g., Moyle *et al.* 2001 in prep.), by utilizing the number of days total delta inflow (DAYFLOW, California Department of Water Resources) exceeds 1,558 cubic meters per second (cms) (55,000 cubic feet per second (cfs)) during the February through May spawning/rearing period as a predictor (independent variable). This is conceptually comparable, yet superior, to the stratified Mann-Whitney U-tests presented in 66 FR 43145, which also controlled for hydrological year type. There is, however, one potentially important assumption associated with the CDFG/USBR MLR model that remains untested: The assumption that there is a lack of interaction between the HYDROLOGY and TIME variables. The CDFG/USBR MLR model assumes that the long term probabilities of high and low Delta inflow years are not systematically changing over time. If in fact those probabilities are systematically changing over time (due to either changing climate or changing water management policy), the coefficients for the TIME variable would be incapable of detecting the influence of the potentially changing HYDROLOGY component of splittail abundance trends. We believe this assumption can and should be tested against existing longitudinal hydrological data bases, with future changes to be determined once: (1) Sufficient splittail abundance data exist to ensure conclusive application of the polynomial model (i.e. multiple peaks and troughs); and (2) the cumulative expected hydrologic effects of potential large-scale water resource projects (i.e. potential projects such as the Folsom Dam reoperation and height increase, Shasta Dam height increase, Sites Reservoir, Colusa Basin off stream storage, increased pumping at export facilities, etc.) are more clearly understood. These potential future actions, and possibly long term climate changes, may appreciably change the timing, duration, magnitude and/or frequency of floodplain inundation within the splittail's range, thus influencing future population trends.

Discussion of CDFG/USBR MLR Model Results

The TIME variable captures temporal trends in the population index data. Its regression coefficient will be negative if splittail abundance is trending downward over time and positive if splittail abundance is trending upward over time. The probabilities of any given coefficient reflecting a true nonzero time trend are 1-p, where p is the standard statistical probability for the null hypothesis (of a zero trend). Thus, a "p-value" of 0.05 would be the same as a 95 percent probability that the corresponding TIME coefficient reflects a true nonzero downward or upward trend in splittail abundance. Results of the CDFG/USBR MLR model as presented by Rempel (2001: Table 3) for CDFG and Michny (2001: Table 1) for USBR reveal that 14 of 20 abundance monitoring data sets for splittail show downward trends (i.e., have negative coefficients for the TIME variable). In addition to a high frequency of negative coefficients that would be highly unlikely by chance alone (exact one tailed p = 0.0577; binomial test, H_0=0.50, N_1=6, N_2=14)(StatXact 4: CYTEL Software Corp. 2000), the median (middle value) probability of nonzero negative trends (0.81 or 81 percent) is also clearly greater than the median probability of nonzero positive trends (0.59 or 59 percent) (Figure 1 below), to an extent that would be highly unlikely by chance alone (exact one tailed p= 0.0303, Wilcoxon-Mann-Whitney test).

Figure 1.



All four coefficients for the TIME variable that exceed a 95 percent probability (classic 0.05 alpha level statistical significance criterion) for a true nonzero trend are negative. A fifth negative TIME variable coefficient is nearly statistically significant (p=0.057). Due to the very limited statistical power associated with the abundance monitoring data sets for splittail (see discussion of this topic in 66 FR 43145) there is substantive bias in favor of type II statistical error, i.e., failing to correctly reject the null hypothesis (of no time trends). Low statistical power is not unique to the splittail data sets. Due to the inherent high variability in fisheries and wildlife abundance data, for applied purposes (such as detecting oil spill impacts on marine bird populations) it has become "customary" to use an alpha level of 0.20 (i.e., an 80 percent probability of true nonzero trends) for statistical tests of population trends over time (Day *et al.* 1997; Murphy *et al.* 1997; Irons *et al.* 2000; Wiens *et al.* 2001). Wiens *et al.* (2001:890) further state that even using an alpha level of 0.20, "* * * there remains the question of how blindly one should follow the results of statistical (significance) testing." Furthermore, Taylor and Gerrodette (1993) persuasively argue that because of the low statistical power that is so often characteristic of abundance monitoring data sets for rare species, "* * * detection of a [statistically significant] decline should not be a necessary criterion for enacting conservation measures * * *." Referring to the management of a rare species of porpoise, the vaquita, Taylor and Gerrodette (1993) caution that due to the low statistical power of abundance monitoring data, "* * * if we were to wait for a statistically significant decline before instituting stronger protective measures, the vaquita would probably go extinct first." Although splittail are not as rare as vaquita, the "boom-or-bust" reproductive biology of splittail results in such high-variance abundance monitoring data that the limitations on statistical power are as severe as Taylor and Gerrodette (1993) encountered with the vaquita. We must therefore take into consideration the issue of statistical power when interpreting the splittail abundance data. We accomplish this by evaluating all trends, not just the trends that meet traditional (p=0.05) criteria for statistical significance. Those traditional criteria assume a much higher standard of statistical power than the splittail data are able to meet. The inherent difficulty in effectively surveying splittail is likely to result in considerable scientific uncertainty and low statistical power to detect actions' effects. Recent studies indicate that these constituents, and the uncertainty and risk associated with them, favor a precautionary approach (Thompson *et al.* 2000, Slooten *et al.* 2000). Under such circumstances, and given the intrinsically precautionary nature of section 4 of the Act, we must consider the preponderance of the data, including both statistically significant and insignificant trends. Of 14 negative coefficients, 7 have a probability of 80 percent or greater (p=0.20) to reflect true nonzero downward trends in splittail abundance. Of 6 positive coefficients, 0 (none) have a probability of 80 percent or greater to reflect true nonzero upward trends in splittail abundance. This asymmetry in the results is highly significant (exact one tailed p=0.022, Fisher's exact test, "mid p" corrected) (StatXact 4: CYTEL Software Corp. 2000) and clearly indicates a preponderance of data consistent with an "apparent" declining trend in splittail abundance.

The four highest, statistically significant (at traditional levels) probabilities of a nonzero downward splittail population trend are exhibited by the Suisun Marsh survey (Age-0 and adult) and in the data collected via fish salvage operations at the State Water Project (SWP) Skinner Delta Fish Protective Facility (Age-1, and Age-2 and greater). The decline evident in the Chipps Island Trawl (Age-2 and greater) is nearly statistically significant at traditional levels (94.3 percent probability). Two additional probabilities of a nonzero downward splittail population trend are evident at the 80 percent probability level; Chipps Island Trawl (Age-1) and SWP (Age-0).

We fully concur with the statements of various respondents that abundance monitoring data for splittail have

methodological weaknesses of one sort or another; none of the surveys were designed specifically to rigorously estimate splittail population numbers (see Moyle et al. 2001 in prep.; Meng and Moyle 1995; and Sommer et al. 1997 for descriptions of surveys). However, existing data sets do constitute best available scientific information for the species.

Public Comments Solicited

We will accept written comments during this re-opened comment period, and comments should be submitted to the Sacramento Fish and Wildlife Office as found in the **ADDRESSES** section.

Author(s)

The primary authors of this notice are Jason Douglas and Joseph Skorupa (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 14, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–6803 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket 020313057–2057–01; I.D. 031102E]

RIN 0648–AP91

Sea Turtle Conservation; Restrictions to Fishing Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is enacting a seasonally-adjusted gear restriction by closing the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8 inch (20.3 cm) stretched mesh, starting on March 15, 2002. The purpose of this action is to reduce the impact of the large-mesh gillnet fisheries on endangered and threatened species of sea turtles primarily from the monkfish fishery which has previously demonstrated a high sea turtle bycatch and mortality rate. The areas restricted to fishing with gillnets larger than 8 inch stretched mesh and the times are as follows: Waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet)—at all times; waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC)—from March 16 through January 14; waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA)—from April 1 through January 14; waters north of 37° 34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA)—from April 16 through January 14. Waters north of 37°56.0′ N (Chincoteague, VA) will not be affected by this rule. NMFS also intends to publish a permanent rule establishing these seasonal restrictions and is seeking comments on this interim final rule.

DATES: This interim final rule is effective on March 15, 2002 through 240 days after March 15, 2002. Comments on this interim final rule are requested and must be postmarked or transmitted by facsimile by 5 p.m., Eastern Standard Time, on June 19, 2002. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send written comments on this interim final rule to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376, Attn: Chief, Endangered Species Division. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Assessment (EA) prepared for this interim final rule may also be requested at the same address.

FOR FURTHER INFORMATION CONTACT: David M. Bernhart (ph. 727–570–5312, fax 727–570–5517, e-mail *David.Bernhart@noaa.gov*), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions for threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided or an incidental take permit issued pursuant to section 7 or 10 of the ESA.

Background

Beginning in 1995, sea turtle strandings off North Carolina dramatically increased during April and May, particularly near the area between Hatteras Inlet and Oregon Inlet. This new stranding pattern continued and intensified throughout the rest of the 1990's, and North Carolina sea turtle strandings grew to record levels. Increasing strandings coincided with increasing effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In April and May 2000, the largest-ever fisheries-related stranding event occurred: 280 sea turtles, 275 of them threatened loggerhead sea turtles, stranded in two short periods. Four of the carcasses were still entangled in gillnet gear with a larger than 8 inch stretched mesh size. Three fisheries were active in offshore waters the week prior to the strandings: Hook-and-line fishing for mackerel, bluefish gillnetting, and monkfish gillnetting. The mesh sizes of the gear recovered with the stranded turtles were only consistent with gillnets for monkfish. There was no evidence that the turtles had been hooked, and the nature of the strandings were not consistent with other possible causes. Satellite sea surface temperature information allowed NMFS to reconstruct the likely times and locations of the sea turtle mortality. Gillnetting for dogfish and monkfish was occurring in those times and places.

These fisheries deploy thousands of yards/meters of gillnets with larger than 8 inch stretched mesh and have very long soak times, ranging from overnight to several days. In order to prevent further sea turtle deaths, on May 12, 2000, NMFS restricted an area along eastern North Carolina and Virginia to fishing with large-mesh gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater for a 30-day period through a temporary rule (65 FR 31500, May 18, 2000). After the large mesh closure was in effect, no additional mass stranding events occurred in North Carolina. However, the monkfish fishery in North Carolina was over by the time the closure went into effect.

The closure also reduced the monkfish gillnetting effort off the coast of Virginia, and there was a large reduction in strandings in 2000 (Mansfield et al., 2001). Due to the large-mesh gillnet closure, as well as the new

trip limits imposed by the FMP on May 1, 2000, there was also a reduction in fisheries landings reported within this region.

Monkfish gillnets—12-inch mesh, tied-down, anchored gillnets; up to 4 nautical miles of net per boat; and soak times from 24 to 120 hours—pose a lethal threat to sea turtles, if they are fished in times and places where turtles occur. In the early spring, sea turtles, particularly loggerheads, mass along warm-water fronts off the North Carolina coast and migrate northward as warming water temperatures allow. Based on the information regarding fishing activity prior to the strandings, large mesh gillnets set along these warm-water fronts were the most likely cause of the catastrophic levels of sea turtle mortality seen in North Carolina in 2000. Even with the high level of strandings, the great majority of turtle carcasses probably never stranded due to the strong offshore currents of the Gulf Stream, and the actual turtle mortality was much higher than the strandings suggest.

2001 Events

NMFS considered implementing closures of the monkfish gillnet fishery in the Mid-Atlantic in 2001 to prevent the same level of turtle mortality from recurring. Implementation of the Year 2 Monkfish Fishery Management Plan (FMP) measures as of May 1, 2000, limited monkfish gillnet vessels in the Southern Fishery Management Area to a trip limit of 300 lb (tail weight) per Day-at-Sea (DAS). In addition, NMFS placed observers on nearly 100 percent of the monkfish gillnet trips out of North Carolina and Virginia ports in spring 2001. Further, NMFS published a rule (66 FR 28842, May 25, 2001) that provided authority to close the monkfish gillnet fishery if the observers documented turtle takes greater than the authorized level in the incidental take statement (ITS) issued with the December 21, 1998, biological opinion on the monkfish fishery.

NMFS, in the meantime, had also reinitiated consultation (pursuant to section 7 of the ESA) on the FMP, primarily as the result of concerns over right whale takes in fixed gear. Consultation was also reinitiated because the ITS for sea turtles was exceeded in 1999. NMFS also analyzed the information on sea turtle strandings and the effect of the FMP's daily landings limits and limitations on total days at sea (DAS). Beginning May 1, 2000, for the area off North Carolina and Virginia, monkfish gillnet vessels were limited to 300 pounds of tails landed per day and 40 DAS per year. Beginning May 1, 2002, the DAS would be reduced to zero (i.e., no directed gillnet fishing for monkfish), but up to ten unused DAS could be carried over. NMFS issued a new biological opinion on the fishery on June 14, 2001, concluding that the fishery, as managed under the FMP, was not likely to jeopardize the continued existence of any species of sea turtle. Incidental take was authorized, with a reduced take level after April, 2002 and zero take anticipated after April, 2003. The opinion expressly considered the reduction in daily landings limits and DAS and considered that the FMP's restrictions would greatly reduce the effort off North Carolina and Virginia, because vessels from northern ports would have little incentive to travel to the south for the limited fishing opportunity.

The June 14, 2001 biological opinion's analysis of the fishery's behavior in spring 2001 proved to be correct: Only seven sink gillnet vessels targeting monkfish fished off North Carolina in 2001, compared to 33 sink gillnet vessels that landed monkfish in North Carolina in 2000. The sea turtle mortality was also greatly reduced: there were only 11 turtle strandings in eastern North Carolina (zone 35) for April and May, total, compared to the close to 300 turtles that stranded in April and May 2000. Four sea turtle takes were observed in the monkfish gillnet fishery off North Carolina and Virginia in spring 2001. Not only were there fewer vessels fishing gillnets in 2001, those vessels apparently fished farther to the north and in colder water, compared to 2000, and thus avoided sea turtle takes.

Changes to the FMP

On August 14, 2001, the U.S. District Court for the District of Rhode Island found the provisions in the FMP that established the trip limits for gillnetters to be unlawful. NMFS filed a motion with the court, asking for reconsideration and asking that the FMP's trip limits remain in place until a new FMP could be developed. The U.S. District Court denied this motion on February 15, 2002. The effect of this ruling is that the gillnet daily limits have now increased from 300 pounds to 1500 or 1000 pounds (based on permit type). In addition, the New England and Mid-Atlantic Fishery Management Councils voted on February 8, 2002, to reverse the FMP's elimination of gillnet DAS after April, 2002, allowing continued gillnetting with a 550 or 450 pounds of tails per DAS (based on permit type). NMFS is reviewing this council action for possible approval. Note that all trip limits discussed in this interim rule, and any past changes to those trip limits are specific only to the Southern Fishery Management Area of the monkfish fishery. The Northern Fishery Management Area has no trip limits and these have not been changed by the court order or new Council action. The reinitiation of ESA Section 7 consultation on the monkfish fishery is underway.

Threat to Sea Turtles

The fishery off North Carolina will be closed from February 15 through March 15, under provisions of the Mid-Atlantic Harbor Porpoise Take Reduction Plan. However, because of the recent court ruling, if no turtle protective measures are in place in the fishery and effort returns to 2000 levels, there is every reason to believe that sea turtle mortality off the southern Mid-Atlantic will return to the very high levels of the late 1990's and possibly the disastrous levels of 2000. The court's ruling and the Council's action undo the effort limitation measures that were important factors in the June 14, 2001 no-jeopardy biological opinion. Under a 1500- or 1000-pound daily limit, NMFS believes that effort off North Carolina will return to the levels seen in 2000. In 2000, there were no trip limits, but the average landings per trip were only 764 pounds, so the 1500- or 1000-pound limit will have little to no effect in reducing effort, and, based on past effort, vessels from other states are expected to travel to North Carolina to target monkfish. The other protective measures of 2001 are no longer in place. The temporary framework rule that depended on 100 percent observer coverage, with closure after the observers documented take greater than that authorized in the ITS, has expired. NMFS does not have funds or observers to achieve 100 percent coverage again, certainly not at the much higher levels of fishing effort that are anticipated. The level of incidental take authorized in the June 14, 2001 opinion is very low (6 loggerheads, 1 green, 1 Kemp's ridley, 1 leatherback sea turtle) and would probably be exceeded quickly if monkfish gillnets are set near warm water boundaries when turtles are making their northward migration. NMFS believes that emergency action is warranted to prevent the violation of the incidental take statement of the opinion and to reduce the potential for a serious impact to turtle populations. The 275 loggerheads that stranded in North Carolina in spring 2000 were probably disproportionately made up of individuals from the northern subpopulation of loggerheads, a subpopulation that has been of

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particular concern, for example, in the 2001 Biological Opinion on the Atlantic pelagic longline fishery management plan, that concluded that fishery was likely to jeopardize loggerhead and leatherback sea turtles.

Seasonally-Adjusted Closure of Large-Mesh Gillnet Fishing in the Mid-Atlantic

By this interim final rule, NMFS is enacting, effective immediately, seasonally-adjusted gear restrictions by closing the Mid-Atlantic EEZ waters to fishing with gillnets with a mesh size larger than 8 inch (20.3 cm) stretched mesh to protect migrating sea turtles. Although the monkfish gillnet fishery currently uses 12 inch (30.5 cm) stretched mesh as their primary gear type, the potential exists for the utilization of smaller mesh gillnets for monkfish. The 8 inch cutoff size as mentioned above is, therefore, being enacted in this rule. NMFS considered banning smaller mesh sizes but fishing for monkfish with gillnets with less than 8 inch mesh is impractical and banning smaller mesh sizes would interfere with the prosecution of other fisheries that have been shown to have minimal impact on sea turtles.

The areas restricted to fishing with gillnets larger than 8 inch stretched mesh and the times are as follows: waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet)—at all times; waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC)—from March 16 through January 14; waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA)—from April 1 through January 14; waters north of 37°34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA)—from April 16 through January 14. Waters north of 37°56.0′ N (Chincoteague, VA) will not be affected by this rule. NMFS also intends to publish a permanent rule establishing these seasonal restrictions and is seeking comments on this interim final rule. The restricted areas include all EEZ waters within the stated boundaries. Because of the evidence from past stranding events, particularly the large stranding event in April and May 2000, NMFS concludes that the large mesh gillnet fishery in the Mid-Atlantic takes, including to capture and kill, numerous endangered and threatened sea turtles during their spring migration. NMFS is taking this action to prevent further mortalities and other takes of listed species in this fishery. The timing of the restrictions is based upon an analysis of sea surface temperatures for the above areas. Sea turtles are known to migrate into and through these waters when the sea surface temperature is 11 degrees Celsius or greater. The January 15 date for the reopening of the areas north of Oregon Inlet (35°46.0′ N) to the large-mesh gillnet fishery is also based upon the 11 degree Celsius threshold and is consistent with the seasonal boundary established for the summer flounder fishery-sea turtle protection area (50 CFR 223.206(d)(2) (iii)(A)).

The actions implemented by this interim final rule are expected to impact approximately 20–25 monkfish gillnet vessel owners and operators. Five alternatives were evaluated in the EA prepared for this interim final rule, including a status quo or "no action" alternative. For a description and analysis of the alternatives, readers should refer to the EA available at the address listed above.

The total cost to the monkfish fishery is expected to be minimal. The primary effect of this interim final rule will be to establish restrictions in an area which is not heavily utilized by the fishery and to set required dates for the northward movement of the fishery up through 37°56.0′ N (Chincoteague, VA) in order to avoid sea turtle interactions. However, based on vessel trip reporting (VTR) data from May 1998 through April 2001, the Virginia and North Carolina trips make up a small part of the total effort in the monkfish sink gillnet fishery. Together they represent 5.1 percent of the monkfish tail weight, 0.9 percent of the liver weight, and 4.1 percent of the total gillnet trips. The fishery normally migrates northward anyway as it follows the monkfish movements. This rule does not prevent or limit fishermen from moving north of 37°56.0′ N (Chincoteague, VA) to prosecute the fishery, although the small number of vessels in this fishery that are based in North Carolina and Virginia would have extra fuel costs that would impact profitability. This rule does not impact the available DAS or catch limits established under previous regulations.

Request for Comments

NMFS is considering issuing these seasonally-adjusted gear restrictions as a final rule. Written public comments on this interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Eastern Standard Time, on June 19, 2002.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator has determined that this interim final rule is necessary to respond to the emergency created by the changes to the federal monkfish fishery, changes which may lead to unauthorized takes in violation of the terms and conditions of the June 14, 2001 Biological Opinion. This interim final rule is consistent with the ESA and other applicable laws. Section 4(b)(7) of the ESA provides that the requirements of 5 U.S.C. 553 of the Administrative Procedure Act do not apply to regulations when there is an emergency posing a significant risk to wildlife (16 U.S.C. 1533(b)(7)).

This interim final rule will be effective for 240 days. If NMFS determines to adopt this interim final rule permanently, NMFS will publish the rule in the **Federal Register** by winter 2002. If significant changes to this interim final rule are needed, NMFS will first publish a proposed rule and seek additional public comment. If NMFS determines that the rule is no longer necessary, NMFS will withdraw this interim final rule. NMFS is providing notice of these regulations to the states of North Carolina and Virginia, as required by section 4(b)(7)(B) of the ESA. NMFS regulations, which were developed and adopted after full notice and comment, give the Assistant Administrator the authority to take emergency actions when the need arises. 50 CFR 223.206(d)(4).

The AA also finds good cause to waive the requirements for prior notice and an opportunity for public comment, for this interim final rule, pursuant to 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. The recent court ruling, described above, increased gillnet DAS limits from 300 pounds to either 1500 or 1000 pounds, based upon permit type. It is expected that, in light of these higher trip limits, the level of fishing effort occurring after March 16, 2002, when the fishery off North Carolina will open, until May 1, 2002, when gillnet DAS will be reduced to zero under the FMP, will cause a significant increase in risk of mortality to sea turtles. As such, any delay in implementation of this interim final rule would prevent NMFS from meeting its obligations under the ESA to prevent such harm.

The New England and Mid-Atlantic Fishery Management Councils have voted to reverse the FMP's elimination of gillnet DAS after April, 2002, and to allow continued gillnetting with a 550 or 450 pounds of tails per DAS (based on permit type). Should NMFS decide to follow the recommendation of the Council, emergency protection for sea turtles would remain necessary after May 1, 2002. However, should NMFS not follow the recommendation of the Council, NMFS will consider this in determining whether to adopt the interim final rule as a final rule.

This interim final rule will be effective for 240 days. If NMFS determines to adopt this interim final rule permanently, NMFS will publish the rule in the **Federal Register** by winter 2002. If significant changes to this interim final rule are needed, NMFS will first publish a proposed rule and seek additional public comment. If NMFS determines that the rule is no longer necessary, NMFS will withdraw this interim final rule.

For the reasons stated above, the AA finds good cause under both section 4(b)(7) of the ESA and 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA has prepared an Environmental Assessment for this interim final rule. Copies of the EA are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements.

Dated: March 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries.

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. § 1531 *et seq.*; 16 U.S.C. § 742a *et seq.*; 31 U.S.C. § 9701 *et seq.*

2. In § 222.102, Definitions, add after the definition for "Four-seam, tapered-wing trawl" and before the definition for "Gulf Area", the following regulatory definition to read as follows:

§ 222.102 Definitions.

* * * * *

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206, paragraph (d) introductory text is suspended and paragraph (d)(8) and (e) are added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(8) *Restrictions applicable to large-mesh gillnet fisheries in the mid-Atlantic region.* No person may fish (including, but not limited to, setting, hauling back, or leaving in the ocean) with, or possess any gillnet with a stretched mesh size larger than 8 inches (20.3 cm), unless all gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected. This restriction is effective starting on March 15, 2002, in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following areas:

(i) Waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet) at any time;

(ii) Waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37°34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) from April 16 through January 14.

* * * * *

(e) *Exception for incidental taking.* The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(8) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

[FR Doc. 02–6772 Filed 3–15–02; 5:02 pm]
BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 031802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the second seasonal apportionment of the total allowable catch of pollock specified for this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 19, 2002, until 1200 hrs, A.l.t., March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA pursuant to § 679.20(d)(1)(iii) on March 11, 2002 (67 FR 10847, March 11, 2002). As of March 15, 2002, 532 metric tons (mt) of pollock remain in the second seasonal directed fishing allowance of the pollock TAC in Statistical Area 630 of the GOA. Therefore, NMFS is terminating the previous closure and is opening

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directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., March 20, 2002.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to allow full use of the amount of the 2002 B season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow full use of the amount of the 2002 B season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 18, 2002.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6856 Filed 3–18–02; 2:13 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 55

Thursday, March 21, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket No. 01–073–1]

Untreated Citrus from Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the plant quarantine safeguard regulations to remove Brownsville and Hidalgo, TX, as ports of entry for untreated Mexican oranges, tangerines, and grapefruit transiting the United States for export to another country. We are also proposing to remove Brownsville, TX, as an authorized port for the exportation by water of shipments of untreated Mexican oranges, tangerines, and grapefruit. We are proposing these actions because neither port has been used for these purposes in over 20 years. These actions would update the regulations so that they accurately reflect the ports used for the importation and exportation by water of untreated citrus from Mexico.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 20, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–073–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–073–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–073–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Byrne, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5242.

SUPPLEMENTARY INFORMATION:

Background

The plant quarantine safeguard regulations in 7 CFR part 352 relieve restrictions for certain plants, plant products, plant pests, soil, and other products and articles that are classified as prohibited or restricted in other regulations in title 7, chapter III. Such plant products include fruits and vegetables that are moved into the United States for: (1) A temporary stay where unloading or landing is not intended; (2) unloading or landing for transshipment and exportation; (3) unloading or landing for transportation and exportation; or (4) unloading and entry at a port other than the port of arrival. Fruits and vegetables that are moved into the United States under these circumstances are subject to inspection and must be handled in accordance with conditions assigned under the safeguard regulations to prevent the introduction and spread of plant pests.

The regulations in § 352.30 address the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries. The regulations currently allow untreated oranges, tangerines, and grapefruit from Mexico to enter the United States at the ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX. The fruit may then be moved, under certain conditions, by truck or railcar to seaports at Brownsville and Galveston, TX, for export by water to another country.

In this document, we are proposing to remove Brownsville and Hidalgo, TX, as ports of entry for untreated oranges, tangerines, and grapefruit from Mexico. In addition, we are also proposing to remove Brownsville, TX, as an authorized port for the exportation by water of such fruit. We are proposing these actions because it has been more than 20 years since any shipments of untreated citrus from Mexico have been imported into the United States through either port. Additionally, the port of Hidalgo, TX, no longer handles cargo; that port now handles only pedestrians and passenger vehicles. It has also been more than 20 years since Brownsville, TX, has been used for the export of untreated Mexican citrus by water to another country.

Removing Brownsville and Hidalgo, TX, as ports of entry for untreated citrus from Mexico and removing Brownsville, TX, as an authorized port of export for such fruit would update the regulations in § 352.30 so that they accurately reflect the ports that are used for those purposes.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are proposing to amend the plant quarantine safeguard regulations to remove Brownsville and Hidalgo, TX, as ports of entry for untreated Mexican oranges, tangerines, and grapefruit transiting the United States for export to another country. We are also proposing to remove Brownsville, TX, as an authorized port for the exportation by water of shipments of untreated Mexican oranges, tangerines, and grapefruit. We are proposing these actions because neither port has been used for these purposes in over 20 years. These actions would update the regulations so that they accurately reflect the ports used for the importation and exportation by water of untreated citrus from Mexico.

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Since the ports of Brownsville and Hidalgo, TX, have not been used for any shipments of untreated citrus from Mexico in over 20 years, this proposed action would have no economic effect on any entity. Small entities located at or around the ports of Brownsville and Hidalgo, TX, will not be affected by this proposed rule for the same reason that no economic entity of any size will be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 352 as follows:

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

1. The authority citation for part 352 would continue to read as follows:

Authority: 7 U.S.C. 2260, 7711–7714, 7731, and 7734; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 352.30 [Amended]

2. Section 352.30 would be amended as follows:

a. In paragraph (b)(2), by removing the words "Brownsville," and "Hidalgo,".

b. In paragraph (b)(3)(iii), by removing the words "Brownsville or".

c. In paragraph (c)(1), by removing the words "Brownsville, or".

d. In paragraph (c)(3), in the paragraph heading and in paragraphs (c)(3)(i) and (c)(3)(ii), by removing the words "Brownsville or" each time they appear.

Done in Washington, DC, this 18th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6838 Filed 3–20–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV02–928–2]

Papayas Grown in Hawaii; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Order to terminate and reschedule referendum.

SUMMARY: This document directs that the continuance referendum scheduled to be held March 4 through March 22, 2002 among eligible growers of Hawaii papayas be terminated and rescheduled for May 6 through May 31, 2002. Rescheduling is necessary due to complications encountered with timely delivery of ballots by mail. Rescheduling will ensure that eligible growers receive their ballots with time to review them and vote. A referendum is necessary to determine whether eligible growers of Hawaii papayas favor continuance of the marketing order regulating the handling of papayas grown in the production area.

DATES: The rescheduled referendum will be conducted from May 6, through May 31, 2002. To vote in this referendum, growers must have been producing Hawaii papayas during the period July 1, 2000, through June 30, 2001.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102 B, Fresno, California, 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), US Department of Agriculture (USDA), 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: J. Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, at 2202 Monterey Street, Suite 102 B, Fresno, California 93721; telephone (559) 487–5901; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit & Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 928 (7 CFR part 928), hereinafter referred to as the "order" and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that the March 4 through March 22, 2002 referendum be terminated and that a rescheduled referendum be conducted from May 6 through May 31, 2002 to ascertain whether continuance of the order is favored by producers. Only growers that were engaged in the production of Hawaii papayas during the period of July 1, 2000, through June 30, 2001, may participate in the rescheduled continuance referendum.

A continuance referendum to be conducted among growers of papayas in Hawaii had been scheduled for the period March 4, through March 22, 2002. Notice of this referendum order was issued on January 31, 2002 and published in the February 6, 2002 issue of the **Federal Register** (67 FR 5526). Termination of this referendum is necessary due to complications encountered with timely delivery of ballots by mail. Given this delay, we can no longer ensure that adequate time will be given to all eligible voters to fully review, contemplate and cast their ballots within the allotted referendum period. All ballots pertaining to the March referendum period will be considered invalid.

The USDA has determined that a rescheduled referendum to determine if growers of papayas in the production area favor continuance of their marketing order will be held from May 6 through May 31, 2002. Rescheduling of the referendum period will ensure proper distribution and ample review for all eligible growers voting in the referendum. New ballots and voting instruction will be issued to all growers of record subsequent to this Notice.

The USDA has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The USDA would continue the order if either two-thirds of the growers voting in the referendum or growers of two-thirds of the volume of Hawaii papayas represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. The USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102 for Hawaii papayas. It has been estimated that it will take an average of 20 minutes for each of the approximately 400 growers of Hawaii papayas to cast a ballot. Participation is voluntary. Ballots postmarked after May 31, 2002, will not be included in the vote tabulation.

J. Terry Vawter and Martin Engeler of the California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Department to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400—900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6957 Filed 3–19–02; 2:36 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–059–1]

Change in Disease Status of Greece With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to add Greece to the list of regions that are considered free of rinderpest and foot-and-mouth disease. We are taking this action because we have determined that Greece is now free of foot-and-mouth disease. We are also proposing to add Greece to the list of regions that are subject to certain import restrictions on meat or meat products because of their proximity to or trading relationships with rinderpest- or foot-and-mouth-disease-affected regions. These actions would update the disease status of Greece with regard to foot-and-mouth disease while continuing to protect the United States from an introduction of this disease by providing additional requirements for any meat and meat products imported into the United States from Greece.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 20, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–059–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–059–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–059–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 lists regions of the world that are declared to be free of rinderpest or free of both rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) considers rinderpest or FMD to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that APHIS has determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

Greece is currently listed in § 94.1(a)(3) of the regulations as a region free of rinderpest. On June 25, 1999, we published in the **Federal Register** (64 FR 34155–34168, Docket No. 98–090–1) a proposal to amend § 94.1 to recognize Greece as a region free of FMD. However, in July 2000, FMD was diagnosed in cattle in the Evros Prefecture in Greece. This and subsequent outbreaks meant that we were unable to declare Greece free of FMD based on that proposal.

Since September 2000, there have been no additional outbreaks of FMD in Greece. APHIS representatives conducted a site visit to Greece in January 2001 to obtain evidence regarding the FMD status of Greece. Documentation of the control and eradication procedures used during the FMD outbreaks in Greece is provided in the site visit report, which may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html*. Briefly summarized, the disease outbreak was eradicated by applying a stamping out/nonvaccination policy. Controls over the movement of animals and animal products from regions of higher risk, such as along Greece's border with Turkey, were applied. In addition, Greece continues to conduct an established surveillance program to detect and control any future incursions of FMD or other diseases. Greece continues to work with Turkey to address risk factors associated with the presence of FMD in Turkey.

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Consistent with the guidelines of the Office International des Epizooties (OIE)—i.e., at least 12 months have elapsed since the last outbreak of FMD in Greece—and the findings of our site visit and review of the supporting documentation provided by Greece, we are proposing to recognize Greece as free of FMD. In addition, we are proposing to add Greece to the list of rinderpest- and FMD-free regions whose exports of ruminant and swine meat and meat products to the United States are subject to certain restrictions to ensure against the introduction of those diseases into this country.

Based on the information submitted to us by the Government of Greece, we have reviewed and analyzed the animal health status of Greece relative to FMD. This review and analysis was conducted in light of the risk factors identified in 9 CFR 92.2, "Application for recognition of the animal health status of a region," which are used to determine the level of risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

Veterinary infrastructure. The veterinary services authorities in Greece have the legal authority, organization, and infrastructure to detect, control, and eradicate FMD. The official veterinary force of Greece includes approximately 810 veterinarians, 70 veterinary laboratories, and 190 lay assistants organized under the State Veterinary Service. The field force is dispersed among 51 Local Disease Control Centers, each of which reports to the National Disease Control Center in Athens. In the event of an animal disease emergency, the State Veterinary Service has the authority to call upon police and local authorities to provide support and assistance in depopulating infected premises, disposing of animal carcasses, controlling and restricting animal movements, and closing markets and slaughterhouses.

Greece's veterinary infrastructure has been strengthened by financial contributions from the European Union for activities relating to specific diseases. In the case of FMD, financial support has been provided for diagnostic laboratory equipment, data management equipment, and surveillance activities.

Disease history and surveillance. The first outbreak of FMD virus serotype Asia 1 in Greece occurred in July 2000, and the last in September 2000. A total of 14 FMD outbreaks occurred in 6 epidemiological episodes. There were three primary outbreaks in the Prefecture of Evros. The remaining outbreaks were secondary, caused by spread from the primary outbreaks. The virus is believed to have come from Turkey, an FMD-affected country with which Greece shares a border.

Routine surveillance for targeted diseases is carried out in specified areas of Greece under the Epidemio-Vigilance Rotational System (EVROS). This program, launched in 2000 with the support of the European Commission, is an integrated system of active surveillance for incursions of targeted diseases, including FMD, designed to provide early warning and effective control. The program is established in the border areas with Turkey that are primarily at risk for incursions of FMD virus.

Diagnostic capabilities. This factor was evaluated by APHIS in the context of the proposed rule published in 1999 and found to be acceptable. No significant changes have occurred since that time, so no further evaluation is necessary.

Vaccination status. No vaccination was used in control of the outbreak of FMD virus type Asia 1 in 2000 or type O1 in 1996. Vaccination has not been used to control type Asia 1 in Greece since 1961.

Disease status of adjacent regions. Following is a brief discussion of the disease status of those countries with which Greece shares a land border:

- *Turkey.* FMD is endemic in the Anatolia region of Turkey and causes significant economic losses. The disease is being controlled using vaccination, quarantine, movement controls, and surveillance and monitoring. Turkey has increased its efforts to control FMD in recent years. Asia 1 and subtypes of FMD virus serotype A remain potential risks for Turkey, however, and also for Europe. Although Turkey should be considered a high-risk area regarding the transmission of the disease to Greece and the rest of Europe, APHIS considers existing controls in Greece to be sufficient to reduce the risk.
- *Bulgaria.* There were no outbreaks of FMD reported to the OIE by Bulgaria in 2000 and through June 2001.
- *Macedonia.* There were no outbreaks of FMD reported to the OIE by the Former Yugoslav Republic of Macedonia in 2000. No data are available for 2001.
- *Albania.* There were no outbreaks of FMD reported to the OIE by Albania in 2000. No data are available for 2001.

Degree of separation from adjacent regions. The Evros River defines the border between Greece and Turkey. However, it is possible that persons and animals may still cross the river undetected, thus posing a risk of transmitting FMD from Turkey. However, Greece has the laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of FMD.

There are several Greek islands that lie in the Aegean Sea directly to the south of the Evros delta off the Turkish mainland. Greece has special surveillance programs in effect on these islands to prevent the transmission of FMD from Turkey to Greece via these islands.

Greece's borders with Bulgaria, Macedonia, and Albania are generally mountainous, concentrating movements in the river valleys but making the mountainous part of the borders more difficult to monitor. This is not considered to be a significant source of risk.

Movement across borders. The movement of animals and animal products from non-European Union (EU) countries is regulated according to EU legislation. These regulations prohibit the entry of live susceptible animals and risky products from regions of higher risk, including Turkey. In general, these movements are well controlled through established border posts. The border between Greece and Turkey is well protected by military and other control points.

Livestock demographics and marketing practices. The area where the outbreak occurred in 2000 is located in the Evros delta, immediately adjacent to the border with Turkey. The Evros delta lies entirely within Greek territory. The entire delta area is a wildlife sanctuary protected by the Ramsar Convention and thus is not inhabited. Arable land within the delta is cultivated with various crops, such as corn, alfalfa, cotton, and tobacco. The marshland along the river and the crop fields after harvest provide year-round pasture for cattle, sheep, and goats. The delta can sustain more than 5,000 cattle and approximately 2,000 sheep and goats. The majority of the cattle are free-grazing beef cattle that move freely throughout the area. All cattle and most sheep and goats inside the delta are individually identified using unique ear tags. As outlined in the EVROS program, all animal movements in the prefecture of Evros, including the delta area, are controlled via permits.

Detection and eradication of disease. FMD has been effectively controlled and eradicated from Greece and is not known to exist in Greece at this time. Greece maintains a surveillance system capable of rapidly detecting FMD should the disease be introduced into the country, with more intense scrutiny in the Evros delta bordering Turkey. The animal health status of the Greek Evros prefecture will continue to be closely monitored. Greece has the laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of FMD and is working closely with neighboring countries and EU Member States to address risk factors presented by those potential sources.

These findings are described in further detail in a qualitative evaluation that may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html* by following the link for current requests and supporting documentation. The evaluation documents the factors that have led us to conclude that Greece is free of FMD. Therefore, we are proposing to recognize Greece as free of FMD and add Greece to the list in § 94.1(a)(2) of regions that are considered free of FMD and rinderpest. We would also remove Greece from the list in § 94(a)(3) of countries that are free of rinderpest only.

These proposed actions would relieve certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from Greece. However, because Greece shares common land borders with countries not considered free of rinderpest and FMD, the importation of meat and other products from ruminants and swine into the United States from Greece would continue to be subject to certain restrictions.

Specifically, we are proposing to add Greece to the list in § 94.11(a) of regions declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists, (2) have a common land border with regions where rinderpest or FMD exists, or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

Greece has a common land border with Turkey, a country not considered free of FMD. As a result, there is some risk that the meat and other animal products produced by Greece could be commingled with the fresh (chilled or frozen) meat of animals from a region in which FMD exists and present an undue risk of introducing FMD into the United States if imported without restriction.

Under § 94.11, meat and other animal products of ruminants and swine, including ship stores, airplane meals, and baggage containing these meat or animal products, may not be imported into the United States except in accordance with § 94.11 and the applicable requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service at 9 CFR chapter III.

Section 94.11 generally requires that the meat and other animal products of ruminants and swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government of the exporting region, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, transported through, or that have otherwise been in a region where rinderpest or FMD exists.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are proposing to amend the regulations to add Greece to the list of regions that are considered free of rinderpest and FMD. We are taking this action because we have determined that Greece is now free of FMD. We are also proposing to add Greece to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions would update the disease status of Greece with regard to FMD while continuing to protect the United States from an introduction of rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Greece.

The following analysis addresses the potential economic effects of this proposed rule as required by the Regulatory Flexibility Act.

From an economic standpoint, the proposed rule would have little or no impact on U.S. animal stock and commodities. There are two reasons. First, the proposed rule would not remove other disease-based restrictions on the importation of ruminants or swine (and certain meat and other products from those animals) from Greece into the United States. Because bovine spongiform encephalopathy is considered to exist in Greece, the importation of ruminants and meat, meat products, and certain other products of ruminants that have been in Greece is prohibited. Furthermore, because hog cholera (also known as classical swine fever) and swine vesicular disease are also considered to exist in Greece, the importation of swine from that region into the United States is prohibited, and the importation of pork and pork products is subject to restrictions.

Second, it appears unlikely that the volume of animals and animal products that would be eligible for importation into the United States from Greece would be sufficient to have a significant impact on the U.S. market. In 2000, Greece produced 287,765 metric tons of beef, veal, mutton, lamb, and pig meat, representing less than 1.5 percent of the comparable U.S. production that year. Similarly, Greece's production of whole, fresh cow milk was 770,000 metric tons, only 1 percent of the comparable U.S. production during that period. Finally, in 1999, live cattle and pig stock in Greece was 1,510,000 head, less than 1 percent of the comparable stock in the United States that year.[1]

Besides cow milk, Greece also produces sheep and goat milk. In 2000, Greece produced 670,000 metric tons of sheep milk and 450,000 metric tons of goat milk. However, there appears to be no significant market in the United States for those commodities, or products made from them, such as cheese, as evidenced by the fact that no sheep or goat milk or cheese is commercially produced in the United States, and U.S. imports of those commodities are relatively minor. In 1999, for example, U.S. imports of cheese made from sheep and goat milk from all countries totaled 32,505 metric tons, less than 1 percent of the total U.S. cheese production.

In 1999, the stock of live sheep and goats in Greece was 14,276,000 head, or 66 percent more than the comparable stock in the United States that year. Here again, however, there appears to be no significant market in the United States for those animals, as evidenced by the fact that the United States imported only 53,165 live sheep and goats from all countries in 1999, which represents less than 1 percent of the sheep and goat stock in the United States that year and less than 1 percent

[1] Food and Agricultural Organization of the United Nations.

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of U.S. imports of all live animals from all countries in 1999.[2]

Entities potentially affected by this proposed rule include U.S. import brokers, agents, and others involved in the sale of animals or animal products from Greece that would no longer be prohibited, or that could be imported under less restrictive conditions, if Greece is declared free of FMD. The number and size of entities that might be directly involved in the importation and sale of such animals or animal products from Greece is unknown, but it is likely that these entities would be small, based on the U.S. Small Business Administration's (SBA) size standards.[3] Given the disease-based restrictions discussed previously that would remain in place and the minimal level of U.S. imports of animals and animal products that would be eligible for importation from Greece, we expect that declaring Greece free of FMD would have only a negligible effect on U.S. entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Lists of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

[2] Food and Agricultural Organization of the United Nations.

[3] The overwhelming majority of U.S. business entities are small under the SBA's standards.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 11, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. Section 94.1 would be amended as follows:

a. In paragraph (a)(2), by adding, in alphabetical order, the word "Greece,".

b. In paragraph (a)(3), by removing the words "Greece and the" and adding the word "The" in their place.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence would be amended by adding, in alphabetical order, the word "Greece,".

Done in Washington, DC, this 18th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6837 Filed 3–20–02; 8:45 am]

BILLING CODE 3410–34–U

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 134

RIN 3245–AE71

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the Regulatory Information Number (RIN) to the proposed rule published in the **Federal Register** on March 12, 2002. The rule proposes to amend its regulations governing proceedings before the Office of Hearings and Appeals and to make conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program. This document corrects the RIN.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, 202–401–1420.

Correction

The Small Business Administration published a document in the **Federal Register** on March 12, 2002, 67 FR 11057, mistakenly referring to RIN 3245-AE92. This correction provides the correct RIN.

In proposed rule FR Doc. 02–5613 published on March 12, 2002 (67 FR 11057) make the following correction. On page 11057, in the first column, remove "RIN: 3245–AE92" and replace with "RIN: 3245–AE71."

Dated: March 15, 2002.

Gloria E. Blazsik,

Acting Assistant Administrator for Office of Hearings and Appeals.

[FR Doc. 02–6792 Filed 3–20–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–69–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, -200, and "300 series airplanes. This proposal would require revision of the applicable maintenance program manual, repetitive inspections for corrosion or cracking of the hook roller shafts of the flap carriage, and eventual replacement of the hook roller shafts with new or serviceable hook roller shafts. This replacement would extend the interval for the repetitive inspections. This action is necessary to prevent cracking of the hook roller shafts of the flap carriage and consequent reduced structural integrity of the flap, which could result in jamming of the flap. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–69–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–69–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCCA advises that corroded hook roller shafts have been found on the flap carriages of several in-service airplanes. During its investigation, the airplane manufacturer has identified discrepancies in the manufacturing process that may have resulted in inadequate corrosion protection on some hook roller shafts. This condition, if not corrected, could cause cracking of the hook roller shafts of the flap carriage and consequent reduced structural integrity of the flap, which could result to jamming of the flap.

Explanation of Relevant Service Information

Bombardier, Inc., has issued De Havilland Inc. Dash 8 Airworthiness Limitations List Temporary Revisions (TRs) AWL–75 and AWL–76 (for Model DHC–8–100 series airplanes), AWL 2–19 (for Model DHC–8–200 series airplanes), and AWL 3–83 (for Model DHC–8–300 series airplanes), all dated July 14, 2000. Those TRs specify new thresholds and repetitive intervals for existing structural inspections of the hook roller shafts of the flap carriage according to De Havilland Inc. Dash 8 Maintenance Program Manual PSM 1–8–7 (for Model DHC–8–100 series airplanes), PSM 1–82–7 (for Model DHC–8–200 series airplanes), or PSM 1–83–7 (for Model DHC–8–300 series airplanes), as applicable. TCCA classified these TRs as mandatory and issued Canadian airworthiness directive CF–1999–10R2, dated September 12, 2000, in order to assure the continued airworthiness of these airplanes in Canada. Canadian airworthiness directive CF–1999–10R2 also requires replacement of existing hook roller shafts with new or serviceable hook roller shafts.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revision of De Havilland Inc. Dash 8 Maintenance Program Manual PSM 1–8–7 (for Model DHC–8–100 series airplanes), PSM 1–82–7 (for Model DHC–8–200 series airplanes), or PSM 1–83–7 (for Model DHC–8–300 series airplanes), as applicable, repetitive detailed inspections for corrosion or cracking of the hook roller shafts of the flap carriage, and eventual replacement of the hook roller shafts with new or serviceable hook roller shafts. This replacement would extend the interval for the repetitive inspections. The inspections would be required to be accomplished according to the applicable De Havilland Inc. Dash 8 Maintenance Program Manual and at the compliance times specified in the TRs described previously. The replacement of the hook roller shafts would be required to be accomplished in accordance with certain sections of the applicable De Havilland Inc. Dash 8 Aircraft Maintenance Manual.

Differences Between the Proposed Rule and Service Information

The service information identifies the inspection described previously only as

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a "structural inspection." For clarity, this proposed AD refers to that structural inspection as a "detailed inspection." Note 2 of this proposed AD defines such an inspection.

Cost Impact

The FAA estimates that 183 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $43,920, or $240 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $460 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $128,100, or $700 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001–NM–69–AD.

Applicability: Model DHC–8–100, –200, and "300 series airplanes; serial numbers 3 through 555 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the hook roller shafts of the flap carriage and consequent reduced structural integrity of the flap, which could result in jamming of the flap, accomplish the following:

Revision of Maintenance Program Manual

(a) Within 30 days after the effective date of this AD, accomplish paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model DHC–8–100 series airplanes: Insert De Havilland Inc. Dash 8 Airworthiness Limitations List Temporary Revisions (TRs) AWL–75 and AWL–76, both dated July 14, 2000, into De Havilland Inc. Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7.

(2) For Model DHC–8–200 series airplanes: Insert De Havilland Inc. Airworthiness Limitations List TR AWL 2–19, dated July 14, 2000, into De Havilland Inc. Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7.

(3) For Model DHC–8–300 series airplanes: Insert De Havilland Inc. Airworthiness Limitations List TR AWL 3–83, dated July 14, 2000, into De Havilland Inc. Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7.

Repetitive Inspections

(b) Do a detailed inspection for corrosion or cracking of the hook roller shafts of the flap carriage, at the times specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable, and according to the service information in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For Model DHC–8–100 series airplanes: For Pre Mod 8Q101103 roller shafts having part number (P/N) 85750362–103 or 85750362–105, do the initial inspection at the compliance time specified in the "Threshold" column of the table in De Havilland Inc. Airworthiness Limitations List TRs AWL–75 and AWL–76, both dated July 14, 2000, or within 12 months after the effective date of this AD, whichever occurs later, according to De Havilland Inc. Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7. Thereafter, repeat the inspection at the applicable interval specified in the "Initial Interval" column of the table in TR AWL–75 and AWL–76, until the airplane reaches the applicable threshold listed in the "Repeat Cut-In" column of the table in TR AWL–75 and AWL–76. Thereafter, repeat the inspections at the applicable interval listed in the "Repeat Interval" column of the table in TR AWL–75 and AWL–76, until paragraph (c) of this AD has been accomplished on all affected hook roller shafts. Where the TR specifies compliance intervals in "flights," for the purposes of this AD, "flights" means "flight cycles."

(2) For Model DHC–8–200 series airplanes: For Pre Mod 8Q101103 hook roller shafts having part number (P/N) 85750362–103 or 85750362–105, do the initial inspection at the compliance time specified in the "Threshold" column of the table in De Havilland Inc. Airworthiness Limitations List TR AWL 2–19, dated July 14, 2000, or within 12 months after the effective date of this AD, whichever occurs later, according to De Havilland Inc. Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7. Thereafter, repeat the inspection at the applicable interval specified in the "Initial Interval" column of the table in TR AWL 2–19, until the airplane reaches the applicable threshold listed in the "Repeat Cut-In" column of the table in TR AWL 2–19. Thereafter, repeat the inspections at the applicable interval listed in the "Repeat Interval" column of the table in TR AWL 2–19, until paragraph (c) of this AD has been accomplished on all affected hook roller shafts. Where the TR specifies compliance intervals in "flights," for the purposes of this AD, "flights" means "flight cycles."

(3) For Model DHC–8–300 series airplanes: For Pre Mod 8Q101103 hook roller shafts having part number (P/N) 85750362–103 or 85750362–105, do the initial inspection at the compliance time specified in the "Threshold" column of the table in De Havilland Inc. Airworthiness Limitations List TR AWL 3–83, or within 12 months after the effective date of this AD, whichever occurs later, according to De Havilland Inc. Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7. Thereafter, repeat the inspection at the applicable interval specified in the "Initial Interval" column of the table in TR AWL 3–83, until the airplane reaches the applicable threshold listed in the "Repeat Cut-In" column of the table in TR AWL 3–83. Thereafter, repeat the inspections at the applicable interval listed in the "Repeat Interval" column of the table in TR AWL 3–83 until paragraph (c) of this AD has been accomplished on all affected hook roller shafts. Where the TR specifies compliance intervals in "flights," for the purposes of this AD, "flights" means "flight cycles."

Replacement

(c) At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, replace hook roller shafts having P/N 85750362–103 or 85750362–105 with new or serviceable hook roller shafts having P/N 85750362–107, according to Sections 57–50–44 and 57–50–53 of the De Havilland Inc. Dash 8 Aircraft Maintenance Manual, as applicable. Replacement of all hook roller shafts, P/N 85750362–103 or 85750362–105, with new hook roller shafts, P/N 85750362–107, ends the repetitive inspections at the intervals required by paragraph (a) of this AD.

(1) For hook roller shafts on which any corrosion or crack is found during any inspection per paragraph (b) of this AD: Do the replacement before further flight.

(2) For uncracked or uncorroded hook roller shafts: Do the replacement within 20,000 flight cycles or 5 years after the effective date of this AD, whichever is first.

Post-Replacement Inspections

(d) Following the replacement of hook roller shafts according to paragraph (c) of this AD, do the Structural Inspection Program for the hook roller shafts of the flap carriage, as specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

(1) For Model DHC–8–100 series airplanes: Using the criteria for Mod 8Q101103 hook roller shafts having P/N 85750362–107, do the initial inspection at the compliance time specified in the "Threshold" column of the table in De Havilland Inc. Airworthiness Limitations List TR AWL–75 and AWL "76, both dated July 14, 2000, according to De Havilland Inc. Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7. Thereafter, repeat the inspection at the applicable interval specified in the "Initial Interval" column of the table in TRs AWL–75 and AWL –76, until the airplane reaches the applicable threshold listed in the "Repeat Cut-In" column of the table in TRs AWL–75 and AWL–76. Thereafter, repeat the inspections at the applicable interval listed in the "Repeat Interval" column of the table in TRs AWL–75 and AWL–76. Where the TR specifies compliance intervals in "flights," for the purposes of this AD, "flights" means "flight cycles."

(2) For Model DHC–8–200 series airplanes: Using the criteria for Mod 8Q101103 hook roller shafts having P/N 85750362–107, do the initial inspection at the compliance time specified in the "Threshold" column of the table in De Havilland Inc. Airworthiness Limitations List TR AWL 2–19, dated July 14, 2000, according to De Havilland Inc. Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7. Thereafter, repeat the inspection at the applicable interval specified in the "Initial Interval" column of the table in TR AWL 2–19, until the airplane reaches the applicable threshold listed in the "Repeat Cut-In" column of the table in TR AWL 2–19. Thereafter, repeat the inspections at the applicable interval listed in the "Repeat Interval" column of the table in TR AWL 2–19. Where the TR specifies compliance intervals in "flights," for the purposes of this AD, "flights" means "flight cycles."

(3) For Model DHC–8–300 series airplanes: Using the criteria for Mod 8Q101103 hook roller shafts having P/N 85750362–107, do the initial inspection at the compliance time specified in the "Threshold" column of the table in De Havilland Inc. Airworthiness Limitations List TR AWL 3–83, according to De Havilland Inc. Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7. Thereafter, repeat the inspection at the applicable interval specified in the "Initial Interval" column of the table in TR AWL 3–83, until the airplane reaches the applicable threshold listed in the "Repeat Cut-In" column of the table in TR AWL 3–83. Thereafter, repeat the inspections at the applicable interval listed in the "Repeat Interval" column of the table in TR AWL 3–83. Where the TR specifies compliance intervals in "flights," for the purposes of this AD, "flights" means "flight cycles."

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–1999–10R2, dated September 12, 2000.

Issued in Renton, Washington, on March 14, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6794 Filed 3–20–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that would have required installation of two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment. This new action revises the proposed rule by adding certain airplanes and removing certain other airplanes from the applicability. The actions specified by this new proposed AD are intended to prevent arcing between circuit breaker terminals and adjacent equipment and structure located in the generator control rack in the electrical/electronics compartment, which, if not corrected, could result in possible electrical shock to maintenance personnel during maintenance operations. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the

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Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–130–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–130–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 29, 2001 (66 FR 45655). That NPRM would have required installation of two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment. That condition, if not corrected, could result in arcing between circuit breaker terminals and adjacent equipment and structure located in the generator control rack in the electrical/electronics compartment, which, if not corrected, could result in possible electrical shock to maintenance personnel during maintenance operations.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Support for the Proposed Rule

One commenter mentions that it generally supports the proposed rule.

Request to Add Additional Service Information

One commenter advises that Boeing has revised Service Bulletin MD90–24–007 by issuing Revision 01, dated August 31, 2000, and Revision 02, dated July 16, 2001. The commenter notes that Revision 01 and Revision 02 add certain airplanes and delete certain other airplanes from the effectivity of the original service bulletin. Since the procedures described in the original service bulletin did not change in the revised service bulletins, the commenter requests that credit also be given for the accomplishment of Revision 01 or 02 of the service bulletin.

The FAA agrees that the procedures described in the original service bulletin are the same as those described in Revision 01 and Revision 02 of the original service bulletin. Since Boeing Service Bulletin MD90–24–007, Revision 02, dated July 16, 2001, contains the correct airplane effectivity, we have revised the applicability of this proposed rule to specify Revision 02. We have also added a new "Note 2" that provides credit for those procedures accomplished per the original service bulletin and Revision 01 of the service bulletin.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 26 Model MD–90–30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,160, or $320 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–130–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category; as identified in Boeing Service Bulletin MD90–24–007, Revision 02, dated July 16, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing between circuit breaker terminals and adjacent equipment and structure located on the generator control rack in the electrical/electronics compartment, and consequent electrical shock to maintenance personnel during maintenance operations, accomplish the following:

Installation

(a) Within one year after the effective date of this AD, install two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–007, Revision 02, dated July 16, 2001.

Note 2: Installation of two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment per the Accomplishment Instructions of Boeing Service Bulletin MD90–24–007, dated February 7, 1996, or Revision 01, dated August 31, 2000, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 14, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6795 Filed 3–20–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 200 and 212

[Docket OST–2002–11741]

Standards for Approving International Charter Flights; Petition of the National Air Carrier Association for Rulemaking

AGENCY: Office of the Secretary, DOT.

ACTION: Petition for rulemaking; request for comments.

SUMMARY: The Department is inviting comments on the petition for rulemaking filed by the National Air Carrier Association (NACA) to add, delete and amend certain provisions of 14 CFR Parts 200 and 212 of the Department's Regulations. In its petition, NACA proposes, among other things, changes in the definitions and standards the Department uses in determining whether to grant or deny foreign air carrier requests to conduct certain types of international charter flights. In order that we may have a complete record on which to base our decision on NACA's petition, we solicit the views of all interested persons and entities, including direct air carriers (both U.S. and foreign), indirect air carriers (both U.S. and foreign), trade associations, labor unions, travel agents, shippers, communities, and the general public, on the proposals set forth in that petition. The proposal is in OST Docket 2002–11741 and can be accessed via the internet by searching Docket 11741 at the DOT Docket website (*http://dms.dot.gov*). Hard copies may also be obtained by calling the contact person listed below.

DATES: Comments to the Petition for Rulemaking are due May 6, 2002. If comments are filed, reply comments are due June 4, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket number OST–2002–11741) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov. Comments must be filed in Docket OST–2002–11741, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any

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comments not submitted electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Gordon Bingham, Foreign Air Carrier Licensing Division, U.S. Department of Transportation, Room 6412, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–2404.

Issued in Washington, DC on March 15, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–6820 Filed 3–20–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR PART 1308

[DEA–225P]

Schedule of Controlled Substances: Proposed Rule: Rescheduling of Buprenorphine From Schedule V to Schedule III

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to increase the regulatory controls placed on buprenorphine by rescheduling buprenorphine from a Schedule V narcotic to a Schedule III narcotic. This proposed action is based on a formal rescheduling recommendation by the Department of Health and Human Services (DHHS) and a DEA review indicating that buprenorphine meets the definition of a Schedule III narcotic. If finalized, this action will impose the regulatory controls and criminal sanctions of a Schedule III narcotic on those person who handle buprenorphine or products containing buprenorphine.

DATES: Comments must be received by April 22, 2002.

ADDRESSES: Comments should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Buprenorphine?

Buprenorphine is a derivative of thebaine, a major constituent of opium, presently marketed in the United States as an injectable formulation under the brand name of Buprenex® for the treatment of pain. It is classified as a narcotic agonist-antagonist, or partial agonist, with an analgesic potency far greater than morphine (generally reported to be about 20 to 30 times that of morphine sulfate in humans). DEA placed buprenorphine in Schedule V of the Controlled substances Act (CSA) in 1985 (50 FR 8104).

Buprenorphine has also been investigated for the treatment of narcotic addiction. Two New Drug Applications (NDA) have been submitted to the Food and Drug Administration (FDA) for this indication. Applications for marketing approval for these high-dose sublingual tablet products remain pending at FDA. However, approvable letters have been issued for both products and they are likely to receive final marketing approval in 2002.

Why Is DEA Issuing This Notice?

As part of the NDA review process for the high-dose sublingual tablet formulations for buprenorphine, the FDA reviewed and evaluated the scientific and medical data relating to scheduling under the CSA pursuant to 21 U.S.C. 811(b), (c), and (f). Since the original review conducted by the FDA in the early 1980s (prior to the marketing of Buprenex®), a substantial amount of human experience with buprenorphine products as well as a number of scientific studies have provided new information. These data have prompted a reevaluation of buprenorphine's status under the CSA. The eight factors used to determine the appropriate placement of buprenorphine under the CSA include:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its physic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

On December 4, 2001, the Assistant Surgeon General and Acting Principal Deputy Assistant Secretary for Health, Department of Health and Human Services (DHHS), Arthur J. Lawrence, signed and forwarded a letter to the DEA recommending that buprenorphine be rescheduled as a Schedule III substance. This recommendation was based on FDA's scientific and medical evaluation. After considering the FDA's evalaution and the DHHS scheduling recommendation and reviewing all the available relevant data regarding the eight factors determinative of control (21 U.S.C. 811(b)(c)), the DEA concludes that buprenorphine should be placed in Schedule III of the CSA.

Why Did DEA Conclude That Buprenorphine Should Be Placed in Schedule III of the Controlled Substances Act?

The DEA found that buprenorphine met the definition of a Schedule III substance. In accordance with 21 U.S.C. 812(b):

1. Buprenorphine has a potential for abuse less than the drugs or other substances in Schedule I or II.

Buprenorphine is a long-acting partial agonist with a high affinity for and slow dissociation from opioid receptors.

Buprenorphine produces effects similar to other pure mu agonists (like morphine or hydromorphone) including euphoria, drug liking, respiratory depression, pupillary constriction and sedation. It is recognized as morphine or heroin-like by experienced narcotic abusers.

Little abuse or diversion of buprenorphine has been noted in the U.S. (reflecting very limited prescription, distribution and product formulation: only low-dose injectable buprenorphine has been marketed). However, significant abuse of buprenorphine has been reported in many countries where it has been more available and other formulations have been marketed. In those countries, buprenorphine has been abused via the intravenous, sublingual, intransasal and inhalation routes by many abuser populations. Buprenorphine products have been diverted from legitimate channels through theft, doctor shopping and fraudulent prescriptions. Significant amounts of buprenorphine have been trafficked across international borders and law enforcement authorities have seized large amounts of buprenorphine involved in these activities.

The above data suggest that the abuse potential of buprenorphine is high and closely resembles other narcotics in Schedule II. However, buprenorphine effects are less dose-dependent than pure mu agonists and a "ceiling effect" has been demonstrated for many of the actions of buprenorphine. This attenuation in effects at high doses may have a blunting effect on the continued escalation in dose to obtain greater reinforcing effects. Although buprenorphine is capable of producing significant respiratory depression and numerous deaths have been associated with injection and abuse of high-dose sublingual tablets in combination with other psychoactive drugs in France, buprenorphine is a safer drug in overdose than other schedule II narcotics. Therefore, buprenorphine appears to have somewhat less abuse potential than Schedule I or II narcotic substances but more abuse potential than partial agonists in Schedule IV. Schedule IV partial agonists are less potent, less likely to produce pure mu agonists effects over a wide range of doses and are generally not recognized as heroin-like by experienced opioid abusers.

2. Buprenorphine has a currently accepted medical use in treatment in the United States.

Buprenex®, a low-dose (0.3 mg/m1) buprenorphine product, is approved for use as a parenteral narcotic analgesic for pain management. Subutex® and Subozone®, high-dose (2 and 8 mg) sublingual tablets for the treatment of narcotic addiction, have not, as yet, received final marketing approval in the U.S. If/When final approval is granted, they will have current accepted medical use in the United States.

3. Abuse of buprenorphine may lead to moderate or low physical dependence or high psychological dependence.

Data from a number of studies indicate that chronic use of buprenorphine is associated with a withdrawal syndrome that is of less intensity and, often, of longer duration than other opioids in Schedule I or II. The withdrawal effects have been characterized as mild to moderate. In addition, about 20 percent of babies born to mothers in treatment with buprenorphine substitution for opioid dependence have exhibited an abstinence syndrome severe enough to require treatment. Drug craving after discontinuation of buprenorphine use has been reported. Buprenorphine-dependent patients can easily return to heroin use and vice versa. These data suggest that buprenorphine produces low to moderate physical dependence and high psychological dependence.

It is likely that the approval and marketing of high-dose buprenorphine sublingual tables (and any other buprenorphine products that may be marketed in the future) will increase the availability of buprenorphine in the United States. The Schedule V controls presently in effect for buprenorphine are insufficient to prevent the diversion and abuse of buprenorphine that is likely to occur with its increased availability. Both foreign data on buprenorphine and the U.S. experience with other drugs like buprenorphine have been viewed by both the DHHS and the DEA as significant and relevant to the control of buprenorphine under the CSA.

According to the United Nations International Narcotics Control Board (UN/INCB), worldwide usage and availability of buprenorphine has increased substantially in recent years. Buprenorphine production has grown from 35 kg in 1980 to 460 kg in 1998. In France, imports increased from 5 kg in 1994 to 159 kg in 1998. The increased availability of buprenorphine in France coincides with the marketing of high-dose sublingual tablets and has been accompanied by increased diversion and abuse and over 100 buprenorphine-related deaths.

In the United States, expansion in the use of mixed agonists-antagonists or partial agonists has been accompanied by significant increases in their diversion, abuse and public health risks. For example, both pentazocine (Talwin®) and butorphanol (Stadol®) were initially marketed as injectable solutions for analgesia. The use of these products were limited and very few abuse-related problems were identified. However, when pentazocine became available in a table formulation and a butorphanol nasal spray was introduced, these fewer formulations greatly increased the availability of these substances. Significant abuse and diversion of these products resulted in their control under the CSA.

What Is the Effect of This Notice?

This proposed rule, if finalized, would specifically list buprenorphine as a Schedule III narcotic. All products containing buprenorphine or salts or buprenorphine would be subject to Schedule III narcotic regulatory requirements. The Schedule III placement will not prevent any future buprenorphine products approved by the FDA for the treatment of narcotic addiction from being used in office based treatment of narcotic addiction in accordance with the Drug Addiction Treatment Act of 2000 (Pub. L. 106–310). This Act amended the CSA to allow qualified physicians, under certification by the DHHS, to prescribe Schedule III–V narcotic drugs (FDA-approved for the indication of narcotic addiction treatment) to narcotic addicts outside the context of clinic-based narcotic treatment programs. The DEA recognizes the need to expand narcotic treatment and this factor was a consideration in proposing Schedule III placement for buprenorphine. However, buprenorphine's abuse potential and psychological dependence profile may result in significant abuse and diversion of the sublingual tablets once they are available for use in the U.S. Should this occur, the DEA will initiate action to further increase the regulatory controls on buprenorphine.

This notice also provides an opportunity for interested persons to comment, in writing, with regard to any information they feel may have a bearing on this matter. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. In the event that comments, objections, or requests for a hearing raise one or more questions that the Administrator finds warrants a hearing, the Administrator shall publish a hearing notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing.

What Regulatory Requirements Will Be Applied to Handlers of Buprenorphine?

Persons currently involved with the manufacture or handling of this substance are not expected to comply with DEA regulations applicable to a schedule III narcotic substance until such time as a final rule is published in the **Federal Register.** If/When a final rule is published in the **Federal Register**, persons who are currently engaged in manufacturing, distributing, dispensing, importing, exporting, storing or conducting research with buprenorphine will be provided with delayed dates for compliance with Federal regulation in order to avoid imposing any special hardship.

Regulatory Certifications

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 605(b)). It will not have a significant economic impact on a substantial number of small business entities. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

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Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The Administrator certifies that this proposed rulemaking has been drafted in accordance with the principles in Executive Order 12866, Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of the Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (21 CFR 0.100), the Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.13 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium 9803

(ii) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9804

(iii) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium 9805

(iv) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts 9806

(v) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts 9807

(vi) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9808

(vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9809

(viii) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9810

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(i) Buprenorphine 9064

(ii) [Reserved.]

* * * * *

3. Section 1308.15 (b) introductory text is proposed to be revised and paragraph (b) (1) is proposed to be removed and reserved to read as follows:

§ 1308.15 Schedule V.

* * * * *

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) [Reserved]

* * * * *

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6767 Filed 3–20–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–043; S–044; S–046; S–047; S–047a]

RIN 1218–AA68; 1218–AA70 [1]

Safety Standards In Shipyard Employment for Scaffolds; Welding, Cutting, and Heating; Access and Egress; and Fall Protection

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Withdrawal of proposed rules.

SUMMARY: OSHA is withdrawing its proposed rules for Scaffolds in Shipyard Employment, Subpart N, Welding, Cutting and Heating in Shipyard Employment, Subpart D, Access and Egress in Shipyards, Subpart E, and Fall Protection for Shipyard Employment, Subpart M.

DATES: This withdrawal is effective on March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph V. Daddura, OSHA Office of Maritime Standards, N–3609, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 693–2086.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1988, OSHA published proposed rules for Scaffolds in Shipyard Employment, Subpart N (53 FR 48182), Welding, Cutting and Heating in Shipyard Employment, Subpart D (53 FR 48111), Access and Egress in Shipyards, Subpart E (53 FR 48130), and Fall Protection for Shipyard Employment, Subpart M (53 FR 48168). The proposed rules intended to consolidate coverage of various shipyard hazards into one vertical standard.

The proposed rule on scaffolds included general requirements for scaffold construction and use, updated requirements for fall protection and falling object protection, and provided specific requirements for certain types of scaffolds. OSHA received 14 comments in response to this proposed rule. See Exhibit 6 (Docket S–047). On April 12, 1994, OSHA reopened the rulemaking record to consider some additional issues, including the appropriateness of replacing the term "capable person" in the proposed rule with "qualified person," the requirements for interior hung scaffolds, and the qualifications for persons performing scaffold inspections. 59 FR 17290 (April 12, 1994). OSHA received 8 comments in response to this notice. See Ex. 9 (Docket S–047a).

The proposed rule for welding, cutting, and heating included general requirements for engineering controls, work practices, and personal protective equipment. It also established general requirements for welding, cutting, and heating in hazardous environments such as hollow metal spaces and confined spaces. In addition, the proposal included specific requirements for oxyfuel gas welding and cutting, arc welding and cutting, and resistance welding. OSHA received 8 comments in response to this proposed rule. See Ex. 6 (Docket S–043).

The proposed rule for access and egress included general requirements for means of access and egress, as well as specific requirements for access and egress on vessels, drydocks, cargo spaces, and other structures. OSHA received 5 comments in response to this proposed rule. See Ex. 6 (Docket S–044).

The proposed rule for fall protection specified instances where fall protection systems would be required in the shipyard environment. It also set forth requirements for fall protection systems criteria, including requirements for guardrail systems, and safety net systems. OSHA received 13 comments in response to this proposed rule. See Ex. 6 (Docket S–046).

Reasons for Withdrawal of Proposed Rules

OSHA is withdrawing the proposed rules for the following reasons. First, OSHA is devoting its resources to higher priority shipyard standards. These important rulemakings include proposed standards for Fire Protection in Shipyard Employment, Subpart P, and General Working Conditions for Shipyard Employment, Subpart F. See OSHA Regulatory Agenda at 66 FR 61872 (Dec. 3, 2001).

Second, there are technologies and developments in shipyard employment that have emerged over the last 14 years that are not reflected in the proposed rules and supporting economic analyses. For example, since 1988 the use of interior hung scaffolds in the shipyard industry has increased greatly. OSHA did not contemplate such widespread use of these scaffolds when it published the proposed rule on scaffolds in 1988. Indeed, the proposed rule on scaffolds only provides minimum requirements for the erection of interior hung scaffolds; it does not address the dismantling of such scaffolds or certain work practices that may affect the structural integrity of the scaffolds. In addition, the manner in which ships and other vessels are constructed has changed dramatically since 1988, especially in small shipyards. Most ships are now constructed in component parts and assembled in one location. This method of construction reduces the need for certain work practices, such as piece-by-piece welding. It also reduces the need for multiple craft work at a single location. OSHA did not envision such a change throughout the entire shipyard industry when it published the proposed rules. This change affects the need for the requirements in the proposed rules, as well as necessitating changes to the supporting economic analyses.

Third, the rulemaking records for these proposed rules are particularly sparse. OSHA received only a few comments in response to each proposal. While most of these comments were helpful and informative, OSHA believes there is insufficient information in the rulemaking records upon which to regulate the specific conditions the proposals were intended to address.

Accordingly, the proposed rules for (1) Scaffolds in Shipyard Employment, Subpart N, (2) Welding, Cutting and Heating in Shipyard Employment, Subpart D, (3) Access and Egress in Shipyards, Subpart E, and (4) Fall Protection for Shipyard Employment, Subpart M are withdrawn.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 6 and 8 of the Occupational Safety and Health Act (29 U.S.C. 655, 657), 29 CFR 1911.11, and 29 CFR 1911.18.

Issued at Washington, DC, this 11 day of March, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–6805 Filed 3–20–02; 8:45 am]

BILLING CODE 4510–26–M

[1] These RIN numbers correspond to the proposed rules for Scaffolds in Shipyard Employment, Subpart N and Access and Egress in Shipyards, Subpart E respectively. The proposed rules for Welding, Cutting and Heating in Shipyard Employment, Subpart D, and Fall Protection for Shipyard Employment, Subpart M no longer appear in OSHA's Semi-Annual Regulatory Agenda. These proposed rules were formally assigned RIN numbers 1218–AA73 and 1218–AA66 respectively.

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; 1611 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

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ACTION: Regulatory negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its eligibility regulations at 45 CFR Part 1611. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1611 Negotiated Rulemaking Working Group will meet on April 11–12, 2002. The meeting will begin at 9 a.m. on April 11, 2002. It is anticipated that the meeting will end by 3:30 p.m. on April 12, 2002.

ADDRESSES: The meeting will be held at the offices of the Center for Law and Social Policy, 1015 15th Street, NW., Suite 400, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20001; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its eligibility regulations at 45 CFR Part 1611. The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to public observation. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Ms. Condray.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–6840 Filed 3–20–02; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 515, 520, 530, 535, 540, 550, 551, 555, and 560

[Docket No. 02–05]

Update of Existing and Addition of New Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission ("Commission") proposes to revise its existing fees for filing petitions and complaints; various public information services, such as record searches, document copying, and admissions to practice; filing ocean transportation intermediary applications; applications for special permission; service contracts; agreements; and passenger vessel performance and casualty certificate applications. These revised fees reflect current costs to the Commission. In addition, the Commission adds a new fee for the provision of a database report on effective carrier agreements, makes nomenclature changes in certain CFR units with respect to Commission bureau designations, and makes section reference changes in certain CFR units to reflect numbering changes made in a previous rulemaking. The Commission also is republishing a fee requirement that was previously inadvertently omitted.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than April 22, 2002.

ADDRESSES: Address comments to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, *E-mail: secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: JoAnn Baca, Special Assistant to the Executive Director, Office of the Executive Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202)523–5800, E-mail: joannb@fmc.gov.

SUPPLEMENTARY INFORMATION: The Commission is authorized under the Independent Offices Appropriation Act ("IOAA"), 31 U.S.C. 9701 (1983), to establish fees for services and benefits that it provides to specific recipients. The IOAA provides that each service or thing of value provided by an agency to a person be self-sustaining to the extent possible, and that each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, policy or interest served, and other relevant facts. 31 U.S.C. 9701.

The primary guidance for implementation of IOAA is Office of Management and Budget ("OMB") Circular A–25, as revised July 8, 1993. OMB Circular A–25 requires that a reasonable charge be made to each recipient for a measurable unit or amount of Government service from which the recipient derives a benefit, in order that the Government recover the full cost of rendering that service.

OMB Circular A–25 further provides that costs be determined or estimated from the best available records in the agency, and that cost computations shall cover the direct and indirect costs to the Government of carrying out the activity, including but not limited to:

(A) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.

(B) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel and rent.

(C) The management and supervisory costs.

(D) The costs of enforcement, collection, research, establishment of standards and regulations, including any required environmental impact statements.

OMB Circular A–25, paragraphs 6.d.1.(a), (b), (c) and (d).

OMB Circular A–25 also calls for a periodic reassessment of costs, with related adjustment of fees, if necessary, and the establishment of new fees where none exist.

The Commission's current filing and service fees have been in effect since 1998, and are no longer representative of the Commission's actual costs for providing such services. Accordingly, the Commission proposes to revise its fees so as to reflect costs attendant to providing the involved services. Fee increases primarily reflect increases in salary and indirect (overhead) costs. For some services, the increase in processing or review time accounts in part for the increase in the level of proposed fees. For other services, proposed fees are lower than current fees due to overall reduced costs to provide those services.

The Commission is instituting a new user fee for provision of a database report on effective carrier agreements. Also, in promulgating new rules governing the filing of service contracts to implement the Ocean Shipping Reform Act of 1998, Public Law 105–158, 112 Stat. 1902, in Docket No. 99–12, *Termination of Dial-Up Service Contract Filing System*, 64 FR 41041 (July 29, 1999), we inadvertently failed to carry over § 514.7 into part 530. That section was a permission process to correct clerical or administrative errors in the essential terms of a filed service contract, and included an attendant user fee. We are therefore republishing it.

The Commission has reviewed its current fees and developed data on the time and cost involved in providing particular services to arrive at the updated direct labor costs for those services. The direct labor costs include clerical, professional, supervisory, and executive time expended on an activity, plus a check processing cost of $1.70. The indirect costs include Government overhead costs, which are fringe benefits and other wage-related Government contributions contained in OMB Circular A–76; [1] Commission general and administrative expenses; [2] and office general and administrative overhead expenses.[3] The sum of these indirect cost components gives an indirect cost factor that is added to the direct labor costs of an activity to arrive at the fully distributed cost.

A detailed summary of the data used to arrive at the proposed fees is available from the Secretary of the Commission upon written or e-mail request.

The Commission intends to update its fees biennially in keeping with OMB guidance. In updating its fees, the Commission will incorporate changes in the salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level of costs.

The Chairman of the Federal Maritime Commission hereby certifies that these proposed fees will not have a significant economic impact on a substantial number of small entities. The Commission recognizes that these proposed revisions may have some impact on the shipping industry. Fees collected from the general public for Commission information recover the cost to the Commission for providing specific services. Commission regulations provide for waiver of fees for those entities that can make the required showing of undue hardship (46 CFR 503.41).

This Rule also makes nomenclature changes in certain CFR units to reflect a change in a relevant Commission bureau name since these CFR units were last revised. Additionally, this Rule makes section reference changes in certain CFR units to reflect numbering changes made in a previous rulemaking.

This Rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

[1] These include leave and holidays, retirement, worker's compensation, awards, health and life insurance, and Medicare. These are expressed as a percentage of basic pay.

[2] These costs include all salaries and overhead, such as rent, utilities, supplies, and equipment, allocated to the Offices of the Commissioners, Executive Director (including administrative offices) and General Counsel. The percentage of these costs to the total agency budget is allocated across all Commission programs.

[3] These expenses are limited to the overhead expenses allocated to those bureaus and offices involved in the fee-generating activities, and is derived from dividing allocated overhead expenses by the total funding for these fee-generated offices.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act.

46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

46 CFR Part 520

Common carrier, Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 550

Administrative practice and procedure, Maritime carriers.

46 CFR Part 551

Administrative practice and procedure, Maritime carriers.

46 CFR Part 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 560

Administrative practice and procedure, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission proposes to amend 46 CFR parts 502, 503, 515, 520, 530, 535, 540, 550, 551, 555, and 560 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817d, 817e, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1964–1965 Comp. P. 306; 21 U.S.C. 853a; Pub. L. 105–258, 112 Stat. 1902.

Subpart D—Rulemaking

2. The fourth sentence of § 502.51(a) is revised to read as follows:

§ 502.51 Initiation of procedure to issue, amend, or repeal a rule.

(a) * * * Petitions shall be accompanied by remittance of a $228 filing fee.* * *

* * * * *

Subpart E—Proceedings; Pleadings; Motions; Replies

3. Section 502.62(g) is revised to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(g) The complaint shall be accompanied by remittance of a $209 filing fee.

* * * * *

4. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a $228 filing fee.

* * * * *

5. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions—General and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a $228 filing fee. [Rule 69.]

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a $209 filing fee. [Rule 182.]

Subpart Q—Refund or Waiver of Freight Charges

7. § 502.271(d)(5) is revised to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(d) * * *

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(5) Applications must be accompanied by remittance of a $81 filing fee.

* * * * *

Subpart S—Informal Procedure for Adjudication of Small Claims

8. The last sentence of § 502.304(b) is revised to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(b) * * * Such claims shall be accompanied by remittance of a $63 filing fee.

* * * * *

PART 503—PUBLIC INFORMATION

9. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

10. In § 503.43, paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii) and (iii), paragraph (c)(4), paragraph (d) and paragraph (e) are revised to read as follows:

§ 503.43 Fees for services.

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of $20.00 per hour and by professional/executive personnel at a rate of $40.00 per hour.

(ii) Minimum charge for record search is $20.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of $75.00 per hour. * * *

(3) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $20.00 per hour.

(iii) Minimum charge for copying is $5.00.

* * * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $86.00 for each certification.

(d) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $10 per proceeding.

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $95 pursuant to § 502.27 of this chapter.

Subpart G—Access to Any Record of Identifiable Personal Information

11. In § 503.69, paragraph (b)(2) is revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $86 for each certification.

* * * * *

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

12. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A—General

13. In § 515.5, paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 515.5 Forms and Fees.

(a) *Forms.* License form FMC–18 Rev., and financial responsibility forms FMC–48, FMC–67, FMC–68, FMC–69 may be obtained from the Commission's website at *http://www.fmc.gov*, the Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, D.C. 20573, or from any of the Commission's area representatives.

(b) * * *

(1) Application for license as required by § 515.12(a): $799;

(2) Application for status change or license transfer as required by §§ 515.18(a) and 515.18(b): $506; and

(3) Supplementary investigations required by § 515.25(a): $225.

Subpart D—Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

14. The second sentence of § 515.34 is revised to read as follows:

§ 515.34 Regulated Persons Index.

* * * The database may be purchased for $103 by contacting the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573. * * *

§ 515.12, 515.18, 515.22, 515.25, Appendix A to Subpart C, Appendix B to Subpart C, Appendix D to Subpart C [Amended]

15. In addition to the amendments set forth above, in 46 CFR part 515 remove the words "Bureau of Tariffs, Certification and Licensing" and add, in their place, the words "Bureau of Consumer Complaints and Licensing" in the following places:

a. Section 515.12(a)(1);
b. Section 515.18(a);
c. Section 515.22(e);
d. Section 515.25(a);
e. Appendix A to Subpart C;
f. Appendix B to Subpart C; and
g. Appendix D to Subpart C.

PART 520—CARRIER AUTOMATED TARIFFS

16. The authority citation for part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; and sec. 424 of Pub. L. 105–383, 112 Stat. 3411.

Subpart B—Filing Requirements

17. The last sentence of § 520.14(c)(1) is revised to read as follows:

§ 520.14 Special permission.

(c) * * *

(1) * * * Every such application shall be submitted to the Bureau of Consumer Complaints and Licensing and be accompanied by a filing fee of $172.

* * * * *

§ 520.2, 520.3, 520.7 [Amended]

18. In addition to the amendments set forth above, in 46 CFR part 520 remove the words "Bureau of Tariffs, Certification and Licensing" and add, in their place, the words "Bureau of Consumer Complaints and Licensing" and remove the acronym "BTCL" and add, in its place, the acronym "BCCL" in the following places:

a. Section 520.2;
b. Section 520.3(d); and
c. Section 520.7(b).

PART 530—SERVICE CONTRACTS

19. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. App. 1704, 1705, 1707, 1716.

Subpart B—Service Contracts

20. Section 530.10(c), introductory text, is revised to read as follows:

§ 530.10 Amendment, correction, and cancellation.

* * * * *

(c) * * * Requests shall be filed, in duplicate, with the Commission's Office

of the Secretary within forty-five (45) days of the contract's filing with the Commission, accompanied by remittance of a $276 service fee, and shall include:

* * * * *

PART 535—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

21. The authority citation for part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

Subpart D—Filing of Agreements

22–23. In § 535.401, paragraph (f) is revised and paragraph (g) is added to read as follows:

§ 535.401 General requirements.

* * * * *

(f) *Fees.* The filing fee is $1,834 for new class A/B agreements requiring Commission review and action; $931 for class A/B agreement modifications requiring Commission review and action; $442 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.26(e) of this chapter); and $145 for carrier and terminal exempt agreements.

(g) The fee for the Commission's agreement database report is $32.

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

24. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358; 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

25. The last two sentences in § 540.4(b) are revised to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,549. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,276.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

26. The last two sentences in § 540.23(b) are revised to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $1,111. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $557.

* * * * *

PART 550—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

27. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 19(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. 105–258; Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart B—Production of Information

28. Section 550.203(b) is revised to read as follows:

§ 550.203 Failure to provide information.

* * * * *

(b) The Commission may, when there is a failure to produce any information ordered produced under § 550.201, make appropriate findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart D—Petitions for Section 19 Relief

29. Section 550.402 is revised to read as follows:

§ 550.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $228 filing fee.

Subpart F—Corrective Actions

30. Section 550.601(d) is revised to read as follows:

§ 550.601 Actions to correct unfavorable conditions.

* * * * *

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR part 535; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

* * * * *

PART 551—ACTION TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

31. The authority citation for part 551 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app 876 (5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

32. Section 551.1 is revised to read as follows:

§ 551.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 551, such rules shall be published in the **Federal Register** and added to this part.

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PART 555—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

33. The authority citation for part 555 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105–258.

34. In § 555.4, paragraphs (a) and (b)(9) are revised to read as follows:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $228 filing fee.

* * * * *

(b) * * *

(9) A recommended action, including any of those enumerated in § 555.8, the result of which will, in the view of the petitioner, address the conditions complained of.

* * * * *

35. In § 555.5, the first sentence of paragraph (a) and the last sentence of § 555.5(c) are revised to read as follows:

§ 555.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in § 555.3 may be initiated by the Commission on its own motion or on the petition of any person pursuant to § 555.4. * * *

* * * * *

(c) * * * Persons who receive information requests from the Commission pursuant to § 555.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

* * * * *

36. The first sentence of § 555.6(c) is revised to read as follows:

§ 555.6 Information demands and subpoenas.

* * * * *

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 555.4, or voluntarily submitted by any person pursuant to § 555.5(c), shall not be disclosed to the public. * * *

37. The first sentence of § 555.7 is revised to read as follows:

§ 555.7 Notification to Secretary of State.

Upon publication of a petition in the **Federal Register**, or on its own motion should it determine to initiate an investigation pursuant to § 555.5, the Commission will notify the Secretary of State of same, and may request action to seek resolution of the matter through diplomatic channels. * * *

§ 555.5, 555.8 [Amended]

38. In addition to the amendments set forth above, in 46 CFR part 555 remove the references to the term "§ 588.3" and add, in its place, the term "§ 555.3" in the following places:

a. Section 555.5 (b);
b. Section 555.8 (a); and
c. Section 555.8 (a) (7).

PART 560—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

39. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714 and 1716, as amended by Pub. L. 105–258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105–258.

40. Section 560.3(a)(2) is revised to read as follows:

§ 560.3 Petitions for relief.

(a) * * *

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $228 filing fee.

* * * * *

41. In § 560.4, paragraphs (a) and (b)(2) are revised to read as follows:

§ 560.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 560.3, when there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b) * * *

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to § 560.5 of this part. Factual submissions shall be in affidavit form.

* * * * *

42. Section 560.7(b)(6) is revised to read as follows:

§ 560.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

(6) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 560.2 of this part;

* * * * *

43. Section 560.8 is revised to read as follows:

§ 560.8 Submission of decision to the President.

Concurrently with the submission of any decision imposing sanctions to the **Federal Register** pursuant to § 560.7(d)(1), the Commission shall transmit that decision to the President of the United States who may, within ten days after receiving the decision, disapprove it if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

44. Section 560.9(b) is revised to read as follows:

§ 560.9 Postponement, discontinuance, or suspension of action.

* * * * *

(b) The Commission shall postpone, discontinue or suspend any action provided for in its final decision if so directed by the President for reasons of national defense or foreign policy of the United States as provided in § 560.8.

By the Commission*.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6742 Filed 3–20–02; 8:45 am]

BILLING CODE 6730–01–P

* Commissioner John A. Moran is not participating.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH96

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on Proposed Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice of the reopening of the public comment period for the proposal to designate critical habitat for the northern Great Plains population of the piping plover (*Charadrius melodus*), and the associated draft environmental assessment and economic analysis, to allow all interested parties to comment. Comments previously submitted via regular or express postal mail need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final rule. Please resubmit comments via regular or express mail that were sent to us by electronic mail since December 2001. We have not received your comments because the Service's internet electronic mail has not been available due to a court order in an unrelated case.

DATES: The comment period is opened and will close on May 20, 2002. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: You may submit written comments and information to Piping Plover Comments, South Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, SD 57501, or by facsimile to 605–224–9974.

You may hand-deliver written comments to our South Dakota Field Office at the address given above.

Copies of the draft economic analysis, draft environmental assessment, and proposed rule for designation of critical habitat for the northern Great Plains breeding population of the piping plover are available from the above address or on the Internet at *http://mountain-prairie.fws.gov/pipingplover*. Please note that at the time this notice was prepared the Service's web pages and electronic mail were not available because of a court order in an unrelated case. If you are unable to access the above website please contact the South Dakota Field Office by telephone or regular mail at the above address.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nell McPhillips, Fish and Wildlife Biologist, at the above address or at 605–224–8693, extension 32.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the northern Great Plains breeding population of the piping plover in the **Federal Register** on June 12, 2001 (66 FR 31760). Section 4(b)(2) of the Endangered Species Act (Act) requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impacts, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

The proposed designation includes 11 areas of prairie alkali wetlands, inland and reservoir lakes in 5 counties in Montana, 18 counties in North Dakota, and 1 county at Lake-of-the-Woods, Minnesota, totaling approximately 196,576.5 acres (79,553.1 hectares). It also includes five areas of portions of four rivers in the States of Montana, North Dakota, South Dakota, and Nebraska, totaling approximately 1,338 miles (2,152.9 kilometers) of river. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

We reopened the comment period on the proposed critical habitat and provided a notice of availability for the economic analysis in the **Federal Register** on December 28, 2001 (66 FR 67165). However, prior to that reopening the Service's web sites and electronic mail were disconnected in response to a court order in an unrelated lawsuit. Persons who have submitted electronic comments to the Service on this proposal since December 28, 2001, should resubmit those comments directly to the office listed in the **ADDRESSES** section above via regular or express mail or facsimile.

Public Comments Solicited

We solicit public comment on the proposal to designate critical habitat for the northern Great Plains breeding population of the piping plover, as well as the associated draft environmental assessment and draft economic analysis. We will accept written comments and information during this comment period. Previous written comments and information submitted during the comment period need not be resubmitted; however, comments submitted by electronic mail since December 28, 2001, should be resubmitted by regular or express mail or facsimile (see **ADDRESSES** section).

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the South Dakota Field Office (see **ADDRESSES** section). Our practice is to make all comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the rulemaking record; we will honor these requests to the extent allowed by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, allowed by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Author

The primary authors of this notice are the South Dakota Field Office staff (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 13, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–6802 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 67, No. 55
Thursday, March 21, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will hold its third meeting.

DATES: The meeting will be held on April 11, 2002, and will begin at 3 p.m. until approximately 6 p.m.

ADDRESSES: The meeting will be held at the Monday Afternoon Club, 120 N. Lassen St., Willows, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of By-Laws & Operating Guidelines/ Possible Action, (2) Report from Project Proposal Subcommittee/Possible Action, (3) Vacant Replacement Member Group A, (4) Elect a Vice-Chairperson/ Action, (5) Forest Service details on Project Proposals/Possible Action, (6) Project Evaluation Criteria, (7) Additional Proposals (RAC members & public), (8) Process to Solicit Proposals, (9) Public Comment, (10) Next Agenda. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 12, 2002.

James F. Giachino,

Designated Federal Officer.

[FR Doc. 02–6815 Filed 3–20–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, April 18, 2002 in Grangeville, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 18, begins at 10 a.m., at Oscar's Restaurant, Grangeville, Idaho. Agenda topics will include review of proposed projects and project selections. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: March 14, 2002.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 02–6864 Filed 3–20–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on Friday, March 29, 2002, at 55 West Monroe Street, Suite 525, Chicago, IL 60603. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–6857 Filed 3–20–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 5:30 p.m. on Monday, April 8, 2002, at the Best Western Heritage Inn, 1700 Fox Farm, Great Falls, Montana 59404. The purpose of the meeting is to hold new member orientation and review an update on statewide and local developments regarding Indian education and civil rights issues in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–6858 Filed 3–20–02; 8:45 am]

BILLING CODE 6553–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on April 11, 2002, at the Marriott Chattanooga Convention Center, Two Carter Plaza, Chattanooga, Tennessee 37402. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–6859 Filed 3–20–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Friday, April 11, 2002, at the Pfister Hotel, 424, East Wisconsin Avenue, Milwaukee, Wisconsin 53202. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–6860 Filed 3–20–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to 2010 decennial planning, development, and testing, as well as the American Community Survey and other related decennial programs. The five CACs on Race and Ethnicity will meet separately on April 29 and May 1 and in plenary and concurrent sessions on April 30. Last-minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: April 29–May 1, 2002. On April 29, the meeting will begin approximately 9 a.m. and end approximately 4:30 p.m. On April 30, the meeting will begin approximately 8:30 a.m. and end approximately 5:30 p.m. On May 1, the meeting will begin approximately 9 a.m. and end approximately 1 p.m.

ADDRESSES: The meetings will be held in the Francis Amasa Walker Conference Center, at the U.S. Census Bureau, 4700 Silver Hill Road, Federal Office Building 3, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone 301–457–2075, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside user perspective about how research and design plans for the 2010 decennial census, the American Community Survey, and other related programs realize goals and satisfy needs associated with these communities. They also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users.

All meetings are open to the public. A brief period will be set aside on May 1 for public comment and questions. Individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer.

Dated: March 14, 2002.

William G. Barron, Jr.,

Acting Director, U.S. Census Bureau.

[FR Doc. 02–6830 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2002]

Foreign-Trade Zone 126, Reno, Nevada Request for Manufacturing Authority (Personal Computers)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Authority of Western Nevada, grantee of FTZ 126, requesting, on behalf of Dell Computer Corporation (Dell), authority to manufacture personal computers under zone procedures within Site 5 (725 Waltham Way, McCarran, Nevada) of FTZ 126 (Reno Customs port of entry). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 14, 2002.

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Dell intends to share a 330,000 square-foot facility within FTZ 126 (110 employees projected) for the manufacture of personal computers, including servers and workstations. Dell is already authorized to manufacture such computers under zone procedures within Foreign-Trade Zone 78, Foreign Trade Zone 183, and Subzone 183A. This proposal involves an increase in the overall level of production under FTZ procedures for Dell.

The specific finished products for which Dell seeks authority to produce under FTZ procedures are various types of computers (desktop and notebook computers, workstations, and network servers) and data storage products. All of these products fall into HTSUS classifications which are duty free. The imported components for which Dell is seeking authority for inverted tariff benefits are cables, batteries, and carrying cases (leather only). Duty rates on these specific items range from 2.6% to 4.5% *ad valorem*, and components purchased from foreign sources currently comprise up to 48 percent of the finished product's value.

This application requests authority to allow Dell to conduct its activity under FTZ procedures, which it says would help improve the international competitiveness of Dell's Reno facility. According to Dell's application, the principal tangible benefit is that, on its domestic sales, the company would be able to choose the duty rate that applies to finished computers (duty free) for the foreign components noted above. The company also anticipates "procedural benefits" through the use of FTZ procedures.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions *via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions *via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 20, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 4, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 1755 East Plumb Lane, Suite 152, Reno, NV 89502.

Dated: March 14, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–6871 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Stora Enso North America (Formerly Known as Consolidated Papers, Inc. and Niagara Paper of Wisconsin) From an Objection by Wisconsin Department of Administration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

On May 5, 1997, Stora Enso North America (formerly known as Consolidated Papers, Inc. and Niagara Paper of Wisconsin) (Appellant), appealed the Wisconsin Department of Administration's (State) objection to the federal hydropower license for the Little Quinnesec Falls project. Action on this appeal stayed pending the resolution of judicial proceedings before the Court of Appeals for the 7th Circuit and negotiations between the Parties.

At the Appellant's request, the Assistant General Counsel for Ocean Services granted several stays of the consistency appeal, which were not opposed by the State. The State and the Appellant have reached an agreement on Appellant's proposed project and the State has determined that the activity is now consistent with the State's Coastal Management Program. By letter to Appellant, the State withdrew its objection to the project. Accordingly, the Appellant has requested that the appeal be withdrawn.

NOAA granted this request and the appeal has been dismissed. This is a final agency action for purposes of judicial review.

FOR FURTHER INFORMATION CONTACT: Karl Gleaves, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: February 12, 2002.

Leila J. Afzal,

Acting General Counsel.

[FR Doc. 02–6798 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Renewal of 19 Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following 19 advisory committees have been determined to be in the public interest and were renewed on February 28, 2002:

A. Board of Visitors National Defense University
B. Strategic Advisory Group for the U.S. Strategic Command
C. Advisory Group on Electron Devices
D. Defense Science Board
E. Defense Advisory Committee on Military Personnel Testing
F. DoD Wage Committee
G. National Security Agency Advisory Board
H. Armed Forces Epidemiological Board
I. Army Science Board
J. Army Education Advisory Committee
K. Chief of Engineers Environmental Advisory Board
L. Scientific Advisory Board of the Armed Forces Institute of Pathology
M. Board of Advisors to the President, Naval War College
N. Board of Advisors to the Superintendent, Naval Postgraduate School
O. Chief of Naval Operations Executive Panel Advisory Committee
P. Naval Research Advisory Committee
Q. Air University Board of Visitors
R. Community College of the Air Force Board of Visitors
S. U.S. Air Force Scientific Advisory Board.

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education, and training, and various technical program areas. Some of them are authorized by statute.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer Spaeth, DoD Committee Management Officer, 703–695–4281.

Dated: March 15, 2002.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6831 Filed 3–20–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Renewal of the Department of Defense Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense Historical Advisory Committee was renewed, effective January 23, 2002, in consonance with the public interest, and in accordance with the provisions of the "Federal Advisory Committee Act."

The DoD Historical Advisory Committee consists of three subcommittees (Historical Records Declassification Advisory Panel, the Department of The Army's Historical Advisory Subcommittee, and the Secretary of the Navy's Subcommittee on Naval History) which advise the Office of the Secretary of Defense and the Secretaries of the Army and Navy regarding the professional standards, historical methodology, program priorities, liaison with professional groups, and adequacy of resources associated with Department of Defense historical programs.

The DoD Historical Advisory Committee will continue to be well balanced in terms of the interest groups represented and functions to be performed. The members include distinguished representatives from academia, current U.S. Government and private sector historians, authors and librarians, and retired general officers of general/flag rank.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Spaeth, DoD Committee Management Officer, 703–695–4281.

Dated: March 15, 2002.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6832 Filed 3–20–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date changes.

SUMMARY: On Friday, December 14, 2001 (66 FR 64810), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Defense Against Terrorists' Use of Biological Weapons. Several of the announced meetings have been rescheduled: from April 29–30, 2002, to May 6–7, 2002; from June 3–4, 2002, to June 6–7, 2002; and from July 22–23, 2002, to July 29–30, 2002. These meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: March 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 02–6833 Filed 3–20–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming working group meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates of Meeting: April 17–18, 2002.

Time: 7:30 a.m.–4:30 p.m. (April 17, 2002); 7:30 a.m.–1 p.m. (April 18, 2002).

The purpose of the meeting is to receive briefings on the health risk of low-level phased array radio frequency energy emissions, specifically risk associated with the PAVE PAWS radar site at Cape Cod Military Reservation.

As part of the deliberations, the working group of the AFEB has requested classified briefings from the Air Force. The meeting location will be at Brooks Air Force Base in San Antionio, Texas. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may file statements with the committee to be considered at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Lt Col James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–6867 Filed 3–20–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 & 26 March.

Time of Meeting: 0800–1700, 25 March 2002, 0800–1700, 26 March 2002.

Place: Directed Technologies, 3601 Wilson Boulevard, Suite 650, Arlington, VA 22201.

Agenda: The Army Science Board's (ASB) Study "Meeting the Future Army Aviation Needs" will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please

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contact (Mr. David Wildes @703–601–1536 or Email: Wildes, David Mr. SAALT/S3)

Wayne Joyner,

Program Support Specialist, Army Science Board.

Agenda

The Army Science Board's Study on "Meeting the Future Aviation Needs" 25–26 March 2002

25 March

900–1200 Army Aviation Science and Technology Program. Presented by the Army Aviation and Missile Research, Development and Engineering Center (AMRDEC). (PROPRIETARY)

1300–1400 Defense Advanced Research Projects Agency (DARPA) Unmanned Combat Air Vehicle (UCAV) Program. Presented by DARPA Program Manager (PM). (PROPRIETARY)

1400–1700 DARPA A–160 Hummingbird, Canard Rotary Wing (CRW) and Unmanned Combat Air Vehcile—Navy (UCAV–N) Programs. Presented by DARPA PM. (PROPRIETARY)

26 March

900–1200 Army Aviation Acquisition Program. Presented by the Program Executive Officer Aviation (PEO Avn). (PROPRIETARY)

1300–1700 Army Aviation Study 2002 Review and Planning Session. Study Director. (PROPRIETARY)

[FR Doc. 02–6885 Filed 3–20–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The category of records entry is being amended to better define those individual pieces of data contained in the reports maintained in the system.

DATES: This proposed action will be effective without further notice on April 22, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 15, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0380–13 DAMO

SYSTEM NAME:

Local Criminal Intelligence Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0190–45a DAMO'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any individual suspected or involved in criminal activity directed against or involving the United States Army.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'Information includes subject's name, aliases, addresses, phone number, date of birth, source of investigation, risk analysis, reports, threat assessments, retention control sheets, victims names, names of informants, names of law enforcement officers and investigators, and subject's group affiliations, if any.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph. Any release of information from this system of records for law enforcement purposes is covered under the DoD "Blanket Routine Use" for law enforcement.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By individual's name, Social Security Number, and/or date of birth.'

* * * * *

A0190–45a DAMO

SYSTEM NAME:

Local Criminal Intelligence Files.

SYSTEM LOCATION:

At all designated Army commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual suspected or involved in criminal activity directed against or involving the United States Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports and supporting documents of criminal activity directed against or involving the U.S. Army. Information includes subject's name, aliases, addresses, phone number, date of birth, source of investigation, risk analysis, reports, threat assessments, retention control sheets, victims names, names of informants, names of law enforcement officers and investigators, and subject's group affiliations, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 380–13, Acquisition and Storage of Information Concerning Non-Affiliated Persons and Organizations; Army Regulation 190–45, Law Enforcement Reporting; Army Regulation 195–2, Criminal Investigation Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To enable designated Army officials, commanders, or civil criminal justice agencies to meet their responsibilities maintaining law and order through investigation and possible judicial action. To identify individuals in an effort to anticipate, prevent or monitor possible criminal activity directed against or involving the U.S. Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape/disc, and on electronic storage media.

RETRIEVABILITY:

By individual's name, Social Security Number, and/or date of birth.

SAFEGUARDS:

Only authorized personnel have access to files. Physical security measures include locked containers/storage areas, controlled personnel access, and continuous presence of authorized personnel.

RETENTION AND DISPOSAL:

Criminal intelligence reports and cross-index cards belonging to the Headquarters, Criminal Investigation Division, are destroyed when no longer needed, except for reports of current operational value. These reports are reviewed yearly for continued retention, not to exceed 20 years, and then destroy. The records maintained at the Regional Headquarters are destroyed after 5 years. Records maintained at District, field office and elements designated by region commanders are destroyed after 3 years or when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations and Plans, Military Operations, 400 Army Pentagon, Washington, DC 20310–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Chief of Staff for Operations and Plans, Military Operations, 400 Army Pentagon, Washington, DC 20310–0400.

Individual should provide their full name, Social Security Number, date of birth, and address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy Chief of Staff for Operations and Plans, Military Operations, 400 Army Pentagon, Washington, DC 20310–0400.

Individual should provide their full name, Social Security Number, date of birth, and address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subjects, witnesses, victims, Military Police and U.S. Army Criminal Investigation Command personnel and special agents, informants, various Department of Defense, federal, state and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 02–6834 Filed 3–20–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Inland Waterways Users Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463), announcement is made of the next committee meeting.

Name of Committee: Inland Waterways Users Board.

Date: April 25, 2002.

Location: Convention and Trade Center, One Carter Plaza, Chattanooga, Tennessee (1–800–841–1674).

Time: 7:30 am to 1 pm.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, US Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: Registration will begin at 7:30 am and the meeting is scheduled to adjourn at 1 pm. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–6868 Filed 3–20–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to internet address *Karen_F._Lee@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory

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obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of English Language Acquisition

Type of Review: New.

Title: Application for Grants Under English Language Acquisition and Language Enhancement: Native American and Alaska Native Children in School.

Abstract: The Department of Education needs and uses this information to make grants. The respondents are eligible entities required to provide this information in applying for grants.

Additional Information: The purpose of the National Professional Development Program is to provide grants for professional development activities that will improve classroom instruction for limited English proficient (LEP) children and assist educational personnel working with such children to meet high professional standards, including standards for certification and licensure as teachers who work in language instruction educational programs or serve LEP students, Section 3131, Public Law 107–110.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 8,200.

Requests for copies of the proposed information collection request should be directed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov*, or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov*, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6791 Filed 3–20–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 15, 2002

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Infants and Toddlers with Disabilities Program (Part C) of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 168.

Abstract: States are required to submit an application to receive funds. An approved application remains in effect until modifications are needed resulting from a change in policy, procedures, or assurances.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6790 Filed 3–20–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on June 3, 2002 from 9:30 a.m. until 6:00 p.m., on June 4, 2002 from 8:30 a.m. until 6:00 p.m., and on June 5, 2002 from 8:30 a.m. until 3:00 p.m. at the Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW, Washington, DC 20037. You may call the hotel at (202) 775–0800 or 1–800–526–7495 to inquire about rooms.

What Assistance Will Be Provided to Individuals with Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW, Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

What Are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for initial recognition or renewal of recognition, requested an expansion of scope, or submitted interim reports.

What Agencies Will the Advisory Committee Review at the Meeting?

The Advisory Committee will review the following agencies during its June 3–5, 2002 meeting.

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers K–12)

Petitions for Renewal of Recognition

1. American Association of Nurse Anesthetists, Council on Accreditation of Nurse Anesthesia Educational Programs (Current scope of recognition: the accreditation of institutions and programs of nurse anesthesia at the certificate, master's, or doctoral degree levels)

2. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (Current scope of recognition: the accreditation and preaccreditation ("Correspondent" and "Candidate") of advanced rabbinical and Talmudic schools)

3. American Board of Funeral Service Education, Committee on Accreditation (Current scope of recognition: the accreditation of institutions and programs awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science)

4. Accrediting Commission on Education for Health Services Administration (Current scope of recognition: the accreditation throughout the United States of graduate programs in health services administration)

5. The American Dietetic Association, Commission on Accreditation for Dietetics Education (Current scope of recognition: the accreditation of Coordinated Programs in Dietetics at both the undergraduate and graduate level, postbaccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level) (Requested expansion of scope of recognition: the current scope of recognition to include the accreditation of Didactic Programs in Dietetics at both the undergraduate and graduate level, and its accreditation of programs offered via distance education.)

6. Council on Education for Public Health (Current scope of recognition: the accreditation and preaccreditation ("Preaccreditation Status") of graduate schools of public health, graduate programs in community health education outside schools of public health, and graduate programs in community health/preventive medicine outside schools of public health)

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7. Liaison Committee on Medical Education (Current scope of recognition: the accreditation of medical education programs leading to the M.D. degree)

8. Middle States Association of Colleges and Schools, Commission on Higher Education (Current scope of recognition: the accreditation and preaccreditation ("Candidate Status") of institutions in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, the U.S. Virgin Islands, the Republic of Panama and a limited number of freestanding American-style institutions abroad that are chartered or licensed by an appropriate agency within the Middle States region)

9. National Association of Nurse Practitioners in Women's Health, Council on Accreditation (Current scope of recognition: the accreditation of women's health nurse practitioner programs located within the United States and its territories)

10. New York Board of Regents (Current scope of recognition: The accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education in the State of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education in the State of New York)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accreditation Commission for Acupuncture and Oriental Medicine

2. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education

3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar

4. American Osteopathic Association, Bureau of Professional Education

5. American Podiatric Medical Association, Council on Podiatric Medical Education

6. Council on Occupational Education

7. Midwifery Education Accreditation Council

8. National Council for Accreditation of Teacher Education

9. North Central Association of Colleges and Schools, Executive Board of the Commission on Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. New York State Board of Regents (Public Postsecondary Vocational Education)

Interim Report

1. Oklahoma State Regents for Higher Education

State Agencies Recognized for the Approval of Nurse Education

Petition for Initial Recognition

1. North Dakota Board of Nursing

Petition for Renewal of Recognition

1. New York State Board of Regents (Nursing Education)

Who Can Make Third-Party Oral Presentations at this Meeting?

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

How Do I Request to Make an Oral Presentation?

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person so that the request is received no later than May 10, 2002. Your request (no more than 6 pages maximum) must include:

- The names, addresses, phone numbers, and fax numbers of all persons seeking an appearance,
- The organization they represent, and
- A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit.* Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the May 10, 2002 deadline will not be distributed to the Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on February 1, 2002. The Advisory Committee will receive and consider only written comments submitted by the deadline specified in that **Federal Register** notice.

How Do I Request to Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: March 14, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6841 Filed 3–20–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Wetlands Involvement for the Proposed Conveyance of Parcel G, Oak Ridge Reservation, Oak Ridge, Tennessee

AGENCY: Oak Ridge Operations, U.S. Department of Energy.

ACTION: Notice of wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE), Oak Ridge Operations (ORO) is proposing to convey Parcel G to the City of Oak Ridge. Parcel G and the adjacent DOE property south of Parcel G support a palustrine emergent/scrub-shrub wetland system totaling approximately 1.4 ha (3.4 acres). More detail on these wetlands is provided in the supplementary information. Parcel G is one of three parcels being considered for conveyance from DOE to the City of Oak Ridge. The other two parcels are the American Museum of Science and Energy and Parcel 279.01, neither of which contain wetlands. The purpose of the proposed DOE action is to provide a plan for the long-term financial stability of the AMSE in order to preserve the museum as an asset to the city of Oak Ridge and the surrounding region. The proposed conveyance of the three parcels is also intended to help offset the City of Oak Ridge's long-term cost of operating the museum. The purpose of the proposed action is also to transfer excess DOE–ORO real property for economic development in order to help offset potential economic losses resulting from DOE downsizing, facility closeouts, and work force restructuring.

In accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations (40 CFR 1500–1508) and the DOE NEPA Implementing Regulations (10 CFR 1021), DOE has prepared a draft Environmental Assessment (EA) to evaluate the proposed action. The EA was issued for public review and comment on January 18, 2002. As a part of the EA (DOE/EA–1415), DOE is including a wetlands assessment to assess the existing wetlands as well as the potential impact of the proposed conveyance. (The wetlands assessment is available by contacting the DOE–ORO representative named below.)

DATES: Comments on the wetlands assessment are due to the address below no later than April 5, 2002.

ADDRESSES: Comments should be addressed to Mr. David R. Allen, U.S. Department of Energy, P.O. Box 2001, MS–SE–30–1, Oak Ridge, TN 37831. Comments may also be faxed to (865) 576–0746.

FOR FURTHER INFORMATION CONTACT: David R. Allen, U.S. Department of Energy, P.O. Box 2001, MS–SE–30–1, Oak Ridge, TN 37831, (865) 576–0411.

For Further Information on General DOE Wetland Environmental Review Requirements, Contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 200585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) has completed a draft EA (DOE/EA–1415) for the Proposed Conveyance of the American Museum of Science and Energy, Parcel G, and Parcel 279.01 to the City of Oak Ridge, Tennessee. The purpose of the proposed DOE action is to provide a plan for the long-term financial stability of the AMSE in order to preserve the museum as an asset to the city of Oak Ridge and the surrounding region. The proposed conveyance of the three parcels is also intended to help offset the City of Oak Ridge's long-term cost of operating the museum. The purpose of the proposed action is also to transfer excess DOE–ORO real property for economic development in order to help offset potential economic losses resulting from DOE downsizing, facility closeouts, and work force restructuring.

Since specific uses of Parcel G would not be known prior to the transfer, DOE has developed reasonably foreseeable scenarios and uses to bound the impact analysis. Scenarios identify potential tenants, utilities and infrastructure, areas to be excluded from development, and a range of emissions, effluents, and wastes that could result from commercial and industrial activities. It is anticipated that the City of Oak Ridge would develop portions of Parcel G for small-scale offices, light industrial use, or retail businesses.

Parcel G contains about 8.1 ha (20.0 acres) and is located southeast of the intersection of Bethel Valley and Scarboro roads. A portion of Parcel G is within the area of the Oak Ridge Institute of Science and Energy Scarboro Operations Site (formerly the South Campus Facility). The Scarboro Operations Site supported research on the biological effects of radionuclides on animals. The portion of Parcel G that is within the boundary of the Scarboro Operations Site was an area where only unexposed animals were housed or grazed. In addition to pasture, the area contained various barns and a three-tiered swine waste treatment pond system. Only one barn structure remains within Parcel G. Nearby land uses include the Y–12 Plant buffer area, Bethel Valley Industrial Park, Commerce Park, and the University of Tennessee Forest Experiment Station and Arboretum. Parcel G is currently zoned by the city of Oak Ridge as F.A.I.R. (Forestry, Agriculture, Industry and Research District).

Parcel G and the adjacent DOE property to the south support a palustrine emergent/scrub-shrub wetland system along Scarboro Creek totaling approximately 1.4 ha (3.4 acres). All wetlands identified at Parcel G exhibited positive field indicators of the wetland criteria: hydrophytic plants, hydric soils, and wetland hydrology. The majority of these wetlands are associated with the floodplain of Scarboro Creek, the Scarboro Creek embayment (part of Melton Hill Reservoir), and two beaver ponds in Scarboro Creek immediately south of Parcel G.

In addition to the Scarboro Creek wetlands, there are three ponds that were created to treat swine waste when Parcel G was actively associated with operation of the Scarboro Operations Site. Agricultural uses of the ponds ceased in the mid-1980's and all three ponds have remained at the site. Two of the ponds remain permanently inundated. The third pond holds water for relatively short periods and supports a wetland plant community. The actual area of wetlands to be transferred with Parcel G is about 0.4 ha (1.0 ac). DOE would retain control over the remaining 1 ha (2.4 acres) of wetlands along Scarboro Creek downstream from Parcel G.

The proposed conveyance of Parcel G would not inherently cause adverse impacts to the survival, quality, natural, and beneficial values of wetlands along Scarboro Creek, because the proposed transfer is an administrative action. Rather, the potential for and degree of adverse impacts would depend upon how the City of Oak Ridge proposes to develop the property. Adverse impacts would include any activity that eliminated or reduced the ability of wetlands to perform their normal biological, chemical, hydrological, and physical functions. Some or all of the wetlands associated with Scarboro Creek could potentially experience

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direct impacts by development in the wetlands themselves or indirect impacts from other activities associated with development of adjacent upland areas at Parcel G. Wetlands downstream from Parcel G could also be affected by any construction activities on Parcel G.

A number of administrative controls, including deed restrictions or conservation easements are available for DOE to use in order to prevent adverse impacts to wetlands at Parcel G. Proposals for development of Parcel G that would affect wetlands and other special aquatic resources would also be subject to regulation by the U.S. Army Corps of Engineers (USACE), Tennessee Department of Environment and Conservation (TDEC), and possibly the Tennessee Valley Authority (TVA). Proposed projects would be required to follow normal sequencing during regulatory review to avoid and minimize adverse impacts to wetlands at Parcel G. Compensatory mitigation should be used as a last resort and would be subject to negotiation between the USACE, TDEC, and possibly DOE and TVA.

In accordance with DOE regulations for compliance with wetlands environmental review requirements (10 CFR part 1022), a wetland assessment will be included within the Environmental Assessment for the Proposed Conveyance of the American Museum of Science and Energy, Parcel G, and Parcel 279.01 to the City of Oak Ridge, Tennessee (DOE/EA–1415).

Issued in Oak Ridge, Tennessee, on March 12, 2002.

James L. Elmore,

Alternate NEPA Compliance Officer.

[FR Doc. 02–6818 Filed 3–20–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension with revisions under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by April 22, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (BAllen@omb.eop.gov) is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: A copy of the materials submitted to OMB is available at *http://www.eia.doe.gov/cneaf/electricity/page/form_417/form_417.html.* Requests for additional information should be directed to Herbert Miller. To ensure timely receipt of any comments sent to EIA, submission by FAX (202–287–1705) or e-mail (herbert.miller@eia.doe.gov) is recommended. Mr. Miller's mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e. new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form EIA–417, "Electric Emergency Incident and Disturbance Report".
2. Security Operations/Office of Emergency Management.
3. OMB Number 1901–0288.
4. Revision and three-year approval requested.
5. Mandatory.
6. Form EIA–417 collects information on electric emergency incidents and disturbances for DOE's use in fulfilling its overall national security and other energy management responsibilities. The information will also be used by DOE for analytical purposes. Control Area Operators or Security Coordinators, as appropriate, file Form EIA–417. In Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and the U.S. Trust Territories, local utilities file the form. The form's instructions explain the filing requirements when a foreign entity is involved.
7. Business or other for-profit; State, local or tribal government.
8. 650 hours (175 respondents × 1.7 responses per year × 2.17 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, March 15, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–6817 Filed 3–20–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–70–000]

The United Illuminating Company, Complainant, v. ISO New England Inc., Respondent; Notice of Complaint

March 15, 2002.

Take notice that on March 14, 2002, The United Illuminating Company (UI) filed a Complaint against ISO New England Inc. (ISO–NE) requesting, inter alia, that the Federal Energy Regulatory Commission immediately strike the January 25, 2002 action by ISO–NE and take further action to ensure that the costs of supporting the Hydro Quebec Interconnection are properly reflected in the NEPOOL Open Access Transmission Tariff or any future tariff for a Northeast Regional Transmission Organization.

Copies of the complaint were served via facsimile and courier to representatives of ISO–NE, electronically to NEPOOL Counsel for circulation to NEPOOL Participants, and by overnight delivery to the affected state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 3, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6842 Filed 3–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–69–000]

UtiliCorp United Inc.; Notice of Filing

March 14, 2002.

Take notice that on March 8, 2002, UtiliCorp United Inc. (UtiliCorp) filed a Petition for Declaratory Order under Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA). UtiliCorp requests that the Commission issue a declaratory order finding that UtiliCorp is not primarily engaged in the generation or sale of electric power within the meaning of Section 201 of PURPA and Section 292.206(a) of the Commission's regulations, and is therefore permitted to acquire up to one hundred percent (100%) of the equity interests in qualifying facilities.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: April 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6788 Filed 3–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–103.000, et al.]

Hermiston Power Partnership., et al.; Electric Rate and Corporate Regulation Filings

March 14, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Hermiston Power Partnership

[Docket No. EG02–103–000]

Take notice that on March 11, 2002, Hermiston Power Partnership (Hermiston) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Hermiston, an Oregon general partnership, proposes to own and operate a 546 MW natural gas-fired, combined cycle electric generating facility located in Umatilla County, Oregon. Hermiston will sell the output at wholesale to an affiliated power marketer.

Comment date: April 3, 2002.

2. EE South Glens Falls

[Docket No. ER99–1261–003]

Take notice that on March 11, 2002, Energy East South Glens Falls, LLC (EE South Glens Falls) tendered a letter concerning its triennial market power review pursuant to an order issued by the Commission in Docket No. ER99–1261–000 on March 11, 1999 granting EE South Glens Falls market-based rate authorization.

Comment date: April 1, 2002.

3. American Transmission Company LLC, Edison Sault Electric Company, Wisconsin Electric Power Company

[Docket No. ER01–702–003, Docket No. OA01–7–000, and Docket No. OA01–8–000 (Not Consolidated)]

Take notice that on March 7, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a compliance filing with the Federal Energy Regulatory Commission (Commission) as required by the Commission's February 1, 2002 Order on Standards of Conduct in the above captioned proceedings.

Comment date: March 28, 2002.

4. Hardee Power Partners Limited

[Docket No. ER01–3064–002]

Take notice that on March 11, 2002, in compliance with the Federal Energy Regulatory Commission's (Commission) letter order issued January 8, 2002 in the above-referenced proceeding, Hardee Power Partners Limited tendered for filing with the Commission revisions to the tariff sheet designations of its Electric Rate Schedule FERC Nos. 1 and 2. These revisions are consistent with the requirements set forth in Order No. 614. Designation of Electric Rate Schedules, 90 FERC 61,352 (2000).

Comment date: April 1, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–947–001]

Take notice that on March 11, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which amend the Midwest ISO's February 1, 2002 filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, 18 CFR 35 et seq. (2001).

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants,

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Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment date: April 1, 2002.

6. Central Maine Power Company

[Docket No. ER02–1301–000]

Take notice that on March 11, 2002, Central Maine Power Company (CMP) tendered for filing a service agreement for Non-firm Local Point-to-Point Transmission Service entered into with Gardner Brook Hydro. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, Fifth Revision, Service Agreement No. 156.

Comment date: April 1, 2002.

7. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–1291–000]

Take notice that on March 6, 2002, Alliant Energy Corporate Services, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to include one page that was omitted from its executed Service Agreement with EnXco, Inc. for Non-Firm Point-to-Point Transmission.

Alliant Energy Corporate Services, Inc. renews its request for an effective date of November 27, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: March 27, 2002.

8. Xcel Energy Services, Inc.

[Docket No. ER02–1292–000]

Take notice that on March 11, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Master Power Purchase and Sale Agreement between Public Service and Williams Gas Processing Company. (Williams Gas), which is in accordance with Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, First Revised Volume No. 6).

XES requests that this agreement become effective on December 11, 2001.

Comment date: April 1, 2002.

9. Puget Sound Energy, Inc.

[Docket No. ER02–1297–000]

Take notice that on March 11, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Firm Point-To-Point Transmission Service and a service agreement for Non-Firm Point-To-Point Transmission Service with NorthPoint Energy Solutions Inc. (NorthPoint), as Transmission Customer. A copy of the filing was served upon NorthPoint.

Comment date: April 1, 2002.

10. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–1298–000]

Take notice that on March 11, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an executed Term Sheet between Wolverine Power Supply Cooperative, Inc., and Wolverine Power Marketing Cooperative, Inc., which term sheet expressly incorporated the terms and conditions of the Wholesale Power Sales Enabling Agreement between Wolverine Power Supply Cooperative, Inc. and Wolverine Power Marketing Cooperative, Inc. previously approved by this Commission. The Term Sheet concerns the sale of power from Wolverine Power to Wolverine Marketing with ultimate service to end-use retail customer CEMEX Wolverine requests an effective date of February 11, 2002 for this filing.

Wolverine states that a copy of this filing has been served upon Wolverine Power Marketing Cooperative, Inc. and the Michigan Public Service Commission.

Comment date: April 1, 2002.

11. Entergy Services, Inc.

[Docket No. ER02–1299–000]

Take notice that on March 11, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Coral Power, L.L.C.

Comment date: April 1, 2002.

12. Southwest Power Pool, Inc.

[Docket No. ER02–1300–000]

Take notice that on March 11, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Higginsville Municipal Utilities (Transmission Customer). SPP seeks an effective date of March 1, 2002 for this service agreement.

The Transmission Customer was served with a copy of this filing.

Comment date: April 1, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6786 Filed 3–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11870–000, New Hampshire]

Goodrich Falls Hydro Electric Company; Notice of Availability of Environmental Assessment

March 15, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for exemption from licensing of the Goodrich Falls Project, located on the Ellis River, in Carroll County, New Hampshire, and has prepared an Environmental Assessment (EA) for the project. There are no Federal lands, including Indian reservations, occupied by project works or located within the project boundary.

The EA contains the staff's analysis of the potential environmental impacts of the proposed exemption and concludes that issuance of an exemption from licensing for the Goodrich Falls Hydroelectric Project would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact John Ramer at (202) 219–2833.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6789 Filed 3–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–74–000]

Reef International, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Eagle Pass International Pipeline Project and Request for Comments on Environmental Issues

March 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Eagle Pass International Pipeline Project involving the construction and operation of facilities by Reef International, L.L.C. (Reef) in Maverick County, Texas, and that cross the international border between the United States and Mexico.[1] The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Reef provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

Reef is proposing the Eagle Pass International Pipeline Project to provide firm transportation to Compania National de Gas, S.A. (Conagas). This project would allow Reef to deliver up to 15 million cubic feet per day. The purpose of the project is to provide the Piedras Negras region of Coahuila, Mexico, with needed, additional supplies of gas.

Reef proposes to construct, operate, and maintain about 4 miles of 12-inch-diameter pipeline and appurtenant facilities from an interconnection with Southern Transmission Company (Southern) in Maverick County, Texas, crossing under the Rio Grande, the midpoint of which is the International Boundary between the United States and Mexico, to a point just across the river in Coahuila, Mexico. Reef is seeking a Presidential Permit from the Commission for the 400-foot-long border crossing in Maverick County, Texas which is the U.S. portion of the directional drill across the Rio Grande. The entire directional drill would be 800 feet in length, half of which would be in Mexico. A meter station would be constructed in Maverick County about 2,035 feet downstream from the interconnection with Southern. About 1000 feet of pipeline and a meter station would be constructed in Mexico and would be owned and operated by Conagas. Also, a 6-inch-diameter propane/butane pipeline would also be constructed parallel to the natural gas pipeline for about 3 miles of the route within the U.S. and also cross into Mexico.

Land Requirements for Construction

Construction of Reef's proposed facilities would require about 25.3 acres of land, including construction right-of-way for the new pipeline and extra work areas needed for the directional drill. The pipeline would be constructed adjacent to existing sanitary sewer and utility easements for 72 percent of the route. For the construction of the pipeline, Reef would use a 50-foot-wide construction right-of-way. Reef indicates that it would maintain a 30-foot-wide permanent right-of-way totaling 14.55 acres. The meter station and access road would be located within a 5.53 acre location adjacent to an industrial area. About 5 acres would be needed for a pipe and contractor yard, although this location has not yet been determined.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources and wetlands
- Vegetation and wildlife
- Threatened and endangered species
- Cultural resources
- Land use
- Reliability and safety

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on

[1] Reef's application was filed with the Commission on January 22, 2002, under Section 3 of the Natural Gas Act.

[2] "We", "us", and "our", refer to the environmental staff of the Office of Energy Projects (OEP).

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the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Reef. This preliminary list of issues may be changed based on your comments and our analysis.

—A directionally drilled crossing of the Rio Grande.

—Potential impact on the jaguarundi, ocelot, and mountain plover which are Federally listed threatened and endangered species.

—Loss of several acres of pecan orchard.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 1, PJ–11.1;
- Reference Docket No. CP02–74–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 15, 2002.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account".

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

[3] The appendix referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6787 Filed 3–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 15, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Exempt

Docket No.	Date filed	Presenter or requester
1. Project Nos. 2061–000, 2777–000 and 1975–000	03–12–02	Bill Baker.
2. CP01–409–000	03–12–02	Alice Weekley.
3. Project Nos. 1975–000, 2061–000, 2777–000 2778–000 and 2065–000	03–12–02	Stan McDonald.
4. Project Nos. 10461–002 and 10462–002	03–12–02	Tom Skutnik and Jerry Sabatis.
5. Project No. 2778–000	03–12–02	Bill Baker.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6843 Filed 3–20–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7161–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Up for Renewal: EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response, EPA ICR #1426.06, OMB Control #2050–0105, Expiration 7/31/2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response, EPA ICR #1426.06, OMB Control #2050–0105, Expiration 7/31/2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 15, 2002.

ADDRESSES: Office of Solid Waste and Emergency Response (5305G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

Remit comments to Sella M. Burchette, US EPA/ERTC, 2890 Woodbridge Avenue, Building 18, MS101, Edison, NJ 08837–3679.

To obtain a copy at no charge, please contact Sella Burchette at (732) 321–6726/FAX: (732) 321–6724/or electronically at *burchette.sella@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Sella M. Burchette, (732) 321–6726/FAX: (732) 321–6724/or electronically at *burchette.sella@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration (OSHA) approved State plans.

Title: EPA Worker Protection Standard for Hazardous Waste Operation and Emergency Response, OMB Control #2050–0105, EPA ICR #1426.06, Expiration 7/31/02. This is a request for renewal of a currently approved collection.

Abstract: Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to identical to the OSHA standards, extends to three categories of employees: those engaged in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities, and employees involved in emergency response operations without regard to location. This ICR renews to existing mandatory record keeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste site, maintaining records of employee training, refresher training, medical exams and reviewing emergency response plans. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual recordkeeping burden for this collection is estimated to average 10.46 hours per site or event. The estimated number of respondents is approximated at 100 RCRA TSD facilities or uncontrolled hazardous waste sites: 23,900 State and local police departments, fire departments or hazardous materials teams. The estimated total burden hours on respondents: 255,427. The frequency of collection: continuous maintenance of records. Burden means to total time, effort, and financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

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and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Remit comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: March 5, 2002.

Elaine F. Davies,

Acting Office Director, Office of Emergency and Remedial Response.

[FR Doc. 02–6849 Filed 3–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7161–5]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grants for development of coastal recreation water monitoring and public notification under the Beaches Environmental Assessment and Coastal Health Act.

SUMMARY: The Beaches Environmental Assessment and Coastal Health Act (BEACH Act) signed into law on October 10, 2000, amends the Clean Water Act (CWA) to reduce the risk of disease to users of the Nation's recreational waters. The BEACH Act authorizes the U.S. Environmental Protection Agency (EPA) to award program development and implementation grants to eligible States, Territories, Tribes, and local governments to support microbiological testing and monitoring of coastal recreation waters, including the Great Lakes, that are adjacent to beaches or similar points of access used by the public. BEACH Act grants also provide support for development and implementation of programs to notify the public of the potential exposure to disease-causing microorganisms in coastal recreation waters. EPA encourages coastal States and Territories to apply for BEACH Act Grants for Program Development (referred to as Development Grants) to develop effective and comprehensive coastal recreation water monitoring and public notification programs.

DATES: Submit your application on or before May 20, 2002.

ADDRESSES: You must send your application to the appropriate Regional Grant Coordinator listed in this document under **SUPPLEMENTARY INFORMATION,** section VII.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch, 202–260–3754.

SUPPLEMENTARY INFORMATION:

I. Grant Program

What Is the Statutory Authority for the Development Grants?

The statutory authority for BEACH grants is section 406(b) of the CWA as amended by the BEACH Act, Public Law 106–284, 114 Stat. 970 (2000). It provides in part: "The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public."

What Activities Are Eligible for Funding Under the Development Grants in Fiscal Yeor 2002?

In Fiscal Year 2002, EPA intends to award grants authorized under the BEACH Act to support the continued development of coastal recreation water monitoring and public notification programs to meet program elements under the BEACH Act. EPA encourages grantees to use these funds to test various approaches for meeting BEACH Act program requirements. As required by the BEACH Act, EPA expects to publish performance criteria for implementation of coastal recreation water monitoring and public notification programs by April 2002. In fiscal year 2003 and beyond, if funds are appropriated to support these programs, EPA expects to make grants to also support implementation of monitoring and notification programs that are consistent with the statutory requirements for implementation grants, which include consistency with EPA's performance criteria.

II. Funding and Eligibility

*Who Is Eligible To Apply for Development Grants Under this **Federal Register** Document?*

Coastal and Great Lake States are eligible for development grants in FY 2002 to develop monitoring and notification programs. The term "State" is defined in section 502 of the CWA to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. However, the Trust Territory of the Pacific Islands no longer exists. The Marshall Islands, the Federated States of Micronesia, and Palau, which were previously entities within the Trust Territory of the Pacific Islands, have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing entity and, as such, is no longer eligible to receive grants as a Territory or possession of the United States.

Are Local Governments Eligible for Funding?

The BEACH Act authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after the one-year period beginning on the date of publication of performance criteria, EPA determines that the State is not implementing a program that meets the requirements of section 406 of the Act. EPA expects to publish performance criteria in April 2002, and therefore expects April 2003 as the earliest date for local governments to be eligible for beach grants.

Are Tribal Governments Eligible for Funding?

Section 518(e) of the CWA authorizes EPA to treat eligible Indian Tribes in the same manner as States for the purpose of receiving CWA section 406 grant funding. In order to receive BEACH Act grant funds a Tribe must have coastal recreation waters for which water quality standards have been established under the CWA. There are currently no Tribes that have met this requirement. In addition, a Tribe must meet the "treatment in the same manner as a State" criteria under CWA section 518(e) to receive grant funds under section 406 of the CWA.

How Much Funding Is Available?

For Fiscal Year 2002, EPA expects to award approximately $10 million in Development Grants to eligible States and Territories.

How Will the Funding Be Allocated?

For this second year of the Development Grants, EPA expects to award grants to all eligible States and Territories who apply for funding based on an allocation formula. In developing this formula EPA consulted with various States, the Coastal States Organization, and Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). This formula uses three factors that are readily available and verifiable: (1) Length of beach season, (2) miles of beach and (3) number of people that use the beaches.

(1) Beach Season Length

Beach season length was selected as a factor since it determines the part of the year that a government would conduct its monitoring program. The longer the beach season, the more resources that a government would need to conduct monitoring. EPA's information on the length of a beach season was obtained from the National Health Protection Survey of Beaches for the States or Territories that reported information. The beach season for American Samoa, Oregon, Puerto Rico, and Northern Mariana Islands was estimated based on season reported by nearby States and Territories. The beach season for Alaska was estimated based on air and water temperature, available information on recreation activities, and data from the 1993 National Water Based Recreation Survey. EPA grouped the States and U.S. Territories into four categories of beach season lengths:

For beaches in—	The beach season category is—
Alaska	< 3 months.
Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin.	3—4 months.
Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina	5—6 months.
American Samoa, California, Florida, Guam, Hawaii, Northern Mariana, Puerto Rico, Texas, U.S. Virgin Islands	9—12 months.

(2) Beach Miles

Miles of beach was selected as a factor because it determines the geographical extent over which a government would conduct monitoring. The longer the miles of beaches, the more resources a government would need to conduct monitoring. For this second year of Development Grants, EPA is using shoreline miles as a surrogate rather than beach miles because beach miles are not available for all beaches in the 35 eligible States and Territories. EPA discussed the drawbacks of using this surrogate factor with States on a conference call on December 11, 2001 BEACH Act grantees, however, must identify their beaches as a condition of their grants; therefore in future years, EPA will be able to measure and thus use beach miles rather than shoreline. Because the BEACH Act grants for 2001 were awarded only recently, States have yet to identify lists of coastal recreation waters in the State. Thus, as a practical matter, EPA could not use beach miles in the allocation formula for FY 2002 grants. Instead, for FY 2002 grants, EPA used the NOAA publication The Coastline of the United States to quantify the shoreline miles.

(3) Beach Use

Beach use was selected as a factor because it reflects the importance of beach-related tourism to the local economy. The greater use a beach receives, the more likely a government would need to conduct increased monitoring because of the larger number of people potentially exposed to pathogens. For this second year of Development Grants, EPA is using the coastal population of counties that are wholly or partially within the State's or Territory's legally defined coastal zone as a surrogate, rather than beach usage because information on beach visitors is not available for all beaches in the 35 eligible States and Territories. EPA also discussed the drawbacks of using this surrogate factor with States on a conference call on December 11, 2001. Participants on the call were doubtful that EPA could develop a consistent, verifiable approach for estimating beach use for all beaches, but could not suggest a better way to quantify this factor at present. EPA is committed to work with the States and Territories with BEACH Act grants to develop a better way to quantify this factor. EPA used the 1990 Census data to quantify coastal population because the 2000 data are not yet available for American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands. EPA will update this factor when the 2000 census data are available for all eligible States and Territories.

The grants allocation formula consists of the sum of three parts. The first part provides a base amount for all States and Territories that varies with the length of the beach season. The second part distributes 50% of the total remaining funds ($10 million in FY 2002 less that used for the beach season length) based on the ratio of shoreline miles in a State or Territory to the total length of shoreline miles. For example, if a State has 4% of the total coastal and Great Lakes shoreline, that State would receive 2% (4% of 50%) of the total funds remaining after the funds for the beach season length are distributed. The third part distributes 50% of the total remaining funds ($10 million in FY 2002 less that used for the beach season length) based on the ratio of coastal population in a State or Territory to the total coastal population. For example, if a State has 2% of the total coastal and Great Lakes population, that State would receive 1% (2% of 50%) of the total funds remaining after the funds for the beach season length are distributed. The following table summarizes the allocation formula:

For the factor—	The part of the allocation is—
Beach season length	< 3 months: $150,000 (States and Territories with a season <3 months receive season-based funding only.) 3–4 months: $200,000 5–6 months: $250,000 >6 months: $300,000
Shoreline miles	50% of funds remaining after allocation of season-based funding.
Coastal population	50% of funds remaining after allocation of season-based funding.

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Based on this allocation formula, the amount of the each State or Territory's development grant award in FY 2002 is expected to be from $150,000 to $530,893 if all 35 eligible States and Territories apply. EPA anticipates that all 35 eligible governments will apply. If fewer than 35 States and Territories apply for the allocated amount, then EPA will re-allocate these grant funds to those States and Territories that applied for the grants using the same formula. If all 35 eligible States and Territories apply, the distribution of the $10 million in funds for year 2002 will be:

For the State or Territory of—	The year 2002 allocation is—
Alabama	$263,142
Alaska	150,000
American Samoa	302,288
California	535,643
Connecticut	226,389
Delaware	211,339
Florida	530,893
Georgia	288,490
Guam	302,775
Hawaii	325,149
Illinois	248,615
Indiana	206,670
Louisiana	383,287
Maine	259,742
Maryland	276,068
Massachusetts	260,691
Michigan	287,556
Minnesota	204,631
Mississippi	258,028
New Hampshire	204,918
New Jersey	285,719
New York	366,030
North Carolina	306,721
Northern Mariana	303,462
Ohio	227,879
Oregon	230,342
Pennsylvania	226,953
Puerto Rico	335,862
Rhode Island	214,225
South Carolina	300,253
Texas	387,957
U.S. Virgin Islands	303,488
Virginia	282,355
Washington	274,034
Wisconsin	228,396

What is the Expected Duration of the Funding and Project Periods?

The expected funding and project period for Development Grants awarded in FY2002 is one year.

Are Matching Funds Required?

Recipients are not required to provide matching funds for Development Grants awarded under authority of the BEACH Act at this time.

What if a State Cannot Use All of Its Allocation?

If a State or Territory cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient(s) in the Region for the development of their coastal recreation water monitoring and notification program. If after this re-allocation, there are still unused funds within the Region, EPA-Headquarters will award these funds to any eligible coastal or Great Lake grant recipient(s).

III. Grant Condition

Section 406(c) of the BEACH Act requires that as a condition of receipt of any BEACH Act grant, recipients identify the program elements listed below. Therefore, EPA will require recipients to address each of the following elements in their grant application and include the status of their efforts on each element in an annual performance report, as required under 40 CFR 31.40:

(1) Lists of coastal recreation waters in the State, including coastal recreation waters adjacent to beaches or similar points of access that are used by the public;

(2) In the case of a State program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) The frequency and location of monitoring and assessment of coastal recreation waters based on: (A) the periods of recreational use of the waters; (B) the nature and extent of use during certain periods; (C) the proximity of the waters to known point sources and nonpoint sources of pollution; and (D) any effect of storm events on the waters;

(4)(A) the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and (B) the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) Measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to EPA and a designated official of the local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified; EPA has determined that this information may be submitted to the Agency in any form so long as it includes the required information;

(6) Measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) Measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

IV. Additional Eligible Activities

Recipients may use funds for activities in support of developing a beach monitoring and notification program, including:

(1) Activities to comply with the grant conditions specified in section III above;

(2) Quality assurance and quality control (QA/QC) procedures consistent with the requirements under 40 CFR 31.45; to develop and implement QA/QC practices for environmentally related measurements or data generation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions; and

(3) Data quality objectives (DQOs), quality assurance project plan (QAPP) and standard operating procedures (SOPs) that clarify study objectives, define the appropriate type of data, and specify tolerable levels of potential decision errors that will be used as the basis for establishing the quality and quantity of data needed to support decisions.

V. Selection Process

What Criteria Will Be Used to Evaluate Applications and Award Development Grants?

Development Grants will be awarded through a non-competitive process by the EPA Regional offices. EPA expects to award grants to all eligible State and Territory applicants that meet requirements of the BEACH Act as described in this document.

Who Has The Authority to Award Development Grants?

The Administrator has delegated the authority to award Development Grants to the Regional Administrators.

VI. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the BEACH Program Development Grant?

The number assigned to the Development Grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

For Fiscal Year 2002, Development Grants cannot be included in a Performance Partnership Grant.

What Are The Components of the Application Package?

The application package should contain completed EPA SF–424 Application for Federal Assistance and be submitted to the appropriate EPA Regional Office by May 20, 2002. Please contact the appropriate EPA Regional Office for a complete application package. See Section VII for a list of EPA Regional Grant Coordinators or visit the EPA Beach Watch Website at *www.epa.gov/ost/beaches* on the Internet.

Will Quality Assurance and Quality Control (QA/QC) and Other Procedures Be Required for Application?

No. A QA/QC plan is not required for the application, however under 40 CFR 31.45 a QA/QC plan is required for any environmentally related measurements or data generation (*e.g.* monitoring) performed under the grant. (*See* section IV of this document).

Will There Be Reporting Requirements?

Recipients must submit annual performance reports and financial reports as required in §§ 31.40 and 31.41.

What Regulations and OMB Cost Circular Will Apply to the Award and Administration of These Grants?

The regulations at 40 CFR part 31 will govern the award and administration of grants to States and Territories under section 406 of the BEACH Act. Allowable costs will be determined in accordance with the cost principles in OMB Cost Circular A–87.

VII. Grant Coordinators

Headquarters—Washington, DC

Charles Kovatch USEPA, 1200 Pennsylvania Ave. NW—4305, Washington DC 20460; T:202–260–3754; F: 202–260–9830; *kovatch.charles@epa.gov.*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Matt Liebman USEPA Region I, One Congress St. Ste. 1100—CWQ, Boston, MA 02114–2023; T:617–918–1626; F: 617–918–1505; *liebman.matt@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe USEPA Region II, 2890 Woodbridge Ave. MS220, Edison, NJ 08837–3679; T: 732–321–6797; F: 732–321–6616; *grebe.helen@epa.gov.*

Region III—Delaware, Maryland, Pennsylvania, Virginia

Nancy Grundahl USEPA Region III, 1650 Arch Street 3ES10, Philadelphia, PA 19103–2029; T: 215–814–2729; F:215–814–2782; *grundahl.nancy@epa.gov.*

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel USEPA Region IV, 61 Forsyth St. 15th Floor, Atlanta, GA 30303–3415; T: 404–562–9274; F: 404–562–9224; *hansel.joel@epa.gov.*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick USEPA Region V, 77 West Jackson Blvd. WT–16J, Chicago, IL 60604–3507; T: 312–353–6704; F: 312–886–0168; *wirick.holiday@epa.gov.*

Region VI—Louisiana, Texas

Mike Schaub USEPA Region VI, 1445 Ross Ave. 6WQ–EW, Dallas, TX 75202–2733; T: 214–665–7314; F: 214–665–6689; *schaub.mike@epa.gov.*

Region IX—American Soma, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming USEPA Region IX, 75 Hawthorne St. WTR–2, San Francisco, CA 94105; T: 415–744–1939; F: 415–744–1078; *fleming.terrence@epa.gov.*

Region X—Alaska, Oregon, Washington

Rob Pedersen USEPA Region X, 120 Sixth Ave. OW–134, Seattle, WA 98101; T: 206–553–1646; F: 206–553–0165; *pedersen.rob@epa.gov.*

Dated: February 25, 2002.

Diane C. Regas,

Acting Assistant Administrator, Office of Water.

[FR Doc. 02–6850 Filed 3–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34237B; FRL–6828–2]

Atrazine; Revised Pesticide Risk Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessment for atrazine to interested stakeholders. This public meeting, called a "technical briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessment for atrazine.

DATES: The technical briefing will be held on, April 16, 2002, from 9 a.m. to 5 p.m.

ADDRESSES: The technical briefing will be held at the National Rural Electric Cooperative Association (NRECA), 4301 Wilson Blvd., Arlington, VA, telephone number (703) 907–5933. Metro accessibility—Ballston Metro Stop.

FOR FURTHER INFORMATION CONTACT: By mail: Kimberly Nesci Lowe, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; e-mail address: lowe.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in the technical briefing on atrazine pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

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To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides. In addition, a brief summary of the atrazine revised risk assessment is now available at http://www.epa.gov/pesticides, as well as in paper as part of the public version of the official record as described in Unit I.B.2.

2. *In person.* The Agency has established an official record under docket control number OPP–34237B. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This document announces the Agency's intention to hold a technical briefing for atrazine. The Agency is presenting the revised risk assessment for atrazine to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about the risk assessment. EPA will describe in detail the revised risk assessment: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions.

The technical briefing is part of the pilot public participation process that EPA and the United States Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of pesticide risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the atrazine revised risk assessment and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit risk management and mitigation ideas and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 13, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6853 Filed 3–20–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7161–3]

Clean Water Act Section 303(d): Final Agency Action on 27 Total Maximum Daily Loads (TMDLs) and Final Agency Action on 6 Determinations That TMDLs Are Not Needed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 27 TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). This notice also announces final agency action removing 6 waterbody/pollutant combinations from the Louisiana 303(d) list because TMDLs are not needed. EPA evaluated these waters and prepared the 27 TMDLs needed in response to a partial consent decree entered in the lawsuit *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Documents from the administrative record files for the 6 determinations that TMDLs are not needed and for 27 TMDLs, including TMDL calculations and responses to comments may be viewed at *www.epa.gov/region6/water/tmdl.htm*. The administrative record files may be obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Takes Final Agency Action on 27 TMDLs

By this notice EPA is taking final agency action on the following 27 TMDLs for waters located within the Mermentau and Vermilion/Teche basins:

Subsegment	Waterbody name	Pollutant
050101	Bayou Des Cannes—Headwaters to Mermentau River	Pesticides (carbofuran & fipronil).
050701	Grand Lake	Pesticides (carbofuran).
050702	Intracoastal Waterway	Pesticides (carbofuran).

Subsegment	Waterbody name	Pollutant
050901	Bays and Gulf Waters to State 3-mile Limit	Pesticides (carbofuran).
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10	Pesticides (carbofuran).
060207	Bayou des Glaises Diversion Canal	Pesticides (carbofuran).
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Pesticides (carbofuran).
060401	Bayou Teche—Keystone Locks and Dam to Charenton Canal	Pesticides (carbofuran).
060701	Tete Bayou	Pesticides (carbofuran).
060801	Vermilion River—Headwaters at Bayou Fusilier-Bourbeaux Junction to New Flanders (Ambassador Caffery Bridge at Hwy 3073).	Pesticides (carbofuran).
060802	Vermilion River—From New Flanders (Ambassador Caffery Bridge) at Hwy 3073 to Intracoastal Waterway.	Pesticides (carbofuran).
060803	Vermilion River Cutoff	Pesticides (carbofuran).
060901	Bayou Petite Anse	Pesticides (carbofuran).
060902	Bayou Carlin (Delcambre Canal)—Lake Peigneur to Bayou Petite Anse (Estuarine).	Pesticides (carbofuran).
060903	Bayou Tigre	Pesticides (carbofuran).
060904	Vermilion River B890 Basin New Iberia Southern Drainage Canal	Pesticides (carbofuran).
060906	Intracoastal Waterway	Pesticides (carbofuran).
060907	Franklin Canal	Pesticides (carbofuran).
060910	Boston Canal and Associated Canals (Estuarine)	Pesticides (carbofuran).
060911	Vermilion-Teche River Basin	Pesticides (carbofuran).
061101	Bayou Petite Anse	Pesticides (carbofuran).
061102	Intracoastal Waterway	Pesticides (carbofuran).
050201	Bayou Plaquemine Brule—headwaters to Bayou Des Cannes	Pesticides (fipronil).
050401	Mermentau River—origin to Lake Arthur	Pesticides (fipronil).
050501	Bayou Queue de Tortue—headwaters to Mermentau River	Pesticides (fipronil).
050603	Bayou Chene—includes Bayou Grand Marais	Pesticides (fipronil).

EPA requested the public to provide EPA with any significant data or information that may impact the 27 TMDLs in 66 FR 47673 (September 13, 2001). The comments received and EPA's response to comments may be found at *www.epa.gov/region6/water/tmdl.htm*.

Final Agency Action Removing 6 Waterbody/Pollutant Combinations for waters located within the Mermentau and Vermilion/Teche basins from the Louisiana 303(d) List Because TMDLs are not Needed:

Subsegment	Waterbody name	Pollutant
050102	Bayou Joe Marcel	Ammonia, nutrients, and organic enrichment/low DO.
060906	Intracoastal Waterway	Nutrients.
061101	Bayou Petite Anse	Nutrients.
060204	Bayou Courtableau—origin to	Oil and grease.

EPA requested the public to provide to EPA any significant data or information that may impact the determinations that 6 TMDLs are not needed in 66 FR 52403 (October 15, 2001). No comments were received.

Dated: March 13, 2002

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–6845 Filed 3–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7161–7]

Public Water System Supervision Program Revision for the State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved Public Water System Supervision Program. Florida has adopted drinking water regulations for Lead and Copper and the definition of a Public Water System. EPA has determined that these sets of revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by April 22, 2002 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 22, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on April 22, 2002.

Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road,

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Tallahassee, Florida 32399–2400, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Franklin Baker, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9442.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: February 14, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–6851 Filed 3–20–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 50]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Carlista Robinson, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3351.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers

1. Application for Quotation—Export Credit Insurance, EIB 92–34.
2. Beneficiary Certificate and Agreement, EIB 92–37.
3. Application for a Financial Institution Buyer Credit Policy, EIB 92–41.
4. Application for Export Credit Insurance Financing or Operating Lease Coverage EIB 92–45.
5. Application for Medium Term Export Credit Insurance Quotation EIB 92–48.
6. Short-Term Multi-Buyer Export Credit Insurance Policy Application, EIB 92–50.
7. Exporter's Application for Short-Term Single-Buyer Policy, EIB 92–64.
8. Application for Export Credit Insurance Umbrella Policy, EIB 92–72.
9. Broker Registration Form EIB 92–79.

OMB Number: 3048–0009.

Type of Review: Revision and extension of expiration date.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. The forms encompass a variety of export credit insurance policies.

Affected Public: They affect all entities involved in the export of U.S. goods and services including exporters, banks, insurance brokers and non-profit or state and local governments. acting as facilitators.

Estimated Annual Respondents: 2,262.

Estimated Time per Respondent: 1 hour.

Estimated Annual Burden: 2,262.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: March 14, 2002.

Carlista D. Robinson,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB#3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR QUOTATION-EXPORT CREDIT INSURANCE
COMMERCIAL BANK INSUREDS
LETTER OF CREDIT (ELC), BANK DEDUCTIBLE (EBD) or
FINANCIAL INSTITUTION SUPPLIER CREDIT (EBS, EBM) POLICIES

THIS DOCUMENT WILL BE A MATERIAL BASIS OF THE INSURANCE IF QUOTATION IS MADE AND ACCEPTED.

1. Applicant Bank:_____ Contact:_____

   Address, include 9 digit Zip Code:_____

   E-Mail_____ Fax_____ Phone_____

   Tax ID #:_____ DUNS #:_____ Congressional District:_____

2. If you wish us to consider adding subsidiaries, branches or affiliates as Additional Named Insureds under your policy, provide full legal name and address below and answer questions 5. A. (2) or B. (2) for each Additional Named Insured.

Name	Address

3. Name of Brokerage (if any, if none insert *"none"*):_____

   Name of Contact:_____ Broker #:_____

   E-Mail_____ Fax_____ Phone_____

4. Please provide the following information unless you have submitted this information within the past 6 months for Policy No_____:

   A. (I)Rating:_____ Agency:_____ Date:_____, or

   (2) a. Annual report, including audited financial statements, on your bank for the past two fiscal years.
   b. The most recent available 10K and 10Q reports on your bank.
   c. Recent (within six months) credit agency report on your bank (otherwise, please attach a check for $35.00).

   B. If you are a foreign bank registered to do business in the U.S., in which state(s) are you licensed to conduct business? How are your operations in this country best described? Does your bank operate as a branch or subsidiary? To what extent are credit decisions made by your bank autonomous of headquarters?

   C. Has your bank or have the individual(s) who will be administering or placing business under this policy ever dealt with Ex-Im Bank before? ☐ Yes ☐ No If yes, describe the programs the bank or the individual(s) are familiar with, and the time period during which these contacts took place._____

   D. Is there any other information that will be of assistance in evaluating your request for a bank policy? ☐ Attached

5. A. **For Letter of Credit Policies** (add pages if necessary):

   (1) a. How are the international banking activities in your bank organized functionally? _____

   (2) a. Who are the key individuals involved? _____

   b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ☐ Yes ☐ No
   c. Please provide their resumes. (See resume form attached)
   You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

   (3) a. How long have you been confirming international letters of credit?_____

   b. From what countries?_____

   (4) Does your bank have any special expertise in particular types of transactions, regions of the world or any other areas?
   _____

   (5) Maximum value of insured letters of credit expected to be outstanding during the policy period: $_____.

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B. **For Financial Institution Supplier Credit** or **Bank Deductible Policies** (add pages if necessary):

(1) Describe how you develop customers for domestic or export receivable financing or factoring.

_____

(2) a. Please identify the individual(s) and administrative area which will be responsible for administering your policy.

_____

b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ☐ Yes ☐ No

c. What experience do the individual(s) identified in 5.B.(2)a.. have with Ex-Im Bank insurance _____ or private sector export credit insurance? _____

d. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

(3) How many years, and to what dollar amount, have you financed or factored receivables?

	# of years	most recent calendar year amount
Domestic Receivables:	_____	$_____
Foreign Receivables:	_____	$_____

(4) Describe the credit procedures used in deciding to finance an exporter's receivables.

Exporter Analysis: _____

Buyer Analysis: _____

(5) a. Maximum value of financed receivables expected to be outstanding during the policy period: $_____

b. For **Financial Institution Suppler Credit Policies** Do you desire (check one) a Documentary Policy ☐
a Non-Documentary Policy ☐
or both ☐

c. After what number of days would you stop financing the exporter's receivables from an overdue buyer? _____

d. How often are financed export receivables monitored? _____

e. Please provide a specimen copy of your lending agreement with exporters for receivable financing or factoring. ☐ Attached

6. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**
2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

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C. (1) neither it nor its principals have been within the **past** 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

D. it will complete and submit **Form-LLL,** Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

F. (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

G. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts.** It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____	_____	____/__/__
Signature	Print Name and Title	Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:
☐ An Ex-Im City/State Partner: _____
☐ A Broker: _____
☐ A Local Development Authority: _____
☐ An Ex-Im Regional Office: _____
☐ A U.S. Export Assistance Center: _____
☐ A Bank: _____
☐ Other (specify): _____

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Attachment to Bank Policy Application
To be filled out for each individual named.
RESUME FORM

Name:_____

Title or Position:_____

Number of years with your organization:_____

Full description of job functions including administering the policy:

_____

_____

_____

_____

Administrative experience:_____

_____

_____

_____

_____

Export-related experience including any previous experience with Ex-Im Bank:_____

_____

_____

_____

Educational background:_____

_____

_____

EXPORT-IMPORT BANK OF THE UNITED STATES
BENEFICIARY CERTIFICATE AND AGREEMENT
For Use With
Bank Letter of Credit Export Credit Insurance Policy or
Financial Institution Buyer Credit Export Credit Insurance Policy or
Medium Term Export Credit Insurance Policy

NOTE: This form is to be used only if the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not also the U.S. Exporter. In that situation the exporter must complete those parts of the Exporter Certificate EIB94-07 required in its instructions and the beneficiary must complete this entire certificate.

Name and Address of Policyholder: Name and Address of Beneficiary:

_____ _____

_____ _____

Policy No._____ _____

(to be completed by the policyholder, also see No.4.e) Beneficiary's Dun & Bradstreet Number _____

Taxpayer ID No.:_____ Congressional District:_____

Indicate (not required)if owned by a☐ woman, or an☐ ethnic minority, describe____

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws; transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

Upon representation that the Export-Import Bank of the United States ("Ex-Im Bank") has issued to the policyholder identified above an export credit insurance policy, and in consideration of either (check one):

☐ a) the payment, acceptance or negotiation of an irrevocable letter of credit in our favor; or,

☐ b) the financing of an export,

We, the Beneficiary, hereby certify to the policyholder and to Ex-Im Bank as follows:

1. The policyholder has either (check one):

☐ a) informed us of an irrevocable letter of credit with Identification No._____ and we have presented, or shall present, documents which are in compliance with the terms and conditions of such irrevocable letter of credit; or,

☐ b) to our belief, established an obligation of the foreign buyer named below to make repayment of funds on a specified term in support of an export, for which we have received payment.

2. The above referenced irrevocable letter of credit or the buyer's obligation to pay the policyholder is in support of an export transaction described as follows:

a) Name and address of buyer_____

b) Description and quantity of product(s)/service(s)_____

c) The product(s) are: ☐ New, ☐ Used. If used, attach Used Equipment Questionnaire form EBD-M-25.

d) Place of Shipment_____ e) Date of Shipment_____

f) Contract Price to Buyer:

(i) Products/Service	$_____
ii) Less discounts or similar allowances	$_____
iii) Plus total insurance, freight or other delivery charges included in the transaction	$_____
Subtotal:	$_____
iv) Less cash payment (minimum 15% required for MT)	$_____
(v) Total final net delivered financed portion	$_____

3. To the best of our knowledge and belief, the products described above were **shipped from the United States**, in accordance with paragraph 2 above.

4. With respect to products
a) which could be used for **military** purposes,
b) which could be components of a product or equipment which could be used for military purposes,
c) which could be used to manufacture products or equipment which could be used for military purposes,
d) listed on the United States **Munitions List** (part 121 of Title 22 of the Code of Federal Regulations), or
e) purchased by or for use by security, military or defense organizations, ☐ we ____ have or ☐ the policyholder ____
Initial Initial
has received the written approval of the Ex-Im Bank for such sale prior to shipment of the products **and attached** it to this certificate. Submit a Defense Product Questionnaire EIB92-61 in order to obtain such approval.

5. The products do not consist of technology, fuel, equipment, materials or goods and services to be used in the construction, alteration, operation or maintenance of **nuclear** power, enrichment, reprocessing, research or heavy water production facilities.

6. To the best of our knowledge and belief the products are **for use only in countries** in accordance with Ex-Im Bank's Country Limitation Schedule in effect on the date of shipment. See Ex-Im Bank's Internet Website <www.exim.gov> Country and Fee Information.

7. a) neither we nor our principals have been within the past 3 years:
(1) **debarred**, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(2) formally proposed for debarment, with a final determination still pending;
(3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
b) We certify that we are **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
c) We has received a **written** statement of exception from Ex-Im Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (a) (1) through (3) and (b).
We further certify that we have not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (a) (1), (2) or (3) above.

8. We will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
a) an officer or employee of any U.S. Government **agency**, or
c) a Member of Congress or a Member's employee, or
d) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

9. we have not, and will not, engage in any activity in connection with this transaction that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of our knowledge, the performance by the parties of their respective obligations covered or to be covered under this transaction does not and will not violate any applicable law.

10. The representations made and the facts stated by us in these certifications and its attachments **are true, to the best of our knowledge and belief, and we have not misrepresented or omitted any material facts.** We further understand that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

By:_____ Signature:_____
Print Name (Authorized Representative of the Beneficiary)

Title:_____ Date:_____

If the beneficiary can not make any or all of the required certifications as they are presented here, Ex-Im Bank must be contacted to request written permission to delete or alter the certification, without which the insurance policy may not be valid.

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Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION for a FINANCIAL INSTITUTION BUYER CREDIT POLICY

(Please Print or Type) APP. NO._____(Ex-Im Bank Use Only)
INSURANCE BROKER: If none, insert "*none*." Broker #:_____
Name of Brokerage:_____ Phone #:_____
Contact Person:_____ Fax #:_____ E-Mail:_____

I. APPLICANT: (Ex-Im use only: Insured #:_____)
Applicant Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____
City:_____ State:_____ Zip Code:_____

Please attach the following information unless you submitted this information within the past 6 months for Policy No._____.

a. Taxpayer ID #:_____ Duns #:_____ Congressional District:_____ **AND**

b. Market Rating:_____ Rating Agency:_____ Date:_____, **OR**

c. (1) ☐ Your most recent published annual report, or audited financial statements.
(2) ☐ Your most recent available 10K and 10Q reports.
(3) ☐ A credit agency report dated within 6 months. If unavailable, attach check for $35.00 to cover Ex-Im Bank's cost in ordering report.
(4) How long have you been lending internationally?_____
(5) To what countries do you actively lend?_____.
(6) How is your foreign loan portfolio broken down between government _____% and private _____% sector buyers?
(7) How often do you visit your overseas buyers?_____
(8) ☐ Attach the names, titles, and the international lending backgrounds of the individuals responsible for administering Ex-Im policies.

2. TRANSACTION:
a. This insurance application is for, check one, a credit extended by you based on:
your relationship with the Buyer or Guarantor , a☐ Buyer Credit, **or**, your relationship with the exporter, a☐ Supplier Credit.
b. This application is for ☐ Comprehensive (Commercial and Political Cover) or☐ Political Only Cover.
c. This application is for a☐ Single Financing or a☐ Revolving Line.
d. Credit limit requested $_____
e. Payment terms requested_____.
f. Ex-Im Bank requires a written debt obligation, i.e., promissory note or draft. If none, check here ☐ and provide a full description of documentation which constitutes the buyer's debt obligation._____.
g. Indicate whether ☐ negotiating or ☐ financing mandate received.
h. For buyer credits, provide a brief description of the products (for supplier credits see 5.c,)_____.

3. BUYER: The "buyer" is the entity which agrees to repay the credit (loan). Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) for Buyers to determine the likelihood of approval:

a. This buyer is ☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector. (Ex-Im use only: File #:_____)
Buyer Name:_____ Duns #:_____
Contact person:_____ Phone #:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State/Province:_____ Postal Code:_____ Country:_____

The following information on the buyer is necessary unless the credit is based on a guarantor, if so check here☐ and complete for the guarantor

b. For **all applications** provide in an attachment:
(1) ☐ A summary of credit facilities (insured and uninsured) extended by the☐ applicant or the ☐ exporter (for Supplier Credits) to this buyer/guarantor specifying the high credit, whether secured or unsecured, and tenor(s) with details on past dues (if applicable), or☐ None.

(2) For ☐ **non-sovereign public** or ☐ **private** buyers/guarantors on which comprehensive cover is requested, provide the following:
(a) Market Rating:_____ Rating Agency:_____ Date:_____, **OR**
(b) ☐ A bank reference not older than 6 months from date of application **and**
(i) ☐ 2 Ex-Im Bank Trade Reference forms (EIB99-14) dated within 6 months of the application **and**
(ii) ☐ For a credit limit up to $1 million, the last 2 fiscal year end audited or signed unaudited financial statements with notes.
☐ For a credit limit over $1 million, provide 3 fiscal year end audited statements with notes and the most recent interim statements with notes if the last fiscal year end is more than 9 months prior to application.
(3) ☐ The applicant's credit memorandum on the buyer/guarantor.
(4) Have you visited the buyer/guarantor? ☐ No ☐ Yes, if yes give date: _____ and attach a copy of your call report.

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4. **GUARANTOR:** The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below and provide the information in 3.b. if the credit is based on the guarantor. (Ex-Im use only: File #: _____)

This guarantor is ☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector.

Guarantor Name: _____ Duns #: _____
Contact person: _____ Phone #: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Postal Code: _____ Country: _____

5. For **SUPPLIER CREDITS** only:

NOTE: You are not required to fill out this section for **Buyer Credits** but, if any information is known, please complete in a, b and c.

a. EXPORTER:

The "exporter" is the entity which contracts with the buyer for the sale of the U.S. items and services. (Ex-Im use only: File #: _____)

Exporter Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State: _____ Zip Code: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____
Fiscal year ended (mo. & yr.): _____ Gross sales revenue in last fiscal year: $ _____ # of employees: _____
Standard Industrial Code of business: _____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____

If "Documentary" cover is desired, check here ☐ and attach the following unless the exporter submitted it within the past 6 months for Policy No._____. Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Exporter Standards for an Enhanced Assignment to determine the likelihood of approval of documentary cover if the exporter, using the US Small Business Administration guidelines, is a small business.

(1) ☐ A bank reference on the exporter dated within 6 months of the application **and**
(2) ☐ 2 trade references on the exporter dated within 6 months of the application **and**
(3) The last 2 fiscal year financial statements of the exporter as follows:

Claim Payment Limit (Credit Limit x %of cover)	Minimum Requirement
☐ $500,000 or less	signed by an authorized officer of the exporter
☐ $500,001 - $999,999	reviewed by a CPA with notes attached
☐ $1,000,000 or more	audited by a CPA with opinion and notes attached

NOTE: The net worth, including subordinated shareholder debt, of the exporter must be at least 20% of the Claim Payment Limit.

b. SUPPLIER: The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.

Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #: _____)

Supplier Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State: _____ Zip Code: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____
Fiscal year ended (mo. & yr.): _____ Gross sales revenue in last fiscal year: $ _____ # of employees: _____
Standard Industrial Code of business: _____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____

c. PRODUCTS: All applicants should note that there are specific United States content requirements for all transactions and that exporters are required to complete an Exporter's Certificate form EIB-94-07 for "Documentary" cover.

(1) Products: ☐ New ☐ Used (If used, complete and attach Used Equipment Questionnaire, EIB-92-63)
(2) Description of products*: _____
(3) Are products listed on the United States Munitions List (part 121 of Title 22 of the Code of Federal Regulations)? ☐ Yes ☐ No
(4) Is each product produced or manufactured in the United States? ☐ Yes ☐ No
(5) Is at least one half of the value, exclusive of price mark-up, exclusively of US origin? ☐ Yes ☐ No
(6) Will any value be added to the products after export from the United States? ☐ Yes ☐ No
If yes please attach an explanation; the transaction may not be eligible for coverage.

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim..gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C52909852S6A0A004DEE7D.

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6. **PARTICIPANTS:** Describe any direct or indirect ownership or family relationship between any of the participants in this transaction. If none, insert *"none"*._____.

☐ the applicant **and** for supplier credits: ☐ the exporter, or
for buyer credits: ☐ the buyer and ☐ the guarantor (if any).

7. **The Applicant** (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**
2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

C. (1) neither it nor its principals have been within the past 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

D. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

F. (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden reporting** for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

G. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts.** It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____ _____ _____
Signature Print Name and Title Date

Note: Please respond to all items and sign application. Applications not completely filled out or not submitted with required financial and credit information will be withdrawn.

Send, or ask your insurance broker or city/state participant to review and send, this application to:
Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:
☐ An Ex-Im Regional Office:_____
☐ An Ex-Im City/State Partner:_____
☐ A U.S. Export Assistance Center:_____
☐ A Broker:_____
☐ A Bank:_____
☐ A Local Development Authority:_____
☐ Other (specify):_____

END

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APPLICATION FOR MEDIUM TERM EXPORT CREDIT INSURANCE QUOTATION INSTRUCTIONS

INTRODUCTION

The Export-Import Bank of the United States (Ex-Im) is an independent federal agency which provides financing support for the export of U.S. goods and services. Several programs are available, including Direct **Loans** to foreign buyers, Financial **Guarantees** of payment for lenders to foreign buyers, **Working Capital Loan Guarantees** of payment by a U.S. exporter to its lender, and **Export Credit Insurance**. Ex-Im issues **Letters of Interest** indicating the eligibility of transactions for these programs, see "Information" below to obtain an application.

These instructions are for an application for export credit insurance by either a lender or exporter on a transaction involving sales of capital goods and services with a medium repayment term to a single buyer. For leases see EIB92-20 Fact Sheet on Lease Policies and EIB92-45 Instructions and Application for Lease Policies.

INFORMATION about Ex-Im programs; the fact sheets and **forms mentioned in these instructions** and the application; information on Private Export Financing Corporation (PEFCO) export financing; names of: credit reporting and rating agencies, banks interested in export financing, insurance brokers and Ex-Im City/State Participants **may be obtained:**

- from Ex-Im's **website** <http://www.exim.gov> , see Programs, then Publications, then Export Credit Insurance or
- by calling an Ex-Im **Regional Office**: Northeast: New York (212) 916-0320,MidAtlantic: Washington, D.C. (202) 565-3902, Midwest: Chicago (312) 353-8081, Southeast: Miami (305) 526-7425, Southwest: Houston (281) 721-0465, West: Los Angeles (562) 980-4580, Orange County (949) 660-1688ext150,San Francisco (415) 705-2285, or
- by calling the Ex-Im Business Development Division **1-800-565-EXIM** (3946), or
- at 811 Vermont Avenue, NW, Washington, D.C. 20571.

REQUIREMENTS TO APPLY for a medium term export credit insurance policy:

There is **NO Application Fee.**
A **non binding insurance premium rate** can be determined using the Ex-Im website **Exposure Fee Calculator** or you may call Ex-Im, see above.

1. The **REASON** Ex-Im's support is requested must demonstrate that the transaction will not go forward without support. See the application form question no. 5.

2. Use of a registered Ex-Im insurance **BROKER** or an Ex-Im **CITY/STATE PROGRAM PARTICIPANT** is recommended but not required. Use of a broker or participant does not affect the Ex-Im premium rate. Regional Offices will provide guidance on applications as well as lists of brokers, city/state program participants, and lenders interested in providing export financing. All information provided in an application will be held **confidential**, subject to the Freedom of Information Act, 5 USC 552, the Privacy Act of 1974, 5 USC552a, and the Right of Financial Privacy Act of 1978, 12 USC 3401 except as required to be disclosed under applicable laws.

3. The **APPLICANT** must be either an exporter or a financial institution with an insurable interest in the transaction. A Taxpayer ID number is requested to report on claim payments. The Standard Industrial Code (SIC) or NAICS Code, gross sales and number of employees are requested to determine eligibility for small business benefits. Gender and ethnic minority ownership interest information are requested but not required. Also, see the **applicant certifications** on the **application** and Part 3 of the application, the **Credit Information Checklist**, which is required to demonstrate the ability of the applicant and exporter or supplier to perform the export.

4. The payment obligation must be in U.S. dollars, must be **unconditional** and must be evidenced by a **PROMISSORY NOTE** (single disbursement or grid forms EIB-92-58A or B, special notes for Mexico and Venezuela) or conforming to the requirements listed in the insurance policy which allow use of a note form other than Ex-Im's.

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5. The **EXPORT** must involve shipment of capital goods from the U.S. Services must normally be provided by U.S. based personnel and may be provided in the U.S. or at the foreign site. Used equipment may be supported, see Used Equipment Questionnaire EBD-M-25 for details. Breeding cattle or livestock may be supported, see Livestock Questionnaire EIB92-62.
Allowance is made for goods and services that are not 100% U.S. origin as follows:
- The Exporter's Supply Contract may include U.S. and "eligible" foreign content.
- Up to 15% of the Exporter's Supply Contract may be eligible foreign content.
- If more than 15% of the Exporter's Supply Contract is eligible foreign content, Ex-Im may provide support for the U.S. content only. There is no minimum U.S. content requirement.

"Eligible Foreign Content" includes goods imported from a foreign country and shipped from the U.S. with the export.
"Ineligible Foreign Content" includes goods shipped from any other country, or services provided in a foreign country, other than the buyer's.
"Goods assembled outside the U.S." by foreign personnel are **normally ineligible** for insurance cover.
"Local costs" are foreign goods and services originating in the country of the buyer and may only be included in the insured amount if approved by Ex-Im Bank.
See **Insurance Program Foreign Content Requirements** EIB99-21 and **Local Cost Policy** EBD-M-05 for details.
Military goods and services and sales to or for use by military/police/security force entities are **normally ineligible**, see Defense Product Questionnaire EIB-92-61. However, goods on the US Munitions List are not necessarily excluded.
Fees for bank, legal, or other technical services, may be financed, see Financing of Fees for **Ancillary Services** EBD-M-13
Ex-Im has cooperative agreements with some foreign export credit agencies like itself. Ex-Im may be able to provide full support for goods and services which do not meet the domestic content requirements **if** the foreign content is from one of those nations **and** there is no other U.S. competition. Ex-Im's Reinsurance Questionnaire Attachment H to EIB95-10 will be required. See Cooperative Insurance Agreements with Foreign Export Credit Agencies (ECAs) EIB99-11.
Capital equipment used to manufacture/produce **exportable goods**, including agricultural commodities, from the country of importation will require a detailed description including changes in the level of production.

6. The **PAYMENT TERMS** to be insured are a maximum of 5 years and will be determined by the details of the transaction or credit including price, buyer, borrower, guarantor, goods, services and use. Sales to dealers, distributors or others for **resale** are limited to 2 years. Some exceptions, such as, sales of certain aircraft or to match confirmed foreign government supported competition, may be eligible for up to 7 years. "Grace" periods and "balloon" payments are **not** allowed. Further details may be found in Ex-Im Bank Standard Repayment Terms EBD-M-26.

EXPORTER'S SUPPLY CONTRACT	MAXIMUM TERM
less than $80,000	2 years
$80,000 - less than $175,000	3 years
$175,000 - less than $350,000	4 years
$350,000 or more	**5 years**

The **NET CONTRACT PRICE** is the amount to be shown in the exporter's invoice related to the goods and services to be exported and services to be performed by U.S. based personnel. If there is more than one exporter or supplier under a transaction, the Net Contract Price is the sum of the Net Contract Price specified in each of the exporter's or supplier's Exporter's Certificates EBD-M-56. The Net Contract Price **includes** eligible foreign content but **excludes** local costs. Shipping and insurance charges may be included in the Net Contract Price but, if from a foreign source, are considered part of eligible foreign content. Ancillary service fees may be included in the Net Contract Price if approved by Ex-Im Bank. The term "Net Contract Price" as used in the Exporter's Certificate, has the same meaning as the term "contract price" as used in medium term policies.
The **FINANCED/INSURED PORTION** of the contract price is the amount left after a **required minimum 15% cash payment** due **prior** to delivery or, for bank policyholders, funding. The cash payment may be financed separately, but is not included in the financed/insured portion.
The **FINANCED/INSURED PORTION** may not be more than **the lesser of**:
- **$10 million**, excluding interest and the premium; or
- **85% of the Net Contract Price**; or
- the **U.S. content** of the Exporter's Supply Contract.

The premium may be included in the insured financed amount without paying "premium on premium." This will increase the premium rate (see the Ex-Im website Exposure Fee Calculator).

The **STARTING POINT** of the payment obligation and corresponding first installment are determined by the shipment date(s), installation period (if any), consolidation of notes, and frequency of payments. See Guidelines for Starting Points EIB99-16. For semi-annual payments after a single shipment without installation, the starting point is the shipment date and the first installment is due within 6 months.

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7. The **BORROWER, GUARANTOR, BUYER** and **END-USER** must be foreign entities in **COUNTRIES** for which Ex-Im is able to provide support, see Ex-Im's **Country Limitation Schedule** (CLS) at www.exim..gov . There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. You may call Ex-Im Bank's Policy and Planning Division at 202-565-3770 for details. Also, see Part 3 of the application and EBD-M-39 for **credit information** required.

A **GUARANTOR** may be required when the borrower is not creditworthy or under certain other circumstances. See EBD-M-39. For example: guarantors **are required** for the **primary source of repayment** (PSR), which may be **either** the borrower **or** guarantor, under the following circumstances:

- if the PSR is a "start-up" company;
- if the ability of the PSR to pay the debt depends on cash flow from an expansion or new line of business (see EBD-M-39, Part II for exceptions to this requirement on transaction of $1 million or more);
- if more than 25% of PSR sales are **to** or **from** a related/commonly owned company, its guarantee is required;
- if the PSR is a private, non-financial institution with sales revenue of less than U.S. $50 million, the insurance requires the personal guarantee of:
  - an owner holding at least 50%, **or**
  - if no individual has a majority position, of any owner(s) holding 20% or more. This requirement is not applicable when no individual holds at least 20%, however a guarantor may still be required.

8. Ex-Im has published **MEDIUM TERM CREDIT STANDARDS,** EBD-M-39, in order to expedite service. Transactions meeting all of the standards have a high probability of being favorably considered, absent any unusual circumstances.
   PART I, transactions of up to and including $1 million - describes the standards and what can be done if they are not met.
   PART II, transactions of greater than $1 million, up to and including $5 million - describes the standards and what can be done if they are not met.
   PART III, transactions of greater than $5 million - describes the standards and under what circumstances **required supplemental financial information** in **Attachment C** of EBD-M-39 must be provided.

Applicants are **encouraged to review the standards.** Applicants should determine if transactions of up to and including $5 million conform to standards and submit calculations showing the standards are met or provide the additional information described therein when standards are not met. This will **significantly reduce the time** to process the application.

INSURANCE COVER offered:

1. Sales must be to a single or to "joint and several" borrower(s). There are **no medium term "multi-buyer"** policies, except those issued on bank-to-bank lines. Applicants may request cover for:
   Single sale, single shipment transactions with or without installation by the exporter;
   Single sale, multiple shipments transactions, with or without installation by the exporter;
   Repetitive sales under a line of credit extended by a financial institution or exporter to a buyer, or sales by multiple exporters to multiple buyers under a medium term line of credit from one bank to another.
   Applicants will receive a time sensitive binding Commitment from Ex-Im to issue single shipment insurance if approved. Multiple shipment and repetitive sales policies are automatically issued if approved and have a final shipment date.
   Applicants, their brokers or city/state participants are typically advised by a facsimile letter of decisions to approve, deny or require additional information on applications.
2. **COVERAGE**: Applicants may request:
   COMPREHENSIVE cover against all the commercial (including devaluation) and political (excluding devaluation, including transfer/inconvertibility) risks specified in the policy which may cause default, **or**
   POLITICAL risks cover only.
   Transactions with **sovereign** buyers or guarantors (those offering the full faith and credit of the country of importation) receive comprehensive cover. Applicants related to the borrower will receive political risks cover only.

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3. **PRE-SHIPMENT**: Applicants may also request pre-shipment cover against certain commercial and political events which may cause the transaction to fail prior to shipment. However, this does not include cover against contract cancellation. Pre-shipment insurance cover may not be combined with an Ex-Im Direct Loan. A minimum 5% cash payment is required at contract signing or before the effective date of pre-shipment cover. If the CLS requires that a letter of credit be used for the payment, the letter of credit must be issued in order for pre-shipment cover to be in effect. Applicants may also request cover for **progress payments** if such payments are for goods and services to be delivered, see Ex-Im Bank Fact Sheet EIB01-04.

4. **PERCENTAGE OF COVER**: The cover is on **100%** of the principal and interest of the insured loan. Post default interest is covered at 100% of the original rate of interest and only if it is specified in the note. Interest is covered until the date of claim payment or 270 days after default, whichever is earlier. There is a 180 day waiting period to file claims due to commercial risk defaults other than insolvency. There is no waiting period for claims resulting from insolvency or political risk defaults.

5. **CONDITIONALITY**: Insurance is a conditional risk protection product which requires the insured to provide evidence of conformance to the insurance contract (policy) by submission of documents at the time a claim is filed. Insureds are required to report borrowers who are 60 days past due. Single sale, single shipment policies require **PAYMENT OF PREMIUM** prior to shipment. Multiple shipment and repetitive sales policies require insured exporters to pay premium by the 15th day after the end of the month in which shipment takes place. Insured bank premiums are due by the 30th day after the end of the month in which financing takes place. Claims must be filed **within 240 days** after a default.

6. **ASSIGNMENTS**: The insurance policy may be assigned by an insured exporter to a financial institution. Financial institutions receive a "documentary" assignment which provides significant protection against both a foreign debtor's default and the risk of non-conformance to the policy by the insured exporter. Insured financial institutions will receive a documentary policy providing the same type of cover as the assignment. Financial institutions may sell insured promissory notes but may not assign the proceeds of the policy.

7. **EXCLUSIONS**: Applicants and potential assignees should read the policy text, declarations, endorsements and special conditions carefully. Exclusions for policies issued to exporters, in addition to those already mentioned, typically include: loss due to the fault of the insured; product disputes unless settled in favor of the exporter; and losses insurable under American Institute of Marine Underwriter's War Risks and Strikes, Riots and Civil Commotion Clauses insurance. The documentary assignment and policy eliminate such exclusions for a financial institution.

END.

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APPLICATION FOR MEDIUM TERM EXPORT CREDIT INSURANCE QUOTATION APPLICATION FORM

Please type the requested information. Add pages if necessary. Processing of your application may be delayed or the application may be withdrawn if the requested information is not provided.

Also see "INSTRUCTIONS" Part 1

1. **Quotation TYPE requested.** Check applicable boxes in **both** "a" and "b."

   a) ☐ SINGLE SALE, single shipment ☐ SINGLE SALE, multiple shipments ☐ REPETITIVE SALES

   b) ☐ COMPREHENSIVE, i.e., commercial and political risks cover ☐ POLITICAL risk cover only

2. Have you applied for an Ex-Im Bank **Letter of Interest, Guarantee or Loan** for this transaction?

   ☐ No ☐ Yes, if yes, give: LI#_____ or PC#_____.

3. **STATUS of export contract.** ☐ Contract awarded to exporter ☐ Contract under negotiation ☐ Responding to bid

4. **PRE-SHIPMENT Coverage Requested.** (Complete **only** if requesting Pre-shipment Coverage)

   ☐ Yes, we want pre-shipment coverage.

   a) Reason pre-shipment coverage is requested:_____.

   b) Date contract executed or anticipated date of signing:_____.

   c) Estimated period between date of contract and final shipment date of items:_____.

   d) Attach a schedule of any progress payments made or to be made by the borrower during the pre-shipment period. ☐ Attached ☐ None

5. **REASON for seeking Ex-Im support.** You **must** check the box below which describe the rationale for support.

   ☐ Confirmed Foreign competition. The exporter is aware that foreign domiciled companies is (are) competing, or is (are) expected to compete for the sale. Provide company name, country and (if known/applicable) the supporting Export Credit Agency:

   _____.

   ☐ Presumed Foreign Competition. The exporter is aware that foreign domiciled companies manufacture comparable goods and services that are sold in the buyer's market with Export Credit Agency support available. Provide company name, country and (if known/applicable the supporting Export Credit Agency:_____.

   ☐ Private financing unavailable without Ex-Im Bank credit risk protection. There is limited availability of private financing (from either external or domestic sources). Indicate how financing is constrained by checking the appropriate box:

   ☐ No availability of economically viable interest rates on terms of over one to two years, or

   ☐ Financial institution lending capacity limits reached for either borrower and/or country, or see Other below.

   ☐ Other _____.

6. **PARTICIPANTS:**

   a) **Insurance BROKER.** If none, insert "*none.*" Broker #:
   Name of Brokerage: Phone #:
   Contact Person: Fax #: E-Mail:

   b) **APPLICANT.**
   Applicant Name: Phone #:
   Contact person: Fax #:
   Position Title: E-Mail:
   Street Address: City:
   State/Province: Zip/Postal Code: Country:
   Taxpayer ID #: Duns #: Congressional District:
   non-banks Fiscal year ended (mo. & yr.): Gross sales revenue in last fiscal year: $ # of employees:
   Standard Industrial Code of business: Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:

   ☐ Attach the **CREDIT INFORMATION Checklist, Part 3,** with required credit information on the applicant.

   Financial institution (bank) applicants check one: this application is a ☐ supplier credit or a ☐ buyer credit.

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c) **LENDER.** The "lender" is the entity which extends the credit (loan) to the borrower or takes assignment of the policy proceeds.
Check if the lender is also the ☐ applicant or ☐ not yet known or complete the following:
Lender Name: Phone #:
Contact person: Fax #:
Position Title: E-Mail:
Street Address: City:
State/Province: Zip/Postal Code: Country:
Taxpayer ID #: Duns #: Congressional District:
☐ Check here if the lender wishes to be published by Ex-Im as a potential source of financing for exports.

NOTE: Assignees and lenders who are not the exporter **must** obtain an Exporter's Certificate form EBD-M-56 to submit with claims.

d) **EXPORTER.** The "exporter" is the entity which contracts with the buyer for the sale of the goods and services.
Check if the exporter is also the ☐ applicant or complete the following:
Exporter Name: Phone #:
Contact person: Fax #:
Position Title: E-Mail:
Street Address: City:
State: Zip Code:
Taxpayer ID #: Duns #: Congressional District:
Fiscal year ended (mo. & yr.): Gross sales revenue in last fiscal year: $ # of employees:
Standard Industrial Code of business: Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:
☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the exporter.

e) **SUPPLIER(S).** The "supplier(s)" is (are) the entity(ies) which produces the goods and/or performs the services to be exported.
Check if the supplier(s) is also the ☐ applicant or ☐ exporter or complete the following for each supplier:
Supplier Name: Phone #:
Contact person: Fax #:
Position Title: E-Mail:
Street Address: City:
State: Zip Code:
Taxpayer ID #: Duns #: Congressional District:
Fiscal year ended (mo. & yr.): Gross sales revenue in last fiscal year: $ # of employees:
Standard Industrial Code of business: Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:
☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the supplier.

f) **BORROWER.** The "borrower" is the entity which agrees to repay the credit (loan).
Borrower Name: Duns #:
Contact person: Phone #: Fax #:
Position Title: E-Mail:
Street Address: City:
State/Province: Postal Code: Country:
☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the borrower.

g) **GUARANTOR.** The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below if a guarantor is proposed or required.
Guarantor Name: Duns #:
Contact person: Phone #: Fax #:
Position Title: E-Mail:
Street Address: City:
State/Province: Postal Code: Country:
☐ Attach the **CREDIT INFORMATION Checklist, Attachment I,** with required credit information on the guarantor.

h) **BUYER.** The "buyer" is the entity which contracts with the exporter for the purchase of the U.S. goods and services.
Check if the buyer is also the ☐ borrower or ☐ guarantor or complete the following:
Buyer Name: Duns #:
Contact person: Phone #: Fax #:
Position Title: E-Mail:
Street Address: City:
State/Province: Postal Code: Country:

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i) **END-USER.** The "end-user" is the foreign entity which uses the U.S. goods and services.
Check if end-user is also the ☐ borrower or ☐ guarantor or ☐ buyer or complete the following, or insert "various" for resales and attach a description of the buyers and their location:

End-User Name: _____ Duns #: _____
Contact person: _____ Phone #: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Postal Code: _____ Country: _____

j) **RELATED PARTICIPANTS.** Attach a description of any direct or indirect ownership interest, management participation, or family relationship among any of the participants identified in a) Broker through i) End-User above, **if none insert "*none*"**: _____ , or ☐ attached.

k) **OTHER U.S., foreign or multilateral agencies.** ☐ Check if an application for support of this export transaction or related project, if any, has been filed with other U.S., foreign or multilateral agencies and explain: _____ .

7. **REQUESTED AMOUNTS AND FINANCING STRUCTURE:**

a) **AMOUNTS:**

(1)Exporter(s) Supply Contract(s)

US Content	$_____		
Eligible Foreign Content		$_____	
Shipping and Insurance	U.S. $_____	Foreign $_____	include as US or Eligible Foreign in (2) see EBD-M-13
Ancillary Services if any	U.S. $_____	Foreign $_____	include as US in (2) if approved see EBD-M-05
Local Costs if any		$_____	
U.S. and Foreign Subtotals	U.S. $_____	**Foreign** $_____	
Total Exporter(s) Supply Contract		$	

(2) Financed/Insured Amount Requested

(a) US Content	$_____	
(b) Eligible Foreign Content	$_____	
(c) **Net Contract Price** (a plus b):	$_____	* ☐ FOB ☐ FAS ☐ CIF
(d) Less Cash Payment minimum 15% of Net Contract Price	($_____)	
(e) Subtotal **Financed/Insured Amount** (c minus d)	$_____	**
(f) Local Costs if Ex-Im Bank permits them to be included	$_____	***
(g)Total Financed/Insured Amount Requested excluding Premium:	$	

* this must correspond to the **aggregate** of the Net Contract Price(s) of all Exporter's Certificate(s) Part A. 1. E. related to the transaction.
** Maximum: the **lesser of 85%** of Net Contract Price **or $10 million** or US Content. Also, if **greater than $ 5 million**, see Part 3 no. 6. For repetitive sales type policies this item is know as the **Credit Limit.**
*** not to exceed 15% of the Net Contract Price in 7. A. (2) (c) above.

b) **PREMIUM.** Check **only** one box.
Including the premium in the financing increases the rate. See the website Fee Calculator
☐ Premium to be included in the financing and to be paid as the shipments/disbursements occur.
☐ Premium to be included in the financing and will be paid up front.
☐ Premium not to be included in the financing; to be paid as the shipments/disbursements occur.
☐ Premium not to be included in the financing; to be paid up front.

c) **PAYMENT TERMS:** Unless otherwise requested, repayment of principal and interest is on a semiannual basis beginning 6 months after the starting point (maximum: 6 months for semi-annual, 3 months for quarterly, etc.).

(1) **Frequency.** At least ☐ semi-annually in _____ equal principal installments, plus interest on the declining balance.
If requesting more frequent installments, specify and explain why necessary: _____ .

(2) **Starting point.** The starting point is generally the event that marks the fulfillment of the Exporter's contractual responsibility.
☐ Shipment (single shipment) ☐ Installation ☐ Other (multiple shipments) refer to Guidelines for Starting Points EIB99-16.
Specify: _____ .
(e.g., a weighted mean shipment date, last shipment date)

(3) **Shipment Period or Date.** Estimated **date of shipment**, or dates for multiple shipments, or start and end dates for repetitive sales, or completion of installation and training ***excluding*** any acceptance, retention, or warranty period: _____ .

(4) **Interest rate** to be charged: _____ .

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8. **PURPOSE OF THE TRANSACTION.**

☐ **Production.** Check if the goods and services will be used to create or expand production capacity for an **exportable product**, including agricultural commodities, and describe the product, the market for it, the current and anticipated sales level: _____ .

☐ **Other** (Replacement, Production for Domestic Market, etc.) _____ .

9. **TRANSACTION DESCRIPTION:**

a) **Description of export** goods and services, including for each export good the name, make, model, manufacturer/supplier, SIC or NAICS Code (if known), number of units, unit price and use: _____ , or

☐ Check if providing the **Content Report** EBD-M-58. Ex-Im Bank endeavors to obtain the report at the time of application on medium term transactions for information and reporting purposes. Processing of, and the decision on, the application will not be delayed or affected by the submission or absence of the report. A **Cause Report** EBD-M-55 is requested at the end of each calendar year to describe the nature and reason for the inclusion of any goods and services with 50% or more foreign content in the good or service.
NOTE: Ex-Im Bank may not provide support for products, countries or buyers with trade sanctions imposed against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C52909852 56A0A004DEE7D. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201.

b) **Origin.** ☐ Check if the goods and services are **not** being shipped from the U.S. and explain _____ .
☐ Check if the services are **not** being provided by U.S. personnel and explain _____ .
☐ Check if assembly is **not** being provided by U.S. personnel and explain _____ .
Identify the source and briefly describe any Eligible Foreign Content (see EIB99-21) including shipping and insurance if **not** providing the Content Report: _____ or

c) ☐ check if requesting foreign co- or re-insurance, see EIB99-11. Complete **and attach** the Reinsurance Questionnaire "Attachment H".

d) **Military/Security/Police.** Check, complete and attach Ex-Im's Defense Product Questionnaire EIB92-61 if :
☐ the borrower, guarantor, buyer or end-user ***is a*** military, security or police force, or
☐ the borrower, guarantor, buyer or end-user ***is associated in any*** way with a military, security or police force, or
☐ if ***any*** goods and services are to be ***used by*** a military, security or police force, or
☐ if ***any*** goods and services are ***intended for use by*** a military, security or police force, or
☐ if ***any*** goods and services ***are*** military, security or police articles, or
☐ if ***any*** goods and services have a military, security or police ***application***, or
☐ if ***any*** goods and services ***are listed on*** the U.S. Munitions List, Title 22, Code of Federal Regulations, Part 121.

e) ☐ **Nuclear.** Check if ***any*** goods and services are to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities.

f) ☐ **Used equipment.** Check if ***any*** goods are used. If so, complete and attach Ex-Im's Used Equipment Questionnaire EBD-M-25

g) ☐ **Livestock.** Check if the export is breeding livestock. If so, complete and attach Ex-Im's Livestock Questionnaire EIB92-62.

h) **Environmental** (see EBD-E-01). Check if the goods and services are:
☐ environmentally beneficial or,
☐ used in abatement, control or prevention of pollution, or
☐ used in handling toxic substances; or
☐ used in power generation, or
☐ related to a renewable energy source (check one): ☐ wind ☐ hydro ☐ geothermal ☐ solar ☐ biomass, or
☐ if they in other ways affect the environment. Explain: _____ .

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10. APPLICANT CERTIFICATIONS The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank (the Bank) that:

a) it is **(check one)**:
- (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
- (2) ☐ an individual or partnership **resident in** the United States; **or**
- (3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
- (4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

c) (1) neither it nor its principals have been within the past 3 years:
- (a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
- (b) formally proposed for debarment, with a final determination still pending;
- (c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarmeat and Suspension Regulations; Common Rule** which defines Covered Transaction.

(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).

It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

d) it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
- (1) an officer or employee of any U.S. Government agency, or
- (2) a Member of Congress or a Member's employee, or
- (3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

e) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

f) (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
- (2) providing the information is mandatory. **Failure to do so may result in the Bank being unable to determine eligibility for the Policy.** The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.
- (3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
- (4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
- (5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
- (6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

g) the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature	Print Name and Title	Month/Day/Year
		/ /

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. See EIB form 92-48 Part 1, "Instructions" for whom to contact with questions.

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office:_____

☐ An Ex-Im City/State Partner:_____ ☐ A U.S. Export Assistance Center:_____

☐ A Broker:_____ ☐ A Bank:_____

☐ A Local Development Authority:_____ ☐ Other (specify):_____

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EX-IM BANK JOBS THROUGH EXPORTS

APPLICATION FOR MEDIUM TERM EXPORT CREDIT INSURANCE QUOTATION
ATTACHMENT 1. CREDIT INFORMATION CHECKLIST

Information must be complete and current
ALL appropriate blocks must be checked.

1. **APPLICANT:**

☐ Check if not applicable because the applicant is a financial institution (bank), or
☐ Current information as described below, is on file at Ex-Im under Guarantee or Policy #_____ , or provide at a minimum a & b below:
- a) ☐ Credit agency report, not older than **6 months** from date of application, **or**
  ☐ a check made out to "Ex-Im Bank" for $35 to acquire a report;
- b) ☐ **If** Financial Statements are **not** included in the Credit Report **or**
  ☐ **if** the contract price is 35% or more of applicant's (exporter's, supplier's) last fiscal year total sales, attach financial statements that are not older than **1 year** from date of application;

2. **EXPORTER,** if different from the applicant:

☐ Not applicable, or
☐ Current information (described in 1. above) is on file at Ex-Im under Guarantee or Policy #_____ , or
a) ☐ , and/or b) ☐ as above.

3. **SUPPLIER**, if different from the applicant or exporter:

☐ Not applicable, or
☐ Current information (described in 1. above) is on file at Ex-Im under Guarantee or Policy #_____ , or
a) ☐ , and/or b) ☐ as above.

4. **BORROWER:**

If application is for ☐ **political only or sovereign risks** provide "4.a" only, or
If credit is based on ☐ **a guarantor** provide only "4.a" on the borrower and answer 5, or
☐ Current information as described below is on file at Ex-Im under Guarantee or Policy #_____ , or provide at a minimum a, b and c below:
- a) ☐ A credit agency report not older than **6 months** from date of application, **or**
  ☐ Check if a credit agency report is not applicable because the borrower is a financial institution (bank) or a foreign government agency.
- b) ☐ Bank reports or references from borrower's (including banks and non-sovereign government agencies) principal commercial banks, not older than **6 months** from date of application, **including** bank names, addresses, personal contacts, length of relationships, experience, amount and terms of secured and unsecured credit.
- c) Financial statements as follows in 1 **or** 2:

1) ☐ For **financed amounts of up to and including $1 million:** Financial statements with notes (preferably audited with opinions and in English; financial institution, i.e., bank, statements **must** be audited) for the previous **3 fiscal year ends** plus interim statements if the latest fiscal year end statements are dated more than **9 months** from date of application. If financial statements are unaudited, they **must** be accompanied by a summary of significant accounting policies used in their preparation.

2) ☐ For **financed amounts of greater than $1 million**: Audited financial statements with notes and opinions in English for the previous **3 fiscal year ends** plus interim statements if the latest fiscal year end statements are dated more then **9 months** from date of application.

d) ☐ Market indications, if available (not required), as follows: ☐ not available

Name of rating agency:_____ Rating:_____ Date:_____

e) ☐ Spread of financial statements including ratios and cash flow (not required for transactions under $1 million).

f) Ex-Im's Medium Term Credit Standards, computed according to EBD-M-39, Attachment A, Parts I and II, transactions up to and including U.S. $5 million (not required but recommended):
- 1) ☐ not computed
- 2) ☐ **are met** and ☐ computations are attached.
- 3) ☐ **are not met**, but ☐ supplemental information described in EBD-M-39 is attached.
- 4) ☐ are not met, but ☐ a **guarantor** is provided.

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5. **GUARANTOR(S):**

☐ Not applicable [e.g., political only, sovereign, guarantor is not the primary source of repayment (PSR)], or
☐ Current information as described below is on file at Ex-Im under Guarantee or Policy #:_____, or provide at a minimum a, b and c below.

a) ☐ A credit agency report the same as in 4.a above, **or**
☐ Check if credit agency report is not applicable because the guarantor is a financial institution (bank) or a foreign government agency.

b) ☐ Bank reports or references the same as in 4.b above

c) Financial statements as follows in a **or** b:
1) ☐ For **financed amounts of up to and including $1 million** the same as in 4.c.1 above.
2) ☐ For **financed amounts of greater than $1 million** the same as in 4.c.2 above.

d) ☐ Market indications, if available (not required), as follows: ☐ not available

Name of rating agency:_____ Rating:_____ Date:_____

e) ☐ Spread of financial statements including ratios and cash flow (not required for transactions under $1 million).

f) Ex-Im's Medium Term Credit Standards, computed according to EBD-M-39, Attachment A, Parts I and II, transactions up to and including U.S. $5 million (not required but recommended):
1) ☐ not computed
2) ☐ are **met** and ☐ computations are attached.
3) ☐ are **not met**, but ☐ supplemental information as described in EBD-M-39 is attached.

6. ☐ **EBD-M-39 ATTACHMENT C** is required for transactions (i.e., financed amount excluding interest and Ex-Im premium) of greater than U.S. $5 million with non-financial institution buyers who **do not have** market indications.
☐ Not applicable. It is **not required** for transactions: of U.S.$5million or less, with financial institutions, with buyers or guarantors who have market indications, with sovereign buyers or guarantors, for political risk cover only, or with buyers or guarantors pre-approved by Ex-Im.

7. **MISCELLANEOUS items** which may be attached by the applicant (if any):

☐ Calculation of Ex-Im Medium Term Credit Standards (see 4f & 5f above)
☐ Description of end-users and countries after resale (see application 6i)
☐ Defense Product Questionnaire EIB92-61 (see application 9d)
☐ Livestock Questionnaire EIB92-62(see application 9h)
☐ Form LLL (see application 10d)
☐ Pro-forma invoice ☐ Letter of Credit
☐ Buyer/Guarantor/Government - Request for Bid, Mandate, or Contract
☐ Description of manufacture/production (see application 8)
☐ EBD-M-39 Attachment C (see 6 above)
☐ Description of related participants (see application 6j)
☐ Used Equipment QuestionnaireEBD-M-25(see application 9g)
☐ Content Report Form EBD-M-58 (see application 9a,c)
☐ Cause Report EBD-M-55
☐ Exporter or supplier product brochure
☐ Reinsurance Questionnaire "Attachment H"
☐ Other (specify):_____.

END

OMB No. 3048-0009
Expires 05/31/02

EXPORT IMPORT BANK OF THE UNITED STATES
SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ dba: _____
Contact: _____ Title: _____ Website: _____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____
Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____
Bank credit line (if any) with: _____ Broker: _____

1. How did you learn about Ex-Im Bank? ☐ Ex-Im Bank regional office ☐ Broker ☐ Bank ☐ US Export Assistance Center ☐ Ex-Im Bank City/State Partner _____ ☐ Other_____

2. Have you ever applied for a U.S. Small Business Administration or Ex-Im Bank program? ☐Yes or ☐ No
If so, please name the agency, program, outcome and status: _____
If you wish to insure sales made by your affiliates, please see Question 17 (Additional Named Insureds) prior to continuing.

3. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

4. Policy Aggregate Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

5. Product and/or services to be exported: _____

6. Are the products* to be covered under the policy:
- Manufactured in the U.S. with a minimum of 51% U.S. content (excluding mark-up)? ☐ Yes or ☐ No
- Manufactured by the applicant? (If no, provide a list of suppliers with addresses.) ☐ Yes or ☐ No
- Shipped from the United States to your buyers? ☐ Yes or ☐ No
- Listed on the U.S. Munitions List (part 121 of title 22 of the Code of Federal Reg.)? ☐ No or ☐ Yes
- Used? (If yes, please attach Used Equipment Questionnaire EBD-M-25) ☐ No or ☐ Yes

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

7. # of years exporting: _____ # of years exporting on terms other than cash in advance (CIA) or confirmed L/C (CILC):_____

	Year: _____	Year: _____
8. Total export sales for the prior 2 years:	$_____	$_____
Total export *credit* sales (exclude CIA, CILC) for the prior 2 years:	$_____	$_____

9. Buyer Types: ____% Manufacturers ____% Wholesalers/ Distributors ____% Retailers ____% End-users

10. Export Credit Portfolio - attach additional pages if necessary.

Country	# of Buyers	Sales	Payment Terms	# of Buyers	Sales	Payment Terms
EXAMPLE: Mexico	10	$2,500,000	50% CILC 50% 60 day OA	12	$3,000,000	100% 60 day OA

EIB92-50 (11/01)

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11. Please list your 5 largest export buyers:

		$		$
		$		$
		$		$
		$		$
		$		$

12. Name(s) of export credit decision maker(s): Title(s): Years of Credit Experience Years of Foreign Credit Exp.

13. At what point do you stop shipping to a past due account? _____ days past due

14. Total export receivables outstanding: $_____ at ___/___/___ (date should be within 60 days of the application)

$	$	$	$	$
Current	1-60 days past due	61-90 days past due	91-180 days past due	181+ days past due

For each buyer over 60 days past due, attach an explanation including: name of buyer, country, amount past due, due date, and collection efforts made.

15. Export credit losses per year or rescheduled debts during each of last three years - attach additional pages if necessary.

	$	
	$	
	$	

16. **Please submit the following as Attachments:**
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available).
- Resume(s) on each credit decision maker identified in question 12.
- Descriptive product brochures (if available).

17. **Special Coverages Required:** If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 3-15 should include export sales of prospective ANI's.

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**
- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify):_____

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The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States**.

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:
- debarred, suspended or declared ineligible from participating in any Covered Transaction or
- formally proposed for debarment, with a final determination still pending;
- voluntarily excluded from participation in a Covered Transaction; or
- indicted, convicted or had a civil judgment rendered against it

for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provide the requested information may** result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. The **public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Signature) (Print Name and Title) (Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which **together with our affiliates** had **average annual export credit sales** during our preceding two fiscal years not exceeding **$5,000,000**, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

(Signature)

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

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EXPORT-IMPORT BANK OF THE UNITED STATES
EXPORTER'S APPLICATION FOR SHORT-TERM SINGLE-BUYER POLICY App No.:_____
(Please Print or Type) (Ex-Im Bank Use Only)

1. Applicant	2. Broker (If none, state "None")
Name: Address: Attn.: Tel No.: Fax No.: E-Mail:	Brokerage: Broker Number: Attn.: Tel No.: Fax No.: E-Mail:

3. Qualification for Coverage. Will the applicant: a) Have title to the products at the time they are shipped? ☐ Yes ☐ No
b) Be directly invoicing the Buyer? ☐ Yes ☐ No
(If you answered no to either you may not be eligible for coverage. Consult your broker, City/State Program participant or Ex-Im)

4. Buyer Name and (full) Address (no Post Office Box nos.) File No.:_____
(Issuing Bank for Letter of Credit transactions) (Ex-Im Bank Use Only)

5. Guarantor Name and Address (If none, state "None") File No.:_____
(Ex-Im Bank Use Only)

PART I - INFORMATION ABOUT THE APPLICANT Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09)Exporter for New Policyholder to determine the likelihood of approval.

6. If you have submitted this information within the past twelve months provide the policy no._____; otherwise attach the following:
a) Your SIC Code (if known)_____ b) Total Employees_____ c) Total Sales_____
d) Tax ID #: _____ e) DUNS #: _____ f) Congressional District:_____
g) Indicate (Not Required) if owned by a☐ Woman, or an ☐ Ethnic Minority, describe_____
h) ☐ Credit agency report dated within 6 months of the application. If unavailable, please attach check for $35.00 to assist in covering Ex-Im Bank's cost in ordering a report.

	Year ___	___
i) Total export sales	$_____	$_____
j) Total export sales (excluding cash in advance and confirmed irrevocable letter of credit transactions) during your last 2 fiscal years:	$_____	$_____

k) Years exporting on credit terms:_____
l) ☐ Attach the collection procedures your company follows in the event your foreign customers become past due.
7. What is your primary reason for applying for this policy? ☐ Risk mitigation ☐ To obtain financing ☐ Other attach explanation.
8. Have you applied for, or received the benefit of, a U.S. Small Business Administration or Ex-Im Bank program such as a Working Capital Loan Guarantee or Insurance Policy approval? (Enhanced Assignments are not available to exporters benefitting from an Ex-Im Bank or US Small Business Administration Working Capital Loan Guarantee) ☐ No ☐ Yes (describe agency, program outcome and status):_____.
9. If requesting an "Enhanced Assignment" check here☐ and attach the following (refer to Ex-Im Bank's Short Term Credit Standards EIB99-09 Exporters for Enhanced Assignments to determine the likelihood of approval):
☐ A bank reference dated within 6 months of the application.
☐ 2 trade references dated within 6 months of the application.
☐ Financial statements as follows:

Limit of Liability	Minimum Requirement
$500,000 or less	signed by an authorized officer for the applicant
$500,001 - $999,999	reviewed by a CPA with notes attached
$1,000,000 or more	audited by a CPA with opinion and notes attached.

PART II - INFORMATION ABOUT THE TRANSACTION
10. Check one: ☐ Firm Order ☐ Negotiating Sale ☐ Responding to Invitation to Bid
11. a) Products ☐ New ☐ Used (If used, attach Used Equipment Questionnaire)
b) Name and Description of Products*:_____.
c) Is each product produced or manufactured in the United States? ☐ Yes ☐ No If no explain:_____.
d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of United States origin? ☐ Yes ☐ No If no, explain: _____.
e) Will any value be added to the product after export from the U.S.?☐ No ☐ Yes If yes, explain: _____.

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f) Are products listed on the United States Munitions List? (Part 121, Title 22, Code of Federal Regulations)☐ Yes ☐ No
g) Has this transaction been considered by any other export credit insurer?☐ No ☐ Yes If yes, attach an explanation.

* Note: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) atwww.exim..gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

12. **SUPPLIER.** The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #:_____)
Supplier Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:_____

13. a) **Payment terms** requested_____
b) Debt instrument (if any)_____
c) Expected frequency of shipments:☐ Single shipment ☐ Multiple shipments under one sales contract.
d) If single shipment, the expected date of shipment_____, or
if multiple shipments, the period required to make shipments from_____ to _____
e) Total shipment volume to be insured $_____
f) If multiple shipments, the expected highest amount outstanding during shipment period $_____
g) Other security/guarantees available. If none, state "None".
14. Coverage type required: ☐ Commercial/Political ☐ Political Only
15. Pre-shipment Coverage (complete only if coverage is requested) **NOTE:** Additional premium will be charged for this cover.
a) Has contract of sale been executed? ☐ Yes ☐ No Date or estimated date:_____
b) Estimated period between date of contract and final shipment date of products:_____
c) ☐ Attach schedule of any progress payments made or to be made by buyer during pre-shipment period of☐ None.
d) What risk is of primary concern to you during the pre-shipment period? _____

PART III - INFORMATION ABOUT THE BUYER Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Buyers: for Financial Institutions, letter of credit transactions, for Financial Institutions non-letter of credit transactions, and for Non-Financial Institution Buyers to determine the likelihood of approval. Attach the following information:

16. a) Market Rating: _____ Rating Agency: _____ Date: _____ **OR**
b) ☐ A credit report on the buyer, and guarantor (if any) not older than 6 months from date of application **and**
☐ 2 (1 if the credit limit is $100,000 or less) Trade Reference forms (EIB99-14) dated within 6 mos of the application **and**
☐ If the credit limit is $300,001 or more, audited or unaudited signed financial statements with notes on the buyer, and guarantor (if any) for the last: 2 fiscal years if the credit limit is $300,001 to $1million, or
3 **audited** fiscal years if the credit limit is $1,000,001 or more.
(Credit and financial information should be on the issuing bank if terms are letter of credit)
17. When did you last visit the buyer?_____
18. a) Summary of credit experience (insured and uninsured) with this buyer during current year and past 2 years:

	___	___	___
Total Sales Each Year	$_____	$_____	$_____
Highest Amount Outstanding During Period	$_____	$_____	$_____
Payment Terms	_____	_____	_____

b) Describe buyer's payment history (check one)
☐ No prior experience ☐ Prompt/Discount ☐ 1-30days slow ☐ 31-60days slow ☐ More than 60 days slow
c) Amount now owing $_____ as of_____ (Date).
d) Amount now past due (indicate maturity dates and explanation).
e) If past dues are due to foreign exchange problems, does applicant have evidence of local currency deposits on all payments due? ☐ Yes ☐ No ☐ Not applicable.
19. Describe any direct or indirect ownership interest or family relationship which exists between the applicant

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and the buyer or guarantor. If none, state "None."_____.

21. **PART IV The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a) it is (**check one**): (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
(2) ☐ an individual or partnership **resident in** the United States; **or**
(3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
(4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally **for use as indicated below**. When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and item (1) should be checked. If, however, it has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please complete item (2): (1) ☐ By the buyer in the country specified above. (2) ☐ If not, name the country (ies) **where** products will be principally used: _____ **by whom**: _____.

c) it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

d) (1) neither it nor its principals has been within the past 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(d) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(2) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications a through d..
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to a, b or c above.

e) it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine if the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

h) the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. The applicant agrees that such representations and facts shall form the basis of and be incorporated in the Policy, if issued, and that the truth of such representations and facts and the due performance of each and every undertaking contained herein above shall be condition precedent to any liability of Ex-Im Bank thereunder. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____ _____ _____
(Signature) (Print Name and Title) Date

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:
☐ An Ex-Im Regional Office:_____
☐ An Ex-Im City/State Partner:_____
☐ A U.S. Export Assistance Center:_____
☐ A Broker:_____
☐ A Bank:_____
☐ A Local Development Authority:_____
☐ Other (specify):_____

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EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR
EXPORT CREDIT INSURANCE UMBRELLA POLICY

(Please Print or Type)

Date:_____
App.No.:_____
(Ex-Im Bank use only)

1. Applicant Name & Address	2. Broker Name & Number
Attn.: Tel No.: Fax No.: E-Mail:	(If none, state "None") Brokerage: Broker Number: Attn.: Tel No.: Fax No.: E-Mail:

3. a. Please specify business activities:

☐ Bank
☐ EMC/ETC
☐ Insurance Broker
☐ Accounting Firm
☐ State Government Organization
☐ Trade Organization
☐ Freight Forwarder
☐ Other_____

b. Legally formed as a _____ (Type) on _____ (Date) in _____ (State)

c. Total number of permanent employees:_____

d. Number of years your organization has been involved in export related activities:_____

e. Tax ID #:_____ f. DUNS #:_____ g. Congressional District:_____

4. a. In your organization, name the individuals who will be responsible for administering the Export Credit Insurance Umbrella Policy.

Name:_____ Name:_____

Title:_____ Title:_____

5. Has your organization ever held an Export-Import Bank of the United States (Ex-Im Bank) policy or acted as a business finder, consultant, buyer or seller representative for any transaction insured under an Ex-Im Bank policy? ☐ Yes ☐ No
If yes, please give the names of the 4 most recent policyholders and the policy numbers:

Holder:_____ Number:_____

Holder:_____ Number:_____

Holder:_____ Number:_____

Holder:_____ Number:_____

6. Please list any individual/institution owning 20% or more of your organization:

7. If your organization has subsidiaries or affiliates involved in export activities, please list their names and addresses: Name Address

8. List two bank references and two business references, including officer to contact, and telephone

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number:

Organization	Contact	Phone Number
1)		
2)		
1)		
2)		

9. Please list the name of each exporter you anticipate will be an insured under this policy. If none are known at this time, indicate "None".

_____

_____

10. Does your organization currently have a fidelity bond and an errors and omissions insurance policy? (Check the appropriate box(es) if yes.)

☐ Fidelity Bond - Issuer:_____

Limits of Liability:_____

☐ Errors and Omissions Policy - Issuer:_____

Limits of Liability:_____

Issuance of an Export Credit Insurance Umbrella Policy will be contingent upon both being in force for the life of the policy

11. Please attach the following information:
   a. Financial statements for the last three years, audited if available; if not audited, signed by an officer
   b. Recent (within 6 months) credit agency report on your organization. If unavailable, please attach a check for $35.00 payable to Ex-Im Bank.
   c. Descriptive brochures or advertising materials.
   d. Resumes on individuals named in question number 4 (see Resume Form attached).
   e. Any other information that you would like to have considered when evaluating this application.
   f. Any completed Insured Exporter Applications for companies mentioned in question number 9.

12. AGREEMENTS OF THE ADMINISTRATOR

The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a. it is (**check one**):
   1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
   2) ☐ an individual or partnership **resident in** the United States; **or**
   3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
   4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b. it will undertake to carry on its business with due care and in full compliance with the laws of the United States and with the state and local laws and regulations governing the area in which the applicant is resident;

c. It will conduct its business from the address listed in question number 1 of this application, and will provide notification within 10 days of any change of its business address;

d. It will provide notification within 10 days if the person responsible for administration of its Export Credit Insurance Trade Association policy and listed in question number 4a of this application change;

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e. It will obtain and maintain errors and omissions insurance covering the performance of its duties and responsibilities under its Export Credit Insurance Trade Association Policy.

f. 1) neither it nor its principals has been within the past 3 years:
   a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
   b) formally proposed for debarment, with a final determination still pending;
   c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
   d) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
   2) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despitean inability to make certifications a through d..

It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to a, b or c above.

g. it will complete and submit **Form-LLL,** Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
   1) an officer or employee of any U.S. Government agency, or
   2) a Member of Congress or a Member's employee, or
   3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

h. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

i 1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
   2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine if the participants' ability to perform and pay under the Policy.
   3) the Bank may not require the information and applicants are not required to respond unless a currently **valid** OMB control number is displayed on this form (see upper right of each page);
   4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), **except as** required to be disclosed under applicable laws;
   5) transfer of **financial** records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted **under the Right of Financial Privacy Act of 1978** (12 USC 3401).
   6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

j. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. The applicant agrees that such representations and facts shall form the basis of and be incorporated in the Policy, if issued, and that the truth of such representations and facts and the due performance of each and every undertaking contained herein above shall be condition precedent to any liability of Ex-Im Bank thereunder. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

This document will be a material basis for the approval of any entity or person as an Administrator of the Export Credit Insurance Umbrella Policy. Any misrepresentation herein is grounds for immediate disqualification of an approved Administrator. Other information, including, but not limited to, interviews and visits to your offices, may be requested.

As an Administrator you will be administering export credit insurance coverage for various insureds and dealing directly with Ex-Im Bank on the insureds' behalf. Many states regulate, through licensing or otherwise, the persons, firms, associations and corporations which handle insurance matters for others. You may wish to review your status as an Administrator under applicable state law(s) before submitting this application for an Export Credit Insurance Umbrella Policy. If your application is approved, it will be for a one-year period only. Renewals may require additional information.

_____ _____

By (Signature) Print Name and Title

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

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EXPORT-IMPORT BANK OF THE UNITED STATES
Attachment to Umbrella Policy Application
To be filled out for each individual named in Question 4a.
RESUME FORM

Name:_____

Title or Position:_____

Number of years with your organization:_____

Full description of job functions including administering the policy:

Administrative experience:_____

Export-related experience including any previous experience with Ex-Im Bank:_____

Educational background:_____

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EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER REGISTRATION FORM

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is registered with Ex-Im Bank and is appointed as broker-of-record by the policyholder either by designation on an insurance policy application or by separate letter.

Name of Brokerage:_____

Contact:_____ Title:_____

Address:_____ PO BOX:_____

City:_____ State:_____ Zip:_____

Phone: (____)_____ Fax: (____)_____ E-mail:_____

Tax ID #:_____ DUNS #:_____ No. of Employees:_____

Indicate (Not Required) if owned by a ☐ woman or ☐ an ethnic minority, describe_____.

Other lines of brokered insurance:_____.

Do you have other offices you wish to register (to be eligible for commissions)? ☐ No ☐ Yes
If "Yes", please list firm's name, address, telephone number, fax number and contact person on a separate sheet.

A list of registered insurance brokers is available on the Ex-Im Bank Internet Website and unbrokered applicants are referred to the list. Please indicate here if you **DO NOT** wish your name released. ☐

1. A Registration Fee of **$85.00** is required, for which you will also receive a copy and updates of the "Ex-Im Bank Users' Guide."
2. You are required to review, understand and **sign** the attached "Standards of Service".
3. Attach a copy of a current, valid insurance brokerage **license** indicating issuance and/or expiry date(s).
4. Forward the attached "Authorization for Automated Deposits" form..

The Broker (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

1. a) neither it nor its principals has been within the past 3 years:
   I) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
   2) formally proposed for debarment, with a final determination still pending;
   3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
   4) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
   b) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1 through 4.
   It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to 1, 2 or 3 above.

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2. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
   a) an officer or employee of any U.S. Government agency, or
   b) a Member of Congress or a Member's employee, or
   c) an officer or employee of Congress.

3. corrupt payments made in connection with Bank supported transactions may be a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC 78dd-1, et. seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business.

4. a) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
   b) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Insurance Program. The information provided will be reviewed to determine if the broker meets the Bank's legislative requirements under the program
   c) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
   d) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
   e) the Bank shall have a right to transfer to another U.S. Government authority any financial records included in this certification or other correspondence as necessary to process, service, foreclose or collect on an insured debt. No other transfer of records to private parties or another U.S. Government authority will be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
   f) the **public burden** reporting for this collection of information is estimated to average ½ hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

5. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature:_____ Print Name:_____

Title: _____ Date: _____

Send this application to Attn: Assistant Director for Broker Relations, Insurance Division, Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

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INSURANCE BROKERS
STANDARDS OF SERVICE

1. To act in a professional, reasonable, prudent and forthright manner in all dealings with your client and Ex-Im Bank.

2. To stay knowledgeable about not only Ex-Im Bank export credit insurance but alternatives, including other Ex-Im Bank programs, other U.S. government programs, and private sector products as well, in order to provide the best options to your clients.

3. To educate your clients about Ex-Im Bank's Insurance Program and policies, its' benefits and proper usage.

4. To serve as your clients' primary contact for any questions concerning the policies and the servicing of a policy.

5. To review all applications and issuances of policies, actions under policies, renewals of policies and credit limits, and claims, for timeliness, completeness, accuracy and reasonableness.

6. To review correspondence from Ex-Im Bank with your clients, including quotes and credit limits, to assist them in understanding the coverage and their responsibilities.

7. To assist your clients to comply with the Agreements of the Insured including shipment reports, premium payment and reports of overdue accounts, and to advise Ex-Im Bank of any potential claims.

8. To report policy cancellations and submit a premium reconciliation to Ex-Im Bank.

9. To provide as much assistance to the policyholder as is possible in order to maximize the benefits of the policy.

I have read the above standards, agree that they are reasonable, and will comply with these standards.

I understand and agree that substantial failure by me to comply with these standards could result in withdrawal from the list of registered insurance brokers published by Ex-Im Bank and cancellation of eligibility for commission payments under Ex-Im Bank export credit insurance policies.

Name of Brokerage	Signature of Broker	Date

Print Name

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EXPORT-IMPORT BANK OF THE UNITED STATES

AUTHORIZATION FOR AUTOMATED DEPOSITS (ACH CREDITS)

I hereby authorize the Export-Import Bank of the United States hereinafter called Ex-Im Bank, to initiate credit entries to my **[ ] CHECKING [ ] SAVINGS account** ☑ ***(check one)*** indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

DEPOSITORY NAME _____

BRANCH _____

CITY _____ STATE ___ ZIP_____

TRANSIT/ABA NUMBER: [ ][ ][ ][ ] - [ ][ ][ ][ ] - [ ]

ACCOUNT NUMBER: _____

This authority is to remain in full force and effect until Ex-Im Bank has received written notification from me of its termination in such time and in such manner as to afford Ex-Im Bank a reasonable opportunity to act on it.

BROKER NAME _____
(please print)

BROKER NO. _____ TAX ID NUMBER _____

SIGNATURE _____ DATE _____

PLEASE ATTACH A VOIDED CHECK FOR THE ACCOUNT NAMED ABOVE

FOR EX-IM BANK USE ONLY

DATE RECEIVED _____

PROCESSED BY _____

Return to: Export-Import Bank of the United States
Director - Broker Relations
811 Vermont Avenue, N.W.
Washington, DC 20571

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EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER COMMISSION SCHEDULE
FOR EXPORT CREDIT INSURANCE POLICIES

Effective: October 1, 1994

BROKER ELIGIBILITY

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is **registered** with Ex-Im Bank and is **appointed** as broker-of-record by the policyholder. The policyholder reserves the right to appoint, delete or change the broker of record at any time. Brokers of record are entitled to any commissions due on premiums paid prior to a change in the broker of record.

COMMISSION RATES

Commission rates paid by Ex-Im Bank are based on the type of policyholder to which the policy is issued, as shown in the chart below:

Type of Policyholder	**Commission Rate (percentage of premium)**
Financial Institutions	**8%**
Exporters	
Small Business	**30%***
Multi-Buyer Policyholders	**12%**
Single-Buyer Policyholders	**10%**
Administrators	
Umbrella Policy	**30%***
Trade Association Policy	**10%**
Lessors	
(whether a financial institution or an exporter)	
Operating Lease Policy	**20%**
Financing Lease Policy	**10%**

*At Ex-Im Bank's discretion, this percentage will increase to 40% for those brokers who meet certain criteria regarding support of small business.

COMMISSION PAYMENTS

- The full amount of all premiums are due at the appropriate lockbox on or before the date specified in the policy. Insurance brokers should not remit premiums "net" of commission.
- Commission payments will be made monthly.
- No commission payments will be made on advance premium.

BROKER CHANGES ON EXISTING POLICIES

Ex-Im Bank policyholders may appoint or change their insurance broker at any time. Insurance brokers appointed after a policy is issued will be recognized on the first day of the next month after the receipt of the policyholder's written notice appointing an insurance broker of record.

Acknowledgment by Ex-Im Bank of a policyholder's appointed insurance broker is made by means of a policy endorsement. Insurance brokers acknowledged by Ex-Im Bank are eligible for commissions with respect to transactions occurring after the effective date of the endorsement.

WHO TO CONTACT: For additional information, please contact a Regional Office or:
EXPORT-IMPORT BANK OF THE U.S., INSURANCE DIVISION
811 VERMONT AVENUE, N.W., WASHINGTON, D.C. 20571
TEL NO (202) 565-3630 or 1-800-565-EXIM FAX NO. (202) 565-3675 INTERNET http://www.exim.gov
Regional Offices: MID ATLANTIC (202) 565-3940 MIDWEST (312) 353-8041
NORTHEAST (202) 466-2950 SOUTHEAST (305) 526-7425
SOUTHWEST (281) 721-0465 WEST: Long Beach (562) 980-4580, San Jose (415) 705-2285

[FR Doc. 02–6708 Filed 3–20–02; 8:45 am]
BILLING CODE 6690–01–C

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–602]

Petition To Redefine the Service Area of Century Tel of the Southwest, Inc. in the State of New Mexico

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Common Carrier Bureau sought comment on Smith Bagley's petition requesting the Commission's consent to the New Mexico Public Regulation Commission's proposed "service area" definition for areas served by the Century Tel of the Southwest, Inc. (Century Tel) within New Mexico.

DATES: Comments are due on or before April 4, 2002. Reply comments are due on or before April 15, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On March 1, 2002, Smith Bagley filed with the Commission a petition, pursuant to section 54.207 of the Commission's rules, requesting the Commission's consent to the New Mexico Public Regulation Commission's (New Mexico Commission) proposed "service area" definition for areas served by Century Tel of the Southwest, Inc. (Century Tel) within New Mexico. The New Mexico Commission proposes to define Smith Bagley's service area as an area different from the study area of Century Tel for the purpose of determining federal universal service obligations and support mechanisms. Specifically, the New Mexico Commission proposes to modify Smith Bagley's service area to include the Zuni, Ramah, and Fence Lake wire centers and Smith Bagley's existing service contour within the Pine Hill, Vanderwagn, Gallup, and Grants wire centers. The New Mexico Commission recommended that Century Tel's noncontiguous Pecos exchange be delineated as its own service area and that the exchanges served by Smith Bagley be grouped together as a second separate service area.

If the Commission does not act on the petition within 90 days of the release of this Public Notice, the definition proposed by the New Mexico Commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.

The Petition: On February 19, 2002, the New Mexico Commission issued an order designating Smith Bagley as an eligible telecommunications carrier (ETC), under section 214(e) of the Communications Act of 1934, as amended (the Act), to receive federal universal service support for service provided in areas of New Mexico. In so doing, the New Mexico Commission concluded that it was in the public interest to designate Smith Bagley as an ETC in the study area of Century Tel, a rural telephone company.

The New Mexico Commission conditioned Smith Bagley's ETC designation upon confirmation of its proposed service area designation by this Commission. In compliance with the request of the New Mexico Commission, Smith Bagley has filed a petition with the Commission seeking approval of the proposed modified service area definition.

Commission Rules: For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company." Section 54.207 of the Commission's rules and the *Universal Service Order*, 62 FR 32962, June 17, 1997, set forth the procedures for consideration of petitions seeking to designate service areas for rural telephone companies that are different from such companies' study areas.

Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice. If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5). If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures. Under § 54.207(e) of the Commission's rules, the Commission delegates its authority under § 54.207(c) to the Chief of the Common Carrier Bureau.

An original and four copies of all comments must be filed with William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–B204, Washington DC 20554. In addition, four copies of each comment must be delivered to Sheryl Todd, Common Carrier Bureau, 445 12th Street, SW., Room 5–A520, Washington, DC 20554, and one copy to Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington DC, 20554. In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, hand-delivered or messenger-delivered filings must be delivered to 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method—	It should be addressed for delivery to—
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail .	445 12th Street, SW., Washington, DC 20554.

In addition to filing paper comments, parties are encouraged also to file comments electronically using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Document in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e.-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by the Internet e-mail. To receive instructions, send an email to *ecfs@fcc.gov* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR. 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Anita Cheng,

Assistant Chief, Accounting Policy Division.

[FR Doc. 02–6773 Filed 3–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2540]

Petitions for Reconsideration of Action in Rulemaking Proceeding

March 15, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by April 5, 2002. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of 2000 Biennial Regulatory Review; Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14).

Number of Petitions Filed: 2.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6771 Filed 3–20–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Marilyn Myers Bouziden, Alva, Oklahoma; to acquire up to 43.47 percent of the voting shares of Myers Bancshares, Inc., Alva, Oklahoma, and thereby indirectly acquire voting shares of The Central National Bank of Alva, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, March 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6782 Filed 3–20–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Country Square Bancshares, Inc., Meriden, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The State Bank of Meriden, Meriden, Kansas.

Board of Governors of the Federal Reserve System, March 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6783 Filed 3–20–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Outcome Measures Surveys of Older Americans Act (OAA) Clients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

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SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 22, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: David Bunoski, Office of Evaluation, Administration on Aging, Room 344G, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–0669.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

Title of Information Collection: National Outcome Measures Surveys of Older Americans Act (OAA) Clients.

Type of Request: New information collection.

Use: Consumer assessment data will be collected in this initial set of surveys to initiate national program outcome assessment consistent with the requirements of the Government Performance and Results Act and the Older Americans Act.

Frequency: One-time.

Respondents: Elderly individuals who have received selected services under Title 3 of the Older Americans Act.

The Administration on Aging is submitting to the Office of Management and Budget for approval the National Outcome Measures Surveys of Older Americans Act (OAA) Clients, pursuant to requirements set forth by congressional statute. Through a contract with WESTAT, Inc., AoA will draw samples of individuals served through Area Agencies on Aging across the country for the purpose of obtaining OAA program service assessments from these individuals. The surveys will utilize information collection instruments and methods developed and tested by experts in the field of gerontology and by State and local entities that administer OAA programs. The surveys will include assessments from among the following service categories: nutrition, transportation, caregiver support, home-care, and information and assistance.

AoA estimates the burden of this collection of information as follows:

Estimated Number of Responses: 3,500.

Total Estimated Burden Hours: 2,000.

In the **Federal Register** of December 3, 2001, Volume 66, Number 3232, Page 60214, the agency requested comments on the proposed collection of information. Two comments from one commenter were received.

In a letter dated January 22, 2002, Patricia P. Pine, Ph.D., Director of the New York State Office for the Aging, made the following recommendations:

Comment: "We strongly recommend that the Performance Outcomes Measures project demonstrations funded by the AoA be extended for at least one more year. This would allow the participating state and area agencies on aging to collect more information and to address validity and reliability issues that have emerged or could emerge during the current demonstrations."

Response: The Administration on Aging has not yet made a decision regarding additional funding for the current fiscal year, but is reviewing options that will include such funding.

Comment: "The proposed national survey instruments should retain only those measures that are relevant to each service category. This would minimize the burden on frail elderly clients. For example, the social functioning measure should be applied to clients who are in the relevant service populations, although this measure does not appear to be relevant to home-care clients."

Response: As part of the normal review of performance measures each year, the nutrition workgroup has begun to address the issue of the pertinence of particular measures of social functioning to the population being surveyed. For example, we are revising the social functioning questionnaire for use with clients who receive home-delivered meals. While we will still ask several questions about individuals' frequency of social contacts, we will no longer ask other questions of home-bound individuals concerning their activities outside the house. When this task is completed, a modified social functioning questionnaire, appropriate for home-care clients, will be available.

Dated: March 13, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–6785 Filed 3–20–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Strawberry Tierra, Inc., Property, Douglas County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Strawberry Tierra, Inc. (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended. The Service proposes to issue a 3-year permit to the Applicant that would authorize the incidental take of the Preble's meadow jumping mouse (Preble's) (*Zapus hudsonius preblei*), federally listed as threatened, and loss and modification of its habitat associated with the construction of retail development in Parker, Douglas County, Colorado. Construction of the project will result in the permanent loss of up to 0.10 acres of willow copse that provides potential foraging and hibernation habitat for the mouse, and temporary loss of 5.37 acres of ruderal grassland that provides potential foraging and hibernation habitat for the mouse. The permit application includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP), which is available for public review and comment. The HCP fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP for the proposed issuance of the incidental take permit. We provide this notice pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the EA and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and EA/HCP should be received on or before May 20, 2002.

ADDRESSES: Persons wishing to review the permit application or the EA/HCP, may obtain a copy by writing to LeRoy Carlson, Field Supervisor, Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, or by calling (303) 275–2370 to request a copy. Documents also will be available for inspection, by appointment, during normal business hours at the address above. Written data or comments should be submitted to the above address. Comments also may be sent by facsimile to (303) 275–2371. Please reference permit number TE–053241 in any comments submitted.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act and Federal regulations prohibit the "take" of a species listed as endangered or threatened (take is defined under the Endangered Species Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct). However, the Service may issue permits to authorize "incidental take" (defined by the Endangered Species Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The proposed action is the issuance of a permit under section 10(a)(1)(B) of the Endangered Species Act to allow the incidental take of Preble's during the construction of a proposed retail development. The proposed project will permanently affect 0.10 acres and temporarily affect 5.37 acres of potential habitat for Preble's. An HCP has been developed as part of the preferred alternative. The proposed HCP will allow for the incidental take of the Preble's by permitting construction of a retail development in an area that may be periodically used as foraging or hibernation habitat. Proposed construction will result in about 0.10 acres of permanent habitat loss and another 5.37 acres of temporary effects to the habitat associated with this localized disturbance.

Alternatives considered in addition to the proposed action were—building at an alternate location, and no action. The draft EA analyzes the onsite, offsite, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources. None of the proposed impacts occur within the riparian corridor. The majority of impacts are in upland areas outside the 100-year floodplain. The Applicant, using the Service's definition of Preble's habitat, has determined that the proposed project would impact approximately 5.47 acres of potential Preble's habitat. The mitigation for the identified impacts will provide a net increase of 2.06 acres to the Preble's and other wildlife by improving potential mouse habitat through revegetation with native grasses, forbs, shrubs, and trees.

The Preble's is the only known Federally listed species that occurs on site and has the potential to be directly affected by the proposed project. The Applicant has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of Preble's; in order to compensate for the loss of Preble's habitat, a total of 7.53 acres adjacent to the 100-year floodplain of Cherry Creek will be preserved and enhanced at a ratio of greater than 1.5:1 through seeding and planting native species.

Dated: March 4, 2002.

John Blankenship,

Deputy Regional Director.

[FR Doc. 02–6809 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Lenox Village Development Site, Nashville, Davidson County, Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Regent Development (Applicant) seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of the endangered Nashville crayfish (*Orconectes shoupi*) from a 5-acre lake, incidental to lake draining for residential development in Nashville, Davidson County, Tennessee. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Nashville crayfish. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE049322–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "*david_dell@fws.gov*". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**).

Due to Court order, the Department of Interior has temporarily lost access to the internet and may not regain it by the time this notice is published. Commentors are encouraged to submit comments by mail or express courier, or to call (see **FURTHER INFORMATION**) to confirm whether our internet capability has been restored.

Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor

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such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before April 22, 2002.

ADDRESSES: Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permit Coordinator), or Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE049322–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Tyler Sykes, Fish and Wildlife Biologist, Cookeville Field Office, (see **ADDRESSES**), telephone 931/528–6481.

SUPPLEMENTARY INFORMATION: Nashville crayfish are limited to the Mill Creek watershed in Davidson and Williamson counties, Tennessee, near metropolitan Nashville. This species has been collected in both pool (adults only) and riffle areas (adults and juveniles). The crayfish take cover under flattened limestone slabs and rocks of varying sizes on the predominately gravel and limestone bedrock substrate found in Mill Creek and its tributaries. Habitat degradation from road and bridge construction, stream channel modifications, and point and non-point source runoff threatens the continued survival of the Nashville crayfish in this restricted range.

The Applicant, Regent Development, requests a permit for incidental take of Nashville crayfish which would occur from the draining of a 5-acre lake at Lenox Village, a proposed development site in Davidson County, Tennessee. The lake is being drained to provide suitable substrate for construction of houses. If the Applicant decided not to build in this area, the lake would still be drained to either remove or repair the dam that is currently holding back the water. The dam has been deemed unsafe by the Tennessee Department of Environment and Conservation and the Applicant has been instructed to either remove the dam or repair it.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has developed an HCP as required for their incidental take permit application.

The HCP describes measures the Applicant will take to minimize and mitigate taking at the Project site. To minimize impacts to the Nashville crayfish from the draining of Resha Lake, the Applicant will:

1. Install proper erosion control measures prior to draining of the lake to insure minimal loss of sediment to the downstream channel during the draining process.

2. Conduct a sweep of the lake prior to initiation of the lake draining process to remove Nashville crayfish. These crayfish will be relocated to area(s) designated by the Service.

3. Conduct periodic sweeps throughout the entire lake draining process to ensure removal of all Nashville crayfish.

To mitigate for any Nashville crayfish that may be taken, the applicant will provide the following:

1. Reconstruction of the stream channel:

a. The channel will be placed in the lake bed and will mirror the up- and down-stream portions of the existing stream channel.

b. Slabrocks will be placed in the reconstructed channel to provide habitat for Nashville crayfish recolonizing the channel.

c. Native vegetation will be planted in buffer zones along the stream bank.

d. The reconstructed stream channel will be designated as greenspace in perpetuity.

2. Installation of wet cells:

Retention basins (wet cells) will be strategically located throughout the property to collect runoff to allow materials harmful to aquatic species to settle out before that water is released to the stream.

3. Education:

a. Informational signs discussing the Nashville crayfish and its habitat will be installed along the reconstructed stream channel.

b. Informational flyers will be distributed through the Homeowners Association to all residents of Lenox Village discussing the Nashville crayfish and ways that residents can protect the species' habitat.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an EA or EIS. This preliminary information may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Nashville crayfish and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project, but rather expect the species to benefit.

2. Approval of the HCP would not have adverse effects on known geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a federal, state, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of Nashville crayfish on the Applicant's project site. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: March 7, 2002.

David P. Flemming,

Acting Regional Director.

[FR Doc. 02–6811 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for an Incidental Take Permit for Residential Development in Collier County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Vestcor Fund XV, Limited (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking red-cockaded woodpeckers (*Picoides borealis*) (RCWs) associated with the clearing of 18.3 acres of foraging habitat incidental to the construction of a multi-family housing development in Collier County, Florida.

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation measures, will individually and cumulatively have a minor or negligible effect on these species covered in the HCP. Therefore, the ITP is a "low-effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE042708–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "*david_dell@fws.gov*". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**).

Due to Court order, the Department of Interior has temporarily lost access to the internet and may not regain it by the time this notice is published. Commentors are encouraged to submit comments by mail or express courier, or to call (see **FURTHER INFORMATION**) to confirm whether our internet capability has been restored.

Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the permit application, Determination of Low Effect and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before April 22, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559. Written data or comments concerning the application, HCP, or supporting documents should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE042708–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Michael Jennings, Fish and Wildlife Biologist, South Florida Ecological Services Field Office (see **ADDRESSES** above), telephone: 561/562–3909 extension 225.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available. The RCW is endemic to the pine forests of the southeastern United States and was once widely distributed across 16 states. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and

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residential and commercial developments, and to hardwood and exotic species encroachment in existing pine forests due to fire suppression and hydrological alteration. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

In southwest Florida, there are an estimated 85 active RCW clusters; 51 percent are on Federal lands, 35 percent are on State lands, and 14 percent are on private lands. The known RCW populations on public lands are periodically monitored and the status of birds on these lands range from increasing to decreasing. Effective land management actions are currently ongoing in the Florida Fish and Wildlife Conservation Commission's Cecil Webb Wildlife Management Area where 27 known active RCW clusters occur. This population is about 40 miles north of the project area and the RCW population is considered stable. Big Cypress National Preserve is about 25 miles southeast of the project area and contains 43 clusters that are actively managed and this population is increasing. In relation to the project site, the closest public land (within two miles) that supports RCWs is the Picayune Strand State Forest where three active clusters exist. This population has been in decline for several decades, but much of the decline resulted from lack of habitat management prior to acquisition by the State of Florida. Recent implementation of aggressive land management actions within the State forest is likely to stabilize this population in the near future and result in long-term increases in the number of active clusters.

The Applicant's project lies within the urban boundary of Naples. Areas surrounding the project site are represented by a mosaic of urban uses and undeveloped property. The location of RCWs on private lands in the Naples area has never been well documented because of a lack of access for survey purposes. Based largely on anecdotal information, observations from roadsides, and limited information gathered from onsite observations in the 1980s and early 1990s, about 12 active clusters are thought to exist on private lands west of the Picayune Strand State Forest and dense urban areas further to the west.

Of the 12 RCW clusters on private lands, two historic localities are known from private lands near the project site. Application of a one-half mile radius circle around these cluster sites indicates that the project site may be within the home range of one, and possibly both of these clusters. However, due to construction time constraints, and lack of access to neighboring properties, adequate RCW foraging habitat surveys could not be conducted on the project site to determine definitively whether RCWs forage in the area. Preliminary habitat assessments looked for, but did not find, active or inactive nest trees. Much of the project area consists of hydric pine flat woods that are relatively undisturbed. Lacking sufficient time to conduct foraging surveys, and the apparent suitability of the project site as foraging habitat and the proximity of RCW clusters, the Applicant opted to consider the entire project area to be RCW foraging habitat.

The Service worked with the Applicant in the design of the mitigation measures. To mitigate for loss of RCW foraging habitat, the Applicant will purchase a minimum of 18.3 acres of suitable RCW foraging habitat within (e.g., inholdings) or adjacent to the Belle Meade tract of the Picayune Strand State Forest. The Applicant will, in cooperation with the Florida Division of Forestry, develop a habitat management plan for the mitigation parcel(s), conduct any initial management actions required to restore acquired mitigation parcels, and contribute sufficient funds into a management endowment to ensure future management of the mitigation parcels. Except for avoidance of RCWs observed during construction, no project minimization measures were proposed by the Applicant because the property was acquired prior to the realization that RCWs may forage on the site. Accordingly, the smallest acreage necessary to construct the proposed multi-family units was acquired. Thus, the existing 18.3 acres will accommodate the proposed development, but does not provide sufficient area to create buffers or to otherwise minimize impacts to foraging habitat. The Applicant has indicated that downsizing the proposed development will not be economically viable. From a biological perspective, onsite preservation is not likely to result in conservation benefits to RCWs in this increasingly urban landscape. On-site preserves established for RCWs during previous section 7 consultations in this area have proven ineffective because they have become surrounded by urban development. The concept of on-site preserves for RCWs may be appropriate for large-scale developments that provide ample open space and sufficient residual habitat, particularly when the preserves are adjacent to actively managed public lands. However, habitat preserves set aside within relatively small development projects of southwest Florida tend to result in small, fragmented parcels of habitat that become increasingly hostile to RCWs as urban development encroaches. In such cases, RCWs often abandoned these small, isolated preserves because sufficient habitat is not available.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, which does not require the preparation of an EA or EIS. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the red-cockaded woodpecker and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project.

2. Approval of the HCP would not have adverse effects on known geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a federal, state, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of RCWs on the Applicant's project site. The Service will also evaluate whether the issuance of a section 10(a)(1)(B) permit complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the Biological Opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: February 27, 2002.

Kemper M. McMaster,

Acting Regional Director.

[FR Doc. 02–6812 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Southern Idaho Ground Squirrel Candidate Conservation Agreement With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Soulen Livestock, Inc. (Soulen Livestock) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Southern Idaho Ground Squirrel Candidate Conservation Agreement with Assurances (Agreement) between Soulen Livestock, the Service, the Idaho Department of Fish and Game, and the Idaho Governor's Office of Species Conservation.

Under the proposed Agreement, the parties would implement conservation measures for southern Idaho ground squirrels (*Spermophilus brunneus endemicus*) over approximately 43,145 acres of Soulen Livestock's land in Washington and Payette Counties, western Idaho. The intent of the Agreement is to conserve southern Idaho ground squirrels by protecting and enhancing ground squirrel habitat and populations, and reintroducing ground squirrels into currently unoccupied suitable habitat, in a manner that is consistent with Soulen Livestock's farming and ranching operations. The proposed term of the Agreement and the permit is 20 years. The Service has prepared an Environmental Assessment for approval of the Agreement and issuance of the permit.

We request comments from the public on the permit application, Agreement, and the Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before April 22, 2002.

ADDRESSES: Comments should be addressed to Dennis Mackey, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709, (facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Dennis Mackey at the above address or telephone 208/378–5267.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their property to benefit unlisted species that are proposed or candidates for listing under the Endangered Species Act, or other sensitive species. Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts, and reduce threats to unlisted species by assuring landowners that they will not be subjected to increased property use restrictions, beyond those identified in the agreement, if the species is listed in the future under the Endangered Species Act. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreements with Assurances are found in 50 CFR 17.22(d) and 17.32(d).

On October 30, 2001, the Service formally identified the southern Idaho ground squirrel as a candidate for listing under the Endangered Species Act (66 FR 54807). Southern Idaho ground squirrels are currently found within an approximately 518,000-acre area comprised of lower elevation shrub/steppe habitat in the Weiser River Basin, in southwest, Idaho. The species appears to have undergone a substantial population decline throughout its range since 1985. Southern Idaho ground squirrels are largely dependent on private lands: 85 percent of the occupied ground squirrel sites are located on private lands, mostly ranches and farms; 12 percent are under federal management by the Bureau of Land Management; and 3 percent of the sites are on lands managed by the Idaho Department of Lands. Conservation measures implemented on private lands are important for the long-term survival of the species.

Landowners may be willing to implement measures that enhance populations of sensitive species on their property, but reluctant to do so because of potential land-use restrictions that could occur should the species eventually be listed under the Endangered Species Act. As a result of this potential regulatory concern, Soulen Livestock developed the Southern Idaho Ground Squirrel Candidate Conservation Agreement with Assurances, in cooperation with the agencies, and is applying to the Service for a permit under section 10(a) of the Endangered Species Act, authorizing incidental take of southern Idaho ground squirrels.

Under the proposed Agreement and permit, Soulen Livestock and the agencies would implement various conservation measures over the 43,145 acres of Soulen Livestock's property depending on present and future occupancy of sites by southern Idaho ground squirrels and the location of ground squirrel reintroduction/translocation sites. The proposed conservation measures can be described in three categories: (1) Measures to be applied on all 43,145 acres; (2) measures that would occur on currently occupied ground squirrel sites (30 acres); and (3) measures on 43,115 acres where ground squirrel occupancy and habitat suitability is currently unknown. On all 43,145 acres of enrolled lands, Soulen Livestock would not authorize the shooting, trapping, or poisoning of southern Idaho ground squirrels and would allow agency personnel access to these lands to conduct ground squirrel surveys. Currently, three sites, covering 30 acres have been identified in the site-specific plan as occupied by southern Idaho ground squirrels and specific conservation measures have been identified at these sites to protect ground squirrels from activities that may have adverse affects to individual ground squirrels or their habitat. The ground squirrel conservation measures on the 30 acres include: (1) Continue reintroduction efforts, (2) monitor ground squirrel populations and habitat characteristics to identify habitat enhancement/rehabilitation measures; (3) implement habitat enhancement measures such as seeding native or non-native vegetation species, fertilizing vegetation, prescribed burning, and providing escape cover; (4) minimize direct mortality from ground disturbing activities; (5) provide supplemental feeding, if necessary; (6) prohibit shooting, trapping, or poisoning of ground squirrels; and (7) control Columbian ground squirrels and badgers. Columbian ground squirrels compete with southern Idaho ground squirrels for food and burrow sites. Badgers can cause severe impacts on prey species, especially if they are at critically low numbers. The remaining

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43,115 acres have not been surveyed for ground squirrel occupancy, and no site-specific conservation measures have been identified on these lands. On these unsurveyed lands, both individual ground squirrels and their habitat will be protected from land use activities that may have adverse effects at any sites identified in the future as occupied by southern Idaho ground squirrels, or sites identified by the agencies as reintroduction/translocation sites. The permit would authorize incidental take of southern Idaho ground squirrels as a result of Soulen Livestock's land use activities: crop cultivation and harvesting, livestock grazing and production, farm equipment operation, and recreational activities.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to Soulen Livestock for take of southern Idaho ground squirrels incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: March 1, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 02–6810 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–034–1010–02]

Closure of Public Lands to Camping and Off-Highway Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands to camping and off-highway vehicle use.

SUMMARY: Notice is hereby given that the following described lands are temporarily closed until further notice to camping and off-highway vehicle use for the protection of public health and safety under the provisions of 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). Persons with authorization to utilize the area by BLM regulations, contracts, leases or permits, may use the area described in accordance with those authorizations. Nothing in this closure effects the exercise of valid existing rights created by a contract, right-of-way, lease, permit or mining claim that is carried out in accordance with the regulations under which the rights were established. The closure will remain in effect until rescinded or modified by the Phoenix Field Manager.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 7 E.,
Sec. 18, Lots 6, 13, 15–19, 21, N½SE¼, SE¼ SE¼.
T. 2 N., R. 1 W.,
Sec. 13, SW¼SE¼;
Sec. 24, NW¼NE¼.

EFFECTIVE DATE: This order is effective upon the signature of the authorized officer.

SUPPLEMENTARY INFORMATION: The public lands involved (approximately 301 acres), located at University Drive/Sossman Road and Camelback Road/Agua Fria River, are adjacent to areas of expanding urban development. Unregulated and extended overnight camping and off-highway vehicle use is not consistent with the orderly growth of the communities and presents health, safety and law enforcement problems.

Fugitive dust resulting from operation of off-highway vehicles in air quality non-attainment areas is a growing and continuing problem. Landowner compliance with Maricopa County and State of Arizona dust abatement and management regulations is becoming critical in the urban areas of Maricopa County. BLM is subject to these rules, especially Maricopa County Rules 301, 302, and 310.01. Air quality issues include considerable PM10 dust from the operation of off-highway vehicles, extensive PM10 accumulations from OHV activities during late afternoons and on weekends, and significant numbers of complaints from concerned citizens.

Increasing levels of local law enforcement time have been allocated to answering disturbance calls from residents and property owners adjacent to these public lands. Law enforcement service calls included OHV-related dust, noise, trespass, random gunfire, drug and alcohol violation arrests, fireworks use, suspicious circumstance calls, illegal dumping of dirt, debris and trash and other illicit activities.

This closure will be monitored and enforced by BLM, the Maricopa County Sheriff's Department and other law enforcement agencies. The following persons, operating within the scope of their official duties, are exempt from the provisions of these closures: BLM employees, state or federal law enforcement and fire protection personnel.

Because of prior existing rights, the following parties (and their representatives) will be allowed access to the above described lands:

(1) USDI, Bureau of Reclamation—(AZA–453, AZA–18823, AZA–19991, AZPHX–086506, AZPHX–86777and Secretarial Orders dated July 2, 1902 and August 21, 1909)
U.S. West—(AZA–10994, AZAR–035574)
City of Mesa—(AZA–17277, AZA–31058)
Maricopa County DOT—(AZAR–035348)
(2) Salt River Project—(AZA–166)
Tucson Electric Power Co.—(AZA–7274, AZA–7872)
Arizona Public Service Co.—(AZA–18635)
Maricopa County DOT—(AZA–19098)
Maricopa County FCD—(AZA–23639)

Order: Notice is hereby given that effective the date of a signature by the authorized officer of this notice, the above described lands are closed to camping and off-highway vehicle use until further notice. Any person who fails to comply with a closure or restriction order issued under 43 CFR 8364 is subject to the penalties provided in 43 CFR Subpart 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Michael A. Taylor, Field Manager, Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, (623) 580–5500.

Dated: December 19, 2001.

Michael A. Taylor,

Field Manager.

[FR Doc. 02–6776 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–31–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–02–1230–EA]

Temporary Closure of Public Lands—Recreation Special Events: Nevada, Carson City Field Office

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral and Washoe Counties on and adjacent to permitted special events such as: Motorized Off Highway Vehicle, Mountain Bike, Horse Endurance competitive event sites and routes.

Competitive events (races) are conducted along dirt roads, trails, washes and areas approved for such use through the Special Recreation Use Permit application process. Events occur from April through November, 2002. Closure period is from 6 a.m. race day until race finish or until the event has cleared between affected Check Point locations; approximately 2 to 24 hour periods. The general public will be advised of each event and Closure specifics via local newspapers and mailed public letters within seven (7) to thirty (30) days prior to the running of an event. Event maps and information will be posted at the Carson City Field Office.

Locations most commonly used for permitted events include, but are not limited to:

1. Lemmon Valley MX Area—Washoe Co., T21N R19E S8.
2. Hungry Valley Off Highway Vehicle Area—Washoe Co., T21–23N R20E.
3. Pine Nut Mountains—Carson, Douglas & Lyon Counties: T11–16N R20–24E.
4. Virginia City/Jumbo Areas—Washoe & Storey Counties: T16–17N R20–21E.
5. Yerington/Weeks Areas—Lyon Co.: T12–16N R23–27E.
6. Fallon Area (Including Sand Mtn.)—Churchill Co.: T14–18N R27–32E.
7. Hawthorne Area—Mineral County: T5–14N R31½–36E.

SUMMARY: The Assistant Manager, Non-Renewable Resources announces the temporary closure of selected public lands under his administration. Persons with authorization to utilize the area by BLM regulations, contracts, leases or permits, may use the area described in accordance with those authorizations. Nothing in this closure affects the exercise of valid existing rights created by a contract, right of way, lease, permit of mining claim that is carried out in accordance with the regulations under which the rights were established. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

EFFECTIVE DATES: April through November, 2002. Events may be canceled or rescheduled at short notice.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6161.

SUPPLEMENTARY INFORMATION: Bureau lands to be temporarily closed to public use include the width and length of those roads and trails identified as the race route by colorful flagging, chalk arrows in the dirt and directional arrows attached to wooden stakes. The authorized applicants or their representatives are required to post warning signs, control access to, and clearly mark the event routes during closure periods.

Public uses generally affected by a Temporary Closure include: road and trail uses, camping, shooting of any kind of weapon including paint ball, and public land exploration.

Spectator and support vehicles may be driven on open roads only. Spectators may observe the races from specified locations as directed by event and agency officials.

A map and schedule of each closure area may be obtained at the contact address.

Exemptions: Closure restrictions do not apply to race officials, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR part 8364 and 43 CFR part 8372.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

Dated: February 11, 2002.

Charles P. Pope,

Acting Assistant Manager, Non-renewable Resources.

[FR Doc. 02–6780 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–PG]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet in Bakersfield.

DATES: Friday and Saturday, April 12–13, 2002.

ADDRESSES: Red Lion Hotel, 2400 Camino Del Rio Court, Bakersfield, California.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. On Friday and Saturday beginning at 8 a.m., the Council will meet to discuss public land issues. The meetings are open to the public. Agenda items include a briefing on current issues and future planning by the four Field Managers of the central California region of the BLM, and an information session on healthy rangelands. There will be a Friday afternoon field trip to the Carrizo Plain National Monument. The public is welcome on the field trip, but must supply their own transportation. There will be public comment periods at 11:30 a.m. on Friday, April 12, and 1 p.m. on Saturday, April 13, at which time the Council will hear comments on any public land issue. Written comments will also be accepted, either at the meeting or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661-391–6010.

Dated: February 22, 2002.

Ron Fellows,

Bakersfield Field Manager.

[FR Doc. 02–6775 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: A field tour to Crescent Valley to view/discuss grazing and mining issues, approval of minutes of the previous meetings, Off-Highway Vehicle Draft Guidelines, Vegetation Draft Guidelines, 3809 Guidelines, Field Managers' and District Ranger's reports.

All meetings are open to the public. The public may present written comments to the Council. Each formal

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Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada, 89820; Field Tour April 24, 2002, beginning at 9 a.m. and returning at 5 p.m.; Business Meeting April 25, 2002 beginning at 9 a.m., public comment period 1:30 p.m.; tentative adjournment at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Specialist, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801, telephone (775) 753–0386.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

David Stout,

Associate Field Manager, Elko Field Office.

[FR Doc. 02–6778 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR110–5880–PB; HAG02–0128]

Medford District Resource Advisory Committee; Notice of Meeting

AGENCY: Medford District Office, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Medford District Resource Advisory Committee will meet in Medford. Agenda topics include review of last meeting minutes, role of alternates, presentations on proposed fiscal year 2002 Title II projects, and discussion regarding proposed projects.

DATES: April 11, 2002. The meeting will begin at 10 a.m. A public comment period will be held from 2 p.m. to 2:30 p.m. The meeting is expected to adjourn at 4 p.m.

ADDRESSES: The meeting will be held at the Medford District Office, located at 3040 Biddle Road, Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Karen Gillespie, Medford District Office (541–618–2424).

Dated: February 22, 2002.

Ron Wenker,

District Manager.

[FR Doc. 02–6779 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Wednesday and Thursday, April 24 and 25, 2002, in Arcata, CA, for a field tour and business meeting. The tour and meeting are open to the public, but anyone participating in the tour must provide their own transportation and lunch.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Wednesday, April 24, at the BLM Arcata Field Office, 1695 Heindon Rd., Arcata. Members will convene, then depart immediately for field tour of sites managed by the Arcata Field Office. On Thursday, April 25, the council will convene a business meeting at 8 a.m. in the Conference Room of the BLM Arcata Field Office. Agenda topics will include discussion of a community forest proposal in Trinity County, a status report on planning for the Headwaters Forest Reserve, and a status report on a proposed amendment to the BLM Redding Field Office Resource Management Plan. Council members will also hear status reports from the managers of the BLM's Arcata, Redding and Ukiah field offices.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

FOR ADDITIONAL INFORMATION: Contact Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300; or Public Affairs Officer Joseph J. Fontana at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–6781 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–010–1430–ET; FL–ES–051481]

Notice of Proposed Withdrawal Modification and Transfer of Jurisdiction; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Veterans Affairs has filed an application to transfer jurisdiction of 49.83 acres of public land withdrawn for the Department of the Navy, Pensacola Naval Air Station. The land is needed for expansion of the Barrancas National Cemetery. The land has been and would remain closed to surface entry and mining, but not from leasing under the mineral leasing laws.

DATES: Comments must be received by June 19, 2002.

ADDRESSES: Comments should be sent to the Field Manager, BLM, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Duane Winters, Jackson Field Office, 601–977–5403.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has filed an application to transfer jurisdiction of the following described public lands, which were withdrawn from all forms of appropriation under the general land laws, including the mining laws, subject to valid existing rights for the Department of Navy, Pensacola Naval Air Station:

Tallahassee Meridian

T. 3 S., R. 30W.,
Tract 6.

The area described contains 49.83 acres in Escambia County.

The Department of Navy has determined that this land is no longer needed for the Pensacola Naval Air Station and has agreed to a transfer of the land to the Department of Veterans Affairs for expansion of the Barrancas National Cemetery.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments,

suggestions, or objections in connection with the proposed transfer of jurisdiction may present their views in writing to the Jackson Field Office of the Bureau of Land Management at the above address.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Bruce Dawson,

Field Manager.

[FR Doc. 02–6777 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Workshop on Transferring Responsibility for Inspection and Enforcement of U.S. Coast Guard Regulations for Fixed Facilities on the Outer Continental Shelf to the Minerals Management Service

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of workshop.

SUMMARY: The MMS and the U.S. Coast Guard (USCG) will jointly hold a workshop to discuss the transfer of responsibility to MMS for inspection and enforcement of USCG regulations for fixed facilities on the Outer Continental Shelf.

DATES: The workshop will be held on Friday, April 12, 2002, from 8:30 a.m. to 12 noon. Written questions you wish to discuss at the workshop must reach MMS by close of business on March 22, 2002.

ADDRESSES: The workshop will be held at the Sheraton North Houston Hotel's Amphitheater at George Bush International Airport, 15700 John F. Kennedy Boulevard, Houston, Texas; telephone (281) 442–5100. Please submit your written questions by mail or fax to the following:

(1) By mail to Staci Atkins, Minerals Management Service, 381 Elden Street, MS 4023, Herndon, Virginia 20170; or,

(2) By Fax to Staci Atkins at (703) 787–1575.

FOR FURTHER INFORMATION CONTACT: Staci Atkins, telephone (703) 787–1620.

SUPPLEMENTARY INFORMATION: On February 7, 2002, the USCG published a final rule in the **Federal Register** (67 FR 5912) authorizing MMS to perform fixed facility inspections on behalf of the USCG. Based on comments we received on the proposed rulemaking, we are aware that industry has questions on how the agreement between the two agencies will be implemented. This workshop will inform industry and the public of the implementation of the MMS inspection program.

The agenda for the meeting on April 12, 2002, is as follows:

- General welcome and overview;
- Presentation of the rulemaking history;
- Overviews of the current MMS and USCG inspection programs;
- Presentation of the integrated inspection program; and
- Question and answer session.

The MMS and USCG encourage you to submit questions and attend the workshop. We will consider your questions submitted in advance in preparing our presentations so that the workshop can focus on key topics. You may also pose questions during the question and answer session at the workshop.

To obtain information on facilities or services for individuals with disabilities or to request that we provide special assistance at the meeting, please contact Staci Atkins as soon as possible.

Dated: February 20, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–6797 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Devils Tower National Monument, Crook County, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement and General Management Plan for Devils Tower National Monument.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Devils Tower National Monument, Wyoming.

DATES: The Draft EIS/GMP was on public review from July 2, through September 30, 2001. Responses to public comment are addressed in the FEIS/GMP. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS/GMP.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent, Devils Tower National Monument, P.O. Box 10, Devils Tower, WY 82714. Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Devils Tower National Monument, P.O. Box 10, Devils Tower, WY 82714, Telephone: (307) 467–5283 x 14.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 or (303)969–2377.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Superintendent, Devils Tower National Monument, (307) 467–5282 x 14.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes five alternatives to manage natural and cultural resources, visitor use and access, general development and park operations. The alternatives address issues including the following. The national monument is subject to visitor congestion, including vehicular circulation and parking, and crowded visitor facilities. None of the four buildings where park staff works has adequate space for office requirements, storage, meetings, or breaks. The space available for the cooperating association's offices and bookstore is inadequate. Congestion and inadequate facilities limit the staff's ability to offer orientation and interpretation that would ensure visitor understanding of the monument's significance and allow visitors to make the best use of their time. Flood control structures on the Belle Fourche River inside and outside the monument have severely damaged the riparian woodland system. Modern recreational use, developments, and climbing on the Tower are sometimes in conflict with American Indian traditional cultural values. High levels of development, visitor use, and crowding at the base of the Tower are not consistent with the spiritual nature of the area. Alternative 1, the no action alternative represents the continuation of existing conditions and management at the monument. Alternative 2 would reduce overall development to improve the monument's natural setting, institute a reservation system during periods of peak visitation, and convert the parking area at the base of the Tower to a pedestrian plaza. Alternative 3, the NPS preferred alternative, would institute a shuttle system for use during peak

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visitation periods, construct a shuttle staging area and visitor orientation facilities within the monument, and convert the parking area at the base of the Tower to a pedestrian plaza. Alternative 4 would also institute a shuttle system, but would construct/relocate staging and visitor orientation facilities, along with headquarters and maintenance facilities, outside the monument boundaries. Alternative 5 would continue to offer visitor experiences similar to those presently available, but would expand, pave, and upgrade parking areas and roads, and/or add facilities to reduce visitor congestion.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on the prairie dog (a candidate for listing as threatened by the Fish and Wildlife Service), wetlands, floodplains, ethnographic and historic resources, visitors' experience of monument resources, visitor access and freedom to go at one's own pace, access to orientation and interpretation, visitor safety, businesses and neighbors, and local and regional economy.

Dated: December 7, 2001.

R. Everhart,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 02–6610 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Valley Forge National Historical Park General Management Plan, Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Valley Forge National Historical Park General Management Plan.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an Environmental Impact Statement for the Valley Forge National Historical Park General Management Plan. This Environmental Impact Statement will be approved by the Northeast Regional Director.

Valley Forge National Historical Park was authorized by Congress, Public Law 94–337, on July 4, 1976. As required, a General Management Plan was prepared and released in September 1982. NPS policy requires that such plans be prepared every 15–20 years. The 1982 plan has numerous deficiencies and left the park without appropriate management tools for resources and recreational use.

The park lies at the center of the wealthiest and most urbanized region of Pennsylvania, just beyond Philadelphia. Its visitation is mostly regional, and it is treasured more as an outstanding recreational and open space resource than as a cultural resource. Its 3400 acres lie in two counties and five municipalities; each jurisdiction has a distinct governance, planning, and zoning structure. The GMP process will begin in FY 02. It will address the following:

- The public's lack of understanding and appreciation for the cultural resources and values of the park, and of the park's mission;
- The need for consensus on defining and managing recreational use in the park;
- A strategic approach to management of the park's cultural resources, including landscapes, earthworks and structures;
- Mitigation of pressures on the park resources resulting from rapid residential and commercial development of areas surrounding the park; and
- Strategies for appropriate partnership opportunities that can enhance the park's visitor services.

A scoping meeting will be scheduled, and notice will be made of the meeting through a broad public mailing and publication of meeting notices in local newspapers. A newsletter introducing the project to the public will be done. Copies of the newsletter will be available by request to the Superintendent, Valley Forge National Historical Park at the phone number below or by email to *VAFO_Superintendent@nps.gov.*

FOR FURTHER INFORMATION, CONTACT: Contact Superintendent, Valley Forge National Historical Park, 610–783–1000 or at *VAFO_Superintendent@nps.gov.*

Dated: January 11, 2002.

Marie Rust,

Regional Director, Northeast Region.

[FR Doc. 02–6609 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 13, 2002, a proposed Consent Decree in *United States* v. *Boise Cascade Corporation,* (Civil No. CV 02–311ST), was lodged with the United States District Court for the District of Oregon. The Consent Decree resolves claims on behalf of the United States Environmental Protection Agency ("EPA") and the State of Louisiana against the Boise Cascade Corporation ("Boise Cascade"). The Complaint, which was filed simultaneously with the lodging of the Decree, alleged violations of the Prevention of Significant Deterioration ("PSD") requirements of Part C of the Clean Air Act (the "CAA"), 42 U.S.C. 7470–7492, and the regulations promulgated thereunder at 40 CFR 52.21 (the "PSD Rules") at eight plywood and particle board plants operated by Boise Cascade.

Under the Consent Decree, Boise Cascade is required to install state-of-the-art air pollution control equipment over the next three years at its Medford and Elgin, Oregon operations, and the Florien and Oakdale plants in Louisiana. In addition, the company must select one of three pollution control options to reduce volatile organic compound emissions (VOCs) from its particle board facility in Island City, Oregon. The company will spend an estimated $15 million to implement these compliance measures. The company will also pay $4.35 million in civil penalties and, under the settlement, Boise Cascade will be installing another $2.9 million in supplemental controls to reduce emissions at the Yakima and Kettle Falls, Washington plants, and to control certain units at the Medford, Oregon plywood facility. The state of Louisiana joined in the settlement and will receive a $250,000 share in the penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and refer on its face to *United States* v. *Boise Cascade Corporation,* D.J. Ref. 90–5–2–1–06414.

The Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 1000 SW. Third Ave., Suite 600, Portland, OR 97204–2902, and at EPA Region 10, Office of Air Quality, 1200 Sixth Avenue OAQ–107, Seattle, Washington. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States and the State of Louisiana* v. *Boise Cascade Corporation,* D.J. Ref. 90–5–2–1–06414.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–6800 Filed 3–20–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the following proposed collections: (1) FECA Medical Report Forms and Claim for Compensation (CA–16b, CA–17b, CA–20, CA–1090, CA–1303, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, CA–1332, CA–1336, OWCP–5a, OWCP–5b, OWCP–5c, and CA–7); and (2) Rehabilitation Action Report (OWCP–44). A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 20, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail pforkel@feix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

FECA Medical Report Forms (CA–16b, CA–17b, CA–20, CA–1090, CA–1303, CA–1305, CA–1331, CA–1332, QCM letters, OWCP–5a, OWCP–5b, OWCP–5c), and Claim for Compensation (CA–7)

I. Background

The Federal Employees' Compensation Act (FECA) provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. Before compensation may be paid, the case file must contain medical evidence showing that the claimant's disability is causally related to the claimant's federal employment. As a particular claim ages, there is continuing need for updated information to support continuing benefits. The FECA Medical Report Forms collect medical information from physicians which is necessary to determine entitlement to benefits under the Act. Form CA–7, Claim for Compensation, requests information from the injured worker regarding pay rate, dependents, earnings, dual benefits, and third-party information. This information collection is approved by the Office of Management and Budget for use through August 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval of this information collection request in order to carry out its statutory responsibility to compensate injured employees under the provisions of the Act. The OWCP has carefully reviewed usage of these forms and has determined that three forms formerly included as part of this OMB clearance number, (CA–1306, CA–1314, and CA–1316,) have not been used in the past year and are obsolete. These forms have been eliminated. The CA–1336 formerly approved as part of this information collection request has been replaced by the QCM Letters. In addition, the CM–1090, the OWCP 5a, 5b, and 5c have been revised.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title(s): Claim for Compensation, FECA Medical Reports.

OMB Number: 1215–0103.

Agency Number(s): CA–16b, CA–17b, CA–20, CA–1090, CA–1303, CA–1305, CA–1331, CA–1087, QCM letters, OWCP–5a, OWCP–5b, OWCP–5c), and Claim for Compensation (CA–7).

Affected Public: Individuals or households; businesses or other for-profit; Federal government.

Frequency: As needed.

Form	No. of respondents	Average minutes per response	Burden hours
CA–7	400	13	87
CA–16b	130,000	5	10,833
CA–17b	60,000	5	5,000
CA–20	65,000	5	5,417
CA–1090	200	10	34
CA–1303	2,000	20	667
CA–1305	10	20	3
CA–1331	200	5	17

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Form	No. of respondents	Average minutes per response	Burden hours
CA–1332	200	30	100
QCM letters	1,000	5	83
OWCP–5a	7,000	15	1,750
OWCP–5b	5,000	15	1,250
OWCP–5c	15,000	15	3,750

Total Responses: 286,010.

Estimated Total Burden Hours: 28,991.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $105,824.

Rehabilitation Action Report (OWCP 44)

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act. Section 8104(a) of the Act provides that eligible injured workers are furnished vocational rehabilitation services. The costs of these services are paid from the Employees' Compensation Fund. The Rehabilitation Action Report (OWCP–44) is submitted by a rehabilitation counselor to report transition periods in the vocational rehabilitation process and to request prompt adjudicatory action. The form gives prompt notification of key events requiring action in the vocational rehabilitation process. The form is currently approved by the Office of Management and Budget OMB for use through August 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to gather information to enable OWCP to make timely, informed decisions about rehabilitation services for an injured worker. There is no change to the form since the last approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Rehabilitation Action Report.

OMB Number: 1215–0182.

Agency Number: OWCP–44.

Affected Public: Businesses or other for-profit; individuals or households.

Frequency: On occasion.

Total Respondents: 7,000.

Time per Response: 30 minutes.

Estimated Total Burden Hours: 3,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 15, 2002.

Gary D. Thayer,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–6866 Filed 3–20–02; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Solid Rock Construction, Inc.

[Docket No. M–2002–007–C]

Stamper Technical Service, Inc., 45 Stamper Lane, Pikeville, Kentucky 41501 has filed a petition for Solid Rock Construction, Inc., No. 1 Mine (I.D. No. 15–16643) located in Pike County, Kentucky, to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors). The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that using padlocks to secure battery plugs would result in diminution of safety to the miners.

2. Aaron Coal Company, L.L.C.

[Docket No. M–2002–008–C]

Stamper Technical Service, Inc., 45 Stamper Lane, Pikeville, Kentucky 41501 has filed a petition for the Aaron Coal Company, L.L.C., No. 2 Mine (I.D. No. 15–17813) located in Pike County, Kentucky, to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors). The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that using padlocks to secure battery plugs would result in diminution of safety to the miners.

3. M & H Coal Company

[Docket No. M–2002–009–C]

M & H Coal Company, P.O. Box 559, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (Quantity and location of firefighting equipment) to its Mercury Slope Mine (I.D. No. 36–01920) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Mercury Slope Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. White County Coal, LLC

[Docket No. M–2002–010–C]

White County Coal, LLC, 1525 County Road 1300 N, P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) to its Pattiki II Mine (I.D. No. 11–03058) located in White County, Illinois. The petitioner proposes to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to move equipment in, out, and around the mine and to perform work in areas outby section loading points where equipment is not required to be maintained permissible. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Hobet Mining, Inc.

[Docket No. M–2002–011–C]

Hobet Mining, Inc., P.O. Box 305, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 77.206(c) (Ladders; construction; installation and maintenance) to its Beth Station No. 79 Preparation Plant (I.D. No. 46–05398) located in Boone County, West Virginia. The petitioner proposes to use a SAF–T–CLIMB fall prevention system on its counterweight tower structure for the overland system at the Beth Station No. 9 Preparation Plant in lieu of using a vertical ladder. The petitioner states that the counterweights are located inside the framework of a structure that is approximately 30 feet high, that the use of the SAF–T–CLIMB system would ensure the safety of individuals working around the counterweights, and that the SAF–T–CLIMB system would be installed so that it would be in compliance with OSHA regulations 29 CFR 1910.27. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners.

6. Energy West Mining Company

[Docket No. M–2002–012–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petitioner requests that Item IV(d)(3) & (4) of the proposed decision and order for its previously granted petition for modification, docket number M–1999–044–C be amended to allow the use of a non-approved diesel grader in the two-entry section with miners inby for maintenance purposes only. The petitioner asserts that the specific terms and conditions listed in this petition would be met before implementing its proposed amendments and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Snyder Coal Company

[Docket No. M–2002–013–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (Quantity and location of firefighting equipment) to its N & L Slope Mine (I.D. No. 36–02203) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the N & L Slope Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 22, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 15th day of March 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–6796 Filed 3–20–02; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Company, Yankee Nuclear Power Station (ROWE); Exemption

1.0 Background

The Yankee Atomic Electric Company (YAEC or the licensee) is the holder of Possession Only License No. DPR–3, which authorizes possession and maintenance of the Yankee Nuclear Power Station (YNPS or plant). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility is a permanently shutdown pressurized-water reactor (PWR) currently in the process of decommissioning and is located on the licensee's site in Franklin County, Massachusetts.

On February 27, 1992, the licensee submitted written certifications to the Commission that it had decided to permanently cease operations at YNPS and that all fuel had been permanently removed from the reactor. The NRC in a license amendment dated August 5, 1992, modified License No. DPR–3 to a Possession Only License (POL). The license is conditioned so that YAEC is not authorized to operate the reactor and fuel may not be placed in the reactor vessel, thus formalizing the YAEC commitment to permanently cease power operations. The YNPS spent nuclear fuel is currently being stored in the spent fuel pool, which is protected by a physical protection system meeting the requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," with exemptions as previously issued by the NRC. To complete the plant site decommissioning process, the spent fuel will be removed from the spent fuel pool and transferred to an onsite independent spent fuel storage installation (ISFSI) for interim storage.

Pursuant to 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear

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Fuel and High-Level Radioactive Waste," an ISFSI may be licensed either under a general or a specific license. Under a general license, a licensee can construct and operate an ISFSI in accordance with the requirements of 10 CFR 72.212, "Conditions of general license issued under § 72.210 [,"General license issued"],," without staff approval. Pursuant to 10 CFR 72.212(b)(5), a licensee must protect the spent fuel at the ISFSI against the design basis threat (DBT) of radiological sabotage in accordance with the same provisions and requirements as are set forth in the licensee's 10 CFR 73.55 physical security plan, with additional conditions and exceptions.

Alternatively, an ISFSI can be constructed under a 10 CFR part 72 specific license, which requires a licensee to develop a detailed security plan in accordance with 10 CFR 73.51, "Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste." The design objective of 10 CFR 73.51 is to protect against a loss of control of the facility that could be sufficient to cause radiation exposure exceeding the dose as described in 10 CFR 72.106, "Controlled area of an ISFSI or MRS (monitored retrievable storage)."

In an August 21, 2000, **Federal Register** notice (65 FR 50606), the Commission clarified portions of 10 CFR part 72, stating that the requirements of 10 CFR 72.106 apply to ISFSIs with either general or specific licenses. The offsite dose limits of 10 CFR 72.106 are defined such that any individual on or beyond the nearest boundary of the controlled area may not receive from any design basis accident the more limiting of a total effective dose equivalent of 0.05 Sv (5 rem) or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue of 0.5 Sv (50 rem).

2.0 Request

Pursuant to 10 CFR 72.212(b)(5), licensees who store their spent fuel under the provisions of 10 CFR part 72, subpart K, "General License for Storage of Spent Fuel at Power Reactor Sites," as YAEC proposes to do, are required to "Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth * * *" in 10 CFR 73.55.

By letter dated September 28, 2000, as supplemented by letters dated October 12, 2000, April 18, 2001, May 29, 2001, June 28, 2001, and March 4, 2002, the licensee requested an exemption from certain requirements of 10 CFR 73.55. YAEC proposed alternative approaches to meet the provisions of portions of 10 CFR 73.55(b) through (h) related to the security organization, physical barriers, access requirements, detection aids, communications, and response requirements. By this same correspondence, the licensee also requested a license amendment that would revise Facility Operating License No. DPR–3 to reference the revisions of the Physical Security Plan, Guard Training and Qualification Plan, and Safeguards Contingency Plan, and made available a copy of the YAEC plans to assist the staff in its review of the exemption and amendment requests.

3.0 Discussion

Pursuant to 10 CFR 72.7, "Specific exemptions," and 10 CFR 73.5, "Specific exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Pursuant to 10 CFR 73.55(a), the Commission may authorize a licensee to provide measures for protection against radiological sabotage other than those specified in the regulations if the licensee demonstrates that the measures have the same high assurance objective as specified in 10 CFR 73.55(a) and that the overall level of system performance provides protection against radiological sabotage equivalent to that which could be provided by paragraphs (b) through (h) of 10 CFR 73.55.

The staff has reviewed the proposed YAEC ISFSI and Fuel in Transit (FIT) Physical Protection Programs against the requirements of each section of 10 CFR 73.55 to determine whether the alternative measures that YAEC proposed should be authorized pursuant to 10 CFR 73.55(a), or whether specific exemptions should be granted from the requirements of these regulations. As part of its review, the staff evaluated the offsite dose that would result from unimpeded access by the DBT of radiological sabotage without protracted loss of control of the facility. On the basis of YAEC's plan in the ISFSI Physical Protection Program to maintain the boundary of its controlled area at a minimum of 300 meters from the dry cask storage installation and provisions in the ISFSI Physical Protection Program that provide the capability to summon off-site local law-enforcement agency response forces to preclude a protracted loss of control of the facility, the staff concluded that the DBT of radiological sabotage would result in an offsite dose well below the 10 CFR 72.106(b) limits. The staff therefore concluded that the alternative measures proposed by YAEC are authorized pursuant to 10 CFR 73.55(a), with one exception. With regard to the requirements of 10 CFR 73.55(d)(5), the staff concluded that the measures proposed by YAEC did not meet the criteria of 10 CFR 73.55(a) to be authorized as alternative measures. However, the staff concluded that pursuant to 10 CFR 72.7 and 10 CFR 73.5, the proposed alternatives to the requirements of 10 CFR 73.55(d)(5) that YAEC requested could be granted as an exemption. A detailed discussion of the staff's evaluation is contained in the safety evaluation supporting these findings dated March 13, 2002, which safeguards information in accordance with 10 CFR 73.21 and therefore, is not available to the public.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 72.7 and 10 CFR 73.5, exemption from the requirements of 10 CFR 73.55(d)(5) related to access requirements is authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 48720, dated September 21, 2001).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of March 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6814 Filed 3–20–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on an Overview of Recent Activities Related to the Potential High-Level Waste Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Beatty, Tonopah, and Ely, Nevada.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff will hold three public meetings on regulation of a potential high-level waste repository at Yucca Mountain. The meetings are intended to foster a common understanding among the stakeholders on safety and regulatory issues, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, NRC.

The meetings are primarily to acquaint the public with the NRC oversight of a potential high-level waste repository at Yucca Mountain. It will begin with an overview of NRC's responsibilities, include a discussion of NRC's regulations and preparations for evaluating a potential U.S. Department of Energy (DOE) license application, and conclude with an overview of the NRC's role with respect to the transportation of high-level waste. Several opportunities for questions will be provided. In addition, members of the NRC staff will be available for discussion with members of the public. The dates, times, and locations of the public meetings are shown below.

Date/Time: Monday, April 8, 2002, from 6:30 p.m.—9:00 p.m. (Pacific time). Tuesday, April 9, 2002, from 6:30 p.m.—9:00 p.m. (Pacific time). Wednesday, April 10, 2002, from 6:30 p.m.—9:00 p.m. (Pacific time).

Place: Beatty Senior Center, 150 A Avenue South, Beatty, Nevada. Tonopah Convention Center, 301 West Brougher Avenue, Tonopah, Nevada. Holiday Inn Prospector Inn & Casino, 1501 E. Aultman Street, Ely, Nevada/

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of March, 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–6813 Filed 3–20–02; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27498]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 15, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 9, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 9, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy, Inc., et al. (70–10059)

Xcel Energy, Inc., ("Xcel"), a registered holding company, and its wholly owned subsidiary, NRG Acquisition Company, LLC ("Acquisition Company," and together with Xcel, "Applicants"), both located at 800 Nicollet Mall, Minneapolis, Minnesota 55402, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 11, 12(b), 32 and 33 of the Act and rules 51, 53, 54 and 58 under the Act.

Applicants propose to commence a tender or exchange offer ("Exchange Offer") for Xcel to acquire the outstanding common stock of NRG Energy, Inc. ("NRG"),[1] a Delaware corporation and a majority owned indirect subsidiary of Xcel,[2] under the terms of a plan approved by Xcel's board of directors on February 14, 2002. In the Exchange Offer, Xcel proposes to acquire the outstanding publicly held shares of NRG, representing approximately a 26 percent minority interest, by exchanging NRG common stock for .4846 shares of Xcel common stock in the Exchange Offer in a tax-free exchange. Applicants also propose to acquire the balance of the shares of NRG's common stock not tendered in the Exchange Offer by means of a short-form merger permitted under Delaware law ("Short-Form Merger"). Xcel proposes to issue up to 24.7 million shares of its common stock in exchange for NRG's common stock obtained in the Exchange Offer and Short-Form Merger.[3]

Under the terms of the Exchange Offer, in order to be successful, enough shares of NRG common stock will need to be tendered so that Xcel's ownership level of NRG reaches 90 percent. If the Exchange Offer results in 90 percent ownership, Wholesale will contribute enough shares of NRG common stock to Acquisition Company to permit Xcel to own at least 90 percent of NRG. Subsequently, Acquisition Company will merge through the Short-Form Merger with and into NRG. Each outstanding share of NRG common stock not acquired in the Exchange Offer will be converted in the Short-Form Merger into the right to receive 0.4846 shares of Xcel in the Exchange Offer. After completion of the Exchange Offer and the Short-Form Merger, Xcel will own NRG as an indirect, wholly owned subsidiary. Xcel states that its investment in NRG will be included as part of Xcels's investment in exempt wholesale generators and foreign investment companies for purposes of sections 32 and 33 of the Act.

[1] NRG is an independent power producer and a leading global energy company, primarily engaged in the acquisition, development, ownership and operation of power generation facilities and the sale of energy, capacity and related products. NRG's common stock is publicly traded and listed on the New York Stock Exchange under the symbol "NRG."

[2] Xcel indirectly owns shares of NRG's common stock through its wholly owned subsidiary, Xcel Energy Wholesale Group, Inc. ("Wholesale"). Xcel owns 147,604,500 shares of NRG's Class A Common Stock, each of which is convertible at any time into one share of NRG's Common Stock. The Class A Common Stock represents 74.3% of all of the outstanding shares of both classes of NRG's common shares combined. Because each share of Class A Common Stock entitles Xcel to ten votes, Xcel currently holds 96.7% of the combined voting power of all of NRG's outstanding common shares.

[3] The shares of Xcel's common stock to be issued in the Exchange Offer and the Short-Form Merger will come from Xcel's authorized but unissued shares.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6799 Filed 3–20–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45560; File No. SR–NSCC–2001–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Permitting Data Services Only Members to Access Fund/Serv

March 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 26, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits Data Services Only Members to access Fund/Serv to process non-NSCC settling mutual fund purchase and redemption transactions and related instructions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Data Services Only Members are permitted access only to those services which are specifically enumerated under NSCC's Rules and which do not involve money settlement through NSCC's facilities. The proposed rule permits Data Services Only Members to access Fund/Serv, provided as part of NSCC's Mutual Fund Services, to process non-NSCC settling mutual fund purchase and redemption transactions and related instructions. The proposed rule also extends this processing only functionality to those Settling Members and Fund Members who wish to utilize it.

The ability of Data Services Only Members and Settling Members to utilize Fund/Serv for processing only is being added at the request of NSCC Fund Members and the Investment Company Institute ("ICI") in order to permit broker-dealers and their financial planner representatives to be able to transmit transaction data to funds in an automated format. Such transmissions are currently being handled manually which is extremely time-intensive.[3]

Accordingly, NSCC's Rule 52 (Mutual Fund Services), Section A (Fund/Serv) is being amended (1) to make Data Services Only Members eligible to utilize the service for the limited purpose of processing (but not settling through NSCC) transactions and related instructions and (2) to enable Settling Members to process transactions and related instructions through Fund/Serv that will settle outside of NSCC. Historically, Fund Members have always had the right to designate parameters within which their orders will be processed. Clarifying language is now being added to set forth this right explicitly. Accordingly, the functionality allowing Data Services Only Members and Settling Members to input transactions for Fund/Serv processing that will settle outside of NSCC will be available to the extent those parameters are selected by Fund Members.

This rule change will increase automation of mutual fund transaction processing between Fund Members, broker-dealers, and other entities and thus facilitates the prompt and accurate clearance and settlement of securities transactions. The proposed rule change is therefore consistent with the requirements of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the ICI and a representative group of mutual fund industry participants in developing this functionality, and all concur with the proposed changes. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(4) [5] promulgated thereunder because the proposal effects a change in an existing service of NSCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of NSCC or persons using the service because the proposed rule change will allow entities to process transactions on an automated basis that are currently processed manually and does not involve the settlement of funds through NSCC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Pursuant to Securities Exchange Act Release No. 44960 (October 19, 2001), 66 FR 56383 (October 25, 2001) [File No. SR–NSCC–2001–14], Data Services Only Members may utilize Mutual Fund Services' Networking in order to access and make inquiries regarding their customer accounts in an automated format. This inquiry functionality utilizes a communications-translation interface (in Extensible Markup Language or XML) that will also be used to transmit transaction data to Fund/Serv that will settle on a participant to participant basis. This functionality and the XML communications interface used to transmit transaction data to Fund/Serv will be collectively marketed to participants under the name Fund/SPEED. The proposed Fund/SPEED fees, as well as the fees for transactions submitted through Fund/Serv that settle on a participant to participant basis, will be the subject of a separate rule filing. Until such time, these services will be provided without charge.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2001–18 and should be submitted by April 11, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6828 Filed 3–20–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45561; File No. SR–NSCC–2002–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising NSCC's Fee Schedule

March 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 25, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to (i) establish fees for the XML-based account inquiry feature of NSCC's Mutual Fund Services ("MFS"), (ii) establish fees for the XML-based communications interface that transmits fund transaction data to NSCC's Fund/SERV for processing, (iii) establish base participation fees for those Fund Members and Mutual Fund Processors [3] using these XML-communication interface features, and (iv) standardize the descriptions, under the name "Fund/*SPEED*," of such MFS features and communications in NSCC's fee schedule.

In addition to and in conjunction with these changes, the proposed rule change provides for Fund/SERV fees for Fund/SERV Processing Only transactions that will settle on a participant to participant basis outside of NSCC.

All of the proposed fees are payable by the applicable Fund Member or Mutual Fund Processor. Pursuant to this rule change, the Fund/*SPEED* fee for account inquiry will be $0.005 per request and fund response ("Account Inquiry"). The Fund/*SPEED* fee for the XML-interface transmission of fund transaction data (other than a new account transaction) to Fund/SERV will be $.50 per item ("Subsequent Trade Transmission") and will be $.75 per item for transmission of transaction data involving a new account ("New Account Trade Transmission.") All of these fees will be payable with respect to services provided from and after April 1, 2002.

In addition, participating Fund Members and Mutual Fund Processors will be charged a monthly membership fee to use these services determined as follows: $250 per month for such members with less than twenty-five eligible mutual funds and/or eligible investment funds (identified by CUSIP) on Fund/SERV; $1,000 per month for such members with between twenty five and ninety nine eligible mutual funds/investment funds on Fund/SERV; and $2,500 per month for such members with one hundred or more eligible mutual funds/investment funds on Fund/SERV. These fees will be effective from and after February 1, 2002.

Finally, this rule change provides that the Fund/SERV fees payable with respect to Fund/SERV Processing Only transactions will be $.175 per side, and the fee for both sides will be charged to and payable by the applicable Fund Member or Mutual Fund Processor, effective with respect to such services provided on and after April 1, 2002.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder, since it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified participants who use MFS of the Fund/*SPEED* changes. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes and changes fees imposed by NSCC, it has become effective pursuant

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] As defined in NSCC's Rule 52, a Mutual Fund Processor is a settling member that is acting in the capacity of a Fund Member in connection with the issuance or redemption of fund shares.

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to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] promulgated thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–02 and should be submitted by April 11, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6829 Filed 3–20–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45557; File No. SR–OCC–2001–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing Financial Reporting Standards for Clearing Futures Commission Merchants That Are Not Fully Registered With the Commission as Broker-Dealers

March 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 9, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC Rule 306 to facilitate financial reporting by clearing members that are FCMs not fully registered with the Commission as broker-dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As a result of the Commodity Futures Modernization Act, entities registered with the Commodity Futures Trading Commission ("CFTC") as futures commission merchants ("FCMs") are allowed to trade in security futures upon notice registration with the Commission.[3] These entities are not subject to the full panoply of Commission regulation, and in particular, they are not required to file reports of financial condition under Rule 17a–5. As a result of amendments to OCC's Rules that were approved by the Commission in File No. SR–OCC–2001–07 (adopting rules for the clearance and settlement of security futures), such entities are now allowed to become clearing members of OCC.[4] OCC has also filed an application with the Commission and the CFTC seeking authority to clear futures on broad-based indexes and options thereon.[5] These products are regulated exclusively by the CFTC, and OCC's proposed rules would permit it to admit clearing members that are regulated exclusively by the CFTC and not registered as broker-dealers at all.

The purpose of this rule change is to facilitate financial reporting by clearing members that are FCMs not fully registered with the Commission as broker-dealers while providing OCC with the same level of financial oversight that OCC has with respect to other clearing members. Such FCMs will be permitted to file their monthly financial reports with OCC using the CFTC's Form 1–FR–FCM. However, notwithstanding the provisions of CFTC Regulation 1.10(b) generally requiring such reports to be filed with the CFTC on a quarterly basis, OCC will require such reports to be filed with OCC monthly. OCC believes that monthly reporting is conducive to the protection of OCC, its clearing members, and the public.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the regulations thereunder because it protects investors and the public interest by ensuring the availability of adequate financial information to OCC regarding clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Section 15(b)(11)(A) of the Securities Exchange Act of 1934.

[4] Securities Exchange Act Release No. 44727, (August 20, 2001), 66 FR 45351.

[5] The CFTC granted OCC's application for registration as a derivatives clearing organization on December 12, 2001. The Commission has published notice of OCC's filing. Securities Exchange Act Release No. 45152, (December 12, 2001), 66 FR 65770.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [6] and Rule 19b–4(f)(1) [7] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2001–17 and should be submitted by April 11, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6826 Filed 3–20–02; 8:45 am]

BILLING CODE 8010–01–U

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45558; File No. SR–OCC–2002–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Eliminating Clearing Fees

March 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 11, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's fee schedule to eliminate certain fees for discontinued or soon to be discontinued services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to amend OCC's fee schedule in two respects. First, OCC is eliminating ONN Fees, effective January 1, 2002. ONN is an electronic bulletin board service operated by OCC for clearing members and other subscribers to access pertinent information posted by OCC and the options exchanges.[3] Information posted on ONN includes information memos on contract adjustments, other notices to clearing members, statistical and volume information, and certain reports. Most of the information made available via ONN is now available on OCC's public web site, *www.optionsclearing.com*. Other information not currently available on OCC's web site will be made available via MyOCC,™ a new web site portal that OCC is creating for use by clearing members and other subscribers. When MyOCC™ is launched, ONN will no longer be offered and MyOCC™ will become the principal vehicle for disseminating options related information. At this time, OCC has determined not to charge fees to access MyOCC,™ and it would be inconsistent with that policy to continue to charge fees for ONN in the meantime.

Second, OCC is eliminating off-site microfiche retrieval charges. In 1996, OCC converted the media on which historical reports were made available to subscribing clearing members from microfiche to CD–ROM and amended its fee schedule to reflect the associated charges.[4] As stated in Filing SR–OCC–96–14, microfiche charges were to be eliminated after the conversion was completed. The conversion was finished some time ago, and accordingly, OCC is updating its fee schedule.

OCC believes the proposed rule change is consistent with Section 17A of the Act because it eliminates fees charged to clearing members and other subscribers for discontinued or soon to be discontinued services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 28669 (December 3, 1990), 55 FR 50793 [Filed No. SR–OCC–09–12].

[4] Securities Exchange Act Release No. 37993 (November 27, 1996), 61 FR 64407 [File No. SR–OCC–96–14].

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change eliminates fees charged clearing members by OCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–01 and should be submitted by April 11, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6827 Filed 3–20–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).
[6] 17 CFR 240.19b–4(f)(2).
[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3939]

Bureau of Human Resources, Office of Recruitment; 30-Day Notice of Proposed Information Collection: Form DS–3091, Thomas R. Pickering Foreign Affairs Fellowship Program

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New collection.
Originating Office: HR/REE/REC.
Title of Information Collection: Thomas R. Pickering Foreign Affairs Fellowship Program.
Frequency: Annual.
Form Number: DS–3091.
Respondents: College students.
Estimated Number of Respondents: 250.
Average Hours Per Response: 15.
Total Estimated Burden: 3,750.
Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Richard Esper, Chief of Student Programs, Office of Recruitment, Bureau of Human Resources, U.S. Department of State, 2401 E Street, NW, Room H–518, Washington, DC 20522; 202–261–8924. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: February 26, 2002.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 02–6862 Filed 3–20–02; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 3913]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union; Notice of Meeting

The Department of State announces that the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Friday, April 19, 2002, beginning at 10 a.m. in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 2002 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in connection with the "Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, as amended." The agenda will include opening statements by the Chairman and members of the Committee and, within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the independent states of the former Soviet Union," based on the guidelines contained in the call for applications published in the **Federal Register** on November 23, 2001. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify Susan Nelson, INR/RES, U.S. Department of State, (202) 736–4610 by Tuesday, April 16, 2002, providing their date of birth, Social Security number, and any requirements for special needs. All attendees must use the 2201 C Street,

NW, entrance to the building. Visitors who arrive without prior notification and without a photo ID will not be admitted.

Dated: March 8, 2002.

Kenneth E. Roberts,

Executive Director, Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 02–6861 Filed 3–20–02; 8:45 am]

BILLING CODE 4710–32–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on Twenty-Three Accessions to the World Trade Organization and on U.S. Participation in Negotiations for the Terms of These Accessions: Algeria, Andorra, Azerbaijan, the Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Kazakhstan, Laos, Lebanon, Former Yugoslav Republic of Macedonia, Nepal, Samoa, the Seychelles, Sudan, Tajikistan, Tonga, Uzbekistan, Vietnam, Yemen, and Yugoslavia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: As a Member of the World Trade Organization (WTO), the United States participates in negotiations for the terms of accession for new Members to the WTO. The Trade Policy Staff Committee (TPSC) is requesting written comments from the public concerning U.S. commercial interests and other issues related to the accessions of 23 countries seeking to join the WTO, and to assist the United States Trade Representative (USTR) in participation in negotiations for the terms of those accessions. These countries are the Azerbaijan Republic (Azerbaijan), Bosnia and Herzegovina, the Commonwealth of The Bahamas (The Bahamas) the Democratic and Popular Republic of Algeria (Algeria), the Federal Republic of Yugoslavia (Yugoslavia), Former Yugoslav Republic of Macedonia, the Independent State of Samoa (Samoa), the Republic of the Sudan (Sudan), the Kingdom of Bhutan (Bhutan), the Kingdom of Cambodia (Cambodia), the Kingdom of Nepal (Nepal), the Kingdom of Tonga (Tonga), the Lao Democratic People's Republic (Laos), the Lebanese Republic (Lebanon), Principality of Andorra (Andorra), the Republic of Belarus (Belarus), the Republic of Cape Verde (Cape Verde), the Republic of Kazakhstan (Kazakhstan), the Republic of Seychelles (the Seychelles), the Republic of Tajikistan (Tajikistan), the Republic of Uzbekistan (Uzbekistan), the Republic of Yemen (Yemen), and the Socialist Republic of Vietnam (Vietnam). With respect to Vietnam, comments may take into consideration submissions made in response to previous requests for written comments in the context of Vietnam's WTO accession and the negotiation of a Bilateral Trade Agreement.

Public comments should include, but not be limited to, information concerning those countries' current trade policies and practices which affect market access for U.S. exports, e.g., tariffs, non-tariff measures; trade and investment in services; other aspects of the trade regime affecting U.S. trade interests subject to WTO provisions; and other conditions or practices that impair the ability of these countries to grant the benefit of WTO provisions to their trading partners. Comments received will be considered in developing U.S. positions and objectives for the multilateral and bilateral negotiations that will determine the terms of WTO accession for Algeria, Andorra, Azerbaijan, The Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Kazakhstan, Laos, Lebanon, Former Yugoslav Republic of Macedonia, Nepal, Samoa, the Seychelles, the Sudan, Tajikistan, Tonga, Uzbekistan, Vietnam, Yemen, and Yugoslavia.

DATES: Public comments should be received by noon on Wednesday, May 15, 2002.

ADDRESSES: Public comment should be submitted to: Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508. Attention: Office of WTO and Multilateral Affairs

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, USTR Director for WTO Accessions (202–395–3063) concerning the WTO accession process and issues related to WTO rules; Paul Moore (*pmoore@ustr.gov*), USTR Director for Market Access and Sarah Sipkins (*ssipkins@ustr.gov*), USTR Director for Tariffs (202–395–5097) concerning issues related to goods market access negotiations; Sharon Sheffield (*ssheffield@ustr.gov*), Director for Agricultural Trade Policy (202–395–6127) concerning issues related to trade in agricultural products or agricultural support; or Christina Lund (*clund@ustr.gov*), USTR Senior Advisor for Services and Intellectual Property Rights and Paul Burkhead (*pburkhead@ustr.gov*), USTR Director for Services Trade Affairs (202–395–4510) concerning issues related to services market access. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representatives, (202) 395–3475.

SUPPLEMENTARY INFORMATION: The countries of Algeria, Andorra, Azerbaijan, The Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Kazakhstan, Laos, Lebanon, Former Yugoslav Republic of Macedonia, Nepal, Samoa, the Seychelles, the Sudan, Tajikistan, Tonga, Uzbekistan, Vietnam, Yemen, and Yugoslavia have applied for accession to the WTO. Article XII of the Marrakesh Agreement Establishing the World Trade Organization states that the terms of WTO Membership for these countries will be negotiated with current WTO Members bilaterally and in meetings of the Working Parties established by the Members of the WTO to conduct the negotiations. The results of these negotiations will include a Working Party report and Protocol of Accession, specifying how the applicants for accession will implement WTO Agreements, and Schedules of specific commitments and concessions on market access for imported goods and services, which will be annexed to the Protocol.

The Chairman of the Trade Policy Staff Committee invites written comments from the public on trade and other measures currently applied by Algeria, Andorra, Azerbaijan, The Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Kazakhstan, Laos, Lebanon, Former Yugoslav Republic of Macedonia, Nepal, Samoa, the Seychelles, the Sudan, Tajikistan, Tonga, Uzbekistan, Vietnam, Yemen, and Yugoslavia that could be subject to the provisions of the WTO, particularly tariffs applied to imports, and other market access issues for goods and services, or practices or measures that could affect the competitiveness of U.S. goods and services in those markets. All comments received will be considered in developing U.S. positions and objectives for participation in these negotiations.

Market access issues for goods of interest to the TPSC include, but are not limited to: (a) Comments on possible tariff reductions and the removal of restrictive border measures such as quotas or import licensing requirements; (b) uniform application of the trading system; (c) the provision of national

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treatment and nondiscriminatory treatment for imported goods, especially in the area of domestic taxation and requirements for and restrictions on the right to import and export goods; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws relating to WTO provisions, such as protection and enforcement of intellectual property rights (IPR) and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements for imports; (g) industrial export and domestic subsidies; (h) agricultural export subsidies and domestic supports and incentives; (i) safeguard and unfair trade practice procedures applied to imports; (j) plant, animal, and human health and safety requirements, including sanitary and phytosanitary requirements; (k) technical barriers to trade; (l) utilization of preshipment inspection services; (m) application of rules of origin; (n) activities of state trading enterprises, including restrictions and other trade-distorting practices made effective through state trading; (o) price controls and policies; (p) foreign exchange controls that act as barriers to trade and investment; (q) preferential trade arrangements, including membership in free trade arrangements or customs unions; (r) government procurement practices; (s) policies concerning trade in civil aircraft; (t) the trade-related aspects of investment policies; and (u) the protection and enforcement of intellectual property rights.

Market access issues for services of interest to the TPSC include, but are not limited to, (a) transparency in application of trade laws and regulations and the right of appeal in cases involving foreign service suppliers; (b) the right to establish a commercial presence in a foreign market to supply services; (c) the right to travel across national borders to make use of a service; (d) the ability to supply services when neither the supplier nor consumer travel, for example, via electronic means; and (e) the right to enter a foreign market temporarily to provide services.

Information on products or practices subject to these negotiations should include, whenever appropriate or possible, the import or export tariff classification number used for the product concerned, the CPC number used for classification of the services sector concerned, or the official citation of the law or regulation being discussed.

Persons submitting written comments should provide a statement, in twenty (20) copies, by noon, Wednesday, May 15, 2002, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC 20508. Where possible, please supplement written comments with a computer disk of the submission containing as much of the technical details as possible. The disk should have a label identifying the software used and the name of the respondent. Written comments submitted, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room 101) at the address noted above. An appointment to review the file may be made by calling the Reading Room at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–6865 Filed 3–20–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2002–11722]

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Public Knowledge of Highway Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. The collection involves a small business research study that is looking into the potential for a national public education program on various highway programs. During a small-scale trial the public will be asked via the web and mailings to comment on local construction issues and proposals. The information collected will be used solely to determine if response levels and public involvement would justify developing the approach across a larger cross-section of the United States population. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 20, 2002.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Bergeron, 415–744–2613, Marketing Specialist, Department of Transportation, Federal Highway Administration, Western Resource Center, Suite 2100, 201 Mission Street, San Francisco, CA 94105 or e-mail to *kathleen.bergeron@fhwa.dot.gov*. Office hours are from 7:00 a.m. to 4:30 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Public Knowledge of Highway Programs.

Background: Following a study performed under the DOT Small Business Innovative Research initiative, the FHWA plans to test some of the proposed ideas for increasing public education and awareness of various highway programs. These include involvement of the public early in the planning process by disseminating accurate and understandable information through a combination of Web sites and regular updates sent to local media, schools and colleges. We do not anticipate using every method in all instances, but will use a series of small-scale demonstrations to evaluate the effectiveness of each approach. Respondents will be asked for views and opinions about any local FHWA initiatives by using media coverage of local projects, Web site information, local mass mailings, or coverage on local cable television channels. We anticipate making maximum use of web-based e-learning and visualization technologies to present the information. We will evaluate which approaches are best.

Respondents: Approximately 200, including the general public, metropolitan planning organizations, various state transportation departments, local/municipal planning departments, schools and colleges.

Frequency: This is a one-time survey for the purposes of this study only.

Estimated Average Burden per Response: 30 minutes per questionnaire.

Estimated Total Annual Burden Hours: 100.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register's** home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 15, 2002.

James R. Kabel,

Chief, Management Programs, and Analysis Division.

[FR Doc. 02–6821 Filed 3–20–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 22, 2002.

ADDRESSES: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Dated: Issued in Washington, DC, on March 15, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12941–N		The Neiman Marcus Group, Longview, TX.	49 CFR 172, subparts C, D, E.	To authorize the transportation in commerce of certain limited quantities of class 3 material that meet the definition of "consumer commodities" to be transported without marking, labeling and shipping papers. (Modes 1, 2, 3, 4, 5.)
12943–N		Nitrochem LLC, Newell, PA.	49 CFR 172.203(a), 173.31(c)(1), 179.13.	To authorize the transportation in commerce of certain Class 8 materials in DOT Class 120J tank cars with a maximum gross weight on rail greater than 263,000 pounds but not greater than 286,000 pounds. (Mode 2.)
12944–N		Wabash Alloys, L.L.C., Wabash, IN.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (Mode 2.)

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NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12945–N		Duratek, Columbia, SC	49 CFR 173.403, 173.427.	To authorize the one-time transportation in commerce of one pressurizer and five steam generators to be classed as surface contaminated objects with radioactive material, Class 7. (Modes 1, 3.)
12946–N		Baker Atlas, Houston, TX	49 CFR 173.304, 173.40	To authorize the one-time transportation in commerce of 60 non-DOT specification cylinders for disposal containing chlorine trifluoride, Division 2.3, subsidiary hazards 5.1, 8 PIH Zone B. (Mode 1.)
12949–N		Railway Progress Institute, Inc., Alexandria, VA.	49 CFR 172.302(c), 173.203(a), 173.22(a) & (b), 179.100–20(a), 179.200–24(a) & (b), 179.201–10(a), 179.220–25.	To authorize the transportation in commerce of rail cars with alternative specification plates for use in transporting various hazardous materials. (Mode 2.)
12950–N		Walnut Industries, Inc., Bensalem, PA.	49 CFR 172.203(a), 172.301(c), 176.76(a)(4).	To authorize the manufacture, marking, sale and use of metal or plastic 55 gallon drums of various hazardous materials overpacked in freight container of transport vehicle using a fabric restraint dunnage system. (Mode 3.)
12951–N		Borden Chemical Co., Missoula, MT.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (Mode 2.)
12953–N	RSPA–02–11835	Westinghouse Electric Company, Pittsburgh, PA.	49 CFR 173.453(d)	To authorize the transportation in commerce of packages of fissile material that exceed the quantities presently authorized. (Modes 1, 2.)
12955–N		Air Cruisers Company, Belmar, NJ.	49 CFR 172.301(c), 173.219(b)(1).	To authorize the transportation in commerce of life-saving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (Modes 1, 4, 5.)
12956–N	RSPA–02–11834	Frazee Industries, Incorporated, San Diego, CA.	49 CFR 172.200	To authorize the transportation in commerce of combination packagings of 1 gallon and 5 gallon steel containers without overpac or shipping papers from the manufacturing facility to the distribution center. (Mode 1.)
12960–N	RSPA–02–11832	International Fuel Cells, South Windsor, CT.	49 CFR 172.200, 172.300, 172.400.	To authorize the transportation in commerce of fuel cells containing small amount of hazardous materials to be shipped without being subject to the HMR. (Modes 1, 4.)

[FR Doc. 02–6822 Filed 3–20–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 5, 2002.

ADDRESSES: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. In confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 15, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
4453–M		Dyno Nobel, Inc., Salt Lake City, UT (See Footnote 1)	4453
7765–M		Carleton Technologies, Inc., Orchard Park, NY (See Footnote 2)	7765
8439–M		Kidde Aerospace, Wilson, NC (See Footnote 3)	8439
8451–M		Olin Corporation, Winchester Group, East Alton, IL (See Footnote 4)	8451
8495–M		Kidde Aerospace, Wilson, NC (See Footnote 5)	8495
8723–M		Dyno Nobel, Inc., Salt Lake City, UT (See Footnote 6)	8723
10427–M		Astrotech Space Operations, Inc., Titusville, FL (See Footnote 7)	10427
10751–M		Dyno Nobel, Inc., Salt Lake City, UT (See Footnote 8)	10751
10929–M		Ashland Inc., Columbus, OH (See Footnote 9)	10929
11401–M		Agilent Technologies, Inc., Santa Clara, CA (See Footnote 10)	11401
11579–M		Dyno Nobel, Inc., Salt Lake City, UT (See Footnote 11)	11579
12102–M	RSPA–98–4005	Clean Harbors Environmental Services, Inc., Braintree, MA (See Footnote 12)	12102
12818–M	RSPA–01–10519	HRD Aero Systems Inc., Valencia, CA (See Footnote 13)	12818

[1] To modify the exemption to authorize the transportation of additional Division 1.5D liquid blasting explosives in non-DOT specification bulk cargo tanks, trailers and motor vehicles.

[2] To modify the exemption to authorize the use of an additional non-DOT specification cylinder bottle assembly unit for the transportation of Division 2.2 materials.

[3] To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification cylinders.

[4] To modify the exemption to authorize an alternative outer packaging for the transportation of not more than 25 grams of explosive or pyrotechnic materials classed as Division 1.4E.

[5] To modify the exemption to authorize an alternate maintenance and inspection program for the non-DOT specification cylinders to permit a 14-year hydrostatic test period.

[6] To modify the exemption to authorize the transportation of additional Division 1.5D liquid blasting explosives in non-DOT specification bulk cargo tanks, trailers and motor vehicles.

[7] To modify the exemption to authorize two additional launch vehicles that will utilize their fairing for packaging of spacecrafts during transport and a quantity increase of several hazardous materials contained in the "flight-ready" spacecraft.

[8] To modify the exemption to authorize the transportation of Division 1.5D liquid blasting explosives in non-DOT specification bulk cargo tanks, trailers and motor vehicles.

[9] To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification tank cars.

[10] To modify the exemption to authorize an increase from 6 grams to a maximum of 9 grams of cesium in the inner cylinder device.

[11] To modify the exemption to authorize the transportation of additional Division 1.5D liquid blasting explosives in non-DOT specification cargo tanks.

[12] To modify the exemption to authorize for-hire contract carriers the ability to transport certain unapproved Class 1 desensitized explosive materials by motor vehicle and cargo vessel.

[13] To reissue the exemption originally issued on an emergency basis for the transportation of certain foreign non-DOT specification steel cylinders used as components (fire extinguishers) in aircraft.

[FR Doc. 02–6823 Filed 3–20–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 392X]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Flathead County, MT

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 3.60-mile line of railroad between milepost 1227.58 and milepost 1231.18, in Kalispell, Flathead County, MT. (line). The line traverses United States Postal Service Zip Code 59901.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 20, 2002,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 1, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Esq., Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] While BNSF initially indicated a proposed consummation date of April 19, 2002, consummation may not take place prior to April 20, 2002 (50 days after the March 1, 2002 filing date of the verified notice). BNSF's representative has subsequently confirmed that consummation cannot occur before April 20, 2002.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1,100, effective April 8, 2002.

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BNSF has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 26, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by March 21, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: March 12, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6594 Filed 3–20–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 391X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Gage County, NE

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 9.46-mile line of railroad between milepost 32.70 in Beatrice and milepost 42.16 in Wymore, in Gage County, NE. The line traverses United States Postal Service Zip Codes 68310, 68318 and 68466.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 20, 2002,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 1, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423. A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] While the applicant initially indicated a proposed consummation date of April 19, 2002, consummation may not take place prior to April 20, 2002 (50 days after the March 1, 2002 filing date of the verified notice). Applicant's representative has subsequently confirmed that consummation cannnt occur before April 20, 2002.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1,100, effective April 8, 2002.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 26, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by March 21, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: March 13, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6736 Filed 3–20–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8848

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8848, Consent to Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

OMB Number: 1545–1407.

Form Number: 8848.

Abstract: Form 8848 is used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of temporary regulations sections 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 5 hours, 46 minutes.

Estimated Total Annual Burden Hours: 28,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6874 Filed 3–20–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 2001 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 2001, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 622–5164, (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:ART, Internal Revenue Service/ Appeals, 1099 14th Street, NW., Washington, DC 20005, Telephone (202) 694–1861, (Not a toll free telephone number).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 02–6774 Filed 3–20–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209484–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209484–87 (TD 8814), Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans (§ 31.3121(v)(2)–1).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefits Plan.

OMB Number: 1545–1643.

Regulation Project Number: REG–209484–87.

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Abstract: This regulation provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Compensation Act (FICA).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2001.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6872 Filed 3–20–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[GL–238–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, GL–238–88 (TD 8549), Preparer Penalties—Manual Signature Requirement (§ 1.6695–1(B)).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Preparer Penalties—Manual Signature Requirement (§ 1.6695–1(B)).

OMB Number: 1545–1385.

Regulation Project Numbers: GL–238–88.

Abstract: This regulation provides that persons who prepare U.S. Fiduciary income tax returns for compensation may, under certain conditions, satisfy the manual signature requirements by using a facsimile signature. However, they will be required to submit to the IRS a list of the names and identifying numbers of all fiduciary returns which are being filed with a facsimile signature.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 1 hour, 17 minutes.

Estimated Total Annual Burden Hours: 25,825.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6873 Filed 3–20–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation—Gulf Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 17 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Gulf Insurance Company has redomesticated from the state of Missouri to the state of Connecticut effective October 1, 2001. The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35041, July 2, 2001.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 revision, on page 35041 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F44, Hyattsville, MD 20782.

Dated: March 14, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–6784 Filed 3–20–02; 8:45 am]

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Federal Register

Thursday,
March 21, 2002

Part II

Federal Communications Commission

47 CFR Parts 0, et al.

Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau, and Other Organizational Changes; Final Rules

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 21, 22, 27, 32, 43, 51, 53, 54, 61, 65, 68, and 90

[FCC 02–10]

Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau, and Other Organizational Changes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to reflect the new organizational structure of the Federal Communications Commission, identifying their functions and appointed delegated authority.

DATES: Effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Contact Mary Beth Richards, Office of the Chairman, Room 8–C750, 202/418–1514 or Yvette Barrett, Office of the Managing Director, Room 1–C828, 202/418–0603, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This Order adopted January 16, 2001 and released March 14, 2002 by the Commission amends its rules to make conforming changes reflecting the reorganization of the Commission. In order to promote a more efficient, effective and responsive organizational structure, the Federal Communications Commission created: the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau; reorganized the International Bureau; and consolidated enforcement and consumer information functions. Functions of the Media Bureau will include policy, licensing, and industry analysis as it relates to broadcast and cable services. The current Common Carrier Bureau will be reconfigured and renamed the Wireline Competition Bureau, which realigns functions in the wireline common carrier area and consolidates the technical and economical analysis with the new bureau. The Consumer Information Bureau will be reconfigured and renamed the Consumer and Governmental Affairs Bureau, which aligns like functions to enhance its policy role and increase its involvement with other government entities. The International Bureau will realign functions into one existing Division relating to satellites and two new Divisions: the Policy Division and the Strategic Analysis and Negotiations Division. In this Order, the Commission will amend its rules to reflect the new structure, describe their functions and delegated authority, and make other conforming organizational changes.

Authority for the adoption of the foregoing revisions is contained in sections 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 201(b) and 303 (r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

Accordingly, *it is ordered* that parts 0, 1, 21, 22, 27, 32, 43, 51, 52, 53, 54, 61, 64, 65, 68, and 90 of the Commission Rules, set forth in Title 47 of the Code of Federal Regulations, are amended as set forth in the rule changes, to be effective March 25, 2002.

List of Subjects

47 CFR Part 0

Organization and functions, Reporting and recordkeeping requirements.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Satellite, Telecommunications, Television.

47 CFR Part 21

Communications common carriers, Reporting and recordkeeping requirements, Television.

47 CFR Part 22

Radio, Reporting and recordkeeping requirements, Rural areas.

47 CFR Part 27

Communications common carriers.

47 CFR Part 32

Communications common carriers, Uniform systems of account.

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 52

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 53

Accounting, Reporting and recordkeeping requirements.

47 CFR Part 54

Communications common carriers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 68

Administrative practice and procedures, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 90

Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 21, 22, 27, 32, 43, 51, 52, 53, 54, 61, 64, 65, 68, and 90 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.5 is amended by revising paragraph (a) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) *Principal staff units.* The Commission is assisted in the performance of its responsibilities by its staff, which is divided into the following principal units:

(1) Office of Managing Director.

(2) Office of Engineering and Technology.

(3) Office of General Counsel.

(4) Office of Plans and Policy.

(5) Office of Media Relations.

(6) Office of Legislative Affairs.

(7) Office of Inspector General.

(8) Office of Communications Business Opportunities.

(9) Office of Administrative Law Judges.

(10) Office of Workplace Diversity

(11) Wireline Competition Bureau.

(12) Wireless Telecommunications Bureau.

(13) International Bureau.

(14) Media Bureau.

(15) Enforcement Bureau.

(16) Consumer and Governmental Affairs Bureau.

* * * * *

3. Section 0.11 is amended by revising paragraphs (a)(5) and (a)(8) to read as follows:

§ 0.11 Functions of the Office.

(a) * * *

(5) Plan and administer the Commissions performance review system. Assure that objections, priorities, and action plans established by Bureau and Offices are consistent with overall Commission objectives and priorities.

* * * * *

(8) Plan and manage the administrative affairs of the Commission with respect to the functions of personnel and position management; labor-management relations; training; budget and financial management; information management and processing; organization planning; management analysis; procurement; office space management and utilization; administrative and office services; supply and property management; records management; personnel and physical security; and international telecommunications settlements.

* * * * *

4. Section 0.15 is amended by revising paragraph (e) to read as follows:

§ 0.15 Functions of the Office.

* * * * *

(e) Maintain liaison with the Consumer and Governmental Affairs Bureau on press and media issues concerning consumer assistance and information including informal consumer complaints.

5. Section 0.17 is amended by revising paragraphs (c) and (g) to read as follows:

§ 0.17 Functions of the Office.

* * * * *

(c) Assist the Office of the Managing Director in preparation of the annual report to Congress, the Commission budget and appropriations legislation to Congress; assist the Office of Media Relations in preparation of the Commission's Annual Report.

* * * * *

(g) Coordinate with the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

6. Section 0.31 is amended by revising paragraph (n) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(n) To assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

7. Section 0.51 is amended by removing paragraph (q), by redesignating paragraphs (r) and (s) as paragraphs (q) and (r) and revising newly designated paragraph (r) to read as follows:

§ 0.51 Functions of the Bureau.

* * * * *

(r) To assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

8. Section 0.61 and the undesignated center heading which immediately precedes it are revised to read as follows:

Media Bureau

§ 0.61 Functions of the Bureau.

The Media Bureau develops, recommends and administers the policy and licensing programs for the regulation of media, including cable television, broadcast television and radio, and satellite services in the United States and its territories. The Bureau advises and recommends to the Commission, or acts for the Commission under delegated authority, in matters pertaining to multichannel video programming distribution, broadcast radio and television, direct broadcast satellite service policy, and associated matters. The Bureau will, among other things:

(a) Process applications for authorization, assignment, transfer and renewal of media services, including AM, FM, TV, the cable TV relay service, and related services.

(b) Conduct rulemaking proceedings concerning the legal, engineering, and economic aspects of media service.

(c) Conduct comprehensive studies and analyses concerning the legal, engineering, and economic aspects of electronic media services.

(d) Administer and enforce rules and policies regarding equal employment opportunity.

(e) Administer and enforce rules and policies regarding political programming and related matters.

(f) Administer and enforce rules and policies regarding:

(1) Radio and television broadcast industry services;

(2) Cable television systems, operators, and services, including those relating to rates, technical standards, customer service, ownership, competition to cable systems, broadcast station signal retransmission and carriage, program access, wiring equipment, channel leasing, and federal-state/local regulatory relationships. This includes: acting, after Commission assumption of jurisdiction to regulate cable television rates for basic service and associated equipment, on cable operator requests for approval of existing or increased rates; reviewing appeals of local franchising authorities' rate making decisions involving rates for the basic service tier and associated equipment, except when such appeals raise novel or unusual issues; evaluating basic rate regulation certification requests filed by cable system franchising authorities; periodically reviewing and, when appropriate, revising standard forms used in administering: the certification process for local franchising authorities wishing to regulate rates, and the substantive rate regulation standards prescribed by the Commission;

(3) Open video systems;

(4) Preemption of restrictions on devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, and direct broadcast satellite services;

(5) The commercial availability of navigational devices;

(6) The accessibility of video programming to persons with disabilities;

(7) Program access and carriage;

(8) The Satellite Home Viewer Improvement Act; and

(9) Post-licensing for satellite consumer broadcast services (DBS, DTH and DARS).

Note to paragraph (f): The Media Bureau's enforcement authority does not include enforcement in those areas assigned to the Enforcement Bureau. See 47 CFR 0.111.

(g) Conduct rulemaking and policy proceedings regarding pole attachments.

(h) Process and act on all applications for authorization, petitions for special relief, petitions to deny, waiver requests, requests for certification,

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objections, complaints, and requests for declaratory rulings and stays regarding the areas listed.

(i) Assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

(j) Exercise authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Media Bureau. Before issuing a subpoena, the Media Bureau shall obtain the approval of the Office of General Counsel.

(k) Carry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.283.

9. Section 0.91 and the undesignated center heading which immediately precedes it are revised to read as follows:

Wireline Competition Bureau

§ 0.91 Functions of the Bureau.

The Wireline Competition Bureau advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the regulation and licensing of communications common carriers and ancillary operations (other than matters pertaining exclusively to the regulation and licensing of wireless telecommunications services and facilities). The Bureau will, among other things:

(a) Develop and recommend policy goals, objectives, programs and plans for the Commission in rulemaking and adjudicatory matters concerning wireline telecommunications, drawing on relevant economic, technological, legislative, regulatory and judicial information and developments. Overall objectives include meeting the present and future wireline telecommunications needs of the Nation; fostering economic growth; ensuring choice, opportunity, and fairness in the development of wireline telecommunications; promoting economically efficient investment in wireline telecommunications infrastructure; promoting the development and widespread availability of wireline telecommunications services; and developing deregulatory initiatives where appropriate.

(b) Act on requests for interpretation or waiver of rules.

(c) Administer the provisions of the Communications Act requiring that the charges, practices, classifications, and regulations of communications common carriers providing interstate and foreign services are just and reasonable.

(d) Act on applications for service and facility authorizations, including applications from Bell operating companies for authority to provide in-region interLATA services and applications from wireline carriers for transfers of licenses and discontinuance of service.

(e) Develop and administer rules and policies relating to incumbent local exchange carrier accounting.

(f) Develop and administer recordkeeping and reporting requirements for telecommunications carriers.

(g) Provide federal staff support for the Federal-State Joint Board on Universal Service and the Federal-State Joint Board on Jurisdictional Separations.

(h) Review the deployment of advanced telecommunications capability to ensure that such deployment is reasonable and timely, consistent with section 706 of the Act, and, where appropriate, recommend action to encourage such deployment.

(i) Provide economic, financial, and technical analyses of telecommunications markets and carrier performance.

(j) Interact with the public, local, state, and other governmental agencies and industry groups on wireline telecommunications regulation and related matters. Assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

(k) Review and coordinate orders, programs and actions initiated by other Bureaus and Offices in matters affecting wireline telecommunications to ensure consistency with overall Commission policy.

(l) Carry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.331.

§ 0.101 [Removed]

10. Section 0.101 is removed.

11. Amend § 0.111 as follows:

a. Revise the notes to paragraphs (a)(1), (a)(2), (a)(4), (a)(8) and (a)(11);

b. Revise paragraph (a)(3);

c. Redesignate paragraphs (a)(12) through (a)(20) as paragraphs (a)(14) through (a)(22);

d. Add new paragraphs (a)(12) and (a)(13); and

e. Revise newly designated paragraphs (a)(15) and (a)(19).

§ 0.111 Functions of the Bureau.

(a) * * *

(1) * * *

Note to paragraph (a)(1): The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services and equipment for persons with disabilities. The International Bureau has primary responsibility for complaints regarding international settlements rules and policies.

(2) * * *

Note to Paragraph (a)(2): The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against non-common carriers subject to the Commission's jurisdiction under Title II of the Communications Act and related provisions.

(3) Resolve formal complaints regarding accessibility to communications services and equipment for persons with disabilities, including complaints filed pursuant to sections 225 and 255 of the Communications Act.

(4) * * *

Note to Paragraph (a)(4): The Office of Engineering and Technology has shared responsibility for radiofrequency equipment and device complaints.

* * * * *

(8) * * *

Note to Paragraph (a)(8): The Media Bureau has responsibility for enforcement of these limits in the broadcast television renewal context.

* * * * *

(11) * * *

Note to Paragraph (a)(11): The Media Bureau has primary responsibility for complaints regarding children's television programming requirements, and for political and related programming matters and equal employment opportunity matters involving broadcasters, cable operators and other multichannel video programming distributors. The relevant licensing Bureau has primary responsibility for complaints involving tower siting and the Commission's environmental rules. The Media Bureau has primary responsibility for complaints regarding compliance with conditions imposed on transfers of control and assignments of licenses of Cable Antenna Relay Service authorizations.

(12) Resolve complaints regarding pole attachments filed under section 224 of the Communications Act.

(13) Resolve complaints regarding multichannel video and cable television service under part 76 of the Commission's rules.

Note to Paragraph (a)(13): The Media Bureau has primary responsibility for complaints regarding the following: subpart A (general), with the exception of § 76.11 of this chapter; subpart B (Registration Statements); subpart C (Federal-State/Local Relationships [Reserved]; subpart D (carriage of television broadcast signals); subpart E (equal employment opportunity requirements); subpart F (nonduplication protection and syndicated exclusivity); subpart G, §§ 76.205, 76.206 and 76.209 of this chapter (political broadcasting); subpart I (Forms and Reports); subpart J (ownership); subpart L (cable television access); subpart N, § 76.944 of this chapter (basic cable rate appeals), and §§ 76.970, 76.971 and 76.977 of this chapter (cable leased access rates); subpart O (competitive access to cable programming); subpart P (competitive availability of navigation devices); subpart Q (regulation of carriage agreements); subpart S (Open Video Systems); and subparts T, U and V to the extent related to the matters listed in this note.

* * * * *

(15) Identify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office.

* * * * *

(19) Provide information regarding pending complaints, compliance with relevant requirements and the complaint process, where appropriate and to the extent the information is not available from the Consumer and Governmental Affairs Bureau or other Bureaus and Offices.

* * * * *

12. Section 0.121 is amended by revising paragraph (b) to read as follows:

§ 0.121 Location of field installations.

* * * * *

(b) Protected field offices are located at the following geographical coordinates (coordinates are referenced to North American Datum 1983 (NAD83)):

Allegan, Michigan
42°36'20.1" N. Latitude
85°57'20.1" W. Longitude
Anchorage, Alaska
61°09'41." N. Latitude
150°00'03.0" W. Longitude
Belfast, Maine
44°26'42.3" N. Latitude
69°04'56.1" W. Longitude
Canandaigua, New York
42°54'48.2" N. Latitude
77°15'57.9" W. Longitude
Douglas, Arizona
31°30'02.3" N. Latitude
109°39'14.3" W. Longitude
Ferndale, Washington
48°57'20.4" N. Latitude
122°33'17.6" W. Longitude
Grand Island, Nebraska
40°55'21.0" N. Latitude
98°25'43.2" W. Longitude
Kingsville, Texas
27°26'30.1" N. Latitude
97°53'01.0" W. Longitude
Laurel, Maryland
39°09'54.4" N. Latitude
76°49'15.9" W. Longitude
Livermore, California
37°43'29.7" N. Latitude
121°45'15.8" W. Longitude
Powder Springs, Georgia
33°51'44.4" N. Latitude
84°43'25.8" W. Longitude
Santa Isabel, Puerto Rico
18°00'18.9" N. Latitude
66°22'30.6" W. Longitude
Vero Beach, Florida
27°36'22.1" N. Latitude
80°38'05.2" W. Longitude
Waipahu, Hawaii
21°22'33.6" N. Latitude
157°59'44.1" W. Longitude

13. In § 0.131 paragraph (a) remove the words "Common Carrier Bureau" and add, in their places the words "Wireline Competition Bureau" and revise the last sentence in paragraph (i) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(i) * * * Also assists the Consumer and Governmental Affairs Bureau with informal consumer complaints and other general inquiries by consumers.

* * * * *

14. Section 0.141 and the undesignated center heading which immediately precedes it are revised to read as follows:

Consumer and Governmental Affairs Bureau

§ 0.141 Functions of the Bureau.

The Consumer and Governmental Affairs Bureau develops and administers the Commission's consumer and governmental affairs policies and initiatives to enhance the public's understanding of the Commission's work and to facilitate the Agency's relationships with other governmental agencies and organizations. The Bureau is responsible for rulemaking proceedings regarding general consumer education policies and procedures and serves as the primary Commission entity responsible for communicating with the general public regarding Commission policies, programs, and activities in order to facilitate public participation in the Commission's decision-making processes. The Bureau also performs the following functions:

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to consumers and governmental affairs. This includes policy development and coordination as well as adjudication and rulemaking.

(b) Collaborates with, and advises and assists, the public, state and local governments, and other governmental agencies and industry groups on consumer matters.

(c) Advises the Commission and other Bureaus and Offices of consumer and governmental affairs-related areas of concern or interest; initiates, reviews, and coordinates orders, programs and actions, in conjunction with other Bureaus and Offices, in matters regarding consumer education policies and procedures, and any other related issues affecting consumer policy; represents the Commission on consumer and governmental-related committees, working groups, task forces and conferences within and outside the Commission; and provides expert advice and assistance to Bureaus and Offices and consumers regarding compliance with applicable disability and accessibility requirements, rules, and regulations.

(d) Collects and analyzes information from industry, other Bureaus and Offices, and the media, as well as information received in the Bureau from informal consumer inquiries and complaints, rulemakings, and consumer forums; identifies trends that affect consumers; in consultation with the Office of the Managing Director, provides objectives and evaluation methods for the public information portion of the Commission's Government Performance and Results Act submissions and other Commission-wide strategic planning efforts.

(e) Researches, develops, and distributes materials to inform consumers about the Commission's rules, proposals, and events, and to promote consumer participation in Commission rulemakings and activities; maintains the Commission's Consumer Information Directory; develops a library of commonly requested materials on issues of interest to all consumers. Ensures that alternative translations of Commission materials are available to Commission employees, Bureaus, Offices, and members of the public.

(f) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to persons with disabilities.

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Provides expert advice and assistance, as required, to other Bureaus and Offices, consumers, industry, and others on issues relevant to persons with disabilities. Initiates rulemakings, where appropriate; reviews relevant agenda items and other documents and coordinates with Bureaus and Offices to develop recommendations and propose policies to ensure that communications are accessible to persons with disabilities, in conformance with existing disability laws and policies, and that they support the Commission's goal of increasing accessibility of communications services and technologies for persons with disabilities.

(g) Plans, develops, and conducts consumer outreach and education initiatives to educate the public about important Commission regulatory programs. In coordination with other Bureaus and Offices, establishes liaison(s) for information sharing purposes to ensure coordination on all consumer outreach projects. Ensures that alternative translations of Commission materials are available to Commission employees, Bureaus, Offices and members of the public.

(h) Serves as the official FCC records custodian for designated records, including intake processing, organization and file maintenance, reference services, and retirement and retrieval of records; manages the Electronic Comment Filing System and certifies records for adjudicatory and court proceedings. Maintains manual and computerized files that provide for the public inspection of public record materials concerning Broadcast Ownership, AM/FM/TV, TV Translators, FM Translators, Cable TV, Wireless, Auction, Common Carrier Tariff matters, International space station files, earth station files, DBS files, and other miscellaneous international files. Also maintains for public inspection Time Brokerage and Affiliation Agreements, court citation files, and legislative histories concerning telecommunications dockets. Provides the public and Commission staff prompt access to manual and computerized records and filing systems.

(i) Provides informal mediation and resolution of individual informal consumer inquiries and complaints consistent with Commission regulations. Resolves certain classes of informal complaints, as specified by the Commission, through findings of fact and issuance of orders. Receives, reviews, and analyzes responses to informal complaints; maintains manual and computerized files that permit the public inspection of informal consumer complaints; mediates and attempts to settle unresolved disputes in informal complaints as appropriate; and coordinates with other Bureaus and Offices to ensure that consumers are provided with accurate, up-to-date information. Develops and fosters partnerships with state regulatory entities to promote the sharing of information pertaining to informal complaint files maintained by the Bureau.

(j) Provides leadership to other Bureaus and Offices for dissemination of consumer information via the Internet.

(k) In coordination with other Bureaus and Offices, handles Congressional and other correspondence related to specific informal consumer complaints, or other specific matters within the responsibility of the Bureau, to the extent not otherwise handled by the Office of General Counsel or other Bureaus or Offices. Responds to and/or coordinates due diligence and other requests for information pertaining to informal inquiries and complaints under the responsibility of the Bureau with other Bureaus and Offices.

15. Section 0.182 is amended by revising paragraph (b) to read as follows:

§ 0.182 Chief, Enforcement Bureau.

* * * * *

(b) In coordination with the Office of Managing Director, which has responsibility for developing the Commission's Continuity of Operations Plan (COOP). Acts as Alternate Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under emergency conditions.

* * * * *

§ 0.241 [Amended].

16. In § 0.241 (d) remove the words "Chief, Mass Media Bureau" and add, in their place, the words "Chief, Media Bureau."

17. Section 0.261 is amended by revising paragraph (a)(3) to read as follows:

§ 0.261 Authority delegated.

(a) * * *

(3) To act upon applications for international telecommunications and services pursuant to part 23 of this chapter and relevant portions of part 63 of this chapter, and coordinate with the Wireline Competition Bureau as appropriate;

* * * * *

18. Section 0.283 and the undesignated center heading which immediately precedes it are revised to read as follows:

Chief, Media Bureau

§ 0.283 Authority delegated.

The Chief, Media Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.61, provided that the following matters shall be referred to the Commission en banc for disposition:

(a) Notices of proposed rulemaking and of inquiry and final orders in such proceedings, with the exception of rulemaking proceedings involving the allotment of FM and television channels.

(b) Application for review of actions taken pursuant to delegated authority.

(c) Matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.

(d) The imposition, reduction or cancellation of forfeitures pursuant to section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $20,000.

§ 0.284 [Amended]

19. In § 0.284 paragraphs (a) introductory text and (b) remove the words "Chief, Mass Media Bureau" and add, in their place, the words "Chief, Media Bureau", remove paragraphs (a)(2), (a)(7) and (c); redesignate paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(8) and (a)(9) as paragraphs (a)(2) through (a)(7).

20. Section 0.285 is revised to read as follows:

§ 0.285 Record of actions taken.

The history card, the station file, and other appropriate files are designated to be the official records of action taken by the Chief of the Media Bureau. The official records of action are maintained in the Reference Information Center in the Consumer and Governmental Affairs Bureau.

21. The undesignated center heading preceding §0.291 is revised and § 0.291 is amended by removing the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau" each place it appears, by removing paragraph (c), by redesignating paragraphs (d) through (j) as paragraphs (c) through (i), and by revising newly designated paragraphs (c) and (i)(2) to read as follows:

Chief, Wireline Competition Bureau

§ 0.291 Authority delegated.

* * * * *

(c) *Authority to designate for hearing.* The Chief, Wireline Competition Bureau shall not have authority to designate for hearing any applications except applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

* * * * *

(i) * * *

(2) The Chief, Wireline Competition Bureau, shall not have authority to act on petitions filed pursuant to part 69, subpart H, of this chapter for pricing flexibility involving common line and traffic sensitive services.

22. Section 0.302 is revised to read as follows:

§ 0.302 Record of actions taken.

The application and authorization files are designated as the Commission's official records of action of the Chief, Wireline Competition Bureau pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center in the Consumer and Governmental Affairs Bureau.

23. Section 0.303 is revised to read as follows:

§ 0.303 Authority concerning registration of telephone terminal equipment.

Authority is delegated to the Chief of the Wireline Competition Bureau jointly in cooperation with the Chief Engineer to act upon applications for registration of equipment to be directly connected to the telephone network; *Provided, however,* That the Chief, Wireline Competition Bureau shall exercise overall policy direction of the program, with appropriate consultation with the Chief Engineer (For record of actions taken under this section, see § 0.247).

§ 0.304 [Amended]

24. In § 0.304 remove the words "Chief, Common Carrier Bureau" and add, in their place, the words "Chief, Wireline Competition Bureau."

25. Section 0.311 is amended by adding paragraph (a)(6) and by revising paragraph (c) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(a) * * *

(6) Release of information pursuant to section 220(f) of the Communications Act, except for release of such information to a state public utility commission or in response to a Freedom of Information Act Request.

* * * * *

(c) Action on emergency requests for Special Temporary Authority during non-business hours shall be promptly reported to the responsible Bureau or Office.

Note to Paragraph (c): See also § 0.182 of this chapter.

26. Section 0.314 is amended by revising paragraphs (f), (g), (h), (i), and (j) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(f) Issue notices and orders to operators of industrial, scientific, and medical (ISM) equipment, as provided in § 18.115 of this chapter.

(g) Act on requests for permission to resume operation of ISM equipment on a temporary basis, as provided by § 18.115 of this chapter, and requests for extensions of time within which to file final reports, as provided by § 18.117 of this chapter.

(h) Issue notices and orders to operators of part 15 devices, as provided in § 15.5 of this chapter.

(i) Issue notices and orders to suspend operations to multi-channel video programming distributors, as provided in § 76.613 of this chapter.

(j) Issue notices and orders to suspend operations to part 74 licensees, as provided in § 74.23 of this chapter.

§ 0.321 [Removed]

27. Section 0.321 is removed.

§ 0.325 [Removed]

28. Section 0.325 is removed.

§ 0.347 [Amended]

29. In § 0.347 remove the words "Consumer Information Bureau" and add, in their place, the words "Consumer and Governmental Affairs Bureau."

§ 0.357 [Amended]

30. In § 0.357 remove the words "Consumer Information Bureau" and add, in their place, the words "Consumer and Governmental Affairs Bureau."

31. The undesignated center heading preceding §0.361 is revised, and §0.361 is amended by revising the introductory text to read as follows:

Consumer and Governmental Affairs Bureau

§ 0.361 Authority delegated.

The Chief, Consumer and Governmental Affairs Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.141, provided that the following matters shall be referred to the Commission en banc for disposition:

* * * * *

32. Section 0.387 is amended by revising paragraph (a) to read as follows:

§ 0.387 Other national security and emergency preparedness delegations; cross reference.

(a) For authority of the Chief of the Media Bureau to issue Emergency Alert System Authorizations (FCC Form 392), see §§ 0.284 (a) (4) and 73.913.

* * * * *

33. Section 0.401 is amended by revising paragraph (a)(5) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(a) * * *

(5) The location of the Office of General Counsel is 445 12th Street, SW, Washington, DC 20554.

* * * * *

§ 0.423 [Amended]

34. In § 0.423 remove the words "Consumer Information Bureau, Consumer Information Network Division" and add, in their place, the words "Consumer and Governmental Affairs Bureau."

§ 0.441 [Amended]

35. In § 0.441 remove the words "Consumer Information Bureau" and add, in their place, the words "Consumer and Governmental Affairs Bureau" each place it appears.

36. Section 0.453 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(2)(ii)(E), (b), (f), (g) introductory text, (i) introductory text and (j) and by removing paragraph (1) and redesignating paragraphs (m) through (o) as paragraphs (1) through (n) and by revising newly designated paragraph (m) to read as follows:

§ 0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC, and Columbia, Maryland. Much of the information available from the public reference rooms may also be retrieved from the Commission's WorldWide Website at *http://www.fcc.gov:*

(a) The Reference Information Center of the Consumer and Governmental Affairs Bureau.

(2) * * *

(ii) * * *

(E) All applications for common carrier authorizations acted upon by the Enforcement Bureau, and related files.

* * * * *

(b) *Reference Information Center.* Station files containing applications and

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related materials for Remote Pickup, Aural STL/ICR, TV Auxiliary, and Low Power Auxiliary Stations in the mass media services.

* * * * *

(f) *The Media Bureau.* The Media Bureau maintains all cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission had assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(g) *The Wireline Competition Bureau.* Section 214 applications and related files, to the extent that they concern domestic communications facilities and services are available for inspection at this location.

* * * * *

(i) *The Wireline Competition Bureau, Industry Analysis Reference Room.* The following documents, files and records are available for inspection at this location.

* * * * *

(j) *The Wireline Competition Bureau, Tariff Review Reference Room.* Contains currently effective tariffs filed by Communications Common Carriers pursuant to various FCC Rules and Regulations. Also available for review and copying are recent revisions to tariff filings and the Public Reference Room Log, which is prepared daily and lists the tariff filings received the previous day.

* * * * *

(m) *The Media Bureau Reference Center.* The following documents, files and records are available for inspection at this location.

(1) All complaints regarding cable programming rates, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(2) All cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission has assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(3) Special relief petitions and files pertaining to cable television operations.

(4) Cable television system reports filed by operators pursuant to § 76.403 of this chapter.

* * * * *

37. Section 0.455 is revised to read as follows:

§ 0.455 Other locations at which records may be inspected.

Except as provided in §§ 0.453,0.457, and 0.459, records are routinely available for inspection in the Reference Information Center or the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those office upon request. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

(a) *Media Bureau.* (1) Rulings under the Fairness Doctrine and section 315 of the Communications Act, and related materials.

(2) Ruling lists which contain brief summaries of rulings.

(3) Congressional correspondence and related materials.

(4) Correspondence and other actions and decisions relating to cable television services that are not filed in the FCC Reference Information Center, e.g. rate regulation files and related documents.

(b) *Wireline Competition Bureau.* (1) Reports of public coast station operators filed under § 43.71 of this chapter.

(2) Valuation reports filed under section 213 of the Communications Act, including exhibits filed in connection therewith, unless otherwise ordered by the Commission, with reasons therefor, pursuant to section 213(f) of the Communications Act. See § 0.457(c)(2).

(3) Computer II files and related materials.

(c) *Office of Managing Director.* (1) All minutes of Commission actions, containing a record of all final votes, minutes of actions and internal management matters as provided in § 0.457 (b)(1) and (c)(1)(i). These records and files are available for inspection in the Agenda Group.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Publications Group.

(3) See § 0.443.

(4) Reports filed pursuant to subpart E of part 19 of this chapter and applications for inspection of such reports. See § 0.460(k).

(d) Office of Engineering and Technology which includes the Bureau's Technical Library containing technical reports, technical journals, and bulletins of spectrum management and related technical materials. Also files containing approved applications for Equipment Authorization (Type accepted, certified and notified) and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(1) Experimental application and license files.

(2) The Master Frequency Records.

(3) Applications for Equipment Authorization (type accepted, type approval, certification, or advance approval of subscription television systems), following the effective date of the authorization. See § 0.457(d)(1)(ii). (Application files, technical journals and other technical materials are maintained at the Commission's Laboratory at Columbia, Maryland.)

(e) *International Bureau.* The treaties and other international and bilateral agreements listed in § 73.1650 of this chapter are available for inspection in the office of the Chief, Strategic Analysis and Negotiations Division, International Bureau. Also contracts and other arrangements filed under § 43.51 and reports of negotiations regarding foreign communication matters filed under § 43.52 of this chapter, except for those kept confidential by the Commission pursuant to section 412 of the Communications Act. See § 0.457(c)(3). Also files relating to international settlements under part 64 of this chapter.

38. Section 0.465(a) is amended by revising the Note to Paragraph (a) to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) * * *

Note to Paragraph (a): The name, address, telephone number, and schedule of fees for the current duplication contractor are published at the time of contract award of renewal in a Public Notice and periodically thereafter. Questions regarding this information should be directed to the Reference Information Center of the Consumer and Governmental Affairs Bureau.

* * * * *

PART 1—PRACTICE AND PROCEDURE

39. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

§ 1.4 [Amended].

40. In § 1.4(f) remove the words "Mass Media Bureau" and add, in their place, the words "Media Bureau."

41. Section 1.115 is amended by revising paragraph (e)(4) to read as follows:

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(e) * * *

(4) Applications for review of final staff decisions issued on delegated authority in formal complaint proceedings on the Enforcement Bureau's Accelerated Docket (see, e.g., § 1.730) shall be filed within 15 days of public notice of the decision, as that date is defined in § 1.4(b). These applications for review oppositions and replies in Accelerated Docket proceedings shall be served on parties to the proceeding by hand or facsimile transmission.

* * * * *

§ 1.221 [Amended]

42. In § 1.221 (b) remove the words "Reference Operations Division of the Consumer Information Bureau" and in paragraph (c) remove the words "Reference Information Division of the Consumer Information Bureau", and add, in their place, the words "Reference Information Center of the Consumer and Governmental Affairs Bureau."

43. Section 1.403 is revised to read as follows:

§ 1.403 Notice and availability.

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a "Public Notice" will be issued (by means of a Commission release entitled "Petitions for Rule Making Filed") as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Reference Information Center, 445 12th Street, SW, Washington, DC and may also be available electronically over the Internet at *http://www.fcc.gov/.*

§ 1.419 [Amended]

44. In § 1.419 (b) remove the words "Information Office" and add, in their place, the words "Reference Information Center" each place it appears.

§ 1.703 [Amended]

45. In § 1.703 (c) remove the words "Common Carrier Bureau" and add, in their place, the words "Enforcement Bureau."

§ 1.735 [Amended]

46. In § 1.735 (b)(3) remove the words "Telecommunications Division" and add, in their place, the words "Policy Division."

§ 1.742 [Amended]

47. In § 1.742 remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 1.743 [Amended]

48. In § 1.743 (e) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

49. Section 1.749 is revised to read as follows:

§ 1.749 Action on application under delegated authority.

Certain applications do not require action by the Commission but, pursuant to the delegated authority contained in subpart B of part 0 of this chapter, may be acted upon by the Chief of the Wireline Competition Bureau subject to reconsideration by the Commission.

50. Section 1.773 is amended by revising paragraphs (a)(2) introductory text, (a)(4) and (b)(3) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) * * *

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. In case of emergency and within the time limits provided, a telegraphic request for such relief may be sent to the Commission setting forth succinctly the substance of the matters required by paragraph (a)(1) of this section. A copy of any such telegraphic request shall be sent simultaneously to the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division, and the publishing carrier. Thereafter, the request shall be confirmed by petition filed and served in accordance with § 1.773(a)(4).

* * * * *

(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission as follows: the original and three copies of each petition shall be filed with the Secretary, FCC room TW–A325, 445 12th Street, SW, Washington, DC 20554; one copy must be delivered directly to the Commission's copy contractor. Additional, separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau; and the Chief, Pricing Policy Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on more than 15 days notice may be served on the filing carrier by mail.

(b) * * *

(3) *Copies, service.* An original and four copies of each reply shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, FCC room TW–A325, 445 12th Street, SW, Washington, DC 20554; one copy must be delivered directly to the Commission's copy contractor. Additional separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division and the petitioner. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served on petitioners personally or via facsimile. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on more than 15 days notice may be served upon petitioner personally, by mail or via facsimile.

51. Section 1.774 is amended by revising paragraph (e)(2)(ii) and in paragraph (f) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau" to read as follows:

§ 1.774 Pricing flexibility.

* * * * *

(e) * * *

(2) * * *

(ii) Any interested party electing to file an opposition or comment in response to a pricing flexibility petition through a method other than ETFS must file an original and four copies of each opposition or comment with the Commission, as follows: the original and three copies of each pleading shall be filed with the Secretary, FCC, 445 12th Street, SW, Washington, DC,

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20554; one copy must be delivered directly to the Commission's copy contractor. Additional, separate copies shall be served upon the Chief, Wireline Competition Bureau and the Chief, Pricing Policy Division.

* * * * *

§ 1.821 [Amended]

52. In § 1.821 remove the words "Mass Media Bureau" and add, in their place, the words "Wireless Telecommunications Bureau."

§ 1.924 [Amended]

53. In § 1.924 (c)(3) remove the words "Compliance and Information Bureau" and add, in their place, the words "Enforcement Bureau."

§ 1.1106 [Amended]

54. In § 1.1106 in the address column, remove the words "Cable Services Bureau" and add, in their place, the words "Cable Services" each place it appears.

55. Section 1.1163 is amended by revising paragraph (c)(1) to read as follows:

§ 1.1163 Adjustments to regulatory fees.

* * * * *

(c) * * *

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Wireline Competition Bureau, Media Bureau, International Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest:

* * * * *

56. Section 1.1202 (d) is amended by revising Note 4 to paragraph (d) to read as follows:

§ 1.1202 Definitions.

* * * * *

(d) * * *

Note 4 to Paragraph (d): listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

* * * * *

57. Section 1.4000 is amended by revising the section heading and paragraph (h) to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

* * * * *

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies will be available for purchase from the Commission's contract copy center, and the Commission decisions will be available on the Internet.

58. Section 1.7001 is amended by revising paragraph (d) to read as follows:

§ 1.7001 Scope and content of filed reports.

* * * * *

(d) Respondents may make requests for Commission non-disclosure of provider-specific data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure or provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to a state commission provided that the state commission has protections in place that would preclude disclosure of any confidential information.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

59. The authority citation for part 21 continues to read:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

§ 21.305 [Amended]

60. In § 21.305 remove the words "Common Carrier Bureau" and add, in their place, the words "Wireless Telecommunications Bureau."

61. Section 21.912 is amended by revising paragraph (d) to read as follows:

§ 21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

* * * * *

(d) The provisions of paragraphs (a) through (c) of this section will not apply to one MDS or MMDS channel used to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator will be permitted one MDS channel in an MMDS protected service area for this purpose, and no more than one MDS channel in an MMDS protected service area may be used by a cable television company or its affiliate or lessor pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Wireless Telecommunications Bureau a cover letter explicitly identifying itself or its lessees as a local cable operator and stating that the lease was executed to facilitate the provision of local programming. The first application or the first lease notification in an area filed with the Commission will be entitled to the exemption. The limitations on one MDS channel per party and per area include any cable/MDS operations grandfathered pursuant to paragraph (f) of this section or cable/ITFS operations grandfathered pursuant to § 74.931(e) of this chapter. The cable operator must demonstrate in its MDS/MMDS application that the proposed local programming will be provided within one year from the date its application is granted. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of grant of the licensee's application for the leased channel, whichever is later. If an MDS license for these purposes is granted and the programming is subsequently discontinued, the license will be automatically forfeited the day after local programming service is discontinued.

* * * * *

§ 21.924 [Amended]

62. In § 21.924 (a) remove the words "Consumer Information Bureau" and add, in their place, the words "Consumer and Governmental Affairs Bureau."

PART 22—PUBLIC MOBILE SERVICES

63. The authority citation for part 22 continues to read:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

64. Section 22.757 is amended by revising paragraph (e) to read as follows:

§ 22.757 Channels for basic exchange telephone radio systems.

* * * * *

(e) Frequencies between 816–865 MHz are available for use on a coordinated basis by both commercial and private wireless licensees.

65. Section 22.947 is amended by revising paragraph (c) introductory text to read as follows:

§ 22.947 Five year build-out period.

* * * * *

(c) *System information update.* Sixty days before the end of the five year build-out period, the licensee of each cellular system authorized on each channel block in each cellular market must file, in triplicate, a system information update (SIU), comprising a full size map, a reduced map, and an exhibit showing technical data relevant to determination of the system's CGSA. Separate maps must be submitted for each market into which the CGSA extends, showing the extension area in the adjacent market. Maps showing extension areas must be labeled (i.e. marked with the market number and channel block) for the market into which the CGSA extends. SIUs must accurately depict the relevant cell locations and coverage of the system at the end of the five year build-out period. SIUs must be filed at the Wireless Telecommunications Bureau, Commercial Wireless Division, 445 12th Street SW, Room 4-C232, Washington, DC 20554. If any changes to the system occur after the filing of the SIU, but before the end of the five year build-out period, the licensee must file, in triplicate, additional maps and/or data as necessary to insure that the cell locations and coverage of the system as of the end of the five year build-out period are accurately depicted.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICE

66. The authority for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

67. Section 27.6 is amended by revising paragraph (a) introductory text to read as follows:

§ 27.6 Service areas.

(a) WCS service areas are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined in the Table immediately following paragraph (a)(1) of this section. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (Eas). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the **Federal Register** Notice that established the 172 EAs are available for public inspection and copying at the Reference Information Center, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

* * * * *

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

68. The authority citation for part 32 continues to read:

Authority: 47 U.S.C. 154(I), 154(j) and 220 as amended, unless otherwise noted.

69. Section 32.17 is revised to read as follows:

§ 32.17 Interpretation of accounts.

To the end that uniform accounting shall be maintained within the prescribed system, questions involving significant matters which are not clearly provided for shall be submitted to the Chief, Wireline Competition Bureau, for explanation, interpretation, or resolution. Questions and answers thereto with respect to this system of accounts will be maintained by the Wireline Competition Bureau.

§ 32.19 [Amended]

70. In § 32.19 remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 32.27 [Amended]

71. In § 32.27 (a) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

72. The authority citation for part 43 continues to read:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

73. Section 43.21 is amended by revising the section heading and paragraphs (g) and (h) to read as follows:

§ 43.21 Transactions with affiliates.

* * * * *

(g) Each incumbent local exchange carrier for whom price cap regulation is mandatory and every incumbent local exchange carrier that elects to be covered by the price cap rules shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to network measures of service quality, as defined by the Wireline Competition Bureau, from the previous calendar year on a study area basis.

(h) Each incumbent local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to customer measures of service quality, as defined by the Wireline Competition Bureau, from the previous calendar year a study area basis.

* * * * *

§ 43.61 [Amended]

74. In § 43.61 (a)(3) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

PART 51—INTERCONNECTION

75. The authority citation for part 51 continues to read:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

76. Section 51.329 is amended by revising paragraph (c)(3) to read as follows:

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§ 51.329 Notice of network changes: Methods for providing notice.

* * * * *

(c) * * *

(3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Wireline Competition Bureau, Federal Communications Commission, Washington, DC 20554." The diskette copy must be on a standard 3 1/2 inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later compatible versions, and shall be in a word-processing format designated, from time-to-time, in public notices released by the Bureau. The diskette must be submitted in "read only" mode, and must be clearly labeled with the carrier's name, the filing date, and an identification or the diskette's contents.

77. Section 51.333 is amended by revising paragraph (e) to read as follows:

§ 51.333 Notice of network changes: Short term notice.

* * * * *

(e) *Resolution.* If an objection is filed pursuant to paragraph (c) of this section, then the Chief, Wireline Competition Bureau, will issue an order determining a reasonable public notice period, provided however, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to § 51.329(b).

PART 52—NUMBERING

78. The authority citation for part 52 continues to read:

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225, 251–2, 271 and 332 unless otherwise noted.

§ 52.15 [Amended]

79. In § 52.15(f)(6)(iii) and (i)(7) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 52.16 [Amended]

80. In § 52.16 (c) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 52.23 [Amended]

81. In § 52.23 (f) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 52.25 [Amended]

82. In § 52.25 (g) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau" each place it appears.

§ 52.26 [Amended]

83. In § 52.26 (b)(3) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau" each place it appears.

§ 52.32 [Amended]

84. In § 52.32 (b) and (c) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 52.109 [Amended]

85. In § 52.109 (c) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

86. The authority citation for part 53 continues to read:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

§ 53.209 [Amended]

87. In § 53.209 (d) remove the words "Common Carrier Bureau" and add, in their place, the words "Enforcement Bureau" each place it appears.

53.211 [Amended]

88. In § 53.211 (e)(3) remove the words "Common Carrier Bureau" and add, in their place, the words "Enforcement Bureau."

PART 54—UNIVERSAL SERVICE

89. The authority citation for part 54 continues to read:

Authority: 47 U.S.C. 1, 4(i), 201 205, 214, and 254 unless otherwise noted.

90. Section 54.207 is amended by revising paragraph (e) to read as follows:

§ 54.207 Service areas.

* * * * *

(e) The Commission delegates its authority under paragraphs (c) and (d) of this section to the Chief, Wireline Competition Bureau.

91. Section 54.301 is amended by revising paragraph (f)(2) to read as follows:

§ 54.301 Local Switching Support.

* * * * *

(f) * * *

(2) The Commission delegates its authority to review, modify, and approve the formula submitted by the Administrator pursuant to this paragraph to the Chief, Wireline Competition Bureau.

92. Section 54.703 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 54.703 The Administrator's Board of Directors.

* * * * *

(c) * * *

(2) The name of an industry or non-industry group's nominee shall be filed with the Office of the Secretary of the Federal Communications Commission in accordance with part 1 of this chapter. The document nominating a candidate shall be captioned "In the matter of: Nomination for Universal Service Administrator's Board of Directors" and shall reference FCC Docket Nos. 97–21 and 96–45. Each nomination shall specify the position on the Board of Directors for which such nomination is submitted. Two copies of the document nominating a candidate shall be submitted to the Wireline Competition Bureau's Telecommunications Access Policy Division.

* * * * *

(d) *Board member terms.* The directors of the Administrator's Board shall be appointed for three-year terms, except that the Chief Executive Officer shall be a permanent member of the Board. Board member terms shall run from January 1 of the first year of the term to December 31 of the third year of the term, except that, for purposes of the term beginning on January 1, 1999, the terms of the six directors shall expire on December 31, 2000, the terms of another six directors on December 31, 2001, and the terms of the remaining six directors on December 31, 2002. Directors may be reappointed for subsequent terms pursuant to the initial nomination and appointment process described in paragraph (c) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the Administrator will notify the Wireline Competition Bureau of such vacancy, and a successor will be chosen pursuant to the nomination and appointment process described in paragraph (c) of this section.

* * * * *

93. Section 54.709 is amended by revising paragraph (a)(3) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) * * *

(3) Total projected expenses for the federal universal service support mechanisms for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factor and individual contributions. For each quarter, the Administrator must submit its projections of demand for the federal universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers, respectively, and the basis for those projections, to the Commission and the Wireline Competition Bureau at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high-cost mechanism, the low-income mechanism, the schools and libraries mechanism and the rural health care mechanism and the basis for those projections to the Commission and the Wireline Competition Bureau at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Telecommunications Reporting Worksheets, the Administrator must submit the total contribution base to the Wireline Competition Bureau at least sixty (60) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factor shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice. If the Commission takes no action within fourteen (14) days of the date of release of the public notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and the contribution factor shall be deemed approved by the Commission. Except as provided in § 54.706(c), the Administrator shall apply the quarterly contribution factor, once approved by the Commission, to contributor's interstate and international end-user telecommunications revenues to calculate the amount of individual contributions.

* * * * *

§ 54.711 [Amended]

94. In § 54.711 (b) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

95. Section 54.717 is revised to read as follows:

§ 54.717 Audits of the Administrator.

The Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether the Administrator is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the Administrator shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Wireline Competition Bureau.

(b) The Wireline Competition Bureau shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Wireline Competition Bureau shall prescribe modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Wireline Competition Bureau, the Administrator shall engage within thirty (30) calendar days an independent auditor to conduct the annual audit required by this paragraph. In making its selection, the Administrator shall not engage any independent auditor who has been involved in designing any of the accounting or reporting systems under review in the audit.

(d) The independent auditor selected by the Administrator to conduct the annual audit shall be instructed by the Administrator to develop a detailed audit program based on the final audit requirements and shall be instructed by the Administrator to submit the audit program to the Wireline Competition Bureau. The Wireline Competition Bureau shall review the audit program and make modifications, as needed, that shall be incorporated into the final audit program. During the course of the audit, the Wireline Competition Bureau may direct the Administrator to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements.

(e) During the course of the audit, the Administrator shall instruct the independent auditor to:

(1) Inform the Wireline Competition Bureau of any revisions to the final audit program or to the scope of the audit;

(2) Notify the Wireline Competition Bureau of any meetings with the Administrator in which audit findings are discussed; and

(3) Submit to the Chief of the Wireline Competition Bureau any accounting or rule interpretations necessary to complete the audit.

(f) Within sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Wireline Competition Bureau.

(g) The Wireline Competition Bureau shall review the audit findings and audit workpapers and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Wireline Competition Bureau to the findings and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(h) Within fifteen (15) calendar days after receiving the Wireline Competition Bureau's recommendations and making any revisions to the audit report, the Administrator shall instruct the independent auditor to submit the audit report to the Administrator for its response to the audit findings. At this time the auditor also must send copies of its audit findings to the Wireline Competition Bureau. The Administrator shall provide the independent auditor time to perform additional audit work recommended by the Wireline Competition Bureau.

(i) Within thirty (30) calendar days after receiving the audit report, the Administrator shall respond to the audit findings and send copies of its response to the Wireline Competition Bureau. The Administrator shall instruct the independent auditor that any reply that the independent auditor wishes to make to the Administrator's responses shall be sent to the Wireline Competition Bureau as well as the Administrator. The Administrator's response and the independent auditor's replies shall be included in the final audit report;

(j) Within ten (10) calendar days after receiving the response of the

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Administrator, the independent auditor shall file with the Commission the final audit report.

(k) Based on the final audit report, the Chief of the Wireline Competition Bureau may take any action necessary to ensure that the universal service support mechanisms operate in a manner consistent with the requirements of this Part, as well as such other action as is deemed necessary and in the public interest.

96. Section 54.722 is amended by revising the section heading and paragraph (a) to read as follows:

§ 54.722 Review by the Wireline Competition Bureau or the Commission.

(a) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

* * * * *

97. Section 54.723 is revised to read as follows:

§ 54.723 Standard of review.

(a) The Wireline Competition Bureau shall conduct *de novo* review of request for review of decisions issue by the Administrator.

(b) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.

98. Section 54.724 is revised to read as follows:

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Wireline Competition Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also at any time, extend the time period for taking action of a request for review of an Administrator decision pending before the Wireline Competition Bureau.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law, or policy within ninety (90) days. The Commission may extend the time period for taking action on the request for review of an Administrator decision. The Wireline Competition Bureau also may extend action on a request for review of an Administrator decision for a period of up to ninety days.

99. Section 54.807 is amended by revising paragraph (c) introductory text to read as follows:

§ 54.807 Interstate access universal service support.

* * * * *

(c) In any study area within which the price cap local exchange carrier has established state approved geographically deaveraged rates for UNE loops, the Administrator shall calculate the Interstate Access Universal Service Support Per Line for each customer class and zone using all eligible telecommunications carriers' base period lines by customer class and zone adjusted for growth during the relevant support period based on the average nationwide annual growth in eligible lines during the three previous years. For the purpose of calculating growth, the Administrator shall use a simple average of annual growth rates for total switched access lines for the three most recent years as reported in the Wireline Competition Bureau Report, Statistics of Communications Common Carriers, Table 6.10—Selected Operating Statistics. Support shall be allocated to lines in the highest cost UNE zone first, and will "cascade" to lines in lower cost UNE zones to the extent that sufficient funding is available. Beginning with the zone with the highest Zone Average Revenue Per Line, support will be applied in the following order of priority:

* * * * *

PART 61—TARIFFS

100. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–05 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–05 and 403, unless otherwise noted.

101. Section 61.17 is amended in paragraph (c), in the application format, by revising the line beginning "Attention:" to read as follows:

§ 61.17 Method of filing applications for special permission.

* * * * *

(c) * * *

Attention: Wireline Competition Bureau (here provide the statements required by section 61.152).

* * * * **

§ 61.32 [Amended]

102. In § 61.32 (c) remove the words "Tariff and Pricing Analysis Branch" and add, in their place, the words "Pricing Policy Division."

103. Section 61.33 is amended by revising paragraphs (a)(3) and (g) to read as follows:

§ 61.33 Letters of transmittal.

(a) * * *

(3) State whether copies have been delivered to the Commercial Contractor and the Chief, Pricing Policy Division.

* * * * *

(g) The letter of transmittal must be substantially in the following format:

_____
(Exact name of carrier in full)

_____
(Post Office Address)

_____
(Date)

Transmittal No.

Secretary, Federal Communications Commission; Washington, DC 20554

Attention: Wireline Competition Bureau

The accompanying tariff (or other publication) issued by _____, and bearing FCC No. _____, effective _____, 20 __, is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended. (Here give the additional information required.)

_____
(Name of issuing officer or agent)

_____
(Title)

* * * * *

§ 61.38 [Amended]

104. In § 61.38 (c)(1) remove the words "Tariff and Pricing Analysis Branch" and add, in their place, the words "Pricing Policy Division."

§ 61.58 [Amended]

105. In § 61.58 (a)(2)(iii) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

106. Section 61.153 is amended by revising paragraph (c) to read as follows:

§ 61.153 Method of filing applications.

* * * * *

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the application letter with all attachments to the Secretary, Federal Communications Commission and a separate copy with all attachments to the Chief, Pricing Policy Division. If a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

_____
Application No.

_____
(Date)

_____
Secretary

Federal Communications Commission, Washington, DC 20554.

Attention: Wireline Competition Bureau (here provide the statements required by Sec. 61.152).

(Exact name of carrier) _____

(Name of officer or agent) _____

(Title of officer or agent) _____

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

107. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended, 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503, unless otherwise noted.

§ 64.604 [Amended]

108. In § 64.604 (c)(5)(iii)(B) and (c)(5)(iii)(I) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 64.605 [Amended]

109. In § 64.605 (a) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 64.903 [Amended]

110. In § 64.903(b) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

111. Section 64.904 amends paragraphs (b) and (c) which was published at 67 FR 5702, February 6, 2002 to read as follows:

§ 64.904 Independent audits.

* * * * *

(b) The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to § 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Enforcement Bureau.

(c) The biennial financial audit shall provide a positive opinion on whether the applicable date shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Enforcement Bureau. The report of the independent auditor shall be filed at the time that the carrier files the annual reports required by § 43.21(e)(2) of this chapter.

112. In Appendix A to part 64 is amended by revising paragraph 6. b. (2)(m) to read as follows:

Appendix A To Part 64—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)

* * * * *

6. * * *

b. * * *

(2) * * *

(m) All reports submitted to the FCC should be directed to Chief, Wireline Competition Bureau, Washington, DC 20554.

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

113. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 404.

114. Section 65.101 is amended by revising paragraph (c) to read as follows:

§ 65.101 Initiation of unitary rate of return prescription proceedings.

* * * * *

(c) The Chief, Wireline Competition Bureau, may issue the notice described in § 65.101(a).

§ 65.103 [Amended]

115. In § 65.103 (a) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 65.105 [Amended]

116. In § 65.105 (a) and (d) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau" each place it appears.

§ 65.820 [Amended]

117. In § 65.820 (d) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

118. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 68.211 [Amended]

119. In § 68.211 (b) remove the words "Common Carrier Bureau" and add, in their place, the words "Wireline Competition Bureau."

§ 68.317 [Amended]

120. In § 68.317 (g) remove the words "Consumer Information Bureau" and add, in their place, the words "Consumer and Governmental Affairs Bureau."

§ 68.420 [Amended]

121. In § 68.420 (b) remove the words "Consumer Information Bureau" and add, in their place, the words "Consumer and Governmental Affairs Bureau" each place it appears and remove the words "Common Carrier Bureau" and add, in their place, the words "Enforcement Bureau."

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

122. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of

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1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

123. Section 90.7 is amended by revising the definition of "*MTA-based license or MTA license*" to read as follows:

§ 90.7 Definitions.

* * * * *

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas ("MTAs"), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the "MTA Map"). The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Reference Information Center in the Consumer and Governmental Affairs Bureau.

* * * * *

[FR Doc. 02–6352 Filed 3–20–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 73, 74, 76 and 78

[DA 02–577]

Establishment of the Media Bureau and Other Organizational Changes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to reflect the reorganization of the existing Cable Services and Mass Media Bureaus into a new Media Bureau. The Commission also transfers the Multipoint Distribution and Instructional Television Fixed Services from the Mass Media Bureau to the Wireless Telecommunications Bureau. This rule will promote a more efficient and effective organizational structure.

DATES: Effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Mort, 202–418–1043.

SUPPLEMENTARY INFORMATION: To promote a more efficient and effective organizational structure, the Commission has concluded that the proper dispatch of its business and the public interest will best be served by consolidating the existing Cable Services and Mass Media Bureaus into a Media Bureau. In the Order adopted March 11, 2002 and released March 14, 2002, we amend the Commission's Rules to make conforming changes reflecting the name of the new Bureau. The Order also transfers the Multipoint Distribution and Instructional Television Fixed Services from the Mass Media Bureau to the Wireless Telecommunications Bureau.

Authority for the adoption of the foregoing revisions is contained in sections 4(i), 5(b), 5(c) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 155(c) and 303(r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provision of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

Accordingly, it is ordered that parts 21, 73, 74, 76 and 78 of the Commission's rules, set forth in Title 47 of the Code of Federal Regulations, are amended effective March 25, 2002.

List of Subjects

47 CFR Part 21

Communications common carriers, Radio.

47 CFR Part 73

Radio, Television.

47 CFR Part 74

Radio, Television.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

For the reasons stated in the preamble, The Federal Communications Commission amends 47 CFR parts 21, 73, 74, 76 as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.6 is amended by revising paragraph (c) to read as follows:

§ 21.6 Filing of applications, fees, and number of copies.

* * * * *

(c) All correspondence or amendments concerning a submitted application shall clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved. All correspondence or amendments concerning a submitted application may be sent directly to the Wireless Telecommunications Bureau.

* * * * *

3. Section 21.303 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 21.303 Discontinuance, reduction or impairment of service.

(a) If the public communication service provided by a station subject to this rule part is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee shall promptly give notification thereof in writing to the Wireless Telecommunications Bureau at Washington, DC 20554. In every such case, the licensee shall furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof shall be given in writing to the Wireless Telecommunications Bureau at Federal Communications Commission, Washington, DC 20554.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, shall voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter or complying with the requirements set forth at § 21.910. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee shall promptly send the station license for cancellation to the Wireless Telecommunications Bureau at Federal Communications Commission, Washington, DC 20554, except that station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from common carrier to non-common carrier pursuant to § 21.910.

(c) Any station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community shall give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee shall promptly send the station license for cancellation to the Wireless Telecommunications Bureau at Federal Communications Commission, Washington, DC 20554, except that Multipoint Distribution Service station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from non-common carrier to common carrier.

* * * * *

PART 73—RADIO BROADCAST SERVICES

4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

5. Section 73.45 is amended by revising paragraph (c)(2) to read as follows:

§ 73.45 AM antenna systems.

* * * * *

(c) * * *

(2) Whenever AM stations use direct reading power meters pursuant to § 73.51, a letter notification to the FCC in Washington, DC, Attention: Audio Division, Media Bureau, must be filed in accordance with § 73.54(e).

6. Section 73.54 is amended by revising paragraph (c) introductory text to read as follows:

§ 73.54 Antenna resistance and reactance measurements.

* * * * *

(c) A letter of notification must be filed with the FCC in Washington, DC, Attention: Audio Division, Media Bureau, when determining power by the direct method pursuant to § 73.51. The letter must specify the antenna or common point resistance at the operating frequency. The following information must also be kept on file at the station:

* * * * *

7. Section 73.58 is amended by revising paragraph (e) to read as follows:

§ 73.58 Indicating instruments.

* * * * *

(e) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, information requested in accordance with § 73.3549 may be filed by letter with the FCC in Washington, DC, Attention: Audio Division, Media Bureau, to request additional time as may be required to complete repairs of the defective instrument.

8. Section 73.68 is amended by revising paragraphs (b), including the Note to paragraph (b), and (d)(1) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(b) A station having an antenna sampling system constructed according to the specifications given in paragraph (a) of this section may obtain approval of that system by submitting an informal letter request to the FCC in Washington, DC, Attention: Audio Division, Media Bureau. The request for approval, signed by the licensee or authorized representative, must contain sufficient information to show that the sampling system is in compliance with all requirements of paragraph (a) of this section.

Note to paragraph (b): A public notice dated December 9, 1985 giving additional information on approval of antenna sampling systems is available through the Internet at http://www.fcc.gov/mb/audio/decdoc/letter/1985–12–09-sample.html.

* * * * *

(d) * * *

(1) Special Temporary Authority (see § 73.1635) shall be requested and obtained from the Commission's Audio Division, Media Bureau in Washington to operate with parameters at variance with licensed values pending issuance of a modified license specifying parameters subsequent to modification or replacement of components.

* * * * *

9. Section 73.69 is amended by revising paragraphs (c) and (d) (5) to read as follows:

§ 73.69 Antenna monitors.

* * * * *

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the allowed period, an informal letter request in accordance with § 73.3549 of the Commission's rules must be filed with the FCC, Attention: Audio Division, Media Bureau in Washington, DC for such additional time as may be required to complete repairs of the defective instrument.

(d) * * *

(5) An informal letter request for modification of license shall be submitted to the FCC, Attention: Audio Division, Media Bureau in Washington, DC within 30 days of the date of monitor replacement. Such request shall specify the make, type, and serial number of the replacement monitor, phase and sample current indications, and other data obtained pursuant to this paragraph (d).

* * * * *

10. Section 73.258 is amended by revising paragraph (d) to read as follows:

§ 73.258 Indicating instruments.

* * * * *

(d) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, an informal letter request in accordance with § 73.3549 may be filed with the FCC, Attention: Audio Division, Media Bureau, in Washington, DC for such additional time as may be required to complete repairs of the defective instrument.

11. Section 73.561 is amended by revising paragraphs (c) and (d) and redesignating Notes 1 and 2 as Notes 1 and 2 to § 73.561 and revising them to read as follows:

§ 73.561 Operating schedule; time sharing.

* * * * *

(c) A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Division, Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, DC, Attention: Audio Division, Media Bureau.

(d) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraph (a) or (b) of this section or to continue operating, the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission provided that notification is sent to the Commission in Washington, DC, Attention: Audio Division, Media Bureau, no later than the 10th day of limited or discontinued operation. During such period, the permittee shall continue to adhere to the requirements of the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the permittee or licensee will notify the FCC, Attention: Audio Division of the date that normal operations resumed. If

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causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, Special Temporary Authority (see § 73.1635) must be requested to remain silent for such additional time as deemed necessary. The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of license to the contrary.

Note 1 to § 73.561: For allocations purposes, both (all) stations sharing time will be treated as unlimited time stations.

Note 2 to § 73.561: See §§ 73.1705, 73.1715, and 73.1740.

* * * * *

12. Section 73.607 is amended by revising paragraph (b) to read as follows:

§ 73.607 Availability of channels.

* * * * *

(b) Notwithstanding paragraph (a) of this section, an application may be filed for a channel or community not listed in the TV Table of Allotments if it is consistent with the rules and policies established in the Third Report and Order in WT Docket 99–168 (FCC 01–25), adopted January 18, 2001. Where such a request is approved, the Media Bureau will change the Table of Allotments to reflect that approval.

13. Section 73.622 is amended by revising paragraph (c)(2) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(c) * * *

(2) Notwithstanding paragraph (c)(1) of this section, an application may be filed for a channel or community not listed in the DTV Table of Allotments if it is consistent with the rules and policies established in the Third Report and Order in WT Docket 99–168 (FCC 01–25), adopted January 18, 2001. Where such a request is approved, the Media Bureau will change the DTV Table of Allotments to reflect that approval.

* * * * *

14. Section 73.624 is amended by revising paragraph (d)(3)(i) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(d) * * *

(3) * * * (i) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

* * * * *

15. Section 73.872 is amended by revising paragraph (c)(2) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(c) * * *

(2) Where a station is licensed pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where a written agreement signed by each time-sharing licensee and complying with requirements in paragraphs (c)(1)(i) through (iii) of this section is filed with the Commission, Attention: Audio Division, Media Bureau, prior to the date of the change.

* * * * *

16. Section 73.1125 is amended by revising paragraph (d)(2) to read as follows:

§ 73.1125 Station main studio location.

* * * * *

(d) * * *

(2) Written authority to locate a main studio outside the locations specified in paragraph (a) or (c) of this section for the first time must be obtained from the Audio Division, Media Bureau for AM and FM stations, or the Video Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraph (a) or (c) of this section, and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, TV or Class A TV licensees or permittees filing a letter request under the section (see § 1.1104 of this chapter).

* * * * *

17. Section 73.1350 is amended by revising paragraph (g) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(g) Whenever a transmission system control point is established at a location other than the main studio or transmitter, a letter of notification of that location must be sent to the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, within 3 days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

* * * * *

18. Section 73.1560 is amended by revising paragraph (d) to read as follows:

§ 73.1560 Operating power and mode tolerances.

* * * * *

(d) *Reduced power operation.* In the event it becomes technically impossible to operate at authorized power, a broadcast station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC. If operation at reduced power will exceed 10 consecutive days, notification must be made to the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, not later than the 10th day of the lower power operation. In the event that normal power is restored within the 30 day period, the licensee must notify the FCC of the date that normal operation was restored. If causes beyond the control of the licensee prevent restoration of the authorized power within 30 days, a request for Special Temporary Authority (see § 73.1635) must be made to the FCC in Washington, DC for additional time as may be necessary.

19. Section 73.1680 is amended by revising paragraph (b) introductory text to read as follows:

§ 73.1680 Emergency antennas.

* * * * *

(b) Prior authority from the FCC is not required by licensees and permittees to erect and commence operations using an emergency antenna to restore program service to the public. However, an informal letter request to continue operation with the emergency antenna must be made within 24 hours to the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, within 24 hours after commencement of its use. The request is to include a description of the damage to the authorized antenna, a description of the emergency antenna, and the station operating power with the emergency antenna.

* * * * *

20. Section 73.1750 is revised to read as follows:

§ 73.1750 Discontinuance of operation.

The licensee of each station shall notify by letter the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, for cancellation. The license of any station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. If a licensee surrenders its license pursuant to an interference reduction agreement, and its surrender is contingent on the grant of another application, the licensee must identify in its notification the contingencies involved.

21. Section 73.3544 is amended by revising paragraph (b) introductory text to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(b) An informal application, see § 73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Division (radio) or Video Services Division (television), Media Bureau, to cover the following changes:

* * * * *

22. Section 73.3549 is revised to read as follows:

§ 73.3549 Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders.

Requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

23. Section 73.3562 is revised to read as follows:

§ 73.3562 Staff consideration of applications not requiring action by the Commission.

Those applications which do not require action by the Commission but which, pursuant to the delegations of authority set forth in subpart B of part 0 of this chapter, may be acted upon by the Chief, Media Bureau, are forwarded to the Media Bureau for necessary action. If the application is granted, the formal authorization is issued. In any case where it is recommended that the application be set for hearing, where a novel question of policy is presented, or where the Chief, Media Bureau desires instructions from the Commission, the matter is placed on the Commission agenda.

24. Section 73.3564 is amended by revising paragraph (a)(1) to read as follows:

§ 73.3564 Acceptance of applications.

(a)(1) Applications tendered for filing are dated upon receipt and then forwarded to the Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for applications for minor modifications of facilities in the non-reserved FM band, as defined in § 73.3573(a)(2), long form applications subject to the provisions of § 73.5005 found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information. Applications that are not substantially complete will not be considered and will be returned to the applicant.

* * * * *

25. Section 73.3617 is revised to read as follows:

§ 73.3617 Information available on the Internet.

The Media Bureau and each of its Divisions provide information on the Internet regarding rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions. The Media Bureau's address is *http://www.fcc.gov/mb/*; the Audio Division's address is *http:// www.fcc.gov/mmb/audio*; the Video Division's address is *http://www.fcc.gov/mb/video*; the Policy Division's address is *http://www.fcc.gov/mb/policy*; the Engineering Division's address is *http://www.fcc.gov/mb/engineering*; and the Industry Analysis Division's address is *http://www.fcc.gov/mb/industry_analysis*.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

26. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), and 554.

27. Section 74.734 is amended by revising paragraph (a)(4) to read as follows:

§ 74.734 Attended and unattended operation.

(a) * * *

(4) A letter notification must be filed with the FCC in Washington, DC, Attention: Video Division, Media Bureau, providing the name, address, and telephone number of a person or persons who may be called to secure suspension of operation of the transmitter promptly should such action be deemed necessary by the FCC. Such information shall be kept current by the licensee.

* * * * *

28. Section 74.751 is amended by revising paragraph (c) to read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(c) Other equipment changes not specifically referred to in paragraphs (a) and (b) of this section may be made at the discretion of the licensee, provided that the FCC in Washington, DC, Attention: Video Division, Media Bureau, is notified in writing upon the completion of such changes.

* * * * *

29. Section 74.763 is amended by revising paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the licensee may discontinue operation for a period of not more than 30 days

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without further authority from the FCC. Notification must be sent to the FCC in Washington, DC, Attention: Video Division, Media Bureau, not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the FCC in Washington, DC, Attention: Video Division, Media Bureau, shall be notified in writing of the date normal operations resumed. If causes beyond the control of the licensee make it impossible to comply within the allowed period, a request for Special Temporary Authority (see § 73.1635 of this chapter) shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

30. Section 74.784 is amended by revising paragraph (b) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(b) The licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station or other station authorized under the provisions of this Subpart without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The FCC, Attention: Video Division, Media Bureau, shall be notified of the call letters of each station rebroadcast, and the licensee of the low power TV or TV broadcast translator station shall certify it has obtained written consent from the licensee of the station whose programs are being retransmitted.

* * * * *

31. Section 74.931 is amended by revising the first paragraph (k) and redesignating the second paragraph (k) as paragraph (l) to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(k) The provisions of paragraph (h) of this section will not apply to ITFS excess capacity leased directly or indirectly to cable operators or affiliates to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator or affiliate will be permitted to lease ITFS excess capacity equivalent to one MDS channel within 32 km (20 miles) of the cable television franchise area or service area for this purpose, and, within 32 km (20 miles) of the cable television franchise area or service area, no more ITFS excess capacity than the equivalent of one MDS channel may be used by a cable television company or affiliate pursuant to this paragraph (k). The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Wireless Telecommunications Bureau a cover letter explicitly identifying its lessee as a local cable operator or affiliate and stating that the lease was executed to facilitate the provision of local programming. The first lease notification for an MDS or ITFS channel in an area filed with the Commission will be entitled to the exemption. The limitations on the equivalent of one MDS channel per party and per area include any cable/ITFS operations grandfathered pursuant to paragraph (l) of this section or any cable/MDS operations grandfathered pursuant to § 21.912(f) of this chapter. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of the grant of the licensee's application for the leased channel(s), whichever is later.

* * * * *

32. Section 74.1234 is amended by revising paragraph (a)(4) to read as follows:

§ 74.1234 Unattended operation.

(a) * * *

(4) The FCC in Washington, DC, Attention: Audio Division, Media Bureau, shall be supplied by letter with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * *

33. Section 74.1290 is revised to read as follows:

§ 74.1290 FM translator and booster station information available on the internet.

The Media Bureau's Audio Division provides information on the Internet regarding FM translator and booster stations, rules, and policies at *http://www.fcc.gov/mb/audio.*

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

34. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

35. Section 76.7 is amended by revising paragraph (g)(3) to read as follows:

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

* * * * *

(g) * * *

(3) Unless otherwise directed by the Commission, or upon motion by the Media Bureau Chief, the Media Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

* * * * *

36. Section 76.501 is amended by revising Note 5 to read as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 5 to § 76.501: Certifications pursuant to this section and these notes shall be sent to the attention of the Media Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

* * * * *

37. Section 76.503 is amended by revising Note 1 to read as follows:

§ 76.503 National subscriber limits.

* * * * *

Note 1 to § 76.503: Certifications made under this section shall be sent to the attention of the Media Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

* * * * *

38. Section 76.630 is amended by revising paragraph (a) to read as follows:

§ 76.630 Compatibility with consumer electronics equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

* * * * *

39. Section 76.934 is amended by revising paragraph (h)(5)(iii) to read as follows:

§ 76.934 Small systems and small cable companies.

* * * * *

(h) * * *

(5) * * *

(iii) A system may file with the Media Bureau an interlocutory appeal from any decision by the franchising authority requesting information from the system or tolling the effective date of a system's proposed rates. The appeal may be made by an informal letter to the Chief of the Media Bureau, served on the franchising authority. The franchising authority must respond within seven days of its receipt of the appeal and shall serve the operator with its response. The operator shall have four days from its receipt of the response in which to file a reply, if desired. If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the burden shall be on the franchising authority to show the reasonableness of its order. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the burden shall be on the operator to show the unreasonableness of the order.

* * * * *

40. Section 76.1003 is amended by revising paragraph (h)(3)(iii)(C)(*2*) to read as follows:

§ 76.1003 Program access proceedings.

* * * * *

(h) * * *

(3) * * *

(iii)* * *

(C)* * *

(*2*) Issues concerning the amount of damages may be designated by the Chief, Media Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge.

* * * * *

41. Section 76.1502 is amended by revising paragraphs (d)(2) and (e)(2) to read as follows:

§ 76.1502 Certification.

* * * * *

(d)* * *

(2) Parties are required to attach a cover sheet to the filing indicating that the submission is an open video system certification application. The only wording on this cover sheet shall be "Open Video System Certification Application" and "Attention: Media Bureau." This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words "open video systems" on their mailing envelope.

(e)* * *

(2) Parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions with the Office of the Secretary and the Bureau Chief, Media Bureau. Comments will not be considered properly filed unless filed with both of these Offices. Parties are required to attach a cover sheet to the filing indicating that the submission is a pleading related to an open video system application, the only wording on this cover sheet shall be "Open Video System Certification Application Comments." This wording shall be located in the center of the page and should be in letters at least 1/2 inch in size. Parties shall also include the words "open video systems" on their mailing envelopes.

* * * * *

42. Section 76.1503 is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 76.1503 Carriage of video programming providers on open video systems.

* * * * *

(b) * * *

(1) *Notification.* An open video system operator shall file with the Secretary of the Federal Communications Commission a "Notice of Intent" to establish an open video system, which the Commission will release in a Public Notice. Parties are required to attach a cover sheet to the filing indicating that the submission is an Open Video System Notice of Intent. The only wording on this cover sheet shall be "Open Video System Notice of Intent" and "Attention: Media Bureau." This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words "open video systems" on their mailing envelopes. Parties must submit copies of the Notice of Intent with the Office of the Secretary and the Bureau Chief, Media Bureau. The Notice of Intent shall include the following information:

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

43. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

44. Section 78.20 is amended by revising paragraph (a) to read as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, DC, are dated upon receipt and then forwarded to the Media Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete, are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant. Applications requiring fees as set forth at part 1, subpart G, of this chapter must be filed in accordance with § 0.401(b) of this chapter.

* * * * *

[FR Doc. 02–6353 Filed 3–20–02; 8:45 am]
BILLING CODE 6712–01–P

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March 21, 2002

Part III

The President

Executive Order 13259—Designation of Public International Organizations for Purposes of the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977

Executive Order 13260—Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security

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Presidential Documents

Title 3—

The President

Executive Order 13259 of March 19, 2002

Designation of Public International Organizations for Purposes of the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 30A(f)(1)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1(f)(1)(B)(ii)) and sections 104(h)(2)(B)(ii) and 104A(f)(2)(B)(ii) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2(h)(2)(B)(ii), 78dd–3(f)(2)(B)(ii)), I hereby designate as "public international organizations" for the purposes of application of section 30A of the Securities Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977:

(a) The European Union, including: the European Communities (the European Community, the European Coal & Steel Community, and the European Atomic Energy Community); institutions of the European Union, such as the European Commission, the Council of the European Union, the European Parliament, the European Court of Justice, the European Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Central Bank, and the European Investment Bank; and any departments, agencies, and instrumentalities thereof; and

(b) The European Police Office (Europol), including any departments, agencies, and instrumentalities thereof.

Designation in this Executive Order is intended solely to further the purposes of the statutes mentioned above and is not determinative of whether an entity is a public international organization for the purpose of other statutes or regulations.

THE WHITE HOUSE,
March 19, 2002.

[FR Doc. 02–07085
Filed 03–20–02; 12:10 pm]
Billing code 3195–01–P

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Presidential Documents

Executive Order 13260 of March 19, 2002

Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *President's Homeland Security Advisory Council.*

(a) *Establishment and Membership.* I hereby establish the President's Homeland Security Advisory Council (PHSAC). The PHSAC shall be composed of not more than 21 members appointed by the President. In addition, the Chair and the Vice Chair of the National Infrastructure Advisory Council; the Chairman of the President's National Security Telecommunications Advisory Committee; and the Chair of the Panel on the Science and Technology of Combating Terrorism, President's Council of Advisors on Science and Technology, shall serve as ex officio members of the PHSAC. The appointed members of the PHSAC shall be selected from the private sector, academia, professional service associations, federally funded research and development centers, nongovernmental organizations, State and local governments, and other appropriate professions and communities.

(b) *Chair and Vice Chair.* The President shall designate a Chair and Vice Chair from among the appointed members of the PHSAC.

(c) *Senior Advisory Committees.* (i) *Establishment and Membership.* The following four Senior Advisory Committees for Homeland Security (SACs) are hereby established to advise the PHSAC: (1) State and Local Officials; (2) Academia and Policy Research; (3) Private Sector; and (4) Emergency Services, Law Enforcement, and Public Health and Hospitals. Each SAC shall generally be composed of not more than 17 members selected by the Assistant to the President for Homeland Security (Assistant). The President may establish additional SACs as appropriate, consistent with this order.

(ii) *Chairs and Vice Chairs.* The Assistant shall from time to time designate a Chair and Vice Chair for each of the SACs from among the PHSAC's members.

(iii) *Subcommittees.* The Chair of each SAC, in consultation with the PHSAC, may as appropriate establish subcommittees to advise the SAC.

Sec. 2. *Functions.* The PHSAC shall meet periodically at the Assistant's request to:

(a) provide advice to the President through the Assistant on developing and coordinating the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks;

(b) recommend to the President through the Assistant ways to improve coordination, cooperation, and communication among Federal, State, and local officials and private and other entities, and provide a means to collect scholarly research, technological advice, and information concerning processes and organizational management practices both inside and outside of the Federal Government;

(c) provide advice to the President through the Assistant regarding the feasibility of implementing specific measures to detect, prepare for, prevent, protect against, respond to, and recover from terrorist threats or attacks within the United States;

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(d) examine, and advise the President through the Assistant on, the effectiveness of the implementation of specific strategies to detect, prepare for, prevent, protect against, respond to, and recover from terrorist threats or attacks within the United States; and

(e) report periodically, as appropriate, to the President through the Assistant on matters within the scope of the PHSAC's functions as described in paragraphs (a) through (d) of this section.

Sec. 3. *Administration.* (a) Upon the request of the Chair of the PHSAC, through the Assistant, and to the extent permitted by law, the heads of executive departments and agencies shall provide the PHSAC with such information relating to homeland security matters as the PHSAC may need for the purpose of carrying out its functions.

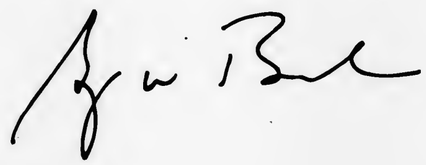
(b) The PHSAC shall have an Executive Director selected by the Assistant.

(c) Members shall serve without compensation for their work on the PHSAC, the SACs, and any subcommittees thereof. However, members shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701–5707).

(d) To the extent permitted by law, and subject to the availability of appropriations, the Office of Administration shall provide the PHSAC with administrative support and with such funds as may be necessary for the performance of the PHSAC's functions.

Sec. 4. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the administration of any portion of this order, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Administrator of General Services in accordance with the guidelines that have been issued by the Administrator.

(b) The PHSAC, any SACs, and any SAC subcommittees shall terminate 2 years from the date of this order unless extended by the President.



THE WHITE HOUSE,
March 19, 2002.

[FR Doc. 02–07086
Filed 03–20–02; 12:11 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 13261 of March 19, 2002

Providing An Order of Succession in the Environmental Protection Agency and Amending Certain Orders on Succession

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of the Administrator of the Environmental Protection Agency (Administrator) during any period when both the Administrator and the Deputy Administrator of the Environmental Protection Agency have died, resigned, or become otherwise unable to perform the functions and duties of the office of Administrator.

Sec. 2. *Order of Succession.*

(a) Assistant Administrator for Toxic Substances;

(b) Assistant Administrator (Air and Radiation);

(c) Assistant Administrator, Office of Solid Waste;

(d) Assistant Administrator (Water Programs);

(e) Assistant Administrator (General Counsel);

(f) Assistant Administrator (Enforcement and Compliance Assurance);

(g) Chief Financial Officer;

(h) Assistant Administrator (Research and Development);

(i) Assistant Administrator (International Activities);

(j) Assistant Administrator (Administration and Resources Management); and

(k) Assistant Administrator (Environmental Information).

Sec. 3. *Exceptions.*

(a) No individual who is serving in an office listed in section 2(a)–(k) in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Administrator.

Sec. 4. *Amendments to Certain Executive Orders providing Orders of Succession.* Executive Orders 13241, 13242, 13243, 13244, 13245, 13246, and 13247 of December 18, 2001, and Executive Orders 13250 and 13251 of December 28, 2001, are hereby amended as follows:

(a) Section 3(a) of Executive Order 13241 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of Agriculture," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(j) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

(b) Section 3(a) of Executive Order 13242 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of Commerce," is replaced with the following: "(a) No individual who is serving in an

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office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

(c) Section 3(a) of Executive Order 13243 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of Housing and Urban Development," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(i) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

(d) Section 3(a) of Executive Order 13244 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of the Interior," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(f) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

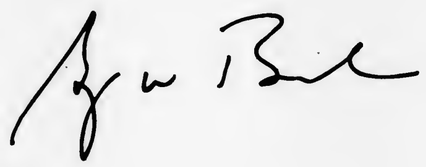
(e) Section 3(a) of Executive Order 13245 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of Labor," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(l) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

(f) Section 3(a) of Executive Order 13246 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of the Treasury," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(c) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

(g) Section 3(a) of Executive Order 13247 of December 18, 2001, entitled "Providing an Order of Succession Within the Department of Veterans Affairs," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.";

(h) Section 3(a) of Executive Order 13250 of December 28, 2001, entitled "Providing an Order of Succession Within the Department of Health and Human Services," is replaced with the following: "(a) No individual who is serving in an office listed in section 2(a)–(c) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order." and;

(i) Section 3(b) of Executive Order 13251 of December 28, 2001, entitled "Providing an Order of Succession Within the Department of State," is replaced with the following: "(b) No individual who is serving in an office listed in section 2(a)–(m) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.".



THE WHITE HOUSE,
March 19, 2002.

[FR Doc. 02–7087
Filed 3–20–02; 12:12 pm]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

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Federal Register

3–22–02 Friday
Vol. 67 No. 56 Mar. 22, 2002

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Federal Register

3–22–02 Friday
Vol. 67 No. 56 Mar. 22, 2002
Pages 13245–13552

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The President

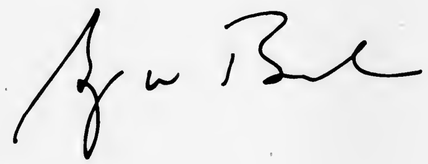
Presidential Determination No. 2002–09 of March 12, 2002

Eligibility of Palau, Kiribati, and Tuvalu to Receive Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Governments of Palau, Kiribati, and Tuvalu will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 12, 2002.

[FR Doc. 02–07103
Filed 03–21–02; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 2002–10 of March 14, 2002

Designation of Bahrain as a Major Non-Nato Ally

Memorandum for the Secretary of State

Pursuant to the authority vested in me, by section 517 of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby designate the Kingdom of Bahrain as a major non-NATO ally of the United States for the purposes of the Act and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register.**

THE WHITE HOUSE,
Washington, March 14, 2002.

[FR Doc. 02–07102
Filed 03–21–02; 8:45 am]
Billing code 4710–10–M

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

Farm Service Agency

7 CFR Part 780

Appeal Procedures

AGENCIES: Federal Crop Insurance Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) and the Farm Service Agency (FSA) are amending the general administrative regulations and appeal procedure regulations. The intended effect of this rule is to establish procedures for program participant appeals of adverse decisions made by the Risk Management Agency (RMA) and to incorporate the appeals procedures created by the Agricultural Risk Protection Act of 2000 regarding the appealability of determinations of good farming practices.

DATES: This rule is effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Kreitzer, Director, Appeals, Litigation and Legal Liaison Staff, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0820, Washington, DC 20250–0820, telephone (202) 690–1683.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because this action merely clarifies and establishes provisions for producers to use in filing appeals of adverse decisions. The effect on small entities is the same as that for large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed under the provisions of Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule amends FCIC and FSA informal appeal regulations to reflect the establishment of RMA and the reorganization of crop insurance functions. On September 30, 1999, FCIC and FSA published a notice of proposed rulemaking in the **Federal Register** at 64 FR 52678–52680 to amend 7 CFR part 400, subpart J and 7 CFR part 780.

Discussion of Comments

Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of three timely comments were received in response to the request for comment on the proposed rule. The comments received and FCIC's responses are as follows:

Comment 1: A reinsured company requested clarification regarding (1) the type of adverse decision with respect to "Compliance with program requirements" that is envisioned to be subject to the rule; (2) the intent of the term "indebtedness," notification to the private company, and the option to participate in any appeal proceedings involving Fiscal Operations and Systems Division (FOSD) decisions that involve contracts of insurance of the private insurance company; and (3) the ambiguity of the definition of the term "adverse decision."

Response: (1) Section 400.91(c) involves catastrophic risk protection

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policies that may be sold directly by FCIC through local FSA offices. While none are currently sold in this manner, the authority to offer such coverage through local FSA offices still exists. In such cases, FCIC would be the entity that makes the decisions regarding eligibility, compliance with the policy provisions, and indemnity payments made. For the purpose of clarity, FCIC has revised the provisions to specifically refer to the crop insurance program. (2) Indebtedness, as used in the definition of the term "FOSD," is one of the grounds upon which an insured can be determined to be ineligible for insurance. Under 7 CFR part 400, subpart U, either FCIC or the reinsured companies make the initial determination that an insured owes a debt and that the debt has not been timely paid based on whether the policy is insured or reinsured by FCIC. Since FCIC makes some direct determinations of indebtedness, the review process of these determinations must be included in the rule. For reinsured policies, the reinsured company provides notice to the producer that the producer owes a debt and the producer must be given an opportunity to dispute the debt. After this process is complete and the debt is determined to be delinquent, the reinsured company notifies FCIC, who then verifies that the debt is delinquent before listing the producer on the Ineligible List. FOSD's role is to determine indebtedness for FCIC insured policies and verify indebtedness for reinsured policies. The definition of the term "FOSD" has been revised to clarify its function with respect to policies that FCIC insures and reinsures. Even though FCIC only verifies the debt, since it is the agency that determines that the producer is ineligible, producers are entitled to appeal FCIC's listing of them on the Ineligible List. However, current regulations limit the reinsured company's role in the review process to that permitted by 7 CFR part 11. That rule does not permit the insurance company participation in these disputes. Until 7 CFR part 11 is revised, reinsured companies are not permitted to directly participate in the administrative review process. (3) FCIC recognizes that the definition of "adverse decisions" in 7 CFR part 11 is much broader than its applicability to FCIC decisions and, therefore, FCIC has revised the definition to limit its applicability to the crop insurance program.

Comment 2: A reinsured company questioned whether: (1) Section 400.91(a)(1) could be removed as no contracts were issued by FCIC; all are issued by private insurance companies; (2) the findings of the Compliance Division are intended to be included under section 400.91(c)(2); (3) section 400.91(c)(3) includes reinsured companies' decisions on claims since it is the reinsured company's decision with respect to whether a claim is paid; (4) sections 400.91(c)(4) and 400.91(d) are in conflict since subsection (c)(4) provides that participants may request an administrative review, mediation or appeal of adverse decisions made by the Agency relative to issuance of payments or other benefits to an individual or entity who is not a participant in the program and subsection (d) states that only a participant may seek an administrative review or mediation under this subpart; (5) the reinsured company will be held harmless by RMA if a mediation decision is arrived at that is counter to policy or procedural provisions; (6) the reinsured company will be made aware of the fact an appellant is seeking mediation, and what time frames apply for such notification; and (7) if "FSA" is included correctly in 780.2(a)(iv), under what authority, circumstances and provisions would FSA make decisions on private insurance carriers' policies.

Response: (1) As stated above, even though all policies are currently reinsured by FCIC, FCIC still has the authority to offer insurance directly to producers. As long as such authority exists, the appeal provisions must remain in effect. (2) Section 400.91(c)(2) only applies to decisions of FCIC regarding whether producers have complied with policy requirements under policies insured by FCIC. This provision has no bearing on those policies insured by the insurance companies since decisions regarding compliance are made by the reinsured company and are not appealable under this rule. (3) As stated above, section 400.91(c)(3) is only applicable to policies insured by FCIC and where FCIC is making the decision with respect to whether claims should be paid. (4) There is no conflict between section 400.91(c)(4) and section 400.91(d). Section 400.91(c)(4) specifically refers to situations where the payment was made to a non-participant such as assignments, etc. where the participant may be challenging the payment made under such an assignment to a non-participant. However, it is still only the participant who may challenge the action, not the non-participant. This is consistent with section 400.91(d). (5) A settlement in mediation is no different than any other appeals process whereby the parties determine their litigative risk. Mediation often assumes a compromise that may entail paying money when it is believed that the producer is not entitled. Reinsured companies do it every day when they settle disputes. If settlement of a dispute can be presumed to be an error or omission, then FCIC would not be required to reinsure such claims when reinsured companies settle a dispute. As in other settlement cases, the risk sharing provisions of the Standard Reinsurance Agreement continue to apply. (6) If the appeal involves a dispute regarding FCIC's conduct regarding a policy it reinsures, the reinsured company will be notified of such appeal in the manner as established in FCIC handbooks. (7) With respect to FSA's 7 CFR 780.2(a)(1), (a)(1)(iii), and (iv) are revised as the references to FCIC exceed the intended current scope of part 780 and because the explicit reference to FSA noninsured crop assistance program is unnecessary in light of other provisions in the section.

Comment 3: A trade association (1) commented that the proposed rule should include notification of companies when appeals are requested; (2) questioned whether section 400.93 is meant to refer to "one administrative review" or whether it should say "an administrative review"; and (3) suggested several editorial or grammatical changes.

Response: (1) As stated above, reinsured companies will be notified in writing of any appeal of a FCIC decision regarding a policy that the reinsured company insures. (2) Section 400.93 refers to one administrative review to make it clear that producers only have one level of appeal in the informal administrative appeals process, which in some cases may be different than the appeals process that was available under 7 CFR part 780. (3) Some of the grammatical changes have been made.

FCIC also made other technical changes to improve the readability of this rule and remove conflicts with other provisions in this rule or with parts 11 or 780 of this title and other ambiguities that may have existed. FCIC has not made any substantive changes as a result of these technical corrections.

After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into this final rule. This entails revisions to many of the provisions to incorporate this new appeals process because mediation and NAD appeal are not applicable to determinations regarding good farming practices. However, except as stated above, the substantive appeals process for adverse decisions remains the same.

List of Subjects in 7 CFR Parts 400 and 780

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and record keeping requirements.

Final Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, subpart J, and the Farm Service Agency amends 7 CFR part 780 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. Revise subpart J of part 400 to read as follows:

Subpart J—Appeal Procedure

Sec.

400.90 Definitions.
400.91 Applicability.
400.92 Appeals.
400.93 Administrative review.
400.94 Mediation.
400.95 Time limitations for filing and responding to requests for administrative review.
400.96 Judicial review.
400.97 Reservations of authority.

Authority: 7 U.S.C. 1506(l), 1506(p)

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

Appellant. Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term "appellant" includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. The farming practices used in the area where the crop is produced, including sustainable farming practices, that are determined by FCIC to be necessary for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance and to be compatible with the agronomic and weather conditions in the area or, for crops grown under an organic practice, the farming practices recommended by a private organization or government agency that certifies organic products and is accredited in accordance with the requirements of the Federal Organic Food Production Act of 1990.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RSO. The Regional Service Office established by the Agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency.

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer hy the private insurance company and reinsured by FCIC under the provisions of the Act.

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review or mediation under this subpart, as applicable.

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§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

(c) There is no appeal to NAD of determinations regarding good farming practices.

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94, but not both. Only an administrative review is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at *http://www.act.fcic.usda.gov.*

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision or determination regarding good farming practices. A request for an administrative review will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to timely file the request for administrative review.

§ 400.96 Judicial review.

(a) With respect to adverse determinations:

(1) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(2) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(3) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in paragraphs (a) and (b) of this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

(b) With respect to determinations regarding good farming practices, participants are not required to exhaust their administrative remedies before bringing suit against FCIC in a United States district court. Any determination by the Agency, or reviewing authority, regarding good farming practices shall not be reversed or modified as the result of judicial review unless the determination is found to be arbitrary or capricious.

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

PART 780—APPEAL REGULATIONS

2. The authority citation for 7 CFR part 780 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

§ 780.1 [Amended]

3. Amend § 780.1 to remove the definition of "Regional Service Office," the term "FCIC" in the definition of "agency," and "or the FCIC Regional Service Office" in the definition of "final decision."

§ 780.2 [Amended]

4. In § 780.2:

a. Amend paragraph (a)(2) to remove the initials "FCIC" wherever they appear.

b. Remove paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(3).

§ 780.7 [Amended]

5. In § 780.7:

a. Amend the to remove the phrase "and reconsideration with the regional service offices."

b. Amend §§ 780.7(b), (c) and (e), to remove the phrase "or the Regional Service Office," wherever it may appear.

§ 780.11 [Amended]

6. Amend § 780.11 to remove the words "FCIC," and "the Manager of FCIC," wherever they may appear.

Signed in Washington, DC, March 15, 2002.

Ross J. Davidson, Jr.,

Monager, Federol Crop Insurance Corporation.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–6888 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–08–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 362 and 381

[Docket No. 01–045F]

RIN 0583–AC84

Mandatory Inspection of Ratites and Squabs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is affirming the interim final rule that it published on May 7, 2001 (66 FR 22899) that amended the Poultry Products Inspection Regulations and the Voluntary Poultry Inspection Regulations to make the slaughtering and processing of ratites and squabs subject to mandatory inspection. The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act). The Agency invited interested parties to comment on the interim final rule. FSIS is also making minor clarifying modifications to the regulations concerning ratites and squabs and is extending for an additional 12 months the time allowed for foreign countries to become equivalent for exporting ratites or squabs to the United States.

DATES: This final rule will be effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the final rule, contact Robert Ragland, DVM, Acting Director, Inspection and Enforcement Standards Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 202, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2001, the Food Safety and Inspection Service (FSIS) published an interim final rule (66 FR 22899) that amended the Poultry Products Inspection Regulations (Part 381) and the Voluntary Poultry Inspection Regulations (Part 362) to include ratites and squabs under the mandatory poultry products inspection regulations. (The interim final rule was originally published on May 1, 2001 (66 FR 21631), but had to be republished on May 7, 2001 because of printing errors.) The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act), signed by the President on October 28, 2000, which provided that 180 days after the date of its enactment, U.S. establishments slaughtering or processing ratites or squabs for distribution into commerce as human food will be subject to the requirements of the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*) (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) (AMA). That provision of the Appropriations Act was effective on April 26, 2001.

Import Inspection

In the interim final rule FSIS allowed foreign countries 18 months from the effective date (April 26, 2001) to become equivalent for exporting ratites and squabs to the U. S. Thus, foreign countries had until October 26, 2002 to do so. FSIS is now extending this time for an additional 12 months to allow countries exporting or wanting to export ratite and squab products to go through the equivalency process. A 12 month extension is being granted because the original 18 month period has proved to be inadequate to complete both the equivalence evaluations and the notice and comment period rulemaking that are necessary to complete an equivalence process. The extended effective date will now be October 26, 2003.

FSIS will make equivalency determinations in accordance with 9 CFR part 327. If FSIS finds the country's export inspection system to be equivalent to the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export ratites or squabs to the United States. After the public has had 60 days to comment on the proposed rule, FSIS will review all of the public comments and make a final determination of equivalency and a determination whether to list the country as equivalent and, therefore, eligible to export ratites or squabs to the United States. This determination will be announced in a final rule in the **Federal Register**, along with FSIS's responses to the public comments. At that time, the country's inspection service may certify establishments for export of ratites and squabs to the United States. In the interim final rule FSIS also set out what countries exporting or wanting to export ratites and squabs needed to do prior to receiving an equivalency determination. These instructions remain unchanged.

Comments on the Interim Final Rule

FSIS provided 60 days for public comment on the interim final rule, ending July 2, 2001. The Agency received comments from industry groups, the European Union, and one individual. FSIS addresses their specific comments.

Comment: The commenters took issue with the definition of "squab" as a "young flightless pigeon." They pointed out that this definition is not always correct and is unenforceable. The commenters requested that the definition of "squab" be changed to a "young pigeon from one to about thirty days of age," the definition used by Wendell Levi in his authoritative book, *The Pigeon.*

Response: FSIS agrees that program inspection personnel have no way of distinguishing between squabs that have flown and those that have not flown and, therefore, is changing the definition of "squabs" to "young pigeons from one to about thirty days of age."

Comment: Commenters stated that the Agency made a mistake including just

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squabs and not all pigeons under the mandatory poultry products inspection regulations because such was the clear intent of the Congress to include all pigeons under the PPIA.

Response: The Agency disagrees. The Appropriation Act states specifically that "squabs" are to be inspected under the PPIA. It does not mention pigeons.

Comment: The European Union (EU) commented that because of the Sanitary Phytosanitary (SPS) equivalence agreement between the EU and the United States (U.S.), FSIS should not certify individual nations in the EU, but rather the Agency should consider the EU as a single entity.

Response: The U.S. and the EU have signed an agreement that establishes a mechanism for the recognition of equivalent sanitary measures maintained by either party (Agreement between the European Community and the United States of America on sanitary measures to protect public health in trade in live animals and animal products commonly called the "Veterinary Equivalence Agreement" or "VEA"). Initially, the Agreement is limited to those sanitary measures enumerated by both parties in an Appendix to the Articles. The Agreement itself is not a blanket recognition of mutual equivalence. Thus, there is no basis for treating the EU as a single exporting country of ratites or any other poultry species.

While the U.S. has agreed in principle that EU poultry standards are equivalent to those of the United States, no final determination has been made that they meet the level of protection that the U.S. deems appropriate. In the interim, the U.S. will continue to accept poultry products from EU Member States that were judged equivalent prior to signing of the VEA. Other Member States may demonstrate that they also have equivalent poultry inspection systems.

In order to make additional poultry equivalence determinations, the U.S. will require documentation (1) that all applicable EU poultry directives have been transposed into country legislation, as is required by EU law, and (2) that they have implemented EU standards appropriately. In addition, a Member State would also need to demonstrate that U.S. pathogen reduction and HACCP requirements—which are not covered by the VEA—have been assimilated into its poultry inspection system and are being implemented in an equivalent manner. Certain other U.S. regulatory import requirements must be met as well.

Comment: One commenter supported any legislation that would increase the consumption of emus.

Response: As is stated in the Regulatory Impact Analysis, the mandatory inspection of ratites and squabs should lead to increased consumption of ratites and squabs.

Summary of the Final Rule

FSIS is affirming the interim final rule on the mandatory inspection of ratites and squabs (66 FR 22899). FSIS is also extending the date for foreign countries to become equivalent for exporting ratite and squabs to the United States for an additional 12 months. The new date will be October 26, 2003. The Agency is also amending the paragraph in § 381.1(b) that defines poultry by changing the definition of squabs from "young pigeons that have not flown" to "young pigeons from one to about thirty days of age." FSIS is also modifying § 381.71 (b) by removing the word "carcasses" from the first sentence of this paragraph to make the language clearer. Moreover, the Agency is adding further information to § 381.94 on the *E. coli* testing and sampling for ratites and squabs as it does for other species under mandatory inspection. This information makes explicit the fact that FSIS has not established specific performance standards for *E. coli* testing of either ratites or squabs.

Regulatory Impact Analysis

Basis for Regulatory Action

The interim final rule amended § 362.1(d) by removing squab from the definition of poultry in the Voluntary Poultry Inspection Regulations and amended Part 381 to include ratites and squabs under the Agency's mandatory poultry inspection requirements.

Baseline

Ratites and squabs are now amenable species and are inspected by the Agency under the mandatory poultry inspection regulations. These species are also inspected under State programs. Ratites are an order of flightless birds that includes ostriches, emus, rheas, cassowaries, and kiwis. The most economically important species of ratites are the ostrich and the emu. Squabs are young pigeons from one to about thirty days of age. Ratite meat and squab meat are valued for their flavor and nutritional characteristics.

Since 1992, when FSIS first granted a request for voluntary inspection for ostriches, approximately 166 establishments have been issued a grant of inspection for ratite operations. Currently, approximately 100 establishments possess a grant of inspection. In 1999, there were a total of 48,286 (76%) ratites inspected in Federal establishments, and 14,427 (24%) ratites inspected in State establishments, or a total of 62,713 ratites inspected (Table 1). Ostriches made up the largest share (69%) of the ratites inspected under the Federal program, whereas emus made up the largest share (56%) of the ratites inspected under State programs.

TABLE 1.—RATITES AND SQUAB INSPECTION VOLUME AND ESTABLISHMENTS, FY 1999

Species	Federal establishments		State establishments		Total inspected
	Number inspected	Percent of total	Number inspected	Percent of total	
Ratites:					
Ostrich	33,521	86	5,254	14	38,775
Emu	14,745	64	8,068	36	22,813
Other	20	2	1,105	98	1,125
Ratites:					
Total	48,286	76	14,427	24	62,713
Squabs	175,496	14	1,122,131	86	1,297,627
Totals	223,782	16	1,136,558	84	1,360,340
Ests	Number		Number		
Squabs	2		2		
Ratites	99		95		

In 1999, States with a large share of ratites inspected under the Federal program were California, Georgia, Illinois, Louisiana, Oklahoma, and Texas. Alabama, California, Mississippi, North Carolina, Ohio, and Texas inspected a large share of ratites under State programs. There were almost an equal number of establishments involved in slaughter of ratites under the Federal (99) and State (95) inspection programs.

Ostriches

Ostrich is the largest bird in the world, standing about seven to eight feet tall and weighing 300–400 pounds when fully grown. Industry representatives indicate that there were about 600 ostrich growers 1998, down from 1000 growers in 1996. There is significant uncertainty about the annual production of ostriches and other ratites at this time.

Ostriches are slaughtered at an average age of 12 months. The average weight at slaughter is 350 pounds. Ostrich meat is sold as steaks, fillets, medallions, roasts, and ground meat. Because of their size ostriches are currently slaughtered in establishments that are equipped to process other red meat species such as cattle, sheep, goats, and swine.

Emus

A mature emu reaches a height of 5 to 6 feet, weighing 90 to 120 pounds. In 1999, 22,813 emus were inspected under Federal and State programs (Table 1). There are a number of valuable products derived from emus in addition to their meat.

There is also significant uncertainty about the annual production of emus. Some sources indicate that there may be as many as 500,000 birds on 5,000 to 6,000 farms in the U.S., with the majority of them in Texas, Oklahoma, and elsewhere in the Southwest.

Squabs

Squabs are young pigeons from one to about thirty days of age. Squabs usually weigh 1 pound or less at the time of slaughter (about 4 weeks old). In 1999, California and Oregon were the only two States that inspected squabs under the Federal voluntary inspection program. In that year, 175,496 squabs were inspected (Table 1). During that same period 1,122,131 squabs were inspected under the State inspection programs of California and South Carolina.

Regulatory Alternatives

FSIS considered two options in developing its interim final rule. The first option was to only change the definition of "poultry" in the Poultry Products Inspection Regulations to include ratites and squabs. This approach may have caused confusion in the industry because it would be difficult to apply some of the current poultry regulations to ratites and squabs, e.g., chilling and certain handling requirements.

The Agency's second option was to make the changes required by statute and other changes as noted above. FSIS selected this option because it provided a more orderly transition from voluntary inspection to mandatory inspection of ratites and squabs than the first option at little or no additional cost. The Agency is now affirming this option in this final rule.

Benefits

There are three primary benefits that may result from extending mandatory inspection services to ratites and squabs: industry growth, public health, and industry cost savings.

Having the mark of inspection on ratite and squab products will likely lead to greater consumer confidence and acceptance of the products. Demand would be expected to increase as a result. Establishments that are able to capitalize on the change in consumer preference would realize increased sales of these products. To the extent that inspection promotes growth in the ratite and squab industry, society could benefit also from the increased employment and earnings of workers in these establishments. Studies are not available to identify the potential growth in the industry that may occur.

The public health benefits of inspection are related to the reduction in risk associated with consumption of all ratite and squab meat that must be inspected using the same procedures employed in the meat and poultry industries. HACCP systems, Sanitation SOPs, and process control practices have been shown to reduce contamination by harmful foodborne pathogens.

A shift to the mandatory inspection system eliminated the payment of fees for inspection services. This is not a benefit from an economic perspective as the costs of inspection are transferred elsewhere in the economy. Since FSIS is recovering these costs through appropriated funds, the change to a mandatory inspection system results in an income transfer from the public to the ratite and squab industry. The total cost savings to the industry will be about $2 million in 2001, with the possibility of increasing over time with the expansion of the industry.

Industry Costs

The compliance cost of extending mandatory inspection to ratite and squab species is negligible. All establishments involved in slaughtering amenable species, as of January 25, 2000, must be in compliance with the provisions of Pathogen Reduction/ Hazard Analysis Critical Control Point (PR/HACCP) final rule. Under the provisions of the rule, all slaughter establishments under mandatory inspection are required to have HACCP plans and meet process control requirements. Nearly all establishments that slaughter and process ratites and squabs, because they also slaughtered other species under mandatory inspection, had already implemented HACCP, Sanitation SOPs, and other measures consistent with mandatory inspection. These establishments were required under the interim final rule to make changes to their HACCP or sanitation procedures to include ratites and squabs. The Agency estimates that establishments that had not included ratites and squabs in their HACCP plans[1] incurred a minimal cost of $500.00 associated with HACCP plan modification.

Because poultry is subject to mandatory Federal inspection, ratites and squabs are now subject to *E. coli* testing requirements. Establishments that slaughter more than one kind of poultry and livestock are required to test the species that the establishment slaughters in the greatest number. Agency research indicates that the number of establishments where ratites and squabs are the species being slaughtered in the greatest number is very low. Consequently, very few establishments are being required to perform additional *E. coli* testing for process control verification. The costs per establishment for *E. coli* testing are shown in Table 2.

For those establishments that slaughtered and processed ratites and squabs under voluntary inspection, the transition to mandatory inspection did not require changes in equipment and processing methods. Ratites are currently being slaughtered and processed in establishments that are equipped to process cattle, sheep, goats, and swine. Squabs are processed using the same equipment and procedures as those used for young chickens.

The Agency estimates that 50% of the Federal establishments (50 establishments) and 25% of the State establishments (24 establishments) made minor changes in their HACCP

[1] HACCP plans are not required to cover non-amenable species.

plan to accommodate mandatory inspection requirements for ratites.

TABLE 2.—POTENTIAL COSTS FOR MANDATORY FEDERAL INSPECTION

Costs	Per est. (dollars)	Industry ($thousand)
Start up Cost:		
HACCP Plan Modification	500	37.0
SSOP Modification	100	7.4
Recurring Cost:		
E. coli Sampling (26 samples@$20 per sample per establishment)	520	38.5
Recordkeeping	300	22.2
Total	1,420	105.1

Another cost that applies to all establishments applying for Federal mandatory inspection is the application cost. This cost is negligible, as it is limited to a one-time cost for filling out an application, about $10. The total compliance cost to the establishments identified above are estimated to be $105,100.

FSIS Costs

The Agency anticipates the need to conduct baseline microbiological studies. These studies constitute the major costs to the Agency totaling $205,000.

Microbiological Testing

The microbiological studies will help the Agency determine the prevalence of harmful bacteria or pathogens in ratites and squabs. These studies can also be used to develop performance standards for pathogen reduction. The cost of a microbiological baseline testing for ratites will be $110,000 and for squabs, $95,000 (Tables 3 and 4).

TABLE 3.—COST TO FSIS OF A MANDATORY RATITE INSPECTION PROGRAM

One-time costs	Inspection hours	$Thousand
Microbiological Baseline		110.0
Transfer Payment [1]: Federally-Inspected Ests	38,524	$1,959.0

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

TABLE 4.—FSIS MANDATORY SQUAB INSPECTION PROGRAM COSTS

One-time costs	Inspection hours	$Thousand
Microbiological Baseline		95.0
Transfer Payment [1]: Federally-Inspected Ests	322	16.4

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

Transfer Payments

Under voluntary inspection, establishments pay for inspection services. The funds for mandatory inspection activities are appropriated from Federal tax revenues. The transition from voluntary to mandatory inspection changes the source of inspection program funding. The Agency estimates that the industry cost of inspection of ratites and squabs for 1999 in Federal establishments was $1,975,000, of which ratites accounted for $1,959,000 and squabs for $16,400, including overhead (Tables 3 and 4).

With ratite and squab inspection mandatory, it is possible that the volume of ratites and squabs inspected at Federally inspected establishments will increase beyond what is currently being inspected. An establishment that was under a State inspection program that shipped ratites and squabs in interstate commerce had to shift to Federal inspection to maintain its markets. It is expected that 25% of the establishments that were under State voluntary inspection will migrate to the Federal mandatory program. This analysis does not take into account the potential increase in the demand for inspection services. Both species currently account for an extremely small share of meat and poultry inspection. Changes in the required level of inspection program personnel are not expected to be significant in the near-term.

The estimated total cost of inspection in State establishments was $554,400 for 14,427 ratites and 1,122,131 squabs for FY 1999. Under the agreement the Agency formerly had with a State having a voluntary inspection program, the Agency paid half of the inspection program costs, or $277,191 (Table 5).

Under the mandatory program, States no longer are able to collect fees for inspection services. States may decide to terminate their ratite and squab inspection programs. If terminations occur, FSIS will take over inspection at the facilities operating under the State program and thereby absorb the total costs of inspection at these establishments. For those States that did not have a State voluntary program for ratites and squabs, the impact of a Federal mandatory inspection program is minimal. The payment of these costs at previously State inspected establishments is an income transfer similar to that occurring for Federally inspected establishments.

The total transfer payment to Federal and State establishments is $2,252,000 ($1,975,000 plus $277,000).

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Ratites	14,427	11,510	442.4

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999—Continued

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Squabs	1,122,131	2,912	111.9
Total	1,136,558	14,422	554.4

[1] FSIS hourly base rate of $38.44 times inspection hours required.

Consumer Cost

In large part, the costs of ratite and squab inspection were transferred from producers to taxpayers. With the burden of paying for inspection service eliminated, establishments may transfer these cost savings to consumers through lower prices.

Economic Impact on International Trade Assessment

Countries that previously had little interest in export certification may petition FSIS because these additional species now come under mandatory inspection. Foreign establishments that specialize in exotic species may seek to broaden their markets by exporting to the United States. The Agency may need to evaluate the equivalence of a greater number of foreign food regulatory inspection systems.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be significant, the Office of Management and Budget (OMB) has reviewed it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments will not be adversely affected by this final rule. Few establishments slaughter and process ratites or squabs exclusively. For small slaughtering establishments as well as large ones, ratites and squabs do not comprise all or even most of their business. Of the 100 establishments that slaughter or process ratites and squabs, only two slaughter over 90% of the squabs consumed in the market. There are no establishments that dominate the slaughtering of ratites. Small entities will benefit along with the rest of the industry with the increased marketability of their product and the cost savings realized because they no longer have to pay fees to either FSIS or the State for voluntary inspection service.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35, respectively, must be exhausted before any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Executive Order 13132

Executive Order 13132, "Federalism," requires that agencies assess the federalism implications of their policy statements and actions, i.e., the effects of those statements and actions on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) preempt State and local laws in regard to the manufacture and distribution of meat and poultry products. Therefore, FSIS policy statements and actions affect federalism within the context of these statutory preemptions.

States and local jurisdictions are preempted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

Specifically, under section 301 of the FMIA and section 5 of the PPIA, a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA. These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be "designated" by the Secretary to receive Federal inspection.

When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be affected, since they must continue to enforce requirements equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the "equal to" provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection programs.

Paperwork Reduction Act Requirements

The Office of Management and Budget has approved the paperwork and recordkeeping requirements under approval number 0583–0122.

Departmental Regulation 4300–4, "Civil Rights Impact Analysis"

FSIS has considered under Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, the potential civil rights impact of this final rule on minorities, women, and persons with disabilities.

The purpose of the final rule is to affirm the interim final rule (66 FR 22899) that included ratites and squabs under mandatory Poultry Products Inspection Regulations.

Congress mandated the inspection of ratites and squabs by April 26, 2001. The Agency promulgated an interim final rule that made all of the necessary changes to the mandatory poultry

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products regulations to include ratites and squabs. This final rule affirms the interim final rule and makes two minor amendments to the regulations.

The requirements placed on the relatively small number of establishments that slaughter or process ratites or squabs are consistent with FSIS mandatory regulatory requirements for other species. The economic impacts on these establishment are in line with the benefits that the public should expect and with what the establishments should expect to recover as a result of moving from voluntary to mandatory inspection. For the overwhelming majority of establishments potentially affected by the move to mandatory inspection, the impacts will be beneficial.

Of the 7,500 Federal and State inspected meat and poultry establishments for which data are available, 317 are owned by females and 297 are owned by non-whites—or a total of about 4 percent of these establishments are female or minority owned. This compares to the 1992 Census figures for all U.S. firms which showed that minorities owned 6.3 percent and women owned 11.2 percent of businesses. No data are available at this time on the disabilities of the owners of meat and poultry establishments. Nor is any data available on the ownership of establishments that slaughter or process ratites and squabs.

There is no evidence to suggest that the establishments owned by minorities would be any more or less affected than establishments owned by non-minorities.

Neither will the final rule have a significant adverse impact on low-income consumers or minority employment. The costs associated with implementing the final rule will not be unduly burdensome to industry and will provide an economic benefit to the industry as a whole. Consumers may realize lower prices for ratites and squabs.

FSIS has used the available information to evaluate the potential impacts of the proposal on small entities and to determine civil rights impacts.

Additional Public Notice

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 381

Poultry and poultry products

Accordingly, the interim final rule published on May 7, 2001 (66 FR 22899) amending 9 CFR parts 362 and 381 is adopted as final, with the following changes:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.1 (b) is amended by revising the definition of poultry to read as follows:

§ 381.1 Definition

* * * * *

Poultry. "Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one to about thirty days of age), whether live or dead.

* * * * *

3. Amend § 381.71 by revising paragraph (b) to read as follows:

§ 381.71 Coverage of all poultry and poultry products processed in official establishments.

* * * * *

(b) Dead-on-arrival ratites and ratites condemned on ante mortem inspection will be tagged "U.S. Condemned" by an establishment employee under FSIS supervision and disposed of by one of the methods prescribed in § 381.95.

* * * * *

4. Amend § 381.94 by revising paragraphs (a)(2)(ii), (a)(2)(iii)(B), (a)(2)(v)(A), Table 1 in paragraph (a)(5)(i), and Table 2 in paragraph (b)(1) as follows:

§ 381.94 Contamination with Microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(2) * * *

(ii) *Sample collection.* A whole bird must be taken from the end of the chilling process. If this is impracticable, the whole bird can be taken from the end of the slaughter line. Samples must be collected by rinsing the whole carcass in an amount of buffer appropriate for that type of bird. Samples from turkeys or ratites also may be collected by sponging the carcass on the back and thigh.[1]

(iii) * * * (B) Turkeys, Ducks, Geese, Guineas, Squabs, and Ratites: 1 sample per 3,000 carcasses, but at a minimum one sample each week of operation.

* * * * *

(v) * * * (A) Very low volume establishments annually slaughter no more than 440,000 chickens, 60,000 turkeys, 60,000 ducks, 60,000 geese, 60,000 guineas, 60,000 squabs, 6,000 ratites, or a combination of all types of poultry not exceeding 60,000 turkeys and 440,000 birds total. Very low volume establishments that slaughter turkeys, ducks, geese, guineas, squabs, or ratites in the largest number must collect at least one sample during each week of operation after June 1 of each year, and continue sampling at a minimum of once each week the establishment operates until June of the following year or until 13 samples have been collected, whichever comes first.

* * * * *

(5)(i) * * *

[1] A copy of FSIS's "Guidelines for *Escherichia coli* Testing for Process Control Verification in Poultry Slaughter Establishments," and "FSIS Turkey Microbiological Procedures for Sponge Sample Collection and Methods of Analysis" are available for inspection in the FSIS Docket Room.

TABLE 1.—EVALUATION OF E. COLI TEST RESULTS *

Types of poultry	Lower limit of marginal range (m)	Upper limit of marginal range (M)	Number of samples tested (n)	Maximum number permitted in marginal range (c)
Chickens	[1] 100	[1] 1,000	13	3
Turkeys	*NA	*NA	*NA	*NA
Ducks	*NA	*NA	*NA	*NA
Geese	*NA	*NA	*NA	*NA
Guineas	*NA	*NA	*NA	*NA
Squabs	*NA	*NA	*NA	*NA
Ratites	*NA	*NA	*NA	*NA

[1] CFU/ml.
* Values will be added upon completion of data collection programs.

* * * * * * * * *

(b) * * *
(1) * * *

TABLE 2.—SALMONELLA PERFORMANCE STANDARDS

Class of product	Performance Standard (percent positive for salmonella) [a]	Number of samples tested (n)	Maximum number of positives to achieve standard (c)
Broilers	20.0%	51	12
Ground chicken	44.6	53	26
Ground turkey	49.9	53	29
Turkeys	[b] NA	NA	NA
Squabs	[b] NA	NA	NA
Ratites	[b] NA	NA	NA

[a] Performance Standards are FSIS's calculation of the national prevalence of Salmonella on the indicated raw products based on data developed by FSIS in its nationwide microbiological baseline data collection programs and surveys. (Copies of Reports on FSIS's Nationwide Microbiological Data Collection Programs and Nationwide Microbiological Surveys used in determining the prevalence of Salmonella on raw products are available in the FSIS Docket Room.)
[b] Not available; baseline targets for turkeys, squabs, or ratites will be added upon completion of the data collection programs for that product.

* * * * *

Done at Washington, DC, on March 18, 2002.

Margaret O'K. Glavin,
Acting Administrator.

[FR Doc. 02–6836 Filed 3–21–02; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–75–AD; Amendment 39–12686; AD 2002–06–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300; A300–600; and A310 series airplanes. This action requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas) following an in-flight incident resulting in extreme lateral loading. This action is necessary to detect and correct reduced structural integrity of the airplane following any future event. This action is intended to address the identified unsafe condition.

DATES: Effective April 8, 2002. Comments for inclusion in the Rules Docket must be received on or before May 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–75–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 12, 2001, an Airbus Model A300 B4–600R series airplane was involved in an accident shortly after takeoff from John F. Kennedy Airport, Jamaica, New York. During the accident event, the vertical stabilizer and rudder departed the airplane. The cause of this accident is under investigation by the National Transportation Safety Board

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(NTSB), and, although the NTSB has not determined the cause of the accident, information to date indicates that the vertical stabilizer was subjected to large aerodynamic structural loading during the accident event.

A recent review of Airbus fleet data indicated that another Airbus Model A300–600 series airplane was involved in an upset event in 1997 that may have subjected the airplane to lateral loads on the vertical stabilizer similar to those experienced on the airplane involved in the November 12, 2001, accident. The vertical stabilizer was recently removed from the airplane involved in the 1997 event, and the composite attachment lugs were subjected to ultrasonic nondestructive inspections (NDIs). The results of the NDI yielded indications consistent with composite delamination of the right-hand aft attachment lug. This type of delamination is characteristic of extreme lateral loading conditions.

Following the event, the operator performed the inspections of the airplane specified in the Airplane Maintenance Manual (AMM) that are deemed necessary by the manufacturer after an in-flight incident. However, the AMM did not include inspections for damage of the vertical stabilizer caused by extreme lateral loading. Extreme lateral load factors can occur as a consequence of severe turbulence, loss of control of the airplane involving yaw and/or roll maneuvers, hazardous system failures or other rare flight conditions. Review of service history indicates that these events only occur rarely. Such conditions, if not corrected, could result in reduced structural integrity of the airplane.

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has coordinated this action with the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. The DGAC plans to release a recommended bulletin to address this issue.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct reduced structural integrity of the airplane following an in-flight incident resulting in extreme lateral loading. This AD requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas), immediately following such an incident.

This AD requires inspections for extreme lateral loads exceeding 0.3g. Because no such inspection methods were defined previously, these inspections must be approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

This AD also requires reporting of these inspection results to the manufacturer, including information regarding the extreme lateral loading event. Based on this information, the manufacturer will develop any appropriate additional inspections. Upon FAA approval, these inspections are also required.

Inspections are not required for extreme lateral loading events that occur on the ground (landing, taxiing). On the ground an extreme lateral load would not be transmitted to the airplane through the vertical stabilizer.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–75–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–09 Airbus Industrie: Amendment 39–12686. Docket 2002–NM–75–AD.

Applicability: All Model A300; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the airplane following an extreme lateral loading event, accomplish the following:

Lateral Load Factor Determination

(a) As of the effective date of this AD, before further flight following an in-flight incident that results in extreme lateral loading, determine whether the lateral load factor (Ny) equaled or exceeded 0.3g. Extreme lateral loading can occur as a consequence of severe turbulence, loss of control of the aircraft involving yaw and/or roll maneuvers, hazardous systems failures, or other rare flight conditions. Then do the inspections specified in paragraph (b) or (c) of this AD, as applicable, at the time specified.

Note 2: Acceptable methods for determining if the lateral load factor equaled or exceeded 0.3g include but are not limited to: Aircraft Communication Addressing and Reporting System (ACARS), Digital Flight Data Recorder (DFDR) readout, or Quick Access Recorder (QAR). A pilot report of extreme lateral acceleration in-flight can be used to assess whether one of the previous methods should be used to determine the lateral load factor.

Note 3: The inspections specified in paragraphs (b) and (c) of this AD are not necessary if lateral load factors exceed 0.3g when the airplane is on the ground (landing, taxiing).

Inspections for Certain Lateral Load Factors

(b) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.3g, but less than 0.35g, accomplish the following actions:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Within 5 days after accomplishing the inspections required by paragraph (b)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to Al/SE–D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 4: Following accomplishment of the requirements of paragraphs (b)(1), (b)(2) and, if necessary, (e) of this AD, the airplane may be returned to service before accomplishing the inspections required by paragraph (b)(3) of this AD.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Within 30 days after the extreme lateral loading event, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 5: The loads assessment, and if necessary, supplementary inspections required by paragraph (b)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (b)(2) of this AD.

Inspections for Certain Other Lateral Load Factors

(c) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.35g, accomplish the following:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Before further flight after accomplishing the inspections required by paragraph (c)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to Al/SE–D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Before further flight, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 6: The loads assessment, and if necessary, supplementary inspections required by paragraph (c)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (c)(2) of this AD.

Detailed Inspections

(d) Do the following detailed inspections at the time specified in paragraph (b)(1) or (c)(1) of this AD, as applicable:

(1) Do the inspections as specified in and per Chapter 05–51–17 (Inspections After Flight in Excessive Turbulence or In Excess of VMO/MMO) of Airbus A300, A300–600 or A310 Airplane Maintenance Manual (AMM), as applicable. Extend the areas for these inspections as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Extend the wing inspection area to include rib 22 through rib 29.

(ii) Extend the fuselage inspection area from the inside to include frame 84 through 87 above stringer 23, and all areas of frame 91.

(2) Do detailed inspections to find damage of the areas specified in paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD, according to a method approved by the Manager, International Branch, ANM–116.

(i) Inspect the fuselage external surface under the vertical stabilizer to fuselage fairing, including side load fittings and lower surface of rib 1 of the vertical stabilizer.

(ii) Inspect the rudder hinge arms and support fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

(iii) Inspect the rudder hinge fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

Note 7: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific

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structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(e) If any damage is found during any inspection required by this AD: Before further flight, repair according to the method specified in the Airbus structural repair manual or according to a method approved by the Manager, International Branch, ANM–116, or by the Direction Generale de l'Aviation Civile or its delegated agent.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, which may add comments and then send it to the Manager, International Branch, ANM–116.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can he accomplished.

Effective Date

(h) This amendment becomes effective on April 8, 2002.

Issued in Renton, Washington, on March 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6910 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–31–AD; Amendment 39–12685; AD 2002–06–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–C28 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28 series engines. This amendment requires removal of third stage turbine wheels, part number (P/N) 6899383, with certain serial numbers (SN's), from service before exceeding new, reduced life limits. This amendment also establishes a drawdown program to require the removal of those turbine wheels that exceed the new lower limits. This amendment is prompted by the potential to experience uncommanded shutdown caused by fractures of third stage turbine blade tips and shrouds. The actions specified by this AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and shrouds.

DATES: Effective date April 26, 2002.

ADDRESSES: The information contained in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the proposal, was published in the **Federal Register** on November 8, 2001 (66 FR 56493). That action proposed to require removal of third stage turbine wheels, part number (P/N) 6899383, with SN's, from service before exceeding new, reduced life limits. That action also proposed to establish a drawdown program to require the removal of those turbine wheels that exceed the new lower limit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Life Limits References

One commenter requests that all references to "new, reduced life", and "new lower" limits be removed and replaced with "specified hour and cycle" limits and "acceptable hour and cycle" limits.

The FAA does not agree. The preamble of the AD provides background information as to why the AD is being issued. The FAA has only one means of mandating lower life limits on a life limited part, and that is with an AD. The sole purpose of this AD is to mandate lower life limits. Removing references to "new, reduced life", and "new lower" limits in the preamble adds to confusion because those references explain why this AD is being issued.

Remove References to Reports of Five Uncommanded Shutdowns

The manufacturer requests that references to reports of five uncommanded shutdowns occurring as a result of the out-of-print condition addressed by this AD, be removed. At the time this AD action was first being considered, it was preliminarily reported that there were five uncommanded shutdowns occurring as a result of the out-of-print condition addressed by this AD. It has since been determined that those shutdowns did not have the out-of-print condition and are unrelated to the actions required by this AD. The manufacturer still supports the issuance of this AD because of the potential safety issue that remains.

The FAA agrees. Therefore, the summary in the preamble of this final rule is changed to read: "This amendment is prompted by the potential to experience uncommanded shutdown caused by third stage turbine blade tip fractures, and turbine shroud fractures."

Eliminate Potential Nomenclature Confusion

The manufacturer requests that the phrase "third stage turbine shrouds" be replaced with the word "shrouds" and remove reference to turbine shroud fractures, to eliminate potential nomenclature confusion. The reason for the request is that on the model 250–C28 series third stage turbine wheels, the blades and shrouds are cast together with the hub, creating a one piece unit.

The FAA agrees. Therefore, the summary in the preamble of this final rule is changed to read: "This amendment is prompted by the potential to experience uncommanded shutdown caused by fractures of third stage turbine blade tips and shrouds.

The actions specified by this AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and shrouds."

Change Unsafe Condition Wording

One commenter requests that the NPRM preamble wording found in the FAA's Determination of an Unsafe Condition and Proposed Actions paragraph be changed from: "Since an unsafe condition has been identified that is likely to exist. * * *", to "Since an unsafe condition has been identified that may exist. * * *" No justification was given for this change.

The FAA does not agree. AD's are issued under Part 39 of the Federal Aviation Regulations, 14 CFR part 39. The FAA must make a finding that an unsafe condition prompting the AD "is likely to" exist or develop in other products of the same type design.

Incorporate Additional Information

The manufacturer requests that a phrase be added to the Economic Analysis that states that not all affected third stage turbine wheels may be installed in engines.

The FAA agrees that additional information should be added to the Economic Analysis. Therefore, the Economic Analysis is modified to include the sentence: "There are approximately 84 engines worldwide that may have an affected third stage turbine wheel installed, however, it is not known how many of those third stage turbine wheels are installed in engines."

Add Reference to Rolls-Royce Service Bulletin

The manufacturer requests a clarification to the AD to include a reference to the Rolls-Royce Corporation service bulletin associated with this life limit change.

The FAA does not agree. There is no reason to reference the service bulletin because all the pertinent information regarding the new reduced life limits of the affected third stage turbine wheels, which includes part number, serial numbers, and drawdown schedule, are included in the AD.

Reword Discussion Information

One commenter requests changing in the discussion section the phrase " to life limits of 1,500 hours TSN and 3,000 CSN" to "to life limits of 1,500 hours TSN or 3,000 CSN, whichever occurs first." This change request by the commenter would be appropriate if the intent of this section was to describe how to comply with the new reduced life limits. However, the intent of the discussion section is to provide background information on the various life limits and how they are changing relative to each other. Details on compliance are explained in Table 2 of the compliance section of the AD, in which the phrase "whichever occurs earlier" is used where appropriate, consistent with the commenter's intent.

Restructure Contents of Table 2

One commenter requests the restructuring of the contents of Table 2 in the AD.

The FAA does not agree. The information in Table 2 as published in the NPRM is accurate and concise, and therefore remains unchanged in this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 84 third stage turbine wheels of the affected design in the worldwide fleet. The FAA estimates that 42 engines installed on helicopters of U.S. registry would be affected by this AD. However, it is not known how many of those third stage turbine wheels are installed in engines. It would take approximately 44 work hours per engine to remove and replace an affected turbine wheel. The average labor rate is $60 per work hour. The cost of a new third stage turbine wheel is approximately $4,371. The FAA estimates that approximately $2,929 per wheel has been lost due to life reduction. However, the manufacturer has stated it may reduce the new wheel cost to the customer. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $294,462.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–08 Rolls-Royce Corporation: Amendment 39–12685. Docket No. 2001–NE–31–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the following Table 1:

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS

HX91428R	HX91489R	HX91707R
HX91456R	HX91490R	HX91708R
HX91457R	HX91492R	HX91709R
HX91458R	HX91493R	HX91710R
HX91459R	HX91494R	HX91711R
HX91461R	HX91500R	HX91712R
HX91462R	HX91501R	HX91713R
HX91464R	HX91503R	HX91714R
HX914659	HX91504R	HX91715R
HX91465R	HX91506R	HX91721R
HX91466R	HX91507R	HX91722R
HX91467R	HX91508R	HX91726R
HX91468R	HX91510R	HX91733R
HX91469R	HX91511R	HX91735R
HX91471R	HX91512R	HX91736R
HX91472R	HX91513R	HX91738R
HX91473R	HX91519R	HX91742R
HX91474R	HX91520R	HX91744R
HX91475R	HX91522R	HX91748R
HX91477R	HX91523R	HX91749R
HX91478R	HX91524R	HX91750R
HX91480R	HX91525R	HX91754R
HX91482R	HX91526R	HX91764R

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS—Continued

HX91483R	HX91527R	HX91765R
HX91485R	HX91528R	HX91766R
HX91486R	HX91529R	HX91767R
HX91487R	HX91530R	HX91768R
HX91488R	HX91706R	HX91769R

Note.—These engines are installed on, but not limited to Bell Helicopter Textron 206L–1 helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent an uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds, do the following:

(a) Remove from service the third stage turbine wheels, P/N 6899383, listed by SN in Table 1 of this AD, in accordance with the following Table 2:

TABLE 2.—REMOVAL SCHEDULE

For third stage turbine wheels on the effective date of this AD	Remove by
(1) With fewer than 3,000 cycles-since-new (CSN), and fewer than 1,500 hours time-since-new (TSN).	3,000 CSN or 1,500 hours TSN, whichever occurs earlier.
(2) With between 3,000 and 6,000 CSN, and fewer than 1,500 hours TSN.	200 additional cycles, after the effective date of this AD.
(3) With fewer than 3,000 CSN, and between 1,500 and 3,000 hours TSN.	100 additional hours, after the effective date of this AD.
(4) With between 3,000 and 6,000 CSN and between 1,500 and 3,000 hours TSN.	200 additional cycles or 100 additional hours, after the effective date of this AD, whichever occurs earlier.
(5) With more than 6,000 CSN, or more than 3,000 hours TSN	Before further flight.

(b) After the effective date of this AD, do not install any third stage turbine wheels listed by SN in Table 1 of this AD. Thereafter, except as provided in paragraph (c) of this AD, no alternative cyclic life limits may be approved for the turbine wheels listed in Table 1 of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on April 26, 2002.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6913 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–284–AD; Amendment 39–12682; AD 2002–06–05]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Air Traffic Control (ATC) Transponders Manufactured by Rockwell Collins, Inc.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various transport category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc. This amendment requires testing each transponder; replacing certain parts in any transponder that fails the initial test with new parts and performing additional test(s); and making repairs, as necessary, so that the transponder passes the test. This amendment is prompted by reports that indicate that the equipment used to conduct earlier tests of certain transponders did not detect certain malfunctions. An airplane equipped with such malfunctioning transponders could transmit inaccurate data concerning its altitude to a nearby airplane equipped with the traffic alert and collision avoidance system (TCAS II), causing the TCAS II to issue an erroneous resolution advisory to the pilot. The actions specified by this AD are intended to prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision.

DATES: Effective April 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Rockwell Collins, Inc., 400 Collins Road, NE., Cedar Rapids, Iowa 52498. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1674; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various transport category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc., was published in the **Federal Register** on January 5, 2001 (66 FR 1054). That action proposed to require testing each transponder; replacing certain parts in any transponder that fails the initial test and performing additional test(s); and making repairs, as necessary, so that the transponder passes the test.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Two commenters state that the airplanes they operate are not affected by the proposed rule.

Change Paragraphs (a) and (b)

One commenter states that Rockwell Collins Service Information Letter (SIL) 00–1, dated May 25, 2000, as specified in the preamble of the proposed rule, implies that the only approved "ramp-tester" to test their 621A–3 transponder is the ATC–601. However, the commenter indicates that all "approved" transponder ramp-testers must meet the criteria set forth in Federal Aviation Regulation 91.413, Part 43, Appendix F. The commenter asks if this proposed AD will change those criteria, and states that, if not, operators should be able to use any transponder ramp-tester that meets those requirements. The commenter adds that verification that a ramp-tester meets the FAR requirements can be confirmed by the manufacturer's technical data sheets and current calibration certificates.

The FAA does not agree that "any" transponder ramp-tester meets the requirements in paragraphs (a) and (b) of the final rule. As specified in the preamble of the proposed rule, "The document (SIL 00–1), subtitled '621A–3 Transponder Overhaul Manual Test Equipment Modification Recommendation,' indicates that some operators using ATC ramp tester model number 601 (ATC–601) to verify performance of Mode C transponders with single Gillham encoded altitude input were experiencing a high reject rate of the 621A–3 transponders manufactured by Rockwell Collins, Inc. The service letter states that the ATC–601 ramp tester is capable of detecting out-of-tolerance errors in the framing pulse width, whereas the ATC–600 ramp tester previously used to test the transponders did not detect these pulse width errors." We concur that certain other ramp-testers may be used, and we have added a new Note 2 (and renumbered subsequent notes) to this final rule that specifies "approved" transponder ramp-testers.

Another commenter states that, to perform the pulse width test specified in paragraph (a) of the proposed rule, a bench check of the transponder is required, and adds that operators may be removing properly operating transponders to comply with the proposed rule. The commenter asks that an option be given to allow operators to perform a functional test with a Mode S ATC test set per the applicable airplane maintenance manual. The commenter adds that, if the transponder passes the functional test, it would not be necessary to remove the transponder from the airplane for a bench check.

We partially agree with the commenter. We do not agree that a bench check of the transponder is required to perform the pulse width test; the pulse width test can be done either with the transponder on the airplane or by removing the transponder and doing a bench check, depending on the capabilities of the test equipment used. We agree that the Mode S ATC is an approved test set, and that test set is specified in Note 2 of this final rule.

The same commenter asks that the final rule specify that any bench check done on a transponder before the effective date of the final rule, in accordance with the service information specified in the proposed rule, is acceptable for compliance with the pulse width tests specified in paragraphs (a) and (b) of the proposed rule. The commenter adds that if the FAA agrees to include the bench check, submission of the reporting requirements specified in paragraph (d) of the proposed rule should be amended to allow for a compliance time of more than 60 days after completion of the bench check. The commenter recommends a 30-day grace period after the effective date of the final rule for the reporting requirement.

We agree and have added a new Note 3 to this final rule to specify that bench checks used to perform the tests per Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000, are acceptable for compliance with paragraph (a) of this final rule. Additionally, we have changed the reporting requirement specified in paragraph (d) of this final rule to specify that the report may be submitted within 60 days AFTER the effective date of the AD.

Another commenter notes that paragraph (b) of the proposed rule specifies that the transmitter tube and resistor be replaced (if any malfunction is detected), per Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975. The commenter states that the referenced service bulletin specifies removal of the resistor (only) on units having serial numbers 7192 and below. The commenter interprets paragraph (b) of the proposed rule as requiring replacement of the transmitter tube and resistor regardless of the unit serial number. The commenter recommends paragraph (b) of the proposed rule be changed to specify that resistor removal is only required on units with serial numbers 7192 and below.

We concur with the commenter and have changed paragraph (b) of the final rule to add paragraphs (b)(1) and (b)(2) to require replacement of the transmitter tube and resistor for transponders having serial numbers up to and including 7192; and replacement of the transmitter tube (only) for transponders having serial numbers 7193 and subsequent.

Credit for Transponders Previously Modified

One commenter asks if the proposed rule will apply to transponders that have already been modified using the procedures specified in Rockwell Collins, Inc. SIL 00–1, which references Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975, cited in the proposed rule as the appropriate source of service information doing the replacement.

We agree that if the replacement required by paragraph (b) of this final rule was done prior to the effective date of the AD using the service information cited in the final rule, it is acceptable for compliance. Therefore, we have added a new Note 4 to this final rule (and renumbered subsequent notes) that specifies previous modification of the transponder is acceptable for compliance with this AD.

Change Paragraph (c)

One commenter states that paragraph (c) of the proposed rule cites the air data computer or interconnect wiring as possibly being defective. The commenter notes that this is in error because the pulse width cannot be affected by the air data computer or its wiring. The commenter adds that the pulse width can be affected by antenna/wiring faults.

We agree with the commenter and have changed paragraph (c) of this final rule to remove the references to repair of the air data computer or wiring connections.

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The same commenter notes that paragraph (c) of the proposed rule specifies that, if malfunction of the transponder is detected, the transponder must be repaired prior to further flight. The commenter asks that the final rule allow for continued operation of the airplane in accordance with the Minimum Equipment List (MEL), provided the defective transponder is not operated.

Note 5 of this final rule (which was Note 2 of the proposed rule) addresses the commenter's concern. That note specifies that the airplane may be operated in accordance with the provisions and limitations specified in the FAA-approved Master Minimum Equipment List (MMEL), provided that only one Mode C transponder on the airplane is inoperative.

Delete Paragraph (c)

One commenter states that paragraphs (a) and (b) of the proposed rule discuss actions for off-wing shop tests per the transponder overhaul manual (OM), but paragraph (c) implies that an on-wing test must be accomplished. The commenter asks that paragraph (c) of the proposed rule be deleted. The commenter notes that any transponder tested in accordance with the OM will not be returned to service unless it can pass the pulse width test. The commenter adds that both the aircraft wiring and interfacing equipment were previously tested per AD 99–23–22 R1, amendment 39–11473 (64 FR 70181, December 16, 1999), which addressed concerns specific to the Rockwell Collins 621A–3 transponders. The commenter states that no additional testing should be required.

We do not agree with the commenter. Paragraph (c) of this final rule requires repair of the transponder if a malfunction is detected; no on-wing test is required by that paragraph. No change to the final rule is necessary in this regard.

Change to Final Rule

We have changed the point of contact for information concerning this final rule to Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 800 airplanes with transponders with the affected part in the worldwide fleet. The FAA estimates that approximately 400 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $96,000, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–05 Transport Category Airplanes: Amendment 39–12682. Docket 2000–NM–284–AD.

Applicability: Transport category airplanes, certificated in any category, equipped with Rockwell Collins Mode C 621A–3 Air Traffic Control (ATC) transponder(s), part number (P/N) 522–2703–XXX (where XXX is any series number).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision, accomplish the following:

Testing

(a) Within 6 months after the effective date of this AD: Perform a pulse width test to detect malfunctions of any Mode C 621A–3 ATC transponder(s) equipped with P/N 522–2703–XXX, where XXX is any part number, in accordance with Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000.

Note 2: Pulse width tests done using TIC–49, ATC–601, ATC–601A, or ATC–1400A ramp or bench testers meet the applicable test requirements specified in paragraphs (a) and (b) of this AD.

Note 3: Previous checks used to perform the test specified in paragraph (a) of this AD, per Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000, are considered acceptable for compliance with paragraph (a) of this AD.

Replacement

(b) If the pulse width test required by paragraph (a) of this AD detects malfunction of a transponder, prior to further flight, perform the requirements specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975.

(1) For transponders having serial numbers up to and including 7192: Replace the transmitter tube and resistor with a new tube and resistor and repeat the pulse width test required by paragraph (a) of this AD.

(2) For transponders having serial numbers 7193 and subsequent: Replace the transmitter tube with a new tube and repeat the pulse width test required by paragraph (a) of this AD.

Note 4: Accomplishment of the replacement specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, prior to the effective date of this AD, per Rockwell Collins Service Information Letter (SIL) 00–1, dated May 25, 2000, is acceptable for compliance with the applicable replacement required by paragraph (b)(1) or (b)(2) of this AD.

Repair

(c) If the follow-up pulse width test required by paragraph (b) of this AD detects malfunction of a transponder: Prior to further flight, repair the transponder in accordance with the applicable Mode C transponder component maintenance manual and airplane maintenance manual. If the repair information is not available in the applicable manual, prior to further flight, repair the transponder in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 5: The airplane may be operated in accordance with the provisions and limitations specified in the FAA-approved Master Minimum Equipment List (MMEL), provided that only one Mode C transponder on the airplane is inoperative.

Reporting Requirement

(d) Submit a report of the results (both positive and negative) of the tests required by paragraphs (a) and (b) of this AD, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, to: Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle ACO, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the part number of the Mode C transponder(s) and whether corrective action was required. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the pulse width test (using a bench check, if necessary) is accomplished after the effective date of this AD: Submit the report within 60 days after performing the test required by paragraph (a) or (b) of this AD, as applicable.

(2) For airplanes on which the pulse width test has been accomplished prior to the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance or Avionics Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD: The actions shall be done in accordance with Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000; and Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975; as applicable. Revision 1 of Rockwell Collins Service Bulletin 621A–3–34–2 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4	1	Nov. 14, 1975.
2, 3, 5/6	Original	June 15, 1975.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rockwell Collins, Inc., 400 Collins Road NE; Cedar Rapids, Iowa 52498. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 26, 2002.

Issued in Renton, Washington, on March 13, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6793 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30301; Amdt. No. 2098]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

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2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

The amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on March 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
02/25/02	MI	HOWELL	LIVINGSTON COUNTY	2/1650	NDB RWY 13, AMDT 2
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1665	NDB OR GPS RWY 4, AMDT 3
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1666	VOR/DME RNAV OR GPS RWY 22, AMDT 2
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1667	VOR/DME OR GPS–A, AMDT 7
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1670	ILS RWY 4, AMDT 3
02/27/02	WY	GREYBULL	SOUTH BIG HORN COUNTY	2/1755	NDB OR GPS RWY 33, AMDT 1
02/27/02	WY	RIVERTON	RIVERTON REGIONAL	2/1756	VOR RWY 28, AMDT 8A
02/28/02	TN	DAYTON	MARK ANTON	2/1777	NDB OR GPS RWY 3, AMDT 1
02/28/02	CA	STOCKTON	STOCKTON METROPOLITAN	2/1778	VOR RWY 29R AMDT 18

FDC Date	State	City	Airport	FDC No.	Subject
02/28/02	HI	HILO	HILO INTL	2/1789	ILS RWY 26, AMDT 12
03/01/02	HI	HONOLULU	HONOLULU INTL	2/1811	ILS RWY 4R, AMDT 11A
03/04/02	FL	PENSACOLA	PENSACOLA REGIONAL	2/1885	VOR RWY 8, AMDT 3A
03/04/02	GA	LAWRENCEVILLE	GWINNETT COUNTY-BRISCOE FIELD.	2/1889	NDB OR GPS RWY 25, ORIG–B
03/04/02	GA	LAWRENCEVILLE	GWINNETT COUNTY-BRISCOE FIELD.	2/1891	ILS RWY 25, AMDT 1A
03/04/02	CT	WILLIMANTIC	WINDHAM	2/1904	LOC RWY 27, AMDT 2
03/04/02	CT	WILLIMANTIC	WINDHAM	2/1905	VOR OR GPS–A, AMDT 8
03/06/02	NY	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	2/1950	ILS RWY 16, AMDT 6A
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/1969	ILS RWY 16R, AMDT 13B
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2010	ILS RWY 34L, AMDT 5B
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2012	NDB OR GPS RWY 34L, AMDT 4A
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2014	NDB OR GPS RWY 34, ORIG–A
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1991	LOC RWY 35, AMDT 5D
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1992	NDB OR GPS RWY 35, AMDT 5D
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1993	VOR RWY 35, AMDT 15C
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2005	VOR/DME RNAV RWY 22, AMDT 4A
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2006	LOC RWY 22, AMDT 5
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2007	NDB RWY 22, AMDT 12
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2009	GPS RWY 22, ORIG
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARTP, TARANTINE FLD.	2/2015	NDB OR GPS RWY 28, AMDT 6A
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARPT, TARANTINE FLD.	2/2016	VOR OR GPS–A, AMDT 5A
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARPT, TARANTINE FLD.	2/2017	LOC RWY 28, AMDT 3A
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE	2/2083	ILS RWY 20L, AMDT 7B
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE	2/2084	VOR/DME OR GPS RWY 20L, AMDT 1A
03/11/02	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	2/2089	RNAV (GPS) RWY 27L, ORIG
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2120	ILS RWY 32, AMDT 17A
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2121	VOR OR TACAN RWY 32, AMDT 24B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2122	NDB RWY 32, AMDT 3B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2123	VOR OR TACAN RWY 14, ORIG–B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2124	RNAV (GPS) RWY 14, ORIG
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2125	RNAV (GPS) RWY 32, ORIG–A
03/13/02	AK	TALKEETNA	TALKEETNA	2/2142	VOR–A, AMDT 9B
03/13/02	AK	TALKEETNA	TALKEETNA	2/2143	GPS RWY 35, ORIG–A
03/13/02	AK	TALKEETNA	TALKEETNA	2/2143	VOR/DME RWY 36, AMDT 1B
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2164	NDB RWY 20, AMDT 3B
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2169	GPS RWY 2, ORIG
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2170	GPS RWY 20, ORIG
03/13/02	GA	METTER	METTER MUNI	2/2172	NDB OR GPS RWY 10, AMDT 2
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2175	SDF RWY 20, AMDT 2B
02/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2178	VOR/DME RWY 2, ORIG–B
03/13/02	ND	FARGO	HECTOR INTL	2/2184	VOR OR TACAN RWY 35, AMDT 12B
03/13/02	ND	FARGO	HECTOR INTL	2/2185	HI–VOR OR TACAN RWY 35, ORIG
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2008	GPS RWY 4, ORIG

[FR Doc. 02–6968 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30300; Amdt. No. 2097]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 it effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" Under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on March 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701, and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 18, 2002*

Montgomery, AL, Montgomery Regional (Dannelly Field), NDB OR GPS RWY 10, Amdt 18C
Los Angeles, CA, Los Angeles Intl, NDB RWY 24R, Amdt 13
Los Angeles, CA, Los Angeles Intl, ILS RWY 6R, Amdt 16
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt 11
Los Angeles, CA, Los Angeles Intl, ILS RWY 7R, Amdt 4
Los Angeles, CA, Los Angeles Intl, ILS RWY 7L, Amdt 5
Los Angeles, CA, Los Angeles Intl, ILS RWY 24R, Amdt 22
Los Angeles, CA, Los Angeles Intl, ILS RWY 24L, Amdt 23
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt 14
Los Angeles, CA, Los Angeles Intl, ILS RWY 25L, Amdt 8
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 6R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 6L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 24R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 24L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25L, Orig
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RADAR–1, Amdt 4A, CANCELLED
Orlando, FL, Executive, RADAR–1, Amdt 25, CANCELLED
Orlando, FL, Orlando Intl, RADAR–1, Amdt 5B, CANCELLED
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Orig
Springfield, MO, Springfield-Branson Regional, VOR/DME OR TACAN RWY 2, Orig
Las Vegas, NV, McCarran Intl, ILS RWY 25L, Amdt 3
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY IL, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 1R, Orig
Las Vegas, NV, McCarran Intl, GPS RWY 1R, Orig, CANCELLED
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 19L, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 19R, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 25L, Orig
Lexington, NC, Davidson County, LOC/DME RWY 6, Orig
Monroe, NC, Monroe, NDB RWY 5, Amdt 3
Atlanta, TX, Hall-Miller Muni, RNAV (GPS) RWY 5, Orig
Atlanta, TX, Hall-Miller Muni, NDB RWY 5, Amdt 3
San Angelo, TX, San Angelo Regional/Mathis Field, VOR/DME OR TACAN RWY 3, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, RNAV (GPS) RWY 3, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, GPS RWY 3, Orig, CANCELLED

** * * Effective May 16, 2002*

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-D

** * * Effective June 13, 2002*

Manassas, VA, Manassas Regional/Harry P. Davis, NDB OR GPS–A, Amdt 8C, CANCELLED

The FAA published an Amendment in Docket No. 30290, Amdt. No. 2088 to Part 97 of the Federal Aviation Regulations (67 FR 3612; dated January 25, 2002) under § 97.33 effective April 18, 2002 which is hereby rescinded:

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig

[FR Doc. 02–6967 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7161–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Kansas, Missouri and Nebraska; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: On January 29, 2002, EPA published a direct final action approving the Commercial and Industrial Solid Waste Incineration (CISWI) negative declaration submitted by Nebraska. We are correcting a citation for the entry for Nebraska.

DATES: This action is effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

On January 29, 2002 (67 FR 4179), EPA published a direct final action approving the Commercial and Industrial Solid Waste Incineration (CISWI) negative declaration submitted by the states of Kansas, Missouri, and Nebraska.

The new entry in 40 CFR part 62, subpart CC-Nebraska contained an incorrect section numerical listing. The correct citation is: § 62.6916.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect citation in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects a citation in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices,

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provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of April 1, 2002. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction is not a "major rule" as defined by 5 U.S.C. 804 *et seq.* (2).

List of Subjects 40 CFR Part 62

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Sulfur oxides, Waste treatment and disposal.

Accordingly, 40 CFR part 62, subpart CC-Nebraska, paragraph four is corrected to read:

In rule FR Doc. 02–2119 published on January 29, 2002 (67 FR 4179), make the following correction. On page 4181, in the second column, the § number "62.6915" is corrected to read "62.6916."

Dated: March 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–6942 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7160–4]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 16 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability; notice of data availability.

SUMMARY: This notice of acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: refrigeration and air conditioning; aerosols; and adhesives, coatings, and inks. In addition, we are notifying the public of new information available on the toxicity of HCFC–225ca and HCFC–225cb, acceptable substitutes used in solvents cleaning.

EFFECTIVE DATE: March 22, 2002.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260–7548. You may inspect the docket between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. Submissions to EPA for the use of the substitutes listed in this document may be found under category VI–D of EPA docket A–91–42. You can find other materials supporting the decisions in this action under category IX–B of EPA docket A–91–42.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2155, by e-mail at *sheppard.margaret@epa.gov*, or by mail at U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC, 20001.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/title6/snap/*.

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Aerosols
C. Adhesives, Coating and Inks
II. New Data Available on the Toxicity of HCFC–225ca/cb
III. Section 612 Program
A. Statutory Requirements
B. Regulatory History
Appendix A—Summary of Acceptable Decisions
Appendix B—New Information Available

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: refrigeration and air conditioning; aerosols; and adhesives, coatings, and inks. For copies of the full list of SNAP decisions in all industrial sectors, visit EPA's Ozone Depletion web site at *http://www.epa.gov/ozone/title6/snap/lists/index.html*.

The sections below discuss the substitute listing in detail. Appendix A contains a table summarizing today's listing decisions. The statements of further information contained in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the "further information" may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the "further information" column of the table to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

A. Refrigeration and Air Conditioning

1., 2., 3. and 4. PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15

EPA's decision: The chemical blends submitted to EPA with the unregistered trade names PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15 are acceptable for use in new equipment as substitutes for:

- CFC–13, CFC–113, CFC–114 and blends thereof in very low temperature refrigeration.

IGC Polycold Systems Inc., the submitter of the above-listed blends, claims that the compositions of these HFC blends, tailored for use in its equipment, are confidential business information. Despite the trade names of these refrigerants, they are not perfluorocarbons. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–268.

Environmental information: The ozone depletion potential (ODP) of each of these four blends is zero.

The global warming potentials (GWPs) of the blends are between 7500 and 8500; therefore, EPA strongly encourages prompt identification and repair of any leaks that may occur. EPA notes that many of the alternatives already listed as acceptable for use within the very low temperature refrigeration end use have GWPs this high or higher, and encourages the continued search for lower-GWP alternatives for this end use. The contribution of these blends to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

Some components of these blends have not been exempted from listing as volatile organic compounds (VOCs) under Clean Air Act regulations for purposes of State Implementation Programs (SIPs) to control ground-level ozone.

Flammability information: These four blends are nonflammable. The individual components of the blends exhibit little to no flammability.

Toxicity and exposure data: All components in these blends have eight-hour time-weighted average occupational exposure limits, such as Workplace Environmental Exposure Levels (WEELs) from the American Industrial Hygiene Association (AIHA), of approximately 1,000 ppm. EPA expects users to follow all recommendations specified in the material safety data sheets (MSDSs) for the blends and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants: The Polycold HFC blends reduce risk to the public compared to the ODSs they replace because they have no ODP. The other substitutes already listed as acceptable for very low temperature refrigeration either (1) have an ODP, (2) have a higher GWP than the Polycold HFC blends, (3) have lower energy efficiency compared to the Polycold HFC blends, resulting in an even higher GWP, or (4) have not been developed into a useful technology for this end use. In addition, there are relatively few acceptable substitutes in this end use with no ODP. Thus, we find that the Polycold HFC blends are acceptable because they reduce overall risk to public health and the environment in the end uses listed.

5. HFE–7000

EPA's decision: Hydrofluoroether (HFE)–7000 is acceptable for use in new and retrofit equipment as a substitute for:

- HCFC–123 in very low temperature refrigeration;
- CFC–11 and CFC–113 in industrial process refrigeration; and
- CFC–11 and CFC–113 in non-mechanical heat transfer.

3M, the submitter of the above-listed blends, indicates that this chemical is also known as HFE–301 and propane, 1,1,1,2,2,3,3 hepta fluoro-3-methoxy or 1-(methoxy)-1,1,2,2,3,3,3-heptafluoropropane. The empirical formula is C4H3F7O and it is also identified as CH3–O–CF2–CF2–CF3 and R–E347mcc1. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–272.

Environmental information: The ODP of HFE–7000 is zero. The GWP is estimated to range between 140 (World Meterological Organization estimate) and 400 (derived from Ninomiya et.al., 2000) relative to carbon dioxide, using a 100-year time horizon. The World Meteorological Organization previously estimated an atmospheric lifetime of 1.3 years, but more recent experimental data indicates a lifetime of 4.7 years (Ninomiya et.al., 2000).

This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability information: This chemical is nonflammable.

Toxicity and exposure data: The manufacturer has recommended an acceptable exposure limit (AEL) of 75 ppm over an eight-hour time-weighted average. EPA believes this exposure limit will be protective of human health and safety. We expect users to follow all recommendations specified in the MSDS for this refrigerant and other safety precautions common in the refrigeration and air conditioning industry. This substitute was submitted to the Agency as part of a Premanufacture Notice (PMN) under the Toxic Substances Control Act (TSCA).

Comparison to other refrigerants: HFE–7000 is less toxic than HCFC–123 and is not an ozone depleter; thus, in the very low temperature end use, it reduces risk overall compared to CFC–11, CFC–113, and HCFC–123, the ODS it replaces. The GWP and atmospheric lifetime of HFE–7000 are lower than those of other acceptable alternatives in very low temperature refrigeration.

There are few alternatives for CFC–11 and CFC–113 in non-mechanical heat transfer, and HFE–7000 has a comparable or lower GWP than those alternatives. HFE–7000 has lower or comparable GWP and an ODP of zero, compared to most other substitutes available for industrial process refrigeration. Thus, we find that HFE–7000 is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

6. ISCEON 39TC

ISCEON 39TC is acceptable for use in new and retrofit equipment as a substitute for CFC–12 in:

- Centrifugal chillers;
- Industrial process refrigeration;
- Industrial process air conditioning;
- Cold storage warehouses; and
- Ice skating rinks.

Rhodia Organique Fine Limited, the submitter of the above-listed refrigerant, claims the composition to be confidential business information. The submitter indicates that the refrigerant, also known as Centri-Cool, is a blend of two hydrofluorocarbons (HFCs). You can find a version of the submission with information claimed confidential by the

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submitter removed, in EPA Air Docket A–91–42, item VI–D–279.

Environmental information: The ozone depletion potential (ODP) of ISCEON 39TC is zero. The Global Warming Potential (GWP) of each of the two components is roughly 2000 to 3000 (relative to carbon dioxide, using a 100-year time horizon).

One component of this blend has not been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations for purposes of State implementation plans (SIP) to control ground-level ozone.

Flammability information: Neither component, nor the blend, is flammable.

Toxicity and exposure data: Both components of the blend have workplace guidance level exposure limits on the order of 1000 ppm. EPA believes this exposure limit will be protective of human health and safety. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants: ISCEON 39TC is not an ozone depleter; thus, it reduces risk overall compared to CFC–12, the ODS it replaces. ISCEON 39TC has a comparable or lower GWP than the other substitutes for CFC–12. Thus, we find that ISCEON 39TC is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

7. R–404A

R–404A is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in:

- Industrial process refrigeration.

R–404A is a blend of 44% by weight HFC–125 (pentafluoroethane), 52% by weight HFC–143a (1,1,1-trifluoroethane) and 4% by weight HFC–134a (1,1,1,2-tetrafluoroethane). You may find the submission under EPA Air Docket A–91–42, item VI–D–283. EPA previously listed R–404A as an acceptable substitute for CFC–12 in industrial process refrigeration and other end uses in the original SNAP rule (March 18, 1994; 59 FR 13044).

Environmental information: The ozone depletion potential (ODP) of R–404A is zero. The Global Warming Potentials (GWP) of HFC–125, HFC–143a and HFC–134a are 3400, 4300 and 1300, respectively (relative to carbon dioxide, using a 100-year time horizon). The contribution of this blend to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

All components of this blend have been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations for purposes of the State implementation plan (SIP) program.

Flammability information: The component HFC–143a is moderately flammable; however, the blend is not flammable nor does it fractionate into a flammable mixture.

Toxicity and exposure data: All components of the blend have workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–404A will adhere to the AIHA's WEELs.

Comparison to other refrigerants: R–404A is not an ozone depleter; thus, it reduces risk overall compared to HCFC–22, the ODS it replaces. R–404A has a comparable or lower GWP than the other substitutes for HCFC–22 and no ODP. Thus, we find that R–404A is acceptable because it reduces overall risk to public health and the environment in the end use listed.

8. Update: Formulation of NU–22 Changed

ICOR International has indicated that it is changing the composition of NU–22. On December 18, 2000, EPA found the original formulation acceptable for a variety of end-uses. At that time, the composition was claimed as confidential business information (CBI); however, the submitter has withdrawn that claim. The original formulation was 28.1% by weight pentafluoroethane (HFC–125), 70% 1,1,1,2-tetrafluoroethane (HFC–134a) and 1.9% isobutane (HC–600a). ICOR International has indicated it will not market this formulation. We are modifying the previous acceptability determination to now list this blend by its composition [R–125/134a/600a (28.1/70.0/1.9)] (rather than as NU–22) as an acceptable substitute for HCFC–22 in new and retrofit applications in the following end-uses:

- Industrial process refrigeration and air-conditioning:
- Centrifugal chillers;
- Reciprocating chillers;
- Residential air conditioning and heat pumps;
- Residential dehumidifiers;
- Refrigerated transport;
- Motor vehicle air conditioning (buses only).

The composition of NU–22 has been changed to 46.6% by weight pentafluoroethane (HFC–125), 50% 1,1,1,2-tetrafluoroethane (HFC–134a) and 3.4% butane, also known as n-butane (HC–600). This composition is identical to that of the refrigerant ISCEON 59. The manufacturer of ISCEON 59 has applied for assignment under the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc. (ASHRAE) Standard 34. The designation of R–417A has been recommended; however, this has not yet been formally published in an addendum or revision to ASHRAE Standard 34.

EPA previously found ISCEON 59 acceptable for several end-uses on December 6, 1999 at 64 FR 68040. That finding now applies to NU–22. NU–22 [R–125/134a/600 (46.6/50.0/3.4)] is acceptable for use in new and retrofit equipment as a substitute for R–22 in:

- Household and light commercial air-conditioning
- Commercial comfort air-conditioning (centrifugal chillers; reciprocating and screw chillers)
- Industrial process refrigeration;
- Industrial process air-conditioning;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Commercial ice machines;
- Vending machines;
- Water coolers;
- Household refrigerators;
- Household freezers;
- Ice skating rinks;
- Non-mechanical heat transfer.

B. Aerosols

1. HFC–245fa

EPA's decision: *Hydrofluorocarbon-245fa is acceptable as a substitute for:*

- CFC–113 and HCFC–141b in the aerosol solvent end use.

This compound is also known as HFC–245fa or 1,1,1,3,3-pentafluoropropane. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–274. EPA has previously found HFC–245fa acceptable for use in certain foam blowing (64 FR 68041, December 6, 1999) and refrigeration and air conditioning applications (65 FR 37901, June 19, 2000).

Environmental information: HFC–245fa has an ozone depletion potential of zero. It has a global warming potential (GWP) of 1022. This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability: HFC–245fa is non-flammable.

Toxicity and exposure data: We expect users to follow all recommendations specified in the manufacturer's MSDS for HFC–245fa. We also expect that the workplace environmental exposure will not exceed the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limit (WEEL) of 300 ppm.

Comparison to other aerosols: HFC–245fa's global warming potential (GWP) is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFC–245fa reduces risk overall compared to the substances it replaces. HFC–245fa:

(1) Is non-flammable and reduces the risk of fire compared to flammable aerosol solvents,

(2) Is less toxic than many of the non-flammable aerosol solvents, and

(3) Has a GWP comparable to or less than other substitute aerosol solvents and has no ODP.

Thus, we find that HFC–245fa is acceptable because it reduces overall risk to public health and the environment in the aerosol solvent end use.

C. Adhesives, Coatings and Inks

1. HFE–7100

EPA's decision: Hydrofluoroether-7100 is an acceptable substitute for:

- CFC–113, HCFC–141b, and methyl chloroform in adhesives, coatings, and inks.

Hydrofluoroether-7100 is also called HFE–7100; $C_4F_9OCH_3$;$C_5F_9OH_3$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. HFE–7100 also may be used as a carrier for lubricant coatings.

Environmental information: HFE–7100 has an ozone depletion potential (ODP) of zero, a global warming potential (GWP) of 390 over a 100-year time horizon, and an atmospheric lifetime of 4.1years. This chemical has been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations.

Flammability: HFE–7100 is non-flammable.

Toxicity and exposure data: HFE–7100 has low toxicity. HFE–7100 has a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

Comparison to other carrier solvents in adhesives, coatings, and inks: HFE–7100's GWP is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFE–7100 reduces risk overall compared to the substances it replaces.

HFE–7100:

(1) Is non-flammable and reduces the risk of fire compared to flammable carrier solvents,

(2) Is less toxic than the non-flammable carrier solvents, and

(3) Has a GWP comparable to or less than other substitute carrier solvents and has no ODP.

Thus, we find that HFE–7100 is acceptable because it reduces overall risk to public health and the environment in the adhesives, coatings, and inks end uses.

2. HFE–7200

EPA's decision: Hydrofluoroether-7200 is an acceptable substitute for:

- CFC–113, HCFC–141b, and methyl chloroform in adhesives, coatings, and inks.

Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_6F_9OH_5$; and ethoxynonafluorobutane, iso and normal. HFE–7200 also may be used as a carrier for lubricant coatings.

Environmental information: HFE–7200 has an ODP of zero, a GWP of 55 and an atmospheric lifetime of 0.9 years. This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability: HFE–7200 has no flash point. Its flammability range in air is 2.4–12.4%.

Toxicity and exposure data: The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). We also expect that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

Comparison to other carrier solvents in adhesives, coatings, and inks: HFE–7200's GWP is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFE–7200 reduces risk overall compared to the substances it replaces.

HFE–7200:

(1) Reduces the risk of fire compared to more flammable carrier solvents,

(2) Is less toxic than the non-flammable carrier solvents, and

(3) Has a GWP comparable to or less than other substitute carrier solvents and has no ODP.

Thus, we find that HFE–7200 is acceptable because it reduces overall risk to public health and the environment in the adhesives, coatings, and inks end uses.

II. New Data Available on the Toxicity of HCFC–225ca/cb

The manufacturer of HCFC–225ca/cb conducted a review of the toxicity of HCFC–225ca, HCFC–225cb, and the mixture of the two isomers. The manufacturer's new analysis indicates that exposure limits of 50 ppm, 400 ppm, and 100 ppm, respectively, for the -ca and -cb isomers and for the commercial formulation of HCFC–225ca/cb may be appropriate. The company that produces HCFC–225 ca/cb has indicated to EPA that they may petition the American Industrial Hygiene Association, a voluntary standard setting committee, to set a Workplace Environmental Exposure Level using these new data.

When EPA originally reviewed HCFC–225ca/cb, we found this substitute acceptable subject to use conditions in solvents cleaning (June 13, 1995; 60 FR 31099) and acceptable in aerosol solvents (April 28, 1999; 64 FR 22993) as a substitute for methyl chloroform and CFC–113. At the time of our determination, we stated that the company-set exposure limit of 25 ppm for the -ca isomer and 250 ppm for the -cb isomer would be protective of human health. The condition for use of HCFC–225 as a non-aerosol cleaning solvent specified that users must meet the company-set exposure limit of 25 ppm for the -ca isomer.

EPA has also done our own assessment of the toxicity using all available toxicity studies and a benchmark dose approach to arrive at an acceptable exposure limit. Our analysis indicates that the manufacturer's revised exposure limits are sufficiently protective of human health. You can find this information in a document titled, "Recommendation of AELs for HCFC–225ca, HCFC–225cb, and HCFC–225 ca/cb." This document is in EPA's Air Docket #A–91–42, item IX–B–73. To obtain a copy, you can contact the EPA Air Docket at the address and phone number listed above in the **ADDRESSES**

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section at the beginning of this document.

III. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.
- 90-day Notification—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

- Refrigeration and air conditioning;
- Foam blowing;
- Solvents cleaning;
- Fire suppression and explosion protection;
- Sterilants;
- Aerosols;
- Adhesives, coatings and inks; and
- Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *www.epa.gov/ozone/title6/snap/chron.html*. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 1, 2002.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A—Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-use	Substitute	Decision	Further information
Very low temperature refrigeration (new equipment only).	PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15 as substitutes for CFC–13, CFC–113, CFC–114 and blends thereof.	Acceptable.	
Very low temperature refrigeration (retrofit and new).	Hydrofluoroether-7000 as a substitute for HCFC–123.	Acceptable.	
Industrial process refrigeration (retrofit and new).	Hydrofluoroether-7000 as a substitute for CFC–11 and CFC–113.	Acceptable.	
	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
	R–404A as a substitute for HCFC–22.	Acceptable.	
Non-mechanical heat transfer (retrofit and new).	Hydrofluoroether-7000 as a substitute for CFC–11 and CFC–113.	Acceptable.	

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information
Centrifugal chillers (retrofit and new)	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Industrial process air conditioning (retrofit and new).	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Cold storage warehouses (retrofit and new).	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Ice skating rinks (retrofit and new)	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
The following end-uses (retrofit and new): • Centrifugal chiller • Reciprocating chillers • Industrial process refrigeration • Industrial process air-conditioning • Refrigerated transport • Residential air conditioning and heat pumps • Residential dehumidifiers • Motor vehicle air conditioning, buses only	R125/134a/600a (28.1/70.01/1.9)] as a sustitute for HCFC–22.	Acceptable.	
The following end-uses (retrofit and new): • Household and light commercial air-conditioning • Centrifugal chiller • Reciprocating chillers • Screw chillers • Industrial process refrigeration • Industrial process air-conditioning • Cold storage warehouses • Refrigerated transport • Retail food refrigeration • Commercial ice machines • Vending machines • Water coolers • Household refrigerators • Household freezers • Ice skating rinks • Non-mechanical heat transfer	NU–22/ISCEON 59 [R–125/134a/600 (46.6/50.0/3.4] as a substitute for HCFC–22.	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigerating and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
Aerosol solvents	HFC–245fa as a substitute for CFC–113 and HCFC–141b.	Acceptable	EPA expects that the workplace environmental exposure will not exceed the Workplace Environmental Exposure Limit of 300 ppm and that users will observe the manufacturer's recommendations in MSDSs.
Adhesives, Coatings, and Inks			
Adhesives, coatings, and inks	Hydrofluoroether-7100 as a substitute for CFC–113, HCFC-141b, and methyl chloroform.	Acceptable.	
Adhesives, coatings, and inks	Hydrofluoroether-7200 as a substitute for CFC–113, HCFC-141b, and methyl chloroform.	Acceptable.	

Appendix B—New Information Available

NON-AEROSOL CLEANING SOLVENTS

End-use	Substitute	Information available
Metal cleaning, Electronics cleaning, Precision cleaning.	HCFC–225ca/cb	Report on benchmark dose analysis of acceptable exposure limit for HCFC–225ca/cb, HCFC–225ca, and HCFC–225cb. See Docket A–91–42, item IX–B–73.

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NON-AEROSOL CLEANING SOLVENTS—Continued

End-use	Substitute	Information available
Aerosols		
Aerosol solvents	HCFC–225ca/cb	Report on benchmark dose analysis of acceptable exposure limit for HCFC–225ca/cb, HCFC–225ca, and HCFC–225cb. See Docket A–91–42, item IX–B–73.

[FR Doc. 02–6848 Filed 3–21–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–CN]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on July 31, 2001 entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update".

EFFECTIVE DATE: This correction is effective October 1, 2001, except for certain wage index corrections that are effective December 1, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION: In the July 31, 2001 final rule entitled "Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update" (66 FR 39562), there were several technical errors in the preamble involving the SNF PPS wage index values. Accordingly, we are correcting several SNF PPS wage index values as published in Table 7.

Specifically, effective October 1, 2001, the wage index value for the Albuquerque, NM Metropolitan Statistical Area (MSA) (area 0200) is corrected from 0.9750 to 0.9759, and the wage index value for the Killeen-Temple, TX MSA (area 3810) is corrected from 0.7292 to 0.7940.

In addition, effective December 1, 2001, the wage index value for the Boston, MA MSA (area 1123) is corrected from 1.1289 to 1.1378, the wage index value for the Savannah, GA MSA (area 7520) is corrected from 0.9243 to 1.0018, and the wage index value for the Killeen-Temple, TX MSA (area 3810) is corrected again from 0.7940 (as corrected in the previous paragraph) to 0.8471.

In accordance with our longstanding policies, these technical and tabulation errors are being corrected prospectively, effective on the dates noted above. This correction notice conforms the published SNF PPS wage index values to the prospectively revised values and does not represent any changes to the policies set forth in the final rule.

The corrections appear in this document under the heading "Correction of Errors". The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on July 31, 2001, except for those wage index corrections that we specifically noted to be effective December 1, 2001.

Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations and does not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

Correction of Errors

In FR Doc. 01–18869 of July 31, 2001 (66 FR 39562), we are making the following corrections:

Corrections to Preamble

1. On page 39572, in column 3 of Table 7, "Wage Index for Urban Areas", the entry of "0.9750" for the Albuquerque, NM MSA (area 0200) is revised to read "0.9759".

2. On page 39573, in column 2 of Table 7, "Wage Index for Urban Areas", the entry of "1.1289" for Boston, MA MSA (area 1123) is revised by adding "1.1378 (effective December 1, 2001)".

3. On page 39575, in column 3 of Table 7, "Wage Index for Urban Areas", the entry of "0.7292" for the Killeen-Temple, TX MSA (area 3810) is revised to read "0.7940" and by adding "0.8471 (effective December 1, 2001)".

4. On page 39578, in column 1 of Table 7, "Wage Index for Urban Areas", the entry of "0.9243" for the Savannah, GA MSA (area 7520) is revised by adding "1.0018 (effective December 1, 2001)".

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93–773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2002.

Dennis Williams,

Acting, Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 02–6757 Filed 3–21–02; 8:45 am]
BILLING CODE 4120–01–P

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417 and 422

[CMS–1181–F]

RIN 0938–AK90

Medicare Program; Modifications to Managed Care Rules Based on Payment Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and Technical Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations to reflect changes in the Social Security Act (the Act), enacted in certain sections of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to the Medicare+Choice (M+C) program. This final rule only makes conforming changes to the regulations that implement the sections of the BIPA, and do not have any substantive effect.

This final rule also makes technical corrections to the M+C regulation published on June 29, 2000 (65 FR 40170). The remainder of the sections of the BIPA relating to the M+C program will be addressed in a subsequent proposed rule.

DATES: This final rule is effective May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Al D'Alberto, (410) 786–1100.

SUPPLEMENTARY INFORMATION:

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the original Medicare fee-for-service program or an M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not previously authorized. Three types of M+C plans were authorized under the new Part C:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (that is, combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

The BBA also enacted new beneficiary protections and quality assurance requirements, a new methodology for paying risk contractors, and new enrollment rules.

B. Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub.L. 106–113) amended the M+C provisions of the Act. These amendments were implemented in a final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). We received 5 comments in response to that final rule, which will be part of the future rulemaking implementing discretionary provisions of the BIPA.

Section 501 of the BBRA amended section 1851(e)(4) of the Act to permit enrollees to receive certain rights ordinarily effective when an M+C plan terminates, at the time the beneficiary receives notice of the termination, as well as when the termination takes effect. These rights include an open enrollment period during which other M+C plans must be open, and the right to choose certain Medigap plans. It also amended section 1851(e)(2) to provide for continuous open enrollment for institutionalized individuals.

Section 502 amended section 1851(f)(2) of the Act to provide that if an election or change in election to an M+C plan were made after the 10th day of a calendar month, the election would be effective the first day of the second calendar month following the date the election or change in election was made, not the first calendar month. In section 503, which amended section 1876(h)(5)(B) of the Act, the BBRA also permitted the extension or renewal of Medicare cost contracts for an additional 2 years, through December 31, 2004. Section 511(a) amended section 1853(a) of the Act by revising the original risk adjustment transition schedule for calendar years (CY) 2000, 2001, and 2002.

Section 512 of the BBRA amended section 1853 of the Act by adding a new paragraph (i) to provide for new entry bonus payments to encourage M+C organizations to offer plans where there were no M+C plans serving the area. Section 513 amended section 1857(c)(4) of the Act to reduce from 5 years to 2 years the period during which an M+C organization that has terminated its M+C contract is barred from entering into a new M+C contract, and provided for a new exception to this rule in cases in which M+C payments are increased by statute or regulation subsequent to the decision to terminate.

M+C organizations were permitted to elect to apply the premium and benefit provisions of section 1854 of the Act uniformly to separate segments of a service area by the amendment in section 515 of the BBRA. The annual deadline for submission of adjusted community rate proposals was changed from May 1 to July 1 pursuant to section 516 of the BBRA, which amended section 1854(a)(1) of the Act.

The annual adjustment in the national per capita M+C growth percentage for 2002, found in section 1853(c)(6) of the Act, was revised by section 517 of the BBRA from a 0.5 percentage point reduction to a reduction of 0.3 percentage points. Section 518 of the BBRA amended section 1852(e)(4) of the Act to make changes in the procedures through which an M+C organization can be deemed by a private accreditation organization to meet certain M+C requirements, and added new categories of requirements that can be deemed to be met.

Section 1852(e)(2) of the Act was amended by section 520 of the BBRA to provide that PPO plans are required to meet only the quality assurance requirements that apply to private fee-for-service plans. Section 522 amended section 1857(e) of the Act by basing the M+C portion of the user fee on the percentage of all Medicare beneficiaries who have enrolled in M+C plans.

Finally, section 523 of the BBRA amended section 1859(e)(2) of the Act to provide that a religious fraternal benefit society could offer any type of M+C plan, and section 524 amended section 1877(b)(3) of the Act to specify that certain Medicare rules that established prohibitions on physician referrals did not apply for purposes of M+C organizations offering M+C coordinated care plans, although they would apply for purposes of M+C MSA plans and private fee-for-service plans.

C. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000, amended the M+C provisions of the Act in sections 601 through 634. In this final rule, we are only making conforming changes to the regulations to reflect amendments made in sections 601, 602, 603, 607, 608, 613, 619, and 634 of the BIPA. In those sections the Congress mandated that the Secretary take certain actions by certain

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deadlines, leaving no discretion in implementing these mandates. In a subsequent rulemaking, we will address the remaining sections of the BIPA that amend M+C provisions of the Act.

1. Increase in Minimum Payment Amount

Section 601 amended section 1853(c)(1)(B) of the Act by establishing new minimum payment amount rates (floor rates) in CY 2001 for months after February. The new monthly minimum rates for March through December of 2001 are as follows:

- $525 for any payment area in a Metropolitan Statistical Area (MSA) within the 50 States and the District of Columbia with a population of more than 250,000;
- $475 for any other area within the 50 States; or
- not more than 120 percent of the minimum amount rate for CY 2000 for any area outside the 50 States and the District of Columbia.

For January and February of 2001, the minimum amount rate is the minimum amount rate for the previous year increased by the national per capita M+C growth percentage, as described in § 422.254(b), for the year. Minimum amount rates for January and February 2001 are based on the M+C rate book published in the March 1, 2000 *Announcement of Calendar Year (CY) 2001 Medicare+Choice Payment Rates.* These rates are published on the Centers for Medicare & Medicaid Services (CMS) web site at *http://www.hcfa.gov/stats/hmorates/aapccpg.htm.* Minimum amount rates established by the BIPA for March through December 2001 are published in the January 4, 2001 *Revised Medicare+Choice (M+C) Payment Rates for Calendar Year (CY) 2001.* These rates are published on the CMS web site at *http://www.hcfa.gov/stats/hmorates/aapccpg/htm.*

The BIPA mandated that floor payment amounts are no longer established on a payment area basis. A single floor rate is now assigned to all payment areas (generally, a county) within MSAs of a certain size, and another floor rate is assigned to all other payment areas. If a payment area is located in an MSA with a population greater than 250,000, the BIPA changed the floor rate for that payment area, effective March 1, 2001. As a result, pre-BIPA revisions to prior years' growth estimates for that payment area cannot be linked to post-BIPA revisions for that payment area. Thus, revisions to prior years' growth estimates for area-specific rates will differ from revisions to prior years' growth estimates for floor rates. We are revising § 422.252(b) to reflect these changes.

2. Increase in Minimum Percentage Increase

Section 602 amended section 1853(c)(1)(C) of the Act by specifying that for March through December 2001, the minimum percentage increase rate is changed to 103 percent of the annual M+C capitation rate for a payment area for 2000. For January and February of 2001, for 2002, and for each succeeding year, the minimum percentage increase rate will be 102 percent of the prior year's annual M+C capitation rate. We have reflected this provision in § 422.252(c).

3. Phase-In of Risk Adjustment

Section 603 amended section 1853(a)(3)(C) of the Act by specifying that for CY 2002 and CY 2003, the risk adjustment method will be used to adjust only 10 percent of the M+C payment rate. (The BBRA provided that for 2002 the risk adjustment method would be used to adjust not more than 20 percent of the rate.) Under the BIPA, therefore, we will continue to apply the transition percentages applied in CYs 2000 and 2001, which are 90 percent demographic method and 10 percent risk adjusted method based on inpatient data, through CY 2003. This change for CY 2002 was announced in the January 12, 2001 *Advance Notice of Methodological Changes for Calendar Year (CY) 2002 Medicare+Choice (M+C) Payment Rates, which was published on our web site at http://www.hcfa.gov/stats/hmorates/45d2001.*

Under section 603 of the BIPA, for CY 2004, risk adjustment is to be based on both inpatient hospital and ambulatory data, and the percentage of the M+C payment rate that is risk adjusted is to increase to 30 percent of the capitation rate. The risk adjustment percentage is to increase to 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007 and succeeding years. We are revising § 422.256 to reflect these changes.

Although the risk adjustment methodology will not be based on both inpatient hospital and ambulatory data until 2004, we have been collecting physician and hospital outpatient data since 2001. In a letter to the American Association of Health Plans, the Health Insurance Association of America, the Blue Cross and Blue Shield Association, and all M+C organizations, dated May 25, 2001, the Secretary suspended the required filing of physician and hospital outpatient department encounter data through July 1, 2002, in contemplation of a re-assessment of our approach to implementing comprehensive risk adjustment.

4. Full Implementation of Risk Adjustment for Congestive Heart Failure Enrollees for 2001

Section 607 amended section 1853(a)(3)(C) of the Act to provide for full implementation of risk adjustment for congestive heart failure enrollees for 2001. Under the BBRA, the phase-in amount for risk adjustment was 10 percent in 2001. This section of the BIPA provides for 100 percent implementation of risk adjustment in 2001 for each enrollee who, as determined under the risk adjustment methodology, has a qualifying congestive heart failure inpatient hospital discharge diagnosis that occurred July 1, 1999 through June 30, 2000. This provision only applies, however, to enrollees who are enrolled in a coordinated care plan that was the only coordinated care plan, as of January 1, 2001, offered in the area where the enrollee lives. Full implementation of risk adjustment for congestive heart failure began January 1, 2001, and is not included in the computation of the M+C capitation rates. Payments began in the spring of 2001, retroactive to January 1, 2001, and will end on December 31, 2001. We will revise § 422.256 to reflect these changes.

5. Expansion of Application of Medicare+Choice New Entry Bonus

Section 608 of the BIPA amended section 1853(i)(1) of the Act to expand the application of the new entry bonus to M+C organizations that enter payment areas (generally counties) that have been unserved since January 1 2001. The BBRA established bonus payments to encourage M+C organizations to offer plans in areas that otherwise would not have an M+C plan available. The application of the new entry bonus is governed by three factors: the definition of unserved payment area, the date a plan is first offered, and the period of application of the bonus plan.

First, the BBRA, in section 512, defined a previously unserved payment area as:

- A payment area in which an M+C plan has not been offered since 1997; or
- A payment area in which an M+C plan (or plans) had been offered since 1997, but in which every M+C organization offering an M+C plan in that payment area since then has notified CMS (no later than October 13, 1999) that it would no longer offer M+C plans in that payment area as of January 1, 2000.

Second, under our interpretation of section 608, the date on which a plan is considered to be first offered is the date on which our contract with the M+C organization becomes effective and M+C beneficiaries may enroll in the plan. Two or more M+C organizations may be eligible for the bonus in the same previously unserved payment area if their M+C plans are first offered on the same date.

Third, the BBRA specified that the new entry bonus payments would only apply to M+C plans that are first offered during the period beginning January 1, 2000 and ending on December 31, 2001 (the period of application). This period of application is a 2-year window during which an M+C organization that enters a previously unserved payment area and offers the first M+C plan in that area will be eligible to begin receiving bonus payments.

Finally, the BBRA specified that the bonus payments to an eligible M+C organization would be 5 percent of the total monthly payment for that payment area for the first 12 months in the previously unserved payment area, and 3 percent for the second 12 months.

Section 608 of the BIPA extended by 1 year (to January 1, 2001) the time period during which an area could become an unserved payment area. The BIPA mandated that a payment area now will be considered a previously unserved payment area if:

- An M+C plan (or plans) had been offered since 1997; and
- Every M+C organization offering an M+C plan in that payment area since then has notified CMS (no later than October 3, 2000) that it would no longer offer M+C plans in that payment area as of January 1, 2001.

The effect of this section of the BIPA was to include additional payment areas in the definition of previously unserved payment area. The BBRA definition of a previously unserved payment area as a payment area in which an M+C plan has not been offered since 1997 remains unchanged.

Table 1 shows a comparison of the two different time periods in effect for the new entry bonus. Although the BIPA changed the time period defining a previously unserved payment area, it did not change the time period during which an M+C plan must first be offered (the period of application). The two time periods are the same: from January 1, 2000 through December 31, 2001.

TABLE 1.—COMPARISON OF BBRA AND BIPA PROVISIONS ON NEW ENTRY BONUS

Provision	BBRA	BIPA
Date a payment area becomes previously unserved	By January 1, 2000	By January 1, 2000 or by January 1, 2001.
Period of application (the window for M+C organizations to first offer an M+C plan in an unserved area).	January 1, 2000 through December 31, 2001.	January 1, 2000 through December 31, 2001.

We discussed the BIPA amendment to the new entry bonus in the January 12, 2001 *Advance Notice of Methodological Changes for Calendar Year 2002 Medicare+Choice Payment Rates,* published on our website at *http://www.hcfa.gov/stats/hmorates/cover01,* and in the March 1, 2001 *Announcement of Calendar Year 2002 Medicare+Choice Payment Rates.* In the March 1 announcement, we indicated that the 1-year extension in the time period defining an unserved area mandated by the BIPA also applied to the 2-year period of application. In effect, this would extend the end of the period of application window from December 31, 2001 to December 31, 2002. As a result, we stated that an M+C organization first offering a plan in a previously unserved payment area on January 1, 2002 would be eligible for the bonus payments.

After further analysis, we have determined that while the BIPA did expand the time period used to define a previously unserved payment area, it did not extend the period of application window during which an M+C organization must first offer a plan in a previously unserved area. The period of application remains January 1, 2000 through December 31, 2001. For example, an M+C organization that first offers a plan in a previously unserved payment area on January 1, 2002 would not be eligible for the new entry bonus payments. However, if the M+C organization first offers a plan in a previously unserved payment area prior to January 1, 2002, then the M+C organization would have first offered an M+C plan within the period of application and the organization would be eligible for new entry bonus payments.

We have reflected the changes in section 608 by the addition of § 422.250(g)(2)(iii).

6. Timely Approval of Marketing Material That Follows Model Marketing Language

Section 613 of the BIPA amended section 1851(h) of the Act by altering the review period for marketing materials that utilize, without modification, proposed model language as specified by us. The review period for these marketing materials was reduced from 45 days to 10 days. All other marketing materials will remain subject to the 45-day review period. We have revised § 422.80(a)(1) to reflect this change.

7. Restoring Effective Date of Elections and Changes of Elections of Medicare+Choice Plans

Section 619 of the BIPA amended section 1851(f) of the Act to reestablish the original BBA effective date of elections or changes in elections to M+C plans during an open enrollment period. The effective date for these elections in the BBA provisions establishing the M+C program was the first day of the calendar month following the election or change in election during an open enrollment period. The BBRA changed this effective date in the case of an election or change in election made after the 10th of the month. Under the BBRA, an election or change in election made after the 10th of the month during an open enrolment period was effective the first day of the second calendar month after the election or change in election. Section 619 of the BIPA reestablishes the original provision making an election or change of election made during an open enrollment period effective the first day of the calendar month following the election, regardless of the day of the month on which the election or change of election is made. We are revising § 422.68(c) to reflect this change, which was effective on June 1, 2001.

8. Service Area Expansion for Medicare Cost Contracts During Transition Period

Section 634 of the BIPA amended section 1876(h)(5) of the Act by revising the limitation on expansion of service areas for cost contracts. We must now accept and approve applications to expand the service area of cost contracts if they are submitted on or before September 1, 2003 and we determine that the organization continues to meet

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the requirements applicable to the organization and to cost contracts under section 1876 of the Act. We are revising § 417.402(b) to reflect this change.

D. Technical Corrections

We are making a number of technical corrections to part 422. These corrections are technical and editorial in nature and do not alter the substance of the regulations. In some sections, they represent material that was inadvertently changed or omitted in the final rule published on June 29, 2000 (65 FR 40170). In § 422.100(d), in order to make clear that no change was intended in the final rule, we are restoring the words "level of" before "cost-sharing", as they appeared before "cost-sharing" in the June 26, 1998 interim final rule. This also makes the language consistent with the reference to the "level of cost-sharing" in § 422.304(b)(1).

In § 422.100(g)(2), we are restoring language that was inadvertently deleted in the final rule, by inserting, at the end of the sentence, before the word ":and", the words ", promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services." While these concepts arguably are captured in the reference to designing benefits to "discriminate" against particular beneficiaries, we want to clarify that the deletion of this language (which was not discussed in the preamble to the final rule) was not intended to make any change in our standards of review in this area.

In § 422.506(a)(4), we are correcting the number of years an M+C organization must wait to enter into a new contract with us after not renewing a contract, which is 2 years, not 5 years, as stated in the current rule. We are also making the same correction to § 422.512(e), by changing the "5" to a "2", to indicate the number of years an M+C organization must wait to enter into a new contract with us after they have terminated a contract.

II. Provisions of This Final Rule

The provisions of this final rule are as follows:

- In § 417.402, we are revising paragraph (b) to indicate that we must accept and approve service area expansion applications, provided they are submitted on or before September 1, 2003, and we determine that the organization continues to meet the requirements in section 1876 of the Act pertaining to cost contractors and the requirements in its cost contract.
- In § 422.68(c), we are indicating that for an election, or change in election, made during an open enrollment period, coverage is effective as of the first day of the first month following the month in which the election, or change in election, is made.
- In § 422.80, we are revising paragraph (a)(1) to indicate that the review period for marketing materials that utilize, without modification, proposed model language as specified by us, will be 10 days, not the 45 days required for all other marketing materials.
- In § 422.250, we are revising paragraph (g)(2) to extend the category of previously unserved payment areas to include a payment area in which every M+C organization that offered an M+C plan in that payment area notified us by October 3, 2000 that it will no longer offer an M+C plan in that payment area effective January 1, 2001. New entry bonus payments may be made to M+C organizations that first enter these payment areas from January 1, 2000 through December 31, 2001.
- In § 422.252, we are revising paragraph (b) to indicate that the minimum amount rate (floor rate) for a payment area for 1999, 2000, and January and February of 2001 is the minimum amount rate for the preceding year, increased by the national per capita growth percentage, as described in § 422.254(b), for the year. The floor rates for January and February 2001 are published in the March 1, 2000 *Announcement of Calendar Year 2001 Medicare+Choice Payment Rates (http://www.hcfa.gov/stats/hmorates/cover01)*. For March through December, 2001, the minimum amount rate for any area in an MSA within the 50 States and the District of Columbia with a population of more than 250,00 is $525; and for any other area within the 50 States, it is $475. For any area outside of the 50 States and the District of Columbia, the minimum amount rate cannot exceed 120 percent of the minimum amounts for those areas for CY 2000. We will also indicate in that section that for 2002, and each succeeding year, the minimum amount rate is the minimum amount for the preceding year, increased by the national per capita growth percentage, as described in § 422.254(b), for the year.

  We are also revising paragraph (c) to indicate that the minimum percentage increase for 1999, 2000, and January and February of 2001 is 102 percent of the annual M+C capitation rate for the preceding year. For March through December of 2001, the minimum percentage increase rate is 103 percent of the annual M+C capitation rate for 2000. For 2002, and for each succeeding year, the minimum percentage increase is 102 percent of the annual M+C capitation rate for the preceding year.
- In § 422.256, we are revising paragraph (d) to indicate changes to the phase-in schedule for risk adjustment. For payments beginning January 1, 2000 and ending December 31, 2003, the risk factor will be based on the inpatient hospital data and will comprise 10 percent of the monthly payment. For January 1, 2001 through December 31, 2001 only, this factor comprises 100 percent of the monthly payment for enrollees with a qualifying inpatient diagnosis of congestive heart failure who are enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001 in the enrollee's county. For payments beginning January 1, 2004, and for all succeeding years, the risk factor will include both inpatient and ambulatory data. The health status risk factor will be phased in according to the following schedule: 30 percent in 2004; 50 percent in 2005; 75 percent in 2006; and 100 percent in 2007 and succeeding years.

  The technical corrections in this final rule are as follows:
- In § 422.100(d)(2), we are correcting an omission by inserting the words "level of" before "cost-sharing", so that the sentence reads "At a uniform premium, with uniform benefits and level of cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.304(b)(2)."
- In § 422.100(g)(2), we are correcting an omission by inserting a phrase at the end of the section, so that it reads "M+C organizations are not designing benefits to discriminate against beneficiaries, promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services; and".
- In § 422.250(g)(2)(ii), we are making a correction by deleting the word "any" and replacing it with the word "all".
- In § 422.506(a)(4), we are correcting the number of years an M+C organization must wait to enter into a new contract with us after deciding not to renew a contract by deleting the "5" and replacing it with a "2".
- In § 422.512(e), we are making the same correction by changing the "5" to a "2", to indicate the number of years an M+C organization must wait to enter into a new contract with us after terminating a contract.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60 days notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(C)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact

A. Overall Impact

We have examined this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Unfunded Mandate Reform Act (UMRA, Pub. L. 104–4), the Regulatory Flexibility Act (RFA, Pub.L. 96–354, September 19, 1980), and the Federalism Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

As a result of changes to the M+C regulations that reflect provisions of the BIPA specified in sections 601, 602, 603, 607, 608, 613, 619, and 634, we have determined that this final rule is a major rule with economically significant effects, as defined in Title 5, United States Code, section 804(2), and under Executive Order 12866. The BIPA provisions addressed in this final rule will result in expenditures by the Federal government of more than $100 million annually. We estimate its impact will be to increase the aggregate payments to M+C organizations by approximately $1 billion in 2001, and approximately $11 billion during the 5-year period from FY 2001 through FY 2005.

Table 2 shows the estimated expenditures under these provisions of the BIPA for this 5-year period. The estimates are rounded to the nearest $5 million, with estimates of less than $5 million represented as $0 in the table. All assumptions applied in calculating the estimates were consistent with the assumptions underlying the President's FY 2002 budget baseline. The total direct impact of approximately $7 billion does not include the additional impact of approximately $4 billion attributable to the indirect effect of increases in fee-for-service expenditures over the same 5-year period. Thus, all provisions of the BIPA addressed in this final rule are expected to increase aggregate payments to M+C organizations by approximately $11 billion over the next 5 years, beginning with $1 billion for 2001. The new payment rates are effective March 1, 2001.

TABLE 2.—ESTIMATED EXPENDITURES FOR BIPA PROVISIONS IN THIS FINAL RULE

BIPA section and provision	Additional cash expenditures, 2001–2005 (in millions)
Sec. 601:	
Increase minimum payment amounts:	
Hospital Insurance (Part A)	$610.
Supplementary Medical Insurance (Part B)	$540.
Sec. 602:	
Increase minimum % pay increase for 2001	Included in figures for Section 601.
Sections 601 and 602 Total	$1,150.
Sec. 603:	
Phase-in of risk adjustment:	
Hospital Insurance (Part A)	$3,310.
Supplementary Medical Insurance (Part B)	$2,430.
Section 603 Total	$5,740.
Sec. 607:	
Full risk adjustment in 2001 for Congestive Heart Failure enrollees:	
Hospital Insurance (Part A)	$50.
Supplementary Medical Insurance (Part B)	$40.
Section 607 Total	$90.
Sec. 608:	
Expand M+C new entry bonus	Not estimable, due to unknown number of eligible M+C organizations. Likely to be $0. (Provision is in effect less than 5 years.)
Sec. 613:	
Timely approval of marketing materials	Not applicable.
Sec. 619:	
Restore effective date of elections	Not applicable.
Sec. 634:	
Service area expansion for Medicare cost contracts	Not applicable.
Total, direct impact of the provisions in this rule	$6,980.
Total, indirect impact of increases in fee-for-service expenditures	Approximately $4,000.
Total, direct and indirect impacts	Approximately $11,000.

The distribution of expenditures for the BIPA provisions included in this final rule varies by whether or not the payment areas served by the M+C organization are floor payment areas, and which type of floor applies. Under the M+C payment methodology prescribed in the BBA, the payment rate for each payment area for a year is the highest of three amounts:

- The minimum payment rate amount, or floor rate;
- The minimum percent increase rate, which is the payment amount received during the last year plus the minimum percent increase for the current year; or
- A blended rate, which is an amount derived from blending the payment area specific rate with a national rate based on historic spending under the original Medicare fee-for-service program.

Generally, a payment area is the same as a county. Floor payment areas are payment areas that receive the minimum, or floor payment rate amounts. Under the provisions of the BIPA, there are now two categories of floor payment areas, those in MSAs with populations of 250,000 or more that receive the $525 minimum payment rate, and all other payment areas that receive the $475 minimum payment rate. The BIPA also specifies that from March through December 2001, all payment areas for which the minimum percentage rate is the highest rate (the non-floor payment areas) will receive 103 percent of the prior year's payment rate amount.

Figure 1 shows the distribution of the three types of payment rates assigned to payment areas in 2001. A high proportion of payment areas receive the $475 floor rate. This floor rate predominates in the mountain states of the Western region and the west-central sections of the Midwest. (In CY 2001, all non-floor rates are the minimum percentage increase, since no payment areas receive a blended rate.)

For most rural areas in the United States, the M+C payment rate is the floor rate. In the June 2001 Report to the Congress, MedPAC examined the differences between urban and rural areas. The report stated that in 2000, 94 percent of Medicare beneficiaries living in a Metropolitan Statistical Area (MSA) with at least 1 million people had at least one M+C HMO offered where they lived. In contrast, only 16 percent of beneficiaries living adjacent to an MSA, but in an area without a town of at least 10,000 people had the option to enroll in an M+C HMO. Only 5 percent of the beneficiaries who lived in completely rural areas (not adjacent to any large or small MSA) had an M+C HMO option available where they lived.

BILLING CODE 4120-01-P

Figure 1
2001 Medicare+Choice Payment Rates, by Payment Area**



**Source: Medpac, Report to the Congress, June 2001

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Table 3 shows how the distribution of enrollees, payment areas, and payment increases varies according to the three payment categories mandated by the BIPA. Enrollment figures include all enrollees as of January 2001 and payment area figures are based on only those areas that have M+C enrollees.

Payment increases refer to the difference between pre-BIPA rates and the BIPA mandated 2001 rates that are effective March through December 2001.

Non-floor payment areas receive the smallest average payment increase of 1 percent above the pre-BIPA rates for CY 2001, and 75 percent of all M+C enrollees reside in these areas. The 53 percent of payment areas that receive the $475 floor rate for CY 2001 have payment increases, on average, of 8 percent. Two percent of all M+C enrollees live in these payment areas. The largest average increase in payment rates are in payment areas that receive the new $525 floor, where approximately one-quarter of all M+C enrollees live. The 18 percent of payment areas assigned the $525 floor receive an average payment increase of 9.7 percent.

TABLE 3.—DISTRIBUTION OF ENROLLEES AND PAYMENT INCREASES FOR 2001, BY THE BIPA PAYMENT CATEGORY

[In percent]

Payment category	Percent of M+C enrollees in payment category	Percent of payment areas in payment category	Average payment increase
$475 floor payment areas	2	55	8.3
$525 floor payment areas	23	15	9.7
Non-floor payment areas	75	30	1.0

Table 4 shows M+C enrollment by payment categories and geographical region. The table is based on January 2001 enrollment, and includes M+C enrollees in coordinated care and private fee-for-service M+C plans, but not enrollees in cost or other non-risk plans. Within each of the four Census regions, the States are ordered by size of M+C enrollment as of January 2001.

Although the map in Figure 1 may show that all three types of payment categories are present in a State, Table 4 may show that there are no M+C enrollees in 1 or 2 of the payment categories. For example, the map shows that South Dakota has at least 1 payment area that is assigned the non-floor rate, but Table 4 shows that there are no M+C enrollees in the non-floor areas.

TABLE 4.—PERCENT OF M+C ENROLLEES IN EACH STATE, BY BIPA PAYMENT CATEGORY

Enrollee residence	In percent			
	Percent enrollees in low-floor payment areas	Percent enrollees in high-floor payment areas	Percent enrollees in non-floor payment areas	Total M+C enrollees, January 2001
Nation	2	23	75	
Northeast:				
Connecticut	None	<1	100	67,051
New Jersey	None	2	98	154,100
Pennsylvania	2	4	94	507,626
Massachusetts	None	14	86	220,246
New York	2	26	72	393,403
Rhode Island	None	72	28	57,368
New Hampshire	10	90	None	1647
Maine	80	20	None	271
Vermont	100	None	None	96
Midwest:				
Michigan	<1	6	94	78,057
Illinois	4	24	72	149,886
Indiana	2	50	48	11,428
Ohio	2	52	46	237,371
Missouri	2	54	44	124,584
Kansas	<1	70	28	26,133
Iowa	8	92	None	2,446
Minnesota	2	98	None	38,804
Nebraska	2	98	None	8,305
N. Dakota	100	None	None	54
S. Dakota	100	None	None	585
Wisconsin	12	88	None	33,068
South:				
Alabama	<1	<1	100	54,285
Dist. of Columbia	None	None	100	3,715
Georgia	<1	<1	100	38,685
Louisiana	<1	<1	100	92,055
Maryland	<1	<1	100	15,220
Delaware	4	None	96	799
Florida	<1	8	92	667,825
Texas	2	8	92	203,968
W. Virginia	18	2	82	5,334
Mississippi	14	8	78	1,252

TABLE 4.—PERCENT OF M+C ENROLLEES IN EACH STATE, BY BIPA PAYMENT CATEGORY—Continued

Enrollee residence	In percent			
	Percent enrollees in low-floor payment areas	Percent enrollees in high-floor payment areas	Percent enrollees in non-floor payment areas	Total M+C enrollees, January 2001
Tennessee	2	44	52	31,930
Arkansas	34	40	26	17,722
S. Carolina	36	54	10	475
Kentucky	<1	94	6	18,642
Virginia	2	92	6	11,196
N. Carolina	16	82	2	45,192
Oklahoma	4	92	2	46,830
West:				
Alaska	2	None	98	116
California	<1	8	92	1,469,716
Arizona	2	22	76	235,366
Nevada	2	22	74	45,030
Colorado	8	54	38	130,181
Wyoming	78	None	22	97
Washington	6	88	6	149,854
Utah	38	60	2	351
Idaho	6	94	<1	5,344
New Mexico	6	94	<1	27,946
Oregon	10	90	<1	136,707
Hawaii	26	74	None	21,563
Montana	100	None	None	165

Under the BIPA, M+C organizations could qualify for higher payment rates, and the statute mandated that the increase in payments be used by the M+C organizations in the following ways:

- To reduce beneficiary premiums.
- To reduce beneficiary cost-sharing.
- To enhance benefits.
- To make contributions to a benefit stabilization fund to reserve funds for future use to offset premium increases or benefit reductions.
- To stabilize or enhance the network of health care providers.
- A combination of the above.

Table 5 describes how M+C organizations choose to use the higher payments for 2001 by showing the percentage of M+C enrollment by each type of fund use and within payment categories ($475 floor, $525 floor, and non-floor payment areas). Almost two-thirds of M+C enrollees are in M+C organizations that used the increased funds for 2001 to enhance provider networks only, and 17 percent of enrollees are in M+C organizations that selected multiple options. The largest payment rate increases went to both floor payment areas (see Table 3) and M+C organizations serving these payment areas were less likely to use the increase in funds exclusively for enhanced provider networks.

TABLE 5.—USE OF INCREASED PAYMENTS UNDER BIPA, BY PERCENT OF ENROLLMENT WITHIN PAYMENT CATEGORIES

[In percent]

M+C organizations uses of increased payment	Percent of total M+C enrollment	Percent of M+C enrollment in *$475 floor* payment areas	Percent of M+C enrollment in *$525 floor* payment areas	Percent of M+C enrollment in *non-floor* payment areas
Reduced premium or cost-sharing only	6	8.4	8.7	5.3
Added or enhanced benefits only	1	0.9	0	0.94
Used stabilization fund only	11	0	2.8	14.2
Enhanced provider network only	65	48.6	43.5	72.3
Used multiple options	17	42.1	45	7.3

The increases in payment rates also had an impact on the premiums that M+C organizations offered their enrollees for 2001. After the increase in payment rates, the national average 2001 premium for the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area decreased by about $2 per month. Currently, we have enrollment data at the level of M+C organization contracts, not at the level of individual plans offered by M+C organizations. Thus, we assigned contract level enrollment data to the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area in each contract. There may be several plans offered by an M+C organization in a payment area, some of which may have additional benefits available for an additional premium.

Premiums have tended to be highest in payment areas where Medicare payment rates have been the lowest. Table 6 shows the impact of the increase in payment rates on 2001 premiums.

TABLE 6.—PREMIUM LEVELS BY PAYMENT CATEGORY, PRE- AND POST-BIPA

Payment category	Pre-BIPA average 2001 premium for "representative" plans	Post-BIPA average 2001 premiums for "representative" plans	Percent change
All payment areas	$25.44	$23.44	−7.9
$475 floor areas	51.70	48.39	−6.4
$525 floor areas	37.75	31.51	−16.5
Non-floor areas	21.08	20.41	−3.2

Prior to the increase in payment rates, 20.5 percent of enrollees were paying over $50 for 2001 premiums. The increase in payment rates decreased this share by 5 percentage points, so that only 15.6 percent of enrollees pay premiums over $50 in 2001. The increase in payment rates had no effect on the percentage of enrollees in the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area with a zero dollar premium for 2001. That share would remain approximately 45 percent.

Drug coverage is most common in payment areas with the highest payment rates. Few M+C organizations have used the increase in payment rates to add a drug benefit. Prior to implementation of the BIPA payment provisions, approximately 69 percent of M+C enrollees would have had drug coverage in the plan with the lowest premium that had the most generous benefit package offered by their M+C organization in the payment area in 2001. As a result of the BIPA payment increases, 70 percent of enrollees (an additional 61,000 enrollees) would have drug coverage in the plan with the lowest premium that had the most generous benefit package offered by their M+C organization in the payment area in 2001. Payment areas with the $475 floor recorded the largest change in the percent of enrollees with drug coverage in the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area as a result of the changes in the BIPA, increasing from 31 percent to 38 percent.

We have not considered alternatives to lessen the impact or regulatory burden of this final rule because the provisions are mandated by the BIPA and no additional burden is imposed by us.

The RFA also requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of between $7.5 million and $25 million annually. Individuals and States are not included in the definition of small entities.

We estimate that fewer than 5 out of 177 M+C contractors have annual revenues of $7.5 million or less. Approximately 35 percent of M+C contractors have tax-exempt status, and thus, for purposes of the RFA are considered to be small entities. We have examined the economic impact of this final rule on M+C organizations, including those that are tax-exempt, and thus small entities, and we find that overall the economic impact is significant but positive, generating an increase in payments. We have not considered alternatives to lessen the impact or regulatory burden of this final rule because the provisions are mandated by the BIPA and no burden is imposed.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of an MSA with fewer than 100 beds. Almost 2 percent of M+C enrollees reside in payment areas outside MSAs, with floor payment rates of $475 for March through December of 2001. M+C organizations in these payment areas will receive, on average, an 8.3 percent increase in payments for 2001. Assuming BIPA-related payment increases in both original Medicare and the M+C program, small rural hospitals in these payment areas could be in a better position to renegotiate their contracts with M+C organizations. This could generate a positive increase in payments to some small rural hospitals. However, information on the payment terms of contracts between M+C organizations and providers is not available, therefore, we are unable to provide data on the level of this impact.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule would have no consequential effect on the annual expenditures of any State, local, or tribal government, or the private sector. Therefore, we have determined, and we certify, that this final regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed or final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

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Publishing a proposed rule is unnecessary because this final rule only makes conforming changes to the regulations to implement those sections of the BIPA in which the Congress allowed no discretion as to the actions to be taken and the times in which they must be completed. These changes were enacted by the Congress, and would be in effect on the date mandated by the legislation without regard to whether they are reflected in conforming changes to the regulation text, since a statute controls over a regulation. In this final rule we merely have revised the regulation text to reflect these new statutory provisions. The BIPA provisions have been incorporated virtually verbatim, with no interpretation necessary. In accordance with 5 U.S.C. 808(2), we do not believe that publishing a notice of proposed rulemaking is necessary, nor would it be practicable given that a number of the provisions have already taken effect consistent with the effective dates established under the BIPA.

Also, this final rule contains only technical corrections to a prior final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). These technical corrections are editorial in nature and do not alter the substance of the regulations.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (2 U.S.C. 300e, 300e–5, 300e–9), and 31 U.S.C. 9701.

Subpart J—Qualifying Conditions for Medicare Contracts

2. In § 417.402, paragraph (b) is revised to read as follows:

§ 417.402 Effective date of initial regulations.

* * * * *

(b) The changes made to section 1876 of the Act by section 4002 of the Balanced Budget Act of 1997 (BBA) are incorporated in part 422 of this chapter, except for changes affecting section 1876 cost contracts, which are incorporated in subpart L of this part. Upon enactment of the BBA (August 5, 1998), no new cost contracts are accepted by CMS, except for current Health Care Prepayment Plans that may convert to section 1876 cost contracts. Section 1876 cost contracts may not be extended or renewed beyond December 31, 2004. CMS must accept and approve applications to modify the cost contracts in order to expand the service area, provided they are submitted on or before September 1, 2003 and CMS determines that the organization continues to meet the regulatory requirements and the requirements in its cost contract.

PART 422—MEDICARE+CHOICE PROGRAM

1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w–21, and 1395w–25).

Subpart B—Eligibility, Election, and Enrollment

2. In § 422.68, paragraph (c) is revised to read as follows:

§ 422.68 Effective dates of coverage and change of coverage.

* * * * *

(c) *Open enrollment periods.* For an election, or change in election, made during an open enrollment period, as described in § 422.62(a)(3) through (a)(6), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

* * * * *

3. In § 422.80, paragraph (a)(1) is revised to read as follows:

§ 422.80 Approval of marketing materials and election forms.

(a) * * *

(1) At least 45 days (or 10 days if using marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution the M+C organization has submitted the material or form to CMS for review under the guidelines in paragraph (c); and

* * * * *

Subpart C—Benefits and Beneficiary Protections

4. In § 422.100, paragraphs (d)(2) and (g)(2) are revised to read as follows:

§ 422.100 General requirements.

* * * * *

(d) * * *

(2) At a uniform premium, with uniform benefits and level of cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.304(b)(2).

* * * * *

(g) * * *

(2) M+C organizations are not designing benefits to discriminate against beneficiaries, promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services; and

* * * * *

Subpart F—Payments to Medicare+Choice Organizations

5. In § 422.250, the following changes are made to read as set forth below:

A. Paragraphs (g)(2)(i) and (g)(2)(ii) are revised.

B. Paragraph (g)(2) (iii) is added.

§ 422.250 General provisions.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(i) A county in which no M+C plan has been offered;

(ii) A county in which an M+C plan or plans have been offered, but where all M+C organizations offering an M+C plan notified CMS by October 13, 1999, that they will no longer offer plans in the county as of January 1, 2000; or

(iii) A county in which an M+C plan or plans have been offered, but where all M+C organizations offering an M+C plan notified CMS by October 3, 2000, that they will no longer offer plans in the county as of January 1, 2001.

* * * * *

6. In § 422.252, the following changes are made to read as set forth below:

A. Paragraph (b)(2) is revised.

B. Paragraphs (b)(3) and (b)(4) are added.

C. Paragraph (c)(2) is revised.

D. Paragraphs (c)(3) and (c)(4) are added.

§ 422.252 Annual capitation rates.

* * * * *

(b) * * *

(2) For 1999, 2000, and January and February of 2001, the minimum amount rate is the minimum amount rate for the preceding year, increased by the national per capita growth percentage (specified in § 422.254(b)) for the year.

(3) For March through December, 2001—

(i) The minimum amount rate for any area in a metropolitan statistical area within the 50 States and the District of Columbia with a population of more than 250,000 is $525;

(ii) For any other area within the 50 States, it is $475; or

(iii) For any area outside the 50 States and the District of Columbia, it is not more than 120 percent of the minimum amount rates for CY 2000.

(4) For 2002 and each succeeding year, the minimum amount rate is the minimum amount for the preceding year, increased by the national per capita percentage (specified in § 422.252(b)) for the year.

(c) * * *

(2) For 1999, 2000, and January and February of 2001, the minimum percentage increase is 102 percent of the annual Medicare+Choice capitation rate for the preceding year.

(3) For March through December of 2001, the minimum percentage increase is 103 percent of the annual Medicare+Choice capitation rate for 2000.

(4) For 2002, and for each succeeding year, the minimum percentage increase is 102 percent of the annual Medicare+Choice capitation rate for the preceding year.

7. In § 422.256, paragraph (d)(2) is revised to read as follows:

§ 422.256 Adjustments to capitation rates and aggregate payments.

* * * * *

(d) * * *

(2) *Implementation.* CMS applies the risk adjustment factor as follows:

(i) For payments beginning January 1, 2001 and ending December 31, 2003, CMS applies a risk factor that incorporates inpatient hospital encounter data. The risk factor will comprise 10 percent of the monthly payment.

(ii) For payments beginning January 1, 2000 and ending December 31, 2001 only, the risk factor comprises 100 percent of the monthly payment for individuals with a qualifying inpatient diagnosis of congestive heart failure who are enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001 in the area where the individual lives.

(iii) For payments beginning January 1, 2004, and for all succeeding years, CMS applies a risk factor that incorporates inpatient hospital and ambulatory encounter data. This factor is phased in as follows:

(A) 30 percent in 2004;

(B) 50 percent in 2005;

(C) 75 percent 2006; and

(D) 100 percent in 2007 and succeeding years.

* * * * *

Subpart K—Contracts With Medicare+Choice Organizations

§ 422.505 [Corrected]

8. In § 422.506, in paragraph (a)(4), the phrase "5 years" is removed and the phrase "2 years" is added in its place.

§ 422.512 [Corrected]

9. In § 422.512, in paragraph (e), the phrase "5 years" is removed and the phrase "2 years" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774—Medicare—Supplementary Medical Insurance Program)

Dated: August 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 16, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6956 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7779]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of

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the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Millburn, Township of, Essex County.	340187	July 23, 1971, Emerg.; August 1, 1979, Reg. March 17, 2002.	3/17/02	3/17/02
Region III				
Pennsylvania: Birmingham, Township of, Chester County.	421474	November 14, 1974, Emerg.; April 15, 1981, Reg. March 17, 2002.	3/17/02	3/17/02
East Caln, Township of, Chester County ..	421477	October 10, 1974, Emerg.; September 30, 1980, Reg. March 17, 2002.	3/17/02	3/17/02
East Brandywine, Township of, Chester County.	421476	November 21, 1975, Emerg.; February 1, 1984, Reg. March 17, 2002.	3/17/02	3/17/02
East Fallowfield, Township of, Chester County.	421479	November 3, 1975, Emerg.; June 1, 1983, Reg. March 17, 2002.	3/17/02	3/17/02
East Marlborough, Township of, Chester County.	421480	March 28, 1975, Emerg.; July 16, 1981, Reg. March 17, 2002.	3/17/02	3/17/02
Modena, Borough of, Chester County	420282	October 10, 1974, Emerg.; November 19, 1987, Reg. March 17, 2002.	3/17/02	3/17/02
South Coatesville, Borough of, Chester County.	420288	December 10, 1975, Emerg.; May 3, 1982, Reg. March 17, 2002.	3/17/02	3/17/02
Valley, Township of, Chester County	421206	May 23, 1974, Emerg.; August 1, 1984, Reg. March 17, 2002.	3/17/02	3/17/02
Wallace, Township of, Chester County	421493	February 11, 1976, Emerg.; March 11, 1983, Reg. March 17, 2002.	3/17/02	3/17/02
West Brandywine, Township of, Chester County.	421496	August 6, 1975, Emerg.; September 28, 1979, Reg. March 17, 2002.	3/17/02	3/17/02
West Marlborough, Township of, Chester County.	422279	May 20, 1975, Emerg.; January 18, 1984, Reg. March 17, 2002.	3/17/02	3/17/02

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII				
Colorado: Fremont County, Unincorporated Areas.	080067	June 25, 1975, Emerg.; September 29, 1989, Reg. March 17, 2002.	3/17/02	3/17/02
South Dakota: Hot Springs, City of, Fall River County.	460027	May 7, 1973, Emerg.; June 30, 1976, Reg. March 17, 2002.	3/17/02	3/17/02

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–6921 Filed 3–21–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–187; CC Docket No. 98–108; DA 02–583]

Termination of Stale or Moot Docketed Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of docketed proceedings; correction.

SUMMARY: In an order adopted December 21, 2001 and released January 11, 2002, the Commission terminated stale or moot docketed proceedings (Termination Order). Inadvertently two docketed proceedings were terminated in error. This document corrects that error by reinstating to pending status CC Docket No. 96–187 and CC Docket No. 98–108.

DATES: Effective March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: In the **Federal Register** Doc. 02–1859 published on January 25, 2002 (67 FR 3617), the Commission inadvertently terminated docketed proceedings in FCC 01–385. Make the first correction on page 3618 by removing the seventh entry of the appendix as follows: CC 96–187 Implementation of a Section of the Telecommunications Act of 1996—RO 62 FR 5757.

Make the last correction on page 3618 by removing the thirteenth entry of the appendix as follows: CC 98–108 Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada—ON 14 FCC Rcd 8077.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6930 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010710172–2039–02; I.D. 061301A]

RIN 0648–AL92

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; response to comments.

SUMMARY: NMFS issues a final rule to change the Community Development Quota (CDQ) regulations for Bering Sea/Aleutian Islands (BSAI) crab to allow the State of Alaska (State) greater flexibility in establishing CDQ fishing seasons. This action is necessary to achieve the conservation and management goals for the BSAI crab CDQ program and is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs (FMP).

DATES: Effective on April 22, 2002.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228, or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act, at section 305(i)(1), required the North Pacific Fishery Management Council (Council) and NMFS to establish a CDQ program. See 16 U.S.C. 1855(i). In 1998, NMFS implemented the crab CDQ program with regulations at 50 CFR 679.31 (63 FR 8356, February 19, 1998) and crab CDQ fisheries began that year. Under the Magnuson-Stevens Act, 7.5 percent of the total allowable catch of each BSAI crab fishery for 2000 and beyond is allocated to the crab CDQ program.

Under the FMP, the Council and NMFS defer management of the BSAI king and Tanner crab fisheries, including the CDQ fisheries, to the State, with Federal oversight. The State/Federal cooperative management regime established in the FMP specifies three categories of management measures that provide the framework for the State management of the crab fisheries, including the determination of the guideline harvest levels (GHLs) and fishery seasons. They are (1) Category 1: Federal Management Measures Fixed in the FMP, (2) Category 2: Framework Management Measures, and (3) Category 3: Management Measures Deferred to the State. The FMP also provides for the State management of CDQ crab harvesting activity, including times when CDQ fishermen may harvest the CDQ reserve.

The State establishes crab fishing seasons according to a shellfish management cycle, based on stock assessment surveys conducted in the summer, and the GHLs for the upcoming fall and winter fishing seasons set according to those surveys. The CDQ reserve is a portion of the GHL. Currently, CDQ crab fisheries are conducted after the regular commercial fishery. However, State regulations allow the harvest of a portion of a CDQ crab fishery before the regular commercial crab fishery begins under specific conditions.

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Although Federal regulations implementing the crab CDQ reserve, at 50 CFR 679.31(d), specify that the crab CDQ reserves be allocated by calendar year, the Magnuson-Stevens Act does not dictate when the reserve is available for harvest, only that the reserve be a portion of the annual harvest amount. By allocating the crab CDQ reserve on a calendar year basis, the State is prevented from conducting a CDQ crab season before the regular commercial fishery for snow crab (*Chionoecetes opilio*) because of the timing of the snow crab fishing season. The regular commercial fishery for snow crab starts on January 15 and is open until the GHL is harvested. Additionally, State stand-down provisions prohibit vessels that intend to participate in the snow crab fishery from being on the fishing grounds 14 days prior to the opening of the fishery. Thus, a CDQ season before the regular snow crab fishery could only start in December of the previous calendar year.

Existing Federal regulations do not prevent a CDQ fishery before the regular commercial fishery for the other crab species because these crab fisheries are prosecuted at times that would allow a CDQ fishery to occur before the regular fishery in the same calendar year.

In October 1998, NMFS proposed to the Council, and the Council concurred, that the Federal regulatory language that specified crab CDQ reserves by "calendar year" be changed to allow the State more flexibility in managing the crab CDQ harvests.

This regulatory amendment changes the Federal regulation at 50 CFR 679.31(d) by removing the phrase "calendar year" from the regulatory language. The CDQ reserve will still be apportioned annually based on the GHLs derived from the annual stock assessments. However, the CDQ reserve for snow crab will be available for harvest before January 1 to follow the annual cycle for crab fisheries used by the State rather than the calendar year cycle for groundfish fisheries used by NMFS. This change is consistent with the intent of the FMP by providing the State with greater flexibility to establish CDQ fishing seasons.

This action also removes the expired CDQ reserve phase-in language at 50 CFR 679.31(d).

NMFS published a proposed rule in the **Federal Register** on July 25, 2001 (66 FR 38626), which described the proposed regulatory amendment and invited comments from the public. Comments were invited until August 24, 2001. NMFS received no public comments on the proposed rule.

Changes From Proposed to Final Rule

NMFS decided to include in this final rule a correction to the regulations at 50 CFR 679.1 concerning the FMP title. In 1998, the Council, when updating the FMP, changed the title of the FMP from the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. NMFS approved the updated FMP in March 1999 (64 FR 11390, March 9, 1999). However, the regulations at 50 CFR 679.1 were not changed to reflect the new FMP title.

Small Entity Compliance Guide

This final rule does not directly effect the management or prosecution of the BSAI crab fisheries. As explained in the FRFA, this final rule adds management flexibility for the State of Alaska to set CDQ fishing seasons according to State regulations.

Classification

The Administrator, Alaska Region, NMFS, determined that this regulatory amendment is necessary for the management of the CDQ crab fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Act for this regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. NMFS also prepared an FRFA based on the IRFA. The FRFA estimates the total number of small entities that will be affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act (RFA). A summary of the FRFA follows.

This regulatory change will have no direct effects, in and of itself, although it is intended to provide added management flexibility. With this Federal regulatory change, the State may choose to conduct a CDQ fishing season before a regular commercial fishery for snow crab.

NMFS considers most of the fishing operations affected by this final rule to be small entities. The universe of small entities is composed of the 319 regular commercial fishermen who hold licenses to operate catcher vessels with snow crab endorsements, the 65 villages that participate in the CDQ program, and the six CDQ groups, for a total of 390 small entities. For the purposes of the FRFA, NMFS assumes that all of the catcher vessels belong to small entities, while the 29 operators of licensed catcher processors with snow crab endorsements are not small entities. At present, however, information on ownership, affiliation, and contractual relationships between and among the catcher vessels is insufficient to allow definitive enumerations of which of these operations are, or are not "small entities" for Regulatory Flexibility Act purposes.

NMFS considered two alternatives, status quo and the regulation change. This regulatory change is a measure to reduce the impacts of the existing regulation on small entities, specifically the CDQ groups and communities that belong to the CDQ groups. The FRFA shows that the status quo alternative adversely impacts the 65 villages and 6 CDQ groups by preventing them from realizing the full value of their snow crab CDQ allocation.

On the other hand, the 319 regular commercial fishermen may experience adverse impacts from the proposed alternative due to the potential disadvantage of fishing for snow crab after some of the GHL has been harvested. Measures to reduce the impacts on these small entities will be taken by the State in determining whether to conduct a CDQ fishery before the regular commercial fishery. These measures include limiting the amount of CDQ quota that can be harvested pre-season to 30 percent of the CDQ quota (which equals 2.25 percent of the GHL) and limiting preseason CDQ fisheries for crab stocks with GHLs above 50 million pounds.

This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). This rule does not duplicate, overlap, or conflict with other Federal regulations.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator, NMFS, finds good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), on the portion of the final rule that changes the title of the FMP. NMFS has determined that such procedures would be unnecessary because changing the FMP title has no effect on the public.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.1 [Amended]

2. In § 679.1(g), remove the words "Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area" and add, in their place, the words "Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs".

§ 679.2 [Amended]

3. In § 679.2, in the definition for *Crab species*, remove the words "Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands" and add, in their place, the words "Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs".

4. In § 679.31, paragraph (d) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* For those king and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska, 7.5 percent of the annual guideline harvest level for each fishery is apportioned to a crab CDQ reserve.

* * * * *

[FR Doc. 02–6748 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 56
Friday, March 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AE71

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals; Correction

AGENCY: Small Business Administration.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the text of the proposed rule published in the **Federal Register** on March 12, 2002, (67 FR 11057) and corrected in the **Federal Register** on March 21, 2002. The rule proposes to amend SBA's regulations governing proceedings before the Office of Hearings and Appeals and to make conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, 202–401–1420.

Correction

In notice of proposed rulemaking document 02–5613 beginning on page 11057 in the issue of Tuesday, March 12, 2002, make the following corrections:

1. On page 11067, in the third column, correct § 134.313 to read as follows:

§ 134.313 Applicability of subpart B provisions.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

§ 134.406 [Corrected]

2. On page 11067, in the third column, correct amendatory instruction 50.c. to read as follows:

50. c. In paragraph (c), revise the first and fourth sentences; and add a new sentence at the end.

Dated: March 19, 2002.

Gloria E. Blazsik,

Acting Assistant Administrator for Office of Hearings and Appeals.

[FR Doc. 02–6993 Filed 3–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers, Models R354, R375, R389, and R390 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. This proposal would require a one-time inspection of the hub joint mating surfaces for fretting. This proposal is prompted by reports of fretting on the joint mating faces of propeller hubs. The actions specified by the proposed AD are intended to prevent failure of the hub due to loose hub through bolts.

DATES: Comments must be received by May 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on certain Dowty propellers. The CAA advises that it has received a number of reports of fretting damage on the joint mating faces of certain Dowty propeller hubs. The CAA believes that the cause of the damage is excessive use of joint sealant during reassembly of the hub after repair or rework of the hub.

Manufacturer's Service Information

Dowty Aerospace Propellers has issued service bulletin (SB) SF340–61–96, dated April 18, 2000, that specifies procedures for inspecting certain propeller hubs for loose hub bolts, and if found, inspecting the mating faces of the hub joint for wear. The CAA classified this SB as mandatory and issued AD 005–04–2000 in order to assure the airworthiness of these Dowty propellers in the UK.

Bilateral Agreement Information

This propeller model is manufactured in the UK and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of the AD

Since an unsafe condition has been identified that is likely to exist or develop on other Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers of the same type design that are used on airplanes registered in the United States, the proposed AD would require inspection of hubs that have been disassembled since being delivered from Dowty Aerospace Propellers for loose hub through bolts within 1,800 flying hours after the effective date of the proposed AD. The proposed AD would also require inspection of the mating faces of the hub joint for wear if any loose through bolts are found. These actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 418 propellers of the affected design in the worldwide fleet. The FAA estimates that 169 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 6 work hours per propeller to do the proposed actions, and that the average labor rate is $60 per work hour. There are no required parts per propeller. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $60,840.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dowty Aerospace Propellers: Docket No. 2000–NE–18–AD.

Applicability

This airworthiness directive (AD) is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. These propellers are installed on, but not limited to, SAAB 340A and 340B airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required within 1,800 flying hours after the effective date of this AD, unless already done.

To prevent failure of the hub due to loose hub through bolts, do the following:

One-time Inspection of the Propeller Hub

(a) If the propeller hub has not been disassembled since it was received from Dowty Aerospace Propellers, no further action is required. Otherwise, do the following:

(1) Within 1,800 flying hours after the effective date of this AD, perform a one-time inspection of the hub for loose hub through bolts in accordance with 3.A.(1) through 3.A.(10) of the Accomplishment Instructions of Dowty Aerospace Propellers service bulletin (SB) SF340–61–96, dated April 18, 2000.

(2) If wear exceeds the limits specified in 3.A.(8) of the Accomplishment Instructions of Dowty Aerospace Propellers service bulletin (SB) SF340–61–96, dated April 18, 2000, replace the hub with a serviceable part.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–04–2000.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6914 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 01–AGL–08]

Proposed Modification of Class E Airspace; Frankfort, MI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects the docket number and four errors in the legal description of a NPRM that was published in the **Federal Register** on Monday, January 7, 2002 (67 FR 705). The NPRM proposed to modify Class E Airspace at Frankfort, MI.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 02–250 published on Monday, January 7, 2002 (67 FR 705), proposed to modify Class E Airspace at Frankfort, MI. An incorrect Airspace Docket No. 00–AGL–08 was assigned to the proposal, and in addition, the following errors were contained in the legal description: Incorrect longitude for the Frankfort Dow Memorial Field Airport, an incorrect MBL VOR/DME radial was used to describe the extension, and the latitude and longitude for the MBL VOR/DME was omitted. This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the errors for the Class E Airspace, Frankfort, MI, as published in the **Federal Register** Monday, January 7, 2002 (67 FR 705), (FR Doc. 02–250), are corrected as follows:

1. On page 705, column 2, in the heading, and column 3, under "Comments Invited", correct the Airspace Docket No. to read "01–AGL–08."

§ 71.1 [corrected]

2. On page 706, column 2, correct the legal description of the airspace designation as follows:

a. Add the following immediately below "AGL MI E5 Frankfort, MI [REVISED]": Manistee VOR/DME (Lat. 44°16′14″ N., long 86°15′14″ W.)

b. Correct the Frankfort Dow Memorial Field Airport longitude to read:

"Long. 86°12′02″ W."

c. Correct "Manistee VOR/DME 186° radial" to read "Manistee VOR/DME 006° radial."

Issued in Des Plaines, Illinois on February 6, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–5119 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141–AA10

Definitions: Electronic or Electromechanical Facsimile; Games Similar to Bingo; Electronic, Computer or Other Technologic Aid to Class II Games

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Proposed Rule for Final Comment.

SUMMARY: The National Indian Gaming Commission (Commission) proposes to clarify the regulatory definitions of three key terms in the Indian Gaming Regulatory Act, "electronic and electromechanical facsimile", "games similar to bingo" and "electronic, computer or other technologic aid to Class II gaming". The Commission believes that these amendments may simplify the classification of games.

DATES: Comments may be submitted on or before April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Penny Coleman, at 202/632–7003 or, by fax, at 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701–2721, enacted on October 17, 1988, established the Commission. Under the Act, the Commission is charged with regulating gaming by Indian tribes. On April 9, 1992, the Commission issued a final rule defining several key terms that were not fully defined in the statute. In light of the experience that it has developed in the past ten years in working with these definitions, the Commission believes that it may be time to reevaluate some of these definitions. Accordingly, on June 22, 2001, the Commission published a Proposed Rule seeking public comment on the proposed removal of the existing definition of "electronic or electromechanical facsimile" from the Commission's regulations and using instead the plain language interpretation that seems to have been preferred by the courts.

The Commission received numerous comments to this proposed rule, a majority of which indicated support for the proposal. However, even many of the supportive comments expressed the view that removing the current definition was merely a first step in addressing the questions at issue. Several comments indicated that the Commission should remove the definition and replace it with another definition providing additional substantive guidance.

The Commission addresses these comments by proposing a new definition of "electronic or electromechanical facsimile." In light of the comments, the Commission also proposes changes to two related definitions for which it seeks additional comment.

Regulatory Flexibility Act

To the extent that tribal gaming operations may be considered small businesses and therefore small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this rule will not have a significant economic effect on a substantial number of small entities. Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Instead, the rule is likely to decrease litigation with Indian tribes and reduce unnecessary friction between the Department of Justice and the Commission.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Commission has analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

List of Subjects in 25 CFR Part 502

Gaming, Indian lands.

For the reasons set forth in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR Part 502 as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

Authority: 25 U.S.C. 2701 *et seq.*

1. Revise § 502.7 to read as follows:

§ 502.7 Electronic, computer or other technologic aid.

(a) Electronic, computer or other technologic aid means any machine or device, such as a computer, telephone, cable, television, screen, satellite, or bingo blower, that when used—

(1) Is not a game of chance but merely assists a player or the playing of a game;

(2) Is readily distinguishable from the playing of an electronic or electromechanical facsimile of a game of chance; and

(3) Is operated according to applicable Federal communications law.

(b) Other examples of an electronic, computer or other technologic aid may include, but are not limited to, equipment that allows communication between and among gaming sites, electronic cards (player stations) for participants in bingo games, and machines or devices that read and/or dispense pull-tabs.

2. Revise § 502.8 to read as follows:

§ 502.8 Electronic or electromechanical facsimile

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the fundamental characteristics of the game and that is not an electronic, computer or technologic aid to a Class II game.

3. Revise § 502.9 to read as follows:

§ 502.9 Games similar to bingo

Pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo means games played with a finite deal, and established prizes, that are preprinted and use paper or other tangible medium, such as, break open or scratch off tickets.

Dated: March 15, 2002.

Elizabeth L. Homer,

Vice Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–6806 Filed 3–21–02; 8:45 am]

BILLING CODE 7565–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–NOI]

RIN 0938–AL13

Medicare Program; Establishment of Special Payment Provisions and Standards for Suppliers of Prosthetics and Certain Custom-Fabricated Orthotics; Intent to Form Negotiated Rulemaking Committee

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice of intent.

SUMMARY: We are statutorily mandated under section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) to establish a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act (FACA). The committee's purpose would be to negotiate the development of a rule regarding the special payment provisions and requirements set forth in section 427 of BIPA for suppliers of prosthetics and certain custom-fabricated orthotics. The committee would consist of representatives who are likely to be significantly affected by the proposed rule. The committee would be assisted by a neutral facilitator.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 22, 2002.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6012-NOI, P.O. Box 8013, Baltimore, MD 21244–8013.

Mail a separate copy of written comments to the following address: Kathryn Cox, Office of Financial Management, Mail Stop C3–02–16, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver your written comments (1 original and 3 copies) by courier to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–6012–NOI.

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For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kathryn Cox, (410)786–5954; Lynn Sylvester, (202) 606–9140 or Ira Lobel, (518) 431–0130.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Background

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Pub. L. 101–648, 5 U.S.C. 561–570) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Negotiated Rulemaking Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified and are willing to negotiate in good faith to reach a consensus on the proposed rule;
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed policy as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the committee is to reach consensus on the language or issues involved in a proposed rule. If consensus is reached, the committee will transmit a report to the agency containing a proposed rule. The agency may use the report as the basis of the agency's proposed rule. The process does not affect otherwise applicable procedural requirements of FACA, the Administrative Procedure Act, and other statutes.

II. Subject and Scope of the Rule

A. Need for the Rule

Section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, requires the Secretary of Health and Human Services to establish the following using negotiated rulemaking procedures:

- Standards for those who bill Medicare for prosthetics and certain custom-fabricated orthotics.
- A list of custom-fabricated orthotics that are subject to the supplier qualification set forth in section 427 of BIPA.

B. Subject and Scope of the Rule

Section 1834(h) of the Social Security Act (the Act) provides for payment of "orthotics and prosthetics," that are described in section 1861(s)(9) of the Act and in our regulations (see 42 CFR 414.202). Orthotics are leg, arm, back, and neck braces. Prosthetics are defined as artificial legs, arms, and eyes, including replacements if required because of a change in the beneficiary's physical condition.

Prosthetics and orthotics which are mainly covered under Medicare Part B, must be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve a malformed body member. Historically, there has been no Medicare requirement that a supplier of prosthetics or orthotics be certified or meet educational requirements other than what a State may require. Presently, fewer than 10 States have licensing requirements for suppliers of prosthetics and orthotics.

In an OIG report, "Medicare Orthotics," by Inspector General June Gibbs Brown, October 1997 (0EI–02–95–00380), the OIG recommended that we take action to improve Medicare billing for orthotics. Specifically, they recommended that we require standards for suppliers of custom-molded and custom-fabricated orthotics.

According to the Congress' mandate under section 427 of BIPA, Medicare will cover prosthetics and certain custom-fabricated orthotics only if furnished by a "qualified practitioner" and fabricated by a "qualified practitioner" or "qualified supplier." A "qualified practitioner" is defined as—

- A physician, a qualified physical or occupational therapist, and a State-licensed orthotist or prosthetist; or
- In States that do not issue those licenses, a trained individual who is either: (1) Certified by either the American Board of Certification in Orthotics and Prosthetics, Inc. (ABC) or the Board for Orthotist/Prosthetist Certification (BOC), or (2) who is credentialed by a program that the Secretary determines, in conjunction with appropriate experts, has sufficient training and education standards.

A "qualified supplier" is defined as any entity that is accredited by—

- ABC or BOC; or
- A program that the Secretary determines has equivalent accreditation and approval standards.

We are required to use a negotiated rulemaking procedure to establish (1) a list of prosthetics and custom-fabricated orthotics subject to this provision, and (2) criteria for acceptable accreditation and credentialing programs for qualified practitioners and suppliers.

C. Issues and Questions To Be Resolved

We anticipate discussion on the issues outlined below. We invite public comment on other issues not identified that would be within the scope of the rule.

1. What/who will be covered by the rule?
   a. Custom-fabricated orthotics.
   b. Practitioners (who does that include?).
   c. The definition of a "positive model" as set forth in the statute.
   d. Interface among practitioners, facilities, and manufacturers.
2. How will practitioners obtain certification and/or credentialing?
   a. Provisions for grandfathering.
   b. Education and experience requirements.
   c. Provisions for loss of certification.
   d. State requirements.
   e. Should there be different certifications for practitioners, manufacturers, and facilities?
   f. Rural areas.
3. Who will certify?
   a. States.
   b. Professional organizations.
   c. Other (for example, educational institutions).
4. Management of the program
   a. CMS's role.
   b. Interface among CMS, the certifying bodies, and the State licensing boards.

With regard to matters outside the scope of the rule, we do not plan to negotiate the process or procedures for updating the list of codes for custom-fabricated orthotics subject to the rule.

III. Affected Interests and Potential Participants

The convener interviewed numerous organizations to identify potential participants whose interests would be affected by the proposed rule. The description of those organizations, together with the convener's finding can be viewed at *www.hcfa.gov/medicare/enrollment/CONVRPT.htm*. The convener has proposed and we agree to accept the following organizations as negotiation participants. We believe these organizations represent an appropriate mix of interests and backgrounds:

- ABC.
- BOC.
- National Community Pharmacy (NCP).
- National Commission of Orthotic and Prosthetic Education (NCOPE).
- American Academy of Orthotists and Prosthetists.
- National Association for the Advancement of Orthotists and Prosthetists (NAAOP).
- American Physical Therapy Association (APTA).
- American Orthotic and Prosthetic Association (AOPA).
- National Orthotic Manufacturers Association (NOMA).
- International Association of Orthotics and Prosthetics (IAOP).
- Hanger Prosthetics.
- Point Health Centers.
- Coalition of Illinois and Florida certification boards.
- Coalition of State associations representing orthotists and prothetists.
- Paralyzed Veterans of America (PVA).
- National Association for Long Term Care (NALTC).

We invite comment on this list of negotiation participants. The intent in establishing the negotiating committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represent all interests associated with the rule to be negotiated.

Groups or individuals who wish to apply for a seat on the committee should respond to this notice within 30 days of its publication. They should provide detailed information regarding the following:

- A description of the interest they represent.
- Evidence that they are authorized to represent parties related to the interests they propose to represent.
- A written commitment that they will actively participate in good faith in the development of the regulation.
- Reasons why the proposed committee could not adequately represent their interest.

IV. Schedule for the Negotiation

We have set a deadline of 6 months beginning with the date of the first meeting for the committee to complete work on the proposed rule. We intend to terminate the activities of the committee if it does not appear likely to reach consensus on a schedule that is consistent with our rulemaking needs.

The first and second meeting dates and times will be published in the **Federal Register**. The purpose of the first meeting will be to discuss in detail how the negotiations will proceed and how the committee will function. The committee will agree to ground rules for committee operation, determine how best to address the principal issues, and, if time permits, begin to address those issues.

We expect that by the second meeting, the committee can complete action on any procedural matters outstanding from the organizational meeting and either begin or continue to address the issues.

V. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee is established only after both consultations with the General Services Administration and receipt of a charter. We have prepared a charter and initiated the requisite consultation process. Only upon successful completion of this process and the receipt of the approved charter will we form the committee and begin negotiations.

B. Participants

The number of participants on the committee is estimated to be 16 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, we must be satisfied that the committee as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the negotiating committee, we will determine, in consultation with the facilitator, whether that individual or representative should be added to the committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule; and
- Is already adequately represented in the negotiating committee.

D. Establishing the Committee

After reviewing any comments on this notice and any requests for representation, we will take the final steps to form the committee.

VI. Negotiation Procedures

When the committee is formed, the following procedures and guidelines will apply, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to—

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may be best accomplished by selection of senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoint of their organizations. This applies to us, and we are designating Hugh H. Hill III, M.D., J.D., Medical Officer, Program Integrity Group, Office of Financial Management.

C. Administrative Support

We will supply logistical, administrative, and management

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support. If it is deemed necessary and appropriate, we will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the committee. We will announce committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for committee meetings, which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the committee defines the term otherwise. We expect the participants to fashion the committee's working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

If the committee is unable to reach consensus, we will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, we and the remaining committee members will evaluate whether the committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record.

I. Other Information

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 9, 2002.

Thomas A. Scully,

Administrator, Center for Medicare and Medicaid Services.

Dated: February 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6952 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10; FCC 02–18]

Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document solicits comments on the authorization of satellite earth stations on board vessels (ESVs). The item contemplates that authorizing ESVs on a more clearly-defined basis, through the adoption of specific rules governing their use, may benefit potential users and service providers by creating regulatory certainty. Some ESVs are already in operation: the International Bureau (Bureau) and the Office of Engineering Technology (OET) (jointly, the Bureaus) have granted two companies waivers to operate ESVs and have granted one company Special Temporary Authorities (STAs) with conditions. However, there are existing terrestrial fixed users in some of the bands identified for ESV operations. Consequently, the Commission solicits comment on potential methods for licensing of ESVs that would help ensure that ESV operations would not cause harmful interference to, nor limit the growth of, terrestrial fixed services operating in the same band.

DATES: Submit comments on or before April 19, 2002; reply comments due on or before May 3, 2002.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Breck Blalock, International Bureau, (202) 418–8191 or Trey Hanbury, International Bureau (202) 418–0766.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry*, IB Docket No. 02–10, adopted January 23, 2002 and released February 4, 2002. The full text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address." A sample form and directions will be sent in reply.

Synopsis

1. In this Notice of Inquiry (NOI) the Commission seeks comment on the appropriateness of and potential methods for authorizing ESVs within its existing regulatory scheme. Such an authorization would take the place of the current system of extending or creating *ad hoc* special temporary authorities (STAs)—and allow ESV operation while protecting existing fixed service (FS) operations. The Commission seeks comment on all aspects of potential licensing, including whether and how such licensing should go forward, and how interference to terrestrial fixed licensees can be mitigated to the greatest extent possible.

2. The Bureaus have authorized two companies to operate ESVs on a waiver and STA basis since 1996: Crescomm (now known as MTN) and Qualcomm, Inc. Waivers and STAs are usually reserved for special circumstances and are not meant to circumvent normal licensing procedures. In examining the broad associated issues, the Commission seeks comment on the necessity of ESV licensing: do services exist that render ESV licensing superfluous? Do ESVs provide services that are unavailable through other means? Could MTN and other companies find other ways to offer similar service? Are there alternatives to ESV licensing, including continuing to grant waivers? The Commission seeks comment on any alternatives and whether/why the alternative is preferable to ESV licensing. As ESV service has now been operational in some form for five years, and as MTN seeks to expand the service, the Commission seeks general comment on whether the time is ripe for developing rules for licensing ESV service. Lastly, the Commission seeks comment on any other issues that commenters deem relevant as the Commission considers the wisdom of advancing ESV licensing.

(a) Regulatory Issues

3. The Commission seeks comment on all issues pertaining to the regulatory status of ESVs. An initial question to address is: in which bands could ESVs best be accommodated?

4. Specifically, the Commission seeks comment on the use of compatible and available bands for operation of ESV systems. The Commission seeks comment on the ability of bands that are currently allocated for MSS to provide for ESV systems. If MSS bands will not adequately provide for this service, the Commission seeks comment on which FSS bands should be considered for ESV operation. If the Commission were to determine that ESVs may operate in FSS networks, would the Commission need to modify the Table of Frequency Allocations to accommodate such use (e.g., through a footnote addition)? Although the 1996 *Crescomm Order* described ESVs as providing mobile-satellite service earth stations, the ITU has recognized that ESVs may operate in FSS networks.

5. ESV operators have used the C-band to date, and are now beginning to use the Ku-band. Due to the multiple modes of ESV operation, should the Commission allow Ku-band operation of ESVs either as an adjunct to C-band operation or in some cases as a replacement for the C-band? The Commission seeks comment on the continued use of C-band and any additional use of Ku-band.

6. ESV operations began in C-band because: (1) These satellite networks can provide broad coverage, which permits ships to communicate from anywhere at sea; and (2) the equipment was readily available. The problem with use of the C-band for ESV operations is that in many countries the band is heavily used by terrestrial microwave systems operating in the FS. As ESVs approach the coast, the potential for interference to FS operations increases, necessitating coordination of ESV use with FS operations so as not to cause interference. Use of the Ku-band in coastal areas is being considered in lieu of coordinating with C-band fixed-service operations. Most countries do not have terrestrial services operating in the satellite uplink portion of the Ku-band and thus coordination may be easier in those areas. The difficulty with using Ku-band is that space station antennas usually provide only spot beam coverage in coastal areas rather than the broader coverage provided in C-band. In this case, for ESVs operating well beyond the coast, communication would be impossible using only Ku-band. The Commission seeks comment on use of the Ku-band generally.

7. ESVs could use the Ku-band in a variety of ways. ESVs could operate in a dual-band mode, using both C-band and Ku-band. If dual-band operation were to be adopted and ESVs operate in C-band while operating at sea, then within some previously-defined minimum distance from shore ESVs could switch to the Ku-band. The Commission seeks comment on dual-band operation.

8. Additionally, where ESVs serve ships that travel only in an area near the coast, the Ku-band could be used exclusively. For example, if a cruise ship only travels around the Hawaiian islands, it is possible that the more limited footprint of the Ku-band would still cover that ship in all three modes: at port, at sea, and while entering or exiting port. In that case, by operating exclusively in the Ku-band, the ESV operation would not have to be coordinated with terrestrial services since such services do not operate in the Ku-band. The Commission seeks comment on whether an ESV on such a limited-range ship could be licensed in the Ku-band instead of the C-band.

(b) Appropriate Licensing Approach and Restrictions

9. The Commission seeks comment on the appropriate licensing approach and restrictions for potential ESV operations. One method for such licensing could be a special restricted class of earth stations. While the Commission is considering the use of other bands (as discussed above), we seek comment on whether ESV licensing under part 25 of the Commission's rules within FSS networks, and with certain restrictions, would be the most appropriate. The bands currently being used, C-band and Ku-band, are allocated to the FSS both domestically and internationally. If the Commission does license ESVs as a special restricted class of earth station, it seeks comment on what those restrictions should be. Alternatively, if the Commission were to license ESVs as MSS earth stations, it seeks comment on what other regulatory changes would be required? Would it be necessary to change our domestic frequency allocations table to provide a maritime mobile-satellite service allocation at C-band and Ku-band, and would any other changes be required to allow these stations to communicate through existing FSS networks? The Commission further notes that the Bureau considered ESV dockside operations in January 2000 and June 2001 and concluded that because ESVs would be operating only intermittently, the service would be better classified as a temporary-fixed service. The Commission requests further comment on the appropriate licensing of dockside operations of ESVs.

10. Other regulatory issues include potential conditions on ESV licenses. One possible restriction might be continuing the condition contained in the current STA and waiver authorizations prohibiting ESV operations from causing harmful interference to any entity operating in conformance with the Table of Frequency Allocations. In other words, if licensed, all ESV operations would be required to cease immediately upon notification of unacceptable interference being caused to a fixed service station. The Commission seeks comment on this potential condition, and on whether all ESV operators should be required to forward any complaints of radio interference to the Commission immediately, in writing. Additionally, the Commission seeks comment on whether it would be appropriate for the Commission to impose additional obligations on the FSS earth stations that provide the gateway facilities for ESVs to ensure that ESV transmissions that cause unacceptable interference are immediately terminated, whether those ESV stations are U.S.-licensed or foreign-licensed. The Commission asks

if it should adopt any additional rules that would allow us to take punitive action against FSS gateway facilities that provide service to ESV stations (whether foreign or domestic) that repeatedly cause unacceptable interference to fixed service stations. If so, what standard of proof should the Commission meet if and when it seeks to impose such sanctions on FSS gateway facility operators? What standard of proof should be required of interested parties requesting that we impose such standards? How could the Commission coordinate with foreign-licensed vessels?

11. In February 1997, MTN was granted an STA to operate its ESVs on a non-harmful interference basis when the ships it served were in or near one of four U.S. seaports. More recently, MTN was authorized to provide ESV service in motion to or from one of 17 U.S. seaports. The Commission seeks comment on whether the Commission should continue to allow in-motion operations in the future. Alternatively, would the potential for interference be significantly reduced by limiting ESV operations only to "in or near" U.S. seaports as initially authorized. If so, how would this affect the services currently provided by ESVs.

12. Other possible restrictions that could be placed on ESV licensees include: specifying a minimum antenna elevation angle (e.g. coordination to a specific satellite), specifying a minimum antenna diameter and maximum half-power antenna beamwidth, and also specifying the antenna tracking accuracy required for the ESV operation. The Commission could also require that ESV applicants specify the minimum amount of spectrum needed to perform the necessary service and that they limit the maximum ESV transmitter power. This would result in greater spectrum efficiency and a decreased potential for interference in bands where coordination with terrestrial services would be necessary. Additionally, the ESV licenses could be limited to a term of 1 to 3 years so that ESV operation could be closely monitored and, in bands where coordination was necessary, fixed service operational changes could be implemented efficiently. Finally, the Commission seeks comment on a requirement that ESV services be limited to receive-only. While the Commission recognizes that such a restriction may limit somewhat the commercial appeal of the ESV service, a receive-only restriction would virtually eliminate the interference issues that are of such concern, particularly in the C-band. The Commission would like to develop a record on the pros and cons of a receive-only restriction. The Commission seeks comment on these or other potential special restrictions.

13. The Commission also seek comment on coordination issues. Ultimately, the Commission's preference is to prevent interference before it occurs. Under usual coordination procedures for FSS, the entire C-band is coordinated. Similarly, the entire visible geostationary satellite orbital arc is generally coordinated. ESVs, however, use considerably less than a full band. Therefore, ESVs could be coordinated to specific satellites, which would limit their azimuth and commensurately limit the portion of the visible arc they would use. The Commission seeks comment on use of this special method of coordination and on any other regulatory issues that the Commission should consider going forward.

(c) Interference Issues

(1) Determining the Distance From Shore Beyond Which Unacceptable Interference Should Not Be Possible

14. If ESV licensing goes forward, determining the distance from shore outside of which interference from ESVs to FS operations will not occur (Distance From Shore) would be critical to successful ESV/FS coordination. The Commission seeks comment on the appropriate Distance From Shore. A Distance From Shore of 200 km may be suggested for two reasons. The current practice of the frequency coordinators requires a search of up to 125 statute miles radius (approx. 200 km) around the proposed location of a new FSS earth station to ascertain if there is potential for interference. This method has been effective for more than twenty years, preventing interference to FS from FSS. The U.S. has presented to ITU–R Working Party 4–9S a series of calculations that suggest that a distance as low as 165 km might be adequate as a coordination distance. Increasing the Distance From Shore from 165 km to 200 km would provide an added degree of protection to FS stations operating in the same band with ESVs, and would be consistent with current domestic procedures for FS–FSS coordination. The Commission seeks comment on this rationale, and on other factors, if any, that should be considered in calculating the appropriate Distance From Shore.

(2) Coordination of Operation Within a Distance Where Unacceptable Interference Might Occur

15. Once the Distance From Shore is determined, the question remains: how would operations be coordinated inside the Distance From Shore to eliminate unacceptable ESV interference to FS operations but still allow ESV operation inside the Distance From Shore? This determination, in the international context, is being addressed within the ITU–R through the calculation of a Composite Area within which interference to fixed stations from ESVs operating in motion near a coastline need to be evaluated. The Commission seeks comment on whether the use of the Composite Area calculations could also serve as the basis to determine this area in a domestic context. Commenters should address whether this method examines all of the factors relevant to determining the potential for interference to fixed stations by ESVs. The Commission seeks comment on whether the use of the Composite Area to address concerns about interference within the Distance From Shore is sufficient, or whether other factors must be considered.

16. The Commission seeks comment on the process for calculating the Composite Area. The Commission also seeks comment on, in general, the Composite Area method for evaluating the potential for interference to fixed stations from ESVs, as well as any other factors that should be considered. Finally, the Commission seeks comment on any alternatives to the Composite Area method for evaluating the potential for interference.

(3) Prevention and Resolution of Interference

17. The Commission also seeks general comment on how to handle anticipated interference issues. It is particularly interested in comments on whether the operation of existing MTN systems has in fact caused interference to other operations. The *Crescomm Order* states that "[t]he mobile nature of the MSS stations makes it extremely difficult to prevent interference and to identify the interference source." Further, the fixed community has stated in an *ex parte* statement that interference from a moving ship is all but impossible to trace and that in-motion operations have not been adequately coordinated as required. The Commission believes that if it licenses ESVs, flexible, efficient and continuous coordination would be the key component to ensuring that ESVs do not cause unacceptable interference to FS stations. In order to ensure this coordination truly is successful, it would be necessary for all parties to be able to identify the ESVs that may be coming into a given port in order to effectuate such coordination, including the precise routes and schedules used by these vessels. One approach to facilitating information exchange could be a requirement for both the ESV operators and coastal administrations to keep a publicly available list of all ESVs that have been licensed or otherwise granted authority to operate in their area. It also may facilitate communication if the harbormaster is provided this information. The Commission seeks comment on requiring real-time location tracking and that more timely information be made available (e.g., on the Internet). For example, the Commission notes that there are many tracking devices commercially available that provide very precise location based on GPS tracking. The Commission seeks comment on the feasibility and adequacy of these possible measures to ensure proper coordination.

18. Other approaches to providing the information necessary to ensure that ESVs do not cause unacceptable interference to the FS include: First, that ESV licenses indicate the name of the ESV operator and a point of contact, as well as the name of the vessel and a method by which to contact the ship directly (for instance, the ship's Inmarsat number); second, the license could list the frequencies that have been cleared for use by that ESV; and third, a website with all information on licensed ESVs could be created for the purpose of such coordination. Thus, if there were any interference reported, all parties would have information to quickly identify its source by contacting the coastal administration, the harbormaster, a website, or the ESV operator. If the ESV were a non-primary licensee, the ESV station would be required to cease operation immediately if it causes interference. The Commission seeks comment on these ideas for information exchange. In this regard, the Commission seeks comment on whether we should require an ESV system to include a means of identification and automatic mechanisms to terminate transmissions whenever the ESV operates outside its operational limits or is identified as the source of interference. How can the Commission enforce the requirements for preventing and resolving unacceptable interference? The Commission seeks comment on these and other ideas to exchange information, to prevent unacceptable interference, and to resolve interference issues should they arise.

19. Shorter license terms might also be an incentive for ESV operators to assist with the resolution of interference complaints, in that if an ESV station was reported to be interfering on a regular basis and was being in any way uncooperative with the FS station licensee, the ESV license may not be renewed. The Commission seeks comment on the appropriateness of a 1–3 year license term. The shorter terms might provide incentive for ESV operators to carefully coordinate their arrival and at-port use with FS stations. The Commission seeks comment on the concept of shorter licensing terms and other issues related to coordination.

Deadlines and Instructions for Filing Comments

Under §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Notice of Inquiry* on or before April 19, 2002. Reply comments are due May 3, 2002. Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC. 20554. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Ordering Clause

Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Notice of Inquiry is adopted.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6917 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2058–01; I.D. 030402A]

RIN 0648–AP07

Fisheries of the Northeastern United States; Proposed 2002 Specifications for the Spiny Dogfish Fishery; Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2002 fishing year, which is May 1, 2002, through April 30, 2003. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent is to specify the commercial quota and other management measures, such as trip limits, to address overfishing of the spiny dogfish resource. This proposed rule would make a correction to the Spiny Dogfish regulations to indicate that the target fishing mortality rate (F) specified for the period May 1, 2003 – April 30, 2004 should be F=0.03.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on April 8, 2002.

ADDRESSES: Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—2002 Spiny Dogfish Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic

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Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at *http:/www.nero.gov/ro/doc/nero.html*.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Policy Analyst, (978)281-9244, fax (978)281-9135, e-mail *bonnie.l.vanpelt@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, trip limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual target F specified in the FMP. The target F for the 2002 fishing year is 0.03.

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states, MAFMC staff, New England Fishery Management Council (NEFMC) staff, NMFS staff and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review annually the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the upcoming fishing year. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the target F level, and publishes proposed measures for public comment.

Monitoring Committee Recommendations

The Monitoring Committee met on September 11, 2001, to review updated stock assessment information. Based on a 3–year average (1999–2001), fishing mortality was estimated at F= 0.27, far above the overfishing threshold level of 0.11. This level of F reflects overfishing in the fishery before the FMP was implemented. Using 1999-2001 Northeast Fisheries Science Center (NEFSC) spring survey trawl data and commercial landings data through 2000, the Monitoring Committee noted a reduction in the biomass of adult females (>80 cm) throughout the time series (1978 - 2001). The average size of female dogfish has declined from greater than 8.8 lb (4 kg) in 1987 to about 4.40 lb (2 kg) in 2000. Since 1990, the estimate of mature female biomass has declined steadily. The decline in estimated biomass of mature females and large males is consistent with cumulative removals from a slow growing stock. These results suggest that total removals have exceeded productive capacity of the stock. The 3–year average of swept area female biomass (>80 cm) for the period 1999 – 2001, has declined to about 34 percent of the recommended biomass rebuilding target (B_{msy}) of 200,000 mt (441 million lb).

NEFMC survey data show a reduction in the biomass of spiny dogfish pups based on the decline in biomass of dogfish less than 35 cm (13.8 inch). The survey indices for pups have continued to be the lowest in the 33–year time series for the past 5 consecutive years (1997 - 2001), indicating recruitment failure.

The Monitoring Committee estimated the yield associated with a F=0.03 for 2002 to be 4.0 million lb (1.81 million kg), assuming the current stock size. The Monitoring Committee recommended a 4–million pound (1.81-million kg) commercial quota for spiny dogfish for the 2002–2003 fishing season, divided into the two semi-annual periods as specified in the FMP: 57.9 percent for quota period 1 (May–October), or 2,316,000 lb (1.05 million kg), and 42.1 percent for quota period 2 (November-April), or 1,684,000 lb (763,849 kg). The Monitoring Committee also recommended maintaining a trip limit of 600 lb (272 kg) for quota period 1 and 300 lb (136 kg) for quota period 2 (vessels are prohibited from landing more than the specified amount in any one calendar day). The Monitoring Committee also expressed concern that even the current restrictive rebuilding strategy may be too liberal to accomplish the rebuilding objectives of the FMP (i.e., rebuilding to SSBmax), even in the long term.

Joint Spiny Dogfish Committee Recommendations

The Joint Spiny Dogfish Committee (Joint Committee) met on September 28, 2001, to consider the recommendations of the Monitoring Committee, and to make a recommendation to the Councils. The Joint Committee recommended that the Councils, using whatever means necessary, adopt a fishing mortality rate for the 2002-2003 fishing season that would be consistent with a commercial quota of 8.8 million lb (4 million kg). In addition, the Joint Committee recommended trip limits of 7,000 lb (3,175 kg) for both quota periods.

Alternatives Proposed by the Councils

The MAFMC and NEFMC voted upon recommendations for year four (2002-2003) management measures at their respective meetings in October and November 2001. The MAFMC adopted the Monitoring Committee recommendations for a commercial quota of 4 million lb (1.81 million kg) and trip limits of 600 lb (272 kg) for quota period 1 (May 1 - Oct. 31) and 300 lb (136 kg) for quota period 2 (Nov. 1 – April 30). The NEFMC adopted the Joint Committee recommendation for a fishing mortality rate consistent with a commercial quota of 8.8 million lb (4 million kg), and trip limits of 7,000 lb (3,175 kg) for both quota periods.

Proposed 2002 Measures

At both Council meetings NMFS noted that it was not possible to modify the FMP target F through the annual specifications as was recommended by the NEFMC, because such a change would require an FMP amendment. NMFS reviewed both Councils' recommendations and concluded that the MAFMC recommendation would assure that the target F is not exceeded. NMFS proposes a commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2002 fishing year to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for Quota period 1 (May 1, 2001–Oct. 31, 2001); and 1,684,000 lb (763,849 kg) for Quota period 2 (Nov. 1, 2001–April 30, 2002). In addition, NMFS proposes to maintain trip limits of 600 lb (272 kg) for Quota period 1, and 300 lb (136 kg) for Quota period 2 to discourage a directed fishery. The directed fishery has traditionally targeted large mature female spiny dogfish, the stock component that is most in need of protection and rebuilding. A trip limit level of 7,000 lb (3,175 kg) could result in a directed fishery, which is inconsistent with the rebuilding program. Maintaining the limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota period 1 and Quota period 2, respectively, would allow for the retention of spiny dogfish caught incidentally while fishing for other species, but discourage directed fishing and, therefore, provide protection for mature female spiny dogfish.

This proposed rule would also make a correction to the spiny dogfish regulations, because they mistakenly specify a target F=0.08 to begin on May 1, 2003. The FMP requires that the target of F=0.03 be maintained through the end of the fishing year 2003–2004.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

The small entities considered in the analysis include 488 vessels that have reported spiny dogfish landings to NMFS in 2000 (the most recent year for which there is vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters. It is not possible to identify these vessels, but some number of them are likely to be impacted. There is no reason to presume the impacts on these vessels would be substantially different from the impact on Federally-permitted vessels.

Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish (a total of 2,079 vessels were issued the permit in 2001). It is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive trip limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish but those increases cannot be estimated.

NMFS considered three alternatives. The action recommended in this proposed rule includes a commercial quota of 4 million lb (1.81 million kg), and trip limits of 600 lb (272 kg) during Quota period 1 and 300 lb (136 kg) during Quota period 2. Alternative 2 includes a commercial quota of 8.8 million lb (4 million kg) and trip limit of 7,000 lb (3,175 kg) for both quota periods. Alternative 3 evaluates the impact of having no management measures.

The potential changes in 2002 revenues under the 4 million lb (1.81 million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.6 million lb (2.08 million kg) of landings, valued at $1,012,000. The analysis is based on the last full fishing year of landings data and assumed that the revenues of the 488 vessels that landed spiny dogfish in 2000 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to the fishery as a whole was estimated to be about $132,000, or about $270 per vessel, compared to fishing year 2001.

The proposed trip limits of 600 lb (272 kg) in Quota period 1, and 300 lb (136 kg) in Quota period 2 represent a continuation of the trip limits established for fishing year 2001 and have no new impact. The trip limit analysis projected that, on average, under a 600 lb (272 kg) trip limit for quota period 1, landings exceeded the semi-annual quota of 2,316,000 lb (1.05 million kg) on about September 5, 2000 (128 days into the quota period). During Quota period 2, however, if a 300-lb (136–kg) possession limit was in effect, landings were projected not to exceed the semi-annual quota of 1,684,000 lb (763,849 kg). The analysis projected landings of only 615,000 lb (278,959 kg) during quota period 2. Thus, approximately 1,069,000 lb (484,890 kg) of allowable spiny dogfish landings were projected not to be landed. Although the commercial quota is 4 million lb (1.81 million kg), total projected landings would only reach 2.93 million lb (1.33 million kg). However, the analysis does not account for behavioral changes by vessel operators that could impact the amount of landings. Also, since vessels without Federal permits are not captured in the analysis, yet their landings count towards the quota, it is likely that additional landings will occur. In fact, during the 2001 fishing year, under identical trip limits and commercial quota, period 1 was open for 52 days under a 600-lb (272-kg) trip limit and period 2 was open for 20 days under a 300-lb (136-kg) trip limit.

Under Alternative 2, the quota would increase to 8.8 million lb (4 million kg). This represents an increase from landings in fishing year 2001 of 4.2 million lb (1.91 million kg), valued at $924,000. Assuming that the increase is shared among the 488 that landed spiny dogfish in fishing year 2000, each vessel would experience revenue increases of $1,893. However, this quota is inconsistent with the target F required by the FMP.

Under Alternative 2, trip limits of 7,000 lb (3,175 kg), the semi-annual quota of 5,095,200 lb (2.31 million kg) would be exceeded on average approximately 55 days into quota period 1 and the semi-annual quota of 3,704,800 lb (1.68 million kg) would be exceeded approximately 80 days into quota period 2.

Although more vessels would find it profitable to land spiny dogfish under a trip limit of 7,000 lb (3,175 kg) while the season is open, the season would close sooner than under the lower trip limits. Vessels may still be able to make profitable trips by directing on other species and landing up to the trip limit of 600 lb (272 kg) or 300 lb (136 kg) of spiny dogfish. Revenues from spiny dogfish alone would be minimal, but the lower trip limits would likely end the directed fishery, consistent with the FMP. If major spiny dogfish markets are eliminated as a result of low supply due to a low trip limit or quick closure of the fishery, much of the revenue from the spiny dogfish fishery would also be drastically reduced.

Under Alternative 3, with no quota or management measures, landings are projected to be 24.9 million lb (11,294 mt) in 2002–2003. This represents an increase from 2001 landings of 20.3 million lb (9.2 million kg). Increases in gross revenues to vessels would be about $4.5 million. Gross revenues for vessels engaged in the spiny dogfish fishery would be expected to increase, on average, by about $9,151 per vessel in fishing year 2002. Although unrestricted fishing would result in higher short-term landings and revenues, compared to fishing year 2001, this would be inconsistent with the rebuilding program established in the FMP, as required by the Magnuson-Stevens Act.

According to 2000 landings information, the impact of the proposed specifications for the 2002 fishing year will be greatest in Massachusetts which accounted for the largest share of the landings (28.5 percent), followed by New Jersey (25.8 percent), North Carolina (14.1 percent), New Hampshire (11.5 percent) and New York (9.4 percent). The top four ports which landed spiny dogfish in 2000 included Chatham, MA (21 percent); Point Pleasant, NJ (17.4 percent); Hampton

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Bay, NY (8.5 percent); and Portsmouth, NH (8.3 percent).

The proposed correction to the target F will have no impact on any business entity, since it does not modify the status quo.

It has been determined that this proposed rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 18, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.230, paragraph (a) is revised to read as follows:

§ 648.230 Catch quotas and other restrictions.

(a) *Annual review.* The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2004, and a target F of 0.08 thereafter will not be exceeded: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

* * * * *

[FR Doc. 02–6983 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 56

Friday, March 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 15, 2002, from 8:30 AM to 5 PM.

ADDRESSES: The meeting will be held at the Franklin Court Building, Room 6001, West Tower, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Franklin Court Building, Room 6001, West Tower, 1099 14th Street NW., Washington, DC Monday, April 15, 2002, from 8:30 AM to 5:00 PM.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 13, 2002.

Patrick W. McDonough

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–6982 Filed 3–21–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 15, 2002, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 15, 2002, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executive Committees. Items to be covered on the agenda include: Lands and Budget Subcommittee reports, a presentation from Sacramento Air Quality Management District, a presentation by Housing and Urban Development, review of the draft FY 2003 Restoration Act Project List, Tahoe TMDL Planning, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address states above.

Dated: March 15, 2002.

Maribeth Gustafson.

Forest Supervisor.

[FR Doc. 02–6908 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on April 2, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on April 2, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone (707) 441–3549. Email: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the committee, and will focus on the overall strategy for selecting Title II projects and involving the public. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–6905 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

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DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 8, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on April 8, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. e-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on discussing Title II project priorities identified by the RAC subcommittees. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 02–6906 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 29, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on April 29, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting Title II projects based on the recommendations of the RAC subcommittees. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 02–6907 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740

SUPPLEMENTARY INFORMATION: On January 25, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 3683) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, VA Medical Center, Salem Primary Care Clinic, Salem, Oregon.

NPA: The Garten Foundation, Salem, Oregon.

Contract Activity: Department of Veterans Affairs.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6945 Filed 3–21–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurment List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product and service will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the product and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Battery, Nonrechargeable, 6 Volt Alkaline/6135–01–333–6737.

NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.

Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Service

Service Type/Location: Administrative Services, Milwaukee Federal Building and U.S. Courthouse, Milwaukee, Wisconsin.

NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.

Contract Activity: General Services Administration, Public Buildings Service.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6946 Filed 3–21–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census of Puerto Rico and Outlying Areas.

Form Number(s): OA–97120, OA–97220, OA–97123, OA–97223, OA–97130, OA–97230, OA–97142, OA–97242,OA–97144, OA–97244, OA–97152, OA–97252, OA–97172, OA–97272, OA–97180, OA–97280, OA–97190, OA–97290, OA–98163, OA–98173, OA–98183, OA–98193.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 55,750 hours in FY 2003.

Number of Respondents: 61,500.

Avg Hours Per Response: 55 minutes.

Needs and Uses: The Census Bureau plans to conduct the 2002 Economic Census of Puerto Rico and Island Areas, which in addition to Puerto Rico, includes Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, as part of the 2002 Economic Census.

The 2002 Economic Census of Puerto Rico and Island Areas will cover the following sectors (as defined by the North American Industry Classification System (NAICS)): Mining, Utilities, Construction, Manufacturing; Wholesale and Retail Trades, Transportation and Warehousing, Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support, Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services (except Public Administration). This scope is equivalent to that of the stateside economic census.

The economic census provides the only source for dependable, comparable data at a geographic level consistent with U.S. counties. The 2002 Economic Census of Puerto Rico and Island Areas is particularly important because of the rapid and varied changes taking place in the economies of these areas. The economic census is the primary source of dependable facts about the structure and functioning of the economies of Puerto Rico and each of the Island Areas, and features the only recognized source of data at a geographic level equivalent to U.S. counties. Economic census statistics serve as part of the framework for the national accounts of Puerto Rico and the Island Areas and provide essential information for government (Federal and local), business, and the general public. The governments of Puerto Rico and the Island Areas rely on the economic census as an important part of the framework for the their income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides benchmarks for surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross product of Puerto Rico and the Island Areas. In addition, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Businesses or other for-profit; Individuals or households; State, local, or tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6959 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

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DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Special Census Program.

Form Number(s): SC–1, SC–1SUPP, SC–2, SC–920, SC–116, SC–351, SC–921(HU), SC–921(SP).

Agency Approval Number: 0607–0368.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 114,421 hours.

Number of Respondents: 851,525.

Avg Hours Per Response: 8 minutes.

Needs and Uses: Governmental units requiring current population statistics between decennial censuses request that the Census Bureau conduct special censuses. Many states distribute funds based on current population statistics. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, and water treatment facilities.

The Special Census Program will operate as a generic OMB clearance, including a library of forms and the operational procedures that will be used for the many special censuses we anticipate conducting this decade. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time. Prior to conducting any special census, the Census Bureau will submit documentation to OMB providing the details of the Special Census under consideration. We will also submit for OMB review and approval, under cover of change worksheet, any special-purpose questions requested by customers to be added to special census questionnaires.

Local jurisdictions use special census data to apply for available funds from both the state and Federal government. Many states distribute these funds based on current population statistics. This fact, along with local population shifts or annexations of territory, prompts local officials to request special censuses. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, water treatment facilities, etc. Some areas feel that additional data are required for proper planning and others must have the additional data to qualify for some sources of funding. For these reasons, local officials request special purpose questions. The Census Bureau also uses special census data as part of its local population estimates calculation and to update the Bureau's Master Address File (MAF) and Topographically Integrated Geographic Encoding and Referencing (TIGER) System.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 196.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6961 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey—Basic Demographic Items

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gregory Weyland, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS) beginning in July 2002. The current clearance expires June 30, 2002.

The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. At the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. The justification that follows is in support of the demographic data.

The demographic information collected in the CPS provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information we collect are age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We use these data also independently for internal analytic research and for evaluation of other surveys. In addition, we use these data as a control to produce accurate estimates of other personal characteristics.

II. Method of Collection

The CPS basic demographic information is collected from individual households by both personal visit and telephone interviews each month. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0049.

Form Number: There are no forms. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 57,000 per month.

Estimated Time Per Response: 1.58 minutes.

Estimated Total Annual Burden Hours: 18,012.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6958 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS) School Enrollment Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information. The Census Bureau and the Bureau of Labor Statistics sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 30 years.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support. This years supplement contains additional questions about library use which are based on questions from the National Household Education Survey administered by the National Center for Education Statistics in 1996. Data about library staff, facilities, and resources exist as reported by libraries from other surveys; however, the questions of how and why households use these libraries are not addressed by these institutional data. The October 2002 Current Population Survey provides the opportunities to ask detailed questions about household library use. The questions are asked of each household and focus on how households use public libraries and whether public library activities are accessible to people with disabilities. This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 067–0464.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Household.

Estimated Number of Respondents: 57,000.

Estimated Time Per Response: 4.5 minutes.

Estimated Total Annual Burden Hours: 4,275.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., 9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6960 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

Departmental Paperwork Clearance Officer. Office of the Chief Information Officer.

[FR Doc. 02–6960 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Industrial Reports Surveys—WAVE III (Mandatory and Voluntary Surveys)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Judy Dodds, Assistant Chief for Census and Related Programs, (301) 457–4587, Census Bureau, Manufacturing and Construction Division, Room 2101, Building #4, Washington, DC 20233 (or via the Internet at *judy.m.dodds@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annul "counterpart" collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys are divided into separate clearance requests, making six separate clearances. We are now combining the mandatory and voluntary surveys into one clearance request, reducing the total number of clearance requests from six to three. Each year, one wave is submitted for review. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave III for clearance. Also, because this is an economic census year, all voluntary annual surveys are made mandatory. The surveys are MA311D—"Confectionery", MA333N—"Fluid Power Products", and MA335L—"Electric Lighting Fixtures". MA333U—"Coin-Operated Vending Machines" is being discontinued because of a lack of funding. The surveys in Wave III are:

Mandatory surveys	Voluntary survey
M311H—Fats and Oils (Warehouse)	*M336G—Civil Aircraft and Aircraft Engines.
M311L—Fats and Oils (Renderers)	*MQ313D—Consumption on the Woolen System and Worsted Combing.
M311M—Fats and Oils (Consumer)..	* These voluntary surveys have mandatory annual counterparts.
M311N—Fats and Oils (Producers)	
MQ313T—Broadwoven Fabrics (Gray).	
**MA311D—Confectionery.	
MA315D—Gloves and Mittens.	
MA327E—Consumer, Scientific, Technical, and Industrial Glassware.	
MA333D—Construction Machinery.	
MA333F—Mining Machinery.	
**MA333N—Fluid Power Products.	
MA334P—Communication Equipment.	
**MA335L—Electric Lighting Fixtures.	
**Voluntary annual surveys made mandatory during an economic census year.	

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0476—Mandatory Surveys 0607–0776—Voluntary & Annual Counterparts Surveys.

Form Number: See Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses, or other for-profit organizations.

Estimated Number of Respondents: Total—10,756.

Estimated Time Per Response: 1.82.

Estimated Total Annual Burden: Total—9,315 hours.

Estimated Total Annual Cost: The estimate cost to respondents for all the CIR reports in Wave III for fiscal year 2003 is $142,706.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 61, 81, 131, 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer. Office of the Chief Information Officer.

[FR Doc. 02–6962 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Company Organization Survey

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 457–2600.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose Business Register (BR), formerly known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment companies.

The BR serves two fundamental purposes:

—First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and contact information (for example, name and address).

—Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 2002 COS in conjunction with the 2002 Economic Census and will coordinate these collections so as to minimize response burden. The consolidated COS/census mail canvass will direct inquiries to the entire BR universe of multiestablishment enterprises, which comprises some 182,000 parent companies and more than 1.6 million establishments. The primary collection medium for the COS and census is paper questionnaire; however, many large enterprises will submit automated/electronic COS reports. COS data content is identical for all reporting modes.

Primary COS inquiries to each of the 182,000 multiestablishment enterprises will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Additional COS inquiries will apply to approximately 5,000 enterprises that operate some 25,000 establishments classified in industries that are out-of-scope to the economic census. The additional inquiries will list an inventory of those out-of-scope establishments and request updates to the inventory, including additions; deletions; and changes to Federal employer identification number, name and address, and industrial classification. Further, the additional inquiries will collect the following basic operating data for each listed establishment: end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll. The economic census will collect data for all other establishments of multiestablishment enterprises, including those items listed above.

III. Data

OMB Number: 0607–0444.

Form Number: NC–99001.

Type of Review: Regular submission.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 182,000 enterprises.

Estimate Time Per Response: .5 hour.

Estimated Total Annual Burden Hours: 91,255.

Estimated Total Annual Cost: Included in the total annual cost of the BR, which is estimated to be $10.2 million for fiscal year 2002.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of United States Code, Sections 131, 182, 224 and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response of this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6963 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to 2010 decennial planning, development, and testing, as well as the American Community Survey and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: May 2–3, 2002. On May 2, the meeting will begin approximately 8:45 a.m. and end approximately 5:15 p.m. On May 3, the meeting will begin approximately 8:45 a.m. and end approximately 1:45 p.m.

ADDRESSES: The meeting will be held in the Francis Amasa Walker Conference Center, U.S. Census Bureau, 4700 Silver Hill Road, Federal Office Building 3, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone 301–457–2075, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Commerce considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside user perspective about how research and design plans for the 2010 decennial census, and the development of the American Community Survey and related programs, will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Dated: March 15, 2002.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 02–6882 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Proposed Information Collection; Comment Request; National Security and Critical Technology Assessment of the U.S. Industrial Base

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce/BXA, in coordination with other government agencies and private entities, conduct assessments of U.S. industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness as well as the needs of the targeted industry sector in order to maintain a strong U.S. industrial base.

II. Method of Collection

Written response.

III. Data

OMB Number: 0694–0119.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden Hours: 24,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6523 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information Services Order Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2) (A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via Internet at *MClayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to Joseph English, telephone 202–482–3334, fax 202–482–5362, e-mail *Joseph.English@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts.

The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Centers to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, e.g., the Agent Distributor Service, which identifies potential overseas agents or distributors for a particular U.S. manufacturer.

The form is being revised because some of the product names have changed or have been discontinued.

II. Method of Data Collection

Trade specialists gather information from clients at the Export Assistance Centers.

III. Data

OMB Number: 0625–0143.

Form Number: ITA–4096P.

Type of Review: Revision-Regular submission.

Affected Public: Companies interested in ordering export promotion products or services.

Estimated Number of Respondents: 2,675.

Estimated Time Per Response: Range from 5 to 60 minutes.

Estimated Total Annual Burden Hours: 483 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $122,750.00 ($16,852.00 for respondents and $105,898.00 for federal government).

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6964 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Intent to Request a Panel Review.

SUMMARY: On February 27, 2002, The Government of Canada filed a Notice of Intent to Request A Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904.4 of the North American Free Trade Agreement. The Notice was based on the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination regarding Certain Softwood Lumber Products from Canada, made by the United States International Trade Administration. This determinations were published in the **Federal Register**, (66 FR 56062) on November 6, 2001. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–02 to this Notice.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Notice of Intent to Request A Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904.4 of the Agreement, on February 27, 2002, requesting that a panel be established in accordance with the Article outlined above.

Article 1904.4 provide in part that:

Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall being to establish a panel at that time.

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Dated: March 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6883 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Intent to Request A Panel Review

SUMMARY: On February 26, 2002, The Government of Canada filed a Notice of Intent to Request A Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904.4 of the North American Free Trade Agreement. The Notice was based on the Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination regarding Certain Softwood Lumber Products from Canada, made by the United States International Trade Administration. This determinations were published in the **Federal Register**, (66 FR 43186) on August 17, 2001. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–03 to this Notice.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Notice of Intent to Request A Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904.4 of the Agreement, on February 27, 2002, requesting that a panel be established in accordance with the Article outlined above.

Article 1904.4 provide in part that:

> Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall being to establish a panel at that time.

Dated: March 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6884 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902C]

North Pacific Fishery Management Council; Notice of Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings April 8–17, 2002, in Anchorage, Alaska. All meetings will be held at the Anchorage Hilton Hotel.

DATES: The Council's Advisory Panel will begin at 8 a.m., Monday, April 8, and continue through Saturday, April 13, 2002. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, April 8, and continue through Wednesday, April 10, 2002.

The Council will begin its plenary session at 8 a.m. on Wednesday, April 10, continuing through noon Wednesday, April 17. All meetings are open to the public except executive sessions. See **SUPPLEMENTARY INFORMATION** for a schedule of other meetings and the agenda.

ADDRESSES: Hilton Hotel, 500 W. 3rd Avenue, Anchorage, Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Other Committee/Workgroup Meetings Scheduled:

The *Individual Fishery Quota (IFQ) Implementation and Cost Recovery Committee* will meet Sunday, April 7, from 6:30pm to 9:30pm at the Anchorage Hilton Hotel to review regulatory amendments to the IFQ program and develop recommendations for the Council.

The *Gulf of Alaska Workgroup* will meet Tuesday, April 9, from 1 p.m.–5 p.m. at the Anchorage Hilton Hotel to continue developing recommendations for rationalization of the Gulf of Alaska groundfish fisheries.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:
   (a) Executive Director's Report.
   (b) State Fisheries Report by Alaska Dept. of Fish and Game.
   (c) National Marine Fisheries Service (NMFS) Management Report.
   (d) U.S. Coast Guard Enforcement and Surveillance report.
   (e) Report on sea otters from the U.S. Fish &Wildlife Service.
2. Observer Program: final action on regulatory amendments and program extension.
3. Halibut/Sablefish IFQ Program: Final action on implementation regulatory amendments and community purchase of quota share amendment.
4. Halibut Subsistence:
   (a) Receive report on the Proposed Rule for October 2000 Council action on halibut subsistence.
   (b) Receive report from Halibut Subsistence Committee on proxy issues.
   (c) Final action on amendments to October 2000 Council action on halibut subsistence.
5. Community Development Quota Policy Amendment: Identify preferred alternative.
6. Crab Management:
   (a) Initial review of analysis for rationalization of Bering Sea/Aleutian Island crab fisheries.
   (b) Finalize suite of alternatives for the environmental impact statement for the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan.
7. Draft Programmatic Groundfish Supplemental Environmental Impact Statement:

   (a) Review report from the Ecosystem Committee (tentative).
   (b) Clarify purpose and need statement.
   (c) Review alternatives for revised analysis
8. American Fisheries Act:
   (a) Initial review of processor sideboards, improved retention/utilization adjustments and bycatch reduction measures.
   (b) Initial review of additional Pacific cod sideboard measures.
   (c) Initial review of single geographic location change, including clarification of Inshore-offshore and Catcher Vessel Operational Area regulations.
   (d) Review industry proposal for pollock bycatch measures and provide direction.
9. Essential Fish Habitat (EFH):
   (a) Review progress and EFH Committee report; provide direction.
   (b) Review recommendations from the joint Council/Alaska Board of Fisheries Protocol Committee.
10. Gulf of Alaska Groundfish Rationalization: Review progress from working group; provide direction.
11. Steller Sea Lions: Initial review of trailing amendments.
12. Review staff tasking and provide direction.
13. Discuss annual management cycle and Council Statement of Operating Policy and Procedures.
14. Discuss and identify research priorities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. Election of Officers.
2. Crab Management (Item #6 on the Council agenda).
3. American Fisheries Act issues (Item #8 on the Council agenda).
4. Essential Fish Habitat (Item #9 on the Council agenda).
5. Draft Programmatic Groundfish SEIS (Item #7 on the Council agenda).
6. Steller Sea Lion trailing amendment (Item #11 on the Council agenda).
7. Research Priorities (Item #13 on the Council agenda).

Advisory Panel: The Advisory Panel will elect officer for the coming year and address the same agenda issues as the Council, with the exception of the Reports under Item 1 of the Council agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 19, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6984 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902B]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 7–12, 2002. The Council meeting will begin on Tuesday, April 9, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9:30 a.m. on Tuesday, April 9 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the DoubleTree Hotel-Columbia River, 1401 N Hayden Island Drive, Portland, OR 97217; telephone: 503–283–2111.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order
   1. Opening Remarks, Introductions,
   2. Roll Call
   3. Executive Director's Report
   4. Approve Agenda
   5. Approve September and November Meeting Minutes

B. Mitchell Act

C. Salmon Management
   1. Report on Federal Regulation Implementation
   2. Identification of Stocks Not Meeting Escapement Goals for Three Consecutive Years
   3. Methodology Reviews for 2002
   4. Tentative Adoption of 2002 Ocean Salmon Management Measures for Analysis
   5. Clarify Council Direction on 2002 Management Measures, (If Necessary)
   6. Final Action on 2002 Measures
   7. Clarification of Final Action on 2002 Measures, (If Necessary)

D. Marine Reserves
   1. Status of Channel Island National Marine Sanctuary Proposal and Other Marine Reserves Processes

E. Habitat Issues
   1. Essential Fish Habitat Issues

F. Groundfish Management
   1. Status of NMFS Regulatory and Other Nonregulatory Activities
   2. Permit Stacking Issues
   3. Status of Fisheries and Consideration of Inseason Adjustments
   4. Rebuilding Plan Status Report
   5. Groundfish Multi-year Management Cycle
   6. Stock Assessment Review Process Issues
   7. Exempted Fishing Permit Applications
   8. Fisheries Ecosystem Plan for Northern California
   9. Yelloweye Landings in Halibut Fishery Area
   10. Strategic Plan Implementation
   11. Statements
   12. Groundfish Fishery Management Plan Environmental Impact Statement

G. Pacific Halibut Management
   1. 2002 Incidental Catch Regulations
   2. Final Action on 2002 Management Measures

H. Administrative and Other Matters
   1. Status of Legislation
   2. Appointments to Advisory Bodies, Standing Committees, and Other Forums
   3. Council's "Statement of Organization, Practices, and Procedures" and "Council Operating Procedures" Documents
   4. Research and Data Needs Process and Economic Data Plan
   5. Council Staff Workload Priorities
   6. June 2002 Council Meeting Draft Agenda

SCHEDULE OF ANCILLARY MEETINGS

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SCHEDULE OF ANCILLARY MEETINGS—Continued

Klamath Fishery Management Council	3 p.m.
MONDAY, APRIL 8, 2002	
Council Secretariat	7 a.m.
Salmon Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Technical Team	8 a.m.
Habitat Advisory Board	10 a.m.
Groundfish Advisory Subpanel	1:30 a.m.
Groundfish Management Team	8 a.m.
Klamath Fishery Management Council	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
TUESDAY, APRIL 9, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	5 p.m.
WEDNESDAY, APRIL 10, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary
THURSDAY, APRIL 11, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Groundfish Management Team	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary
FRIDAY, APRIL 12, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary

Although nonemergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least five days prior to the meeting date.

Dated: March 19, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6985 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of a Previously Announced Grace Period on Export Visa and Quota Requirements for Certain Textile Costumes Produced or Manufactured in Various Countries, Exported Before June 1, 2002, and Entered for Consumption or Withdrawn from Warehouse for Consumption Before August 1, 2002

March 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a grace period on export visa and quota requirements for certain textile costumes.

SUMMARY: On March 1, 2002, the U.S. Customs Service published a notice in the **Federal Register** informing the public that certain imported textile costumes, entered for consumption or withdrawn from warehouse for consumption after March 1, 2002, are to be classified as wearing apparel in accordance with the Court of International Trade decision in *Rubie's Costume Company v. United States.* This announcement applied to imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170). On March 4, 2002, the Committee for the Implementation of Textile Agreements published a notice and letter to the Commissioner of Customs in the **Federal Register** allowing a grace period before imposing quota and visa requirements on goods described above that are exported before April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before June 1, 2002 (see 67 FR 9706). The Committee for the Implementation of Textile Agreements has decided to extend that grace period. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to exempt from export visa and quota requirements goods described above that are exported before June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before August 1, 2002.

EFFECTIVE DATE: March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

This directive amends, but does not cancel, the directive issued to you on February 28, 2002. In that directive, the Committee for the Implementation of Textile Agreements decided to allow a grace period on the export visa and quota requirements for the textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170).

Effective on March 22, 2002, you are directed to extend the exemption from export visa and quota requirements for goods as described above that are exported prior to June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption prior to August 1, 2002.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6950 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Produced in Certain Companies in Taiwan

March 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs to deny entry to shipments allegedly manufactured in a certain companies in Taiwan.

EFFECTIVE DATE: March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies. (See Federal Register notice 64 FR 41395, published on July 30, 1999).

In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the U.S. Customs Service to deny entry to textile and textile products allegedly manufactured by Attain Enterprise Co., Ltd. and Tian Tuan Shing Co., Ltd. for two years. Customs has informed CITA that these companies were found to have been illegally transhipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such amendment will be published in the Federal Register.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the U.S. Customs Service, effective for goods exported on and after March 22, 2002 and extending through March 21, 2004, to deny entry to textiles and textile products allegedly manufactured by the Taiwanese companies Attain Enterprise Co., Ltd. and Tian Tuan Shing Co., Ltd. Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III.
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–6949 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DR–S

DELAWARE RIVER BASIN COMMISSION

Notice of Final Rule; Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan To Establish Water Usage Reporting Requirements and Modify Water Metering Requirements

SUMMARY: At its April 19, 2001 business meeting, the Delaware River Basin Commission ("Commission") amended its *Water Code* and *Comprehensive Plan* to establish water usage reporting requirements for source water withdrawals and water service and to modify its existing water metering requirements for consistency with the new reporting provisions. Today's notice fulfills a requirement of the Delaware River Basin Compact, Pennsylvania Act No. 268 of 1961, that rules adopted by the Commission be filed in accordance with the laws of the signatory parties.

EFFECTIVE DATE: These amendments are effective immediately.

FOR FURTHER INFORMATION CONTACT: Additional information, including background on the need for water usage reporting requirements and an account of the process by which the amendments were developed, is contained in the original Notice of Proposed Rulemaking, November 29, 2000 (65 FR 71094). The text of the new reporting requirements and the complete *Water Code* as amended are available on the Commission's web site at *http://www.DRBC.net*, or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, (609)–883–9500 (x203).

SUPPLEMENTARY INFORMATION: On October 23, 2000 the Commission published on its web site a Notice of Proposed Rulemaking to establish water

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usage reporting requirements to ensure that the Commission has the source and service information needed to evaluate how and where water is being used in the basin. Notice was published in the **Federal Register** on November 29, 2000 (65 FR 71094), the *Delaware Register of Regulations* on December 1, 2000, the *New Jersey Register* on December 4, 2000, the *New York State Register* on November 22, 2000 and the *Pennsylvania Register* on November 11, 2000. A public hearing was held on January 9, 2001. The proposed amendments were substantively revised on the basis of the written and oral testimony received, and a notice of revised proposed rulemaking was published in the **Federal Register** on March 1, 2001 (66 FR 12930), the *Delaware Register of Regulations* on March 1, 2001, the *New Jersey Register* on March 5, 2001, the *New York State Register* on February 28, 2001 and the *Pennsylvania Bulletin* on March 3, 2001. An additional comment period and public hearing were provided. The final rule was approved by the Commission at the conclusion of the hearing on April 19, 2001.

The final rule amends Section 2.50.1, "Service Metering" and Section 2.50.2, "Source Metering, Recording and Reporting" of the Commission's *Water Code* and adds a new Section 2.50.3, "Reporting Requirements." The title of Section 2.50 is revised to read, "Water Metering and Reporting Requirements." Section 2.50.1 is amended to authorize, rather than require, the Executive Director to enter into administrative agreements with the implementing agencies of the signatory states, whereby the appropriate state agencies will administer and enforce the provisions of the regulation. Section 2.50.1 is further amended to provide that in the absence of such an administrative agreement, the Commission shall serve as the agency for administration and enforcement. Section 2.50.2 is amended to provide that the Commission shall administer and enforce the regulation in the New York portion of the basin. New Section 2.50.3 enumerates the types of source and service data to be reported for water supply systems serving the public and for other withdrawals subject to the requirements of Section 2.50.1, Section 2.50.2 and the Commission's Ground Water Protected Area Regulations. In order to avoid redundant reporting, Section 2.50.3 enumerates different reporting requirements for the year 2000 than for subsequent years. For the year 2000, a greater one-time effort is required to initiate reporting. For subsequent years, a much smaller effort is required to continue reporting.

Dated: March 11, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–6219 Filed 3–21–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 8, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 21, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 18, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New collection.

Title: Application Package for LEAs under the REAP Rural and Low-Income School Program (KA)

Abstract: This information collection package collection will serve as the application package for LEAs under the REAP Rural and Low-Income School Program. This application package will be used by LEAs applying for benefits under this program in States where the SEA chooses not to participate in the program.

Additional Information: The Department is requesting an emergency clearance for the LEA Application for the Rural and Low-Income School Program by March 22, 2002 due to the unanticipated event and potentially causing public harm if awards were not made in time. This is a state-administered formula grant program under the statute. The Secretary is to award formula grants to SEAs, which in turn must award subgrants to eligible LEAs either competitively or on a formula basis. However, the statute makes provisions in the event an SEA chooses not to participate in the program. In such cases, the Secretary may use the SEA's allotment to award grants directly to eligible LEAs in that State either competitively or by formula. Eligible LEAs in non-participating States are referred to as "specially qualified agencies" in the legislation. Some SEAs have recently indicated that they may choose not to participate in this program. The application package that is the subject of this emergency clearance will be used to make direct grants to LEAs in those states, should it be necessary. If normal procedures were to be followed, the Department would not be able to make grant awards under this program by July 1st. The Rural and Low-Income program is one of the programs covered under the Consolidated Application provisions in the No Child Left Behind Act. The Department cannot make allocations for any applicant (either State or LEA) until all eligible applicants have submitted their allocation and eligibility data to the Department, and therefore the need for emergency processing.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 2400.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting "Browse Pending Collections" and clicking on link number 1984. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivian.reese@ed.gov. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6916 Filed 3–21–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1256–000]

GA Power Marketing, L.P.; Notice of Filing

March 12, 2002.

Take notice that on March 5, 2002, GA Power Marketing, L.P. (GAPM) tendered for filing an original tariff sheet for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations.

GAPM is a limited partnership that intends to engage in wholesale electric energy purchases and sales as a power marketer. GAPM is not in the business of generating or transmitting electric power. GAPM is a limited partnership which has Global Operations Services, Inc. as its general partner. Global Operations Services, Inc. is a wholly-owned subsidiary of Global Advisors Limited which, through its affiliates, is involved primarily in investment management.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: March 26, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6892 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–79–000, et al.]

PG&E Dispersed Generating Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 15, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Generating Company, LLC

[Docket No. EG02–79–000]

Take notice that on March 12, 2002, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to clarify its Application For Redetermination of Exempt Wholesale Generator Status filed with the Commission on January 31, 2002.

Comment Date: April 5, 2002.

2. Bangor Hydro-Electric Company

[Docket No. ER99–1522–001]

Take notice that on March 12, 2002, Bangor Hydro-Electric Company (Bangor Hydro) filed an updated market analysis as required by the Federal Energy Regulatory Commission's (Commission) March 12, 1999 order in Docket No. ER99–1522–000 granting Bangor Hydro market based rate authority.

Comment Date: April 2, 2002.

3. Progress Energy Inc., on behalf of, Progress Ventures, Inc.

[Docket No. ER02–1302–000]

Take notice that on March 12, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, Dynegy Power Marketing, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of March 11, 2002 for this Service Agreement. Copies of the filing

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were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: April 2, 2002.

4. Tampa Electric Company

[Docket No. ER02–1303–000]

Take notice that on March 12, 2002, Tampa Electric Company (Tampa Electric) tendered for filing service agreements with Reliant Energy Services, Inc. (Reliant) for firm point-to-point transmission service and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of March 12, 2002, for the tendered service agreements, and therefore requests waiver of the Commission's notice requirement. Copies of the filing have been served on Reliant and the Florida Public Service Commission.

Comment Date: April 2, 2002.

5. West Texas Utilities Company

[Docket No. ER02–1304–000]

Take notice that on March 12, 2002, West Texas Utilities Company (WTU) filed a Second Revised Agreement for Sale and Purchase of Power and Associated Energy and Responsive Reserves (Second Revised Agreement) between WTU and Brazos Electric Power Cooperative, Inc. (Brazos). The Second Revised Agreement is being filed under WTU's Market-Based Rate Tariff and replaces, in its entirety, First Revised Service Agreement No. 25, currently on file under the Market-Based Rate Tariff. CSW Operating Companies FERC Electric Tariff, First Revised Volume No. 8. The Second Revised Agreement is designated Second Revised Service Agreement No. 25.

WTU seeks an effective date of July 31, 2001 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Brazos and on the Public Utility Commission of Texas.

Comment Date: April 2, 2002.

6. New England Power Company

[Docket No. ER02–1305–000]

Take notice that on March 12, 2002, New England Power Company (NEP) submitted for filing First Revised Service Agreement No. 212 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Fitchburg Gas and Electric Light Company.

NEP states that a copy of this filing has been served upon Fitchburg and all appropriate state regulators.

Comment Date: April 2, 2002.

7. PacifiCorp

[Docket No. ER02–1306–000]

Take notice that on March 12, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Notice of Cancellation of Service Agreement No. 22 under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 6 for the Electric Service Agreement entered on November 21, 1996 between Blanding City, Utah and PacifiCorp.

Copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: April 2, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1307–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by East Kentucky Power Cooperative.

A copy of this filing was sent to East Kentucky Power Cooperative.

Comment Date: April 2, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1308–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Hutchinson Utilities Commission.

A copy of this filing was sent to Hutchinson Utilities Commission.

Comment Date: April 2, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1309–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Municipal Energy Agency of Nebraska.

A copy of this filing was sent to Municipal Energy Agency of Nebraska.

Comment Date: April 2, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1310–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Omaha Public Power District.

A copy of this filing was sent to Omaha Public Power District.

Comment Date: April 2, 2002.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1311–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by UtiliCorp United Inc.

A copy of this filing was sent to UtiliCorp United Inc.

Comment Date: April 2, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1312–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Tennessee Valley Authority.

A copy of this filing was sent to Tennessee Valley Authority.

Comment Date: April 2, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1314–000]

Take notice that on March 12, 2002, Niagara Mohawk Power Corporation (NIMO) filed two executed interconnection agreements with CH Resources, Inc. (CH Resources). The interconnection agreements set forth the terms and conditions governing the interconnection between the Niagara generating facility (Niagara Facility) and the Syracuse generating facility (Syracuse Facility), respectively, and NIMO's transmission system.

Copies of the filing were served upon CH Resources and the New York Public Service Commission.

Comment Date: April 2, 2002.

15. Eliot G. Protsch

[Docket No. ID–3594–001]

Take notice that on March 8, 2002, Eliot G. Protsch filed an Application to Hold Interlocking Positions.

Comment Date: April 8, 2002.

16. James S. Haines, Jr.

[Docket No. ID–3692–000]

On March 7, 2002, the above named individual filed with the Federal Energy Regulatory Commission an application for authority to hold interlocking positions in the Empire District Electric Co., with its principal place of business at 602 Joplin Avenue, Post Office Box 127, Joplin, Missouri, 64802–0127, and El Paso Electric Co., with its principal place of business at 123 West Mills, P.O. Box 982, El Paso, Texas, 79960.

Comment Date: April 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6890 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Electricity Market Design and Structure; Notice of Working Paper

March 15, 2002.

Take notice that the Commission has distributed a working paper on standardized transmission service and wholesale electric market design. The purpose of this paper is to stimulate public discussion that can guide the development of a proposed rulemaking on these issues.

The working paper is being placed in the record of this rulemaking docket. It will also be available on the Commission's website at *http://www.ferc.gov/electric/RTO/mrkt-strct-comments/discussion_paper.htm.*

Comments on this paper should be filed with the Commission by March 27, 2002. Comments may be filed in paper format or electronically. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington D.C. 20426. For electronic filings via the Internet, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6891 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and Motorcycles; OMB Control Number 2060–0104; expiration date March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. This ICR consolidates the following related ICRs; Motor Vehicle Exclusion Determination; OMB Control Number 2060–0124; National Low Emitting Vehicle Program; OMB Control Number 2060–0345; Selective Enforcement Audit; OMB Control Number 2060–0064; Emission Defect Information and Voluntary Emission Recall Reports for On-Highway, Light Duty Vehicles; OMB Control Number 2060–0425; Verification of Test Parameters and Parts Lists for Light Duty Vehicles and Light-Duty Trucks; OMB Control Number 2060–0094. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referring EPAICR No. 0783.42 and OMB Control No. 2060–0104, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0783.42. For technical questions about the ICR contact Richard W. Nash, Certification and Compliance Division, 2565 Plymouth Road, Ann Arbor MI 48103, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and

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Motorcycles; OMB Control Number 2060–0104, EPA ICR Number 0783.42, expiration date March 30, 2002. This is a request for extension of a currently approved collection.

Abstract: EPA collects product information and test results from manufactures of passenger cars, light duty trucks and motorcycles. This information is used to verify that emission standards have been met prior to the vehicles being offered for sale and that fuel economy values are accurate. It is also used in selecting vehicles for audit testing. At the conclusion of a model year production figures and test results are reviewed to determine if fuel economy standards have been met.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published October 9, 2001, oral and written comments were receive.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7,343 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 70.

Estimated Number of Respondents: 70.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 514,000.

Estimated Total Annualized Capital, O&M Cost Burden: $7.1 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0783.42 and OMB Control No. 2060–0104 in any correspondence.

Dated: March 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6996 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Institutional Controls Tracking Systems and Costs Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Institutional Controls Tracking Systems and Costs Survey, EPA ICR No. 2043.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2043.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at Auby.Susan@epa.gov, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2043.01. For technical questions about the ICR, contact Michael E. Bellot by phone at (703) 603–8905.

SUPPLEMENTARY INFORMATION:

Title: Institutional Controls Tracking Systems and Costs Survey (EPA ICR No. 2043.01). This is a new collection.

Abstract: The Office of Emergency and Remedial Response (OERR) is currently researching the development of a system for tracking institutional controls at Superfund sites. Institutional controls are non-engineered site measures such as administrative or legal controls that minimize the potential for exposure to contamination or protect the integrity of a remedy by limiting land or resource use. Proper implementation, monitoring, and enforcement of institutional controls are critical to EPA's core mission of protecting human health and the environment. Although institutional control mechanisms are necessary parts of many site remedies, they are often implemented, monitored, or enforced by state, tribal or local governments. OERR is proposing to complete a study that includes: (1) Conducting research into the types of institutional controls tracking systems that are currently in use and evaluating their relative strengths and weaknesses; (2) developing a focused list of data collection points and definitions; (3) developing and piloting a process for the collection of data to be used to estimate data availability and the cost and time required for data acquisition; (4) developing a data entry process; and (5) researching the feasibility of sharing data and linking federal, state, tribal and local institutional control tracking in a web-based system. In a second phase of this study, OERR is planning to develop the tracking system, establish data linkages, and populate the database. This proposed ICR specifies information necessary to determine what types of institutional controls tracking systems are currently in use; their purpose, scope, and structure; the kinds of data they track; their data entry, quality assurance, administration, and access features; data querying capabilities; compatibility with a future EPA system; development, population, and operating costs; and lessons learned from developing, implementing, and operating these systems. EPA estimates that approximately 52 States, 10 Tribes, and no more than 200 local agencies (planning, zoning, and real estate recording offices) will be surveyed. If approved by OMB, respondents will have 60 days from receipt of the survey to submit their responses. In addition to the survey, this proposed ICR includes EPA requests for clarifications, questions and updates to the survey, and agency visits. Clarifications and updates will be necessary if EPA has follow-up questions regarding responses or if EPA requires more information to understand a tracking system. Up to 50 agencies may be required to submit more detailed descriptions. EPA proposes to visit up to 20 agencies to evaluate institutional controls tracking systems. Responding to the survey is entirely voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 2, 2001 (66 FR 50182); 19 comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Tribes, and Local Agencies.

Estimated Number of Respondents: 262.

Frequency of Response: One time only.

Estimated Total Annual Hour Burden: 2,620 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2043.01 in any correspondence.

Dated: March 14, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6997 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, EPA ICR No. 0801.14, OMB Control Number 2050–0039, expiration date March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0801.14 and OMB Control No. 2050–0039, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susuan Auby at EPA by phone at (202) 260–2740, by E-mail at Auby.Susan@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0801.14. For technical questions about the ICR contact Bryan Groce at 703–308–8750, *groce.bryan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, OMB Control No. 2050–0039, EPA ICR No. 0801.14, expiring March 31, 2002. This is a request for an extension of a currently approved collection.

Abstract: The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section mandates a hazardous waste manifest "system" to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, and disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste. The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

This system does not ordinarily involve intervention on the part of EPA unless hazardous wastes do not reach their point of disposition within a specified time frame. In most cases, RCRA-authorized States operate the manifest system, and requirements may vary among authorized States.

EPA believes manifest requirements and the resulting information collection mitigate potential hazards to human health and the environment by ensuring that hazardous waste is sent to and received by appropriate treatment, storage, and disposal facilities, by initiating appropriate response actions if a shipment does not reach its intended destination, and by providing necessary emergency response information in the event of an accident, spill, or leak during transportation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection

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of information was published on November 27, 2001 (66 FR 59248); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous Waste Generators, Transporters, and Treatment, Storage, and Disposal Facilities (TSDFs).

Estimated Number of Respondents: 145,974.

Frequency of Response: Per shipment of hazardous waste.

Estimated Total Annual Hour Burden: 3,612,539 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $ 2,416.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0801.14 and OMB Control No. 2050–0039 in any correspondence.

Dated: March 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6998 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–4]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in General Electric Company v. United States Environmental Protection Agency, No. 99–1353 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants for Source Categories: Generic MACT Standards, 40 CFR part 63, subpart YY, published at 64 FR 34921 on June 29, 1999. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on March 13, 2002.

DATES: Written comments on the proposed settlement agreement must be received by April 22, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on March 13, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants for Source Categories: Generic MACT Standards, 40 CFR part 63, subpart YY, on June 29, 1999 (64 FR 34921). Thereafter Petitioner the General Electric Company ("GE") filed a timely petition for review, citing an issue concerning the recordkeeping provision in 40 CFR 63.1109(c). Thereafter, GE raised additional issues pertaining to the definition of "process vent" in 40 CFR 63.1101, which EPA concluded could only be properly resolved in conjunction with related issues being considered with respect to some other MACT standards. The parties have now reached agreement on appropriate revisions to each of these provisions, and on some additional minor corrections as well.

The settlement requires the EPA Administrator to sign a proposed rule incorporating these changes no later than three months after the date the settlement was signed by counsel for the parties. Because EPA believes the proposed amendments are not controversial and are unlikely to elicit adverse comment, and because relatively little time remains before the compliance date for the affected standards, EPA expects to utilize a direct final rule, which will become final 60 days after publication if no adverse comments are received.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: March 14, 2002.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–6999 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed March 11, 2002 Through March 15, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020100, Draft EIS, FHW, MI, I–94 Jackson Freeway Modernization Project, Improvements between Michigan State Route 60 (M–60) and Sargent Road, Funding, NPDES and COE Section 404 Permits, Jackson County, MI, Comment Period Ends: May 06, 2002, Contact: Ronald Hatched (517) 702–1832.

EIS No. 020101, Draft Supplement, AFS, OK, AR, Vegetation Management in the Ozark/Quachita Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Qzark, Quachita and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OR, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020102, Draft Supplement, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Vegetation Management in the Coastal Plain/ Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020103, Draft Supplement, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Al, GA, KY, NC, SC, TN, VA and WV, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020104, Final EIS, NPS, DC, Mary McLeod Bethune Council House National Historic Site, Implementation, General Management Plan, Washington, DC, Comment Period Ends: April 22, 2002, Contact: Diann Jacox (202) 673–2402.

EIS No. 020105, Draft EIS, NPS, MN, Grand Portage National Monument General Management Plan, Implementation, Cook County, MN, Comment Period Ends: May 20, 2002, Contact: Tim Cochrane (218) 387–2788.

EIS No. 020106, Draft EIS, AFS, ID, Mann Creek Vegetation Management and Watershed Restoration Project, Implementation, Payette National Forest, Weiser Ranger District, Washington County, ID, Comment Period Ends May 06, 2002, Contact: Greg Lesch (208) 549–4200. This document is available on the Internet at: http://www.fs.fed.us/r4/payette/main.html.

EIS No. 020107, Draft Supplement, FTA, HI, Oahu Primary Corridor Transportation Project, Updated Information on the Refined Bus Rapid Transit (BRT) Alternative, Major Investment Study, In the City and County of Honolulu, HI, Comment Period Ends: May 07, 2002, Contact: Donna Turchie (415) 744–2737.

EIS No. 020108, Final EIS, AFS, NM, Talpa-to-Penasco Proposed to Construct and Operate 69 kV Transmission Line, Kit Carson Electric Cooperative, Carson National Forest, Camine Real Ranger District, Tasos County, NM, Wait Period Ends: April 22, 2002, Contact: Sher Churchchill (505) 758–6200. This document is available on the Internet at: http://www.fs.fed.us/r3/carson.

EIS No. 020109, Final Supplement, COE, TN, Chickamauga Dam Navigation Project, New and Updated Information concerning Cumulative Effects and Compliance with Section 106 of the Historic Preservation Act, NPDES, US Army COE Section 404 and US Coast Guard Permits Issuance, Tennessee River, Hamilton County, TN, Wait Period Ends: April 22, 2002, Contact: Wayne Easterling (615) 736–7847.

EIS No. 020110, Final EIS, USN, CA, Point Mugu Sea Range Naval Air Warfare Center Weapons Division (NAWCWPWS), Proposes To Accommodate TMD Testing and Training, Additional Training Exercises, Ventura, Los Angeles, Santa Barbara, San Diego and San Luis Obispo Counties, CA, Wait Period Ends: April 22, 2002, Contact: Gina Smith (888) 217–9045.

Amended Notices

EIS No. 020065, Draft EIS, FAA, MD, VA, DC, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), Newly Consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA; DC, MD and VA, Comment Period Ends: May 23, 2002, Contact: William Carver (800) 762–9531. Revision of FR Notice Published on 02/22/2002: CEQ Comment Period Ending 05/28/2002 is Corrected to 05/23/2002.

Dated: March 19, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6981 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66302; FRL–6829–5]

Ethion; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order cancelling the registrations of all pesticide products produced by Cheminova AGRO A/S, FMC Corporation, and Micro-Flo Corporation containing O,O,O,O-tetaethyl S,S-methylene bis(phosphorodithioate) (ethion). This cancellation order follows a notice in the September 26, 2001 **Federal Register** announcing receipt of requests for cancellation of these products, and announcing the commencement of a public comment period as required by section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has received no comments, and is therefore granting the requested cancellation orders. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: Cancellation of manufacturing-use products will be effective on October 1, 2003, and cancellation of end-use products will be effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Dumas,Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8015; fax number: 703–308–8041; e-mail address:dumas.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of thisdocument, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66302. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

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the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking

This notice announces the cancellation of five ethion pesticide products as requested by Cheminova A/S, FMC Corporation, and Micro-Flo Corporation. These registrations are listed in Table 1.

A. Background Information

Ethion is an organophosphate insecticide registered for use on citrus in Florida and Texas, and cattle in eartags.

On August 24, August 29, and August 31, 2001, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, respectively, signed a Memorandum of Agreement with EPA requesting cancellation pursuant of 6(f) of FIFRA of all their registrations for products containing ethion. In the **Federal Register** of September 26, 2001 (66 FR 49182) (FRL–6805–5), EPA announced its intention to accept the cancellation requests and provided for a public comment period. No comments were received in response to that notice.

B. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA grants the cancellation requests for the registrations identified in Table 1. Accordingly, EPA orders the cancellation of the manufacturing-use products (EPA Registration Nos. 4787–10 and 279–2280) effective October 1, 2003. EPA orders the cancellation of end-use products (279–1254, 51036–89, and 51036–90) effective December 31, 2003. Any distribution, sale or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stocks Provisions in Unit III. of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

TABLE 1.—CANCELED REGISTRATIONS

Company	Registration Number	Product
Cheminova A/S	4787-10	Cheminova Ethion Technical
FMC Corporation	279-1254 279-2280	Ethion 4 Miscible Ethion Technical Insecticide
Micro-Flo Corporation	51036-89 51036-90	Ethion 4 EC Ethion 8 EC

III. Provisions for Disposition of Existing Stocks

Cancellation of manufacturing-use products will be effective on October 1, 2003, and cancellation of end-use products will be effective on December 31, 2003.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action (56 FR 29362, June 26, 1991).

A. Manufacturing Use Products

As of October 1, 2003, all sale and distribution of existing stocks of ethion manufacturing use products is prohibited, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of December 31, 2003, all use of existing stocks of manufacturing-use products to manufacture any other product is prohibited, except for production of products intended for export consistent with the requirements of FIFRA section 17.

B. End Use Products

As of December 31, 2003, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, are prohibited from distributing or selling existing stocks of the end-use products, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of October 1, 2004, all sale and distribution of existing stocks of the end-use products is prohibited, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of December 31, 2004, all use of existing stocks of the end-use products is prohibited.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2002.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6854 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66300A; FRL–6831–6]

Notice of Receipt of Requests to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amend to Terminate Certain Uses of CCA Products; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period.

SUMMARY: Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA issued a notice of receipt of requests from registrants of affected chromated copper arsenate (CCA) products to cancel certain products and to amend to terminate certain uses of other CCA products. In the notice published on February 22, 2002, the Agency provided a 30–day comment period that expires on March 25, 2002. In a letter submitted on behalf of Elementis PLC and dated March 11, 2002, an extension of the period for submission of public comments was requested. After due consideration of the registrant's request, the Agency, by this notice, is hereby announcing that the deadline for submitting comments is extended from March 25, 2002, to April 9, 2002.

DATES: Comments on the matters announced in the February 22, 2002 **Federal Register** notice must be received on or before April 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** of the February 22 **Federal Register**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–66300A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bonaventure Akinlosotu, Antimicrobial Division, Office of Pesticide Programs (7510C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: akinlosotu.bonaventure@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the initial **Federal Register** notice of February 22, 2002 (67 FR 8244) (FRL–6826–8). A copy of the letter requesting the time extension has been placed in the official record of this action (docket control number OPP–66300).

I. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use CCA products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66300. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

List of Subjects

Environmental protection.

Dated: March 18, 2002.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

[FR Doc. 02–6943 Filed 3–21–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66292A; FRL–6823–8]

Fenamiphos and Metolachlor; Registered Uses Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the use cancellations as requested by the companies that hold the registrations of pesticide end-use and manufacturing-use products containing the active ingredient (a.i.) fenamiphos and metolachlor and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 20, 2001, notice of receipt of requests for voluntary cancellation of uses. EPA indicated that it would issue an order confirming the voluntary use cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. Any distribution, sale, or use of fenamiphos and metolachlor products labeled for the canceled uses are only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective March 22, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Tawanda Spears, telephone number: (703) 308–8050; e-mail address: spears.tawanda@epa.gov (Fenamiphos) and Anne Overstreet, telephone number: (703) 308–8068; e-mail address: overstreet.anne@epa.gov (Metolachlor), Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use fenamiphos and/or metolachlor products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this

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document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66292A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

EPA is publishing a single notice in response to registrants' requests to delete some uses for fenamiphos and metolachlor from their labels. (See the table in this unit for specific information regarding the cancellation requests.)

Reregistration Eligibility Decision (RED) documents summarize the findings of EPA's reregistration process for individual chemical cases, and reflect the Agency's decisions on risk assessment and risk management for uses of individual pesticides. The metolachlor RED was issued in April of 1995. However, since the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996, the Agency is required to reconsider metolachlor tolerances consistent with the provisions of the Act. This tolerance reassessment decision is scheduled to be completed in 2002. In defining the scope of this review, Syngenta, the metolachlor registrant, has elected to voluntarily drop certain uses from their manufacturing-use product label.

For fenamiphos, an organophosphate, a RED has not been issued. Although the Agency has not yet completed its cumulative risk assessment for a RED, the Agency is issuing an interim reregistration eligibility decision (IRED) to inform the public of the Agency's completion of assessment of risks associated with the active ingredient fenamiphos alone, any unreasonable adverse effect from the exposure to fenamiphos, and mitigation measures necessary to eliminate such unreasonable adverse effects to the environment. When the Agency completes assessing the cumulative effects of pesticides sharing a common effect of toxicity with fenamiphos, the Agency will issue a final decision on the reregistration eligibility of pesticides containing fenamiphos. As part of this process, Bayer has elected to delete certain uses from its product labels rather than develop the data necessary to support reregistration.

In the **Federal Register** notice published on September 20, 2001 (66 FR 48459) (FRL–6800–3), EPA published a notice of the Agency's receipt of requests for voluntary cancellation of uses from registrants that hold the pesticide registrations containing fenamiphos and metolachlor.

B. Requests for Voluntary Cancellation of Registered Uses

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend their end-use and manufacturing-use product registrations of pesticide products containing fenamiphos and metolachlor, respectively, to delete the listed uses from the listed product(s) bearing such use. The registrations, for which amendments to delete uses were requested, are identified in the following table.

TABLE 1.—VOLUNTARY CANCELLATION OF REGISTERED USES

Chemical	PC Code	Company/Address	Nature of Action	Products Affected	Comments
Fenamiphos	100601	Bayer Corp., 8400 Hawthorne Rd., P.O. Box 4913, Kansas City, MO, 64120–0013	Cotton and pineapple use deletion	3EC[1] [3125–283] 15G[2] [3125–236]	Cancel 3EC and 15G on cotton and 15G on pineapple
Metolachlor	108801	Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300	Stone fruits and almond use deletion	100–587	

[1] Nemacur 3 (emulsifiable concentrate - 3 lb a.i./gal)
[2] 15G: Nemacur 15% (granular formulation - 15% a.i./gal)

In the **Federal Register** notice, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C). No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. The Agency orders that the registrations of the uses identified in the table are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table (i.e., products bearing labeling for the canceled uses) in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or sale of manufacturing-use products by registrants.* Distribution or sale by the registrant of the existing stocks of any product identified in Table 1 will not be lawful under FIFRA after 12 months from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Distribution or sale of manufacturing-use products byothers.* Distribution or sale by persons other than the registrant of the existing stocks of any product identified in Table 1 will not be lawful under FIFRA after 24 months from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2002.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6855 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 13, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 22, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.1705, Performance Tests (channels delivered), Section 76.601, Performance Tests.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 10,400.

Estimated Time per Response: 0.5 to 70 hours.

Frequency of Response: Semi-annual and triennial reporting requirements; Third party disclosure.

Total Annual Burden: 277,200 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Section 76.1705 requires cable television systems to maintain at its local office a current listing of cable television channels that the system delivers to its subscribers. 47 CFR Section 76.601 requires cable systems with over 1,000 subscribers to comply with all pertinent technical standards and to conduct semi-annual performance tests and triennial performance tests for color testing. The FCC or the local franchise authority may require additional tests to secure compliance with these technical standards. Furthermore, prior to requiring additional testing, the local franchising authority must notify the cable operator, who is then allowed 30 days to comply with any perceived signal quality problems that need correcting.

OMB Control Number: 3060–0638.

Title: Section 76.934(g), Alternative Rate Regulation Agreements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 50 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Sections 76.934(g) requires that local franchising authorities, certified pursuant to 47 CFR Section 76.910, and small systems operated by small cable companies may enter into an alternative rate regulation agreements affecting the basic service tier and the cable programming service tier. Small systems must file a copy of the operative alternative agreement with the FCC so that verification can be made that such agreements have been entered into and executed pursuant to the Commission's rules.

OMB Control Number: 3060–0644.

Title: Establishing Maximum Permitted Rates for Regulated Cable Services on Small Cable Systems, FCC Form 1230.

Form Numbers: FCC 1230.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal government; Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 5.

Estimated Time per Response: 2.0 to 2.25 hours.

Frequency of Response: Annual reporting requirements; Third party disclosure.

Total Annual Burden: 211 hours.

Total Annual Costs: None.

Needs and Uses: On May 5, 1995, the FCC adopted rules that allow a small cable system owned by a small cable company to use a simplified cost-of-service procedure to set its maximum permitted rate. Pursuant to these rules, a cable system is eligible to set its maximum permitted rate with the FCC Form 1230 if it is a system with 15,000 or fewer subscribers, and it is not owned by a cable company with more than 400,000 subscribers. The FCC and the

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local franchise authorities use these data to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under FCC regulations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6932 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–376]

Commission Seeks Comment on AT&T Request To Contribute to Universal Service Based on Projected Revenues

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on AT&T request to the Commission to permit it to contribute based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on historical revenues from two quarters prior.

DATES: Comments are due on or before April 12, 2002. Reply comments are due on or before April 22, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On December 13, 2001, AT&T filed a request with the Commission to contribute to universal service based on its projected revenues on a going-forward basis. Pursuant to § 54.711(c) of the Commission's rules, universal service contributions are based on a contributors' historical gross-billed end-user interstate and international telecommunications revenues, which are reported on a quarterly basis on the FCC Form 499–Q. The FCC Form 499–Q instructs contributors to report their revenues from the prior calendar quarter. These revenue data then serve as the basis for contributions assessed in the next calendar quarter. AT&T asks the Commission to permit it to contribute based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on historical revenues from two quarters prior. AT&T contends that grant of its request is warranted because the interval between reporting and assessment of contributions under the current rules, combined with AT&T's declining interstate and international revenues, force it to recover its universal service contributions from a smaller customer base than the one on which it was assessed. We seek comment on AT&T's request.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 12, 2002, and reply comments are due on or before April 22, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 24121, May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 02–6929 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–510]

Common Carrier Bureau Seeks Comment on Guam Cellular and Paging, Inc. d/b/a/ Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan in the Commonwealth of the Northern Mariana Islands

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on the Guam Cellular and Paging, Inc. d/b/a Saipancell (Saipancell) petition seeking designation of eligibility to receive federal universal service support for service offered on the island of Saipan in the Commonwealth of the Northern Mariana Islands.

DATES: Comments are due on April 22, 2002. Reply comments are due on May 6, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Assistant Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On February 19, 2002, Saipancell filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered on the island of Saipan in the Northern Mariana Islands. Specifically, Saipancell contends that the Commonwealth Utilities Corporation, which is the public utility commission of the Northern Mariana Islands, has provided an affirmative statement that it does not regulate commercial mobile radio service carriers; Saipancell meets all the statutory and regulatory prerequisites for ETC designation; and designating Saipancell as an ETC will serve the public interest. Pursuant to § 54.207(c) of the Commission's rules, Saipancell also requests that the Commission redefine the service area of the incumbent rural local exchange carrier, Micronesian Telephone Corporation (MTC). MTC serves three islands in the Northern Mariana Islands—Saipan, Tinian, and Rota. Saipancell seeks redefinition of the MTC service area to enable Saipancell to be designated as an ETC only for the island of Saipan.

The petitioner must provide copies of its petition to the Commonwealth Utilities Corporation at the time of filing with the Commission. The Commission will also send a copy of the Public Notice to the Commonwealth Utilities Corporation by overnight express mail to ensure that the Commonwealth Utilities Corporation is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 12, 2002, and reply comments are due on or before April 22, 2002. An original and four copies of all comments must be filed with William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–B204, Washington DC 20554. In addition, four copies of each comment must be delivered to Sheryl Todd, Common Carrier Bureau, 445 12th Street, SW., Room 5–A520, Washington, DC, 20554, and one copy to Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington DC, 20554. In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, hand-delivered or messenger-delivered filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method. . .	It should be addressed for delivery to. . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

In addition to filing paper comments, parties are encouraged also to file comments electronically using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Document in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by the Internet e-mail. To receive instructions, send an email to *ecfs@fcc.gov* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Anita Cheng,

Assistant Chief, Accounting Policy Division.

[FR Doc. 02–6931 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Flood Insurance.

OMB Number: 3064–0120

Annual Burden:

Estimated annual number of respondents/recordkeepers: 5,700
Estimated number of covered transactions: 180,000
Estimated reporting hours: 9,000
Estimated recordkeeping hours: 5,700
Estimated total annual reporting and recordkeeping burden hours: 14,700
Estimated average annual burden hours per respondent/recordkeeper: 2.6 hours

Expiration Date of OMB Clearance: April 30, 2002.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before April 22, 2002, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Each supervised lending institution is currently required to provide a notice of special flood hazards to a borrower acquiring a loan secured by a building on real property located in an area

identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Dated: March 18, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–6951 Filed 3–21–02; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

[Notice 2002–4]

The Voting System Standards and an Opportunity to Publicly Voice Previously Submitted Comments

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on the December 13, 2001, release of the Voting System Standards.

DATES: The hearing will be held at 10:00 a.m. on Wednesday, April 17, 2002. All requests to testify must be received by the Commission by April 7, 2002. Requests to testify are limited to election officials, members of the National Association of State Election Directors' Voting System Standards Board, and those parties who have previously submitted written comments to the June 16, 2001, and/or December 13, 2001, release of the Voting System Standards.

ADDRESSES: Requests to testify should be addressed to Penelope Bonsall, Director of the Office of Election Administration, and must be submitted in either written or electronic form. Due to recent delays in mail service to government offices, electronic or fax submissions are encouraged to ensure timeliness. Written requests to testify should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed requests should be sent to (202) 219–8500, with printed copy follow-up to insure legibility. Electronic mail requests should be sent to vss@fec.gov. Persons sending requests by electronic mail must include their full name, electronic mail address and postal service address within the text of the request. Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Penelope Bonsall, Director of the Office of Election Administration, 999 E Street, NW., Washington, DC 20463, (202) 694–1095 or (800) 424–9530, ext. 1095.

SUPPLEMENTARY INFORMATION: The Voting System Standards (the "Standards") were originally promulgated in 1990. Technological and commercial innovations during the last decade have demanded that the Standards be updated, and the project to revise them was begun in 1998. The revised Standards have two volumes. Volume I provides functional and technical requirements for a number of system types and configurations. Volume II provides testing specifications for the requirements in Volume I. Both Volumes are available at the Commission's web site (*http://www.fec.gov/pages/vss/vss.html*). The Commission previously released for public comment a draft of the first volume on June 16, 2001. 66 FR 35978. During this comment period, the Commission received 38 sets of comments from 39 parties. Subsequently, the Commission released the entire draft Standards on December 13, 2001. 66 FR 65708. The comment period for the December 13, 2001, draft release ended on February 1, 2002. FR Notice 2001. Twenty-seven sets of comments from twenty-three parties were received by the Commission in response to the December 13, 2001, release. Four commenters requested to testify at a public hearing if one is held.

After considering these requests and the other comments received to date in response to the notice, the Commission believes a public hearing would be helpful in considering the issues raised by the draft Standards. The hearing will be held at 10:00 a.m. on April 17, 2002.

Dated: March 18, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–6948 Filed 3–21–02; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Outcome Evaluation of HIV Prevention Programs Focusing on Prevention Case Management Interventions Implemented by the Directly-funded Community-Based Organizations (CBOs)—New—National Center for HIV, STD and Tuberculosis Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). This evaluation is necessary to understand the impact of CDC's expenditures and efforts to support CBOs and for modifying and improving the HIV prevention case management efforts of CBOs. This data collection will provide standardized data and allow CDC to (a) assess the implementation and effectiveness of HIV prevention case management (PCM) interventions through process and outcome evaluations; (b) determine the degree of adherence to the CBOs' documented HIV PCM intervention protocol, and through quality assurance efforts, to revise program implementation as necessary; (c) understand the behavioral impact of these programs; and (d) provide useful information for CBO program planners and implementers.

Three CBOs funded under Program Announcement 01000, Community-Based Strategies to Increase HIV Testing of Persons at High Risk in Communities of Color, successfully competed for additional funds from Program Announcement 01159, Outcome Evaluation of HIV Prevention Programs with a focus on Prevention Case Management Interventions and Group-Level Interventions Implemented by CDC's Directly-funded Community-Based Organizations, to conduct an outcome evaluation of their PCM interventions for two years. These CBOs administer baseline social-behavioral questionnaires as part of program services. Each CBO will report on the PCM program that it has implemented, and, as part of the research project, will conduct two short follow-up social-behavioral questionnaires with clients to assess changes in participant risk behaviors. Incentives will be given to CBO respondents to complete follow-up assessments. This is a two-year project; each of the three CBOs is estimated to collect data from 100 clients each year. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CBO Clients (year—1)	300	1	30/60	150
CBO Clients (year—2)	300	1	30/60	150
Total				300

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6924 Filed 3–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Breast, Colorectal, and Prostate Cancer Patterns of Care, Reoccurrence, and Survival (CBOs)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Invasive cancers of the breast, colon and rectum, and prostate impose a substantial burden of disease in the United States (U.S.) and are expected to account for approximately 42 percent of the estimated 1.3 million invasive cancers that will be diagnosed during 2002. Breast and colorectal cancers are particularly of high public health importance because of current widespread activities in place for early diagnosis and treatment.

Even though these cancers are of high public importance, statewide central cancer registries are not likely to capture complete follow-up information or detailed information on treatment modalities other than surgery. Also, data on extent of disease at diagnosis are often limited. In order to expand the uses of their data to include survival and patterns of care studies and clinical research, registries may need to collect additional information. Through re-abstracting representative samples of cases from population-based, central cancer registries from 1997, this pattern of care study will assess the quality of stage and treatment data. Estimates of the proportions of patients who received the standard of care for localized breast, localized prostate, and stage III colon cancers will be determined as well. Registries participating in the study will send data to the CDC for some analyses. Data for the patterns of care study and for the CONCORD Study, a collaborative project between the CDC and cancer registries in the U.S. and Europe, will be re-abstracted from medical records at the same time. The annualized estimated cost to respondents is $2,056,000.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Physicians (M.D., D.O.)	4440	1	15/60	1,110
Total				1,110

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Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6925 Filed 3–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Funotions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 56562–63, dated November 8, 2001) is amended to reorganize the Accounting Branch, Financial Management Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the Accounting Branch (HCAC2) and insert the following:

(1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops accounting and travel policies and procedures for CDC; (2) provides financial information for management purposes, effective control and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the U.S. Treasury; (3) coordinates activities of the Accounting Branch with the FMO Director, the FMO Budget Branch, the FMO Financial Services Branch, the Financial Policy and Internal Quality Assurance Activity, and the FMO Financial Systems Branch; (4) coordinates accounting and travel policy issues with the HHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of HHS and the General Accounting Office and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting and reporting requirements of the Chief Financial Officer's Act, the Federal Managers' Financial Integrity Act, the Principles of Appropriation Law and other regulatory requirements; (7) compiles all accounting information for the 5-Year Financial Management Plan which provides CDC's financial management vision and objectives for the ensuing 5 years period; (8) develops strategies for employee training and professional development and (9) complies and submits the annual financial statements required by the Chief Financial Officers' Act.

Delete the in its entirety the title and functional statement for the Accounts Payable Section (HCAC22).

Delete the functional statement for the Cincinnati Accounting Section (HCAC23) and insert the following:

(1) Maintains a system of accounts to meet the budgetary and accounting requirements of the NIOSH accounting point; (2) provides financial information for management purposes, effective control and accountability of all accounting point funds, and integration of NIOSH accounting with the accounting and reporting operations of CDC and the U.S. Treasury; (3) coordinates the NIOSH accounting point accounts payable and receivable activities including auditing of vouchers; (4) reviews the NIOSH accounting point system for compliance with CDC, HHS and General Accounting Office requirements; and (5) reconciles NIOSH accounting point general ledger accounts including cash, property and receivables.

Delete the functional statements for the Debt and Property Management Section (HCAC24) and insert the following:

(1) Compiles and submits the quarterly HHS Debt Management report which reports the status of all unpaid debts due to CDC from the public; (2) compiles and submits the annual Treasury report of debts due to CDC; (3) performs all debt collection activities in accordance with the Debt Collection Act of 1982 and in accordance with requirements provided by HHS; (4) prepares customer billings; (5) collects and records all amounts billed to customers; (6) controls billings and collections processed on the Online Payment and Collection System (OPAC/IPAC) related to debt collection; (7) reconciles accounts receivable subsidiary records to the CDC general ledger receivable accounts; (8) coordinates CDC's debt collection activities with FMO's Financial Services Branch and with CDC program administrative offices; (9) coordinates all debt collection activities with the U.S. Justice Department and with private collection agencies; (10) prepare and controls daily deposits which are delivered to the Federal Reserve Bank; (11) performs property accounting activities including maintenance of general ledger property accounts and reconciliation with the CDC Personal Property System and (12) maintains travel advance records and reconciles subsidiary records to general ledger advance accounts.

Delete the functional statement for the General Ledger Section (HCAC25) and insert the following:

(1) Compiles and submits the Report of Budget Execution which reports the obligations incurred against the current year appropriation; (2) compiles and submits the monthly Statement of Transactions report to the U.S. Treasury which reports the CDC cash disbursements by appropriation; (3) reconciles general ledger cash accounts with the U.S. Treasury monthly disbursements and receipts; (4) performs daily maintenance on the general ledger accounts including the asset, liability, capital and budgetary accounts; (5) makes recommendations for improvements to the accounting system and monitors internal controls; (6) analyzes the general ledger accounts, prepares system-wide reconciliations and interprets the effect of transactions on the CDC's financial resources; (7) develops new reports to support budget requirements and to support the needs of CDC management; (8) controls input of all funding transactions; (9) performs daily maintenance of accounting system tables; (10) controls grant awards processed through the Payment Management System (PMS) including submission of grant obligations to PMS, recording of disbursements received from PMS and reconciliation of the general ledger accounts.

After the Financial Systems Branch (HCAC5), insert the following:

Financial Services Branch (HCAC6). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops and implements policies and procedures for all accounts payable and disbursement functions at CDC; (2) coordinates activities of the Financial Services Branch with the FMO Director, FMO Accounting Branch, FMO Budget Branch, FMO Financial Policy and Internal Quality Assurance Activity, and FMO Financial Systems Branch; (3) coordinates the development of new financial systems to automate accounts payable and disbursement operations, and maintains and serves as the CDC focal point on all existing automated payment and disbursement systems; (4) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the requests, and provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers for valid payment requests; (5) compiles and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) acts as liaison with the CIOs and outside customers to provide financial information, resolve problems and provide training and advice on payment, travel and disbursement issues; (7) serves as the CDC subject matter expert on all financial matters dealing with international travel, assignments and payments; and (8) analyzes internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

Cash Management and Quality Control Section (HCAC62). (1) Overall responsibility for policies, procedures, internal controls and systems related to section payment and disbursement activities; (2) analyzes and reconciles disbursements made for CDC by other Federal activities, and insures that disbursements are consistent with Federal Appropriations Law requirements, GAO policies, interagency elimination entry requirements, and other governing financial regulations; (3) overall responsibility for all financial matters dealing with international travel, assignments and payments; (4) serves as the focal point at CDC for vendor, employee and CIO payment and disbursement questions and resolution of payment and disbursement problems; (5) acts as CDC liaison on all payment issues related to the implementation of the Government Purchase Card Program; (6) maintains contract advance records and coordinates the recording and reconciling of subsidiary records to general ledger advance accounts; (7) serves as the CDC focal point for cashier and imprest fund issues; (8) analyzes year-end liquidated obligations for compliance with Federal Appropriations Laws and the Economy Act, and recommends funding changes to CIO's; and (9) prepares and reconciles all U.S. Treasury Department reports and transmissions and serves as the primary point of contact for all U.S. Treasury issues; (10) performs ongoing quality control reviews of various payment and disbursement processes and systems in the Financial Services Branch, including reviews to ensure compliance with the Prompt Payment Act and to validate the legality, propriety and accounting treatment of travel and non-travel payments at CDC, including reviews of payments processed by the Cincinnati office; (11) identifies recurring problems in payment processes and recommends corrective actions or identifies required training to correct the deficiency; (12) serves as the focal point for all Federal Income Tax issues for CDC payments, reconciles tax withholding general ledger accounts, and prepares all monthly, quarterly and annual reports to the Internal Revenue Service; and (13) establishes local policy and procedures on electronic payments and maintains the automated file containing vendor payment address and banking information.

Payment and Travel Services Section (HCAC63). (1) Develops and implements policies and procedures related to payment processes and systems and ensures appropriate internal controls are in place and functioning to ensure the integrity and legality of CDC payments; (2) analyzes and approves payment for all equipment, supplies, travel, transportation and services procured by CDC, and ensures the validity, legality and proper accounting treatment of expenditures processed through the Accounts Payable module of the CDC Financial Management System; (3) provides expert level guidance, oversight, and interpretation of policies, laws, rules and regulations for the CIO's on all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (4) serves as the Subject Matter Expert and focal point for the development of new financial systems to automate accounts payable operations and serves as the focal point for payment system issues for CDC; (5) researches and analysis appropriations law issues at CDC and provides guidance consistent with legal and regulatory guidelines; (6) complies and submits a variety of management and payment performance reports required by various outside agencies; (7) analyzes various internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators; (8) coordinates all aspects of CDC's Electronic Commerce Program in the Financial Services Branch; and (9) analyzes a variety of accounting and travel system reports to ensure that obligations are liquidated in a timely manner.

Dated: March 13, 2002.

David Fleming,

Acting Director.

[FR Doc. 02–6926 Filed 3–21–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4026–FN]

RIN 0938–ZA21

Medicare Program; Medicare+Choice Organizations—Approval of the Joint Commission on Accreditation of Healthcare Organizations for Medicare+Choice (M+C) Deeming Authority for Managed Care Organizations That Are Licensed as Health Maintenance Organizations (HMOs) or Preferred Provider Organizations (PPOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for deeming authority of Medicare+Choice (M+C) organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs). We have found that the JCAHO's standards for managed care plans/integrated delivery networks/provider-sponsored organizations (networks) submitted to us and amended during the application process, meet or exceed those established by the Medicare program. Therefore, M+C organizations that are licensed as HMOs or PPOs and are accredited by JCAHO, may receive, at their request, deemed status for the M+C requirements in the six areas—Quality Assurance, Information on Advance Directives, Antidiscrimination, Access to Services, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records—that are specified in section 1852(e)(4)(B) of the Social Security Act (the Act).

Regulations set forth in 42 CFR 422.157(b)(2) specify that the Secretary will publish a **Federal Register** notice that indicates whether an accreditation organization's request for approval has been granted and the effective date and term of the approval, which may not exceed 6 years.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization that has a Medicare+Choice (M+C) contract with us. To enter into an M+C contract, the

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organization must be licensed by the State as a risk-bearing entity and must meet the requirements that are set forth in 42 CFR part 422. Those regulations implement part C of title XVIII of the Social Security Act (the Act), which specifies the services that a managed care organization must provide and the requirements that the organization must meet to be an M+C contractor. Other relevant sections of the Act are parts A and B of title XVIII and part A of title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Following approval of the M+C contract, we engage in routine monitoring of the M+C organization to ensure continuing compliance. The monitoring process is comprehensive and uses a written protocol that specifies the Medicare requirements the M+C organization must meet.

An M+C organization may be exempt from our monitoring of the requirements that are in the areas listed in section 1852(e)(4)(B) of the Act if the organization is accredited by a CMS-approved accrediting organization. In essence, the Secretary "deems" that the Medicare requirements are met based on a determination that the accrediting organization's standards are at least as stringent as Medicare requirements. Regulations for the M+C deeming program are set forth in §§ 422.156, 422.157, and 422.158. The term for which we may approve an accrediting organization may not exceed 6 years as stated in § 422.157(b)(2). For continuing approval, the accrediting organization will have to re-apply to us.

II. Provisions of the Proposed Notice

On September 18, 2001, we published a proposed notice in the **Federal Register** (66 FR 48147) announcing the receipt of an application from JCAHO for approval of deeming authority for M+C organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs). In the proposed notice, we provided the factors on which we would base our evaluation. In accordance with § 422.157(b)(1)(iii) of the M+C regulations, we provided a 30-day public comment period. We did not receive any public comments in response to that proposed notice.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the JCAHO's accreditation program (including their standards and monitoring protocol) was compared to the requirements set forth in part 422 for the M+C program.

A. Components of the Review Process

The review of JCAHO's application for approval of M+C deeming authority included the following components.

1. Site Visit

A site visit to JCAHO's headquarters was conducted to assess—

- The corporate policies and procedures that relate to the network accreditation program;
- The survey, decision-making, and report-writing processes used in JCAHO's network accreditation program;
- The resources available for accreditation reviews and JCAHO's ability to financially sustain an M+C deeming program;
- The staff and surveyor training and evaluation programs;
- The communication, customer support and release of accreditation information to the public; and
- JCAHO's ability to investigate and respond appropriately to complaints against accredited networks.

2. Desk-Top Review

A desk-top review of JCAHO's network accreditation program, included the following items—

- A description of JCAHO's survey process for networks, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited M+C organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;
- Information about the individuals who perform network accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience required of them, the content and frequency of the in-service training, the evaluation system used to monitor performance, and the conflict of interest requirements governing JCAHO staff;
- A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by JCAHO, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation, if we grant JCAHO M+C organization deeming authority;
- The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including any coordination of these activities with licensing bodies and ombudsmen programs;
- A description of how JCAHO provides accreditation information to the general public;
- The policies and procedures for (1) withholding, denying and removing accreditation status, and the other actions JCAHO may take in response to noncompliance with their standards and requirements; and (2) how JCAHO treats accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;
- Lists of all (1) JCAHO-accredited M+C organizations, (2) networks surveyed by JCAHO in the past 3 years, and (3) networks that were scheduled to be surveyed by JCAHO within 3 months of submitting their application;
- A written presentation of JCAHO's ability to furnish data electronically, via telecommunications;
- A resource analysis that included financial statements for the past 3 years (audited, if possible) and the projected number of deemed status surveys for the upcoming year; and
- A statement acknowledging that, as a condition of approval, JCAHO agreed to comply with the ongoing responsibility requirements stated in § 422.157(c).

3. Assessment of JCAHO's Standards and Methods of Evaluation

As part of the application, JCAHO submitted a crosswalk that compared its standards and methods of evaluations with corresponding M+C requirements. A multicomponent team of our regional and central office staff then reviewed and evaluated JCAHO's standards and processes and compared them to the M+C requirements in six areas: Quality Assurance, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

4. Observation of a JCAHO Accreditation Survey

An observation of a JCAHO accreditation survey of a network organization allowed our staff to (1) validate that the accreditation review methods described in JCAHO's application were equal to (or exceeded) the corresponding Medicare requirements, and (2) resolve outstanding issues that were identified during the review of JCAHO's application materials.

B. Results of the Review Process

We determined that JCAHO's current accreditation program for networks either did not address or did not "meet or exceed" several of the M+C requirements contained in the six categories set forth in section 1852(e)(4)(B) of the Act. To address this issue, JCAHO agreed to complement their current network accreditation program. Thus, when assessing M+C organizations (including their subcontractors and affiliates, as applicable) that seek deemed status for the Medicare requirements contained in the six categories established in the Act, JCAHO will add the requirements described below.

1. Quality Assurance (§ 422.152)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Achieve and report minimum performance levels when we establish them;
- Assess enrollee satisfaction;
- Correct significant systemic problems that come to their attention through internal surveillance, complaints or other mechanisms, such as the use of appeals and grievances;
- Conduct quality improvement projects that meet or exceed the requirements specified in § 422.152.
- Collect data related to (1) both acute and chronic conditions as related to preventive services and care outcomes, (2) the use of clinical resources for high volume services, and (3) the availability, accessibility, and cultural competency of services;
- Select quality indicators that are objective, clearly defined, based upon current research, and generally used in the public health community. Indicators must be measured over time, monitored for at least 1 year after the desired level of performance is achieved (sustained improvement), and benchmarked to targets if we specify targets;
- Designate a policymaking body and a senior official that are accountable for the quality assurance program and that encourage providers and consumers to participate actively;
- Evaluate the effectiveness of the quality assurance program strategy on an annual basis and modify as necessary.

2. Provider Participation Rules (42 CFR part 422 subpart E)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Provide physicians with (1) written notice of material changes in participation rules before the changes are put into effect, (2) written notice of participation decisions that are adverse to physicians, and (3) a process for appealing adverse participation decisions, including (a) having a majority of the members of the hearing panel be peers of the affected physician, and (b) allowing the physician the opportunity to present information on the decision;
- Provide that the participation guidelines, procedures, and Federal requirements apply equally and consistently to all physicians, and do not allow for employment or contracts with individuals excluded from the Medicare program;
- Provide (1) written notification (with specific content) when suspending or terminating an agreement under which the physician provides services to the M+C plan enrollees, and (2) notification to licensing and disciplinary bodies on quality-related suspensions or terminations;
- Provide at least 60 days written notice (applies to provider as well) before terminating a contract without cause;
- Make information available to us and to enrollees on counseling or referral services to which the M+C organization objects on moral or religious grounds;
- Distribute to each enrollee, at the time of enrollment and at least annually thereafter, a written statement that includes information on his or her right to obtain a summary description of the method of physician compensation;
- Ensure that participating providers and suppliers who provide services to Medicare enrollees are approved for participation in Medicare and that the M+C organization does not employ or contract with providers who have opted out of Medicare participation;
- Address the limitation on provider indemnification that is stated in § 422.212.

JCAHO agreed to a Physician Incentive Plan (PIP) review strategy that we proposed. M+C organizations will continue to provide PIP information directly to us. We will notify JCAHO when a M+C organization that they have deemed is "noncompliant" for any of the PIP requirements; JCAHO will then contact the M+C organization to inform it that it must comply with the PIP provisions. If, at the end of the accrediting organization's corrective action process, the M+C organization continues to be noncompliant, the accrediting organization will refer the case to us.

3. Information on Advance Directives (§ 422.128)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Implement written policies and procedures for advance directives for all adult patients served, and share those policies and procedures with each enrollee at the time of enrollment;
- Comply with State laws that (1) allow the provider to conscientiously object to certain types of care (including a statement of limitation, if the M+C organization cannot implement the advance directive), and (2) require information concerning health care decision-making rights to be reflected within 90 days after the effective date of the law;
- Inform individuals that complaints concerning noncompliance with the advance directive requirements may be filed with the State survey and certification agency.

4. Antidiscrimination (§ 422.110 and § 422.502(h))

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Prohibit the denial, limitation or conditioning of coverage or benefits to eligible enrollees on the basis of any factor that relates to health status, except in the case of an individual with end-stage renal disease;
- Comply with all applicable laws and regulations related to discrimination and payment sources.

5. Access to Services (§ 422.112)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Instruct enrollees regarding their right to (1) access emergency services without prior authorization, (2) choose a personal provider from a panel of primary care providers accepting new enrollees, and (3) refuse care from specific providers;
- Provide information regarding treatment options in a language that the enrollee understands;
- Provide services, both clinical and nonclinical, that are readily available, accessible, and appropriate, when medically necessary (24 hours a day/7 days a week) to all enrollees, including those with limited English proficiency or reading skills and those with diverse cultural and ethnic backgrounds. Services include access to specialty care such as women's health services;
- Provide coordination-of-care programs that include (1) an initial health care needs assessment and a

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follow-up process, (2) policies regarding ongoing coordination of care by primary care providers or other means, (3) procedures for the identification of, and treatment plans for, individuals with complex or serious needs, and (4) coordination of plan services with community and social services;

• Establish, monitor, and improve performance regarding standards for timeliness of access to care and member services that meet or exceed our standards;

• Conduct an ongoing program to monitor compliance with policies and procedures that ensure that information for patient care and quality review is available;

• Transmit information to the enrollee's primary care provider regarding services used under a point-of-service (POS) benefit by an enrollee.

6. Confidentiality and Accuracy of Enrollee Records (§ 422.118)

JCAHO will add to its accreditation standards requirements for M+C organizations to release original medical records only in accordance with Federal or State laws, court orders, or subpoenas; however, when permitted by law, the records must be made available to treatment providers and to organizations involved in assessing quality of care or investigating enrollee grievances.

7. Delegation Requirements (Contained in Five of Six Deeming Categories)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

• Oversee and be accountable for any functions or responsibilities that are described in the standards for which JCAHO received deeming authority, if that area (or standard) is delegated to another entity;

• Specify in a written agreement the delegated activities and reporting responsibilities of the entity and provide for the revocation of the delegation or other remedies for inadequate performance;

• Monitor the performance of the entity on an ongoing basis and formally review the organization at least annually.

C. Term of Approval

Regulations at § 422.157(b)(2) permit us to grant a term of approval for deeming authority for accreditation organizations of up to 6 years. We are granting this deeming authority through March 24, 2008.

IV. Paperwork Reduction Act

The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in part 422, Medicare+Choice Program, are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of June 30, 2002. Consequently, this notice does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) September 19, 1980 (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less in any 1 year (for details, see the Small Business Administration's publication that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes JCAHO as a national accreditation organization that has approval for deeming authority for HMOs or PPOs that are participating in the M+C program. Since M+C organizations are monitored every 2 years by our regional office staff to determine compliance with M+C requirements, we believe that the M+C deeming program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare+Choice program. In FY 2001, there were 179 M+C contracts and 5,578,605 enrollees. Approximately eight of those M+C organizations were accredited by JCAHO.

This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and does not significantly affect State authority. This regulation describes only processes that must be undertaken to fulfill our obligation to enforce our regulations as required by the April 8, 1997 (62 FR 16985) regulation.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by OMB.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w–21 and 42 U.S.C. 1395w–25)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–7123 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2138–N]

RIN 0938–ZA28

Medicare, Medicaid, and CLIA Programs; Continuance of Approval of the American Osteopathic Association (AOA) as an CLIA Accreditation Organization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the continued approval of the American Osteopathic Association (AOA) as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have determined that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by AOA meet the conditions required by CLIA statute and its implementing regulations. Consequently, laboratories that voluntarily become accredited by AOA, in lieu of direct Federal oversight, and continue to meet AOA requirements would meet the CLIA condition level requirements for laboratories and, therefore, are not subject to routine inspection by State survey agencies to determine their compliance with CLIA requirements. However, these laboratories are subject to Federal validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period March 22, 2002 through March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Todd, (410) 786–3385.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. CLIA replaced in its entirety section 353(e)(2) of the Public Health Service Act, as enacted by the Clinical Laboratories Improvement Act of 1967. In the July 31, 1992 **Federal Register** (57 FR 33992), we issued a final rule implementing the accreditation provisions of CLIA. Under this rule, we may approve a private, nonprofit organization as an approved accreditation organization to accredit clinical laboratories under the CLIA program if the organization meets certain requirements. An organization's requirements for accredited laboratories must be equal to, or more stringent than, the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Therefore, a laboratory accredited by an approved accreditation organization that meets and continues to meet all of the accreditation organization's requirements would be considered to meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations in part 493, subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specify the requirements an accreditation organization must meet in order to be an approved. We approve an accreditation organization for a period not to exceed 6 years.

In general, the approved accreditation organization must, among other conditions and requirements:

• Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by us.

• Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by us when taken as a whole.

• Provide reasonable assurance that these standards and criteria are continuously met by its accredited laboratories.

• Provide us with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.

• Notify us at least 30 days before implementing any proposed changes in its standards.

• If we withdraw our approval, notify the accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if, among other things, it meets the standards of an approved accreditation organization and authorizes the accreditation organization to submit records and other information to us as required.

In addition to requiring the promulgation of criteria for approving an accreditation organization and withdrawing this approval, CLIA regulations require us to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization, as well as, by any other means that we determine appropriate.

II. Notice of Continued Approval of AOA as an Accreditation Organization

In this notice, we approve AOA as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA. The Centers for Disease Control and Prevention (CDC) and CMS have examined the AOA application and all subsequent submissions to determine equivalency with the requirements under 42 CFR part 493, subpart E that an accreditation organization must meet to be granted approved status under CLIA. We have determined that AOA complied with the applicable CLIA requirements and grant AOA approval as an accreditation organization under 42 CFR part 493, subpart E, as of March 21, 2002 through March 24, 2002 for all specialty and subspecialty areas under CLIA.

As a result of this determination, any laboratory that is accredited by AOA during this time period for an approved specialty or subspecialty is deemed to meet the applicable CLIA condition level requirements for the laboratories found in part 493 and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or by any other Federal State, local public agency, or nonprofit organization under an agreement with the Secretary.

III. Evaluation of American Osteopathic Association (AOA)

The following describes the process used to determine that the American Osteopathic Association (AOA), as a private, nonprofit organization, provides reasonable assurance that laboratories it accredits will meet the applicable requirements of CLIA.

A. Requirements for Approving an Accreditation

Organization Under CLIA

To determine whether we should grant approved status to AOA as a private, nonprofit organization for accrediting laboratories under CLIA for all specialty or subspecialty areas of human specimen testing it requested, we conducted a detailed and in-depth comparison of AOA's requirements for its laboratories to those of CLIA. In summary, we evaluated whether AOA meets the following requirements:

• Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to, or more stringent than, the

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CLIA condition level requirements (for the requested specialties and subspecialties) and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements.

• Meets the applicable requirements of part 493, subpart E.

As specified in the regulations of part 493, subpart E, the review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of the following:

• Whether the organization's requirements for its accredited laboratories are equal to, or more stringent than, the condition levels requirements of the CLIA regulations.

• The organization's inspection process to determine the following:

+ The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors.

+ The comparability of the organization's full inspection and complaint inspection requirements to the Federal requirements including, but not limited to, inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories.

+ The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements.

+ The ability of the organization to provide us with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process.

+ The ability of the organization to provide us with electronic data related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in CMS-approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action.

+ The ability of the organization to provide us with electronic data for all its accredited laboratories and the area of specialty and subspecialty testing.

+ The adequacy of the numbers of staff and other resources.

+ The organization's ability to provide adequate funding for performing the required inspections.

• Whether the organization has an agreement with us that requires it, among other things, to meet the following:

+ Notify us of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization, within 30 days of the date the action is taken.

+ Notify us within 10 days of a deficiency identified in an accredited laboratory if the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

+ Notify us of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days.

+ Notify each laboratory accredited by the organization within 10 days of our withdrawal of approval of the organization as an accreditation organization.

+ Provide us with inspection schedules, on request, for the purpose of conducting onsite validation inspections.

+ Provide our agent, the State survey agency, or CMS with any facility-specific data that include, but are not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

+ Provide us with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.

+ Provide upon the request by any person, on a reasonable basis (under State confidentiality and disclosure requirements, if applicable), any laboratory's PT results with the explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an approved accreditation organization must, among other things, meet the following requirements:

• Authorize the organization to release to us all records and information required.

• Permit inspections as required by the CLIA regulations at part 493, subpart Q (Inspection).

• Obtain a certificate of accreditation under § 493.55 (Application for registration certificate and certificate of accreditation).

B. Evaluation of the AOA Request for Continued Approval as an Accreditation Organization Under CLIA

We have examined AOA's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of part 493: 1. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

AOA has requested continued approval to accredit all specialties and subspecialties and has submitted the following:

• Description of its PT monitoring process, inspection processes, policies, and data management and analysis system.

• List of its inspection team size, composition, and education and experience.

• Investigative and complaint response procedures.

• Our notification agreements.

• Procedures for the removal or withdrawal of accreditation from a laboratory.

• Current list of accredited laboratories with announced or unannounced inspection process.

We have determined that AOA has complied with the requirements under CLIA for approval as an accreditation organization under this subpart.

Our evaluation identified several areas of AOA requirements that are more stringent that the CLIA requirements and apply to the laboratory when taken as a whole. Rather than include them in the appropriate subparts multiple times, we have listed them here:

• AOA lists extensive requirements for the laboratory information system (LIS) that include but are not limited to the following:

+ The laboratory must ensure that test results generated by the LIS are reported, archived and maintained in an accurate and reliable manner.

+ The laboratory must perform and document the necessary system maintenance required by the LIS manufacturer or established by and validated by the laboratory.

+ All input/output devices must be maintained to ensure accurate, clear, and interference-free transmission of reports.

+ The laboratory must validate new or revised software and/or hardware before their use.

+ LIS access must be used to limit access to only those functions the personnel are authorized to use.

plus The LIS must be protected against power and electrical interruptions.

+ The laboratory must validate and have records of that validation for all calculations performed by the LIS at least twice a year or as specified by the manufacturer.

• AOA requires the establishment of protocols to protect the confidentiality of patient-identified information and considers all patient identified information received or generated in the laboratory as confidential information that must be so defined in laboratory protocols for employees and agents of the laboratory who have knowledge of test results.

• AOA has specific requirements for autopsy pathology that include but are not limited to the following:

+ Clinical records are reviewed with the attending physician before conducting the autopsy.

+ Written policies and procedures for the storage and release of bodies must be available and followed.

+ Written policies and procedures for the autopsy consent must be available and followed.

+ Autopsy policies and procedures must be available at nursing stations, admitting office and other appropriate places.

+ Requirements for autopsy pathology environmental conditions, equipment, materials and supplies.

+ Requirements for autopsy pathology safety.

+ Requirements for autopsy pathology reports.

2. Subpart H (regarding participation in proficiency testing)

AOA's requirements for PT are equivalent to those of CLIA.

3. Subpart J (regarding patient test management)

AOA's requirements in patient test management are equivalent to those of CLIA.

4. Subpart K (regarding quality control)

The quality control (QC) requirements of AOA have been evaluated against the applicable requirements of CLIA and its implementing regulations. We have determined that AOA's requirements, when taken as a whole, are more stringent than the CLIA requirements. Specifically, the AOA has laboratory safety requirements that are specific and detailed. AOA requires laboratories to have an appointed safety officer and maintain quarterly written safety reports. AOA also has requirements for fire safety and prevention of fire hazards, universal precautions, hazardous waste management, and environmental safety requirements to address electrical grounding and emergency power.

5. Subpart M (regarding personnel)

We have found that AOA's personnel requirements, when taken as a whole, are equal to the CLIA requirements.

6. Subpart P (regarding quality assurance)

We have determined that AOA's requirements are equal to the CLIA requirements of this subpart. AOA has adopted the CLIA quality assurance requirements in their entirety and included them in AOA's checklist.

7. Subpart Q—Inspections

AOA will continue to perform on-site inspections on a biennial basis. Therefore, we have determined that AOA's inspections are equivalent to CLIA.

8. Subpart R—Enforcement

AOA meets the requirements of subpart R to the extent that it applies to accreditation organizations. AOA policy stipulates the action it takes when laboratories it accredits do not comply with its requirements. AOA must deny, revoke, or limit accreditation of a laboratory as appropriate and report the action to us within 30 days. AOA also provides an appeal process for laboratories that have had accreditation denied, revoked, suspended, or limited.

We have determined that AOA's laboratory enforcement and appeal policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of AOA-accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections, performed by our agent, or the State survey agency, or us, will be our principal means for verifying that the laboratories accredited by AOA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide, in part, that we may remove the approval of an accreditation organization, such as that of AOA, for cause, before the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described in § 493.573 (Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure programs), we will conduct a review of an approved accreditation organization's program. In addition, we will conduct a review, when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate widespread or systemic problems in the organization's accreditation processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole. If validation inspection results over a 1-year period indicate a rate of disparity of 20 percent or more between our findings and those of the organization, we will conduct a review under § 493.575(a)(4).

If we determine that AOA has failed to adopt or maintain requirements that are equal to, or more stringent than the CLIA requirements, or systematic problems exist in its inspection process, a probationary period as determined by us, not to exceed 1 year, may be given to AOA to adopt equal or more stringent requirements. We will make a final determination as to whether or not AOA retains its approved status as an accreditation organization under CLIA. If approved status is withdrawn, an accreditation organization such as AOA may resubmit its application if it revises its program to address the rationale for the denial, demonstrates that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. However, if an approved accreditation organization requests reconsideration of an adverse determination in accordance with subpart D (Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs) of part 488 (Survey, Certification, and Enforcement Procedures) of our regulations, it may not submit a new application until we issue a final reconsideration determination. Should circumstances result in AOA having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

VII. OMB Review

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

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Dated: January 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6953 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2140–PN]

Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Approval of Deeming Authority for Critical Access Hospitals

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an initial application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for consideration as a national accreditation program for critical access hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act (the Act) requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: Written comments will be considered if received at the appropriate address, as provided in **ADDRESSES**, no later than 5 p.m. on April 22, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–2140–PN, PO Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or,

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the indicated addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2140–PN.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the following address: 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: (410) 786–7197) to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Irene H. Dustin, (410) 786–0495.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided the hospital meets certain requirements. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Under this authority, the Secretary has set forth in regulations minimum requirements that a CAH must meet to participate in Medicare. The regulations at 42 CFR part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)) determine the basis and scope of covered services provided by a CAH, set out rural health network specifications and establish staff qualifications. Conditions for Medicare payment for critical access services can be found at § 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 (Provider Agreements and Supplier Approval) and those pertaining to the survey and certification of facilities are at 42 CFR part 488, (Survey, Certification and Enforcement Procedures), subparts A (General Provisions) and B (Special Requirements).

In order for a CAH to be approved for participation in or coverage under the Medicare program, the hospital must have a current provider agreement to participate in the Medicare program as a hospital. The provider agreement must be in place at the time the hospital applies for CAH designation and be in compliance with part 482 (Conditions of Participation for Hospitals), as well as part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)). Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or standards set forth in the statute and part 482 of our regulations. Then, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies.

Exceptions are provided in the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) for rural health clinics that were previously downsized from an acute care hospital, or for a closed hospital that is requesting to reopen as a CAH. In these instances, only the provisions of 42 CFR part 485, subpart F apply.

Section 1865(b)(1) of the Act permits "accredited" hospitals to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. Section 1865(b)(1) of the Act provides that, if a provider demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, CMS shall "deem" the hospital as having met the requirements.

If an accrediting organization is recognized in this manner, any provider accredited by a national accrediting body approved program would be deemed to meet the Medicare conditions of participation. The American Osteopathic Association (AOA) is currently the only organization recognized with deeming authority for critical access hospitals. The final notice approving the AOA for deeming authority for CAHs was published in the **Federal Register** on September 28, 2001 (66 FR 49677).

A national accreditation organization applying for approval of deeming authority under section 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited providers to meet requirements that are at least as stringent as the Medicare conditions of participation..

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act requires that our findings concerning review of national accrediting organizations consider, among other factors, an accreditation organization's requirements for the following: accreditation, survey procedures, resources for conducting required surveys, capacity to furnish information for use in enforcement activities, and monitoring procedures for provider entities found not in compliance with the conditions or requirements, and ability to provide us with necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from our receipt of the request to publish approval or denial of the application.

The purpose of this proposed notice is to inform the public of our consideration of JCAHO's request to become a national accreditation program for CAHs. This notice also solicits public comment on the ability of JCAHO requirements to meet or exceed the Medicare conditions of participation for CAHs.

III. Evaluation of Deeming Authority Request

On February 1, 2002, JCAHO submitted all the necessary materials concerning its request for approval as a deeming organization for CAHs to enable us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of JCAHO will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of JCAHO standards for a critical access hospital as compared with our comparable critical access hospital conditions of participation.
- JCAHO's survey process to determine the following:

—Survey team composition, surveyor qualifications, and the capacity of the organization to provide continuing surveyor training.

—The comparability of JCAHO's processes to that of State agencies, including survey frequency and the ability to investigate and respond appropriately to complaints against accredited facilities.

—JCAHO's processes and procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. These monitoring procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(3).

—JCAHO's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—JCAHO's capacity to provide us with electronic data in an ASCII comparable format as well as the reports necessary for validation and assessment of the organization's survey process.

—The adequacy of JCAHO's staff and other resources, and its financial viability.

—JCAHO's capacity to adequately fund required surveys.

—JCAHO's policies with respect to whether surveys are announced or unannounced.

—JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Response to Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all public comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a final notice, we will respond to the public comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant affect on the right of States, local or tribal governments.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplemental Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: March 18, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6954 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3076–FN]

Medicare Program; Approval of the Indian Health Service (IHS) as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the Indian Health Service (IHS) as a national accreditation organization for outpatient Diabetes Self-Management Training (DSMT) services. This notice also announces the decision of the IHS to adopt the National Standards for Diabetes Self-Management Education Programs (NSDSMEP), for purposes of determining that American Indian and Alaska Native (AI/AN) entities meet the necessary quality standards to furnish outpatient diabetes self-management and training services under Part B of the Medicare program. Therefore, diabetes self-management training (DSMT) programs accredited by the IHS will receive "deemed" status under the Medicare program.

EFFECTIVE DATE: This accreditation is effective on March 22, 2002, for a term of 6 years.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(qq) of the Social Security Act (the Act) provides us with the statutory authority to regulate Medicare outpatient coverage of diabetes self-management training (DSMT) services. The section also permits DSMT programs to be deemed to have met our regulatory standards if they are accredited by an organization that represents individuals with diabetes as having met standards for furnishing DSMT services. Section 1865 (b) of the Act specifies a process whereby we approve and recognize national accrediting organizations for the purpose of recognizing health care entities accredited by the organization to have met such program requirements. The regulations published in accordance with section 1865(b) have served as the model for our approval of accreditation programs.

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The final rule on DSMT, published on December 29, 2000 in the **Federal Register** (65 FR 251) explicitly modeled its accreditation organization approval process after the section 1865 approval process specified in 42 CFR part 488, subpart A. The final rule states that DSMT programs interested in participating in the Medicare program must meet conditions for coverage specified in our regulations at 42 CFR part 410, subpart H. One requirement is that entities must satisfy required quality standards. Currently, one way that an entity must satisfy the quality standards under § 410.145 is to be accredited by a CMS-approved accrediting body. The regulations pertaining to the application process for national accreditation organizations for DSMT at § 410.142(a) specify that we may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals with diabetes to accredit entities to furnish training. After we approve and recognize the accreditation organization, it may accredit an entity to meet one of the sets of quality standards described in § 410.144, and we will deem these entities to have met these standards.

II. Review Process and Findings

A. Review Process

In evaluating an application from an accrediting organization, we consider the following factors under section 1865(b)(2) of the Act and specified for DSMT purposes at § 410.142(e):

- The organization uses and enforces quality standards that CMS has determined meet or exceed the CMS quality standards described in § 410.144(a), or uses the National Standards for Diabetes Self-Management Education Programs (NSDSMEP) quality standards described in § 410.144(b);
- The organization meets the requirements for approved organizations in § 410.143;
- The organization is not owned or controlled by the entities it accredits, as defined in § 413.17(b)(2) or (b)(3); and
- The organization does not accredit any entity it owns or controls.

We are required by § 410.142(d) to publish a proposed notice in the **Federal Register** after the receipt of a written request for approval from a national accreditation organization. After review of the national accreditation organization's application, the regulations require that we publish a notice of our approval or disapproval after we receive a complete package of information and the organization's deeming application.

B. Review Findings

We received a complete application from the Indian Health Service (IHS) on September 5, 2001. On October 26, 2001, we published a proposed notice in the **Federal Register** (66 FR 54262) announcing the application of the IHS for approval as an accreditation organization for American Indian/Alaska Natives (AI/AN) diabetes self-management training programs. We reviewed the application, and our findings indicated that the IHS meets the CMS criteria as "a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes" to accredit entities to furnish training in § 410.142(a).

We recognize that the IHS has a solid record of well-balanced experience in representing the interest of individuals with diabetes in the past decades. The AI/AN population has the highest rate of diabetes in the world and the prevalence of diabetes is 350 percent higher than in the general U.S. population. Recognizing the size of the AI/AN population affected by diabetes, the Congress, since 1979, has funded the IHS-administered National Diabetes Program to promote collaborative strategies to combat diabetes, develop standards-of-care policies for diabetes, disseminate comprehensive information about diabetes, and advocate for the AI/AN population in the health field. The IHS has played a leadership role in the development of diabetic care surveillance and data collection in the AI/AN diabetes program. The IHS monitors the quality of the AI/AN diabetic education service through the established system and network of the IHS National Diabetes Program, the IHS Area Consultants, the IHS Model Diabetes Program, the Special Diabetes Grant Programs and the IHS Integrated Diabetes Education and Clinical Standards Recognition Program for AI/AN Communities. Additionally, the IHS works in partnership with the IHS Model Diabetes Programs to tailor educational materials, treatment programs, nutrition counseling and physical activities to accommodate cultural, physical and geographical needs.

We recognize that the traditional definition of "nonprofit organization" used by HHS in other contexts generally does not cover governmental entities. However, we have determined that the IHS possesses the indicia of nonprofit status because among other things, it is not formed for commercial or profit-making purposes; it does not have shares or shareholders, and it serves charitable purposes. All the health care services, including DSMT services, are furnished to the AI/AN population free of charge, and The Indian Health Care Improvement Act requires Medicare and Medicaid reimbursements be allocated back to the facilities to make improvements in the programs and maintain compliance with the applicable conditions and requirements.

We do not anticipate a conflict of interest in the deeming of AI/AN DSMT entities by IHS. The Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 450f) authorizes the IHS to contract or compact with tribes for independent administration and operation of health services and programs in their communities. Under ISDEAA and the Public Health Service Act (42 U.S.C. section 254c–3(c)), the tribes may administer the diabetes programs funds independently from the IHS, and the agency serves in a consultative role regarding best practices. The IHS provides technical assistance to tribes on an as needed basis and has limited authority to sanction or assume a tribal health program. We therefore believe that IHS's deeming authority will be exercised in compliance with § 410.142(e) (regarding relationships with owned or controlled entities).

In the best interests of the AI/AN population, which has been affected by diabetes in alarming proportions, we have exercised our flexibility and discretion to approve the IHS application to accredit AI/AN DSMT programs. Our decision is based on the consideration of the unique relationship between the IHS National Diabetes Program, the Tribal Diabetes Program and the Special Diabetes Grant Program, as well as the distinct IHS funding structure that does not exist in other types of health care systems.

During the term of approval as an accrediting organization, IHS will: (1) Enforce the NSDSMEP for its deemed entities; (2) comply with the requirements for approved accreditation organizations under § 410.143; (3) continue to refrain from exercising administrative authority over the IHS Model Diabetes Programs, Tribal Model Diabetes Programs and the 1997 BBA Diabetes Grant Programs; and (4) continue to retain its consultative role regarding best diabetes practices.

III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

During the 30-day comment period, we received one comment in support of the IHS application. We reviewed the application and determined that IHS has demonstrated experience in representing the interests of individuals with diabetes and is therefore qualified to accredit entities to furnish training. The IHS is adopting the NSDSMEP quality standards as permitted by the statute. Therefore, we have approved the IHS' application as an accreditation organization for diabetes self-management training programs under § 410.142(d) for a term of 6 years. The IHS is the second accreditation organization that we have approved for accrediting diabetes self-management training programs.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1861(qq), 1871 of the Social Security Act (42 U.S.C. 1395(qq), 1395bb.

(Catalog of Federal Domestic Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: February 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6955 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3089–N]

Medicare Program; Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice is soliciting interested parties to submit requests for review of the appropriateness of the payment amount for a particular intraocular lens furnished by an ambulatory surgical center.

DATES: Requests for review must be received at the address provided no later than 5 p.m. E.S.T. on April 22, 2002.

ADDRESSES: Mail requests for review (one original and three copies) to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Betty Shaw, Mailstop C1–09–06, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100; or Mary Stojak, (410) 786–6939.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b) of SSAA 1994 requires us to develop and implement a process under which interested parties may request, for a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for IOLs furnished by ambulatory surgical centers (ASCs) under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** titled "Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers" (64 FR 32198), which added subpart F to 42 CFR part 416. That rule set forth the process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs), defined the terms relevant to the process, and established a flat rate payment adjustment of $50 for intraocular lenses (IOLs) that we determine are NTIOLs. This payment adjustment is good for a 5-year period that begins when we recognize a payment adjustment for the first intraocular lens in a new subset of an existing class of intraocular lens or a new class of technology, as explained below. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized IOL. After July 16, 2002, we may change the $50 adjustment amount through a notice with comment period.

Review Process for Establishing Classes of New Technology Intraocular Lenses

We evaluate requests for the designation of an IOL as an NTIOL by doing the following:

(1) Publishing a notice in the **Federal Register** announcing the deadline and requirements for submitting a request for us to review payment for an IOL.

(2) Receiving requests to review the appropriateness of the payment amount for an IOL.

(3) Compiling a list of the requests we receive and identify the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(4) Publishing a notice in the **Federal Register** listing the requests, and giving the public 30 days to comment on the IOLs for which a review was requested.

(5) Reviewing the information submitted with the request to review, and requesting confirmation from the Food and Drug Administration (FDA) about labeling applications that have been approved on the model lens under review. We also request a recommendation from the FDA about whether or not the lens model represents a new class of technology that sets it apart from other IOLs.

Using a baseline of the date of the last determinations of new classes of intraocular lenses, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses that are classified by a predominant characteristic as reducing the risk of intraoperative or postoperative complication or trauma, or demonstrating accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information.

(7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class.

(8) Publishing a notice in the **Federal Register** (within 120 days after we publish the notice identified in paragraph (4) of this section) announcing the IOLs that we have determined are "new technology" IOLs. These NTIOLs qualify for the following payment adjustment:

(a) Determinations made before July 16, 2002—$50.

(b) Determinations made after July 16, 2002—$50 or the amount announced through proposed and final rules in connection with ambulatory surgical center services.

(9) Adjusting payments effective 30 days after the publication of the notice announcing our determinations described in paragraph (8) of this section.

Who May Request a Review?

Any party who is able to furnish the information required in § 416.195 (A

request to review) may request that we review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for an IOL that meets the definition of a new technology IOL in § 416.180 (Definitions).

Requests to Review

A request for review must include all of the following information:

- The name of the manufacturer, the model number, and the trade name of the IOL.
- A copy of the FDA's summary of the IOL's safety and effectiveness.
- A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.
- A copy of the IOL's original FDA approval notification.
- Reports of modifications made after the original FDA approval.
- Other information that supports the requestor's claim (that is, clinical trials, case studies, journal articles, etc.).

Privileged or Confidential Information

To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, we maintain the confidentiality of the information and protect it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, for trade secrets, the Trade Secrets Act (18 U.S.C. 1905). We recommend that the requestor clearly identify all information that is to be characterized as confidential. The Freedom of Information Act does not prohibit the disclosure of any information; rather it allows us to withhold certain information based on identifiable harms as described above.

Application of the Payment Adjustment

We recognize the IOL(s) that define a new technology subset for purposes of subpart F of part 416 as belonging to the class of NTIOLs for a period of 5 years effective from the date that we recognize the first new technology IOL within the subset for a payment adjustment. Any IOL that we subsequently recognize as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with our recognition of the first NTIOL in the subset.

II. Provisions of This Notice

Under our rules at 42 CFR part 416, subpart F, we are soliciting requests for review of the appropriateness of the payment amount for intraocular lenses furnished by an ASC. Requests for review must comply with our regulations at § 416.195 and be received at the address provided by the date specified in the **DATES** section of this notice. We will announce timely requests for review in a subsequent notice that will allow for public comment. Currently, if we determine a lens as an NTIOL, the lens will be eligible for a payment adjustment of $50 or a different amount implemented through proposed and final rules.

III. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it is merely soliciting interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens furnished by an ambulatory surgical center.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6758 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on April 9, 2002, from 8 a.m. to 4 p.m.

Location: 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

Contact: Susan Bond, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, rm. 17–35, Rockville, MD 20857, 301–827–6687, or e-mail sbond@oc.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: Open committee discussion, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 4:30 p.m. The board will hear and discuss emerging issues in antimicrobial resistance, process analytical technologies (followup), and biomaterials innovation; and discuss the external science review for FDA's Office of Regulatory Affairs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 3, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Bond at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 15, 2002.

Bonnie Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–6994 Filed 3–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Grant to the Virginia Office of Newcomer Services

AGENCY: Office of Refugee Resettlement, DHHS.

ACTION: Grant award announcement.

SUMMARY: Notice is hereby given that an award is being made to the Virginia Office of Newcomer Services, Richmond, Virginia in the amount of $375,000 to provide funds to refugees in need of employment assistance as a result of the September 11, 2001 attack on the Pentagon. The closure of Reagan National Airport and the rapid decline in the metropolitan Washington, DC hospitality industry caused substantial numbers of refugees to lose their jobs. Many of these refugees arrived in the United States some time ago and are no longer eligible for refugee cash assistance and refugee medical assistance.

The Virginia Office of Newcomer Services intends to provide funds for mental health services, transportation assistance, English as a Second Language, direct assistance, and State administration costs.

After the appropriate reviews, it has been determined that the need for additional services is compelling. The period of this funding will extend through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Loren Bussert, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4732.

Dated: March 18, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–6919 Filed 3–21–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–06]

Notice of Proposed Information Collection: Comment Request; Financial Statement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, telephone (518) 464–4200 extension 4206 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Financial Statement.

OMB Control Number, if applicable: 2502–0098.

Description of the need for the information and proposed use: This form is used by HUD to obtain information about a debtor's ability to pay the debt in full, pay in installments, and/or compromise the debt. Failure to collect this information would result in uneducated decisions in respect to the handling of the debtor's account.

Agency form numbers, if applicable: HUD 56142.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of annual hours needed to prepare the information is 800; the number of respondents is estimated to be 800; the frequency of the response is once per respondent; and the estimated time per response is one hour.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–6889 Filed 3–21–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AF: Ms. Barbara Jenkins, Air Force Real Estate Agency (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, MS5512, Washington, DC 20240; (202) 219–0728: NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 14, 2002.

John D. Garrity,

Director, Officer of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. A110
ISC Kodiak
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200210016
Status: Excess
Comment: 1316 sq. ft., presence of asbestos/lead paint, most recent use—retail/commercial

Arkansas

Social Sec. Administration
225 Hazel Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: GSA
Property Number: 54200210016
Status: Surplus
Comment: 7437 sq. ft. office building
GSA Number: 7–G–AR–0560

Blytheville Fed. Ofc. Bldg.
120 North Broadway
Blytheville Co: Mississippi AR 72316–
Landholding Agency: GSA
Property Number: 54200210017
Status: Surplus
Comment: 7921 sq. ft. office building, good condition GSA Number: 7–G–0559

California

Ingalls Hall
Army Reserve Center
2400 Fifth Street
Norco Co: Riverside CA 91760–1900
Landholding Agency: GSA
Property Number: 54200210018
Status: Surplus
Comment: 64,000 sq. ft., needs rehab, presence of asbestos/lead paint, water contains magnesium
GSA Number: 9–D–CA–1561

Eickenhorst Residence
4418 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210018
Status: Unutilized
Comment: 935 sq. ft., needs rehab, off-site use only

Connecticut

Bldgs. 2, 108, 440
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200210095
Status: Unutilized
Comment: various sq.ft., need rehab, presence of asbestos/lead paint, most recent use—office/store/club, off-site use only

Guam

Bldgs. 47, 48
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210096
Status: Unutilized
Comment: 144 sq. ft. each, no utilities, most recent use—storage

Bldgs. 81, 82
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210097
Status: Unutilized
Comment: 377 sq. ft. each, no utilities, most recent use—storage

Bldgs. 449
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210098
Status: Unutilized
Comment: 500 sq. ft. no utilities, most recent use—small arms

Bldgs. 732
Naval Forces, Marianas
Mariana Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210099
Status: Unutilized
Comment: 7360 sq. ft. no utilities, most recent use—warehouse

Nevada

Silver Strikes Lanes
400 Highway 6
Tonopah Co: NV 89049–
Landholding Agency: GSA
Property Number: 54200210019
Status: Excess
Comment: approx. 16,080 sq. ft. single story guutted light industrial bldg. on 8.23 acres
GSA Number: 9–I–NV–514

Sandia Duplex Housing
Victoria/Thomas Streets
Tonopah Co: NV
Landholding Agency: GSA
Property Number: 54200210020
Status: Excess
Comment: 3 duplexes, 750 sq. ft per unit w/carports
GSA Number: 9–I–NV–514

New Jersey

Sandmeier House
6 Old Mine Road
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210019
Status: Excess
Comment: 1240 sq. ft., presence of lead paint, most recent use—residence/storage, off-site use only

Sandmeier Garage
6 Old Mine Road
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210020
Status: Excess
Comment: 1352 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

McCullough House
2 Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210023
Status: Excess
Comment: 630 sq. ft., needs major rehab, presence of lead paint, most recent use—rsidential, off-site use only

Cedzidlo House
Old Mine Road
Montague Co: Sussex NJ 07827–
Landholding Agency: Interior
Property Number: 61200210028
Status: Excess
Comment: 1680 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Camp Weygadt House
Rt. #46
Columbia Co: Warren NJ 07832–
Landholding Agency: Interior
Property Number: 61200210029
Status: Excess
Comment: 1200 sq. ft., needs rehab, presence of lead paint, most recent use—residential, off-site use only

Camp Weygadt Garage
Rt. #46
Columbia Co: Warren NJ 07832–
Landholding Agency: Interior
Property Number: 61200210030
Status: Excess

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Comment: 484 sq. ft., needs repair, presence of lead paint, most recent use—storage, off-site use only

Pennsylvania

Henn House
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210021
Status: Excess
Comment: 1505 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Henn Garage
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210022
Status: Excess
Comment: 576 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Donovan House
Hidden Lake Drive
Bushkill Co: Monroe PA 18324–
Landholding Agency: Interior
Property Number: 61200210024
Status: Excess
Comment: 768 sq. ft., possible lead paint, most recent use—residential, off-site use only

Michaels House
Michaels Hill Road
Bushkill Co: Pike PA 18324–
Landholding Agency: Interior
Property Number: 61200210025
Status: Excess
Comment: 1097 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Smith House
Conashaugh Rd.
Milford Co: Pike PA 18337–
Landholding Agency: Interior
Property Number: 61200210026
Status: Excess
Comment: 1770 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Smith Garage
Conashaugh Rd.
Milford Co: Pike PA 18337–
Landholding Agency: Interior
Property Number: 61200210027
Status: Excess
Comment: 453 sq. ft., needs repair, presence of lead paint, most recent use—storage, off-site use only

Santucci House
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210031
Status: Excess
Comment: 1604 sq. ft., needs repair, presence of lead paint, most recent use—seasonal residence, off-site use only

Santucci Garage
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 612002100312
Status: Excess
Comment: 480 sq. ft., needs major repair, presence of lead paint, most recent use—storage, off-site use only

Virginia

Federal Building
1426 N. Augusta St
Staunton Co: Augusta VA 24401–2401
Landholding Agency: GSA
Property Number: 54200210022
Status: Surplus
Comment: 4084 sq. ft. office building
GSA Number: 4–G–VA–0728

Bldg. 247
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210118
Status: Excess
Comment: 4492 sq. ft., needs major repair, possible asbestos/lead paint, most recent use—support bldg., off-site use only

Bldg. 188
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210119
Status: Excess
Comment: 11,461 sq. ft., needs major repair, possible asbestos/lead paint, most recent use—outfitting facility, off-site use only

Bldg. 258
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210120
Status: Excess
Comment: 432 sq. ft., needs major repair, most recent use—warehouse, off-site use only

Bldg. 278
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210121
Status: Excess
Comment: 5820 sq. ft., needs major repair, most recent use—maintenance facility, off-site use only

Bldg. 279
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210122
Status: Excess
Comment: 5820 sq. ft., needs major repair, most recent use—maintenance facility, off-site use only

Bldg. #11A
Naval Shipyard
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210123
Status: Excess
Comment: 10687 sq. ft., needs major repair, most recent use—office, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area

Bldg. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area

Bldg. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area

Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area

Bldg. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area

Bldg. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldg. 30306, 30335, 30782

Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldg. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldg. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldg. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldg. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldg. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldg. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldg. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Residence & Garage
904 Eighth Street
Orland Co: Glenn CA 95963–
Landholding Agency: Interior
Property Number: 61200210012
Reason: Extensive deterioration

Jones Residence
4400 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210013
Status: Unutilized
Reason: Extensive deterioration

Conradi Residence
4060 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210014
Status: Unutilized
Reason: Extensive deterioration

Van Houten Residence
4412 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210015
Status: Unutilized
Reason: Extensive deterioration

Conte Residence
4406 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1255
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210087
Status: Excess
Reason: Extensive deterioration

Bldg. 1508
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210088
Status: Excess
Reason: Extensive deterioration

Bldg. 18417
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210089
Status: Excess
Reason: Extensive deterioration

Bldg 22159
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210090
Status: Excess
Reason: Extensive deterioration

Bldg. 41302
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210091
Status: Excess
Reason: extensive deterioration

Bldg. 52830
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210092
Status: Excess
Reason: Extensive deterioration

Bldg. 62551
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210093
Status: Excess
Reason: Extensive deterioration

Bldg. 210548
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210094
Status: Excess
Reason: Extensive deterioration

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 24451
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Guam

Bldg. 138
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210100
Status: Unutilized
Reason: Secured Area

Bldg. 460
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210101
Status: Unutilized
Reason: Secured Area

Bldg. 1741
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210102
Status: Unutilized
Reason: Secured Area

Bldg. 1742
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210103
Status: Underutilized
Reason: Secured Area

Bldg. 1743
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210104
Status: Underutilized
Reason: Secured Area

Bldg. 6012
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210105
Status: Underutilized
Reason: Secured Area

New Jersey

McCullough Garage
2 Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210017
Status: Excess
Reason: Extensive deterioration

New Mexico

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirkland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

Puerto Rico

Culebrita Island Lighthouse
Culebra Island Co: PR
Landholding Agency: GSA
Property Number: 54200210021
Status: Surplus
Reason: inaccessible
GSA Number: 1–T–PR–509

South Carolina

16 Bldgs.
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Location: 294, 297, 316, 319, 710, 991, 3510, 3534, 3542, 3550, 3590, 3580, 3582, 3584, 3588, 3592
Landholding Agency: Navy
Property Number: 77200210106
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Virginia

Bldgs. CA61, CA62, CA69
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number 77200210107
Status: Excess
Reason: Extensive deterioration

Bldgs. MC64, NH34
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210108
Status: Excess
Reason: Extensive deterioration

3 Bldgs.
Naval Station
SDA201, SDA217, SDA277
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210109
Status: Excess
Reason: Extensive deterioration

Bldg. 149
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210110
Status: Excess
Reason: Extensive deterioration

Bldgs. 187, 194
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210111
Status: Excess
Reason: Extensive deterioration

Bldg. 201
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210112
Status: Excess
Reason: Extensive deterioration

Bldgs. 203, 212
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210113
Status: Excess
Reason: Extensive deterioration

Bldg. 284
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210114
Status: Excess
Reason: Extensive deterioration

Bldg. 285
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210115
Status: Excess
Reason: Extensive deterioration

Bldg. 295
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210116
Status: Excess
Reason: Extensive deterioration

Bldgs. 320, 329
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210117
Status: Excess
Reason: Extensive deterioration

[FR Doc. 02–6552 Filed 3–21–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mayer Family Habitat Conservation Plan, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Geoffrey and Susan Mayer (Applicants) have applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) incidental to otherwise lawful activities associated with the development of a 0.35-acre parcel (project site) near the City of Scotts Valley, Santa Cruz County, California. The Applicants have requested that the federally endangered Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) be included as a covered species on the permit.

We request comments from the public on the permit application, which is available for review. The application includes a Low-Effect Habitat Conservation Plan (HCP), that fully describes the proposed project and the measures that the Applicants would undertake to minimize and mitigate anticipated take of the Mount Hermon June beetle, as required in Section 10(a)(2)(B) of the Act. The HCP also addresses and adverse effects to the Ben Lomond spineflower.

We also request comments on our preliminary determination that the HCP qualifies as a "low-effect" plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments must be received no later than April 22, 2002.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, HCP, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The taking prohibitions of the Act do not apply to federally listed plants on private lands unless such take would violate State law. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants. For these reasons, the Applicants have chosen to address the state and federally listed Ben Lomond spineflower in their HCP.

The Applicants propose to construct a single-family dwelling and associated infrastructure, including driveways, sidewalks, retaining walls, lap pool, patio, and a concrete ditch, on a 0.35-acre parcel. The project site is located at 275 Bob's Lane in a residential neighborhood referred to as Whispering Pines in an unincorporated area of the County of Santa Cruz near the southwest boundary of the City of Scotts Valley. Zoning for this parcel and the surrounding residential neighborhood is R–1–10, indicating that one single-family residence is allowed on a minimum lot size of 10,000 square feet. Most of the Whispering Pines neighborhood has been built out, with less than 30 lots remaining empty. The southwest and southeast boundaries of the parcel are bordered by existing homes, the northeast boundary borders Bobs Lane, and the northwest boundary borders an existing sand quarry. The project site is currently undeveloped and vegetated with a mixture of native and non-native species including ponderosa pine seedlings (*Pinus ponderosa*), live oaks (*Quercus agrifolia* and *Q. wislizenii*), liquidambars (*Liquidambar sp.*), silverleaf manzanita (*Arctostaphylos silvicola*), cultivated grapes (*Vitis sp.*), bracken fern (*Pteridium aquilinum* var. *pubescens*), and non-native grasses.

In 2000, biologists conducted surveys for special status plants and wildlife on the project site. Twenty-two adult males of the Mount Hermon June beetle were captured on the project site during one night of surveys. The Ben Lomond spineflower was observed growing in two areas totaling 1,406 square feet on the project site. Based on these surveys, the Service concluded that the development of the project site likely would result in take of the Mount Hermon June beetle, and adverse effects to the Ben Lomond spineflower.

The Applicants propose to implement measures to minimize and mitigate for the removal of suitable habitat for the Mount Hermon June beetle and Ben Lomond spineflower from the project site. Specifically, they propose to (1) protect in perpetuity a one-acre mitigation parcel occupied by the Mount Hermon June beetle and Ben Lomond spineflower at an off-site location via a recorded conservation easement with the Center for Natural Lands Management (CNLM); (2) provide funding for management and monitoring of the mitigation site in perpetuity in a manner that supports habitat for the Mount Hermon June beetle and Ben Lomond spineflower; and (3) undertake various measures during grading and construction activities at the project site to minimize impacts to both endangered species and their habitat.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on the Mount Hermon June beetle and Ben Lomond spineflower. Two alternatives to the taking of listed species under the Proposed Action are considered in the HCP. Under the No-Action alternative the project site would not be developed and the HCP would not be implemented. Without the HCP, habitat for the Ben Lomond spineflower and Mount Hermon June beetle on the project site likely would decline further as a result of threats from existing development surrounding the site. Furthermore, no off-site habitat would be protected for the benefit of the Mount Hermon June beetle and Ben Lomond spineflower. This alternative would also result in an unnecessary economic burden on the Mayer family.

Under the Redesigned Project alternative, the development footprint for the project would be reduced or relocated to another portion of the site, thus reducing or altering the area of destroyed habitat for the Mount Hermon June beetle and Ben Lomond spineflower. Given the small size of the project site (0.35 acres), a reduction in the development envelope would not significantly improve conditions for the Mount Hermon June beetle and Ben Lomond spineflower on the site. Adverse impacts from construction, on-going use of the site, and from surrounding residential development would threaten both species, regardless of the size or type of development that occurs on the project site. As the lot is small in size, and narrow and rectangular in shape, relocation of the house and associated infrastructure is not practical. This alternative would

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also result in an unnecessary economic burden on the Mayer family.

The Service has made a preliminary determination that the HCP qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the Applicants' proposal to construct a single-family residence qualifies as a "low-effect" plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Ben Lomond spineflower and Mount Hermon June beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the Mount Hermon June beetle or Ben Lomond spineflower resulting from development of the project site.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Mayers. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: March 15, 2002.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02-6927 Filed 3-21-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement for Bull Trout in Falls Creek, Lemhi County, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that John Folsom and Ben O'Neal (Applicants) have each applied to the Fish and Wildlife Service (Service) for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit applications include a proposed Safe Harbor Agreement (Agreement) for bull trout (*Salvelinus confluentus*) between the Applicants and the Service. The proposed permits and Agreement would remain in effect for 20 years. Three alternatives, including the proposed alternative, are described within the Environmental Assessment (EA), which is also available for public review and comment.

We (the Service) announce the opening of a 30-day comment period and request comments from the public on the Applicants' enhancement of survival permit applications, the accompanying proposed Agreement, and Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public. For further information and instructions on reviewing and commenting on this document, see the Public Comment and Document Availability section, below.

DATES: Written comments should be received on or before April 22, 2002.

ADDRESSES: Comments should be addressed to Ted Koch, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378-5243; facsimile: 208/378-5262).

FOR FURTHER INFORMATION CONTACT: Ted Koch, (208) 378-5243.

SUPPLEMENTARY INFORMATION:

Background

Under the Services' Safe Harbor Agreement and Landowner Incentive Fund programs, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to additional property use restrictions in the future. Safe Harbor Agreements provide assurances to the property owner that allow alterations or modifications to property enrolled under the Agreement, even if such action results in the incidental take of a listed species or, in the future, returns the species or habitat to an originally agreed-upon baseline condition. The Landowner Incentive Fund contributes funding for these efforts. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

The Falls Creek Aquatic and Riparian Restoration Project and Bull Trout Safe Harbor Agreement in the Pahsimeroi River basin in Central Idaho are proposed to enhance the conservation of bull trout, and other aquatic and riparian species, and continue agricultural irrigation near the mouth of Falls Creek. Bull trout, a species federally listed as threatened, are negatively affected by impacts to habitat from many sources, including agricultural irrigation activities. Specific impacts include dewatering bull trout streams and entraining bull trout in unscreened agricultural irrigation ditches.

This project is expected to: (1) Restore 6 miles of stream habitat that has been dewatered for agricultural irrigation purposes for the last 80 to100 years; (2) reconnect a population of bull trout long isolated in the headwaters of Falls Creek with reduced populations downstream in the Pahsimeroi River; (3) open new migration, spawning, and rearing habitat for this and other resident fish species; (4) restore 6 miles of riparian habitat, connecting similar existing habitats in the mountains and the valley floor; and (5) allow additional recharge of the underground aquifer in the area. Roughly 2 miles of riparian habitat adjacent to existing surface water irrigation ditches would be lost when use of the ditches for conveying water is abandoned. Irrigation of agricultural fields near the mouth of Falls Creek would continue through pumping of groundwater, while currently diverted surface water flows would be returned to the historic Falls Creek stream channel. The Bureau of Land Management (BLM) would implement stream habitat restoration actions on lands under their management to facilitate aquatic and riparian habitat restoration, and may provide technical assistance to neighboring private landowners. Due to the experimental nature of the project, the Service, BLM and others will monitor effects on bull trout, aquatic and riparian habitats, ground water resources, and adapt management as necessary.

The proposed Agreement would seek to eliminate or minimize impacts to bull trout and other aquatic and riparian dependent species from agricultural irrigation activities by facilitating the following actions: (1) Restore, as a baseline condition, 8.0 cubic feet per second (cfs) of stream flow in the 6-mile long dewatered portion of Falls Creek by transferring surface irrigation flow rights to ground water wells drilled near the mouth of Falls Creek; (2) Reconstruct the existing head box, or irrigation diversion facility, to improve flow control, ensuring appropriate surface flows are provided in the stream channel; (3) Reestablish the currently dewatered, natural Falls Creek stream channel and riparian habitat so water can flow in a defined channel to the Pahsimeroi River via Big Springs Creek; (4) Enhance ground-water recharge in the local hydrologic system; (5) Develop a new irrigation system to improve efficiency of water use; (6) Determine pre-project fisheries and riparian status in specific locations, and implement monitoring, evaluation, and adaptive management programs; and (7) Monitor effects of the new ground water wells on other wells in the valley, and the relationship between Falls Creek surface water flows and ground water pumping.

Consistent with our Safe Harbor policy, we would issue enhancement of survival permits to the Applicants authorizing incidental take of bull trout as a result of agricultural irrigation activities on their property. Additionally, as a condition of the Agreement and issuance of a 10(a)(1)(A) enhancement of survival permits, the Applicants are assured that we will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those voluntarily agreed to. We expect that the incidental take authorized under the proposed Agreement may never occur. Any incidental take that might occur from the proposed action would result from the effects of ground water pumping on surface water flows in Falls Creek, which is expected to be minimal or non-existent. In accordance with this Agreement, the minimum baseline condition will be the Applicants' provision of 8.0 cfs of surface water flow rights to the natural stream channel in Falls Creek. Take of bull trout as a result of diverting any of the 8.0 cfs of stream flow rights will not be authorized.

In addition to the proposed Surface Water Restoration alternative described above, other alternatives considered in more detail include: A No Action Alternative that would continue to dewater Falls Creek with no habitat restoration, isolate a bull trout population in the stream's headwaters, and risk entrainment and mortality of bull trout in unscreened irrigation ditches; an Irrigator Buy-Out Alternative that would terminate irrigation in the Falls Creek area and completely restore aquatic and riparian habitat in Falls Creek; and an Increased Irrigation Efficiency alternative that would include all four irrigators on Falls Creek as permittees of the Service, and restore some stream flow and habitat to Falls Creek.

Public Comment and Document Availability

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue enhancement of survival permits under section 10(a)(1)(A) of the Endangered Species Act to the Applicants for take of bull trout in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

You may obtain copies of the documents for review by contacting the individual named above (see **ADDRESSES**). You also may make an appointment to view the documents at the above address during normal business hours (see **ADDRESSES**).

Dated: March 1, 2002.

Rowan W. Gould,

Deputy Regionol Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02-6909 Filed 3-21-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Safe Harbor Agreement for Forster-Gill, Inc., Blue Lake Properties, Humboldt County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: This notice advises the public that Forster-Gill, Inc., has applied to the Fish and Wildlife Service (we, the Service) for an enhancement of survival permit pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for northern spotted owl (*Strix occidentalis caurina*). The permit application includes a Safe Harbor Agreement between Forster-Gill, Inc., and the Service. The proposed Agreement and permit would become effective upon signature of the Agreement and would remain in effect 80 and 90 years, respectively. We have made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement, which is also available for public review.

We announce the opening of a 30-day comment period to receive comments from the public on the Applicant's enhancement of survival permit application, the accompanying proposed Agreement, and Environmental Action Statement. For further information and instruction on the reviewing and comment process, see Public Review and Comment section below.

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DATES: Written comments must be received by April 22, 2002.

ADDRESSES: Comments should be addressed to Mr. Bruce Halstead, Project Leader, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California, 95521; facsimile (707) 822–8411. (See Public Review and Comments section below.)

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hoffman at the above address or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subject to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with Forster-Gill, Inc., to develop a Safe Harbor Agreement for the creation and enhancement of habitat for the northern spotted owl on the Forster-Gill, Inc., properties in Blue Lake, California. There are two baseline conditions that will be maintained under this Agreement: (1) Protection of an 11.2-acre no-harvest area that will buffer the most recent active northern spotted owl nest site, but will also be maintained in the absence of a nest site; and (2) maintenance of 216 acres on the property such that the trees will always average 12 to 24 inch diameter at breast height with a canopy closure of 60 to 100 percent. The property is currently at the lower end of the diameter and canopy closure ranges. By the end of the Agreement, the property will be at the upper end of the diameter and canopy closure ranges. Under this Agreement, Forster-Gill, Inc., will: (1) Annually survey and monitor for the species location and reproductive status; (2) protect all active nest sites (locations where nesting behavior is observed during any of the previous 3 years) with a no-harvest area that buffers the nest site by no less than 300 feet and limits timber harvest operations, within 1,000 feet of an active nest site during the breeding season, to the use of existing haul roads; and (3) manage the second growth redwood timber on the property in a manner that maintains suitable northern spotted owl habitat while creating over time the multi-layered canopy structure with an older, larger tree component associated with high quality spotted owl habitat.

We anticipate that this Agreement will provide, maintain, and enhance for the 80-year life of the Agreement over 200 acres of suitable northern spotted owl habitat within a matrix of private timberland.

Consistent with Safe Harbor policy, we propose to issue a permit to Forster-Gill, Inc., authorizing incidental take of northern spotted owls which may move on to the enrolled lands, and their progeny, as a result of lawful activities on the Forster-Gill, Inc., Blue Lake Properties, so long as baseline conditions are maintained and terms of the Agreement are implemented. These activities include unintentional take of northern spotted owls from long-term timber management and related activities including the felling, skidding and transport of timber and other related forest products. As the long-term timber management and related activities proposed under this Agreement will not result in the elimination of any currently suitable spotted owl habitat, it is unlikely that take would occur in this manner. However, in the event that an owl pair moves on to, or within 300 feet of the enrolled property, the application of uneven aged timber management using single tree selection silviculture between 300 and 500 feet from an active nest site, may result in incidental take through degradation of the habitat, e.g. alteration of the microclimate within the proximity of the nest site. The development and maintenance of high quality habitat in a matrix of private timberland subject to even aged management regimes will provide a relatively stable habitat condition that we believe will provide high productivity for multiple generations of spotted owls. Therefore, the cumulative impact of the Agreement and the activities it covers, which are facilitated by the allowable incidental take, is expected to provide a net benefit to the northern spotted owl.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted therein to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If, upon completion of the 30-day comment period, we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to Forster-Gill, Inc., for take of northern spotted owls incidental to otherwise lawful activities in accordance with the terms of the Agreement.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application, Environmental Action Statement, or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materiels received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act.

Dated: March 15, 2002.

John Engbring,

Deputy Manager, California/Nevada Operations Office., Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–6928 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Request to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Bureau of Indian Affairs (BIA) Form-4432, Verification of Indian Preference for Employment in the BIA and the Indian Health Service (IHS) has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. The BIA is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 22, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. Send a copy of your comments to Duane Bird Bear, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Carolyn Newman, 202–208–2473.

SUPPLEMENTARY INFORMATION: A 60-day notice for public comments was published in the **Federal Register** on November 21, 2001 (66 FR 58514). No comments were received on the workload burden or the form itself (OMB Control No. 1076–0160) during this public comment period. Comments were received on January 28, 2002, but they concerned substantive requirements for descendants of members of federally recognized Indian tribes but who were not themselves enrolled members of the tribe. This issue will be addressed during rule revision.

I. Abstract

The purpose of the Indian Preference Form is to encourage qualified Indians to seek preference in employment with the BIA and the IHS. BIA collects information under the proposed regulations to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and the IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior, or the Department of Health and Human Services and that continues to perform the functions formerly performed as part of the BIA or the IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska Native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States. The information is submitted in order to obtain or retain a benefit, namely, preference in employment with the BIA and the IHS.

II. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish us to withhold any information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. You may request copies of the information collection forms and our submission to OMB from the person listed in **FOR FURTHER INFORMATION CONTACT** section.

III. Data

Title: Verification of Indian Preference for Employment in the BIA and the IHS, BIA Form 4432.

OMB approval number: 1076–0160.

Type of Request: Extension of a currently approved collection.

Description of respondents: Qualified Indians who are seeking preference in employment with the BIA and IHS. Approximately a total of 5,000 applications for preference in employment are received annually by the BIA field offices.

Frequency: On occasion as needed.

Estimated completion time: The average burden of submitting an Indian Preference Form is 30 minutes including time for reviewing instructions, searching data sources and assembling the information needed.

Total annual burden: 5,000 × ½ hour = 2500 hours.

Estimated cost: There are no costs to consider, except postage and the cost of duplicating the original verification form, because verification of the information is already available for other reasons. The form will be used by an applicant to seek documentation of Indian descent or membership from either a tribal official or the BIA.

Dated: March 4, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6978 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of a Draft Recreation Area Management Plan for the Imperial Sand Dunes Recreation Area and Associated Draft Amendment to the California Desert Conservation Area Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a Draft Recreation Area Management Plan (DRAMP) for the Imperial Sand Dunes Recreation Area (ISDRA) and associated Draft Amendment to the California Desert Conservation Area (CDCA) Plan and Draft Environmental Impact Statement (DEIS).

SUMMARY: The DRAMP and Draft Amendment to the CDCA Plan provide direction and guidance for the management of public lands and resources of the ISDRA, including goals and management objectives, management prescriptions in accordance with the Federal Land Policy and Management Act (FLPMA) of 1976, management direction specific to discrete areas within the ISDRA, and monitoring and evaluation requirements. The DEIS evaluates the DRAMP and alternatives to the DRAMP, including necessary amendments to the CDCA Plan.

DATES: Written comments on the DRAMP, Draft Amendment to the CDCA Plan and DEIS will be accepted until

June 28, 2002. Six (6) public meetings will be held between 7–10 p.m.

The dates and locations of the public meetings are as follows:

April 9, 2002, El Centro, CA, City Council Chambers, 1275 Main Street, El Centro, CA.

April 11, 2002, Long Beach, CA, The Grand, 4101 East Willow Street, Long Beach, CA.

April 15, 2002, Phoenix, AZ, Phoenix College, 1202 West Thomas Road, Phoenix, AZ.

April 18, 2002, Brawley, CA, Brawley City Council, 225 A Street, Brawley, CA.

April 23, 2002, Yuma, AZ, Yuma Civic and Convention Center, 1440 W Desert Hills Drive, Yuma, AZ.

April 25, 2002, San Diego, CA, Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, CA.

ADDRESSES: Comments should be sent to Greg Thomsen, Field Manager, El Centro Field Office, California Desert District, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243. Comments also may be sent by e-mail to: *rtrost@ca.blm.gov*. Comments on the DRAMP, Draft Amendment to the CDCA Plan and DEIS, including names and addresses of respondents, will be available for public review at the El Centro Field Office during normal working hours (7:45 a.m to 4:15 p.m., except holidays), and may be published as part of the Final Environmental Impact Statement and Amendment to the CDCA Plan. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety. The planning documents and direct supporting record for the analysis and DRAMP will be available for inspection at the El Centro Field Office during normal working hours. Some important historical records may also be posted on the BLM Internet site to facilitate public access.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4420.

SUPPLEMENTARY INFORMATION: The ISDRA project area, trending generally for 40 miles from the southeast to northwest, comprises approximately 208,284 acres of public lands bounded approximately to the west by the Old Coachella Canal, to the east by the Union Pacific Railroad, to the North by Mammoth Wash, and to the south by Interstate 8 and the California/Mexico border. The primary activities conducted in the ISDRA include recreational camping and use of Off-Highway Vehicles. Issues addressed in the DRAMP and DEIS include: recreation resources; biological resources (wildlife and botany); cultural resources and paleontology; land ownership and management; geology and soils; socioeconomics; and public health and safety. The DEIS also addresses water; noise; mineral resources; hazardous materials; solid waste; visual resources; energy; access; climate; topography; and air quality.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 02–6977 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[OMB Control Number 1010–0123]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Issuing Orders Requested by Indian Lessors."

DATES: Submit written comments on or before May 21, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION: *Title:* Issuing Orders Requested by Indian Lessors.

OMB Control Number: 1010–0123.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf. The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982, as amended, requires that the Secretary "establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." In order to accomplish these tasks, Indian lessors need a procedure for requesting the Secretary to issue orders for payments or reports. The MMS developed a proposed rule, published January 12, 1999 (64 FR 1930), to add Subpart C—Requests from Indian Lessors for MMS to Issue an Order to 30 CFR Part 242—Orders. The subpart explained how Indian lessors could formally request that MMS issue an order to persons concerning the reporting of production and the reporting and payment of royalties and other payments due under their leases. A final rule codifying these provisions has not been published yet. Because OMB approval of this information collection expires April 30, 2002, we are seeking OMB approval to renew these reporting requirements until a final rule is published.

This information collection covers the hour burden associated with submitting requests to MMS to issue an order. Submission of the information in this collection is necessary for MMS to determine the validity of the request and investigate the reasons for perceived errors or underpayments. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 12 Indian lessors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 180 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request.

Public Comment Policy. We will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 8, 2002.

Milton K. Dial,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 02–6904 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–MR–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–007]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 1, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: none.

2. Minutes

3. Ratification List

4. Inv. No. 731–TA–925 (Final) (Greenhouse Tomatoes from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 11, 2002.)

5. Outstanding action jackets: (1.) Document No. GC–02–029: Concerning Inv. No. 337–TA–443 (Certain Flooring Products).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 19, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7124 Filed 3–20–02; 2:40 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Videotape: Interpersonal Communications in the Correctional Setting

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jails Division, is seeking applications for the production of a betacam or digital format videotape, Interpersonal Communications in the Correctional Setting.

Background

Supervising inmates and managing their behavior are two of the primary responsibilities of correctional institutions. Effective communication with inmates is one of the most important skills correctional staff must have to maintain the safety and security of institutions. The National Institute of Corrections has an established curriculum on Interpersonal Communications in the Correctional Setting which is used to instruct correctional staff in appropriate communication skills for use with the inmates they supervise. Materials for this curriculum include an instructor's guide, participant manual, and a 60 minute instructional videotape. The current instructional videotape is outdated in terms of narrator and actor appearance, language, and use of graphics. To ensure the course remains effective NIC needs to produce an updated version of the training videotape.

Project Objectives

To produce a revised version of the existing Interpersonal Communications in the Correctional Setting training tape, using a revised script provided by the National Institute of Corrections.

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Scope of Work

Videotape Length: About 60 minutes.

Videotape Audience: Correctional staff and instructors participating in the Interpersonal Communications in the Correctional Setting training program.

Use of Videotape: The videotape will be used in the Interpersonal Communications in the Correctional Setting training program. Instructors will use the videotape during the training, in conjunction with the instructor's guide and participant manual.

Videotape Distribution: NIC expects to widely distribute the videotape. It will be made available, upon request and free of charge, through the NIC Information Center. Local officials, detention practitioners, professional corrections organizations, private corrections consultants, and professionals in related fields will be able to request the use of this videotape.

Videotape Content: The National Institute of Corrections has developed a revised script for this videotape. The approximately 60 minute videotape will include an on-screen narrator, voice-over narration, music, graphics, scenarios using professional actors to portray correctional staff and inmates, and/or other strategies designed to most effectively demonstrate concepts. Scenarios will be filmed inside correctional facilities. Scenario actors will represent diverse backgrounds (ethnicity, race, age, and sex).

Project Description: The production company will see the videotape production through from beginning to end. The company is expected to provide the staff, equipment, and other resources necessary to directing, producing, filming, editing, and all other activities necessary to videotape production.

The production company is asked to assign one staff to oversee the project and work closely with NIC staff on all phases of videotape production. NIC staff will assist in identifying correctional facilities for on-site shooting. NIC staff will be available on-site during some or all of the filming. NIC staff must review and approve the treatment, creative ideas, selection of the narrator and actors, shooting days, music, graphics, animation, editing, and screening dates. NIC staff will have all editing rights and final approval of rough drafts.

NIC staff will be available to the production company to assist with questions or problems that arise. It is important, therefore, that the production company staff are readily available for in-person meetings with NIC staff in Longmont, Colorado. At a minimum, the production company must be available to meet in Longmont, Colorado for a project kick-off meeting.

The production company will videotape in betacam or digital format. Once the videotape is completed, the production company will provide NIC one betacam or digital master and 12 copies of the tape in VHS format. All videotape used in this production, including B footage, is the property of the U.S. Government and is to be delivered to NIC upon completion of this project.

Production Schedule: The list below shows the major activities required to complete the project. Videotape production will begin upon award of this agreement and must be completed twelve months after the award date. The schedule for completion of activities should include the following, at a minimum.

- Production company's kickoff meeting in Longmont, Colorado with NIC staff for a project overview;
- Production company's review of existing video and revised script provided by NIC;
- Selection of on-screen narrator, voice-over narration, and scenario actors coordinated with an approved by NIC staff;
- Selection of scenario site(s) coordinated and approved by NIC staff;
- Filming scheduled and coordinated with NIC staff;
- Filming;
- Completion of draft footage;
- Screening of draft footage by production company and NIC staff;
- Edit from screen;
- Graphics/animation/music planned, then presented to and approved by NIC staff;
- Graphics/animation/music created;
- On-screen narration and voice-over narration presented to and approved by NIC staff;
- Screening of edit(s) by production company and NIC staff;
- Review and approval of final edit by NIC staff;
- Final products delivered.

Authority: Public Law 93–415

Funds Available: The award will be limited to $85,000 (direct and indirect costs) and project activity must be completed within twelve months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be submitted using OMB Standard Form 424, Federal Assistance, and attachments. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement.

The narrative portion of this cooperative agreement application should include, at a minimum:

- A brief paragraph that indicates the applicant's understanding of the purpose of the videotape;
- A brief paragraph that summarizes the project goals and objectives;
- A clear description of the methodology that will be used to complete the project and achieve its goals;
- A statement or chart of measurable project milestones and time lines for the completion of each;
- A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;
- A description of the qualifications of the applicant organization and each project staff;
- A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principal's and associate's relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application. The application must be accompanied by a resume of the applicant's work and a brief sample(s) of complete video productions. The applicant organization must specify its roles in the production of the sample videos.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Tuesday, May 7, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the National Institute of Corrections is still being delayed due to recent events. Hand delivery applications should be brought to 500 First Street, NW., Washington, DC 20534. The front desk will call (202) 307–3106, extension 0 for pickup. Faxed or e-mailed applications will not be accepted.

Addresses and Further Information: A copy of this announcement and application forms may be obtained through the NIC Web site: *http://www.nicic.org* (click on "Cooperative Agreements"). Requests for a hard copy of the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 44222, 202–307–3106, ext. 44222, or e-mail: *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Kris Keller at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 119 or 303–682–0382, ext. 119, or by e-mail: *kdkeller@bop.gov*.

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

- Indication of a clear understanding of the project requirements;
- Background, experience, and expertise of the proposed project staff, including any subcontractors;
- Previous video production experience;
- Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;
- Technical soundness of project design and methodology;
- Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;
- Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed;
- Indication of availability to meet the NIC staff at key points in videotape production (at a minimum, those listed under "Project Description").

Number of Awards: One (1).

NIC Application Number: 02J23. This number should appear as a reference line in your cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Dated: March 19, 2002.

Larry Solomon,

Deputy Director, National Institute of Corrections.

[FR Doc. 02–6995 Filed 3–21–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this date may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

No. CO020018—See CO020017
No. CO020019—See CO020017
No. CO020020—See CO020010
No. CO020021—See CO020017
No. CO020022—See CO020017
No. CO020023—See CO020017
No. CO020024—See CO020017
No. CO020025—See CO020017
No. CO020026—See CO020017
No. CO020027—See CO020017
No. CO020028—See CO020016
No. OR020002—See OR020007

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Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume IV

Wisconsin
WI0020049 (Mar. 22, 2002)
WI0020050 (Mar. 22, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020012 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)
New York
NY020003 (Mar. 1, 2002)
NY020013 (Mar. 1, 2002)

Volume II

Delaware
DE020002 (Mar. 1, 2002)
DE020004 (Mar. 1, 2002)
DE020005 (Mar. 1, 2002)
DE020009 (Mar. 1, 2002)

Volume III

North Carolina
NC020001 (Mar. 1, 2002)
NC020003 (Mar. 1, 2002)

Volume IV

Indiana
IN020002 (Mar. 1, 2002)
IN020003 (Mar. 2, 2002)
IN020004 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
IN020007 (Mar. 1, 2002)
IN020008 (Mar. 1, 2002)
IN020009 (Mar. 1, 2002)
IN020011 (Mar. 2, 2002)
IN020012 (Mar. 1, 2002)
IN020014 (Mar. 1, 2002)
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Ohio
OH020001 (Mar. 1, 2002)
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OH020004 (Mar. 1, 2002)
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IA020005 (Mar. 1, 2002)
IA020013 (Mar. 1, 2002)
IA020016 (Mar. 1, 2002)
IA020032 (Mar. 1, 2002)
IA020060 (Mar. 1, 2002)

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Colorado
CO020002 (Mar. 1, 2002)
CO020003 (Mar. 1, 2002)
CO020011 (Mar. 1, 2002)
CO020014 (Mar. 1, 2002)
Idaho
ID020003 (Mar. 1, 2002)
ID020004 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
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WA020002 (Mar. 1, 2002)
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Nevada
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General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service, *http://davisbacon.fedworld.gov* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14 day of March 2002.

Carol J. Poleskey,

Chief Branch of Construction Wage Determinations.

[FR Doc. 02–6661 Filed 3–21–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–15; Exemption Application No. D–10852, et al.]

Grant of Individual Exemptions; Rockford Corporation 401(k) Retirement Savings Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Rockford Corporation 401(k) Retirement Savings Plan (the Plan) Located in Tempe, AZ

[Prohibited Transactions Exemption 2002–15; Exemption Application No. D–10852]

Exemption

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and (E) of the Code,[1] shall not apply, effective December 30, 1999 until March 15, 2000, to an arrangement, by Rockford Corporation (Rockford), the Plan sponsor, for the reversal of the original purchase of debt securities (the Debentures) previously issued by Rockford (the Reversal Transactions), involving the following transactions affecting the individually-directed accounts in the Plan (the Plan Accounts) of certain Plan participants (the Participants): (1) The purchase, by the Participants, from their Plan Accounts of the Debentures; (2) the distribution in kind of the Debentures by the Plan Accounts to the Participants; (3) the rollover of the Debentures, if distributed in kind to the Participants, into self-directed individual retirement accounts (the IRAs) established by the Participants; and (4) any benefit that may have inured to Rockford by not having to repurchase the Debentures held by the Plan Accounts.

This exemption is subject to the following conditions:

(a) A Form 5330 was filed by Rockford with the Internal Revenue Service (the Service) and all appropriate excise taxes were paid with respect to the Plan's acquisition and holding of the Debentures, as well as for the extension of credit by the Plan to Rockford resulting therefrom.

(b) With respect to each Debenture,

(1) Rockford offered to repurchase such Debentures from each affected Participant's account in the Plan (the Plan Account), at their fair market value, as determined by Arthur Andersen LLP, a qualified, independent appraiser; and

(2) By March 15, 2000 each Debenture was either—

(i) Repurchased by Rockford; (ii) purchased by or distributed in kind to each Participant whose Plan Account had held such Debentures; and (iii) rolled over, at the election of the Participant, into the Participant's self-directed IRA.

(c) At the time of the Reversal Transactions, each Plan Account received no less than fair market value for the Debentures, which was in excess of their initial cost.

(d) The Plan Accounts paid no fees or commissions in connection with the Reversal Transactions.

(e) Rockford advised each affected Participant in advance of any transaction of the various options available with respect to the divestment of the Debentures from the Participant's Plan Account.

(f) Rockford has maintained, or will cause to be maintained, for a period of six years from the date of such transactions, in a manner capable for audit and examination, such records as are necessary to enable the persons described below in paragraph (g) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Rockford, the records are destroyed prior to the end of the six year period.

(g)(1) Except as provided in paragraph (2) of this section (g) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any Participant or beneficiary or duly authorized employee or representative of such Participant or beneficiary.

(g)(2) None of the persons described in subparagraphs (g)(1)(B)–(g)(1)(C) shall be authorized to examine the trade secrets of Rockford or commercial or

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption is effective from December 30, 1999 until March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 13, 2001 at 66 FR 64459.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, U.S. Department of Labor, (202) 693–8556. (This is not a toll-free number.)

Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York

[Prohibited Transaction Exemption 2002–16; Exemption Application Number D–10886]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 16, 1998, to the acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds resulted in the Fund's receipt of a one-day profit totaling $147,250.01;

(e) Upon identifying the Acquisition as a "prohibited transaction", MS&Co and Alliance acted promptly to comply with the relevant provisions of the Act and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 3, 2002 at 67 FR 351.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

[Prohibited Transaction Exemption 2002–17; Exemption Application No. D–10961]

Exemption

The Department of Labor is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Section I: Transactions

The restrictions of sections 406(a)(1)(A) through (d) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4974 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by:

(a) Independent contractor agents (the Agent(s)) of State Farm Mutual Automobile Insurance Company (State Farm) or its affiliates, who are also registered representatives of State Farm VP Management Corp. (SFVPMC), for themselves and their employees, and

(b) The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below), provided that the conditions set forth in Section II, below are satisfied.

Section II: Conditions

(a) Neither State Farm nor its affiliates has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(b) Plans do not pay any plan-level investment management, investment advisory, or similar fees to State Farm or its affiliates in connection with the investment of the assets of such Plans in any of the Funds.

(c) Plans do not pay any redemption fees in connection with the sale of shares of any of the Funds by such Plans.

(d) Plans do not pay any sales commissions in connection with the acquisition or sale of shares of any of the Funds, and the Agents do not receive any sales commission or any other compensation or benefit, direct or indirect, in connection with the transactions that are the subject of this exemption. In this regard, neither State Farm nor any of its affiliates provides production credit, bonus, trip, or other sales incentive to such Agents based on such transactions.

(e) All dealings between the Plans and the Funds and State Farm and its affiliates are on a basis no less favorable to such Plans than such dealings with other shareholders of the Funds.

(f) The price paid or received by a Plan for shares in a Fund is the net asset value per share, as defined, in Section III(d), below, at the time of the transaction and is the same price that would have been paid or received for such shares by any other investor in such Fund at that time.

(g) For each Plan, the combined total of all fees received by State Farm and its affiliates for the prevention of services to such Plan, and in connection with the provision of services to any of the Funds in which such Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Neither State Farm nor its affiliates receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 1940 Act) in connection with the transactions.

(i) The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees.

(j)(1) Each Agent, or a Family Member of such Agent (as defined in Section III(e), below) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or Participant's account, as the case may be, is considering investing, including but not limited to:

(A) A current prospectus for such Fund;

(B) A statement describing the fees for investment advisory, investment management, or similar services, a statement describing any fees for secondary services (Secondary Services), as defined below in Section III(f), (including but not limited to fees for acting as custodian, transfer agent, or for providing administrative, brokerage, or other services) payable to State Farm or its affiliates, and all other fees to be charged to or paid by such Plan, Participant's account, or such Fund to State Farm or its affiliates;

(C) A statement regarding appropriate investments for retirement plans and explaining why such Fund would be an appropriate investment for such Plan or Participant's account, as the case may be; and

(D) Upon the request of an Agent, a Family member, or a Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, a copy of the proposed exemption and/or a copy of the final exemption, as such documents appear when published in the **Federal Register**.

(2) Each Participant, in the case of a Plan that does not provide for participant investment direction, receives from the fiduciary responsible for directing the investment of plan asset in advance of any initial investment in a Fund by such Plan:

(A) A statement that the Plan is investing in the Funds;

(B) The name of each Fund in which such Plan is investing; and

(C) A current prospectus for each such Fund.

(k) Any investment of the assets of a Plan (or a Participant's account in the case of a participant directed individual account plan) in each particular Fund is implemented only at the express direction of an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, after such Agent, Family Member, or Participant, or other fiduciary of a plan who has the authority to acquire or dispose of shares of the Funds, receives the information described in paragraph (j) of Section II, above.[3]

[3] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this exemption, and that satisfaction of the conditions of this exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the Department notes that the selection and the retention of any of the Funds as an investment or an investment option under a Plan is a fiduciary act. In this regard, the Department expects the fiduciary of a Plan to determine, if such selection and retention of any of the Funds by a Plan is appropriate after taking into consideration the investment performance of such Funds and the fees paid by such Funds (including advisory fees and administrative fees paid to State Farm and other persons).

(l) Pursuant to paragraph (k) of Section II, above, the investment of any assets of a Plan (or Participant's account, in the case of a participant directed individual account plan) in a Fund shall be terminable at will by an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, without penalty to such Plan (or Participant's account, in the case of an individually directed account plan), upon receipt by State Farm or its affiliates of a written notice of termination. A form (the Termination Form) expressly providing an election to terminate the investment in a Fund by a Plan (or Participant's account, in the case of an individually directed account plan) with instructions on the use of the form must be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, no less than annually; provided that the Termination Form need not be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, pursuant to this paragraph, sooner than six (6) months after such Termination Form is supplied pursuant to paragraph (m) of this Section II, below, except to the extent required by such paragraph in order to disclose an additional service or a fee increase. The instructions for the Termination Form must include a statement that the investment by a Plan in the Fund is terminable at will by a Plan (or Participant's account in the case of a participant directed individual account plan) without penalty to such Plan (or Participant's account), upon receipt by State Farm or its affiliates of written notice from the appropriate Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds.

(m) (1) In the event of an increase in fees paid by a Fund for any service, or

(2) In the event of an addition of any Secondary Service for which a fee is charged, or

(3) In the event of an increase in the rate of any fee that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed for such fee. State Farm or its affiliates will, at least 30 days in advance of the implementation of such fee increase or a fee for an additional service or increase in the rate of a fee, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and that explains the nature and amount of the additional service for which a fee is charged or the increase in fees or the increase in the rate of any fee) to the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds. Such notice shall be accompanied by a Termination Form with instructions, as described above in paragraph (1) of this Section II, which will permit a Plan (or Participant's account, in the case of a participant directed individual account plan) to redeem shares of such Fund without penalty.

(n)(1) On an annual basis, each Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives from State Farm the following information for each Fund in which a Plan (or Participant's account, in the case of a participant directed individual account plan) invests:

(A) A copy of the current prospectus,

(B) Upon the request of the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, a copy of the Statement of Additional Information that contains a description of all fees paid by such Fund to State Farm or its affiliates;

(C) A copy of the annual report prepared by State Farm or its affiliates that includes information about such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report; and

(D) Oral or written responses to inquiries of an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or

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dispose of shares of the Funds, as such responses arise.

(2) On an annual basis, each Participant in the case of a Plan that does not provide for participant investment direction receives from the fiduciary responsible for directing the investment of plan assets copies of the annual report for each of the Funds in which the assets of such Plan are invested.

(o) Any plan subject to this exemption that is a prototype retirement plan sponsored by State Farm or its affiliates may not require the investment of a minimum percentage of the total assets of such Plan in State Farm investment products.

(p) State Farm or its affiliates maintain for a period of six (6) years the records necessary to enable the persons described in paragraph (q) of this Section II, below, to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of State Farm or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other that State Farm and its affiliates shall be subject to the civil penalty that may be assessed under Section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (q) of this Section II, below.

(q)(1) Except as provided in paragraph (q)(2) of this Section II, below, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (p) of this Section II, above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service.

(ii) Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) of this Section II, above, shall be authorized to examine trade secrets of State Farm or its affiliates, or commercial or financial information that is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term, "affiliate" or "affiliates," means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, "Funds or Funds," shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

(d) The term, "net asset value," means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other asset's belonging to such Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(e) The term, "Family Member or Family Members," means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term, "Secondary Service," means a service other than an investment management, investment advisory, or similar service, which is provided by State Farm or its affiliates to a Fund, including custodial, accounting, brokerage, administrative, or any other service.

(g) "Termination Form," means the form supplied to an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, that expressly provides an election to terminate on behalf of a Plan (or the Participant's account in the case of a participant directed individual account plan) the investment of plan assets in a Fund. Such Termination Form may be used at will by an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds to terminate the investment by a Plan in a Fund without penalty to the Plan (or the Participant's account, in the case of a participant directed individual account plan) and to notify State Farm and its affiliates in writing to effect a termination by selling the shares of a Fund held by the Plan (or Participant's account) requesting such termination within one (1) business day following receipt by State Farm or its affiliates of the form; provided that if, due to circumstances beyond control of State Farm or its affiliates, the sale cannot be executed within one (1) business day, State Farm or its affiliates shall have one (1) additional business day to complete such sale.

(h) The term, "Plan" or "Plans," means any pension plan subject to the Act and/or the Code, including but not limited to plans that provide for participant investment direction, traditional individual retirement accounts (IRAs), SEP–IRAs, and Keogh plans.

EFFECTIVE DATE: This exemption is effective, as of May 1, 2001.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on December 13, 2001. All comments and requests for a hearing were due by January 28, 2002.

In a letter dated February 5, 2002, the applicants confirmed that State Farm had provided notice to interested persons of the pendency of the proposed exemption. The notification was provided via electronic mail (e-mail) to all State Farm agents who are registered representatives. It is represented that on December 20, 2001, the Corporate Department of State Farm sent an e-mail to all of its Agency Field Executives (AFEs or AFE) and its Agency Resource Managers (ARMs or ARM). The e-mail contained a copy of the Notice, as published in the **Federal Register**, along with a notice to interested persons (the Supplemental Statement), as described at 29 CFR 2570.43(b)(2) of the Department's regulations. The Supplemental Statement provided that interested persons had a right to comment on the proposed exemption and/or request a hearing by January 28, 2002.

The AFEs were instructed to send to the registered representatives who report to them an e-mail containing the Supplemental Statement with the Notice attached. The AFEs were further required to "cc" a corporate mailbox on the e-mail to each registered representative. In any area where an AFE's position was not currently filled or an AFE was out of the office on vacation or for any other reason, ARMs were instructed to send the e-mail to the registered representatives, using the same procedure that AFEs were instructed to use.

The Corporate Department of State Farm monitored the corporate mailbox to determine whether a follow-up from the Vice President-Agency (VPA) or the ARM for the region was necessary. Through the "cc" to the corporate mailbox, State Farm was able to verify whether each AFE or ARM, if applicable, had forwarded the Notice and the Supplemental Statement to the registered representatives. The appropriate VPA or ARMs were instructed to take corrective action if a "cc" was not received from an AFE or an ARM.

Through this verification process, State Farm determined that 7,935 out of 10,175 registered representatives received the e-mail notification by December 28, 2001. State Farm was also able to confirm that the remaining 2,240 registered representatives received the e-mail notification by January 15, 2002.

Although State Farm represents that it was able to notify all of the registered representatives through the process described above, the process was slower than anticipated. In light of the fact that notification to some interested persons was delayed until January 15, 2002, and in order to allow such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicants agreed to, an extension of the deadline within which to comment and request a hearing on the proposed exemption. In this regard, the applicants confirmed in a letter dated February 5, 2001, that all 10,175 registered representatives were sent via first class U.S. mail on January 23, 2002, notification that the comment period had been extended and that all comments and/or requests for a hearing on the proposed exemption were due by February 15, 2002.

During the comment period, the Department received one (1) comment letter in which the commentator requested a hearing. In this regard, the commentator wished to use the hearing to discuss the possibility of providing State Farm Mutual Funds for herself and her family members.

The Department has considered the request of the commentator for a hearing. In this regard, the commentator has not indicated any manner in which she or her family would be adversely affected by the exemption. Rather, the comment supports the issuance of the exemption. As the commentator will be able to purchase shares in the Funds for herself and her family members upon the publication of the exemption, the Department does not believe that any issue has been raised which would require the convening of a hearing.

During the comment period, the Department received favorable comment letters from fifty-six (56) commentators. In this regard, these commentators expressed support for the grant of the exemption.

The Department also received unfavorable comment letters from four (4) commentators. At the close of the comment period, the Department forwarded copies of all of the comment letters, both favorable and unfavorable, to the applicants. With respect to the four (4) unfavorable comment letters, the Department requested that the applicants respond in writing to the issues raised by the commentators. The concerns expressed by these commentators and the applicants response thereto are summarized below.

One commentator did not think that the exemption was necessary, not did he think that the Act should be changed to satisfy the wishes of a few individuals. In response to this commentator, the applicants point out that State Farm's exemption request has been submitted and proposed under the relevant procedures of the Department's regulations; and therefore, the granting of the proposed exemption does not change the Act, but on the contrary, is within the scope of the Act. Further, the applicants point out, as evidenced by the number of comments in favor of the proposed exemption, that many registered representative agents favor having the Funds available as investment options for their plans and the plans of their family members. If the exemption is granted, the applicants note that the exemption will in no way obligate the commentator to invest in the Funds.

Another commentator did not understand why State Farm had not previously allowed investments in the Funds by the agents' plans. In response, the applicants state that State Farm did not permit its registered representative agents to sell shares of the Funds to their plans (or those of family members) because of the possibility that such sales could be considered prohibited transactions, absent an exemption. The applicants point out that the grant of proposed exemption will allow investments in the Funds to be made available to the commentator, with appropriate safeguards, as reflected in the conditions and other terms of the exemption.

This same commentator complained that State Farm had placed a quota requirement on registered representatives. Another commentator indicated that State Farm had recently notified agents that they must produce a minimum number of sales per year or lose their license to sell State Farm products. This commentator expressed the opinion that sales of shares in the Funds would help agents and their clients who happen to be relatives.

It is the Department's view that crediting transactions subject to the exemption for purposes of satisfying a minimum number of sales per year in order to retain a license to sell State Farm products is a benefit to State Farm agents, in violation of Section II(d) of the exemption. In this regard, the applicants confirm that transactions subject to this exemption will not be credited in determining whether the requirement of a minimum number of sales per year has been met.

The fourth commentator objected to the proposed exemption because it does not permit him to be paid for his work. In response, the applicants presume that this commentator would support the exemption, if it allowed him, as an agent, to receive commissions on sales of shares in the Funds to plans established by such agent for himself and his employees or to plans established by family members of such agent. The condition that no commissions be paid in connection with the subject transactions is designed as a safeguard to protect against potential self-dealing. In this regard, Section II(d), ensures that, where the agent is a plan fiduciary, the agent's decision whether to invest plan assets in the Funds is not unduly influenced by the potential for personal gain and that personal gain will not be a motivating factor in any other transaction covered by the exemption.

The Department also received, on February 12, 2002, a comment letter

from the applicants. In their comment letter, the applicants requested certain amendments to the operant language in the exemption, as set forth in the Notice published in the **Federal Register**. The applicants' comments and the Department's response thereto are discussed in the numbered paragraphs below.

1. The applicants requested that the language of Section II(i), as published in the Notice, be revised to add the phrase, "for their employees," after the word, "affiliates." In this regard, State Farm wished to clarify that compliance with Section II(i) would not preclude agents or their family members from relying on the relief provided by the exemption to purchase shares of the Funds for various prototype plans sponsored by State Farm.

The Department concurs with the applicants' request and has modified Section II(i) of the exemption to read as follows: "The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees."[4]

2. The applicants requested that the language of Section II(j), (k), (1), (m), (n), and Section III(g), as published in the Notice in the **Federal Register**, be amended. In this regard, State Farm requested that the phrase, "or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds," be added at the end of the phrase, "Agent, Family Member, or Participant in a participant directed individual account plan," each time such phrase or a variation of such phrase appears in Section II(j), (k), (m), (n), or in Section III(g). State Farms believes that in cases where a separate independent fiduciary, such as an investment committee, has been appointed to make relevant investment decisions for a plan concerning the acquisition or disposition of shares of the Funds, that it would be appropriate to include such fiduciary among the parties listed in Section II(j), (k), (m), (n), or in Section III(g).

The Department concurs with the applicants' request. Accordingly, the Department has modified the language of the exemption to add the phrase, "or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds," as indicated below:

(a) in Section II(j)(1), after the word, "direction," on page 64473, column 2, line 12 of the Notice;

(b) in Section II(j)(1)(D), after the word, "plan," on page 64473, column 2, line 48 of the Notice;

(c) in Section II(k), after the word, "plan," on page 64473, column 3, line 4 of the Notice, and after the word, "Participant," on page 64473, column 3, line 6 of the Notice;

(e) in Section II(1), after the word, "Participant," on page 64473, column 3, lines 15 and 49 of the Notice, and after the word, "Participants," on page 64473, column 3, lines 38 and 32 of the Notice;

(f) in Section II(m)(3), after the word, "plan," on page 64474, column 1, line 25 of the Notice;

(g) in Section II(n)(1), after the word, "plan," on page 64474, column 1, line 37 of the Notice;

(h) in Section II(n)(1)(B), after the word, "plan" on page 64474, column 1, line 46 of the Notice;

(i) in Section II(n)(1)(D), after the word, "Participant," on page 64474, column 1, line 60 of the Notice; and

(j) in Section III(g), after the word, "plan," on page 64474, column 3, lines 57 and 67 of the Notice.

Further, in order to maintain consistency in the language of the exemption, the Department has modified Section II (q)(ii) to read as follows:

Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or [any] other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds [owned by such Plan], or any duly authorized employee or representative of such fiduciary.

3. The applicants sought clarification that the meaning of the term, "prototype retirement plan," as set forth in Section II(o) of the Notice, referred only to Section 401(a) qualified plans, and does not preclude State Farm IRAs approved under the Internal Revenue Service prototype IRA program from limiting permissible investment to State Farm products only. In this regard, State Farm proposed that the term, "prototype retirement plan," as set forth in Section II(o), be replaced by the phrase, "a section 401(a) qualified prototype plan." Subsequently, in a letter dated February 26, 2002, the applicants withdrew this comment.

The Department has accepted the applicants' withdrawal of the comment and notes that the language of Section II(o) in the exemption remains the same as the language published in the Notice.

4. In Section III(c) of the Notice, the term, "Fund or Funds" is defined to include:

Any diversified open-end investment company or companies registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

State Farm believes that this definition would be more accurate if it referred to the individual investment portfolios within the State Farm Mutual Fund Trust in light of the manner in which the terms, "Fund and Funds," were used throughout the Notice. Therefore, State Farm proposes that Section III(c) be revised to read as follows:

The term, "Fund or Funds," shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company [or companies] registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

The Department concurs with the applicants' request and has modified Section III(c) of he exemption, accordingly. Further, in order to maintain consistency in the language of the exemption, the Department has modified three (3) other sections of the exemption. In this regard, Section I has been modified to read as follows:

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), [open-end management investment companies registered under the Investment Company Act of 1940 (the 1940 Act)] as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by * * *.

Section III(d) of the exemption has been modified to read as follows:

The term, "net asset value," means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other assets belonging to such Fund [or portfolio of such Fund], less the liabilities charged to each such [portfolio or] Fund, by the number of outstanding shares.

In addition, Section II(n)(1)(C) of the exemption has been modified to read as follows:

A copy of the annual report prepared by State Farm or its affiliates that includes information about [the portfolios in] such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report.

5. The applicants sought to clarify the use of the words, "relative" and "Family Member or Family Members," as those terms are used in the Notice. In this regard, the applicants noted that the term, "Family Member or Family Members," is defined solely by reference to section 3(15) of the Act in parenthetical phrases that appear in Section I(b) and Section II(j)(1) of the Notice, whereas the word, "relative," as defined in Section III(e) of the Notice, references the relevant provisions of both the Act and the Code and includes within the definition of a relative—"a brother, a sister, or a spouse of a brother or a sister." As the term, "Family Member or Family Members," appears in Section I(b) and in Sections II(j)(1); (j)(1)(D); (k); (l); (m)(3); (n)(1); an d(q)(1)(ii), in order to minimize the need to modify the text of the exemption, State Farm proposes that the term defined in Section III(e) of the Notice be changed from "relative" to "Family Member or Family Members." Further, State Farm proposes that the parenthetical phrase, "(as defined in section 3(15) of the Act)," be deleted from both Section I(b) and Section II(j)(1).

The Department concurs with the applicant's request and has amended the relevant provisions of the exemption. In this regard, Section III(e) in the exemption has been modified to read, as follows:

The term, ["relative,"] "Family Member or Family Members," means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

Section I(b) in the exemption has been modified to read, as follows:

The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below [section 3(15) of the Act]), provided that the conditions set forth in Section II, below are satisfied.

Section II(j)(1) in the exemption has been modified to read, as follows:

Each Agent, or a Family Member of such Agent (as defined in Section III(e), below [section 3(15) of the Act]) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or Participant's account, as the case may be, is considering investing, including but not limited to * * *

Section III(a)(2) in the exemption has been modified to read as follows:

Any officer, director, employee, [relative] Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person.

6. Section III(g) of the exemption, sets forth the requirements for the Termination Form. The applicants sought confirmation that for this purpose, "termination" means the pricing and redemption of the Fund shares and does not necessarily include the actual mailing of a redemption check or other physical transfer of funds (*e.g.*, by rollover to another account). Subsequently, by letter dated February 26, 2002, the applicants withdrew this comment. In this regard, State Farm represented that in accordance with its standard operating procedures, State Farm will price and redeem shares within one business day (except when circumstances outside of State Farm's control prevent such execution) and will mail redemption checks or otherwise disburse the funds within a reasonable time thereafter.

7. The Department also wishes to correct certain typographical errors that appeared in the Notice. In this regard, in Section II(h), the word, "receives," should be replaced by the word, "receive," and the phrase, "the Investment Company Act of 1940," should be inserted before the parenthetical, "(the 1940 Act)." The subparagraphs under Section II(n)(1) should be designated by capital letters, "(A)," "(B)," "(C)," and "(D)." In Section III(g), the parenthetical "(1)," should be inserted after the word, "one," whenever that word appears in such section.

After giving full consideration to the entire record, including the written comments from the commentors, the Department has decided to grant the exemption, as amended herein. In this regard, the comment letters, both favorable and unfavorable, submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published in December 13, 2001, at 66 FR 64472.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 2002–18; Exemption Application No. D–11035]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 of the notice of proposed exemption; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, see the notice of proposed exemption published on January 18, 2002 at 67 FR 2689.

Temporary Nature of Exemption

This exemption is temporary and will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other

[4] Throughout this exemption words that have been stricken from the text as published in the Notice appear in closed brackets and additions to the language of text as published in the Notice appear in bold.

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provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–6430 Filed 3–21–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–041)]

NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach Task Force; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach (E/PO) Task Force.

DATES: Thursday, April 18, 2002, 8:30 a.m. to 5:30 p.m., and Friday, April 19, 2002, 8:30 to 5:30 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Role of E/PO in Office of Space Science Program
—Role of the Office of Space Science E/PO Program in the Overall NASA Education Program
—Background on the Office of Space Science E/PO Program
—Issues to be addressed by the Task Force
—Task Force Schedule and Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6986 Filed 3–22–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–042]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Wednesday, May 1, 2002, 9 a.m. to 4 p.m., and Thursday, May 2, 2002, 9 a.m. to 12 Noon.

ADDRESSES: NASA George C. Marshall Space Flight Center, Center Directors Conference Room, Huntsville, AL 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—Office of Small and Disadvantaged Business Utilization Update of Activities
—NAC Meeting Report
—Overview of NASA Ames Research Center
—Overview of Small Business Program
—Public Comment
—Panel Discussion and Review
—Committee Panel Reports
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6987 Filed 3–21–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Dates/Time: April 25, 2002 8:30 a.m.–5 p.m., April 26, 2002 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: 21st Century Biology—Planning and Issues Discussion.

Dated: March 19, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–6979 Filed 3–21–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–4]

Duke Energy Corporation; Notice of Docketing of the Materials License SNM–2503; Amendment Application for the Oconee Independent Spent Fuel Storage Installation

By letter dated October 31, 2001, Duke Energy Corporation (DEC) submitted an application to the Nuclear Regulatory Commission (NRC or Commission) in accordance with 10 CFR part 72 requesting an amendment of the Oconee independent spent fuel storage installation (ISFSI) license (SNM–2503) for the ISFSI located in Oconee County, South Carolina. DEC is seeking Commission approval to amend its license to change the ISFSI's technical specifications for environmental reporting to the NRC. DEC has requested to change the frequency for submitting an environmental report of radioactive effluent releases from semi-annually to annually, in accordance with current NRC environmental reporting requirements in 10 CFR 72.44(d).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–4 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated October 31, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML020230028. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of March 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 02–6992 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–293; 030–34378; and License Nos. DPR–35; 20–07626–04]

In the Matter of Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station); Order Approving Transfer of Operating Authority and Conforming Amendments

I

Entergy Nuclear Generation Company (ENGC or the licensee) is the holder of Facility Operating License No. DPR–35, which authorizes ENGC to possess, use, and operate the Pilgrim Nuclear Power Station (Pilgrim Station or the facility). ENGC is also the holder of Materials License No. 20–07626–04, which authorizes ENGC to possess, use, and transport certain materials in the form of contamination on reactor components. The facility is located in Plymouth County, Massachusetts.

II

By application dated August 24, 2001, the Commission was informed that ENGC proposes to enter into an Operating Agreement with Entergy Nuclear Operations, Incorporated (ENO), and transfer operating authority to ENO. The application was supplemented by submittals dated December 20, 2001, and February 15, 2002. ENO is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 and an indirect wholly owned subsidiary of Entergy Corporation. Under the proposed transaction, ENO will be designated as a new facility licensee exclusively authorized to operate and maintain Pilgrim Station in accordance with the terms and conditions of the facility operating license. The transaction involves no change in ENGC's ownership of the facility. The licensee requested approval of the proposed transfer of operating authority under the Pilgrim Station facility operating license and transfer of the materials license to ENO. The licensee also requested conforming amendments to reflect the transfer. The proposed amendments would essentially add ENO to the licenses and make other administrative changes to reflect that ENO is authorized to operate Pilgrim Station.

No physical changes to Pilgrim Station were proposed in the application. In addition, ENGC's entitlement to capacity and energy from Pilgrim Station will not be affected by the transfer of operating authority.

Approval of the transfer of operating authority under the operating license and the conforming license amendments was requested by ENGC pursuant to 10 CFR 50.80 and 10 CFR 50.90. The applicable provisions of the regulations governing the transfer and amendment of the materials license are 10 CFR 30.34, 30.38, 40.41, 40.44, 70.32, and 70.34. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on October 4, 2001 (66 FR 50694). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Under 10 CFR 30.34, 40.41, and 70.32, no byproduct, source, or special nuclear material license shall be transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended, which require, inter alia, Commission consent. After reviewing the information in the application by ENGC and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that ENO is qualified to hold the operating authority under the facility operating license and to hold the materials license, and that the transfer of the operating authority under the facility operating license and the transfer of the materials license to ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities

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authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated March 15, 2002.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 30.34, 40.41, 50.80, and 70.32, *It is hereby ordered* that the transfer of the licenses, as described herein, to ENO is approved, subject to the following conditions:

(1) ENO shall, prior to completion of the transfer of operating authority for Pilgrim Station, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that ENO has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to ENO, ENGC and ENO shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days prior to the date of closing. If the transfer is not completed by March 30, 2003, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfers are approved. The amendments shall be issued and made effective at the time the proposed transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated August 24, 2001, supplements dated December 20, 2001, and February 15, 2002, and the safety evaluation dated March 15, 2002, which are available for public inspection at the Commission's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*.

Dated at Rockville, Maryland, this 15th day of March 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6991 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Plant Operations will hold a joint meeting on April 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, April 9, 2002—1:00 p.m. until the conclusion of business.*

The Subcommittees will hear discussions regarding issues related to the investigation of control rod drive mechanism (CRDM) penetration cracking and reactor pressure vessel head degradation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6988 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 9, 2002—11 a.m.–12:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6989 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 10, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 10, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the Duke Cogema Stone & Webster construction application request for a mixed oxide fuel fabrication facility and DOE-announced changes to the request. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6990 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 7d–2, SEC File No. 270–464, OMB Control No. 3235–0527

Rule 237, SEC File No. 270–465, OMB Control No. 3235–0528

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"). In cases where these individuals move to the United States, these participants ("Canadian/U.S. Participants" or "participants") may not be able to manage their Canadian retirement account investments. Most securities and most investment companies ("funds") that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirements of the Securities Act of 1933 ("Securities Act")[1] and, in the case of securities of an unregistered fund, the Investment Company Act of 1940 ("Investment Company Act").[2] As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants, in the past, had not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

In 2000, the Commission issued two rules that enabled Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian/U.S. Participants and sales to their accounts.[3] Rule 237 under the Securities Act permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act. Rule 7d–2 under the Investment Company Act permits foreign funds to offer securities to Canadian/U.S. Participants and sell

[1] 15 U.S.C. 77.

[2] 15 U.S.C. 80a.

[3] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)].

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securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act.

The provisions of rules 237 and 7d–2 are substantially identical. Rule 237 requires written offering materials for securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission and may not be offered or sold in the United States unless they are registered or exempt from registration under the U.S. securities laws. Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to make the same disclosure concerning those securities, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. Neither rule 237 nor rule 7d–2 requires any documents to be filed with the Commission. The burden under either rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement. The staff estimates the annual burden as a result of the disclosure requirements of rules 7d–2 and 237 as follows.

a. Rule 7d–2

At the time rule 7d–2 was adopted,[4] the staff estimated that there were approximately 1,300 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act. During the first year rule 7d–2 was in effect, the staff estimates that approximately 910 (70 percent) of these Canadian funds relied on the rule. The staff further estimates that each of those 910 Canadian funds, on average, distributed 3 different written offering documents concerning those securities, for a total of 2,730 offering documents.[5]

The staff therefore estimates that during the first year that rule 7d–2 was in effect, approximately 910 respondents made 2,730 responses by adding the new disclosure statements to approximately 2,730 written offering documents. Thus, the staff estimates that the total annual burden associated with this disclosure requirement in the first year after rule 7d–2 became effective was approximately 455 hours (2,730 offering documents × 10 minutes per document). In each year following the first year that rule 7d–2 became effective, the staff estimates that approximately 65 (5 percent) additional Canadian funds may rely on the rule to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts, and that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 195 offering documents. The staff therefore estimates that in each year after the first year that rule 7d–2 became effective, approximately 65 respondents would make 195 responses by adding the new disclosure statement to approximately 195 written offering documents. The staff therefore estimates that after the first year, the annual burden associated with the rule 7d–2 disclosure requirement would be approximately 32.5 hours (195 offering documents × 10 minutes per document).

b. Rule 237

Canadian Issuers Other Than Funds

The Commission understands that there are approximately 3,500 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian/U.S. Participants.[6] The staff estimates that in any given year approximately 35 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 35 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 105 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 35 respondents would be required to make 105 responses by adding the new disclosure statements to approximately 105 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 17.5 hours (105 offering documents × 10 minutes per document).

Other Foreign Issuers Other Than Funds

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. Because Canadian law strictly limits the amount of foreign investments that may be held in a Canadian retirement account, however, the staff believes that the number of issuers from other countries that relies on rule 237, and that therefore is required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6933 Filed 3–21–02; 8:45 am]

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[4] *See supra* note 3.

[5] Because Canadian tax law effectively precludes non-Canadian funds from being held in a Canadian retirement account, the Commission believes that no funds from countries other than Canada rely on rule 7d–2 to sell their shares to the Canadian retirement accounts of Canadian/U.S. Participants.

[6] Canadian funds can rely on both rule 7d–2 and rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts without violating the registration requirements of the Investment Company Act or the Securities Act. Rule 237, however, does not require any disclosure in addition to that required by rule 7d–2. Thus, the disclosure requirements of rule 237 do not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d–2. To avoid double-counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with rule 237.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From

Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions

Rule 701, OMB Control No. 3235–0522, SEC File No. 270–306

Regulations 14D and 14E, and Schedule 14D–9, OMB Control No. 3235–0102, SEC File No. 270–114

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Securities Act Rule 701 requires when offerings in excess of $5 million are made under the employee benefit plan exemptive rule, the issuers must provide the employees with risk and financial statement disclosures among other things. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory agreements. Information provided under Rule 701 is mandatory. Approximately 300 companies annually rely on Rule 701 exemption and it takes an estimated .5 hours to prepare and review. It is estimated that 25% of the 600 total annual burden hours (150 hours) is prepared by the company.

Regulations 14D and 14E and Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Approximately 310 issuers annually file Schedule 14D–9 and it takes 64.43 hours to prepare and review. It is estimated that 25% of the 79,803 total burden hours (19,973 burden hours) is prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6893 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From:

Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 7d–1, OMB Control No. 3235–0311, SEC File No. 270–176

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension and approval of the collections of information discussed below.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. 80a–7(d)] (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 [17 CFR 270.7d–1] under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting the foreign fund's registration under the Act.

The rule requires a Canadian fund proposing to register under the Act to file an application with the Commission that contains various undertakings and agreements of the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 [15 U.S.C. 77a–77z–3], and the Securities Exchange Act of 1934 [15 U.S.C. 78a–78mm], as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the [Act]." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These information collection

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requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the foreign fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a respondent would make two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a respondent's investment adviser would make one response each year under the rule to maintain records in the United States. Commission staff estimates that each recordkeeping response would require 6.25 hours each of secretarial and compliance clerk time at a cost of $13.48 and $12.77 per hour, respectively, and the response to update the list of affiliated persons would require 0.25 hours of secretarial time, for a total annual burden of 25.25 hours at a cost of $331.49. The estimated number of 25.25 burden hours is identical to the current allocation.

If a foreign fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

The Commission believes that the active registrant and its associated persons may spend (excluding the cost of burden hours) approximately $540 per year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a foreign fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no investment company has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6934 Filed 3–21–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following additional meeting during the week of March 18, 2002: an additional closed meeting will be held on Friday, March 22, 2002, at 11:00 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Friday, March 22, 2002, are: formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 19, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7032 Filed 3–19–02; 4:26 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45566; File No. SR–Amex–2001–68]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Adopt Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On September 4, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt sanctioning guidelines for violations of its options order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 13, 2002.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines for violations of its options rules related to firm quotes (Exchange Rule 958A), limit order display (Exchange Rule 958A),[5] priority, parity, and precedence (Exchange Rules 111, 126, 155, 950, and 958),[6] and trade reporting (Exchange Rule 992). The Exchange also proposes to adopt sanction guidelines for its rule regarding anti-competitive behavior and harassment (Exchange Rule 16).

The Exchange has developed the proposed sanction guidelines for use by the various bodies adjudicating disciplinary matters in determining appropriate sanctions.[7] These bodies include Disciplinary Panels, the Amex Adjudicatory Council and the Amex Board of Governors ("Adjudicators"). The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[8] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. The guidelines may also be used by parties to a disciplinary action in entering into a stipulation of facts and consent to penalty.

The proposed sanction guidelines contain an introductory section that explains the overall purpose of the guidelines and sets forth general principles that apply to all sanctions determinations. The proposed introductory section also includes principal considerations for determining sanctions that may be considered as aggravating or mitigating factors. The proposed sanctioning guidelines contain individual guidelines that provide specific monetary and non-monetary sanctions generally applicable to the violations at issue and list additional principal considerations for the specific violations.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[11] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[12] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 ("Order").

[4] See Securities Exchange Act Release No. 45412 (February 7, 2002), 67 FR 6777.

[5] The Exchange has an option limit order display rule filing pending with the Commission. See SR–Amex–00–27.

[6] According to the Exchange, it does not have an explicit definition of its members' obligation of "best execution" owed to its customer. The Exchange states that its rules regarding firm quotes, limit order display, priority, parity and precedence, however, collectively define the obligations of members with respect to orders and, therefore, embody the concept of best execution.

[7] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. See letter from Richard T. Chase, Executive Vice President, Amex, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 24, 2001.

[8] When determining whether an action is the first disciplinary action, the Adjudicators would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two year look back provision would apply on a rolling basis.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(6).

[12] See *supra* note 7.

continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[13]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2001–68) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6899 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45576; File No. SR–Amex–2001–76]

Self-Regulatory Organizations; Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Partial Accelerated Approval of Amendment No. 3 Thereto by the American Stock Exchange LLC Relating to the Obligations of Specialists and Registered Options Traders

March 15, 2002.

I. Introduction

On September 12, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to collective actions of specialists and registered options traders.[3] The Amex filed Amendment Nos. 1 and 2 to the proposed rule change on December 17, 2001[4] and January 18, 2002,[5] respectively. The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on February 14, 2002.[6] The Exchange filed Amendment No. 3 to the proposed rule change on March 13, 2002.[7] The Commission received no comments on the proposed rule change. The Commission is publishing notice of Amendment No. 3 to solicit comments from interested persons. The Commission is also granting accelerated approval to all portions of the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, except for the provision of proposed Commentary .02(b) to Amex Rule 950 that states that "[w]ith respect to orders sent through the Exchange's order routing systems it is presumed that the member has requested a collective response."

II. Description of Proposal

The Exchange proposes to amend Exchange Rules 950, 958, and 958A to codify its interpretation that unless otherwise provided for in Exchange rules, it is a violation of just and equitable principles of trade for specialists and registered options traders ("traders") to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class. The Exchange believes that there are, however, certain specific circumstances where, in order to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and traders may be necessary and appropriate. According to the Exchange, these circumstances arise: (1) in connection with the specialist's establishment of parameters used by the Exchange's automated quotation updating system (known as "X-TOPS") to automatically generate options quotations in response to changes in the market for the underlying security or index; (2) in responding to customer requests for markets in size, such that the collective efforts of the specialist and traders are necessary in order to be able to fill any resulting order to buy or sell options; and (3) whenever the specialist and traders, in order to fulfill their obligations pursuant to Rule 11Ac1–1 under the Act and Amex Rule 958A, and to be competitive with other exchanges, collectively agree as to the best bid, best offer, and aggregate quotation size. The following is a description of the nature and extent of the joint action among the specialist and traders that is permitted under each of these circumstances.

X–TOPS Parameters

Proposed Commentary .02 to Exchange Rule 950(n) and proposed paragraph (h) to Exchange Rule 958 would (i) require the specialist to disclose to all registered option traders in an option class the variables of the formula used to generate automatically updated market quotations for each option class and/or series, and (ii) permit the specialist to receive input from the registered options traders on any one or all of these variables provided, however, that it is within the specialist's sole discretion to make the final independent decision in determining the variables to be used in the X-TOPS formula. Registered options traders would not be required to provide input into these decisions. Those specialists using an Exchange-approved proprietary system to calculate and generate quotes may be exempt by the Exchange from having to disclose proprietary information concerning the variables (but not the variables themselves) used by their systems.

Joint Responses to Requests for Markets

Proposed Commentary .02 to Exchange Rule 950(n) and proposed new paragraph (h) to Exchange Rule 958 would expressly permit a collective response to a request for a market to buy or sell option contracts in sizes larger than the greater of the Auto-Ex eligible size or the size communicated or disseminated pursuant to Exchange

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[13] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Amex submitted the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order, which requires in part that certain options exchanges, including the Amex, adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class . . . . " *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] The Amex submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1").

[5] Letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, dated January 16, 2002 ("Amendment No. 2"). Amendment No. 2 amends proposed Amex Rules 950 and 958 to clarify that "large order" means orders larger than the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size. Amendment No. 2 also makes a technical correction to proposed Amex Rule 958(h)(iii).

[6] Securities Exchange Act Release No. 45413 (February 7, 2002), 67 FR 6953.

[7] Letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 8, 2002 ("Amendment No. 3").

Rule 958A,[8] provided the member requested the collective response.

In addition, the proposed rule change would permit the specialist to agree to transact the full size of the options order at a specific price unilaterally determined by the specialist and subsequently allocate portions of the order to registered options traders that wish to participate in the trade.[9] If or when a trade is executed under such circumstances, the contracts would be allocated in accordance with the Exchange's specialist and registered options traders participation policy.[10]

Finally, the Exchange proposes that with respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Exchange Rule 958, it would be presumed that the member has requested a collective response.[11]

Firm Quote Guarantees

Currently, Amex Rule 958A obligates specialists and traders to be firm for (i) customer orders up to the quotation size being disseminated, and (ii) broker-dealer orders, up to the size established and periodically published by the Exchange. Rule 11Ac1–1 under the Act anticipates that exchanges will disseminate one automatically generated quote for a trading crowd, which necessitates collective action on behalf of the specialist and traders to communicate size to the Exchange. If or when a trade is executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.

III. Discussion

The Commission finds that the proposed rule change, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission believes that the proposed rule change, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is consistent with the Section 6(b)(8)[13] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the portion of the proposed rule change approved herein should deter collective action on the part of Exchange members by clearly establishing in the Exchange's rules that options market makers are prohibited from determining by agreement the spreads or option prices at which they will trade an issue, subject to certain specified exceptions that the Commission herein approves.[14] For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.

In addition, the proposed rule change would permit the specialist and registered options traders to make a collective response to a member's specific request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a request for a single price and that the order be sufficiently large. In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the specialist and other members of a trading crowd.

At this time, the Commission is not approving the provision of proposed Commentary .02(b) to Amex Rule 950, that states that it is presumed that the member has requested a collective response for orders sent through the Exchange's order routing systems, because this proposed provision warrants further consideration.

Finally, the Commission finds that the portion of the proposed rule change that is approved herein is designed to effectively limit the circumstances in which collective action is permissible.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change, as amended by Amendment Nos. 1 and 2, was published for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change, and Amendment Nos. 1 and 2, in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. The Commission notes that the Amendment No. 3 to the proposal clarifies the proposed rules in response to issues raised by Commission staff. Accordingly, the Commission finds that good cause exists, consistent with Sections 6(b)(8) of the Act,[15] and 19(b)(2) of the Act[16] to grant partial accelerated approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

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[8] *Id.* Amendment No. 3 amends proposed Amex Rules 950 and 958 to clarify that "large order" means orders larger than the greater of the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size.

[9] See Amendment No. 3, *supra* note 7. Amex No. 3 codifies in proposed Amex Rules 950 and 958 that the specialist may unilaterally give a single bid (offer) in response to a request for a market and subsequently discuss with the registered options traders whether they wish to participate in the contracts executed in accordance with that bid (offer).

[10] See Securities Exchange Act Release No. 42964 (June 20, 2000) 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30) which proposes to codify current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists.

[11] As noted in Section III of this order, the Commission is not approving this provision at this time.

[12] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(8).

[14] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(2).

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public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–76 and should be submitted by April 12, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2001–76), as amended, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6901 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45571; File No. SR–CBOE–2001–71]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Incorporate Certain Principal Considerations In Determining Sanctions and To Incorporate In the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt sanctioning guidelines and to incorporate in its Minor Rule Violation Plan violations of the Exchange's order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.[4] On March 7, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] No comments were received on the proposed rule change. This order granted accelerated approval to the proposed rule change and issues notice of filing and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rule 17.11 (Judgment and Sanction) to incorporate certain Principal Considerations in Determining Sanctions ("Principal Considerations") to be applied by the Exchange's BCC in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. In addition, the Exchange proposes to amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) to incorporate in its MRP violations of the Exchange's order handling rules, including violations of firm quote requirements pursuant to Exchange Rule 8.51; failure to promptly book and display limit orders that would improve the disseminated quote pursuant to Exchange Rules 7.7 and 8.85(b); failure to honor the priority of marketable customer orders maintained in the Customer Limit Order Book pursuant to Exchange Rule 6.45; and failure to use due diligence in order execution pursuant to Exchange Rules 6.73 and 8.85(b). The proposed rule change would provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[6] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. Finally, the proposed rule change would also permit any member who is issued a summary fine notice to have the opportunity to submit one written offer of settlement to the BCC.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with section 6(b)(6) of the Act,[9] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[10] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[11]

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies when the Exchange may aggregate multiple violations and when subsequent offenses would be referred to the Exchange's BCC and not treated under the Exchange's MRP. Amendment No. 1 also clarifies that the Exchange may aggregate multiple violations into a single offense only where such aggregation is based upon a comprehensive automated surveillance program. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with sections 6(b)(5)[12] and 19(b)(2) of the Act,[13] to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE–2001–71 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2001–71) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6898 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45577; File No. SR–CBOE–2001–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to AutoQuote Parameters

March 15, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's AutoQuote System. The **Federal Register** published the proposed rule change for comment on February 12, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The CBOE submitted the proposed change to Interpretation and Policy .07 to CBOE Rule 8.7 pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class * * *." The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would permit market makers to coordinate in setting the components of the formula used by an automated quotation updating system, or AutoQuote.[5]

AutoQuote is the Exchange's electronic quotation system that

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the "Order").

[4] *See* Securities Exchange Act Release No. 45427 (February 8, 2002), 67 FR 6958.

[5] *See* letter from Edward Joyce, President and Chief Operating Officer, CBOE, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated March 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that the Exchange would aggregate individual violations of options order handling rules and treat such violation as a single offense only where such aggregation is based on a comprehensive automated surveillance program. In addition, the Exchange clarified that a sixth and subsequent violation of the options order handling rules would be referred to the Business Conduct Committee ("BCC") and not treated under the Exchange's Minor Rule Plan ("MRP").

[6] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Mary L. Bender, Senior Vice President and Chief Regulatory Officer, CBOE, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 21, 2001.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

[10] *See supra* note 6.

[11] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45394 (February 5, 2002), 67 FR 6556.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] For purposes of this filing and the proposed interpretation, the term AutoQuote is used to refer to both the Exchange's own automatic quotation system that is offered to trading crowds to generate quotes and to proprietary automated quotation updating systems that are used by trading crowds, DPMs, LMMs, SMMs, or appointed market-makers to generate quotes in lieu of or in addition to the Exchange's own AutoQuote system.

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automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. According to the Exchange, AutoQuote provides a means to update the quotes for the tens of thousands of series the Exchange lists.[6] AutoQuote formulas require the selection and input of the following components or variables: an option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying.

The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would set forth a more thorough description of AutoQuote. The proposed rule change also would identify who has responsibility under Exchange rules to determine a formula for generating automatically updated market quotations. For classes of options in which a DPM is appointed, the DPM would have primary responsibility to determine the formula, which includes determining the components or variables used in the AutoQuote formula.[7] For classes of options in which an LMM or SMM is appointed, such as the S&P 100 option class ("OEX"), the LMM or SMM would have primary responsibility to determine the formula for generating automatically updated market quotations.[8] For classes of options in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee would be permitted to appoint one or more market makers in good standing with an appointment in the particular option class ("Appointed Market-Makers") to determine a formula for generating automatically updated market quotations, using the Exchange's AutoQuote system or a proprietary automated quotation updating system.

Although DPMs, LMMs, SMMs, and Appointed Market-Makers would have the responsibility for determining the formula for generating automatically updated market quotations, the proposed amendment to Interpretation and Policy .07 expressly would provide that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market makers in the trading crowd in setting the components or variables of the formula. However, members of the trading crowd would not be required to provide input to the DPM, LMM, SMM, or Appointed Market-Maker about these decisions and the decision is ultimately that of the DPM, LMM, SMM or Appointed Market-Maker in the particular class.

For classes of options in which a DPM, LMM, SMM or Appointed Market-Maker does not have the responsibility to determine a formula for generating automatically updated market quotations, the market makers would be permitted to coordinate and agree upon the variables for the AutoQuote formula. In some trading crowds, one or a few market makers may take responsibility (with the crowd's approval) for updating the AutoQuote variables without seeking input on a continual basis. The CBOE believes that such market maker coordination is necessary and appropriate because an AutoQuote system is centralized and applicable to all market participants. Thus, the obligations resulting from the quotes generated by AutoQuote, such as the firm quote obligation, are imposed on the crowd as a whole.[9] Moreover, although AutoQuote is essential to ensure that quotes are updated on the numerous series traded by the Exchange on a timely basis, individual market makers can and do compete among each other to gain a larger share of orders by verbalizing quotes that improve the AutoQuote generated quotes. These verbalized quotes by market makers override the AutoQuote generated quotes for the particular series that is the subject of the verbalized quote.

Finally, the proposed amendment to Interpretation .07 would provide that the provisions described above and set forth in the proposed amendment to Interpretation .07 would also apply to the use of automated quotation updating systems that generate indicative prices that are indications of interest and not firm quotes.[10]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[12] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting AutoQuote parameters. For instance, the proposal would permit the DPM, LMM, or SMM, or Appointed Market-Maker, as applicable, to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. In addition, the proposal codifies a more complete description of AutoQuote, which the Commission believes should protect investors and the public interest by providing important information regarding how options prices on the Exchange are derived. Moreover, the Commission notes that individual market makers can compete among each other to gain a larger share of orders and override the AutoQuote generated quotes by verbalizing quotes that improve the AutoQuote generated quotes, which should limit any anticompetitive effects of the proposed rule change.

The Commission notes that in its filing, the Exchange states its belief that the proposed rule change is "procompetitive" because it is necessary to provide for a fair and orderly market in the thousands of options series traded on the Exchange. While the Commission does not agree that the proposed rule change enhances competition, the Commission finds that the burden that the proposal imposes on competition is appropriate in furtherance of the purposes of the Act and, thus, is not inconsistent with the Act.[13] Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2001–64) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6902 Filed 3–21–02; 8:45 am]

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[6] Although the Exchange believes that AutoQuote is necessary, the Exchange notes that individual market makers can and do manually improve the quote themselves in order to gain a larger share of orders than competing market makers. In these instances, the manual quote overrides the AutoQuote for that particular series.

[7] See CBOE Rule 8.85(a)(x).

[8] On December 17, 2001, the CBOE filed SR–CBOE–2001–63 which amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market performance Committee ("MPC") may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day in an options class for which a DPM has not been appointed. See Securities Exchange Act Release No. 45419 (February 7, 2002), 67 FR 6772 (February 13, 2002). The Commission is approving SR–CBOE–2001–63 simultaneously with the proposed rule change.

[9] CBOE has always used, and the applicable CBOE rules envision, a centralized autoquote system. Although it may be technologically feasible at some point in the future to have a system that would permit each individual market-maker to have his or her own automatic quote updating capability (and although CBOE may eventually develop such a model), CBOE believes that its centralized autoquote system is essential to preserving CBOE's current model of a floor-based, open-outcry market that includes joint crowd obligations pursuant to rules that have been approved by the Commission.

[10] Interpretation and Policy .10 to CBOE Rule 8.7 provides that "[m]arket-makers may display indicative spread prices on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise. Such indicative prices shall not be regarded as firm quotes, and a market-maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market."

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(8).

[13] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45585; File No. SR–CHX–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Confirming Changes Arising From the Securities Industry Transition to a Decimal Pricing Environment

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In this submission, the Exchange proposes to confirm the amendment of certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to confirm its amendment of certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The amendments described in this submission consist of changes that: (1) Confirm that the Exchange's minimum trading variation is $.01; (2) delete references to the procedures and conventions that were used during the conversion from quoting in fractions to quoting in decimals; and (3) remove all fractional price increments set forth in the current version of certain CHX rules.

Minimum Price Variation. The Exchange's rules currently state that all issues quoting in decimals will quote in increments of $.01 or any other variation required by the joint decimalization implementation plan filed with the Commission. This submission confirms the $.01 quoting increment and deletes references to the joint decimalization plan.

Removing references to the conversion from fractional to decimal pricing. Article XXB of the Exchange's Rules currently contains rules relating to the transition from a fractional pricing environment to one based on decimals. Now that this process has been completed, the Exchange believes it is appropriate to formally remove this Article from its rules.

Removing other fractional references. The remaining text contained in this submission removes fractional references in other Exchange rules.

None of the changes proposed in this submission effect any substantive change in the CHX rules or the operations of the Exchange. Instead, this submission confirms that the rules that the Exchange put in place as it began its transition to quoting in decimals continue to govern its operations.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[4] In particular, the proposed rule change is consistent with section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[3] These changes were included in a rule change proposal submitted pursuant to section 19(b)(3)(A) of the Act, which took effect upon filing. See Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–00–25). That proposal contained language that sought to remove fractional references automatically once the transition to decimal trading had been completed. In addition to confirming the Exchange's minimum trading increment, this submission recognizes that that automatic removal was not an available alternative and formally removes the fractional references from the Exchange's rules.

[4] 15 U.S.C. 78(f)(b).

[5] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–06 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6937 Filed 3–21–02; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45584; File No. SR–CHX–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Requesting Permanent Approval of Pilot Rules Relating to the Securities Industry Transition to Decimal Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule. The two pilots containing these rule changes are due to expire on April 15, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange requests permanent approval of pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule. The two pilots containing these rule changes are due to expire on April 15, 2002. The CHX is not proposing any substantive changes to the pilots.

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a decimal pricing environment.[3] By a series of subsequent submissions, each pilot was extended to April 15, 2002.[4] The Exchange now requests permanent approval of the current pilots, effective as of April 15, 2002.

The Ominbus Decimal Pilot: The Omnibus Decimal Pilot for which the Exchange seeks permanent approval amended certain provisions of Article XX, Rule 37 of the Exchange's rules, which were impacted by the securities industry transition to a decimal pricing environment. Specifically, the Exchange proposes permanent approval of changes to Article XX, Rule 37 which (1) Allow specialists to elect, on an issue by issue basis, to either manually

[3] These changes were proposed in two separate CHX submissions, the second of which dealt solely with decimal-related changes to the Exchange's crossing rule, Article XX, Rule 23. *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 64 FR 53065 (August 31, 2000) (SR–CHX–00–22) (approving changes to various CHX rules on a pilot basis ("Omnibus Decimal Pilot")); *see also* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–00–13) approving changes to the CHX crossing rule on a pilot basis ("Crossing Rule Decimal Pilot")).

[4] *See* Securities Exchange Act Release No. 42964 (February 16, 2000) 66 FR 11621 (February 26, 2001) (File No. SR–CHX–2001–03) (extending Omnibus Decimal Pilot through July 9, 2001); 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001) (SR–CHX–2001–13) (extending Omnibus Decimal Pilot through November 5, 2001); 45059 (November 15, 2001), 66 FR 58453 (November 21, 2001) (SR–CHX–2001–20) (extending Omnibus Decimal Pilot through January 14, 2002), and 45481 (February 27, 2002), 67 FR 10244 (March 6, 2002) (SR–CHX–2002–01) (extending Omnibus Decimal Pilot through April 15, 2002; *see also*, Securities Exchange Act Release Nos. 44000 (February 23, 2001) (66 FR 13361 (March 5, 2001) (extending Crossing Rule Decimal Pilot through July 9, 2001), 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001) (SR–CHX–2001–22) (extending Crossing Rule Decimal Pilot through January 14, 2002), and 45482 (February 27, 2002), 67 FR 10243 (March 6, 2002) (SR–CHX–2002–03) (extending Crossing Rule Decimal Pilot through April 15, 2002).

or automatically execute limit orders when a trade-through occurs in the primary market; (2) remove the "pending auto-stop" functionality from the Exchange's systems; and (3) allow a specialist, on an issue by issue basis, to establish an auto execution guarantee that is not dependent on the ITS Best Bid or Offer ("ITS BBO") or National Best Bid or Offer ("NBBO") size. The Exchange believes that decimal pricing is likely to continue to affect the CHX trading environment, and the interaction between the CHX and the national market system, in a manner that necessitates permanent approval of these pilot rule changes, which are designed to minimize the adverse impact of decimalization on trading operations.[5]

Manual or Automatic Execution of Limit Orders When a Trade-Through Occurs. The Exchange proposes to amend permanently Article XX, Rule 37(b)(6) to allow a specialist to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The pre-pilot version of the rule provided that agency limit orders (that were not marketable when entered into the Exchange's MAX automatic execution system) would automatically be filled at the limit price when there was a price penetration of the limit price in the primary market for the subject security. Under the pilot rule, automatic execution of such limit orders is no longer mandated. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. The obligation to fill the order at the limit price remains the same under either election. The Exchange believes that this pilot rule reasonably addresses the impact that the decimal pricing environment has had on the national market system, where the number of small orders executed at multiple price levels has increased the number of inadvertent trade throughs that would otherwise lead to unwarranted automated executions of large orders in a CHX specialist's limit order book, exposing the specialist to substantially increased liability in the decimal pricing environment.

Removal of the Pending Auto-Stop Functionality. For similar reasons, the Exchange proposes to amend permanently Article XX, Rule 37(b)(10) to eliminate the Exchange's "pending auto-stop" function. Under the pre-pilot rule, all agency market orders from 100 to 599 shares that were not automatically executed, because, among other things, the order size exceeded the quantity at the ITS BBO, were designated as "pending auto-stop orders." Such orders were stopped, and due an execution at the ITS BBO thirty seconds after entry into the Exchange's MAX system, unless the order had been canceled, executed, manually stopped, or put on hold during such thirty second period. Once an order was stopped, a text message to that effect was automatically sent to the order-sending firm.

The Exchange believes that this feature is not practicable in the decimal pricing environment, given the dramatic increases in quote traffic and the systems issues associated with generating administrative notifications regarding pending auto-stop. Additionally, quoting in decimals has significantly increased stock price points and, as a result, decreased the quantities associated with the ITS BBO price point and increased the rate of change in the ITS BBO price point. Both of these factors reduce a specialist's ability to offset the pending auto-stop guarantee. Under these circumstances, the Exchange believes it would be imprudent to continue to provide such a guarantee.

Changes Relating to Relationship Between Automatic Execution Guarantee and BBO Size. The rationale set forth above relating to the decrease in the quantities associated with the BBO price point also supports permanent approval of the Exchange's pilot rule change permitting CHX specialists to designate automatic execution guarantee levels that are not dependent on the BBO. Under the pre-pilot version of the CHX rule,[6] an order was not eligible for automatic execution on the Exchange if the order was larger than the then-current BBO size. Given the post-decimalization decreased quantities at each price point, the pre-pilot version of the rule would effect a corresponding decrease in the number of orders eligible for automatic execution on the Exchange. To accommodate customer demand for automatic execution, the Exchange believes that permanent approval of the pilot rule is necessary. The pilot rule permits a CHX specialist to designate, on an issue-by-issue basis, automatic execution guarantees that exceed the BBO size. Such an election is strictly voluntary and thus does not operate to increase the exposure of any specialist who desires to maintain the protections of the existing rule.

The Crossing Rule Decimal Pilot: The Exchange also proposes permanent approval of the pilot rule change to Article XX, Rule 23 of the Exchange's rules, which governs participation in crossing transactions in Nasdaq/NM securities effected on the floor of the Exchange Crossing transactions represent a significant component of Exchange volume. Under the pre-pilot rule, if a floor broker presents a crossing transaction, another member was able to participate, or "break up," the transaction, by offering (after presentation of the proposed crossing transaction) to better one side of the transaction by the minimum price variation. The floor broker was then effectively prevented from consummating the transaction as a "clean cross," which often operated to the detriment of the floor broker's customer(s).[7] In instances where the minimum price variation is relatively small, it is very inexpensive for a member to break up crossing transactions in this manner.

Given the post-decimalization transition to a minimum price variation of only $.01, the floor broker community, and other CHX members, remain concerned that much of the crossing business (and corresponding Exchange volume) will evaporate if the pilot rule is not amended on a permanent basis to preclude breaking up crossing transactions in the manner described above.

Under the pilot rule (which was developed by the Exchange's Decimalization Subcommittee and Floor Broker Tech Subcommittee to strike a balance of interests of those members who are impacted by crossing transactions), a floor broker is permitted to consummate crossing transactions without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject

[5] This submission does not concern "typographical" amendments to CHX rules, where the sole change that was proposed by the Exchange was the substitution of a decimal price increment for the fractional price increment set forth in certain CHX rules. The proposed "typographical" amendments were the subject of a separate submission previously approved by the Commission on a permanent basis. *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–00–25).

[6] Art. XX, Rule 37(b)(11).

[7] According to the Exchange, some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the breakup of the cross transaction by another Exchange member. Of course, the floor broker will still retain the ability to present both sides of the order at the post if the customers so desire.

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security.[8] These requests will place the specialist and other market makers on notice that the floor broker is intending to "cross" within the bid-offer spread. This arrangement is intended to ensure that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but will preclude them from breaking up a cross transaction after the cross transaction is presented.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[9] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

I. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–05 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6938 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] These updated quotes are not directed solely to the floor broker. Anyone at the post may respond to the updated quotes.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)912).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45568; File No. SR–ISE–2001–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange LLC To Increase the Minimum Quote Size for Certain Option Classes

March 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE amended its proposal on February 13, 2002[3] and on March 13, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt a three-month pilot program establishing greater size requirements for certain quotations in specified options. The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, ISE market makers must establish and maintain quotations that are firm for at least 10 contracts for customers and 1 contract for non-customers. The ISE now wishes to adopt a three-month pilot program in which ISE market makers would be required to establish and maintain quotations of a larger minimum size in a limited number of option classes. Specifically, the details of the three-month pilot program are as follows:

• The pilot would apply to the following options:[5] Nasdaq 100 Trust; Sun Microsystems; EMC Corp.; Qualcomm; Wells Fargo & Co.; Oracle; Lucent; Juniper Networks; Intel; AOL Time Warner; Tyco; Citigroup; Cisco; Applied Materials; Microsoft; General Electric; Broadcom; Nokia; and Siebel Systems.[6]

• The pilot would last for three months.

• For PMMs, the minimum size for quotes would be 100 contracts for customers and 50 contracts for broker-dealers.[7] For Competitive Market Makers ("CMMs"), the size requirements would be half of the PMM requirement: 50 contracts for customers and 25 contracts for broker-dealers. The enhanced broker-dealer size would not apply to executions against other market makers, where the minimum size would continue to be 1 contract.[8]

• These enhanced size requirements would apply only to the options series in the three months closest to expiration. Moreover, the pilot would not apply to "deep-in-the-money" options[9] or an option in the last three days of that option's trading. That is, the pilot would not apply for the last three days of trading during an option series' expiration week.

The ISE's intent in establishing the pilot program is to help determine the potential effect that increased minimum size requirements would have on the quality of the ISE's market and on the Exchange's ability to attract order flow. The ISE believes that it is likely that larger size guarantees would help the Exchange attract more order flow. However, the Exchange is concerned that requiring larger size could lead to a degradation of the quality of the Exchange's quotation. The Exchange believes that limiting the pilot to the specified options would tend to limit any adverse effects of the higher minimum size requirement. Specifically, the included options represent 19 of the 22 options with the highest trading volume in the industry, and thus, are the most liquid options. The Exchange chose these pilot stocks in consultation with its PMMs and CMMs.[10]

The Exchange intends to monitor the effects of the pilot closely. Prior to the expiration of the pilot, the Exchange would determine whether to end the pilot or whether to continue an enhanced size requirement in this or some other form. If the Exchange determines to continue an enhanced size requirement, it would file the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–32 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6895 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to replace the original rule filing in its entirety and specifies the options to be included in the pilot program rather than allowing Primary Market Makers ("PMMs") to choose the options to be included in the pilot.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2002 ("Amendment No. 2"). In Amendment No. 2, the ISE proposes to clarify that, in the pilot program, new enhanced size levels would apply to customer and broker-dealer orders, but not to the orders of market makers on either the ISE or other exchanges.

[5] For the purpose of the three-month pilot program, an "option" refers to all put and call options on the same underlying security.

[6] *See* Amendment No. 1, *supra* note 3.

[7] This enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least 10 contracts when the quotation consists, in part, of a customer order for less than 10 contracts.

[8] *See* Amendment No. 2, *supra* note 4.

[9] The proposed rule change defines "deep-in-the-money" as all options with strike prices that are in the money by four or more pricing intervals in relation to the at-the-money strike price. *See* proposed Supplementary Material .03 to ISE Rule 804.

[10] Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Cyndi Nguyen, Attorney, Division, Commission, on March 15, 2002.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45563; File No. SR–MBSCC–2001–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Implementing a Real-Time Trade Matching Service

March 14, 2002.

I. Introduction

On September 19, 2001, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–MBSCC–2001–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1]. On September 26, 2001, MBSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 25, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45299, (January 17, 2002), 67 FR 3762.

granting approval of the proposed rule change.

II. Description

In furtherance of MBSCC's mission to reduce the costs and risks associated with trading in the mortgage-backed securities market, MBSCC has enhanced its services to enable its participants to submit executed trade terms and receive comparison results from MBSCC in a more timely manner. The cornerstone of this objective is the implementation of the Real-Time Trade Matching ("RTTM") service that will replace MBSCC's current twice-daily match process with respect to trade input information. MBSCC anticipates that the RTTM service will provide more certainty, reduce execution/market risk, and eliminate the redundancy between the verbal checkout process (which is described below) and the current MBSCC matching process.[3]

MBSCC's objective in implementing the RTTM service is to match all trade input in real-time within minutes of trade execution while providing participants with the greatest flexibility and least amount of disruption in the migration towards this goal. MBSCC will retire its batch trade matching process with respect to trade input information upon implementation of the RTTM service. All trade activity for all participants, regardless of the form of trade input, will be matched solely by the RTTM service upon its implementation. Therefore, participants that increase the frequency of submission and reconciliation throughout the business day will be able to realize the benefits of the RTTM service.

MBSCC's Current Matching Process

Currently, MBSCC participants submit details of executed trades daily to MBSCC by means of terminal or batch submissions. While participants may submit trade input to MBSCC during published business hours, MBSCC performs its matching process of participant submitted data twice per day: at 10:30 a.m. ("AM Pass") and 11:30 p.m. ("PM Pass").

Output reports/files detailing the results of the matching process are available to participants at 11:30 a.m. (for the AM Pass) and 4:00 a.m. (for the PM Pass). The primary outputs are the "Purchase and Sale Report" listing submitted trades that successfully compared and the "Transaction Summary Report" listing, among other things, submitted trades that did not compare. The Purchase and Sale Report serves as the sole and binding confirmation of trades and provides data for Rule 10b–10 compliance purposes as well.

Given that the majority of trades are submitted after the AM Pass, the timing limitations of a twice daily matching/reporting process mean that participants generally are notified that a trade has achieved "binding confirmation" status at the earliest during the morning following submission to MBSCC. To overcome this time delay, participants engage in a process known as "verbal checkout." Shortly after execution, participants contact each other and verbally confirm executed trade details. The verbal checkout process is important to participants because it allows them to ascertain with some degree of certainty their intraday trading positions. While generally effective, the verbal checkout process is cumbersome, error-prone, and lacks the "binding" status afforded by the two-sided matching and confirmation through MBSCC.

The RTTM Service and the Requisite Rules Changes

In order to provide more certainty, reduce execution/market risk, and eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process, MBSCC will offer the RTTM service. As stated above, MBSCC currently processes transaction information in two batch processing passes. One segment of that processing, the matching of trade input information, will be processed by the RTTM service. The other segments of the daily processing, including the matching of clearance information, will continue to be done in either one or both of the two existing batch processing passes.

The RTTM service will provide trade input matching for dealer-to-dealer trades and for inter-dealer broker trades. The RTTM service will support all of the trade types currently supported by MBSCC (settlement balance order destined, trade-for-trade, comparison only, and option) as well as the various trade functions such as the "Don't Know" or "DK" function used by participants.

Participants will be able to submit transaction information for processing through the RTTM service using the batch file submission method that is used today, which is called "File Transmission Service." In addition, participants will also be able to use a batch file transmission method that employs SWIFT formats, the RTTM terminal service, and interactive messaging. Regardless of the input method, MBSCC will make available to participants real-time updates on all transactions entered into the system.

The following rule changes are necessary to accommodate the introduction of the RTTM service:

i. *General provisions on the RTTM service:* MBSCC is adding two provisions to its rules to provide generally for the RTTM service. One of these provisions (new Section 1 of Rule 3 of Article II) will provide that MBSCC's comparison of trade input will occur in real time, and the other (new Section 1 of Rule 4 of Article II) will distinguish the RTTM processing from the current processing passes.

ii. *New reports provided by the RTTM service:* MBSCC's RTTM processing will produce output via the RTTM terminal service as well as via interactive messages. MBSCC is adding to its definitions the term "Report" to encompass any type of output in any form that is provided by MBSCC to its participants. As a result specifically of RTTM processing, there will be two new "Reports." The "RTTM Compare Report"[4] will indicate the transactions whose trade input has compared, and the "RTTM Uncompare Report" will indicate the transactions whose trade input has not compared.

iii. *Changes to existing reports:* MBSCC will continue to provide the reports that are created as a result of its current two processing passes, with some modifications in one case. The Purchase and Sale Report details the results of the current batch trade processing, which includes the matching of trade input submissions and the matching of clearance information. No changes are proposed to the information provided by the Purchase and Sale Report. Like the Purchase and Sale Report, the Transaction Summary Report is also provided as a result of the current twice daily processing passes. Upon implementation of RTTM processing, the Transaction Summary Report will no longer provide details of unmatched trade terms. Unmatched trade terms will be available to participants via the RTTM Uncompare Reports (which as stated above will be in the form of

[3] One of the main objectives of the RTTM service is to significantly reduce the risks associated with a prolonged period of time between trade execution and achievement of legal and binding confirmation. The elapsed time between trade execution and verbal checkout, followed by a legal and binding confirmation, is a known and serious risk to the ultimate settlement of the trade for all trading organizations. Reducing the elapsed time between trade execution and achievement of a legal and binding confirmation increases certainty and reduces risk.

[4] The RTTM Compare Report will also indicate cancellataions of previously compared trades.

output provided by MBSCC via the RTTM terminal service as well as via interactive messages). MBSCC is proposing to modify its rules to delete references to the Transaction Summary Report as notification of unmatched trades and to provide for this notification to occur by means of the RTTM Uncompare Reports.

iv. *Sole and binding confirmation of trades:* MBSCC's Rules currently provide that the Purchase and Sale Report is the sole and binding confirmation of the trade. In addition, the Purchase and Sale Report currently fulfills Rule 10b-10 requirements for generation of trade confirms. As stated above, upon implementation of RTTM, the Purchase and Sale Report will continue to be produced twice daily listing matched trades. Participants will, however, have received notice of trade input matching prior to the production of the Purchase and Sale report by means of the RTTM Compare Reports. To enable participants to rely upon the results of the RTTM processing, MBSCC is amending its rules so that the RTTM Compare Reports constitute sole and binding trade confirmation of trade input. Since the Purchase and Sale Report covers the matching of clearing information (which is not covered by the RTTM processing and thus would not be reported in the RTTM Compare Reports), it will remain the sole and binding confirmation with respect to that information. The Purchase and Sale Report will remain the Rule 10b-10 compliant confirmation.

v. *Trade input submission by inter-dealer brokers ("IDBs"):* Certain RTTM trade input formats require that an IDB submit two separate transactions linked together by a common reference number per trade. Under the current trade submission format, IDBs submit two transactions on give-up trades: one identifying the buying dealer and one identifying the selling dealer. The rule on IDB trade input (currently Section 1 of Rule 3 of Article II) speaks generally in terms of trade input and does not specify the number of submissions required. MBSCC is modifying this rule to add a reference to MBSCC's Procedures, which will describe in detail the trade input submission requirements.

vi. *Retirement of maximum match mode:* MBSCC's Rules provide that each dealer must select a match mode to govern the comparison of that dealer's MBSCC-eligible transactions involving an IDB. The rules currently provide for three match modes: the "exact match mode," the "net position match mode," and the "maximum match mode."[5] Upon implementation of the RTTM service, only the exact and net position match modes will be available. MBSCC is retiring the maximum match mode due to lack of participant demand for this option. The proposed rule change deletes all references to the maximum match mode.

vii. *Review of reports by participants:* MBSCC's Rules currently contain a provision that requires participants and limited purpose participants to review the reports that they receive from MBSCC. MBSCC is expanding the provision to cover any type of communication provided to participants by MBSCC and to require participants to inform MBSCC promptly, and in no event later than ten calendar days after receipt of the communication, if there is any error, omission, or other problem with respect to the communication. MBSCC believes that the ten-day timeframe will provide participants with a sufficient amount of time within which to detect problems in a communication from MBSCC.

viii. *New definitions:* MBSCC is adding to its definitions the following new terms: "Real Time," "RTTM Processing," "RTTM Compare Report," "RTTM Uncompare Report," and "Report." Various amendments are made to existing definitions that are incidental to the changes described above.

ix. *Amendment to MBSCC's Schedule of Charges for IDBs:* MBSCC is proposing to amend its Schedule of Charges to give IDBs a service-fee based incentive to move to interactive messaging. MBSCC believes that it is important to offer the incentive to its IDB participants because their early participation is critical to a successful implementation of the RTTM service. From a dealer perspective, lack of participation by one or more of the IDBs severely dilutes the benefits dealers will gain from RTTM usage because a large percentage of the dealers' matching activity is against IDBs. The perception of reduced benefits could lead to delays in dealer participation and a protracted rollout process. Therefore, MBSCC is proposing to waive for a period of one year commencing with putting the RTTM service into production the $.25/side "Give-Up Trade Create" trade recording fee for IDBs that participate in MBSCC's "beta" (testing) phase of the RTTM service and that subsequently move to production.[6]

[5] The "exact match mode" means that trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased by the dealer for a particular transaction is identical to the par amount of a particular transaction reported by the broker. The "net position match mode" means that trade input that matches in all other respects will be compared only if the aggregate par amount of one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. The "maximum match mode" means that trade input that matches in all other respects will be compared to the extent that the par amount of eligible securities reported to have been sold or purchased by the dealer does not exceed the aggregate par amount for one or more transactions reported by the broker with transactions reported by the broker in any excess par amount remaining uncompared.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of MBSCC.[7] The rule change, which allows MBSCC to implement real-time trade matching, should help MBSCC to reduce risk and provide more certainty by enabling firms to know earlier of any trades which do not compare and to have more time to resolve the problems. As a result, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities at MBSCC and should help MBSCC to protect the securities and funds in its possession or control or for which it is responsible. Therefore, the Commission finds that the rule change is consistent with Section 17A and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–2001–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6936 Filed 3–21–02; 8:45 am]

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[6] IDBs must be interactive in order to participate in the testing phase, which is scheduled to take place during the first quarter of 2002.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45559; File No. SR–NSCC–2001–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

March 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 17, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to revise certain fees.[3] Certain trade recording, trade comparison, and trade clearance fees are being reduced for services provided on and after January 1, 2002. Certain fixed income fees are being increased for services provided on and after January 1, 2002. A trade rejection fee for fixed income is being introduced for services provided on and after January 1, 2002. And, an account transfer rejects fee for the automated customer account transfer service (ACATS) is being introduced for services provided on and after March 1, 2002. Based upon estimated volume projections for 2002, it is anticipated that the overall effect on NSCC members of these changes will be to reduce fees paid to NSCC.

NSCC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's particpants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes and changes fees imposed by NSCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2).[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2001–17 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6935 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] [3]: NSCC's revised fee schedule is attached as Exhibit A to its filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45567; File No. SR–PCX–2001–23]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Adopt New Sanctioning Guidelines for Enforcing Compliance With the Exchange's Options Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 13, 2002.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 ("Order").

[4] *See* Securities Exchange Act Release No. 45416 (February 7, 2002), 67 FR 6777.

II. Description of the Proposal

Currently, violations of the Exchange's firm quote, limit order display, and priority rules are treated as formal disciplinary actions and outside the scope of the Exchange's Minor Rule Plan ("MRP").[5] Violations of trade reporting and best execution obligations, however, are generally handled pursuant to the Exchange's MRP. While the MRP provides general guidance with respect to fine levels to be imposed for each distinct violation, nothing in the MRP prohibits the Exchange from removing a single violation of these obligations from the MRP and enforcing it as a formal disciplinary matter. The Exchange may also initiate a formal disciplinary action if it deems that a member or member organization's conduct amounts to a pattern or practice with respect to violations of the rules covered by its MRP or if its conduct in even a single instance is particularly egregious.

The Exchange proposes to establish specific fine levels for disciplinary actions initiated as a result of violations of the Exchange's rules relating to firm quote (Rule 6.86), limit order display (Rule 6.55), obligations of market makers, priority (Rule 6.75), best execution (Rule 6.46), and trade reporting (Rule 6.69). The proposed sanctioning guidelines would be used by various Exchange bodies that adjudicate disciplinary actions, including the Ethics and Business Conduct Committee, the PCX Board of Governors, the PCX Surveillance and Enforcement Departments, for in-house adjudications (collectively, "Adjudicatory Bodies"), in determining appropriate remedial sanctions. The proposal lists general principles that would be considered by the Adjudicatory Bodies in connection with the imposition of sanctions in all cases.[6] The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[7] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[10] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems[11]. The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[12]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2001–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6894 Filed 3–21–02; 8:45 am]

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[5] *See* PCX Rule 10.13.

[6] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Hassan A. Abedi, Manager, Enforcement, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 2001.

[7] When determining whether an action is the first disciplinary action, the Adjudicatory Body would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two-year look-back provision would apply on a rolling basis. Telephone conversation between Hassan A. Abedi, Manager, Enforcement, PCX, and Sonia Patton, Special Counsel, Division, Commission, on February 6, 2002.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] See supra note 6.

[12] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45578; File No. SR–PCX–2001–50]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

March 15, 2002.

I. Introduction

On December 13, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange")

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submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to collective actions of market makers. The **Federal Register** published the proposed rule change for comment on February 12, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The Exchange has submitted the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the PCX, adopt new, or amend existing, rules to make express any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. The Exchange is proposing to amend PCX Rule 6.37 ("Obligation of Market Makers") by adding a new subsection (e) to be entitled, "Prohibited Practices and Procedures." Proposed subsection (e)(1) would state that any practice or procedure whereby market makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited, subject to three exceptions set forth in proposed PCX Rule 6.37(f), which are described below.

Subsection (1) to proposed PCX Rule 6.37(f) would permit the Lead Market Maker ("LMM") to receive input from the members of the trading crowd on the variables of the formula the LMM uses to generate automatically updated market quotations in each option issue, but the members of the crowd would not be required to provide feedback. In addition, it would be within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. Finally, subsection (1) would state that LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems.

Subsection (2) of proposed PCX Rule 6.37(f) would state that the obligation of market makers to make competitive markets would not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. A large order would be defined as an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to PCX Rule 6.87.

Subsection (3) of proposed PCX Rule 6.37(f) would state that in conjunction with their obligations as a responsible broker or dealer pursuant to PCX Rule 6.86 and SEC Rule 11Ac1–1,[5] the LMM and market makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to PCX Rule 6.86(c).

The Exchange is also proposing a similar change to PCX Rule 6.82 ("Obligations of Lead Market Makers") by adding new subsection (c)(8), which would provide that LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. It would also permit the LMM to disclose the autoquote variables to the members of the trading crowd.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[7] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act.

The Commission believes that the proposed rule change should deter collective action on the part of Exchange members by clearly establishing in the Exchange's rules that options market makers are prohibited from determining by agreement the spreads or option prices at which they will trade an issue, subject to certain specified exceptions that the Commission herein approves.[8] For instance, the proposal would permit LMMs to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.

In addition, the proposed rule change would permit the LMM and members of the crowd to make a collective response to a request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a member's specific request for a single price and that the order be sufficiently large. In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the LMM and other members of a trading crowd.

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2001–50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6903 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45392 (February 5, 2002), 67 FR 6567.

[4] See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] 17 CFR 240.11Ac1–1.

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(8).

[8] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45575; File No. SR–Phlx–2001–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Auto-Quote System

March 15, 2002.

I. Introduction

On March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's Auto-Quote System. The Phlx submitted amendments to the proposed rule change on August 29, 2001[3] and October 31, 2001.[4] The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on November 23, 2001.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of Proposal

The Phlx proposes to amend Commentary .01 to Exchange Rule 1080 to add language providing an enhanced description of Auto-Quote, the Exchange's electronic options pricing system and to permit the specialist to consult with the trading crowd in setting Auto-Quote parameters.

On September 11, 2000, the Commission issued an order[6] that requires in part that the Phlx adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option class.[7] The Exchange submitted the proposed rule change pursuant to this undertaking.

The proposed rule change would incorporate a more thorough description of Auto-Quote into Exchange rules. First, it would describe its various pricing models, inputs, and parameters. Second, it would provide that specialists may establish a specialized proprietary connection ("specialized quote feed") that by-passes the Auto-Quote system. Finally, it would provide that while the specialist selects the pricing model and inputs for Auto-Quote, he or she may (but is not required to and may, for proprietary business reasons, determine not to) consult with the trading crowd on the pricing model and the inputs to be used. The proposed rule change also provides that if the specialist consults with one member of the crowd, all members of the crowd present must be given the opportunity to provide input.[8] However, members of the trading crowd would not be required to provide input to the specialist in setting Auto-Quote parameters.[9]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(8)[11] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting Auto-Quote parameters.[12] For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. The Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2001–25) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6896 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 28, 2001 ("Amendment No. 1").

[4] Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 30, 2001 ("Amendment No. 2").

[5] Securities Exchange Act Release No. 45060 (November 15, 2001), 66 FR 58771.

[6] See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order").

[7] See Section IV.B.j. of the Order.

[8] See Amendment No. 1, *supra* note 3. Among other things, Amendment No. 1: (i) states the reasons why a specialist would wish to consult with the trading crowd about specific Auto-Quote parameters; (ii) clarifies that if a specialist decides to consult with one member of the trading crowd about the Auto-Quote parameters, all members of the crowd that are present at the time must be given the opportunity to consult; and (iii) revises proposed Commentary .01(b)(ii) to Phlx Rule 1080 to state that the specialist may determine which model to select per option, not per series, as previously stated.

[9] See Amendment No. 2, *supra* note 4. Amendment No. 2 revises the text of proposed Commentary .01(b)(ii) to Phlx Rule 1080 to clarify that where the specialist determines to consult with and/or agree with the trading crowd with respect to selecting the Auto Quote System model or setting the parameters, members of the trading crowd are not required to provide input to the specialist about these decisions.

[10] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(8).

[12] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45570; File No. SR–Phlx–2001–114]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Aggregation of Individual Violations of Exchange Order Handling Rules and Option Floor Procedure Advices

March 15, 2002.

I. Introduction

On December 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to

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Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 960.2(f) and Exchange Rule 970 to permit the Exchange to aggregate, or "batch," individual violations of Exchange order handling rules and Option Floor Procedure Advices ("OFPAs") and consider such "batched" violations as a single offense.[3] The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.[4] On March 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] No comments were received on the proposed rule change. This order approves the proposed rule change on an accelerated basis and issues notice of filing and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

The proposed rule change would clarify that the Exchange may consider multiple numbers of violations of order handling rules and OFPAs[6] as one single offense, where automated surveillance is available,[7] for purposes of initiating disciplinary action under Exchange rules, or imposing fines pursuant to fine schedules set forth in the relevant OFPAs under the Exchange's Minor Rule Plan. Such aggregation of order handling violations would enable the Exchange's Market Surveillance Department to identify, through exception reporting,[8] members and member organizations that fail to meet acceptable compliance thresholds for such rules and OFPAs, and to determine whether to impose fines pursuant to the Exchange's Minor Rule Plan or refer the matter to the Business Conduct Committee ("BCC") for consideration of formal disciplinary action.[9] In addition, as an alternative to aggregation, the Exchange may refer violations to the BCC for possible disciplinary action when the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances or when any single instance of violative conduct without exceptional circumstances is deemed to be egregious.[10]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[13] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[14] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[15]

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies that "batching" of violations can occur only where the Exchange uses automated surveillance to detect violations. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with Sections 6(b)(5)[16] and 19(b)(2) of the Act,[17] to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2001–114 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–2001–114) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6897 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change in accordance with the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 ("Order").

[4] *See* Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 7, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that "batching" of violations can occur only where the Exchange uses automated surveillance to detect violations.

[6] Specifically, the Exchange proposes, pursuant to its Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules, to "batch" violations of Exchange Rule 1051 (concerning the requirement that a member or member organization initiating an options transaction must report or ensure that the transaction is reported within 90 seconds of execution); Exchange Rule 1082 (concerning the requirement that quotes be firm for both price and size, and the requirement that marketable orders received in a size greater than the disseminated size be executed in their entirety or up to the disseminated size within 30 seconds); OFPA A–1 (concerning the requirement that a specialist use due diligence to ensure that the best available bid and offer is displayed for those option series in which he is assigned); OFPA F–2 (the aforementioned 90-second trade reporting requirement under the Exchange's Minor Rule Plan); and other OFPAs.

[7] *See supra* note 4.

[8] *Id.*

[9] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Anne Exline Starr, First Vice President Regulatory Group, Phlx, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations ("OCIE"), Commission, and Deborah Lassman Flynn, Assistant Director, Division, Commission, dated January 30, 2002. The Exchange has informed OCIE that it will begin automated surveillance for trade reporting violations no later than April 15, 2002. In the interim period, OCIE will continue to evaluate the Exchange's surveillance, investigatory, and enforcement process to ensure that the Phlx is adequately surveilling and enforcing member compliance with its trade reporting requirements.

[10] In the event that the Exchange discovers through investigation that a single violation or a pattern or practice of violations of Exchange order handling rules is the result of intentional conduct on the part of a member organization, nothing would preclude the Exchange from referring such a matter directly to the Business Conduct Committee for possible disciplinary action.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

[14] *See supra* note 9.

[15] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45569; File No. SR–Phlx–2001–60]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Adopting Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On May 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.[3] On December 18, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on February 13, 2002.[5] No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines ("Guide") to assist the various individuals involved in the Exchange's enforcement process, including the Exchange's BCC, by recommending ranges of monetary sanctions to be applied to violations of certain Exchange rules and Option Floor Procedure Advices ("OFPAs"). The Guide covers certain offenses related to the trading of options on the Exchange trading floor, with particular emphasis on options order handling rules.[6] The Guide is proposed as an internal document to be used by the BCC, hearing panels, and the Board of Governors ("Adjudicatory Bodies") in determining appropriate sanctions to be imposed in formal disciplinary proceedings. The Exchange's enforcement staff may also refer to the Guide in negotiating settlements.

The Exchange has drafted the Guide with an introduction and matrices. The introduction explains the purpose and intent of the Guide and presents an overview of the Exchange's enforcement program, including a description of factors to be considered when sanctioning misconduct in disciplinary proceedings. The matrices cover the Exchange's options order handling rules. Each matrix outlines recommended monetary sanction ranges and specific factors for consideration when a particular options order handling rule has been violated.[7] The proposed Guide would also allow for non-monetary sanctions, such as suspension, expulsion, or other sanctions in egregious cases. The matrices are also arranged by subject matter and trading floor participant (floor broker, registered options trader, specialist).

The proposed Guide would cover only matters brought before the Exchange's BCC, which has jurisdiction over disciplinary actions pursuant to Exchange By-law Article X, Sec. 10–11

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the "Order").

[4] *See* letter from Linda S. Christie, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 17, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended Phlx Rule 960.10(a) to incorporate the Exchange's Enforcement Sanction Guide by reference into the Exchange's rules. The proposed new language requires the Exchange's Business Conduct Committee ("BCC") to refer to the Enforcement Sanction Guide for factors to be considered and appropriate sanctions when imposing disciplinary sanctions for violations of the Exchange's option order handling rules.

[5] *See* Securities Exchange Act Release No. 45415 (February 7, 2002), 67 FR 6781.

[6] In addition to filing this proposed Guide, the Exchange has submitted another proposed rule change to adopt guidelines to be used in determining when it is appropriate to aggregate violations of the Exchange's options order handling rules. See Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961 (February 13, 2002) (SR-Phlx-2001–114).

[7] The Exchange informed Commission staff that the Adjudicatory Bodies would be permitted to consider the entire disciplinary history of the member and, in any event, would be required to consider all violations within the past three years. Telephone conversation between Linda Christie, Counsel, Phlx, and Sonia Patton, Special Counsel, Division, Commission, on March 8, 2002.

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and Exchange Rule 960.1. The Guide would not apply to violations charged under the Exchange's minor rule violation enforcement and reporting plan, which consists of Exchange Rule 970 and the corresponding OFPA.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[10] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[11]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2001–60), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6900 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45581; File No. SR–Phlx–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Amending Existing Exchange Rules and Options Advices To Eliminate References to Fractional Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 14, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx submitted an amendment to the proposed rule change on March 8, 2002.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Phlx rules and Phlx Options Floor Procedure Advices and Order and Decorum Regulations ("Options Advices"), to remove references to fractional pricing. The text of the proposed rule change is available at the Commission and the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain existing Exchange rules and Options Advices to delete references to fractions and dual pricing in fractions and in decimals. Although references in Exchange rules to both fractional and decimal pricing were necessary during the phase-in period of decimalization since June of 2000, such references are no longer needed after full, industry-wide implementation of decimal pricing as a result of which all equity and option products are now quoted only in decimals.

In June 2000, the Commission reviewed the Decimals Implementation Plan ("Decimals Plan")[3] submitted by the National Association of Securities Dealers and the national securities exchanges. The Decimals Plan proposed a Minimum Price Variation ("MPV") of $.01 for equities, and an MPV of $.05 for options trading under $3.00 and $.10 for options trading at $3.00 or higher, which the Exchange implemented in Phlx Rules 125 and 1034 ("MPV rules").[4] Because decimals pricing was instituted in several phases in the years 2000 and 2001, during which time securities were quoted in both fractional and decimal prices, the Exchange modified its MPV rules and various other rules to include references to both fractional and decimal pricing. After the implementation of full, industry-wide decimalization such that all securities now quote in decimals, references to fractions and dual pricing in fractions and in decimals are no longer necessary in Phlx rules.

The Exchange therefore proposes to delete references to fractions and dual pricing from the following Phlx Rules of the Board of Governors:[5] 125, Variations in Bids and Offers; 229, Philadelphia Stock Exchange Automated Communication and Execution System; 245, Terms of Offering on Tape; 307 "Part-Paid" Securities; and 803 Criteria for Listing—Tier I.

The Exchange proposes to delete references to fractions and dual pricing from the following Phlx options rules: 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; 1015 Quotation Guarantees; 1034 Minimum Trading Increments; 1079 FLEX Index and Equity Options;[6] 1080 Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO–X");[7] and 1033A, Meaning of Premium Bids and Offers.

The Exchange proposes to delete references to fractions and dual pricing from the following Options Advises: A–9, All-or-None Option Orders; A–11, Responsibility to Fill Customer Orders; and F–6, Option Quote Parameters.[8]

An example of the non-substantive changes proposed is that the language of Exchange Rules 125 and 1034 will be modified to eliminate references to fractional increments so that the remaining language will refer only to quoting in decimals. A further example is that references to fractional pricing in Exchange Rule 1080(c)(i)(C) will be eliminated so that the example of a crossed trade in the rule that currently reflects fractional pricing (2⅛ bid, 2 asked) would reflect only decimal pricing (2.10 bid, 2 asked).

According to the Exchange, the proposed amendments are non-substantive, technical changes for the purpose of conforming Exchange rules to the development of full decimalization in the securities industry.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and with Section 6(b)(5),[11] in particular, in that it promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–05 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6939 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Phlx submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[3] *See* Securities Exchange Release No. 42914 (June 8, 2000), 65 FR 38101 (June 19, 2000).

[4] *See* Securities Exchange Act Release No. 43421 (October 6, 2000), 65 FR 61207 (October 16, 2000). The Exchange has indicated that it believes the MPV for equities should be $.05 and not the current $.01 MPV. *See* Phlx Decimal Pricing Impact Study for Equities and Options (September 7, 2001) and Phlx comment letter to Commission sub-pennies concept release S7–14–01 (November 19, 2001), wherein Phlx suggested that the investing public and the markets would be best served by mandating a nickel MPV for equity trading. For competitive reasons, however, the Exchange intends to continue the penny MPV for equities, and the nickel/dime MPV for options. The Exchange therefore reaffirms the MPVs currently in its rules: $.01 for equities (Rule 125), and $.05 for equity and index options and Exchange-Traded Fund Shares quoting under $3.00 and $.10 for those quoting at $3.00 or higher (Rule 1034).

[5] The Exchange's Rules of the Board of Governors (numbered between 1 and 1000) are applicable to equity trading. By virtue of Phlx Rule 1000, they are also applicable to options trading except to the extent that specific options rules (numbered 1000 et. seq.) govern or unless the context otherwise requires.

[6] FLEX options are customized index options that trade on the Phlx as well as on other exchanges.

[7] AUTOM is the Exchange's electronic order routing, delivery, execution, and reporting system for equity and index options. AUTO–X, the automatic execution feature of AUTOM, automatically executes eligible public customer market and marketable limit orders in equity and index options.

[8] In addition, subsequent to an amendment of the joint exchange Intermarket Trading System ("ITS") Plan to remove references to fractional pricing, Phlx intends to modify its Rule 2001, Intermarket Trading System, to delete such references. Phlx and the other ITS participants have substantially similar rules implementing the ITS Plan.

[9] Certain Phlx rules, such as Rule 650, Mandatory Participation in Decimalization Testing, and Rule 134, Decimal Pricing, expired automatically upon the full, industry-wide implementation of decimal pricing, and do not require any rule change.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45580; File No. SR–Phlx–2002–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has requested accelerated approval of the proposed rule change. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent two Philadelphia Stock Exchange Automated Communication and Execution System ("PACE")[3] pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer ("Price Improvement Pilot"). It has been in effect since January 30, 2001.[4]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection ("Order Execution/Price Protection Pilot"). It has been in effect since August 25, 2000.[5]

The Phlx is not making any changes to the Price Improvement Pilot or the Order Execution/Price Protection Pilot, with the exception of deleting language that indicates that they are pilot programs. Upon approval of the proposed rule change, the Price Improvement Pilot and the Order Execution/Price Protection Pilot will be permanent. The text of the proposed rule change is available at the Phlx and at the Commission.

[3] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[4] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); and 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002) (SR–Phlx–2002–01).

[5] The order execution and price protection pilot program was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102); and 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to make permanent the Price Improvement Pilot and the Order Execution/Price Protection Pilot. No other changes are proposed to these pilot programs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act[6] in general, and in particular, with Section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by providing for automatic price improvement and automatic execution of certain market orders and mandatory double-up/double-down price protection for equities traded over the PACE system on a permanent basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exhange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–18 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6940 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 8, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11783
Date Filed: March 6, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–AFR 0146 dated 22 February 2002
TC2 Europe-Africa Expedited Resolutions r1–r6
PTC2 EUR–AFR 0147 dated 1 March 2002
TC2 Europe—Africa Resolutions r7–r47
Minutes—PTC2 EUR–AFR 0145 dated 22 February 2002
Tables—PTC2 EUR–AFR Fares 0094 dated 1 March 2002
Intended effective dates: 1 April 2002, 1 May 2002

Docket Number: OST–2002–11784
Date Filed: March 6, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0115 dated 19 February 2002
TC2 Within Africa Expedited Resolutions 015v, 017c
PTC2 AFR 0117 dated 26 February 2002
TC2 Within Africa Resolutions r3–r30
Minutes—PTC2 AFR 0116 dated 22 February 2002
Tables—PTC2 AFR Fares 0043 dated 1 March 2002
Intended effective dates: 1 April 2002, 1 May 2002

Docket Number: OST–2002–11793
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–AFR 0129 dated 1 March 2002
TC12 South Atlantic-Africa Expedited Resolutions r1–r4
PTC12 NMS–AFR 0131 dated 1 March 2002
TC12 South Atlantic-Africa Resolution 002d r5
Intended effective dates: 15 April 2002, 30 April 2002

Docket Number: OST–2002–11794
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–AFR 0128 dated 1 March 2002
North Atlantic-Africa Expedited Resolutions r1–r5
PTC12 NMS–AFR 0130 dated 1 March 2002
North Atlantic-Africa Expedited Resolutions 002a r6
Intended effective dates: 15 April 2002, 30 April 2002

Docket Number: OST–2002–11803
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
Mail Votes 203 and 204
PTC12 NMS–ME 0156 dated 6 February 2002
TC12 Mid Atlantic-Middle East Resolutions r1–r10
PTC12 NMS–ME 0157 dated 6 February 2002
TC12 South Atlantic-Middle East Resolutions r11–r20
PTC12 NMS–ME 0164 and 0165 dated 1 March 2002
Adoption of Mail Votes 203 and 204
Minutes—PTC12 NMS–ME 0160 dated 15 February 2002 filed with Docket OST 2002–11699
Tables—PTC12 NMS-Fares 0090 dated 5 March 2002
PTC12 NMS-Fares 0091 dated 5 March 2002
Intended effective dates: 1 April 2002

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–6965 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 8, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2911.
Date Filed: March 6, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 27, 2002.
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and Subpart B, requesting renewal of its experimental certificate of public convenience and necessity for Route 747, to engage in scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Frankfurt, Germany, and the coterminal points Johannesburg and Cape Town, South Africa, and beyond South Africa to Harare, Zimbabwe.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–6966 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9854]

Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation; Notice of Comment Period Closing Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of comment period closing date.

SUMMARY: This action establishes a new closing date for the comment period for Phase II of the notice "Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation." The FAA indefinitely suspended the closing date for the comment period for Phase II after the terrorist attacks on September 11, 2001.

ADDRESSES: Comments should be mailed or delivered in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–2001–9854, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Wharff, Senior Economist, Office of Aviation Policy and Plans, 800 Independence Avenue, SW, Washington, DC 20591; telephone number 202–267–7035.

Background

On June 12, 2001, the FAA published a notice in the **Federal Register** seeking comments on a proposed extension of the slot exemption lottery allocation (Phase I) and several demand management options for LaGuardia Airport (Phase II) (66 FR 31731). Specifically, with respect to Phase II, the FAA sought comments on the feasibility and effectiveness of five different demand management options that could be used to replace the current temporary administrative limits on the

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number of aircraft operations at LaGuardia Airport (LGA). These five demand management options include both administrative and market-based approaches to allocate capacity. The details of each approach are described in the notice and can be accessed electronically through the following URL: *http://api.hq.faa.gov/lga/index.htm.*

Following the aircraft hijackings and terrorist attacks on September 11, 2001, the FAA temporarily ceased all non-military flights in the United States and required the adoption of certain security measures prior to the resumption of commercial air service. Several air carriers reduced flight schedules below previously planned levels throughout the national airport system, including LGA, in order to adjust to operational changes brought on by the new security requirements and reductions in passenger demand. Given these events, the FAA suspended, by notice issued on October 12, 2001, the closing date for the comment period on Phase II until further notice (66 FR 52170). The FAA indicated in that notice that at a later date it would publish a notice setting forth the new closing date and indicate whether the scope or nature of the demand management options under consideration have changed.

Current Action

Utilization rates of slot and slot exemptions at LGA are currently below last year's levels by approximately 14 percent. However, based on projected airline schedules for LGA, it appears that operations at LGA should return to their pre-September, 2001 levels by the end of the summer of 2002. Consequently, the FAA believes that it is appropriate to resume the discussion on long-term demand management alternatives for LGA.

Additionally, several recent actions may affect commenters' view of the identified demand management options, such as the attacks of September 11, the Port Authority of New York and New Jersey's rate increase for LGA, John F. Kennedy International Airports and Newark International Airport, and the shift in fleet mix resulting in an increase number of regional jet operations at LGA since September 11. The FAA invites comments on the long-term effects of these actions on the stated options. Therefore, the comment period for Phase II will close 90 days from the publication date of this notice.

Issued on March 18, 2002 in Washington, DC.

John M. Rodgers,

Director of the Office of Aviation Policy and Plans.

[FR Doc. 02–6973 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 23—9 a.m.–5 p.m.; April 24—10 a.m.–3 p.m.

Place: Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

Purpose: The meeting agenda will include receiving recommendations from the standing Subcommittees or FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman (*gloria.ctr.dunderman@faa.gov*) at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937. Please inform us if you are in need of assistance or require a reasonable accommodation for this meeting.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 18, 2002.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 02–6969 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held April 8–12, 2002 starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20035; telephone (202) 833–9339; fax (202 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Special working group sessions will be held April 8–9 and on April 12.* The plenary agenda will include:

- April 10–11:
- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
- WG–1, Operations & Implementation
- WG–2, Traffic Information Service—Broadcast (TIS–B)
- WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
- WG–4, Application Technical Requirements
- WG–5, Universal Access Transceiver (UAT) MOPS
- WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standard (MASPS)
- EUROCAE WG–51 Report (Sub-groups 1–3)
- Review and Approve Proposed Final Draft FTCA DO–242A, Minimum Aviation System Performance Standards for Automatic Dependent Surveillance Broadcast (ADS–B), RTCA Paper No. 044–02/SCI186–188
- UAT MOPS Review Status
- Analysis and Review of Modeling Assumptions

- TIS–B MOPS Review Status
- Closing Plenary Session (Other Business, Review Actions Items/Work Program, Date, Place and Time of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued: in Washington, DC, on March 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6970 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held April 22–26, 2002 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at Eurocontrol, 96 Rue de la Fusée, Brussels, Belgium.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org;* (2) Eurocontrol; telephone +32 2 729 90 11; fax +32 2 729 90 44.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting. The agenda will include:

- April 22:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report
- April 23–25:
  - PUB, Publications Integration Sub-group and Chair meetings
  - INTEROP, Interoperability Sub-group
  - ICSPR, Initial Continental Safety and Performance Requirements Sub-group
  - IOSPR, Initial Oceanic Safety and Performance Requirements Sub-group
- April 26:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6971 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS).

DATES: The meeting will be held April 8–12, 2002, from 9 am to 4:30 pm (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting.

Note: Specific working group sessions will be held April 8–11.

The plenary agenda will include:

- April 12:
- Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
- Review Working Group Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/3rd Civil Frequency (WG–1)
  - GPS/Wide Area Augmentation System (WAAS) (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - SC–159 Ad Hoc
- Review of EUROCAE activities
- Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6972 Filed 3–21–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20989]

Stagecoach Group PLC and Coach USA, Inc., et al.—Control—Coach USA Indiana, Inc., and California Acquisition, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Stagecoach Group PLC (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 to control Coach USA Indiana, Inc. (Coach USA Indiana), and California Acquisition, Inc. (California Acquisition). Persons wishing to oppose this application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by May 6, 2002. Applicants may file a reply by May 21, 2002. If no comments are filed by May 6, 2002, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20989 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland.[1] With operations in several countries, Stagecoach is one of the world's largest providers of passenger transportation services. It had total revenues of $2.7 billion for the fiscal year ending April 30, 2001. Coach is a Delaware corporation that currently controls over 100 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[2] its noncarrier regional management subsidiaries,[3] and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[4] In previous Board decisions, Coach management subsidiaries have obtained authority to control motor passenger carriers jointly with Coach.[5]

Applicants state that Coach formed Coach USA Indiana and California Acquisition in January 2002 and that these entities, together with Coach, are party to an asset purchase transaction that contemplates that they will acquire motorcoaches and other assets from carriers currently controlled by VecTour Inc. (VecTour).[6] VecTour is presently in Chapter 11 status and the asset acquisition is therefore subject to the approval of the U.S. Bankruptcy Court for the District of Delaware.

According to applicants, Coach USA Indiana will operate assets being acquired from two motor passenger carriers controlled by VecTour: United Limo, Inc. (United Limo), and Tri-State Coach Lines, Inc. (Tri-State Coach Lines). Coach USA Indiana will initially operate approximately 39 motorcoaches and 8 minivans. Coach USA Indiana will also employ approximately 160 full-time and 40 part-time personnel. It intends to initiate carrier operations following the closing of its asset acquisition transaction, and it plans to change its corporate name to, and conduct operations as, United Limo, and also utilize the trade name Tri-State Coach Lines.[7] At the time of the filing of the application in this proceeding, Coach USA Indiana had no operating revenues.

California Acquisition will operate assets being acquired, through the same transaction to which Coach USA Indiana is a party, from VecTour of California. California Acquisition will employ approximately 100 personnel, using a fleet of approximately 70 motorcoaches. It intends to initiate carrier operations following the projected March 14, 2002 closing of its asset acquisition transaction, and it plans to change its corporate name to, and conduct operations as, Franciscan Lines, Inc.[8] At the time of the filing of the application in this proceeding, it had no operating revenues.

Coach USA Indiana and California Acquisition recently obtained federally issued operating authority from the Federal Motor Carrier Safety Administration.[9] Before these entities obtained operating authority, Coach placed the stock of each entity into a separate independent voting trust. The control transaction here will not involve any transfer of the federal operating authority held by either entity.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed acquisition of control will not reduce competitive options or adversely impact fixed charges or the interests of the employees of either entity. They assert that granting the application will allow both prospective carriers to take advantage of economies of scale and substantial benefits offered by applicants, including interest cost savings and reduced operating costs. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicants' representative.

[1] Stagecoach was formerly known as Stagecoach Holdings PLC. It recently changed its name to Stagecoach Group PLC.

[2] Stagecoach controls Coach through various subsidiaries, namely, SCUSI Limited (formerly known as SUS 1 Limited); SCOTO Limited (formerly known as SUS 2 Limited); Stagecoach General Partnership; and SCH US Holdings Corp.

[3] These subsidiaries are Coach USA North Central, Inc. (Coach USA North Central) and Coach USA West, Inc. (Coach USA West).

[4] *See Stagecoach Holdings PLC—Control—USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[5] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999). The same approach is being followed here. Under this proposal, Coach USA Indiana would also be jointly controlled by co-applicant Coach USA North Central, and California Acquisition would also be jointly controlled by co-applicant Coach USA West.

[6] The Board has previously approved common control of the three carriers whose assets are being acquired. *See Global Passenger Services, L.C.C., et al.—Control—Bortner Bus Company, et al.*, STB Docket No. MC–F–20924 (STB served July 17, 1998); (authorizing control of Franciscan Lines, Inc., a carrier whose name was eventually changed to VecTour of California); and *Global Passenger Services, L.L.C., et al.—Control—Gongaware Tours, et al.*, STB Docket No. MC–F–20954 (STB served Sept. 16, 1999) (authorizing control of Tri-State Coach Lines, Inc., and United Limo, Inc.).

[7] Coach USA Indiana's name appears on its operating authority as "Coach USA Indiana, Inc D/B/A Tri-State Coach Lines."

[8] California Acquisition's name appears on its operating authority as "California Acquisition, Inc D/B/A Franciscan Lines."

[9] On February 27, 2002, Coach USA Indiana obtained operating authority in Docket No. MC–425233, authorizing it to provide charter and special operations between points in the United States, and regular-route operations over specified routes in Indiana, Illinois, and Wisconsin. On that same date, California Acquisition obtained operating authority in Docket No. MC–425205, authorizing it to provide charter and special operations between points in the United States.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed control transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed control transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 6, 2002, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW, Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: March 18, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6980 Filed 3–21–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 02–03]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's opinion on whether Federal law preempts certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks and regulations promulgated pursuant to that statute (the Massachusetts Law). The OCC has determined that Federal law preempts the provisions at issue.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

On July 14, 2000, the OCC published in the **Federal Register** notice of a request from the Massachusetts Bankers Association (Requester) for the OCC's opinion concerning whether section 104 of the Gramm-Leach-Bliley (GLBA), Pub. L. 106–102, 113 Stat. 1338, 1352–59 (Nov. 12, 1999), preempts certain provisions of the Massachusetts Law. *See* Notice of Request for Preemption Determination, 65 FR 43827, (Notice). The OCC is publishing its response to the request as an appendix to this notice.

In the Notice, the OCC requested public comment on whether Federal law preempts the provisions of the Massachusetts Law that the Requester had identified. In response, the OCC received 110 comments. Many of these commenters, primarily banks and banking trade associations, supported preemption of the Massachusetts Law provisions. These commenters maintained generally that the Massachusetts Law provisions do not fall within the safe harbor provisions of GLBA (the Safe Harbors) and that they prevent or significantly interfere with the exercise of national banks' authority to engage in insurance sales, solicitation, or cross-marketing activities.

Commenters opposing preemption expressed several concerns. First, some commenters argued that some or all of the provisions under review fall within the Safe Harbors, or are substantially similar to the Safe Harbors, and are therefore protected from preemption. Several commenters asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not "prevent or significantly interfere" with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or cross-marketing activity.

For the reasons described in the preemption opinion, the OCC has concluded that Federal law preempts the following provisions of the Massachusetts Law identified by the Requester:

- The Massachusetts Law provision prohibiting non-licensed bankpersonnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer.
- The Massachusetts Law provision prohibiting non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance.
- The Massachusetts Law provision prohibiting banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit.

The analysis used to reach these conclusions and the reasons for each conclusion are described in detail in our reply to the Requester.

Dated: March 5, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

March 18, 2002.

Kevin F. Kiley,
Executive Vice President,
Massachusetts Bankers Association, Inc.,
73 Tremont Street, Suite 306,
Boston, MA 02108–3906.

Dear Mr. Kiley,

This letter replies to your request, on behalf of the Massachusetts Bankers Association, for the opinion of the Office of the Comptroller of the Currency (OCC) concerning whether certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks and regulations promulgated pursuant to that statute apply to national banks.[1]

The provisions you have asked us to review prohibit: (1) Non-licensed bank personnel from referring a prospective customer to a licensed insurance agent or broker except upon an inquiry initiated by the customer; (2) a bank from compensating

[1] The provisions of the Massachusetts law and implementing regulations are collectively referred to in this letter as the "Massachusetts Law."

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an employee for such a referral; and (3) a bank from telling a loan applicant that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit. For the reasons described in detail in this letter, we have concluded that federal law would preempt the provisions of the Massachusetts Law that you have asked us to review.

In reaching this conclusion, we have reviewed the provisions of the Massachusetts Law under the legal standards, including the provisions of the Gramm-Leach-Bliley Act (GLBA),[2] that govern the applicability of state law to national banks. We also have relied on our experience in supervising national banks that engage in insurance activities to evaluate the effects of the state law provisions under consideration here on national banks' ability to conduct an insurance agency business.

The first section of this letter provides background on the process we used to develop our opinion and addresses the significant comments that we received in response to our publication of notice of your request. Section II describes the framework that governs our legal analysis. Finally, Section III analyzes each of the provisions of the Massachusetts Law that you have asked us to review to determine whether, in our opinion, it is preempted by federal law.

I. Background and Comments

On May 22, 1998, the Commonwealth of Massachusetts enacted legislation entitled Consumer Protection Act Relative to the Sale of Insurance by Banks.[3] The Massachusetts Department of Banking and Insurance has promulgated regulations[4] pursuant to this legislation. The statute and implementing regulations impose a number of requirements that affect the insurance sales, solicitation, or cross-marketing activities of financial institutions, including national banks.

By letter dated May 30, 2000, you requested the OCC's opinion on whether the three specific provisions of the Massachusetts Law that your letter identified are preempted pursuant to section 104 of the GLBA.[5] In your request, you asserted that these state law provisions are not protected from preemption by the safe harbor provisions contained in section 104(d)(2)(B) of the GLBA ("Safe Harbors") and that they prevent or significantly interfere with the ability of national banks to exercise their authority to engage in insurance sales, solicitation, or cross-marketing activities.

On July 14, 2000, the OCC published notice of your request in the **Federal Register** and requested comments on whether federal law preempts the Massachusetts Law provisions.[6] We received a total of 110 comments in response to the notice. Many of these commenters, primarily banks and banking trade associations, supported preemption of the Massachusetts Law provisions. These commenters maintained generally that the Massachusetts Law provisions do not fall within the Safe Harbors and that they prevent or significantly interfere with the exercise of national banks' authority to engage in insurance sales, solicitation, or cross-marketing activities. For the reasons set out in greater detail in Section III of this letter, we agree that federal law preempts each of the state laws in question.

Commenters opposing preemption expressed several concerns. First, some commenters argued that some or all of the provisions under review fall within the Safe Harbors, or are substantially similar to the Safe Harbors, and are therefore protected from preemption. Several commenters asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not "prevent or significantly interfere" with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or cross-marketing activity. These points are addressed in detail in Section III of this letter.

Some of the commenters opposed to preemption also argued more generally that the OCC lacks the authority to determine whether federal law preempts the Massachusetts Law. As these comments suggest, federal courts, rather than the OCC, are the ultimate arbiters of whether federal law preempts state law in a particular case. Nevertheless, Congress and the federal courts have recognized that the OCC has the authority to interpret, in the first instance, federal laws affecting national bank powers. Indeed, the National Bank Act contains specific provisions governing the issuance of opinions concerning preemption of state laws by the OCC.[7] As the primary supervisor of national banks, the OCC is uniquely positioned to evaluate the effect of the Massachusetts Law on national banks' ability to exercise their federal authority to sell insurance.[8] Further, from a practical perspective, in the absence of interpretive advice, national banks that sell, or wish to sell, insurance in Massachusetts will face added cost, burden, and uncertainty. Finally, Congress clearly envisioned that the federal banking agencies would be making determinations as to whether state laws regarding insurance sales and solicitations were preempted, because section 304 of the GLBA contains detailed provisions for judicial review of conflicts between a state insurance regulator and a federal regulator arising from such a determination.[9]

A few commenters opposed to preemption asserted that the OCC should not find that federal law preempts the Massachusetts Law provisions because state insurance regulators are, pursuant to GLBA, responsible for the functional regulation of the business of insurance. The GLBA expressly provides, however, that the states' functional regulation authority over insurance activities is subject to federal preemption standards as incorporated in section 104.[10] In particular, the question whether a state insurance sales law applies to national banks is resolved by application of the federal standards to the state provision in question.[11]

Commenters also expressed concerns about the impact an OCC opinion concerning the Massachusetts Law would have on similar laws enacted in at least 30 states. These commenters noted that these state laws were the products of extensive negotiations involving state regulators and the insurance and banking industries. This letter expresses no view with respect to state laws other than those specifically addressed here. We specifically note, however, that the conclusions reached in this letter do not result in a finding that any provisions of the Model Unfair Trade Practices Act adopted by the National Association of Insurance Commissioners (NAIC) would be preempted.[12]

The commenters opposed to preemption also urged the OCC to delay issuing its opinion until the Sixth Circuit resolves the appeal of the Federal District Court's decision in *Association of Banks in Insurance, Inc.* v. *Duryee*.[13] In *Duryee*, a national bank and trade association with national bank members sought a declaratory judgment that certain Ohio insurance licensing statutes as applied to national banks are preempted by the federal statute—12 U.S.C. 92—that authorizes national banks to sell insurance from agencies based in small towns without regard to affiliation or control. The District Court granted the plaintiffs' motion for summary judgment and issued the declaratory judgment and enjoined Ohio from enforcing its licensing statutes against national banks operating from small towns in the state. Commenters here asserted that the OCC should delay opining in this matter because the appellate decision in *Duryee* would clarify the parameters of the *Barnett* standards in matters involving the application of state insurance laws to national banks. However, in the time since the commenters submitted their comments on this matter, the Sixth Circuit issued its decision in the *Duryee* appeal, affirming the grant of a declaratory judgment and the issuance of a permanent injunction against the state's enforcement of the laws against national banks.[14] The Sixth Circuit's decision in *Duryee* thus strongly supports the conclusions we reach in this letter.

The next section of this letter summarizes the federal preemption standards that apply to the state laws you have asked us to review.

II. Federal Preemption Standards: The GLBA and Barnett

In our recent letter concerning whether federal law preempts certain provisions of the West Virginia Insurance Sales Consumer Protection Act[15] (the West Virginia Letter), we set forth a detailed analysis of the GLBA preemption framework. That analysis is incorporated by reference here and is summarized below.

The GLBA establishes several different standards governing the applicability of state law to depository institutions and their affiliates, depending on whether the state law at issue affects: The institution's ability to engage in an affiliation that is "authorized or permitted by Federal law;" its ability to engage in activities "authorized or permitted" pursuant to the GLBA; or its ability to engage in insurance sales, solicitation, and cross-marketing activities.[16] With respect to *any* insurance sales, solicitation, or cross-marketing activities, section 104(d)(2) establishes the following standard governing the applicability of state law:

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A.* v. *Nelson*, 517 U.S. 25 (1996), no state may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.[17]

However, section 104 protects from preemption under this standard 13 specified types of restrictions on insurance sales, solicitation, and cross-marketing activities—the Safe Harbors—as well as state restrictions that are "substantially the same as but no more burdensome or restrictive than" the Safe Harbors.[18] State laws regarding any insurance sales, solicitation, and cross-marketing activities that are not covered by a Safe Harbor are subject to the standards for preemption set forth in *Barnett*, pursuant to section 104(d)(2).

The *Barnett* standards represent an application, in the national bank context, of the analysis used by the Supreme Court to determine, under the Supremacy Clause of the U.S. Constitution, whether federal law conflicts with state law such that the state law is preempted. Under this analysis, the Court reviews whether a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[19] In the national bank context, the Court applies this analysis by looking at whether the state law at issue conflicts with the exercise of a national bank's federally authorized powers. Thus, in holding that a Florida statute restricting a national bank's ability to sell insurance in that state was preempted, the Court in *Barnett* relied upon a number of its precedents holding that a particular state statute was preempted because it "stood as an obstacle" to a national bank's exercise of those powers.[20]

The scope of the standard is illustrated by the Court's earlier decision in the *Franklin National Bank* case, which was relied upon by the Court in *Barnett*.[21] In the *Franklin* case, the Court held that a state law that prohibited national banks from using the word "savings" in their advertising was preempted. The Court's rationale was not that the state statute directly precluded national banks from engaging in the business of receiving savings deposits. The statute at issue did not have that effect. Instead, the Court said that the federal law authorizing national banks to take savings deposits must be read to authorize them to engage in the ordinary incidents of that business, such as advertising. Finding a "clear conflict" between the state and federal laws, the Court held that the state advertising restriction was preempted. The meaning of *Franklin*, expressly confirmed in *Barnett*,[22] is that a national bank's power to engage in an activity necessarily includes the power to conduct the business effectively and competitively.

The Court recognized in *Barnett* that not every state law that affects a national bank activity "stands as an obstacle" to the accomplishment of the federal purpose:

> In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases take the view that normally Congress would not want States to

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[2] *See* Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[3] Chapter 129 of the Acts of 1998. The provisions at issue here are codified at Mass. Gen. L. ch. 167F, § 2A.

[4] 209 CMR 49.00, *et seq.* and 211 CMR 142.00, *et seq.*

[5] GLBA § 104, 113 Stat. At 1352. Section 104 of the GLBA is codified at 15 U.S.C. 6701. In this letter, we cite section 104 of the GLBA rather than the provision as codified.

[6] *See* 65 FR 43827 (July 14, 2000).

[7] *See* 12 U.S.C. 43 (requiring, under certain circumstances, that the OCC publish notice of preemption issues as well as "any final opinion letter" on such issues).

[8] *See United States* v. *Mead Corp.*, 121 S. Ct. 2164, 2173 n.13 (2001) (describing the weight generally given by the courts to certain OCC interpretive opinions).

[9] *See* GLBA § 304, 113 Stat. at 1338, *codified at* 15 U.S.C. 6714.

[10] *See* GLBA § 301, 113 Stat. at 1407, *codified at* 15 U.S.C. 6711 ("The insurance activities of any person (including a national bank exercising its power to act as agency under [12 U.S.C. 92]) shall be functionally regulated by the States, *subject to section 104.*") (emphasis added).

[11] Several commenters also asserted that under section 305 of the GLBA, state insurance customer protection statutes may only be preempted if the Federal banking agencies jointly determine that the Federal regulations enacted pursuant to section 305 provide greater consumer protection than the state law. *See* GLBA, § 305, 113 Stat. at 1410–15, codified at 12 U.S.C. 1831x. Section 305 of the GLBA directed the Federal banking agencies to promulgate certain consumer protection regulations relating to the sale, solicitation, and advertising of insurance products by depository institutions and persons selling insurance on the premises of depository institutions or otherwise on behalf of such institutions. Section 305(g)(2) explains the relationship between these regulations and state laws that are in effect in that jurisdiction. Pursuant to section 305(g)(2), these Federal regulations do not override inconsistent state laws unless the agencies jointly determine that the Federal regulations provide better consumer protections than the state provisions. The state then is given up to 3 years to override that determination. Section 305(g) relates solely to the preemptive effect that is to be given to Federal regulations promulgated under section 305(a). By its terms, it does not relate to the preemptive effect that is to be given to other Federal regulations or statutes. In the insurance sales area, this is determined pursuant to section 104 of the GLBA and the *Barnett* standards it incorporates, as explained in Section II of this letter.

[12] The Model Unfair Trade Practices Act is available on the NAIC's Web site, *www.NAIC.org*.

[13] 55 F. Supp. 2d 799 (S.D. Ohio 1999).

[14] 270 F.3d 397 (6th Cir. 2001). The Sixth Circuit remanded the case for further consideration of whether certain corporate organizational licensing requirements are preempted in light of GLBA. However, the Sixth Circuit resolved the issues of relevance to our consideration of the Massachusetts Law, namely, the legal standards to apply when considering whether a state law is preempted. As is explained further in Section II of this letter, the Sixth Circuit was clear that section 104 requires that the entire preemption test as set out in *Barnett*—and not one limited to a consideration of whether a state law "prevents or significantly interferes" with a federal power—is to be applied. The remand will resolve whether the corporate organizational requirements are preempted in light of *Barnett* and the anti-discrimination provision set out in section 104(e) of GLBA. However, the outcome of that remand will not affect the conclusions reached in this letter.

[15] Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, to Sandra Murphy, Esq., dated September 24, 2001. This letter was published in the **Federal Register** at 66 FR 51502 (October 9, 2001).

[16] GLBA §§ 104(c)(1), (d)(1), and (d)(2), respectively.

[17] GLBA § 104(d)(2)(A). State statutes that were enacted after September 3, 1998, also must meet certain non-discrimination standards with respect to those provisions not covered by the Safe Harbors. *See* GLBA § 104(e). The Massachusetts Law was enacted on May 22, 1998, and therefore these nondiscrimination provisions are not applicable to this analysis.

[18] *See* GLBA §§ 104(d)(2)(B)(i)–(xiii).

[19] *Barnett*, 517 U.S. at 31, *quoting Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). The Court's quotation from the *Hines* case came at the conclusion of a paragraph summarizing the 3 traditional bases for federal preemption under the Supremacy Clause:

> Sometimes courts, when facing the pre-emption question, find language in the Federal statute that reveals an explicit congressional intent to pre-empt state law. More often, explicit pre-emption language does not appear, or does not directly answer the question. In that event, courts must consider whether the Federal statute's "structure and purpose," or nonspecific statutory language, nonetheless reveal a clear, but implicit, pre-emptive intent. A Federal statute, for example, may create a scheme of Federal regulation "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." Alternatively, Federal law may be in "irreconcilable conflict" with state law. Compliance with both statutes, for example, may be a "physical impossibility," or, the state law may "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Id. at 31 (citations omitted).

[20] In describing this analysis, the Court said:

> [T]he Federal Statute says that its grant of authority to sell insurance is in "addition to the *powers* now vested by law in national [banks]." [12 U.S.C. 92] (emphasis added). In using the word "powers," the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental "powers" to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law. See, *e.g.*, *First Nat. Bank of San Jose* v. *California*, 262 U.S. 366, 368–369 (1923) (national banks' "power" to receive deposits preempts contrary state escheat law); *Easton* v. *Iowa*, 188 U.S. 220, 229–230 (1903) (national banking system normally "independent, so far as powers conferred are concerned, of state legislation").

Barnett, 517 U.S. at 32 (parallel and "cf." citations omitted).

[21] *Franklin National Bank of Franklin Square* v. *New York*, 347 U.S. 373 (1954), cited in *Barnett*, 517 U.S. at 33.

[22] *Barnett*, 517 U.S. at 35 ("Thus, the Court's discussion in *Franklin Nat. Bank*, the holding of that case, and the other precedent we have cited above, strongly argue for a similar interpretation here—a broad interpretation of the word "may" that does not condition federal permission upon that of the State.").

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forbid, or impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where (unlike here) doing so does not prevent or significantly interfere with the national bank's exercise of its powers. See, *e.g., Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 247–252 (1944) (state statute administering abandoned deposit accounts did not "unlawful[ly] encroac[h] on the rights and privileges of national banks"); *McClellan* v. *Chipman*, 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not "destro[y] or hampe[r]" national bank functions); *National Bank* v. *Commonwealth*, 9 Wall. 353, 362 (1870) (national banks subject to state law that does not "interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government").[23]

In this portion of its analysis, the Court describes the boundary of the preemptive scope of the federal laws authorizing powers for national banks by describing circumstances under which a state law has been found not to stand as an obstacle to the accomplishment of the federal purpose.[24]

The variety in the language that the Supreme Court used in *Barnett* to describe the conflicts analysis that governed the result there shows that the analysis cannot be encapsulated by any one phrase. Rather, whatever words are used to describe it, the analysis requires an examination of the effect that a particular state statute has on a national bank's exercise of a federally authorized power—here, the power to sell insurance granted by federal statutes, including 12 U.S.C. 92.[25]

Section 104 of the GLBA follows this same approach. Though it specifically mentions the "prevent or significantly interfere" formulation quoted above, the full text of section 104(d)(1) introduces that phrase and provides its context with the words "[i]n accordance with the legal standards for preemption set forth in [*Barnett*]." This express reference to the *Barnett* decision in its entirety and without qualification and to its "standards" in the plural, rather than the singular, demonstrates that the statute imports the whole of the *Barnett* conflicts analysis as governing the preemption of state laws pertaining to insurance sales, solicitation, and cross-marketing activities. Any doubt on this point is resolved by the express preservation of the applicability of the *Barnett* case in a subsequent portion of section 104:

> (C) CONSTRUCTION.—Nothing in this paragraph shall be construed—
>
> (I) to limit the applicability of [*Barnett*] with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B) [*i.e.*, the Safe Harbors]; or
>
> (II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.[26]

The effect of this language is to reaffirm, following the listing of the Safe Harbors, that both the standards that the Supreme Court articulated in the *Barnett* decision and the analysis that the Court used in that case apply to state laws that are not protected by the Safe Harbors.[27] Thus, the standards for preemption used by the Court in *Barnett* before enactment of GLBA are the same standards that apply today with respect to the application of state insurance sales, solicitation, or cross-marketing laws that are not covered by a Safe Harbor to insurance activities that are authorized for national banks under federal law.

III. Application of Federal Preemption Standards to the Massachusetts Law

Application of the principles we have discussed requires that we conduct a three-step analysis of the provisions of the Massachusetts Law that you have asked us to review. We first determine which of the several standards contained in section 104 of the GLBA applies. Since all three of the provisions you have identified pertain to insurance sales, solicitation, or cross-marketing, the analysis of each provision is governed by section 104(d)(2)(A), that is, the *Barnett* standards which are incorporated by the statute. Second, we consider whether any provision of the Massachusetts Law is protected from preemption by one or more of the Safe Harbors described in section 104(d)(2)(B). Finally, if a provision is not protected by a Safe Harbor, we apply the *Barnett* standards to determine whether, in our view, the state law conflicts with a national bank's authority to sell insurance and is therefore preempted.

A. The Massachusetts Restrictions on Referrals by Bank Personnel

The Massachusetts statute and regulations prohibit non-licensed bank personnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer (the Referral Prohibition). The same statute and regulations further prohibit non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance (the Referral Fee Prohibition). The Massachusetts statute provides:

> Officers, tellers and other employees of a bank who are not licensed as insurance agents may refer a customer of said bank to a licensed insurance agent of the bank only when such customer initiates an inquiry relative to the availability or acquisition of insurance products. No such officer, teller or other employee shall be further or additionally compensated for making said referrals.[28]

This statutory provision is implemented in regulations set forth at 211 CMR § 142.05(3) and 209 CMR § 49.06(3). Section 142.05(3) of 211 CMR provides:

> (3) Insurance sales activities conducted at the main office or at any branch location shall be conducted only by insurance agent [sic] or brokers licensed pursuant to M.G.L. c. 175, §§ 163 and 166, respectively. Non-licensed bank personnel may refer consumers to a licensed insurance agent or broker of the bank only upon an inquiry initiated by the consumer. Non-licensed bank personnel shall not be additionally compensated for such referrals.

Section 49.06(3) of 209 CMR provides:

> (3) *Solicitations and Sales by Bank Personnel.* The solicitation and sale of insurance by banks shall be conducted by licensed personnel of such institutions to the extent required by applicable insurance laws and regulations. Unlicensed officers, tellers and other employees, however, may refer customers to licensed personnel only where:
>
> (a) the customer initiates an inquiry as to the availability or acquisition of insurance products; and
>
> (b) such unlicensed personnel are not additionally compensated for such referrals.

The Director of the Massachusetts Office of Consumer Affairs and Business Regulation (the Massachusetts Director), who oversees the Massachusetts Department of Banking and Insurance, asserted in her comment letter that the Referral Prohibition and the Referral Fee Prohibition are protected by two of the GLBA Safe Harbors.[29] Although the Massachusetts Director does not specify which Safe Harbors, there are two concerning referrals. Safe Harbor (iv) protects state laws that prohibit the payment of valuable consideration, such as referral fees, to unlicensed individuals for "services as an insurance agent or broker." A referral by an unlicensed person who does not discuss specific policy terms and conditions, however, is expressly excluded from the term "services as an insurance agent or broker." Safe Harbor (v) preserves state laws prohibiting referral fees based on the purchase of insurance by the customer.

As we have noted, the Safe Harbors protect state provisions that are "substantially the same as but no more burdensome or restrictive than" the restrictions in the federal statutory text. It is our opinion that the Referral Prohibition is not "substantially the same as" Safe Harbor (iv) and that it is more burdensome and restrictive than Safe Harbor (iv). The plain language of Safe Harbor (iv) protects only those state laws restricting payment for referrals by unlicensed personnel that involve discussions of specific insurance policy terms and conditions. The Massachusetts Referral Prohibition, however, restricts *all* referrals by unlicensed bank personnel (unless initiated by the customer), including those that do not involve specific insurance policy discussions. In our view, this exceeds the scope of Safe Harbor (iv), and consequently is not protected.

Similarly, in our view, the Massachusetts Referral Fee Prohibition is not protected by Safe Harbor (v). Safe Harbor (v) protects only those state restrictions on referral fees tied to a customer's purchase of insurance. The Massachusetts Referral Fee Prohibition goes further than this by prohibiting referral fees of any kind. As such, the Massachusetts Referral Fee Prohibition is more burdensome and restrictive than the restrictions contemplated in Safe Harbor (v).

Because the Referral Prohibition and Referral Fee Prohibition are not protected by the GLBA Safe Harbors, we must consider whether they are preempted by the *Barnett* standards incorporated in GLBA section 104.

The Massachusetts Referral Prohibition imposes significant limitations on a bank's ability to engage in insurance sales, solicitation, and cross-marketing activities. By limiting referrals to only those resulting from a customer's inquiry, the Massachusetts Referral Prohibition effectively deprives banks of important opportunities to offer insurance products to customers. The Referral Prohibition precludes non-licensed bank personnel, such as bank tellers and customer service personnel, from even mentioning to their customers the fact that qualified, licensed insurance agents employed by the bank are available to discuss with them their insurance needs, unless the customer happens to ask about the product. This will prevent in most cases the very bank employees likeliest to have contact with customers from engaging in the cross-marketing activities that are permissible for national banks.

By effectively eliminating cross-marketing activities by unlicensed bank staff, the Massachusetts Referral Prohibition runs afoul of the express language of section 104(d) of the GLBA. Under section 104(d)(2)(A), in accordance with the Barnett standards, no state may prevent or significantly interfere with the ability of a depository institution to engage in "*any* . . . crossmarketing activity" if that cross-marketing activity is not protected by the safe harbors for referrals set out in sections 104(d)(2)(B)(iv) and (v).[30] The word "any" in section 104(d)(2)(A) clearly encompasses a bank's ability to engage in a wide range of cross-marketing activities, including the referrals prohibited by Massachusetts.[31]

The Massachusetts Referral Fee Prohibition imposes a further, significant limitation on a bank's ability to cross-market insurance products. As many commenters noted, one effective way for a bank to cross-market it to offer a financial incentive for unlicensed bank personnel to refer a customer to qualified insurance personnel. By prohibiting a bank from offering that financial incentive, the Massachusetts Referral Fee Prohibition impermissibly prevents the bank from structuring its internal operations so that it can engage effectively in the cross-marketing activities permitted by GLBA.

Thus, in our view, both the Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition would be preempted under the *Barnett* standards incorporated in section 104(d)(2) because they frustrate the authority of national banks to engage in insurance activities and activities incidental thereto. National banks' ability to engage in insurance activities encompasses their ability to engage in activities incidental to those insurance activities, such as marketing the availability of the insurance products. *See* 12 U.S.C. 24(Seventh); *Franklin National Bank*, 347 U.S. at 377–378. The Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition conflict with these powers, in particular, with a bank's ability to engage, as described in section 104(d)(2)(A) of GLBA, in cross-marketing activities. As many commenters pointed out, the state law in question effectively deprives a bank of an important means of advertising the availability of an entire line of financial products that it is authorized to offer. Thus, consistent with the Supreme Court's holdings in *Barnett* and *Franklin National Bank*, we believe that the Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition are preempted because they conflict with national banks' authority to market the availability of products that the banks may offer under federal law and, therefore, to engage in the full range of

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[23] *Barnett*, 517 U.S. at 33–34.

[24] Thus, under *Franklin*, *Barnett*, and other federal cases, a conflict between a state law and federal law need not amount to a whole, or even partial, prohibition in order for the federal law to have preemptive effect. *See Barnett*, 517 U.S. at 31–32. Where a federal grant of authority is unrestricted, state law that attempts to place limits on the scope and effective exercise by a national bank of its express or incidental powers will be preempted. *See, e.g., Franklin National Bank*, 347 U.S. at 378; *Duryee*, 270 F.3d at 409 ("The intervenors' attempt to redefine 'significantly interfere' as 'effectively thwart' is unpersuasive."); *New York Bankers Ass'n, Inc.* v. *Levin*, 999 F. Supp. 716, 719 (W.D.N.Y. 1998) (holding that a New York statute that restricted the types of insurance banks could sell to their customers was preempted on the grounds that the state law "constitutes an interference with [banks'] rights" to sell insurance).

[25] National banks are authorized to engage in insurance activities by a number of federal statutory provisions, including: 12 U.S.C. 24 (Seventh) (*e.g.*, credit life insurance); 12 U.S.C. 24a (authority to engage in insurance sales through a financial subsidiary); 12 U.S.C. 92 (authority to sell insurance from "small towns"); and 15 U.S.C. 6713 (title insurance, where permissible for state banks).

[26] GLBA, § 104(d)(2)(C)(iii). The words "this paragraph" in the lead-in language mean paragraph (2) of subsection (d). We construe the "no inference" language in the second clause to mean that a state law may not be inferred to be preempted under the "prevent or significantly interfere standard" solely because it is excluded from coverage by one of the Safe Harbors. Accordingly, our analysis in Section III draws no such inferences.

[27] As we noted in the West Virginia Letter, the legislative history of section 104 confirms that Congress intended to incorporate the whole of *Barnett* by referencing it in that section. The Senate Report accompanying the GLBA, in commenting on a provision prescribing the "prevent or significantly interfere" standard, using language that was almost identical to the language of section 104(d)(2) as ultimately enacted, states that: The Committee believes that State insurance sales, solicitation, and cross-marketing laws adopted prior to September 3, 1998 should be subject to preemption under the preemption standards applicable when such laws were adopted. Thus, it is the Committee's intent that such laws may be subject to preemption under applicable case law, and the statutory preemption standard set forth in subsection 104(d)(2)(A), which is patterned after such case law. There is an extensive body of case law related to the preemption of State law. For example, in *Barnett Bank of Marion County, N.A.* v. *Nelson*, 116 S.Ct. 1103 (1996), the U.S. Supreme Court noted that Federal courts have preempted State laws that "prevent or significantly interfere" with a national bank's exercise of its powers; that "unlawfully encroach" on the rights and privileges of national banks; that "destroy or hamper" national banks' functions; or that "interfere with or impair" national banks' efficiency in performing authorized functions.

S. Rep. No. 44, 106th Cong. 1st Sess. At 13 (1999). (The limitation on the application of this standard to state laws adopted prior to September 3, 1998 was deleted in the final legislation.) The Senate Report described as affirmative preemption standards phrases that the *Barnett* Court used to describe cases in which state law was not preempted. This transposition does not change the substance of the point sought to be made in the Report, namely, that the intention of Congress was to incorporate into the statute the pre-existing standards described in the applicable caselaw and not a new standard comprising only the "prevent or significantly interfere" language. As we have previously described, it is the application of the conflicts analysis and not the particular words used to describe the effect of a state statute that comprise the *Barnett* standards. *See* H. Rep. 106–74 Part 3 at 139 ("Subsection 104(b)(2)(C) reiterates the underlying principles of subsection 104(b)(2)(A), affirming that the *Barnett* standard and case law continues to be applicable to insurance sales, solicitations, and cross-marketing activities that are not protected by the safe harbors set forth in subsection 104(b)(2)(B)."); and *Duryee*, 270 F.3d at 409 (noting that "the Barnett Bank opinion cited two cases that do not support the intervenors' interpretation of the standard").

[28] MASS. GEN. L. ch. 167F, § 2A(b)(2).

[29] *See* Comment Letter from Jennifer Davis Carey, Director, Consumer Affairs and Business Regulation, Commonwealth of Massachusetts, dated August 10, 2000, at 3 (hereinafter "Director's Letter").

[30] GLBA § 104(d)(2)(A) (emphasis added).

[31] We note that federal law expressly contemplates that a national bank employee may make referrals, and receive compensation for making referrals, that would be prohibited under Massachusetts Law. Section 305 of the GLBA requires the OCC and the other federal banking agencies to prescribe regulations that include, among other provisions:

> [s]tandards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

See also 12 CFR 14.50(b) (OCC implementing regulations). As noted above, Safe Harbor (iv) permits bank employees who are not licensed to engage in insurance activities to make referrals under certain circumstances; and Safe Harbor (v) protects from preemption only state prohibition of referral fees based on the customer's purchase of insurance. Thus, Congress clearly contemplated that bank employees would make referrals to persons in the bank licensed to sell insurance and receive compensation for doing so.

insurance activities authorized by Congress.[32]

B. The Massachusetts Restrictions on the Timing of an Insurance Solicitation

The Massachusetts statute and regulations also prohibit banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit (the Waiting Period Requirement).[33] There are no limits in federal law that impose conditions on a national bank's insurance activities comparable to the limits imposed by the Waiting Period Requirement. Moreover, as the Massachusetts Director acknowledged in her letter,[34] there are no GLBA Safe Harbors that would protect this requirement. Accordingly, the Waiting Period Requirement must be analyzed under the standards for preemption set forth in *Barnett* and made applicable to national banks' insurance activities by section 104(d)(2).

In our opinion, the Waiting Period Requirement is preempted under those standards because of the requirement's impact on the ability of a depository institution to engage in insurance sales, solicitation, and cross-marketing activity. The Massachusetts Director asserts that the Waiting Period Requirement does not "significantly interfere" with the ability of a bank to sell insurance because the requirement merely governs *when* the bank may solicit consumers.[35] That characterization substantially understates the effect of the requirement on a bank's ability to cross-market its products, however. As we stated in the West Virginia Letter, based on our experience, restricting the timing of an insurance solicitation also restricts "the methods by which a bank may solicit an insurance sale from a customer and thus substantively affects the bank's ability to solicit and sell insurance products."[36] The Massachusetts Waiting Period Requirement, like the timing provision considered in the West Virginia letter, would preclude national banks from availing themselves of a prime opportunity to cross-market insurance products, that is, when the transaction is still in process.

It also would make subsequent cross-marketing much more costly by requiring banks to develop databases to keep track of customers that have loans pending with the bank. Banks would have to institute methods of communicating this information to its sales force and of apprising the sales force of changes as they occur. The Waiting Period Requirement also would significantly hamper a bank's mass mailing efforts since bank staff would be required to remove from the mass mailing those individuals who have loans pending with the bank. The cost of developing and maintaining these procedures would impair the bank's ability to engage in insurance activities and frustrate its ability to pursue particular sales activities.[37]

IV. Conclusions

The Massachusetts Referral and Referral Fee Prohibitions frustrate the ability of national banks to cross-market insurance products, an authority specifically referenced in section 104 of GLBA and recognized by the Supreme Court as essential to the conduct of modern business. The Massachusetts Waiting Period Requirement impermissibly restricts the methods by which a bank may solicit an insurance sale from a customer and would also significantly interfere with the cross-marketing of insurance products. It is therefore our opinion that the Massachusetts Referral Prohibition, the Massachusetts Referral Fee Prohibition, and the Massachusetts Waiting Period Requirement would be preempted under the *Barnett* standards incorporated in GLBA section 104(d)(2).

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 02–6918 Filed 3–21–02; 8:45 am]

BILLING CODE 4810–33–P

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[32] The Massachusetts Director also asserted in her letter that the Referral Prohibition and Referral Fee Prohibition should not be preempted because the provisions are "consumer protective in nature and guard against inappropriate product recommendations, high pressure sales tactics and the sale of insurance products on the basis of compensation to the seller rather than the benefit to consumers." Director's Letter, *supra* note 29, at 2. As explained by the district court in the *Duryee* case, however, "[w]here state and federal laws are inconsistent, the state law is pre-empted even if it was enacted by the state to protect its citizens or consumers." *Duryee*, 55 F.Supp at 802. Agreeing with this conclusion, the Sixth Circuit stated that "the fact that the state legislature enacted the [state law at issue] to protect general insurance agents and consumers does not, for that reason alone, preclude federal preemption." *Duryee*, 270 F.3d at 408. *See also Franklin National Bank*, 347 U.S. at 378.

[33] **Mass. Gen. L.** 167F, § 2A(b)(4)(iii) and (iii), 209 CMR § 49.06(5)(b) and (c), and 211 CMR § 142.06(2) and (3)(b). Specifically, § 142.06(2) provides:

No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by 211 CMR 142.06 have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. . . .

Section 142.06(3)(b) provides:

(3) In the instance of an application to a bank for an extension of credit to be secured by a mortgage on real estate and in which it is necessary for the applicant to obtain a policy insuring said premises against loss and designating such bank as loss payee:

* * * (b) such bank shall not, in any manner, solicit the applicant to purchase the required insurance from the bank until said commitment has been accepted by the applicant . . . .

[34] Pursuant to the Director's Letter, the Director's acknowledgement of this point "shall [not] be construed in any way to waive or concede any issues . . . that may arise in any other proceeding regarding the Massachusetts bank insurance laws." Director's Letter, *supra* note 29, at 3.

[35] We note that other Federal regulations contemplate, and in some instances require, that insurance solicitations occur *prior* to loan approval. Under the Truth-in-Lending-Act regulations, a lender must disclose to a consumer the finance charge, which in some instances includes insurance costs, associated with a loan. *See* 12 CFR 226.4(d) and 226.18. The estimated finance charge disclosure in connection with a residential mortgage loan subject to the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*, typically is required prior to loan approval. *See* 12 CFR 226.19(a) (disclosure must be made prior to the loan's consummation or mailed within three days of receipt of the consumer's application, whichever is earlier). Similarly, a lender must make the insurance disclosures required by the GLBA Section 305 regulations "at the time the consumer applies for an extension of credit in connection with which an insurance product is solicited, offered or sold." *See* 12 CFR 14.40(c)(1).

[36] West Virginia Letter at 25.

[37] The Massachusetts Director argues that preemption of the Waiting Period Requirement would interfere with Massachusetts insurance laws and other consumer protection laws that prohibit "tying." We have not been asked to consider these other Massachusetts laws in this letter. We note, however, that national banks are required to comply with the significant tying restrictions imposed by federal law. Twelve U.S.C. 1972 generally prohibits a bank from extending credit, leasing or selling property, furnishing services, or fixing or varying prices of these transactions on the condition or requirement that the customer obtain additional credit, property, or service from the bank, subject to certain exceptions. Nothing in this opinion would allow national banks to engage in impermissible tying under section 1972. Moreover, section 305 of the GLBA requires that the OCC's insurance consumer protection regulations contain anti-tying provisions consistent with section 1972. *See* 12 CFR 14.30(a).

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration for Unaccompanied Articles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration for Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration for Unaccompanied Articles.

OMB Number: 1515–0087.

Form Number: Customs form 255.

Abstract: This collection is completed by each arriving passenger for each parcel or container which is being sent from an Insular Possession at a later date. This declaration allows that traveler to claim their appropriate allowable exemption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annualized Cost on the Public: $18,750.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02–6877 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Record of Vessel Foreign Repair or Equipment Purchase

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Record of Vessel Foreign Repair or Equipment Purchase. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1515–0082.

Form Number: Customs form 226.

Abstract: This collection is required to ensure the collection of revenue (duty) required on all equipment, parts, or materials purchased, and repairs made to U.S. Flag vessels outside the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annualized Cost on the Public: $30,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6876 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning,

1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator.

OMB Number: 1515–0193.

Form Number: N/A.

Abstract: This collection is required to ensure that any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 154.

Estimated Total Annualized Cost on the Public: $9,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6878 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request North American Free Trade Agreement Duty Deferral

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the North American Free Trade Agreement Duty Deferral. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: North American Free Trade Agreement Duty Deferral.

OMB Number: 1515–0208.

Form Number: N/A.

Abstract: The North American Free Trade Agreement Duty Deferral Program prescribe the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program for exportation to another NAFTA country.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 36 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annualized Cost on the Public: $10,400.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6879 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Notice of Detention

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Notice of Detention. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Notice of Detention.

OMB Number: 1515–0210.

Form Number: N/A.

Abstract: This collection requires a response to the Notice of Detention of merchandise and to provide evidence of admissibility to allow entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 250..

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annualized Cost on the Public: $12,500.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02–6880 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lay Order Period—General Order Merchandise

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions.

OMB Number: 1515–0220.

Form Number: N/A.

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annualized Cost on the Public: $103,125.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6881 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain

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information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the appropriate claimant eligibility for accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0216" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to file a claim for accrued benefits available at the time of the veteran's death. The information is used by the Veterans Benefits Administration to determine the appropriate claimant eligibility for accrued benefits.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,750.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–6922 Filed 3–21–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility to reinstate or change government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0131" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used by the policyholder to apply for new issue, reinstatement or change of plan on Government Life Insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–6923 Filed 3–21–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
March 22, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412 et al.

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Implementation and FY 2003 Rates; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS–1177–P]

RIN 0938–AK69

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Implementation and FY 2003 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a prospective payment system for Medicare payment of inpatient hospital services furnished by long-term care hospitals (LTCHs) described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act). This proposed rule would implement section 123 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA) of 1999 and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000. Section 123 of the BBRA directs the Secretary to develop and implement a prospective payment system for LTCHs. The prospective payment system described in this proposed rule would replace the reasonable cost-based payment system under which the LTCHs are currently paid.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on May 21, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1177–P, P.O. Box 8013, Baltimore, MD 21244–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them. If you prefer, you may deliver (by hand or courier) your written comments (an original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1177–P. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786–4487, or Judy Richter, (410) 786–2590 (General information, transition payments, payment adjustments)

Michele Hudson, (410) 786–5490 (Calculation of the payment rates, relative weights/case-mix index, update factors, payment adjustments)

Ann Fagan, (410) 786–5662 (Patient classification system)

SUPPLEMENTARY INFORMATION:

Inspection of Public Comment

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Boulevard, Baltimore, MD 21244, Monday through Friday of each week from 8:30 to 5 p.m. Please call (phone: (410) 786–7197) to make an appointment to view the public comments.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

APR–DRGs All patient-defined, diagnosis-related groups.
BBA Balanced Budget Act of 1997, Public Law 105–33.
BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113.
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554.
CMGs Case-mix groups.
CMI Case-mix index.
CMS Centers for Medicare & Medicaid Services.
DRGs Diagnosis-related groups.
FY Federal fiscal year.
HCRIS Hospital Cost Report Information System.
HHA Home health agency.
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191.
IRF Inpatient rehabilitation facility.
LTC–DRG Long-term care diagnosis-related group.
LTCH Long-term care hospital.
MDCN Medicare Data Collection Network.
MedPAC Medicare Payment Advisory Commission.
MedPAR Medicare provider analysis and review file.
ProPAC Prospective Payment Assessment Commission.
SNF Skilled nursing facility.
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248.

I. Background

When the Medicare statute was originally enacted in 1965, Medicare payment for hospital inpatient services was based on the reasonable costs incurred in furnishing services to Medicare beneficiaries. Section 223 of the Social Security Act Amendments of 1972 (Pub. L. 92–603) amended section 1861(v)(1) of the Social Security Act (the Act) to set forth limits on reasonable costs for hospital inpatient services. Section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) amended the Medicare statute to limit payment by placing a cap on allowable costs per discharge. Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) added section 1886(d) to the Act that replaced the reasonable cost-based payment system for most hospital inpatient services. Section 1886(d) of the Act provides for a prospective payment system for the operating costs of acute care hospital inpatient stays, effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although most hospital inpatient services became subject to the prospective payment system, certain specialty hospitals are excluded from that system and continue to be paid their reasonable costs subject to the cap established under TEFRA. These hospitals included long-term care hospitals (LTCHs), rehabilitation and psychiatric hospitals, rehabilitation and psychiatric units of acute care hospitals, and children's hospitals. Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

Subsequent to the implementation of the acute care hospital inpatient prospective payment system, both the number of excluded hospitals and Medicare payments to these hospitals grew rapidly.

Congress enacted various provisions in the Balanced Budget Act (BBA) (Pub. L. 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA) (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) (Pub. L. 106–554) to provide for the development and implementation of a prospective payment system for the following excluded hospitals:

- Rehabilitation hospitals (including units in acute care hospitals).
- Psychiatric hospitals (including units in acute care hospitals).
- LTCHs.

Section 4422 of the BBA mandated that the Secretary develop a legislative proposal, for presentation to Congress by October 1, 1999, for a case-mix adjusted LTCH prospective payment

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system under the Medicare program. This system was to include an adequate patient classification system that reflects the differences in patient resource use and costs among LTCHs. Furthermore, in developing the legislative proposal for the prospective payment system, the Secretary was to consider several payment methodologies, including the feasibility of an expansion of the acute care inpatient hospital prospective payment system (diagnosis-related group (DRG) based system) established under section 1886(d) of the Act.

In the interim, section 4414 of the BBA imposed national limits (or caps) on hospital-specific target amounts (that is, annual per discharge limit) for these hospitals until cost reporting periods beginning on or after October 1, 2002. At the same time that Congress modified the payment system based on limits on target amounts, it also included in the BBA a provision to require the Secretary to develop a legislative proposal for establishing a prospective payment system for LTCHs.

With the passage of the BBRA in November 1999, in section 122, Congress refined some policies of the BBA prior to the implementation of prospective payment systems for LTCHs and psychiatric hospitals and units. Section 123 of the BBRA further requires that the Secretary develop a per discharge, DRG-based system for LTCHs and requires that this system be described in a report to the Congress by October 1, 2001, and be in place by October 1, 2002. Section 307(b)(1) of BIPA modified the BBRA's requirements for the prospective payment system for LTCHs by mandating that the Secretary "* * * shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data." Furthermore, section 307(b)(1) of BIPA provided that the Secretary "* * * shall examine and may provide for appropriate adjustments to the long-term hospital prospective payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment * * *." In the event that the Secretary is unable to implement the LTCH prospective payment system by October 1, 2002, section 307(b)(2) of BIPA requires the Secretary to implement a prospective payment system using the existing hospital DRGs, modified where feasible to account for resource use by LTCHs.

In this proposed rule, we set forth the proposed Medicare prospective payment system for LTCHs as authorized under the BBRA and BIPA. Below, we discuss the development, proposed policies, and proposed implementation of the proposed LTCH prospective payment system. These discussions include the following:

- An overview of the current payment system for LTCHs.
- A discussion of the statutory requirements for developing and implementing a LTCH prospective payment system.
- A discussion of research findings on LTCHs.
- A detailed discussion of the proposed LTCH prospective payment system, including the patient classification system, relative weights, payment rates, additional payments, and the budget neutrality requirements mandated by section 123 of Public Law 106–113.
- An analysis of the estimated impact of the proposed LTCH prospective payment system on the Federal budget and LTCHs.
- Proposed changes to existing regulations and the establishment of proposed regulations in 42 CFR Chapter IV to implement the proposed LTCH prospective payment system.

A. Overview of Current Payment System for LTCHs

1. Exclusion of Certain Facilities From the Acute Care Hospital Inpatient Prospective Payment System

Although payment for operating costs of most hospital inpatient services became subject to a prospective payment system under the Social Security Amendments of 1983 (Pub. L. 98–21) which added section 1886(d) to the Act, certain types of hospitals and units were excluded from that payment system. Section 1886(d)(1)(B) of the Act lists the following classes of excluded hospitals:

- Psychiatric hospitals and units.
- Rehabilitation hospitals and units.
- LTCHs.
- Children's hospitals.

Effective with cost reporting periods beginning on or after October 1, 1989, cancer hospitals were added to this list by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

The hospital inpatient prospective payment system is a system of average-based payments that assumes that some patient stays will consume more resources than the typical stay, while others will demand fewer resources. Therefore, an efficiently operated hospital should be able to deliver care to its Medicare patients for an overall cost that is at or below the amount paid under the hospital inpatient prospective payment system. In a report to the Congress, Hospital Prospective Payment for Medicare (1982), the Department of Health and Human Services stated that the "467 DRGs were not designed to account for these types of treatment" found in the four classes of excluded hospitals, and noted that "including these hospitals will result in criticism and their application to these hospitals would be inaccurate and unfair."

The Congress excluded these hospitals from the hospital inpatient prospective payment system because they typically treated cases that involved stays that were, on average, longer or more costly than would be predicted by the DRG system. The legislative history of the 1983 Social Security Amendments stated that the "DRG system was developed for short-term acute care general hospitals and as currently constructed does not adequately take into account special circumstances of diagnoses requiring long stays." (Report of the Committee on Ways and Means, U.S. House of Representatives, to Accompany HR 1900, H.R. Rept. No. 98–25, at 141 (1983)). Therefore, these hospitals could be systemically underpaid if the same DRG system were applied to them.

Following enactment in April 1983 of the Social Security Amendments of 1983, we implemented the hospital inpatient prospective payment system on October 1, 1983, including the initial publication in the **Federal Register** of the rules and regulations for the hospital inpatient prospective payment system—the September 1, 1983 interim final rule (48 FR 39752) and the January 3, 1984 final rule (49 FR 234). Updates and modifications of the regulations have been published annually in the **Federal Register**. We also developed payment policy for hospitals that were seeking to be excluded from the hospital inpatient prospective payment system. The regulations concerning exclusion of LTCHs from the hospital inpatient prospective payment system are found in 42 CFR part 412, subpart B.

2. Requirements for LTCHs To Be Excluded From the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, the prospective payment system for hospital inpatient operating costs set forth in section 1886(d) of the Act does not apply to several specified types of hospitals, including LTCHs defined in section 1886(d)(1)(B)(iv)(I) of the Act as "* * * a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days." Public Law 105–33 added section 1886(d)(1)(B)(iv)(II) to the Act, which also provides another definition of LTCHs, specifically, a hospital that was first excluded in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Implementing regulations at § 405.471(c)(5) (now § 412.23(e)) require the facility to have a provider agreement with Medicare to participate as a hospital, and an average inpatient length of stay greater than 25 days as calculated under the following formula: The average length of stay is calculated by dividing the total number of inpatient days (excluding leave of absence or pass days) for all patients by the total number of discharges for the hospital's most recent complete cost reporting period. The determination of whether or not a hospital qualifies as an LTCH is based on the hospital's most recently filed cost report, or if a change in the hospital's average length of stay is indicated, by the same method for the immediately preceding 6-month period (§ 412.23(e)(3)). (Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iii).)

3. Payment System Requirements Prior to the BBA

Hospitals that are excluded from the hospital inpatient prospective payment system under section 1886(d)(1)(B) of the Act are paid for inpatient operating costs under the provisions of Public Law 97–248 (TEFRA) that are found in section 1886(b) of the Act and implemented in regulations at 42 CFR part 413. Public Law 97–248 established payments based on hospital-specific limits for inpatient operating costs. A ceiling on payments to hospitals excluded from the acute care hospital inpatient prospective payment system is determined by calculating the product of a facility's base year costs (the year on which its target reimbursement limit is based) per discharge, updated to the current year by a rate-of-increase percentage, and multiplied by the number of total current year discharges. (A detailed discussion of target amount payment limits under Public Law 97–248 can be found in the September 1, 1983 final rule published in the **Federal Register** (48 FR 39746).)

The base year for a facility varied, depending on when the facility was initially determined to be a prospective payment system-excluded provider. The base year for facilities that were established prior to the implementation of Public Law 97–248 was 1982, when Public Law 97–248 was enacted. For facilities established after implementation of Public Law 97–248 (section 1886(b) of the Act), we originally provided in the regulations for payment to these facilities for their full "reasonable" costs for their first 3 cost reporting years, and allowed the facilities to choose which of those years would be used in the future to determine their target limit. This "new provider" period was later shortened to 2 cost reporting years (§ 413.40(f)(1)(1992)), and we designated the second cost reporting year as the cost reporting year used to determine the hospital's per discharge target amount.

Excluded facilities whose costs were below their target amounts received bonus payments equal to the lesser of half of the difference between costs and the target amount, up to a maximum of 5 percent of the target amount, or the hospital's costs. For excluded facilities whose costs exceeded their target amounts, Medicare provided relief payments equal to half of the amount by which the hospital's costs exceeded the target amount up to 10 percent of the target amount. Excluded facilities that experienced a more significant increase in patient acuity could also apply for an additional amount under the regulations for Medicare exception payments (§ 413.40(d)).

4. Effect of the Current Payment System

Utilization of post-acute care services has grown rapidly in recent years since the implementation of the acute care hospital inpatient prospective payment system. Average length of stay in acute care hospitals has decreased, and patients are increasingly being discharged to post-acute care settings such as LTCHs, skilled nursing facilities (SNFs), home health agencies (HHAs), and inpatient rehabilitation facilities (IRFs) to complete their course of treatment. The increased utilization of post-acute care providers, including hospitals excluded from the prospective payment system, has resulted in the rapid growth in Medicare payments to these hospitals in recent years. In addition, there has been a significant increase in the number of LTCHs. In 1991, there were 91 LTCHs; in 1994, 155 LTCHs; in 1999, 225 LTCHs; in December 2000, 252 LTCHs; and in November 2001, 270 LTCHs. Payments to post-acute care providers were among the fastest growing providers under the Medicare program throughout the 1990s. (Prospective Payment Assessment Commission (ProPAC) June 1996 Report to Congress, p. 91.)

LTCHs have experienced faster growth in the number of facilities and Medicare program payments than any other category of prospective payment system-excluded provider. In its June 1996 Report to Congress, ProPAC found that, from 1990 to 1993, payment to rehabilitation facilities rose about 25 percent per year, while payments to LTCHs increased 33 percent annually (p. 92). ProPAC also found that, from 1991 to 1995, the number of rehabilitation facilities increased 21 percent (from 852 in 1991 to 1,029 in 1995), while the number of LTCHs increased 93 percent (from 91 in 1991 to 176 in 1995) (p. 93). Furthermore, the best available Hospital Cost Report Information System (HCRIS) data indicate $398 million in payments for inpatient operating services to 105 LTCHs in FY 1993 and $1.05 billion in payments for inpatient operating services to 206 LTCHs in FY 1998. This is more than a 96 percent increase in the number of LTCHs and a 164 percent increase in payments to LTCHs in 5 years.

In its March 1999 report to the Congress, the Medicare Payment Advisory Commission (MedPAC) (formerly ProPAC) stated that: "[The] TEFRA system has remained in effect longer than expected partly because of difficulties in accounting for the variation in resource use across patients in exempted facilities. The unintended consequences of sustaining that system have been a steady growth in the number of prospective payment system-exempt facilities and a substantial payment inequity between older and newer facilities. In particular, the payment system encouraged new exempt facilities to maximize their costs in the base year to establish high cost limits. Once subject to its relatively high limit, a recent entrant could reduce its costs below its limit, resulting in reimbursement of its full costs plus bonus payment. By contrast, facilities that existed before they became subject to TEFRA could not influence their cost limits. Given the relatively low limits of older facilities, they are more likely to incur costs above their limits and thus receive payments less than their costs." (p. 72)

To address concerns regarding the historical growth in payments and the disparity in payments to existing and newly excluded hospitals and units, the BBA mandated several changes to the existing payment system. These changes

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are outlined in section I.B.1. of this preamble.

5. Research and Discussion of a Prospective Payment System for LTCHs Prior to the BBA

Section 603(a)(2)(C)(ii) of Public Law 98–21 required the Secretary to include the results of research studies on whether and how excluded hospitals and units can be paid on a prospective basis, in the 1985 Report to the Congress on the Impact of Prospective Payment Methodology. HCFA (now CMS) undertook and funded a wide range of research projects that resulted in 1987 in a report to the Congress entitled "Developing a Prospective Payment System for Excluded Hospitals." In that report, the Secretary presented an examination of the then current state of the four classes of excluded hospitals and units and offered recommendations for the development of a prospective payment system. "Long-term" or "chronic disease" hospitals, the report noted, "are the least understood of the excluded hospital types" (p. 3–51).

The following information was clear—there were a relatively small number of facilities (94 at that time); LTCHs were not dispersed throughout the country and, therefore, potential long-term care patients were receiving necessary care elsewhere; LTCHs, as defined by the greater than 25-day average length of stay, constituted a diverse set that closely resembled other hospitals, both included (acute care) and excluded (psychiatric, rehabilitation, and children's) under the prospective payment system (pp. 3–51 through 3–63). The Report concluded with the following discussion: "Because this class of hospitals treats a very heterogeneous patient population and does not share a common set of facility characteristics, the development of a separate classification system for prospective payment purposes would appear to be both infeasible and undesirable. At the same time, as part of HCFA's [now CMS's] impact analysis, we were investigating the feasibility of including LTCHs under the current prospective payment system, where their cases would be expected to be paid predominantly under the prospective payment system outlier policy." (pp. 3–63 through 3–64)

The 1987 report further noted that present and future research on LTCHs would focus on acquiring a broader understanding of LTCHs, long-term care patients, and other treatment settings and on the preliminary financial impact of a prospective payment system on both LTCHs and the Medicare system. An initial inquiry was also planned "into the role of those hospitals as a component of the continuum of care between acute care hospitals and skilled nursing facilities, as a general first step in developing a classification system for patients in these facilities. * * *" (p. 3–54)

ProPAC's March 1996 Report to Congress endorsed the concept of prospective payment systems for all post-acute services, emphasizing consistent payment methods across all classes of facilities in order to encourage provider efficiency (p. 75). ProPAC's extensive analysis of "patients using post-acute care providers and in these providers' treatment patterns" based on FY 1994 data discussed in the June 1996 Report to Congress, concluded that "[a]lthough there was significant overlap in the hospital assigned DRGs across settings, other patient characteristics, such as medical complexity or functional status, may influence which patients use a particular site." (p. 110)

In ProPAC's March 1, 1997 report, ProPAC's Recommendation 33, entitled "Coordinating Post-Acute Care Provider Payment Methods" stated that "the Commission urges the Congress and the Secretary to consider the overlap in services and beneficiaries across post-acute care providers as they modify Medicare payment policies." (p. 60)

The passage of Public Law 105–33 (the BBA) provided for the establishment of separate and distinct prospective payment systems for post-acute care providers: SNFs (section 4432(a)), IRFs (section 4421), and HHAs (section 4603(b)). In addition, Congress directed the Secretary to develop a legislative proposal to pay LTCHs prospectively as well (section 4422).

B. Requirements of the BBA, BBRA, and BIPA for LTCHs

1. Provisions of the Current Payment System

a. BBA. The BBA amendments to section 1886(b) of the Act significantly altered the payment provisions for excluded hospitals and units and also added other qualifying criteria for certain hospitals excluded from the hospital inpatient prospective payment system (sections 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, and 4419). Provisions of these amendments that related to the current payment system were explained in detail and implemented in our final rule published in the **Federal Register** on August 29, 1997 (62 FR 45966).

Section 4411 of the BBA amended section 1886(b)(3)(B) of the Act and restricted the rate-of-increase percentages that are applied to each provider's target amount so that excluded hospitals and units experiencing lower inpatient operating costs relative to their target amounts receive lower rates of increase.

Section 4412 amended section 1886(g) of the Act to establish a 15-percent reduction in capital payments for excluded psychiatric and rehabilitation hospitals and units and LTCHs, for portions of cost reporting periods occurring during the period of October 1, 1997, through September 30, 2002.

Section 4413(b) of Public Law 105–33 amended section 1886(b)(3) of the Act to permit certain LTCHs to elect a rebasing of the target amount for the 12-month cost reporting period beginning during FY 1996.

Section 4414 of the BBA amended section 1886(b)(3) of the Act to establish caps on the target amounts for excluded hospitals and units at the 75th percentile of target amounts for similar facilities for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. These caps on the target amounts apply only to psychiatric and rehabilitation hospitals and units and LTCHs. Payments for these excluded hospitals and units are based on the lesser of a provider's cost per discharge or its hospital-specific cost per discharge, subject to this cap.

Section 4415 of the BBA amended section 1886(b)(1) of the Act by revising the percentage factors used to determine the amount of bonus and relief payments, and establishing continuous improvement bonus payments for cost reporting periods beginning on or after October 1, 1997 for hospitals and units excluded from the prospective payment system that meet specified criteria. If a hospital is eligible for the continuous improvement bonus, the bonus payment is equal to the lesser of: (1) 50 percent of the amount by which operating cost are less than expected costs; or (2) 1 percent of the target amount.

Sections 4416 and 4419 of the BBA amended section 1886(b) of the Act to establish a new framework for payments for new excluded providers. Section 4416 added a new section 1886(b)(7) to the Act that established a new statutory methodology for new psychiatric and rehabilitation hospitals and units and LTCHs. Prior to this change, new hospitals excluded from the acute care hospital inpatient prospective payment system were exempted from the target amount per discharge ceiling until the end of the first cost reporting period ending at least 2 years after they accepted their first patient. This new provider "exemption" was eliminated from all classes of excluded providers except children's hospitals for cost reporting periods beginning on or after October 1, 1997, by section 4419(a) of the BBA. Under section 4416, payment to these new excluded providers for their first two cost reporting periods is limited to the lesser of the operating costs per case, or 110 percent of the national median of target amounts, as adjusted for differences in wage levels, for the same class of hospital for cost reporting periods ending during FY 1996, updated to the applicable period.

It is important to note that prior to enactment of the BBA, the payment provisions for excluded hospitals and units applied consistently to all classes of excluded providers (that is, psychiatric, rehabilitation, long-term care, children's, and cancer). However, effective for cost reporting periods beginning on or after October 1, 1997, there are specific payment provisions for certain classes of excluded providers, as well as modifications for all excluded providers.

b. BBRA. With the enactment of the BBRA of 1999, Congress refined some of the policies mandated by the BBA for hospitals excluded from the acute care hospital inpatient prospective payment system. The provisions of the BBRA, which amended section 1886(b)(3)(H) of the Act relating to the current payment system for excluded hospitals, were explained in detail and implemented in our interim final rule published in the **Federal Register** on August 1, 2000 (65 FR 47026) and in our final rule also published on August 1, 2000 (65 FR 47054).

Section 4414 of the BBA had provided for caps on target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997. Section 121 of the BBRA amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to these caps on the target amounts for existing psychiatric and rehabilitation hospitals and units and LTCHs, effective for cost reporting periods beginning on or after October 1, 1999 through September 30, 2002.

Section 122 of BBRA provided for an increase in the continuous improvement bonus for eligible LTCHs and psychiatric hospitals and units for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002.

c. BIPA. Two provisions of BIPA that amended section 1886(b)(3) of the Act were directed at LTCHs. Section 307(a) of BIPA provided for a 2-percent increase to the wage-adjusted 75th percentile cap on the target amount for existing LTCHs, effective for cost reporting periods beginning during FY 2001. Section 307(a) also provided a 25-percent increase to the hospital-specific target amounts for existing LTCHs for cost reporting periods beginning in FY 2001, subject to the wage-adjusted national cap.

2. Provisions for a LTCH Prospective Payment System

a. BBA. In section 4422 of the BBA, the Congress mandated that the Secretary develop a legislative proposal for a case-mix adjusted prospective payment system under the Medicare program, for submission by October 1999 based on consideration of several payment methodologies, including the feasibility of expanding the current DRGs and the prospective payment system currently in place for acute care hospitals.

b. BBRA. Section 123 of the BBRA specifically requires that the prospective payment system for LTCHs be designed as a per discharge system with a DRG-based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 123 also requires that a report be submitted to the Congress describing the system design of the mandated LTCH prospective payment system no later than October 1, 2001, and that the system be implemented for cost reporting periods beginning on or after October 1, 2002.

c. BIPA. The BIPA reiterated the dates of implementation of the LTCH prospective payment system set forth in the BBRA. This statute also directs the Secretary to examine the following specific payment adjustments: adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment. Furthermore, if the Secretary is unable to implement the prospective payment system by October 1, 2002, the BIPA mandates that a default LTCH prospective payment system be implemented, based on existing DRGs, modified where feasible to account for the specific resource use of long-term care patients.

C. Research Supporting the Establishment of the LTCH Prospective Payment System: Legislative Requirements

Section 4422 of the BBA required us to formulate a legislative proposal on the development of a prospective payment system for LTCHs for submission to the Congress by October 1, 1999. To prepare for this proposal, we awarded a contract to The Urban Institute (Urban) following the enactment of the BBA for a multifaceted analysis of LTCHs, including a description of facilities and patients, as well as exploration of a variety of classification and payment system options.

In section 123(a) of the BBRA, Congress mandated a per-discharge, DRG-based model for the prospective payment system for LTCHs. Our basic objective remained unchanged—to arrive at a clearer understanding of the universe of LTCHs in relation to facility characteristics; beneficiary utilization; and beneficiary characteristics such as diagnoses, treatment, and discharge patterns.

Under the terms of our original contract with Urban, 3M Health Information Systems (3M) was subcontracted to provide an analysis and assessment of alternative classification systems for use in LTCHs in keeping with variables such as treatment patterns, patient demographics, and diagnoses and procedure codes for patients at LTCHs and acute care hospitals.

After the enactment of section 123 of the BBRA, we instructed 3M to limit its analyses to several DRG-driven classification systems, using the database constructed by Urban describing LTCHs, patients at LTCHs, and patients with the same diagnoses as LTCH patients treated in other facilities. We also contracted with 3M to develop and analyze the data necessary for us to design and develop the proposed Medicare LTCH prospective payment system based on DRGs.

D. Description of Sources of Research Data

The records for all Medicare hospital inpatient discharges (including discharges for LTCHs) are contained in the Medicare provider analysis and review file (MedPAR), which includes patient demographics (age, gender, race, and residence zip code), clinical characteristics (diagnoses and procedures), and hospitalization characteristics. (Beneficiary data were encrypted to prevent the identification of specific Medicare beneficiaries.) The Medicare cost report data constitute the HCRIS, and includes information on facility characteristics, utilization data, and cost and charge data by cost center.

The description of the universe of LTCHs in section I.E. of this proposed rule is based on calendar year (CY) 1997 MedPAR, the HCRIS file containing the best available cost data for cost reporting periods that began during FYs 1996 and 1997, and 1997 data from the Online Survey Certification and Reporting System (OSCAR).

The 1997 OSCAR data provided information from the State survey and certification process to identify and characterize providers that participate in Medicare and Medicaid and includes a list of all hospitals that were designated as LTCHs by Medicare. OSCAR data included the number of employees of various types and the number of different types of beds and care units, as well as variables on certification date, type of control, geographic region, and hospital size.

E. The Universe of LTCHs

1. Background Issues

LTCHs typically furnish extended medical and rehabilitative care for patients who are clinically complex and have multiple acute or chronic conditions. Generally, Medicare patients in LTCHs have been transferred from acute care hospitals and receive a range of "post-acute care" services at LTCHs, including comprehensive rehabilitation, cancer treatment, head trauma treatment, and pain management. (MedPAC March 1999 Report to Congress, p. 95.) A LTCH must be certified as an acute care hospital that meets criteria set forth in section 1861(e) of the Act in order to participate as a hospital in the Medicare program. Generally, under Medicare, hospitals are paid as LTCHs if they have an inpatient average length of stay greater than 25 days.

LTCHs are a heterogeneous group of facilities ranging from old tuberculosis and chronic disease hospitals to newer facilities designed primarily to care for ventilator-dependent patients. They are unevenly distributed across the United States, with one-third (72 of 203 in 1997) located in Massachusetts, Texas, and Louisiana. As of 1997, 203 facilities were determined by Medicare to be LTCHs; by early 2000, 239 facilities were determined by Medicare to be LTCHs; and as of November 2001, OSCAR had data on 270 LTCHs.

LTCHs constitute a relatively small provider group in the Medicare program and have not been widely studied. Only limited information has been published about their characteristics in terms of types of patients served and resources used. As stated earlier in section I.C. of this preamble, the primary goal of the initial research contract with Urban was to increase our knowledge about LTCHs and their patients. In addition to describing the providers and patients, the study was expected to provide insight into the ways in which LTCHs differ from other Medicare post-acute care providers. In the following summary and tables, we provide a description of Urban's findings that formed the basis for the design of the proposed prospective payment system for LTCHs presented in this proposed rule.

2. General Medicare Policies

Inpatient stays at LTCHs are covered under the Part A hospital benefit and include room and board, medical and nursing services, laboratory tests, X-rays, pharmaceuticals, supplies, and other diagnostic or therapeutic services (§§ 409.10 and 412.50). LTCHs can offer specialized services (for example, physical rehabilitation or ventilator-dependent care) or can provide more generalized services (for example, chronic disease care).

Hospital services are covered for up to 90 days during a Medicare-defined "benefit period," which is a period that begins with admission as an inpatient to an acute care or other hospital and ends when the beneficiary has spent 60 consecutive days outside of an inpatient facility (§ 409.60). There are 60 additional covered lifetime reserve days that may be used over a beneficiary's lifetime. One inpatient deductible payment ($792 in 2002) is required for each benefit period, so a beneficiary generally does not have to make a new deductible payment for a LTCH stay unless the LTCH stay is not preceded by another hospital stay. A patient with a long LTCH stay, however, is subject to a coinsurance payment ($198 in 2002) for days 61 through 90 of hospital use during a benefit period. For the lifetime reserve days, the Medicare beneficiary is subject to a daily coinsurance amount ($396 in 2002) (§ 409.61). LTCHs must meet State licensure requirements for acute care hospitals and must have a provider agreement with Medicare in order to receive Medicare payment. Intermediaries verify that LTCHs meet the required average length of stay of greater than 25 days.

3. Exclusion From the Acute Care Hospital Inpatient Prospective Payment System

As discussed more fully in section I.A.2 of this preamble, LTCHs were excluded from the FY 1984 implementation of the acute care hospital inpatient prospective payment system and continued to be paid based on their cost per discharge, subject to per discharge limits.

4. Geographic Distribution

Overall, 203 LTCHs filed Medicare claims in 1997. This number translates into an average of approximately one facility per 200,000 Medicare enrollees. As can be seen in Table 1, LTCHs are not distributed across all States in proportion to the number of Medicare enrollees in those States. They are unevenly distributed across the United States, with one-third (72 of 203) located in Massachusetts, Texas, and Louisiana. These three States together account for 36 percent of the LTCHs, but only fewer than 10 percent of Medicare enrollees. Furthermore, 13 small States have no LTCHs, although they account for approximately 7 percent of Medicare enrollees. In contrast, the three largest Medicare States (California, Florida, and New York) account for 24.1 percent of Medicare enrollees together, but only 13.8 percent of LTCHs.

TABLE 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Alabama	1	0.5	696,586	1.8	191	1.0
Alaska	0	0.0	38,570	0.1	0	0.0
Arizona	4	2.0	667,226	1.7	187	1.0
Arkansas	0	0.0	453,195	1.1	0	0.0
California	12	5.9	3,920,674	9.9	1,304	7.1
Colorado	4	2.0	464,299	1.2	277	1.5
Connecticut	4	2.0	531,805	1.3	716	3.9
Delaware	0	0.0	111,171	0.3	0	0.0
District of Columbia	1	0.5	80,028	0.2	23	0.1
Florida	11	5.4	2,853,420	7.2	805	4.4

TABLE 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997—Continued

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Georgia	6	3.0	915,577	2.3	557	3.0
Hawaii	1	0.5	163,217	0.4	13	0.1
Idaho	0	0.0	163,303	0.4	0	0.0
Illinois	5	2.5	1,701,123	4.3	703	3.8
Indiana	11	5.4	877,656	2.2	434	2.4
Iowa	0	0.0	498,288	1.3	0	0.0
Kansas	3	1.5	406,752	1.0	74	0.4
Kentucky	1	0.5	633,802	1.6	337	1.8
Louisiana	19	9.4	622,805	1.6	1,288	7.0
Maine	0	0.0	218,265	0.6	0	0.0
Maryland	4	2.0	651,710	1.7	465	2.5
Massachusetts	17	8.4	991,641	2.5	3,077	16.8
Michigan	3	1.5	1,435,420	3.6	280	1.5
Minnesota	2	1.0	669,708	1.7	313	1.7
Mississippi	2	1.0	428,729	1.1	65	0.4
Missouri	3	1.5	888,959	2.3	317	1.7
Montana	0	0.0	139,392	0.4	0	0.0
Nebraska	1	0.5	263,287	0.7	25	0.1
Nevada	3	1.5	225,152	0.6	106	0.6
New Hampshire	0	0.0	170,031	0.4	0	0.0
New Jersey	3	1.5	1,239,890	3.1	212	1.2
New Mexico	2	1.0	231,517	0.6	86	0.5
New York	5	2.5	2,780,994	7.0	1,262	6.9
North Carolina	1	0.5	1,129,329	2.9	59	0.3
North Dakota	0	0.0	107,628	0.3	0	0.0
Ohio	7	3.4	1,766,266	4.5	653	3.6
Oklahoma	8	3.9	523,358	1.3	294	1.6
Oregon	0	0.0	500,035	1.3	0	0.0
Pennsylvania	6	3.0	2,183,850	5.5	412	2.3
Rhode Island	1	0.5	177,247	0.4	700	3.8
South Carolina	2	1.0	562,732	1.4	0	0.0
South Dakota	0	0.0	123,401	0.3	211	1.2
Tennessee	6	3.0	838,357	2.1	210	1.1
Texas	36	17.7	2,275,673	5.8	1,818	9.9
Utah	1	0.5	204,525	0.5	39	0.2
Vermont	0	0.0	89,821	0.2	0	0.0
Virginia	3	1.5	893,602	2.3	664	3.6
Washington	2	1.0	742,589	1.9	97	0.5
West Virginia	0	0.0	349,684	0.9	0	0.0
Wisconsin	1	0.5	806,951	2.0	34	0.2
Wyoming	1	0.5	65,699	0.2	3	0.0
Total	195	100.00	36,322,068	100.00	18,311	100.00

Source: 1997 Online Survey and Certification Reporting System (OSCAR).

Although the distribution of certified beds generally tracks the distribution of LTCHs across States, there is not always a direct relationship between the number of LTCHs and the bed capacity in a given State. For instance, Massachusetts has only 8.4 percent of LTCHs, but 16.8 percent of Medicare-certified beds. In contrast, Texas has 17.7 percent of LTCHs, but only 9.9 percent of the certified beds.

5. Characteristics by Date of Medicare Participation

The OSCAR program provided data captured by the State survey and certification process that can be used to identify and characterize providers participating in Medicare and Medicaid. The following analyses were based on LTCHs for which data were available. Eight facilities, which account for only 1 percent of all LTCH stays and 1.3 percent of certified beds, were excluded from the analysis since 1997 OSCAR records were not available for these facilities.

Given the known payment variations for old and new facilities that were excluded facilities paid under the target amount methodology, we divided the LTCHs by age (the date of the LTCH's first Medicare participation, as reported by OSCAR) to gain a sense of the variation among the existing LTCHs in 1997. A strong correlation is found between the age of a LTCH and other key characteristics, such as location and ownership control, as well as operating costs and Medicare payments. For analytical purposes, therefore, the total sample of LTCHs was stratified based on age ("old," "middle," or "new"). Of the 195 LTCHs in OSCAR in 1997, 20 percent were in existence before the hospital inpatient prospective payment system and hospital inpatient prospective payment system exclusions went into effect in October 1983 (old LTCHs); 30 percent were determined to be LTCHs between October 1983 and September 1993 (middle LTCHs); and 50 percent were determined to be LTCHs between October 1993 and September 1997 (new LTCHs). This pattern is consistent with reports of the large growth in the number of LTCHs in recent years. (As of November 2001, OSCAR had data on 270 LTCHs, which indicate that the growth has continued.)

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Old LTCHs are generally located in the northeast region of the United States, while newer LTCHs are typically located in the southern region. Most notably, the ownership of the LTCHs that began Medicare participation before and after the implementation of the acute care hospital inpatient prospective payment system is quite different. Old LTCHs are either government controlled (about 63 percent) or nonprofit (about 37 percent). In contrast, one-half of the LTCHs that began participation in Medicare between 1983 and 1993, and two-thirds of those that began participation in Medicare in FY 1994 or later, are proprietary facilities. Virtually no new LTCHs are government controlled.

6. Hospitals-Within-Hospitals and Satellite Facilities

The Medicare statute does not contemplate the recognition of "LTCH units" of prospective payment system acute care hospitals; the statute does reference rehabilitation and psychiatric units. Long-term care units of prospective payment system hospitals are not allowed in part because of the concern that transfers of acute care patients into the LTCH units could inappropriately maximize prospective payments under the hospital inpatient prospective payment system. The presence of a long-term care "unit", excluded from the hospital inpatient prospective payment system and co-located in an acute care hospital, could enable the acute care hospital to shift patients to the long-term care "unit" without completing the full course of treatment. These patient transfers could result in inappropriate payments under Medicare since the acute care hospital would make money in those cases where it received a full DRG payment without providing the full course of treatment to the beneficiary and could avoid losing any money for other more costly patients by prematurely discharging them to the LTCH. Since payments to hospitals under the hospital inpatient prospective payment system were based on hospital costs that included the costs of patients with longer lengths of stay, such a patient shift would result in an "overpayment" to the acute care hospital and the LTCH would receive an additional payment for that same patient.

Nonetheless, in the mid-1990s, of the roughly 150 LTCHs in existence at the time, about 12 recently established LTCHs were, in fact, LTCHs located in the buildings or on the campuses of acute care hospitals. In order to prevent the gaming of the Medicare system that would result from inappropriate transfers between the inpatient acute care hospital and the LTCH located within the acute care hospital, we have implemented additional qualifying criteria at § 412.22(e) for these entities. These criteria require that in order to be excluded from the prospective payment system, a hospital located in or on the campus of an acute care hospital (referred to as a "hospital-within-a-hospital") must have a separate governing body, chief executive officer, chief medical officer, and medical staff. In addition, the hospital must perform basic functions independently from the host hospital, incur no more than 15 percent of its total inpatient operating costs for items and services supplied by the hospital in which it is located, and have an inpatient load of which at least 75 percent of patients are admitted from sources other than the host hospital. Originally, these regulations were effective as of October 1994. However, section 4417(a) of the BBA amended section 1886(d)(1)(B) of the Act to provide that a hospital that was excluded from the prospective payment system on or before September 30, 1995, as an LTCH, shall continue to be so classified, notwithstanding that it is located in the same building or in one or more buildings located on the same campus as another hospital. (See § 412.22(f).)

In the late 1990s, we became aware of a newly developing entity that was physically similar, but legally unrelated, to a hospital-within-a-hospital. These entities were hospital-within-hospital type facilities (in the buildings or on the campuses of acute care hospitals) owned by a separate existing LTCH. We identified these facilities as "long-term care hospital satellites."

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the hospital inpatient prospective payment system, a satellite of a hospital: (1) Must maintain admission and discharge records that are separately identified from those of the hospital in which it is located; (2) cannot commingle beds with beds of the hospital in which it is located; (3) must be serviced by the same fiscal intermediary as the hospital of which it is a part; (4) Must be treated as a separate cost center of the hospital of which it is a part; (5) for cost reporting purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (6) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as that hospital. In addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the hospital inpatient prospective payment system. The total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital that was excluded from the prospective payment system for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

7. Specialty Groups of LTCHs by Patient Mix

There is a widely held view that the population of LTCHs is heterogeneous. We believe that understanding the composition of this population and identifying and classifying subgroups within it are fundamental to designing a prospective payment system for LTCHs.

Broad categories of conditions as defined by major diagnostic categories (MDCs), the principal diagnostic categorization tool used under the hospital inpatient prospective payment system, were used to classify LTCHs according to the medical conditions of their patient caseloads. (MDCs were formed by dividing all possible principal diagnoses into 25 mutually exclusive categories. Most MDCs correspond to a major organ system, though a few correspond to etiology.)

We also explored the possibility of grouping patients by DRGs or by selected individual diagnoses. These attempts resulted in creating groups too small for any effective characterization. However, the analysis did reveal that while some LTCHs treat a wide range of conditions, others specialize in one or two types of conditions. In order to analyze a grouping based on patient mix, under its contract with us, Urban first examined the proportion of facilities' caseloads in specific MDCs. There are five MDCs in which at least one LTCH has a majority (that is, more than 50 percent) of its cases. Patients with respiratory system problems are the most common caseload concentration—in 1997, 13 percent of LTCHs have a caseload concentration of 50 percent to 75 percent, and another 7 percent of LTCHs have more than 75 percent of their cases in this MDC.

The other three MDCs that make up a majority of at least one LTCH's patient caseload (nervous system MDC, musculoskeletal and connective tissue disorders MDC, and factors influencing health status MDC) are all related to rehabilitation needs. (Because rehabilitation-related DRGs are common

to LTCHs and fall into the "Factors Influencing Status" MDC, we are proposing to classify all cases in this MDC as rehabilitation services for the purpose of this analysis.) Seven percent of LTCHs have a majority of their caseload in an MDC related to rehabilitation-related services. A significantly less common concentration is seen in the 2 percent of LTCHs that have a majority of their patients in the mental diseases and disorders MDC. All but two LTCHs in our analysis have some share of patients with respiratory system problems. Similarly, all but five LTCHs have some patients with circulatory problems.

Based on these findings, we developed a grouping that consists of four broad categories of LTCHs based on patient caseload. Facilities with greater than 50 percent of their cases in the respiratory MDC were assigned to a "respiratory specialty" group for the purpose of this analysis. Similarly, all facilities with over 50 percent of their caseload in the mental MDC were designated as "mental specialty" facilities. The three rehabilitation-related MDCs were combined into one "rehabilitation-related MDC" category and grouped into a "rehabilitation specialty" group. All remaining facilities (that did not have high concentrations of patients in the respiratory MDC, the mental MDC, or the rehabilitation-related MDCs category) were placed into a "multispecialty" facility group. LTCHs in this category provide care to a wider range of patient types than LTCHs in the first three categories.

To better understand the relatively large number of multispecialty LTCHs, we explored their MDC composition. Not unexpectedly, most of these facilities have high proportions of cases in the respiratory MDC and the rehabilitation-related MDCs category, although some LTCHs do not serve either of these populations in great numbers. Few LTCHs do not have a significant share of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. Only 2 percent of multispecialty LTCHs have less than 25 percent of their caseload in either specialty group. Similarly, only 7 percent of multispecialty facilities have less than 35 percent of their caseload in either of the two groups. In contrast, about 60 percent of LTCHs have at least half of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. This high share demonstrates that, despite their assignment to the multispecialty category, most LTCHs serve a high percentage of patients with respiratory or rehabilitation problems, or both.

Although respiratory and rehabilitation specialty facilities are prevalent in the LTCH population, there are also some "niche" LTCHs that have unique patient populations or provide uncommon services. These hospitals include, for example, a large hospital where most admitted individuals (90 percent) die in the facility.

Several LTCHs provide services for special populations. One facility provides services for a prison population. A large share of this facility's funding is through Medicaid; cost report data show Medicaid covers two-thirds of its patient stays.

Some other facilities work with similarly specialized populations and have very small Medicare caseloads. In particular, two facilities that focus on developmentally disabled children and younger adults had fewer than 10 Medicare stays in 1997. Cost reports show that one of these facilities, which provides rehabilitation for its Medicare patients, has few discharges (under 100) regardless of payer source. The other, which provides mostly psychiatric services, relies on public funding for only a small share of its discharge payments.

Although there are a few niche facilities in the LTCH population, our analysis indicates that a preponderance of the LTCHs can be classified in distinct specialty groups that focus on adult rehabilitation and respiratory system care.

8. Sources and Destinations of LTCH Patients

Another useful perspective on LTCHs is the pattern of sources from which patients are admitted to LTCHs and destinations to which LTCH patients are discharged. This information shows how such transition patterns differ among the specialty groups. In general, the findings are consistent with the notion that LTCHs as a group are heterogeneous in terms of the patients they serve.

The vast majority (70 percent) of LTCH patients are admitted from acute care hospitals. Within this group, acute care patients whose stays are designated as "outlier" stays, as defined by section 1886(d)(5)(A)(i) of the Act and implemented in § 412.80, were identified separately. Sixteen percent of LTCH admissions were acute care hospital outlier patients, while 54 percent were admitted from acute care hospitals but did not have extraordinarily long acute care stays. After acute care hospitals, direct admission from the community is the next most common source of admissions (14 percent) to LTCHs.

The admission patterns vary somewhat by LTCH specialty type. Notably, 85 percent of admissions to respiratory specialty LTCHs are from acute care hospitals, including 22 percent that are acute care hospital outlier cases. A very small percentage (7 percent) of admissions to respiratory specialty LTCHs are from the community. In contrast, the admission sources for the rehabilitation specialty LTCHs are more similar to that of the multispecialty LTCHs. Notably, a higher than average share of patients come from SNFs (8 percent) and HHAs (6 percent) and a lower percentage of patients transition from acute care hospital outlier stays (12 percent). A relatively large share (11 percent) of patients at rehabilitation specialty LTCHs are admitted directly from the community compared to patients at respiratory specialty LTCHs (7 percent). These findings suggest that patients admitted to rehabilitation specialty LTCHs might present a less medically intensive clinical picture than patients admitted to respiratory specialty LTCHs.

The admission pattern of patients admitted to the mental specialty LTCHs is quite different from those of the other specialties. A relatively small percentage (31 percent) of patients are admitted from acute care hospitals and only 2 percent are admitted after being acute care hospital outliers. In contrast, large proportions are admitted directly from the community (40 percent) or from some other type of Medicare provider (27 percent).

An analysis of the pattern of discharge destinations for LTCHs shows that, overall, 38 percent of LTCH stays are discharged to the community without additional Medicare services. Equal percentages (18 percent) are discharged to SNFs and acute care hospitals, and 21 percent of patients are discharged to HHAs.

Some variations in discharge destination patterns exist among LTCHs by specialty. Relative to the overall sample, the respiratory specialty LTCHs have higher than average percentages of patients discharged to SNFs (24 percent versus 18 percent), and lower percentages discharged to HHAs (14 percent versus 21 percent). Rehabilitation specialty facilities, however, have a relatively high proportion of cases (34 percent) discharged to HHAs, and a lower than average proportion discharged to the community without additional Medicare services (28 percent versus 38 percent). Finally, mental specialty hospitals have an unusually high

percent of cases (71 percent) discharged to the community without additional Medicare services. These findings suggest that patients served by respiratory specialty LTCHs are more likely to require extended care in institutional settings (for example, SNFs), while patients discharged from rehabilitation specialty facilities also require extended care, but not necessarily in institutional settings.

9. LTCHs and Patterns Among Post-Acute Care Facilities

Urban's research also produced data regarding a comparison of LTCHs with other post-acute care settings in order to provide us with the broadest possible understanding of the universe of LTCHs. The findings were only preliminary comparisons of patients among and across post-acute settings because of the nature of each category of post-acute care providers. Even though data suggest substantial clinical differences among the providers with some areas of overlap, because of some similarities we found it useful to draw parallels and distinctions among post-acute care providers. Moreover, findings from this research supported conclusions published in several reports to the Congress produced by ProPAC and MedPAC over the past decade.

Most patients in LTCHs have several diagnosis codes on their Medicare claims, indicating that they have multiple comorbidities and are probably less stable upon admission than patients admitted to other post-acute care settings. Relative to IRFs, LTCHs have a higher proportion of patient costs attributable to ancillary services (for example, pharmacy, laboratory, and radiology charges) (MedPAC March 1999 Report to Congress, p. 95). LTCHs also provide care to a disproportionately large number of Medicare beneficiaries who are eligible because of disability. While individuals with disabilities make up about 10 percent of the Medicare population, they make up 17 percent of LTCH patients.

Urban's analysis also explored the demographic characteristics of LTCH patients compared to IRF patients. The proportion of LTCH patients who are under 65 years of age (18 percent) is twice that of IRF patients (9 percent). The share of LTCH patients over 85 years old is slightly higher (18 percent) compared to IRF patients (14 percent). LTCHs also have a higher proportion of male patients and a lower proportion of white patients than IRFs. LTCHs have long median lengths of stay: 21 days versus 16 days for IRFs. About one-third of the LTCH Medicare stays are by beneficiaries who are also eligible for Medicaid, compared to fewer Medicaid-eligible beneficiary stays at IRFs (17 percent). It has been widely documented that dually eligible beneficiaries are generally much sicker than non-Medicaid eligible Medicare beneficiaries.

Urban's analysis also included a description of the demographic characteristics of LTCH patient stays by admission sources—outlier acute care hospital, nonoutlier acute care hospital, and other. Those with prior outlier acute care hospital stays seem to be the most distinctive group in terms of length of stay, gender, race, and poverty: they have the highest mean and median length of stay in the LTCH, the highest proportion male, the highest proportion white, and the lowest proportion of Medicaid-eligible patients. However, in terms of age, those with prior hospital stays (whether outlier or nonoutlier) are quite different from those with other admission sources. Those without a prior acute care hospital stay are younger and about twice as many are under age 65, whose mean age is about 5 and 3 years lower than those with a prior outlier stay and those with a prior nonoutlier stay, respectively. Among those with an acute care hospital stay, the nonoutliers are slightly older on average, with higher percentages in the oldest groups (75 to 84 and 85 plus) and the highest median age of all three groups.

The policies that we are proposing in this proposed rule were determined in part based on analysis of the above data and information gathered on LTCHs and their Medicare patients.

F. Overview of System Analysis for the Proposed LTCH Prospective Payment System

For the systems analysis, 3M used the MedPAR (FY 1999 through FY 2000), OSCAR (FY 2000), and HCRIS (FYs 1998 and early 1999) files. Specifically, for this proposed rule, 3M performed the following tasks:

- Construction of an updated data file, using the most recent data available from CMS.
- Analysis of issues, factors, or variables and presentation of options for possible use in the design and implementation of the proposed prospective payment system.
- Data simulation of various system features to analyze their impact on the design of the proposed prospective payment system.

A data file was constructed to serve as the basis of our proposed patient classification system and the development of proposed payment weight rates and proposed payment adjustments. The analysis of this data file helped us regarding the structure of the proposed prospective payment system in this proposed rule. We relied upon patient charge data from FY 2000 MedPAR for setting proposed LTC-DRG weights and upon costs data from FY 1998 and FY 1999 cost reports for proposed payment rates. We expect that the availability of updated FY 2000 MedPAR data and updated FY 1999 HCRIS data, further analysis of the data file, and review of the comments that we receive in response to this proposed rule may result in refinements to our proposed policies, particularly in the areas of weights and rates.

G. Evaluation of DRG-Based Patient Classification Systems

Section 307(b) of Public Law 106–554 modified the requirements of section 123 of Public Law 106–113 by specifically requiring that the Secretary examine "the feasibility and the impact of basing payment under such a system [the LTCH prospective payment system] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data."

In order to comply with statutory mandates, our evaluation of DRG-based patient classification systems focused on two models—the LTC-all patient-refined DRGs (LTC–APR–DRGs Version. 1.0), a severity-based case-mix classification system developed specifically for LTCHs; and the LTC–CMS–DRGs, a modification of the DRG system used in the acute care hospital inpatient prospective payment system.

The LTC–APR–DRGs, a condensed version of 3M's all-patient refined DRGs (APR–DRGs) for acute care hospitals, was developed by Dr. Norbert Goldfield, Clinical Director of 3M Health Information Systems for exclusive use in LTCHs. The LTC–APR–DRG system was designed to reflect the clinical characteristics of LTCH patients. This case-mix classification model contains 26 base LTC–APR–DRGs, subdivided by 4 severity of illness levels to yield 104 classification levels. In this system, the patient's secondary diagnoses, their interaction, and their clinical impact on the primary diagnosis determine the severity level assigned to each of the 26 LTC–APR–DRGs.

The LTC–CMS–DRGs are based on research done by The Lewin Group (Developing a Long-Term Hospital Prospective Payment System Using Currently Available Administrative Data for the National Association of Long-Term Hospitals (NALTH), July 1999.) This model uses our existing hospital inpatient DRGs with weights that accounted for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), the LTC–CMS–DRG model groups low volume DRGs into 5 quintiles based on average charge per discharge. The result was 184 classification groups (179 DRG-based and 5 charge-based payment groups) based on patient data from FYs 1994 and 1995. (CMS updated this analysis using patient data from FYs 1999 and 2000 for purposes of system evaluations.)

Under either classification system, DRG weights would be based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals. GROUPER software programs enabled us to examine the most recent LTCH and acute care hospital inpatient prospective payment system patient discharge data in light of the features of each system. Using regression analyses and simulations, the impact of each patient classification system on potential adjustment features for the prospective payment system was assessed. (Data files used in these analyses are specified in section I.C.2.) Our medical staff as well as physicians involved in treatment of patients at LTCHs provided additional input from the standpoint of clinical coherence and practical applicability.

The system that we are proposing for the LTCH prospective payment system is the LTC–CMS–DRG GROUPER that is based on the Lewin model because we believe it accurately predicts costs without the problems that we believe could be inherent with the APR–DRG system. (In section III. of this proposed rule, which describes the functioning of the classification system as a component of the proposed LTCH prospective payment system, the LTC–CMS–DRGs are referred to as the proposed LTC–DRGs.)

It is important to note that we have analyzed both systems based on MedPAR files generated by LTCH patient data, using the best available data. Since the TEFRA payment system, under which LTCHs are currently paid, is not tied to patient diagnoses, the coding data from LTCHs have not been used for payment. Nevertheless, data analyses indicated that there was a minimal difference in both systems' abilities to predict costs. (The difference in the R^2, a statistical measure of how much variation in resource use among cases is explained by the models, was only 0.0313.)

We believe that either classification system would result in more equitable payments for LTCHs compared to current payment methods. The proposed LTCH prospective payment system would generally improve the accuracy of payments for more clinically complex patients. (*See* our discussion of the TEFRA payment system in section I.A. of this proposed rule.) As the Congress intended, the DRG weights under the proposed LTCH prospective payment system would reflect the "* * * different resource use of long-term care hospital patients." Patients requiring more intensive complex services would be classified in LTC–DRGs with higher relative weights and hospitals would receive appropriately higher payments for these patients. We solicit comments on the impact one system may have over another as it applies to different kinds of LTCHs.

Although either system would result in more equitable payments to LTCHs, we have several interrelated concerns about adopting the LTC–APR–DRG system based upon its complexity, its clinical subjectivity, and its utility as it relates to other Medicare prospective payment systems. The LTC–APR–DRG model provides a clinical description of the population of LTCHs, patients exhibiting a range of severity of illness with multiple comorbidities as indicated by secondary diagnoses. The clinical interaction of the primary diagnosis with these comorbidities determines the severity level of the primary diagnoses, resulting in the final assignment to a LTC–APR–DRG by the GROUPER software designed for this system.

One aspect of our examination of the LTC–APR–DRG system included clinical review of actual case studies provided by physicians at several LTCHs and evaluations of the LTC–APR–DRG assignments that would have resulted based on the clinical logic of the APR–DRG GROUPER. A review of a number of those cases by different medical professionals resulted in different possible classifications for the GROUPER program. Looking at the same case, different views were held as to which APR–DRG category or to which level of severity the case should be grouped. Given the array of specialization at different LTCHs reflecting a range of services and patient types, as described in section I.E.7. of this preamble, we believe that we lack sufficient data, at this point in time, to definitely determine the effect of particular comorbidities on patient resource needs in LTCHs. Furthermore, it appears that depending on how many of the diagnoses are coded, medical judgement suggests that it could be possible to classify the same patient in more than one group or level of severity. Because of these concerns, we believe that payments under such a policy could be insufficiently well-defined, given currently available data, to ensure consistently appropriate Medicare payments.

We are aware that the forthcoming prospective payment system for IRFs is based on a patient classification system that includes a measure of comorbidities, the combination of the case-mix group (CMG) and comorbidity tier. In general, most IRF patients are treated for one primary rehabilitation condition (for example, a hip replacement) that is associated with functional measures and sometimes age. The CMGs constructed for IRF patients account for diagnostic, functional, and age variables. These variables are used to explain the variability in the cost among the various CMGs. Some of the remaining variability in cost could then be further explained by selected comorbidities which the inpatient rehabilitation data showed were statistically significant.

In contrast, determining whether particular comorbidities increase the cost of a case for a LTCH patient is complicated by the nature of the clinical characteristics of these patients. More specifically, many LTCH patients have numerous conditions that may not all be relevant to the cost of care for a particular discharge. Although the patient actually has a specific condition, including this condition among secondary diagnoses coded under the LTC–APR–DRG system, may assign an inaccurate severity level to the primary diagnosis and result in inappropriate LTC–APR–DRG payment. We also believe that reliance on existing comorbidity information submitted on LTCH bills could result in significant variation in the assignment of the specific LTC–APR–DRGs.

The LTC–CMS–DRG system is a system that is familiar to hospitals because it is based on the current DRG system under the acute care hospital inpatient prospective payment system. We believe that the familiarity of the LTC–CMS–DRG model may best facilitate the transition from the cost-based system to the prospective payment system as well as providing continuity in payment methodology across related sites of care (for example,

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an acute care hospitalization for a patient with a chronic condition.).

We further wish to note that the adoption of severity-adjusted DRGs will be explored by CMS for use under the hospital inpatient prospective payment system. In its June 2000 Report to Congress, MedPAC recommended that the Secretary "* * * improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis related group refinements that more fully capture differences in severity of illness among patients." (Recommendation 3A, p. 63.) Although we are not proposing LTC–APR–DRGs in this proposed rule, we are interested in receiving comments on this issue. We also wish to note that in the event the LTCH prospective payment system is implemented using LTC–DRGs, we could have the opportunity to propose a severity-adjusted patient classification for LTCHs in the future, particularly if the acute care hospital inpatient prospective payment system moves in this direction.

H. Recommendations by MedPAC for a LTCH Prospective Payment System

As we noted in the section I.A.5. of this proposed rule, since the establishment of the acute care hospital inpatient prospective payment system in 1983, the topic of post-acute care payments under Medicare has been addressed in reports to the Congress prepared by ProPAC and its successor, MedPAC. Recommendations in these reports encouraged modifications to Medicare payment policies, examined the differences among post-acute care providers and within each category of providers, and reiterated the goal of eventually implementing prospective payment systems for providers being paid under the target amount payment methodology.

In its March 1, 1996 Report and Recommendations to the Congress, ProPAC recommended that "prospective payment systems should be implemented for all post-acute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control the volume of post-acute service use, such as bundling services for a single payment." (Recommendation 20, p. 75)

The following year, in its March 1, 1997 Report and Recommendations to the Congress, ProPAC recommended "* * * the Congress and the Secretary to consider the overlap in services and beneficiaries across post-acute care providers as they modify Medicare payment policies. Changes to one provider's payment method could shift utilization to other sites and thus fail to curb overall spending. To this end, ProPAC commends HCFA's (now CMS's) efforts to identify elements common to the various facility-specific patient classification systems to use in comparing beneficiaries across settings." Ultimately, Medicare should move towards more uniform payment policies across sites, the Report continued, and "payment amounts should vary depending on the intensity and nature of the services beneficiaries require, rather than on the setting. Further, providers should have incentives to coordinate services or an episode * * *" (p. 60)

However, with enactment of the BBA, the Congress enacted legislation to provide for distinct prospective payment systems for HHAs (section 4603(b)), SNFs (section 4432(a)), and IRFs (section 4421). The BBA further required the development of a legislative proposal for the case-mix adjusted LTCH prospective payment system. Section 123 of the BBRA requires the Secretary to develop a per discharge DRG-based system for LTCHs, and section 307(a) of BIPA mandates that the Secretary examine the feasibility and impact of basing payments to LTCHs using the existing DRGs, modified to account for the resource use of LTCH patients. Thus, Congress mandated systems that would result in different payments, depending on the site of service, and not a system that is uniform across sites.

Notwithstanding the mandate to establish post-acute care prospective payment systems, MedPAC continued to articulate concern regarding the overlap of services among post-acute providers. In its June 1998 Report to Congress, MedPAC stated that "all of these policy changes, in combination with the fact that similar services can be provided in multiple post-acute settings, indicate the need for continued monitoring and analysis of post-acute providers, policies, and service utilization." (p. 90)

In its March 1999 Report to Congress, MedPAC encouraged the Secretary to "* * * collect a core set of patient assessment information across all post-acute care settings." (Recommendation 5A, p. 82)

Section 123 of BBRA specifically mandated a per discharge, DRG-based prospective payment system for LTCHs and established a timetable for the presentation of the proposed system in a report to the Congress by October 1, 2001 and for implementation of the actual prospective payment system by October 1, 2002. Further direction for a distinct prospective payment system for LTCHs was indicated in section 307(b) of BIPA, which directed the Secretary to examine a number of payment adjustment factors and establishes a default system if the Secretary is unable to meet the implementation timetable.

As we develop the prospective payment system for LTCHs described in this proposed rule, however, we wish to state that we do not believe that the establishment of distinct prospective payment systems for each post-acute care provider group eliminates the need to monitor payments and services across all service settings. We endorse MedPAC's Recommendation 3G, in its March 2000 Report to Congress, that encourages the Secretary to "assess important aspects of the care uniquely provided in a particular setting, compare certain processes and outcomes of care provided in alternative settings, and evaluate the quality of care furnished in multiple-provider episodes of post-acute care." (p. 65). We intend to monitor the appropriateness of LTCH stays by tracking the number of LTCH patients and SNF patients and the frequency of subsequent admissions to an acute care hospital. We believe this data will be valuable in assessing the outcome of care provided in these settings.

Furthermore, we strongly support the additional research that will be required to choose or to develop an assessment instrument that will evaluate the quality of services delivered to beneficiaries in post-acute settings.

I. Evaluated Options for the Proposed Prospective Payment System for LTCHs

Section 123 of BBRA and section 307(b) of BIPA establish the statutory authority for the development of the proposed prospective payment system for LTCHs that is discussed in this proposed rule. Under the BBRA, we are required to:

- Develop a per discharge prospective payment system for inpatient hospital services furnished by LTCHs described in section 1886(d)(1)(B)(iv) of the Act.
- Include an adequate patient classification system that is based on DRGs that reflect the differences in patient resource use and costs.
- Maintain budget neutrality.
- Submit a report to the Congress describing this system by October 1, 2001.
- Implement this system for cost reporting periods beginning on or after October 1, 2002.

Section 307(b) of BIPA modified the requirements of section 123 of the BBRA by requiring the Secretary to—

- Examine the feasibility and the impact of basing payment under the prospective payment system on the use of existing (or refined) DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital data.
- Examine appropriate adjustments to LTCH prospective payments, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In the event that we are unable to meet the implementation deadline of October 1, 2002, a default system will be implemented in which the payment is based on existing hospital DRGs, modified where feasible to account for resource use of LTCH patients. This default system would be based on the most recently available hospital discharge data for such services furnished on or after that date.

Although the statutory mandate for development of the LTCH prospective payment system established in the BBRA and the BIPA requires a per discharge, DRG-based system, generally the statute gives the Secretary broad discretion in designing the prospective payment system. The design of any prospective payment system requires decisions on the following issues:

- The categories used to classify services such as DRGs.
- The methodology for calculating the relative weights that are assigned to each patient category to reflect the relative difference in resource use across DRGs (these are relative values in economic terminology).
- The methodology for calculating the base rate, which is the basis for determining the DRG-based Federal payment rates. It is a standardized payment amount that is based on average costs from a base period and also reflects the combined aggregate effects of the payment weights and various facility and case level adjustments. Operating and capital-related costs may be combined in this base rate or may be treated separately.
- Adjustments to the base rate to reflect cost differences across providers, such as disproportionate share adjustments, indirect graduate medical education programs, and outliers.
- Finally, a procedure for the transition from the current system to the DRG-based prospective payment system must be established.

We pursued a two-pronged strategy as we developed the proposed prospective payment system for LTCHs. First, we analyzed the data and empirical facts about LTCH patients and providers summarized in section I.E. of this proposed rule. Secondly, in light of this information, we analyzed each option based on regressions and simulations, using the data sets described in section I.D. of this preamble.

Both technical and proposed policy considerations were important in these design proposals. We reviewed features of other recent prospective payment systems designed or implemented by CMS for other post-acute care providers to determine the feasibility of including features in the LTCH prospective payment system and to identify modifications that might enhance their application for this system. In addition, we considered factors that were important to the development of Medicare's acute care hospital inpatient prospective payment system, such as urban and rural location, and whether the hospital served a disproportionate share of low-income patients. We also analyzed clinical significance, administrative simplicity, availability of data, and consistency with other Medicare payment policies.

In addition to satisfying statutory requirements, the design of the proposed prospective payment system for LTCHs presented in this proposed rule is the result of the following factors:

- Our empirical understanding of the "universe" of LTCHs and long-term care patients, as set forth in section I.E. of this preamble.
- Our experience with the acute care hospital inpatient prospective payment system.
- Consideration of recommendations in MedPAC's reports to Congress on post-acute care.
- Our monitoring of the establishment and continuing development and refinement of prospective payment systems for IRFs, SNFs, and HHAs.

Additionally, as we deliberated on the choice of the specific model of DRG-based system we are proposing to use for the LTCH prospective payment system, we consulted with LTCH physicians and LTCH representatives.

II. General Discussion of the Proposed LTCH Prospective Payment System

A. Goals of the Proposed LTCH Prospective Payment System

We have designed the proposed prospective payment system for LTCHs in this proposed rule with the following objectives:

- To base the prospective payment system on an analysis of the best information and data available.
- To establish a payment model using our experience in implementing other prospective payment systems.
- To provide incentives to control costs and to furnish services as efficiently as possible.
- To base payment on clinically coherent categories and to appropriately reflect average resource needs across different categories.
- To minimize opportunities and incentives for inappropriately maximizing Medicare payments.
- To establish a system that is beneficiary centered by formulating procedures for quality monitoring.
- To develop a system that is administratively feasible.

B. Applicability of the Proposed LTCH Prospective Payment System

Our existing regulations at 42 CFR Part 482, Subparts A through D set forth the general conditions that hospitals must meet to qualify to participate in Medicare. There are no additional conditions for LTCHs as there are for psychiatric facilities.

Criteria for classification as a LTCH for purposes of payment are set forth in existing § 412.23(e), which provides that a LTCH must—

- Have a provider agreement to participate as a hospital and an average inpatient length of stay greater than 25 days or for cost reporting periods beginning on or after August 5, 1997, for a hospital that was first excluded from the prospective payment system in 1986, have an average inpatient length of stay of greater than 20 days and demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease, as defined in regulations. The calculation of the average inpatient length of stay is calculated by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.
- Meet the additional criteria specified in § 412.22(e) if it is to be classified as a hospital-within-a-hospital and to be excluded from the acute care hospital inpatient prospective payment system.
- Meet the additional criteria specified in § 412.22(h) if it is to be classified as a satellite facility and to be excluded from the acute care hospital inpatient prospective payment system.

Results of our research on LTCHs, as set forth in section I.D. of this preamble, have suggested the following particular issue that we have evaluated and are proposing to address concurrent with the proposed implementation of the proposed LTCH prospective payment system:

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Proposed Change in the Average 25-Day Total Inpatient Stay Requirement. Section 1886(d)(1)(B)(iv)(I) of the Act describes a LTCH generally as "a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days." Thus, the statute gives the Secretary extremely broad discretion in determining the average inpatient length of stay for hospitals for purposes of determining whether a hospital warrants exclusion from the prospective payment system in section 1886(d) of the Act. Existing Medicare regulations at § 412.23(e)(1) and (e)(2) include all hospital inpatients in this calculation of the average inpatient length of stay.

Our data have revealed that approximately 52 percent of Medicare patients at LTCHs have lengths of stay of less than ⅔ of the average length of stay for the proposed LTC–DRGs in this proposed rule, and 20 percent have a length of stay of even less than 8 days. This means that some hospitals, while currently qualifying as LTCH by averaging non-Medicare long stay patients to maintain a length of stay of over 25 days, do not furnish "long-term care" on average to their Medicare patients. In these situations, many of the hospitals' short stay Medicare patients could be receiving appropriate services as patients at acute care hospitals. Under the proposed LTCH prospective payment system, the proposed LTC–DRG weights and proposed standard Federal payment rate are based on the charges and costs of LTCH patients, which are typically more medically complex and more costly than acute care hospital patients.

Since the proposed LTCH prospective payment system would result in higher per discharge payments for LTCHs than payments under the acute care hospital inpatient prospective payment system for patients that would group into identical DRGs under each system, we believe that under current policy, which factors in non-Medicare patients' lengths of stay in determining LTCH status, could result in inappropriately higher payments for those Medicare short-stay patients who happen to be treated in a LTCH instead of an acute care hospital. This is the case since if the average length of stay of patients at a hospital would not reach the mandatory 25-days threshold for designation as a LTCH unless non-Medicare patients are included in the calculation, the hospital would be paid for its Medicare patients under the acute care hospital inpatient prospective payment system. Therefore, if a hospital is not treating Medicare patients that, on average, require the more costly services offered at LTCHs that differentiate these hospitals from acute care hospitals, we believe that Medicare payments should be determined under the acute care hospital inpatient prospective payment system. Such payments would be lower for each DRG than would be paid for under the LTC–DRG system, reflecting the lower costs of acute care hospitals.

Under the current TEFRA reasonable cost-based reimbursement system, Medicare payments to LTCHs are commensurate with the actual reasonable costs incurred by the hospital. Therefore, under that system, Medicare payments for shorter lengths of stay patients reflect the lower costs of those patients. However, under the proposed LTCH prospective payment system, which is based on average costs of treatment for particular diagnosis, the hospital would receive prospective payments based on such average costs for these much shorter length of stay patients. Even under our proposed short-stay outlier policy, as described in section IV.B.2. of this proposed rule, the hospital would have the opportunity to be paid 150 percent of its costs.

Therefore, under our broad authority in the statute to determine the average inpatient length of stay, we are proposing to specify that we would include the hospital's Medicare patients, but not non-Medicare patients, in determining the average inpatient length of stay (proposed § 412.23(e)(2)) for purposes of section 1886(d)(1)(B)(iv)(I) of the Act. In proposing this change in policy, we believe there would be a strong incentive for LTCHs not to admit many short-stay Medicare patients since doing so could jeopardize their status as a LTCH. Instead, those patients could receive appropriate care at an acute care hospital and the care would be paid under the hospital inpatient prospective payment system. Furthermore, changing the methodology for determining the average inpatient length of stay to be based only on Medicare patients is consistent with the intent of our proposed very short-stay discharge policy (described in section IV.B.1. of this proposed rule) and our proposed short-stay outlier policy (described in section IV.B.2. of this proposed rule), which are also intended to discourage LTCHs under the proposed prospective payment system from treating Medicare patients that do not require the more costly resources of LTCHs and who could reasonably be treated in acute care hospitals.

We would monitor the types of hospitals that would qualify as LTCHs based on this proposed definition. It is possible that hospitals that currently qualify as either rehabilitation hospitals or psychiatric hospitals would also qualify as LTCHs under this proposed revised criteria, and could be paid as LTCHs in order to maximize Medicare payments. We also would monitor whether the proposed change in methodology for measuring the average length of stay in LTCHs would result in unanticipated shifts of patients to those settings. If a pattern of these behaviors is observed, we believe it may be appropriate that Congress address the issues raised through a legislative change.

As indicated above, pursuant to our broad authority in the statute, we are proposing to change the methodology for determining the average inpatient length of stay for purposes of section 1886(d)(1)(B)(iv)(I) of the Act, but we are not proposing to change the methodology for purposes of section 1886(d)(1)(B)(iv)(II) of the Act (proposed § 412.23(e)). For purposes of the latter provision (subclause (II)), we are proposing to retain the current methodology (which includes non-Medicare as well as Medicare patients) because we believe that the considerations underlying the proposed change in methodology for subclause (I) are not present under subclause (II). As discussed above, we are proposing to revise the methodology for purposes of the general definition of LTCH under subclause (I) because it has come to our attention that some hospitals that might not warrant exclusion from the prospective payment system have nevertheless obtained status as excluded hospitals under the current methodology. We believe that excluding non-Medicare patients in determining the average inpatient length of stay for purposes of subclause (I) would be more appropriate in identifying the hospitals that warrant exclusion under the general definition of LTCH in subclause (I). However, in enacting subclause (II), Congress provided an exception to the general definition of LTCH under subclause (I), and we have no reason to believe that the proposed change in methodology for determining the average inpatient length of stay would better identify the hospitals that Congress intended to exclude under subclause (II). Therefore, at this time, we are proposing to retain the current methodology for purposes of subclause (II).

C. LTCHs Not Subject to the Proposed LTCH Prospective Payment System

We are proposing that only hospitals qualifying as LTCHs under the proposed revised criteria described in section II.B. of this proposed rule and in proposed revised § 412.23(e) by October 1, 2002, would be subject to the proposed LTCH prospective payment system. (This proposed system is summarized below in section II.D. and described in detail in section IV. of this proposed rule.) Our proposed treatment of hospitals first qualifying as LTCHs after October 1, 2002, is addressed in section IV.H. of this proposed rule.

The following hospitals are paid under special payment provisions, as described in existing § 412.22(c) and, therefore, would not be subject to the proposed LTCH prospective payment system rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

D. Summary Description of the Proposed LTCH Prospective Payment System

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we are proposing to implement a prospective payment system for LTCHs that would replace the current reasonable cost-based payment system under TEFRA. The proposed prospective payment system would utilize information from LTCH patient records to classify patients into distinct DRGs based on clinical characteristics and expected resource needs. Separate payments would be calculated for each DRG with additional adjustments applied, as described below.

1. Procedures

We are proposing that, upon the discharge of the patient from a LTCH, the LTCH would assign appropriate diagnosis and procedure codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). The LTCH would then enter these codes on the current Medicare claims form and submit the completed claims form to its Medicare fiscal intermediary. At present, the standard Medicare claims form is the UB–92. Under a requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, electronic health care claims, including Medicare claims, will be required to be in the new national standard claims format and medical data code sets in accordance with regulations at 45 CFR Parts 160 and 162. The Medicare fiscal intermediary would enter the information into its claims processing systems and subject it to a series of edits called the Medicare Code Editor (MCE). This editor is designed to identify cases that would require further review before classification into a proposed LTC–DRG (described in sections II.D.2. and III. of this proposed rule).

After screening through the MCE, each claim would be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the GROUPER utilized by the acute care hospital inpatient prospective payment system, which was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare fiscal intermediary would determine the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments.

As provided for under the acute care hospital inpatient prospective payment system, we are proposing to provide opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary (proposed § 412.513(c)). A hospital would have 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital would be allowed to submit additional information as part of its request. The fiscal intermediary would review that hospital's request and any additional information and would decide whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case would be reviewed by the appropriate Peer Review Organization (PRO) as specified in § 476.71(c)(2). Following this 60-day period, the hospital would not be able to submit additional information with respect to the LTC–DRG assignment or otherwise revise its claim.

The operational aspects and instructions for completing and submitting Medicare claims under the LTCH prospective payment system will be addressed in a Medicare Program Memorandum once the final system requirements are developed and implemented.

2. Patient Classification Provisions

We are proposing a patient classification system called long-term care diagnosis-related groups (LTC–DRGs). The LTC–DRGs would classify patient discharges based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. We began the development of the proposed LTC–DRGs by using the CMS DRGs under the acute care hospital inpatient prospective payment system with the most recent data available. We address the issue of the use of proposed low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights. Further details of the proposed LTC–DRG classification system are discussed in section III. of this proposed rule.

3. Payment Rates

In accordance with section 123(a)(1) of Public Law 106–113, we are proposing to use a discharge as the payment unit for the proposed LTCH prospective payment system for Medicare patients. We would update these per discharge payment amounts annually. The proposed payment rates would encompass both inpatient operating and capital-related costs of furnishing covered inpatient LTCH services, including routine and ancillary costs, but not the costs of bad debts, approved educational activities, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a PRO, which are costs paid outside the prospective payment system. Consistent with current policy, beneficiaries may be charged only for deductibles, coinsurance, and noncovered services (for example, telephone and television). They may not be charged for the differences between the hospital's cost of providing covered care and the proposed Medicare LTCH prospective payment amount.

We are proposing to determine the LTCH prospective payment rates using relative weights to account for the variation in resource use among LTC–DRGs. During FY 2003, the LTCH prospective payment system would be "budget neutral" in accordance with section 123(a)(1) of Public Law 106–113. That is, total payments for LTCHs during FY 2003 would be projected to equal payments that would have been paid for operating and capital-related costs of LTCHs had this proposed new

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payment system not been enacted. Budget neutrality is discussed in detail in section IV. of this preamble.

Based on our analysis of the data, we are proposing to make additional payments to LTCHs for discharges meeting specified criteria as "outliers." For purposes of this proposed rule, outliers are cases that have unusually high costs, exceeding the LTC–DRG payment plus the fixed loss amount as discussed in section IV.D. of this proposed rule. In conjunction with a high cost outlier policy, we are proposing payment policies regarding very short-stay discharges, short-stay outliers, and interrupted stays. A detailed description of these proposed policies appears in section IV.B. of this preamble.

4. Limitation on Charges to Beneficiaries

In accordance with existing regulations and for consistency with other established hospital prospective payment systems policies, we are proposing to specify that a LTCH may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital would be paid under the proposed LTCH prospective payment system (proposed § 412.507). We also are proposing to specify under proposed § 412.507 that a LTCH receiving a prospective payment for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of the existing regulations, and for items or services specified under § 489.20(a) of the existing regulations.

5. Medical Review Requirements

In accordance with existing regulations at §§ 412.44, 412.46, and 412.48 and for consistency with other established hospital prospective payment systems policies, we are proposing to specify that a LTCH must have an agreement with a PRO to have the PRO review, on an ongoing basis, the medical necessity, reasonableness, and appropriateness of hospital admissions and discharges and of inpatient hospital care for which outlier payments are sought; the validity of the hospital's diagnostic and procedural information; the completeness, adequacy, and quality of the services furnished in the hospital; and other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries (proposed § 412.508(a)). In addition, we are proposing to require that, because payment under the proposed prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to that effect. We are proposing to apply the existing hospital requirements for the contents and filing of the physician acknowledgment statement (proposed § 412.508(b)).

Also, consistent with existing established hospital prospective payment system policies, we are proposing that if CMS determines, on the basis of information supplied by the PRO, that a hospital has misrepresented admissions, discharges, or billing information or has taken an action that results in the unnecessary admission or multiple admission of individuals entitled to Part A benefits or other inappropriate medical or other practices, CMS may deny payment (in whole or in part) for inpatient hospital services related to the unnecessary or subsequent readmission of an individual or require the hospital to take actions necessary to prevent or correct the inappropriate practice. Notice and appeal of a denial of payment would be provided under procedures established to implement section 1155 of the Act. In addition, a determination of a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system would be referred to the Department's Office of Inspector General, for handling in accordance with 42 CFR 1001.301.

6. Furnishing of Inpatient Hospital Services Directly or Under Arrangements

In accordance with existing regulations at § 414.15(m) and for consistency with other established hospital prospective payment systems policies, we are proposing that a LTCH must furnish covered services to Medicare beneficiaries either directly or under arrangements. Under proposed § 412.509, we are proposing that the LTCH prospective payment would be payment in full for all inpatient hospital services, as defined in § 409.10 of the existing regulations. We also are proposing that we would not pay any provider or supplier other than the LTCH for services furnished to a Medicare beneficiary who is an inpatient of the LTCH, except for those services that are not included as inpatient hospital services that are listed under existing § 412.50 (that is, physicians' services that meet the requirements of § 415.102(a) for payment on a fee schedule basis; physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act; nurse practitioners and clinical nurse specialist services, as defined in section 1861 (s)(2)(K)(ii) of the Act; certified nurse midwife services, as defined in section 1861(gg) of the Act; qualified psychologist services, as defined in section 1861(ii) of the Act; and services of an anesthetist, as defined in § 410.69).

7. Reporting and Recordkeeping Requirements

We are proposing to impose the same recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of the existing regulations on all LTCHs that would participate in the proposed LTCH prospective payment system (proposed § 412.511).

8. Implementation of the Proposed Prospective Payment System

We are proposing a 5-year transition period from cost-based reimbursement to prospective payment for LTCHs as discussed in section IV.G. of this proposed rule. During this period, two payment percentages would be used to determine a LTCH's total payment under the prospective payment system. The proposed blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment federal rate percentage	Cost-based reimbursement percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

Therefore, for a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total prospective payment would consist of 80 percent of the amount based on the current cost-based reimbursement system and 20 percent of the proposed Federal prospective payment rate. The percentage of payment based on the LTCH prospective payment Federal rate would increase by 20 percent and the cost-based reimbursement rate percentage would decrease by 20 percent for each of the remaining 4 fiscal years in the transition period. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs would be determined entirely under the proposed Federal prospective payment system methodology. Furthermore, we are proposing that LTCHs would have the option to elect to be paid 100 percent of the Federal rate and not be subject to the 5-year transition. (See section IV.G. of this proposed rule.)

III. Long-Term Care Diagnosis-Related Group (LTC-DRG) Classifications

Section 307(b) of Public Law 106–554 requires that the Secretary examine "the feasibility and the impact of basing payment under such a system (the LTCH prospective payment system) on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data." The DRG-based patient classification system described in this section for the proposed LTCH prospective payment system would be based on the existing CMS DRG system used in the acute care hospital inpatient prospective payment system, modified where feasible to reflect the fact that LTCH patients represent a different patient mix from patients in short-term acute care hospitals, as required by section 307(b) of Public Law 106–554. Therefore, an understanding of pertinent facts about the CMS DRG system is essential to an understanding of the proposed LTC-DRGs that would be employed in the proposed LTCH prospective payment system.

A. Background

The design and development of DRGs began in the late 1960s at Yale University. The initial motivation for developing the DRGs was the creation of an effective framework for monitoring the quality of care and the utilization of services in a hospital setting. The first large-scale application of the DRGs as a basis for payments was in the late 1970s in New Jersey. New Jersey's State Department of Health used DRGs as the basis of a prospective payment system in which hospitals were reimbursed a fixed DRG-specific amount for each patient treated. In 1972, section 223 of Public Law 92–603 originally authorized the Secretary to set limits on costs reimbursed under Medicare for inpatient hospital services. In 1982, section 101(b)(3) of Public Law 97–248 required the Secretary to develop a legislative proposal for Medicare payments to hospitals, SNFs, and, to the extent feasible, other providers on a prospective basis. (See the September 1, 1983 **Federal Register** (48 FR 39754).) In 1983, Title VI of Public Law 98–21 added section 1886(d) to the Act, which established a national DRG-based hospital prospective payment system for Medicare inpatient acute care services. (See the January 3, 1984 **Federal Register** (49 FR 234).)

B. Historical Exclusion of LTCHs

Since the hospital inpatient DRG system had been developed from the cost and utilization experience of general acute care hospitals, it did not account for the resource costs for the types of patients treated in hospitals such as rehabilitation, psychiatric, and children's hospitals, as well as LTCHs and rehabilitation and psychiatric units of acute care hospitals. Therefore, the statute (section 1886(d)(1)(B) of the Act) excluded these classes of hospitals and units from the prospective payment system for general acute care hospitals. The excluded hospitals and units continued to receive payments based on costs subject to a cap on each facility's per discharge costs during a base year, with a yearly update as set forth in Public Law 97–248. (Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of Pub. L. 101–239.)

C. Patient Classifications by DRGs

1. Objectives of the Classification System

The DRGs are a patient classification system that provides a means of relating the type of patients treated by a hospital (that is, its case-mix) to the costs incurred by the hospital. In other words, DRGs relate a hospital's case-mix to the resource demands and associated costs experienced by the hospital. Therefore, a hospital that has a more complex case-mix treats patients who require more hospital resources.

While each patient is unique, groups of patients have demographic, diagnostic, and therapeutic attributes in common that determine their level of resource intensity. Given that the purpose of DRGs is to relate a hospital's case-mix to its resource intensity, it was necessary to develop a way of determining the types of patients treated and to relate each patient type to the resources they consumed. In the development of the existing CMS DRGs, in order to aggregate patients into meaningful patient classes, it was essential to develop clinically similar groups of patients with similar resource intensity. The characteristics of a practical and meaningful DRG system were distilled into the following objectives:

- The patient characteristics should be limited to information routinely collected on hospital abstract systems.
- There should be a manageable number of DRGs encompassing all patients.
- Each DRG should contain patients with a similar pattern of resource intensity.
- DRGs should be clinically coherent, that is, containing patients who are similar from a clinical perspective.

Under a DRG-based system, patient information routinely collected include the following six data items: principal diagnosis, secondary or additional diagnoses, procedures, age, gender, and discharge status. All hospitals routinely collect this information; therefore, a classification system based on these elements could be applied uniformly across hospitals.

Limiting the number of DRGs to a manageable total (that is, hundreds of patient classes instead of thousands) ensures that, for most of the DRGs, hospital discharge data would allow for meaningful comparative analysis to be performed. If a hospital has a sufficient number of cases in particular DRGs, this will allow for evaluations and comparisons of resource consumption by patients grouped to those DRGs as compared to resources consumed by patients grouped to other DRGs. A large number of DRGs with only a few patients in each group would not provide useful patterns of case-mix complexity and cost performance.

The resource intensity of the patients in each DRG must be similar in order to establish a relationship between the case-mix of a hospital and the resources it consumes. (Similar resource intensity means that the resources used are relatively consistent across the patients in each DRG.) In implementing the original DRGs for the acute care hospital inpatient prospective payment system, we recognized that some variation in resource intensity would be present among the patients in each DRG, but the level of variation would be identifiable and predictable.

The last characteristic for an effective patient classification system is that the patients in a DRG are similar from a clinical perspective; that is, the definition of a DRG has to be clinically coherent. This objective requires that the patient characteristics included in the definition of each DRG be related to a common organ system or etiology, and that a specific medical specialty should typically provide care to the patients in a particular DRG.

2. DRGs and Medicare Payments

The LTC–DRGs that we are proposing as the patient classification component of the proposed LTCH prospective payment system would correspond to

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the DRGs in the acute care hospital inpatient prospective payment system. As discussed in section IV.A.2. of this proposed rule, we are proposing to modify the CMS DRGs for the proposed LTCH prospective payment system by developing LTCH-specific relative weights to account for the fact that LTCHs generally treat patients with multiple medical problems. Therefore, we are presenting a brief review of the DRG patient classification system in the acute care hospital inpatient prospective payment system.

Generally, under the prospective payment system for short-term acute care hospital inpatient services, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the DRG to which a beneficiary's stay is assigned. Cases are classified into DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.
(6) Discharge status of the patient.

The diagnostic and procedure information from the patient's hospital record is reported by the hospital using ICD–9–CM codes on the uniform billing form currently in use.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject it to a front-end automated screening process called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, cases such as the following are selected for further development:

- Cases that are improperly coded (for example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.).
- Cases including surgical procedures not covered under Medicare (for example, organ transplant in a nonapproved transplant center).
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, it will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by a software program called the GROUPER using the six data elements noted above.

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update.

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. While we do not anticipate large numbers of surgical cases in LTCHs, surgical DRGs are assigned based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity. Generally, the GROUPER does not recognize certain other procedures; that is, those procedures not surgical (for example, EKG), or minor surgical procedures generally not performed in an operating room and, therefore, not considered as surgical by the GROUPER (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, discharge status, and presence or absence of complications or comorbidities (CC). It should be noted that CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis (for example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a comorbidity or complication when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to pre-existing conscious level). Additionally, we would note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

D. Proposed LTC–DRG Classification System for LTCHs

Unless otherwise noted, our analysis of a per discharge DRG-based patient classification system is based on LTCH data from the FY 2000 MedPAR file which contains hospital bills received through May 31, 2001, for discharges in FY 2000.

The proposed patient classification system for the proposed LTCH prospective payment system would be based on the hospital inpatient prospective payment system currently used for Medicare beneficiaries, as described in section III.C. of this proposed rule. Within the LTCH data set, as identified by provider number, we would classify all cases to the CMS DRGs. We identified individual LTCH cases with a length of stay equal to or less than 7 days (see section IV.B.1. of this preamble for a discussion of the proposed very short-stay discharge policy under § 412.527) and grouped them into two proposed very short-stay LTC–DRGs; one for psychiatric cases and one for all other cases. Therefore, the proposed patient classification system would consist of 501 DRGs that would form the basis of the proposed FY 2003 LTCH prospective payment system GROUPER. The 501 proposed LTC–DRGs include two DRGs for very short-stay discharges (*see* section IV.B.1.) and two error DRGs. The other 497 proposed LTC–DRGs are the same DRGs used in the hospital inpatient prospective payment system GROUPER for FY 2002 (version 18). Cases submitted to the fiscal intermediaries would be processed using the data elements, MCE, and the GROUPER system already in place for the acute care hospital inpatient prospective payment system as described above.

There is one significant difference in this proposed system that sets it apart from the concept of DRG definition based on clinical coherence. As noted above, cases with a length of stay equal to or less than 7 days (referred to hereafter as "very short-stay") were identified and grouped together in two separate LTC–DRGs.

We are proposing to group cases that stayed 7 days or fewer that would otherwise be grouped into DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders) into a new proposed psychiatric very short-stay group. We are proposing to classify all other cases that stayed 7 days or fewer, that is, very short-stay cases not classified into MDC 19 or 20, into the second new proposed very short-stay, nonpsychiatric group. Additionally, as in the acute care hospital inpatient prospective payment system, we are proposing to include two "error DRGs" in the LTC–DRG system where cases that cannot be assigned to valid DRGs will be grouped. These are DRG 469 (Principal diagnosis invalid as a discharge diagnosis) and DRG 470 (Ungroupable). (*See* 66 FR 40062, August 1, 2001.) Therefore, the LTC–DRG system that we are proposing would include 4 nonclinical categories into which LTCH patients can be grouped.

E. ICD–9–CM Coding System

1. Historical Use of ICD–9–CM Codes

The Ninth Revision of the International Classification of Diseases, Clinical Modification, was adapted for use in the United States in 1979. This coding system is the basis for the CMS DRGs, upon which the proposed LTC–DRGs would be based. Additionally, the Standards for Electronic Transactions (65 FR 50312) designates the ICD–9–CM volumes 1 and 2 (including the official ICD–9–CM Guidelines for Coding and Reporting) as the standard medical data code set for capturing diseases, injuries, impairments, other health-related problems and their manifestations and causes. The ICD–9–CM volume 3 procedures (including the Official ICD–9–CM Guidelines for Coding and Reporting) have been adopted as the HIPAA standard code set for prevention, diagnosis, treatment, and management of actions taken for diseases, injuries, and impairments on hospital inpatients. These guidelines are available through a number of sources, including the following Web site: *http://www.cdc.gov/nchs/data/icdguide.pdf*.

(We note that should the Secretary, in the future, adopt a different medical data code set for capturing diseases, injuries, or impairments, hospitals participating in the Medicare program would be required to use those codes.)

2. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular proposed LTC–DRG would determine the amount that would be paid for the case, it is important that the coding is accurate. We are proposing that classifications and terminology used in the proposed LTCH prospective payment system would be consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics (Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980) and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We wish to point out that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPPA Administrative Simplification Act of 1996 (see 45 CFR part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. Additionally, the following definitions (as described in the 1984 Revision of the Uniform Hospital Discharge Data Set, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS DRGs:

- Diagnoses include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.

All procedures performed would be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

As discussed in section II.D.1. of this proposed rule and consistent with the procedures for review of CMS DRGs under the acute care hospital inpatient prospective payment system, we are proposing to provide LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

3. Maintenance of ICD–9–CM System

In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The committee encourages participation in the above process by health-related organizations. In this regard, the committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups, as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the committee formulates recommendations, which then must be approved by the agencies.

The committee presents proposals for coding changes at two public meetings per year held at the CMS Central Office located in Baltimore, Maryland. The agenda and date of the meeting can be accessed on the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.htm*.

After consideration of public comments received at both meetings, as well as in writing, coding changes are published by CMS in the annual proposed and final rules in the **Federal**

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Register on Medicare program changes to the short-term acute care hospital inpatient prospective payment systems. For example, new codes effective for discharges on or after October 1, 2001, can be found in Tables 6A through 6F of the August 1, 2001 hospital inpatient prospective payment system and rates for FY 2002 final rule (66 FR 40063 through 40066).

All changes to the ICD–9–CM coding system that affect DRG assignment are addressed annually in the acute care hospital inpatient prospective payment system proposed and final rules. Since the proposed DRG-based patient classification system for the proposed LTCH prospective payments system is based on the acute care hospital inpatient prospective payment system DRGs, these changes would also affect the proposed LTCH prospective payment system DRG patient classification system. As coding changes may have an impact on DRG assignment, LTCHs would be encouraged to obtain and correctly use the most current edition of the ICD–9–CM codes. The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2002 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Dept. 50, Washington, DC 20402–9329, telephone: (202) 512–1800. The stock number is 017–022–01510–2, and the price is $22.00. In addition, private vendors also publish the ICD–9–CM.

Copies of the Coordination and Maintenance Committee minutes can be obtained from the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.htm.* We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS Room 1100, 6525 Belcrest Road, Hyattsville, MD 20782. Comments may be sent by e-mail to: *dfp4@cdc.gov.*

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Comments may be sent by e-mail to: *pbrooks@cms.hhs.gov.*

As noted above, the ICD–9–CM code changes that have been approved would become effective at the beginning of the Federal fiscal year, October 1. Of particular note to LTCHs would be the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D). Use of invalid codes would cause claims to fail the MCE screens.

4. Coding Rules and Use of ICD–9–CM in LTCHs

The emphasis on the need for proper coding cannot be overstated. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration.

Because of our concern with correct coding practice, we have been working with the AHA editorial advisory board for its publication "Coding Clinic for ICD–9–CM" since 1984. Coding Clinic was developed to improve the accuracy and uniformity of medical record coding and is recognized in the industry as the definitive source of coding instruction. In 1987, the AHA created the cooperating parties, who have final approval of the coding advice provided in Coding Clinic. The cooperating parties consist of the AHA, the AHIMA (formerly the AMRA), CMS (formerly HCFA), and NCHS. As we participate on the editorial advisory board and are one of the cooperating parties, we support the use of Coding Clinic for coding advice for LTCHs. Information about Coding Clinic can be obtained from the American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, or at its Web site at *http://www.ahacentraloffice.org.*

Even though we recognize that the **Federal Register** may not be the most efficient vehicle for coding instruction, we believe it is important to briefly review some of the basic instructions for coding. Our compelling need is based on the review of the data submitted by LTCHs. We note that the logic of the care patterns or place of treatment should not be considered in reviewing the following scenarios. Rather, we are attempting to present simplistic examples to illustrate correct coding practice.

- Principal diagnosis—As noted above, the specific definition for principal diagnosis established by the 1984 Revision of the Uniform Hospital Discharge Data Set is "the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care." When a patient is discharged from an acute care facility and admitted to a LTCH, the appropriate principal diagnosis at the LTCH is not necessarily the same diagnosis for which the patient received care at the acute care hospital. For example, a patient who suffers a stroke (code 436, Acute, but ill-defined, cerebrovascular disease) is admitted to an acute hospital for diagnosis and treatment. The patient is then transferred to a LTCH for further treatment of left-sided hemiparesis and dysphasia. The appropriate principal diagnosis at the LTCH would be a code from section 438 (Late effects of cerebrovascular disease), such as 438.20 (Late effects of cerebrovascular disease, Hemiplegia affecting unspecified side) or 438.12 (Late effects of cerebrovascular disease, Dysphasia).

Coding guidelines state that the residual condition is sequenced first followed by the cause of the late effect. In the case of cerebrovascular disease, the combination code describes both the residual of the stroke (for example, speech or language deficits or paralysis), and the cause of the residual (the stroke)). Code 436 would only be used for the first (initial) episode of care for the stroke that was in the acute care setting.

- Other diagnoses—Secondary diagnoses that have no bearing on the LTCH stay would not be coded. For example, a patient who has recovered from pneumonia during a previous episode of care would not have a diagnosis code for pneumonia included in his or her list of discharge diagnoses. The pneumonia was not treated during this LTCH admission and, therefore, has no bearing on this case.
- Procedures—Codes reflecting procedures provided during a previous acute care hospital stay would not be included because the procedure was not performed during this LTCH admission. For example, a patient with several chronic illnesses is admitted to an acute care hospital with a diagnosis of appendicitis for which he or she receives an appendectomy. The patient subsequently is transferred to a LTCH for medical treatment following surgery, and as a result of the multiple secondary conditions, the patient needs a higher level of care than he or she could receive at a SNF or at home with an HHA. In this situation, appendicitis would not be coded because this condition was resolved with the removal of the appendix. The procedure code for appendectomy would not be used on the LTCH record, as the procedure was performed in the acute care setting, not during the LTCH admission.

We would train fiscal intermediaries and providers on the new system prior to its implementation. We also would issue manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries following the publication of the final rule.

IV. Proposed Payment System for LTCHs

The LTCH prospective payment system proposed in this rule would use Federal prospective payment rates across 501 proposed distinct LTC–DRGs. We are proposing to establish a standard Federal payment rate based on the best available LTCH cost data. LTC–DRG relative weights would be applied to the standard Federal rate to account for the relative differences in resource use across the LTC–DRGs. The proposed system would also include an adjustment for very short-stay discharges, short-stay outliers, and high-cost outlier cases, as described in section IV.B. of this preamble.

The proposed standard Federal prospective payment rate, which is the basis for determining proposed Federal payment rates for each proposed LTC–DRG, would be determined based on average costs from a base period, and also would reflect the combined aggregate effects of the proposed payment weights and other proposed policies discussed in this section. In discussing the proposed methodology, we begin by describing the various adjustments and factors that would serve as the input used in establishing the proposed standard Federal prospective payment rate. Accordingly, we are proposing to develop prospective payments for LTCHs using the following major steps:

- Develop the LTC–DRG relative weights.
- Determine appropriate payment system adjustments.
- Calculate the budget neutral standard Federal prospective payment rate.
- Calculate the Federal LTC–DRG prospective payments.

A detailed description of each step and a discussion of our proposed policies for special cases, phase-in implementation, and other policies follows.

A. Development of the Proposed LTC–DRG Relative Weights

1. Overview of Development of the Proposed LTC–DRG Relative Weights

As previously stated, one of the primary goals for the implementation of the proposed LTCH prospective payment system would be to pay each LTCH an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for beneficiaries whose care is more costly. To accomplish these goals, we are proposing to adjust the standard Federal prospective payment system rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

In this proposed payment system, relative weights for each LTC–DRG would be a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (proposed § 412.515). To ensure that Medicare patients classified to each proposed LTC–DRG would have access to an appropriate level of services and to encourage efficiency, we are proposing to calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 would, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

To calculate the proposed relative weights, we obtained charges from FY 2000 Medicare bill data in the June 2001 update of the MedPAR and we used version 18.0 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2001). In the final rule, we would recalculate the relative weights based on the most recent MedPAR data and version 19.0 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2002). By nature LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such nonarbitrary distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we are proposing to use a hospital-specific relative value method to calculate relative weights. We believe this method would remove this hospital-specific source of bias in measuring average charges. Specifically, we would reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. As MedPAC noted in its June 2000 Report to Congress, the hospital-specific relative value method eliminates distortion in the weights due to systematic differences among hospitals in the level of charge markups or costs (p. 58). The case-mix index is the average case weight (adjusted to eliminate the effect of short-stay outliers that are described in section IV.B.2. of this preamble) for cases at each LTCH.

Under the hospital-specific relative value method, we would standardize charges for each LTCH by converting its charges for each case to hospital-specific relative charge values and then adjusting those values for the LTCH's case-mix. The adjustment for case-mix is needed to rescale the hospital-specific relative charge values (which average 1.0 for each LTCH by definition). The average relative weight for a LTCH is its case-mix, so it is reasonable to scale each LTCH's average relative charge value by its case-mix. In this way, each LTCH's relative charge values will be adjusted by its case-mix to an average that reflects the complexity of the cases it treats relative to the complexity of the cases treated by all other LTCHs (the average case-mix of all LTCHs).

We would standardize charges for each case by first dividing the adjusted charge for the case (adjusted for short-stay outliers as described in section IV.B.2. of this proposed rule) by the average adjusted charge for all cases at the LTCH in which the case was treated. The average adjusted charge would reflect the average intensity of the health care services delivered by a particular LTCH and the average cost level of that LTCH. The resulting ratio would be multiplied by that LTCH's case-mix index to determine the standardized charge for the case.

Multiplying by the LTCH's case-mix index accounts for the fact that the same relative charges are given greater weight in a hospital with higher average costs than they would at a LTCH with low average costs in order to adjust each LTCH's relative charge value to reflect its case-mix relative to the average case-mix for all LTCHs. Because we are proposing to standardize charges in this manner, we would count charges for a Medicare patient at a LTCH with high average charges as less resource intensive than they would be at a LTCH with low average charges. For example, a $10,000 charge for a case in a LTCH with an average adjusted charge of $17,500 reflects a higher level of relative resource use than a $10,000 charge for a case in a LTCH with the same case-mix, but an average adjusted charge of $35,000. We believe that the adjusted charge of an individual case would more accurately reflect actual resource use for an individual LTCH because the variation in charges due to systematic differences in the markup of charges among LTCHs is taken into account.

As explained in section III. of this proposed rule, we would group cases with a 7-day or fewer length of stay (very short-stay discharges under proposed § 412.527 described in section IV.B.1. of this preamble) into one of two proposed groups. We are proposing that discharges with a 7-day or fewer length of stay that would otherwise be grouped into DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders) would be grouped into a proposed psychiatric very short-stay discharge group. All other very short-stay discharges would be grouped into the second very short-stay discharge, nonpsychiatric group. Each of these very short-stay discharge groups would have its own relative weight and an average length of stay computed using the same methodology used to determine the relative weights for the "regular" (length of stay greater than 7 days) LTC–DRGs.

In addition, in order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we would group those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. Using LTCH cases from the June 2001 update of the FY 2000 MedPAR, we identified 188 LTC–DRGs that contained between 1 and 24 cases. This list of LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 37 LTC–DRGs (188/5 = 37 with 3 LTC–DRGs as a remainder). We made an assignment to a specific quintile by sorting the 188 low volume DRGs in ascending order by average charge. Since the number of LTC–DRGs with less than 25 LTCH cases is not evenly divisible by five, the average charge of the low volume LTC–DRG was used to determine which quintiles received an additional LTC–DRG. After sorting the 188 volume LTC–DRGs in ascending order, the first fifth of low volume (37) LTC–DRGs with the lowest average charge are grouped into Quintile 1. Since the average charge of the next LTC–DRG (38th in the sorted list) is closer to the previous LTC–DRG's average charge (assigned to Quintile 1) than to the average charge of the 39th LTC–DRG on the sorted list (to be assigned to Quintile 2), it is placed into Quintile 1. This process was repeated through the remaining low volume LTC–DRGs so that 3 quintiles contained 38 LTC–DRGs and 2 quintiles contained 37 LTC–DRGs. The highest average charge cases would be grouped into Quintile 5. In order to determine the proposed relative weights for the 188 LTC–DRGs with low volume, we used the five low volume quintiles described above. The composition of each of the five low volume quintiles shown below in Table 2 would be used in determining the proposed LTC–DRG relative weights. We would determine a proposed relative weight and average length of stay for each of the proposed five low volume quintiles using the formula applied to the regular LTC–DRGs (25 or more cases), as described in section IV.A.2 of this proposed rule. We would assign the same relative weight and average length of stay to each of the proposed LTC–DRGs that make up that proposed low volume quintile. We note that as this proposed system is dynamic, it is entirely possible that the number and specific type of LTC–DRGs with a low volume of LTCH cases would vary in the future. We would use the best available claims data in the MedPAR to identify low volume LTC–DRGs and to calculate the relative weights based on our proposed methodology.

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES

LTC–DRG	Description
	Proposed Quintile 1
45	NEUROLOGICAL EYE DISORDERS
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC
53	SINUS & MASTOID PROCEDURES AGE >17
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES
69	OTITIS MEDIA & URI AGE >17 W/O CC
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC
158	ANAL & STOMAL PROCEDURES W/O CC
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC
178	UNCOMPLICATED PEPTIC ULCER W/O CC
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17
290	THYROID PROCEDURES
295	DIABETES AGE 0–35
299	INBORN ERRORS OF METABOLISM
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON–NEOPL W/O CC
307	PROSTATECTOMY W/O CC
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC
336	TRANSURETHRAL PROSTATECTOMY W CC
337	TRANSURETHRAL PROSTATECTOMY W/O CC
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC
396	RED BLOOD CELL DISORDERS AGE 0–17
419**	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY
447	ALLERGIC REACTIONS AGE >17
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC
467	OTHER FACTORS INFLUENCING HEALTH STATUS
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC
	Proposed Quintile 2
21	VIRAL MENINGITIS
46	OTHER DISORDERS OF THE EYE AGE >17 W CC
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17
95	PNEUMOTHORAX W/O CC
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT
124**	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
128	DEEP VEIN THROMBOPHLEBITIS
129	CARDIAC ARREST, UNEXPLAINED
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC
208	DISORDERS OF THE BILIARY TRACT W/O CC
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC
232	ARTHROSCOPY
273	MAJOR SKIN DISORDERS W/O CC
276	NON-MALIGANT BREAST DISORDERS
284	MINOR SKIN DISORDERS W/O CC
288	O.R. PROCEDURES FOR OBESITY
301	ENDOCRINE DISORDERS W/O CC
306	PROSTATECTOMY W CC
309	MINOR BLADDER PROCEDURES W/O CC
311	TRANSURETHRAL PROCEDURES W/O CC
324	URINARY STONES W/O CC
328	URETHRAL STRICTURE AGE >17 W CC
338	TESTES PROCEDURES, FOR MALIGNANCY
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC
348	BENIGN PROSTATIC HYPERTROPHY W CC
349*	BENIGN PROSTATIC HYPERTROPHY W/O CC
360	VAGINA, CERVIX & VULVA PROCEDURES
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC
419*	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA
	Proposed Quintile 3
4	SPINAL PROCEDURES
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC
22	HYPERTENSIVE ENCEPHALOPATHY
32	CONCUSSION AGE >17 W/O CC
66	EPISTAXIS
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17
84	MAJOR CHEST TRAUMA W/O CC
157	ANAL & STOMAL PROCEDURES W CC
177	UNCOMPLICATED PEPTIC ULCER W CC
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
225	FOOT PROCEDURES
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION
279	CELLULITIS AGE 0–17
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC
308	MINOR BLADDER PROCEDURES W CC
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY
341	PENIS PROCEDURES
349**	BENIGN PROSTATIC HYPERTROPHY W/O CC
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY
390	NEONATE W OTHER SIGNIFICANT PROBLEMS
401	LYMPHOMA & NON–ACUTE LEUKEMIA W OTHER O.R. PROC W CC
409	RADIOTHERAPY
421	VIRAL ILLNESS AGE >17
427	NEUROSES EXCEPT DEPRESSIVE
432	OTHER MENTAL DISORDER DIAGNOSES
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC
497	SPINAL FUSION W CC
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA
510	NON–EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA
	Proposed Quintile 4
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA
5	EXTRACRANIAL VASCULAR PROCEDURES
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH
110	MAJOR CARDIOVASCULAR PROCEDURES W CC
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P
118	CARDIAC PACEMAKER DEVICE REPLACEMENT
124*	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
125*	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC
150	PERITONEAL ADHESIOLYSIS W CC
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC
293*	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
310	TRANSURETHRAL PROCEDURES W CC
312	URETHRAL PROCEDURES, AGE >17 W CC
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS
439	SKIN GRAFTS FOR INJURIES
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC
503	KNEE PROCEDURES W/O PDX OF INFECTION
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA
	Proposed Quintile 5
2	CRANIOTOMY FOR TRAUMA AGE >17
31	CONCUSSION AGE >17 W CC
44	ACUTE MAJOR EYE INFECTIONS
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES
75	MAJOR CHEST PROCEDURES
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT
125**	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY
226	SOFT TISSUE PROCEDURES W CC
227	SOFT TISSUE PROCEDURES W/O CC
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC
267	PERIANAL & PILONIDAL PROCEDURES
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES
293**	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC
417	SEPTICEMIA AGE 0–17
479***	OTHER VASCULAR PROCEDURES W/O CC
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA
488	HIV W EXTENSIVE O.R. PROCEDURE
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC
501	KNEE PROCEDURES W PDX OF INFECTION W CC

*One of the original 188 low volume LTC-DRGs initially assigned to a different low volume quintile; reassigned to this low volume quintile in addressing nonmonotonicity (see step 4 below).

**One of the original 188 low volume LTC-DRGs initially assigned to this low volume quintile; reassigned to a different low volume quintile in addressing nonmonotonicity (see step 4 below).

***One of the original 188 low volume LTC-DRGs initially assigned to this low volume quintile; removed from the low volume quintiles in addressing nonmonotonicity (see step 4 below).

After grouping the cases in the appropriate proposed LTC–DRG, we calculate the proposed relative weights in this proposed rule by first adjusting the number of cases in each LTC–DRG for the effect of short-stay outlier cases under proposed § 412.529. The short-stay adjusted discharges and corresponding charges would be used to calculate proposed "relative adjusted weights" in each LTC–DRG using the hospital-specific relative value method described above. We describe each of these steps in greater detail below.

2. Steps for Calculating the Proposed Relative Weights

Step 1—Adjust charges for the effects of short-stay outliers. The first step in the calculation of the relative weights is to adjust each LTCH's charges per discharge for short-stay outlier cases (that is, a patient with a length of stay in excess of 7 days, but below two-thirds the average length of stay of the LTC–DRG as described in section IV.B.2. of this proposed rule).

We would make this adjustment by counting a short-stay outlier as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay for the LTC–DRG for nonshort-stay outlier cases. This would have the effect of proportionately reducing the impact of the lower charges for the short-stay outlier cases in calculating the average charge for the LTC–DRG. This process produces the same result as if the actual charges per discharge of a short-stay outlier case would be adjusted to what they would have been had the patient's length of stay been equal to the average length of stay of the LTC–DRG.

Counting short-stay outlier cases as full discharges with no adjustment in determining the relative weights would lower the relative weight for affected LTC–DRGs because the relatively lower charges of the short-stay outlier cases bring down the average charge for all cases within a LTC–DRG. This would result in an "underpayment" to nonshort-stay outlier cases and an "overpayment" to short-stay outlier cases. Therefore, adjusting for short-stay outlier cases in this manner would result in more appropriate payments for all LTCH cases. The result of step 1 is that each LTCH's average cost per discharge is adjusted for short-stay outliers (as described above) before removing statistical outliers (step 2) and calculating the LTC–DRG relative weights on an iterative basis (step 3) using the hospital-specific relative value method.

Step 2—Remove statistical outliers. We are proposing to define statistical outliers as cases that are outside of 3.0 standard deviations from the mean of the log distribution of both charges per case and the charges per day for each proposed LTC–DRG. After adjusting each LTCH's discharges for short-stay outlier cases (see step 1), these statistical outliers would be removed prior to calculating the proposed relative weights. We believe that they may represent aberrations in the data that would distort the measure of average resource use. Including those cases in the calculation of the relative weights could result in an inaccurate weight that does not truly reflect relative resource use among the proposed LTC–DRGs. Thus, removing statistical outliers would result in more appropriate payments. These adjusted charges per discharge for each proposed LTC–DRG are then used to calculate the average adjusted charge of all cases at the LTCH in determining the proposed relative weight for the proposed LTC–DRGs.

Step 3—Calculate the LTC–DRG relative weights on an iterative basis. The process of calculating the LTC–DRG relative weights would be iterative. First, for each case, we would calculate a hospital-specific relative charge value by dividing the short-stay outlier adjusted charge per discharge (see step 1) of the case (after removing the statistical outlier (see step 2)) by the average charge per discharge for the LTCH in which the case occurred. The resulting ratio is then multiplied by the LTCH's case-mix index to produce an adjusted hospital-specific relative charge value for the case. An initial case-mix index value of 1.0 is used for each LTCH.

For each LTC–DRG, the proposed LTC–DRG relative weight would then be calculated by dividing the average of the adjusted hospital-specific relative charge values (from above) for the LTC–DRG by the overall average hospital-specific relative charge value across all cases for all LTCHs. Using these recalculated LTC–DRG relative weights, each LTCH's average relative weight for all of its cases (case-mix) would be calculated by dividing the sum of all the LTCH's LTC–DRG relative weights by its total number of cases. The LTCHs' hospital-specific relative charge values above would be multiplied by these hospital specific case-mix indexes. These hospital-specific case-mix adjusted relative charge values are then used to calculate a new set of LTC–DRG relative weights across all LTCHs. This iterative process would be continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001.

Step 4—Adjust the LTC–DRG relative weights to account for nonmonotonically increasing relative weights. As explained in section III.C. of this proposed rule, the proposed LTC–DRGs would contain "pairs" that are differentiated based on the presence or absence of CCs. Proposed LTC–DRGs with CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis, but the presence of additional diagnoses does not automatically generate a CC. The value of monotonically increasing relative weights rises as the resource use increases (for example, from uncomplicated to more complicated). The presence of CCs in a LTC–DRG means that cases classified into a "without CC" LTC–DRG are expected to have lower resource use (and lower costs). In other words, resource use (and costs) are expected to decrease across "with CC"/"without CC" pairs of LTC–DRGs. For a case to be assigned to a proposed LTC–DRG with CCs, more coded information is called for (that is, at least one relevant secondary diagnosis), than for a case to be assigned to a proposed LTC–DRG without CCs (which is based on only one primary diagnosis and no relevant secondary diagnoses). Currently, the database includes both accurately coded cases without complications and cases that have complications (and cost more) but were not coded completely. Both types of cases would be grouped to a proposed LTC–DRG "without CCs" since only one primary diagnosis was coded. Since LTCHs are currently paid under cost-based reimbursement, which is not based on patient diagnoses, LTCHs' coding for these cases may not have been as detailed as possible.

Thus, in developing the proposed relative weights for the LTCH prospective payment system, we found on occasion that the data suggested that cases classified to the proposed LTC–DRG "with CCs" of a "with CC"/"without CC" pair had a lower average charge than the corresponding proposed LTC–DRG "without CCs." We believe this anomaly may be due to coding that may not have fully reflected all comorbidities that were present. Specifically, LTCHs may have failed to code relevant secondary diagnoses, which resulted in cases that actually had complications and comorbidities being classified into a "without CC" LTC–DRG. It would not make sense to pay a lower amount for the "with CC" LTC–DRG, so we are proposing to group both the cases "with CCs" and "without CCs" together for the purpose of calculating the proposed relative weights for the proposed LTC–DRGs until we have adequate data to calculate appropriate separate weights for these anomalous DRG pairs. We expect that, as was the case when we first implemented the acute care hospital inpatient prospective payment system, this problem will be self-correcting, as LTCHs submit more completely coded data in the future.

Using the LTCH cases in the June 2001 update of the FY 2000 MedPAR, we identified three types of "with CC" and "without CC" pairs of proposed LTC–DRGs that are nonmonotonic, that is, where the "without CC" LTC–DRG would have a higher average charge than the "with CC" LTC–DRG.

The first category of nonmonotonically increasing relative weights for LTC–DRG pairs "with and without CCs" contains 5 pairs of LTC–DRGs in which both the LTC–DRG "with CCs" and the LTC–DRG "without CCs" had 25 or more LTCH cases and, therefore, did not fall into one of the 5 quintiles. For each pair of LTC–DRGs, we would combine the cases and compute a new relative weight based on the case-weighted average of the combined cases of the LTC–DRGs. The case-weighted average charge would be determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. This new relative weight would be assigned to both of the LTC–DRGs in the pair. For the proposed FY 2003 implementation of the LTCH prospective payment system, the following proposed LTC–DRGs would be in this category: LTC–DRGs 10 and 11, 89 and 90, 138 and 139, 141 and 142, and 274 and 275.

The second category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs consists of 4 pairs of LTC–DRGs that have fewer than 25 cases and are both grouped to different quintiles in which the "without CC" LTC–DRG would be in a higher-weighted quintile than the "with CC" LTC–DRG. For each pair, we would combine the cases and determine the case-weighted average charge for all cases. The case-weighted average charge would be determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. Based on the case-weighted average charge, we determined which quintile the "combined LTC–DRG" would be grouped. Both LTC–DRGs in the pair would then be grouped into the same quintile, and thus have the same proposed relative weight. For the proposed FY 2003 implementation of the LTCH prospective payment system, the following proposed LTC–DRGs would be in this category: 124 and 125 (low volume quintile 4), 292 and 293 (low volume quintile 4), 348 and 349 (low volume quintile 2), and 419 and 420 (low volume quintile 2).

The third category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs has one pair of LTC–DRGs where one of the LTC–DRGs has fewer than 25 LTCH cases and is grouped to a quintile and the other LTC–DRG has 25 or more LTCH cases and would have its own LTC–DRG weight, and the LTC–DRG "without CCs" would have the higher weight. We would remove the low volume pair LTC–DRG from the quintile and combine it with the other pair LTC–DRG for the computation of a new relative weight for each of these LTC–DRGs. This proposed new relative weight would be assigned to both LTC–DRGs, so they would each have the same relative weight. For the proposed FY 2003 implementation of the LTCH prospective payment system, proposed LTC–DRGs 478 and 479 would be in this category.

In addition, for the FY 2003 implementation of the LTCH prospective payment system, we are proposing to determine the relative weight for each LTC–DRG using charges reported on the June 2001 update of the FY 2000 MedPAR. Of the proposed 501 LTC–DRGs in the proposed CMS LTCH prospective payment system, we identified 111 LTC–DRGs for which there were no LTCH cases in the database. That is, based on the FY 2000 MedPAR, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2000 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of proposed LTC–DRGs, we were unable to determine weights for these 111 LTC–DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2003 when the LTCH prospective payment system would be implemented, we are proposing to assign relative weights to each of the 111 "no volume" LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 390 (501 − 111 = 390) LTC–DRGs for which we are able to determine relative weights, based on FY 2000 charge data.

As there are currently no LTCH cases in these "no volume" LTC–DRGs, we are proposing to establish relative weights for the 111 LTC–DRGs with no LTCH cases in the FY 2000 MedPAR by grouping them to the appropriate low volume quintile. This methodology would be consistent with our methodology used in determining relative weights to account for low volume LTC–DRGs described above.

Our proposed methodology for determining relative weights for the "no volume" LTC–DRGs is as follows: First, we would cross-walk the no volume LTC–DRGs by matching them to other similar LTC–DRGs for which there were LTCH cases in the FY 2000 MedPAR based on clinical similarity and intensity of use of resources as determined by care provided during the period of time surrounding surgery, surgical approach (if applicable), length of time of surgical procedure, post-operative care, and length of stay. We would assign the weight for the applicable quintile to the no volume LTC–DRG if the LTC–DRG to which it would be cross-walked was grouped to one of the low volume quintiles. If the LTC–DRG to which the no volume LTC–DRG would be cross-walked was not one of the LTC–DRGs grouped to one of the low volume quintiles, we would compare the weight of the LTC–DRG to which the no volume LTC–DRG would be cross-walked to the weights of each of the five quintiles and assign the no volume LTC–DRG the relative weight of the quintile with the closest weight. A list of the proposed no volume LTC–DRGs and the LTC–DRG to which it would be crosswalked in order to determine the appropriate low volume quintile for the assignment of a relative weight is shown below in Table 3.

TABLE 3.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT [1]

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
3	CRANIOTOMY AGE 0–17	1	Quintile 4.
6	CARPAL TUNNEL RELEASE	8	Quintile 3.
26	SEIZURE & HEADACHE AGE 0–17	25	Quintile 2.
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	29	Quintile 3.
33	CONCUSSION AGE 0–17	32	Quintile 3.
36	RETINAL PROCEDURES	47	Quintile 1.
37	ORBITAL PROCEDURES	47	Quintile 1.
38	PRIMARY IRIS PROCEDURES	47	Quintile 1.
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	47	Quintile 1.
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	47	Quintile 1.
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	47	Quintile 1.
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	47	Quintile 1.
43	HYPHEMA	47	Quintile 1.
48	OTHER DISORDERS OF THE EYE AGE 0–17	47	Quintile 1.
49	MAJOR HEAD & NECK PROCEDURES	73	Quintile 3.
50	SIALOADENECTOMY	73	Quintile 3.
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	73	Quintile 3.
52	CLEFT LIP & PALATE REPAIR	53	Quintile 1.
56	RHINOPLASTY	55	Quintile 1.
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 1.
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 1.
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 1.
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 1.
61	MYRINGOTOMY W TUBE INSERTION AGE >17	55	Quintile 1.
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17	55	Quintile 1.
67	EPIGLOTTITIS	73	Quintile 3.
70	OTITIS MEDIA & URI AGE 0–17	69	Quintile 1.
71	LARYNGOTRACHEITIS	69	Quintile 1.
72	NASAL TRAUMA & DEFORMITY	69	Quintile 1.
98	BRONCHITIS & ASTHMA AGE 0–17	97	Quintile 1.
106	CORONARY BYPASS W PTCA	104	Quintile 4.
107	CORONARY BYPASS W CARDIAC CATH	104	Quintile 4.
108	OTHER CARDIOTHORACIC PROCEDURES	104	Quintile 4.
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	104	Quintile 4.
119	VEIN LIGATION & STRIPPING	131	Quintile 2.
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	136	Quintile 2.
146	RECTAL RESECTION W CC	148	Quintile 4.
147	RECTAL RESECTION W/O CC	148	Quintile 4.

TABLE 3.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT [1]—Continued

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	155	Quintile 5.
163	HERNIA PROCEDURES AGE 0–17	160	Quintile 1.
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	157	Quintile 3.
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	158	Quintile 1.
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	158	Quintile 1.
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	158	Quintile 1.
168	MOUTH PROCEDURES W CC	185	Quintile 4.
169	MOUTH PROCEDURES W/O CC	185	Quintile 4.
187	DENTAL EXTRACTIONS & RESTORATIONS	185	Quintile 4.
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	189	Quintile 3.
195	CHOLECYSTECTOMY W C.D.E. W CC	191	Quintile 4.
196	CHOLECYSTECTOMY W C.D.E. W/O CC	197	Quintile 3.
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	199	Quintile 5.
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	211	Quintile 2.
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17	219	Quintile 1.
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	257	Quintile 1.
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	258	Quintile 1.
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	258	Quintile 1.
286	ADRENAL & PITUITARY PROCEDURES	292	Quintile 4.
289	PARATHYROID PROCEDURES	290	Quintile 1.
291	THYROGLOSSAL PROCEDURES	290	Quintile 1.
317	ADMIT FOR RENAL DIALYSIS	316	Quintile 3.
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	326	Quintile 1.
334	MAJOR MALE PELVIC PROCEDURES W CC	354	Quintile 5.
335	MAJOR MALE PELVIC PROCEDURES W/O CC	354	Quintile 5.
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	347	Quintile 2.
342	CIRCUMCISION AGE >17	344	Quintile 1.
343	CIRCUMCISION AGE 0–17	344	Quintile 1.
351	STERILIZATION, MALE	344	Quintile 1.
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	346	Quintile 3.
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	367	Quintile 3.
362	ENDOSCOPIC TUBAL INTERRUPTION	367	Quintile 3.
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	360	Quintile 2.
370	CESAREAN SECTION W CC	365	Quintile 5.
371	CESAREAN SECTION W/O CC	365	Quintile 5.
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	359	Quintile 1.
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	359	Quintile 1.
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	359	Quintile 1.
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	359	Quintile 1.
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	359	Quintile 1.
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	359	Quintile 1.
378	ECTOPIC PREGNANCY	359	Quintile 1.
379	THREATENED ABORTION	359	Quintile 1.
380	ABORTION W/O D&C	359	Quintile 1.
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	359	Quintile 1.
382	FALSE LABOR	359	Quintile 1.
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	359	Quintile 1.
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	359	Quintile 1.
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	385	Quintile 3.
387	PREMATURITY W MAJOR PROBLEMS	385	Quintile 3.
388	PREMATURITY W/O MAJOR PROBLEMS	385	Quintile 3.
389	FULL TERM NEONATE W MAJOR PROBLEMS	385	Quintile 3.
391	NORMAL NEWBORN	390	Quintile 3.
392	SPLENECTOMY AGE >17	197	Quintile 3.
393	SPLENECTOMY AGE 0–17	197	Quintile 3.
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	416	Quintile 3.
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	171	Quintile 1.
412	HISTORY OF MALIGNANCY W ENDOSCOPY	171	Quintile 1.
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	421	Quintile 3.
441	HAND PROCEDURES FOR INJURIES	229	Quintile 3.
446	TRAUMATIC INJURY AGE 0–17	445	Quintile 3.
448	ALLERGIC REACTIONS AGE 0–17	447	Quintile 1.
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	450	Quintile 1.
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	209	Quintile 5.
481	BONE MARROW TRANSPLANT	394	Quintile 5.
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	2	Quintile 5.
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	486	Quintile 5.
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	486	Quintile 5.
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	497	Quintile 3.

[1] This table does not reflect the four transplant LTC–DRGs, for which we propose to assign a relative weight of 0.0000.

To illustrate the methodology we are proposing for determining relative weights for the 111 LTC–DRGs with no LTCH cases, we are providing the following examples, which refer to the no volume LTC–DRGs crosswalk information provided above in Table 3:

Example 1: There were no cases in the FY 2000 MedPAR file for LTC–DRG 3 (Craniotomy Age 0–17). Since the period of time surrounding the surgery and the post-operative care are similar in resource use and the length and complexity of the surgical procedures and the length of stay are similar, we determined that LTC–DRG 1 (Craniotomy Age > 17 Except for Trauma), which is assigned to low volume quintile 4 for the purpose of determining the proposed relative weights, displayed similar clinical and resource use. Therefore, we are proposing to assign the same relative weight of LTC–DRG 1 of 1.3735 (quintile 4) (see Table 4 below) to LTC–DRG 3.

Example 2: There were no LTCH cases in the FY 2000 MedPAR file for LTC–DRG 98 (Bronchitis & Asthma Age 0–17). Since the severity of illness in patients with bronchitis and asthma are similar in patients regardless of age, we determined that LTC–DRG 97 (Bronchitis & Asthma Age>17 W/O CC) displayed similar clinical and resource use characteristics and have a similar length of stay to LTC–DRG 98. There were over 25 cases in LTC–DRG 97. Therefore, it is not assigned to a low volume quintile for the purpose of determining the relative weights. However, under our proposed methodology, LTC–DRG 98, with no LTCH cases, needs to be grouped to a low volume quintile. We identified that the quintile with the closest weight to LTC–DRG 97 (0.5239; see Table 4 below) was quintile 3 (0.5268; see Table 4 below). Therefore, we are proposing to assign LTC–DRG 98 a relative weight of 0.5268.

Furthermore, we are proposing to establish LTC–DRG relative weights of 0.0000 for heart, kidney, liver, and lung transplants (proposed LTC–DRGs 103, 302, 480, and 495, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare. We are only proposing to include these four transplant LTC–DRGs in the GROUPER program for administrative purposes. Since we are proposing to use the same GROUPER program for LTCHs as is used under the acute care hospital inpatient prospective payment system, removing these DRGs would be administratively burdensome. For further discussion of the Medicare coverage of heart, kidney, liver, and lung transplants, see the following **Federal Register** documents: February 2, 1995 final rule (60 FR 6537); April 12, 1991 final rule (56 FR 15006); and April 6, 1987 final rule (52 FR 10935). Based on our research, we found that most LTCHs only perform minor surgeries, such as minor small and large bowel procedures, if any surgeries at all. Given the extensive criteria that must be met to become certified as a transplant center for Medicare, we do not believe that any LTCHs would become certified as a transplant center. In fact, in the nearly 20 years since the implementation of the hospital inpatient prospective payment system, there has never been a LTCH that even expressed an interest in becoming a transplant center. We specifically solicit comments on whether there is a need for CMS to address determining relative weights (other than zero) for transplant LTC–DRGs. We are proposing to assign proposed LTC–DRGs 103, 302, 480, and 495 a relative weight of zero, as shown in Table 4 below.

Again, we note that as this proposed system is dynamic, it is entirely possible that the number of LTC–DRGs with a zero volume of LTCH cases based on the system we are proposing would vary in the future. We would use the best available claims data in the MedPAR to identify zero volume LTC–DRGs and to determine the relative weights in the final rule.

Table 4 lists the proposed LTC–DRGs and their proposed respective relative weights and arithmetic mean length of stay.

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA [4]	1.3735	36.5	13
2	CRANIOTOMY FOR TRAUMA AGE >17 [5]	2.1422	48.3	1
3	CRANIOTOMY AGE 0–17 [4*]	1.3735	36.5	0
4	SPINAL PROCEDURES [3]	0.9568	30.0	10
5	EXTRACRANIAL VASCULAR PROCEDURES [4]	1.3735	36.5	2
6	CARPAL TUNNEL RELEASE [3*]	0.9568	30.0	0
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.8690	46.3	60
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC [3]	0.9568	30.0	2
9	SPINAL DISORDERS & INJURIES	1.5321	41.1	180
10	NERVOUS SYSTEM NEOPLASMS W CC	1.0668	31.8	162
11	NERVOUS SYSTEM NEOPLASMS W/O CC	1.0668	31.8	69
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.9289	32.6	1,955
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7511	25.4	126
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.0143	30.9	2,678
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.8800	27.6	182
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1461	29.8	114
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.8295	25.9	28
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9063	28.9	138
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.8609	30.5	72
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.5115	36.4	189
21	VIRAL MENINGITIS [2]	0.7107	24.5	2
22	HYPERTENSIVE ENCEPHALOPATHY [3]	0.9568	30.0	8
23	NONTRAUMATIC STUPOR & COMA	1.2866	36.1	71
24	SEIZURE & HEADACHE AGE >17 W CC	0.9144	29.2	141
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.6727	25.1	74
26	SEIZURE & HEADACHE AGE 0–17 [2]	0.7107	24.5	0
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5525	38.6	54
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.0679	29.7	134
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.8326	27.2	95
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17 [3]	0.9568	30.0	0
31	CONCUSSION AGE >17 W CC [5]	2.1422	48.3	2
32	CONCUSSION AGE >17 W/O CC [3]	0.9568	30.0	2

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
33	CONCUSSION AGE 0–17[3]	0.9568	30.0	0
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.1042	30.8	518
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.9505	30.3	190
36	RETINAL PROCEDURES[1*]	0.5239	18.2	0
37	ORBITAL PROCEDURES[1*]	0.5239	18.2	0
38	PRIMARY IRIS PROCEDURES[1*]	0.5239	18.2	0
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY[1*]	0.5239	18.2	0
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17[1*]	0.5239	18.2	0
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17[1*]	0.5239	18.2	0
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS[1*]	0.5239	18.2	0
43	HYPHEMA[1*]	0.5239	18.2	0
44	ACUTE MAJOR EYE INFECTIONS[5]	2.1422	48.3	3
45	NEUROLOGICAL EYE DISORDERS[1]	0.5239	18.2	6
46	OTHER DISORDERS OF THE EYE AGE >17 W CC[2]	0.7107	24.5	9
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC[1]	0.5239	18.2	3
48	OTHER DISORDERS OF THE EYE AGE 0–17[1*]	0.5239	18.2	0
49	MAJOR HEAD & NECK PROCEDURES[3*]	0.9568	30.0	0
50	SIALOADENECTOMY[3*]	0.9568	30.0	0
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY[3*]	0.9568	30.0	0
52	CLEFT LIP & PALATE REPAIR[1*]	0.5239	18.2	0
53	SINUS & MASTOID PROCEDURES AGE >17[1]	0.5239	18.2	1
54	SINUS & MASTOID PROCEDURES AGE 0–17[1]	0.5239	18.2	0
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES[1]	0.5239	18.2	1
56	RHINOPLASTY[1*]	0.5239	18.2	0
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17[1*]	0.5239	18.2	0
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17[1*]	0.5239	18.2	0
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17[1*]	0.5239	18.2	0
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17[1*]	0.5239	18.2	0
61	MYRINGOTOMY W TUBE INSERTION AGE >17[1*]	0.5239	18.2	0
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17[1*]	0.5239	18.2	0
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES[5]	2.1422	48.3	5
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.4108	35.1	144
65	DYSEQUILIBRIUM	0.7130	27.0	25
66	EPISTAXIS[3]	0.9568	30.0	3
67	EPIGLOTTITIS[3]	0.9568	30.0	0
68	OTITIS MEDIA & URI AGE >17 W CC	0.8959	23.7	25
69	OTITIS MEDIA & URI AGE >17 W/O CC[1]	0.5239	18.2	7
70	OTITIS MEDIA & URI AGE 0–17[1*]	0.5239	18.2	0
71	LARYNGOTRACHEITIS[1*]	0.5239	18.2	0
72	NASAL TRAUMA & DEFORMITY[1*]	0.5239	18.2	0
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	1.0917	33.3	31
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17[2]	0.7107	24.5	1
75	MAJOR CHEST PROCEDURES[5]	2.1422	48.3	19
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7153	50.7	327
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC[5]	2.1422	48.3	13
78	PULMONARY EMBOLISM	0.8294	24.8	122
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.2588	31.5	2,047
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.0733	30.0	204
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17[3]	0.9568	30.0	10
82	RESPIRATORY NEOPLASMS	0.9690	26.9	755
83	MAJOR CHEST TRAUMA W CC	0.9797	24.8	33
84	MAJOR CHEST TRAUMA W/O CC[3]	0.9568	30.0	10
85	PLEURAL EFFUSION W CC	1.2406	30.1	132
86	PLEURAL EFFUSION W/O CC	0.7529	25.0	30
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.4202	44.1	5,741
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.9390	25.3	4,229
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.9740	27.2	2,387
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9740	27.2	554
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17[4]	1.3735	36.5	21
92	INTERSTITIAL LUNG DISEASE W CC	0.8885	24.8	181
93	INTERSTITIAL LUNG DISEASE W/O CC	0.7284	23.8	38
94	PNEUMOTHORAX W CC	0.9341	28.3	43
95	PNEUMOTHORAX W/O CC[2]	0.7107	24.5	5
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8855	24.4	139
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5268	17.8	67
98	BRONCHITIS & ASTHMA AGE 0–17[1*]	0.5239	18.2	0
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.4609	32.1	384
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0387	27.9	156

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.3776	30.9	164
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.6568	22.0	34
103	HEART TRANSPLANT[6]	0.0000	0.0	0
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH[4]	1.3735	36.5	2
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH[4]	1.3735	36.5	2
106	CORONARY BYPASS W PTCA[4*]	1.3735	36.5	0
107	CORONARY BYPASS W CARDIAC CATH[4*]	1.3735	36.5	0
108	OTHER CARDIOTHORACIC PROCEDURES[4*]	1.3735	36.5	0
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH[4*]	1.3735	36.5	0
110	MAJOR CARDIOVASCULAR PROCEDURES W CC[4]	1.3735	36.5	1
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	1.3735	36.5	0
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES[5]	2.1422	48.3	3
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.5915	43.7	109
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.7160	46.5	31
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P[4]	1.3735	36.5	3
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT[5]	2.1422	48.3	4
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT[2]	0.7107	24.5	1
118	CARDIAC PACEMAKER DEVICE REPLACEMENT[4]	1.3735	36.5	11
119	VEIN LIGATION & STRIPPING[2*]	0.7107	24.5	0
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.3748	41.6	167
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.8843	24.1	191
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.6762	22.4	64
123	CIRCULATORY DISORDERS W AMI, EXPIRED	1.1855	23.7	58
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG[4]	1.3735	36.5	7
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG[4]	1.3735	36.5	4
126	ACUTE & SUBACUTE ENDOCARDITIS	1.0442	31.2	193
127	HEART FAILURE & SHOCK	0.8658	25.8	2,434
128	DEEP VEIN THROMBOPHLEBITIS[2]	0.7107	24.5	16
129	CARDIAC ARREST, UNEXPLAINED[2]	0.7107	24.5	22
130	PERIPHERAL VASCULAR DISORDERS W CC	0.9391	29.3	1,139
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7878	27.4	279
132	ATHEROSCLEROSIS W CC	0.8672	23.6	641
133	ATHEROSCLEROSIS W/O CC	0.8388	25.3	195
134	HYPERTENSION	0.8482	28.8	136
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9344	24.7	152
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7211	24.2	42
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17[2*]	0.7107	24.5	0
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8712	28.1	273
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.8712	28.1	104
140	ANGINA PECTORIS	0.6919	23.5	85
141	SYNCOPE & COLLAPSE W CC	0.6732	24.4	84
142	SYNCOPE & COLLAPSE W/O CC	0.6732	24.4	71
143	CHEST PAIN	0.6017	20.4	50
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.9035	25.2	579
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.6545	20.6	97
146	RECTAL RESECTION W CC[4*]	1.3735	36.5	0
147	RECTAL RESECTION W/O CC[4*]	1.3735	36.5	0
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC[4]	1.3735	36.5	12
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC[1]	0.5239	18.2	3
150	PERITONEAL ADHESIOLYSIS W CC[4]	1.3735	36.5	2
151	PERITONEAL ADHESIOLYSIS W/O CC[4]	1.3735	36.5	0
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC[5]	2.1422	48.3	4
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC[5]	2.1422	48.3	0
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC[5]	2.1422	48.3	1
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC[5]	2.1422	48.3	1
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17[5*]	2.1422	48.3	0
157	ANAL & STOMAL PROCEDURES W CC[3]	0.9568	30.0	3
158	ANAL & STOMAL PROCEDURES W/O CC[1]	0.5239	18.2	1
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC[4]	1.3735	36.5	1
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC[1]	0.5239	18.2	1
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC[1]	0.5239	18.2	2
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC[1]	0.5239	18.2	0
163	HERNIA PROCEDURES AGE 0–17[1*]	0.5239	18.2	0
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC[3*]	0.9568	30.0	0
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC[1*]	0.5239	18.2	0

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TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC [1*]	0.5239	18.2	0
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC [1*]	0.5239	18.2	0
168	MOUTH PROCEDURES W CC [4*]	1.3735	36.5	0
169	MOUTH PROCEDURES W/O CC	1.3735	36.5	0
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.8984	42.4	25
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC [1]	0.5239	18.2	1
172	DIGESTIVE MALIGNANCY W CC	1.0289	27.9	520
173	DIGESTIVE MALIGNANCY W/O CC	1.0177	28.9	140
174	G.I. HEMORRHAGE W CC	0.9592	26.9	270
175	G.I. HEMORRHAGE W/O CC	0.9181	28.3	62
176	COMPLICATED PEPTIC ULCER	0.9934	24.3	48
177	UNCOMPLICATED PEPTIC ULCER W CC [3]	0.9568	30.0	16
178	UNCOMPLICATED PEPTIC ULCER W/O CC [1]	0.5239	18.2	7
179	INFLAMMATORY BOWEL DISEASE	1.0571	24.0	40
180	G.I. OBSTRUCTION W CC	1.0191	27.8	212
181	G.I. OBSTRUCTION W/O CC	0.9831	24.8	49
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE > 17 W CC	0.9781	28.3	375
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE > 17 W/O CC	0.7925	24.4	149
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17 [4]	1.3735	36.5	2
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE > 17 [4]	1.3735	36.5	16
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17 [4]	1.3735	36.5	0
187	DENTAL EXTRACTIONS & RESTORATIONS [4*]	1.3735	36.5	0
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W CC	1.1863	29.5	476
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W/O CC	1.0223	25.1	74
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17 [3*]	0.9568	30.0	0
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC [4]	1.3735	36.5	1
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC [4]	1.3735	36.5	0
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC [5]	2.1422	48.3	2
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC [5]	2.1422	48.3	0
195	CHOLECYSTECTOMY W C.D.E. W CC [4*]	1.3735	36.5	0
196	CHOLECYSTECTOMY W C.D.E. W/O CC [3*]	0.9568	30.0	0
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC [3]	0.9568	30.0	2
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC [3]	0.9568	30.0	0
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY [5]	2.1422	48.3	1
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY [5*]	2.1422	48.3	0
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES [5]	2.1422	48.3	4
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.8110	26.6	128
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.8782	25.5	247
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0512	26.0	205
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.9764	26.5	99
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC [2]	0.7107	24.5	24
207	DISORDERS OF THE BILIARY TRACT W CC	0.7691	25.8	62
208	DISORDERS OF THE BILIARY TRACT W/O CC [2]	0.7107	24.5	16
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY [5].	2.1422	48.3	10
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC [4]	1.3735	36.5	9
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC [2]	0.7107	24.5	2
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17 [2*]	0.7107	24.5	0
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.4379	41.5	35
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE [3]	0.9568	30.0	9
217	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	1.5497	43.6	185
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC [4].	1.3735	36.5	1
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC [1].	0.5239	18.2	1
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17 [1*]	0.5239	18.2	0
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC [4].	1.3735	36.5	1
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC [2].	0.7107	24.5	1
225	FOOT PROCEDURES [3]	0.9568	30.0	17
226	SOFT TISSUE PROCEDURES W CC [5]	2.1422	48.3	7
227	SOFT TISSUE PROCEDURES W/O CC [5]	2.1422	48.3	1
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC [3]	0.9568	30.0	2
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC [3]	0.9568	30.0	1
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR [5]	2.1422	48.3	1
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR [4]	1.3735	36.5	13
232	ARTHROSCOPY [2]	0.7107	24.5	1

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC [5]	2.1422	48.3	10
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC [5]	2.1422	48.3	0
235	FRACTURES OF FEMUR	0.9608	34.9	157
236	FRACTURES OF HIP & PELVIS	0.8221	28.8	1,638
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6749	24.3	26
238	OSTEOMYELITIS	1.0920	34.5	962
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	0.8876	29.2	259
240	CONNECTIVE TISSUE DISORDERS W CC	1.0327	28.8	93
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.8174	28.3	39
242	SEPTIC ARTHRITIS	0.8899	30.8	140
243	MEDICAL BACK PROBLEMS	0.7222	25.4	860
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.6953	25.5	232
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4845	19.3	396
246	NON-SPECIFIC ARTHROPATHIES	0.7693	27.5	35
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.7016	24.9	343
248	TENDONITIS, MYOSITIS & BURSITIS	0.7110	24.6	449
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.9154	30.4	333
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8878	30.6	34
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.8341	29.2	41
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17 [1]	0.5239	18.2	1
253	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC	0.9364	31.9	245
254	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC	0.7816	28.7	160
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17 [3]	0.9568	30.0	2
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.9541	30.3	310
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC [1]	0.5239	18.2	1
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC [1]	0.5239	18.2	1
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC [1*]	0.5239	18.2	0
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC [1*]	0.5239	18.2	0
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION [3]	0.9568	30.0	1
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY [1*]	0.5239	18.2	0
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.6894	51.6	657
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.4650	49.2	110
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC [5]	2.1422	48.3	11
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC [5].	2.1422	48.3	1
267	PERIANAL & PILONIDAL PROCEDURES [5]	2.1422	48.3	3
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES [5]	2.1422	48.3	4
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5586	45.1	143
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.2594	40.1	26
271	SKIN ULCERS	1.2354	39.1	4,021
272	MAJOR SKIN DISORDERS W CC	0.9667	29.9	50
273	MAJOR SKIN DISORDERS W/O CC [2]	0.7107	24.5	11
274	MALIGNANT BREAST DISORDERS W CC	1.2025	32.9	118
275	MALIGNANT BREAST DISORDERS W/O CC	1.2025	32.9	32
276	NON-MALIGANT BREAST DISORDERS [2]	0.7107	24.5	7
277	CELLULITIS AGE >17 W CC	0.8857	28.3	816
278	CELLULITIS AGE >17 W/O CC	0.7680	26.0	359
279	CELLULITIS AGE 0–17 [3]	0.9568	30.0	8
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.9550	30.7	132
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7586	25.2	74
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17 [1]	0.5239	18.2	0
283	MINOR SKIN DISORDERS W CC	0.9649	29.9	53
284	MINOR SKIN DISORDERS W/O CC [2]	0.7107	24.5	17
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS [4].	1.3735	36.5	18
286	ADRENAL & PITUITARY PROCEDURES [4*]	1.3735	36.5	0
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.5168	42.1	32
288	O.R. PROCEDURES FOR OBESITY [2]	0.7107	24.5	1
289	PARATHYROID PROCEDURES [1*]	0.5239	18.2	0
290	THYROID PROCEDURES [1]	0.5239	18.2	1
291	THYROGLOSSAL PROCEDURES [1*]	0.5239	18.2	0
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC [4]	1.3735	36.5	14
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC [4]	1.3735	36.5	1
294	DIABETES AGE >35	0.8786	28.2	443
295	DIABETES AGE 0–35 [1]	0.5239	18.2	4
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.9448	28.2	665
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.7716	24.5	206
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17 [3]	0.9568	30.0	5
299	INBORN ERRORS OF METABOLISM [1]	0.5239	18.2	4

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
300	ENDOCRINE DISORDERS W CC	0.8315	27.4	66
301	ENDOCRINE DISORDERS W/O CC [2]	0.7107	24.5	12
302	KIDNEY TRANSPLANT [6]	0.0000	na	0
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM [5]	2.1422	48.3	2
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC [3]	0.9568	30.0	2
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC [1]	0.5239	18.2	2
306	PROSTATECTOMY W CC [2]	0.7107	24.5	1
307	PROSTATECTOMY W/O CC [1]	0.5239	18.2	2
308	MINOR BLADDER PROCEDURES W CC [3]	0.9568	30.0	4
309	MINOR BLADDER PROCEDURES W/O CC [2]	0.7107	24.5	1
310	TRANSURETHRAL PROCEDURES W CC [4]	1.3735	36.5	7
311	TRANSURETHRAL PROCEDURES W/O CC [2]	0.7107	24.5	5
312	URETHRAL PROCEDURES, AGE >17 W CC [4]	1.3735	36.5	2
313	URETHRAL PROCEDURES, AGE >17 W/O CC [4]	1.3735	36.5	0
314	URETHRAL PROCEDURES, AGE 0–17	1.3735	36.5	0
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.8305	40.6	99
316	RENAL FAILURE	1.1553	29.1	1,721
317	ADMIT FOR RENAL DIALYSIS [3*]	0.9568	30.0	0
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1129	33.0	118
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC [3]	0.9568	30.0	24
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8814	28.7	730
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.7213	25.6	202
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17 [3]	0.9568	30.0	7
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY [3]	0.9568	30.0	14
324	URINARY STONES W/O CC [2]	0.7107	24.5	4
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.5862	21.2	25
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC [1]	0.5239	18.2	18
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17 [1*]	0.5239	18.2	0
328	URETHRAL STRICTURE AGE >17 W CC [2]	0.7107	24.5	1
329	URETHRAL STRICTURE AGE >17 W/O CC [2]	0.7107	24.5	0
330	URETHRAL STRICTURE AGE 0–17 [2]	0.7107	24.5	0
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9193	26.7	293
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.8284	24.8	69
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17 [5]	2.1422	48.3	1
334	MAJOR MALE PELVIC PROCEDURES W CC [5*]	2.1422	48.3	0
335	MAJOR MALE PELVIC PROCEDURES W/O CC [5]	2.1422	48.3	0
336	TRANSURETHRAL PROSTATECTOMY W CC [1]	0.5239	18.2	1
337	TRANSURETHRAL PROSTATECTOMY W/O CC [1]	0.5239	18.2	3
338	TESTES PROCEDURES, FOR MALIGNANCY [2]	0.7107	24.5	1
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 [5]	2.1422	48.3	1
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17 [2*]	0.7107	24.5	0
341	PENIS PROCEDURES [3]	0.9568	30.0	2
342	CIRCUMCISION AGE >17 [1*]	0.5239	18.2	0
343	CIRCUMCISION AGE 0–17 [1*]	0.5239	18.2	0
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY [1].	0.5239	18.2	1
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY [5].	2.1422	48.3	3
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.9607	29.7	154
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC [2]	0.7107	24.5	21
348	BENIGN PROSTATIC HYPERTROPHY W CC [2]	0.7107	24.5	5
349	BENIGN PROSTATIC HYPERTROPHY W/O CC [2]	0.7107	24.5	1
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM [4]	1.3735	36.5	24
351	STERILIZATION, MALE [1*]	0.5239	18.2	0
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES [4]	1.3735	36.5	15
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY [1].	0.5239	18.2	1
354	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC [1]	0.5239	18.2	0
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC [1]	0.5239	18.2	1
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES [1]	0.5239	18.2	5
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY [3]	0.9568	30.0	0
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC [1]	0.5239	18.2	1
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC [1]	0.5239	18.2	4
360	VAGINA, CERVIX & VULVA PROCEDURES [2]	0.7107	24.5	1
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION [3*]	0.9568	30.0	0
362	ENDOSCOPIC TUBAL INTERRUPTION [3*]	0.9568	30.0	0
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY [4]	1.3735	36.5	1
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY [2*]	0.7107	24.5	0
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES [5]	2.1422	48.3	5
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9694	29.5	134

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.8881	30.4	43
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM [3]	0.9568	30.0	22
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS [2]	0.7107	24.5	14
370	*CESAREAN SECTION W CC [5*]	2.1422	48.3	0
371	CESAREAN SECTION W/O CC [5*]	2.1422	48.3	0
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES [1*]	0.5239	18.2	0
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES [1*]	0.5239	18.2	0
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C [1*]	0.5239	18.2	0
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C [1*]	0.5239	18.2	0
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE [1*]	0.5239	18.2	0
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE [1*]	0.5239	18.2	0
378	ECTOPIC PREGNANCY [1*]	0.5239	18.2	0
379	THREATENED ABORTION [1*]	0.5239	18.2	0
380	ABORTION W/O D&C [1*]	0.5239	18.2	0
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY [1*]	0.5239	18.2	0
382	FALSE LABOR [1*]	0.5239	18.2	0
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS [1*]	0.5239	18.2	0
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS [1*]	0.5239	18.2	0
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY [3*].	0.9568	30.0	2
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE [3*].	0.9568	30.0	0
387	PREMATURITY W MAJOR PROBLEMS [3*]	0.9568	30.0	0
388	PREMATURITY W/O MAJOR PROBLEMS [3*]	0.9568	30.0	0
389	FULL TERM NEONATE W MAJOR PROBLEMS [3*]	0.9568	30.0	0
390	NEONATE W OTHER SIGNIFICANT PROBLEMS [3]	0.9568	30.0	2
391	NORMAL NEWBORN [3*]	0.9568	30.0	0
392	SPLENECTOMY AGE >17 [3*]	0.9568	30.0	0
393	SPLENECTOMY AGE 0–17 [3*]	0.9568	30.0	0
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS [5]	2.1422	48.3	1
395	RED BLOOD CELL DISORDERS AGE >17	0.8709	25.8	144
396	RED BLOOD CELL DISORDERS AGE 0–17 [1]	0.5239	18.2	2
397	COAGULATION DISORDERS	1.3069	29.5	43
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.8361	25.4	36
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC [2]	0.7107	24.5	10
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE [4]	1.3735	36.5	2
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC [3]	0.9568	30.0	3
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC [3]	0.9568	30.0	0
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.1242	29.4	280
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8288	24.7	88
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17 [3*]	0.9568	30.0	0
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC [5]	2.1422	48.3	1
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC [5]	2.1422	48.3	0
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC [2]	0.7107	24.5	3
409	RADIOTHERAPY [3]	0.9568	30.0	24
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [4]	1.3735	36.5	14
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY [1*]	0.5239	18.2	0
412	HISTORY OF MALIGNANCY W ENDOSCOPY [1*]	0.5239	18.2	0
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	0.9832	26.7	49
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.8681	29.7	30
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.9075	44.1	227
416	SEPTICEMIA AGE >17	1.1222	29.4	1,695
417	SEPTICEMIA AGE 0–17 [5]	2.1422	48.3	5
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0078	28.4	522
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC [2]	0.7107	24.5	17
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC [2]	0.7107	24.5	11
421	VIRAL ILLNESS AGE >17 [3]	0.9568	30.0	14
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17 [3*]	0.9568	30.0	0
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.0906	31.9	272
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS [4]	1.3735	36.5	15
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.7912	30.5	63
426	DEPRESSIVE NEUROSES	0.6290	25.5	92
427	NEUROSES EXCEPT DEPRESSIVE [3]	0.9568	30.0	20
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.7423	31.6	31
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.6401	27.9	957
430	PSYCHOSES	0.5602	26.4	2,396
431	CHILDHOOD MENTAL DISORDERS	0.5023	23.0	50
432	OTHER MENTAL DISORDER DIAGNOSES [3]	0.9568	30.0	7
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2778	12.6	59
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.5051	22.2	145
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	0.4378	20.2	179

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TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY [1]	0.5239	18.2	4
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY [1]	0.5239	18.2	2
439	SKIN GRAFTS FOR INJURIES [4]	1.3735	36.5	13
440	WOUND DEBRIDEMENTS FOR INJURIES	1.2503	39.8	40
441	HAND PROCEDURES FOR INJURIES [3*]	0.9568	30.0	0
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.3777	38.6	28
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC [4]	1.3735	36.5	3
444	TRAUMATIC INJURY AGE >17 W CC	1.2206	34.5	169
445	TRAUMATIC INJURY AGE >17 W/O CC	0.9130	28.0	86
446	TRAUMATIC INJURY AGE 0–17 [3*]	0.9568	30.0	0
447	ALLERGIC REACTIONS AGE >17 [1]	0.5239	18.2	2
448	ALLERGIC REACTIONS AGE 0–17 [1*]	0.5239	18.2	0
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC [2]	0.7107	24.5	19
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC [1]	0.5239	18.2	11
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17 [1*]	0.5239	18.2	0
452	COMPLICATIONS OF TREATMENT W CC	1.3070	33.1	311
453	COMPLICATIONS OF TREATMENT W/O CC	0.7486	23.6	61
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC [2]	0.7107	24.5	11
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC [2]	0.7107	24.5	5
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.5801	43.2	197
462	REHABILITATION	0.7802	28.3	7,505
463	SIGNS & SYMPTOMS W CC	0.8474	29.7	859
464	SIGNS & SYMPTOMS W/O CC	0.7091	28.1	478
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS [2]	0.7107	24.5	20
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1.2446	32.0	273
467	OTHER FACTORS INFLUENCING HEALTH STATUS [1]	0.5239	18.2	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.3052	49.6	429
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	na	0
470	UNGROUPABLE	0.0000	na	0
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY [5*]	2.1422	48.3	0
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	1.2549	25.3	39
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.3043	38.9	4,182
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.5835	41.1	26
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.9253	46.5	162
478	OTHER VASCULAR PROCEDURES W CC	1.8876	42.6	42
479	OTHER VASCULAR PROCEDURES W/O CC	1.8876	42.6	4
480	LIVER TRANSPLANT [6]	0.0000	na	0
481	BONE MARROW TRANSPLANT [5*]	2.1422	48.3	0
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES [4]	1.3735	36.5	2
483	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES	3.2118	51.4	326
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA [5*]	2.1422	48.3	0
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR [5*].	2.1422	48.3	0
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA [5]	2.1422	48.3	2
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.3111	35.9	77
488	HIV W EXTENSIVE O.R. PROCEDURE [5]	2.1422	48.3	2
489	HIV W MAJOR RELATED CONDITION	1.5141	38.5	106
490	HIV W OR W/O OTHER RELATED CONDITION	1.4702	36.4	48
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY [5*].	2.1422	48.3	0
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [4]	1.3735	36.5	1
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC [3]	0.9568	30.0	6
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC [1]	0.5239	18.2	1
495	LUNG TRANSPLANT [6]	0.0000	na	0
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION [3*]	0.9568	30.0	0
497	SPINAL FUSION W CC [3]	0.9568	30.0	4
498	SPINAL FUSION W/O CC [3]	0.9568	30.0	0
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC [5]	2.1422	48.3	4
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC [4]	1.3735	36.5	1
501	KNEE PROCEDURES W PDX OF INFECTION W CC [5]	2.1422	48.3	2
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC [5]	2.1422	48.3	0
503	KNEE PROCEDURES W/O PDX OF INFECTION [4]	1.3735	36.5	3
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT [4]	1.3735	36.5	2
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT [4]	1.3735	36.5	4
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA [4].	1.3735	36.5	9
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA [2].	0.7107	24.5	2
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA [3].	0.9568	30.0	24

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA [2].	0.7107	24.5	9
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA [3]	0.9568	30.0	23
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA [2]	0.7107	24.5	10
601	VERY SHORT-STAY ADMISSION NON-PSYCHIATRIC DIAGNOSES [7]	0.1546	4.3	543
602	VERY SHORT-STAY ADMISSION PSYCHIATRIC DIAGNOSES [8]	0.0827	4.5	10,361

* Proposed relative weights for these LTC–DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2000 MedPAR.
[1] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 1.
[2] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 2.
[3] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 3.
[4] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 4.
[5] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 5.
[6] Proposed relative weights for these LTC–DRGs were assigned a value of 0.0.
[7] Proposed relative weights for these LTC–DRGs were determined by combining LTCH cases in MDC 19 or 20 with a length of stay 7 days or fewer.
[8] Proposed relative weights for these LTC–DRGs were determined by combining LTCH cases in MDCs other than 19 or 20 with a length of stay 7 days or fewer.

B. Special Cases

Under section 123 of Public Law 106–113, the Secretary generally has broad authority in developing the prospective payment system for LTCHs. Thus, the Secretary generally has broad authority in determining whether (and how) to make adjustments to prospective payment system payments. Section 307 of Public Law 106–554 directs the Secretary to "examine" appropriate adjustments to the prospective payment system, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by an average length of stay greater than 25 days. Certain "special" cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. Further, because of the budget neutrality requirement of section 123(a)(1) of Public Law 106–113, "overpayment" for these cases would reduce payments for all other cases that warrant full payment based on the LTCH services delivered. We discuss the special cases below in terms of proposed definitions, policy rationale, and proposed payment methodology. The three proposed subsets are very short-stay discharges, short-stay outliers, and interrupted stays.

1. Very Short-Stay Discharges

We are proposing, under § 412.527, to define a very short-stay discharge as a discharge that has a length of stay of 7 days or fewer (regardless of the LTC–DRG assignment), irrespective of the discharge designation (including cases where the patient expires). A very short-stay discharge often occurs when it is determined, following admission to a LTCH, that the beneficiary would receive more appropriate care in another setting, such as a patient who experiences an acute episode or requires more intensive rehabilitation therapy than is available at the LTCH. These patients may be discharged to another site of care and then subsequently readmitted to the LTCH following that stay if they require LTCH treatment (see the interrupted stay policy in section IV.B.3 of this preamble for further clarification regarding length of stay criteria), or they may be discharged and not subsequently readmitted because they no longer require LTCH treatment. Other circumstances that would warrant classification as a very short-stay discharge would involve patients who are either discharged to their home or who expire within the first 7 days of being admitted to a LTCH.

Since LTCHs are defined by statute as generally having an average length of stay greater than 25 days, we are proposing to make an adjustment for very short-stay discharges in order to make appropriate payment to cases that may not necessarily require the type of services intended to be provided at a LTCH. Further, we believe that providing a special payment for very short-stay discharges neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care.

In considering the appropriate upper day threshold for identifying very short-stay discharges, we found in our analysis that, from a clinical perspective, it takes about 3 days to evaluate the appropriateness of the admission and typically an additional 3 to 4 days for any treatment to begin to have any impact on the patient's health status. Therefore, we believe that patient cases with 7 days or less treatment in a LTCH are different than the typical LTCH patient cases and generally the patients are not in the hospital long enough to clinically receive full LTCH treatment. We believe that establishing a special payment for these types of cases addresses the problem of an extremely short length of stay that is inherent in a discharge-based prospective payment system. Furthermore, because the rates are set to be budget neutral, if we did not propose to make this adjustment, providing a full prospective payment system payment for very short-stay cases would reduce payments for nonshort-stay LTCH cases.

We are proposing to pay a very short-stay discharge case under a LTC–DRG-specific per diem methodology. Analysis of payment-to-cost ratios indicates that the accuracy of the payments could be improved if we categorize very short-stay discharge cases into two categories based on the primary diagnosis—one for psychiatric

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cases and one for all other types of cases. We believe it would be appropriate to separate very short-stay discharge cases into psychiatric and nonpsychiatric categories because our analysis shows that the resources used to treat these two types of patients during the first 7 days differ significantly. In our simulations, combining psychiatric very short-stay discharge cases with all other very short-stay discharge cases resulted in a considerable "overpayment" of the very short-stay discharge psychiatric cases and a substantial "underpayment" of all other (nonpsychiatric) very short-stay discharge cases. As shown in Table 4 above, the proposed relative weight of LTC–DRG 602 for very short-stay discharge psychiatric cases (0.0827) is almost half the proposed relative weight of LTC–DRG 601 (0.1546) for very short-stay discharge nonpsychiatric cases. This means that the average charge for cases with a stay of 7 days or less in nonpsychiatric LTC–DRGs is almost twice the average charge for cases with a stay of 7 days or less in psychiatric LTC–DRGs. Therefore, for payment of very short-stay discharge cases, we are proposing under § 412.527(c)(1), to categorize a discharge into either a very short-stay discharge psychiatric LTC–DRG or a very short-stay discharge nonpsychiatric LTC–DRG. Additional analysis of nonpsychiatric cases with a length of stay of 7 days or fewer indicates that there is not a significant difference in the resource use across other "categories" of LTCH very short-stay discharge cases and the equity of the payment system would not be improved. Thus, we do not believe further distinctions among very short-stay discharge nonpsychiatric cases would be necessary or appropriate.

The relative weight for each of these two very short-stay discharge LTC–DRGs would be based on the average charge for all very short-stay discharge psychiatric cases and all nonpsychiatric cases, respectively, relative to all other LTC–DRGs (excluding all very short-stay discharge cases). We computed the proposed relative weights for the very short-stay discharge psychiatric LTC–DRG and very short-stay discharge nonpsychiatric LTC–DRG by identifying all cases in which the length of stay is 7 days or fewer and categorizing those cases as either psychiatric or nonpsychiatric based on the primary diagnosis of the discharge. Very short-stay discharge psychiatric cases were identified based on the primary ICD–9–CM diagnosis code that would otherwise be classified in LTC–DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or LTC–DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders) in the absence of a very short stay discharge policy. The proposed relative weights for these two very short-stay discharge LTC–DRGs would be calculated in the same manner discussed previously, using the hospital-specific relative value methodology. Each very short-stay discharge LTC–DRG per diem amount would be determined by dividing the applicable Federal payment rate (Federal payment rate x LTC–DRG weight) by 7 days (proposed § 412.527(c)(2)).

2. Short-Stay Outliers

We believe that considerations similar to those underlying the proposed very short-stay discharge policy also apply to short-stay cases with a length of stay greater than 7 days. More specifically, we note that some Medicare patients may have slightly longer lengths of stay, but are still well below the average length of stay of greater than the 25-day threshold specified in the statute, reflecting the fact that these beneficiaries may not require the type of care generally provided in a LTCH or may require urgent treatment at another site of care. Therefore, we also are proposing a short-stay outlier policy that would encompass cases with a length of stay beyond the 7 days that are addressed by the proposed very short-stay discharge policy.

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care and be readmitted to the LTCH if they require subsequent LTCH treatment (see the interrupted stay policy in section IV.B.3. of this preamble for further clarification regarding length of stay criteria), or they may be discharged and not readmitted because they no longer require LTCH treatment.

Furthermore, patients may expire early in their LTCH stay. As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. Therefore, we believe that a payment adjustment for short-stay outlier cases would result in more appropriate payments since these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios for the cases described above show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly "overpaid" for the resources they have actually expended.

We also believe that providing a reduced payment for short-stay outlier cases neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care or before the beneficiary is discharged to go home. Establishing a short-stay outlier payment for these types of cases addresses the incentives inherent in a discharge-based prospective payment system for treating patients with a short length of stay. One of the primary objectives of a prospective payment system is to provide incentives for hospitals to become more efficient and, in doing so, to ensure that they can still receive adequate and appropriate payments. Because the rates are set to be budget neutral, providing a full prospective payment system payment for those cases that do not actually require the full course of treatment would reduce payments for cases that warrant full payment based on the LTCH services furnished. Therefore, we believe that a short-stay outlier policy would permit more equitable payment.

In considering possible short-stay outlier policies, we sought to balance appropriate payments to shorter stay cases, which are generally less expensive than the average case in each LTC–DRG, and payments to inlier cases in each LTC–DRG. In the absence of a short-stay outlier policy, based on analysis of payment-to-cost ratios, the full LTC–DRG payment would "overpay" the short-stay cases and "underpay" the inlier cases. A short-stay outlier policy that results in payment-to-cost ratios that are at (or close to) 1.0 would ensure appropriate payments to both short-stay and inlier cases within a LTC–DRG because, on average, payments would closely match costs for these cases under this proposed prospective payment system.

With no short-stay outlier policy, we estimate that payment-to-cost ratios would be greater than 2.0 for cases with lengths of stays below the average length of stay for the LTC–DRG. We considered three alternative short-stay outlier policies in which payment would be based:

- The least of 100 percent of the cost of the case, 100 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and the average length of stay of the LTC–DRG;
- The least of 150 percent of the cost of the case, 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG; or
- The least of 200 percent of the cost of the case, 200 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and half of the average length of stay of the LTC–DRG.

In each of the three alternatives examined, the short-stay outlier day threshold corresponds to the day where the full LTC–DRG payment would be reached by paying the specified percentage of the per diem amount for the LTC–DRG. This would result in a gradual increase in payment as the length of stay increases without producing a "payment cliff", which would provide an incentive to discharge a patient one day later because there would be a significant increase in the payment. For example, in a LTC–DRG with an average length of stay of 24 days and a full LTC–DRG payment of $24,000, the per diem amount would be $1,000 per day ($24,000/24 days). At 150 percent of the per diem amount (1.5 × $1,000 = $1,500 per day), the full LTC–DRG payment ($24,000) would be reached on day 16 (16 days × $1,500 per day = $24,000), which is equal to two-thirds of the average length of stay for the LTC–DRG (2/3 × 24 days = 16 days). Thus, under the second alternative, the upper day threshold is two-thirds of the average length of stay and a case with a length of stay between 8 and 16 would be paid as a short-stay outlier in this example.

Our analysis of the three alternative short-stay outlier policies described above showed that a short-stay outlier policy that would pay the least of 100 percent of cost, 100 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment with a length of stay between 8 days and the average length of stay for the LTC–DRG would result in an average payment-to-cost ratio of slightly less than 1.0 for cases identified as short-stay outliers and a payment-to-cost ratio of just over 1.0 for cases that exceeded the average length of stay. Such a short-stay outlier policy would slightly "underpay" most inlier cases while "overpaying", and thus reducing the incentives for efficiency in the delivery of care of, longer stay cases.

Our analysis also showed that a short-stay outlier policy that would pay the least of 200 percent of cost, 200 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment for cases that stayed between 8 days and half of the average length of stay for the LTC–DRG would result in an average payment-to-cost ratio of greater than 1.5 for those cases identified as short-stay outliers. Such a short-stay outlier policy would result in significant overpayment to those cases identified as short-stay outliers.

Our analysis of a short-stay outlier policy that would pay the least of 150 percent of cost, 150 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment for cases that stayed between 8 days and two-thirds of the average length of stay for the LTC–DRG showed that payment-to-cost ratios for both cases that would be identified as short-stay outliers and inlier cases (that are below the high-cost outlier threshold) would be at or slightly above 1.0. We believe that this alternative would most appropriately pay cases identified as short-stay outliers, inlier cases, and longer stay cases without an incentive to provide inefficient care.

Payment simulations showed that, of the LTCH cases in the FY 2000 MedPAR with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG under the proposed system, payment to 60.8 percent of those cases would be capped at 150 percent of cost. While we acknowledge that under any prospective payment system, hospitals have the opportunity to make a profit on discharges, particularly to help cover the expenses of their extraordinarily costly Medicare patients, we believe that a payment limited to 150 percent of costs or 150 percent of the LTC–DRG per diem payment amount would allow LTCHs to make a reasonable, but not excessive, profit for these short-stay patients.

Based on the analysis described above, we are proposing, under § 412.529, to define a short-stay outlier as a case that has a length of stay between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG. We also are proposing to pay a short-stay outlier case defined in proposed § 412.529(a) the least of—(1) 150 percent of the LTC–DRG specific per diem based payment; (2) 150 percent of the cost of the case; or (3) the full LTC–DRG payment (proposed § 412.529(c)(1)).

The LTC–DRG specific per diem based payment would be determined using the proposed standard Federal payment rate (Federal payment rate × LTC–DRG weight) and the arithmetic mean length of stay of the specific LTC–DRG (proposed § 412.529(c)(2)). The cost of a case would be determined using the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case (proposed § 412.529(c)(3)).

3. Interrupted Stay

We are proposing, under § 412.531, to define interrupted stay cases as those cases in which a LTCH patient is discharged to an inpatient acute care hospital, an IRF, or a SNF for treatment or services not available at the LTCH for a period that is within (less than or equal to) one standard deviation from the arithmetic average length of stay for the DRG assigned for the inpatient acute care hospital stay, one standard deviation from the arithmetic average length of stay for the CMG and the comorbidity tier assigned for the IRF stay, or within 45 days in a SNF (that is, one standard deviation from the average length of stay for all Medicare SNF cases), followed by readmittance to the same LTCH. In considering an appropriate interrupted stay threshold, we attempted to balance the payment incentives of both the LTCH and the acute care hospital, IRF, or SNF to which the LTCH patient is discharged before being readmitted to the LTCH. In order to assure that discharges from LTCHs are based on clinical considerations and not financial incentives, we are proposing that the proposed interrupted stay day threshold would only pay the LTCH for more than one discharge if the patient's length of stay at the acute care hospital, IRF, or SNF exceeds one standard deviation from the average length of stay for the DRG, the combination of the CMG and the comorbidity tier, or for all Medicare SNF cases, respectively. This would, therefore, make it more difficult for a LTCH to find a prospectively paid acute care hospital, IRF, or SNF that would admit a LTCH patient just to allow the LTCH to receive two separate LTC–DRG payments.

We believe that an interrupted-stay day threshold of one standard deviation from the average length of stay for either the acute care hospital DRG, the IRF combination of the CMG and the comorbidity tier, or for all Medicare SNF cases provides the appropriate disincentive since cases that stay significantly longer than the average length of stay are more costly than the average case. Since the SNF prospective payment system is a per diem system, not a per discharge system, we are proposing the same threshold for all SNF cases regardless of the resource utilization group (RUG) classification.

We believe that the proposed interrupted stay threshold is appropriate because, in general, the average length of stay plus one standard deviation would capture the majority of the discharges that are similar to the average length of stay for the respective DRG, combination CMG and comorbidity tier, or for all Medicare SNF cases. In addition, this is consistent with the basis for our payment policy for new technologies under the hospital inpatient prospective payment system where the cost of a new technology must exceed one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new technology is assigned in order to receive additional payments (see the September 7, 2001 final rule, 66 FR 46914). The counting of the days for the interruption of the stay would begin on the day of discharge from the proposed LTCH and would end on the day the patient is readmitted to the LTCH. For the purposes of payment under the proposed LTCH prospective payment system, a case that meets the proposed definition of an interrupted stay would be considered a single discharge from the LTCH, and, therefore, would receive only one LTC–DRG payment. Since the two LTCH stays would be considered as a single case for the purposes of payment under the LTCH prospective payment system, the second discharge from the LTCH would be covered under the single LTC–DRG payment. The acute care hospital, the IRF, or the SNF stay would be paid in accordance with the applicable payment policies for those providers.

We are proposing to make one discharge payment under the LTCH prospective payment system for an interrupted stay case as defined under proposed § 412.531(a), to reduce the incentives inherent in a discharged-based prospective payment system of "shifting" patients between Medicare-covered sites of care in order to maximize Medicare payments. This proposed policy is particularly appropriate for LTCHs since, as a group, these hospitals are considerably diverse and offer a broad range of services such that where some LTCHs may be able to handle certain acute conditions, others would need to transfer their patients to acute care hospitals. (See section I.E. of this preamble for a description of the universe of LTCHs.)

For instance, some LTCHs are equipped with operating rooms and intensive care units and are capable of performing minor surgeries. However, other LTCHs are unable to provide those services and would need to transfer the beneficiary to an acute care hospital. Similarly, a patient who no longer requires hospital-level care, but is not ready to return to the community, could be transferred to a SNF. This incentive to "shift" patients between Medicare-covered sites of care in order to maximize Medicare payments is of a particular concern when the LTCH is physically located within the walls of another hospital. Often, the LTCH patient may not even be aware of a transfer to the other hospital or SNF because he or she will have only been moved down the hall or to another wing of the building. Moreover, our research reveals that hospitals-within-hospitals are the fastest growing type of LTCH. We also believe that the same incentives for inappropriate discharges and readmittance exist for satellite LTCHs that are located within acute care hospitals, described in § 412.22(h), as well as for distinct part SNFs located in acute care hospitals or co-located with LTCHs. (We address the particular issues of onsite discharges and readmittances in section IV.B.5. (proposed § 412.532(d)) in this proposed rule.)

Whether or not a LTCH patient who is discharged to an inpatient acute care hospital, an IRF, or a SNF and then returns to the same LTCH is treated as an interrupted stay (with one LTC–DRG payment) or as a new admission (with two separate LTC–DRG payments) would depend on the patient's length of stay compared to the arithmetic average length of stay and the standard deviation for the hospital inpatient prospective payment system DRG, the IRF combination of the CMG and the comorbidity tier, or 45 days for all Medicare SNF cases. The arithmetic average length of stay and one standard deviation for each acute care hospital DRG and each IRF combination of the CMG and the comorbidity tier are shown below in Tables 5 and 6, respectively.

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
1	18
2	19
3	56
4	16
5	7
6	7
7	22
8	6
9	13
10	14
11	8
12	13
13	11
14	11
15	7
16	12
17	6
18	10
19	7
20	20
21	12
22	10
23	8
24	11
25	6
26	5
27	11
28	12
29	7
31	13
32	5
34	10
35	10
36	3
37	9
38	5
39	4
40	7
42	5
43	5
44	9
45	6
46	9
47	6
49	10
50	4
51	7
52	4
53	8
54	2
55	7
56	6
57	10
59	6
60	6
61	12
62	2
63	10
64	13
65	5
66	6
67	7
68	7
69	6
70	5
71	7
72	7
73	9
75	19
76	24
77	10
78	11
79	16
80	10
81	48
82	13
83	10

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
84	6
85	12
86	7
87	12
88	9
89	10
90	7
91	8
92	12
93	7
94	12
95	7
96	8
97	6
98	9
99	6
100	4
101	8
102	5
103	112
104	25
105	18
106	19
107	17
108	19
109	13
110	18
111	8
113	24
114	17
115	16
116	9
117	10
118	6
119	11
120	20
121	12
122	6
123	10
124	9
125	5
126	22
127	10
128	9
129	8
130	10
131	7
132	6
133	4
134	6
135	9
136	5
138	8
139	4
140	5
141	7
142	5
143	4
144	11
145	5
146	18
147	9
148	22
149	9
150	20
151	10
152	14
153	8
154	25
155	8
156	15
157	11
158	5
159	10
160	5
161	9
162	4
163	8
164	14
165	7
166	10
167	4
168	10
169	5
170	24
171	9
172	14
173	7
174	9
175	5
176	10
177	8
178	5
179	11
180	10
181	6
182	8
183	5
184	5
185	9
186	18
187	7
188	11
189	6
190	23
191	28
192	11
193	22
194	11
195	18
196	9
197	16
198	7
199	19
200	22
201	26
202	13
203	13
204	11
205	12
206	7
207	10
208	5
209	8
210	12
211	8
212	25
213	18
216	19
217	29
218	10
219	5
220	7
223	6
224	3
225	10
226	14
227	5
228	8
229	5
230	12
231	11
232	7
233	15
234	7
235	16
236	9
237	6
238	17
239	12
240	13
241	7
242	13
243	9
244	10
245	8
246	8
247	7
248	9
249	8
250	8
251	5
253	10
254	6
256	10
257	6
258	3
259	7
260	2
261	5
262	8
263	24
264	13
265	16
266	7
267	8
268	8
269	17
270	8
271	14
272	12
273	8
274	13
275	10
276	10
277	11
278	7
279	4
280	8
281	6
282	2
283	9
284	6
285	20
286	13
287	22
288	12
289	7
290	5
291	3
292	21

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGs—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
293	12
294	9
295	7
296	10
297	6
298	6
299	11
300	12
301	7
302	16
303	15
304	18
305	6
306	12
307	4
308	14
309	4
310	10
311	3
312	10
313	5
315	19
316	13
317	6
318	12
319	5
320	10
321	7
322	7
323	6
324	3
325	7
326	5
327	5
328	7
329	4
331	11
332	6
333	10
334	9
335	5
336	7
337	3
338	11
339	10
341	8
342	7
344	6
345	8
346	12
347	6
348	8
349	5
350	8
352	9
353	13
354	11
355	5
356	4
357	16
358	9
359	4
360	6
361	7
363	8
364	9
365	15
366	14
367	6
368	12
369	7
370	13
371	7
372	7
373	4
374	6
375	3
376	6
377	10
378	4
379	8
380	4
381	6
382	2
383	8
384	4
389	34
390	7
392	19
394	18
395	9
396	9
397	10
398	12
399	6
400	20
401	22
402	8
403	16
404	9
406	20
407	8
408	19
409	12
410	8
411	4
412	4
413	14
414	8
415	30
416	14
417	8
418	12
419	9
420	6
421	7
422	5
423	17
424	36
425	8
426	9
427	10
428	19
429	15
430	17
431	15
432	12
433	7
439	18
440	20
441	7
442	19
443	7
444	8
445	5
447	5
449	8
450	4
451	2
452	10
453	5
454	11
455	6
461	12
462	20
463	8
464	6
465	6
466	9
467	7
468	26
470	88
471	10
473	28
475	22
476	20
477	18
478	15
479	7
480	44
481	37
482	26
483	69
484	25
485	19
486	24
487	14
488	34
489	18
490	11
491	6
492	32
493	11
494	4
495	28
496	18
497	12
498	6
499	9
500	5
501	20
502	12
503	8
504	56
505	9
506	33
507	16
508	16
509	9
510	15
511	11
512	24
513	18
514	16
515	14
516	9
517	6
518	8
519	11
520	4
521	12
522	17
523	8

* Arithmetic average length of stay and standard deviation based on data used to develop the hospital inpatient prospective payment system FY 2002 DRG relative weights (see the August 1, 2001 final rule, 66 FR 40054).

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0101**	1	11
0101**	2	10
0101	3	8
0101	None	13
0102**	1	17
0102	2	18
0102	3	16
0102	9	15
0103**	1	19
0103**	2	18
0103	3	17
0103	None	18
0104	1	25
0104	2	18
0104	3	18
0104	None	19
0105	1	24
0105	2	25
0105	3	22
0105	None	23
0106	1	26
0106	2	26
0106	3	27
0106	None	27
0107	1	25
0107	2	30
0107	3	30
0107	None	30
0108**	1	35
0108	2	44
0108	3	33
0108	None	33
0109	1	36
0109	2	35
0109	3	31
0109	None	35
0110**	1	39
0110	2	35
0110	3	40
0110	None	39
0111**	1	40
0111	2	38
0111	3	35
0111	None	39
0112	1	66
0112	2	52
0112	3	45
0112	None	44
0113	1	46
0113	2	41
0113	3	38
0113	None	40
0114	1	56
0114	2	51
0114	3	48
0114	None	48
0201**	1	19
0201	2	22
0201	3	21
0201	None	17
0202**	1	27
0202	2	24
0202	3	26
0202	None	25
0203	1	27
0203	2	27
0203	3	30
0203	None	27
0204**	1	35
0204	2	34
0204	3	33
0204	None	33
0205	1	65
0205	2	56
0205	3	52
0205	None	48
0301**	1	21
0301	2	22
0301	3	19
0301	None	20
0302**	1	27
0302	2	25
0302	3	27
0302	None	25
0303	1	33
0303	2	35
0303	3	33
0303	None	32
0304	1	63
0304	2	50
0304	3	53
0304	None	47
0401**	1	22
0401	2	22
0401	3	30
0401	None	30
0402**	1	30
0402	2	27
0402	3	33
0402	None	31
0403**	1	51
0403	2	55
0403	3	50
0403	None	52
0404	1	87
0404	2	64
0404	3	101
0404	None	66
0501**	1	18
0501	2	21
0501	3	15
0501	None	16
0502**	1	18
0502	2	26
0502	3	13
0502	None	18
0503**	1	25
0503	2	26
0503	3	23
0503	None	22
0504**	1	33
0504	2	31
0504	3	37
0504	None	29
0505	1	46
0505	2	48
0505	3	44
0505	None	45
0601**	1	20
0601	2	21
0601	3	17
0601	None	19
0602	1	19
0602	2	22
0602	3	21
0602	None	23
0603	1	33
0603	2	27
0603	3	27
0603	None	27
0604	1	49
0604	2	36
0604	3	40
0604	None	36
0701**	1	18
0701	2	18
0701	3	19
0701	None	17
0702**	1	22
0702	2	22
0702	3	23
0702	None	20
0703**	1	25
0703	2	26
0703	3	25
0703	None	24
0704	1	19
0704	2	29
0704	3	26
0704	None	26
0705	1	29
0705	2	32
0705	3	32
0705	None	31
0801**	1	13
0801	2	13
0801	3	12
0801	None	12
0802**	1	14
0802	2	15
0802	3	13
0802	None	13
0803	1	13

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TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0803	2	16
0803	3	19
0803	None	15
0804	1	21
0804	2	20
0804	3	21
0804	None	18
0805**	1	22
0805	2	24
0805	3	21
0805	None	20
0806**	1	30
0806	2	30
0806	3	28
0806	None	27
0901**	1	17
0901	2	17
0901	3	17
0901	None	16
0902**	1	21
0902	2	22
0902	3	20
0902	None	20
0903**	1	26
0903	2	27
0903	3	27
0903	None	24
0904**	1	35
0904	2	36
0904	3	35
0904	None	33
1001**	1	19
1001	2	23
1001	3	18
1001	None	21
1002**	1	22
1002	2	22
1002	3	21
1002	None	23
1003**	1	26
1003	2	27
1003	3	25
1003	None	27
1004**	1	29
1004	2	30
1004	3	28
1004	None	28
1005	1	30
1005	2	37
1005	3	38
1005	None	35
1101**	1	24
1101	2	17
1101	3	19
1101	None	18
1102**	1	33
1102	2	26
1102	3	26
1102	None	28
1103**	1	43
1103	2	33
1103	3	33
1103	None	39
1201**	1	16
1201	2	14
1201	3	16
1201	None	14
1202**	1	22
1202	2	16
1202	3	20
1202	None	20
1203**	1	23
1203	2	20
1203	3	20
1203	None	20
1204**	1	29
1204	2	26
1204	3	24
1204	None	25
1205**	1	36
1205	2	32
1205	3	31
1205	None	30
1301**	1	19
1301	2	21
1301	3	21
1301	None	17
1302**	1	22
1302	2	21
1302	3	21
1302	None	20
1303**	1	27
1303	2	25
1303	3	24
1303	None	26
1304**	1	39
1304	2	39
1304	3	46
1304	None	36
1401	1	25
1401	2	17
1401	3	15
1401	None	16
1402	1	19
1402	2	21
1402	3	20
1402	None	20
1403	1	31
1403	2	28
1403	3	23
1403	None	24
1404	1	44
1404	2	36
1404	3	32
1404	None	31
1501**	1	20
1501	2	18
1501	3	20
1501	None	20
1502**	1	23
1502	2	26
1502	3	19
1502	None	23
1503**	1	28
1503	2	29
1503	3	25
1503	None	27
1504**	1	46
1504	2	44
1504	3	49
1504	None	42
1601**	1	22
1601	2	21
1601	3	20
1601	None	20
1602**	1	31
1602	2	30
1602	3	31
1602	None	27
1701**	1	20
1701	2	19
1701	3	15
1701	None	21
1702**	1	29
1702	2	29
1702	3	30
1702	None	26
1703	1	48
1703	2	45
1703	3	41
1703	None	37
1801**	1	17
1801**	2	17
1801**	3	17
1801	None	15
1802**	1	26
1802**	2	26
1802**	3	26
1802	None	26
1803**	1	33
1803	2	37
1803	3	31
1803	None	33
1804**	1	58
1804	2	45
1804**	3	56
1804	None	56
1901**	1	22
1901**	2	22
1901	3	25
1901	None	22
1902**	1	39
1902	2	39
1902	3	39
1902	None	36
1903**	1	54
1903	2	47
1903	3	42
1903	None	59
2001	1	20
2001	2	20
2001	3	18
2001	None	18
2002	1	21
2002	2	23
2002	3	21
2002	None	22
2003	1	29
2003	2	27
2003	3	27
2003	None	27
2004	1	47
2004	2	33
2004	3	32
2004	None	34
2005	1	50
2005	2	39
2005	3	38
2005	None	37
2101**	1	26
2101**	2	25
2101**	3	22
2101	None	24
2102**	1	44
2102	2	41
2102	3	39
2102	None	48
5001	None	3
5101	None	11
5102	None	31
5103	None	12
5104	None	43

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**

* Arithmetic average length of stay and standard deviation based on data used to develop the IRF PPS relative weights for the combination CMG and comorbidity tiers in the August 7, 2001 final rule (66 FR 41394).

** Standard deviation for this combination CMG comorbidity tiers is unavailable; the lowest standard deviation for the CMG was used to determine the average length of stay plus one standard deviation.

If the LTCH patient who was discharged to an acute care hospital or an IRF has a length of stay in the acute care hospital or the IRF that exceeds one standard deviation from the average length of stay of the hospital inpatient DRG or the combination of the CMG and the comorbidity tier, respectively, then the subsequent admission to the same LTCH would be treated as a new LTCH stay rather than being considered as an interrupted stay, even if the second discharge is determined to fall into the same LTC–DRG as the original stay in the LTCH. Similarly, a patient returning to the LTCH following a stay in a SNF of longer than 45 days (more than one standard deviation from the average length of stay for all Medicare SNF cases) would be paid as a new stay for the LTCH. Thus, under this circumstance, the beneficiary would be deemed to have had two separate stays at the LTCH, resulting in two separate payments under the LTCH prospective payment system.

An interrupted stay could occur during a regular inlier case (length of stay greater than two-thirds the average length of stay for the LTC–DRG). A very short-stay discharge or a short-stay outlier (as explained in sections IV.B.1 and IV.B.2., respectively, of this proposed rule) could also become an interrupted stay if the beneficiary is discharged to an acute care hospital, an IRF, or a SNF. Whether or not the beneficiary's stay would remain in either of these categories would depend upon the total length of stay in the LTCH. Upon the initial discharge to the acute care hospital, the IRF, or the SNF, the LTCH "day count" would stop. For an interrupted stay case, this count would be resumed upon readmission to the LTCH until the beneficiary's final discharge (home, another site of care, or death). Thus, the period of absence (number of days) that the beneficiary is a patient in the acute care hospital, the IRF, or the SNF during a LTCH interrupted stay would not be included in determining the length of stay of the LTCH stay.

If the total number of days at the LTCH, from the initial admission to the final discharge, still falls into either the very short-stay discharge or short-stay outlier payment category, the LTCH would receive payment according to the proposed very short-stay discharge policy described in section IV.B.1. of this preamble or the proposed short-stay outlier policy described in section IV.B.2. of this preamble, respectively. If, on the other hand, the total number of days in the LTCH exceeds two-thirds of the average length of stay of the LTC–DRG (the proposed short-stay outlier criteria), one full LTC–DRG payment would be made for the case. Moreover, all applicable payment policies, including outliers and transfers for the acute care hospital inpatient prospective payment system and the IRF prospective payment system would still apply under this proposed policy.

The following are examples of possible ways in which these proposed policies would interact:

Example 1: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is more than the sum of the average length of stay of the DRG under the hospital inpatient prospective payment system and one standard deviation before being discharged back to the LTCH. Medicare hospital payments for this beneficiary would be as follows:

- One very short-stay discharge LTCH prospective payment system payment to the LTCH for the first (5-day length of stay) LTCH discharge.
- Payment to the acute care hospital under the hospital inpatient prospective payment system for the acute care stay.
- A separate LTCH prospective payment system payment either as a very short-stay discharge (see proposed § 412.527), a short-stay outlier (see proposed § 412.529) or regular stay, depending on the second LTCH length of stay. This case would not be an interrupted stay because the acute care hospital stay was for more days than one standard deviation from the average length of stay of the DRG under the acute care hospital inpatient prospective payment system.

Example 2: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is a number of days that is less than or equal to the sum of the average length of stay of the acute care hospital inpatient DRG and one standard deviation before being discharged back to the LTCH. The beneficiary remains in the LTCH for an additional 9 days after readmission to the LTCH following the acute care hospital stay. This case would be treated as an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the acute care hospital under the hospital inpatient prospective payment system for the DRG for the acute care hospital stay.
- The stay was interrupted because the acute care hospital stay was within one standard deviation from the average length of stay of the acute care hospital inpatient DRG. Therefore, a single payment would be made to the LTCH under the proposed LTCH prospective payment system. This payment would be a short-stay outlier payment (under proposed § 412.529) if the total LTCH length of stay (14 days) is less than two-thirds the average length of stay of the LTC–DRG.

Example 3: A beneficiary stays in the LTCH for 5 days and is discharged to an IRF and the length of stay at the IRF is less than or equal to the sum of the average length of stay of the IRF combination of the CMG and the comorbidity tier and one standard deviation before being discharged back to the LTCH. The beneficiary remained in the LTCH for an additional 12 days, so that the combined 17 days is greater than two-thirds of the average length of stay for the LTC–DRG after readmission to the LTCH following the IRF stay. This case would be an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the IRF under the IRF prospective payment system for the combination of the CMG and the comorbidity tier for the IRF stay; and
- Since the stay was interrupted because the IRF stay was within one standard deviation from the average length of stay of the IRF combination of the CMG and the comorbidity tier, a single payment would be made under LTCH prospective payment system. This payment would be a full LTC–DRG payment because the total LTCH length of stay is greater than two-thirds of the average length of stay of the LTC–DRG.

In Example 2 and Example 3, upon return to the LTCH following the discharge from the acute care hospital or the IRF, the day count would be resumed at day 6 of the LTCH stay. If the beneficiary was then discharged on day 6 or 7, the stay would be paid as a very short-stay discharge (see

proposed § 412.527); if the beneficiary was discharged within two-thirds of the average length of stay for the LTC–DRG, the stay would be paid as a short-stay outlier (see proposed § 412.529); and if the beneficiary was discharged beyond the short-stay threshold (two-thirds of the average length of stay for the LTC–DRG), the case would be paid for the full LTC–DRG.

While the interrupted stay policy proposed under § 412.531 is based in part on clinical considerations, we realize that it may be somewhat administratively burdensome for the LTCH to determine the DRG for the acute care hospital stay or the combination of the CMG and the comorbidity tier for the IRF stay in order to determine whether or not a beneficiary that is discharged to an acute care hospital, an IRF, or a SNF and then returns to the LTCH would be an interrupted stay (with a single LTCH prospective payment system payment) or a new admission (with two separate LTCH prospective payment system payments). Therefore, we are considering treating all patients who are discharged to either an acute care hospital or an IRF and admitted back to the LTCH within a fixed period of time (as we have proposed for SNFs), regardless of the DRG of the patient in the acute care hospital or the combination of the CMG and the comorbidity tier of the patient in the IRF, as an interrupted stay. We believe that 9 days for acute care hospitals and 27 days for IRFs would be an appropriate threshold to identify interrupted stay cases because, in both cases, the proposed thresholds are one standard deviation from the average length of stay of all patients in those respective settings. We are aware that, under such a policy, less clinically complex brief acute care hospital and IRF stays would be included and would become an interrupted stay if the beneficiary returns to a LTCH. However, those types of cases would be offset by stays that require more intense and lengthy care. We are in the process of further analyzing Medicare claims data for LTCH beneficiaries who are discharged to an acute care hospital or an IRF and return to the LTCH following that stay to determine if an interrupted stay threshold of a fixed number of days is the more appropriate policy. We specifically solicit comments on the appropriate period of absence for such an interrupted stay threshold. We also are interested in receiving comments regarding the inclusion of discharges to psychiatric hospitals or units in our proposed interrupted stay policy.

4. Other Special Cases

Under other Medicare prospective payment systems, specifically for inpatient acute care hospitals and for IRFs, there are separate policies for other types of special cases such as transfer cases and patients who expire. We believe the proposed very short-stay discharge policy (under proposed § 412.527), the proposed short-stay outlier policy (under proposed § 412.529), and the proposed interrupted stay policy (under proposed § 412.531) would adequately address these circumstances. For instance, a case with a stay that is less than two-thirds the average length of stay of the LTC–DRG would be paid under the proposed short-stay outlier policy (or the very short-stay discharge policy if the length of stay is 7 days or fewer) regardless of whether or not the patient is transferred upon discharge to his or her home or to another setting where Medicare would make additional payments, or whether the patient expired. Moreover, if a beneficiary's stay at the LTCH is at least two-thirds the average length of stay of the LTC–DRG, a full LTC–DRG payment would be made regardless of the destination following discharge. Therefore, we are not proposing a separate policy for cases that are transferred (except for those that are encompassed by the proposed interrupted stay policy) or for patients who expire.

Currently, under the hospital inpatient prospective payment system, discharges in 10 DRGs are considered to be transfers if the patients are discharged to another Medicare post-acute site of care, such as a LTCH, under section 1886(d)(5())(ii) of the Act, implemented in regulations at § 412.4. The rationale behind this amendment was Congressional concern that Medicare may, in some cases, be "overpaying hospitals for patients who are transferred to a post-acute care setting after a very short acute care hospital stay." (Conference Agreement, H.R. Conf. Rept. No. 105–217, 105th Cong., 1st Sess., at 740 (1997).) In such a scenario, Medicare would also have to pay the post-acute care provider for care that theoretically could have been provided at the acute care hospital. Section 1886(d)(5)(J)(iv) of the Act authorizes the Secretary to expand the post-acute care transfer policy to additional DRGs. From the standpoint of LTCHs, the impact of expanding the hospital inpatient prospective payment system post-acute care transfer policy could be significant for the LTCH prospective payment system since this policy could affect behavior at acute care hospitals. If additional discharges would be paid as transfers, these patients may be kept longer at acute care hospitals in order to avoid a reduced payment for the transfer and then have a shorter length of stay during the subsequent stay at the LTCH. Presently, approximately 70 percent of LTCH Medicare patients are admitted following discharge from an acute care hospital. We are presently exploring whether to propose an expansion of the 10–DRG policy in the FY 2003 hospital inpatient prospective payment system proposed rule.

5. Onsite Discharges and Readmittances

As we explained above, we do not believe that a separate policy governing transfers of Medicare patients between LTCHs and acute care hospitals is necessary at this time. However, we are proposing a policy that would address transfers between LTCHs and distinct-part SNFs, acute care hospitals, rehabilitation facilities, or psychiatric facilities when the LTCH and any of these other providers are co-located because of the potential for inappropriate shifting of patients among these providers without clinical justification to maximize Medicare payment. This situation may occur when a distinct-part SNF is part of a LTCH or when the LTCH is located within an acute care hospital or an IRF as either a "hospital-within-a-hospital (as defined in § 412.22(e)) or a "satellite facility" (as defined in § 412.22(h)) and a distinct-part SNF (as defined in section 1819(a) of the Act) is also part of the same acute care hospital or IRF. (Section I.E.9. of this proposed rule describes findings from Urban's research on the admission and discharge patterns between LTCHs and SNFs.)

Similarly, a long-term care "hospital-within-a-hospital" or satellite facility may be co-located with a psychiatric or rehabilitation hospital that is also a hospital within the same acute care hospital or is a satellite facility situated in the same acute care hospital (§§ 412.25 and 412.27), or may be co-located in an acute care hospital with a psychiatric unit (§ 412.27) or a satellite psychiatric or rehabilitation unit (§ 412.25(e)).

We believe that a per discharge system, such as the prospective payment system for LTCHs, could provide inappropriate incentives to prematurely discharge patients to one of these other onsite providers once their lengths of stay at the LTCH exceeded the thresholds established by the short-stay discharge and outlier policies described in section IV.B. of this proposed rule. These discharges would

be based on payment considerations rather than on a clinical basis as an extension of the normal progression of appropriate patient care. If the long-term care hospital-within-a-hospital inappropriately discharges Medicare patients to the distinct-part SNF, or the onsite IRF, psychiatric facility, or acute care hospital without providing a complete episode of hospital-level care, Medicare would make inappropriate payments to the long-term care hospital-within-a-hospital, since payments under the proposed prospective payment system would have been calculated based on a complete episode of such care. This type of a case could then be followed by a readmission to the LTCH from the onsite provider for an additional LTC–DRG payment. (In the case of a discharge from a LTCH to an offsite acute care hospital, an IRF, or a SNF with a subsequent return to the LTCH, payments would also be considered under the interrupted stay policy set forth at section IV.B.3. of this proposed rule and at proposed § 412.531.)

In determining an appropriate response to onsite discharges and readmittances, we are proposing a policy consistent with our policy described in the July 30, 1999 **Federal Register** (64 FR 41535) that addresses inappropriate discharges of patients between an acute care hospital inpatient prospective payment system excluded hospital-within-a-hospital (such as a LTCH) to the host acute care hospital, that culminated in a readmission to the hospital-within-a-hospital. In that context, we expressed the same concern noted above—that these types of moves were occurring for financial rather than clinical reasons. In order to discourage these practices, we implemented regulations at § 413.40(a)(3) to specify how to calculate the cost per discharge under the excluded hospital payment provisions. Under those regulations, during a cost reporting period, if the hospital-within-a-hospital discharges more than 5 percent of its inpatients to the acute care hospital where it is located, and those patients are readmitted to the excluded hospital, Medicare considers each patient's entire stay as one discharge for purposes of calculating the cost per discharge of the excluded hospital. In determining whether a patient has previously been discharged and then readmitted, we consider all prior discharges, even if the discharge occurs late in one cost reporting period and the readmission occurs in the next cost reporting period. Only when the excluded hospital's number of these cases in a particular cost reporting year exceeds 5 percent of the total number of its discharges are the first discharges not counted for payment purposes. (If the 5-percent threshold is not triggered, all discharges are counted separately.)

With the implementation of the per discharge prospective payment system for LTCHs, we are proposing to adopt a similar policy to address inappropriate discharges and readmittances between LTCHs and other onsite providers by establishing a threshold beyond which the original patient stay and the readmission would be paid as one discharge (proposed § 412.532). By paying only one discharge, we would discourage those transfers that would be based on payment considerations instead of on a clinical basis. Generally, if a LTCH readmits more than 5 percent of its Medicare patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital, only one LTC–DRG payment would be made to the LTCH for each discharge and readmittance during the LTCH's cost reporting period. Therefore, payment for the entire stay would be paid either as one full LTC–DRG payment, a very short-stay discharge, or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we are proposing to apply one threshold for discharges and readmittances with a co-located acute care hospital, consistent with the policy that has been in place under § 413.40(a)(3) for acute care hospitals and excluded hospitals described above. We also are proposing a separate 5-percent threshold for all discharges and readmittances with co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital, an IRF, or a SNF, the onsite discharge and readmittance policies that we are proposing would apply in addition to the proposed interrupted stay policy that we are proposing in section IV.B.3 of this proposed rule and at proposed § 412.531. This means that even if a discharged LTCH patient who was readmitted to the LTCH following a stay in an acute care hospital of greater than one standard deviation from the average length of stay of the specific hospital inpatient prospective payment system DRG, if the facilities share a common location and the 5-percent threshold were exceeded, the subsequent discharges from the LTCH would not represent a separate hospitalization for payment purposes. Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit with readmittances to the LTCH, the subsequent discharges would not be treated as a separate discharge for Medicare payment purposes, notwithstanding provisions of the proposed interrupted stay policy with regard to lengths of stay at an IRF or a SNF (see proposed §§ 412.531(b)(5)(ii) and (b)(5)(iii)). (As under the proposed interrupted stay policy, payment to an acute care hospital under the hospital inpatient prospective payment system, to an IRF under the IRF prospective payment system, and to a SNF under the SNF prospective payment system, would not be affected. Payments to the psychiatric facility also would not be affected.)

We are aware that situations could arise where, under sound clinical judgement, a patient who no longer required LTCH-level of care could be discharged to a SNF and then experience a setback necessitating rehospitalization. However, it is likely that, in such a scenario, in most cases the patient would be subsequently admitted to an acute care hospital rather than readmitted to the LTCH located within the acute care hospital. In addition, if the patient is being treated by a LTCH that also specializes in treating psychiatric or rehabilitation patients, it is unlikely that the patient who, for some medical reason, needed to be transferred to an onsite psychiatric or rehabilitation hospital or unit, would need to be readmitted to the LTCH. We believe that the 5-percent thresholds for discharges to onsite acute care hospitals and for discharges to onsite IRFs, SNFs, and psychiatric facilities followed by readmission to the LTCH provide adequate flexibility for those rare circumstances where such actions would be clinically preferable.

We believe that the combination of a discharge-based payment system that inherently contains financial incentives for shifting patients to another site of care and the close proximity of other sites of care such as other onsite hospitals-within-hospitals, satellites, and distinct-part SNFs, necessitates this type of policy. If we implement this policy in the final rule, we would monitor such discharges and analyze data and compare practice patterns before and after the implementation of the prospective payment system and, if warranted, may consider extending it to offsite providers.

6. Additional Issues for Onsite Facilities

As we prepare to implement a proposed prospective payment system for LTCHs, we are reevaluating certain existing policies for hospitals-within-hospitals and satellite facilities that

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were established under the TEFRA payment system for excluded hospitals.

Existing regulations at § 412.22(e) specify exclusion criteria based on ownership and control for hospitals-within-hospitals and their host hospitals (59 FR 45330, September 1, 1994). We were concerned about possible manipulation of Medicare payments by a single entity that owns or controls an acute care hospital and a co-located LTCH. We believed that such a situation could lead to premature patient discharges from the acute care hospital to the co-located LTCH, resulting in two Medicare payments to the controlling entity for one episode of care. Under this circumstance, the LTCH would, in fact, function as an excluded unit of an acute care hospital, a situation inconsistent with section 1886(d)(1)(B) of the Act, which allows excluded rehabilitation and psychiatric units in acute care hospitals but not long-term care units. Through the proposed interrupted stay and proposed onsite discharge and readmittance policies set forth in sections IV.B.3. and IV.B.5., respectively, of this proposed rule, which limit potential inappropriate Medicare payments, we believe that we have addressed some of the concerns that originally led us to establish the rules in § 412.22(e). Accordingly, we are soliciting comments on any possible changes to CMS payment policy regarding ownership and control for hospitals-within-hospitals.

The second area that we are soliciting comments, in light of the forthcoming proposed LTCH prospective payment system, is our policy regarding LTCHs that have established satellite facilities. In § 412.22(h)(1), we define a satellite as "a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital." Satellite arrangements exist when an existing hospital that is excluded from the hospital inpatient prospective payment system and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e), shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 **Federal Register** (64 FR 41532 through 41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the hospital inpatient prospective payment system. We will consider the possibility of revisiting the policies we established for these satellites. In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Public Law 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the facilities were established. The target amount limit for excluded hospitals or units established before October 1, 1997 was set at the 75th percentile of the target amounts of similarly classified hospitals, as specified in § 413.40(c)(4)(iii), for cost reporting periods ending during FY 1996 as updated to the applicable cost reporting period. For excluded hospitals and units established on or after October 1, 1997, under section 4416 of Public Law 105–33, the payment amount for the hospital's first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii), may not exceed 110 percent of the national median of target amounts of similarly classified hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals, governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals, under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, then the facility would be paid under the inpatient DRG system. Therefore, while an excluded hospital or unit could "transfer" bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (64 FR 41532–4153, July 30, 1999), then the hospital would not be paid as a hospital excluded from the hospital inpatient prospective payment system. No similar limitation, however, was imposed with respect to the number of total beds in excluded hospitals and units and satellites of these facilities established after October 1, 1997, since these facilities were already subject to the lower payment limits of section 4416 of Public Law 105–33, and would, therefore, not benefit from the higher cap by creating a satellite.

Section 123 of Public Law 106–113 confers broad authority on the Secretary regarding the implementation of the proposed prospective payment system for LTCHs, and as described in section IV.G. of this proposed rule, we are proposing to transition this proposed prospective payment system over 5 years. During this time, payments to LTCHs would gradually change from hospital-specific cost-based payments to a per-discharge LTC–DRG-based prospective payment system. In addition, IRFs also will be transitioned to 100 percent payment starting with cost reporting periods beginning during FY 2003. We would consider whether to propose elimination of the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 hospitals, once the applicable prospective payment system is fully phased-in, since all LTCHs would be paid based on 100 percent of the proposed LTCH prospective payment system by FY 2007 and the payment provisions under the TEFRA system at that time would no longer exist for this class of hospitals or for IRFs for cost reporting periods beginning during FY 2003. (This policy change, lifting of bed-number criteria for hospitals under prospective payment systems, that we are considering to propose, would not apply to hospitals that continue to be paid under the TEFRA system. Accordingly, during the 5-year phase-in, the policies in § 412.22(h)(2)(i) would continue to apply to LTCH satellites.

7. Monitoring System

In this proposed rule, we are proposing various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based prospective payment system. We also would be collecting and interpreting data on changes in average lengths of stay under the proposed prospective payment system for specific LTC–DRGs and the impact of these changes on the Medicare program.

We propose to develop a monitoring system that would assist us in evaluating the LTCH prospective payment system. If our data indicate that changes might be warranted, we may revisit these issues and consider revising these proposed policies in the future.

C. Payment Adjustments

As indicated earlier, the Secretary generally has broad authority under section 123 of Public Law 106–113 in developing the prospective payment system for LTCHs. Thus, the Secretary generally has broad authority in determining whether (and how) to make

adjustments to the prospective payments to LTCHs. Section 307 of Public Law 106–554 directs the Secretary to "examine" appropriate adjustments to the prospective payments to LTCHs, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments.

In determining whether to propose specific payment adjustments under the prospective payment system for LTCHs, we conducted extensive regression analyses of the relationship between LTCH costs (including both operating and capital-related costs per case) and several factors that may affect costs such as the percent of Medicaid patients treated, the percent of Supplemental Security Income (SSI) patients treated, geographic location, and medical education programs. The appropriateness of potential payment adjustments is based on both cost effects estimated by regression analysis and other factors, including simulated payments that we discuss in section IV.E. of this proposed rule.

Our analyses are based on data from 222 LTCHs for which cost and case-mix data were available. We estimated costs for each case by multiplying hospital-specific cost-to-charge ratios by the LTCH's charges for that case. Cost-to-charge ratios were obtained from FY 1998 or FY 1999 cost report data, or both, available in the HCRIS minimum data set and Medicare claims data (charges) available in the MedPAR file. Because the universe of LTCHs has grown relatively rapidly over the last several years, in order to maximize the number of LTCHs in the database, we used the most recent cost report data available for each LTCH. If we had both FY 1998 and FY 1999 cost report data, we used the most complete cost reporting period (that is, the cost reporting period with the greater number of months). If we used FY 1998 cost report data because FY 1999 data were either unavailable (due to the time lag in cost report settlement) or incomplete, we updated the FY 1998 data for inflation using the FY 1999 excluded hospital market basket increase (2.4 percent) as published in the July 31, 1998 hospital inpatient prospective payment system FY 1999 final rule (63 FR 40954). As indicated in Appendix A of this proposed rule, we are proposing to use the excluded hospital market basket with a capital component to update payment rates. The excluded hospital market basket is currently used to update LTCHs' target amounts for inflation under the TEFRA system. We believe that proposing to continue use of the excluded hospital market basket to update LTCHs' costs for inflation is appropriate because the excluded hospital market basket measures price increases of the services furnished by excluded hospitals, including LTCHs. We believe that there is insufficient data to develop a proposed market basket based only on LTCH costs at this time.

In computing hospital-specific cost-to-charge ratios, we matched the costs for which we had the most recent and complete cost reporting period data to the claims in the MedPAR file for each month in that cost reporting period. For example, for a LTCH with a 12-month FY 1999 cost reporting period beginning on July 1, we used MedPAR data from July 1999 through June 2000 to compute a FY 1999 cost-to-charge ratio. The cost per case for each hospital is calculated by summing all costs and dividing by the number of corresponding cases.

Multivariate regression analysis is the standard statistical technique for examining cost variation that was used to analyze potential payment adjustments for LTCHs. We looked at two standard models—(1) a double log regression explanatory model to examine the impact of all relevant factors that might potentially affect a LTCH's cost per case; and (2) a payment model that examines the impacts of those factors that were determined to affect costs and, therefore, were used to determine payment rates. In multivariate regression, the estimated average cost per case (the dependent variable) at the LTCH can be explained or predicted by several independent variables, including the case-mix index, the wage index for the LTCH, and a vector of additional explanatory variables that may affect a LTCH's cost per case, such as a teaching program or the proportion of low-income patients. The case-mix index is the average of the LTC–DRG weights, derived by the hospital-specific relative value method, for each LTCH. Short-stay outlier cases are weighted based on the ratio of the length of stay for the short-stay case to the average length of stay for nonshort-stay cases in that LTC–DRG. We simulated payments using an estimated budget neutral payment rate and the regression coefficients as proxies for proposed payment system adjustments. Then we calculated payment-to-cost ratios for different classes of hospitals for specific combinations of payment policies.

We examined payment variables applicable to the hospital inpatient and IRF prospective payment systems, including the disproportionate share patient percentage, both the resident-to-average daily census ratio and the resident-to-bed ratio teaching variables, and variables that account for location in a rural or large urban area. A discussion of the major payment variables and our findings appears below.

1. Area Wage Adjustment

Section 307(b) of Public Law 106–554 requires that we examine the appropriateness of an area wage adjustment. Such an adjustment would account for area differences in hospital wage levels and would be made by adjusting the LTCH prospective payment system payment rate by a factor that would reflect the relative hospital wage level in the geographic area of the hospital as compared to the national average hospital wage level. At this time, we are not proposing an area wage adjustment for payments to LTCHs because the regression analysis indicated that a wage adjustment would not increase accuracy of payments. While we are not proposing to make an area wage adjustment in this proposed rule, we are specifically soliciting comments on whether an area wage adjustment is appropriate.

Under the acute care hospital inpatient prospective payment system, a wage index is applied to the labor-related share of the operating standardized amount to adjust for local cost variation. The hospital inpatient prospective payment system wage index is used also to make an area wage adjustment under the IRF prospective payment system, the SNF prospective payment system, the home health prospective payment system, and the outpatient hospital prospective payment system.

We began our analysis of the appropriateness of an area wage adjustment for LTCHs by evaluating the labor-related share from the excluded hospital with capital market basket. (This is the same market basket that is used in the IRF prospective payment system.) Currently, under the TEFRA cost-based reimbursement system, the excluded hospital market basket is used to update LTCHs' target amounts, which are used to determine payments to LTCHs for inpatient operating costs. Since we are proposing a single standard Federal rate under the proposed LTCH prospective payment system (see section IV.D. of this proposed rule), we are proposing to use a market basket with a capital component. A further explanation of the excluded hospital with capital market basket can be found in Appendix A of this proposed rule.

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The labor-related share is the relative importance of wages, fringe benefits, professional fees, postal services, labor-intensive services, and a portion of the capital share for FY 2003. We determine a labor-related share of the excluded hospital with capital market basket by first estimating the portion related to operating costs. The excluded hospital with capital market basket is based on available cost data for facilities excluded from the acute care hospital inpatient prospective payment system, including long-term care, rehabilitation, psychiatric, cancer, and children's hospitals.

Using the excluded hospital with capital market basket, we determined that the labor-related share of operating costs would be 69.428 percent for FY 2003, which is calculated as the sum of the relative importance for wages and salaries (50.381 percent), employee benefits (11.525), professional fees (2.059), postal services (0.244), and all other labor intensive services (5.219).

The labor-related share of capital costs in the market basket needs to be considered as well. We are proposing to use the portion of capital attributed to labor, which is estimated to be 46 percent by CMS' Office of the Actuary. This is the same percentage used for both the hospital inpatient capital prospective payment system and the IRF prospective payment system. For FY 2003, we estimate the relative importance for capital to be 7.552 percent of the excluded hospital with capital market basket. We multiply 46 percent by 7.552 percent to determine that the labor-related share for capital costs for FY 2003 would be 3.474 percent.

We then add the 3.474 percent for capital costs to the 69.428 percent for operating costs to determine the total labor-related share based on the excluded hospital with capital market basket. Thus, when we examined an adjustment to account for area differences in hospital wage levels, we used a labor-related share of 72.902 percent for the proposed LTCH prospective payment system. Specifically, we examined the appropriateness of accounting for differences in area wage levels by multiplying the labor-related portion of the unadjusted Federal payment by the FY 2002 inpatient acute care hospital wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. (This methodology is the methodology used under the IRF prospective payment system and the SNF prospective payment system.) Wage data to compute LTCH-specific wage indices are currently not available. However, LTCHs and other post-acute care facilities (for example, IRFs, SNFs, and HHAs) generally compete in the same local labor market for the same types of employees as inpatient acute care hospitals.

To validate the labor-related share calculated from the market basket, we analyzed the results of the wage index coefficient derived from regression analysis. In the regression, we standardized each LTCH's cost per case by the various factors, such as case-mix, bed size, number of cases, length of stay, and occupancy. The wage index coefficient allows us to approximate the labor-related portion of cost per case. Since the labor-related share derived from the market basket is the proportion of costs that have been identified as being influenced by the local labor amount, we would expect this coefficient to be statistically significant and near our market basket measure. The double-log regression analysis generated a wage index coefficient, which approximates the labor-related portion of cost per case, that is not statistically significant and is not near the market basket measure (72.902 percent) since it is only 19.91 percent. This suggests that the wage adjustment we examined would be only a small and unreliable predictor of LTCHs' costs.

Since the statistical analysis did not show a significant relationship between LTCHs' costs and their geographic location, we do not believe that at this point it would be appropriate to include a proposed adjustment for area wages. Furthermore, without applying the wage adjustment to the proposed standard Federal rate for LTCHs to account for the difference in area wage levels, the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system) of the proposed system taken as a whole is 0.82086. However, by applying the wage adjustment to the labor-related share of the proposed standard Federal rate for LTCHs to account for area differences in hospital wage levels, the r-squared value is reduced to 0.8017 for the proposed system as a whole (that is, including case-mix index and outlier policies). This means that not making a wage index adjustment would provide a 2.3 percent increase in the ability of the proposed payment system to predict costs. Furthermore, our regression analysis indicates that including a wage index adjustment would inappropriately redistribute payments to LTCHs by shifting money to LTCHs that are located in an area within a higher wage index but in fact have lower costs. Therefore, at this time we are not proposing an adjustment to account for area differences in LTCH wage levels. However, we will revisit the appropriateness of an adjustment to account for area differences in LTCH wage levels in developing the final rule.

2. Adjustment for Geographic Reclassification

In accordance with section 307(b) of Public Law 106–554, we also examined the appropriateness of applying an adjustment for geographic reclassification to payments under the LTCH prospective payment system, where hospitals could request reclassification from one geographic location to another for the purpose of using the other area's wage index value, Federal payment rates, or both. Such an adjustment is made under the acute care hospital inpatient prospective payment system in accordance with section 1886(d)(10) of the Act. The adjustment would treat a hospital located in one geographic area as being located in another geographic area, if certain conditions are met, because its costs and wages are more similar to those hospitals located in the other geographic area. As explained below, at this time, we are not proposing an adjustment for geographic reclassification in the prospective payment system for LTCHs.

Our data identified 14 rural LTCHs, but our analysis supported neither a proposed adjustment to account for differences in area wage levels nor a proposed adjustment for LTCHs located in rural areas or large urban areas because the regression analysis indicated that a wage adjustment would not increase the accuracy of payments. Therefore, under the proposed LTCH prospective payment system, all LTCHs would be treated the same for the purposes of payment, regardless of location. Since there would be no purpose for LTCHs to reclassify to another area, at this time we are not proposing an adjustment for geographic reclassification in the proposed prospective payment system for LTCHs.

We plan to review the above proposed policy determinations in developing the final rule based on the most recent available data. At that time, we also would revisit the appropriateness of an adjustment for geographic reclassification. It is important to note, however, that the Medicare Geographic Classification Review Board (MGCRB) currently has authority only over acute care (section 1886(d) of the Act) hospitals and there is presently no analogous determination process for hospitals that have been excluded from the acute care hospital inpatient prospective payment system. Under the TEFRA system, prospective payment system-excluded hospitals and units, including LTCHs, are not required to fill out information related to wage-related costs on the Medicare cost report (that is, Worksheet S–3). Therefore, if a wage adjustment is ultimately implemented as part of the LTCH prospective payment system and it is determined that it is appropriate to make geographic reclassification adjustments, we would need to establish instructions for data collection on LTCH wage-related costs in order to determine an appropriate geographic reclassification adjustment for LTCHs. It would also be necessary to develop an application process and determination procedures.

3. Adjustment for Disproportionate Share of Low-Income Patients

Section 307(b) of Public Law 106–554 requires us to examine the appropriateness of an adjustment for hospitals serving a disproportionate share (DSH) of low-income patients, consistent with section 1886(d)(5)(F) of the Act, which establishes this adjustment for inpatient acute care hospitals. In assessing the appropriateness of a similar adjustment for LTCHs serving low-income patients, as specified in section 1886(d)(5)(F) of the Act, we focused our analysis on the relationship between serving low-income patients and LTCHs' cost per case. Based on the results of our analysis described below, at this time we are not proposing an adjustment for the treatment of a disproportionate share of low-income patients.

Under section 1886(d)(5)(F) of the Act, in calculating Medicare payments for inpatient services at acute care hospitals, the disproportionate share patient percentage takes into account both the percentage of Medicare patients who receive SSI and the percentage of Medicaid patients who are not entitled to Medicare. The DSH patient percentage is defined as:

$$\text{DSH Patient Percent} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Patient Days}}$$

Based on this formula, an inpatient acute care hospital qualifies for a DSH adjustment under section 1886(d)(5)(F)(v) of the Act (as amended by section 211(a) of Public Law 106–554) if the hospital has a DSH patient percentage greater than or equal to 15 percent. The calculation of the DSH payment adjustments under that section is as follows:

- Hospitals (urban and rural) with fewer than 100 beds and whose DSH patient percentage is equal to or greater than 15 percent and less than 19.3 percent receive the DSH payment adjustment determined using the following formula:

(DSH patient percentage − 15) (.65) + 2.5.

- Hospitals (urban or rural) with fewer than 100 beds and whose DSH patient percentage is equal to or greater than 19.3 percent receive a flat add-on of 5.25 percent.
- Rural hospitals with greater than 500 beds and whose DSH patient percentage is equal to or greater than 15 percent and less than 20.2 percent receive the DSH payment adjustment using the following formula:

(DSH patient percentage − 15) (.65) + 2.5.

- Rural hospitals with greater than 500 beds and whose DSH patient percentage is equal to or greater than 20.2 percent receive the DSH payment adjustment using the following formula:

(DSH patient percentage − 20.2) (.825) + 5.88.

We analyzed the results of applying a DSH adjustment, in accordance with the criteria at section 1886(d)(5)(F) of the Act described above, on LTCHs. In modeling payments, because the proposed LTCH prospective payment system must be budget neutral in accordance with section 123(a) of Public Law 106–113, the proposed inclusion of such a DSH policy would result in a 3.31 percent decrease to the base payment rate. Furthermore, the inclusion of such a DSH policy would result in a 3.79 percent decrease in the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system). Accordingly, we found that including a DSH adjustment that is consistent with section 1886(d)(5)(F) of the Act would reduce the explanatory power of the proposed LTCH prospective payment system, or the ability of the proposed payment system model to predict cost per case, while lowering the base payment rate. Thus, at this time we are not proposing a DSH adjustment consistent with section 1886(d)(5)(F) of the Act.

We also evaluated an alternative adjustment, using regression analysis, that takes into account both the percentage of Medicare patients who are receiving SSI (SSI percent) and the percentage of Medicaid patients who are not entitled to Medicare (Medicare percent) without the other criteria specified in section 1886(d)(5)(F) of the Act. This analysis was made to determine if there is any relationship between these two variables and cost per case. The results of this analysis showed that the regression coefficients for both the percentage of Medicare patients who are receiving SSI and the percentage of Medicaid patients who are not entitled to Medicare would be statistically significant at the 99-percent level. However, the positive relationship between cost per case and the percentage of LTCH Medicare patients who are receiving SSI would be offset by a negative relationship between cost per case and the percentage of LTCH Medicaid patients who are not entitled to Medicare. This implies that while costs per discharge would appear to increase (slightly) as the percentage of LTCH Medicare SSI patients increases, costs per discharge would decline (slightly) as the percentage of LTCH Medicaid, non-Medicare patients increased. Therefore, at this time we are not proposing an adjustment for the treatment of a disproportionate share of low-income patients based on a LTCH's combined SSI percentage and Medicaid percentage.

Finally, we examined an adjustment for the treatment of low-income patients based solely on a LTCH's SSI ratio (the percentage of Medicare patients who are receiving SSI). The SSI ratio is calculated by dividing Medicare SSI days by total patient days. While the regression coefficient would be positive, it was not very large (0.04), which means that for every 1-percent increase in the SSI percent, a 0.04-percent increase in cost per case would be observed. Thus, at best, an empirically based adjustment based on the SSI percent would be very small. The positive regression coefficient for the SSI percentage is significantly influenced by the large SSI percentages of only a few LTCHs. Accordingly, we do not believe it is appropriate to propose an adjustment based on a LTCH's SSI percentage. Because section 123(a) of Public Law 106–113 requires that the LTCH prospective payment

system be budget neutral, applying such an adjustment would result in a 2.98-percent reduction in the proposed base payment rate for all LTCHs that is based on a small positive regression coefficient that is due mostly to a relatively small number of LTCHs with a large SSI percentage.

Because the analyses above do not indicate an increase in the accuracy of payments based on the adjustments examined for the treatment of a disproportionate share of low-income patients, we are not proposing an adjustment at this time. We will revisit the appropriateness of a DSH adjustment in developing the final rule based on the most recent data available.

4. Adjustment for Indirect Teaching Costs

In accordance with the directive of section 307(b) of Public Law 106–554 to examine "appropriate adjustments" to payments under the LTCH prospective payment system, we also examined the appropriateness of applying an adjustment for indirect teaching costs to payments under the proposed LTCH prospective payment system. Based on the analysis described below, at this time we are not proposing an adjustment for indirect teaching costs.

There are presently 14 LTCHs with teaching programs. LTCHs with major teaching programs tend to be older, larger (greater than 125 beds) hospitals, located in large urban areas, and have a higher proportion of low-income patients but with a lower case-mix index. Based on a double log regression, we found that the indirect teaching cost variable would be negative and not significant. We looked at different specifications for the teaching variable. We used a resident-to-bed ratio as the coefficient for the teaching variable in the regression that is currently used to measure teaching intensity under the acute care hospital inpatient prospective payment system for operating costs. We also used a ratio of resident to average daily census (defined as total inpatient days divided by the number of days in the cost reporting period) that is currently used under the acute care hospital inpatient prospective payment system for capital-related costs, as a measure of teaching intensity. We based this analysis on the estimated number of full-time equivalent (FTE) residents assigned to the inpatient area of the LTCH. In all our payment regressions, we determined that the teaching variable would not be significant. This means that there is no empirical evidence to show that LTCHs' cost per case would vary with teaching costs. Therefore, at this time we are not proposing an adjustment for indirect teaching costs. We will revisit the appropriateness of an adjustment for the costs of indirect medical education in developing the final rule based on the most recent available data.

5. Cost-of-Living Adjustment (COLA) for Alaska and Hawaii

In accordance with the directive of section 307(b) of Public Law 106–554 to examine "appropriate adjustments" to payments under the LTCH prospective payment system, we also examined the appropriateness of applying a cost-of-living adjustment (COLA) under the proposed LTCH prospective payment system for LTCHs located in Alaska and Hawaii.

There is currently one LTCH in Hawaii and no LTCHs in Alaska. In the absence of a COLA, we performed simulations, which indicate that the facility in Hawaii might experience a payment to cost ratio of 0.89 percent. Therefore, we are proposing a COLA for LTCHs in Hawaii and Alaska to account for the higher costs incurred in those states. The IRF proposed rule (November 3, 2000, 65 FR 66357) indicated that based on payment simulations, without a COLA, the one IRF located in Alaska may have a loss and the one IRF for which data were available, would have a gain. Due to the small number of cases, analysis of the simulation results were inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Accordingly, we did not include a COLA adjustment for those hospitals in the prospective payment system for IRFs. (65 FR 66357, November 3, 2000). We believe it appropriate, however, to propose a COLA for LTCHs based on the higher costs found in Hawaii. In general, the COLA would account for the higher costs in the LTCH and would eliminate the projected loss that the LTCH in Hawaii would experience absent the COLA. Furthermore this policy is consistent with the COLA made to account for the higher costs in acute care hospitals in Alaska and Hawaii under both the operating prospective payment system and the capital prospective payment system. We are proposing to make a COLA, under proposed § 412.525(b), to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in the table below. These factors are obtained from the U.S. Office of Personnel Management.

COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

6. Adjustment for High-Cost Outliers

In accordance with the directive of section 307(b) of Public Law 106–554, we also examined the appropriateness of an adjustment for additional payments for outlier cases. These are cases that have extraordinarily high costs relative to the costs of most discharges classified in the same LTC–DRG. Providing additional payments for outliers could strongly improve the accuracy of the LTCH prospective payment system in determining resource costs at the patient and hospital level. These additional payments would reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, would reduce the incentives to underserve these patients.

We considered various outlier policy options. Specifically, we examined outlier policies under which outlier payments would be projected to be 5 percent, 8 percent, or 10 percent of total prospective system payments. We examined the impact of setting the outlier target percentage at 5 percent because that percentage is consistent with the range of targets provided under section 1886(d)(5)(A)(iv) of the Act for the hospital inpatient prospective payment system. We also considered an outlier target of 10 percent because that percentage was recommended in an industry study commissioned by NALTH. In addition, we considered an outlier target of 8 percent to analyze the impact of setting the outlier target at some percentage between 5 and 10 percent.

We also examined marginal cost factors, or the change in total cost with one unit of change in output, of 55 and 80 percent. We examined an 80-percent marginal cost factor for outlier payments because it is the same as the factor used under both the hospital inpatient prospective payment system and the IRF prospective payment system. We examined a 55-percent marginal cost factor in order to analyze the impact that a lower marginal cost factor would have on outlier payments and payments for all other cases.

As discussed in further detail in the June 4, 1992 hospital inpatient prospective payment system proposed rule (57 FR 23640), a study performed by RAND Corporation indicated that the marginal cost of care is usually less than the average cost because later days of a stay have considerably lower costs than the earlier days of the stay.

In order to determine the most appropriate outlier policy, we analyzed the extent to which the various options would reduce financial risk, reduce incentives to underserve costly beneficiaries, and improve the overall fairness of the system. We believe an outlier target of 8 percent would allow us to achieve a balance of the above stated goals. Our regression analysis showed that additional increments of outlier payments over 8 percent would reduce financial risk, but by successively smaller amounts. Since outlier payments are included in budget neutrality calculations, outlier payments would be funded by prospectively reducing the nonoutlier prospective payment system payment rates by the proportion of projected outlier payments to projected total prospective payment system payments in the absence of outlier payments; the higher the outlier target, the greater the (prospective) reduction to the base payment rate. We are proposing to provide outlier payments and to set outlier numerical criteria prospectively before the beginning of each Federal fiscal year so that outlier payments are projected to equal 8 percent of total payments under the proposed LTCH prospective payment system. Based on regression analysis and payment simulations, we believe this option optimizes the extent to which we would be able to protect vulnerable hospitals, while still providing adequate payment for all other cases that are not outlier cases.

We are proposing, under proposed § 412.525(a), to make an outlier payment for any discharges where the estimated cost would exceed the proposed adjusted LTCH prospective payment system payment for the proposed LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital would incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. The estimated cost of a case would be calculated by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge.

Our analysis of payment-to-cost ratios for outlier cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases. This factor would ensure that there is a balance between the need to protect LTCHs financially while encouraging them to treat expensive patients and maintaining the incentives of a prospective payment system to improve the efficient delivery of care. Based on this analysis and consistent with the marginal cost factor used under the IRF prospective payment system and under section 1886(d) of the Act for inpatient acute care hospitals, we are proposing to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount). The proposed fixed-loss amount would be calculated by simulating aggregate payments with and without an outlier policy, using FY 2000 MedPAR claims data and the best available cost report data in an iterative process to determine a fixed-loss threshold that would result in outlier payments being equal to 8 percent of total payments. As discussed in section IV.D. of this proposed rule, for FY 2003 we proposing a fixed-loss amount of $29,852. Therefore, for FY 2003, we are proposing to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment plus $29,852).

D. Calculation of the Proposed Standard Federal Payment Rate

1. Overview of the Development of the Proposed Standard Payment Rate

Section 123(a)(1) of Public Law 106–113 requires that the prospective payment system for LTCHs maintain budget neutrality. Therefore, we are proposing to calculate the standard Federal rate by setting total estimated prospective payment system payments equal to estimated payments that would have been made under the TEFRA methodology if the proposed prospective payment system for LTCH were not implemented as described in this proposed rule. In accordance with section 307(a)(2) of the BIPA, the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA and the enhanced bonus payments for LTCHs for FY 2001 and FY 2002 provided for by section 122 of the BBRA were not taken into account in the development of the proposed prospective payment system for LTCHs.

The proposed methodology for determining the standard Federal payment rate under the proposed LTCH prospective payment system is described in further detail below.

2. Development of the Proposed Standard Federal Payment Rate

a. Data Sources

The data sources that we used to calculate the proposed standard Federal payment rate include cost report data from FYs 1996 through 1999 and FY 2000 Medicare claims data from the June 2001 update of the MedPAR since these data were the most recently available complete data for LTCHs. We used data from 222 LTCHs to calculate the proposed standard Federal payment rate. We updated the cost report data for each LTCH to the midpoint of FY 2003 using an inflation factor based on the historical relationship of each hospital's costs and their target amounts as described in section IV.D.2.b. of this proposed rule. The FY 1996 cost report data were used to determine each LTCH's update for FY 1999, and the FY 1997 cost report data were used to determine the update for FY 2000. The FY 1998 cost report data were used to determine the update for FY 2001, and the FY 1999 cost report data were used to determine the update for FY 2002. We were unable to calculate a proposed payment under the current payment system for some LTCHs because cost report data were unavailable. We will attempt to obtain the most recent payment amounts for these hospitals through their Medicare fiscal intermediary and we will consider using these data to construct the standard Federal payment rates for the final rule. We will also examine the extent that certain LTCHs (new LTCHs, for example) are not included in the data used to determine the proposed standard Federal payment rate and consider the appropriateness of an adjustment to better reflect total estimated payments for LTCHs.

In determining the proposed prospective payment rates for LTCHs, we had significant concerns about the integrity of some of the cost report data in HCRIS. Specifically, we were concerned about data from cost reports submitted by a hospital chain that is the owner of approximately 20 percent of LTCHs nationwide that arose from a "qui tam" action filed by the U.S. Department of Justice (DOJ) in July 1999. This action alleged, among other

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claims, that the hospitals inflated both cost and charge data on Medicare hospital cost reports filed from 1994 through 1999. On March 16, 2001, the hospital chain agreed to pay approximately $339 million to settle claims arising from 11 separate actions. Based upon audits and projections performed by Medicare's fiscal intermediary under the direction of our Office of Financial Management, the Medicare LTCH action was allocated $178 million of this settlement.

Under the terms of the agreement, Medicare cost reports from the years in question were not reopened and audited. However, the fiscal intermediary was able to estimate the effect on the Medicare cost reports for 1995, 1996, and 1997. Then a random sample of Medicare cost reports from 1998 and 1999 were reviewed to verify the projected impact for those years and a settlement figure was determined for FY 1995 through FY 1999. Therefore, in order to avoid the negative impact those providers' data may otherwise have on the integrity of the data, we are basing our proposed standard Federal rate on a factor determined by CMS' Office of the Actuary to adjust the costs reported in those affected FY 1998 and FY 1999 cost reports. This factor was derived by determining the ratio of the portion of the settlement amount described above attributable to each LTCH to the Medicare payments received by each affected LTCH during the period covered by the settlement.

b. Update the Latest Cost Report Data to the Midpoint of FY 2003

Consistent with the methodology used under the IRF prospective payment system (at § 412.624(c)), we are proposing, at § 412.523(c)(2), to update each LTCH's cost per discharge to the midpoint of FY 2003, using the weighted average of the applicable percentage increases to the TEFRA target amounts for FYs 1999 through 2002 (in accordance with § 413.40(c)(3)(vii)) and the full market basket percentage increase for FY 2003. For FYs 1999 through 2002, we would determine the appropriate update factor for each hospital by using the methodology described below:

- For hospitals with costs that equal or exceed their target amounts by 10 percent or more for the most recent cost reporting period for which information is available, the update factor would be the market basket percentage increase.
- For hospitals that exceed their target amounts by less than 10 percent, the update factor would be equal to the market basket minus 0.25 percentage points for each percentage point by which operating costs are less than 10 percent over the target (but in no case less than 0).
- For hospitals that are at or below their target amounts, but exceed two-thirds of the target amounts, the update factor would be the market basket minus 2.5 percentage points (but in no case less than 0).
- For hospitals that do not exceed two-thirds of their target amounts, the update factor would be 0 percent.

For FY 2003, we propose to use the most recent estimate of the percentage increase projected by the excluded hospital market basket index.

c. Estimate Total Payments Under the Current (TEFRA) Payment System

We would estimate payments for inpatient operating services under the TEFRA system using the following methodology:

Step 1: Determine each LTCH's hospital-specific target amount. The hospital-specific target amount for a LTCH is calculated based on the hospital's allowable inpatient operating cost per discharge for the hospital's base period, excluding capital-related, nonphysician anesthetist, and medical education costs. This target amount would then be updated using a rate-of-increase percentage as described in § 413.40(b)(3). For FYs 1998 through 2002, there are two national caps on the payment amounts for LTCHs. Under § 413.40(c)(4)(iii), a LTCH's hospital-specific target is the lower of its net allowable base year costs per discharge increased by the applicable update factors or the cap for the applicable cost reporting period. In determining each LTCH's hospital-specific target amount, we would use the FY 2002 cap amounts published in the August 1, 2001 **Federal Register** (66 FR 39915–39916), adjusted in accordance with section 307(a)(2) of Public Law 106–554 by removing the 2-percent increase in the cap for existing LTCHs required by section 307(a)(1) of Public Law 106–554. For existing hospitals (that is, LTCHs paid as an excluded hospital before October 1, 1997), the applicable cap amount for FY 2002 is $30,783 for the labor-related share adjusted by the applicable geographic wage index and added to $12,238 for the nonlabor-related share. For "new" hospitals (that is, LTCHs first paid as an excluded hospital on or after October 1, 1997), the cap amount applicable for FY 2002 is $16,701 for the labor-related share adjusted by the applicable geographic wage index and added to $6,640 for the nonlabor-related share. These capped amounts would then be inflated to the midpoint of FY 2003 by applying the excluded hospital operating market basket.

As explained above, we note that, in accordance with section 307(a)(2) of the BIPA, in estimating total payments to LTCHs under the current payment system, the increase to the hospital target amounts and caps on the target amounts for LTCHs effective from October 1, 2001 through September 30, 2002, provided for under section 307(a)(1) of the BIPA were not to be taken into account.

Step 2: Determine each LTCH's payment amount for inpatient operating services. Under the TEFRA system, a LTCH's payment amount for inpatient operating services is the lower of—

- The hospital-specific target amount (subject to the application of the cap as determined in Step 1) times the number of Medicare discharges (the ceiling); or
- The hospital average inpatient operating cost per case times the number of Medicare discharges.

In addition, under the TEFRA system, payments may include a bonus or relief payment, as follows:

- For LTCHs whose net inpatient operating costs are lower than or equal to the ceiling, payment would be determined based on the lower of either the net inpatient operating costs plus 15 percent of the difference between the inpatient operating costs and the ceiling or the net inpatient operating costs plus 2 percent of the ceiling.
- For LTCHs whose net inpatient operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment would be the ceiling.
- For LTCHs whose net inpatient operating costs are greater than 110 percent of the ceiling, payment would be the ceiling plus the lower of 50 percent of the difference between the 110 percent of the ceiling and the net inpatient operating costs or 10 percent of the ceiling.

Further, under the TEFRA system, excluded hospitals and units, including LTCHs, may be eligible for continuous improvement bonus payments as described under § 413.40(d)(4). As explained above, in accordance with section 307(a)(2) of Public Law 106–554, the enhancement of continuous improvement bonus payments for LTCHs, effective for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002, and provided for under section 122 of Public Law 106–113, were not to be taken into account in estimating total payments to LTCHs under the current TEFRA system.

Step 3: Determine each LTCH's payment for capital-related costs. Under the TEFRA system, in accordance with section 1886(g) of the Act, Medicare allowable capital costs are paid on a reasonable cost basis. Thus, each LTCH's payment for capital-related costs would be taken directly from the cost report and updated for inflation using the excluded hospital market basket, consistent with the methodology used under the IRF prospective payment system.

Step 4: Determine each LTCH's average total (operating and capital) payment per case under the current (TEFRA) payment system. Once estimated payments for inpatient operating costs are determined (including bonus and relief payments, as appropriate), we would add the operating payments and capital payments together to determine each LTCH's estimated total payments under the current (TEFRA) payment system. We would then divide each LTCH's estimated total TEFRA payments by the corresponding number of Medicare discharges from the cost report to determine what each LTCH's average total payment per case would be under the current (TEFRA) payment system.

Step 5: Determine a case weighted average payment under the current (TEFRA) payment system. We would determine each LTCH's average payment under the current (TEFRA) system weighted for its number of cases in the June 2001 update of the FY 2000 MedPAR by multiplying its average total payment per case from step 4 by its number of cases in the FY 2000 MedPAR.

Step 6: Estimate total (MedPAR) weighted payments under the current (TEFRA) payment system. We would estimate total weighted payments under the current (TEFRA) payment system by summing each LTCH's (MedPAR) weighted payments under the current (TEFRA) payment system (from step 5). In addition, we adjusted the estimated total weighted payments to reflect the estimated portion of additional outlier payments under proposed § 412.525(a). (This is consistent with not including outlier payments in estimating payments under the proposed prospective payment system in Step e. below.) This total would be the numerator in the calculation of a budget neutrality adjustment.

d. Calculate the Average Weighted Payment per Discharge Amount

Once estimated total payments under the current payment system are calculated, we would calculate an average per discharge payment amount weighted by the number of Medicare discharges under the current payment system. This would be done by first determining the average payment per discharge amount under the current payment system for each LTCH. Cost report data would be used to calculate each LTCH's average payment per discharge by dividing the number of discharges into the total payments. As explained above in section IV.D.2.a. of this proposed rule, the LTCH's payment per discharge would be adjusted consistent with the terms of the DOJ settlement agreement.

Next, we would determine the weighted average per discharge payment amount by multiplying each LTCH's average payment per discharge amount from the cost report by the number of discharges from the Medicare claims data in the FY 2000 MedPAR file. Then we would add the amounts for all LTCHs and divide by the total number of discharges from the Medicare claims in MedPAR to derive a weighted average payment per discharge.

e. Estimate Payments Under the Proposed Prospective Payment System Without a Budget Neutrality Adjustment

Payments under the proposed payment system would then be estimated without a budget neutrality adjustment. To do this, we would multiply each LTCH's case-mix index adjusted for short-stay outliers (*see* section IV.B.2. of this proposed rule), the number of discharges from the Medicare claims in MedPAR adjusted for short-stay outliers (*see* section IV.B.2. of this proposed rule) and the weighted average per discharge payment amount computed above. For purposes of this calculation, we would estimate payments for each LTCH as if it were paid based on 100 percent of the proposed standard Federal rate in FY 2003 rather than the proposed transition blend methodology described in section IV.G. of this proposed rule. Total payments for each LTCH would then be summed for all LTCHs. This total would be the denominator in the calculation of the budget neutral adjustment.

f. Determine the Budget Neutrality Adjustment

The budget neutrality adjustment would be calculated by dividing total adjusted payments under the current payment system (the total amount calculated in section IV.D.2.c. of this preamble) by estimated payments under the proposed prospective payment system, without a budget neutrality adjustment (the total amount calculated in section IV.D.2.e. of this preamble).

g. Determine the Standard Federal Payment Rate

The resulting budget neutrality adjustment (determined in section IV.D.2.f. of this preamble) would then be multiplied by the average weighted per discharge payment amount under the current payment system and we would adjust the result further to include a behavioral offset. As previously stated, to calculate the proposed standard Federal payment rate, we estimated what would have been paid under the current payment system. However, we expect that as a result of the implementation of the new prospective payment system, LTCHs may experience usage patterns that are significantly different from their current usage patterns. Since there is a fixed payment based on diagnosis in a per discharge prospective payment system regardless of the length of stay (except for additional outlier payments), there would be an incentive to discharge a patient (to home or to another site of care) as early in the stay as possible in order to minimize cost and maximize profit). As a result, discharges may occur earlier in the LTCH stay. This would result in lower payments under the current payment system for this care which must be taken into account when computing the budget neutral payment rate. Furthermore, as explained in sections IV.A.2. and G. of this proposed rule, we expect the LTCH's coding practice of LTCHs to improve once the proposed prospective payment system is implemented, which has a significant potential of resulting in a case-mix that would be higher than what would be used to determine the budget neutral standard Federal rate.

As was the case when the hospital inpatient prospective payment system was implemented, improved coding could result in a higher case-mix because hospitals would code secondary diagnoses more completely and accurately, now that these diagnoses would factor into the LTC–DRG assignment and, ultimately, their payment. The inclusion of appropriate secondary diagnoses could result in the case being grouped into a higher weighted LTC–DRG. This is especially true for LTCHs since they generally treat more medically complex patients who are more likely to have many secondary diagnoses. Thus, if the same cases that were used to develop the proposed standard Federal rate are grouped into higher weighted LTC–DRGs as a result of improved coding, this higher case-mix would result in higher payments under the proposed payment system for this care. This effect must also be taken

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into account when computing the budget neutral standard Federal rate. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

The proposed standard Federal payment rate with a behavioral offset is $27,649.02. This proposed dollar amount includes a 0.27 percent (that is, twenty-seven hundredths of one percent) reduction for the behavioral offset in the proposed standard Federal payment rate otherwise calculated under the methodology described above. Consistent with the assumptions made under the IRF prospective payment system, in determining this proposed behavioral offset adjustment, we assumed that the LTCHs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with the LTC–DRG at any point.

For FY 2003, we are proposing to establish a fixed-loss outlier threshold (as described previously in section IV.C.6. of this proposed rule) equal to the proposed standard Federal prospective payment rate for the LTC–DRG plus $29,852. In setting this proposed fixed-loss amount of $29,852, we project that FY 2003 outlier payments would equal 8 percent of LTC–DRG payments under the proposed LTCH prospective payment system in accordance with proposed § 412.523.

h. Determine a Budget Neutrality Offset To Account for the Proposed Transition Methodology

Section 123(a)(1) of the BBRA requires that the LTCH prospective payment system maintain budget neutrality. As discussed in further detail in section IV.G. of this proposed rule, we are proposing a 5-year transition period from cost-based TEFRA reimbursement to prospective payment, during which a LTCH would be paid an increasing percentage of the proposed LTCH prospective payment system rate and a decreasing percentage of its TEFRA rate for each discharge. Furthermore, we are proposing to allow a LTCH to elect to be paid based on 100 percent of the proposed standard Federal rate in lieu of the blend methodology. Based on a comparison of the estimated FY 2003 payments to each LTCH based on 100 percent of the proposed standard Federal rate and the proposed transition blend methodology, we project that approximately 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate since they would receive higher payments than under the proposed transition blend methodology. We project that the remaining 42 percent of LTCHs will choose to be paid based on the transition blend methodology (80 percent of TEFRA; and 20 percent of the prospective payment system) in FY 2003 since they would receive higher payments than if they were paid based on 100 percent of the Federal rate.

Since the proposed standard Federal rate ($27,649.02) determined under section IV.D.2.g. of this proposed rule was calculated as if all LTCHs would be paid based on 100 percent of the proposed standard Federal rate in FY 2003, in order to maintain budget neutrality, we are proposing to reduce all LTCH Medicare payments during the transition period by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the proposed transition methodology and the option to elect payment based on 100 percent of the Federal rate.

We project that the full effect of the proposed 5-year transition period and the election option would result in a cost to the Medicare program of $230 million as follows:

Fiscal year	Estimated cost (in millions)
2003	$50
2004	80
2005	60
2006	30
2007	10

Thus, in order to maintain budget neutrality, we propose to apply a 5.1 percent reduction (0.949) to all LTCHs payments in FY 2003 to account for the estimated cost of $50 million for FY 2003. Furthermore, in order to maintain budget neutrality, we would propose a budget neutrality offset for each of the remaining years of the transition period in a notice of proposed rulemaking to account for the estimated costs for the respective fiscal year.

Based on the data available at this time, we would propose the following offsets to LTCH payments during the transition period: 3.9 percent (0.961) in FY 2004; 2.6 percent (0.974) in FY 2005; and 1.3 percent (0.987) in FY 2006. No budget neutrality offset would be necessary in the 5th year of the transition period (FY 2007) because under the proposed transition methodology, all LTCHs would be paid based on 100 percent of the standard Federal rate and zero percent of payments under TEFRA. These estimates are based on the inflation factors and projected Medicare spending for LTCHs discussed in section VI.B.6. of this proposed rule, and that an estimated 58 percent of LTCHs will elect to be paid based on 100 percent of the standard Federal rate rather than the transition blend.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we would monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section IV.D of this proposed rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. Pursuant to this broad authority, under § 412.523(d)(3), we are proposing a possible one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. Moreover, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

We estimate that total Medicare program payments for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in billions)
2003	$1.80
2004	1.91
2005	2.02
2006	2.14
2007	2.26

These estimates are based on the assumption that the proposed LTCH inflation factor (the excluded hospital market basket) would be 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007, that 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate rather than the proposed transition blend, and that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004 and 2005, 2.4 percent in FY 2006, and 2.3 percent in FY 2007.

E. Development of the Proposed Federal Prospective Payments

Once the proposed relative weights for each LTC–DRG and the proposed standard Federal payment rate are calculated, the proposed Federal prospective payments can be determined. Under proposed § 412.523(c)(4), a LTC–DRG payment would be calculated by multiplying the proposed standard Federal payment rate by the appropriate proposed LTC–DRG relative weight. The equation would be as follows:

Federal Prospective Payment = LTC–DRG Relative Weight * Standard Federal Payment Rate

F. Computing the Proposed Adjusted Federal Prospective Payments

The proposed Federal prospective payments described in section IV.E. of this preamble would be adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the proposed Federal prospective payment rate by the appropriate proposed adjustment factor shown in the table in section IV.C.5. of this proposed rule.

G. Transition Period

Under the broad authority conferred to the Secretary by section 123 of Public Law 106–113 for development of a prospective payment system for LTCHs, we are proposing, under § 412.533, a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system being proposed, payment would not be based on the experience of an individual hospital. We believe that a 5-year phase-in would provide LTCHs time to adjust their operations and capital financing to the new payment system, which would be based on prospectively determined Federal payment rates.

Moreover, capital renovation and expansion plans of certain LTCHs may not be amenable to short-term adjustment due to the commitment of capital funds involved. We believe that a 5-year transition period with an increasing percentage of prospective payments should afford LTCHs an opportunity to increase their efficiency in the delivery of operating services and reserve additional payments to finance their capital expenditures.

We further believe that the 5-year phase-in of the proposed LTCH prospective payment system would allow LTCH personnel to develop proficiency with the LTC–DRG coding system, resulting in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates. Our analysis conducted during the development of the proposed LTCH prospective payment system revealed that most patients in LTCHs have several diagnosis codes on their Medicare claims indicating multiple CCs, although further review of individual case studies indicated that in some instances all of the diagnoses were not reported. Since payments to LTCHs under the current TEFRA system are based on reasonable costs, not diagnosis codes, past coding by LTCHs may not have accurately reflected the patient's diagnoses. Further evidence of incomplete coding is shown by the pairs of LTC–DRGs where the "without CC" LTC–DRG had a higher average charge than the corresponding with CC LTC–DRG. As described in more detail in section III. of this proposed rule, since the LTC–DRGs "with CCs" require more coded information, we believe this phenomenon indicates incomplete coding and that over the 5-year phase-in of the LTC–DRG-based LTCH prospective payment system, this problem would be resolved.

The proposed 5-year transition period would enable us to collect Medicare claims and cost data that would be produced based on new program instructions to providers and fiscal intermediaries, and subject to program integrity monitoring. This gradual phase-in would provide a stable fiscal base for LTCHs, as we analyze data that may lead to our revisiting and perhaps revising specific policy decisions for the proposed LTCH prospective payment system.

We are proposing that the transition period for all hospitals subject to the proposed LTCH prospective payment system would begin with the hospital's first cost reporting period beginning on or after October 1, 2002 and extend through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, we are proposing that a LTCH's total payment under the prospective payment system would be based on two payment percentages—one based on reasonable cost-based (TEFRA) payments, and the other based on the standard Federal prospective payment rate. The proposed blend percentages are as follows:

Cost reporting penods beginning on or after	Federal rate percentage	TEFRA rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

For a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total payment for a LTCH would consist of 80 percent of the amount calculated under the current (TEFRA) payment system for that specific LTCH and 20 percent of the proposed Federal prospective rate. The percentage of payment based on the proposed LTCH prospective payment system Federal rate would increase by 20 percentage points each year, while the TEFRA rate percentage would decrease by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs would be determined entirely under the proposed Federal prospective payment system methodology. The TEFRA rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the prospective payment system were not implemented.

Medicare fiscal intermediaries would continue to compute the LTCH TEFRA payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act. We note that several TEFRA provisions that currently are in effect would no longer be effective for cost reporting periods beginning in FY 2003. For instance, the caps on the target amounts for "existing" LTCHs provided for under

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section 4414 of the BBA (see § 413.40(c)(4)(iii)) for FYs 1998 through 2002 would no longer be applicable for cost reporting periods beginning in FY 2003. For purposes of the LTCH prospective payment system, a LTCH's target amount for FY 2003 would be determined by updating its FY 2002 target amount (subject to the cap). In addition, the 15-percent reduction to payments to LTCHs for capital-related costs provided for under section 4412 of the BBA (§ 413.40(j)) is applicable for portions of cost reporting periods occurring in FYs 1998 through FY 2002. This reduction would no longer be applicable for cost reporting periods beginning in FY 2003. Therefore, the TEFRA portion of a LTCH's payment for capital-related costs during the LTCH prospective payment system transition period would be based on 100 percent of its Medicare allowable capital costs.

In implementing the proposed prospective payment system for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, we are proposing, under § 412.533(b), to allow a LTCH to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from cost-based payments to prospective payments. However, once a LTCH elects to be paid based on 100 percent of the Federal rate, it would not be able to revert to the proposed transition blend.

The purpose of the transition period is to allow for a smooth transition from cost-based reimbursement to prospective payment. We believe that it is appropriate not to allow a LTCH to revert back to the blended transition methodology once it elects payment based on 100 percent of the Federal rate, because allowing LTCHs to switch back to a payment based on the transition blend from a payment based on 100 percent of the Federal rate would be administratively burdensome to our fiscal intermediaries.

Consistent with transition methodology policies under the IRF prospective payment system, we are proposing that, in order to elect payment based on 100 percent of the Federal rate, a LTCH must notify the fiscal intermediary of the election no later than 30 days before the beginning of the cost reporting period in the applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007 (proposed § 412.533(b)). The request by the LTCH to make the election would be made in writing to the Medicare fiscal intermediary. The intermediary would have to receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the 30th day before the cost reporting period begins would not be approved. If the 30th day before the cost reporting begins falls on a day that the postal service or other delivery sources are not open for business, the LTCH would be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's request is not received or not approved, payment would be based on the transition period rates.

H. Payments to New LTCHs

For the purposes of the proposed LTCH prospective payment system, we are proposing under § 412.23(e)(4) to define a new LTCH as a provider of inpatient hospital services that (1) meets the proposed revised qualifying criteria (described in section II.B.1. and in proposed § 412.23(e)(1) of this proposed rule); and (2) under present or previous ownership (or both), has not received payment as a LTCH for discharges prior to October 1, 2002 (the effective date of the proposed prospective payment system for LTCHs).

We are proposing, under § 412.533(c), that new LTCHs would be paid based on 100 percent of the Federal rate starting with their first cost reporting period beginning on or after October 1, 2002. Thus, these new LTCHs would not participate in the 5-year transition from cost-based reimbursement to prospective payment (*see* section IV.G. of this proposed rule), as would other LTCHs.

The proposed transition period described in section IV.G. of this proposed rule is intended to provide existing LTCHs time to adjust to payment under the new proposed system. Since these new LTCHs would not have received payment for the delivery of LTCH services prior to the effective date of the LTCH prospective payment system, we do not believe that new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as would existing LTCHs.

These new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, added by section 4416 of Public Law 105–33. In accordance with § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 2001, the payment amount for a "new" (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (*see* 62 FR 46019, August 29, 1997). A LTCH's second cost reporting period is subject to the same payment limit as the first cost reporting period. The target amount for the LTCH beginning with its third 12-month cost reporting period, as set forth in § 413.40(c)(4)(v), is its payment amount for the preceding cost reporting period updated to the third cost reporting period. Under the proposed prospective payment system for LTCHs, those "new" LTCHs would be paid under the proposed transition methodology described in section IV.G. of this proposed rule.

For example, a new LTCH that first began receiving payment as a LTCH on October 1, 2001, would be subject to the 110 percent of the median target amount payment limit for LTCHs (in accordance with § 413.40(f)(2)(ii)) for both its FY 2002 and FY 2003 cost reporting periods. For its cost reporting period beginning on October 1, 2002 (the first cost reporting period under which the LTCH would be subject to the proposed prospective payment system), under the proposed transition methodology the LTCH's TEFRA portion of its payment for operating costs (80 percent) would be limited by the 110 percent of the median target amount payment limit for LTCHs under § 413.40(f)(2)(ii). For its cost reporting period beginning on October 1, 2003, under the proposed transition methodology that LTCH's TEFRA portion of its payment for operating costs (60 percent) would be limited by its target amount as determined under § 413.40(c)(4)(v). However, where a new LTCH first begins to receive payment as a LTCH on or after October 1, 2002, the LTCH would not be subject to the 5-year transition period under proposed § 412.533. The LTCH would be paid based on 100 percent of the proposed LTCH prospective payment system Federal rate beginning with its first cost reporting period.

I. Method of Payment

As discussed earlier, we are proposing that a beneficiary would be classified into a proposed LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG would be used to determine the Federal prospective payment that

the LTCH would receive for the Medicare-covered Part A services the LTCH furnished during the Medicare beneficiary's stay. We are proposing, under § 412.541(a), that the payment would be based on the submission of the discharge bill since section 123(a) of Public Law 106–113 requires that the LTCH prospective payment system be a per discharge based system. The discharge bill would provide data to allow for reclassifying the stay from payment at the full LTC–DRG rate into one of the proposed very short-stay discharge LTC–DRGs (under proposed § 412.527), or to determine the payment for a case as a proposed short-stay outlier (under proposed § 412.529) or as a proposed interrupted stay (under proposed § 412.531), or to determine if the case would qualify for an outlier payment (under proposed § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information proposed to be used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, length of stay or interrupted stay status) would be recorded by the LTCH on the beneficiary's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment made would represent payment in full, under proposed § 412.521(b), for inpatient operating and capital-related costs, but not the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a PRO, which are costs paid outside the proposed LTCH prospective payment system.

Under the current payment system, a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h), and may be eligible to receive accelerated payments as described in § 413.64(g). With the implementation of a prospective payment system for LTCHs, at this time (under proposed § 412.541) we are proposing to continue this existing administrative policy of allowing PIP under § 413.64(h) and accelerated payments under § 413.64(g) for qualified LTCHs. For those LTCHs that will be paid during the 5-year transition based on the blended transition methodology in § 412.533 for cost reporting periods beginning on or after October 1, 2002 and before October 1, 2006, the PIP amount would be based on the transition formula. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount would be based on the estimated prospective payment for the year rather than on the estimated cost reimbursement. Excluded from the PIP amounts would be outlier payments that are paid upon submission of a discharge bill. In addition, Part A costs that are not paid for under the proposed LTCH prospective payment system, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a PRO would be subject to the interim payment provisions at § 413.64.

V. Provisions of the Proposed Rule

We are proposing to establish a new subpart O under 42 CFR part 412, to implement the provisions of the proposed prospective payment system for LTCHs as discussed in detail throughout the preamble to this proposed rule.

In addition, we are proposing to make additional policy changes and conforming changes to the following sections of the regulations under 42 CFR parts 412, 413, and 476 as discussed throughout this preamble: §§ 412.1, 412.20, 412.22, 412.23, 412.116, 431.1, 413.40, 413.64, and 476.71.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this proposed rule as required by Executive Order 12866. We also have examined the impacts of this rule under the criteria of the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132 (Federalism).

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have determined that this proposed rule would not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of $100 million in any one year. Because the proposed LTCH prospective payment system must be budget neutral in accordance with section 123(a)(1) of Public Law 106–113, we estimate that there will be no budgetary impact for the Medicare program.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all hospitals are considered small entities. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. Section VI.B. of this proposed rule contains our estimated impact of this proposed rule on the hospitals classified as located in rural areas that have fewer than 100 beds for which we had cost report data available.

4. Unfunded Mandate

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any proposed rule or any final rule preceded by a proposed rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This proposed rule would not mandate any requirements for State, local, or tribal governments nor would it affect private sector costs.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local

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governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule would not have any negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We discuss the impact of this proposed rule below in terms of its fiscal impact on the Federal Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of Public Law 106–113 requires us to set the payment rates contained in this proposed rule such that total payments under the LTCH prospective payment system are projected to equal the amount that would have been paid if this prospective payment system had not been implemented. However, the proposed standard Federal rate ($27,649.02) was calculated as if all LTCHs would be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section IV.D.2.h. of the preamble, we are proposing a budget neutrality offset to payments (in addition to the budget neutrality adjustment reflected in the proposed standard Federal rate) to account for the monetary effect of the proposed 5-year transition period and the proposed policy to permit LTCHs to elect to be paid based on 100 percent of the standard Federal rate rather than a blend of Federal rate payments and reasonable-cost based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the proposed transition methodology and the option to elect payment based on 100 percent of the Federal rate. Thus, in accordance with section 123(a)(1) Public Law 106–113, there would be no budgetary impact to the Medicare program by implementation of the proposed LTCH prospective payment system.

2. Impacts on Providers

In order to understand the impact of the proposed new prospective payment system on different categories of LTCHs, it is necessary to estimate payments that would be made under the current (TEFRA) payment methodology (current payments) and payments under the proposed prospective payment system (proposed prospective payments). We also evaluated the ratio of estimated prospective payments to estimated costs for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and 1999 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the "unknown" category. Hospital groups include:

—Location: Large Urban/Other Urban/Rural
—Participation Date
—Ownership Control
—Census Region
—Bed Size

To estimate the impacts among the various categories of providers, it is imperative that current payments and proposed prospective payments contain similar inputs. More specifically, we estimated proposed prospective payments only for those providers that we are able to calculate current payment. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount as described in section IV.D.2.b. of this proposed rule to estimate payment under the TEFRA system.

As previously stated in section IV.C. of this preamble, we have both case-mix and cost data for 222 LTCHs. All 222 providers that had covered Medicare claims in FY 2000 were used to analyze the appropriateness of various adjustments to the proposed standard Federal unadjusted payment rate. However, for the impact analyses shown in the following tables, we simulate payments for 211 LTCHs. The methodology used to update payment data to the midpoint of FY 2003 was based on the use of historical cost report data to determine the relationship between the LTCH's costs and target amount. Thus, the number of providers reflects only those providers for which we had cost report data available from FYs 1996, 1997, 1998, and 1999 (see discussion in section IV.D.2. of this proposed rule).

These impacts reflect the estimated losses/gains among the various classifications of providers for FY 2003. Proposed prospective payments were based on the proposed standard Federal rate of $27,649.02 and the hospital's estimated case-mix based on FY 2000 claims data. These hospital payments were compared to the hospital's payments based on its cost from the cost report inflated to FY 2003 and subject to the updated per discharge target amount.

3. Calculation of Current Payments

To calculate current costs, cost report data are trended forward from the midpoint of the cost reporting period to the midpoint of FY 2003 using the methodology set forth in section IV.D.2.b. of this preamble. To estimate current payments, we determined payments for operating costs for each LTCH in accordance with the methodology in section 1886(b) of the Act. Further, we compute payments for capital-related costs consistent with section 1886(g)(4) of the Act. To determine each LTCH's average per discharge payment amount under the current payment system, operating and capital-related payments are added together, and then the total payment is divided by the number of Medicare discharges from the cost reports. Total payments for each LTCH are then computed by multiplying the number of discharges from the FY 2000 MedPAR claims by the average per discharge payment amount.

4. Calculation of Proposed Prospective Payments

To estimate payments under the proposed prospective payment system, we multiply each LTCH's case-mix index by the LTCH's number of Medicare discharges and the proposed standard Federal rate. As noted in section IV.C. of this proposed rule, we are proposing to not make adjustments for area wage differences (wage index), geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients.

Next, we calculated payments using the proposed transition blend percentages for FY 2003 (80 percent of current cost-based (TEFRA) payments and 20 percent of payments under the proposed LTCH prospective payment system) and compared that estimated blended payment to the LTCH's estimated payment if it would elect payment based on 100 percent of the Federal rate (see section IV.G. of this proposed rule). If a LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the proposed transition methodology and transition immediately to prospective payments.

Then we applied the proposed 5.1 percent reduction to payment to account for the effect of the proposed 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments to each LTCH's estimated payments under the proposed prospective payment system (see section IV.D.2.h. of this proposed rule). The impact based on our projection of whether a LTCH would be paid based on the proposed transition blend methodology or would elect payment based on 100 percent of the Federal rate for cost reporting periods beginning during FY 2003 is shown below in Table 1. We also show in Table 2 below the impact if the LTCH prospective payment system were fully implemented in FY 2003, that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH prospective payment system for FY 2003. Accordingly, the proposed 5.1 percent reduction to account for the proposed 5-year transition methodology on LTCHs' Medicare program payments was not applied to LTCHs' estimated payments under the proposed prospective payment system. Furthermore, beginning with cost reporting periods beginning during FY 2007, the proposed 5-year transition period would have ended, and all LTCHs would be paid based on 100 percent of the proposed standard Federal rate. All payment simulations reflect data trended to the midpoint FY 2003.

Tables 1 and 2 below illustrate the aggregate impact of the proposed payment system among various classifications of LTCHs. The first column, LTCH Classification, identifies the type of LTCH. The second column lists the number of LTCHs of each classification type; the third column identifies the number of long-term care cases; and the fourth column is the ratio of proposed prospective payments to current payments.

TABLE 1.—PROJECTED IMPACT REFLECTING 20 PERCENT OF PROPOSED PROSPECTIVE PAYMENTS AND 80 PERCENT OF CURRENT (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
All Providers [1]	211	70,732	1.0010
BY LOCATION:			
Rural	10	2,112	1.1826
Urban	201	68,620	0.9972
Large Urban	128	50,486	0.9977
Other Urban	73	18,134	0.9955
BY PARTICIPATION DATE:			
After Oct 1993	125	39,171	0.9819
Before Oct 1983	31	10,980	1.0498
Oct 1983–Sept 1993	51	20,103	1.0209
Unknown	4	478	1.0206
BY OWNERSHIP CONTROL:			
Voluntary	54	19,920	0.9874
Proprietary	131	46,739	1.0010
Government	26	4,073	1.0837
BY CENSUS REGION:			
New England	18	9,587	1.0283
Middle Atlantic	13	5,777	1.0209
South Atlantic	25	6,215	1.0294
East North Central	33	8,070	1.0489
East South Central	11	2,826	1.0330
West North Central	12	3,266	1.0808
West South Central	71	27,345	0.9543
Mountain	15	2,423	1.0277
Pacific	13	5,223	1.0024
By Bed Size:			
0–24 Beds	25	3,571	0.9886
25–49 Beds	84	19,426	1.0172
50–74 Beds	20	6,324	0.9688
75–124 Beds	29	12,362	0.9994
125–199 Beds	23	13,191	0.9869
200+ Beds	30	15,858	1.0100

[1] These estimated impacts of the proposed budget neutral LTCH prospective payment system are subject to rounding. Therefore, the impact on all providers is not exactly equal to 1.0000.

TABLE 2.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
All Providers [1]	211	70,732	0.9977
BY LOCATION:			
Rural	10	2,112	1.2327
Urban	201	68,620	0.9927
Large Urban	128	50,486	0.9918
Other Urban	73	18,134	0.9955
BY PARTICIPATION DATE:			
After Oct 1993	125	39,171	0.9675
Before Oct 1983	31	10,980	1.0763
Oct 1983–Sept 1993	51	20,103	1.0286

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TABLE 2.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS—Continued

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
Unknown	4	478	1.0403
BY OWNERSHIP CONTROL:			
Voluntary	54	19,920	0.9846
Proprietary	131	46,739	0.9956
Government	26	4,073	1.1130
BY CENSUS REGION:			
New England	18	9,587	1.0593
Middle Atlantic	13	5,777	1.0247
South Atlantic	25	6,215	1.0497
East North Central	33	8,070	1.0732
East South Central	11	2,826	1.0614
West North Central	12	3,266	1.1076
West South Central	71	27,345	0.9234
Mountain	15	2,423	1.0178
Pacific	13	5,223	0.9902
BY BED SIZE:			
25–49 Beds	25	3,571	0.9845
50–74 Beds	84	19,426	1.0317
75–124 Beds	20	6,324	0.9170
125–199 Beds	29	12,362	0.9886
200+ Beds	23	13,191	0.9842

[1] These estimated impacts of the proposed budget neutral LTCH prospective payment system are subject to rounding. Therefore, the impact on all providers is not exactly equal to 1.0000.

5. Results

We have prepared the following summary of the impact (as shown in Table 1) of the LTCH prospective payment system set forth in this proposed rule.

a. Location

The majority of LTCHs are in urban areas. Only 4.7 percent of the LTCHs are identified as being located in a rural area, and approximately less than 3 percent of all long-term care cases are treated in these rural hospitals. Impact analysis shows that the new payment to current payment ratio is estimated to be 1.1826 for rural LTCHs, and 0.9972 for urban LTCHs. There is only a small difference in payment between large urban LTCHs and other urban LTCHs. About 71.4 percent of the LTCH cases are in LTCHs located in large urban areas. Large urban LTCHs have a new payment to current payment ratio of 0.9977, while other urban LTCHs have a new payment to current payment ratio of 0.9955.

b. Participation Date

LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) after October 1993. We did not have sufficient OSCAR data on four LTCHs, which we labeled as an "Unknown" category. The majority, approximately 55 percent, of the long-term care cases are in hospitals that began participating after October 1993 and have a new payment to current payment ratio of 0.9816 (see Table 1) and approximately 15 percent of the cases are in LTCHs that began participating in Medicare before October 1983 with a new payment to current payment ratio of 1.0498.

c. Ownership Control

LTCHs are grouped into three categories based on ownership control type: (1) Voluntary; (2) proprietary; and (3) government. We expect that government LTCHs would gain the most from the proposed payment system with an estimated new payment to current payment ratio of 1.0837, although only approximately 11.5 percent of LTCHs are government run. Voluntary and proprietary LTCHs have a new payment to current payment ratio of 0.9874 and 1.0010, respectively.

d. Census Region

Of the nine census regions, we expect that LTCHs in the West North Central Region will have the highest new payment to current payment ratio (1.0808). We expect only LTCHs in the West South Central will have a new payment to current payment ratio of less than 1.0 (0.9543).

e. Bed Size

LTCHs were grouped into six categories based on bed size: 0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds. The majority of LTCHs were in bed size categories where the new payment to current payment ratio is estimated to be greater than 0.98. LTCHs with beds between 25–49 or over 200 beds have a new payment to current payment ratio greater than 1.0 (1.0172 and 1.0100, respectively). LTCHs with between 50–74 beds have the lowest estimated new payment to current payment ratio (0.9688).

6. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in million)
2003	$1,800
2004	1,910
2005	2,020
2006	2,140
2007	2,260

These estimates are based on the current estimate of increase in the excluded hospital with capital market basket of 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007. We estimate that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004, 2005, and 2007, and 2.4 percent in FY 2006, and an estimated increase in the total number of LTCHs.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we would monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section IV.D of this proposed rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. In accordance with this broad authority, we plan to discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH prospective payment system rates so that the effect of the difference between actual payments and estimated payments for the first year of LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. Moreover, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

7. Effect on Medicare Beneficiaries

Under the proposed LTCH prospective payment system, hospitals would receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the proposed LTCH prospective payment system, but we expect that paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

8. Computer Hardware and Software

We do not anticipate that hospitals would incur additional systems operating costs in order to effectively participate in the prospective payment system for LTCHs. We believe that LTCHs possess the computer hardware capability to handle the LTC–DRGs, computerization, data transmission, and GROUPER software requirements. Our belief is based upon indications that approximately 99 percent of hospital inpatient claims currently are submitted electronically. Moreover, LTCHs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing) or other regulatory requirements for reporting patient information.

C. Alternatives Considered

Section 123 of Public Law 106–113 specifies that the case-mix adjusted prospective payment system must be a per discharge system based on DRGs, and section 307(b) of Public Law 106–554 directs the Secretary to examine the "feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of LTCH patients as well as the use of the most recently available hospital discharge data." Section 307(b) further requires the Secretary to "examine" appropriate adjustments to the system such as adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Act. Generally, the statute confers broad authority on the Secretary in designing the key elements of the system. Our considerations of the patient classification systems in detail in section I.G. of this proposed rule. Our evaluation of alternative features and adjustment factors for the LTCH prospective payment system are set forth in section IV. We are soliciting public comments regarding our proposed policies and system design and will consider them as we formulate our final rule for the prospective payment system for LTCHs.

D. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comments on each of these issues for the following proposed sections that contain information collection requirements:

Proposed §§ 412.116(a)(4) and 412.541(b) and (e) Method of Payment: Periodic Interim Payments and Accelerated Payments

Under proposed § 412.116(a)(4), for cost reporting periods beginning on or after October 1, 2002, payments to a LTCH for inpatient hospital services under the prospective payment system would be made as described in proposed § 412.541. Proposed § 412.541(b) provides that a LTCH may receive periodic interim payments for Part A services, subject to the provisions of § 413.64(h). Section 413.64(h) specifies that the request for periodic interim payments must be made to the fiscal intermediary. Proposed § 412.541(e) states that, upon request, an accelerated payment may be made to a LTCH that is not receiving a periodic interim payment if the LTCH is experiencing financial difficulties.

We estimate that the burden associated with this provision is the time it takes a LTCH to prepare and submit its request for periodic interim payments or accelerated payments. We estimate that approximately three LTCHs would request periodic interim payments under the prospective payment system and that it would take each hospital 1 hour to prepare and make the request. We estimate that approximately two LTCHs would

request accelerated payments and that it would take them approximately 30 minutes each to prepare and submit their written request, for a total estimated annual burden of 1 hour.

Both of these proposed sections of the regulations are exempt from the PRA since the two requirements would affect less than 10 LTCHs per year (see 5 CFR Part 1320.3(c)(4)).

Proposed § 412.508(b)(1) and (b)(2): Content of Physician Acknowledgement Statement and Completion of Acknowledgement

Proposed § 412.508(b) provides that a physician must complete an acknowledgement statement that each patient's principal and secondary diagnoses and major procedures performed are documented by the physician's entries in the patient's medical record. Proposed § 412.508(b)(1) specifies that when a claim is submitted, the hospital must have a signed and dated acknowledgement from the attending physician that the physician has received notice of the required acknowledgement of entries in the patient's medical record and that anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable laws. Proposed § 412.508(b)(2) specifies that the acknowledgement must be completed by the physician at the time the physician is granted admitting privileges at the hospital or before or at the time the physician admits his or her first patient.

The burden associated with these information collection requirements is the time required for the physician to complete the acknowledgement statements.

These information collection requirements are currently approved under OMB approval number 0938–0359 through February 28, 2002. (We note that these requirements are currently in the reapproval process with OMB.)

Proposed § 412.511 Reporting and Recordkeeping Requirements

Under proposed § 412.511, a LTCH subject to the proposed prospective payment system described in this proposed rule must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24. While §§ 413.20 and 413.24 are subject to the PRA, the burden associated with these requirements is currently captured in approved collection 0938–0758, with a current expiration date of 3/31/2002. This collection is currently at OMB awaiting re-approval.

Proposed § 412.533(b) Transition Payments: Election Not To Be Paid Under the Transitional Period Methodology

Under proposed § 412.533(b), a LTCH may elect to be paid based on 100 percent of the Federal prospective payment rate at the start of any of its cost reporting periods during a 5-year transition period beginning on or after October 1, 2002, and before October 1, 2007, without regard to the transitional percentages. Proposed § 412.533(b)(1) specifies that the request to make the election must be made in writing to the Medicare intermediary by the LTCH and received no later than 30 days before the beginning of the cost reporting period for each applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007.

We estimate that 135 LTCHs would make a request under this section to elect to receive the full Federal rate and that it would take each LTCH approximately 15 minutes each to prepare and submit their written request, for a total estimated annual burden of 34 hours.

If you comment on these information collection requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: Dawn Willinghan CMS–1177–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

We have submitted the information collection requirements under §§ 412.508(b), 412.116, 412.533, and 412.541 to the Office of Management and Budget (OMB) for review under the authority of PRA. We also have submitted a copy of this proposed rule to OMB for its review of the information collection requirements. These requirements would not be effective until approved by OMB.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provisions of this proposed rule will be considered if we receive them by the date specified in the **DATES** section of this preamble.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. Section § 412.1 is amended by:

a. Adding a new paragraph (a)(3);

b. Redesignating paragraph (b)(12) as paragraph (b)(13); and

c. Adding a new paragraph (b)(12).

§ 412.1 Scope of part.

(a) *Purpose.* * * *

(3) This part implements section 123 of Public Law 106–113, which provides for the establishment of a prospective payment system for the costs of inpatient hospital services furnished to Medicare beneficiaries by long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act, for cost reporting periods beginning on or after October 1, 2002. This part also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to the long-term care hospital prospective payment system, including adjustments to diagnosis-related group (DRG) weights, area wage adjustments, geographic reclassification, outlier adjustments, updates, and disproportionate share adjustments consistent with section 1886(d)(5)(F) of the Act.

(b) *Summary of content.* * * *

(12) Subpart O of this part describes the prospective payment system specified in paragraph (a)(3) of this section for long-term care hospitals and sets forth the general methodology for paying for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals, effective with cost reporting periods beginning on or after October 1, 2002.

* * * * *

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.20 is amended by:

a. Revising paragraph (a).

b. Redesignating paragraph (c) as paragraph (d).

c. Adding a new paragraph (c).

§ 412.20 Hospital services subject to the prospective payment systems.

(a) Except for services described in paragraphs (b), (c), and (d) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid under the prospective payment systems specified in § 412.1(a)(1).

* * * * *

(c) Effective for cost reporting periods beginning on or after October 1, 2002, covered inpatient hospital services furnished to Medicare beneficiaries by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are paid under the prospective payment system described in subpart O of this part.

* * * * *

4. Section 412.22 is amended by revising paragraph (b) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section and §§ 412.20(b) and (c), all excluded hospitals (and excluded hospital units, as described in §§ 412.23 through 412.29) are reimbursed under the cost reimbursement rules set forth in part 413 of this subchapter, and are subject to the ceiling on the rate of hospital cost increases described in § 413.40 of this subchapter.

* * * * *

5. Section 412.23 is amended by revising paragraph (e) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* A long-term care hospital must meet the requirements of paragraph (e)(1) and (e)(2) of this section and, where applicable, the additional requirements of § 412.22(e), to be excluded from the prospective payment systems specified in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(3) and in Subpart O of this part.

(1) *Provider agreements.* The hospital must have a provider agreement under Part 489 of this chapter to participate as a hospital; and

(2) *Average length of stay.* (i) The hospital must have an average Medicare inpatient length of stay of greater than 25 days as calculated under paragraph (e)(3) of this section; or

(ii) For cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the prospective payment system under this section in 1986 meets the length of stay criterion if it has an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days and demonstrates that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease as defined in paragraph (f)(1)(iv) of this section.

(3) *Calculation of average length of stay.* The average Medicare inpatient length of stay is calculated—

(i) By dividing the number of total Medicare inpatient days (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period;

(ii) If a change in the hospital's Medicare average length of stay is indicated, by the same method for the immediately preceding 6-month period; or

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required Medicare average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(4) *Definition of new long-term care hospital.* For purposes of payment under the long-term care hospital prospective payment system under Subpart O of this part, a new long-term care hospital is a provider of inpatient hospital services that meets the qualifying criteria in paragraphs (e)(1) and (e)(2) of this section and, under present or previous ownership (or both), has not received payment as a long-term care hospital for discharges occurring prior to October 1, 2002.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

6. In § 412.116, the heading of paragraph (a) is revised and a new paragraph (a)(4) is added to read as follows:

§ 412.116 Method of payment.

(a) *General rules.* * * *

(4) For cost reporting periods beginning on or after October 1, 2002, payments for inpatient hospital services furnished by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are made as described in § 412.521.

* * * * *

7. A new subpart O is added to read as follows:

Subpart O—Prospective Payment System for Long-Term Care Hospitals

Sec.

412.500 Basis and scope of subpart.
412.503 Definitions.
412.505 Conditions for payment under the prospective payment system for long-term care hospitals.
412.507 Limitation on charges to beneficiaries.
412.508 Medical review requirements.
412.509 Furnishing of inpatient hospital services directly or under arrangement.
412.511 Reporting and recordkeeping requirements.
412.513 Patient classification system.
412.515 LTC–DRG weighting factors.
412.517 Revision of LTC–DRG group classifications and weighting factors.
412.521 Basis of payment.
412.523 Methodology for calculating the Federal prospective payment rates.
412.525 Adjustments to the Federal prospective payment.
412.527 Special payment provisions for very short-stay discharges.
412.529 Special payment provisions for short-stay outliers.
412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.
412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.
412.533 Transition payments.

412.535 Publication of the Federal prospective payment rates.
412.541 Method of payment under the long-term care hospital prospective payment system.

Subpart O—Prospective Payment System for Long-Term Care Hospitals

§ 412.500 Basis and scope of subpart.

(a) *Basis.* This subpart implements section 123 of Public Law 106–113, which provides for the implementation of a prospective payment system for long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act. This subpart also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to that system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and disproportionate share adjustments consistent with section 1886(d)(5)(F) of the Act.

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for long-term care hospitals, including the methodology used for the development of payment rates and associated adjustments and related rules. Under this system, for cost reporting periods beginning on or after October 1, 2002, payment for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals is made on the basis of prospectively determined rates and applied on a per discharge basis.

§ 412.503 Definitions.

As used in this subpart—

CMS stands for the Centers for Medicare & Medicaid Services.

Discharge. A Medicare patient in a long-term care hospital is considered discharged when—

(1) The patient is formally released;

(2) The patient stops receiving Medicare-covered long-term care services; or

(3) The patient dies in the long-term care facility.

LTC–DRG stands for the diagnosis-related group used to classify patient discharges from a long-term care hospital based on clinical characteristics and average resource use, for prospective payment purposes.

Outlier payment means an additional payment beyond the standard Federal prospective payment for cases with unusually high costs.

PRO stands for the Utilization and Quality Control Peer Review Organization.

§ 412.505 Conditions for payment under the prospective payment system for long-term care hospitals.

(a) *Long-term care hospitals subject to the prospective payment system.* To be eligible to receive payment under the prospective payment system specified in this subpart, a long-term care hospital must meet the criteria to be classified as a long-term care hospital set forth in § 412.23(e) for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1). This condition is subject to the special payment provisions of § 412.22(c), the provisions on change in hospital status of § 412.22(d), the provisions related to hospitals-within-hospitals under § 412.22(e), and the provisions related to satellite facilities under § 412.22(h).

(b) *General requirements.* (1) Effective for cost reporting periods beginning on or after October 1, 2002, a long-term care hospital must meet the conditions for payment of this section and §§ 412.507 through 412.511 to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare beneficiaries.

(2) If a long-term care hospital fails to comply fully with these conditions for payment with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, CMS may withhold (in full or in part) or reduce Medicare payment to the hospital.

§ 412.507 Limitation on charges to beneficiaries.

(a) *Prohibited charges.* Except as provided in paragraph (b) of this section, a long-term care hospital may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital is paid under the prospective payment system.

(b) *Permitted charges.* A long-term care hospital that receives payment under this subpart for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter, and for items and services as specified under § 489.20(a) of this chapter.

§ 412.508 Medical review requirements.

(a) *Admission and quality review.* A long-term care hospital must have an agreement with a PRO to have the PRO review, on an ongoing basis, the following:

(1) The medical necessity, reasonableness, and appropriateness of hospital admissions and discharges.

(2) The medical necessity, reasonableness, and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.523(d)(1) and 412.525(a).

(3) The validity of the hospital's diagnostic and procedural information.

(4) The completeness, adequacy, and quality of the services furnished in the hospital.

(5) Other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Physician acknowledgement.* Because payment under the long-term care hospital prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to this effect.

(1) *Content of physician acknowledgement statement.* When a claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

> Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(2) *Completion of acknowledgement.* The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

(c) *Denial of payment as a result of admissions and quality review.* (1) If CMS determines, on the basis of information supplied by a PRO that a hospital has misrepresented admissions, discharges, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits under Part A, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries, CMS may, as appropriate—

(i) Deny payment (in whole or in part) under Part A with respect to inpatient hospital services provided for an unnecessary admission or subsequent readmission of an individual; or

(ii) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(2) When payment with respect to admission of an individual patient is denied by a PRO under paragraph (c)(1) of this section, and liability is not waived in accordance with §§ 411.400 through 411.402 of this chapter, notice and appeals are provided under procedures established by CMS to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

(3) A determination under paragraph (c)(1) of this section, if it is related to a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system, is referred to the Department's Office of Inspector General for handling in accordance with § 1001.301 of this title.

§ 412.509 Furnishing of inpatient hospital services directly or under arrangement.

(a) Subject to the provisions of § 412.521(b), the applicable payments made under this subpart are payment in full for all inpatient hospital services, as defined in § 409.10 of this chapter. Inpatient hospital services do not include the following:

(1) Physicians' services that meet the requirements of § 415.102(a) of this subchapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioners and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Certified nurse midwife services, as defined in section 1861(gg) of the Act.

(5) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(6) Services of an anesthetist, as defined in § 410.69 of this subchapter.

(b) Medicare does not pay any provider or supplier other than the long-term care hospital for services furnished to a Medicare beneficiary who is an inpatient of the hospital except for services described in paragraphs (a)(1) through (a)(6) of this section.

(c) The long-term care hospital must furnish all necessary covered services to the Medicare beneficiary who is an inpatient of the hospital either directly or under arrangements (as defined in § 409.3 of this subchapter).

§ 412.511 Reporting and recordkeeping requirements.

A long-term care hospital participating in the prospective payment system under this subpart must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of this subchapter.

§ 412.513 Patient classification system.

(a) *Classification methodology.* CMS classifies specific inpatient hospital discharges from long-term care hospitals by long-term care diagnosis-related groups (LTC–DRGs) to ensure that each hospital discharge is appropriately assigned based on essential data abstracted from the inpatient bill for that discharge.

(b) *Assignment of discharges to LTC–DRGs.* (1) The classification of a particular discharge is based, as appropriate, on the patient's age, sex, principal diagnosis (that is, the diagnosis established after study to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, and the patient's discharge status.

(2) Each discharge from a long-term care hospital is assigned to only one LTC–DRG (related, except as provided in paragraph (b)(3) of this section, to the patient's principal diagnosis), regardless of the number of conditions treated or services furnished during the patient's stay.

(3) When the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill is returned to the hospital for validation and reverification. The LTC–DRG classification system provides a LTC–DRG, and an appropriate weighting factor, for those cases for which none of the surgical procedures performed are related to the principal diagnosis.

(c) *Review of LTC–DRG assignment.* (1) A hospital has 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital may submit additional information as a part of its request.

(2) The intermediary reviews that hospital's request and any additional information and decides whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case will be reviewed by the appropriate PRO as specified in § 476.71(c)(2) of this chapter.

(3) Following the 60-day period described in paragraph (c)(1) of this section, the hospital may not submit additional information with respect to the DRG assignment or otherwise revise its claim.

§ 412.515 LTC–DRG weighting factors.

(a) *General.* For each LTC–DRG, CMS assigns an appropriate weight that reflects the estimated relative cost of hospital resources used within that group compared to discharges classified within other groups.

(b) *Very short-stay discharges.* CMS determines a weighting factor or factors for discharges of Medicare patients from a long-term care hospital after a very short stay in accordance with § 412.527.

§ 412.517 Revision of LTC–DRG group classifications and weighting factors.

CMS adjusts the classifications and weighting factors annually to reflect changes in—

(a) Treatment patterns;

(b) Technology;

(c) Number of discharges; and

(d) Other factors affecting the relative use of hospital resources.

§ 412.521 Basis of payment.

(a) *Method of payment.* (1) Under the prospective payment system, long-term care hospitals receive a predetermined payment amount per discharge for inpatient services furnished to Medicare beneficiaries.

(2) The amount of payment under the prospective payment system is based on the Federal payment rate established in accordance with § 412.523, including adjustments described in § 412.525, and, if applicable during a transition period, on a blend of the Federal payment rate and the cost-based reimbursement rate described in § 412.533.

(b) *Payment in full.* (1) The payment made under this subpart represents payment in full (subject to applicable deductibles and coinsurance described in subpart G of part 409 of this subchapter) for inpatient operating costs as described in § 412.2(c) and capital-related costs described in subpart G of part 413 of this subchapter associated with furnishing Medicare covered services in long-term care hospitals.

(2) In addition to payment based on prospective payment rates, long-term care hospitals may receive payments separate from payments under the prospective payment system for the following:

(i) The costs of approved medical education programs described in §§ 413.85 and 413.86 of this subchapter.

(ii) Bad debts of Medicare beneficiaries, as provided in § 413.80 of this subchapter.

(iii) A payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

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(iv) Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements, as specified in § 412.113(c)(2).

(v) The costs of photocopying and mailing medical records requested by a PRO, in accordance with § 476.78(c) of this chapter.

(c) *Payment by workers' compensation, automobile medical, no-fault or liability insurance or an employer group health plan primary to Medicare.* If workers' compensation, automobile medical, no-fault, or liability insurance or an employer group health plan that is primary to Medicare pays in full or in part, payment is determined in accordance with the guidelines specified in § 412.120(b).

(d) *Effect of change of ownership on payments under the prospective payment system.* When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

(1) Payment for the operating and capital-related costs of inpatient hospital services for each patient, including outlier payments as provided in § 412.525 and payments for hemophilia clotting factor costs as provided in paragraph (b)(2)(iii) of this section, are made to the entity that is the legal owner on the date of discharge. Payments are not prorated between the buyer and seller.

(i) The owner on the date of discharge is entitled to submit a bill for all inpatient hospital services furnished to a beneficiary regardless of when the beneficiary's coverage began or ended during a stay, or of how long the stay lasted.

(ii) Each bill submitted must include all information necessary for the intermediary to compute the payment amount, whether or not some of that information is attributable to a period during which a different party legally owned the hospital.

(2) Other payments for approved medical education programs, bad debts, anesthesia services furnished by hospital employed nonphysician anesthestists, and costs of photocopying and mailing medical records to the PRO as provided for under paragraphs (b)(2)(i), (ii), (iv), and (v) of this section are made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

§ 412.523 Methodology for calculating the Federal prospective payment rates.

(a) *Data used.* To calculate the initial prospective payment rates for inpatient hospital services furnished by long-term care hospitals, CMS uses—

(1) The best Medicare data available; and

(2) A rate of increase factor to adjust for the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient long-term care hospital services.

(b) *Determining the average costs per discharge for FY 2003.* CMS determines the average inpatient operating and capital-related costs per discharge for which payment is made to each inpatient long-term care hospital using the available data under paragraph (a)(1) of this section. The cost per discharge is adjusted to FY 2003 by a rate of increase factor, described in paragraph (a)(2) of this section, under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year.

(c) *Determining the Federal prospective payment rates.*

(1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the standard Federal rate. The standard Federal rate is a standardized payment amount based on average costs from a base year that reflects the combined aggregate effects of the weighting factors and other adjustments.

(2) *Update the cost per discharge.* CMS applies the increase factor described in paragraph (a)(2) of this section to each hospital's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for FY 2003. Based on the updated cost per discharge, CMS estimates the payments that would have been made to each hospital for FY 2003 under Part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the standard Federal rate.* The standard Federal rate is computed as follows:

(i) *For FY 2003.* Based on the updated costs per discharge and estimated payments for FY 2003 determined in paragraph (c)(2) of this section, CMS computes a standard Federal rate for FY 2003 that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after FY 2003.* The standard Federal rate for fiscal years after FY 2003 will be the standard Federal rate for the previous fiscal year, updated by the increase factor described in paragraph (a)(2) of this section, and adjusted as appropriate as described in paragraph (d) of this section.

(4) *Determining the Federal prospective payment rate for each LTC–DRG.* The Federal prospective payment rate for each LTC–DRG is the product of the weighting factors described in § 412.515 and the standard Federal rate described in paragraph (c)(3) of this section.

(d) *Adjustments to the standard Federal rate.* The standard Federal rate described in paragraph (c)(3) of this section will be adjusted for—

(1) *Outlier payments.* CMS adjusts the standard Federal rate by a reduction factor of 8 percent, the estimated proportion of outlier payments under the long-term care hospital prospective payment system, as described in § 412.525(a).

(2) *Budget neutrality.* CMS adjusts the Federal prospective payment rates for FY 2003 so that aggregate payments under the prospective payment system are estimated to equal the amount that would have been made to long-term care hospitals under Part 413 of this subchapter without regard to the prospective payment system implemented under this subpart.

(3) The Secretary will review payments under this prospective payment system and will make a one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006 so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment rates for future years.

(e) *Calculation of the adjusted Federal prospective payment.* For each discharge, a long-term care hospital's Federal prospective payment is computed on the basis of the Federal prospective payment rate multiplied by the relative weight of the LTC–DRG assigned for that discharge. A hospital's Federal prospective payment rate will be adjusted, as appropriate, to account for outliers and other factors as specified in § 412.525.

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.* CMS provides for an additional payment to a long-term care hospital if its estimated costs for a patient exceeds the adjusted LTC–DRG plus a fixed-loss amount. For each fiscal year, CMS determines a fix-loss amount that is the maximum loss that a hospital can incur under the prospective payment system for a case with unusually high costs before the hospital will receive any additional payments. The additional payment equals 80 percent of the difference between the estimated cost of the patient case and the sum of the adjusted Federal prospective payment

for the LTC–DRG and the fixed-loss amount.

(b) *Adjustments for Alaska and Hawaii.* CMS adjusts the Federal prospective payment for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

(c) *Special payment provisions.* CMS adjusts the Federal prospective payment to account for—

(1) Very short-stay discharges, as provided for in § 412.527;

(2) Short-stay outliers, as provided for in § 412.529; and

(3) Interruption of a stay, as provided for in § 412.531.

§ 412.527 Special payment provision for very short-stay discharges.

(a) *Very short-stay discharge defined.* A "very short-stay discharge" means a case that has a length of stay in a long-term care hospital of 7 days or fewer.

(b) *Adjustment to payment.* CMS adjusts the Federal prospective payment for very short-stay discharges, as defined in paragraph (a) of this section.

(c) *Method for determining payment.*

(1) Payment for a very short-stay discharge will be made on a per diem methodology according to the primary diagnosis of the discharge under either—

(i) A LTC–DRG psychiatric category; or

(ii) A LTC–DRG nonpsychiatric category.

(2) Each per diem amount is determined by dividing the Federal payment rate of the applicable LTC–DRG category specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section (that is, Federal payment rate x the LTC–DRG weight) by seven.

§ 412.529 Special payment provision for short-stay outliers.

(a) *Short-stay outlier defined.* "Short-stay outlier" means a discharge with a length of stay in a long-term care hospital that is between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG.

(b) *Adjustment to payment.* CMS adjusts the hospital's Federal prospective payment to account for any case that is determined to be a short-stay outlier, as defined in paragraph (a) of this section, under the methodology specified in paragraph (c) of this section.

(c) *Method for determining the payment amount.* (1) The payment amount for a short-stay outlier is the least of the following amounts:

(i) 150 percent of the LTC–DRG specific per diem amount determined under paragraph (c)(2) of this section multiplied by the length of stay of the discharge;

(ii) 150 percent of the cost of the case determined under paragraph (c)(3) of this section; or

(iii) The full Federal prospective payment for the LTC–DRG (the Federal payment rate x LTC–DRG weight).

(2) CMS calculates a per diem amount for short-stay outliers for each LTC–DRG by dividing the standard Federal payment rate (the Federal payment rate x LTC–DRG weight) by the arithmetic mean length of stay of the specific LTC–DRG.

(3) To determine the cost of a case, CMS uses the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case.

§ 412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.

(a) *Interruption of a stay defined.* "Interruption of a stay" means a stay at a long-term care hospital during which a Medicare inpatient is transferred upon discharge to an acute care hospital, an IRF, or a SNF for treatment or services that are not available in the long-term care hospital and returns to the same long-term care hospital within the applicable period specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For a discharge to an acute care hospital, the applicable period is the number of days that is equal to one standard deviation beyond the average length of stay for the DRG assigned for the acute care inpatient hospital stay. The counting of those days begins on the day of discharge from the long-term care hospital and ends on the day the patient is readmitted to the long-term care hospital.

(2) For a discharge to an IRF, the applicable period is the number of days that is equal to one standard deviation beyond the average length of stay for the combination of the CMG and comorbidity tier for the IRF stay. The counting of those days begins on the day of discharge from the long-term care hospital and ends on the day that the patient is readmitted to the long-term care hospital.

(3) For a discharge to a SNF, the applicable period is 45 days, that is, the number of days that is equal to one standard deviation beyond the average length of stay for all Medicare SNF patients. The counting of those days begins on the day of discharge from the long-term care hospital and ends with the 45th day after the discharge.

(b) *Methods of determining payments.* (1) For purposes of determining a Federal prospective payment, any stay in a long-term care hospital that involves an interruption of the stay will be paid as a single discharge from the long-term care hospital. The number of days that a beneficiary spends in an acute care hospital, an IRF, or a SNF during an interruption of stay at a long-term care hospital is not included in determining the length of stay of the patient at the long-term care hospital. CMS will make only one LTC–DRG payment for all portions of a long-term care stay that involves an interruption of a stay. In accordance with § 412.513(b), payment will be based on the patient's LTC–DRG which would be determined by the principal diagnosis which is the condition established after study to be chiefly responsible for occasioning the first admission of the patient to the hospital for care.

(2) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is 7 days or less, CMS will make a Federal prospective payment for a very short stay discharge in accordance with § 412.527(c).

(3) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is between 8 days and two-thirds the average length of stay of the LTC–DRG, CMS will make a Federal prospective payment for a short-stay outlier in accordance with § 412.529(c).

(4) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay exceeds two-thirds of the average length of stay for the LTC–DRG, CMS will make one full Federal LTC–DRG prospective payment for the case. An additional payment will be made if the patient's stay qualifies as a high-cost outlier, as set forth in § 412.525(a).

(5) Notwithstanding the provisions of paragraph (a) of this section, if a patient who has been discharged from a long-term care hospital to another facility and is readmitted to the long-term care hospital for additional treatment or services in the long-term care hospital following the stay at the other facility, the subsequent admission to the long-term care hospital is considered a new stay, even if the case is determined to fall into the same LTC–DRG, and the long-term care hospital will receive two separate Federal prospective payments if one of the following conditions are met:

(i) The patient has a length of stay in the acute care hospital that exceeds one standard deviation from the average length of stay for the inpatient hospital DRG;

(ii) The patient has a length of stay in the IRF that exceeds one standard

deviation from the average length of stay for the combination of CMG and the comorbidity tier; or

(iii) The patient has a length of stay in the SNF that exceeds 45 days (one standard deviation from the average length of stay for all Medicare SNF patients).

(c) *Payments to an acute care hospital, an IRF, or a SNF during an interruption of stay.* (1) Payment to the acute care hospital for the acute care hospital stay following discharge from the long-term care hospital will be paid in accordance with the acute care hospital inpatient prospective payment systems specified in § 412.1(a)(1).

(2) Payment to an IRF for the IRF stay following a discharge from the long-term care hospital will be paid in accordance with the IRF prospective payment system specified in § 412.624 of Subpart P of this part.

(3) Payment to a SNF for the SNF stay following a discharge from the long-term care hospital will be paid in accordance with the SNF prospective payment system specified in subpart J of Part 413 of this subchapter.

§ 412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.

(a) The policies set forth in this section apply in the following situations:

(1) A long-term care hospital (including a satellite facility) that is co-located within an onsite acute care hospital, an onsite IRF, or an onsite psychiatric facility or unit that meets the definition of a hospital-within-a-hospital under § 412.22(e).

(2) A satellite facility, as defined in § 412.22(e), that is co-located with the long-term care hospital.

(3) A SNF, as defined in section 1819(a) of the Act, that is co-located with the long-term care hospital.

(b) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an acute care hospital co-located with the long-term care hospital, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from that acute care hospital, the discharge to the co-located acute care hospital and the readmission to the long-term care hospital will be treated as one discharge and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(c) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an onsite IRF, an onsite psychiatric hospital or unit, or an onsite SNF, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from the onsite IRF, the onsite psychiatric hospital or unit, or the onsite SNF, a discharge to any of these providers and a readmission to the LTCH will be treated as one discharge and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(d) For purposes of calculating the payment per discharge, payment for the entire stay at the long-term care hospital will be paid as a full LTC–DRG payment under § 412.523, a very short-stay discharge under § 412.527, or a short-stay outlier under § 412.529, depending on the duration of the entire stay.

(e) If the long-term care hospital does not meet the 5-percent thresholds specified under paragraph (b) or (c) of this section for discharges to the specified onsite providers and readmissions to the long-term care hospital during a cost reporting period, payment under the long-term care prospective payment system will be made, where applicable, under the policies on interruption of a stay as specified in § 412.531.

(f) Payment to the onsite acute care hospital, the onsite IRF, the onsite psychiatric hospital or unit, and the onsite SNF for a beneficiary's stay in the specified onsite providers is subject to the applicable payment policies, including outliers and transfers, under the acute care hospital inpatient prospective payment system, the IRF prospective payment system, the SNF prospective payment system, or the excluded psychiatric hospital or unit cost-based reimbursement payment system, as appropriate.

(g) In determining whether a patient has previously been discharged and then admitted, all prior discharges are considered, even if the discharge occurs late in one cost reporting period and the readmission occurs late in next cost reporting period.

§ 412.533 Transition payments.

(a) *Duration of transition periods.* Except for a long-term care hospital that makes an election under paragraph (b) of this section or for a long-term care hospital that is defined as new under § 412.23(e)(4), for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, a long-term care hospital receives a payment comprised of a blend of the adjusted Federal prospective payment as determined under § 412.523, and the payment determined under the cost-based reimbursement rules under Part 413 of this subchapter.

(1) For cost reporting periods beginning on or after October 1, 2002 and before October 1, 2003, payment is based on 20 percent of the Federal prospective payment rate and 80 percent of the cost-based reimbursement rate.

(2) For cost reporting periods beginning on or after October 1, 2003 and before October 1, 2004, payment is based on 40 percent of the Federal prospective payment rate and 60 percent of the cost-based reimbursement rate.

(3) For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2005, payment is based on 60 percent of the Federal prospective payment rate and 40 percent of the cost-based reimbursement rate.

(4) For cost reporting periods beginning on or after October 1, 2005 and before October 1, 2006, payment is based on 80 percent of the Federal prospective payment rate and 20 percent of the cost-based reimbursement rate.

(5) For cost reporting periods beginning on or after October 1, 2006, payment is based entirely on the adjusted Federal prospective payment rate.

(b) *Election not to be paid under the transition period methodology.* A long-term care hospital may elect to be paid based on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition periods specified in paragraph (a) of this section. Once a long-term care hospital elects to be paid based on 100 percent of the Federal prospective payment rate, it may not revert to the transition blend.

(1) *General requirement.* A long-term care hospital must request the election under this paragraph (b) no later than 30 days before the beginning of the hospital's cost reporting period in each applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2006.

(2) *Notification requirement to make election.* The request by the long-term care hospital to make the election under this paragraph (b) must be made in writing to the Medicare fiscal intermediary. The intermediary must receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the 30th day before the cost reporting period begins will not be approved. If the 30th day before the cost reporting begins falls on a day that the postal service or other delivery sources are not open for business, the long-term care hospital is responsible for allowing sufficient time for the delivery of the request before the deadline. If a long-term care hospital's request is not received or not approved, payment will be based on the transition period rates specified in paragraphs (a)(1) through (a)(5) of this section.

(c) *Payments to new long-term care hospitals.* A new long-term care hospital, as defined in § 412.23(e)(4), will be paid based on 100 percent of the standard Federal rate, as described in § 412.523, with no transition payments, as described in § 412.533.

§ 412.535 Publication of the Federal prospective payment rates.

CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each fiscal year in the **Federal Register**. This information includes the unadjusted Federal payment rates, the LTC–DRG classification system and associated weighting factors, and a description of the methodology and data used to calculate the payment rates. This information is published on or before August 1 prior to the beginning of each fiscal year.

§ 412.541 Method of payment under the long-term care hospital prospective payment system.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, long-term care hospitals receive payment under this subpart for inpatient operating costs and capital-related costs for each discharge only following submission of a discharge bill.

(b) *Periodic interim payments*—(1) *Criteria for receiving periodic interim payments.* (i) A long-term care hospital receiving payment under this subpart may receive periodic interim payments (PIP) for Part A services under the PIP method subject to the provisions of § 413.64(h) of this subchapter.

(ii) To be approved for PIP, the long-term care hospital must meet the qualifying requirements in § 413.64(h)(3) of this subchapter.

(iii) As provided in § 413.64(h)(5) of this subchapter, intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

(2) *Frequency of payment.* (i) For long-term care hospitals approved for PIP and paid solely under Federal prospective payment system rates under § 412.533(b), the intermediary estimates the long-term care hospital's Federal prospective payments net after estimated beneficiary deductibles and coinsurance and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year.

(ii) For long-term care hospitals approved for PIP and paid using the blended payment schedule specified in § 412.533(a) for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, the intermediary estimates the hospital's portion of the Federal prospective payments net and the hospital's portion of the reasonable cost-based reimbursement payments net, after beneficiary deductibles and coinsurance, in accordance with the blended transition percentages specified in § 412.533(a), and makes biweekly payments equal to 1/26 of the total estimated amount of both portions of payments for the year.

(iii) If the long-term care hospital has payment experience under the prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year.

(iv) Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this subchapter.

(v) The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a hospital receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) *Termination of PIP*—(i) *Request by the hospital.* Subject to paragraph (b)(1)(iii) of this section, a long-term care hospital receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates PIP if the long-term care hospital no longer meets the requirements of § 413.64(h) of this subchapter.

(c) *Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system.* For Medicare bad debts and for the costs of an approved education program, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, and photocopying and mailing medical records to a PRO, which are costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1/26 of the total estimated amount. Each payment is made 2 weeks after the end of the biweekly period of service as described in § 413.64(h)(6) of this subchapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a long-term care hospital receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Outlier payments.* Additional payments for outliers are not made on an interim basis. The outlier payments are made based on the submission of a discharge bill and represent final payment.

(e) *Accelerated payments*—(1) *General rule.* Upon request, an accelerated payment may be made to a long-term care hospital that is receiving payment under this subpart and is not receiving PIP under paragraph (b) of this section if the hospital is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the long-term care hospital.

(ii) Due to an exceptional situation, there is a temporary delay in the hospital's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* A request by a long-term care hospital for an accelerated payment must be approved by the intermediary and by CMS.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as long-term care hospital bills are processed or by direct payment by the long-term care hospital.

B. Part 413 is amended as set forth below:

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PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

2. Section 413.1 is amended by:

a. Revising paragraph (d)(2)(ii).

b. Adding paragraphs (d)(2)(vi) and (d)(2)(vii).

§ 413.1 Introduction.

* * * * *

(d) * * *

(2) * * *

(ii) Payment to children's and psychiatric hospitals (as well as separate psychiatric units (distinct parts) of short-term general hospitals) that are excluded from the prospective payment systems under subpart B of part 412 of this subchapter and hospitals outside the 50 states and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

* * * * *

(vi) For cost reporting periods beginning before October 1, 2002, payment to long-term care hospitals that are excluded under subpart B of part 412 of this subchapter from the prospective payment systems is on a reasonable cost basis, subject to the provisions of § 413.40.

(vii) For cost reporting periods beginning on or after October 1, 2002, payment to the long-term hospitals that meet the condition for payment of §§ 412.505 through 412.511 of this subchapter is based on prospectively determined rates under subpart O of part 412 of this subchapter.

* * * * *

Subpart C—Limits on Cost Reimbursement

3. Section 413.40 is amended by:

a. Republishing the introductory text of paragraph (a)(2)(i).

b. Adding a new paragraph (a)(2)(i)(D).

c. Amending paragraph (a)(2)(ii) by republishing the introductory text, removing "and" at the end of paragraph (a)(2)(ii)(A), adding "and" at the end of paragraph (a)(2)(ii)(B), and adding a new paragraph (a)(2)(ii)(C).

d. Adding a new paragraph (a)(2)(iv).

§ 413.40 Ceiling on the rate of increase in hospital inpatient cost.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(D) Long-term care hospitals, as defined in section 1886(d)(1)(B)(iv) of the Act, that are paid based on 100 percent of the Federal prospective payment rate for inpatient hospital services in accordance with section 123 of Public Law 106–113 and section 307 of Public Law 106–554 and § 412.533 (b) and (c) of subpart O of part 412 of this subchapter for cost reporting periods beginning on or after October 1, 2002.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to—

* * * * *

(C) Long-term care hospitals excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter and in accordance with § 412.23 of this subchapter, except as limited by paragraph (a)(2)(iv) of this section with respect to long-term care hospitals specified in § 412.23(e) of this subchapter.

* * * * *

(iv) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 2002, this section applies to long-term care hospitals that are excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter. For cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, this section also applies to long-term care hospitals, subject to paragraph (a)(2)(i)(D) of this section.

* * * * *

Subpart E—Payments to Providers

4. In § 413.64, paragraph (h)(2)(i) is revised to read as follows:

§ 413.64 Payment to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*— * * *

(2) * * *

(i) Part A inpatient services furnished in hospitals that are excluded from the prospective payment systems, described in § 412.1(a)(1) of this chapter, under subpart B of part 412 of this subchapter or are paid under the prospective payment systems described in subparts O and P part 412 of this subchapter.

* * * * *

C. Part 476 is amended as set forth below:

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 476.71 is amended by revising paragraph (c)(2) to read as follows:

§ 476.71 PRO review requirements.

* * * * *

(c) *Other duties and functions.* * * *

(2) As directed by CMS, the PRO must review changes in DRG and LTC–DRG assignments made by the intermediary under the provisions of §§ 412.60(d) and 412.513(c) of this chapter that result in the assignment of a higher-weighted DRG or a different LTC–DRG. The PRO's review must verify that the diagnostic and procedural information supplied by the hospital is substantiated by the information in the medical record.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: December 12, 2001.

Thomas A. Scully,

Administrator, Health Care Financing Administration.

Dated: February 22, 2002.

Tommy G. Thompson,

Secretary.

Editorial Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Proposed Market Basket for LTCHs

A market basket has historically been used under the Medicare program to account for price increases of the services furnished by providers. The proposed market basket for LTCHs would include both operating and capital-related costs of LTCHs because we are proposing a single payment rate for both operating and capital-related costs (see section IV.D. of this proposed rule). Under the reasonable cost-based reimbursement system, the excluded hospital market basket is used to update limits on payment for operating costs for LTCHs. The excluded hospital market basket is based on operating costs from 1992 cost report data and includes Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCH costs are reflected as a component of the excluded hospital market basket, this index in part reflects the cost shares of LTCHs. In order to capture total costs (operating and capital), we are proposing to add a capital component to the excluded hospital market basket for use under the proposed LTCH prospective payment system. We are referring to this proposed index as the excluded hospital with capital market basket.

At this time, we are not proposing a separate market basket for LTCHs because, currently, we believe that we do not have sufficient LTCH data to develop an accurate market basket based only on the costs of LTCHs. As the excluded hospital market basket is currently used under the reasonable cost-based (TEFRA) payment system for LTCHs, we believe it is appropriate to propose to use that market basket (including a component for capital costs) for LTCHs under the proposed prospective payment system. The same excluded hospital with capital market basket is used under the IRF prospective payment system.

In the following discussion, we describe the methodology used to determine the proposed operating portion of the market basket, the methodology used to determine the proposed capital portion of the market basket, and additional analyses explaining the extent to which long-term care cost shares are reflected in the proposed excluded hospital with capital market basket for LTCHs.

The operating portion of the excluded hospital with capital market basket consists of major cost categories and their respective weights. The major cost categories include wages and salaries, employee benefits, professional fees, pharmaceuticals, and a residual. The weights for the major cost categories are developed from the Medicare cost reports for FY 1992. The cost report data used include those hospitals excluded from the hospital inpatient prospective payment system where the Medicare average length of stay is within 15 percent (higher or lower) of the total facility average length of stay. Using the 15-percent threshold resulted in a subset of hospitals that had a significant amount of Medicare days and costs compared to using no adjustment or using a different threshold. Limiting the sample in this way provides a more accurate reflection of the structure of costs for Medicare. We chose to compare the average length of stay for all patients to that of Medicare beneficiaries as the test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our goal was to measure cost shares that were reflective of case-mix and practice patterns associated with providing services to Medicare beneficiaries (61 FR 46196, August 30, 1996). We chose to limit the data in the database because we use facility-wide data to calculate the cost shares and including facilities report costs that are significantly reflective of the non-Medicare case-mix would inappropriately skew the data and would not be reflective of the case-mix and practice patterns associated with Medicare patients. We accomplished our goal by limiting the reports we used to those with similar length of stays for the Medicare and total facility populations. The detailed cost categories under the residual are derived from the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce. This survey is used in conjunction with the 1992 Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. A more detailed description of the development of the operating portion of this index can be found in the final rule, "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates," published in the **Federal Register** on August 29, 1997 (62 FR 45993 through 45997).

As previously stated, the proposed market basket for the proposed LTCH prospective payment system reflects both operating and capital-related costs. Capital-related costs include depreciation, interest, and other associated capital-related costs. The cost categories for the capital portion of the excluded hospital with capital market basket that we are proposing are developed in a similar manner as those for the hospital inpatient prospective payment system capital input price index, which is explained in the August 30, 1996 **Federal Register** (61 FR 46196–46197). We calculated weights for capital costs using the same set of Medicare cost reports used to develop the operating share. The resulting capital weight for the FY 1992 base year is 9.080 percent.

Because capital is consumed over time, depreciation and interest costs in the current year reflect both current and previous capital purchases. We use vintage weighting to capture this effect. Vintage weighting, which is explained in the August 30, 1996 **Federal Register** (61 FR 46197 through 46203), is the process of weighting price changes for individual years in proportion to that year's share of total purchases still being consumed.

In order to vintage weight the capital portion of the index as described above, the average useful life of both assets and debt instruments (for example, a loan, bond, or promissory note) needs to be developed. For depreciation expenses, the useful life of fixed and movable assets is calculated from the Medicare cost reports for excluded hospitals, including LTCHs. The average useful life for fixed assets is 21 years and the average useful life for movable assets is 13 years. For interest expenses, we use the same useful life of debt instruments used in the hospital inpatient prospective payment system capital input price index. We believe that this useful life is appropriate because it reflects the average useful life of hospital issuances of commercial and municipal bonds from all hospitals, including LTCHs. The average useful life of interest expense is determined to be 22 years (61 FR 46199). After the useful life is determined, a set of weights is calculated by determining the average proportion of depreciation and interest expense incurred in any given year during the useful life. This information is developed using the Medicare cost reports. These calculations are the same as those described for the hospital inpatient prospective payment system capital input price index in the August 30, 1996 **Federal Register** (61 FR 46196 through 46198). The price proxies for each of the capital cost categories are the same as those used for the hospital inpatient prospective payment system capital input price index. The cost categories, price proxies, and base-year FY 1992 weights for the excluded hospital with capital market basket that would be used under the proposed LTCH prospective payment system are presented in Table 1 below. The vintage weights for the index are presented in Table 2 below.

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%) base-year 1992
Total		100.000
Compensation		57.935
Wages and Salaries	CMS Occupational Wage Proxy	47.417
Employee Benefits	CMS Occupational Benefit Proxy	10.519
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical	1.908
Utilities:		1.524
Electricity	WPI—Commercial Electric Power	0.916
Fuel Oil, Coal, etc.	WPI—Commercial Natural Gas	0.365
Water and Sewerage	CPI–U—Water & Sewage	0.243
Professional Liability Insurance	CMS—Professional Liability Premiums	0.983
All Other Products and Services		28.571
All Other Products		22.027
Pharmaceuticals	WPI—Prescription Drugs	2.791
Food: Direct Purchase	WPI—Processed Foods	2.155
Food: Contract Service	CPI–U—Food Away from Home	0.998
Chemicals	WPI—Industrial Chemicals	3.413

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TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/wage variable	Weights (%) base-year: 1992
Medical Instruments	WPI—Med. Inst. & Equipment	2.868
Photographic Supplies	WPI—Photo Supplies	0.364
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423
Paper Products	WPI—Convert. Paper and Paperboard	1.984
Apparel	WPI—Apparel	0.809
Machinery and Equipment	WPI—Machinery & Equipment	0.193
Miscellaneous Products	WPI—Finished Goods	2.029
All Other Services:		6.544
Telephone	CPI–U—Telephone Services	0.574
Postage	CPI–U—Postage	0.268
All Other: Labor	ECI—Compensation: Service Workers	4.945
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757
Capital-Related Costs:		9.080
Depreciation		5.611
Fixed Assets	Boeckh-Institutional Construction: 21 Year Useful Life	3.570
Movable Equipment	WPI—Machinery & Equipment: 13 Year Useful Life	2.041
Interest Costs:		3.212
Non-profit	Avg. Yield Municipal Bonds: 22 Year Useful Life	2.730
For-profit	Avg. Yield AAA Bonds: 22 Year Useful Life	0.482
Other Capital-Related Costs	CPI–U—Residential Rent	0.257

* The wage and benefit proxies are a blend of 10 employment cost indices (ECI). A detailed discussion of the price proxies can be found in the August 30, 1996 and August 29, 1997 FEDERAL REGISTER final rules (61 FR 46197 and 62 FR 45993). The operating cost categories in the excluded market basket described in August 29, 1997 FEDERAL REGISTER (62 FR 45993 through 45996) had weights that added to 100.0. When we add an additional set of cost category weights (capital weight = 9.08 percent) to this original group, the sum of the weights in the new index must still add to 100.0. If capital cost category weights sum to 9.08, then operating cost category weights must add to 90.92 percent. Each weight in the excluded hospital market basket from the August 29, 1997 FEDERAL REGISTER (62 FR 45996 through 45997) was multiplied by 0.9092 to determine its weight in the excluded hospital with capital market basket.

TABLE 2.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) VINTAGE WEIGHTS

Year	Fixed assets (21-year weights)	Movable assets (13-year weights)	Interest: capital-related (22-year weights)
1	0.0201	0.0454	0.0071
2	0.0225	0.0505	0.0082
3	0.0225	0.0562	0.0100
4	0.0285	0.0620	0.0119
5	0.0301	0.0660	0.0139
6	0.0321	0.0710	0.0161
7	0.0336	0.0764	0.0185
8	0.0353	0.0804	0.0207
9	0.0391	0.0860	0.0244
10	0.0431	0.0923	0.0291
11	0.0474	0.0987	0.0350
12	0.0513	0.1047	0.0409
13	0.0538	0.1104	0.0474
14	0.0561	.....	0.0525
15	0.0600	.....	0.0590
16	0.0628	.....	0.0670
17	0.0658	.....	0.0742
18	0.0695	.....	0.0809
19	0.0720	.....	0.0875
20	0.0748	.....	0.0931
21	0.0769	.....	0.0993
22	.....	.....	0.1034
Total	1.0000	1.0000	1.0000

We further analyzed the extent to which the weights in the excluded hospital with capital market basket that we are proposing reflect the cost weights in LTCHs, particularly since more than 50 percent of excluded hospitals are psychiatric hospitals. For this purpose, we conducted an analysis comparing the major cost weights for LTCHs to the same set of cost weights for excluded hospitals. We analyzed the variations of wages, drugs, and capital. This analysis showed that these weights differed only slightly between the different types of hospitals. When the LTCH weights were substituted into the market basket structure for sensitivity analysis, the effect was less than 0.2 percentage points in any given year. This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment under the hospital inpatient prospective payment system is warranted. In addition, many LTCHs specialize in rehabilitation or psychiatric services. Thus, it would be anticipated that the cost shares would not differ drastically from these other types of prospective payment system-excluded hospitals. Based on this analysis, we believe that using the excluded hospital with capital market basket for the proposed LTCH prospective payment system would provide a reasonable measure of the price changes facing LTCHs. We request comments on any other data sources that may be available to provide detailed cost category information on LTCHs.

Appendix B—Proposed Update Framework

Section 307(b) of Public Law 106–554 requires that the Secretary examine the appropriateness of certain adjustments to the LTCH prospective payment, including updates. Updates are necessary to appropriately account for changes in the prices of goods and services used by a provider in furnishing care to patients. A market basket has historically been used under the Medicare program in setting update factors for services furnished by providers. We are proposing that, beginning in FY 2004, the annual update to the standard Federal rate (described in section IV.D. of this proposed rule) would be equal to the percentage change in the excluded hospital with capital market basket index described in Appendix A of this proposed rule. However, in the future we would develop an update framework to update payments to LTCHs that would account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. The update framework would be proposed in the appropriate annual proposed rule in accordance with the notice and comment rulemaking process. While we are not proposing a specific update framework for the LTCH prospective payment system at this time in this proposed rule, we are providing a conceptual basis for developing such an update framework.

A. Need for an Update Framework

Under the proposed LTCH prospective payment system, Medicare payments to LTCHs would be based on a predetermined national payment amount per discharge. Under section 123 of BBRA and section 307(b) of BIPA, the Secretary has broad authority to make appropriate adjustments to the LTCH payment system, including updates to payment rates. Our goal is to develop a method for analyzing and comparing expected trends in the underlying cost per discharge to use in establishing these updates. However, as stated earlier, we are proposing that until an update framework is developed, future updates would be based only on the increase in the excluded hospital with capital market basket.

A market basket for the proposed LTCH prospective payment system (the excluded hospital with capital market basket), developed by CMS's Office of the Actuary (OACT), represents just one component in the measure of growth in LTCHs' costs per discharge. It captures only the pure price change of inputs (labor, materials, and capital) used by the hospital to produce a constant quantity and quality of care. However, other factors also contribute to the change in costs per discharge, including changes in case-mix, intensity, and productivity.

Under the hospital inpatient prospective payment system, CMS and MedPAC use an update framework to account for these other factors and to make annual recommendations to the Congress concerning the magnitude of the update. We are currently examining these factors and exploring ways that they could be incorporated into an update framework for the LTCH prospective payment system. We are also examining some additional conceptual and data issues that must be considered when the framework is constructed and applied.

At this time, we are proposing that future annual updates would be equal to the proposed market basket for the LTCH prospective payment system described in Appendix A of this proposed rule (the excluded hospital with capital market basket). We believe an annual update based on the proposed market basket for the LTCH prospective payment system would provide for a reasonable update until a more comprehensive update framework can be developed. Currently, under the TEFRA system, the excluded hospital market basket is used as the basis for updates to LTCHs' target amounts for inpatient operating costs. While our experience in developing other update frameworks, such as the hospital inpatient (operating and capital) and SNF prospective payment systems, could provide us with the conceptual framework, we are not proposing to apply an update framework at this time since we believe that it is important to develop successively more refined models of an update framework based on our evaluation of public comments and recommendations submitted to us on this issue. We would then further study the potential adjustments and the best available data. We are actively pursuing developing an analytical framework that would support the continued appropriateness and relevance of the payment rates for services provided to beneficiaries in LTCHs. To this end, we are requesting comments concerning the use and feasibility of the conceptual approach outlined below in this proposed rule. We are specifically interested in comments concerning which factors are appropriate and should be accounted for in the framework, and suggestions concerning potential data sources and analysis to support the model. As with the existing methodology used under the hospital inpatient prospective payment system, the features of a LTCH-specific update framework would need to be based on sound policy and methodology.

B. Factors Inherent in LTCH Payments Per Discharge

In order to understand the factors that determine LTCH costs per discharge, it is first necessary to understand the factors that determine LTCH payments per discharge. Payments per discharge under the LTCH prospective payment system are based on the cost and an implicit normal profit margin to the LTCH in providing an efficient level of care. We have developed a methodology to identify a mutually exclusive and exhaustive set of factors included in LTCH payments per discharge. The discussion here details a set of equations to identify these factors.

In its simplest form, the average payment per discharge to a LTCH can be separated into a cost term and a profit term as shown in equation (1):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} + \frac{\text{Profits}}{\text{Discharge}} \quad (1)$$

This equation can be made multiplicative by converting profit per discharge into a profit rate as shown in equation (2):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \frac{\text{Payments}}{\text{Costs}} \quad (2)$$

An output price term can be introduced into the equation by multiplying and dividing through by input prices and productivity. As shown in equation (3), the term inside the brackets represents the output price, since an output price reflects the input price and profit margin adjusted for productivity:

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}} \right) * \frac{\text{Productivity}}{\text{Input Prices}} \quad (3)$$

The cost per discharge term can be further separated by accounting for real case-mix. Under the proposed LTCH prospective payment system, LTC–DRGs are used to classify patients. Based on accurate DRG classification data, average real case-mix per discharge can be incorporated, as shown in equation (4):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs/Discharge}}{\text{Real Case Mix/Discharge}} * \frac{\text{Real Case Mix}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \frac{\text{Productivity}}{\text{Input Prices}} \quad (4)$$

The term "real" is imperative here because only true case-mix should be measured, not case-mix caused by improper coding behavior. By rearranging the terms in equation (4), a set of mutually exclusive and exhaustive factors such as those shown in equation (5) can be identified:

$$\frac{\text{Payments}}{\text{Discharge}} = \left(\frac{\frac{\text{Costs}}{\text{Discharge}}}{\text{Input Prices} * \frac{\text{Real Case Mix}}{\text{Discharge}}} * \text{Productivity}\right) * \frac{\text{Real Case Mix}}{\text{Discharge}} * \frac{1}{\text{Productivity}} * \text{Input Prices} * \frac{\text{Payments}}{\text{Costs}} \quad (5)$$

The term in brackets can be analyzed in two steps. First, excluding the productivity term results in case-mix adjusted real cost per discharge, which is input intensity per discharge. Second, multiplying input intensity by productivity results in case-mix adjusted real payment per discharge, or output intensity per discharge. The rationale behind this step is explained in detail in section C below.

The result of this exercise is that LTCH payment per discharge can be determined from the following factors:

$$\text{Payment Per Discharge} = \frac{\left(\begin{array}{c}\text{Case-Mix-Constant}\\ \text{Real Output Intensity}\\ \text{Per Discharge}\end{array}\right) * \left(\begin{array}{c}\text{Real Case Mix}\\ \text{per Discharge}\end{array}\right) * (\text{Input Prices}) * (\text{Profit Margins})}{\text{Productivity}} \quad (6)$$

Thus, it holds that the change in LTCH payment per discharge is a function of the change in these factors shown above. In order to determine an annual update that most accurately reflects the underlying cost to the LTCH of efficiently providing care, the four factors related to cost must be accounted for when an update framework is developed. A brief discussion of each factor, including specific conceptual and data issues, is provided in section C below.

C. Defining Each Factor Inherent in LTCH Costs Per Discharge

Each cost factor from equation (6) in section B is discussed here in detail. Because this is a basic conceptual discussion, it is likely that more detailed issues may be relevant that are not explored here.

1. Input Prices

Input prices are the pure prices of inputs used by the LTCH in providing services. When we refer to inputs, we are referring to costs, which have both a price and a quantity component. The price is an input price, and the quantity component reflects real inputs or real costs. Similarly, when we refer to outputs, we are referring to payments, which also have both a price and a quantity component. The price component is the transaction output price, and the quantity component is the real output or real payment. The real inputs include labor, capital, and materials such as drugs. By definition, an input price reflects prices that LTCHs encounter in purchasing these inputs, whereas an output price reflects the prices that buyers encounter in purchasing LTCH services. We currently measure input prices using the excluded hospital with capital market basket. While not specific to LTCHs, we believe this index adequately reflects the input prices faced by LTCHs as we describe in Appendix A.

2. Productivity

Productivity measures the efficiency of the LTCH in producing outputs. It is the amount of real outputs, or real payments, that can be produced from a given amount of real inputs or real costs. For LTCHs, these inputs are in the form of both labor and capital; thus, they represent multifactor productivity, as not just labor productivity is reflected. The followiug set of equations shows how multifactor productivity can be measured in terms of available data, such as payments, costs, and input prices:

$$\text{Productivity} = \frac{\text{Real Payments}}{\text{Real Costs}} = \frac{\text{(Payments/Output Price)}}{\text{(Costs/Input Price)}} = \frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Price}}{\text{Output Price}}$$

Rearranging the terms, this multifactor productivity equation was used as the basis for incorporating an output price term in equation (3) above. This equation is the basis for understanding the relationship between input prices, output prices, profit margins, and productivity.

Equation (6) shows that productivity is divided through the equation, offsetting other factors. The theory behind this offset is that if an efficient LTCH in a competitive market can produce more output with the same amount of inputs, the full increase in input costs does not have to be passed on by the provider to maintain a normal profit margin.

3. Real Case Mix Per Discharge

Real case mix per discharge is the average overall mix of care provided by the LTCH, as measured using the proposed LTC–DRG classification system. Over time, a measure of real case mix will change as care is given in more or less complex LTC–DRGs. Changes in the level of care within a LTC–DRG classification group would not be reflected in a case-mix measure based on LTC–DRGs, but instead should be captured in the intensity factor of equation (6). The important distinction here is the difference between real and nominal case mix. Under the proposed LTCH prospective payment system, LTCHs would submit claims using the proposed LTC–DRG classification system. The case-mix reflected by the claims is considered "nominal". However, the reported classification can reflect the true level of care provided or improper coding behavior. An example of improper coding behavior would be the upcoding, or case-mix "creep," that took place when the hospital inpatient prospective payment system was implemented. Any change in case-mix that is not associated with the actual level of care or a true change in the level of care provided must be excluded in order to determine real case-mix.

4. Case-Mix Constant Real Output Intensity Per Discharge

Intensity is the true underlying nature of the product or service and can take the form of output or input intensity, or both. In the case of LTCHs, output intensity per discharge is associated with real payment per discharge, while input intensity per discharge is associated with real cost per discharge. For example, input intensity would be associated with a nurse's hours when providing treatment, whereas output intensity would be associated with the type and number of treatments a nurse provides. The underlying nature of LTCH services is determined by such factors as technological capabilities, increased utilization of inputs (such as labor or drugs), site of care, and practice patterns. Because these factors can be difficult to measure, intensity per discharge is usually calculated as a residual after the other factors from equation (6) have been accounted for.

Accounting for output intensity associated with an efficient LTCH can be more accurately analyzed using a LTCH's costs rather than its payments. This analysis would also provide an alternative to developing or using a transaction output price index. The following series of equations shows how to use the definition of an output price as defined earlier to convert the equation for output intensity per discharge to reflect costs instead of payments, as used in equation (6):

Case-Mix Constant Real Output Intensity per Discharge

$$\begin{aligned}\begin{array}{c}\text{Case-Mix Constant}\\ \text{Real Output Intensity}\\ \text{per Discharge}\end{array} &= \frac{\text{[Payments/Discharge]}}{\text{Output Prices} * \text{Real Case Mix/Discharge}}\\ &= \frac{\text{[Payments/Discharge]}}{\left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \text{Real Case Mix/Discharge}}\\ &= \frac{\text{[Payments/Discharge]} * \text{Costs}}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}}\\ &= \frac{\text{Payments} * \text{[Costs/Discharge]}}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}}\\ &= \frac{\text{[Costs/Discharge]}}{\frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}}\\ &= \frac{\text{[Costs/Discharge]}}{\text{Input Prices} * \text{Real Case Mix/Discharge}} * \text{Productivity}\end{aligned}$$

The last equation is identical to the term in brackets in equation (5), case-mix constant real input intensity per discharge multiplied by productivity. Thus, output intensity per discharge can be defined in such a way that cost data from the LTCH are utilized. This equation can be broken down even further to account for different types of input intensity per discharge. We discuss this matter more fully in section D below.

D. Applying the Factors That Affect LTCH Costs Per Discharge in an Update Framework

As discussed earlier, payments per discharge under the LTCH prospective payment system must be updated each year. Under this proposed rule, updates would be equal to the percent change in the excluded hospital with capital market basket beginning in FY 2004. The development of an update framework with a sound conceptual basis would provide the capability to understand the underlying trends in LTCH costs per discharge for an efficient provider.

Earlier, factors inherent in LTCH costs per discharge were identified. Changes in these factors determine the change in LTCH costs per discharge. Accounting for each of these factors from equation (6) under the proposed LTCH prospective payment system is discussed below:

- Change in case-mix constant real output intensity per discharge would be accounted for in the update framework, reflecting the factors that affect not only case-mix constant real input intensity per discharge, but also productivity, which is determined separately. Factors that can cause changes in case-mix constant real input intensity per discharge include, but are not limited to, changes in site of service, changes in within-LTC–DRG case-mix, changes in practice patterns, changes in the use of inputs, and changes in technology available.
- As discussed earlier, changes in nominal case-mix are automatically included in the payment to the LTCH. Therefore, the update framework should include an adjustment to convert changes in nominal case-mix per discharge to changes in real case-mix per discharge.
- Change in multifactor productivity would be accounted for in the update framework. The availability of historical data on input prices, payments, and costs are useful in the analysis of this factor. MedPAC sets this factor as a target under hospital inpatient prospective payment system.
- Changes in input prices for labor, material, and capital would be accounted for in the update framework. Our Office of the Actuary currently has an input price index, or market basket, to assist in updating payments for LTCH services; this is the excluded hospital with capital market basket.
- In an update framework, a forecast error adjustment would be included to reflect that the updates are set prospectively and a forecast error for a given year should not be perpetuated in payments for future years. In the case of the hospital inpatient prospective payment system, this prospective adjustment is made on a 2-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

E. Current Hospital Inpatient Prospective Payment System and Illustrative LTCH Prospective Payment System Update Frameworks

Table I shows the payment update framework for the current hospital inpatient prospective payment system and an illustrative update framework for the LTCH prospective payment system. Some of the factors in the hospital inpatient prospective payment system framework are computed using Medicare cost report data, while others

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are determined based on policy considerations. The details of calculating each factor for the hospital inpatient prospective payment system framework can be found in the May 4, 2001 proposed rule (66 FR 22891) that set forth proposed updates to the payment rates used under the hospital inpatient prospective payment system for FY 2002. This design for a LTCH update framework is for illustrative purposes only, as much more work needs to be done to determine the appropriate level of detail for each factor. The numbers provided for the hospital update are only intended to serve as examples of prior updates recommended for the hospital inpatient prospective payment system.

MedPAC supports the use of this type of framework for updating payments and applies a similar framework when it proposes updates to hospital payments in its annual recommendation to Congress. The appropriateness of this framework for updating inpatient hospital payments was discussed in the Health Care Financing Review, Winter 1992, in an article entitled, "Are PPS Payments Adequate? Issues for Updating and Assessing Rates." A similar framework would be useful for analyzing updates to LTCH payments.

TABLE I.—CURRENT CMS HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND ILLUSTRATIVE LTCH PROSPECTIVE PAYMENT SYSTEM UPDATE FRAMEWORKS

CMS hospital inpatient prospective payment system update percent change in:	FY 2002 calculated hospital update percent change	Illustrative LTCH prospective payment system update percent change in:
CMS Prospective Payment System Hospital Market Basket.	3.3	CMS Excluded Hospital with Capital Market Basket.
Forecast Error	0.7	Forecast Error.
Productivity	−0.6 to −0.5	Productivity.
Output Intensity:	0.2 to 0.3	Output Intensity:
Science and Technology		Science and Technology.
Practice Patterns		Real Within-DRG Change.
Real Within-DRG Change		Utilization of Inputs.
Site of Service		Site of Service.
Case-mix Adjustment Factors:		Case-mix Adjustment Factors:
Projected Case Mix	& − 1.0	Nominal Across-DRG Case-Mix.
Real Across-DRG Change	1.0	Real Across-DRG Change.
Total Cost Per Discharge	0.3 to 0.5	Total Cost Per Discharge.
Other Policy Factors:		Other Policy Factors:
Reclassification and Recalibration	0.0	None.
Total Calculated Update	3.6 to 3.8	Total Calculated Update.

[1] Table data derived from the May 4, 2001 FEDERAL REGISTER, Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2002 Rates; Proposed Rule (66 FR 22890).

F. Additional Conceptual and Data Issues

Additional conceptual issues specific to the proposed LTCH prospective payment system include the relevance of a site-of-service substitution adjustment, the necessity of an adjustment for LTC–DRG reclassification, the handling of one-time factors, and consistency with other types of hospital updates since LTCHs are similar in structure to these other types of hospitals.

Under the hospital inpatient prospective payment system, a site-of-service substitution factor (captured as part of intensity) was necessary because of the incentive to shift care from inpatient hospital to other settings such as hospital outpatient departments, SNFs, or HHAs. For the proposed LTCH prospective payment system, it is not clear without additional research whether there is an incentive to shift care either into or out of the LTCH because of the changes in behavior created by the different Medicare payment systems.

A reclassification and recalibration adjustment under the hospital inpatient prospective payment system is necessary to account for changes in the case-mix or the types of patients treated by LTCHs resulting from the annual reclassification and recalibration of the proposed LTC–DRGs. This adjustment for case-mix is applied to the current fiscal year update, but reflects the effect of revisions in the fiscal year 2 years prior. MedPAC does not make this adjustment in its update framework. Whether a LTC–DRG reclassification adjustment would be necessary in the update framework would depend on the data availability and the likelihood of revisions to LTC–DRG classifications on a periodic basis.

There is also a question about how to handle one-time factors (an example of these could be those increased costs of converting computer systems to Year 2000 compliance). An update framework might be an appropriate mechanism to account for these items, but because of uncertainty surrounding their impact on costs, determining an appropriate adjustment amount may be difficult. MedPAC has discussed this issue in prior sessions, but was unable to agree on the exact methodology for these types of factors.

LTCHs are heterogeneous and are designated as a separate payment category only because their patients have longer average lengths of stay. This raises the question of whether certain factors in an update framework for LTCHs should be consistent with the factors in an update framework for other types of hospitals since they face similar cost pressures. Additional research in this area would need to be conducted to determine the reasonableness of having consistent updates.

The purpose of this conceptual discussion is not to determine how the identified factors of the update framework would be measured. We recognize that there are significant measurement issues in accurately determining the factors that would account for growth in costs per discharge for efficiently providing care. This is driven, in part, by the shift from a cost-based payment system with an upper payment limit to a prospective payment system. Significant research and data collection will be necessary to accurately measure these factors over the historical period. One example of this would be to measure the distinction between real and nominal case-mix change. However, many of these same concerns were also encountered and successfully addressed in the hospital inpatient prospective payment system update framework.

The discussion here provides the conceptual basis for developing an update framework for the LTCH prospective payment system that reflects changes in the underlying costs of efficiently providing services. It is important to note that the framework would not handle distribution issues such as geographic wage variations. Due to some variations in technical methodologies for measuring the factors of an update framework, and because of some of the data concerns mentioned earlier, implementing an update framework for the LTCH prospective payment system would involve making significant policy decisions on issues similar to those made for the hospital inpatient prospective payment system update framework. We invite comments on the type of data sources to use, what other factors (if any) we should consider in an update framework, and any additional comments concerning the issues discussed in this proposed rule regarding the update framework.

[FR Doc. 02–6714 Filed 3–21–02; 8:45 am]
BILLING CODE 4120–01–P

Federal Register

Friday,
March 22, 2002

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7161–6]

RIN 2060–AJ87

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) final rule for new and existing publicly owned treatment works (POTW), pursuant to a settlement agreement with the Pharmaceutical Research and Manufacturers of America (PhRMA) regarding their petition for judicial review of the POTW NESHAP. We are proposing to rescind the applicability provision; adopt, for all industrial POTW treatment plants which are area sources of hazardous air pollutants (HAP), the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the Clean Air Act (CAA).

DATES: *Comments.* Comments must be received on or before April 22, 2002. If a public hearing is held, written comments must be received by May 6, 2002.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by April 1, 2002, a public hearing will be held on April 5, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–46, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–46, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439–03), Research Triangle Park, NC 27711, telephone (919) 541–5671, to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–96–46 for this regulation contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street SW., Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0884, facsimile number (919) 541–0246, electronic mail address "lucas.bob@epa.gov". For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representatives.

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: (Docket No. A–96–46). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it "Confidential Business Information." Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Bob Lucas, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in making an oral presentation or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins at the Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Collins to verify time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket

The docket is an organized and complete record of all the information compiled by the EPA in the development of the POTW NESHAP and these amendments. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA). The regulatory text and other materials related to these proposed amendments are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action:

Category	Standard industrial classification (SIC) codes	North American industrial classification system (NAICS) codes	Examples of potentially regulated entities
Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal Governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly-owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by these proposed amendments. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1580 of the final rule and in 40 CFR 63.1. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in these proposed amendments is organized as follows:

I. What is the background for this action?
II. What changes to the current rule are we proposing as the result of our settlement agreement with the PhRMA?
III. What is the basis for controlling POTW that are area sources?
IV. What is the basis for exempting area source POTW from title V permitting?
V. What are the impacts of the proposed amendments?
VI. What are the administrative requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. What Is the Background for This Action?

On October 26, 1999, we promulgated the NESHAP for new and existing POTW using our authority under the CAA. In the POTW NESHAP, we require air pollution controls on new or reconstructed treatment plants at POTW that are major sources of HAP. Section 112(a)(1) of the CAA defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The standards also define the requirements for industrial POTW. Industrial POTW treat regulated waste streams from an industry (e.g., pharmaceutical manufacturing) that may be subject to other NESHAP, and this treatment allows the industry to comply with the NESHAP. The standards include a provision in 40 CFR 63.1580(c) stating that if an industrial major source complies with the other NESHAP by using the treatment and controls at a POTW, then the POTW is considered to be a major source.

On March 23, 2001, we published final rule amendments that clarified and corrected errors in the promulgated rule. The PhRMA filed a timely petition for judicial review of the POTW NESHAP. The PhRMA expressed concern regarding the practical effect of the provision classifying an industrial POTW as a major source if the POTW receives wastewater for treatment from a major source. In particular, PhRMA was concerned that industrial POTW might be subject to permitting requirements which would otherwise not apply, and that such POTW might elect not to accept wastewater for treatment in these circumstances. We entered into settlement discussions with PhRMA and executed a settlement agreement with PhRMA on November 16, 2001. We are proposing these amendments to the POTW NESHAP pursuant to that agreement.

II. What Changes to the Current Rule Are We Proposing as the Result of Our Settlement Agreement With the PhRMA?

In the settlement agreement we reached with PhRMA, we agreed to make the following three changes: (1) Rescind the applicability provision set forth in 40 CFR 63.1580(c); (2) adopt, for all industrial POTW treatment plants which are area sources of HAP, the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and (3) exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the CAA. Area sources of HAP are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAP.

The CAA affords EPA the authority to adopt an alternative definition of "major source" in appropriate circumstances. Our original intent in adopting the alternate definition in 40 CFR 63.1580(c) of the POTW NESHAP was to make all industrial POTW subject to direct enforcement under the CAA, thereby providing additional assurance that they would adhere to the treatment and control limits of the applicable industrial NESHAP. The proposed amendments will still accomplish this goal since all POTW that meet our definition of industrial POTW will remain subject to direct enforcement and will be required to meet the control limits of the applicable industrial NESHAP.

III. What Is the Basis for Controlling POTW That Are Area Sources?

As directed by section 112(k) of the CAA, we developed the Urban Air Toxics Strategy to control emissions of HAP from area sources in urban areas.

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The Agency identified 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. In an action published in the **Federal Register** on July 19, 1999 (64 FR 38706), we identified POTW as one of the urban area source categories to be considered for additional regulation due to their contribution to HAP emissions in urban areas. At least six of the 33 urban area HAP (benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene chloride, tetrachloroethylene) may be emitted from POTW. Evaluating the feasibility of controlling HAP emissions from industrial POTW that are area sources is, therefore, one element in implementing our Urban Air Toxics Strategy.

Though POTW with significant HAP emissions are often associated with urban areas, today we are proposing a national rule. A national rule promotes regulatory consistency and assures that populations in smaller cities or rural areas that might be located near area sources will receive the same degree of protection. In addition, POTW serving urban areas can have rural locations. Therefore, a national rule was considered appropriate for POTW.

When EPA regulates HAP emissions from area sources, CAA section 112(d)(5) provides that we may set standards that provide for the use of generally available control technology (GACT). We have determined that GACT requirements for all existing industrial POTW which are area sources should be the same as the MACT requirements for those existing industrial POTW which are deemed to be major sources under the present rule. Thus, we are proposing to require that existing industrial POTW that are area sources must meet all requirements established by the applicable MACT standard for the industrial discharger. This approach assures that these requirements will be enforceable directly on an industrial POTW, without the need to classify any POTW, which itself emits HAP in area source quantities, as a major source.

Similarly, we have determined that GACT requirements for all new or reconstructed industrial POTW should be the same as MACT requirements for new or reconstructed industrial POTW which are deemed to be major sources under the present rule. This requires that such sources comply with the MACT requirements for the industrial discharger or for new or reconstructed non-industrial POTW, whichever are more stringent. Thus, we are proposing to establish GACT equal to MACT for all industrial POTW. This eliminates the need for a definition of major source which is derived from the characteristics of the discharger rather than the POTW.

For new and existing non-industrial POTW which are area sources, we have determined that GACT should be no control. In addition, we are proposing to exempt such non-industrial area sources from the notification requirements in the current POTW NESHAP. In setting GACT at no control for non-industrial facilities, we considered the fact that the emissions of HAP from these facilities are typically low. Existing facilities do not have HAP controls, and the cost of adding HAP controls would be prohibitively high. With respect to new sources, the CAA provides that we may establish GACT requirements less stringent than the MACT floors which apply to major sources. Although we did adopt some limited control requirements for those new non-industrial POTW which are major sources, we do not believe that requiring such controls would be warranted for those new POTW which are only area sources.

IV. What Is the Basis for Exempting Area Source POTW From Title V Permitting?

We are proposing in these amendments to exempt those POTW which are regulated as area sources from any title V permitting requirements under the authority given to us under section 502(a) of the CAA. Major sources of HAP are subject to the Federal operating permit program established by title V of the CAA. Area sources may also be subject to title V permitting requirements, but we have statutory authority to waive these requirements. Section 502(a) of the CAA permits us to exempt one or more area source categories (in whole or in part) from the requirement to obtain a permit under 42 U.S.C. 7661a(a) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.

One important purpose of the operating permit program is to provide a mechanism by which the general regulatory requirements established by Federal standards can be translated into more specific requirements for affected sources. This function is largely superfluous in the case of industrial POTW because the industrial dischargers are themselves subject to the operating permit program, and wastewater treatment requirements under the applicable MACT standards are one of the elements which must be incorporated in the operating permit for those industrial facilities. Thus, it is unnecessary to require that an area source industrial POTW obtain an operating permit to identify those wastewater treatment requirements which apply. The applicable requirements will already be clearly established in the permit obtained by the discharger.

In these circumstances, we believe it would be unnecessarily burdensome to require that an area source POTW obtain an additional operating permit. Therefore, unless the source is otherwise required to obtain an operating permit, we are proposing to exempt the owner or operator of industrial POTW area sources subject to these standards from any permitting requirements under title V of the CAA.

V. What Are the Impacts of the Proposed Amendments?

We do not expect any change in the environmental impacts of the final POTW NESHAP as a result of these proposed amendments to apply GACT to POTW. All facilities regulated under the present rule must meet identical control requirements under these proposed amendments. Furthermore, EPA anticipates that there will be no increase in the regulatory burden because there are no additional sources that will be subject to the standards. Indeed, we believe that the proposed amendments, by exempting industrial POTW which are area sources from title V requirements, which would apply to them under the present rule, will relieve affected sources, State and local agencies, and the EPA Regional Offices from an unnecessary regulatory burden.

VI. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these proposed amendments are not a "significant regulatory action" because they will not have an annual effect on the economy of $100 million or more.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled, "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed amendments.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on the proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments impose no new requirements on new or existing POTW treatment plants. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed amendments from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

The proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed amendments have been determined to be not "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more

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for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The regulatory revisions proposed here have no associated costs and do not contain requirements that apply to small governments or impose obligations upon them. This action is not a "significant" regulatory action within the meaning of Executive Order 12866 and does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any action subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed amendments would not have a significant impact on a substantial number of small entities as they impose no new requirements on new or existing POTW treatment plants. Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. Under the RFA, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

H. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the October 26, 1999 POTW final rule by the EPA and was submitted to and approved by OMB. A copy of this ICR (OMB control number 2060–0428) may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. These proposed amendments will not require additional burden on the affected entities.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The proposed amendments do not involve any additional technical standards. Therefore, the requirements of the NTTAA do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VVV—[Amended]

2. Section 63.1580 is revised to read as follows:

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a POTW which is a major source of hazardous air pollutant (HAP) emissions, or at any industrial POTW regardless of whether or not it is a major source of HAP; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

Note to Paragraph (b): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for the definitions of major source and area source.

(c) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW

treatment plant, as defined in § 63.1595, apply.

3. Section 63.1586 introductory text is revised to read as follows:

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. There are no control requirements for any new or reconstructed area source non-industrial POTW treatment plant which is not a major source of HAP. The control requirements for a new or reconstructed major source non-industrial POTW treatment plant which is a major source of HAP are as follows:

* * * * *

4. Section 63.1590 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing non-industrial POTW treatment plant, or a new or reconstructed area source non-industrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed non-industrial POTW treatment plant which is a major source of HAP, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

* * * * *

5. Section 63.1591 is amended by revising paragraph (a) to read as follows:

§ 63.1591 What are my notification requirements?

(a) If you have an industrial POTW treatment plant or a new or reconstructed non-industrial POTW which is a major source of HAP, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

* * * * *

6. Section 63.1592 is revised to read as follows:

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which do and do not apply to POTW treatment plants.

(b) Unless a permit is otherwise required by law, the owner or operator of an industrial POTW which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

7. Table 1 to subpart VVV is amended by revising the entries "§ 63.1(c)(2)(i)" and "§ 63.9(a)" to read as follows:

TABLE 1 TO SUBPART VVV.—APPLICABILITY OF 40 CFR PART 63—GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
.	.	.
§ 63.1(c)(2)(i)	Yes/No	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
.	.	.
§ 63.9(a)	Yes/No	Applicability of notification requirements. Existing major non-industrial POTW treatment plants, and existing and new or reconstructed area non- industrial POTW treatment plants are not subject to the notification requirements.
.	.	.

[FR Doc. 02–6847 Filed 3–21–02; 8:45 am]
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Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–6]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This action changes the deadline for existing sources complying with the rule. Under the promulgated rule, existing affected sources would be required to be in compliance by June 23, 2002. With this action, existing sources will be required to be in compliance with the rule by December 23, 2003.

In the "Rules and Regulations" section of this **Federal Register**, we are making this change in a direct final rule without prior proposal because we view the change as noncontroversial and anticipate no adverse comments. We have explained our reasons for this change in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive an adverse comment on the revised definition, we will publish a timely withdrawal of the direct final rule, and it will not take effect. If we receive adverse comment, we will respond to all such comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by April 22, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879 ..	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in on-site production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the proposed revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of this proposed amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Action Is EPA Proposing?

This proposal would change the compliance date from June 23, 2002 to December 23, 2003. For further information, please see the information provided in the direct final rulemaking notice located in the "Rules and Regulations" section of today's **Federal Register**.

II. What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule amendment on small entities, a small entity is defined as:

(1) A small business in the NAICS code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on small entities" (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendment merely extends the compliance date for such regulated entities and therefore imposes no additional regulatory requirements on owners or operators of affected sources.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–6976 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

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Part V

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Direct Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–5]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date of the PAI Production NESHAP as currently promulgated by 18 months. Under the promulgated rule, the compliance date is June 23, 2002. With this action, existing sources will be required to comply with the rule by December 23, 2003.

DATES: This direct final rule will be effective May 21, 2002 without further notice, unless the EPA receives adverse comments by April 22, 2002. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879 ..	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

Today's action is necessary to extend the compliance deadline of the PAI Production NESHAP pending review and approval of a proposed Settlement Agreement between EPA and the American Crop Protection Association (ACPA) and BASF Corporation and promulgation of rule amendments described in that Settlement Agreement. The ACPA and BASF, as well as the American Coke and Coal Chemicals Institute and Eastman Chemical Company, filed petitions for judicial review of the PAI Production NESHAP promulgated on June 23, 1999 (64 FR 33550). On January 18, 2002, EPA entered into a Settlement Agreement with ACPA and BASF, resolving petitioners' litigation. Notice of that Agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116). The Agreement calls for EPA to propose a number of amendments to the PAI Production NESHAP.

Upon final approval of the Settlement Agreement, EPA will publish a notice of proposed rulemaking with the agreed upon amendments to the PAI Production NESHAP in the **Federal Register**.

Today's direct final rulemaking extends the compliance date for existing sources from June 23, 2002 to December 23, 2003. We believe this extension reasonably allows sources time to assess the compliance impacts of proposed Settlement Agreement and the agreed upon rule amendments included in that Settlement Agreement. While we believe the 18-month extension of the compliance date will be sufficient for all sources to come into compliance with the amendments to be proposed, should a source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, that source may request an extension of up to 1 year in accordance with 40 CFR 63.1364(a)(2).

II. What Amendment Are We Making to the Rule Today?

Today's action extends the compliance date by 18 months. Under the promulgated PAI Production NESHAP, existing affected sources would be required to be in compliance by June 23, 2002. With today's action, existing sources must be in compliance by December 23, 2003.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are taking separate direct final action on the compliance date extension in order to ensure that this change can be completed before the current June 23, 2002 compliance deadline for existing sources. We believe this 18-month extension is a noncontroversial change because it provides a reasonable extension to allow sources to assess the compliance impacts of the agreed upon rule amendments included in the Settlement Agreement. As a result, we anticipate no adverse comments.

If we receive an adverse comment on this action, we will publish a timely notice before the effective date of this amendment indicating that the rule is being withdrawn. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule amendment is a not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on small entities" (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule amendment in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule amendment is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by December 23, 2003.

* * * * *

[FR Doc. 02–6975 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

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Federal Register

Friday,
March 22, 2002

Part VI

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–7]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date as currently promulgated for existing sources subject to the PAI NESHAP by 60 days. Without this amendment, the compliance date under the rule would be June 23, 2002. With this action, existing sources will be required to comply with the rule by August 22, 2002.

DATES: March 22, 2002.

ADDRESSES: Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002.

I. What Amendment Are We Making to the Rule?

Today's action extends the compliance deadline for existing sources under the PAI NESHAP by 60 days. Without this amendment, 40 CFR 63.1364(a)(1) would require existing affected sources to comply with the provisions of subpart MMM by June 23, 2002. With today's action, existing sources must be in compliance by August 22, 2002.

This amendment will result in deferring the deadline for submitting precompliance plans pursuant to 40 CFR 63.1368(e). Sources are required to submit these precompliance plans 3 months prior to the compliance date of the standard (66 FR 58393, November 21, 2001). Without this amendment, precompliance plans would be due March 23, 2002. As a result of this amendment, precompliance plans will now be due May 22, 2002, unless and until the compliance deadline is further extended.

II. Why Are We Amending the Rule?

We are promulgating an interim 60-day extension of the compliance deadline for the PAI NESHAP in order to avoid unnecessary and potentially confusing submittals of the precompliance plans currently due March 23, 2002. Submittal of the precompliance plans on March 23, 2002 would be premature and unnecessary because EPA is currently in the process of proposing amendments to the PAI NESHAP, including an extension of the compliance deadline. These other amendments are the result of a settlement agreement between EPA and the American Crop Protection Association (ACPA) and BASF Corporation signed January 18, 2002.[1] Under the settlement agreement, EPA is to take final action on the proposed amendments by September 6, 2002.

Pursuant to the settlement agreement, EPA is publishing a direct final rulemaking and parallel proposal that would extend the compliance deadline in 40 CFR 63.1364(a)(1) to December 23, 2003. These actions, however, will not be effective before March 23, 2002.

Thus, in order to minimize confusion and potentially unnecessary paperwork, we believe an immediate short-term extension of the compliance deadline is necessary while the direct final rulemaking process is completed.

III. Why Are We Relying on the Good Cause Exemption to Promulgate This Final Rule?

Clean Air Act section 307(d) generally requires EPA to provide notice and an opportunity for public comment on actions promulgating or revising regulations under CAA section 112(d). Section 307(d)(2), however, exempts rulemakings where the Agency, pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), finds for good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

The EPA finds that good cause is warranted to forgo notice and opportunity for comment for this action to provide a short, interim extension of the compliance deadline. The EPA is publishing a direct final rule and parallel proposal to extend the compliance deadline further, but the public review process will not be completed before the current March 23, 2002 precompliance plan deadline. The EPA believes it is in the interest of all parties to avoid the unnecessary paperwork burden associated with submitting precompliance plans that need to be revised and resubmitted if the PAI NESHAP are amended according to the settlement agreement with ACPA and BASF. The interim extension is of limited duration to allow EPA time to complete the public review process on the direct final rule extending the compliance deadline to December 23, 2003.

IV. What Are the Administrative Requirements for This Final Rule?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10,1999). This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This final rule amendment does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule amendment also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule amendment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This direct final rule amendment is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 23, 1999 final rule (64 FR 33550).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 22, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

[1] Notice of this agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising the paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by August 22, 2002.

* * * * *

[FR Doc. 02–6974 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

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Federal Register

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March 22, 2002

Part VII

Securities and Exchange Commission

17 CFR Parts 210, 228, et al.
Requirements for Arthur Andersen LLP Auditing Clients; Final Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 240, 249 and 260

[Release Nos. 33–8070, 34–45590; 35–27503; 39–2395; IA–2018; IC–25464; FR–62; File No. S7–03–02]

RIN 3235–AI46

Requirements for Arthur Andersen LLP Auditing Clients

AGENCY: Securities and Exchange Commission.

ACTION: Temporary final rules and final rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is adopting rules to assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP. In addition, the Commission is modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002. The rules the Commission adopts today, as well as the interpretations set forth in this release, are necessary to effect these modifications. The Commission emphasizes that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. In the document, the Commission also publishes companion orders relating to, among other matters, the inclusion of financial statements in filings under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935 where those filings would have included audited or reviewed financial statements for which Andersen had been engaged as the independent public accountant. To further an understanding of the interactions between the rules we adopt today, the interpretations set forth in this document and the exemptions provided in the orders, this document includes a description of a number of actions taken in those orders.

EFFECTIVE DATE: March 18, 2002, except Temporary Notes 1T, 2T and 3T preceding § 210.3–01; § 228.304T; Temporary Notes 1T and 2T in § 228.310; §§ 228.601T, 229.304T, 229.601T, 230.427T; Instruction 2T following paragraph (b)(2)(iv) in § 230.428; and the amendments to Form 20–F will be effective from March 18, 2002 to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Investors with questions can call a special hotline maintained by the Commission's Office of Investor Education and Assistance at 1–800–SEC–0330 or e-mail the office at *help@sec.gov*.

Issuers with questions regarding Securities Act or Exchange Act filings or compliance with the Trust Indenture Act, please call the Division of Corporation Finance's hotline at 202–942–2816 or e-mail the Division at *cfhotline@sec.gov*.

Auditors with transition questions may call the Office of the Chief Accountant at 202–942–4400 or e-mail the office at *oca@sec.gov*.

For questions regarding broker-dealers, self-regulatory organizations, and transfer agents, please call the Division of Market Regulation's hotline at 202–942–0069 or e-mail the Division at *marketreg@sec.gov*.

For questions regarding investment companies, investment advisers or public utility holding companies, please call the Division of Investment Management's hotline at 202–942–0590 or e-mail the Division at *IMOCA@sec.gov*.

SUPPLEMENTARY INFORMATION: We are adopting temporary amendments to Item 310 [1] of Regulation S–B [2] and Article 3 [3] of Regulation S–X [4] under the Securities Act of 1933 [5] ("Securities Act") and Form 20–F [6] under the Securities Exchange Act of 1934 [7] ("Exchange Act). We are also adopting amendments to Rule 2–02 [8] of Regulation S–X and Rule 428 [9] under the Securities Act. Additionally, we are adopting temporary Items 304T [10] and 601T [11] of Regulation S–B, temporary Items 304T [12] and 601T [13] of Regulation S–K,[14] temporary Rule 427T,[15] Rule 401a [16] and Rule 437a [17] under the Securities Act, Rule 12b–37 [18] under the Exchange Act and Rule 19a–1 [19] under the Trust Indenture Act of 1939 [20] ("Trust Indenture Act"). We are also attaching to this release a copy of Release No. 34–45589 (March 18, 2002) as Appendix A (the "34 Act Order"), a copy of Release Nos. IA–2017 and IC–25463 (March 18, 2002) as Appendix B (the "40 Act Order") and a copy of Release No. 35–27502 (March 18, 2002) as Appendix C (the "35 Act Order").

I. Introduction

The Securities and Exchange Commission is taking necessary and immediate regulatory actions to assure a continuing and orderly flow of information to investors and U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP ("Andersen"). The actions the Commission takes today, through this release and by separate Commission orders attached as Appendices A, B and C to this release (the "Orders") apply, and the guidance issued in Staff Accounting Bulletin No. 90, Topic I.L.,[21] does not apply. The Commission has requested and received assurances from Andersen that it will continue to audit financial statements in accordance with generally accepted auditing standards ("GAAS") and applicable professional and firm auditing standards, including quality control standards. Andersen has also told the Commission that if it becomes unable to continue to provide those assurances, it will advise the Commission immediately.

As discussed more fully in this release, companies to whom Andersen issues a manually signed audit report after March 14, 2002 must file a letter as an exhibit to their filings stating they have received certain representations from Andersen concerning audit quality controls, including representations regarding the continuity of Andersen personnel working on the audit, the availability of national office consultation, and the availability of personnel at foreign affiliates of Andersen to conduct relevant portions of the audit. So long as Andersen continues to be in a position to provide

[1] 17 CFR 228.310.
[2] 17 CFR 228.10 *et seq.*
[3] 17 CFR 210.3–01–3–20.
[4] 17 CFR 210.1–01 *et seq.*
[5] 15 U.S.C. § 77a *et seq.*
[6] 17 CFR 249.220f.
[7] 15 U.S.C. § 78a *et seq.*
[8] 17 CFR 210.2–02.
[9] 17 CFR 230.428.
[10] 17 CFR 228.304T.
[11] 17 CFR 228.601T.
[12] 17 CFR 229.304T.
[13] 17 CFR 229.601T.
[14] 17 CFR 229.10 *et seq.*
[15] 17 CFR 230.427T.
[16] 17 CFR 230.401a.
[17] 17 CFR 230.437a.
[18] 17 CFR 240.12b–37.
[19] 17 CFR 260.19a–1.
[20] 15 U.S.C. § 77sss, *et seq.*
[21] Staff Accounting Bulletin No. 90 (Feb. 7, 1991) [56 FR 4938].

those assurances, the Commission will continue to accept financial statements audited by Andersen in filings.

In addition, if companies for which Andersen had been engaged as the independent public accountant [22] are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report, these companies may need additional time to engage new independent accountants and complete their filings. Further, as a number of requirements throughout the federal securities laws are contingent upon the flow of accurate and timely information into the market, any potential disruption may, absent the actions the Commission takes today, have a significant impact on a company's compliance with a number of provisions under the federal securities laws.

Accordingly, the Commission is taking action for those Andersen clients that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The Commission will require adherence to existing filing deadlines, but will accept filings that include unaudited financial statements from any such issuer unable to provide timely audited financial statements. Issuers electing this alternative will generally be required to amend their filings within 60 days to include audited financial statements. The Commission has taken similar actions regarding reviews of interim financial statements.

The actions the Commission takes today, through this release and by the Orders, are meant to provide investors with the timely financial information to which they are entitled under the federal securities laws, while giving certain Andersen clients time to address any timing constraints and temporary disruptions they may face. In addition to those actions, in this release we also adopt rules and express interpretations concerning the impact of those actions upon other requirements of the federal securities laws.[23] None of the actions announced by the Commission today affects the liability standards to which an issuer's filing is subject.

We emphasize that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. Consistent with this approach, our actions do not apply to issuers to whom Andersen had issued a signed audit report on or before March 14, 2002. We also recognize there are a number of situations that will be fact-specific. We strongly encourage companies to contact the staff of the Commission listed at the beginning of this release and request consideration of specific situations and the appropriateness of additional Commission or staff action.

II. Registrants Under the Securities Act of 1933

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S–X (and Temporary Note 2T to Item 310 of Regulation S–B for small business issuers [24] and General Instruction A–T2 to Form 20–F for foreign private issuers [25]) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The following sections outline specific relief to be granted to these issuers. This relief does not apply for financial statements where Andersen has already issued a manually signed audit report for those financial statements on or before March 14, 2002.

1. Form Eligibility

Forms S–2, [26] S–3,[27] F–2,[28] F–3 [29] and S–8 [30] under the Securities Act permit alternative disclosure formats.[31] Eligibility for those forms is dependent upon, among other requirements, whether the company filing the registration statement has filed all required reports under the Exchange Act for a specified period and whether the company has filed those reports in a timely manner for a specified period. The 34 Act Order provides alternate procedures for filing Exchange Act reports by issuers that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. It is the Commission's view that the filing of reports in the manner permitted by the 34 Act Order is consistent with the protection of investors. Accordingly, it is our further view that compliance with the 34 Act Order should not negatively impact a company's eligibility to use Securities Act registration statement forms. We are adopting Rule 401a under the Securities Act to make clear that issuers that are eligible to rely on the 34 Act Order and that comply with its terms for the filing of their Exchange Act reports will be current and timely and, therefore, will not have their eligibility for Securities Act forms impacted negatively.

2. Financial Statements Required in Registration Statements

The financial statement requirements for registration statements on Forms S–

[22] Throughout this release, where we refer to Andersen, we also include foreign affiliates of Andersen.
[23] The Commission's actions are procedural in nature and are of finite duration. The temporary rules and amendments we are adopting today expire on December 31, 2002.
[24] The term "small business issuer" is defined in Item 10(a)(1) of Regulation S–B.
[25] The term "foreign private issuer" is defined in Securities Act Rule 405 [17 CFR 230.405].
[26] 17 CFR 239.12.
[27] 17 CFR 239.13.
[28] 17 CFR 239.32.
[29] 17 CFR 239.33.
[30] 17 CFR 239.16b.
[31] Forms S–4 and F–4 [17 CFR 239.25 and 17 CFR 239.34] under the Securities Act do not have "form eligibility" standards relating to the company registering a transaction on that form or the other company(ies) involved in the transaction. Rather, Forms S–4 and F–4 permit specific disclosure formats regarding each of those companies based on their eligibility to use Forms S–2 or S–3 and F–2 or F–3, respectively. As new Securities Act Rule 401a relates to eligibility to use Securities Act forms, that rule should be considered when completing those sections of Forms S–4 and F–4 that rely upon Securities Act form eligibility.

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1,[32] S–2, S–3, S–4, S–6,[33] S–8, S–11,[34] N–1,[35] N–1A,[36] N–2,[37] N–3,[38] N–4,[39] N–5[40] and N–14[41] generally are set forth in Regulation S–X.[42] The financial statement requirements for registration statements on Form SB–1[43] and Form SB–2,[44] as well as for financial statements regarding small business issuers on other Securities Act forms, generally are set forth in Item 310 of Regulation S–B. The financial statement requirements for registration statements on Forms F–1,[45] F–2, F–3 and F–4 generally are contained in Form 20–F under the Exchange Act. We have adopted temporary notes to Article 3 of Regulation S–X and Item 310 of Regulation S–B and a temporary instruction to Form 20–F for eligible issuers whose registration statements contain financial statements of an entity that has a fiscal year ending between and including November 30, 2001[46] and April 15, 2002, as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002.[47] These new items generally provide that unaudited information may be included in Securities Act registration statements so long as audited financial statements are subsequently provided by amendment. These new items may not be relied upon by any registrant that is a "blank check company" as defined in Securities Act Rule 419(a)(2).[48] These items will have the following effect on the inclusion of audited financial statements in registration statements under the Securities Act:

- Registration statements filed by companies that, at the time of filing the registration statement, are not required to file reports under Section 13(a)[49] or 15(d)[50] of the Exchange Act, must in all circumstances include financial statements that meet the timeliness and audit requirements of Commission rules.
- Registration statements (or any pre-effective or post-effective amendments thereto) filed by companies that, at the time of filing the registration statement, are required to file reports under Section 13(a) or 15(d) of the Exchange Act,[51] may include financial statements that meet the timeliness requirements of Commission rules but that are unaudited if Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements and the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report.[52] The registration statement must also include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.[53] These companies will then be required to file a pre-effective amendment, post-effective amendment or an amendment to a document incorporated by reference, as appropriate, containing the audited financial statements for the required periods if the registered offering or offerings have not been completed. Generally, if the registration statement is not yet effective and will become effective on or after the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,[54] a pre-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, containing audited financial statements must be filed before effectiveness.[55] If the registration statement is effective, the amendment containing audited financial statements generally must be filed by the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,[56] if the offering or offerings are not complete (including any prospectus delivery period required by Section 4(3) of the Securities Act[57] and the rules thereunder) by such date.[58]
- Registration statements for offerings that are registered in accordance with Securities Act Rule 415[59] and that are updated through "forward incorporation by reference" of the issuer's Exchange Act reports rather than through the filing of post-effective amendments will be updated in accordance with the procedures for including the audited financial information in the registrant's Exchange Act reports.

Issuers with effective registration statements for offerings registered in accordance with Rule 415 under the Securities Act must update the registration statement pursuant to undertakings included in those registration statements.[60] Among the events requiring an updating of the registration statement is the occurrence of facts or events that, individually or in the aggregate, represent a "fundamental change in the information set forth in the registration statement."[61] It is the Commission's view that the failure of an eligible issuer to include audited financial statements in the registration statement, either through the filing of a post-effective amendment or amendments of Exchange Act reports or other documents incorporated by reference, in accordance with Temporary Note 1T to Article 3 of Regulation S–X (or Temporary Note 1T of Item 310 of S–B for small business issuers or Temporary Instruction A–T1 to Form 20–F for foreign private issuers) represents such a "fundamental change." Accordingly, failure to comply with those requirements will require the filing of a post-effective amendment to the registration statement. Offerings under the registration statement must cease until a post-effective amendment that includes all information required by those requirements is declared effective.

Section 10(a)(3) of the Securities Act requires that the information in a prospectus that is used more than nine months after the effective date of the registration statement of which the prospectus is a part "shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished without unreasonable effort or expense."[62] If the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report, this presents a situation that we believe would cause compliance with Section 10(a)(3) to involve "unreasonable effort or expense." Accordingly, we are adopting temporary Rule 427T under the Securities Act to extend for eligible issuers the sixteen month requirement in Section 10(a)(3) as it relates to audited financial statements. Under Rule 427T, the Section 10(a)(3) timeliness requirement for audited financial statements will be satisfied by any eligible issuer if two conditions are met. First, the prospectus used more than nine months after the effective date of the registration statement is updated to include unaudited financial information that is as of a date not more than sixteen months prior to use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.[63] Second, the prospectus used more than nine months after the effective date of the registration statement is updated to include audited financial information that is as of a date not more than eighteen months prior to use.[64] The updated prospectus should include a discussion of any material changes from the unaudited financial information and updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information. Temporary Rule 427T may not be relied upon by any registrant that is a "blank check company" as defined in Securities Act Rule 419(a)(2).

3. Additional Disclosure Required in Filings

Issuers permitted to provide unaudited financial information in reliance on the temporary rules adopted today or in reliance on the Orders should consider whether any additional disclosure is necessary in those filings. The Commission has adopted Temporary Note 2T to Article 3 of Regulation S–X to provide guidance on the additional disclosure. The guidance in the note applies to all such issuers, including small business issuers and foreign private issuers. The temporary note is intended to provide guidance to issuers in meeting their disclosure obligations under the federal securities laws. While the exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's former public company audit clients, issuers must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of the audited financial statements because the issuer was unable to obtain from Andersen or elected not to have Andersen issue a manually signed audit report. The issuer must also place this prominent statement in the filing immediately before the financial statements and follow guidance as to providing:

- A statement as to when and how the issuer intends to provide the audited financial statements; and
- A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

Further, any audit report previously issued by Andersen that is required to be included in a filing should be included as required.

4. Predecessor Auditor's Reports

Each issuer filing audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a manually signed accountants' report[65] from Andersen.[66] Issuers may be unable to obtain an accountants' report for the period for which Andersen was engaged. Accordingly, the Commission is amending Rule 2–02 of Regulation S–X to provide that those issuers that cannot obtain an accountants' report from Andersen after reasonable efforts may file a copy of the latest signed and dated accountants' report issued by Andersen for such period. The issuer must disclose prominently on such copy that the report is a copy of a previously issued Andersen report and that the report has not been reissued by Andersen. This rule is available only to issuers filing documents containing financial statements for a period with respect to which Andersen issued an accountants' report.

5. Written Consents

Each issuer filing a Securities Act registration statement containing financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a written consent from Andersen. An issuer may be unable to obtain these consents. Accordingly, the Commission is adopting Securities Act Rule 437a to provide that, notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this rule may dispense with the requirement for

[32] 17 CFR 239.11.
[33] 17 CFR 239.16.
[34] 17 CFR 239.18.
[35] 17 CFR 239.15.
[36] 17 CFR 239.15A.
[37] 17 CFR 239.14.
[38] 17 CFR 239.17a.
[39] 17 CFR 239.17b.
[40] 17 CFR 239.24.
[41] 17 CFR 239.23.
[42] These financial statement requirements may be included in the form indirectly, as they apply to the company's periodic reports, which are incorporated by reference into the registration statement. Form S–8 has an additional requirement, as expressed in Instruction 2 to Securities Act Rule 428(b) [17 CFR 230.428(b)], regarding the delivery of documents during the first 120 days of a fiscal year for a domestic company and the first 190 days of a fiscal year for a foreign private issuer. Under this instruction, the company may deliver a document that does not include audited financial information for the most recently completed fiscal year, so long as the company provides audited financial information by the end of the 120 day or 190 day period, as applicable. Consistent with the 34 Act Order, domestic companies may provide a document to plan participants within the first 180 days of the fiscal year that do not contain audited financial statements. Similarly, foreign private issuers may deliver such documents within the first 250 days of the fiscal year. The delivery of such documents will be permissible conditioned upon the delivery of audited financial statements by the end of the 180 day or 250 day period, as applicable.
[43] 17 CFR 239.9.
[44] 17 CFR 239.10.
[45] 17 CFR 239.31.
[46] For foreign private issuers, this date is August 31, 2001. For registered investment companies, this date is January 1, 2002. If the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), this date is December 29, 2001.
[47] We are using the date of March 14, 2002 to ensure that the registrant had engaged Andersen as its auditor for their most recent fiscal year end. Other rules and amendments adopted today address situations where a registrant is using financial information that has previously been audited by Andersen.
[48] 17 CFR 230.419(a)(2).
[49] 15 U.S.C. § 78m(a).
[50] 15 U.S.C. § 78o(d).
[51] Including registered investment companies that have previously filed a registration statement under the Securities Act that has been declared effective by the Commission.
[52] Unit investment trusts that offer a new series will continue to be required to provide audited financial statements for the registrant as currently required. The Commission believes that obtaining an audit that verifies the securities deposited in a unit investment trust is not unduly burdensome.
[53] *See* Section II.B.3 of this release.
[54] Annual report to shareholders, in the case of a registered investment company.
[55] The 60 day period applies to foreign private issuers and issuers that meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers). For issuers that do not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers), the period is 106 days. If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.
[56] Annual report to shareholders, in the case of a registered investment company.
[57] 15 U.S.C. 77d(3).
[58] The period is 106 days for issuers that do not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers). If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.
[59] 17 CFR 230.415.
[60] Those undertakings, which are set forth in Item 512(a) of Regulation S–B or Regulation S–K [17 CFR 228.512 and 17 CFR 229.512], must be included in registration statements for offerings registered in accordance with Rule 415 under the Securities Act.
[61] 17 CFR 228.512(a)(1)(ii) and 17 CFR 229.512(a)(1)(ii).
[62] Id.
[63] For registration statements that are updated through "forward incorporation by reference" of Exchange Act reports, each of the required updates may be accomplished in that manner. For registration statements that are updated through the filing of post-effective amendments, each update will require a post-effective amendment.
[64] Provisions of the 34 Act Order, the 40 Act Order or Temporary Note 1T to Article 3 of Regulation S–X may require the filing of audited financial statements at an earlier time than Rule 427T. For example, a registered investment company generally would be required to file its annual updating amendment with audited financial statements no later than the date it is required to file audited financial statements in its annual report to shareholders under the 40 Act Order, *i.e.*, typically 120 days after the close of its fiscal year.
[65] See Item 302 of Regulation S–T [17 CFR 232.302] for requirements related to signatures in electronic submissions.
[66] See Rule 2–02(a) of Regulation S–X [17 CFR 210.2–02(a)] for the technical requirements of an accountants' report.

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the registrant to file the written consent of Andersen as required by Section 7 of the Securities Act where:

- The registrant has not already obtained the written consent that would be required if not for this temporary rule,
- The registrant is not able to obtain the written consent after reasonable efforts, and
- The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

This rule is available only to issuers filing registration statements containing financial statements audited by Andersen. The rule may not be relied upon by any registrant that is a "blank check company" as defined in Securities Act Rule 419(a)(2).

6. Rule 144

Rule 144(c)(1)[67] provides that there shall be adequate, current public information available for purposes of Rule 144 if the issuer of the securities to be offered has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 90 days preceding the subject sale of securities and has filed all required reports for the 12 months preceding that sale. It is the view of the Commission that the requirement to have filed all required reports for purposes of Rule 144(c)(1) is satisfied for issuers eligible to rely on the 34 Act Order if they have filed their Exchange Act reports as permitted under the 34 Act Order.[68]

7. Rule 144A

Rule 144A(d)(4)[69] addresses the information that an issuer that is not a reporting company under the Exchange Act, not a foreign government and not a foreign company exempt from registration under Section 12 of the Exchange Act[70] by Exchange Act Rule 12g3–2(b)[71] must agree to provide to investors or prospective investors if Rule 144A is to be relied upon. Among other requirements, an issuer subject to Rule 144A(d)(4) must provide financial information that "should be audited to the extent reasonably available." It is the view of the Commission that resales under Rule 144A will not be affected by the unavailability of audited financial information due to reliance on the 34 Act Order and temporary rules adopted today.

8. Rule 701

The conditions for the Rule 701 exemption from Securities Act registration for certain offerings of securities include financial statement requirements. It is the view of the Commission that, to the extent required, where the information referenced in Rule 701(e) is prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports is sufficient for purposes of Rule 701.

9. Regulation D

Rule 502(b)(2)(ii)[72] sets forth the financial information requirements for issuers that are subject to the Exchange Act reporting requirements. Subject to various conditions, that rule may require the furnishing of annual reports under Exchange Act Rule 14a–3,[73] reports under the Exchange Act or registration statements under the Securities Act. It is the view of the Commission that, where the reports and registration statements referenced in Rule 502(b)(2)(ii) are prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports and registration statements is sufficient for purposes of Regulation D.

10. Items 304 and 601 of Regulation S–K and Regulation S–B

Item 304 of Regulation S–K[74] sets forth the disclosure requirements for an issuer when its independent public accountant is dismissed or resigns. This disclosure would include a discussion of any disagreements with the independent accountants regarding accounting and financial disclosure. Subject to various conditions, the issuer may be required to request that its former independent accountant furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to Item 304(a) and, if not, stating the matters on which it does not agree. This letter must be filed as an exhibit to certain of the issuer's filings in accordance with Item 601(b)(16) of Regulation S–K.[75]

The resignation or dismissal of the independent accountant triggers an issuer's obligation to file a current report on Form 8–K.[76] That Form 8–K must include the information required by Item 304. Further, the disclosure and letter required by Item 304 must be included in any Exchange Act registration statement or report on Form 10,[77] 10–SB,[78] 10–K,[79] 10–KSB[80] or N–SAR[81] or Securities Act registration statement on Form S–1, S–2, S–4 or S–11 that the issuer files. We are adopting temporary Items 304T and 601T of Regulation S–K and Regulation S–B for use by issuers for which Andersen had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Andersen had been engaged to examine a significant subsidiary's financial statements and on which the principal accountant expressed reliance in its report, on or after March 14, 2002. Under Item 304T, the filing obligation of these issuers will be satisfied if the issuer's filings do not include the letter from Andersen if the issuer has not yet obtained it and is not able to obtain it after reasonable efforts.

III. Trust Indenture Act of 1939

Section 314(a)(1) of the Trust Indenture Act[82] requires companies that are obligors on securities issued under an indenture that is qualified under the Trust Indenture Act to file certain information with the indenture trustee. The indenture obligor must "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act."[83] We have adopted a rule to make clear the application of Section 314(a)(1) to indenture obligors that file their Exchange Act reports with the Commission in compliance with the 34 Act Order.[84] Trust Indenture Act Rule 19a–1 states that the indenture obligor's filing with the indenture trustee of those Exchange Act reports filed in accordance with the 34 Act Order shall satisfy the indenture obligor's responsibility to "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act" for purposes of Section 314(a)(1).

IV. Registrants Under the Securities Exchange Act of 1934

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S–X (and Temporary Note 2T to Item 310 of Regulation S–B for small business issuers and General Instruction A–T2 to Form 20–F for foreign private issuers) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The 34 Act Order issued by the Commission provides affected issuers extensions of time to file audited financial statements or obtain reviews of financial statements for quarterly reports under specified conditions. In most cases, the relief is conditioned on timely filing of the financial statements on an unaudited basis and requiring an amendment to the filing within 60 days after the original due date to provide the audited financial statements. The relief does not apply for financial statements where Andersen has already issued a manually signed report for those financial statements on or before March 14, 2002. In addition, the relief does not apply to any filings by a "blank check company" as defined in Securities Act Rule 419(a)(2). We are adopting Rule 12b–37 under the Exchange Act to make clear that reports filed in compliance with the 34 Act Order and the 40 Act Order will satisfy the issuer's Exchange Act filing requirements.

1. Annual Reports on Form 10–K/Form 10–KSB

For issuers that file annual reports on Form 10–K or Form 10–KSB, the relief provided by the 34 Act Order applies to issuers with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for these reports, but permits eligible issuers to file their annual reports with those financial statements on an unaudited basis. The 34 Act Order's conditions require the issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.[85] Further, within 60 days of the original due date for filing, the issuer must file an amendment presenting the financial statements audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations,[86] that should be amended to reflect any changes in the financial statements.[87]

For example, the 34 Act Order permits a company with a fiscal year that ended on December 31, 2001, for which Andersen had been engaged as the independent public accountant to examine the company's financial statements on or after March 14, 2002, to file timely its annual report responding to all items required in the report by April 1, 2002,[88] but include the financial statements on an unaudited basis.[89] Under the 34 Act Order, the company will then file the audited financial statements, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than May 31, 2002.[90]

2. Quarterly Reports on Form 10–Q/Form 10–QSB

For issuers that file quarterly reports on Form 10–Q[91] or Form 10–QSB,[92] the relief provided by the 34 Act Order applies to issuers that have fiscal quarters ending between and including January 26, 2002 and June 15, 2002. The 34 Act Order maintains the existing

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[67] 17 CFR 230.144(c)(1).

[68] This position, as well as the positions expressed with regard to Rule 701 [17 CFR 230.701] and Regulation D [17 CFR 230.501–508], are consistent with Exchange Act Rule 12b–37 which we are adopting today to address the satisfaction of an issuer's Exchange Act filing requirements.

[69] 17 CFR 230.144A(d)(4).

[70] 15 U.S.C. 77l.

[71] 17 CFR 240.12g3–2(b).

[72] 17 CFR 230.502(b)(2)(ii).

[73] 17 CFR 240.14a–3.

[74] 17 CFR 229.304. Item 304 of Regulation S–B [17 CFR 228.304] sets forth the same requirement for issuers reporting under the small business issuer reporting system. The discussion of Item 304T in this section refers to new Item 304T of Regulation S–K and Regulation S–B.

[75] 17 CFR 229.601(b)(16). The discussion of Item 601 of Regulation S–K applies equally to Item 601 of Regulation S–B [17 CFR 228.601].

[76] 17 CFR 249.308.

[77] 17 CFR 249.10.

[78] *Id.*

[79] 17 CFR 249.310.

[80] 17 CFR 249.310b.

[81] 17 CFR 249.330. In the case of registered investment companies, the disclosure and letter must also be included in the annual report to shareholders.

[82] 15 U.S.C. 77nnn(a)(1).

[83] *Id.* Section 314(a)(1) also discusses the obligations for indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. The discussion in this section and new Rule 19a–1 do not apply to indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

[84] Trust Indenture Act Rule 19a–1 is consistent with Exchange Act Rule 12b–37 which we are adopting today regarding satisfaction of an issuer's Exchange Act filing requirements. Trust Indenture Act Rule 19a–1 uses the term "eligible indenture obligors." The rule defines "eligible indenture obligors" as those obligors that may rely on any of the provisions of the 34 Act Order with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

[85] *See* Section II.B.3 of this release.

[86] Item 303 of Regulation S–K and Regulation S–B [17 CFR 229.303 and 17 CFR 228.303].

[87] If the original filing was on Form 10–K and Andersen had been engaged originally as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements must also be provided.

[88] General Instruction A. to Form 10–K and Form 10–KSB set the due date for these reports at 90 days after the end of the issuer's fiscal year. If that date falls on a Saturday, Sunday or holiday, Exchange Act Rule 0–3 [17 CFR 240.0–3] allows such reports to be filed on the first business day following. March 31, 2002, which is 90 days after December 31, 2001, falls on a Sunday, so the report will be due by April 1, 2002.

[89] One-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25 [17 CFR 240.12b–25]. If an issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. If the issuer is relying on Exchange Act Rule 12b–25 in connection with a report covered by the Orders, the 34 Act Order provides that the issuer need not attach as an exhibit to its Form 12b–25 filing a statement by Andersen as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

[90] Reliance on the 34 Act Order is conditioned upon filing the amendment within 60 days after the original due date of the report, excluding any additional period issuers had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[91] 17 CFR 249.308.

[92] 17 CFR 249.308b.

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filing deadlines for these reports,[93] but permits eligible issuers to file their quarterly reports with financial statements that have not been reviewed pursuant to Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB). The 34 Act Order's conditions require the issuer to provide similar disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.

Under the 34 Act Order's conditions, if, upon completion of the review, there is a change in those financial statements, the issuer must amend its quarterly report to present the reviewed financial statements, a discussion of any material changes from the unreviewed financial statements and any other section of the quarterly report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, that should be amended to reflect any changes in the financial statements. Otherwise, the 34 Act Order's conditions only require the issuer to state in its next quarterly report that the financial statements for the previous quarter had subsequently been reviewed by an accountant other than Andersen, but the issuer is not required to include a copy of the review report. If an amendment to the previous quarterly report is not required, we encourage issuers to make public that there were no material changes as a result of the review prior to the submission of the next required periodic report.

3. Annual Reports on Form 20–F

For foreign private issuers that file annual reports on Form 20–F, the 34 Act Order applies to foreign private issuers with fiscal years ending between and including August 31, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadline for Form 20–F, but permits eligible foreign private issuers to file their annual reports on Form 20–F with financial statements on an unaudited basis. The 34 Act Order's conditions require these financial statements to include an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) if the foreign private issuer prepares its financial statements in accordance with local GAAP or international accounting standards (IAS). The 34 Act Order's conditions also require the foreign private issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.

Within 60 days after the original due date for filing, a foreign private issuer relying on the 34 Act Order must file an amendment presenting the audited financial statements (including the audited reconciliation to U.S. GAAP where the issuer's financial statements are prepared in accordance with local GAAP or IAS) audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report that should be amended to reflect any changes in the financial statements, including without limitation the Operating and Financial Review and Prospects required by Item 5 of Form 20–F.[94]

For example, the 34 Act Order permits a foreign private issuer with a fiscal year that ended on December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the financial statements to file timely its annual report on Form 20–F responding to all items required in the report by July 1, 2002,[95] but include the financial statements and the reconciliation to U.S. GAAP on an unaudited basis.[96] Under the 34 Act Order, the foreign private issuer must then file the audited financial statements and reconciliation, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than August 30, 2002.[97]

4. Employee Benefit Plan Annual Reports on Form 11–K

For non-ERISA[98] employee stock purchase, savings and similar plans subject to Section 15(d) of the Exchange Act, the 34 Act Order applies to plans with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for Form 11–K,[99] but permits non-ERISA plans whose annual reports would need to include audited plan financial statements for which Andersen had been engaged as the independent public accountant on or after March 14, 2002 to file their annual reports on Form 11–K with unaudited plan financial statements. The 34 Act Order's conditions require the plan to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report. Further, within 60 days of the original due date for filing, the plan must file an amendment presenting the financial statements audited by an accountant other than Andersen and a discussion of any material changes from the unaudited financial statements filed originally.

Exchange Act Rule 15d–21[100] provides plans with the alternative of including audited financial statements in the annual report of the issuer of the stock or other securities offered to employees through their participation in the plan. If the plan follows this alternative procedure, the 34 Act Order permits unaudited plan financial statements (with appropriate disclosures) to be filed in the annual report (or an amendment thereto) of the issuer within 120 days after the end of the fiscal year of the plan. The 34 Act Order's conditions require audited plan financial statements to be filed as an amendment within 180 days after the end of the fiscal year of the plan. Plans with fiscal years that end within 62 days before the end of the fiscal year of the issuer that elect to furnish the information as part of the issuer's next annual report, as permitted by Exchange Act Rule 15d–21(b), will not be affected.

For example, the 34 Act Order permits a plan with a fiscal year ending December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the plan's financial statements on or after March 14, 2002, to file timely its annual report on Form 11–K by April 1, 2002,[101] but include the plan financial statements on an unaudited basis.[102] Under the 34 Act Order, the plan will then file its audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment by May 31, 2002.[103]

If the alternative procedure in Exchange Act Rule 15d–21 is followed, the 34 Act Order permits unaudited plan financial statements to be filed in the annual report of the issuer, or as an amendment to that report, by April 30, 2002. Under the 34 Act Order's conditions, audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report related to the plan that should be updated will need to be filed as an amendment by July 1, 2002.[104] If the plan has a fiscal year that ends within 62 days before the end of the fiscal year of the issuer, it may elect to file the plan financial statements in the issuer's next annual report pursuant to Exchange Act Rule 15d–21(b).

Plans subject to ERISA will remain subject to the existing requirements for filing plan financial statements.

5. Filings on Schedules 14A and 14C

For issuers that file proxy statements or information statements that require audited financial statements pursuant to Item 13 or Item 14 of Schedule 14A[105] or Item 1 of Schedule 14C,[106] the 34 Act Order permits the filing of unaudited financial statements of issuers and, where applicable, of acquired companies, where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002.[107] For issuers that are not registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before September 13, 2002. For registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before August 13, 2002. The 34 Act Order's conditions require the proxy statement or information statement to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.

Under the 34 Act Order, these issuers must file revised material or amend documents incorporated by reference, as appropriate, containing financial statements audited by an accountant other than Andersen for the required periods by the earlier of 60 days[108] from the date when the financial statements were required to be included in the proxy statement or information statement and the date the audited financial statements are filed in the annual report of the registrant,[109] if the solicitation for purposes of proxy statements (or corporate action for purposes of information statements) has not been completed by such date. The revised material or amended documents must present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.[110]

Additionally, the Commission recognizes that issuers sending their proxy statement or information statement prior to obtaining their audit report will be unable to provide disclosure regarding audit committee reports pursuant to Item 7(d)(3)(i) of Schedule 14A and audit fees pursuant to Item 9(e) of Schedule 14A or Item 1 of Schedule 14C. The 34 Act Order permits the omission of this information for issuers with a fiscal year end between November 30, 2001 and April 15, 2002 from proxy statements and information statements in full satisfaction of those disclosure requirements if the issuer meets the 34 Act Order's conditions.

The 34 Act Order's conditions require the issuer to send its proxy statement or information statement on or before September 13, 2002.[111] Further, the issuer must respond to all other applicable disclosure requirements in their proxy statement or information statement. Under the 34 Act Order, the issuer will then include disclosure in response to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A in their amended Form 10–K or Form 10–KSB, if this information was required in the Schedule 14A or Schedule 14C.

6. Annual Reports to Shareholders in Connection With Annual Meeting Proxy Solicitations

Issuers furnishing proxy statements or information statements in connection with their annual meeting of security holders, or written consents in lieu of annual meetings, at which directors are to be elected, must accompany or precede that proxy statement with an annual report to shareholders. That annual report to shareholders must satisfy the requirements of Exchange Act Rule 14a–3(b)[112] for proxy statements and Exchange Act Rule 14c–3[113] for information statements. The 34 Act Order applies to issuers with a fiscal year ending between and including

[93] General Instruction A.1. to Form 10–Q and Form 10–QSB set the due date for these reports at 45 days after the end of the issuer's first three fiscal quarters. As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If the issuer complies with that rule, it can file its quarterly report no later than the fifth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[94] If Andersen or a foreign affiliate of Andersen had been engaged originally as the independent public accountant for the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20–F (and any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) must also be provided.

[95] General Instruction A.(b) of Form 20–F sets the due date for these annual reports at six months after the end of the fiscal year covered by the report. June 30, 2002 falls on a Sunday, so the report will be due by July 1, 2002 for foreign private issuers with a December 31 fiscal year end.

[96] As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If a foreign private issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[97] As with reports on Form 10–K and Form 10–KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period foreign private issuers had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[98] ERISA stands for the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. §§ 1001–1461].

[99] 17 CFR 249.311.

[100] 17 CFR 240.15d–21.

[101] General Instruction A. to Form 11–K sets the due date for these reports at 90 days after the end of the fiscal year of the plan for non-ERISA plans. March 31, 2002 falls on a Sunday, so the report will be due by April 1 for plans with a December 31 fiscal year end.

[102] As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If a plan complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[103] As with reports on Form 10–K and Form 10–KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period the plan had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[104] 180 days after the end of a fiscal year of a plan with a December 31 fiscal year is June 29, 2002, which falls on a Saturday. Accordingly, the amendment will be due by July 1, 2002.

[105] 17 CFR 240.14a–101.

[106] 17 CFR 240.14c–101.

[107] Under the 34 Act Order, the entity in question must also have a fiscal year ending with a date between and including November 30, 2001 and April 15, 2002 (for entities that meet the requirements of Rule 3–01(c) of Regulation S–X (or Item 310(b) of Regulation S–B if the entity is a small business issuer)), a fiscal year ending with a date between and including December 29, 2001 and April 15, 2002 (for entities that do not meet the requirements of Rule 3–01(c) of Regulation S–X (or Item 310(b) of Regulation S–B if the entity is a small business issuer)) or a fiscal year ending with a date between and including January 1, 2002 and April 15, 2002 (if the entity is a registered investment company).

[108] This period is 106 days for an issuer that does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (Item 310(g) of Regulation S–B for small business issuers).

[109] Or the annual report to shareholders in the case of a registered investment company.

[110] Unless the company is eligible to rely on Regulation S–B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the company's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements are also required to be provided if this information would otherwise have been required in the proxy statement or information statement.

[111] This date is August 13, 2002 in the case of an issuer that is a registered investment company.

[112] 17 CFR 240.14a–3(b).

[113] 17 CFR 240 14c–3.

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November 30, 2001 and April 15, 2002 for proxy statements or information statements sent on or before September 13, 2002.

Where their annual reports will include financial statements as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002, the 34 Act Order permits issuers to provide those financial statements on an unaudited basis, if the document containing the unaudited financial statements includes disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X. The 34 Act Order's conditions require any issuer that does not include audited financial statements to inform its shareholders (i.e., through a press release [114] and posting the audited financial statements on the issuer's website, if it has one) when it files or amends its Form 10–K or Form 10–KSB to include the financial statements audited by an accountant other than Andersen, if the issuer's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

7. Tender Offer Filings on Schedules TO

For offerors that commence tender offers that require financial statements pursuant to Item 10 of Schedule TO,[115] the 34 Act Order permits the filing of unaudited financial statements where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002. The relief provided by the 34 Act Order applies to a Schedule TO filed on or before September 13, 2002 that would need to contain audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 and where Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements. The 34 Act Order's conditions require the Schedule TO to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.

Under the 34 Act Order, the offeror must file revised material or amend documents incorporated by reference, as appropriate, to provide the financial statements audited by an accountant other than Andersen no later than the earlier of 60 days from the date the audited financial statements were required to be included in the Schedule TO and the date the audited financial statements are filed in the annual report of the registrant,[116] if the tender offer has not been completed by that date. The 34 Act Order's conditions require the revised material or amended documents to present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.[117]

V. Special Case-by-Case Matters

A. Item 7 of Form 8–K—Financial Statements in Business Combination Transactions

Item 7 of Form 8–K requires the filing by an acquiring company of financial statements of a target company and *pro forma* financial statements within 75 days of the consummation for certain business combination transactions. The Commission invites acquiring companies to seek accommodation, such as extensions of time to file, or other relief, such as permitting use of unaudited financial statements if the acquiring or target company had Andersen as its independent accountant and audited financial statements are not available and cannot be obtained without unreasonable effort and expense, in writing under Rule 3–13 of Regulation S–X. Letters should name all parties involved and state the relief or accommodation sought, the reason(s) the relief or accommodation is being sought and any other relevant information. Letters should be addressed to the Commission at 450 Fifth Street, NW, Washington, DC 20549–0410 (Facsimile: 202–942–9582). For purposes of the significance tests of Regulation S–X used to determine whether financial statements of a target company and *pro forma* financial statements are required, if Andersen was the independent accountant of the issuer, the issuer should use the most recent annual consolidated financial statements filed at, or prior to, the date of acquisition, even though the most recent filing may include unaudited financial statements.

B. Other Matters

We encourage issuers to contact the staff of the Commission and request consideration of the appropriateness of Commission or staff action in connection with their specific factual situation. Some of the areas where these types of requests may be appropriate include: companies with uncommon fiscal year ends, change in fiscal year end and the resultant need to file transition reports pursuant to either Exchange Act Rule 13a–10 [118] or Exchange Act Rule 15d–10,[119] special financial reports required by Exchange Act Rule 15d–2,[120] filings by Canadian issuers under the Multi-Jurisdictional Disclosure System [121] and issues concerning the need to recirculate a prospectus, resolicit a proxy statement or extend an offering.

VI. Broker-Dealers and Transfer Agents Registered Under the Exchange Act; Other Market Regulation Guidance

The 34 Act Order provides affected registered broker-dealers and transfer agents extensions of time to file audited financial statements and audited internal controls reports, respectively, under specified conditions. The 34 Act Order also permits affected registered broker-dealers to furnish unaudited annual financial statements to customers and certain other persons under specified conditions. The relief provided by the 34 Act Order is available with respect to registered broker-dealers and transfer agents that are unable or elect not to obtain from Andersen a manually signed audit report for those financial statements, or a manually signed internal controls report, so long as such manually-signed reports were not received on or before March 14, 2002.

A. Broker-Dealer Financial Statements

The relief provided by the 34 Act Order applies to broker-dealers with a fiscal year ending between and including January 14, 2002 and April 15, 2002. Paragraph (d) of Exchange Act Rule 17a–5 [122] generally requires a registered broker-dealer to file with the Commission annually, on a calendar or fiscal year basis, specified audited financial statements no later than 60 days after the date of the financial statements. The 34 Act Order permits eligible broker-dealers to file their audited financial statements within 60 days after the date the statements otherwise would have been required to have been filed under paragraph (d)(5) of Rule 17a–5. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to file its audited financial statements no later than May 31, 2002.

In addition, paragraph (c) of Exchange Act Rule 17a–5 generally requires a registered broker-dealer to send to its customers and certain other persons [123] certain audited financial statements within 105 days after the date of the end of the calendar or fiscal year.[124] The 34 Act Order maintains the existing deadline under Rule 17a–5(c), but permits eligible broker-dealers to furnish financial statements on an unaudited basis. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to furnish unaudited annual financial statements to customers and such other persons no later than May 16, 2002.

B. Transfer Agent Internal Control Reports

Paragraph (a) of Exchange Act Rule 17Ad–13 [125] generally requires a registered transfer agent to file annually with the Commission and the transfer agent's appropriate regulatory agency a report prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds. That internal controls report must be filed within 90 calendar days of the date of the accountant's study and evaluation. The 34 Act Order permits eligible transfer agents to file their internal controls reports within 60 days after the date the reports otherwise would have been required to have been filed under paragraph (a) of Rule 17Ad–13. For example, the 34 Act Order permits a transfer agent, for which Andersen had been engaged to prepare its annual internal controls report and had conducted its study and evaluation as of January 31, 2002, and for which a manually-signed report has not been received on or before March 14, 2002, to file such report no later than June 30, 2002.

C. Other Market Regulation Guidance

1. Listing Requirements of Self-Regulatory Organizations

Self-regulatory organization ("SRO") listing standards typically require issuers to distribute to shareholders an annual report containing audited financial statements within a prescribed period after the end of the issuer's fiscal year and no later than a prescribed number of days before the issuer's annual meeting.[126] The Commission will work with applicable SROs to encourage them to grant relief to listed companies that are audit clients of Andersen that is consistent with the relief being issued by the Commission today.

2. SRO Member Firm Audit Requirements

To the extent that SRO rules require broker-dealer member firms to file annual audited financial statements,[127] the Commission will work with such SROs to encourage them to grant relief to member firms that are audit clients of Andersen that is consistent with the relief being issued by the Commission today. In addition, the Commission urges broker-dealer audit clients of Andersen with fiscal years ending before January 14, 2002 that have encountered delays in completing their audited financial statements to contact their designated examining authority for an appropriate extension of time to file under Exchange Act Rule 17a–5.[128]

3. Municipal Securities Issuers: Contractual Requirements to Provide Audited Financial Statements

Exchange Act Rule 15c2–12 [129] generally requires underwriters participating in municipal securities offerings to reasonably determine that issuers and certain other "obligated persons" have contracted to provide annual financial statements to certain information repositories,[130] and to disclose in material event notices [131] and future official statements [132] failures to do so by the contractual deadline. The Commission urges municipal securities market participants to interpret the filing of annual audited financial statements within 60 days of the contractual deadline, by municipal securities issuers and obligated persons with a fiscal year ending between and including September 15, 2001 and April 15, 2002 that are audited by Andersen, as not creating a material breach of their contractual undertaking. This interpretation would be appropriate, however, only if the issuer or obligated person files unaudited financial statements with the appropriate repositories by the contractual deadline.

VII. Registrants Under the Investment Company Act of 1940 and the Investment Advisers Act of 1940

The Commission is also issuing an order under the Investment Company Act [133] and Investment Adviser Act [134] that address issues investment companies and investment advisers may face that are unable to obtain the services of Andersen or that choose not to continue to engage Andersen as their independent public accountant.

A. Registrotion Statements and Reports Under the Investment Company Act

1. Eligibility

The 40 Act Order provides relief for investment companies with obligations to file amendments to registration statements under the 1940 Act, annual reports to shareholders, and annual

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[114] The press release is to announce that the audited financial statements are available and may be found in the issuer's filing on the Commission's website at www.sec.gov and on the issuer's website, citing the address, if the issuer has a website.

[115] 17 CFR 240.14d–100.

[116] Or annual report to shareholders in the case of a registered investment company.

[117] Unless the offeror is eligible to rely on Regulation S–B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the offeror's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements must also be provided.

[118] 17 CFR 240.13a–10.

[119] 17 CFR 240.15d–13.

[120] 17 CFR 240.15d–2.

[121] As a general matter, it is the view of the Commission that MJDS filers on Forms F–7, F–8, F–9, F–10 or F–80 [17 CFR 239.37, 239.38, 239.39, 239.40 or 239.41] under the Securities Act will be in compliance with the requirements of the form relating to consents of Andersen if the issuer meets the eligibility requirements and conditions of new Securities Act Rule 437a.

[122] 17 CFR 240.17a–5.

[123] Subparagraph (c)(1) of Rule 17a–5 requires registered broker-dealers to file specified customer statements with the Commission, at its principal office in Washiogton, D.C., with the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and with each national securities exchange and national securities association of which it is a member.

[124] Specifically, the audited financial statements must be sent to customers no later than 105 days after the date of the audited report required by paragraph (d) of Rule 17a–5.

[125] 17 CFR 240.17Ad–13.

[126] *E.g.*, NYSE Listed Company Manual Para. 203.01; NASD Rule 4350(b); Amex Listing Standards, Policies and Requirements Sections 610–611.

[127] *E.g.*, NYSE Rule 418; CBOE Rule 15.6.

[128] Subparagraph (l)(1) of Exchange Act Rule 17a–5 permits a broker-dealer's designated examining authority to extend the period for filing annual audit reports under paragraph (d) of Exchange Act Rule 17a–5.

[129] 17 CFR 240.15c2–12.

[130] Annual financial information is to be furnished to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any. (Rule 15c2–12(b)(5)(i)(A)–(B)).

[131] Rule 15c2–12(b)(5)(i)(D).

[132] As defined in Rule 15c2–12(f)(3), the required "final official statement" must include a description of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified by Rule 15c2–12(b)(5)(i).

[133] 15 U.S.C. 80a–1 *et seq.*

[134] 15 U.S.C. 80b–1 *et seq.*

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reports on Form N–SAR.[135] An investment company is eligible for the relief (an "Eligible Fund") if—

- Andersen had been engaged on or after March 14, 2002 as the fund's independent public accountant;
- The Eligible Fund, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect to those financial statements; and
- The Eligible Fund is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report with respect to its financial statements.

2. Registration Statement Under the Investment Company Act

For Eligible Funds with a fiscal year ending between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to file a post-effective amendment to their 1940 Act registration statements within six months after their fiscal year end (rather than 120 days) if the fund has timely filed its Form N–SAR as provided in the order. The 40 Act Order thus conforms the 1940 Act registration statement updating requirements to those we are today adopting in 1933 Act Rule 427T.

3. Annual Reports to Shareholders

For Eligible Funds transmitting annual reports to shareholders and that have fiscal years ended between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to mail their annual reports to shareholders with unaudited financial statements that also contain the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X. The Eligible Fund must file an amended annual report within 60 days of the original due date containing financial statements audited by another independent public accountant and a discussion of any material changes from the unaudited financial statements filed originally. [136]

Most closed-end funds annually furnish shareholders a proxy statement (or information statement) that must be accompanied or preceded by an annual report. The 40 Act Order's conditions require a closed-end fund, when it amends its annual report to include the audited financial statements, to inform its shareholders through a press release and by posting the audited financial statements on the company's web site (if it has one) if the company's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

4. Form N–SAR

For Eligible Funds filing annual reports on Form N–SAR with fiscal years ending between December 15, 2001 and April 15, 2002, the 40 Act Order permits them to file their Form N–SAR with unaudited financial information and without the report of independent accountants on internal controls so long as the Eligible Fund files an amendment providing audited financial information and the report of the independent accountants on internal controls within 60 days of the original due date for the filing.

Investment companies for which Andersen has been acting as independent accountant may report a change in accountant under item 77K of Form N–SAR consistent with our statement on change in accountants as described above in Section II.B.10. of this release.

B. Selection of Independent Public Accountant

Section 32(a)(1) and Rule 32a–3 under the Investment Company Act set forth certain periods at the beginning of each fiscal year during which registered management investment companies (mutual funds, closed-end funds and business development companies) must select an independent public accountant.[137] Some investment companies for which Andersen serves as independent public accountant may need additional time as a result of recent events. The 40 Act Order provides an additional sixty days for an investment company to select an independent public accountant whose financial statements for its last fiscal years was audited by Andersen and whose fiscal year ended on or before April 15, 2002.

Section 32(a) provides that a new accountant may be selected due to the death or resignation of the accountant by a vote of a majority of members of the investment company's board of directors (*i.e.*, without shareholder ratification), but does not address how a fund whose board of directors has terminated the appointment of the accountant may select a new one. The 40 Act Order permits a fund that had selected Andersen as its independent public accountant on or before March 14, 2002, and thereafter terminated the appointment, to select a new independent public accountant by a majority vote of the independent directors of the fund.

Section 32 requires the directors to select the investment company's independent public accountant at a meeting at which their votes would be cast "in person." In light of the events surrounding Andersen, the 40 Act Order permits companies making selections pursuant to the provisions of the 40 Act Order to cast their votes in a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

C. Verification of Assets in Custody

Various Investment Company Act rules (Rules 17f–1, 17f–2, 6e–2 and 6e–3(T)) regarding custody of securities or similar investments of a management investment company or insurance company separate account require that the securities and other investments be verified by actual examination periodically by an independent public accountant.[138] Because clients of Andersen may decide to retain a new independent public accountant and may need additional time to complete their verifications, the 40 Act Order allows an additional 60 days to complete these verifications for investment companies with a fiscal year ending between January 1 and April 15, 2002.

D. Balance Sheets of Investment Advisers

Investment Adviser Act Form ADV requires an investment adviser to include on Schedule G of the Form a balance sheet for its most recent fiscal year, audited by an independent accountant, if the adviser has custody of client funds or securities or if the adviser requires prepayment of more than $500 in fees per client and six or more months in advance.[139] The 40 Act Order permits an adviser that had engaged Andersen (or a foreign affiliate of Andersen) to examine the balance sheet to be included in Schedule G to use an unaudited balance sheet to satisfy the requirements of Schedule G for 60 days if the adviser—

- Had not, on or before April 14, 2002, obtained a manually signed unaudited report from Andersen (or a foreign affiliate of Andersen);
- Is unable or elects not to have Andersen issue a manually signed audit report from Andersen in respect to that balance sheet; and
- Has a fiscal year ending between December 1, 2001 and April 15, 2002.

At the end of the 60-day period the adviser must resume furnishing or offering to furnish a disclosure statement containing an audited balance sheet. The 40 Act Order imposes no additional filing requirements.

E. Exemptive Orders

In the past, the Commission has issued a number of orders under the Investment Company Act and the Investment Advisers Act and the rules thereunder exempting investment companies, investment advisers and others from provisions of these statutes and rules. Some of these orders are conditioned upon the involvement of an independent accountant preparing a report, conducting an audit, reviewing various systems or procedures, monitoring ongoing transactions or providing other services. Persons relying on these orders that have retained the services of Andersen will not be in violation of the applicable provisions of law or rule because of an inability to comply with the conditions or representations as a result of their inability to obtain the services of or elects not to continue to engage Andersen. We have provided persons relying on these orders an additional 60 days to comply with the requirements of their orders.

VIII. Registrants Under the Public Utility Holding Company Act of 1935

The Commission is issuing another order under the Public Utility Holding Company Act of 1935 [140] that addresses issues that registered public utility holding companies may face as a result of the circumstances surrounding Andersen.

A. Annual Reports on Form U5S

Public utility holding companies registered under the Public Utility Holding Company Act of 1935 are required to file with the Commission annual reports on Form U5S.[141] Form U5S includes requirements that a registered holding company incorporate by reference annual reports filed by any of its system companies under the Exchange Act ("1934 Act Reports") as well as the opinion of its independent accountant with respect to the holding company's consolidated financial statements.

The 35 Act Order permits registered public utility holding companies with a fiscal year ending between November 30, 2001 and April 15, 2002 that have retained Andersen as their independent accountant to file their annual report on Form U5S with unaudited financial statements. Specifically, the 35 Act Order permits registered public utility holding companies to incorporate by reference 1934 Act Reports that meet the requirements of the 34 Act Order provided they amend their filing to include any amended report filed in accordance with the 34 Act Order as well as the opinion of their independent accountants within 60 days.

B. Computations Required by Certain Rules and Orders

Rules 53 and 58 under the Public Utility Holding Company Act of 1935 establish safe harbors that permit registered public utility holding companies to invest up to a specified amount in various types of non-utility activities without seeking prior Commission approval.[142] In computing the permitted level of investment, registered public utility holding companies relying on the rules are required to use financial information included in their filings on Form 10–Q and Form 10–K. Other registered utility holding companies with orders under Sections 53, 54 [143] and 58 of the Public Utility Holding Company Act of 1935 permitting them to exceed these safe harbors are required to make analogous computations pursuant to the terms of their orders. The 35 Act Order makes clear that with respect to any computation required by Rule 53(a)(1) or Rule 58(a)(1) or any similar computation required by these rules or orders, a registered public utility holding company that is filing annual reports of Form 10–K or quarterly reports on Form 10–Q in reliance on the 34 Act Order may rely on the financial statements included in those filings in performing the required calculations.

IX. Consideration of Comments

We are publishing final rules and temporary final rules, rather than a notice of proposed rulemaking, for reasons stated in the section entitled "Procedural Matters." We will, however, consider any comments concerning whether other temporary or permanent rule changes are needed.

X. Procedural Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[144] This requirement does not apply, however, if the agency "for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest." [145] The Commission believes that it is appropriate to adopt the rules immediately for two reasons. First, some Andersen clients that end their audit relationship with Andersen may be in the middle of, or about to begin, raising capital publicly but will not have the required audited financial statements available when they are needed. The rules are needed immediately to remove regulatory impediments to their capital-raising plans with minimal market disruption. Second, information needs to be available to the investing public, beginning immediately, about the assurances issuers to whom Andersen issues reports after March 14, 2002 have received from Andersen concerning Andersen's quality control procedures in place during the audit. Accordingly, the Commission for good cause finds that delaying adoption of these rules until after a notice and comment period would be impractical and contrary to the public interest.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[146] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[147] For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the rules effective immediately.[148]

XI. Paperwork Reduction Act

This Paperwork Reduction Act ("PRA") information pertains to both the rules adopted today and the accompanying orders attached to this release as Appendices A–C. Certain provisions of the rules and accompanying orders contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995.[149] We submitted this requirement to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. The title for

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[135] 17 CFR 274.101.

[136] An investment company that continues to engage Andersen must make the disclosures specified in Temporary Note 3T to Article 3 of Regulation S–X in its annual report to shareholders, although the exact nature of each company's disclosure may vary depending upon the facts and circumstances of each company. See discussion in Section II.A. of this release.

[137] 15 U.S.C 80a–31 and 17 CFR 270.32a–3. Section 32(a)(1) also applies to face amount certificate companies.

[138] 17 CFR 270. 17f–1, 17f–2, 6e–2, and 6e–3(T).

[139] 17 CFR 279.1.

[140] 15 U.S.C. 79a *et seq.*

[141] 17 CFR 259.5s.

[142] 17 CFR 250.53 and 58.

[143] 17 CFR 250.54.

[144] *See* 5 U.S.C. 553(b).

[145] *Id.*

[146] *See* 5 U.S.C. 553(d).

[147] *Id.*

[148] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. 801 (if agency finds that notice and public procedure are "impractical, unnecessary, or contrary to the public interest," rule "shall take effect at such time as the Federal agency promulgating the rule determines").

[149] 44 U.S.C. 3501 *et seq.*

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the collection is Temporary Relief for Certain Entities Audited by Arthur Andersen LLP.

As discussed above, the Commission is adopting rules and issuing orders to mitigate the potential consequences to the markets as a result of Andersen's indictment. In order to minimize any market disruption, the Commission is providing relief with respect to certain filing and other requirements for certain clients of Andersen. The collection of information adopted today is necessary to ensure that the market receives disclosure from clients of Andersen that are taking advantage of this relief. The collection of information will supply investors with information they may not otherwise have and will help prevent confusion.

Temporary Relief for Certain Entities Audited by Arthur Andersen LLP. This collection of information encompasses certain new disclosures required by certain clients of Andersen. In general, public companies for whom Andersen does not complete audits or reviews will be allowed to file unaudited financial statements, rather than audited ones, in order to meet existing periodic reporting, proxy statement, tender offer, and registration requirements, as long as they disclose that the financial statements are unaudited (or not reviewed), provide audited (or reviewed) financial statements at a later date, and explain any material differences between the unaudited and audited financial statements. In some cases, issuers must alert the public through a press release that the audited financial statements are available and post the audited financial statements on their websites (if they have websites). Certain investment advisers may provide clients and prospective clients with unaudited balance sheets, with appropriate disclosure, and provide audited balance sheets at a later date. Clients that wish to file financial statements audited by Andersen must file a letter with affected filings concerning representations received from Andersen regarding Andersen's audit quality controls. In certain cases where Andersen clients were required to submit a consent or a reissued accountants' report from their auditor, but cannot obtain the consent or the reissued accountants' report, those requirements have been waived provided the filing includes appropriate disclosure. Because the rules regarding waiver of consents and reissued accountants' reports are permanent, these aspects of the collection of information also have been submitted to OMB for regular review as a stand-alone collection of information.

This collection of information imposes a minimal and temporary burden on some Andersen clients. It is difficult to estimate with precision the burden imposed by this collection of information requirement. We estimate that there are approximately 2,400 clients of Andersen potentially affected by this collection of information. However, some clients may not be subject to the collection of information because these clients may already have filed financial statements audited by Andersen.

We estimate for purposes of the PRA that approximately 1,979 Andersen clients will make new disclosures associated with one periodic report (two burden hours per filing) and approximately 325 will make new disclosures associated with two such reports; approximately 130 Andersen clients will make new disclosures associated with one registration statement each (three burden hours per filing); approximately 2,304 Andersen clients will make new disclosures associated with one proxy-related filing each (two burden hours per filing); approximately 22 Andersen clients will make new disclosures associated with one tender offer-related filing (two burden hours per filing); approximately 83 Andersen clients will make disclosures associated with investment adviser balance sheet requirements (one hour per disclosure); and approximately 2,400 Andersen clients will make one disclosure relating to Andersen's audit quality controls (one burden hour per filing). We recognize that the assumptions necessarily overcount the potential burden, as they assume all clients will both continue to be audited by Andersen and decide not to have Andersen complete the audit. We make these assumptions because the overall burden estimate is minimal and because we cannot estimate which option Andersen clients will choose. Thus, for PRA purposes, we have estimated that the total number of burden hours associated with this collection of information is 12,783.

Waiver of Auditor Consent and Reissued Accountants' Report. The Commission has also submitted, for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11, as a separate collection of information that will not be temporary, two aspects of the above-described collection of information. First, companies currently need to include in their registration statements the consent of auditors for use of their reports related to the three previous years' audits. For Andersen clients unable to obtain these consents, the rule amendments waive the obligation to obtain an auditor's consent for years before 2001, provided that the company discloses any limitations on remedies resulting from the lack of consents. Second, certain issuers that change auditors need to obtain from their predecessor auditor a reissued accountants' report for previously audited financial statements. Under the new rules, if the issuer is unable to obtain the accountants' report after reasonable efforts, the issuer may provide a copy of the latest previously issued accountants' report, as long as it discloses that the report is a copy of a report previously issued and that the report has not been reissued by Andersen. This collection of information is necessary to advise potential purchasers of securities and investors of certain information that they would not receive otherwise.

For the purposes of the collection of information entitled "Temporary Relief for Certain Entities Audited by Arthur Andersen LLP," we estimated that the disclosures associated with registration statements would take three hours and that disclosures associated with periodic reports, proxy statements and tender offers would take two hours. One half hour of these estimates is the estimated time required to make disclosures associated with the waiver of consents and one half hour of these estimates is the estimated time required to make disclosures associated with the waiver of the predecessor auditor's reissued report.

We estimate that last year there were approximately 650 registration statements filed by clients of Andersen. For purposes of the PRA, we assume that 650 Andersen clients will file one registration statement annually requiring waivers of the consent and the reissued predecessor auditor's report. Additionally, we estimate that of Andersen's approximately 2,400 clients, approximately 2,304 are public companies that file annual reports, proxy materials and tender offer filings. We estimate that these clients will file 2,629 annual reports (certain issuers with non-ERISA retirement benefit plans may file additional annual reports for those plans), 2,304 proxy-related filings, and 132 tender offer filings. Because we estimate that each disclosure will require one half hour, we estimate that the total number of burden hours associated with this collection of information is 3,182.5.

The Commission has adopted, and OMB has approved, the collection of information entitled "Temporary Relief for Certain Entities Audited by Arthur Andersen LLP" on an emergency basis. The control number for this collection of information is OMB Control No. 3235–0557. This collection of information will expire on September 30, 2002. As noted above, the Commission has also submitted for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11 the collection of information entitled "Waiver of Auditor Consent and Reissued Accountants' Report."

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information entitled "Waiver of Auditor Consent and Reissued Accountants' Report" is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirement should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–03–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–03–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its regular review of the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the disclosure requirements is mandatory for those taking advantage of the rules and orders. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

XII. Analysis of Costs and Benefits

The Commission is sensitive to the costs and benefits imposed by its rules.[150] The rules we are adopting include a requirement that Andersen clients that continue their audit relationship with Andersen make publicly available certain assurances they receive from Andersen concerning Andersen's quality control procedures in place during the audit (the "assurance letter requirement"). The rules also provide alternative regulatory requirements that will give Andersen clients certain options regarding compliance with the federal securities laws (the "temporary rules").

A. The Assurance Letter Requirement

The assurance letter requirement benefits investors by providing that basic information about Andersen's continued adherence to quality control standards be made publicly available with respect to each Andersen audit during this period of uncertainty and potentially rapid change. The costs of the assurance letter requirement are limited to the minimal costs involved for Andersen to transmit representations to its audit clients and the minimal costs involved for each Andersen audit client to include representations in a letter with certain filings.

B. The Temporary Rules

Before its indictment, Andersen may not have completed its audit or issued audit opinions with respect to many of its clients in registration or about to register securities. Andersen clients that are in that position, but that choose to end their audit relationship with Andersen or are unable to obtain audit services from Andersen to complete their audits (hereafter, the "terminated clients"), will need to engage new independent public accountants. We recognize that many terminated clients may be unable to engage a new auditor that can, in a timely fashion, complete an audit and sign an audit opinion that normally must be included with a registration statement. The purpose of the temporary rules is to minimize disruption to the capital markets and to the terminated clients while those clients complete certain pending or imminent offerings.

The temporary rules have four primary components:

- The Commission is permitting the terminated clients filing registration statements (other than companies registering initial public offerings) to include unaudited financial statements. Those terminated clients must amend their registration statements to include audited financial statements within 60 days after the date on which the audited financial statements would otherwise be required.
- The Commission is extending from 16 to 18 months the age of audited financial information that a terminated client can include in a prospectus used nine months after the effectiveness of an underlying registration statement.
- The Commission is waiving the requirement for Andersen clients to include in a registration statement the consent of Andersen to use audit reports for prior years for which a consent cannot be obtained; the issuer must include a copy of the latest signed and dated accountants' report issued by Andersen and include certain related disclosure if a reissued accountants' report cannot be obtained.
- Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The Commission is providing relief allowing the affected terminated clients to continue to use their unaudited financial statements for registration statements or any other purpose provided they obtain audited financial statements within 60 days of the original due date.

1. Benefits

The benefit of the temporary rules, like the Orders issued today, is the mitigation of disruption, uncertainty, lost opportunity, and other costs that, however unlikely, might be visited upon the market and the terminated clients. The temporary rules provide the market and the terminated clients with regulatory clarity to help address the disruption in an orderly fashion, and without expending more resources, or forsaking more opportunity, than is necessary.

First, by virtue of addressing and resolving certain questions, the temporary rules mitigate the costs to terminated clients from having to formulate capital-raising plans in an uncertain regulatory environment. It is unavoidable that the terminated clients will need to devote resources to

[150] In companion Orders issued today, we are providing relief under the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Public Utility Holding Company Act. This cost-benefit analysis addresses only the relief provided by these rule amendments.

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assessment and planning, but a principal benefit of the temporary rules is to facilitate that assessment and planning process by preemptively addressing questions that would arise concerning regulatory compliance.

Second, the temporary rules will help mitigate any possible disruptions to the capital-raising process. The terminated clients currently in registration, or planning to register securities in the very near term, may be unable to obtain audited financial statements in time to support registration statements. They may also face hardship in obtaining necessary consents from Andersen to include accountants' reports related to financial statements Andersen audited in prior years and obtaining a reissued accountants' report for use in future filings. Capital raising frequently is time-sensitive. By preserving for the terminated clients the option of going forward with their capital-raising plans, albeit subject to whatever market risk accompanies going forward with unaudited financial statements, the temporary rules afford issuers and investors a capital-raising and investment option that would otherwise be postponed and possibly lost altogether.

Third, the temporary rules will benefit certain terminated clients by extending a regulatory deadline that would be difficult, and perhaps impossible, to meet because of the transition to a new auditor. Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The temporary rules provide a reasonable regulatory accommodation for the terminated clients in that position.

2. Costs

As described above, the principal purpose of the temporary rules is to mitigate costs and uncertainties. Because the temporary rules, like the Orders issued today, provide optional compliance alternatives, any costs that they impose will be imposed only on those parties that choose to proceed pursuant to them. The terminated clients that opt to proceed pursuant to the temporary rules may incur costs associated with explaining the effect of filing unaudited financial statements, retransmitting financial statements, and obtaining new signatures for the second filing, with attendant liability.

The temporary rules may also impose certain other types of costs. One cost that may result from the rules is the unquantifiable cost of allowing the terminated clients to offer securities for a temporary period with unaudited, rather than audited, financial statements. That cost is borne both by investors, who may bear more risk than usual in purchasing the securities, and by the terminated clients, since that increased investor risk may create a less receptive market and a correspondingly higher cost of capital for those issuers.

The temporary rules limit the time during which potential investors in the securities will need to make investment decisions without the benefit of audited financial statements. The temporary rules do not mitigate the risk to those investors who do in fact purchase the securities in the period before the audited financial statements are filed, nor do they mitigate the risk to issuers that investors may be less receptive to their securities during that period.

Some costs may be associated with allowing a withdrawing client to use audited financial information that is up to 18 months old, rather than 16 months old, in a prospectus used nine months after the effectiveness of the underlying registration statement. The increased age of the information may mean that it is perceived by investors to be less reliable.

Costs may also accompany the waiver, for current and former Andersen clients, of the requirement that a registration statement include the consent of Andersen to use Andersen audit opinions for prior years. Because the registration statements will be supported by prior years' audit opinions that are not backed by the auditor's current consent, the temporary rules may generate a cost in that investors may have less confidence in the issuer's reported financial condition for those earlier years. Similar costs may be associated with the inability of issuers to obtain a reissued accountants' report.

The inability of Andersen clients to obtain Andersen's consent is a consequence of Andersen's status and not a consequence of the temporary rules. That inability alone, however, does not make it impossible for Andersen clients to comply with the consent requirement, since they could decide to retain a different auditor to re-audit prior years. Thus, while it is Andersen's status, and not the temporary rules, that may make it impossible to obtain the relevant consents from Andersen, the temporary rules create the possibility that the affected registration statements will be effective without those issuers otherwise complying with the consent requirement. Issuers may select the approach which they perceive to be most cost-effective.

Finally, there are costs associated with extending the deadline for filing audited financial statements by those terminated clients that expect to report a loss for a recently completed fiscal year or have reported losses for the past two fiscal years. As discussed above, the use of unaudited financial statements can result in unquantifiable costs to investors and issuers. The filing deadline serves a regulatory purpose that will be impeded temporarily because of the delay.

XIII. Regulatory Flexibility Act

The Regulatory Flexibility Act [151] does not apply to the rules we are adopting today. The Regulatory Flexibility Act only requires agencies to prepare analyses for rulemaking when the Administrative Procedure Act requires general notice of proposed rulemaking.[152] As noted above, the Commission is not required to solicit public comment because the Commission is using the expedited rulemaking procedures under section 553(b) of the Administrative Procedure Act.

XIV. Effects on Competition, Efficiency and Capital Formation

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts.

A. The Assurance Letter Requirement

We have considered what impact the assurance letter requirement will have on efficiency, competition, and capital formation. The requirement may promote efficiency to some degree by making available to markets information that it would not otherwise be available, at a de minimis cost to those that must supply the information. The assurance letter requirement will neither promote nor impede capital formation or competition, but will only help ensure the availability of relevant information to markets and investors.

B. The Temporary Rules

The temporary rules neither promote nor impede competition. The temporary rules give the terminated clients the option of proceeding with capital formation as intended before the announcement of Andersen's indictment. Absent the relief we are providing today, some terminated clients might be forced to postpone public offerings of securities until they engage a new auditor and obtain audited financial statements. By affording those terminated clients the option of proceeding, temporarily, with unaudited financial statements, the temporary rules reduce that obstacle to capital formation.

Some terminated clients have made, or will make, financial and economic decisions to raise capital based on their individual needs and will pursue plans toward that end. Absent the relief we are providing today, the temporary adjustments that the terminated clients would need to make to financial and other operations due to the postponement of those plans would likely entail overall inefficiencies in their capital-raising efforts. By giving those terminated clients the option to proceed, the temporary rules provide them with an alternative that would reduce or eliminate those inefficiencies.

We have considered whether the temporary rules promote competition. The temporary rules will neither promote nor impede competition. The terminated clients may have made plans for, and based expectations on, raising capital within a certain time frame. Absent the relief we are providing today, capital raising could be delayed. From this perspective, the temporary rules may well mitigate that possible effect.

We have also considered whether the temporary rules would impede competition by giving terminated clients a competitive advantage relative to other issuers. It might be suggested that other issuers would like to have the option of filing a registration statement with unaudited financial statements and only supplying audited financial statements sixty days later. We cannot conclude that the temporary rules create a competitive advantage for the terminated clients or otherwise impede competition. The terminated clients will be seeking capital without supplying investors with audited financial statements, while competing issuers seeking capital in the same markets will supply audited financial statements. This does not constitute a competitive advantage for the terminated clients. The temporary rules do not pose an impediment to competition or materially impede the competitive position of any issuer.

[151] 5 U.S.C. 601–612.

[152] 5 U.S.C. 603(a).

XV. Statutory Bases

The amendments contained in this release are being adopted under the authority set forth in Sections 2, 4, 6, 7, 8, 10, 19 and 28 of the Securities Act, as amended, Sections 3, 4, 10, 12, 13, 14, 15, 23 and 36 of the Exchange Act, as amended, and Sections 304, 305, 307, 308, 310, 314 and 319 of the Trust Indenture Act of 1939, as amended.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Text of the Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. By amending § 210.2–02 by adding paragraph (e) to read as follows:

§ 210.2–02 Accountants' reports.

* * * * *

(e) Paragraph (e) of this section applies only to registrants that are providing financial statements in a filing for a period with respect to which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") issued an accountants' report. Notwithstanding any other Commission rule or regulation, a registrant that cannot obtain an accountants' report that meets the technical requirements of paragraph (a) of this section after reasonable efforts may include in the document a copy of the latest signed and dated accountants' report issued by Andersen for such period in satisfaction of that requirement, if prominent disclosure that the report is a copy of the previously issued Andersen accountants' report and that the report has not been reissued by Andersen is set forth on such copy.

3. By adding Temporary Note 1T, Temporary Note 2T and Temporary Note 3T after the introductory note under the undesignated heading "General Instructions as to Financial Statements" preceding § 210.3–01 to read as follows:

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

* * * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms S–1, S–2, S–3, S–4, S–6, S–8, S–11, N–1, N–1A, N–2, N–3, N–4, N–5 or N–14 (§§ 239.11, 239.12, 239.13, 239.25, 239.16, 239.16b, 239.18, 239.15, 239.15A, 239.14, 239.17a, 239.17b, 239.24 or 239.23 of this chapter), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note. In the case of a registered investment company that files a new registration statement on Form S–6 other than an insurance company separate account, however, the relief provided by this note shall not extend to financial statements of the registered investment company itself.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d)) or, in the case of a registered investment company, has previously filed a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*) that has been declared effective by the Commission;

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)) (or Item 310(g) of Regulation S–B

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(§ 228.310(g) of this chapter) if the entity is a small business issuer) (or if the entity is a depositor for a registered unit investment trust and the entity is not subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d))) and is not a registered investment company;

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)) (or Item 310(g) of Regulation S–B (§ 228.310(g) of this chapter) if the entity is a small business issuer) and is not a registered investment company; or

(C) January 1, 2002 and April 15, 2002 in the case of a registered investment company;

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a "blank check company" as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the applicable registration form, but with unaudited financial statements that meet the timeliness requirements of Rule 3–01 of Regulation S–X (§ 210.3–01) or, for a registered investment company, Rules 3–12 and 3–18 of Regulation S–X (§§ 210.3–12 and 210.3–18) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter) based on the audited financial statements; (iii)A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer (other than a registered investment company) meets all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov);

(ii) If the issuer (other than a registered investment company) does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(iii) If the issuer is a registered investment company, the date shall be the earlier of:

(A) 6 months after the close of the fiscal year of the issuer; and

(B) The date on which an amended annual report to shareholders containing audited financial statements is filed in accordance with Release No. IC–25463 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides unaudited financial statements in a filing in reliance on Release No. 34–45589 (March 18, 2002) or Release Nos. IA–2017 and IC–25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33–8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**. The guidance provided by this note is intended to assist issuers in meeting their disclosure obligations under the federal securities laws. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Arthur Andersen LLP's (or a foreign affiliate of Arthur Andersen LLP's) former public company audit clients. To the extent this note requires disclosure on the cover page of a filing, if the subject filing does not have a cover page, present this information as a preface to the disclosure presented in response to the form.

(b) The issuers for which this temporary note applies must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elected not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements and a cross-reference to additional information contained in the filing.

(c) The issuer for which this temporary note applies also shall provide the prominent statement referred to in paragraph (b) of this note in the filing immediately before the financial statements and shall also disclose:

(1) A statement as to when and how the issuer intends to provide the audited financial statements; and

(2) A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

(d) Further, any audit report previously issued by Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) that is required to be included in a filing should be included as required.

(e) This temporary note will expire on December 31, 2002.

Temporary Note 3T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

5. By adding § 228.304T to read as follows:

§ 228.304T (Item 304T) Item 304T of Regulation S–B.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 228.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 228.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 228.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 228.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

6. By amending § 228.310 by adding Temporary Note 1T and Temporary Note 2T after the introductory notes to read as follows:

§ 228.310 (Item 310) Financial Statements.

Notes * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms SB–1, SB–2, S–3, S–4 or S–8 (§§ 239.9, 239.10, 239.13, 239.25 or 239.16b), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. §§ 78m(a) or 78o(d));

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Item 310(g) of Regulation S–B (§ 228.310(g)); or

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Item 310(g) of Regulation S–B (§ 228.310(g));

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a "blank check company" as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the timeliness requirements of Item 310(g) of Regulation S–B (§ 228.310(g)) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20 of this chapter).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer meets all of the conditions of Item 310(g)(2) of Regulation S–B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(ii) If the issuer does not meet all of the conditions of Item 310(g)(2) of Regulation S–B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

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(c) This temporary note will expire on December 31, 2002.

* * * * *

7. By adding § 228.601T to read as follows:

§ 228.601T (Item 601T) Item 601T of Regulation S–B.

Any issuer that may rely upon the alternative disclosure requirement of § 228.304T shall comply with § 228.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the registrant in response to § 228.304(c), the issuer must comply with § 228.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 228.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

9. By adding § 229.304T to read as follows:

§ 229.304T (Item 304T) Item 304T of Regulation S–K.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 229.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 229.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 229.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 229.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

10. By adding § 229.601T to read as follows:

§ 229.601T (Item 601T) Item 601T of Regulation S–K.

Any issuer that may rely upon the alternative disclosure requirement of § 229.304T shall comply with § 229.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the issuer in response to § 229.304(c), the issuer must comply with § 229.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 229.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

11. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 77*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

12. By adding § 230.401a to read as follows:

§ 230.401a Requirements as to proper form.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov), the filing of reports in accordance with the provisions of that Release shall result in those reports being "timely filed" for purposes of all form eligibility standards in registration statement forms under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

13. By adding § 230.427T to read as follows:

§ 230.427T Information in prospectuses more than nine months after the effective date of the related registration statement.

(a) Notwithstanding the language in Section 10(a)(3) of the Act (15 U.S.C. § 77j(a)(3)), until December 16, 2002, for a registrant that meets the eligibility requirements in paragraph (a)(1) of this section, the audited financial information in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be as of a date not more than eighteen months prior to such use; provided that the conditions specified in paragraph (a)(2) of this section are satisfied.

(1) *Eligibility requirements.* A registrant meets the eligibility requirements of this paragraph (a) of this section if:

(i) The registrant has an effective registration statement under the Act that is required to include financial statements for any entity that has a fiscal year ending between and including November 30, 2001 (or, in the case of a registered investment company, January 1, 2002) and April 15, 2002;

(ii) Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged, on or after March 14, 2002, as the independent public accountant to examine those financial statements for that fiscal year;

(iii) On or before March 14, 2002, the registrant had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements for that fiscal year;

(iv) The registrant is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(v) The registrant is not a "blank check company" as defined in § 230.419(a)(2) of this chapter.

(2) *Conditions.*

(i) A prospectus that is used more than nine months after the effective date of the registration statement of which that prospectus is a part includes unaudited financial information that is as of a date not more than sixteen months prior to such use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20 of this chapter).

(ii) The audited financial information referred to in paragraph (a)(1)(i) of this section in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) and the prospectus must include:

(A) A discussion of any material changes from the unaudited financial information; and

(B) Updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information.

(b) This temporary section will expire on December 31, 2002.

14. By amending § 230.428 by adding Instruction 2T to the Instructions following paragraph (b)(2)(iv) to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for Form S–8 registration statement; requirements relating to offerings of securities registered on Form S–8.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

Instructions.

* * * * *

2T. With regard to issuers that are eligible to rely on and are electing to comply with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33–8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**, until September 13, 2002 (or December 16, 2002 with respect to foreign private issuers), if the latest fiscal year has ended within 180 days (or 250 days with respect to foreign private issuers) prior to the delivery of documents containing the information specified by Part I of Form S–8 (§ 239.16b of this chapter), the issuer may deliver a document containing financial statements for the fiscal year preceding the latest fiscal year, provided that within the 180 or 250 day period a document containing financial statements for the latest fiscal year is furnished to each employee. This temporary instruction will expire on December 31, 2002.

* * * * *

15. By adding § 230.437a to read as follows:

§ 230.437a Written consents.

(a) This section applies only to registrants that:

(1) Are not a "blank check company" as defined in § 230.419(a)(2); and

(2) Are filing a registration statement containing financial statements in which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been acting as the independent public accountant.

(b) Notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this section may dispense with the requirement for the registrant to file the written consent of Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) as required by Section 7 of the Act (15 U.S.C. 77g) where:

(1) The registrant has not already obtained the written consent that would be required if not for this section;

(2) The registrant is not able to obtain the written consent after reasonable efforts; and

(3) The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

17. By adding § 240.12b–37 to read as follows:

§ 240.12b–37 Satisfaction of filing requirements.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) or Release No. IC–25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov), filings made in accordance with the provisions of those Releases shall satisfy the issuer's requirement to make such a filing under Section 13(a), 14 or 15(d) of the Act (15 U.S.C. 77m(a), 78n or 78o(d)), as applicable, and the Commission's rules and regulations thereunder.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

19. By amending Form 20–F (referenced in § 249.220f) by adding General Instruction A–T1. and General Instruction A–T2. after General Instruction A. to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

United States

Securities and Exchange Commission

Washington, D.C. 20549

Form 20–F

* * * * *

General Instructions

A. * * *

* * * * *

A–T1. Temporary Instructions Relating to Certain Financial Statements.

Notwithstanding any other Commission rule or regulation, every foreign private issuer meeting the eligibility requirements in paragraph (a) of this instruction that files a registration statement on Forms F–1, F–2, F–3, F–4 or S–8, or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this instruction.

(a) *Eligibility Requirements.* A foreign private issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act;

(2) Whose registration statement will include audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant on or after March 14, 2002, unless the foreign private issuer fits within Instruction 2 to Item 8 of Form 20–F, in which case the fiscal year can be between August 31, 2001 and April 15, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit

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report in respect of those financial statements; and

(5) That is not a "blank check company" as defined in Securities Act Rule 419(a)(2) (§ 230.419(a)(2) of this chapter).

(b) *Conditions.*

(1) The foreign private issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the required timeliness requirements for those financial statements as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP).

(2) The foreign private issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T of Article 3 of Regulation S–X (17 CFR 210.3–01 " 3–20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this instruction, the foreign private issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the foreign private issuer must file either a post-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this instruction; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this instruction. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the registrant's financial statements, selected financial data required by Item 3(a) of Form 20–F based on the audited financial statements;

(iii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or Form 20–F that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this instruction, the date shall be the earlier of:

(i) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(ii) The date on which an amended Form 20–F containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary instruction will expire on December 31, 2002.

A–T2. Temporary Instructions Relating to Certain Financial Statements

(a) This temporary note applies to any foreign private issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") after March 14, 2002 in a filing. The exact content of each foreign private issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The foreign private issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the foreign private issuer addressed to the Commission that states that Andersen has represented to the foreign private issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

20. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

21. By adding § 260.19a–1 to read as follows:

§ 260.19a–1 Compliance with Section 314(a)(1) of the Trust Indenture Act for certain eligible indenture obligors.

(a) This section is applicable only to an "eligible indenture obligor" as defined in paragraph (b) of this section.

(b) For purposes of paragraph (c) of this section, an "eligible indenture obligor" is any obligor that:

(1) Is required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange of 1934 (15 U.S.C. §§ 78m or 78o(d)) (the "Exchange Act"); and

(2) May rely on any of the provisions of Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (14 U.S.C. 78m or 78o(d)).

(c) An "eligible indenture obligor" that files with the indenture trustee those Exchange Act reports filed with the Commission in accordance with the Release referred to in paragraph (b)(2) of this section has met its duty under Section 314(a)(1) of the Act (15 U.S.C. 77nn(a)(1)) to "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934."

By the Commission.

Dated: March 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B and C to the preamble will not appear in the Code of Federal Regulations.

Appendix A

United States of America Before the Securities and Exchange Commission

Securities Exchange Act of 1934

Release No. 34–45589/March 18, 2002

Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP ("Andersen"), the Commission finds that the exemptions set forth below are necessary and appropriate in the public interest and consistent with the protection of investors.[1]

I. Accordingly, *it is ordered*, pursuant to Section 36 of the Securities Exchange Act of 1934 (the "Exchange Act"), that any one or more of theprovisions of Section I. of this order shall apply to any issuer:

- Whose report, registration statement, amendment or other documents referenced in this order will include financial statements the examination or review of which Andersen (or a foreign affiliate of Andersen) had been engaged, on or after March 14, 2002, as the independent public accountant;
- That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements (or a review report in the case of interim financial statements);
- That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements (or a review in the case of interim financial statements); and

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. See Release No. 33–8070 (March 18, 2002).

- That is not a "blank check company" as defined in Rule 419(a)(2) under the Securities Act of 1933.

The review referenced above is a review in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B).

1. *Annual Reports on Form 10–K/Form 10–KSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that is required to file an annual report on Form 10–K or Form 10–KSB may file its annual report for that fiscal year under the conditions below.

Conditions.

(a) The issuer timely files its annual report on Form 10–K or Form 10–KSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(b) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If the original filing was on Form 10–K and Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment.

2. *Quarterly Reports on Form 10–Q/Form 10–QSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal quarter ending between and including January 26, 2002 and June 15, 2002 that is required to file quarterly reports on Form 10–Q or Form 10–QSB may file its quarterly report for those fiscal quarters under the conditions listed below.

Conditions.

(a) The issuer timely files its quarterly report on Form 10–Q or Form 10–QSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with interim financial statements that have not been reviewed by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB);

(b) The issuer provides disclosure in the report similar to that reflected in the guidance included in Temporary Note 2T to Article 3 of Regulation S–X, as applicable;

(c) If upon completion of the review by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB) there is a change to the interim financial statements, the issuer must file an amendment to the report upon completion of the review presenting:

(1) The interim financial statements reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) A discussion of any material changes from the unreviewed financial statements filed originally; and

(3) Any other section of the quarterly report that should be amended, including without limitation, Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(d) If upon completion of the review there is not a change to the interim financial statements, the issuer must state in its quarterly report for the immediately succeeding fiscal quarter that the interim financial statements for the previous quarter had subsequently been reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), but no report of that independent public accountant need be presented.

3. *Annual Reports on Form 20–F.* Notwithstanding any other Commission rule or regulation, a foreign private issuer that has a fiscal year ending between and including August 31, 2001 and April 15, 2002 that is required to file an annual report on Form 20–F may file its annual report on Form 20–F for that fiscal year under the conditions listed below.

Conditions.

(a) The foreign private issuer timely files its annual report on Form 20–F within the period specified in Form 20–F (including any additional period for filing the report if the foreign private issuer relies on Exchange Act Rule 12b–25) responding to all items required by Form 20–F, but with unaudited financial statements for those financial statements as to the examination of which either Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP);

(b) The foreign private issuer provides disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The foreign private issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20–F (including any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements or unaudited reconciliation filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, the Operating and Financial Review and Prospects required by Item 5 of Form 20–F, to reflect any changes in the financial statements so filed by amendment.

4. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, an issuer that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 10–K or Form 10–KSB for its fiscal year ending between and including November 30, 2001 and April 15, 2002, its annual report on Form 20–F for its fiscal year ending between and including August 31, 2001 and April 15, 2002, its annual report on Form N–SAR for its fiscal year ending between and including December 15, 2001 and April 15, 2002 or its quarterly report on Form 10–Q or Form 10–QSB for its fiscal quarter ending between and including January 26, 2002 and June 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

5. *Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that files either a Schedule 14A or Schedule 14C that requires audited financial statements of an entity with a fiscal year ending between and including:

(i) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), (ii) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), or (iii)January 1, 2002 and April 15, 2002, if the entity is a registered investment company, may file unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002);

(b) The issuer's proxy statement or information statement responds to all items

required by Schedule 14A or Schedule 14C (taking into account paragraph I.6. below), but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the proxy statement or information statement disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X;

(d) The issuer must file either revised materials or amended documents incorporated by reference, as appropriate, not later than the date specified in paragraph I.5.(e) below, provided that this filing or amendment need not be made if the solicitation or corporate action has been completed by that date. Such filing or amended document shall present:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements if this information would otherwise have been required in the proxy statement or information statement;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents; and

(e) For purposes of paragraph I.5.(d) above:

(1) If the issuer meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B), the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with this Order;

(2) If the issuer does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B), the date shall be the earlier of (i) 106 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with this Order; and

(3) If the issuer is a registered investment company, the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be in the proxy statement or information statement and (ii) the date on which an amended annual report to shareholders containing audited financial information is filed in accordance with Release No. IC–25463 (March 18, 2002).

6. *Audit Committee Disclosures in Certain Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A or Schedule 14C may omit any disclosure required by Item 7(d)(3)(i) and Item 9(e) of Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C under the conditions listed below.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002).

(b) The issuer's proxy statement or information statement responds to all items required by Schedule 14A or Schedule 14C (taking into account paragraph I.5. above, if applicable) other than Items 7(d)(3)(i) and Item 9(e) for Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C for Schedule 14C.

(c) The issuer has not filed audited financial statements nor amended its Form 10–K or Form 10–KSB pursuant to paragraph I.1. above prior to sending its proxy statement or information statement to shareholders.

(d) The issuer includes information in its amended Form 10–K or Form 10–KSB (or, in the case of a registered investment company, in its amended annual report to shareholders) that responds to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A, if this information would otherwise have been required in the Schedule 14A or Schedule 14C.

7. *Rule 14a–3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14a–3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's proxy statement responds to all items required by Schedule 14A (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(e) The issuer announces in a press release, at the time it files its Form 10–K or Form 10–KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

8. *Rule 14c–3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files a Schedule 14C that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14c–3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's information statement responds to all items required by Schedule 14C (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(e) The issuer announces in a press release, at the time it files its Form 10–K or Form 10–KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

9. *Schedules TO.* Notwithstanding any other Commission rule or regulation, every issuer whose Schedule TO requires audited financial statements of an entity with a fiscal year ending between and including November 30, 2001 and April 15, 2002 may file the Schedule TO with unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer files its Schedule TO on or before September 13, 2002;

(b) The offering materials respond to all items required by Schedule TO, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the offering materials disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(d) The issuer must either file revised materials or amend documents incorporated by reference to provide the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen) not later than the earlier of (i) 60 days from the date the audited financial statements were required to be included in the Schedule TO and (ii) the date on which an amended Form 10–K or 10–KSB (or, in the case of a registered investment company, annual report to shareholders) containing audited financial statements is filed in accordance with this Order; provided that such filing or amendment shall not be required if the tender offer has been completed by such date. The revised materials or the periodic report which satisfies this requirement through incorporation by reference, must present:

(1) Those audited financial statements;

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged originally as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents.

II. *It is further ordered,* pursuant to Section 36 of the Exchange Act, that:

1. *Employee Benefit Plan Annual Reports on Form 11–K.* Notwithstanding any other Commission rule or regulation, employee stock purchase, savings and similar plans meeting the requirements in paragraph II.1.(a) below that are required to file annual reports on Form 11–K may file their annual report on Form 11–K for their fiscal year ending between and including November 30, 2001 and April 15, 2002 under the conditions listed in paragraph II.1.(b) below.

(a) *Eligibility Requirements.* This paragraph II.1. applies to an employee stock purchase, savings or similar plan:

(1) That is subject to Section 15(d) of the Exchange Act;

(2) That is not subject to the Employee Retirement Income Security Act of 1974;

(3) That has a fiscal year ending between and including November 30, 2001 and April 15, 2002;

(4) Whose report for such period will include financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant on or after March 14, 2002;

(5) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements;

(6) That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements; and

(7) Where the issuer of the stock or other securities offered to employees through their participation in the plan is not a "blank check company" as defined in Rule 419(a)(2) under the Securities Act of 1933.

(b) *Conditions.*

(1) The plan timely files its annual report on Form 11–K within the period specified in Form 11–K (including any additional period for filing the report if the plan relies on Exchange Act Rule 12b–25) responding to all items required by Form 11–K, but with unaudited plan financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(2) The plan provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report;

(3) The plan files an amendment to the report within 60 days of the original due date for filing (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(i) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the annual report that should be amended to reflect any changes in the financial statements so filed by amendment.

(4) Notwithstanding paragraphs II.1.(b)(1)–(3) above, if the plan elects to use the alternative filing procedure in Exchange Act Rule 15d–21:

(i) Unaudited plan financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant must be filed in the annual report on Form 10–K, Form 10–KSB or U5S of the issuer, or an amendment thereto, within 120 days after the end of the fiscal year of the plan;

(ii) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report with respect to the plan;

(iii) An amendment must be filed to such report within 180 days after the end of the fiscal year of the plan, presenting:

(A) The audited financial statements that would have been required for the plan where Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(B) A discussion of any material changes from the unaudited financial statements filed originally; and

(C) Any other section of the annual report related to the plan that should be amended including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(iv) Notwithstanding paragraphs II.1.(b)(4)(i)–(iii) above, a plan whose fiscal year ends within 62 days prior to the end of the fiscal year of the issuer may elect to file the audited plan financial statements as a part of the issuer's next annual report pursuant to Exchange Act Rule 15d–21(b).

2. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, every plan meeting the eligibility requirements in paragraph II.1.(a) above that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 11–K for its fiscal year ending between and including November 30, 2001 and April 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

III. *It is further ordered,* pursuant to Section 36 of the Exchange Act, that:

1. *Rule 17a–5.* A registered broker-dealer with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to conduct the broker-dealer's annual audit pursuant to Exchange Act Rule 17a–5(d) as of a date between and including January 14, 2002 and April 15, 2002, and for which the manually signed audit report has not been received on or before March 14, 2002, may (i) file its audited financial statements within 60 days after the date the statements would otherwise have been required to have been filed under Exchange Act Rule 17a–5(d)(5); and (ii) comply with the requirements of Exchange Act Rule 17a–5(c)(2) by furnishing unaudited statements to customers and other persons set forth in Exchange Act Rule 17a–5(c)(1) within 105 days after the date as of which audited statements were to have been prepared. The unaudited statements shall contain the information specified in Exchange Act Rule 17a–5(c)(2)(i) and (c)(2)(ii).

2. *Rule 17Ad–13.* A registered transfer agent with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to prepare a report concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds pursuant to Exchange Act Rule 17Ad–13(a), and for which the manually signed report has not been received on or before March 14, 2002, may file the report pursuant to such paragraph within 60 days after the date the report otherwise would have been required to have been filed.

By the Commission.

Jonathan G. Katz.

Secretary.

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Appendix B

United States of America Before the Securities and Exchange Commission

Investment Company Act of 1940

Release No. IC-25463/March 18, 2002

Investment Advisers Act of 1940

Release No. IA-2017/March 18, 2002

Order Under Sections 6(b), 6(c), and 38(a) of the Investment Company Act of 1940 and Sections 206A and 211(a) of the Investment Advisers Act of 1940 Granting Exemptions From Certain Provisions of the Acts and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP ("Andersen"), the Commission finds that the exemptions set forth below:

- Are necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act of 1940 (Company Act) and Investment Advisers Act of 1940 (Advisers Act); and
- Are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Company Act and Advisers Act.[1]

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, IT IS ORDERED, pursuant to Sections 6(b), 6(c), and 38(a) of the Company Act and Sections 206A and 211(a) of the Advisers Act:

I. Selection of Auditors by Investment Companies

1.(a) A registered management investment company, registered face amount certificate company or a business development company:

(i) Whose financial statements for its last fiscal year were audited by Andersen, had not selected its independent public accountant on or before March 14, 2002, and whose fiscal year ends on or before April 15, 2002, is exempt from the requirement of Section 32(a) of the Company Act and Rule 32a–3 thereunder that such company select its independent public accountant within the time periods specified by Section 32(a) or rule 32a–3, provided that it selects its independent public accountant other than Andersen no later than 60 days after it otherwise would have been required to select the independent public accountant; or

(ii) That had selected Andersen as its independent accountant on or before March 14, 2002, and terminates the appointment may, notwithstanding any provision of Section 32(a), select another independent public accountant by vote of a majority of those members of the board of directors who are not interested persons of the registered investment company.

(b) A registered management investment company, registered face amount certificate company or a business development company that selects an independent public accountant pursuant to paragraph I.1.(a) of this Order is exempt from the provisions of Section 32(a) that require that the selection be made by a vote of a majority of those members of the board of directors who are not interested persons, cast in person at a meeting called for that purpose, provided that such votes are instead cast at a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

II. Custody of Investment Company Assets

1. *Self-Custody.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002, and which has engaged Andersen for the purpose of verifying assets pursuant to Rule 17f–2, 6e–2 or 6e–3(T) under the Company Act and elects to terminate such engagement is exempt from the requirement of those rules that an independent public accountant conduct an actual examination of such assets at least three times during the company's fiscal year, provided the examinations required by the rules are conducted by an independent public accountant other than Andersen no later than 60 days from the date they were required to be conducted.

2. *Custody with a Member of a National Securities Exchange.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002 that has engaged Andersen for the purpose of verifying assets held with a member of a national securities exchange pursuant to Rule 17f–1 under the Company Act and elects to terminate such engagement is exempt from the requirement that an independent public accountant conduct an examination of such assets at the end of the annual fiscal period, semiannual fiscal period and at a time chosen by the accountant, provided that:

(a) The actual examinations are conducted by an independent public accountant other than Andersen no later than 60 days after the date they were required to be conducted; and

(b) In the case of a semiannual or annual verification, the assets are verified as of the end of the annual or semiannual fiscal period.

III. Reports and Registration Statements by Investment Companies

1. The relief provided in Section III of this order shall apply to a registered investment company:

(a) Whose report, registration statement, or amendments referenced in this order will include financial statements or are based on financial statements the examination of which Andersen had been engaged, on or after March 14, 2002, as the independent public accountant;

(b) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect of those financial statements; and

(c) That is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report in respect of those financial statements.

2. *Annual Reports on Form N–SAR.* A registered management investment company or a unit investment trust having a fiscal year ending between and including December 15, 2001 and April 15, 2002 is exempt from the requirement of Rule 30a–1 under the Company Act to file an annual report to the Commission on Form N–SAR containing financial information based upon audited financial information and without a report of independent accountants on internal controls, provided that such company or trust:

(a) Files Form N–SAR within 60 days of the end of its fiscal year (or 75 days in the case of a company or trust relying on Rule 12b–25 under the Securities Exchange Act of 1934 ("Exchange Act")) responding to all items required by the form, but with financial information based upon unaudited financial statements, and includes disclosure in an exhibit to the form explaining that financial information in the report is based upon unaudited financial statements because the company or trust was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

(b) Files an amendment to its Form N–SAR no later than 60 days from the date it was required to file Form N–SAR (excluding any additional time period for filing the additional report if the company or trust relied upon Rule 12b–25 under the Exchange Act for the filing of that report) that contains (i) financial information based upon financial statements audited by an independent public accountant other than Andersen, (ii) a report of independent accountants on internal controls issued by an independent public accountant other than Andersen, and (iii) an exhibit that provides a discussion of any material changes from the financial information based upon the unaudited financial statements filed originally and identifies the items of the company's or trust's Form N–SAR that were revised as a result of the amendment.

3. *Annual Reports to Shareholders.* A registered management investment company or a unit investment trust having a fiscal year ending between and including January 1, 2002 and April 15, 2002, is exempt from the requirement of Rule 30e–1 under the Company Act (and registration forms to which the Rule refers) to transmit to each shareholder of record an annual report containing audited financial statements, provided that the company or trust:

(a) Transmits to its shareholders within 60 days after the close of its fiscal year (and files with the Commission no later than 10 days thereafter) an annual report responding to all items required by the appropriate form, but with (i) unaudited financial statements, and (ii) disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X;

(b) Files with the Commission no later than 60 days from the date it was required to file the annual shareholder report an amendment to its shareholder report containing (i) the financial statements audited by an independent public accountant other than Andersen, (ii) a discussion of any material changes from the unaudited financial statements filed originally, and (iii) changes to any other section to reflect any changes in the financial statements filed by amendment; and

(c) In the case of a closed-end management company, announces, at the time it files its amendment that includes financial statements audited by an independent public accountant other than Andersen, that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the company's website, citing the address, if the company has a website; provided that this announcement need not be made if the company's solicitation or corporate action has been completed prior to the time that these audited financial statements are filed.

4. *Amendments to Investment Company Act Registration Statements.* A registered management investment company that has (i) a fiscal year ending between and including January 1, 2002 and April 15, 2002, and (ii) timely filed a report on Form N–SAR as provided in paragraph III.2. of this order, is exempt from the requirement of Rule 8b–16 under the Company Act to amend its registration statement within 120 days of the end of its fiscal year, provided that the company files the amendment not later than six months after the end of the fiscal year.

IV. Balance Sheet Requirement for Certain Investment Advisers

A registered investment adviser that (i) is required by Item 14 of Part II of Form ADV under the Advisers Act to furnish a balance sheet audited by an independent public accountant, (ii) had engaged Andersen (or a foreign affiliate of Andersen) as an independent public accountant to examine the balance sheet to be included in Form ADV; (iii) had not, on or before March 14, 2002, obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen); (iv) is unable to or elects not to have Andersen issue a manually signed audit report from Andersen in respect of that balance sheet; and (v) has a fiscal year ending between and including December 1, 2001 and April 15, 2002, is exempt from the requirement of Rule 204–3 of the Advisers Act to furnish (in the case of a prospective client) or offer (in the case of a client) Part II of Form ADV (or a written disclosure statement) that contains an audited balance sheet, provided that:

1. The adviser furnishes or offers to furnish to prospective clients and clients on a timely basis Part II of Form ADV (or a written disclosure statement containing at least the information required by Part II) responding to all items required by Form ADV, but with an unaudited balance sheet, and discloses prominently on Schedule G (or the written disclosure statement) that an audited balance sheet is unavailable because the adviser was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

2. The adviser amends its Part II (or written disclosure statement) to include a balance sheet examined by an independent public accountant other than Andersen no later than 60 days from the date it was required to update its Part II (which amendment is not required to be submitted to the Commission).

V. Exemptive Orders

An investment company, investment adviser, employees' securities company or other person relying on a Commission exemptive order issued under the Company Act or the Advisers Act that requires (either as a result of a representation made by the applicant or condition of the order) the involvement of an independent public accountant or independent representative (who may be an independent public accountant), that, on or after March 14, 2002, had engaged but is no longer able to obtain such services from Andersen or elects not to continue to engage Andersen shall not be deemed to have violated the terms or conditions of the order provided:

1. In the case of a report that must be furnished periodically or an audit that must be conducted annually, the report is furnished or audit is conducted by an independent public accountant other than Andersen no later than 60 days after the report was otherwise required to be furnished or the audit was otherwise required to be conducted; and

2. In the case of ongoing transactions that must be reviewed by the independent public accountant (or independent representative), the transactions are effected without the review, provided that the company or adviser engages an independent public accountant (or independent representative) other than Andersen no later than May 15, 2002, and that new engagement requires the independent public accountant (or independent representative) to review the transactions effected during the interim period.

By the Commission.

Jonathan G. Katz,
Secretary.

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. *See* Investment Company Act Release No. 25464 (March 18, 2002).

Appendix C

United States of America Before the Securities and Exchange Commission

Public Utility Holding Company Act of 1935

Release No. 35–27502/March 18, 2002

Order Under Sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP ("Andersen"), the Commission finds that the exemptions set forth below are necessary and appropriate to the exercise of the powers conferred on it by the Public Utility Holding Company of 1935.[1]

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, *it is ordered*, pursuant to sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935:

I. Annual Reports on Form U5S

(1) Notwithstanding any other Commission rule or regulation, every registered public utility holding company that is required to file an annual report on Form U5S and

(a) That has a fiscal year ending from November 30, 2001 to April 15, 2002, and

(b) That meets the requirements of Section I of Securities Exchange Act of 1934 Release No. 45589 (March 18, 2002) ("1934 Act Order")

may file its annual report on Form U5S for its fiscal year ending from November 30, 2001 to April 15, 2002 under the conditions listed in paragraph (2) below. Reports filed pursuant to this order shall be deemed to have satisfied the registered public utility holding company's requirement to file an annual report for such period under section 14 of the Public Utility Holding Company Act and the Commission's rules and regulations thereunder.

(2) *Conditions:*

(a) The registered public utility holding company files its annual report on Form U5S within the required period, responding to all items required by the form except for any item requiring that (i) the registered public utility holding company provide material including audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant or (ii) the registered public utility holding company provide an opinion of an independent public accountant that would have been provided by Andersen;

(b) With respect to any annual report required to be incorporated by reference in Exhibit A to Form U5S, the registered public utility holding company incorporates by reference an annual report that complies with paragraphs I.1.(a) and I.1.(b) of the 1934 Act Order;

(c) With respect to any amendment to an annual report required by paragraph I.1.(c) of the 1934 Act Order, the registered public utility holding company files the amendment as an amendment to its Form U5S filing on the same day and amends any other section of its Form U5S filing that should be updated as a result; and

(d) With respect to "the opinion of the independent accountants" required by Exhibit F to Form U5S, the registered public utility holding company files as an amendment to its Form U5S filing the opinion within 60 days of the original due date of the Form.

II. Computations Required by Certain Rules and Orders

With respect to any computation required by rule 53(a)(1) or rule 58(a)(1) or any similar

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. *See* Release No. 33–8070 (March 18, 2002).

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computation required by a Commission order issued under sections 53, 54 or 58 of the Public Utility Holding Company Act of 1935, a registered public utility holding company which is filing annual reports on Form 10–K or quarterly reports on Form 10–Q in reliance on the exemptions provided in the 1934 Act Order may rely on the financial statements included in those filings in performing the required computations.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6947 Filed 3–19–02; 4:54 pm]

BILLING CODE 8010–01–P



Federal Register

Friday,
March 22, 2002

Part VIII

Federal Emergency Management Agency

44 CFR Part 62

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers; Final Rule

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD17

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are launching a three-year pilot project that will permit governmental risk-sharing pools to sell flood insurance to public entities under the National Flood Insurance Program's Write Your Own (WYO) effort. We are limiting the participants in this pilot effort to a maximum of six such insurers that are able to provide flood insurance only to public entities for their public buildings. The participants in this pilot effort must comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate in the WYO program. This final rule includes the eligibility criteria for participation in the pilot and an addendum to the WYO Arrangement that construes the term "the company" used in the Arrangement to mean not only WYO companies but also the insurers selected for this pilot.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–4335, or (e-mail) *Edward.Pasterick@fema.gov*.

SUPPLEMENTARY INFORMATION: On May 8, 2001, we published at 66 FR 23200 a proposed rule that would add, on a pilot project basis, a new category of insurer to the National Flood Insurance Program (NFIP)'s Write Your Own (WYO) system. We proposed the pilot to be for three years with participation limited to no more than three intergovernmental risk-sharing pools sponsored by State municipal leagues.

Our stated purpose for the pilot was to use the WYO program as a model for serving the flood insurance needs of municipalities. We said in the proposed rule, "One of the inherent strengths of the WYO program, and one of the reasons for its success, is that private insurance companies, writing property insurance for other perils such as wind and fire, provide convenient access to flood insurance coverage for their customers in need of flood insurance protection. This model may also apply to the unique relationship that public entity insurers, especially State municipal league-sponsored or other intergovernmental risk-sharing pools . . . enjoy with local governments."

We proposed the pilot in response to several organizations—several such risk pools and the National League of Cities—that asked us to consider permitting intergovernmental risk pools sponsored by State municipal leagues to sell flood insurance on a limited basis under the WYO program. We considered the request and agreed to propose such an expansion of the WYO program, but only on a pilot project basis. We saw the pilot as a controlled extension of the proven WYO approach—to use available mechanisms in the insurance marketplace to protect property owners from the peril of flood loss.

We also presented the proposal, during its formative stages and before its publication as a proposed rule, to WYO companies and associations for flood insurance producers. The WYO companies and these associations raised concerns about the proposal. We summarize their concerns under the "Comments" section.

In sum, our intention for the pilot has been to determine whether the WYO model would be as successful in the public sector as it has been in the private sector. Using the WYO model we want to see whether the governmental risk pools selected for the pilot will provide more convenient and direct access for municipal governments to obtain flood insurance coverage. We have decided after careful consideration of the public comments on the proposed rule to proceed with the pilot with a number of modifications.

Comments: Summary

During the comment period, we received fifteen written submissions from the public. The following submitted comments on the proposed rule:

- One State Executive Department,
- One international association,
- One insurance agency,
- Two private WYO insurance companies,
- Four national associations, and
- Six State Municipal leagues.

In addition to the written comments, we heard comments from representatives of two national associations—the National League of Cities (NLC) and the National Association of Counties (NACo)—at a meeting on June 20, 2001. FEMA's Office of the General Counsel, in coordination with the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, facilitated that meeting. We recorded the comments offered by the two national associations and made them part of the docket for this rule. We summarize that meeting and our decisions under a separate heading of this section.

The public generally favored the proposal. Twelve of the written submissions supported the pilot project while three objected to the proposal. Four of those in support of the proposal expressed an interest in participating in the pilot project.

Each of the following sections treats issues raised by the submitters and explains our reasons for accepting, rejecting, or modifying a given recommendation. We also add a section that summarizes the content of the June 20, 2001 meeting that is included in the rule's docket. Additionally, one set of comments was submitted well after the end of the comment period; however, we considered those comments as well and discuss them in a separate section.

Proposed Pilot: Creating Non-Insurance Company Competitors

Two private insurance companies expressed concern that the pilot would create "non-insurance company" competition for the WYO companies "that may or may not be subject to the same requirements as the WYO participants."

We modeled the participation criteria for the pilot's participants in 44 CFR 62.24(b) on the participation standards that WYO companies have had to meet under 44 CFR 62.24(a). Also, the pilot participants will participate under the same WYO Arrangement that WYO companies do. To ensure consistent standards and requirements, we added an addendum to the WYO Arrangement that expands the definition of "WYO company" to include the public entity insurers that will participate in the pilot. As a result, the pilot participants will be subject to the same requirements for customer service, reporting, financial management, and administration that the private WYO insurance companies must meet.

We would point out that the participants in the pilot project will not be able to sell flood insurance coverage to private consumers—homeowners, business owners, condominium associations, or the owners of multi-family dwellings. They may sell flood insurance only to public entities for their public buildings. Conversely, WYO companies may still sell flood insurance to public entities for their public buildings as well as to homeowners, business owners, condominium associations, and the owners of multi-family dwellings. The pilot project will not change that.

Use of Cover America II To Promote Flood Coverage for Public Buildings

The two private insurance companies objecting to the proposal asked whether the market of public buildings was in fact an "under-penetrated" market. If so, the WYO companies suggested that, instead of launching a pilot project, we should use the NFIP's marketing campaign, Cover America II, to increase education and awareness among municipalities that may need flood insurance protection for their public buildings. The commenters suggested that we target mailings to municipalities for their public buildings and launch awareness and education efforts with municipal leagues, instead of implementing the pilot.

Whether the pilot will serve an "under-penetrated" market was not a major factor in proposing the pilot. Rather, the primary purpose of the pilot is to extend to another category of insurer and client the same opportunity for full service that is currently enjoyed by private WYO companies and their policyholders. At the same time, any increase in market penetration resulting from the pilot will be welcome.

We believe using our marketing and education efforts to target public entities is a good suggestion, but it is not a mutually exclusive option to launching the pilot. We plan to look into such a marketing and education effort with the view of increasing the number of public buildings protected by flood insurance. The pilot project will be one of several measures we will use to accomplish that objective.

Cost of Flood Insurance as Deterrent to Sales

The two companies objecting to the pilot, and one municipal league in support of the proposal, believed that public entities have not bought flood insurance to date for their public buildings because of the cost of coverage. The pilot will provide a good opportunity to examine this.

We will also be interested to see whether the convenience for public entities in dealing with one insurance vehicle for all lines of property coverage will increase flood insurance coverage of public buildings in the selected States.

Expansion of the Pilot

Two national associations—the Association of Governmental Risk Pools (AGRIP) and the National Association of Counties—recommended that we expand the pilot project to permit other interested public-entity pools, including county pools, to participate. AGRIP, however, said that a pilot is unnecessary arguing that the need is already clear.

We disagree with the position that a pilot is unnecessary; we believe that we need a pilot project to demonstrate whether using governmental risk-pools will be a useful vehicle for meeting the flood insurance needs of municipal governments and for meeting the standards of the program. We agree, however, with AGRIP and NACo that the expansion of the pilot is warranted.

In the preamble of the proposed rule, we said that the pilot would consist of three intergovernmental risk-sharing pools sponsored by State municipal leagues. As we mentioned earlier, two other national organizations—NACo and AGRIP—that represent the interests of risk pools asked that we expand the scope of the pilot to permit their members to be considered for the pilot as well. Those comments have merit.

We have agreed therefore to expand the scope of the pilot to permit eligible entities from each of these national associations to participate in the pilot. Due to the limitations on NFIP resources, however, we must at this time limit the expanded pilot to a maximum of six participants. In order to ensure that participation in the pilot is fair, representative, and equally distributed among various kinds of governmental risk pools, we will accept two nominations each from NLC, NACo, and AGRIP for this WYO pilot. This represents a doubling of the scope of pilot, which we originally proposed.

Each of the national associations representing governmental risk pools—NLC, NACo, and AGRIP—will nominate two of its interested members to participate in the pilot. We will then review the applications of all candidate organizations and accept up to six organizations that meet our criteria as set forth in the NFIP's regulations, 44 CFR 62.23 and 62.24.

Criteria for Participation

AGRIP recommended a number of changes to 44 CFR 62.23 and 62.24 that would be inclusive enough to accommodate other public entity pools. We believe our language in the proposed rule is already inclusive enough to accommodate such entities and that was certainly our intention in drafting the proposal. And while we have not adopted every change in wording recommended by AGRIP, we have modified the criteria for participation in section 62.23 and 62.24 to ensure that the pilot is open not only to intergovernmental risk-sharing pools sponsored by State municipal leagues but also county pools and other governmental risk pools. For instance, in section 62.23(b), we say that "the term 'WYO company' shall include public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, and other intergovernmental risk-sharing pool entities for covering public entity structures." We maintain the position that those eligible for the WYO program under this pilot must be an entity already acting as an insurer, that is, an organization that provides property and liability coverage and is subject to State oversight.

Questions

In addition to the questions we have addressed in the preceding sections, one State, which sponsors a local government property insurance fund ("Fund"), asked specific questions on the program's implementation. We restate those questions followed by our answer.

Question: How will, or could participation in the pilot project affect compliance with FEMA (disaster) guidelines? For example, by participating in the pilot program could Fund members, if they elect not to purchase flood coverage, be held to a different (higher) standard of compliance, as it relates to FEMA eligibility guidelines.

Answer: Fund members will not be held to a higher standard.

Question: The Fund does not employ or use agents. Does the Fund need to become an Agent of Record, or appoint an Agent of Record to receive commissions on its behalf? Could the NFIP commissions be paid directly to the Fund?

Answer: Under the WYO program, a portion of the expense allowance—the portion of the premium income that a participating insurer retains—provides for a 15% agent commission; however, it does not have to be used to pay for commissions if a participating insurer does not use agents. (One of the private companies participating in the WYO program does not use agents in selling flood insurance.)

Question: Can separate service fees be paid directly to the Fund for administering/ servicing the NFIP WYO program? If so, what are those fees and how would they be calculated.

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Answer: We do not pay service fees directly to participating insurers. Under Article III of the WYO Arrangement, participants retain a certain percentage of the premium for selling and servicing flood insurance. We call the amount of premium participants retain the "expense allowance."

Question: Are there any plans for the FEMA/NFIP Application to be streamlined or tailored to the governmental entities in the pilot project?

Answer: No, there are no such plans.

Question: What type of bank account is envisioned to process premium collections and claim payments for a governmental risk-sharing insurer?

Answer: The WYO Arrangement and the WYO Program's Financial Control Plan call for the participating WYO entity to deposit premiums into a separate, restricted account. Article II of the Arrangement requires the participating WYO company to "separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing, for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III."

Question: Do the FEMA/NFIP Flood Zone maps have a global position or plotting feature whereby the Fund can access them electronically? Can the Fund enter an address or location co-ordinate and automatically determine what Flood hazard Zone or Area the building or location is situated?

Answer: The NFIP does not provide such a service. There are private enterprises called Flood Zone Determination Companies that provide such a service for a fee. Those interested in acquiring such services may find a list of Flood Zone Determination Companies on FEMA's Web site at *www.fema.gov* under "Flood Zone Determination Companies."

Question: What types of training programs are available for training and support of producers or administrative staff, if * * * (we) are selected as one of the candidates for the pilot program?

Answer: The NFIP's Bureau and Statistical Agent conducts training for all the program's major stakeholders, including the WYO companies. We plan during the early implementation of the pilot program for the NFIP Bureau to conduct such specialized training for the selected participants.

Meeting of FEMA and Stakeholders

On June 20, 2001, FEMA's Office of the General Counsel, the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, and the Deputy Administrator for the Federal Insurance and Mitigation Administration met with representatives of the NLC and NACo. The NLC and NACo had asked for the meeting so that they could offer comments on the proposed rule, in addition to their written comments, and get clarification on several issues. We made the recorded minutes of that meeting part of the official docket for this rule and they are available upon request from FEMA's Rules Docket Clerk, 500 C Street, SW., Washington, DC 20472.

At the meeting, representatives for NLC and NACo asked whether there was any flexibility for expanding the pilot to accommodate other kinds of qualified pools. The Deputy Administrator responded that the scope of the pilot resulted from ongoing work between FEMA, the NLC, and several of its members that had expressed an interest in providing flood insurance to its members. One representative from NACo stressed that "we want to be part of the pilot and [can] identify a * * * (member) that is doing a good job." The enthusiasm and support by NACo both at the June 20, 2001 meeting and in written comments submitted to the FEMA Rules Docket, as well as the written comments of AGRIP, have prompted us to expand the pilot to accommodate other governmental risk pools. We will ask the NLC, NACo, and AGRIP each to nominate two of its interested and potentially qualified members to us for consideration in the pilot.

Additional Comment

One national association of insurance agents submitted written comments well after the close of the comment period. We reviewed those comments but did not find them persuasive. The association "does not believe that a new delivery system would change the mindset of public entity risk pools, a market segment that has never been willing to pay the price for flood coverage recommended to them in the past."

Our philosophy is that we wish to use and, in this case, test every available mechanism within the marketplace that can help property owners—private and public to protect their interests with flood insurance. The finite nature of the pilot will help us evaluate the effectiveness of applying the successful WYO model to the public sector as well. We believe the pilot's restriction that the pilot's participants may only sell flood insurance to public entities and then again only for their public buildings will preserve the unique relationship that private insurance companies and agents have with their private customers—a market excluded from the participants of this pilot. Conversely, the pilot does not preclude agents and companies from marketing to public entities in addition to their private customers.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this rule is to launch a three-year pilot project that will permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's WYO effort.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule will accomplish one primary purpose: To determine the merit of permanently expanding the WYO program to permit State municipal league-sponsored and other governmental risk-sharing pools to sell flood insurance to public entities to cover their buildings against flood loss. The rule will permit us to analyze the three-year pilot project to determine the merit of permitting such insurers to be eligible to sell flood insurance permanently under the WYO program. There are no major economic impacts resulting from implementation of this rule. Rather, the rule will add a new marketing avenue for writing flood insurance for public buildings.

The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Act, a person does not have to respond to and may not be penalized for failing to comply with an information collection that does not display a currently valid OMB.

The Office of Management and Budget has approved the use of the following information collection requirements for use by a maximum of six pilot participants in the newly added governmental risk-sharing pools category of insurer under the Write Your Own (WYO) program. The criteria for participating in the program are contained in FEMA regulation 44 CFR 62.23(a) and 62.24 and Appendixes A and B of part 62. The information collections are:

Title: Write Your Own (WYO) Program, OMB Number 3067–0169, expiration date March 31, 2002, hour burden—33 minutes per respondent; and

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants, OMB Number 3067–0259, expiration date April 30, 2002, hour burden—7 hours per respondent.

FEMA did not receive any comments on the need for the information, the accuracy of the burden estimate, cost to the respondents, or the methods for minimizing burden on the respondents during the review and comment period for the proposed rule.

Addressee: Interested persons should submit comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 on or before April 22, 2002. Comments may also be sent to the Chief, Records Management Branch, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule revises the NFIP regulations to launch a three-year pilot project that permits governmental risk sharing pools to sell insurance to public entities under the NFIP's WYO Program. We will limit the participants to six such insurers that will be able to provide flood insurance only to public entities for public buildings. Participation in the pilot program is voluntary.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule adds a new category of insurer under the WYO program—an insurer that would provide another marketing avenue to protect public buildings from flood loss. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have. We have, nevertheless, consulted with local officials, with the National League of Cities, the National Association of Counties, the Association of Governmental Risk Pools, Write Your Own companies, and several State municipal leagues. We have welcomed their valuable comments, and this rule has benefited from their comments.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Revise paragraphs (a) and (b) of section 62.23 to read as follows:

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§ 62.23 WYO Companies authorized.

(a)Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under these arrangements, such companies or other insurers may offer flood insurance coverage under the program to eligible applicants. Such WYO companies may offer flood coverage to policyholders insured by them under their own property business lines of insurance, pursuant to their customary business practices, including their usual arrangements with agents and producers. WYO companies may sell flood insurance coverage in any State in which the WYO company is authorized to engage in the business of property insurance. Other WYO insurers may offer flood insurance coverage to their pool members insured by them under their own property business lines of coverage, pursuant to their customary business practices. These other WYO insurers may provide flood coverage in any State that has authorized the other insurer to provide property coverage to its members. Arrangements entered into by WYO Companies or other insurers under this subpart must be in the form and substance of the standard arrangement; titled "Financial Assistance/Subsidy Arrangement," a copy of which is included in appendix A of this part and made a part of these regulations.

(b)Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term "WYO Company" shall include the following kinds of insurers: Public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and other intergovernmental risk-sharing pool for covering public entity structures.)

* * * * *

3. Revise section 62.24 to read as follows:

§ 62.24 WYO participation criteria.

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

(1) Be a licensed property insurance company;

(2) Have a five (5) year history of writing property insurance;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit information, as data become available, to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO program, which will end September 30, 2004, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the other insurer's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the other insurer meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where an already qualified performer will fulfill the applicant's reporting requirements, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d)To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant will submit information concerning its plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicants will also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farm-owners multiple peril, homeowners multiple peril, and commercial multiple peril policies or coverage documents in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

Addendum to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, Financial Assistance/Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures participating in the pilot project established in § 62.24(b) that permits intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

(1) "Company" in the preceding Arrangement includes "a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures."

(2) The references to "marketing guidelines" in Article II—Undertaking of the Company and to "marketing goals" in Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 12, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6920 Filed 3–21–02; 8:45 am]

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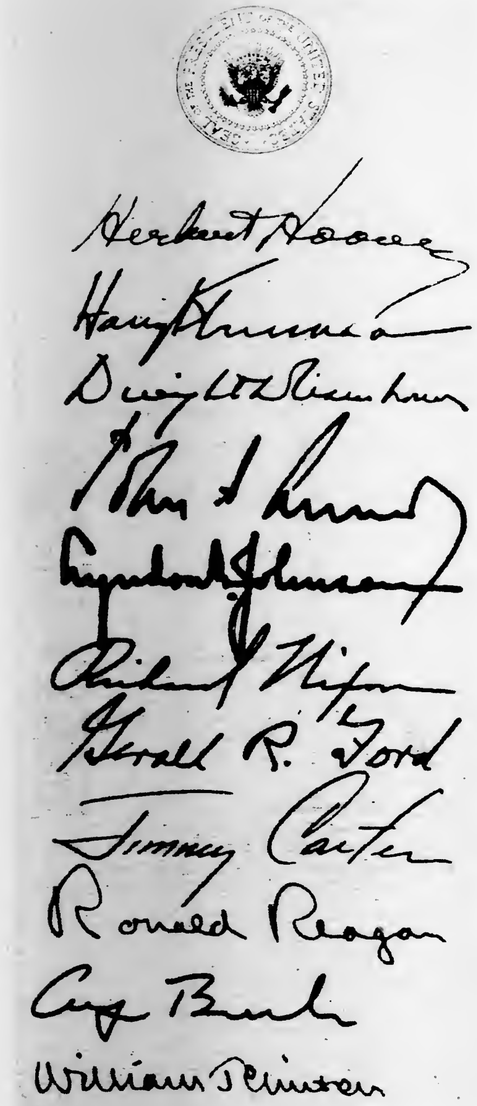
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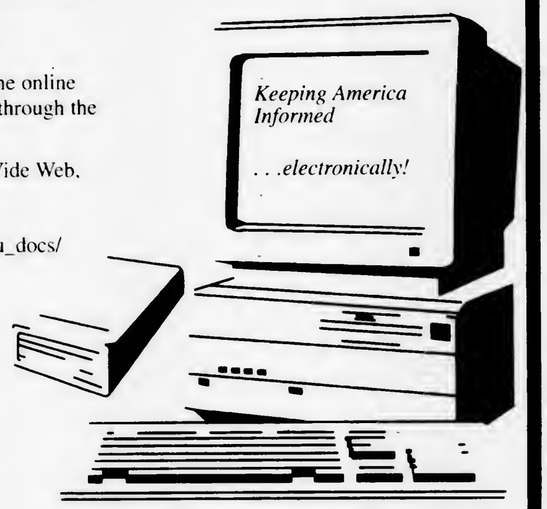
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Federal Register

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ30

Prevailing Rate Systems; Change in the Survey Cycle for the Pennington, South Dakota, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to change the timing of local wage surveys in the Pennington, South Dakota, nonappropriated fund Federal Wage System wage area. The change will help balance the workload for the Department of Defense and improve the amount and quality of data it collects during local annual wage surveys in the Pennington wage area.

DATES: Effective Date: April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter at (202) 606–8359; by FAX at (202) 606–4264; or by email at *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On December 19, 2000, the Office of Personnel Management (OPM) published a proposed rule to change the timing of local wage surveys in the Pennington, South Dakota, nonappropriated (NAF) Federal Wage System (FWS) wage area (65 FR 79320). The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

The Department of Defense (DOD), the lead agency for the Pennington, SD, wage area, requested that the survey schedule be changed so that full-sale surveys could be conducted in June of even-numbered fiscal years. DOD conducted a full-scale survey in January 2002 and will conduct another full-scale survey in June 2002. The change from January to June will help avoid problems associated with conducting local wage surveys during inclement weather in western South Dakota and will improve wage survey participation and data yield. In addition, the new survey cycle will allow DOD to achieve a better balance in its wage survey workload.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Pennington NAF wage area from January of even-numbered fiscal years to June of even-numbered fiscal years.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532—[Amended]

2. Appendix B to subpart B is amended by revising under the State of South Dakota the listing of beginning month of survey from "January" to "June" for the Pennington NAF wage area.

[FR Doc. 02–7022 Filed 3–22–02; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

RIN 0503–AA20

Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the policies and procedures pertaining to 20 rural enterprise communities designated by the Secretary of the U.S. Department of Agriculture (USDA) (Secretary) as authorized by the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Agriculture Appropriations Act 1999) (Round IIS). This rule also contains the policies and procedures for implementing the grant program authorized by section 766 of the Agriculture Appropriations Act 1999 (USDA EZ/EG grants). Additionally, this rule clarifies post-designation procedures that rural empowerment zones and enterprise communities must follow to maintain their standing. Finally, this final rule amends the regulation to reflect that two new rural empowerment zones were authorized by the Community Renewal Tax Relief Act of 2000 (Round III).

EFFECTIVE DATE: April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Norman Reed, (202) 690–0719, Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 266, 300 7th Street, SW., Washington, DC 20024–3203, telephone 1–800–645–4712, or by sending an Internet e-mail message to "*info@www.ezec.gov*". For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA's TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed by the Office of Management and Budget (OMB) under E.O. 12866 and has been determined to be a significant regulatory action.

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Programs Affected

The Catalog of Federal Domestic Assistance Program affected by this action is 10.772, Empowerment Zone Program.

Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of the Department of Agriculture.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The information collection requirements contained in 7 CFR part 25 are comprised of one-time application requirements (Application burden) and ongoing reporting requirements (Reporting burden).

The Application burden paperwork package approved under control no. 0570–0026 was approved by OMB in the context of the Round II application effort. The overall burden is a function of the hours assumed for each applicant multiplied by an estimated number of applicants. Comments on these application requirements were invited April 16, 1998 [63 FR 19108] at the time the Interim Final Rule for 7 CFR part 25 was published. No comments were received. After the expiration of the application deadline, the application burden no longer existed and USDA requested that the burden level under this control number be amended accordingly and this was approved by OMB. Subsequently, Congress authorized another competitive round for designations (Round III). USDA submitted a request to OMB to conform the burden level under this control number to reflect another round of application effort. The Application Form is the same as earlier approved under this burden level as well as the hour burden per applicant for Round III. The only difference between the burden levels estimated for Rounds II and III consists of a different assumed number of applicants. The burden level per applicant was the same. USDA's earlier estimate of 60 applicants for Round III is very close to the 55 valid applications we actually received. Now that the deadline for Round III is passed, there is no ongoing Application Burden. Accordingly, the submission was withdrawn and remains as previously approved by OMB. USDA will seek to amend the Application Burden only in the event legislation is passed which authorizes additional designations.

The Reporting burden paperwork package approved by OMB under control no. 0570–0027 covers the ongoing reporting requirements imposed by 7 CFR part 25 for empowerment zones and enterprise communities designated to date. USDA submitted a request to amend the Reporting paperwork burden to reflect the incrementally higher aggregate reporting burden associated with the designation of two empowerment zones pursuant to Round III and was approved by OMB. The individual reporting requirements imposed on Round III designees are the same as for all designees, and unchanged from those published and for which comments were invited April 27, 2000 [65 FR 24656] at the time the most recent proposed rule for amending 7 CFR part 25 was published. No comments were received.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 13132, Federalism

The policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of state and local governments to solve pressing economic, social, and physical problems in their communities.

Background

The Secretary of Agriculture published on April 16, 1998 [63 FR 19108], an interim final rule with request for comments and a notice inviting applications for 5 additional rural empowerment zone designations as authorized by title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, approved August 5, 1997) (Round II). These Round II empowerment zones were designated on December 24, 1998.

These 5 new rural empowerment zones were in addition to the 3 rural empowerment zones and 30 enterprise communities designated on December 21, 1994 by the Secretary of Agriculture pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Round I).

On December 21, 2000, the Community Renewal Tax Relief Act was signed into law (Pub. L. 106–554), authorizing the designation of two more rural empowerment zones (Round III), bringing the total authorized rural empowerment zones to ten. The eligibility criteria for Round III are exactly the same as for Round II empowerment zones.

The legislation which authorized Round I empowerment zones also authorized 30 rural enterprise communities. On October 21, 1998, the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 was signed into law, authorizing an additional 20 rural enterprise communities (Round IIS), bringing the total authorized to 50.

The proposed rule pertaining to Round IIS also amended 7 CFR part 25 in other ways that affected all rural empowerment zones and rural enterprise communities. Most notably it implemented a newly authorized direct grant program for Round II and IIS designees. It also amended the ongoing reporting and administrative requirements for all designated communities.

The Community Renewal Tax Relief Act of 2000 authorizing Round III was signed into law subsequent to publication of the proposed rule. It increased the number of designations the Secretary of Agriculture may make, it extends designation periods and increases certain tax code benefits which attach to the designations. It expressly provides that the eligibility requirements for Round III empowerment zones are to be the same as for Round II, with no change.

In addition to the changes for which comments were invited in the published proposed rule, this Final Rule conforms 7 CFR part 25 to reflect the provisions of the Community Renewal Tax Relief Act of 2000. These conforming changes are technical in nature such the Secretary has determined it appropriate that they be incorporated in this final rulemaking without subjecting them to the notice and comment process.

Discussion of Comments

Eleven comments were received in response to the published proposed rulemaking. Ten were from representatives of empowerment zones or enterprise communities (EZ/ECs); one was from a Rural Development State Director. Of the ten, five were from the same community and the other five represented different communities.

Ten of the eleven comments received were opposed to the proposed requirement that not less than 55% of the membership of the board of directors of the lead entity be determined by broad-based election. One respondent raised concerns about the requirements associated with the National Environmental Protection Act (NEPA). One respondent requested that EZ/EC program funds be considered eligible match funding for other federal programs. The use of EZ/EC funds as matching funds for other federal programs is currently prohibited. See 7 CFR 3019.23(a)(5) and OMB Circular A–110 issued by the Office of Management and Budget.

Objections to the board composition requirement were varied. One respondent argued that USDA's approval of the strategic plan at the time of designation included the proposed corporate organization of the lead entity, this approval was incorporated into the Memorandum of Agreement, and this agreement cannot be changed absent mutual consent.

Another respondent expressed concern that imposing a 55% elected board is excessive control on the part of USDA and counter to the empowerment principle that community-based decisions should be supported. One specifically argued that the boards should be comprised of "movers and shakers" rather than run by committee. Yet another stated that elections are not necessary because representative boards are being appointed now.

The regulatory amendment requiring 55% elected representation on the board of the lead entity was developed as a direct result of program reviews done for the first round of designated communities. In several of the most needy communities, the board members did not reflect the racial or economic diversity present in the community. Their decisions often did not reflect the principles of the EZ/EC program, or the best interest of the low-income residents. Rather, funding decisions and community management had reverted to traditional, less representative, power structures.

Designations are granted contingent upon final USDA approval of the applicant's strategic plan and the signing of a Memorandum of Agreement (MOA). The MOA documents the relationship and respective responsibilities of USDA and the designated community. It is not contractually binding and so states in the text of the document.

Public support for the policies of the lead entity is critical for the success of the strategic plan. USDA recognizes that appointed boards might be necessary in the start-up phase of an EZ/EC, but has learned from experience that it is possible to conduct board elections at the required public meetings at little or no additional cost to the community. Some appointments may yet be necessary to address special needs representation, such as youth or low-income representation, or to enjoy the benefit of legal, engineering, or other specific expertise on the board. USDA has observed that "movers and shakers" are capable of being elected to the board of lead entities.

Two respondents cited election-related problems that are specific to tribal entities. One questioned USDA's authority to override decisions made by tribal governments to appoint boards. In the case of areas covering a group of distinct tribes, with separate governance structures, disbursed populations, historical animosities and uneven minority distribution within the populace, achieving a representative board is possible through appointments, but less likely via elections.

USDA acknowledges the tribal governance issues, and has incorporated an exception for tribal entities if there is compelling evidence that the objectives intended by the election requirement cannot be realized except through an appointment process.

One respondent requested requirements for environmental assessments or environmental impact statements be waived for some projects, citing redundant environmental requirements imposed by state and other Federal partners. It was suggested that USDA accept the determinations made pursuant to environmental reviews conducted by others for purposes of EZ/EC program requirements.

USDA cannot waive the requirements of NEPA. The EZ/EC program has three options as far as NEPA is concerned. USDA could prepare yet another stand alone environmental regulation specific to the EZ/EC program, or use one of the two environmental regulations in effect within the Rural Development mission area at USDA. The final rule adopts the environmental review processes in effect for the Rural Utilities Service

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(RUS) at 7 CFR part 1794. The environmental regulation that applies to other Rural Development agencies is referred to only for purposes of determining what level of environmental review is required for a given project. Once that threshold is determined, the notice and other provisions for environmental assessments, environmental impact statements, etc., contained in the RUS regulation are to be followed. The RUS regulation was chosen because it affords the greatest flexibility in implementing NEPA—most specifically with respect to whom can prepare the review document.

As is the case with most federal environmental regulations implementing NEPA, an agency head can adopt as its own a determination made by another federal agency, provided the review has met federal requirements. NEPA expressly contemplates that where multiple federal agencies are involved, efforts are to be made to avoid redundancy and determine a "lead agency". Unless expressly authorized by law, NEPA requires an agency head to evaluate the environmental consequences of the federal action taken by that agency. It has happened that a non-federal entity was authorized by law to make federal NEPA determinations, but it is not so authorized for the EZ/EC program.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

In accordance with the reasons set out in the preamble, 7 CFR part 25 is amended as follows:

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. The authority citation for part 25 is revised to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 1391; Sec. 766, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

Subpart A—General Provision

§ 25.1 [Amended]

2. Amend § 25.1 by revising paragraph (a) to read as follows:

§ 25.1 Applicability and scope.

(a) Applicability. This part contains policies and procedures applicable to rural empowerment zones and enterprise communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Round I), the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277) (Round IIS), and the Community Renewal Tax Relief Act of 2000 (Public Law 106–554) (Round III).

* * * * *

§ 25.3 [Amended]

3. Amend § 25.3 by revising the definitions of "brownfield" (and placing it in correct alphabetical order), "designation", "designation date" and by adding in alphabetical order definitions for "designation period", "funding official", "Office of Community Development", "Round IIS", "Round III", "state director" and "USDA EZ/EC grant program" to read as follows:

§ 25.3 Definitions.

* * * * *

Brownfield means a "qualified contaminated site" meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

* * * * *

Designation means the process by which the Secretary designates rural areas as empowerment zones or enterprise communities pursuant to eligibility criteria established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*).

Designation date means December 21, 1994, in the case of Round I designations, and December 24, 1998, in the case of Round II and Round IIS designations.

Designation period means, in the case of empowerment zones, the lesser of such time as has elapsed from the designation date to December 31, 2009 or from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e) and, in the case of enterprise communities, the lesser of ten years or such time as has elapsed from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e).

* * * * *

Funding official means the state director in the state where the designated rural area is located, or if the designated rural area is located in more than one state, the state where the headquarters office of the lead managing entity is located.

* * * * *

Office of Community Development or *OCD* means the office of the Deputy Administrator, Community Development, as identified in 7 CFR 2003.26(b)(4).

* * * * *

Round IIS identifies designations of rural enterprise communities pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

Round III identifies designations of empowerment zones pursuant to section 111 of the Community Renewal Tax Relief Act of 2000 (Public Law 106–554).

* * * * *

State director means the state director for the Rural Development mission area within USDA, as identified in 7 CFR 2003.10.

* * * * *

USDA EZ/EC grant program means the grant program authorized by section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

§ 25.4 [Amended]

4. Amend § 25.4 by revising paragraphs (a) and (b)(2) and adding paragraphs (b)(3), (b)(4) and (b)(5) to read as follows:

§ 25.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural empowerment zones and enterprise communities as are made shall be from the applications submitted in response to the notice inviting applications or other applicable notice published in the **Federal Register**. The Secretary may elect to designate as champion communities those nominated areas which are not designated as either a rural empowerment zone or enterprise community and whose applications meet the criteria contained in § 25.301.

(b) * * *

(2) *Round II.* The Secretary may, prior to January 1, 1999, designate up to five rural empowerment zones in addition to those designated in Round I.

(3) *Round IIS.* The Secretary may designate up to 20 rural enterprise communities in addition to those designated in Round I.

(4) *Round III.* The Secretary may, prior to January 1, 2002, designate up to two rural empowerment zones in addition to those designated in Round I and Round II.

(5) *Champion communities.* The number of champion communities is limited to the number of applicants which are not designated empowerment zones or enterprise communities.

* * * * *

Subpart B—Area Requirements

§ 25.103 [Amended]

5. Amend § 25.103 by revising the introductory text of paragraphs (b)(2) and (b)(3) to read as follows:

§ 25.103 Area size and boundary requirements.

* * * * *

(b) * * *

(2) For purposes of applying paragraph (a)(1) of this section to Round II, Round IIS and Round III designations: * * *

(3) For purposes of applying paragraph (a)(2) of this section to Round II, Round IIS and Round III designations, the following shall not be treated as violating the continuous boundary requirement nor the limit on the number of noncontiguous parcels:

* * * * *

§ 25.104 [Amended]

6. Amend § 25.104 as follows:

a. Amend the heading of paragraphs (a)(2) and (b)(2) by adding ", Round IIS and Round III".

b. Revise the introductory text of paragraphs (a), (b) and (c), and revise paragraph (c)(2) to read as follows:

§ 25.104 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following poverty rate criteria specific to Round I, Round II, Round IIS and Round III nominated areas:

* * * * *

(a) *Special rules.* The following special rules apply to the determination of poverty rate for Round I, Round II, Round IIS and Round III nominated areas:

* * * * *

(c) *General rules.* The following general rules apply to the determination of poverty rate for Round I, Round II, Round IIS and Round III nominated areas.

* * * * *

(2) *Noncontiguous parcels.* Each such parcel (excluding, in the case of Round II, Round IIS and Round III, up to three noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria contained in this section.

* * * * *

Subpart C—Nomination Procedure

§ 25.202 [Amended]

7. Amend § 25.202 by revising paragraph (b)(7) to read as follows:

§ 25.202 Strategic plan.

* * * * *

(b) * * *

(7) Include such other information as required by USDA in the notice inviting applications or other applicable notice.

* * * * *

§ 25.203 [Amended]

8. Revise § 25.203 to read as follows:

§ 25.203 Submission of applications.

General. A separate application for designation as an empowerment zone or enterprise community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the notice inviting applications or other applicable notice as published in the **Federal Register** and must contain complete and accurate information.

Subpart D—Designation Process

§ 25.300 [Amended]

9. Amend § 25.300 by revising paragraphs (a) and (b) to read as follows:

§ 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of applications for designation as empowerment zones or enterprise communities, including submission deadlines and addresses, in a notice inviting applications or other applicable notice, to be published in the **Federal Register.**

(b) *Acceptance for processing.* USDA will accept for processing those applications as empowerment zones and enterprise communities which USDA determines have met the criteria required under this part. USDA will notify the states and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the notice inviting applications or other applicable notice published in the **Federal Register.** The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the certifications and written assurances required by § 25.200(b).

* * * * *

Subpart E—Post-Designation Requirements

§ 25.404 [Amended]

10. Amend § 25.404 as follows:

a. Redesignate paragraph (a) as (c) and paragraph (b) as (d).

b. Add new paragraphs (a) and (b) to read as follows:

§ 25.404 Validation of designation.

(a) *Maintaining the principles of the program.* The empowerment zone, enterprise community or champion community (the designated community) must maintain a process for ensuring ongoing broad-based participation by community residents consistent with the approved application and planning process outlined in the strategic plan.

(1) *Continuous improvement.* The designated community must maintain a process for evaluating and learning from its experiences. It must detail the methods by which the community will assess its own performance in implementing its benchmarks, the process it will use for reviewing goals and benchmarks and revising its strategic plan.

(2) *Participation.* The designated community must develop as part of its strategic plan a written plan for assuring continuous broad-based community participation in the implementation of the strategic plan and the means by which the strategic plan is implemented, including board membership in the lead entity and other key partnership entities.

(b) *Administration of the strategic plan.* The strategic plan must be administered in a manner consistent with the principles of the program contained in § 25.202(a).

(1) *Lead entity.* The lead entity must have legal status and authority to receive and administer funds pursuant to Federal, state and other government or nonprofit programs.

(2) *Capacity.* The lead entity must have the capacity to implement the strategic plan, as demonstrated by audited financial statements as of the most recent fiscal year or other documentation that may be requested by USDA.

(3) *Board membership.* The membership of the board must be representative of the entire socio-economic spectrum in the designated community including business, social service agencies, health and education entities, low income and minority residents. Board membership may be

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determined by either broad-based election or by appointment to meet this diversity requirement; however, not more than 45 percent of board members may be selected by appointment. Elections of community residents to the board may be done by any locally acceptable process; however, at least one board member from each of the designated community's census tracts must be elected and representative of the low income residents in their census tract. The Deputy Administrator, Office of Community Development, may waive the 45 percent maximum appointment limit only for Tribal Governmental Organizations where the Deputy Administrator determines, in writing, that a more representative board would be obtained through the appointment process.

(4) *Partnerships.* The relationship between the designated community's lead entity board and local governments and other major regional and community organizations operating in the same geographic area is critical to the community's success in implementing its strategic plan. Every effort should be made to identify and maintain relationships with local partners. Documentation including, but not limited to, minutes of meetings, benchmark activity reports and annual reports of the lead entity must reflect the contributions of local partnership entities.

(5) *Public information.* The designated community must have written procedures in place describing the means by which citizens of the community and partnership organizations will be kept informed of the community's activities and progress in implementing the strategic plan, consistent with the principal objective of community based partnerships pursuant to § 25.202(a)(2). These procedures must be kept current and compliance with them documented on an ongoing basis.

* * * * *

11. Subpart G of part 25, consisting of §§ 25.600 through 25.999 is added to read as follows:

Subpart G—Round II and Round IIS Grants

Sec.

25.600 Purpose.
25.601 Delegation of authority.
25.602 Eligible recipients.
25.603 Grant approval and obligation of funds.
25.604 Disbursement of grant funds.
25.605 Grant program reporting requirements.
25.606 Financial management and records.
25.607 Suspension or termination of grant funds.
25.608–25.619 [Reserved]
25.620 Eligible grant purposes.
25.621 Ineligible grant purposes.
25.622 Other considerations.
25.623 Programmatic changes.
25.624–25.999 [Reserved]

§ 25.600 Purpose.

This subpart outlines USDA policies and authorizations and contains procedures for the USDA EZ/EC grant program.

§ 25.601 Delegation of authority.

(a) *Program administration.* The Deputy Administrator, Office of Community Development, shall be responsible for the overall development of policy and administration of the USDA EZ/EC grant program.

(b) *Funding official.* Unless otherwise provided, the state director is responsible for implementing the authorities in this subpart, consistent with the guidance issued by the Office of Community Development. Except for grant approval and environmental determination authorities, state directors may re-delegate their duties to qualified staff members.

(c) *Environmental review determinations.* The funding official is responsible for making environmental review determinations.

(d) *Authority to issue regulations.* The Under Secretary, Rural Development, may promulgate regulations under this part.

§ 25.602 Eligible recipients.

(a) *General.* The grants made under this subpart shall be made to the lead managing entities on behalf of the Round II rural empowerment zones and Round IIS rural enterprise communities, respectively, in accordance with an approved strategic plan. Such grants shall be available to successor entities approved in writing by USDA.

(b) *Exception.* The funding official, with the approval of the Office of Community Development, may elect to award all or part of the available grant funds to an alternate grantee.

(c) *Subrecipients.* The grantee shall relay funds to subrecipients, as provided in the approved strategic plan, as soon as practicable.

§ 25.603 Grant approval and obligation of funds.

Grants may be made at such time as the nominated area has been designated and such other prerequisites as USDA shall determine have been met, including but not limited to:

(a) The empowerment zone or enterprise community has entered into a memorandum of agreement satisfactory to USDA;

(b) The empowerment zone or enterprise community has conformed its strategic plan to be consistent with the level of federal grant aid available and such conforming amendments (if any) have met with the approval of the Office of Community Development and the funding official;

(c) Completion of the environmental review process, including all appropriate public notices;

(d) The proposed grantee has agreed, in form and substance satisfactory to the Office of Community Development, to any funding conditions imposed by USDA;

(e) The grantee has submitted a request for obligation of funds, in form and substance satisfactory to the Office of Community Development, inclusive of the following certification:

"The grantee certifies that it and all direct or substantial subrecipients are in compliance and will continue to comply with all applicable laws, regulations, executive orders and other generally applicable requirements, including those contained in 7 CFR parts 25, 3015, 3016, 3017, 3018, 3019 and 3052 and any agreement to meet funding conditions, in effect at the time of the grant or as subsequently amended."

§ 25.604 Disbursement of grant funds.

(a) The funding official will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

(b) A "request for advance or reimbursement," in form and substance satisfactory to USDA, must be completed by the grantee on behalf of itself and all applicable subrecipients and submitted to the funding official.

(c) Requests for advance or reimbursement must identify:

(1) The amount requested for each benchmark activity;

(2) The cumulative amount advanced to date (not inclusive of the current amount requested) for each benchmark activity;

(3) The total USDA EZ/EC grant obligated for each benchmark activity;

(4) The total approved budget for the applicable project or program (inclusive of non USDA EZ/EC grant program sources);

(5) An estimated percentage of completion or progress made in accomplishing the benchmark goal associated with each benchmark activity;

(6) Certification that the lead managing entity and the subrecipients (where applicable) are in compliance with all applicable laws and regulatory requirements; and

(7) Such other information as the funding official may require.

(d) Requests for advance or reimbursement may include only activities or projects which are identified in an approved strategic plan.

§ 25.605 Grant program reporting requirements.

Grantees may incorporate grant reporting requirements in the reports submitted pursuant to § 25.400, or submit them separately. In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

§ 25.606 Financial management and records.

(a) In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

(b) Grantees must retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least 3 years after the end of the designation period, except that the records shall be retained beyond the 3 year period if audit findings have not been resolved or if directed by the United States. Records may be retained and submitted in electronic form if allowed by Generally Accepted Government Accounting Principles.

§ 25.607 Suspension or termination of grant funds.

(a) Grants under this subpart may be suspended or terminated by the funding official, in all or in part, in accordance with this subpart and the applicable provisions of 7 CFR parts 3015, 3016 and 3019, as applicable.

(b) The funding official may elect to suspend or terminate the entirety of a grant, or funding of a particular benchmark activity, but nevertheless fund the remainder of a request for advance or reimbursement, where the funding official has determined:

(1) That grantee or subrecipient of the grant funds has demonstrated insufficient progress toward achieving the related benchmark goal or in any other way failed to comply with the strategic plan;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis;

(3) The strategic plan calls for a revised use of the grant funds; or

(4) Such other cause as the funding official identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

§§ 25.608–25.619 [Reserved]

§ 25.620 Eligible grant purposes.

Eligible grant purposes are:

(a) Services directed at the goals of—

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(b) Projects and activities identified in the strategic plan for the area; and

(c) Activities that benefit residents of the area for which the grant is made.

§ 25.621 Ineligible grant purposes.

Grant funds may not be used:

(a) As a source of local matching funds required for other federal grants;

(b) To fund political activities:

(c) To duplicate current services or replace or substitute for financial support provided from other sources. If the current service is inadequate, however, grant funds may be used to augment financial support or service levels beyond what is currently provided;

(d) To pay costs of preparing the application package for designation under this program;

(e) To pay costs of a project which were incurred prior to the execution date of the applicable memorandum of agreement;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) To assist in the relocation of businesses;

(i) To support or promote gambling; or

(j) For political lobbying.

§ 25.622 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and 7 CFR part 1901, subpart E.

(b) *Environmental review.* All grants made under this subpart are subject to the environmental requirements in effect for the water and environmental programs of the Rural Utilities Service at 7 CFR part 1794. The threshold levels of environmental review, for projects funded by the USDA EZ/EC grant program (or EZ/EC SSBG funds where the Secretary is authorized to execute the responsibilities under the National Environmental Policy Act of 1969), which projects, by their nature, would qualify for assistance under any program administered by the Rural Housing Service or Rural Business Service within USDA, shall be determined in accordance with 7 CFR part 1940, subpart G as follows:

(1) Projects meeting the descriptions found at 7 CFR 1940.310(b), (c), (d) and (e) shall be considered categorically excluded (without an environmental report) for purposes of 7 CFR 1794.21.

(2) Projects meeting the descriptions found at 7 CFR 1940.311 shall be considered categorically excluded (with an environmental report) for purposes of 7 CFR 1794.22.

(3) Projects meeting the description found at 7 CFR 1940.312 shall require the preparation of an environmental assessment (EA) for purposes of 7 CFR 1794.23.

(4) Projects which would normally require the preparation of an environmental impact statement (EIS) for purposes of 7 CFR 1940.313 shall require an EIS for purposes of 7 CFR 1794.25.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, "Uniform Federal Assistance Regulations";

(2) 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments";

(3) 7 CFR part 3017, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)";

(4) 7 CFR part 3018, "New Restrictions on Lobbying";

(5) 7 CFR part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and

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(6) 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

§ 25.623 Programmatic changes.

Prior approval from USDA is required for all changes to the scope or objectives of an approved strategic plan or benchmark activity. Failure to obtain prior approval of changes to the strategic plan or benchmarks, including changes to the scope of work or a project budget may result in suspension, termination, and recovery of USDA EZ/EC grant funds.

§§ 25.624–25.999 [Reserved]

Dated: March 18, 2002.

Ann M. Veneman,

Secretary.

[FR Doc. 02–7023 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–054–2]

Phytophthora Ramorum; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and notice of public hearings; correction.

SUMMARY: In an interim rule published in the **Federal Register** and effective on February 14, 2002, we amended the domestic quarantine regulations by quarantining 10 counties in the State of California and a portion of 1 county in the State of Oregon because of the presence of *Phytophthora ramorum* and by regulating the interstate movement of regulated and restricted articles from the quarantined area. The interim rule contained errors in the Supplementary Information section and in the rule portion. This document corrects those errors.

EFFECTIVE DATE: February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8247.

SUPPLEMENTARY INFORMATION: In an interim rule published in the **Federal Register** on February 14, 2002 (67 FR 6827–6837, Docket No. 01–054–1), we amended the domestic quarantine regulations in 7 CFR part 301 by adding a subpart, "Phytophthora Ramorum" (§§ 301.92 through 301.92–10, referred to below as the regulations). The regulations quarantine portions of the States of California and Oregon because of *Phytophthora ramorum* and restrict the interstate movement of regulated and restricted articles from quarantined areas.

P. ramorum is a harmful fungus that has been found in several hosts, including manzanita (*Arctostaphylos manzanita*). In the Supplementary Information section and the rule portion of the interim rule, we incorrectly listed all species of *Arctostaphylos* as regulated and restricted articles by identifying manzanita as *Arctostaphylos* spp. Therefore, in order for the regulations to accurately identify this specific host, we are correcting the errors in the rule portion of the interim rule by replacing *Arctostaphylos* spp. with *Arctostaphylos manzanita*.

In FR Doc. 02–3721, published on February 14, 2002 (67 FR 6827–6837), make the following corrections:

PART 301—[CORRECTED]

1. On page 6835, in the first column, in § 301.92–2, in paragraphs (a)(1) and (b)(1), correct "(*Arctostaphylos spp.*)," to read "(*Arctostaphylos manzanita*),".

2. On page 6837, in the first column, in § 301.92–10, in paragraph (b), correct "(*Arctostaphylos* spp.)," to read "(*Arctostaphylos manzanita*),".

Done in Washington, DC, this 19th day of March, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–7110 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–3 FIR]

Raisins Produced From Grapes Grown in California; Extension of Redemption Date for Unsold 2001 Diversion Certificates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that extended the deadline for raisin handlers to redeem diversion certificates issued under the 2001 raisin diversion program (RDP). The deadline is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action gave producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP.

EFFECTIVE DATE: Effective April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule continues in effect an interim final rule that extended the deadline for handlers to redeem diversion certificates issued under the 2001 RDP for Natural (sun-dried) Seedless (NS) raisins. The deadline was extended from December 17, 2001, to January 18, 2002, and applied only to certificates unsold by producers to handlers as of December 18, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an interim final rule that extended the deadline for handlers to redeem diversion certificates issued under the 2001 NS RDP. The deadline was extended from December 17, 2001, to January 18, 2002, and applied only to certificates unsold by producers as of December 18, 2001. This action gave producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP. This action was recommended by the RAC at a meeting on December 11, 2001, by a near unanimous vote of 36 in favor, 2 opposed (believed the RAC should adhere to the current deadline), and 1 abstained. All certificates were redeemed by January 18, 2002.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of an RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC prior to December 20. The RAC conducts a lottery if the tonnage applied far exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC by December 15 (Monday, December 17, 2001, for the 2001 RDP since December 15 fell on a Saturday) and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

2001 NS Diversion Program

The 2000–01 California NS raisin crop was the largest on record with final deliveries of raisins from producers to handlers totaling 432,616 tons. This compares to the 10-year average of 344,303 tons. With this large crop, 203,330 tons of NS raisins were set aside in a reserve pool. Of that reserve tonnage, 89,076 tons were ultimately allocated to a diversion program. As of December 1, 2001, 70,529 tons of diversion certificates had been acquired by handlers. It was reported at the December 11, 2001; RAC meeting, by RAC staff that the status of about 2,000 tons of 2001 diversion certificates was unknown.

RAC Recommendation

The RAC met on December 11, 2001, and addressed a concern expressed by some producers with the 2001 RDP. Some producers were having trouble selling their 2001 diversion certificates to handlers. There was concern that some certificates may remain unsold and unredeemed by the December 15 deadline (or Monday, December 17, 2001, for the 2001 RDP since December 15 fell on a Saturday). Several reasons were mentioned as to why this was occurring. The California raisin industry as a whole is experiencing a severe economic downturn. Two short crops in 1998 and 1999 along with other factors caused producer prices to drop drastically for the 2000 crop, marking the first time in about 13 years that prices had fallen. The value of handler inventories has likewise fallen which has contributed to handler difficulties in securing financing to purchase diversion certificates from producers. In addition, some handlers do not need any more raisins to meet their market needs. In some instances, producers tried to negotiate a premium price for their certificates with handlers.

After deliberating various options (discussed in the following section of this rule regarding the Regulatory Flexibility Analysis), the RAC recommended extending the deadline for handlers to redeem 2001 diversion certificates from December 17, 2001, to January 18, 2002. The extension applied only to 2001 certificates unsold by producers as of December 18, 2001. Producers still holding certificates had to have the certificates verified and stamped appropriately by the RAC by December 21, 2001, to indicate that such certificates were valid until January 18, 2002. Handlers could then purchase these certificates from producers and redeem them for 2000–01 crop reserve raisins following prescribed procedures

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in § 989.156(k). This action gave producers still holding certificates additional time to sell their certificates to handlers, and gave handlers additional time to secure financing to purchase the certificates from producers and redeem them with the RAC. All certificates were redeemed by January 18, 2002. Thus, producers will be compensated for diverting their 2001 production, which is the intent of the RDP. Section 989.156(k) was changed accordingly for the 2001 RDP only.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise §§ 989.156(k) of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. This rule continues in effect an interim final rule that extended the deadline for handlers to redeem 2001 diversion certificates with the RAC from December 17, 2001, to January 18, 2002, and applied only to certificates unsold by producers to handlers as of December 18, 2001. All certificates were redeemed by January 18, 2002. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, producers who curtailed 2001 production and had trouble selling their diversion certificates to handlers had additional time to sell their certificates to handlers. Handlers pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. For the 2001 RDP, the industry average free tonnage price applied to diversion certificates was $854 per ton, and applicable harvest costs as established by the RAC were $340 per ton. Preliminary volume regulation percentages for the 2001–02 crop were announced by the RAC at 56 percent free and 44 percent reserve. Thus, using these figures, if a producer was issued a certificate for 100 tons of raisins, he/she would be paid $138.24 per ton by the handler, or a total of $13,824 (($854 per ton × 100 tons × .56) minus (100 tons × $340 per ton harvest cost)). Extending the deadline gave producers additional time to sell their certificates and earn some income for not producing a 2001 crop.

Regarding the impact of this action on handlers, handlers experiencing financial difficulty had additional time to arrange for financing through likely extending lines of credit with financial institutions. Handlers pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers redeem the certificates for 2000–01 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost, plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton) and inspecting (currently $9.00 per ton) the tonnage represented on the certificate (or a total of $415 per ton). In the above example, the handler would redeem the 100-ton certificate with the RAC, pay the RAC $41,500 ($415 per ton × 100 tons), and receive 44 tons (.44 × 100 tons) of raisins from the 2000–01 reserve pool.

In addition, the $41,500 in the above example paid by the handler to the RAC would be allocated to the 2000–01 reserve pool and be used to pay remaining pool expenses or be distributed to 2000–01 reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC and/or by the RAC's Administrative Issues Subcommittee. It was proposed that the RAC purchase unsold diversion certificates from producers. However, the order currently provides no authority for this. In addition, there are concerns as to how this would impact future raisin diversion programs, in particular, whether the integrity of the RDP could be maintained.

It was also proposed that a late fee be added to handlers' costs for redeeming diversion certificates after December 17, 2001. However, the order provides no authority for such a late charge. Another option considered was to take no action and adhere to the December deadline. Some industry members believe that there is no guarantee that producers can sell their harvested crop each season, and there should likewise be no "guarantee" that producers can sell their diversion certificates.

There was also consideration of other extension dates besides January 18, 2002. However, after much deliberation, the majority of RAC members believe that extending the deadline to January 18, 2002, was the best solution to this situation. This date gives the RAC sufficient time before it recommends final volume regulation percentages to ensure that all redeemed diversion certificates are properly reported as 2001 acquisitions by handlers and included in the 2001–02 crop estimate.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on December 11, 2001, and the RAC's Administrative Issues Subcommittee meeting on December 5, 2001, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on December 19, 2001 (66 FR 65423). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period that ended on January 3, 2002. One comment was received.

The commenter opposed extending the redemption deadline, expressing concern with changing the rules to accommodate a few producers while the majority of producers were able to sell their certificates by the December deadline. The commenter, who is also a handler, also expressed concern that the extension would apply to producers who had tried to negotiate a premium price for their diversion certificates. The commenter stated that, in such instances, it released the producers from their sales contract.

Similar concerns regarding producers who tried to negotiate a premium price for their diversion certificates with handlers were raised at the RAC meeting by RAC members as well. However, other reasons were given at the meeting as to why some producers were having trouble selling their certificates. As stated earlier in this rule, the California raisin industry as a whole is experiencing a severe economic downturn. Two short crops in 1998 and 1999 along with other factors caused producer prices to drop drastically for the 2000 crop, marking the first time in about 13 years that prices had fallen. The value of handler inventories has likewise fallen which has contributed to handler difficulties in securing financing to purchase diversion certificates from producers. In addition, some handlers do not need any more raisins to meet their market needs. In light of the unusual circumstances currently facing the California raisin industry, the majority of RAC members favored extending the deadline until January 18, 2002. The intent of the RDP is to divert tonnage and reduce supplies, while providing some compensation to producers. Extending the deadline resulted in redemption of all certificates, thus helping to achieve the program's intent.

The commenter also expressed concern that the RAC's statistical report regarding acquisitions of diversion certificates did not appear to reconcile with the RAC staff's report on the status of all diversion certificates. Such a discrepancy would not adversely affect this rulemaking, but may raise compliance issues.

Accordingly, no changes will be made to the rule, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC, the comment received, and other available information, it is hereby found that finalizing this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 66 FR 65423 on December 19, 2001, is adopted as a final rule without change.

Dated: March 18, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7107 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–706 FR Correction]

Hass Avocado Promotion, Research and Information Order; Referendum Procedures; Correction

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that was published on February 19, 2002 [67 FR 7261] by publishing the correct Harmonized Tariff Schedule number for Hass avocados used to determine importer eligibility to vote in the referendum. The rule established referendum procedures to be used in connection with the Hass Avocado Promotion, Research, and Information Order.

EFFECTIVE DATE: March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Julie A. Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or julie.morin@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department of Agriculture (Department) published a final rule in the **Federal Register** on February 19, 2002 [67 FR 7261], establishing referendum procedures for the referendum on the implementation of the Hass Avocado Promotion, Research, and Information Order [7 CFR Part 1219]. The proposed Order is authorized under the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813].

Need for Correction

As published, there was a typographical error in the final rule. In § 1219.101(b) the definition of eligible importer, the Harmonized Tariff Schedule number identifying Hass avocados is incorrect. Accordingly, this correction document contains the correct Hass avocado Harmonized Tariff Schedule number.

Correction

FR Doc. 02–3796, published on February 19, 2002 [67 FR 7261], is corrected as follows:

§ 1219.101 [Corrected]

1. On page 7264, in the second column, in the Definitions for Subpart B—Referendum Procedures, section number § 1219.101(b) is correctly revised to read as follows:

(b) *Eligible importer* means any person who imported Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States for at least one year prior to the referendum. Importation occurs when Hass avocados originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Hass avocados immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Hass avocados from the U.S. Customs Service when such Hass avocados are entered or

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withdrawn for consumption in the United States.

Dated: March 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-7105 Filed 3-22-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-CE-32-AD; Amendment 39-12683; AD 2002-06-06]

RIN 2120-AA64

Airworthiness Directives; Rockwell Collins, Inc. TDR-94 and TDR-94D Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell Collins TDR-94 and TDR-94D Mode S transponders that derive altitude information from a Gillham (gray code) encoded pressure altitude source and are installed on airplanes. This AD requires you to have the unit modified to prevent erroneous altitude reporting. This AD is the result of reports that erroneous altitude resolutions could occur when the affected transponders are utilized in areas with other airplanes equipped with certain aircraft collision avoidance system (ACAS) or traffic alert and collision avoidance system (TCAS) configurations. The actions specified by this AD are intended to prevent these erroneous altitude resolutions from causing a reduction in the intended ACAS or TCAS Change 7 separation margins. Such a condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

DATES: This AD becomes effective on May 3, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 3, 2002.

ADDRESSES: You may get the service information referenced in this AD from Rockwell Collins Inc., Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-32-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4134; facsimile: (316) 946-4407; e-mail: *roger.souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received information that erroneous altitude resolutions could occur on certain Rockwell Collins TDR-94 and TDR-94D Mode S transponders installed in airplanes with Gillham (gray code) encoded sources. This information indicates that these transponders are utilized in areas with other airplanes equipped with certain aircraft collision avoidance system (ACAS) or traffic alert and collision avoidance system (TCAS) configurations. In these situations, the transponders could receive incorrect TCAS resolution advisories. This could result in a reduction in the intended ACAS or TCAS Change 7 minimum separation margins.

Gillham altitude sources have a 100-foot resolution. The affected transponder will set the altitude resolution status to indicate a 25-foot resolution when connected to a Gillham altitude source. For those units that have digital sources of altitude information, the altitude resolution status is set correctly.

These Rockwell Collins TDR-94 and TDR-94D Mode S transponders could be installed on, but not limited to, the following airplanes:

—Aerospatiale ATR42 series airplanes;
—deHavilland DHC-7 and DHC-8 series airplanes; and
—Short Brothers Models SD3-60 and SD3-60 SHERPA airplanes.

What Is the Potential Impact if FAA Took No Action?

As described above, such erroneous altitude resolutions could cause a reduction in the intended ACAS or TCAS Change 7 separation margins and result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Rockwell Collins TDR-94 and TDR-94D Mode S transponders that derive altitude information from a Gillham (gray code) encoded pressure altitude source and are installed on airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 2001 (66 FR 55898). The NPRM proposed to require you to have the actions of Rockwell Collins Service Bulletin No. 17 (TDR-94/94D-34-17), dated February 8, 1999, incorporated on any affected Mode S transponder that is installed on a type-certificated airplane where Gillham pressure altitude encoding sources are used.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Add Revision 1 of Service Bulletin 17 as an Acceptable Method of Compliance

What Is the Commenter's Concern?

A commenter states that Rockwell Collins Service Bulletin No. 17 (TDR-94/94D-34-17), Revision No. 1, dated May 15, 2000, should be included as an acceptable method of compliance. The commenter states that the only change revision 1 makes to the original service bulletin is in the Material Information.

What Is FAA's Response to the Concern?

The FAA concurs that Revision 1 of the service bulletin should be included as an acceptable method of compliance with this AD. We will incorporate this bulletin into the AD.

Comment Issue No. 2: Add Another Service Bulletin as an Acceptable Method of Compliance

What Is the Commenter's Concern?

The commenter states that Rockwell Collins Service Bulletin 20 (TDR-94/94D-34-20), Revision 1, dated May 2, 2001, should also be included as an acceptable method of compliance with this AD. Service Bulletin 20 allows modification of TDR-94 and TDR-94D Mode S Transponders from the -004 or -005 status to the -006 status. Service Bulletin 20 includes all -005 status functionality required in Service Bulletin 17.

What Is FAA's Response to the Concern?

The FAA concurs that Rockwell Collins Service Bulletin 20 (TDR-94/94D-34-20), Revision 1, dated May 2, 2001, should be included as an acceptable method of compliance with this AD. We will incorporate this bulletin into the AD.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the referenced service information and minor editorial corrections. We have determined that these additions and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 1,400 affected Rockwell Collins TDR-94 and TDR-94D Mode S transponders could be installed on airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$295	$475	$665,000

The manufacturer will provide warranty credit for parts and labor for work done in accordance with Rockwell Collins Service Bulletin No. 17, dated February 8, 1999, Service Bulletin 17, Revision No. 1, dated May 15, 2000, and to the extent noted in Service Bulletin 20, Revision No. 1, dated May 2, 2001.

Compliance Time of This AD

Why Is the Compliance Time of This AD Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

The compliance of this AD is presented in calendar time instead of hours TIS because the condition exists regardless of airplane operation. The erroneous altitude indications could occur regardless of the number of times and hours the airplane was operated or the age of the Mode S transponder. For these reasons, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed in a reasonable time period on all airplanes that have an affected Rockwell Collins TDR-94 and TDR-94D Mode S transponder installed, and where Gillham pressure altitude encoding sources are used.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002-06-06 Rockwell Collins, Inc.: Amendment 39-12683; Docket No. 2000-CE-32-AD.

(a) *What airplanes are affected by this AD?* This AD applies to TDR-94 Mode S transponders (Collins part number (CPN) 622-9352-004) and TDR-94D Mode S transponders (CPN 622-9210-004) that derive altitude information from a Gillham (gray code) encoded pressure altitude source and are installed on, but not limited to, the following airplanes that are certificated in any category:

(1) Aerospatiale ATR42 series airplanes;

(2) deHavilland DHC-7 and DHC-8 series airplanes; and

(3) Short Brothers Models SD3-60 and SD3-60 SHERPA airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane with one of the affected TDR-94 or TDR-94D Mode S Transponder units installed must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent erroneous altitude resolutions from causing a reduction in the intended aircraft collision avoidance system (ACAS) or traffic alert and collision avoidance system (TCAS) Change 7 minimum separation margins. Such a condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

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Actions	Compliance	Procedures
(1) Determine whether the altitude information from any TDR–94 Mode S transponder (CPN 622–9352–004) or TDR–94D Mode S transponder (CPN 622–9120–004) is derived from a digital air data source or a Gillham (gray code) encoded source.	Within the next 3 months after May 3, 2002 (the effective date of this AD).	As specified in Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999, Service Bulletin 17, Revision No. 1, dated May 15, 2000, or Service Bulletin 20 (TDR–94/94D–34–20), Revision No. 1, dated May 2, 2001. Collins Product Information Letter No. 71, dated January 1999, references Service Bulletin 17, dated February 8, 1999
(2) If the altitude information is derived from a Gillham (gray code) encoded source, have the unit modified to prevent erroneous altitude reporting. The modification encompasses converting the TDR–94 transponder from Collins part number (CPN) 622–9352–004 to CPN 622–9352–005 or converting CPN 622–9352–004/005 to CPN 622–9352–006; and converting the TDR 94D transponder from CPN 622–9210–004 to CPN 622–9210–005 or converting CPN 622–9210–004/005 to CPN 622–9210–006.	At the next transponder check required by 14 CFR 91.413 and occurs 3 months after May 3, 2002 (the effective date of this AD) or within the next 9 months after May 3, 2002 (the effective date of this AD), whichever occurs first.	In accordance with Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999, Service Bulletin 17, Revision No. 1, dated May 15, 2000, or Service Bulletin 20 (TDR–94/94D–34–20), Revision No. 1, dated May 2, 2001. Collin Product Information Letter No. 71, dated January 1999, references Service Bulletin 17, dated February 8, 1999.
(3) If the altitude information from all affected transponders is derived from a digital air data source, no modification action is required by this AD.	Not applicable	Not applicable.
(4) Do not install any TDR–94 Mode S transponder (CPN 622–9352–004) or TDR–94D Mode S transponder (CPN 622–9210–004) on any airplane if the altitude information is derived from a Gillham (gray code) encoded source, unless the modification required by paragraph (d)(2) of this Ad is incorporated.	As of May 6, 2002 (the effective date of this AD).	Accomplish the modification in accordance with Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999, Service Bulletin 17, Revision No. 1, dated May 15, 2000, or Service Bulletin 20 (TDR–94/94D–34–20), Revision No. 1, dated May 2, 2001. Collins Product Information Letter No. 71, dated January 1999, references Service Bulletin 17, dated February 8, 1999.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: roger.souter@faa.gov.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Rockwell Collins Service Bulletin No. 17 (TDR–94/94D–34–17), dated February 8, 1999, Rockwell Collins Service Bulletin Service Bulletin 17 (TDR–94/94D–34–17), Revision No. 1, dated May 15, 2000, or Service Bulletin 20 (TDR–94/94D–34–20), Revision No. 1, dated May 2, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Rockwell Collins Inc., Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 3, 2002.

Issued in Kansas City, Missouri, on March 12, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6625 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 740, 742, 743, and 774

[Docket No. 020228045–2053–02]

RIN 0694–AC56

Corrections to Rule Entitled: Revisions to License Exception CTP: Implementation of Presidential Announcement of January 2, 2002

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 8, 2002 the Bureau of Export Administration (BXA) published a final rule revising License Exception CTP. This rule corrects errors in instruction 9.

DATES: This rule is effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Sharron Cook in the Office of Exporter Services, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION:

In rule FR Doc. 02–5562 published on March 8, 2002, (67 FR 10608), BXA makes the following corrections.

PART 742—[CORRECTED]

On page 10610, in the third column, under part 742, in instruction 9, revise the phrase "in paragraph (b)(3)(iv)(A)" to read "in paragraph (b)(3)(iv)(A)," and by revising the phrase "with a CTP greater than 85,000 MTOPS" to read "with a CTP greater than 190,000 MTOPS" in paragraph (b)(3)(i)(B).

Dated: March 19, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services, Export Administration.

[FR Doc. 02–7111 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–33–M

RAILROAD RETIREMENT BOARD

20 CFR Part 345

RIN 3220–AB52

Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to permit the filing of contribution reports via the Internet. The Government Paperwork Elimination Act provides that Federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The changes will permit the filing of Form DC–1, "Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act" electronically.

DATES: Effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The amendments revise sections of part 345 of the Board's regulations (20 CFR part 345) to permit the filing of employer contribution reports via the Internet. The Government Paperwork Elimination Act, Pub. L. 105–277 §§ 1701–1710 (codified as 44 U.S.C. 3504n) provides that Federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The amendments to part 345 will permit the filing of Form DC–1, "Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act" electronically.

The revision of § 345.111 provides that if the DC–1 is filed electronically, no duplicate filing is required. The revision to § 345.113 provides that the DC–1 may be filed electronically through the Board's agent. That section is further amended to provide that if the DC–1 is filed electronically, no further authentication is required. The paper Form DC–1 must be signed. However, with submission of the DC–1 electronically, the Board intends to use a user-ID/PIN/password system for the submission of the form as a substitute for a required signature.

Employers currently use a user-ID/PIN/password system to access RRBLINK and make electronic tax deposits. Form DC–1 is being added to the existing system. The user-ID/PIN/password system was established under a Memorandum of Understanding between Firstar Bank and the U.S. Department of the Treasury. A PIN/password system is used to access the pay.gov site to which the RRBLINK system will eventually migrate. The pay.gov site is operated by the U.S. Department of the Treasury. Such a system also is consistent with the guidance provided by the Department of Justice regarding the use of electronic processes.

The revision to § 345.114 permits the use of an electronic version of the DC–1 that can be accessed from the Board's financial agent. Section 345.115 is revised to provide that the DC–1, if filed electronically, may be filed with the Board's designee.

Section 345.124 is revised to clarify that if an employer wishes to appeal the amount of the contribution, interest, or penalty, the procedure in that section is to be followed. Section 345.307 is revised to clarify that if the employer wishes to protest the contribution rate, the procedure in that section is to be followed. In addition, the title of the person who hears such a protest is revised due to an agency reorganization from the "Director of Unemployment and Sickness Insurance" to the "Director of Assessment and Training".

The Board published the proposed rule on January 16, 2002 (67 FR 2157), and invited comments by March 18, 2002. No comments were received. Accordingly, the proposed rule is being published as a final rule without change.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory analysis is required. The Office of Management and Budget has approved information collections associated with this rule under control number 3220–0012.

List of Subjects in 20 CFR Part 345

Electronic filing, Paperwork elimination, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 345 of the Code of Federal Regulations as follows:

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

1. The authority citation for part 345 continues to read as follows:

Authority: 45 U.S.C. 362(l).

2. Section 345.111 of subpart B is revised to read as follows:

§ 345.111 Contribution reports.

(a) *General.* (1) Except as provided in paragraph (a)(2) of this section, every employer shall, for each calendar quarter of each year, prepare a contribution report, in duplicate, on Form DC–1. If the Form DC–1 is filed electronically, no duplicate submission is required.

(2) Contribution reports of employers who are required by State law to pay compensation on a weekly basis shall include with respect to such compensation all payroll weeks in which all or the major part of the compensation falls within the period for which the reports are required.

(b) *Compensation to be reported on Form DC–1.* Employers shall enter on the employer's quarterly contribution report, prior to any additions or subtractions, the amount of creditable compensation appearing on payrolls or other disbursement documents for the corresponding quarter as the amount of creditable compensation from which the contribution payable for that quarter is to be computed.

(Approved by the Office of Management and Budget under control number 3220–0012)

3. Section 345.113 of subpart B is revised to read as follows:

§ 345.113 Execution of contribution reports.

(a) Each contribution report on Form DC–1 shall be signed by hand by:

(1) The individual, if the employer is an individual;

(2) The president, vice president, or other duly authorized officer, if the employer is a corporation; or

(3) A responsible and duly authorized member or officer having knowledge of its affairs if the employer is a partnership or other unincorporated organization.

(b) The Form DC–1 may be filed electronically through the Board's authorized agent. If filed electronically, no further authentication is required.

4. Section 345.114 of subpart B is revised to read as follows:

§ 345.114 Prescribed forms for contribution reports.

Each employer's contribution report, together with any prescribed copies and supporting data, shall be filled out in accordance with the instructions and regulations applicable thereto. The prescribed forms may be obtained from or accessed by contacting the Board. An employer will not be excused from making a contribution report for the reason that no form has been furnished to such employer. Application should be made to the Board for the prescribed forms in ample time to have the contribution report prepared, verified, and filed with the Board on or before the due date. Contribution reports that have not been so prepared will not be accepted and shall not be considered filed for purposes of § 345.115 of this part. In case the prescribed form has not been obtained, a statement made by the employer disclosing the period covered and the amount of compensation with respect to which the contribution is required may be accepted as a tentative contribution report if accompanied by the amount of contribution due. If filed within the prescribed time, the statements so made will relieve the employer from liability for any penalty imposed under this part for the delinquent filing of the contribution report provided that the failure to file a contribution report on the prescribed form was due to reasonable cause and not due to willful neglect, *and provided further*, that within 30 days after receipt of the tentative report, such tentative report is supplemented by a contribution report made on the proper form. (Approved by the Office of Management and Budget under control number 3220–0012)

5. Section 345.115 of subpart B is revised to read as follows:

§ 345.115 Place and time for filing contribution reports.

Each employer shall file its contribution report with the Chief Financial Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092, or the Chief Financial Officer's designee. The employer's contribution report for each quarterly period shall be filed on or before the last day of the calendar month following the period for which it is made. If such last day falls on Saturday, Sunday, or a national legal holiday, the report may be filed on the next following business day. If mailed, reports must be postmarked on or before the date on which the report is required to be filed.

6. Section 345.124 of subpart B is revised to read as follows:

§ 345.124 Right to appeal the amount of a contribution, interest, or penalty.

(a) Except as otherwise provided, an employer may seek administrative review of any determination with respect to any contribution, interest, or penalty made under this part by filing a request for reconsideration with the Chief Financial Officer within 30 days after the mailing of notice of such determination. An employer shall have a right to appeal to the Board from any reconsideration decision under this section by filing notice of appeal to the Secretary to the Board within 14 days after the mailing of the decision on reconsideration. Upon receipt of a notice of an appeal, the Board may designate one of its officers or employees to receive evidence and report to the Board under the procedures set forth in part 319 of this chapter. An appeal of the contribution rate is made under § 345.307 of this part.

(b) Any appeal filed under this part shall not relieve the employer from filing any reports or paying any contribution required under this part nor stay the collection thereof. Upon the request of an employer, the Board may relieve the employer of any obligation required under this part pending an appeal. Unless specifically provided by the Board, such relief shall not stay the accrual of interest on any disputed amount as provided for in § 345.122 of this part.

7. Section 345.307 of subpart D is revised to read as follows:

§ 345.307 Rate protest.

(a) *Request for reconsideration.* An employer may appeal a determination of a contribution rate computed under this part by filing a request for reconsideration with the Director of Assessment and Training within 90 days after the date on which the Board notified the employer of its rate of contribution for the next ensuing calendar year. Within 45 days of the receipt of a request for reconsideration, the Director shall issue a decision on the protest.

(b) *Appeal to the Board.* An employer aggrieved by the decision of the Director of Assessment and Training under paragraph (a) of this section may appeal to the Board. Such appeal shall be filed with the Secretary to the Board within 30 days after the date on which the Director notified the employer of the decision on reconsideration. The Board may decide such appeal without a hearing or, in its discretion, may refer the matter to a hearings officer pursuant to part 319 of this chapter.

(c) *Decision of the Board final.* Subject to judicial review provided for in section 5(f) of the RUIA, the decision of the Board under paragraph (b) of this section is final with respect to all issues determined therein.

(d) *Waiver of time limits.* A request for reconsideration or appeal under this section shall be forfeited if the request or appeal is not filed within the time prescribed, unless reasonable cause, as defined in this part, for failure to file timely is shown.

(e) *Rate pending review.* Pending review of the protested rate, the employer shall continue to pay contributions at such rate. Any adjustment in the contributions paid at such rate as the result of an appeal shall be in accordance with § 345.118 of this part.

(f) The amount of a contribution, interest, or penalty may be protested in accord with § 345.124 of this part.

Dated: March 19, 2002.

By Authority of the Board, for the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–7069 Filed 3–22–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE INTERIOR

Office of Indian Education Programs

25 CFR Part 46

RIN 1076–AE29

Technical Amendments to Adult Education Program

AGENCY: Office of Indian Education Programs, Interior.

ACTION: Final rule; corrected.

SUMMARY: This rule changes our estimate of the time it takes to fill out the application form for adult education benefits. The new estimated completion time of four hours more accurately reflects the time that applicants must spend to provide the information that we request. This more accurate estimate satisfies the requirements of the Paperwork Reduction Act and Office of Management and Budget regulations. The application requirements themselves remain unchanged.

EFFECTIVE DATE: Effective on March 25, 2002.

FOR FURTHER INFORMATION CONTACT: William A. Mehojah, Jr., Director, Office of Indian Education Programs, 202–208–6123.

SUPPLEMENTARY INFORMATION: The final rule was published in the **Federal Register** on August 19, 1997 (62 FR 44081). At that time, 46.3 listing a burden time of 3 hours per response was published. Since then, the hour burden has been changed to 4 hours per response and approved by the Office of Management and Budget. We are amending the rule to agree with the approved hour burden. Additionally, we are correcting the address for submission of comments and deleting reference to sending comments to the Office of Management and Budget. The change will not adversely affect respondents.

Determination To Issue A Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b) do not apply because of the good cause exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary and contrary to the public interest. This amendment brings agreement between the rule and the Information Collection Request (1076–0120) which provides an additional hour for the annual report preparation. We have published this increased burden estimate in the **Federal Register** several times and have received no adverse comments. The rule also directed comments to be sent to the Office of Management and Budget but that is no longer considered necessary by the Office of Management and Budget. For these reasons, public comment on this technical change is unnecessary.

Determination To Make Rule Effective Immediately

The Department has determined that the amended rule should be effective immediately in accordance with 5 U.S.C. 533(d) for the following reasons: (1) The changes to amend the rule have no adverse affect on the public, and (2) the public has had opportunity to comment on the response burden previously during renewal of the Information Collection Request.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements programs or the rights or obligations of their recipients. The program for adult education is not changed except to put the rule in agreement with the approved information collection.

(4) This rule does not raise novel legal or policy issues. The main impact is to put the rule in agreement with the approved information collection.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Funding will not be affected by this minor change to the rule.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule imposes no unfunded mandates on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule will not require additional costs to state, local, or tribal governments. This rule is in compliance with the provisions of the Unfunded Mandates Act of 1995 (1 U.S.C. 1531, *et seq.*).

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule affects adult education by making the rule agree with the approved information collection. A takings implication assessment is not required.

Federalism (Executive Order 12612)

This rule does not have significant Federalism effects. A Federalism assessment is not required. This rule affects only the small adult education programs of the tribes.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3 (a) and 3 (b)(2) of Executive Order 12988.

Paperwork Reduction Act

This regulation requires a collection of information from 10 or more parties, and submission under the Paperwork Reduction Act is required. OMB form 83–I for this collection has been reviewed by the Department and approved by the Office of Management and Budget as 1076–0120.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. It has no effect on the environment. A detailed statement under the National Environmental Policy Act of 1969 is not needed.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

The rewriting of this rule is designed to ensure that the rule agrees with the approved information collection. The rewriting of this rule directs comments to the bureau in accordance with the Office of Management and Budget direction. The addition of 1 hour to the burden has been published in the **Federal Register** several times, allowing the tribes affected and other members of the public to comment.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your

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comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 46.3 Information Collection) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*

List of Subjects in 25 CFR Part 46

Indians—education, adult education.

Dated: March 7, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

For the reasons set out in the preamble, Part 46 of Title 25 of the Code of Federal Regulations is amended as follows:

PART 46—ADULT EDUCATION PROGRAM

1. The authority citation for part 46 continues to read as follows:

Authority: 43 U.S.C. 1457; 25 U.S.C. 2, 9, 13.

2. Section 46.3 is revised to read as follows:

§ 46.3 Information collection.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control number 1076–0120. This information is being collected to assess the need for adult education programs. The information collection is used to manage program resources and for fiscal accountability and appropriate direct services documentation. Response to this request is necessary to obtain or retain a benefit. Public reporting burden for this form is estimated to average 4 hours per response including time for reviewing instructions, gathering, maintaining data, completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the BIA Information Collection Clearance Officer, 1849 C Street NW., Washington, DC 20240.

[FR Doc. 02–7000 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–021]

Drawbridge Operation Regulations: Hatchett Creek (US 41), Gulf Intracoastal Waterway, Venice, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a deviation from the regulations governing the operation of the new Hatchett Creek (US 41) bridge across the Gulf Intracoastal Waterway in Venice, Florida. This deviation allows the drawbridge owner to only open one leaf of the bridge from March 18, 2002, until May 15, 2002, to complete construction of the new bascule leaves. A double leaf opening is available with 6 hours notice to bridge tender.

DATES: This rule is effective from 12:01 a.m. on March 18, 2002, until 11:59 p.m. on May 15, 2002.

ADDRESSES: Comments and material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–02–021] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida Department of Transportation requested that the Coast Guard temporarily allow the Hatchett Creek bridge to only open a single leaf of the bridge from March 18, 2002, until May 15, 2002. Double leaf openings will be available with 6 hour advance notice to the bridge tender. This temporary deviation from the existing bridge regulations is necessary to complete construction of the new bascule leaves. The Hatchett Creek (US 41), bridge has a horizontal clearance of 45 feet between the fender and the down span.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to allow the owner to complete construction of the new bascule leaves. Under this deviation, the Hatchett Creek (US 41) bridge need only open a single leaf of the bridge from March 18, 2002, until May 15, 2002. Double leaf openings will be available with a 6 hour advanced notice to the bridge tender.

Dated: March 13, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–7001 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 152–1152a; FRL–7163–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving the State Implementation Plan (SIP) revision submitted by the state of Missouri which provides for the attainment and maintenance of the sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in Springfield (Greene County), Missouri. This revision approves a Consent Agreement which requires SO_2 emission reductions from a major air emissions source in Springfield. Approval of this SIP revision will make the Consent Agreement Federally enforceable.

DATES: This direct final rule will be effective May 24, 2002, unless EPA receives adverse comments by April 24, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation or control strategy mean to me?
What is the NAAQS for SO_2?
What NAAQS exceedances occurred in Springfield, Missouri?
What is the control strategy?
What is contained in the SIP submittal?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations and control strategies to be incorporated into the Federally-enforceable SIP, states must formally adopt them consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state regulation or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The Missouri SIP is published in 40 CFR part 52, subpart AA.

The actual state regulations and control strategies which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation or control strategy with a specific effective date.

What Does Federal Approval of a State Regulation or Control Strategy Mean to Me?

Enforcement of the state regulation or control strategy before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the NAAQS for SO_2?

As mentioned above, we have established ambient air quality standards for a number of pollutants, including SO_2. These standards are set at levels to protect public health and welfare. The standards are published in 40 CFR part 50. If ambient air monitors measure violations of the standard, states are required to identify the cause of the problem and to take measures which will bring the area back within the level of the standard. The 24-hour standard for SO_2 is 0.14 parts per million, not to be exceeded more than once per year. There is also a 3-hour and an annual standard.

What NAAQS Exceedances Occurred in Springfield, Missouri?

In 1996, there were two exceedances of the 24-hour SO_2 standard at separate monitors in the vicinity of the James River power station. The source of the SO_2 emissions identified as contributing to the exceedances of the NAAQS was the Springfield, Missouri, City Utilities James River power generating station. There are five boilers at this facility.

What Is the Control Strategy?

The Missouri Department of Natural Resources (MDNR) negotiated enforceable emission limitations and other control measures, means, and techniques, as well as schedules and timetables for compliance, sufficient to ensure that the NAAQS for SO_2 will be achieved and maintained in the future. These measures incorporate the use of low sulfur coal and fuel blending. Compliance will be determined through coal sampling and fuel certification, and continuous emissions monitoring.

The control strategy reduces the allowable SO_2 that can be emitted to the atmosphere on a 24-hour average from the five boiler units. Units 1–4 are limited to 1.5 lb/mmBtu of heat input and Unit 5 is limited to 2.0 lb/mmBtu of heat input. The pre-existing limit was 9.2 lb/mmBtu. Two additional SO_2 monitors will be installed in the vicinity of the James River station, for a total of five monitors.

These control strategy requirements were incorporated into a Consent Agreement issued by MDNR to City Utilities. In addition to the conditions above, the Consent Agreement contains monitoring, reporting, and recordkeeping requirements sufficient to determine compliance. These provisions shall also be incorporated into the facility's Title V operating permit.

What Is Contained in the SIP Submittal?

The MDNR submitted a request to us to approve the Consent Agreement as a revision to the Missouri SIP. Additional information is contained in the state submittal and in the EPA Technical Support Document (TSD) for this notice which can be obtained by contacting us at the address above.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving a revision to the Missouri SIP which requires source-specific SO_2 emission reductions which will result in attainment and maintenance of the SO_2 NAAQS in Springfield (Greene County), Missouri.

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Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. (5 U.S.C. 804(3).) EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(d) the table is amended by adding a new entry to the end of the table to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
.	.	.	.	.
Springfield City Utilities James River Power Station SO_2.	Consent Agreement	12/06/01	3/25/02 and FR cite.	

* * * * *

[FR Doc. 02–7092 Filed 3–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 114–1114b; FRL–7162–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving as an amendment to the Missouri State Implementation Plan (SIP) a revision to the Missouri construction permit rule. EPA is also responding to comments received during the public comment period. This revision will strengthen the SIP with respect to attainment and maintenance of established air quality standards, ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revisions pursuant to section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule is effective on April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Background

On April 6, 2001, we published a proposal and a direct final **Federal Register** document to approve Missouri rule 10 CSR 10–6.060, Construction Permits Required, as a revision to the Missouri State Implementation Plan (SIP). Among other revisions, this submission established minimum emission cutoffs for the state's minor new source review (NSR) program. In general, Missouri did not previously have exemptions to its minor NSR program based on emission levels. The revisions, in relevant part, exempt sources with emission levels below 0.5 pounds per hour or 876 pounds per year of a regulated pollutant from the minor source permitting program. Because adverse comments were submitted on our approval of the rule, the direct final rule was withdrawn on June 1, 2001 (66 FR 29705).

Two comment letters were received—one from the Associated Industries of Missouri (AIM) and one from the Regulatory Environmental Group For Missouri (REGFORM). The REGFORM comments were received two days after the close of the comment period, but since its comments were similar to those submitted by AIM, they will also be addressed here.

Response to Comments

Comment 1: The AIM comment was general in nature and pertained to the portion of the rule relating to the emission levels below which permit review for new construction or modification is not required. AIM stated that this issue had been the subject of discussion of a work group involving industry, citizen groups and the Missouri Department of Natural Resources (MDNR), which led up to the revision of the rule, and the work group is again meeting and the "insignificant levels" issue is again being reviewed. Since the rule may be revised again, AIM believes it is inappropriate to incorporate the rule in the SIP at this time. The comments from REGFORM also concerned the "insignificant levels." REGFORM commented that the aforementioned work group was again meeting and that we should not approve this revision, but instead wait until a new rule is promulgated after the work group has completed its deliberations.

Response to Comment 1: The CAA contains two limitations relating to EPA action on SIP submittals which are relevant to the comment. First, section 110(k)(2) provides, in part, that EPA must act on a SIP submission within 12 months after EPA determines that the SIP submission is "complete." Second, section 110(k)(3) provides that we must approve a SIP revision which meets the requirements of the CAA.

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Because of the 12-month deadline for EPA action, we would be unable to merely defer action on the submission until the work group reaches consensus on rule changes, and MDNR makes rule changes (MDNR rulemaking process generally takes about one year; MDNR has not begun that process yet and has made no decision to begin the rulemaking process), even if we had a justification for deferring action pending that process. We also note that deferring action would leave in place the current rule, which contains no exemptions based on emission levels, leaving sources subject to a more stringent rule than the revised rule which we are approving into the SIP.

Although the commenters did not suggest that EPA disapprove the rule, we note that disapproval would be the alternative available to EPA under section 110 (k)(2), and that the commenters have not provided any basis for EPA to disapprove the revision. The commenters state that it is inappropriate to approve the revision now, since it may be revised in the future. However, SIP revisions are always subject to future changes, and the CAA provides no basis for us to disapprove a rule merely because it might be changed later. For the reasons stated in the proposal and this final rule, we have determined that the SIP revision meets the requirements of the CAA, and we are approving it under section 110 (k)(3). If MDNR makes further revisions to the rule and submits the revisions to EPA, we will evaluate the revisions and determine whether to incorporate the revisions into the SIP through future rulemaking.

Comment 2: REGFORM also specifically expressed concern about the insignificant level of 0.5 pounds per hour, below which a source is not subject to the rule requirements. REGFORM asserts that establishing a threshold in pounds per hour considerably restricts permit applicants' ability to qualify for an exemption, even if the source is meeting the yearly limit.

Response to Comment 2: EPA recognizes that a per hour emission rate may be more restrictive than a daily or annual rate. However, there is nothing which restricts the state from setting an hourly limit. The state decided that the 0.5 hourly exemption level was appropriate and considered comments on the 0.5 hourly exemption during its public comment period. (The state's response to comments is contained in the July 29, 1999, Missouri Air Conservation Commission Briefing Document.) The state concluded that a short-term applicability limit was needed to ensure protection of short-term air quality standards. The commenter did not provide any information indicating that the state's choice of a short-term limit is inconsistent with the CAA. Therefore, EPA concludes that it cannot disapprove or defer action on this provision merely because it may be more restrictive than the annual applicability limits.

Summary: The comments submitted fail to provide sufficient technical or statutory reasons to not fully approve the revised rule in the Missouri SIP. We therefore are taking final action to approve this rule revision as an amendment to the Missouri SIP.

Have the Requirements for Approval of a SIP Revision Been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in the April 6, 2001, **Federal Register** notice and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are taking final action to approve this rule as a revision to the Missouri SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.060" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
.	.	.	.	.
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
.	.	.	.	.
10–6.060	Construction Permits Required.	11/30/99	03/25/02 and FR cite.	Section 9, pertaining to hazardous air pollutants, is not part of the SIP.
.	.	.	.	.

* * * * *

[FR Doc. 02–7094 Filed 3–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–260; RM–5728]

Radio Broadcasting Services; Olive Branch, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 22, 1988, a document concerning updating the FM Table of Allotments for Section 73.202(b) under Mississippi. The spelling of the community was incorrect. This document corrects the spelling of the community.

DATES: Effective on March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: On June 22, 1988, the Commission published a document (53 FR 23369) amending § 73.202(b), the FM Table of Allotments, by adding Channel 239A at Olive Branch, Mississippi. The name of the community was listed in the FM Table of Allotments as "Olive Brance" in lieu of Olive Branch. This document corrects the spelling of the community.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7019 Filed 3–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1480; MM Docket No. 00–158; RM–9337, RM–9892]

Radio Broadcasting Services; Alamo Community, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of September 15, 2000, 65 FR 55930, a document concerning updating Section 73.202(b), the FM Table of Allotments for Radio Broadcasting Services; Alamo Community, New Mexico of the Commission Rules. The docket number listed in the heading was published incorrectly. The correct docket number is set forth above.

DATES: Effective on March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

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Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7018 Filed 3–22–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 57
Monday, March 25, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–705 PR#2 Correction]

Proposed Hass Avocado Promotion, Research and Information Order; Correction

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule that was published on February 19, 2002 [67 FR 7290] by publishing the correct Harmonized Tariff Schedule number for Hass avocados used to identify those avocados which are subject to import assessments.

EFFECTIVE DATE: March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Julie A. Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or *julie.morin@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Department of Agriculture (Department) published a proposed rule on the Hass Avocado Promotion, Research, and Information Order [7 CFR Part 1219] in the **Federal Register** on February 19, 2002 [67 FR 7290]. The proposed Order is authorized under the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813].

Need for Correction

As published, there was a typographical error in the proposed rule. In § 1219.54(c)(2) import assessments, the Harmonized Tariff Schedule number identifying Hass avocados is incorrect. Accordingly, this correction document contains the correct Hass avocado Harmonized Tariff Schedule number.

Correction

FR Doc. 02–3797, published on February 19, 2002 [67 FR 7290], is corrected as follows:

§ 1219.54 [Corrected]

1. On page 7307, in the first column, in the Assessment—Import Assessments, section number § 1219.54(c)(2) is correctly revised to read as follows:

(2) The import assessment shall be uniformly applied to imported fresh Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States or any other numbers to identify fresh Hass avocados. Assessments on other types of imported fresh avocados or on processed Hass avocados, such as prepared, preserved, or frozen Hass avocados or Hass avocado paste, puree, and oil will be added at the recommendation of the Board with the approval of the Secretary.

Dated: March 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7106 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–088–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are reopening the public comment period on an amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of the State's responses to several required program amendments codified in the Federal regulations. The amendment is intended to render the West Virginia program no less effective than the Federal requirements. We are reopening the comment period to provide an opportunity to review and comment on a status report from West Virginia Department of Environmental Protection (WVDEP) of actions taken by the State in an attempt to satisfy the required program amendments, and other related documents. We are also providing opportunity to comment on the State's responses to two required program amendments that we inadvertently omitted from a previous announcement of a public comment period.

This document gives the times and locations that the West Virginia program, the proposed amendments to that program, the status report provided by WVDEP, and other related documents are available for your inspection, and the comment period during which you may submit written comments on the amendment.

DATES: We will accept written comments until 4:30 p.m. (local time), on April 9, 2002.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov*.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510.

In addition, you may review copies of the proposed amendment, the status report provided by WVDEP, and the other related documents during regular

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business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated November 30, 2000 (Administrative Record Number WV–1189), the WVDEP submitted an amendment to its program. The amendment consists of the State's written response to several required regulatory program amendments codified in the Federal regulations at 30 CFR 948.16. We announced receipt of the proposed amendment on January 3, 2001 (66 FR 335). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1194).

On January 15, 2002, we met with the WVDEP to discuss our concerns with the proposed amendment and to obtain the State's responses to our concerns (Administrative Record Number WV–1271). The WVDEP submitted a draft status report on February 15, 2002 (Administrative Record Number WV–1274). By letters dated February 26, 2002, and March 8, 2002 (Administrative Record Numbers WV–1277 and WV–1280, respectively), the WVDEP sent us updated status reports, with attachments, that outline the actions taken by WVDEP in an attempt to satisfy the required program amendments. That information is summarized below. On various dates we provided WVDEP with related materials such as West Virginia 2001 Bulletin No. 32 concerning agricultural statistics (Administrative Record Number WV–1269); Natural Resources Conservation Service (NRCS) listing of prime farmland soils in West Virginia (Administrative Record Number WV–1278); and "Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II" (Administrative Record Number WV–1277).

We also discussed with the WVDEP the State's responses to several required program amendments that were submitted to us by letter dated May 2, 2001 (Administrative Record Number WV–1209). We announced receipt and provided an opportunity to comment on the amendments submitted on May 2, 2001, in the May 24, 2001, **Federal Register** (66 FR 28682) (Administrative Record Number WV–1213). In that announcement, we inadvertently omitted identifying the State's responses to the required program amendments codified at 30 CFR 948.16(gggg) and (hhhh). Therefore, we are taking this opportunity to announce receipt and provide an opportunity to comment on the State's responses to the required amendments codified at 30 CFR 948.16(gggg) and (hhhh).

We have organized the information provided by WVDEP according to the required program amendment codified at 30 CFR 948.16 that is being addressed. We will begin each discussion by quoting the required amendment. We will then include WVDEP's response to that required amendment, followed by a description of any attachments that were provided by WVDEP. Finally, whenever we add our own words in the form of a note, we will place our note within brackets.

Required Amendments Addressed in the November 30, 2000, Submittal

1. 30 CFR 948.16(dd) Revegetation.

30 CFR 948.16(dd)—West Virginia shall submit proposed revisions to Subsection 38–2–9.3 of its surface mining reclamation regulations or otherwise propose to amend its program to establish productivity success standards for grazing land, pasture land and cropland; require use of the 90 percent statistical confidence interval with a one-sided test using a 0.10 alpha error in data analysis and in the design of sampling techniques; and require that revegetation success be judged on the basis of the vegetation's effectiveness for the postmining land use and in meeting the general revegetation and reclamation plan requirements of Subsections 9.1 and 9.2. Furthermore, * * *, West Virginia shall submit for OSM approval its selected productivity and revegetation sampling techniques to be used when evaluating the success of ground cover, stocking, or production as required by 30 CFR 816.116 and 817.116.

WVDEP response:

Productivity: The WVDEP has developed a policy (Attachment 1) that will use productivity standards developed by the Natural Resources Conservation Service (NRCS) or other publications of the United States Department of Agriculture. These standards will be compared to yields obtained from the particular site.

Ground cover: WVDEP has reviewed the modified Rennie-Farmer Method in addition to methods used in other states and has developed a policy (Attachment 1) which references section 3 of "Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II," by Robert E. Farmer, Jr. *et al.*, OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

Attachment 1: Productivity and Ground Cover Success Standards

The productivity success standards for grazing land and hayland will be based upon determinations for similar map units as published in the productivity tables in NRCS soil surveys for the county or from average county yields recognized by the United States Department of Agriculture (USDA). The yields for grazing land or hayland will be measured in material produced per acre or animal units supported. The success of production shall be equal to or greater than that of the standard obtained from the tables. Evaluation methods for productivity to be utilized are described in section 1 of "Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II" by Robert E. Farmer, Jr. *et. al.*, OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

The productivity success standard for cropland shall be determined using yields for reference crops from unmined areas. Reference crop yields shall be determined from the current yields records of representative local farms in the surrounding area or from the average county yields recognized by the USDA. The success of production shall be equal to or greater than that of the reference crop from unmined areas. Evaluation methods for productivity to be utilized are described in section 1 of "Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II" by Robert E. Farmer, Jr. *et. al.*, OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

The company shall be responsible for providing DEP with copies of the productivity tables and/or data used to determine reference crop yield. Where the USDA or other agricultural data for productivity does not exist for a particular county, the applicant will work with the DEP and the USDA to develop standards for the proposed area.

Ground cover success shall be based on the Rennie and Farmer technique described in section 3 of "Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II" by Robert E. Farmer, Jr. *et. al.*, OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

2. 30 CFR 948.16(ee) Prime farmland.

30 CFR 948.16(ee)—West Virginia shall submit documentation that the U.S. Soil Conservation Service (SCS), now the NRCS, has been consulted with respect to the nature and extent of the prime farmland reconnaissance inspection required under Subsection 38–2–10.1 of the State's surface mining reclamation regulations. In addition, the State shall either delete paragraphs (a)(2) and (a)(3) of Subsection 38–2–10.2 or submit documentation that the SCS State Conservationist concurs with the negative determination criteria set forth in these paragraphs.

WVDEP response:

Comments from NRCS resolve this issue (WV administrative Record No. 1203). The NRCS stated in their comment letter dated February 9, 2001, to OSM that all prime farmlands in the State have been mapped and are available. WVDEP has contacted the NRCS and has drafted a letter seeking further concurrence (Attachment 1A).

Attachment 1A: February 25, 2002, Letter From WVDEP to NRCS

In the letter that comprises this attachment, WVDEP stated that it was providing NRCS a copy of its rule concerning prime farmlands at CSR 38–2–10 (Attachment 1P). WVDEP requested that NRCS address the following: the reconnaissance inspection and two paragraphs of the negative determination section.

WVDEP described the States reconnaissance inspection process as it currently exists. Included in that description are the following criteria, one or more of which can be the basis of a prime farmland negative determination: (1) No historical use of the land as cropland; (2) the slope of the land in the permit area is greater than 10 percent: (3) other factors (*i.e.*, rocky surface, frequent flooding) disqualify the land as prime farmland; (4) a soil survey by a qualified person.

The letter further states that WVDEP reviews the applicants' information and will check county soil survey maps. The soils in the area are compared to a list from "West Virginia's Prime Farmland Soil Mapping Units" by NRCS (Attachment 3P). If the soils in the proposed mining area are not on the list, then the negative determinations are approved. If the negative determination is not approved, then the NRCS is consulted. If prime farmland is identified, then a much more detailed plan is required.

For counties where no mapping has been published, WVDEP's procedure is described in Attachment 2P. If the slopes are less than 10 percent and the area has historically been used as cropland then NRCS is consulted.

WVDEP further stated that the criteria for both the slope and the rocky or flooded land were based on NRCS literature. Of all the soils identified in the "West Virginia's Prime Farmland Soil Mapping Units" document, not one has greater than 10 percent slope and that same document says that prime farmland cannot be in areas that are flooded frequently nor areas that are rocky (10 percent cover of rock fragments coarser than 3 inches).

The letter of Attachment 1A asked for NRCS concurrence on the State's methods of reconnaissance inspections and with the State's negative determination criteria for prime farmland.

Attachment 2P: Prime Farmlands Identifications

Soil surveys prepared by the NRCS will be the basis for the final determination of prime farmlands in West Virginia involving surface mining permits. In these cases where soil surveys are not complete in a county and prime farmland involvement is possible, the NRCS will conduct a soil survey for the permit area for final determination.

If a permit application contains any areas with less than 10 percent slope and it is evident the area has been used for crops at least 5 years out of the last 20 years, it is possible that these areas could be considered prime farmland.

If this condition is present, you should check the NRCS soil survey for that county. If a soil survey does not exist for a particular county, you should consult the local NRCS District Conservationist for a prime farmland determination.

In counties where soil surveys have been published, you must locate the permit on the soils map and by utilizing the symbols on the map, determine the soil types in the proposed area. Then, comparison with the attached list of soils constituting prime farmlands in West Virginia will have to be made. If the soil type is considered prime farmland on the list, the District Conservationist for that county must be contacted for final determination.

If the permit application involves prime farmland, all provisions of sections 507(b)(16) and 515(b)(7) of Public Law 95–87 and section 10 of the West Virginia Surface Mining Regulations will apply.

Attachment 3P: West Virginia's Prime Farmland Soil Mapping Units

This publication contains a listing of West Virginia's prime farmland soil mapping units. The publication is dated April 1982.

Attachment 4P: This attachment consists of the State response to the required amendment codified at 30 CFR 948.16(ee) as submitted to OSM on November 30, 2000.

3. 30 CFR 948.16(oo). Spillway design.

30 CFR 948.16(oo)—West Virginia shall submit proposed revisions to subsection 38–2–5.4(b)(8) of its surface mining reclamation regulations to require that excavated sediment control structures which are at ground level and which have an open exit channel constructed of non-erodible material be designed to pass the peak discharge of a 25-year, 24-hour precipitation event.

WVDEP response:

The WVDEP is proposing language (Attachment 2) that all sediment control structures spillways will be designed based on a 25-year/24-hour storm except for haulroads.

Attachment 2: This attachment contains the draft language for CSR 38–

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2–5.4.b.8. As amended, the proviso that excluded excavated sediment control structures is deleted. In its place is language that provides as follows: "provided, however that this subsection does not apply to haulroads." As amended, CSR 38–2–5.4.b.8. provides as follows.

5.4.b.8. Be designed to safely pass a twenty-five (25) year, twenty-four (24) hour precipitation event. The combination of both principal and/or emergency spillway of the structures shall be designed to safely pass the peak discharge of a twenty-five (25) year, twenty-four (24) hour precipitation event, provided, that a single open channel spillway may be used only if it is of non-erodable construction and designed to carry sustained flows; or earth or grass-lined and designed to carry short term, infrequent flows at non-erosive velocities where sustained flows are not expected; provided, however, that this subsection does not apply to haulroads.

4. 20 CFR 948.16(nnn) Unjust hardship.

30 CFR 948.16(nnn)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B–1–7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code.

WVDEP response:

The WVDEP is proposing language (Attachment 3) to exclude unjust hardship as criteria to support the granting of temporary relief under WV Code 22–3.

Attachment 3: W. Va. Code 22B–1–7 Appeals to Boards

This attachment consists of the language at 22B–1–7(d) and (h) and identifies how these provisions are proposed to be amended.

Paragraph (d) is amended by adding a proviso that provides as follows: "Provided; however, the criterion of unjust hardship cannot be used to support the granting of temporary relief for an order or other decision issued under article three chapter twenty-two of this code."

5. 30 CFR 948.16(ooo) Temporary relief.

30 CFR 948.16(ooo)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B–1–7(h) by removing reference to Article 3, Chapter 22.

WVDEP response:

This provision only applies to the Environmental Quality Board (EQB), which adjudicates Clean Water Act appeals. The WVDEP is proposing language (Attachment 3) to delete the reference to Article 3 Chapter 22.

Attachment 3: W. Va. Code 22B–1–7(h) Appeals to Boards

This attachment consists of the language at section 22B–1–7(d) and (h) and identifies how these provisions are proposed to be amended. Paragraph (h) is amended in the first sentence by deleting reference to article "three" chapter 22 of the W. Va. Code.

6. 30 CFR 948.16(sss) Water replacement waiver.

30 CFR 948.16(sss)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR 38–2–14.5(h) and 22–3–24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of "Replacement of water supply," paragraph (b), at 30 CFR 701.5.

WVDEP response:

The WVDEP has reevaluated its water replacement and waiver requirements at W.Va. Code § 22–3–24 and the rules. As stated in 38–2–14.5.h, the waiver of water supply provided in § 22–3–24(b) only applies to underground operations and the agency plans to propose changes for the 2003 regular legislative session that would clarify that replacement of an affected water supply that is needed for the existing land use or for the post-mining land use cannot be waived. Historically, under the state program, replacement waivers are not sought nor granted for such water supplies. However, in the interim, it is the position of the WVDEP that replacement of water supply can only be waived when consistent with the conditions described in the definition of "Replacement of water supply," paragraph (b), at 30 CFR 701.5.

7. 30 CFR 948.16(vvv)(2) Certification of haul roads.

30 CFR 948.16(vvv)(2)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend CSR 38–2–4.12 to reinstate the following deleted language: "and submitted for approval to the Director as a permit revision."

WVDEP response:

The WVDEP has established guidelines (Series 20 Effective 1–97, page 22 of the I&E Handbook, Attachment 4) for approval of minor revisions to the original design. Minor deviations from the approved plan for haulroads (width, grade, etc.) are permissible as long they are within the construction tolerance specified in 38–3.35. [Note: typo, should be 38–2–3.35]

Attachment 4: Minor Revisions Approvable by Field Level Personnel

Policy/Procedures: Minor revisions to original designs must be within the construction tolerances specified in 38–2–3.35. If not, a permit revision is required. The following are examples of minor revisions that are approvable at the field inspector level.

1. Minor drainage structure configuration changes (*i.e.*, round vs. square, spillway on one side instead of the other, *etc.*) as long as the required sediment storage capacity is maintained. (Approved by virtue of the inspector signing off on the as-built certification)

2. Minor road width/slope configuration (as long as the width/slope do not compromise safety considerations). (Approved as an as-built certification)

3. Additional sediment control capacity (*i.e.*, additional sumps on roads, pre sumps in front of sediment ponds). (Approved as an as-built certification)

4. Species substitution on planting plans (*i.e.*, substituting legume for legume, hardwoods for hardwoods, *etc.*). Approved by letter submittal and inspector signs off on it.

5. Minor bench size changes on fills (*i.e.*, wider than twenty (20) feet. (Approved on the final certification)

6. Outlets/spillways constructed of different material than originally proposed. (Approved on the as-built certification)

7. Additional rock flumes on backfill areas (letter approval when constructed).

8. Minor encroachment of the permit boundary (*i.e.*, slips, shootovers, *etc.*). These need to be covered with a notice of violation (NOV) then shown on a progress map or on the final map. The acreage involved has to be included in the disturbed acreage number on the Phase I release application, and the bond reduction calculated accordingly.

Keep in mind that some of these changes need to be delineated on the "map of record." This can be done by requesting a progress map to accompany the certification or letter, or at a mid term review, or at the time of final map submittal (Phase I release).

8. 30 CFR 948.16(vvv)(3) Slurry impoundments.

30 CFR 948.16(vvv)(3)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

WVDEP response:

The WVDEP is proposing a change to 5.4.d.4 (Attachment 5) which clarifies that non-MSHA sized coal processing waste dams and embankments will be certified by a registered professional engineer as indicated in 30 CFR 780.25.

Attachment 5: CSR 38–2–5.4.d. Certification

This provision would be amended at subdivision 38–2–5.4.d.3. by adding the words "except all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer." As amended, CSR 38–2–5.4.d.3. would read as follows: Design and construction certification of embankment type sediment control structures may be performed only by a registered professional engineer or licensed land surveyor experienced in construction of embankments "except all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer."

9. 30 CFR 948.16(vvv)(4) Coal refuse disposal.

30 CFR 948.16(vvv)(4)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend CSR 38–2–14.15(m), or otherwise amend the West Virginia program to require compliance with 30 CFR 816/817.81(b), (d), and (e) regarding coal refuse disposal, foundation investigations, and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from goundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability.

WVDEP response:

Clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such materials must not be buried or stored in proximity to any drainage course such as springs and seeps.

This part of the required program amendment is satisfied by the state rule (14.15.m.2) which requires that coal processing waste will not be placed in the backfill unless it is non-acid and/or non-toxic material or rendered non-acid and/or non-toxic material and by the state rule (14.6.b) which prohibits acid-forming or toxic forming material being buried or stored in proximity to a drainage course or groundwater system.

Emergency Procedures: OSM believes that the State's emergency procedures at subsection 14.15.m.2 may be no less effective than those at 30 CFR 816.81(e).

Material from Outside the Permit Area: The state rules are clear that prior approval of the Secretary is necessary before placing coal refuse material in the backfill regardless of where the material originates. 14.15.m.2. states the following:

The coal processing waste will not be placed in the backfill unless it has been demonstrated to the satisfaction of the Secretary that: 14.15.m.2.A. the coal processing waste to be placed based upon laboratory testing to be non-toxic and/or non-acid producing; or 14.15.m.2.B. an adequate handling plan including alkaline additives has been developed and the material after alkaline addition is non-toxic and/or non-acid producing.

The WVDEP requires the permittee to identify the source of the refuse in addition to the laboratory testing. Any changes in the source of the refuse require approval of the Secretary.

Foundation: This part of the required program amendment is satisfied due to the requirement that backfill be designed and certified by a registered professional engineer so that a minimum long-term static safety factor of 1.3 is achieved for the final graded slope. All stability analyses include properties of the material to be placed, properties of the foundation (whether on solid bench or backfill) and include site conditions that will affect stability.

Acid Material Handling Plan: OSM stated that this required program amendment is based on a comment by EPA on the original submittal of the rule and that EPA did not comment on WVDEP's explanation. In WVDEP's explanation, it stated that the state rule is clear that the material must be non-acid producing or rendered non-acid producing prior to placement before the Secretary can allow placement of the material in the backfill. In addition, WVDEP stated that the rules at 14.6 apply to the handling of all acid producing material.

10. 30 CFR 948.16(zzz) Pre-subsidence surveys.

30 CFR 948.16(zzz)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.1., or otherwise amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic, and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic, and residential water supplies within the permit and adjacent areas, and to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminsh, or interrupt drinking, or residential water supplies.

WVDEP response:

The WVDEP stated the identification of structures on a map as required by 3.12.a includes showing the location and type. However, for clarification, on February 4, 2002, WVDEP modified the permit application to state "Identify Structure (location and type)" (Attachment 6). This program amendment is currently being reviewed by OSM.

Attachment 6: Section S: Underground/Subsidence Information

Section S–2 of the permit application provides as follows: Does the subsidence survey identify any of the following within 30 degree angle of draw above the proposed underground workings? (Minimum 30 decgree angle of draw unless otherwise specified)

A. Perennial and/or intermittent streams?	Yes	No
B. Structures?	Yes	No
C. Renewal Resource Lands?	Yes	No
D. PSD or Municipal Water Works	Yes	No

If Yes to A.. B., C., and/or D. above, identify (location and type) on the topographic map.

11. 30 CFR 948.16(aaaa) Water supply survey.

30 CFR 948.16(aaaa)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise CSR 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the water supply survey required by CSR 38–2–3.12.a.2. include all drinking, domestic, and residential water supplies within the permit area and adjacent area, without limitation by an angle of draw, that could be contaminated, diminished, or interrupted by subsidence.

WVDEP response:

The 30-degree angle of draw as set forth in state rule is a minimum criteria and the state reserves the right to request surveys within a larger area based on evaluation of the application. However, for clarification, the WVDEP has proposed a change to 3.12.a (Attachment 7).

Attachment 7: CSR 38–2–3.12. Subsidence Control Plan

Subsection 3.12.a.1. is proposed to be amended by adding the words "unless a greater area is specified by the Secretary." In addition, a new sentence is added at the end of this paragraph which is as follows. "A survey that identifies, on a topographic map of a scale of 1 inch = 1,000 feet or less, location and type of water supplies and a narrative indicating whether or not subsidence could contaminate, diminish or interrupt water supplies both on the

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permit area and adjacent areas." Other changes are also made. As amended, CSR 38–2–3.12.a.1. would read as follows:

3.12.a.1. A survey that identifies, on a topographic map of a scale of 1 inch = 1,000 feet or less, structures, perennial and intermittent streams or renewable resource lands and a narrative indicating whether or not subsidence would cause material damage or diminution of value or use of such structures or renewable resource lands both on the permit area and adjacent areas within an angle of draw of at least 30 degrees unless a greater area is specified by the Secretary. Provided; however, an angle of draw less than 30 degrees can be requested by the applicant based upon results of site specific analyses and demonstration that a different angle of draw is justified. Computer program packages predicting surface movement and deformation caused by underground coal extraction can be utilized. A survey that identifies, on a topographic map of a scale of 1 inch = 1,000 feet or less, location and type of water supplies and a narrative indicating whether or not subsidence could contaminate, diminish or interrupt water supplies both on the permit area and adjacent areas.

CSR 38–2–3.12.a.2. is proposed to be amended by deleting the phrase "the area encompassed by the applicable angle of draw" and by replacing those words with the phrase "the permit area and adjacent areas." Other minor changes are also proposed. As amended, paragraph 3.12.a.2. would provide as follows. "A survey of the quality and quantity of water supplies that could be contaminated, diminished or interrupted by subsidence within the permit area and adjacent areas."

12. 30 CFR 948.16(bbbb) Pre-subsidence survey report and cost.

30 CFR 948.16(bbbb)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining quality and quantity of drinking, domestic, or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

WVDEP response:

Historically, the presubsidence survey includes any assessments and engineering evaluation used and copies of the survey are to be provided to the property owner and to the WVDEP at the cost of the applicant. However, for clarification, the WVDEP has proposed a change to 3.12.a.2.B. (Attachment 7) to reflect that position.

Attachment 7: Subsidence Control Plan

Subsection CSR 38–2–3.12.a.2.B. is proposed to be amended in the fourth paragraph, by adding the words "at the cost of the applicant" at the beginning of the sentence. In addition, the words "containing any technical assessments and engineering evaluation used in the survey" are added. As amended, the fourth paragraph at CSR 38–2–3.12.a.2.B. provides as follows.

At the cost of the applicant, a written report of the survey containing any technical assessments and engineering evaluation used in the survey shall be prepared and signed by the person or persons who conducted the survey. Copies of the report shall be provided to the property owner and to the Secretary.

13. 30 CFR 948.16(iiii) Recreational facility use.

30 CFR 948.16(iiii)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend the term of "recreational uses" at W.Va. Code 22–3–13(c)(3) to mean "recreational facilities use" at SMCRA section 515(c)(3).

WVDEP response:

Neither state code nor state rules define the term "public facility including recreational land use." It is the state position that the term "public facility including recreational land use," implies structures or other significant developments that the public is able to use, or that confer some type of public benefit. Depending upon individual circumstances, this term may include schools, hospitals, airports, reservoirs, museums, and developed recreational sites such as picnic areas, campgrounds, ballfields, tennis courts, fishing ponds, equestrian and off-road vehicle trails, and amusement areas, together with necessary supporting infrastructure such as parking lots and rest facilities. In general, those sites with a public or public facility postmining land use will provide the public with access as a matter of right on a non-profit basis. Facilities that meet a public need, like water supply reservoirs and publicly owned prisons, and facilities that provide a benefit, like flood control structures and institutions of higher education, also qualify, even if they are not readily accessible to all members of the public or completely non-profit.

14. 30 CFR 948.16(nnnn) Abandoned coal refuse removal.

30 CFR 948.16(nnnn)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to either delete CSR 38–2–3.14 or revise CSR 38–2–3.14 to clearly specify that its provisions apply only to operations that do not qualify as surface mining operations as defined in 30 CFR 700.5. If the State chooses the second option it must submit a sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under WVSCMRA.

WVDEP response:

WVDEP included the words "and if not AML eligible" to allow for the removal of abandoned coal refuse piles under AML enhancement requirements. The State has developed a sampling protocol and set the BTU value for coal (Attachment 8).

Attachment 8: Removal of Abandoned Coal Refuse Piles

The Secretary may issue a reclamation contract, in accordance with 38–2–3.14, solely for the removal of existing abandoned coal processing waste piles; only if the average quality of the refuse material *does not* meet the minimum BTU value standards to be classified as coal and/or has a percent ash value of greater than 50, as set forth in ASTM standard D 388–99.

Refuse material that *does not* meet minimum BTU value standards to be classified as coal means; a pile of waste products of coal mining, physical coal cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material in which the material in the pile has a calculated average BTU value less than 10,500.

Calculation of the average BTU value of the pile will be based on samples taken in a minimum of five different, uniformly distributed locations. The number and spacing of sampling locations should take into account variability of the material in short distances.

Required Amendments Addressed in the May 2, 2001, Submittal

15. 30 CFR 948.16(xx) Constructed outcrop barriers.

30 CFR 948.16(xx)—West Virginia shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise subsection CSR 38–2–14.8(a) to specify design requirements for constructed outcrop barriers that will be the equivalent of natural barriers and will assure the protection of water quality and ensure the long-term stability of the backfill.

WVDEP response:

Responding to OSM's concern that the word "inhibit" as in "to inhibit slides and erosion" is less effective than the Federal standard of "prevent" at 30 CFR 816.99(a), WVDEP provided the following.

The state statutory language for outcrop barriers at W.Va. Code 22–3–13(b)(25) requires the retention of the natural barrier to "inhibit" slides and erosion. As set forth in the **Federal Register** dated January 21, 1981, OSM agrees that provisions regarding natural barriers at W.Va. Code 22–3–13(b)(25) and (c)(4) were found to be consistent with section 515(b)(25) of SMCRA.

Standard Engineering Practices.—The constructed outcrop barriers are designed structures that have a required minimum long-term static safety factor while the natural outcrop barriers are not designed structures and are not required to have a minimum factor of safety. Furthermore, the analysis of stability includes consideration of the material to be placed, the foundation and site conditions. The WVDEP is in the process of developing guidelines for constructed outcrop barriers that will include: requirements for the outslope; sequencing of construction of the outcrop barrier; and minimum factor of safety when barrier is part of the sediment control system (Attachment 9).

[**Note:** Attachment 9 completes WVDEP's process of developing guidelines for constructed outcrop barriers.]

Attachment 9: Constructed Outcrop Barriers

Standard engineering practices for constructed outcrop barriers shall include the following:

1. The design of the constructed barrier shall take into consideration site conditions.

2. The construction of the outcrop barrier shall occur simultaneously with the removal of the natural barrier and be located at or near the edge of the lowest coal seam being mined. Temporary measures must be in place until the barrier is constructed.

3. The recommended outslope of the constructed barrier is 2v:1v

[**Note:** This is a typo, and should be 2v:1h.]

with a static safety factor of 1.3.

4. If the proposed outslope is steeper than 2v:1v

(**Note:** This is a typo, and should be 2v:1h.],

the constructed barrier shall be designed to have a static safety factor of 1.5.

5. If constructed barrier is part of the sediment control system (sediment ditch), the constructed barrier shall be designed to have a static safety factor of 1.5.

16. 30 CFR 948.16(gggg) Bonding for water replacement.

30 CFR 948.16(gggg)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5) by requiring additional bond whenever protected water supplies are contaminated, diminished, or interrupted by underground mining operations conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply.

In the program amendment submitted by the WVDEP on May 2, 2001, WVDEP proposed to amend CSR 38–2–16.2.c.4. by deleting the existing first two sentences. In their place, the following sentences are added.

The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period.

In addition, the final existing sentence is being amended by adding the following words to the end of the sentence: "to land or structures, or the estimated cost to replace water supply."

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(gggg). For more information, see Finding 26 in the February 9, 1999, **Federal Register** (64 FR 6201, 6212–6213).

WVDEP response:

Under the state program additional bond is required whenever a protected water supply will be contaminated, diminished, or interrupted by underground mining and the amount of bond is based to be the estimated cost of replacing the water supply. However, for clarification, WVDEP has proposed a change to 16.2.c.4 (Attachment 10).

Attachment 10: CSR 38–2–16.2.c.4. Bonding for Subsidence Damage

CSR 38–2–16.2.c.4. is proposed to be amended by deleting the word "that" in the first sentence immediately after the word "permittee." In its place, the word "when" is added. In addition, the first sentence is amended by adding the words "when contamination, diminution or interruption occurs to a domestic or residential water supply" are added immediately following the words "structures, or." As amended, CSR 38–2–16.2.c.4. provides as follows.

16.2.c.4. Bonding for Subsidence Damage: The Secretary shall issue a notice to the permittee when subsidence related material damage has occurred to lands, structures, or when contamination, diminution or interruption occurs to a domestic or residential water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The Secretary may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the Secretary concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period. If extended beyond ninety (90) days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs to land or structures, or the estimated cost to replace water supply.

17. 30 CFR 948.16(hhhh) Time allowed for bonding for water replacement.

30 CFR 948.16(hhhh)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), by requiring that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

In the program amendment submitted by the WVDEP on May 2, 2001, WVDEP proposed to amend CSR 38–2–16.2.c.4. by deleting the existing first two sentences. In their place, the following sentences are added.

The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The Secretary may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the Secretary concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period. If extended beyond ninety (90) days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs to land or structures, or the estimated cost to replace water supply.

In addition, the last existing sentence is being amended by adding the following words to the end of the sentence: "to land or structures, or the estimated cost to replace water supply."

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(hhhh). For more information, see Finding 26 in the February 9, 1999, **Federal Register** (64 FR 6201, 6212–6213).

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WVDEP response:

OSM agreed to reevaluate its rules and other program approval decisions, especially Pennsylvania Act 54. OSM agrees that the State can provide notification to an operator of a water problem under 30 CFR 817.121(c)(5). Once an operator is notified of the problem and if repair, replacement, or compensation cannot occur within 90 days, the operator is required to post the additional bond. In addition, an extension of time beyond 90 days is allowed for the reasons set forth under 30 CFR 817.121(c)(5). The parties agreed that counsel for OSM and counsel for WVDEP would reevaluate this issue.

[**Note:** With respect to Act 54, OSM did not reconsider its decision on Act 54, we merely checked to see if it had any relevance to this issue.]

18. 30 CFR 948.16(pppp) Bond release and premining water quality.

30 CFR 948.16(pppp)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38–2–24.4.

WVDEP response:

OSM acknowledged that the offending language in 24.4 was deleted with the passage of H. B. 2663.

Required Amendments Not Addressed by WVDEP

19. 30 CFR 948.16(oooo) Coal removal incidental to construction.

30 CFR 948.16(oooo)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to remove CSR 38–2–23.

WVDEP response:

WVDEP proposed to delete the incidental mining requirements at subsection 23, but its rule advisory council recommended that the proposed deletion be removed from the final rule change. WVDEP acknowledged that these provisions have been disapproved by OSM, and they are not implementing them, as recently evidenced by the West Virginia Supreme Court decision. However, WVDEP did acknowledge that they would continue to pursue with OSM and others the approval of incidental coal removal requirements to prevent the wasting of coal. OSM said that WVDEP must provide it a schedule showing that it is attempting to get these provisions out of its program.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. WV–088–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their names or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse affect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 8, 2002.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–7088 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–024]

RIN 2115–AA97

Safety Zone: Beverly Homecoming Fireworks—Beverly, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Beverly Homecoming Fireworks on August 11, 2002 in Beverly, MA. The safety zone would temporarily close all waters of Beverly Harbor in a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′50″ W. The safety zone would prohibit entry into or movement within this portion of Beverly Harbor during the closure period.

DATES: Comments and related material must reach the Coast Guard on or before May 1, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This proposed regulation would establish a safety zone in Beverly Harbor within a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′50″ W. The safety zone would be in effect from 8 p.m. until 10:30 p.m. on August 11, 2002.

The zone would restrict movement within this portion of Beverly Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the

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regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Beverly Harbor during the effective periods, the affects of this regulation will not be significant for several reasons: The minimal time that vessels will be restricted from the area, vessels may safely transit outside of the safety zone, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Beverly Harbor on August 11, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside of the safety zone during the effective periods, the periods are limited in duration, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Michael Popovich at the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Execute Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–024 to read as follows:

§ 165.T01–024 Safety Zone: Beverly Homecoming Fireworks—Beverly, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Beverly Harbor in a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′50″ W.

(b) *Effective date.* This section is effective from 8 p.m. until 10:30 p.m. on August 11, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: March 1, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–7002 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 152–1152; FRL–7163–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri which provides for the attainment and maintenance of the sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in Springfield (Greene County), Missouri. This revision approves a Consent Agreement which requires SO_2 emission reductions from a major air emissions source in Springfield. Approval of this SIP revision will make the Consent Agreement Federally enforceable. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by April 24, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–7093 Filed 3–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020313055–2055–01; I.D. 021902F]

RIN 0648–AO62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20). This proposed rule would establish a 3–year moratorium on the issuance of charter vessel or headboat (for-hire) permits for the reef fish fishery and coastal migratory pelagics fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico. In addition, as a consequence of the proposed moratorium, the current charter vessel/headboat permit system for coastal migratory pelagic fish would be restructured to provide separate permits for the Gulf of Mexico and South Atlantic. The intended effect of this rule is to cap the number of for-hire vessels operating in these respective fisheries at the current level while the Gulf of Mexico Fishery Management Council (Council) evaluates the need for further management actions that may be needed to rebuild these fishery resources, and to promote attainment of optimum yield.

DATES: Comments must be received no later than 5 p.m., eastern daylight savings time, on May 9, 2002.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet. Copies of the initial regulatory flexibility analysis (IRFA) prepared by NMFS for this proposed rule are available from the same address.

Comments on the collection-of-information requirements contained in this rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of Amendments 14 and 20, which include an environmental assessment, and a regulatory impact review (RIR), and copies of two related minority reports opposing implementation of the proposed moratorium may be obtained from the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015; e-mail: *Gulf.Council@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) that was prepared by the Council. The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal

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Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that was prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendments 14 and 20 to address issues of increased fishing mortality and fishing effort in the for-hire sector of the recreational fishery. There are an estimated 3,220 recreational for-hire vessels in the Gulf of Mexico. Of these for-hire vessels, there are an estimated 1,275 charter vessels and 92 headboats; the remainder are probably smaller guide boats that usually fish inshore. The number of charter boats operating in the Gulf of Mexico has increased from 516 in 1981 to 1,275 in 1998 (147 percent), while the number of headboats has remained relatively stable during the same period. Further, the number of individual angler charter vessel trips increased by approximately 51 percent (through 1998) over the average number of trips from the previous decade.

During this same period, there has been an increase in the number of fish stocks identified as overfished or approaching an overfished state. In the January 2001 report to Congress on the Status of U.S. Fisheries, red snapper and red grouper were classified as being overfished and undergoing overfishing. Gag grouper was classified as undergoing overfishing and approaching an overfished state. King mackerel was classified as overfished and vermillion snapper was classified as undergoing overfishing. Further, the Council was notified, by a letter from NMFS in January, 2001, that greater amberjack was overfished.

While all sectors have contributed to the overfished status of these important fisheries, higher catch rates by the for-hire sector in recent years have substantially increased the proportion of landings attributed to that sector. The percent of recreational red grouper landed by number by charter vessel and headboats increased from 14 percent (1988–1989) to 32 percent (1996–1997); the percent of recreational red snapper landed by number increased from 34 percent (1981–1982) to 62 percent (1988–1989) to 71 percent (1996–1997). This increase in catch rate by the recreational for-hire sector has contributed to the progressively earlier closures of the red snapper recreational fishery each year. This fishery was closed on November 27 in 1997, September 30 in 1998, and August 29 in 1999. This progressively longer closure period is adversely impacting the charter vessel headboat sector that is dependent on this stock. Additionally, for king mackerel, the percent of total recreational landings by number landed by charter vessel and headboats increased from 17 percent in 1983, to 32 percent in 1988, and to 62 percent in 1997, almost doubling between each period. The landings for gag grouper increased from 15 percent during 1981–1982 to 33 percent during 1995–1996, i.e., essentially doubling between the first and last period. Further, the recreational for-hire vessels historically have landed most of the recreational landings of vermillion snapper (90 percent) and greater amberjack (63 percent) during the period 1995/1996.

In conjunction with existing bag limits and size limits, the proposed rule would further moderate short-term future increases in fishing effort in the for-hire sector of the recreational fishery by limiting the number of vessels in the fishery. The proposed moratorium is a form of limited access management that is intended to temporarily stabilize this effort. It would allow the Council the time necessary to develop a more comprehensive approach to help restore overfished stocks possibly including further effort limitation, and would promote attainment of optimum yield during the interim.

Provisions of the Proposed Charter Vessel/Headboat Moratorium in the Gulf of Mexico EEZ

This proposed rule would establish a 3–year moratorium on the issuance of charter vessel/headboat permits for Gulf reef fish or Gulf coastal migratory pelagic fish. Beginning 150 days after the effective date of the final rule that would implement this proposed moratorium, the only valid charter vessel/headboat permits for those two fisheries would be those permits issued under the provisions of the moratorium. In addition, any person who has a valid charter vessel/headboat permit for coastal migratory pelagic fish (valid in the Gulf or South Atlantic) should note that this proposed rule would result in a restructuring of that permit--voiding the existing permit, effective 150 days after the effective date of the final rule implementing this moratorium, and creating two new separate permits: one for Gulf coastal migratory pelagic fish (subject to the moratorium provisions); and one for South Atlantic coastal migratory pelagic fish (not subject to the moratorium provisions). See Change Proposed by NMFS--Requirement for a New Permit for South Atlantic Coastal Migratory Pelagic Fish for additional details.

Eligibility Requirements for the Gulf Charter Vessel/Headboat Permits

Under the proposed moratorium, initial eligibility for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish would be limited to the following—

(1) An owner of a vessel that had a valid charter vessel/headboat permit for Gulf reef fish or coastal migratory pelagic fish, or whose application for such permit had been received by NMFS, at some time during the period March 29, 2000, through March 29, 2001, and who has such a valid permit on the effective date of the final rule that would implement this proposed moratorium.

(2) Any person who can provide NMFS with documentation verifying that, prior to March 29, 2001, he/she had a charter vessel or headboat under construction and that the associated expenditures were at least $5,000 as of that date. If the vessel owner was constructing the vessel, the vessel owner must provide NMFS with receipts for the required expenditures. If the vessel was being constructed by someone other than the owner, the owner must provide NMFS with a copy of the contract and/or receipts for the required expenditures.

(3) An historical captain, defined for the purposes of this proposed rule as a person who provides NMFS with documentation verifying that—

(A) Prior to March 29, 2001, he/she was issued either a United States coast Guard (USCG) Operator of Uninspected Passenger Vessel license (commonly referred to as a 6-pack license) or a USCG Masters license and operated, as a captain, a federally permitted charter vessel or headboat in the Gulf reef fish and/or coastal migratory pelagic fisheries that was not permitted in his/her name or the name of a corporation in which he/she was a shareholder; and

(B) At least 25 percent of his/her earned income was derived from charter vessel or headboat fishing in one of the years 1997, 1998, 1999, or 2000.

NMFS' permit records would be the sole basis for determining eligibility based on permit or application history (i.e., eligibility criterion 1). No more than one owner of a currently permitted vessel would be credited with meeting the permit history criterion based on a vessel's permit history. An owner would not be issued initial charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish under the moratorium in excess of the number of federally permitted charter vessels and/or headboats that he/she owned simultaneously at some time during the period March 29, 2000, through March 29, 2001.

Application Requirements and Procedures

An applicant who desires a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish would be required to submit an application for such permit to the Regional Administrator, Southeast Region, NMFS (RA) postmarked or hand-delivered not later than 90 days after the effective date of the final rule implementing this proposed moratorium. Failure to apply in a timely manner would preclude permit issuance even when the applicant meets the eligibility criteria for such permit. Application forms would be available from the RA. The information requested on the application form varies according to the eligibility criterion that the application is based upon as indicated in proposed § 622.4(r)(5).

On or about the effective date of any final rule implementing this moratorium, the RA would automatically mail an application to each owner of a vessel who, based on NMFS' permit records, is eligible based on the permit history or permit application criterion. The RA would also mail each such owner a notice that his/her existing charter vessel/headboat permit(s) for coastal migratory pelagic fish and/or Gulf reef fish would expire 150 days after any effective date of the final rule implementing this moratorium and that the new permit(s) required under such a moratorium would be required as of that date. A vessel owner who believes he/she qualifies for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on permit or application history, but who does not receive an application from the RA, would have to request an application from the RA and provide documentation of eligibility.

Any person applying based on the eligibility criteria related to vessel construction or historical captain status would have to request a permit application from the RA and provide the required documentation of vessel construction and associated costs, as indicated in proposed § 622.4(r)(2)(ii), or documentation of historical captain status, as indicated in proposed § 622.4(r)(2)(iii), as applicable. Information to document historical captain status would include income tax records pertinent to verifying earned income; a copy of the applicable USCG license and/or Certificate of Inspection; and a notarized affidavit signed by a vessel owner certifying the period the applicant served as captain of a charter vessel or headboat permitted for Gulf reef fish and/or coastal migratory pelagic fish, whether the charter vessel or headboat was permitted for Gulf reef fish or coastal migratory pelagic fish or both, and whether the charter vessel or headboat was uninspected (i.e., 6-pack) or had a USCG Certificate of Inspection.

Issuance of Initial Permits/Letter of Eligibility

If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in proposed § 622.4(r)(2) are met, the RA would issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the applicant not later than 140 days after the date the final rule is effective (i.e., at least 10 days before the permit(s) is required).

A person whose eligibility is based on historical captain status would be issued a letter of eligibility by the RA. The letter of eligibility could be redeemed through the RA for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish, with a historical captain endorsement. The letter of eligibility would be valid for the duration of the moratorium; would be valid only for a vessel of the same authorized passenger capacity as the vessel used to document earned income requirement in proposed § 622.4(r)(2)(iii)(B); and would be valid only for the fisheries certified on the application under proposed § 622.4(r)(2)(iii)(A) (i.e., only those fisheries in which the required participation was documented). A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish with a historical captain endorsement would be valid only on a vessel that the historical captain operates as a captain.

Appeals Process Regarding Initial Eligibility

An applicant would be allowed to request an appeal of the RA's determination regarding initial permit eligibility by submitting a written request for reconsideration to the RA with copies of the appropriate records for establishing eligibility. Such request would have to be postmarked or hand-delivered within 30 days after the date of the RA's notification of ineligibility and could include a request for an oral hearing. If an oral hearing is granted, the RA would notify the applicant of the place and date of the hearing and would provide the applicant a maximum of 30 days prior to the hearing to provide information in support of the appeal.

The RA could independently review the appeal or could appoint one or more appellate officers to review the appeal and make independent recommendations to the RA. The RA and appellate officer(s) could only deliberate whether the eligibility criteria were applied correctly. Hardship or other factors would not be considered in determining eligibility. The RA would make the final determination regarding granting or denying the appeal. The RA would notify the applicant of the decision regarding the appeal within 30 days after receipt of the request for appeal or within 30 days after the conclusion of the oral hearing, if applicable.

Transferability of Permits

A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement would be transferable, with or without sale of the permitted vessel, except that no transfer would be allowed to a vessel with a greater authorized passenger capacity than that of the vessel from which the permit was transferred.

A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement could only be transferred to a vessel operated by the historical captain, could not be transferred to a vessel with a higher authorized passenger capacity than the vessel from which the permit was transferred, and would not otherwise be transferable.

To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of a vessel that is to receive the transferred permit would have to complete the transfer information on the reverse of the permit and return the permit and a completed application for transfer to the RA.

Permit Renewal

Permit renewal would be contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (charter vessels only), NMFS' Southeast Headboat Survey (logbooks), Texas Parks and Wildlife

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Marine Recreational Fishing Survey, or a data collection system that replaces one or more of those surveys.

A permit that is not renewed or that is revoked by NMFS would not be reissued during the moratorium. A permit would be considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

Vessel Decal Requirement

Upon issuance, renewal, or transfer of a permit under this proposed moratorium, the RA would issue the owner or eligible historical captain of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal would have to be displayed on the port side of the deckhouse or hull and would have to be maintained so that it is clearly visible.

Change Proposed by NMFS—Requirement for a New Permit for South Atlantic Coastal Migratory Pelagic Fish

Formerly, the charter vessel/headboat permit for coastal migratory pelagic fish applied in the EEZ of both the Gulf of Mexico and South Atlantic. The establishment of a separate charter vessel/headboat permit for Gulf coastal migratory pelagic fish under this proposed moratorium would necessitate that a separate charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish also be established and that the former charter vessel/headboat permit for coastal migratory pelagic fish (applicable in both the Gulf and South Atlantic) be voided. All of these actions would be effective 150 days after the effective date of the final rule implementing the proposed moratorium. The new separate charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish would not be subject to the provisions of the moratorium.

Approximately 5 months prior to the date that the new permit would be required, the RA, based on NMFS' permit records, would mail an application for an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish to each owner of a vessel with a valid charter vessel/headboat permit for coastal migratory pelagic fish. Any such owner who desires an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish would have to submit the completed application to the RA. To avoid any lapse in authorization to fish for coastal migratory species in the South Atlantic EEZ (i.e., valid permit status), such owners would have to submit the completed application to the RA postmarked or hand-delivered not later than 90 days after the effective date of the final rule implementing the moratorium. For completed applications received by that deadline, the RA would issue the permit no later than 140 days after the effective date of the final rule implementing this moratorium (i.e., at least 10 days before the permit is required). Applications will be accepted at any time, but if received after the deadline (90 days after effective date), the permit may not be issued prior to the date that the permit is first required. These special procedures would apply only to the application and issuance of the initial permit; subsequent permitting activities would be conducted in accordance with the standard permitting procedures as specified in 50 CFR 622.4(b) through (l).

An owner or operator of a vessel who desires a charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish and who does not have a valid charter vessel/headboat permit for coastal migratory pelagic fish would be required to obtain a permit application from the RA. For additional permitting procedures, see 50 CFR 622.4(b) through (l).

Minority Reports

Two nearly identical minority reports objecting to the implementation of the proposed charter vessel/headboat permit moratorium were submitted--each signed by two Council members, a total of three different Council members. The primary objections expressed in these minority reports were that the moratorium is not necessary, would not accomplish its stated goal, would reduce competition in the for-hire industry, would create a windfall profit for a select group of people and deny others the right to pursue an occupation of their own choice, would result in unnecessary social engineering, and would violate national standards 4 and 8 of the Magnuson-Stevens Act. Copies of the minority reports are available from the Council (see **ADDRESSES**).

Classification

At this time, NMFS has not determined whether Amendments 14 and 20, that this proposed rule would implement, are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendments 14 and 20.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. Paperwork and reporting requirements are described below in the PRA discussion. This proposed rule would not duplicate any other requirements. A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objective of the proposed rule is to cap the number of for-hire vessels permitted to fish for reef fish or coastal migratory pelagics in the EEZ of the Gulf of Mexico at the current level while the Council assesses the actions necessary to restore overfished reef fish and king mackerel stocks and determine whether a more comprehensive effort management system is appropriate for these fisheries. The proposed rule would: create a new for-hire vessel permit for the Gulf EEZ for vessels fishing for reef fish and/or coastal migratory pelagics; establish a 3–year moratorium on the issuance of new for-hire vessel permits effective the date that the final rule implementing Amendments 14 and 20 becomes effective; establish eligibility requirements for the permits that would accommodate owners of vessels that possessed or had applied for charter/headboat reef fish and/or coastal migratory pelagic permits on or before March 29, 2001 and who possess such permit(s) as of the effective date of the final rule implementing this moratorium, new for-hire vessels contracted for or under construction prior to March 29, 2001, and historical captains; allow full transference of permits during the moratorium with or without the vessel but without any increase in the passenger capacity of the recipient vessel (permits with a historical captain endorsement may only be transferred to a vessel operated by the historical captain); not allow permit renewal during the moratorium for permits not renewed within one year of expiration; allow an appeal process to resolve issues related to initial eligibility; and, establish reporting and permit renewal conditions.

The creation of a for-hire permit and implementation of a 3–year moratorium for the issuance of new permits would provide some stability for the for-hire sector in terms of number of participating vessels while the need for a more comprehensive controlled access or effort management system is evaluated. The specific number of vessels accommodated by the rule is unknown since it is not known how many individuals will qualify and seek permits under the boat construction or historical captain provisions. The moratorium will also not produce a hard cap on effort in the form of angler trips since current vessels may be operating under less than full passenger capacity and will retain the flexibility to increase the frequency of partial-day trips. Nevertheless, the rule will limit expansion to the capacity of current participants. This will allow identification and enumeration of vessels in these fisheries to support essential data collection and establish a more stable environment for assessing the status of the fishery in support of subsequent regulation.

The proposed rule would effectively allow status quo operation by current participants in the fishery who had such permits (or applied for such) at some time during March 29, 2000, to March 29, 2001, and who also have a valid permit on the date the final rule becomes effective. The eligibility provisions for new vessel construction and historical captains will further protect the opportunities of individuals who have demonstrated a dependence on the fishery through capital investment or historical participation. The only impediment to the status quo business practices of such initial qualifiers is the limitation on vessel passenger capacity upgrades under the current permit. Such upgrade would be possible, however, through the purchase of the appropriate permit from another vessel. The liberal provisions for permit transfer support business upgrade, allow the entrance of new operators or buy-outs by more efficient operators, and create a marketable asset that may enhance the value of the vessel and client lists should a participant decide to sell his/her business. The eligibility and transfer provisions are, thus, consistent with the intent to allow status quo participation while it is determined whether current effort levels are appropriate, rather than legislate reductions. The appeals process will afford valid participants the opportunity to address record discrepancies that adversely affect their eligibility. Finally, the renewal provisions support the fishery management process by aiding in the collection of essential harvest and participation information.

Business operations in the for-hire sector consist primarily, if not exclusively, of small business entities. For-hire vessel operations are considered small business entities if they generate receipts of less than $6.0 million per year. The average gross revenues for charter boats operating in 1997 was $83,000 for vessels in Alabama through Texas (based on average numbers of trips per vessel and average fee per trip) and $68,000 for vessels in Florida, while the average gross revenues for head boats/party boats was $328,000 in Alabama through Texas and $324,000 in Florida. Current revenues may exceed those of 1997, but the revenue performance of the fishery clearly qualifies the participants as small business entities.

All for-hire vessels that fish for reef fish or coastal migratory pelagics in the Gulf of Mexico EEZ will be affected by the proposed rule. However, all of these vessels are currently required to possess the appropriate for-hire permits for the fisheries in which they participate. Hence, the proposed rule only creates one additional permit, by requiring vessels expecting to fish for coastal migratory pelagics in both the Gulf of Mexico and South Atlantic to obtain two permits, one for each subregion, instead of the current single permit which allows fishing in either subregion. This will require an additional $20 application fee for the second permit. As of the control date of March 29, 2001, there were 2,226 permitted for-hire vessels, of which 1,737 had both reef fish and coastal migratory pelagic charter permits, 123 had only the reef fish charter permit, and 366 had only the coastal migratory pelagic charter permit. These totals are substantially greater than those at the previous control date of November 18, 1998, when there were only 940 permitted for-hire vessels, of which 723 had both permits, 58 had only the reef fish permit and 159 had only the coastal migratory pelagic permit. While total permit numbers more than doubled during this time span, a potentially substantial portion of the increase is likely attributable to vessels that were previously operating in the fishery without the proper permits, since a frequent comment at public hearings was that operators were unaware of the current permit requirements. Thus, not all of the increase is believed to be due to either new participation or speculative purchase. It is not currently known how many vessels obtained their first for-hire permit after the cut-off date and would, therefore, not be eligible for the initial receipt of the permit. Nor is it known how many vessels might be expected to enter the fishery during the proposed moratorium period in the absence of a moratorium. The large increase in permits suggests that a substantial number of vessels interested in participating in the fishery have already established qualification, and the liberal qualification and transfer provisions of the rule should allow further entry by interested individuals, albeit at a larger cost due to the need to purchase a permit from a current operation.

Six alternatives to the proposed moratorium were considered. These were: a 5–year moratorium instead of the proposed 3–year moratorium; status quo; a 50–percent income requirement for renewal in lieu of a moratorium; for-hire species quotas; a 3 or–5 year moratorium in combination with species quotas; and a 3–year moratorium with mandatory expiration should the red snapper restrictions become more severe. Since the status quo alternative would not accomplish the Council's goals, among the remaining alternatives, including the proposed rule, the proposed rule was determined to have the least impact on small entities. The 5-year alternative would provide a more stable planning horizon for industry participants, but extend the period during which capacity expansion would be limited and restrictions on new entry would be imposed. The 50–percent income requirement would result in contraction of existing participants beyond the intent of the Council, which is to stabilize rather than contract the fishery while a more comprehensive evaluation is conducted and management program is designed. Species quotas would subject the fishery to disruptive closures. Linkage to the red snapper management environment was determined to be indefensible and, therefore, would not allow implementation of the proposed rule and would forego the perceived benefits of stabilization. In summary, the proposed rule would best accomplish the Council's intent while minimizing impacts.

Seven alternatives to the proposed form of the permit (i.e., a new for-hire permit with species endorsements) were considered. These were: limiting the new permit to the coastal migratory pelagic fishery; status quo; a new for-hire permit with species endorsements that encompass transferable and non-transferable endorsements; income-based renewal requirements; an option to allow commercial participants in the coastal migratory pelagic fishery to qualify for the for-hire permit; a fully transferable new permit with endorsements (i.e., no separate classes of transferability); and a special

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guideboat permit (with no moratorium) for vessels carrying fewer than 4 anglers with species endorsements. Maintaining the status quo would not support the Council's goals. Income requirements were rejected since they would result in contraction of the fishery rather than stabilize participation. The allowance for commercial operators to qualify would allow expansion of participation, which is, again, contrary to the Council's intent. Limiting the permit to the coastal migratory pelagic fishery would not be sufficiently inclusive to accomplish the Council's goals. The guideboat permit would allow unlimited expansion of this sector and, although these vessels may infrequently fish in the EEZ, would run counter to the Council's intent to stabilize all for-hire participation in the EEZ and pressure on respective stocks. The remaining alternatives reflect variations on the types of endorsements required (species covered) or class of endorsements (transferability conditions). The variations on endorsement types primarily affects paperwork requirements and these effects are insignificant. The transferability effects will be discussed below. In summary, the proposed rule best accomplishes the Council's intent while minimizing impacts.

Ten alternatives to the initial eligibility requirements were considered. These were: allowing all persons who held a for-hire permit on the date of implementation of the amendment; allowing all persons who held a for-hire permit on either September 16, 1999 or November 11, 1999; using a control date of November 18, 1998 and allowing for continuous participation under permit, vessel replacement by current permitted participant and issuance of new permit, purchase of permitted vessel, or purchase of a new vessel and issuance of a new permit; establishment and eligibility requirements for a Class 1 (fully transferable) species endorsement; establishment and eligibility requirements for a Class 2 (non-transferable) species endorsement; historical captain permit/endorsement provisions (2 alternatives); boat-under-construction provisions (2 alternatives); and allowing all persons who held a for-hire permit on or before January 1, 2002. Since the intent of the Council is to accommodate actual participation existent at the time of amendment development and the perception was strong that many active participants did not possess the required permits, control dates more restrictive than the proposed control date would increase the negative impacts on the fishery through the exclusion of active participants, contrary to the intent of the Council. More liberal control dates, however, while reducing the potential universe of excluded vessels, would also be contrary to the Council's intent of stabilizing participation at the level existent at the time of amendment development. Restrictions on transferability could result in contraction of the fleet, contrary to the intent of stabilization, and would increase the negative impacts on the fishery. The alternative historical captain provisions would have increased the burden of eligibility and increased the negative impacts. The alternative provisions for boats under construction are more restrictive than those of the proposed rule and would have increased the negative impacts on the fishery. In summary, the proposed rule accomplishes the Council's intent while minimizing impacts.

Five alternatives to the permit/endorsement transferability allowance were considered. These were: limiting the transfer to vessels owned by the same permit holder; transfer of permits/endorsements with or without transfer of the vessel; prohibition of transfer for the first year of the moratorium; prohibition of transfer throughout the moratorium; and, transfer provisions based on endorsement class. Allowing transfer between vessels held by the same permittee would reduce the costs and profitability impacts associated with capacity upgrade, but would run counter to the intent of the Council to stabilize the fishery at the current level of effort, in this case, angler platform opportunities. If operations were allowed to freely upgrade passenger capacity, while the number of vessel/small business participants would remain stable, the effective angler effort, which ultimately determines fish harvest pressure, would be allowed to increase unimpeded. This is counter to the Council's intent. All other alternatives would increase the negative impacts on the fishery relative to the proposed rule. In summary, one alternative is counter to the Council's intent, while all other alternatives would increase the negative impacts on the fishery. Thus, the proposed rule accomplishes the Council's intent while minimizing impacts.

Five alternatives to the passenger restrictions on permit transfers were considered. These were: no restriction; no transfers between different classes (based on passenger capacity) of USCG certified; allowing passenger capacity upgrade if USCG certification is received; transfer only between vessels of equal or lower passenger capacity based on USCG certification; and establishment of two classes – uninspected/uncertified and certified with transfers limited to within class. Since stability of the fishery is the stated intent of the Council, any alternative that allows passenger capacity to increase would, while mitigating the adverse impacts of upgrade limitations, be counter to the Council's intent. The proposed rule simplifies the passenger-related transfer restrictions while accomplishing the Council's intent and minimizing impacts.

Two alternatives to the re-issue of non-renewed or revoked permits were considered. These were: re-issue of 50 percent of these permits to either a list of interested persons or to persons that were either excluded from the initial issuance of permits or can document prior experience in the for-hire fishery. Not re-issuing these permits would increase the negative impacts on the fishery associated with vessels excluded from participation. The proposed alternative will simplify the management of the program, but the primary Council justification for its selection is that any reduction in fishery effort will help address problems related to too much competition in the fishery. Increased profitability may accrue to remaining participants. Whether these increased profits will exceed the foregone profits by excluded entities cannot be determined.

Six alternatives to the appeals process were considered. These were: no appeal; establish an appeals board that makes recommendations to the Regional Administrator (RA) on permit eligibility; an appeals process limited to owners and operators of vessels prior to the control date or persons who contracted for the construction of a vessel prior to the control date November 28, 1998; an appeals process that accommodates both hardships and data and/or record disputes between vessel owners and NMFS; no hardship appeals; and no appeals process if the control date selected is January 1, 2002. Not allowing an appeals process will increased the negative impacts on persons excluded from the initial issuance of permits.

The proposed rule accommodates the impact mitigation benefits of the various alternatives with the exception of the disallowance of hardship appeals. Disallowance of hardship appeals will simplify the management of the program, while increasing the impacts on those excluded. The number of potential hardship appeals cannot be precisely estimated, but is not expected to be large. The proposed rule, therefore, while not fully mitigating the impacts on excluded participants, will mitigate the impacts on those excluded due to permit record discrepancies and establish a more simplified management program.

Two alternatives to the reporting and renewal requirements were considered. These were: require charter logbooks; and status quo. Logbooks are already mandatory for the headboat fishery. Requiring logbooks for the charter sector would increase the economic burden on the charter sector without mitigating the impacts of potential permit non-renewal. Allowing the status quo would allow all charter vessels to renew their permit without having to participate in any data collection programs and, thus, would mitigate any adverse effects that would accrue to any vessels not having their permit renewed. Such action would not, however, satisfy the Council's intent to support comprehensive systematic data collection for this fishery. Thus, the proposed rule will satisfy the Council's intent while minimizing impacts.

This proposed rule contains five collection-of-information requirements subject to the Paperwork Reduction Act (PRA)—namely a requirement to submit a charter vessel/headboat permit application, submission of information on vessel construction, submission of information on historical captain eligibility, submission of appeals of NMFS' initial denial of a charter vessel/headboat permit, and mandatory responses to NMFS' (voluntary) Marine Recreational Fishing Vessel Directory Telephone Survey (charter vessels only). Requests to collect this information have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated to average 20 minutes, 2 hours, 2 hours, 5 hours, and 7 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. In addition, § 622.5(b)(1) of this proposed rule revises slightly (i.e., revises the names of the applicable permits consistent with this proposed rule) the requirement for charter vessel/headboat submission of a fishing trip record if selected by the Science and Research Director. The requirement applicable to headboats has been approved by OMB under control number 0648-0016 with an estimated time per response of 12 minutes. NMFS does not currently have PRA approval to select any charter vessels for this reporting and would obtain OMB clearance prior to making any selection.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of the collection of information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraphs (a)(1) and (g) are revised and paragraph (r) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) *Charter vessel/headboat permits.* (i) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess, in or from the EEZ, species in any of the following species groups, a valid charter vessel/headboat permit for that species group must have been issued to the vessel and must be on board—

(A) Gulf coastal migratory pelagic fish.

(B) South Atlantic coastal migratory pelagic fish.

(C) Gulf reef fish.

(D) South Atlantic snapper-grouper.

(ii) See paragraph (r) of this section regarding a moratorium on Gulf charter vessel/headboat permits and the associated provisions.

(iii) See paragraph (r)(12) of this section for an explanation of the requirement for the new charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish and for procedures for initial application and issuance of that permit.

(iv) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of "Charter vessel" and "Headboat" in §622.4 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

* * * * *

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. A person who acquires a vessel who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel is currently permitted, the application must be accompanied by the original permit and a copy of the vessel's new USCG documentation or state registration.

* * * * *

(r) *Moratorium on charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* The provisions of this paragraph (r) are applicable through the date that is 3 years after the effective date of the final rule that contains this paragraph (r).

(1) *Applicability.* Beginning 150 days after the effective date of the final rule that contains paragraph (r)(1) of this section, the only valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish

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are those that have been issued under the moratorium criteria in paragraph (r) of this section. No applications for additional charter vessel/headboat permits for these fisheries will be accepted. Existing permits may be renewed, are subject to the transferability provisions in paragraph (r)(9) of this section, and are subject to the requirement for timely renewal in paragraph (r)(10) of this section.

(2) *Initial eligibility.* Initial eligibility for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following—

(i) An owner of a vessel that had a valid charter vessel/headboat permit for Gulf reef fish or coastal migratory pelagic fish, or whose application for such permit had been received by NMFS, at some time during the period March 29, 2000, through March 29, 2001, and who has such a valid permit on the effective date of the final rule that contains this paragraph (r)(2)(i)of this section.

(ii) Any person who can provide NMFS with documentation verifying that, prior to March 29, 2001, he/she had a charter vessel or headboat under construction and that the associated expenditures were at least $5,000 as of that date. If the vessel owner was constructing the vessel, the vessel owner must provide NMFS with receipts for the required expenditures. If the vessel was being constructed by someone other than the owner, the owner must provide NMFS with a copy of the contract and/or receipts for the required expenditures.

(iii) A historical captain, defined for the purposes of paragraph (r) of this section as a person who provides NMFS with documentation verifying that—

(A) Prior to March 29, 2001, he/she was issued either a USCG Operator of Uninspected Passenger Vessel license (commonly referred to as a 6-pack license) or a USCG Masters license and operated, as a captain, a federally permitted charter vessel or headboat in the Gulf reef fish and/or coastal migratory pelagic fisheries that was not permitted in his/her name or the name of a corporation in which he/she was a shareholder; and

(B) At least 25 percent of his/her earned income was derived from charter vessel or headboat fishing in one of the years, 1997, 1998, 1999, or 2000.

(3) *Special conditions applicable to eligibility based on historical captain status.* A person whose eligibility is based on historical captain status will be issued a letter of eligibility by the RA. The letter of eligibility may be redeemed through the RA for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish, with a historical captain endorsement. The letter of eligibility is valid for the duration of the moratorium; is valid only for a vessel of the same authorized passenger capacity as the vessel used to document earned income in paragraph (r)(2)(iii)(B) of this section; and is valid only for the fisheries certified on the application under paragraph (r)(2)(iii)(A) of this section. A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish with a historical captain endorsement is valid only on a vessel that the historical captain operates as a captain.

(4) *Determination of eligibility based on permit history.* NMFS' permit records are the sole basis for determining eligibility based on permit or application history. An owner of a currently permitted vessel who believes he/she meets the permit or application history criterion based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership. No more than one owner of a currently permitted vessel will be credited with meeting the permit history criterion based on a vessel's permit history. An owner will not be issued initial charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish under the moratorium in excess of the number of federally permitted charter vessels and/or headboats that he/she owned simultaneously at some time during the period March 29, 2000 through March 29, 2001.

(5) *Application requirements and procedures*—(i) *General.* An applicant who desires a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish must submit an application for such permit to the RA postmarked or hand-delivered not later than 90 days after the effective date of the final rule implementing this moratorium. Application forms are available from the RA. The information requested on the application form varies according to the eligibility criterion that the application is based upon as indicated in paragraphs (r)(5)(ii), (iii), and (iv) of this section; however, all applicants must provide a copy of the applicable, valid USCG Operator of Uninspected Passenger Vessel license or Masters license and valid USCG Certificate of Inspection. Failure to apply in a timely manner will preclude permit issuance even when the applicant meets the eligibility criteria for such permit.

(ii) *Application based on the prior permit/application history criterion.* On or about the effective date of the final rule implementing this moratorium, the RA will mail an application for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish to each owner of a vessel who, according to NMFS' permit records, is eligible based on the permit or application history criterion in paragraph (r)(2)(i) of this section. Information requested on the application is consistent with the standard information required in paragraph (b)(3)(ii) of this section. The RA will also mail each such owner a notice that his/her existing charter vessel/headboat permit(s) for coastal migratory pelagic fish and/or Gulf reef fish will expire 150 days after the effective date of the final rule implementing this moratorium and that the new permit(s) required under this moratorium will be required as of that date. A vessel owner who believes he/she qualifies for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on permit or application history, but who does not receive an application from the RA, must request an application from the RA and provide documentation of eligibility. The RA will mail applications and notifications to vessel owner addresses as indicated in NMFS' permit records.

(iii) *Application based on a charter vessel/headboat under construction prior to March 29, 2001.* A person who intends to obtain a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on the vessel-under-construction eligibility criterion in paragraph (r)(2)(ii) of this section must obtain an application from the RA. Information requested on the application includes the standard information required in paragraph (b)(3)(ii) of this section and the documentation of construction and associated costs as specified in paragraph (r)(2)(ii) of this section.

(iv) *Application based on historical captain status.* A person who intends to obtain a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on historical captain status must obtain an application from the RA. Information requested on the application includes the standard information required in paragraph (b)(3)(ii) of this section and documentation of the criteria specified in paragraphs (r)(2)(iii)(A)and (B) of this section. Such documentation includes income tax records pertinent to verifying earned income; a copy of the applicable USCG license and/or Certificate of Inspection; and a notarized affidavit signed by a vessel owner certifying the period the applicant served as captain of a charter vessel or headboat permitted for Gulf reef fish and/or coastal migratory pelagic fish, whether the charter vessel or headboat was permitted for Gulf reef fish or coastal migratory pelagic fish or both, and whether the charter vessel or headboat was uninspected (i.e., 6-pack) or had a USCG Certificate of Inspection.

(v) *Incomplete applications.* If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Issuance of initial permits.* If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in paragraph (r)(2) of this section are met, the RA will issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the applicant not later than 140 days after the date the final rule is effective.

(7) *Notification of ineligibility.* If the applicant does not meet the applicable eligibility requirements of paragraph (r)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it not later than 120 days after the date the final rule is effective.

(8) *Appeal process.* (i) An applicant may request an appeal of the RA's determination regarding initial permit eligibility, as specified in paragraph (r)(2) of this section, by submitting a written request for reconsideration to the RA with copies of the appropriate records for establishing eligibility. Such request must be postmarked or hand-delivered within 30 days after the date of the RA's notification of ineligibility and may include a request for an oral hearing. If an oral hearing is granted, the RA will notify the applicant of the place and date of the hearing and will provide the applicant a maximum of 30 days prior to the hearing to provide information in support of the appeal.

(ii) A request for an appeal constitutes the appellant's authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) for the RA to make available to the appellate officer(s) such confidential records as are pertinent to the appeal.

(iii) The RA may independently review the appeal or may appoint one or more appellate officers to review the appeal and make independent recommendations to the RA. The RA will make the final determination regarding granting or denying the appeal.

(iv) The RA and appellate officer(s) are empowered only to deliberate whether the eligibility criteria in paragraph (r)(2) of this section were applied correctly. Hardship or other factors will not be considered in determining eligibility.

(v) The RA will notify the applicant of the decision regarding the appeal within 30 days after receipt of the request for appeal or within 30 days after the conclusion of the oral hearing, if applicable. The RA's decision will constitute the final administrative action by NMFS.

(9) *Transfer of permits*— (i) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel from which the permit was transferred. The determination of authorized passenger capacity will be based on the USCG Certificate of Inspection or USCG Operator of Uninspected Passenger Vessel license associated with the vessels involved in the transfer. If no valid Certificate of Inspection is provided for a vessel, that vessel will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a higher authorized passenger capacity than the vessel from which the permit was transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse of the permit and return the permit and a completed application for transfer to the RA.

(10) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the following—

(A) NMFS'Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1) of this part);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(10)(i)(A)(B) or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(11) *Requirement to display a vessel decal.* Upon issuance, renewal, or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

(12) Requirement and procedure for obtaining an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish. (i) General. This paragraph (r)(12) explains the necessity of requiring and the procedure for obtaining an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish. Formerly, the charter vessel/headboat permit for coastal migratory pelagic fish applied in the EEZ of the Gulf and South Atlantic. The establishment of a separate charter vessel/headboat permit for Gulf coastal migratory pelagic fish under the moratorium established by paragraph (r) of this section necessitates that a separate charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish also be established effective 150 days after the effective date of the final rule implementing the moratorium and that the former charter vessel/headboat permit for coastal migratory pelagic fish (applicable in both the Gulf and South Atlantic) be voided effective as of that same date. The newly required charter vessel/headboat permit for

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South Atlantic coastal migratory pelagic fish is not subject to the provisions of the moratorium in paragraphs (r)(1) through (11) of this section.

(ii) *Application for and issuance of an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish*— (A) *Owner of a vessel with a valid charter vessel/headboat permit for coastal migratory pelagic fish.* On or about the effective date of the final rule implementing the moratorium in paragraph (r) of this section, the RA, based on NMFS' permit records, will mail an application for an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish to each owner of a vessel with a valid charter vessel/headboat permit for coastal migratory pelagic fish. Any such owner who desires an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish must submit the completed application to the RA. To avoid any lapse in authorization to fish for coastal migratory species in the South Atlantic EEZ (i.e., valid permit status), such owners must submit the completed application to the RA postmarked or hand-delivered not later than 90 days after the effective date of the final rule implementing the moratorium. For completed applications received by that deadline, the RA will issue the permit no later than 140 days after the effective date of the final rule implementing this moratorium. Applications will be accepted at any time, but if received after the deadline, the permit may not be issued prior to the date that the permit is first required (i.e., 150 days after the effective date of the final rule implementing the moratorium). These special procedures apply only to the application and issuance of the initial permit; subsequent permitting activities will be conducted in accordance with the standard permitting procedures as specified in paragraph (b) through (l) of this section.

(B) *Owner or operator of a vessel without a valid charter vessel/headboat permit for coastal migratory pelagic fish.* An owner or operator of a vessel who desires a charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish and who does not have a valid charter vessel/headboat permit for coastal migratory pelagic fish must obtain a permit application from the RA. For additional permitting procedures, see paragraphs (b) through (l)of this section.

3. Section 622.5 (b)(1) is revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) *Coastal migratory pelagic fish, reef fish, and snapper-grouper.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, or snapper-grouper in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

* * * * *

4. In § 622.7, paragraphs (b) and (f) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in § 622.18.

* * * * *

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6(a) and (b) or § 622.4(r)(11).

* * * * *

5. Section 622.43 (a)(3)(ii) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(3) * * *

(ii) A person aboard a vessel for which valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish and a valid commercial vessel permit king or Spanish mackerel have been issued may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

* * * * *

[FR Doc. 02–7128 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 57
Monday March 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–376]

Fruit and Vegetable Industry Advisory Committee; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public to attend. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: The Committee meeting which is open to the public will be held on Tuesday, April 16, 2002, from 8 a.m. to 5 p.m. and Wednesday, April 17, 2002, from 8 a.m. to 1 p.m.

ADDRESSES: The Committee meeting will be held at the South Building, Room 3501, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, Room 2077 South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4722, e-mail—*robert.keeney@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), the Secretary of Agriculture established the Fruit and Vegetable Industry Advisory Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the USDA on tailoring its programs to the fruit and vegetable industry's needs.

At the April 16–17, 2002, meeting announced in this document, the members of the Committee will elect the Chairperson and Vice-Chairperson of the Committee who will serve for a 2-year term. The committee will seek input from parties particularly interested in fruit and vegetable programs regarding the full spectrum of issues faced by the fruit and vegetable industry including: improvement of service to the fruit and vegetable industry; improvement of fruit and vegetable programs delivery; and other input regarding the tailoring of USDA programs to meet industry needs. Therefore, AMS, is giving notice of the committee meeting to the public to attend.

Those parties that wish to attend the meeting should register on or before April 9, 2002, since space is limited. To register please e-mail *Robert.Keeney@usda.gov* or send a fax to 202–720–0016. Registrants should include their name, address, and daytime telephone number.

Upon entering the South Building, visitors should inform security personnel that they are attending the FVIAC Committee Meeting. Identification will be required to be admitted to the building. Security personnel will direct visitors to a registration log that will need to be signed on entrance into the building. All visitors must be registered with AMS in advance of the meeting.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Dated: March 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7108 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–02–330]

United States Standards for Grades of Canned Mushrooms

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; withdrawal.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) published a notice soliciting comments on its proposed revision to change the United States Standards for Grades of Canned Mushrooms. Specifically, AMS proposed to lower the Recommended Minimum Drained Weight Averages (RMDWA's) and lower limits for mushrooms packed in the 8 ounce, jumbo, and No. 10 can sizes. After reviewing and considering the comments received, the Agency has decided to withdraw the proposal and terminate the action.

EFFECTIVE DATE: March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building; STOP 0247, Washington, DC 20250; faxed to (202) 690–1527; or e-mailed to *Chere.Shorter@usda.gov.*

The current United States Standards for Grades of Canned Mushrooms, along with the proposed changes, are available either through the address cited above or by accessing the Internet at *http://www.ams.usda.gov/fv/ppb.html.* Any comments received, regarding this notice will also be posted on that site.

SUPPLEMENTARY INFORMATION:

Background

In August 1990, USDA, through one of its field offices, received a letter from a food importer in New York alerting AMS to the disparity in the United States Standards for Grades of Canned Mushrooms. The company proposed that the RMDWA's in the U.S. Standards for Grades of Canned Mushrooms be lowered to 56 percent of the water capacity of the container, the FDA minimum fill requirement appearing in 21 CFR 155.201.

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In consideration of this proposal, AMS gathered information from government and industry sources.

Drained weight, although not a factor of quality in canned mushrooms, is very important in connection with the marketing of processed fruit and vegetable products. Drained weight indicates the amount of fruit and vegetable ingredient in relation to packing media and to some extent the degree to which a product may have disintegrated during processing and handling. Most U.S. standards for canned fruits and vegetables contain a recommended drained weight. Drained weight, when applicable, is a requirement in federal specifications and other purchase specifications or contracts. The USDA reports the range of drained weights on their certificates when there is a mandatory FDA requirement, such as for canned mushrooms. Although drained weight is an FDA mandatory requirement in canned mushrooms, buyers and sellers can establish their own specification of minimum drained weights that exceed the FDA.

Presently, the U.S. standard for canned mushrooms includes a recommended minimum drained weight of 62 percent of the water capacity, or for example, 68.0 ounces for the No. 10 can, while the FDA minimum is 61.3 ounces (56 percent) for this can size. The water capacity is determined according to the FDA method outlined in 21 CFR 130.12. The FDA established its current 56 percent minimum in rulemaking based upon a petition from the National Food Processors Association (NFPA) requesting that the drained weight required for mushrooms packed in larger cans be reduced because of the high incidence of bacterial spoilage in such containers. The FDA initiated rulemaking in a proposed rule (47 FR 26843; June 22, 1982). The NFPA attributed the problem to overfilling to meet the drained weight requirement. Therefore, the NFPA proposed to reduce the drained weight requirement for larger cans so that the ratio of mushrooms to water capacity of the container was not less than 56 percent. A final rule was published in the **Federal Register** on March 15, 1983 (48 FR 10812) and a **Federal Register** Notice confirming the effective dates was published on September 14, 1983 (48 FR 41155.)

The USDA published a notice in the **Federal Register**, on December 4, 1998 (63 FR 67040), proposing to revise the U.S. Standards for Grades of Canned Mushrooms by lowering the recommended drained weight from 62 percent to 56 percent of the can capacity.

A 60 day comment period was provided for interested persons to send in comments on this recommended change to the Standards.

AMS received one comment that was opposed to the change in drained weight. The commenter stated that the change would result in a lack of uniformity in that there would be a larger number of pack sizes within the narrow range of 56 to 62 percent of the water capacity. They also stated that the change would require expensive changes in the manufacturing process, through new heat penetration studies, new labels, and new in-plant procedures resulting in a restructuring of the manufacturing process. And finally, the commenter felt that the marketing environment would become more confused as a result. AMS believes that the comments have merit and therefore has decided to withdrawal the proposal and terminate the action.

In another matter, the commenter wanted a review of the current color standards for canned mushrooms. They stated that due to the extreme difficulty in achieving Grade A color in glass, that the minimum color classifications be reviewed.

Because this response is beyond the scope of the intended notice, USDA will review this discussion in another forum when more data is available. Interested parties are however encouraged to submit data to justify reviewing the minimum color requirements for canned mushrooms.

After reviewing and considering the comments received, the Agency has decided not to proceed with the action. Therefore, the notice published December 4, 1998 (64 FR 67040) is withdrawn.

Dated: March 18, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7109 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Withdrawal of the Pacific Southwest Regional Guide

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The intended effect of this action is to comply with 36 CFR part 219 section 219.35(e) which directs that within 1 year of November 9, 2000, the Regional Forester must withdraw the Regional Guide. When a Regional Guide is withdrawn, the Regional Forester must identify the decisions in the Regional Guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions.

DATES: This action will be effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bradley J. Burmark, Forest Planner, Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592, 707–562–8950

SUPPLEMENTARY INFORMATION: This action withdraws the Pacific Southwest Regional Guide. None of the direction in the Pacific Southwest Regional Guide will be transferred to a regional supplement of the Forest Service directive system or to forest plans. The direction in the Regional Guide is already in the forest plans, is obsolete, has been replaced by more recent direction, or is already present in other existing policies.

Dated: March 19, 2002.

Gilbert J. Espinosa,

Acting Regional Forester.

[FR Doc. 02–7062 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[01–04–S1]

Designation for the Central Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces designation of Central Iowa Grain Inspection Corporation to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 2002.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail janhart@gipsadc.usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 4, 2001, **Federal Register** (66 FR 63015), GIPSA asked persons interested in providing official services in the geographic area assigned to Central Iowa Grain Inspection Service, Inc., to submit an application for designation. Applications were due by January 2, 2002.

There were two applicants for the Central Iowa area: Central Iowa Grain Inspection Service, Inc., and Kevin D. Bredthauer and Sandra M. Bredthauer, of Des Moines, Iowa, proposing to do business as Central Iowa Grain Inspection Corporation. Both applied for the entire geographic area currently assigned to Central Iowa Grain Inspection Service, Inc. Central Iowa Grain Inspection Service, Inc., is a designated official agency. GIPSA asked for comments on the applicants for providing service in the Central Iowa area in the January 28, 2002, **Federal Register** (67 FR 3875). Comments were due by February 28, 2002. GIPSA received no comments by the due date. Central Iowa Grain Inspection Service, Inc., subsequently withdrew their application and asked for voluntary cancellation of their designation, effective March 31, 2002.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that, effective April 1, 2002, and ending March 31, 2005, Central Iowa Grain Inspection Corporation is able to provide official services in the geographic areas specified in the December 4, 2001, **Federal Register**, for which they applied. Interested persons may obtain official services by calling Central Iowa Grain Inspection Corporation at 515–266–1101.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: March 8, 2002.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–7024 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties; Additional Comment Period

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of additional comment period on proposed policy.

SUMMARY: The Department of Commerce is announcing a one-week final comment period for parties interested in submitting comments on the October 15, 1998, proposed clarification on the automatic-liquidation regulation where a reseller has been involved in the chain of commerce.

DATES: Submit comments by April 1, 2002.

ADDRESSES: Submit written comments to Faryar Shirzad, Assistant Secretary for Import Administration, Docket Center, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Laurie Parkhill, Office 3, Import Administration at 202–482–4733, or Patrick Gallagher, Office of Chief Counsel for Import Administration, at 202–482–5053.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department of Commerce (the Department) published a proposed clarification of the Department's position on the automatic-liquidation procedures for a reseller and invited public comment on that clarification. See *Notice and Request for Comment on Policy Concerning Assessment of Antidumping Duties*, 63 FR 55361 (*Proposed Clarification*). On November 12, 1998, we published a notice of *Rebuttal Period for Comments on Policy Concerning Assessment of Antidumping Duties* (63 FR 63288) which extended the period for initial comments to November 13, 1998, established a rebuttal period until December 4, 1998, and provided for the submission of comments and rebuttal in an electronic format for posting to the Import Administration internet home page.

In the *Proposed Clarification* the Department explained the need for a clear articulation of its policy concerning the assessment of antidumping duties where intermediate companies are involved in exporting merchandise subject to antidumping duty orders to the United States. See 63 FR 55361. The Department also proposed in that notice that its clarified policy would apply to all entries for which the anniversary date for requesting an administrative review is on or after the date of publication of a final decision on this issue.

The Department received several written comments and rebuttals regarding the proposed assessment clarification and is preparing its final decision on the issue. Specifically, the Government of Canada, Micron, Volvo, the Steel Service Center Institute, the American Bearing Manufacturers Association, and The Timken Company provided comments. See the Import Administration Web site at *www.ia.ita.doc.gov*. The Department has reviewed these comments and is prepared to announce a final decision shortly.

Given the passage of time since the publication of the *Proposed Clarification*, however, the Department has decided to alert the public to the pending clarification and to provide one more opportunity for the public to submit comments on the proposed clarification. The Department will consider all comments it has already received: re-submisison of earlier comments is not necessary. Parties which have not yet commented on the proposal may submit comments within seven (7) calendar days of the publication of this notice for the Department's consideration.

To help simplify the processing and distribution of comments, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5″ diskette in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the name of the proposed document, *e.g.*, "Reseller Liquidation."

Comments received on diskette will be made available to the public on the Web at ia.ita.doc.gov. In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5″ diskettes (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at

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202–482–0866 or via e-mail at *Andrew Lee Beller@ita.doc.gov*.

Address written comments to Faryar Shirzad, Assistant Secretary for Import Administration, Docket Center, Room 1870, Pennsylvania Avenue and 14th Street., NW, Washington, DC 20230. Attention: Laurie Parkhill, Comment on Automatic Liquidation.

Dated: March 15, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–6870 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Egypt Presidents' Council: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to Notice of Membership Opportunity: Extension to deadline for applications.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice and counsel to both governments. The **Federal Register** published a notice of membership opportunities for American business representatives on the U.S. side of the Council on November 19, 2001. The deadline was December 28, 2001, and extended to January 25, 2002. This notice hereby extends the deadline by which applications must be received.

DATES: In order to receive full consideration, requests must be received no later than: Friday, April 19, 2002.

ADDRESSES: Please send your requests for consideration to Maram R. Talaat, Egypt Desk Officer, Office of the Middle East, U.S. Department of Commerce by fax at 202–482–0878 or courier to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Maram R. Talaat, Office of the Middle East, Room H–2029B, U.S. Department of Commerce, Washington, DC 20230, phone: 202–482–3752.

SUPPLEMENTARY INFORMATION: This amends the notice of membership opportunities on the U.S.-Egypt Presidents' Council published in the **Federal Register** on November 19, 2001 (66 FR 57937–57938).

Dated: March 20, 2002.

Cherie A. Loustaunau,

Director, Office of the Middle East.

[FR Doc. 02–7117 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902F]

Proposed Information Collection; Comment Request; 2002 Coastal Resource Management Customer Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 24, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tom Fish at NOAA Coastal Services Center, (843) 740–1271 or Tom.Fish@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This survey will be used by the NOAA Coastal Services Center to obtain information from our customers about their natural resource management issues, their information needs, and their technological capabilities. The respondents will be from the coastal natural resource management community. The information will be used to make quality improvements to the Center's products and services.

II. Method of Collection

A paper survey will be used, but a password-protected Web version of the survey will also be available.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, Local, or Tribal government (state natural resource management agencies); not-for-profit institutions (Sea Grant programs).
Estimated Number of Respondents: 700.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 350 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7130 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902G]

Proposed Information Collection; Comment Request; Gulf of Mexico Reef Fish and Coastal Pelagics Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before May 24, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jim Waters, Department of Commerce, NOAA, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516–9722, (252–728–8710).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect information about vessel expenses and earnings in the Gulf of Mexico reef fish and coastal pelagics (mackerels) fisheries with which to conduct economic analyses that will improve fishery management in those fisheries; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 et seq.), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS Strategic Operating Plans. These data will be collected in conjunction with catch and effort data already being collected in this fishery as part of its logbook program, and will be used to assess how fishermen will be impacted by and respond to regulations likely to be considered by fishery managers.

II. Method of Collection

Owners of selected vessels with Federal commercial permits in the Gulf of Mexico reef fish and coastal pelagics fisheries will be required to report information about trip costs, input usage, input prices, and dockside prices as part of the logbook reporting requirements in this fishery. In addition, these vessel owners will be required to complete and submit by mail a separate form about annual fixed cost information such as expenditures for repair and maintenance, gear purchase and repair, fishing licenses and permits, insurance, dock fees, repayment on boat and business loans, office expenses and so forth.

III. Data

OMB Number: 0648–0016.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 350.
Estimated Time Per Response: 10 minutes per trip report; 30 minutes for the annual fixed-cost survey.
Estimated Total Annual Burden Hours: 1,400.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7131 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902H]

Proposed Information Collection; Comment Request; NOAA Coastal Ocean Program Grants Proposal Application Package

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before May 24, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Leslie McDonald, 301–713–3338, ext. 155, or Leslie.McDonald@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration's Coastal Ocean Program (COP) provides direct financial assistance through grants and cooperative agreements for research supporting the management of coastal ecosystems. In addition to standard government application requirements, applicants for financial assistance are required to submit a summary proposal budget form and a project summary form. Applicants are also requested to submit 20 copies of applications to expedite the review process. Recipients are required to file annual progress reports and a project final report using COP formats. All of these requirements are needed for better evaluation of proposals and monitoring of awards.

II. Method of Collection

Paper forms and documents are submitted to the COP. The option of electronic submission is being explored.

III. Data

OMB Number: 0648–0384.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions (universities, colleges, junior colleges, technical schools, laboratories); State, Local, or Tribal Government.
Estimated Number of Respondents: 300.
Estimated Time Per Response: 30 minutes for a budget form; 30 minutes for a project summary; 5 hours for an

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annual report; 10 hours for a final report; and 10 minutes to provide the extra copies required.

Estimated Total Annual Burden Hours: 1,100.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7132 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011102267–2064–02; I.D. No. 102301B]

Financial Assistance for Marine Mammal Stranding Networks Through the John H. Prescott Marine Mammal Rescue Assistance Grant Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications, re-opening receipt of application date.

SUMMARY: The National Marine Fisheries Service (NMFS) published a document in the **Federal Register** of January 14, 2002, concerning the solicitation of competitive applications under the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Stranding Grant Program). This document re-opens the receipt of application date for no later than 5 p.m., (local time) on April 8, 2002.

DATES: The closing date for receipt of applications has been re-opened until April 8, 2002. You must submit one signed original and two copies of the completed application (including supporting information). We will not accept facsimile or electronic applications.

ADDRESSES: We must receive your application by 5 p.m. (E.S.T.) April 8, 2002, in one of the offices designated in the **Federal Register** issue of January 14, 2002 (67 FR 1720).

FOR FURTHER INFORMATION CONTACT: Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program 301–713–2322 ext. 178 or via e-mail: *Teri.Rowles@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This solicitation, the application package, and supplementary documents are available on the NMFS Office of Protected Resources Home Page at: *http://www.nmfs.noaa.gov/prot—res/PR2/ Health—and—Stranding—Response— Program/Prescott.html*.

Title IV of the Marine Mammal Protection Act, the Marine Mammal Health and Stranding Response Program is available at: *www.nmfs.noaa.gov/prot—res/laws/MMPA/MMPA.html*.

Information on MMPA and ESA research and enhancement permits can be found at: *http://www.nmfs.noaa.gov/prot—res/PR1/Permits/pr1permits—types.html*.

Background

In the **Federal Register** notice issue of January 14, 2002, (67 FR 1720) under **DATES** change the date from March 15, 2002 to April 8, 2002. Applications will be accepted until 5 p.m. E.S.T. Any proposals that were received in the period after the original closing date of March 15 and before March 25, 2002, will be considered by the program and do not need to re-apply.

Dated: March 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–7104 Filed 3–20–02; 3:04 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020306047-2047-01; I.D. 020402E]

RIN 0648-ZB14

Mid-Atlantic Fishery Management Council (Council); Request for Research Proposals (RFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS announces that for fishing year 2003 up to 3 percent of the total allowable landings (TAL) will be dedicated to research endeavors under a research set-aside program (RSA). This notice describes how the application and selection process for research projects to be funded under the RSA by a set-aside from the TAL of selected species will operate. The RSA provides a mechanism to fund research and compensate vessels through the sale of fish harvested under the research quota. The setting of the actual research set-aside quotas will be the subject of future rulemakings. NMFS is soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, *Loligo* squid, *Illex* squid, Atlantic mackerel, butterfish, bluefish, and tilefish fisheries.

DATES: All research proposals to be considered under this solicitation must be received between March 25, 2002, and 5 p.m., EST, on May 13, 2002, in the Northeast Regional Office (see **ADDRESSES**). Postmarks prior to the end of the receipt period will not be sufficient. Facsimile applications will not be accepted. For further information related to the timeframe for review and selection of proposals to be conducted with research quota set-asides, see Section A, Background, under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Proposals must be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark proposals "Attention--Mid-Atlantic Research Proposals." Copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at http://www.ofa.noaa.gov/grants/index.html, under the title "Grants Management Forms," or by contacting the Council office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, (302) 674-2331, fax (302) 674-5399, e-mail thoff@mafmc.org or Paul H. Jones, Fishery Policy Analyst, NMFS, (978) 281-9273, fax 978-281-9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The award of a set-aside from the TAL of selected species became possible with the approval of Framework Adjustment 1 (Framework 1) to the Council's Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Bluefish Fishery Management Plans (FMPs); and the RSA provisions of the Tilefish FMP. Framework 1 was approved by the Secretary of Commerce on August 10, 2001. It established a procedure through which research set-aside amounts would be set annually as part of the Council's quota-setting process. The set-asides can range between 0 and 3 percent of each species' TAL. The set-aside allocated for a given species is to be utilized primarily for research involving that species. However, to promote research in those cases where it would otherwise be infeasible, individual research projects could involve allocations from the set-asides for several of the species listed in this notice. Therefore, in addition to applying for part of the set-aside involving a species directly involved in a research project, applicants may also apply for up to 25 percent of the research set-aside quota for species not directly involved in a particular research project.

To be eligible for consideration, a research proposal for work to be conducted using a research set-aside allocation for the 2003 fishing year must be received during the application period identified in the DATES section of this document. Applicants must submit one signed original and two signed copies of the completed application (including supporting information). Prior to selection, NOAA will convene a panel to review proposals submitted in response to this RFP.

The Council, in consultation with the Atlantic States Marine Fisheries Commission (Commission), will incorporate the level of research set-aside (percentages) for each of the set-aside species for the 2003 fishing year into the Council's annual quota specification packages. NMFS will consider the recommended level of set-aside as part of the specification rulemaking process. It is anticipated that most proposals will request that vessels conducting research be exempt from certain regulations for the relevant fishery. The impacts of such an exemption must be analyzed. To ease the burden on researchers, the Council will prepare, as appropriate, an analysis of the impacts associated with the anticipated exemptions during the annual quota specification process. This process is intended to satisfy the analytical and public notice provisions of the Exempted Fishing Permit (EFP) regulations at 50 CFR 600.745. However, certain conditions may require the applicant to provide additional analysis associated with such an exemptions (see section N of this notice).

The actual level of research set-aside quota available to researchers for the 2003 fishing year will depend on the TAL level specified by the Council at its quota-setting meetings in June and August, 2002, and on the percentage (0 to 3 percent) of the TAL established by the Council as the level of research set-aside. To help researchers develop proposals for the 2003 fishing year, the table below provides some guidance on the general magnitude of research set-asides and estimated values that a researcher might expect to be available for fishing year 2003. The table is based on TAL levels for these fisheries for the 2002 fishing year and assumes that NMFS will approve the maximum set-aside level of 3 percent of the TAL. The table is intended only as a guide to be used when developing research proposals for the 2003 fishing year. It does not necessarily reflect the actual research set-aside quota that will be allocated for fishing year 2003. Based on Council recommendation, NMFS could choose to adopt less than 3 percent of TAL as a set-aside, or could decide not to adopt any set-aside for a given fishery. The estimated values of the set-aside allocations will vary depending on market considerations prevailing at the time the research trips are conducted.

EXAMPLE OF 3-PERCENT RESEARCH SET-ASIDES

Allocation Species	Pounds	Kilograms	Estimated Value($)
Summer Flounder	537,300	243,719	902,664
Scup	186,600	84,642	236,982
Black Sea Bass	185,100	83,961	318,372
Loligo Squid	1,124,339	510,000	865,741
Illex Squid	1,587,302	720,000	365,079
Atlantic Mackerel	5,621,693	2,550,000	730,820
Butterfish	390,013	176,910	222,307
Bluefish	1,135,200	514,927	431,376
Tilefish	59,850	27,148	148,428

B. Authority

Issuing grants is consistent with §§ 303(b)(11), 304(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

C. Catalog of Federal Domestic Assistance (CFDA)

11.454, Unallied Management Projects

D. Funding Instrument and Project Period

In consultation with NMFS, the NOAA Grants Office will award a grant to successful applicants through the NOAA grant award process. The project period for all research is January 1, 2003, through December 31, 2003. Proposals to fund research that was started prior to the project period, or that would be completed after the project period will not be considered.

E. Funding Availability

No Federal funds are provided for research under this notification. The Federal Government's contribution to the project will be an EFP or Letter of Authorization, as applicable, which will provide special fishing privileges in response to research proposals selected

under this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. Any funds generated from the landings authorized under a research set-aside grant shall be used to cover the cost of the research, including vessel costs, and to compensate vessel owners for expenses incurred. Therefore, the owner of each fishing vessel selected to land a species in excess of a trip limit or seasonal quota must use the proceeds of the sale of the excess catch to compensate the researcher for costs associated with the research activities and use of the vessel.

Any additional funds above the cost of the research activities (or excess program income) shall be retained by the vessel owner as compensation for the use of his/her vessel.

F. Scope of Research

Projects funded under the research quota set-aside program should enhance understanding of the fishery resource or contribute to the body of information on which management decisions are made. Research, as well as additional voyages to obtain fish for compensation, may be conducted, as specified in the EFP or Letter of Authorization, as applicable, in or outside of a closed area, within the timeframe of a commercial quota closure, and onboard a fishing or other type of vessel, including recreational and/or commercial vessels.

Funds generated from the research quota set-aside landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of the set-aside species. For example, the funds could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists), or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner, should the sale of the excess catch not fully reimburse the researcher or vessel owner for his/her expenses.

G. Eligibility Criteria

All commercial organizations; non-profit organizations; state, local or tribal governments; institutions of higher education; and individuals are eligible to apply, provided that all proposal requirements are satisfied and the proposal is received by the date specified in this document.

A person is not eligible to submit an application under this program if he/she is an employee of any Federal agency; a Regional Fishery Management Council; or an employee of a Council. However, Council members who are not Federal employees can submit an application.

H. Proposal Preparation and Requirements

NOAA employees (whether full-time, part-time, or intermittent) are not allowed to help in the preparation of an application, except that staff may provide you with information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for a proposal. However, the Council or NMFS contact person (see **FOR FURTHER INFORMATION CONTACT**) may provide assistance to researchers who are seeking vessels to participate in the collection of set-aside species or directly in research projects.

Proposals must identify the research to be conducted and the total amount of the set-aside species requested for the project, including its approximate cash value. If a waiver of Federal regulations is proposed, a list of the specific regulations to be waived and a brief justification for such a waiver must be included with the proposal.

In addition, each proposal must identify the requirements for the participating vessel(s) that would make a trip to collect the set-aside species. The vessel(s) selected by the applicant must be listed in the proposal, if possible, or specifically identified prior to final approval by NOAA. Proposals may request that the quota set-aside be collected separately from the research trip or other related research trip. The separate compensation trips do not necessarily have to be conducted by the same vessel.

The researcher's proposal must state the amount of funds required to support the research project, as well as the amount required to compensate the vessel owner either for the collection of set-aside species, or for participation in the research project, or both. The proposal must also include the agreement between the vessel owner and researcher that shows exactly how the research activity is to be paid for, if possible, or such agreement must be provided prior to final approval by NOAA.

I. Project Funding Priorities

The Council and NOAA will give priority to funding research proposals in the following areas identified as research priorities by the Council and Commission for the 2003 fishing year (not listed in order of priority):

1. Bycatch and discard reduction concerning: (a) Distinctions between regulatory discards and bycatch attributed to gear, including mesh selectivity and/or overall gear design in the summer flounder fishery; (b) gear modifications in the *Loligo* squid fishery to reduce scup and other species bycatch; (c) discard studies in the *Loligo* and scup fisheries; and (d) better estimates of recreational discards in the summer flounder, scup, black sea bass and bluefish fisheries;

2. Mesh and gear selectivity focusing on: (a) The examination of summer flounder catch composition in small-mesh net fisheries within the summer flounder small-mesh exemption area; (b) summer flounder mesh selectivity studies; (c) scup mesh selectivity; (d) squid mesh selectivity; (e) black sea bass mesh selectivity; (f) the development of threshold triggers based on gear and fishery characteristics; (g) evaluation of various pot vent sizes for black sea bass; (h) estimation of mortality of black sea bass left in pots during the closed season; (i) evaluation of fishery management actions, e.g., do closures have a net positive effect on fishing mortality by postponing such mortality, or do they simply allow for concentration of resources such that when the seasons open the consequent fishing effort offsets the mortality reductions that occurred during the closure; and (j) mesh retention studies of 2-1/2 (6.35 cm), 2-3/4 (6.985 cm), and 3-inch (7.63 cm) mesh for butterfish;

3. Fishing impacts on habitat pertaining to: (a) Mobile gear impacts on tilefish burrows; (b) scup spawning areas and scup larvae settlement areas in coastal/estuarine waters; (c) benthic habitat of juvenile and adult black sea bass, and scup offshore wintering areas; and (d) mapping of spawning areas and egg mop areas for *Loligo*;

4. Cooperative stock assessment surveys focusing on: (a) The use of alternative industry assessment methods to determine abundance of Atlantic mackerel; (b) the summer flounder fishery; (c) surveys for summer flounder in areas not traditionally sampled by the North East Fisheries Science Center gear; (d) side-by-side comparisons for summer flounder and scup of commercial and NEFSC survey gear; (e) better survey information for bluefish; (f) tagging studies of bluefish movements; and (g) DNA analysis for stock descriptions of Atlantic bluefish and Atlantic mackerel;

5. Improved recreational fishery data focusing on: (a) Research to enhance the overall knowledge of the recreational fishery; (b) statistical models to evaluate the effectiveness of recreational management measures and/or data collection process; (c) studies of bluefish hooking mortality by size of fish; and (d) tagging studies with break-away hooks for movement of tilefish.

6. Other: (a) Evaluation of redirection of fishing effort with area closures for black sea bass; (b) evaluation of whether artificial reefs increase the productivity of black sea bass or simply concentrate the resource; and (c) evaluation of the mixing of Illex and *Loligo* in September and October.

J. Evaluation Criteria

The review panel convened by NOAA to evaluate proposals submitted in response to this RFP (see section L of this notice), will evaluate proposals by assigning scores up to the maximum indicated for each of the following criteria:

1. A clear definition of the problem, need, issue or hypothesis to be addressed. The proposal should describe its relevance to RSA program priorities. If not directly related to priorities listed in this solicitation, provide justification why the proposed project should be considered (25 points);

2. Cost-effectiveness of the project. The request and value of the anticipated revenue from RSA should be commensurate with estimated project costs. Economic and budget projections must be quantified, to the extent possible. Where appropriate, use of existing equipment versus acquisition of new equipment (fishing gear) is preferred (25 points);

3. A clear definition of the approach to be used, including description of field work, theoretical studies, and laboratory analysis to support that proposed research, and the ability of the researchers to physically complete work during the 2003 calendar year can be completed in the area and time proposed. Activities that take place over a wider versus narrower geographical range, where appropriate, are preferred (25 points);

4. Demonstration of support, cooperation and/or collaboration with the fishing industry, and qualifications/experience of project participants. Where appropriate, unified versus separate stand-alone proposals on related projects involving multiple principal investigators are preferred (15 points);

5. Identification of anticipated benefits, potential users, likelihood of success, and methods of disseminating results. Where appropriate, data format generated from the research must be consistent with NMFS' and Atlantic Coastal Cooperative Statistical Program's (ACCSP) databases (10 points). A copy of this format is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

K. Selection Procedures

NOAA will solicit written technical evaluations from the Council members who make up the Ecosystem Planning Committee (Committee) and from three or more appropriate private and public sector experts to score proposals using the criteria specified in section J of this notification to determine the technical merit of the proposal. Following completion of the technical evaluation, NOAA will convene a review panel, including the Committee and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. No consensus recommendations will be made. Based on the results of the technical review, rank order based on average scores, comments provided by the review panel, and the following program policy factors, NOAA will select the successful proposals and inform the Council of its recommendations. The program policy factors are: (1) The time of year the research activities are to be conducted; (2) the ability of the proposal to meet the experimental fishery requirements discussed under Section N of this notice; and (3) redundancy of research projects. Therefore, the highest scoring projects may not necessarily be selected for an award. The selecting official will provide final approval of the projects to allow NMFS to exempt selected vessel(s) from specific regulations implementing the respective FMPs through written notification to the applicant.

For proposals that request exemptions from existing regulations (e.g., possession limits, closed seasons, etc.), the impacts of the proposed exemptions must be analyzed. The Council will analyze these impacts as part of the impacts of the proposed specifications for the upcoming fishing year in the annual quota specification packages it submits to NMFS. However, those individuals with proposals that include vessel activities that extend beyond the scope of the analysis provided by the Council may be required to provide additional analysis before issuance of an EFP will be considered (see section N). Any researchers who request regulatory exemptions that are beyond the scope of the Council analysis may be required to adhere to the regulations that govern the issuance of an EFP by NMFS (see section N). If necessary, and as appropriate, NMFS will consult with the Council and successful applicants to secure the information required for granting an exemption if issuance of an EFP is necessary for the research to be conducted. The final decision on the applicant's proposal for research quota will not be made by NOAA until NMFS advises that the applicant's EFP request is approved.

L. Proposal Format

Proposals should be limited to seven pages, excluding item 6 below. The format may vary but must include:

1. A project summary;

2. A narrative project description to include: (a) Project goals and objectives; (b) the relationship of the proposed project to management needs or priorities identified by the Council; (c) a statement of work (project design and management including who is responsible, expected products, and participants other than applicant); and (d) a summary of the existing state of knowledge related to the project and contribution and relevance of the proposed work;

3. A description of all funding sources (including revenues derived from the sale of the species harvested under the research quota set-aside) and funding needs. This element of the proposal must include the amount of research quota set-aside requested for each species and the expected funds to be generated by the sale of those species, as well as the expected percentage of funds to be allocated to the researcher and any involved fishing vessel;

4. A budget that includes a breakdown of costs, including permit costs, equipment, supplies, and overhead. Applicants must submit a Standard Form 424 (Application for Federal Assistance) including a detailed budget using Standard Form 424A, (Budget Information-- Non-Construction Programs), Standard Form 424B (Assurances - Non-Construction Programs), and Commerce Department Form CD-511, (Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying). Copies of these Standard Forms may be found on the Internet in a PDF version at http://www.ofa.noaa.gov/grants/index.html (Grants Management Forms);

5. A list of any Federal or state regulations that the applicant needs to have waived and a brief justification for such a waiver. Note that requests for waivers of any state regulations will be forwarded to the appropriate state agency(s). NOAA cannot guarantee that

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state agencies will accede to any particular request; and

6. Supporting documents including resumes, cooperative research agreements, and contracts.

M. Final Reports and Data Submission

NOAA will require project researchers to submit to NOAA, with a copy for the Council, an interim and/or final report describing their research project results, or other acceptable deliverable(s), in a timeframe that is specific to the type of research conducted. The format of the report may vary, but must contain:

1. A brief summary of the report;
2. A description of the issue/problem that was addressed;
3. A detailed description of methods of data collection and analyses;
4. A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; this should include benefits and/or contributions to management decision-making;
5. A list of entities, firms, or organizations that actually performed the work and a description of how the work was accomplished; and
6. A detailed final accounting of all funds used to conduct research, including generation of project income resulting from sale of research set-aside quota. The financial information must be submitted on Office of Management and Budget Standard Form-269. Copies of this Standard Form may be found on the Internet in a PDF version at http://www.ofa.noaa.gov/grants/index.html (Grants Management Forms). Projects designed to collect new data for inclusion in NMFS' or ACCSP's databases must submit the data in electronic format with appropriate documentation. Certain databases will have highly specific requirements as to required fields and content. Researchers must agree to provide newly collected data in a format acceptable to the administrators of the receiving databases.

N. Other Requirements

The Council staff will bear the primary responsibility for the evaluations of impacts associated with the research, including analysis of any requested regulatory waivers. However, researchers proposing research and/or compensation fishing that goes beyond the scope of analysis provided by the Council staff in the Council's annual specification packages shall be required to submit a Supplemental Environmental Assessment to obtain an EFP from NMFS. Should a researcher be required to submit a request for an EFP to NMFS such submission should be received by NMFS at least 60 days before the requested start date of the proposed research to allow for additional review and analysis. A final decision on the applicant's grant request for research quota will not be made until NMFS has approved the applicant's EFP request.

O. Other Requirements of Recipients

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case is resolved, the Department will provide further information on implementation of Executive Order 13202.

P. Disposition of unsuccessful applications.

If an application is not selected, NOAA will return the proposal and related documents to the applicant.

Q. Other

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, NOAA (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSIs) in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

DOC/NOAA supports cultural and gender diversity in our programs and encourages women and minority individuals and groups to submit applications.

DOC/NOAA encourages applications from members of the fishing community, and applications that involve fishing community cooperation and participation.

Classification

Prior notice and opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 533, or any other law, was not required for this action, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

Applications under this program are not subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs."

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 269, 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348-0039, 0348-0043, 0348-0044, 0348-0040, and 0348-0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

This action has been determined to be not significant for purposes of Executive Order 12866.

Dated: March 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulations National Marine Fisheries Service.

[FR Doc. 02–7134 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Thursday, April 4, 2002, 9 a.m. to 5 p.m.; Friday, April 5, 2002 9 a.m. to 12:30 p.m.

ADDRESSES: National Oceanic and Atmospheric Administration, Silver Spring Metro Center III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Thursday, April 4, 2002

9:00 a.m.—Welcoming and Opening Formalities, Change of Panel Chairs, Election of Sea Grant Review Panel Officers, Approval of Last Meeting Minutes and Agenda, Introductory Remarks.
9:20 a.m.—Executive Committee Report.
9:45 a.m.—NSGO Director's Update.
10:15 a.m.—Sea Grant Association Report.
10:45 a.m.—Break.
11:00 a.m.—Allocation Committee Report.
12:00 noon—Working Lunch (Wisconsin Sea Grant Information Management System Demonstration).
1:45 p.m.—Allocation Committee Report (continued).
2:45 p.m.—Duce Committee Report Consideration.
3:45 p.m.—Break.
4:00 p.m.—Program Evaluation Implementation Report.
4:15 p.m.—Best Management Practices.
4:30 p.m.—Coastal States Organization Presentation.

Friday, April 5, 2002

9:00 a.m.—NOAA Update.
9:30 a.m.—Congressional Update.
10:30 a.m.—Break.
10:45 a.m.—NSGO Update, Sea Grant Fisheries Extension, Communications Update, Education Update, NOAA MSI/Environmental Entrepreneurship Program, Aquatic Nuisance Species, Maine and New Hampshire Sea Grant College, Status.
12:00 noon—Wrap-up.
12:30 p.m.—Adjourn.

This meeting will be open to the public.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02–7058 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a research permit (1374).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. Andrew J. Read of Duke University Marine Laboratory.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 24, 2002.

ADDRESSES: Written comments on the new application should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see ADDRESSES). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Threatened Loggerhead turtle (*Caretta caretta*)

Application 1374

The purpose of this research is to describe relationships between the movements of sea turtles and the fall gillnet flounder fishery as well as habitat use of loggerhead, green and Kemp's ridley sea turtles. Turtles will be collected in collaboration with the NMFS Beaufort Laboratory Turtle Research Team as part of their "Coastal North Carolina Demographic and Life History Studies" program under endangered species permit #1260. The turtles will be monitored via satellite telemetry. The applicant will monitor up to 30 loggerhead, 10 green and 10 Kemp's ridley sea turtles.

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Dated: March 20, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7135 Filed 3–22–02; 8:45 am]

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Korea

March 19, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59578, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 19, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on March 25, 2002, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within Group II	
338/339	1,427,770 dozen.
435	37,396 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–7070 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Petition to Amend a Rule of Origin under the North American Free Trade Agreement (NAFTA)

March 19, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a petition filed under Section 7.2 of Annex 300-B of NAFTA to amend the NAFTA rules of origin for certain men's and boy's woven shirts.

SUMMARY: On February 26, 2002 the Chairman of CITA received a petition from the American Textile Manufacturers Institute (ATMI) requesting CITA to commence consultations with the governments of Canada and Mexico for the purpose of amending the rules of origin set forth in Annex 401 of the NAFTA for Harmonized Tariff Schedule (HTS) subheadings 6205.20 - 6205.30. In particular, ATMI requests that paragraph (c) of the subheading rule applicable to HTS subheadings 6205.20 - 6205.30 be deleted.

ATMI claims that the fabrics described in paragraph (c) of the subheading note are currently being produced in commercial quantities in the United States and are available in a timely manner. Specifically, ATMI claims that Dan River, Inc., an ATMI member, currently has in its line a fabric that conforms to the following specifications:

Fiber content	60% cotton / 40% polyester
Weight	108.5 grams per square meter
Construction	Plain weave, not of square construction
Thread count	74 per square centimeter
Average yarn size	71.07 metric
Finish	Available bleached and dyed

A modification of the NAFTA rules of origin may only be made after reaching agreement with the other NAFTA parties. CITA hereby solicits public comments on this petition, in particular with regard to whether the fabric described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **April 24, 2002.**

FOR FURTHER INFORMATION CONTACT: Martin Walsh, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On February 26, 2002 the Chairman of CITA received a petition from the American Textile Manufacturers Institute (ATMI) requesting CITA to commence consultations with the governments of Canada and Mexico for the purpose of amending the rules of origin set forth in Annex 401 of the NAFTA for Harmonized Tariff Schedule (HTS) subheadings 6205.20 - 6205.30. In particular, ATMI requests that paragraph (c) of the subheading rule applicable to HTS subheadings 6205.20 - 6205.30 be deleted.

ATMI claims that the fabrics described in paragraph (c) of the subheading note are currently being produced in commercial quantities in the United States and are available in a timely manner. Specifically, ATMI claims that Dan River, Inc., an ATMI member, currently has in its line a fabric that conforms to the following specifications:

Fiber content	60% cotton / 40% polyester
Weight	108.5 grams per square meter
Construction	Plain weave, not of square construction
Thread count	74 per square centimeter
Average yarn size	71.07 metric
Finish	Available bleached and dyed

CITA is soliciting public comments regarding this request, particularly with respect to whether the fabric described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than April 24, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the fabric described above cannot be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of men's shirts stating that it attempted to purchase U.S. made fabric of the kind described above, including quantities requested and the required time frame for delivery, and found no U.S. producers able to fill the order.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–7071 Filed 3–22–02; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Homeland Security NOFA Discussion Forum

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service will host a series of five teleconference calls to discuss, and answer questions regarding, the recent Notice of Availability of Funds to Strengthen Communities and Organizations in Using Service and Volunteers to Support Homeland Security, published in the **Federal Register** on March 8, 2002 (67 FR 10684). Please send discussion questions via e-mail to *homelandnofa@cns.gov* prior to the calls. We will consider all discussion questions, although we cannot guarantee that every item will be discussed due to the high number of expected participants. Teleconference participation is limited to the first 100 callers. The toll-free number for all five calls is 1–877–921–2789. The pass code is verbal: "GARY." Callers will also be required to provide the conference leader's name (Gary Kowalczyk, Coordinator of National Service Programs).

DATES: Teleconference calls will take place on the following dates and times:

Tuesday, March 26, 2002, 3:30–5:00 p.m. EST.

Wednesday, March 27, 2002, 2:00–3:30 p.m. EST.

Friday, March 29, 2002, 3:00–4:30 p.m. EST.

Tuesday, April 2, 2002, 3:30–5:00 p.m. EST.

Friday, April 5, 2002, 2:30–4:00 p.m. EST.

ADDRESSES: Our address is The Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information, contact Deena Johnson (202–606–5000, ext. 562) or Femi Estrada-Petersen (202–606–5000, ext. 192), or e-mail *homelandnofa@cns.gov.*

Dated: March 20, 2002.

Gary Kowalczyk,

Coordinator, National Service Programs.

[FR Doc. 02–7113 Filed 3–22–02; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants to Support New Senior Companion and Foster Grandparent Projects

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter, the "Corporation") announces the availability of funding for grants to support three new Senior Companion projects in geographic areas that do not fall within approved service areas of current Corporation-funded Senior Companion projects and three new Foster Grandparent projects in geographic areas that do not fall within approved service areas of current Corporation-funded Foster Grandparent projects. The purpose of the Senior Companion Program (SCP) is to provide opportunities for income eligible

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individuals 60 years of age and over to serve adults with special needs. The purpose of the Foster Grandparent Program (FGP) is to provide opportunities for income eligible individuals 60 years of age and over to serve children and youth with special or exceptional needs on a person to person basis.

On November 8, 2001, President Bush announced that the Corporation will support homeland security in the coming year, and the Corporation encourages applicants for these grants to include appropriate activities for Foster Grandparents and Senior Companions that help support homeland security. The Corporation defines homeland security to include activities that support public safety, public health, and disaster preparedness and relief.

Individual Senior Companion grant awards will be approximately $211,825 to cover the costs of 48 Senior Companion service years for twelve months. Individual Foster Grandparent grant awards will be approximately $192,265 to cover the costs of 44 Foster Grandparent service years for twelve months.

DATES: Applications must arrive at the Corporation for National and Community Service by 5:00 p.m. (Eastern Daylight Time), May 31, 2002. The Corporation will not accept applications that are submitted via facsimile. Due to delays in delivery of regular U.S.P.S. mail to government offices, there is no guarantee that your application will arrive in time to be considered. We suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service. We anticipate announcing selections under this Notice no later than June 28, 2002.

ADDRESSES: One unbound, single-sided original and two copies of the application must be submitted to the following address: Corporation for National and Community Service, National Senior Service Corps, 1201 New York Avenue, NW, Washington, DC 20525, Attn: Mr. John Keller. All applicants are encouraged voluntarily to submit two additional copies of the application to expedite the review process. Applications must arrive at the Corporation for National and Community Service by 5:00 p.m. (Eastern Daylight Time), May 31, 2002. The Corporation will not accept applications that are submitted via facsimile. Due to delays in delivery of regular U.S.P.S. mail to government offices, there is no guarantee that your application will arrive in time to be considered. We suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service.

Applications: Application guidelines and instructions can be obtained by contacting the appropriate Corporation State Office. Information on how to contact state offices is located on our Web site: *www.nationalservice.org.* Click on "Contact Us" at the bottom of the page. Applicants are urged to pay close attention to these application materials. They contain a wide variety of relevant requirements, including non-federal contributions, the amounts of stipends volunteers may receive, and the requirements for organizations proposing to operate a project.

FOR FURTHER INFORMATION CONTACT: Contact John Keller at 202–606–5000 ext. 285. TDD (202) 565–2799. This Notice is available in an alternative format for people with visual impairments.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service to meet the nation's educational, public safety, environmental and other human needs. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. This year, the Corporation will help support more than 1.5 million Americans who perform substantial service in communities across the country.

In the State of the Union address, the President announced that the USA Freedom Corps will build on the great American ethic of service. The USA Freedom Corps will promote a culture of responsibility, service, and citizenship. It will work with key service agencies in government and the nonprofit sector to provide incentives and new opportunities to serve at home and abroad. The USA Freedom Corps will draw from Americans of all ages and of every background. The Corporation for National and Community Service and its programs—National Senior Service Corps, AmeriCorps, and Learn and Serve America—are part of the efforts under the USA Freedom Corps. The programs of the National Senior Service Corps include the Senior Companion and Foster Grandparent Programs as well as the Retired and Senior Volunteer Program (RSVP).

Program Period of Performance

The program period for all grants is twelve months. Future funding is contingent on performance and the availability of appropriations.

Application Instructions

To be considered for funding, applications must meet all of the criteria and requirements contained in this Notice. The Grant Application, CNCS Form 424–NSSC, and supplemental guidelines and instructions, can be obtained by contacting the appropriate Corporation State Office. The Corporation State Office can also advise applicants concerning the service areas covered by existing projects. Information on how to contact state offices is located on our Web site: *www.nationalservice.org.* Click on "Contact Us" at the bottom of the page. Applicants are urged to pay close attention to these application materials. They contain a wide variety of relevant requirements, including non-federal contributions, the amounts of stipends volunteers may receive, and the requirements for organizations proposing to operate a project. Applicants must submit all forms and attachments specified in the Grant Application and supplemental guidelines and instructions.

Selection Criteria

The Corporation will initially determine: (1) Whether the organization is eligible; (2) whether the application contains all the required information, and (3) whether the geographic location of the proposed project is an approved geographic service area that does not currently have a project funded by the Corporation under the respective program (FGP or SCP) for which they are applying.

After this initial screening, the Corporation will select and evaluate applications based on the following criteria: Program Design (60%) Organizational Capacity (25%), and Budget/Cost-Effectiveness (15%). Details on the application criteria will be available in the application package available from Corporation state offices. The Corporation will take into consideration the following factors after the proposals are assessed:

- *Geographic location:* The Corporation will assure a mix of urban and rural sites.
- *Diversity:* The Corporation will select organizations whose local projects have the capacity to recruit ethnic and racial minorities, males, and persons with disabilities.

Program Authority

Corporation Authority to make these grants is codified in 42 U.S.C. 4950 *et seq.*

Additional Information Concerning the Specific Funding Available

Senior Companion Projects

The Senior Companion Program

The Senior Companion Program (SCP) is authorized by the Domestic Volunteer Service Act of 1973, as amended (Public Law 93–113, Title II, Part C, 42 U.S.C. 5013) and provides opportunities for income eligible individuals 60 years of age and over to serve adults with special needs. The SCP was launched in 1974 with its first 11 projects. Today there are over 17,000 Senior Companions serving 55,000 frail adults annually in 218 local SCP projects. These Senior Companions provide high quality and reliable personal support to adults, primarily the frail elderly, experiencing difficulties with activities of daily living, allowing them to live independently in their own homes for as long as possible. The SCP focuses on those with moderate physical, mental, or emotional impairments who are without adequate family support and who in the absence of non-medical support services would be at risk of institutionalization. Senior Companions also assist clients in patient discharge programs at acute care, mental health, and long-term care facilities to make the transition to living in less restrictive community settings. Some Senior Companions provide short-term respite for primary caregivers of frail adults in times of special need. Senior Companions have also helped their clients participate in emergency response drills, supplied information about crime prevention, and accompanied them to meetings where safety, health, and disaster response concerns are addressed.

Purpose

The purpose of this funding is to start new Senior Companion projects in geographic locations currently unserved by this program.

In addition, the Corporation encourages applicants for these grants to include, where appropriate, activities for Senior Companions that help support homeland security. The Corporation defines homeland security to include activities that support public safety, public health, and disaster preparedness and relief. For example, applicants for a Senior Companion project may propose activities that engage Senior Companions in:

- Providing clients with information and education related to the community's public safety, public health, and disaster preparedness and disaster mitigation plans and activities.
- Assisting their clients to participate in emergency response drills.
- Supplying clients with information on crime avoidance.
- Identifying potential safety, health, or emergency preparedness problems in their clients' homes, institutional environments, or neighborhoods and bringing these to the attention of professional case workers or other appropriate agencies.
- Providing transportation and/or escorting clients for medical appointments, immunizations, errands, etc.
- Providing respite to families of caregivers by caring for an adult with special needs and permitting the primary caregiver to attend meetings, volunteer, or simply become informed about local homeland security measures.
- Participating as a link between clients and community activities to prevent bias-related disorder or violence.
- Assisting crime victims who are frail or suffer from physical, mental, or emotional disabilities, where Senior Companions give support and assistance, including special referrals, as victims recover from trauma of crime and related losses.
- Assisting adults who are discharged from residential health care facilities, especially acute care facilities, who can be helped to resume a greater degree of independent living.

The above are examples only. Local communities will determine the best strategies for integrating Senior Companions into homeland security efforts, consistent with the purpose of the program. Applicants are encouraged to be creative about how Senior Companions can be part of a community or statewide effort to support homeland security. For example, SCP projects can establish relationships with local Citizens Corps Councils being supported at the state level by Governors and coordinated at the federal level by the Federal Emergency Management Agency (FEMA). For further information on these councils, visit *www.citizenscorps.gov.* Where Citizen Corps Councils have not yet been created, projects might be able to collaborate with local organizations that will make up the Citizen's Corps Council, such as Neighborhood Watches, emergency response programs, police volunteer programs, etc.

Eligible Applicants

Public agencies (including state and local agencies and other units of government), non-profit organizations, institutions of higher education and Indian Tribes are eligible to apply. Sponsors of Senior Companion projects that receive no funds from the Corporation, other than funding for Programs of National Significance (PNS), are eligible to apply. Current sponsors of Senior Companion projects funded by the Corporation are not eligible to apply for funding of a new Senior Companion project.

An organization described in section 501(c)(4) of the Internal Revenue Code of 1986, (26 U.S.C. 501(c)(4)) that engages in lobbying activities is not eligible to apply, serve as a host site for volunteers, or act in any type of supervisory role in the program.

Number and Amount of Awards

The Corporation intends to fund three Senior Companion projects in approved service areas that do not currently have a local project of the Senior Companion Program. The average amount of awards will be approximately $211,825.

Applicable Regulations

Regulations governing the SCP are located in 45 CFR part 2551. These will be provided as part of the application materials.

Foster Grandparent Projects

The Foster Grandparent Program

The Foster Grandparent Program (FGP) is authorized by the Domestic Volunteer Service Act of 1973, as amended (P.L. 93–113, Title II, Part B, 42 U.S.C. 5011 and provides opportunities for income eligible individuals 60 years of age and over to serve children and youth with special or exceptional needs on a person to person basis. The Foster Grandparent Program provides communities with valuable service by empowering older adults to contribute to their communities through volunteer service, enhance the lives of the volunteers and those whom they serve. The program began in 1965 as a national demonstration designed to show how low-income persons age 60 and over have the maturity and experience to establish a personal relationship with children having either special or exceptional needs. Today there are 34,000 Foster Grandparents providing care and attention every day to more than 220,000 qualified children and youth annually in 339 local FGP projects. Foster Grandparents volunteer in schools, hospitals, drug treatment centers, correctional institutions, and

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Head Start and day care centers. They offer emotional support to children who have been abused and neglected, mentor troubled teeagers and young mothers, care for premature infants and children with physical disabilities or servere illnesses, including AIDS. In the aftermath of the September 11 tragedy, many Foster Grandparents were important sources of reassurance to the children in their care. The special relationship and high level of personal care provided by Foster Grandparents helps young people grow, gain confidence, and become more productive members of society.

Purpose

The purpose of this funding is to start new Foster Grandparent projects in geographic locations currently unserved by this program.

In addition, the Corporation encourages applicants for these grants to include, where appropriate, activities for Foster Grandparents that help support homeland security. The Corporation defines homeland security to include activities that support public safety, public health, and disaster preparedness and relief. For example, applicants for a Foster Grandparent project may propose activities that engage Foster Grandparents in:

- Providing children with age-appropriate information and education related to the community's public safety, public health, and disaster preparedness and disaster mitigation plans and activities.
- Assisting children to participate in emergency response drills.
- Supplying children with information on crime avoidance.
- Identifying potential safety, health, or emergency preparedness problems in institutional environments, or neighborhoods and bringing these to the attention of professional caseworkers or other appropriate agencies.
- Providing temporary respite to families of caregivers by caring for disabled or chronically ill children living at home, thereby permitting the primary caregiver to attend meetings, volunteer, or simply become informed about local homeland security measures.
- Participating as a link between children and community activities to prevent bias-related disorder or violence.
- Assisting children who are discharged from residential health care facilities, especially acute care facilities, who can be helped to resume a greater degree of independent living.

The above are examples only. Local communities will determine the best strategies for integrating Foster Grandparents into homeland security efforts, consistent with the purpose of the program. Applicants are encouraged to be creative about how Foster Grandparents can be part of a community or statewide effort to support homeland security. For example, FGP projects can establish relationships with local Citizens Corps Councils being supported at the state level by Governors and coordinated at the federal level by the Federal Emergency Management Agency (FEMA). For further information on these councils, visit *www.citizenscorps.gov*. Where Citizen Corps Councils have not yet been created, projects might be able to collaborate with local organizations that will make up the Citizen's Corps Council, such as Neighborhood Watches, emergency response programs, police volunteer programs, *etc.*

Eligible Applicants

Public agencies (including state and local agencies and other units of government), non-profit organizations, institutions of higher education and Indian Tribes are eligible to apply. Sponsors of Foster Grandparent projects that receive no funds from the Corporation, other than funding for Programs of National Significance (PNS), are eligible to apply. Current sponsors of Foster Grandparent projects funded by the Corporation are not eligible to apply for funding of a new Foster Grandparent project.

An organization described in section 501(c)(4) of the Internal Revenue Code of 1986, (26 U.S.C. 501(c)(4)) that engages in lobbying activities is not eligible to apply, serve as a host site for volunteers, or act in any type of supervisory role in the program.

Number and Amount of Awards

The Corporation intends to fund three Foster Grandparent projects in approved service areas that do not currently have a local project of the Foster Grandparent Program. The average amount of awards will be approximately $192,265.

Applicable Regulations

Regulations governing the FGP are located in 45 CFR part 2553. These will be provided as part of the application materials.

Dated: March 20, 2002.

Teresa Scannell,

Director, National Senior Service Corps.

[FR Doc. 02–7112 Filed 3–22–02; 8:45 am]

BILLING CODE 6050–$$–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, April 3, 2002. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: updates on the Comprehensive Plan, a set of Water Quality Standards revisions under development by the Water Quality Advisory Committee, and proposed resolutions to protect existing water quality in the Lower Delaware River; a report of the Flow Management Technical Advisory Committee concerning extending or replacing the Experimental Augmented Conservation Release Program for the New York City Delaware Basin Reservoirs; a report on the PCB Expert Panel meeting of February 12, 2002; and a proposed resolution regarding additional point source discharge monitoring required to support development of a TMDL for PCBs in the Delaware Estuary.

The subjects of the public hearing to be held during the 1:00 p.m. business meeting include, in addition to the dockets listed below, a resolution revising and extending Docket No. D–77–20 CP (Revision 4) to continue the Augmented Conservation Release Program for the New York City Delaware Basin Reservoirs, and a resolution to issue Guidelines for Developing an Integrated Resource Plan under the Delaware River Basin Commission Ground Water Protected Area Regulations.

The dockets scheduled for public hearing are as follows:

1. *Holdover Project: Philadelphia Suburban Water Company D–98–11 CP.* A project to withdraw up to 4.0 million gallons per day (mgd) from the East Branch Brandywine Creek for public water supply when streamflow exceeds 25 percent of the average daily flow and is also greater than 90 mgd for the Brandywine River at Chadds Ford. The applicant proposes to serve portions of Wallace, East Brandywine and West Brandywine Townships, all in Chester County, Pennsylvania. The intake will be situated on the east bank of the East Branch Brandywine Creek just south of Marshall Road in Wallace Township. On a yearly use basis, withdrawal is expected to average approximately 0.76 mgd. When available, the raw water will be conveyed for storage in a nearby abandoned quarry (known as Cornog Quarry) with an estimated storage capacity of approximately 100 mg. Withdrawals ranging from 0.5 mgd to 1.0 mgd will then be made from the quarry, treated by a proposed new filter plant, and distributed to the project service area.

2. *Boeing Defense and Space Group D–94–30 (Revision).* A project to revise the NPDES Permit limits for effluent metals parameters listed in Docket No. D–94–30 to reflect modifications which are consistent with current water quality regulations. No increase in the industrial waste treatment plant (IWTP) capacity of 0.234 mgd is proposed. The IWTP will continue to serve the applicant's military aircraft manufacturing operation in Ridley Creek Township, Delaware County, Pennsylvania. No modifications of the treatment process are proposed, as the applicant continues to utilize the Best Available Treatment (BAT) for the industrial classification. IWTP effluent will continue to discharge to the tidal reach of Crum Creek in Water Quality Zone 4, about a half-mile upstream of its confluence with the Delaware River.

3. *Perkasie Borough Authority D–97–12 CP (Revision).* A ground water withdrawal project to increase the existing withdrawal from the applicant's existing Wells Nos. 5, 6, 9, 10, 11 and 12 to 40.2 mg/30 days. The project is located in the Three Mile Run and Perkiomen Creek watersheds in Perkasie Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Mercer County Improvement Authority D–99–28 CP.* A surface water withdrawal project via a new intake on Assunpink Creek at Mercer Lake to withdraw up to 1.3 mgd of water. The new intake, in addition to an existing intake, which can also provide up to 1.3 mgd, will irrigate the applicant's Mercer Oaks II Golf Course with a total limit of 15 mg/mo. The project is located off Quakerbridge Road in West Windsor Township, Mercer County, New Jersey.

5. *Artesian Water Company D–2000–46 CP.* An application for approval of a ground water withdrawal project to supply up to 63.94 mg/30 days of water to the Delaware Correctional Center from existing Wells Nos. 1 and 2 in the Rancocas Formation; and new Wells Nos. 3 and 4 in the Mount Laurel Formation, and to limit the withdrawal from all wells to 63.94 mg/30 days. The project is located near the Town of Smyrna, New Castle County, Delaware.

6. *United Water Delaware D–2001–37 CP.* A ground water withdrawal project to supply up to 8.7 mg/30 days of water to the applicant's public water supply system for new Well No. 1 in the Potomac Formation. The project is located in the Christina River watershed in New Castle County, Delaware.

7. *Camelback Ski Corporation D–2001–40.* A project for a tiered increase of the surface water withdrawal from the applicant's intake on Pocono Creek in the Brodhead Creek Watershed from a maximum seasonal use of 84.6 mg/30 days to 130 mg/30 days during the period between December and January. Up to 50 mg is proposed in the months of November and February, and 15 mg in March. The water supplies the applicant's snowmaking operation at the Camelback Ski Resort in Pocono Township, Monroe County, Pennsylvania. During the months of April through October, the applicant will use water for minor maintenance purposes averaging less than 100,000 gpd.

8. *Philadelphia Suburban Water Company D–2001–50 CP.* A ground water withdrawal project to supply up to 7.68 mg/30 days of water to the applicant's public water supply system from new Well "B" in the Brunswick Formation. The project is located in the Perkiomen Creek watershed in Perkiomen Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Aronimink Golf Club D–2001–62.* A ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's irrigation system from new Wells Nos. 2 and 3 in the crystalline rock of the Piedmont Province and to limit the existing withdrawal from all wells to 10.8 mg/30 days. The project is located in the Darby Creek watershed in Newtown Township, Delaware County, Pennsylvania.

10. *Hanah Country Inn D–2002–7.* A project to expand a 9,000 gpd secondary septic treatment system to treat 13,830 gpd and provide a new subsurface discharge leach field at the applicant's 900 acre lodging facility located in the Town of Middletown, Delaware County, New York. The project is in the drainage area to the Delaware River Basin Commission's Special Protection Waters. The site is located on both sides of State Route 30, between County Route 38 (Arkville Road) and East Hubbell Road. The project is in the East Branch Delaware River Watershed, upstream from Pepacton Reservoir.

In addition to the public hearing items, the Commission will address the following at its 1:00 p.m. business meeting: Minutes of the February 6, 2002 business meeting; announcements; a report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; a resolution regarding additional point source discharge monitoring required to support development of a TMDL for PCBs in the Delaware Estuary; a resolution authorizing the Executive Director to enter into a grant agreement with the State of New Jersey in the amount of $100,000 for the Lower Delaware Watershed Region Program Grant: Delaware River Estuary Air, Water and Sediment Field Study; and public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: March 19, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–7060 Filed 3–22–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 24, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

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Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 20, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision of a currently approved collection.

Title: Report of Randolph-Sheppard Vending Facility Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary). Individuals or household, Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 702.

Abstract: The information is needed to evaluate the effectiveness of the program and to promote growth. The information is transmitted to State agencies to assist in the conduct and expansion of the program at the State level. Respondents are the designated voc. Rehab. Agencies.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting "Browse Pending Collections" and clicking on link number 1982. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at 202–708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7091 Filed 3–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The proposed collection of information would implement a statutory requirement that Technology Transfer Ombudsmen report quarterly on complaints they receive.

DATES: Consideration will be given to comments submitted by May 24, 2002.

ADDRESSES: Written comments may be submitted to: Susan L. Frey, Director, Records Management Division (IM–11), Office of Records and Business Management, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, Maryland 20874–1290, and Michael P. Hoffman, Office of General Counsel (GC–62), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: This package contains:

(1) *OMB No.:* New.

(2) *Collection Title:* Technology Partnerships Ombudsmen Reporting Requirements.

(3) *Type of review:* New collection.

(4) *Purpose:* This collection of information would implement a provision in the Technology Transfer Commercialization Act of 2000 (Pub. L. 106–404) that requires Technology Transfer Ombudsmen appointed by DOE national laboratories to report quarterly on the number and nature of complaints and disputes received and the Ombudsman's assessment of their resolution.

(5) *Estimated Number of Respondents:* 24 Technology Transfer Ombudsmen.

(6) *Estimated Number of Burden Hours:* 100 (Quarterly times 24 respondents).

Request for Comments: Pursuant to 44 U.S.C. 3506(c)(2)(A), DOE invites comment on: (1) Whether the proposed collection of information is necessary; (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who choose to respond. Additional information about DOE's proposed information collection may be obtained from the contact person named in this notice.

Statutory Authority: 44 U.S.C. 3506(c)(2)(A).

Issued in Washington, DC, on March 13, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer, U.S. Department of Energy.

[FR Doc. 02–7074 Filed 3–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Enzymatic Hydrolysis Demonstration Plant To Convert Biomass to Transportation Fuels and/or Chemicals

AGENCY: Golden Field Office, Department of Energy.

ACTION: Notice of request for expressions of interest.

SUMMARY: The Department of Energy (DOE), Golden Field Office (GO), on behalf of the Office of Fuels Development (OFD), intends to issue solicitations in support of the DOE Biofuels Program in the FY 2003—FY 2005 timeframe. The DOE/GO anticipates issuing the initial solicitation in early FY 2003 for the research and development of a demonstration plant conceptual design, process research, and detailed design of an enzymatic hydrolysis demonstration plant to convert lignocellulosic biomass to transportation fuels (biofuels) and/or chemicals. The purpose of the demonstration plant is to provide engineering data to reduce risk, enable process guarantees, and assure commercial development of the technology. For the initial FY 2003 solicitation, DOE anticipates awarding cost-shared cooperative agreements to one or two industry-led teams. Subject to the availability of funds, DOE intends to issue a subsequent solicitation in FY 2004 for the construction and initial operation of the demonstration plant. Expressions of interest in these solicitations is requested at this time.

DATES: Please provide expressions of interest and comments by May 1, 2002, to the DOE Golden Field Office.

ADDRESSES: Submit the expressions of interest to the U.S. Department of Energy, Golden Field Office, Andrew R. Trenka, 1617 Cole Boulevard, Golden, CO 80401–3393.

FOR FURTHER INFORMATION CONTACT: Andrew R. Trenka, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393, via facsimile at (303) 275–4753, or electronically at *andy_trenka@nrel.gov*.

SUPPLEMENTARY INFORMATION: DOE is sponsoring the demonstration of an enzyme sugar platform. This demonstration project is a concentrated effort to use a conversion process based on the low-cost enzymes being developed under major DOE cost-shared projects by Genencor International and Novozymes Biotech Inc., to convert a large volume of biomass into cost-effective alternative transportation fuels and/or chemicals. The initial commercialization of the platform technologies may use biomass wastes and residues. The demonstration plant will provide engineering data to reduce risk, enable process guarantees and assure commercial development of the technology. Each firm, partnership, or consortia may, at its option, utilize, via a Cooperative Research and Development Agreement (CRADA), the DOE laboratories active in the DOE Biofuels research program, *i.e.* National Renewable Energy Laboratory (NREL), Oak Ridge National Laboratory (ORNL), *etc.* These laboratories could contribute specialized capabilities, facilities, or equipment to the project that would complement the partnership's capabilities. The winning team or teams will be expected to carry out multi-year technology development and demonstration efforts, including the construction and operation of the platform demonstration plant at a scale sufficient to prove the technical and economic feasibility of feedstock handling, biomass fractionation, enzymatic cellulose hydrolysis, and product fermentation(s) to products. Initial discussions suggest this scale may need to be 40–50 tons per day of input biomass feedstock (dry basis), with corn stover identified as the most plentiful agricultural residue feedstock. The scale of the plant, the feedstock, and the slate of end products will be open to the results of the initial conceptual design and technology research. However, the final products must be based on sugar fermentation and whatever feedstock is chosen should have the potential to lead to significant reductions of imported petroleum, *e.g.*, several billion gallons per year.

DOE expects the industrial partners' cost-share contribution to the initial solicitation to be at least 50% of the initial costs; however, if lower, the rational should be fully explained. Higher cost-shares will be encouraged. DOE intends to share the cost of the FY 2004 and FY 2005 demonstration plant construction efforts, with the industrial partners' contribution being at least 50% of the construction and operating costs (statutory requirement). DOE intends that its partners will have demonstrated experience in the design, construction, and operation of transportation fuels, chemicals, and/or biomass processing facilities, in addition to demonstrated access to financial markets to facilitate eventual commercialization of these technologies. Interested parties should include the following in their expressions of interest:

(1) Experience;

(2) Types of partner organizations (private, public, non-profit) with which they contemplate teaming (including anticipated DOE laboratory involvement);

(3) Any plans to co-locate the demonstration plant with an existing facility;

(4) The types of financial resources they would use to fund their cost-share of the design, process research, construction, and operation phases of the project;

(5) How they will integrate the ongoing research being undertaken by Genencor International and/or Novozymes Biotech, Inc., to produce low-cost cellulases;

(6) The approach to be followed for the planned solicitations;

(7) The approximate budget required to design, construct, and initially operate the demonstration plant;

(8) The approximate size and cost of the demonstration plant to prove the commercial viability of the conversion processes; and

(9) Any additional information or comments to assist in drafting the solicitation.

DOE held a preview technology review in Golden, Colorado, on January 30–31, 2002, and is scheduling a second pre-solicitation meeting in Golden, Colorado in May 2002 (specific date to be determined), for all interested parties to discuss the planned solicitation(s), DOE contracting procedures, intellectual property, the use of government-owned facilities, cost-sharing principles, and other issues.

Information about the platform project, DOE's cost-shared enzyme cost reduction activities, current NREL enzymatic hydrolysis research efforts and technology assessment, the DOE Biofuels program, and the pre-solicitation meeting can be found at the following URL: *http://www.ott.doe.gov/biofuels/enzyme_sugar_platform.html*.

Issued in Golden, Colorado, on February 14, 2002.

Matthew A. Barron,

Contracting Officer, Office of Acquisition and Financial Assistance.

[FR Doc. 02–7075 Filed 3–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 10, 2002, 6 p.m.–9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge

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Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. To be determined.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on March 20, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7073 Filed 3–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–114–000]

Columbia Gas Transmission Corporation; Notice of Application

March 19, 2002.

Take notice that on March 14, 2001, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–114–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its Well No. 6764 and associated appurtenances located in Richland County, Ohio, in Columbia's Lucas Storage Field, all as more fully set forth in the application.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "Rims" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Columbia states that the physical condition of the facilities proposed for abandonment have deteriorated to the extent that an expensive repair or abandonment is required. Columbia further states that it has determined that repairs would be uneconomic due to the poor performance of the well.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25315–1273 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 9, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7077 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–045]

Columbia Gulf Transmission Company; Notice of Compliance Filing

March 19, 2002.

Take notice that on March 13, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of March 1, 2002:

Sixth Revised Sheet No. 20
Fifth Revised Sheet No. 20A
Fifth Revised Sheet No. 20B

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's October 24, 2001 orders approving negotiated rate agreements in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date*: March 28, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7080 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–984–001]

Duke Energy Enterprise, LLC; Notice of Filing

March 18, 2002.

Take notice that on March 14, 2002, Duke Energy Enterprise, LLC (Duke Enterprise) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act revisions to its FERC Electric Tariff No. 1.

Duke Enterprise renews its request, pursuant to Section 35.11 of the Commission's regulations, that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for this application of February 8, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date*: March 28, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7035 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1024–001]

Duke Energy Sandersville, LLC; Notice of Filing

March 18, 2002.

Take notice that on March 14, 2002, Duke Energy Sandersville, LLC (Duke Sandersville) tendered for filing pursuant to section 205 of the Federal Power Act a proposed revision to its FERC Electric Tariff No. 1.

Duke Sandersville seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Sandersville also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Sandersville requests an effective date of April 15, 2002, which is 60 days from the original filing date of its proposed rate schedules.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date*: March 28, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7036 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–200–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 19, 2002.

Take notice that on March 14, 2002, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective April 14, 2002:

Original Sheet No. 271A
First Revised Original Sheet No. 290A

EPNG states that the proposed tariff provision indicates EPNG's agreement to binding arbitration of a dispute under certain circumstances if a shipper is a foreign government, an agency of a foreign government, or an entity created by them to conduct business.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the

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instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7084 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–12–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

March 19, 2002.

Take notice that on March 13, 2002, Enbridge Pipelines (KPC), formerly Kansas Pipeline Company (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 121A, to be made effective April 1, 2002.

Enbridge KPC states that the purpose of the filing was to correct an error resulting from Enbridge KPC's filing of First Revised Volume No. 1 of its FERC Gas Tariff on September 12, 2001 in FERC Docket No. GT01–32–000. The omission happened because Original Sheet No. 222 (Original Volume No. 1) was not on the FERC Fastr System, therefore, when Enbridge KPC made the changes noted above and filed it with the Commission, it did not file the General Terms and Conditions language shown on that sheet.

Enbridge KPC states that copies of its transmittal letter has been provided by First Class mail and/or electronic communication, depending on the method that such party elected to receive such copies, to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7078 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–198–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 19, 2002.

Take notice that on March 13, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 12, 2002:

Fifth Revised Sheet No. 650
Fourth Revised Sheet No. 651
Fourth Revised Sheet No. 652
Fourth Revised Sheet No. 653
Fifth Revised Sheet No. 654

FGT states that on September 1, 1994, it filed a Stipulation and Agreement of Settlement (Settlement) and pro forma tariff sheets setting forth procedures for the interruption of interruptible transportation and the curtailment of firm service during periods of diminished capacity on FGT's system. The Settlement was supported by most of the customers on FGT's system. On January 12, 1995 the Commission issued an order which accepted and clarified the Settlement. (70 FERC ¶ 61,017.) The Commission issued an order on rehearing on June 2, 1995. (71 FERC ¶ 61,274.)

Also, FGT states that the Settlement, as approved and modified by the Commission, establishes procedures in subsections (g) and (h) of section 17.A.4. of the General Terms and Conditions (GT&C) of FGT's Tariff to review the Exempt Use classifications under FGT's curtailment plan. These procedures require that: the DVC [Data Verification Committee] shall meet one year after the date [November 1, 1995] of the implementation of these curtailment provisions to review the Exempt Use classifications. Thereafter, unless otherwise agreed to by the DVC, the DVC shall meet the earlier of: (i) each three years after the plan's implementation date or anniversary thereof or (ii) within sixty (60) days following the second of two firm curtailment events on FGT's system occurring within a 12-month period.

FGT states that pursuant to the terms of FGT's Tariff, the DVC met on October 4, 2001, to review, classify and establish exempt uses as shown on the referenced tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7082 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1166–000]

Frederickson Power L.P.; Notice of Filing

March 18, 2002.

Take notice that on February 28, 2002, Frederickson Power L.P. (Frederickson Power) filed a notice of change of status and a Code of Conduct respecting Frederickson Power's pending affiliation with Duke Energy Corporation.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date*: March 28, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7037 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–053]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

March 19, 2002.

Take notice that on March 13, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. As shown on the contract, Gulf South requests an effective date of April 1, 2002.

Special Negotiated Rate Between Gulf South Pipeline Company, LP and The City of Fairhope, Contract #14497

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7079 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–199–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

March 19, 2002.

Take notice that on March 13, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective April 12, 2002:

First Revised Sheet No. 37
First Revised Sheet No. 39
Second Revised Sheet No. 40
First Revised Sheet No. 43
First Revised Sheet No. 45
First Revised Sheet No. 50
1st Rev. First Revised Sheet No. 183

MRT states that the revised tariff sheets will modify the Tariff's General Terms and Conditions and the Tariff provisions applicable to No Notice Transportation Service (Rate Schedule NNT) and Firm Storage Service (Rate Schedule FSS), to grant greater flexibility to customers in securing through their service agreements the exact services that best suit their needs, in a manner consistent with Commission policy. Specifically, MRT states that it is proposing the ability to negotiate (1) a contractual right of first refusal ("ROFR") in certain circumstances where a regulatory ROFR otherwise would not be available to the customer pursuant to Commission regulations, (2) a reduction of a customer's contract entitlements where there has been a bypass of that customer by a third party, and (3) a process for cooperative efforts between MRT and a customer to implement any regulatory or other governmental order whereby a customer is to unbundle the services that it provides to its own customers. MRT states that the revised tariff sheets also provide additional flexibility for a storage customer with regard to the requirements governing injections into and withdrawals from MRT's storage facilities.

MRT states that it has served copies of the filing upon all customers and relevant state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7083 Filed 3–22–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–157–001]

Transwestern Pipeline Company; Notice of Compliance Filing

March 19, 2002.

Take notice that on March 13, 2002, Transwestern Pipeline Company (Transwestern), tendered for filing changes in its FERC Gas Tariff, Second Revised Volume No. 1, Substitute 4th Revised Sheet No. 15, Substitute 10th Revised Sheet No. 25, and Substitute 6th Revised Sheet No. 34, proposed to be effective March 4, 2002.

Transwestern states that the above tariff sheets are being filed in compliance with the Commission's February 27, 2002 Order in Docket No. RP02–157–000. Transwestern states that in the Order, the Commission directed Transwestern to file revised tariff sheets that clearly indicate that a shipper on Transwestern's system must have title to the gas it is transporting. Therefore, Transwestern is submitting the substitute tariff sheets to clarify that the shipper must have title prior to nominating gas receipts and deliveries on Transwestern's system.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7081 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1141–000, et al.]

El Paso Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 18, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. El Paso Electric Company

[Docket No. ER02–1141–000]

Take notice that on March 14, 2002, El Paso Electric Company (El Paso) tendered for filing a Service Agreement with Arizona Electric Power Cooperative, Inc. for Firm Transmission Service under El Paso's Open Access Transmission Tariff. The Service Agreement was originally submitted for filing on February 27, 2002 but contained an erroneous service agreement designation. This filing corrects the error.

El Paso requests that the proposed Service Agreement be permitted to become effective on January 24, 2002. A copy has been served on the Texas Public Utility Commission.

Comment Date: April 4, 2002.

2. Appalachian Power Company

[Docket No. ER02–1313–000]

Take notice that on March 13, 2002, Appalachian Power Company tendered for filing an Amendment to Letter Agreement with Allegheny Energy Supply Company, L.L.C.

AEP requests an effective date of February 20, 2002. Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment Date: April 3, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1315–000]

Take notice that on March 13, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Tenaska Power Services Co.

A copy of this filing was sent to Tenaska Power Services Co.

Comment Date: April 3, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1316–000]

Take notice that on March 13, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Muscatine Power and Water.

A copy of this filing was sent to Muscatine Power and Water

Comment Date: April 3, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1317–000]

Take notice that on March 13, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Central Iowa Power Cooperative.

A copy of this filing was sent to Central Iowa Power Cooperative.

Comment Date: April 3, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1318–000]

Take notice that on March 13, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by MidAmerican Energy Company (MECR).

A copy of this filing was sent to MidAmerican Energy Company (MECR).

Comment Date: April 3, 2002.

7. Zion Energy LLC

[Docket No. ER02–1319–000]

Take notice that on March 13, 2002, Zion Energy LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 300 MW gas-fired, simple cycle electric generating facility in the City of Zion in Lake County, Illinois. Applicant also filed a long-term Fuel Conversion Services Agreement between Wisconsin Electric Power Company and Applicant, and a power purchase agreement between Wisconsin Power & Light Company (WP&L) and Applicant for the short-term sale of capacity and energy by Applicant to WPL. Applicant requests privileged and confidential treatment for both agreements.

Comment Date: April 3, 2002.

8. UtiliCorp United Inc.

[Docket No. ER02–1320–000]

Take notice that on March 13, 2002, UtiliCorp United Inc. (UtiliCorp), filed with the Commission, pursuant to Section 205 of the Federal Power Act, 16 USC 824d, and Part 35 of the Commission's regulations, 18 CFR 35, Amendatory Agreement No. 2 to the Multiple Interconnection & Transmission Contract between UtiliCorp United Inc. d/b/a Missouri Public Service and Kansas City Power & Light Company, (UtiliCorp's Rate Schedule FERC No. 20). This amendment provides for an additional interconnection point at the Liberty South Station in Clay County, Missouri.

Comment Date: April 3, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7033 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–4–001; CP01–5–002]

Maritimes & Northeast Pipeline L.L.C., and Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Maritimes Phase III/Hubline Project Amendments and Request for Comments on Environmental Issues

March 18, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the amended Maritimes Phase III/ HubLine Project involving construction and operation of facilities by Maritimes & Northeast Pipeline, L.L.C. (Maritimes) in Essex County, Massachusetts and Algonquin Gas Transmission Company (Algonquin) in primarily offshore Essex, Suffolk, Plymouth, and Norfolk Counties, Massachusetts.[1] There would be minor onshore facilities in Essex, Suffolk and Norfolk Counties. The amendment would change the diameter of the already approved offshore pipeline facilities from 16 to 24 inches in diameter and from 24 to 30 inches in diameter. This EA will be used by the Commission in its decision-making process to determine whether the amendment is in the public convenience and necessity.

All applicable landowners were informed of the previously approved project and had an opportunity to participate in the process which resulted in its approval.

Summary of the Proposed Amendment

Maritimes wants to increase the diameter of its approved Phase III facilities from the Salem Meter Station to its connection with Algonquin's approved HubLine facilities in Beverly, Massachusetts. Maritimes has approval to construct and operate approximately 23.8 miles of 30-inch-diameter pipeline and 1.0 mile of 24-inch-diameter pipeline; and appurtenant facilities to include three mainline valves, one tap valve, two cathodic protection ground beds, and two meter stations. Algonquin has approval to construct and operate approximately 29.4 miles of 24-inch-diameter offshore mainline pipeline; approximately 5.4 miles of 16-inch-diameter offshore lateral pipeline to the existing Massachusetts Water Resources Authority (MWRA) Waste Water Treatment facility on Deer Island; and one new meter station on Deer Island, and a block valve and receiver and regulator facilities near the interconnect with the existing I–9 pipeline.

Maritimes seeks authority to:

- Change the diameter of the approximately 1.0 mile of 24-inch-diameter pipeline to 30 inches; and
- Modify the Salem Meter Station by deleting the launcher/receiver and changing some of the metering and piping to accommodate the larger diameter pipe.

Algonquin seeks authority to:

- Change the diameter of the approximately 29.4 miles of 24-inch-diameter offshore mainline pipeline to 30 inches;
- Change the diameter of the approximately 5.4 miles of 16-inch-diameter offshore lateral pipeline to the existing Massachusetts Water Resources Authority (MWRA) Waste Water Treatment facility on Deer Island to 24 inches; and
- Modify the one new meter station on Deer Island, and a block valve and receiver and regulator facilities near the interconnect with the existing I–9 pipeline to accommodate the larger diameter pipe.

Land Requirements for Construction

The change in the pipeline diameter would result in no additional onshore land requirements from those already approved. Construction of the proposed offshore facilities with the larger pipeline diameter would disturb about 7 more acres of sea floor than currently approved.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local

[1] Maritimes' and Algonquin's applications were filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

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government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed amendment under these general headings:

- Sediments
- Cultural resources
- Endangered and threatened species
- Water resources, fisheries
- Vegetation

We will also evaluate possible alternatives to the proposed modifications, and, if necessary, make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA.

To ensure your comments are considered, please carefully follow the instructions in the public participation section in this NOI beginning on page 5.

Currently Identified Environmental Issues

No additional environmental concerns beyond those identified in the final environmental impact statement [3] for the approved project have been identified for this amendment. As a result we do not anticipate revisiting many of the issues already covered by the final environmental impact statement prepared for the approved project. We also do not anticipate the need to issue the EA for public comment.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the amendment. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the amendment, alternatives to the amendment, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to:

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission 888 First St., NE, Room 1A
Washington, DC 20426

- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP01–4–001 and CP01–5–002.
- Mail your comments so that they will be received in Washington, DC on or before April 17, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this amendment. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed amendment is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC Web site, *www.ferc.gov*, using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet Web site provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7034 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

[3] Phase III/HubLine Project Final Environmental Impact Statement, FERC/EIS–0136, November 2001.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filinf and Soliciting Motions To Intervene and Protests

March 18, 2002.

a. *Type of Application*: New Major License.

b. *Project No.*: P–401–027.

c. *Date Filed*: September 14, 2001.

d. *Applicant*: Indiana Michigan Power Company.

e. *Name of Project*: Mottville Hydroelectric Project.

f. *Location*: On the St. Joseph River, in Mottville Township, St. Joseph County, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: J.F. Norris, Jr., American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1700, or *jfnorris@aep.com*.

i. *FERC Contact*: Lee Emery (202) 219–2779 or *lee.emery@FERC.gov*.

j. *Deadline for filing motions to intervene and protest*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project.

Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, motions to intervene and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. *Status of environmental analysis*: This application is not ready for environmental analysis at this time.

l. *Description of Project*: The existing Mottville Project consists of: (1) Two 17-foot high earth-filled embankments extending towards the center of the river from both riverbanks, including (i) a west embankment that is 140 feet long and has a crest width of 15 feet and extends to the powerhouse, and (ii) an east embankment that is 365 feet long and has a crest width of 8 feet and extends from the east riverbank to the spillway; (2) a 237-foot long, reinforced concrete spillway with 10 steel Taintor gates along the crest of the spillway, which are separated by 2.5-foot-wide piers between Bays 1 and 2, and 3 and 4 and 1.5-foot-wide piers between the remaining Bays with the Taintor gates being 22-feet-wide and 13-feet-high in Bays 1 and 2 and 22-feet-wide and 7.5-feet-high in Bays 3 through 10; (3) a combined powerhouse-intake structure, made of brick and concrete, that is 118 feet long, 28 feet wide, and 25 feet long; (4) 4 vertical shaft, single runner, propeller type generating units with an installed generating capacity of 420 kW each; (5) a 14.5-foot-long, 28-foot-wide, and 25-foot-long switchboard bay attached to the west end of the powerhouse; (6) a 50 horsepower, 460-volt, 3-phase air bubbler system; (7) a 15-ton overhead traveling crane; (8) a 20-foot-wide stilling basin extending across the length of the spillway; (9) a 12-inch-thick, reinforced concrete spillway apron; (10) an inoperable 4-foot-wide by 150-foot-long concrete fishway with a slope of about 25 percent; (11) sets of angled steel intake trashracks that are 3-feet 2-inches wide by 14-feet-high with 3/8-inch steel bars with 4-inch spacing between the bars; (12) a five-mile-long, 378-acre reservoir with a gross storage capacity of 2,900-acre-feet at the normal operating pool surface elevation of 770.4 NGVD; (13) a three phase, 2.4/34.5 kV transformer; and (14) other appurtenant facilities. The applicant estimates that the total average annual generation would be 7,800 MWh. All generated power is sold to Indiana Michigan Power Company's customers.

m. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link'select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Procedural schedule*: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of NEPA scoping—March 2002

Notice that the application is ready for environmental analysis—April 2002

Notice of availability of the NEPA document—August 2002

Order issuing the Commission's decision on the application December 2002

o. Protests or Motions to Intervene—Anyone may submit a protest or motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7038 Filed 3–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 20, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 27, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE. Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400; For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

788th—Meeting, March 27, 2002; Regular Meeting, 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Docket# ER02–913, 000, American Electric Power Company

E–3.
Docket# ER02–854, 000, Florida Power & Light Company

E–4.
Docket# ER02–851, 000, Southern Company Services, Inc.
Other#s EL02–67, 000, Southern Company Services, Inc.

E–5.
Docket# ER02–922, 000, California Independent System Operator Corporation
Other#s EL02–51, 000, California Electricity Oversight Board v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing L.P., Mirant Delta LLC, Reliant Energy Services, Inc.,

Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynegy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company, LLC, Southern California Edison Company, All other Public and Non-Public Utilities who own or control generation in California and who sell through the Markets or use the transmission lines operated by the California Independent System Operator Corporation and all scheduling Coordinators acting on behalf of the above Entities

E–6.
Docket# ER02–935, 000, Florida Power & Light Company

E–7.
Docket# ER02–924, 000, Michigan Electric Transmission Company

E–8.
Docket# ER02–945, 000, Louisville Gas and Electric Company and Kentucky Utilities Company

E–9. Omitted

E–10. Omitted

E–11. Omitted

E–12.
Docket# EL99–14, 003, Southwestern Electric Cooperative, Inc. v. Soyland Power Cooperative, Inc.
Other#s EL99–14, 004, Southwestern Electric Cooperative, Inc. v. Soyland Power Cooperative, Inc.

E–13.
Docket# ER01–3000, 003, International Transmission Company
Other#s RT01–101, 003, International Transmission Company
EC01–146, 003, DTE Energy Company

E–14.
Omitted

E–15.
Docket# EC02–23, 001, Trans-Elect, Inc., Michigan Transco Holdings, LP, Consumers Energy Company and Michigan Electric Transmission Company
Other#s ER02–320, 001, Trans-Elect, Inc., Michigan Transco Holdings, LP, Consumers Energy Company and Michigan Electric Transmission Company
ER02–320, 002, Trans-Elect, Inc., Michigan Transco Holdings, LP, Consumers Energy Company and Michigan Electric Transmission Company

E–16.
Omitted

E–17.
Docket# ER02–139, 002, Florida Power & Light Company
Other#s ER02–139, 001, Florida Power & Light Company

E–18.
Omitted

E–19.
Docket# ER02–485, 001, Midwest Independent Transmission System Operator, Inc.

E–20.
Docket# EC02–5, 001, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC
Other#s EL02–53, 001, Vermont Yankee Nuclear Power Corporation
ER02–211, 001, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

E–21.
Docket# TX00–1, 001, United States Department of Energy—Western Area Power Administration, Colorado River Storage ProjectManagement Center
Other#s ER00–896, 001, Public Service Company of New Mexico

E–22.
Docket# ER01–770, 003, Arizona Public Service Company
Other#s ER01–917, 003, Arizona Public Service Company

E–23.
Docket# ER01–889, 010, California Independent System Operator Corporation
Other#s EL00–95, 036, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
ER01–889, 003, California Independent System Operator Corporation
ER01–889, 005, California Independent System Operator Corporation
ER01–889, 006, California Independent System Operator Corporation
ER01–3013, 001, California Independent System Operator Corporation
ER01–3013, 002, California Independent System Operator Corporation
ER01–889, 009, California Independent System Operator Corporation

E–24.
Docket# ER01–3141, 001, American Electric Power Service Corporation
Other#s ER01–3141, 002, American Electric Power Service Corporation
ER01–3141 003 American Electric Power Service Corporation

E–25.
Docket# ER02–84, 001, Nevada Power Company

E–26.
Docket# ER02–42, 001, GWF Energy LLC
Other#s ER00–2998, 003, Southern Company Services, Inc.
ER00–2999, 003, Southern Company Services, Inc.
ER00–3000, 003, Southern Company Services, Inc.
ER00–3001, 003, Southern Company Services, Inc.

E–27.
Docket# EL00–95, 057, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange

E–28.
Docket# EL01–93, 004, Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC and Mirant, LLC v. ISO New England, Inc.
Other#s ER00–2998, 004, Southern Company Services, Inc.
ER00–2999, 004, Southern Company Services, Inc.
ER00–3000, 004, Southern Company Services, Inc.
ER00–3001, 004, Southern Company Services, Inc.

E–29.
Docket# ER01–702, 002, American Transmission Company, LLC
Other#s OA01–8, 001, Wisconsin Electric Power Company

E–30.
Docket# EL01–117, 000, Montana Power Company

E–31.
Docket# EL02–54, 000, San Diego Gas & Electric Company

E–32.
Docket# EL02–46, 000, Generator Coalition v. Entergy Services, Inc.
Other#s ER01–2201, 000, Generator Coalition v. Entergy Services, Inc.

E–33.
Docket# EL02–26, 000, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, L.L.C., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation
Other#s EL02–28, 000, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, L.L.C., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation
EL02–29, 000, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Reliant Energy Services, Mirant Americas Energy Marketing, BP Energy Company and Allegheny Energy Supply Company, L.L.C.
EL02–30, 000, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Reliant Energy Services, Mirant Americas Energy Marketing, BP Energy Company and Allegheny Energy Supply Company, L.L.C.
EL02–31, 000, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Reliant Energy Services, Mirant Americas Energy Marketing, BP Energy Company and Allegheny Energy Supply Company, L.L.C.
EL02–32, 000, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Reliant Energy Services, Mirant Americas Energy Marketing, BP Energy Company and Allegheny Energy Supply Company, L.L.C.
EL02–33, 000, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, L.L.C., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation
EL02–34, 000, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Reliant Energy Services, Mirant Americas Energy Marketing, BP Energy Company and Allegheny Energy Supply Company, L.L.C.
EL02–38, 000, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, L.L.C., Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services Corporation
EL02–39, 000, Nevada Power Company v. Morgan Stanley Capital Group, Calpine Energy Services, Reliant Energy Services, Mirant Americas Energy Marketing, BP Energy Company and Allegheny Energy Supply Company, L.L.C.
EL02–43, 000, Southern California Water Company v. Mirant Americas Energy Marketing, LP
EL02–56, 000, Public Utility District No. 1 of Snohomish County, Washington v. Morgan Stanley Capital Group, Inc.

E–34.
Docket# EL02–63, 000, Constellation Power Source, Inc.

E–35.
Docket# EL02–44, 000, Indeck Maine Energy, LLC v. ISO New England, Inc.

E–36.
Omitted

E–37.
Docket# ER02–711, 000, American Electric Power Service Corporation

E–38.
Docket# OA96–77, 000, Consumers Energy Company
Other#s ER97–1502, 000, Consumers Energy Company
ER98–1247, 000, Consumers Energy Company

E–39.
Docket# EL00–43, 000, UtiliCorp United, Inc. v. City of Harrisonville, Missouri
Other#s EL00–68, 000, Missouri Joint Municipal Electric Utility Commission

E–40.
Docket# EL99–65, 003, Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corporation
Other#s EL95–38, 003, Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corporation

E–41.
Omitted

E–42.
Docket# TX97–5, 000, Tennessee Power Company

E–43.
Docket# ER99–230, 001, Alliant Services Company

E–44.
Docket# EL01–78, 001, LG&E Energy Marketing, Inc. v. Southern Company Services, Inc. and Georgia Transmission Corporation

E–45.
Docket# EL01–87, 000, South Eastern Energy Corporation and Morgan Stanley Capital Group Inc. v. City of Dalton, Georgia, Georgia Transmission Corporation, Georgia Power Company and the Municipal Electric Authority of Georgia

E–46.
Docket# EL00–95, 045, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into the Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 042, Investigation of Practices of the California Independent System Operator and the California Power Exchange

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs, and Rates—Gas

G–1.
Omitted

G–2.
Docket# RP02–164, 000, PG&E Gas Transmission, Northwest Corporation

G–3.
Omitted

G–4.
Docket# RP02–166, 000, Florida Gas Transmission Company
Other#s RP02–167, 000, Florida Gas Transmission Company

G–5.
Docket# RP02–185, 000, Florida Gas Transmission Company

G–6.
Docket# RP96–320, 050, Gulf South Pipeline Company, LP

G–7.
Docket# RP96–320 051 Gulf South Pipeline Company, LP

G–8.
Docket# RP02–190 000 Northern Border Pipeline Company

G–9.
Docket# GT02–11, 000, Northwest Pipeline Corporation

G–10.
Omitted

G–11.
Docket# RP02–179, 000, Williams Gas Pipelines Central, Inc.

G–12.
Docket# RP02–186, 000, Vector Pipeline L.P.

G–13.
Omitted

G–14.
Docket# RP02–174, 000, Columbia Gas Transmission Corporation

G–15.
Docket# RP02–170, 000, Columbia Gas Transmission Corporation

G–16.
Omitted

G–17.
Docket# RP02–163, 000, Florida Gas Transmission Company

G–18.
Omitted

G–19.
Docket# RP02–171, 000, Transcontinental Gas Pipe Line Corporation

G–20.
Docket# RP02–181, 000, Colorado Interstate Gas Company

G–21.
Omitted

G–22.
Omitted

G–23.
Omitted

G–24.
Docket# RP00–477, 000, Tennessee Gas Pipeline Company
Other#s RP98–99, 000, Tennessee Gas Pipeline Company
RP00–477, 001, Tennessee Gas Pipeline Company
RP01–18, 000, Tennessee Gas Pipeline Company
RP01–18, 001, Tennessee Gas Pipeline Company

G–25.
Docket# RP00–478, 000, Honeoye Storage Corporation
Other#s RP00–574, 000, Honeoye Storage Corporation

G–26.
Omitted

G–27.
Docket# RP00–414, 000, PG&E Gas Transmission, Northwest Corporation
Other#s RP01–15, 001, PG&E Gas Transmission, Northwest Corporation
RP01–15, 000, PG&E Gas Transmission, Northwest Corporation

G–28.
Docket# RP00–413, 000, Pine Needle LNG Company, LLC
Other#s RP00–554, 000, Pine Needle LNG Company, LLC

G–29.
Docket# RP00–483, 000, Sabine Pipe Line LLC
Other#s RP00–603, 000, Sabine Pipe Line LLC

G–30.
Docket# RP00–464, 000, Stingray Pipeline Company
Other#s RP00–620, 000, Stingray Pipeline Company
RP00–620, 001, Stingray Pipeline Company

G–31.
Docket# RP02–188, 000, Petal Gas Storage, L.L.C.
Other#s RP00–491, 001, Petal Gas Storage, L.L.C.
CP01–69, 003, Petal Gas Storage, L.L.C.
RP00–491, 000, Petal Gas Storage, L.L.C.

G–32.
Docket# PR02–3, 000, Bay Gas Storage Company, Ltd.

G–33.
Docket# RP01–236, 003, Transcontinental Gas Pipe Line Corporation
Other#s RP00–481, 003, Transcontinental Gas Pipe Line Corporation
RP00–553, 006, Transcontinental Gas Pipe Line Corporation

G–34.
Docket# RP95–197, 041, Transcontinental Gas Pipe Line Corporation
Other#s RP97–71, 029, Transcontinental Gas Pipe Line Corporation

G–35.
Omitted

G–36.
Docket# RP01–262, 003, Columbia Gas Transmission Corporation

G–37.
Docket# RP99–518, 026, PG&E Gas Transmission, Northwest Corporation

G–38.
Docket# RP02–143, 000, Kansas Gas Service v. Enbridge Pipelines KPC

G–39.
Docket# RP00–426, 007, Texas Gas Transmission Corporation

G–40.
Docket# RP02–176, 000, Panhandle Eastern Pipe Line Company

G–41.
Docket# RP00–482, 000, Reliant Energy Gas Transmission Company
Other#s RP00–482, 001, Reliant Energy Gas Transmission Company
RP01–12, 000, Reliant Energy Gas Transmission Company
RP01–317, 000, Reliant Energy Gas Transmission Company

G–42.

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Docket# RP02–165, 000, Horizon Pipeline Company, L.L.C.

Energy Projects—Hydro

H–1.
Docket# P–12020, 001, Marseilles Hydro Power, LLC
Other#s P–12150, 000, Marseilles Land and Water Power Company
H–2.
Omitted
H–3.
Docket# P–2622, 009, International Paper Company and Turner Falls Hydro LLC
Other#s P–2622, 010, International Paper Company and Turner Falls Hydro LLC
H–4.
Docket# P–2596, 004, Rochester Gas and Electric Corporation
Other#s P–2596, 002, Rochester Gas and Electric Corporation
H–5.
Docket# P–12055, 000, Dakota Pumped Storage, LLC
Other#s P–12134, 000, South Dakota Conservancy District

Energy Projects—Certificates

C–1.
Docket# CP00–6, 003, Gulfstream Natural Gas System, L.L.C.
C–2.
Docket# CP01–415, 000, East Tennessee Natural Gas Company
C–3.
Docket# CP01–427, 000, Dominion Transmission, Inc.
C–4.
Docket# CP01–438, 000, Northwest Pipeline Corporation
C–5.
Docket# CP02–4, 000, Northwest Pipeline Corporation
C–6.
Docket# CP96–152, 029, Kansas Pipeline Company
C–7.
Docket# CP01–22, 003, North Baja Pipeline LLC
Other#s CP01–23, 002, North Baja Pipeline LLC
CP01–24, 003, North Baja Pipeline LLC
CP01–25, 003, North Baja Pipeline LLC

Magalie R. Salas,

Secretary.

[FR Doc. 02–7197 Filed 3–21–02; 11:31 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[MO 153–1153; FRL–7161–8]

Notice of Deficiency for Clean Air Act Operating Permit Program in Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency and notice of availability.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act (Act) and the regulations on Federal oversight and sanctions, EPA is publishing this Notice of Deficiency (NOD) for Missouri's Clean Air Act title V operating permits program. The NOD is based upon EPA's finding that several state requirements do not meet the minimum Federal requirements. Publication of this notice is a prerequisite for withdrawal of Missouri's title V program approval, but EPA is not withdrawing the program through this action. This notice also provides information regarding the availability of additional related information.

EFFECTIVE DATE: March 25, 2002. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Harriett Jones, EPA, Region 7, Air, RCRA, and Toxics Division, Air Permitting and Compliance Branch (ARTD/APCO), 901 North 5th Street, Kansas City, KS 66101, (913) 551–7703, or by e-mail at *jones.harriett@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. EPA published that notice on December 11, 2000 (65 FR 77376).

As stated in the **Federal Register** notice, EPA agreed to respond by December 1, 2001, to timely public comments on programs that have obtained interim approval; and EPA agreed to respond by April 1, 2002, to timely comments on fully approved programs. EPA is publishing a NOD because the Agency has determined that deficiencies exist and is notifying all commenters in writing to explain the reasons for not making a finding of deficiency on other issues. EPA received two timely comment letters pertaining to Missouri's title V program, one from the Sierra Club and the other from the National Environmental Development Association/Clean Air Regulatory Project (NEDA/CARP). In reviewing the commenters' concerns, EPA agreed that some of the comments identify deficiencies in Missouri's program. EPA is addressing those deficiencies in this notice. In addition, the commenters raised other issues that EPA has determined are not deficiencies. EPA is responding to the commenters in writing, explaining the basis for EPA's decision.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permit programs. In addition, EPA may on its own identify deficiencies. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

II. Description of Action

1. Modifications to Acid Rain Portion of Operating Permit

EPA's regulations at 40 CFR 70.7(e), which pertain to minor and significant modifications of operating permits, specify that permit modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act. Although Missouri's regulations do include this requirement at 10 CSR 10–6.065(6)(E)4.B. for administrative amendments, the requirement is not included in the minor and significant permit modification procedures at 10 CSR 10–6.065(6)(E)5. Because of the omission of this requirement, the state's program does not comply with the requirements of the Act and 40 CFR part 70. The state has initiated procedures to add this requirement to its regulations.

2. Minor Permit Modifications

EPA's regulations at 40 CFR 70.7(e)(2)(ii)(C) require that an application for a minor permit modification must include certification by a responsible official that the requested modification meets the criteria for use of the minor permit modification procedures and a request that such procedures be used. The state's regulations governing minor permit modifications at 10 CSR 10–6.065(6)(E)5.B. fail to include this requirement. Because of the omission of this requirement, the state's program does not comply with the requirements of the Act and 40 CFR part 70. The state has initiated procedures to add this requirement to its regulations.

3. Contemporaneous Written Notice of Off-Permit Changes

EPA's regulations at 40 CFR 70.4(b)(14)(ii) mandate that if an approved program allows certain "off-permit" changes (*i.e.*, changes that are not addressed or prohibited by the permit) to be made without a permit revision, the state's regulations must require that the source provide "contemporaneous" written notice of each change to the permitting authority and to EPA, except for those that are determined to be insignificant. Missouri's regulations at 10 CSR 10–6.065(6)(C)9.A. do allow certain "off-permit" changes to be made without a permit revision, and written notice of each change is required at 10 CSR 10–6.065(6)(C)9.B. However, although this regulation is titled "Contemporaneous notice, except insignificant activities", the wording of Missouri's regulation ("permittee must provide written notice of the change * * * no later than the next annual emissions report") effectively results in allowing up to one year for notification of the change to be submitted. Therefore, EPA does not believe that the rule ensures "contemporaneous" submission of the written notice, and finds that the state's program does not comply with the requirements of the Act and 40 CFR part 70. The state has initiated procedures to revise this regulation accordingly.

III. Availability of EPA Responses to Citizen Comments

As discussed above, EPA is responding in writing to all timely comments that citizens submitted pursuant to the settlement agreement. For all comments not resulting in a NOD, EPA will explain why it found that a NOD was not warranted. EPA Region 7 will also post its response letters on the Internet at *http://www.epa.gov/oar/ooqps/permits/response/* or you may obtain a copy by contacting Harriett Jones, EPA Region 7, by phone at (913) 551–7730 or by e-mail at *jones.harriett@epa.gov*.

IV. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section lists a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal, that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a NOD, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a state has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. In addition, section 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of NOD, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Missouri's title V program. Consistent with 40 CFR 70.10(b), EPA will wait at least 90 days, at which point it will determine whether Missouri has taken significant action to correct the deficiencies.

V. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit by May 24, 2002.

Dated: March 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–6941 Filed 3–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66301; FRL–6827–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request from the registrant Earth Care, Division of United Industries Corp., (previously Pursell Industries) to cancel its registration for the product Green Up Kerb 50W, EPA Reg. No. 8660–85, which contains the pesticide pronamide. Also under section 6(f)(1) of FIFRA, EPA is issuing a notice of receipt of request from the registrant International Paint Inc., to cancel its registration for the product 673 Black Co-Poly Crab Pot, EPA Reg. No. 23566–17, which contains the pesticide tributyltin methacrylate.

The EPA received these requests for voluntary cancellation as a result of activities related to the tolerance reassessment of pronamide and discussions on potential risks of tributyltin used in antifouling paints, respectively.

DATES: Comments on the requested cancellations must be submitted to the appropriate address provided below April 24, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–66301 in the subject line of the first page of your response.

FOR FURTHER INFORMATION CONTACT: For the pronamide product, Cecelia Watson, (703) 305–4329; e-mail address watson.cecelia@epa.gov Special Review and Reregistration Division (7508C), Office of Pesticides Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. By courier: Room 604W38, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. For the tributyltin product, Jill Bloom, (703) 308–8019; email address bloom.jill@epa.gov (Same address as above, Room 604W53).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use pesticides. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person or persons listed under **FOR FURTHER INFORMATION CONTACT**.

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B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at http://www.epa.gov/. To access this document, on the homepage select "Laws and Regulations" "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *In person.* Contact Cecelia R Watson at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 604W38, Arlington VA, telephone number (703) 305–4329. Available from 6:30 am to 4:00 pm, Monday through Friday, except for federal holidays. Contact Jill Bloom at the same address, Room 604W53, telephone number (703) 308–8019.

C. How and to Whom Do I Submit Comments or request withdrawal?

You may submit comments or, if you are a registrant, request withdrawal, through the mail, in person, or electronically.

1. *By mail.* Registrants who choose to withdraw a request for cancellation of the product pronamide must submit such withdrawal in writing to Cecelia R Watson, at the above address, postmarked April 24, 2002. Registrants who choose to withdraw a request for cancellation of the tributyltin product must submit such withdrawal in writing to Jill Bloom, at the above address, postmarked April 24, 2002.

2. *In person or by courier.* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticides Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The DPD is open from 8:00 am to 4:30 pm, Monday through Friday, except for federal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically.* You may submit your comments electronically by e-mail to: watson.cecelia@epa.gov or bloom.jill@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

II. What Action is the Agency Taking?

Section 6(f)(1) of FIFRA provides that a registrant of pesticide products may at any time request that any of its pesticides registrations be cancelled. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

This notice announces receipt by the Agency of request from registrants to cancel certain product registrations. These registrations are listed in the following Table 1 by registration number, product name, and active ingredient.

TABLE 1.—REGISTRATIONS REQUESTED TO BE CANCELLED

Registration No.	Product Name	Active Ingredients
8660–85	Green Up Kerb WB 50	Pronamide
23566–17	673 Black Co-Poly Crab Pot Paint	Tributyltin methacrylate

Note: EPA companies number 8660 and 23566 have waived the 180 day comment period for registrations listed.

Users of these products who desire continued use of the products being cancelled should contact the applicable registrant before [insert date 30 days from date of publication in Federal Register] unless indicated otherwise, to discuss withdrawal of the application for amendment. This 30-day period also permits interested members of the public to intercede with the registrant prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No	Company Name and Address
8660	Earth Care, Division of United Corporation, P.O. Box 142642,St. Louis, MO 63114–0642
23566	International Paint Inc.,2270 Morris Ave., Union, NJ 07083

III. Provision for Disposition of Existing Stocks

Earth Care and International Paints Inc. have informed the Agency that they do not need any time to sell or distribute their existing stock of products EPA Reg. No. 8660–85 and EPA Reg No. 23566–17. As a result, the Agency has not authorized further sale or distribution of these products by the registrants.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before September 23, 2002. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 15, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–7100 Filed 3–22–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1076; FRL–6827–8]

Notice of Filing a Pesticide Petition to Amend An Existing Tolerance for a Certain Microbial Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petition proposing the revision of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1076, must be received on or before April 24, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1076 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus,Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information.

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1076. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1076 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1076. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that youprovide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received an amended pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide microbial in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains

data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:March 14, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 5E4575

EPA has received an amended pesticide petition PP 5E4575 from Interregional Research Project Number 4 (IR–4), proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.1206 to extend the temporary exemption from tolerance for residues of the non-aflatoxin-producing microbial pesticide *Aspergillus flavus* AF 36 in/on cotton. This amended petition is filed by IR–4, New Jersey Agricultural Experiment Station, Technology Center of New Jersey, Technology Centre of New Jersey, 681 U. S. Highway #1 South, North Brunswick, NJ 08902–3390 on behalf of the USDA/ARS Southern Regional Center, 1100 Robert E. Lee Blvd., New Orleans, LA 70179–0687. The amendment seeks to extend the current temporary exemption from tolerance to include cotton treated with *A. flavus* AF36 in 9 counties in Texas. They propose to continue trials to collect research data, in accordance with Experimental Use Permit 69224–EUP–1, in both Arizona and Texas until December 31, 2005. (See 64 FR 8358, February 19, 1999) (FRL–6057–3)

The EUP currently allows for application of 200,000 pounds (90,179 kg) of the microbial pesticide to a total of 20,000 acres of commercial cotton fields in 5 counties in Arizona including Yuma, LaPaz, Maricopa, Mohave and Pinal counties. In addition to the 20,000 acres in AZ, they propose to apply a total of 20,000 pounds (9,018 kg) of the microbial pesticide on 2,000 acres of commercial cotton fields in 9 counties in Texas (Nueces, San Patricio, Bee, Calhoon, Jackson, Wharton, Hildalgo, Cameron, and Willacy counties).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, IR–4 and USDA ARS Southern Regional Center have submitted summaries of information, data, and arguments in support of their pesticide petition, to comply with the Food Quality Protection Act of 1996. The database was evaluated by EPA and a final rule published in the **Federal Register** on May 26, 1999 (Volume 64, Number 101) Page 28371. The temporary exemption from tolerance and the EUP were extended until December 30, 2003, as published in the **Federal Register** on May 23, 2001 (Volume 66, Number 100) Page 28383–28386. *Aspergillus flavus* AF36 is an atoxigenic strain which is proposed to displace the toxic aflatoxin-producing strains of *A. flavus* as discussed in the aforementioned final rule.

[FR Doc. 02–7101 Filed 3–22–02; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 18, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–1005.
Expiration Date: 07/31/2002.
Title: Numbering Resource Optimization—Phase 3.
Form No.: N/A.
Respondents: Business or other for-profit; State, Local or Tribal Government.
Estimated Annual Burden: 53 respondents; 63.7 hour per response (avg.); 3380 total annual burden hours (for all collections under this control number).
Estimated Annual Reporting and Recordkeeping Cost Burden: $12,000.
Frequency of Response: On occasion; Third Party Disclosure.
Description: In the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Federal Communications Commission (Commission) was given "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." Pursuant to that authority, the Commission conducted a rulemaking that, among other things, addressed regular reporting on numbering use by United States carriers. In the Third Report and Order and Second Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200 (Third Report and Order), the Commission addresses the federal cost recovery mechanism, including the requirement for price cap carriers to file tariffs reflecting recovery through an exogenous recovery adjustment for a two-year period beginning April 2, 2002.

A. Reporting Requirements for Federal Cost Recovery

Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." This statutory provision applies both to the costs of numbering administration and to the costs of Local Number Portability (LNP). In the Third Report and Order, the Commission establishes a federal cost recovery mechanism under which price cap LECs may recover their extraordinary carrier-specific costs directly related to thousands-block number pooling through an exogenous adjustment to access charges. However, because thousands-block number pooling may actually reduce network costs, in order for carriers to qualify for the exogenous adjustment to access charges, the Commission requires them to demonstrate that pooling results in a net cost increase rather than a cost reduction. (*No. of respondents:* 18; *hours per response:* 85 hours; *total annual burden:* 1530 hours).

B. Request for Safety Valve Mechanism by State Commission

In the Third Report and Order, the Commission established a safety valve to ensure that carriers experiencing rapid growth in a given market will be able to meet customer demand. States may use the safety valve to grant requests from carriers that demonstrate the following: (1) The carrier will exhaust its numbering resources in a market or rate area within three months (in lieu of 6 months-to-exhaust requirement); and (2) projected growth is based on the carrier's actual growth in the market or rate area, or in the carrier's actual growth in a reasonably comparable market, but only if that projected growth varies no more than 15 percent from historical growth in the relevant market. States may also grant relief if a carrier demonstrates that it has received a customer request for numbering resources in a given rate center that it cannot meet with its current inventory. Carriers may demonstrate such a need by providing the state with documentation of the customer request and current proof of utilization in the rate center. (*No. of respondents:* 15; *hours per response:* 50 hours; *total annual burden:* 750 hours).

C. Request for Delegated Authority To Implement Service-Specific and Technology-Specific Area Code Overlays

The Commission lifted the ban on service-specific and technology-specific overlays (collectively, specialized overlays or SOs) and will allow state commissions seeking to implement SOs to request delegated authority to do so on a case-by-case basis. State commission seeking to implement service-specific and/or technology-specific area code overlays, must request delegated authority to do so. As an initial matter, a state commission seeking to implement a SO should discuss why the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay. State commissions should also specifically address the following: (1) The technologies or services to be included in the SO; (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs; (6) whether there will be 10-digit dialing in the SO and the underlying area code(s); (7) whether the SO and underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place. (*No. of respondents:* 20; *hours per response:* 55 hours; *total annual burden:* 1100 hours). Data from such reporting will be used by the Commission to determine whether carriers properly qualified for the exogenous adjustment to access charges because pooling resulted in a net cost increase.
Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0470.
Expiration Date: 03/31/2005.
Title: 47 CFR Sections 64.901–64.903, Allocation of Cost, Cost Allocation Manual and RAO Letters 19 and 26.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 5 respondents; 400 hour per response (avg.); 2000 total annual burden hours (for all collections under this control number).
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Annually.
Description: Section 201(b) of the Communications Act of 1934, as amended, requires that common carriers establish just and reasonable charges, practices and regulation for the services they provide; the Commission is responsible for regulating the telecommunications industry and ensuring that common carriers abide by its mandate. Pursuant to Section 64.901 carriers are required to separate their regulated costs from nonregulated cost using the attributable cost method of cost allocation. Carriers must follow the principles described in Section 64.901. Section 64.903(a) requires local exchange carriers with annual operating revenues equal to or above the indexed revenue threshold as defined in 47 CFR 32.9000 to file a cost allocation manual, except mid-sized incumbent local exchange carriers, containing the information specified in Section 64.903(a)(1)–(6). Section 64.903(b) requires that carriers update their cost allocation manuals at least annually, except that changes to the cost apportionment table and the description of time reporting procedures must be filed at the time of implementation. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in the cost apportionment table must be quantified in $100,000 increments at the cost pool level. Moreover, filing of cost allocation manuals and occasional updates are subject to the uniform format and standard procedures specified in RAO Letter 19. RAO Letter 26 provides guidance to carriers in revising their CAMS to reflect changes to the affiliate transactions rules pursuant to the Accounting Safeguards Order. In CC Docket No. 01–199, the Commission eliminated the annual CAM updates and filing of other changes for mid-sized carriers. While mid-sized carriers no longer will be required to annually file a CAM, they, like all other carriers, must be prepared to produce documentation of how they separate regulated from nonregulated costs to the Bureau, upon request. The cost allocation manual is reviewed by the Commission to ensure that all costs are properly classified between regulated and nonregulated activity. Uniformity in the CAMs will help improve the joint cost allocation process. In addition, this uniformity will give the Commission greater reliability in financial data submitted by the carriers through the Automated Reporting Management Information System (ARMIS). Obligation to respond: Mandatory.

OMB Control No.: 3060–0384.
Expiration Date: 03/31/2005.
Title: Auditor's Attestation and Certification—Sections 64.904 and 64.905.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 12 respondents; 107.08 hour per response (avg.); 1285 total annual burden hours (for all collections under this control number).
Estimated Annual Reporting and Recordkeeping Cost Burden: $1,200,000.
Frequency of Response: On occasion; Annually; Biennially.
Description: Section 201(b) of the Communications Act of 1934, as amended, requires that common carriers establish just and reasonable charges, practices, and regulations for the service they provide. The Commission is responsible for regulating the telecommunications industry and ensuring that common carriers abide by its mandate. Since common carriers are allowed to provide non-common carrier services, the Commission must establish mechanisms to control cost shifting,

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inhibiting carriers from imposing on ratepayers for regulated interstate services the costs and risks of nonregulated ventures. Pursuant to section 64.904(a), each incumbent local exchange carrier required to file a cost allocation manual shall elect to either (1) have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or (2) have a financial audit performed by an independent auditor every two years, covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual. See 47 CFR 64.904 (a)–(c). In CC Docket 00–199, the Commission eliminated the requirement that CAMs of mid-sized carriers be subject to an attest audit every two years. Instead of requiring mid-sized carriers to incur the expense of a biennial attestation engagement, they will file a certification with the Commission stating that they are complying with section 64.901 of the Commission's rules. The certification must be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis. Such certification of compliance represents a less costly means of enforcing compliance with our cost allocation rules. See 47 CFR Section 64.905. The independent audit requirement is imposed to ensure that the carriers are properly implementing their cost allocation manual. The independent audits serve as an important aid in the Commission's monitoring program. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0734.
Expiration Date: 03/31/2005.
Title: Accounting Safeguards, CC Docket No. 96–150 (47 U.S.C. Sections 260, 271–276 and 47 CFR Sections 53.209, 53.211 and 53.213).
Form No.: N/A.
Respondents: Businesses or other for-profit.
Estimated Annual Burden: 27 respondents; 4587.37 hours per response (avg.); 123,859 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $632,500.
Frequency of Response: On occasion; Biennially; Annually; Recordkeeping; Third Party Disclosure.
Description: In a Report and Order issued in CC Docket No. 96–150, the Commission addressed the accounting safeguards necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Telecommunications Act of 1996. The Report and Order prescribed the way incumbent local exchange carriers (ILECs), including the Bell Operating Companies (BOCs), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications and information services, telecommunications equipment and CPE manufacturing and others. In CC Docket No. 00–199, the Commission adopted a $500,000 threshold for transactions involving asset transfers. The $500,000 threshold represents a de minimus exception to the affiliate transaction fair market valuation rules. Carriers are still required to follow the affiliate transactions rules in recordkeeping these transactions in their books of accounts, however, they will not have to make the comparison between fair market value and fully distributed costs. The required information enables the Commission to ensure that the subscribers to regulated telecommunications services to not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers. Obligation to respond: Mandatory.

OMB Control No.: 3060–0370.
Expiration Date: 03/31/2005.
Title: Part 32—Uniform System of Accounts for Telecommunications Companies.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 239 respondents; 6,123.41 hour per response (avg.); 1,463,496 total annual burden hours (for all collections under this control number).
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Recordkeeping.
Description: Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, in its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 219(b) of the Communications Act, as amended, 47 U.S.C. 219(b), authorizes the Commission by general or special orders to require any carrier subject to this Act to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission authorized or required by law to act. The Uniform System of Accounts is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. Entities having annual revenues from regulatory telecommunications operations of less than $114 million are designated as Class B and are subject to a less detailed accounting system than those designated as Class A companies. See 47 CFR part 32. In CC Docket No. 00–199, the Commission conducted its second comprehensive, bienfiial review of the accounting rules and the Automated Reporting Management Information System (ARMIS) reporting requirements that apply to incumbent local exchange carriers (LECs). The Commission made four major accounting and reporting reforms. The Commission substantially consolidated and streamlined Class A and reduced Class B accounting requirements; relaxed certain aspects of its affiliate transactions rules; significantly reduced the cost of regulatory compliance with its cost allocation rules for mid-sized carriers; and reduced the ARMIS reporting requirements for both large and mid-sized LECs. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 02–7017 Filed 3–22–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Election Administration Advisory Panel: Reestablishment of Charter

AGENCY: Federal Election Commission.

ACTION: Notice of Election Administration Advisory Panel: Advisory Panel Charter Reestablishment.

SUMMARY: The Federal Election Commission announces the reestablishment of the charter for the Election Administration Advisory Panel. The purpose of the Panel is to provide advice and consultation to the FEC's Office of Election Administration with respect to its research programs on election administration. The FEC adheres to the following criteria in the structuring of the twenty-member group: 1. The Panel should include representation of election officials from the major geographic subdivisions of the country as well as urban and rural areas. 2. The Panel membership should be bipartisan. 3. Every effort should be made to ensure a racially, ethnically and gender balanced Panel. The above criteria provide varied points of view that result in invaluable advice and counsel.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Office of Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 694–1095; Toll Free (800) 424–9530 (option 4).

Dated: March 19, 2002.
R. Bryan Whitener,
Election Specialist, Office of Election Administration, Federal Election Commission.
[FR Doc. 02–7031 Filed 3–22–02; 8:45 am]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Mildred M. Hansen and Mildred M. Hansen Trust, Currie, Minnesota, and Donald Hansen, Slayton, Minnesota; to retain voting shares of Currie Bancorporation, Inc., Currie, Minnesota, and thereby indirectly retain voting shares of Currie State Bank, Currie, Minnesota.

Board of Governors of the Federal Reserve System, March 19, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–7059 Filed 3–22–02; 8:45 am]
BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250]

Proposed Collection for Public Comments; Comment Request Entitled Zero Burden Information Collection Reports

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (2090–0250), Zero Burden Information Collection Reports.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Zero Burden Information Collection Reports.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: May 24, 2002.

ADDRESSES: Submit comments regarding this information collection to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405 or fax to (202) 501–4067. Please cite OMB Control Number 3090–0250.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GAS (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA will be requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0250, Zero Burden Information Collection Reports.

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process. Since May 10, 1992, GSA has published two rules that fall under Information Collection 3090–0250: "Implementation of Public Law 99–506" published at 56 FR 29442, June 27, 1991, and "Industrial Funding Fee" published at 62 FR 38475, July 18, 1997.

B. Annual Reporting Burden

None.

Obtaining Copies of Proposal

Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports.

Dated: March 19, 2002.
Michael W. Carleton,
Chief Information Officer (I).
[FR Doc. 02–7139 Filed 3–22–02; 8:45 am]
BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for an extension to an existing OMB clearance (3090–0112).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personnel Property. A request

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for public comments was published at 67 FR 331, January 3, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSA, to conduct a report assessing the distribution of surplus property, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: April 24, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Denise Thomas, Federal Supply Services (703) 308–0742.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to renew information collection, 3090–0112, concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55.
Annual responses: 220.
Burden hours: 330.

Copy of Proposal

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0112, State Agency Monthly Donation Report of Surplus Property, in all correspondence.

Dated: March 19, 2002.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 02–7136 Filed 3–22–02; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0023]

Submission for OMB Review: Comment Request Entitled Surplus Personal Property Mailing List Application

AGENCY: Property Management Division (FBP), GSA.

ACTION: Notice of request for an extension to an existing approved OMB clearance (3090–0023).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved collection concerning Surplus Personal Property Mailing List Application. A request for public comments was published at 67 FR 330, January 3, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSA, mainly on the Surplus Mailing List, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Victor Arnold-Bik, Property Management Division, GSA (703) 305–5809.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to extend a currently approved information collection, 3090–0023, concerning Surplus Personal Property Mailing List Application. This GSA Form 2170 is completed by persons who wish to have their names placed on the Surplus Personal Property Mailing List maintained by GSA Regional Sales Offices. Mailing labels are produced based on the type of property and geographical area indicated by the prospective bidder on the mailing list application.

B. Annual Reporting Burden

Respondents: 12,000.
Annual responses: 12,000.
Burden hours: 996.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0023, Surplus Personal Property Mailing List Application, in all correspondence.

Dated: March 19, 2002.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 02–7137 Filed 3–22–02; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0006]

Submission for OMB Review: Comment Request Entitled GSAR Clause, 552.237–71, Qualifications of Employees

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for an extension to an existing OMB clearance 3090–0006.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSAR Clause, Qualifications of Employees. Information collected under this authority is required by regulation. A request for public comments was published at 67 FR 330, January 3, 2002. No comments were received.

Public comments are particularly invited on: Whether this information collection generated by the GSAR Clause, Qualifications of Employees, is necessary for security reasons, to properly determine if an employee is suitable to work under a GSA service contract for guards, child care, cleaning, and maintenance contract; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: April 24, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thorton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of service contracts for guards, childcare, cleaning, and maintenance. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 15,496.
Responses Per Respondent: 1.
Total Responses: 15,496.
Hours Per Response: 1.
Total Burden Hours: 15, 496.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0006, Qualifications of Employees, in all correspondence.

Dated: March 19, 2002.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 02–7138 Filed 3–22–02; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing; Request for Public Comment

AGENCY: Office of the Secretary, DHHS.

ACTION: Request for public comment on a draft information brochure on genetic tests for the general public.

SUMMARY: The Secretary's Advisory Committee on Genetic Testing (SACGT) is seeking public comment on a draft information brochure entitled *Genetic Testing: Some Basic Questions and Answers*. The content of the brochure is reproduced below. The brochure's objective is to provide an overview of genetic tests and to outline some questions to consider about having a genetic test. Its target audience is the general public.

DATES: The public is encouraged to provide written comments on the draft brochure by April 19, 2002. Comments may be sent by mail (SACGT, National Institutes of Health, Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892), facsimile (301–496–9839), or email (*sc112c@nih.gov*). All public comments received will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Questions about this request can be directed to Ms. Sarah Carr, SACGT Executive Secretary, by e-mail, *sc112c@nih.gov*, or telephone (301–496–9838). The draft brochure also will be posted on SACGT's website for review and comment.

SUPPLEMENTARY INFORMATION:

Ensuring the appropriate use of genetic tests is an important challenge, requiring dedicated efforts on several fronts, including public education. A well-informed public will have a basic understanding about the benefits, risks, and implications of genetic tests and, should the situation arise, will know what questions to ask to make an informed decision about whether to have a genetic test. SACGT has developed the following draft information brochure, *Genetic Testing: Some Basic Questions and Answers*, to help inform the general public about genetic tests and to suggest the type of questions they should consider asking if they are faced with a decision about whether to have a genetic test.

Using a question and answer format, the brochure explains what genetic tests are, the different purposes for which they are used, how they are similar to and different from other medical tests, and some of their limitations and possible outcomes (potential benefits and risks); addresses insurance policy implications, privacy, confidentiality, and discrimination; provides informational and services resources; and outlines questions to ask oneself and one's healthcare provider when considering a genetic test. The brochure does not provide information about specific genetic tests nor is it intended for patients or consumers who have had experience with genetic testing.

SACGT is seeking comments on the content, readability, and utility of the brochure and strategies for dissemination. In particular, SACGT would appreciate responses to the following specific questions:

1. Is the document useful? How might you use such a brochure?
2. Is the content appropriate and complete? Is it understandable and written at the appropriate reading level? Are there other issues that should be addressed? Are there other questions that should be included?
3. Is the tone of the brochure appropriate? Is it culturally appropriate to a wide range of groups?
4. Should the brochure be produced in other languages and, if so, which languages?
5. To whom and how should this brochure be disseminated?
6. Should the brochure serve as a model for the development of more specific test information brochures? Who should be tasked with developing such brochures? Is this an appropriate role for SACGT? Should SACGT recommend that HHS support the development of test-specific information brochures?

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Draft Brochure

Genetic Testing: Some Basic Questions & Answers

Genetic tests have been available for a number of years, but more tests are becoming available and are being offered as part of medical care. At some point in the future, you may face a decision about whether to have a genetic test.

Genetic tests are like other medical tests in many ways, but they have some important differences and issues to consider. This brochure provides some basic information about genetic testing and highlights the kinds of questions you may want to ask.

What is a Genetic test?

(To include diagram of chromosomes, genes, gene products)

Our genetic information is contained in structures called chromosomes that are made up of a chemical called DNA. Chromosomes are made up of smaller units called genes. There are 23 pairs of chromosomes, one set from our father and one from our mother. Genes contain the information about how our bodies are put together and function. It may help to think of the chromosome as a necklace and genes as beads on the necklace.

Genetic tests usually involve having blood drawn to look for changes in DNA, genes, gene products, or chromosomes. Some changes, such as those that cause certain cancers, develop during one's lifetime, possibly through environmental factors like sun exposure. Other changes can be inherited from one or both parents and passed on to children.

What Are the Different Types of Genetic Tests?

- *Diagnostic tests* are used to diagnose a medical condition in people who have symptoms or health problems. Diagnostic tests can also be used to figure out the best course of treatment or how a medical condition might progress over time.
- *Predictive tests* are used to tell whether healthy people are at higher risk of developing a particular medical condition later in life.
- *Pharmacogenetic tests* are used to tell how genetic makeup may affect a person's reaction to specific medicines. This type of test may help healthcare providers prescribe the most effective drugs with the fewest side effects.
- *Newborn screening tests* are done when babies are born to tell whether they have certain genetic diseases. These are diseases that can be treated if they are found early enough. By state law or rules, all babies are screened unless the parents decline testing.
- *Carrier tests* are used to tell whether healthy people have one copy of a genetic change that puts their children (but not them) at higher risk for having a genetic condition.
- *Prenatal tests* diagnose genetic conditions in pregnancy.

Are Genetic Tests Different From Other Medical Tests?

Genetic tests are similar to other medical tests, but there are a couple of important differences to keep in mind. Medical tests generally provide information only about the person being tested. Genetic test results can provide information for the health or life decisions of other family members as well.

Medical tests usually look for a current health condition. Predictive genetic tests, on the other hand, are done when people are healthy to see whether they are at higher risk of developing a particular disease in the future.

Unlike most other medical tests, genetic education and counseling may be provided for some genetic tests to be sure that patients understand the test, the potential results, and issues to consider.

What Are Some Limitations of Genetic Testing?

Like other medical tests, genetic tests have limitations, and they differ depending on the type of genetic test. For example, predictive genetic tests do not give "yes" or "no" answers about whether you will develop a specific disease. Instead, they tell you what your chances might be of developing a medical condition. They do not establish for sure that you will develop the condition or how the condition will affect you.

A genetic test does not test for all genetic conditions. Rather, a genetic test is done for a specific genetic condition or group of genetic conditions. In addition, for some diseases, a genetic test may not detect all changes that cause a specific condition. If the test does not find a change, you could still have or be at risk for that condition or be at risk for having children with that condition. For some tests, a family member with the condition may need to be tested to identify the genetic change before other family members who may be at risk can be tested.

Your healthcare provider, genetic specialist, or a testing laboratory can provide more information about test limitations. Over time, additional research may reduce some of the current uncertainties with genetic tests.

What Are Some of the Risks and Benefits of Having a Genetic Test?

Each genetic test has different risks and benefits. In general, the risks of genetic tests are not physical, since they mostly involve routine procedures, such as drawing blood or swabbing a cheek. Instead, the benefits and risks have more to do with how prepared you and your family are to learn the results. Learning that you may be at higher risk for a disease, for example, may be difficult to handle emotionally. On the other hand, the knowledge may help you plan preventive measures or make better decisions about the future. Likewise, you may learn that you are healthy, but members of your family have a higher likelihood of disease. For these reasons, it is important to weigh carefully the possible positive and negative outcomes before deciding whether or not to have a genetic test.

Possible Benefits of Genetic Testing

- You may learn information that is important for your healthcare.
  - *You may learn that you have or are at risk for a medical condition.* The results of genetic testing may be useful for diagnosing a medical condition or predicting risks for conditions. The results may help predict the course of the disease or determine a treatment plan, screening options, or prevention strategies. Results of genetic tests could also be important for family members if they are at risk for the same medical condition.
  - *You may learn that you are not at increased risk for a medical condition.* Such information may give peace of mind. However, many conditions are caused by your environment, diet, or behavior, as well as genetics. You may still face the same odds of getting such a condition as the population at large.
  - *You may learn that you are a carrier for a medical condition.* You may have a disease-causing gene but not have the condition yourself. If your partner is a carrier too, you could have children with the genetic condition. If you find out that you are a carrier, your partner may want to be tested prior to having children to see if he or she is also a carrier. If you are a carrier of a genetic condition, your relatives may be carriers too, and they may also want to be tested.
- You may learn information that could be useful for future decision making.

Finding out whether you have, or are at risk for, a particular genetic condition may be important information for your life decisions. If you decide to have children, you may want to undergo prenatal testing or prepare for a child with special needs. The results of a genetic test may also have an impact on your financial planning, career choices, and lifestyle.

- Test results may provide relief and reduce anxiety and uncertainty about the future.

Finding out that you are not at risk for a particular medical condition can bring a sense of relief and peace of mind. Sometimes, even people who learn that they have, or may develop, a genetic condition feel less anxious after learning their test results. They may experience more anxiety from "not knowing" than "knowing" their risk. For others, the reverse may be true.

Potential Risks of Genetic Testing

- You may learn information that can be difficult to handle.

Coping with the knowledge from genetic tests may be difficult. It is particularly hard if there is no treatment or cure for the medical condition or if the condition may not develop until later in life. It is not unusual for people to feel sad, angry, confused, or anxious. Talking these feelings over with your healthcare provider or a genetics specialist may help. You may also find support from therapists, religious leaders, your friends and family, and patient/consumer advocacy or support groups (listed under "Informational Resources").

- Family dynamics may change.

Genetic conditions may affect family members in different ways. Sharing medical information in a family and addressing feelings can sometimes be difficult and may change how family members relate to each other. It is important to keep in mind that there are supportive resources (some of which are listed below) that can help.

- The result may not be clear or uncertain.

There are limitations to today's testing technology. Sometimes a test may not produce a definite result. At other times, the meaning of a test result may not be known. Even after having a genetic test, you may not learn anything new or may be left with uncertainty about what a result means. Of course, the field of genetic testing is changing, so tests will become more refined over time.

- You may be at risk for insurance or employment discrimination.

People are often concerned that the results of genetic tests could be used by insurers to deny coverage or increase the cost of insurance. They also worry that employers might use the test results in hiring and promotion decisions. The way insurers use test results generally depends on the type of plan you have, such as whether it is individual or group coverage. There are some protections to help prevent such discrimination, and they are discussed in the next section.

Can the Results of Genetic Testing Affect Insurance Coverage or Employment?

Some states prohibit employers from using genetic information in hiring and promotion decisions. Some prohibit health insurers from increasing fees or denying coverage based on genetic information. There are also significant differences among states in the level of protection. In other words, the results of genetic tests could affect your coverage depending on the type of insurance you have, whether or not you have symptoms, and the state in which you live. You can find out about your state's laws by contacting the National Conference of State Legislatures at 303–830–2200 or *www.ncsl.org*. The National Human Genome Research Institute also posts information about current state laws, as well as information about federal efforts, at: *http://www.nhgri.nih.gov/Policy_and_public_affairs/Legislation/*

Will Test Results Be Kept Confidential?

Your medical records, including genetic test results, are confidential. Test results can only be released with your permission or unless specifically required by law. The terms of most health insurance policies give the insurance company access to your medical information, especially if you request insurance coverage of genetic testing. However, many companies have policies stating that your health information will not be shared without your consent. You have the right to see the information in your medical records.

Will Insurance Cover the Cost of Genetic Testing?

Insurance coverage for genetic testing will depend on the type of insurance you have and the indication for testing. Genetic tests can cost more than other tests because they can take longer to perform and the techniques are more complex. If your insurance does not cover the cost of genetic testing, you may have to pay out-of-pocket. Find out about the cost of the test and insurance coverage before having the test done.

Where Can I Find More Information About Genetic Disorders or Genetic Testing?

Patient and consumer advocacy or support groups can help you obtain information about genetics and specific genetic conditions. They can also help you make connections with people facing similar issues. In addition, many government agencies have helpful resources.

Informational Resources

- Genetic Alliance, Toll free number: 800–336–4363. (*www.geneticalliance.org*).
- Genetics Education Center, (*www.kumc.edu/gec/*).
- "GeneTests", (*http://www.genetests.org/*).
- March of Dimes, Toll free number: 888–663–4637. (*www.modimes.org*).
- National Human Genome Research Institute, (*http://www.nhgri.nih.gov/Policy_and_public_affairs/Communications/Patients_and_families/*).
- National Newborn Screening and Genetics Resources Center, (*www.genes-r-us.uthscsa.edu*).
- National Organization for Rare Disorders, Toll free number: 800–999–6673. (*www.rarediseases.org*).
- Office of Rare Diseases, National Institutes of Health, (*http://rarediseases.info.nih.gov/ord/*).
- Office of Genetics and Disease Prevention, Centers for Disease Control and Prevention, (*http://www.cdc.gov/genetics/default.htm*).
- U.S. Department of Energy, (*http://www.ornl.gov/hgmis/medicine/genetest.html*).

Genetics clinics provide care, information and support for individuals who have, or are at risk for, a genetic condition.

To locate genetic services, you can:

- Ask your healthcare provider
- Contact your local medical center/hospital and ask if there are genetic services
- Contact your state department of public health and request information on genetic services
- Contact the National Society of Genetic Counselors (610–872–7608) *www.nsgc.org*
- Contact the Genetic Alliance (toll free: 800–336–4363) *www.geneticalliance.org*
- Contact your local March of Dimes chapter (888–663–4637) *www.modimes.org*
- For cancer genetics specialists, contact the National Cancer Institute (toll free: 800–422–6237) *www.nci.nih.gov*

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To Be Placed at the End of the Document as a Tear-Out Page

Questions to Ask About Genetic Testing

Below are some questions you can ask yourself and your healthcare provider as you consider genetic testing. Many of these same questions could be asked about any medical test. There may not be answers to all of these questions and some of the answers may change as our knowledge about genetic testing grows.

Questions to Ask Yourself

- ☐ Do I know what type of genetic test is being offered?
- ☐ Will the test results be helpful to me? Do I want to know this information?
- ☐ What might I do differently if I have the results?
  - ☐ Will I make changes in my healthcare based on the results?
  - ☐ Will I make changes in my life decisions (e.g. children, finances, career choice) based on the results?
- ☐ Is this a good time in my life for me to have the genetic test?
- ☐ What will my reactions be when receiving the genetic test results?
- ☐ Do I have the support that I may need or people who I can talk to, if needed?
- ☐ Have I given myself enough time to explore these issues?
- ☐ Do I have all the information I need to make a decision about genetic testing? Have all my questions been answered?

Questions to Ask Your Healthcare Provider

- ☐ *Specific genetic test and purpose:* What genetic test(s) will be done? What is the purpose of doing the genetic test? Why is the genetic test recommended?
- ☐ *Test accuracy & limitations:* How accurate is the genetic test? What are the limitations of the genetic test? How well does the test diagnose or predict the medical condition? Does the laboratory where the test will be performed have the appropriate certification?
- ☐ *Benefits & risks:* What are the benefits and risks of being tested? Of not being tested?
- ☐ *Result interpretation:* What are the possible test outcomes and what will the results mean?
- ☐ *Communication of results:* When can I expect to receive my test results? How will results be communicated to me?
- ☐ *Medical care:* What are the signs and symptoms of this condition? Are there medical treatments or preventive options available for the condition? Would options change depending on the test results? What would my options be if I decide not to be tested?
- ☐ *Insurance issues:* What is the cost of the genetic test(s)? Will my insurance cover the cost? Will the results of genetic testing affect my insurance rates, coverage or my ability to obtain insurance?
- ☐ *Confidentiality of test results:* Who will have access to my test results? Will the results be kept confidential?
- ☐ *Family issues:* What will my test results mean for other family members? Should other family members consider genetic testing? What should I tell my family members?
- ☐ *Sample issues:* Will part of my sample be left over from the test and, if so, what will happen to it?

Genetic Testing—It Should Be Your Decision

This brochure has provided some basic information about genetic testing. We hope it will be helpful if you have to make decisions about genetic testing. Some people may decide to have a genetic test because they feel the information would be important for their healthcare and/or life decisions. Others may decide not to have a genetic test because they feel that the risks outweigh the benefits of having the information, they feel their decisions would be no different, or they prefer not to know. The decision to have a genetic test is yours to make. It's your genetic information, and it's your choice.

Dated: March 18, 2002.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 02–7056 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Agricultural Health Study (A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture)—Validation Sub-Study, on Rheumatoid Arthritis

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Tuesday, October 23, 2001, pages 53618–53619 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Agricultural Health Study (A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture)—validation sub-study on Rheumatoid Arthritis.

Type of Information Collection Request: Revision of a currently approved collection (0925–0406, expiration 11/31/03).

Need and Use of Information Collection: The Agricultural Health Study is an ongoing prospective cohort study of 89,189 farmers, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. The proposed collection of additional information is intended to assess the validity of self-reported Rheumatoid Arthritis (RA) in the Agricultural Health Study (AHS) within small subgroups of individuals. The collection is intended to identify confirmed cases of RA to include in etiologic analyses of farming exposures and RA; evaluate the efficacy of certain questions or sets of questions for screening out false-positives for self-reported RA and identify subgroups to target for future etiologic studies of RA, based on a relatively high prevalence of RA and the feasibility of disease confirmation.

Frequency of Response: Single time reporting.

Affected Public: Individuals or households, Farms.

Type of Respondents: Private pesticide applicators and their spouses. The annual reporting burden is as follows:

Estimated Number of Respondents: 11,373..

Estimated Number of Responses per Respondent: 2.2;

Average Burden Hours Per Response: 1.18.

Estimated Total Annual Burden Hours Requested: 13,433.

The annualized cost to respondents is estimated at: $138,045. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Michael C.R. Alavanja, Dr. P.H., Division of Epidemiology and Genetics, National Cancer Institute, Executive Plaza South, Suite 8000, 6120 Executive Boulevard, Rockville, MD 20852, or call non-toll free (301) 435–4720, or E-mail your request, including your address to: *alavanjam@mail.nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 15, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–7055 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: April 15, 2002.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) The NIH Response to COPR's October Report on Human Research Protections; (2) Health Disparities; and (3) Research in Environmental Health Sciences by Dr. Kenneth Olden, Director, NIEHS.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gorman@od.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center home page: *www.nih.gov/about/publicliaison/index.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7051 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Cancer Institute Special Emphasis Panel

Date: March 27, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: C Michael Kerwin, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8039, Rockville, MD 20892–7405, 301–496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7050 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: April 10, 2002.

Time: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6081, Bethesda, MD 20892–7965, 301–435–0815, *browne@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7052 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Infectious Agents in Vascular Disease Molecular Mechanism for HCMV Mediated Atherogenesis RFA–HL–02–002.

Date: June 17–18, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Alessandra Bini, PhD, Scientific Review Administrator, Review Branch, Room 7204, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, 301–435–0299.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7049 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 25, 2002.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Award; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7043 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project Applications.

Date: April 1–3, 2002.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Rochester Crowne Plaza, 70 State Street, Rochester, NY 14614.

Contact Person: Ethel B. Jackson, DDS, Chief Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–7846, *jackson4@niehs.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7044 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 22, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7045 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Prevention of Group B Streptococcal (GBS) Disease".

Date: April 2, 2002.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–2766, *gm145a@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7046 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 1819, 2002.

Time: 10 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Ambassador II Room, Bethesda, MD 20814.

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7047 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Multicenter Clinical Trial of Crohn's Disease.

Date: April 12, 2002.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Room 754, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: May 7, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7048 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: April 5, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Rm 409, Rockville, MD 20892. (Telephone Conference Call)

Contact Person: L. Tony Beck, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003, 301–443–0913, *lbeck@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Career Development Awards (K23) in Alcohol Research.

Date: April 13, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892. (Telephone Conference Call)

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

(Catalogue of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93:272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs, 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7053 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 8, 2002.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Susan M. Matthews, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892–9607, 301–443–5047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7054 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Use of Macrocyclic Lactones as Inhibitors of Vacuolar-Type ATPases for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in: 60/122,953 filed 3/5/99 (Provisional I, DHHS ref. No. E–244–97/2); 60/169,564 filed 12/8/99 (Provisional II, DHHS ref. No. E–244–97/0) and PCT (PCT/US00/05582), filed 3/3/00 and claiming priority to both Provisionals I and II, "Vacuolar-Type (H^+) ATPase Inhibiting Compounds, Compositions and Uses Thereof;" and 60/053,784, filed 7/25/97 (DHHS Ref. No. E–244–97/1), converted into PCT/US98/15011 filed 7/23/98, "Antitumor Macrocyclic Lactones, Compositions and Methods of Use", to Attenuon, L.L.C., having a place of business in San Diego, CA. The aforementioned patent rights have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 24, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Wendy R. Sanhai, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *sanhaiw@od.nih.gov*; Telephone: (301) 496–7056, ext. 244; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: This invention describes a class of macrocyclic lactones (benzolactone enamides) derived from marine sponges, and which inhibit vacuolar-type (H^+) ATPases (V–ATPases). Selective inhibition of V–ATPases may represent an effective means of treating various disease states: Alzheimer's disease, glaucoma and osteoporosis and cancer (via affecting cellular proliferation, angiogenesis, tumor cell invasiveness, metastasis and drug resistance). The compounds have been shown to be active against a specific group of human tumors when tested in the NCI 60-cell line panel. The licensee of these inventions will be required to comport with all applicable federal and country-of-collection policies relating to biodiversity.

The field of use may be limited to the treatment of cancer, angiogenesis-dependent diseases and osteoporosis.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–7057 Filed 3–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0208, Extension)

The mission of the Substance Abuse and Mental Health Services Administration (SAMHSA) is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency.

Data are collected from all SAMHSA knowledge development and application and targeted capacity expansion grants and contracts where client outcomes are to be assessed at intake and post-treatment. SAMHSA-funded projects are required to submit this data as a contingency for their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of the proposed data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness*. Following is the estimated annual response burden for this effort.

Center	Number of clients	Responses/ client	Hours/ response	Annual burden hours
Center for Substance Abuse Treatment	3,750	3	.70	2,625

Center	Number of clients	Responses/ client	Hours/ response	Annual burden hours
Center for Substance Abuse Prevention	12,150	3	.63	7,654
Center for Mental Health Services	13,837	3	.25	3,459
Total				13,738

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 19, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–7064 Filed 3–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for Comments Regarding the Prevention, Identification, and Treatment of Co-occurring Disorders—Extension of Due Date

In compliance with section 503A of the Public Health Service Act (42 U.S.C. 290aa–2a), the Substance Abuse and Mental Health Services Administration (SAMHSA) is required to provide to the United States Congress a report on the prevention, identification, and treatment of co-occurring disorders. Public comment is solicited in order to aid in the development of this report. On March 6, 2002, SAMHSA published a notice requesting written input on this subject to be provided by March 27, 2002.

DATES: The new deadline for receipt of public comment has been extended until April 5, 2002.

ADDRESSES: All comments should be sent to James Winarski; Advocates for Human Potential; 323 Boston Post Road; Sudbury, MA 01776.

FOR FURTHER INFORMATION CONTACT: Eileen Elias, M.Ed., Special Expert, SAMHSA, 301–443–8742.

Dated: March 19, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–7030 Filed 3–22–02; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–08]

Notice of Proposed Information Collection: Comment Request; Home Equity Conversion Mortgages (HECM): Consumer Protection Measures Against Excessive Fees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: May 24, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Home Equity Conversion Mortgages (HECM): Consumer Protection Measures Against Excessive Fees.

OMB Control Number, if applicable: 2502–0534.

Description of the need for the information and proposed use: Events in the marketplace have given rise to vendors who prey on the elderly to use the HECM program as a vehicle for earning excessive fees for services which are of little or no value, or which can be obtained free of charge (or at minimal cost) from other sources—including HUD-approved Housing Counseling Agencies. The information is needed to assure that the homeowner is not obtaining a HECM mortgage under an obligation to pay excessive fees for services.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 6,800, the number of respondents is 8,000 generating 32,000 responses annually, the frequency of response is once per mortgagor, and the hours per response is .25 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 17, 2002.

John Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–7126 Filed 3–22–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–07]

Notice of Proposed Information Collection: Comment Request; Statement of Taxes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting comments on the subject proposal.

DATES: May 24, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Wayne Eddins, Reports Management Office, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty A. Belin, Systems Accountant, Office of Financial Services, 451 7th Street, SW., Washington, DC 20410, telephone (202) 401–2168, extension 2807, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Statement of Taxes.

OMB Control Number: 2505–0418.

Description of the need for the information and proposed use: When a lender with an insured multifamily mortgage assigns a mortgage or conveys a property to HUD, the lender is required to submit all records and accounts relative to the mortgage to HUD. These provisions are spelled out in Statute 12 U.S.C. 1713(g); Title II, section 207(g) of the National Housing Act; and 24 CFR 207.258(b)(4). Included in the records is the Statement of Taxes. From this Statement, HUD updates its records of the mortgagor's real estate taxes, the location (lot and block numbers) of the property, taxes due dates, and penalty dates. During the claim audit for insurance benefits, this form is used to verify the last taxes paid.

Agency form number: HUD–434.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 215, frequency of response is once per claim, the burden per response is estimated to be .50 hours, and the total estimated annual burden hours requested is 107.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 19, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–7127 Filed 3–22–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–03]

Notice of Planned Closing of Topeka, Kansas Post-of-Duty Station

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of planned closing of Topeka, Kansas post-of-duty station.

SUMMARY: This notice advises the public that the HUD Office of Inspector General (OIG) is closing its Topeka, Kansas post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In 1998, HUD/OIG established a one-person post-of-duty station in Topeka, Kansas, to give direct support to the HUD/OIG's Operation Safe Home (OSH) initiative to combat violent and drug-related crime in public and assisted housing in Topeka and nearby communities. Although the Topeka post-of-duty station is only about 50 miles from HUD/OIG's Kansas City Regional Office, nationwide experience since the initiation of OSH in 1994 had proven that the best results/impact could be obtained when HUD/OIG Special Agents were physically located in the target city. However, in accordance with the requirements of the Fiscal Year 2002 HUD Appropriations Act (Pubic Law 107–73, approved November 26, 2001), HUD/OIG is terminating OSH and re-deploying staff to focus on investigations involving single-family fraud and property flipping. This change eliminates the need to maintain a separate post-of-duty station in Topeka, Kansas, and gives HUD/OIG the opportunity to generate cost savings associated with discontinuing an additional office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that "[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the

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establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations)." (*See* House Conference Report No. 95–1792, October 14, 1978 at 105–106.)

The two-person duty station in Topeka, Kansas, is a single-purpose duty station, and the duty station is being closed based on workload rather than on a reorganization of HUD/OIG field offices. Although notice of the closing of a duty station is not subject to the requirement of section 7(p), as supported by legislative history, HUD/OIG nevertheless prepared a cost-benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Topeka, Kansas duty station and provides the cost-benefit analysis of the impact of the closure.

Impact of the Closure of the Topeka, Kansas Post-of-Duty Station

HUD/OIG considered the costs and benefits of closing the Topeka, Kansas post-of-duty, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area (*i.e.*, OSH activities, of course, will be impacted, but HUD/OIG has been directed to terminate these activities).

Cost-Benefit Analysis

A. *Cost Savings:* The Topeka, Kansas post-of-duty currently costs $21,415 per year in lease and other expenses. Thus, closing the post-of-duty will result in an annual savings of at least $21,415. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises, nor will HUD/OIG incur costs associated with the lease or purchase of duplicative office equipment.

B. *Additional Costs:* There are no offsetting expenses anticipated. The Special Agent assigned to the Topeka, Kansas post-of-duty will be reassigned to the Kansas City Regional Office, without need for relocation reimbursement. Further, there is adequate existing office space to accommodate the Special Agent within the Kansas City Regional Office.

C. *Impact on Local Economy:* The Topeka, Kansas post-of-duty office space comprises a mere 1,162 square feet of space, which can easily be re-leased to other tenants. Thus, no appreciable impact on the local economy is anticipated.

D. *Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services:* The establishment of the Topeka, Kansas post-of-duty was based entirely on the needs of the HUD/OIG to have a Special Agent in closer proximity to OSH activities conducted in the Topeka area. These activities are being terminated. Further, as was the case prior to 1998, fraud investigations in the Topeka area can be cost effectively addressed by agents assigned to the Kansas City Regional Office, which is about 50 miles away.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Topeka, Kansas post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: March 15, 2002.

Michael P. Stephens,

Deputy Inspector General.

[FR Doc. 02–7125 Filed 3–22–02; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Rockledge) for Incidental Take of the Golden-Cheeked Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Rockledge, Inc. (Applicant) has applied for an incidental take permit (TE–051567–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered golden-cheeked warbler. The proposed take would occur as the result of the construction and occupation of a low-density residential development of 35 to 40 homesites on 53.5 acres of the 193.0-acre Russell Park Estates, Williamson County, Texas.

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 am to 4:30 pm) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–051537–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin, U.S. Fish and Wildlife Service, Austin Office, (512) 490–0057.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicants: Rockledge, Inc. plans to construct a low-density residential development of 35 to 40 homesites, within 30 years, on approximately 53.5 acres of the 193.0-acre Russell Park Estates, located approximately 0.25 miles south of the intersection of County Road 262 and Farm to Market 3405, Williamson County, Texas. This action will eliminate up to 53.5 acres of golden-cheeked warbler habitat. In addition, the vulnerability of another approximately 34.4 acres of warbler habitat may be reduced as a result of indirect effects associated with the development. The Applicant has made every effort to minimize and/or avoid impacts to the Bone Cave harvestman and believes the proposed action will not impact the harvestman. No take for this species is being requested or would be granted by issuance of this permit. The Applicant proposes to compensate for this incidental take of the golden-cheeked warbler by preserving approximately 139.4 acres of the highest quality warbler habitat onsite. This preserve land is adjacent to property owned by the U.S. Army Corps of Engineers.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 02–7014 Filed 3–22–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bureau of Reclamation

Trinity River Mainstem Fishery Restoration Program

AGENCY: Fish and Wildlife Service and Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement/Supplemental Draft Environmental Impact Report (SEIS/SDEIR).

SUMMARY: The Fish and Wildlife Service (FWS) and the Bureau of Reclamation (Reclamation), along with the Hoopa Valley Tribe and Trinity County, California are preparing a Supplemental Environmental Impact Statement/Supplemental Draft Environmental Impact Report for the Trinity River Mainstem Fishery Restoration Program (Program). The purpose of the SEIS/SDEIR is to analyze the effects of two biological opinions associated with the Program issued on October 12, 2000, one by the FWS and the other by the National Marine Fisheries Service of the Department of Commerce (NMFS), on Central Valley Project (CVP) operations and the effects of the Program on energy generation within the context of the state of deregulation and supply uncertainty for electricity within California.

A final environmental impact statement (EIS) on the Program was issued in November, 2000, and a Record of Decision (ROD) executed on December 19, 2000. Central Valley water and power interests filed suit seeking to enjoin implementation of the ROD. On March 22, 2001, the court issued a Memorandum Decision and Order enjoining the federal defendants from implementing any of the flow related aspects of the ROD. *Westlands Water District* v. *United States Department of the Interior*, CIV–F–00–7124–OWW/DLB (E.D. Calif., filed May 3, 2001). In its Memorandum Decision and Order the court found that the effects of reasonable and prudent measures in the two biological opinions as well as the effects on power in light of the California energy crisis, were not adequately analyzed in the EIS. The federal agencies are now seeking to address these issues in a SEIS and are soliciting public input and comment on this process.

The overall objective of the Program is to meet Federal trust responsibilities for tribal fishery resources and restore the fisheries in the Trinity River basin to the level that existed prior to the construction of the Trinity River Division (TRD) of the CVP. These actions are authorized by the Act of August 12, 1955, 69 Stat. 719; the Trinity River Basin Fish and Wildlife Management Act, Public Law 98–541 (1984), as amended, and the Central Valley Project Improvement Act, Public Law 102–575, Title XXXIV (1992) (CVPIA). The FWS and Reclamation are the federal co-leads for purposes of complying with National Environmental Policy Act (NEPA); along with Hoopa Valley Tribe, which is also acting in a co-lead agency role. Trinity County functions as the state lead agency for purposes of complying with the California Environmental Quality Act (CEQA).

The purpose for the October 2000 EIS/EIR is as follows: to restore and maintain the natural production of anadromous fish on the Trinity River mainstem downstream of Lewiston Dam. The purpose of the SEIS/SEIR will be the same.

DATES: A scoping meeting will be held on Thursday, May 9, 2002, from 1:30 to 4:30 p.m. in Redding, California, to solicit public input on alternatives, concerns, and issues to be addressed in the SEIS/SDEIR.

Written comments on the scope of the SEIS/SDEIR may be mailed to Reclamation at the address below by May 23, 2002. Comments received after this date will be considered but may not be included in the resulting SEIS/SDEIR scoping report.

ADDRESSES: The scoping meeting will be held at the Holiday Inn, 1900 Hilltop Drive, Redding, CA 96002.

Written comments on the scope of the SEIS/SDEIR should be sent to Mr. Russell Smith, Bureau of Reclamation, Shasta Dam Office, 16349 Shasta Dam Boulevard, Shasta Lake CA 96019; telephone: (530) 275–1554; fax (530) 275–2441.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Smith at the above address or by telephone at (530) 275–1554.

SUPPLEMENTARY INFORMATION: In 1983 an EIS on the Trinity River Basin Fish and Wildlife Management Program was prepared by the FWS (U.S. Fish and Wildlife Service, 1983). The environmental document analyzed habitat restoration actions, watershed rehabilitation, and improvements to the Trinity River Salmon and Steelhead Hatchery (TRSSH). The EIS clarified that the hatchery's purpose was to mitigate for the loss of the 109 miles of habitat upstream of Lewiston Dam; whereas, the restoration and rehabilitation projects were explicitly designed to increase natural fish production below the dam.

In 1984, the Trinity River Basin Fish and Wildlife Management Act (Public Law 98–541) was enacted. It formalized the existence of the Trinity River Basin Fish and Wildlife Task Force (Task Force), and directed the Secretary of the Interior (Secretary) to implement measures to restore fish and wildlife habitat in the Trinity River. The Task Force was directed at implementation of a fish and wildlife management program "to restore natural fish and wildlife populations to levels approximating those which existed immediately prior to the construction of the Trinity Division." In 1996 Congress re-authorized and amended the original Trinity River Basin Fish and Wildlife Management Act (Public Law 104–143). The 1996 amendments clarified that "restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration * * * ".

In 1992 Congress passed the CVPIA (Public Law 102–575, Title XXXIV) in order to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley, including the Trinity River Basin. Specifically, the CVPIA provides at section 3406(b)(23) that "[i]n order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe and meet the fishery restoration goals' of Public Law 98–541, the Secretary is directed to complete the Trinity River Flow Evaluation Study (TRFES) and to develop recommendations "based on the best available scientific data, regarding permanent instream fishery flow requirements and TRD operating criteria and procedures for the restoration and maintenance of the Trinity River fishery." The CVPIA also specifically provided for the Secretary to consult with the Hoopa Valley Tribe on the TRFES and, upon the Tribe's concurrence, to implement the restoration recommendations accordingly.

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A joint EIS/EIR, for the Trinity River Mainstem Fishery Restoration Program (TRMFRP) was prepared by the FWS, Reclamation, Trinity County, and the Hoopa Valley Tribe, and was completed in October, 2000. A ROD selecting the alternative to be implemented for the TRMFRP, was signed by the Secretary, with the concurrence of the Hoopa Valley Tribe, pursuant to section 3406(b)(23) of the CVPIA, and issued in December 2000. However, the EIR was not certified by Trinity County and it is not a finalized document under CEQA.

Subsequent to execution of the ROD, water and power interests in the Central Valley of California amended a previously filed lawsuit against the federal agencies materially involved in either the decision making process for the ROD or the associated Endangered Species Act approvals for the TRMFRP (Reclamation, FWS, and NMFS), in federal district court. Plaintiffs sought, and were granted a preliminary injunction for implementation of the flow related aspects of the ROD. The terms of the injunction limit the increase in flows in the Trinity River which may be implemented in the ROD, but allow the Secretary to proceed with all other activities approved by the ROD. *Westlands Water District* v. *United States Department of the Interior*, CIV-F–00–7124–OWW/DLB (E.D. Calif., filed May 3, 2001). Subsequently, the plaintiff and plaintiff-intervenors and federal defendants, but not defendant-intervenors Hoopa Valley and Yurok Tribes, jointly agreed to stay the case, pending the development of a supplemental NEPA document that would address the issues identified by the *Westlands* court as requiring further analysis; including the effect that the change in operations of the TRD would have within the context of deregulation of electrical utilities in California and the effects that compliance with the biological opinions issued by the FWS and NMFS would have upon CVP operations.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 19, 2002.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region, Bureau of Reclamation.

Dated: March 19, 2002.

Mary Ellen Mueller,

Fisheries Supervisor, California and Nevada Operations Office, Fish and Wildlife Service.

[FR Doc. 02–7066 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–02–1610–JP–064B]

Notice of Intent To Prepare an Amendment to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the California Desert Conservation Area (CDCA) Plan and Environmental Assessment (EA) in the Western Colorado section of Imperial County, CA.

SUMMARY: Pursuant to 43 CFR 1610.2(c), notice is hereby given that the Bureau of Land Management proposes to amend the CDCA Plan, as amended in 1980. The proposed amendment will establish or revise designations of areas and trails for off-road vehicles in accordance with 43 CFR part 8342. The proposals will pertain to public lands addressed by the California Desert Conservation Area Plan in Imperial County that lie west of the Southern Pacific Railroad and the Chocolate Mountain Gunnery Range (excluding the Imperial Sand Dunes) and the western boundary of the CDCA in San Diego County, California. The proposed plan amendment will include an EA in accordance with the National Environmental Policy Act and CFR 1610.5–5.

DATES: The public is invited to submit comments on the scope of the plan amendment and EA. Written comments will be accepted until May 17, 2002. Two (2) public meetings California area. The times and places for meetings will be published in the Imperial Valley Press and the Yuma Daily Sun.

ADDRESSES: Comments should be sent to Greg Thomsen, Field Manager, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243–4561. Comments, including names and addresses of respondents, will be available for public review at the El Centro Field Office during normal working hours (7:45 AM to 4:30 PM, except holidays), and may be published as part of the EA or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Arnold F. Schoeck, Lead Outdoor Recreation Planner, at the above address, telephone number (760) 337–4441, or e-mail at Arnold_Schoeck.ca.blm.gov.

SUPPLEMENTARY INFORMATION: Public input from previous public meetings and written comments in response to previous designations efforts will be used to define issues. Preliminary issues identified include: providing for off-highway vehicle use; providing adequate vehicle access for other casual uses; visitor safety; providing protection for Peninsular Bighorn Sheep and Flat-tailed Horned Lizards; and homeland defense (*i.e.*, US-Mexican Border issues).

Planning criteria will include honoring valid existing rights. The CDCA amendment will be consistent with officially approved resource related plans, policies and programs of other Federal agencies, State and local governments, and Indian Tribes. The proposed route of travel designation changes to the CDCA Plan requires a formal plan amendment before the designation changes can be implemented. The amendment process and ORV trail designations shall be conducted in compliance with the Federal Land Policy Management Act of 1976 (FLPMA), planning regulations (43 CFR part 1600), ORV trail designation regulations (43 CFR part 8340), BLM manual guidance, and all applicable Federal laws affecting BLM land use decisions and ORV designations. The planning process shall include an EA with a biological evaluation prepared in compliance with the National Environmental Policy Act of 1969 (NEPA), the President's Council of Environmental Quality (CEQ) regulations (40 CFR part 1500), and Bureau guidance.

The Bureau intends to rely largely on existing route inventory data, information obtained from coordination with other federal, state, and local agencies, and consultation with Indian tribes, and public comments.

Three alternatives are anticipated to be: (1) A No Action Alternative that will maintain the existing designations. (2) The Updated Designation Alternative that will propose the designation changes identified in the previous update effort (1997). (3) A Protection Alternative that will propose additional seasonal closures and route closures in addition to changes in the Updated Designation Alternative.

Dated: March 15, 2002.

Greg Thomsen,

Field Manager.

[FR Doc. 02–7237 Filed 3–22–02; 8:45 am]

BILLING CODE 1610–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–0; OR–55334]

Public Land Order No. 7519; Withdrawal of National Forest System Land To Protect the White King/Lucky Lass Mine Reclamation Project Area; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of National Forest System land from location and entry under the United States mining laws until August 8, 2013, to protect the White King/Lucky Lass Mine reclamation project area. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Woodward, Fremont National Forest, HC 10 Box 337, Lakeview, Oregon 97630, 541–947–2151.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location or entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect reclamation work on the White King/Lucky Lass Mine area:

Willamette Meridian

Fremont National Forest
T. 37 S., R. 19 E.,
Sec. 30, NW¼NE¼.

The area described contains 40.00 acres in Lake County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire on August 8, 2013, unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 13, 2002.

Rebecca W. Watson,

Assistant Secretary.

[FR Doc. 02–7061 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Committee Two Hundred Thirty Seventh Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, April 26, 2002.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (February 1, 2002)
3. Reports of Officers
4. Reports of Subcommittees
   Dune Shacks
   Nickerson Fellowship
5. Superintendent's Report
   News from Washington
   PWC Update
   Zoning Standards
   Highlands Center
   Doane Road Environmental Assessment Public Comment
6. Old Business
   Pheasant Hunting
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: February 11, 2002.

Maria Burks,

Superintendent.

[FR Doc. 02–7003 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American

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Museum of Natural History professional staff in consultation with representatives of the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

In 1921, human remains representing a minimum of one individual were collected by Charles L. Bernheimer and Earl Morris from the vicinity of Long Hollow, La Plata River, La Plata County, CO, during an expedition sponsored by the American Museum of Natural History. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on the American Museum of Natural History's documentation, which refers to these remains as "Ute." These human remains originate from an area utilized by Ute bands during the postcontact period.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

This notice has been sent to officials of the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Elaine Guthrie, Acting Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5835, before April 24 2002. Repatriation of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: February 5, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7008 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

CORRECTION—Notice of Inventory Completion for Native American Human Remains in the Control of the Arizona State Office, Bureau of Land Management, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Arizona State Office, Bureau of Land Management, Phoenix, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the list of culturally affiliated groups cited in the Notice of Inventory Completion published July 21, 2000. The list of culturally affiliated groups for four of the sites listed in the original notice is corrected by adding the following group: Hopi Tribe of Arizona. These four sites are AZ T:13:9(ASM), AZ EE:1:154(ASM), AZ EE:1:155(ASM), and AZ EE:1:9:107(ASM).

Paragraphs 21 and 22 of the July 21, 2000, notice are corrected by substituting the following paragraphs:

Continuities of ethnographic materials, technology, and architecture indicate affiliation of sites AZ T:13:9(ASM), AZ EE:1:154(ASM) and AZ EE:1:155(ASM) with present-day Piman and O'odham cultures, and the **Hopi Tribe of Arizona**. Oral traditions presented by representatives of the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; **Hopi Tribe of Arizona**; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona support affiliation with Hohokam sites in southern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 32 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; **Hopi Tribe of Arizona**; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

Paragraphs 29, 30, 31, 32, 33 and 34 of the July 21, 2000, notice are corrected by substituting the following eight paragraphs for this section of the published notice. For clarity, paragraphs 29, 30 and 31, 32 are republished unchanged, although their positions in the notice are altered. The cultural affiliation for site AZ EE:4:9 (BLM) has not changed.

In 1987, human remains representing three individuals were recovered during legally authorized salvage excavations of site AZ EE:9:107(ASM) in Nogales, AZ. No known individuals were identified. No associated funerary object are present.

Based on ceramics and architecture, site AZ EE:9:107(ASM) was identified as a Hohokam village dating to A.D. 700-1200.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of site AZ EE:9:107(ASM) with present-day Piman and O'odham cultures **and the Hopi Tribe of Arizona**. Oral traditions presented by representatives of the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian

Reservation, Arizona; **the Hopi Tribe of Arizona**; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support affiliation with Hohokam sites in southern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of **three** individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; **the Hopi Tribe of Arizona**; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

In 1988, human remains representing two individuals were recovered during legally authorized salvage excavations of site AZ EE:4:9(BLM) along the San Pedro River near Fairbank, AZ. No known individuals were identified. No associated funerary objects are present.

Based on artifacts and site organization, site AZ EE:4:9(BLM) was identified as Sobaipuri.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of site AZ EE:4:9(BLM) with present-day Piman and O'odham cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support affiliation with Sobaipuri sites in southern Arizona.

Based on the above-mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of **two** individuals of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona; the Zuni Tribe of the Zuni Reservation, New Mexico; the Navajo Nation, Arizona, New Mexico and Utah; the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Fort Mohave Indian Tribe of Arizona, California and Nevada; and the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Gary Stumpf, Bureau of Land Management, Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004, telephone (602) 417-9509, before April 24, 2002. Repatriation of the human remains and associated funerary objects to the respective culturally affiliated Indian tribes may begin after that date if no additional claimants come forward.

Dated: February 8, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7011 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana Department of Culture, Recreation, and Tourism, Division of Archaeology, Baton Rouge, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Louisiana State Division of Archaeology, Baton Rouge, LA, that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 49 cultural items are complete pottery vessels.

At an unknown date prior to 1985, Roy Pohler purchased these vessels from unknown sources. Museum records indicate that 36 pots were removed from locations in Clark County, AR; 5 pots were removed from the Bowman site, on the Little River, Clark County, AR; 2 pots were removed from Murfreesboro, Pike County, AR; 2 pots were removed from Pike County, AR; 1 pot was removed from Broken Bow, McCurtain County, OK; and 3 pots have no provenience. In 1985, Mr. Pohler donated the pottery vessels to the Louisiana Department of Culture, Recreation, and Tourism, Division of Archaeology.

Consultations with representatives of the Caddo Indian Tribe of Oklahoma and professional staff at the Louisiana Division of Archaeology and Louisiana State University indicate that, based on stylistic attributes, the ceramic vessels are culturally affiliated with the archaeological Caddo culture. The vessels date to the 16th century. The present day descendants of the Caddo people in Arkansas are the Caddo Indian Tribe of Oklahoma.

Because the Caddo are known to have buried their dead along with whole vessels, these pots are considered to be unassociated funerary objects. Based on the above-mentioned information, officials of Louisiana Division of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Louisiana Division of Archaeology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Caddo Indian Tribe of Oklahoma.

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This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Dr. Thomas Eubanks, State Archaeologist, Louisiana State Division of Archaeology, 1051 North 3rd Street Room 405, Baton Rouge, LA, telephone (225) 342-8170, before April 24, 2002. Repatriation of these unassociated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: February 6, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7009 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Milwaukee Public Museum, Milwaukee, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff and contract specialists in physical anthropology in consultation with representatives of the Zuni Tribe of the Zuni Reservation, New Mexico, and the Hopi Tribe of Arizona.

At an unknown date, human remains representing one individual were removed from a grave in an unknown location near Frisco, Catron County, NM, by an unknown person. These human remains were donated to the Milwaukee Public Museum by Mary E. Stewart in 1899. Ms. Stewart also donated human hair, believed to be from the same individual, to the Milwaukee Public Museum in 1901. No known individual was identified. No associated funerary objects are present.

While the exact age of the remains cannot be determined from existing evidence, cranial deformation associated with the use of hard cradleboards was noted and suggests a post-AD 700 date.

Based on cranial morphology and dental traits, these human remains are identified as Native American. Consultation evidence provided by representatives of the Zuni Tribe of the Zuni Reservation, New Mexico, and the Hopi Tribe of Arizona indicates that the geographical location of the burial is consistent with the traditional territories of the Zuni and Hopi peoples. Both groups claim descent from the archeologically defined Anasazi culture in Catron County, NM.

Based on the above-mentioned information, officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Milwaukee Public Museum also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Zuni Tribe of the Zuni Reservation, New Mexico, and the Hopi-Tribe of Arizona.

This notice has been sent to officials of the Zuni Tribe of the Zuni Reservation, New Mexico, and the Hopi Tribe of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Alex Barker, Anthropology Section Head, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233, telephone (414) 278-2786, before April 24, 2002. Repatriation of the human remains to the Zuni Tribe of the Zuni Reservation, New Mexico, and the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: February 7, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7010 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is one headdress made of metal, copper, leather, and fiber.

In 1886, a "Tlingit" headdress was recovered from a "shaman's grave," on Baranof Island, 17 miles from Sitka, AK, by Walter G. Chase, who donated the cultural item to the Peabody Museum of Archaeology and Ethnology in 1891.

Peabody Museum documentation indicates that this cultural item is Tlingit. Research and consultation with the Sealaska Corporation on behalf of the Kiks.adi Clan has indicated that this headdress (identified as Kiks.adi Ixt' Shaadaa) was recovered from an area considered to be the traditional territory of the Kiks.adi Clan, a Raven Clan of Tlingit people, who are represented by the Sealaska Corporation.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this cultural item and the Kiks.adi Clan of Tlingit people, who are represented by the Sealaska Corporation.

This notice has been sent to officials of the Angoon Community Association; Central Council of the Tlingit & Haida Indian Tribes; Kake Tribal Council; Petersburg Indian Association; Sealaska Corporation; Shaan Set, Inc.; and the Sitka Tribe of Alaska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 24, 2002. Repatriation of this unassociated funerary object to the Sealaska Corporation on behalf of the Kiks.adi Clan may begin after that date if no additional claimants come forward.

Dated: February 5, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7004 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Aleut Corporation; Aleutian/Pribilof Islands Association Inc.; Chaluka Corporation; and the Native Village of Nikolski, which is represented by the Nikolski IRA Council.

In 1874, human remains representing one individual were collected from Kagamil Island, AK, by Captain Hennings of the Alaska Commercial Company. These human remains were donated to the Peabody Museum of Archaeology and Ethnology by the Alaska Commercial Company through the Smithsonian Institution in 1875. No known individual was identified. No associated funerary objects are present.

Museum documentation and published sources describe the human remains as an "Aleut" and date them to the 18th century. Historical documents and consultation information indicate that the Native Village of Nikolski, which is today represented by the Nikolski IRA Council and the Chaluka Corporation, occupied the area where the human remains were collected during the 18th century.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Native Village of Nikolski, which is represented by the Nikolski IRA Council and the Chaluka Corporation.

This notice has been sent to officials of the Aleut Corporation; Aleutian/Pribilof Islands Association, Inc.; the Native Village of Nikolski; the Nikolski IRA Council; and the Chaluka Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 24, 2002. Repatriation of the human remains to the Native Village of Nikolski, which is represented by the Nikolski IRA Council and the Chaluka Corporation, may begin after that date if no other additional claimants come forward.

Dated: February 5, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-7005 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Aleut Corporation; Aleutian/Pribilof Islands Association, Inc.; Ounalashka Corporation; and the Qawalangin Tribe of Unalaska.

In 1872, human remains representing one individual were collected from the Amaknak Spit site, Dutch Harbor, Unalaska, AK, by William H. Dall, who donated these human remains to the Peabody Museum of Archaeology and Ethnology that same year. No known individual was identified. No associated funerary objects are present.

In 1886, human remains representing one individual were collected from a cave at Unalaska, AK, by Alice C. Fletcher, who donated these human remains to the Peabody Museum of Archaeology and Ethnology in 1887. No

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known individual was identified. No associated funerary objects are present.

Peabody Museum of Archaeology and Ethnology documentation describes both of these sets of human remains as "Aleut." Historical documents and consultation information indicate that the Qawalangin Tribe of Unalaska, which is today represented by the Ounalashka Corporation, has traditionally occupied the area of the Aleutian Islands from which the human remains were collected.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d) (1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Qawalangin Tribe of Unalaska, which is represented by the Ounalashka Corporation.

This notice has been sent to officials of the Aleut Corporation; Aleutian/Pribilof Islands Association, Inc.; Ounalashka Corporation; and the Qawalangin Tribe of Unalaska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 24, 2002. Repatriation of the human remains to the Qawalangin Tribe of Unalaska, which is represented by the Ounalashka Corporation, may begin after that date if no additional claimants come forward.

Dated: February 5, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7006 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Bering Straits Native Corporation, the Unalakleet Native Corporation, and the Native Village of Unalakleet.

In 1869, human remains representing one individual were collected from Norton Sound, AK, by William H. Dall, who donated these human remains to the Peabody Museum of Archaeology and Ethnology in the same year. No known individual was identified. No associated funerary objects are present.

Peabody Museum of Archaeology and Ethnology documentation describes the remains as "Unaleet [sic], Eskimo." Given the proximity of Norton Sound to the village of Unalakleet, the human remains are probably from Unalakleet. Historical documents and consultation information indicate that the Native Village of Unalakleet has traditionally occupied the area from which the human remains were collected.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d) (1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Native Village of Unalakleet.

This notice has been sent to officials of the Native Village of Unalakleet, Unalakleet Native Corporation, and Bering Straits Native Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 24, 2002. Repatriation of the human remains to the Native Village of Unalakleet may begin after that date if no additional claimants come forward.

Dated: February 5, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7007 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is one beaded blanket fragment.

This object was purchased on behalf of William Claflin by Mrs. D. F. Craig, who lived near Fort Sill, OK, from 1922 to 1925. In 1985, the object was bequeathed to the Peabody Museum of Archaeology and Ethnology as part of the William Claflin Collection.

Peabody Museum of Archaeology and Ethnology records indicate that the object "was bought by Mrs. Craig from an Indian Trader near Ft. Sill who claimed it had been taken from a grave" and that the grave was that of a "Comanche?" individual. Based on the specific cultural affiliation suggested by the collector, as noted in museum records, this burial was most likely a Comanche burial from the historic period. This unassociated funerary object originated in a region historically occupied by the Comanche, Apache, and Kiowa tribes. Therefore, the preponderance of historical, geographic, and archaeological evidence indicates that a reasonable link of shared group identity can be made between this unassociated funerary object and the Comanche Indian Tribe, Oklahoma.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this cultural item and the Comanche Indian Tribe, Oklahoma.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Comanche Indian Tribe, Oklahoma; and Kiowa Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 24, 2002. Repatriation of this unassociated funerary object to the Comanche Indian Tribe, Oklahoma may begin after that date if no additional claimants come forward.

Dated: February 5, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7012 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with officials of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1936, human remains representing one individual from Nantucket, MA, were donated to the Peabody Museum by Miss Harwood of the Nantucket Observatory Astronomy Laboratory. The remains were recovered by an unknown collector at an unknown date. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. This interment most likely dates to the late Woodland period or later (post-A.D. 1000). Based on a compilation of radiocarbon-dated human remains from Nantucket by the Nantucket Historical Society, it is likely that these human remains are not older than 1,000 years. To date, no radiocarbon dates for human remains from Nantucket are earlier than circa A.D. 1000. According to archeological evidence and oral tradition, the island of Nantucket is located within the traditional territory of the Wampanoag Nation during the late Woodland period. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1941, human remains representing one individual from the Hughes site, Nantucket, MA, were recovered by Arthur F. Hughes. The human remains were donated to the Peabody Museum of Archaeology and Ethnology through Edward Brooks of the Massachusetts Archaeological Society the same year. No known individual was identified. No associated funerary objects are present.

According to museum documentation, ceramic sherds, a broken bone awl, a bent ceramic pipe stem, and a probable Levanna-style triangular projectile point were found in association with the human remains, but are not in the possession of the Peabody Museum of Archaeology and Ethnology.

These human remains were found in a traditional Native American-style burial context, with the head oriented to the northeast and the face to the east. This interment most likely dates to the late Woodland period or later (post-A.D. 1000). Based on a compilation of radiocarbon-dated human remains from Nantucket by the Nantucket Historical Society, it is likely that these human remains are not older than 1,000 years. To date, no radiocarbon dates for human remains from Nantucket are earlier than circa A.D. 1000. Attributed dates of the stylistic characteristics of the funerary objects from the Hughes site are consistent with this radiocarbon information. Native ceramic pipes with bent stems are identified initially during the middle Woodland period (circa A.D. 1), but are most strongly associated with the late Woodland period and later (post-A.D. 1000) in New England. Levanna-style projectile points date to the middle Woodland period and later in the New England area (post-A.D. 1). According to archeological evidence and oral tradition, the Hughes site is located within the traditional territory of the Wampanoag Nation during the late Woodland period. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the

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Wampanoag Nation (a nonfederally recognized Indian group).

In 1956, human remains representing two individuals from Nantucket, MA, were donated to the Peabody Museum of Archaeology and Ethnology by the Robert S. Peabody Museum, Andover, MA. These human remains had been collected by Alfred Shurrocks and his wife in 1935, who then donated them to the Robert S. Peabody Museum. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics indicate that the human remains are Native American. Based on a compilation of radiocarbon-dated human remains from Nantucket by the Nantucket Historical Society, it is likely that these human remains are not older than 1,000 years. To date, no radiocarbon dates for human remains from Nantucket are earlier than circa A.D. 1000. According to archeological evidence and oral tradition, the island of Nantucket is located within the traditional territory of the Wampanoag Nation during the late Woodland period. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1959, human remains representing one individual from Nantucket, MA, were permanently loaned to the Peabody Museum of Archaeology and Ethnology by the Warren Anatomical Museum at the Harvard Medical School. These human remains may have been collected by J.M. Warren at an unknown date because they are from the J.M. Warren collection, which was assembled by Mr. Warren himself. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the human remains are Native American. This interment most likely dates to the historic/contact period (post-A.D. 1500). The pattern of copper stains present on the cranial remains indicates that they were interred some time after European contact. Also, based on a compilation of radiocarbon-dated human remains from Nantucket by the Nantucket Historical Society, it is likely that these human remains are not older than 1,000 years. To date, no radiocarbon dates for human remains from Nantucket result earlier than circa A.D. 1000. Oral tradition and historic documentation indicate that the island of Nantucket is within the aboriginal and historic homeland of the Wampanoag Nation during the late Woodland period. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Wampanoag Tribe of Gay Head (Aquinnah), and that there is a cultural relationship between these Native American human remains and the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

This notice has been sent to officials of the Wampanoag Repatriation Confederation, the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe, and the Assonet Band of the Wampanoag Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 24, 2002. Repatriation of these human remains to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group), may begin after that date if no additional claimants come forward.

Dated: February 12, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–7013 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Freeport Regional Water Project, Sacramento River, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement/ Environmental Impact Report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 as amended, Reclamation proposes to participate in a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the Freeport Regional Water Project (FRWP). The FRWP is being proposed by the Freeport Regional Water Authority (FRWA), a joint powers agency formed by the Sacramento County Water Agency (SCWA) and East Bay Municipal Utility District (EBMUD) to make use of Central Valley Project (CVP) contract and other water supplies, reduce rationing during droughts, reduce groundwater overdraft in Sacramento County, and to increase water service reliability for customers. The FRWP would enable Reclamation to meet delivery obligations under its water supply contracts with SCWA and EBMUD. The FRWA will be the lead agency under the California Environmental Quality Act (CEQA). The City of Sacramento will serve as a responsible agency under CEQA.

DATES: Reclamation and the Joint Powers Authority will seek public input on alternatives, concerns, and issues to be addressed in the EIS/EIR through scoping meetings in March. The schedule and locations of the scoping meetings are as follows:

- Monday, April 8, 2002, 6:30–8:30 p.m, Oakland, CA
- Thursday, April 11, 2002, 6:30–8:30 p.m., Sacramento, CA (Freeport)
- Monday, April 15, 2002, 6:30–8:30 p.m., Sacramento, CA (Meadowview)
- Thursday, April 18, 2002, 6:30–8:30 p.m, Herald, CA

Written comments on the scope of alternatives and impacts to be considered should be sent to the Freeport Regional Water Project at the address below by May 2, 2002. Reclamation estimates that the draft EIS/EIR will be available for public review in the summer of 2002.

ADDRESSES: The meeting locations are:

- Oakland at the EBMUD Training Room, 375 11th Street, 2nd Floor
- Sacramento at the Bartley Cavanaugh Golf Course, 8301 Freeport Boulevard
- Sacramento at the Meadowview Community Center, 2450 Meadowview Road
- Herald at the Herald Fire Department, Hendrickson Hall, 127 Ivie Road

Written comments on the project scope should be sent to Freeport Regional Water Project, c/o Gregg Ellis, 2600 V Street, Sacramento, CA 95818.

FOR FURTHER INFORMATION CONTACT: Rob Schroeder at 7794 Folsom Dam Road, Folsom California, 95630, telephone number (916) 989–7274.

SUPPLEMENTARY INFORMATION: SCWA provides water to two separate retail service areas within the unincorporated areas of central Sacramento County, SCWA Zone 41, and Elk Grove Water Service on the east side of the City of Elk Grove. SCWA is responsible for providing water supplies and facilities throughout these areas including the Laguna, Vineyard, Elk Grove and Mather Field communities through a capital funding zone known as "Zone 40". The long-term master plan for Zone 40 envisions meeting present and future water needs through a program of conjunctive use of groundwater and surface water. SCWA presently has a CVP entitlement of 22,000 acre-feet. Water for SCWA is currently delivered through the City of Sacramento's intake and treatment facilities, based on SCWA need and available City capacity. These and additional water supplies are expected to be conveyed through the FRWP.

EBMUD is a multipurpose regional agency that provides water to over 1.3 million municipal and industrial water users throughout portions of Contra Costa and Alameda Counties in the East Bay region. EBMUD currently obtains most of its supply from Pardee Reservoir on the Mokelumne River, with the remainder collected from local runoff in its East Bay terminal reservoirs. On July 26, 2001, EBMUD and Reclamation entered into an amendatory CVP contract which allows EBMUD to take delivery of its CVP supply at the location known as Freeport on the Sacramento River south of downtown Sacramento subject to all applicable environmental laws and regulations.

The FRWP is intended by the Joint Powers Authority to meet the identified water delivery needs of the SCWA and EBMUD. It would also enable Reclamation to meet its CVP water delivery obligations to these agencies under existing water supply contracts with EBMUD and SCWA.

The general purposes of the Freeport Regional Water Project are to:

- Provide surface water facilities through which SCWA can deliver water to Zone 40 to support growth approved under the County of Sacramento General Plan. Water would be delivered under SCWA's CVP water supply contract with Reclamation and other anticipated CVP contract assignments, appropriated water rights, and water rights transfers;
- Provide surface water facilities through which EBMUD can deliver water under its amendatory CVP water service contract to provide EBMUD with a supplemental water supply that would reduce existing and future customer deficiencies to manageable levels during drought conditions; and
- Capitalize on the opportunity to cooperate in an endeavor that would minimize costs to each agency and minimize environmental effects by constructing joint facilities to the extent feasible.

The FRWP would also enable Reclamation to deliver water under its CVP amendatory contract with EBMUD and its contract with SCWA.

The FRWP as currently envisioned would consist of:

- An approximately 185 million gallon per day (mgd) intake/pumping facility
- A raw water pipeline to a turnout at approximately Bradshaw Road in central Sacramento County,
- A new water treatment plant in central Sacramento County to serve SCWA needs,
- A raw water pipeline connecting to the Folsom South Canal,
- A new pumping plant near the end of the Folsom South Canal,
- A pipeline from the Folsom South Canal to the Mokelumne Aqueducts,
- A new pumping and treatment facility at the Mokelumne Aqueducts to deliver water to EBMUD.

The EIS/EIR will consider a range of alternatives including the no-action alternative.

Scoping is an early and open process designed to determine the issues and alternatives to be addressed in the EIS/EIR. The following are issues that have been identified by Reclamation to date: Sacramento River fishery effects; water quality; agricultural and municipal water supply availability, and quality; construction-related effects on the Sacramento River, urban areas, and natural habitats; and, wetland, upland, and aquatic habitats.

The draft EIS/EIR will focus on the impacts and benefits of implementing the various alternatives. It will contain an analysis of the physical, biological, social, and economic impacts arising from the alternatives. In addition, it will address the cumulative impacts of implementation of the alternatives in conjunction with other past, present, and reasonably foreseeable actions.

If special assistance is required, contact Mr. Robert Schroeder at Reclamation (916) 989–7274. Please notify Mr. Schroeder as far in advance of the workshops as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at (916) 989–7285.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: February 20, 2002.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02–7065 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Construction of Campbell County Force Road

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the reconstruction of Campbell County Force Road.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $255,000 from the Abandoned Mine Land Reclamation Fund to pay 8.2 percent of the cost of building the Campbell County Force Road. In its application, the State proposes paying for part of the construction cost as a public facility project that will benefit a community impacted by coal mining.

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This notice describes when and where you may read the grant application for funding the Campbell County Force Road. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4:00 p.m., m.s.t. April 24, 2002.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office. Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will take all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983 **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it had addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and public facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning non-coal lien authority and contractor eligibility that improved the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems and the Secretary concurs, then it may request funds to undertake abandoned non-coal mine reclamation, community impact assistance, and public facilities projects under sections 411(b), (e), and (f), of SMCRA.

State law regulations that apply to the proposed Abandoned Coal Mine Land Program Campbell County Force Road funding request include Wyoming Statue 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund the Cost of the Campbell County Force Road

The Wyoming Department of Environmental Quality will submitted to us a grant application in the fall of 2003. In that application, Wyoming will ask for $255,000 to pay for a part of the cost of constructing the Campbell County Force Road. This is 8.2 percent of the estimated cost of the project. The Governor of Wyoming certified the need and urgency to fund this project prior to completing the State's remaining inventory of non-coal reclamation work, as allowed by section 411(f) of SMCRA. that certification says the project is in a community impacted by coal mining activities. Campbell County will provide the balance of funding from county reserves, and may seek additional grant funding for future phases of the project.

This project will allow the realignment of a hazardous secondary road to reduce dangerous 90 degree curves which are public safety hazards. The Governor's certification states that the safety hazards impacting the Campbell County Force Road warrant funding of this project before the remaining inventory of non-coal projects are completed.

IV. How We Will Review Wyoming's Grant Application

We will review the grant application using regulations at 30 CFR 875.15; specifically subsections 875.15(e)(1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total cost involved; (4) documentation from other local, State, Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before the priority projects relating to the protection of public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Campbell County Force Road project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of sections 875.15(e)(1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of reconstructing the Campbell County Force Road. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: March 18, 2002.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 02–7090 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Construction of City of Lander Water Treatment Plant

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the City of Lander Water Treatment Plant.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $1,000,000 from the Abandoned Mine Land Reclamation Fund to pay part of the cost of building a City of Lander Water Treatment Plant. In its application, the State proposes paying for part of the construction cost as a public facility project that will benefit a community impacted by mineral mining.

This notice describes when and where you may read the grant application for funding the City of Lander Water Treatment Plant. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., April 24, 2002.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will take all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Rands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements on the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983 **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it had addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now

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reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and public facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning non-coal lien authority and contractor eligibility that improved the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems and the Secretary concurs, then it may request funds to undertake abandoned non-coal mine reclamation, community impact assistance, and public projects under sections 411(b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Abandoned Coal Mine Land Program City of Lander Water Treatment Plant funding request include Wyoming Statue 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund the Cost of the City of Lander Water Treatment Plant

The Wyoming Department of Environmental Quality will submit to us a grant application in the fall of 2003. In that application, Wyoming will ask for $1,000,000 to pay for a part of the cost of constructing the City of Lander Water Treatment Plant. The Governor of Wyoming certified the need and urgency to fund this project prior to completing the State's remaining inventory of non-coal reclamation work, as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by mineral mining activities. This project is the second phase of AML Project 44 which was included in the 2001 AML grant. This grant provided $887,239 of funding for the initial design and construction of the City of Lander Water Treatment Plant.

This project addresses an Enforcement Order from the EPA. The Governor's certification states that the safety hazards impacting the City of Lander water users warrant funding of this project before the remaining inventory of non-coal projects are completed.

IV. How We Will Review Wyoming's Grant Application

We will review the grant application using regulations at 30 CFR 875.15; specifically subsections 875.15(e)(1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total cost involved; (4) documentation from other local, State, Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before the priority projects relating to the protection of public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this request, and a copy of all comments received and their resolution by the State. Wyoming's application for the City of Lander Water Treatment Plant project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we received and determine whether the funding meets the requirements of sections 875.15(e)(1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do If You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of constructing the City of Lander Water Treatment Plant. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: March 18, 2002.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 02–7089 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Index and Description of Major Information Systems and Availability of Records

AGENCY: United States International Trade Commission.

ACTION: Notice announcing availability of public information.

SUMMARY: The United States International Trade Commission (USITC or Commission) provides notice of its index and description of major information systems and availability of its records.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott (202–205–2799), Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission and persons seeking information on the Commission, or making submittals or requests, and seeking decisions, may contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission makes agency records available to the public in a number of ways: *Electronic Document Information System.* This system provides Internet access to public documents filed with the Office of the Secretary. Docketing information for USITC investigations instituted since 1996 is available electronically by accessing the USITC Internet site at "*http://www.usitc.gov*" or directly at "*http://dockets.usitc.gov/eol/public/.*"

FOIA. Commission records may also be requested under the Freedom of Information Act (FOIA) (5 U.S.C. 552). These requests are filed with the Secretary at 500 E Street, SW., Washington, DC 20436, and must clearly be identified in the request letter and on the envelope as a "Freedom of Information Act Request." Commission rules for requesting information under FOIA are set out in 19 CFR 201.17–201.21.

Government Information Locator. The USITC has an entry in the Government Information Locator Service, at "*http://www.access.gpo.gov/su_docs/gils/gils.html.*"

Libraries. The Commission maintains two libraries, its National Library of International Trade (the Commission's main reference library), located on the 3rd floor of the Commission building, and a law library, located on the 6th floor. Both are open to the public during normal business hours of 8:45 a.m. to 5:15 p.m. The libraries contain, among other things, complete sets of Commission reports. To determine whether the respective libraries have the information sought, persons seeking information may call the main library at 202–205–2630, or the law library at 202–205–3287.

Public Reading Room. The Commission's docket files in the Office of the Secretary contain the submissions made in all Commission investigations. The files are available for inspection in the Public Reading Room in the Office of the Secretary. The Public Reading Room is located on the 1st floor of the Commission building. Persons having questions regarding availability of records may call the Dockets staff at 202–205–1802. Depending on the age of the records requested, the files are available electronically, in hard copy, and/or on microfiche.

Reports. Reports containing the findings and conclusions of Commission investigations and Commissioner opinions are available in hard copy, generally at no charge, from the Office of the Secretary (telephone 202–205–1809). Reports are also made available for download from the USITC Internet site.

Rules. The Commission's Rules of Practice and Procedure set out the procedures used in Commission proceeding. The rules in 19 CFR parts 200–213 are located in the Code of Federal Regulations and the Commission's Internet site.

Tariff and Trade Data Web. The Commission's DataWeb "*http://dataweb.usitc.gov,*" provides public access to tariff and trade data. Data from 1989 are available and can be retrieved in a number of classification systems.

USITC Internet Site. Recent Commission notices, news releases, meeting agendas, monthly calendars, general information "fact sheets," Commissioner biographies, schedules of pending investigations (including hearing dates and deadlines for written submissions), reports, information frequently requested under FOIA, and general information about the Commission are available electronically through the Internet at "*http://www.usitc.gov.*"

Copies of Commission public records can also be obtained from the Secretary through an on-site duplicating service for a minimum fee.

By order of the Commission.

Issued: March 19, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7140 Filed 3–22–02; 8:45 am]

BILLING CODE 3–22–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure, scheduled for April 12, 2002, in Washington, DC, has been canceled. [Original notice of hearing appeared in the **Federal Register** of March 4, 2002.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 19, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–7076 Filed 3–22–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on March 4, 2002, a proposed Consent Decree in *United States* v. *Hybard Paul*, Civil Action No. 01–0184–P–L, was lodged with the United States District Court for the Southern District of Alabama.

In this action the United States sought to recover response costs incurred by the Environmental Protection Agency ("EPA") during the performance of a response action to address releases and threatened releases of hazardous substances at the Walker Springs Wood Treater Superfund Site ("Site") in Walker Springs, Clarke County, Alabama. The Decree resolves the liability of Defendant Hybard Paul for the United States' past response costs and future costs. The Defendant will make a one-time payment of $250,000 to the Hazardous Substances Superfund. In return, the United States will covenant not to sue or to take administrative action against defendant under Sections 106 and 107(a) of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Hybard Paul*, DOJ Ref. 90–11–3–07380.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Alabama, Riverview Plaza, Suite 600, 63 S. Royal Street, Mobile, Alabama 36602, and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please refer to *United States* v. *Hybard Paul*, No. 01–0184–P–L (S.D. Ala.), DOJ Ref. 90–11–3–07380, and enclose a check in the amount of $3.75 (25 cents

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per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–7025 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on March 5, 2002, a proposed consent decree in *United States and Ohio* v. *City of Youngstown, Ohio*, Civil Action No. 4:98 CV 2438, was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States sought injunctive relief and civil penalties under Section 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), against the City of Youngstown, Ohio, ("Youngstown") for violations of Section 301 of the Act, 33 U.S.C. 1311, and the terms and conditions of Youngstown's National Pollutant Discharge Elimination System ("NPDES") permits at Youngstown's wastewater treatment plant and throughout its sewer collection system. The Complaint alleges that Youngstown violated the Clean Water Act and its applicable NPDES permits by failing to meet certain permit deadlines, failing to comply with effluent limitations in its permits, discharging wastewater and raw sewage through unpermitted point sources, failing to monitor its discharges in accordance with its permit requirements, and failing to notify the regulatory agencies of missed deadlines.

The proposed Clean Water Act consent decree provides for injunctive relief consisting of the following: (1) Elimination of the overflow point known as outfall 6108 at the Orchard Meadow area of Mill Creek Park; (2) elimination of certain specified direct discharges of sanitary sewage and process wastewater that are not currently connected to the Youngstown collection system; (3) development and implementation of Youngstown's long term control plan as required by its discharge permit; (4) removal of accumulated sewer sediments in the Mill Creek collector; (5) short-term improvements to Youngstown's collection system maintenance programs, documentation, and data management; (6) an evaluation of Youngstown's collection system maintenance programs and data management and proposed improvements; (7) replacement of the Meadowbrook pump station and the Lansdowne pump station and evaluation of additional upgrades at the Dry Run pump station; (8) implementation of a revised inspection schedule for combined sewer overflows; (9) implementation of measures to reduce vandalism at manholes within the collection system; and (10) installation of additional level sensing equipment at certain specified overflow structures. In addition, Youngstown will pay a civil penalty of $60,000, to be split evenly between the United States and its co-plaintiff the State of Ohio, to resolve the claims in the Complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Ohio* v. *City of Youngstown*, DOJ Ref. #90–5–1–1–4383.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097 phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.75 (25 cents per page reproduction costs), payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7026 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies (CWRT): Solvent Selection Guide

Notice is hereby given that, on February 7, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. *et seq.* ("the Act"), CWRT: Solvent Selection Guide has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Center for Waste Reduction Technologies ("CWRT"), New York, NY; Cytec Industries Inc., West Paterson, NJ; The Dow Chemical Company, Midland, MI; E.I. du Pont de Nemours & Company, Wilmington, DE; GalxoSmithKline, King of Prussia, PA; Pharmacia, Peapack, NJ; Pfizer Corporation, New London, CT; and Rohm and Haas Company, Philadelphia, PA. The nature and objectives of the venture are to develop solvent selection tools to facilitate the selection of solvent candidates in early compound development, make life cycle EHS impacts/issues visible for each solvent candidate, facilitate process optimization in late compound development, explore solvent mixtures that do not introduce additional complexity into managing solvents, and explore designer solvent possibilities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7028 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on January 15, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alphacast Co. Ltd., Seoul, REPUBLIC OF KOREA; Almedio, Inc., Tokyo, JAPAN; AniMeta Systems, Inc., Taipei, TAIWAN; CMC Magnetics Corporation, Taipei, TAIWAN; Flextronics International Denmark A/S, Pandrup, DENMARK; Guangdong Cosmic Digital Technology, Co., Ltd., Dong Guan City, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Guangzhou Telefield Limited, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Hibino Corporation, Minato-Ku Tokyo, JAPAN; Homenema Disk Incorporation, Taipei Hsien, TAIWAN; iCEBOX LLC, Seattle, WA; Linn Products Limited, Glasgow, Scotland, UNITED KINGDOM; NewSoft Technology Corp., Taipei, TAIWAN; ODME B.V., Eindhoven, THE NETHERLANDS; Optical Disc Stampers, Orange, CA; Tanway Electronic Factory, Guangzhou, PEOPLE'S REPUBLIC OF CHINA; Zhongshan Kenloon Digital Technology Co., Ltd., Zhongshan, Guangdong, PEOPLE'S REPUBLIC OF CHINA; and Zhong Shan Shi NEON Electronic Fty. Ltd., Kowloon, HONG-KONG-CHINA have been added as parties to this venture.

Also, Alcorn McBride Inc., Orlando, FL; Amoisonic Electronics Co., Ltd., Xiamen, PEOPLE'S REPUBLIC OF CHINA; ANAM Electronics Co. Ltd., Ansan-City, Kyungki-Do, REPUBLIC OF KOREA; C-Cube Semiconductor II Inc., Milpitas, CA; Chaintech Computer Co. Ltd., Tapiei Hsien, TAIWAN; Cinet AS, Oslo, NORWAY; C-Media Electronics Inc., Taipei, TAIWAN; CNERC–OD, Taipei, TAIWAN; Coach Master International dba CMI Worldwide, Inc., Seattle, WA; Comjet Information Systems Corp., Taipei, TAIWAN; Compal Electronics, Taipei, TAIWAN; Compaq Computer Corporation, Houston, TX; Computer & Entertainment, Inc., Taipei, TAIWAN; Creative Technology Ltd., Singapore, SINGAPORE; Daesung Eltec Co., Ltd., Seoul, REPUBLIC OF KOREA; Daikin Industries, Tokyo, JAPAN; Diskware Co., Ltd., Koutou-ku, Tokyo, JAPAN; Eastman Kodak Company (Digital & Applied Imaging Division), Rochester, NY; E-Smart Electronics, Ltd., Kowloon, HONG-KONG-CHINA; First International Computer, Inc., Taipei Hsien, TAIWAN; Fly Ring Digital Technology, Ltd., Hong Kong, HONG KONG-CHINA; Freindly CD-Tek Corporation, Taipei, TAIWAN; Fema O.D. S.A., Barcelona, SPAIN; Gigastorage Corporation, Hsinchu, TAIWAN; Goldteck International Inc., Taipei, TAIWAN; Great China Technology, Inc., Taipei Hsien, TAIWAN; Gynco Electronics (HK) Ltd., Tainan Hsien, TAIWAN; Hermosa Cysware Ltd., Taipei, TAIWAN; Highlead Technology, Inc., Taipei Hsien, TAIWAN; Hisaki Sekkei Inc., Fukushima, JAPAN; Hua Du shi Teng Wei Electronic Factory, Kowloon Bay, HONG KONG-CHINA; InterMagic Corporation, Seoul, REPUBLIC OF KOREA; Jeu Hang Technology Co., Ltd., Taipei, TAIWAN; Kenden Corporation, Chiyoda-ku, Tokyo, JAPAN; Konka Group Co., Ltd., Shenzhen Special Zone, PEOPLE'S REPUBLIC OF CHINA; Lection Technology Co., Ltd., Fremong, CA; Luxsonor Semiconductor Inc., Fremont, CA; Makidol Electronics Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; MbyN Inc., Kyungki-do, REPUBLIC OF KOREA; Media Dimensions, Inc., Austin, TX; Metatec International Corporation, Dublin, OH; Motorola, Inc., Austin, TX; National Semiconductor, Corp. (Mediamatics), Santa Clara, CA; Novac Co., Ltd., Tokyo, JAPAN; Pan-International Industrial Corp., Hsinchu City, TAIWAN; PitsExpert Technology Co., Ltd., Taipei, TAIWAN; Proside Corporation, Chiba, JAPAN; Provac Disc Media Inc., Toronti, Ontario, CANADA; QNX Software Systems Ltd., Kanata, Ontario, CANADA; Sasken Communication Technologies Limited, Bangalore, INDIA; Sensory Science Corporation, Scottsdale, AZ; Shinwa Industries (PRC), Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; Silicon Integrated Systems Corporation, Sunnyvale, CA; Silicon Magic Corporation, Sunnyvale, CA; Soft4D Co., Ltd., Songnam-Si, REPUBLIC OF KOREA; Spruce Technologies, Inc., San Jose, CA; STMicroelectronics, Inc., Carrollton, TX; Stream Machine Company, Milpitas, CA; Sun Microsystems Inc., Palo Alto, CA; Takaya Corporation, Okayama, JAPAN; Toolex International N.V., Eindhoven, THE NETHERLANDS; Trident Microsystems, Inc., Santa Clara, CA; Videolar S/A, Alphaville-Barueri, BRAZIL; Yuan High-Tech Development Co., Ltd., Taipei, TAIWAN; and Zen Research N.V., Curacao, NETHERLANDS ANTILLES have been dropped as parties to this venture.

The following members have changed their names: Ahead Software GmbH to Ahead Software AG, Karlsbad, GERMANY; and Lite-On Technology to JVC Lite-On IT Manufacture and Sales, Limited, Hong Kong, HONG KONG-CHINA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD Copy Control Association ("DVD CCA") intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association ("DVD CCA")" filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on October 12, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 349).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7027 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Oceanic Institute: Biosecure Zero-Exchange Shrimp Technology

Notice is hereby given that, on February 6, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Oceanic Institute: Biosecure Zero-Exchange Shrimp Technology (BioZEST) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are PIC–USA, Berkeley, CA; Kahuku Shrimp Company, Kahuku, HI; Zeigler Brothers, Inc., Gardners, PA; and The Oceanic Institute, Waimanalo, HI. The nature and objectives of the venture are to develop and demonstrate an economically viable, environmentally responsible, and sustainable production system for shrimp in the U.S. using selectively bred animals in a closed environment that prevents the introduction of disease agents. The system entails zero exchange of water and is termed the "Biosecure Zero-exchange Shrimp Technology" or BioZEST. The activities of this joint venture project will be partially funded by an award from the Advanced Technology Program, National Institute

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of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7029 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of the a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 12, 2001, Chiragene, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed in 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 24, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 12, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–7115 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38324), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Stepan Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 12, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–7116 Filed 3–22–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Parole Commission

[(Public Law 94–409) (5 U.S.C. Sec. 552b)]

Record of Vote of Meeting Closure

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 11:00 a.m. on Thursday, March 15, 2002, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four appeals from the National Commissioners' decisions pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Michael J. Gaines, and John R. Simpson.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: March 19, 2002.

Edward F. Reilly, Jr.,

Choirman, U.S. Parole Commission.

[FR Doc. 02–7170 Filed 3–21–02; 10:18 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

March 15, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contract Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Producer Price Index Survey.

OMB Number: 1220–0008.

Affected Public: Business or other for-profit.

Estimated Time Per Response and Total Burden Hours:

Form	Number of respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
BLS 1810A, A1, B, C, C1, and E	1,585	Once	6,340	120	12,680
BLS 473P	26,250	Monthly	1,260,000	18	378,000
Totals	27,835		1,266,340		390,680

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing service): $0.

Description: The Producer Price Index, one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary market level. It is also used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements. The failure to calculate data would tend to extend the time frame required for accurate recognition of and appropriate adaptation to economic events.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 02–7142 Filed 3–22–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the revision of the *"Labor Market Information (LMI) Cooperative Agreement."* A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before May 24, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS enters into Cooperative Agreements with State Employment Security Agencies (SESAs) annually to provide financial assistance to the SESAs for the production and operation of the following LMI statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Covered Employment and Wages Report, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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e.g., permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget (OMB) clearance is being sought for the LMI Cooperative Agreement. The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the SESAs and monitor their financial and programmatic performance and adherence to administrative requirements imposed by common regulations implementing OMB Circular A–102 and other grant-related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

Type of Review: Revision of a currently approved collection.
Agency: Bureau of Labor Statistics.
Title: Labor Market Information (LMI) Cooperative Agreement.
OMB Number: 1220–0079.
Affected Public: State, Local or Tribal Governments.
Frequency: Monthly, quarterly, annually.

Information collection	Respondents	Frequency	Responses	Time	Total hours
Work Statements	55	1	55	1–2 hr	55–110
BIF (LMI 1A, 1B)	55	1	55	1–6 hr	55–330
Quarterly Automated Financial Reports	48	4	192	10–50 min	32–160
Monthly Automated Financial Reports	48	*8	384	5–25 min	32–160
BLS Cooperative Statistics Financial Report (LMI 2A)	7	12	84	1–5 hr	84–420
Quarterly Status Report (LMI 2B)	1–30	4	4–120	1 hr	4–120
Total	1–55		774–890		262–1300
Average Totals	55		832		781

*Reports are not received for end-of-quarter months, *i.e.*, December, March, June, September.

Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 12th day of March, 2002.

Jesús Salinas,
Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–7141 Filed 3–22–02; 8:45 am]
BILLING CODE 4510–24–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its fourth regional meeting, the Commission's sixth public meeting, to hear and discuss coastal and ocean issues of concern to the Southwest region of the United States, covering the coastal area of California.

DATES: Public meetings will be held Thursday, April 18, 2002 from 12:30 p.m. to 6:15 p.m. and Friday, April 19, 2002 from 8:30 a.m. to 6:00 p.m.

ADDRESSES: The meeting location is the Embassy Room, Davidson Executive Conference Center, University of Southern California, 3415 Figueroa Street, Los Angeles, California 90089–0871.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW, Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by April 10, 2002 to the meeting Point of Contact. Public comment periods are scheduled for Thursday, April 18 and Friday, April 19. The agenda for the meeting, including specific times for the public comment periods, and guidelines for making public comments will be posted on the Commission's website at *http://www.oceancommission.gov* prior to the meeting.

Dated: March 19, 2002.

Admiral James D. Watkins,
USN (ret.), Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 02–7063 Filed 3–22–02; 8:45 am]
BILLING CODE 6820–WM–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement of a Revised Information Collection: RI 20–80

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reinstatement of a revised information collection. RI 20–80, Alternative Annuity Election, is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Approximately 200 RI 20–80 forms are completed annually. We estimate it takes approximately 20 minutes to complete the form. The annual burden is 67 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received on or before April 24, 2002.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235 Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Desktop Publishing and Printing, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,
Director.

[FR Doc. 02–7020 Filed 3–22–02; 8:45 am]
BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established under Schedule C between February 1, 2002, and February 28, 2002, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during February 2002:

Broadcasting Board of Governors

Senior Projects Officer to the Director. Voice of America. Effective February 21, 2002.

Senior Projects Officer to the Director. Voice of America. Effective February 21, 2002.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective February 8, 2002.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Utilities Service. Effective February 1, 2002.

Special Assistant to the Director, Office of Communications. Effective February 1, 2002.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective February 8, 2002.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective February 11, 2002.

Special Assistant to the Under Secretary for Farm and Foreign Agricultural Service. Effective February 25, 2002.

Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective February 28, 2002.

Department of the Air Force (DOD)

Confidential Assistant to the Assistant Secretary (Financial Management Comptroller). Effective February 8, 2002.

Department of the Army (DOD)

Secretary (Office Automation) to the Under Secretary of the Army. Effective February 6, 2002.

Secretary (Office Automation) to the Assistant Secretary of the Army (Civil Works). Effective February 8, 2002.

Secretary (Office Automation) to the General Counsel of the Army. Effective February 8, 2002.

Special Assistant to the Secretary of the Army. Effective February 15, 2002.

Personal And Confidential Assistant to the Assistant Secretary of the Army (Financial Management and Comptroller). Effective February 22, 2002.

Special Assistant to the Assistant Secretary of the Army (Civil Works) for Congressional Affairs. Effective February 26, 2002.

Department of Commerce

Chief Information Officer to the Under Secretary of Technology. Effective February 4, 2002.

Deputy Director to the Director, Office of Public Affairs, International Trade Administration. Effective February 6, 2002.

Confidential Assistant to the Assistant Secretary for Export Administration. Effective February 6, 2002.

Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective February 19, 2002.

Confidential Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service. Effective February 22, 2002.

Deputy Director to the Director, Office of the White House Liaison. Effective February 28, 2002.

Department of Defense

Electronic Commerce Specialist to the Deputy Assistant Secretary of Defense (Deputy Chief Information Officer). Effective February 1, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective February 4, 2002.

Staff Assistant to the Deputy Assistant Secretary of Defense (Near East/South Asia). Effective February 4, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective February 5, 2002.

Speech Writer to the Director, Directorate for Editorial Services. Effective February 5, 2002.

Public Affairs Specialist to the Assistant Secretary of Defense for Public Affairs. Effective February 6, 2002.

Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs). Effective February 8, 2002.

Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Public Affairs) for Issues and Strategy Management. Effective February 8, 2002.

Defense Fellow to the Special Assistant to the Secretary (White House Liaison). Effective February 11, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective February 11, 2002.

Director, Communications Strategy to the Assistant Secretary of Defense for Public Affairs). Effective February 11, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective February 11, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective February 11, 2002.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective February 13, 2002.

Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective February 13, 2002.

Special Assistant to the Principal Deputy Under Secretary of Defense (Policy). Effective February 19, 2002.

Defense Fellow to the Director, Administration and Management. Effective February 21, 2002.

Defense Fellow to the Director, Administration and Management. Effective February 21, 2002.

Writer-Editor to the Director, Strategic Communications. Effective February 21, 2002.

Confidential Assistant to the Assistant Secretary of Defense. Effective February 22, 2002.

Public Affairs Specialist to the Assistant Secretary of Defense for Public Affairs. Effective February 24, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective February 25, 2002.

Department of Education

Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison. Effective February 1, 2002.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective February 1, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective February 5, 2002.

Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective February 5, 2002.

Confidential Assistant to the Chief of Staff. Effective February 6, 2002.

Special Assistant to the Chief of Staff. Effective February 6, 2002.

Confidential Assistant to the Chief of Staff. Effective February 6, 2002.

Special Assistant to the Director, Office of Public Affairs. Effective February 11, 2002.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective February 14, 2002.

Special Assistant to the Chief of Staff. Effective February 14, 2002.

Confidential Assistant to the Chief of Staff. Effective February 14, 2002.

Confidential Assistant to the Chief of Staff. Effective February 14, 2002.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective February 14, 2002.

Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective February 14, 2002.

Special Assistant to the Chief of Staff. Effective February 21, 2002.

Director, Office of Scheduling and Briefing to the Chief of Staff. Effective February 24, 2002.

Confidential Assistant to the Director, Office of Public Affairs. Effective February 25, 2002.

Special Assistant to the Chief of Staff. Effective February 27, 2002.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective February 28, 2002.

Secretary's Regional Representative, Region 7 to the Deputy Assistant Secretary for Regional Services. Effective February 28, 2002.

Department of Energy

Policy Advisor to the Secretary of Energy. Effective February 1, 2002.

Special Assistant to the Assistant Secretary for Policy and International Affairs. Effective February 4, 2002.

Trip Coordinator to the Deputy Director for Advance. Effective February 5, 2002.

Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for Policy and International Affairs. Effective February 7, 2002.

Special Assistant to the Assistant Secretary for Fossil Energy. Effective February 8, 2002.

Special Assistant to the Secretary of Energy. Effective February 13, 2002.

Deputy Director to the Director, Office of Economic Impact and Diversity. Effective February 15, 2002.

Special Assistant to the Deputy Secretary of Energy. Effective February 25, 2002.

White House Liaison to the Secretary of Energy. Effective February 27, 2002.

Department of Health and Human Services

Deputy Director for Operations to the Director of Intergovernmental Affairs. Effective February 5, 2002.

Deputy Director of the Director of Scheduling. Effective February 11, 2002.

Special Assistant to the Secretary of Health and Human Services. Effective February 13, 2002.

Confidential Assistant to the Director of Scheduling. Effective February 25, 2002.

Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective February 27, 2002.

Special Assistant to the Chief of Staff. Effective February 27, 2002.

Department of Housing and Urban Development

Staff Assistant to the Deputy Assistant Secretary for Public Affairs. Effective February 1, 2002.

Deputy Assistant Secretary for Special Needs to the Assistant Secretary for Community Planning and Development. Effective February 19, 2002.

Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective February 20, 2002.

Special Assistant to the Deputy Secretary of Housing and Urban Development. Effective February 28, 2002.

Department of the Interior

Speechwriter to the Director of Communications. Effective February 15, 2002.

Associate Director to the Director, Office of Congressional and Legislative Affairs. Effective February 22, 2002.

Special Assistant to the Director, Minerals Management Service. Effective February 26, 2002.

Department of Justice

Attorney Advisor to the Attorney General. Effective February 4, 2002.

Attorney Advisor/Special Assistant to the Director, Office of Domestic Preparedness, Office of Justice Programs. Effective February 5, 2002.

Attorney Advisor to the Assistant Attorney General, Civil Division. Effective February 5, 2002.

Secretary (OA) to the United States Attorney, District of Maryland. Effective February 8, 2002. Deputy Assistant Attorney General to the Assistant Attorney General, Tax Division. Effective February 8, 2002.

Counsel to the Assistant Attorney General, Civil Division. Effective February 11, 2002.

Senior Advisor to the Director, Office of Public Affairs. Effective February 12, 2002.

Special Assistant to the Director, Office of Congressional and Public Relations. Effective February 14, 2002.

Secretary (OA) to the United States Attorney, Southern District of Alabama. Effective February 21, 2002.

Secretary (Office Automation) to the United States Attorney, District of New Mexico. Effective February 25, 2002.

Department of Labor

Senior Intergovernmental Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 4, 2002.

Speech Writer to the Assistant Secretary, Office of Public Affairs. Effective February 4, 2002.

Staff Assistant to the Deputy Secretary. Effective February 4, 2002.

Special Assistant to the Deputy Under Secretary for International Labor Affairs. Effective February 11, 2002.

Special Assistant to the Assistant Secretary for Employment and Training Administration. Effective February 13, 2002.

Special Assistant to the Director, Women's Bureau. Effective February 19, 2002.

Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 20, 2002.

Staff Assistant to the Assistant Secretary for Policy. Effective February 21, 2002.

Special Assistant to the Assistant Secretary for Disability Employment Policy. Effective February 22, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective February 25, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 27, 2002.

Special Assistant to the Assistant Secretary for Administration and Management. Effective February 28, 2002.

Department of the Navy (DOD)

Staff Assistant to the Secretary of the Navy. Effective February 12, 2002.

Department of State

Senior Advisor to the U.S. Permanent Representative to the Organization of American States. Effective February 4, 2002.

Senior Advisor to the Assistant Secretary for South Asian Affairs. Effective February 6, 2002.

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective February 8, 2002.

Protocol Officer (Ceremonials) to the Chief of Protocol. Effective February 22, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective February 26, 2002.

Staff Assistant to the Senior Advisor (White House Liaison). Effective February 26, 2002.

Special Assistant to the Secretary of State. Effective February 26, 2002.

Department of Transportation

Associate Director to the Assistant Secretary for Government Affairs. Effective February 5, 2002.

Special Assistant to the Assistant Secretary for Transportation Policy. Effective February 8, 2002.

Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective February 25, 2002.

Chief, Consumer Information Division to the Administrator, National Highway Traffic Safety Administration. Effective February 26, 2002.

Director, Office of Public and Consumer Affairs to the Administrator, National Highway Traffic Safety Administration. Effective February 26, 2002.

Department of the Treasury

Speechwriter to the Assistant Secretary for Public Affairs. Effective February 14, 2002.

Senior Advisor to the Assistant Secretary for Management and Chief Financial Officer. Effective February 25, 2002.

Department of Veterans Affairs

Director, Congressional Affairs to the Assistant Secretary for Congressional and Legislative Affairs. Effective February 8, 2002.

Environmental Protection Agency

Senior Advisor on Outreach to the Assistant Administrator for Solid Waste and Emergency Response. Effective February 11, 2002.

Associate Assistant Administrator to the Assistant Administrator for Office of Prevention, Pesticides and Toxic Substances. Effective February 11, 2002.

Special Assistant to the Director of Operations. Effective February 11, 2002.

Special Assistant for Communications to the Assistant Administrator, Office of Water. Effective February 11, 2002.

Public Affairs Specialist to the Associate Administrator. Effective February 14, 2002.

Export-Import Bank of the United States

Special Assistant to the Vice President for Public Affairs. Effective February 26, 2002.

Federal Emergency Management Agency

Deputy Chief of Staff to the Director. Effective February 8, 2002.

Staff Assistant to the General Counsel. Effective February 22, 2002.

Special Assistant to the Chief Information Officer to the Assistant Director, Information Technology Services Directorate. Effective February 27, 2002.

Federal Housing Finance Board

Special Assistant to the Chairman. Effective February 26, 2002.

National Transportation Safety Board

Senior Policy Advisor to the Chairman, National Transportation Safety Board. Effective February 25, 2002.

Office of Management and Budget

Counselor to the Controller, Office of Federal Financial Management. Effective February 4, 2002.

Confidential Assistant to the Deputy Director, Office of Management and Budget. Effective February 8, 2002.

Deputy Director to the Associate Director for Communications. Effective February 11, 2002.

Office of National Drug Control Policy

Associate Deputy Director to the Deputy Director, State and Local Affairs. Effective February 8, 2002.

Securities and Exchange Commission

Director of Communications to the Chairman. Effective February 8, 2002.

Senior Advisor for Legislative Affairs to the Director of Communications. Effective February 8, 2002.

Director of Public Affairs to the Director of Communications. Effective February 8, 2002.

Small Business Administration

Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective February 4, 2002.

Special Assistant to the Chief Operating Officer. Effective February 20, 2002.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development. Effective February 25, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–7021 Filed 3–22–02; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Representative Payee Parental Custody Monitoring

(2) *Form(s) submitted:* G–99d

(3) *OMB Number:* 3220–0176

(4) *Expiration date of current OMB clearance:* 5/31/2002

(5) *Type of request:* Extension of a currently approved collection

(6) *Respondents:* Individuals or households

(7) *Estimated annual number of respondents:* 1,850

(8) *Total annual responses:* 1,850

(9) *Total annual reporting hours:* 154

(10) *Collection description:* Under Section 12(e) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection

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obtains information needed to verify the parent-for-child payee still retains custody of the child.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 02–7067 Filed 3–22–02; 8:45 am]
BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Certification of Relinquishment of Rights.
(2) *Form(s) submitted:* G–88.
(3) *OMB Number:* 3220–0016.
(4) *Expiration date of current OMB clearance:* 5/31/2002.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 3,600.
(8) *Total annual responses:* 3,600.
(9) *Total annual reporting hours:* 360.
(10) *Collection description:* Under Section 2(e)(2) of the Railroad Retirement Act, the Railroad Retirement Board must have evidence that an annuitant for an age and service, spouse, or divorced spouse annuity has relinquished their rights to return to the service of a railroad employer. The collection provides the means for obtaining this evidence.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 02–7068 Filed 3–22–02; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25465; 812–12420]

Delaware Investments Dividend and Income Fund, Inc. and Delaware Investments Global Dividend and Income Fund, Inc.; Notice of Application

March 18, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Delaware Investments Dividend and Income Fund, Inc. ("DDF") and Delaware Investments Global Dividend and Income Fund, Inc. ("DGF") (DDF and DGF each, a "Fund" and collectively, the "Funds") request an order to permit them to make up to twelve distributions of long-term capital gains in any one taxable year, so long as they maintain in effect their distribution policies with respect to their common stock calling for fixed monthly distributions.

FILING DATES: The application was filed on January 24, 2001 and amended on March 14, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 12, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o Bruce G. Leto, Stradley Ronon Stevens & Young, LLP., 2600 One Commerce Square, Philadelphia, PA 19103–7098.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are registered under the Act as closed-end, diversified management investment companies and organized as Maryland corporations. Each Fund's primary investment objective is high current income; capital appreciation is a secondary objective. The Funds seek to achieve their goals by investing in a wide variety of income-generating equity securities, including dividend-paying common stocks, convertible securities, preferred stocks and other equity related securities. The Funds' shares are listed on the New York Stock Exchange and have historically traded at a discount to net asset value ("NAV"). Delaware Management Company, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as the Funds" investment adviser. Delaware International Advisers, Ltd., an investment adviser registered under the Advisers Act, serves as the sub-adviser for the foreign component of DGF's investment portfolio.

2. On July 20, 1995 and November 16, 1995, respectively, the boards of directors of DGF and DDF (the "Boards"), including a majority of the directors who are not "interested persons" of each Fund, as defined in section 2(a)(19) of the Act, adopted a distribution policy (each, a "Distribution Policy" and collectively, the "Distribution Policies") with respect to each Fund's shares of common stock. The Boards considered that the Distribution Policies would provide a consistent income stream to the Funds' shareholders and might help support the market price of the Funds' common stock. The Boards review and approve the level of the distribution for each respective Fund at each quarterly Board meeting. Pursuant to the Distribution Policies, the shareholders of each Fund currently receive a fixed distribution of 12.5 cents per share on a monthly basis. If for any taxable year, the total distributions required by the Distribution Policies exceed the sum of each Fund's net investment income and net realized capital gains, the excess generally will be treated as a return of capital (up to the amount of the shareholder's adjusted tax basis in his shares). Applicants state that the Distribution Policies provide a steady cash flow to the Funds' shareholders and are a method to reduce the trading discount from NAV.

3. Applicants request relief to permit the Funds, so long as they maintain in effect the Distribution Policies, to make up to twelve long-term capital gains distributions in any one taxable year.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. The Funds assert that rule 19b–1, by limiting the number of net long-term capital gains distributions the Funds may make with respect to any one year, would prohibit the Funds from including available net long-term capital gains in certain of their fixed monthly distributions. As a result, the Funds state that they could be required to fund these monthly distributions with returns of capital (to the extent net investment income and net realized short-term capital gains are insufficient to cover a monthly distribution). The Funds further assert that, to distribute all of their long-term capital gains within the limits in rule 19b–1, the Funds may be required to make total distributions in excess of the annual amount called for by the Distribution Policies or retain and pay taxes on the excess amount. The Funds assert that the application of rule 19b–1 to their Distribution Policies may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The Funds submit that the concerns underlying section 19(b) and rule 19b–1 are not present in their situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Funds state that the Distribution Policies have been described in the Funds' periodic communications to their shareholders. The Funds further state that, as required by rule 19a–1 under the Act, a separate statement showing the source of the distribution will accompany any distribution. The Funds also state that a statement showing the amount and source of each monthly distribution during the year will be included with each Fund's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year).

4. The Funds submit that another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend ("selling the dividend"), when the dividend results in an immediate corresponding reduction in NAV and is, in effect, a return of the investor's capital. The Funds state that this concern does not apply to closed-end investment companies, such as the Funds, that do not continuously distribute their shares.

5. The Funds state that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. The Funds assert that this concern is not present because the Funds will continue to make monthly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the Funds believe that the requested relief satisfies this standard.

Applicants' Condition

The Funds agree that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering by the Funds of their common shares other than:

(i) A non-transferable rights offering to shareholders of the Funds, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Funds have received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–7039 Filed 3–22–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 10778, March 8, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, March 12, 2002 at 10:00 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item was added to the closed meeting held on Tuesday, March 12, 2002: regulatory matter concerning financial markets.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permitted consideration of the scheduled matter at the closed meeting.

At times, changes in Commission priorities require alterations in the

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scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 19, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7166 Filed 3–20–02; 5:02 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45574; File No. SR–CBOE–2001–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Exchange's AutoQuote System

March 15, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's Auto-Quote System. The Exchange filed Amendment No. 1 to the proposed rule change on February 7, 2002.[3] The **Federal Register** published the proposed rule change and Amendment No. 1 for comment on February 13, 2002.[4] The Exchange filed Amendment No. 2 to the proposed rule change on March 7, 2002.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended by Amendment No. 1, and issues notice of, and grants accelerated approval to, Amendment No. 2.

II. Description of Proposal

CBOE Rule 8.15 currently provides that the appropriate MPC may appoint Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") for a specified period of time to participate in opening rotations in S&P 100 options ("OEX") and options on the Dow Jones Industrial Average ("DJX"). The proposed rule change amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market Performance Committee ("MPC") may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and to use the Exchange's AutoQuote system or to provide a proprietary automated quotation updating system to monitor and automatically update market quotations during the trading day in any options class for which a Designated Primary Market-Maker ("DPM") has not been appointed.

Proposed new paragraph (d) of CBOE Rule 8.15 provides that LMMs and SMMs appointed pursuant to the CBOE Rule 8.15 to determine a formula for generating automatically updated market quotations must, for the period in which its acts as LMM or SMM, use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day. Proposed paragraph (d) also requires LMMs to disclose to the trading crowd the variables of the formula for generating automatically updated market quotations unless exempted by the appropriate MPC. Proposed paragraph (d) further provides a cross-reference to the requirements of Interpretation .07 to CBOE Rule 8.7, which sets forth the AutoQuote obligations of market makers.[6] The Exchange also proposes to eliminate the references to S&P 100 options and options on the DJX from CBOE Rule 8.15 so that the appropriate MPC may appoint LMMs and SMMs in other options classes without having to file a proposed rule change with the Commission.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[8] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting AutoQuote parameters. For instance, the proposal amends CBOE Rule 8.15 to make explicit in the rule that in options for which a DPM has not been appointed, the Exchange's MPC may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and to use the Exchange's AutoQuote system or to provide a proprietary automated quotation updating system. The Commission believes this provision should clarify the obligations of LMMs and SMMs with respect to the Exchange's AutoQuote system. In addition, the proposal would permit the LMM or SMM to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit members of the crowd to be given a voice in setting AutoQuote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.[9]

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

The Commission finds good cause for accelerating approval of Amendment No. 2 because it clarifies the obligations of LMMs and SMMs regarding AutoQuote. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[10] and section 19(b)(2) of the Act[11] to accelerate approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–63 and should be submitted by April 15, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2001–63), as amended, is approved, and Amendment No. 2 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7040 Filed 3–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45591; File No. SR–MSRB–2002–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–17 on Disclosure of Material Facts

March 18, 2002.

On January 25, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change relating to Rule G–17, on disclosure of material facts.

The Commission published the proposed rule change for comment in the **Federal Register** on February 12, 2002.[3] The Commission received no comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The proposed rule change provides an interpretation of the duty to deal fairly set forth in Rule G–17. The MSRB's proposed this interpretation to set forth an expanded explanation of what Rule G–17's obligation to "disclose all material facts" means in today's innovative market. The MSRB believes that technological changes necessitate interpretive guidance for the application of certain rules. Alternative trading systems present the most graphic example of changing dealer/customer relationships and the consequent need for regulatory change, but these relationship obligations are not necessarily limited to electronic trading venues.

As part of a dealer's obligation to deal fairly, the MSRB has consistently interpreted that Rule G–17 creates affirmative disclosure obligations for brokers, dealers and municipal securities dealers (collectively, "dealers"). The MSRB has stated that a dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[4] These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.

Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal securities transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, "established industry sources").[5]

In addition to the basic disclosure obligations, the duty to "deal fairly" is intended to "refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets."[6] The customs and practices of the industry suggest that the sources of information generally used by a dealer that effects transactions in municipal securities may vary with the type of municipal security. For example, a dealer might have to draw on fewer industry sources to disclose all material facts about an insured "triple-A" rated general obligation bond than for a non-rated conduit issue. In addition, to the extent that a security is more complex, for example, because of complex structure or where credit quality is changing rapidly, a dealer might need to take into account a broader range of information sources prior to executing a transaction.

II. Discussion

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act.[7] The

Continued

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 requests the Commission to designate the proposed rule change as having been filed pursuant to section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] Securities Exchange Act Release No. 45419 (February 7, 2002), 67 FR 6772.

[5] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated March 5, 2002 ("Amendment No. 2").

[6] *See* Amendment No. 2, *supra* note 5.

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(8).

[9] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–45361 (January 30, 2002), 67 FR 6562.

[4] *See e.g.*, Rule G–17 Interpretation—Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, *MSRB Rule Book* (July 2001) at 129–130. The Commission described material facts as those "facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." *Municipal Securities Disclosure*, Exchange Act Release No. 26100 (Sept. 22, 1988) 53 FR 37778 at note 76, quoting In re *Walston & Co. Inc., and Horrington*, Exchange Act Release No. 8165 (Sept. 22, 1967) 43 SEC 508, 1967 SEC LEXIS 553. Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438 (1976).

[5] Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under Rule G–17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

[6] *See* Exchange Act Release No. 13987 (Sept. 22, 1977).

[7] MSRB rules shall, "be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the

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MSRB believes that this rule satisfies this standard because it is intended to clarify that a dealer's general obligation to provide disclosure is viewed within the context of reasonably available information about the municipal security and the dealer's actual knowledge of the municipal security. Additionally, the MSRB believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it applies equally to all brokers, dealers and municipal securities dealers.

The Commission must approve a proposed MSRB rule change if the Commission finds that the MSRB's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that govern the MSRB.[8] The language of section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.[9]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an interpretation of Rule G–17, on disclosure of material facts, meets this standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In particular, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, set forth above.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act, [10] that the proposed rule change (File No. SR–MSRB–2002–01) be and hereby is, approved.

mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[8] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–4(b)(2)(c).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7042 Filed 3–22–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45573; File No. SR–Phlx–2001–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Solicitation of Trading Interest on the Exchange Floor

March 15, 2002.

I. Introduction

On March 8, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice ("OFPA") F–32 pertaining to the solicitation of quotations.[3] On May 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[4] On November 21, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[5] The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on February 12, 2002.[6] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to adopt Phlx Rule 1033(a)(ii) and OFPA F–32, which would permit the members of a trading crowd (including the specialist and Registered Options Traders ("ROTs")) to discuss, negotiate, and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that can be executed at a given price or prices in response to a floor broker's request for a single bid or offer. The proposal would expressly permit a collective response from trading crowd members. However, members would not be required to participate in a collective response and may voice a bid or offer independently from, and differently from, the trading crowd members. In fact, an individual ROT with the necessary liquidity, willing to execute a trade at a price better than the prevailing market, could bid against the crowd and take the entire trade, or part of the trade, pursuant to the Phlx allocation rules.[7]

III. Discussion

After careful consideration the Commission has determined to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[8] and, in particular, with section 6(b)(8) of the Act,[9] which requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

This proposed rule change will clearly establish in the Phlx's rules the parameters under which Phlx specialists and ROTs may coordinate to respond efficiently to the needs of investors, while fulfilling their duty to make fair and orderly markets. In particular, the proposed rule change will allow the trading crowd, in response to a floor broker's request for a single bid or offer for a large size order, to collectively discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that can be executed at a given price or prices.

The Commission believes that this proposed rule change recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member might not be able to fill. The Commission believes that any anticompetitive effect of this proposal is limited by requiring that there be a request for a single price and that the order be sufficiently large.[10] In addition, the Commission notes that under the proposed rule change, a single crowd participant may voice a bid or offer independently from, and differently from, the specialist and other members of a trading crowd in order to execute the entire order or part of the order.[11]

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2001–33) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7041 Filed 3–22–02; 8:45 am]

BILLING CODE 8010–01–U

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.j. of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange, among other things, to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class.

[4] See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 10, 2001 ("Amendment No. 1").

[5] See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 21, 2001 ("Amendment No. 2").

[6] See Securities Exhange Act Release No. 45391 (February 4, 2002), 67 FR 6570.

[7] See Phlx Rule 1014. See also File No. SR–Phlx–2001–39 (proposing to amend Phlx Rule 1014).

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(8).

[10] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[11] See supra note 7. See also Phlx Rules 1015(a) and 1082(e).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Connecticut District Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m., on Monday, April 8, 2002, Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(860) 240–4700.

Anyone wishing to attend and make an oral presentation to the Board must contact Marie A. Record, no later than April 4, 2002 via e-mail or fax. Marie A. Record, District Director, U.S. Small Business Administration, Connecticut District Office 330 Main Street, Hartford, CT 06106 (860) 240–4670 phone or (860) 240–4714 fax or e-mail *marie.record@sba.gov.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–7119 Filed 3–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Lighthouse Capital Fund, L.P. ("TD Lighthouse"), 303 Detroit Street, Suite 301, Ann Arbor, Michigan 48104, and TD Origin Capital Fund, L.P. ("TD Origin"), 150 Washington Avenue, Santa Fe, New Mexico, Federal Licensees under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). TD Lighthouse and TD Origin propose to provide equity financing to LivHome, Inc. ("LivHome"), 5900 Wilshire Boulevard, Suite 705, Los Angeles, California 90036. The financing is contemplated for market expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Tullis Dickerson Capital Focus II, L.P. and TD Javelin Capital Fund II, L.P., Associates of both TD Lighthouse and TD Origin, currently and collectively own greater than 10 percent of LivHome, and therefore LivHome is considered an Associate of TD Lighthouse and TD Origin as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: March 19, 2002.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–7118 Filed 3–22–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 3917]

Secretary of State's Advisory Committee on Private International Law (ACPIL), Study Group on International Carriage of Goods by Sea; Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Friday April 5, 2002, to consider the draft instrument on the International Carriage of Goods by Sea, as prepared by the Comité Maritime International (CMI) for the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 2 p.m. to 5 p.m. in the offices of Haight Gardner Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in determining the U.S. negotiating position for the first session of the UNCITRAL Working Group on this draft instrument, to be held in New York from April 15 to 26, 2002.

A copy of the preliminary draft convention is available on UNCITRAL's website, *www.uncitral.org.* The Study Group meeting is open to the public up to the capacity of the meeting room. Persons wishing to attend should contact Miss Rosie Gonzales by fax at 202–776–8482, by telephone at 202–776–8420 or by e-mail at *gonzaler@ms.state.gov,* providing their name, affiliation, telephone and fact number, and e-mail address. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20490–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/*

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submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.s.t., Monday through Friday, except federal holidays. An electronic version of this document, along with all documents entered into this docket is available on the World Wide Web at *http//dms.dot.gov*.

Mary Helen Carlson,

Attorney-Adviser, Office of Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 02–7120 Filed 3–22–02; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act; Meeting

Agency Holding the Meeting: Tennessee Valley Authority (Meeting No. 1538).

Time and Date: 9 a.m. (CST), March 26, 2002.

Place: Trousdale County Courthouse, 200 East Main Street, Hartsville, Tennessee.

Status: Open.

Agenda

Approval of minutes of meeting held on January 22, 2002.

New Business

C—Energy

C1. Sale at public auction of two coal leases on the TVA Illinois Coal Reserves and delegation of authority to the Executive Vice President, Fossil Power Group, to administer and amend the leases to maximize royalty income to TVA.

C2. Contract with Martin Marietta Aggregates for limestone supply for Cumberland Fossil Plant.

C3. Contract with Vulcan Materials Company for limestone supply for Widows Creek Fossil Plant Units 7 and 8.

C4. Contract with KenAmerican Resources, Inc., for coal supply for Paradise Fossil Plant Units 1 and 2.

C5. Contract with Liberty Coal Company, LLC, for coal supply for Shawnee Fossil Plant Unit 10.

C6. Extension of Contract No. CO0107–01 with Hopkins County Coal, LLC for coal supply for Widows Creek Fossil Plant Units 7 and 8 and award of a contract to Synfuel Solutions Operating, LLC for synthetic fuel to be manufactured from coal produced by Hopkins County Coal.

C7. Delegation of authority to enter into a coal transloading and blending services contract with Calvert City Terminal LLC for delivery to various TVA fossil plants.

C8. Contract with Cameco, Inc., for the supply of uranium trioxide to be used as blend stock to convert highly enriched uranium transferred to TVA from DOE into low enriched uranium suitable for use in nuclear fuel at TVA's Browns Ferry Nuclear Plant.

C9. Supplements to contracts with Adecco, Midpoint International, Inc., and Westaff to continue staff augmentation engineering and technical support services for all TVA organizations.

E—Real Property Transactions

E1. Public auction sale of approximately 554 acres of TVA land on the Hartsville Nuclear Plant Site Reservation for industrial/commercial development purposes only in Trousdale and Smith Counties, Tennessee (Tract No. XOHNP–2).

E2. Sale of noncommercial, nonexclusive permanent easements to Johnny and Lynn Solomon (Tract No. XTELR–224RE) and Michael and Nancy Huddleston (Tract No. XTELR–225RE) for construction, operation, and maintenance of private water-use facilities affecting approximately .08 acre of land on Tellico Reservoir in Monroe and Loudon Counties, Tennessee.

E3. Grant of permanent and temporary construction easements, without charge, except for payment of administrative costs, to the city of Jefferson City, Tennessee, affecting approximately 2.2 acres of land on Cherokee Reservoir in Jefferson County, Tennessee (Tract No. XTCK–66S), for a sewer line and pump station.

E4. Grant of a permanent easement for a substation, without charge, except for payment of administrative costs, to Appalachian Electric Cooperative affecting approximately 8.8 acres of land on Cherokee Dam Reservation in Grainger County, Tennessee (Tract No. XTCK–65SS).

E5. Modification of deed restrictions affecting approximately 11.9 acres of former TVA land on Chickamauga Reservoir (a portion of Tract No. XCR–188) in Rhea County, Tennessee.

E6. Grant of a permanent easement, without charge, except for administrative costs, to the city of Dayton, Tennessee, for recreation purposes affecting approximately 91.5 acres of land on Chickamauga Reservoir in Rhea County, Tennessee (Tract No. XTCR–199RE).

E7. Grant of a 5-year term easement, without charge, except for administrative costs, to the Watts Bar Utility District for a well, water storage tank, and waterlines affecting approximately 3.2 acres of land on Watts Bar Reservoir in Rhea County, Tennessee (Tract No. XTWBR–142E).

E8. Sale of a permanent easement to Jeff Pearcy for a road and utilities easement affecting approximately 0.53 acre of land on Kentucky Reservoir in Decatur County, Tennessee (Tract No. XGIR–938H).

E9. Grant of a permanent easement, without charge, except for payment of administrative costs, to the State of Tennessee for highway improvement purposes affecting approximately 1.1 acres of land on Melton Hill Reservoir in Anderson County, Tennessee (Tract No. XTMHR–20H).

E10. Grant of a permanent easement, without charge, except for payment of administrative costs, to the Bond Cemetery Perpetual Care Fund, Inc., for a cemetery expansion affecting approximately 1.6 acres of land on Cedar Creek Reservoir in Franklin County, Alabama (Tract No. XTBCCER–2CE).

E11. Grant of a permanent easement, without charge, except for payment of administrative costs, to the Alabama Department of Conservation and Natural Resources for general governmental and storage space purposes, affecting approximately 7 acres of land on Wheeler Reservoir in Limestone County, Alabama (Tract No. XTWR–108B).

E12. Public auction sale for commercial development purposes of approximately 4.1 acres of land on the Muscle Shoals Reservation in Colber County, Alabama (Tract No. X2NPT–16).

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements of rights-of-way affecting Tracts Nos. HCVB–1, –2, –43, –45, –47, –49, –51, –54, –68, –71, –55 and –76, Hanceville-Bremen Transmission Line in Cullman County, Alabama, and Tracts Nos. SEM–1, –3, –38, and –29, Sturgis-Eupora Tap to Maben Transmission Line in Choctaw and Webster Counties, Mississippi.

Information Items

1. Approval of the renewal of the Regional Resource Stewardship Council charter for an additional 2 years.

2. Approval of the extension of Contract No. CO0036–01 with AEI Resources, Inc., for coal supply to Widows Creek Fossil Plant.

3. Approval of an amendment to the Business Practice entitled "The Acquisition and Disposal of Fossil Fuels and Related Transportation and Storage" to standardize and streamline TVA's fuel acquisition process and to reflect recent changes in the strategic alignment of the Fossil Power Group.

4. Approval of an amendment to the Business Practice entitled "The Sale or use of Coal Combustion By-Products and Related Services" to reflect recent changes in the strategic alignment of the Fossil Power Group.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: March 19, 2002.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 02–7153 Filed 3–20–02; 4:25 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flammability Test Method for Aircraft Blankets

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to a flammability test method for aircraft blankets. The proposed TSO prescribes the minimum performance standards that aircraft blankets must meet to be identified with the marking "TSO–C152."

DATES: Comments must identify the TSO file number and be received on or before June 7, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Jensen, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This TSO is proposed to provide minimum performance standards for the flammability characteristics of blankets to be used for passenger comfort in aircraft cabins.

On November 28, 1993, the pilot of a Northwest Airlines B727–200 aircraft declared an emergency after a fire was reported in an overhead stowage bin. The fire was noticed just as the aircraft was being pushed back from the loading gate at Dorval International Airport. The fire was extinguished by crew members and all passengers were safely evacuated.

The stowage bin involved in the fire contained a personal carry-on bag and five 100 percent polyester airline blankets in two separate piles. The blankets were supplied by two different manufacturers. Upon completion of their investigation, the Transportation Safety Board (TSB) of Canada determined that the original source of fuel for the fire was the 100 percent polyester airline blankets. This conclusion was based on TSB testing of a section of unburned blanket. In their first test, a lit match was placed at the edge of the blanket. In their second test, a lit match was placed on top of the blanket. In both cases, the blanket ignited and rapid propagation of flame was observed.

The Federal Aviation Administration (FAA) does not require flammability testing of airline blankets. Therefore in light of the above incident, the U.S. National Transportation Safety Board asked the FAA to develop a fire performance test method and performance criteria for blankets suppled to commercial airline operators. At that time, many airlines used blankets that met only the FAA vertical Bunsen burner test criteria specified in Title 14 Code of Federal Regulations § 25.853. However, this test may be inappropriate as a measurement of ignitability for certain types of blankets since the polyester blankets involved in the Northwest Airlines B727–200 fire met the test criteria.

In March 1996, the FAA's Technical Center completed the development of a flammability test for blankets. The Technical Center published its report and included it in the FAA's Aircraft Materials Fire Test Handbook. In August 1996, the FAA issued Flight Standards Information Bulletin for Air Transportation (FSAT) 96–11 that recommended that air carriers replace old blankets at the end of their service life with blankets that met these new FAA-developed standards.

FSAT 96–11 expired in August 1997, and industry no longer had an FAA-approved flammability standard for aircraft blankets to reference. Therefore, the FAA is issuing Technical Standard Order (TSO) C152, Flammability Test Method for Aircraft Blankets.

How To Obtain Copies

A copy of the proposed TSO–C152 may be obtained via the Internet, http://www.faa.gov/avr/air/100home.htm, or on request from the office listed under "For Further Information Contact." Copies of Advisory Circular (AC) 20–115, Radio Technical Commission for Aeronautics, Inc., Document RTCA/DO–178, AC 25–17, Transportation Airplane Cabin Interiors Crashworthiness Handbook, and DOT/FAA/CT–89/15, "Aircraft Materials Fire Test Handbook," may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, 3341 Q 75th Avenue, Landover, MD 20785. Department of Transportation (DOT) Specifications may be purchased from the U.S. Department of Transportation Records Center, 400 7th Street SW, Washington, DC 20590.

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Issued in Washington, DC, on March 7, 2002.

John McGraw,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–6129 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Burleigh and Morton Counties, ND

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Burleigh and Morton Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: Calvin Larson, Environment and Design Engineer, Federal Highway Administration, 1471 Interstate Loop, Bismarck, North Dakota 58503–0567, Telephone: (701) 250–4204; Terrence Udland, Bridge Engineer, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505–0700, Telephone: (701) 328–1969.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota Department of Transportation, will prepare an environmental impact statement (EIS) to determine the best long-term solution for the Liberty Memorial Bridge crossing of the Missouri River. The proposed improvement would involve the rehabilitation or reconstruction of the bridge and approach roadways.

The existing bridge is 80 years old and has developed extensive deterioration and damage due to weathering, ice control chemicals, and traffic conditions. In addition, the bridge approach geometry and lane widths do not conform to current highway standards and therefore constitute a safety hazard. Emergency repairs to the pier caps were completed in 2001. These repairs were limited and are projected to last for only five years.

The bridge is listed on the National Register of Historic Places. It was christened the Liberty Memorial Bridge in honor of North Dakota World War I soldiers. It was the first vehicular bridge over the Missouri River in North Dakota. At the time it was completed, it was the only vehicular bridge between Great Falls, Montana and Sioux City, Iowa. It was also the final link in the coast-to-coast National Parks Highway, later designated U.S. Highway 10.

The alternatives that will likely be evaluated include (1) taking no action; (2) rehabilitating the existing bridge; (3) rehabilitating the existing bridge and constructing a new bridge adjacent to the existing; and (4) constructing a new bridge in the vicinity of the existing bridge and demolishing the existing bridge.

Letters describing the proposed action and soliciting views and comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Public scoping meetings for identifying significant issues to be addressed in the environmental impact statement will be held on April 8, 2002 in the Bismarck, North Dakota, City Council Chamber and on April 9, 2002 in the Mandan, North Dakota, City Council Chamber.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the North Dakota Department of Transportation or FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: March 8, 2002.

J. Michael Bowen,

Division Administrator, Federal Highway Administration, Bismarck, North Dakota.

[FR Doc. 02–7015 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2002–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2002 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2002 RCAF (Unadjusted) is 1.062. The second quarter 2002 RCAF (Adjusted) is 0.563. The second quarter 2002 RCAF–5 is 0.541.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Legal, Suite 405, 1925 K Street, NW, Washington, D.C. 20006, phone (202) 293–7776. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 19, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7121 Filed 3–22–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–565 (Sub–No. 6X); STB Docket No. AB–55 (Sub–No. 604X)]

New York Central Lines, LLC—Abandonment Exemption—in Shelby County, OH; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Shelby County, OH

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuonces of Service* for NYC to abandon and CSXT to discontinue service over approximately .90 miles of railroad between milepost QIO 163.98 and milepost QIO 163.08 in Sidney, Shelby County, OH.[1] The line traverses United States Postal Service Zip Code 45365.

[1] Pursuant to Board authorization in 1998, CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 24, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 4, 2002. Petitions to reopen or requests for public use conditions under 49 CFR. 1152.28 must be filed by April 15, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NYC and CSXT have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 29, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 25, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: March 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6869 Filed 3–22–02; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1,100, effective April 8, 2002.

Corrections

Federal Register
Vol. 67, No. 57
Monday, March 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

RIN 3038–AB88

Reporting Levels for Large Trader Reports; Security Futures Products

Correction

In rule document 02–6288 beginning on page 11569 in the issue of Friday, March 15, 2002, make the following corrections:

1. On page 11569, in the first column, under the heading **SUMMARY:**, in the fourth line, "features" should read, "futures".

§ 15.03 [Corrected]

2. On page 11571, in § 15.03, in the table, under the column "Number of contracts", in the second line from the bottom, "100" should read, "200".

[FR Doc. C2–6288 Filed 3–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

MTMC Pam 55–4, "How to do Business in the DoD Personal Property Program." Defense Transportation Regulation Part IV, Tender of Service

Correction

In notice document 02–6582 beginning on page 12540 in the issue of Tuesday, March 19, 2002, make the following correction:

On page 12541, in the second column, in the second paragraph, in the seventh line, the word "exam" is changed to read "final".

[FR Doc. C2–6582 Filed 3–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket Nos. RM02–4–000]

Notice of Extension of Time

Correction

Proposed rule document 02–5972 was inadvertently published in the Rules and Regulations section in the issue of Wednesday, March 13, 2002, appearing on page 11229. It should have appeared in the Proposed Rules section.

[FR Doc. C2–5972 Filed 3–22–02; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

Correction

In notice document 02–6313 beginning on page 11692 in the issue of Friday, March 15, 2002, make the following correction:

On page 11692, in the third column, in the second line under the heading "**DATES**", "March 14, 2002" should read, "May 14, 2002".

[FR Doc. C2–6313 Filed 3–22–02; 8:45 am]
BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

Correction

In notice document 02–6428 beginning on page 11722 in the issue of March 15, 2002, make the following correction:

On page 11722, in the third column, under the heading Variable-Rate Premiums in the first paragraph, in the tenth line, the phrase "(currently 85 percent)" is removed.

[FR Doc. C2–6428 Filed 3–22–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA– 2002–11675 (HM–145M)]

RIN 2137–AD65

Hazardous Materials: Revisions to the List of Hazardous Substances and Reportable Quantities

Correction

In rule document 02–5089 on page 9926 in the issue of Tuesday, March 5, 2002, make the following correction:

On page 9927, in the third column, Table 1 to Appendix A is corrected to read as set forth below:

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
[REMOVE].	
. . . . .	
2,4,6–Tribromophenol	100
K140	100
K156	1
K157	1
K158	1
K169	10
K170	1
K171	1
K172	1
. . . . .	
[REVISE].	
. . . . .	
Chloromethyl methyl ether	10 (4.54)
. . . . .	
Dichloromethyl ether	10 (4.54)
. . . . .	
Methane, chloromethoxy-	10 (4.54)
. . . . .	
Methane, oxybis(chloro-	10 (4.54)
. . . . .	
[ADD].	
. . . . .	
K156	1 (0.454)
K157	1 (0.454)
K158	1 (0.454)

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
K169	10 (4.54)

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
K170	1 (0.454)

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
K171	1 (0.454)
K172	1 (0.454)
K174	1 (0.454)
K175	1 (0.454)
K176	1 (0.454)
K177	5000 (2270)
K178	1 (0.454)

[FR Doc. C2–5089 Filed 3–22–02; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Monday,
March 25, 2002

Part II

Environmental Protection Agency

40 CFR Parts 260 and 261
Regulation of Hazardous Oil-Bearing Secondary Materials From the Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System To Produce Synthesis Gas; Proposed Rule

VOL 67 ISS 57 MR 25 2002 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL–7162–8]

RIN 2050–AE78

Regulation of Hazardous Oil-Bearing Secondary Materials From the Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System To Produce Synthesis Gas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revisions to the RCRA hazardous waste program to allow a conditional exclusion from the definition of solid waste. This exclusion would be for hazardous oil-bearing secondary materials generated by the petroleum refinery industry when these materials are processed in a gasification system to produce synthesis gas fuel and other non-fuel chemical by-products. We are proposing this exclusion to put the gasification of these hazardous oil-bearing secondary materials on the same regulatory footing (i.e., excluded) as other hazardous secondary materials returned to a petroleum refining process. If adopted, this proposal will establish a more consistent regulatory framework for this practice, potentially enhancing the use of this technology, as well as establishing conditions on the practice to assure the legitimacy of this fuel manufacturing activity.

We are also soliciting comment on a proposal that would extend the conditional exclusion to other hazardous secondary materials generated by industries (other than the petroleum refining industry).

DATES: EPA will accept public comment on this proposed rule until June 24, 2002. Comments postmarked after the close of the comment period will be stamped "late" and may or may not be considered by the Agency.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket Number F–2002–RPRP–FFFFF to: (1) If using regular U. S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA–HQ), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, or (2) If using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The official record (i.e., public docket) for this proposed rulemaking is F–2001–RPRP–FFFFF. In addition to this official record, two additional dockets have material supporting this proposal. They are: F–98–PR2A–FFFFF and F–98–RCSF–FFFFF.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. The RCRA Hotline is open Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this proposed rulemaking, contact Elaine Eby at 703–308–8449 or *eby.elaine@epa.gov*, or write her at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

You may submit comments electronically through the Internet to: rcra-docket@epa.gov. You should identify comments in electronic format with the docket number F–2002–RPRP—FFFFF. All electronic comments must be submitted as an ASCII (text) file avoiding the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002.

Availability of the Proposal on the Internet

Please follow these instructions to access the proposal: From the World Wide Web (WWW) type *http://www.epa.gov/epaoswer/hazwaste/gas.htm*.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposed rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

How Can I Influence EPA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on the items we have specifically identified throughout the proposal. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this document.
- Be sure to include the name, date, and docket number with your comments.

The Agency will consider the public comments during development of the final rule related to this action. The Agency urges commenters submitting data in support of their views to include evidence that appropriate quality assurance/quality control (QA/QC) procedures were followed in generating the data. Data the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for the final rule.

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I. Statutory Authority

These regulations are proposed under the authority of sections 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923 and 6924.

II. Summary of Today's Proposal

The Environmental Protection Agency (EPA or the Agency) is today proposing a conditional exclusion from the definition of solid waste. This exclusion will apply to hazardous oil-bearing secondary materials (i.e., sludges, byproducts, or spent materials) generated by the petroleum refining industry (Standard Industrial Classification (SIC) 2911) when processed, either on-site or off-site, in a gasification system to produce synthesis gas fuel and other non-fuel chemical by-products. We are proposing that the exclusion be subject to a set of conditions that specify the following: (1) The system meets the definition of a gasification system; (2) the system generates a synthesis gas fuel that meets the specifications of exempted synthesis gas; (3) the materials generated by the gasification system must not be placed on the land if they exceed the nonwastewater Universal Treatment Standards (UTS) for chromium, lead, nickel, vanadium, arsenic, and antimony (found at 40 CFR 268.48); and (4) the excluded materials must not be placed on the land or speculatively accumulated prior to insertion into the gasification system.

We are also soliciting comment on a proposed option to broaden today's conditional exclusion to other generated hazardous secondary materials.

III. Why Are We Proposing This Exclusion?

We are proposing this exclusion to put gasification of hazardous oil-bearing secondary materials (i.e., sludges, byproducts, or spent materials) on the same regulatory footing, i.e., excluded—as other secondary materials returned to a petroleum refining process. We believe that such operations are better viewed as an aspect of petroleum production rather than as hazardous waste management. (See 63 FR 42110, August 6, 1998) At the present time, gasification systems processing these materials are exempt from RCRA permitting, as recycling units. While the operation itself (i.e., gasification) is exempt, there are numerous RCRA requirements that still apply to the overall operation (e.g., storage and handling). The Agency believes that gasification systems processing hazardous oil-bearing secondary materials from petroleum refineries operate as fuel manufacturing devices whether the operation takes place at a petroleum refinery or elsewhere. As such, we believe that these additional requirements present an unnecessary impediment to a fuel manufacturing activity.[1] We are therefore proposing to revise the current regulations that apply to this activity to better reflect our current way of thinking.

Today's proposal supplements the current exclusions applicable to the petroleum refining industry (found at 40 CFR 261.4(a)(12)). In fact, we are proposing this exclusion for many of the same reasons that we excluded hazardous oil-bearing secondary materials recycled through coking and quench coking processes in the petroleum refining industry. See August 6, 1998, Petroleum Listing Final Rule (see 63 FR 42110).[2] In that rule, we

[1] In a May 25, 1995 letter from Michael Shapiro, Director of the Office of Solid Waste to William Spratlin, Director, EPA Region VII Air, RCRA, and Toxics Division, we explained that our regulations classify gasification devices operating at petroleum refineries to convert waste materials into fuels as recycling devices exempt from RCRA permitting. OSWER Directive 9441.1995(18).

[2] On July 15, 1998, we published in the **Federal Register** (see 63 FR 38139) a Notice Of Data Availability (NODA). In the NODA, we requested comment on extending a then-proposed and now final solid waste exclusion applying to certain recycling activities performed at petroleum refineries (See 63 FR 42110, August 6, 1998). The Agency requested comment as to whether the exclusion should also apply to the recycling of hazardous oil-bearing secondary materials in a gasification system operating at a petroleum refinery. As a result of the comments received on the NODA, the Agency proceeded with investigating whether gasification of oil-bearing hazardous secondary materials from the petroleum industry is better regulated as a recycling waste-management activity or whether it should be excluded as a fuel manufacturing activity. The gasification industry has argued that the current regulatory process does not make sense because secondary materials from the petroleum refining

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determined that hazardous oil-bearing secondary materials returned to a petroleum refinery fuel production process need not be regarded as RCRA solid wastes, even though a fuel is ultimately produced. See 63 FR at 42127–42128. Instead, the insertion of petroleum refining residuals back into the refining process can be viewed as a production process that involves the recovery of fuel value from crude oil, which is the basic raw material used in petroleum refining.

In the case of gasification, we are proposing this exclusion because we have determined that the situation is analogous. Gasification of hazardous oil-bearing secondary materials from petroleum refineries involves the recovery of organic components from the residuals of crude oil refining to produce a gaseous fuel, which can be viewed as part of a fuel production process. Particular indicia that this is a production process are the high cost of construction a gasification unit and the exacting product specification that apply to the final product. Furthermore, the gasification process appears to provide a better and more efficient means to recover fuels from oil-bearing materials than provided by quench coking, which we already determined to be a valid process in refining operations (see 63 FR 42114).

If adopted, this exclusion will provide a more consistent regulatory framework for petroleum refineries that wish to include gasification as part of their refining configuration. We also believe it will promote the use of a fuel manufacturing process that produces marketable fuels and chemicals from materials that were otherwise destined for waste treatment, disposal, or a less environmentally benign recycling activity.

IV. What Are the Environmental Benefits of This Proposal?

There are numerous environmental benefits associated with today's proposal. First, if promulgated, the exclusion will reduce the total amount of hazardous waste sent for disposal by petroleum refineries. Based on data from the 1997 Biennial Reporting System (BRS) database, petroleum refineries operating in the United States generate approximately 130 million tons of RCRA hazardous waste annually with at least 7–10 million tons managed in RCRA units.[3] Although equal volumes of these same materials would be generated under this proposal, a large fraction of the waste materials generated by petroleum refineries would be processed into synthesis gas and other co-products reducing the amount of waste materials sent for traditional RCRA treatment and disposal.

If adopted, today's proposal also likely provides additional benefits to the environment because of the unique features of gasification, including: (1) Increased efficiency in the production of electricity; (2) reduction in emissions of acid rain causing pollutants; (3) reduction in particulate matter and pollutants implicated in global warming; (4) increased resource conservation; (5) displacement of virgin materials used in the chemical manufacturing industry by chemicals produced from gasification; and (6) reduction in energy usage and pollution from reductions in the acquisition, transportation, and preparation of virgin materials used in electricity production, petroleum refining and chemical manufacturing industries.

V. Background and Overview

A. How Have Gasification Devices Been Used in the Past?

Gasification devices have a long history of use in the United States for the production of fuels. The use of gasification processes to produce useable quantities of fuel began in the mid 1800's when manufactured gas plants converted coal into hydrogen gas and methane to power city street lamps. Following the widespread use of electricity to power city lights, the operation of manufactured gas plants largely ended. Use of gasification systems to produce fuel from coal or other organic sources increased briefly during the years surrounding and during World War II as the international community experienced a shortage of fuels derived from oil. Following the end of World War II, the use of gasification declined rapidly as more effective techniques to produce fuels from crude oil were developed and crude oil was once again plentiful. In the 1970's, gasification technologies were resurrected to deal with fuel shortages. During this time, the United States Department of Energy (DOE) financed research in gasification technologies that resulted in commercial ventures designed to use the technology to produce higher value fuels from low value coal. Over the last 10 to 15 years, private industry and the DOE have continued their investigation of gasification as a clean coal energy alternative, and have developed better methods to extract fuel value from organic containing materials, as well as developing more efficient turbines to utilize the clean burning fuel.

In recent years, the oil refining and chemical manufacturing industries have configured gasification systems to produce base chemical products and fuels. Presently, gasification systems operate around the world in a number of different configurations. In the United States, gasification systems have been designed to gasify coal, municipal solid waste, tires, petroleum coke, biomass, and oil-bearing hazardous secondary materials into synthesis gas for the production of electricity or use as a feedstock to produce more complex chemical products. Data on the use of gasification to process hazardous waste is limited. Information that does exist, has largely been confined to configurations where the systems produce specialty chemical intermediates from virgin materials, or where the devices produce a fuel from historically waste-like materials that can be burned for energy recovery (e.g., gasification of petroleum refinery secondary materials).

There are two reasons gasification has been used relatively infrequently to process hazardous wastes. First, gasification systems are expensive and generally cost more to construct and operate than conventional process devices utilized by fuel and chemical manufacturers. Second, current regulations (albeit relatively minimal for the gasification of hazardous oil-bearing secondary materials from the petroleum industry) limit operators processing these materials from using them in the most cost effective manner. However, because of increased emphasis on the use of more efficient systems, there is renewed interest in using gasification as a possible method to reduce the volume

industry should not be defined as solid wastes if they are to be processed in a gasification system. Nor is the operation of the gasification system, pursuant to the exemption for recycling processes in 40 CFR 261.6(c)(1), altogether satisfactory to the industry. This is because the resulting synthesis gas fuel remains classified as a hazardous waste fuel (see 40 CFR 261.2(c)(2) (fuels produced from secondary materials are normally themselves wastes) and 40 CFR 261.3(c)(2)(so-called derived from rule, which, as relevant here, states that fuels derived from listed wastes remain hazardous waste-derived fuels)), unless it meets the specification for hazardous constituents set out in 40 CFR 261.38 of the rules. The gasification industry maintains that this regulatory framework discourages the use of gasification as a means to recycle hazardous oil-bearing secondary materials from the petroleum refining industry. Representatives of the petroleum refining industry have suggested that an exclusion from the definition of solid waste for secondary materials processed in a gasification system is a more appropriate classification under RCRA, and would greatly enhance the use of this technology in the industry. Proponents of gasification technologies likewise maintain that petroleum refineries would be more likely to recycle their solid waste if the regulatory status of the devices and the gasification system were clearly identified to be a part of the fuel manufacturing process.

[3] See Regulatory Impacts of Proposed Exclusions of Petroleum Refinery Wastes.

of wastes disposed, and thereby reduce the associated treatment costs of those wastes, while producing valuable commodities from the process.

B. How Do Gasification Systems Operate?

In general, gasification systems are designed to react carbon containing materials and steam at high temperatures under partial oxidation conditions to produce a synthesis gas fuel composed mainly of carbon monoxide and hydrogen. However, all gasification systems do not operate in exactly the same manner. Gasification systems can be designed to operate at high or low pressures, reducing conditions, using dry or wet feed systems, but they are all operated in a manner that limits the complete oxidation of hydrogen and carbon monoxide to water and carbon dioxide. Some gasification systems derive a portion of the energy—in the form of heat—from the partial oxidation of the materials being fed to the system. When the feed materials are partially oxidized, heat is given off. The heat helps sustain the process by promoting the disassociation of other molecular species in the reactor freeing the molecular species for limited oxidation. In gasification systems, this process promotes the formation of hydrogen and carbon monoxide species which are the base compounds in synthesis gas fuel. Using organic materials as both fuel and raw material for the gasification process is one of the reasons the system operates with increased efficiency when compared to traditional power plants that use coal or petroleum coke as their fuel.

Gasification systems generally include two basic components. The first is the high temperature reactor or gasifier and the second is a gas cleanup or polishing system used to remove various contaminants from the raw (un-polished) synthesis gas fuel. The two systems work in conjunction to produce a high purity synthesis gas that can be used directly as a fuel for power production, or used to produce chemicals or fuels in other manufacturing processes. Operators of gasification systems monitor and control the operation to ensure that it is producing a high quality synthesis gas. They monitor and limit parameters such as the BTU value, sulfur content, chloride content, and ash content of the materials fed to the reactor (gasifier). They also continuously monitor and regulate the amount of oxygen fed to the reactor, the temperature of the reactor, and the composition of the raw synthesis gas produced by the reactor. In the synthesis gas cleanup stage, operators monitor and regulate various other parameters that maintain the removal efficiency of the cleanup system. The result of these parameter specifications and attendant monitoring is production of a synthesis gas that meets the desired specifications.

Gasification systems, similar to many of the more traditional fuel production units found at petroleum refineries, are expensive, highly engineered systems that must be carefully operated to produce marketable fuels and co-products in a cost-effective manner. Both traditional petroleum refining processes (e.g., distillation, catalytic cracking, fractionation, thermal cracking, etc.) and gasification systems operate under conditions in which the feed, temperature, and pressure are closely controlled to optimize the production of marketable fuels or fuel components. Owners/Operators of both gasification systems and traditional refinery process units must analyze and characterize the feed materials, in addition to controlling the operation of the unit. Operational control of the gasification system is necessary to optimize the conversion processes occurring in the reaction chamber and to regulate the performance of the gas polishing systems.

C. How Do Gasification Systems Remove Contaminants From Raw Synthesis Gas?

In a gasification system, the gas cleanup or polishing component will be configured and monitored to operate with varying degrees of performance. The operation of the gas cleanup component is determined by the composition of the raw synthesis gas and the product specifications for the fuel and chemicals generated. Generally, the systems operate with sufficient effectiveness to produce a synthesis gas that contains low contaminant levels of sulfur, nitrogen, ash, and metals. The systems used to remove contaminants are generally the same types of systems used in other industrial settings to produce commercial grade chemical compounds or to remove unwanted contaminants from gaseous effluent streams. These systems have a history of use in industrial settings with the parameters that control their operation being well understood.

As we explained earlier, the synthesis gas product from gasification is not released directly to the atmosphere. Gasification systems are generally designed to be closed to the environment. In gasification systems, the raw synthesis gas exits the reactor at a temperature between 1800 and 3000 degrees Fahrenheit (depending on the design and operating characteristics of the device). Generally, after exiting the reactor, heat value from the gas is extracted in systems designed to produce steam and electricity. The raw synthesis gas is then typically processed in a series of systems designed to remove entrained particulate matter, acid gases (such as hydrochloric acid), and other inorganic compounds. The gas cleanup systems typically include filters or scrubbers for the removal of entrained particles and absorbers for the removal/recovery of sulfur and chlorine. The solids recovered in the filters or scrubbers are frequently put back into the gasification system. The polishing systems that remove the unwanted contaminants from the raw synthesis gas also concentrate these materials to form chemical by-products. The reduced sulfur species are recovered as elemental sulfur, or in some cases, converted to a sulfuric acid by-product. The typical sulfur removal and recovery process used to clean the raw synthesis gas (to yield a high purity fuel) are the same commercially available methods used in other industrial applications such as oil refining and natural gas recovery. Sulfur recoveries of 95% to 99% can typically be achieved using these systems. These systems do include process vents, but the synthesis gas is not released through these vents. After the gas is polished, it is sent for turbine combustion to produce electricity and steam or to produce other chemical products.

Metal species found in the materials fed to the gasification system are controlled both in the reactor phase, and in the cleanup systems used by the device. The low volatility metals are captured in the slag emitted from the reactor, with the higher volatility metals being captured in the cleanup systems, or in the particulate removal systems and acid gas scrubbers. These captured metals can be put back into the reactor or be removed from the system and disposed. Control of metal compounds in gasification systems is discussed more in a later section of today's proposal.

Ultimately, the extent to which contaminant removal systems polish the raw synthesis gas is governed by the fuel specifications for the systems that use the synthesis gas and/or the environmental regulations that apply to those systems. For example, use of synthesis gas in combustion gas turbines can require fairly low levels of alkalis and total entrained particles, thus the gas cleanup system would be tailored for this type of contaminant removal. The turbine system may also have fairly low sulfur oxide(s) emissions standards

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applicable to the turbine stack, so the synthesis gas will also have to be cleaned to a level to meet the emission standard. Therefore, the ability of gasification systems to extract useful chemical by-products from hazardous oil-bearing secondary materials is based on the extent the gas must be polished before it is released for its intended commercial application.

D. What Air Emissions Result From Gasification Systems?

As we stated earlier, there are generally no direct emissions to the atmosphere from a gasification system.[4 5] Emissions to the atmosphere from gasification activities are nearly always the result of using the synthesis gas as a fuel for the production of power or heat generation. As a fuel, the synthesis gas can be burned in simple cycle gas turbines or in steam boilers. However, synthesis gas is typically used in more advanced systems that are designed as combined cycle gas turbine/steam boilers. Combined cycle turbine configurations exploit physical characteristics unique to synthesis gas to produce electricity with greater efficiency than other power generating designs. Alternatively, the synthesis gas can also be used as a feedstock for chemical manufacturing processes including the production of ammonia, methanol, acetic acid, and hydrogen.

Metal and chlorine emissions from the combustion of synthesis gas depend on the composition of the synthesis gas, which is dependent on the effectiveness of the synthesis gas cleanup system. Chlorine control using wet scrubbers to remove HCl has been used successfully for many years and can routinely achieve a removal effectiveness of 99%.[6] Semi-volatile metals are expected to be contained primarily in the filter/scrubber ash. Lower volatility metals are primarily bound in the slag. Mercury, which is not found in significant quantities in petroleum refinery waste, is highly volatile and is expected to be controlled only to a small degree in a gasifier's wet scrubbers. If mercury was present in the hazardous oil-bearing secondary materials generated by the petroleum refining industry and those materials were processed by a gasification system, the mercury would likely be emitted out the stack of the device (i.e., turbine) firing the synthesis gas produced by the gasification system.[7] Potential mercury emissions are not a concern for this proposed conditional exclusion because hazardous oil-bearing secondary materials generated by petroleum refineries are not expected to contain significant quantities of mercury. See Docket Number F–98–PR2A–FFFFF, Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes.[8]

E. What Solid Wastes are Generated by Gasification Systems?

Gasification systems also generate solid waste residuals which are largely dependent on the design, configuration, and operation of the gasification system. They can include a slag material composed primarily of ash and low and semi volatile metals bound in a glass-like substrate that is released from the reactor component of the gasifier, sour liquors from the cleanup systems that are used to scrub contaminants from the product synthesis, and particulate matter captured in particulate control systems used by the gasification system to remove fine particulate matter from the synthesis gas.[9] The gasification designs we have reviewed either put the liquid streams and particulate matter back into the reactor, remove the contaminants from the scrubbing streams to produce valuable chemical by-products, treat the effluents in devices designed to destroy or reduce the toxicity of the effluents, or send the effluents for disposal.

Analysis conducted as part of research efforts utilizing gasification technologies has shown that composition of the residues in a given gasification system are largely dependent on the composition of the secondary materials fed to the system. Data submitted by Texaco show that the composition of the vitrified slag that is generated by the gasification reactor is mostly inert material that does not exhibit a characteristic of hazardous waste.[10] At this time, we lack the data necessary to determine whether the characteristics of the residues from gasification are due to the dilution effect of the other materials being processed along with petroleum hazardous secondary materials in the device, or is the result of a unique operational or design trait associated with gasification systems.[11] The Agency specifically solicits comment on this issue.

Under today's proposal, we would classify solid waste residues generated during the gasification of excluded material as newly generated, and determine whether they are hazardous based on whether they exhibit a characteristic when they are generated. Should a residue exhibit a characteristic, it would have to be managed in compliance with hazardous waste regulations. (As noted earlier, to assure process legitimacy, we are also proposing that the residues comply with the UTS for chromium, lead, nickel, vanadium, arsenic, and antimony).[12]

[4] Generally, gasification systems are designed and operated to prevent direct releases to the atmosphere when operating to produce synthesis gas; however, some devices incorporate small incinerators that combust effluent discharges from the raw synthesis gas cleanup systems and those devices do release combustion off-gases to the atmosphere. Under today's proposal, devices that utilize incinerators to combust non-gaseous effluents from the gasification process, or raw synthesis gas cleanup systems would be subject to appropriate regulations to control emissions from those sources. For example, if characteristic hazardous waste is removed from the gasification process and sent to an incinerator for destruction, the combustion device is subject to regulation as a hazardous waste incinerator.

[5] Gasification systems are designed with release vents or flares that operate during emergencies or during malfunctioning operations. Flares and release vents are necessary to prevent damage or catastrophic failure of the gasification system in the event of a major malfunction. These types of relief systems are common at facilities that manufacture products using thermal processes. The operation of the flares or release vents is regulated by each facility's Title V Clean Air Act permit.

[6] Removal effectiveness is based on data that was used to support the Hazardous Waste Combustion Phase 1 MACT rule and is based on data from hazardous waste burning incinerators. See Docket Number F–1999–RC2F–FFFFF and the technical support document for: NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. 64 FR 52828, September 30, 1999. Removal effectiveness of systems used by gasification systems were not evaluated for this notice.

[7] *A Comparison of Gasification and Incineration of Hazardous Waste—Final Report*. March 30, 2000. This report was prepared for the U.S. Department of Energy and contrasts incineration and gasification technologies. It also evaluates emissions tests performed on gasification systems processing coal that shows that some mercury is controlled in the gasification process. The report concludes that further tests are necessary to understand the control mechanism and to ensure that the data is not an artifact of poor composite coal sampling.

[8] In a later section of today's proposal, we request comment on options we are considering to revise the synthesis gas specification (found at 40 CFR 261.38(b)) to reduce the allowable concentrations of RCRA metals that can exist in waste-derived synthesis gas excluded from the definition of solid waste. This is because we have determined that the specification does not represent the concentration of metals that realistically exists in synthesis gas derived from hazardous waste.

[9] Data submitted by Texaco in response to the July 1998 NODA suggests that the slag produced by their gasification systems is an inert material that does not leach metals because the glass-like matrix of the material effectively stabilizes the metals. See Docket Number F–98–PR2A–FFFFF.

[10] See: "Analysis of Residues From Texaco Gasification Process" which is found in the docket supporting this proposed rule.

[11] Certain gasification systems function because they are designed to take advantage of the heat given off in the limited oxidation reactions, and thus require the introduction of inorganic material to provide thermal inertia for the system. This design characteristic could contribute to the inert quality of the residue material.

[12] EPA's first study of wastes from coal gasification are set forth in the *1990 Report to Congress on Special Wastes from Mineral Processing*. (See specifically Chapter 5.) In that report, EPA determined that ash from coal gasification was Bevill exempt as a result of the Bevill rul that was promulgated on June 13, 1991 (54 FR 27307). All other solid wastes generated at gasification plants, other than coal gasification ash, are subject to RCRA as newly generated wastes, and to subtitle C if they exhibit a characteristic of hazardous waste. Coal gasification ash retains its Bevill exempt status as long as the gasification facility uses feedstock that is comprised of greater than 50 percent virgin feedstock (i.e. coal). See 54 FR at 36619, September 1, 1989.

F. Gasification Systems Processing Hazardous Oil-Bearing Secondary Materials From Petroleum Refineries

The gasification of hazardous oil-bearing secondary materials from the petroleum industry is taking place only under very narrow, specialized exemptions. At the present time, we are aware of four gasification operations in the United States that engage in this activity. Three of the gasification systems are operated on-site at petroleum refineries.[13] The fourth is an off-site gasification system owned and operated by the Dakota Gasification Company.[14]

VI. How Do Gasification Systems Differ From Hazardous Waste Treatment Units?

In most cases, gasification systems resemble fuel manufacturing devices more than they resemble RCRA treatment devices. Information submitted to us in response to the July 1998 NODA suggests that the design, operation, and operational characteristics of certain gasification systems are significantly different from those of conventional RCRA treatment devices. This is because gasification systems are not designed and operated to treat waste. Gasification systems manufacture synthesis gas fuel by re-forming the organic compounds that exist in oil-bearing hazardous secondary materials through unique conversion processes that involve thermal disassociation and partial oxidation. The synthesized fuel is primarily composed of hydrogen and carbon monoxide. Gasification systems can also be configured to produce other gaseous or solid compounds for purposes other than as a fuel.

The reformation or conversion processes occurring within gasification systems are continuously monitored and controlled to enhance conversion efficiency. As such, they require feedstock materials to adhere to certain specifications prior to introduction into the system. Feedstock materials must be analyzed to determine BTU value, sulfur concentrations, chlorine concentration, and ash content. The analytical information on the feed material is needed in order to control the processes that convert the organic components of the feedstock material into valuable products (including synthesis gas fuel).

Gasification processes likewise limit and control oxygen levels to ensure the process reactions convert organic material to the synthesis gas product, and to prevent the complete (or unwanted) oxidation of the gaseous compounds that constitute synthesis gas. In contrast to gasification systems, thermal waste treatment devices (such as incinerators and certain industrial furnaces) process materials through "complete oxidation processes" to reduce the volume and toxicity of the waste materials. When referring to "complete oxidation processes" that occur in thermal treatment devices, what we mean is that the oxidation of specific compounds in the waste material is not controlled to any extent other than that what is needed to fully oxidize and destroy the waste materials.

Gasification systems also differ significantly from thermal waste treatment devices in terms of releases to the environment. As explained more fully below, gasification systems are not designed to and ordinarily do not release gases directly to the environment. Gasification systems are generally designed to be closed to the environment. The gases evolved in the partial oxidation or reactor phase are processed in polishing systems following the reactor that strip the gas of sulfur, chlorine, and particulate matter. These polishing systems recover some of these materials to form additional products such as elemental sulfur, sulfuric acid, or hydrochloric acid. [15]

Following the polishing processes, the synthesis gas can be used in a number of ways: (1) Immediately as a fuel in a combustion turbine; (2) as a chemical intermediate in a chemical manufacturing process; or (3) stored for product use later. In contrast, thermal treatment devices (e.g., incinerators and industrial furnaces) are designed to release combustion off-gases to the environment as a consequence of normal operation.[16] The resultant gases, which are primarily carbon dioxide and water, are rarely used in a manner similar to that of the gasification system.[17]

Gasification systems differ significantly from hazardous waste treatment units. As such, we are today proposing that full RCRA oversight may not be warranted for the gasification of hazardous oil-bearing secondary materials from the petroleum refining industry, as long as we place conditions on the activity so that it can be distinguished from hazardous waste treatment activities.

VII. Detailed Discussion of Today's Proposal

Today, we are proposing to conditionally exclude hazardous oil-bearing secondary materials generated by the petroleum refining industry (SIC 2911) from the definition of solid waste when the materials are destined to be processed in a gasification system to produce synthesis gas fuel and other non-fuel chemical by-products.[18] To

[13] See letter from Mr. James Childress, Executive Director, Gasification Technologies Council to Ms. Elaine Eby, USEPA. Re: Operational Gasification Systems Processing Hazardous Oil-Bearing Secondary Materials. January 2002.

[14] The Dakota Gasification Facility, located in Belluah, North Dakota, is a commercial operation that was constructed and designed with the assistance of the DOE to promote the use of gasification of coal for the production of fuels. This facility is currently processing hazardous oil-bearing secondary material from a BP Amoco refinery located in North Dakota under a RCRA treatment study approved by the State.

[15] The markets for these non-fuel by-products were not evaluated for this proposal, but many of the by-products do have marketable value. Non-gaseous by-products that are used in a production process to produce other products are not regulated by this proposal and are generally excluded from regulation under 40 CFR 261.2(e)(1)(i). In some systems the stripped contaminants are fed back to the gasification reactor.

[16] However, we note that certain types of industrial furnaces are designed to treat hazardous waste and extract sulfur compounds or halogen acids from the effluent gas stream prior to release to the atmosphere. These systems are generally operated to release the gases directly to the atmosphere after the desired compounds are extracted from the combustion off-gas.

[17] In addition to the operational differences between gasification systems and thermal waste treatment systems, it would appear that gasification systems currently in operation are being used in the chemical and petroleum refining industries to convert non-waste feedstocks into synthesis gas fuel or chemical intermediates required for specialty chemical manufacturing. These systems are relatively expensive to construct and operate and require a fairly large and consistent supply of carbon-based feedstock (e.g., coal, natural gas, petroleum coke, etc.) to produce synthesis gas that has economic value. The units, at least as presently operated, are integral components of these manufacturing operations. The fact that these devices can be operated in a manner to process materials historically classified as hazardous waste does not discount the fact that they are designed and operated to produce a product that is valuable as a fuel or chemical and that this appears to be their primary function.

[18] The proposed exclusion applies only to hazardous oil-bearing secondary materials from SIC classification 2911. While the Agency understands that some petroleum refineries may be integrated with other industrial processes exhibiting other SIC classifications, this exclusion is only for secondary materials generated by the production processes under the 2911 classification. However, the Agency solicits comment on whether the exclusion should be expanded to other hazardous secondary

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ensure that each gasification system processing materials excluded under today's proposal is engaged in a manufacturing activity, we are proposing that the exclusion be subject to a set of conditions. The conditions specify that: (1) The system processing the hazardous oil-bearing secondary material meets the proposed definition of a gasification system; (2) the synthesis gas product from the gasification system meets the fuel specifications promulgated in the "synthesis gas rule,"[19] which is a regulatory benchmark for classifying synthesis gas produced from hazardous waste as a fuel rather than as hazardous waste (see 40 CFR 261.38(b)); (3) the materials (both co-products and solid waste residuals) generated by the gasification system that are placed on the land do not exceed the nonwastewater Universal Treatment Standards (UTS) for 6 metals present in listed wastes generated by the petroleum refining industry; and (4) the excluded hazardous oil-bearing secondary materials are not speculatively accumulated nor placed on the land prior to insertion into the gasification system. Provided these conditions are met, the hazardous oil-bearing secondary materials from petroleum refineries would not be solid wastes. Similarly, the fuels or chemical by-products manufactured from these excluded materials would also be excluded.

The exclusion would apply to materials processed in a gasification system operating either on site or off-site of a petroleum refinery. While this does differ from existing exclusions in that it would apply whether or not the gasification system is located at the site of the petroleum refinery, we believe it is appropriate to extend the on-site exclusion to off-site fuel manufacturing processes because gasification systems operate in exactly the same manner whether they are used to process materials into fuels on-site or off-site of a petroleum refinery (i.e., gasification systems operate as fuel manufacturing devices at any location they are operating).[20]

A. What Are the Conditions of the Exclusion?

Today's proposed exclusion includes four conditions to ensure that each gasification system processing the excluded material is engaged in a legitimate manufacturing activity that converts the valuable components of the hazardous oil-bearing secondary materials into fuels, and into non-fuel chemical by-products, that do not contain high levels of non-contributing toxic components. Today's notice proposes to exclude hazardous oil-bearing secondary materials generated by the petroleum refining industry from the definition of solid waste if the materials are processed in a gasification system and used in a manner consistent with the conditions of the exclusion. The consequence of this exclusion would be that hazardous oil-bearing secondary materials are excluded from the definition of solid waste, at the point of generation, provided: (1) The system meets the definition of a gasification system; (2) the system generates a synthesis gas fuel that meets the specifications of exempted synthesis gas; (3) the materials generated by the gasification system are not placed on the land if they exceed the nonwastewater UTS for chromium, lead, nickel, vanadium, arsenic, and antimony (found at 40 CFR 268.48); and (4) the excluded materials are not placed on the land or speculatively accumulated prior to insertion into the gasification system.

1. Definition of a Gasification System

During our review of the operation and performance of available gasification technologies, we determined that it is necessary to define the types of devices that can process (i.e., gasify) hazardous oil-bearing secondary materials into a synthesis gas that we believe is a legitimate fuel. This is because there are a large number of devices operating in the United States that could claim to be a type of gasification system, but do not gasify materials in the same manner, or to the same extent, as the gasification systems we considered for this proposal. These other devices may be waste treatment devices, or recycling devices that process solid waste. Therefore, this first condition defines the types of systems that may process excluded hazardous oil-bearing secondary material under this exclusion in order to distinguish the gasification process from waste treatment, including incineration.

As explained earlier, most combustion devices (e.g., incinerators) convert organic material into hydrogen and carbon monoxide gases at some point during ideal combustion processes (i.e., complete oxidation of organic material to water and carbon dioxide). Gasification systems preferentially convert the organic material into a synthesis gas primarily composed of carbon monoxide and hydrogen by limiting the oxidation reactions. Gasification systems generally accomplish this by regulating the organic material and oxygen being fed to the reactor based on feedback from continuous monitoring of temperature, pressure, and products of oxidation. These continuously monitored parameters control the extent that organic material is oxidized, and concentrates the metals found in the feed into a slag emitted from the reactor as a solid waste. Therefore, to limit the exclusion to gasification systems that operate as fuel manufacturing devices, as well as to distinguish gasification systems from treatment devices such as incinerators, cement kilns, and thermal desorbers, we are proposing and solicit comment on the following definition of a gasification system.

Gasification system means an enclosed thermal device and associated gas cleaning system or systems that does not meet the definition of an incinerator or industrial furnace (found at §§ 260.10), and that: (1) Limits oxygen concentrations in the enclosed thermal device to prevent the full oxidization of thermally disassociated gaseous compounds; (2) utilizes a gas cleanup system or systems designed to remove contaminants from the partially oxidized gas that do not contribute to its fuel value; (3) slags inorganic feed materials at temperatures above 2000;° F; (4) produces a synthesis gas; and (5) is equipped with monitoring devices that ensure the quality of the synthesis gas produced by the gasification system.

Under this first condition, you would be required to ensure that your gasification system meets the definition above, in order for the hazardous oil-bearing secondary materials from the petroleum industry to be eligible for the exclusion. The purpose of this condition

materials from other industrial operations (with other SIC classifications) when these operations are integrated with industrial processes under the primary SIC classification of 2911.

[19] For purposes of this preamble discussion, we are using the term, "Synthesis Gas Rule" to refer to the rulemaking that provided for the "Syngas Fuel Exclusion" (40 CFR 261.(b)). The entire rule can be found in 63 FR 33782, June 19,1998. Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1: RCRA Comparable Fuel Exclusion; Permit Modification for Hazardous Waste Combustion Units; Notification of Intent to Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions.

[20] Gasification systems operating off-site of petroleum refineries may continue to process the materials they currently gasify in addition to the materials we are proposing to exclude without affecting the regulatory status of their device with respect to RCRA regulation. However, if gasification systems are processing hazardous wastes (i.e., hazardous materials identified or listed as hazardous wastes, in addition to the petroleum industry secondary materials we are proposing to exclude), then such devices would of course continue to be subject to RCRA jurisdiction under the current proposal.

is to ensure that the exclusion applies only to gasification systems designed, operated, monitored, and controlled in a manner that promotes the removal or conversion of toxic compounds found in the hazardous oil-bearing secondary materials, as well as generating a synthesis gas fuel. The rationale supporting this condition is consistent with the rationale we used in excluding recovered oil from the definition of solid waste. See 63 FR at 42113.

2. Synthesis Gas Fuel Specification

The second condition of this proposed exclusion defines the chemical and physical specifications of a legitimate synthesis gas fuel product. This condition ensures that each gasification system using the exclusion is engaged in a legitimate fuel manufacturing activity. It does this by requiring you to ensure that the synthesis gas produced from the gasification of excluded materials meet the specifications for the exclusion of hazardous waste derived synthesis gas found at 40 CFR 261.38(b). It is appropriate to apply the "Synthesis Gas Rule" specifications to synthesis gas produced from hazardous oil-bearing secondary materials, because we believe that synthesis gas manufactured from this material should not contain hazardous constituents and other non-contributing contaminates at concentrations greater than synthesis gas derived from hazardous waste. We recognize that some gasification systems are designed and operated to produce a synthesis gas that may not meet the constituent levels specified by the Synthesis Gas Rule because the gas is specifically manufactured for use in a specialized chemical manufacturing process. Therefore, the specification would apply only to synthesis gas actually used as a fuel. See the preamble discussion on "Parameters for the Synthesis Gas Fuel Exclusion" found at 63 FR 33791, June 19, 1998.

Under this proposal, hazardous oil-bearing secondary materials would be excluded from the definition of solid waste at the point they are generated, as long as they are processed in a gasification system that meets our proposed definition, and handled in accordance with the other conditions. Since RCRA regulations do not apply to the excluded materials, the synthesis gas product is also not subject to RCRA regulations, as long as the synthesis gas produced by the gasification system meets as a fuel the specification levels of the synthesis gas exclusion.Of course, units burning the synthesis gas fuel are themselves potentially subject to regulation under other statutes, notably the Clean Air Act. Today's proposal would not affect any such regulation.

3. Land Placement of Products, Co-Products, and Solid Waste Residuals

The third condition of the proposed exclusion applies to co-products and residues generated by the gasification system that are recycled by being applied to the land. This condition would require that materials that are applied to the land must meet the nonwastewater Universal Treatment Standards (UTS) (40 CFR 268.48) for the following toxic metals: antimony, arsenic, chromium, lead, nickel, and vanadium. It is believed that these metals will partition with the ash into the slag residue generated by the process. These metals do not contribute to the gaseous fuel or to the gasification process. We suspect that the metal concentration in the residue will be comparable to or substantially less than the concentration of metals in the slag from gasifiers that process petroleum coke or coal exclusively. Data submitted by BP Amoco show that the metals in oil-bearing secondary materials do not substantially increase the total metal concentration normally found in the residue generated by the Dakota gasification facility when it is processing coal exclusively. [21]

This third condition ensures that co-products or residues generated by the gasification process do not contain toxic metals with a potential for leaching greater than allowed by the requirements of the land disposal restrictions. This condition is similar to conditions established for hazardous waste-derived products that are used in a manner constituting disposal (see 40 CFR 266.20), but we chose only to apply the UTS limits for the metals which are known to exist in petroleum refinery waste.[22]

This condition ensures legitimacy by applying the same land disposal provisions to the co-products or residuals that would have existed had the material not been excluded from the definition of solid waste, and so would eliminate an incentive to claim to be performing "gasification" for the real purpose of avoiding treatment of metals in treatment residues that ultimately are placed on the land. The condition similarly would serve to ensure that the gasification of excluded oil-bearing hazardous secondary materials is not just a means of discarding waste components in the materials (which are otherwise listed hazardous wastes) by the eventual unrestricted placement of those components on the land. Finally, the proposed condition is needed to assure that the gasification system is operated for the production purpose claimed. As explained earlier, part of the operating premise of gasification is that it preferentially converts organic matter in secondary materials into fuels (or intermediates) while removing metals from raw synthesis gas and trapping those metals in an inert matrix. The proposed condition provides a means of quantifying this premise.

4. Speculative Accumulation and Storage of Excluded Materials

The fourth condition of the proposed exclusion specifies that excluded hazardous oil-bearing secondary materials may not be placed on the land, or speculatively accumulated prior to insertion into a gasification system. This condition further defines gasification of excluded oil-bearing materials as a manufacturing activity because it requires that the excluded materials are handled as a valuable feed to the gasification system. We know of no gasification system (or for that matter, any refinery) which stores these materials on the land, and to do so would indicate that the materials are being handled as waste, not feedstock (since physical integrity of the ostensibly-valuable feed materials could no longer be assured, and there would be large-scale losses of the oil-bearing secondary materials due to the land placement). Thus, the physical characteristics of hazardous oil-bearing secondary materials from the petroleum industry should preclude storing the material in anything other than tanks or containers. This is because the material is generally comprised of tar-like oily substances that are not amenable for land storage.

The proposed condition prohibiting speculative accumulation of the excluded oil-bearing secondary materials before they are inserted into the gasification system ensures that legitimate quantities of the waste material are being recycled rather than being stored to avoid regulation. We feel that this condition also is necessary to assure that recycling actually occurs, and that materials are not discarded by being stored for extended periods. Furthermore, this condition is consistent with the condition that we

[21] Data submitted by Amoco Refining Inc, which show that petroleum secondary materials make a minor contribution to the total concentration of metals routinely found in ash from the Dakota Gasification facility.

[22] This condition is also similar to a condition we included in the exclusion for other petroleum oil-bearing secondary materials. There, we applied the FO37 listing to non-fuel residuals that are produced when oil-bearing wastes are reinserted into petroleum distillation and refining processes. See 63 FR at 42128.

adopted for excluded oil-bearing residuals returned to refinery processes. See 60 FR 57752.

B. What Are the Proposed Recordkeeping and Reporting Requirements?

There are no specific recordkeeping and reporting requirements associated with this proposal. However, we are seeking comment whether any records and reporting are necessary in addition to the current documentation requirement associated with 40 CFR 261.2(f) for materials that would be excluded from the definition of solid waste under today's notice. 40 CFR 261.2(f) does not contain specific record keeping requirements but it does require the respondent to bear the burden of showing, through appropriate documentation, that the excluded material is being processed in a manner that meets the conditions in the claimed exclusion. We offer this information as a reminder and are not reopening this provision for comment.

In today's notice, we are proposing to exclude hazardous oil-bearing secondary materials generated from the petroleum refinery industry (SIC 2911) that are destined for gasification whether or not the gasification system is located at a refinery. We note that allowing the secondary petroleum streams to go to facilities outside the petroleum refining industry is somewhat different than the structure of 40 CFR 261.4(a)(12)(i), which the Agency has used as a model for today's proposal. 40 CFR 261.4(a)(12)(i) excludes from RCRA jurisdiction, under certain conditions, oil-bearing secondary materials generated by petroleum refineries when the materials are re-inserted into the petroleum refining process (either at the refinery generating the secondary material or at another off-site petroleum refinery, as long as the materials are shipped directly). 40 CFR 261.4(a)(12)(i) does not specify recordkeeping requirements, except 40 CFR 261.2(f) applies to respondents claiming the exclusion.

In today's proposal, however, we believe that excluding materials processed in gasification systems operating independent (or off-site) of petroleum refineries is appropriate because gasification is a process employed by petroleum refineries to upgrade low value organic material into fuels, and the purpose and operation of the system remains the same whether the system is operated at the same location the oil-bearing materials are generated or elsewhere. Since today's proposal would be somewhat more expansive than the exclusion at 40 CFR 261.4(a)(12)(i), we are requesting comment on whether further clarification of recordkeeping and reporting requirements is necessary in addition to the 40 CFR 261.2(f) documentation requirement to ensure that excluded materials are appropriately processed. The purpose of recordkeeping, recording and documentation would be to: (1) Ensure that the excluded materials are indeed fed to a gasification facility; (2) the materials are handled appropriately prior to introduction to the gasification system; (3) the synthesis gas fuel ultimately produced meets the synthesis gas specifications; (4) the inorganic residues produced by the gasification system that are placed on the land do not exceed the nonwastewater UTS for metals found in the input refinery material fed to the gasification system; and (5) the residue does not exhibit a hazardous waste characteristic under subpart C, part 261. One proposed rule, "Requirements for Zinc Fertilizers Made From Recycled Hazardous Secondary Materials" (See 65 FR 70954, November 28, 2000) provides an example of additional recordkeeping and reporting requirements that could be used to verify that the conditions of an exclusion are met.

EPA is interested in obtaining comments on what specific records would be necessary to document whether: (1) The synthesis gas generated from a gasification system, using excluded secondary materials, meets the synthesis gas fuel specification under 40 CFR 261.38(b); (2) the residue generated from the gasification system meets the UTS levels in 40 CFR 268.48 for specific inorganic metals; and (3) the residue generated from the gasification system fails to exhibit a hazardous waste characteristic as defined in part 261, subpart C. We are also interested in receiving comments that explain the different types of information petroleum refinery operators currently keep to demonstrate compliance with other solid waste exclusions (such as 40 CFR 261.(a)(12)(i)) that rely on 40 CFR 261.2(f) to demonstrate compliance with the conditions of the exclusions and whether such information is routinely maintained as a type of industry practice.

C. How Do We Ensure Excluded Material Is Processed in a Gasification System?

As with other exclusions and exemptions from the definition of solid waste, the person claiming the exclusion must be able to produce whatever documentation is necessary to demonstrate that the material is excluded from regulation (see § 261.2(f)). EPA recommends that to make this demonstration, petroleum refineries document the amount of secondary material excluded, and the location that these materials are processed in a gasification system, as well as maintaining documentation to demonstrate compliance with the enumerated conditions of today's proposed exclusion.

D. Are We Concerned About Volatile Metals in the Excluded Material?

We are aware that certain metals, which can be found in low concentrations in petroleum refining secondary materials, can be processed by a gasification system and end up in the product synthesis gas. The metals of most concern, based on their inherent properties, are lead and mercury; however, based on data we received from the petroleum refining industry, we do not believe that synthesis gas manufactured from oil-bearing materials will contain sufficient concentrations of these metals to create an emissions hazard if the fuel is burned for energy recovery. Nevertheless, because there is a potential for volatile metals to partition to the synthesis gas product, we are proposing that the synthesis gas must meet the specifications of 40 CFR 261.38(b) if used as a fuel, which limits the concentration of those metals to levels we deemed appropriate for hazardous waste-derived synthesis gas excluded from RCRA regulation. As explained earlier, the fuel specification serves as a means to ensure that the process produces a fuel product rather than a means to dispose of waste.

E. Are We Concerned About Dioxin Emissions From the Processing of Excluded Material?

In contrast to devices that burn organic compounds, gasification systems are designed to promote the thermal decomposition of organic-containing compounds and limit the formation of compounds with a greater molecular weight than methane. This design characteristic limits the formation of dioxin pre-cursors in the high temperature reactor. Formation in the PM control units is controlled by the lack of dioxin precursors, the lack of particulate matter, and the lack of a favorable temperature profile. Analytical data submitted by Texaco and Dow support the contention that dioxin is not generated during synthesis gas production. The reader is referred to the docket for additional information.

In addition to the theoretical arguments and analytical data supporting the contention that synthesis gas does not contain dioxin, we also limit the amount of dioxin that can exist in synthesis gas fuel directly through the application of the synthesis gas fuel specification found at 40 CFR 261.38(b). The synthesis gas specifications that apply as a condition of the exclusion do not allow significant concentrations of dioxin to be present in the product gas. These factors, as well as analytical results that show low concentrations of dioxin in the produced synthesis gas, lead us to conclude that controls to limit the formation of dioxin in the synthesis gas are unnecessary to propose. Additionally, we recognize that the down stream applications of the synthesis gas will also control the levels of dioxin that may be released to the atmosphere or to other products manufactured from the synthesis gas. Specifically, we believe that any dioxin compounds that exist (at low concentrations) in the synthesis gas will be appropriately controlled under the applicable MACT rules if the synthesis gas is burned to produce electricity in a gas turbine. Therefore, we believe that concerns regarding dioxin formation are adequately addressed in today's proposal and we are not proposing any additional requirements to specifically limit dioxin emissions as a result of downstream uses of the synthesis gas fuel.

VIII. Other Hazardous Secondary Materials That Could Also Be Conditionally Excluded When Processed in a Gasification System

Today's proposed exclusion from the definition of solid waste is based largely on two central themes. First, gasification is a legitimate manufacturing process for processing secondary materials in an efficient and environmentally protective manner and is better viewed as a manufacturing activity rather than waste recycling. Second, hazardous oil bearing secondary materials from the petroleum refining industry (SIC 2911) are especially appropriate for use in such units. With respect to these points, EPA is soliciting comment on expanding the exclusion to allow for other hazardous secondary materials to be conditionally excluded from the definition of solid waste if they are processed in a gasification system.

A. What Are the Environmental Benefits of a Broader Exclusion?

The gasification of hazardous waste can be viewed as an innovative extension of the conventional fuels gasification technology for synthesis gas. The gasification of hazardous secondary materials (i.e., hazardous waste), in this manufacturing application, has the potential to significantly reduce pollution to the environment by allowing for the continued processing of hydrocarbon materials that would otherwise be treated and/or land disposed. [23] The downstream uses of the products generated by the gasification process also have environmental benefit. When the synthesis gas is burned for energy recovery it displaces fossil fuels that would be used for the same energy production. Plus, it displaces the energy used to liberate, transport, and prepare the fossil fuels for use, as well as the pollution that results from removing, transporting and processing the fossil fuels. When synthesis gas is used as a feedstock for the manufacture of chemicals such as acetic acid, acetic anhydride, oxoalcohols, butanol, methanol, ammonia, and hydrogen, it displaces other feedstock that take energy to produce and prepare for manufacturing. Furthermore, when other non-fuel co-products are manufactured in the gasification system, e.g., elemental sulfur, sulfuric acid, chlorine, hydrochloric acid and ammonia, the co-products displace similar products manufactured conventionally. This reduces pollution to the environment associated with the conventional manufacturing processes that do not use secondary materials as a component of the feed.

B. What Is the Regulatory Status of a Gasification System?

Under existing regulations, hazardous secondary materials that are processed in a gasification system to produce synthesis gas and is used or re-used in an industrial process to manufacture legitimate products are not subject to RCRA jurisdiction through the provisions of 40 CFR 261.2(e)(1)(i). This provision excludes materials from the definition of solid waste if the materials are "used or re-used as ingredients in an industrial process to make a product, provided the materials are not being reclaimed." As a result, gasification systems that manufacture synthesis gas, used exclusively in other on-going manufacturing processes, are currently not subject to RCRA jurisdiction because the materials being processed by the system are never solid wastes. Conversely, hazardous secondary materials that are processed in a gasification system to produce synthesis gas that is used as a fuel remain regulated by RCRA in accordance with 40 CFR 261.2(c)(2) and the applicable regulatory provisions in §§ 261.6 and 266.100 et seq. See 63 FR at 33791 (June 19, 1998); see also § 261.2(e)(2)(ii), which says that the exclusion for secondary materials being used or reused does not apply to secondary materials that are burned for energy recovery, used to produce fuels, or contained in fuels. Thus, gasification systems that produce synthesis gas used as a fuel are subject to RCRA jurisdiction because the materials being processed are solid wastes (assuming that the secondary materials being processed are also hazardous wastes).

In the past, we have stated that gasification systems processing hazardous waste materials are exempt from RCRA permitting because they are engaged in recycling (assuming that legitimate recycling is occurring). [24] Designating gasification systems as recycling units exempts them from RCRA permitting, but it does not exclude the material being processed from RCRA regulation. This results in the synthesis gas fuel being designated as a waste-derived fuel and would require that all parties comply with the regulations that apply to the generation, transportation, storage and handling of the hazardous waste materials.

The hazardous waste-derived synthesis gas fuel can be excluded from regulation under the provisions of the synthesis gas exclusion found at 40 CFR 261.38(b). This section provides an exclusion from the definition of solid waste for synthesis gas fuels that meet the composition specifications of the provision. This exclusion applies at the point the fuel is produced. We recognize that this results in a situation where under one use, the product synthesis gas (*i.e.*, as a chemical intermediate), is excluded, but under a different use (i.e., as a fuel) the product synthesis gas is regulated. This is problematic considering the fact that the synthesis gas product remains the same whether it's used as an ingredient in an industrial process or as fuel, and the device itself is unregulated by RCRA in either case. Furthermore, available information suggests that chemical industry gasification systems may not be dedicated to only one use for the synthesis gas, i.e., gasification systems may produce synthesis gas both for the manufacture of chemical products and as a fuel. [25] See the "Comment Response

[23] U.S. Environmental Protection Agency. *Texaco Gasification Process—Innovative Technology Evaluation Report*. July 1995. EPA/540/R–94/514.

[24] See OSWER Directives 9441.1995(18), and 9432.1996(01).

[25] See letter from Mr. Dan Pearson, Executive Director, Texas Natural Resource Conservation Commission to Mr. Randall A. Jones, Director, Regulatory Affairs, Molten Metals Technology, Re: Continued

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Document" in Docket Number F–98–RCSF–FFFFF for additional information on this point.

C. What Are the Conditions of the Broader Exclusion?

In today's notice, we are also requesting comment on a proposed expansion of the conditional exclusion from the definition of solid waste (discussed earlier in today's notice) to additional hazardous secondary materials.[26] Under this alternative proposal, one exclusion, under a set of expanded conditions, could be promulgated for hazardous secondary materials, including those from the petroleum industry, destined for processing in a gasification system to produce synthesis gas fuel and other chemical products. We believe that because of the unique properties of synthesis gas and the operational capabilities of gasification systems, as well as its environmental benefits, it is appropriate to suggest and solicit comment on broadening the exclusion in this way.

To expand the exclusion to address additional hazardous secondary materials, three modifications to the current proposal could be made. First, in the third condition of the proposed exclusion, i.e., land placement of products, co-products, and solid waste residuals, the number of hazardous inorganic constituents required to meet UTS would increase from six to fifteen. The addition of nine hazardous inorganic constituents, captures the entire suite of inorganic constituents regulated by RCRA in 40 CFR 268.48 and further ensures that the co-products or residues generated by the gasification system do not contain any toxic inorganics with a potential for leaching greater than allowed by the requirements of the land disposal restrictions. These additional constituents are all toxic metals, except for cyanide.

As mentioned previously, we have data showing metals will partition with the ash into the slag residue generated by the gasification process and be effectively immobilized. As we have discussed earlier, these metal constituents do not contribute to the gaseous fuel or to the gasification process. We are also proposing to add cyanide (both total and amenable) to the array of hazardous inorganic constituents being regulated. It is believed that cyanide will effectively dissociate in the gasification process contributing to the production of the synthesis gas. As such, there should not be any measurable quantities of cyanide in the co-products or residuals. The expansion of this condition to include all the RCRA toxic inorganics ensures that the gasification system is being operated for the production purpose claimed. As previously discussed, part of the operating premise of gasification is that it preferentially converts organic matter in secondary materials into fuels (or intermediates) while removing metals from raw synthesis gas and immobilizing those metals in an inert matrix. This condition is a means of quantifying this premise.

The second modification would be the addition of a fifth condition. This condition would require each hazardous secondary material processed in a gasification system to contain greater than 20% by weight total organic carbon (TOC). The addition of this condition ensures that every secondary material processed in a gasification system contributes to the manufacture of the synthesis gas and so eliminates an incentive to claim to be performing "gasification" for the real purpose of avoiding hazardous waste treatment. The 20% TOC threshold approximates the lowest value material known to be effectively processed in a gasification system for synthesis fuel production. The 20% TOC threshold represents the level which we believe is reasonable both economically and technologically to ensure legitimate manufacturing by the gasification system. The Agency recognizes that by including such a condition, it could restrict certain hazardous secondary material from being processed in a gasification system under the exclusion. However, without a complete understanding of these activities and knowledge of the types of hazardous secondary materials that could be processed through such an operation, we believe that with this broader exclusion, a TOC threshold of 20% is a necessary condition to ensure that legitimate manufacturing activities are taking place. Unlike hazardous oil-bearing secondary materials from the petroleum refining industry, little information exists that provides a comprehensive assessment of gasification's performance on other RCRA hazardous waste. (See: *A Comparison of Gasification and Incineration of Hazardous Waste—Final Report*. United States Department of Energy. DCN 99.803931.02. March 30, 2000). However, the Agency specifically solicits comment on the appropriateness of requiring each hazardous secondary material to have a 20% by weight TOC content. In addition, the Agency also requests comment on alternative indicators, other than TOC, that could be used to ensure that hazardous secondary materials are used legitimately in gasification systems to manufacture synthesis gas fuel and other products.

The third or final modification to the exclusion would be a prohibition on the use of any mercury-containing hazardous secondary material into the gasification system for the manufacturing of synthesis gas. As discussed previously in the preamble (See section V. D—What Air Emissions Result From Gasification Systems?), the Agency is concerned with the potential for highly volatile metals, in particular mercury, to be emitted out the stack of devices (i.e., turbines) firing synthesis gas produced by a gasification system. As discussed earlier, this is not a concern, for the petroleum refining exclusion being proposed today, because hazardous oil-bearing secondary materials from the petroleum refining industry are not expected to contain significant quantities of mercury. However, the Agency is concerned that the specification for the synthesis gas exclusion (see 40 CFR 261.38(b)) which requires that the synthesis gas contain less than 1 part per million by volume of each RCRA metal, including mercury, may not represent the concentration of metals that realistically exists in synthesis gas derived from hazardous waste.[27] To that end, the Agency proposes a sixth condition to the broader exclusion—a prohibition on the use of hazardous secondary materials containing mercury. This prohibition would exclude, from processing in a gasification system, any hazardous waste which exhibits the characteristic of mercury and any hazardous waste for which mercury was a basis for listing under 40 CFR part 261, appendix VII.

Proposed Catalytic Extraction Processing (CEP) Facility—Bay City, Texas. February 27, 1996.

[26] Information available to the Agency suggests that there are other secondary materials amenable to gasification. For example, municipal waste and sewage sludge, contaminated soil, tires, and coal ash may be gasified to produce synthesis gas and other valuable products. Used oil, is another example of a material that the Agency believes can be processed in a gasification system to produce synthesis gas (i.e., fuel). The reader is referred to the docket supporting this proposal for additional information.

[27] The Agency conducted a preliminary analysis on determining how much mercury can potentially be emitted from synthesis gas that is combusted in a turbine if the synthesis gas contains mercury at the 1ppmv specification level. It was determined that approximately 1.04 tons of mercury could potentially be released from the use of 1 trillion BTU of synthesis gas at the specification levels. If you would compare this to coal for a similar 1 trillion BTU with a concentration of 0.1ppmw of mercury, 0.004 tons of mercury could be potentially released.

This would include the RCRA hazardous wastes D009, K071, K106, F039, U151, P065 and P092. The Agency also solicits comment on expanding this prohibition to include other highly volatile metals.

With these modifications, a broader exclusion is being suggested, which the Agency believes should ensure that the processing of excluded material(s) in a gasification system is a legitimate fuel manufacturing activity that converts components of hazardous carbonaceous material into fuel and into non-fuel chemical by-products without containing high levels of non-contributing toxic components. As such, the option discussed here conditionally excludes hazardous secondary materials from the definition of solid waste, at the point they are generated, when processed in a gasification system provided: (1) Each hazardous secondary material processed in the system contains greater than 20% by weight total organic carbon; (2) the system does not process any hazardous waste which exhibits the characteristic of mercury and any hazardous waste for which mercury is a basis for listing under 40 CFR part 261, appendix VII as hazardous secondary materials; (3) the system meets the definition of a gasification system; (4) the system generates a synthesis gas fuel that meets the specifications of exempted synthesis gas; (5) the materials generated by the gasification system are not placed on the land if they exceed the nonwastewater UTS for antimony, arsenic, barium, beryllium, cadmium, chromium (total), cyanides (total), cyanides (amenable), lead, mercury, nickel, selenium, silver, thallium, and vanadium; and (6) the excluded materials are not placed on the land or speculatively accumulated prior to insertion into the gasification system.

While the Agency requests comment on all aspects of this proposed rulemaking, we are specifically soliciting comment, information, and data on:

- The performance of gasification on other hazardous secondary materials (that are currently hazardous waste) known to contain low concentrations of metals, e.g., hazardous secondary materials that are generated outside SIC 2911, such as spent potliner from the primary aluminum industry (K088).
- The performance of gasification on certain hazardous secondary materials that contain high concentrations of non-contributing components (namely metals or halides).
- Potential partitioning of metals to the product synthesis gas and their subsequent release during the combustion of the synthesis gas in turbines to produce electricity or steam.[28]
- Whether the Agency should develop a set of general criteria for the types of hazardous secondary materials that would be appropriate for gasification, and what those criteria might be.[29]
- Whether the Agency should require specific design and operating conditions for all components of the gasification systems, including the gas cleanup or polishing systems and the secondary product recovery systems and what they would be.
- The market for building and operating gasification systems in the future, including future capacity for gasification.
- The market for synthesis gas and other products from gasification, including non-fuel products recovered in the process.

Finally, we recognize that in order to achieve the benefits of gasification, secondary materials must be safely transported and handled prior to delivery at the gasification facility, and actually delivered for use as a feedstock to the facilities. We note that a number of factors work towards safe delivery, including Department of Transportation regulations for hazardous materials, and the threat of legal liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for spilled or disposed hazardous materials. Further, there are currently only a very few gasification facilities that have indicated any interest in accepting hazardous secondary materials, and they have indicated they must have contracts for acceptance of materials, including technical specifications that limit the types of materials that the particular unit may accept as a feedstock. Also, as explained in more detail in the next section, current regulation requires a person claiming an exclusion to produce appropriate documentation to show he or she actually meets the terms of the exclusion, which may mean, for example, producing contracts with a gasification facility, records of shipment and delivery of materials to the gasification system.

The RCRA hazardous waste universe is broad with over 18,000 large quantity generators and many more small quantity generators. Concerns have been raised that generators, perhaps working with waste brokers, may falsely claim to be sending material to gasification systems for processing as a feedstock, when, in fact, they are simply trying to evade regulation. Therefore, the Agency is specifically seeking comment (as we note in the next section) on whether some sort of mechanism, beyond current regulations, should be imposed to ensure that these secondary materials arrive at the gasification facility and are used as feedstock. Also, we request comment on whether an exclusion should apply when brokers are involved, and if so, whether the exclusion should apply in that case beginning only when the material is shipped from the broker to the gasification facility (i.e., the broker would be regulated under the RCRA rules).

In any event, should improper management occur, despite the factors described above, the exclusion proposed today would not apply and parties would be subject to enforcement action, possibly leading to criminal penalties. We seek comment on the checks and balances described above and whether they adequately address the concerns over possible improper use of the exclusion.

D. What Are the Proposed Recordkeeping and Reporting Requirements for This Broader Exclusion?

As with the petroleum refining conditional exclusion previously discussed in this preamble, there are no specific recordkeeping and reporting requirements specifically associated with this broader conditional exclusion. However, we are seeking comment as to whether any records and/or reporting are necessary in addition to the current documentation requirement associated with 40 CFR 261.2(f) for materials that would be excluded from the definition of solid waste. 40 CFR 261.2(f) does not contain specific recordkeeping requirements but it does require the respondent to bear the burden of showing, through appropriate documentation, that the excluded material is being processed in a manner that meets the conditions in the claimed exclusion. We offer this information again as a reminder and are not reopening this provision for comment.

[28] To address this issue, we are requesting comment on a number of approaches to revise the synthesis gas specifications found at 40 CFR 261.38(b). In particular, the Agency is interested in soliciting comment on the specifications for highly volatile metals. The approaches we are considering can be found in the docket of today's proposal entitled Options to Revise the Synthesis Gas Specification. We specifically request comment on this document.

[29] States could then develop procedures for identifying specific waste streams that are excluded, using either rulemaking procedures or a variance process. A variance process might be similar to the provisions already found at 40 CFR 260.31 for certain exclusions from the definition of solid waste.

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In this broader exclusion, we are proposing to exclude hazardous secondary materials, meeting certain conditions, from the definition of solid waste whether the gasification system is located on-site or off-site. We again note that allowing the secondary streams to go to facilities off-site is somewhat different than the structure of 40 CFR 261.4(a)(12)(i), which the Agency has used as a model for today's proposal. 40 CFR 261.4(a)(12)(i) does not specify recordkeeping requirements, except 40 CFR 261.2(f) applies to respondents claiming the exclusion.

In this broader exclusion, however, we believe that excluding materials processed in gasification systems operating independent (or off-site) is appropriate because gasification is a process employed by industry to manufacture synthesis gas. The purpose and operation of the system remains the same whether the system is operated at the same location that the secondary materials are generated or elsewhere. As with the petroleum refining conditional exclusion being proposed today, we are again requesting comment on whether further clarification of recordkeeping and reporting requirements is necessary in addition to the 40 CFR 261.2(f) documentation requirement to ensure that excluded materials are appropriately processed. The purpose of recordkeeping, recording and documentation would be to ensure: (1) That the excluded materials are indeed fed to a gasification facility; (2) each hazardous secondary materials has a TOC content of at least 20%; (3) no mercury-containing hazardous wastes are processed in the gasification system; (4) the materials are handled appropriately prior to introduction to the gasification system; (5) the synthesis gas fuel ultimately produced meets the synthesis gas specifications; (6) the inorganic residues produced by the gasification system that are placed on the land do not exceed the nonwastewater UTS for the inorganic constituents found in 40 CFR 268.48; and (7) the residue does not exhibit a hazardous waste characteristic under subpart C, part 261. As mentioned previously, the proposed rule, "Requirements for Zinc Fertilizers Made From Recycled Hazardous Secondary Materials" (See 65 FR 70954, November 28, 2000) provides an example of additional recordkeeping and reporting requirements that could be used to verify that the conditions of an exclusion are met.

EPA is interested in obtaining comments on what specific records would be necessary to document whether: (1) The synthesis gas generated from a gasification system, using excluded secondary materials, meets the synthesis gas fuel specification under 40 CFR 261.38(b); (2) the residue generated from the gasification system meets the UTS levels in 40 CFR 268.48 for specific inorganic metals; and (3) the residue generated from the gasification system fails to exhibit a hazardous waste characteristic as defined in part 261, subpart C. We are also interested in receiving comments that explain the different types of information industry operators currently keep to demonstrate compliance with other solid waste exclusions (such as 40 CFR 261.(a)(12)(i)) that rely on 40 CFR 261.2(f) to demonstrate compliance with the conditions of the exclusions and whether such information is routinely maintained as a type of industry practice.

IX. State Authorization

A. Statutory Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR part part 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorization

Today's proposal would be promulgated pursuant to non-HSWA authority, and contains provisions that are less stringent than the current Federal program. The conditional exclusion for hazardous waste processed in a gasification system would be less stringent. Consequently, States would not be required to adopt the proposed exclusion as a condition of authorization of their hazardous waste programs.

X. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of novel legal or policy issues. As such, this action was submitted for OMB review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Implementation of this rule may result in considerable positive economic impacts and positive net benefits. Benefits derive from cost savings and resource conservation, and potential environmental quality improvements. There are no costs associated with this rulemaking, outside of the costs of regulatory development.

Economic Impacts

The proposal discusses limiting the exclusion to facilities in the petroleum refining industry, defined under the Census Bureaus's Standard Industrial Classification code 2911. This industry includes the production of petroleum products through distillation, fractionation, and/or cracking of crude oil and unfinished petroleum derivatives. Total 1999 employment in the sector was 63,500 and the value of products estimated at $170 billion.

Data submitted to EPA in Biennial Reports shows 172 refineries generated between 7 and 10 million tons of hazardous waste in 1997. These refineries are currently treating and disposing of their wastes in compliance with RCRA Subtitle C requirements for management, treatment, and disposal. We estimate that approximately 20–25% of this waste is being recycled to petroleum cokers. Some waste is land disposed. Much of the remaining waste is currently used for fuel (at an average cost of $75 per ton) or incinerated (which may cost between $320 and $730 for liquids, sludges, and solids that are not severely contaminated). Disposal of treatment residuals adds another $60–130 per ton to waste management costs. The American Petroleum Institute has estimated that refineries spent a total of $210 million in 1999 for waste management.

Significant uncertainties make it difficult to estimate the impacts of this rulemaking. Because so few facilities are gasifying hazardous wastes, there is not a robust body of data on the operational characteristics of the devices with these feedstocks. We do not have good information on the proportion of these secondary materials that could efficiently serve as supplements to the primary feedstocks of coal and petroleum coke, nor do we have a clear idea of the types of wastes that might be amenable to the process; therefore we are requesting comment on these issue with this proposal.

In addition, we believe that an exclusion for all refinery wastes would foster competition in the market for these secondary materials. Since these materials are replacing (to some extent) other feedstocks for the gasification system, tipping fees for these materials could be charged. We have not attempted to model this market, nor determine supply and demand or prices. It is clear, however, that revenue streams from tipping fees would be bounded by current management costs.

EPA is aware of four refineries who are currently gasifying some residuals; all refineries are eligible to take advantage of this exclusion. It does seem likely that other refiners would be interested in reducing their waste management costs by sending wastes to gasification systems, whether to on-site captive facilities or to off-site gasification facilities. Similarly, these units should be eager to gain tipping fees for feedstocks. Therefore, transportation costs and the technical specification requirements for gasification feedstocks are likely to be the chief limiting factors in moving petroleum wastes into these systems. Within those constraints, this proposal could lead to a substantial reduction in that $210 million spent by refineries on waste management. Concomitantly, gasifiers would receive economic gains, with losses to the hazardous waste treatment and disposal industry.

Costs and Benefits

Costs associated with this rule are expected to be minimal, including time to read the rule, residual (i.e., slag) testing and other tasks to meet the conditions. Losses to the hazardous waste treatment and disposal industry are expected to constitute transfers to generators and gasification owner/operators; although these may be significant impacts, they are not true economic costs. Therefore, the direction of social benefits from this proposal can only be positive. These uncertainties and assumptions, therefore, do not affect the Agency's assessment of positive net benefits stemming from this rule; they only affect the magnitude of that net benefit.

Benefits From This Rule Are Likely To Include

Cost savings: Savings in treatment and disposal costs for wastes. The magnitude of these savings is difficult to project, but the upper bound would be the $210 million that refineries are currently spending on waste management. Depending on how markets and prices develop, this rule could also result in reduced costs of electricity, and reduced costs for chemical intermediates that gasification systems produce. In addition, both generators of refinery wastes and Federal/state RCRA regulating agencies are expected to save administrative burden and costs because of this regulatory change.

Resource conservation benefits: We project that this rule will facilitate gasifiers in substituting secondary materials (formerly disposed as wastes) for coal. To the extent that this rule induces power generators to burn synthesis gas instead of coal, there is the potential for additional resource conservation benefits. Potential environmental benefits exist if that substitution takes place, since synthesis gas is a much cleaner fuel than coal and produces less harmful emissions.

More detail on costs and benefits of the rulemaking are provided in the memorandum entitled, *Regulatory Impacts of Proposed Exclusions of Petroleum Refinery Wastes*, which accompanies this proposal.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a

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significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposal is de-regulatory in nature. The primary industry affected by this rule is the petroleum refining industry, and it will not cause adverse effects to this industry. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule will not significantly or uniquely affect small governments. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Today's rule is not, therefore, subject to the requirements of section 203 of UMRA.

D. Federalism—Applicability of Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards. Therefore, EPA proposes to use the constituent specification limits of the synthesis gas exclusion found at 40 CFR 261.38(b) to establish the legitimacy of the fuel, and the universal treatment standards for chromium, lead, nickel, vanadium, arsenic, and antimony to establish the legitimacy of products placed on the land.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule pertains to hazardous oil-bearing secondary materials processed in a gasification system to produce valuable products. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low-income communities. Today's proposed rule is intended to reduce risks of excluded hazardous secondary materials as proposed, and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

The wastes proposed for exclusion will be subject to protective conditions regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that this proposed exclusion, if finalized, may affect where these wastes are managed in the future, the Agency's decision to conditionally exclude these materials is independent of any decisions regarding the location of waste generators and the siting of waste gasification facilities. Today's proposed rule will reduce loadings of oil-bearing wastes to the soil, and reduce emissions to the atmosphere. EPA believes that these provisions of the proposal will benefit all populations in the United States, including low-income and minority communities.

We encourage all stakeholders including members of the environmental justice community and members of the regulated community to provide comments or further information related to potential environmental justice concerns or impacts, including information and data on facilities that have evaluated potential ecological and human health impacts (taking into account subsistence patterns and sensitive populations) to minority or low-income communities.

I. Executive Order 13211 (Energy Effects)

This proposal is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this proposal will not have any adverse energy effects. It is a de-regulatory proposal that will primarily affect the petroleum refinery industry (SIC classification 2911). If adopted, the proposal will promote the practice of petroleum refineries processing their hazardous oil-bearing secondary material (materials historically classified as hazardous waste) in gasification systems to produce synthesis gas fuel. Synthesis gas fuel is an alternative fuel composed primarily of hydrogen and carbon monoxide. When used to produce electricity in combined cycle turbines, its use allows power generators to produce electricity more efficiently than other forms of fossil fuel based electricity production.

J. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. There are no information collection requirements for this proposed rule that require an ICR. Furthermore, there are no paperwork requirements for entities affected by this proposal. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, Chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937–6939, and 6974.

2. Section 260.10 is amended by adding a new definition for "gasification system" in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Gasification system means an enclosed thermal device and associated gas cleaning system or systems that does not meet the definition of an incinerator or industrial furnace (found at §§ 260.10), and that:

(1) Limits oxygen concentrations in the enclosed thermal device to prevent the full oxidization of thermally disassociated gaseous compounds;

(2) Utilizes a gas cleanup system or systems designed to remove contaminants from the partially oxidized gas that do not contribute to its fuel value;

(3) Slags inorganic feed materials at temperatures above 2000°F ;

(4) Produces a synthesis gas; and

(5) Is equipped with monitoring devices that ensure the quality of the synthesis gas produced by the gasification system.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by adding paragraph (a)(12)(iii) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) * * *

(iii)(A) Hazardous oil-bearing secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC 2911) and inserted into a gasification system (defined in § 260.10 of this chapter) to produce a synthesis gas used as an ingredient in chemical manufacture or as a fuel, subject to the conditions of paragraph (a)(12)(iii)(B) of this section.

(B) Conditions.

(*1*) Synthesis gas used as a fuel must meet the specifications of § 261.38(b) of this part;

(*2*) The hazardous oil-bearing secondary material must not be placed on the land prior to insertion in the gasification system;

(*3*) The hazardous oil-bearing secondary material must not be speculatively accumulated prior to insertion in the gasification system, unless a variance has been granted under § 260.31(a) of this chapter; and

(*4*) Any materials (by-products, sludges, "frits", bottoms) generated by the gasification system that are excluded under paragraph (a)(12)(iii) that are placed on the land must meet the non-wastewater Universal Treatment Standards for chromium, lead, nickel, vanadium, arsenic, and antimony found at § 268.48 of this chapter.

[FR Doc. 02–7097 Filed 3–22–02; 8:45 am]
BILLING CODE 6560–50–P

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Federal Register

Monday,
March 25, 2002

Part III

Department of the Interior

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations—Changes to Addresses for Submitting Appeals; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

RIN 1006–AA43

Acreage Limitation Rules and Regulations—Changes to Addresses for Submitting Appeals

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Reclamation (Reclamation) is revising its regulations governing acreage limitation appeals to reflect a change of address for submitting appeals to the Commissioner of Reclamation and a change of address for submitting appeals to the Office of Hearings and Appeals (OHA). The change of address for the Commissioner is being made to facilitate the processing of appeals, while the change of address for OHA is needed because that agency is moving to a new building in Arlington, Virginia, effective February 11, 2002.

DATES: This rule is effective on March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Rizzi, Lead Water and Land Regulatory Specialist, Office of Policy, Bureau of Reclamation, P.O. Box 25007, Mail Code D–5200, Denver, Colorado 80225, telephone (303) 445–2900.

SUPPLEMENTARY INFORMATION:

I. Background

In 43 CFR part 426, Reclamation has promulgated regulations implementing certain provisions of Federal reclamation law that address the ownership and leasing of land on Reclamation projects and the pricing of Reclamation irrigation water. Included in those regulations are procedures for appeals of regional directors' final determinations to the Commissioner of Reclamation and for appeals of Commissioner's decisions to the Department of the Interior's Office of Hearings and Appeals.

The Office of the Commissioner has staff located in both Washington, D.C., and Denver, Colorado. The Office of Policy staff in Denver reviews all appeals of final determinations made under the Acreage Limitation Rules and Regulations by regional directors and makes recommendations for action on each appeal. Since the staff at the Denver Office has those responsibilities, it is more efficient for appeals to be sent directly to Denver instead of coming to Washington and then being forwarded to Denver.

OHA consists of a headquarters office, located in Arlington, Virginia, and nine field offices located throughout the country. Since 1970, the headquarters office has been located at 4015 Wilson Boulevard, and that address is included in 43 CFR 426.24(g). Effective February 11, 2002, the OHA headquarters office is being relocated to 801 North Quincy Street, Arlington, Virginia. In anticipation of that move, we are revising the administrative appeals section of the Acreage Limitation Rules and Regulations to reflect OHA's new street address.

II. Procedural Requirements

A. Determination To Issue Final Rule Effective in Less Than 30 Days

We have determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rulemaking because the changes being made relate solely to matters of agency organization, procedure, and practice. They therefore satisfy the exemption from notice and comment for rulemaking in 5 U.S.C. 553(b)(A).

We have determined that there is good cause to waive the requirement of publication 30 days in advance of the rule's effective date under 5 U.S.C. 553(d)(3). The timing of OHA's relocation is dictated by the construction schedule for the building to which OHA is moving. The actual move date was confirmed only in the past few weeks. If the changes in this rule were to become effective 30 days after publication, it would cause delays in processing appeals. An immediate effective date means that appeals received after the rule is published will go directly to Denver to be processed more rapidly. Because an immediate effective date benefits the public and because this is an administrative change, there is a good cause for making this rule effective immediately, as allowed by 5 U.S.C. 553(d)(3). We will include the new OHA address in any Commissioner's decision made under 43 CFR 426.24 that we issue after February 10, 2002.

B. Review Under Procedural Statutes and Executive Orders

We have reviewed this final rule under the following statutes and executive orders governing rulemaking procedures: the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*; the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). We have determined that these rule changes do not trigger any of the procedural requirements of those statutes and executive orders because this final rule merely changes the mailing address where appeals of acreage limitation final determinations and Commissioner decisions are to be sent.

List of Subjects in 43 CFR Part 426

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

Dated: February 6, 2002.

R. Thomas Weimer,

Acting Assistant Secretary—Water and Science.

For the reasons stated in the preamble, Reclamation amends its regulations in 43 CFR part 426 as follows:

PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

1. The authority citation for part 426 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz–1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

2. In § 426.24, paragraphs (g)(1) and (g)(2) are revised to read as follows:

§ 426.24 Reclamation decisions and appeals.

* * * * *

(g) * * *

(1) Commissioner, Bureau of Reclamation, Office of Policy, Attention: D–5200, P.O. Box 25007, Denver, Colorado 80225.

(2) Director, Office of Hearings and Appeals, Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

[FR Doc. 02–7072 Filed 3–22–02; 8:45 am]

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Black stem rust; published 2-22-02
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 1857/P.L. 107–153

To encourage the negotiated settlement of tribal claims. (Mar. 19, 2002; 116 Stat. 79)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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Book 1 of 2 Books
Pages 13703–14154

Tuesday
Mar. 26, 2002

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ISS
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Presidential Documents

Title 3—

The President

Proclamation 7533 of March 21, 2002

National Bone and Joint Decade, 2002–2011

By the President of the United States of America

A Proclamation

Living a life free from daily bone pain or joint discomfort is something most people take for granted. Our bones, joints, and connective tissues are the structure upon which all other systems of the body depend. They give us strength, mobility, protection, and stability. And they permit us to perform a great variety of physical activities that shape our daily lives.

Our musculoskeletal structure is a complex system of tissue and bone that is regularly subjected to trauma, metabolic and genetic processes, and the gradual wear and tear of an active life. When these bones and tissues become damaged or diseased, they can create chronic conditions that may seriously impede and sometimes permanently affect one's health and well-being.

In the United States, musculoskeletal disorders are a leading cause of physical disability. Conditions such as osteoporosis, osteoarthritis, rheumatoid arthritis, back pain, spinal disorders, and fractures, also affect hundreds of millions of people around the world. And many children suffer from crippling bone and joint diseases and deformities, impeding normal development and preventing them from experiencing a full and healthy life.

The incidence of musculoskeletal conditions will increase as the average age of our population increases. And our culture's increasing emphasis on physical activity, while important to society's overall well-being, will also increase the stress factors on bones and joints. Ensuing disorders, if left untreated, could result in significant pain and suffering that would affect employment, well-being, and healthcare costs.

National Bone and Joint Decade, 2002-2011, envisions a series of international initiatives among physicians, health professionals, patients, and communities, working together to raise awareness about musculoskeletal disorders and promoting research and development into therapies, preventative measures, and cures for these disorders. Advances in the prevention, diagnosis, treatment, and research of musculoskeletal conditions will greatly enhance the quality of life of our aging population.

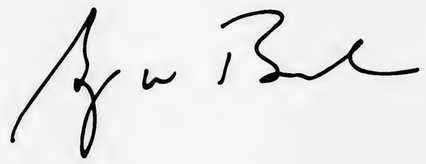
The National Institutes of Health, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, and other Federal agencies support many bone and joint studies. Industry and private professional and voluntary agencies support other initiatives. This work involves scientists examining the possible genetic causes of bone and joint diseases and studying how hormones, growth factors, and drugs regulate the skeleton. Other researchers are studying bone density, quality, and metabolism, and other ways to increase the longevity of joint replacements for those whose daily activities have become painful, difficult, or even impossible. These research efforts can help relieve pain and suffering and give countless children and adults the opportunity for a better life.

Thanks to the hard work of these dedicated researchers, we have made great progress in understanding and treating musculoskeletal disorders. I commend their efforts and encourage them to pursue diligently further research that will help those suffering from these disorders. And I hope

that all Americans will learn more about musculoskeletal problems, their long- and short-term effects, and the therapies and treatments available to help them.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the years 2002–2011, as National Bone and Joint Decade. I call upon the people of the United States to observe the decade with appropriate programs and activities; and I call upon the medical community to pursue research in this important area.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–7360
Filed 3–25–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7534 of March 21, 2002

Education and Sharing Day, U.S.A., 2002

By the President of the United States of America

A Proclamation

America's future depends in part on ensuring that every child in America receives a quality education. And by teaching our children the importance of serving those in need, we will help fulfill an important part of their education, showing them the rewards that come from compassionate outreach.

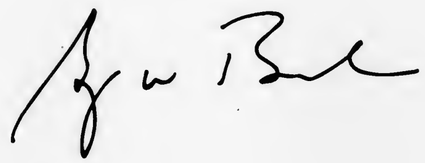
Education has always played a vital role in the success of our Nation. It has provided hope through the principle that any citizen can realize the American dream, regardless of background, ethnicity, or faith. By challenging young people to set high goals and to work hard to achieve them, we prepare our youth to carry on the success of the American story and to become leaders of this great Nation. A core foundation of knowledge and values is essential for students to excel and contribute to the well-being of our communities, our country, and the world.

Parents are a child's first and most important teachers, and they provide the cornerstone of a child's early education. Quality teachers, however, also play an important role in a child's personal and intellectual development. The *No Child Left Behind Act of 2001*, which I signed into law in January 2002, requires that, by the end of the 2005–06 school year, there must be a "highly qualified" teacher in every classroom. Through this new law, States and school districts will have multiple tools to help them meet the new teacher quality requirements. Key elements of this effort include providing State grants to recruit and train teachers, and recruiting high-quality individuals to become teachers, offering expanded student loan forgiveness for teachers. And we must encourage Americans to volunteer their time to serve as mentors to our young people.

Great teachers are also found outside the classroom, making a positive impact on children and on local families. For example, Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, demonstrated the power of teaching others to pursue both intellectual and moral excellence. For this purpose, he established education and outreach centers that offered social services and humanitarian aid. Today, more than 1,400 of these centers operate in 35 countries, meeting the spiritual and material needs of local communities. These beacons of hope communicate the Rebbe's ideal of living a meaningful life through personal responsibility and dedication to those in need. On the 100th anniversary of the Rebbe's birth, I encourage Americans to help teach our young people. In classrooms, homes, and places of worship, we can all make a lasting impact on individual children and thus invest in our country as a whole.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 24, 2002, as Education and Sharing Day, U.S.A., 2002. I call on all Americans to help our young people better understand the importance of character and develop a true love of learning. By doing so, we invest in the future of our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–07361
Filed 03–25–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 784

RIN 0560—AG17

Lamb Meat Adjustment Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rule implementing the Farm Service Agency's (FSA) Lamb Meat Adjustment Assistance Program (LMAAP). The program is designed to help restore purchasing power and enable producers to make significant changes in production practices to adjust to import competition by providing financial assistance to sheep and lamb producers who have recently experienced low prices and poor market conditions. On the basis of comments and suggestions received, FSA is making several changes to the program provisions in the interim rule and is adding other provisions.

EFFECTIVE DATE: March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, (202) 720–1919 or e-mail *danielle_cooke@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

A notice with request for comments on the information collection was part of the interim rule. No comments were received from the public during the 60-day comment period regarding the information collection. A regular submission of an information collection package was approved by OMB for use through the year 2003 and assigned OMB control number 0560–0205. The amendments to 7 CFR part 784, contained in this rule involve a change in existing information collection requirements that was previously approved by OMB. In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of a revision to a currently approved collection as necessary for the proper functioning of the program. A regular information collection package will be submitted to OMB.

Discussion of Final Rule

The interim rule published in the **Federal Register** on June 21, 2000 (65 FR 38409), set forth regulations to allow direct payments to provide immediate financial assistance to sheep and lamb producers who have recently experienced low prices and poor market conditions. The background provisions of that rule described, in addition, the statutory underpinnings of the program, those being provisions of the Act of August 24, 1935, as amended. One of those provisions is clause (3) of section 32, which authorizes the Secretary of Agriculture to "reestablish farmers purchasing power in connection with the normal production of any agricultural commodity for domestic consumption." Under the program, eligible producers of sheep and lambs may receive direct payments towards the production segment of the industry to share expenses for productivity improvement projects. In the second and third year, under the original rule direct payments to producers are based on quality incentives that will assist the industry's competitiveness in the marketplace. To enhance the competitiveness of the domestic lamb and sheep industry, the program is extended by this rule through July 2003 and the rule contemplates that an additional $37.7 million of Fiscal Year 2002 Section 32 funds will be available for the program. Of the $37.7 million in additional funds, $26 million will be allocated to the new ewe lamb incentive payment for Year 3 and Year 4, while the remaining funds will go towards continuing feeder lamb and slaughter lamb payments during Year 2, Year 3, and Year 4 of the program.

Comments regarding the provisions of the program were accepted until July 21, 2000. Comments were received from 48 entities or persons, which includes 28 sheep producers and ranchers, 13 agricultural associations, two farm bureaus, two United States Congressmen, one agricultural university, and two Agency employees.

Most of the comments addressed particular provisions of the interim rule. These are discussed below on a section-

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by-section basis, along with the changes that have been made to the interim rule. Changes to each section based on the experience of operating the program under the interim rule are also discussed on a section-by-section basis.

General

Five respondents commented that the program does not benefit the industry and excludes the small farmer. Prior to publishing the interim rule, USDA provided several opportunities for public participation in the rulemaking process through highly publicized meetings. Comments and program proposals were solicited after the President's announcement of the assistance package to assess their needs and obtain regulatory guidance. We believe the interests of small producers have been duly addressed and considered, as all elements of the industry will be able to share in the elements of this program without an increase in payment rates.

Section 784.1 Applicability; Available Payments

Most of the comments concerned the lack of an incentive or a payment to encourage the purchase or retention of ewe lambs for breeding stock to replenish the lambing inventory. By this rule, FSA, in conjunction with AMS, will add a ewe lamb incentive payment to the program. This will provide incentives for producers to purchase or retain their breeding ewes, expand herds, and increase the available supply of domestic lamb meat. Payments for the new ewe lamb incentive payment program cover purchases back to August 1, 2001, and then continue for two payment years through July 31, 2003. An additional $26 million is authorized for the ewe lamb incentive payment with a target of $13 million per year.

Also in this section, slaughter and feeder lamb payments have been extended one year through July 31, 2003. This will enable domestic lamb and sheep producers to compete more effectively in the marketplace. A total of $10 million has been authorized to make payments available for marketings of eligible feeder and slaughter lambs during Year 4. In addition, $1.7 million has been allocated to cover the anticipated short fall of funds for marketings of eligible feeder and slaughter lambs during Year 3.

Section 784.3 Definitions

Three respondents believed the "feeder lamb definition" provided for in section 784.3 should be changed to allow for lambs fed using a high protein diet or other appropriate diet. That comment was accepted, as the original definition may be too narrow.

As there is a one year extension of the LMAAP, a definition for Year 4 was added. A definition for "ewe lamb" was also added to reflect the expansion of the program.

Section 784.4 Year 1 Time and Method for Application

Some of the commenters believed that the time periods between the program announcement and the program deadlines were too short, and that the eligibility period should be retroactive from the 1999 marketing season. FSA, however, established the dates of the program to coincide with the dates in the President's announcement of the $100 million assistance plan to help U.S. sheep and lamb farmers. Therefore, the comment was not adopted and no such changes were made in this final rule.

Section 784.5 Year 1 Eligibility

There were several public comments received regarding Year 1 payments. Specifically, seven respondents felt the use of a gross annual revenue level was too restrictive and precluded many from qualifying for a payment during Year 1 or a feeder lamb payment during Year 2. FSA, however, established the use of a gross annual revenue of $2.5 million or less to help ensure that the Federal financial benefits of this rule are distributed to farmers of more modest financial means. Therefore, the comments are not adopted into this final rule.

Although no comments on this issue were received, while operating under the interim rule, FSA decided to establish a deadline date for producers to complete facility improvements. This provision was added to ensure producer timely compliance with eligibility requirements provided in § 784.5(b)(3). Sheep and lamb operations that do not complete the facility improvements by the deadline date will be determined ineligible for benefits and must immediately refund the payment made and with interest.

Three comments were received from the public who felt that farm raised rams for breeding up to yearling age should be eligible to generate a payment. Other suggestions included that to be eligible to generate a ram payment, the ram should show evidence of various traits of above average genetic potential; another suggested that a provision be added for payments for ram semen and embryo purchases. No change was made as the current incentives appear sufficient to accomplish the program purposes and more directly aimed at the desired result. For the time period covered, the genetic potential of a ram, ewe or lamb was evaluated and payment made through enrolling in the National Sheep Improvement Program (NSIP), or a similar FSA approved program, that evaluates animals in a flock for maternal, growth, and wool traits. We think these guidelines were sufficient, and at this point the ram portion of the program is over.

Two comments received opposed the sheep improvement program payment by stating this payment does not address the entire industry and should be eliminated. Another comment suggested that Government funds should not be used to solicit membership in voluntary programs such as the NSIP. Comments also suggested that the sheep improvement program payment should include payments with respect to a scrapie program.

The NSIP was approved by USDA because of its recognition in the industry, but the rule allowed for other programs to be approved as well. Scrapie programs were not included in the sheep improvement program because funds under the alternative Domestic Lamb Industry Adjustment Assistance Program were specifically appropriated for animal health issues that included scrapie eradication. Further, scrapie eradication programs are not genetically based and would, therefore not qualify as a genetic evaluation program.

Five of the received comments directed concern toward the ineligibility of facility improvements begun and not completed by the end of the sign-up period. One respondent believed that the facility improvement eligibility requirements were too broad, and more specific guidelines were needed. One respondent was concerned that the facility improvement payment was not designed to make a difference because it was geared more towards small producers and not the entire industry. In response to these concerns, policy and procedure was established in this final rule to provide specific guidelines for facility improvements and a deadline date was established to have facility improvements completed beyond the deadline established for producers to apply for program payments.

Section 784.6 Year 1 Rate of Payment and Limitations on Funding

Three comments were received from the public who believed that the maximum ram payment rate for Year 1 payments should be increased. The payment limitations in Year 1 were

imposed to assure fair distribution of available funds for all eligible producers with the total available funding and we believe were set at appropriate levels to cover the program goals. No changes were made.

Section 784.8 Year 2 and Year 3 Time and Method for Application

The majority of the comments received were regarding Year 2 and Year 3 eligibility requirements. Four comments indicated that Year 2 and Year 3 payments should be based on actual sales receipts from the market place because the eligibility requirements for payments with respect to slaughter and feeder lambs and the paperwork involved were too complicated and cumbersome. In response to this concern, FSA has revised operating procedure to allow producers to self-certify feeder lambs by fax by faxing the last page of the LMAAP application form to AMS at least two working days prior to a designated 24-hour viewing period. Then USDA agents, based on their availability, would randomly select sheep and lamb operations to verify the claims. Following that, the producer to receive payment would submit to their FSA county office the completed Form FSA–383 and supporting documentation, as proof of the faxed information.

Also, in the final rule, the provision in § 784.5 allowing a payment to a sheep and lamb operation that owned a feeder lamb continuously for 30 days prior to marketing has been changed to require the operation to own the feeder lamb continuously from birth to the time of marketing. The interim rule led to attempted abuse by a few producers who falsified lamb sales records to circumvent the regulation in order to receive multiple payments.

Several comments received with respect to the slaughter lamb carcass requirements in this section suggested that the 55 to 75 pound dressed hot carcass weight requirement be increased to 80 pounds. Other comments suggested that the 55 to 75 pound dressed hot carcass weight should be eliminated, to accommodate northeastern producers. These producers typically do not qualify for a feeder or slaughter lamb payment because they sell to restaurant and ethnic markets where lamb carcasses average 20 to 45 pounds dressed hot carcass weights. Respondents felt that fine wool sheep would not meet the muscling criteria because the fine wool breeds of the northeastern region are slower to develop muscling. Two comments were received that suggested a gradual phase in of program standards that would allow breeding programs to adjust to a policy that favors breeds suited to meat production rather than wool production. There were also three comments that suggested Yield grade 3 slaughter lamb carcasses be eligible for payment.

USDA uses the standard of a hot carcass weight of 55 to 75 pounds to provide lamb consumers with a more appealing product. This standard also serves to improve profitability by increasing the efficiency of the lamb production cycle and to encourage the production of more consistently palatable and higher yielding lamb products. Lamb processors want larger carcasses because there is less labor involved for the amount of meat that is realized. Additionally, the weight range and yield grade were not changed in the final rule because the industry wants a more uniform carcass that yields a consistent product in size, weight, and appearance. Finally, the concept of plate coverage was considered in making this determination. The food service industry prefers fewer ribs with larger portions when preparing meals from middle meats. Therefore, these comments are not adopted in this final rule.

Seven comments received from the public expressed concerns about AMS certification, particularly whether AMS has the resources to certify to the feeder and slaughter lambs for the qualifying factors. Eleven comments were received suggesting that AMS simplify the certification procedures by allowing USDA inspectors and small USDA processing plants to certify the carcass criteria. Other suggestions included allowing a waiver of slaughter lamb carcass requirements to producers that marketed less than 500 lambs per year and allowing the use of a Statewide average grade score as a proxy for individual slaughter lamb carcass data. Five respondents believed that a provision should be established to allow producers who sell lambs on a live weight basis to be eligible for payments in Year 2 and Year 3. Some comments suggested that the slaughter lamb payments be based on 100 pounds per lamb with a 145 pound cap. The producer would have to produce receipts for the pounds of lambs sold to the packer and receipts for the pounds of lambs purchased from the sheep producer, and the payment would be based on the difference. To address these situations, the Agency will allow slaughter facilities that process less than 50 market lambs per week to certify the slaughter lamb carcass requirements, provided they are approved by AMS and meet the established guidelines. Otherwise, the rules appear to be appropriate and efficient with respect to the accomplishment of the goals of the program and administrative necessities.

Three respondents felt that slaughter lambs placed on a truck along with those of several other producers for transport to a slaughter facility would be a major problem and that payments should not be based on a producer's pro rata share. In response to this concern, the LMAAP application form has been revised to assist the sellers of slaughter lambs to identify and trace their lambs placed on a commingled truck load and sold to a slaughter facility. Otherwise the slaughter facility could not identify the number of lambs from a particular producer. This form must accompany lambs to the slaughter facility and be presented to the USDA grader for certification and payment. However, these payments will still be based on a pro-rata share.

Section 784.10 Availability of Funds for Year 1 through Year 3

There were no comments on this section, however, an additional $1.7 million has been authorized to cover an anticipated shortfall in the $10 million allocated to FSA for the feeder and slaughter lamb direct payment in Year 3. Payments for eligible slaughter and feeder lambs will continue through July 31, 2003, to further provide those eligible for the payments with an immediate infusion of funds to help pay operating expenses and meet other financial obligations. An additional $10 million will be provided to extend the direct payments for eligible feeder and slaughter lambs into 2003. In addition, $26 million is authorized for the new ewe lamb incentive payment during Year 3 and Year 4. These changes will increase the total available funds for the program in the final rule from $30 million to $67.7 million and establish a program for Year 4.

Section 784.13 Estates, Trusts, and Minors

One public comment was received from a surety association regarding the participation of minors in the program and the enforceability of a surety contract with a minor. However, provisions exist that allow a minor who meets the LMAAP program eligibility requirements to participate in the program, provided the applicable program documents are signed by the minor and co-signed by a person determined by the FSA County Committee to be financially responsible.

Section 784.17 was added to provide offset and withholding provisions and

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§ 784.18 was added for assignment of payments. Also, minor changes are made throughout this part to improve structure, clarity, and readability. Also, internal agency administrative procedures are removed.

Finally, changes were made in the proration language of the rule to cover possible over-subscription. The rule contemplates that Year 4 payments will be prorated in advance to comply with expected demand and then paid first-come, first-served, until exhausted. Also the rule specifies that monies committed to ewe incentives may be used only for those purposes and that no other program money will be used for those purposes.

The Department of Agriculture plans to evaluate this program's effectiveness through a review of the impact of several key components. The performance measures will include an annual review of the change in the following: (1) U.S. flock size; (2) quality and yield of slaughter lambs; (3) number of feeder lambs qualifying for payments; and (4) number and quality of ewes retained. These evaluations will continue for the duration of the program.

List of Subjects in 7 CFR Part 784

Administrative practice and procedure, Direct payments to sheep and lamb operations, Reporting and record keeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 784 is revised to read as follows:

PART 784—LAMB MEAT ADJUSTMENT ASSISTANCE PROGRAM

Sec.

784.1 Applicability; available payments.
784.2 Administration.
784.3 Definitions.
784.4 Year 1 time and method for application.
784.5 Year 1 eligibility.
784.6 Year 1 rate of payment and limitations on funding.
784.7 Year 2, Year 3, and Year 4 time and method for application.
784.8 Year 2, Year 3, and Year 4 eligibility.
784.9 Year 2, Year 3, and Year 4 rate of payment and limitations on funding.
784.10 Availability of funds for Year 1 through Year 4.
784.11 Appeals.
784.12 Misrepresentation and scheme or device.
784.13 Estates, trusts, and minors.
784.14 Death, incompetency, or disappearance.
784.15 Maintenance and inspection of records.
784.16 Refunds; joint and several liability.
784.17 Offsets and withholdings.
784.18 Assignments.

Authority: Clause (3) of section 32 of the Act of August 24, 1935, as amended; 7 U.S.C. 612c.

§ 784.1 Applicability; available payments.

(a) This part establishes the Lamb Meat Adjustment Assistance Program pursuant to Clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). The purpose of this program is to provide benefits to sheep and lamb operations to reestablish their purchasing power in connection with the normal production of sheep and lambs for domestic consumption and boost the long-term development and growth of sheep and lamb production in the United States.

(b) Under and subject to this part, FSA will provide with respect to sheep and lamb operations: Year 1 payments in which sheep and lamb operations will receive payments for, during the time period encompassing Year 1 as defined in § 784.3, purchasing eligible rams for breeding, enrolling their herd in a sheep improvement program, and for making improvements to their production facilities; Year 2, Year 3, and Year 4 payments for marketings of eligible slaughter lambs or feeder lambs during the period encompassing those time periods; and Year 3 and Year 4 payments for retaining or purchasing ewe lambs for breeding stock to replenish the lamb inventory during the period encompassing those time periods. Unless otherwise determined by the agency in accordance with the provisions of this part, the amount that may be expended under this part shall not exceed $67.7 million. Claims that exceed that amount will be prorated in accordance with the provisions for proration that are contained in this part.

(c) To be eligible for any payments under this part, the sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application.

§ 784.2 Administration.

This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Administrator, FSA, or his designee and the employees of the Agency.

§ 784.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Lamb Meat Adjustment Assistance Program established by this part.

Agricultural Marketing Service or AMS means the Agricultural Marketing Service of the Department.

Application means the Lamb Meat Adjustment Assistance Program Application, Forms FSA–382 and FSA–383.

Average Choice Confirmation means a muscling score of that designation assigned in accordance with official USDA standards and procedures.

Department means the United States Department of Agriculture.

Eligible lambs means feeder lambs and slaughter lambs during Year 2 through Year 4 and also ewe lambs during Year 3 through Year 4.

Ewe lamb means a female lamb no more than 18 months of age that has not produced an offspring.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Feeder lamb means a ewe or wether of less than one year of age that when sold is intended to be further fed a high protein diet or other appropriate diet to reach an acceptable slaughter market weight.

Foot rot means an infectious, contagious disease of sheep that causes severe lameness and economic loss from decreased flock production.

Lambing cycle means the period of time from birth to weaning.

Parrot mouth means a genetic defect resulting in the failure of the incisor teeth to meet the dental pad correctly.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

Sheep and lamb operation means any self-contained, separate enterprise operated as an independent unit exclusively within the United States in which a person or group of persons raise sheep and/or lambs.

Sheep improvement program means the "National Sheep Improvement Program" operated by the American Sheep Industry Association or other similar program for herd improvement approved by the FSA with respect to payments under this part.

Slaughter lamb means a lamb that is sold for immediate slaughter.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

USDA Choice, USDA Prime, USDA Yield Grade 2 mean, respectively, the classifications for lamb carcasses so designated under the Official United States Standards for Grades of Lamb, Yearling, Mutton, and Mutton Carcasses promulgated by the Secretary of Agriculture under the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087; 7 U.S.C. 1621–1627) and related authorities.

Year 1 means the period of time beginning July 22, 1999, and ending September 30, 2000.

Year 2 means the period of time beginning August 1, 2000, and ending July 31, 2001.

Year 3 means the period of time beginning August 1, 2001, and ending July 31, 2002.

Year 4 means the period of time beginning August 1, 2002, and ending July 31, 2003.

§ 784.4 Year 1 time and method for application.

(a) A request for Year 1 benefits under this part must be submitted on a Lamb Meat Adjustment Assistance Program Payment Application. The form may be obtained from and must be submitted to the FSA county office serving the county where the sheep and lamb operation is located. The completed form must be received by the FSA county office by the close of business on October 13, 2000. Applications not received by the close of business on October 13, 2000, will be returned as not having been timely filed and the sheep and lamb operation filing the application will not be eligible for benefits under this program.

(b) The sheep and lamb operation requesting Year 1 benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it, program benefits will not be approved. Providing a false certification may result in additional civil and criminal sanctions.

(c) Not withstanding any other provisions of this section, payments will not be made under this section for the acquisition of rams to the extent that any such purchase, at any time during Year 1, created, or help create, a ratio of rams to ewes for the operation that was less than 1 ram to 15 ewes. However, the limitation on payments provided for in the preceding sentence shall not apply to the extent that the operation establishes to the satisfaction of the FSA County Office Committee that a lower ratio of rams to ewes is customary for the operation for breeding purposes.

§ 784.5 Year 1 eligibility.

(a) To be eligible to receive the Year 1 payments under this part, as described in § 784.1, at the rates provided in § 784.6, a sheep and lamb operation must:

(1) Be engaged in the business of producing and marketing agricultural products at the time of filing the application;

(2) Have in 1999 gross annual revenue of $2.5 million or less; and

(3) During Year 1,

(i) Purchased rams for breeding purposes within that operation, provided that such rams must have been at least 90 days of age when purchased and must have been, or will be, maintained by the operation for at least 90 days continuously after the date of purchase; or

(ii) Enrolled sheep in an eligible sheep improvement program; or

(iii) Made sheep and lamb operation facility improvements with respect to their operation.

(b) To be eligible for payments for facility improvements made under paragraph (a)(3)(iii) of this section, the sheep and lamb operation must do the following:

(1) Submit supporting documentation of the cost of the improvements made to the facility during program Year 1. Supporting documentation must be dated during Year 1. Materials purchased prior to Year 1 are ineligible.

(2) Use facility improvements for sheep and lamb production activities continuously for at least the next three consecutive years, and

(3) Must complete the facility improvement by a date determined by the Administrator of FSA, or his designee. The Deputy Administrator for Farm Programs, FSA may authorize State and county committees to waive or modify the facility improvement completion date in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) Upon a failure to maintain the facility for the full three years or complete the facility improvement by the established deadline, the operation must refund the Year 1 facility payment immediately plus interest at the rate of interest determined by the Agency, from the date FSA made such benefits available to the date of repayment.

(d) With respect to payments made for activities addressed in paragraph (a)(3)(i) of this section, upon any failure to maintain a ram for the full required 90-day period after payment, unless the 90-day period referred to in paragraph (a)(3)(i) of this section has already expired, the operation must immediately refund the payment plus interest at a rate determined by the Agency.

§ 784.6 Year 1 rate of payment and limitations on funding.

Subject to the availability of funds and to the proration rules of § 784.10, Year 1 payments for qualifying operations shall be at the following rates:

(a) Up to $100 for each eligible ram purchased, with a maximum of $2,500 per sheep and lamb operation;

(b) $.50 for each qualifying sheep enrolled in a qualifying sheep improvement program, up to $500 per sheep and lamb operation; plus

(c) 20% of the cost of the qualifying facility improvements up to $2,500 per sheep and lamb operation.

§ 784.7 Year 2, Year 3, and Year 4 time and method for application.

(a) A request for Year 2, Year 3, and Year 4 benefits under this part must be submitted on a completed Lamb Meat Adjustment Assistance Program Payment Application. The application must be submitted to the FSA county office serving the county where the sheep and lamb operation is located but, in any case, must be received by the FSA county office by the close of business on August 15, 2001, if applying for Year 2 benefits, by the close of business on August 15, 2002, if applying for Year 3 benefits, and by the close of business August 15, 2003, if applying for Year 4 benefits. The certification section of the application must be completed prior to submission. Applications not received by the respective deadlines will be rejected and returned.

(b) The sheep and lamb operation requesting benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification by FSA. Refusal to allow any agency of the Department of Agriculture to verify any information provided will result in rejection of the application or an obligation to return payments. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

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§ 784.8 Year 2, Year 3, Year 4 eligibility.

(a) Subject to the availability of funds, Year 2, Year 3, and Year 4 payments will, as described to in § 784.1, be made for eligible marketings of slaughter lambs. Payments for slaughter lambs can be received by an operation at the rates described in § 784.9 for those eligible lambs slaughtered in Year 2, Year 3, and Year 4 if the lambs were owned continuously for 30 days prior to the marketing for slaughter and if the carcass produced meets the criteria set out in paragraph (b) of this section. Other criteria, as set out in this part, may also apply as a condition for, or limitation on, payment. See paragraphs (d) and (g) of this section for feeder lamb and purchased or retained ewe lamb payment eligibility.

(b) In order for a marketing of a slaughter lamb to qualify for payment under paragraph (a) of this section, the carcass produced by the slaughter must meet and be certified by an AMS agent to meet the following criteria:

(1) Meet the requirements of USDA Quality Grade Choice or Prime for lamb carcasses;

(2) Meet the requirements of USDA Yield Grade 2;

(3) Have a muscling confirmation score of "Average Choice" or better; and

(4) Have a 55–75 pound dressed hot carcass weight.

(c) Slaughter facilities that process less than 50 market lambs per week on a yearly basis can request approval from AMS to certify the slaughter lamb carcass requirements according to paragraph (b) of this section. To obtain approval from AMS, the slaughter facility must submit a written request for AMS approval to the address provided by FSA.

(d) Eligible slaughter lambs commingled on a pooled load for transport to a slaughter facility must complete the applicable information on the LMAAP application form. Producers with lambs on these pooled loads can receive a pro-rata portion of payment for eligible slaughter lambs that meet the criteria for payment according to paragraph (b) of this section. The LMAAP application must accompany lambs to the slaughter facility and be presented to the USDA grader for certification. The seller must comply with all other FSA guidelines to be eligible for such benefits for this program.

(e) Subject to the availability of funds, sheep and lamb operations may be eligible for the Year 2, Year 3, and Year 4 feeder lamb payments, as specified in § 784.9, if:

(1) The operation had gross sales of no more than $2.5 million in the year preceding the year for which payment is requested; and

(2) The feeder lambs sold were owned by the operation from birth to the time of marketing and, when marketed, were certified by AMS, as thick-muscled and large-framed.

(f) An eligible sheep and lamb operation can self-certify to the eligibility criteria described in paragraph (e) of this section, if they do the following:

(1) Certify to the number of feeder lambs that meet the criteria in paragraph (e)(2);

(2) Maintain identification with the farm or ranch of origin of the feeder lambs for a 24-hour viewing period to allow AMS agents or their assigned representatives an opportunity to verify qualifying feeder lambs;

(3) Complete and fax page 4 of the LMAAP application to a number provided by FSA or AMS at least 2 workdays prior to a 24-hour period when lambs can be viewed for verification, providing on the form the location and contact person for USDA verification purposes;

(4) Submit an LMAAP Application for payment;

(5) Submit supporting documentation to the local county office to prove that page 4 of the LMAAP application was completed and faxed according to paragraph (f)(3) of this section.

(g) Sheep and lamb operations that elect not to self-certify according to paragraph (f) of this section, can self-certify to the eligibility criteria described in paragraph (e) of this section when lambs lose ownership identification by doing the following:

(1) Provide unique identification for all marketed lambs by:

(i) Requesting program ear tags in writing from USDA (the address is available at any local FSA office); or

(ii) Uniquely identifying or tagging each qualifying self-certified feeder lamb that meets the eligibility requirements clearly described in paragraph (e)(2) of this section before transferring ownership. Alternative methods of identification may be used such as other unique ear tags or paint brands;

(2) Complete and fax page 4 of the LMAAP application to a number provided by FSA including the location of the lambs for 30 days after FAX notification and the type of animal identification;

(3) Submit LMAAP Application to the local county office for payment; and

(4) Submit supporting documentation to the local county office to prove that page 4 of the LMAAP application was completed and faxed according to paragraph (g)(2).

(5) Applicable FSA program forms, office addresses, and fax number information is available on the internet at *www.sc.egov.usda.gov*.

(h) In order for an eligible sheep and lamb operation to receive a ewe lamb incentive payment, the producer must certify that the ewe lamb, at the time of certification is:

(1) Not older than 18 months of age;

(2) Has not produced an offspring;

(3) Does not possess the following characteristics:

(i) Parrot mouth; or

(ii) foot rot.

(i) In addition, to qualify for ewe lamb incentive payment, the sheep and lamb operation must:

(1) Certify that it will maintain the qualifying ewe lambs in the herd for at least one complete offspring lambing cycle and actually maintain the lambs for that period in accord with that certification.

(2) Upon request by an AMS agent, agree to allow the AMS agent to verify that the ewe lambs meet qualifying characteristics. These qualifying characteristics inter alia, must be certified by an AMS agent as equal or superior to those required for lamb incentive payments, as described in paragraphs (b) and (e) of this section.

(3) Maintain documentation of any death loss of qualifying ewe lambs.

(4) Agree to refund any payments made with respect to any ewe lamb which has died before completing the full program requirements where said deaths for the operation exceed 10 percent per program year.

(5) Be in compliance with all requirements relating to Scrapie, as described in 9 CFR part 79; and

(j) To be eligible for any payments addressed under this section, sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application.

(k) In addition, to be eligible for Year 2, Year 3, and Year 4 payments, a sheep and lamb operation must submit a timely application during the application period for Year 2, Year 3, and Year 4 benefits and comply with all other terms and conditions of this part or which are contained in the application to be eligible for such benefits.

§ 784.9 Year 2, Year 3, and Year 4 rate of payment and limitations on funding.

Subject to the availability of funds, and the proration rules set out in § 784.10, Year 2, Year 3, and Year 4 payments may be made to sheep and lamb operations at the following rates:

(a) $3 for each qualifying feeder lamb; plus

(b) $5 for each qualifying slaughter lamb marketed in any covered month except for June or July of the applicable program year, and

(c) $8 for each qualifying slaughter lamb marketed in June or July of the applicable program year.

(d) $18 for each qualifying ewe lamb retained or purchased for breeding purposes for Year 3 and Year 4 only.

§ 784.10 Availability of funds for Year 1 through Year 4._

(a) Total payments under this part, unless otherwise determined by the FSA, cannot exceed $67.7 million. At the close of Year 3, FSA will determine if the remaining available funds will be sufficient for program Year 4. In the event that funds should be insufficient to complete the expected payments to eligible producers during program Year 4, then the payment rates for that program year shall be prorated by a national factor so as to reduce the expected payments to be made to the amount available and payment shall be made at those rates until monies are expended. Payments made during a prorated program year shall be made first-come, first-served so long as there are monies available in the manner set for in these regulations. Payments for preceding years will not be affected.

(b) A national factor shall be determined, if necessary for slaughter lamb and feeder lamb payments based on the factoring of the remaining available funds at the conclusion of Year 3 divided by the average number of slaughter and feeder lambs that qualified for benefits during Year 2 and Year 3.

(c) Of the $67.7 million of total funds under this part, $26 million is specifically earmarked for the ewe lamb incentive payments, with a target of $13 million per year for Year 3 and Year 4. Those monies ($26 million) should be used only for the ewe incentive payments and no other funds shall be used for those payments. A national factor shall be determined, if necessary for ewe lamb payments based on the factoring of the remaining available funds at the conclusion of Year 3 divided by the number of ewe lambs that qualified for ewe lamb payments during Year 3.

(d) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall reduce the national factor in such manner as FSA, in its sole discretion, finds fair and reasonable.

§ 784.11 Appeals.

Any sheep and lamb operation which is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title or otherwise applicable.

§ 784.12 Misrepresentation and scheme or device.

(a) A person or operation shall be ineligible to receive assistance under this program if it is determined by FSA to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any sheep and lamb operation or person engaged in acts prohibited by this section and any sheep and lamb operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this part and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 784.13 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must, also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 784.14 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 784.15 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the sheep and lamb operations under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during the regular business hours, authorized representatives of USDA shall have access to the premises of the sheep and lamb operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section shall be refunded with interest.

§ 784.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, then all such payments made under this part to any sheep and lamb operation or person shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing an application for payment as having an interest in an operation or payment shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation or payment.

(c) Interest shall be applicable to refunds required of any person under this part if FSA determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation for funds, from the date FSA made such benefits available to the

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date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of FSA alone for refunds resulting from those violations determined by FSA to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 792.

(f) Any excess payments made by FSA with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 784.17 Offsets and withholdings.

FSA may offset or withhold any amounts due FSA under this subpart in accordance with the provisions of 7 CFR part 792, or successor regulations, as designated by the Department.

§ 784.18 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

Signed at Washington, DC, on March 20, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–7220 Filed 3–21–02; 3:52 pm]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE42

Small Business Size Regulations; Size Standards for Programs of Other Agencies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising the procedural regulations that Federal agencies must follow to obtain approval of the SBA Administrator for establishing size standards for use in their programs. This revision will simplify SBA's regulations by requiring agencies to consult with SBA before proposing a size standard. It requires them to obtain the SBA Administrator's approval before publishing a final rule.

DATES: This rule is effective on April 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618.

SUPPLEMENTARY INFORMATION:

Introduction

The Small Business Act (sec. 3(a) & (b), 15 U.S.C. 632) (the Act) provides for the establishment of small business size standards. The Act authorizes the Administrator of SBA to "specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act *or any other Act*" (emphasis added). The Act gives the SBA Administrator exclusive authority to establish small business size standards for all Federal agencies, in the absence of other specific statutory authority. Unless a statute specifies size standards for an agency's program or gives an agency direct authority to establish size standards, the agency must use the applicable size standards established by SBA. However, the Act allows an agency to "prescribe a size standard for categorizing a business concern as a small business concern" (sec. 3(a)(2)(C) of the Act) provided the contemplated size standard meets certain criteria *and* the agency obtains approval of the SBA Administrator.

Currently, SBA's Small Business Size Regulations in 13 CFR 121.902 describe procedures that agencies must follow before they prescribe size standards for their own use. These regulations require an agency, contemplating the use of size standards different from those established by SBA, to obtain the SBA Administrator's approval to do so before it proposes them for comment as part of its rulemaking process. If an agency believes that size standards different from those established by SBA are appropriate for its purposes, it must propose specific size standards, explain why it believes they are appropriate for their purposes and why SBA's size standards are not, and seek public comment on them. The proposed size standards must be specific and must meet the criteria set forth in the Act and SBA's regulations. Before an agency issues a final rule, it must notify SBA of the size standards it is adopting and provide SBA with copies of public comments received on the proposed size standards.

Reasons for the Change in the Regulation

Based on its experience in evaluating agencies' requests for special size standards, SBA proposed revisions to its Small Business Size Regulations by modifying what information agencies need to provide to SBA and when formal approval is required (65 FR 4176, dated January 26, 2000). SBA explained in the proposed rule that the purpose of the revision is to: (1) Streamline the rulemaking process; (2) eliminate a step in the approval process in cases where an agency contemplates adopting a size standard different from a proposed size standard approved by the SBA's Administrator; (3) give an agency SBA's advisory input before the agency issues its proposed size standard; and (4) allow SBA to consider in its decision-making process the requesting agency's proposed rule, its explanation and justification for the size standards it intends to adopt, copies of the public comments to the proposed size standards, and a draft copy of the agency's intended final rule.

Summary of New Procedures

This final rule adopts the proposed changes of January 26, 2000. The comments received on the proposed rule generally supported the proposed revisions (see discussion of comments below). The adopted procedures establish a consultation requirement with SBA's Office of Size Standards before publishing a proposed rule and require agencies to obtain the SBA Administrator's formal approval before adopting the size standards in a final rule.

Consultation with SBA's Office of Size Standards must be in writing and take place at least fourteen (14) calendar days before issuing the proposed rule. It must include what size standard the agency is proposing, to what program it will apply, how the agency arrived at the particular size standard, and why SBA's existing size standards do not satisfy the agency's program requirements. This consultation will allow SBA to review the proposed size standards and advise the agency as soon as practicable of issues that could prevent the SBA Administrator's approval, such as those in conflict with the Act or SBA Small Business Size Regulations. The agency will then have the opportunity to address those issues in either the proposed rule or final rule.

Prior to publishing a final rule, the agency must request and obtain the SBA's Administrator's approval to establish its own size standard. The agency must provide SBA with copies of

public comments on the proposed rule; a justification for the intended size standards; a copy of the intended final rule; and any additional information the SBA may request as part of its review.

These procedures are more practical for the agencies to follow than the current procedures in two ways. First, they only require the SBA Administrator's approval before the agency issues its final rule adopting the contemplated size standards, rather than before it proposes them. Agencies have found submitting formal requests during the formulation of the proposed rule difficult since size standard decisions are often made shortly before publication of the rule. Second, by consulting with SBA prior to publishing a proposed rule it makes SBA aware of an agency's proposal and gives it an opportunity to advise the agency if the contemplated size standards could not be approved. An agency will be able to consider SBA's comments before publishing a proposed rule, if possible, and well in advance of a final rule.

Summary and Discussion of Comments to the Proposed Rule

SBA received six comments to its proposal. Four Federal agencies commented on the rule, one association, and one office within SBA. All, but one commenter, were supportive of the proposed changes to the current procedures. The comments raised several noteworthy issues. These issues are discussed below, and they lead to minor wording changes to the final rule.

A comment from a United States Commission supported the proposed regulatory revision. The Commission stated that such a change would help conserve the resources of SBA as well as those of agencies that seek approval for special size standards under this regulation. SBA can then focus on the comments the agency receives to its proposed size standards, rather than on the agency's pre-comment estimates of their appropriateness for the stated purpose. The Commission further commented that the requirement for consultation at least 14 days prior to publishing the proposed size standards should cause no undue burden on agencies in complying with this regulation.

The Commission also commented that the requirement in the proposed § 121.903(a)(6), that the requesting agency certify its compliance with the Small Business Act, is unnecessary. We agree with the Commission's observation, and we have not included that requirement in the final rule. As part of SBA's review, it will ensure that an agency's size standard complies with the Small Business Act.

The Commission also suggested reversing the order of § 121.903(a)(5) and § 121.903(a)(6). These sections discuss the requirement to obtain the SBA Administrator's approval and what information an agency must submit. SBA recognizes that these sections are closely related and can be considered as one. Therefore, SBA has combined the requirements of the proposed § 121.903(a)(6) with § 121.903(a)(5).

A Federal agency opposed the proposed regulatory change for three reasons. First, it claimed that the change will not reduce the regulatory burden on agencies, and for some it may be more burdensome. The agency stated that the proposed revision requires more information than the existing regulation. We disagree. The new procedures essentially ask for the same information that we require under the existing regulation. The only difference is in the timing of the submission. In fact, based on past experience, we strongly believe that the existing regulation, if we do not revise it, is more burdensome on an agency than these revisions. The current regulation requires SBA to review the submitted information without the benefit of the public comments on the proposed size standard. The new procedures require only that the agency consult with SBA before it proposes the size standards, and provide SBA minimal information at that time. The agency does not have to obtain SBA approval to propose size standards. Documentation to support an agency's request for alternative size standards would be more comprehensive and logically related if the agency submits it to SBA after it has had the benefit of public comments on its proposal.

Second, the objecting agency requested that SBA clarify whether "consultation" associated with a Regulatory Flexibility Analysis in § 121.903(c) is an "informal" consultation or a formal consultation as described in the proposed § 121.903(a)(2). Section 121.903(c) refers only to the use of size standards for performing a Regulatory Flexibility Analysis (RFA). Under section 601(3) of the Regulatory Flexibility Act, an agency must use SBA's size standards for an RFA, or after consultation with the SBA's Office of Advocacy and after an opportunity for public comment, it may use different size standards. The procedures of § 121.903(a) do not apply to alternative size standards established for RFA purposes.

Third, the agency recommended that the final rule require SBA action within a reasonable time. The agency pointed out that the proposed rule contained no timeframe within which SBA must respond, and expressed concern that SBA could "prevent indefinitely an agency from issuing a final rule." Another agency also raised this point and recommended a 21-day period for SBA to review a final rule. Under this final rule, an agency requests approval for alternate size standards only after it has gone through the proposal and comment stage at least once. SBA cannot anticipate how much time an agency will allow between the time it requests approval and when it intends to publish its final rule. Further, SBA cannot know the nature or the extent of the comments the agency will receive, or how long it may take for SBA and the agency to resolve any outstanding issues. With these unknowns, we cannot specify in a rule how long SBA will take to respond to the agency's request. Furthermore, not approving an agency's request within a stated time cannot bestow de facto approval by SBA, because the Act specifically requires the Administrator's approval before an agency can prescribe its own size standards. It goes without saying that SBA remains committed to giving priority to agency requests for approval for alternative size standards and will strive to complete its review within 30 days, if practicable, and will work with an agency to resolve issues that may prevent timely approval of size standards.

An office within SBA concurred in the proposed changes. The office noted that in the proposed § 121.903(a)(1)(ii) that SBA referred to "gross" receipts as the size standard measure for services concerns. The office expressed concern that this might confuse the meaning of 13 CFR 121.104, "How Does SBA Calculate Receipts," which does not use the term "gross," except "in the case of a sole proprietorship" (§ 121.121.104a(a)(1)). We agree, and have removed "gross" from the final version of § 121.903(a)(1)(ii).

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35.)

The Office of Management and Budget reviewed this rule as a "significant" regulatory action under Executive Order 12866.

For purposes of the Regulatory Flexibility Act, SBA has determined that this rule does not have a significant economic effect on a substantial number of small entities. SBA has made this determination for the following reasons: (1) The change is procedural, not

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substantive, in nature; (2) the change applies to Federal agencies only; and (3) the change applies only when a Federal agency contemplates categorizing an entity as a small business concern for its programs using standards other than those established by SBA. SBA has also made this determination based on the nature, number and complexity of requests from Federal agencies that have made such requests. SBA believes that this amendment will not increase the nature, number or frequency of these requests.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent possible under standards in section 3 of the Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44, U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For reasons stated in the preamble, SBA is amending 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Section 121.902 is revised to read as follows:

§ 121.902 What size standards are applicable to programs of other agencies?

SBA size standards. The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless the agency and SBA agree otherwise.

3. Section 121.903 is revised to read as follows:

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not suitable for their programs, then agency heads may establish a more appropriate small business definition for the exclusive use in such programs, but only when:

(1) The size standard will determine:

(i) The size of a manufacturing concern by its average number of employees based on the preceding twelve calendar months, determined according to § 121.106;

(ii) The size of a services concern by its average annual receipts over a period of at least three years, determined according to § 121.104;

(iii) The size of other concerns on data over a period of at least three years; or,

(iv) Other factors approved by SBA;

(2) The agency has consulted in writing with SBA's Assistant Administrator for Size Standards at least fourteen (14) calendar days before publishing the proposed rule which is part of the rulemaking process. The written consultation will include:

(i) What size standard the agency contemplates using;

(ii) To what agency program it will apply;

(iii) How the agency arrived at this particular size standard for this program; and,

(iv) Why SBA's existing size standards do not satisfy the program requirements;

(3) The agency proposes the size standard for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553;

(4) The agency provides a copy of the proposed rule, when it publishes it for public comment as part of the rulemaking process, to SBA's Assistant Administrator for Size Standards; and

(5) SBA's Administrator approves the size standard before the agency adopts a final rule or otherwise prescribes the size standard for its use. The agency's request for the SBA Administrator's approval must include:

(i) Copies of all comments on the proposed size standard received in response to the proposed rule;

(ii) A separate written justification for the intended size standard;

(iii) A copy of the intended final rule if available at that time, or a copy of the intended final rule and preamble prior to its publication; and

(iv) Other information SBA may request in connection with the request.

(b) When approving any size standard established pursuant to this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(c) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to section 601(3) of the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

4. Section 121.904 is added to read as follows:

§ 121.904 When does SBA determine the size status of a business concern?

For compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

Dated: October 16, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 02–7152 Filed 3–25–02; 8:45 am]

BILLING CODE 8025–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements; Correction

AGENCY: Federal Trade Commission.

ACTION: Final rule, correction.

SUMMARY: This document contains the correction to the premerger notification final rule which was published Monday, March 18, 2002, (67 FR 11898). This document corrects a paragraph reference that appears in an example to § 802.51.

EFFECTIVE DATE: April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Karen E. Berg, Attorney, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION: The final rule, as published, contained an error in the paragraph referenced in the examples to section 802.51.

Accordingly, the final rule for 16 CFR part 802, published in the **Federal Register** on March 18, 2002, is corrected as follows:

§ 802.51 [Corrected]

On page 11904, in § 802.51, in example 3, in the third column, in the second line "(b)(3)" is corrected to read "(b)(2)".

Donald S. Clark,

Secretary.

[FR Doc. 02–7171 Filed 3–25–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 02N–0086]

Public Information; Cross Reference to Other Regulations; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct an inadvertent error that has been incorporated into the public information regulations. This action is being taken to ensure the accuracy and consistency of the regulations.

DATES: This rule is effective March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: FDA has discovered that an error has been incorporated into the agency's regulations for 21 CFR part 20. This document corrects that error. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

§ 20.100 [Amended]

2. Section 20.100 *Applicability; cross-reference to other regulations* is amended by removing paragraph (c)(30) and redesignating paragraphs (c)(31) through (c)(41) as paragraphs (c)(30) through (c)(40), respectively.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7180 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name and address for G.D. Searle & Co.

DATES: This rule is effective March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: G.D. Searle & Co., P.O. Box 5110, Chicago, IL 60680, has informed FDA of a change of name and address to G.D. Searle LLC, Pharmacia Corp., 4901 Searle Pkwy., Skokie, IL 60077. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "G.D. Searle & Co." and in the table in paragraph (c)(2) by revising the entry for "000014" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
. . . . .	. .
G.D. Searle LLC, Pharmacia Corp., 4901 Searle Pkwy., Skokie, IL 60077	000014
. . . . .	. .

(2) * * *

Drug labeler code	Firm name and address
000014	G.D. Searle LLC, Pharmacia Corp., 4901 Searle Pkwy., Skokie, IL 60077

Dated: February 22, 2002.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–7147 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 809a

RIN 0701–AA64

Installation Entry Policy, Civil Disturbance Intervention and Disaster Assistance

AGENCY: Department of the Air Force, DoD.

ACTION: Final Rule.

SUMMARY: The Department of the Air Force has revised its regulations in 32 CFR part 809a dealing with installation entry policy, barments, enforcing order within or near Air Force installations, and civil disturbance and disaster assistance, to reflect current policies. This rule implements guidance from Section 21 of the Internal Security Act of 1950; DoD Directive 5200.8, Security of DoD Installations and Resources; and Title 10 U.S.C., Sections 332 and 333. The revision adds expulsion and installation entry point check procedures.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: SMSgt Walter Filipiak, (210) 671–0898.

List of Subjects in 32 CFR Part 809a

Civil defense, Civil disorders, Disaster assistance, Federal buildings and facilities, Foreign relations, Law enforcement, Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR Part 809a to read as follows:

PART 809a—INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

Sec.

809a.0 Purpose.

Subpart A—Installation Entry Policy

809a.1 Random installation entry point checks.
809a.2 Military responsibility and authority.
809a.3 Unauthorized entry.
809a.4 Use of Government facilities.
809a.5 Barment procedures.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

809a.6 Authority.
809a.7 Definitions.
809a.8 Installation policies and laws.
809a.9 Conditions for use of Air Force resources.
809a.10 Military commanders' responsibilities.
809a.11 Procedures outside the United States.

Authority: 10 U.S.C. 332 and 333.

§ 809a.0 Purpose.

This part prescribes the commanders' authority for enforcing order within or near Air Force installations under their jurisdiction and controlling entry to those installations. It provides guidance for use of military personnel in controlling civil disturbances and in supporting disaster relief operations. This part applies to installations in the United States, its territories and possessions, and will be used to the maximum extent possible in the overseas commands. Instructions issued by the appropriate overseas commander, status of forces agreements, and other international agreements provide more definitive guidance for the overseas commands. Nothing in this part should be construed as authorizing or requiring security forces units to collect and maintain information concerning persons or organizations having no affiliation with the Air Force other than a list of persons barred from the installation.

Subpart A—Installation Entry Policy

§ 809a.1 Random installation entry point checks.

The installation commander determines when, where, and how to implement random checks of vehicles or pedestrians. The commander conducts random checks to protect the security of the command or to protect government property.

§ 809a.2 Military responsibility and authority.

(a) Air Force installation commanders are responsible for protecting personnel and property under their jurisdiction and for maintaining order on installations, to ensure the uninterrupted and successful accomplishment of the Air Force mission.

(b) Each commander is authorized to grant or deny access to their installations, and to exclude or remove persons whose presence is unauthorized. In excluding or removing persons from the installation, the installation commander must not act in an arbitrary or capricious manner. Their action must be reasonable in relation to their responsibility to protect and to preserve order on the installation and to safeguard persons and property thereon. As far as practicable, they should prescribe by regulation the rules and conditions governing access to their installation.

§ 809a.3 Unauthorized entry.

Under Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797), any directive issued by the commander of a military installation or facility, which includes the parameters for authorized entry to or exit from a military installation, is legally enforceable against all persons whether or not those persons are subject to the Uniformed Code of Military Justice (UCMJ). Military personnel who reenter an installation after having been properly ordered not to do so may be apprehended. Civilian violators may be detained and either escorted off the installation or turned over to proper civilian authorities. Civilian violators may be prosecuted under 18 U.S.C. 1382.

§ 809a.4 Use of Government facilities.

Commanders are prohibited from authorizing demonstrations for partisan political purposes. Demonstrations on any Air Force installation for other than political purposes may only occur with the prior approval of the installation commander. Demonstrations that could result in interference with, or prevention of, the orderly accomplishment of the mission of an installation or that present a clear danger to loyalty, discipline or morale of members of the Armed Forces will not be approved.

§ 809a.5 Barment procedures.

Under the authority of 50 U.S.C. 797, installation commanders may deny access to the installation through the use of a barment order. Barment orders should be in writing but may also be oral. Security forces maintain a list of personnel barred from the installation.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

§ 809a.6 Authority.

The authority to intervene during civil disturbances and to provide disaster assistance is bound by directives issued by competent authorities. States must request federal military intervention or aid directly from the President of the United States by the state's legislature or executive. Installation commanders must immediately report these requests in accordance with AFI 10–802, *Military Support to Civil Authorities* (Available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.).

§ 809a.7 Definitions.

The following definitions apply to this part:

(a) *Emergencies.* These are conditions which affect public welfare and occur as a result of enemy attack, insurrection, civil disturbances, earthquake, fire, flood, or other public disasters which endanger life and property or disrupt the usual process of government. The term "emergency" includes any or all of the conditions explained in this section.

(b) *Civil defense emergency.* This is a disaster situation resulting from devastation created by an enemy attack and requiring emergency operations during and following attack. It may also be proclaimed by appropriate authority in anticipation of an attack.

(c) *Civil disturbances.* These are group acts of violence or disorder prejudicial to public law and order including those which follow a major disaster. They include riots, acts of violence, insurrections, unlawful obstructions or assemblages, or other disorders.

(d) *Major disaster.* Any flood, fire, hurricane, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of the State and local governments in alleviating the damage, hardship, or suffering caused thereby.

§ 809a.8 Installation policies and laws.

This subpart contains policies on the use of Air Force military personnel in civil disturbances and disasters. The more important laws concerning military aid to civil authorities are also summarized.

(a) The Air Force gives military assistance to civil authorities in civil defense or civil disturbances and disasters only when such assistance is requested or directed. Commanders will not undertake such assistance without authority, unless the overruling demands of humanity compel immediate action to protect life and property and to restore order.

(b) The military service having available resources nearest the affected area is responsible for providing initial assistance to civil authorities in emergencies. Subsequent operations are to be according to the mutual agreement between the senior service commanders concerned.

(c) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State is the primary responsibility of State and local authorities. It is well-established U.S. Government policy that intervention with military forces takes place only after State and local authorities have used their own forces and are unable to control the situation, or when they do not take appropriate action.

§ 809a.9 Conditions for use of Air Force resources.

This part is not intended to extend Air Force responsibilities in emergencies to generate additional resources (manpower, materiel, facilities, etc.) requirements, or encourage participation in such operations at the expense of the Air Force primary mission. It is a guide for the employment of Air Force resources when:

(a) A disaster or disturbance occurs in areas in which the U.S. Air Force is the executive agent of the United States.

(b) A disaster or disturbance occurs in areas that are remote from an Army installation but near an Air Force installation, thereby necessitating Air Force assumption of responsibility pending arrival of Army personnel.

(c) The overriding demand of conditions resulting from a natural disaster compels immediate action to protect life and property and to restore order.

§ 809a.10 Military commanders' responsibilities.

(a) Civilians in the affected area will be informed of the rules of conduct and other restrictive measures to be enforced by the military. These will be announced by local proclamation or order, and will be given the widest publicity by all available media.

(b) Persons not normally subject to military law, who are taken into custody by military forces incident to civil disturbances, will be turned over to the civil authorities as soon as possible.

(c) Military forces will ordinarily exercise police powers previously inoperative in an affected area; restore and maintain order; maintain essential transportation and communication; and provide necessary relief measures.

(d) U.S. Air Force civilian employees may be used, in any assignments in which they are capable and willing to serve. In planning for on-base contingencies of fires, floods, hurricanes, and other natural disasters, arrangements should be made for the identification and voluntary use of individual employees to the extent that the needs for their services are anticipated.

§ 809a.11 Procedures outside the United States.

It is Air Force policy to make every reasonable effort to avoid any confrontation between United States military forces and host nation demonstrators or other dissidents posing a threat to Air Force resources. Intervention by United States military personnel outside the United States is governed by international law, bilateral and other international agreements to which the United States is a party, and host-nation laws. Local plans to counter such situations must include provisions to request and obtain host nation civil or military support as quickly as possible.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6886 Filed 3–25–02; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–009]

RIN 2115–AE46

Special Local Regulations for Marine Events; Chesapeake Bay Near Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is adopting temporary special local regulations during the Volvo Ocean Race, Leg 7 Restart, a marine event to be held over the waters of Chesapeake Bay between Thomas Point and Sandy Point, near Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Chesapeake Bay during the event.

DATES: This rule is effective from 10 a.m. to 2:30 p.m. EDT on April 28, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–009 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Volvo Ocean Race Chesapeake Project Officer, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will occur on Sunday, April 28, 2002, and numerous spectator craft are expected to gather near the event area. Because of the danger posed by many sailing vessels maneuvering in close proximity of each other at the beginning of a critical race restart, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The William P. Lane Jr. (Chesapeake Bay) Bridge Eastern Span and Channel will remain unaffected during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, sponsor-provided pamphlets and area newspapers.

Background and Purpose

On April 28, 2002, Ocean Race Chesapeake, Inc. will sponsor the Leg 7 Restart of the 2001–2002 Volvo Round The World Race on the waters of Chesapeake Bay between Thomas Point and Sandy Point, near Annapolis, Maryland. The event will consist of eight 64-foot sailing vessels conducting a strictly organized restart to a highly publicized, international sailing race. Opposing teams will be maneuvering in a predetermined area on the Chesapeake Channel adjacent to the William P. Lane Jr. (Chesapeake Bay) Bridge Main Channel Span. A fleet of spectator vessels is anticipated. Due to the need for vessel control while a fair and accurate restart is conducted, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Chesapeake Bay. The regulated area will include an area approximately 7.5 nautical miles long and 1.3 nautical miles wide. The temporary special local regulations will be enforced from 10 a.m. to 2:30 p.m. EDT on April 28, 2002, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The William P. Lane Jr. (Chesapeake Bay) Bridge Eastern Span and Channel will remain unaffected during the event.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this regulation prevents traffic from transiting the Chesapeake Channel between Thomas Point and Sandy Point during the event, the effect of this regulation will not be significant due to the limited duration of the regulation, the availability of the William P. Lane Jr. (Chesapeake Bay) Bridge Eastern Span and Channel, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, sponsor-provided pamphlets and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of Chesapeake Bay during the event.

Although this regulation prevents traffic from transiting the Chesapeake Channel of the Chesapeake Bay during the event, the effect of this regulation will not be significant because of its limited duration, the availability of the William P. Lane Jr. (Chesapeake Bay) Bridge Eastern Span and Channel, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, sponsor-provided pamphlets and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add a temporary section, § 100.35T–05–009 to read as follows:

§ 100.35T–05–009 Chesapeake Bay, near Annapolis, MD.

(a) *Definitions:*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant.* Includes all vessels participating in the Volvo Ocean Race Chesapeake under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Activities Baltimore.

(4) *Regulated Area.* Includes the waters of the Chesapeake Bay, within an area approximately 7.5 nautical miles long and 1.3 nautical miles wide, bounded by a line drawn from a position at latitude 39°00′32″ N, longitude 076°23′03″ W, southwesterly to a position at 39°00′11″ N, longitude 076°21′50″ W, southeasterly to a position at 38°56′07″ N, longitude 076°24′11″ W, southerly to a position at 38°53′00″ N, longitude 076°24′13″ W, easterly to a position at 38°53′00″ N, longitude 076°25′58″ W, northerly to a position at 38°56′30″ N, longitude 076°25′29″ W, thence northeasterly to a position at 39°00′32″ N, longitude 076°23′03″ W. All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations:*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Effective Dates:* This section is in effect from 10 a.m. to 2:30 p.m. EDT on April 28, 2002.

Dated: March 13, 2002.

L. Mizell,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–7232 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–15–P

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Proposed Rules

Federal Register
Vol. 67, No. 58
Tuesday, March 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–98–303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Apples. These standards are issued under the Agricultural Marketing Act of 1946. The proposal would provide for the mixed varieties and change the color requirements for apples by reducing the number of apple varieties required to meet specific minimum color requirements. It would also delete the provision that apples be "carefully hand-picked." The "U.S. No. 1 Early grade" and the "Unclassified" section would also be deleted. Size specifications would be changed to allow Red Delicious and Golden Delicious varieties to meet either a minimum diameter or a minimum weight (currently these varieties must meet a minimum diameter designation). Changes would also be made to the application of tolerances for the purpose of allowing greater tolerances for defects in individual packages which contain 10 pounds or less, provided that the averages for the lot as a whole are met. The marking requirements would be changed by adding variety and grade to required markings on containers. The term "brown surface discoloration" would be added to the provisions which contain the requirements for the various grades of apples. The classification of "Bitter pit" and "Jonathan spot" would be clarified. Also, the U.S. Condition Standards for Export would be revised by removing the tolerance for slight scald and by changing the individual container tolerances in these requirements from one defective apple to three defective apples, provided the averages for the lot as a whole are met. In addition, the proposed rule will provide metric equivalents for dimensions given in terms of U.S. customary units and contains conforming and editorial changes. The purpose for this revision is to update and revise the standards to more accurately represent today's marketing practices.

DATES: Comments must be received by May 28, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2065, South Building, STOP 0240, Washington, DC 20250; Fax (202) 720–8871, e-mail *FPBDocket_clerk@usda.gov*. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David Priester, at the above address or call (202) 720–2185; e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) received a request to update and revise the United States Standards for Grades of Apples from the U.S. Apple Association (USAA). The USAA is a trade association representing over 500 individual apple business-related firms including growers, packers, shippers, processors, and industry suppliers. In addition, the USAA also represents approximately 9,000 apple growers throughout the U.S. through affiliation with state or regional apple associations. The Department and the USAA have been working closely together over the past eleven years to identify issues, defects, tolerances, and marketing practices related to apples for fresh market sale for the purpose of updating the United States Standards for Grades of Apples. The revisions being proposed will benefit all aspects of the apple industry with regard to these areas and make the standards current with today's marketing trends and practices.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities, The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule would revise the U.S. Standards for Grades of Apples that were issued under the Agricultural Marketing Act of 1946. The proposed amendment of the standards would: revise the basic requirements sections of each grade by providing for mixed varieties; delete the reference to "carefully hand-picked"; revise the reference to "scald" by using the term "brown surface discoloration"; clarify the classification of "Bitter pit" and "Jonathan spot"; place the definitions for bruising in their appropriate places; delete the "U.S. No. 1 Early grade"; revise the color requirements section by redefining the requirements and requiring less varieties to meet these requirements; delete the "Unclassified" section; designate weight equivalents (in grams) for certain diameter sizes of Red Delicious and Golden Delicious varieties; revise the "application of tolerances" section in regard to consumer packages; and add variety and grade to the marking requirements section.

The U.S. Standards for Grades of Apples and the U.S. Condition Standards for Export are both voluntary standards. There are no regulatory

provisions that require the use of these standards with the exception of the Export Apple Act (7 U.S.C. 581 *et seq.*) and its regulations (7 CFR part 33) in regard to the U.S. Standards for Grades of Apples. Under the Export Apple Act, shipments of apples to foreign countries must meet a minimum requirement of the U.S. No. 1 grade (there are exemptions based on lot size, destination, etc.).

According to USDA's National Agricultural Statistics Service (NASS) report of the 1997 Census of Agriculture, there are approximately 18,500 apple farms in the United States. Further, NASS information indicates that, in 1998, these 18,500 farms produced over 11 billion pounds of apples. Approximately 55 percent of the 1998 crop was eaten as fresh fruit. In 1999, apple production was down to 10 billion pounds. The top five producing states were Washington, New York, Michigan, California, and Pennsylvania, respectively. These five states collectively produced over 83 percent of the total 1998 U.S. apple crop.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The apple industry is characterized by growers and handlers whose farming operations generally involve more than one type (such as fresh market utilization versus processed market utilization) and variety of apple, and whose income from farming operations is not exclusively dependent on one apple variety or even one commodity. Typical apple growers and shippers produce multiple varieties of fresh market apples within a single year. It is estimated that the majority of the producers do have overall gross annual receipts greater than $750,000. Additionally, there are approximately 5,100 apple handlers (i.e., packers, brokers, distributors, importers, etc.). It is estimated that the majority of apple handlers do not fit SBA's definition of a small entity.

This rule proposes several changes to the U.S. Standards for Grades of Apples. These changes are intended to update the standards to maintain their usefulness in today's markets. For example, the color requirements that appear in the current standards are much the same as those that were published in 1923 even though many of the varieties marketed then are no longer marketed, or marketed in a significant volume. This proposed action will make the standards more consistent and uniform with current marketing trends and commodity characteristics. Therefore, it should benefit handlers and growers regardless of their size. Further, the benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities. Alternatives were considered for this action. One alternative would be to not issue the proposed changes. However, the need for revision increases due to ever changing market characteristics, and the proposal represents approximately 10 years of research, surveys, and other input from all sectors of the apple industry and government. Further, since the purpose of these standards is to facilitate the marketing of agricultural commodities, not revising them by upgrading the standard could result in confusion in terms of the proper application of the U.S. grade standards.

This proposed action will not impose any additional reporting or recordkeeping requirements on either small or large apple producers, handlers, or importers. In addition, other than discussed above, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this rule.

Discussion of Proposed Revisions

The current U.S. apple grades (U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, U.S. No. 1 Early, U.S. No. 1 Hail, and U.S. Utility) would remain in the standards. The U.S. No. 1 Early grade would be removed. This grade (Section 51.302 (a)) would be deleted since market surveys performed by the Department have indicated that it is no longer used by the industry.

Section 51.300, U.S. Extra Fancy, Section 51.301, U.S. Fancy, and Section 51.303, U.S. Utility currently state that apples must be "of one variety." This would be changed to " . . . consists of apples of one variety (except when more than one variety is printed on the container)" to allow for mixed variety lots. This change is being proposed primarily for the benefit of those shipper/packers that would prefer to pack more than one variety in the same container, such as gift packs of two or more varieties. However, the names of the multiple varieties would be required to be printed on the container. Any packages that contain more than one variety and are not designated as such on the container would fail to grade due to dissimilar varieties.

Sections 51.300, 51.301, and 51.303 also state that the apples must be ". . . carefully handpicked." We propose to delete this provision and its corresponding definition in § 51.315 because it is difficult to determine if an apple has been "carefully handpicked," especially at points of destination. Further, this requirement was not intended to prevent machine picked apples from making a U.S. grade. The original intent of this phrase was to preclude apples which had fallen from the tree and were laying on the ground (commonly referred to as "drops") from making a U.S. grade. However, the apple industry does not use drops for packing. As a result of the deletion of § 51.315, all sections following this section would be renumbered accordingly.

The Department's Agricultural Handbook 376 states that "Scald is a physiological disease of apples that has been recognized as a serious problem for as long as apples have been stored and marketed commercially. Scald is known by such names as ordinary scald, storage scald, common scald, hard scald (as opposed to the soft scald disease), and superficial scald, although tissues may be killed to ¼ inch in some varieties."

Sections 51.300, 51.301, and 51.303 currently require that apples be free from "scald" in any of the grades. Although there are many different origins of scald, there are primarily only two types, surface scald and soft scald. Surface scald which only affects the skin of the apple and which is firm in texture, would be included under the definitions of injury, damage, and serious damage, under the term "brown surface discoloration." The word "scald" would be replaced with the phrase "soft scald" in these sections. To meet any of the grades apples would be requires to be free from "soft scald."

Many years ago, scald was a serious problem in shipments of apples, especially lots which had been stored for a period of time before shipment or sale. Improved harvesting techniques and anti-scald treatments have substantially limited the presence of scald in apple shipments. Although soft scald results in a disintegration of the flesh, and sometimes also produces a foul odor, surface scald is less objectionable, restricting the area affected to that of the skin. In addition, there are several types of defects which occur simply as brown surface discoloration (*i.e.*, delayed sunburn, which will be discussed in detail below) and which cannot be differentiated by the naked eye. This change is being proposed because it would be more accurate to group these defects together as "brown surface discoloration" than to use the term "scald."

Also, we are proposing to make revisions concerning two physiological

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defects known as bitter pit and Jonathan spot. Although bitter pit and Jonathan spot are two separate, nonparasitic or noncontagious diseases, their appearance and effect to the apple are very similar. Therefore, these two defects are treated the same for the purpose of determining the quality based on the U.S. grade standards.

While the origin(s) of these two diseases is not entirely clear, their appearance is unmistakable. Affected apples display grayish brown to black circular spots which may be sunken (pits). Typical spots or pits are 1/16 to 1/8 inch in diameter, and often in the case of Jonathan spot, these spots will occur around the lenticels. These apples may have from one spot to the entire surface affected. Bitter pit and Jonathan spot are referenced in the standards in three different manners. In the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 they are listed as "free from" defects (*i.e.*, fruit must be from these defects to meet the grades.) A description of when bitter pit or Jonathan spot are considered to be "serious damage" appears in Section 51.320. Furthermore, the U.S. Condition Standards for Export reference "damage by" bitter pit or Jonathan spot which does not conform with the U.S. grade standards' basic requirements which use the term "free from."

Therefore, to make the standards more clear and to eliminate any inconsistencies, it is proposed U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades require fruit to be free from damage caused by bitter pit and Jonathan spot, and free from serious damage in the U.S. Utility grade. "Bitter pit or Jonathan spot when one or more spots affects the surface of the apple" would also be added to the defects considered as damage in § 51.317 (g)(5). (This section is currently designated as § 51.319; however, the Section number would be changed due to revisions in text which will be described in detail later in this supplementary information section.) Section 51.320 (g)(5), Serious Damage (proposed § 51.318 (g)(5)) currently provides that "Bitter pit or Jonathan spot which is thinly scattered over more than one-tenth of the surface and does not materially deform or disfigure the fruit" is considered to be serious damage. The section would be revised by removing "does not materially deform . . ." as the form of the fruit should not be considered when determining whether the fruit is seriously damage by bitter pit or Jonathan spot.

Sections 51.300 and 51.301 each require that apples be free from "bruises except those which are slight and incident to proper handling and packing." However, bruising is currently scored based on severity (*i.e.*, injury, damage, and serious damage) while slight and incidental bruises (bruises which can be seen by holding the apple at certain angles to light or by slight indentations to the surface which have no apparent affect on the underlying flesh) are not considered as defects which would prevent the fruit from meeting grade.

While the degree of bruising is not defined in the standard, guidelines appear in the Apples Market Inspection and Apples Shipping Point Inspection handbooks. The fruit is considered is to be injured if the area affected exceeds 5/8 inch in diameter or 1/8 inch in depth, damage if the area affected exceeds 7/8 inch in diameter or 3/16 inch in depth, and serious damage if the area affected exceeds 1 1/8 inch in diameter or 3/8 inch in depth based on an apple with a three inch diameter. Correspondingly greater or lesser amounts are allowed based on the size of the individual apple. In addition, different allowances may be provided based on the type of pack (tray pack, cell pack, or other packs).

Therefore, to clarify and simplify the process of scoring bruises as a defect, §§ 51.300, 51.301, and 51.303 would require fruit to be free from injury, damage, or serious damage defect, by bruising, respectively, and different levels of bruising would be included in the definitions of injury, damage, and serious damage.

Another change proposed in this revision involves the amount of red color needed on red varieties apples for each grade. Currently, several varieties are listed in Table 1 of Section 51.305, Color Requirements. Many of the varieties listed in this table are no longer produced commercially. In addition, newer varieties have been marketed which are not listed in this table. This has led to questions as to the application of color requirements over the years, and their usefulness in application. After several years of research and surveys, the Department and the USAA Grades and Standards Committee (USAA GSC) believe they have developed a system that will best suit the needs of all apple marketers.

The proposed method will determine color requirements only for those varieties produced in commercial volume which have historically been marketed based on their color attributes. The USAA GSC has proposed a list consisting of the following twelve varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York. All other varieties would have no color requirements in determining the grade, although the color requirements of these other varieties may be specified between marketers.

The method or process used to determine color requirements for the twelve varieties of apples previously mentioned would remain basically unchanged. However, the Department is currently working on designing a new color comparator which will be applicable to these twelve varieties (the current version is only applicable to 6 different varieties). These color standards will be available for examination during the comment period in the Fresh Products Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture South Building, Washington, D.C. 20250; in any field office of the Fresh Products Branch; or upon request of any authorized inspector of the Fresh Fruit and Vegetable Inspection Service. In addition, the USAA GSC has provided suggested percentages of color required for the specified varieties. Finally, a new footnote would be added to the color requirements table in reference to "varietal name designations." Varietal name designations refers to hybrid or sport varieties, or varietal names which contain one of the twelve listed varieties as a portion of the name. The footnote specifies that varietal designations of the twelve listed varieties must meet or exceed those color requirements listed for the original variety (*e.g.*, a varietal designation of Royal Winesap would be required to meet the same color requirements as designated for Winesap).

Section 51.306, Unclassified, would be removed. The Department has been removing sections in revised standards that make reference to "Unclassified" to eliminate any misunderstanding that this term designates an actual grade name. The term "Unclassified" is not an actual grade classification but was originally set out in the standards for use when no definite grade had been assigned to a given lot. Removing this entry would result in all sections following it to be renumbered by decreasing the Section number by one unit (*i.e.*, the following § 51.307 Tolerances, will now become § 51.306).

Another area within the standard that we propose to revise involves size requirements. Based on the current size requirements for lots designated by numerical count, § 51.307 (c) provides that not more than 5 percent of the apples in a lot may vary more than 1/4 inch in diameter. To determine if a lot has met this requirement, every apple must be sized and recorded so that it may be determined where, among all apples sampled, the one-quarter inch variation lies. After determining where the variation is, the total number of apples outside this variation must be tallied.

We propose to revise the size section to provide for a much simpler process to determine uniformity. First, the diameters of the smallest and largest apple in the package would be determined. If the range between these two apples is 1/2 inch or less, the sample will be described as "fairly uniform." If the range between these two apples is greater than one-half inch, the sample would be described as "irregular." It is proposed that not more than 10 percent of the samples in the lot may fail to meet fairly uniform.

Also, weight equivalents would now be used for the Red Delicious and Golden Delicious varieties. These two varieties, due to their characteristic shape, can often be elongated (sometimes referred to as "typie" by apple handlers) rather than wide. The result is a product that actually has more edible flesh but is still unable to meet minimum diameter size requirements. The USAA has proposed a list of weight equivalents based on reference data from actual tests and surveys. These weights would appear in Table II of the proposed § 51.306(c), (currently § 51.307 (c)) along with their corresponding diameter measurement.

When this designation is used, an individual apple would be considered to have met the minimum size requirement if the apple is smaller than the minimum diameter, provided it is equal to or greater than the minimum weight. Likewise, an apple not meeting the minimum weight designation would also be considered to have met the minimum size requirement if the apple is equal to or larger than the corresponding minimum diameter. However, not more than five percent of the apples in any lot would be allowed to fail to meet both minimum diameter and minimum weight when so designated. In addition, when Red Delicious or Golden Delicious apples are designated with diameter/weight combination, they would only be designated according to the combinations listed in Table II.

Another proposed revision to the standards affects the application of tolerances. The application of tolerances allows for an occasional sample with defects exceeding the lot tolerance, provided the lot averages within lot tolerances as a whole. However, the current application of tolerances for packages which contain 10 pounds or less, allows more than an occasional excess. It states, "Not over 10 percent of the packages may have more than three times the tolerance specified, except that at least one defective apple may be permitted in any package: *Provided*, That not more than one apple or more than 6 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown." This could permit up to 100 percent defects in samples or packages that represent less than 10 percent of the packages in the lot.

Therefore, a more restrictive and appropriate Application of Tolerances for this situation is proposed. Section 51.307 (b)(1) (currently designated § 51.308 (b)(1)) would be revised to provide "No package may have more than 3 times the tolerance specified, except that at least three defective apples may be permitted in any package: *Provided*, That not more than three apples or more than 18 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown."

Proposed Section 51.308 (currently 51.309), Calculation of percentages, designates how the apples are to be sampled based on various characteristics of the lot, and, ultimately, how the percentages are determined based on the sampling method. Currently, the section states that when numerical count is marked on the container, percentages will be calculated on the basis of count and all other cases are based on weight or an equivalent basis. However, sampling for consumer size packages (consumer size packages are generally considered as packages weighing ten pounds or less) is not specifically addressed. Therefore, we propose to revise § 51.308. First, the title of the section would be changed to "Methods of sampling and calculation of Percentages" to more accurately reflect the contents of the section. Second, to specifically address the situation of consumer size packages, as well as any other basis for determining percentages, it is proposed that § 51.308 be revised to read as follows:

"(a) When the numerical count is marked on the container, containers are packed to weigh ten pounds or less, or in any container where the minimum diameter of the smallest apple does not vary more than 1/2 inch from the minimum diameter of the largest apple, percentages shall be calculated on the basis of count;

(b) In all other cases except those listed in paragraph (a) of this section, they shall be calculated on the basis of weight."

Section 51.312, Marking requirements, currently states that the numerical count or minimum diameter of the apples packed in a closed container shall be indicated on the container. The USAA GSC believes that requiring the count or diameter to be marked on the container is not sufficient for today's market, and that the grade and variety should also be plainly marked on the outside of the container. It is also necessary to revise this section to provide for the newly-proposed weight/diameter size classifications for Red Delicious and Golden Delicious varieties, and to provide for packages that contain more than one variety.

Therefore, we propose to revise § 51.312 (redesignated as § 51.311) to read as follows: "Variety (or varieties if more than one is packed in the container), grade, and the numerical count or minimum diameter of apples packed in a closed container shall be indicated on the container. For apple lots utilizing the combined diameter/weight designations for Red Delicious and Golden Delicious varieties, the minimum diameter and minimum weight of apples packed in a closed container shall be indicated on the container. (a) When the numerical count is not shown, the minimum diameter or, in the case of Red Delicious or Golden Delicious lots where minimum diameter/weight designations have been chosen, the minimum diameter and weight as designated in Table II, shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, or whole inches and not less than eighth inch fractions thereof in the following manner: "A" inches or "B" grams, where "A" corresponds to one of the diameter measurements in terms of inches in Table II and "B" corresponds to the weight measurement in grams as indicated in Table II. Both diameter and weight must be shown using the word "or" between the given measurements." Paragraph (b) of this section remains unchanged.

Proposed §§ 51.316, 51.317, and 51.318 (currently §§ 51.318, 51.319, and 51.320) define terms of injury, damage, or serious damage. These sections would also be revised to reflect the changes concerning bruising, brown surface discoloration, bitter pit, and Jonathan spot as indicated in the earlier discussion of this supplementary information section.

Finally, proposed § 51.321, U.S. Condition standards for export (currently § 51.323), is a separate set of requirements that may be used for both exported and domestic shipments of apples. These requirements are not mandatory for exports or domestic shipments, but are provided as an optional classification for lots of apples. Only one change that pertains

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specifically to providing 2 percent allowance for apples affected by slight scald is proposed in this section. Paragraph (c)(3) of this section states that "Not more than 2 percent shall be allowed for apples affected by slight scald." Deleting this is necessary to clarify reference to scoring scald in the U.S. Condition Standards for Export and to make them consistent with the revisions being proposed within the standards. The inclusion of brown surface discoloration in the standards would encompass the various types of scald, making current paragraph (c)(3) of this section unnecessary.

Accordingly, AMS proposes to amend the United States Standards for Grades of Apples as follows:

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

2. In part 51, Subpart—United States Standards for Grades of Apples for processing is revised to read as follows:

Subpart—United States Standards for Grades of Apples

Grades

Sec.
51.300 U.S. Extra Fancy.
51.301 U.S. Fancy.
51.302 U.S. No. 1.
51.303 U.S. Utility.
51.304 Combination grades.

Color Requirements

51.305 Color requirements.

Tolerances

51.306 Tolerances.

Application of Tolerances

51.307 Application of tolerances.

Methods of Sampling and Calculation of Percentages

51.308 Methods of sampling and calculation of percentages.

Condition After Storage or Transit

51.309 Condition after storage or transit.

Packing Requirements

51.310 Packing requirements.

Marking Requirements

51.311 Marking requirements.

Definitions

51.312 Mature.
51.313 Overripe.
51.314 Clean.
51.315 Fairy well formed.
51.316 Injury.
51.317 Damage.
51.318 Serious damage.
51.319 Seriously deformed.
51.320 Diameter.

U.S. Condition Standards for Export

51.321 U.S. Condition Standards for Export.

Metric Conversion Table

51.322 Metric conversion table.

Grades

§ 51.300 U.S. Extra Fancy.

"U.S. Extra Fancy" consists of apples of similar varietal characteristics (except when the name of more than one variety appears on the container) which are mature but not overripe, clean, fairly well formed; free from decay, internal browning, internal breakdown, soft scald, scab, freezing injury, visible water core, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible water core after January 31st of the year following the year of production except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in Table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

§ 51.301 U.S. Fancy.

"U.S. Fancy" consists of apples of similar varietal characteristics (except when the name of more than one variety appears on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible water core, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible water core after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in Table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

§ 51.302 U.S. No. 1.

"U.S. No. 1" consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in Table I of § 51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of "damage by russeting," except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: *Provided,* That, in the case of the Yellow Newtown or similar varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent. Each apple of this grade has the amount of color specified in § 51.305 for the variety. Invisible water core shall not be scored in this grade. (See §§ 51.305 and 51.306.)

(a) *U.S. No. 1 Hail:* "U.S. No. 1 Hail" consists of apples which meet the requirements of U.S. No. 1 grade except that hail marks where the skin has not been broken and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. (See §§ 51.305 and 51.306.)

(b) [Reserved]

§ 51.303 U.S. Utility.

"U.S. Utility" consists of apples of similar varietal characteristics (except when more than one variety is printed on the container) which are mature but not overripe, not seriously deformed and free from decay, internal browning, internal breakdown, soft scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, bitter pit or Jonathan spot, disease, insects, or other means. (See § 51.306.)

§ 51.304 Combination grades.

(a) Combinations of the grades in §§ 51.300 through 51.303 may be used as follows:

(1) Combination U.S. Extra Fancy and U.S. Fancy;

(2) Combination U.S. Fancy and U.S. No. 1; and

(3) Combination U.S. No. 1 and U.S. Utility.

(b) Combinations other than these are not permitted in connection with the U.S. apple grades. When Combination grades are packed, at least 50 percent of the apples in any lot shall meet the requirements of the higher grade in the combination. (See § 51.306.)

Color Requirements

§ 51.305 Color requirements.

In addition to the requirements specified for the grades set forth in §§ 51.300 to 51.304, apples of these grades shall have the percentage of color specified for the variety in Table I appearing in this Section. All apple varieties other than those appearing in Table I shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided,* That an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color. (A) Color standards USDA Visual Aid APL–CC–1 (Plates a–e) consists of a folder containing the color requirements for apples set forth in this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York. These color standards will be available for examination and purchasing information in the Fresh Products Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture South Building, Washington, D.C. 20250; in any field office of the Fresh Products Branch; or upon request of any authorized inspector of the Fresh Fruit and Vegetable Inspection Service.

TABLE I

Only the varieties listed in this table shall be required to meet a minimum color requirement. Variety	U.S. Extra Fancy Percent	U.S. Fancy Percent	U.S. No. 1 Percent
Red Delicious	66	40	25
Red Rome	66	40	25
Empire	66	40	25
Idared	66	40	25
Winesap	66	40	25
Jonathan	66	40	25
Stayman	50	33	25
McIntosh	50	33	25
Cortland	50	33	25
Rome Beauty	50	33	25
Delicious	50	33	25
York	50	33	25

[1] Variations on varietal designations listed in this table must meet or exceed those color requirements listed.

Tolerances

§ 51.306 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the grades in §§ 51.300, 51.301, 51.302, 51.303, and 51.304 the following tolerances are provided as specified:

(a) Defects. (1) U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, and U.S. No. 1 Hail grades: 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than 1 percent for apples affected by decay or internal breakdown.

(2) U.S. Utility grade. 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged by insects, and including in the total tolerance not more than 1 percent for apples affected by decay or internal breakdown.

(b) When applying the foregoing tolerances to Combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 40 percent of the higher grade.

(c) Size. When size is designated by the numerical count for a container, not more than 10 percent of packages in the lot may fail to be fairly uniform.[1] When size is designated by minimum or maximum diameter, not more than 5 percent of the apples in any lot may be smaller than the designated minimum, and not more than 10 percent may be larger than the designated maximum. For Red Delicious or Golden Delicious varieties only, a combination of minimum diameter and/or weight may be used. When this designation is used, an individual apple will be considered to have met the minimum size requirement even if the apple is smaller than the minimum diameter, provided it

[1] "Fairly uniform" means the size of the fruit within the container does not vary more than ½ inch diameter from the smallest to largest fruit.

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is equal to or greater than the weight provided in Table II of this section. However, not more than 5 percent of the apples in any lot may fail to meet either the minimum diameter or minimum weight when so designated. In addition, when Red Delicious or Golden Delicious apples are designated with diameter/weight combinations, they may only be designated according to the following table:

TABLE II

Red Delicious	Golden Delicious
2⅛ inches or 65 grams.	63 grams
2¼ inches or 75 grams.	70 grams
2⅜ inches or 84 grams.	82 grams
2½ inches or 100 grams.	95 grams
2⅝ inches or 115 grams.	109 grams
2¾ inches or 139 grams.	134 grams

Application of Tolerances

§ 51.307 Application of tolerances.

The contents of individual packages in the lot, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(a) Packages which contain more than 10 pounds:

(1) Shall have not more than one and one-half times a specified tolerance of 10 percent or more and not more than double a tolerance of less than 10 percent, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

(2) [Reserved]

(b) Packages which contain 10 pounds or less:

(1) No package may have more than 3 times the tolerance specified, except that at least three defective apples may be permitted in any package: *Provided*, That not more than three apples or more than 18 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown.

(2) [Reserved]

Methods of Sampling and Calculation of Percentages

§ 51.308 Methods of sampling and calculation of percentages.

(a) When the numerical count is marked on the container, containers are packed to weigh ten pounds or less, or in any container where the minimum diameter of the smallest apple does not vary more than ½ inch from the minimum diameter of the largest apple, percentages shall be calculated on the basis of count.

(b) In all other cases except those listed in paragraph (a) of this section, they shall be calculated on the basis of weight.

Condition After Storage or Transit

§ 51.309 Condition after storage or transit.

Decay, scald, or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

Packing Requirements

§ 51.310 Packing requirements.

(a) Apples tray packed or cell packed in cartons shall be arranged according to approved and recognized methods. Packs shall be at least fairly tight [2] or fairly well filled.[3]

(b) Closed cartons containing apples not tray or cell packed shall be fairly well filled or the pack shall be sufficiently tight to prevent any appreciable movement of the apples.

(c) Packs in wooden boxes or baskets shall be sufficiently tight to prevent any appreciable movement of apples within containers when the packages are closed. Each wrapped apple shall be completely enclosed by its individual wrapper.

(d) Apples on the shown face of any container shall be reasonably representative in size, color and quality of the contents.

(e) Tolerances: In order to allow for variations incident to proper packing, not more than 10 percent of the containers in any lot may fail to meet these requirements.

Marking Requirements

§ 51.311 Marking requirements.

Variety (or varieties if more than one is packed in the container), grade, and the numerical count or minimum diameter of apples packed in a closed container shall be indicated on the container. For apple lots utilizing the combined diameter/weight designations for Red Delicious and Golden Delicious varieties, the minimum diameter and minimum weight of apples packed in a closed container shall be indicated on the container.

(a) When the numerical count is not shown, the minimum diameter or, in the case of Red Delicious or Golden Delicious lots where minimum diameter/weight designations have been chosen, the minimum diameter and weight as designated in Table II, shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, or whole inches and not less than eighth inch fractions thereof in the following manner: "A" inches or "B" grams, where "A" corresponds to one of the diameter measurements in terms of inches listed in Table II and "B" corresponds to the weight measurement in grams as indicated in Table II. Both diameter and weight must be shown using the word "or" between the given measurements.

(b) The word "minimum," or its abbreviation, when following a diameter size marking, means that the apples are of the size marked or larger. (See §§ 51.306 and 51.307.)

Definitions

§ 51.312 Mature.

"Mature" means that the apples have reached the stage of development which will insure the proper completion of the ripening process. Before a mature apple becomes overripe it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing different stages of firmness of apples:

(a) "Hard" means apples with a tenacious flesh and starchy flavor.

(b) "Firm" means apples with a tenacious flesh but which are becoming crisp with a slightly starchy flavor, except the Delicious variety.

(c) "Firm ripe" means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy.

(d) "Ripe" means apples with mealy flesh and soon to become soft for the variety.

§ 51.313 Overripe.

"Overripe" means apples which have progressed beyond the stage of ripe, with flesh very mealy or soft, and past commercial utility.

§ 51.314 Clean.

"Clean" means that the apples are free from excessive dirt, dust, spray residue, and other foreign material.

[2] "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The top layer of apples, or any pad or space filler over the top layer of apples, shall be not more than ¾ inch below the top edge of the carton.

[3] "Fairly well filled" means that the net weight of apples in containers raning from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties.

§ 51.315 Fairly well formed.

"Fairly well formed" means that the apple may be slightly abnormal in shape but not to an extent which detracts materially from its appearance.

§ 51.316 Injury.

"Injury" means any specific defect defined in this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detract from the appearance or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to "inch" or "inches in diameter" refers to that of a circle of the specified diameter. Any reference to "aggregate area," "total area," or "aggregate affected area" means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as injury:

(a) Receding in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is injured by receding. Smooth net-like receding outside of the stem cavity or calyx basin shall be considered as injury when an aggregate area of more than 10 percent of the surface is covered, and the color of the receding shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like receding when the appearance is affected to a greater extent than the amount permitted in this paragraph.

(b) Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit.

(c) Dark brown or black limb rubs which affect a total area of more than one-fourth inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of injury by receding.

(d) Hail marks, drought spots, other similar depressions or scars:

(1) When the skin is broken, whether healed or unhealed;

(2) When there is appreciable discoloration of the surface;

(3) When any surface indentation exceeds one-sixteenth inch in depth;

(4) When any surface indentation exceeds one-eighth inch in diameter; or

(5) When the aggregate affected area of such spots exceeds one-half inch in diameter.

(e) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) ⅛ inch in depth;

(2) ⅝ inch in diameter;

(3) Any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (e)(1) or (2) of this section.

(f) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than ¼ inch in diameter.

(g) Disease: (1) Cedar rust infection which affects a total area of more than three-sixteenths inch in diameter.

(2) Sooty blotch or fly speck which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(3) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(h) Insects: (1) Any healed sting or healed stings which affect a total area of more than one-eighth inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.317 Damage.

"Damage" means any specific defect defined in this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to "inch" or "inches in diameter" refers to that of a circle of the specified diameter. Any reference to "aggregate area," "total area," or "aggregate affected area" means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as damage:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is damaged by russeting, except that excessively rough or bark-like russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin shall be considered as damage:

(1) Russeting which is excessively rough on Roxbury Russet and other similar varieties.

(2) Smooth net-like russeting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the amount permitted in this paragraph (a).

(3) Smooth solid russeting, when an aggregate area of more than 5 percent of the surface is covered, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is affected to a greater extent than the amount permitted in this paragraph (a).

(4) Slightly rough russeting which covers an aggregate area of more than one-half inch in diameter.

(5) Rough russeting which covers an aggregate area of more than one-fourth inch in diameter.

(b) Sunburn or sprayburn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting.

(c) Limb rubs which affect a total area of more than one-half inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russeting.

(d) Hail marks, drought spots, other similar depressions, or scars:

(1) When any unhealed mark is present;

(2) When any surface indentation exceeds one-eighth inch in depth;

(3) When the skin has not been broken and the aggregate affected area exceeds one-half inch in diameter; or

(4) When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth inch in diameter.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-fourth inch.

(f) Invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than a slight degree

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outside the circular area formed by the vascular bundles: *Provided*, That invisible water core shall not be scored as damage against the Fuji variety of apples under any circumstances.

(g) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/16 inch in depth;

(2) 7/8 inch in diameter;

(3) Any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (g)(1) or (2) of this section.

(h) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 1/2 inch in diameter.

(i) Disease. (1) Scab spots which affect a total area of more than one-fourth inch in diameter.

(2) Cedar rust infection which affects a total area of more than one-fourth inch in diameter.

(3) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(4) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(5) Bitter pit or Jonathan spot when one or more spots affects the surface of the apple.

(j) Insects. (1) Any healed sting or healed stings which affect a total area of more than three-sixteenths inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.318 Serious damage.

"Serious damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which seriously detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to "inch" or "inches in diameter" refers to that of a circle of the specified diameter. Any reference to "aggregate area," "total area," or "aggregate affected area" means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as serious damage:

(a) The following types and amounts of russeting shall be considered as serious damage:

(1) Smooth solid russeting, when more than one-half of the surface in the aggregate is covered, including any russeting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russeting, which detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russeting permitted: *Provided*, That any amount of russeting shall be permitted on Roxbury Russet and other similar varieties.

(2) [Reserved]

(b) Sunburn or sprayburn which seriously detracts from the appearance of the fruit.

(c) Limb rubs which affect more than one-tenth of the surface in the aggregate.

(d) Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth of the surface in the aggregate: *Provided*, That no hail marks which are unhealed shall be permitted and not more than an aggregate area of one-half inch shall be allowed for well healed hail marks where the skin has been broken.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-half inch.

(f) Visible water core which affects an area of more than one-half inch in diameter.

(g) Disease. (1) Scab spots which affect a total area of more than three-fourths inch in diameter.

(2) Cedar rust infection which affects a total area of more than three-fourths inch in diameter.

(3) Sooty blotch or fly speck which affects more than one-third of the surface.

(4) Red skin spots which affect more than one-third of the surface.

(5) Bitter pit or Jonathan spot which is thinly scattered over more than one-tenth of the surface.

(h) Insects. (1) Healed stings which affect a total area of more than one-fourth inch in diameter including any encircling discolored rings.

(2) Worm holes.

(i) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/8 inch in depth;

(2) 1 1/8 inches in diameter;

(3) Any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraph (i)(1) or (2) of this section.

(j) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 3/4 inch in diameter.

§ 51.319 Seriously deformed.

"Seriously deformed" means that the apple is so badly misshapen that its appearance is seriously affected.

§ 51.320 Diameter.

When measuring for minimum size, "diameter" means the greatest dimension of the apple measured at right angles to a line from stem to blossom end. When measuring for maximum size, "diameter" means the smallest dimension of the apple determined by passing the apple through a round opening in any position.

U.S. Condition Standards for Export

§ 51.321 U.S. Condition Standards for Export.[4]

(a) Not more than 5 percent of the apples in any lot shall be further advanced in maturity than firm ripe.

(b) Not more than 5 percent of the apples in any lot shall be damaged by storage scab.

(c) Not more than a total of 5 percent of the apples in any lot shall be affected by scald, internal breakdown, freezing injury, or decay; or damaged by bitter pit, Jonathan spot, water core[5] except that invisible water core shall not be scored as damage when these condition standards are applied to the Fuji variety of apples, or other condition factors: *Provided*, That:

(1) Not more than a total of 2 percent shall be allowed for apples affected by decay and soft scald;

(2) Not more than 2 percent shall be allowed for apples affected by internal breakdown;

(d) Container packs shall comply with packing requirements specified in § 51.310 of the United States Standards for Grades of Apples.

(e) Any lot of apples shall be considered as meeting the U.S. Condition Standards for Export if the entire lot averages within the requirements specified: *Provided*, That no package in any lot shall have more than double the percentages specified, except that for packages which contain 10 pounds or less, individual packages in any lot may have not more than three times the tolerance or three apples (whichever is the greater amount).

[4] These standards may be applied to domestic shipments of apples as well as export lots, and may be referred to as "U.S. Condition Standards."

[5] "Damage by water core" means externally invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than slight degree outside the circular area formed by the vascular bundles, or any externally visible water core.

§ 51.322 Metric conversion table.

METRIC CONVERSION TABLE

Inches	Millimeters (mm)
§ 51.322 Metric conversion table. .	
1/16 equals	1.6
1/8 equals	3.2
3/16 equals	4.8
1/4 equals	6.4
3/8 equals	9.5
1/2 equals	12.7
5/8 equals	15.9
3/4 equals	19.1
7/8 equals	22.2
1 1/8 equals	28.6
2 1/8 equals	54.0
2 1/4 equals	57.2
2 3/8 equals	60.3
2 1/2 equals	63.5
2 3/4 equals	69.9
Cubic Inches	**Cubic Centimeters (cc)**
2100 equals	34,412.7
2900 equals	47,522.3
Pounds	**Grams (g)**
10 equals	4,536.0
37 equals	16,783.2
40 equals	18,144.0

Dated: March 18, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-7221 Filed 3-25-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 772

[FHWA Docket No. FHWA-2000-8056]

RIN 2125-AE80

Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a rulemaking proceeding to revise noise regulations relating to the noise insulation of private residences. The agency undertook this action to consider allowing Federal participation in the noise insulation of private residences when a traffic noise impact occurs, i.e., when predicted traffic noise levels approach or exceed the FHWA noise abatement criteria or when the predicted traffic noise levels substantially exceed the existing noise levels. Currently, Federal participation in the noise insulation of private residences is allowable only in situations where severe traffic noise impacts exist or are expected, and normal abatement measures are physically infeasible or economically unreasonable. The agency has determined that the proposed change would establish a highly controversial funding policy and would add tremendous cost to the highway program. Accordingly, we are terminating the rulemaking proceeding and closing the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Armstrong, Office of Natural Environment, HEPN-20, (202) 366-2073, or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (202) 366-1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA noise regulations were developed as a result of the Federal-Aid Highway Act of 1970 (Pub. L. 91-605, 84 Stat. 1713) and apply to projects where a State department of transportation has requested Federal funding for participation in the project. Under the FHWA noise requirements found at 23 CFR part 772, the State DOT must determine if there will be traffic noise impacts in areas adjacent to federally-aided highways when a project is proposed for the construction of a highway on a new location or the reconstruction of an existing highway to either significantly change the horizontal or vertical alignment or increase the number of through-traffic lanes. Such a project is termed a "Type I" project. If the State DOT identifies potential traffic noise impacts, it must consider noise abatement measures and implement the measures when they are determined to be reasonable and feasible.

Federal law and the FHWA regulations do not require the State DOTs to implement noise abatement along existing highways. However, they may voluntarily initiate this type of abatement, termed a "Type II" project, but they are solely responsible for making this decision. Federal participation in the funding of such projects is limited to those that propose abatement measures along lands that were developed or were under substantial construction before approval of the acquisition of the right-of-way for, or construction of, the existing highway.

Noise abatement measures which may be incorporated in "Type I" and "Type II" projects include the following: (1) Traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits and exclusive land designations); (2) alteration of horizontal and vertical alignments; (3) acquisition of property rights (either in fee or lesser interest) for construction of noise barriers; (4) construction of noise barriers (including landscaping for aesthetic purposes), whether within or outside the highway right-of-way; (5) acquisition of real property or interests therein (predominately unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise (this measure may be included in "Type I" projects only); and (6) noise insulation of public use or nonprofit institutional structures.

In establishing the noise regulations, the FHWA limited routine noise insulation to public use or nonprofit institutional structures in an effort to balance what is desirable from an environmental perspective with what is reasonable fiscally, i.e., balance noise reduction benefits with overall program costs. However, there may be situations where: (1) Severe traffic noise impacts exist or are expected, and (2) the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, the FHWA may approve a State's request for unusual or extraordinary abatement measures on a case-by-case basis. When considering extraordinary abatement measures, the State must demonstrate that the affected activities experience traffic noise impacts to a far greater degree than other similar activities adjacent to highway facilities. For example, residential areas experience absolute noise levels of at least 75 decibels or residential areas experience noise level increases of at least 30 decibels over existing noise levels. The noise insulation of private residences is an example of an extraordinary abatement measure.

The Advance Notice of Proposed Rulemaking (ANPRM)

On December 28, 2000, the FHWA issued an ANPRM, at 65 FR 82301, to seek comment on allowing the use of

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Federal funds for noise insulation of private residences as an interior noise abatement measure. Member(s) of Congress had suggested that the noise insulation of private residences be added to the listing of abatement measures, which may routinely be considered whenever a traffic noise impact occurs. Such consideration would not require the occurrence of a severe traffic noise impact. However, such consideration could require that all other measures be evaluated and be determined not to be reasonable and feasible before the noise insulation of private residences could be considered. As with all elements of highway traffic noise analysis and abatement, consideration for the noise insulation of private residences should be applied uniformly and consistently on a statewide basis.

The FHWA sought comments on the following questions:

1. Should the FHWA revise its noise regulation to allow Federal participation in the noise insulation of private residences whenever a traffic noise impact occurs, not only when a severe traffic noise impact occurs?

2. Should the FHWA revise its noise regulation to routinely allow Federal participation in the noise insulation of private residences, i.e., add it to the listing of abatement measures which may be included in "Type I" and "Type II" projects, or should Federal participation in the noise insulation of private residences be allowed only after all the other listed abatement measures have been determined not to be reasonable and feasible?

3. Should the FHWA revise its noise regulation to address the noise insulation of private residences in a manner, which is, different from that discussed in the first two questions? If so, how?

Comments Received in Response to the ANPRM

The agency received comments on the proposed revision from one member of Congress, two Federal agencies, one metropolitan planning organization, one insulation contractor, and 15 State departments of transportation (DOT).

The member of Congress supported making a regulatory change to allow private home insulation where "conventional exterior noise barriers are found to be impractical or excessively expensive." This would increase a State DOT's flexibility to participate in alternative noise abatement projects and would provide noise abatement in many instances where it would not be provided under existing FHWA regulations.

The Department of Housing and Urban Development recommended a "total, multi-modal noise package" be considered for noise effects and mitigation.

The U.S. Environmental Protection Agency encouraged the provision of more flexibility in the use of noise insulation for private residences, i.e., noise insulation should be available for consideration in all situations.

The metropolitan planning organization supported a regulatory revision to allow greater flexibility in using Federal funds for the noise insulation of private homes.

The insulation contractor strongly supported a revision to routinely provide noise insulation.

One State department of transportation commented that the FHWA's noise regulations should be re-crafted to allow Federal participation in any reasonable and feasible noise abatement methodology, provided specific performance criteria have been satisfied.

The other 14 State DOTs voiced opposition to the proposed regulatory change, indicating the proposed regulatory change will result in the following: (1) A substantial increase in the cost and complexity of the noise abatement program (one State DOT estimated its average annual noise mitigation cost would increase from $1.9 million to $30.6 million, approximately doubling the annual expenditure for all planning, analysis, design, and construction related to all environmental disciplines); (2) a dramatic increase in the amount of time and effort invested to complete noise studies/final abatement designs, with the potential for causing significant and costly project delays; (3) inequities in the noise abatement program, since the costs associated with insulating private residences would vary greatly (this could increase the potential for discrimination complaints); (4) unnecessary additional burdens for States (since building insulation cannot be accurately modeled, its cost would have to be estimated on a house-by-house basis and its application would be far too difficult to manage in a reasonable and cost effective manner); (5) no provision of benefits for the exterior areas of residences; (6) legal concerns related to maintenance of the home insulation and the consideration of future homeowner remodeling/changes; (7) a tremendous administrative burden, since extensive, comprehensive contractual agreements would be required among all involved parties, e.g., State DOTs, consultants, contractors, local government officials, and homeowners, to minimize the possibility of litigation; and (8) unnecessary complications of a noise abatement program that has been easily understood and accepted by the public for an extended period of time. The same 14 State DOTs indicated that the current regulatory guidance is adequate and appropriate and that the noise insulation of private residences should remain a "technique of last resort."

Analysis

The agency proposal considered allowing Federal participation in the routine noise insulation of private residences whenever a traffic noise impact occurs. After review of the comments submitted in response to that proposal, it has become apparent that, while increasing the flexibility in providing noise abatement, routinely allowing Federal participation in the noise insulation of private residences would place an unacceptable additional burden on State DOTs and add an unacceptably high cost to the Federal-aid highway program that was not previously anticipated. The additional burden to States would include a tremendous increase in the resources needed to address the administrative, legal, and technical elements of providing noise abatement in private residences. The fifteen-fold increase in annual noise abatement costs estimated by one State DOT is an example of the unacceptable increase in Federal-aid highway program costs.

Conclusion

For the reasons stated above, the FHWA is terminating this rulemaking action and closing the docket.

Authority: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; and 49 CFR 1.48(b).

Issued on: March 18, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–7165 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 21

RIN 1076–AD98

Arrangement With States, Territories, or Other Agencies for Relief of Distress and Social Welfare of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to remove regulations on Arrangement with States, Territories, or other agencies for relief of distress and social welfare of Indians. The program governed by this rule is now administered under regulations in Contracts under the Indian Self-Determination and Education Assistance Act. Eliminating this rule will remove any confusion regarding the process for providing certain social services to the tribes.

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: You may submit your comments on the proposed rule by mail or by hand-delivery to Larry Blair, Chief, Human Services Division, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Larry Blair at (202) 208–2479.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs under Part 209 Departmental Manual, Chapter 8.1A, and by memorandum dated January 25, 1994, from Chief of Staff, Department of Interior, to Assistant Secretaries and Heads of Bureaus and Offices.

Background

A proposed rule was published in the **Federal Register** on July 1, 1996 (61 FR 33876), to revise the existing regulation in order to improve its clarity and understanding to the public through the use of Plain English. No comments were received on the July 1, 1996, publication. Due to questions raised by the Solicitor's Office on the impact that this proposed rule could have on the Office of Indian Education Programs, the rule was not finalized. Also, 25 CFR part 21 is no longer necessary because this program now falls under the regulations in 25 CFR part 900, which implement the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2203, 25 U.S.C. 450 *et seq.*, as amended). We therefore propose the removal of this part to clarify that tribal governments have total responsibility for operating social service programs.

Finally, this rule has never been used by the Office of Tribal Services, and used only once by the Office of Indian Education Programs. It has never been funded as a viable program.

Regulatory Planning and Review (Executive Order 12866)

This rule was reviewed by the Office of Management and Budget, and determined not to be a significant regulatory action under Executive Order 12866. This rule has not had an effect of $100 million or more on the economy, nor has it adversely or materially affected the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities. The removal of this rule will also not create any serious inconsistency or otherwise interfere with an action taken or planned by another agency. The removal of this rule removes the apparent inconsistency with the Self-Determination and Education Assistance Act, as amended. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or rights or obligations of their recipients. 25 CFR part 21 deals with the negotiation, execution and planning of social service contracts yet, it has never been funded or used by the social services programs. This rule does not raise novel legal or policy issues because it has been replaced by a law more responsive to the needs of the tribes.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule involves the negotiation, execution and planning of social service contracts, between the Federal Government and State or local governments, and does not have an effect upon the regulation of small business, organizations or grant jurisdiction over small governments. State and local governments will not be negatively impacted with the elimination of this rule because it has never been funded. They also are free to apply for grants under the Johnson-O'Malley Act providing no tribe or tribal entities are interested in applying.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule provides guidance for social services contracting and has no effect on the costs or prices in local communities. This rule does not have significant adverse effect on competition, employment, investments, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule does not affect local enterprises and has never been used for operation of social service programs under this part.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any State, local, or tribal government or private entities and is in compliance with the provisions of the Unfunded Mandates Act of 1995. This rule, if funded and used, would provide the funds needed in the contract to perform the services.

Takings (Executive Order 12630)

The Department has determined that this rule does not have significant "takings" implications, or pertain to "taking" of private property interests, nor does it affect private property.

This rule involves the negotiation, execution and planning of social service contracts, and does not deal with private property, or trusts. This rule does not affect property rights protected by the Constitution and does not pose a risk of compensable taking.

Federalism (Executive Order 12612)

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This rule has been examined under the Paper Reduction Act of 1995. Information collection was necessary for 25 CFR part 21 to identify how contract funds were to be used, and to measure contractors' performance and plans for future performance. Since its inception, 25 CFR part 21 has never been used by the social service program, and thus the information collections approved for contract funding or performances were allowed to expire, unused.

National Environment Policy Act

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

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Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Public Comment Solicitation

If you wish to comment on this rule, you may send your comments by mail or hand-deliver them to the person listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours, Monday through Friday, 9:00 a.m. to 4:00 p.m. EST, excluding Federal holidays. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, available for public inspection in their entirety.

List of Subjects in 25 CFR Part 21

Indians, Indian-welfare contracts.

For the reasons stated in the preamble and under the authority of 25 U.S.C. 9, the Bureau of Indian Affairs proposes to remove 25 CFR part 21 from Chapter I of Title 25 of the Code of Federal Regulations.

Dated: March 14, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7208 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–004]

RIN 2115–AE46

Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the St. Mary's Seahawk Sprint, a marine event held on the waters of the St. Mary's River, St. Mary's City, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the St. Mary's River during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 24, 2002.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Operations Oversight Branch, Auxiliary and Recreational Boating Safety Section, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

St. Mary's College of Maryland annually sponsors the St. Mary's Seahawk Sprint, a rowing regatta conducted during the second weekend in April. The St. Mary's Seahawk Sprint consists of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the St. Mary's River. A fleet of spectator vessels traditionally gathers near the event site to view the competition. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard proposes to restrict vessel movement in the event area during the crew races.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent regulated area on specified waters of the St. Mary's River. The proposed special local regulations will be in effect annually from 7 a.m. to 4 p.m. on the second Saturday in April. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the regulated area between races, when it is safe to do so. The proposed regulated area is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the St. Mary's River during the event, the effect of this proposed regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, would not have a significant economic impact on a substantial number of small entities. Although this proposed regulation will prevent traffic from transiting a portion of the St. Mary's River during the event, the effect of this proposed regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

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PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. 100.527 is added to read as follows:

§ 100.527 St. Mary's River, St. Mary's City, Maryland.

(a) Definitions:

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10′05″ North, and bounded to the north by a line at latitude 38°12′00 ″ North, All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates.* This section is effective annually from 7 a.m. to 4 p.m. on the second Saturday in April.

Dated: March 13, 2002.

L. Mizell,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–7233 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Oklawaha River, Marion County, FLa

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the Muclan Farms swingbridge across the Oklawaha River, mile 63.9, Marion County, Florida by allowing the span to remain permanently in the closed position. The bridge has not received a request for an opening since 1998. This action should accommodate the needs of the bridgeowner and provide for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before May 28, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Ave, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of [CGD07–02–008] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 406, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 S.E. 1st Ave Miami, FL 33130 Coast Guard, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–008], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Muclan Farms swingbridge is located in a rural section of Marion County. The current regulations in 33 CFR 117.319 require the swingbridge to open if 3 hours advance notice is given to the St. Johns River Water Management District. The Water Management District has not received any requests for an opening since 1998. The Water Management District requested the Coast Guard change the current regulation to allow the bridge to remain closed. The Water Management District is currently negotiating a contract to repair the swingbridge. If the swingbridge is allowed to remain closed, moveable parts may not need to be repaired and the repair costs will decrease. There are obstructions in the waterway and the waterway is not being maintained for navigation.

Discussion of Proposed Rule

The Coast Guard proposes to create a permanent rule allowing the Muclan Farms swingbridge to permanently remain closed. The reference to the Muclan Farms swingbridge in the current regulation at 33 CFR 117.319(a) would be deleted. A new subparagraph at 33 CFR 117.39(c) would be created for the Muclan Farms swingbridge regulation. We will reconsider this proposed rule if navigation on the River resumes.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there have been no bridge openings since 1998.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because there have been no bridge openings since 1998. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the person listed under: **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.319, revise paragraph (a) and add paragraph (c) to read as follows:

§ 117.319 Oklawaha River.

(a) The draw of the Sharpes Ferry (SR 40) bridge, mile 55.1, shall open on signal if at least three hours notice is given.

(b) * * *

(c) The draw of the Muclan Farms bridge, mile 63.9, need not open for the passage of vessels.

Dated: March 11, 2002.

John E. Crowley, Jr.,

Captain, Coast Guard, Acting Commander Seventh Coast Guard District.

[FR Doc. 02–7229 Filed 3–25–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–2001–10163]

RIN 2115–AG18

Federal Requirements For Propeller Injury Avoidance Measures

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Coast Guard is reopening the period for public comment concerning federal requirements for propeller injury avoidance measures. The president of the National Association of State Boating Law Administrators (NASBLA) asked that we reopen the comment period, which ended March 11, 2002, so its Committee could discuss the proposed rule at its meeting in April 2002 and so NASBLA could submit a comment to the docket. We are reopening the period until May 11, 2002, so that NASBLA and other interested persons can submit comments.

DATES: Comments must reach the docket on or before May 11, 2002.

ADDRESSES: Identify your comments and related material by the docket number for this rulemaking [USCG–2001–10163]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U. S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand-delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Internet Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*. You may obtain a copy of this notice by calling the Infoline of the U. S. Coast Guard at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org* or at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Carlton Perry, Project Manager, Office of Boating Safety, U. S. Coast Guard, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking entitled "Federal Requirements For Propeller Injury Avoidance Measures" on December 10, 2001 [66 FR 63645]. That document also contains a detailed history of the Coast Guard's previous regulatory efforts in the area of propeller injury prevention.

Reason for Reopening the Comment Period

In response to the notice of proposed rulemaking, we received more than 70 comments, including a request from the President of NASBLA to extend the comment period beyond April 15, 2002, to enable the Boats & Associated Equipment Committee of NASBLA to review the proposal at its meeting and allow NASBLA to submit a comment to the docket. We are reopening the comment period until May 11, 2002, to let the committee discuss the proposed rulemaking at their meeting and for NASBLA to submit a comment to the docket. During this time, we will also accept comments from any other interested party. The Coast Guard requests that you not re-submit comments already in the docket.

Request for Comments

We encourage you to participate in this rulemaking by submitting your comments to the Docket Management Facility as specified in **ADDRESSES**. We will consider comments received during this reopened comment period and may change the proposed rule in response to the comments.

Dated: March 16, 2002.

Kenneth T. Venuto,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 02–7230 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–15–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2520, 2521, 2522, 2524, 2525, 2526, 2528, and 2550

RIN 3045–AA32

AmeriCorps Grant Regulations

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") proposes to amend several provisions relating to the AmeriCorps national service program, including requirements for AmeriCorps grants and rules on how AmeriCorps members may use the AmeriCorps education award.

DATES: Written comments should be received on or before May 28, 2002.

ADDRESSES: Comments may be mailed or delivered to Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525, sent by facsimile transmission to (202) 565–2784, or sent electronically to *gkowalcz@cns.gov*. Copies of all communications received will be available for review at the Corporation by members of the public.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This proposed rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION: Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support service performed by AmeriCorps members. In addition, the Corporation, through the National Service Trust, provides education awards and certain interest payments to AmeriCorps participants who successfully complete a term of service in an approved national service position.

The proposed rule reflects our efforts to eliminate requirements that are unnecessary and burdensome as well as to conform our regulations to changes in law. Consistent with Executive Order 13198, entitled "Agency Responsibilities with respect to Religious and Community Initiatives," and issued on January 29, 2001, the Corporation has identified several AmeriCorps regulations that may impede effective religious and other community efforts to solve social problems. To this end, we also sought input from an April 2001 focus group of representatives from sixteen religious and small community-based organizations on how we could remove barriers to their participation. While some of the ideas suggested by the group would require statutory amendments, other ideas concern regulatory items that are not dictated by statute. In addition, we identified several changes to regulations that reflect recent changes in statute or that otherwise will promote the efficiency of national service programs.

The proposed rule:

1. Provides flexibility in the types of AmeriCorps member activities authorized in connection with disaster relief, homeland defense, or other compelling community needs.

2. Explicitly recognizes that religious organizations are eligible to receive AmeriCorps grants.

3. Eliminates the "six month rule" as a requirement for grantees.

4. Expands the types of educational expenses that may be paid with the education award.

5. Modifies the education award refund rules in the event a member does not complete a period of enrollment at an institution of higher education.

6. Provides that an AmeriCorps member's declaration under penalty of law may constitute sufficient documentation of that individual's attainment of a high school degree for purposes of enrolling as an AmeriCorps member and using the education award.

7. Modifies and strengthens the requirements relating to prohibited activities and clarifies that these requirements apply only to AmeriCorps programs funded under subtitle C of the National and Community Service Act.

8. Eliminates obsolete references to Palau.

9. Amends the regulations in conformance with the National and Community Service Act of 1990, as amended, to recognize that a Territory that establishes a state commission is eligible to apply for administrative grant funds to support the activities of the state commission.

10. Amends the definition of "Institution of Higher Education" to conform with the Higher Education Amendments of 1998.

Flexibility in Types of AmeriCorps Activities

The proposed rule broadens the circumstances under which AmeriCorps members may engage in activities that provide an indirect benefit to their community. The Corporation may approve such activities with respect to disaster relief, homeland defense, and other compelling community needs.

Eligibility of Religious Organizations for AmeriCorps Grants

The proposed rule inserts references to religious organizations in several lists of types of organizations eligible to apply for AmeriCorps grants. This affirms that religious organizations are eligible on the same basis as any other private nonprofit organization to apply for AmeriCorps grants and operate AmeriCorps programs.

Elimination of "Six Month Rule"

The proposed rule eliminates a requirement under which grantees could not select any prospective AmeriCorps member who is or was previously employed by a prospective project sponsor within six months of the member's enrollment in the program. Our experience has shown this requirement to be burdensome for grantees. We believe that there are more effective and efficient ways to ensure that grantees are complying with rules against displacement, without imposing a blanket "six month rule." By continuing to require grantees to show how a proposed project will address unmet needs and by enforcing existing rules against displacement, the Corporation can ensure that any former employees enrolled as AmeriCorps member will perform service that goes well beyond—in both degree and kind—their former job duties.

Use of Education Award for Educational Courses Offered by Title IV Institutions of Higher Education

AmeriCorps members may use their education award to pay "current educational expenses" at institutions of higher education that have entered into program participation agreements with the U.S. Department of Education under Title IV of the Higher Education Act (HEA). In 1999, by regulation, we limited such expenses to those recognized in the "cost of attendance" definition under Title IV. As a result, AmeriCorps members pursuing educational interests outside a Title IV eligible program were precluded from using their education award for their educational expenses.

We revisited this rule based on input from AmeriCorps members who want to use the education award to pay for continuing education and other non-Title IV eligible courses at Title IV institutions of higher education. We have concluded that section 148 of the National and Community Service Act (42 U.S.C. 12604), while tying the payment of current educational expenses to Title IV institutions of higher education, can be read to allow payment of educational expenses outside the definition of "cost of attendance." Such a reading will also advance the national service legislation's purpose of including all Americans, since older participants or participants with disabilities might be more likely to pursue educational opportunities outside degree-granting courses of study. This proposed rule allows the education award to be used to pay (1) the cost of attendance as currently permitted for individuals in Title IV eligible programs; and (2) other educational expenses attributable to courses offered by Title IV institutions of higher education. There is no change to the requirement, based in statute, that expenses be "current," that is, incurred after an individual enrolls in an AmeriCorps position.

Refunds to the National Service Trust

The current rule derives from the requirement in the NCSA that the Corporation provide, by regulation, for the refund to the Corporation of education awards disbursed to institutions of higher education, in the event that the student eligible for the education award withdraws or otherwise fails to complete the period of enrollment. The NCSA required the Corporation's refund regulations to be consistent with the fair and equitable refund policies required under section 484B of the HEA. That section of the HEA was amended in 1998 and now only applies to refunds of title IV funds. Consequently, the Corporation is amending its regulations to provide that refunds of the education award to the Corporation will be made consistent with each institution of higher education's published refund policy, or in the absence of such a published policy, on a pro-rata basis.

Declaration Sufficient Documentation of Member's Attainment of High School Diploma

To enroll in AmeriCorps, an individual must have obtained a high school diploma (or its equivalent) or agree to do so prior to using the

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education award. Additionally, to use an education award, an individual must have obtained a high school diploma (or its equivalent). Because the education award is principally designed for use in connection with attending an institution of higher education, and high school attainment is normally a prerequisite for such attendance, the proposed rule provides that an individual's written declaration under penalty of law is sufficient to establish this element of eligibility without additional documentation.

Clarification of Statutory List of Prohibited Activities

We first issued regulations in Part 2520 regarding prohibited activities in 1994 when virtually all AmeriCorps grants activities were conducted under subtitle C of the National and Community Service Act. Since 1994, we initiated several AmeriCorps programs, including the AmeriCorps Education Awards program and the AmeriCorps Promise Fellows program, under demonstration authority in subtitle H of the National and Community Service Act. We also added in sub-regulatory provisions several items to the statutory list of prohibited activities. The proposed rule strengthens the list of prohibited activities by including these additions, and clarifies that requirements relating to prohibited activities in subtitle C of the Act apply only to grant programs funded under subtitle C. Demonstration AmeriCorps grants programs continue to be governed by the general administrative provisions, including restrictions on activities, in Part 2540.

Elimination of Obsolete References to Palau

The proposed rule eliminates references to Palau, which became independent on October 1, 1994 and is no longer eligible as a U.S. Territory for AmeriCorps grants.

Eligibility of Territories for Administrative Funds

Under the National and Community Service Act of 1990, as amended, (NCSA), states, including territories, are eligible to apply for grants to establish and operate a state commission or alternative administrative entity. 42 U.S.C. 12576. Currently, however, 45 CFR § 2550 does not recognize that territories are eligible to apply for grants to support a state commission or alternative administrative entity. We are amending the regulations to include territories as entities eligible to apply for grants under this section, in order to comply with the NCSA.

Definition of Institution of Higher Education

The Higher Education Amendments of 1998 (Pub. L. 105–244) amended the National and Community Service Act of 1990, as amended by changing the reference to the definition of "Institution of Higher Education" from section 1201(a) of the Higher Education Act, to section 101 of the Higher Education Act. We have amended the regulations to conform with this statutory amendment.

Executive Order 12866

The Corporation has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the proposed changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs-social programs, Volunteers.

45 CFR Part 2520

Grant programs-social programs, Volunteers.

45 CFR Part 2521

Grant programs-social programs, Volunteers.

45 CFR Part 2522

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2524

Grant programs-social programs, Technical assistance, Volunteers.

45 CFR Part 2525

Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2526

Education, Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2528

Education, Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2550

Administrative practice and procedure, Grant programs-social programs.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2510.20 by revising the definition of "Institution of Higher Education," and by adding the definition "Subtitle C Program" after the definition "Subdivision of a State" to read as follows:

§ 2510.20 Definitions

* * * * *

Institution of higher Education. The term *institution of higher education* has the same meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

* * * * *

Subtitle C Program. The term *subtitle C program* means an AmeriCorps program authorized and funded under subtitle C of the National and Community Service Act of 1990, as amended. (NCSA) (42 U.S.C. 12501 *et seq.*) It does not include demonstration programs, or other AmeriCorps programs, funded under subtitle H of the NCSA.

* * * * *

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

1. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Revise the heading of part 2520 to read as shown above.

3. Revise § 2520.10 to read as follows:

§ 2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?

The purpose of the AmeriCorps subtitle C program is to provide financial assistance under subtitle C of the National and Community Service Act to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service, and to provide AmeriCorps education awards to participants in such programs.

4. Revise § 2520.20 to read as follows:

§ 2520.20 What types of service activities are allowed for AmeriCorps subtitle C programs supported under parts 2520 through 2524 of this chapter?

(a) Except as provided in paragraph (b) of this section, the service must either provide a direct benefit to the community where it is performed, or involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. Moreover, the approved AmeriCorps activities must result in a specific identifiable service or improvement that otherwise would not be provided and that does not duplicate the routine functions of workers or displace paid employees. Programs must develop service opportunities that are appropriate to the skill levels of participants and that provide a demonstrable, identifiable benefit that the community values.

(b) In certain circumstances, some activities may not provide a direct benefit to the communities in which the service is performed. Such activities may include, but are not limited to, clerical work and research. However, a participant may engage in such activities only if the performance of the activity is incidental to the program's provision of service that does provide a direct benefit to the community in which the service is performed, or if the Corporation approves such activities in connection with disaster relief, homeland defense, or other compelling community needs.

5. Revise § 2520.30 to read as follows:

§ 2520.30 What activities are prohibited in AmeriCorps subtitle C programs?

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities associated with the AmeriCorps program or the Corporation, staff and members may not engage in the following activities—

(a) Attempting to influence legislation;

(b) Organizing or engaging in protests, petitions, boycotts, or strikes;

(c) Assisting, promoting, or deterring union organizing;

(d) Impairing existing contracts for services or collective bargaining agreements;

(e) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(f) Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(g) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(h) Providing a direct benefit to—

(1) A business organized for profit;

(2) A labor union;

(3) A partisan political organization;

(4) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

(5) An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities; and

(i) Such other activities as the Corporation may prohibit.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

1. The authority citation for part 2521 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Revise the heading of part 2521 to read as shown above.

3. Amend § 2521.10 by revising the heading and paragraph (a) to read as follows:

§ 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education are eligible to apply for AmeriCorps subtitle C grants. However, the fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible.

* * * * *

4. Amend § 2521.20 as follows:

a. By revising the heading, paragraph (a)(2)(ii) and the first sentence of paragraph (b)(2)(ii);

b. Removing paragraph (c); and

c. Redesignating paragraphs (d) and (e) as (c) and (d) respectively.

The revisions read as follows:

§ 2521.20 What types of AmeriCorps subtitle C program grants are available for award?

* * * * *

(a) * * *

(2) * * *

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education

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may apply either to a State or directly to the Corporation for planning grants.

* * * * *

(b) * * *

(2) * * *

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. * * *

* * * * *

5. Amend § 2521.30 by revising the heading, the introductory text, paragraph (b)(1), footnote 1, and the first sentence of paragraph (b)(3) to read as follows:

§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps subtitle C program grants as follows:

* * * * *

(b) * * *

(1) One percent of available funds will be distributed to the U.S. Territories [1] that have applications approved by the Corporation according to a population-based formula.[2]

* * * * *

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), institutions of higher education, and Federal agencies. * * *

* * * * *

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2522.100 by revising the heading and the first sentence of the introductory text, and removing the last sentence of paragraph (g)(1) to read as follows:

§ 2522.100 What are the minimum requirements that AmeriCorps subtitle C grantees must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps subtitle C programs must meet certain minimum program requirements. * * *

* * * * *

3. Amend § 2522.200 by redesignating paragraphs (b) through (d) as (c) through (e) respectively, adding a new paragraph (b), and revising the heading of the newly redesignated (e) to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

* * * * *

(b) Written declaration regarding high school diploma sufficient for enrollment. For purposes of enrollment, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (a) of this section relating to high school education, a program need not obtain additional documentation of that fact.

* * * * *

(e) Secondary documentation of citizenship or immigration status. * * *

* * * * *

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

1. The authority citation for part 2524 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2524.10 by revising paragraph (a) introductory text to read as follows:

§ 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, religious organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

* * * * *

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2525.20 by revising the definition "Current educational expenses" and by adding the definitions "Educational Expenses" after the definition of "Education Award" and "Period of Enrollment" after the definition of "Institution of Higher Education" to read as follows:

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after an individual enrolls in an approved national service position.

* * * * *

Educational expenses at a Title IV institution of higher education. The term *educational expenses* means—

(1) Cost of attendance as determined by the institution, or

(2) Other costs attributable to a non-title IV educational course as follows:

(i) Tuition and fees normally assessed a student for a course or program of study by the institution, including costs for rental or purchase of any books or supplies required of all students in the same course of study;

(ii) For a student engaged in a course of study by correspondence, only tuition and fees and, if required, books, and supplies;

(iii) For a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(iv) For a student engaged in a work experience under a cooperative education program or course, an allowance for reasonable costs associated with such employment (as determined by the institution).

* * * * *

Period of Enrollment. Period of enrollment means the period that the title IV institution has established for which institutional charges are generally assessed (i.e., length of the student's course, program, or academic year.)

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

[1] The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multiplied by the amount of the one percent set-aside.

2. Amend § 2526.10 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

* * * * *

(c) *Written declaration regarding high school diploma sufficient for disbursement.* For purposes of disbursing an education award, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (b) of this section relating to high school education, no additional documentation is needed.

* * * * *

PART 2528—USING AN EDUCATION AWARD

1. The authority citation for part 2528 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2528.10 by revising paragraph (a)(2) to read as follows:

§ 2528.10 For what purposes may an education award be used?

(a) * * *

(2) To pay all or part of the current educational expenses at an institution of higher education in accordance with § 2528.30 through § 2528.50;

* * * * *

3. Amend § 2528.30 by revising the heading, paragraph (a), introductory text, and paragraphs (a)(2)(iii), (iv), and (v) to read as follows:

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current educational expenses at an institution of higher education, the Corporation must receive—

* * * * *

(2) * * *

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution of higher education will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award;

(iv) Individuals using education awards to pay for the current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance or other educational expenses attributable to a course offered by the institution;

* * * * *

4. Amend § 2528.50 by revising paragraph (a) to read as follows:

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, an institution of higher education that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation in an amount determined under that institution's published refund requirements.

(2) If an institution for higher education does not have a published refund policy, the institution must provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

5. Amend § 2528.60 by revising paragraph (a)(2)(iii) to read as follows:

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) * * *

(2) * * *

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the school-to-work program will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award;

* * * * *

6. Amend § 2528.70 by revising paragraph (a) to read as follows:

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, an approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation determined under that program's published refund policy.

(2) If a school-to-work program does not have a published refund policy, the program must provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

1. The authority citation for part 2550 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend section 2550.10 by revising the first sentence of paragraph (c) to read as follows:

§ 2550.10 What is the purpose of this part?

* * * * *

(c) The Corporation will distribute grants of between $125,000 and $750,000 to States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities. * * *

3. Amend § 2550.20 by revising paragraph (k) to read as follows:

§ 2550.20 Definitions.

* * * * *

(k) State. As used in this part, the term State refers to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Dated: March 13, 2002.

Gary Kowalczyk,

Director of Planning and Program Integration.

[FR Doc. 02–6604 Filed 3–25–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 030502B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Atlantic Coastal Fisheries Cooperative Management; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the American lobster (lobster) fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue EFPs that would allow up to 100 current federally permitted lobster and/or Maine lobster/crab license holders to conduct fishing operations otherwise restricted by the regulations governing the lobster fishery. EFPs would allow federally permitted and/or state-only lobster/crab licensed vessels to fish modified lobster traps to target Jonah crabs to collect important fishery and biological data on the sustainability and practicality of a directed Jonah crab fishery in Exclusive Economic Zone (EEZ) Nearshore Management Area 1 (ENMA1).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 10, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments on EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135. Copies of the proposal and the draft Environmental Assessment are available from the Northeast Regional Office at the address stated above.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Maine Division of Marine Resources (MEDMR) submitted an original application on December 6, 2000, for EFPs to conduct an experimental fishery for Jonah crab in Federal waters of the EEZ. Subsequent amendments to this application were dated April 30, 2001; May 29, 2001; July 9, 2001; and February 13, 2002. Revisions to the original application included: (1) Scaling back the fishery from unlimited participation to 100 participants; (2) an Environmental Assessment was prepared to describe the impacts attributable to the experimental fishery beyond those analyzed under the Draft Final Environmental Impact Statement prepared for the lobster fishery regulations under ACFCMA; (3) addition/removal of gear restrictions to comply with Atlantic Large Whale Take Reduction Plan (ALWTRP) requirements; (4) addition of socioeconomic data to the logbook; (5) addition of a one-time demographic and ethnographic profile survey and fixed-cost survey; (6) reduced minimum soak times to 10 days from 2 weeks and then later changed soak time to a maximum of 2 weeks (operational soak times of less than 1 week); (7) added a requirement that participants pass Level 1 training in identification and disentanglement of whales and sea turtles; (8) clarified that both Jonah crab buoys and Jonah crab traps would be clearly marked as "CRAB"; (9) requested that state-only licensed vessels be allowed to participate in the Federal portion of ENMA1; and (10) specified that the 40 percent "exploratory" (i.e., not yet field tested for targeting Jonah crabs) traps would be of a top-entry design instead of the previous proposal to have the design be at the discretion of the participant. In addition, a January 30, 2002, memorandum clarified that the submission dated December 5, 2001, will be considered a Memorandum of Understanding concerning the Reasonable and Prudent Alternatives outlined in the draft Biological Opinion for the Jonah crab experimental fishery.

The Jonah crab, *Cancer borealis*, is currently an unregulated species in the EEZ and little is known about its biology, distribution, and relative abundance. MEDMR believes it is important to obtain a better understanding of the Jonah crab resource and the feasibility of developing a potential sustainable fishery. Due to a recent increase in Jonah crab abundance and market demand, it may be profitable for lobster fishermen to target Jonah crabs with modified lobster traps during times of low lobster landings (generally in the spring).

Under current State of Maine lobster management (Atlantic States Marine Fisheries Commission (ASMFC) Amendment 3), all traps (defined as structures or other devices, other than nets, that are placed, or intended to be placed, on the ocean bottom) that are designed for or are capable of catching lobsters must contain a lobster trap tag unless exempted. With a limit of 800 trap tags (and in some cases fewer), fishermen who are interested in helping explore and develop the Jonah crab fishery in the EEZ cannot do so unless they receive the necessary exemptions from the Federal lobster regulations at 50 CFR 697.19. The EFPs would facilitate the collection of data on modified lobster trap designs (side-entry and top-entry) to establish acceptable bycatch thresholds of lobsters and allow for the development of a species-specific Jonah crab trap, which would be exempted from the lobster regulations. In addition, the issuance of EFPs for the testing of modified lobster traps under commercial conditions could: (1) Contribute to the development of year-round Jonah crab markets; (2) provide additional economic opportunities for lobster and Jonah crab fishermen who are currently being held to a maximum trap limit; and (3) provide important biological and demographic data on the Jonah crab resource, thus contributing to baseline information on the Jonah crab life cycle and population structure. The overall goal of the experiment is to develop a permanent Jonah crab fishery that could someday ease pressure and decrease reliance on the harvesting of lobsters by allowing fishermen to diversify fleet options through their pursuit of new markets.

The experiment would expand on pilot studies in nearshore and offshore waters (within 3 nautical miles from shore) of the Gulf of Maine, which were conducted in spring and summer 2000. These pilot studies tested various gear modifications in areas of both high and low seasonal lobster abundance. The results of this preliminary research suggested that a modified side-entry trap may be the best design for targeting Jonah crabs with negligible lobster bycatch.

The proposed experiment would be conducted in ENMA1, defined at 50 CFR 697.18(a), for 1 year from the date of EFP issuance, and would be carried out according to the specifications detailed below. The experimental area would be concentrated along the Maine coast between the western and eastern boundaries of the ENMA1. The results of the NMFS trawl survey suggest that Jonah crabs are most abundant at depths of 60-200 m, which occur about 3 to 20 nautical miles offshore.

While at least 60 percent of the traps used in the experiment would have the preferred modified side-entry trap design, the remaining 40 percent of experimental traps could incorporate a top-entry design that has proven effective in decreasing lobster bycatch in State crab fisheries. The following side-entry trap dimensions were developed through preliminary research and modeling and are in compliance with current lobster trap requirements: (1) Side-entry hoops not to exceed 2.5 inches (6.35 cm) in height; (2) a minimum of two, 3.25–inch (8.26–cm) circular escape vents in the parlor and kitchen of the trap; and (3) a minimum of one standard 1.94–inch (4.93–cm) x 5.75–inch (14.61–cm) rectangular escape vent in the parlor of the trap. Although preliminary testing of side-entry traps was conducted with escape vents of 3.0 inches (7.62 cm) in diameter, a projected escape pattern model based on Jonah crab carapace length and width revealed that the 3.25–inch (8.26–cm) escape vent would be most efficient at retaining legal crabs and excluding lobsters. The top-entry "exploratory" traps would be required to have a minimum circular entrance-opening diameter of 3.6–inches (9.14–cm), as well as the same circular and rectangular escape vent requirements outlined above for modified side-entry traps.

In response to MEDMR's July 30, 2001, request that NMFS initiate an ESA section 7 consultation on this fishery, a draft Biological Opinion on the Jonah crab fishery concluded that the proposed EFP activities, described in the original application and all subsequent amendments, are likely to jeopardize the continued existence of the endangered western North Atlantic right whale. Therefore, the proposed Reasonable and Prudent Alternative (RPA) is designed to avoid the likelihood that the Jonah crab experimental fishery will jeopardize the continued existence of the western North Atlantic right whale. The proposed measure is intended to remove the potential for entanglement of western North Atlantic right whales in Jonah crab trap gear during the period when the whales are most likely to occur in the experimental fishing area. The proposed RPA would limit Jonah crab experimental fishery participants to no more than their current lobster trap allocation (800 traps or fewer), unless the fisher uses either neutrally buoyant or sinking groundline for any traps in excess of his/her lobster trap allocation, during those times that western North Atlantic right whales are expected to be in the experimental fishing area (June 1 through October 31).

Vertical lines (e.g., buoy lines) and horizontal lines (e.g., lobster pot trawl groundlines) in the water column have been shown to adversely affect Endangered Species Act (ESA)-listed marine mammals and sea turtles, and precautions must be taken to prevent gear entanglements with these species. It is generally believed that floating line poses more of an entanglement risk to sea turtles and whales than sinking or neutrally buoyant line because it is loosely suspended in the water column, making it more likely to be encountered by a whale or sea turtle swimming through the area. Thus, the use of sinking or neutrally buoyant line rather than floating line as a condition of the EFP would reduce the chances of entanglement.

Additional gear restrictions that would meet the requirements of the Atlantic Large Whale Take Reduction Plan (ALWTRP), as well as additional measures to minimize the risk to protected species are as follows: (1) A minimum of 10 traps per vertical line; (2) no interspersed lobster traps per single line of Jonah crab traps; (3) a MEDMR requirement to clearly mark each buoy with the word "CRAB" under the State lobster/crab license number; (4) maximum soak times of 2 weeks (operational soak time will less than 1 week); and (5) a MEDMR requirement to mark each Jonah crab trap with the State lobster/crab license number and the word "CRAB."

The following additional conservation measures would be required of all Jonah crab experimental participants. Unlike lobsters, most crabs reach reproductive size before the size of harvest. Therefore, the MEDMR is recommending that there be a minimum legal carapace width of 5 inches (127 mm), no retention of females, and no retention of regulated species, in particular lobster. MEDMR would require participating fishermen to record catch information including, but not limited to, numbers of trap hauls, type of trap, soak times, and bycatch (specifically, count of undersized and legal-sized lobsters). The MEDMR would designate a minimum of 2 observer days per month to this experimental fishery. Observer data collected would complement the MEDMR-supplied logbooks, and would include detailed fisheries, trap design and fishing methods information on randomly sampled individual trap hauls. For each trap haul sampled, all crabs and lobster bycatch retained would be measured for carapace width (length for lobsters), sex, molt condition, and egg development. All illegal crabs and all bycatch, including all lobsters incidental to the catch of Jonah crabs, would be returned to the sea promptly after data collection. In addition, a one-time MEDMR survey will provide baseline demographic and ethnographic profiles on the Jonah crab fishery, and information on fixed costs (gear modifications, rope, etc.).

While alternative top-entry trap designs have proven to be less capable of catching lobsters, the MEDMR proposed that these "exploratory" traps be monitored directly by periodic onboard observer trips. In addition, the Maine Marine Patrol (MMP) would routinely haul gear to ensure compliance with experimental crab trap specifications and gear restrictions described above. A cooperative agreement that was signed on March 8, 2001, between NMFS and the MMP will allow State enforcement officials to enter Federal waters and act as deputized Federal law enforcement agents in upholding the regulations promulgated under the Magnuson-Stevens Act, ACFCMA, ESA, Marine Mammal Protection Act, National Marine Sanctuaries Act, and the Lacey Act.

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The EFPs would exempt up to 100 vessels from the requirements of the lobster fishery regulations according to the provisions at 50 CFR parts 600.745 and 697.22, as follows: (1) Permit, tagging and trap limit requirements under § 697.4(a) and (d), and § 697.19(a)(2) and (c); (2) temporary possession of lobster less than the minimum carapace size specified at § 697.20(b)(1) and (2) for data collection purposes; (3) trap tag identification requirements at § 697.21(a)(2); and (4) deployment and gear configuration requirements at § 697.21(b)(2).

Based on the results of this EFP, this action may lead to future rulemaking.

Dated: March 19, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–7133 Filed 3–25–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 58

Tuesday, March 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agriculture Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Nutrient Data Lab (NDL), Beltsville Human Nutrition Research Center, Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR (60 FR 44978, August 29, 1995), this notice announces the Nutrient Data Laboratory's intent to request approval for a new information collection from consumers of municipal and tap water supplies throughout the U.S. The study will provide data on the fluoride content of the U.S. water supply for development of a comprehensive database of the fluoride concentration of beverages and foods consumed in the U.S., to be released on USDA–NDL's website.

DATES: Comments on this notice must be received by the agency 30 days after date of publication in the **Federal Register** to be assured of consideration.

ADDRESSES: Address all public comments concerning this notice to Dr. Pamela Pehrsson, Nutrient Data Lab, U.S. Department of Agriculture, Room 309A Bldg. 005, 10300 Baltimore Ave., Beltsville, MD 20705, 301–504–0716 (v) or 301–504–0713 (f). Submit electronic comments to *ppehrsson@rbhnrc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Pamela Pehrsson, Nutrient Data Lab, U.S. Department of Agriculture, Room 309A Buldg. 005, 10300 Baltimore Ave., Beltsville, MD 20705, 301–504–0716 (v) or 301–504–0713 (f), *ppehrsson@rbhnrc.usda.gov* or Rena Cutrufelli, Nutrient Data Lab, U.S. Department of Agriculture, Room 208A Bldg. 005, 10300 Baltimore Ave., Beltsville, MD 20705, 301–504–0693 (v) or *rcutrufelli@rbhnrc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Tap Water Sampling for the USDA Fluoride Database.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for collection of water samples and supporting information from U.S. consumers in the who use water from the tap (including a municipal water supply, well water, etc.) for drinking and cooking.

Abstract: NDL will develop a database of the fluoride content of public drinking water supplies and other beverages and foods in the U.S. The proposed work is a collaborative effort between investigators at the Nutrition Coordinating Center (NCC) at the University of Minnesota, and at the Nutrient Data Laboratory at the Agricultural Research Service, US Department of Agriculture (USDA–NDL). This research is designed as a national analytical survey of fluoride in chief contributors to the U.S. diet and based on preliminary work done at USDA–NDL and NCC. This national fluoride database will be released on USDA–NDL's website and will be adapted to support the NCC fluoride assessment methodology. These products will provide an important data resource for nutrition-related research, planning, and policy nationwide. Development of the fluoride database is underway and funded by The National Institute of Dental and Craniofacial Research (NIDCR), NIH.

The fluoride content of the U.S. water supply is important in research of the dental health of children who may be at risk for dental caries (too little fluoride) or overexposure to fluoride, which results in permanent mottling of the teeth. Individuals of all ages are affected by the fluoride content of the water supply because water, in addition to being a highly consumed beverage by itself, is the base of many other high consumption beverages (e.g., carbonated beverages, teas, coffee, and processed fruit drinks). The level of fluoride supplementation and filtration practices for municipal water and for water-based beverages has not always been documented so the analytical results of previous studies may not be meaningful. In addition, previously determined data on the fluoride content of drinking water are local or regional and not the result of a statistically determined, nationally representative approach to sample collection. No seasonal (over time) variability assessment has been documented using national data.

The fluoride of household tap water used for cooking and drinking is the core of this database and detailed documentation about the source and use of the water is critical in the validation the resulting data. The need for this type of information in developing a database usable to the dental research and service communities is pressing.

The sampling approach and frame for this study were developed by statisticians at the National Agricultural Statistics Service, USDA. All county samples were drawn using a minimum replacement probability proportional to size procedure (PMR). The county sizes were taken from 2000 Census county population files given on the Census web site. Each sample contains 72 counties for use in picking up two water samples per county. Within each county, two participants, yielding a total of 144, will be recruited through a phone survey using a randomized listing of all county residents.

Adult individuals, who are considered in a position of responsibility for the household and have agreed to participate will complete a questionnaire which focuses on their source of drinking/cooking water and any treatment of the water. They will fill two 250 ml bottles with tap water from the kitchen faucet.

The bottles and survey will be shipped in a prepaid, prelabeled package (provided to the consumer) to Virginia Polytechnic Institute and State University for analysis. The fluoride survey was modified and abbreviated from a test study of tap water to more effectively phrase the questions and eliminate questions which were not, in retrospect, providing useful information. All responses will be confidential. To ensure confidentiality, fluoride data attached to a consumer code to prevent identification of individuals will be reported only in table format. The data will not be used to assess the quality of a family's socioeconomic status or any other characteristic of that individual's home.

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Individual consumers will be informed of these confidentiality assurances in the precollection letters. Participants will be awarded an incentive which will be an emergency or travel pack for their automobile (value estimated around $12) for each collection. The pack will not display a company endorsement, but will display a USDA logo. The choice of a similar product equal to or slightly higher in value will be offered as a choice for the second collection.

Estimate of Burden: For the fluoride survey in this study, burden on the respondents will consist of completing the questionnaire along with collection of water samples in two bottles supplied by NDL. The total time for survey completion and water collection is estimated to take 30 minutes or less.

Respondents: Randomly selected consumers in the U.S. public within statistically defined areas (Census-based).

Estimated Number of Respondents: 144 in total, each participating in the information and water collection twice over a 3–6 month period.

Estimated Total Annual Burden on Respondents: 144 × 30 minutes × 2 collections = 144 hours of time and effort across the U.S. contributed to this collection of tap water.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions made; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on the respondents, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: January 31, 2002.

Phyllis Johnson,

Director, Beltsville Area Research Center.

[FR Doc. 02–7148 Filed 3–25–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Counties Payments Committee has scheduled a meeting on April 20, 2002, to discuss how it will provide Congress with the information specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. In order to develop its recommendations to Congress, the Committee would like to hear from both elected officials and the general public. The meeting will consist of a public input session from 1 p.m. until 5 p.m.

DATES: The meeting will be held on April 20, 2002.

ADDRESSES: The meeting will be held in the Silver Baron "D" meeting room on the mezzanine level at the Silver Legacy Casino/Resort, 407 North Virginia Street, Reno, Nevada.

Those who cannot be present may submit written responses to the questions listed under **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, PO Box 34718, Washington, DC 20043–4713, or electronically to the Committee's website at *http://countypayments.gov/comments.html*. Comments on this notice must be received by April 30, 2002, to be assured of consideration. Comments received after that date will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574 or *rphillips01@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub. L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. The Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occuring on Federal lands which are Federal responsibilities; and monitor payments and implementation of The Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

At the April 20 meeting in Reno, the Committee asks that respondents provide information that is responsive to the following questions:

1. Do counties receive their fair share of federal revenue-sharing payments made to eligible States?

2. What difficulties exist in complying with, and managing all of the federal revenue-sharing payments programs? Are some more difficult than others?

3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?

4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?

5. What are the economic and social effects of changes in revenues generated from public lands over the past 15 years, as a result of changes in management on public lands in your State or county?

6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions, or revenue-sharing payments?

7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?

8. What relationship, if any, should exist between federal revenue-sharing programs and management activities on public lands?

9. What alternatives exist to provide equitable revenue-sharing to States and counties and promote "sustainable forestry"?

10. What has been your experience regarding implementation of Public Law 106–393, The Secure Rural Schools and Community Self-Determination Act?

11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple-use management of these lands?

12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple-use management of these lands?

Dated: March 19, 2002.

Scott D. Conroy,

Acting Deputy Chief, Programs and Legislation.

[FR Doc. 02–7241 Filed 3–25–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Change in meeting date.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: Date of the announcement in the **Federal Register** of Tuesday March 19, 2002 on page 12513 is changed from March 25, 2002 to April 25, 2002. No other changes are made. The meeting will be from 3:00 P.M. to 6:00 PM.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; email *dmcintosh@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approval of the minutes of the February meeting; (2) apply Criteria to submitted Proposals; (3) Select Projects that best meet the Evaluation Criteria; (4) Recommend Projects; and (5) Public Comment Period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 19, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–7219 Filed 3–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License; Tiger Optics, Inc.

AGENCY: National Institute of Standards and TechnologyCommerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent No. 5,835,231 (Application No. 08/962,171), titled "Broad Band Intro-Cavity Total Reflection Chemical Sensor," filed October 31, 1997; NIST Docket No. 96–025US, Patent No. 5,986,768 (Application No. 08/962,171), titled, "Intra-Cavity Total Reflection For High Sensitivity Measurement Of Optical Properties," filed October 31, 1997; NIST Docket No. 96–025CIP, and Patent No. 5,943,136 (Application No. 08/962,170), titled, "Intra-Cavity Total Reflection For High Sensitivity Measurement Of Optical Properties," filed October 31, 1997; NIST Docket No. 96–012US, to Tiger Optics, Inc., having a place of business at 250 Titus Avenue, Warrington, PA 18976–2426. The grant of the license would be in the following fields of use: (1) Semiconductor, Compound Semiconductor, and Specialty/Electronic Chemicals Manufacturing; (2) Chemical and Petrochemical Processing and Manufacturing; and (3) Environmental Monitoring and Control (including detection of chemical and biological warfare agents).

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, Phone 301–975–2691.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 USC 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 USC 209 and 37 CFR 404.7. The availability of the inventions for licensing was published in the **Federal Register** as follows:

NIST Docket No. 96–025US, Vol. 63, No. 96 (page 27564, May 19, 1998).

NIST Docket No. 96–025CIP, Vol. 64, No. 101 (page 28453, May 26, 1999).

NIST Docket No. 96–012US, Vol. 64, No. 101 (page 28453, May 26, 1999).

U.S. Patent No. 5,835,231 is owned by the U.S. government, as represented by the Secretary of Commerce. The present invention permits broadband, ultra-sensitive measurement of optical absorption for any state of matter by the cavity ring-down technique using a small, monolithic, total internal reflection ring cavity. It significantly advances the sensitivity, accuracy, and adaptability of optical absorption spectroscopy for decisive qualitative and quantitative chemical analysis, with greatly increased trace analysis capability.

U.S. Patent No. 5,986,768 is owned by the U.S. government, as represented by the Secretary of Commerce. An optical cavity resonator device is provided for conducting sensitive measurement of optical absorption by matter in any state with diffraction-limited spatial resolution through utilization of total internal reflection within a high-Q (high quality, low loss) optical cavity. Intracavity total reflection generates an evanescent wave that decays exponentially in space at a point external to the cavity, thereby providing a localized region where absorbing materials can be sensitively probed through alteration of the Q-factor of the otherwise isolated cavity. When a laser pulse is injected into the cavity and passes through the evanescent state, an amplitude loss resulting from absorption is incurred that reduces the lifetime of the pulse in the cavity. By monitoring the decay of the injected pulse, the absorption coefficient of manner within the evanescent wave region is accurately obtained from the decay time measurement.

U.S. Patent No. 5,943,136 is owned by the U.S. government, as represented by the Secretary of Commerce. The present invention relates to a device which permits the sensitive measurement of the optical absorption of matter in any state with diffraction-limited spatial resolution using total internal reflection within a high-Q (high-quality, low-loss) optical cavity. Its use provides qualitative and quantitative analysis of material composition and rates of chemical reactions. The device is especially well suited for thin film diagnostics.

Dated: March 18, 2002.

Karen H. Brown.

Deputy Director.

[FR Doc. 02–7188 Filed 3–25–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of the Dates and Locations of Public Scoping Meetings for the Proposed Designation of the Northwestern Hawaiian Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean

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Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Scoping meetings.

SUMMARY: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve extends approximately 1200 nautical miles long and 100 nautical miles wide. Pursuant to this Act and the Executive Order, NOAA issued a notice of intent on January 19, 2001 (66 FR 5509) to designate the Reserve as a national marine sanctuary. A notice announcing the beginning of public scoping pursuant to the National Environmental Policy Act was issued on March 18, 2002 (67 FR 11996). This notice announces the dates and locations of the public scoping meetings.

DATES AND ADDRESSES: The public scoping process started on March 18, 2002, and ends on Friday, May 3, 2002. Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalaniana'ole Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 397–2662; or emailed to *nwhi@noaa.gov*. Comments will be available for public review at the office address above. Summaries of public comments from initial scoping meetings will be available at *hawaiireef.noaa.gov*. Scoping meetings will be held as follows:

(1) Tuesday, April 9, 6:00 p.m., Waianae District Park, Multipurpose Building, 85–601 Farrington Highway, Waianae, Oahu, Hawaii.

(2) Wednesday, April 10, 6:00 p.m., Heeia Kea State Park Visitors Center Hall, 46–465 Kamehameha Highway, Kaneohe, Oahu, Hawaii.

(3) Thursday, April 11, 6:00 p.m., Maui Arts and Cultural Center, McCoy Studio Theater, One Cameron Way, Kahului, Maui, Hawaii.

(4) Thursday, April 11, 1:00 p.m., Department of Commerce Building, Room 1414, 14th and Constitution Avenue, NW., Washington, DC.

(5) Friday, April 12, 6:00 p.m., Kulana Oiwi Halau, Lot 24, Maunaloa Highway, Kaunakakai, Molokai, Hawaii.

(6) Monday, April 15, 6:00 p.m., Japanese Cultural Center, Manoa Room, 2454 South Beretania Street, Honolulu, Oahu, Hawaii.

(7) Tuesday, April 16, 6:00 p.m., Radisson Kauai Beach Resort, Jasmine Ballroom, 4331 Kauai Beach Drive, Lihue, Kauai, Hawaii.

(8) Wednesday, April 17, 6:00 p.m., University of Hawaii at Hilo, Marine Science Building, 200 West Kawili Street, Hilo, Hawaii.

(9) Thursday, April 18, 6:00 p.m., King Kamehameha's Kona Beach Hotel, Kamakahonu Ballroom, 75–5660 Palani Road, Kailua-Kona, Hawaii.

(10) Friday, April 19, 6:00 p.m., Lanai Public Library, Frazier Avenue, Lanai City, Lanai, Hawaii.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, (808) 397–2657, *nwhi@noaa.gov*.

SUPPLEMENTARY INFORMATION: The National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1341 *et seq.*, authorizes the Secretary of Commerce (Secretary) to designate discrete areas of the marine environment as national marine sanctuaries to protect their special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or esthetic qualities. The NMSA is administered by the National Oceanic and Atmospheric Administration (NOAA) through the National Marine Sanctuary Program (NMSP).

The public scoping process, including the public scoping meetings, is intended to solicit information and comments on the range and significance of issues related to the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary. The results of this scoping process will assist NOAA in formulating alternatives for a draft management plan and draft environmental impact statement for the proposed designation. NOAA encourages the public and interested parties to submit (via mail, e-mail, or fax) comments throughout the scoping period and to attend public scoping meetings at the locations listed above.

Each public scoping meeting will include a brief overview of the proposed Sanctuary region and its history, and an opportunity for members of the public to provide verbal comments through a round-table format. Each round table will accommodate 10–15 people and will have its own facilitator and note-taker who will work with the participants at that table to obtain their comments and ideas. All comments offered at the round-tables are considered part of the official record; however, participants are strongly encouraged to submit written comments to ensure that the full scope of their thoughts and ideas is considered by NOAA.

Authority: 16 U.S.C. Section 1431 et seq., Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 20, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–7187 Filed 3–25–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF ENERGY

Notice of Renewal of the Secretary of Energy Advisory Board

Pursuant to section 14 (a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been renewed for an additional two-year period, beginning in March 2002.

The Board will continue to provide independent, balanced, and authoritative advice to the Secretary of Energy on matters concerning the Department's management, basic science, research, development and technology activities; energy and national security responsibilities; environmental cleanup activities; energy-related economic activities; the operations of the Department; and on any other activities and operations of the Department of Energy as the Secretary may direct.

The Board members are selected to assure well-balanced representation and on the basis of their broad competence in areas relating to quality management, basic science, renewable energy, energy policy, environmental science, economics, business expertise and broad public policy interests. Membership of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act (Pub. L. 92–463) and implementing regulations.

The renewal of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business in connection with the performance of duties established by statute for the Department of Energy. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel, U.S. Department of Energy, ME–75, FORS, Washington, DC 20585, Telephone: (202) 586–3279.

Issued in Washington, DC, on March 20, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–7192 Filed 3–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Monday, April 22, 2002, 6:30 p.m.–9 p.m. Tuesday, April 23, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: DeSoto Hilton, 15 East Liberty Street, Savannah, GA.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803)725–5374.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOEand its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, April 22, 2002

6:30 p.m., Public Comment Session
7p.m.—9 p.m., Committee Meetings
9 p.m., Adjourn

Tuesday, April 23, 2002

8:30–9:15 a.m., Approval of Minutes; Agency Updates; Public Comment Session; Facilitator Update
9:15–10:15 a.m., Strategic & Long-Term Issues Committee
10:15–11:15 a.m., Environmental Restoration Committee
11:15–11:45 a.m., Administrative Committee Reports

Bylaws Amendment Proposal

11:45–12 noon, Public Comments
12 noon, Lunch Break
1–1:30 p.m., Executive Committee and SSAB Chairs Trip Report
1:30–3:00 p.m., Waste Management Committee Report
3–3:45 p.m., Nuclear Materials Committee Report
3:45–4:00 p.m., Public Comments
4 p.m., Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, April 22, 2002.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC, 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on March 21, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7191 Filed 3–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC02–15–000, EC02–15–001, ER02–177–000, ER02–177–001, ER02–177–002]

Cinergy Services, Inc., Cinergy Corporation, The Cincinnati Gas & Electric Company, Cinergy Power Investments, PSI Energy, Inc.; Notice of Issuance of Order

March 20, 2002.

Cinergy Services, Inc. (Cinergy), on behalf of Cinergy Corporation and its affiliates, Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Power Investments, Inc. (collectively, "Applicants") made certain filings, in the above-docketed proceedings, with the Commission pursuant to Ohio restructuring legislation implementing customer choice and pursuant to three settlements that provide for the continuation of joint generation and dispatch and joint transmission planning among Cinergy affiliates. Applicants also filed under section 205 of the Federal Power Act various agreements, including a market-based rate tariff, related to their corporate reorganization. Applicants filings also requested certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Applicants.

On March 18, 2002, the Commission issued an Order Authorizing Transfer Of Assets, Granting Market-Based Rates And Accepting Related Agreements For Filing (Order) that granted Applicants request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (J), (K), and (M):

(J) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(K) Absent a request to be heard within the period set forth in Ordering Paragraph (J) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(M) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may

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also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–7200 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–201–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 20, 2001.

Take notice that on March 15, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing. The tariff sheets will become effective April 15, 2002.

CIG is filing to update its tariff consistent with recent Commission orders in other pipeline company proceedings concerning (1) the adjustment of rate components in discount agreements to achieve an overall agreed upon rate and (2) the specification of minimum pressure requirements. Additionally, CIG proposes to change certain sections to conform to prior revisions, correct tariff references, and delete obsolete language from its pro forma service agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7206 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–963–000]

Crete Energy Venture, LLC; Notice of Issuance or Order

March 20, 2002.

Crete Energy Ventures, LLC (CEV) submitted for filing a rate schedule under which CEV will engage in the sales of capacity, energy and certain ancillary services at market-based rates. CEV also requested waiver of various Commission regulations. In particular, CEV requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CEV.

On March 15, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CEV should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, CEV is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CEV, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CEV's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 15, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–7201 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–12–000]

Dow Pipeline Company; Notice of Petition for Rate Approval

March 20, 2002.

Take notice that on February 28, 2002, Dow Pipeline Company (Dow) filed, pursuant to section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval of a system-wide interruptible transportation rate it proposes to charge for transporting natural gas pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Dow proposes a rate of $0.0349 per Dth, plus 0.7% in-kind fuel reimbursement. Dow requests that rates be effective December 1, 2001.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before April 4, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7204 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–202–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

March 20, 2002.

Take notice that on March 18, 2002 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing, to become effective May 1, 2002.

KMIGT states that it is making this housekeeping filing as an effort to clarify and correct various sections of KMIGT's FERC Gas Tariff.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7207 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1000–000]

TECO–PANDA Generating Company, L.P.; Notice of Issuance of Order

March 20, 2002.

TECO–PANDA Generating Company, L.P. (TECO–PANDA) submitted for filing a rate schedule under which TECO–PANDA will engage in the sales of capacity, energy and certain ancillary services at market-based rates. TECO–PANDA also requested waiver of various Commission regulations. In particular, TECO–PANDA requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by TECO–PANDA.

On March 15, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TECO–PANDA should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, TECO–PANDA is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of TECO–PANDA, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TECO–PANDA's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 15, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–7202 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2413–002, *et al.*]

American Electric Power Service Corporation, *et al.*; Electric Rate and Corporate Regulation Filings

March 20, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. American Electric Power Service Corporation

[Docket No. ER01–2413–002]

Take notice that on March 14, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amended Interconnection and Operation Agreement between Indiana Michigan Power Company and Sugar Creek Energy, L.L.C. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the

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Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of May 12, 2002.

A copy of the filing was served upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: April 4, 2002.

2. International Transmission Company

[Docket No. ER02–974–001]

Take notice that on March 14, 2002, International Transmission Company (International Transmission) tendered for filing an amendment to the filing of several service agreements for the provision of non-discriminatory transmission service executed under the joint access transmission tariff between International Transmission and Michigan Electric Transmission Company. The amendment revises the February 6 Filing to include the required Order No. 614 designations for the Service Agreements.

Comment Date: April 4, 2002.

3. Duke Energy Corporation

[Docket No. ER02–994–001]

Take notice that on March 15, 2002, Duke Energy Corporation submitted an amendment to its filing in the above-captioned docket. The March 15, 2002 amended filing supercedes the original February 8, 2002 filing. All interventions, protests and comments regarding both filings should be filed by the date indicated below.

Comment Date: April 5, 2002.

4. Keyspan-Ravenswood, Inc.

[Docket No. ER02–1085–001]

Take notice that on March 7, 2002, KeySpan-Ravenswood, Inc. (Ravenswood) filed an amendment to its February 25, 2002 informational letter filed with the Commission, pursuant to section 35.15'' of the Commission's rules. The amendment withdraws Ravenswood's notification of cancellation of the Transition Capacity Agreement between Ravenswood and The Consolidated Edison Co of New York, Inc. (Con Edison) accepted in Docket No. ER99–2376–000 and designated by the Commission as Ravenswood's Rate Schedule FERC No. 1 because the contract has not yet terminated. However, Ravenswood's notification of termination contained in the February 25 filing regarding the Transition Energy Agreement between Ravenswood and Con Edison accepted in Docket No. ER99–3183–000 and designated by the Commission as Ravenswood's Rate Schedule FERC No. 2 remains in effect.

Comment Date: April 1, 2002.

5. Illinois Power Company

[Docket No. ER02–1328–000]

Take notice that on March 18, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed with the Federal Energy Regulatory Commission (Commission) five Emergency Energy Service Agreements entered into with Exelon Generation Company, LLC; Allegheny Energy Supply Company, LLC; Southern Illinois Power Cooperative; Central Illinois Light Company; and Alliant Energy Corporate Services, Inc. pursuant to Illinois Power's Emergency Energy Tariff.

Illinois Power requests an effective date of February 1, 2002, for all five Agreements and accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power states that a copy of this filing has been sent to all five customers.

Comment Date: April 8, 2002.

6. Illinois Power Company

[Docket No. ER02–1329–000]

Take notice that on March 18, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed with the Federal Energy Regulatory Commission (Commission) a Network Integration Transmission Service Agreement entered into with Tri-County Electric Cooperative, Inc. and a Network Integration Transmission Service Agreement entered into with Clinton County Electric Cooperative, Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of March 1, 2002, for both Agreement sand accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power states that a copy of this filing has been sent to the customers.

Comment Date: April 8, 2002.

7. Pacific Gas and Electric Company

[Docket No. ER02–1330–000]

Take notice that on March 18, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing several Agreements, including an executed Generator Interconnection Agreement (GIA) to replace the unexecuted placeholder GIA that is part of the Generator Special Facilities Agreement (GSFA), between PG&E and Los Medanos Energy Center LLC (LMEC) providing for Special Facilities and the parallel operation of LMEC's generating facility and the PG&E-owned electric system that is on file with the Federal Energy Regulatory Commission (Commission) as Service Agreement No. 8 to PG&E Electric Tariff, Sixth Revised Volume No. 5.

Copies of this filing have been served upon LMEC, Calpine Corporation, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: April 8, 2002.

8. Pacific Gas and Electric Company

[Docket No. ER02–1332–000]

Take notice that on March 18, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing three executed Generator Interconnection Agreements (GIAs) to replace the unexecuted placeholder GIAs that are part of the Generator Special Facilities Agreements (GSFAs) between PG&E and each of the following generators, Fresno Cogeneration Partners, LP (Fresno), NEO Corporation, NEO California Power LLC, Chowchilla (NEO Chowchilla) and NEO Corporation, NEO California Power LLC, Red Bluff (NEO Red Bluff). These Agreements provide for the parallel operation of the generating facilities of Fresno, NEO Chowchilla and NEO Red Bluff and the PG&E-owned electric system and are on file with the Commission as Service Agreement Nos. 11, 13 and 14 to PG&E Electric Tariff, Fourth Revised Volume No. 5. The GIAs provide no rates for services, and there are no associated sales or revenue.

Copies of this filing have been served upon Fresno, NEO Chowchilla, NEO Red Bluff, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: April 8, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER02–1333–000]

Take notice that on March 18, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to the PJM Open Access Transmission Tariff. PJM states that the proposed changes add new, standardized terms and conditions for interconnection of generation facilities with the PJM Transmission System and related forms of service agreements, and make conforming changes to various provisions of the existing Part IV of the PJM Tariff.

PJM further states that copies of this filing have been served on all parties to Docket No. RT01–2–000, as well as on all PJM Members and the state electric regulatory commissions in the PJM region.

PJM requests an effective date of June 1, 2002 for the proposed tariff changes.

Comment Date: April 8, 2002.

Standard Paragraph:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7198 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–104–000, et al.]

PPL Sundance Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 19, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PPL Sundance Energy, LLC

[Docket N. EG02–104–000]

Take notice that on March 15, 2002, PPL Sundance Energy, LLC (Applicant), having its principal place of business at Two North Ninth Street, Allentown, Pennsylvania, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed for the purpose of operating the 450 MW Sundance generating plant, located in Pinal County, Arizona. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: April 9, 2002.

2. PPL University Park, LLC

[Docket No. EG02–105–000]

Take notice that on March 15, 2002, PPL University Park, LLC (Applicant), having its principal place of business at Two North Ninth Street, Allentown, Pennsylvania, filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed for the purpose of operating the 540 MW University Park generating plant, located in University Park, Illinois. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: April 9, 2002.

3. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–1321–000]

Take notice that on March 14, 2002, Wolverine Power Supply Cooperative, Inc., submitted for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between Wolverine Power Supply Cooperative, Inc. and the Tower Kleber Limited Partnership dated January 1, 2002. Wolverine requests that this Agreement be designated as Service Agreement No. 3 under its FERC Electric Tariff, First Revised Volume No. 1.

Wolverine requests an effective date of January 1, 2002, for this Agreement.

Wolverine states that a copy of this filing has been served upon Tower Kleber Limited Partnership and the Michigan Public Service Commission.

Comment Date: April 4, 2002.

4. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–1322–000]

Take notice that on March 14, 2002, Wolverine Power Supply Cooperative, Inc., submitted for filing an executed Generator Interconnection and Operation Service Agreement between Wolverine Power Supply Cooperative, Inc. and the Tower Kleber Limited Partnership dated January 1, 2002. Wolverine requests that this agreement be designated as Service Agreement No. 4 under its FERC Electric Tariff, First Revised Volume No. 1.

Wolverine requests an effective date of January 1, 2002, for this Agreement.

Wolverine states that a copy of this filing has been served upon Tower Kleber Limited Partnership and the Michigan Public Service Commission.

Comment Date: April 4, 2002.

5. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1323–000]

Take notice that on March 14, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed First Revised Service Agreement No. 110 and Supplement No. 1 to First Revised Service Agreement No. 110 under Allegheny Power's Open Access Transmission Service Tariff. Service Agreement No. 110 was accepted for filing by the Federal Energy Regulatory Commission on July 24, 1997 in Docket No. ER97–3137–000. First Revised Service Agreement No. 110 and its Supplement No. 1 consist of an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with the Borough of Tarentum and replace Service Agreement No. 110.

Allegheny Power requests that First Revised Service Agreement No. 110 and its Supplement No. 1 have an effective date of March 16, 2002.

Copies of the filing have been provided to the Customer and all parties of record.

Comment Date: April 4, 2002.

6. Mt. Carmel Cogen, Inc.

[Docket No. ER02–1324–000]

Take notice that on March 15, 2002, Mt. Carmel Cogen, Inc. (Mt. Carmel), filed with the Federal Energy Regulatory Commission an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

Mt. Carmel is a corporation formed under the laws of Delaware. Mt. Carmel owns and operates a 45–MW generating

plant located in Mount Carmel, Pennsylvania.

Comment Date: April 5, 2002.

7. PPL Sundance Energy, LLC

[Docket No. ER02–1325–000]

Take notice that on March 15, 2002, PPL Sundance Energy, LLC (PPL Sundance) filed with the Federal Energy Regulatory Commission (Commission) an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates.

Comment Date: April 5, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–000]

Take notice that on March 15, 2002, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated PJM Operating Agreement to implement an Economic Load Response Program on a multi-year basis.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of June 1, 2002 for the amendments.

Comment Date: April 5, 2002.

9. PPL University Park, LLC

[Docket No. ER02–1327–000]

Take notice that on March 15, 2002, PPL University Park, LLC filed with the Federal Energy Regulatory Commission (Commission) an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates.

Comment Date: April 5, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–7149 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Extension of Temporary Amendment of License.

b. Project No.: 2899–105.

c. Date Filed: March 18, 2002.

d. Applicant: Idaho Power Company.

e. Name of Project: Milner Hydroelectric Project.

f. Location: The Milner hydroelectric project is located on the Snake River in Twin Falls and Cassia Counties, Idaho. The project includes 109 acres of land administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707; (208) 388–2676.

i. FERC Contact: Questions about this notice can be answered by Kenneth Hogan at (202) 208–0434 or e-mail address: *Kenneth.Hogan@ferc.gov*. The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. Deadline for filing comments, terms and conditions, motions to intervene, and protests: 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *www.ferc.gov*.

k. Idaho Power Company (IPC) filed an application for an extension of the temporary amendment authorized by the Commission's order dated May 8, 2001, which temporarily waived the minimum flow requirement set forth in Article 407, and approved the dewatering of the Milner bypass reach between May 8, 2001, and March 31, 2002. Article 407 reads as follows:

The licensee shall discharge from Milner Dam a target flow of 200 cubic feet per second as measured at the Milner gage located in the bypass reach. The licensee shall release water from the Idaho Water Bank and/or make releases from upstream storage controlled by the licensee to provide the necessary flow to achieve the 200-cfs target. The main powerhouse shall not operate during any time the target flow is not met. The target flow may be temporarily reduced if required by operating emergencies beyond the control of the licensee or for short periods upon mutual agreement between the licensee and Idaho Department of Fish and Game.

Idaho Power requests that the May 8, 2001 order, superceding Article 407, be extended to the end of the irrigation season, October, 2002.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the Web at *http://www.ferc.gov*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7203 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000, RT01–10–000, RT01–15–000, ER02–323–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (RTO Cost Benefit Analysis Report); Notice Organizing Staff Technical Conference on RTO Cost Benefit Report

March 20, 2002.

This Notice provides organizational details regarding the March 25, 2002, technical conference relating to the report on "Economic Assessment of RTO Policy" issued February 26, 2002.[1] The conference will begin at 10:00 a.m. at the Federal Energy Regulatory's Commission's offices, 888 First Street, NE, Washington, DC. All interested persons are invited to attend.

The conference will utilize a question and answer format. Members of the Commission staff and ICF Consulting will be available to respond to questions concerning the results and methodology of the RTO Policy report. No presentations will be made either by staff or participants.

The conference will be transcribed, so those not attending can review the proceedings. Those interested in obtaining transcripts of the conference need to contact Ace Federal Reporters, at 202–347–3700. Transcripts will be available on the Commission's web site 10 days after receipt from Ace-Federal Reporters. Anyone interested in purchasing videotapes of the conference should call VISCOM at 703–715–7999.

The Capitol Connection offers all Open and special FERC meetings live over the Internet as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at 703–993–3100 or visit the Web site, *www.capitolconnection.gmu.edu*.

The Capitol Connection also offers FERC Open Meetings through its Washington, DC area television service. In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211.

For further information about the conference, please contact either:

William Meroney, 202–208–1069, *William.meroney@ferc.gov*.

Charles Whitmore, 202–208–1256, *Charles.whitmore@ferc.gov*.

Federal Energy Regulatory Commission, 888 N. Capitol Street, NE, Washington DC 20426.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7205 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

[1] The report is available on the Commission's web site, http://www.ferc.gov.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–13–000]

Conference on Energy Infrastructure; Notice of Conference

March 20, 2002.

The Federal Energy Regulatory Commission (FERC) will hold a conference on energy infrastructure issues in the southeastern states on Thursday, May 9, 2002 at the Orlando World Center Marriott Resort and Convention Center, 8701 World Center Drive, Orlando, Florida.

The conference is for the purpose of discussing the adequacy of the electric, gas and other energy infrastructure in the Southeast, and related matters. In addition to specialized panelists, the Governors and state utility commissioners of the southeastern states are being invited to participate. The goal is to identify present infrastructure needs, investment and other barriers to expansion, and environmental and landowner concerns. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for the southeastern states. It is our firm belief that until we have an adequate, well-functioning energy infrastructure, we cannot expect workable, competitive markets.

The one-day meeting will begin at 9:00 a.m. and conclude at 4:30 p.m. All interested parties are invited to attend. Hotel rooms have been blocked at the Marriott under the name of the Federal Energy Regulatory Commission for any attending guests to reserve a one- or two-night stay but will be released by April 17. You can still reserve a room after April 17, but on a room availability and rate basis. The hotel can be reached at 1–800–621–0638.

To attend, please register online on the Commission Web site at *http://www.ferc.gov/calendar/courses-outreach/coursesoutreach.htm*. Scroll down and click on "Southeast Energy Infrastructure Conference". There is no registration fee. We will issue further details on the conference, including the agenda and a list of participants, as plans evolve. For additional information, please contact Carol

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Connors in the Office of External Affairs at *carol.connors@ferc.gov.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7199 Filed 3–25–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7163–8]

Annual Conference on Analysis of Pollutants in the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of conference.

SUMMARY: The Office of Science and Technology and Battelle, co-sponsors, will hold the "25th Annual Conference on Analysis of Pollutants in the Environment" to discuss all aspects of environmental measurement. The conference is open to the public.

DATES: The annual conference will be held on May 7–9, 2002. On May 7, 2002, the conference will begin at 8:45 a.m. and adjourn at 5 p.m. A workshop on "Surviving a Laboratory Audit" will be presented from 1:30 p.m. to 5 p.m.

On May 8, 2002, the conference will begin at 8:45 a.m. and adjourn at 4:15 p.m. On May 9, 2002, the conference will begin at 8:30 a.m. and adjourn at 12 p.m.

ADDRESSES: The conference will be held at the Sheraton Norfolk Waterside Hotel, 777 Waterside Drive, Norfolk, Virginia, 23510.

FOR FURTHER INFORMATION CONTACT: Conference and workshop arrangements are being conducted by Battelle. For information on registration, hotel rates, transportation, social events, and reservations call Andrea Grew, Battelle, at (781) 952–5290 or by facsimile at (781) 934–2124.

If you need special accommodations at this meeting, including wheelchair access, you should contact Andrea Grew, Battelle, at least five business days prior to the meeting so that we can make appropriate arrangements. If you have technical questions regarding the conference or workshop programs, please contact Marion Kelly, e-mail: *kelly.marion@epa.gov,* (202) 566–1045 or by facsimile at (202) 566–1053.

SUPPLEMENTARY INFORMATION: The "25th Annual Conference on Analysis of Pollutants in the Environment" is designed to bring together representatives of regulated industries, commercial environmental laboratories, State and Federal regulators, municipal water and wastewater laboratories, and environmental consultants and contractors to discuss all aspects of environmental measurement with a particular focus on environmental water regulations, compliance monitoring, and related issues.

The draft program agenda for the conference follows:

Tuesday, May 7, 2002

Welcome and Status of Office of Water Activities

8:45 a.m. Welcome—Robert G. Beimer, Battelle

9:00 a.m. Opening Remarks—William Telliard, U.S. EPA Office of Science & Technology, Engineering and Analysis Division

9:15 a.m. Office of Water Activities—James Hanlon, Acting Deputy Assistant Administrator, U.S. EPA Office of Water, Field Techniques

9:45 a.m. Comparison of Field Collection Techniques and Filtration Procedures for Determination of Chlorophyll in Ambient Waters—R.E. Stewart, D.H. Smith, and T.Y. Du, Virginia Department of Environmental Quality

10:15 a.m. Break

Bacteriological Tracking

10:30 a.m. Microbial Source Tracking: Principles and Practice—Mansour Samadpour, University of Washington

11:00 a.m. Source Tracking of Bacteria: A Case Study—Ward Staubitz, U.S. Geological Survey Site Investigation

11:30 a.m. The Destruction of the World Trade Center and PCBs, PBDEs, PCDD/Fs, PBDD/Fs, and Chlorinated Biphenylenes in Water, Sediment, and Sewage Sludge—Simon Litten, New York State Department of Environmental Conservation; D. McChesney, U.S. EPA Region II; and Brian Fowler and M.C. Hamilton, Axys Analytical Services

12:00 Noon—Lunch

Workshop

1:30 p.m.—5:00 p.m. Surviving a Laboratory Audit—U.S. EPA Staff: Nancy Wentworth, Office of Research and Development, Quality Assurance Division; Joseph Slayton, U.S. EPA Region III, Environmental Science Center; U.S. EPA Drinking Water Representative; Steve Baker, State of Arizona

5:00 p.m. Adjourn

Wednesday, May 8, 2002

Organics Analysis

8:45 a.m. Determination of the Congener Distribution in Aroclors to the Sub-ppm Level—Coreen Hamilton, Katherine Kaye, and Brian Fowler, Axys Analytical Services

9:15 a.m. Application of Aroclor Toxicity Equivalents to Historic Aroclor Data and to Non-detects—Andy Beliveau, U.S. EPA Region I

9:45 a.m. Navigating EPA's Alternate Test Procedure for Development of an Alternate Chlorophenolics Procedure: Process and Results—Diana Cook, Glenn Wilson, and Michelle Wrabel, National Council for Air and Stream Improvement

10:00 a.m. Break

10:15 a.m. Polybrominated diphenyl ethers: An Emerging Environmental Problem—Mehran Alaee, Canadian Center for Inland Waters

10:45 a.m. Polybrominated diphenyl ethers by Gas Chromatography with an Electron Capture Detector—Robert Rieck, U.S. EPA Region X, Manchester Laboratory

11:15 a.m. Polybrominated diphenyl ethers by HRGC/HRMS—Coreen Hamilton, Brian Fowler, and Louis Haviland, Axys Analytical Services

11:45 a.m. Lunch

Sample Preservation and Holding Times

1:00 p.m. Study Supporting Extension of the Unpreserved Mercury Holding Time to 28 Days—Mark Bruce, Scott Irwin, and Patrick O'Meara, Severn Trent Laboratory, Canton, Ohio

1:30 p.m. Effect of Freezing on Concentrations of Classical Pollutants—Khouane Ditthavong, U.S. EPA Office of Science & Technology, Engineering and Analysis Division

2:00 p.m. Effect of Starting Temperature, Ice Placement, and Other Variables on Length of Time that Samples Remain Below 4 °C in a Picnic Cooler—William Telliard, U.S. EPA Office of Science & Technology, Engineering and Analysis Division

2:30 p.m. Break

Metals Analysis

2:45 p.m. Determination of Arsenic Species in Fish and Their Impact on Fish Advisories— Eric Crecelius, Margaret O'Neill, and Tim Fortman, Battelle Marine Sciences Laboratory

3:15 p.m. Results of the Interlaboratory Validation of EPA Method 245.7: Mercury in Water by Cold-vapor Atomic Fluorescence—Maria Gomez-Taylor, U.S. EPA Office of Science & Technology, Engineering and Analysis Division

Bioassay

3:45 p.m. Comparison of Results of Determination of Dioxin-like Toxicity by Cell-line Bioassays and HRGC/HRMS—Harry McCarty, DynCorp Information & Enterprise Technology, Inc.

4:15 p.m. Adjourn

5:30 p.m. Conference Reception

Thursday, May 9, 2002

Whole Effluent Toxicity

8:30 a.m. Grading on a Curve: How to Use Laboratory Control Charts and Other QA/QC Data to Interpret Toxicity Test Results—Tim Moore, Risk Sciences; and Jim Pletl, Hampton Roads Sanitation District

Microbiological Methods

9:00 a.m. Interlaboratory Validation of EPA Method 1605 for Aeromonas in Water—Misty Pope, Ken Miller, Kevin Connell, Jessica Pulz, Chris Maynard, Ben Meadows, and Kyle May, DynCorp Information & Enterprise Technology, Inc.; and Mary Ann Feige, U.S. EPA Office of Ground Water and Drinking Water Technical Support Center, Cincinnati

9:30 a.m. Are Current Microbiological Method Holding Times Meaningful? An Assessment of the Stability of Multiple Pathogens in Wastewater at Multiple Times and Temperatures—Robin Oshiro, U.S. EPA Office of Science and Technology, Engineering and Analysis Division; and Misty Pope, Kevin Connell, Jessica Pulz, Ken Miller, and Yildiz Chambers, DynCorp Information & Enterprise Technology, Inc.

10:00 a.m. Break

10:15 a.m. Special Session: Demonstration of E. coli and Enterococci Methods Proposed by EPA for Use in Recreational Water Monitoring—Robin Oshiro, U.S. EPA Office of Science and Technology, Engineering and Analysis Division

12:00 Noon—Adjourn

Dated: March 19, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–7225 Filed 3–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the U.S. Fire Administration's National Fire Academy Long-term Course Evaluation Forms.

SUPPLEMENTARY INFORMATION: The data collection from the long-term evaluation forms—one for students and one for the student's supervisor—will obtain course specific feedback regarding the impact of course content on job performance. This data is needed to improve instructional delivery and curriculum design. Demographic data are needed to identify differentials in course impact. The information collection also supports the Government Performance and Results Act.

Collection of Information

Title: National Fire Academy Long-term Evaluation Form for Supervisors, National Fire Academy Long-term Evaluation Form for Students.

Type of Information Collection: Renewal of existing collection in use with OMB approval.

OMB Number: 3067–0260.

Form Numbers: Form F–8872–NETC; F–8873–NETC.

Abstract: The National Fire Academy's long-term evaluation forms—one for students and one for the student's supervisor—will obtain course specific feedback regarding impact of course content on job performance. The information is needed to improve instruction and content. Demographic data are needed to identify differentials in course impact.

Affected Public: Individuals.

Estimated Total Annual Burden Hours: 375.

FEMA Forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Student	750	1	.33	247.50
Superv	750	1	.17	127.50
Total	1,500			375

Estimated Cost: $105,000.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Gladhill, Program Analyst, National Fire Academy, (301) 447–1239 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.Anderson@fema.gov.*

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Dated: March 18, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7173 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Public Assistance Progress Report and various forms used to administer the Public Assistance Program.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes the President to provide assistance to State and local governments to help them to respond to and recover from a disaster. In order to receive Federal assistance (i.e., Federal grants) State and local officials and officials of eligible private nonprofit organizations who have a responsibility for response to a major disaster and for the restoration of facilities in the aftermath of such events must provide information to FEMA. The information is required in accordance with FEMA regulations 44 CFR, § 206.204(f), § 206.203(c), § 206.203(d)(i) and guidance published in FEMA 322, Public Assistance Guide, and FEMA 323, Public Assistance Applicant Handbook.

Collection of Information

Title: Public Assistance Progress Report and Program Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0151.

Form Numbers: FEMA Form 90–49, Request for Public Assistance, FEMA Form 90–91, Project Worksheet (PW), FEMA Form 90–91A, Damage Description and Scope of Work Continuation Sheet, FEMA Form 90–91B, Cost Estimate Continuation Sheet, FEMA Form 90–91C, Maps and Sketches Sheet, FEMA Form 90–91D, Photo Sheet, FEMA Form 90–120, Special Considerations Questions, FEMA Form 90–121, PNP Facility Questionnaire, FEMA Form 90–123, Force Account Labor Summary Record, FEMA Form 90–124, Materials Summary Record, FEMA Form 90–125, Rented Equipment Summary Record, FEMA Form 90–126, Contract Work Summary Record, FEMA Form 90–127, Force Account Equipment Summary Record, FEMA Form 90–128, Applicant's Benefits Calculation Worksheet.

Abstract: Progress Report ensures that FEMA and the State have up-to-date information on Public Assistance (PA) program grants. The State submits reports quarterly to the Regional Director for construction projects for which a final payment has not been made. The date of the report will be determined jointly by the State and the Disaster Recovery Manager. The progress report describes the status of project completion dates, and circumstances that could delay a project. The State is expected to impose some reporting requirements for applicants so that they can prepare quarterly reports. Request for Public Assistance—The Request is FEMA's official application form. The Grantee has 30 days from the date of the designation of the area where the damage occurred to submit a completed Request to the Regional Director for each applicant who requests public assistance. Project Worksheet (PW)—The PW identifies the eligible scope of work and includes a quantitative estimate for the eligible work. FEMA or the applicant (sub-grantee), assisted by the State, will prepare a PW for each project. The applicant will have 60 days to identify and report damages to FEMA. Federal funds are obligated to the State based on the approved PW. The State will then approve sub-grantees based on the PW approved for each applicant. PW Damage Description and Scope of Work Continuation Sheet—The *Damage Description and Dimensions* and *Scope of Work* should be listed in the areas provided on the PW. The optional PW—Damage Description and Scope of Work Continuation Sheet provides additional space, if needed, to describe the work necessary to restore the facility to its pre-disaster design. PW Cost Estimate Continuation Sheet—The cost estimate is the estimated cost of repair for the damages described in the *Project Description* of the PW. The optional PW Cost Estimate Continuation Sheet provides additional space, if needed, to estimate the cost to restore the facility to its pre-disaster condition. PW Maps and Sketches Sheet—The optional PW Maps and Sketches Sheet assist applicants in organizing project documentation. The exact location of the facility is described and a sketch of the facility will assist the applicant in describing the damage in terms of facility features or items requiring repair. PW Photo Sheet—The optional PW Photo Sheet assist applicants in organizing project documentation. The Photo Sheet provides field personnel with specific information that enables facility damages to be documented before work is accomplished. Force Account Labor Summary Record—The optional Force Account Labor Summary Record, is used to record applicant personnel cost. Force Account Equipment Summary Record—The optional Force Account Equipment Summary Record, is used to record applicant equipment costs. Materials Summary Record—The optional Materials Summary Record, is used to record the supplies and materials an applicant may take out of stock or purchase. Contract Work Summary Record—The optional Contract Work Summary Record, is used to record the costs of work that an applicant has done by contract. Rented Equipment Summary Record—The optional Rented Equipment Summary Record, is used to record the cost of rented or leased equipment. Special Considerations Questions—The key to expedited review and approval of emergency- or permanent-work projects is early identification of factors that affect compliance with environmental resources, disaster assistance, and historic preservation legislation and Executive Orders on floodplain, wetlands, and environmental justice. The optional Special Considerations Questions, assists applicants in organizing project documentation. It is more important that any considerations simply be noted on the PW thus alerting FEMA early on in the process to any problems or circumstances expected to result in noncompliance with the approved grant. A condition of all FEMA funded projects is that they conform to State and local laws and ordinances. Applicant's Benefits Calculation Worksheet—The optional Applicant's Benefits Calculation Worksheet is used to record the costs of fringe benefits for force account labor. PNP Facility Questionnaire—The optional PNP Facility Questionnaire is used to help determine the eligibility of specific Private Non-Profit facilities.

Affected Public: State, Local or Tribal government, and Not-For-Profit Institutions.

Estimated Total Annual Burden Hours: 94,243.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)	Hourly cost estimate for personnel/staff	Annual cost
Progress Report	25	4	25	2,500	$40	$100,000
FEMA Form 90–49	114	53	[1]10	1,007	25	25,175
FEMA Form 90–91, 90–91A, 90–91B, 90–91C, and 90–91D	564	53	[1]90	44,838	30	1,345,140
FEMA Form 90–120	564	53	[1]10	4,982	25	124,575
FEMA Form 90–121	20	53	[1]30	530	25	13,250
FEMA Form 90–123	564	53	[1]15	7,473	25	189,825
FEMA Form 90–124	564	53	[1]15	7,473	25	189,825
FEMA Form 90–125	564	53	[1]15	7,473	25	189,825
FEMA Form 90–126	564	53	[1]15	7,473	25	189,825
FEMA Form 90–127	564	53	[1]15	7,473	25	189,825
FEMA Form 90–128	114	53	[1]30	3,021	25	75,525
Total	222,488			94,243		2,617,790

[1] Minutes.

Estimated Cost: All projects approved under the State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA State Agreement and the Stafford Act. The cost to respondents for this information collection is estimated to be $2,617,790.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: James Walke, Branch Chief, Public Assistance Branch, Recovery Division, (202) 646–2751 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e:mail *muriel.anderson@fema.gov.*

Dated: March 18, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7174 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed [new, revised, or continuing—select one] information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the end-of-course evaluation form used for National Fire Academy field (off-campus) and State Weekend Program courses.

SUPPLEMENTARY INFORMATION: The National Fire Academy (NFA) is mandated under the Fire Prevention and Control Act of 1974, Public Law 93–498, to provide training and education to the Nation's fire and emergency response personnel. The programs offered by the Academy serve as models of excellence. To maintain the quality of these programs, it is necessary to evaluate them on an on-going basis. This National Fire Academy Course Evaluation Form is a key component for the measurement of quality assurance for NFA field (off-campus) and State Weekend Program courses. This form is used for courses delivered both on-campus and throughout the Nation.

Collection of Information

Title: National Fire Academy Course Evaluation Form.

Type of Information Collection: Extension of existing approved collection.

OMB Number: 3067–0233.

Form Numbers: FEMA Form 95–45.

Abstract: This National Fire Academy Course Evaluation Form is used in all field two-day (off-campus) and State Weekend Program courses. The form is primarily used to assess the effectiveness of the course materials and instructor delivery. The demographic information is used in developing needs assessments for future course development/revision efforts.

Affected Public: Individuals.

Estimated Total Annual Burden Hours: 6250.

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FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
95–45	25,000	1	.25	6,250
Total	25,000	1	.25	6,250

Estimated Cost: $104,000 per year.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Gladhill, Program Analyst, National Fire Academy, (301) 447–1239 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.Anderson@fema.gov*.

Virginia A. Akers,

Acting Branch Chief, Program Services and Systems Branch,Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7176 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the renewal of the Standard Flood Hazard Determination form.

SUPPLEMENTARY INFORMATION: FEMA is seeking to extend the use of the Standard Flood Hazard Determination form, which is required by Title V of the National Flood Insurance Reform Act of 1994. No changes in the information collected will be made. Changes to the form's instructions, to include the purpose of the form, have been made.

Collection of Information

Title: Standard Flood Hazard Determination form.

Type of Information Collection: Extension.

OMB Number: 3067–0264.

Form Numbers: FEMA 81–93 Standard Flood Hazard Determination form.

Abstract: On September 23, 1994, the President signed the Riegle Community Development and Regulatory Improvement Act of 1994. Title V of this Act is the National Flood Insurance Reform Act (NFIRA). Section 528 of the NFIRA requires that FEMA develop a standard hazard determination form for recording the determination of whether a structure is located within an identified Special Flood Hazard Area and whether flood insurance is available. Section 528 of the NFIRA also requires the use of this form by regulated lending institutions, federal agency lenders, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association for any loan made, increased, extended, renewed or purchased by these entities. The form developed to comply with the above requirements is the Standard Flood Hazard Determination form (FEMA form 81–93, dated October 1998). This form will be completed by federally regulated lending institutions when making, increasing, extending, renewing or purchasing each loan for the purpose of documenting the factors considered as to whether flood insurance is required and available. An estimated 20,000,000 such uses are made each year. This number is entirely driven by the volume of mortgage transactions, of which fluctuations in interest rates is a principal factor.

Affected Public: Business or other for-profit, Federal Government.

Estimated Total Annual Burden Hours: Completing the Standard Flood Hazard Determination form is estimated to average approximately 20 minutes per form. An estimated 20,000,000 forms per year, multiplied by 0.33 hours per form, results in an estimated burden of approximately 6,600,000 hours.

Estimated Cost: An estimated 0.33 hour per form multiplied, by 20 million forms per year, multiplied by $29 per hour results in an estimated annualized cost of $191,400,000.

Comments: Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to: Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Frederick Sharrocks, Mapping Support Branch Chief, Federal Insurance and Mitigation Administration, 202.646.2796, for additional information. Contact Ms. Anderson at (202) 646–2625 (voice), (202) 646–3347(facsimile), or e-mail address: *muriel.anderson@fema.gov* for copies of the proposed information collection.

Dated: March 19, 2002.

Virginia A. Akers,

Acting Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7177 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to amend or revise National Flood Insurance Program Maps to remove certain property from the 1-percent annual chance floodplain.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Cecelia Lynch, FEMA, Federal Insurance and Mitigation Administration at (202) 646–7045 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e:mail *muriel.Anderson@fema.gov*.

SUPPLEMENTARY INFORMATION: With the passage of the Flood Disaster Protection Act of 1973, an owner of a structure, with a federally backed mortgage, located in the 1-percent annual chance floodplain, was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort, FEMA mapped the 1-percent annual chance floodplain in communities. However, due to scale limitations, individual structures that may be above the base flood cannot always be shown as being out of the 1-percent annual chance floodplain. FEMA will issue a Letter of Map Amendment (LOMA) or a Letter of Map Revision—Based on Fill (LOMR–F) to waive the Federal requirement for flood insurance when data is submitted to show that the property or structure is "reasonably safe from flooding" and at or above the elevation of the base flood.

Collection of Information

Title: Right to Submit Technical or Scientific Data to Correct Mapping Deficiencies.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0147.

Form Numbers: FEMA Forms 81–87, 81–87A, 81–87B.

Abstract: The certification forms (referred to as MT–1 series forms) are designed to assist requesters in gathering information that FEMA needs to determine whether a certain property is likely to be flooded during the flood event that has a 1-percent annual chance of being equaled or exceeded in any given year (base flood).

FEMA Form 81–87, Property Information, describes the location of the property, what is being requested, and what data are required to support the request.

FEMA Form 81–87A, Elevation Information, indicates what the Base (1-percent annual chance) Flood Elevation (BFE) for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. This information is required in order for FEMA to determine if the property that the requester would like removed from the SFHA is at or above the BFE.

FEMA Form 81–87B, Community Acknowledgment, requires that a community official certify that the request complies with minimum floodplain management criteria specified in 44 CFR 60.3, as per NFIP regulations 44 CFR 65.5(a)(4).

Estimated Total Annual Burden Hours:

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours Per response (C)	Annual burden hours (A x B x C)
81–87	3,300	Annual	1.63	5,379
81–87A	3,300	Annual	0.67	2,211
81–87B	3,300	Annual	0.88	2,904
Total	3,300		3.18	10,494

Estimated Cost. Cost to respondents is estimated to be $346,459 annually, while the cost to the Federal Government is estimated to be $900,000 annually.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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(c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

Dated: March 20, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7194 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Mitigation Assistance-Cerro Grande Mitigation Proposal.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0286.

Abstract: The information collected on the Request for Mitigation Assistance—Cerro Grande Mitigation Proposal, (FFCG–4) will be collected by claimants with the assistance of a FEMA mitigation specialist and will be used by mitigation specialist to determine if mitigation funding will be awarded to claimants. The information collection is addressed in the Cerro Grande Fire Assistance Act Final Rule published in the **Federal Register** on March 21, 2001. This data collection will continue until the closing data of August 28, 2003.

Affected Public: Individual or Households.

Number of Respondents: 800.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 2,400.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov*.

Dated: March 18, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7175 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for National Flood Insurance Program Map and Insurance Products

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This Notice contains the revised fee schedule for processing requests for the National Flood Insurance Program (NFIP) map and insurance products available through the FEMA Map Service Center (MSC). The changes in the fee schedule will allow FEMA to reduce further the expenses to the NFIP by recovering more fully the costs associated with producing, retrieving, and distributing particular NFIP map and insurance products. This year, with the implementation of the MSC's new e-commerce site and conversion of the paper maps and studies to digital files, the MSC is also recommending fee charges for the new online Internet requests and CD products.

DATES: The revised fee schedule is effective for all requests dated, May 1, 2002, or later.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Mapping Support Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472; by telephone at (202) 646–2796 or by facsimile at (202) 646–4596 (not toll-free calls), by e-mail at *Frederick.Sharrocks@fema.gov*.

SUPPLEMENTARY INFORMATION: Throughout this Notice, we use "we," "our," and "us" to refer to FEMA.

This Notice contains the revised fee schedule for processing requests for NFIP map and insurance products available through the MSC.

Effective Date

The revised fee schedule is effective for all written requests, on-line Internet requests made through the FEMA Flood Map Store, and all telephone requests received on or after May 1, 2002. The revised fee schedule supersedes the current fee schedule for requests for Map and Insurance products, established May 3, 2000.

Evaluations Performed

To develop the revised fee schedule for requests for particular NFIP map and insurance products, we first evaluated the actual costs incurred at the MSC for producing, retrieving, and distributing those products. We then analyzed historical sales, cost data, and product unit costs for unusual trends or anomalies; analyzed the effect of program changes, new products, technology investments, and other factors on future sales and product costs. The products covered by this Notice are discussed in detail below.

Periodic Evaluation of Fees

As indicated in the Notice published in the **Federal Register** on May 3, 2000, a primary component of the fees is the prevailing private sector rates charged to FEMA for labor and materials. Because these rates and the actual production, retrieval, and distribution costs may vary from year to year, we will evaluate the fees periodically and publish a revised fee schedule, when appropriate, as a notice in the **Federal Register** Fee Schedule for Requests for Map and Insurance Products.

Our MSC distributes a variety of NFIP map and insurance products to a broad range of our customers, including Federal, State, and local government officials; real estate professionals; insurance providers; appraisers; builders; land developers; design engineers; surveyors; lenders; homeowners; and other private citizens. Specifically, our MSC distributes the following products:

- Paper (printed) copies of Flood Hazard Boundary Maps (FHBMs);
- Paper (printed) copies of Flood Insurance Rate Maps (FIRMs);
- Paper (printed) copies of Digital Flood Insurance Rate Maps (DFIRMs);
- Paper (printed) copies of Flood Insurance Study (FIS) reports, including the narrative, tables, Flood Profiles, photographs, and other graphics;
- Paper (printed) copies of Flood Boundary and Floodway Maps (FBFMs), when they are included as an exhibit in the FIS;
- Digital Q3 Flood Data files, which FEMA developed by scanning the published FIRM and vectorizing a thematic overlay of flood risks;
- Digital Q3 Flood Data files for Coastal Barrier Resource Areas (CBRA Q3 Flood Data files);
- Community Status Book, which is a report generated by FEMA's Community Information System database that provides pertinent map status information for all identified communities;
- Flood Map Status Information Service (FMSIS), through which FEMA provides status information for effective NFIP maps;
- Letter of Map Change (LOMC) Subscription Service, through which FEMA makes certain types of LOMCs available biweekly on CD-ROM;
- NFIP Insurance Manual (Full Manual), which provides vital NFIP information for insurance agents nationwide;
- NFIP Insurance Manual (Producer's Edition), which is used for reference and training purposes; and
- Community Map Action List (CMAL), which is a bimonthly list of communities and their NFIP status codes.

Based on our review of actual cost data and future trends, we revised our fee schedule for the products listed above to reflect actual production costs (i.e., printing and operating costs). Specifically, we increased both the processing fee and the shipping costs for paper copies of FHBMs, FIRMs, DFIRMs, FBFMs, and FIS reports, and we increased the shipping cost only for the Q3 Flood Data Files, CBRA Flood Data Files, Community Status Book, FMSIS, LOMC Subscription Service, NFIP Insurance Manuals, and CMAL. Federal, State, and local governments continue to be exempt from paying fees for the map products.

The MSC is now preparing to distribute its products in several new ways. While we will continue to ship paper products, we are ready to begin distributing digital products for download directly from the Internet and on CD. The following is a description of the MSC's new digital products:

- Maps on the Web—raster images of the FIRMs and Floodways in TIFF format.
- FIS on the Web—raster images of FIS in PDF format.
- Flood Map CDs without a Database—includes only the raster images of the maps and can be purchased by panel or in community, county, or state kits.
- F–MIT Light on the Web—a free downloadable flood map image view tool, to be used in conjunction with viewing TIFF images that supports panning, zooming, and creating a "firmette". A firmette is a user-defined "cut-out" section of the map at 100% map scale designed for printing on a standard office printer.
- F–MIT Light on CD—same as F–MIT Light on the Web, designed for use with the Flood Map CD without a Database.
- FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners on CD:* This document combine previous FEMA publications, guidance documents, and memorandums regarding Flood Hazard Mapping. The Guidelines reflect recent changes to processes and products associated with the implementation of the Map Modernization Program, including the Cooperating Technical Partners initiative, new Project Scoping procedures, and digital Flood Insurance Rate Map (DFIRM) specifications.

For more information on the map and insurance products available from the MSC, we invite interested parties to visit our MSC Web site at *http://www.fema.gov/msc*.

We show the revised fee schedule for the current products and the proposed fee schedule for the new products in the table below:

	Fee	Shipping
Paper Product or Service:		
Paper copies of FHBM, FIRM, DFIRM, or FBFM panels.	$2.00 per panel	$0.37 per panel for first 10 panels plus $0.03 for each additional panel.
Paper copies of FIS (not including FBFM panels that are included as exhibit).	$5.00 per FIS volume	$4.00 for first FIS plus $0.40 for each additional FIS.
Hurry Charge for FHBM, FIRM, DFIRM, FBFM, or FIS.	$33.00 per order	Based on product and units shipped; no additional shipping charge if customer provides own shipping account.
Q3 Flood Data Files	$50.00 per CD–ROM	$3.65 for first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order
CBRA Q3 Flood Data Files	$50.00 per CD–ROM	$3.65 for first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
Community Status Book (Individual Orders)	$2.50 per state	$1.00 per state
	$20.50 for entire U.S.	$4.26 for entire U.S.
Community Status Book (Annual Subscription).	$50.00 per state	Not applicable.
	$250.00 for entire U.S..	
FMSIS (Individual Orders)	$13 per state	$3.65 for first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
	$38 for entire U.S.	
FMSIS (Annual Subscription)	$148 per state	Not appllicable.
	$419 for entire U.S..	
LOMC Subscription Service (Individual Orders).	$85 per per issue	$3.65 for first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
LOMC Subscription Service (Annual Subscription).	$2,000	Not applicable.

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	Fee	Shipping
NFIP Insurance Manual: (Full Manual)	$25.00 per copy for complete manual	$4.85 for the initial manual, plus $1.32 for each semi-annual update.
NFIP Insurance Manual (Producer's edition).	$15.00 per copy	$4.85 for the initial manual, plus $1.32 for each semi-annual update.
CMAL	No charge	$1.00 for each list.
Internet Products (Downloaded from the web):		
FIRMs	$1.50 per map panel	None.
FIS	$4.00 per study plus $1.50 per floodway	None.
F–MIT Light (view tool for map images)	Free	N/A.
CD Products:		
Maps on CD without County Database	$1.50 per panel	$3.65 for the first 4 CDs plus $0.10 for each additional CD.
FIS on CD	$4.00 per study plus $1.50 per floodway	$3.65 for the first 4 CDs plus $0.10 for each additional CD.
Priority Handling Charge added to regular charge.	$33.00	N/A.
F–MIT Light on CD (view tool for map images).	Free	$3.65.
FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners on CD.*	$2.60	$3.65.

Payment Submission Requirements

Fee payments for non-exempt requests must be made to us in advance of services being rendered. These payments shall be made in the form of a check or money order or by credit card payment. Checks and money orders must be made payable, in U.S. funds, to the *National Flood Insurance Program.*

We will deposit all fees collected to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: March 20, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–7195 Filed 3–25–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 9, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Thomas Mark Huston, Columbus Junction, Iowa; to retain voting shares of CJSB Bancorporation, Columbus Junction, Iowa, and thereby indirectly retain voting shares of Columbus Junction State Bank, Columbus Junction, Iowa.

Board of Governors of the Federal Reserve System, March 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7156 Filed 3–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. CSB Financial Corporation, Teaneck, New Jersey; to become a bank holding company by acquiring 22.6 percent of the voting shares of Community State Bank, Teaneck, New Jersey.

Board of Governors of the Federal Reserve System, March 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7155 Filed 3–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Concord EFS, Inc., Memphis, Tennessee; to acquire Core Data Resources, Inc., Amarillo, Texas, and thereby engage in data processing activities, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, March 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–7154 Filed 3–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act; Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, April 1, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7393 Filed 3–22–02; 3:42 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop: Consumer Information Security

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice Announcing Public Workshop; Requesting Public Comment and Participation; and Correcting Earlier Notice With Respect to Dates of Public Workshop.

SUMMARY: The FTC is planning to host a public workshop to explore issues relating to the security of consumers' computers and the personal information stored in them or in company databases. This notice provides the correct dates for the public workshop.

DATES: The workshop will be held on Monday, May 20, 2002, from 9 a.m. to 5 p.m., and Tuesday, May 21, 2002, from 9 a.m. to 2 p.m., at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.[1]

Pre-registration: The event is open to the public and there is no fee for attendance. However, attendees are strongly encouraged to pre-register, as seating will be limited. To pre-register, please email your name and affiliation by April 29, 2002, to *securityworkshop@ftc.gov.*

Requests to participate as a panelist: As discussed below, written requests to participate as a panelist in the workshop must be filed on or before April 1, 2002. Persons filing requests to participate as a panelist will be notified on or before April 22, 2002, if they have been selected to participate.

Written comments: Whether or not selected to participate, persons may submit written comments on the Questions to be Addressed at the workshop. Such comments must be filed on or before April 29, 2002. For further instructions on submitting comments and requests to participate, please see the "From and Availability of Comments" and "Requests to Participate as a Panelist in the Workshop" sections below. To read our policy on how we handle the information you may submit, please visit *http://www.ftc.gov/ftc/privacy.htm.*

ADDRESSES: Written comments and requests to participate as a panelist in the workshop should be submitted to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Alternatively, they may be e-mailed to *securityworkshop@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: L. Mark Eichorn, Division of Advertising Practices, 202–326–3053, Ellen Finn, Division of Financial Practices, 202–326–3296, or Laura Berger, Division of Financial Practices, 202–326–2471. The above staff can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

The security of consumers' home computers is an issue of growing importance. The terms "virus," "worm," and "Trojan horse" have gained new meanings as "Melissa,"

[1] An earlier **Federal Register** notice inadvertently provided incorrect dates for the public workshop. *See* 67 FR 10213 (March 6, 2002). This notice provides the correct dates for the public workshop, and is in all other respects substantively identical to the earlier **Federal Register** notice and to the notice and news release posted on the Commission website at http://www.ftc.gov/opa/2002/03/security.htm.

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"ILOVEYOU," and "Code Red" infected computers across the globe. News of hackers' "exploits" make front page news. At the same time, more and more consumers access the Internet through "always on" DSL or cable Internet connections, which allow quick access to Internet content but also may be vulnerable to attack even when the consumer is not actively using the Internet. As consumers use their computers as repositories for sensitive information such as passwords, financial records, and health information, the potential destruction or disclosure of that information is cause for concern.

Another aspect of consumer security is whether consumers' personal information held by businesses is secure. When consumers interact with businesses—whether to check a bank account balance, register to receive information, or purchase a product or service—those businesses become custodians of consumers' personal information. An employee processing a consumer's payment or a consumer checking his or her account balance may want access to this information, but at the same time businesses face the challenge of securing it from access by external threats such as hackers or even by unauthorized insiders. Should a hacker gain access to a business' customer credit card database, for example, that intrusion may not only have serious consequences for that particular business and the consumer's financial well-being, but may also affect consumers' confidence and willingness to engage in e-commerce generally.

This workshop provides an opportunity for the Commission to explore information security issues that affect consumers. The questions to be addressed at the workshop would include:

1. The Current State of Information Security

- What are the security risks facing consumers?
- Are consumers aware of the risks?
- What are the costs to consumers of security measures and of security failures?
- Do consumers accurately assess security risks?
- How does consumers' security affect the network as a whole?

2. Security Issues Relating to Consumers' Home Information Systems

- What steps can consumers take to reduce their security risks?
- What information resources or security products are available to help consumers protect themselves?
- If consumers' lack of awareness or technical expertise lead to security vulnerabilities, what steps can be taken to raise awareness or educate consumers?
- What types of awareness and education initiatives are currently being pursued?
- What are the "best practices" being implemented by businesses to assist consumers in safeguarding their home information system?

3. Security Issues for Businesses that Maintain Consumers' Personal Information

- What practical challenges do businesses face in securing their computer systems, and specifically consumers' personal information that is stored on them?
- What are the costs to businesses of security measures and of security failures?
- What measures can businesses, especially smaller businesses, take to secure their computer systems and the consumer information stored on them?
- What information resources are available to help these businesses?
- What are the "best practices" being implemented by businesses to address these issues?

4. Emerging Business Models, Technologies, and Best Practices

- What are the existing business models for security, and are they sustainable over the long term?
- What technologies, business models, or initiative are emerging in the marketplace to address the security of consumers' information?

5. Revising the OECD Security Guidelines

Commissioner Orson Swindle is leading the U.S. delegation to the Organization for Economic Cooperation and Development ("OECD") Experts Group reviewing the OECD Guidelines for the Security of Information Systems. These voluntary guidelines contain principles which provide a framework for participants to think about information and network security practices, policies, and procedures. The guidelines discuss cultivating a "culture of security" and contain nine policy principles for the security of information systems and networks, as well as principles relating to the life cycle of information systems and networks. The guidelines specifically address: raising awareness of security risks; responsibility for the security of information systems; designing security into system architecture; and risk management, assessment, and monitoring. Because the principles provide a helpful framework for thinking about security issues, the Commission plans to present a panel discussion on the Security Guidelines.

Form and Availability of Comments

The FTC requests that interested parties submit written comments on the above questions to facilitate greater understanding of the issues. Of particular interest are any studies, surveys, research, and empirical data. Comments should indicate the number(s) of the specific question(s) being answered, provide responses to questions in numerical order, and use a separate page for each question answered. Comments should be captioned "Consumer Information Security Workshop—Comment, P024512," and must be filed on or before April 29, 2002.

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be mailed to *securityworkshop@ftc.gov*.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and FTC regulations, 16 CFR part 4.9, Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. This notice and, to the extent technologies possible, all comments will also be posted on the FTC website at *www.ftc.gov/securityworkshop*.

Registration Information

The workshop will be open to the public and there is no fee for attendance. As discussed above, pre-registration is strongly encouraged, as seating will be limited. To pre-register, please email your name and affiliation to *securityworkshop@ftc.gov* by April 29, 2002. A detailed agenda and additional information on the workshop will be posted on the FTC's website at *www.ftc.gov/securityworkshop* before May 20, 2002.

Requests To Participate as a Panelist in the Workshop

Those parties who wish to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before April 1, 2002, either by mail to the Secretary of the FTC or by e-mail to *securityworkshop@ftc.gov*. Requests to participate as a panelist should be captioned "Consumer Information Security Workshop—Request to Participate, P024512." Parties are asked to include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will focus and their contact information, including a telephone number, facsimile number, and email address (if available), to enable the FTC to notify them if they are selected. An original and two copies of each document should be submitted. Panelists will be notified on or before April 22, 2002 whether they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the workshop. The number of parties selected will not be so large as to inhibit effective discussion among them.

1. The party has expertise in or knowledge of the issues that are focus on the workshop.
2. The party's participation would promote a balance of interests being represented at the workshop.
3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s). In addition, there will be time during the workshop for those not serving as panelists to ask questions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–7172 Filed 3–25–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services Announces the Following Advisory Committee Meeting

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9 a.m. to 5 p.m., April 9, 2002;9 a.m. to 3 p.m., April 10, 2002.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC.

Status: Open.

Purpose: This meeting will be conducted as a hearing. The Subcommittee will hear testimony and discussion on two topics: One, the potential replacement of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) Volume 3 (procedures) with the International Classification of Diseases Procedure Coding System (ICD–10–PCS); and two, gaps in the current Health Insurance Portability and Accountability Act of 1996 (HIPAA) medical data code sets.

For More Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: N2–14–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site:*http://www.ncvhs.hhs.gov/* were an agenda for the meeting will be posted when available.

Dated: March 19, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–7214 Filed 3–25–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Health Care Policy and Research Special Emphasis Panel (SEP); Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a list of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ) and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed or long terms. Rather, they are asked to serve for particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Small Research Project Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *SEP Meeting on:* Health Services Research Small Research Projects.

Date: March 26, 2002 (Open on March 26, from 2:30 p.m. to 2:40 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 5th Floor Conference Room, 5W4, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 19, 2002.

Lisa Simpson,

Deputy Director.

[FR Doc. 02–7178 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding an "Evidence-Based Practice Center (EPC II)". The RFP was published in the Commerce Business Daily on January 31, 2002.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C.,

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Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Evidence-Based Practice Center (EPC II)".

Date: April 9–10, 2002 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd, 4th Floor, Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Jacqueline Besteman, Center for Practice and Technology Assessment, Agency for Healthcare Research and Quality, 6010 Executive Blvd, Suite 300, Rockville, Maryland 20852, 301–594–4017.

Dated: March 14, 2002.

Lisa A. Simpson,

Deputy Director.

[FR Doc. 02–7196 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Symptoms Associated with the Convalescent Period of a Dengue Infection—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Dengue is a vector-borne febrile disease of the tropics transmitted most often by the mosquito *Aedes aegypti.* Symptoms of the acute disease include fever, headache, rash, retro-orbital pain, myalgias, arthralgias, vomiting, abdominal pain and hemorrhagic manifestations.

Many symptoms are mentioned in the medical literature as associated with the convalescent period (3–8 weeks) after dengue infection, including depression, dementia, loss of sensation, paralysis of lower and upper extremities and larynx, epilepsy, tremors, manic psychosis, amnesia, loss of visual acuity, hair loss, and peeling of skin. No epidemiologic study has been conducted to define the timing, frequency and risk factors for these symptoms. The objective of this study is to examine the incidence and characteristics of mental health disorders and other complications associated with dengue infection and convalescence.

The study will be conducted in Puerto Rico, where dengue is endemic and causes severe sporadic epidemics. Laboratory positive confirmed cases of dengue, laboratory negative suspected dengue cases and neighborhood controls will be prospectively enrolled in the study. Person-to-person interviews with adults (age 18 years or greater) will be conducted and information will be collected regarding symptoms experienced during the convalescent phase of the infection. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Laboratory positive confirmed dengue	200	2	1	400
Dengue negative control	200	2	1	400
Neighborhood control	200	2	1	400
Total				1200

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7158 Filed 3–25–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ICD–9–CM Coordination and Maintenance Committee Meeting; National Center for Health Statistics (NCHS), Data Policy and Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Time and Date: 9 a.m.–5 p.m., April 18–19, 2002.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 2002 calendar year cycle on Thursday and Friday April 18–19, 2002. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include: Asthma, Neurologic topics, Myasthenia gravis in crisis, Sickle Cell disease, delayed separation of umbilical cord, Facial droop, long-term antiplatelet/antithrombotic (aspirin) use, artificial heart status/complications of artificial heart, encounter for insulin pump titration and training, ICD–10 Procedure Classification System (PCS)—Update Classic Infrafascial Semm Hysterectomy (CISH), Laparoscopic Assisted Supracervical Hysterectomy (LASH), intra-arterial blood gas monitoring, multi-level spinal fusion, vascular access device, addenda.

Contact Person for Additional Information: Amy Blum, Medical Classification Specialist, Data Policy and Standards Staff, NCHS, 6526 Belcrest Road, Room 1100, Hyattsville, Maryland 20782, telephone 301/458–4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland, 21244 telephone 410–786–1542 (procedures).

Notice: In the interest of security, (CMS) has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the room capacity, the meeting room will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 15, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–7185 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC) Family and Intimate Violence Prevention Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 8:30 a.m.–12 p.m., April 16, 2002.

Place: The Holiday Inn Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: To advise and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence and sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters to be Discussed: The Subcommittee will discuss the (1) FY 2002 Activities of NCIPC and the Division of Violence Prevention (DVP), and (2) Overview of Proposed Changes to the ACIPC.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Pamela Chin, Deputy Director, Office of the Director, DVP, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–1378.

Name: Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings.

Time and Date: 8 a.m.–12 p.m., April 16, 2002.

Place: The Holiday Inn Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control (NCIPC) programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include updates from the Subcommittee's Executive Secretary, the role of the Subcommittee, fiscal year 2002 research Request for Applications, dissemination of extramural research findings, and a progress report on completing and implementing the research agenda.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1:30 p.m.–5:30 p.m., April 16, 2002. 8:30 a.m.–3 p.m., April 17, 2002.

Place: The Holiday Inn Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include an update from the Director, NCIPC; a review and determination on committee rules and draft criteria for subcommittees and workgroups; workgroup reports; reports from the Science and Program Review Subcommittee and the Family and Intimate Violence Prevention Subcommittee; a presentation and discussion on state health departments and their role in injury prevention and control; current status of injury prevention and control in states; Association of State and Territorial Health Officials' perspective on the challenges of building capacity for injury control and prevention in state health departments;

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implementing an injury prevention program in the states; training needs and issues to build capacity in state health departments for injury prevention and control; broadening the focus of injury prevention programs in the areas of intentional and unintentional injury; a presentation on how NCIPC is moving forward; discussion and recommendations from the Committee; progress report on the research agenda; update on NCIPC's Tenth Anniversary Events; and recommendations for presentation to the Committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 15, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–7184 Filed 3–25–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 56562–63, dated November 8, 2001) is amended to establish the organizational structure within the National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the *National Center on Birth Defects and Developmental Disabilities (CF),* insert the following:

Office of the Director (CF1). (1) Directs, manages, and coordinates the activities of the National Center on Birth Defects and Developmental Disabilities (NCBDDD); (2) develops goals and objectives; provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (3) coordinates NCBDDD program activities with other CDC components, Federal agencies, international organizations, State and local health agencies, business and industry, voluntary organizations, and community-based organizations; (4) coordinates technical assistance to states, other nations and international organizations; (5) coordinates with medical, scientific, and other professional organizations interested in birth defects prevention, pediatric genetics, developmental disabilities prevention, and disabilities and health; (6) advises the Director, CDC, on policy matters concerning NCBDDD activities.

Resource Management Office (CF12). (1) Plans, coordinates, and provides administrative and management advice and guidance for NCBDDD; (2) provides and coordinates Center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (3) prepares annual budget plans and budget justifications; (4) coordinates NCBDDD requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for NCBDDD, and prepares special reports and studies, as required, in the administrative management areas; (6) maintains liaison with related staff offices and other officials of CDC.

Division of Birth Defects and Developmental Disabilities (CF2). (1) Conducts research to determine the causes and prevention of birth defects and developmental disabilities; (2) maintains and expands support for state-based surveillance; (3) evaluates the effectiveness of efforts to prevent birth defects and developmental disabilities; (4) conducts and disseminates findings of epidemiologic research, investigations, demonstrations, and programs directed toward the prevention of selected adverse reproductive outcomes that are environmentally related; (5) provides assistance to State and local health departments on community exposures to terotogenic, mutagenic, embryotoxic, other environmental agents, and genetic influences adversely interfering with normal growth and development; (6) conducts research and develops programs to identify women at high risk of an alcohol-exposed pregnancy and to fund epidemiologic and clinical research studies aimed at early identification and intervention of children affected by prenatal alcohol exposure; (7) works closely with international organizations and entities in developing strategies and programs for reducing the number of birth defects and developmental disabilities; (8) develops and evaluates prevention strategies and provides training, technical consultation, and assistance to States and localities in developing their capacity for planning, establishing, and maintaining surveillance and prevention programs; (9) maintains and oversees funding and technical assistance to state-based institutions (e.g., the Centers for Birth Defects Research and Prevention that seek causes and promotes prevention of birth defects; (10) plans, develops, establishes, and maintains systems of surveillance including registries for monitoring, evaluating and disseminating information; (11) assists in increasing the capacity of States to prevent and control birth defects and developmental disabilities through training, technology transfer, grants, cooperative agreements, contracts, and other means; (12) provides information and education to the public; (13) provides services, consultation, technical assistance, and information to States, localities, other Federal agencies, international organizations, and other public and private organizations; (14) provides training in the epidemiology to professionals throughout the U.S. and abroad; and (15) collaborates and coordinates activities with other CIOs and HHS agencies.

Division of Human Development and Disability (CF3). (1) Conducts, analyzes, and disseminates disability surveillance data to identify: the distribution of disabilities in state populations; health conditions that occur with greater frequency among people with disabilities relative to those without disability; and risk and protective behaviors compared to people without disabilities; (2) assists States and localities with the development, monitoring and evaluation of blood spot screening and early hearing detection and intervention (EHDI) tracking and surveillance systems; (3) plans, establishes, and maintains systems of surveillance, including registries, for monitoring, evaluating, and disseminating information on disability and related conditions and detrimental child outcomes; (4) oversees and manages grants, cooperative agreements, contracts, and other funding instruments related to Division

programs; (5) assists States and localities in developing their capacity for serving individuals with disabilities and secondary conditions (e.g., developing prevention strategies, providing training and technical consultation); (6) collaborates with universities, Federal, national, and State organizations to identify and address knowledge and research gaps in disability, hearing and vision loss, child development, and blood spot screening; (7) collaborates with universities and other organizations to investigate environmental, social, and technological supports to promote social participation and human development; (8) conducts applied research on public health aspects of normal and abnormal child development (e.g., early childhood, behavior problems in children); (9) conducts research on etiology of hearing loss and associated disabilities, cost and effectiveness of EHDI programs, family issues related to the EHDI programs and long-term benefits of early identification and intervention; (10) conducts research on interventions to prevent adverse child developmental outcomes; (11) conducts and disseminates research findings about people with disabilities, with special emphasis on women, children, and older persons; (12) develops and disseminates information on public health aspects of normal and abnormal child development (e.g., early childhood, hearing loss, behavior problems in children); (13) provides information and education to the public on disabilities; and (14) develops programs that seek to identify health risks, protective factors and measure the effectiveness of health promotion activities for prevention of conditions related to disability.

Dated: March 15, 2002.

Jeffrey P. Koplan,

Director.

[FR Doc. 02–7157 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–P–0015SPA]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Due to the events of September 11, 2001, the timing of this proposed information collection has been negatively affected. We are requesting Emergency OMB review for this supplement since this is a beneficial survey and it can do no harm if OMB acted upon this sooner than the normal timeframe. The 60-day **Federal Register** notice was published on January 8, 2002, for which we solicited public comment. CMS is requesting OMB review and approval of this collection by April 25, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 22, 2002.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare Current Beneficiary Survey—Supplement on Patient Activation; *Form No.:* CMS–P–0015SPA (OMB# 0938–NEW); *Use:* A primary theme of the NMEP education efforts has been to help Medicare beneficiaries make choices. Simply providing uniform information to an undifferentiated audience is not sufficient. CMS needs to know whether beneficiaries have the communication skills, motivation and basic knowledge of their own health status to be partners in their own health care. The purpose of this survey supplement is to assess the degree to which Medicare beneficiaries participate actively in their own health care decisions.; *Frequency:* One-time; *Affected Public:* Individuals or households; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 2,666.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by April 22, 2002: Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262. Attn: Dawn Willinghan, CMS–P–0015SPA; and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Eydt, CMS Desk Officer.

Dated: March 20, 2002.

Julie Brown,

Acting, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7209 Filed 3–25–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–250 through 254, CMS–10008, and CMS–287]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1.) *Type of Information Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS–250 through CMS–254 (OMB# 0938–0214); *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. CMS contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. CMS charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, CMS has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. These information collection requirements describe the MSP requirements and consist of the following:

1. Initial enrollment questionnaire
2. MSP claims investigation, which consists of first claim development, trauma code development, self-reporting MSP liability development, notice to responsible third party development (411.25 notice), secondary claims development, and "08" development (involving claims where information cannot be obtained from the beneficiary)
3. Provider MSP development, which requires the provider to request information from the beneficiary or representative during admission and other encounters; *Frequency:* On occasion; *Affected Public:* Individuals or households, business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 867,863,540; *Total Annual Responses:* 867,863,540; *Total Annual Hours Requested:* 2,779,942.

(2.) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Recognition of Pass-Through Payment for Drugs and Biologicals Under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR 419.43 formerly known as "Recognition of New Technology/Pass-Through Items Under the Prospective Payment System for Hospital Outpatient Services"; *Form No.:* CMS–10008 (OMB# 0938–0802); *Use:* This information is necessary to determine items eligible for payment as new technology within the ambulatory payment classification (APC) system as well as items eligible for the transitional pass-through payment provision as required by section 201 of the BBRA. This collection will enable CMS to implement those special payment provisions; *Frequency:* On Occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 193.

(3.) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Office Cost Statement and Supporting Regulations in 42 CFR 413.17 and 413.20; *Form No.:* CMS–287 (OMB# 0938–0202); *Use:* Medicare law permits components of chain organizations to be reimbursed for certain costs incurred by the chain home offices. The Home Office Cost Statement is required by the fiscal intermediary to verify Home Office Costs claimed by the components. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions and business or other for-profit; *Number of Respondents:* 1,231; *Total Annual Responses:* 1,231; *Total Annual Hours Requested:* 573,646.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 12, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7210 Filed 3–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–339]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) if the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with 5 U.S.C. 1395g and 42 CFR 413.20 and 413.24. We cannot reasonably comply with the normal clearance procedures because the approval for this collection was inadvertently allowed to lapse. The CMS–339's purpose is to assist the provider in preparing an acceptable cost report and to minimize subsequent contact between the provider and its intermediary. If the information is not collected, then the fiscal intermediary will have to go onsite to each provider to get this information. Consequently, it is far less burdensome and extremely cost effective to capture this information through the CMS–339. It is essential to have this information to maintain the provider profile and to scope (i.e., special, limited or full) the audit.

We are currently working on elimination of form CMS–339 and including the applicable questions on the individual cost report forms. In an effort to eliminate the requirement for information no longer needed, we reviewed the comments received from the Federation of American Hospitals, American Hospital Association, and others. This resulted in our issuance of Program Memorandum A–01–137, entitled Modification to Form CMS–339 Requirements, Provider Cost Reimbursement Questionnaire. This has deleted Exhibit 6, Providers Owners/Management Personnel Compensation Exhibit. It has eliminated several questions from other exhibits for all providers. Exhibits 2, 3, and 4, Provider-Based Physicians, were eliminated for many providers.

We intend to revise the CMS–339 if the revisions planned for the cost reports are not operational before we have completely implemented the revised forms CMS–885 (Provider enrollment) (there are redundancies between the forms CMS–339 and 855). Those forms will not have been collected from all providers until three years after OMB approval. If the cost reports are revised to include the pertinent questions from the form CMS–339 (and the latter form eliminated) before the end of that three year period, we will then remove those questions from the cost reports.

CMS is requesting OMB review and approval of this collection by March 29, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by March 28, 2002. We published a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements on February 8, 2002. We will submit the requirements for OMB review and an extension of this emergency approval during the 180-day approval period.

Type of Information Collection Request: Reinstatement of a previously approved collection.

Title of Information Collection: Medicare Provider Cost Report Reimbursement Questionnaire and Supporting Regulations in 42 CFR 413.20, 413.24, 415.50, 415.55, 415.60, 415.70, 415.150, 415.152, 415.160, and 415.162.

Form No.: CMS–339 (OMB# 0938–0301).

Use: The Medicare Provider Cost Report Reimbursement Questionnaire must be completed by all providers to assist in preparing an acceptable cost report, to ensure proper Medicare reimbursement, and to minimize subsequent contact between the provider and it fiscal intermediary. It is designed to answer pertinent questions about key reimbursement concepts found in the cost report and to gather information necessary to support certain financial and statistical entries on the cost report. In addition, it provides an audit trail for the fiscal intermediary.

Frequency: Annually.

Affected Public: Business or other for-profit, not-for-profit institutions, and State, local and tribal government.

Number of Respondents: 33,144.

Total Annual Responses: 33,144.

Total Annual Hours: 1,342,332.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by March 28, 2002.

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262. Attn: Julie Brown, CMS–339, and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Eydt, CMS Desk Officer.

Dated: March 20, 2002.

Julie Brown,

Acting CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7211 Filed 3–25–02; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–02–01]

Developmental Disabilities: Notice of Availability of Financial Assistance and Request for Applications To Fund Family Support Model Demonstration Projects Under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF), is accepting

applications for Fiscal Year 2002 Family Support Demonstration Projects.

This Program Announcement No. 93631–02–01 consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides background information on ADD for applicants. Part III describes the application review process. Part IV contains several components including: description of eligible applicants, purpose of project funds, requirements of project design, and evaluation criteria. Part V describes the process for preparing and submitting the application.

Grants will be awarded under this Program Announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is May 28, 2002.

Deadline

Applications Submitted by Mail

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, 370 L'Enfant Promenade SW., Mail Stop 326F, Washington, DC 20447–0002, Attention: Lois B. Hodge. Any applications received after 4:30 p.m. on the deadline date will not be considered for competition.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing.

Application Submitted by Courier

Applications *handcarried* by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, Monday through Friday (excluding Federal holidays), at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, ACF Mailroom, 2nd Floor (near Loading Dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024. Applicants using express/overnight services should allow two working days (Monday through Friday, excluding holidays) prior to the deadline date for receipt of applications. (**Note** to applicants: Express/overnight mail services do not always deliver at the time to which they agreed.)

Receipt of Applications: Applications must either be hand delivered or mailed to the addresses listed above (under DEADLINE). ACF cannot accommodate transmission of applications by fax or through other electronic media. Applications transmitted electronically will not be accepted. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Additional material will not be accepted, or added to an application, unless it is postmarked by the deadline date.

Late Applications: Applications that do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The Administration for Children and Families (ACF) may extend application deadlines when circumstances such as acts of God (e.g., floods, hurricanes) occur, or when there is widespread disruption of the mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

FOR FURTHER INFORMATION CONTACT: For information about the application process, program information and application materials contact, Administration for Children and Families (ACF), Joan Rucker, 370 L'Enfant Promenade, SW., Mail Stop 300–F, Washington, DC, 20447, 202/690–7898; or *add@acf.dhhs.gov*.

Copies of this program announcement and many of the required forms may be obtained electronically at the ADD World Wide Web Page: *http://www.acf.dhhs.gov/programs/add/*.

Notice of Intent To Submit Application: If you intend to submit an application, please contact, Joan Rucker of ADD at (202) 690–7898 within 15 days of the date of this announcement. Please give the number, and title of this announcement, your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address. The information will be used to determine the number of expert reviewers needed and to update the mailing list for Program Announcements.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). ADD shares goals with other ACF programs that promote the economic and social well being of families, children, individuals and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

These goals will enable individuals, including people with developmental disabilities; to live productive and independent lives integrated into their communities.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs to promote the self-sufficiency and protect the rights of persons with developmental disabilities. ADD implements the Developmental Disabilities Assistance and Bill of Rights Act (the DD Act) that was reauthorized in 2000. The DD Act defines developmental disabilities, reauthorizes four major programs under ADD, devolves advocacy authority to the States, promotes consumer oriented systems change and capacity building activities and facilitates network formations.

This Act supports and provides assistance to States, public, private nonprofit agencies, and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration and inclusion into the community.

The Act established, in part, as the policy of the United States:

- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- Services, supports, and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preference, and cultural differences.

Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the DD Act are:

(1) State Council on Developmental Disabilities that engage in advocacy, capacity building and systematic change activities.

(2) Protection and Advocacy System (P&A's) that protect the legal and human rights of individuals with developmental disabilities.

(3) The National Network of University Centers for Excellence in Developmental Disabilities (UCDD's) that engages in training, outreach and dissemination activities.

(4) The Projects of National Significance (PNS), including Family Support Grants, support the development of family centered and directed systems for families of children with disabilities.

All ADD programs must engage in activities related to advocacy, capacity building and systems change in one or more areas of emphasis. These areas of emphasis are: child-care related activities; early intervention and education activities; employment-related activities; health-related activities; housing-related activities; recreation-related activities; transportation-related activities; and quality assurance activities.

C. Statutory Authorities Covered Under This Announcement

This announcement is covered under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15000, *et.seq.* The Projects of National Significance are Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15081, *and et.seq.* Provisions under this section provides for the award of grants, contracts, or cooperative agreements for projects of national significance that support the development of national and state policies that reinforce and promote the self-determination, independence, productivity, and integration and inclusion in all facets of community life of individuals with developmental disabilities through family support activities, data collection and analysis, technical assistance to entities that provide family support and data collection activities and other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities.

Part II. Background Information For Applicants

A. Description of Family Support Program

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C., *et. Seq.* was authorized on October 30, 2000. The DD Act includes a new Title II, the "Families of Children With Disabilities Support Act of 1999". The purpose of this new family support program is for states to create or expand statewide systems change. It allows for the award of competitive, grants to conduct training, technical assistance, and other national activities designed to address the problems that impede the self-sufficiency of families with children with disabilities. Although funds have never been appropriated, ADD intends to promote the intent of Title II, by awarding Family Support Grants through the provisions stated in Subtitle E—Projects of National Significance.

Part III. The Application Review

A. Eligible Applicants

Only public or non-profit private entities, *not individuals*, are eligible to apply under this announcement. All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and the official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by submitting a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of a valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation is located. ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

Before applications under this Program Announcement are reviewed, each one will be screened to determine whether the applicant is eligible for funding. Applications from organizations that do not meet eligibility requirements will not be considered or reviewed in the competition, and the applicant will be so informed.

Faith-based organizations are eligible to apply for these family support grants if they meet the eligibility requirements stated above. All applicants must submit a letter of designation as the lead entity for coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities. The designation must be by the Chief Executive Officer of their State.

B. Review Process and Funding Decisions

Applications from eligible applicants received by the deadline date will be reviewed and scored by experts in the field, generally persons from outside of the Federal Government. Reviewers will use the evaluation criteria listed elsewhere in this announcement to review and to score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding

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sources when this is determined to be in the best interest of the Federal Government or the applicant.

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular program description.

ADD expects all applications to focus on or feature: services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

This year, an additional five (5) points will be awarded in scoring for any project that demonstrates in their application a partnership and collaboration with any of the 140 Empowerment Zones/Enterprise Communities. To receive the 5 points, the application must specify how the involvement of the EZ/EC is related to the objectives and/or the activities of the project. The application must also include a letter from an authorized representative of the EZ/EC indicating its agreement to participate and describing its role in the project. Applications submitted for implementation funds must include a letter from the EZ/EC pledging its continued support.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal Government) will review and score the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the program description under each section of the Project Narrative Statement.

Reviewers will: determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each applicant may receive per section in the review process.

D. Structure of Program Description

The program description is composed of the following sections:

- *Eligible Applicants*: This section specifies the type of organization that is eligible to apply under the particular program description. Specific restrictions are also noted, where applicable.
- *Purpose*: This section presents the basic focus and/or broad goal(s) of the program description.
- *Background Information*: This section provides the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular program activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Evaluation Criteria*: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to need for assistance, results expected, project design, and organizational and staff capabilities. Inclusion and discussion of these items is important since the information provided will be used by the reviewers in evaluating the application against the evaluation criteria.
- *Minimum Requirements for Project Design*: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers to evaluate the applications against the evaluation criteria. Project products, continuation of the project after Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration*: This section specifies the maximum allowable length of the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs*: This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement*: This section specifies the minimum non-Federal contribution, either cash or in-kind match, required.
- *Anticipated Number of Projects to Be Funded*: This section specifies the number of projects ADD anticipates funding under the program description.
- *CFDA*: This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this program description will be funded. This information is needed to complete item 10 on the SF 424.

Applications that are more clearly focused on, and directly responsive to, the concerns of the program description usually score better than those that are less specific and generally defined. Applicants are encouraged to tailor their responses according to the specific requirements of the program description.

E. Available Funds

Subject to the availability of funding, ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2002. The size of the awards will vary. The program description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

F. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25%).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of P. L. 95–134, as amended, which requires that the Department waive any requirement for local matching funds for grants under $200,000.

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

Applicants required to submit a full project description should prepare the project description statement in accordance with the following instructions.

Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and need for assistance: Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or benefits expected: Identify the results and benefits to be derived. Extent to which the applicant is consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy practice, theory and/or research. Extent to which the proposed project cost is reasonable in view of the expected results.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profile: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

H. Closed Captioning for Audiovisual Efforts

Applicants must include closed captioning and audio description in the development of any audiovisual products.

Part IV. Fiscal Year 2002 Families of ChildrenWith Disabilities Support Projects—Description and Requirements

Eligible Applicants: Eligibility applicants include a State entity, unit or office designated by the chief executive officer of the state as the lead agency for this project. Proof of designation as lead agency by the governor/CEO must be submitted with the application. Applicants awarded new and implementation grants last year (FY 2001) under this announcement are not eligible. Applicants awarded grants in Fiscal Year 2000 are eligible to apply for implementation funds. Applicants who have never received grants under this announcement are eligible to apply for funds.

Purpose: Project funds must be utilized to support systems change activities to assist each State with developing, implementing, expanding or enhancing, a statewide system of family support for families of children with disabilities designed to be family-centered, family-directed, culturally competent, community-centered, and comprehensive. This system will:

(1) Ensure the full participation, choice and control of families of children with disabilities in decisions related to the provision of such family support for their family;

(2) ensure the active involvement of families of children with disabilities in the planning, development, implementation, and evaluation of such a statewide system;

(3) increase the availability of, funding for, access to, and provision of family support for families of children with disabilities;

(4) promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with disabilities to

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increase participation, choice, and control in the provision of family support for families of children with disabilities;

(5) increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in these projects; and

(6) increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures that facilitate or impede the availability or provision of family support for families of children with disabilities.

Background Information: Promoting family support for families with a child with a disability is a new stage in the federal goal development of disability policy. Historically, families with a child with a severe disability would only receive support once the child was placed in a state institution. In recent decades, disability policies have progressed to promote a more family-centered approach to service provision; indeed, many states have initiated family support legislation. This accomplishment is often the result of initiatives developed by the state developmental disabilities councils. Currently, all the states plus the District of Columbia offer some type of family support program. This support consists of any community-based service administered or financed by the state MR/DD agency providing for vouchers, direct cash payments to families, reimbursement, or direct payments to service providers which the state agency itself identified as family support. A broad range of services that fall within family support including—cash subsidy payments, respite care, family counseling, architectural adaptation of the home, in-home counseling, sibling support programs, education and behavior management services and the purchase of specialized equipment. Family support is a growing expenditure in state budgets. Family support expenditures advanced from $569 million for 279,266 families in 1996 to $1.0 billion for 385,414 families in 2000. Family support spending constituted 3.6 percent of total MR/DD state resources in 2000, up from 2.3% in 1996. All 50 states reported a family support initiative in either cash subsidy, or other family support activity. (Braddock, D., Hemp, R., Rizzolo, M.C., Parish, S. & Pomeranz, A. (2002). The State of the States in Developmental Disabilities: 2002 Study Summary. Boulder, CO: Coleman Institute for Cognitive Disabilities & Department of Psychiatry, University of Colorado).

The Federal government's involvement in family support began in 1982 with what is known as the "Katie Beckett Waiver". This provision amended the Medicaid law to give states the option to waive the deeming of parental income and resources for any child eighteen years of age and under who is eligible for placement in a Medicaid certified long term care institution or hospital, ICF/MR or nursing home. This waiver allows parents access to an array of family, home and community supports. Many states use this option, which requires states to determine that (1) the child requires the level of care provided in an institution; (2) it is appropriate to provide care outside the facility; and (3) the cost of care at home is no more than the cost of institutional care. In states that use this option, parents may choose either institutional or community care for their Medicaid eligible children.

Federal disability policy in the 1980s increasingly began to reflect the principles of family-centered, community-based, coordinated care as Federal programs were established or reauthorized. Among these were:

(1) The Temporary Respite Care and Crisis Nurseries Act of 1986 that funded a variety of in-home and out-of-home respite programs;

(2) a new Part H for infants, toddlers, and their families was added in 1986 to the then Education of the Handicapped Act;

(3) the reauthorization of the Maternal and Child Health Care Block grant in 1989 emphasized these principles in it's Children with Special Health Care Needs program; and

(4) a definition of family support services was added in 1990 to the Developmental Disabilities Assistance and Bill of Rights Act.

Minimum Requirements for Project Design: ADD expects grant funds to maximize opportunities for systems change to ensure the provision of family support to families of children with disabilities through the collaboration and strengthening of community action service organizations. Project activities should accomplish any of the following:

- Establishment of a state policy council of families with children with disabilities or utilize an existing council which will advise and assist the lead entity in the performance of activities of this application. The State Policy Council shall be composed of a majority of participants who are family members of children with disabilities and/or who are youth with disabilities (ages 18–21);
- Training and technical assistance for family members, service providers, community members, professionals, members of the Policy Council, state agency staff, students and others;
- Interagency coordination of Federal and State policies, resources, and services; interagency workgroups to enhance public funding options and coordination; and other interagency activities that promote coordination;
- Outreach to locate families who are eligible for family support and to identify groups who are underserved or unserved;
- Policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities;
- Hearings and forums to solicit input from families of children with disabilities regarding family support programs, policies, and plans for such families;
- Public awareness and education to families of children with disabilities, parent groups and organizations, public and private agencies, students, policymakers, and the general public;
- Needs assessment;
- Data collection and analysis related to the statewide system of family support for families of children with disabilities;
- Implementation plans to utilize generic community service organizations in innovative partnerships to include families of children with disabilities;
- Pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with disabilities;
- Evaluation system using measurable outcomes based on family satisfaction indicators. Indicators include the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the individual family.

ADD expects to fund applications that include or incorporate into these activities one or more of the following populations relevant to their state: (1) Unserved and underserved populations which includes populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, and individuals from underserved geographic areas (rural or urban); (2) aging families of adult children with disabilities who are over age 21 with a focus on assisting those families and their adult child to be included as self-determining members of their communities; (3) foster/adoptive families of children with disabilities; (4) families participating in the state's Temporary Assistance to Needy Families Program (TANF) , welfare-to-work, and/or SSI program; (5) veterans with families having a child with a disability; (6) parents with disabilities, especially with cognitive disabilities, having children with or without disabilities; and 7) families of children with behavioral/emotional issues.

ADD intends to fund those applications that describe how the project intends to:

- Ensure consumer/self-advocate orientation and participation.
- Include key project personnel with direct life experience with living with a disability.
- Have strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- If applicable, research should reflect the principles of participatory action.
- Consider cultural competency ("cultural competency" as defined in the DD Act as—services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behavior of individuals who are receiving the services, supports or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved.
- Will allow individuals with disabilities and their families to be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities.
- Comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1998 (Pub. L. 105–220).
- Use collaboration through partnerships and coalitions.
- Develop the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.
- Develop and establish system change activities beyond project period.

Disseminate models, products, best practices, and strategies for distribution between networks and beyond.

Applications must also include provisions for the travel of a key staff person during the project period to Washington, DC.

(1) *Evaluation Criteria:* Four (4) criteria will be used to review and evaluate each application under this announcement. Each of these criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for a criterion in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be included is described below.

Criterion 1: Objectives and Need for Assistance (Maximum 25 points)

The application must describe the context of the proposed demonstration project, including the geographic location, environment, magnitude and severity of the problem(s) to be solved and the needs to be addressed. Those eligible applicants applying for implementation funds, in addition to providing the following information, please submit a summary/abstract of the project goals and accomplishments during the first year of your grant.

Applicant must:

(1) Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; (7 points)

(2) Demonstrate the need for the assistance and state the principal and subordinate objectives for the project; (8 points)

(3) Provide supporting documentation or other testimonies from concerned interests other than the applicant; (5 points)

(4) Provide any relevant data based on planning studies; and (4 points) provide maps and other graphic aids. (1 point)

Criterion 2: Results or Benefits Expected (Maximum 20 points)

Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and/or research should be indicated.

Applicant must:

(1) Clearly describe project benefits and/or results as they relate to the objectives of the project; (10 points); and

(2) Provide information as to the extent to which the project will build on current theory, research, evaluation and best practices to contribute to increased knowledge of understanding the problems, issues or effective strategies and practices in family support. (10 points)

Criterion 3: Approach (Maximum 35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. Applicants are expected to present a plan that (1) reflects an understanding of the characteristics, needs and services currently available to the targeted population; (2) provides services that directly address the needs of the target population; (3) is evidence based and grounded in theory and practice; (4) is appropriate and feasible; (5) can be reliably evaluated; and (6) if successfully implemented, can be sustained after Federal funding has ceased.

Applicant must:

(1) Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each project. Define goals and specific measurable objectives for the project; (8 points)

(2) Cite factors which might accelerate or decelerate the work and provide reasons for taking this approach as opposed to others; (3 points)

(3) Describe any unusual features of the project, such as design or technological innovation, reductions in cost or time, or extraordinary social and community involvement; (5 points)

(4) Provide for each assistance program quantitative projects of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, the activities should be listed in chronological order to show the schedule of accomplishments and their target dates; (4 points)

(5) Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Describe how the proposed project will be evaluated to determine the extent to which it has achieved its stated goals and objectives; and whether the methods of evaluation include the use of performance measures that are clearly related to the intended outcomes of the project; (8 points)

(6) Describe the products to be developed during the implementation of the proposed project. This can include questionnaires, interview guides, data collection instruments, software, internet applications, reports, article outcomes and evaluation results. Also present a dissemination plan for conveying the information; (4 points)

(7) List each organization, operator, consultant, or other key individuals

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who will work on the project along with a short description of the nature of their effort of contribution. (3 points)

Criterion 4: Organizational Profile (20 points)

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit with the organization that will have responsibility for the project) is structured, the types and quantity of services, and/or the research and management capabilities it possesses. Applicants need to demonstrate that they have the capacity to implement the proposed project. Capacity includes (1) experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing sustaining work among key stakeholders; (5) experience and commitment of any proposed consultants and subcontractors; and (6) appropriateness of the organizational structure, including its management information system, to carry out the project.

Applicant must:

(1) Identify the background of the project director/principal investigator and key project staff (including name, address, and training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project; present brief resumes; (5 points)

(2) Provide a brief background description of how the applicant organization is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses; (5 points)

(3) Provide an organization chart showing the relationship of the project to the current organization; (5 points) and

(4) Describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. (5 points)

Project Duration: This announcement is soliciting applications for a project period up to seventeen (17) months under this area. Awards, on a competitive basis, can be up to a seventeen-month (17) budget period.

Federal Share of Project Costs: The maximum Federal shares for first time applicants shall not exceed $200,000 for a state or $100,000 for a territory for the budget period. The maximum Federal share for applicants requesting implementation funds shall not exceed $100,000 for a state and not to exceed $50,000 for a territory.

Matching Requirement: Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $66,666 (the total project cost is $266,666, of which $66,666 is 25%).

Anticipated Number of Projects to be Funded: It is anticipated that up to twenty-seven (27) projects will be funded.

CFDA: ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms and other materials can be obtained by any of the following methods: Joan Rucker, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7898; *http://www.acf.dhhs.gov/programs/add*; or *add@acf.dhhs.gov*. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained in the program description in Part IV of this announcement.

A. Required Notification of the State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under this Order, States may design their own process for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its single point of contact (SPOC), if applicable, or to ACF.

As of November 20, 1998, all States and territories, except Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions, or for projects administered by federally recognized Indian Tribes, need not take any action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the potential applications and to receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible. This will enable the program office to obtain and to review SPOC comments as part of the award process. It is imperative that an applicant submit all required materials and indicate the date of the submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop 326F, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the ADD Web site, (*http://www.acf.dhhs.gov/programs/add*), or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7898.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils can be found at ADD's Web site: *http:///www.acf.dhhs.gov/programs/add* or by contacting "Joan Rucker, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7898.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A-Page 2 and Certifications/ Assurances are contained in the application package that can be accessed as mentioned earlier in this announcement. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Please indicate if you are applying for first time funding or implementation funds.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier" —Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For ADD's priority area, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels

In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded." —To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telepl one number of the

authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative" —Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The type of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants; this should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or the entire program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Parts 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary/Abstract

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Provide a summary description that accurately and concisely reflects the proposal. The summary should describe the objectives of the project, the approaches to be used and the expected outcomes. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals must be closed captioned and audio described). The project summary description, together with the information on the SF 424, will constitute the project "abstract." This is a major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Organization Profile.

The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description, and under Part IV, and Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" × 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 75 pages. This will be strictly enforced. A page is a single side of an 8½ × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 75-page limit. Each page of the application will be counted to determine the total length.

5. Part V—Assurances/Certifications

Applicants are required to file a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications can be obtained from the ADD Web site, *http://www.acf.dhhs.gov/programs/add,* or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade SW., Mailstop 300F, Washington, DC, 20447, 202/690-7447. These forms can be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. *A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.*

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with

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developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies.Applications for different priority areas are packaged separately;
—Application is from an organization that is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 75 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
—Budget Information—Non-Construction Programs(SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Proof of designation as lead agency;
—Table of Contents;
—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project Description (See Part III, Section C);
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying;
—Certification of Protection of Human Subjects, if necessary; and
—Certification of the Pro-Children Act of 1994 (Environmental Tobacco Smoke), signature on the application represents certification.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

G. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: March 19, 2002.

Patricia Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 02–7213 Filed 3–25–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0102]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with the submission of notifications of health claims or nutrient content claims based on authoritative statements of scientific bodies of the U.S. Government.

DATES: Submit written or electronic comments on the collection of information by May 28, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed extension of existing collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body (OMB Control No. 0910–0374)—Extension

Section 403(r)(2)(G) and (r)(3)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(2)(G) and (r)(3)(C)), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA), provides that a food producer may market a food product whose label bears a nutrient content claim or a health claim that is based on an authoritative statement of a scientific body of the U.S. Government or the National Academy of Sciences. Under these sections of the act, a food producer that intends to use such a claim must submit a notification of its intention to use the claim 120 days before it begins marketing the product bearing the claim. In the **Federal Register** of June 11, 1998 (63 FR 32102), FDA announced the availability of a guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body." The guidance provides the agency's interpretation of terms central to the submission of a notification and the agency's views on the information that should be included in the notification. The agency believes that the guidance will enable food producers to meet the criteria for notifications that are established in section 403(r)(2)(G) and (r)(3)(C) of the act. In addition to the information specifically required by the act to be in such notifications, the guidance states that the notifications should also contain information on analytical methodology for the nutrient that is the subject of a claim based on an authoritative statement. FDA intends to review the notifications it receives to ensure that they comply with the criteria established for them by the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Basis of Burden	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Section 403(r)(2)(G) nutrient content claims	1	1	1	250	250
Section 403(r)(3)(C) health claims	2	1	2	450	900
Guidance for notifications	3	1	3	1	3
Totals	3	1	3		1,153

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with health claims and nutrient content claims and with other similar notification procedures that fall under its jurisdiction. Because the claims are based on authoritative statements of certain scientific bodies of the Federal Government or the National Academy of Sciences or one of its subdivisions, FDA believes that the information submitted with a notification will either be provided as part of the authoritative statement or readily available as part of the scientific literature to firms wishing to make claims. Presentation of a supporting bibliography and a brief balanced account or analysis of this literature should be fairly straightforward.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7179 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1215]

Agency Information Collection Activities; Announcement of OMB Approval; Foreign Establishment Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Foreign Establishment Registration and Listing" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 27, 2001 (66 FR 59138), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0483. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7145 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–01–S

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0077]

Agency Emergency Processing Under OMB Review; Emergency Medical Device Shortage Program Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a telephone survey used to assist FDA in implementing an emergency medical device shortage program so that the agency can respond quickly to medical device shortages that might arise in the aftermath of a bioterrorist attack.

DATES: Submit written comments on the collection of information by April 25, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 10503, Attn: Stuart Shapiro, Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately so that the agency can respond quickly to medical device shortages that might arise in the aftermath of a terrorist attack.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Emergency Medical Device Shortage Program Survey

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)), the Commissioner of FDA is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA. Section 510 of the act (21 U.S.C. 360) requires that domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution register their establishments and list the devices they manufacture with FDA. Section 522 of the act (21 U.S.C. 360(l)) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. These sections of the act enable FDA to enhance consumer protection from risks associated with medical devices usage that are not foreseen or apparent during the premarket notification and review process.

FDA is compiling a list of medical devices that would be needed to treat patients in the event of a biological or chemical weapon attack. FDA plans to collect manufacturing and inventory information concerning the devices on this list, starting with those devices that are considered critical to patient care. This information will allow FDA to identify quickly sources and locations of medical devices in the event that they are needed in an emergency. It will also help to identify logistical problems in the event that borders are closed or transportation has been disrupted. In addition, FDA plans to maintain a list of telephone contacts for the manufacturers so that communication channels with manufacturers will be in place in the event that they are needed.

This telephone survey's primary respondents will be medical device manufacturers and wholesalers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Telephone Survey	7,000	1	7,000	.1	700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal FDA estimates.

The total number of manufacturers is estimated to be 70,000. FDA estimates that approximately 10 percent of these manufacturers would be contacted in a 1-year period, due to limitations on FDA staff. It is estimated also that the survey will take approximately 6 minutes to complete over the telephone. Therefore, 7,000 respondents (10 percent of the FDA manufacturer base) times 1/10 of an hour (i.e., 6 minutes) would equal a total of 700 hours.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7146 Filed 3–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Hepatitis B and C Among Health Care for the Homeless Program Clients—New

The Health Care for the Homeless Clinicians' Network (HCHCN) of the National Health Care for the Homeless Council, Inc., through a cooperative agreement with the Bureau of Primary Health Care, Health Resources and Services Administration, proposes to conduct epidemiological research regarding hepatitis B and C. The study will be of adult homeless clients and will be conducted using laboratory tests and patient interviews. The study is designed to estimate the prevalence of lifetime hepatitis B and C infection among homeless adults and the rate of comorbidity of hepatitis B and C infection, identify high-risk groups, describe health service utilization specific to hepatitis B and C, and assess patient knowledge and attitudes regarding hepatitis B and C. The participants will be recruited from eight clinics of the national Health Care for the Homeless Program.

The estimated response burden is as follows:

Respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Clients	400	1	1	400

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 20, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–7181 Filed 3–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Statement of Organization, Functions and Delegations of Authority

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) (60 FR 51480, October 2, 1995, and as last amended at 66 FR 58740–41, dated November 23, 2001) is being amended to reflect the following changes in Chapter PG within Part P, Program Support Center, HHS.

The changes to the above chapter establish Division-level organizations for the *Federal Occupational Health Service.*

Program Support Center

Under *Part P, Section P–20, Functions,* after the title and statement for *Chapter PG, Federal Occupational Health Service (PG)* add the following:

Office of the Director (PGA)

Provides executive direction, policy, guidance and supervision, and coordinates long- and short-range planning for the Federal Occupational Health Service (FOHS). In addition the office provides management expertise to the FOHS divisions in the areas of: fiscal controls, management information, program support services, operations support, and is responsible for FOHS' strategic planning and performance measurement. Operations consist of: (1) Evaluation and consultation of Federal managers concerning the management and delivery of the full scope of agency occupational health programs; (2) nationwide assistance in planning, implementing and monitoring health programs for Federal agencies on a reimbursable basis including improved environmental, educational, promotional, clinical, information management, and managerial services; (3) health evaluations, science and engineering assessments training, and demonstration projects; (4) developing standards and criteria; (5) promoting workforce productivity and reducing absenteeism, lost time and related Federal liability; (6) development and operation of shared services for contracting, cost comparison, analysis and program formulation; (7) maintaining relationships with health officials in other Federal agencies and private organizations; and (8) participating in Federal occupational health related policy and program development and implementation.

Division of Clinical Services (PGB)

Designs and delivers comprehensive occupational health clinical services (including wellness/fitness) throughout the Nation to assist client agencies to improve and maintain the physical health of their workforce and meet or exceed regulatory compliance standards regarding occupational health. Services are aimed at promoting healthy work and lifestyle habits and detecting and intervening in those conditions which are deleterious to wellness and productivity. Specifically: (1) Adopts standards of practice, protocols, and procedures by which clinical services are provided that meet or exceed the highest standards established by professional bodies representing appropriate clinical disciplines; (2) maintains a formal, written system of ancillary program policies to ensure that clinical services are delivered to all clients in accordance with interagency agreements, regardless of location or actual provider of service; (3) conducts periodic reviews and program audits, and uses total quality management/continuous quality improvement techniques to assure that the highest quality clinical services are delivered in a compliant, effective, efficient, and consistent manner; (4) conducts applied research, training, and demonstration projects to address clinical needs, including specific programs requested by clients; (5) designs and delivers customized programs and services including facility and workplace designs for clients with special needs; (6) develops methods for evaluation of clinical services and conducts such evaluations on request; (7) maintains clinical services information and records; and (8) assures that all clinical consultation and services have been fully reimbursed by customers.

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Division of Employee Assistance Program Services (PGC)

Designs and delivers comprehensive employee assistance program (EAP) services throughout the Nation to assist clients with the complete spectrum of personal problems and workplace issues. Services are aimed at promoting healthy work and lifestyle habits and detecting and intervening in those conditions that are deleterious to wellness and productivity. Specifically: (1) Adopts standards of practice, protocols, and procedures by which EAP services are provided that meet or exceed the highest standards established by professional bodies representing appropriate EAP disciplines; (2) maintains a formal, written system of ancillary program policies to ensure that EAP services are delivered to all clients in accordance with interagency agreements, regardless of location or actual provider of service; (3) conducts periodic reviews and program audits, and uses total quality management/ continuous quality improvement techniques to assure that the highest quality EAP services are delivered in a compliant, effective, efficient, and consistent manner; (4) conducts applied research, training, and demonstration projects to address EAP needs, including specific programs requested by clients; (5) designs and specialized EAP agency standards, programs, and facility and workplace designs for clients with special needs; (6) develops and implements methods for evaluation of EAP services; (7) maintains EAP services information and records; and (8) assures that all EAP services have been fully reimbursed by customers.

Division of Environmental Health Services (PGE)

Designs and delivers comprehensive occupational health (EH) services throughout the Nation to assist clients with the complete spectrum of EH concerns. Services are aimed at promoting healthy work and lifestyle habits and detecting and intervening in those conditions which are deleterious to wellness and productivity. Specifically: (1) Adopts standards of practice, protocols, and procedures by which EH services are provided that meet or exceed the highest standards established by professional bodies representing appropriate EH disciplines; (2) maintains a formal, written system of ancillary program policies to ensure that EH services are delivered to all clients in accordance with interagency agreements, regardless of location or actual provider of service; (3) conducts periodic reviews and program audits, and uses total quality management/ continuous quality improvement techniques to assure that the highest quality EH services are delivered in a compliant, effective, efficient, and consistent manner; (4) conducts applied research, training, and demonstration projects to address EH needs, including specific programs requested by clients; (5) designs and specialized EH agency standards, programs, and facility and workplace designs for clients with special needs; (6) develops methods for evaluation of EH services and conducts such evaluations on request; (7) maintains the EH services information and records; and (8) assures that all clinical consultation and services have been fully reimbursed by customers.

Dated: March 19, 2002.

Curtis L. Coy,

Director, Program Support Center.

[FR Doc. 02–7182 Filed 3–25–02; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–09]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing-FederalHousing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Room 3119P, L'Enfant Plaza, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–7510, X137. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with sections 204(c) and 207(j) of the National Housing Act, 12 U.S.C. 1710(c) and 1713(j), and in accordance with HUD's regulation at 24 CFR 203.409 and 207.259(e)(3), the Federal Housing Commissioner, with the approval of the Secretary of the Treasury, announces the call of all FHA debentures, with a coupon rate of 7.125 percent or above, except for those debentures subject to "debenture lock agreements", that have been registered on the books of the Bureau of Public Debt, Department of the Treasury, and are, therefore, "outstanding" as of March 29, 2002. The date of the call is July 1, 2002.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the date of this Notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after May 15, 2002. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on July 1, 2002, will be made automatically to the registered holder.

Dated: March 20, 2002.

John C. Weicher,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 02–7246 Filed 3–25–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–20]

Delegation of Authority to Regional Directors

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority to Regional Directors in the HUD Regional Offices.

SUMMARY: In this notice the Deputy Secretary, through the Assistant Deputy Secretary for Field Policy and Management, delegates operational management authority to the HUD Regional Directors. The delegation provides the authority necessary to manage programs and resources located in HUD regional and field offices nationwide. Currently the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Ft. Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA); and Region X (Seattle, WA). Pursuant to this authority, HUD Regional Directors are delegated specific authorities pertaining to cross program coordination, personnel management, administrative management, resource management, and representation regarding matters under their respective jurisdictions. Except as otherwise specified, Regional Directors are authorized to redelegate operational management authority to Field Office Directors under their respective jurisdictions. In accordance with this delegation, performance elements will be standardized for all field managers and supervisors. In addition to overall management and supervision, the elements shall include communication, customer service, representation, equal employment opportunity, and a subject-matter specific critical element. Regional Directors are also authorized to provide input into the performance assessment of program managers in their jurisdictions. To the extent practicable, 40% weight will be given to the assessment provided by the Regional Director. This delegation further authorizes the Regional Directors to enter into co-sponsorship agreements with the concurrence of the General Counsel and the relevant program Assistant Secretary or equivalent. Under this delegation, the title of the ten Field Assistant General Counsel is changed to Regional Counsel.

EFFECTIVE DATE: March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Bob Etchison, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–1123. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.) Comments or questions can be submitted through the Internet to *Bob—Etchison@hud.gov.*

SUPPLEMENTARY INFORMATION: These Delegations of Authority are designed to improve efficiency, effectiveness, and accountability of management operations. They are intended to provide a managerial framework, promote customer service, and encourage coordination among and within the field offices.

Accordingly, the Deputy Secretary, through the Assistant Deputy Secretary for Field Policy and Management, delegates to each Regional Director authority within his or her respective jurisdiction as follows:

Section A: Authority Delegated

1. *Cross-Program Coordination.* Each Regional Director is delegated the following duties to aid cooperation among different programs, program directors, and offices:

- Developing and implementing Management Plans;
- Coordinating cross-program projects and Field Office Quality Management Reviews;
- Preparing briefing papers and hot issues documents;
- Leading disaster relief efforts; and
- Consulting with program directors on major program decisions. Regional Directors can trigger Headquarter's review of decisions made by program directors. Where the Regional Director and relevant program director disagree regarding a major program decision, the Assistant Deputy Secretary for Field Policy and Management may raise the matter with the relevant Assistant Secretary or equivalent. The relevant Assistant Secretary or equivalent makes the final determination, subject to review by the Deputy Secretary, if necessary.

2. *Personnel Management.* Each Regional Director is delegated the following personnel management responsibilities for field offices within his or her jurisdiction:

- Providing input on the performance ratings of managers and supervisors within the region. To the extent practicable, 40% weight will be given to the assessment provided by the Regional Director. The performance for the Directors of the Homeownership Centers; Troubled Agency Recovery Centers; Administrative Service Centers; Satellite Field Directors of the Departmental Enforcement Centers; and the Regional Counsel will be evaluated within their respective organizations, with consultation provided by the Assistant Deputy Secretary for Field Policy and Management;
- Approving short-term details across program area lines (up to sixty days);
- Approving leave requests for managers and supervisors;
- Regional Directors are authorized to serve as part of the recommending and hiring process for managers and supervisors within their respective jurisdictions. The Assistant Secretary, or equivalent, makes the final selection regarding their managers and supervisors;
- Acting as supervisor, or when necessary assigning a supervisor, to out-stationed staff; and
- Managing and conducting labor/ management relations.

3. *Administrative Management.* Each Regional Director is delegated the following administrative duties for field offices under his or her jurisdiction:

- Determining official office hours, opening, closing, and emergency procedures.

4. *Resource Management.* Each Regional Director is delegated the following resource allocation responsibilities under his or her jurisdiction:

- Managing the administrative budget, e.g., training, equipment, etc.;
- Approving program travel requests; and
- Redistributing up to 20% of travel funds among program areas.

5. *Representation.* Each Regional Director is delegated the following duties as the Region's primary contact person and HUD representative regarding:

- Developing and maintaining the lead point of contact with local officials;
- Maintaining the role as principal point of contact with industry groups;
- Managing all inquiries and correspondence, including Freedom of Information Act requests, Congressional and Intergovernmental communications;
- Responding to all media inquiries in conjunction with Headquarters and the Office of Public Affairs;
- Administering the local office's web page and internet sources;
- Monitoring and evaluating customer service; and
- Entering into co-sponsorship agreements, with the concurrence of the General Counsel and the relevant program Assistant Secretary or equivalent.

Section B: Authority Revoked

The redelegations of authority from the Assistant Secretaries to the Secretary's Representatives pertaining to the waiver of program directives and handbook provisions are revoked. These redelegations were published in the **Federal Register** at 61 FR 35800 (July 8, 1996) PIH; 61 FR 35801 (July 8, 1996) Housing; 61 FR 35802 (July 8, 1996) CPD; and 61 FR 35803 (July 8, 1996) FHEO. Today's delegation also revokes the further redelegations from the Secretary Representative to the Southeast/Caribbean State and Area Coordinators published in the **Federal Register** at 61 FR 59236 (November 21, 1996) Housing; 61 FR 59236 (November 21, 1996) PIH; 61 FR 59237 (November 21, 1996) FHEO; and FR 59237 (November 21, 1996) CPD. All previous delegated or redelegated authority inconsistent with this Delegation of Authority is hereby revoked.

Section C: Authority To Redelegate

This authority may be redelegated, as appropriate, from Regional Directors to Field Office Directors within their respective jurisdictions. The authority to enter into co-sponsorship agreements may not be redelegated below the level of Regional Director.

Authority: Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d); 66 FR 18790, Delegation of Concurrent Authority to the Deputy Secretary (April 11, 2001).

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Dated: March 18, 2002.
Alphonso Jackson,
Deputy Secretary.
[FR Doc. 02–7245 Filed 3–25–02; 8:45 am]
BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Draft Environmental Impact Statement on Resident Canada Goose Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS) on resident Canada goose management which is available for public review. The DEIS analyzes the potential environmental impacts of several management alternatives for addressing problems associated with overabundant resident Canada goose populations. The Service is issuing this notice to invite further public participation in the review process, identify the location, date, and time of public hearings, and identify the Service official to whom questions and comments may be directed.

DATES: Written comments regarding the DEIS should be submitted by May 30, 2002, to the address below. Dates for eleven public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. Comments on the DEIS should be sent to the above address. Copies of the DEIS can be downloaded from the Division of Migratory Bird Management web site at *http://migratorybirds.fws.gov* Comments on the DEIS should be sent to the above address. Alternatively, comments may be submitted electronically to the following address: *canada_goose_eis@fws.gov*. Locations for eleven public hearings are identified in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714; or Ronald Kokel (703) 358–1714.

SUPPLEMENTARY INFORMATION: On August 19, 1999, a notice was published in the **Federal Register** (64 FR 45269) announcing that the Service intended to prepare an Environmental Impact Statement for resident Canada goose management. On March 1, 2002, the Environmental Protection Agency notified the public of the availability of the DEIS in the **Federal Register** (67 FR 9448). In the March 1, 2002 notice, we indicated that the comment period would end on May 30, 2002. This notice is provided pursuant to Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Public Scoping Meetings

Eleven public hearings will be held on the following dates at the indicated locations and times:

1. April 1, 2002; Dallas, Texas, at the Hyatt Regency Downtown, 300 Reunion Boulevard, 7 p.m.
2. April 23, 2002; Palatine, Illinois, at the Holiday Inn Express, 1550 E. Dundee Road, 7 p.m.
3. April 24, 2002; Waupun, Wisconsin, at the Waupun High School, 801 E. Lincoln, 7 p.m.
4. May 7 2002; Franklin, Tennessee, at Franklin Cool Springs Marriott, 700 Cool Springs Blvd., 7 p.m.
5. May 14, 2002; Bloomington, Minnesota, at the Minnesota Valley National Wildlife Refuge Visitors Center, 3815 East 80th Street, 7 p.m.
6. May 15, 2002; Brookings, South Dakota, at Brookings Area Multiplex, 824 32nd Avenue, 7 p.m.
7. May 20, 2002; Richmond, Virginia, at the Comfort Inn Conference Center, 3200 W. Broad Street, 7 p.m.
8. May 21, 2002; Danbury, Connecticut, at the Holiday Inn, 80 Newtown Road, 7 p.m.
9. May 22, 2002; North Brunswick, New Jersey, at the Ramada Inn, 999 U.S. Route 1 South, 7 p.m.
10. May 29, 2002; Denver, Colorado, at the Colorado Department of Wildlife, Northeast Region Service Center, Hunter Education Building, 6060 Broadway, 7 p.m.
11. May 30, 2002; Bellevue, Washington, at the DoubleTree Hotel, 300—112th Avenue S.E., 7 p.m.

In order to be considered, comments must include your name and postal mailing address; we will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record. The public may inspect comments during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR 1506.6(f)). Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

The DEIS evaluates alternative strategies to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce goose-related damages. The objective of the DEIS is to provide a regulatory mechanism that would allow State and local agencies, other Federal agencies, and groups and individuals to respond to damage complaints or damages by resident Canada geese. The DEIS is a comprehensive programmatic plan intended to guide and direct resident Canada goose population growth and management activities in the conterminous United States. The DEIS analyzes seven management alternatives: (1) No Action (Alternative A); (2) Increase Use of Nonlethal Control and Management (excludes all permitted activities) (Alternative B); (3) Increase Use of Nonlethal Control and Management (continued permitting of those activities generally considered nonlethal) (Alternative C); (4) New Regulatory Options to Expand Hunting Methods and Opportunities (Alternative D); (5) Integrated Depredation Order Management (consisting of an Airport Depredation Order, a Nest and Egg Depredation Order, a Agricultural Depredation Order, and a Public Health Depredation Order) (Alternative E); (6) State Empowerment (PROPOSED ACTION) (Alternative F); and (7) General Depredation Order (Alternative G). Alternatives were analyzed with regard to their potential impacts on resident Canada geese, other wildlife species, natural resources, special status species, socioeconomics, historical resources, and cultural resources.

Our proposed action (Alternative F) would establish a regulation authorizing State wildlife agencies (or their authorized agents) to conduct (or allow) management activities, including the take of birds, on resident Canada goose populations. Alternative F would authorize indirect and/or direct population control strategies such as aggressive harassment, nest and egg destruction, gosling and adult trapping and culling programs, expanded methods of take to increase hunter harvest, or other general population reduction strategies. The intent of Alternative F is to allow State wildlife management agencies sufficient flexibility, within predefined guidelines, to deal with problems caused by resident Canada geese within their respective States. Other guidelines under Alternative F would include criteria for such activities as special expanded harvest opportunities during a portion of the Migratory Bird Treaty closed period (August 1–31), airport, agricultural, and public health control, and the non-permitted take of nests and eggs.

Dated: March 7, 2002.
Steve Williams,
Director.
[FR Doc. 02–7215 Filed 3–25–02; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Roanoke River National Wildlife Refuge

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to prepare an environmental impact statement to analyze the alternatives in the Draft Comprehensive Conservation Plan under development for the Roanoke River National Wildlife Refuge in North Carolina, pursuant to the National Environmental Policy Act and implementing regulations. Initial public scoping and review meetings were held in May 2001. A Wilderness Review of Roanoke River National Wildlife Refuge was conducted in accordance with the Wilderness Act of 1964, as amended, and Refuge Planning Policy 602 FW, Chapters 1, 2, and 3.

ADDRESSES: Comments and requests for information concerning this refuge may be addressed to: Bob Glennon, 1106 West Queen Street, PO Box 329, Edenton, North Carolina 27932; telephone 252/482–2364; fax 252/482–3855; cell 252/337–5284. Information concerning this refuge may be found at the following Web site: *http://rtncf-rci.ral.r4.fws.gov.*

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following addresses: *bob_glennon@fws.gov* or *FW4_FR_Planning@fws.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Bob Glennon directly at the above address. Finally, you may hand-deliver comments to Mr. Glennon at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service implements management decisions and sets forth goals, objectives, and strategies needed to accomplish refuge purposes and identify the Service's best estimate of future needs. These plans detail program planning levels that are sometimes substantially above current budget allocations and, as such, are primarily for Service strategic planning and program prioritization purposes. The plans do not constitute a commitment for staffing increases, operational and maintenance increases, or funding for future land acquisition. Roanoke River National Wildlife Refuge was established in August 1989, to protect and enhance wooded wetlands consisting of bottomland hardwoods and swamps with high waterfowl value along the Roanoke River.

Authority: The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to (1) advise other agencies and the public of our intentions, and (2) to obtain suggestions and information on the alternatives to include in the environmental impact statement.

Dated: February 15, 2002.
Sam D. Hamilton,
Regional Director.
[FR Doc. 02–7186 Filed 3–25–02; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Spokane Tribe of Indians Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Spokane Tribal Liquor Code. The Code regulates the control, possession, and sale of liquor on the Spokane Tribe of Indians trust lands, in conformity with the laws of the State of Washington, where applicable and necessary. Although the Code was adopted on January 3, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Code is effective on March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of the adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Spokane Tribal Liquor Code, Resolution No. 2001–098, was duly adopted by the Spokane Tribal Business Council on January 3, 2001. The Spokane Tribe of Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effect among individuals and family members within the Spokane Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 9.

I certify that by Resolution No. 2001–098, the Spokane Tribal Liquor Code, was duly adopted by the Spokane Tribal Business Council on January 3, 2001.

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Dated: March 11, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Spokane Tribal Liquor Code, Resolution No. 2001–098, reads as follows:

CHAPTER 24—LIQUOR CODE

Section 24–1. Purpose

The Spokane Tribe possesses the sovereignty to decide whether to allow liquor transactions on its Reservation. If the Spokane Tribe allows liquor transactions, it also possesses the sovereignty to regulate those transactions. By the enactment of this Code, the Spokane Tribe is permitting liquor transactions that are in conformity with this Code and 18 U.S.C. 1161. The Spokane Tribe also intends this Code to regulate and control the sale, distribution and possession of liquor. This code is adopted pursuant to Article VIII of the Constitution of the Spokane Tribe of Indians.

Section 24–2. Title and Jurisdiction

24–2.01. Title. This Chapter shall be known as the Spokane Tribal Liquor Code.

24–2.02. Jurisdiction. The Spokane Tribe of Indians enacts this Code to apply to all lands under its jurisdiction, namely all lands and water areas within the exterior boundaries of the Spokane Reservation, any extensions of the Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation, as well as those lands that fulfill the definition of Indian Country as defined in 18 U.S.C. 1151 and 1154.

Section 24–3. Definitions.

24–3.01. Definitions. For the purposes of this Chapter, unless otherwise required by the context, the following words and phrases shall have the designated meanings:

(1) *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. This term does not include alcohol which is intended to be or has been denatured and used as a fuel for use in motor vehicles, farm implements and machines or implements of husbandry.

(2) *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 4% of alcohol by weight, and not less than one-half of 1% of alcohol volume. For purposes of this Chapter any such beverage, including ale, stout and porter containing more than 4% of alcohol by weight shall be regulated the same as beer.

(3) *Business Council.* The Spokane Tribal Business Council.

(4) *Commercial Sale.* The transfer, exchange or barter, in any manner or by any means whatsoever for a consideration, by any person, association, partnership, or corporation of liquor and beer products.

(5) *Licensed Operator.* That person licensed by the Spokane Liquor Commission to operate a liquor outlet.

(6) *Liquor.* Includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine and beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, or other substance, which contains more than 1% of alcohol by weight shall be conclusively deemed to be intoxicating.

(7) *Liquor Outlet.* A tribally licensed retail sales business selling liquor products by the package or the drink on the lands under the jurisdiction of the Tribe and this Code.

(8) *Package.* Any container or receptacle used for holding liquor.

(9) *Public Place.* Includes streets and alleys of towns; highways or roads; buildings and grounds used for school purposes; public halls and grounds adjacent thereto; those parts of establishments where beer or liquor may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls of tribal buildings, restaurants, theaters, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; publicly owned parks and/or playgrounds; tribal fairgrounds, and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(10) *Regulations.* Those rules and policy regulations made by the Spokane Liquor Commission.

(11) *Spirits.* Any beverage which contains alcohol obtained by distillation, including wines exceeding 24% of alcohol by volume.

(12) *Spokane Liquor Commission.* The Board that shall administer this Chapter and is empowered as set out in Section 24–4 of this Chapter.

(13) *Tribe.* The Spokane Tribe of Indians.

(14) *Wine.* Any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et. cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume.

Section 24–4. Membership and Powers of the Spokane Liquor Commission

24–4.01. Membership. The Spokane tribal Business Council shall be the Spokane Liquor Commission. The Council may, if it so wishes, appoint others as a Commission to serve in its stead. That Commission shall be composed of no less than five and no more than seven members.

24–4.02. General Powers. The Commission is empowered to:

(1) Administer this Code by exercising general control, management, and supervision of all liquor sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Code;

(2) Adopt and enforce rules and regulations in furtherance of the purposes of this Code and in the performance of its administrative functions;

(3) License each liquor outlet within the jurisdiction of the Spokane Tribe of Indians;

(4) Examine the records of each liquor outlet at a time and place convenient to both the licensed operator and the Commission;

(5) Revoke any license issued to a liquor outlet at its informed discretion;

(6) Inspect the physical premises of each liquor outlet;

(7) Designate any area, upon application of the owner, where public consumption of liquor may occur;

Section 24–5. Licensing of Liquor Outlet

24–5.01. License Required. Each liquor outlet is required to possess a license granted by the Commission.

Section 24–6. Application for Liquor Outlet License

24–6.01. Application. Applications for a liquor outlet license may be obtained at the Tribal Office. Completed applications shall be submitted to the Liquor Commission. Members of the Spokane Tribe of Indians shall have preference over other applicants for licenses.

24–6.02. Application Fee. Each application shall be accompanied by an application charge or fee of $100.00, which shall be non-refundable, even if the applicant is not granted a license. The application fee for special use liquor license to be issued under 24–6.04 shall be $15.00.

24–6.03. Grant of License. The Commission shall review the application and may, if it deems necessary, request additional information and documentation from the applicant. If the Commission is satisfied that the applicant is a suitable and reputable person, the Commission may issue a license for the sale of liquor products. The Commission shall state on the license whether the license is for the sale of liquor by the drink, by the package, or both. A license shall only entitle the operator to one outlet. A license may be granted for the sale of only beer or wine by the drink.

24–6.04. License Renewal. A license shall be issued for the period of two years. This license shall be non-transferrable. The license shall be renewable every two years at the discretion of the Commission, with the operator filing a new application and paying the filing fee. The Commission may also issue a special use liquor permit to persons paying the necessary application fee under 24–6.02 for a maximum period of three (3) days as long as the liquor to be sold or distributed is in conjunction with regularly scheduled community or social events.

24–6.05. Limitation on Licenses. The Commission shall carefully limit the number of licenses and limit the location of the licenses to protect the health, safety and welfare of the people. The number and location of the licenses is within the sole discretion of the Commission.

24–6.06. Designation of Public Use Area. An applicant may apply for a designation as a public use area. The applicant shall be responsible for obtaining a liquor license and shall so indicate in its application that the application is for the purpose of consumption of liquor on the premises. All provisions of this Chapter shall apply to any area so designated unless specifically excluded.

Section 24–7. Restrictions on Liquor Outlets

24–7.01. Sales to Minors. No licensed operator shall give, sell or otherwise supply liquor to any person under 21 years of age, either for his or her own use or for the use of his or her parents or for the use of any other person.

24–7.02. Consumption of Liquor Upon Licensed Premises Prohibited. No licensed operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control, unless the operator has a license to sell liquor by the drink or has otherwise been designated under this chapter as a location where public consumption of liquor may occur.

24–7.03. Conduct on Licensed Premises

(1) No Tribal operator shall be disorderly, boisterous or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2) No operator or employee shall consume liquor, beer or wine while working on the licensed premises.

(3) No operator shall permit suggestive, lewd or obscene conduct or acts on his or her premises.

24–7.04. Employment of Minors. No person under the age of 21 years shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein. Employees 18 years or older may sell and handle beer or wine not to be consumed on the premises provided that there is direct supervision by an adult 21 years of age or older.

24–7.05. Display of License. Any Tribal operator issued a license shall frame under glass and display the license on the premises.

24–7.06. Operator's Premises Open to Commission Inspection. The premises of all Tribal operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the Commission.

24–7.07. Hours of Operation. All liquor outlets, with the exception of grocery stores or convenience stores selling only beer or wine, shall close by 3:00 a.m. and not reopen before 6:00 a.m.

24–7.08. Records Confidential. All records of the Commission shall be confidential.

Section 24–8. Sovereign Immunity Preserved

24–8.01. No Waiver of Sovereign Immunity. Nothing in this Chapter is intended or shall be construed as a waiver of the sovereign immunity of the Spokane Tribe of Indians or its officials. No official, agent or employee of the tribe is authorized, nor shall he or she attempt, to waive the immunity of the Tribe or its officials.

Section 24–9. Tribal Liability and Credit

24–9.01. No Liability by Tribe. An operator is forbidden to represent or give the impression to any supplier or any other person with whom he or she does business that he or she is an official representative of the Tribe or Commission authorized to pledge Tribal credit or financial responsibility for any of the expenses of his or her business operation. The operator shall hold the Spokane Indian Tribe and the Spokane Liquor Commission harmless from all claims of liability of whatever nature.

Section 24–10. Insurance

24–10.01. Insurance. The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism and other insurable risks. The Commission or the Tribal Business Committee may establish as a condition of any license higher limits and any additional coverage it deems advisable.

Section 24–11. Revocation of Operator's License

24–11.01. Grounds for Revocation. Failure of an operator to abide by the provisions of this Chapter and any additional regulations or requirements imposed by the Spokane Liquor Commission will constitute grounds for revocation of the operator's license.

24–11.02. Notice of Revocation. If by a majority vote of the members of the Spokane Liquor Commission, it is decided that grounds exist for the revocation of a license of any operator, notice shall be given to the operator of a hearing at which the grounds and evidence of such a revocation shall be presented by the Commission, and an opportunity shall be presented to the operator to answer any charges, produce evidence, and make argument on his or her behalf. Such hearing shall be held within ten days of such notice, but may be continued to a later date if both the Commission and the operator consent.

24–11.03. Request for a Rehearing. If after notice and hearing, the Commission revokes an operator's license, the operator may within ten days after such revocation, petition the Commission for a rehearing. The

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petition shall state the basis for a rehearing, including all newly discovered evidence or information not before the Commission at the first hearing. The Commission shall grant or deny the request for a rehearing within twenty days of the receipt of the petition.

24–11.04. Judicial Review of Revocation. An operator whose license was revoked may petition the Spokane Tribal Court for review of the decision within twenty days of the written decision of the Commission. The appeal shall be on the record and shall not be heard de novo. If the Court finds that the order of the Spokane Liquor Commission was arbitrary and capricious, clearly erroneous, in violation of the Constitution of the Spokane Tribe of Indians, in violation of the Constitutional rights of Indians as set forth in 25 U.S.C. 1301–1303, made upon unlawful procedures or some other error of law, the Court shall vacate the order of the Commission and remand to the Commission for the re-issuance of a license.

24–11.05. Scope of Review Limited to Issue of Revocation. By authorizing such a review of its decision, the Spokane Tribe is not waiving its sovereign immunity explicitly or implicitly, but providing operators with a judicial review of its decisions. Thus suits against the Spokane tribe of Indians or its officials for damages or any other relief are not authorized by this Chapter.

24–11.06. Judicial Review Not Granted to Those Denied a License Upon Application. An application for a liquor license is a privilege and not a right. Thus a simple denial of an application for a license is not entitled to judicial review in the Spokane Tribal Court.

24–11.07. Emergency Powers. If for an extremely serious reason, such as the keeping of the peace or the health and welfare of the people, the Commission finds it necessary to close the premises of a liquor outlet, it may do so provided that a hearing is provided to the licensed operator within three days (excluding weekends and holidays) of the closing of the liquor outlet.

Section 24–12. Violations

24–12.01. Any person(s) who shall violate any provision of this Chapter shall be subject to one or all of the following civil remedies:

(1) A civil penalty of up to $500.00 per occurrence per day and confiscation of all proceeds of such activities.

(2) A civil injunction against continued violations of this Chapter.

(3) Exclusion from the Spokane Reservation in conformity with Chapter 21 of the Spokane Tribal Code.

(4) If licensed operators, the revocation of the liquor outlet license.

Section 24–13. Severability

24–13.01. Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

Section 24–14. Previous Liquor Codes and Ordinances Abrogated

24–14.01. Previous Code Provisions Abrogated. It is the intent of the Spokane Indian Tribe and of the Spokane Business Committee that this liquor code cited above totally supersedes and stands in the place of any previously existing codes and ordinances relating to liquor.

[FR Doc. 02–7238 Filed 3–25–02; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Abbreviated Final Environmental Impact Statement Death Valley National Park, California/Nevada; Notice of Approved Record of Decision

SUMMARY: The Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan and Abbreviated Final Environmental Impact Statement for Death Valley National Park. The Record of Decision includes background on the conservation planning effort, a description of the decision made and synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferable alternative, a discussion of measures to minimize environmental harm, and an overview of public and agency involvement in the decision-making process. The new General Management Plan will be used by park staff as a "blueprint" for managing the park over the next 10–15 years.

Decision (Selected Action): As detailed in the Record of Decision, the National Park Service (NPS) will implement Alternative 1, the proposed action, described in the Revised Draft Environmental Impact Statement and General Management Plan and the Abbreviated Final Environmental Impact Statement and General Management Plan. As a public service subsequent to the approval of the Record of Decision, the NPS will excerpt and reprint the final General Management Plan (the selected alternative) as a stand-alone Presentation Plan document. The selected alternative was both the agency-preferred alternative and the environmentally preferred alternative.

The selected plan represents the best mix of actions, policies, and strategies for the management of Death Valley National Park, given diverse public opinion and varying mandates. The General Management Plan (GMP) envisions the park as a natural environment and a cultural landscape (an arid ecosystem overlain by many layers of human occupation and use from prehistoric to historic to the present time), where the protection of native desert ecosystems and processes is assured for future generations. The protection and perpetuation of native species in a self-sustaining environment is a primary long-term goal. The GMP seeks to manage the park to perpetuate the sense of discovery and adventure that currently exists. This means limiting new development inside the park. The GMP envisions adjacent "gateway" communities as providing increased support services (food, gas, and lodging) for visitors, but also seeks to retain current opportunities for roadside camping, backcountry camping, and access to the backcountry via existing primitive roads, consistent with the NPS mission. The current park management strategies and policies will apply to the new park lands and put in place the necessary planning and management components to adequately address the Wilderness designation of 95% of the park lands. The GMP also fulfills the NPS mission of resource preservation and provision of visitor services while achieving other mandates from Congress. A stated goal of the GMP is to seek funding to purchase private property within the park from willing sellers.

Other Alternatives Considered: In addition to the proposal, other alternatives considered included "existing management" and an "optional management" approach. The existing management alternative (Alternative 2) describes the continuation of current management strategies. It is commonly referred to as the no-action or status quo alternative. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to assess the potential environmental

effects of those changes. This "no new actions" concept follows the guidance of the Council on Environmental Quality, which describes the No Action Alternative as no change from the existing management direction or level of management intensity. It does not mean that no agency management actions would be taken. Death Valley National Park would continue managing the park according to policies and strategies identified in the 1989 GMP.

The optional approach (Alternative 3) is similar to the proposed action, except this alternative identifies the closing and restoration to a natural condition of the Chicken Strip airstrip at Saline Valley (adversely affecting those people who visit the area by airplane). This alternative also proposes closing the historic Emigrant campground because of potential flood hazards. All areas within the Eureka-Saline wilderness road corridor would be open for roadside camping. Designated car camping sites would be established in the area of the Saline Valley warm springs. Additional distinctions were detailed in the approved Record of Decision.

Basis for Decision: The selected GMP provides a logical, systematic and proactive approach to management of the Park in compliance with NPS laws, regulations and policies. The further rationale for selecting Alternative 1 over the no-action Alternative is based on the lessened environmental impacts that would be anticipated to occur by seeking funds and implementing activities identified in the proposed plan. Public opinion also helped inform the NPS's preferred approach over Alternative 3. In particular, preserving the natural quiet and sounds associated with the physical and biological resources of the park, management of Wilderness for maximum protection, funding of the full removal of feral burros, enhanced interpretive information to educate the public on desert ecosystems, geological processes, and the prehistoric, historical and Native American record, and improved administrative operations are among the key elements of the new GMP.

No Impairment of Park Resources and Values: The NPS may not allow the impairment of park resources and values unless directly and specifically provided for by legislation or by the proclamation establishing the park. Impairment that is prohibited by the NPS's Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. In determining whether impairment may ensue from an action, park managers consider duration, severity, and magnitude of the impact; resources and values affected; and direct, indirect, and cumulative effects of the action. According to NPS Policy, "An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is: (a) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; (b) Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or (c) Identified as a goal in the park's general management plan or other relevant National Park Service planning documents." (NPS Management Policies, 2001).

This policy does not prohibit impacts to park resources and values. The NPS has the discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impacts do not constitute impairment. Moreover, an impact is less likely to constitute impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values.

Human activity and past development have resulted in the ongoing disruption of natural systems and processes in Death Valley National Park for generations. The no-action alternative would result in future unplanned and uncoordinated actions that are merely reactive to immediate concerns. Furthermore, these actions would likely be responsive to immediate, short-term, adverse impacts that demand attention, but may result in long term impairment to park values and resources. Thus, the ability of the public to experience, understand, appreciate, and enjoy the park could be impaired under the no-action alternative.

The NPS has determined that implementing Alternative 1 will not constitute an impairment to Death Valley National Park's resources and values. This conclusion is based on a thorough analysis of the environmental impacts described in the Revised Draft EIS/GMP, the Abbreviated Final EIS/GMP, the public comments received, relevant scientific studies, and the professional judgment of the decision-maker guided by the direction in NPS Management Policies. While the plan may result in some minor negative impacts, in all cases these adverse impacts are the result of proactive strategies intended to implement the NPS mission, policies, and regulations in the management of Death Valley National Park. None of the proposals would result in impacts that would impair the integrity of park resources or values, including opportunities that would otherwise be present for the enjoyment of those resources or values. Overall, the plan results in major, long-term benefits to park resources and values and opportunities for their enjoyment; it does not result in their impairment.

The actions comprising Alternative 1 will achieve the goals of the California Desert Protection Act and NPS management policies (which include protecting and enhancing the natural and cultural resources of Death Valley and providing opportunities for high-quality, resource-based visitor experiences) in a comprehensive, integrated manner that takes into account the interplay between resource protection and visitor use. Actions implemented under Alternative 1 that would cause overall negligible adverse impacts, minor adverse impacts, short term impacts, and beneficial impacts to park resources and values, as described in the Revised Draft EIS/GMP and the Abbreviated Final EIS/GMP, will not constitute impairment. This is because these impacts have limited severity and/or duration and will not result in appreciable irreversible commitments of resources. Beneficial effects identified during the NEPA process include effects related to removal of exotic burros and protecting threatened park resources and values. Beneficial effects do not constitute impairment.

The collective actions discussed in Alternative 1 are proposed as a means of managing Death Valley National Park in a manner that would result in a protected native desert ecosystem that functions without interference from human activities, while allowing visitor use and Congressionally mandated resource consumptive activities. While some of these activities may seem contrary to the NPS preservation mission (e.g. grazing, mining), Congress specifically provides for these activities (under NPS regulation) in the park pursuant to the California Desert Protection Act. These activities may only be allowed subject to other applicable laws and regulations. This proposal outlines management strategies for these activities, and others, that would be implemented to minimize potential impacts from these activities to levels below the threshold of impairment. For example, all future mining operations would be required to undergo NPS review and impact analysis under 36 CFR part 9, subpart A. Also, a grazing management plan would

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be developed to manage the one remaining cattle grazing permit so that park resources are protected. The proposed actions included in this alternative would establish an overall management approach that would allow activities to occur in the park without impairing the integrity of park resources or values, including opportunities that would otherwise be present for the enjoyment of those resources or values.

In addition, the NPS has determined that the environmentally preferable alternative is Alternative 1. In aggregate, Alternative 1 best achieves the six conditions prescribed under § 101 of NEPA. While some of the actions in other alternatives may be similar to Alternative 1 in their effect and consequence, Alternative 1: (1) Provides the highest level of protection of natural and cultural resources while concurrently attaining the widest range of beneficial uses of the environment without degradation; (2) maintains an environment that supports diversity and variety of individual choice; and (3) integrates resource protection with opportunities for an appropriate range of visitor uses.

Measures to Minimize Environmental Harm: The NPS investigated all practical means to avoid or minimize environmental impacts that could result from implementating the various actions. The measures are fully incorporated into Alternative 1 (as analyzed in the Revised Draft EIS/GMP and the Abbreviated Final EIS/GMP (see Appendix E in Revised Draft EIS/GMP). Monitoring and enforcement programs will supplement the implementation of mitigation measures. These programs will assure compliance monitoring, biological and cultural resource protection, traffic management, noise and dust abatement, noxious weed control, pollution prevention measures, visitor safety and education, and other mitigation measures. Mitigation measures will also be applied to all future actions that are guided by this plan. In addition, the NPS will conduct specific compliance reviews (i.e., National Environmental Policy Act, Wilderness Act, National Historic Preservation Act, Endangered Species Act, and other relevant legislation) for any future actions.

Background of Planning Process: This extensive conservation planning effort was prompted by the enactment of the California Desert Protection Act (CDPA) on October 31, 1994. CDPA transferred over 3 million acres of California desert lands from the Bureau of Land Management (BLM) to the NPS and designated nearly 8 million acres of Wilderness on NPS and BLM lands. In addition, CDPA redesignated Death Valley as a national park (likewise Joshua Tree National Park, and Mojave National Preserve was created). Wide ranging changes confronting the management of the public lands in the California desert, including increasing wildland development, mounting public use pressures, the formal listing of the desert tortoise, and passage of CDPA itself prompted NPS, BLM, and U.S. Fish and Wildlife Service desert managers to address these and other anticipated changes through development of updated or new management plans.

The significant expansion of Death Valley National Park with 1.3 million additional acres and the designation of over 95% of the park's lands as Wilderness clearly warranted the development of a new general management plan (GMP) to update and replace a 1989 GMP written for the former Monument. The GMP will serve as the overall management strategy for the next 10–15 years, and is a "blueprint" under which more detailed activity or implementation plans are to be prepared (the new GMP is general rather than specific in nature, and focuses on purposes of the unit, significant attributes, overall mission of the agency, what activities are appropriate within these constraints, resource protection strategies, provides guidelines for visitor use and development of facilities for visitor enjoyment and administration of the park). The goal of the GMP is to determine how best to manage the park to meet Congressional intent as expressed in the CDPA and the mission of the NPS. It was the stated intention of this conservation planning effort to explore only alternatives that would result in an implementable management plan for the park. Alternatives that would require legislation before they could be implemented, were contrary to specific Congressional direction or NPS regulations or policy, or require vast sums of funding to implement, would create unreasonable expectations on the part of the public and would not serve the need of creating an implementable management plan for this unit. Therefore, only alternatives that explore the range of options for managing uses mandated by Congress were evaluated.

Preparation of this GMP began in 1995 with the selection and stationing of a planning team in Barstow, California. The Notice of Intent was published in the **Federal Register** on September 5, 1995. The planning team conducted 20 public scoping meetings in September 1995 and April 1997 to gather public input on the management direction for the park and BLM lands. In addition, a number of agency scoping meetings were held. From this input and meetings with interested parties (such as county departments, special interest groups, state agencies, Native American tribes, etc.) and discussions with NPS and BLM staff, proposed management plans were developed.

In September 1998 the Draft Environmental Impact Statement/ General Management Plan (EIS/GMP) was released for public review. Approximately 450 printed copies (and 100 CD–ROMs) of the Draft EIS/GMP were distributed for review; the entire document was also posted on the internet with links from the park's homepage and the Northern and Eastern Mojave planning page. The notice of filing of the Draft EIS/GMP was published in the **Federal Register** by the Environmental Protection Agency (EPA) on September 11, 1998 (FR 48727). Written comments were accepted from September 11, 1998, through January 15, 1999, a period of 127 days. Eleven public meetings were held in October 1998 throughout the planning region of southern California and southern Nevada. In addition, the planning team participated in numerous meetings of the Death Valley Advisory Commission to obtain their feedback, concerns, and direction regarding the development of the GMP. Death Valley received approximately 600 comment letters from government agencies, tribes, interest groups, and individuals. In addition, members of environmental groups sent approximately 1,800 identical postcards. Several additional letters and postcards were received after the closing date for public comments.

Due to the large number of substantial changes required as a result of public comment on the 1998 Draft EIS/GMP, the NPS decided to rewrite the document. In September 2000, a Revised Draft Environmental Impact Statement and General Management Plan was released for 92 days of public review. Responses to written public comments on the 1998 Draft EIS/GMP were addressed in a separately bound report. A notice of filing was published in the **Federal Register** by the EPA on September 6, 2000 (FR 54062–54064). Eleven more public meetings on the revised materials were held in southern California and southern Nevada during October and November 2000. During the public comment period, a total of 47 written comments were received. All substantive comments on the 1998 Draft DEIS/GMP were addressed in a separate document that was made available concurrent with the Revised EIS/GMP.

After consideration of substantive public comments on the Revised EIS/ GMP (which surfaced no new major issues or information gaps), the NPS decided to prepare an Abbreviated Final Environmental Impact Statement and General Management Plan, dated June 2001. The abbreviated format was used because changes to the revised draft document were minor and confined primarily to factual corrections, which do not modify the analysis. This abbreviated format requires that the material be integrated with the Revised Draft Environmental Impact Statement and General Management Plan to comprise the full record of the environmental impact analysis and public comment.

Conclusion: Alternative 1 provides the most comprehensive and proactive strategy among the alternatives considered for meeting the NPS's purposes, goals, and criteria for managing Death Valley National Park in accordance with Congressional direction, federal laws, and NPS management policies. The selection of Alternative 1, as reflected by the analysis contained in the environmental impact statement, would not result in the impairment of park resources and would allow the NPS to conserve park resources and provide for their enjoyment by visitors. To obtain a copy of the Presentation Plan document when it becomes available, or for the complete Record of Decision at this time, requests may be sent to the Superintendent, Death Valley National Park, Death Valley, California, 92328.

Dated: September 27, 2001.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region, National Park Service.

[FR Doc. 02–7248 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Portage National Monument, MN; General Management Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the draft general management plan/draft environmental impact statement for Grand Portage National Monument, Minnesota.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft general management plan/draft environmental impact statement (DGMP/DEIS) for Grand Portage National Monument (hereafter "the Monument"). This notice also announces public open houses for the purpose of explaining the DGMP/DEIS and receiving public comments on the DGMP/DEIS.

DATES: There will be a 60-day public review period for comments on this DGMP/DEIS. Comments on the DGMP/ DEIS must be received 60-days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register** or following an announcement in local papers, whichever is published later. Public open houses for information about, or to make comment on the DGMP/DEIS will be held in Grand Marais and other locations within the State of Minnesota. Information about time and place will be available by contacting the park at the address below. Open house schedules will be published in state and local papers.

ADDRESSES: Copies of the DCMP/DEIS are available by request by writing to Grand Portage National Monument, P.O. Box 668, Grand Marais, MN 55604–0668, by phone 218–387–2788. The document can be picked-up in person at the Monument's Headquarters, 315 S. Broadway, Grand Marais, MN.

FOR FURTHER INFORMATION CONTACT: Superintendent, Grand Portage National Monument, P.O. Box 668, Grand Marais, MN 55604–0668, or at telephone number 218–387–2788.

SUPPLEMENTARY INFORMATION: The purpose of the general management plan is to set forth the basic management philosophy for the Monument and to provide the strategies for addressing issues and achieving identified management objectives. The DDMP/ DEIS describes and analyzes the environmental impacts of a proposed action and three action alternatives for the future management direction of the Monument. A no action alternative is also evaluated. The preferred alternative, Alternative E, is an alternative that was developed to combine actions from the other alternatives to achieve desired results. It would include a year-round heritage center and an Ojibwe Culture Center. Alternative B would attempt to transport visitors back to the 1790's, with maritime transportation along the historic waterfront and additional interpretation of Lake Superior and connecting waterways. Visitors could learn about the maritime aspects of the fur trade, as well as about the Ojibwe culture and heritage. Alternative C would offer a multifaceted visitor experience: several newly reconstructed structure and interpretive exhibits, a combined heritage center/headquarters open year-round, and an Ojibwe Heritage Cultural Center. Interpretation would encompass prehistoric, historic, and contemporary activities. Alternative D would include a large multifunctional heritage center, which would offer a glimpse into the history of the Grand Portage and its inhabitants. Alternative A is the no-action alternative, which provides a baseline for comparing other action alternatives.

Persons wishing to comment may do so by one of several methods. They may attend the open house noted above. They may mail comments to Superintendent, Grand Portage National Monument, P.O. Box 668, Grand Marais, MN 55604–0668. They also may hand-deliver comments to the Grand Portage National Monument headquarters located at 315 S. Broadway, Grand Marais, MN.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. As always, the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments will not be considered.

The responsible official is Mr. William Schenk, Midwest Regional Director, National Park Service.

Dated: January 22, 2002.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 02–7256 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Notice of Intent

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a general management plan and environmental impact statement for Fallen Timbers Battlefield and FortMiamis National Historic Site, Ohio.

SUMMARY: The National Park Service (NPS) will prepare a general management plan (GMP) and an associated environmental impact statement (EIS) for Fallen Timbers Battlefield and Fort Miamis National Historic Site in accordance with section

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102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means. Notification of all public involvement opportunities will be announced in the local press and in NPS mailings. To begin the public process, the NPS will conduct a scoping meeting to explain the planning effort and to solicit opinion about issues to address in the GMP/EIS.

DATES: Two public scoping meetings will be held on Tuesday, March 12, 2002. An afternoon session will be held from 3:30 p.m. to 5:30 p.m.; and an evening session will be held from 7:00 p.m. to 9:00 p.m. Both meetings will be held at the Toledo-Lucas County Public Library, Maumee Branch, 501 River Road, Maumee, Ohio. More information about the meetings is available from the Site Manager, Metroparks of the Toledo Area, at the address and telephone number below.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Public Information Officer, Metroparks of the Toledo Area, 5100 West Central Avenue, Toledo Ohio 43615; phone: 419–535–3057 extension 126.

FOR FURTHER INFORMATION CONTACT: Metroparks of the Toledo Area, Public Information Officer, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Public Law 106–164, signed into law on December 9, 1999, provides for the establishment of Fallen Timbers Battlefield and Fort Miamis National Historic Site as an affiliated unit of the National Park System. The purpose of the National Historic Site is to recognize, preserve, interpret and link Fort Miamis and the Fallen Timbers Battlefield. The Battle of Fallen Timbers played an important role in the history of the Nation's early Northwest frontier and was the culminating event which demonstrated the tenacity of the American people in their efforts to expand settlement westward through the struggle for dominance of the Old Northwest Territory.

In accordance with NPS Park Planning policy, the GMP will ensure the Historic Site has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 et seq.), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

Dated: January 22, 2002.

David N. Given,

Acting Regional Director.

[FR Doc. 02–7252 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statement; Notice of Intent

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a general management plan and environmental impact statement for First Ladies National Historic Site, Ohio.

SUMMARY: The National Park Service (NPS) will prepare a general management plan (GMP) and an associated environmental impact statement (EIS) for First Ladies National Historic Site, Ohio, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulation 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means. Notification of all public involvement opportunities will be announced in the local press and in NPS mailings. To begin the public process, the NPS will conduct a scoping meeting to explain the planning effort and to solicit opinion about issues to address in the GMP/EIS.

DATES: A public scoping meeting will be held on Monday, February 25, 2002 at 2:00 p.m. at the Saxton House, 331 S. Market Avenue, Canton, Ohio. More information about the meetings is available from the Site Manager, First Ladies National Historic Site, at the address and telephone number below.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Ms. Carol J. Spears, Site Manager, First Ladies National Historic Site, 8095 Mentor Avenue, Mentor, OH 44060. Telephone: 440–974–2993.

FOR FURTHER INFORMATION CONTACT: Site Manager, First Ladies National Historic Site, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: First Ladies National Historic Site was established to preserve and interpret the role and history of First Ladies for the benefit, inspiration, and education of the people of the United States.

In accordance with NPS Park Planning policy, the GMP will ensure the National Historic Site has a clearly defined direction for resource preservation, visitor use, and facilities development. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

Dated: January 18, 2002.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 02–7255 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Rosie the Riveter/World War II Home Front National Historical Park; Richmond, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), the National Park Service (NPS) is undertaking a conservation planning and environmental impact analysis process to determine what approaches to take concerning resource protection and visitor use in the development of the Rosie the Riveter/World War II Home Front National Historical Park in Richmond, Contra Costa County, California. Notice is hereby given that a public scoping process has been initiated to prepare an Environmental Impact Statement (EIS) and General Management Plan (GMP). The purpose of the scoping process is to elicit public comment regarding the spectrum of issues and concerns, including a suitable range of alternatives, and the nature and extent of potential environmental impacts and appropriate mitigation strategies which should be addressed in the planning and environmental analysis process.

Background

As authorized by Pub. L. 106–352, the NPS is preparing a General Management Plan for the Rosie the Riveter/World War II Home Front National Historical Park in Richmond, California. The Rosie the Riveter/World War II Home Front National Historical Park includes the Ford Assembly Building, the Richmond Shipyard #3 (currently known as the Port of Richmond, Terminals 5, 6 and 7), the Maritime and Ruth Powers Child Development Centers, Atchison Village housing, Kaiser Field Hospital, Fire Station 67A, the Rosie the Riveter Memorial, the S.S. Red Oak Victory, and city parks referred to in the authorizing legislation as Shimada Peace Memorial Park, Westshore Park (now known as Lucretia Edwards Park), Sheridan Observation Point Park, Vincent Park, and the Bay Trail/Esplanade. The National Park Service does not own or manage these sites, but is authorized to interpret the story of Rosie the Riveter and the World War II home front, conduct and maintain oral histories, operate an education center, provide visitor services, provide technical assistance, enter into agreements to support preservation and interpretation, and acquire technical assistance, enter into agreements to support preservation and interpretation, and acquire certain structures from willing sellers. The NPS will work in cooperation with the public and private owners of these sites to plan for and encourage their preservation and use.

Pub. L. 106–352 requires the General Management Plan to include a plan to preserve the historic setting of the Rosie the Riveter/World War II Home Front National Historical Park, which must be jointly developed and approved by the City of Richmond. Legislation also requires the General Management Plan to include a determination of whether there are additional representative sites in Richmond that should be added to the park, or sites elsewhere in the United States that relate to the industrial, governmental, and citizen efforts during World War II that should be linked to and interpreted at the park.

In preparing the General Management Plan, the NPS will develop management prescriptions for each area of the park. These management prescriptions will specify desired resource conditions, desired visitor experiences, and appropriate types and levels of management, use and development. The General Management Plan will serve as a blueprint for the next ten to fifteen years to guide park management decisions relating to park operations, facilities, staffing, interpretation and community involvement.

Scoping Comments

Formal scoping for the General Management Plan and EIS is hereby initiated. Public meetings will be held at various locations in Richmond, CA, and in other parts of the San Francisco Bay Area, with locations and dates to be determined. These public meetings will be announced via local and regional news media and by direct mail. All interested individuals, organizations and agencies wishing to provide comments, suggestions, or relevant information, or those wishing to be added to the project mailing list, should respond to: National Park Service, Attn: Martha Crusius, Planning and Partnerships, 1111 Jackson St. #700, Oakland, CA 94607. All written comments must be postmarked not later than August 30, 2002.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, their requests will be honored to the extent allowable by law. Such requests must be available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

Decision Process

Availability of the draft GMP/EIS for review and written comment will be announced by **Federal Register** notice, via local and regional news media, and direct mailing. At this time the draft GMP/EIS is anticipated to be available for public review in 2003, and that subsequently a final GMP/EIS will be completed in 2004. To afford additional opportunity to comment on the draft GMP/EIS after it is distributed, public meetings will be held in the City of Richmond and San Francisco Bay Area (dates and locations to be determined). Notice of the availability of the final GMP/EIS will likewise be published in the **Federal Register**. As this is a delegated EIS, the official responsible for approval is the Regional Director, Pacific West Region, National Park Service; subsequently the official responsible for implementation will be the Superintendent of Rosie the Riveter/World War II Home Front National Historical Park.

Dated: January 11, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–7254 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan; Santa Monica Mountains National Recreation Area Lost Angeles and Ventura Counties, California; Notice of Scoping to Prepare Environmental Document

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*) that public scoping has been initiated for a conservation planning and impact analysis process for updating the current fire management plan at Santa Monica Mountains National Recreation Area. The purpose of the scoping process is to elicit early public comment regarding issues and concerns, a suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts which should be addressed.

Background: The Santa Monica Mountains National Recreation Area is a 150,000 acre unit of the National Park System. Naturally occurring fire is an

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important ecological process in maintaining the native plant communities of the park, but wildfire poses a hazard to life and property at the urban/wildland interface areas. The park has had a fire management program since 1986; the plan was updated in 1994. The park utilizes a limited number of forms of fire management to achieve natural and cultural resource management and hazard fuel reduction goals including complete suppression, prescribed burning and mechanical fuel reduction.

The current environmental impact analysis of the park's fire management program was initiated in 1986 and culminated in a Finding Of No Significant Impact. Since that time, a spectrum of new issues, improved information, and unforeseeable constraints have emerged which have the potential to affect the future direction of the fire management program within the park. Some of these factors include but are not limited to: a potential decline in ecosystem health due to anthropogenically increased fire frequency, increased hazards and costs associated with fire suppression at the urban/wildland interface, and more stringent air quality regulations.

Information and Comment: As noted, the National Park Service will undertake a conservation planning and environmental impact analysis effort to address issues and concerns regarding any update in the current fire management program, and identify new alternatives for fire management in the Santa Monica Mountains National Recreation Area. At this time, it has not been determined whether an Environmental Assessment or Environmental Impact Statement will be prepared, however, this scoping process will aid in this determination.

As an early step in this undertaking, a series of four public scoping meetings will be conducted in April, 2002. California cities where scoping meetings will be held are: Calabasas/Agoura Hills, Malibu, Beverly Hills, and Thousand Oaks. For those unable to attend meetings, a scoping document will be available upon request. The main topics to be addressed in the scoping document and meetings are: background information on the fire management program; a review of relevant policy and law affecting the fire management program; an assessment of current fire management needs; and the identification of issues and potential alternatives related to future fire management in the park. All interested individuals, organizations, and agencies are encouraged to provide comments or suggestions. Written comments regarding the fire management program update must be postmarked no later than August 31, 2002.

For confirmed details about the scoping meetings, or to request a copy of the scoping background material and provide comments, please contact: Superintendent, Santa Monica Mountains National Recreation Area; Attn: Corrina Marote B—Fire Management Plan; 401 West Hillcrest Drive, Thousand Oaks, California 91360 or via telephone at (805) 370–1845.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision: The official responsible for final approval is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation would be the Superintendent, Santa Monica Mountains National Recreation Area. The draft fire management plan and environmental document are expected to be available for public review in June, 2002. At this time it is anticipated that the final plan and environmental document are to be completed in October, 2002.

Dated: February 8, 2002.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 02–7249 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; Middle and South Forks Kings River Wild and Scenic River Comprehensive Management Plan; North Fork Kern River Wild and Scenic River Comprehensive Management Plan; Sequoia and Kings Canyon National Parks Tulare and Fresno Counties, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: The National Park Service (NPS) will prepare Comprehensive Management Plans for the Middle and South Forks Kings River and the North Fork Kern River, which in 1987 were designated as components of the National Wild and Scenic Rivers System. The purpose of these Comprehensive Management Plans is to provide direction and overall guidance on managing these wild and scenic rivers within the boundaries of Sequoia and Kings Canyon National Parks. These plans will be prepared concurrently with the park's ongoing General Management Plan (GMP), in accord with 40 CFR 1501.7 and 40 CFR 1508.22 of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969 (Pub.L. 91–190). This notice supersedes a previous Notice of Intent which was published in the October 28, 1997 **Federal Register** (V62.N208.PP55827–28). The forthcoming Environmental Impact Statement (EIS) for the GMP will be expanded to include Comprehensive Management Plans for these river segments.

Background

Congress directed the NPS to revise the GMP for these parks to recognize these designations. The EIS will include an evaluation of the potential impacts, if any, and appropriate mitigation strategies, associated with implementing Comprehensive Management Plans (CMP) for wild and scenic river management. The CMPs will establish boundaries and identify appropriate classification of segments, and the GMP and CMPs will ensure that no development or use of park lands will be undertaken that is inconsistent with the designation of these river segments.

Comments

Comments concerning the scope of the CMPs, and any new information regarding the GMP, are encouraged at this time. Scoping comments regarding the GMP received previously are recorded in the administrative record and will also continue to be addressed (a synopsis of issues and concerns received overall will be available). Written comments concerning the CMPs or/and GMP should be sent to: Superintendent, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, CA 93271–9651. All written responses must be postmarked not later than March 29, 2002. For additional info, or requests to be added to the project mailing list, contact Dr. David Graber, GMP Coordinator, at the above address or via telephone at (559) 565–3173.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Sequoia and Kings Canyon National Parks. At this time it is anticipated that the Draft EIS for the GMP/CMPs will be available for public review in the fall of 2002. Distribution of the document will be duly noted in the **Federal Register** and announced via local and regional press. Thereafter the Final EIS would be completed in the spring of 2003.

Dated: January 16, 2002.

Cynthia Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–7253 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Funding Assistance for Non-Federal Acquisition of Civil War Battlefield Land

AGENCY: National Park Service, Interior.

ACTION: Availability of Funding for Acquisition of Civil War Battlefield Land.

SUMMARY: The National Park Service (NPS) announces the availability of funds to assist States and local communities in acquiring for permanent protection lands, or interests in lands, at significant Civil War battlefield sites.

ADDRESSES: Funding proposals should be mailed to: Hampton Tucker, National Park Service, Heritage Preservation Services, 1849 C Street, NW., NC 200, Washington, DC, 20240, telephone (202) 343–3580.

FOR FURTHER INFORMATION CONTACT: Paul Hawke, National Park Service, Heritage Preservation Services, 1849 C Street, NW., NC 200, Washington, DC, 20240, telephone (202) 343–1005.

SUPPLEMENTARY INFORMATION: The National Park Service's American Battlefield Protection Program (ABPP) announces the availability of funds from the Land and Water Conservation Fund to help States and local communities acquire and preserve our nation's threatened Civil War Battlefields, as authorized by the FY 2002 Department of the Interior Appropriations Act (Pub. L. 107–63). The $11 million available for matching grants will be administered by the ABPP and awarded through a competitive process over three years (fiscal years 2002 through 2004). Each grant requires a dollar-for-dollar non-Federal match. Grants are available for the fee simple acquisition of land, or for the acquisition of permanent, protective interests in land, at Civil War Battlefields listed in the Civil War Sites Advisory Commission's (CWSAC) 1993 Report on the Nation's Civil War Battlefields. Higher consideration will be given to proposals for acquisition at battlefields defined as Priority 1 or 2 sites in the CWSAC Report. The CWSAC Report and a listing of battlefields' priority status can be found on the ABPP's Web site at *http://www2.cr.nps.gov/abpp/priority.htm.*

Who May Apply

Battlefield Land Acquisition Grants will be awarded to units of State and local governments. In any case where a private non-profit organization seeks to acquire battlefield land with assistance from this program, that organization must apply in partnership with a State or local government agency. The government agency may then subgrant the federal funds to the non-profit organization. In any case where a local government or a private non-profit organization acquires land or an interest in land with assistance from this program, it must convey an acceptable perpetual protective easement on the land to the State Historic Preservation Officer or other governmental agency acceptable to the National Park Service, in accordance with the Administrative Requirements set out below.

What Is Funded

Grants must be used to acquire battlefield land or to acquire a permanent, protective interest (i.e., a perpetual easement) in battlefield land. Additional costs associated with the acquisition—such as appraisal costs, survey fees, title insurance, and other closing costs—are also eligible grant costs. Eligible battlefields are those listed in the CWSAC's 1993 Report on the Nation's Civil War Battlefields. CWSAC Priority 1 & 2 sites will be given highest consideration. Eligible acquisitions should lie within the "core" areas of these battlefields, as defined by the CWSAC. Proposals for acquisition of battlefield land outside the "core" area but within the "study" area as defined by the CWSAC are eligible but will be considered a lower priority than "core" area land. Land lying entirely outside of the CWSAC "study area" is not eligible for assistance from this program. In any case where the land proposed for acquisition lies partially within the study area and partially outside the study area, the majority of the land must be within the study area. Contact the ABPP to confirm core and study area boundaries. There is no minimum grant request. Typically, $500,000 will be the maximum award, though NPS will entertain larger requests under special circumstances. Past acquisition grants have ranged from $50,000 to $500,000, with an average grant of $220,000.

Ordinarily, grant funds will be awarded for acquisitions that take place following the award of the grant. However, a State or local government may apply on behalf of a non-profit organization that has borrowed money in order to acquire land immediately in order to prevent its imminent sale for development, provided that the land in question is not currently protected by public ownership of a permanent, protective interest in the land. Grant assistance for the retirement of such privately held debt must result in the public ownership of either the fee simple interest or a permanent, protective interest in the land, in accordance with the other terms of this offering. However, the fact of such prior purchase creates no additional priority for funding assistance from NPS.

Administrative and Funding Requirements

- A dollar-for-dollar non-Federal match is required for all projects; Federal appropriations or other Federal grants may not be used for match. Matching funds should be "in-hand" or otherwise committed at the time that the acquisition proposal is submitted to NPS. NPS will accept proposals from applicants who have not yet secured their matching share, but it reserves the right to provide such applicants with a conditional response pending the availability of matching funds within a specified period of time. If partners will not commit matching funds without the leverage provided by this acquisition grant, applicants may provide a letter from potential funding sources guaranteeing that receipt of a battlefield acquisition grant will release matching funds.

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• Section 6.f. of the Land and Water Conservation Act requires that the land acquired with these funds shall not be converted to other uses without the express written consent of the Secretary of the Interior, but must be preserved in perpetuity. These provisions must be included in any conveyance documents of land or interests in lands acquired with grant funds. All Battlefield Acquisition grantees must agree that a permanent record will be kept in the relevant public property records and be available for public inspection to the effect that this property was acquired with Federal assistance, and that it will not be converted to other than preservation uses without the written approval of NPS. All grantees further agree, therefore, that the appropriate remedy in the event of a breach by the grantee of this agreement shall be the specific performance of this agreement, and that the amount of the grant cannot be repaid to negate the requirements of this agreement.

• Because the Section 6.f. "non-conversion" clause noted above is not necessarily sufficient to protect the historic features of the battlefield, NPS also requires that all Battlefield Acquisition grantees or subgrantees must encumber the title to the acquired battlefield property with a preservation easement running with the land, in favor of and enforceable in court by the State Historic Preservation Office, or by another government agency acceptable to NPS, in perpetuity. In cases where a State government agency will acquire and manage the property, the State must enter into a letter of agreement with NPS, stating that the State will preserve and maintain the property and its historic features for future generations. This letter will be recorded with the deed for the property and will run with the land in perpetuity.

• The fundamental purpose of the Land and Water Conservation Fund is to assist in the acquisition and/or development of public outdoor recreation areas. Accordingly, grantees must provide for the appropriate public access to and enjoyment of any lands or interests in lands acquired with assistance from this program, subject to necessary and reasonable measures on the part of the grantee to protect the historic features of the battlefield from damage or loss.

• Prior to the expenditure of grant funds for the purchase of real property, a current appraisal must be obtained. This appraisal must have an effective date within 180 calendar days of the signing of the contract to purchase the property. A professional appraiser licensed and certified in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), as amended, in the State where the appraised property is located must perform the appraisal. A copy of the appraisal must be submitted to NPS for review to support the proposed acquisition cost. Appraisal preparation, documentation and reporting must be made in conformance with the standards and practices of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as codified in 49 CFR 24.103, and the Uniform Standards of Professional Appraisal Practices (USPAP Standards 1 and 2) published by the Interagency Land Acquisition Conference. A copy of the appraisal standards can be obtained from the Department of Justice Web site at *http://www.usdoj.gov/enrd/land-ack/fwd*. Appraisals will be reviewed by NPS for conformance with the Federal appraisal requirements. The cost of the appraisal is an allowable cost for this grant.

• Grantees may not charge costs for administering the project to the grant or to the required matching share.

Proposal Package

Each proposal should include the following elements (all must be present before the proposal will be accepted by the ABPP):

(1) CWSAC Priority Listing and Map

The applicant must include the CWSAC priority listing and document that the proposed acquisition lies within the battlefield core and/or study area, as defined by the CWSAC. Applicants must submit a USGS quadrangle map with the boundaries of the proposed acquisition clearly drawn.

(2) Threat to the Battlefield

The applicant must demonstrate that the battlefield is imminently threatened. The nature, the extent, and the level of severity of the threat to the battlefield must be clearly and convincingly stated. Further, the applicant must describe how and to what extent the proposed acquisition addresses the described threat.

(3) Ability to Secure Non-Federal Match

An applicant that has secured matching funds must list all sources of those funds. The applicant must certify that the non-federal matching funds are either "in-hand" or otherwise committed in writing at the time of application. Third-party matching share commitments must be documented by letter from the third party. Matching share commitments contingent upon receipt of federal funds from this program are acceptable.

An applicant that has not yet secured matching funds must submit a specific, credible plan for raising the necessary matching funds. The plan must identify potential sources of funds. It must include a proposed schedule, usually not more than 120 days, for securing funds or commitments of funds.

(4) Immediacy of Acquisition

The applicant must demonstrate that the owner of the property to be acquired is willing to sell the land at an agreed-upon price. Acceptable documentation includes a contract or contingent contract to buy the land, or a letter from the owner indicating willingness to enter into such a contract at a specified price. The applicant should include a schedule for completion of the acquisition within the near future.

For Additional Information

Questions and requests may be addressed to Paul Hawke, Chief, American Battlefield Protection Program, at 202–343–1005.

Proposal Submission

Proposal packages must be submitted in hard copy. Faxed proposals and proposals submitted electronically will not be accepted. Incomplete proposals will not be considered. Unsuccessful applicants may resubmit a more complete proposal for consideration in a later round of awards.

A complete proposal package contains all of the following items

• A carefully drawn map on a USGS Quadrangle Map that defines the boundaries of the battlefield and identifies within those boundaries the specific lands to be acquired.

• A statement defining the threat to the battlefield. The statement should highlight the impact of this threat on the proposed acquisition parcel.

• A statement from the property owner indicating a willingness to sell or to negotiate for the sale of the property.

• A list of sources of the required non-Federal matching share. Verification of the availability of these funds must be included with this proposal.

Application Deadlines

Applicants may submit their proposals to NPS at any time. Applications for Priority 1 and 2 battlefields will be reviewed as they are received. NPS will notify the applicant of its decision within 30 days of receipt of the application. Applications for Priority 3 and 4 battlefields will be reviewed every four months beginning on June 1, 2002, and thereafter on October 1, 2002, February 1, 2003, June 1, 2003, and October 1, 2003, or until funds are no longer available. For example, a Priority 3 or 4 application received on June 2, 2002 would not be reviewed until October 1, 2002. NPS will notify Priority 3 and 4 applicants of its decision within 45 days of the pertinent deadline above.

Dated: February 13, 2002.

Hampton Tucker,

Grants Management Specialist, Heritage Preservation Services.

[FR Doc. 02–7251 Filed 3–25–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 2, 2002. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by April 10, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Alameda County

Remar Bakery, 1010 46th St., Emeryville, 02000328

Humboldt County

Washington School, 1910 California St., Eureka, 02000329

Los Angeles County

Broadway Theatre and Commercial District (Boundary Increase), 242, 248–260, 249–259, 900–911, 908–910, 921–937, 930–947 S. Broadway, Los Angeles, 02000330

CONNECTICUT

Fairfield County

Gores, Landis, House, 192 Cross Ridge Rd., New Canaan, 02000331

Hartford County

Erwin Home for Worthy and Indigent Women, 140 Bassett St., New Britain, 02000332

Litchfield County

Benedict, Francis Jr., House, 85 N. Colebrook Rd., Norfolk, 02000333

Esperanza, 511 Town Hill Rd., New Hartford, 02000334

New Haven County

Canoe Brook Historic District, Roughly along Bradley St., Cherry Hill Rd., Home Place, Lincoln Ave., Main and N. Harbor Sts., Branford, 02000335

East Haven Green Historic District, 263, 270, 274 Hemingway Ave., 125, 129, 133, 139, 143, 150 Main St., 3, 7, 11, 15, 23, 27, 39, 47 Park Pl. & 58, 100 River St., East Haven, 02000336

New London County

Quaker Hill Historic District, Roughly along Old Norwich Rd. from Richards Grove Rd. to Mohegan Ave. Pkwy., Waterford, 02000337

GEORGIA

Bibb County

Cherokee Brick and Tile Company, 3250 Waterville Rd., Macon, 02000338

Coweta County

Newnan Cotton Mill and Mill Village Historic District, Roughly bounded by E. Washington, Wilcoxen and Farmer Sts., and CSX RR., Newnan, 02000339

Warren County

Warrenton Downtown Historic District, Roughly centered on jct. of Main and Depot Sts., Warrenton, 02000340

KENTUCKY

Boone County

Crisler—Crisler Mounds Site, Address Restricted, Hebron, 02000341

Logan County

Cedar Grove Rosenwald School, 375 Cedar Grove Rd., Olmstead, 02000342

Madison County

Berea College Forest, KY 21, 2 mi. E. of Berea College campus, Berea, 02000343

Mercer County

Froman—McCann House, 532 Bailey Pike, Harrodsburg, 02000344

Nelson County

Johnson, Silvester, House and Business, 151–153 N. Main St., New Haven, 02000345

MAINE

Androscoggin County

Penney, Samuel, House, 78 Maple St., Mechanics Falls, 02000346

Franklin County

Coburn, John G., 360 River Rd., Carthage, 02000347

Kennebec County

Powder House Lot, High St., 1/4 mi. S. of jct. with Winthrop St., Hallowell, 02000348

Piscataquis County

Breakwater, The, S. tip of Kineo Is., W. side of Kineo Cove (Kineo Township), Rockwood, 02000349

Waldo County

Tranquility Grange No. 344, 1 mi. N. of jct. ME 52 and ME 173, Lincolnville Center, 02000350

Washington County

Boynton High School, Former, 78 High St., Eastport, 02000351

York County

Welch, Andrew, Homestead, 1286 Middle Rd., Parsonsfield, 02000352

MARYLAND

Montgomery County

Salmon—Stohlman House, 4728 Dorset Ave., Chevy Chase, 02000353

MISSISSIPPI

Oktibbeha County

Outlaw, Dossey A., Plantation, 2173 Oktoc Rd., Starkville, 02000354

MISSOURI

Benton County

Central Cole Camp Historic District, (Cole Camp, Missouri MPS) Roughly consists of the 100 blks. of E and W Main St., most of Maple St., 105 E. Butterfield, 106 N Olive, 107 N Boonville-Cole Camp, 02000355

Cape Girardeau County

Marquette Hotel, 338 Broadway St., Cape Girardeau, 02000356

Ste. Genevieve County

Ste. Genevieve Historic District, (Ste. Genevieve, Missouri MPS) Roughly bounded by Main St. and St. Mary's Rd., Roberts, 7th, and Seraphin Sts., Ste. Genevieve, 02000357

NEW YORK

Columbia County

Van Valkenburgh, James G. House, 31 Co. Rd. 13, Chatham, 02000358

Montgomery County

West Hill School, 3 Otsego St., Canajoharie, 02000359

New York County

Sugar Hill Historic District, Roughly bounded by W. 155th St., 145th St., Bradhurst Ave. and Convent Ave., New York, 02000360

Suffolk County

First Congregational Church of New Village, N. side of Middle Country Rd. W. of Elliot Ave., Lake Grove, 02000361

VIRGINIA

Albemarle County

Advance Mills, Jct. VA 743 and VA 641, Advance Mills, 02000362

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Bath County

Mustoe House, Rt. 2, Box 211, Hot Springs, 02000363

Richmond Independent City

Barton Heights Cemeteries, 1600 Lamb Ave., Richmond (Independent City), 02000364
Carver Residential Historic District, 700–1500 blks. W. Leigh, 700–1400 blks. W. Catherine, Clay, & Marshall, Richmond (Independent City), 02000365
Chestnut Hill—Plateau Historic District, 1st, 2nd, 3rd, 4th and 5th Aves. from Brooklyn Park Blvd. to Trigg St., Richmond, 02000366

Smyth County

Saltville Historic District, Main St., 1st Ave., Palmer Ave, Palmer Ln., Stadium Dr., and Henrytown Rd. Saltville, 02000367

Waynesboro Independent City

Port Republic Road Historic District, Alpha, Beta, Elkton Sts., Fairview Ave., Fontaine St., Minden Pl., Port Republic Rd., Riverside Dr. and Shiloh Ave., Waynesboro (Independent City), 02000368
Tree Streets Historic District, Roughly bounded by Pine Ave., Eleventh St., S. Wayne Ave., 16th St., and Oak Ave., Waynesboro (Independent City), 02000369

WISCONSIN

Waupaca County

Main Street Historic District, Roughly along S. and N. Main Sts. from W. Union to Granite Sts., Waupaca, 02000370

A request for a MOVE has been for the following Resources: The Boone County Clerk's Building within the

KENTUCKY

Boone County

Burlington Historic District, KY 18, Burlington, 79000961

WISCONSIN

Dane County

Brittingham Park Boathouse, N. Shore Dr., Madison, 82000649

[FR Doc. 02–7250 Filed 3–25–02; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: New Collection, Comments Requested

ACTION: 60 Day emergency notice of information collection under review: new collection; voluntary appeal file brochure.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 1, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the OMB, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, (202) 395–6466, Washington, DC, 20530.

During the first 60 days of this same review period, a regulator review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Natalie Goff-Haggerty, Program Analyst, Federal Bureau of Investigation, CJIS Division, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile at (304) 625–2356.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* New data collection.

(2) *Title of the Form:* Voluntary Appeal File Brochure.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None.

Sponsor: Criminal Justice Information Services Division of, Federal Bureau of Investigation, Department of Justice

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract: Primary:* Any individual requesting entry into the FBI/NICS Voluntary Appeal File (VAF).

Brief Abstract: Under the NICS final rule, 28 CFR 25.9(b)(1), (2), (3), published on (DATE), the NICS must destroy all identifying information on allowed transactions before the start of the next NICS operational day. If a potential purchaser is delayed or denied a firearm, then successfully appeals the decision, the NICS would not be able to retain the record(s) of the appeal or any supporting documentation/information. The purchaser would be continually if the record could not be updated, would be required to appeal the decision and resubmit documentation/information to overtime the appeal on subsequent purchases. The proposed change in the regulation would permit lawful purchasers to request that the NICS maintain documentation/information on the individual in a VAF will be maintained by the NICS for the purpose of preventing the future lengthy delays or denials of a firearm transfer.

The application contained on the VAF brochure will be the means for an individual to request entry into the VAF. This form will be available to the public through Federal Firearm Licensees, state points of contacts for gun checks, and on the NICS website at he internet address: www.fbi.gov/programs/nics/index/htm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The number of persons requesting entry into the VAF is estimated to be 24,000 individuals. It takes an average of five minutes to read and complete all areas of the application, an estimated two hours for the process of fingerprinting including travel, and 25 minutes to mail the form for a total of two and a half hours estimated burden to the respondent.

(6) *An estimate to the total burden (in hours) associated with the collection:* The number of persons requesting entry into the VAF is estimated to be 24,000 individuals. The time it takes each individual to complete the process is 2.5 hours. The total public burden hours is 24,000 respondents times 2.5 hours which would equal 60,000 total burden hours.

If additional information is required contact Mr. Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 20, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–7169 Filed 3–25–02; 8:45 am]
BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–043)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Fiber Materials,Inc., of Biddeford, Maine, has applied for a partially exclusive license to practice the invention described in NASA Case No. MSC–23314–1, entitled "Flexible Multi-Shock Shield," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATE(S): Responses to this notice must be received by April 10, 2002.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: March 19, 2002.

Paul G. Pastorek,

General Counsel.

[FR Doc. 02–7240 Filed 3–25–02; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act; Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, April 2, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7222B Marine Accident Report—Sinking of the U.S. Small Passenger Vessel Miss Majestic in Lake Hamilton, Hot Springs, Arkansas, on May 1, 1999.

7450 Railroad Accident Report—Derailment of Union Pacific Railroad Train QFPLI–26 at Eunice, Louisiana, on May 27, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, March 29, 2002.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: March 22, 2002.

Vicky O'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–7350 Filed 3–22–02; 2:23 pm]
BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its May 24, 2001, application for proposed amendment to Facility Operating License No. NPF–12 for the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would have revised the technical specifications to include the emergency feedwater system automatic isolation valves into the surveillance requirements.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 8, 2001 (66 FR 41625). However, by letter dated October 30, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 24, 2001, and the licensee's letter dated October 30, 2001, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of March 2002.

For the Nuclear Regulatory Commission.

Gordon E. Edison, Sr.

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–7217 Filed 3–25–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of two years.

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on the Medical Uses of Isotopes for the two year period commencing on March 20, 2002 is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

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Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; radiopharmacy; State medical regulation; patient's rights and care; health care administration; medical research; medical dosimetry, and Food and Drug Administration regulation.

FOR FURTHER INFORMATION PLEASE CONTACT: Angela Williamson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–5030.

Dated: March 20, 2002.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 02–7216 Filed 3–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Agency Holding The Meeting: Nuclear Regulatory Commission.

Date: Weeks of March 25, April 1, 8, 15, 22, 29, 2002.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters To Be Considered:

Week of March 25, 2002

Monday, March 25, 2002
1:00 p.m. Discussion of Intergovernmental Issues (Closed—Ex. 1)

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002

Week of April 8, 2002—Tentative

Friday, April 12, 2002
9:25 a.m. Affirmation Session (Public Meeting) (If needed)

Week of April 15, 2002—Tentative

There are no meetings scheduled for the Week of April 15, 2002

Week of April 22, 2002—Tentative

There are no meetings scheduled for the Week of April 22, 2002

Week of April 29, 2002—Tentative

Tuesday, April 30, 2002
9:30 a.m. Discussion of Intergovernmental Issues (Closed)
Wednesday, May 1, 2002
8:55 a.m. Affirmation Session (Public meeting). (If needed)
9:00 a.m. Briefing on Results of Agency Action Review Meeting—Reactors, (Public Meeting), (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information:

By a vote of 5–0 on March 19 and 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule on Revision of the Skin Dose Limit, 10 CFR part 20" be held on March 20, and on less than one week's notice to the public.

By a vote of 5–0 on March 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on March 22, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 21, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–7318 Filed 3–22–02; 11:47 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin (BL) 2002–01 to all holders of operating licenses for pressurized-water nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor pressure vessel. It addresses the recent discovery of degradation in the reactor pressure vessel head at the Davis-Besse Nuclear Power Station and the concerns this has raised about the structural integrity of the reactor coolant pressure boundary throughout the pressurized-water reactor (PWR) industry. The purpose of the bulletin is to require PWR licensees to submit (1) information related to the integrity of the reactor coolant pressure boundary including the reactor pressure vessel head, at their respective facilities, and the extent to which inspections have been undertaken to satisfy applicable regulatory requirements, and (2) the basis for concluding that their plants satisfy applicable regulatory requirements related to the structural integrity of the reactor coolant pressure boundary and future inspections will ensure continued compliance with applicable regulatory requirements. This information is necessary to permit the assessment of plant-specific compliance with NRC regulations. The information will also be used by the NRC staff to determine the need for and to guide the development of additional regulatory actions to address reactor coolant pressure boundary integrity.

DATES: The bulletin was issued on March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Karwoski, at (301) 415–2752 or by e-mail to *kjk1@nrc.gov*.

SUPPLEMENTARY INFORMATION: Bulletin 2002–01 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. The ADAMS Accession No. for the bulletin is ML020770497.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of March 2002.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–7218 Filed 3–25–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25467; 812–12214]

Bear Stearns Funds, et al.; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 ("Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit (a) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (b) the registered investment companies to use uninvested cash ("Uninvested Cash") and cash collateral from securities lending transactions ("Cash Collateral") to purchase shares of certain money market funds; and (c) the registered investment companies to lend portfolio securities to affiliated broker-dealers.

APPLICANTS: The Bear Stearns Funds ("BSF"), Bear, Stearns & Co. Inc. ("Bear Stearns"), Bear Stearns Securities Corp. ("BSSC"), Bear Stearns Asset Management Inc. ("BSAM"), Bear Stearns Funds Management Inc. ("BSFM"), and Custodial Trust Company ("CTC").

FILING DATES: The application was filed on August 9, 2000 and amended on March 15, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Jay G. Baris, Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. BSF is a Massachusetts business trust registered under the Act as an open-end management investment company. BSF currently consists of 12 separate portfolios (together with future series, the "Portfolios") with varying investment objectives and management policies, one of which is the Prime Money Market Portfolio ("PMMP"), a money market fund that complies with the requirements of rule 2a–7 under the Act. BSAM, a wholly owned subsidiary of The Bear Stearns Companies, Inc. ("BSCI"), is registered as an investment adviser under the Investment Advisers Act of 1940. BSAM serves as each Portfolio's investment adviser. BSFM, a wholly owned subsidiary of BSCI, serves as each Portfolio's administrator. Bear Stearns, an affiliate of BSAM, serves as each Portfolio's distributor.

2. CTC, a wholly owned subsidiary of BSCI, serves as custodian of each of the existing Portfolios (other than the Emerging Markets Debt Portfolio) and as lending agent with BSSC, a wholly owned subsidiary of BSCI (each of CTC and BSSC, the "Lending Agent"). BSSC is a broker-dealer registered under the Securities Exchange Act of 1934.

3. Applicants request that any relief granted pursuant to the application also apply to (a) any other registered investment company or series thereof for which BSAM or any person controlling, controlled by or under common control with BSAM (included in the term "BSAM") now or in the future serves as investment adviser (such investment company or series thereof included in the term "Portfolio"), (b) any other broker-dealer now or in the future controlling, controlled by or under common control with BSSC (together with BSSC, "Affiliated Broker-Dealers"), and (c) any investment entity excluded from the definition of investment company under section 3(c)(1) or section 3(c)(7) of the Act, advised by BSAM, and established for the purpose of investment of Cash Collateral in connection with the securities lending program described below (each, a "PIF").[1] Each PIF will comply with the requirements of rule 2a–7 under the Act.

4. CTC currently administers a securities lending program ("Lending Program") pursuant to a securities lending policy with the respective Portfolios that participate in the securities lending program (the "Lending Portfolios"). Each Lending Portfolio is permitted by its investment policies to lend its portfolio securities, and its prospectus or statement of additional information will disclose that it may engage in portfolio securities lending. BSF's Board of Trustees (the "Board"), including a majority of the trustees who are not interested persons within the meaning of section 2(a)(19) of the Act ("Disinterested Trustees"), have approved BSF's participation in the Lending Program, and will monitor the Lending Program on an ongoing basis.

5. Under the Lending Program, the Lending Agent will enter into agreements ("Securities Loan Agreements") with certain entities ("Borrowers") that wish to borrow portfolio securities owned by the respective Lending Portfolios. The Securities Loan Agreements will require that loans be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for such loans may include Cash Collateral or other collateral, such as U.S. government securities.

6. Under the Lending Program, the Lending Agent will be responsible for soliciting Borrowers for each Lending Portfolio's securities, monitoring daily the value of the loaned securities and collateral, and requesting Borrowers to add to the collateral when required by the Securities Loan Agreements. The Lending Agent may manage Cash Collateral only in accordance with specific parameters established by a Lending Portfolio. These guidelines include permissible investment of Cash

[1] All existing entities that currently intend to rely on the requested relief have been named as applicants. All existing entities currently intending to rely on the requested order have been named as applicants.

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Collateral as well as a list of eligible types of investments.[2]

7. With respect to securities loans that are collateralized by assets other than cash, the Lending Portfolio involved will receive a loan fee paid by the Borrower equal to a percentage of the market value as specified in the applicable Securities Loan Agreement. With respect to securities loans collateralized by cash, the Borrower will be entitled to receive a fixed Cash Collateral fee based on the amount of cash held as collateral. The Lending Portfolio in such a case will be compensated on the spread between the net amount earned on the investment of the Cash Collateral and the Borrower's Cash Collateral Fee.

8. Portfolios may have Uninvested Cash that comes from a variety of sources, including dividend or interest payments received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemptions, as well as new monies received from investors.

9. The applicants request relief to permit: (a) The Lending Portfolios to pay the Lending Agent a fee based on a share of the revenue derived from securities lending activities; (b) the Portfolios to use Cash Collateral and Uninvested Cash (together, "Cash Balances") to purchase shares of PMMP, PIFs and any future registered open-end management investment company that complies with rule 2a–7 under the Act (together with PMMP, "Money Market Funds"); and (c) the Lending Portfolios to lend portfolio securities to Affiliated Broker-Dealers.

Applicants' Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and Rule 17d–1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling or controlled by, or under common control with, such other person. Applicants state that CTC and BSAM are wholly owned subsidiaries of BSCI, and therefore CTC may be deemed to be an affiliated person of BSAM, the investment adviser for each Lending Portfolio. Because a fee arrangement between a Lending Agent and a Lending Portfolio, under which compensation is based on a percentage of the revenue generated by securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1, applicants request an order to permit each Lending Portfolio to pay, and the Lending Agent to accept, such fees in connection with services provided by the Lending Agent to a Lending Portfolio.

2. Applicants state that each Lending Portfolio will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with CTC or BSSC, as Lending Agent, will meet the standards of rule 17d–1 under the Act:

(a) In connection with the approval of CTC or BSSC as Lending Agent for a Lending Portfolio and implementation of the proposed fee arrangement, a majority of the Board, including a majority of Disinterested Trustees, will determine that (i) the contract with the Lending Agent is in the best interests of the Lending Portfolio and its shareholders, (ii) the services to be performed by the Lending Agent are appropriate for the Lending Portfolio, (iii) the nature and quality of the services provided by the Lending Agent are at least equal to those provided by others offering the same or similar services for similar compensation, and (iv) the fees for the Lending Agent's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Lending Portfolio's contract with CTC or BSSC for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby CTC or BSSC will be compensated as Lending Agent based on a percentage of the revenue generated by a Lending Portfolio's participation in the Lending Program, the Board will obtain competitive quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to paragraph (a) above.

(d) The Board, including a majority of the Disinterested Trustees, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Lending Portfolio will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in Money Market Funds and PIFs

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Portfolio to use Cash Balances to acquire shares of the Money Market Funds in excess of the limits imposed by section 12(d)(1)(A), and the Money Market Funds to sell its shares to the Portfolios in excess of the percentage limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by sections 12(d)(1)(A) and (B) of the Act are created by the proposed investment of Cash Balances in PMMP. Applicants state that the arrangement will not result in an inappropriate layering of fees because PMMP will not charge a sales load, redemption fee, asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. Conduct Rules ("NASD Conduct Rules")), or if such shares are subject to any such fees, BSAM will waive its advisory fee for each Portfolio in an amount that offsets the amount of such fees incurred by the Portfolios. In addition, before approving any advisory contract for a Portfolio, the Board, including a majority of the Disinterested Trustees, will consider the extent to which the advisory fees charged to the Portfolio by BSAM should be reduced or waived to account for reduced services provided to the Portfolio by BSAM as a result of Uninvested Cash being invested in PMMP or PIF. If PMMP offers more than one class of shares, each Portfolio will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Neither PMMP nor any PIF whose shares are acquired by a Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A).

4. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person, acting as principal, from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among other things, any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person or any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that to the extent that a Portfolio owns 5% or more of the voting securities of PMMP or PIF, PMMP or PIF could be deemed to be an affiliated person of the Portfolio. In addition, to the extent that the Portfolios, PMMP and PIF share a common investment adviser and the Portfolios and PMMP share a common Board, applicants state that the Portfolios, PMMP and PIF may be considered to be under common control and therefore be affiliated persons. As a result, section 17(a) may prohibit the sale of shares of PMMP or PIF to a Portfolio, and the redemption of such shares by PMMP or PIF from the Portfolio.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Portfolios to use Cash Balances to purchase shares of PMMP or PIF and to permit the redemption of the shares. Applicants maintain that the terms of the proposed transaction are reasonable and fair because the Portfolios will purchase and sell shares of PMMP or PIF on the same terms and on the same basis as other shareholders. Applicants assert that the proposed transactions comply with each Portfolio's investment restrictions and policies. Applicants further state that the investment of Cash Collateral in PMMP or a PIF will comply with all present and future Commission and staff positions concerning securities lending. Applicants also state that the PIFs will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

7. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants state that the Portfolios, BSAM (by managing assets of the Portfolios and PIFs), and PMMP or a PIF (by selling shares to and redeeming shares from the Portfolios) may be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d–1. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the described transactions relating to investments of Cash Balances in PMMP or PIFs. For the reasons discussed above, applicants believe that the proposed transactions meet the standards of rule 17d–1.

C. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company, to borrow money or other property from the registered investment company. Applicants state that because an Affiliated Broker-Dealer may be deemed to be a person under common control with BSAM, an Affiliated Broker-Dealer may be considered an affiliated person, or a second-tier affiliate, of a Lending Portfolio. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Lending Portfolios.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit the Lending Portfolios to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Portfolio will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.[3] In this regard, applicants state that at least 50% of the loans made by the Lending Portfolios, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board, including a majority of the Disinterested Trustees, and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending Portfolio. The Board, including a majority of the Disinterested Trustees, also will review quarterly reports on all lending activity.

[2] The personnel who will provide day-to-day lending agency services to the Lending Portfolios do not and will not provide investment advisory services to the Lending Portfolios, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Lending Portfolios.

[3] A "spread" is the compensation earned by a Lending Portfolio from a securities loan, which compensation is in the form either of a lending fee payable by the Borrower of the Lending Portfolio (when non-cash collateral is posted) or of the excess retained by the Lending Portfolio over a rebate rate payable by the Lending Portfolio to the Borrower (when Cash Collateral is posted and then invested by the Lending Portfolio).

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Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. General

1.Each Portfolio, Money Market Fund and PIF that relies on the requested order will be advised by BSAM.

2. The securities lending program of each Lending Portfolio will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

3. Before a Lending Portfolio may participate in the Lending Program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Lending Portfolio's participation in the Lending Program. The Board will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board, including a majority of the Disinterested Trustees, will determine that investing Cash Collateral in PMMP or a PIF is in the best interests of the shareholders of the Lending Portfolio.

B. Investment of Cash Balances in PMMP and PIF

1. The shares of PMMP or a PIF sold to and redeemed from the Portfolios will not be subject to a sales load, redemption fee, asset-based sales charge, or service fees (as defined in the NASD Conduct Rules).

2. If BSAM collects a fee from PMMP or a PIF for acting as its investment adviser with respect to assets invested by a Portfolio, before the next meeting of the Board on behalf of the Portfolio is held for the purpose of voting on an advisory contract under section 15 of the Act, BSAM will provide the Board with specific information regarding the approximate cost to BSAM for, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Portfolio that can be expected to be invested in PMMP or the PIF. Before approving any advisory contract under section 15, the Board, on behalf of the Portfolio, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Portfolio by BSAM should be reduced to account for the fee indirectly paid by the Portfolio because of the advisory fee paid by PMMP or a PIF to BSAM. The minute books of each Portfolio will record fully the Board's considerations in approving the advisory contract, including the considerations relating to the fees referred to above.

3. Each of the Portfolios will invest Uninvested Cash in, and hold shares of, PMMP and PIFs only to the extent that the Portfolio's aggregate investment of Uninvested Cash in PMMP and PIF does not exceed 25% of the Portfolio's total assets. For purposes of this limitation, each Portfolio or series thereof will be treated as a separate investment company.

4. Investment in shares of PMMP and PIFs will be in accordance with each Portfolio's respective investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. Neither PMMP nor any PIF will acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. A majority of the Board of a Portfolio, including a majority of the Disinterested Trustees of such Portfolio, will initially and at least annually thereafter, determine that investment of Uninvested Cash in shares of PMMP or a PIF is in the best interests of the shareholders of the Portfolio.

7. A Portfolio's Uninvested Cash will be invested in PMMP or a PIF only if PMMP or the PIF invests solely in the types of instruments that the Portfolio has authorized for the investment of its Uninvested Cash.

8. Each PIF in which a Portfolio invests will comply with rule 2a–7 under the Act. Each PIF will value its shares, as of the close of business on each business day, using the amortized cost method to determine its net asset value per share. BSAM, as the managing member of the PIF, will adopt and monitor the procedures described in rule 2a–7(c)(7) under the Act and BSAM will take such other actions as are required to be taken pursuant to such procedures. A Portfolio may purchase shares of a PIF only if BSAM determines on an ongoing basis that the PIF is operating as a money market fund in compliance with rule 2a–7. BSAM will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and the Staff .

9. Each PIF in which a Portfolio invests will comply with sections 17(a), (d) and (e) and 18 of the Act as if the PIF were an open-end registered investment company. With respect to all redemption requests made by a Portfolio, the PIF will comply with section 22(e) of the Act. BSAM, as managing member, will adopt procedures designed to ensure that the PIF complies with sections 17(a), (d) and (e), 18 and 22(e) of the Act. BSAM will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and the staff.

10. The net asset value per share of a PIF in which a Portfolio may invest will be determined by dividing the value of the assets belonging to the PIF, less the liabilities of the PIF, by the number of shares of the PIF outstanding.

11. Each Portfolio will purchase and redeem shares of a PIF on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis as other shareholders investing in the same PIF. A separate account will be established in the shareholder records of the PIF for the account of each applicable Portfolio.

C. Loans to Affiliated Broker-Dealers

1. The Lending Portfolios, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one broker-dealer on the approved list of Borrowers of securities from a Lending Portfolio will be in accordance with a schedule to be approved by the Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Lending Portfolio, computed at market value.

3. A Lending Portfolio will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. (a) All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by the Board and by a majority of the Disinterested Trustees ("Schedule of Spreads").

(b) The Schedule of Spreads will set forth rates of compensation to the Lending Portfolio that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all Borrowers of the Lending Portfolios' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

(d) If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) Each Lending Portfolios' portfolio securities lending program will be monitored on a daily basis by an officer of the Lending Portfolio who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Board, including a majority of the Disinterested Trustees.

5. The Board, including a majority of the Disinterested Trustees, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Lending Portfolios will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the procedures and the other undertakings set forth herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7167 Filed 3–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45593; File No. SR–GSCC–2001–08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Revising Margin Factor and Offset Class Schedules

March 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 11, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change refines GSCC's "margin factor and offset class schedules" and "disallowance percentage schedules."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organizotion's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC netting members are required to maintain deposits in a clearing fund account. Each member's required deposit is calculated daily to ensure that enough funds are on hand to cover the risks associated with that member's activities. GSCC calculates the margin amount on a member's net settlement positions using factors (percentages) that are based on an assessment of historical daily price volatility data. In order to give "credit" for offsetting net settlement positions to the extent appropriate, GSCC established offset classes for securities of varying maturity and disallowance percentages among those different offset classes.

As a result of GSCC's ongoing monitoring of its risk management processes, GSCC has determined to refine its "margin factor and offset class schedules" and its "disallowance percentage schedules" to take into account (i) its growing business in non-mortgage-backed agency securities ("Agencies") and in mortgage-backed agency securities ("MBS"),[3] (ii) potential differences in price volatility between its regular settlement services ("DVP service") and its GCF Repo service, and (iii) the recent establishment of a daily data feed from GSCC's clearing banks that provides GSCC with accurate information regarding the specific securities which its members deliver against generic CUSIP numbers established for the GCF Repo service.

In the revised margin factor and offset class schedules, GSCC has established a different margin factor for MBS. Although it has retained the same margin factors for Agencies as it uses for Treasury securities,[4] the format of the new schedules will enable GSCC to more easily establish different margin factors for Agencies in the future if the need arises. The clearing bank data feed now permits GSCC to classify each security settled in the GCF Repo service according to its true remaining maturity instead of requiring GSCC to categorize each security as if it had the longest remaining maturity of all the securities within the same generic CUSIP number. It should be noted that for the present

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Mortgage-backed agency securities are only processed in the GCF Repo service at GSCC and not in GSCC's regular services.

[4] Price volatility studies indicate that there is currently no need to establish different margin factors for Treasuries and Agencies. GSCC monitors price volatility on an ongoing basis.

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time. GSCC has assigned the same conservative margin factor to all MBS.

In the revised margin factor and offset class schedules, GSCC has segregated (i) Treasury securities settled in the DVP service, (ii) Treasury securities settled in the GCF Repo service, (iii) Agencies settled in the DVP service, (iv) Agencies settled in the GCF Repo service, and (v) MBS settled in the GCF Repo service into separate offset classes.

The revised disallowance percentage schedules provide for offsets among the different offset classes. These schedules take into account the increasing volatility in the interest rate spreads between Treasury securities and Agencies. The schedules also permit offsets between MBS on the one hand and Treasury securities and Agencies on the other. It should be noted that these offsets are based on a more conservative model than GSCC uses with respect to other securities it processes because it assumes that GSCC would need an extra business day to liquidate pools of securities and to correct for model risk that is inherent in MBS.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enable GSCC to modify its margining and offsetting schedules to promote a more prudent and accurate margining process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. The Commission believes that the revised margin factor and offset class schedules enables GSCC to promote a more accurate margining process. As such, the Commission believes GSCC's proposal is consistent with its obligation to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

GSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow GSCC to immediately employ the revised schedules in its daily margin calculations.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–08 and should be submitted by April 16, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–GSCC–2001–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7168 Filed 3–25–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 25, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Requests from borrowers (Financial Statement).

No: 770.

Frequency: On Occasion.

Description of Respondents: SBA Borrower's or guarantor's who request a compromise.

Responses: 5,000.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–7242 Filed 3–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 25, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Servicing Agent Agreement.

No: 1506.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies and SBA Borrower's.

Responses: 4,200.

Annual Burden: 4,200.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–7243 Filed 3–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region X Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region X Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, April 4, 2002 at 9:00 a.m. at the Portland Development Commission, 1900 SW 4th Avenue, Room 2500–A, Portland, OR 97201, phone (503) 823–3210, fax (503) 823–3368, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Don Matsuda in writing or by fax, in order to be put on the agenda. Don Matsuda, U.S. Small Business Administration, Portland District Office, 1515 S. W. Fifth Avenue, Suite 1050, Portland, OR 97201, phone (503) 326–5221, fax (503) 326–5103, e-mail: *donald.matsuda@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: March 19, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–7150 Filed 3–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region X Regulatory Fairness Board; Public Hearing

The Small Business Administration Region X Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Hearing on Tuesday, April 2, 2002 at 9:30 a.m. at the SBA District Office, Business Enterprise Center, 1200 Sixth Avenue, Park Place Building, Suite 1700, Seattle, WA 98101, Phone (206) 553–7342, fax (206) 553–7066, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning the regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Julie J. McFarlane in writing or by fax, in order to be put on the agenda. Julie J. McFarlane, U.S. Small Business Administration, Seattle District Office, 1200 Sixth Avenue, Park Place Building, Suite 1700, Seattle, WA 98101, Phone (206) 553–7342, fax (206) 553–7066, e-mail: *Julie.mcfarlane@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: March 19, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–7151 Filed 3–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3953]

M/DGHR/MED/EX; 60-Day Notice of Proposed Information Collection: Form DS–1622, Medical History and Examination for Foreign Service—For Children 11 Years and Under; Form DS–1843, Medical History and Examination for Foreign Service—For Persons 12 Years and Over; (OMB# 1405–0068)

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of the notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of a current collection.

Originating Office: Office of Medical Services, M/DGHR/MED.

Title of Information Collection: Medical History and Examination for Foreign Service—For Children 11 years and Under; Medical History and Examination for Foreign Service—For Persons 12 Years and Over.

Frequency: Biennially.

Form Number: DS–1622 and DS–1843.

Respondents: Candidates for Foreign Service Positions and their Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: One Hour.

Total Estimated Burden: 12,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

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FOR FURTHER ADDITIONAL INFORMATION: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to John A. Triplett, M.D., Office of Medical Services, 2401 E Street, NW., Room 201, U.S. Department of State, Washington, DC 20520.

Dated: March 11, 2002.

Maria C. Melchiorre,

Acting Executive Director, Office of Medical Services, Department of State.

[FR Doc. 02-7239 Filed 3-25-02; 8:45 am]

BILLING CODE 4710-36-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001-11237]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115-0596 and 2115-0597

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded two Information Collection Reports (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before April 25, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2001-11237] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001. (b) OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL-401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202-493-2251 or (b) OIRA 202-395-7285, attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available for inspection and copying in public dockets. Copies are available in docket USCG 2001-11237 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G-CIM-2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202-267-2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [66 FR 64336 (December 12, 2001)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2001-11106. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Claims Under the Oil Pollution Act of 1990.

OMB Control Number: 2115-0596.

Type of Request: Extension of a currently approved collection.

Affected Public: Claimants and responsible parties of oil spills.

Forms: This collection of information does not require the public to fill out forms, but does require the public to provide initial information in writing. Follow-up information, if necessary, may be provided by letter, fax or e-mail.

Abstract: The Coast Guard will use the information collected to determine whether claims submitted to the Oil Spill Liability Trust Fund are compensable and, if they are, to ensure that the Fund reimburses them in the correct amounts.

Annual Estimated Burden Hours: The estimated burden is 13,722 hours a year.

2. *Title:* State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990.

OMB Control Number: 2115-0597.

Type of Request: Extension of a currently approved collection.

Affected Public: State Governments.

Forms: This collection of information does not require the public to fill out Coast Guard forms, but does require the public to provide information in writing.

Abstract: The Coast Guard will use information provided by the State to the Coast Guard National Pollution Funds Center to determine whether expenditures submitted by the State to the Fund are compensable and, if they are, to ensure payment of the correct amount of funding from the Oil Spill Liability Trust Fund.

Annual Estimated Burden Hours: The estimated burden is 3 hours a year.

Dated: March 20, 2002.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 02-7231 Filed 3-25-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2002-11893]

Review of Boating Safety Regulations

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a comprehensive review of current boating safety regulations in three stages. These stages correspond with sequential meetings of the National Boating Safety Advisory Council (NBSAC). This notice requests comments for the second stage, involving manufacturer requirements to prevent drownings. We will provide NBSAC members with a summary of the comments before the October 2002 meeting and will consider all relevant public comments and NBSAC recommendations in determining which regulations, if any, should be changed.

DATES: Comments and related material for the second stage of the review must reach the Docket Management Facility on or before May 28, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG-2002-11893), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW, Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1-800-368-5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org* or at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Carlton Perry, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202-267-0979 or by e-mail at *cperry@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

NBSAC is an advisory committee created under 46 U.S.C. 13110(a). It advises the Coast Guard on substantive matters of boating safety. Its 21 members come from 3 segments of the boating community: the boating industry; State officials on boating safety; and representatives of national recreational boating organizations and the general public. NBSAC meets twice a year, in the spring and fall. The meetings are open to the public. Under 46 U.S.C. 4302 (c)(4),the Coast Guard must consult NBSAC in the formulation of boating safety regulations.

Past Comprehensive Reviews

In 1981, 1986, 1992, and 1997, we conducted comprehensive reviews of our boating safety regulations in conjunction with a single NBSAC meeting. We asked NBSAC to determine whether the regulations were still necessary, beneficial, cost-effective, and consistent with current technology. These periodic reviews led NBSAC to make numerous recommendations to improve and update specific provisions in the regulations.

Current Comprehensive Review

We are conducting this review in three stages at sequential NBSAC meetings. We published the first notice announcing in the **Federal Register** on August 30, 2001 [66 FR 45791], stating that NBSAC would review regulations of the first stage in April 2002. We will publish notices in the future, requesting comments for the remaining stage, announcing the specific date of the meeting. Each stage will evaluate current boating safety regulations, but will not include any rules under development.

The first review stage includes administrative requirements for manufacturers and importers of recreational vessels (33 CFR part 179 and part 181, subparts B and C) and fire and explosion prevention requirements for manufacturers and importers of recreational vessels (33 CFR part 183, subparts I, J, and K). NBSAC will review these regulations and comments at its April 2002 meeting.

The second review stage includes requirements for manufacturers and importers of recreational vessels to prevent drownings (33 CFR part 183, subparts B, C, D, F, G, H, and L). NBSAC will review these regulations and comments at its October 2002 meeting.

The third review stage includes requirements for operators (33 CFR parts 95, 100, 173, 174, 175, 177 and 46 CFR part 25, subparts 25.30, 25.35 and 25.40, and part 58, subparts 58.03 and 58.10). NBSAC will review these regulations and comments at its April 2003 meeting.

You may find copies of the boating safety regulations at any public library that carries the United States Code of Federal Regulations. You may buy them from the Superintendent, Government Printing Office, telephone: 202-512-2250; facsimile: 202-512-1800. You may also access them on the Internet at URL address *http://www.gpo.gov/nara/cfr*.

Request for Comments

We encourage interested persons from all sectors of the boating community to participate in this second regulatory review stage by submitting comments and related material regarding any changes to the current boating safety regulations, including elimination or revocation of any requirements. If you submit comments, please include your name and address, identify the docket number for this notice (USCG-2002-11893) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

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We are especially interested in responses to the following questions:

- *Need*—Is there still a need for the regulation? Is the problem that the regulation was originally intended to solve still a problem?
- *Technical Accuracy*—Has the regulation kept pace with the technological, economic, environmental, or other relevant conditions? Would any particular changes make it more effective in achieving its intended goal?
- *Cost/Benefit*—What are the costs, or other burdens or adverse effects, including impacts on use of energy, of the regulation? What are the benefits of the regulation in terms of personal safety or other values? Do the benefits outweigh the costs?
- *Problems*—Are there any problems or complaints in understanding or complying with the regulation?
- *Alternative*—Are there any nonregulatory ways to achieve the goal of the regulation at a lower cost, lower burden, or adverse effect?

We will summarize all comments received in response to this request during the comment period and will provide a copy of the summary to the NBSAC members for their consideration before the October 2002 meeting. We will consider all relevant comments in the formulation of any changes to the boating safety regulations that may result from this review stage.

Dated: March 20, 2002.

Kenneth T. Venuto,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 02–7234 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement: Marshall and St. Joseph Counties in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to US 31 in Marshall and St. Joseph Counties in Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dirks, Environmental Specialist, Federal Highway Administration, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana 46204. Telephone: (317) 226–7492, Fax: (317) 226–7341, e-mail: *robert.dirks@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FWHA in cooperation with the Indiana Department of Transportation (INDOT) will prepare an EIS to improve the US 31 corridor through Marshall and St. Joseph Counties in Indiana. The proposed corridor is between US 30 near Plymouth and US 20 in South Bend, a distance of about 20 miles.

This project is intended to evaluate various transportation alternatives that would reduce traffic congestion and improve safety on US 31 with minimal impacts to the environment. The project would also provide greater accessibility to north-central Indiana and would accommodate the transportation needs of the growing population and employment of northern Indiana. Along this 20 mile section of US 31, many of the intersections are currently experiencing traffic congestion and travel delay.

FHWA and INDOT will determine the purpose and need for the project, evaluate alternatives that satisfy the needs, describe the affected environment, discuss the environmental consequences regarding the alternatives, while providing agency coordination and public involvement. The project will follow Indiana's Streamlined EIS Procedures, which can be found on their website at *www.fhwa.dot.gov/indiv/procedur.htm.*

Early Coordination letters will be sent to appropriate federal, state, and local agencies describing the proposed action and inviting the agencies to be Participating Agencies in the study. Once the draft purpose and need has been developed and preliminary alternatives identified, the agencies and the public will have an opportunity to review and comment on this information. Agencies and the public will also have an opportunity to comment when the preliminary alternatives have been screened to those carried forward for more detailed environmental evaluation in the Draft Environmental Impact Statement (DEIS).

Upon completion of the DEIS, the DEIS will be available for public review and hearings will also be held. Public notice will be given as to the time and place of the meetings and hearings. Another interagency meeting will be held to offer the opportunity to comment on the preferred alternative and mitigation measures that are recommended.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this EIS should be directed to the FHWA contact provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to the program).

Authority: 23 USC 315; 49 CFR 1.48.

Issued on: February 22, 2002.

Robert Dirks,

Environmental Specialist, FHWA, Indianapolis, Indiana.

[FR Doc. 02–7227 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11732]

Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility, Trucking and Freight Forwarding

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FMCSA to request the Office of Management and Budget (OMB) to renew its clearance of the currently approved information collection identified below under Supplementary Information. This information collection provides registered motor carriers, property brokers, and freight forwarders a means of meeting financial security documentation requirements.

DATES: Comments must be submitted on or before May 28, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted on the Internet by using the universal resource locator (URL) at: *http://dmses.dot.gov/submit*, or by fax to (202) 493–2251. Internet users may view all comments received by the Document Management System (DMS) on the Internet at: *http://dms.dot.gov*. Please follow the instructions online for more information and help. Please include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comments are received, you must include a self-addressed, stamped postcard; or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, (202) 358–7028, Insurance Compliance Division (MC–ECI), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility, Trucking and Freight Forwarding.

OMB Number: 2126–0017.

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registrations to the FMCSA. Registration remains valid only as long as the transportation entities maintain, on file with the FMCSA, evidence of the required levels of insurance coverage pursuant to 49 U.S.C. 13906. Regulations governing financial responsibility requirements are found at 49 CFR 387.

Forms BMC–91, 91X, and 82 provide evidence of the required coverage for bodily injury and property damage (BI&PD) liability. Forms BMC–34 and 83 establish compliance with cargo liability requirements. Forms BMC–84 and 85 are filed by brokers to comply with the requirement for a $10,000 surety bond or trust fund agreement. Forms BMC–35, 36, and 85 cancel prior filings. Forms BMC–90 and 32 are endorsements that must be attached to BI&PD and cargo insurance policies, respectively, but are not filed with the FMCSA.

Motor carriers can also apply to self-insure BI&PD and/or cargo liability in lieu of filing certificates of insurance or surety bonds with the FMCSA. Form BMC–40 is the application used to apply for self-insurance authority.

Respondents: Motor carriers, freight forwarders, and brokers.

Estimated Average Burden per Response: The estimated average burden per response for the BMC–40 is 40 hours. The estimated average burden per response for each of the other forms (BMC–32, 34, 35, 36, 82, 83, 84, 85, 90, 91, and 91X) is 10 minutes per form.

Estimated Total Annual Burden: The estimated total annual burden is 200 hours for the BMC–40 based on 5 filings per year [5 filings per year × 40 hours to complete = 200]. The estimated total annual burden for all of the other forms described above is 45,025 hours based on 270,152 filings per year [270,152 filings per year × 10 minutes to complete divided by 60 minutes = 45,025 total burden hours]. Therefore, the total burden hour request is 45,225 [200 estimated annual burden hours for the BMC–40 + 45,025 hours for the other forms = 45,225 total burden hours].

Frequency: Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with the FMCSA and then when such coverages are replaced. Notices of cancellation are required only when such certificates of insurance, surety bonds or trust fund agreements are canceled. Form BMC–40 is generally filed only when a carrier seeks approval to self-insure its BI&PD and/or cargo liability.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance for a renewal of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended, and 49 CFR 1.73.

Issued on: March 18, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7159 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–11871]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 28, 2002.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: 202–366–5744; fax: 202–366–7901, or e-mail: *kenneth.kline@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Obligation Guarantees—46 CFR part 298, Title XI.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0018.

Form Numbers: MA–163, MA–163A

Expiration Date of Approval: October 31, 2002.

Summary of Collection of Information: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and

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credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Need and Use of the Information: The information collected is necessary for MARAD officials to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Description of Respondents: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels satisfying criteria under the Merchant Marine Act, as well as businesses interested in shipyard modernization and improvements.

Annual Responses: 21.

Annual Burden: 1470 hours.

By Order of the Maritime Administrator.

Dated: March 19, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7160 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11872]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADY CATHERINE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11872. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LADY CATHERINE. Owner: Felton Havins, Jr.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Twenty-five thousand pounds gross weight, 49.2 Feet Length"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: The vessel is currently located in Amelia Island, Florida and will be use primarily in that part of the coastal southeastern US with occasional transits to the Bahamas. The vessel is principally for my personal use with proposed leasing from time to time to a local sailing school as an instructional vehicle for their advanced/offshore courses. I also anticipate occasional (approximately six times per year) charters for a maximum of six passengers"

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1991. Place of construction: France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "LADY CATHERINE is the largest and most fully equipped sailing vessel available in the local six passenger sailing charter market. The local sailing school has no access to any other comparably equipped vessel for their advanced classes of instruction"

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "LADY CATHERINE was built in 1991. Therefore, there is no foreseeable negative impact on US shipyards. To the contrary, currently all maintenance and upgrades are being performed locally in US owned/operated shipyards."

By Order of the Maritime Administrator.

Dated: March 19, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7162 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11873]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MISTLETOE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11873. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: MISTLETOE. Owner: Dr. & Mrs. Wesley A. Dunn.

(2) Size, capacity and tonnage of vessel. According to the applicant: "55 feet loa, beam 16', depth 5', Gross Tonnage 29, Net 23".

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Florida Atlantic and Gulf coast Waters to Louisiana including adjacent waters. We plan primarily to do custom cruises for lunch, golf outings, or sunset dinner cruises in an upscale manner with an upper limit of 12 and a Coast Guard Licensed Captain. We would also do overnight trips for no more than 4 passengers with appropriate licensed crew. We would anticipate doing some fishing, should our passengers wish, although we would not consider our yacht a charter fishing boat."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1994. Place of construction: Ping Tong, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Impact on other local charter boats would be minimal. Charter boat operations in our area are primarily fishing charters involving smaller vessels. There are about 4 large boats that carry 30 or more passengers on daytime and sunset cruises. Neither type operation wold be in competition with our low volume, high-end market."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "this waiver would have no impact on US shipyards. We have been using US ship yards for our yearly haul outs, maintenance and repairs."

Dated: March 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7161 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11874]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TRADEWINDS.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11874. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to

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properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement:

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: Tradewinds. Owner: Jay Hill, Daniel Tingley and Pam Tingley.

(2) Size, capacity and tonnage of vessel. *According to the applicant: "Size of vessel:* 37.9', *Capacity of Vessel:* 14 Net Tons or 32 persons, *Tonnage of Vessel:* 18 Gross Tons".

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant: "Intended use for this vessel is three-fold as follows:* (1) Local knowledge indoctrination sailings from Kemah, Texas (Clear Lake) to Galveston, Texas (Galveston Island) including day sailing in the Gulf of Mexico coastal region not to exceed 20 miles offshore for hire with not more than four passengers. This indoctrination is designed to allow aspiring sailors who have participated in sail training programs, to move from inland waters to coastal and near-coastal environments with the advantage of experienced Captain and Crew aboard. (2) Sail training for American Sailing Association and US sailing Keelboat Certification Systems in the Gulf of Mexico and neighboring coastal waters including offshore passage making from Galveston Bay to Florida, Maine, Bahamas, and limited areas of Mexico * * * (3) Owners' personal recreational use."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1977. *Place of construction:* Tamsui Taipei Hsien, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "This waiver will allow an additional Uninspected Passenger Vessel to begin operations in the Galveston Bay area. Due to the targeted customer base, the only impacts we can foresee in the use of this vessel is its addition to the water traffic in the Clear Lake (Kemah Inlet) and Galveston Bay (Houston Ship Channel) waterways, and the addition of a Captained Charter Vessel in the area. After extensive research, we have found that existing operators are of the following types: (1) Inspected vessels that conduct short-duration bay cruises for hire, (2) inspected vessels that conduct guided fishing excursions, dinner cruises, or special event cruises for hire, (3) uninspected vessels that conduct near-shore sail training in the Galveston Bay direct regional area, (4) uninspected charter vessels where customers may hire a Captain to operate the vessel. We feel our niche in the market will not adversely affect any of the above operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver for a single uninspected vessel with a passenger limit of six passengers will not adversely impact U.S. shipyards in that U.S. shipyards currently build/manufacture large quantities of vessels capable of performing the same intended uses listed in (3) above. No attempt to broker, endorse, sell, or advertise the vessel type and manufacturer in this waiver is intended nor will it be made. We simply enjoy the vessel and wish to use it in our business."

Dated: March 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7163 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Eighth Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Eighth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at ten Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATES AND TIMES: The meeting is scheduled from 9 a.m. to 5 p.m. on Thursday, April 25, 2002.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation headquarters, 400 Seventh Street, SW, Room 2230, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN web site at: *http://www-nrd.nhtsa.dot.gov/include/bio_and_trauma/ciren-final.htm.* NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA website. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles, and the seventh quarterly meeting on December 6, 2001, with a topic of Age Related Injuries (Elderly and Children). Presentations from these meetings are available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the eighth such meeting. The topic for this meeting is Brain and Traumatic Head Injuries. Subsequent meetings have tentatively been scheduled for August 2002 and December 2002. These meetings are in lieu of an annual CIREN conference.

Please be aware that this is a closed building. Attendees to this meeting must present photo identification, pass through the xray and magnetometer, and be escorted to the meeting room so please allow sufficient time to complete this process.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.* If you do not have access to the web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stemski, Office of Human-Centered Research, 400 Seventh Street, SW, Room 6220, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: March 21, 2002.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 02–7228 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11780]

Notice of Receipt of Petition for Decision That Nonconforming 2001 and 2002 Vespa ET2 and ET4 Motor Scooters Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 and 2002 Vespa ET2 and ET4 motor scooters are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 and 2002 Vespa ET2 and ET4 motor scooters that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 25, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Automobile Concepts, Inc. of North Miami, Florida ("ACI") (Registered Importer 01–278) has petitioned NHTSA to decide whether non-U.S. certified 2001 and 2002 Vespa ET2 and ET4 motor scooters are eligible for importation into the United States. The vehicles, which ACI believes are substantially similar, are 2001 and 2002 Vespa ET2 and ET4 motor scooters that were manufactured for importation into and sale in the United States and certified by their manufacturer, Piaggio & Co. SpA. as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 and 2002 Vespa ET2 and ET4 motor scooters to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

ACI submitted information with its petition intended to demonstrate that non-U.S. certified 2001 and 2002 Vespa ET2 and ET4 motor scooters, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 and 2002 Vespa ET2 and ET4 motor scooters are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also states that the original manufacturer has stamped into the frame of each non-U.S. certified 2001 and 2002 Vespa ET2 and ET4 motor scooters a unique 17-digit vehicle identification number (VIN) that meets the requirements of 49 CFR Part 565.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Replacement of all bulbs, including headlamp, stop lamp, and directional signals, with U.S.-certified components; (b) replacement of the stop lamp lens with a U.S.-certified component; (c) installation of U.S.-certified front amber reflectors; (d) installation of a U.S.-certified rear reflector; (e) installation of U.S.-certified rear red reflector.

Standard No. 111 *Rearview Mirrors:* Inscription of the required warning statement on the rearview mirrors, or replacement of those mirrors with U.S.-model components.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label that displays the recommended tire size, rim size, and cold inflation pressure. The petitioner states that the vehicles are equipped from the factory with rims that are marked in accordance with the standard, identical to those on their U.S.-certified counterparts.

Standard No. 123 *Motorcycle Controls and Displays:* (a) Installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles; (b) installation of a supplemental engine stop control on the right side of the handlebar, identified as "engine stop," with "off" and "run" positions.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the frame of the motor scooter.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal**

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Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 19, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–7164 Filed 3–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 20, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 25, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0146.

Form Number: IRS Form 2553.

Type of Review: Extension.

Title: Election by a Small Business Corporation.

Description: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Business or other for-profit, farms.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hr., 51 min.
Learning about the law or the form	3 hr., 10 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 27 min.

Frequency of Response: Other (once).

Estimated Total Reporting/Recordkeeping Burden: 7,745,000 hours.

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Type of Review: Extension.

Title: Instructions for Requesting Rulings and Determination Letters.

Description: The National Office issues ruling letters and District Directors issue determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The National Office also issues other types of letters. The procedural regulations set forth the instructions for requesting ruling and determination letters.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 271,914.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 248,496 hours.

OMB Number: 1545–0988.

Form Number: IRS Form 8609 and Schedule A.

Type of Review: Extension.

Title: Low-Income Housing Credit Allocation Certification (8609); and Annual Statement (Schedule A).

Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation from the housing-credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Respondents: Business or other for-profit, individuals or households, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 120,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Form 8609	8 hr., 51 min.	3 hr., 4 min	3 hr., 21 min.
Schedule A (8609)	6 hr., 41 min.	1 hr., 12 min	1 hr. 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,770,200 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–7860.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–7193 Filed 3–25–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
March 26, 2002

Part II

Department of Housing and Urban Development

Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grants Programs for Fiscal Year 2002; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–N–01]

Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grant Programs for Fiscal Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs.

SUMMARY: This Fiscal Year (FY) 2002 SuperNOFA announces the availability of approximately $2.2 billion in HUD program funds covering 41 grant categories within programs operated and administered by HUD offices. The General Section of this SuperNOFA provides the application procedures and requirements that are applicable to all the programs in this SuperNOFA. The Program Section of this SuperNOFA provides a description of the specific programs for which funding is made available and describes any additional procedures and requirements that are applicable to a specific program. Please be sure you read both the General Section and the Program Section of this SuperNOFA to ensure you respond to all the requirements for funding.

APPLICATION DUE DATES: The information in this "APPLICATION DUE DATES" section applies to all programs that are part of this SuperNOFA. You, the applicant, must submit a completed application to HUD on or before the respective program's application due date. Application due dates can be found in the HUD FY 2002 SuperNOFA Funding Chart located in this General Section. Information for each program is reiterated in the appropriate Program Section of this SuperNOFA. HUD will not accept any applications sent by facsimile (fax).

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES:

New Security Procedures. HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD's new policy is:

- No hand deliveries will be accepted;
- Applications sent to the Robert C. Weaver HUD Headquarters Building or the Public and Indian Housing Grants Management Center may only be shipped using DHL, Falcon Carrier, Federal Express (FedEx), United Parcel Service (UPS), or United States Postal Service (USPS);
- Applications submitted to HUD Field Offices must be sent via the USPS;
- All mailed applications must be postmarked on or before midnight of their due date and received within 15 days of the due date; and,
- All applicants who mail applications must have a Certificate of Mailing (USPS Form 3817) as their documentary evidence that the application was filed on time.

Addresses. You, the applicant, must submit a complete application and the required number of copies to the locations identified in the Program Section of this SuperNOFA. When submitting your application, you must refer to the name of the program for which you are seeking funding.

If your application is due to the Robert C. Weaver Building, HUD Headquarters, you must send the application to the following address: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Applications submitted to the Public and Indian Housing Grants Management Center (GMC) should be addressed to Grants Management Center, 501 School Street, SW, Suite 800, Washington, DC 20024. (See the HUD FY 2002 SuperNOFA Funding Chart or Program Section for room location and additional information regarding the addresses for application submission.) Please make sure that you note the correct room number to ensure that your application is not misdirected. Addresses for HUD Field Offices are listed in Appendix A–1 of the General Section of this SuperNOFA.

Applications Sent by Overnight/Express Mail Delivery to HUD Headquarters or the Public and Indian Housing Grants Management Center. If your application is sent by overnight delivery or express mail to HUD Headquarters or the Public and Indian Housing Grants Management Center, your application will be filed on time if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service no later than the application due date. Delivery must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM, Eastern Time, Monday through Friday.

Copies of Applications. The Program Section of this SuperNOFA may specify that to facilitate the processing and review of your application, one or more copies of the application also must be sent to an additional HUD location (for example, a copy to the HUD Field Office and the original application to HUD Headquarters). Please follow the directions of the Program Section to ensure that you submit your application to the proper location(s). If you are required to submit applications to HUD Headquarters *and* Field Offices, timeliness of submission will be based on the time your application is received at HUD Headquarters.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: The information in this section is applicable to all programs that are part of this SuperNOFA. This section describes how you may obtain application kits, additional information about the SuperNOFA, and technical assistance. A guidebook to HUD programs titled "Connecting with Communities: A User's Guide to HUD Programs and the 2002 SuperNOFA process" is available from the SuperNOFA Information Center and the HUD website at www.hud.gov. This guidebook provides a brief description of all HUD programs, a description of the SuperNOFA programs, eligible applicants for these programs, and examples of how programs can work in combination to serve local community needs. To obtain a guidebook, application kit, or print copy of the General Section or program NOFA, call the SuperNOFA Information Center at 1–800–HUD–8929 or 1–800–HUD–2209 (TTY). Copies of all documents related to the SuperNOFA may be downloaded from HUD's website, www.hud.gov.

For Application Kits and SuperNOFA User Guide. HUD is pleased to provide you with instructions for applying for all HUD programs that are part of this SuperNOFA. The instructions are designed to guide you through the application process and ensure that your application addresses all requirements for the program funding you are seeking. For some announcements of funding availability in this SuperNOFA, HUD provides an application kit; for others, no application kit is required. Each Program Section will specify whether there is an application kit, or only the instructions in the SuperNOFA.

Please note that if there is a discrepancy between information provided in the application kit and the information provided in the published SuperNOFA, the information in the published SuperNOFA prevails. Therefore, please be sure to review your application submission against the requirements in the SuperNOFA.

You may request general information and application kits from the SuperNOFA Information Center (1–800–HUD–8929 or 1–800–HUD–2209 (TTY)). When requesting an application kit, please refer to the name of the program you are interested in. Be sure to provide your name, address (including zip code), and telephone number (including area code). To ensure sufficient time to prepare your application, requests for application kits can be made immediately following publication of the SuperNOFA. The SuperNOFA Information Center opens for business simultaneously with the publication of the SuperNOFA. You can also obtain information on this SuperNOFA and application kits for this SuperNOFA through the HUD website, www.hud.gov.

Consolidated Application Submissions. If you, the applicant, would like to apply for funding under more than one program in this SuperNOFA, you need only submit one original SF–424 and set of assurances and certifications, accompanied by the HUD–424M provided in this SuperNOFA. Once you have submitted one original set of forms, certifications, and assurances, you need send only copies of these standard items with any additional application you submit. Make sure to specify the correct program, however, on each copy of the SF–424 application form and indicate the program to which you have submitted the original signature forms for the standard assurances and certifications. Additionally, the Program Section may specify additional forms, certifications, assurances, or other information that may be required for a particular program in this SuperNOFA.

For Further Information. For answers to questions you may have about this SuperNOFA, you have several options. You may call the SuperNOFA Information Center at 1–800–HUD–8929 or 1–800–HUD–2209 (TTY) between the hours of 9:00 AM and 8:00 PM Eastern Time or you may contact the HUD Office or Processing Center serving your area at the telephone number listed in the SuperNOFA for the program in which you are interested. You may also obtain information on this SuperNOFA and application kits for this SuperNOFA through the HUD website, www.hud.gov.

For Technical Assistance. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance about this SuperNOFA. However, HUD staff are not permitted to assist in preparing your application. Following selection of applicants, but before awards are made, HUD staff are available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

Satellite Broadcasts. HUD will hold information broadcasts via satellite for potential applicants to learn more about the programs in this SuperNOFA and preparation of the applications. For more information about the date and time of each broadcast, consult the HUD website, www.hud.gov.

Streamlining Grants. The Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107) directs each Federal agency to develop and implement a plan that, among other things, streamlines and simplifies the application, administrative, and reporting procedures for Federal financial assistance programs administered by the agency. This law also requires the Director of the Office of Management and Budget (OMB) to direct, coordinate, and assist Federal agencies in establishing (1) a common application and reporting system and, (2) an interagency process for addressing ways to streamline and simplify Federal financial assistance application and administrative procedures and reporting requirements for program applicants.

This law also requires OMB to consult with the grantee community as it works with the Federal agencies to develop and implement the course of action that would be undertaken by the Federal agencies to establish an electronic site for accessing grant information and applications. Over the last year, HUD has held outreach sessions informing you of the goals of this new law and seeking your input as the Federal agencies work together to achieve implementation. To find out about the work being done by the Federal agencies to streamline and consolidate the grant application and reporting requirements please go to www.iaegc.gov.

HUD is an active member in the Federal agency working group working to streamline grant application requirements and has established a website where you can obtain information about all grant programs within HUD. You can access this site from our homepage at www.hud.gov by clicking on "HUD Program inventory." In the future, HUD plans to link this site to grant information of other Federal agencies. If you are interested in finding out more about the "Federal Commons" and the work being done by other agencies, please visit the Inter-Agency Electronic Grants Committee (IAEGC) website at www.fedcommons.gov.

Introduction to the FY 2002 SuperNOFA

HUD'S FY 2002 SUPERNOFA PROCESS

Background

This is the fifth year HUD is issuing a SuperNOFA for the majority of its competitive grant programs and other financial assistance programs. The SuperNOFA announces the availability of the majority of HUD's discretionary funds. The document is designed to simplify the application process, bring consistency and uniformity to the application and selection process, and make it easier to find funding opportunities available from the Department because they are released early in the year and at the same time. Equally important, the SuperNOFA approach is designed to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs. The SuperNOFA provides a "menu" of HUD programs. From this menu, communities will be made aware of funding available for their jurisdictions. Non-profit organizations, public housing agencies, local and State governments, tribal governments and tribally-designated housing entities, veterans service organizations, faith-based and other community-based non-profit organizations, and others will be able to identify the programs for which they are eligible for funding.

By providing access to information about available funding at one time, HUD believes applicants are better able to coordinate service within communities to avoid duplication and more efficiently serve those most in need of assistance.

HUD's Strategic Goals

As part of its internal strategic planning processes, the Department has re-assessed its policy goals and priorities for the next five years and, as a result, is in the process of updating the HUD Strategic Plan framework. Activities funded through this SuperNOFA are meant, to the extent practicable, to support the new Strategic Goals described below. Note that these goals reflect an interim change to HUD's Strategic Plan. In FY 2002, the Department will fully revise its Strategic Plan after consultation with stakeholders and Congress.

Strategic Goal 1: Make the home-buying process less complicated, the paperwork less demanding and the mortgage process less expensive. This is a new Strategic Goal that will help to focus the Department's work in

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enforcing the Real Estate Settlement Procedures Act and countering predatory lending. HUD's activities under this Strategic Goal will help to make homeownership more accessible and less expensive for millions of families and help protect them from predatory lending.

Strategic Goal 2: Help families move from rental housing to homeownership. HUD's second Strategic Goal focuses on HUD's activities to expand homeownership opportunities for minorities, persons with disabilities, and other Americans, and to help families that rent be able to afford the costs of rental housing.

Strategic Goal 3: Improve the quality of public housing and provide more choices for its residents. HUD's goals for its public and assisted housing programs go beyond simply providing affordable housing. HUD also strives to improve the *quality* of the housing opportunities provided to families in public and assisted housing. This Goal focuses on improving the management accountability and physical conditions of public and assisted housing and on maximizing the potential of these programs to help families make progress towards self-sufficiency and become homeowners.

Strategic Goal 4: Strengthen and expand faith-based and other community partnerships that enhance communities. HUD has a long and rich history of cooperating with faith-based and other community-based organizations to address the needs of underserved communities, including the needs of those Americans for whom homelessness, the lack of affordable housing, and limited alternatives for special needs housing lead to despair and hopelessness. Building on this history, HUD plans to strengthen and expand its partnerships with faith-based and other community-based groups to take further advantage of their capacity to provide quality services to communities and families.

Strategic Goal 5: Effectively address the challenge of homelessness. HUD is the primary agency responsible for providing housing and related resources to prevent homelessness and help homeless families and individuals move to permanent housing. HUD has a number of objectives with respect to its homelessness work, including that of ending chronic homelessness in 10 years.

Strategic Goal 6: Embrace high standards of ethics, management and accountability. In order to be effective in meeting HUD's other Strategic Goals, it is essential that HUD and HUD's partners embrace high standards of ethics, management, and accountability. The Secretary has established improved ethics and accountability of HUD staff and HUD's partners as "perhaps the most important" of HUD's priorities. This Goal cuts across all of HUD's programs and applies to each HUD employee and to every organization that partners with HUD to help HUD accomplish its mission.

Strategic Goal 7: Ensure equal opportunity and access to housing. HUD's core mission has always been to help families find affordable and decent housing. This mission will be fulfilled when all Americans are given an equal opportunity to buy or rent housing that matches their individual needs. Unfortunately, instances of discrimination against minorities, architectural barriers to persons with disabilities, and a lack of housing options for the elderly have all combined to exclude some Americans from enjoying the fruits of America's prosperity. HUD is committed to ending the practice of discrimination through enforcement of fair housing laws as well as through educating lenders, landlords, and tenants in complying with the laws.

Strategic Goal 8: Support community and economic development efforts. HUD funds a variety of programs that help to support the community and economic development efforts of state and local communities. The largest of these programs is the Community Development Block Grant program. Other programs include Section 108 loan guarantees, the Brownfields Economic Development Initiative, the Lead Hazard Reduction and the Healthy Homes Program, the University Partnership Programs, the Indian Community Development Block Grant and Renewal Communities, Empowerment Zones and Enterprise Communities. Additionally, HUD's Native eDGE initiative supports a telephone call center, a publications clearinghouse, website, and a technical assistance information center so that tribes, Native Americans, lending institutions, and private businesses wishing to do business with Tribal governments and entities can collaborate to promote economic growth.

Changes in the SuperNOFA Process for FY 2002

Rating Factors. Applications for most programs in this SuperNOFA will be rated according to five standard Rating Factors (see Section III (C) below). For FY 2002, Rating Factor 5, "Coordination, Self-Sufficiency and Sustainability," has been expanded to reflect this Administration's priority for fostering self-sufficiency.

Coordination means you, the applicant, are working with other organizations that are *not* directly participating in your proposed work activities and have agreed to share information and outcomes that result from the successful completion of your activities, so that the other organizations and members of the community can benefit from the results and improve the overall success of related activities within the community. The goal of coordination is to ensure that programs do not operate in isolation. Coordination looks beyond the support given to the applicant's program claimed by the applicant under Rating Factor 4, Leveraging, and asks "How does the applicant's program fit into other activities and programs that are being carried out by others in the community?"

Self-sufficiency refers to the extent to which proposed activities can result in increased independence and empowerment. Increased independence can result from expanded job opportunities, homeownership, or housing in a wider range of neighborhoods, additional educational opportunities, and improved living environments.

Sustainability refers to two distinct issues: (1) The potential for an applicant organization to become financially self-sustaining; and, (2) the potential of a specific project or activity to be sustained into the future absent any HUD funding. Just as a business plan presents to a commercial lender an outline of a course of action for an organization to become profitable, the information in the application for this factor will outline a realistic path for the applicant to become financially independent without a need for continued HUD funding.

Applicant Debriefing. Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for at least 120 days after awards for assistance are announced, HUD will provide any requesting applicant with a debriefing on their application. All requests for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF–424 or his or her successor in office. Submit your request to the person or organization identified as the Contact under the section entitled "Further Information and Technical Assistance" or as specified in the Program Section of the SuperNOFA under which you applied for assistance. Information provided to you during your debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

Points Deducted for Poor Performance. As part of HUD's efforts to place greater emphasis on accountability, applicants who received prior awards and failed to meet their program goals may have points deducted from their rating score. Specific details on how points will be deducted are included, as applicable, in the Program Section of the SuperNOFA.

New Programs and Changes to Programs. The FY 2002 SuperNOFA includes the following new funding opportunities:

- Housing Counseling Services Targeting the Colonias;
- Public Housing Resident Opportunity and Self-Sufficiency (ROSS) for Neighborhood Networks Program; and
- Public Housing Resident Opportunity and Self-Sufficiency (ROSS) for Homeownership Supportive Services Program.

Funding opportunities that have changed significantly or been renamed include:

- Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program Coordinators Program, replacing Family Self Sufficiency (FSS) Program Coordinators;
- Healthy Homes Demonstration Program, replacing the Healthy Homes Demonstration and Education Program of Fiscal Year 2001; and
- Healthy Homes and Lead Technical Studies, replacing the program for Healthy Homes Research.

Not Available for FY 2002. Funding opportunities that were part of the FY 2001 SuperNOFA but are not available in FY 2002 are:

- Public Housing Drug Elimination—Technical Assistance Program (DETAP);
- Indian Housing Drug Elimination Program;
- Drug Elimination New Approach Anti-Drug Program;
- Drug Elimination Grants for Multifamily Low Income Housing; and,
- Community Housing Development Organization (CHDO) TA.

Funding will be announced later in the year for:

- Revitalization of Severely Distressed Public Housing (HOPE VI);
- Homeownership Research Studies;
- Lead Elimination Action Program (LEAP); and
- Urban Scholars Fellowship Program.

Funding Notices Issued Prior to the SuperNOFA. Due to statutory deadlines for the obligation of funds or for other reasons, there are several programs that have been issued prior to the SuperNOFA. These include:

- Fair Share Allocation of Incremental Voucher Funding;
- Community Development Work Study Program; and
- Capacity Building for Community Development and Affordable Housing. Information on these programs is available on the HUD website at *www.hud.gov.*

Changes to the HOPE VI Program. As indicated earlier, HOPE VI is not included in the FY 2002 SuperNOFA. The HOPE VI NOFA will be published separately in the **Federal Register** at a later date and will be posted on the HUD website, www.hud.gov. Each eligible PHA will receive a HOPE VI Application Kit that will also include the published NOFA. HUD anticipates that the FY 2002 HOPE VI NOFA will reflect some significant changes. Thresholds and rating criteria are being re-examined with a particular emphasis on issues of project readiness, extent of severe distress, leverage, grant amounts and distribution, homeownership, and relocation-related services.

Changes to Policy Priorities. Section VI of this SuperNOFA has been updated to reflect the changes in policy priorities. Please be sure to read the section carefully. Among the new priorities are the inclusion of faith-based and other community-based organizations in program development and implementation, and an emphasis on services to the Colonias. This SuperNOFA also reflects administrative initiatives announced by the Secretary, including a commitment to core values and ethical business practices and an intention to foster intergovernmental partnership and strengthen state and local participation in Federal programs.

Organization of the SuperNOFA

The SuperNOFA is divided into two major sections, the General Section and the Program Section. The General Section of the SuperNOFA describes the procedures and requirements applicable to all applications. The Program Section of the SuperNOFA describes each program and program component that is part of this SuperNOFA. For each funding opportunity, the Program Section describes the eligible applicants, eligible activities, factors for award, and any additional requirements or limitations. Please read both sections carefully to be sure your application is complete. Your attention to the sections will ensure that you apply for funding for which your organization is eligible and that you fulfill all the requirements for application submission.

As part of the simplification of this funding process and to avoid duplication of effort, the SuperNOFA provides for consolidated applications for several of the programs that are part of this SuperNOFA. HUD programs that provide assistance for, or complement, similar activities (for example, the Continuum of Care programs and CPD Technical Assistance programs) have a consolidated application that reduces the administrative and paperwork burden applicants would otherwise encounter. The Program Chart in this introductory section of the SuperNOFA identifies the programs that have been consolidated and for which a consolidated application is made available to eligible applicants.

HUD provides copies of all required forms in this publication. The standard forms, certifications, and assurances applicable to all programs, or the great majority of programs, in the SuperNOFA follow the General Section as Appendix B. The forms and any additional certifications and assurances that are unique to the individual program will follow that program section of the SuperNOFA.

The specific statutory and regulatory requirements of the programs that are part of this SuperNOFA continue to apply to each program. The SuperNOFA will identify, where necessary, the statutory requirements and differences applicable to the specific programs. *Please pay careful attention to the specific submission requirements that are identified for each funding opportunity. Not all applicants are eligible to receive assistance under all funding opportunities identified in this SuperNOFA.*

The Programs of This SuperNOFA and the Amount of Funds Allocated

The funding opportunities that are part of this SuperNOFA are identified in the following chart. The amount of funds available is based on funds appropriated in FY 2002 and funds recaptured from prior years' appropriations. In the event that HUD recaptures program funds or other funds become available for a program, HUD reserves the right to increase the available funding by these additional amounts.

The chart also includes the application due date, the OMB approval number for the information collection requirements, and the Catalog of Federal Domestic Assistance (CFDA) number for each funding opportunity.

BILLING CODE 4210–32–P

HUD FY 2002 SuperNOFA Funding

Program Name	Funding Available (funding is approximate)	Application Due Date	Submission Location and Room
HOUSING AND COMMUNITY DEVELOPMENT			
Community Development Technical Assistance (TA)	**Up to $10 million**		
HOME TA CFDA No. 14.239 OMB Approval No: 2506-0166	Up to $5 Million	June 7, 2002	HUD Headquarters Room 7251 and a copy to appropriate local HUD Office
McKinney-Vento Homeless Assistance Programs TA CFDA No. 14.235 OMB Approval No: 2506-0166	Up to $3 million	June 7, 2002	HUD Headquarters Room 7251 and a copy to appropriate local HUD Office
HOPWA TA CFDA No. 14.241 OMB Approval No: 2506-0133	Up to $2 million	June 7, 2002	HUD Headquarters Room 7251 and one copy to appropriate local HUD Office
Community Development Block Grant Assistance	**Up to $70 million**		
Community Development Block Grants for Indian Tribes and Alaskan Native Villages CFDA No. 14.862 OMB Approval No.: 2577-0191	Up to $70 million	June 6, 2002	HUD Area ONAP Office
UNIVERSITY AND COLLEGE PARTNERSHIPS			
University and College Programs	**Up to $37.1 million**		
Community Outreach Partnership Centers (COPC) CFDA No. 14.511 OMB Approval No: 2528-0180	Up to $7.5 million	June 20, 2002	HUD Headquarters Room 7251
Historically Black Colleges and Universities (HBCU) Program CFDA No. 14.237 OMB Approval No.: 2506-0122	Up to $10.5 million	June 20, 2002	HUD Headquarters Room 7251 and one copy to local HUD Field Office

Hispanic-Serving Institutions Assisting Communities (HSIAC) Program CFDA No. 14.514 OMB Approval No.: 2528-0198	Up to $10.1 million	June 20, 2002	HUD Headquarters Room 7251
Alaska Native/Native Hawaiian Communities Program (AN/NHIAC) CFDA No. 14.515 OMB Approval No.: 2528-0206	Up to $6 million	June 20, 2002	HUD Headquarters Room 7251
Tribal Colleges and Universities Program (TCUP) CFDA No.: 14.519 OMB Approval No.: 2528-0215	Up to $3 million	June 20, 2002	HUD Headquarters Room 7251
FAIR HOUSING OUTREACH, ENFORCEMENT AND HOUSING COUNSELING			
Fair Housing Programs	**Up to $20 million**		
Fair Housing - Private Enforcement Initiative (PEI) CFDA No. 14.410 OMB Approval No.: 2539-0033	Up to $11.82 million	May 22, 2002	HUD Headquarters Room 5224
Fair Housing Education and Outreach Initiative (EOI) CFDA No.14.409 OMB Approval No.: 2539--0033	Up to $6.32 million	May 22, 2002	HUD Headquarters Room 5224
Fair Housing Organizations Initiative (FHOI) CFDA No. 14.413 OMB Approval No.: 2539-0033	Up to $2.1 million	May 22, 2002	HUD Headquarters Room 5224
Housing Counseling Programs	**Up to $18.25 million**		
Housing Counseling – Local Housing Counseling Agencies (LHCA) CFDA No. 14.169 OMB Approval No.: 2502-0261	Up to $6.6 million	May 17, 2002	Appropriate HUD Homeownership Center

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Housing Counseling – National and Regional Intermediaries CFDA No. 14. 169 OMB Approval No.: 2502-0261	Up to $10.4 million	May 17, 2002	HUD Headquarters Room 9166
Housing Counseling – State Housing Finance Agencies (SHFA) CFDA No. 14. 169 OMB Approval No.: 2502-0261	Up to $1 million	May 17, 2002	Appropriate HUD Homeownership Center
Housing Counseling – Colonias CFDA No. 14. 169 OMB Approval No.: 2502-0261	Up to $250,000	May 17, 2002	Santa Ana Homeownership Center
HEALTHY HOMES AND LEAD HAZARD CONTROL			
Healthy Homes and Lead Hazard Control Programs	**Up to $88.5 million**		
Lead Hazard Control Program CFDA No.: 14.900 OMB Control No.: 2539-0015	Up to $80 million	June 14, 2002	HUD Headquarters Room P3206
Healthy Homes and Lead-Technical Studies CFDA No.: 14.901 OMB Control No.: 2539-0010	Up to $3.5 million	June 14, 2002	HUD Headquarters Room P3206
Healthy Homes Demonstration Program CFDA No.: 14.901 OMB Control No.: 2539-0015	Up to $5 million	June 14, 2002	HUD Headquarters Room P3206
ECONOMIC DEVELOPMENT AND EMPOWERMENT			
Economic Development and Empowerment Programs	**$ 182.1 million**		
Brownfields Economic Development Initiative (BEDI) CFDA No.: 14.246 OMB Control No.:2506-0153	Up to $29 million	July 9, 2002	HUD Headquarters Room 7251
Self-Help Homeownership Opportunity Program (SHOP) CFDA No.: 14.247 OMB Control No.: N/A	Up to $22 million	June 19, 2002	HUD Headquarters Room 7251

YouthBuild CFDA No.: 14.243 OMB Approval No.: 2506-0142	Up to $59.75 million	May 30, 2002	HUD Headquarters Room 7251
Rural Housing and Economic Development CFDA No.: 14.250 OMB Approval No.: 2506-0169	Up to $25 million	April 26, 2002	HUD Headquarters Room 7251
Public Housing Resident Opportunity and Self-Sufficiency (ROSS) Programs	**Up to $78.2 million**		
ROSS for Resident Management and Business Development CFDA No.: 14.870 OMB Approval No.: 2577-0229	Up to $6 million	May 14, 2002	Grants Mgmt. Center. For Tribes: ONAP, Denver Program Office
ROSS for Capacity Building CFDA No.: 14.870 OMB Approval No.: 2577-0229	Up to $5 million	May 14, 2002	Grants Mgmt. Center. For Tribes: ONAP, Denver Program Office
ROSS for Resident Service Delivery Models CFDA No.: 14.870 OMB Approval No.: 2577-0229	Up to $21 million	June 18, 2002	Grants Mgmt. Center. For Tribes: ONAP, Denver Program Office
ROSS for Service Coordinator Renewals CFDA No.: 14.870 OMB Approval No.: 2577-0229	Up to $20 million	May 14, 2002	Grants Mgmt. Center. For Tribes: ONAP, Denver Program Office
ROSS for Neighborhood Networks CFDA No.: pending OMB Approval No.: Pending	Up to $15 million	July 10, 2002	Grants Mgmt. Center. For Tribes: ONAP, Denver Program Office
ROSS for Homeownership Supportive Services CFDA No.: Pending OMB Approval No.: Pending	Up to $11.2 million	July 10, 2002	Grants Mgmt. Center. For Tribes: ONAP, Denver Program Office

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TARGETED HOUSING, HOMELESS AND HOUSING CHOICE VOUCHER ASSISTANCE			
Homeless Assistance	**Up to $950 million**		
Continuum of Care Homeless Assistance Supportive Housing CFDA No. 14.235 Shelter Plus Care CFDA No. 14.238 Section 8 Moderate Rehabilitation Single Room Occupancy CFDA No. 14.249 OMB Approval No. 2506-0112	Up to $950 million	June 21, 2002	HUD Headquarters Room 7270 and two copies to appropriate Field Office
Elderly	**Up to $578.6**		
Section 202 Supportive Housing for the Elderly CFDA No.: 14.157 OMB Approval No.: 2502-0267	Up to $485.6 million	June 5, 2002	Appropriate local HUD Multifamily Hub Office or Multifamily Program Center
Assisted Living Conversion Program for Eligible Multifamily Projects CFDA No.: 14.314 OMB Approval No.: 2502-0542	Up to $93 million	July 3, 2002	Appropriate Multifamily Hub Office
Persons With Disabilities	**Up to $ 238.9 million**		
Section 811 Supportive Housing for Persons With Disabilities CFDA No.: 14.181 OMB Approval No.: 2502-0462	Up to $117.5 million	June 5, 2002	Appropriate local HUD Multifamily Hub Office or Multifamily Program Center
Housing Opportunities for Persons With AIDS (HOPWA) CFDA No.: 14.241 OMB Approval No.: 2506-0133	Up to $27.5 million	May 16, 2002 for Renewals June 25, 2002 for New Projects	HUD Headquarters Room 7251 and two copies to appropriate local HUD Field Office
Mainstream Housing Opportunities for Persons With Disabilities CFDA No.: 14.867 OMB Approval No.: 2577-0169	Up to $53.9 million	July 22, 2002	Grants Management Center

Rental Assistance for Non-elderly Persons With Disabilities Related to Certain Types of Section 8 Project-Based Development and Section 202, 221(d) and 236 Developments CFDA No.: 14.857 OMB Control No.: 2506-0169	Up to $20 million	July 2, 2002	Grants Management Center
Rental Assistance for Non-Elderly Persons With Disabilities in Support of Designated Housing Plans CFDA No.: 14.857 OMB Approval No.: 2577-0169	Up to $20 million	Housing Plan - May 20, 2002 Application - July 23, 2002	Plan to the Special Application Center: Application to Grants Management Center
Other Targeted Housing Assistance	**Up to $71.4 million**		
Service Coordinators in Multifamily Housing CFDA No.: 14.191 OMB Approval No.: 2577-0198	Up to $25 million	July 3, 2002	Appropriate local HUD Multifamily Hub Office or Multifamily Program Center
Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program Coordinators CFDA No.: 14.855 & 14.85 OMB Approval No.: 2577-0198	Up to $46.4 million	May 21, 2002	Grants Management Center

EDUCATIONAL PROGRAMS			
Doctoral Educational Programs	**Up to $ .55 million**		
Early Doctoral Student Research Grant Program CFDA No.: 14.517 OMB Approval No.: 2528-0216	Up to $150,000	June 20, 2002	HUD Headquarters Room 8106
Doctoral Dissertation Research Grant Program CFDA No.: 14.516 OMB Approval No.: 2528-0213	Up to $400,000	June 20, 2002	HUD Headquarters Room 8106

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Paperwork Reduction Act Statement. The information collection requirements in this SuperNOFA have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preceding chart provides the OMB approval number for each program that is part of this SuperNOFA. Where the chart notes that an OMB number is pending, this means that HUD has submitted the information to OMB to obtain an approval number and HUD's request for the number is pending. As soon as HUD receives the approval number, the number will be published in the **Federal Register** and provided to the SuperNOFA Information Center. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

General Section of the SuperNOFA

I. Authority, Purposes of the FY 2002 SuperNOFA, Funding Amounts, Restrictions Concerning Tobacco Products and Eligible Applicants and Activities

(A) *Authority.* HUD's authority for making funding available under this SuperNOFA is the FY 2002 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Public Law 107–73, approved November 26, 2001 (FY 2002 HUD Appropriations Act). Generally, this statement of authority is not repeated in the individual program sections of this SuperNOFA. The authority provision in the program sections identifies additional statutes and regulations that authorize the requirements listed for the funding competitions that make up this SuperNOFA.

(B) *Purposes.* The purposes of this SuperNOFA are to:

(1) *Make funding available to empower communities and residents.* The funding made available by this SuperNOFA will assist community leaders and residents, including low- and moderate-income residents and faith-based and other community-based grassroots organizations, in using HUD funds to develop viable communities and provide decent housing for all citizens, without discrimination.

(2) *Simplify the application process for funding under HUD programs.* For the majority of funding in this year's SuperNOFA, the SuperNOFA continues to provide a single, uniform set of rating factors and submission requirements. This year's SuperNOFA also allows you, the applicant, to apply for more than one program with a single application.

(3) *Promote comprehensive approaches to housing and community development.* Through the SuperNOFA process, HUD encourages you, the applicant, to focus on the interrelationships that exist in your community and in the use of HUD's funding programs to build community-wide efforts that coordinate the resources of multiple applicants and programs. To successfully address community needs, solve community problems, and take advantage of existing resources, HUD encourages members of a community to join together and pool all available resources in a common, coordinated effort. By making all of HUD's competitive funding available in one document, HUD encourages you, the applicant, to be able to relate the activities proposed for funding under this SuperNOFA to the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI). Applicants who demonstrate a coordinated effort will obtain higher scores than applicants who do not.

(4) *Promote self-sufficiency and economic opportunity* for the persons and communities being served by your program of activities. HUD's goal is to promote the self-sufficiency of those most in need of assistance, ensuring that the funds provided can result in measurable progress in increasing homeownership opportunities for low income and minority households, providing training and job opportunities so individuals and families can be economically self-sufficient, and better coordinating the delivery of services to homeless persons, persons with disabilities and minorities or residents where English may be a second language.

(C) *Funding Available.* As noted in the Introductory Section of this SuperNOFA, the HUD programs in this SuperNOFA are allocated amounts based on appropriated funds. If HUD recaptures funds in any program, HUD reserves the right to increase the available funding by those amounts.

(D) *Restrictions on the Use of HUD Funds in Support of the Sale of Tobacco Products.* Section 211 of the FY 2001 HUD Appropriations Act prohibits the use of HUD funds to construct, operate, or otherwise benefit a facility or facilities with a designated portion that sells or intends to sell predominantly cigarettes or other tobacco products. The Act defines the predominant sale of cigarettes or other tobacco products to mean sales representing more than 35 percent of annual in-store, non-fuel sales. Therefore, any programs funded with remaining or recaptured FY 2001 funds must adhere to this prohibition.

(E) *Eligible Applicants and Eligible Activities.* The Program Section of the SuperNOFA describes the eligible applicants and eligible activities for each program.

II. Requirements and Procedures Applicable to All Programs

Except as may be modified in the Program Section of this SuperNOFA, the requirements, procedures and principles listed below apply to all programs that are part of this SuperNOFA. Please read the Program Section of the SuperNOFA for additional requirements or information.

(A) *Statutory Requirements.* To be eligible for funding under this SuperNOFA, you, the applicant, must meet all statutory and regulatory requirements applicable to the program or programs for which funding is sought. If you need copies of the program regulations, they are available from the SuperNOFA Information Center or through the HUD website, www.hud.gov. HUD will not consider an application from an ineligible applicant. See the Program Section for instructions on how HUD will respond to proposed activities that are ineligible. With the exception of the Section 202 and Section 811 programs, HUD may also eliminate the ineligible activities from funding consideration and reduce grant amounts accordingly.

(B) *Threshold Requirements.*

(1) *Compliance with Fair Housing and Civil Rights Laws.*

(a) With the exception of federally recognized Indian tribes and their instrumentalities, all applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the non-discrimination provisions enumerated at 24 CFR 1003.601, as applicable. In addition to these requirements, there may be program-specific threshold requirements identified in the Program Sections of the SuperNOFA.

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings under Title VI, Section 504, or Section 109, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the individual program NOFA, you may not apply for assistance under this SuperNOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) *Conducting Business In Accordance With Core Values and Ethical Standards.* Entities subject to 24 CFR Parts 84 and 85 (most non-profit organizations and State, local and tribal governments or government agencies or instrumentalities who receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (see Sections 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this SuperNOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(3) *Other Threshold Requirements.* The Program Section for the funding for which you are applying may specify other threshold requirements. Additional threshold requirements may be identified in the discussion of "eligibility" requirements in the Program Section.

(C) *Additional Non-discrimination Requirements.* You, the applicant, and your subrecipients must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*) and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq*).

(D) *Affirmatively Furthering Fair Housing.* Under Section 808(e)(5) of the Fair Housing Act, HUD is obliged to affirmatively further fair housing. HUD requires the same of its grant recipients. Unless otherwise specified in the Program Section of this SuperNOFA, if you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes are color, national origin, religion, sex, disability or perceived ability, and family status. Unless otherwise instructed in the Program Section of this SuperNOFA, your application must include specific steps to:

(1) Overcome the effects of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; and/or

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the SuperNOFA rating factors that address affirmatively furthering fair housing. Please see the Program Section of this SuperNOFA for further information.

The requirements to affirmatively further fair housing apply to:

- Alaskan Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC);
- Assisted Living Conversion Program (ALCP) for Eligible Multifamily Housing Projects;
- Brownfields Economic Development Initiative (BEDI);
- Community Outreach Partnership Centers (COPC);
- Continuum of Care Homeless Assistance Programs (SHP, Shelter Plus Care, Section 8 Moderate Rehab);
- Fair Housing Initiatives Program (FHIP);
- Funding Availability for Rental Certificate/Housing Choice Voucher Family Self-Sufficiency (FSS) Program;
- Healthy Homes Demonstration Program;
- Healthy Homes Initiative and Lead Technical Studies;
- Hispanic-Serving Institutions Assisting Communities (HSIAC);
- Historically Black Colleges and Universities (HBCU) Program;
- Housing Counseling;
- Housing Opportunities for Persons With AIDS (HOPWA);
- Lead Hazard Control Program;
- Mainstream Housing Opportunities for Persons with Disabilities;
- Public Housing Resident Opportunities and Self-Sufficiency (ROSS) Program;
- Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans;
- Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Developments;
- Resident Opportunities for Self-Sufficiency (ROSS) for Homeownership Supportive Services;
- Rural Housing and Economic Development (RHED);
- Section 202 Supportive Housing for Elderly Persons;
- Section 811 Supportive Housing for Persons with Disabilities;
- Self-Help Homeownership Opportunity Program (SHOP);
- Service Coordinators in Multifamily Housing; and
- YouthBuild Program.

(E) *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* Certain programs in this SuperNOFA require recipients of assistance to comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements at subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low- and very low-income persons. As noted in the Program Section of this SuperNOFA, Section 3 is applicable to the following programs:

- Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC);
- Assisted Living Conversion Program (ALCP);
- Brownfields Economic Development Initiative (BEDI);
- Community Development Block Grant Program for Indian Tribes and Alaska Native Villages;
- Continuum of Care Homeless Assistance Programs;
- Healthy Homes and Lead Technical Studies;
- Healthy Homes Demonstration Program;
- Hispanic-Serving Institutions Assisting Communities (HSIAC);
- Historically Black Colleges and Universities (HBCU) Program;
- Housing Opportunities for Persons With AIDS (HOPWA);
- Lead Hazard Control;
- Resident Opportunities and Self-Sufficiency Program (ROSS);
- Section 202 Supportive Housing for the Elderly Program;
- Section 811 Supportive Housing for Persons with Disabilities Program.
- Self-Help Homeownership Opportunity Program (SHOP); and
- YouthBuild Program.

(F) *Ensuring the Participation of Small Businesses, Small Disadvantaged*

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Businesses, and Women-Owned Businesses. HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on Federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e) and non-profit recipients of assistance (grantees and sub-grantees) by 24 CFR 84.44(b), to take all necessary affirmative steps in contracting for purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, or as specified in the Program Section.

(G) *Relocation.* The relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing government-wide regulation at 49 CFR part 24 cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance. Some HUD program regulations also cover persons who are temporarily relocated.

Applicants should review the regulations for the programs for which they are applying when planning their project.

(H) *Forms, Certifications, and Assurances.* You, the applicant, are required to submit signed copies of the standard forms, certifications, and assurances listed in this section, unless the requirements in the Program Section specify otherwise. Also, the Program Section may specify additional forms, certifications, assurances or other information that may be required for a particular program in this SuperNOFA.

As part of HUD's continuing efforts to improve the SuperNOFA process, several of the required standard forms have been simplified this year. The standard forms, certifications, and assurances are:

- Standard Form for Application for Federal Assistance (SF–424) (which includes civil rights/fair housing certification);
- Federal Assistance Funding Matrix and Certifications, (HUD–424M);
- Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information-Construction Programs (SF–424C), as applicable;
- Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;
- Drug-Free Workplace Certification (HUD–50070);
- Certification of Payments to Influence Federal Transaction (HUD–50071) and, if engaged in lobbying, the Disclosure Form Regarding Lobbying (SF–LLL) (federally recognized tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State recognized Indian tribes and TDHEs established under State law are required to submit this certification);
- Applicant/Recipient Disclosure/Update Report (HUD–2880);
- Certification Regarding Debarment and Suspension (HUD–2992) as required by 24 CFR 24.510 (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, sub-grants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required);
- Certification of Consistency with RC/EZ/EC Strategic Plan (HUD–2990), if applicable;
- Certification of Consistency with the Consolidated Plan (HUD–2991) if applicable;
- Acknowledgment of Application Receipt (HUD–2993); and,
- Client Comments and Suggestions (HUD 2994).

Copies of these standard forms follow this General Section of the SuperNOFA. Copies of forms that are particular to an individual program follow the funding information for that program. Also included in Appendix B to the General Section is the Funding Application for the Housing Choice Voucher Program (HUD 52515).

Note: Forms SF–424A and SF–424C ask for information which is similar to the information required by form HUD 4123—Cost Summary which is listed as a required form under the ICDBG Program Section of this SuperNOFA and which is a required form for that program. Also note that there are assurances separate from SF–424B and 424D for the ICDBG program, which are specific to that program.

(I) *OMB Circulars and Government-wide Regulations Applicable to Grant Programs.* Certain OMB circulars also apply to programs in this SuperNOFA. The policies, guidance, and requirements of OMB Circular A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), OMB Circular A–21 (Cost Principles for Education Institutions), OMB A–122 (Cost Principles for Nonprofit Organizations), OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), and the regulations in 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments), may apply to the award, acceptance, and use of assistance under the programs of this SuperNOFA, and to the remedies for non-compliance, except when inconsistent with the provisions of the FY 2002 HUD Appropriations Act, other Federal statutes or regulations, or the provisions of this SuperNOFA. Compliance with additional OMB Circulars or government-wide regulations may be specified for a particular program in the Program Section of the SuperNOFA. Copies of the OMB Circulars may be obtained from EOP Publications; Room 2200; New Executive Office Building; Washington, DC 20503; telephone (202) 395–7332 (this is not a toll free number); or, from the website, www.whitehouse.gov/omb/circulars/index.html.

(J) *Environmental Requirements.* If you become a grantee under one of the programs in this SuperNOFA that assist physical development activities or property acquisition, you are generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or

(2) For programs subject to 24 CFR part 58, HUD has approved a grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review.

You, the applicant, should consult the Program Section of the SuperNOFA for the applicable program to determine the procedures for, timing of, and any exclusions from environmental review under a particular program. For applicants applying for funding under the Sections 202 or 811 Programs, please note the environmental review requirements for these programs.

(K) *Conflicts of Interest.* If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under this SuperNOFA, you are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for this SuperNOFA, you may not serve on a selection panel and you may not serve as a technical advisor to HUD for this SuperNOFA. All individuals involved in rating and ranking this SuperNOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable: how the selection or non-selection of any applicant under this SuperNOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or, how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to participating in any matter regarding this SuperNOFA. If you have questions regarding these provisions or if you have questions concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815.

(L) *Accessible Technology.* The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal grant awarded. The Act's coverage includes, but is not limited to, computers (hardware, software, word-processing, email, and web pages), facsimile machines, copiers and telephones. When developing, procuring, maintaining, or using EIT, funding recipients must ensure that the EIT allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, they may provide an alternative means to allow the individual to use the information and data. However, no grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services is generally provided.

III. Application Selection Process

(A) *Rating Panels.* To review and rate applications, HUD may establish panels. These panels may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain certain expertise and outside points of view, including views from other Federal agencies.

(1) *Rating.* HUD will evaluate and rate all applications for funding that meet the threshold requirements and rating factors for award described in this SuperNOFA. This will include rating the applicant and/or the applicant's organization and staff for technical merit or threshold compliance as well as any sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to the project. In evaluating applications for funding HUD will take into account applicants' past performance in managing funds, including the ability to account for funds appropriately; timely use of funds received either from HUD or other Federal, State, or local programs; meeting performance targets for completion of activities; and, number of persons to be served or targeted for assistance. HUD may include information at hand or available from public sources such as, but not limited to, newspapers, Inspector General or Government Accounting Office Reports or Findings, and/or hotline complaints that have been proven to have merit. In evaluating past performance, HUD may elect to deduct points from the rating score or establish threshold levels as specified under the Factors for Award in the Program Section of this SuperNOFA.

(2) *Ranking.* HUD will rank applicants within each program or, for Continuum of Care applicants, across the three programs identified in the Continuum of Care section of this SuperNOFA. HUD will rank applicants only against those applying for the same program funding. Where there are set-asides within a program competition, you, the applicant, will compete against only those applicants in the same set-aside competition.

(B) *Threshold Requirements.* HUD will review your application to determine whether it meets all of the threshold requirements described in Section II(B), above. Only applications that meet all of the threshold requirements will be eligible to be rated and ranked.

(C) *Factors for Award Used to Evaluate and Rate Applications.* For each program that is part of this SuperNOFA, the points awarded for the rating factors total 100. Depending upon the program for which you the applicant seek funding, the funding opportunity may provide for up to six bonus points as provided in paragraphs (1)–(3) of this Section III(C).

(1) *RC/EZ/EC.* The SuperNOFA provides for the award of two bonus points for eligible activities/projects that the applicant proposes to be located in federally designated Empowerment Zones (EZs), Enterprise Communities (ECs), Urban Enhanced Enterprise Communities (EECs), Strategic Planning Communities, or Renewal Communities (RCs), serve the residents of these areas, and are certified to be consistent with the area's strategic plan. (For ease of reference in the SuperNOFA, all these federally designated areas are collectively referred to as "RC/EZ/ECs" and residents of any of these federally designated areas as "RC/EZ/EC residents.") The individual funding announcement will indicate if the bonus points are available for that funding. The SuperNOFA contains a certification that must be completed for the applicant to be considered for RC/EZ/EC bonus points. A list of RCs, EZs, ECs, EECs, and Strategic Planning Communities is attached to this General Section of the SuperNOFA as Appendix A–2 and is also available from the SuperNOFA Information Center, and the HUD website, www.hud.gov.

(2) *Brownfield Showcase Communities:* In the BEDI competition, two bonus points are available for federally designated Brownfields Show Case Communities. (Please see BEDI section of this SuperNOFA for additional information.) A list of the federally designated RCs, EZs, ECs, Enhanced ECs, and Brownfield Showcase Communities is available from the SuperNOFA Information Center or through the HUD website, www.hud.gov.

(3) *Court-Ordered Consideration.* For any application submitted by the City of Dallas, Texas, for funds under this SuperNOFA for which the City of Dallas is eligible to apply, HUD will consider the extent to which the strategies or plans in the application or applications will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low-income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low-income housing programs have on potential participants in the programs covered by this SuperNOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 bonus points to

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the score based upon this consideration. This special consideration results from an order of the U.S. District Court for the Northern District of Texas, Dallas Division. (This Section III(C)(2) is limited to applications submitted by the City of Dallas.)

(4) *The Five Standard Rating Factors.* The majority of programs in this SuperNOFA use the five rating factors described below. Additional details about the five rating factors and the maximum points for each factor are provided in the Program Section of the SuperNOFA. You, the applicant, should carefully read the factors for award as described in the Program Section of the SuperNOFA. HUD has established these five factors as the basic factors for award in every program that is part of this SuperNOFA. For a specific funding opportunity, however, HUD may have modified these factors to take into account specific program needs or statutory or regulatory limitations imposed on a program. The standard factors for award, except as modified in the program area section, are:

Factor 1: Capacity of the Applicant and Relevant Organizational Staff

Factor 2: Need/Extent of the Problem

Factor 3: Soundness of Approach

Factor 4: Leveraging Resources

Factor 5: Coordination, Self-Sufficiency and Sustainability

The Continuum of Care Homeless Assistance Programs have only two factors that receive points: Need and Continuum of Care.

(D) *Negotiation.* After HUD has rated and ranked all applications and made selections, HUD may require, depending upon the program, that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In this instance, HUD may offer an award, and proceed with negotiations with the next highest-ranking applicant.

(E) *Adjustments to Funding.*

(1) HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and that the purposes of a specific program are met.

(2) HUD will not fund any portion of your application that: is not eligible for funding under specific program statutory or regulatory requirements; does not meet the requirements of this SuperNOFA; or may be duplicative of other funded programs or activities from previous years' awards or other selected applicants. Only the eligible portions of your application (including non-duplicative portions) may be funded.

(3) If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next highest-ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program where there is a balance of funds.

(4) In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this SuperNOFA, HUD may select that applicant when sufficient funds become available.

(F) Performance and Compliance Actions of Grantees. HUD will measure and address the performance and compliance actions of grantees in accordance with the applicable standards and sanctions of their respective programs.

IV. Application Submission Requirements

As discussed in the Introductory Section of this SuperNOFA, part of the simplification of this funding process is to reduce the duplication of effort that has been required of applicants in the past. Before the SuperNOFA process, many of HUD's applicants were required to complete and submit similar applications for HUD funded programs. As the Program Chart shows, the FY 2002 SuperNOFA provides, as did the previous SuperNOFAs, for consolidated applications for several of the programs for which funding is available under this SuperNOFA.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding. (Sections 202 and 811 Programs provide for appeal of rejection of an application on technical deficiency. Please see the Program Section for these programs for additional information and instructions.)

VI. HUD's FY 2002 SuperNOFA Policy Priorities

This Section describes important initiatives that HUD is encouraging applicants to undertake in implementing programs funded under this SuperNOFA. Seven SuperNOFA policy priorities are listed below. Each of the seven policy priorities support the interim Strategic Goals listed in Part II of this NOFA, as noted below.

(A) *Increasing Homeownership Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families where English may be a Second Language.* Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership to many who want the joy, security, and sense of community that comes from owning a home of their own. Proposed activities can support Strategic Goals 1, 2, and 7.

(B) *Improving the Quality of Public Housing and Providing More Choices for Its Residents.* HUD wants to improve the quality of life for those living in public housing, not only by improving the physical surroundings of public housing developments, but by providing residents greater opportunities to move from public housing into homeownership opportunities or into a community with greater housing choices and better educational and employment opportunities. Proposed activities directly support Strategic Goal 3, but can also support Strategic Goals 4, and 7.

(C) *Encouraging Accessible Design Features.* As described in Section II (B) and (H), applicants must be in compliance with applicable civil rights laws including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws, and regulations implementing them, provide for nondiscrimination based on disability and require housing and facilities to incorporate certain features intended to provide for their use and enjoyment by persons with disabilities.

HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. These features would eliminate many other barriers limiting the access of persons with disabilities to housing and other facilities. These accessible design features are intended to promote visitability and incorporate features of universal design as described below:

(i) Visitability in New Construction and Substantial Rehabilitation. Applicants are encouraged to incorporate visitability standards where feasible in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. Copies of the Uniform Federal Accessibility Standards (UFAS) are available from the SuperNOFA Information Center (1–800–HUD–8929 or 1–800–HUD–2209 (TTY)) and also from the Office of Fair Housing and Equal Opportunity; U.S. Department of Housing and Urban Development; Room 5230, 451 Seventh Street, SW.; Washington, DC 20410; 202–755–5404 or 1–800–877 8399 (TTY Federal Information Relay Service). Proposed activities support Strategic Goal 7.

(ii) Universal Design. Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. Universal design is the design of products and environments to be usable by all people to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. In addition to any applicable required accessibility features under Section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, electronic communication mechanisms, or when communicating with community residents at public meetings or events. HUD believes that by creating housing that is accessible to all, it can increase the supply of affordable housing for all, regardless of ability or age. Likewise, creating places where people work, train, and interact which are useable and open to all residents increases opportunities for economic and personal self-sufficiency. Proposed activities under this priority will support Strategic Goals 2, 7, and 8.

(D) *Improving Computer Access, Literacy, and Employment Opportunities.* The Department seeks to promote activities that provide access to computers to low- and moderate-income adults and children who do not have access and, therefore, may be disadvantaged with respect to education, work, and training opportunities. HUD encourages applicants to incorporate education and job training opportunities through initiatives such as HUD's Neighborhood Networks. Neighborhood Networks enhance the self-sufficiency, employability, and economic self-reliance of low-income families and the elderly living in HUD-insured or HUD-assisted properties, and public housing by providing on-site computer access and training resources.

Applicants are encouraged to teach adults and children how to use computers to achieve economic self-sufficiency, provide job training and placement, and establish public-private partnerships to support community-learning centers and provide apprenticeship opportunities. Proposed activities can support Strategic Goals 2, 3, 4, 5, 7, and 8.

(E) *Providing Full and Equal Access to Faith-Based and Other Community-Based Organizations in HUD Program Implementation.* (1) HUD encourages non-profit organizations, including grassroots faith-based and other community-based organizations, to participate in the vast array of programs for which funding is available through this SuperNOFA. HUD believes that grassroots organizations, e.g., civic organizations, congregations, and faith-based and other community-based organizations, have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services such as assisting the homeless and preventing homelessness, counseling individuals and families on fair housing rights, providing elderly housing opportunities, developing first time homeownership programs, increasing homeownership and rental housing opportunities in neighborhoods of their choice, developing affordable and accessible housing in neighborhoods across the country, creating economic development programs, and supporting the residents of public housing facilities. The goal of this policy priority is to make HUD's programs more effective, efficient, and accessible by expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. Additionally, HUD encourages applicants to include these faith-based and other community-based grassroots organizations in their workplans. Applicants, their partners, and participants must review the Program Section of this SuperNOFA to determine eligibility. Faith-based and other community-based grassroots organizations, and applicants who currently or propose to partner, fund, or subcontract with grassroots organizations, including faith-based or other community-based non-profits eligible under applicable program regulations, in conducting their work programs will receive higher rating points as specified in the program section of this SuperNOFA.

(2) Definition of Grassroots Organizations.

(a) HUD will consider an organization a "grassroots organization" if the organization is headquartered in the local community to which it provides services; and,

(i) Has a social services budget of $300,000 or less, or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots." Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations but must demonstrate that they are currently working with a grassroots organization, e.g., having a congregation or civic organization, or other charitable organization provide volunteers.

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(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses. Activities under this priority directly support Strategic Goal 4.

(F) *Ensuring that Programs are Accountable for the Promises Made and the Actions Taken.* HUD encourages applicants to include program measures to ensure that promises made in your application for funding for persons to be assisted, units to be constructed or rehabilitated, timelines and budgets to be followed, and results to be achieved can be accounted for and independently assessed to ensure performance goals have been met. Applicants who have included means of assessing progress and tracking performance goals and achievements against promises made in the application will receive higher rating points. Actions taken to support this priority directly support Strategic Goal 6.

(G) *Colonias.* HUD seeks to improve housing conditions for families living in Colonias. Colonia means any identifiable community that:

(i) is located in Arizona, California, New Mexico, or Texas;

(ii) is within 150 miles of the border between the United States and Mexico; and

(iii) meets objective need criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, sanitary, and accessible housing.

Activities performed under this priority primarily support Strategic Goal 8, but can also support Strategic Goals 3, 4, and 7.

VII. Findings and Certifications

(A) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

(B) *Executive Order 13132, Federalism.* Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of Section 6 of the Executive Order are met. This SuperNOFA does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(C) *Executive Order 12372, Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform a State review function. The official listing of State Points of Contact (SPOC) for this review process can be found at www.whitehouse.gov/omb/grants/spoc.html. States not listed on the website have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your State has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your applications. If your State does not have a SPOC, you may send applications directly to HUD.

(D) *Prohibition Against Lobbying Activities.* You, the applicant, are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not and have not used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law must comply with this requirement.

(E) *Section 102 of the HUD Reform Act, Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

(2) *Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice and for at least 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting one on their application. All debriefing requests must be made in writing or by email by the authorized official whose signature appears on the SF–424 or his or her successor in office, and submitted to the person or organization identified as the Contact under the section entitled "Further Information and Technical Assistance" in the Program Section of the SuperNOFA under which you applied for assistance. Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(3) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

(4) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to Section 102(a) of the HUD Reform Act; and/or

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) *Section 103 of the HUD Reform Act.* HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at 202–708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

VIII. The FY 2002 SuperNOFA Process and Future HUD Funding Processes

Each year, HUD strives to improve its SuperNOFA. The FY 2002 SuperNOFA was revised based upon comments received during the FY 2001 funding process. HUD continues to welcome comments and feedback from applicants and other members of the public on how HUD may further improve its competitive funding process.

The description of programs for which funding is available under this SuperNOFA follows this General Section and its appendices.

Dated: March 14, 2002.

Mel Martinez,

Secretary.

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APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
NEW ENGLAND	Boston, MA	HUD - Boston Office - O'Neil Federal Building 10 Causeway Street, Room 375 Boston, MA OFC PHONE (617) 994-8203 FAX (617) 565-6558
	Hartford, CT	HUD - Hartford Office One Corporate Center Hartford, CT OFC PHONE (860) 240-4844 FAX (860) 240-4850
	Bangor, ME	HUD - Bangor Office 202 Harlow Street - Chase Bldg. Suite 101 Bangor, ME OFC PHONE (207) 945-0468 FAX (207) 945-0533
	Bangor, ME	HUD - Bangor Office 202 Harlow Street - Chase Bldg. Suite 101 Bangor, ME OFC PHONE (207) 945-0468 FAX (207) 945-0533
	Manchester, NH	HUD - Manchester Office Norris Cotton Federal Bldg. 275 Chestnut Street Manchester, NH OFC PHONE (603) 666-7682 FAX (603) 666-7667
	Providence, RI	HUD - Providence Office 10 Weybosset Street Sixth Floor Providence, RI OFC PHONE (401) 528-5352 FAX (401) 528-5097
	Burlington, VT	HUD - Burlington Office Room 237 - Federal Building 11 Elmwood Avenue Burlington, VT OFC PHONE (802) 951-6290 FAX (802) 951-6298
NEW YORK/NEW JERSEY	New York, NY	HUD - New York Office 26 Federal Plaza - Suite 3541 New York, NY OFC PHONE (212) 264-1161 FAX (212) 264-3068
	Albany, NY	HUD - Albany Office 52 Corporate Circle Albany, NY OFC PHONE (518) 464-4200 Ext. 4204 FAX (518) 464-4300
	Buffalo, NY	HUD - Buffalo Office Lafayette Court, 5th Floor 465 Main Street Buffalo, NY OFC PHONE (716) 551-5733 Ext. 5000 FAX (716) 551-5752
	Syracuse, NY	HUD - Syracuse Storefront Office 128 Jefferson Street Syracuse, NY OFC PHONE (315) 477-0616 FAX (315) 477-0196
	Newark, NJ	HUD - Newark Office - 13th Floor One Newark Center Newark, NJ OFC PHONE (973) 622-7619 FAX (973) 645-2323
	Camden, NJ	HUD - Camden Office 2nd Floor - Hudson Bldg. 800 Hudson Square Camden, NJ OFC PHONE (856) 757-5081 FAX (856) 757-5373
MID-ATLANTIC	Philadelphia, PA	HUD Philadelphia Office The Wanamaker Building 100 Penn Square, East Philadelphia, PA OFC PHONE (215) 656-0600 FAX (215) 656-3445
	Pittsburgh, PA	HUD Pittsburgh Office 339 Sixth Avenue - Sixth Floor Pittsburgh, PA OFC PHONE (412) 644-5945 FAX (412) 644-4240
	Wilmington, DE	HUD - Wilmington Office 824 Market Street, Suite 850 Wilmington, DE OFC PHONE (302) 573-6300 FAX (302) 573-6259
	Baltimore, MD	HUD Baltimore Office 10 South Howard Street, 5th Floor Baltimore, MD OFC PHONE (410) 962-2520 Ext. 3474 FAX (410) 962-1849
	Richmond, VA	HUD Richmond Office 3600 West Broad Street Richmond, VA OFC PHONE (804) 278-4507 Ext. 3208 FAX (804) 278-4603
	Washington, DC	HUD Washington, DC Office 820 First Street NE, Suite 300 Washington, DC OFC PHONE (202) 275-9206 Ext. 3075 FAX (202) 275-9212

APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
	Washington, DC	801 N. Capitol St NE Washington, DC (202) 275-9200 Ext. 3141
	Charleston, WV	HUD - Charleston Office 405 Capitol Street, Suite 708 Charleston, WV OFC PHONE (304) 347-7036 Ext. 101 FAX (304) 347-7050
SOUTHEAST/CARIBBEAN	Atlanta, GA	Secretary's Representative 40 Marietta Street - Five Points Plaza Atlanta, GA OFC PHONE (404) 331-4111 FAX (404) 730-2392
	Birmingham, AL	HUD - Birmingham Office Medical Forum Bldg 950 22nd Street North, Suite 900 Birmingham, AL OFC PHONE (205) 731-2617 FAX (205) 290-7593
	San Juan, PR	HUD Caribbean Office 171 Carlos E. Chardon Avenue San Juan, PR OFC PHONE (787) 766-5201 FAX (787) 766-5995
	Louisville, KY	HUD - Louisville Office 601 West Broadway, PO Box 1044 Louisville, KY OFC PHONE (502) 582-5251 FAX (502) 582-6074
	Miami, FL	HUD Florida State Office 909 SE First Avenue Miami, FL OFC PHONE (305) 536-5678 FAX (305) 536-5765
	Jacksonville, FL	HUD - Jacksonville Office 301 West Bay Street, Suite 2200 Jacksonville, FL OFC PHONE (904) 232-2627 FAX (904) 232-3759
	Orlando, FL	HUD - Orlando Office 3751 Maguire Boulevard, Room 270 Orlando, FL OFC PHONE (407) 648-6441 FAX (407) 648-6310
	Tampa, FL	HUD Tampa Office 500 Zack Street, Suite 402 Tampa, FL OFC PHONE (813) 228-2504 FAX (813) 228-2431
	Jackson, MS	HUD Jackson Office McCoy Federal Building 100 W. Capitol Street, Room 910 Jackson, MS OFC PHONE (601) 965-4700 Ext. 2105 FAX (601) 965-4773
	Greensboro, NC	HUD Greensboro Office Koger Building 2306 West Meadowview Road Greensboro, NC OFC PHONE (336) 547-4001, 4002,4003 FAX (336) 547-4138
	Columbia, SC	HUD Columbia Office 1835 Assembly Street Columbia, SC OFC PHONE (803) 765-5592 FAX (803) 253-3040
	Nashville, TN	HUD - Nashville Office 235 Cumberland Bend, Suite 200 Nashville, TN OFC PHONE (615) 736-5213 ext. 7120 FAX (615) 736-2018
	Knoxville, TN	HUD - Knoxville Office 710 Locust Street, SW Knoxville, TN OFC PHONE (423) 545-4384 FAX (423) 545-4569
	Memphis, TN	HUD - Memphis Office 200 Jefferson Avenue, Suite 1200 Memphis, TN OFC PHONE (901) 544-3367 FAX (901) 544-3697
MIDWEST	Chicago, IL	Ralph Metcalfe Federal Building 77 West Jackson Boulevard Chicago, IL OFC PHONE (312) 353-5680 FAX (312) 886-2729
	Indianapolis, IN	HUD Indianapolis Office 151 North Delaware Street, Suite 1200 Indianapolis, IN OFC PHONE (317) 226-6303, ext. 7034 FAX (317) 226-6317
	Detroit, MI	HUD Detroit Office 477 Michigan Avenue Detroit, MI OFC PHONE (313) 226-7900 FAX (313) 226-5611
	Flint, MI	HUD Flint Office Municipal Center, North Building 1101 S. Saginaw Street Flint, MI OFC PHONE (810) 766-5112 FAX (810) 766-5122
	Grand Rapids, MI	HUD Grand Rapids Office Trade Center Building 50 Louis

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Region	Office	Address and phone numbers
		Street, N.W. Grand Rapids, MI OFC PHONE (616) 456-2100 FAX (616) 456-2114
	Minneapolis, MN	HUD Minneapolis Office 220 Second Street, South Minneapolis, MN OFC PHONE (612) 370-3288 FAX (612) 370-3220
	Columbus, OH	HUD Columbus Office 200 North High Street Columbus, OH OFC PHONE (614) 469-2540, Ext. 8116 FAX (614) 469-2432
	Cincinnati, OH	HUD Cincinnati Office 15 East 7th Street Cincinnati, OH OFC PHONE (513) 684-2967 FAX (513) 684-6224
	Cleveland, OH	HUD Cleveland Office 1350 Euclid Avenue, Suite 500 Cleveland, OH OFC PHONE (216) 522-4058 Ext. 7102 FAX (216) 522-4067
	Milwaukee, WI	HUD Milwaukee Office 310 West Wisconsin Avenue, Room 1380 Milwaukee, WI OFC PHONE (414) 297-3214 ext. 8000 FAX (414) 297-3947
SOUTHWEST	Ft. Worth, TX	HUD Ft. Worth Office 801 Cherry St, PO Box 2905 Ft. Worth, TX OFC PHONE (817) 978-5965 FAX (817) 978-5567
	Dallas, TX	HUD Dallas Office 525 Griffin Street, Room 860 Dallas, TX OFC PHONE (214) 767-8300 FAX (214) 767-8973
	Houston, TX	HUD Houston Office 2211 Norfolk #200 Houston, TX OFC PHONE (713) 313-2274 ext. 7015 FAX (713) 313-2319
	Lubbock, TX	HUD Lubbock Office 1205 Texas Avenue, Room. 511F Lubbock, TX OFC PHONE (806) 472-7265 Ext. 3030 FAX (806) 472-7275
	San Antonio, TX	HUD San Antonio Office 800 Dolorosa San Antonio, TX OFC PHONE (210) 475-6806 FAX (210) 472-6804
	Little Rock, AR	HUD Little Rock Office 425 West Capitol Avenue #900 Little Rock, AR OFC PHONE (501) 324-5401 FAX (501) 324-6142
	New Orleans, LA	HUD New Orleans Office Hale Boggs Bldg. 501 Magazine Street, 9th Floor New Orleans, LA OFC PHONE (504) 589-7201 FAX (504) 589-6619
	Shreveport, LA	HUD Shreveport Office 401 Edwards Street, Room. 1510 Shreveport, LA OFC PHONE (318) 676-3440 FAX (318) 676-3407
	Albuquerque, NM	HUD Albuquerque Office 625 Silver Avenue SW, Suite 100 Albuquerque, NM OFC PHONE (505) 346-6463 Ext. 7332 FAX (505) 346-6704
	Oklahoma City, OK	HUD Oklahoma City Office 500 W. Main Street, Suite 400 Oklahoma City, OK OFC PHONE (405) 553-7500 FAX (405) 553-7588
	Tulsa, OK	HUD Tulsa Office 1516 S Boston Ave, Suite 100 Tulsa, OK OFC PHONE (918) 581-7168 FAX (918) 581-7440
GREAT PLAINS	Kansas City, KS	HUD Kansas City Office 400 State Avenue, Room 200 Kansas City, KS OFC PHONE (913) 551-5462 Ext. 5 FAX (913) 551-5469
	Des Moines, IA	HUD Des Moines Office 210 Walnut Street, Room 239 Des Moines, IA OFC PHONE (515) 284-4573 FAX (515) 284-4743
	Omaha, NE	HUD Omaha Office 10909 Mill Valley Road, Suite 100 Omaha, NE OFC PHONE (402) 492-3103 FAX (402) 492-3150
	St. Louis, MO	HUD St. Louis Office 1222 Spruce Street #3207 St. Louis,

APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
		MO OFC PHONE (314) 539-6560 FAX (314) 539-6384
ROCKY MOUNTAINS	Denver, CO	Secretary's Representative HUD Denver Office 633 17th Street, 14th Floor Denver, CO OFC PHONE (303) 672-5440 FAX (303) 672-5004
	Helena, MT	HUD Helena Office 7 W 6th Avenue Helena, MT OFC PHONE (406) 449-5048 FAX (406) 441-1292
	Fargo, ND	HUD - Fargo Office 657 2nd Avenue North, Room 366 Fargo, ND OFC PHONE (701) 239-5040 FAX (701) 239-5249
	Sioux Falls, SD	HUD - Sioux Falls Office 2400 West 49th Street, Room. I-201 Sioux Falls, SD OFC PHONE (605) 330-4223 FAX (605) 330-4428
	Salt Lake City, UT	HUD Salt Lake City Office 257 East, 200 South. Room. 550 Salt Lake City, UT OFC PHONE (801) 524-6071 FAX (801) 524-3439
	Casper, WY	HUD - Wyoming Office 100 East B Street, Room 4229 Casper, WY OFC PHONE (307) 261-6251 FAX (307) 261-6245
PACIFIC/HAWAII	San Francisco, CA	HUD - San Francisco Office 450 Golden Gate Avenue San Francisco, CA OFC PHONE (415) 436-6532 FAX (415) 436-6446
	Fresno, CA	HUD - Fresno Office 2135 Fresno Street, Suite 100 Fresno, CA OFC PHONE (559) 487-5032 Ext. 232 FAX (559) 487-5191
	Los Angeles, CA	HUD Los Angeles Office 611 W. Sixth Street, Suite 800 Los Angeles, CA OFC PHONE (213) 894-8007 FAX (213) 894-8110
	Sacramento, CA	HUD Sacramento Office 925 L Street Sacramento, CA OFC PHONE (916) 498-5220 Ext. 322 FAX (916) 498-5262
	San Diego, CA	HUD San Diego Office Symphony Towers 750 B Street, Suite 1600 San Diego, CA OFC PHONE (619) 557-5310 FAX (619) 557-5312
	Santa Ana, CA	HUD Santa Ana Office 1600 N. Broadway, Suite 100 Santa Ana, CA OFC PHONE (714) 796-5577 Ext. 3006 FAX (714) 796-1285
	Phoenix, AZ	HUD Phoenix Office 400 North Fifth Street, Suite 1600 Phoenix, AZ OFC PHONE (602) 379-4434 FAX (602) 379-3985
	Tucson, AZ	HUD Tucson Office 160 N Stone Ave Tucson, AZ OFC PHONE (520) 670-6000 FAX (520) 670-6207
	Honolulu, HI	HUD Honolulu Office 500 Ala Moana Blvd. #3A Honolulu, HI OFC PHONE (808) 522-8175 Ext. 256 or 259 FAX (808) 522-8194
	Las Vegas, NV	HUD Las Vegas Office 333 N. Rancho Drive - Atrium Bldg. Suite 700 Las Vegas, NV OFC PHONE (702) 388-6208/6500 FAX (702) 388-6244
	Reno, NV	HUD Reno Office 3702 S. Virginia Street Reno, NV OFC PHONE (775) 784-5356 FAX (775) 784-5066
NORTHWEST/ALASKA	Seattle, WA	Secretary's Representative HUD Seattle Office 909 First Avenue, Suite 200 Seattle, WA OFC PHONE (206) 220-5101 FAX (206) 220-5108
	Spokane, WA	HUD Spokane Office US Courthouse Bldg. 920 W. Riverside, Suite 588 Spokane, WA OFC PHONE (509) 353-0674 FAX (509) 353-0682
	Anchorage, AK	HUD Anchorage Office 949 East 36th Avenue, Suite 401

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Region	Office	Address and phone numbers
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	Boise, ID	HUD Boise Office Plaza IV, Suite 220 800 Park Boulevard Boise, ID OFC PHONE (208) 334-1990 ext. 3007 FAX (208) 334-9648
	Portland, OR	HUD Portland Office 400 SW 6th Avenue #700 Portland, OR OFC PHONE (503) 326-2561 FAX (503) 326-2568

Appendix A-2 – List of EZs, ECs, Urban Enhanced Enterprise Communities, Strategic Planning Communities, and Renewal Comunities

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Appendix B

This appendix to the General Section of the SuperNOFA contains the standard forms, certifications and assurances used by the majority if not all of the programs that are part of the SuperNOFA.

Application for Federal Assistance

OMB Approval No. 0348-0043

	2. Date Submitted (mm/dd/yyyy)	Applicant Identifier
1. Type of Submission Application: ☐ Construction ☐ Non-Construction Pre-application: ☐ Construction ☐ Non-Construction	3. Date Received by State (mm/dd/yyyy)	State Application Identifier
	4. Date Received by Federal Agency (mm/dd/yyyy)	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit
Address (give city, county, State, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number (EIN) (xx-yyyyyyy)

7. Type of Applicant (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Inter-municipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N Nonprofit
O Public Housing Agency
P. Other (Specify)

8. Type of Application:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. Name of Federal Agency

10. Catalog of Federal Domestic Assistance Number (xx-yyy)

Title:

11. Descriptive Title of Applicant's Project

12. Areas Affected by Project (cities, counties, States, etc.)

13. Proposed Project		14. Congressional Districts of	
Start Date (mm/dd/yyyy)	Ending Date (mm/dd/yyyy)	a. Applicant	b. Project

15. Estimated Funding

Complete form HUD-424-M, Funding Matrix

16. Is Application Subject to Review by State Executive Order 12372 Process?

a. **Yes** This pre-application/application was made available to the State Executive Order 12372 Process for review on:

Date (mm/dd/yyyy)_____

b. **No** ☐ Program is not covered by E.O. 12372

or ☐ Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?

☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/pre-application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number (Include Area Code)
d. Signature of Authorized Representative		e. Date Signed (mm/dd/yyyy)

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form SF-424 (7/97)
Prescribed by OMB Circular A-102

Instructions for the SF-424

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Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency .

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For pre-applications, use a separate sheet to provide a summary description of this project.

Item Entry

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. **Use form HUD-4243-M, Funding Matrix.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval (pending)

Federal Assistance Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which Federal funding is being requested, and complete the certifications.

Program*	Applicant Share	Federal Share	State Share	Local	Other	Program Income	Total
Grand Totals							

* For FHIPs, show both initiative and component

Instructions for the HUD-424-M

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form is to be used by applicants requesting funding from the Department of Housing and Urban Development for application submissions for Federal assistance.

Enter the following information:

Program: The HUD funding program you are applying under.

Applicant Share: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Federal Share: Enter the amount of HUD funds you are requesting with your application.

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is contributing to your project or program of activities.

Local Share: Enter the amount of funds or cash equivalent of in-kind services your local government is contributing to your project or program of activities.

Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being contributed to your project or program of activities.

Program Income: Enter the amount of program income you expect to generate and contribute to this program over the life of your award.

Total: Please total all columns and fill in the amounts.

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Budget Information — Non-Construction Programs

OMB Approval No. 0348-0044

Section A - Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

Section B - Budget Categories

6. Object Class Categories	Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. **Totals** (sum of 6i and 6j)					
7. Program Income	$	$	$	$	$

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Section C - Non-Federal Resources

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) Totals
8.	$	$	$	$
9.				
10.				
11.				
12. **Total** (sum of lines 8 - 11)	$	$	$	$

Section D - Forcasted Cash Needs

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. **Total** (sum of lines 13 and 14)	$	$	$	$	$

Section E - Budget Estimates of Federal Funds Needed for Balance of the Project

(a) Grant Program	Future Funding Periods (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **Total** (sum of lines 16-19)	$	$	$	$

Section F - Other Budget Information

21. Direct Charges | 22. Indirect Charges

23. Remarks

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Instructions for the SF-424A

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General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the later case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a **single** Federal grant program (Federal Domestic Assistance Catalog number) and **not requiring** a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a **single** program **requiring** budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in **Column** (a) and the respective catalog number on each line in Column (b).

For applications pertaining to **multiple** programs where one or more programs **require** a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (a) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

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Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.O. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 36701 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (e) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the national Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

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OMB Approval No. 0348-0041

Budget Information—Construction Programs

Note: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case you will be notified.

Cost Classification	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Column a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. Project inspection fees	$ .00	$ .00	$ .00
7. Site work	$ 00	$ .00	$ 00
8. Demolition and removal	$ 00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ 00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. **Subtotal**	$ .00	$ .00	$ .00
13. Contingencies (sum of lines 1-11)	$ .00	$ .00	$ .00
14. **Subtotal**	$ .00	$ .00	$ .00
15. Project (program) income	$ .00	$ .00	$ .00
16. **Total Project Costs** (subtract #15 from #14)	$ .00	$ .00	$ .00
Federal Funding			
17. Federal assistance requested, calculate as follows: Enter eligible costs from line 16c _____ Multiply x _____ % (Consult Federal agency for Federal percentage share). Enter the resulting Federal share.			$ .00

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SF-424C (Rev. 4/92)
Prescribed by OMB Circular A-102

Instructions for HUD-424C

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project (0348-0041), Washington, D.C. 20503. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

This sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions please contact the Federal agency.

Column a.—If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "**Cost Classifications.**"

If this application entails a change to an existing award, enter the eligible amounts **approved under the previous award** for the items under "**Cost Classification.**"

Column b.—If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is not allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (–)] to the previously approved costs (from column a.) reflected in this application.

Column c.—This is the net of lines 1 through 16 in columns "a." and "b.".

Line 1—Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchase of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2—Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3—Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line 4—Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5—Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6—Enter estimated engineering inspection costs.

Line 7—Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.

Line 9—Enter estimated cost of the construction contract.

Line 10—Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11—Enter estimated miscellaneous costs.

Line 12—Total of items 1 through 11.

Line 13—Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14—Enter the total of lines 12 and 13.

Line 15—Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16—Subtract line 15 from line 14.

Item 17—This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.

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SF-424C (Rev. 4/92)
Prescribed by OMB Circular A-102

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Assurances — Construction Programs

OMB Approval No. 0348-0042

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other non-discrimination Statute(s) which may apply to the application.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

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Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. **Sites for Work Performance.** The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title

Signature	Date
X	

form HUD-50070 (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title

Signature	Date (mm/dd/yyyy)

Previous edition is obsolete

form HUD 50071 (3/98)
ref. Handboooks 7417.1, 7475.13, 7485.1, & 7485.3

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
( ) -	- -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants (For further information see 24 CFR Sec. 4.3). ☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 ☐ Yes ☐ No.

If you answered **"No"** to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form.
However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.
Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:
1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Form **HUD-2880** (3/99)

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Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the dunng the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance):

General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unil of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

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Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title

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Certification of Consistency with the RC/EZ/EC Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the Strategic Plan of a Federally-designated Empowerment Zone (EZ), Enterprise Community (EC), an Urban Enhanced Enterprise Community, Strategic Planning Community or Renewal Community.

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of RC/EZ/EC _____

I further certify that the proposed activities/projects will be located within the RC/EZ/EC/Urban Enhanced EC or Strategic Planning Community and will serve the RC/EZ/EC/Urban Enhanced EC, Strategic Planning Community residents, or Renewal Community. (2 points)

Name of the Official Authorized to Certify the RC/EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.

(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official of the Jurisdiction Name: _____

Title: _____

Signature: _____

Date: _____

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Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp.9/30/2002)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to congidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	☐	☐		
for Section 8 Vouchers?	☐	☐		

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the waiting list)

	Number of Dwelling Units by Bedroom Size							
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates								
Vouchers								

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

E. Housing Quality Standards (HQS). (Check applicable box)

☐ HUD's HQS will be used with no modifications ☐ Attached for HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or nonmetropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement..

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions..

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory	
	Phone No.	Date

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Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Grants Management and Compliance
Room 2182
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvemenl (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

form **HUD-2994** (2/2001)

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Grant Applicant's Status as a Religious Organization

U.S. Department of Housing and Urban Development
Office of Administration

OMB Approval No. Pending
(exp. 99/99/9999)

Public reporting burden for this collection is estimatied to averge 0.02 hour per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the information collection instrument. HUD may not collect this information, and you are not required to complete this form, unless a it displays a currently valid OMB.

The Department of Housing and Urban Development (HUD) requests that you voluntarily provide the following information in order to satisfy the reporting requirements of the President's "Faith-Based Initiative," in accordance with Executive Order is 13198, signed January 29, 2001, and to respond to public inquiries about program benefits.

Collection of this information is not mandatory and your response will not affect in any way the scoring of your submission.

Is the applicant a religious organization — meaning an organization with a religious motivation, character, or purpose — or is it affiliated with or sponsored by a religious organization? (Check one below)

☐ YES
☐ NO

As part of this project, does applicant propose to either partner with, fund or subcontract with another organization which is either a religious organization or which is affiliated with or sponsored by a religious organization?

☐ YES
☐ NO

Name of Applicant Organization:

Title of Program for which Application was submitted:

Date: _____

form **HUD-424-F** (02/06/2004)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE (TA)

HOME TA

McKinney-Vento
Homeless Assistance
Programs TA

HOPWA TA

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE (CD–TA) PROGRAMS—HOME, MCKINNEY-VENTO ACT HOMELESS ASSISTANCE AND HOPWA

Program Overview

Purpose of the Program. The purposes of the technical assistance programs in this SuperNOFA are:

HOME Technical Assistance. To help HOME participating jurisdictions design and implement HOME programs, including: Improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing; facilitating the exchange of information to help participating jurisdictions carry out their programs; facilitating the establishment and efficient operation of employer-assisted housing programs and land bank programs consistent with the purposes of the HOME statute; and encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships.

McKinney-Vento Act Homeless Assistance Programs Technical Assistance. To provide applicants, potential applicants, grantees, and project sponsors for McKinney-Vento Act funded Emergency Shelter Grants, Supportive Housing Program, Section 8 Moderate Rehabilitation Single Room Occupancy and Shelter Plus Care projects with technical assistance to promote the development of housing and supportive services as part of the Continuum of Care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and to enable them to live as independently as possible.

Housing Opportunities for Persons with AIDS (HOPWA). To train HOPWA grantees, project sponsors, and potential recipients of program funds in comprehensive housing strategies and responsive area programs that assist residents who are living with HIV/AIDS; in the sound management of HOPWA programs to support program operations in an efficient and effective manner, including undertaking community consultations, program planning, housing development and operations, program evaluation and reporting on accomplishments; and to build the capacity of nonprofit organizations to carry out activities as HOPWA project sponsors.

Available Funds. Approximately $10 million in FY 2002 funds is available for the three CD–TA programs.

Eligible Applicants. Specific eligibility requirements for the CD–TA programs are found below in Section III(C). Up to twenty five percent of the HOME and McKinney-Vento Act Homeless Assistance technical assistance funds is limited to qualified providers who have not previously received a CPD technical assistance award. This limitation is not applicable to HOPWA technical assistance.

Application Deadline. June 7, 2002.

Match. None.

Additional Information

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Submit your completed applications (an original and one copy) on or before June 7, 2002 at the address shown below.

The original application that you submit to Headquarters is considered the official application. Send a copy of your application on or before the application deadline date to the HUD CPD Field Office(s) in which you are seeking to provide services. Only one application per applicant is permitted; however, one application can include as few as one or as many as all three CD–TA programs.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12 midnight on the application due date and received by the designated HUD office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, FedEx, DHL and Falcon Carrier. Delivery by these services must be made during HUD Headquarters business hours, between 8:30 AM and 5:30 Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Addresses for Submitting Applications. HUD Headquarters. Your completed application consists of one original application and one copy. Submit your original application to HUD Headquarters, U.S. Department of Housing and Urban Development, CPD Processing and Control Branch, Room 7251, 451 Seventh Street, SW., Washington, DC 20410.

Copy to Field Office. Send a copy of the application to the appropriate CPD Field Office(s) at the address shown on the list of HUD CPD Field Offices included as Appendix B.

When submitting your application, please refer to the Community Development Technical Assistance Program. Be sure to include your name, mailing address (including zip code), telephone number (including area code), and fax number (including area code).

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, please refer to "Community Development Technical Assistance Programs or CD–TA." Please be sure to provide your name, address (including zip code), telephone number (including area code), and fax number (including area code).

For Further Information and Technical Assistance. You may contact the HUD CPD Office serving your area at the telephone number listed in the list of HUD CPD Field Offices included in the application kit, or you may contact Karen E. Daly at 202–708–3176, x5552 in HUD Headquarters. Persons with hearing and speech challenges may access the above number via TTY (text

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telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Information on this SuperNOFA also may be obtained through the HUD web site on the Internet at www.hud.gov.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at www.hud.gov.

II. Amount Allocated

(A) The amounts allocated for each CD–TA program are as follows:

HOME TA FY 2002 funds: up to$5,000,000

McKinney-Vento Act Homeless Assistance Programs FY 2002 TA funds: up to $3,000,000

HOPWA FY 2002 TA funds: up to $2,000,000

(B) Each HUD/CPD Field Office has been allocated a "fair-share" of CD–TA funds for purposes of this competition, except for the HOPWA TA funds which will be awarded only through a national competition (see CD–TA Appendix A for the fair share allocations). The amounts are based on allocations of HOME and McKinney-Vento Act Homeless Assistance formula funds and competitive programs for which Field Offices have management oversight. These amounts are only for guidance purposes for you to develop your program budgets by Field Office jurisdiction and are not the exact amounts to be awarded to you in each area.

HUD will determine the total amount to be awarded to any provider based upon the size and needs of the provider's service area within each Field Office jurisdiction in which the provider is selected to operate, the funds available for that area, the number of other awardees selected in that area, and the scope of the technical assistance to be provided. Additionally, HUD may reduce the amount of funds allocated for Field Office jurisdictions to fund national CD–TA providers and other CD–TA providers for activities which cannot be budgeted or estimated by Field Office jurisdiction. HUD may require selected applicants, as a condition of funding, to provide coverage on a geographically broader basis than applied for in order to supplement or strengthen the intermediary network in terms of the location (service area), types and scope of technical assistance proposed.

(C) In order to reach new technical assistance providers in the HOME and McKinney-Vento Act Homeless Assistance program areas up to 25% of the funds in each of these two program areas within a Field Office (or at the national level) will be awarded to applicants who have not previously been funded under a CPD technical assistance competition. Therefore, up to $1.25 million will be awarded to new providers in HOME and $750,000 in McKinney-Vento Act Homeless Assistance. If qualified new applicants are not found in each program area in each Field Office and/or at the national level, the remaining funds will be made available for previously funded providers. The reverse also is true.

(D) To the extent permitted by funding constraints, HUD intends to provide coverage for as full a range as possible, of eligible CD–TA activities of each CD–TA program in each Field Office jurisdiction. To achieve this objective, HUD will fund the highest ranking providers that bring the required expertise in one or more specialized activity areas, and fund portions of providers' proposed programs in which they have the greatest skill and capability for given geographic areas or on a national basis. HUD also may require national, multi-jurisdictional, or other providers to provide coverage to Field Office jurisdictions which cannot otherwise receive cost-effective support from a CD–TA provider. In selecting applicants for funding, in addition to the rating factors, HUD will apply program policy criteria identified in Section V of this CD–TA Program section of SuperNOFA to select a range of providers and activities that would best serve program objectives for each program serviced by the CD–TA funded under this SuperNOFA.

III. Program Description; Program Award Period; Eligible Applicants; Eligible Activities; and Sub-Grants

(A) *Program Description.* Up to $10 million in technical assistance (TA) funds is available from three separate technical assistance programs: HOME TA, McKinney-Vento Act Homeless Assistance TA, and HOPWA TA (collectively "CD–TA").

The funding of these three CD–TA programs through a single funding availability announcement will not affect the ability of eligible applicants to seek CD–TA funding. Eligible applicants are able to apply for funding under as few as one, and as many as three, separate CD–TA programs, individually or collectively, singularly or in combination. The specific provisions of the three separate CD–TA programs have not been changed. This Community Development Technical Assistance Programs section of the SuperNOFA reflects the statutory requirements and differences in the three different CD–TA programs.

(B) Program Award Period

(1) Cooperative Agreements will be for a period of up to 36 months. HUD, however, reserves the right to:

(a) Terminate awards in accordance with provisions contained in OMB Circular A–102, and 24 CFR parts 84 and 85 anytime after 12 months;

(b) Withdraw funds from a specific provider, if HUD determines that the urgency of need for the assistance is greater in other Field Office jurisdictions or the need for assistance is not commensurate with the award for assistance;

(c) Extend the performance period of individual awardees up to a total of 12 additional months.

(2) In cases where an applicant selected for funding under this CD–TA program section of the SuperNOFA currently is providing CD technical assistance under an existing CD–TA grant/cooperative agreement, HUD reserves the right to adjust the start date of funding under this program to coincide with the conclusion of the previous award, or to incorporate the remaining activities from the previous award into the new agreement, adjusting the funding levels as necessary.

(C) Eligible Applicants

(1) *General.* The eligible applicants for each of the three CD–TA programs are listed in paragraphs (2), (3), and (4) of this Section (C). This paragraph (1) lists requirements applicable to all applicants.

(a) Many organizations are eligible to apply for more than one CD–TA program and are encouraged to do so to the extent they have the requisite experience, expertise and capability.

(b) All applicant organizations must have demonstrated ability to provide CD–TA in a geographic area larger than a single city or county and must propose to serve an area larger than a single city or county.

(c) An organization may not provide assistance to itself.

(d) A consortium of organizations may apply for one or more CD–TA programs, but HUD will require that one organization be designated as the legal applicant, where legally feasible. Where one organization cannot be so designated for all proposed activities, HUD may execute more than one cooperative agreement with the members of a consortium. However, in general HUD will not award more than one cooperative agreement per application unless necessary due to legal requirements.

(e) All applicants must meet minimum statutory eligibility requirements for each CD–TA program for which they are chosen in order to be awarded a cooperative agreement. Copies of the Technical Assistance program regulations will be provided with the application kit.

(f) All eligible CD–TA providers may propose assistance using in-house staff, consultants, sub-contractors and sub-recipients, networks of private consultants and/or local organizations with requisite experience and capabilities. Whenever possible, applicants should make use of technical assistance providers located in the Field Office jurisdiction receiving services. This draws upon local expertise and persons familiar with the opportunities and resources available in the area to be served while reducing travel and other costs associated with delivering the proposed technical assistance services.

(g) All applicants must meet the applicable threshold requirements of Section II(B) of the General Section of the NOFA.

(2) *McKinney-Vento Act Homeless Assistance Programs TA Eligible Applicants.*

(a) States, units of general local government, and public housing authorities.

(b) Public and private non-profit or for-profit groups, including educational institutions and area-wide planning organizations, qualified to provide technical assistance on McKinney-Vento Act Homeless Assistance projects.

(3) *HOME TA Eligible Applicants.* (a) A for-profit or non-profit professional and technical services company or firm that has demonstrated capacity to provide technical assistance services;

(b) A HOME participating jurisdiction (PJ) or agency thereof;

(c) A public purpose organization responsible to the chief elected official of a PJ and established pursuant to State or local legislation;

(d) An agency or authority established by two or more PJs to carry out activities consistent with the purposes of the HOME program;

(e) A national or regional non-profit organization that has membership comprised predominantly of entities or officials of entities of PJs or PJs' agencies or established organizations.

(4) *HOPWA TA Eligible Applicants.*

(a) Non-profit organizations; and

(b) States and units of general local government.

(D) *Eligible Activities.* Eligible activities as appropriate for each of the three CD–TA programs are listed below:

(1) *HOME Technical Assistance.* HUD will provide assistance to:

(a) Facilitate the exchange of information that would help participating jurisdictions carry out the purposes of the HOME statute, including information on program design and accessibility, housing finance, land use controls, and building construction techniques;

(b) Improve the ability of States and units of local government to design and implement housing strategies, particularly those States and units of local government that are relatively inexperienced in the development of affordable housing;

(c) Encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of the HOME statute;

(d) Improve the ability of States and units of local government, community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction and operation of affordable housing;

(e) Facilitate the establishment and efficient operation of employer-assisted housing programs, through research, technical assistance, and demonstration projects; and

(f) Facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of the HOME statute.

(2) *McKinney-Vento Act Homeless Assistance Programs Technical Assistance.* Funds are available to provide technical assistance to McKinney-Vento Act funded Homeless Assistance projects. Funds may be used to provide technical assistance to prospective applicants, applicants, recipients or other providers (project sponsors) of McKinney-Vento Act funded housing and supportive services for homeless persons. The assistance may include, but is not limited to, written information such as papers, manuals, guides and brochures; person-to-person exchanges; on-site assessments and provision of technical expertise; and training and related costs.

(3) *HOPWA Technical Assistance.* For the purposes of this CD–TA program section of the SuperNOFA, HOPWA technical assistance shall mean the transfer to HOPWA grantees and project sponsors and potential recipients of program funds, the skills and knowledge needed to develop, operate and support HOPWA-eligible projects and activities.

An applicant for HOPWA TA funds must propose activities on a national basis, a regional basis (e.g. serving a multi-state area) or within a State or community. The application should emphasize how activities will advise and train communities and project sponsors in undertaking program planning, community consultations, housing development and operations, coordination with related health-care and other supportive services, and evaluation and reporting on program performance. The Department has established the following national goal for all HOPWA TA projects:

• *National Goal " Sustainable and Sound Management of HOPWA Programs and Projects.*

HOPWA TA funds may be used to help to build the capacity of grantees, project sponsors and potential applicants. The national goal is to enhance (1) the organization's ability to use HUD funds in a manner that upholds the public trust in the operation of the program, and (2) the organization's ability to sustain their projects through financial downturns and beyond the term of the grant. Technical assistance providers should plan programs on financial assessments, developing cost-cutting strategies, long range strategic planning, management and operational efficiency, redirecting resources to essential housing programs, how to identify new financial resources, fund-raising strategies and implementing community-wide planning to avoid duplication of service provision. To achieve this goal, HOPWA TA can be used in the following areas:

(a) Management and operations through such activities as:

(i) Advising on management practices to ensure responsive, efficient and cost effective facility and program operations;

(ii) Advising on fiscal management to ensure accountability in the use of funds and in the development of long-term strategies to assure financial viability including strategic planning, merger and acquisition consideration, financial development programs; and

(iii) Assisting projects in using the Department's information technology, financial systems and information management systems.

(b) State, local, and community planning through such activities as:

(i) Advising on the coordination of housing with health-care and other

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related supportive services for eligible persons;

(ii) Assisting in developing collaborations with local, State and Federal agencies that administer HIV/AIDS-related programs, including programs funded under the Ryan White CARE Act;

(iii) Creating or linking to existing needs assessments of the area's housing needs of persons living with HIV/AIDS and their families;

(iv) Creating or linking to comprehensive multiple-year HIV/AIDS housing plans that are undertaken in collaboration with local, State and federal programs including the Ryan White CARE Act programs; and

(v) Creating or linking to existing plans that address specialized needs of clients, including assistance for clients with serious mental illness, chronic alcohol and other drug abuse issues, and homelessness.

(c) Program evaluation through such activities as:

(i) Advising on data collection and program evaluation and dissemination of results; and

(ii) Developing and providing program handbooks, guidance materials, audio/visual products, training, and other activities to promote good management practices.

HOPWA TA applicants should demonstrate that they will assist in the development of Sustainable and Sound Management of HOPWA Programs by serving grantees who assist underserved populations and presenting a plan that describes an outreach and technical assistance program directed to organizations who serve identified underserved populations. The Department has been advised by persons living with HIV/AIDS, HIV/AIDS housing providers, and national organizations, of the continuing disparity in accessing health-care and HIV/AIDS treatment among underserved populations, such as, racial and ethnic minority populations, women, youth, post-incarcerated populations and persons living in rural areas. For the purposes of the HOPWA TA portion of this NOFA, underserved populations are defined as low-income populations living with HIV/AIDS and their families, such as racial or ethnic minority groups, women, persons living in rural areas, youth, post-incarcerated populations, or other underserved groups as determined by your service area, whose housing and related service needs are not currently being met in your service area. To meet this definition of an underserved population, you must present reliable statistics and data sources (i.e. Census, health department statistics, research, scientific studies, Consolidated Plan, and Continuum of Care documentation), showing the unmet need in the provision of housing and supportive services for the identified underserved population under Rating Factor 2 (1). HUD will consider your presentation of statistics and data sources based on soundness and reliability and the specificity of information to the underserved population and the area to be served.

In an effort to meet this continuing need, the highest rated applicants will demonstrate an outreach and assistance program to an identified underserved population as detailed under Rating Factor 3, Soundness of Approach (2) and will support the National HOPWA Goal of Sustainable and Sound Management. Such assistance could include linking HOPWA grantees and project sponsors to other community based organizations that serve an underserved population but have no, or limited, experience with providing housing services. Additionally, HOPWA TA providers could provide assistance to collaborations targeting an underserved population funded under the HOPWA competitive program.

(E) *Sub-Grants Applicants.* Sub-Grant Applications may propose to make sub-grants to achieve the purposes of their proposed CD–TA programs in accordance with program requirements in Section IV of this CD–TA Program section of the SuperNOFA.

IV. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA (please especially note a new requirement regarding Conducting Business in Accordance with Core Values and Ethical Standards found in General Section II(B)(2)), applicants are subject to the following requirements:

(A) *Program Requirements for HOME and McKinney-Vento Act Homeless Assistance.*

(1) *Profit/Fee.* No increment above cost, no fee or profit, may be paid to any recipient or subrecipient of an award under this CD–TA Program section of the SuperNOFA.

(2) *Demand/Response Delivery System.*

(a) As an awardee, you must operate within the structure of the demand/response system described in this section. You must coordinate your plans with, and operate under the direction of, each HUD Field Office within whose jurisdiction you are operating. When so directed by a Field Office, you will coordinate your activities instead through a lead CD–TA provider or other organization designated by the Field Office.

(b) If selected as the lead CD–TA provider in any Field Office jurisdiction, as an awardee you must coordinate the activities of other CD–TA providers selected under this CD–TA Program section of the SuperNOFA under the direction of the HUD Field Office. Joint activities by CD–TA providers may be required.

(c) Under the demand/response system, CD–TA providers will be required to:

(i) When requested by a Field Office or Government Technical Representative (GTR), market the availability of their services to existing and potential clients to include local jurisdictions in which the assistance will be delivered.

(ii) Respond to requests for assistance from the HUD Field Office(s) with oversight of the geographic service area for which the technical assistance will be delivered, including responding to priorities established by the Field Office in its Grants Management System. HOME PJs, and McKinney-Vento Act Homeless Assistance grantees may request assistance from the CD–TA provider directly, but such requests must be approved by the local HUD Field Office.

(iii) When requested by a Field Office or GTR, conduct a Needs Assessment to identify the type and nature of the assistance needed by the recipients of the assistance. These needs assessments should typically identify the nature of the problem to be addressed by the technical assistance services; the plan of action to address the need including the type of technical assistance services to be provided, the duration of the service, the staff assigned to provide the assistance, anticipated products and/or outcomes, and the estimated cost for the provision of services; and the relationship of the proposed services to the planned or expected Consolidated Plan submission to HUD and to other technical assistance providers providing service within the locality.

(iv) Obtain approval for the Technical Assistance Delivery Plan (TADP) from the HUD Field Office(s) with oversight for the area in which service will be provided. (See Section 3 below).

(v) Work cooperatively with other CD–TA providers in their geographic areas to ensure that clients are provided with the full range of CD–TA services needed and available. CD–TA providers are expected to be knowledgeable about the range of services available from other providers, make referrals and arrange visits by other CD–TA providers when appropriate, and carry out CD–TA activities concurrently when it is cost-effective and in the interests of the client to do so. HUD Field Offices may direct CD–TA providers to conduct joint activities.

(3) *Technical Assistance Delivery Plan (TADP).*

(a) After selection for funding but prior to award, you must develop a TADP for each Field Office jurisdiction or National Program for which you have been selected, in consultation with the Field office and/or GTR.

(b) In developing the TADP, you must follow the Field Office's management plan determining your priority work activities, location of activities, and organizations to be assisted during the cooperative agreement performance period.

(c) The Field Office management plan should indicate the issues to be addressed by CD–TA, the improved performance expected as a result of CD–TA, and methods for measuring the success of the CD–TA.

(d) The TADP must delineate all the tasks and sub-tasks for each CD program the applicant will undertake in each Field Office jurisdiction. The TADP must show the location of the community/State in which the CD–TA activities will occur, the level of CD–TA funding and proposed activities by location, the improved program performance or other results expected from the CD–TA and the methodology to be used for measuring the success of the CD–TA. A time schedule for delivery of the activities, budget summary, budget-by-task and staffing plan must be included in the TADP.

(4) *Negotiation.* After all applications have been rated and ranked and a selection has been made, HUD requires that all winners participate in negotiations to determine the specific terms of the TADP and the budget. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(5) *Forms, Certifications and Assurances.* You must submit with your application the forms, certifications and assurances listed in the General Section of this SuperNOFA.

(6) *Financial Management and Audit Information.* After selection for funding but prior to award, you must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that your financial management system meets prescribed standards for fund control and accountability required by 24 CFR part 84 for Institutions of Higher Education and other Non-Profit Institutions, 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). The information should include the name and telephone number of the independent auditor, cognizant Federal auditor, or other audit agency as applicable.

(7) *Training Sessions.* When conducting training sessions as part of its CD–TA activities, CD–TA providers are required to:

(a) Design the course materials as "step-in" packages (also called "train-the trainer" packages) so that a Field Office or other CD–TA provider may separately give the course on its own;

(b) Arrange for joint delivery of the training with Field Office participation when so requested by the Field Office or by the GTR for national grants; and

(c) When requested by a Field Office and/or GTR, provide for professional videotaping of the workshops/courses and ensure their production in a professional and high-quality manner, suitable for viewing by other CD clients (if this requirement is implemented, additional funds may be requested).

(d) When required by HUD, deliver HUD-approved training courses that have been designed and developed by other HUD contractors or HUD cooperating parties on a "step-in" basis for CD–TA clients, and send trainers to HUD-approved Train-the Trainer sessions.

(8) *Reports to Field Offices and/or GTRs.* CD–TA providers will be required to report to the HUD Field Office(s) with oversight of the geographic area(s) in which CD-TA services are provided or to Headquarters GTRs in the case of national providers. At a minimum, this reporting will be on a quarterly basis unless otherwise specified in the approved TADP.

(9) *Active Participation.* HUD Field Offices will be active participants in the delivery of all technical assistance by funded providers throughout the term of the cooperative agreement.

(10) *HOME TA Program Limitations.* Pursuant to section 243(b) of the Cranston-Gonzalez National Affordable Housing Act, funding to any single eligible HOME TA organization, whether as an independent or joint applicant, is limited to not more than 20% of the operating budget of the recipient organization in any one year and is limited to 20% of the funds available under this CD–TA program section of the SuperNOFA.

(11) *HOME National TA Program Guidance.* With the funds designated for a national TA program, HUD intends to fund applications which propose activities to help HOME participating jurisdictions design and implement HOME programs, including: improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing, facilitating the exchange of information to help participating jurisdictions carry out their programs; facilitating the establishment and efficient operation of employer-assisted housing programs; and/or encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships. Proposals should directly address how the capacity of participating jurisdictions may be improved to ensure that HOME funds are used effectively, efficiently and in compliance with the HOME rules to develop affordable housing. Emphasis should be placed on the basic skills and systems needed to develop, maintain and manage well designed and constructed affordable housing over the long term when using Federal funds.

(12) *Affirmatively Furthering Fair Housing.* Section II(D) of the General Section of the SuperNOFA does not apply to these technical assistance programs.

(B) *Program Requirements for HOPWA Technical Assistance.*

(1) *General Requirements.* The items listed below specify the requirements that apply to the HOPWA TA applications as follows: in Section IV(A), Paragraphs: (1) Profit/Fee; (4) Negotiation, except that the TADP reference will apply to a workplan negotiated between the applicant and the GTR for the HOPWA TA grant in HUD Headquarters; (5) Forms, Certifications and Assurances; (6) Financial Management and Audit Information; (7) Training Sessions; (8) Reports to Field Offices and/or GTRs, except that you must report to the HOPWA Headquarters GTR, at a minimum, on a quarterly basis, unless otherwise specified in an approved HOPWA TA workplan and you will be expected to meet the following performance benchmarks: (i) you are required to begin technical assistance activities within one year of your selection (i.e., one year from the date of the signing of your selection letter by HUD); and (ii) you are requested to provide an initial report to the Field Office and the Headquarters GTR on the startup of the planned activities within six months of your selection. Please outline any accomplishments in implementing the funds along with identifying any barriers or issues for which the Department may provide assistance. If a selected project does not meet the appropriate performance benchmark, HUD reserves the right to cancel or withdraw the grant funds.

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(2) *Coordination of HOPWA TA Requests.* Except for national meetings, research, information and other activities that are conducted on a program-wide basis in cooperation with HUD Headquarters, as the grantee of HOPWA TA funds, you must work cooperatively with HUD Field Offices. You must notify the applicable HUD Field Office of the planned activities; must consider the views or recommendations of that office, if any; must follow those recommendations, to the degree practicable; and must report to the applicable Field Office on the accomplishments of this assistance.

V. Application Selection Process

(A) Rating and Ranking

(1) HUD will evaluate applications competitively and rank them against all other applicants that have applied for the same CD–TA program (HOME, McKinney-Vento Act Homeless Assistance) within each Field Office or as a National Provider under HOPWA. There will be separate rankings for each CD–TA program, and you will be ranked only against others that have applied for the same CD–TA program.

(2) Once scores are assigned, all applications will be listed in rank order for each CD–TA program for which they applied by Field Office jurisdiction and/or the HOPWA National Program. In each Field Office jurisdiction or National Program area, all applications for the HOME TA program will be listed in rank order on list, all applications for the McKinney-Vento Act Homeless Assistance TA program will be listed in rank order on another list, and all applications for the HOPWA TA national projects will be ranked separately on a third list. Under this system, a single application from one organization for all CD–TA programs could be assigned different scores and different rankings for each program in different Field Offices.

(3) Applications will be funded in rank order for each CD–TA program by Field Office jurisdiction, except for HOPWA TA national providers and others which cannot be ranked by Field Office jurisdiction. National providers and others will be ranked separately and funded in rank order for each CD–TA program. Irrespective of final scores, HUD may apply program policy criteria to select one applicant in each of the two HOME and McKinney-Vento Act Homeless Assistance) CD–TA programs in each Field Office or nationally, to ensure diversity of methods, approaches, or kinds of projects. HUD will apply these program policy criteria to provide coverage of CD–TA services for minorities; women, particularly women in the homebuilding professions under section 233(b)(7) of the Cranston-Gonzalez National Affordable Housing Act; persons with disabilities; homeless; persons with special needs; and rural areas.

(4) In addition to the authority in the General Section to adjust funding, HUD reserves the right to adjust funding levels for each applicant for each CD–TA program, as follows:

(a) Adjust funding levels for any provider based upon the size and needs of the provider's service area within each Field Office jurisdiction in which the provider is selected to operate, the funds available for that area, the number of other awardees selected in that area, funds available on a national basis for providers that will be operating nationally, or the scope of the technical assistance to be provided;

(b) To negotiate increased grant awards with applicants approved for funding if HUD requests them to offer coverage to geographic areas for which they did not apply or budget, or if HUD receives an insufficient amount of applications.

(5) If funds remain after all selections have been made, remaining funds may be:

(a) Distributed among all HUD Field Offices (in proportion to their fair-share awards) and/or the National Program, or

(b) Made available for other CD–TA program competitions.

(6) If you apply for HOPWA TA funds, you must propose activities that will be carried out on a national, regional, State or community basis. The Department reserves the right to adjust the amount of requested funds that are awarded to correspond with the size of the intended service area in comparison to the planned national scope of activities to ensure the best use of these limited resources. Additionally, HUD may also modify the service area of a selected application, if practicable.

(B) *Factors for Award Used to Evaluate and Rate Applications.* The factors and maximum points for each factor are provided below. The maximum number of points to be awarded for a CD–TA application is 100. The minimum score for an applicant to be considered in funding range is 70, with a minimum of 15 points in Factor 1. The CD–TA program is not an eligible program for bonus points, as described in Section III(C)(1)–(3) of the General Section of the SuperNOFA.

Rating of the "applicant" or the "applicant's organization and staff", unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

When addressing the Factors for Award, you should discuss the specific TA projects, activities, tasks, etc. that you suggest be carried out during the term of the cooperative agreement. See Sections IV(A)(2) and (3) of this CD–TA program section for a discussion of the extent to which such activities may be revised at or after the time of award. In responding to the Factors, you should be specific about the type of experience, knowledge, skills and abilities your organization, your staff, and any subcontractors firmly committed to the project have with the CD–TA programs and you should provide relevant examples to support your application. You should also be specific when detailing the communities, populations (HOPWA only) and/or organizations which you propose to serve, especially in response to Factor 3, Subfactor 2 and in detailing the dollar amounts you have leveraged in Factor 4.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (25 points) (Minimum for Funding Eligibility 15 points)

In rating this factor, HUD will consider the extent to which the application demonstrates in relation to CD–TA program funding that is requested:

(1) (10 points) Recent, relevant and successful experience of your organization and staff in providing technical assistance in all eligible activities and to all eligible entities for the CD–TA program(s) applied for, as described in the regulations;

(2) (8 points) The relevant experience, competence, knowledge, skills, and abilities of your key personnel in managing complex, multi-faceted or multi-disciplinary programs that require coordination with other CD–TA entities or multiple, diverse units in an organization;

(3) (7 points) You have sufficient personnel or access to qualified experts or professionals with the knowledge, skills, and abilities to deliver the proposed level of technical assistance in each proposed service area in a timely and effective fashion.

Rating Factor 2: Potential Effectiveness of the Application in Meeting Needs of Target Groups/Localities and Accomplishing Project Objectives for Each CD–TA Program for which Funds Are Requested (20 Points)

In rating this factor, HUD will consider the extent to which your application:

(1) (8 points) Identifies high priority needs and issues for the CD program in each community or Field Office jurisdiction for which CD–TA funding is requested, or on a national or regional basis for national HOPWA grants;

(2) (7 points) Outlines a clear and cost-effective plan of suggested TA activities for addressing those needs and aiding a broad diversity of eligible grantees and/or beneficiaries, including those which traditionally have been under-served; and

(3) (5 points) Identifies creative activities to assist eligible grantees in participating in the development of, and improving, local Consolidated Plans and comprehensive strategies.

Rating Factor 3: Soundness of Approach (35 Points)

In rating this factor, HUD will consider the extent to which your application evidences a sound approach in addressing identified needs and:

(1) (13 points) Provides a cost effective plan for designing, organizing, managing and carrying out the suggested technical assistance activities within the framework of the Demand/Response System or, for HOPWA TA applicants, in addressing the HOPWA TA goal.

(2) (12 points) Demonstrates an effective outreach and assistance program to specifically identified disadvantaged communities, populations (HOPWA only) and/or organizations which previously have been underserved and have the potential to participate in CPD programs.

(3) (5 points) Provides for full geographic coverage, including urban and rural areas, (directly or through a consortium of providers) of a single State or Field Office jurisdiction or is targeted to address the needs of rural areas, minority groups or other under-served groups or for HOPWA TA applicants, addresses other approaches that respond to identified needs.

(4) (5 points) Proposes a feasible, creative plan, which uses state of the art or new promising technology, to transfer models and lessons learned in each of its CD–TA program's activities to grantees and/or program beneficiaries in other CD–TA programs.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider: The extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities.

Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award you are seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. You also may partner with other program funding recipients to coordinate the use of resources in the target area.

You must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program and preferably be submitted on the organization's letterhead. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which you coordinate your activities with other known organizations, participate or promote participation in a community's Consolidated Planning process and Continuum of Care homeless assistance strategy, and are working towards addressing a need identified in your application as high priority in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which you demonstrate you have:

(1) Coordinated your proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps you will take to share information on solutions and outcomes with others. Describe any written agreements, memoranda of understanding in place, or that will be in place after award.

(2) Taken or will take specific steps to work with recipients of technical assistance services to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities you propose.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(C) *Applicant Debriefing.* As described in the General Section, Introduction to the FY 2002 SuperNOFA, applicant debriefings will be conducted beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**. Refer to the General Section for details.

VI. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II(H) of the General Section of the SuperNOFA (collectively referred to as the "standard forms"), your application must, at a minimum, contain the following items (except that the following paragraphs (C), (D), and (E), do not apply to HOPWA TA applicants). The standard forms can be found in Appendix B to the General Section of the SuperNOFA.

(A) Transmittal Letter which identifies the SuperNOFA, the CD–TA programs for which funds are requested and the dollar amount requested for each program, and the applicant or applicants submitting the application. If your organization has never received a CPD technical assistance award, please include a statement to this effect in the transmittal letter. Additionally, HOPWA TA applicants are requested to submit a two-page executive summary outlining the key elements of the proposed TA activities.

(B) Narrative statement addressing the Factors for Award described in Section V(B) of this CD–TA Program section of this SuperNOFA. You should number the narrative response in accordance with each factor for award. This narrative statement will be the basis for evaluating your application. It should include a plan of suggested TA activities as described in Factors 2, 3, and elsewhere. These suggested TA activities may form a starting point for negotiating the TADP described in Section IV(A)(3) of this CD–TA Program section of the SuperNOFA. However, they are used primarily for purposes of rating and evaluation and may be substantially altered and revised during negotiations with the Field Offices on the content of the TADPs (see Section

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IV(A)(3)) or Headquarters program office for national projects.

(C) Statement that identifies the Field Office jurisdictions in which you propose to offer services. If you will not offer services throughout the full jurisdictional area of the Field Office, your statement should identify the service areas involved (e.g., States, counties, etc.), as well as the communities in which you propose to offer services.

(D) A matrix that summarizes the amount of funds you are requesting for each CD–TA program in each Field Office jurisdiction. (See the CD–TA application kit for a copy of the matrix to be submitted.)

(E) A statement as to whether you propose to be considered for the role of lead CD–TA provider in one or more specific program areas in a Field Office jurisdiction, and if so, your organization's capabilities and attributes that qualify you for the role.

(F) Budget Summary identifying costs for implementing the plan of suggested TA activities by cost category for each CD–TA program for which funds are requested by Field Office or as a National Provider (in accordance with the following):

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable.

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award;

(9) Indirect Costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs.

These line items should total the amount requested for each CD–TA program area. The grand total of all CD–TA program funds requested should reflect the grand total of all funds for which application is made.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and 58.34(a)(9), the assistance provided by these programs relates only to the provision of technical assistance and is categorically excluded from the requirements of the National Environmental Policy Act and not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing or repair for HUD assistance under these technical assistance programs.

IX. Authority

HOME Technical Assistance. The HOME Technical Assistance Program is authorized by the HOME Investment Partnerships Act (42 U.S.C. 12781–12783); 24 CFR part 92.

McKinney-Vento Act Homeless Assistance Programs Technical Assistance. The Supportive Housing Program is authorized under 42 U.S.C. 11381 *et seq.*; 24 CFR 583.140. The Emergency Shelter Grant, Section 8 Moderate Rehabilitation Single Room Occupancy Program and Shelter Plus Care Technical Assistance Programs are authorized by the FY 2002 HUD Appropriations Act.

HOPWA Technical Assistance. The HOPWA Technical Assistance program is authorized under the FY 2002 HUD Appropriations Act. The HOPWA program is authorized under the AIDS Housing Opportunities Act (42 U.S.C. 12901) and the HOPWA regulations are found at 24 CFR part 574.

APPENDIX A TO CD–TA PROGRAM: "FAIR-SHARE" AMOUNTS ALLOCATED TO EACH HUD CPD OFFICE

HUD CPD field office	HOME TA	McKinney-Vento Act homeless assistance TA	HOPWA TA
Alabama State Office	50,000	40,000	
Alaska State Office	50,000	40,000	
Arkansas State Office	50,000	40,000	
California State Office	257,900	242,000	
Los Angeles Area Office	224,100	255,000	
Caribbean Office	61,400	40,000	
Colorado State Office	92,100	40,000	
Connecticut State Office	50,000	40,000	
District of Columbia Office	50,000	83,000	
Florida State Office	50,000	70,000	
Jacksonville Area Office	79,800	49,000	
Georgia State Office	76,800	40,000	
Hawaii State Office	50,000	40,000	
Illinois State Office	156,600	145,000	
Indiana State Office	61,400	40,000	
Kansas/Missouri State Office	64,500	40,000	
St. Louis Area Office	50,000	40,000	
Kentucky State Office	50,000	40,000	
Louisiana State Office	64,500	40,000	
Maryland State Office	50,000	40,000	
Massachusetts State Office	132,100	182,000	
Michigan State Office	119,800	138,000	
Minnesota State Office	50,000	52,000	

APPENDIX A TO CD–TA PROGRAM: "FAIR-SHARE" AMOUNTS ALLOCATED TO EACH HUD CPD OFFICE—Continued

HUD CPD field office	HOME TA	McKinney-Vento Act homeless assistance TA	HOPWA TA
Mississippi State Office	50,000	40,000	
Nebraska State Office	50,000	40,000	
New Jersey State Office	92,100	52,000	
New Mexico State Office	50,000	40,000	
New York State Office	267,200	239,000	
Buffalo Area Office	55,300	57,000	
North Carolina State Office	67,600	40,000	
Ohio State Office	144,300	104,000	
Oklahoma State Office	50,000	40,000	
Oregon State Office	55,300	40,000	
Pennsylvania State Office	122,800	106,000	
Pittsburgh Area Office	61,400	57,000	
South Carolina State Office	50,000	40,000	
Tennessee Knoxville Area Office	61,400	40,000	
Texas State Office	156,600	88,000	
San Antonio Area Office	50,000	40,000	
Virginia State Office	55,300	40,000	
Washington State Office	58,300	67,000	
Wisconsin State Office	61,400	54,000	
National Total	1,500,000		2,000,000

Appendix B to CD–TA Program—List of HUD CPD Field Offices

Alabama

Alabama State Office, Medical Forum Building, 950 22nd Street North, Suite 900, Birmingham, AL 35203, CPD Telephone Number 205–631–2630, ext 1051, TTY Number: 205–731–2624, Local Hours of Operation: 8 am–4:30 pm

Alaska

Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4399, CPD Telephone Number: 907–271–3669, TTY Number: 907–271–4328, Local Hours of Operation: 8 am–4:30 pm

Arizona

California State Office, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, CPD Telephone Number: 415–436–6597, TTY Number: 415–436–6594, Local Hours of Operation: 8:15 am–4:45 pm

Arkansas

Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, CPD Telephone Number: 501–324–6375, TTY Number: 501–324–5931, Local Hours of Operation: 8 am–4:30 pm

California

Northern—California State Office, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, CPD Telephone Number: 415–436–6597, TTY Number: 415–436–6594, Local Hours of Operation: 8:15 am–4:45 pm

Southern—Los Angeles Area Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017, CPD Telephone Number: 213–894–8000, TTY Number: 213–894–8133, Local Hours of Operation: 8 am–4:30 pm

Caribbean

Caribbean Office, 171 Carlos E. Chardon Avenue, Suite 301, San Juan, PR 00918–0903, CPD Telephone Number: 787–766–5400, TTY Number 787–766–5909, Local Hours of Operation: 8 am–4:30 pm

Colorado

Colorado State Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, CPD Telephone Number: 303–672–5414, TTY Number: 303–672–5248, Local Hours of Operation: 8 am–4:30 pm

Connecticut

Connecticut State Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, CPD Telephone Number: 860–240–4800, TTY Number: 860–240–4665, Local Hours of Operation: 8 am–4:30 pm

Delaware

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, CPD Telephone Number: 215–656–0624, TTY Number: 215–656–3452, Local Hours of Operation: 8 am–4:30 pm

District of Columbia

District of Columbia Office, 820 First Street, NE., Suite 450, Washington, DC 20002, CPD Telephone Number: 202–275–0994, TTY Number: 202–275–0772, Local Hours of Operation: 8 am–4:30 pm

Florida

Southern—Florida State Office, 909 Southeast First Avenue, Room 500, Miami, FL 33131, CPD Telephone Number: 305–536–4431, TTY Number: 305–536–4743, Local Hours of Operation: 8:30 am–5 pm

Northern—Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, CPD Telephone Number: 904–232–1777, TTY Number: 904–232–2631, Local Hours of Operation: 8 am–4:30 pm

Georgia

Georgia State Office, Five Points Plaza Building, 40 Marietta Street, Atlanta, GA 30303–2806, CPD Telephone Number: 404–331–5001, TTY Number: 404–730–2654, Local Hours of Operation: 8 am–4:30 pm

Hawaii

Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 3A, Honolulu, HI 96813–4918, CPD Telephone Number: 808–522–8180, TTY Number: 808–522–8193, Local Hours of Operation: 8 am–4 pm

Idaho

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, CPD Telephone Number: 503–326–7018, TTY Number: 503–326–3656, Local Hours of Operation: 8 am–4:30 pm

Illinois

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, CPD Telephone Number: 312–353–1696, TTY Number: 312–353–5944, Local Hours of Operation: 8:15 am–4:45 pm

Indiana

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, CPD Telephone Number: 317–226–6790, TTY Number: 317–226–7081, Local Hours of Operation: 8 am–4:45 pm

Iowa

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, CPD Telephone Number:

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402–492–3181, TTY Number: 402–492–3183, Local Hours of Operation: 8 am–4:30 pm

Kansas

Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, CPD Telephone Number: 913–551–5485, TTY Number: 913–551–6972, Local Hours of Operation: 8 am–4:30 pm

Kentucky

Kentucky State Office, 601 West Broadway, Post Office Box 1044, Louisville, KY 40201–1044, CPD Telephone Number: 502–582–6163, TTY Number: 1–800–648–6056, Local Hours of Operation: 8 am–4:45 pm

Louisiana

Louisiana State Office, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, CPD Telephone Number: 504–589–7212, TTY Number: 504–589–7279, Local Hours of Operation: 8 am–4:30 pm

Maine

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 531, Boston, MA 02122, CPD Telephone Number: 617–994–8350, TTY Number: 617–565–5453, Local Hours of Operation: 8:30 am–5 pm

Maryland

Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, CPD Telephone Number: 410–962–2520, TTY Number: 410–962–0106, Local Hours of Operation: 8 am–4:30 pm

Massachusetts

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 531, Boston, MA 02122, CPD Telephone Number: 617–994–8350, TTY Number: 617–565–5453, Local Hours of Operation: 8:30 am–5 pm

Michigan

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, CPD Telephone Number: 313–226–7188, TTY Number: 313–226–6899, Local Hours of Operation: 8 am–4:30 pm

Minnesota

Minnesota State Office, 220 Second Street, South, Minneapolis, MN 55401–2195, CPD Telephone Number: 612–370–3019, TTY Number: 612–370–3186, Local Hours of Operation: 8 am–4:30 pm

Mississippi

Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1096, CPD Telephone Number: 601–965–4700, TTY Number: 601–965–4171, Local Hours of Operation: 8 am–4:45 pm

Missouri

Eastern—St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 63103–2836, CPD Telephone Number: 314–539–6524, TTY Number: 314–539–6331, Local Hours of Operation: 8 am–4:30 pm

Western—Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, CPD Telephone Number: 913–551–5485, TTY Number: 913–551–6972, Local Hours of Operation: 8 am–4:30 pm

Montana

Colorado State Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, CPD Telephone Number: 303–672–5414, TTY Number: 303–672–5248, Local Hours of Operation: 8 am–4:30 pm

Nebraska

Nebraska State Office, Executive Tower Centre 10909 Mill Valley Road, Omaha, NE 68154–3955, CPD Telephone Number: 402–492–3181, TTY Number: 402–492–3183, Local Hours of Operation: 8 am–4:30 pm

Nevada

California State Office, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, CPD Telephone Number: 415–436–6597, TTY Number: 415–436–6594, Local Hours of Operation: 8:15 am–4:45 pm

New Hampshire

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 531, Boston, MA 02122, CPD Telephone Number: 617–994–8350, TTY Number: 617–565–5453, Local Hours of Operation: 8:30 am–5 pm

New Jersey

New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, CPD Telephone Number: 973–622–7900, TTY Number: 973–645–3298, Local Hours of Operation: 8 am–4:30 pm

New Mexico

New Mexico State Office, 625 Silver Avenue S.W., Suite 100, Albuquerque, NM 87102–3185, CPD Telephone Number: 505–346–7271, TTY Number: (TTY Relay Operator): 1–800–877–8339, Local Hours of Operation: 8 am–5 pm

New York

Downstate—New York State Office, 26 Federal Plaza, New York, NY 10278–0068, CPD Telephone Number: 212–264–8000, ext. 3401, TTY Number: 212–264–0927, Local Hours of Operation: 8 am–4:30 pm

Upstate—Buffalo Area Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, NY 14203–1780, CPD Telephone Number: 716–551–5755, TTY Number: 716–551–5787, Local Hours of Operation: 8 am–4:30 pm

North Carolina

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, CPD Telephone Number: 336–547–4005, TTY Number: 336–547–4055, Local Hours of Operation: 8 am–4:45 pm

North Dakota

Colorado State Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, CPD Telephone Number: 303–672–5414, TTY Number: 303–672–5248, Local Hours of Operation: 8 am–4:30 pm

Ohio

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, CPD Telephone Number: 614–469–5737, TTY Number: 614–469–6694, Local Hours of Operation: 8 am–4:45 pm

Oklahoma

Oklahoma State Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102–2233, CPD Telephone Number: 405–553–7569, TTY Number: (TTY Relay Operator): 1–800–877–8339, Local Hours of Operation: 8 am–4:30 pm

Oregon

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, CPD Telephone Number: 503–326–7018, TTY Number: 503–326–3656, Local Hours of Operation: 8 am–4:30 pm

Pennsylvania

Eastern—Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, CPD Telephone Number: 215–656–0624, TTY Number: 215–656–3452, Local Hours of Operation: 8 am–4:30 pm

Western—Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, CPD Telephone Number: 412–644–2999, TTY Number: 412–644–5747, Local Hours of Operation: 8 am–4:30 pm

Rhode Island

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 531, Boston, MA 02122, CPD Telephone Number: 617–994–8350, TTY Number: 617–565–5453, Local Hours of Operation: 8:30 am–5 pm

South Carolina

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, CPD Telephone Number: 803–765–5564, TTY Number: 803–253–3071, Local Hours of Operation: 8 am–4:45 pm

South Dakota

Colorado State Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, CPD Telephone Number: 303–672–5414, TTY Number: 303–672–5248, Local Hours of Operation: 8 am–4:30 pm

Tennessee

Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street SW, Third Floor, Knoxville, TN 37902–2526, CPD Telephone Number: 423–545–4391, TTY Number: 423–545–4559, Local Hours of Operation: 7:30 am–4:15 pm

Texas

Northern—Texas State Office, 801 Cherry Street, Post Office Box 2905, Fort Worth, TX 76102, CPD Telephone Number: 817–978–5933, TTY Number: 817–978–9273, Local Hours of Operation: 8 am–4:30 pm

Southern—San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, CPD Telephone Number: 210–475–6820, TTY Number: 210–475–6885, Local Hours of Operation: 8 am–4:30 pm

Utah

Colorado State Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, CPD Telephone Number: 303–672–5414, TTY Number: 303–672–5248, Local Hours of Operation: 8 am–4:30 pm

Vermont

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 531, Boston, MA 02122, CPD Telephone Number: 617–994–8350, TTY Number: 617–565–5453, Local Hours of Operation: 8:30 am–5 pm

Virginia

Virginia State Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, CPD Telephone Number: 804–278–4500, TTY Number: 804–278–4501, Local Hours of Operation: 8 am–4:30 pm

Washington

Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, CPD Telephone Number: 206–220–5150, TTY Number: 206–220–5185, Local Hours of Operation: 8 am–4:30 pm

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

Program Overview

(A) Authority

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) and the regulations in 24 CFR part 1003.

(B) Purpose of the Program

The purpose of the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG) is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

(C) Available Funds

The FY 2002 appropriation for the ICDBG Program is $70,000,000. In addition, any FY 2001 ICDBG carry-over funding would be available for distribution in FY 2002.

(D) Eligible Applicants

Eligible applicants are Indian tribes or tribal organizations on behalf of Indian tribes.

(E) Application Deadline

June 6, 2002.

(F) Match

None.

(G) Additional Information

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

Please note: when used in this NOFA the word "tribe" means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations, and ANCSA Regional Corporations.

I. Application Due Date, Addresses for Submission, Tips for Application Preparation, Application Kits, Further Information, and Technical Assistance

(A) Application Due Date

Your completed application (one original and two copies) must be postmarked on or before 12:00 midnight, on June 6, 2002 and be received by the designated Area Office of Native American Programs (ONAP) on or within 15 days of the application due date.

See the General Section of this SuperNOFA for specific procedures that you must follow for the form of application submission. Please note that for security purposes, applications can *only* be delivered to Area ONAPs via the United States Postal Service. Hand carried applications will not be accepted.

(B) Addresses for Submitting Applications to the Appropriate Area ONAP

Submit original signed application and two copies to the appropriate Area ONAP for your jurisdiction. A list of jurisdictions is given below. Please note that for security purposes, applications can *only* be delivered to Area ONAPs via the *United States Postal Service.*

If you are applying from this geographic location then * * *	send your application to this Area ONAP:
All States East of the Mississippi River, Plus Iowa and Minnesota.	Eastern/Woodlands Office of Native American Programs Grants Management Division, 77 West Jackson Blvd., Room 2400, Chicago, IL 60604–3507, Telephone: (312) 886–4532, Ext. 2815.
Louisiana, Kansas, Oklahoma, and Texas, except West Texas.	Southern Plains Office of Native American Programs, Grants Management Division, 500 W. Main Street, Suite 400, Oklahoma City, OK 73102–3202, Telephone: (405) 553–7525.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, Grants Management Division, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, Telephone: (303) 672–5465.
Arizona, California, and Nevada	Southwest Office of Native American Programs, Grants Management Division, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, AZ 85004–2361, Telephone: (602) 379–3865.
New Mexico and West Texas	Southwest Office of Native American Programs, Grants Management Division, Albuquerque Plaza, 201 3rd Street N.W., Suite 1830, Albuquerque, NM 87102–3368, Telephone: (505) 346–6923.
Idaho, Oregon, Washington	Northwest Office of Native American Programs, Grants Management Division, Federal Office Building, 909 First Avenue, Suite 300, Seattle, WA 98104–1000, Telephone: (206) 220–5271.
Alaska	Alaska Office of Native American Programs, Grants Management Division, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399, (907) 271–4603.

(C) General Tips for ICDBG Application Preparation

In order to expedite the review of your application and to ensure that your application is given a thorough and complete review of all responses to each of the components of the selection criteria, please indicate on the first page of each project submission, the type of project(s) being proposed: Economic Development, Homeownership Assistance, Housing Rehabilitation, Land Acquisition to Support New Housing, Microenterprise Programs, New Housing Construction or Public Facilities & Improvements. This will help to ensure that the appropriate project specific thresholds and rating sub-factors will be applied.

In addition, please use separate tabs for each rating factor and rating sub-factor. In order to be rated, make sure the response is beneath the appropriate heading. Keep the responses in the same order as the NOFA. Limit your narrative explanations to 200 words or less and provide the necessary data such as a market analysis, a pro forma, housing survey data, etc., that support the response. Include all relevant material to a response under the same tab. Only include that documentation that will clearly and concisely support your response to the rating criteria.

HUD suggests that you do a preliminary rating for your project, providing a score according to the NOFA point system. This will help to show you how your project might be scored by reviewers. Also, it will help to show you where the strengths and weaknesses of the application are

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located. This will help you determine where improvements can be made to your application prior to its submission.

(D) Application Kits

For an application kit and any supplemental material please call the SuperNOFA Information Center at 1–800–HUD–8929 or the appropriate Area ONAP for your jurisdiction as listed above. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. An application kit also will be available on the Internet through the HUD Web site at *http://www.hud.gov/grants*. When requesting an application kit, please refer to ICDBG and provide your name, address (including zip code), and telephone number (including area code).

(E) Further Information

You should direct general program questions to the Area ONAP serving your area or to Jackie Kruszek, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone (800) 561–5913. Persons with speech or hearing impairments may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the "800" number, these numbers are not toll-free.

(F) Technical Assistance

Before the application due date, we will be available to provide you with general guidance and technical assistance. We, however, are not permitted to assist in preparing your application. Following selection of applicants, but before awards are made, we are available to assist you in clarifying or confirming information that is required to address a pre-award requirement or condition but will not affect the rating or ranking of your application.

Amount Allocated

(A) Available Funds

The FY 2002 appropriation for the ICDBG Program is $70,000,000. In addition, any FY 2001 ICDBG carry-over funding would be available for distribution in FY 2002.

(B) General

Title I of the Housing and Community Development Act of 1974 which authorizes CDBG requires grants for Indian tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 1003. Applicants within an Area ONAP's geographic jurisdiction compete only against each other for that Area ONAP's allocation of funds.

(C) Allocations

The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 1003.101. Following these requirements, based on an appropriation of $70,000,000 less $2,000,000 retained to fund Imminent Threat Grants, the allocations for FY 2002 are as follows:

Eastern/Woodland	$ 5,905,403
Southern Plains	12,608,675
Northern Plains	10,791,499
Southwest	27,710,487
Northwest	4,741,105
Alaska	6,242,832
Total	68,000,000

(D) Imminent Threats

The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 1003, subpart E. In order to satisfy these criteria, the problem to be addressed must be such that an emergency situation exists or would exist if the problem were not addressed. In addition, you may use funds only to address imminent threats that are not of a recurring nature and that represent a unique and unusual circumstance that impacts an entire service area. In accordance with the provisions of 24 CFR part 1003, subpart E, we will retain $2,000,000 to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 2002 is $350,000. We established this ceiling pursuant to the provisions of 24 CFR 1003.400(c).

You do not have to submit a request for assistance under the imminent threat set-aside (24 CFR part 1003, subpart E) by the deadline established in this NOFA. The deadline applies only to applications submitted for assistance under 24 CFR part 1003, subpart D, Single purpose grants.

If, in response to a request for assistance, an Area ONAP issues you a letter to proceed under the authority of 24 CFR 1003.401(a), then your application must be submitted to and approved by the Area ONAP before a grant agreement may be executed. This application must contain: Standard Form 424, Application for Federal Assistance; a brief description of the proposed project; Form HUD–4123, Cost Summary; Form HUD–4125, Implementation Schedule; Form HUD–2880, Applicant/Recipient Disclosure/Update Report; and, Form HUD–50070, Certification for a Drug-Free Workplace.

III. Program Description; Eligible Applicants; Eligible Activities; and Definitions

(A) Program Description

The purpose of the ICDBG Program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes.

(B) Eligible Applicants

To apply for funding you must be eligible as an Indian Tribe (or as a tribal organization) by the application submission date.

Tribal organizations are permitted to submit applications under 24 CFR 1003.5(b) on behalf of eligible tribes when one or more eligible tribe(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under title I of the Indian Self-Determination and Education Assistance Act. A determination of such eligibility must be made by the Bureau of Indian Affairs or the Indian Health Service, as appropriate. This determination must be provided to the ONAPs by the application submission date.

If a tribe or tribal organization claims that it is a successor to an eligible entity, the ONAPs must review the documentation to determine whether it is in fact the successor entity.

Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 1003.5, a tribal organization that submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the ANCSA Village Corporation, and the ANCSA Regional Corporation.

On March 13, 2000 (65 FR 13298), the Bureau of Indian Affairs published a

Federal Register notice entitled "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs." This notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR part 83. Additionally, pursuant to title I of the Indian Self-Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the application submission date. (See 24 CFR 1003.5 for a complete description of eligible applicants.)

(C) Eligible Activities

Activities that are eligible for ICDBG funding are identified at 24 CFR part 1003, subpart C. Please note that although this subpart has not yet been revised to include the restrictions on activity eligibility that were added to section 105 of the CDBG statute by section 588 of the Quality Housing and Work Responsibility Act of 1998, these restrictions apply. Specifically, ICDBG funds may not be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. The rating factors included under V (J) specify many of the activities listed as eligible under part 1003, subpart C. Those listed include new housing construction, housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and micro-enterprise programs. However, the following eligible activities not clearly identified by the rating factors may be proposed and rated as described below. For a complete description of eligible activities, please refer to 24 CFR Part 1003 Subpart C.

(1) *Acquisition of property.* This activity can be proposed as Land to Support New Housing or as part of New Housing Construction, Public Facilities and Improvements or Economic Development depending on the purpose of the land acquisition to support new construction.

(2) *Assistance to Institutions of Higher Learning.* If such entities have the capacity, they can help the ICDBG grantees to implement eligible projects.

(3) *Assistance to Community Based Development Organizations (CBDO's).* Grantees may provide assistance to these organizations to undertake activities related to neighborhood revitalization, community economic development or energy conservation.

(4) *Clearance, Demolition.* These activities can be proposed as part of Housing Rehabilitation, New Housing Construction, Public Facilities and Improvements or Land to Support New Housing.

(5) *Code Enforcement.* This activity can be proposed as Housing Rehabilitation. The activity must comply with the requirements at 24 CFR 1003.202. HUD approval is required prior to demolition of any assisted housing.

(6) *Comprehensive Planning.* This activity is eligible, and can be proposed, as part of any otherwise eligible project to the extent allowed by the 20 percent cap on the grant for planning/administration.

(7) *Energy Efficiency.* Associated activities can be proposed under Housing Rehabilitation or Public Facilities and Improvements depending upon the type of energy efficiency activity.

(8) *Lead Based Paint Abatement and Evaluation.* These activities can be proposed under Housing Rehabilitation.

(9) *Non-Federal Share.* ICDBG funds can be used as a match for any non-ICDBG funding to the extent allowed by such funding and the activity is eligible under 24 CFR part 1003, Subpart C.

(10) *Privately and Publicly Owned Commercial or Industrial Buildings (real property improvements).* These activities can be proposed under Economic Development. Privately owned commercial rehabilitation is subject to the requirements at 24 CFR 1003.202.

(11) *Privately Owned Utilities.* Assistance to privately owned utilities can be proposed under Public Facilities and Improvements.

(12) *Removal of Architectural Barriers.* This includes removing barriers that restrict mobility and access for elderly and persons with disabilities. This activity can be proposed under Housing Rehabilitation or Public Facilities and Improvements depending upon the type of structure where the barrier will be removed.

(D) Definitions

(1) *Adopt.* To approve by formal tribal resolution.

(2) *Assure.* To comply with a specific NOFA requirement. As an applicant, you must state your compliance or your intent to comply in your application.

(3) *Document.* To supply supporting written information and/or data in the application that satisfies the NOFA requirement.

(4) *Entity Other than Tribe.* A distinction is made between the requirements for point award under Rating Factor 3 if a tribe or an entity other than the tribe will assume maintenance and related responsibilities for projects other than economic development and land acquisition to support new housing. Entities other than the tribe must have the following characteristics: must be legally distinct from the tribal government; their assets and liabilities cannot be considered to be assets and liabilities of the tribal government; claims against such entities cannot be made against the tribal government; and, must have governing boards, boards of directors, or groups or individuals similar in function and responsibility to such boards which are separate from the tribe's general council, tribal council, or business council, as applicable.

Entities other than the tribe may be completely external to the tribe, e.g., a Federal agency, or may be an entity formed or chartered under provisions of tribal law, e.g., a tribally chartered non-profit or for-profit corporation, tribal utility authority, or tribal political subdivision. For example, a housing office that is operated as a department of the tribe would be considered the tribe. However, a housing office that is operated as a tribally designated housing entity (TDHE) would be considered an entity other than the tribe.

(5) *Homeownership Assistance Programs.* Tribes may apply for assistance to provide direct homeownership assistance to low- and moderate-income households to: subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers; acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that ICDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly); provide up to 50 percent of any downpayment required from a low- and moderate-income homebuyer; or, pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer.

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(6) *Leverage.* Resources that you will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to: tribal trust funds; loans from individuals or organizations; State or Federal loans or guarantees; other grants; and non-cash contributions and donated services. (See Rating Factor 4 of this NOFA for documentation requirements for point award for leveraged resources.)

(7) *Microenterprise Programs.* Tribes may apply for assistance to operate programs to fund the development, expansion and stabilization of microenterprises. Microenterprises are defined as commercial entities with five or fewer employees, including the owner. Microenterprise program activities may entail the following assistance to eligible businesses: providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support for the establishment, stabilization, and expansion of microenterprises; providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services to owners of microenterprises and persons developing microenterprises.

(8) *Operations and Maintenance (O&M) for Public Facilities and Improvements.* While various items of cost will vary in importance and significance depending on the type of facility proposed, there are items of expense related to the operation of the physical plant which must be addressed in a O&M plan (tribe assumes responsibility) or letter of commitment (entity other than tribe will assume these responsibilities). These items include daily or other periodic maintenance activities; repairs such as replacing broken windows; capital improvements or replacement reserves for repairs such as replacing the roof; fire and liability insurance (may not be applicable to most types of infrastructure projects such as water and sewer lines); and, security (may not be applicable to many types of infrastructure projects such as roads).

Please note that while it is possible that the service provider may, in its agreement with a tribe, commit itself to cover certain or all facility O&M costs, as defined, these O&M costs do not include the program service provision costs related to the delivery of services (social, health, recreational, educational or other) which may be provided in a facility.

(9) *Project Cost.* The total cost to implement the project. Project cost includes both ICDBG and non-ICDBG funds and resources.

(10) *Standard Housing/Standard Condition.* Housing that meets the housing quality standards (HQS) adopted by the applicant. The HQS adopted by the applicant must be at least as stringent as the Section 8 HQS contained in 24 CFR 982.401 (Section 8 Tenant-Based Assistance: Housing Choice Voucher Program) unless the ONAPs approve less stringent standards based on a determination that local conditions make the use of Section 8 HQS infeasible. You may submit, before the application due date, a request for the approval of standards less stringent than Section 8 HQS. If you submit the request with your application, you should not assume automatic approval by the ONAPs. The adopted standards must provide for a safe house, in physically sound condition with all systems performing their intended design functions; a livable home environment and an energy efficient building and systems that incorporate energy conservation measures; and, an adequate space and privacy for all intended household members.

IV. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, as an applicant you must comply with the following requirements:

(A) Program Requirements Applying to All Projects

(1) *Grant Ceilings.* The authority to establish grant ceilings is found at 24 CFR 1003.100(b)(1). Grant ceilings are established for FY 2002 funding at the following levels:

Area ONAP	Population	Ceiling
Eastern/Woodlands	ALL	$500,000
Southern Plains	ALL	750,000
Northern Plains	ALL	800,000
Southwest	50,001+	5,000,000
	10,501–50,000	2,500,000
	7,501–10,500	2,000,000
	6,001–7,500	1,000,000
	1,501–6,000	750,000
	0–1,500	550,000
Northwest	ALL	500,000
Alaska	ALL	500,000

For the Southwest Area ONAP jurisdiction, the population used to determine ceiling amounts is the Native American population that resides on a reservation or rancheria. Please contact that office before submitting your application if you are unsure of the population level to use to determine the ceiling amount for your tribe or if you believe that the level used for previous years needs to be revised or corrected. The Southwest ONAP must approve any corrections or revisions to Native American population data before you submit your application.

(2) *Environmental Requirements.* As required by 24 CFR 1003.605, ICDBG grantees must perform environmental reviews of ICDBG activities in accordance with 24 CFR part 58. Grantees may not commit or expend any ICDBG or nonfederal funds on project activities (other than those listed in 24 CFR 58.34 or 58.35(b)) until HUD has approved a Request for Release of Funds and environmental certification submitted by the grantee. The expenditure or commitment of ICDBG or nonfederal funds for such activities prior to HUD approval may result in the denial of assistance for the project or activities under consideration.

(3) *Indian Preference.* HUD has determined that the ICDBG program is subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). The provisions and requirements for implementing this section are in 24 CFR 1003.510.

(4) *Anti-discrimination Provisions.* Under the authority of section 107(e)(2) of the CDBG statute, HUD waived the requirement that recipients comply with the anti-discrimination provisions in section 109 of the CDBG statute with respect to race, color, and national origin. You must comply with the other prohibitions against discrimination in section 109 (HUD's regulations for section 109 are in 24 CFR part 6) and with the Indian Civil Rights Act.

(5) *Conflict of Interest.* In addition to the conflict of interest requirements with respect to procurement transactions found in 24 CFR 85.36 and 84.42, as applicable, the provisions of 24 CFR 1003.606 apply to such activities as the provision of assistance by the recipient or sub-recipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance.

(6) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* Section 3 requirements apply to the ICDBG Program, but as stated in 24 CFR 135.3(c), the procedures and requirements of 24 CFR part 135 apply to the maximum extent consistent with, but not in derogation of, compliance with Indian Preference.

(B) Program Requirements Applying to Specific Projects

(1) *Low and Moderate Income Status for Rehabilitation Projects.* All households that receive grant assistance under a housing rehabilitation project will be of low- and moderate-income status.

(2) *Housing Rehabilitation Cost Limits.* Grant funds spent on rehabilitation per house must fall within the following limits for each Area ONAP jurisdiction:

(i) Eastern/Woodlands	$35,000
(ii) Southern Plains	20,000
(iii) Northern Plains	35,000
(iv) Southwest	40,000
(v) Northwest	40,000
(vi) Alaska	55,000

(3) *Commitment to Housing for Land Acquisition to Support New Housing Projects.* For land acquisition to support new housing projects, your application must include evidence of a financial commitment and an ability to construct at least 25 percent of the housing units to be built on the land proposed for acquisition. This evidence must consist of one (or more) of the following: a firm or conditional commitment to construct (or to finance the construction of) the units; documentation that an approvable application for the construction of these units has been submitted to a funding source or entity; or, documentation that these units are specifically identified in the Indian Housing Plan (IHP), (one-Year Financial Resources Narrative; Table 2, Financial Resources, Part I., Line 1E; and Table 2, Financial Resources, Part III) submitted on or on behalf of the applicant as an affordable housing resource with a commensurate commitment of Indian Housing Block Grant (IHBG) (aka the Native American Housing Block Grant (NAHBG)) resources. If the IHP for the IHBG (aka NAHBG) Program year that coincides with the implementation of the ICDBG proposed project has not been submitted, you must provide an assurance that when submitted, the IHP will specifically reference the proposed project.

(4) *Health Care Facilities.* If you propose a facility that would provide health care services funded by the Indian Health Service (IHS), you must assure that the facility meets all applicable IHS facility requirements. We recognize that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards at least compare to nationally accepted minimum standards.

(C) Inapplicable General Section Program Requirements

Please note that the requirements in the General Section regarding conducting business in accordance with HUD core values and ethical standards do not apply to the ICDBG Program. The provision in II(C) of the General Section giving two bonus points for eligible activities/projects to be located in a RC/EZ/EC does not apply. In addition, the requirements in Section II(D) of the General Section of the SuperNOFA regarding applicability of affirmatively furthering fair housing do not apply. The requirement is inconsistent with section 106(a) of the Housing and Community Development Act of 1974, as amended, which specifically makes inapplicable to the ICDBG program the requirement of section 104(b)(2) that the grantee certify that it will affirmatively further fair housing.

V. Application Selection Process

You, the applicant, must meet all of the applicable threshold requirements of Section II(B) of the General Section of the SuperNOFA. Your application must meet all screening for acceptance requirements and all applicant and project specific thresholds listed below. HUD will review each application and assign points in accordance with the selection factors described in this section. A maximum of 100 points may be awarded under Rating Factors 1 through 5 including 1 point awarded for applications incorporating accessible design features into the proposed project with associated performance measures. To be considered for funding, your application must receive a minimum of 15 points under rating factor 1 and an application score of 70 out of the possible total of 100.

(A) Screening for Acceptance

ONAPs will screen applications for single purpose grants. The ONAPs will reject an application that fails this screening and will return the application unrated. The ONAPs will accept your application if it meets all the criteria listed below as items (1) through (6):

(1) Your application is received or submitted in accordance with the requirements set forth under Address and Application and Submission Procedures in the General Section of this SuperNOFA;

(2) You are eligible;

(3) The proposed project is eligible;

(4) Your application contains substantially all the components specified in VI of the ICDBG Program Section of this SuperNOFA;

(5) Your application shows that at least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of 24 CFR 1003.208; and

(6) Your application is for an amount that does not exceed the grant ceilings that are established by the NOFA.

(B) Threshold Review

ONAPs will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicant threshold requirements set forth in 24 CFR 1003.301(a) and the project specific threshold requirements set forth in 24 CFR 1003.302.

(C) Rating

The ONAPs will review and rate each project that meets the acceptance criteria and threshold requirements. The total points for all rating factors is 100. A maximum of 100 points may be awarded under Rating Factors 1 through 5 including 1 point awarded for applications incorporating accessible design features into the proposed project with associated performance measures. Promoting accessible design features is one of HUD's FY 2002 policy priorities as describes in Section (V) of the General Section of this SuperNOFA. To be considered for funding, your application must receive a minimum of

15 points under rating factor 1 and an application score of 70 out of the possible total of 100.

(D) Public Service Projects

Because there is a statutory 15 percent cap on the amount of grant funds that may be used for public services activities, you may not receive a single purpose grant solely to fund public services activities. Your application, however, may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in your application. If your application does not receive full funding, we will reduce the public services allocation proportionately so that it comprises no more than 15 percent of the total grant award. In making such reductions, the feasibility of the proposed project will be taken into consideration. If a proportionate reduction of the public services allocation renders such a project infeasible, the project will not be funded.

(E) Final Ranking

We will rank all projects against each other according to the point totals they receive, regardless of the type of project or component under which the points were awarded. We will select projects for funding based on this final ranking, to the extent that funds are available. We will determine individual grant amounts in a manner consistent with the considerations set forth in 24 CFR 1003.100(b)(2). Specifically, ONAPs may approve a grant amount less than the amount requested. In doing so, ONAPs may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, and the reasonableness of the project costs. If the ONAPs determine that there are not enough funds available to fund a project as proposed by the applicant, they may decline to fund that project and may fund the next highest-ranking project or projects for which adequate funds are available. The ONAPs may select, in rank order, additional projects for funding if one of the higher-ranking projects is not funded or if additional funds become available.

(F) Tiebreakers

When rating results in a tie among projects and insufficient resources remain to fund all tied projects, the ONAPs will approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the ONAPs will use the following factors in the order listed to resolve the tie:

(1) The applicant that has not received an ICDBG over the longest period of time.

(2) The applicant with the fewest active ICDBGs.

(3) The project that would benefit the highest percentage of low and moderate income persons.

(G) Pre-award Requirements

If there are technical deficiencies in successful applications, you must satisfactorily address these deficiencies before we can make a grant award. Please see Section V of the General Section of this NOFA for a definition of such a deficiency and a description of the process to address and correct the deficiency. You must correct all technical deficiencies within the timeframe established by HUD. If they are not corrected, we will not make the grant award and will reject your application.

We also may require a successful applicant to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. We will normally give you no less than thirty (30) calendar days to respond to these requirements. If you do not respond within the prescribed time period or you make an insufficient response, the ONAPs may determine that you have not met the requirements and may withdraw the grant offer. The ONAPs require you to submit supporting documentation if specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or you have not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project. You may not substitute new projects for those originally proposed in your application nor will this information affect your project's rating and ranking. We will award, in accordance with the provisions of this NOFA, grant amounts that had been allocated for applicants unable to meet pre-award requirements.

(H) General Threshold Requirement

According to 24 CFR 1003.301(a), an applicant who has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule will be disqualified from the competition.

(I) Project Specific Threshold Requirements

Please indicate on the first page of each project submission, the type of project(s) (Economic Development, Homeownership Assistance, Housing Rehabilitation, Land Acquisition to Support New Housing, Microenterprise Programs, New Housing Construction or Public Facilities & Improvements) that is (are) being proposed. This will help to ensure that the appropriate project specific thresholds and rating sub-factor will be applied.

In addition, for definitions of "assure" and "document", please refer to Section III(D), Definitions of this Program Section of the SuperNOFA.

(1) *Housing Rehabilitation Project Thresholds.*

(a) In accordance with 24 CFR 1003.302(a), for housing rehabilitation projects, you must adopt rehabilitation standards and rehabilitation policies before you submit an application. *You must submit these standards and policies with the application.*

(b) In accordance with 24 CFR 1003.302(a), you must also provide an assurance that project funds will be used to rehabilitate HUD-assisted houses only when the tenant/homebuyer's payments are current or the tenant/homebuyer is current in a repayment agreement except in an emergency situation. Exceptions to this requirement must be approved by the ONAP Administrator on a case-by-case basis.

(2) *Land Acquisition to Support New Housing Project Thresholds.* No project specific thresholds.

(3) *New Housing Construction Project Thresholds.* (a) In accordance with 24 CFR 1003.302, new housing construction can only be implemented through a Community Based Development Organization (CBDO). Eligible CBDOs are described in 24 CFR 1003.204(c). You must provide documentation establishing that the entity implementing your new housing construction project qualifies as a CBDO.

(b) In accordance with 24 CFR 1003.302, you must also submit with your application a current tribal resolution adopting and identifying construction standards. The construction standards may be a tribal building code or a nationally recognized model code. If it is a tribal code, it must regulate all of the areas and sub-areas identified in 24 CFR 200.925(b). If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925(c).

(c) In accordance with 24 CFR 1003.302, you must also include in your application documentation supporting the following:

(i) All households to be assisted under a new housing construction project must be of low or moderate income status;

(ii) No other housing is available in the immediate reservation area that is suitable for the households to be assisted;

(iii) No other funding sources including an IHBG (aka NAHBG) can meet the needs of the household(s) to be served; and

(iv) The house occupied by the household to be assisted is not in standard condition and rehabilitation is not economically feasible, the household is currently in an overcrowded house (more than one household per house), or the household to be assisted has no current residence.

(4) *Homeownership Assistance Project Thresholds.* No project specific thresholds.

(5) *Public Facilities and Improvements Project Thresholds.* No project specific thresholds.

(6) *Economic Development Project Thresholds.* In accordance with 24 CFR 1003.302, for economic development assistance you must provide a financial analysis. The financial analysis must demonstrate that the project is financially feasible and the project has a reasonable chance of success. The analysis must also demonstrate the public benefit resulting from the ICDBG assistance. The more funds you request, the greater public benefit you must demonstrate. The analysis must also establish that to the extent practicable, reasonable financial support will be committed from non-federal sources prior to disbursement of federal funds; any grant amount provided will not substantially reduce the amount of non-federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and that grant funds used for the project will be disbursed on a pro-rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and has a reasonable chance of success.

(7) *Microenterprise Program Thresholds.* No project specific threshold.

(J) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applications and the points for each factor are provided below. A maximum of 100 points may be awarded under Rating Factors 1 through 5. To be considered for funding, your application must receive a minimum of 15 points under rating factor 1 and an application score of 70 out of the possible total of 100, the maximum any project can receive. The following summarizes the points assigned to each rating factor and each rating sub-factor and lists which rating sub-factors apply to which project types. Please use this table to ensure you are addressing the appropriate rating sub-factor for your project.

Rating factor	Rating and sub-factor	Points	Project type
1	Total	30	Minimum of 15 Points Required.
	(1)(a)	10	All Project Types.
	(1)(b)	*5 or 7	All Project Types.
	(1)(c)	*3 or 8	All Project Types.
	(1)(d)	*2 or 5	All Project Types.
	(2)(a)	*2 or 0	All Project Types.
	(2)(b)	*2 or 0	All Project Types.
	(2)(c)	*2 or 0	All Project Types.
	(2)(d)	*2 or 0	All Project Types.
	(2)(e)	*2 or 0	All Project Types.
2	Total	20	All Project Types.
	1	5	All Project Types.
	(2)(a)	15	Public Facilities and Improvements and Economic Development Projects.
	(2)(b)	15	New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Assistance Projects.
	(2)(c)	15	Microenterprise Programs.
3	Total	35	
	(1)	19	All Project Types.
	(2)	1	All Project Types.
	(3)	1	All Project Types.
	(4)(a)(i)	15	Public Facilities and Improvements (tribe assumes O&M responsibilities).
	(4)(a)(ii)	15	Public Facilities and Improvements (entity other than tribe assumes O&M responsibilities).
	(4)(b)	15	New Housing Construction, Housing Rehabilitation, and Homeownership Assistance Projects.
	(4)(c)	15	Economic Development.
	(4)(d)	15	Microenterprise Programs.
	(4)(e)	15	Land Acquisition to Support New Housing.
4	Total	10	All Project Types.
5	Total	5	All Project Types.
Total possible.		100	Minimum of 70 Points Required.

* The first number listed indicates the maximum number of points available to current ICDBG grantees under this sub-factor. The second number indicates the maximum number of points available to new applicants.

Rating Factor 1: Capacity of the Applicant (30 Points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. If applicable, past performance in administering previous ICDBG grants will be taken into consideration. Please specifically address the existence or availability of these resources for the *specific type of*

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activity for which you are applying. You must receive a minimum of 15 points under this factor for your proposed activity to be eligible for funding. HUD will not rate any projects further that do not receive a minimum of 15 points under this factor.

(1) Managerial, Technical, and Administrative Capability

(20 points for current ICDBG grantees)
(30 points for new applicants)

Your application must include documentation demonstrating that you possess or can obtain managerial, technical, and/or administrative capability necessary to carry out the proposed project. Your application must address who will administer the project and how you plan to handle the technical aspects of executing the project.

(a) Managerial and Technical Staff

(10 points)

The extent to which your application describes the roles/responsibilities and the knowledge/experience of your overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning, managing and implementing projects for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of your staff to undertake eligible program activities. In rating this factor, HUD will consider experience within the last 5 years to be recent; experience pertaining to the specific activities being proposed to be relevant; and experience producing specific accomplishments to be successful. The more recent the experience and the more experience your own staff members who work on the project have in successfully conducting and completing similar activities, the greater the number of points you will receive for this rating factor.

(b) Project Management Plan and Method

(5 points for current ICDBG grantees)
(7 points for new applicants)

The extent to which your project management plan identifies the specific actions that you and your partners contractors and/or sub grantees will take to complete your proposed project on time and within budget. Your management plan must include a description of the management structure for the program and a schedule outlining the estimated completion of all tasks associated with your proposed project.

(c) Financial Management

(3 points for current ICDBG grantees)
(8 points for new applicants)

The extent to which your application describes how your financial management systems will facilitate effective fiscal control over your proposed project. Effective fiscal control will be judged in terms of your financial management and/or internal control policies and procedures meeting 24 CFR part 85 and 24 CFR part 1003 requirements as evidenced by a tribal resolution adopting such policies and procedures and the adopted resolution is included with your application; how you will apply your financial systems to the specific project for which you are applying; and, the findings of your most recent financial audit or a letter of endorsement from your auditor if the most recently conducted audit report has not been finalized is included with your application.

(d) Procurement and Contract Management

(2 points for current ICDBG grantees)
(5 points for new applicants)

The extent to which your application describes how your procurement and contract administration policies and procedures will facilitate effective procurement and contract control over your proposed project. Effective procurement and contract control will be judged in terms of your procurement and contract administration policy and procedures meeting 24 CFR part 85 and 24 CFR part 1003 requirements as evidenced by an adopted resolution and included with your application, and how you will apply your procurement and contract systems to the specific project for which you are applying.

(2) Past Performance

(10 points for current ICDBG grantees)
(0 points for new applicants)

Your performance in administering ICDBG grants over the preceding 12-month period on any open ICDBG grant will be evaluated based on the following performance measures.

(a) (2 points for current ICDBG grantees) (0 points for new applicants) You have had satisfactory progress in meeting the time frames established in the HUD-approved Implementation Schedule for the ICDBG Program.

(b) (2 points for current ICDBG grantees) (0 points for new applicants) You have had timely submission of required reports including the Annual Status and Evaluation Report and Federal Cash Transaction Report for the ICDBG Program.

(c) (2 points for current ICDBG grantees) (0 points for new applicants) You have submitted close-out documents to HUD in a timely manner. Close-out documents are required for the ICDBG Program within 90 days of the date it is determined that the criteria for close out at 24 CFR 1003.508 have been met.

(d) (2 points for current ICDBG grantees) (0 points for new applicants) You have submitted in a timely fashion annual audits in accordance with the ICDBG Program requirements and OMB Circular A–133 and its compliance supplements.

(e) (2 points for current ICDBG grantees) (0 points for new applicants) You have resolved in a timely fashion ICDBG monitoring findings and controlled audit findings or no findings in current reports.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for the proposed project to address a documented problem among the intended beneficiaries.

(1) (5 points) Your application includes documentation demonstrating that the proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

(2) (15 points) Your project benefits the neediest segment of the population. The criteria for this sub-factor vary according to the type of project for which you are applying. Please note that you may submit data that are unpublished and not generally available in order to meet the requirements of this section. However, to do so, you must submit a demographic data certification along with supporting documentation as described in Section VI (A) and (C)(6) below.

(a) Public Facilities and Improvements and Economic Development Project

The proposed activities benefit the neediest segment of the population, as identified below. For economic development projects, you may consider beneficiaries of the project as persons served by the project and/or persons employed by the project.

(15 points) 85 percent or more of the beneficiaries are low or moderate income.

(10 points) At least 75 percent but less than 85 percent of the beneficiaries are low or moderate income.

(5 points) At least 55 percent but less than 75 percent of the beneficiaries are low or moderate income.

(0 points) Less than 55 percent of the beneficiaries are low or moderate income.

(b) New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Assistance Projects

(15 points) The Indian tribe's IHBG (aka NAHBG) amount was $100,000 or less in IHBG (aka NAHBG) funds.

(10 points) The Indian tribe's IHBG (aka NAHBG) amount was more than $100,000 but at most $300,000 in IHBG (aka NAHBG) funds.

(5 points) The Indian tribe's IHBG (aka NAHBG) amount was more than $300,000 but at most $500,000 in IHBG (aka NAHBG) funds.

(0 points) The Indian tribe's IHBG (aka NAHBG) amount was more than $500,000 in IHBG (aka NAHBG) funds.

(c) Microenterprise Programs

The owner(s) of the microenterprise must be low or moderate income and the majority of the jobs created or retained will be for low- or moderate-income persons. To evaluate need, the nature of the jobs created or retained will be evaluated. The owners of the microenterprises are low and moderate income *and:*

(15 points) All employees are low or moderate income.

(10 points) At least 75 percent but less than 100 percent of the employees are low or moderate income.

(5 points) At least 55 percent but less than 75 percent of the employees are low or moderate income.

(0 points) Less than 55 percent of the employees are low and moderate income.

Rating Factor 3: Soundness of Approach (35 Points)

This factor addresses the quality and anticipated effectiveness of your proposed project in meeting the needs you have identified in Rating Factor 2 and the commitment to sustain your proposed project. The populations that were described in demographics that documented need should be the same populations that will receive the primary benefit of the proposed project.

(1) (14 points) Description of and Rationale for Proposed Project

The extent to which your proposed project is a viable and cost effective approach to address the needs outlined under Rating Factor 2 of your application. You must describe the proposed project in detail and indicate why you believe the proposed project will be most effective in addressing the identified need. Appropriate information to address this subfactor includes the size, type and location of the project; rationale for project design; and, anticipated cost savings due to innovative program design and/or construction methods. For land acquisition to support new housing projects, you must establish that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low- and moderate-income households to benefit from the project.

(2) (5 points) Budget and Cost Estimates

The quality, thoroughness, and reasonableness of the proposed project budget. Cost estimates must be broken down by line item for each proposed activity and documented by outside sources when appropriate.

(3) (1 point) Accessible Design Features

Your application incorporates accessible design features into your proposed project and provides associated performance measures. Promoting accessible design features is one of HUD's FY 2002 policy priorities as describes in Section (V) of the General Section of this SuperNOFA.

(4) (15 points) Commitment to Sustain Activities

Your application demonstrates your commitment to sustain your proposed activities. The criteria for this sub-factor vary according to the type of project for which you are applying.

(a) Public Facilities and Improvement Projects

(i) *If the tribe assumes operation and maintenance responsibilities for public facilities and improvements,* a resolution that both adopts the operation and maintenance plan and commits necessary funds must be included in the application

(15 points) The plan itself is included and addresses maintenance, repairs, insurance, replacement reserves and includes a cost breakdown for annual expenses; for community buildings only, the source of operating funds is identified for any recreation, social or other services to be provided by the tribe or other entities and letters of commitment from service providers are included which address both operating expenses and space needs.

(10 points) A resolution adopting the operation and maintenance plan and committing funds is included; the plan is included and addresses most, but not all above items, but does include a satisfactory cost breakdown; for community buildings only, above service provider commitments (if applicable) as well as the source of operating funds are included. Information provided is sufficient to determine that the project will proceed effectively.

(5 points) A resolution adopting the plan and committing funds, or a plan addressing most of the above items is included. Information provided is sufficient to determine that the project will proceed effectively.

(0 points) None of the above criteria are met.

(ii) *If an entity other than the tribe commits to pay for operation and maintenance for public facilities and improvements,* the application must contain a letter of commitment from the entity that assumes the operation and maintenance responsibilities.

(15 points) Your application contains a letter of commitment from the entity that identifies the maintenance responsibilities and, if applicable, responsibilities for operations the entity will assume, as well as commits the necessary funds to provide for these responsibilities; for community buildings only, the source of funds for program service provision is identified for any recreation, social or other services to be provided by the tribe or other entities and letters of commitment from service providers are included which address both these funds and space needs.

(10 points) Your application contains a letter of commitment identifying maintenance responsibilities and, if applicable, responsibilities for operations the entity will assume, but no information committing the necessary funds is included; for community buildings only, the source of funds for program service provision is identified for any applicable services to be provided by the tribe or other entities and letters of commitment from applicable providers are included which address both these funds and space needs.

(5 points) Your application identifies the maintenance provider and, if applicable, responsibilities for operations the entity will assume, but a letter of commitment is not provided; for community buildings only, letters of commitment to provide services are included but no information regarding the provision of these funds or space needs is provided.

(0 points) None of the above criteria are met.

(b) New Housing Construction, Housing Rehabilitation, and Homeownership Assistance Projects

(15 points) The ongoing maintenance responsibilities are clearly identified for

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the tribe and/or the participants, as applicable. All participant maintenance responsibilities are included on a statement to be signed by the participant as a condition of receiving grant assistance and the statement to be used is included in the application.

(10 points) Maintenance responsibilities are identified, but lacking in detail, and the above statement to be signed by the participant is submitted.

(5 points) Tribal maintenance responsibilities are identified but participant responsibilities are either not addressed or do not exist.

(0 points) None of the above criteria are met.

(c) Economic Development Projects

You must include information or documentation which addresses or provides the following in the application: A description of the organizational system and capacity of the entity that will operate the business; the feasibility and market analysis of the proposed business activity and the financial viability of the project.

Appropriate documents to include in the application to address these items include:

(i) Articles of incorporation, by-laws, resumes of key management positions and board members.

(ii) Business operating plan.

(iii) Market study no more than two years old.

(iv) Feasibility study indicating how the proposed business will capture a fair share of the market.

(v) Detailed cost summary for the development of the project.

(vi) Five year operating or cash flow financial projections.

(vii) For the expansion of an existing business, copies of financial statements for the most recent three years (or the life of the business, if less than three years).

(15 points) All above documents applicable to the proposed project are included in your application and provide evidence that the project's chance for financial success is excellent.

(8 points) All or most of the above documents applicable to the proposed project are included and provide evidence that the project's chance for financial success is reasonable.

(0 points) Neither of the above criteria is met.

(d) Microenterprise Programs

You must include the following information or documentation in the application that addresses or provides a description of how your microenterprise program will operate. Appropriate information to include in the application to address program operations includes:

(i) Program description. A description of your microenterprise program including the types of assistance offered to microenterprise applicants and the types of entities eligible to apply for such assistance.

(ii) Processes for selecting applicants. A description of your processes for analyzing microenterprise applicants' business plans, market studies and financial feasibility. For credit programs, you describe your process for determining the loan terms (i.e. interest rate, maximum loan amount, duration, loan servicing provisions) to be offered to individual microenterprise applicants.

(15 points) All of the above information or documentation applicable to the proposed project are thoroughly addressed in the application and the chances for success are excellent.

(8 points) All or most of the above information or documentation applicable to the proposed project are addressed in the application and the chances for success are reasonable.

(0 points) Neither of the above criteria is met.

(e) Land Acquisition Projects to Support New Housing

Submissions must include the results of a preliminary investigation conducted by a qualified independent entity demonstrating that the proposed site has suitable soil conditions for housing and related infrastructure, available drinking water, access to utilities, vehicular access, drainage, nearby social and community services, and no known environmental problems.

(15 points) The submissions include all of the above-mentioned items and all necessary infrastructure is in place.

(8 points) The submissions demonstrate that the proposed site(s) is/are suitable for housing but that not all necessary infrastructure is in place. A detailed description of resources to be used and a detailed implementation schedule for development of all necessary infrastructure demonstrates that such infrastructure, as needed for proposed housing development, will be developed in time for such development, but no later than two years after site purchase.

(0 points) Neither of the above criteria is met.

Rating Factor 4: Leveraging Resources (10 Points)

HUD believes that ICDBG funds can be used more effectively to benefit a larger number of Native American persons and communities if projects are developed that use tribal resources and resources from other entities in conjunction with ICDBG funds. To encourage this, we will award points based on the percentage of non-ICDBG resources provided relative to project costs as follows:

Non-ICDBG resources to project costs	Points
Less than 5 percent	0
At least 5 percent but less than 10 percent	2
At least 10 percent but less than 15 percent	4
At least 15 percent but less than 20 percent	6
At least 20 percent but less than 25 percent	8
25 percent or more	10

Contributions which could be considered as leveraged resources for point award include, but are not limited to: Tribal trust funds; loans from individuals or organizations; State or Federal loans or guarantees; other grants including IHBG (aka NAHBG) funds; donated goods and services needed for the project; land needed for the project; and, direct administrative costs.

Contributions that will not be considered include, but are not limited to: Indirect administrative costs as identified in OMB Circular A–87, attachment A, section F; contributions of resources to pay for anticipated operations and maintenance costs of the proposed project; and, in the cases of expansions to existing facilities, the value of the existing facility.

To be considered for point award, letters of firm commitments, memoranda of understanding, or agreements to participate from any entity, including the tribe that will be providing a contribution to the project must accompany the application.

To demonstrate the commitment of tribal resources, the application must contain a council resolution or legal equivalent that identifies and commits the tribal resources to the project, subject to approval of the ICDBG assistance and favorable outcome of any environmental review required under 24 CFR part 58 for the project. In the case of IHBG (aka NAHBG) funds, whether they are administered by the tribe or a TDHE, an approved IHP must identify and commit the IHBG (aka NAHBG) resources to the project. If the tribe/TDHE intends to include the leveraged commitment in a future IHP, the application must contain a council resolution or legal equivalent that identifies and commits the IHBG (aka NAHBG) resources to the project subject to the same requirements as above.

To demonstrate the commitment of public agency, foundation, or other private party resources, a letter of commitment, memorandum of understanding, and/or agreement to participate, including any conditions to which the contribution may be subject, must be submitted with the application. All letters of commitment must include the donor organization's name, the specific resource proposed, the dollar amount of the financial or in-kind resource and method for valuation, and the purpose of that resource within the proposed project. The commitment must be signed by an official of the organization legally authorize to make commitments on behalf of the organization and must be conditional upon favorable outcome of any environmental review required under 24 CFR part 58 for the project.

In addition to the above requirements, for all contributions of goods, services and land, you must demonstrate that the donated items are necessary to the actual development of the project and include comparable costs (or time estimates, if appropriate) that support the donation. Land valuation must be established using one of the following methods and the documentation must be contained in the application: A site specific appraisal no more than two years old; an appraisal of a nearby comparable site also no more than two years old; a reasonable extrapolation of land value based on current area realtor value guides; or, a reasonable extrapolation of land value based on recent sales of similar properties in the same area.

Rating Factor 5: Comprehensiveness and Coordination (5 Points)

This factor addresses the extent to which your project planning and proposed implementation reflect a coordinated, community-based process of identifying and addressing needs including assisting beneficiaries and the program to achieve self-sufficiency/sustainability.

(1) (2 points) Your application addresses the extent to which you have coordinated your activities with other organizations that are not directly participating in your proposed work activities (not project partners such as those listed under Rating Factor 4: Leveraging), but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner. For example, your project is consistent with and, to the extent possible, identified in the IHP (One-Year Financial Resources Narrative; Table 2, Financial Resources, Part I., Line 1E; and, Table 2, Financial Resources, Part II) submitted by you or on your behalf for the IHBG (aka NAHBG) Program. If the IHP for the IHBG (aka NAHBG) program year that coincides with the implementation of the ICDBG proposed project has not been submitted, you must provide an assurance that when submitted, the IHP will specifically reference the proposed project.

(2) (3 points) Your proposed project will accomplish measurable outcomes such as number of jobs created or obtained; education or job training opportunities provided, increased economic self-sufficiency of recipients of program beneficiaries; increased homeownership rates; and, reduction of drug-related crime or health related hazards.

VI. Application Submission Requirements

(A) Demographic Data

You may submit data that are unpublished and not generally available in order to meet the requirements of this section. You must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

Data differentiate between reservation and BIA service area populations, when applicable.

(B) Publication of Community Development Statement

You must prepare and publish or post the community development statement portion of your application according to the citizen participation requirements of 1003.604.

(C) Application Submission

Your application must contain the items listed below. You must also include the forms, standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding and can be found in Appendix B to the General Section of the SuperNOFA. Those forms listed in that Appendix that are applicable to this funding are as follows:

(1) Standard Form for Application for Federal Assistance (SF–424)

(2) Federal Assistance Funding Matrix and Certifications (HUD–424M)

(3) Drug-Free Workplace Certification (HUD–50070).

(4) Applicant/Recipient Disclosure/Update Report (HUD–2880).

(5) Certification Regarding Debarment and Suspension (HUD–2992).

(6) Certification of Consistency with RC/EZ/EC Strategic Plan (HUD–2990), if applicable;

(7) Acknowledgement of Application Receipt (HUD–2993).

(8) Client Comments and Suggestions (HUD–2994), optional.

In addition, if the application has been submitted by a tribal organization as defined in 24 CFR 1003.5(b), on behalf of an Indian tribe, you must submit concurring resolutions from the Indian tribe stating that the tribal organization is applying on the tribe's behalf.

The other required items are as follows:

(1) Community Development Statement that includes:

(a) Components that address the general threshold requirement and the relevant project specific thresholds and rating factors;

(b) A schedule for implementing the project (form HUD–4125, Implementation Schedule); and

(c) Cost information for each separate project, including specific activity costs, administration, planning, technical assistance, and total HUD share (form HUD–4123, Cost Summary);

(2) Certifications (form HUD 4126);

(3) A map showing project location, if appropriate;

(4) If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(a) The number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(b) The number to be displaced or temporarily relocated;

(c) The estimated cost of relocation payments and other services;

(d) The source of funds for relocation; and

(e) The organization that will carry out the relocation activities;

(5) If applicable, evidence of the disclosure required by 24 CFR 1003.606(e) regarding conflict of interest.

(6) If applicable, the demographic data certification described in Section VI(A) and V(J), Rating Factor 2 of this NOFA. The data accompanying the certification must identify the total number of persons benefiting from the project and the total number of low-and-moderate persons benefiting from the project. Supporting documentation must

include a sample copy of a completed survey form and an explanation of the methods used to collect the data, and a listing of incomes by household.

VIII. Applicant Debriefing

Please refer to Section VII (E)(2) of the General Section of this SuperNOFA.

IX. Error and Appeals

Judgments made within the provisions of this NOFA and the program regulations (24 CFR part 1003) are not subject to claims of error. You may bring arithmetic errors in the rating and ranking of applications to the attention of the ONAPs within 30 days of being informed of your score. If an arithmetic error was made in the application review and rating process that, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the ONAPs may fund that project in the next funding round without further competition.

Appendix A

The non-standard forms, which follow, are required for your ICDBG application.

BILLING CODE 4210–32–P

APPENDIX A

Cost Summary

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 5/31/2003)

See Instructions and Public Reporting Statement on back.

1. Name of Applicant (as shown in item 5, Standard Form 424)

2. Application/Grant Number (to be assigned by HUD upon submission)

3. ☐ Original (check here if this is the first submission to HUD) ☐ Revision (check here if submitted with implementation on schedule as part of pre-award requirements) ☐ Amendment (check here if submitted after HUD approval of grant)

Date (mm/dd/yyyy)

4. Project Name & Project Category (see instructions on back) a	ICDBG Amount Requested for each activity b	Program Funds (in thousands of $) Other Source Amount for each activity c	Other Source of Other Funds for each activity d
	$	$	
5. Administration a. General Management and Oversight			
b. Indirect Costs: Enter indirect costs to be charged to the program pursuant to a cost allocation plan.			
c. Audit: Enter estimated cost of Program share of A-133 audits.			
Administration Total *			
6. Planning The Project description must address the proposed use of these funds.			
7. Technical Assistance Enter total amount of ICDBG funds requested for technical assistance. **			
8. Sub Total Enter totals of columns b. and c.	$	$	
9. Grand Total Enter sum of column b. plus column c			$

* The total of items 5 and 6 cannot exceed 20% of the total ICDBG funds requested.

** No more than 10% of ICDBG funds requested may be used for technical assistance. If funds are requested under this line item, a separate project description must accompany the application to describe the technical assistance the application intends to obtain. Only technical assistance costs associated w/in the development of a capacity to undertake a specific funded program activity are eligible (24 CFR 1003.205).

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of 1990. The information requested does not lend itself to confidentiality.

Instructions for Item 4.
Project Name and Project Type

Participants enter the project name and the name of one of the following three categories of activities:

- Housing
- Community Facilities
- Economic Development

Also enter the component name if applicable. Use a separate Cost Summary sheet (form HUD-4123) for each project included in the application.
Examples of categories and/or components including examples of eligible activities are listed below.

Housing

Rehabilitation Component
- Rehabilitation
- Demolition

Land to Support New Housing Component

New Housing Construction Component

Community Facilities

Infrastructure Component
- Water
- Sewer
- Roads and Streets
- Storm Sewers

Buildings Component
- Health Clinic
- Daycare Center
- Community Center
- Multi-purpose Center

Economic Development
- Commercial (wholesale, retail)
- Industrial
- Motel/Hotel
- Restaurant
- Agricultural Development

OMB Approval No. 2577-0191
(exp 9/31/2003)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Implementation Schedule
Indian Community Development Block Grant (ICDBG)

See Instructions and Public Reporting Statement on back.
Submit a separate implementation schedule for each project category.

1. Name of Applicant (as shown in Item 5, Standard Form 424)

2. Application/Grant Number (to be assigned by HUD)

3. ☐ Original (First submission to HUD) Date (mm/dd/yyyy)
☐ Pre-Award Submission
☐ Amendment (submitted after grant approval)

4. Name of Project (as shown on form HUD-4123, Item 4)

5. Effective Date (mm/dd/yyyy) Expected Completion Date (mm/dd/yyyy) Expected Closeout Date (mm/dd/yyyy)

6. Environmental Review Status
☐ Exempt (As described in 24 CFR 58.34) ☐ Under Review (Review underway; findings not yet made)
☐ EIS Required (Finding that project may significantly affect environment or EIS automatically required by 24 CFR 58.37) ☐ Not Started (Review not yet begun)
☐ Finding of No Significant Impact (Finding made that request for release of funds for project is not an action which may significantly affect the environment.)
☐ Certification (Environmental review completed; certification and request for release of funds being prepared for submission.) ☐ Categorically Excluded (as described in 24 CFR 58.35)

7. Tribal Fiscal Year (mm/dd/yyyy)

8. Schedule.
Use Calendar Year (CY) quarters. Fill-in the CY below. See detailed instructions on back.

	CY 1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	5th Qtr.	6th Qtr.	7th Qtr.	8th Qtr.	Date (mm/dd/yyyy) (If exceeds 8th Quar.
(a)									
	$	$	$	$	$	$	$	$	$Total

10. Planned Drawdowns by Quarter (Enter amounts non-cumulatively) $ $ $ $ $ $ $ $ $Total

11. Cumulative Drawdown (If more than one page, enter total on last page only) $ $ $ $ $ $ $ $ $Total

Previous editions are obsolete

form HUD-4125 (12/97)

page of pages

Public reporting burden for this collection of information is estimated to **average** 40 hours **per response**, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden **estimate** or any other aspect of this collection of information, including suggestions for reducing this burden, to the **Reports Management** Officer, Paperwork Reduction Project (2577-0191), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information requires that each eligible applicant submit information to enable HUD to **select the best projects** for funding during annual competitions for the ICDBG Program. The information will be used by HUD to **determine** whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is **essential** for HUD in monitoring grants to ensure that grantees are **making** proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of 1990. The information requested does not lend itself to confidentiality.

Instructions for Item 9 Schedule: Use Calendar Year (CY) **quarters**. Fill in the CY below. If the project begins in May, for example, enter under "1st Qtr." A(April), M(May), J(June). Indicate time period required to complete each activity, e.g., acquisition, by entering "X" under the months it will begin and end. Draw a horizontal line from the first to the second "X". If the completion date will extend beyond the 8th quarter, enter date in the far right column and attach an explanation.

page 1 of pages

form HUD-4125 (12/97)

Previous editions are obsolete

Certifications

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 5/31/2003)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of 1990. The information requested does not lend itself to confidentiality.

The grantee hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program. Also, the grantee gives assurances and certifies with respect to the grant that:

A. It possesses the legal authority to apply for the grant and execute the proposed program.

B. The governing body has duly authorized the filing of the application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

C. It will comply with the HUD general administration requirements in 24 CFR Part 85.

D. It will comply with the requirements of Title II of Public Law 90-284 (25 USC 1301) (the Indian Civil Rights Act).

E. It will comply with the Indian preference provisions required in 24 CFR 1003.510.

F. It will establish written safeguards to prevent employees from using positions funded under the ICDBG programs for a purpose that is, or gives the appearance of being, motivated by private gain for themselves, their immediate family or business associates. Nothing in this certification should be construed as to limit employees from benefiting from program activities for which they would otherwise be eligible.

G. It will give HUD and the Comptroller General access and right to examine all books, records, papers, or documents related to the grant for a period of not less than three years after program completion or until resolution of any final audit findings.

H. Neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24.

I. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 1003.602.

J. The chief executive officer or other official of the applicant approved by HUD:

1. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of the Act apply to the applicant's proposed program pursuant to 24 CFR 1003.605.

2. Is authorized and consents on behalf of the applicant and him/her self to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.

Note: Applicants for whom HUD has approved a claim of incapacity to accept the responsibilities of the Federal government for purposes of complying with the environmental review requirements of 24 CFR part 58 pursuant to 24 CFR 1003.605 need not include the provision of paragraph J in their assurance.

K. It will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 (Economic Opportunities for Low and Very Low Income Persons) to the maximum extent consistent with, but not in derogation of, compliance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC. 450e(b)).

L. It will comply with the requirements of the Fire Authorization Administration Act of 1992 (Pub.L. 102-522).

M. It will provide the drug-free workplace required by 24 CFR part 24, subpart F.

N. It will comply with 24 CFR, part 4, subpart A, showing full disclosure of all benefits of the project as collected by Form HUD-2880, Applicant/Recipient Disclosure Report.

O. Prior to submission of its application to HUD, the grantee has met the citizen participation requirements which includes following traditional means of member involvement, as required in 24 CFR 1003.604.

P. It will administer and enforce the labor standard requirements prescribed in 24 CFR 1003.603.

Q. The Program has been developed so that not less than 70 percent of the funds received under this grant will be used for activities that benefit low- and moderate-income persons.

Note: Applicants receiving Imminent Threat Grants need not include the provision of this paragraph in their assurance.

Name (type or print)	Title
Signature	Date (mm/dd/yyyy)

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form HUD-4126 (12/98)

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY OUTREACH PARTNERSHIP CENTERS (COPC)

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE COMMUNITY OUTREACH PARTNERSHIP CENTERS PROGRAM (COPC)

PROGRAM OVERVIEW

Purpose of the Program. To provide funds to community colleges, four-year colleges, and universities to establish and operate Community Outreach Partnership Centers (COPCs) to address the problems of urban areas.

Available Funds. Approximately $7.5 million as appropriated in the FY 2002 VA–HUD appropriation act.

Eligible Applicants. Public and private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

Application Deadline. June 20, 2002

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 20, 2002, at HUD Headquarters.

Address for Submitting Applications. New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FED EX, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date, when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, Fed EX, and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not serve your area, you should submit your application via the United States Postal Service.

For Application Kits. For an application kit and supplemental material you should call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, you should refer to COPC and provide your name, address (including zip code), and telephone number (including area code). You may also download the application kit on the Internet through the HUD Web site at http://www.hud.gov.

For Further Information and Technical Assistance. You may contact Armand W. Carriere of HUD's Office of University Partnerships at (202) 708–3061, ext. 3181. If you have a speech or hearing impairment, you may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the "800" number, these numbers are not toll-free. You may also reach Mr. Carriere via the Internet at Armand_W._Carriere@hud.gov.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, you should consult the HUD web site at the web address listed above.

II. Amount Allocated

Up to $7.5 million has been allocated to fund grants under the program. This year, HUD will award two kinds of grants—(A) New Grants to applicants who have never received a COPC grant before to undertake eligible work and (B) New Directions Grants to fund previous COPC recipients (as identified in Section III.(B) below) to undertake new directions in their activities. HUD will use up to $6.1 million to fund approximately 16 New Grants and up to $1.4 million to fund approximately 7 New Directions Grants.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The main purpose of this COPC Program is to assist in establishing or carrying out outreach and applied research activities addressing the problems of urban areas. But HUD also looks to the program to encourage structural change, both within an institution of higher education and in the way the institution relates to its neighbors. Funding under this program is used to establish and operate local Community Outreach Partnership Centers (COPC). The five key concepts that your COPC Program should include are:

(1) Outreach, technical assistance, and applied research should be provided to neighborhoods and neighborhood-based organizations based on what the residents decide is needed, rather than what the institution concludes is appropriate for that neighborhood;

(2) Community-based organizations and residents should be empowered by the project and be your partners throughout the life of the project and beyond, from planning to implementation to activities beyond the grant;

(3) Your applied research should be related to the outreach activities and be used to influence your activities within the grant period or shortly after it ends. HUD will not fund research without practical application;

(4) The assistance you provide should be primarily by faculty, students, or to a limited extent, by neighborhood residents or community-based organizations funded by the university; and

(5) Your program should be part of your institution's broader effort to meet its urban mission, and be supported by its senior officials, rather than just the work of a few faculty members. Your proposed activities should not duplicate those of other entities in the community and should be appropriate for an institution of higher education to undertake in light of its teaching, and research, and service missions.

(B) *Eligible Applicants.* Eligible applicants for both New Grants and New Directions Grants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

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For New Grants, only applicants that have never previously received a New Grant, a New Directions Grant, or an Institutionalization Grant are eligible. Institutions that participated in a COPC grant as a member of a consortium of colleges or universities will be eligible to apply for a New Grant if they received 25% or less of the earlier grant. For New Directions Grants, applicants must meet the following requirements: you must have received a New Grant in FY 1994, 1995, 1996, 1997, 1998 or 1999; you must never have received a New Directions Grant; and you must have drawn down (i.e., requests for reimbursement have been processed), by the application due date, at least 75% of the funds you received from any previous COPC award. Joint Community Development Program grantees are not eligible for either kind of funding, nor are FY 2000 and 2001 COPC Grantees.

Consortia of eligible institutions may apply, as long as one institution is designated the lead applicant. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed staffing, and in order to fund as many eligible applicants as possible, HUD has determined that you may be part of only one consortium or submit only one application or the application will be disqualified. HUD will hold you responsible for ensuring that neither you nor any part of your institution, including specific faculty, participate in more than one application. For New Directions Grants, if you originally received funding as a consortium, you are not required to submit again with all the consortium members. Members of a previously approved consortium may submit on their own or as part of their old consortium. However, as with New Grants, only one application from an institution will be permitted.

Different campuses of the same university system are eligible to apply, even if one campus has already received COPC funding. Such campuses are eligible as separate applicants only if they have administrative and budgeting structures independent of other campuses in the system.

(C) *Eligible Activities.* Your COPC Program must combine research with outreach, work with communities and local governments and address the multidimensional problems that beset urban areas. To meet the threshold requirements, your New Grant application must be multifaceted and address three or more urban problems and you must propose at least one distinct activity to address each separate urban problem. Urban problems include issues related to housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, the environment, community organizing, and other areas deemed appropriate by the Secretary. Single purpose applications are not eligible. For example, if you propose to undertake health education for elementary school children, organizing around health issues, and job readiness for the health professions, HUD will deem your application as single purpose, because it really only addresses the problem of health care. Likewise, if you propose to address housing, economic development, and health care problems by developing a Geographic Information System, your application would also be considered single purpose because it does not propose separate and distinct activities for each of the problems you address. As examples of eligible projects, if you propose a health care project for the elderly, a job training program on construction trades for high school seniors, and an affordable housing fair, you would meet the test of addressing three urban problems, each with a separate activity. Alternatively, if you propose a Geographic Information System to identify economic development potential, an oral history of the neighborhood, and the creation of block watches, you would also meet the test. These are just examples. For more information about the projects that have actually been funded under the program, you should look at the Office of University Partnerships' web site at www.oup.org. If you are applying for a New Directions Grant, you will only be required to address two urban problems and undertake at least one activity for each of these problems.

The statute creating COPC is very specific that the programs address the problems of urban areas. HUD uses the Census definition of an urban area: a single geographic place (e.g., a city, town, or village, but not a county) with a population of 2,500 or more. You cannot meet this test by aggregating several places smaller than the population threshold in order to meet this requirement.

Funded research must have a clear near-term potential for solving specific, significant urban problems. You must have the capacity to apply your research results and to work with communities and local institutions, including neighborhood groups, local governments, and other appropriate community stakeholders, in applying these results to specific real-life urban problems.

While the list of eligible and ineligible activities is the same for both New Grant applicants and New Directions Grant applicants, New Directions Grant applicants must demonstrate that the proposed activities either implement new eligible projects in the current target neighborhood(s) or implement eligible projects in a new target neighborhood(s). New Directions applicants will be required to specifically describe how the activities described in the New Directions application differ from the activities described in the original COPC application.

Eligible activities include:

(1) Research activities that have practical application for solving specific problems in designated communities and neighborhoods, including evaluation of the effectiveness of the outreach activities. In order to ensure that the primary focus of your project is on outreach, research may not total more than one-quarter of the total project costs contained in any grant made under this COPC funding announcement (including the required 50% match).

(2) Outreach, technical assistance and information exchange activities which are designed to address specific urban problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of your total project costs (including the required 25% match). Examples of outreach activities include, but are not limited to:

(a) Assistance to communities to improve consolidated housing and community development plans and eliminate impediments to the design and implementation of such plans;

(b) Design of community or metropolitan strategies to resolve urban problems of communities and neighborhoods;

(c) Innovative use of funds to provide direct technical expertise and assistance to local community groups, residents, and other appropriate community stakeholders to assist them in resolving local problems such as homelessness, housing discrimination, and impediments to fair housing choice;

(d) Technical assistance in business start-up activities for low- and moderate-income individuals and organizations, including business start-up training and technical expertise and assistance, mentor programs, assistance in developing small loan funds, business incubators, etc;

(e) Technical assistance to local public housing authorities on welfare-to-work initiatives and physical transformations of public or assisted housing, including development of accessible and visitable housing;

(f) Job training and other training projects, such as workshops, seminars, and one-on-one and on-the-job training;

(g) Assistance to communities to design ways to use HUD's Partnership for Advancing Technology in Housing (PATH) technology such as analyzing building codes and building materials or designing new building systems. (Remember that actual physical development activities are not eligible under COPC.) For more information, see the General Section of the SuperNOFA or visit the website at www.pathnet.org;

(h) Assistance to communities to improve their fair housing planning process; and

(i) Regional projects that maximize the interaction of targeted inner city distressed neighborhoods with suburban job opportunities similar to HUD's Bridges-to-Work or Moving to Opportunity programs. (For more information see www.HUDUSER.org).

(3) Funds for faculty development including paying for course time or summer support to enable faculty members to work on the COPC.

(4) Funds for stipends or salaries for students (but the program cannot cover tuition and fees) while they are working on the COPC.

(5) Activities to carry out the "Responsibilities" listed under Section IV (B) below. These activities may include leases for office space in which to house the Community Outreach Partnership Center, under the following conditions:

(a) The lease must be for existing facilities not requiring rehabilitation or construction;

(b) No repairs or renovations of the property may be undertaken with Federal funds; and

(c) Properties in the Coastal Barrier Resource System designated under the Coastal Barrier Resources Act (16 U.S.C. 3501) cannot be leased with Federal funds.

(6) Components of your program may address metropolitan or regional strategies. You must clearly demonstrate how:

(a) Your strategies are directly related to what the targeted neighborhoods and neighborhood-based organizations have decided is needed; and

(b) Neighborhoods and neighborhood organizations are involved in the development and implementation of the metropolitan or regional strategies.

(D) *Ineligible Activities.* Activities ineligible for funding under this program are as follows:

(1) Research activities that have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

(2) Any type of construction, rehabilitation, or other physical development costs.

(3) Costs used for routine operations and day-to-day administration of institutions of higher education, local governments or neighborhood groups.

IV. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, grantees must meet the following program requirements:

(A) *Grant Sizes and Terms.* If you are applying for a New Grant, you may not request less than $250,000 or more than $400,000. This amount must be spent over a three-year period, and your budget must reflect this period. Since the Statement of Work (in Section VI.(G)) and the Narrative Statement Addressing the Factors for Award (in Section VI.(H)) are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, HUD will not accept a New Grant application that is under $250,000 or over $400,000.

If you are applying for a New Directions Grant, you may not request a grant that exceeds $150,000. This amount must be spent over a two-year period. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budgei and grant request, and in the interest of fairness to all applicants, HUD will not accept a New Directions application that is over $150,000.

(B) *Responsibilities.* You are required to:

(1) Employ the research and outreach resources of your institution of higher education to solve specific urban problems identified by communities served by your Center;

(2) Establish outreach activities in areas identified in your application as the communities to be served;

(3) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(4) Coordinate outreach activities in communities to be served by your Center;

(5) Facilitate public service projects in the communities served by your Center;

(6) Act as a clearinghouse for dissemination of information;

(7) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(8) Exchange information with other Centers.

The clearinghouse function in Section IV(B)(6) above refers to a local or regional clearinghouse for dissemination of information and is separate and distinct from the functions in (8) above, which relate to the provision of information to the University Partnerships Clearinghouse, which is the national clearinghouse for the program.

(C) *Cap on Research Costs.* No more than 25% of your total project costs (Federal share plus match) can be spent on research activities. You are, however, not required to undertake any research as part of your project. You may apply for a project that is totally for outreach activities.

(D) *Match.* The non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in 24 CFR part 84, and in particular § 84.23 entitled "cost sharing or matching." You may not count as match any costs that would be ineligible for funding under the program (e.g., housing rehabilitation).

(1) If you are a New Grant applicant, you must meet the following match requirements:

(a) *Research Activities.* 50% of the total project costs of establishing and operating research activities.

(b) *Outreach Activities.* 25% of the total project costs of establishing and operating outreach activities.

(2) If you are a New Directions Grant applicant, you must meet the following match requirements:

(a) *Research Activities.* 60% of the total project costs of establishing and operating research activities.

(b) *Outreach Activities.* 35% of the total project costs of establishing and operating outreach activities.

In previous competitions, some applicants incorrectly based their match calculations on the Federal grant amount, not the total project costs. An example of how you should calculate the match correctly and a worksheet for the calculation are included in the application kit. The worksheet, which is also included in the program area section of the SuperNOFA, should be included with your application.

(E) *Administrative.* Your grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), A–21 (Cost Principles

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for Education Institutions), and A–133 (Audits of States, Local Governments, and Non-Profit Organizations. You may not spend more than 20% of your grant on planning or administrative costs. The application kit contains a detailed explanation of what these costs are. You can access the OMB circulars at the White House website at http:whitehouse.gov/omb/circulars/index.html.

V. Application Selection Process

There will be two separate competitions—one for New Grants and one for New Directions Grants. For each type of grant, applications will be rated, ranked, and selected separately. Two types of reviews will be conducted: a threshold review to determine your application's eligibility; and a technical review to rate your application based on the rating factors in Section V(A) below.

(A) *Additional Threshold Requirements For Funding Consideration.* Under the threshold review, your application can only be rated if you are both in compliance with the requirements of the General Section of the SuperNOFA and if the following additional standards are met:

(1) You have met the statutory match requirements, if applying for a New Grant or the higher match levels described above, if applying for a New Directions Grant.

(2) You have proposed a program in which at least 75% of the total project costs will be for outreach activities.

(3) For New Grants, you have requested a Federal grant between $250,000 and $400,000. For New Directions Grants, you have requested a Federal grant that is no more than $150,000.

(4) You have addressed at least three urban problems (2 urban problems if you are a New Directions applicant), such as affordable housing, fair housing, economic development, neighborhood revitalization, infrastructure, health care; job training, education, crime prevention, planning, the environment, and community organizing and have proposed at least one separate and distinct activity for each problem you propose to address.

(5) You and any part of your organization are participating in only one application.

(6) Your project will operate in an urban area.

(B) *Factors For Award Used To Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA. Unless otherwise noted, New Grant applications and New Directions Grant applications will receive the same number of points on a given factor.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *For New Grants* (15 points). *For New Direction Grants* (7 points).

(a) The knowledge and experience of your overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of your staff to undertake eligible program activities. In rating this factor, HUD will consider experience within the last 5 years to be recent; experience pertaining to the specific activities being proposed to be relevant; and experience producing specific accomplishments to be successful. The more recent the experience and the more experience your own staff members who work on the project have in successfully conducting and completing similar activities, the greater the number of points you will receive for this rating factor. The following categories will be evaluated:

(i) Undertaking research activities in specific communities that have a clear near-term potential for practical application to significant urban issues, such as affordable housing, fair housing including accessible and visitable housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing;

(ii) Undertaking outreach activities in specific communities to solve or ameliorate significant urban issues;

(iii) Undertaking projects with community-based organizations or local governments; and

(iv) Providing leadership in solving community problems and making national contributions to solving long-term and immediate urban problems.

(b) Past Performance. *For New Directions Grants only* (8 points). The extent to which you performed successfully under your previous COPC grant(s), as measured by:

(i) Your achievement of specific measurable outcome objectives;

(ii) Your leveraging of funding beyond the funds originally proposed to be leveraged for that project; and

(iii) The effectiveness of your administration of any previous COPC grants (including the timeliness and completeness of your compliance with COPC reporting requirements and your ability to have resolved problems which presented themselves during the grant period). In addressing timeliness of reports, you should compare when your reports were due with when they were actually submitted.

(c) Full points will be awarded for exceptional performance, which consistently meets and exceeds promised goals.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding your proposed program activities and your indication of the urgency of meeting the need in the target area. In responding to this factor, you will be evaluated on the extent to which you document the level of need for the proposed activity and the urgency in meeting the need.

You should use statistics and analyses contained in a data source(s) that is sound and reliable. To the extent that the targeted community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identify the level of the problem and the urgency in meeting the need, you should include references to these documents in your response.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), you should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Comprehensive Plan, and other sound and reliable sources appropriate for your program. You may also address needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements.

To the extent possible, the data you use should be specific to the area where the proposed activity will be carried out. You should document needs as they apply to the area where activities will be targeted, rather than the entire locality or state.

Rating Factor 3: Soundness of Approach (50 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. There must be a clear relationship between your proposed activities, community needs and the purpose of the program funding for you to receive points for this factor. The factor will be evaluated based on the extent to which the proposed work plan will:

(1) (10 points). Identify the specific services or activities to be performed. Note that you are not required to undertake research as part of the grant. In reviewing this subfactor, HUD will consider the extent to which:

(a) There is a clear research agenda;

(i) With identifiable research projects and outcomes (e.g., reports, surveys, etc.)

(ii) That identifies each task and who will be responsible for it;

(iii) Which is tied to the outreach agenda (e.g., if you proposed to study the extent of housing abandonment in a neighborhood and then design a plan for reusing this housing, you would be able to demonstrate the link between your proposed research and outreach strategies); and

(iv) Which does not duplicate research by your institution or by others for the target area previously completed or currently underway. If other complimentary research is underway, you need to describe how the proposed research agenda would complement it.

(b) There is a clear outreach agenda:

(i) With identifiable outreach projects;

(ii) That identifies each task and who will be responsible for it;

(iii) That involves your institution as a whole (i.e., many academic disciplines and administrative offices);

(iv) That provides for on-site or frequent presence in the target area; and

(v) That does not duplicate outreach activities by your institution or others for the target area previously completed or currently underway.

(2) (7 points). Involve the communities to be served in a partnership for the planning and implementation of your activities. In reviewing this subfactor, HUD will look at the extent to which:

(a) You have formed or will form one or more Community Advisory Committees, representative of the communities' diversity (including businesses, community groups, residents, and others) to be served to develop and implement strategies to address the needs identified in Factor 2. You will be expected to demonstrate that you have already formed such a committee(s) or secured the commitment of the appropriate persons to serve on the committee(s), rather than just describing generally the types of people whose involvement you will seek.

(b) You have involved a wide range of neighborhood organizations and local government entities in the identification of your research and outreach activities.

(c) The committee and your partners will play an active role in all stages of the project and will not serve as merely advisors or monitors.

(d) Your outreach agenda includes training projects for local community leaders, for example, to increase their capacity to direct their organizations or undertake various kinds of community development projects.

(3) (6 points). Help solve or address an urgent problem as identified in Rating Factor 2 and will achieve the purposes of the program within the grant period. In reviewing this subfactor, HUD will look at the extent to which:

(a) You identify specific time phased and measurable objectives to be accomplished; your proposed short and long term program objectives to be achieved as a result of the proposed activities; the tangible and measurable impacts your work program will have on the community in general and the target area or population in particular including affirmatively furthering fair housing for classes protected under the Fair Housing Act; and the relationship of your proposed activities to other ongoing or proposed efforts to improve the economic, social or living environment in the impact area; and

(b) Grant funds will pay for activities you conduct directly, rather than passing funds through to other entities (In order for your application to be competitive, no more than 25 percent of your grant funds should be passed to other entities); and

(c) The activities you propose to undertake are pressing and urgent needs, as identified in the documents described in Factor 2.

(4) (4 points). Potentially yield innovative strategies or "best practices" that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. In reviewing this subfactor, HUD will assess your demonstrated ability to disseminate results of research and outreach activities to other COPCs and communities. HUD will evaluate your past experience and the scope and quality of your plan to disseminate information on COPC results, strategies, and lessons learned through such means as conferences, cross-site technical assistance, publications, etc. The more proactive your plan for providing information to a wide range of audiences, the greater the number of points you will receive.

(5) (5 points) Include activities that affirmatively further fair housing, for example:

(a) Working with other entities in the community to overcome impediments to fair housing, such as discrimination in the sale of rental of housing or in advertising, provision of brokerage services, or lending;

(b) Promoting fir housing choice through the expansion of homeownership opportunities and improved quality of services for minorities, families with children, and persons with disabilities; or

(c) Providing housing mobility counseling services.

(6) HUD 2002 Policy Priorities (6 Points)

The extent to which your application will further and support the following priorities of HUD. The quality of the response you provide to one or more of HUD's priorities (described below) will determine the score you receive. You will receive one point for each policy priority addressed, up to a total of 6 points. For a fuller explanation of each policy priority, please refer to Section VI. of the General Section of this SuperNOFA.

(a) Increasing Homeownership Opportunities for Low and Moderate Income persons, Persons with Disabilities and the Elderly, and Minorities and families where English may be a second language.

(b) Improving the Quality of Public Housing and Increasing Economic Mobility Choices for Residents.

(c) Encouraging Accessible Design Features.

(d) Improving Computer Access, Literacy, and Employment Opportunities.

(e) Providing Full and Equal Access to Faith-Based and Other Community Organizations in HUD Program Implementation.

(f) Ensuring that Programs are Accountable for the Promises Made and the Actions Taken.

(g) In addition to the HUD policy priorities, the following is a program priority: Using PATH Technologies in Housing Construction and Rehabilitation. HUD encourages participation in Partnership for Advancing Technology in Housing (PATH) for programs that intend to use funding for construction or rehabilitation. PATH's goal is to achieve dramatic improvement in the quality of

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American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations, particularly those innovations that make housing more affordable to low and moderate income persons and which are energy efficient. PATH has a FY 2002 budget of $8.75 million.

PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction. Applicants should see *www.pathnet.org* on the Internet for more information, the list of technologies, latest PATH Newsletter, results from field demonstrations and PATH projects. Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by: Reducing costs; improving durability; increasing energy efficiency; improving disaster resistance, and reducing environmental impact.

(7) *For New Grants* (12 points): *For New Directions Grants* (7 points). Result in the COPC function and activities becoming part of the urban mission of your institution and being funded in the future by sources other than HUD. The bases for rating an application for this selection factor will be different, depending on whether the application is for a New Grant or a New Directions Grant.

In reviewing this subfactor for a New Grant, HUD will consider the extent to which:

(a) COPC activities relate to your institution's urban mission; demonstrate support and involvement of the institution's executive leadership; are linked by a formal organizational structure to other units related to outreach and community partnerships; are reflected in budget and planning documents; are part of a climate that rewards faculty work on these activities through promotion and tenure policies; benefit students because they are part of a service learning program or professional training at your institution (rather than just volunteer activities); and are reflected in your curriculum. HUD will look at your institution's commitment to faculty and staff continuing work in COPC neighborhoods or replicating successes in other neighborhoods and to your longer term commitment (e.g., five years after the start of the COPC) of hard dollars to COPC work. HUD will consider the extent to which your proposed activities are appropriate for an institution of higher education because they are tied to your institution's teaching or research mission. In addition, HUD will consider the extent to which your faculty, staff and students from across many disciplines are involved in COPC-like activities as a way of demonstrating your institution's commitment to these kinds of activities.

(b) You have received commitments for funding from sources outside the university for related COPC-like projects and activities in the targeted neighborhood or other distressed neighborhoods. Funding sources to be considered include, but are not limited to, local governments, neighborhood organizations, private businesses, your institution, and foundations.

In reviewing this subfactor for a New Directions Grant, HUD will consider the extent to which your New Directions project will sustain the institutional capacity and commitment of your institution to undertake outreach activities. HUD will be looking for increases in the number of faculty undertaking this kind of work, increases in the number of courses linked to outreach activities and the number of students taking these courses, formal changes in institutional policies related to support of outreach, and other measures of the impact of this work on your institution.

(8) *For New Direction Grants only* (5 points). Previous grantees have a wealth of knowledge that they can and should share with other institutions. If you send a faculty member of your team who has been listed in your application to participate in the peer review process for New Grants, you will receive 5 points.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes. This factor measures the extent to which you have established partnerships with other entities to secure additional resources to increase the effectiveness of your proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award you are seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to establish partnerships with you. You may also establish partnerships with funding recipients in other grant programs to coordinate the use of resources in the target area. In evaluating this factor, HUD will allocate points as follows:

(1) Five (5) points will be awarded for a match that is 50% over the required match, as described in Section IV(D) above. Fewer points will be assigned depending on the extent of the match. Matching funds must be provided unconditionally in order to be counted for this factor.

HUD is concerned that applicants should be providing hard dollars as part of their matching contributions to enhance the tangible resources going into targeted neighborhoods. Thus, while indirect costs can count towards meeting the required match, they will not be used in calculating match overage. Only direct costs can count in this factor.

(2) Up to an additional 5 points will be awarded for the extent to which you document that matching funds are provided from eligible sources other than your institution (e.g., funds from the city, including CDBG, other State or local government agencies, public or private organizations, or foundations). Fewer points will be assigned depending on the extent of the outside match.

You must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from any entity, including your own institution, that will be providing matching funds to the project. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed total level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization. Unless matching funds are accompanied by a commitment letter citing the specific dollar amount pledged, they will not be counted towards the match.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (Maximum 10 points)

This factor addresses the extent to which you coordinated your activities with other known organizations, participate or promote participation in your community's Consolidated Planning process, and are working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community. If you propose to work in a Community Development Block Grant (CDBG) non-entitlement jurisdiction, you will only need to address subfactors (1) and (3). If you are working in a CDBG non-entitlement area, please note that at the beginning of the discussion of this factor.

In evaluating this factor, HUD will consider:

(1) The extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed worked activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner;

(2) The extent to which your application implements practical solutions within the grant term to result in assisting beneficiaries of grant program funds in achieving independent living, economic empowerment, educational opportunities; housing choices or improved living environments;

(3) The extent to which your program exhibits the potential to be financially self-sustaining by decreasing dependence on Federal funding and relying more on state, local and private funding so your activities can be continued after your grant award period is completed.

(4) Institutionalization of Project Activities. HUD will also consider the extent to which your project will result in the kinds of activities that will be sustained by the university by becoming part of the mission of the institution. HUD will also look at the university's monetary commitment to continuing to work in the target area or other similar areas and to its longer term commitment of hard dollars to similar work.

(C) *Selections.* In order to be funded under COPC, you must receive a minimum score of 70. HUD intends to fund at least one eligible applicant that serves colonias, as defined by section 916(d) of the Cranston-Gonzalez National Affordable Housing Act, as long as the applicant receives a minimum score of 70. HUD will select the highest ranking colonias application from among the rated colonias applications.

If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach, shall be selected. If there is still a tie, the application with the most points for Factor 4, Leveraging Resources shall be selected.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded COPCs. If HUD decides to use this option, it will do so only if two adjacent HUD regions do not yield at least one fundable COPC on the basis of rank order. If this occurs, HUD will fund the highest ranking applicant within the two regions as long as the minimum score of 70 points is achieved.

After all applications have been rated and ranked and selections have been made, HUD may require you, if you are selected, to participate in negotiations to determine the specific terms of your Statement of Work and grant budget. In cases where HUD cannot successfully conclude negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with that applicant.

VI. Application Submission Requirements

You should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please, do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard" forms can be found as Appendix A to this program section of the SuperNOFA. The items are as follows:

(A) *SF–424,* Application for Federal Assistance.

(B) *HUD–424M,* Federal Assistance Funding Matrix.

(C) *Application Checklist.*

(D) *Transmittal Letter* signed by the Chief Executive Officer of your institution or his or her designee. If a designee signs, your application must include the official delegation of signatory authority;

(E) *Abstract.* (1 page limit) An abstract describing the goals and activities of your program.

(F) *Narrative statement addressing the Factors for Award in Section V(B).* (50 page limit, including letters of commitment, tables and maps, but not including letters of matching commitments, the match calculation worksheet, and budget forms). (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.) For FY 2002 the statement of work and the budget are now a part of Factor 3, Soundness of Approach.

(1) The Statement of Work incorporates all activities to be funded in your application and details how your proposed work will be accomplished. Following an activity and tasks under each activity format, your Statement of Work must:

(a) Arrange the presentation of related major activities by project functional category (e.g., economic development, affordable housing, capacity building), summarize each activity, identify the primary persons involved in carrying out the activity, and delineate the major tasks involved in carrying it out.

(b) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(c) Identify specific numbers of quantifiable intermediate and end products and objectives you will deliver by the end of the award agreement period as a result of the work performed.

(d) Identify whether you propose to work in a Community Development Block Grant (CDBG) entitlement area or not.

(2) Your budget presentation should be consistent with your Statement of Work and include:

(a) Budget Form—The budget form (Form HUD–424–CB) should be used to prepare the budget.

(b) A narrative explanation of how you arrived at your cost estimates, for any line item over $5,000.

(c) A statement of your compliance with the 20% limitation on "Planning and Administration" Costs.

(d) An explanation of your compliance with the requirement that not more than 25% of the total budget be allocated to research activities (Form HUD–30002).

(3) Your narrative response should be numbered in accordance with each factor and subfactor.

(G) *Certifications.*

(1) SF–424B, Assurances for Non-Construction Programs.

(2) HUD–50071, Certification of Payments to Influence Certain Federal Transactions;

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(3) SF–LLL, Disclosure of Lobbying Activities (if applicable);
(4) HUD–2880, Applicant/Recipient Disclosure/Update Form;
(5) HUD–50070, Certification of Drug-Free Workplace;
(6) HUD–2992, Certification Regarding Debarment and Suspension;
(7) HUD–2991, Certification of Consistency with the Consolidated Plan; and
(8) HUD–2990, Certification of Consistency with the RC/EZ/EC Strategic Plan (if applicable);

(H) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

(I) *Client Comments and Suggestions (HUD–2994).* If you wish to offer comments on the COPC NOFA of this SuperNOFA or the SuperNOFA process, please complete this form. This form is optional.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

IX. Other Items

(1) *Executive Order 12372. Intergovernmental Review of Federal Programs.* You must comply with this Executive Order. Please refer to the General Section VII(C) for details.

(2) *Conducting Business in Accordance with Core Values and Ethical Standards.* HUD requires that all grantees adhere to core values and ethical business practices, as described in Section II(B)(2)) of the General Section of this SuperNOFA as a condition of award.

(3) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD requires grantees to take all necessary affirmative steps in contracting with businesses, small disadvantaged businesses and women-owned businesses in conducting your work activities. Please refer to section II (F) of the General Section of this SuperNOFA for specific requirements.

(4) *Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice, and for not less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to Armand Carriere Office of University Partnerships at (202) 708–3061, ext. 3181. If you have a speech or hearing impairment, you may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (the Federal Information Relay Service TTY). Other than the "800" number, these numbers are not toll-free. You may also reach Mr. Carriere via the Internet at Armand_W._Carriere@hud.gov. Materials provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

IX. Authority

This program is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; the "COPC Act"). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCD Act of 1992). Section 801(c) of the HCD Act of 1992 authorized $7.5 million for each year of the 5-year demonstration to create Community Outreach Partnership Centers as authorized in the COPC Act. The FY 2002 HUD Appropriations Act (P.L. 107–73) continued the program beyond the initial five-year demonstration by providing funding for Community Outreach Partnership Centers for FY 2002.

Appendix A

The non-standard forms, which follow, are required for your COPC application.

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Community Outreach
Partnership Centers Program
Matching Requirements

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

OMB Approval No 2528-0180 (exp 2/28/2003)

	Federal Share $	Match $	Total Cost $	Match as Percent of Total Cost:
Research Activities: (list)				
Subtotal				%
Outreach Activities: (list)				
Subtotal				%
Total				

form HUD-38001 (4/98)

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The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Community Outreach Partnership Centers (COPC) program.
Total public reporting burden for collection of this information is estimated to average 80 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
The information submitted in response to the notice of funding availability for the COPC program and HSI-WSP program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101-235, approved December 15, 1989, 42 U.S.C. 3545).
The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Community Outreach
Partnership Centers Program
Breakdown of Outreach and Research Activities

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

OMB Approval No. 2528-0180
(exp. 2/28/2003)

The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Community Outreach Partnership Centers (COPC) program.

Total public reporting burden for collection of this information is estimated to average 80 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information submitted in response to the notice of funding availability for the COPC program and HSI-WSP program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101-235, approved December 15, 1989, 42 U.S.C. 3545).

The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

	Total Cost $	Percent of Total Project Cost
Total Research Activities		%
Total Outreach Activities		%
Total		

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Community Outreach Partnership Centers Program
Budget (Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

OMB Approval No. 2528-0180 (exp. 2/28/2003)

Functional Category	Year 1 Federal $	Year 1 Match $	Year 2 Federal $	Year 2 Match $	Year 3 Federal $	Year 3 Match $	Total Federal $	Total Match $
Name of First Category								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Category								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Category								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								

The information collection requirements contained in this notice of funding availability and application kit will be used to make application, determine eligibility and establish grant amounts for the Community Outreach Partnership Centers (COPC) program. Total public reporting burden for collection of this information is estimated to average 80 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information submitted in response to the notice of funding availability for the COPC program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101-235, approved December 15, 1989, 42 U.S.C. 3545). The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

form **HUD-30003** (11/1999)

Community Outreach Partnership Centers Program
Budget

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

Functional Category	Year 1 Federal $	Year 1 Match $	Year 2 Federal $	Year 2 Match $	Year 3 Federal $	Year 3 Match $	Total Federal $	Total Match $
Name of Category								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Category								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Category								
Planning and Management								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Grand Total of all Categories								

form **HUD-30003** (11/1999)

Verification of Match for New Grants

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

OMB Approval No. 9999-9999 (exp. 99/99/9999)

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collected on this form is utilized to calculate and verify the amount of matching resources as a percentage of total project costs. This collection of information is authorized by Public Law 100-242, section 501. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Record of Match Commitments

List of matching sources	Check if commitment letter is included and activity is eligible for match
1. _____	
2. _____	
3. _____	
4. _____	
5. _____	
6. _____	
7. _____	
8. _____	

Verification of Match (cont'd.)

CALCULATION OF THE MATCH

1. REQUIRED MATCH:

A. Research Total Project Costs::

_____ (Grant request for Research) + _____ (Match for Research) = _____ (Research Total Project Costs)

Research match should be:

_____ (Research Total Project Costs) X 50% = _____ (Required Research Match)

B. Outreach Total Project Costs::

_____ (Grant request for Outreach) + _____ (Match for Outreach) = _____ (Outreach Total Project Costs)

Outreach match should be:

_____ (Outreach Total Project Costs) X 25% = _____ (Required Outreach Match)

C. Required Total Match:

_____ (Required Research Match-from 1.A.) + _____ (Required Outreach Match-from 1.B.) = _____ (Required Total Match)

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2. ACTUAL MATCH FOR STATUTORY PURPOSES:

COUNT ONLY THOSE ITEMS WHICH ARE ELIGIBLE AND FOR WHICH THERE ARE COMMITMENT LETTERS, USING THE FORM HUD-30001. THAT FORM AND THE FIRST PART OF THIS WORKSHEET SHOULD CONFORM.

Research match provided: _____

Outreach match provided: _____

Total match provided: _____

Match provided is more than match required:

_____ Yes _____ No

3. ACTUAL MATCH FOR FACTOR 4 PURPOSES:

Actual total match provided (from # 2 above): _____

Minus indirect match: _____

Actual total match for following calculations: _____

4. MATCH OVERAGE

Total Actual Match (w/o indirect costs)(from 3)= _____
Total Required Match (from 1.C.)

(As long as the number produced is more than 1, use only amount to the right of the decimal point to determine overage. If the number is less than 1, there is no match overage and you are not eligible for any points under this subfactor.)

5. MATCH FROM OUTSIDE SOURCES

Total Match from Outside Sources =
Total Actual Match (w/o indirect costs) (from 3) _____

Verification of Match for New Directions Grants

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

OMB Approval No. 9999-9999 (exp. 99/99/9999)

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collected on this form is utilized to calculate and verify the amount of matching resources as a percentage of total project costs. This collection of information is authorized by Public Law 100-242, section 501. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Record of Match Commitments

List of matching sources	Check if commitment letter is included and activity is eligible for match
1. _____	
2. _____	
3. _____	
4. _____	
5. _____	
6. _____	
7. _____	
8. _____	

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Verification of Match (cont'd.)

CALCULATION OF THE MATCH

1. REQUIRED MATCH:

A. Research Total Project Costs::

_____ (Grant request for Costs) Research) + _____ (Match for Research) = _____ (Research Total Project

Research match should be:

_____ (Research Total Project Costs) X 60% = _____ (Required Research Match)

B. Outreach Total Project Costs::

_____ (Grant request for Costs) Outreach) + _____ (Match for Outreach) = _____ (Outreach Total Project

Outreach match should be:

_____ (Outreach Total Project Costs) X 35% = _____ (Required Outreach Match)

C. Required Total Match:

_____ (Required Research Match-from 1.A.) + _____ (Required Outreach Match-from 1.B.) = _____ (Required Total Match)

2. ACTUAL MATCH FOR STATUTORY PURPOSES:

COUNT ONLY THOSE ITEMS WHICH ARE ELIGIBLE AND FOR WHICH THERE ARE COMMITMENT LETTERS, USING THE FORM HUD-30001. THAT FORM AND THE FIRST PART OF THIS WORKSHEET SHOULD CONFORM.

Research match provided: _____

Outreach match provided: _____

Total match provided: _____

Match provided is more than match required:

_____ Yes _____ No

3. ACTUAL MATCH FOR FACTOR 4 PURPOSES:

Actual total match provided (from # 2 above): _____

Minus indirect match: _____

Actual total match for following calculations: _____

4. MATCH OVERAGE

Total Actual Match (w/o indirect costs)(from 3)= _____
Total Required Match (from 1.C.)

(As long as the number produced is more than 1, use only amount to the right of the decimal point to determine overage. If the number is less than 1, there is no match overage and you are not eligible for any points under this subfactor.)

5. MATCH FROM OUTSIDE SOURCES

Total Match from Outside Sources = _____
Total Actual Match (w/o indirect costs) (from 3)

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Sample Letter of Commitment

Use the Commitment Provider's Letterhead

(Insert Date)

Processing and Control Branch
Office of Community Planning and Development
Department of Housing and Urban Development
451 7th Street, SW, Room 7251
Washington, DC 20410-3500
ATTN: (fill in appropriate program name)

Re: HUD Notice of Funding Availability, FR- , for (fill in appropriate program name)

To Whom It May Concern:

If this proposal is funded, (provider name) commits $(amount) (or) (type of in-kind contribution) valued at $(amount) to (applicant name) for (type of activity) to be made available for recipients of the program. These funds will be made available on (date) for the following grant activity(ies): _____

Sincerely,

(Signature of Authorized Representative)

(Title)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) PROGRAM

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FUNDING AVAILABILITY FOR THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. To assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, principally for persons of low and moderate income, consistent with the purposes of Title I of the Housing and Community Development Act of 1974.

Available Funds. Approximately $10.5 million.

Eligible Applicants. Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12876, dated November 1, 1993, are eligible for funding under the HBCU Program.

Application Deadline. June 20, 2002.

Match: None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under the HBCU program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 20, 2002 at HUD Headquarters with a copy to the appropriate HUD CPD Field Office.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), Fed EX, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date, when you submitted your application to the US Postal Service. The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, Fed EX, and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 a.m. and 5:30 p.m. Eastern Time, Monday to Friday. If these companies do not service your area, you should submit your application via the US Postal Service.

Address for Submitting Applications. Your completed application consists of one original and two copies of your application. Submit your original signed application and one of the two copies to the following address: Processing and Control Branch, Office of Community Planning and Development; Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7251, Washington, DC, 20410. When submitting your application, please refer to the HBCU Program, and include your name, mailing address (including zip code) and telephone number (including area code).

Copies of Applications to HUD Field Offices. To facilitate processing and review of your application, submit one copy (the second copy) to the Community Planning and Development (CPD) Director in the appropriate HUD Field Office for the HBCU by 5:30 p.m. Eastern Time on June 20, 2002. The list of HUD Field Offices with CPD Directors is included in Appendix A to this program section of the SuperNOFA.

HUD will accept only *one* application per HBCU. If HUD receives more than one application from a single HBCU, HUD will ask the HBCU to identify which application it wants evaluated. If the HBCU does not respond within the stipulated period (see Section V of the General Section of this SuperNOFA), all of the applications received from the HBCU will be disqualified. You should take this policy into account to ensure that multiple applications are not submitted.

For Application Kits. For an application kit and any supplemental materials, you should call the SuperNOFA Information Center at 1–800–HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800-HUD–2209. When requesting an application kit, you should refer to the HBCU Program and provide your name, address (including zip code), and telephone number (including area code). You may also download the application on the Internet through the HUD web site *at http://www.hud.gov.*

For Further Information and Technical Assistance. You may contact Ophelia Wilson, Historically Black Colleges and Universities Program, Office of University Partnerships, Policy Development and Research, Department of Housing and Urban Development, 451, Seventh St. SW., Washington, DC 20410. telephone (202) 708–3061 ext. 4390. (This is not a toll-free number.) If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also obtain information from the HUD Field Office located in your geographic area. Appendix A of this program section of the SuperNOFA contains the names, addresses and telephone numbers of the HUD Field Offices. For general information and information regarding training on this HBCU Program section of the SuperNOFA, you can call the SuperNOFA Information Center at 1–800–HUD–8929.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at *http://www.hud.gov.*

II. Amount Allocated

Approximately $10.5 million is being made available for funding under this program section of the SuperNOFA. Additional funds may be available if funds are recaptured, deobligated, appropriated or otherwise made available during the fiscal year.

(A) *Allocation of Funding.* In order to ensure that some previously unfunded HBCUs will receive awards in this competition, approximately $1.7 million of the available funds will be awarded to HBCUs that have not previously been funded under the HUD HBCU program. Previously unfunded HBCUs are listed in Appendix B of this HBCU Program section of the SuperNOFA.

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The remaining approximately $8.8 million of FY 2002 funds will be awarded to HBCUs that have received funding under previous HBCU competitions. Previously funded HBCUs are listed in Appendix C of this HBCU Program section of the SuperNOFA.

If recaptured funds are made available, those funds will also be divided proportionately between the two types of applicant funding pools.

HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in a particular application. The maximum amount awarded to previously unfunded applicants will be up to $340,000 and the maximum amount awarded to previously funded applicants will be up to $550,000. Applicants requesting more than the maximum amount will be disqualified.

(B) *Term of Grant.* The maximum period for performance of your proposed program under this SuperNOFA for the HBCU Program is 36 months. The performance period will commence on the effective date of your grant agreement.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The HBCU Program assists HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of Title I of the Housing and Community Development Act of 1974.

(1) For the purposes of this program, the term "locality" includes any city, county, town, township, parish, village, or other general political subdivision of a State or the U.S. Virgin Islands within which an HBCU is located.

(2) If your HBCU is located in a metropolitan statistical area (MSA), as established by the Office of Management and Budget, you may consider your locality to be one or more of these entities within the entire MSA. The nature of the locality for each HBCU may differ, therefore, depending on its location.

(3) A "target area" is the locality or the area within the locality in which your HBCU will implement its proposed HUD grant activities.

(B) *Eligible Applicants.* Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12876, dated November 1, 1993, are eligible for funding under the HBCU Program. Applicants must be accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

(C) *Eligible Activities.* (1) *General.* Each activity you propose for funding must meet both a Community Development Block Grant (CDBG) Program national objective AND the CDBG eligibility requirements. Eligible activities that may be funded under the HBCU Program are those activities eligible for CDBG funding. The eligible activities are listed in 24 CFR part 570, subpart C, particularly §§ 570.201 through 570.206. Additionally, not less than 51% of the aggregated expenditures of a grant must benefit low and moderate income persons under the criteria specified in 24 CFR 570.208(a) or 570.208(d)(5) or (6). Each activity that may be funded under this SuperNOFA for the HBCU Program must meet one of the three national objectives of the Community Development Block Grant program which are:

(a) Benefit to low- or moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and other financial resources are not available to meet such needs.

Criteria for determining whether an activity addresses one or more of these objectives are provided at 24 CFR 570.208.

(2) *Examples of Eligible Activities.* Examples of activities that generally can be carried out with these funds include, but are not limited to:

(a) Acquisition of real property;

(b) Clearance and demolition;

(c) Rehabilitation of residential structures including lead-based paint hazard evaluation and reduction; and encouraging accessible design features in accordance with the requirements of section 504 of the Rehabilitation Act of 1973;

(d) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, such as water and sewer facilities and streets;

If you are proposing to undertake any of the activities listed in (a) through (d), you will be required to provide at least two reasonable appraisals/estimates, from a *qualified* entity other than the HBCU, of the cost to complete the activities. This information is to be submitted with your application. Such an entity must be involved in the business of housing rehabilitation, construction, and/or management;

(e) Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where the assistance is:

(i) Required under the provisions of 24 CFR 570.606(b) or (c); or

(ii) Determined by the grantee to be appropriate under the provisions of 24 CFR 570.606(d);

(f) Direct homeownership assistance to low- and moderate-income persons, as provided in section 105(a)(25) of the Housing and Community Development Act of 1974;

(g) Special economic development activities described at 24 CFR 570.203;

(h) Assistance to facilitate economic development by providing technical or financial assistance for the establishment, stabilization, and expansion of microenterprises, including minority enterprises;

(i) Assistance to a CBDO to carry out a CDBG neighborhood revitalization, community economic development, or energy conservation project, in accordance with 24 CFR 570.204. This could include activities in support of a HUD approved local entitlement grantee CDBG Neighborhood Revitalization Strategy (NRS) or HUD approved State CDBG Community Revitalization Strategy (CRS); and

(j) Eligible public service activities, including but not limited to such activities as those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, homebuyer down payment assistance, or recreational needs. If grant funds are used to provide public services, you are bound by the CDBG statutory requirement that not more than 15% of the total grant amount be used for public service activities that benefit low and moderate income persons. Therefore, you must propose to use at least 85% of the grant amount for activities qualifying under an eligibility category other than public services (as described at 24 CFR 570.201(e)). If you propose an activity which otherwise is eligible it may not be funded if State or local law requires that it be carried out by a governmental entity.

The CDBG Publication entitled "Community Development Block Grant Program Guide to National Objectives and Eligible Activities for Entitlement Communities" describes the regulations, and a copy can be obtained from HUD's SuperNOFA Information Center at 1–800–HUD–8929 or 1–800–HUD–2209 for the hearing impaired.

(k) Fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, family status and/or disability aware of the range of housing opportunities available to them; and

(l) Payment of reasonable grant administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with grant funds.

(3) *Activities Designed to Promote Training and Employment Opportunities.* In selecting proposed eligible activities, we urge you to consider undertaking activities designed to promote opportunities for training and employment of low-income residents in connection with HUD initiatives such as "Twenty/20 Education Communities" in public housing and "Neighborhood Networks" (NN) in other Federally-assisted or insured housing. We also encourage you, whenever feasible, to propose implementing activities in a Federally-designated Urban or Rural (HUD or Department of Agriculture) Empowerment Zone, Urban or Rural Enterprise Community (EZ or EC), or a HUD-approved local CDBG Neighborhood Revitalization Strategy Area or HUD-approved State CDBG Community Revitalization Strategy Area.

(D) *Ineligible CDBG Activities* are listed at § 570.207.

IV. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, you are subject to the following requirements:

(A) *Institutional Eligibility.* Institutions with two (2) or more active HBCU grants and who have drawn down less than 50% of the funding for each active grant prior to the 2002 application date will be ineligible to apply for a 2002 HBCU grant.

(B) *Leveraging.* Although a match is not required to qualify for funding, applicants that provide letters evidencing a firm commitment from other Federal (e.g., Americorps Programs), State, local, and/or private sources to provide funding, and/or in-kind goods or services to implement the proposed activities will receive points under Rating Factor 4. These letters must be dated no earlier than the date of this published SuperNOFA. If you do not have evidence of leveraging, you will receive zero (0) points for Rating Factor 4.

(C) *Affirmatively Furthering Fair Housing.* Please see Section II(D) of the General Section of this SuperNOFA.

(D) *Employment of Local Area Residents (Section 3).* Please see Section II(E) of the General Section of this SuperNOFA. The requirements are applicable to certain activities that may be funded under this program section of the SuperNOFA.

(E) *Labor Standards.* If you are awarded a grant, you must comply with the labor standards (Davis-Bacon) as found at 24 CFR 570.603.

(F) *OMB Circulars.* Your grant will be governed by: (1) OMB Circular A–21 entitled "Cost Principles for Educational Institutions"; (2) OMB Circular A–133 entitled "Audits of States, Local Governments, and Non-Profit Organizations"; and (3) the provisions of 24 CFR part 84 entitled "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations. You can access the OMB Circulars at the White House website at http://whitehouse.gov/omb/circulars/index.html

(G) *Nondiscrimination.* In addition to the fair housing and other civil rights assurances described under Section II (B) of the SuperNOFA General Section, applicants for the HBCU Program must comply with Section 109 of the Housing and Community Development Act of 1974, as amended. Implementing regulations for Section 109 are found under 24 CFR part 570, including, but not limited to, reporting and record-keeping requirements under 24 CFR 570.506 and 570.507.

(H) *Conducting Business In Accordance With HUD Core Values and Ethical Standards.* HUD requires that all grantees adhere to core values and ethical business practices, as described in Section II (B)(2) of the General Section of this SuperNOFA as a condition of award.

(I) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD requires grantees to take all necessary affirmative steps in contracting with businesses, small disadvantaged businesses and women-owned businesses in conducting your work activities. Please refer to section II (F) of the General Section of this SuperNOFA for specific requirements.

V. Application Selection Process

(A) *Threshold Factors for Funding Consideration.* HUD will conduct a review to insure that applications are complete and consistent with the threshold requirements of Section II (B), of the General Section of the SuperNOFA, including Compliance with Fair Housing and Civil Rights Laws, this HBCU Program section of the SuperNOFA and the HBCU Program regulations (24 CFR 570.404) before reviewing the application for rating and ranking. The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

(B) *Funding of Applications.* To be considered for funding, your application must receive a minimum score of 70 out of the possible total of 100 points for Factors 1 through 5. In addition, two bonus points may be awarded for RC/EZ/EC, as described in the General Section of the SuperNOFA. Within each category of eligible applicants, HUD will fund applications in rank order, until it has awarded all available funds for that category of applicant, or until there are no fundable applications remaining in that category. If there is a tie in the point scores of two applications, the rank order will be determined by the score on Rating Factor 3, 4, 2, 1, 5 in that order. HUD will give the higher rank to the application with the most points for a factor in the above order.

If funds remain after approving all fundable applications within a category of applicants, HUD may choose to add those funds to the funds available for the other category of applicants.

(C) *After Selection.* After selection, but prior to award, you will be required to:

(a) Negotiate. After HUD has rated and ranked all applications and HUD has selected the competition winners, HUD requires that all winners participate in negotiations to determine the specific terms of the Statement of Work and the final grant budget. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(b) Provide Financial Management and Audit Information. If you are selected for funding, you will be required to submit a copy of your most recent audit from an Independent Public Accountant, or the cognizant government auditor, stating that your financial management system meets prescribed standards for fund control and accountability required by OMB Circular A–133, as codified at 24 CFR part 84 and provides your approved fringe benefit and overhead rates.

(D) *Factors For Award Used To Evaluate and Rate Applications.* HUD will use the Factors For Award set forth below to evaluate applications. Your application must contain sufficient information for HUD to review it for its merits. The score for each factor will be based on the qualitative and quantitative aspects of your response to that factor. You are not to exceed a total of fifty (50) pages to respond to Rating Factor 1 through 5. This limitation applies to your narrative response,

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tables, and maps, and NOT to firm commitment letters, and the performance narrative for previously funded HBCUs.

The maximum number of points that may be awarded is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (25 Points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement your proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which:

(1) *Knowledge and Experience.* (5 Points for previously funded applicants and 25 Points for previously unfunded applicants). Your application demonstrates the knowledge and experience of the overall project director and staff, including the day-to-day program manager, consultants (including technical assistance providers) and contractors in planning and managing the kinds of programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of your staff to undertake eligible program activities. In rating this factor, HUD will consider the extent to which your organization and staff have recent, relevant, and successful experience in:

(a) Undertaking specific successful community development projects with community-based organizations or local governments; and

(b) Providing proven leadership in solving community problems which have a direct bearing on the proposed activity.

(2) *Past Performance* (20 Points for previously funded applicants). The extent to which you have performed successfully under your previous and current HBCU grant(s), as measured by:

(a) Your achievement of specific measurable outcome objectives consistent with timelines in your grant proposal;

(b) Your leveraging of funding consistent with or exceeding the Fund originally proposed to be leveraged for that project; and

(c) The effectiveness of your administration of any previous HBCU grants (including the timeliness and completeness of your compliance with HBCU reporting requirements and your ability to take action to resolve problems which presented themselves during the grant period). In addressing timeliness of reports, you should compare when your reports were due with when they were actually submitted.

(d) Full points will be awarded for exceptional performance, which consistently meets and exceeds promised goals.

For each open HUD HBCU grant, you must submit a *performance narrative as outlined in Appendix D.*

Rating Factor 2: Need/Extent of the Problem (10 Points)

This factor addresses the extent to which there is a need for funding your proposed program activities and an indication of the importance of meeting the need in the target area. In responding to this factor, you will be evaluated on the extent to which you *document* the level of need for the proposed activities and the importance of meeting the need.

You should use statistics and analyses contained in one or more data sources that are sound and reliable. To the extent that your community's (State or local government's) Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identify the level of the problem and the urgency in meeting the need, you should include references to these documents in your response to this factor. If your proposed activities are not covered under the scope of the Consolidated Plan and AI, you should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, HUD's Continuum of Care gaps analysis and its E-MAPS (www.hud.gov/emaps), law enforcement agency crime reports, Public Housing Authorities' Comprehensive Plan, community needs analysis such as provided by the United Way, local Urban League, the HBCU and other sound and reliable sources appropriate for the HBCU program. You also may address needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements.

To the extent possible, the data you use should be specific to the area where your proposed activities will be carried out. You should document needs as they apply to the area where the activities will be targeted, rather than the entire locality or State, unless the target area is the entire locality or State.

Rating Factor 3: Soundness of Approach (45 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan, the commitment of your institution to sustain the proposed activities, and your actions regarding Affirmatively Furthering Fair Housing.

(1) *Quality of the Work Plan* (40 Points). This factor includes your statement of work and budget.

(a) Work Plan Impact (10 Points). Describe how your proposed activities will:

(i) Expand the role of the HBCU in its community;

(ii) Alleviate and/or fulfill the needs identified in Factor 2;

(iii) Relate to and not duplicate other activities in the target area. Duplicative efforts will be acceptable, if you are able to demonstrate that there is a population in need that is not being served;

(iv) Involve and empower the citizens of the target area; and

(v) Be disseminated to a wide variety of audiences, both academic and community-based, using a wide variety of media, including print and internet technology.

(b) *Specific Services and/or Activities.* (25 Points). Your work plan must incorporate all proposed activities. HUD will consider the feasibility of success of your program, the measurable objectives, and how timely your products will be delivered.

Describe each proposed activity, and the tasks required to implement and complete the activity. If your proposed work activity triggers federal relocation laws, you must comply with the regulations in 24 CFR 570.606 and, 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

Also, for each activity, describe:

(i) How it meets a CDBG national objective;

(ii) The sequence, duration, and the products to be delivered in 6 month intervals, up to (36) months. You should indicate which staff member, described in your response to Factor 1, will be responsible and accountable for the deliverables; and

(iii) Measurable objectives to be accomplished, e.g. the number of: persons to be trained and employed; houses to be built (pursuant to 24 CFR 570.207) or rehabilitated; minority owned businesses to be started, etc.

(c) HUD Priorities (5 Points). The extent to which your application will further and support the following priorities of HUD. The quality of the response you provide to one or more of HUD's priorities will determine the score you receive. You will receive one point for each policy priority addressed, up to a total of five (5) points. For a fuller explanation of each policy priority, please refer to Section VI of the General Section of this SuperNOFA.

(i) Increasing Homeownership Opportunities for Low and Moderate Income Persons, Persons with Disabilities and the Elderly, and Minorities and families where English may be a second language.

(ii) Improving the Quality of Public Housing and Increasing Economic Mobility Choices for Residents.

(iii) Improving Computer Access, Literacy, and Employment Opportunities.

(iv) Providing Full and Equal Access to Faith-Based and Other Community Based Organizations in HUD Program Implementation.

(v) Ensuring that Programs are Accountable for the Promises Made and the Actions Taken.

(vi) Encouraging Accessible Design Features.

(2) *Affirmatively Furthering Fair Housing* (5 Points). The extent to which you propose to undertake activities designed to affirmatively further fair housing, for example:

(a) Working with other entities in the community to overcome impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services, or lending;

(b) Promoting fair housing through the expansion of homeownership opportunities and improved quality of services for minorities, families with children, and persons with disabilities; or

(c) Providing mobility counseling.

In evaluating Rating Factor 3, HUD will consider the extent to which your budget is consistent with the Work Plan and the dollars indicated on the Standard Form (SF) 424. Your budget submission must include:

(i) A budget summary covering the Federal and non-Federal share of the costs proposed by cost category. You should pay particular attention to accurately estimating costs, determining the necessity for and reasonableness of costs; and correctly computing all budget items and totals. Indirect costs must be substantiated and approved by the cognizant Federal agency or you must provide an indirect cost rate plan. The indirect cost rate should be indicated in your budget;

(ii) A budget justification, which should be a narrative statement indicating how you arrived at your costs. When possible, you should use quotes from vendors or historical data. You must support all direct labor and salaries with mandated city/state pay scales or other documentation; and

(iii) A budget-by-activity which includes a listing of tasks to be completed for each activity needed to implement the program, the overall costs for each activity, and the cost for each funding source.

You must submit at least two reasonable appraisals/estimates supplied by *qualified* entities, other than the HBCU, if you are proposing to do any of the following: acquisition of real property; clearance and demolition; rehabilitation of residential, commercial and/or industrial structures; *and/or* acquisition, construction, or installation of public facilities and improvements. You may obtain guidance for securing these estimates from the local HUD's Office of Community Planning and Development.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure resources which can be combined with HUD program funds to implement the proposed activities. Potential Sources of Assistance are:

- Federal, State and local governments
- Housing Authorities
- Local or national nonprofit organizations
- Banks and private businesses
- Foundations
- Faith-based and other community based organizations
- The HBCU

For each match, cash or in-kind contribution to your program, you must submit a letter from the provider on the provider's letterhead. The date of the letter from the CEO of the provider organization must be dated no earlier than the date of this published SuperNOFA. A firm commitment letter should address the following:

- The cash amount contributed or dollar value of the in-kind goods and/or sevices committed;
- How the match is to be used;
- The date the match will be made available and a statement that it will be for the duration of the grant period;
- Any terms and conditions affecting the commitment, other than receipt of a HUD HBCU Grant; and
- The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services.

In evaluating this factor, HUD will consider the extent to which you have secured firm commitments for additional resources to increase the effectiveness of your proposed activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated solely for the purpose(s) of the award you are seeking. A higher number of points will be awarded for a cash match than in-kind goods or services of the same value. The maximum number of rating points you can receive for leveraging is ten (10). Applicants will receive no points for undocumented claims. Use the format provided, to respond to this factor.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which you have coordinated your activities with other known organizations, participate or promote participation in your community's Consolidated Planning process, and are working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community. For specific information about your locality's planning process, contact the local Community Development Agency or the local HUD Field Office.

In evaluating this factor, HUD will consider the extent to which you demonstrate you have:

(1) Coordinated your proposed activities with those of other groups or organizations *before* submission in order to best complement, support and coordinate all known activities, and if funded, the specific steps you will take to share information on solutions and outcomes with others. You should describe any written agreements, memoranda of understanding in place, or that will be in place after award.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to your proposed activities.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(4) Institutionalization of Project Activities. HUD will also consider the extent to which your project will result in the kinds of activities that will be sustained by the HBCU by becoming part of the mission of the HBCU. HUD will also look at the HBCUs monetary commitment to continuing to work in the target area or other similar areas and to its longer term commitment of hard dollars to similar work.

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VI. Application Submission Requirements

(A) *Forms, Certifications and Assurances.* Your application must contain the items listed in this Section VI. These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms follow the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard forms" can be found in Appendix D to this program section of the SuperNOFA.

Forms applicable to the HBCU application are as follows:

(1) Standard Form SF–424, Application for Federal Assistance.

(2) Standard Form SF–424B, Assurances for Non-Construction Programs.

(3) Standard Form SF–4240, Assurances for Construction Programs.

(4) Form HUD–424M Budget Matrix

(5) Form HUD–50070, Certification for a Drug-Free Workplace.

(6) Form HUD–50071, Certification of Payments to Influence Federal Transactions. If you did do any lobbying then you must also complete the Certification and Disclosure Form Regarding Lobbying (SF–LLL).

(7) Form HUD–2880, Applicant/ Recipient Disclosure Update Report.

(8) Form HUD–2992, Certification Regarding Debarment and Suspension. This certification is required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required).

(9) Form HUD–2991, Certification of Consistency with the Consolidated Plan; and

(10) Form HUD–2990, Certification of Consistency with the RC/EZ/EC Strategic Plan. RC/EZ/EC bonus points will only be awarded when the HBCU is located within the geographic boundaries of a HUD or Department of Agriculture RC/EZ/EC. If applicable, you will need to indicate on this form if the college or university is located within the geographic boundaries of the RC/EZ/EC.

(B) *Transmittal Letter.* A transmittal letter must accompany your application. Your cover letter must be signed by the Chief Executive Officer (usually the President or Provost) of your institution. If the Chief Executive Officer has delegated this responsibility to another official, that person may sign, but a copy of the delegation must also be included.

(C) *Letter Certifying Local Approval.* This letter certifies that the jurisdiction in which your activities will take place approve the implementation of your activities.

(D) *Abstract/Executive Summary* (one page limit) describing the goals and activities of your project.

(E) *Narrative Statement Responding To the Factors For Award* (50 page limit, including tables and maps, but not including firm commitment letters, and the performance narrative). The narrative should be numbered in accordance with each factor and subfactor.

Please note that all certification forms must be signed by the authorized certifying official.

(F) *HUD Form 40076, Budget Information.* Also, HUD will not consider appendices to an application. You must submit your documentation, including firm commitment letters and the performance narrative with your responses to the pertinent factors in order to receive points for it.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

Selection for award does not constitute approval of any proposed sites. Following selection for award, HUD will perform an environmental review of activities proposed for assistance under this program part, in accordance with 24 CFR part 50. The results of the environmental review may require that your proposed activities be modified or that your proposed sites be rejected. You are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Your application constitutes an assurance that your institution will assist HUD to comply with part 50; will supply HUD with all available and relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select an alternate property; and will not acquire, rehabilitate, convert, demolish, lease, repair or construct property and not commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received. In supplying HUD with environmental information, you should use the same guidance as provided in the HUD Notice CPD–99–01 entitled "Field Environmental Review Processing for HUD Colonias Initiative (HCI) Grants," issued January 27, 1999.

IX. Other Matters

(1) Disclosures. HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (update information also reported on Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports' both applicant disclosures and updates'will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR 4.7 Part 5.

(2) Publication of Recipients of HUD Funding. HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(3) Section 103 HUD Reform Act. HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquires to the subject areas permitted under 24 CFR part 4.

(4) Debriefing. Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice, and for not longer than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to the person or organization identified as the Contact under the section entitled For Further Information and Technical Assistance in the program section of the Super NOFA under which you applied for assistance. Materials provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

X. Authority

This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989). The HBCU Program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

Appendices to the HBCU NOFA

A. Field Office Community Planning and Development Directors With Historically Black Colleges And Universities Located Within Their Jurisdiction

B. Historically Black Colleges and Universities Previously Unfunded By HUD During Fiscal Years 1991–2001

C. Historically Black Colleges and Universities Previously Funded By HUD During Fiscal Years 1991–2001

D. HBCU Application Forms

Appendix A—Community Planning and Development (CPD) Directors With Historically Black Colleges and Universities Located Within Their Jurisdiction

Harold Cole, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7630 ext. 1027

Danny Carter, Acting, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–6375

John Perry, Richard B. Russell Federal Building, 49 Marietta Street-Five Points Plaza, Atlanta, GA 30303–2806, 404–331–5001 ext. 2449

Ben Cook, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, 502–582–6163 ext. 214

Gregory Hamilton, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7212 ext. 3047

Joseph O'Connor, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, MD 21201–2505, 410–962–2520 ext. 3071

Raymond Perry, Acting, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–7908, ext. 8055

Emily Eberhardt, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1096, 601–965–4700, ext. 3140

Ann Wiedl, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 63103–2836, 314–539–6524

Charles T. Ferebee, 2306 West Meadowview Rd., Greensboro, NC 27407–3707, 336–547–4005

James Nichol, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–1777, ext. 2136

Carmen R. Cabrera, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–0903, 787–766–5576, ext. 2005

Lana Vacha, 200 North High Street, Columbus, OH 43215–2499, 614–469–5737, ext. 8240

David Long, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7569

Joyce Gaskins, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0624 ext. 3201

Louis E. Bradley, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5564

Virginia Peck, John J. Duncan Federal Building, 710 Locust Street SW., Third Floor, Knoxville, TN 37902–2526, 865–545–4391 ext. 121

Katie Worsham, 801 Cherry Street, Fort Worth, TX 76102, 817–978–5951

John T. Maldonado, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–475–6820, ext. 2293

Carlos Renteria, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4503, ext. 3229

Ronald J. Herbert, 820 First Street NE, Suite 450, Washington, DC 20002–4205, 202–275–0994, ext. 3163

Lynn Daniels, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2512, 416–644–2999

Jack Johnson, 909 SE First Avenue, Room 500, Miami, FL 33131–3028, 305–536–4431, ext. 2223

Appendix B—Historically Black Colleges and Universities Previously Unfunded By HUD During Fiscal Years 1991–2001

Alabama

Concordia College
Selma University
Trenholm State Technical College

Arkansas

Delaware

Delaware State University

Florida

Florida Memorial College

Georgia

Morehouse School of Medicine
Paine College

Louisiana

Southern University at Shreveport/Bossier City

Maryland

University Of Maryland Eastern Shore

Michigan

Lewis College of Business

Mississippi

Mary Holmes College

North Carolina

Ohio

Wilberforce University

Pennsylvania

Cheyney University of Pennsylvania

South Carolina

Clinton Junior College
Denmark Technical College
Morris College

Tennessee

Knoxville College
Lane College

Texas

Jarvis Christian College
Southwestern Christian College

Virginia

West Virginia

U.S. Virgin Islands

Appendix C—Historically Black Colleges and Universities Previously Funded by HUD During Fiscal Years 1991–2001

Alabama

Alabama A&M University
Alabama State University
Bishop State Community College
Gadsden State Community College
J.F. Drake Technical College
Lawson State Community College
Miles College
Oakwood College
Stillman College
Talladega College
Tuskegee University
C.A. Fredd Technical College

Arkansas

Arkansas Baptist College
Philander Smith College
Shorter College
University of Arkansas at Pine Bluff

District of Columbia

Howard University
University of the District of Columbia

Florida

Bethune-Cookman College
Edward Waters College
Florida A&M University

Georgia

Albany State University
Clark Atlanta University
Fort Valley State University
Interdenominational Theological Center
Morehouse College
Morris Brown College
Savannah State University
Spelman College

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Kentucky
Kentucky State University

Louisiana
Dillard University
Grambling State University
Southern University A & M College System at Baton Rouge
Southern University at New Orleans
Xavier University of New Orleans

Maryland
Bowie State University
Coppin State College
Morgan State University

Mississippi
Alcorn State University
Coahoma Community College
Jackson State University
Mississippi Valley State University
Rust College
Tougaloo College
Hinds Community College

Missouri
Harris-Stowe State College
Lincoln University

North Carolina
Barber-Scotia College
Bennett College
Elizabeth City State University
Fayetteville State University
Johnson C. Smith University
North Carolina A&T State University
North Carolina Central University
St. Augustine's College
Shaw University
Winston Salem State University

Ohio
Central State University

Oklahoma
Langston University

Pennsylvania
Lincoln University

South Carolina
Allen University
Benedict College
Claflin College
South Carolina State University
Voorhees College

Tennessee
Fisk University
Lemoyne-Owen College
Meharry Medical College
Tennessee State University

Texas
Huston-Tillotson College
Paul Quinn College
Prairie View A&M University
Saint Philip's College
Texas Southern University
Texas College
Wiley College

Virginia
Hampton University
Norfolk State University
Saint Paul's College
Virginia State University
Virginia Union University

West Virginia
West Virginia State University
Bluefield State College

U.S. Virgin Islands
University of the Virgin Islands

Appendix D

The non-standard forms, which follow, are required for your HBCU application.

BILLING CODE 4210-32-P

Budget Summary

Federal Share

Name and Address of Applicant: _____

_____

_____

_____

Detailed Description of Budget

1. Direct Labor — Category: Position or Individual	Estimated Hours	Rate/ Hour	Estimated Cost	Total Cost
Total Direct Labor Cost				

2. Fringe Benefits — Category	Rate	Base	Estimated Cost	Total Cost
Total Fringe Benefits Cost				

3. Materials — Category: Item	Quantity	Unit Cost	Estimated Cost	Total Cost
Total Materials Cost				

HBCU Page no: ☐

form HUD-40076-HBCU (1/2001)

Budget Summary (con't.)

Federal Share

Detailed Description of Budget

Category		Mileage	Rate/ Mile	Estimated Cost	Total Cost
4. Travel	a. Transportation (1) Local Private Vehicle				
4. Travel	a. Transportation (2) Air/Destination	Trips	Fare	Estimated Cost	Total Cost
4. Travel	a. Transportation (3) Other/Item	Quantity	Unit Cost	Estimated Cost	Total Cost
4. Travel	b. Per Diem or Subsistence	Days	Rate/ Day	Estimated Cost	Total Cost
Total Travel Cost					

Category		Quantity	Unit Cost	Estimated Cost	Total Cost
5. Equipment	Item				
Total Equipment Cost					

Category		Days	Rate/ Day	Estimated Cost	Total Cost
8. Consultants	Type				
Total Consultants Cost					

HBCU Page no: ☐ form HUD-40076-HBCU (1/2001)

Budget Summary (con't.)

Federal Share

Detailed Description of Budget

Category				Estimated Cost	Total Cost
7. Subcontracts	List individual subcontracts				
Total Subcontracts Cost					

Category		Quantity	Unit Cost	Estimated Cost	Total Cost
8. Other Direct	Item				
Total Other Direct Cost					

Category		Rate	Base	Estimated Cost	Total Cost
9. Indirect	Type				
Total Indirect Cost					
Total Estimated Costs					

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Budget Summary
Non-Federal Share

Name and Address of Applicant: _____

Detailed Description of Budget

Category 1. Direct Labor Position or Individual	Estimated Hours	Rate/ Hour	Estimated Cost	Total Cost
Total Direct Labor Cost				

Category 2. Fringe Benefits	Rate	Base	Estimated Cost	Total Cost
Total Fringe Benefits Cost				

Category 3. Materials Item	Quantity	Unit Cost	Estimated Cost	Total Cost
Total Materials Cost				

Budget Summary (con't.)
Non-Federal Share

Detailed Description of Budget

Category 4. Travel a. Transportation (1) Local Private Vehicle	Mileage	Rate/ Mile	Estimated Cost	Total Cost

4. Travel a. Transportation (2) Air/Destination	Trips	Fare	Estimated Cost	Total Cost

4. Travel a. Transportation (3) Other/Item	Quantity	Unit Cost	Estimated Cost	Total Cost

4. Travel b. Per Diem or Subsistence	Days	Rate/ Day	Estimated Cost	Total Cost
Total Travel Cost				

Category 5. Equipment Item	Quantity	Unit Cost	Estimated Cost	Total Cost
Total Equipment Cost				

Category 6. Consultants Type	Days	Rate/ Day	Estimated Cost	Total Cost
Total Consultants Cost				

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Budget Summary (con't.)

Non-Federal Share

Detailed Description of Budget

Category 7. **Subcontracts** List individual subcontracts			Estimated Cost	Total Cost
Total Subcontracts Cost				

Category 8. **Other Direct** Item	Quantity	Unit Cost	Estimated Cost	Total Cost
Total Other Direct Cost				

Category 9. **Indirect** Type	Rate	Base	Estimated Cost	Total Cost
Total Indirect Cost				
Total Estimated Costs				

HBCU
Page no: ☐

form HUD-40076-HBCU (1/2001)

RESPONSE SHEET

Applicant Name: _____

Budget-By-Activity The information that the applicant supplies on this form will be reviewed in conjunction with the narrative response and other documentation for the budget submission requirement.

Activity No.	List Activity and Tasks for Each Activity	Source of Funds: HUD HBCU Grant	Other Federal	State	Local	Private	Total
		$	$	$	$	$	$
		$	$	$	$	$	$
		$	$	$	$	$	$
		$	$	$	$	$	$
		$	$	$	$	$	$
	Subtotal	$	$	$	$	$	$
	Costs of Administering Grant	$	$	$	$	$	$
	Percent of Total	%	%	%	%	%	%
	*Total	$	$	$	$	$	$

*Must equal amounts on SF-424.

HBCU
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form HUD-40076-HBCU (1/2001)

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Factor 4 Response Format

(Use this form or type on separate pages)

RESPONSE SHEET

Applicant Name: _____

Factor 4 - Leveraging Resources (maximum points: **10**). The information that the applicant supplies on this form will be used in conjunction with the narrative response and other documentation to rate Factor 4.

Name of Provider (Donor)	Cash or In-Kind	Dollar Value Provided	To Be Applied To Task No.	Commitment Letter Page No.
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
Total		$		

HBCU Page no: ☐

form HUD-40076-HBCU (1/2001)

Sample Letter of Commitment

Use the Commitment Provider's Letterhead

(Insert Date)

Processing and Control Branch
Office of Community Planning and Development
Department of Housing and Urban Development
451 7th Street SW, Room 7251
Washington, DC 20410-3500
Attn: (State appropriate program name)

Re: HUD Notice of Funding Availability, FR- for (state appropriate program name)

To Whom It May Concern:

If this proposal is funded, (**provider name**) commits $(**amount**) (or) (**type of in-kind contribution**) valued at $(**amount**) to (**applicant name**) for (**type of activity**) to be made available for recipients of the program.

These funds will be made available on (**date mm/dd/yyyy**) for the following grant activity(ies):(**list**)

Sincerely,

(Signature of Authorized Representative)

(Title)

form HUD-40076-HBCU (1/2001)

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HISPANIC-SERVING INSTITUTIONS ASSISTING COMMUNITIES (HSIAC) PROGRAM

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE HISPANIC-SERVING INSTITUTIONS ASSISTING COMMUNITIES PROGRAM (HSIAC)

PROGRAM OVERVIEW

Purpose of the Program. To assist Hispanic-serving institutions of higher education (HSIs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Community Development Act of 1974, as amended.

Available Funds. Approximately $10.1 million ($7.5 million from FY 2002 appropriation + $2.6 million carry over from FY 2001).

Eligible Applicants: Only nonprofit Hispanic-serving institutions of higher education that meet the definition of an HSI established in Title V of the 1998 Amendments to the Higher Education Act of 1965 (Pub.L. 105–244; enacted October 7, 1998).

Application Deadline. June 20, 2002

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funds under the Hispanic-serving Institutions Assisting Communities Program (HSIAC), please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 20, 2002 at HUD Headquarters.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), Fed Ex, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date, when you submitted your application to the US Postal Service. The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, Fed EX, and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the US Postal Service.

Address for Submitting Applications. Your completed application consists of an original signed application and two copies of the application. Submit your completed application to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC, 20410. When submitting your application, please refer to HSIAC and include your name, mailing address (including zip code), and telephone number (including area code).

HUD will accept only one application per HSI campus for this program. If your institution submits more than one application, per campus, HUD will ask you to identify which application you want evaluated. Only one application may be evaluated. If you do not respond within the stipulated cure period (see Section V of the General Section of this SuperNOFA), all of your applications will be disqualified. You should take this policy into account and take steps to ensure that multiple applications are not submitted.

For Application Kits. For an application kit and any supplemental material, you should call the SuperNOFA Information Center at 1–800-HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800-HUD–2209. When requesting an application kit, you should refer to HSIAC and provide your name and address (including zip code) and telephone number (including area code). You may also access the application on the Internet through the HUD web site at http//www.hud.gov/grants.

For Further Information and Technical Assistance. You may contact Armand Carriere of HUD's Office of University Partnerships at 202–708–3061 extension 3181. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Armand Carriere via email at Armand_W._Carriere @hud.gov.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

Approximately $7.5 million FY2002 funds plus $2.6 million carryover from FY 2001 are being made available under this SuperNOFA for HSIAC.

The maximum grant period is 36 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested and awarded is $600,000. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, if you submit an application requesting more than $$600,000 in HUD funds, the application will be ruled ineligible. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of HSIAC is to assist HSIs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

(1) For the purposes of this program, the term "locality" includes any city, county, township, parish, village, or other general political subdivision of a State, Puerto Rico, or the U.S. Virgin Islands within which your HSI is located.

(2) A "target area" is the locality or the area within the locality in which your institution will implement its proposed HUD grant.

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(B) *Eligible Applicants.* Only if your institution is a nonprofit institution of higher education and meets the statutory definition of an HSI in Title V of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105–244) are you eligible to apply. In order for you to meet this definition, at least 25 percent of the full-time undergraduate students enrolled in your institution must be Hispanic and not less than 50 percent of these Hispanic students must be low-income individuals. You are not required to be on the list of eligible institutions prepared by the U.S. Department of Education. However, if you are not, you will be required to certify in the application that you meet the statutory definition. If you are one of several campuses of the same institution, you may apply separately from the other campuses as long as your campus has a separate administrative structure and budget from the other campuses. In addition, in order to fund as many different HSIs as possible, you can only apply if you did not receive an HSIAC grant in FY 2001. If you received an HSIAC grant in FY 2000, you may reapply as long as: (1) you propose an entirely new project for a different activity; (2) you propose a different project director; and (3) you have drawn down at least 75% of your previous grant by the application due date.

(C) *Eligible Activities.*

(1) *General.* Each activity you propose for funding must meet both a Community Development Block Grant Program (CDBG) national objective and the CDBG eligibility requirements. A discussion of the national objectives can be found at 24 CFR part 570.208. Each activity that may be funded under this SuperNOFA for the HSIAC program must meet one of the three national objectives of the CDBG program which are:

(a) Benefit to low- and moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and other financial resources are not available to meet such needs. (You must ensure that of your aggregate grant expenditures under paragraphs (a), (b), and (c) above, at least 51% are for activities benefiting low- and moderate-income persons.)

Criteria for determining whether an activity addresses one or more of these objectives are provided at 24 CFR 570.208.

Ineligible activities are listed at § 570.207. The CDBG publication entitled, "CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities" discusses the regulations. You can obtain a copy from the SuperNOFA Information Center. If you propose an activity which otherwise is eligible, it may not be funded if State or local law requires that it be carried out by a governmental entity.

In addition, you may not propose the construction or rehabilitation of your institution's facilities unless you can demonstrate that such activities would meet the purpose of this program to expand the role and effectiveness of an HSI in its locality. HUD will scrutinize proposed activities for eligibility. As examples of eligible and ineligible on-campus activities, rehabilitating a library for use by your students would not be an eligible activity, but rehabilitating it to convert it to a micro-business enterprise center for the community would be; or as another example, just undertaking your normal activities (e.g., offering English as a Second Language classes) would not be considered eligible activities because they would not expand your role and effectiveness in community development activities. You should call Armand Carriere at 202–708–3061 extension 3181 if you have any questions about the eligibility of any activities you may propose. You may also look at the Office of University Partnerships website at www.oup.org for summaries of last year's winners.

(2) *Examples of Eligible Activities.* Examples of activities that generally can be carried out with these funds, under one the three national objectives, include, but are not limited to:

(a) Acquisition of real property;

(b) Clearance and demolition;

(c) Rehabilitation of residential structures to increase housing opportunities for low- and moderate-income persons and rehabilitation of commercial or industrial buildings to correct code violations or for certain other purposes, e.g., making accessibility and visitability modifications to housing;

(d) Direct homeownership assistance to low- and moderate-income persons, as provided in section 105(a)(25) of the Housing and Community Development Act of 1974;

(e) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, such as water and sewer facilities and streets;

(f) Relocation payments and other assistance for temporarily and permanently relocated individuals, families, businesses, and non-profit organizations where the assistance is:

(1) Required under the provision of 24 CFR 570.606 (b) or (c); or

(2) Determined by your institution to be appropriate under the provisions of 24 CFR 570.606(d).

(g) Lead-based paint hazard reduction, pursuant to the CDBG regulations;

(h) Special economic development activities described at 24 CFR 570.203, including activities designed to promote training and employment opportunities;

(i) Assistance to facilitate economic development by providing technical assistance or financial assistance for the establishment, stabilization, and expansion of microenterprises, including minority enterprises.

(j) Assistance to community-based development organizations (CBDO) to carry out a CDBG neighborhood revitalization, community economic development, or energy conservation project, in accordance with 24 CFR 570.204. This could include activities in support of a HUD approved local CDBG Neighborhood Revitalization Strategy (NRS) or HUD approved State CDBG Community Revitalization Strategy (CRS);

(k) Eligible public service activitiesup to 15 percent of the grant including:

(i) Work study programs that meet the program requirements of the Hispanic-serving Institutions Work Study program, which can be found at 24 CFR 570.416;

(ii) Outreach and other program activities as described in the Community Outreach Partnership Centers Program section of the SuperNOFA;

(iii) Educational activities including English as a Second Language (ESL) classes, adult basic education classes, GED preparation and testing, and curriculum development of courses that will lead to a certificate or degree in community planning and development;

(iv) Job and career counseling, assessment, training, and other activities designed to promote employment opportunities, not related to special economic development activities;

(v) Capacity building for community organizations;

(vi) Social and medical services for youths, adults, senior citizens, and the homeless;

(vii) Fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, familial status and/or disability aware of the range of housing opportunities available to them;

(viii) Day care centers;

(ix) Continuum of care services for the homeless;

(x) Public access telecommunications centers including Twenty/20 Education Communities (formerly known as Campus of Learners) and Neighborhood Networks;

(xi) Activities to use HUD's Partnership for Advancing Technology in Housing (PATH) technology;

(l) Administrative Costs. Up to 20% of your grant for program administration costs related to the planning and execution of community development activities assisted in whole or in part with grant funds. Pre-award planning costs may not be paid out of grant funds.

(D) Ineligible CDBG Activities are listed at 24 CFR 570.207.

IV. Program Requirements

(1) Executive Order 12372, Intergovernmental Review of Federal Programs. You must comply with this Executive Order. Please refer to the General Section VII(C) for details.

(2) *Leveraging.* Although a match is not required to qualify for funding, if you claim leveraging from any source, including your own institution, you must provide letters or other documentation evidencing the extent and firmness of commitments of leveraging from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published SuperNOFA. Potential sources of leveraging assistance include: your own institution (for both direct and indirect costs);

- Federal, State and local governments;
- Housing authorities;
- Local or national nonprofit organizations;
- Banks and private businesses; foundations; and
- Faith-based and other community based organizations.

(3) *Employment of Local Area Residents (Section 3).* Please see Section II(E) of the General Section of this SuperNOFA. The requirements are applicable to certain activities that may be funded under this program section of the SuperNOFA.

(4) *Labor Standards.* If you are awarded a grant, you must comply with the labor standards (Davis-Bacon) as found at 24 CFR 570.603.

(5) *OMB Circulars.* Your grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–21 (Cost Principles for Education Institutions), and A–133 (Audits of States, Local Governments, and Non-Profit Organizations). The application kit contains a detailed explanation of what these costs are. You can access the OMB circulars at the White House website at http://whitehouse.gov/omb/circulars/index.html.

(6) *Nondiscrimination.* In addition to the fair housing and other civil rights assurances described under Section II (B) of the General Section, you must comply with Section 109 of the Housing and Community Development Act of 1974, as amended. Implementing regulations for Section 109 are found under 24 CFR 570, including, but not limited to, reporting and record-keeping requirements under 24 CFR 570.506 and 570.507.

(7) *Conducting Business In Accordance With Core Values and Ethical Standards* HUD requires that all grantees adhere to core values and ethical business practices, as described in Section II.(B)(2)) of the General Section of this SuperNOFA.

(8) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD requires grantees to take all necessary affirmative steps in contracting with businesses, small disadvantaged businesses and women-owned businesses in conducting your work activities. Please refer to section II (F) of the General Section of this SuperNOFA for specific requirements.

V. Application Selection Process

HUD will conduct two types of review: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application will only be rated if it is both in compliance with the requirements of the General Section of the SuperNOFA and the following additional standards are met:

(1) You must be an eligible HSI and meet the other eligibility requirements under Section III(B) of this program NOFA;

(2)Your application requests a Federal grant of $600,000 or less over the three year period.

(3) There is only one application from your institution or a campus of your institution;

(4) At least one of the activities in your application is eligible.

(B) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 102. Your application must receive a minimum of 70 out of the possible total of 102 points to be considered for funding. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which:

(1) *Knowledge and Experience (5 Points for previously funded applicants and 15 points for previously unfunded applicants).* Your application demonstrates the knowledge and experience of the overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning and managing the kinds of programs for which funding is being requested. Experience will be judged in terms of recent relevant and successful experience of your staff to undertake eligible program activities. In rating this factor, HUD will consider experience within the last 5 years to be recent: experience pertaining to the specific activities being relevant: and experience producing specific accomplishments to be successful. The more recent the experience and the more recent the experience of your own staff members who work on the project have in successfully conducting and completing similar activities, the greater the number of points you will receive for this rating factor. The following categories will be evaluated:

(a) Undertaking specific successful community development projects with community-based organizations; and

(b) Providing proven leadership in solving community problems which have a direct bearing on the proposed activity.

(2) *Past Performance* (10 points for previously funded applicants)

The extent to which you have performed successfully under your previous and current HSIAC grant(s), as measured by:

(a) Your achievement of specific measurable outcome objectives consistent with timelines in your grant proposal;

(b) Your leveraging of funding consistent with or exceeding the funds originally proposed to be leveraged for that project; and

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(c) The effectiveness of your administration of any previous HSIAC grants (including the timeliness and completeness of your compliance with HSIAC reporting requirements and your ability to take action to resolve problems which presented themselves during the grant period). In addressing timeliness of reports, you should compare when your reports were due with when they were actually submitted.

(d) Full points will be awarded for exceptional performance, which consistently meets and exceeds promised goals.

Rating Factor 2: Need/Extent of the Problem (15 points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting the need in the target area. In responding to this factor, you will be evaluated on the extent to which you document the level of need for the proposed activities and the importance of meeting the need.

You should use statistics and analyses contained in one or more data sources that are sound and reliable. To the extent that your targeted community's Five (5) Year Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identify the level of the problem and the urgency in meeting the need, you should include references to these documents in your response to this factor.

If your proposed activities are not covered under the scope of the Consolidated Plan and AI, you should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include Census reports, HUD Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Comprehensive Plans, community needs analyses such as provided by the United Way, your institution, etc., and other sound and reliable sources appropriate for HSIAC. You may also address needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements. To the extent possible, the data you use should be specific to the area where the proposed activities will be carried out. You should document needs as they apply to the area where the activities will be targeted, rather than the entire locality or State, unless the target area is the entire locality or State.

Rating Factor 3: Soundness of Approach (40 points)

This factor addresses the quality and cost-effectiveness of your proposed work plan, the commitment of your institution to the proposed activities, and your actions regarding HUD's priorities and Affirmatively Furthering Fair Housing.

(1) *Quality of the Work Plan* (35. Points). This factor includes your Statement of Work and Budget.

(a) *Specific Services and/or Activities* (12 Points). Specifically, HUD will consider the extent to which your proposed activities will:

(i) Expand the role of your institution in its community;

(ii) The project you propose can be completed within the three year grant period

(iii) Relate to and not duplicate other activities in the target area;

(iv) Involve and empower the citizens of the target area, targeting specifically faith-based and other community-based grassroots organizations, in all stages of the proposed project (particularly through a committee that is representative of the target community, to guide the project); and

(v) Be disseminated to a wide variety of audiences, both academic and community-based, using a wide variety of media, including print and Internet technology.

(b) *Work Plan Impact* (13 Points). HUD will consider the feasibility of success of your program, the measurable objectives, and how timely your products will be delivered. Specifically, HUD will examine the extent to which:

(i) You propose to alleviate and/or fulfill the needs identified in Factor 2; and

(ii) The objectives are measurable (e.g., the number of loans made, the number of jobs created), result in measurable improvement to the community (e.g., fifteen more homeowners, twenty more jobs in a specific field), and how well you demonstrate that these objectives will be achieved by your proposed management plan and team and will result directly from your activities.

(c) *Involvement of the Faculty and Students* (5 points). The extent to which your application proposes to involve your students and faculty, as part of their coursework in outreach and applied research activities. HUD's goal is to encourage you to fund activities similar to those eligible under the COPC program to be undertaken as a complement to those proposed in your HSIAC application. For more information about the COPC program, you can look at the University Partnerships Clearinghouse web site at http://www.oup.org/techassist/copc/techcopc.html.

(d) *HUD Priorities* (5 points). The extent to which your application will further and support at least one of the following priorities of HUD. The quality of the response you provide to one or more of HUD's priorities will determine the score you receive. You will receive one point for each policy priority addressed, up to a total of 5 points. For a fuller explanation of each policy priority, please refer to Section VI. of the General Section of this SuperNOFA.

(i) Encouraging Accessible Design Features.

(ii) Improving Computer Access, Literacy, and Employment Opportunities.

(iii) Providing Full and Equal Access to Faith-Based and Other Community Based Organizations in HUD Program Implementation.

(iv) Ensuring that Programs are Accountable for the Promises Made and the actions taken.

(v) Improving the Quality of Public Housing and Increasing Economic Mobility Choices for Residents.

(2) *Affirmatively Furthering Fair Housing* (5 points). The extent to which you propose to undertake activities designed to affirmatively further fair housing, for example:

(a) Working with other entities in the community to overcome impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services or lending;

(b) Promoting fair housing choice through the expansion of homeownership opportunities and improved quality of services for minorities, families with children, and persons with disabilities; or

(c) Providing housing mobility counseling services.

Rating Factor 4: Leveraging Resources (10 points)

This factor addresses your ability to secure community resources, which can be combined with HUD program funds to achieve program objectives.

In evaluating this factor, HUD will consider the extent to which you have established partnerships with other entities to secure additional resources to increase the effectiveness of the proposed activities. Resources may include funding or in-kind contributions, such as services or equipment. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities. You may also establish partnerships with other program funding recipients to coordinate the use of resources in the target area.

You may count overhead and other institutional costs (e.g., salaries) that are waived as leveraging. However, higher points will be awarded if you secure leveraging resources from sources outside your institution.

You must provide letters or other documentation showing the extent and firmness of commitments of leveraged funds (including your own resources) in order for these resources to count in determining points under this factor. Any resource for which there is no commitment letter will not be counted, nor will the resource be counted without the proposed level of commitment being quantified. If your application does not include evidence of leveraging, it will receive zero (0) points for this Factor.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (20 points)

This factor addresses the extent to which you have coordinated your activities with other known organizations, participate or promote participation in a community's Consolidated Planning process, and are working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community. For specific information about your locality's process, contact the local Community Development Agency or the local HUD field office. If you propose to work in a Community Development Block Grant (CDBG) non-entitlement jurisdiction, you will only need to address subfactors (1) and (3).

In evaluating this factor, HUD will consider the extent to which you demonstrate that you have:

(1) Coordinated your proposed activities with those of other groups or organizations prior to submission in order to best complement, support, and coordinate all known activities and, if funded, the specific steps you will take to share information on solutions with others. Any written agreements, memoranda of understanding in place, or that will be in place after award, should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities you propose.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally-funded activities, including those proposed or ongoing in the community.

(4) *Institutionalization of Project Activities.* The extent to which your project will result in the kinds of proposed activities being sustained by becoming part of the mission of your institution. In reviewing this subfactor, HUD will consider the extent to which program activities relate to your institution's mission; demonstrate support and involvement of the institution's executive leadership; are linked by a formal organizational structure to other units related to outreach and community partnerships; are reflected in budget and planning documents; are part of a climate that rewards faculty work on these kinds of activities through promotion and tenure; benefit students because they are part of a service learning program at your institution; and are reflected in the curriculum. HUD will look at your monetary and non-monetary commitments to faculty and staff continuing work in the target area or other similar areas and to your longer term commitment (five years after the start of the grant) of hard dollars to similar work. If you have previously received an HSIAC grant, you must describe the progress your institution has made since you received the HSIAC grant in institutionalizing your project activities.

(C) *Selections.* In order to be funded, you must receive a minimum score of 70 points. HUD will fund applications in rank order, until it has awarded all available funds. If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach, shall be selected. If there is still a tie, the application with the most points for Factor 4, Leveraging, shall be selected. A minimum of two applications which include colonias projects will be funded if they receive a minimum score of 70 points.

(1) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (update information also reported on Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(2) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(3) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

(4) *Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice, and for not less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing. Materials provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

HUD will not fund specific proposed activities that do not meet eligibility requirements (see 24 CFR part 570, subpart C) or do not meet a national objective in accordance with 24 CFR 570.208.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded HSIACs. If HUD decides to use this option, it will do so only if two adjacent

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HUD regions do not yield at least one fundable HSIAC on the basis of rank order. If this occurs, HUD will fund the highest ranking applicant within the two regions as long as the minimum score of 70 points is achieved.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with that applicant.

V. Application Submission Requirements

You should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard forms" can be found as Appendix A to this program section of the SuperNOFA. The items are as follows:

(A) *SF–424*, Application for Federal Assistance.

(B) *HUD–424M*, Federal Assistance Funding Matrix.

(C) *Transmittal Letter*, signed by the Chief Executive Officer of your institution or his or her designee. If a designee signs, your application must include the official designation of signatory authority.

(D) *Abstract/Executive Summary* (one page limit) describing the goals and activities of the project.

(E) *Narrative Statement Addressing the Factors for Award.* (50 page limit, including tables, and maps, but not including any letters of commitment and budget forms) (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.). For FY 2002, the statement of work and the budget are now part of Factor 3, Soundness of Approach.

(1) The Statement of Work incorporates all activities to be funded in your application and details how your proposed work will be accomplished. For each proposed activity, your Statement of Work must:

(a) Arrange the presentation of major related activities (e.g., rehabilitation of a child care center, provision of tutoring services), summarize each activity, identify the primary persons (as described in addressing Rating Factor 1) involved in carrying out the activity and accountable for the deliverables, and delineate the major tasks involved in carrying it out. You should also describe how each activity meets a CDBG national objective.

(b) Indicate the sequence in which tasks are to be performed, noting areas of work that must be performed simultaneously. The sequence, duration, and the products to be delivered should be presented in six month intervals, up to 24 months.

(c) Identify the specific numbers of quantifiable intermediate and end products and objectives (e.g., the number of houses of be rehabilitated, the number of people to be trained, the number of minority businesses started, etc.) you aim to deliver by the end of the grant period as a result of the work performed.

(2) The budget presentation should he consistent with the Statement of Work and include:

(a) A budget by activity, using Form HUD–30004 included in the application kit and in the program area section of the SuperNOFA. This form separates the Federal and non-Federal costs of each program activity. Particular attention should be paid to accurately estimating costs; determining the necessity for and reasonableness of costs; and correctly computing all budget items and totals.

(b) A narrative statement of how you arrived at your costs, for any line item over $5,000. Indirect costs must be substantiated and the rate must have been approved by the cognizant Federal agency. If you are proposing to undertake rehabilitation of residential, commercial, or industrial structures or acquisition, construction, or installation of public facilities and improvements, you must submit reasonable costs supplied by a *qualified* entity other than your institution. Guidance for securing these estimates can be obtained from the CPD Director in your HUD field office or from your local government.

(c) A statement of compliance with the 20 percent limitation on "Planning and Administration" costs.

(3) Your narrative statement addressing the factors for award should address all factors for award. You should number the narrative in accordance with each factor and subfactor. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.) In addressing Factor 4, for each leveraging source, cash or in kind, you must submit a letter, dated no earlier than the date of this SuperNOFA, from the provider on the provider's letterhead that addresses the following:

- The dollar amount or dollar value of the in-kind goods and/or services committed. For each leveraging source, the dollar amount in the commitment letter must be consistent with the dollar amount you indicated in the Budget;
- How the leveraging amount is to be used;
- The date the leveraging amount will be made available and a statement that it will be for the duration of the grant period;
- Any terms and conditions affecting the commitment, other than receipt of a HUD HSIAC Grant; and
- The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit and the program area section of the SuperNOFA for a sample commitment letter.)

(G) *Certifications.*

(1) SF–424B, Assurances for Non-Construction Programs.

(2) HUD–50071, Certification of Payments to Influence Certain Federal Transactions;

(3) SF–LLL, Disclosure of Lobbying Activities (if applicable);

(4) HUD–2880, Applicant/Recipient Disclosure/Update Form;

(5) HUD–50070, Certification of Drug-Free Workplace;

(6) HUD–2992, Certification Regarding Debarment and Suspension;

(7) HUD–2991, Certification of Consistency with the Consolidated Plan; and

(8) HUD–2990, Certification of Consistency with the RC/EZ/EC Strategic Plan (if applicable);

(H) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

(I) *Client Comment and Suggestions (HUD–2994).* If you wish to offer comments on the HSIAC NOFA of this SuperNOFA or the SuperNOFA process, please complete this form. This form is optional.

You may not submit appendices or general support letters or resumes. If you submit letters of leveraging commitment, they must be included in your response to Factor 4. If you submit other documentation, it must be included with the pertinent factor responses (taking note of the page limit).

VI. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VII. Environmental Requirements

Selection for award does not constitute approval of any proposed sites. Following selection for award, HUD will perform an environmental review of activities proposed for assistance under this program, in accordance with 24 CFR part 50. The results of the environmental review may require that your proposed activities be modified or that your proposed sites be rejected. You are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Your application constitutes an assurance that your institution will assist HUD to comply with part 50; will supply HUD with all available and relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, demolish, lease, repair, or construct property and not commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received. In supplying HUD with environmental information, you should use the same guidance as provided in the HUD Notice CPD–99–01 entitled "Field Environmental Review Processing for HUD Colonias Initiative (HCI) Grants" issued January 27, 1999.

VIII. Authority

This program was approved by the Congress under the section 107 of the CDBG appropriation for Fiscal Year 2001, as part of the FY 2001 HUD Appropriations Act. HSIAC is being implemented through this program section of the SuperNOFA and the policies governing its operation are contained herein.

Appendix A

The non-standard forms, which follow, are required for your HSIAC application.

BILLING CODE 4210–32–P

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Hispanic-Serving Institutions Assisting Communities

Budget Applicant should duplicate this page as necessary.

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

OMB Approval No. 2528-0198 (exp. 9/30/2002)

Activity	Year 1 Federal $	Year 1 Leveraged $	Year 2 Federal $	Year 2 Leveraged $	Year 3 Federal $	Year 3 Leveraged $	Total Federal $	Total Leveraged $
Name of Activity								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Activity								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Grand Totals (this page)								

The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Hispanic-Serving Institutions Assisting Communities (HSIAC) program. Total public reporting burden for collection of this information is estimated to average 80 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information submitted in response to the notice of funding availability for the HSIAC program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101-235, approved December 15, 1989, 42 U.S.C. 3545). The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

form **HUD-30004** (03/2002)

Hispanic-Serving Institutions Assisting Communities

Budget Applicant should duplicate this page as necessary.

Activity	Year 1 Federal $	Year 1 Leveraged $	Year 2 Federal $	Year 2 Leveraged $	Year 3 Federal $	Year 3 Leveraged $	Total Federal $	Total Leveraged $
Name of Activity								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Activity **Planning and Management**								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Grand Totals (all pages)								

form **HUD-30004** (03/2002)

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ALASKA NATIVE/NATIVE HAWAIIAN ASSISTING COMMUNITIES PROGRAM (AN/NHIAC)

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FUNDING AVAILABILITY FOR THE ALASKA NATIVE/NATIVE HAWAIIAN INSTITUTIONS ASSISTING COMMUNITIES PROGRAM (AN/NHIAC)

PROGRAM OVERVIEW

Purpose of the Program. To assist Alaska Native/Native Hawaiian institutions of higher education (AN/NHIs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Community Development Act of 1974, as amended.

Available Funds. Approximately $4 million plus $2.2 million in previously unexpended FY 2001 funds, to be divided evenly between Alaska Native institutions of higher education (ANIs) and Native Hawaiian institutions of higher education (NHIs).

Eligible Applicants: Only nonprofit Alaska Native and Native Hawaiian institutions of higher education that meet the definitions of Alaska Native and Native Hawaiian institutions of higher education established in Title III, Part A, Section 317 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998 (Pub.L. 105–244; enacted October 7, 1998).

Application Deadline. June 20, 2002

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funds under the Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 20, 2002, at HUD Headquarters.

Application Submission Procedures. New Security Procedures. In response to the terrorist attacks in September 2001 HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped by the following delivery services: United Parcel Service (UPS), Fed EX, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date, when you submitted your application to the US Postal Service. The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application die date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by not later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, Fed EX, and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area you should submit your application via the US Postal Service.

Address for Submitting Applications. Your completed application consists of an original signed application and two copies. Submit your completed application to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC, 20410. When submitting your application, please refer to AN/NHIAC and include your name, mailing address (including zip code) and telephone number (including area code).

For ANIs, HUD only will accept one application per campus. For NHIs, HUD will accept one application per institution. If your institution submits more than one application per campus (for ANIs) or more than one application per institution (for NHIs), HUD will ask you to identify which application you want evaluated. Only one application may be evaluated. If you do not respond within the stipulated cure period (see Section V of the General Section of this SuperNOFA), all of your applications will be disqualified. You should take this policy into account and take steps to ensure that multiple applications are not submitted.

For Application Kits. For an application kit and any supplemental material, you should call the SuperNOFA Information Center at 1–800–HUD–8929 (toll free). If you have a hearing or speech impairment, please call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, you should refer to AN/NHIAC Program and provide your name and address (including zip code) and telephone number (including area code). You may also access the application on the Internet through the HUD web site at www.hud.gov.

For Further Information and Technical Assistance. You may call Armand Carriere of HUD's Office of University Partnerships at 202–708–3061, extension 3181. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Mr. Carriere via email at Armand_W._Carriere@hud.gov.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

Approximately $ 4 million in FY 2002 funds and $2.2 million in previously unexpended FY 2001 funds is being made available under this SuperNOFA for AN/NHIAC. Of this amount, $ 3.1 million is being made available for Alaska Native institutions (ANIs) of higher education and $ 3.1 million is being made available for Native Hawaiian institutions of higher education (NHIs). The performance period of 36 months will commence on the effective date of the grant agreement. The maximum amount which can be requested and awarded to a particular Alaska Native institution of higher education is $600,000. The maximum amount which can be requested and awarded to a particular Native Hawaiian institution of higher education is $3 million with each application composed of no more than five separate projects, each in a different neighborhood. Each separate project can be for no more than $600,000

Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, if you are an ANI and submit an

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application requesting more than $600,000 in HUD funds, it will be ruled ineligible. If you are an NHI and you submit an application for more than $3 million, it will be ruled ineligible. If you are an NHI and you submit an application in which you request more than $600,000 for any one project, that particular project will be ruled ineligible. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of AN/NHIAC is to assist AN/NHIs to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

(1) For the purposes of this program, the term "locality" includes any city, county, township, parish, village, or other general political subdivision of a State within which your AN/NHI is located.

(2) A "target area" is the locality or the area within the locality in which your institution will implement its proposed HUD grant.

(B) *Eligible Applicants.* Only if your institution is a nonprofit institution of higher education and meets the statutory definition of either an Alaska Native institution of higher education or a Native Hawaiian institution of higher education, as contained in Title III, Part A, Section 317 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998 (Pub.L. 105–244) are you eligible to apply. If you are an Alaska Native institution of higher education, in order for you to meet this definition, at least 20 percent of your undergraduate headcount enrollment must be Alaska Native students. If you are a Native Hawaiian institution of higher education, in order to meet this definition at least 10 percent of your undergraduate headcount enrollment must be Native Hawaiian students. You are not required to be on a list of eligible AN/NHIs prepared by the U.S. Department of Education. However, if you are not, you will be required to certify in the application that you meet the statutory definition. If you are an ANI and received a grant in FY 2001, you are not eligible to submit an application in FY 2002. If you are an NHI and received a grant in FY 2001, you are not permitted to submit an application for the same specific project in a different neighborhood, another project in the same neighborhood, or another project with the same project director as the project funded in FY 2001.

If you are an ANI and your institution has multiple campuses, each one is eligible to apply separately, as long as it meets the above enrollment test. You may undertake as many projects and activities as you want, as long as you do not exceed the $600,000 cap for an application. If you are an NHI, you are permitted to submit only one application, no matter how many separate campuses you have, as long as your institution meets the above enrollment test. You may undertake up to five separate projects, each in a different neighborhood, with each project requesting no more than $600,000. In your application you must describe how each project is separate and distinct; how your proposed activities relate to that project; and that each project will not rely on any part of another project for its successful completion. A project can include one or more of the eligible activities listed below. For example, if you propose a homeownership project, you might rehabilitate housing in a neighborhood, demolish some structures to create spaces for lawns, and provide a loan pool for purchasers of this housing. All these activities could still be viewed as one project. You might also undertake a job training program for welfare-to-work families by rehabilitating a warehouse and offering the job training there. These activities could also be viewed as one project. But if you proposed to create a homeownership loan program and a job training program, these activities would be viewed as two separate projects. Your institution could undertake both, but they would have to be in two different neighborhoods.

(C) *Eligible Activities.* (1) *General.* Each activity you propose for funding must meet both a Community Development Block Grant Program (CDBG) national objective and the CDBG eligibility requirements. A discussion of the national objectives can be found at 24 CFR 570.208. Each activity that may be funded under this SuperNOFA for the Alaskan Native/Native Hawaiian program must meet one of the three national objectives of the CDBG program which are:

(a) Benefit to low- and moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and other financial resources are not available to meet such needs. (You must ensure that of your aggregate grant expenditures under paragraphs (a), (b), and (c) above at least 51% are for activities benefiting low- and moderate-income persons).

Criteria for determining whether an activity addresses one or more of these objectives are provided at 24 CFR 570.208.

The CDBG publication entitled "CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities" discusses the regulations. You can obtain a copy from the SuperNOFA Information Center. If you propose an activity which otherwise is eligible, it may not be funded if State or local law requires that it be carried out by a governmental entity.

In addition, you may not propose the construction or rehabilitation of your institution's facilities unless you can demonstrate that such activities would meet the purpose of this program to expand the role and effectiveness of an AN/NHI in its locality. HUD will scrutinize proposed activities for eligibility. As examples of eligible and ineligible on-campus activities, rehabilitating a library for use by your students would not be an eligible activity, but rehabilitating it to convert it to a micro-business enterprise center for the community would be; another example, just undertaking your normal activities (e.g., offering English as a Second Language class) would not be considered eligible activities because they would not expand your role and effectiveness in community development activities. You should call Armand Carriere at 202 708–3061 extension 3181 if you have any questions about the eligibility of any activities you may propose. You may also look at the Office of University Partnerships website at www.oup.org for summaries of winners under the Hispanic-serving Institutions Assisting Communities program, a program very similar to this one.

(2) *Examples of Eligible Activities.* Examples of activities that generally can be carried out with these funds, under one of the three national objectives, include, but are not limited to:

(a) Acquisition of real property;

(b) Clearance and demolition;

(c) Rehabilitation of residential structures to increase housing opportunities for low- and moderate-income persons and rehabilitation of commercial or industrial buildings to correct code violations or for certain other purposes, e.g., making accessibility and visitability modifications to housing;

(d) Direct homeownership assistance to low- and moderate-income persons, as provided in section 105(a)(25) of the Housing and Community Development Act of 1974;

(e) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, such as water and sewer facilities and streets;

(f) Relocation payments and other assistance for temporarily and permanently relocated individuals, families, businesses, and non-profit organizations where the assistance is (i) required under the provision of 24 CFR 570.606(b) or (c); or (ii) determined by your institution to be appropriate under the provisions of 24 CFR 570.606 (d).

(g) Lead-based paint hazard reduction, pursuant to the CDBG regulations;

(h) Special economic development activities described at 24 CFR 570.203, including activities designed to promote training and employment opportunities;

(i) Assistance to facilitate economic development by providing technical assistance or financial assistance for the establishment, stabilization, and expansion of microenterprises, including minority enterprises;

(j) Assistance to community-based development organizations (CBDO) to carry out a CDBG neighborhood revitalization, community economic development, or energy conservation project, in accordance with 24 CFR 570.204. This could include activities in support of a HUD approved local CDBG Neighborhood Revitalization Strategy (NRS) or HUD approved State CDBG Community Revitalization Strategy (CRS);

(k) Eligible public service activities. Up to 15 percent of the grant can be used for public service activities. Examples include:

(i) Work study programs that meet the program requirements of the Hispanic-serving Institutions Work Study program, which can be found at 24 CFR 570.416;

(ii) Outreach and other program activities as described in the Community Outreach Partnership Centers Program section of the SuperNOFA;

(iii) Educational activities including English as a Second Language (ESL) classes, adult basic education classes, GED preparation and testing, and curriculum development of courses that will lead to a certificate or degree in community planning and development;

(iv) Job and career counseling assessment, training, and other activities designed to promote employment opportunities, not related to special economic development activities;

(v) Capacity building for community organizations;

(vi) Social and medical services for youths, adults, senior citizens, and the homeless;

(vii) Fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, familial status and/or disability aware of the range of housing opportunities available to them; (viii) Day care centers;

(ix) Continuum of care services for the homeless;

(x) Public access telecommunications centers including Twenty/20 Education Communities (formerly known as Campus of Learners) and Neighborhood Networks;

(xi) Activities to use HUD's Partnership for Advancing Technology in Housing (PATH) technology;

(l) Administrative Costs. Up to 20% of your grant for program administration costs related to the planning and execution of community development activities assisted in whole or in part with grant funds. Pre-award planning costs may not be paid out of grant funds.

(D) Ineligible CDBG Activities are listed at CFR 570.207.

IV. Program Requirements

(A) Executive Order 12372, Intergovernmental Review of Federal Programs. You must comply with this Executive Order. Please refer to Section VII(C) of the General Section for details.

(B) *Leveraging.* Although a match is not required to qualify for funding, if you claim leveraging from any source, including your own institution, you must provide letters or other documentation evidencing the extent and firmness of commitments of leveraging from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published SuperNOFA. Potential sources of leveraging assistance include your own institution (for both direct and indirect costs); State and local governments; housing authorities; local or national nonprofit organizations; banks and private businesses; foundations; and faith-based and other community based organizations.

(C) *Affirmatively Furthering Fair Housing.* Please see Section II(D) of the General Section of this SuperNOFA.

(D) *Employment of local area residents (Section 3).* Please see Section II(E) of the General Section of this SuperNOFA. The requirements are applicable to certain activities that may be funded under this program section of the SuperNOFA.

(E) *Labor Standards.* If you are awarded a grant, you must comply with the labor standards (Davis-Bacon) as found at 24 CFR 570.603.

(F) *OMB Circulars.* Your grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), OMB Circular A–21 (Cost Principles for Education Institutions), and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations). The application kit contains a detailed explanation of what these costs are. You can access the OMB circulars at the White House website at http://whitehouse.gov//omb/circulars/index.html.

(G) *Nondiscrimination.* In addition to the fair housing and other civil rights assurances described under Section II (B) of the SuperNOFA General Section, you must comply with Section 109 of the Housing and Community Development Act of 1974, as amended. Implementing regulations for Section 109 are found under 24 CFR 570, including, but not limited to, reporting and record-keeping requirements under 24 CFR 570.506 and 570.507.

(H) *Conducting Business In Accordance With Core Values and Ethical Standards.* HUD requires that all grantees adhere to core values and ethical business practices, as described in Section II(B)(2) of the General Section of this SuperNOFA as a condition of award.

(I) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-owned Businesses.* HUD requires grantees to take all necessary affirmative steps in contracting with small businesses, small disadvantaged businesses and women-owned businesses in conducting your work activities. Please refer to Section II.(F) of the General Section of this SuperNOFA for specific requirements.

V. Application Selection Process

HUD will conduct two types of review: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application can only be considered for rating and ranking if it is in compliance with both the requirements of the General Section of the SuperNOFA and the following additional standards are met:

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(1) You must be an eligible Alaska Native or Native Hawaiian institution of higher education and meet the other eligibility requirements in Section III(B) of this program NOFA;

(2) If you are an ANI, you request a Federal grant of $600,000 or less over the three-year grant period; or

(3) If you are an NHI, you request a Federal grant of $3 million or less over the three year grant period composed of no more than five separate projects, each in a different neighborhood, and each project for an award of no more than $600,000.

(4) If you are an ANI, there is only one application from your institution or a campus of your institution. If you are an NHI, there is only one application from your institution, no matter how many campuses there are.

(5) At least one of the activities in your application is eligible.

(B) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which:

(1) Knowledge and Experience (5 Points for previously funded applicants and 15 points for previously unfunded applicants) Your application demonstrates the knowledge and experience of the overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning and managing the kinds of programs for which funding is being requested. Experience will be judged in terms of recent, relevant, and successful experience of your staff to undertake eligible activities. In rating this factor, HUD will consider experience within the last 5 years to be recent experience pertaining to the specific activities being relevant and experience producing specific accomplishments to be successful. The more recent the experience and the more recent the experience of your own staff members who work on the project have in successfully conducting and completing similar activities, the greater the number of points you will receive for this rating factor. The following categories will be evaluated:

(a) Undertaking specific successful community development projects with community-based organizations; and

(b) Providing proven leadership in solving community problems and have a direct bearing on the proposed activity.

(2) Past Performance (10 Points for previously funded applicants)

The extent to which you performed successfully under your previous AN/NHAIC grant(s), as measured by:

(a) Your achievement of specific measurable outcome objectives;

(b) Your leveraging of funding beyond the funds originally proposed to be leveraged for that project; and

(c) The effectiveness of your administration of any previous AN/NHAIC grants (including the timeliness and completeness of your compliance with AN/NHAIC reporting requirements and your ability to have resolved problems which presented themselves during the grant period). In addressing timeliness of reports, you should compare when your reports were due with when they were actually submitted.

Full points will be awarded for exceptional performance, which consistently meets and exceeds promised goals.

Rating Factor 2: Need/Extent of the Problem (15 points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting the need in the target area. In responding to this factor, you will be evaluated on the extent to which you document the level of need for the proposed activities and the importance of meeting the need.

You should use statistics and analyses contained in one or more data sources that are sound and reliable. To the extent that your targeted community's Five (5) Year Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identify the level of the problem and the urgency in meeting the need, you should include references to these documents in your response to this factor.

If your proposed activities are not covered under the scope of the Consolidated Plan and AI, you should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include Census reports, HUD Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Comprehensive Plans, community needs analyses such as provided by the United Way, your institution, etc., and other sound and reliable sources appropriate for AN/NHIAC. You may also address needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements.

To the extent possible, the data you use should be specific to the area where the proposed activities will be carried out. You should document needs as they apply to the area where the activities will be targeted, rather than the entire locality or State, unless the target area is the entire locality or State.

Rating Factor 3: Soundness of Approach (40 points)

This factor addresses the quality and cost-effectiveness of your proposed work plan and your actions regarding HUD's priorities and Affirmatively Furthering Fair Housing.

(1) *Quality of the Work Plan* (35 Points). This factor includes your Statement of Work and Budget

(a) *Specific Services and/or Activities* (12 Points). Specifically, HUD will consider the extent to which your proposed activities will:

(i) Expand the role of your institution in its community;

(ii) Alleviate and/or fulfill the needs identified in Factor 2;

(iii) Relate to and not duplicate other activities in the target area.

(iv) Involve and empower the citizens of the target area, targeting specifically faith-based and other community-based grassroots organizations, in all stages of the proposed project (particularly through a committee that is representative of the target community, to guide the project); and

(v) Be disseminated to a wide variety of audiences, both academic and community-based, using a wide variety of media, including print and Internet technology.

(b) *Work Plan Impact* (12 Points). HUD will consider the feasibility of success of your program, the measurable objectives, and how timely your products will be delivered. Specifically, HUD will examine the extent to which:

(i) The project you propose can be completed within the two-year grant period; and

(ii) The objectives are measurable (e.g., the number of loans made, the number of jobs created), result in measurable improvement to the community (e.g., fifteen more homeowners, twenty more jobs in a specific field), and how well you demonstrate that these objectives will be achieved by your proposed management plan and team and will result directly from your activities.

(c) *Involvement of the Faculty and Students* (5 points). The extent to which your application proposes to involve your students and faculty, as part of their coursework in outreach and applied research activities. HUD's goal is to encourage you to fund activities similar to those eligible under the COPC program to be undertaken as a complement to those proposed in your AN/NHIAC application.

(d) *HUD Priorities* (6 points). The extent to which your application will further and support the following priorities of HUD. The quality of the response you provide to one or more of HUD's priorities will determine the score you receive. You will receive one point for each policy priority addressed, up to a total of 6 points. For a fuller explanation of each policy priority, please refer to Section VI. of the General Section of this SuperNOFA

(i) Encouraging Accessible Design Features

(ii) Improving Computer Access, Literacy, and Employment Opportunities

(iii) Providing Full and Equal Access to Faith Based and Other Community Based Organizations in HUD Program Implementation.

(iv) Ensuring that Programs are Accountable for the Promises Made and the Actions Taken.

(v) Increasing Homeownership Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities and the Elderly, and Minorities and Families where English may be a second language

(vi) Improving the Quality of Public Housing and Providing More Choices for its Residents.

(2) *Affirmatively Furthering Fair Housing* (5 points). The extent to which you propose to undertake activities designed to affirmatively further fair housing, for example:

(a) Working with other entities in the community to overcome impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services or lending;

(b) Promoting fair housing choice through the expansion of homeownership opportunities and improved quality of services for minorities, families with children, and persons with disabilities; or

(c) Providing housing mobility counseling services.

Rating Factor 4: Leveraging Resources (10 points)

This factor addresses your ability to secure community resources, which can be combined with HUD program funds to achieve program objectives.

In evaluating this factor, HUD will consider the extent to which you have established partnerships with other entities to secure additional resources to increase the effectiveness of the proposed activities. Resources may include funding or in-kind contributions, such as services or equipment. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities. You may also establish partnerships with other program funding recipients to coordinate the use of resources in the target area.

You may count overhead and other institutional costs (e.g., salaries) that are waived as leveraging. However, higher points will be awarded if you secure leveraging resources from sources outside the institution.

You must provide letters or other documentation showing the extent and firmness of commitments of leveraged funds (including your own resources) in order for these resources to count in determining points under this factor. Any resource for which there is no commitment letter will not be counted, nor will the resource be counted without the proposed level of commitment being quantified. If your application does not include evidence of leveraging, it will receive zero (0) points for this Factor.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (20 points)

This factor addresses the extent to which your project will result in activities that are coordinated with other agencies in the community and can be sustained as part of the mission of your institution.

(1) Coordinated your proposed activities with those of other groups or organizations prior to submission in order to best complement, support, and coordinate all known activities and, if funded, the specific steps you will take to share information on solutions with others. Any written agreements, memoranda of understanding in place, or that will be in place after award, should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities you propose.

(3) Sustainability/Institutionalization of Project Activities. The extent to which your project will result in activities that can be sustained as part of the mission of your institution. In reviewing this subfactor, HUD will consider the extent to which program activities relate to your institution's mission, benefit students because they are part of a service learning program at your institution, and are reflected in the curriculum. HUD will look at your monetary and non-monetary commitments of faculty and staff continuing work in the target area or other areas facing similar challenges, and to your longer term commitment (five years after the start of the grant) of hard dollars to similar work.

(C) *Selections.* For ANI applications, each application will be reviewed and rated based on these selection criteria. For NHI applicants, each project in an application will be reviewed and rated separately. If you are an ANI, you must receive a score of at least 70 points on your application in order to be eligible for funding. If you are an NHI, you must receive a score of at least 70 points for a project in order for that project to be eligible for funding. HUD will fund applications (for ANIs) or projects (for NHIs) in rank order, until it has awarded all available funds. HUD will rank and select applications from Alaska Native institutions and Native Hawaiian institutions separately. If, within either of these two categories, two or more applications (for ANIs) or projects (for NHIs) have the same number of points, the application (for ANIs) or project (for NHIs) with the most points for Factor 3, Soundness of Approach, shall be selected. If there is still a tie, the application (for ANIs) or project (for NHIs) with the most points for Factor 4, Leveraging, shall be selected. If all the funds in one category are not awarded, they cannot be transferred to the other category.

HUD will not fund specific proposed activities that do not meet eligibility requirements (see 24 CFR part 570, subpart C), or do not meet a national objective in accordance with 24 CFR 570.208.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to

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offer an award to the next highest ranking applicant, and proceed with negotiations with that applicant.

(1) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (update information also reported on Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(2) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(3) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537(a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

(4) *Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice, and for not less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing. Materials provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

VI. Application Submission Requirements

You should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard forms" can be found as Appendix A to this program section of the SuperNOFA. The items are as follows:

(A) *SF–424,* Application for Federal Assistance.

(B) *HUD–424M,* Federal Assistance Funding Matrix.

(C) *Transmittal Letter,* signed by the Chief Executive Officer of your institution or his or her designee. If a designee signs, your application must include the official designation of signatory authority. If you are an NHI, this letter should cover your entire application, no matter how many projects are proposed.

(D) *Abstract/Executive Summary* (one page limit for ANIs and three pages for NHIs) describing the goals and activities of the project. If you are an NHI, the abstract should cover your entire application, no matter how many projects are proposed.

(E) *Narrative Statement Addressing the Factors for Award.* (If you are an ANI, there is a 50 page limit including tables and maps, but not including any letters of commitment or budget forms. If you are an NHI, there is a 50 page limit for each separate project, including tables and maps, but not including any letters of commitment or budget forms, with each project responding to all of the Narrative Statement Addressing the Factors for Award Requirements (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.) For FY 2002, the Statement of Work and the Budget are now part of Factor 3, Soundness of Approach.

(1) The Statement of Work incorporates all activities to be funded in your application and details how your proposed work will be accomplished. For each proposed activity, your Statement of Work must:

(a) Arrange the presentation of major related activities (e.g., rehabilitation of a child care center, provision of tutoring services), summarize each activity, identify the primary persons (as described in addressing Rating Factor (1) involved in carrying out the activity and accountable for the deliverables, and delineate the major tasks involved in carrying it out. You should also describe how each activity meets a CDBG national objective.

(b) Indicate the sequence in which tasks are to be performed, noting areas of work that must be performed simultaneously. The sequence, duration, and the products to be delivered should be presented in six-month intervals, up to 36 months.

(c) Identify the specific numbers of quantifiable intermediate and end products and objectives (e.g., the number of houses to be rehabilitated, the number of people to be trained, the number of minority businesses started, etc.) you aim to deliver by the end of the grant period as a result of the work performed.

(2) The budget presentation should be consistent with the Statement of Work and include:

(a) A budget by activity, using Form HUD–30005 included in the application kit and in the program area section of the SuperNOFA. This form separates the Federal and non-Federal costs of each program activity. Particular attention should be paid to accurately estimating costs; determining the necessity for and reasonableness of costs; and correctly computing all budget items and totals.

(b) A narrative statement of how you arrived at your costs, for any line item over $5,000. Indirect costs must be substantiated and the rate must have been approved by the cognizant Federal agency. If you are proposing to undertake rehabilitation of residential, commercial, or industrial structures or acquisition, construction, or installation of public facilities and improvements, you must submit reasonable costs supplied by a *qualified* entity other than your institution. Guidance for securing these estimates can be obtained from the CPD Director in your HUD field office or from your local government.

(c) A statement of compliance with the 20 percent limitation on "Planning and Administration" costs.

(3) Your narrative statement addressing the factors for award should address all factors for award. You should number the narrative in accordance with each factor and subfactor. Please do not repeat material in the Statement of Work.

In addressing Factor 4, for each leveraging source, cash or in kind, you must submit a letter, dated no earlier than the date of this SuperNOFA, from the provider on the provider's letterhead that addresses the following:

- The dollar amount or dollar value of the in-kind goods and/or services committed. For each leveraging source, the dollar amount in the commitment letter must be consistent with the dollar amount you indicated in the Budget;
- How the leveraging amount is to be used;
- The date the leveraging amount will be made available and a statement that it will be for the duration of the grant period;
- Any terms and conditions affecting the commitment, other than receipt of a HUD AN/NHIAC Grant; and
- The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit and the program area section of the SuperNOFA for a sample commitment letter.) If you are an NHI, you should separate your leveraging sources by project and include the appropriate letters in the Narrative Statement for that project.

(G) *Certifications.*

(1) SF–424B, Assurances for Non-Construction Programs

(2) HUD–50071, Certification of Payments to Influence Certain Federal Transactions

(3) SF–LLL, Disclosure of Lobbying Activities (if applicable)

(4) HUD–2880, Applicant/Recipient Disclosure/Update Form

(5) HUD–50070, Certification of Drug-Free Workplace

(6) HUD–2992, Certification Regarding Debarment and Suspension

(7) HUD–2991, Certification of Consistency with the Consolidated Plan and

(8) HUD–2990, Certification of Consistency with the RC/EZ/EC Strategic Plan (if applicable)

(H) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

(I) *Client Comments and Suggestion Form (HUD–2994).* If you wish to offer comments on the AN/NHIAC NOFA of this SuperNOFA or the SuperNOFA process, please complete this form. This form is optional.

You may not submit appendices or general support letters or resumes. If you submit letters of leveraging commitment, they must be included in your response to Factor 4. If you submit other documentation, it must be included with the pertinent factor responses (taking note of the page limit).

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

Selection for award does not constitute approval of any proposed sites. Following selection for award, HUD will perform an environmental review of activities proposed for assistance under this program, in accordance with 24 CFR part 50. The results of the environmental review may require that your proposed activities be modified or that your proposed sites be rejected. You are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Your application constitutes an assurance that your institution assist HUD to comply with part 50; will supply HUD with all available and relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, lease, repair, or construct property and not commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received. In supplying HUD with environmental information, you should use the same guidance as provided in the HUD Handbook entitled "Field Environmental Review Processing for HUD Colonias Initiative Grants" issued January 27, 1998.

IX. Authority

This program was approved by Congress under section 107 of the CDBG appropriation for fiscal year 2002, as part of the FY 2002 HUD Appropriations Act. AN/NHIAC is being implemented through this program section of the SuperNOFA and the policies governing its operation are contained herein.

Appendix A

The non-standard forms, which follow, are required for your AN/NHIAC application.

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Alaska Native/Native Hawaiian Institutions Assisting Communities

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

OMB Approval No. 2528-0206 (exp. 5/31/2003)

Budget Applicant should duplicate this page as necessary.

Activity	Year 1 Federal $	Year 1 Leveraged $	Year 2 Federal $	Year 2 Leveraged $	Year 3 Federal $	Year 3 Leveraged $	Total Federal $	Total Leveraged $
Name of Activity								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Activity								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Grand Totals (this page)								

The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) program. Total public reporting burden for collection of this information is estimated to average 80 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information submitted in response to the notice of funding availability for the AN/NHIAC program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101-235, approved December 15, 1989, 42 U.S.C. 3545). The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

form **HUD-30005** (03/2002)

Alaska Native/Native Hawaiian Institutions Assisting Communities

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

Budget Applicant should duplicate this page as necessary.

Activity	Year 1 Federal $	Year 1 Leveraged $	Year 2 Federal $	Year 2 Leveraged $	Year 3 Federal $	Year 3 Leveraged $	Total Federal $	Total Leveraged $
Name of Activity								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Name of Activity **Planning and Management**								
Direct Labor								
Fringe Benefit								
Materials								
Travel								
Equipment								
Consultants								
Subcontracts								
Other Direct Costs								
Indirect Costs								
Subtotal								
Grand Totals (all pages)								

form **HUD-30005** (03/2002)

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TRIBAL COLLEGES AND UNIVERSITIES PROGRAM (TCUP)

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FUNDING AVAILABILITY FOR TRIBAL COLLEGES AND UNIVERSITIES PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. To assist Tribal colleges and universities to build, expand, renovate, and equip their own facilities.

Available Funds. Approximately $3 million from Fiscal Year 2002 appropriation.

Eligible Applicants: Only tribal colleges and universities that meet the definition of a Tribal College or University (TCU) established in Title III of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244; enacted October 7, 1998)

Application Deadline. June 20, 2002

Match. None.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before 5:30 PM, Eastern time, on June 20, 2002 at HUD Headquarters.

Applications Submission Procedures New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date, when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Address for Submitting Applications. Your completed application consists of an original signed application and two copies of the application. Submit your completed application to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, please refer to TCUP and include your name, mailing address (including zip code) and telephone number (including area code).

HUD will accept only one application per TCU campus for this program. If your institution has multiple campuses, each one many submit a separate application. If your institution submits more than one application, per campus, HUD will ask you to identify which application you want evaluated. Only one application will be evaluated. If you do not respond within the stipulated cure period (see Section VI below), all of your applications will be disqualified. You should take this policy into account and take steps to ensure that multiple applications are not submitted.

For Application Kits. For an application kit and any supplemental material, you should call the SuperNOFA Information Center at 1–800–HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, you should refer to TCUP and provide your name and address (including zip code) and telephone number (including area code). You may also access the application on the Internet through the HUD web site at www.hud.gov./grants.

For Further Information and Technical Assistance. You may contact Armand Carriere of HUD's Office of University Partnerships at 202–708–3061, extension 3181 or Sherone Ivey of the Office of Native American Programs at 202–401–7914, extension 4200. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Mr. Carriere via email at Armand_W._Carriere@hud.gov and Ms. Ivey at Sherone_E._Ivey@hud.gov.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

Approximately $3 million in FY 2002 funds is being made available under this NOFA for TCUP.

The maximum grant period is 24 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested and awarded is $400,000. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, if you submit an application requesting more than $400,000 in HUD funds, the application will be ruled ineligible. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of TCUP is to assist TCUs to build, expand, renovate, and equip their own facilities, especially those facilities that are used by or available to the larger community.

(B) *Eligible Applicants.* Only if your institution is a nonprofit institution of higher education and meets the statutory definition of a TCU in Title III of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244) are you eligible to apply. If you are one of several campuses of the same institution, you may apply separately from the other campuses as long as your campus has a separate administrative structure and budget from the other campuses.

(C) *Eligible Activities.* Each activity you propose for funding must meet one of the following national objectives:

(a) Benefit low- and moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

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(c) Meet other community development needs having a particular urgency and other financial resources are not available to meet such needs.

You may not use any of your grant for public services, as defined in 24 CFR part 570, subpart C, § 570.201(e). You may use no more than 20 percent of your grant for planning and administrative activities, as defined in 24 CFR part 570, subpart C, § 570.206. Grant funds can only be used to build, expand, renovate, and equip facilities owned by your institution. Long-term leases of property (i.e., at least five years in duration) are considered an acceptable form of ownership under this program. Equipment can include, but is not limited to, computers, furniture, books, etc.

While community-wide use of your facility is permissible, the facility must be predominantly for the use of your institution (i.e., it must be used by your institution at least 51% of the time). The facility to be assisted must be for some activity or activities that your institution normally provides, as opposed to activities undertaken by other entities using your facility. Buildings in which your institution undertakes activities are eligible for assistance even if they do not serve those enrolled in your institution. A few examples are provided to show eligible uses of the grant. If your institution operates a small business assistance center, renovation of the facility in which the center is located would be an eligible grant activity, because the center is part of your institution even though it is not serving enrolled students. Conversely, if your institution rents space to another entity that operates a small business assistance center, renovation of the facility in which that center is located would not be an eligible grant activity, unless the space is used by your institution at least 51% of the time. As another example, you could build a new gymnasium solely for your students or propose to offer some physical education classes or other activities in the evening to the larger community. But if you proposed to build a new gymnasium, with the majority of the activities for non-students, or with the activities being primarily run by an outside entity, that would be an ineligible activity.

While you may choose to apply for a grant for any kind of college or university facility, facilities that will be used by or available to the larger community (as long as the use is still predominantly for your institution, as noted above) are eligible to receive extra points where the larger community has participated in the planning and implementation of this project. For example, in order to get these points, you could request a grant to rehabilitate a student union building that would also serve as a community meeting facility, with the community helping to plan the renovations and also helping to operate additional activities. As another example, you could expand a facility currently serving as a small business assistance center where current and potential small business owners helped design the expansion. As a third example, you could equip a computer lab where the larger community helped you identify the equipment needs and will also help in implementing workshops, etc. If you are proposing work on a facility that is solely for your institution (e.g., a dormitory or administration building), you can only get these points if you involve the community in the planning and implementation of the project. See Rating Factor 3 for more details. You should call Armand Carriere or Sherone Ivey at the above numbers if you have any questions about the eligibility of any activities you may propose.

(D) *Other Requirements.*

(1) *Leveraging.* Although a match is not required to qualify for funding, if you claim leveraging from any source, including your own institution, you must provide letters or other documentation evidencing the extent and firmness of commitments of leveraging from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published NOFA. Potential sources of leveraging assistance include your own institution (for both direct and indirect costs), tribes, the Indian housing authorities, financial institutions and private businesses, foundations, and faith-based and other institutions.

(2) *Federal Requirements.* If awarded a grant, you must comply with all Federal requirements, including the following:

(a) If your TCU is a part or instrumentality of a tribe, you must comply with the Indian Civil Rights Act (25 U.S.C. 1301 et seq.), but if your TCU is not a part or instrumentality of a tribe, you must comply with the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 et seq. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1, and Section 109 of the Housing and Community Development Act of 1974, as amended, with respect to nondiscrimination on the basis of age, sex, religion, or disability and implementing regulations at 24 CFR part 6;

(b) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, prohibiting discrimination on the basis of age;

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, prohibiting discrimination against handicapped individuals;

(d) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, requiring that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons;

(e) The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87;

(f) The requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.);

(g) Nondiscrimination provisions of Section 109 and Labor standards of section 110 of the Housing and Community Development Act of 1974 (HCDA 1974)(42 U.S.C. 5301 et seq.), referenced at 24 CFR 570.602 and 570.603, respectively. However, in accordance with HCDA 1974 section 107(e)(2), the Secretary waives the provisions of HCDA 1974 section 109 and 110 with respect to this program for grants to a TCU that is a part of a tribe, i.e., a TCU that is legally a department or other part of the tribal government, but not a TCU that is established under tribal law as an entity separate from the tribal government. If your TCU is not a part of a tribe, the nondiscrimination provisions and labor standards of HCDA section 109 and 110 apply to activities under the grant to your TCU.

(4) *OMB Circulars.* Your grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–21 (Cost Principles for Education Institutions), and A–133 (Audits of States, Local Governments, and Non-Profit Organizations). The application kit contains a detailed explanation of what these costs are. You can access the OMB circulars at the White House website at http://www.whitehouse.gov/OMB/circulars.

(E) *Conducting Business In Accordance with Core Values and Ethical Standards.* HUD requires that all grantees adhere to core values and ethical business practices, as described in section II.(B)(2)) of the General Section of this SuperNOFA.

(F) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD requires grantees to take all necessary affirmative steps in contracting with businesses, small disadvantaged businesses and women-owned businesses in conducting your work activities. Please refer to section II (F) of the General Section of this SuperNOFA for specific requirements.

IV. Application Selection Process

HUD will conduct two types of review: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application can only be rated if it is in compliance with the requirements of this NOFA and the following additional standards are met:

(1) You must be an eligible TCU;

(2) Your application requests a Federal grant of $400,000 or less over the two-year grant period;

(3) There is only one application from your institution or a campus of your institution;

(4) At least one of the activities in your application is eligible.

In addition you must meet the following Civil Rights threshold requirements if your TCU is not a part or instrumentality of a tribe.

If you, the applicant, (1) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; Act by the Secretary alleging ongoing discrimination; (2) are a defendant in a Fair Housing Act lawsuit by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (3) Have received a letter of noncompliance findings under Title VI, Section 504 or Section 109, HUD will not rate or rank your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in this NOFA. HUD's decision regarding whether a charge, lawsuit, or letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. If your TCU is a part or instrumentality of a tribe, there must be no outstanding violataions of Title II of the Civil Rights Act, which requires due process for all activities undertaken by Native American tribes.

(B) *Factors Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100. HUD has five standard factors and several subfactors that it uses for evaluating almost all of its programs. Additionally, the SuperNOFA provides for the award of up to two bonus points for applicants that propose to serve federally designated RC/EZ/ECs, as defined in paragraph III(C)(1) of the General Section of this SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which your application demonstrates the knowledge and experience of the overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning and managing the kinds of programs for which funding is being requested. More points will be awarded for this factor where the experience belongs to members of the TCU staff than where it belongs to consultants, contractors, and other staff outside your institution. In addition, more points will be awarded where the experience belongs to people who will actually work on your proposed project. Experience will be judged in terms of recent, relevant, and successful experience of your staff to undertake activities in:

(a) Developing and equipping facilities for your institution; and

(b) Working with your community on the planning and implementation of projects.

Rating Factor 2: Need/Extent of the Problem (15 points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting this need. In responding to this factor, you will be evaluated on the extent to which you document the level of need for the proposed activities and the importance of meeting the need. You should use statistics and analyses contained in one or more data sources that are sound and reliable. To the extent possible, the data you use should be specific to the area where the proposed activities will be carried out.

Rating Factor 3: Soundness of Approach (45 points)

This factor addresses the quality and cost-effectiveness of your proposed work plan.

(a) *Specific services and/or activities* (10 Points). Specifically, HUD will consider the extent to which your proposed activities will:

(i) Meet an identified important need; and

(ii) Relate to and not duplicate other activities in the target area.

(b) *Community Involvement* (10 points). HUD will consider the extent to which you have involved the community in all stages of the proposed project.

(c) *Work Plan Impact* (10 Points). HUD will consider the feasibility of success of your program, the measurable objectives, and how timely your products will be delivered. Specifically, HUD will examine the extent to which:

(i) The project you propose can be completed within the two year grant period; and

(ii) The objectives are measurable (e.g., the number of classrooms added, the number of additional clients that can be helped in an expanded small business assistance center), result in measurable improvement to the community (e.g., fifty more people receiving computer literacy training, twenty more small businesses started, etc.), and how well you demonstrate that these objectives will be achieved by your proposed management plan and team and will result directly from your activities.

(d) *Involvement of the Faculty and Students* (10 points). The extent to which your application proposes to use students and faculty, as part of their coursework, for project activities. HUD's goal is to encourage students and faculty to be able to use this grant to enhance their education experience and assist their community at the same time.

(e) *HUD Priorities* (5 points). The extent to which your application will further and support the following priorities of HUD. The quality of the response you provide to one or more of HUD's priorities will determine the score you receive. You will receive one point for each policy priority addressed, up to a total of 5 points. For a fuller explanation of each policy priority,

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please refer to Section VI. of the General Section of this SuperNOFA.

(i) Encouraging Accessible Design Features.

(ii) Improving Computer Access, Literacy, and Employment Opportunities

(iii) Providing Full and Equal Access of Faith-Based and Other Community Based Organizations in HUD Program Implementation.

(iv) Ensuring that programs are accountable for the promises made and the actions taken.

(v) Improving the Quality of Public Housing and Providing More Choices for its Residents.

Rating Factor 4: Leveraging Resources (10 points)

This factor addresses your ability to secure community resources, which can be combined with HUD program funds to achieve program objectives.

In evaluating this factor, HUD will consider the extent to which you have established partnerships with other entities to secure additional resources to increase the effectiveness of the proposed activities. Resources may include funding or in-kind contributions, such as services or equipment. Resources may be provided by governmental entities, e.g., the Tribe, the Federal government (Bureau of Indian Affairs, Department of Health and Human Services, Department of Education), etc., public or private nonprofit organizations, for-profit private organizations, or other entities. You may also establish partnerships with other program funding recipients to coordinate the use of resources in the target area.

You may count overhead and other institutional costs (e.g., salaries) that are waived as leveraging. However, higher points will be awarded if you secure leveraging resources from sources outside your institution.

You must provide letters or other documentation showing the extent and firmness of commitments of leveraged funds (including your own resources) in order for these resources to count in determining points under this factor. Commitment letters must state a dollar amount in order to earn points for this factor. If your application does not include evidence of leveraging, it will receive zero (0) points for this Factor.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 points)

This factor addresses the extent to which you have coordinated your activities with other known organizations and are working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which you demonstrate that you have:

(1) Coordinated your proposed activities with those of other groups or organizations prior to submission in order to best complement, support, and coordinate all known activities and, if funded, the specific steps you will take to share information on solutions with others. Any written agreements, memoranda of understanding in place, or that will be in place after award, should be described.

(2) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD/ONAP-funded projects/activities; and

(b) Other Federal, State or locally-funded activities, including those proposed or ongoing in the community.

(3) Sustainability/Institutionalization of Project Activities. The extent to which your project will result in the kinds of proposed activities being sustained by becoming part of the mission of your institution. In reviewing this subfactor, HUD will consider the extent to which program activities relate to your institution's mission, benefit students because they are part of a service learning program at your institution, and are reflected in the curriculum. HUD will look at your monetary and non-monetary commitments to faculty and staff continuing work in the target area or other similar areas and to your longer term commitment (five years after the start of the grant) of hard dollars to similar work.

(C) *Selections.* In order to be funded, you must receive a minimum score of 70 points. HUD will fund applications in rank order, until it has awarded all available funds. If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach, shall be selected. If there is still a tie, the application with the most points for Factor 1, Capacity, shall be selected.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with that applicant.

HUD will not fund specific proposed activities that do not meet one of the national objectives referenced in Section IIIC above. In addition, HUD reserves the right to fund less than the full amount requested in your application if any of your proposed activities is not eligible for funding under the statute creating this program.

(D) Applicant Debriefing. Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to Armand Carriere or Sherone Ivey. Materials provided to you during your debriefing will incude the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

V. Application Submission Requirements

You should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form. Binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances found in the Appendix B to the General Section of this SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard forms," can be found in Appendix A to this program section of the SuperNOFA. The items are as follows:

(A) SF–424, Application for Federal Assistance

(B) HUD–424M, Federal Assistance Funding Matrix

(C) Transmittal Letter

(Signed by the Chief Executive Officer of your institution or his or her designee. If someone else in your institution signs this letter, your application must include an official designation of signing authority to that person.)

(D) Abstract/Executive Summary

(One page limit) describing the goals and activities of the project.)

(E) Narrative Statement Addressing the Factors for Award

(50 page limit, including tables, and maps, but not including any letters of commitment and budget forms.)

(1) The Statement of Work incorporates all activities to be funded in your application and details how your proposed work will be accomplished. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.) For each proposed activity, your Statement of Work must:

(a) Present a step-by-step breakdown of the major activities for which you seek funding (e.g., rehabilitation of a business development center, construction of new classrooms), identify the primary persons (as described in addressing Rating Factor 1) involved in carrying out the activity and accountable for the deliverables, and delineate the major tasks involved in carrying it out. You should also describe how each activity meets one of the national objectives referenced in Section IIIC above.

(b) Indicate the sequence in which tasks are to be performed, noting areas of work that must be performed simultaneously. The sequence, duration, and the products to be delivered should be presented in six month intervals, up to 24 months.

(c) Identify the specific numbers of quantifiable intermediate and end products and objectives (e.g., the number of classrooms added, the number of additional clients that can be helped in an expanded small business assistance center, etc.) you aim to deliver by the end of the grant period as a result of the work performed.

(d) Provide a description of how any proposed new construction or renovation of existing facilities will comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8.21).

(2) The budget presentation should be consistent with the Statement of Work and include:

(a) A budget by activity, using Form HUD–30006 included in the application kit and Appendix B of this NOFA. This form separates the Federal and non-Federal costs of each program activity. Particular attention should be paid to accurately estimating costs; determining the necessity for and reasonableness of costs; and correctly computing all budget items and totals.

(b) A narrative statement of how you arrived at your costs, for any line item over $5,000. Indirect costs must be substantiated and the rate must have been approved by the cognizant Federal agency. If you are proposing to undertake rehabilitation of residential, commercial, or industrial structures or acquisition, construction, or installation of public facilities and improvements, you must submit reasonable costs supplied by a *qualified* entity other than your institution (e.g., an architect, engineer, construction firm, etc.).

(3) Your narrative statement addressing the factors for award should address each of the four factors for award. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.)

In addressing Factor 4, for each leveraging source, cash or in-kind, you must submit a letter, dated no earlier than the date of this NOFA, from the provider on the provider's letterhead that addresses the following:

(i) The dollar amount or dollar value of the in-kind goods and/or services committed. For each leveraging source, the dollar amount in the commitment letter must be consistent with the dollar amount you indicated in the Budget;

(ii) How the leveraging amount is to be used;

(iii) The date the leveraging amount will be made available;

(iv) Any terms and conditions affecting the commitment, other than receipt of a HUD TCUP Grant; and

(v) The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit and Appendix B for a sample commitment letter.)

(G) *Certifications.*

(1) SF–424B, Assurances for Non-Construction Programs or SF–424D, Assurances-Construction Programs, depending on the activities you propose to undertake.

(2) HUD–50071, Certification of Payments to Influence Certain Federal Transactions;

(3) SF–LLL, Disclosure of Lobbying Activities (if applicable);

(4) HUD–2880, Applicant/Recipient Disclosure/Update Form;

(5) HUD–50070, Certification of Drug-Free Workplace;

(6) HUD–2992, Certification Regarding Debarment and Suspension.

(H) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

(I) *Client Comment and Suggestions (HUD–2994).* If you wish to offer comments on the TCUP NOFA, please complete this form. This form is optional.

You may not submit appendices or general support letters or resumes. If you submit letters of leveraging commitment, they must be included in your response to Factor 4. If you submit other documentation, it must be included with the pertinent factor responses (taking note of the page limit).

VI. Environmental Requirements

Environmental Review. Certain eligible activities under this NOFA are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19 (b)(1), (b)(3), (b)(12), or (b)(14). Selection for award does not constitute approval of any proposed sites. If the TCUP application proposes the use of grant funds to assist any non-exempt activities, following selection for award, HUD will perform an environmental review of activities proposed for assistance under the program, in accordance with 24 CFR part 50. The results of the environmental review may require that your proposed activities be modified or that your proposed sites be rejected. You are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Your application constitutes an assurance that your institution will assist HUD to comply with part 50; will supply HUD with all available and relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, demolish, lease, repair, or construct property and not commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received. In supplying HUD with environmental information, you should use the same guidance as provided in HUD Notice CPD–99–01 entitled "Field Environmental Review Processing for HUD Colonias Initiative (HCI) Grants" issued January 27, 1999.

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VII. Authority

This program was approved by the Congress under the CDBG appropriation for Fiscal Year 2001, as part of the FY 2002 HUD Appropriations Act (Public Law 107–73). TCUP is being implemented through this NOFA and the policies governing its operation are contained herein.

Appendix A

The non-standard forms, which follow, are required for your TCUP application.

BILLING CODE 4210–32–P

Budget - Tribal Colleges and Universities Program

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

OMB Approval No. 2528-0215
(exp. 10/31/2004)

Applicant should duplicate this page as necessary

The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Tribal Colleges and Universities Program (TCUP). Total reporting burden for collection of this information is estimated to average 80 hours. This include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information submitted in response to the notice of funding availability for TCUP is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989, U.S.C. 3545). The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

	Activity #1 Name: Cost Item	Grant Request	Leveraged Funds*	Total Cost
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 1 Cost			

	Activity #2 Name:			
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 2 Cost			

*Letters of leveraging costs must accompany the application in order for leveraged funds to be accepted.

Activity #3 Name:			
Cost Item	Grant Request	Leveraged Funds*	Total Cost
1. Administrative and legal expenses			
2. Land, structures, rights-of-way, appraisals, etc.			
3. Relocation expenses and payments			
4. Architectural and engineering fees			
5. Other architectural and engineering fees			
6. Project inspection fees			
7. Site work			
8. Demolition and removal			
9. Construction			
10. Equipment			
11. Miscellaneous			
12. Total Activity # 2 Cost			
Activity #4 Name: Planning and Administration			
1. Direct Labor			
2. Fringe Benefit			
3. Materials			
4. Travel			
5. Equipment			
6. Consultants			
7. Subcontracts			
8. Other Direct Costs			
9. Indirect Costs			
10. Total Activity Cost #3			
Grand Totals (all pages)			

*Letters of leveraging costs must accompany the application in order for leveraged funds to be accepted.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FAIR HOUSING INITIATIVES PROGRAM (FHIP)

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE FAIR HOUSING INITIATIVES PROGRAM (FHIP)

PROGRAM OVERVIEW

Purpose of the Program. To increase compliance with the Fair Housing Act (the Act) and with substantially equivalent State and local fair housing laws.

Available Funds. For FY 2002, approximately $20,250,000 is allocated to three (3) Initiatives as follows:

A. Private Enforcement Initiative (PEI) $11,825,000 million.

B. Education and Outreach Initiative (EOI) $6,325,000 million.

C. Fair Housing Organizations Initiative (FHOI) $2,100,000 million.

Eligible Applicants. Eligibility requirements are described in detail under each of the funded Initiatives and Components, set forth below, and eligible applicants may include: Qualified Fair Housing Organizations (QFHOs); Fair Housing Enforcement Organizations (FHOs); public or private for-profit or not-for-profit organizations or institutions, or other public or private entities that are working to prevent or eliminate discriminatory housing practices; faith-based community-based organizations, State and local governments or their agencies; and Fair Housing Assistance Program (FHAP) agencies (as defined in Section IV of this NOFA).

Application Deadline. May 22, 2002.

Match: No matching funds are required for the Education and Outreach or Private Enforcement Initiatives. However, sponsored organizations under FHOI must meet the requirements described in Section IV (D) below.

ADDITIONAL INFORMATION

If you are interested in applying for funding under the Fair Housing Initiatives Program (FHIP), please review carefully the General Section of this SuperNOFA (hereafter, the General Section), the FHIP Authorizing Statute (Sec. 561 of the Housing and Community Development Act of 1987, as amended) and the FHIP Regulations (24 CFR 125.103–501).

I. Application Due Date, Further Information, and Technical Assistance

A. *Application Due Date.* You must submit completed applications for all Initiatives and Components by 6 p.m., Eastern Time, on or before May 22, 2002 at HUD Headquarters building, at the address shown below.

See the General Section of this SuperNOFA for specific procedures governing the method of application submission (e.g., mailed applications, express mail, or overnight delivery). In addition, review all information on delivery services permitted into HUD Headquarters building without escort.

B. *Address for Submitting Applications.* Your application consists of an original signed application form (SF 424) and all items listed in the Checklist (See Section IV and Appendix C for all submission requirements). Submit your completed application (one original and five copies) to: FHIP SuperNOFA 2002 [Specify the Initiative/Component to which you apply], FHIP/FHAP Support Division, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5224, Washington, DC 20410.

When you submit your application, please provide the following information at the front top left corner of the mailing envelope: your organization's name, name of contact person, mailing address (including zip code), telephone number (including area code), and fax number. Applicants for more than one Initiative or Component must submit six copies for each Initiative or Component for which you apply. See General Section of the NOFA for further information on Consolidated Application Submissions.

C. *For Further Information and Technical Assistance.* You may contact Myron P. Newry or Denise L. Brooks of the FHIP Division, at 202–708–0800 (this is not a toll-free number). Persons with hearing or speech impairments may contact the Division by calling 1–800–290–1617 (this is a toll-free number). Contained in Appendix A of this NOFA is a Question and Answer section, please review this for answers to some of your questions.

Satellite Broadcast. HUD will hold an information broadcast via satellite for prospective applicants to learn more about the program and preparing applications. For more information about the date and time of this broadcast, you should consult the HUD web site at http://www.hud.gov/grants.

II. Amounts Allocated

In Fiscal Year 2002, $20,250,000 was appropriated for the Fair Housing Initiatives Program. This amount is being made available on a competitive basis to eligible organizations responding to this NOFA. The amount available for each Initiative or Component and the maximum amount of funds that can be awarded for each grant are specified as follows:

(A) *Private Enforcement Initiative (PEI).* Approximately $11,825,000 million is allocated; maximum award is $275,000 per grant; project duration is 12 to 18 months.

(B) *Education and Outreach Initiative (EOI).* Approximately $6,325,000 million is allocated to the Regional/Local/Community-Based Program and a National Program. The maximum award is $100,000 for the Regional/Local/Community-Based Program and the project duration is 12 months. The maximum award for the National Program is $1,000,000 and the project duration is 12 months for the Media Campaign Component and 24 months for the Fair Housing Awareness Component. EOI has four Components: Regional/Local/Community-Based Programs:

(1) EOI—General Component. Approximately $3,500,000 million is allocated.

(2) EOI—Disability Component. Approximately $825,000 is allocated.

National Program:

(3) Media Campaign Component. Approximately $1,000,000 is allocated.

(4) Fair Housing Awareness Component. Approximately $1,000,000 is allocated.

(C) *Fair Housing Organizations Initiative (FHOI).* Approximately $2,100,000 is allocated; project duration is three years. Maximum award is $1,050,000 allocated over a three year period at up to $350,000 per year.

III. Program Description; Eligible Applicants; Eligible Activities

A. *Program Description.* The Fair Housing Initiatives Program (FHIP), 24 CFR part 125, assists fair housing activities that increase compliance with the Fair Housing Act (the Act) and with the substantially equivalent fair housing laws administered by state and local government agencies [Fair Housing Assistance Program Agencies (FHAP)]. Applications submitted for funding under EOI are required to describe a complaint referral process that should result in referrals to HUD of fair housing complaints and other information regarding discriminatory housing practices. Applications selected for funding under PEI and FHOI must comply with the *Mandatory Referral* requirement described in Section IV(B) of this NOFA.

B. *Changes to this year's NOFA.* To improve the FHIP NOFA, a number of changes have been made this year. There are 2 new EOI National Program Components: the Media Campaign and the Fair Housing Awareness Components. The project duration for EOI Regional/Local/Community-Based Program and the National Program Media Campaign awards is 12 months and for the National Program's Fair

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Housing Awareness Component 24 months. For FHOI, the project duration is 3 years. Changes also have been made in how the applications are rated.

For EOI: See Section V (D) "Factors for Award Used to Evaluate and Rate Regional/Local Community-Based Applications" of this NOFA on changes to EOI—General.

For FHOI: HUD has determined that rural areas and areas with immigrant populations (especially racial and ethnic minorities who are not English speaking or have limited English proficiency) are underserved. These underserved areas include: the Colonias, rural areas, or areas that contain large concentrations of persons protected under the Act where either no public or private fair housing enforcement organization exists or the jurisdiction is not sufficiently served by one or more public or private fair housing enforcement organizations.

For PEI: We have increased the award cap from $250,000 to $275,000. In addition, we have eliminated the requirement that applicants with current PEI grants be excluded from participating in this year's NOFA.

Finally, for PEI and FHOI, a total of 5 points will be deducted if the applicant is an organization that has received FHIP funding in the past to conduct enforcement-related activities has not complied with the program requirements regarding mandatory referrals and reimbursement of the Federal government for compensation resulting from FHIP-funded enforcement activity. If you have received PEI funds previously, your application should clearly state how you have complied with this requirement.

Other Changes. This year HUD will take into account an applicant's past performance in evaluating applications for funding. HUD will assess performance ratings for applicants who have received FHIP funding in 1998, 1999, or 2000. If the applicant has received a "poor" performance rating for its most recent performance rating from its Government Technical Representative, its application is ineligible for FY 2002 competition. An applicant that does not agree with its determination of ineligibility for the FY 2002 competition because of "poor" performance must address to HUD's satisfaction the factors resulting in the "poor" performance rating before the FHIP application deadline. If the "poor" performance rating is not resolved to the Department's satisfaction before the application deadline, the application remains ineligible. HUD is interested in increasing the performance level of all grantees; therefore, applicants who are deemed ineligible because of a "poor" performance rating have the right and are encouraged to seek technical assistance from HUD to correct their performance in order to be eligible for future NOFA competition. All other applicants who have not received FHIP funding, or have received FHIP funding prior to 1998 will be evaluated on past performance as outlined in Rating Factor 1.

Finally, applicants must submit with their application a written code of conduct and a description of the methods you will use to ensure that all officers, employees and agents of your organization become aware of your code of conduct (See General Section). [Additional clarification is provided in Appendix A, Most Frequently Asked Questions.]

Bonus Points: See General Section III (C) "Factors For Award Used to Evaluate and Rate Applications" for information on how Bonus Points will be awarded under this SuperNOFA.

C. *Ineligible Activities.* You are reminded to read carefully the eligibility requirements for each Initiative and Component. Enforcement-related activities are not eligible for funding under EOI and there is a limit on the amount of education-related activities that can be funded in an enforcement grant (PEI or FHOI). No awardee may use FHIP funds to settle a claim, satisfy a judgment, or fulfill a court order in any defensive litigation (24 CFR 125.104(f)).

D. *Priorities.* Immigrant populations (especially racial and ethnic minorities who are not English speaking or have limited proficiency in English) often face formidable barriers because of discriminatory housing practices. It is especially important that fair housing services be directed to these underserved and immigrant populations and to the specific types of discrimination they may encounter. All applicants are encouraged to address the fair housing needs of these populations.

For FHOI, HUD will fund applications that purpose to provide services in underserved areas (See Section III (B)(1)(b) of this NOFA.

HUD expects applicants to address all forms of housing discrimination covered under the Fair Housing Act. In addition, since the September 11, 2001 attacks in the United States, incidents of bias based on religion and national origin have been on the rise. Applicants should specifically address discrimination under the Fair Housing Act based on national origin and religion and describe education and outreach efforts to these vulnerable communities to provide information about their fair housing rights.

Finally, HUD has determined there is a need to ensure equal opportunity and access to housing in communities across the nation. Applicants submitting applications to the Education and Outreach National Program's two Components (Media Campaign Component and Fair Housing Awareness Component) must address this need. For the Media Campaign Component, applicants are required to provide a centralized and coordinated effort for the development and implementation of a fair housing media campaign designed to educate the public about their fair housing rights. The Fair Housing Awareness Component will provide education and outreach to promote public awareness on predatory lending.

(A) *Private Enforcement Initiative (PEI).* This Initiative assists private, tax-exempt fair housing enforcement organizations in the investigation and enforcement of alleged violations of the Act and substantially equivalent State and local fair housing laws. As a condition of funding, you will be required to refer to HUD all cases arising from FHIP-funded enforcement activities (see Mandatory Referrals, Section IV below).

(1) *Eligible Applicants.* Eligible applicants are fair housing enforcement organizations (FHOs) with at least one year of experience in complaint intake, complaint investigation, testing for fair housing violations, and meritorious claims in the two years prior to the filing of this application (24 CFR 125.401(b)(2)) and qualified fair housing enforcement organizations (QFHOs) with at least two years of enforcement-related experience, as noted above, within the three years prior to filing this application, (24 CFR 125.103). You must certify, in the Statement of Eligibility that you submit with this application, that your organization is an FHO or a QFHO and document in the Statement of Eligibility that your organization has the required one or two years of enforcement-related experience. Remember, if you fail to submit the completed Statement of Eligibility (Appendix C), this will be a technical deficiency and you will have 14 days to provide the requested materials (Section V of the General Section of the SuperNOFA). All applicants claiming QFHO and FHO status are required also to submit with their application a copy of its Letter of Determination from the Internal Revenue Service (IRS) in support of its 501(c)(3) tax-exempt status. However, failure to provide this document with your application is a technical deficiency and you will have 14 days to provide the requested information (Section V of the General Section of the SuperNOFA).

(2) *Eligibility of Successor Organization.* HUD recognizes that QFHOs and FHOs may merge with each other or other organizations. The merger of a QFHO or an FHO with a new organization, that has a separate Employer Identification Number (EIN), does not confer QFHO or FHO status upon the successor. To determine whether the successor organization meets the eligibility requirements for this Initiative, HUD will look at the enforcement-related experience of the successor organization (based upon the successor organization's EIN). The successor organization is not eligible to apply under this Initiative unless it establishes in the Statement of Eligibility that it is a private, tax-exempt organization with the requisite two years for a QFHO or one year experience for an FHO.

(3) *Eligible Activities* include:

(a) Complaint intake of allegations of housing discrimination, testing, evaluating testing results, or providing other investigative and complaint support for administrative and judicial enforcement of fair housing laws;

(b) Investigations of individual complaints and systemic housing discrimination for further enforcement processing by HUD, through testing and other investigative methods;

(c) Mediated agreements or other voluntary resolution of allegations of fair housing discrimination after a complaint has been filed; and

(d) Costs and expenses of litigating fair housing cases, including expert witness fees.

(B) *Education and Outreach Initiative (EOI).* This Initiative assists projects that inform the public about the rights and obligations under the Act and substantially equivalent State and local fair housing laws. Under this Initiative, you must develop a complaint referral process so that activities funded under this Initiative will result in referrals to HUD of fair housing complaints and other information regarding possible discriminatory housing practices. Applications are solicited for the EOI-Regional/Local/Community-Based Program—in which activities are conducted on a regional/local/community-based level and in a National Program. You may submit your application for the Regional/Local/Community-Based General Component or Disability Component or the National Program's Media Campaign Component or Fair Housing Awareness Component depending upon its focus.

(1) *Eligible Applicants.* Eligible applicants are QFHOs; FHOs (under this Initiative an FHO is not bound by the requirement to have engaged in enforcement-related activity for at least one year, (24 CFR 125.103); public or private, for-profit or not-for-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices (this category includes entities that will be established as a result of receiving an award under this FHIP NOFA); faith-based or community-based organizations; State or local governments or their agencies; and agencies that participate in the FHAP (see the list of FHAP agencies at Appendix D). If you are a disability advocacy group, faith-based or community-based organization or traditional civil rights organization, you are encouraged to apply under this Initiative.

(2) *Eligible Activities.* The following are eligible activities for EOI: conducting educational symposia; distributing existing fair housing materials throughout your project area; providing outreach and information on fair housing through printed and electronic media; and providing outreach to persons with disabilities and/or their support organizations and service housing providers, and the general public regarding the rights of persons with disabilities under the Act. When conducting your outreach activities, we encourage the use of existing, locally or nationally available fair housing materials; except that you may modify those existing materials in languages other than English.

The Components for the Regional/Local/Community-Based Program are described below:

Disability Component. Applications that emphasize the fair housing needs of persons with disabilities, so that persons with disabilities, housing providers and the general public better understand the rights and obligations under the Act and more fully appreciate the forms of housing discrimination that persons with disabilities may encounter, should submit their applications to the EOI—Disability Component. Although the Component has a disability focus, the funded activities must provide education and outreach to all persons protected under the Act.

General Component. Applications for all other fair housing education and outreach activities should be submitted to the EOI-General Component. One point will be awarded for applications from faith-based or community-based organizations or organizations that propose to either partner or sub-contract with faith-based or community-based organizations in conducting their work programs. Applicants who are submitting applications in conjunction with a faith-based or community-based organization must include in their application a letter of firm commitment from that faith-based or community-based organization. This letter of firm commitment must: (1) identify the faith-based or community-based organization; (2) identify the activities/tasks to be undertaken by the faith-based or community-based organization under this project; and (3) be signed by the individual or organization with legal authority able to make commitments for the organization.

Finally, up to three points will be awarded for applications specifically addressing housing discrimination based on national origin and religion since the September 11, 2001 attacks, as described in Section III(D), Priorities, of this NOFA.

The Components for the *National Program* are described below:

Media Campaign Component. Activities for funding must provide a centralized, coordinated effort for the development and implementation of a fair housing media campaign designated for FY 2003 Fair Housing Month activities. Additional information on the EOI-National Program is contained within this NOFA under the Factors for Award—National Program Media Campaign Component.

Fair Housing Awareness Component. Grantees must conduct a national campaign to educate the public on the dangers of abusive lending practices that target specific neighborhoods or vulnerable segments of the population. Additional information on the EOI National Program is contained within this NOFA under the Factors for Award—National Program Fair Housing Awareness Component.

(C) *Fair Housing Organizations Initiative (FHOI).* This Initiative provides assistance to projects that establish or build the capacity of organizations to become viable fair housing enforcement organizations that conduct fair housing enforcement activities in underserved areas (as defined in Section IV) with large concentrations of persons protected by the Act. This is accomplished with the assistance of a sponsoring organization. It is the sponsoring organization that submits the application under this Initiative. The sponsored organization whose enforcement capacity is established or enhanced by funding under this Initiative, will be allowed to participate in this Initiative for three

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years contingent upon annual performance reviews. Funds are allocated under this NOFA for 3 years and may be distributed to the sponsored organization by the sponsoring organization. The sponsoring organization may expend FHIP funds for administrative costs as described below. HUD has targeted for funding under this Initiative projects that will provide fair housing enforcement services to the Colonias, rural areas, or to areas with large concentrations of individuals who fall within one or more categories protected under the Act and who are immigrants (especially racial and ethnic minorities who are not English speaking or have limited English proficiency).

(1) *Eligible Applicants.* Only the sponsoring organization is eligible to apply under this Initiative. The sponsoring organization must be a qualified fair housing enforcement organization (QFHO) with at least 2 years of experience in complaint intake, complaint investigation, testing for fair housing violations, and meritorious claims in the 3 years prior to the filing of this application, as defined at 24 CFR 125.103. You must certify in the Statement of Eligibility that you submit with this application that your organization is a QFHO. Remember, if you fail to submit the completed Statement of Eligibility (Appendix C), this will be a technical deficiency and you will have 14 days to provide the requested materials (see Section V of the General Section of the SuperNOFA on technical corrections that do not affect scoring). You are also required to submit a copy of your IRS tax-exempt status with your application. However, failure to provide this document with your application is a technical deficiency, and you will have 14 days to provide the requested information (see Section V of the General Section of the SuperNOFA).

Eligibility of Successor Organization. HUD recognizes that a QFHO may merge with one or more organizations. The merger of a QFHO into a new organization, that has a separate Employer Identification Number (EIN), does not confer QFHO status upon the successor organization. To determine whether the successor organization meets the eligibility requirements for this Initiative, HUD will consider the enforcement-related experience of the successor organization (based upon the successor organization's EIN). The successor organization is not eligible to apply under this Initiative unless it can establish that it is a private, tax-exempt organization with the requisite 2 years of experience as a QFHO.

(2) *Eligible Activities.* The proposed activities must build the enforcement capacity of the sponsored organization so that it can undertake all of the following activities by the conclusion of year 3 of the grant cycle:

(a) Complaint intake of allegations of housing discrimination, testing, evaluating testing results or providing other investigative and complaint support for administrative and judicial enforcement of fair housing laws;

(b) Investigations of individual complaints and systemic housing discrimination for further enforcement processing by HUD, through testing and other investigative methods;

(c) Mediation or other voluntary resolution of allegations of fair housing discrimination after a complaint has been filed; and

(d) Costs and expenses of litigating fair housing cases, including expert witness fees.

(3) *Administrative Costs for the Sponsoring Organization.* The sponsoring organization may use no more than 15 percent of the annually awarded funds to cover its costs to administer the grant

IV. Program Requirements

(A) Requirements for All Initiatives.

In addition to the Threshold Requirements in Section II(B) of the General Section of this SuperNOFA, your FHIP-funded program application must also meet the following requirements:

(1) *Protected Basis.* All FHIP-funded projects must address housing discrimination based upon race, color, religion, sex, disability, familial status, or national origin.

(2) *Broad-Based and Full-Serviced.* Your organization must conduct a broad-based and full-service enforcement project that addresses discrimination against all persons protected by the Fair Housing Act on the basis of race, color, religion, sex, disability, familial status, or national origin.

(3) *Performance Measures and Products.* Your application must demonstrate how your project activities will support HUD goals, identify performance measures/outcomes in support of those goals, describe your proposed record-keeping and evaluation systems, and identify current (baseline) conditions and target levels of the performance measures that you plan to achieve. Your application also must contain a strategy for generating project products, with related timelines and milestones. In addition, you must include in your application and work plan program measures to ensure that promises made in your application for persons to be assisted, timelines and budgets to be followed, and results to be achieved can be accounted for and independently assessed to ensure performance goals have been met. Applicants who have included means of assessing progress, tracking performance goals and achievements against promises made in the application will receive higher rating points. If selected for funding, your final performance measures will be negotiated between you and HUD as part of your executed grant agreement.

(4) *Reports and Meetings on Performance Measures and Products.* You are required to report quarterly on the status of project products against your approved milestones and timelines and meet at least semi-annually with HUD to ensure that project activities satisfy grant requirements. In your final grant report, you must describe the status of performance measures in a spreadsheet format or other manner specified by the Department.

(5) *Single Award Limitation/ Preference Must Be Stated.* You may submit applications under all Initiatives and Components for which your organization is eligible but you will receive only one grant with the exception that successful FHOI applicants may receive a grant award under one of the other Initiatives. If you submit more than one application for funding, you must clearly state your preference in two places in each application you submit: (i) the Transmittal Letter and (ii) the Cover Page. The Selecting Official may disregard your preference if it is in the best interest of the Program to do so. Failure to submit your preference at the time of application will be treated as a technical deficiency, which may be corrected as noted in Section V of the General Section of this SuperNOFA.

(6) *Independence of Awards.* HUD will review each application separately and without reference to other applications submitted by you or others. You may submit one application to each of the Initiative/Components outlined in this NOFA. However, each application you submit must be independent and capable of being implemented without reliance on the selection of other applications submitted by you or other applicants.

(7) *Project Starting Period.* For planning purposes, assume a start date no later than thirty days after completion of negotiations. Negotiations are estimated to start on or before September 30, 2002.

(8) *Page Limitation and Formatting Requirements.* All pages in your application must be numbered consecutively from beginning to end. The maximum number is 10 pages per factor. This does not include any attachments that may be required under each factor (for example, the proposed statement of work and budget required under Factor 3: Soundness of Approach). The narrative pages must be double-spaced and you are required to use 12 point typesize. You must respond fully to each factor to obtain maximum points. Failure to: provide narrative responses to all factors or omitting requested information will result in less than the maximum points available for the given Rating Factor for Award or subfactor. Failure to provide double spaced, 12 point typesize narrative responses will result in five points being deducted from your overall score (one point per factor).

(9) *Training funds.* Your proposed budget must set-aside funds to participate in HUD-sponsored or approved training ($3,000 for EOI and PEI annually; and $6,000 annually for FHOI). Requests to attend HUD-approved training must be submitted to the GTR for approval in advance of the requested training. Do not include amounts over the $3,000 or $6,000 (as appropriate) for the training set-aside in this category. If applicants do not include these funds in the budget and you are selected for an award, HUD may modify your budget, reallocating the appropriate amount for training.

(10) *Payment Contingent on Completion.* Payment of FHIP fund is made on a reimbursement basis. Payments are contingent on the satisfactory and timely completion of your project activities and products as reflected in your grant or cooperative agreement. Requests for funds must be accompanied by financial and progress reports.

(11) *Accessibility Requirements.* All activities, facilities, and materials funded by this Program must be accessible to persons with disabilities (24 CFR 8.2, 8.4, 8.6, and 8.54).

(12) *Copyright Materials.* You may copyright any work that is eligible for copyright protection subject to HUD's right to reproduce, publish, or otherwise use your work for Federal purposes, and to authorize others to do so as required in 24 CFR 84.36.

(13) *Complaints Against Grantees/ Cooperative Agreements.* Each FHIP grantee/cooperative agreement is overseen by a HUD Grant Officer. Complaints from the public against FHIP grantees should be forwarded to the Grant Officer. The Grant Officer's name and contact information is provided in the grant/cooperative agreement. If, after notice and consideration of relevant information, the Grant Officer concludes that there has been inappropriate conduct, such as a violation of FHIP program requirements, grant, or cooperative agreement terms or conditions or any other applicable statute, regulation or other requirement, HUD will take appropriate action in accordance with 24 CFR 84.62. Such action may include: written reprimand; consideration of past performance in awarding future FHIP applications; repayment to HUD of funds received under the grant; or temporary or permanent denial of participation in the FHIP in accordance with 24 CFR part 24.

(14) *Avoiding Double Payments.* If you are awarded funds under this NOFA, you (and any subcontractor or consultant) may not charge or claim credit for the activities performed under this project to any other Federal project.

(15) *Ineligible Activities.*

(a) *Fair Housing and Free Speech.* None of the amounts made available under this NOFA may be used to investigate or prosecute under the Act any activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action that is protected by the First Amendment to the U.S. Constitution. This includes activities engaged in for the purpose of achieving or preventing action by a government official or entity.

(b) *Insurance Testing.* HUD will fund organizations who conduct insurance-related enforcement work under the FHIP, but no project will focus exclusively on this issue.

(16) *Key Personnel.* If your organization is selected for award, you must certify to HUD (HUD Form 40076) whether any staff member identified in the proposal or proposed to be hired (including signator on the SF–424) has been convicted of a felony or crime involving fraud or perjury. In advising HUD, you must specify the crime(s) for which the person was convicted, the date entered, and the penalty received and submit a copy of the report from the police or court documenting the conviction. Depending upon the facts, HUD may place special conditions upon the grantee or the particular person's participation in grant funded activities.

(17) *Definitions.* The definitions that apply to this FHIP section of the NOFA are as follows:

Broad-based proposals those that include activities that are not limited to a single fair housing issue; instead, they cover multiple issues related to housing discrimination covered under the Act, such as: rental, sales and financing of housing. (See also Full Service Projects below)

Colonias (See General Section).

Complainant means the person (including the Assistant Secretary) who files a complaint under Section 810 of the Act.

Disability advocacy groups mean organizations that traditionally have provided for the civil rights of persons with disabilities. This would include organizations such as Independent Living Centers, and cross-disability legal services groups. Such organizations must be experienced in providing services to persons with a broad range of disabilities, including physical, cognitive, and psychiatric/mental disabilities. Such organizations must demonstrate actual involvement of persons with disabilities throughout their activities, including on staff and board levels.

Enforcement proposals are potential complaints under the Act that are timely, jurisdictional, and well-developed, that could reasonably be expected to become enforcement actions if an impartial investigation finds evidence supporting the allegations and the cases proceeded to a resolution with HUD involvement.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

Fair Housing Assistance Program (FHAP) Agencies mean State and local government agencies that administer laws substantially equivalent to the Act, as described in 24 CFR part 115 and receive FHAP funds.

Fair Housing Enforcement Organization (FHO) means an organization engaged in fair housing activities as defined in 24 CFR 125.103.

Faith-based and Other Community-based Organizations (See General Section).

Full-service projects must include the following enforcement-related activities in your project application: interviewing potential victims of discrimination; analyzing housing-related issues; taking complaints; testing; evaluating testing results; conducting preliminary investigations; conducting mediation; enforcing meritorious claims through litigation or referral to administrative enforcement agencies; and disseminating information about fair housing laws.

Meritorious claims mean enforcement activities by an organization as defined in 24 CFR 125.103.

Operating budget means your organization's total planned budget expenditures from all sources, including

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the value of in-kind and monetary contributions, in the period for which funding is requested.

Qualified Fair Housing Enforcement Organization (QFHO) means an organization engaged in fair housing activities as defined in 24 CFR 125.103.

Regional/Local/Community-Based Activities are defined at 24 CFR 125.301(a) & (d).

Rural Areas, according to the Rural Housing and Economic Development Program of Community Planning and Development (CPD), may be defined in one of five ways:

(i) A place having fewer than 2,500 inhabitants (within or outside of metropolitan areas).

(ii) A county with no urban population (i.e., city) or 20,000 inhabitants or more; territory, persons and housing units in the rural portions of 'extended cities.'

(iii) The rural portions of extended cities in the United States as identified by the U.S. Census Bureau.

(iv) Open country which is not part of or associated with an urban area. The United States Department of Agriculture (USDA) describes open country as a site separated by open space from any adjacent densely populated urban area. Open space includes undeveloped land, agricultural land, or sparsely settled areas, but does not include physical barriers (such as rivers or canals) public parks, commercial and industrial developments, small areas reserved for recreational purposes, and open space set aside for future development.

(v) Any place with a population not in excess of 20,000 and that is not located in a Metropolitan Statistical Area.

Traditional Civil Rights Organizations mean non-profit organizations or institutions and/or private entities with a history and primary mission of securing Federal civil rights protection for groups and individuals protected under the Act or substantially equivalent State or local laws and that are engaged in programs to prevent or eliminate discriminatory housing practices.

Underserved Areas mean jurisdictions that contain large concentrations of persons protected under the Act and where either no public or private fair housing enforcement organizations exist or the jurisdiction is not sufficiently served by one or more public or private enforcement fair housing organizations. (See definitions of Colonias, Faith-based and Community-based organizations above).

Underserved Populations mean groups of individuals who fall within one or more of the categories protected under the Act and who are also: (1) Of an immigrant population (especially racial and ethnic minorities who are not English-speaking or with limited English proficiency), (2) in rural populations, (3) persons living in the Colonias, (4) the homeless, and (5) persons with disabilities who can be historically documented to have been subject to discriminatory practices not having been the focus of Federal, State or local fair housing enforcement efforts.

(18) *Grant/Cooperative Agreements.* The type of funding instrument HUD may offer a successful applicant will be a grant/cooperative agreement which sets forth the relationship between HUD and the grantee where the principal purpose is the transfer of funds, property, services, or anything of value to accomplish a public purpose. The agreement will identify the eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violations of the agreement. HUD will monitor your progress using provisions of your grant/cooperative agreement to ensure that you have achieved the objectives set out in your agreement. Failure to meet such objectives would be the basis for HUD determining your agreement in default and exercising available sanctions, including suspension, termination, and/or the recapture of your grant/cooperative agreement funds. Also HUD may refer violations or suspected violations to enforcement offices within HUD, the Department of Justice, or other enforcement authorities.

(19) *Reallocation of Funds.* If after all applications within funding range have been selected or obligations are completed in an Initiative and funds remain available, the selecting official or designee will have the discretion to reallocate leftover funds in rank order between Initiatives as follows:

(a) for EOI, any remaining funds from any component will be reallocated first within the Initiative; if after reallocating funds within the Initiative left over funds remain, they shall be reallocated to PEI then to FHOI;

(b) for PEI, any remaining funds will be reallocated to EOI then to FHOI;

(c) for FHOI, left over funds will be reallocated to PEI then to EOI.

Reallocated funds will be awarded within Initiative as described in Section V of this NOFA.

(20) *Affirmatively Furthering Fair Housing.* A separate AFFH submission is not required for FHIP because the purpose of the program is to further fair housing.

(21) *Conducting Business in Accordance with Core Values and Ethical Standards.* (See General Section. Refer also to the discussion on Code of Conduct above).

(22) *Product Information.* Press releases and any other product intended to be disseminated to the public must be submitted to the Government Technical Representative (GTR) 2 weeks before release for approval and acceptance.

(23) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women Owned Businesses.* See General Section.

(B) Additional Requirements For PEI and FHOI

(1) *Mandatory Referrals.* You must refer to HUD all cases arising from FHIP-funded enforcement activities. In all FHIP-funded cases where you find a basis for filing a complaint on behalf of a complainant other than your organization, you must file the complaint with HUD unless the complainant declines to do so in writing. In addition to filing complaints with HUD, a complainant may file a civil action in Federal or State Court.

(2) *Outreach Expenses.* The funds awarded for enforcement grants may be used for outreach and education activities (hereafter, outreach activities) in order to promote awareness of your project's services, as follows: under FHOI, you may provide for up to 10 percent of the requested funds for the sponsored organization to be used for outreach activities; under PEI, you may designate up to 5 percent of the requested funds for outreach activities.

(3) *Tester Requirements.* Testers in your FHIP-funded testing activities must not have prior felony convictions or convictions of crimes involving fraud or perjury. All testers must receive training acceptable to HUD or be experienced in testing procedures and techniques. Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(a) Have an economic interest in the outcome of the test; except to the extent that they could recover damages as provided by law;

(b) Be a relative related by adoption, blood, or marriage of any party in a case;

(c) Have had any employment or other affiliation, within the past year, with the person or organization to be tested; or

(d) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

(4) *Review and Approval of Testing Methodology.* If your SOW proposes testing, other than rental housing testing, HUD may require copies of the following documents to be reviewed and approved by HUD prior to your carrying out the testing activities:

(a) The testing methodology to be used,

(b) The training materials to be provided to testers, and

(c) Other forms, protocols, cover letters, etc., used in the conduct of testing and reporting of results.

The testing methodology and training materials that you submit to HUD for review and approval are for enforcement purposes and will remain confidential.

(5) *Conflict of Interest and Use of Settlement Funds.*

(a) You may not solicit funds from or seek to provide fair housing educational or other services or products for compensation either directly or indirectly to any person or organization that has been the subject of FHIP-funded testing by your organization during the 12-month period following the test. This does not preclude providing training or technical assistance that is court ordered or contained in a negotiated settlement. HUD reserves the right to impose additional provisions addressing potential conflicts of interest.

(b) You must reimburse the United States for FHIP-funded activities whenever you receive funds as the result of enforcement activities funded in whole or in part by the FHIP program, including testing. You must provide information about reimbursements and/or potential reimbursements in a report that you submit to HUD (see Reports below). Terms for reimbursing the United States will be specified in your grant or cooperative agreement. This reimbursement requirement does not apply to compensation received as a result of a judgment in Federal or State Court. Calculate your reimbursement on a per complaint basis. Identify the complaint, then subtract the amount of non-FHIP funds from the amount of FHIP funds used to resolve the complaint. The difference is the amount owed. For example:

FHIP grant of $15,000 ($10,000 which is for testing: 20 tests @ $500 each). One test results in a $15,000 conciliation/settlement. Additional expenses paid from non-FHIP funds: $100.
Total FHIP funds for the settlement activity that resulted in collected funds: $400.00 Calculation
$500 (Amt. of FHIP funds in activity resulting in conciliation/settlement) – *$100 (Non–FHIP funds used in the same activity)*
Total $400 to be repaid to HUD.

(6) *Reports.* You must provide reports in a format (which may be computer-generated), at a frequency and with contents specified by HUD. At a minimum, the report must include the number and basis of complaints filed with HUD, with a FHAP agency, or in Federal/State Court as well as the number and terms of settlements or other outcomes achieved. If HUD does not prescribe a format or frequency, you will provide a narrative report within 90 days after all grant activities have ended or at the end of each 12-month period of the grant, whichever comes first. You do not have to disclose the terms of settlements or judgment that a court or other tribunal orders be kept confidential. You will also be required to provide status reports on case referrals you have made to HUD or a FHAP agency. These reports are for enforcement purposes and will remain confidential.

(7) *Enforcement Log.* You are required to record information about the funded project in a case tracking log (or Fair Housing Enforcement Log) in a format prescribed by HUD. Such information must include: the number of complaints of possible discrimination you have received; the protected basis of these complaints; the issue, test type, and number of tests utilized in the investigation of each allegation; the respondent type and testing results; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; the entity to which the case was referred; and the resolution and type of relief sought and received. You must agree to make this log available to HUD. This log will be considered confidential for enforcement purposes.

(8) *Attachments.* All PEI and FHOI applicants must submit a Statement of Eligibility. All applicants must submit resumes, or position description in lieu of resume, of all key personnel; for those who have received funding for other projects, a copy of the most recent performance assessment from the funding source, if it was a HUD funded project, the most recent SF 269. In addition, FHOI, and PEI applicants must submit the Internal Revenue Service's, Letter of Determination declaring your Section 501(c)(3) status as a tax-exempt organization.

(C) Additional Requirements for Education and Outreach Initiative

Complaint Referral Process. EOI activities do not end with the delivery of educational activities. Their purpose is to enable persons who believe they have experienced housing discrimination to file complaints for investigation and relief. EOI applicants must develop a process for referring fair housing complaints to HUD or substantially equivalent entities under the Act. HUD expects this complaint referral process will result in referrals to HUD of fair housing complaints and other information regarding discriminatory housing practices.

(D) Additional Requirements for Fair Housing Organizations Initiative

Sponsored organization's viability and fair housing enforcement capacity. Over the duration of the grant, the sponsored organization must demonstrate its capacity to become a viable, fair housing enforcement organization that conducts fair housing-related enforcement activities and leverages non-FHIP resources. These are the performance measures that, if not met, may result in termination of the grant, and your description for achieving these measures will be considered when HUD evaluates your application. We will look for this description in your response to Rating Factor 3: Soundness of Approach. Specifically, the application must address:

(a) Fair Housing-related enforcement activities. The sponsored organization must conduct all enforcement-related activities by the conclusion of year 3 of the grant: complaint intake, complaint investigation, testing for fair housing violations, and meritorious claims. Your application must identify which activities the sponsored organization will conduct at the end of the grant year 1, 2 and 3. Your performance measures will be based upon this description, and failure to meet them may result in termination of your grant or cooperative agreement.

(b) Organizational resources. The sponsored organization must not rely exclusively on FHIP funding. At the conclusion of each grant year, the sponsored organization must show increasing support from sources other than what is awarded under this program. Specifically, at the conclusion of year 1, no less than 5% of the funds supporting the sponsored organization's fair housing enforcement-related activities must be funded from non-FHIP funds; at the conclusion of year 2, no less than 10% of the funds supporting the sponsored organization's fair housing enforcement-related activities must be from non-FHIP funds; and at the conclusion of year 3, no less than 20% of the funds supporting the sponsored organization's fair housing enforcement-related activities must be from non-FHIP funds. Your application must state how you will meet these requirements. Your performance measures will be based upon these requirements, and failure to meet them may result in termination of the grant.

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V. Application Selection Process

(A) Screening/Threshold Review

Only applications that satisfy all of the applicable requirements under this NOFA will be considered for funding. Applicants meeting any of the following conditions are ineligible.

(1) *General Section Requirements and Procedures.* If you do not meet the Threshold Requirements set forth in Section II (B) of the General Section of this SuperNOFA.

(2) *Debarment and Suspension.* If your organization is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency.

(3) *Maximum award.* If you request funding in excess of the maximum allowed under the Initiative or Component for which you are applying your application is ineligible. Any amount over the maximum award, even if less than one dollar, will be considered a request in excess of the maximum award. In addition, inconsistencies in the amount requested and/or miscalculations that result in amounts over the maximum award will be considered excessive.

(4) *Research Activities.* If 25% or more of your project is aimed solely and primarily at research. Also, your application should not require any surveys or questionnaires.

(5) *Eligibility Applicants.* If you do not meet the eligibility requirements for PEI and FHOI. For PEI, you must be a FHO or a QFHO and document in the Statement of Eligibility that your organization has the required one or two years of enforcement-related experience. For FHOI, you must be a QFHO.

(6) *Tax Exempt Status.* If you are not a tax-exempt, nonprofit, charitable organization. For PEI and FHOI, you must be a 501(c)(3) tax exempt organization as determined by the Internal Revenue Service (IRS). Your application must include a copy of your Letter of Determination from the Internal Revenue Service, dated prior to the deadline date of this NOFA, in support of your 501(c)(3) tax-exempt status.

(7) *Media-based Applications.* Applicants who submit applications under the EOI National Program Media Campaign must have as its primary responsibility advertisement and media and have at least 5 years of experience as an advertisement/media organization, or if the applicant is not a media organization, it must include as part of its proposal a subcontract with an established media/advertising or public relations organization, that has experience in conducting national media campaigns. Applicants that fail to meet this requirement or include such subcontract arrangements in their proposals will be ineligible for funding. Further, for-profit awardees must adhere to OMB Circular A–122.

(8) *Poor Performance.* HUD will assess performance ratings for applicants who have received FHIP funding in 1998, 1999, or 2000. If the applicant has received a "poor" performance rating for its most recent performance rating from its Government Technical Representative, its application is ineligible for FY 2002 competition. An applicant that does not agree with its determination of ineligibility for the FY 2002 competition because of "poor" performance must address to HUD's satisfaction the factors resulting in the "poor" performance rating before the FHIP application deadline. If the "poor" performance rating is not resolved to the Department's satisfaction before the application deadline, the application remains ineligible. HUD is interested in increasing the performance level of all grantees; therefore, applicants who are deemed ineligible because of a "poor" performance rating have the right and are encouraged to seek technical assistance from HUD to correct their performance in order to be eligible for future NOFA competition.

(9) *Suits Against the United States.* Your application is ineligible if as a current or past recipient of FHIP funds, your organization used any funds provided by HUD for the payment of expenses in connection with litigation against the United States (24 CFR 125.104(f)).

(10) *Other Litigation.* Your application is ineligible if any recipient under this Program used any funds provided by HUD to settle a claim, satisfy a judgment, or fulfill a court order in any defensive litigation (24 CFR 124.104).

(B) *Rating and Ranking.* Although all rating factors are organized the same way for all FHIP Initiatives, there are differences in application requirements and rating criteria, which are indicated throughout the Rating Factor instructions. Your application for funding will be evaluated competitively against all other applications submitted under one of the following Initiatives or Components:

(1) Private Enforcement Initiative (PEI)

(2) Education and Outreach Initiative

(a) Regional/Local/Community-Based Program:

i. General Component (EOI—GC)

ii. Disability Component (EOI—DC)

(b) National Program:

iii. Media Campaign Component

iv. Fair Housing Awareness Component

(3) Fair Housing Organizations Initiative (FHOI)

All eligible applications will be reviewed and points awarded based upon: (1) your narrative responses to the Factors for Award and accompanying materials (e.g., resumes) and (2) bonus points, if entitled. The maximum number of points to be awarded for the Rating Factors is 100. See Section III (C) of General Section for discussion on Bonus Points. Applications with a score of seventy (70) points or more will be considered of sufficient quality for funding. The Selecting Official will not select for award any application with a score below seventy (70) points. Generally, applications of sufficient quality for funding will be selected in simple rank order under each Initiative or Component. HUD reserves the right to select applicants out of rank order to achieve greater geographic distribution of awards under each Initiative or Component, as described in Section V (C) below. Selections under each Initiative or Component will continue to be made until either all allocated funds have been obligated or until no applications of sufficient quality remain.

(B) Tie Breaking

When two or more applications have the same total overall score, the application with the higher score under Rating Factor 3: Soundness of Approach will be ranked higher. If this does not break the tie, the application with the higher score under Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience will be ranked higher. If this does not break the tie, the application requesting the lower amount of FHIP funding will be ranked higher.

(C) Achieving Geographic Diversity of Awards

(1) *PEI and EOI.* HUD reserves the right to select applications out of rank order under geographic diversity, to ensure that, to the extent possible, applications from more states for each Initiative or Component are selected for funding. If the Selecting Official exercises this discretion, it shall be applied to all qualified applications (applications of sufficient quality for funding—applications that received a score of 70 or more points) in each Initiative or Component in which the Selecting Official applies geographic diversity. The geographic diversity provision will be applied as follows: when there are two or more applications of sufficient quality from the same state, the application(s) with the lower score(s) will be moved to the end of the qualified queue. The applications moved to the end of the qualified queue will retain their rank order. If sufficient funds remain, it is possible that applications moved to the end of the queue may be selected for award.

(2) *FHOI.* The geographic diversity selection procedures described in paragraph V(C)(1) will be used for FHOI for activities proposed in the same state.

(D) *Factors for Award Used to Evaluate and Rate PEI, FHOI and EOI Regional/Local Community-Based Applications.* The factors for rating and ranking applications and the maximum points for each Rating Factor are described below. Failure to provide the required information under the appropriate Factor will result in a lower score for that Factor—for example, information in the Project Abstract, although useful for obtaining a concise summary of the proposed activities is not considered in the rating of applications. Please respond fully to the criteria in each Rating Factor and sub-factor and, when directed, provide other information in support of your response. The Factors for Award are set out as follows:

In general. This section applies to **all** PEI, FHOI, and EOI Regional/Local Community-Based applicants. Your responses to each Rating Factor and including the "In Addition" section below must not exceed 10 page Rating Factor requirement.

In Addition. This section identifies issues to which you must respond, if required, by the particular Initiative or Component for which you are applying.

Rating Factor 1: Capacity of Applicant and Relevant Organizational Experience (20 Points)

You must describe staff expertise and your organization's ability to complete the proposed activities within the grant period. You must also provide performance assessments conducted by your funding sources, including HUD, that have been done of your organization's performance of these activities. Such performance assessments must be signed by or attached to a transmittal signed by the authorized representative of the funding source(s).

In General. HUD recognizes that, in carrying out the proposed activities, you may have persons already on staff, plan to hire additional staff, or rely on subcontractors or consultants to perform specific tasks. You must describe your staffing plan and the extent to which you plan to add staff (employees) or contractors.

(a) (5 Points) *Number and expertise of staff (this includes subcontractors and consultants).* You must show that you will have sufficient, qualified staff who will be available to complete the proposed activities. Provide the following information for all staff assigned to or hired for this project, not just key personnel (those persons identified in attachments to Rating Factor 3: Soundness of Approach):

(i) Identify, by name and/or title, all persons that will be assigned to the project. You must describe the knowledge and experience of the proposed overall project director and day-to-day program manager in planning and managing large and complex interdisciplinary programs. Indicate the percentage of time that key personnel will devote to your project. To receive maximum points, your day-to-day program manager must devote a minimum of 75% of his/her time to the project. You may demonstrate capacity by thoroughly describing your prior experience in fair housing. You should indicate how this prior experience would be used in carrying out your proposed activities. Your application must clearly identify those persons that are on staff at the time this application is filed, and those persons who will be assigned at a later date; describe each person's duties and responsibilities and their expertise (including years of experience) to perform project tasks; indicate whether the staff person is assigned to work full-time or part-time (if part-time, indicate the percentage of time each person is assigned to the project).

(ii) Attach resumes, or position description in lieu of resumes, for all key personnel. (Resumes do not count against the ten-page limit.)

(iii) Describe the qualifications to be considered in the selection of staff or contractors (and their staff) that will be assigned or hired at a later date, when you expect they will begin working on the project and how project activities will be carried out until then. Assume a start date of September 30, 2002.

(iv) Describe the racial/ethnic diversity of project staff and the applicant's governing board. If there is no diversity, please explain. No explanation of the lack of diversity will result in less points being awarded.

(v) Include a chart showing availability of all named personnel during the proposed period of activity.

(b) (10 Points) *Organizational experience.* In responding to this subfactor, you must show that your organization has: (i) Conducted a past project or past projects similar in scope and complexity to the project proposed in this application (whether FHIP-funded or not), or (ii) engaged in activities that, although not similar, are readily transferable to the proposed project. Experience will be judged in terms of recent, relevant and successful experience of your staff to undertake eligible activities. In rating this factor, HUD will consider experience within the last 3 years to be recent, experience pertaining to the specific activities to be relevant, and experience producing specific accomplishments to be successful. The more recent the experience and the more experience your own staff members who work on the project have in successfully conducting and completing similar activities, the greater the number of points you will receive for this rating factor. If the applicant organization has not engaged in projects similar to the scope and activities proposed in the application, two (2) points will be deducted.

In addition. If you are applying for funding under PEI or FHOI, provide the following information when responding to this subfactor:

(i) Respond completely to all questions in the Statement of Eligibility. (A copy of a blank Statement of Eligibility appears in the Appendix C to this NOFA.) For PEI, you must clearly state whether you are a QFHO or an FHO. You must provide information that establishes that your organization has engaged in each of the enforcement-related activities, for at least one year (if you are an FHO) or two years (if you are a QFHO). For FHOI, you must be a QFHO.

(ii) Describe the procedure you will use to ensure that testers comply with the requirements in Section IV (B) (3) of this program NOFA.

(iii) If you propose to conduct testing (other than rental or accessibility testing) projects proposing testing in the specific areas (for example, if testing is for sales of housing, your application should outline your sales testing experience) should document that, at a minimum, you have conducted successful testing in those areas. Provide a general description of when and where the tests occurred, the entities tested, and the overall results of the tests, including complaints filed and the settlements or remedies secured.

FHOI. Provide a statement of organizational capacity and experience of the sponsored organization.

In general. (c) (5 Points) *Performance on past project(s).* You must describe your organization's past performance in conducting activities relevant to your

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proposal, in the past three years (including FY 1998–2000 FHIP grants), demonstrating good financial management and documenting timely use of funds, timely reporting and submissions of tasks and deliverables. HUD may supplement information you provide with relevant information on hand or available from public sources such as newspapers, Inspector General or General Accounting Office Reports or Findings, hotline complaints that have been proven to have merit, or other such sources of information. In evaluating past performance, the following points will be deducted from your score under this rating sub-factor:

5 points will be deducted if you obtained any "fair performance" assessment;
3 points will be deducted if you obtained any "good performance" assessment; and
0 points will be deducted if you obtained any "excellent performance" assessment.

For other Federal, State and local programs, include an assessment/review of the work performed under past projects. Attach a copy of the funding entity's performance assessment/review of this project, if applicable. The following will apply to funding received from other Federal, State and local programs:

3 points will be deducted for failing to meet target dates and schedules for performance; and
2 points will be deducted for failure to meet measurable program outputs and outcomes.

If you do not have a past performance assessment or prior experience, you should include information such as meeting target dates, meeting program outputs and successful outcomes for projects similar in scope and size and give a description of the purpose of the project and what was accomplished. If audit reports are available, submit a copy of the most recent report. Those applicants that do not submit an audit report will receive a lower score for this sub-factor than those that do.

In addition. (a) If you have received an FHOI or a PEI award under the FY 1998, 1999 or 2000 FHIP NOFA, you must:

(i) Discuss your compliance with the mandatory referral requirement of all cases arising from FHIP-funded activities requirement, as described in the FY 1998, 1999, and 2000 NOFAs. Three (3) points will be deducted for this subfactor if you do not show in your application compliance with the requirement.

(ii) Discuss your compliance with the requirement to reimburse the Federal government for compensation received from FHIP-funded enforcement activities. If you have not reimbursed the Federal government for such compensation, explain why you have not. Also, state whether you reported to HUD any likely compensation that may result in such reimbursement. Two (2) points will be deducted for this sub-factor if you have not complied with the requirement.

Rating Factor 2. Need/Distress/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed activities to address a documented fair housing problem in the target area. You will be evaluated on the information that you submit that describes the fair housing need in the geographic area you propose to serve, its urgency and how your project is responsive to that need. You must also describe whether you and/or your project are not served by a State or local FHAP agency.

(a) (15 Points) *Documentation of Need.* To justify the need for your project, you must describe the following:

(1) The fair housing need, including:
(a) Geographic area to be served;
(b) Populations protected by the Act that will be served—your project must serve all persons protected by the Act; and
(c) The presence of housing discrimination, segregation and/or other indices of discrimination in the project area based upon race, color, religion, sex, national origin, familial status, or disability. You must submit data and studies that support this indication.

(2) The urgency of the identified need. For example:
(a) The consequences to persons protected by the Act if your application is not selected for funding;
(b) The extent to which the organizations provide the services identified in your application;

(3) Other sources that support the need and urgency for this project. For example, use reports, statistics, or other data sources that are sound and reliable, including but not limited to, HUD or other Federal, state or local government reports analyses, relevant economic and/or demographic data, including those that show segregation, foundation reports and studies, news articles, and other information that relate to the identified need. Chapter V of the *Fair Housing Planning Guide, Vol. 1* has other suggestions for supporting documentation. You may access the Guide from the HUD web at "www.hud.gov."

If the fair housing needs you have identified are not covered under the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) or if your locality does not have a CP or AI, you should so indicate, and use other sound data sources to identify the level of need and the urgency in meeting the need. If your application addresses needs that are identified in the AI, you will receive more points than applicants located in an area with an AI that do not relate their program to the identified needs in the AI. For you to receive maximum points for this factor, there must be a direct relationship between your proposed activities, community needs, and the purpose of the program funding.

To the extent possible, the data you use should be specific to the area where the proposed activity will be carried out. You should document needs as they apply to the area where activities will be targeted, rather than the entire locality or state. If the data presented does not specifically represent your target area, you should discuss why the target areas were proposed.

(4) The link between the need and your proposed activities:
(a) how the proposed activities augment or improve upon on-going efforts by public and private agencies, organizations and institutions in the target area, and/or
(b) why, in light of other on-going efforts, the additional funding you are requesting is necessary.

In addition, with respect to (a) Documentation of Need, the following apply to specific FHIP Initiatives or Components:

EOI—Disability Component. Your project must serve all persons protected by the Act.

FHOI. HUD has targeted for funding under this Initiative, projects that will provide fair housing enforcement services to underserved areas and to areas with large concentrations of individuals who fall within one or more categories protected under the Act who are immigrants (especially racial and ethnic minorities who are not English-speaking or have limited English proficiency). Although HUD has targeted these areas, you are still required to justify the need for the sponsored organization by: (i) demonstrating the presence of housing discrimination, segregation and/or other indices of discrimination in the project area based upon race, color, religion, sex, national origin, familial status, or disability and submit data and studies that support your claim; and (ii) explain

why the project area is underserved and why the proposed sponsored organization is needed. Your proposal must serve all persons protected by the Act.

(b) (5 Points) *Underserved Areas.* Up to five points will be awarded when the applicant *and* project area are not served by a State or local FHAP agency. In instances where the applicant is located in an area not served by a FHAP agency but the project activities are conducted in various geographic areas, some that are not served by a State or local FHAP agency, points will be awarded as follows:

5 points will be awarded if more than 80% of the activities are conducted in areas not served by a State or local FHAP agency.

4 points will be awarded if more than 60% but less than 80% of the activities are conducted in areas not served by a State or local FHAP agency.

3 points will be awarded if more than 40% but less than 60% of the activities are conducted in areas not served by a State or local FHAP agency.

2 points will be awarded if more than 20% but less than 40% of the activities are conducted in areas not served by a State or local FHAP agency.

1 point will be awarded if less than 20% of the activities are conducted in areas not served by a State or local FHAP agency.

You must indicate whether (a) you are located in an area that is served by a State or local FHAP agency (see Appendix C for a list of FHAP agencies); (b) the activities you propose will be conducted in a project areas served by a State or local FHAP agency; and (c) explain why the project area is underserved and/or why the proposed organization or activity is needed.

Attachments. None required.

Rating Factor 3: Soundness of Approach (40 Points)

You must describe your project in detail, demonstrate how your project activities will support HUD goals, propose suggested performance measures/outcomes in support of these goals, and identify current baseline conditions and target levels of the performance measures that you plan to achieve. Also attach a SOW and budget. Your proposed activities must support HUD's goals.

(1) (4 Points) *Support of HUD Goals.* Describe how your proposed project will further and support HUD. For FY 2002 FHIP applications, address the following:

A. *EOI.* (i) Applicants that are faith-based and other community-based organizations that propose to either partner or sub-contract with faith-based and other community-based organizations in conducting their work programs will receive one point under this sub-factor. Please describe the following:

(I) Project purpose.
(II) Persons to be served.
(III) Geographic area to be served.
(IV) Proposed activities and who will conduct these activities, e.g., you or a subcontractor(s) or consultant(s).
(V) The methodology you will use to carry out these activities and tasks.

(a) Applicants who partner or sub-contract with faith-based or community based organization in conducting their work program and submit a referral process will receive two points.

(b) Applicants who partner or sub-contract with faith-based or community-based organization in conducting their work program and do not submit a referral process will receive one point.

(ii) Up to three points will be awarded for applications specifically addressing housing discrimination based on national origin and religion since the September 11, 2001 attacks, as described in Section III(D), Priorities, of this NOFA. Please describe the following:

(I) Project purpose.
(II) Persons to be served.
(III) Geographic area to be served.
(IV) Proposed activities and who will conduct these activities, e.g., you or a subcontractor(s) or consultant(s), and
(V) The methodology you will use to carry out these activities and tasks.

(a) Applicants who target outreach activities to specifically address discrimination under the Fair Housing Act based on national origin and religion since the September 11, 2001 attacks and submit a referral process will receive three points.

(b) Applicants who target outreach activities to specifically address discrimination under the Fair Housing Act based on national origin and religion since the September 11, 2001 attacks and do not submit a referral process will receive two points.

B. PEI, FHOI, and EOI—Disability

Should discuss their project purpose and proposed activities, persons to be served, geographic areas and methodology.

In addition. If you apply under the:

EOI. Describe how activities or final products can be used by other organizations and agencies. Also, describe the elements of the complaint referral process you will develop as a task under this grant. Explain how this referral process will result in an increased number of referrals to HUD.

FHOI. Over the course of the grant, the sponsored organization must conduct fair housing-related enforcement activities and leverage non-FHIP resources. These are the performance measures that, if not met, may result in termination of the grant, and your description for achieving these measures will be considered when evaluating your application.

PEI/FHOI. Describe a procedure to ensure that referrals of all complaints are made as required by this NOFA. Your description should include safeguards to ensure that referred complaints are fully jurisdictional under the Act and supported by credible and legitimate evidence that the Act has been violated.

You may conduct limited outreach activities (for PEI and for FHOI), as described in section IV (B)(2). This must be reflected clearly in your SOW and Budget.

(2) (5 Points) *Performance Objectives and Measures.* Identify and discuss the specific methods and measures you will use (in addition to HUD reporting requirements) to measure progress, evaluate program effectiveness, and identify program changes necessary to improve performance. Describe how you will obtain, document and report the information. You will receive higher points under this subfactor if your application clearly states a specified set of performance criteria and outcomes that can be measured. Clearly identify the results of the proposed activities and what you will use to measure performance. The expected outcomes of your proposed activities should support HUD's strategic goal of "Ensuring Equal Opportunity and Access to Housing." You will receive fewer points if you fail to develop measurable objectives with respect to your stated activities.

Information Requirements. For PEI and FHOI, your application must include a description of the enforcement proposals to be referred to HUD. Your description must explain the information (see 24 CFR 121.2) you intend to collect and analyze, the type of complaints you anticipate referring to HUD for enforcement purposes, and describe the procedure you will implement for referring such complaints. If you propose a testing program, you must explain how you plan to structure the tests, train investigators, conduct investigations, etc. This description should make clear the safeguards to be used to ensure that complaints referred to HUD are fully jurisdictional under the Act and supported by credible and legitimate evidence that the Act has been violated. Describe the procedures you will put in

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place to ensure that referrals of all complaints are sent to HUD. Failure to provide this description of your procedure will result in the reduction of 2 points for this subfactor.

(3) (15 Points) *Proposed Statement of Work (SOW) and Financial Management.* The SOW and budget are attachments that will not count toward the 10-page limit on the narrative response to this factor. However, points will be assigned based on the relevance of proposed activities to stated needs, attention to implementation steps, proposed activities consistent with organizational expertise and capacity and accuracy of the SOW and budget. See Section VI for submission requirements.

Statement of Work—Submit a proposed SOW that comprehensively outlines in chronological order the administrative and program activities and tasks to be performed during the grant period. Your outline should identify all activities and tasks to be performed and by whom (e.g., you, a subcontractor, or partner), and the products that will be provided to HUD and when. You should also include a schedule of your activities and products (with interim implementation steps), staff allocation over the term of the project; staff acquisition and training; and activities of partners and/or subcontractors. The tasks identified in the SOW should be related to the proposed budget (See Appendix C for sample SOW).

Financial Management Capacity. Describe and provide documentation to support your organization's financial management system. In addition, provide documentation about your capabilities in handling financial resources and maintenance of an adequate accounting and internal control procedures.

(4) (16 Points) *The Budget Form and the Budget Information*—HUD will also assess the soundness of your approach by evaluating the quality, thoroughness, and reasonableness of the budget and financial controls of your organization, including information on your proposed program cost categories. As part of your response, you must prepare a budget that: (1) is reasonable and cost-effective in achieving the goals identified in your proposed SOW; (2) relates tasks in the SOW to the proposed budget costs; (3) is cost-effective; (4) is quantifiable based on the Need identified in Factor 2; and (5) documents and justifies all cost categories in accordance with the cost categories indicated in the Budget Narrative Workplan that is discussed in more detail in paragraphs (a) through (j) below.

Cost Effectiveness of Program. Discuss and provide supportive facts concerning the extent to which your proposed program is cost effective in achieving the anticipated results of the proposed activities. Also, indicate how the proposed project is quantifiable based on the needs identified in Rating Factor 2.

FHOI Provide a statement of transfer of programmatic and management responsibilities from the sponsoring to sponsored organization by the end of grant year 3.

In addition:

Your Non-Construction Programs SF–424A must show the total cost of the project and indicate other sources of funds that will be used for the project. While the costs are based only on estimates, the budget narrative work plan must include information such as quotes obtained from various vendors, or you may rely on historical data. Applicants must round all budget items to the nearest dollar.

A written budget narrative must accompany the proposed budget. It must explain and attach back-up documentation for each cost category. Generally, estimated costs for high-cost items or subcontractors/consultants should be supported by bids from at least three (3) sources. Where there are travel costs for subcontractors/consultants, you must show that local subcontractors/consultants are not available and that the combined travel costs (per diem rates should be consistent with Federal Travel Regulations 41 CFR 301.11) and rates and fees of the out-of-town subcontractors/consultants do not exceed the rates and fees charged by local subcontractors and consultants. The narrative (counted toward the 10 page limit) and supporting documentation (not counted toward the 10 page limit) must address the following for maximum points.

(a) *Direct Labor—by position or individual,* specify the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(b) *Fringe Benefits—by staff position,* identify the rate, the salary base on which the rate was computed, estimate the cost per position, and the total estimated fringe benefits cost;

(c) *Material Costs—indicate the item,* unit costs per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(d) *Transportation Costs*—where use of a local private vehicle is proposed, costs must indicate the proposed number of miles (travel costs should be consistent with Federal Travel Regulations), rate per mile of travel identified by item, and estimated total private vehicle costs. Where air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. If other transportation costs are listed, you should identify the other method of transportation selected, the number of trips to be made and destinations, the estimated costs, and the total estimated costs for any other transportation costs.

(e) *Per Diem*—you must identify per diem or subsistence costs per travel day, the number of travel days, and the estimated costs for per diem/subsistence, which should total estimated transportation costs. You must use the Federal Travel Regulation for per diem rates for cities listed under "Transportation Costs" in your costs estimates.

(f) *Equipment charges*—must identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(g) *Consultant Costs*—indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(h) *Subcontract Costs*—identify each proposed subcontract and amount (each proposed subcontract must include a separate budget that identifies proposed costs by cost categories). If applicable, your project budget must include any costs related to subcontract(s) with the FHAP agencies and disability advocacy and/or traditional civil rights organizations that account for activities related to the subcontractor's role in the project. Your application must include a separate detailed budget for each subcontract.

(i) *Other Direct Costs*—listed by item, quantity, unit costs, total for each item listed, and total direct costs for the award; and

(j) *Indirect Costs*—identify your approved indirect cost rate base to which the rate applies and total indirect costs. If you do not have an accepted, federally negotiated indirect cost rate, you may use direct cost for all of your program costs. Alternatively you may develop a proposed indirect cost rate in accordance with Office of Management and Budget (OMB) Circular A–122, Cost Principles and Procedures for Non-Profit Organizations, and provide supportive documentation on this calculation. You must establish your approved indirect cost rate base in accordance with Circular A–122. Organizations that have previously established indirect cost rates should not include direct costs in their indirect category.

Rating Factor 4: Leveraging Resources (10 Points Maximum)

This factor addresses your ability to secure additional resources to support your project. Points will be awarded on the basis of the percentage of non-FHIP resources you have identified and how firm the commitment is for those resources.

Firm Commitment of Leveraging. HUD encourages you to secure resources from sources other than what is requested from this program. Community resources may include funding or in-kind contributions, such as work space or services or equipment, allocated to the purpose(s) of your proposal. Resources may be provided by governmental entities (including other HUD programs), public or private non-profit organizations, for-profit private organizations, or other entities willing to work with you. In order to secure points you must establish leveraging of resources by providing letters of firm commitment from the organizations and/or individuals who will support your project. Each letter of firm commitment must: (i) Identify the organization and/or individual committing resources to the project, (ii) identify the sources and amounts of the leveraged resources (the total FHIP and non-FHIP amounts must match those in your proposed budget submitted under Factor 3), and (iii) describe how these resources will be used as part of your SOW. The letter must be signed by the individual or organization official legally able to make commitments for the organization. If the resources are in-kind or donated goods, the commitment letter must indicate the dollar value of those resources (Do not include indirect costs within your in-kind resources. In-kind and matching contributions and Program Income must be in accordance with part 84.23 and 84.24). No points will be awarded for general letters of support endorsing the project from organizations and/or individuals (including elected officials) in your community. The commitment is firm even if the offer is contingent upon HUD making an award under this program NOFA.

For PEI and EOI, if your project will not be supported by non-FHIP resources, then you will not receive any points under this factor. Points will be assigned for PEI and EOI based on the following scale:

2 points will be awarded if your project will be supported by non-FHIP resources, but those funds are less than 5% of the project's total costs are from non-FHIP resources.

4 points will be awarded if at least 5% and less than 10% of the project's total costs are from non-FHIP resources.

6 points will be awarded if at least 10% and less than 20% of the project's total costs are from non-FHIP resources.

8 points will be awarded if at least 20% and less than 30% of the project's total costs are from non-FHIP resources.

10 points will be awarded if at least 30% of the project's total costs are from non-FHIP resources.

For FHOI, 3 points will be awarded if more than 5%, but less than 10% of the project's total cost are from non-FHIP resources.

5 points will be awarded if at least 10% and less than 20% of the project's total costs are from non-FHIP resources.

7 points will be awarded if at least 20% and less than 30% of the project's total costs are from non-FHIP resources.

10 points will be awarded if at least 30% of the project's total costs are from non-FHIP resources.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which you develop interrelationships, provide increased independence and empowerment, and generate organizational and project self-sufficiency.

1. *Coordination*—You are encouraged to join together and pool all available resources in a common, coordinated effort. You should relate your activities with other organizations in the project area, participate or promote participation in the project area's Consolidated Planning process (including Analysis of Impediments to Fair Housing Choice), and create partnerships with other activities in the community. In evaluating this factor, HUD will consider the extent to which you demonstrate:

(a) You have coordinated your activities with other known organizations that are not directly participating in your proposed work activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner.

(b) The extent to which your application implements practical solutions within the grant term to result in assisting beneficiaries of grant program funds in achieving independent living, economic empowerment, educational opportunities, housing choice or improved living environments;

(c) The extent to which your application addresses outreach activities to promote awareness of project activities. At a minimum, your application should discuss procedures you will use to promote awareness of the services provided by your proposal.

2. *Self-Sufficiency*—You should demonstrate the extent to which your application develops solutions that result in increased independence and empowerment for those in your target areas. Such increased independence can result from such benefits as reducing discrimination practices, increasing awareness of the Act; increasing homeownership; eliminating barriers to housing choice or overcoming the impediments identified in the AI. For the EOI—Disability Component, you should demonstrate how the activities will assist the Department in implementing the Olmstead Supreme Court decision.

3. *Sustainability*—You should demonstrate the extent to which your program can become financially self-sustaining thereby decreasing your dependence on Federal funding and relying more on State, local and private funding so your activities can be continued after your grant award period is completed.

E. Factors for Award Used To Evaluate and Rate Applications for the National Education and Outreach Initiative Program

The factors for rating and ranking applicants and the maximum points for each factor, are provided below. The maximum number of points awarded any application is 100. Bonus points are not available for this category of funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner, and the applicant's ability to develop and implement large information campaign projects as appropriate, on a national scale. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to the project.

(5 Points) General Description of Applicant Organization and Relevant Experience.

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In rating this factor, HUD will consider the extent to which the applicant demonstrates:

(a) The qualifications of the applicant organization; the type of organization (e.g., public, private, non-profit, for profit); and the organization's general areas of activity or line of business.

(b) If the applicant has managed large, complex, interdisciplinary projects, the applicant must include information on them in its response.

(c) Awards and major accomplishments of the applicant organization must be described. HUD will also consider any documented evidence, such as performance reviews, newspaper articles, or monitoring findings that may reflect positively or negatively upon the ability of the applicant and its proposed staff to perform the work.

(d) The applicant's capability in handling financial resources with adequate financial control procedures and accounting procedures. In addition, HUD will consider findings identified in applicants' most recent audits; accuracy of mathematical calculations; and other available information on financial management capability.

(i) For the Media Campaign Component—Applicants must describe their ability to effectively develop, implement, and manage a media campaign on a national scale. (Applicants must be or include as part of their proposal a subcontract with an established media/advertisement organization that has experience in conducting national media campaigns.) Applicants for FHIP program funding must specifically describe their experience in developing or carrying out programs to prevent or eliminate discriminatory housing practices. Applicants must discuss their and/or subcontractor's ability to implement a coordinated national marketing awareness campaign, especially in the areas of fair housing, discrimination, public health, and housing. In responding to this subfactor, the applicant must describe the extent to which its and/or subcontractor's past activities have resulted in successful national media campaigns as appropriate, especially with respect to developing and implementing innovative strategies resulting in positive public response.

(ii) For the Fair Housing Awareness Component—Applicants must describe their ability to develop, implement and manage a national campaign to raise the public's awareness of subtle abusive and deceptive discriminatory housing loans and mortgage lending practices. You must describe your ability to understand fair housing issues/policies/practices. In responding to this subfactor, describe your knowledge of the sub-prime lending market and your past experience in developing and implementing innovative strategies in combating subtle abusive and deceptive lending practices on a nationwide basis.

(10 Points) Specific Description of Staff for Proposed Activities. The applicant must demonstrate that it has or will have sufficient personnel or will be able to quickly access qualified experts or professionals to deliver the proposed activities timely and effectively, including the readiness and ability of the applicant to immediately begin the proposed work program. Also the applicant must demonstrate relevant knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. To demonstrate that the applicant has sufficient qualified personnel, the applicant must submit the proposed number of staff hours for the sub-contractor, employees and experts to be allocated and availability of proposed staff to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert. Highly competitive applications must demonstrate that proposed staff has at least 3 years of recent and relevant experience to undertake eligible program activities or projects similar in scope or nature and directly relevant to the work activities proposed. Finally, applicants should describe their or their sub-contractor's expertise in languages other than English and in reaching the informational needs of non-English speaking audiences.

(5 Points) Consideration of Past Performance. Your past experience in terms of your ability to attain measurable progress in the implementation of your most recent and similar activities where your performance has been assessed. HUD will take into account your past performance in managing funds, including the ability to account for funds appropriately; timely use of funds received either from HUD or other Federal, state or local programs; meeting performance targets for completion of activities and number of persons to be served or targeted for assistance. HUD will use information related to these measures based on information on hand or available from public sources such as newspapers, Inspector General or Government Accounting Office Reports or Findings, hotline complaints that have been proven to have merit, or other such sources of information. In evaluating past performance, the following will apply to Fiscal Years 1998, 1999, and 2000 FHIP grantees:

5 points will be deducted if you obtained any "fair performance" assessment;
2 points will be deducted if you obtained any "good performance" assessment; and
0 points will be deducted if you obtained any "excellent performance" assessment.

For other Federal, State and local programs, include an assessment/review of the work performed under past projects. Attach a copy of the funding entity's performance assessment/review of this project, if applicable. The following will apply to funding received from other Federal, State and local programs:

3 points will be deducted for failing to meet target dates and schedules for performance; and
2 points will be deducted for failure to meet measurable program outputs and outcomes.

If you do not have a past performance assessment or prior experience you should include information such as meeting target dates, meeting program outputs and successful outcomes for projects similar in scope and give a description of the purpose of the project and what was accomplished. If audit reports are available, submit a copy of the most recent report. Those applicants that do not submit an audit reports will receive a lower score for this sub-factor than those that do.

Rating Factor 2: Need/Approach to the Problem (20 Points)

This factor addresses the extent to which the applicant documents and defines the national need that its proposed activities and methods are intended to address, and how its proposal offers the most effective approach for dealing with that national need. In responding to this factor, an applicant will be evaluated on the following:

(1) The extent to which the applicant defines, describes, and documents the national need the application intends to address, which demonstrates a grasp of the elements of the problem, its pervasiveness at the national level, and an understanding of the necessary mass media vehicles. The applicant's description of the national need will be used to evaluate the depth of the applicant's understanding of the problem as an indication of ability to address the problem; and

(2) If the applicant has experienced staff or if the applicant proposes to use a contractor subgrantee, the extent to which the applicant provides a rationale for how it will utilize its staff or a contractor or subgrantee to incorporate its proposed activities, methods, and media techniques will most effectively deal with the national need described by the applicant in response to subfactor (1), immediately above. To the extent possible, applicants should demonstrate effectiveness in terms of scope and cost.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. The SOW must address the strategy, quality and time frames needed to carry out the project and all activities as proposed.

(5 Points) Measuring Performance Results. Applicants must describe their specific methods and measures to assess progress, evaluate program effectiveness, and identify program changes necessary to improve performance to ensure that commitments made and results to be achieved can be accounted for and independently assessed to ensure performance measurements are met. Applicants who have identified inputs and outcome measurements and included means for assessing these measures, tracking and monitoring performance goals and achievements against commitments made in the application will receive higher points than those that do not.

(15 Points) Statement of Work. Submit a proposed SOW that comprehensively outlines in chronological order the administrative and program activities and tasks to be performed during the grant period. Your outline should also include a schedule of proposed activities and products (with interim implementation steps), staff allocation over the term of the project, staff acquisitions and training, and activities of partners and subcontractors.

For the Media Campaign Component—HUD anticipates that products will be available in at least 3 languages plus English. Deliverables may include Public Service Announcements (PSAs) for radio and television in both majority and minority markets, and posters and other graphic materials. Graphic materials may include, but are not limited to, enlarged reproductions of several print PSAs, separately produced and printed posters for national public dissemination, and the development of ad slicks to market in newspapers and magazines nationwide. The applicant should plan on using a clipping service or other appropriate means to collect information on frequency and scope of the placement of ads.

For the Fair Housing Awareness Component—HUD anticipates that all proposed activities will be conducted in a manner that will reach and benefit those members of the public vulnerable to subtle abusive and deceptive mortgage lending practices (e.g. languages, formats, locations, distribution, use of minority media). Applicants may target such tactics as: Loan flipping, multiple refinancing transactions over short periods of time, balloon payments, insurance packing and other predatory lending tactics. Deliverables may include Public Service Announcements (PSAs) for radio and television, and posters and other graphic materials. Graphic materials may include, but are not limited to; enlarged reproductions of several print PSAs, and separately produced and printed posters for national public dissemination.

In evaluating this factor, HUD will consider the extent to which you submit and describe your:

(10 Points) Work Plan. Applications should include work plans that: (a) Clearly describe the specific activities and tasks to be performed, the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously, estimated completion dates, and the work and program deliverables to be completed within the grant period, including specific numbers of quantifiable end products and program improvements the applicant aims to deliver by the end of the award agreement period as a result of the work performed;

(b) Provide national media market coverage, specific protected class focus, as well as focus on persons underserved (ethnic and racial minorities, especially those who are non-English speaking or who are not proficient in English); and

(c) Describe the immediate benefits of the project and how the benefits will be measured. Applicants must describe the methods they will use to determine the effectiveness of their national marketing strategies.

(d) Ensure that your application adheres to Performance Measures as outlined in Section IV(A)(2).

(10 Points) Budget Form and Budget Information. A written budget narrative must accompany the proposed budget. The narrative (counted toward the 10 page limit) and supporting documentation (not counted toward the 10 page limit) must address the following for maximum points:

(1) Cost estimates of salary levels, staff assignments, number of staff hours, and all other budget items are reasonable, allowable, and appropriate for the proposed activities;

(2) The proposed program is cost effective in achieving its anticipated results, as well as in achieving significant impact; and

(3) The proposed program is effective by explaining and attaching back-up documentation for each cost category. Generally, estimated costs for high-cost items or subcontractors/consultants should be supported by bids from at least three (3) sources. Where there are travel costs for subcontractors/consultants, you must show that local subcontractors/consultants are not available and that the combined travel costs (per diem rates should be consistent with Federal Travel Regulations) and rates and fees of the out-of-town subcontractors/consultants do not exceed the rates and fees charged by local subcontractors and consultants. A breakdown of each cost category is listed in Section V(D) of this NOFA.

In addition: (4) The proposed activities will be conducted in a manner (e.g., languages, formats, locations, distribution, use of majority and minority media) that will reach and benefit all members of the public, especially members of target groups identified in the individual program sections of this National NOFA;

(5) How proposed activities will yield long-term results and innovative strategies or "best practices" that can be readily disseminated to other organizations and State and local governments; and

(6) The proposed Media Campaign and Fair Housing Awareness Components make available activities, training and meeting sites, and information services and materials in places and formats that are accessible to all persons including persons with disabilities.

Rating Factor 4: Leveraging Resources (10 Points Maximum)

This factor addresses the ability of the applicant to secure other resources, which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The amount of non-FHIP resources you have identified and how firm the commitment is for those resources. HUD encourages you to secure resources from sources other than what is requested from this program. Resources may include funding or in-kind

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contributions, such as workspace, donated media announcements, or equipment allocated to the purposes of your proposal. Resources may be provided by governmental entities (including other HUD programs) public or private non-profit organizations, for profit private organizations, or other entities willing to work with you in accordance with the proposed FHIP activities. If your project will not be supported by non-FHIP resources, then you will not receive any points under this factor. Points will be assigned based on the following scale:

2 points will be awarded if your project will be supported by non-FHIP resources, but those funds are less than 5% of the project's total costs are from non-FHIP resources.

4 points will be awarded if at least 5% and less than 10% of the project's total costs are from non-FHIP resources.

6 points will be awarded if at least 10% and less than 20% of the project's total costs are from non-FHIP resources.

8 points will be awarded if at least 20% and less than 30% of the project's total costs are from non-FHIP resources.

10 points will be awarded if more than 30% of the project's total costs are from non-FHIP resources. You must establish leveraging of resources by providing letters of firm commitment from the organizations and/or individuals committing resources to the project. Each letter of firm commitment must: (i) Identify the organizations and/or individuals committing resources to the project; (ii) identify the sources and amounts of the leveraged resources (the total FHIP and non-FHIP amounts must match those in your proposed budget submitted under Factor 3), and (iii) describe how these resources will be used as part of your SOW. The letter must be signed by the individual or organization official legally able to make commitments for the organization. If the resources are in-kind or donated goods, the commitment letter must indicate the dollar value of these resources. No points will be awarded for general letters of support endorsing the project from organizations and/or individuals (including elected officials) in your project area(s).

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which you develop interrelationships, provide increase independence and empowerment, and generate organizational and project self-sufficiency.

1. *Coordination*—You should address the extent to which your program provides materials, training or services and implements a coordinated process of addressing the national need by using HUD funding resources and other available resources. You must also describe how they plan to use their affiliated branches, or partner with other organizations, to distribute materials or services developed under this National NOFA for use at the local level. In evaluating this factor, HUD will consider:

(a) The extent to which you have developed interrelationships to help build nation-wide efforts that coordinates the resources of multiple applicants and programs. HUD encourages multiple entities to join together and pool all available resources in a common, coordinated effort to obtain national geographic coverage. Describe in your proposal how your project activities will be coordinated with other organizations and linked with: (i) Other on-going HUD-funded program activities; (ii) Other on-going national, Federal, State, local or privately funded activities.

(b) The extent to which your application addresses outreach activities to promote awareness of project activities. This includes: (i) a discussion of how your methods or approaches will ensure that project activities and materials are distributed nationally, regionally, and locally to groups and organizations, (ii) identification of such groups and organizations in your project area, and (iii) an explanation of how your project will promote national coordination with various groups or organizations. At a minimum, your application should discuss procedures you will use to promote awareness of the services provided by your proposal.

2. *Self-Sufficiency*—You should demonstrate the extent to which your application develops solutions that result in increased independence and empowerment for those on a national level. Such increased independence can result from such benefits as reducing discrimination practices; increasing awareness of the Act; increasing homeownership; or eliminating predatory lending practices.

3. *Sustainability*—You should demonstrate the extent to which your program can become financially self-sustaining thereby decreasing your dependence on Federal funding and relying more on state, local and private funding so your activities can be continued after your grant award period is completed.

(F) Applicant Notification and Award Procedures

(1) *Notification.* No information about the review and award process will be available to you during the period of HUD evaluation, which begins on the closing date for applications under this NOFA and lasts approximately 90 days thereafter, except to advise you, in writing or by telephone, if HUD determines that your application is ineligible or has technical deficiencies which may be corrected as described in Section V of the General Section of the SuperNOFA and Section VII of this NOFA.

(2) *Negotiations.* If you are selected, HUD will require you to participate in negotiations to determine the specific terms of your cooperative or grant agreement. HUD will follow the negotiation procedures described at Section III of the General Section of the SuperNOFA. The selection is conditional and does not become final until the negotiations between the applicant and the Department are successfully concluded and the grant or cooperative agreement is signed and executed. HUD will negotiate only with the person identified in the application as the Director of the organization or if specifically identified in the application, the Project Director. HUD will not negotiate with any third party (i.e, a subcontractor, etc.).

(3) *Funding Instrument.* HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each applicant selected for award. Upon completion of negotiations, HUD reserves the right to use the funding instrument it determines is most appropriate.

(4) *Adjustments to Funding.* As provided in Section III of the General Section of the SuperNOFA, HUD may approve an application for an amount lower than the amount requested, fund only portions of your application, withhold funds after approval, reallocate funds among activities and/or require that special conditions be added to your grant agreement, in accordance with 24 CFR 84.14, the requirements of this SuperNOFA, or where:

(a) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(b) An ineligible activity is proposed in an otherwise eligible project;

(c) Insufficient amounts remain to fund the full amount requested in the application, and HUD determines that partial funding is a viable option;

(d) The past record of key personnel warrants special conditions; or,

(e) Training funds are not reserved for FHIP training.

(5) *Performance Sanctions.* A grantee or subcontractor failing to comply with the requirements set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, and denial of further participation in programs of HUD or any Federal agency.

(6) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not longer than 120 days, HUD will, upon receiving written request from the applicant, provide a debriefing to the requesting applicant. Materials provided during the debriefing will be the applicant's final scores for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied. Applicants requesting a debriefing must send a written request to Annette Corley, Public Trust Officer, U.S. Department of Housing and Urban Development, FHIP/FHAP Support Division, 451 7th Street SW, Room 5224, Washington, DC 20410. HUD will not release the names of applicants or their scores to third parties. Selections do not become final until final negotiations with HUD are successfully concluded.

VI. Application Submission Requirements

In addition to the forms, certifications and assurances required of applicants to all HUD programs, which can be found in the General Section of the SuperNOFA, you must submit with each FHIP application, the forms, certifications and assurances described below and found at Appendix B.

In General

When applying under any Initiative or Component you must submit the following:

(A) *Transmittal Letter.* Your transmittal letter must identify: (1) The dollar amount requested, (2) the specific FHIP Initiative, or in the case of EOI, whether for the Regional/Local Community Based Program or the National Program, and the specific Component (General or Disability, Media Based or Fair Housing Awareness), for which you are applying, and (3) your preference for selection, if you are applying to more than one Initiative or Component (does not apply for FHOI).

(B) *Cover Page.* Respond to Applicant's Preference for Award which identifies your rank order preference if submitting more than one application. Failure to submit the Cover Page will result in a correctable Technical Deficiency as outlined in Section V of the General Section of this NOFA.

(C) *Narrative Statement.* Respond completely to the instructions under each of the five Factors for Award and include the related items, such as resumes, SOW, and budget. Failure to provide the required information in the appropriate Factor will result in a lower score for that Factor—for example, information in the Project Abstract, although useful for developing a project synopsis, will not be considered when evaluating applications. The narrative responses must not exceed 10 pages per factor (required attachments are not counted); text must be double-spaced and pages numbered consecutively (starting with Factor 1 through the end of Factor 5). Please use 12 typesize for your narrative responses.

(D) Applicants must develop, maintain, and submit a written code of conduct as noted in the General Section.

Listed below are requirements by Factor for the Regional/Local Community Based Programs:

Award Factor 1: Capacity of Applicant and Relevant Organizational Experience—Narrative, Performance Assessments/Evaluation of Past Projects if Applicable

In addition:

For PEI and FHOI Applicants:

(1) *Testing Experience.* You must document your prior testing experience (see Factor 1: Capacity of the Applicant and Relevant Organizational Experience),

(2) *Letter of Determination from IRS* of your 501(c)(3) tax-exempt status, and

(3) *Statement of Eligibility.*

Award Factor 2: Need/Distress/Extent of the Problem

Narrative. Reference or submit data and studies that indicate the presence of housing discrimination, segregation and/or other indices of discrimination in the project area based upon race, color, religion, sex, national origin, familial status or disability, and explain why the project area is underserved and why the proposed organization is needed. Do not attach copies of reports, computer print-outs, etc. If you have tables or exhibits include them. Make sure they are referenced in the text. Attachments not mentioned in the text will not be reviewed necessarily.

Award Factor 3: Soundness of Approach—Narrative, Statement of Work, Budget Form(s), Budget Narrative

You MUST submit a certification from an Independent Public Accountant or your cognizant government auditor on your financial management and audit information. Failure to submit this information will result in points being deducted from your application. In addition, you must describe the information you intend to collect and analyze, the type of complaints you anticipate referring to HUD for enforcement purposes, and describe the procedure you will implement for referring such complaints.

In addition: Depending upon the Initiative or Component for which you are seeking funding, you must respond to the following points in your narrative responses:

(a) For EOI Applicants, You must describe the elements you will use to develop the process for referring fair housing complaints to HUD.

(b) For FHOI Applicants,

(1) The sponsored organization must conduct all of these enforcement-related activities by the conclusion of year 3 of the grant: complaint intake, complaint investigation, testing for fair housing violations, and meritorious claims. The application must specify which activities will be conducted in year 1, year 2, and year 3. Even though HUD has targeted for award projects that assist rural and immigrant populations, you must explain why the proposed fair housing enforcement organization is needed.

(2) Performance Measures. You must address the following:

(i) the sponsored organization's capacity to become a viable, fair housing enforcement organization that conducts fair housing related enforcement activities and leverages non-FHIP resources.

(ii) that the sponsored organization will meet the required performance measures for sponsored organizations and how these measures will be achieved.

Award Factor 4: Leveraging Resources—Narrative. Letter(s) of Firm Commitment

Award Factor 5: Coordination, Self-Sufficiency and Sustainability—Narrative

No attachments are required.

Listed below are the requirements by Factor for the EOI—National Program Components.

Award Factor 1: Capacity of Applicant and Relevant Organizational Experience—Narrative

Performance Assessments/Evaluation of Past Projects if applicable.

Award Factor 2: Need/Distress/Extent of the Problem—Narrative

Reference and submit data and studies that indicate the need for a centralized, coordinated fair housing media designed to educate the public about their fair housing rights. Do not attach copies of reports, computer printouts, etc. If you have tables or exhibits include them. Make sure they are referenced in the text. Attachments not mentioned in the text will not be reviewed necessarily.

Award Factor 3: Soundness of Approach—Narrative

SOW. Budget Form(s), Budget Narrative. You MUST submit a certification from an Independent Public Accountant or your cognizant government auditor on your financial management and audit information.

Award Factor 4: Leveraging Resources—Narrative

Letter(s) of Firm Commitment.

Award Factor 5: Coordination, Self-Sufficiency and Sustainability—Narrative

No attachments are required.

Audit Information—Unless you are a new Federal applicant, you must submit a certification from an Independent Public Accountant or your cognizant government auditor, stating that the financial management system you employ meets prescribed standards for fund control and accountability required by: OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations; OMB Circular A–110 (as codified at 24 CFR part 84), Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and/or OMB Circular A–102 (as codified at 24 CFR Part 85) Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally-Recognized Indian Tribal Governments. This information must contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable. Failure to submit this information will result in points being deducted from your application. This information must be provided before HUD will enter into a grant or cooperative agreement.

VII. Corrections to Deficient Applications

Section V of the General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(3), (4), (9), (12), and (13) of HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under related laws and authorities.

IX. Authority

Section 561 of the Housing and Community Development Act of 1987, as amended, (42 U.S.C. 3616) established the Fair Housing Initiatives Program (FHIP)) and the implementing regulations are found at 24 CFR part 125.

APPENDIX A—FREQUENTLY ASKED QUESTIONS

Q. If data, tables, exhibits, and studies are submitted with the application, will they be counted toward the 10 page limit requirement?

A. Yes. Summarize the points you want to make in the 10 page narrative statement from the data tables, exhibits, and studies.

Q. In previous years, FHIP applicants were not required to submit the Certification of Consistency with the Consolidated Plan. Is the Certification required this year?

A. Yes.

Q. Where can I find a copy of the Application Kit?

A. There is no Application Kit for the FY2002 FHIP SuperNOFA. The NOFA clearly describes the requirements for completing a successful application and all forms and certifications needed to complete the application are included in the General and FHIP Sections of the SuperNOFA.

Q. What are the maximum number of narrative pages that can be submitted for each Rating Factor?

A. The maximum number is 10 pages per Rating Factor. This does not include any attachments that may be required under each factor (for example, the proposed statement of work and budget required under Factor 3: Soundness of Approach). The narrative pages must be double-spaced and you are required to use 12 typesize. Points will be deducted from your application if this criteria is not met.

Q. The FHIP SuperNOFA refers to QFHOs and FHOs. What is the difference between them?

A. These terms are defined in the FHIP regulations. Both organizations must be private, tax-exempt, charitable organizations that have engaged in enforcement-related activities. The amount of enforcement-related experience is an eligibility requirement for PEI, least one year for and FHOI, at least two years. (See 24 CFR 125.103 for QFHO and 24 CFR 125.401(b)(2) for FHO.)

Applicants to PEI and FHOI are required to complete the Statement of Eligibility—where they self-identify as a QFHO or an FHO and provide information, including dates of enforcement-related activities. The information you provide should enable HUD to determine if your organization meets at least the one or two year enforcement-related experience requirement.

Q. May an applicant subcontract out a percentage of its activities to subcontactors or consultants, if it is selected for a FHIP award?

A. Yes. However, when the expenditures to a particular subcontractor, partner, subgrantee, or consultant exceed 10% of the grant amount, an itemized budget is required.

Q. Is an organization "engaged in testing for fair housing violations" if it hires an organization to subcontractor or consultant in conducting its testing program?

A. Yes, so long as the applicant analyzes the test results, and undertakes some oversight or selection of testing operations.

Q. Does the SuperNOFA identify what makes an application ineligible?

A. Yes. See the eligibility requirements for each Initiative and Section IV(B) of the FHIP NOFA, and the Threshold Criteria in Section V(A).

Q. Can an applicant propose to do an Analysis of Impediments (AI)?

A. No. The applicant can identify activities to be carved out of the AI but not to do planning to develop AI.

Q. Are there major differences between this year's SuperNOFA and last year's?

A. Yes, those differences are explained in Section III of the FHIP NOFA.

Q. At what point may a FHOI "sponsored organization" apply under any FHIP Initiative?

A. A sponsored organization is eligible after three (3) years to apply for funds under EOI and, depending upon its record of conducting enforcement-related activities, may be eligible to apply for funds under PEI.

Q. What are maximum awards?

A. Maximum award is the maximum amount that will be awarded under the Initiative for which you are applying. If you request an amount over this maximum amount, your application will be declared ineligible.

Q. Where do you send completed applications?

A. All completed applications must be received by the FHIP/FHAP Support Division Office in Washington, DC. These applications should be mailed or sent by an express service to the address stated in the SuperNOFA under the Section Address for Submitting Applications.

Q. What is the best method of knowing that the appropriate person has received my application? Should I follow up with a call?

A. Include with your completed application a complete copy of the Acknowledgment of Application Receipt. Be sure to include your correct mailing address and the person to whom the Acknowledgment should be sent. HUD will not acknowledge the receipt of applications over the telephone (see General Section for return receipt requirements).

Q. What is the website address?

A. Http//www.hud.gov/grants

Q. What is the due date?

A. The due date is outlined in this NOFA under Section I, Application Due Date.

Q. If I have a technical question, can I call HUD?

A. Yes, technical questions should be directed to Lauretta A. Dixon, Myron P. Newry, or Denise L. Brooks of the [FHIP/FHAP Support Division at (202) 708–0800 (this is not a toll-free number).] Persons with hearing or speech impairments may call 1–800–290–1617 (this is a toll-free number). Technical assistance does not extend to helping you to write your individual application, but to clarify general application and program requirements.

Q. What is meant by geographic diversity?

A. See comments above in Section V.

Q. As an FHOI applicant, are education and outreach expenses required to come out of my 15% administrative costs?

A. No. The education and outreach expenses can be accounted for in the budget of the organization being established or enhanced.

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APPENDIX B

FHEO FIELD STRUCTURE - OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

FHEO OFFICES	DIRECTORS	TELEPHONE NO.	AREA COVERED
BOSTON Hub Thomas P. O'Neill Federal Bldg. 10 Causeway Street, Room 375 Boston, MA 02222-1092	Marcella Brown	(617) 565-6977	MA, CT, ME, VT, NH, RI
NEW YORK CITY Hub 26 Federal Plaza New York, NY 10278-0068	Stanley Seidenfeld	(221) 264-1290	NY, NJ
PHILADELPHIA Hub The Wanamaker Building 100 Penn Square East Philadelphia, PA 19107-3380	Wanda S. Nieves	(215) 656-0647	PA, MD, VA, DC, WV, DE
ATLANTA Hub 5 Points Plaza 40 Marrietta Street, SW Atlanta, GA 30303-3388	Gregory King	(404) 331-5001	GA, AL, MS, FL, PUERTO RICO, KY, TN, SC, NC
CHICAGO Hub Ralph H. Metcalfe Federal Building 77 West Jackson Boulevard Chicago, IL 60604-3507	Barbara Knox	(312) 353-7776	IL, MN, MI, WI, OH, IN
FORT WORTH Hub 1600 Throckmorton Street Fort Worth, TX 76113-2905	Thurman Miles (Acting)	(817) 978-9271	TX, AR, OK, LA, NM
KANSAS CITY Hub Gateway Tower II 400 State Avenue Kansas City, KS 66101-2406	Robbie Herndon	(913) 551-6958	KA, MO, NE, IA

DENVER Hub 633 17TH Street Denver, CO 80202-3607	Sharon Santoya (Acting)	(303) 672-5434	CO, UT, WY, SD, ND, MT
SAN FRANCISCO Hub Phillip Burton Federal Bldg. 450 Golden Gate Avenue San Francisco, CA 94102-3448	Chuck E. Hauptman	(415) 436-6569	CA, HI, NV, AZ, Guam
SEATTLE Hub Seattle Federal Office Bldg. 909 1st Avenue, Suite 200 Seattle, WA 98104-1000	Judith Keeler	(206) 220-5170	WA, OR, ID

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INCLUDE ALL TASKS SHOWN ON THIS FORM

STATEMENT OF WORK FOR

The applicant, _____, agrees to undertake the following activities in accordance with its FY 2002 application for funding under the _____ Initiative--_____Component (if applicable) for a ___-month project commencing _____, 2002 in the geographic area of _____. For FHOI, provide a timetable for transfer of activities/responsibilities from the sponsoring to the sponsored organization.

APPENDIX C - FORMS

Forms that must be filed with all FHIP applications, in addition to the forms listed in the **General Section** are included below:

ADMINISTRATIVE ACTIVITIES	TASKS	SUBMITTED BY	SUBMITTED TO
1.			GTR/GTM
2.			GTR/GTM
3.			GTR/GTM
4.			GTR/GTM
5.			GTR/GTM
6. Complete HUD-2880 Disclosure Statements	Submit Disclosure Statement. If no changes occur, submit statement of no change with final report	When changes occur	GTR/GTM
7. Complete SF-269A Financial Status Report and Written Quarterly Status Reports on All Activities	Submit SF-269A and Copy of Written Report	Quarterly	GTR/GTM
8. Voucher for Payment	Submit payment request to LOCCS	Per Payment Schedule	GTR/GTM
9. Complete Listing of Current or Pending Grants/Contracts/Other Financial Agreements	Submit Listing for Recipient and any contractors	45 Days and At end of Grant	GTR/GTM
10. Prepare summary of First Year (24 month grants)	Submit summary of first year accomplishments.	395 days	GTR/GTM

ADMINISTRATIVE ACTIVITIES	TASKS	SUBMITTED BY	SUBMITTED TO
11. Prepare and Submit Draft of Final Report	Submit Draft of Report. Report Summary should include objectives, accomplishments and results. Complaint and testing activities should summarize data on complaints received and tests conducted by basis and issue and outcomes including Number of credible, legitimate Complaints Filed with HUD, State or local Fair Housing Agency, Department of Justice or Private Litigator; and Types of Relief/Results.	One month before end of grant term.	GTR/GTM
12. Complete Final Report and Provide Copies of All Final Products Not Previously Submitted	Submit a copy of the Final Report and All Final Products not previously submitted to GTR and GTM.	Within 90 days after end of grant term.	GTR/GTM
13. Submit 2 copies of Final Report and all Final Program Products produced under the Grant (with diskette, where feasible) to HUD.	Activities and database entry sheet(s) to HUD Copy of HUD database entry sheet(s) or detailed description of items submitted to GTR and GTM	Within 90 days after end of grant term.	GTR/GTM/

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KEY PERSONNEL

Title _____ Name _____

PROGRAM ACTIVITIES			
ACTIVITIES	TASKS	SUBMITTED BY	SUBMITTED TO
1. Contact HUD and/or other information sources to obtain any appropriate materials prior to development of new materials	List of materials requested	90 days	GTR/GTM. Submit one copy of **all final products** to HUD
2. Review/refine referral process to refer potential victims to HUD, DOJ, a state or local agency, or a private attorney	Copy of Referral Process. All audit-based enforcement actions should be referred to HUD.	45 days	GTR/GTM
3. Intake and process complaints, including testing and referral. Complete Enforcement Log which details complaints received; dates; the protected basis of these complaints; the issue, test type, and number of tests utilized in the investigation of each allegation; the respondent type and testing results; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; to whom the case was referred; and resolution/type of relief sought and received. (PEI and FHOI PROJECTS ONLY)	Submit copy of Enforcement Log and a Report on number of enforcement proposals referred to HUD.	Quarterly	GTR/GTM

[illegible]			[illegible]D
4. Non-rental Testing methodology and tester training must be received/approved by HUD.	Submit testing methodology and tester training to HUD for review and approval.	60 days	GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM
			GTR/GTM

BUDGET NARRATIVE WORKPLAN FORMAT

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Name of Organization:
Budget Period: _____ months

Position or Individual	Estimated Hours	Rate Per Hour	Estimated Cost	Federal Cost	In-Kind
		$	$	$	$
		$	$	$	$
		$	$	$	$
		$	$	$	$
TOTAL DIRECT LABOR	$			$	$
Fringe Benefits	**Rate**	**Base**	**Estimated Cost**	**Federal Cost**	**In-Kind**
F.I.C.A.		$	$	$	$
Unemployment Insurance[1]		$	$	$	$
Health Insurance[2]		$	$	$	$
Workers Compensation[1]		$	$	$	$
TOTAL FRINGE BENEFITS	$			$	$
Materials	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Cost**	**In-Kind**
		$	$	$	$
		$	$	$	$
		$	$	$	$
		$	$	$	$
TOTAL MATERIALS	$			$ *	$
Local Travel	**Mileage/Fare**	**Rate/Mi.**	**Estimate Cost**	**Federal Cost**	**In-Kind**
		$	$	$	$
		$	$	$	$
SUBTOTAL LOCAL TRAVEL	$			$	$

* Materials/Equipment prices must be supported by vouchers/cash register receipts of same or similar item or lease quotes from vendor at time of budget negotiation

[1] Rates may vary by State.

[2] Rates may vary by organization.

Air Travel Destination	Number of Travelers	Roundtrip Fare	Estimated Cost	Federal Cost	In-Kind Cost
	$	$	$	$	$
Subtotal Air Travel	$			$	$
Other Travel Items	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Cost**	**In-Kind Cost**
		$	$	$	$
		$	$	$	$
Subtotal Other Travel	$			$	$
Per Diem Subsistence	**Number of Travelers**	**Number of Days/Rate Per Day**	**Estimated Cost**	**Federal Cost**	**In-Kind Cost**
			$	$	$
Per Diem Subsistence	$			$	$
TOTAL TRAVEL	$			$ *	$
Equipment	**Quantity**	**Unit Cost**	**Estimate Cost**	**Federal Cost**	**In-Kind Cost**
		$	$	$	$
		$	$	$	$
		$	$	$	$
		$	$	$	$
TOTAL EQUIPMENT COSTS	$			$ **	$
Consultants	**Days**	**Rate Per Day**	**Estimated Cost**	**Federal Cost**	**In-Kind Cost**
Qq		$	$	$	$
		$	$	$	$
		$	$	$	$
		$	$	$	$
		$	$	$	$
TOTAL CONSULTANTS	$			$ ***	$

* All travel must be grant related and rates not exceed the Federal rate

** Lease/purchase of equipment must be supported by three quotes at time of budget negotiation

***Daily rate for FY 2002 cannot exceed GS 15 Step 10, unless a waiver is obtained from Grant Officer

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Subcontracts	Rate/Service	Quantity	Estimated Cost	Federal Cost	In-Kind Cost
			$	$	$
TOTAL SUBCONTRACTS	$			$ *	$
Other Direct	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Cost**	**In-Kind Cost**
		$	$	$	$
		$	$	$	$
		$	$	$	$
		$	$	$	$
TOTAL OTHER DIRECT	$			$	$

Indirect	Rate	Base	Estimated Cost	Federal Cost	In-Kind Cost
	**		$	$	$
TOTAL INDIRECT	$			$	$

	Total Estimated Cost	Total Federal Cost	Total In-Kind Cost
TOTAL COSTS	$	$	$
Amount To Enter on Form 424 Funding Matrix	$	$	$

*When individual subcontract fees exceed 10% of your grant amount, an itemized budget is required.

** If you have a Federally negotiated indirect rate, you should use that rate and the appropriate base in this section. In all other instances, you should include your current overhead rate, if any, which has been tailored to your organization's operating budget. The rate and base used here is illustrative only and you must use your organization's rate.

Cover Page FY 2002 FHIP Application

Check Initiative/Component (only one box) for which the application is being submitted. Submit a separate application for each Initiative/Project for which funding is sought.

Applicant Name _____

Initiative/Component	Catalog of Federal Domestic Assistance No.
Private Enforcement Initiative	14-410
Education and Outreach Initiative/Regional-Local-Community Based Program	14-409
General Component	14-409
Disability Component	14-409
National Program Media Campaign Component	14-409
National Program Fair Housing Awareness Component	14-409
Fair Housing Organizations Initiative	14-413

If you submit more than one application, you must indicate in the table below all Initiatives for which you are applying. In addition, if you apply for funding under more than one Initiative or Component, you must state your priority for selection and submit your preference in the table below. If you fail to submit your preference, your application will be deemed technically deficient.

Applicant's Preference for Award

Initiative/Component	Applied (Yes or No)	Rank-Order Preference
Private Enforcement Initiative		
EOI-Regional/Local/Community based **Disability Component**		
EOI-Regional-Local/Community based **General Component**		
EOI-National Program **Media Campaign Component**		
EOI-National Program **Fair Housing Awareness Component**		
Fair Housing Organizations Initiative		

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Checklist for Completeness of Application

Use this checklist to ensure that your application includes all required items

Copy of SF-424 (Place a copy of the SF-424 and attached HUD-424-M (Matrix) on top of application package. See **General Section** for procedures on Consolidated Applications.
Transmittal Letter
Cover Page
Checklist for Completion of Applications
Project Abstract Outlining Project Activities
Code of Conduct
Factor No. 1 Narrative
Factor No. 1 Attachments: Performance Assessment/Evaluation of Past Performance, Statement of Eligibility, Tester Experience, Letter of Determination from IRS on 501(c)(3), if applicable.
Factor No. 2 Narrative
Factor No. 3 Narrative
Factor No. 3 Attachments: Statement of Work, Budget Form(s), Budget Narrative, Audit Information.
Factor No. 4 Narrative.
Factor No. 4 Attachments: Letter(s) of Firm Commitment
Factor No. 5 Narrative.
Responses to Additional Requirements for Specific Initiative/Project

Application Forms and Certifications
SF-424 Application for Federal Assistance and HUD-424-M (Matrix)
SF-424-A Budget Information - Non-construction Programs
SF-424 B Standard Assurances - Non-construction Programs
Applicant Disclosure Report (HUD-2880)
Certification of Payments to Influence Federal Transactions (HUD-50071)
OMB SF-LLL Disclosure of Lobbying Activities
Certification for a Drug-Free Workplace (HUD-50070)
Certification of Consistency with the EZ/EC Strategic Plan (HUD-2990), if applicable
Certification of Consistency with the Consolidated Plan (HUD-2991)
Certification Regarding Debarment and Suspension (HUD-2992)
List of Current or Pending Financial Agreements
Acknowledgment of Application Receipt (HUD-2993)
Client Comments and Suggestions (HUD-2994)
Certification of Key Personnel (HUD 40076)
Code of Conduct

STATEMENT OF ELIGIBILITY

The Completed Statement of Eligibility is required for all the Private Enforcement and Fair Housing Organizations Initiatives applicants. (You may attach additional pages if necessary.) Failure to complete and submit this Statement of Eligibility with the application will be deemed a 'technical deficiency'. (See Section V of the General Section of the SuperNOFA)

++

Check Appropriate Box: (Note: Only QFHOs are eligible for FHOI)

❑ **PRIVATE ENFORCEMENT INITIATIVE**

❑ **FAIR HOUSING ORGANIZATIONS INITIATIVE**

1) What is your organizational Status?

Is your organization a private, tax-exempt, nonprofit, charitable organization?

❑ **YES** ❑ **NO**

If yes, have you attached a copy of the "Letter of Determination" from the Internal Revenue Service confirming your status as a 501(c)(3) tax-exempt organization.

❑ **YES** ❑ **NO**

2) Are you a Qualified Fair Housing Organization (QFHO) or a Fair Housing Organization (FHO) with at least one year's experience in complaint intake, complaint investigation, testing for fair housing violations, and meritorius claims? If you check "no", you are not eligible under this initiative . if you check "yes", you must answer the remaining questions.

❑ **YES** ❑ **NO**

Please check whether you are a QFHO or an FHO as noted.

❑ **QFHO (entity with at least 2 years of enforcement-related experience)**

❑ **FHO (entity with at least 1 year of enforcement-related experience)**

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3) Is your project broad-based and full service? If you check "no", your organization is not eligible to apply under this initiative. If you check "yes", you must answer the remaining questions.

❑ YES ❑ NO

4) Briefly describe your experiences in each of the following fair housing enforcement activities. Your organization must have engaged in each of these activities for at least one year in the two years preceding the filing of this application. It is not necessary that the activities were conducted simultaneously nor for consecutive/continuous years, as long as each activity has been conducted for at least one year within the past two years. (Do not limit this description to FHIP funded enforcement activities.)

When responding to the following, include dates, so that HUD can readily determine whether you have met the "at least one year" requirement.

a) **Number of complaints received and processed, by basis (e.g. race, color, religion, sex, disability, familial status, and national origin) and issue (e.g. rental, sales, lending).**

b) **Number of complaints referred to HUD for investigation.**

c) **Describe your testing program, types of tests (rental, sales, lending, insurance, and basis (e.g. race, color, religion, sex, disability, familial status, and national origin)), including number of tests conducted (both individual and systemic).**

d) **Describe the investigative experience, apart from testing, conducted by your organization.**

e) **Summarize the complaint outcomes, including judicial and administrative findings; number of pending complaints; and number of awards and amount to plaintiffs of monetary/non-monetary relief.**

5) Has your organization used FHIP funds for the payment of expenses in connection with litigation against the United States?

❑ YES ❑ NO

6) Has your organization used FHIP funds to settle a claim, satisfy a judgment or fulfill a court order in any defensive litigation?

❑ YES ❑ NO

Signature of Authorized Representative **Date**

***Certification is for FY 2002 NOFA**

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All Current or Pending Grants/Contracts/Other Financial Agreements

All applicants are required to list all current or pending grants, contracts, or other financial agreements. The listing must include the name and address of the funding source, a brief description of the project services/activities, the start and end dates for the grant or contract, and the amount of the contract or grant. This list must be updated during the negotiations for any award under the FY 2002 FHIP, as provided for in the grant agreement schedule of articles.

A sample listing is provided below.

A blank form is provided for your use also, or you may submit the information in any convenient format.

Sample Format

Listing of Current and Pending Grants/Contracts/Other Financial Agreements

Name and Address of Entity or Organization	Brief Description of Services/Activities Provided	Dollar Amount of Grant or Contract	Start Date and Expiration Date

If the current or pending grant is a FHIP grant, please include your FHIP grant number.

Listing of Current and Pending Grants/Contracts/Other Financial Agreements

Name and Address of Entity or Organization	Brief Description of Services/Activities Provided	Dollar Amount of Grant or Contract	Start Date and Expiration Date

If the current or pending grant is a FHIP grant, please include your FHIP grant number.

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APPENDIX D

FHAP AGENCY NAMES

NEW ENGLAND REGION

CONNECTICUT

State Agency: Connecticut Commission on Human Rights and Opportunities
Hartford, CT 06106

MASSACHUSETTS

State Agency: Massachusetts Commission Against Discrimination
Boston, MA 02108

Localities: Boston Fair Housing Commission
City of Boston Office of Civil Rights
Boston, MA 02201

Cambridge Human Rights Commission
Cambridge, MA 02139

MAINE

State Agency: Maine Human Rights Commission
Augusta, ME 04333-0051

RHODE ISLAND

State Agency: Rhode Island Commission for Human Rights
Providence, RI 02903-3768

VERMONT

State Agency: Vermont Human Rights Commission
Montpelier, VT 05633-6301

NEW YORK/NEW JERSEY REGION

NEW YORK

State Agency: New York State Division of Human Rights
New York, NY 10027

Localities: Rockland County Commission on Human Rights
Pomona, NY 10970

MID-ATLANTIC REGION

DELAWARE

State Agency: Delaware Division of Human Relations,
Wilmington, DE 19801

MARYLAND

State Agency: Maryland Commission on Human Relations
Baltimore, MD 21202

PENNSYLVANIA

State Agency: Pennsylvania Human Relations Commission
Harrisburg, PA 17101-2702

Localities: Pittsburgh Human Relations Commission
Pittsburgh, PA 15219

Reading Commission on Human Relations
Reading, PA 19601

York City Human Relations Commission
York, PA 17403

VIRGINIA

State Agency: Virginia Department of Professional and Occupational Regulation,
Fair Housing Administration, Real Estate Board
Richmond, VA 23230-4917

WEST VIRGINIA

State Agency: West Virginia Human Rights Commission
Charleston, WV 25301

Localities: Charleston Human Rights Commission
Charleston, WV 25301

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Huntington Human Relations Commission
Huntington, WV 25701

DISTRICT OF COLUMBIA

District of Columbia Office of Human Rights
Washington, DC 20001

SOUTHEAST/CARIBBEAN REGION

FLORIDA

State Agency: Florida Commission on Human Relations
Tallahassee, FL 32302

Localities: City of Bradenton
Community Development Department
Bradenton, FL 34205

Lee County Office of Equal Opportunity
Fort Myers, FL 33901

Jacksonville Equal Opportunity Commission
Jacksonville, FL 32202

Orlando Human Relations Department
Orlando, FL 32801

Palm Beach County Office of Human Rights
West Palm Beach, FL 33401

Pinellas County Office of Human Rights
Clearwater, FL 33756

St. Petersburg Human Relations Department
St. Petersburg, FL 33701

Tampa Office of Human Rights
Tampa, FL 33602

Hillsborough County Board of County Commissioners
Tampa, FL 33602

KENTUCKY

State Agency: Kentucky Commission on Human Rights
Louisville, KY 40202-0069

Localities: Lexington-Fayette Urban County Human Rights Commission
Lexington, KY 40507

Louisville and Jefferson County Human Relations Commission
Louisville, KY 40202

GEORGIA

State Agency: Georgia Commission on Equal Opportunity
Atlanta, GA 30303-1605

NORTH CAROLINA

State Agency: North Carolina Human Relations Commission
Raleigh, NC 27603

Localities: City of Charlotte/Mecklenburg County Community Relations Committee (Charlotte)
Charlotte, NC 28202

City of Charlotte/Mecklenburg County Community Relations Committee (Mecklenburg County)
Charlotte, NC 28202

City of Asheville
Asheville, NC 28802

Asheville/Buncombe County Community Relations Council
Asheville, NC 28801

Durham Human Relations Commission
Durham, NC 27701

Greensboro Human Relations Department
Greensboro, NC 27402

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New Hanover County Human Relations Commission
Wilmington, NC 28401

Orange County Human Relations Commission
Hillsborough, NC 27278

Winston-Salem Human Relations Commission
Winston-Salem, NC 27105

TENNESSEE

State Agency: Tennessee Human Rights Commission
Nashville, TN 37243

Localities: City of Knoxville Department of Community Development
Knoxville, TN 37902

SOUTH CAROLINA

State Agency: South Carolina Human Affairs Commission
Columbia, SC 29240

MIDWEST REGION

ILLINOIS

Localities: Springfield Community Relations Commission
Springfield, IL 62701

INDIANA

State Agency: Indiana Civil Rights Commission
Indianapolis, IN 46204-2255

Localities: Elkhart Human Relations Commission
Elkhart, IN 46516

Fort Wayne Metropolitan Human Relations Commission
Fort Wayne, IN 46802

Gary Human Relations Commission
Gary, IN 46402

Hammond Human Relations Commission
Hammond, IN 46320

South Bend Human Relations Commission
South Bend, IN 46617

MICHIGAN

State Agency: Michigan Department of Civil Rights
Lansing, MI 48913

OHIO

State Agency: Ohio Civil Rights Commission
Columbus, OH 43205-1379

Localities: Dayton Human Relations Council
Dayton, OH 45402

Parma Law Department
Parma, OH 44129-5593

Shaker Heights Fair Housing Review Board
Shaker Heights, OH 44120

SOUTHWEST REGION

LOUISIANA

State Agency: Louisiana Public Protection Division
Baton Rouge, LA 70801

OKLAHOMA

State Agency: Oklahoma Human Rights Commission
Oklahoma City, OK 73105

TEXAS

State Agency: Texas Commission on Human Rights
Austin, TX 78723

Localities: Austin Human Rights Commission
Austin, TX 78701

Department of Human Relations
Corpus Christi, TX 78401

City of Dallas Fair Housing Office
Dallas, TX 75201

Fort Worth Human Relations Commission
Fort Worth, TX 76102

Garland Office of Housing and Neighborhood Services
Garland, TX 75040

GREAT PLAINS

IOWA

State Agency: Iowa Civil Rights Commission
Des Moines, IA 50319

Localities: Cedar Rapids Civil Rights Commission
Cedar Rapids, IA 52401-1256

Davenport Civil Rights Commission
Davenport, IA 52801

Des Moines Human Rights Commission
Des Moines, IA 50309

Dubuque Human Rights Department
Dubuque, IA 52001-4932

Sioux City Human Rights Commission
Sioux City, IA 51101

Waterloo Commission on Human Rights
Waterloo, IA 50703

Mason City Human Rights Commission
Mason City, IA 50401

KANSAS

Lawrence Human Relations Commission
Lawrence, KS 66044

Community and Neighborhood Services Department
Olathe, KS 66061

Salina Human Relations Department
Salina, KS 67401

City of Topeka Human Relations Commission
Topeka, KS 66603

MISSOURI

State Agency: Missouri Commission on Human Rights, Department of Labor
Jefferson City, MO 65109

Localities: Kansas City (MO) Human Relations
Kansas City, MO 64106

NEBRASKA

State Agency: Nebraska Equal Opportunity Commission
Lincoln, NE 68509-4934

Localities: Lincoln Commission on Human Rights
Lincoln, NE 68508

Omaha Human Relations Department
Omaha, NE 68183-0502

ROCKY MOUNTAINS

COLORADO

State Agency: Colorado Civil Rights Division
Denver, CO 80202

NORTH DAKOTA

State Agency: North Dakota Department of Labor
Bismarck, ND 58505-0340

UTAH

State Agency: Utah Anti-Discrimination Division
Salt Lake City, UT 84114

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PACIFIC/HAWAII REGION

ARIZONA

State Agency: Civil Rights and Conflict Resolution Section
Arizona Attorney General's Office
Phoenix, AZ 85007-2926

Localities: City of Phoenix Equal Opportunity Department
Phoenix, AZ 85003

CALIFORNIA

State Agency: California Department of Fair Employment and Housing
Sacramento, CA 95812

HAWAII

State Agency: Hawaii Civil Rights Commission
Honolulu, HI 96813

NORTHWEST/ALASKA REGION

WASHINGTON

State Agency: Washington State Human Rights Commission
Olympia, WA 98504-2490

Localities: King County Office of Civil Rights
Seattle, WA 98104-2628

Seattle Human Rights Department
Seattle, WA 98104-1849

Tacoma Human Rights Department
Tacoma, WA 98402

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING COUNSELING

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE HOUSING COUNSELING PROGRAM

PROGRAM OVERVIEW

Program Purpose. This program supports the delivery of a wide variety of housing counseling services to homebuyers, homeowners, low- to moderate-income renters, and the homeless. The primary objectives of the program are to expand homeownership opportunities and improve access to affordable housing. Counselors provide guidance and advice to help families and individuals improve their housing conditions and meet the responsibilities of tenancy and homeownership.

Agencies funded through this program may also provide Home Equity Conversion Mortgage (HECM) counseling to elderly homeowners who are looking to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

Available Funds. Approximately $18.25 million.

Eligible Applicants. (1) HUD-approved local housing counseling agencies (LHCAs); (2) HUD-approved national and regional intermediaries; and (3) State housing finance agencies (SHFAs).

Application Deadline. May 17, 2002.

Match. No specific ratio required. However, in order to receive points under rating factor 4, applicants are required to demonstrate the commitment of other private and public sources of funding to supplement HUD funding for the applicant's counseling program. HUD does not intend for its housing counseling grants to cover all costs incurred by an applicant.

ADDITIONAL INFORMATION

I. Application Submission, Further Information and Technical Assistance

Application Submission. In addition to reviewing the applicable instructions below, all applicants should consult the General Section of this SuperNOFA and review the new security procedures that affect application submission.

Local Housing Counseling Agencies (LHCAs) and State Housing Finance Agencies (SHFAs) applying under Categories 1 and 3 must submit an original and two copies of a complete application to the Homeownership Center (HOC) whose jurisdiction includes the geographic area in which the applicant is proposing to work (see Appendix B.) *Applications submitted to a HOC must be mailed via the United States Postal Service.* HUD will not accept hand delivered applications. Your application will be considered timely if it is postmarked on or before 12 midnight on May 17, 2002 and received by the designated HUD office on or within fifteen (15) days of the application due date. *All applicants must obtain and save a Certificate of Mailing* showing the date when you submit your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was filed on time. Applications should be sent to the attention of the Program Support Division Director, and the envelope should be clearly marked "FY 2002 Housing Counseling Grant Application."

National and regional housing counseling intermediaries applying under Category 2 must submit an original and two copies of a complete application to Director, Program Support Division, Room 9166, Office of Single Family Housing, HUD Headquarters, 451 Seventh Street, SW., Washington, DC 20410. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.* The envelope should be clearly marked, "FY 2002 Housing Counseling Intermediary Application."

Mailed Applications. Your application will be considered timely if it is postmarked on or before 12 midnight on May 17, 2002 and received by the designated HUD office on or within fifteen (15) days of the application due date. All applicants must obtain and save a *Certificate of Mailing* showing the date when you submit your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was filed on time.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent to HUD Headquarters by overnight delivery or express mail, your application will be considered on time if it is received before or on May 17, 2002, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Again, you must use one of the four carrier services listed above. Delivery by these services must be made during HUD Headquarters' business hours, between 8:30 AM and 5:30 PM Eastern Time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Grant Application—Colonias. Applicants applying under Category 4 must submit an original and two copies of a complete application to the Santa Ana HOC (see Appendix B.) The Santa Ana HOC will be evaluating all applications submitted from across the country. Applications should be sent to the attention of the Program Support Division Director, and the envelope should be clearly marked "FY 2002 Housing Counseling—Colonias Application". Applications submitted to a HOC must be mailed *via the United States Postal Service.* HUD will not accept hand delivered applications. Your application will be considered timely if it is postmarked on or before 12 midnight on May 17, 2002 and received by the Santa Ana HOC on or within fifteen (15) days of the application due date. *All applicants must obtain and save a Certificate of Mailing* showing the date when you submit your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was filed on time.

Application Kits. There is no application kit. Specific application submission requirements are outlined in Section V.

Further Information. Local housing counseling agencies and State housing finance agencies should call the HOC serving their area (See Appendix B for the contact information for the HOCs). National and regional intermediaries should contact HUD Headquarters, Program Support Division at (202) 708–0317 (this is not a toll-free number). Persons with hearing or speech impairments may access any of these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. These are not toll free telephone numbers.

Satellite Broadcast. HUD will hold an informational broadcast via satellite for potential applicants to learn more about the program and the application. For more information about the date and time of the broadcast, consult the HUD web site at *http://www.hud.gov/grants.*

II. Amount Allocated

Under this SuperNOFA, approximately $18.25 million of the $20 million appropriated in FY 2002 is made available for eligible applicants, including $250,000 for counseling services that specifically target Colonias.

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An allocation of up to $1 million of the $20 million total in program funding has been set aside for housing counseling support which may include continuation of the Housing Counseling Clearinghouse, tuition assistance for housing counselors, and/or other HUD counseling initiatives and activities. An allocation of up to $750,000 of the $20 million appropriated is available for the Home Equity Conversion Mortgage (HECM) Program, as provided in section 255(k) of the National Housing Act (12 U.S.C. 1715z-20).

III. Grant Categories/Eligible Applicants

Grant Categories—Under the Housing Counseling Program, HUD awards grants to qualified public or private nonprofit organizations to provide housing counseling services through four grant categories: (1) Local Housing Counseling Agencies (LHCA); (2) National and Regional Intermediaries; (3) State Housing Finance Agencies (SHFA); and (4) Agencies Serving Colonias.

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Grant Categories	*Who Eligible*	*Total Amount Available*
Category 1 – LHCAs	HUD-approved LHCAs	$6.6 million
Category 2 – Regional and National Intermediaries	HUD-approved regional and national intermediaries	$10.4 million
Category 3 – SHFAs	SHFAs	$ 1 million
Category 4 – Colonias	HUD-approved LHCAs, HUD-approved regional and national intermediaries, and SHFAs	$250,000

Eligibility—HUD-approved LHCAs, HUD-approved national or regional intermediaries, and SHFAs are eligible for funding under Category 4, Colonias, as described below. Applicants applying under Category 4 may also apply under

one of the other three categories, as described below. A separate application must be submitted for Category 4, in addition to an application for funding under any other category. See Section I, 'Application Submission,' above for details on where to submit applications.

HUD-approved LHCAs may only apply for and receive grants under Categories 1 and/or 4, *or* Category 4 and/or one sub-grant from an intermediary under Category 2 or 3. HUD-approved LHCAs that apply under Category 1 are prohibited from also applying for a subgrant from an intermediary under Category 2 or 3. LHCAs that are not HUD-approved, but are affiliates or branches of SHFAs or national or regional intermediaries, may apply for and receive only one sub-grant from an intermediary under Category 2 or 3, but not both, and/or a sub-grant from an intermediary under category 4, Colonias. They are not, however, eligible to apply directly under Category 4.

HUD-approved national and regional intermediaries may only apply for grants under Categories 2 and/or 4.

SHFAs may only apply for grants under Categories 3 and/or 4.

Category 1—Local Housing Counseling Agencies (LHCAs). Approximately $ 6.6 million is available from HUD to directly fund HUD-approved LHCAs.

Eligible applicants include private and public nonprofit organizations that secure HUD-approval as of the publication date of this SuperNOFA, and retain such approval through the term of any grant awarded. For information on securing HUD-approval as a LHCA, contact the HOC within whose jurisdiction you are located (see Appendix B).

Award: No individual LHCA may be awarded more than $100,000. HUD anticipates that the average award will be approximately $18,500.

Funding allocation: Funding is allocated to each HOC jurisdiction by a formula that reflects the increased emphasis on the expansion of homeownership opportunities for first-time homebuyers and HUD's intent to ensure appropriate geographical distribution of program funds.

Allocations for use in local agency programs by HOC are as follows:

HOC	Funding allocation
Philadelphia HOC	$1,861,698
Atlanta HOC	1,924,468
Denver HOC	1,469,281
Santa Ana	1,344,553
Total	$6.6 million

Category 2—National and Regional Intermediaries. Approximately $10.4 million is available from HUD to directly fund HUD-approved national and regional intermediaries.

Eligible applicants include private and public nonprofit organizations that secure HUD-approval as national or regional intermediaries as of the publication date of this SuperNOFA, and retain such approval through the term of any grant awarded. For information on securing HUD approval as an intermediary, contact the HUD Headquarters Program Support Division at (202) 708–0317.

Intermediaries provide sub-grants to affiliates. Eligible sub-grantees are not required to be HUD-approved, although HUD-approved LHCAs may apply to an intermediary as a sub-grantee. Intermediaries that award sub-grants to affiliates that are not HUD-approved must assure that said affiliates meet or exceed the standards, as specified in paragraph 2–1 of HUD Handbook 7610.1, Rev-4, CHG–1, for HUD-approved LHCAs. To be eligible for a sub-grant, affiliates must certify in the sub-grant agreement that they have not applied for or received a grant under Category 1, or a sub-grant from another intermediary under Category 2, or a sub-grant from a SHFA under Category 3.

Awards for HUD-approved national and regional intermediaries may not exceed $1.5 million and $500,000, respectively.

Category 3—State Housing Finance Agencies (SHFA). Approximately $1 million is available to fund SHFAs that provide housing counseling services directly or serve as intermediaries to affiliates who offer housing counseling services.

Eligible applicants are entities that satisfy the definition in 24 CFR 266.5 of a "housing finance agency." SHFAs and eligible sub-grantees/affiliates do not need HUD-approval in order to receive these funds. HUD-approved LHCAs may apply to a SHFA as a sub-grantee. SHFAs that award sub-grants to affiliates that are not HUD-approved must assure that said affiliates meet or exceed the standards, as specified in paragraph 2–1 of HUD Handbook 7610.1, REV–4, CHG–1, for HUD-approved LHCAs. To be eligible for a sub-grant, affiliates must certify in the sub-grant agreement that they have not applied for or received a grant under Category 1, or a sub-grant from a HUD-approved intermediary under Category 2, or a sub-grant from another SHFA.

Award: There is no cap on the award amount that a SHFA, or its affiliates, may receive.

Funding Allocation: The amount of funding available to each of the four HUD Homeownership Center jurisdictions is as follows:

HOC	Funding allocation
Atlanta, GA	$254,285
Denver, CO	254,285
Philadelphia, PA	267,145
Santa Ana, CA	224,285
Total	1,000,000

Category 4—Colonias. Approximately $250,000 is available for housing counseling services that specifically target Colonias.

Eligible applicants include LHCAs and national or regional intermediaries that secure HUD-approval as of the date of the SuperNOFA publication, and retain such approval through the term of any grant awarded. SHFAs are also eligible.

Intermediaries provide sub-grants to affiliates. Eligible sub-grantees are not required to be HUD-approved, although HUD-approved LHCAs may apply to an intermediary as a sub-grantee. Intermediaries that award sub-grants to affiliates that are not HUD-approved must assure that said affiliates meet or exceed the standards, as specified in paragraph 2–1 of HUD Handbook 7610.1, REV–4, CHG–1, for HUD-approved LHCAs.

Award: There is no cap on the award amount.

IV. Eligible Activities

(A) Grantees or sub-grantees directly providing housing counseling services under Categories 1 through 4 may use their HUD housing counseling funds for one or more of the following eligible activities:

(1) *Pre-Occupancy Counseling.* This includes the following types of one-on-one counseling: pre-purchase, pre-rental, search assistance/mobility, fair housing, budgeting for mortgage or rent payments, money management, and housing care and maintenance. This also may include guidance on how to apply for housing assistance, how to identify and avoid predatory lending practices, as well as referrals to community or homeless services.

(2) *Homebuyer Education Programs.* These programs are housing related education programs in which educational materials are used in training sessions for multiple participants, including HUD's Homebuyer Education and Learning Program (HELP). For a typical homebuyer education program, participants complete eight to twelve course hours. Agencies that provide this service must also offer individual counseling to complement group sessions.

(3) *Post-Purchase/Mortgage Default and Rent Delinquency Counseling.* This includes counseling on how to: restructure debt, obtain recertification for rent subsidy, establish reinstatement plans, seek loan forbearance, and manage household finances. This counseling can also include helping victims of predatory lending, educating clients on renter's and landlord's rights, explaining the eviction process, providing referrals to other sources, and assisting clients with locating alternative housing or pursuing loss mitigation strategies.

(4) *Post-Purchase/Post-Occupancy Counseling.* This includes education programs and counseling activities on property maintenance, personal money management, and relations with lenders and landlords.

(5) *Home Equity Conversion Mortgage (HECM) Counseling.* HECM counseling assists clients who are 62 years or older with the opportunity to convert the equity in their homes into income to pay living, medical or other expenses.

(6) *Home Improvement and Rehabilitation Counseling.* This counseling includes educating the client about: their loan and grant options, the loan and/or grant application processes, what housing codes and housing enforcement procedures apply for the intended activity, how to specify and bid construction work, how to enter into construction contracts, and how to manage construction contracts, including actions to address the non-performance of contractors.

(7) *Displacement and Relocation Counseling.* This counseling includes helping clients understand their rights when faced with displacement, explaining the responsibility of the entity causing displacement, assisting clients with understanding eviction proceedings, providing assistance with locating alternate housing, and referring clients to homeless services.

(8) *Marketing and Outreach Initiatives.* This includes providing general information about housing opportunities, conducting informational campaigns, and raising awareness about critical housing topics, such as predatory lending or fair housing issues.

Note: For each of the eight general activities you propose, you must be prepared to meet the needs of all individuals requesting services, including the disabled, regardless of the complexity of the services involved.

(B) *Intermediaries and SHFAs* can directly provide the housing counseling services described above in Section A, or distribute and administer grant funds and provide technical assistance and other services to affiliates, who are eligible to undertake any or all of the eligible housing counseling activities outlined above.

Intermediaries and SHFAs have wide discretion to decide how to allocate their HUD Housing counseling and leveraged funding among their affiliates, with the understanding that a written record must be kept documenting and justifying funding decisions. This record must be made available to affiliates and to HUD. Intermediaries and SHFAs must also execute sub-grant agreements with their affiliates and branches that clearly delineate the mutual responsibilities for program management, including appropriate time frames for reporting results to HUD.

V. Application Submission Requirements

All applicants must meet the requirements listed in Section II of the General Section of the SuperNOFA. Because applications will be handled by various staff members, applications must be bound or secured in a binder, tabbed, and organized as instructed in the General Section of this SuperNOFA, and materials must be submitted in the order in which they appear in this NOFA. Use the checklist below to organize your application.

(A) *All applicants.* Unless indicated below, all applicants must submit the following:

(1) *The standard forms, certifications, and assurances* listed in Section II(H) of the General Section of the SuperNOFA (collectively, referred to as the "standard forms").

(2) *HUD-approval.* Each applicant is required to submit evidence of HUD-approval as a housing counseling agency, unless the applicant is a SHFA that satisfies the definition of a "housing finance agency" in 24 CFR 266.5.

(3) *Form HUD–9902, Housing Counseling Agency Fiscal Year Activity Report,* for fiscal year October 1, 2000 through September 30, 2001. If you did not participate in HUD's Housing Counseling Program during October 1, 2000 through September 30, 2001, this report should be completed to reflect your counseling workload during that period. A copy of this form is included in Appendix A of this SuperNOFA.

(4) *The Congressional District(s), including the names of the current Senators and Representatives,* in which your proposed activities are to occur.

(5) *Narrative statements* addressing the following five Rating Factors. Responses to the rating factors should provide HUD with detailed quantitative and qualitative information and relevant examples regarding the housing counseling work of your organization. For applicants applying under Category 4, Colonias, narrative statements must address how you will meet the needs of the Colonias you target.

Please be as specific and direct as possible. Responses to each factor should be limited to 10 double-spaced, single-sided pages. However, if you feel you need to include more information to make your case, you should feel free to do so.

Rating Factor 1: Capacity—Readiness and Effectiveness (30 Points)

This factor addresses the readiness and ability of an applicant to immediately begin the proposed work program, as well as the potential for an applicant to cost-effectively and successfully implement the proposed activities indicated under rating factor 3. In rating this factor, HUD will consider the degree to which the applicant, and, if applicable, affiliates:

(1) (10 points) Has sufficient personnel with the relevant knowledge and experience to implement the proposed activities in a timely and effective fashion. Experience is relevant if it corresponds directly to projects of a similar scale and purpose. Please submit:

—Names and titles of employees, including subcontractors and consultants, allocated to each proposed activity, as well as the corresponding staff hours for each task. Clerical staff should not be listed.

—Descriptions of each employee's, subcontractor's, or consultant's relevant professional background and experience related to the tasks they are to perform. Individual descriptions should be limited to one page.

(2) (20 points) Provide quality services in a cost-effective manner. Provide an overview, and submit any supporting data/evidence, of your organization's (and, if applicable, your affiliate organizations") prior fiscal year performance. At a minimum, responses should:

—Describe your prior fiscal year's counseling results, as they relate to your last year's goals. Include total number of clients served, the major types of counseling conducted, the outcomes for clients as a result of the counseling.

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—Identify all of the sources and amounts of funds for counseling in the previous fiscal year.
—Identify specific uses of counseling funds in the previous year, such as staff costs, and the total costs for each use. Justify your expenses from the previous fiscal year to show that they were reasonable, allowable, and appropriate for the counseling activities identified above.

Characterize your performance in the past fiscal year at meeting the grant requirements for your housing counseling activities. Specifically indicate your performance at satisfying reporting requirements (such as Form HUD 9902)—indicate timeliness and completeness of your past reporting. Also indicate whether or not you fully expended grant awards for the past fiscal year. If not fully expended, provide an explanation as to why the funds were not fully expended and the steps you have taken to ensure that future funding will be expended in a timely manner.

HUD may also rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making its determination under this factor.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding your proposed activities described under rating factor 3.

(1) (10 points) Applicants must provide recent economic and demographic data, and any other evidence, that demonstrates need relevant to the target area and your proposed activities. Applicants that fail to identify objective data will receive no points for this factor. Responses to this factor must reference data sources that demonstrate the level of need for your proposed program of activities. To the extent that the community you serve has documented need in its Consolidated Plan, Analysis of Impediments to Fair Housing Choice (AI), or other planning documents, reference these in your response. Economic and demographic data must include persons with disabilities located in the target area. The U.S. Census Bureau, for example, maintains disability data by state, county and metropolitan statistical area (MSA) at the following website address: *http:www.census.gov/hhes/www/disability.html*

(2) (5 points) Listed below are 6 FHA priorities that complement the Departmental priorities listed in Section VI of the General Section of the SuperNOFA. Please indicate which, if any, of the FHA or Departmental priorities your counseling activities will address and provide the data, and source of data, that supports the need in your target community for addressing this priority. You will receive one point for each FHA or Departmental priority you adequately address in your application, up to a total of 5 points.

—Retaining homeownership.
—Serving areas with concentrations of high default and foreclosure rates.
—Predatory lending.
—HECM.
—Fair housing.
—Serving areas underserved by financial institutions.

Rating Factor 3: Scope of Housing Counseling Services/Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of your proposed housing counseling work plan, which describes all housing counseling activities to be performed. Work plans should include:

(1) (10 points) Your goals and objectives, geographic coverage / target areas, and the proposed housing counseling services and / or intermediary activities you propose to undertake. There must be a clear relationship between the proposed activities, community needs as outlined in Rating Factor 2, and the purposes of the proposed program for an applicant to receive points for this factor.

(2) (15 points) Benefits to be achieved, and indicators by which to measure performance, including the number of clients who will be served. If the number of clients you propose to serve exceeds by 25% or more the number of clients you served in your last reporting year (October 1, 2000 through September 30, 2001), you must demonstrate that you have the financial and human resources to adequately serve the additional clients.

(3) (15 points) Costs, time and resources associated with providing the proposed activities. Describe the level of effort you anticipate is required to meet the needs of your clients. Applicants should carefully document the variety and complexity of the services to be provided. Provide the hourly-labor rate and counseling time per client for proposed tasks to demonstrate the cost-effectiveness of the specific services provided.

Rating Factor 4: Leveraging Resources (10 Points)

HUD housing counseling funding is not intended to fully fund either an organization's housing counseling program, or that of its local affiliates. All organizations that use housing counseling grant funds and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding. Any agency that does not have other resources available will receive no points for this factor.

Applicants will be evaluated based on their ability to provide evidence that they have obtained additional resources for their housing counseling activities, including: direct financial assistance; in-kind contributions, such as services, equipment, office space; labor; etc. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities committed to providing you assistance.

In order to obtain points under this factor, the applicant must demonstrate leveraging by providing letters from entities and/or individuals committing resources to the project that include:

—The identity of the entity or individual committing resources to the project.
—Dollar value of the resources to be committed.
—Types of resources to be committed.
—Time period for which the resources will be provided. Commitment letter must demonstrate that funds will be available during the grant period pertaining to this NOFA, October 1, 2002 " September 31, 2003.
—Responsibilities as they relate to your proposed program.
—The signature of an official of the entity legally able to make commitments on behalf of the entity.
—No conditions that would nullify the commitment. (It is, however, acceptable for the commitment to be conditional on HUD funding.)

Points for this factor will be awarded based on the satisfactory provision of evidence of leveraging and financial sustainability, as described above, *and* the ratio of requested HUD housing counseling funds to total budget, as follows:

Percentage	Points
1–10	10
11–15	9
16–20	8
21–25	7
26–30	6
31–35	5
36–40	4
41–45	3
46–50	2
51–99	1

Rating Factor 5: Coordination, Self-Sufficiency, and Sustainability (5 Points)

This factor addresses the extent to which the applicant is working towards addressing identified needs in a holistic and comprehensive manner through linkages with other organizations / activities in the community to help clients move to self-sufficiency. Sustainability refers to the potential for an applicant organization to become financially self-sustaining, and the potential of a specific project or activity to be sustained into the future absent of any HUD funding. In evaluating this factor, HUD will consider the extent to which applicants can demonstrate they have and will:

(1) Coordinate proposed activities with those of other groups or organizations, including, but not limited to, HUD funded housing counseling agencies, to coordinate the use of housing counseling and support services in your target area. Any written agreements or memoranda of understanding in place should be described and copies provided. The activities undertaken with other entities must be described in detail.

(2) Share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place should be described and copies provided.

(3) Actively participate in your community's Consolidated Planning process and the Analysis of Impediments to Fair Housing Choice (AI).

(4) Develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with other:

(a) HUD-funded projects/activities outside the scope of those covered by the target area's Consolidated Plan; and

(b) Federal, State or locally funded activities, including those proposed or on-going in the target area.

(B) *National and Regional Intermediaries and State Housing Finance Agencies* must provide the following:

(1) Identification of which affiliates will receive funding through this grant award. Applicants unable to identify which affiliates will receive sub-grants must explain why this is the case and what process will be used to select grantees. Pursuant to the applicable regulations at 24 CFR 84.82(d)(3)(iii) and 85.30(d)(4), grantees must receive HUD's written approval for sub-grants.

(2) Description of the activities of those affiliates, explicitly stating the types of services to be offered.

(3) Brief description of your relationship with your affiliates (i.e. membership organization, field or branch office, subsidiary organization, etc.).

(4) Brief description of the process that will be used to determine affiliate funding levels, distribute funds, and monitor affiliate performance, including compliance with the civil rights requirements outlined in the General Section of the SuperNOFA.

(C) *National and Regional Intermediaries* must provide a list of, and certify to, the states in which they maintain offices, including the national office and all affiliates or branch offices.

(D) *State Housing Finance Agencies* must submit evidence of their statutory authority to operate as a SHFA, and apply for, and use, any funds awarded.

VI. Application Selection Process/ Funding Policies

(A) *General.* Applications will be evaluated competitively, and ranked against all other applicants that applied in the same funding category. For Category 2, applications by national and regional intermediaries will be rated and ranked in HUD Headquarters. For Category 1, LHCAs, and Category 3, SHFAs, applications will be rated and ranked by the relevant HOC. The Santa Ana HOC will rate and rank all applications under Category 4, Colonias. The funding formula described below will be used to calculate award amounts.

(B) *Factors For Award Used to Rate and Rank Applications.* The Factors for Award, and maximum points for each factor, are outlined above in Section V (A)(5). These factors will be used to evaluate applications and the maximum number of points for each applicant is 100.

(C) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not less than 120 days, HUD will, upon receiving written requests from the applicant, provide a debriefing to the requesting applicant. Materials provided during a briefing will be the applicant's final scores for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied. Applicants requesting to be debriefed must send a written request to the person listed as the *Contact for further information and technical assistance* in Section I above.

(D) *Funding Methodology.* Only applicants who receive at least 70 points out of the 100 will be considered eligible for funding. All eligible applicants will then be funded in proportion to the score they receive.

This year's formula will work as follows for each category: every agency that receives a score of 70 points will receive a base award of $5,000, then will receive additional funds for every point above the 70 point cutoff. The total number of agencies with scores above 70 will be multiplied by $5,000 and that amount will be subtracted from the total available under the category, or in the cases of Categories 1 and 3, to the HOC. Then, the remaining balance will be divided by the total number of points each agency scores that are above the 70 point cutoff. The division will result in a dollar value for each point. The number of points that each agency scores above the 70 point base will be multiplied by that dollar value. The result of that multiplication will be added to the $5,000 base for the total award amount. For example, an agency with a score of 85 would receive $5,000 plus the dollar value for each point times 15 (15 being the number of points above the 70 point cutoff).

(E) *Grant Period.* Funds awarded shall be available for a period of twelve (12) calendar months. Applicants selected for award must receive prior HUD approval to incur costs prior to the date of the grant agreement. Grantees may incur pre-award costs ninety (90) calendar days prior to the effective date of the grant agreement All pre-award costs are incurred at the applicant's risk and HUD has no obligation to reimburse such costs if the award is inadequate to cover such costs or the award offer is withdrawn because of the applicant's failure to satisfy the requirements of this NOFA.

(F) *Award Instrument.* HUD expects to use a grant agreement, but it reserves the right to use the award instrument it determines to be most appropriate. All Housing Counseling Program awards shall be made on a cost reimbursement basis in accordance with the requirements in OMB Circular A–87, Cost Principles for State and Local Governments and Indian Tribal Governments; or OMB Circular A–122, Cost Principles for Non-Profit Organizations, as applicable to your organization; and the administrative requirements established in OMB Circular A–102, which was implemented by 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments); OMB Circular A–110, which was implemented by 24 CFR part 84 (Grants and Agreements with Institutions of

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Higher Education, Hospitals and Other Non-Profit Organizations); and OMB Circular A–133 which was implemented by 24 CFR parts 84 and 85. If you receive an award you are also required to ensure that any sub-recipients also comply with the above requirements. OMB circulars can be found at *www.whitehouse.omb.gov*.

(G) *Financial Management Systems.* Applicants selected for funding must provide documentation demonstrating that the applicant's financial management systems satisfy the requirements in the applicable regulations at 24 CFR 84.21(b) and 85.20. Consistent with the requirements of the Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501–07), when the applicant expended $300,000 or more in Federal awards in its most recent fiscal year, such documentation must include a certification from, or most recent audit by, the applicant's Independent Public Accountant that the applicant maintains internal controls over Federal awards; complies with applicable laws, regulations, and contract or grant provisions; and prepares appropriate financial statements. The applicant will have at least thirty (30) calendar days to respond to this requirement. If an applicant does not respond within the prescribed time or responds with insufficient documentation, then HUD may determine that the applicant has not met this requirement and may withdraw the grant offer.

(H) *Indirect Cost Rate.* You must also submit documentation establishing your organization's indirect cost rate. Such documentation may consist of a certification from, most recent audit, or indirect cost rate agreement by, the cognizant Federal agency or an Independent Public Accountant. If your organization does not have an established indirect cost rate, you will be required to develop and submit an indirect cost proposal to HUD or the cognizant Federal Agency as applicable, for determination of an indirect cost rate that will govern your award. Applicants that do not have a previously established indirect cost rate with a Federal agency shall submit an initial indirect cost rate proposal immediately after the applicant is advised that it will be offered a grant and, in no event, later than three months after the effective date of the grant. OMB Circular A–122 established the requirements to determine allowable direct and indirect costs and the preparation of indirect cost proposals, and can be found at *www.whitehouse.omb.gov*.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications. Applications will be declared ineligible for any of the following reasons:

—If you do not meet the Civil Rights Threshold Requirements set forth in Section II(B) of the General Section of this SuperNOFA.

—If you are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions from any Federal department or agency.

VIII. Program Requirements

Agencies selected as grantees or sub-grantees must comply with the following requirements:

(A) *General Requirements.* The requirements listed in Section II of the General Section of the SuperNOFA apply to this program.

(B) *Specific Requirements.* Programmatic requirements are outlined in detail in HUD Handbook 7610.1, REV–4, CHG–1, dated October 27, 1997, which can be viewed on HUD's website at *http://www.hud.gov/offices/hsg/sfh/hcc_home.cfm*. Additionally, the following also apply:

(1) *List of Agencies.* Pursuant to section 106 (C)(5) of the Housing and Urban Development Act of 1968, HUD maintains a list of all HUD-approved and HUD-funded counseling agencies, including contact information, which interested persons can access. All grantees under Categories 1 and 4, and sub-grantees under Categories 2 and 3, will be placed on this list and must accept subsequent referrals, or when they do not provide the services sought, refer the person to another agency in the area that does provide the services.

(2) *Accessibility*—All grant recipients and sub-recipients must make counseling offices and services reasonably accessible to persons with a wide range of disabilities and help persons locate suitable housing in locations throughout the applicant's community, target area, or metropolitan area, as defined by the applicant.

(C) *Religious Discrimination.* Grant recipients and sub-recipients are prohibited from:

(1) Discriminating on behalf of or against any segment of the population in the provision of services or in outreach, including those of other religious affiliations.

(2) Requiring religious instruction or religious counseling, conducting mandatory religious services or worship, engaging in religious proselytizing, and exerting religious influence in the provision of assistance under your housing counseling program.

(D) Entities that are subject to 24 CFR parts 84 and 85 (most nonprofit organizations and State, local and tribal governments or government agencies or instrumentalities who receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (*See* Section 84.42 and 85.36(b)(3)). Consistent with regulations governing housing counseling programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among employees, officers or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value, and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this SuperNOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees and agents of your organization are aware of your code of conduct.

(E) *Performance Measurement.* Grant recipients are required to complete and submit a form HUD–9902, Fiscal Year Activity Report (APPENDIX A). The information compiled from this report provides HUD with its primary means of measuring your program performance.

(F) *Environmental Requirements.* In accordance with 24 CFR 50.19(b)(9) and (12) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

IX. Authority

HUD's Housing Counseling Program is authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), and is generally governed by HUD Handbook 7610.1, REV–4, CHG–1, dated October 27, 1997.

Appendix A—Form HUD–9902, Fiscal Year Activity Report

Appendix B

Homeownership center	States
Philadelphia Homeownership Center, Mr. John Niebieszczanski Patrick V. McNamara Building SF Program Support Branch 4, 477 Michigan Ave. Rm. 1600, Detroit, MI 48226, For technical questions Contact: Robert Wright (215) 656–0527 x3406.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
Atlanta Homeownership Center, Ms. Gayle Knowlson, 40 Marietta Street, 8th Floor, Atlanta, GA 30303–2806, Contact: Fellece Sawyer-Coleman, (404) 331–5001, x2675.	Alabama, Puerto Rico, Florida, Georgia, Illinois, Indiana, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Denver Homeownership Center, Ms. Irma Devich, Wells Fargo Building, 633 17th Street, Denver, CO 80202–3607, Contact: Irma Devich, (303) 672–5216 x1980.	Arkansas, Colorado, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wisconsin, Wyoming
Santa Ana Homeownership Center, Mr. Jerrold Mayer, 1600 N. Broadway, Suite 100, Santa Ana, CA 92706–3927, Contact: Rhonda J. Rivera, Chief 1–888–827–5605, (714) 796–1200 x3210.	Alaska, Arizona, California, Hawaii, Oregon, Idaho, Nevada, Washington

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Housing Counseling Agency
Fiscal Year Activity Report

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0261
(exp. 6/30/2002)

Read the Instructions and Public Reporting Statement on the back of this form.

Check here if this is a new address ☐

1. Counseling agency name and address

2. **Reporting Year (yyyy)**
from Oct 1, _____
to Sep 30, _____

			All Counseling Activities	HUD Grant Activities
3. **Number of Clients Counseled this Report Period**	1. Homeowners (mortgage paid off)			
	2. Mortgagors (own property covered by mortgage)			
	3. Potential Mortgagors (want to purchase housing)			
	4. Renters (occupy rental property)			
	5. Potential Renters (want to rent housing)			
	6. Homeless			
	7. Disabled Persons			
	8. Other			
	9. Total			
Race/ Ethnicity	a. American Indian /Alaskan Native			
	b. Asian /Pacific Islander			
	c. Black Non-Hispanic			
	d. Hispanic			
	e. White Non-Hispanic			
4. **Results of Counseling**				
Homeowners	10. Obtained a Home Equity Conversion Mort.(HECM)			
	11. Other			
	12. Total			
Mortgagors	13. Obtained a HECM			
	14. Brought mortgage current			
	15. Forbearance agreement			
	16. Mortgage assigned to HUD			
	17. Executed a deed-in-lieu			
	18. Sold their property			
	19. Mortgage foreclosed			
	20. Rented alternative housing			
	21. Other			
	22.Total			
Potential Mortgagors	23. Purchased housing			
	24. Decided not to purchase			
	25. Other			
	26. Total			
Renters	27. Purchased housing			
	28. Rented alt. housing			
	29. Other			
	30. Total			
Potential Renters	31. Purchased housing			
	32. Rented alt. housing			
	33. Other			
	34. Total			
Homeless	35. Occupied "transitional" housing			
	36. Occupied "emergency shelter"			
	37. Occupied permanent hsg. for handicapped			
	38. Entered public or prvt. section traditional hsg.			
	39. Other			
	40. Total			

5. **HUD Grant Activity - Summary Data**

HUD Grant No. From Block 3, Form HUD-1044	HUD Grant Amount From Block 14, Form HUD-1044	Number of Clients	Amount Invoiced
	Total		

6. Name of Person Authorized to Sign this Report

Title

Signature | Date (mm/dd/yyyy)

Previous editions are obsolete. ref. Handbook 7610.1 form **HUD-9902** (5/98)

Public reporting burden for this collection of information is estimated to average 1.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering end maintaining the data needed, and completing and reviewing the collection of information. This agency mey not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

This information is collected in connection with HUD's Housing Counseling Program, and will be used by HUD to determine that the grant applicant meets the requirements of the Notice of Funding Availability (NOFA) and to assign points for awarding grant funds on e competitive and equitable besis. The information is required to obtain funding under Section 106 of the Housing and Community Development Act of 1974. The information is considered sensitive and is protected by the Privacy Act which requires the records to be maintained with appropriate administrative, technical and physical safeguards to ensure their security and confidentiality.

Instructions for Form HUD-9902, Housing Counseling Agency Fiscal Year Activity Report

This **HUD Fiscal Year** Activity Report enables a HUD-approved housing counseling agency to report all of its housing counseling activity for clients with housing needs and problems. Paragraph 1-7A of the HUD Housing Counseling Program Handbook 7610.1 provides the definition of "client," "housing need," and "housing problem."

1. **Counseling Agency Name & Address** - Enter the official name of your agency in the format you submitted to HUD. If the address you enter is a new address, check the box indicating this change.
2. **Enter Report HUD Fiscal Year** - This is an annual report covering the HUD Fiscal Year. Indicate the HUD Fiscal Year covered by the report. Even if your agency was approved by HUD for less than the full year report period, include clients counseling during the full report year.

General

Clients - Please remember that you report **clients** as defined in paragraph 1-7A of HUD's Housing Counseling Program Handbook 7610.1. You are **not** reporting the number of individual persons you counseled.

Examples:

a. A **husband and wife** or a **brother and sister** or **three friends** who are mortgagors under the same note count as **one client**.
b. **Three renting families** who experience the **same problem** with the **same landlord** and come to your agency together for assistance count as **one client**.

Columnar Entries - The report contains two data columns.

a. **All Counseling Activities** - Enter data covering **all** housing counseling activities, including those performed under one or more HUD housing counseling grants.
b. **HUD Grant Activities** - Enter data covering **only** counseling provided under one or more HUD counseling grants during the report period. include this data in the "All Counseling Activities" column.

3. **Clients Counseled This Report Period** - Enter the number of clients to whom you provided counseling during the report period. This might include clients who entered your work l load the previous report period but you carried over into and counseled during the current report period.
Enter the client count in the box that best describes the status of the clients when they first entered your work load.

Disabled Person - A person reported on this line is defined in the Fair Housing Act, Sec. 802 (h) as follows:
Handicap means, with respect to a person -- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802))."

Homeless - A client reported on this line must meet the definition for "homeless" or "homeless individual" set forth in Section 103., General Definition of Homeless Individual, of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77).

Racial/Ethnic Categories - Enter number of clients to whom you provided counseling during this period.

a. **White (Non Hispanic)** - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
b. **Black (Non Hispanic)** - A person having origins in any of the black racial groups of Africa.
c. **Hispanic** - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.
d **American Indian or Alaskan Native** - A person having origins in any of the original peoples of North America, and who maintains, cultural identification through tribal affiliation or community recognition.
e **Asian or Pacific Islander** - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

Other - Throughout the form, "other" provides a general category into which you place clients who do not fall under any specific category on the form.

4. **Results of Counseling** - You might achieve more than one result for the same client during the report year.
Example: A mortgagor in default enters into a **forbearance agreement** and later **sells the property.** Report both results on the appropriate lines.
5. **HUD Grant Activity - Summary Data** - Enter summary data from the "HUD Grant Activities" column for each grant under which you provided counseling during the report period. In the "Total" row, enter totals for the "No. of Clients" and the "Amount Invoiced' columns.
6. An authorized staff person must sign and date the report.

Previous editions are obsolete. ref. Handbook 7610.1 form **HUD-9902** (5/98)

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LEAD-BASED PAINT HAZARD CONTROL GRANT PROGRAM

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE LEAD-BASED PAINT HAZARD CONTROL GRANT PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. The purpose of the Lead-Based Paint Hazard Control Grant Program is to assist States, Indian Tribes and local governments in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately owned housing for rental or owner-occupants in partnership with faith-based and other community-based organizations.

Available Funds. Approximately $80 million in Fiscal Year 2002.

Eligible Applicants. States, Indian Tribes or local governments. If you are a State or Tribal applicant, you must have a Lead-Based Paint Contractor Certification and Accreditation Program authorized by EPA.

Application Deadline. June 14, 2002.

Match. A minimum of 10% match in local funds.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Submit your completed application (an original and four copies) to HUD postmarked on or before 12:00 midnight, Eastern Time, on June 14, 2002, at the address shown below.

See the General Section of the SuperNOFA for specific procedures concerning the form of application submission (e.g., mailed applications, express mail or overnight delivery).

Application Submission Procedures. New Security Procedures. In HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.*

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. *All applicants must obtain and save a* Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Address for Submitting Applications. For Mailed Applications. The address for mailed applications is: Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, 451 Seventh Street, SW. Room P3206, Washington, DC 20410.

For Application Kits. You may obtain an application kit from the SuperNOFA Information Center at 1–800–HUD–8929. Persons with speech or hearing impairments may call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, please refer to the Lead-Based Paint Hazard Control Grant Program. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. You may contact Ellis G. Goldman, Director, Program Management Division, Office of Healthy Homes and Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 112 (this is not a toll-free number). If you are a hearing-or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

(A) *Available Funding.* Approximately $80 million in Fiscal Year 2002 funds will be available for the Lead-Based Paint Hazard Control Grant Program.

(B) *Allocation of Funds/Grant Awards.* Both current or prior (previously funded) grantees or previously unfunded applicants are eligible to apply for grants of $1 million to $2.5 million. Approximately 32 to 40 grants will be awarded. Approximately 80% of the funds shall be available to current and prior Lead-Based Paint Hazard Control grantees. Applications from current and prior (previously funded) grantees will be evaluated and scored as a separate group and will not be in direct competition with applications from previously unfunded applicants. A minimum score of 70 is required for fundable applications. Within the category of current and prior grantees, a new subcategory has been created this year to allow for the "renewal" of current grants that meet specific criteria. Current grantees (with active grants at the application deadline date) whose period of performance commenced on or after January 1, 2000 and that, in their most recent grant, have completed and cleared at least 65 % of the negotiated number of units and have expended, as evidenced by the drawdown from the HUD Line of Credit Control System (LOCCS), at least 45 % of their original HUD Federal grant award by March 31, 2002, are eligible to request up to $2 million to continue grant program activities for an additional 24 months after their current period of performance ends. By achieving the above referenced level of performance significantly ahead of the expected schedule, these grantees have demonstrated a clear basis for eligibility in receiving additional funds without the need to submit a full application in response to the SuperNOFA. The creation of this subcategory reflects the intention of this grant program to move towards more competitive performance-based awards. Applicants eligible to submit a "Request for Renewal" will be required to submit a Total Budget (Federal Share and Matching), work plan strategy and supporting materials prescribed in the application. In addition, grantees awarded grant funds under this subcategory will be required to meet the terms and conditions of their current grant agreement and any additional applicable requirements under this NOFA. Additional details and guidance will be provided in the application kit.

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III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The Lead-Based Paint Hazard Control Grant Program assists States, Indian Tribes and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately owned housing units for rental and owner-occupants. Appendix B (Eligibility of HUD Assisted Housing) and the application kit for this program will list the HUD-associated housing programs that meet the definition of eligible housing under this program.

(1) Because lead-based paint is a national problem, these funds will be awarded to:

(a) Maximize the combination of children protected from lead poisoning and housing units where lead-hazards are controlled;

(b) Target lead hazard control efforts at housing in which children are at greatest risk of lead poisoning;

(c) Stimulate cost-effective approaches that can be replicated;

(d) Emphasize lower cost methods of hazard control;

(e) Build local capacity to safely and effectively address lead hazards during lead hazard control, renovation, remodeling, and maintenance activities; and

(f) Affirmatively further fair housing and environmental justice.

(2) The objectives of this program include:

(a) Implementation of a national strategy, as defined in Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4851 *et. seq.*) (Title X), to build the community's capacity necessary to eliminate lead-based paint hazards in housing, as widely and quickly as possible by establishing a workable framework for lead-based paint hazard identification and control;

(b) Mobilization of public and private resources, involving cooperation among all levels of government, the private sector, and faith-based and other community-based organizations to develop cost-effective methods for identifying and controlling lead-based paint hazards;

(c) Development of comprehensive community approaches which result in integration of all community resources (governmental, faith-based and other community-based, and private businesses) to address lead hazards in housing;

(d) Integration of lead-safe work practices into housing maintenance, repair, weatherization, rehabilitation, and other programs that will continue after the grant period ends;

(e) Establishment of a public registry (listing) of lead-safe housing or inclusion of the lead-safe status of properties in another publicly accessible address-based property information system; and

(f) To the greatest extent feasible, promotion of job training, employment, and other economic opportunities for low-income and minority residents and businesses that are owned by and/or employ low-income and minority residents as defined in 24 CFR 135.5 (*See* 59 FR 33881, June 30, 1994).

(B) *Eligible Applicants.* (1) To be eligible to apply for funding under this program, the applicant must be a State, Indian Tribe, or unit of local government. Multiple units of a local government (or multiple local governments) may apply as part of a consortium; however, you must identify a single primary government or agency as "the applicant." You may submit only one application. In the event you submit multiple applications, this will be considered a curable (minor) defect and the application review process delayed until you notify HUD in writing which application should be reviewed. Your other applications will be returned unevaluated. (See the General Section of the SuperNOFA, Section V, Corrections to Deficient Applications)

(2) Threshold Requirements. As an applicant, you must meet all of the threshold requirements of Section II(B) of the General Section of the SuperNOFA as well as any specific threshold requirements for applicants under the Lead Hazard Control Grant Program. Applications will not be rated or ranked if they do not meet the threshold requirements of Section II (B) of the general Section of the SuperNOFA.

(3) Consolidated Plans. (This requirement does not apply to Indian Tribes)

(a) If your jurisdiction has a current HUD approved Consolidated Plan, you must submit, as an appendix, a copy of the lead-based paint element included in the approved Consolidated Plan.

(b) If your jurisdiction does not have a currently approved Consolidated Plan, but it is otherwise eligible for this grant program, you must include your jurisdiction's abbreviated Consolidated Plan, which includes a lead-based paint hazard control strategy developed in accordance with 24 CFR 91.235.

(4) Contracts or other formal arrangements with faith-based and other community-based organizations. If selected for funding, local and State applicants must enter into contractual relationships or other formal arrangements with faith-based and other community-based organizations. Such relationships must be established prior to actual execution of the grant agreement. This requirement does not apply to Indian Tribes.

(5) EPA Authorization. If you are a State government or an Indian Tribal government, you must have an EPA authorized Lead-Based Paint Training and Certification Program in effect on the application deadline date to be eligible to apply for Lead Hazard Control Grant funds. The approval date in the **Federal Register** notice published by the EPA will be used in determining the Training and Certification status of the applicant State or Indian Tribal government.

(6) Current or prior grantees that have not completed a minimum of 35 percent of the units in their most recent grant agreement as of March 31, 2002, are not eligible to apply under this NOFA.

(7) The eligibility factors discussed in paragraphs (1) through (5) above are threshold requirements. If you do not satisfy the appropriate eligibility requirements stated in these paragraphs, HUD will not review your application.

(C) *Eligible Activities.* HUD is interested in promoting lead hazard control approaches that result in the reduction of this health threat for the maximum number of low-income families with children under six, for the longest period of time, and that demonstrate techniques which are cost-effective, efficient, and replicable elsewhere. Activities must be conducted in compliance with HUD's Lead-Safe Housing Rule, 24 CFR Part 35, and with any applicable requirements of a Training and Certification Program that has been authorized by the Environmental Protection Agency under the requirements of 40 CFR 745.320. Copies of HUD's Lead-Safe Housing Rule, and the companion publication "Interpretive Guidance: The HUD Regulation on Controlling Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Housing Being Sold," are available from the National Lead Information Clearinghouse at 1–800–424–LEAD and on the Internet at www.hud.gov.

(1) Direct Project Elements that you may undertake directly or through sub-recipients, include:

(a) Performing dust testing, hazard screens, inspections, and risk assessments of eligible housing constructed before 1978 to determine the presence of lead-based paint and/or lead hazards from paint, dust, or soil.

(b) Conducting the required pre-hazard control blood lead testing of children under the age of six years (72 months) residing in units undergoing inspection, risk assessment, or hazard control, unless reimbursable from Medicaid or another source.

(c) Conducting lead hazard control, which may include: interim control of lead-based paint hazards in housing (which may include specialized cleaning techniques to address lead dust); and abatement of lead-based paint hazards, including soil and dust, by means of removal, enclosure, encapsulation, or replacement methods. Complete abatement of all lead-based paint or lead-contaminated soil is not acceptable as a cost-effective strategy unless justification is provided and subsequently approved by HUD. Abatement of lead-contaminated soil should be limited to areas with bare soil in the immediate vicinity of the structure, i.e., drip line or foundation of the structure being treated, and children's play areas.

(d) Carrying out temporary relocation of families and individuals during the period in which hazard control is conducted and until the time the affected unit receives clearance for reoccupancy.

(e) Performing blood lead testing and air sampling to protect the health of the hazard control workers, supervisors, and contractors.

(f) Undertaking minimal housing rehabilitation activities that are specifically required to carry out effective hazard control, and without which the hazard control could not be completed and maintained. Hazard Control grant funds may be used for lead hazard control work done in conjunction with other housing rehabilitation programs. HUD strongly encourages integration of this grant program with housing rehabilitation, weatherization, and other energy conservation activities.

(g) Conducting clearance dust-wipe testing and laboratory analysis.

(h) Engineering and architectural activities that are required for, and in direct support of, lead hazard control.

(i) Providing resources to build capacity for lead-safe housing and lead hazard control, including free delivery of HUD-approved lead-safe work practices training courses for rehab contractors, rehab workers, homeowners, renters, painters, remodelers, maintenance staff, and others conducting renovation, rehabilitation, maintenance or other work in private housing; free delivery of lead sampling technician training, lead-based paint worker or contractor certification training; and subsidies for licensing or certification fees to low-income persons seeking credentials as lead-based paint workers or contractors or lead sampling technicians.

(j) Providing cleaning supplies for lead-hazard control, and instructions or training in their use, to faith-based and other community-based organizations, homeowners, and renters in low-income private housing.

(k) Conducting planning, coordination, and training activities to comply with HUD's Lead-Safe Housing Rule (24 CFR part 35) that became effective on September 15, 2000. These activities should support the expansion of a workforce properly trained in lead-safe work practices which is available to conduct interim controls on HUD assisted housing covered by these regulations. The regulation and interpretive guidance about the rule are available from the National Lead Information Center at 1–800–424–LEAD or *www.hud.gov.*

(l) Conducting general or targeted community awareness, education or outreach programs on lead hazard control and lead poisoning prevention including educating owners of rental properties on the Fair Housing Act and offering educational materials in languages other than English and providing training on lead-safe maintenance and renovation practices and management. Upon request, this also would include making all materials available in alternative formats to persons with disabilities (*e.g.;* Braille, audio, large type).

(m) Procuring liability insurance for lead-hazard control activities.

(n) Supporting data collection, analysis, and evaluation of grant program activities. This includes compiling and delivering such information and data as may be required by HUD. This activity is separate from administrative costs.

(o) Conducting applied research activities directed at demonstration of cost effective methods for lead hazard control.

(p) Purchasing or leasing equipment having a per unit cost under $5,000.

(q) Purchasing or leasing no more than two (2) X-ray fluorescence analyzers for use by the Lead-Based Paint Hazard Control Grant Program, if not already available.

(r) Preparing a final report at the conclusion of grant activities.

(2) Support Elements.

(a) Administrative costs. There is a 10% maximum for administrative costs. Specific information on administrative costs is included in this Lead-Based Paint Hazard Control Grant Program section of this SuperNOFA.

(b) Program planning and management costs of sub-grantees and other sub-recipients. (D) *Ineligible Activities.* You may not use grant funds for any of the following:

(1) Purchase of real property.

(2) Purchase or lease of equipment having a per unit cost in excess of $5,000, except for the purchase of X-ray fluorescence analyzers.

(3) Chelation or other medical treatment costs related to children with elevated blood lead levels. Non-Federal funds used to cover these costs may be counted as part of the required matching contribution.

(4) Lead hazard control activities in publicly owned housing, or project-based Section 8 housing.

IV. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, the applicant must comply with the following requirements: (A) Conformance of proposed plans to Federal and State policies for Lead-Based Paint Hazard Control. All lead hazard control activities must be conducted in compliance with the applicable requirements of HUD's Lead-Safe Housing Rule, 24 CFR part 35, and as clarified in HUD's Interpretive Guidance about the rule. Activities must also comply with any additional requirements in effect under a State or Tribal Lead-Based Paint Training and Certification Program that has been authorized by the Environmental Protection Agency pursuant to 40 CFR 745.320.

Budgeting

(1) *Matching Contribution.* You must provide a matching contribution of at least 10% of the requested grant sum. This may be in the form of cash, including private sector funding, or in-kind (non-cash) contributions or a combination of these sources. With the sole exception of Community Development Block Grant (CDBG) funds, Federal funds may not be used to satisfy the statutorily required ten (10) percent matching requirement. Federal funds may be used, however, for contributions above the statutory requirement. If you do not include the minimum 10% match in your application, the application will be rated lower during the evaluation process. If selected for an award, you will be required to provide evidence that the matching contribution requirement will be met before being given the grant.

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(2) *Direct Lead Hazard Identification and Control Activities.* The budget proposed must show a minimum of 60 percent of the total Federal amount requested identified for direct lead hazard control activities. Direct lead hazard control activities consist of dust testing, hazard screens, lead inspections, risk assessments, lead hazard control services, and clearance examinations. Direct hazard control activities do not include relocation, blood testing of residents or workers, housing rehabilitation, training, community education, applied research, purchase of supplies or equipment, or administrative costs.

(3) *Lead-Safe Work Practice Training Activities.* For most applicants, at least two (2) percent of the total Federal amount in the budget proposal will be necessary to promote the expansion of a workforce properly trained in lead-safe work practices and which is available to conduct interim controls and follow lead-safe work practices while performing work on HUD assisted housing units per the provisions of the HUD Lead Safe Housing Regulation 24 CFR Part 35(1330(a)(4)(iii)(v), and to safely repair, rehabilitate, and maintain other privately-owned residential property. Any applicant that proposes to use less than 2% of the total Federal amount for this purpose shall present evidence that there is currently in place a workforce that is sufficient in size and is properly trained to carry out the work under the Lead Hazard Control grant and the HUD Lead-Safe Housing Regulation.

(4) *Applied Research Activities.* You may identify a maximum of five (5%) percent of the total grant request for applied research activities.

(5) *Administrative Costs.* There is a 10% maximum for administrative costs as specified in Section 1011 (j) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, Public Law 102–550). Additional information about allowable administrative costs is provided in Appendix B of this NOFA and in the application kit.

(B) *Period of Performance.* The period of performance is 36 months for first time grant recipients. The period of performance for current and prior grantees is 30 months, except grantees receiving an award under a "Request for Renewal," for which there is a 24-month period of performance.

(C) *Certified and Trained Performers.* Funded activities must be conducted by persons qualified for the activities according to 24 CFR part 35 (possessing certification as abatement contractors, risk assessors, inspectors, abatement workers, or sampling technicians, or others having been trained in a HUD-approved course in lead-safe work practices).

(D) *Coastal Barrier Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), you may not use grant funds for properties located in the Coastal Barrier Resources System.

(E) *Flood Disaster Protection Act.* Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), you may not use grant funds for lead-based paint hazard control of a building or manufactured home that is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). You are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(F) *National Historic Preservation Act.* The National Historic Preservation Act of 1966 (16 U.S.C. 470) and the regulations at 36 CFR part 800 apply to the lead-based paint hazard control activities that are undertaken pursuant to this program. HUD and the Advisory Council for Historic Preservation have developed an optional Model Agreement for use by grantees and State Historic Preservation Officers in carrying out activities under this program. This may be obtained from the SuperNOFA Clearinghouse.

(G) *Waste Disposal.* You must handle waste disposal according to the requirements of the appropriate local, State and Federal regulatory agencies. You must handle disposal of wastes from hazard control activities that contain lead-based paint but are not classified as hazardous in accordance with state or local law or the HUD Guidelines for the Evaluation and Control of Lead-Based Hazards in Housing (HUD Guidelines). The Guidelines may be purchased from HUD User (1–800–245–2691) or downloaded from the HUD website (www.hud.gov).

(H) *Worker Protection Procedures.* You must observe the procedures for worker protection established in the HUD Guidelines, as well as the requirements of the Occupational Health and Safety Administration (OSHA) (29 CFR 1926.62—Lead Exposure in Construction), or the State or local occupational safety and health regulations, whichever are most protective. If other applicable requirements contain more stringent requirements than the HUD Guidelines, the more rigorous standards shall be followed.

(I) *Prohibited Practices.* You must not engage in practices that are not allowed because of health and safety risks. Methods that generate high levels of lead dust shall be undertaken only with requisite worker protection, containment of dust and debris, suitable cleanup, and clearance. Prohibited practices include:

(1) Open flame burning or torching;

(2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) exhaust control;

(3) Uncontained hydro blasting or high-pressure wash;

(4) Abrasive blasting or sandblasting without HEPA exhaust control;

(5) Heat guns operating above 1100 degrees Fahrenheit;

(6) Chemical paint strippers containing methylene chloride or other volatile hazardous chemicals in a poorly ventilated space; and

(7) Dry scraping or dry sanding, except scraping in conjunction with heat guns or around electrical outlets or when treating no more than two (2) square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.

(J) *Proposed Exceptions to HUD Requirements.* Proposed methods that differ from HUD's Lead Safe Housing Rule will be considered on their merits through a separate HUD review and approval process after the grant award is made and a specific justification has been presented. HUD may consult with experts from both the public and private sectors. HUD will not approve methods that, in HUD's opinion, involve a lowering of standards that have the potential to adversely affect the health of residents, contractors or workers, or the environment.

(K) *Written Policies and Procedures.* You must have clearly established, written policies and procedures for eligibility, program marketing, unit selection, expediting work on homes occupied by children with elevated blood lead levels, and all phases of lead hazard control, including risk assessment, inspection, development of specifications, pre-hazard control blood lead testing, financing, relocation and

clearance testing. Grantees, subcontractors, sub-grantees, sub-recipients, and their contractors must adhere to these policies and procedures.

(L) *Continued Availability of Lead Safe Housing to Low-Income Families.* Units in which lead hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents as required by Title X. You must maintain a registry (listing) of units in which lead hazards have been controlled and ensure that these units are marketed to agencies and families as suitable housing for families with children under six. The grantee must notify the owner of the information that is collected so that the owner may make disclosure to tenants in accordance with the requirements under 24 CFR part 35, Subpart A.

(M) *Testing.* In developing your application budget, include costs for inspection, risk assessment, and clearance testing for each dwelling that will receive lead hazard control, as follows:

(1) *Testing.* (a) *General.* All testing and sampling shall conform to the current HUD Guidelines and Federal, state or tribal regulations developed as part of the appropriate contractor certification program. It is particularly important to provide this full cycle of testing for lead hazard control, including interim controls. Testing must be conducted according to the HUD Guidelines and the EPA lead hazard standards rule at 40 CFR part 745. All test results must be provided to the owner in a timely fashion, together with a notice describing the owner's legal duty to disclose the results to tenants and buyers under 24 CFR part 35, Subpart A.

(b) *Pre-Hazard Control.* A combined inspection and risk assessment is recommended. You should ensure that the results of the pre-hazard control investigation are sufficient to support hazard control decisions. When appropriate, you may elect to perform a lead hazard screen in lieu of an inspection or risk assessment.

(c) *Non-Identification of Lead Hazards from Paint, Dust, Soil.* In the event you propose to conduct lead hazard control work without identification of lead hazards from paint, dust, and soil, you must fully justify the technical and other rationale for such a proposal. HUD must approve such proposals. Approval is subject to HUD environmental review under 24 CFR part 50.

(d) *Clearance Testing.* Clearance dust testing must be conducted according to the EPA lead hazards standards rule at 40 CFR part 745 for abatement projects and the Lead-Safe Housing rule (24 CFR part 35) for lead hazard control activities or other abatement. These are available at www.epa.gov and www.hud.gov respectively.

(2) *Blood lead testing.* Before lead hazard control work begins, each occupant who is under six years old must be tested for lead poisoning within the six months preceding the housing intervention. Any child with an elevated blood lead level must be referred for appropriate medical follow-up. The standards for such testing are described in the Centers for Disease Control and Prevention publications *Preventing Lead Poisoning in Young Children* (1991), and *Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials (1997).*

(N) *Cooperation With Related Research and Evaluation.* You shall cooperate fully with any research or evaluation sponsored by HUD, CDC, EPA or other government agency and associated with this grant program, including preservation of project data and records and compiling requested information in formats provided by the researchers, evaluators or HUD. This also may include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in your original proposal. Participant data shall be subject to Privacy Act protection.

(O) *Data collection.* You will be required to collect and maintain the data necessary to document the various lead hazard control methods used and the cost of these methods.

(P) *Section 3 Employment Opportunities.* Please see Section II (E) of the General Section of the SuperNOFA. The requirements of Section 3 of the Housing and Urban Development Act of 1968 are applicable to the Lead-Based Paint Hazard Control Program.

(Q) *Replacing Existing Resources.* Funds received under this grant program shall not be used to replace existing community resources dedicated to any ongoing project.

(R) *Certifications and Assurances.* You must include the certifications and assurances listed in the General Section of the SuperNOFA with your application.

(S) *Davis-Bacon Act.* The Davis-Bacon Act does not apply to this program. However, if you use grant funds in conjunction with other Federal programs in which Davis-Bacon prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

(T) *Conducting Business in Accordance With HUD Core Values and Ethical Standards.* If awarded assistance under this SuperNOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees and agents of your organization are aware of your code of conduct (See Section II(B)(2) of the General Section of the SuperNOFA for information about conducting business in accordance with HUD's core values and ethical standards.)

(U) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* The Department of Housing and Urban Development (HUD) is committed to ensuring that small businesses, small disadvantaged businesses and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on Federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and sub grantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority business, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to *permit maximum participation by small and minority business, and women's business enterprises;*

(iv) *Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;*

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) above.

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V. Application Selection Process

(A) *Rating and Ranking.* Only those applications that meet the threshold review requirements will be rated and ranked. HUD intends to fund the highest ranked applications receiving a minimum score of 70 within the limits of funding, but reserves the right to advance other eligible applicants in funding rank. A decision to advance an applicant will be based on work plan strategies that foster innovative local approaches or lead hazard control methods.

(B) *Award Offers.* In the selection process, once available funds have been allocated to meet the requested or negotiated amounts of the top eligible applicants, HUD reserves the right to offer any residual amount as partial funding to the next eligible applicant, provided HUD is satisfied that the residual amount is sufficient to support a viable, though reduced effort, by such applicant(s). If you are an applicant offered a reduced grant amount you will have a maximum of seven (7) calendar days to accept such a reduced award. If you fail to respond within the seven-day limit, you shall be considered to have declined the award. Applicants may respond by e-mail, facsimile, or by mail.

(C) *Budget.* HUD will evaluate your proposed budget to determine if it is reasonable, clearly justified, and consistent with the intended use of grant funds. HUD is not required to approve or fund all proposed activities. Previously unfunded applicants may devote up to 36 months for the planning, implementation, and completion of lead hazard control activities. Current and prior grantees may devote up to 30 months, except those grantees awarded funds under the "Request for Renewal," for which up to 24 months can be devoted to those activities. You must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A).

Note: Current grantees eligible to submit a "Request for Renewal" are to complete the required budget forms included in the NOFA and develop a work plan strategy for conducting lead hazard control program activities during the 24-month period of performance. Do not respond to the Factors for Award listed below. The application kit will provide additional guidance for submitting an application.

(D) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are stated below. The maximum number of points to be awarded is 106. This maximum includes six bonus points as described in Section III(C)(1–3) of the General Section of the SuperNOFA, which addresses EZ, Brownfield Showcase Communities, and a court-ordered consideration applicable to this program. A minimum score of 70 is required for fundable applications.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 points for all applicants)

This factor addresses your organizational capacity necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's staff" for technical merit or threshold compliance, unless otherwise specified, includes any faith-based and other community-based organizations, sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to your project. In rating this factor, HUD will consider:

(1) The applicant's recent, relevant and successful demonstrated experience (including governmental and faith-based and other community-based partners) to undertake eligible program activities. The applicant must describe the knowledge and experience of the proposed overall project director and day-to-day program manager in planning and managing large and complex interdisciplinary programs, especially involving housing rehabilitation, public health, or environmental programs. The applicant must demonstrate that it has sufficient personnel or will be able to quickly retain qualified experts or professionals, to begin the proposed work program immediately after receiving an award and to perform lead hazard evaluation, lead hazard reduction, and other proposed activities in a timely and effective manner. In the narrative response for this factor, you should include information on your program staff, their experience, their commitment to the program, salary information, and position titles. Resumes (for up to three key personnel), position descriptions, and a clearly identified organizational chart for the lead hazard control grant program effort must be included in an appendix. Indicate the percentage of time that key personnel will devote to your project. The applicant's day-to-day program manager must be experienced in the management of housing rehabilitation or lead hazard control, or similar work involving project management, and must be dedicated to the proposed program for a minimum of 75% of the time. The applicant should provide a description of any previous experience in enrolling units and in completing lead hazard control work, housing rehabilitation or other work in a timely and effective manner. Describe how any other principal components of your agency, other public entities, or other organizations will participate in implementing or otherwise supporting or participating in the grant program. You may demonstrate capacity by thoroughly describing your prior experience in initiating and implementing lead hazard control efforts and/or related environmental, health, or housing projects. You should indicate how this prior experience will be used in carrying out your proposed comprehensive Lead-Based Paint Hazard Control Grant Program.

(2) If the applicant received previous HUD Lead-Based Paint Hazard Control Grant funding, this past experience will be evaluated in terms of cumulative progress and achievements under the previous grant(s). Where the applicant has received multiple HUD Lead Hazard Control Grants, performance under the most recent grant award will be primarily evaluated. If you are a current or prior grantee, you must provide the detail necessary to assure HUD that you will implement the proposed work immediately and perform it concurrently with existing lead hazard control grant work. The applicant must provide a description of its progress and performance in implementing the most recent grant award including the total number of housing units enrolled, assessed, in progress and completed and cleared as of the most recent calendar quarter. The applicant must also describe results from other lead hazard control grant program work plan activities and tasks including results from efforts undertaken to build local capacity for lead hazard control; in implementing HUD's Lead-Safe Housing Rule; "mainstreaming" lead-safe work practices into the private market; and in conducting effective education, outreach, and other training activities. The applicant should also cite specific instances in which the program has made a positive impact in the community. These impacts could include decreases in the number of children with elevated blood lead levels in the target area, average blood lead levels, and dust lead levels. In addition, activities undertaken to develop, enhance or expand the local infrastructure through collaboration should also be discussed.

In evaluating applications for funding HUD will take into account an applicant's past performance in managing funds, including the ability to account for funds appropriately; timely use of funds received either from HUD or other Federal, State or local programs; meeting performance targets for completion of activities and number of persons to be served or targeted for assistance. HUD may use information relating to these items based on information at hand or available from public sources such as newspapers, Inspector General or Government Accounting Office Reports or Findings, hotline complaints that have been proven to have merit, or other such sources of information.

In evaluating past performance, HUD may elect to deduct points from the rating score as specified under the Factors for Award or set threshold levels for performance as specified in the funding announcement.

Rating Factor 2: Needs/Extent of the Problem (20 points for all applicants)

This factor addresses the extent to which there is a need for the proposed program to address a documented problem and will be based on the evidence of lead poisoning, the presence of lead hazards, high risk children, and high risk housing in any proposed target area(s).

(1) Document a critical level of need for your proposed activities in the geographical area where activities will be carried out. Since an objective of the program is to prevent at-risk children from being poisoned, specific attention must be paid to documenting such need as it applies to the targeted areas, rather than the entire locality or state.

(2) Document the following for the target area(s):

(a) Numbers and percentages of children less than 72 months of age

i. numbers and percentages of children with elevated blood lead levels

ii. numbers and percentages of children tested for blood lead levels,

(b) Economic and demographic data relevant to the target area, including poverty and unemployment rates;

(c) Relevant housing market data available from HUD, or other data sources, including the Consolidated Plan/Analysis of Impediments, Public Housing Authority's Five Year Comprehensive Plan, State or local Welfare Department's Welfare Reform Plan, and;

(d) Other data relevant to the target area or jurisdiction that documents an unmet need for lead-safe housing. These data may include the number of units that have been occupied by lead poisoned children where the identified lead-based paint hazards have not been remediated; the number of lead-based paint health and/or housing code violations; or the number of pre-1978 or pre-1960 housing units anticipated to undergo rehabilitation in the next 12 months; the proportion or number of units with lead dust hazards; information about the principal sources of exposure in your community, their prevalence, and the segments and/or characteristics of the housing most affected by these exposure sources; and/or other information about housing condition.

(3) To the extent that statistics and other data contained in your community's Consolidated Plan or Analysis of Impediments to Fair Housing Choice (AI) and other data sources support the extent of the problem, you should include references to the Consolidated Plan, the AI or other data sources in your response.

(4) Provide information about the areas targeted for lead hazard control activities (data may be available from State or local sources, included in your currently approved Consolidated Plan or AI, derived from current Census Data, or available from special studies). The information to be provided includes the following:

(a) The age and condition of housing;

(b) The number and percentage of very-low (income less than 50% of the area median) and low (income less than 80% of the area median) income families, as determined by HUD, with adjustments for smaller and larger families;

(c) The number and proportion of children under six years (72 months) of age at risk of lead poisoning;

(d) The extent of the lead poisoning problem in children under six years (72 months) of age in target areas and the overall jurisdiction; and

(e) Other socioeconomic or environmental factors that demonstrate a need to establish or continue lead hazard control work in your jurisdiction.

(5) You also must provide documentation of the priority that the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice has placed on addressing the needs you described. If your application addresses needs that are in the Consolidated Plan, Analysis of Impediments to Fair Housing Choice, or the result of court orders or consent decrees, settlements, conciliation agreements, voluntary compliance agreements, and/or Childhood Lead Poisoning Prevention Programs or other relevant local initiatives you will receive more points than applicants that do not relate their program to identified needs.

(6) For you to receive maximum points for this factor, there must be a direct relationship between your proposed lead hazard control activities in the target area(s) and the documented community needs.

Rating Factor 3: Soundness of Approach (40 points for previously unfunded applicants and 50 points for current or prior grantees)

This factor addresses the quality and cost-effectiveness of your proposed work plan and the demonstrated performance of current and prior grantees both in terms of units completed and LOCCS draw downs). You should present information on your proposed lead-based paint hazard control program and describe how it will satisfy the identified needs. To the extent possible, describe a comprehensive strategy to address the need to protect targeted neighborhoods rather than individual units or homes. Your response to this factor must include the following elements:

(1) *Lead Hazard Control Work Plan Strategy* (32 points for previously unfunded applicants; 42 points for current and prior grantees). Describe your work plan goals and specific time-phased strategy to complete work under the grant within the 36-month period of performance (30 months for existing grantees) for your lead hazard control grant program. You should provide information on:

(a) *Implementing a Lead Hazard Control Program* (13 points for previously unfunded applicants; 6 points for current or prior grantees). Describe how you will implement the strategy for your proposed lead hazard control program. The description must include information on:

(i) How the project will be managed and staffed, the steps taken to ensure the availability of lead-based paint contractors and workers to conduct lead hazard control interventions, and other activities needed during the planning phase of the program and prior to beginning actual lead hazard control intervention work. In addition, a detailed description of the selection process for sub grantees, subcontractors or sub-recipients, and how assistance and funding will flow from the grantee to the actual performers of work under the grant shall be provided.

(ii) The overall number of eligible privately owned housing units scheduled for lead hazard control intervention work and the strategy for their identification, selection, prioritization, and enrollment in the selected target area(s). Discuss the eligibility criteria for unit selection and how the program will identify units that meet these criteria. Explain how referrals of eligible units from childhood lead poisoning prevention programs,

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other health or housing agencies or health providers that serve children will be obtained. Also discuss how referrals from the Section 8/Housing Choice Voucher programs and other agencies that provide housing assistance to low-income households with children including CDBG, Home-funded housing programs or other sources will be obtained. (Include as attachments any referral agreements, commitment letters or other documents from other entities that describe their participation in recruiting eligible units in the lead hazard control grant program.) (*See* Rating Factor 4 Leveraging Resources and Rating Factor 5 Coordination, Self-Sufficiency and Sustainability), Provide estimates of the total number of owner occupied and/or rental units that will receive lead hazard control. You should describe how the program will respond to the needs of children with elevated blood lead levels located outside the target area(s).

(iii) The degree to which the work plan focuses on eligible privately-owned housing units occupied by low-income families with children under six years (72 months) of age. Describe your planned approaches to control lead hazards in vacant and/or occupied units before children are poisoned and your plans to ensure that the program will continue to match these units with low-income families with children under six years (72 months) of age in the future. Discuss strategies to control lead hazards in units where children have already been identified with an elevated blood lead level, including your process for referring and tracking children with elevated blood lead levels for medical case management, and your capacity to rapidly complete lead hazard control work in their units. Also describe your process for referrals of EBL-occupied units that do not meet all the eligibility criteria for inclusion in the lead hazard control grant program. Provide estimates of the number of children you will assist through this program.

(iv) The lead hazard control financing strategy, including eligibility requirements, terms, conditions, dollar limits, and amounts available for lead hazard control work. You must discuss the way assistance from the grant funds will be administered to or on behalf of property owners (e.g. use of grants, deferred loans and/or forgivable loans and the basis and schedule for forgiveness), and the role of other resources, such as private sector financing), as well as the entity that will administer the financing process. Describe any matching requirements proposed for assistance to rental property owners.

(v) You should describe how your proposed program will satisfy the stated needs in the Consolidated Plan. Describe how your proposed program will further and support the policy priorities of the Department, including promoting healthy homes; providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs; or providing educational and job training opportunities. Describe how your strategy will provide long-term benefits to families with children under six years of age. Describe whether any of the proposed activities will occur in an EZ/EC and how they will benefit the residents of those zones or communities.

(b) *Lead Hazard Control Outreach and Community Private Sector Involvement* (6 points for all applicants). Applicants are encouraged to solicit participation of faith-based and other community-based and private sector organizations to accomplish outreach and community involvement activities and to build long-term capacity and sustain accomplishments in the target area. Applicants that partner, fund, or subcontract with faith-based and other community-based organizations will receive higher points in this sub factor. Your application must describe:

(i) Proposed methods of community education. These may include community awareness, education, training, and outreach programs in support of the work plan and objectives. This description should include general and/or targeted efforts undertaken to assist your program in reducing lead exposure. Programs should be culturally sensitive, targeted, and linguistically appropriate. Upon request, this would include making materials available in alternative formats to persons with disabilities (*e.g.*, Braille, audio, large type), and in other languages common to the community to the extent possible.

(ii) Strategy for involving neighborhood or faith-based and other community-based organizations in your proposed activities. Your activities may include training (including training residents to screen houses through visual assessment and sampling), outreach, community education, marketing, inspection (including dust lead testing), and the conduct of lead hazard control activities. HUD will evaluate the level of substantive involvement during the review process.

(iii) Strategies and methodologies that affirmatively further fair housing and increase access to lead-safe housing for all segments of the population: homeowners, owners of rental properties, and tenants. This outreach should address ways to avoid housing discrimination against families with young children, and ways to ensure that all families will have adequate, lead-safe housing choices in the future.

(c) *Technical Approach/Performance* (13 points for previously unfunded applicants; 30 points for current or prior grantees). (Previously unfunded applicants are to respond to items (c) i–vii below)

(Current or prior grantees will be evaluated on the basis of cumulative unit production and cumulative LOCCS draw downs made under the grantee's most recent award for the period ending March 31, 2002. Current and prior grantees do not need to respond to items (c) i–vii below but are to provide a response for items viii and ix)

For Previously Unfunded Applicants

(i) Describe your process for the conduct of lead hazard evaluation (risk assessments and/or inspections) in units of eligible privately owned housing to confirm that there are lead-based paint hazards in the housing units where lead hazard control is undertaken. You may use the results of a valid risk assessment or inspection that had been previously performed within that past 6 months by certified inspectors or risk assessors in accordance with the HUD Guidelines if the report identified lead-based paint hazards and it is evident that hazards remain.

(ii) Describe your testing methods, schedule, and costs for performing blood lead testing, risk assessments, inspections and clearance examinations to be used. If you propose to use a more restrictive standard than the HUD/EPA thresholds (e.g., less than 0.5% or 1.0 mg/ square centimeter for lead in paint, or less than 40, 250, 400 mg/square foot for lead in dust on floors, sills and troughs respectively); or 400 ppm in bare soil in children's play areas and 1200 ppm for bare soil in the rest of the yard), identify the standard(s) which will be used. All testing shall be performed in accordance with applicable regulations.

(iii) Describe the lead hazard control methods and strategies that you will undertake and the number of units you will treat for each method selected (interim controls or hazard abatement). Complete abatement of all lead painted surfaces in all units is generally not acceptable as a strategy. In cases where only a few surfaces have lead hazards in a specific unit and abatement is cost-effective, the applicant must provide a detailed rationale for selecting complete abatement as a strategy. Provide an estimate of the per unit costs (and a basis for those estimates) for each lead hazard control method proposed and a schedule for initiating and completing lead hazard control work in the selected units. Discuss efforts to incorporate cost-effective lead hazard control methods. Explain your cost estimates, providing detail on how the estimates were developed, with particular references to cost effectiveness.

(iv) Schedule. Describe your expected schedule for the overall project. Discuss when you plan to perform lead hazard control on your first unit; and complete lead hazard control on all units in the lead hazard control program. Describe the schedule for a typical unit that will receive lead hazard control. Discuss the duration for referral/intake, enrollment and qualification; evaluation; hazard control; and clearance. Describe the schedule for emergency referrals (e.g. unit occupied by a child under the age of 6 years of age with an elevated blood lead level).

(v) Describe how you will integrate proposed lead hazard control activities with rehabilitation activities, including providing the training needed to create a workforce properly trained in lead-safe work practices for units assisted or rehabilitated under other HUD programs, and any collaboration with local housing or health departments, rehabilitation programs or community development corporations to stage lead hazard control and rehabilitation in the same units.

(vi) Describe your contracting process, including development of specifications or adoption of existing specifications for selected lead hazard control methods. Describe the management processes you will use to ensure the cost-effectiveness of your lead hazard control methods. Your application must include a discussion of the contracting process for the conduct of lead hazard control activities in the selected units, and requirements for coordination among lead hazard control, rehabilitation, weatherization, and other contractors.

(vii) Describe your plan for occupant protection or the temporary relocation of occupants of units selected for lead hazard control work. Describe any plan to avoid overnight relocation in small scale projects, consistent with 24 CFR 1345 (a)(2) and HUD's Interpretive Guidance J24, R18, and R19.You should address the use of safe houses and other temporary housing arrangements, storage of household goods, stipends, incentives, etc.

For Current and Prior Grantees

(viii) If you are a current or prior grantee, you must describe the actions you will take to ensure that your proposed lead hazard control work will occur concurrently with other ongoing HUD lead hazard control grant work. Your application must provide the detail necessary to assure HUD that you will implement the proposed work immediately and perform it concurrently with existing lead hazard control grant work. (*See* rating Factor 1)

(ix) If you are an existing or prior grantee, you must describe your progress in meeting the unit production goals included in your most recent lead hazard control grant award. If the unit production achieved is below the performance values (percentages of units completed) provided in the application kit, and no changes are proposed to your work plan, you should explain why the strategy in the earlier grant remains appropriate. Failure to provide this discussion will result in reduced points for this sub factor. In addition, the expenditure rate as reflected by the timely drawdown of HUD grant funds from the Line of Credit Control System (LOCCS) will be evaluated in conjunction with the achievement of the unit production goal.

(2) *Economic Opportunity* (4 points for all applicants). Describe the ways you will train individuals and contractors in housing related trades, such as painters, remodelers, renovators, maintenance personnel, and rehabilitation specialists, and others in lead-safe work practices. Describe how you will help to integrate lead-safety into other housing activities, such as meeting the requirements of the HUD Lead-Safe Housing Regulation in housing units rehabilitated or assisted with Federal funds.

Describe the methods to be used to provide economic opportunities for residents and businesses in the community. This discussion should include information on how you will promote training, employment, business development, and contract opportunities as part of your lead hazard control program. Grantees must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing rules at 24 CFR Part 135. Describe how you will accomplish the requirement by (1) providing training and employment opportunities for low and very low-income persons living within the grantee's jurisdiction, and by (2) providing business opportunities to businesses owned by low and very low-income persons living within the grantees jurisdiction.

(3) *Program Evaluation, Data Collection, and Research* (4 points for all applicants).

(a) Identify and discuss the specific methods and measures you will use (in addition to HUD reporting requirements) to measure progress, evaluate program effectiveness, and identify program changes necessary to improve performance. Describe how you will obtain, document and report the information.

(b) Provide a detailed description of any proposed applied research activities. Describe the objectives, methodology and impact at the local level of the proposed research activities.

Rating Factor 4: Leveraging Resources (10 points for previously unfunded applicants; 5 points for current or prior grantees)

This factor addresses your ability to obtain other community and private sector resources that can be combined with HUD's program resources to achieve program objectives. Current and prior grantees will be evaluated on their ability to generate new and/or additional resources and partnerships with faith-based and other community-based organizations committed to increasing lead poisoning prevention activities.

(1) In evaluating this factor, HUD will consider the extent to which you have established working partnerships with other entities to get additional resources or commitments to increase the effectiveness of the proposed program activities. Resources may include cash or in-kind contributions of services, equipment, or supplies allocated to the proposed program. Resources may be provided by governmental entities, public or private organizations, and other entities partnering with you. Leveraging arrangements with rental property owners may have the benefits of increasing the efficiency of public lead hazard expenditures and creating a financial stake for rental property owners in the quality of lead hazard control work. Contractual or other formal relationships with faith-based and other community-based organizations are a requirement for State and local government applicants. Documentation of these relationships with faith-based and other community-based organizations must be provided in this application either by signed agreements or commitment letters. This requirement does not apply to applicants who are an Indian Tribe. You also may partner with other program funding recipients to coordinate the use of resources in your target area.

(2) You should detail any activities to increase the understanding of lead poisoning prevention in your community. This could include partnerships with childhood lead screening programs, collaboration with

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ongoing health, housing or environmental research efforts which could result in a greater availability of resources, and efforts to build capacity for lead-safe housing.

(3) Matching funds must be shown to be specifically dedicated to and integrated into supporting the lead-based paint hazard control program. You may not include funding from any Federally funded program (except the CDBG program) as part of your required 10% match. Other resources from the private sector or other sources committed to the program that exceed the required 10% match will provide points for this rating factor. Contributions above the first 10% may include funds from other Federally funded programs, State, local, charity, non-profit or for-profit entities. You must support each source of contributions, cash or in-kind, both for the required minimum and additional amounts, by a letter of commitment from the contributing entity, whether a public or private source. This letter must describe the contributed resources that you will use in the program and the purpose for which they are designated. Staff in-kind contributions should be given a monetary value. If you do not provide letters specifying details and the amount of the actual contributions, those contributions will not be counted. Matching contributions required of rental property owners may be included as part of your match. Documentation and estimates for the amount of the match should be provided in the annex for this factor.

(4) Applicants will not receive full points under this rating factor if they do not submit evidence of a firm commitment and the appropriate use of leveraged resources under the grant program. Such evidence must be provided by including letters of firm commitment, memoranda of understanding, or other signed agreements to participate from those entities identified as partners in your application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, the proposed level of commitment and responsibilities as they relate to your proposed program. The commitment must be signed by an official of the organization legally able to make commitments on behalf of the organization. Describe the role of faith-based and other community-based organizations in specific program activities, such as hazard evaluation and control; monitoring; and awareness, education, and outreach within the community. Describe how you will ensure that commitments to sub grantees specified in your proposal will be honored and executed, contingent upon an award from HUD.

Rating Factor 5: Coordination, Self-Sufficiency, and Sustainability (10 Points for previously unfunded applicants; 5 Points for current or prior grantees)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to prevent lead poisoning in your community's housing by using available HUD and other community resources. This factor consists of three elements: (1) The extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed work activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner; (2) The extent to which your application implements practical solutions within the grant term to result in assisting beneficiaries of grant program funds in achieving independent living, economic empowerment, educational opportunities, housing choice, or improved living environments; and (3) The extent to which your program exhibits the potential to be financially self-sustaining by decreasing dependence on Federal funding and relying more on State, local, and private funding so your activities can be continued after your grant award period is completed. In evaluating this factor, HUD will consider how you have:

(1) Coordinated your proposed activities with those of other groups or organizations to best support and coordinate all known activities and the specific steps you will take to share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place or proposed should be described. You should, at a minimum, describe the activities, in your metropolitan area or region, of other HUD Lead-Based Paint Hazard Control grantees, Centers for Disease Control and Prevention (CDC) Childhood Lead Poisoning Prevention grantees, Maternal and Child Health programs, State Medicaid agencies and child care providers, EPA grantees, EPA Regions and/or EPA-authorized certification and training programs, and other programs which are addressing lead poisoning prevention needs. Efforts undertaken to encourage non-profit organizations, including faith-based organizations, to participate in the program should be described. Coordination also includes providing technical assistance and training to neighboring or regional jurisdictions to facilitate the implementation of lead-based paint hazard control activities in those jurisdictions.

(2) Become actively involved (or if not currently active, describe the specific steps that will be taken to become active) in your community's Consolidated Plan and Analysis of Impediments processes and contribute information, action steps, and strategies to the element of the Consolidated Plan that has been established to identify and address the problem of childhood lead poisoning.

(3) Coordinated and integrated lead hazard control work with the local agencies responsible for housing rehabilitation, housing and health codes, and other related housing programs, as well as with the work of community development corporations, other faith-based and other community-based organizations and childhood lead poisoning prevention programs.

(a) Describe the degree to which lead hazard control work will be done in conjunction with other housing-related activities (*i.e.*, rehabilitation, weatherization, correction of code violations, and other similar work), or your plan for the integration and coordination of lead hazard control activities into those activities in the future.

(b) Describe plans to incorporate lead-based paint maintenance, and hazard control standards with the applicable housing codes and health regulations, including training of workers to conduct such activities.

(c) Describe plans to generate and use public subsidies or other private-sector resources (such as revolving loan funds) to finance future lead hazard control activities.

(d) Describe plans to develop public-private lending partnerships to finance lead hazard control as part of acquisition and rehabilitation financing including the use of Community Reinvestment Act "credits" by lending institutions.

(e) Discuss efforts undertaken to coordinate activities of all agencies and organizations participating in any aspect of the proposed program.

(f) Describe specific plans and objectives to implement a registry of lead-safe housing that is available to the public, or to incorporate housing or inclusion of the lead-safe status of properties in another publicly accessible address-based property information system. Such plans could include strategies on how the information would be managed and made available to the public so that families (particularly low income families with children under age six) can make informed decisions regarding their housing options. Existing grantee applicants must address any registry of lead-safe housing and specifically discuss the availability, amount of information contained, and the use by members of the community.

(g) Detail the extent to which the policy of affirmatively furthering fair housing for all segments of the population is advanced by the proposed activities. Detail how your proposed work plan will support the community's efforts to affirmatively further affordable housing for all segments of the population. If you have an existing grant, you should discuss activities that have contributed to enhanced lead safe housing opportunities to all segments of the population.

(h) Describe plans to adopt or amend statutes, regulations, or policies that will more fully integrate lead hazard control into community policies and priorities.

(4) Describe efforts to coordinate and cooperate with other organizations that will lead to a reduction in lead risks to community residents. This could include such activities as free training to create a workforce properly trained in lead safe work practices, lead-safe repainting and remodeling; promotion of essential maintenance practices; and provision of lead dust testing to low-income, privately-owned homes which may not receive lead hazard control assistance under this grant program.

(5) Describe how your program will be held accountable for meeting program goals, objectives, and the actions undertaken in implementing the grant program. Applicants should provide a description of the mechanism to assess progress and track performance in meeting the goals and objectives outlined in the work plan. Applicants should provide assurances that work plans and performance measures developed for the program will assist intended beneficiaries, and that work will be conducted in a timely and cost-effective manner.

VI. Application Submission Requirements

(A) Applicant Information

(1) *Application Format.* The application narrative response to the Rating Factors is limited to a maximum of 25 pages. Your response must be typewritten on one (1) side only on 8 ½" x 11" paper using a 12-point (minimum) font with not less than ¾" margins on all sides. Appendices should be referenced and discussed in the narrative response. Materials provided in the appendices should directly apply to the rating factor narrative.

(2) *Application Checklist.* Your application must contain the items listed in this Section VI(A)(B). These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives, letters), referred to as the "non-standard forms" can be found as Appendix A to this program section of the SuperNOFA. The application items are as follows:

(a) Transmittal Letter that identifies "the applicant" (or applicants) submitting the application, the dollar amount requested, what the program funds are requested for, and the nature of involvement with faith-based and other community-based organizations.

(b) The name, mailing address, telephone number, and principal contact person of "the applicant." If you have consortium associates, sub-grantees, partners, major subcontractors, joint venture participants, or others contributing resources to your project, you must provide similar information for each of these partners.

(c) Checklist and Submission Table of Contents.

(d) Applicant Abstract. An abstract describing the goals and objectives of your proposed program (2 page maximum).

(e) Standard Form 424, Application for Federal Assistance.

(f) HUD 424M, Federal Assistance Funding Matrix.

(g) A detailed budget (total budget is the federal share and matching contribution) with supporting cost justifications for all budget categories of your grant request. You must provide a separate estimate for the overall grant management element (Administrative Costs), which is more fully defined in the application kit for this program section of the SuperNOFA. The budget shall include not more than 10% for administrative costs and not less than 90% for direct project elements. A minimum of 60% of the total Federal amount requested must be dedicated to direct lead hazard control activities. A sufficient amount of the total Federal amount must be dedicated to activities to create a workforce properly trained in lead-safe work practices. In the event of a discrepancy between grant amounts requested in various sections of the application, the amount you indicate on the SF–424 will govern as the correct value.

(h) An itemized breakout (using the SF–424A) of your required matching contribution, including:

—Values placed on donated in-kind services;

—Letters or other evidence of commitment from donors; and

—The amounts and sources of contributed resources.

(i) Standard Forms SF–LLL and SF–424B, and HUD Forms 2880, 2990, 2991, 2992, 2993, 2994, 50070 and 50071.

(j) Contracts, Memoranda of Understanding or Agreement, letters of commitment or other documentation describing the proposed roles of agencies, local broad-based task forces, participating faith-based and other community or neighborhood-based groups or organizations, local businesses, and others working with the program.

(k) A copy of the lead hazard control element included in your current program year's Consolidated Plan. You should include the discussion of any lead-based paint issues in your jurisdiction's Analysis of Impediments, particularly as it addresses your target areas.

(l) Narrative responses to the five rating factors.

(B) *Proposed Activities.* All applications must, at a minimum, describe the proposed activities in the narrative responses to the rating factors. Your narrative statement must be numbered in accordance with each factor for award (Rating Factors 1 through 5).

(C) *Applicant Debriefing. See* Section VII (E)(2) of the General Section of the SuperNOFA for information about applicant debriefing. Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** Notice, and for at least 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to the person or organization identified as the Contact under the section entitled For Further Information and Technical Assistance in the program section of the SuperNOFA under which you applied for assistance. Information provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon

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which assistance was provided or denied.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

In accordance with HUD regulations in 24 CFR Part 58, recipients of lead-based paint hazard control grants will assume Federal environmental review responsibilities. Recipients of a grant under this funded program will be given guidance in these responsibilities.

IX. Authority

The Lead-Based Paint Hazard Control Program is authorized by Section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992).

Appendix A

The non-standard forms, which follow, are required for your Lead-Based Paint Hazard Control Program application. They are the Checklist and Submission Table of Contents and the Total Budget (Federal Share and Matching Contribution, including instructions).

Appendix B

The description of "Administrative Costs" and the "Eligibility of HUD Assisted Housing" are included in this section of the NOFA.

BILLING CODE 4210–32–P

LEAD HAZARD CONTROL GRANT PROGRAM

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. **You must include this checklist and submission table of contents with the proposal.**

		Cover page
☐	**Transmittal Letter**	
☐	**Applicant Abstract Summary** (limited to a maximum of 2 pages)	
☐	**Application Forms**	
☐	Standard Form 424 and SF 424A Section B	
☐	Standard Form 424B (Assurances/Non-Construction Programs)	
☐	HUD-424-M	
☐	Total Budget (Federal Share and Matching)	
☐	HUD 2880 Disclosure and Update Report	
☐	HUD 2990 Certification of Consistency with the EZ/EC Strategic Plan	
☐	HUD 2991 Certification of Consistency with the Consolidated Plan	
☐	HUD 2992 Certification Regarding Debarment and Suspension	
☐	HUD 50070 Certification for a Drug-Free Workplace	
☐	HUD 50071 Certifications of Payments to Influence Federal Transactions	
☐	Form SF-LLL Disclosure of Lobbying Activities Required	
	☐ Form SF-LLL Not Required	
	Threshold Requirements	
☐	Copy of Lead-Based Paint Element in Consolidated Plan	
☐	Performance Measure - Minimum of 35% of units in most recent HUD agreement were completed and cleared by March 31, 2002 as reported to HUD (**Current Grantees Only**)	
	Rating Factor Response (The narrative response to the Rating Factors cannot exceed a total of 25 pages.)	
☐	1. Capacity of the Applicant and Relevant Experience	
☐	2. Needs/Extent of the Problem	
☐	3. Soundness of Approach	
☐	4. Leveraging Resources	
☐	5. Coordination, Self Sufficiency, and Sustainability	
	Appendices	
☐	Appendix 1 - Material in support of Rating Factor 1	
☐	Appendix 2 - Material in support of Rating Factor 2	
☐	Appendix 3 - Material in support of Rating Factor 3	
☐	Appendix 4 - Material in support of Rating Factor 4	
☐	Appendix 5 - Material in support of Rating Factor 5	
☐	Appendix 6 - Materials relating to the application thresholds or forms. The Lead-Based Paint Element from the Consolidated Plan should be provided in this appendix.	
☐	Appendix 7 - Other materials related to the application (as required)	
☐	HUD 2993 Acknowledgment of Application Receipt	

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CHECKLIST AND SUBMISSION TABLE OF CONTENTS
LEAD HAZARD CONTROL GRANT PROGRAM

"REQUEST FOR RENEWAL GRANTS ONLY"

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. **You must include this checklist and submission table of contents with the proposal.**

		Cover page
☐	**Transmittal Letter**	
☐	**Applicant Abstract Summary** (limited to a maximum of 2 pages)	_____
	Application Forms	
☐	Standard Form 424 and SF 424A Section B	_____
☐	HUD-424-M	_____
☐	Total Budget (Federal Share and Matching)	_____
	Threshold Requirements	
☐	Period of Performance commenced on or after January 1, 2000	_____
☐	Performance Measures	
	(1) Minimum of 65% of the units in HUD agreement were completed and cleared by March 31, 2002 as reported to HUD	
	AND	
	(2) Minimum of 45% of Grant Funds were expended by March 31, 2002 as evidenced by the drawdown from the HUD Line of Credit Control System (LOCCS)	_____

Note:
Current grantees that do not meet the threshold requirements listed immediately above may still be eligible to apply for Lead Hazard Control Grant Funds under the "Current and Prior" grantee category of this Notice of Funding Availability (NOFA). Grantees should review the requirements for submitting a proposal under the "Current and Prior" grantee category and pay particular attention to the Rating Factor Response requirements.

Required Supporting Materials

☐	Work Plan Strategy for the 24 months renewal period Developed in accordance with the Office of Healthy Homes and Lead Hazard Control Policy Guidance Issuance 2001-03 (available on the HUD Internet Web site at http://www.hud.gov/offices/lead)	_____

Appendices

☐	Appendix 1 - Materials relating to the application thresholds or forms.	_____
☐	Appendix 2 – Materials supporting work plan strategy	_____
☐	Appendix 2 - HUD 2993 Acknowledgment of Application Receipt	_____

Spreadsheet version available from www.hud.gov/offices/lead

Budget Summary

Total Budget (Federal Share and Matching)

Name and Address of Applicant _____

Detailed Description of Budget (for full grant period)

Category					
1. Personnel (Direct Labor)	Estimated Hours	Rate per Hour	Estimated Cost	Federal Share	Match
Position or Individual					
Total Direct Labor Cost					
2. Fringe Benefits	Rate	Base	Estimated Cost	Federal Share	Match
Total Fringe Benefits Cost					
3. Travel					
3a. Transportation - Local Private Vehicle	Mileage	Rate per Mile	Estimated Cost	Federal Share	Match
Subtotal - Trans - Local Private Vehicle					
3b. Transportation - Airfare (show destination)	Trips	Fare	Estimated Cost	Federal Share	Match
Subtotal - Transportation - Airfare					

Prepared 02/15/2002

Spreadsheet version available from www.hud.gov/offices/lead

Budget Summary

Total Budget (Federal Share and Matching)

Detailed Description of Budget

3c. Transportation - Other	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Transportation - Other					
3d. Per Diem or Subsistence (Indicate location)	**Days**	**Rate per Day**	**Estimated Cost**	**Federal Share**	**Match**
Subtotal - Per Diem or Subsistence					
Total Travel Cost					
4. Equipment (Only Items over $5,000 each)	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Share**	**Match**
Total Equipment Cost					
5. Supplies and Materials (Items under $5,000)					
5a. Consumable Supplies	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Share**	**Match**
Subtotal - Consumable Supplies					
5b. Non-Consumable Materials	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Share**	**Match**
Subtotal - Non-Consumable Materials					
Total Supplies and Materials Cost					

Spreadsheet version available from www.hud.gov/offices/lead

Budget Summary

Total Budget (Federal Share and Matching)

Detailed Description of Budget

6. Consultants (Type)	Days	Rate per Day	Estimated Cost	Federal Share	Match
Total Consultants Cost					
7. Contracts and Sub-Grantees (List individually)	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Share**	**Match**
Total Subcontracts Cost					
8. Other Direct Costs	**Quantity**	**Unit Cost**	**Estimated Cost**	**Federal Share**	**Match**
Item					
Total Other Direct Costs					
9. Indirect	**Rate**	**Base**	**Estimated Cost**	**Federal Share**	**Match**
Type					
Total Indirect Costs					
Total Estimated Costs					

Total of Federal Share and Match

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Spreadsheet version available from www.hud.gov/offices/lead

Analysis of Total Estimated Costs	Estimated Cost	Percent of Total	Percent of Labor
1 Personnel (Direct Labor)			
2 Fringe Benefits			
3 Travel			
4 Equipment			
5 Supplies and Materials			
6 Consultants			
7 Contracts and Sub-Grantees			
8 Other Direct Costs			
9 Indirect Costs			
Total			

Federal Share
Match

Expressed as a percentage of the Federal Share

Some cells in this spreadsheet are protected. There is no password for this spreadsheet.

Prepared 02/15/2002

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Instructions for Completing the Budget Summary Spreadsheet

Note: an electronic version of this spreadsheet may be obtained from the HUD Office of Healthy Homes and Lead Hazard Control website at www.hud.gov/offices/lead

Item	Discussion
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs which are associated with the proposed grant program, including those costs which will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program NOFA discusses the travel requirements which should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs which may be incurred (metro, etc.).

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3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements that should be listed here.
4 - Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items that have a unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost.
6 - Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees *Note: If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Total Budget Summary spreadsheet should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section.*	List the sub-grantees, sub-recipients, or sub-contractors that will help accomplish the grant effort. Besides, sub-grantees or sub-recipients, other contracts for services including those for conducting inspections, risk assessments, and clearance inspections; contracts with faith-based and community-based organizations; liability insurance; contracts with laboratories; and training and certification for contractors and workers should be listed under this item. Unless your proposed program will perform the primary grant effort with in-house employees (costs listed in Items 1 and 2), the costs for contractors, sub-grantees or sub-recipients performing the primary grant activities should be identified and listed in this section. Types of activities which should be shown in this section: • Contracts for all services • Training • Contracts with Faith-Based and Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed in this section) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or sub-grantee will perform, if not evident.

8 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage • Relocation, if costs are paid directly by your organization (if relocation costs are paid by a sub-grantee, it should be reflected in Section 7)
9 - Indirect Costs	OMB Circular A87 defines indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs. The spreadsheet is set up to use the Total Direct Labor plus the Fringe Benefits costs as the base for the indirect cost calculation. If your organization calculates indirect costs differently, please use a different base and discuss how you calculate fringe as a comment.

The three rightmost columns allow you to identify how the costs will be spread between the Federal Share and the Match. This information will help the reviewers better understand your program and priorities. The far right column is an "error checking" function to confirm that the estimated cost is equal to the sum of the Federal Share and the Match. If there is a discrepancy, the word "Error" will appear.

Note: The formats and many of the cells for the spreadsheet (which can be downloaded from the HUD Office of Healthy Homes and Lead Hazard Control's website at: www.hud.gov/offices/lead) are protected. There is no password for the protection.

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APPENDIX B

Administrative Costs

I. PURPOSE

The intent of this HUD grant program is to allow the Grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of the grant. In most circumstances the Grantee, whether a state or a local government, is expected to serve principally as a conduit to pass funding to sub-grantees, which are to be responsible for performance of the lead-hazard reduction work. Congress set a top limit of ten (10) percent of the total grant sum for the Grantee to perform the function of overall management of the grant program, including passing on funding to sub-grantees. The cost of that function, for the purpose of this grant, is defined as the "administrative cost" of the grant, and is limited to ten (10) percent of the total grant amount. The balance of ninety (90) percent or more of the total grant sum is reserved for the sub-grantee/direct-performers of the lead-hazard reduction work.

II. ADMINISTRATIVE COSTS: WHAT THEY ARE NOT

For the purposes of this HUD grant program for States and local governments to provide support for the evaluation and reduction of lead-hazards in low and moderate-income, private target housing: the term "administrative costs" should not be confused with the terms "general and administrative cost", "indirect costs", "overhead", and "burden rate". These are accounting terms, usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department; the Police Department; the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

III. ADMINISTRATIVE COSTS: WHAT THEY ARE

For the purposes of this HUD grant program, "Administrative Costs" are the Grantee's allowable direct costs for the overall management of the grant program plus the allocable indirect costs. The allowable limit of such costs that can be reimbursed under this program is ten (10) percent of the total grant sum. Should the Grantee's actual costs for overall management of the grant program exceed ten (10) percent of the total grant sum, those excess costs shall be paid for by the Grantee. However, excess costs paid for by the Grantee and may be shown as part of the requirement for cost-sharing funds to support the grant.

IV. ADMINISTRATIVE COSTS: DEFINITION

A. GENERAL

Administrative costs, are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the HUD grant for lead-hazard reduction activities. Those costs shall be segregated in a separate cost center within the Grantee's accounting system, and they are eligible costs for reimbursement as part of the grant, subject to the ten (10) percent limit. Such administrative costs do not include any of the staff and overhead costs directly arising from specific sub-grantee program activities eligible under Section III(C) of this NOFA, because those costs are eligible for reimbursement under a separate cost center as a direct part of project activities.

The Grantee may elect to serve solely as a conduit to sub-grantees, who will in turn perform the direct program activities eligible under NOFA Section III(C), or the grantee may elect to perform all or a part of the direct program activities in other parts of its own organization, which shall have their own segregated, cost centers for those direct program activities. In either case, not more than 10 percent of the total HUD grant sum may be devoted to administrative costs, and not less than 90% of the total grant sum shall be devoted to direct program activities. Grantee shall take care not to mix or attribute administrative costs to the direct project cost centers.

B. SPECIFIC

Reasonable costs for the Grantee's overall grant management, coordination, monitoring, and evaluation are eligible administrative costs. Subject to the ten (10) percent limit, such costs include, but are not limited to, necessary expenditures for the following, goods, activities and services:

(1) Salaries, wages, and related costs of the Grantee's staff, the staff of affiliated public agencies, or other staff engaged in Grantee's overall grant management activities. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program for each person whose primary responsibilities (more than 65% of their time) with regard to the grant program involve direct overall grant management assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any overall grant management assignments. The Grantee may use only one of these two methods during this program. Overall grant management includes the following types of activities:

(a) Preparing grantee program budgets and schedules, and amendments thereto;
(b) Developing systems for the selection and award of funding to sub-grantees and other sub-recipients;
(c) Developing suitable agreements for use with sub-grantees and other sub-recipients to carry out grant activities;
(d) Developing systems for assuring compliance with program requirements;
(e) Monitoring sub-grantee and sub-recipient activities for progress and compliance with program requirements;
(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;
(g) Evaluating program results against stated objectives;
(h) Providing local officials and citizens with information about the overall grant program; (However, a more general education program, helping the public understand the nature of lead hazards, lead hazard reduction, blood-lead screening, and the health consequences of lead poisoning is a direct project support activity).
(i) Coordinating the resolution of overall grant audit and monitoring findings; and
(j) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i).

(2) Travel costs incurred for official business in carrying out the overall grant management;

(3) Administrative services performed under third party contracts or agreements, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

(4) Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

(5) The fair and allocable share of Grantee's general costs that are not directly attributable to specific projects or operating departments such as: The Mayor's and City Council's salaries and related costs; the costs of the City's General Council's office, not charged off to particular projects or operating departments; and the costs of the City's Accounting Department not charged back to specific projects or operating departments. (If Grantee has an established burden rate it should be used; if not Grantee shall be assigned a negotiated provisional burden rate, subject to final audit.)

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Eligibility of HUD Assisted Housing

Eligibility of HUD-associated "eligible" housing units to participate under HUD's lead-based paint hazard control grant program

Program	Eligible?	Program	Eligible?
Housing Components of Community Planning & Development Programs		Housing in Military Impacted Areas (Section 238)	Yes
Community Development Block Grants (Entitlement)	Yes	Single Family Home Mortgage Coinsurance (Section 244)	Yes
Community Development Block Grants (Non-Entitlement) for States and Small Cities	Yes	Graduated Payment Mortgages (Section 245)	Yes
Community Development Block Grants (Section 108 Loan Guarantee)	Yes	Adjustable Rate Mortgages (ARMs) (Section 251)	Yes
Special Purpose Grants	Yes	Manufactured Homes (Title I)	Yes
The **Home** Program: **HOME** Investment Partnerships	Yes	**Housing - Multifamily Programs**	
HOPE for Homeownership of Single Family Homes	Yes	Rent Supplements (Section 101)	No
Shelter Plus Care - Sponsor-based Rental Assistance	No	Multifamily Rental Housing (Section 207)	Yes
Shelter Plus Care - Tenant-based Rental Assistance	Yes	Cooperative Housing (Section 213)	Yes
Shelter Plus Care - Project-based Rental Assistance	No	Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220)	Yes
Shelter Plus Care - SRO Rental Assistance	No	Multifamily Rental Housing for Moderate-Income Families - Section 221(d)(3)	No
Single Family Property Disposition Homeless Initiative	No	Multifamily Rental Housing for Moderate-Income Families - Section 221(d)(4)	Yes
Emergency Shelter Grants	Yes	Existing Multifamily Rental Housing (Section 223(f))	Yes
Housing Opportunities for Persons With AIDS (HOPWA)	Yes	Supplemental Loans for Multifamily Projects (Section 241)	Yes
Surplus Properties (Title V)	No	Supportive Housing for Persons with Disabilities (Section 811)	No
Supportive Housing Demonstration Program Transitional Housing Component	Yes	**HOPE 2**: Homeownership of Multifamily Units (Title IV)	No
Supportive Housing Demonstration Program Permanent Housing Component	Yes	Low-Income Housing Preservation and Resident Homeownership (Title VI)	No
Supplemental Assistance for Facilities to Assist the Homeless (SAFAH)	Yes	Emergency Low-Income Housing,Preservation (Title II)	No
Supportive Housing Program	Yes	Flexible Subsidy (Section 201)	No
Section 8 SRO Mod Rehab for Homeless Individuals	No	**Public and Indian Housing**	
Innovative Demonstration Program	Yes	Section 8 Project-Based Certificate Program	No
Housing - Single Family Programs		Section 8 Tenant Based Certificate and Voucher Program	Yes
One- to Four-Family Home Mortgage Insurance (Section 203(b) and (i))	Yes	Section 8 Moderate Rehabilitation Program	No
Rehabilitation Mortgage Insurance (Section 203(k))	Yes	Public Housing Development	No
Homeownership Assistance for Low- and Moderate-Income Families (Section 221(d)(2))	No	Public Housing Operating Subsidy	No
Homes for Service Member (Section 222)	Yes	Public Housing Modernization (Comprehensive Grant Program)	No
Housing in Declining Neighborhoods (Section 223(e))	Yes	Public Housing Modernization (Comprehensive Improvement Assistance Program)	No
Condominium Housing (Section 234)	Yes		

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HEALTHY HOMES AND LEAD-TECHNICAL STUDIES

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FUNDING AVAILABILITY FOR HEALTHY HOMES AND LEAD TECHNICAL STUDIES

PROGRAM OVERVIEW

Purpose of the Program. To fund technical studies to improve methods for detecting and controlling lead-based paint and other residential health and safety hazards. The purpose of the Healthy Homes Initiative is to develop, demonstrate and promote cost effective, preventive measures to correct multiple safety and health hazards in the home environment that are associated with serious diseases and injuries in children. The purpose of the lead technical studies program is to improve methods for detecting and controlling residential lead-based paint hazards.

Available Funds. Approximately $2.5 million for healthy homes technical studies, and $1 million for lead technical studies.

Eligible Applicants. Academic and not-for-profit institutions located in the U.S., State and local governments, and federally recognized Indian tribes are eligible to apply. For-profit firms also are eligible; however, they are not allowed to earn a fee.

Application Deadline. June 14, 2002.

Match. None required.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 14, 2002.

See the General Section of this SuperNOFA for specific procedures that you must follow for the form of application submission (*e.g.*, mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications. For U.S. Postal Service and Overnight/ Express Mailed Applications. The address for mailed applications is: Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, 451 Seventh Street, SW, Room P3206, Washington, DC 20410.

Application Submission Requirements. New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.*

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. *All applicants must obtain and save* a Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

For Application Kits. You may obtain an application kit from the SuperNOFA Information Center at 1–800-HUD–8929. Persons with speech or hearing impairments may call the Center's TTY number at 1–800-HUD–2209. When requesting an application kit, please refer to the Healthy Homes and Lead Technical Studies grant program. Please be sure to provide your name, address (including zip code), and telephone number (including area code). Alternatively, you may obtain an application kit by downloading it from the Internet at www.hud.gov.

For Further Information and Technical Assistance. You may contact: Dr. Peter Ashley, Office of Healthy Homes and Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 115, or Ms. Curtissa Coleman, Grants Officer, extension 119 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

Approximately $2.5 million from HUD's FY 2002 Healthy Homes Initiative appropriation will be available to fund technical studies proposals and approximately $1 million from the FY 2002 lead technical assistance appropriation will be available to fund lead technical studies proposals in FY 2002. Grants or cooperative agreements will be awarded on a competitive basis according to the Rating Factors described in Section V(B). For technical studies under the Healthy Homes Initiative, HUD anticipates awarding 3 to 6 grants ranging from approximately $200,000 to approximately $1 million. For lead technical studies, HUD anticipates awarding 1 to 4 grants ranging from approximately $250,000 to approximately $1 million.

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description. Background

(1) *General Goals and Objectives.* (i) The overall goal of the Healthy Homes and Lead Technical Studies program is to gain knowledge to improve the efficacy and cost-effectiveness of methods for evaluation and control of health and safety hazards in the home. Through the Healthy Homes Initiative, HUD is assessing and promoting new risk reduction techniques and technical studies on the control of key hazards described in Appendix A. Objectives to be addressed by these projects are:

(a) Investigation of the epidemiology of housing-related hazards and illness and injury.

(b) Development and assessment of low-cost test methods and protocols for identification and assessment of housing-related hazards.

(c) Development and assessment of cost-effective methods for reducing or eliminating housing-related hazards.

(d) Evaluation of the effectiveness of housing interventions and public education campaigns, and barriers and incentives affecting future use of the most cost-effective strategies.

(e) Investigation of the health effects on children living in deteriorated housing and the impact on their development and productivity.

(ii) The overall goal of the lead technical studies program is to gain knowledge to improve the efficacy and

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cost-effectiveness of methods for lead-based paint hazard evaluation and control. HUD is especially interested in the following technical studies topics:

(a) Evaluation of interior and exterior lead hazard control methodologies, especially novel approaches;

(b) The effectiveness of ongoing maintenance activities in controlling lead-based paint hazards;

(c) Other areas of focus that are consistent with the overall goals of HUD's lead technical studies program.

A table of examples of current Healthy Homes and Lead Technical Studies projects being funded by HUD can be found in Appendix C. HUD has also developed resource papers on a number of topic areas of importance under the Healthy Homes Initiative, including mold, environmental aspects of asthma, carbon monoxide, unintentional injuries, and hazard assessment. These papers can be downloaded from HHI web site at www.hud.gov.

(2) *Healthy Homes Initiative.* The Healthy Homes Initiative (HHI) departs from the more traditional approach of attempting to correct one hazard at a time (e.g., asbestos, radon). In April 1999, HUD submitted to Congress a preliminary plan containing a full description of the Initiative. This description (Summary and Full Report) is available on the HUD website at www.hud.gov. A description of the HHI is available at the HHI website, www/hud.gov.

In addition to deficiencies in basic housing facilities that may impact health, changes in the U.S. housing stock and more sophisticated epidemiological methods and biomedical research have led to the identification of new and often more subtle health hazards in the residential environment (e.g., asthma and mold-induced illness). While such hazards will tend to be found disproportionately in housing that is substandard (e.g., structural problems, lack of adequate heat, etc.), such housing-related environmental hazards may also exist in housing that is otherwise of good quality. Appendix A to this Healthy Homes and Lead Technical Studies program section of the SuperNOFA briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention. Appendix B to this Healthy Homes and Lead Technical Studies program section of the SuperNOFA lists the references that serve as the basis for the information provided in this Healthy Homes and Lead Technical Studies section of this SuperNOFA.

HUD is interested in promoting approaches that are cost-effective and efficient and that result in the reduction of health threats for the maximum number of residents for the long run, and in particular low-income children. The overall goals and objectives of the HHI are to:

(i) Mobilize public and private resources, involving cooperation among all levels of government, the private sector, and faith-based and other community-based organizations to develop the most promising, cost-effective methods for identifying and controlling housing-based hazards.

(ii) Build local capacity to operate sustainable programs that will continue to prevent and, where they occur, minimize and control housing-based hazards in low and very low-income residences when HUD funding is exhausted.

HUD recognizes that there are many key scientific and implementation questions related to this Initiative, some of which were articulated in the HHI Preliminary Plan. With this NOFA, HUD hopes to advance the recognition and control of residential health and safety hazards and more closely examine the link between housing and health.

(3) *Lead Technical Studies.* HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act of 1971, as amended, 42 U.S.C. 4801–4846. Sections 1051 and 1052 of the Lead Based Paint Hazard Reduction Act of 1992 ("Title X") (42 U.S.C. 4854 and 4854a) state that the Secretary of HUD, in cooperation with other Federal agencies, shall conduct technical studies on specific topics related to the evaluation and subsequent mitigation of residential lead hazards. The HUD-sponsored technical studies program also responds to recommendations that were made by the Task Force on Lead-Based Paint Hazard Reduction and Financing, which was established pursuant to section 1015 of Title X. The Task Force presented its final report to HUD and the Environmental Protection Agency (EPA) in July 1995. The Task Force Report, entitled "Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing" (see Appendix A of this technical studies program section of the SuperNOFA), recommended research be conducted on a number of key topics to address significant gaps in our knowledge of lead exposure and hazard control.

The findings of technical studies will be used in part to update HUD's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* ("*Guidelines*"), which were published in June, 1995 and amended in September, 1997. The *Guidelines* are a report on state-of-the-art procedures for all aspects of lead-based paint hazard evaluation and control. The *Guidelines* reflect the Title X framework for lead hazard control, which distinguishes three types of control measures: interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are designed to address hazards quickly, inexpensively, and temporarily, while abatement is intended to produce a permanent solution. While the *Guidelines* recommend procedures that are effective in identifying and controlling lead hazards while protecting the health of abatement workers and occupants, HUD recognizes that targeted technical studies and field experience will result in future changes to the *Guidelines*. For availability of the *Guidelines*, see Appendix A of this technical studies program section of the SuperNOFA.

(B) Eligible Applicants

Academic and not-for-profit institutions located in the U.S., State and local governments, and federally recognized Indian tribes are eligible under all existing authorizations. For-profit firms also are eligible; however, they are not allowed to earn a fee (i.e., no profit can be made from the project). Federal agencies and Federal employees are not eligible to submit applications. The General Section of the SuperNOFA provides additional eligibility requirements.

(C) Eligible Activities

(1) *Healthy Homes Initiative, Eligible Activities*

(a) Evaluation of residential health and safety hazard assessment and control methodologies (including both existing methods and the evaluation of improved or novel approaches). Areas of particular interest to HUD include:

—Improving indoor air quality, such as through cost-effective approaches to upgrading residential ventilation or improving control/management of combustion appliances. Applicants should discuss how proposed approaches might affect energy residential energy costs (e.g., increasing air exchange rates resulting in an increase in heating costs).

—Improving or assessing the efficacy of current methods for residential Integrated Pest Management (IPM). IPM approaches focus on the use of economical means for managing pests, which incorporate information on the life cycles of pests and their interaction with the environment, while minimizing hazards to people, property, and the environment (see link at www.hud.gov). HUD is particularly interested in IPM methods for reducing cockroach and/or rodent populations in multifamily housing.

—Controlling excess moisture and dust control measures (e.g., preventing track-in of exterior dust and soil, improved methods for interior dust cleaning) have been identified as key areas in the HHI Preliminary Plan.

— Additional ideas will be considered with an open mind toward novel techniques and applications.

(b) Low-cost analytical techniques for the rapid, on and off-site determination of environmental contaminants of concern (e.g., bioaerosols, pesticides, allergens).

—Establish and validate any necessary procedures, such as extraction and/or digestion that would work well with the field device/procedure.

—Improve old technology (e.g., colorimetric tests, titrimetric procedures) as well as examine and improve newer techniques.

—Consider the safety, environmental impacts, and cost of the procedure, particularly as used in the field.

In proposing technical studies within the broad topic areas discussed in III.C.2(a) and III.C.2(b), applicants should consider the following:

—The "fit" of the proposed hazard assessment and/or control methods within the overall goal of addressing multiple health and safety hazards in a cost-effective manner.

—The efficacy of the proposed methods for hazard control and risk reduction (e.g., how long is effective hazard reduction maintained?).

—Evaluate critical elements and potential weaknesses of the methods or techniques, and address how to minimize the effect of each critical element and/or eliminate or mitigate each weakness.

— Demonstrate where and how these methods have been applied and tested, and/or perform demonstration activities.

Although HUD is soliciting proposals for technical studies on these broad topics, HUD will also consider funding applications for technical studies on topics that are relevant under the overall goals and objectives of this program, as described above. In such instances, the applicant should describe how the proposed project activity addresses these overall goals and objectives.

Applicants should consider the efficiencies that might be gained by working cooperatively with some of the recipients of HUD's Healthy Homes and Lead Hazard Control grants, which are widely distributed throughout the U.S. Information on current grantees is available at www.hud.gov.

You may address one or more of the technical studies topic areas within your proposal, or submit separate applications for different topic areas. Projects need not address all of the objectives within a given topic area.

(2) *Lead Technical Studies, Eligible Activities.*

(a) *Evaluation of Interior and Exterior Lead Hazard Control Methodologies, Especially Novel Approaches.* Identify and evaluate new methods and/or techniques for lead-based paint hazard control. Identify materials and/or procedures that may be used for abatement or for interim controls. Show the potential utility of these methods for lead hazard control and risk reduction. Evaluate critical elements and potential weaknesses of the methods or techniques, and address how to minimize the effect of each critical element and/or eliminate or mitigate each weakness. Demonstrate where and how these methods have been applied and tested, and/or perform demonstration activities. Illustrate the results obtained, and the costs involved. Recommend cost-effective changes to the Program for inclusion in future HUD lead hazard control grants, and for possible inclusion in future revisions to the Guidelines.

(b) *The Effectiveness of Ongoing Maintenance Program Activities in Controlling Lead-Based Paint Hazards.* While a variety of lead abatement and interim control techniques have been evaluated for their effectiveness in controlling lead-based paint hazards at and after their implementation, there is limited study directly assessing the effectiveness of ongoing lead-based paint maintenance programs. Evaluate the effectiveness and feasibility of developing and implementing ongoing lead-based paint maintenance programs, identify program components for which particular implementation difficulties exist, and evaluate proposed measures for overcoming those difficulties. Such quantitative evaluation of program components could address whether and how technically-acceptable and cost-effective work practices are selected and implemented, how effective supervisors are in monitoring work activities to ensure that lead-based paint hazards are controlled and that dust and debris are contained and cleaned up during work, and how well clearance procedures (including necessary re-cleaning) are integrated into the maintenance program, among other factors.

(c) *Other Focus Areas that are Consistent with the Overall Goals of HUD's Lead Technical Studies Program.* Additional ideas will be considered with an open mind toward novel techniques and applications. Although HUD is soliciting proposals for technical studies on some specific topics, HUD will also consider funding applications for technical studies on topics which are relevant under the overall goals and objectives of the lead hazard control technical studies program, as described above. In such instances, the applicant should describe how the proposed activity addresses these overall goals and objectives.

(D) Ineligible Activities

(1) Purchase or lease of equipment having a per unit cost in excess of $5,000, unless prior written approval is obtained from HUD.

(2) Medical treatment costs.

IV. Program Requirements.

(A) *Applicable Requirements.* Please refer to Section II of the General Section of the SuperNOFA, Requirements and Procedures Applicable to All Programs. The threshold requirements are listed in Section II B of the General Section of this SuperNOFA. Applicants must comply with these threshold requirements.

(B) *Conducting Business in Accordance with HUD Core Values and Ethical Standards.* All applicants shall develop and maintain a written code of conduct that reflects HUD's Core Values. Refer to the General Section of the SuperNOFA for additional information.

(C) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* The Department of Housing and Urban Development (HUD) is committed to ensuring that small businesses, small disadvantaged businesses and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Refer to the General Section of the SuperNOFA for applicable requirements.

(D) *Certifications and Assurances.* In addition to the certifications mentioned in the Section II(G) of the General Section of the SuperNOFA, you must comply with the following:

(1) All relevant State and Federal regulations regarding exposure to and proper disposal of hazardous materials.

(2) Any blood lead testing, blood lead level test results, and medical referral

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and follow-up for children under six years of age will be conducted according to the recommendations of the Centers for Disease Control and Prevention (CDC) *Preventing Lead Poisoning in Young Children*. (See Appendix B of this technical studies program section of the SuperNOFA).

(3) HUD technical studies grant funds will not replace existing resources dedicated to any ongoing project.

(4) Laboratory analysis covered by the National Lead Laboratory Accreditation Program (NLLAP) will be conducted by a laboratory recognized under the program.

(5) Human research subjects will be protected from research risks in conformance with Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60.

(6) The requirements of OSHA (e.g., 29 CFR part 1910 and/or 1926, as applicable), or the State or local occupational safety and health regulations, whichever are most stringent, will be met.

(E) *Period of Performance.* The period of performance cannot exceed 36 months from the time of award.

(F) *Conducting Business in Accordance with HUD core Values and Ethical Standards.* If awarded assistance under this Super NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. See Section II(A)(2) of the General Section of the SuperNOFA for information about conducting business in accordance with HUD's core values and ethical standards.

V. Application Selection Process

(A) *Submitting Applications for Grants.* Applications that meet all of the threshold requirements will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors described below in Section V (B) of this program section of the SuperNOFA. Your application must receive a total score of at least 70 points to remain in consideration for funding.

Awards will be made separately in rank order for Healthy Homes Technical Studies applications and Lead Technical Studies applications, within the limits of funding availability for each program.

Within each of the two technical studies programs, you may address more than one of the technical study topic areas within your proposal (e.g., a HH technical studies applicant can address multiple topics consistent with the HHI program objectives), or submit separate applications for different topic areas. Projects need not address all of the objectives within a given topic area. While you will not be penalized for not addressing all of the specific objectives for a given topic area, if two applications for technical study in a given topic have equal scores, HUD will select the applicant whose project addresses the most objectives.

You are encouraged to plan projects that can be completed over a short time period (e.g., 12 to 24 months from the date of award) so useful information generated from the technical studies can be available for policy or program decisions and disseminated to the public as quickly as possible.

Regarding the amount to be awarded to the selected applicants, please refer to the Negotiations section in the General Section of this SuperNOFA.

(1) *Use of Residual Funds.* In the selection process, HUD reserves the right to offer partial funding to any or all applicants. If you are offered a reduced grant amount, you will have a maximum of fourteen (14) calendar days to accept such a reduced award. If you fail to respond within the 14-day limit, you shall be considered to have declined the award.

(B) *Rating Factors.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The factors or their assigned points differ somewhat from those used for most program areas included in this SuperNOFA because they have been amended for rating the unique aspects of technical study applications. The maximum number of points to be awarded is 100. The EZ/EC bonus points described in the General Section of the SuperNOFA do not apply to this Technical Studies NOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (30 Points)

This factor addresses the extent to which you have the ability and organizational resources necessary to successfully implement your proposed activities in a timely manner. The rating of you, the "applicant," will include any sub-grantees, consultants, sub-recipients, and members of consortia that are firmly committed to the project (generally, "subordinate organizations"). In rating this factor HUD will consider the extent to which your application demonstrates:

(1) *The capability and qualifications of the principal investigator and key personnel* (20 points). Qualifications to carry out the proposed study as evidenced by academic background, relevant publications, and recent (within the past 10 years) relevant research experience. Publications and research experience are considered relevant if they required the acquisition and use of knowledge and skills that can be applied in the planning and execution of the technical study that is proposed under this program section of this SuperNOFA.

(2) *Past performance of the study team in managing similar projects* (10 points). Demonstrated ability to successfully manage various aspects of a complex technical study in such areas as logistics, study personnel management, data management, quality control, community study involvement (if applicable), and report writing, as well as overall success in project completion (i.e., projects completed on time and within budget). You should also demonstrate that your project would have adequate administrative support, including clerical and specialized support in areas such as accounting and equipment maintenance.

Rating Factor 2: Need/Extent of the Problem (10 Points)

This factor addresses the extent to which there is a need for your proposed study activities to address documented problems, target areas or target groups. In responding to this factor, you should document in detail how your project would make a significant contribution towards achieving some or all of HUD's stated goals and objectives for one or more of the topic areas described in Sections III (A) and (C)(1)–(2) of this program section of the SuperNOFA.

(1) Your rating will be based on the scope and completeness of your documentation that should include available data linking housing-based hazards to disease or injuries to children. Examples of data that might be used to demonstrate need include:

(a) Rates of childhood illnesses or injuries (e.g., asthma, burns) that could be caused or exacerbated by exposure to conditions in the home environment and/or rates of environmentally-related disease or adverse health effects (e.g., hypertension, elevated blood lead levels) that would be addressed by your technical study;

(b) Unavailability of other federal, state or local funding or private sector resources that could be, or are being used, to address the problem. This includes current research projects for which funding will be terminated or significantly reduced in the next 12 months.

(c) Data documenting affected groups or areas that are traditionally underserved or have special needs.

(2) If your application addresses needs that are in the Consolidated Plan, court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements, you will receive more points than applicants that do not relate their program to identified need.

(3) In addition, if you are seeking funding for "other" technical study focus areas, as is described in Section III(C)(1)(b) and III(C)(2)(c), you must document the importance and need for the project with respect to addressing the overall goal of this technical studies program.

Rating Factor 3: Soundness of Approach (50 Points)

This factor addresses the quality of your proposed technical study plan. Specific components include the following:

(1) *Soundness of the study design* (30 points). The project description/study design must be thorough and feasible, and reflect your knowledge of the relevant scientific literature. You should clearly describe how your study builds upon the current state of knowledge for your focus area. If possible, your study should be designed to address testable hypotheses, which are clearly stated. Your study design should be statistically based, with adequate power to test your stated hypotheses. The study design should be presented as a logical sequence of steps or phases, with individual tasks described for each phase. You should identify any important "decision points" in your study plan and you should discuss plans for data management, analysis and archiving.

Indicate if you will address any of the Department's FY 2002 policy priorities that are applicable to this program (see Section VI of the General Section of the SuperNOFA for a description of these policy priorities). You will receive one point for each of the applicable policy priorities that are addressed in your application. Policy priorities that are potentially applicable to the Healthy Homes and Lead Technical Studies NOFA are: (1) Improving the Quality of Public Housing and Providing More Choices for its Residents; and (2) Colonias.

(2) *Quality assurance mechanisms* (10 points). You must describe the quality assurance mechanisms that will be integrated into your project design to ensure the validity and quality of the results. Areas to be addressed include acceptance criteria for data quality, procedures for selection of samples/sample sites, sample handling, measurement and analysis, and any standard/nonstandard quality assurance/control procedures to be followed. Documents (e.g., government reports, peer-reviewed academic literature) that provide the basis for your quality assurance mechanisms should be cited.

(3) *Project management plan* (8 points). The proposal should include a management plan that provides a schedule for the completion of major activities, tasks and deliverables, with an indication that there will be adequate resources (*e.g.*, personnel, financial) to successfully meet the proposed schedule. You are encouraged to plan a project with a duration of 24 months or less.

(5) *Budget Proposal* (2 Points). Your budget proposal should thoroughly estimate all applicable direct and indirect costs, and be presented in a clear and coherent format in accordance with the requirements listed in the General Section of this SuperNOFA. HUD is not required to approve or fund all proposed activities. Your budget should be submitted in the format provided in Appendix D; an electronic spreadsheet is available on HUD's website, *www.hud.gov*. You must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A) and all major tasks, for yourself, sub-recipients, partners, major subcontractors, joint venture participants, or others contributing resources to the project. Your budget proposal should be activity and task related.

Rating Factor 4: Leveraging Resources (5 Points)

Your proposal should demonstrate that the effectiveness of HUD's Healthy Homes and Lead Technical Studies grant funds are being increased by securing other public and/or private resources or by structuring the project in a cost-effective manner, such as integrating the project into an existing study. Resources may include funding or in-kind contributions (such as services, facilities or equipment) allocated to the purpose(s) of your project. Staff and in-kind contributions should be given a monetary value.

You should provide evidence of leveraging/partnerships by attaching to your application the following: Letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the project efforts. Each letter of commitment, memorandum of understanding, or agreement to participate must include the organization's name, proposed level of commitment (with monetary value) and responsibilities as they relate to specific activities or tasks of your proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (5 Points)

(1) The extent to which you have coordinated your activities with other organizations that have or are in the process of conducting similar work. Your proposed study should build upon the existing body of related work and it should not significantly duplicate work that is currently being conducted, or has been conducted, by other organizations (to the extent that this can be ascertained);

(2) The extent to which your project will help generate practical solutions that can be funded and implemented locally for the identification and mitigation of health and safety hazards in residential environments;

(3) The extent to which your project findings can be used by various local and State governmental and non-governmental organizations to develop programs to implement improved evaluation and remediation strategies for addressing health and safety hazards in the residential environment in the absence of additional Federal funding.

VI. Application Submission Requirements

(A) *Applicant Data.* Your application must contain the items listed in this Section (VI(A)). These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the non-standard forms can be found as Appendix D to this program section of the SuperNOFA: The items are as follows:

(1) Transmittal Letter that identifies what the technical study program funds are requested for (you should clearly specify that you are applying for funds under either the Healthy Homes Initiative technical studies program or the Lead Hazard Control technical studies program), the dollar amount requested, and the applicant or applicants submitting the application. If

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two or more organizations are working together on the project, a primary applicant must be designated.

(2) Checklist and Submission Table of Contents (see Appendix D).

(3) The name, mailing address, telephone number, and principal contact person of the prime applicant. If you have consortium associates, sub-grantees, partners, major subcontractors, joint venture participants, or others contributing resources to your project, similar information must be provided for each of these entities.

(4) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report; Certification Regarding Lobbying; and/or SF–LLL, Disclosure of Lobbying Activities, where applicable. A Certification of Consistency with the Consolidated Plan is not required for this application.

(5) Completed Standard Forms SF–424, 424M, 424A, 424B, and other certifications and assurances listed in the General Section of the SuperNOFA.

(6) A detailed total budget with supporting cost justification for all budget categories of the Federal grant request. Use the budget format discussed in Section V(B) Rating Factor 3:5, above. (See Appendix D.)

(7) A two-page (maximum) abstract containing the following information: The project title, the names and affiliations of all investigators, and a summary of the objectives, expected results, and study design described in the proposal.

(8) A project description/narrative statement addressing the rating factors for award of funding under this program section of the SuperNOFA. The narrative statement must be numbered in accordance with each factor for award (Rating Factors 1 through 5). The response to the rating factors should not exceed a total of 25 pages for each technical study topic area. Any pages in excess of this limit will not be read.

(9) Any important attachments, appendices, references, or other relevant information may accompany the project description, but must not exceed twenty (20) pages for the entire application. Any pages in excess of this limit will not be read.

(10) The resumes of the principal investigator and other key personnel. Resumes shall not exceed three pages each, and are limited to information that is relevant in assessing the qualifications of key personnel to conduct and/or manage the proposed technical studies.

(B) *Applicant Debriefing.* See Section VII(E)(2) of the General Section of the SuperNOFA for information about applicant debriefing.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(1) and (b)(5) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to environmental review under the related laws and authorities.

IX. Authority

These grants are authorized under sections 1051 and 1052 of the Residential Lead Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992, sections 501 and 502 of the Housing and Urban Development Act of 1970, and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, Pub. L. 107–73, approved November 26, 2001.

Appendix A

The following briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention:

Allergens and asthma: Experts estimate that 14 million Americans have asthma, with an associated annual cost of $14 billion. Asthma is now recognized as the leading cause of school and work absence, emergency room visits and hospitalization. For sensitized children, exposure to antigens from dust mites, certain pets, and cockroaches has been associated with more severe asthma. There is a preponderance of evidence showing a dose-response relationship between exposure and prevalence of asthma and allergies; some evidence also indicates that exposure to antigens early in life may predispose or hasten the onset of allergies and asthma. Dust mites have been identified as the largest trigger for asthma and allergies. Cockroach allergens appear to be excessive in 30–50% of inner-city housing and affect 5–15% of the population, whereas dust mite appears to be the dominant allergen in other environments.

Interventions known to have beneficial effects include installation of impervious mattress and pillow covers, which can reduce allergen exposure by 90%. Other dust mite control measures include dehumidification, laundering bedding, and removal of carpets and other dust sinks. Cleaning carpets with tannic acid solution has also been demonstrated to greatly reduce dust mites. Asthma prevention program costs have been estimated at about $500 per unit, which includes about $150 for educational interventions.

Asbestos: Asbestos is a mineral fiber that has been used commonly in a variety of building construction materials and household products for insulation and as a fire-retardant. The Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC) have banned most asbestos products. Manufacturers have also voluntarily limited uses of asbestos. Today, asbestos is most commonly found in older homes: In pipe and furnace insulation materials, asbestos shingles, millboard, textured paints and other coating materials, and floor tiles. Elevated concentrations of airborne asbestos can occur when asbestos-containing materials (ACM) are disturbed by cutting, sanding or other remodeling activities. Improper attempts to remove these materials can release asbestos fibers into the air in homes, increasing asbestos levels and endangering people living in those homes. The most dangerous asbestos fibers are too small to be visible. After they are inhaled, they can remain and accumulate in the lungs. Asbestos can cause lung cancer, mesothelioma (a cancer of the chest and abdominal linings), and asbestosis (irreversible lung scarring that can be fatal). Most people with asbestos-related diseases were exposed to elevated concentrations on the job; some developed disease from exposure to clothing and equipment brought home from job sites. As with radon, dose-response extrapolations suggest that lower level exposures, as may occur when asbestos-containing building materials deteriorate or are disturbed, may also cause cancer.

Intact asbestos-containing materials are not a hazard; they should be monitored for damage or deterioration and isolated if possible. Repair of damaged or deteriorating ACM usually involves either sealing (encapsulation) or covering (enclosure) it. Repair is usually cheaper than removal, but it may make later removal of asbestos more difficult and costly. Repairs should be done only by a professional trained and certified to handle asbestos safely and can cost from a few hundred to a few thousand dollars; removal can be more expensive.

Combustion products of heating and cooking appliances: Burning of oil, natural gas, kerosene, and wood for heating or cooking purposes can release a variety of combustion products of health concern. Depending upon the fuel, these may include carbon monoxide (a chemical asphyxiant), oxides of nitrogen (respiratory irritants), polycyclic aromatic hydrocarbons (e.g., the carcinogen benzo[a]pyrene), and airborne particulate matter (respiratory irritants). Carbon monoxide, an odorless gas, can be fatal. Nitrogen dioxide can damage the respiratory tract, and sulfur dioxide can irritate the eyes, nose and respiratory tract. Smoke and other particulates irritate the eyes, nose and throat, and can cause lung cancer.

Improper venting and poor maintenance of heating systems and cooking appliances can dramatically increase exposure to combustion products. Experts recommend having combustion heating systems inspected by a trained professional every year to identify blocked openings to flues and chimneys; cracked or disconnected flue pipe; dirty filters; rust or cracks in the beat exchanger; soot or creosote build-up; and exhaust or gas odors. Installing a carbon monoxide detector is also recommended; however, such a detector will not detect other combustion by-products.

Insect and Rodent pests: The observed association between exposure to cockroach antigen and asthma severity has already been noted above. In addition, cockroaches may act as vehicles to contaminate and environmental surfaces with certain pathogenic organisms. Rodents can transmit a number of communicable diseases to humans, either through bites, arthropod vectors, or exposure to aerosolized excreta. In addition, humans can become sensitized to proteins in rodent, urine, dander and saliva. Such sensitization may contribute to asthma severity among children. Insect and rodent infestation is frequently associated with substandard housing that makes it difficult to eliminate. Treatment of rodent and insect infestations often includes the use of toxic pesticides that may present hazards to occupants (*see below*). Integrated pest management (IPM) for rodents and cockroaches, which reduces the use of pesticides, is estimated to cost approximately $150 per unit. IPM control measures include sealing holes and cracks, removing food sources and use of traps.

Lead: Exposure to lead, especially from deteriorating lead-based paint, remains one of the most important and best studied of the household environmental hazards to children. Although blood lead levels have fallen nationally, a large reservoir of lead remains in housing. The most recent national survey, conducted from 1991–94, showed that nearly one million U.S. preschoolers still have elevated blood lead levels. Overall, the prevalence rate among all children under six years of age is 4.4%. Among low-income children living in older housing where lead-based paint is most prevalent, the rate climbs to 16%; and for African-American children living in such housing, it reaches 21%.

HUD estimates that 38 million dwellings have some lead-based paint, and that 26 million have significant lead-based paint hazards. Of those, about 5.7 million have young children and of those, about 1.6 million have household incomes under $30,000 per year. Costs for lead hazard control can range anywhere from $500 to $15,000 per unit. Corrective measures include paint stabilization, enclosure and removal of certain building components coated with lead paint, and cleanup and "clearance testing," which ensures the unit is safe for young children.

Mold and moisture: An analysis of several pulmonary disease studies estimates that 25% of airways disease, and 60% of interstitial lung disease may be associated with moisture in the home or work environment. Moisture is a precursor to the growth of mold and other biological agents, which is also associated with respiratory symptoms. An investigation of a cluster of pulmonary hemosiderosis (PH) cases in infants showed PH was associated with a history of recent water damage to homes and with levels of the mold Stachybotrys atra (SA) in air and in cultured surface samples. Associations between exposure to SA and "sick building" symptoms in adults have also been observed. Other related toxigenic fungi have been found in association with SA-associated illness and could play a role. For sensitive individuals, exposure to a wide variety of common molds may also aggravate asthma. Addressing mold problems in housing requires coordination among the medical, public health, microbiological, housing, and building science communities.

The cost of mold/moisture-related intervention work (e.g., integrated pest management, clean & tune furnace, remove debris, vent clothes dryer, cover dirt floor with impermeable vapor barrier) is a few hundred dollars, unless major modification of the ventilation system is needed. In Cleveland, mold interventions, including repairs to ventilation systems and basement flooring, in the most heavily contaminated homes range from $500–$5,000, with some costs also being dedicated to lead hazard control simultaneously through its lead+asthma program.

Pesticide residues: According to the EPA, 75 percent of U.S. households used at least one pesticide product indoors during the past year. Products used most often are insecticides and disinfectants. Another study suggests 80 percent of most people's exposure to pesticides occurs indoors and that measurable levels of up to a dozen pesticides have been found in the air inside homes. The amount of pesticides found in homes appears to be greater than can be explained by recent pesticide use in those households; other possible sources include contaminated soil or dust that migrates in from outside, stored pesticide containers, and household surfaces that collect and then release the pesticides. Pesticides used in and around the home include products to control insects (insecticides), termites (termiticides), rodents (rodenticides), molds and fungi (fungicides), and microbes (disinfectants). In 1990, the American Association of Poison Control Centers reported that some 79,000 children were involved in common household pesticide poisonings or exposures. In households with children under five years old, almost one-half stored at least one pesticide product within reach of children. Exposure to chlorpyriphos (CP), a commonly used organophosphate insecticide, in the prenatal and early postnatal period may impair neurodevelopment. While CP is a biodegradable pesticide, substantial persistence of CP in house dust has been demonstrated. Exposure to high levels of cyclodiene pesticides, commonly associated with misapplication, has produced various symptoms, including headaches, dizziness, muscle twitching, weakness, tingling sensations, and nausea. In addition, EPA is concerned that cyclodienes might cause long-term damage to the liver and the central nervous system, as well as an increased risk of cancer.

There are available data on hazard evaluation methods and remediation effectiveness regarding pesticide residues in the home environment.

Radon progeny: The National Academy of Sciences estimates that approximately 15,000 cases of lung cancer per year are related to radon exposure. Epidemiologic studies of miners exposed to high levels of radon in inhaled air have defined the dose response relation for radon-induced lung cancer at high exposure levels. Extrapolation of these data has been used to estimate the excess risk of lung cancer attributable to exposure to radon gas at the lower levels found in homes. These estimates indicate that radon gas is an important cause of lung cancer deaths in the U.S. Excessive exposures are typically related to home ventilation, structural integrity and location.

Radon measurement and remediation methods are well developed, and the Environmental Protection Agency (EPA) recommends that every home be measured for radon. EPA estimates that materials and labor costs for radon reduction in an existing home are $800–$2500. Including radon resistant techniques in new home construction costs $350–$500, and can save up to $65 annually in energy costs, according to the EPA.

Take home hazards from work/hobbies and work at home: When the clothing, hair, skin, or shoes of workers become contaminated with hazardous materials in the workplace, such contaminants may inadvertently be carried to the home environment and/or an automobile. Such "take-home" exposures have been demonstrated, for example, in homes of lead-exposed workers. In addition, certain hobbies or workplaces located in the home may provide an especially great risk of household contamination.

Control methods include storing and laundering work clothes separately, and showering and changing before leaving work, or immediately after arriving home. Once a home becomes contaminated, cleaning floors and contact surfaces and replacing furnishings may be necessary to reduce exposures.

Unintentional injuries/fire: Unintentional injury is now the leading cause of death and disability among children younger than 15 years of age. In 1997, nearly 7 million persons in the United States were disabled for at least 1 full day by unintentional injuries received at home. During the same year, 28,400 deaths were attributable to unintentional home injuries, of which 1800 occurred among children 0–4 years of age. Among young children, three types of events accounted for more than 3/4 of deaths: fires/burns, drownings, and mechanical suffocation. Falls and poisoning are the next most common.

Home visitation protocols have been shown to be effective in reducing exposure to such hazards. The "add-on" cost of injury prevention measures, when combined with other housing interventions are estimated at about $100 per unit. This includes the cost of some injury prevention devices, such as smoke alarms, electrical socket covers, etc.

Appendix B—Relevant Publications and Guidelines

To secure any of the documents listed, call the listed telephone number (generally, the telephone numbers are not toll-free). A number of these references are provided on HUD's CD, "Residential Lead Desktop Reference, 3rd Edition." This CD is available

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at no charge from the National Lead Information Clearinghouse, 1–800–424–LEAD.

Regulations

1. Worker Protection: OSHA publication—Telephone: 202–693–1888 (OSHA Regulations) (available for a charge)—Government Printing Office—Telephone: 202–512–1800 (not a toll-free number):

—General Industry Lead Standard, 29 CFR 1910.1025 (Document Number 869022001124). Can be downloaded from the Internet without charge from www.osha-slc.gov/OshStd_data/1910_1025.html.

—Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D (Document Number 869022001141). Can be downloaded from the Internet without charge from *www.osha-slc.gov/OshStd_data/1926_0062.html.*

2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations) (available for a charge)—Telephone 1–800–424–9346, or, from the Washington, DC, metropolitan area, 1–703–412–9810 (not a toll-free number). Can be downloaded from the Internet without charge from www.epa.gov/docs/epacfr40/chapt-I.info/subch-I/htm.

3. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule: 40 CFR part 745 (EPA) (Lead Hazard Standards, Work Practice Standards, EPA and State Certification and Accreditation Programs for those engaged in lead-based paint activities)—Telephone: 1–202–554–1404 (Toxic Substances Control Act Hotline) (not a toll-free number). Can be downloaded from the Internet without charge from *www.epa.gov/lead/.*

4. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule: 24 CFR part 35, subparts A through R, published September 15, 1999, at **Federal Register** pages 50201 through 50231(HUD)—Telephone: 1–800–424–LEAD (National Lead Information Center). Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

5. U.S. Environmental Protection Agency. Lead; Identification of Dangerous Levels of Lead; Final Rule at 66 FR 1205–1240, January 5, 2001. TSCA Hotline: 202–554–1404 (not a toll-free number). Can be downloaded from the Internet without charge from www.epa.gov/lead/leadhaz.htm.

Guidelines

1. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; HUD, June 1995, and amended September 1997. (available for a charge)—Telephone: 800–245–2691. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

2. Preventing Lead Poisoning in Young Children; Centers for Disease Control, October 1991: Telephone: 888–232–6789. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

3. Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials, November 1997; Centers for Disease Control and Prevention (CDC): Telephone: 888–232–6789. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

Reports and Articles

1. Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, (Summary and Full Report); HUD, July 1995 (available for a charge)—Telephone 800–245–2691. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

2. The Healthy Homes Initiative: A Preliminary Plan (Summary and Full Report); HUD, July 1995. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

3. Institute of Medicine. Indoor Allergens. Assessing and Controlling Adverse Health Effects. National Academy Press. Washington, D.C. 1993.

4. Mott L., Our Children at Risk. Natural Resources Defense Council. Washington, D.C. 1997. Can be ordered from the Internet from www.nrdc.org.

5. Rom W.N., Ed. Environmental and Occupational Medicine. Little, Brown and Co., Boston. 1992.

6. President's Task Force on Environmental Health Risks and Safety Risks to Children. Asthma and The Environment: An Action Plan to Protect Children. Washington, D.C. 1999. Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards. Washington, D.C. 2000. Can be downloaded from the Internet without charge from *www.epa.gov/children.*

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APPENDIX C ♦ Healthy Homes and Lead Technical Studies

Examples of Healthy Homes Technical Studies

No.	Title	Description
1	Urban Mold and Moisture Control Program	Assess the efficacy of low cost interventions to address mold and moisture problems as measured by subsequent reductions in fungal levels in environmental samples and reduction in asthma morbidity. Also includes development and validation of a visual assessment tool.
2	Improving the Lead Dust Final Clean Protocol to Reduce Cockroach Allergen Exposure	Determine effectiveness of modified cleaning protocols in reducing household contamination by cockroach allergen; evaluate polyclonal immunoassay for measuring cockroach allergens.
3	Healthy Public Housing	Document EHS hazards affecting public housing residents; evaluate remedial measures and quantify economic benefits of interventions
4	Head Start Healthy Homes Initiative	Evaluate home visitation with low cost interventions to Head Start families as a means of reducing health risks for asthma, lead poisoning and injury.
5	Baseline Study of Fungi in Urban Homes With No Known Moisture Problems	Identify fungal species and concentrations in samples of air and settled dust in homes with no known mold and moisture problems.
6	Use of GIS Predictive Modeling to Identify Homes at High Risk for Environmental Health Hazards	A GIS-based predictive modeling approach, built on an ongoing GIS modeling project for lead hazards, will be used to identify homes that are likely to have multiple environmental health hazards.
7	A Portable Instrument to Detect, Identify and Quantify Mold in Homes	The objective is to develop a relatively low cost, portable instrument to perform on-site evaluation of airborne concentrations of specific fungal species as well as estimates of total fungal concentration.
8	Evaluation of a Low Cost Method for Identification and Assessment of Mold Problems in Housing	The objective is to conduct laboratory and field testing of a new instrument for measuring the release of mold spores from surfaces.
9	Novel Markers of Fungal Exposure in Homes and Their Relationship to Respiratory Symptons in Children in New York City	This research is evaluating the utility of fungal exposure assessment through immunoassay measurement of fungal extracellular polysaccharides (EPS) in house dust and fungal EPS specific immunoglobulin G (IgG) in the serum of participants to identify relationships between mold exposure and respiratory symptoms.

Examples of NOFA-Funded Lead Technical Studies

No.	Title	Description
1	Cleaning Lead Contaminated Dust from Hard Surfaces	The purpose of this research is to determine the effectiveness of various detergents in cleaning lead-contaminated dust from hard surfaces under varying conditions of wear and dust loading.
2	Monitoring HEPA Vacuum Dust Pick-up with an Aerosol Photometer	The objective of this research is develop a dynamic reading instrument that will indicate when a surface is sufficiently "clean".
3	Developing a Method for Collecting and Analyzing Vacuum Dust Samples for Lead Using Field Portable XRF	This research involves the development and assessment of a field method for collecting residential dust samples and analyzing them for lead using a field portable XRF analyzer.
4	The Use of Biosolids to Reduce Soil-lead Hazards	The study involves the application of treated biosolids to lead-contaminated urban yards with subsequent assessment of the effectiveness of the treatment in reducing lead concentration and bioavailability.
5	Assessing the Effectiveness of a State Law Requiring Lead Hazard Control Treatments in pre-1950 Rental Housing	The project is assessing the effectiveness of low cost treatments in reducing residential dust-lead hazards in rental housing.

APPENDIX D

The non-standard forms, which follow, are required for your Healthy Homes and Lead Technical Studies application. They are the "Checklist and Submission Table of Contents" and the "Budget Summary," including instructions.

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CHECKLIST AND SUBMISSION TABLE OF CONTENTS
HEALTHY HOMES AND LEAD TECHNICAL STUDIES GRANT PROGRAM

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. **You must include this checklist and submission table of contents with the proposal.**

		Cover page
☐	**Transmittal Letter (limited to one page)**	
☐	**Applicant Abstract** (limited to a 2-pages; does not count towards 25-page limit)	
	Application Forms (to be included in Appendix 3)	
☐	Standard Form 424 and Standard Form 424A (Section B)	
☐	Standard Form 424B (Assurances/Non-Construction Programs)	
☐	HUD 424-M	
☐	Budget Summary (Federal Share and Matching)	
☐	HUD 2880 Disclosure and Update Report	
☐	HUD 2990 Certification of Consistency with the EZ/EC Strategic Plan	
☐	HUD 2992 Certification regarding Debarment and Suspension	
☐	HUD 50070 Certification for a Drug-Free Workplace	
☐	HUD 50071 Certifications of Payments to Influence Federal Transactions	
☐	Form SF-LLL Disclosure of Lobbying Activities Required ☐ Form SF-LLL Not Required (See SuperNOFA)	

Rating Factor Response (The narrative response to the Rating Factors cannot exceed a total of 25 pages.)

☐	1. Capacity of the Applicant and Relevant Organizational Experience	
☐	2. Need/Extent of the Problem	
☐	3. Soundness of Approach	
☐	4. Leveraging Resources	
☐	5. Coordination, Self-Sufficiency and Sustainability	

Appendices

☐	Appendix 1 – Required material in support of the Rating Factors (e.g, resumes of key personnel, organizational chart, letters of commitment) arranged in order of Rating Factor. Does not count towards the 20-page limit; resumes limited to 3 pages each.	
☐	Appendix 2 – Optional material in support of the Rating Factors, arranged in order of Rating Factors, e.g., maps, letters of support. The 20-page limit applies to this Appendix.	
☐	Appendix 3 – Material relating to the forms, or budget material. (See Application Forms, above.)	
☐	HUD 2993 Acknowledgment of Application Receipt	
☐	HUD 2994 Client Comments and Suggestions (Optional)	

Spreadsheet version available from www.hud.gov/fileaf/eaforms.html

Budget Summary

Total Budget (Federal Share and Matching)

Name and Address of Applicant

Detailed Description of Budget (for full grant period)

Category					
1. Personnel (Direct Labor)	Estimated Hours	Rate per Hour	Estimated Cost	Federal Share	Match
Position or Individual					
Total Direct Labor Cost					
2. Fringe Benefits	Rate	Base	Estimated Cost	Federal Share	Match
Total Fringe Benefits Cost					
3. Travel					
3a. Transportation - Local Private Vehicle	Mileage	Rate per Mile	Estimated Cost	Federal Share	Match
Subtotal - Trans - Local Private Vehicle					
3b. Transportation - Airfare (show destination)	Trips	Fare	Estimated Cost	Federal Share	Match
Subtotal - Transportation - Airfare					

Prepared 02/12/2002

Spreadsheet version available from www.hud.gov/lea/leaforms.html

Budget Summary

Total Budget (Federal Share and Matching)

Detailed Description of Budget

3c. Transportation - Other	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Transportation - Other					

3d. Per Diem or Subsistence (indicate location)	Days	Rate per Day	Estimated Cost	Federal Share	Match
Subtotal - Per Diem or Subsistence					
Total Travel Cost					

4. Equipment (Only items over $5,000 each)	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Total Equipment Cost					

5. Supplies and Materials (Items under $5,000)					
5a. Consumable Supplies	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Consumable Supplies					

5b. Non-Consumable Materials	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Non-Consumable Materials					
Total Supplies and Materials Cost					

Spreadsheet version available from www.hud.gov/lea/leaforms.html

Budget Summary

Total Budget (Federal Share and Matching)

Detailed Description of Budget

6. Consultants (Type)	Days	Rate per Day	Estimated Cost	Federal Share	Match
Total Consultants Cost					

7. Contracts and Sub-Grantees (List individually)	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Total Subcontracts Cost					

8. Other Direct Costs	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Item					
Total Other Direct Costs					

9. Indirect	Rate	Base	Estimated Cost	Federal Share	Match
Type					
Total Indirect Costs					
Total Estimated Costs					

Total of Federal Share and Match

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Spreadsheet version available from www.hud.gov/lea/leaforms.html

Analysis of Total Estimated Costs	Estimated Cost	Percent of Total	Percent of Labor
1 Personnel (Direct Labor)			
2 Fringe Benefits			
3 Travel			
4 Equipment			
5 Supplies and Materials			
6 Consultants			
7 Contracts and Sub-Grantees			
8 Other Direct Costs			
9 Indirect Costs			
Total			

Federal Share
Match **Expressed as a percentage of the Federal Share**

Some cells in this spreadsheet are protected. There is no password for this spreadsheet.

Instructions for Completing the Budget Summary Spreadsheet

Note: an electronic version of this spreadsheet may be obtained from the HUD Office of Healthy Homes and Lead Hazard Control website at www.hud.gov/offices/lead

Item	Discussion
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs which are associated with the proposed grant program, including those costs which will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program NOFA discusses the travel requirements which should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs which may be incurred (metro, etc.).

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3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements that should be listed here.
4 - Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items that have a unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost.
6 - Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees *Note: If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Total Budget Summary spreadsheet should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section.*	List the sub-grantees, sub-recipients, or sub-contractors that will help accomplish the grant effort. Besides, sub-grantees or sub-recipients, other contracts for services including those for conducting inspections, risk assessments, and clearance inspections; contracts with faith-based and community-based organizations; liability insurance; contracts with laboratories; and training and certification for contractors and workers should be listed under this item. Unless your proposed program will perform the primary grant effort with in-house employees (costs listed in Items 1 and 2), the costs for contractors, sub-grantees or sub-recipients performing the primary grant activities should be identified and listed in this section. Types of activities which should be shown in this section: • Contracts for all services • Training • Contracts with Faith-Based and Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed in this section) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or sub-grantee will perform, if not evident.

8 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage • Relocation, if costs are paid directly by your organization (if relocation costs are paid by a sub-grantee, it should be reflected in Section 7)
9 - Indirect Costs	OMB Circular A87 defines indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs. The spreadsheet is set up to use the Total Direct Labor plus the Fringe Benefits costs as the base for the indirect cost calculation. If your organization calculates indirect costs differently, please use a different base and discuss how you calculate fringe as a comment.

The three rightmost columns allow you to identify how the costs will be spread between the Federal Share and the Match. This information will help the reviewers better understand your program and priorities. The far right column is an "error checking" function to confirm that the estimated cost is equal to the sum of the Federal Share and the Match. If there is a discrepancy, the word "Error" will appear.

Note: The formats and many of the cells for the spreadsheet (which can be downloaded from the HUD Office of Healthy Homes and Lead Hazard Control's website at: www.hud.gov/offices/lead) are protected. There is no password for the protection.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HEALTHY HOMES DEMONSTRATION PROGRAM

Billing Code 4210-32-C

VOL
67
ISS
58
MR
26
2002
UMI

FUNDING AVAILABILITY FOR THE HEALTHY HOMES DEMONSTRATION PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. The purpose of the Healthy Homes Demonstration Program is to develop, demonstrate and promote cost-effective, preventive measures to correct multiple safety and health hazards in the home environment that produce serious diseases and injuries in children. HUD is interested in reducing health threats to the maximum number of residents, especially children, in a cost efficient manner.

Available Funds. Approximately $5 million of funds.

Eligible Applicants. Not-for-profit institutions, and for-profit firms located in the U.S., state and local governments, and federally recognized Indian Tribes are eligible to apply. For-profit firms are not allowed to include a fee in the cost proposal (i.e., no profit can be made from the project). Federal agencies and federal employees are not eligible to apply for this program.

Application Deadline. June 14, 2002.

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this initiative, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. The application due date is June 14, 2002. Your completed application (one original and four copies) must be postmarked before 12:00 midnight Eastern Time, on June 14, 2002, and mailed to the address shown below.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.*

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. *All applicants must obtain and save* a Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Address for Submitting Applications. The address for all applications submitted is: Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Attn: Ellen R. Taylor, 451 Seventh Street, SW., Room P3206, Washington, DC 20410.

For Application Kits. You may obtain an application kit from the SuperNOFA Information Center at 1–800–HUD–8929, or the TTY number at 1–800–HUD–2209. When requesting an application kit, please refer to the Healthy Homes Demonstration Program. Please be sure to provide your name, address (including zip code), and telephone number (including area code). Alternatively, you may obtain an application kit by downloading it from the Internet at www.hud.gov.

For Further Information and Technical Assistance. You may contact Ms. Ellen Taylor, Planning and Standards Division, Office of Healthy Homes and Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 116, or Ms. Curtissa Coleman Grants Officer, extension 119. (These are not toll-free numbers.) Hearing- and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Satellite Broadcasts. HUD will hold information broadcasts via satellite for potential applicants to learn more about the programs in this SuperNOFA and preparation of the applications. For more information about the date and time of the broadcast, you should consult the HUD website at www.hud.gov.

II. Amount Allocated

Approximately $5 million will be available under the FY 2002 appropriation. Grants will be awarded on a competitive basis following evaluation of all proposals according to the Rating Factors described in Section V(C) of this program section. HUD anticipates that approximately 6 to 8 grants will be awarded, ranging from approximately $250,000 to approximately $1,000,000.

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description

(1) *Background.* The Healthy Homes Demonstration Program is a part of HUD's Healthy Homes Initiative. The Healthy Homes Initiative (HHI) departs from the more traditional approach of attempting to correct one hazard at a time (e.g., asbestos, radon). In April 1999, HUD submitted to Congress a preliminary plan containing a full description of the Initiative. This description (Summary and Full Report) is available on the HUD website at www.hud.gov.

The HHI builds upon HUD's existing housing-related health and safety issues, including lead hazard control, building structural safety, electrical safety, and fire protection to address multiple childhood diseases and injuries, such as asthma, mold-induced illness, carbon monoxide poisoning, and other conditions, related to housing in a more coordinated fashion. A coordinated effort is feasible because a limited number of building deficiencies contribute to many hazards. Substantial savings are possible using this approach, because separate visits to a home by an inspector, public health nurse, or outreach worker can add significant costs to efforts to eliminate hazards. A description of the HHI program, and a link to the Healthy Homes website, are available at *www.hud.gov*.

In addition to deficiencies in basic housing facilities that may impact health, changes in the U.S. housing stock and more sophisticated epidemiological methods and

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biomedical research have led to the identification of new and often more subtle health hazards in the residential environment. While such hazards will tend to be found disproportionately in housing that is substandard (*e.g.*, structural problems, lack of adequate heat, etc.), such housing-related environmental hazards may also exist in housing that is otherwise of good quality. Appendix A to the Healthy Homes (HH) Demonstration program section of the SuperNOFA briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention. Appendix B to the HH Demonstration program section of the SuperNOFA lists the references that serve as the basis for the information provided in this section of the SuperNOFA.

HUD is interested in promoting approaches that are cost-effective and efficient and that result in the reduction of health threats for the maximum number of residents for the long run, and, in particular, for low-income children. Section VI of the General Section of the SuperNOFA presents HUD's FY 2002 Policy Priorities and the text below presents the overall goals and objectives of the HHI:

(a) Mobilize public and private resources, involving cooperation among all levels of government, the private sector, and faith-based and other community-based organizations to develop the most promising, cost-effective methods for identifying and controlling housing-based hazards.

(b) Build local capacity to operate sustainable programs that will prevent and control housing-based hazards in low and very low-income residences when HUD funding is exhausted.

(c) Affirmatively further fair housing and environmental justice.

(2) *Healthy Homes Demonstration Activities.* Through the Healthy Homes Demonstration program, HUD will initiate competitive projects to promote implementation of available risk reduction techniques for the control of key hazards described in Appendix A. HUD will award demonstration projects that implement housing assessment, maintenance, renovation and construction techniques to identify and correct housing-related illness and injury risk factors, and disseminate healthy homes information and replicate successful interventions.

HUD will evaluate proposals based on the elements described below. Applicants are required to be specific as to the locations where they are targeting their intervention activities to occur, the residents, individuals, or groups targeted to receive interventions, and the organizations targeted to continue to operate effective intervention strategies over the life of the award and thereafter.

Objectives to be addressed by these demonstration projects are:

(a) Identification of target areas and homes where interventions will occur.

(b) Identification and evaluation of effective methods of hazard abatement and risk reduction.

(c) Development of appropriately-scaled, flexible, cost-effective and efficient intervention strategies that take into account the range of conditions likely to be encountered in older housing, and that maximize the number of housing units that receive an intervention.

(d) Development of methodologies for evaluating intervention effectiveness.

(e) Development of local capacity in target areas and target groups to operate sustainable programs to prevent and control housing-based hazards, especially in low and very-low income residences.

(f) Development of a cost-effective protocol for identifying homes that are candidates for interventions, identifying hazards in these homes, and screening out homes where structural or other condition factors (e.g., cost) make interventions infeasible or impractical.

(g) Development and delivery of public outreach programs that provide information about effective methods for preventing housing-related childhood diseases and injuries and for promoting the use of these interventions.

(h) Targeting, through education and outreach, specific high-risk communities and other identified audiences such as homeowners, landlords, health care deliverers, pregnant women, children, residential construction contractors, maintenance personnel, housing inspectors, real estate professionals, home buyers, and low-income minority families.

(i) Implementation of media strategies to use print, radio and television to increase public awareness of housing-related hazards that threaten children.

(j) Dissemination of existing tools and, as needed, new tools to inform parents and caregivers about housing-related hazards and enable them to take prompt corrective action.

(B) Eligible Activities

The following direct activities and support activities are eligible under this grant program.

(1) *Direct Project Elements* (activities conducted by you and any sub-recipients):

(a) Performing evaluations of eligible housing to determine the presence of housing-based hazards (*e.g.*, mold growth, allergens, unvented appliances, exposed steam pipes or radiators, deteriorated lead-based paint) through the use of generally accepted testing procedures.

(b) Conducting housing interventions to remediate existing housing-based hazards and address conditions that could result in their recurrence. Any lead hazard evaluation and control work shall be conducted by persons qualified for the activities according to 24 CFR part 35, especially sections 13.1325 for abatement and 13.1330 for interim controls. Qualified persons must possess certification as abatement contractors, risk assessors, inspectors, abatement workers, or sampling technicians, or otherwise having been trained in a HUD-approved course in lead-safe work practices. You may refer to the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines) for additional information. The *Guidelines* and/or applicable regulations may be downloaded from the Office of Healthy Homes and Lead Hazard Control's homepage, linked to www.hud.gov. All pest control activities shall incorporate the principles and methods of integrated pest management (IPM). In technical terms, IPM is the coordinated use of pest and environmental information with available pest control methods to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment. (One information source is the University of Minnesota's electronic textbook of Integrated Pest Management, available at *http://ipmworld.umn.edu/textbook.htm.)*

(c) Undertaking housing rehabilitation activities that are specifically required to carry out effective control of housing-based hazards, and without which the intervention could not be completed and maintained. Grant funds under this program may also be used to control lead-based paint hazards, but such controls may not be a principal focus of the grant.

(d) Carrying out temporary relocation of families and individuals, when necessary, during the period in which intervention is conducted and until the time the affected unit receives clearance for re-occupancy. Residents relocated must be guaranteed the choice of returning to the unit after the intervention.

(e) If medical examinations of young children for conditions caused or exacerbated by exposure to hazards are demonstrated to be critical to the outcome of your project, and there are no alternative sources to cover these costs, conducting such examinations.

(f) Environmental sampling, and medical testing recommended by a physician or applicable occupational or public health agency to protect the health of the intervention workers, supervisors, and contractors, unless reimbursable from another source.

(g) Conducting clearance testing and analysis for lead, mold, carbon monoxide and/or other toxins as appropriate, with respect to generally accepted standards or criteria, or where not available, other appropriate levels justified in conjunction with the project. Clearance dust samples related to lead-based paint must be analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program (NLLAP). All tests results related to lead-based paint must be provided to the owner of the unit, together with a notice describing the owner's legal duty to disclose the results to tenants and buyers.

(h) Carrying out architectural, engineering and work specification development and other construction management services to control housing-based hazards and remediate existing hazards.

(i) Providing training on safe maintenance practices to homeowners, renters, painters, remodelers, and housing maintenance staff working in low or very-low income housing.

(j) Providing cleaning supplies for hazard intervention and hazard control to faith-based and other community-based organizations for use by homeowners and tenants in low-income housing, or to such homeowners and tenants directly. (*See* Section VI(E) of the General Section of the SuperNOFA for more information about faith-based and other community-based organizations.)

(k) Conducting general or targeted community education programs on environmental health and safety hazards. This activity would include training on safe maintenance and renovation practices, among other topics. It would also include making materials available, upon request, in alternative formats for persons with disabilities (*e.g.*, Braille, audio, large type), and in languages other than English that are common in the community, whenever possible.

(l) Securing liability insurance for hazard evaluation and control activities to be performed. This activity is not an administrative activity.

(m) Supporting data collection, analysis, and evaluation of project activities.

(n) Maintaining a registry (updated at least monthly) of housing units in which housing-based hazards were not found during evaluation, and those in which such problems and hazards have been controlled. Units on the registry should be given priority for affirmatively marketing to low-income families with young children, and such families should be given preference for occupancy when they are vacant. (If you are selected for an award, HUD will provide specific data requirements for the registry.)

(o) Preparing quarterly progress reports and an overall final grant report detailing activities (e.g., number of units tested, types of interventions provided, evaluation of the most cost-efficient methodologies by type of unit), findings, and recommended future actions for cost-effective interventions, at the conclusion of grant activities.

(2) *Support Elements.*

(a) Your administrative costs.

(b) Program planning and management costs of sub-grantees and other sub-recipients.

(D) Ineligible Activities

(1) Purchase of real property.

(2) Purchase or lease of equipment having a per unit cost in excess of $5,000, unless prior written approval is obtained from HUD.

(3) Medical treatment costs, except as specified in Section III (C) (1)(e) above.

IV. Program Requirements

In addition to program requirements listed in the General Section of the SuperNOFA, you, the applicant, must comply with the following requirements:

(A) *Budgeting—Administrative Costs.* There is a 10% maximum for administrative costs, as specified in Section 1011(j) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, Public Law 102–550). Additional information about allowable administrative costs is provided in Appendix C of this NOFA.

(B) *Period of Performance.* The period of performance cannot exceed 36 months from the time of the award.

(C) *Coastal Barrier Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), funds may not be used for properties located in the Coastal Barrier Resources System.

(D) *Flood Disaster Protection Act.* Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), funds may not be used for construction, reconstruction, repair or improvement of a building or mobile home which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). You are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(E) *National Historic Preservation Act.* The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the mold intervention and related hazard control activities that are undertaken pursuant to this program. HUD and the Advisory Council for Historic Preservation have developed an optional Model Agreement for use by grantees and State Historic Preservation Officers in carrying out any lead hazard control activities under this program. This must be obtained from the SuperNOFA Information Center at 1–800–HUD–8929.

(F) *Waste Disposal.* Waste disposal will be handled according to the requirements of the Occupational Health and Safety Administration (OSHA) (*e.g.*, 29 CFR part 1910 and/or 1926, as applicable), the Environmental Protection Agency (EPA) (*e.g.*, 40 CFR parts 61, 260–282, 300–374, and/or 700–799, as applicable), the Department of Transportation (*e.g.*, 49 CFR parts 171–177), and/or appropriate state or local regulatory agencies and applicable EPA, HUD, state and local regulatory agency guidance.

(G) *Worker Protection Procedures.* You must comply with the requirements of OSHA (*e.g.*, 29 CFR part 1910 and/or 1926, as applicable), or the state or local occupational safety and health regulations, whichever are most stringent.

(H) *Written Policies and Procedures.* You must have written policies and procedures for all phases of intervention, including evaluation, development of specifications, financing, occupant relocation, independent project inspection, and clearance testing (*e.g.*, for mold, lead, carbon monoxide or other hazards, as applicable). You and all your subcontractors, sub-recipients, and their

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contractors must comply with these policies and procedures.

(I) *Clearance Testing for Lead Hazard Control Activities.* Clearance dust testing must be conducted according to the EPA lead hazards standards rule at 40 CFR part 745 for abatement projects and the Lead-Safe Housing rule (24 CFR part 35) for lead hazard control activities other than abatement. These are available at *www.epa.gov/lead* and *www.hud.gov*, respectively.

(J) *Continued Availability of Safe Housing to Low-Income Families.* Units in which housing-based hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents for not less than 3 years following the completion of intervention activities.

(K) *Environmental Review.* You must comply with HUD's regulations in 24 CFR 50.3(h) in carrying out responsibilities regarding environmental review. Recipients of a grant under this NOFA will be given guidance in these responsibilities.

(L) *Conducting Business in Accordance with HUD Core Values and Ethical Standards.* If awarded assistance under this SuperNOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. See Section II(A)(2) of the General Section of the SuperNOFA for information about conducting business in accordance with HUD's core values and ethical standards.

(M) *Relocation.* Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property, in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing government-wide regulation at 49 CFR part 24. The relocation requirements of the URA and the government-wide regulations cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation or demolition for an activity undertaken with HUD assistance.

(N) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* The Department of Housing and Urban Development (HUD) is committed to ensuring that small businesses, small disadvantaged businesses and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Refer to the General Section of the SuperNOFA for applicable requirements.

(O) *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* Recipients of assistance must comply with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements of subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing, and (2) business concerns which provide economic opportunities to low and very low-income persons. Frequently Asked Questions (FAQs) about Section 3 requirements are available at www.hud.gov.

(P) *Data collection and provision.* You must collect, maintain and provide to HUD the data necessary to document the various approaches used to evaluate and control housing-based hazards, including evaluation and control methods, building conditions, medical and familial information (with confidentiality of individually-identifiable information ensured) in order to determine the effectiveness and relative cost of these methods.

(Q) *Certifications and Assurances.* You must include the certifications and assurances listed in Section II(H) of the General Section of the SuperNOFA with your application. A Certification of Consistency with the Consolidated Plan is not required for this application.

(R) *Davis-Bacon Act.* The Davis-Bacon Act does not apply to this program. However, if program funds are used in conjunction with other Federal programs in which Davis-Bacon prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other federal programs.

V. Application Selection Process

(A) *Threshold Requirements.* Please see Section II(B) of the General Section of this SuperNOFA. As an applicant, you must meet all of the threshold requirements of Section II(B) of the General Section of the SuperNOFA. Applications that meet all of the threshold requirements will be eligible to be scored and ranked based on the total number of points allocated for each of the rating factors described below. Your application must receive a total score of at least 70 points to remain in consideration for funding.

(B) *Rating and Ranking.* HUD intends to award the highest ranked applications listed in the Programs Section of the SuperNOFA within the limits of funding availability.

(1) In evaluating applications for funding HUD will take into account an applicant's past performance in managing funds, including the ability to account for funds appropriately; timely use of funds received either from HUD or other federal, state or local programs; meeting performance targets for completion of activities and number of persons to be served or targeted for assistance. HUD may use information relating to these items based on information at hand or available from public sources such as newspapers, Inspector General or Government Accounting Office Reports or Findings, hotline complaints that have been proven to have merit, or other such sources of information. In evaluating past performance, HUD may elect to deduct points from the rating score as specified under the Factors for Award or set threshold levels for performance as specified in the funding announcement.

(C) *Factors for Award Used to Evaluate and Rate Applications.* This section provides the factors for rating and ranking your application and the maximum points for each factor. The maximum number of points to be awarded is 106, including the potential for six bonus points, as defined in paragraphs (1) through (3) of Section III (C) of the General Section of the SuperNOFA. This maximum includes two EZ/EC bonus points, two bonus points for Brownfields Showcase Communities, and two bonus points for the court ordered consideration in the City of Dallas, Texas, as described in Section III(C) of the General Section of the SuperNOFA

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses your organizational capacity necessary to successfully implement your proposed activities in a timely manner. The rating of you or your staff includes any faith-based and other community-based organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project. Applicants that are, or propose to, either partner, fund, or sub-contract with grassroots organizations, particularly faith-based and other community-based non-profits in conducting their work programs will receive higher rating points as specified in the Program Section of this SuperNOFA. See Section VI(E) of the General Section of the SuperNOFA for additional information. In rating this factor HUD will consider:

(1) Your recent, relevant and successful demonstrated experience in undertaking eligible program activities. You must describe the knowledge and experience of the proposed overall project director and day-to-day project manager in planning and managing large and complex interdisciplinary programs, especially those involving housing, public health, or environmental programs. In your narrative response for this factor, you should include information on your project staff, their experience, commitment to the project, and position titles. Resumes of up to three (3) pages each and position descriptions for up to three personnel in addition to the project director and project manager, and a clearly delineated organizational chart for your project must be included in an appendix. Copies of job announcements (including salary range) should be included for any key positions that are currently vacant, or contingent upon an award. Indicate the percentage of time that key personnel will devote to your project and any salary costs to be paid by funds from this program. Include descriptions of the experience and qualifications of subcontractors and consultants.

(2) Your qualifications to carry out the proposed activities as evidenced by experience, academic background, training, and/or relevant publications of project staff.

(3) Whether you have sufficient personnel, or will be able to quickly retain qualified experts or professionals to begin your proposed project immediately, and to perform your proposed activities in a timely and effective fashion. Describe how principal components of your organization will participate in, or support, your project. You should thoroughly describe capacity, as demonstrated by experience in initiating and implementing related environmental, health, or housing projects.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for your proposed project activities to address documented problems, target area(s) and target groups.

(1) Document a critical level of need for your proposed activities in the area where activities will be carried out. You should pay specific attention to documenting the need as it applies to your target area(s), rather than the larger geographic area.

(2) Your documentation should summarize available data linking housing-based hazards to disease or injuries to children in your target area(s). Examples of data that might be used to demonstrate need, include:

(a) Economic and demographic data relevant to your target area(s), including poverty and unemployment rates;

(b) Rates of childhood illnesses (*e.g.*, asthma, allergies, hypertension, elevated blood lead levels) or injuries (*e.g.*, falls, burns) among children residing in your target areas that could be caused or exacerbated by exposure to conditions in the home environment; and

(c) Unavailability of other Federal, state or local funding or private sector resources that could be, or are being, used to address the problem.

(3) For the areas targeted for your project activities, provide data available in your jurisdiction's currently approved Consolidated Plan and the Analysis of Impediments to Fair Housing Choice (AI) or derived from current census data or from other sources. All data that address the following should be documented:

(a) The age and condition of housing;

(b) The number and percentage of very-low and low-income families with incomes less than 50% and 80% of the median income, respectively, as determined by HUD, for the area, with adjustments for smaller and larger families. Statistics that describe low and very-low income families are available at *www.huduser.org/datasets/il/fmr00/sect82.html*. Additional census statistics are available at: *www.census.gov/hhes/www/income00.html, www.census.gov/hhes/income/income00/statemhi.html,* and *www.huduser.org/datasets/il/fmr00/index.html*.

(c) To the extent that statistics and other data contained in your community's Consolidated Plan or AI support the extent of the problem, you should include references to the Consolidated Plan or AI in your response.

(d) Data documenting targeted groups that are traditionally underserved or have special needs. If the data presented in your response does not specifically represent your target area, you should discuss why the target areas are being proposed. If your application addresses needs that are in the Consolidated Plan or AI, court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements, you will receive more points than applicants that do not relate their project to an identified need.

Rating Factor 3: Soundness of Approach (45 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. You should present information on the proposed approach for addressing housing-based hazards and describe how proposed activities would help HUD achieve its goals for this program area. For you to receive maximum points for this factor, there must be a direct relationship between the proposed activities, community needs, and the purpose of the project. You may find that developing a Logic Model would be useful for this Rating Factor; information about developing a Logic Model is available at: *www.hud.gov*. The response to this factor should include the following elements:

(1) *Approach for Developing the Project* (25 points). Describe your overall approach for your proposed project. The description must include a discussion of specific planned project activities that address one or more of the following categories:

(a) *Project activities* (15 points).

(i) Describe in detail how you will identify, select, prioritize, and enroll units of eligible housing in which you will undertake housing-based hazard interventions, how you will integrate safe work practices into housing maintenance, repair, and improvements, and then target such units to low-income families with young children. You should use all reasonably available sources of information on controlling housing-based hazards in buildings and protecting workers and occupants during and after the intervention process.

(ii) Describe any assessment tools you would employ to establish baseline data.

(iii) Provide the estimated total number of owner occupied and/or rental units in which you will conduct interventions.

(iv) Describe your process for evaluating units of eligible housing in

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which you will undertake housing-based hazard interventions.

(v) Describe any specialized testing or visual inspection that you will conduct during unit inspection with reference to source(s) of the protocol(s).

(vi) Discuss efforts to incorporate cost-effective methods to address multiple environmental health and safety hazards, and describe the specific interventions you will utilize to control housing-based hazards before children are affected; and/or to control these hazards in units where children have already been treated for illnesses or injuries associated with housing-based hazards (*e.g.*, burns, lead poisoning, asthma).

(vii) Describe the process for your referral of children for medical case management if this is not ongoing.

(viii) Describe your process for the development of work specifications for the selected interventions.

(ix) Describe your management processes to be used to ensure the cost-effectiveness of the housing interventions, and provide cost estimates per intervention and per unit.

(x) Discuss your contracting process to obtain contractors to conduct interventions in selected units.

(xi) Describe your plan for the temporary relocation of occupants of units selected for intervention, if relocation is necessary, and how you will determine the need for relocation. Address the use of safe houses and other housing arrangements, storage of household goods, stipends, incentives, etc. Describe how you will meet relocation requirements.

(xii) Describe your plan for ensuring right of return and/or first referral for occupants of units selected for intervention who have had to move for intervention to occur.

(xiii) Describe how you will affirmatively further fair housing.

(xiv) Describe the financing strategy, including eligibility requirements, terms, conditions, and amounts available, to be employed in conducting housing-based hazards activities. You must discuss the way funds will be administered (*e.g.*, use of grants, deferred loans, forgivable loans, other resources, private sector financing, etc.) as well as the agency that will administer the process.

(xv) Proposed methods of community education. These should include community awareness, education, training, and outreach programs in support of your work plan and objectives that are culturally sensitive, targeted, and linguistically appropriate.

(xvi) Proposed involvement of neighborhood, or faith-based and other community-based organizations in the proposed activities. These activities may include outreach, community education, marketing, inspection, and housing evaluations and interventions.

(xvii) Proposed methods to reach high-risk groups and communities, vulnerable populations and persons traditionally underserved.

(xviii) Indicate if, and describe how, you will address any of HUD's Departmental policy priorities. (See Section VI of the General Section of the SuperNOFA for a fuller explanation of HUD's policy priorities.) Policy priorities that are potentially applicable to the Healthy Homes Demonstration NOFA are: 1) Improving the Quality of Public Housing and Providing More Choices for its Residents; 2) Increasing the Participation of Faith-based and other Community-based Organizations in HUD Program Implementation; and 3) Colonias. You will receive one point for each of the applicable policy priorities that are addressed in your application.

(b) *Project Evaluation* (10 points). You are required to identify and discuss the specific methods you will use to measure progress towards your goals, track and report results of interventions, and evaluate the effectiveness of interventions:

(i) Discuss the performance goals for your project and identify specific outcome measures;

(ii) Describe how the outcome information will be obtained, documented, and reported.

(2) *Approach for Implementing the Project* (20 points). Describe your project goals and objectives and the strategy you will use in planning and executing the project. You should provide information on the general approach and overall plan employed.

(a) *Baseline Plan for Project Management* (10 points). Include a management plan that:

(i) Lists the project objectives, major tasks and activities. All specific activities necessary to complete the proposed project must be included in the task listing;

(ii) Incorporates appropriate performance goals and benchmarks;

(iii) Identifies major milestones and provides a schedule for the assignment, tracking and completion of major tasks and activities, and a timeframe for delivery;

(iv) Designates resources and identifies responsible entities; and

(v) Provides an estimate of per unit (or other appropriate apportionment) costs (and a basis for those estimates) for the type of interventions that are planned.

(b) *Budget Justification* (5 points). Your proposed budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the project management plan and intended use of program funds. HUD is not required to approve or fund all proposed activities. Your budget should be submitted in the format recommended in Appendix D of this NOFA. An electronic spreadsheet and other budgetary forms are available on HUD's website, at www.hud.gov. You must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A) and all major tasks, for yourself, sub-recipients, partners, major subcontractors, joint venture participants, or others contributing resources to the project. Describe clearly and in detail your budgeted costs for each required program element (major task) included in your overall plan.

(c) *Economic Opportunity* (5 points). To the greatest extent feasible, your project should promote job training, employment, and other economic opportunities for low-income and minority residents and businesses which are owned by, and/or employ, low-income and minority residents as defined in 24 CFR 135.5. You should:

(i) Describe how you or your partners will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing rules at 24 CFR part 135. Describe how you will accomplish this requirement by (1) providing training and employment opportunities for low- and very low-income persons living within the grantee's jurisdiction, and by (2) providing business opportunities to businesses owned by low and very low-income persons living within the grantee's jurisdiction.

(ii) Describe how you or your partners will satisfy the requirements of Section 3 of the Housing and Urban Development Act of 1968 to give preference to hiring low and very low-income persons or contracting with businesses owned by or employing low and very-low income persons. Frequently Asked Questions about Section 3 requirements are available at www.hud.gov.

(iii) Describe how your proposed project will further and support the policy priorities of the Department, including providing opportunities for self-sufficiency, particularly for persons enrolled in welfare-to-work programs; or providing educational and job training opportunities; and

(iv) Describe the extent to which your proposed activities will occur in an Empowerment Zone or Enterprise Community (EZ/EC), Urban Enhanced Enterprise Community (EEC), Strategic Planning Community or Renewal Community, Brownfields Showcase Community, or the City of Dallas, Texas as defined in Section III(C)(1) through (3) of the General Section of the SuperNOFA.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other community resources (such as financing, supplies or services) that can be combined with HUD's resources to achieve project purposes.

(1) In evaluating this factor, HUD will consider the extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed project. Describe how other organizations will participate in or support your project. Resources may include funding or in-kind contributions (such as services or equipment) allocated to your proposed project. Resources may be provided by state and local governmental entities, public or private organizations, or other entities willing to be your partner in this effort.

(2) Each source of contributions (financial or in-kind) must be supported by a letter of commitment from the contributing entity, whether a public or private source, which must describe the contributed resources that will be used in your project. Staff in-kind contributions should be given a market-based monetary value. If you fail to provide letters of commitment with specific details including the amount of the actual contributions, you will not get rating points for this factor. Each letter of commitment, memorandum of understanding, or agreement to participate shall include the organization's name and the proposed level of commitment and responsibilities as they relate to the proposed project. The commitment must be signed by an official legally able to make commitments on behalf of the organization.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor consists of three elements:

(1) The extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed work activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner. Applicants that are, or propose to, either partner, fund, or sub-contract with grassroots organizations, particularly faith-based and other community-based non-profits in conducting their work programs will receive higher rating points as specified in the Program Section of this SuperNOFA. *See* Section VI(E) of the General Section of the SuperNOFA for additional information about faith-based and other community-based organizations.

(a) Describe your plan for integrating and coordinating housing-based hazard interventions with other housing-related activities (*e.g.*, rehabilitation, weatherization, removal of code violations, and other similar work).

(b) Describe your plans to consolidate housing-based hazard interventions with applicable housing codes and health regulations.

(c) Describe your plans to generate and use public subsidies or other resources (such as revolving loan funds) to finance future interventions to prevent and control housing-based hazards, particularly in low and very low-income housing.

(d) Detail the extent to which you will ensure that the needs of minorities and persons with disabilities will be addressed adequately during your intervention activities; and that housing in which hazards have been addressed will remain available and affordable in the long run for low-income, minority, large families, and for persons with disabilities.

(2) The extent to which your application implements practical solutions within the grant term to result in assisting beneficiaries of grant program funds in achieving independent living, economic empowerment, educational opportunities, housing choice or improved living environments;

(3) The extent to which your program exhibits the potential to be financially self-sustaining by decreasing dependence on federal funding and relying more on state, local and private funding so your activities can be continued after your grant award period is completed.

(D) *Applicant Debriefing. See* Section VII (E)(2) of the General Section of the SuperNOFA for information about applicant debriefing.

VI. Application Submission Requirements

(A) *Applicant Information.* You should submit your application in accordance with the format and instructions contained in this program section of this SuperNOFA. The following is a checklist of required application contents. Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard forms" are listed in the Checklist and Submission Table of Contents provided in Appendix D of this NOFA and are available electronically at *www.hud.gov*. The items are as follows:

(1) Transmittal letter (one-page only) that summarizes your proposed project, provides the dollar amount requested, and identifies you and your partners in the application.

(2) The name, mailing address, and telephone number of the principal contact person. If you are a consortium of associates, sub-recipients, partners, major subcontractors, joint venture participants, or others contributing resources to the project, similar information shall also be provided for each of these entities and you must specify the primary entity.

(3) Checklist and Submission Table of Contents.

(4) Standard Forms SF–424, 424A (Section B), 424B (Assurances/Non-Construction Programs), 424M, Total Budget (Federal Share and Matching).

(5) HUD–2880 (Disclosure and Update Report); HUD 2990 (Certification of Consistency with EZ/EC Strategic Plan); HUD 2992 (Certification regarding Debarment and Suspension); HUD 50070 (Certification for a Drug-Free Workplace); HUD 50071 (Certifications of Payments to Influence Federal Transactions); Form SF-LLL Disclosure of Lobbying Activities, where applicable. A Certification of Consistency with the Consolidated Plan is not required for this application.

(6) Application Abstract. An abstract describing the goals and objectives of your proposed program (2-page maximum) must be included in the proposal.

(7) A narrative statement addressing the rating factors for award. The narrative statement must be numbered in accordance with each factor for award (Rating Factors 1 through 5). The response to the rating factors must not exceed a total of 25 pages (12 point font with 1 inch margins). Any pages in excess of this limit will not be read. (The 25-page limit does not apply to the two-page abstract.)

(8) Any attachments, appendices, references, or other relevant information that directly support the narrative may

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accompany it, but must not exceed twenty (20) pages (12 point font with 1 inch margins) for your entire application. Any pages in excess of this limit will not be read. Specific criteria for the content of the appendices for the Healthy Homes Demonstration Program grant application are listed in the Checklist and Submission Table of Contents. (See Appendix D of this NOFA.)

(9) A detailed budget with supporting cost justification for all budget categories of your funding request, in accordance with Rating Factor 3, element (2)(b). This information will not be counted towards the page limits. A detailed budget must also be provided for any subcontractors, subgrantees, or subrecipients receiving greater than 10% of the Federal budget request.

(10) The resumes and position descriptions of your project director and project manager and up to three additional key personnel (in accordance with Rating Factor 1), not to exceed three pages each (12-point font with 1-inch margins). This information is to be included in Appendix 1 and will not be counted towards the page limit.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

Activities assisted under this program are subject to HUD environmental review to the extent required under 24 CFR part 50. An award under the Healthy Homes Initiative does not constitute approval of specific sites where activities may be carried out. Following award execution, HUD will perform environmental reviews for activities to be carried out on properties proposed by your organization. You may not rehabilitate, convert, repair or construct a property, or commit or expend program funds or non-HUD funds for these program activities for any eligible property, until you receive written notification from the appropriate HUD official that HUD has completed its environmental review and the property has been approved. The results of environmental reviews may require that proposed activities be modified or proposed sites rejected.

IX. Authority

The authority for this program is Sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, Public Law 107–73, approved November 26, 2001.

Appendix A

The following briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention. More information about housing-associated health and injury hazards is available at the Healthy Homes Initiative website, linked to www.hud.gov.

Allergens and asthma: Experts estimate that 14 million Americans have asthma, with an associated annual cost of $14 billion. Asthma is now recognized as the leading cause of school and work absence, emergency room visits and hospitalization. For sensitized children, exposure to antigens from dust mites, certain pets, and cockroaches has been associated with more severe asthma. There is a preponderance of evidence showing a dose-response relationship between exposure and prevalence of asthma and allergies; some evidence also indicates that exposure to antigens early in life may predispose or hasten the onset of allergies and asthma. Dust mites have been identified as the largest trigger for asthma and allergies. Cockroach allergens appear to be excessive in 30–50% of inner-city housing and affect 5–15% of the population, whereas dust mite appears to be the dominant allergen in other environments.

Interventions known to have beneficial effects include installation of impervious mattress and pillow covers, which can reduce allergen exposure by 90%. Other dust mite control measures include dehumidification, laundering bedding, and removal of carpets and other dust sinks. Cleaning carpets with tannic acid solution has also been demonstrated to greatly reduce dust mites. Asthma prevention program costs have been estimated at about $500 per unit, which includes about $150 for educational interventions. Additional information is available in HUD's research topic paper, "Healthy Homes Issues: Asthma" available at the Resources, Technical Resources link of HUD's Healthy Homes Initiative website, linked to www.hud.gov.

Asbestos: Asbestos is a mineral fiber that has been used commonly in a variety of building construction materials and household products for insulation and as a fire-retardant. The Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC) have banned most asbestos products. Manufacturers have also voluntarily limited uses of asbestos. Today, asbestos is most commonly found in older homes: in pipe and furnace insulation materials, asbestos shingles, millboard, textured paints and other coating materials, and floor tiles. Elevated concentrations of airborne asbestos can occur when asbestos-containing materials (ACM) are disturbed by cutting, sanding or other remodeling activities. Improper attempts to remove these materials can release asbestos fibers into the air in homes, increasing asbestos levels and endangering people living in those homes. The most dangerous asbestos fibers are too small to be visible. After they are inhaled, they can remain and accumulate in the lungs. Asbestos can cause lung cancer, mesothelioma (a cancer of the chest and abdominal linings), and asbestosis (irreversible lung scarring that can be fatal). Most people with asbestos-related diseases were exposed to elevated concentrations on the job; some developed disease from exposure to clothing and equipment brought home from job sites. As with radon, dose-response extrapolations suggest that lower level exposures, as may occur when asbestos-containing building materials deteriorate or are disturbed, may also cause cancer.

Intact asbestos-containing materials are not a hazard; they should be monitored for damage or deterioration and isolated if possible. Repair of damaged or deteriorating ACM usually involves either sealing (encapsulation) or covering (enclosure) it. Repair is usually cheaper than removal, but it may make later removal of asbestos more difficult and costly. Repairs should be done only by a professional, trained and certified to handle asbestos safely and can cost from a few hundred to a few thousand dollars; removal can be more expensive.

Combustion products of heating and cooking appliances: Burning of oil, natural gas, kerosene, and wood for heating or cooking purposes can release a variety of combustion products of health concern. Depending upon the fuel, these may include carbon monoxide (a chemical asphyxiant), oxides of nitrogen (respiratory irritants), polycyclic aromatic hydrocarbons (e.g., the carcinogen benzo[a]pyrene), and airborne particulate matter (respiratory irritants). Carbon monoxide, an odorless gas, can be fatal. Nitrogen dioxide can damage the respiratory tract, and sulfur dioxide can irritate the eyes, nose and respiratory tract. Smoke and other particulates irritate the eyes, nose and throat, and can cause lung cancer.

Improper venting and poor maintenance of heating systems and cooking appliances can dramatically increase exposure to combustion products. Experts recommend having

combustion heating systems inspected by a trained professional every year to identify blocked openings to flues and chimneys; cracked or disconnected flue pipe; dirty filters; rust or cracks in the heat exchanger; soot or creosote build-up; and exhaust or gas odors. Installing a carbon monoxide detector is also recommended; however, such a detector will not detect other combustion by-products.

Insect and rodent pests: The observed association between exposure to cockroach antigen and asthma severity has already been noted above. In addition, cockroaches may act as vehicles to contaminate and environmental surfaces with certain pathogenic organisms. Rodents can transmit a number of communicable diseases to humans, either through bites, arthropod vectors, or exposure to aerosolized excreta. In addition, humans can become sensitized to proteins in rodent urine, dander and saliva. Such sensitization may contribute to asthma severity among children. Insect and rodent infestation is frequently associated with substandard housing that makes it difficult to eliminate. Treatment of rodent and insect infestations often includes the use of toxic pesticides that may present hazards to occupants (see below). Integrated pest management (IPM) for rodents and cockroaches, which reduces the use of pesticides, is estimated to cost approximately $150 per unit. IPM control measures include sealing holes and cracks, removing food sources and use of traps. In technical terms, Integrated Pest Management (IPM) is the coordinated use of pest and environmental information with available pest control methods to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment. (One information source is the University of Minnesota's electronic textbook of Integrated Pest Management, available at *http://ipmworld.umn.edu/textbook.htm.*)

Lead: Exposure to lead, especially from deteriorating lead-based paint, remains one of the most important and best studied of the household environmental hazards to children. Although blood lead levels have fallen nationally, a large reservoir of lead remains in housing. The most recent national survey, conducted from 1991–94, showed that nearly one million U.S. preschoolers still have elevated blood lead levels. Overall, the prevalence rate among all children under six years of age is 4.4%. Among low-income children living in older housing where lead-based paint is most prevalent, the rate climbs to 16%; and for African-American children living in such housing, it reaches 21%.

HUD estimates that 38 million dwellings have some lead-based paint, and that 26 million have significant lead-based paint hazards. Of those, about 5.7 million have young children and of those, about 1.6 million have household incomes under $30,000 per year. Costs for Lead Hazard Control can range anywhere from $500 to $15,000 per unit. Corrective measures include paint stabilization, enclosure and removal of certain building components coated with lead paint, and cleanup and "clearance testing," which ensures the unit is safe for young children.

Mold and moisture: An analysis of several pulmonary disease studies estimates that 25% of airways disease, and 60% of interstitial lung disease may be associated with moisture in the home or work environment. Moisture is a precursor to the growth of mold and other biological agents, which is also associated with respiratory symptoms. An investigation of a cluster of pulmonary hemosiderosis (PH) cases in infants showed PH was associated with a history of recent water damage to homes and with levels of the mold Stachybotrys atra (SA) in air and in cultured surface samples. Associations between exposure to SA and "sick building" symptoms in adults have also been observed. Other related toxigenic fungi have been found in association with SA-associated illness and could play a role. For sensitive individuals, exposure to a wide variety of common molds may also aggravate asthma. Addressing mold problems in housing requires coordination among the medical, public health, microbiological, housing, and building science communities. Additional information is available in HUD's research topic paper, "Healthy Homes Issues: Mold" available at the Resources, Technical Resources link of HUD's Healthy Homes Initiative website, linked to *www.hud.gov.*

The cost of mold/moisture-related intervention work (*e.g.*, integrated pest management, clean and tune furnace, remove debris, vent clothes dryer, cover dirt floor with impermeable vapor barrier) is a few hundred dollars, unless major modification of the ventilation system is needed. For example, in Cleveland, mold interventions, including repairs to ventilation systems and basement flooring, in the most heavily contaminated homes range from $500—$5,000, with some costs also being dedicated to lead hazard control simultaneously through its Lead+Asthma program.

Pesticide residues: According to the EPA, 75 percent of U.S. households used at least one pesticide product indoors during the past year. Products used most often are insecticides and disinfectants. Another study suggests 80 percent of most people's exposure to pesticides occurs indoors and that measurable levels of up to a dozen pesticides have been found in the air inside homes. The amount of pesticides found in homes appears to be greater than can be explained by recent pesticide use in those households; other possible sources include contaminated soil or dust that migrates in from outside, stored pesticide containers, and household surfaces that collect and then release the pesticides. Pesticides used in and around the home include products to control insects (insecticides), termites (termiticides), rodents (rodenticides), molds and fungi (fungicides), and microbes (disinfectants). In 1990, the American Association of Poison Control Centers reported that some 79,000 children were involved in common household pesticide poisonings or exposures. In households with children under five years old, almost one-half stored at least one pesticide product within reach of children. Exposure to chlorpyriphos (CP), a commonly used organophosphate insecticide, in the prenatal and early postnatal period may impair neurodevelopment. While CP is a biodegradable pesticide, substantial persistence of CP in house dust has been demonstrated. Exposure to high levels of cyclodiene pesticides, commonly associated with misapplication, has produced various symptoms, including headaches, dizziness, muscle twitching, weakness, tingling sensations, and nausea. In addition, EPA is concerned that cyclodienes might cause long-term damage to the liver and the central nervous system, as well as an increased risk of cancer.

There are available data on hazard evaluation methods and remediation effectiveness regarding pesticide residues in the home environment.

Radon progeny: The National Academy of Sciences estimates that approximately 15,000 cases of lung cancer per year are related to radon exposure. Epidemiologic studies of miners exposed to high levels of radon in inhaled air have defined the dose response relation for radon-induced lung cancer at high exposure levels. Extrapolation of these data has been used to estimate the excess risk of lung cancer attributable to exposure to radon gas at the lower levels found in homes. These estimates indicate that radon gas is an important cause of lung cancer deaths in the U.S. Excessive exposures

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are typically related to home ventilation, structural integrity and location.

Radon measurement and remediation methods are well developed, and the Environmental Protection Agency (EPA) recommends that every home be measured for radon. EPA estimates that materials and labor costs for radon reduction in an existing home are $800–$2500. Including radon resistant techniques in new home construction costs $350–$500, and can save up to $65 annually in energy costs, according to the EPA.

Take-home hazards from work/hobbies and work at home: When the clothing, hair, skin, or shoes of workers become contaminated with hazardous materials in the workplace, such contaminants may inadvertently be carried to the home environment and/or an automobile. Such "take-home" exposures have been demonstrated, for example, in homes of lead-exposed workers. In addition, certain hobbies or workplaces located in the home may provide an especially great risk of household contamination.

Control methods include storing and laundering work clothes separately, and showering and changing before leaving work, or immediately after arriving home. Once a home becomes contaminated, cleaning floors and contact surfaces and replacing furnishings may be necessary to reduce exposures.

Unintentional injuries/fire: Unintentional injury is now the leading cause of death and disability among children younger than 15 years of age. In 1997, nearly 7 million persons in the United States were disabled for at least 1 full day by unintentional injuries received at home. During the same year, 28,400 deaths were attributable to unintentional home injuries, of which 1800 occurred among children 0–4 years of age. Among young children, three types of events accounted for more than of deaths: fires/burns, drownings, and mechanical suffocation. Falls and poisoning are the next most common.

Home visitation protocols have been shown to be effective in reducing exposure to such hazards. The "add-on" cost of injury prevention measures, when combined with other housing interventions are estimated at about $100 per unit. This includes the cost of some injury prevention devices, such as smoke alarms, electrical socket covers, etc.

Appendix B

References: To secure any of the documents listed, call the listed telephone number (generally, the telephone numbers are not toll-free). A number of these references are provided on HUD's CD, "Residential Lead Desktop Reference, 3rd Edition." This CD is available at no charge from the National Lead Information Clearinghouse, 1–800–424–LEAD.

Regulations

1. Worker Protection: OSHA publication—Telephone: 202–693–1888 (OSHA Regulations) (available for a charge)—Government Printing Office—Telephone: 202–512–1800 (not a toll-free number):

—General Industry Lead Standard, 29 CFR 1910.1025 (Document Number 869022001124). Can be downloaded from the Internet without charge from www.osha_slc.gov/OshStd_data/1910_1025.html.

—Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D (Document Number 869022001141). Can be downloaded from the Internet without charge from www.osha-slc.gov/OshStd_data/1926_0062.html.

2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations) (available for a charge)—Telephone 1–800–424–9346, or, from the Washington, DC, metropolitan area, 1–703–412–9810 (not a toll-free number). Can be downloaded from the Internet without charge from www.epa.gov/docs/epacfr40/chapt-I.info/subch-I.htm.

3. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule: 40 CFR Part 745, (EPA) (Lead Hazard Standards, Work Practice Standards, EDP and State Certification and Accreditation programs for those engaged in lead-based paint activities)—Telephone: 1–202–554–1404 (Toxic Substances Control Act Hotline) (not a toll-free number). Can be downloaded from the Internet without charge from www.epa.gov/lead.

GUIDELINES

1. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; HUD, June 1995, and amended September, 1997. (available for a charge)—Telephone: 800–245–2691. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

2. Preventing Lead Poisoning in Young Children; Centers for Disease Control, October 1991; Telephone: 888–232–6789. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

3. Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials, November 1997; Centers for Disease Control and Prevention (CDC); Telephone: 888–232–6789. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

REPORTS

1. Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, (Summary and Full Report); HUD, July 1995 (available for a charge)—Telephone 800–245–2691. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

2. The Healthy Homes Initiative: A Preliminary Plan (Summary and Full Report): HUD, July 1995. Can be downloaded from the Internet without charge from www.hud.gov/offices/lead.

3. Institute of Medicine. *Indoor Allergens. Assessing and Controlling Adverse Health Effects.* National Academy Press. Washington, D.C. 1993.

4. Mott L., Our Children at Risk. Natural Resources Defense Council. Washington, D.C. 1997. Can be ordered from the Internet from www.nrdc.org

5. Rom W.N., Ed. *Environmental and Occupational Medicine.* Little, Brown and Co., Boston. 1992.

6. President's Task Force on Environmental Health Risks and Safety Risks to Children. Asthma and The Environment: An Action Plan to Protect Children. Washington, D.C. 1999. *Eliminating Childhood Lead Poisoning:* A Federal Strategy Targeting Lead Paint Hazards. Washington, D.C., 2000. Can be downloaded from the Internet without charge from *www.epa.gov/children.*

Appendix C

Administrative Costs

I. Purpose

The intent of this HUD grant program is to allow the Grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of the grant. In most circumstances the Grantee, whether a state or a local government, is expected to serve principally as a conduit to pass funding to sub-grantees, which are to be responsible for performance of the lead-hazard reduction work. Congress set a top limit of ten (10) percent of the total grant sum for the Grantee to perform the function of overall management of the grant program, including passing on funding to sub-grantees. The cost of that function, for the purpose of this grant, is defined as the "administrative cost" of the grant, and is limited to ten (10) percent of the total grant amount. The balance of ninety (90) percent or more of the total grant sum is reserved for the sub-grantee/direct-performers of the lead-hazard reduction work.

II. Administrative Costs: What They Are Not

For the purposes of this HUD grant program for States and local governments to provide support for the evaluation and reduction of lead-hazards in low and moderate-income, private target housing: the term "administrative costs" should not be confused with the terms "general and administrative cost", "indirect costs", "overhead", and "burden rate". These are accounting terms, usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department; the Police Department; the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

III. Administrative Costs: What They Are

For the purposes of this HUD grant program, "Administrative Costs" are the Grantee's allowable direct costs for the overall management of the grant program plus the allocable indirect costs. The allowable limit of such costs that can be reimbursed under this program is ten (10) percent of the total grant sum. Should the Grantee's actual costs for overall management of the grant program exceed ten (10) percent of the total grant sum, those excess costs shall be paid for by the Grantee. However, excess costs paid for by the Grantee and may be shown as part of the requirement for cost-sharing funds to support the grant.

IV. Administrative Costs: Definition

A. General

Administrative costs, are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the HUD grant for lead-hazard reduction activities. Those costs shall be segregated in a separate cost center within the Grantee's accounting system, and they are eligible costs for reimbursement as part of the grant, subject to the ten (10) percent limit. Such administrative costs do not include any of the staff and overhead costs directly arising from specific sub-grantee program activities eligible under Section III(B) of this Healthy Homes Demonstration NOFA, because those costs are eligible for reimbursement under a separate cost center as a direct part of project activities.

The Grantee may elect to serve solely as a conduit to sub-grantees, who will in turn perform the direct program activities eligible under NOFA Section III(B), or the grantee may elect to perform all or a part of the direct program activities in other parts of its own organization, which shall have their own segregated, cost centers for those direct program activities. In either case, not more than 10 percent of the total HUD grant sum may be devoted to administrative costs, and not less than 90% of the total grant sum shall be devoted to direct program activities. Grantee shall take care not to mix or attribute administrative costs to the direct project cost centers.

B. Specific

Reasonable costs for the Grantee's overall grant management, coordination, monitoring, and evaluation are eligible administrative costs. Subject to the ten (10) percent limit, such costs include, but are not limited to, necessary expenditures for the following, goods, activities and services:

(1) Salaries, wages, and related costs of the Grantee's staff, the staff of affiliated public agencies, or other staff engaged in Grantee's overall grant management activities. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program for each person whose primary responsibilities (more than 65% of their time) with regard to the grant program involve direct overall grant management assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any overall grant management assignments. The Grantee may use only one of these two methods during this program. Overall grant management includes the following types of activities:

(a) Preparing grantee program budgets and schedules, and amendments thereto;

(b) Developing systems for the selection and award of funding to sub-grantees and other sub-recipients;

(c) Developing suitable agreements for use with sub-grantees and other sub-recipients to carry out grant activities;

(d) Developing systems for assuring compliance with program requirements;

(e) Monitoring sub-grantee and sub-recipient activities for progress and compliance with program requirements;

(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;

(g) Evaluating program results against stated objectives;

(h) Providing local officials and citizens with information about the overall grant program; (However, a more general education program, helping the public understand the nature of lead hazards, lead hazard reduction, blood-lead screening, and the health consequences of lead poisoning is a direct project support activity).

(i) Coordinating the resolution of overall grant audit and monitoring findings; and

(j) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i).

(2) Travel costs incurred for official business in carrying out the overall grant management;

(3) Administrative services performed under third party contracts or agreements, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

(4) Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

(5) The fair and allocable share of Grantee's general costs that are not directly attributable to specific projects or operating departments such as: The Mayor's and City Council's salaries and related costs; the costs of the City's General Council's office, not charged off to particular projects or operating departments; and the costs of the City's Accounting Department not charged back to specific projects or operating departments. (If Grantee has an established burden rate it should be used; if not Grantee shall be assigned a negotiated provisional burden rate, subject to final audit.)

Appendix D

Forms: The non-standard forms, which follow, are required for your Healthy Homes Demonstration application. They are the Checklist and Submission Table of Contents and the Total Budget (Federal Share and Matching Contribution, including instructions).

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APPENDIX D

CHECKLIST AND SUBMISSION TABLE OF CONTENTS HEALTHY HOMES DEMONSTRATION GRANT PROGRAM

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. **You must include this checklist and submission table of contents with the proposal.**

		Cover page
☐	**Transmittal Letter (limited to one page)**	
☐	**Applicant Abstract** (Limited to two pages; does not count toward the 25- page limit.)	_____
	Application Forms (to be included in Appendix 3)	
☐	Standard Form 424 and Standard Form 424A (Section B)	_____
☐	Standard Form 424B (Assurances/Non-Construction Programs)	_____
☐	HUD 424-M	
☐	Total Budget (Federal Share and Matching)	_____
☐	HUD 2880 Disclosure and Update Report	_____
☐	HUD 2990 Certification of Consistency with the EZ/EC Strategic Plan	_____
☐	HUD 2992 Certification Regarding Debarment and Suspension	_____
☐	HUD 50070 Certification for a Drug-Free Workplace	_____
☐	HUD 50071 Certifications of Payments to Influence Federal Transactions	_____
☐	Form SF-LLL Disclosure of Lobbying Activities Required ☐ Form SF-LLL Not Required (See SuperNOFA)	

Rating Factor Response (The narrative response to the Rating Factors cannot exceed a total of 25 pages.)

☐	1. Capacity of the Applicant and Relevant Organizational Experience	_____
☐	2. Need/Extent of the Problem	_____
☐	3. Soundness of Approach	_____
☐	4. Leveraging Resources	_____
☐	5. Coordination, Self-Sufficiency and Sustainability	_____

Appendices

☐	Appendix 1 – Required materials in support of the Rating Factors (e.g., resumes of 3 key staff members, organizational chart, letters of commitment) arranged in order of Rating Factor. (Materials in this appendix do not count toward the 20-page limit; resumes are limited to 3 pages each.)	_____
☐	Appendix 2 – Optional materials in support of the Rating Factors, arranged in order of Rating Factor, e.g., maps, letters of support. The 20-page limit applies to this Appendix.	_____
☐	Appendix 3 – Material related to the forms, or budget materials. (See Application Forms, above.)	_____
☐	HUD 2993 Acknowledgment of Application Receipt	_____
☐	HUD 2994 Client Comments and Suggestions (Optional)	_____

Spreadsheet version available from www.hud.gov/offices/lead

Budget Summary

Total Budget (Federal Share and Matching)

Name and Address of Applicant _____

Detailed Description of Budget (for full grant period)

Category					
1. Personnel (Direct Labor)	Estimated Hours	Rate per Hour	Estimated Cost	Federal Share	Match
Position or Individual					
Total Direct Labor Cost					
2. Fringe Benefits	Rate	Base	Estimated Cost	Federal Share	Match
Total Fringe Benefits Cost					
3. Travel					
3a. Transportation - Local Private Vehicle	Mileage	Rate per Mile	Estimated Cost	Federal Share	Match
Subtotal - Trans - Local Private Vehicle					
3b. Transportation - Airfare (show destination)	Trips	Fare	Estimated Cost	Federal Share	Match
Subtotal - Transportation - Airfare					

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Spreadsheet version available from www.hud.gov/offices/lead

Budget Summary

Total Budget (Federal Share and Matching)

Detailed Description of Budget					
3c. Transportation - Other	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Transportation - Other					
3d. Per Diem or Subsistence (indicate location)	Days	Rate per Day	Estimated Cost	Federal Share	Match
Subtotal - Per Diem or Subsistence					
Total Travel Cost					
4. Equipment (Only items over $5,000 each)	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Total Equipment Cost					
5. Supplies and Materials (Items under $5,000)					
5a. Consumable Supplies	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Consumable Supplies					
5b. Non-Consumable Materials	Quantity	Unit Cost	Estimated Cost	Federal Share	Match
Subtotal - Non-Consumable Materials					
Total Supplies and Materials Cost					

Spreadsheet version available from www.hud.gov/offices/lead

Budget Summary

Total Budget (Federal Share and Matching)

Detailed Description of Budget					
6. Consultants (Type)	Days	Rate per Day	Estimated Cost	Federal Share	Match
Total Consultants Cost					
7. Contracts and Sub-Grantees (List individually)	Quantity	Unit Cost	Estimated Cost	Federal Share	Match

Spreadsheet version available from www.hud.gov/offices/lead

Analysis of Total Estimated Costs	Estimated Cost	Percent of Total	Percent of Labor
1 Personnel (Direct Labor)			
2 Fringe Benefits			
3 Travel			
4 Equipment			
5 Supplies and Materials			
6 Consultants			
7 Contracts and Sub-Grantees			
8 Other Direct Costs			
9 Indirect Costs			
Total			

Federal Share
Match

Expressed as a percentage of the Federal Share

Some cells in this spreadsheet are protected. There is no password for this spreadsheet.

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Instructions for Completing the Budget Summary Spreadsheet

Note: an electronic version of this spreadsheet may be obtained from the HUD Office of Healthy Homes and Lead Hazard Control website at www.hud.gov/offices/lead

Item	Discussion
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs which are associated with the proposed grant program, including those costs which will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program NOFA discusses the travel requirements which should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs which may be incurred (metro, etc.).

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3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements that should be listed here.
4 - Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items that have a unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost.
6 - Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees *Note: If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Total Budget Summary spreadsheet should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section.*	List the sub-grantees, sub-recipients, or sub-contractors that will help accomplish the grant effort. Besides, sub-grantees or sub-recipients, other contracts for services including those for conducting inspections, risk assessments, and clearance inspections; contracts with faith-based and community-based organizations; liability insurance; contracts with laboratories; and training and certification for contractors and workers should be listed under this item. Unless your proposed program will perform the primary grant effort with in-house employees (costs listed in Items 1 and 2), the costs for contractors, sub-grantees or sub-recipients performing the primary grant activities should be identified and listed in this section. Types of activities which should be shown in this section: • Contracts for all services • Training • Contracts with Faith-Based and Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed in this section) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or sub-grantee will perform, if not evident.

8 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage • Relocation, if costs are paid directly by your organization (if relocation costs are paid by a sub-grantee, it should be reflected in Section 7)
9 - Indirect Costs	OMB Circular A87 defines indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs. The spreadsheet is set up to use the Total Direct Labor plus the Fringe Benefits costs as the base for the indirect cost calculation. If your organization calculates indirect costs differently, please use a different base and discuss how you calculate fringe as a comment.

The three rightmost columns allow you to identify how the costs will be spread between the Federal Share and the Match. This information will help the reviewers better understand your program and priorities. The far right column is an "error checking" function to confirm that the estimated cost is equal to the sum of the Federal Share and the Match. If there is a discrepancy, the word "Error" will appear.

Note: The formats and many of the cells for the spreadsheet (which can be downloaded from the HUD Office of Healthy Homes and Lead Hazard Control's website at: www.hud.gov/offices/lead) are protected. There is no password for the protection.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE (BEDI)

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FUNDING AVAILABILITY FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE (BEDI)

PROGRAM OVERVIEW

Purpose of the Program. BEDI funds are used to enhance the security of a loan guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974, as amended, for the same project, or to improve the viability of a project financed with the Section 108-guaranteed loan. HUD intends to make available approximately $26 million in BEDI funds along with almost $3 million in unobligated Economic Development Initiative (EDI) funds, totaling approximately $29 million that will be available in FY 2002 to stimulate economic development by local governments and private sector parties in brownfields.

HUD desires to see BEDI funds (as defined in Section III (A)(1) below) and Section 108 funds used to finance projects and activities in brownfields that will provide near-term results and demonstrable economic benefits, such as job creation and increases in the local tax base. A BEDI grant must be used in conjunction with a new Section 108 guaranteed loan commitment. In FY 2002, HUD seeks to increase economic development opportunity throughout the country and promote energy efficient projects.

Available Funds. Approximately $29 million, as further described in Section II below. The maximum amount of any BEDI grant award this year will be $2 million per project.

Eligible Applicants. Only units of general local government eligible for assistance under the Community Development Block Grant (CDBG) program may apply for a BEDI grant and a Section 108 Guaranteed Loan. CDBG-eligible urban counties may also apply for funding, but units of general local government which participate in the Urban County may not submit an application independent of the Urban County. (See Section III(B) below for additional information regarding eligible applicants.)

Application Deadline. July 9, 2002.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Please submit your completed applications (one original and three copies) on or before July 9, 2002, to the addresses shown below.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Only a limited number of express delivery services have access to the Robert C. Weaver, HUD Headquarters Building. All applications to field offices, homeownership centers and program hubs must be delivered by the United States Postal Service (USPS). Applications sent to the Robert C. Weaver Building may be mailed using the United States Postal Service or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into the Robert C. Weaver Building without escort. To avoid potential delivery problems, therefore, you must use one of the four carriers listed above. For purposes of this program section to the SuperNOFA, delivery by the approved services must be made during HUD's business hours, i.e., between 8:30 AM and 5:30 PM Eastern time, Monday through Friday. If one of these companies does not serve your area, you should submit your application via the USPS.

Mailed Applications. Your application will be considered timely filed if it is postmarked on or before 12:00 midnight of the application due date and received by the designated HUD office by or within fifteen (15) days of the application due date. *All applicants must obtain and save a* Certificate of Mailing (PS Form 3817) showing the date when the application was submitted to the USPS. The Certificate of Mailing will be your documentary evidence that the application was timely filed. The Certificate of Mailing is available from the USP.

Applications Sent by Overnight/ Express Mail Delivery To HUD Headquarters. An application sent by overnight delivery or express mail to HUD Headquarters will be considered by HUD as timely filed if it is received before or on the application due date, or if documentary evidence is provided that the application was placed in transit with the overnight delivery/ express mail service by no later than the application due date.

Applications to HUD Field Offices. Applications submitted to HUD Field Offices must be mailed via the United States Postal Service. At the same time the application and copies are submitted to HUD Headquarters, an additional copy should be submitted to the Community Planning and Development Division of the appropriate HUD Field Office for the applicant's jurisdiction.

Addresses for Submitting Applications. To HUD Headquarters. Submit your completed application (an original and two copies) by mail or permitted delivery service to: Processing and Control Unit, Room 7251, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, Attention: BEDI.

When submitting the application, please specify BEDI on any label or mailing container, and include the applicant's name, mailing address (including zip code), street address (if different from mailing address) and zip code, and voice and facsimile telephone numbers (including area code), along with the contact person's name and voice and facsimile telephone numbers (including area code).

For Application Kits. To request an Application Kit and any supplemental information, please call HUD's SuperNOFA Information line toll free at 1–800-HUD–8929. When requesting an Application Kit, please refer to BEDI. Please be sure to provide the applicant's name, address (including zip code), and telephone number (including area code), along with the name and phone number of your contact person. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209 to obtain an application kit. The Application Kit will also be available on the Internet through the HUD web site at http://www.hud.gov.

For Further Information and Technical Assistance. Contact Lisa Peoples, Economic Development Specialist, Office of Economic Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7140, Washington, DC 20410, telephone (202) 708–0614 ext. 4456 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance about this BEDI NOFA. However, HUD staff are not permitted to assist in preparing your BEDI application. Following selection of applicants, but before awards are made, HUD staff are available to assist in clarifying or confirming information

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that is a prerequisite to the offer of an award by HUD. In addition, the Section 108 Loan Guarantee program is not a competitive program and therefore is not subject to those provisions of the HUD Reform Act pertaining to competitions that do not permit HUD staff to assist in the preparation of applications. HUD staff are available to provide advice and assistance to develop your Section 108 loan application.

Applicant Debriefing. Beginning not less than 30 days after the awards for assistance are announced, HUD will, upon receiving written request from the applicant, provide a debriefing to the requesting applicant. Information provided during a briefing will be the applicant's final scores for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied. Applicants requesting to be debriefed must send a written request to the contact person for the BEDI program, Ms. Lisa Peoples, at the address listed in the preceding paragraph.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of BEDI application(s). For more information about the date and time of the broadcast, you should consult the HUD web site at *http://www.hud.gov.*

II. Amount Allocated

HUD has available a maximum of $29,008,155 for grant awards under this program section. This amount consists of $25 million in appropriations under "Brownfields Redevelopment" heading in the Fiscal Year 2002 HUD Appropriations Act, $1,065,000 of unobligated appropriated funds from the Fiscal Year 2001 HUD Appropriations Act under the "Brownfields Redevelopment" heading, and $2,943,155 in funds originally appropriated for awards under the competitive Economic Development Initiative (EDI) program under the Fiscal Year 2000 HUD Appropriations Act. All such funds are authorized by Section 108(q) of the Act (as defined below). Consequently there will be no separate competition for EDI funds this year, and all of these funds are being made available by HUD for the purpose of assisting public entities in the redevelopment of brownfields. The maximum amount of a BEDI award under this competition is $2 million per project. If any additional funds become available for the BEDI program during Fiscal Year 2002, HUD may either fund additional applicants in accordance with this program section of the SuperNOFA, or may add these funds to funds available for future competitions pursuant to Section 108(q) of the Act.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* BEDI is designed to help cities redevelop abandoned, idled, or underutilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination, i.e., brownfields. BEDI provides funding to local governments to be used in conjunction with Section 108 loan guarantees to finance redevelopment of brownfields sites. A BEDI grant award will be conditioned upon, and must be used in conjunction with, a new Section 108-guaranteed loan commitment. Both Section 108 loan guarantee proceeds and BEDI grant funds are initially made available by HUD to units of general local government eligible for assistance through either HUD's Entitlement or State and Small Cities segments of the Community Development Block Grant program. Such public entities may re-loan the Section 108 loan proceeds and provide BEDI funds to a business or other entity to carry out an approved brownfield economic development project, or the public entity may carry out the eligible project itself, as provided in the approved application. In either case, BEDI grant funds and the 108 proceeds must be used to support the same eligible project.

(1) *Definitions.* Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this program section of this SuperNOFA shall have the respective meanings given thereto in that part.

Act means Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

Application means a single set of documents submitted by an eligible applicant for BEDI grant funds, in accordance with the provisions of this program section of the SuperNOFA to finance a brownfield economic development project. A BEDI application must be accompanied by a Section 108 loan guarantee request, which may consist of either a brief summary of the proposed use of 108 funds, or a full application, which may either be submitted at the same time as the BEDI application or be provided within 60 days of BEDI grant award, as more fully explained in Section IV(C) of this program section. Note that the Section 108 application must be submitted to the appropriate HUD field office concurrently with its submission to Headquarters.

Brownfields means abandoned, idled, or under-used real property (including industrial and commercial facilities) where expansion or redevelopment is complicated by real or perceived contamination.

Brownfields Economic Development Initiative (BEDI) funds means the appropriated funds made available for the competition under this program section from any available BEDI or EDI appropriation.

Brownfields Economic Development Initiative (BEDI) project means an activity or activities (including mixed use projects with housing components) that are eligible under Section 108(q) of the Act and under 24 CFR 570.703, and that increase economic opportunity for persons of low- and moderate-income or that stimulate or retain businesses or jobs or that otherwise lead to economic revitalization in connection with brownfields.

CDBG funds means those funds collectively so defined at 24 CFR 570.3, including grant funds received pursuant to Section 108(q) and this program section of this SuperNOFA.

Economic Development Initiative (EDI) grant means the provision of economic development grant assistance under Section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub.L. 103–233, approved April 11, 1994).

EPA means the U.S. Environmental Protection Agency.

Firm Commitment means either a written agreement or letter of understanding by which an applicant and/or a third party:

(1) Agrees to perform an activity specified in the application, and demonstrates its relationship to the proposed BEDI/Section 108 project;

(2) Specifies the amount of the commitment, and demonstrates that it has the financial and organizational capacity to deliver the resources necessary to successfully complete the activity; if the committed activity is to be self-financed, the third party must evidence its financial capacity through a corporate or personal financial statement or other appropriate means; and

(3) Irrevocably commits the resources to the activity either through cash or in-kind services or contributions; if any portion is to be financed through a grant or loan from another public or private organization, that institution's grant or loan commitment must be firmly committed as well.

Any such agreement or letter of understanding shall be understood as being contingent upon receipt of the BEDI grant.

In order for an applicant's commitment of CDBG funds to be accepted by HUD as additional financing for a BEDI project, a resolution from the local governing body (e.g., city/borough council) authorizing the amount and permitted use(s) of the funds must be provided. Each agreement or letter of commitment must include the organization's name and proposed total level of commitment (including how the value was determined) and responsibilities as they relate to the proposed BEDI project. The commitment must be signed by an official of the organization legally authorized to make commitments on behalf of the organization, and remain in effect for a period stated in the commitment.

Grassroots organization means any such organization as defined in Section VI (E)(2) of the General Section of the SuperNOFA above.

Showcase Community means an applicant chosen by the Federal Government's Brownfields National Partnership for inclusion in the Federal Government's Brownfields Showcase Communities program. (See Section III(C)(2) of the General Section of the SuperNOFA) for advice on locating a list of Showcase communities.)

Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for an Empowerment Zone or Enterprise Community designated pursuant to 24 CFR part 597 or part 598.

(2) *Background.* HUD has multiple programs which are intended to stimulate economic and community development and promote economic revitalization of distressed areas, and which can be effectively employed to address and remedy brownfields conditions. Primary among HUD's resources are the Community Development Block Grant (CDBG) program and the Section 108 loan guarantee program.

(a) The CDBG program provides grant funds ($4.341 billion in FY 2002) by formula to local governments (either directly or through States) to carry out community and economic development activities. The Section 108 loan guarantee program provides CDBG-recipient communities with a source of financing for economic development, public facilities, and other eligible large scale physical development projects. HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities and non-entitlement units of general local government eligible to receive funds under the State CDBG program. The Section 108 program is subject to the regulations of 24 CFR part 570 applicable to the CDBG program as described in 24 CFR part 570, subpart M. BEDI grants must support Section 108 loan guarantees as generally described in this program section of this SuperNOFA.

(b) For FY 2002, the Section 108 program is authorized at $608,696,000 in loan guarantee authority. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. Under this program, communities (and States, as applicable) pledge their continuing CDBG allocations as security for loans guaranteed by HUD. The Section 108 program, however, does *not* require CDBG funds to be escrowed for loan repayment (unless such an arrangement is specifically negotiated as loan security and included in the applicable "Contract for Loan Guarantee Assistance.") This means that a community can ordinarily continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment.

(3) *EDI Progrom.* The EDI authorization, Section 108(q) of the Act, was enacted in 1994 and is intended to complement and enhance the Section 108 Loan Guarantee program. $2,943,155 in FY 2000 EDI appropriations is being made available under this program section of the SuperNOFA, conditioned on their award and use for brownfields economic development projects in accordance with this program section. A purpose of EDI (and BEDI) grant funds is to reduce grantees' potential loss of future CDBG allocations:

(a) By strengthening the economic feasibility of a project financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan);

(b) By directly enhancing the security of the Section 108-guaranteed loan; or

(c) Through a combination of these or other risk mitigation techniques.

(4) *BEDI Program.* In the FY 2002 HUD Appropriations Act, Congress has made a specific appropriation of $25 million as authorized by Section 108(q) of the Act to assist in financing brownfields redevelopment, which funds are being made available under this program section along with $1,065,000 in unobligated funds appropriated for FY 2001 for brownfields redevelopment.

HUD intends all the funds available pursuant to this program section of the SuperNOFA to be used for purposes of the redevelopment of brownfields sites. Accordingly, BEDI funds shall be used as the stimulus for local governments and private sector parties to commence redevelopment or continue phased redevelopment efforts on brownfields sites where contamination is known or suspected and a redevelopment plan exists. HUD desires to see BEDI and Section 108 funds used to finance projects and activities that will provide near-term results and demonstrable economic benefits, such as job creation and increases in the local tax base. HUD does not encourage applications whose scope is limited only to site acquisition and/or remediation (i.e., land banking), where there is no immediately planned redevelopment.

(5) *Integration of Other Government Brownfields Programs.* HUD expects and encourages local governments which are designated through (a) the Federal Government's Brownfields Showcase Community program, (b) other Federal brownfields programs (e.g., EPA's Assessment Pilot, Tax Incentive, or Revolving Loan Fund programs), (c) a State-supported brownfields program, or (d) a State or local related economic development program, to integrate efforts arising from those programs in developing projects for assistance under HUD's BEDI and Section 108 programs. Applicants should elaborate upon these ties in their response to the rating factors, where appropriate (*e.g.*, "Capacity of the Applicant," "Soundness of Approach," "Leveraging Resources," or " Coordination, Self-Sufficiency and Sustainability"—Rating Factors 1, 3, 4, and 5 respectively.)

(6) *Additional Security for Section 108 Loan Guarantee.* Public entities should be mindful of the need to provide additional security for the Section 108 loan guarantee pursuant to 24 CFR 570.705(b)(3). Although a public entity is required by the Act to pledge its current and future CDBG funds as security for the Section 108 loan guarantee, the public entity will usually be required to furnish additional collateral. In most cases, the additional collateral consists (in whole or in part) of the asset financed with the Section 108 loan funds (e.g., a loan made to a business as part of an economic development project). Applications proposing uses for BEDI funding that directly enhance the value of the assets securing the Section 108 loan will help ensure that the project-based asset(s)

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will satisfy the additional collateral requirements.

(7) *Uses of BEDI Funds.* Provided that proposals are consistent with other CDBG requirements, including meeting National Objectives and activity eligibility requirements under § 570.703 of the Section 108 Loan Guarantee regulations, the following are illustrative of ways in which BEDI funds can be used to support 108-guaranteed loans:

(a) *Land Writedowns.* Local governments may use a combination of Section 108 and BEDI funds to acquire a brownfield site for purposes of reconveying the site to a private developer at a discount from its purchase price. This approach would provide the developer with an asset of enhanced value that could be used as collateral for other sources of funding. Such other sources of financing could be used to finance environmental remediation or other development costs. In theory, the level of BEDI assistance could approximate the difference between the original cost of the site and its remediation in comparison to the market value of the remediated property.

(b) *Site Remediation Costs.* Local governments may use BEDI funds in any of several ways to address site remediation costs. If the local government proposes to use Section 108 funds to acquire real property, BEDI funds could be used to address assessment and site remediation costs as part of demolition, clearance, or site preparation activities. If the local government uses Section 108 funds to make a loan to a developer, BEDI funds could be granted or loaned to the developer for the purpose of addressing remediation costs as part of an economic development activity.

(c) *Funding Reserves.* The cash flow generated by an economic development project may be expected to be relatively "thin" in the early stages of the project, *i.e.*, potentially insufficient to meet operating expenses and debt service obligations. The BEDI grant can make it possible for reserves to be established in a way that enhances the economic feasibility of the project.

(d) *Over-Collateralizing the Section 108 Loan.* The use of BEDI grant funds may be structured in appropriate cases to improve the likelihood that project-generated cash flow will be sufficient to cover debt service on the Section 108 loan directly and therefore enhance the security of the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

The creation of a loan pool funded with both Section 108 and BEDI grant funds, for example, would provide loans to various businesses from the combined pool at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio could then be pledged to the repayment of the Section 108 loan.

(e) *Direct Enhancement of the Security of the Section 108 Loan.* The BEDI grant can be used to cover the cost of providing credit enhancements for the Section 108 loan. For example, the BEDI grant can be used to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize, and thus will serve to protect the public entity's future CDBG funds.

(f) *Provision of Financing to For-Profit Businesses at a Below Market Interest Rate.*

While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses, non-profit groups or public entities in severely economically distressed neighborhoods. The BEDI grant can be used to make Section 108 financing affordable by serving to "buy down" the interest rate up front, or make full or partial interest payments. This might increase the financial viability of the businesses or other entities in the early start-up period, which might not otherwise be possible with Section 108 alone. This strategy would be particularly useful where a community was undertaking a large commercial or retail project in a brownfield area in order to act as a catalyst for other development in the area.

(g) *Combination of Techniques.* A combination of the above could be employed to implement a BEDI project successfully.

(B) *Eligible Applicants.* (1) Any public entity eligible to apply for Section 108 loan guarantee assistance in accordance with 24 CFR 570.702 may apply for BEDI grant assistance under Section 108(q). Eligible applicants are CDBG entitlement units of general local government and non-entitlement units of general local government eligible to receive loan guarantees under 24 CFR part 570, subpart M. Urban Counties, as defined at 24 CFR 570.3 and 570.307, are eligible applicants for BEDI funds; units of general local government that participate in an Urban County program are not independently eligible applicants. For non-entitlement applicants other than those subject to 24 CFR 570, subpart F, applicants will be required to provide evidence in the application from an authorized official of the State agency responsible for administering the State CDBG program stating that it will support the related Section 108 loan with a pledge of its CDBG funds pursuant to the requirements of 24 CFR 570.705(b)(2). Such evidence shall take the form of the HUD Certification titled "SECTION 108 LOAN GUARANTEES: State Certifications Related to Nonentitlement Public Entities" included in this program section to the SuperNOFA, or which may be obtained either by downloading from the Internet or in the BEDI Application Kit to be published shortly after publication of this SuperNOFA. Note that effective January 25, 1995, non-entitlement public entities in the State of Hawaii are authorized to apply to HUD for Section 108 loans (see 59 FR 47510, December 27, 1994). Thus non-entitlement public entities in all 50 states and Puerto Rico are eligible to participate in the Section 108 and BEDI programs.

(2) Applicants for BEDI projects must comply with the threshold requirements of Section II of the General Section of the SuperNOFA.

(C) *Eligible Activities and National Objectives.* (1) BEDI grant funds and Section 108 loan guarantee funds may be used for activities listed at 24 CFR 570.703, provided such activities are carried out as part of a BEDI project as described in this program section of the SuperNOFA. You are required to submit applications that seek funding for BEDI projects that will contribute to the redevelopment and revitalization of brownfields. Applications that fail to meet the threshold requirements found in Section II(B) of the General Section of the SuperNOFA and the program requirements of this section will not be rated, ranked, or otherwise considered by HUD.

(2) Each activity assisted with Section 108 loan guarantee or BEDI funds must meet a national objective of the CDBG program as described in 24 CFR 570.208. Applicants must clearly identify in their narrative statement (as described in Section V(B) of this program section below) the CDBG national objective to be achieved by the proposed project and provide the appropriate CDBG national objective regulatory citation found at 24 CFR 570.208. Applicants must also address, when applicable, how the proposed activities will comply with the public benefit standards of the CDBG program as reflected in the regulation at 24 CFR 570.209 for the Entitlement and Small

Cities programs, or 24 CFR 570.482 for the State CDBG program.

(3) A grantee's aggregate use of its CDBG funds, including any Section 108 loan guarantee proceeds and Section 108(q) (BEDI) funds provided pursuant to this program section of the SuperNOFA, must comply with the CDBG primary objective requirements as described in Section 101(c) of the Act and 24 CFR 570.200(a) (3) for entitlement grantees, or 570.484 in the case of a recipient under a State's program.

(4) Applicants are reminded of the Department's Policy Priorities for FY 2002 found in SectionVI of the General Section of the SuperNOFA, several of which apply to this program section, as described below, under Rating Factors 3 and 5 in Section V of this program section.

IV. Program Requirements

(A) *CDBG Program Regulations.* In addition to 24 CFR 570.701 (Definitions), § 570.702 (Eligible applicants), and § 570.703 (Eligible activities), as explained in Section III (C) of this program section of the SuperNOFA, the CDBG regulatory requirements cited in 24 CFR 570.707, including subparts J (Grant Administration), K (Other Program Requirements), and O (Performance Reviews) govern the use of BEDI funds, as applicable.

(B) *Compliance with Applicable Laws.* Applicants are advised that an award of BEDI funding does not in any way relieve the applicant or third party users of BEDI funds from compliance with all applicable Federal, State and local laws, particularly those addressing the environment. Applicants are further advised that HUD may require evidence that any project involving remediation has been or will be carried out in accordance with applicable law, including voluntary clean up programs.

(C) *Related Section 108 Loan Guarantee Request.* (1) Each BEDI application must be accompanied by a request for new Section 108 loan guarantee assistance. The request may take any of the four forms as defined below. Notwithstanding the form of your request for new Section 108 loan guarantee assistance under paragraphs (a), (b), (c), or (d) below of this Section IV(C), you must include citations to the specific regulatory subsection supporting activity eligibility and National Objectives compliance for the Section 108 funds described in your application. (See Section III(C) of this program section of the SuperNOFA.) Both the BEDI and Section 108 funds must be used in conjunction with the same BEDI project.

(a) A full application for new Section 108 loan guarantee(s), including the documents listed at 24 CFR 570.704(b).

(b) A brief description (not to exceed three pages) of the project to be applied for in a subsequent new Section 108 loan guarantee application(s). Such a 108 application(s) will be submitted within 60 days of written notice of BEDI selection. BEDI awards will be conditioned on approval of actual Section 108 loan commitments in a specific ratio of BEDI funds to Section 108 funds as approved by HUD in the BEDI award. The application description must be sufficient to support the basic eligibility of the proposed project and activities for Section 108 assistance. (See Section III(C) of this program section of the SuperNOFA.)

(c) A copy of a pending, unapproved Section 108 loan guarantee application, and any proposed amendments to the Section 108 application which are related to the BEDI application. The applicant's submission of such a BEDI/Section 108 application shall be deemed by HUD to constitute a request to suspend separate processing of the Section 108 application. The Section 108 application will not be approved until on or after the date of the related BEDI award.

(d) A request for Section 108 loan guarantee assistance (analogous to Section IV(C)(1)(a) or (b) of this BEDI section of the SuperNOFA) that proposes to increase the amount of a previously approved application. However, any amount of Section 108 loan guarantee authority approved before HUD's announcement of a BEDI grant for the same project is not eligible to be used in conjunction with a BEDI grant under this program section.

(2) Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI or BEDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this SuperNOFA, is not eligible for a BEDI award under this SuperNOFA. For example, if a public entity has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the public entity had previously been awarded a BEDI grant of $1 million and had agreed to submit a Section 108 loan application for $10 million in support of that BEDI grant, the public entity's application under this program section of this SuperNOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(D) *Prohibitions on Use of BEDI and Section 108 Funds.* Certain restrictions shall apply to the use of BEDI and Section 108 funds:

(1) BEDI grant funds must not be used as a resource to immediately repay the principal of a loan guaranteed under Section 108. Repayment of principal is only permissible with BEDI grant funds as a matter of security if other sources projected for repayment of principal prove to be unavailable.

(2) Section 108 loan obligations may not be subordinated, directly or indirectly, to federally tax exempt obligations. Pursuant to Office of Management and Budget (OMB) Circular A–129 (Rev.) Appendix A, Sections II. 2.c. and d., (Policies for Federal Credit Programs and Non-Tax Receivables), Section 108 guaranteed loan funds may not directly or indirectly support federally tax-exempt obligations.

(3) BEDI grant funds shall not be used in any manner by grantees to provide public or private sector entities with funding to remediate conditions caused by their own actions, where the public entity (or other known prospective beneficiary of the proposed BEDI grant) has been determined responsible for causation and remediation by order of a court or a Federal, State, or local regulatory agency, or is responsible for the remediation as part of a settlement approved by such a court or agency.

(4) Applicants may not propose projects on sites which are listed or proposed to be listed on EPA's National Priority List (NPL). Further, applicants are cautioned against proposing projects on sites where the nature and degree of environmental contamination is not well quantified or which are the subject of on-going litigation or environmental enforcement action.

(5) Your attention is called to Section I (D) of the General Section of the SuperNOFA, which notes that the FY 2001 HUD Appropriations Act prohibits the use of funds appropriated under such Act from being used to benefit a facility whose predominant use is the sale of tobacco. See that section for more details.

(6) In addition, BEDI grant assistance cannot be used to leverage a Section 108 loan guarantee approved prior to the date of HUD's announcement of a BEDI grant pursuant to this SuperNOFA. However, the BEDI grant may be awarded before HUD approval of the Section 108 commitment if HUD

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determines that such award will further the purposes of the Act.

(7) A BEDI award will not be made if the Section 108 request contained in the application (See Section IV(C) of this program section) calls for the use of the Section 108-guaranteed obligation solely as security for other financing on the project.

(A) *Time-frames.* BEDI grant awards will contain conditions requiring grantees to adhere to time-frames mutually agreed on by the applicant/grantee and HUD for implementing proposed projects and drawing Section 108 and BEDI funds. However, as a condition of any award under this program section, if the related Section 108 application has not been submitted and approved and the Note guaranteed within fifteen (15) months of written HUD notification of grant award, HUD may deobligate the BEDI funds. In addition, if a grantee should fall fifty percent (50%) or more behind both the stated activity and draw-down schedules provided for in the BEDI grant agreement within the first eighteen (18) months of the grant period, and for each quarter thereafter, HUD may recapture the balance of the grant funds (unless HUD has authorized an amendment to the stated schedules in writing, in which case the aforementioned 50% calculation would apply to the amended and approved schedules). If BEDI grant funds and Section 108 loan proceeds are not disbursed to the applicant within the timeframes specified in the BEDI Grant Agreement, HUD reserves the right to recapture the BEDI funds.

(F) *Limitations on Grant Amounts.* (1) HUD expects to approve BEDI grant amounts for approvable applications with a range of ratios of BEDI grant funds awarded to new Section 108 loan guarantee commitments but the minimum ratio will be $1.00 of Section 108 loan guarantee commitments for every $1.00 of BEDI grant funds. However, if you propose a leverage ratio of exactly 1:1, your application, while still meeting the threshold requirement, will not receive any points under the Rating Factor 4, paragraph (1): "Leverage of Section 108 Funds."

To receive points under this Factor, applications will have to exceed the 1:1 minimum ratio, and the higher the ratio, the more points will be awarded. Because the proposed ratio of BEDI funds to Section 108 funds represents an applicant's financial commitment, HUD will condition the BEDI grant award on the grantee's achievement of that specific ratio. Its failure to meet that condition by obtaining timely HUD approval of a commitment for, and issuance of, the required Section 108 guaranteed obligations ratio will result in the cancellation and recapture of all or a proportionate share of the BEDI grant award.

(2) HUD will cap BEDI awards at a maximum of $2 million per project. An application in excess of $2 million will be reduced to the extent HUD determines that such a reduction is appropriate.

(3) After selection, but prior to grant award, if HUD determines that an application can be funded at a lesser BEDI grant amount than requested and still be feasible and consistent with the proposed plan and the purposes of the Act, it reserves the right to reduce the amount of the BEDI award and/or increase the required Section 108 loan guarantee commitment.

(4) In the event you are awarded a BEDI grant that has been reduced below the original request (e.g., your application contained some activities that were ineligible, exceeded the $2 million cap, or there were insufficient funds to fund the last competitive application at the full amount requested), you will be required to modify your project plans and application to conform the terms of HUD approval before HUD will execute a grant agreement.

(5) HUD also will proportionately reduce or deobligate the BEDI award if you do not submit an approvable Section 108 loan guarantee application and issue Section 108-guaranteed obligations on a timely basis (including any extension authorized by HUD) in the amount required by the BEDI/108 leveraging ratio, which will be approved by HUD as a special condition of the BEDI grant award (*see* Section IV(E)(1) above of this program section of the SuperNOFA).

(6) Any modifications or amendments to your application approved pursuant to this SuperNOFA, whether requested by you or by HUD, must be within the scope of the approved original BEDI application in all respects material to rating the application, unless HUD determines that your revised application remains within the competitive range and is otherwise approvable under this SuperNOFA competition.

(7) In the case of a requested increase in guarantee assistance for a project with a previously approved Section 108 loan guarantee commitment (as further discussed in Section IV(C)(1)(d), above), the BEDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(G) *Timing of Grant Awards and Disbursements.* (1) To the extent you submit a full and complete Section 108 application with the BEDI grant application, HUD will evaluate your Section 108 application immediately following the competition for BEDI grant funds. Note that the 108 application must be submitted to the appropriate HUD field office concurrently with submission to Headquarters.

(2) HUD's notice to you of the amount and conditions of BEDI funds awarded, based upon review of the BEDI application, constitutes an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement. However, BEDI funds must not be disbursed to the grantee before the issuance of the related Section 108 guaranteed obligations.

(3) Pursuant to the FY 2002 HUD Appropriations Act (Pub. L. 107–73, under the "Brownfields Redevelopment" heading) and 31 U.S.C. 1552(a), FY 2002 BEDI funds must be obligated (i.e., awarded) by HUD by September 30, 2003, and must be disbursed by HUD to the grantee by September 30, 2008. FY 2000 EDI funds must be obligated by September 30, 2002, and must be disbursed by HUD to the grantee by September 30, 2007. FY 2001 BEDI funds are not subject to statutory obligation or disbursement deadlines. In all cases, however, HUD reserves the right to require earlier disbursement under a BEDI grant agreement.

(H) *Economic Opportunities for Low and Very Low-Income Persons, including Those with Disabilities.* Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) is applicable to BEDI grant recipients. Please see Section II(E) of the General Section of the SuperNOFA.

(I) *Nondiscrimination.* In addition to the other requirements found in Section II of the General Section of this SuperNOFA, Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309), is applicable to BEDI grant recipients. Applicants must therefore adhere to HUD regulations at 24 CFR parts 6 and 570, including, but not limited to, reporting and record-keeping requirements under 24 CFR 570.506 and 570.507, and must have resolved to HUD's satisfaction any letter of noncompliance findings under Section 109 before the deadline for BEDI application submission.

(J) *Obligation to affirmatively further fair housing.* Grantees that use BEDI funds in projects that involve the construction, rehabilitation, or other provision of residential housing are obliged to affirmatively further fair housing. Therefore, applicants that propose to use BEDI funds in projects that involve residential housing must include in their applications an explanation of how they propose to further fair housing opportunities for persons on the basis of race, color, national origin, sex, religion, familial status, or disability. Applicants should respond to this requirement under Rating Factor 3, subfactor (1). Affirmative activities include, but are not limited to, initial and periodic assessments of the extent to which affordable and accessible housing opportunities are provided or denied to persons by race, color, national origin, sex, religion, familial status, or disability; outreach to persons in underserved population groups or advocacy organizations representing such persons; and affirmatively fair marketing. Applicants that do not propose to use BEDI funds in projects that involve residential housing should include a statement to this effect in their applications.

(K) *Core Values—your attention is called to Section II(B)(2) of the General Section of the SuperNOFA.*

(L) *Small Businesses—another of HUD's goals, to increase the participation of small and disadvantaged, including women-owned, businesses, if possible, is described more particularly in Section II(F) of the General Section of the SuperNOFA.*

V. The Application Selection Process

(A) Rating and Ranking.

(1) Each rating factor and the maximum number of points are provided below. The maximum number of points to be awarded is 106. To be eligible for funding, a BEDI application must obtain a total score of at least 70 points, of which a minimum of 40 points (out of a maximum possible score of 60 points) must be achieved in Rating Factors 1 (Capacity) and 3 (Soundness of Approach) combined.

(2) All applications meeting BEDI program and threshold requirements will be rated under the selection criteria below. *Applications must include citations to the specific regulatory subsections supporting eligibility of activities and compliance with National Objectives.* (See Section III(C) of this program section of this SuperNOFA). The applicant must also provide narrative statements in response to each of the rating factors below.

Applications will be selected for funding as follows:

(3) All BEDI grant applications that meet threshold requirements will be ranked separately in order of points assigned with the applications receiving more points ranked above those receiving fewer points.

(4) In the event two or more applications are given the same score, but there are insufficient funds to fund all of the tied applications, the application(s) with the highest score(s) on Rating Factor 3 (Soundness of Approach) shall be selected. If there is still a tie, the following Factors will be considered sequentially, with the application having the high score on that Factor taking precedence until the tie is broken: Rating Factor 1 (Capacity and Experience), Rating Factor 2 (Distress/Extent of the Problem), Rating Factor 4 (Leveraging Resources), and Rating Factor 5 (Coordination, Self-Sufficiency and Sustainability).

(5) Fundable BEDI project applications must meet the threshold requirements stipulated in Section II(B) of the General Section of this SuperNOFA and be complete as required by the submission requirements of this program section of the SuperNOFA or they will not be ranked. Economic development projects will be funded in rank order until the total aggregate amount of the applications funded is equal to the maximum amount available in the competition (subject to the limitations described in Section IV(F) above).

(B) BEDI Narrative Statement

(1) Applications must contain narrative statements printed in 12 point type, with sequentially numbered pages for the entire application, including forms and exhibits. The BEDI narrative statement must not exceed three (3) 8.5" by 11" pages, doubled-spaced. The BEDI narrative statement should:

(a) Describe the activities that will be carried out with the BEDI grant funds, and explain the nature and extent of the brownfield problem(s) affecting the the site and/or structure(s) already on the site; and

(b) Describe how the proposed uses of BEDI funds will meet the National Objectives under 24 CFR 570.208 of the CDBG program and qualify as eligible activities under 24 CFR 570.703. *Applications must include citations to the specific regulatory subsections supporting eligibility of activities and compliance with National Objectives.* (See Section III(C) of this program section of this SuperNOFA).

(2) The applicant must also provide in narrative form responses to each of the rating factors below.

(C) *Factors for Award Used to Evaluate and Rate Applications.* HUD will evaluate all applications for funding assistance based on the following factors, the responses to which demonstrate the quality of the proposed project or activities, and the applicant's capacity and commitment to use the BEDI funds in accordance with the purposes of the Act.

(D) Responses to Rating Factors 1–5 below shall not exceed fifteen (15) double-spaced pages combined.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (25 Points Maximum)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's organization and staff" will include any subcontractors, consultants, and sub-recipients that are firmly committed (see definition in Section III(A)(1) above) to participate in the activities described in the application. In rating this factor, HUD will consider the following:

(1) (up to 15 points) The applicant should demonstrate that it has the organization, the staff and financial resources in place to implement the specific steps required to successfully carry out its proposed BEDI/Section 108 project. Evidence of this capacity includes:

(a) Performance in the administration of its CDBG, HOME or other HUD programs;

(b) Performance, if any, in carrying out economic development projects similar to that proposed, including brownfields economic development or redevelopment projects, if any, and the ability to conduct prudent underwriting, if applicable;

(c) Ability to carry out projects and programs in a timely manner. An applicant must address its performance in spending previously awarded funds, if any, in a timely manner, including, for CDBG entitlement recipients, the extent to which it has met the HUD standard of having no more than 1.5 times its entitlement amount undisbursed (see 24 CFR 570.902(a)(1)(i)); and,

(d) If applicable, capacity to manage projects and funds awarded as a result of a federal Empowerment Zone/Enterprise Community designation (including Enhanced Enterprise Community (EEC) designation).

(e) An applicant that has previously received an EDI or BEDI grant award must describe the status of the implementation of those project(s) assisted with EDI or BEDI funds, any delays that have been encountered and the actions it is taking to overcome any

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such delays in carrying out the project(s) in a timely manner. For such previously funded EDI or BEDI grant projects, HUD will award more rating points for applications providing evidence of achievement of specific measurable outcomes in carrying out approved activities funded with such grant funds and the associated Section 108-guaranteed loan funds.

If any of the rating criteria listed under (a) through (e) above do not apply to an application, the rating for this subfactor (1) shall be based solely upon the other applicable criteria.

(2) (up to 10 points) Experience and performance of subrecipients, nonprofit organizations and other entities, if any, that have a role in implementing the proposed BEDI/108 program should be included in the response to this subfactor (2). If there are no third parties participating with the applicant in the proposed project, points under this subfactor (2) will be allocated under subfactor (1) and added to the maximum points possible under it.

Experience will be judged in terms of recent (i.e., within the past 3 years) and successful performance of activities relevant to those proposed in the BEDI application. The more recent and extensive the experience, the greater the number of points that will be awarded for this Factor.

In responding to sections (1) and (2) above of this Factor, applications that merely summarize the amount of funds received/spent/under management will receive fewer points than those providing specific measurable information on accomplishments.

In addition to the application, HUD also may rely on information at hand or available from public sources such as newspapers, from performance and/or monitoring reports, Inspector General or Government Accounting Office reports or findings, hotline complaints that have been proven to have merit, audit reports and other available information in rating this Factor.

Rating Factor 2: Distress/Extent of the Problem (20 Points Maximum)

This Factor addresses the extent to which there is need for funding the proposed activities based on levels of distress in both the jurisdiction of the public entity that is the applicant *and* the geographic area that will benefit from the project. In responding to this Factor, applications will be evaluated on the extent to which the level of distress is documented and compared with national data.

(1) In applying this Factor, HUD will consider current levels of distress defined in standard geographic terms in the area (*i.e.*, Census Tract(s) or Block Groups immediately surrounding the project site up to a radius of one-half mile), or it may be the target area proposed to be served by the project, along with the jurisdiction in which the project is to be located. The applicant should describe the nature of the distress that the project is designed to address and the rationale for its definition of the area to be benefited. Examples of project beneficiaries include: (a) those receiving or using products or services produced by the project, and (b) those employed by the project.

To the extent that the applicant's Consolidated Plan, its Analysis of Impediments to Fair Housing choice (AI), and/or its Anti-Poverty Strategy found therein identify the level of distress in the jurisdiction and the neighborhood in which the project is to be carried out, references to such documents should be included in preparing the response to this Factor.

Notwithstanding the above, an applicant proposing a project to be located outside the area for which benefit is claimed could still receive points under this Factor if a clear rationale is provided linking the proposed project location and the benefits to be derived by persons living in the target area.

(2) Applicants should provide data that address the following specific indicators of distress:

(a) Poverty rate (up to 8 points)—data should be provided in both absolute and percentage form (i.e., whole numbers and percents) for both the target area and the applicant's jurisdiction as a whole; an application that compares the local poverty rate in the following manner to the national average at the time of submission will receive points under this section as follows:

(i) Equal to or greater than, but less than twice, the national average: 2 points;

(ii) Equal to or greater than twice, but less than three times, the national average: 5 points;

(iii) Equal to or greater than three times the national average: 8 points.

(b) Unemployment (up to 8 points)—an application that compares the local unemployment rate for the applicant's jurisdiction and the target area in the following manner to the national average at the time of submission will receive points under this Section as follows:

(i) Equal to or greater than, but less than twice, the national average: 2 points;

(ii) Equal to or greater than twice, but less than three times, the national average: 4 points;

(iii) Equal to or greater than three times, but less than four times, the national average: 6 points;

(iv) Equal to or greater than four times the national average: 8 points.

(c) Other Indicators of social and/or economic decline that best capture the applicant's local situation (up to 4 points)—examples that could be provided under this section include information demonstrating the target area and the jurisdiction's stagnant or falling tax base, including recent (within the last three years) commercial or industrial closings, downturns or layoffs; housing conditions, such as the number and percentage of substandard and/or overcrowded units; rent burden (defined as average housing cost divided by average income) for both the target area and jurisdiction; local crime statistics.

HUD requires use of sound and reliable data (*e.g.*, U.S. Census data, State statistical reports, university studies/reports that are verifiable) to support distress levels cited in each application. A source for all information along with the publication or origination date must also be provided. Updated Census data are available as follows for the listed indicators:

Unemployment rate—estimated monthly for counties, with a two-month lag;

Poverty rate—estimated every two years, with a three-year lag, with 2000 being the most recent available.

In rating applications under this Factor, HUD reserves the right to consider sources of available objective data other than, or in addition to, those provided by applicants, in order to compare such data to those provided by applicants.

Rating Factor 3: Soundness of Approach (35 Points Maximum)

This factor addresses the quality and cost-effectiveness of the proposed plan. The relationship between the proposed eligible activities, community needs and purposes of the program funding must be clearly described, as follows, in order to receive points for this Factor. In rating this Factor, HUD will consider the following:

(1) Consistency/appropriateness of proposed activities with identified needs. (Up to 8 points)—The extent to which the proposed plan for use of BEDI grant/Section 108-guaranteed loan funds will address the needs described in Rating Factor 2 above regarding the distress and extent of the problem in the target area or area to be benefited. The applicant should provide a clear and quantified explanation of this relationship. As part of the response to this Factor, an applicant should also identify the specific eligible activities it will carry out, and should fully describe:

(a) How the project will achieve one of the National Objectives under the Community Development Block Grant program, and

(b) How the project will address the applicant's Consolidated Plan and its Analysis of Impediments, if any, including the following issues:

(i) Affordable housing—the extent to which the applicant will offer current residents of the proposed site or area that will benefit from the proposal an opportunity to relocate to environmentally healthy housing or neighborhoods which have more amenities and services, better employment and educational opportunities, and to housing that provides the accessibility and visitability features that families require, or to remain in the revitalized neighborhood, if applicable; and

(ii) The extent to which it will be used to accommodate people with disabilities.

(2) Feasibility and Demonstrable Benefits. (Up to 15 points)—The extent to which the plan is logical, feasible and likely to achieve its stated purpose. HUD's desire is to fund projects and activities that will quickly produce demonstrable results and advance the purposes of the BEDI program. Points for this subfactor will be awarded in two parts, for the following:

(a) Understanding of Steps to Implement. (Up to 8 points)—The extent to which the plan demonstrates a clear understanding of the steps required to implement the project, including the actions that all parties responsible for implementing the project must complete.

(i) Pre-construction—the extent to which your response to this Factor takes into account site selection, planning, and environmental issues typical of many brownfields remediation efforts will be considered under this subfactor. You are cautioned, for example, against proposing projects on sites where the nature and degree of environmental contamination is not well-quantified or that are the subject of on-going litigation or environmental enforcement. Moreover, sites with unknown or exceptionally expensive contamination problems may be beyond the scope of the BEDI program's financial resources, and sites subject to pending and current litigation may not be available for remediation and development or redevelopment in a time-frame consistent with HUD's desire for rapid progress in the use of BEDI and Section 108 funds.

(ii) Description of problem and solution—the applicant should explain each undertaking and the sequence of undertakings that are required to complete the project. This includes a full description of both the problem (including, but not limited to, the extent of environmental contamination) and the benefits that will accrue from the project, i.e., permanent jobs, amount of commercial or industrial space, housing units to be provided, and the timing of the delivery of benefits. For multi-phase projects, the response to this Factor must clearly delineate the different phases, whether or not they are to be funded by BEDI/Section 108 funds, as well as a proposed schedule for drawing down all funds necessary to complete the project, including BEDI and Section 108 funds.

(iii) Monitoring performance—the extent to which applications describe means of assessing progress, tracking performance goals and achievements against Plan objectives.

(b) Timeliness (Up to 7 points)—The extent to which the plan demonstrates that the project is "ready to go", *i.e.*, will produce demonstrable benefits within a short period of time.

(i) Applications providing evidence that authority necessary to proceed with the project activities identified in subfactor (a) above, such as any necessary zoning classification, waivers, general and special use permits, assessment district designation, public easements and rights-of way, memoranda of understanding, site control, etc., have been sought and/or received will receive up to three (3) points for this subfactor (i).

(ii) The applicant should provide a specific time schedule (with both beginning and end dates) for carrying out the project and identify measurable objectives (acquisition, site improvements, construction, etc.) to be accomplished. (Up to 2 points)

A timeline form is provided in Appendix A to this program section of the NOFA and also in the Application Kit for this purpose, but HUD will consider the timeline only as an illustration of the narrative response to this subfactor (2).

(iii) BEDI applications accompanied by a full and complete Section 108 application will receive up to two (2) points for this subfactor (iii).

(3) Financial Feasibility/Need (up to 10 Points)—The extent to which the applicant demonstrates that its project is financially feasible based on its proposed use of BEDI and Section 108 funds. In responding to this subfactor (3), the applicant must clearly address the question of why the BEDI funds are critical to the success of this project by providing the following items, as applicable:

(a) Project costs and financial requirements—a funding sources and uses statement, as well as the derivation of project costs;

(b) How the BEDI and Section 108 funds will be used;

(c) The applicant's criteria for determining funding need and feasibility;

(4) Other (Up to 2 Points)—

(a) The extent to which the project demonstrates energy-efficient solutions to the problems addressed in Rating Factor 2 above, in the construction and/or the operation phases once the overall project is completed. Examples of such conservation and/or other efficiencies include the following: combining heat and power systems as part of electrical generation; adopting Department of Energy weatherization guidelines for property rehabilitation; and purchasing Environmental Protection Agency-identified Energy Star appliances. (Up to 1 point)

(b) Applications providing evidence of partnership, funding and/or subcontracting agreements with grassroots organizations, as defined in Section II(F)(2) of the General Section of the SuperNOFA, will receive up to one (1) point under this subfactor (b).

Rating Factor 4: Leveraging Resources (15 Points Maximum)

In evaluating this factor, HUD will consider the extent to which the response demonstrates the likelihood that the project will leverage both Section 108 loan and other public or private funds as part of the total project resources. This factor has two subfactors, each with its own maximum point total:

(1) *Leverage of Section 108 funds.* (Up to 8 points)—

The minimum ratio of Section 108 funds to BEDI funds in any project may not be less than 1:1. The extent to which the proposed project leverages an amount of Section 108 funds greater than a 1:1 ratio will result in that application's receiving a higher number of points. If the application has a ratio of 1:1, it will not receive any points under this subfactor. The higher the ratio of additional new Section 108 funds to BEDI funds proposed in an application, the more points it will receive under this subfactor. (*See* Section IV(F)(1) and (5) of this program section of the SuperNOFA regarding the

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conditioning of BEDI awards on achievement of a specific BEDI/Section 108 leveraging ratio.)

(2) *Leverage of Other Financial Resources.* (Up to 7 points)—

HUD will evaluate the extent to which other funds (public or private) are leveraged by BEDI grant funds, and the extent to which such other funds are firmly committed to the project. This could include the use of CDBG funds, other federal or state grants or loans, local general funds, project equity or commercial financing provided by private sources or funds from non-profits or other sources. Funds will be considered committed to the project if they meet the definition of "Firm Commitment" found in Section III(A)(1) above, and may be subject to completion of any environmental review required under 24 CFR part 58 for the project.

Rating Factor 5: Coordination, Self-Sufficiency & Sustainability (5 Points Maximum)

This factor addresses the extent to which the applicant has coordinated its activities with other organizations not directly participating in the proposed project, but which share common community development goals; the extent to which it participates or promotes participation in its or the State's Consolidated Planning process; and that it is working towards addressing a need described in Rating Factor 2 above in a comprehensive manner through linkages with other activities in the community.

(1) Coordination—in evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has coordinated its proposed activities with those of other groups or organizations, including other federal, state or local governmental activities in the area, if any, before submission, in order to best complement, support and coordinate all activities; and developed specific steps to share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place, or that will be in place after award, should be described in the application.

(2) Developed linkages—applications should describe linkages with other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan, as well as established linkages and outreach with residents of the project area, i.e., specific steps to develop linkages with other activities, programs or projects (through meetings, information networks, planning processes or other mechanisms to coordinate activities), so that solutions are holistic and comprehensive.

(3) Self-sufficiency—applications should describe the extent to which project activities will result in long term physical and economic improvement for the current residents of the target area or neighborhood in which the project will be carried out, and which will allow them to continue to live in a redeveloped or revitalized neighborhood and thus share in the anticipated economic benefits the project is expected to generate.

(4) Sustainability—the extent to which the project incorporates one or more elements that facilitate a successful transition of welfare recipients to work, including the number of jobs that are part of career path or apprenticeship programs to be created by the project and the impact of the project on job creation that will benefit individuals on welfare or low-to very low-income persons. Such an element could include, for example, linking the proposed project or loan fund to social and/or other services needed to enable welfare recipients to successfully secure and carry out full-time jobs in the private sector; provision of job training to welfare recipients who might be hired by businesses financed through the proposal; and/or incentives for businesses financed with BEDI/Section 108 funds to hire and train welfare recipients, including those with disabilities.

Bonus Points

An application may receive up to six (6) bonus points, until the maximum of six points are achieved. Two bonus points may be awarded for each of the following:

(a) Projects that are located either in federally-designated Empowerment Zones, Enterprise or Renewal Communities, or Strategic Planning Communities (See Section III(C)(2) of the General Section of the SuperNOFA) for advice on locating a list of designated communities);

(b) Projects that are located in Brownfields Showcase Communities designated by EPA (See Section III(C)(2) of the General Section of the SuperNOFA) for advice on locating a list of Showcase communities.)

(c) Qualifying projects in the City of Dallas, Texas, as mandated by a decision by the U.S. District Court for the Northern District of Texas, Dallas Division. Up to two (2) additional points will be awarded to an application that describes how the use of BEDI and Section 108 loan funds will be used to help eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order. For specific details, please see Section III(C)(3) in the General Section of the SuperNOFA.

VI. Application Submission Requirements

(A) *BEDI Funding.* An application for a BEDI grant under this program section of the SuperNOFA must have the following items to be complete. The standard forms, certifications and assurances that are required for the BEDI application (and listed in paragraph (I) below) can be found in Appendix B to the General Section. The remaining application items that are forms (i.e., excluding such items as narratives or letters, etc.), referred to as the "non-standard forms", can be found in Appendix A to this program section of the SuperNOFA.

(B) *Transmittal Letter* signed by the authorized representative of the eligible applicant indicating that it is submitting the application for funding under the Brownfields Economic Development Initiative Program and is requesting funding consideration for a BEDI project.

(C) *Checklist and Submission Table of Contents* indicating the page numbers where the submission items can be found in the application (form HUD–40076–EDI/BEDI).

(D) *BEDI Narrative Statement* (not to exceed 3 pages) describing BEDI-funded eligible activities within the proposed project. (See Section V(B) of this program section.)

(E) *EDI/BEDI/Section 108 Funding Eligibility Statement.* A completed EDI/BEDI Section 108 Funding Eligibility Statement (form HUD–40076–EDI/BEDI).

(F) *Request for Loan Guarantee Assistance.* A request for loan guarantee assistance under Section 108, as further described in Section IV(C) of this program section of the SuperNOFA. Full application guidelines for the Section 108 program are found at 24 CFR 570.704.

(G) *Narrative Responses to Factors for Award (not to exceed 15 pages overall):*

(1) Rating Factor 1: Capacity and Relevant Organizational Experience. Provide a narrative indicating the capacity of your organization and staff to perform the work for which it is requesting funding.

(2) Rating Factor 2: Need Statement Identifying the level of Distress/Extent of the Problem. Provide a narrative statement including any documentation supporting the statement of need. Optional form HUD–40076-EDI/BEDI may also be used as a format to respond to this Factor for Award.

(3) Rating Factor 3: Soundness of Approach. Include the activities, budget and time frame for conducting activities in the response (see form HUD 40076–EDI/BEDI).

(4) Rating Factor 4: Leveraging Resources. The response should include a completed copy of form HUD–40076–EDI/BEDI, "Rating Factor 4: Leveraging Resources—Sources and Uses Statement."

(5) Rating Factor 5: Coordination, Self-sufficiency and Sustainability: Provide a narrative response to this factor.

(H) *Request for Funds.* A single application must contain a request for funds for a single BEDI/108 project. An applicant may submit more than one application for each additional unrelated BEDI/108 project, but in no event will HUD rate and rank more than one BEDI project per application.

(I) *Additional Application Forms and Certifications.* In addition to any forms that have been submitted in response to Section VI (A)—(H) above (which may be found at Appendix A), the following forms and certifications must also be submitted in accordance with Section II(H) of the General Section of this SuperNOFA:

(1) Application for Federal Assistance (Standard Form (SF–424);

(2) Federal Assistance Funding Matrix (HUD 424–M);

(3) Standard Form for Assurances—Non-Construction Programs (SF 424–B) and/or Standard Form for Assurances—Construction Programs (SF 424–D): not required for BEDI applications since the "Leveraging Resources—Sources and Uses Statement" serves the same purpose as a budget form, but must be submitted with the Section 108 application. Since these forms contain assurances of compliance with civil rights and other regulatory requirements, BEDI applicants may elect to provide the signed assurances either with the BEDI or the Section 108 application.

(4) Drug-Free Workplace Certification, HUD–50070.

(5) Certification of Payments to Influence Federal Transactions, HUD–50071, (and if applicant and/or participating parties are engaged in lobbying, the Disclosure Form Regarding Lobbying, SF–LLL);

(6) Applicant/Recipient Disclosure/Update Report, HUD–2880;

(7) Certification Regarding Debarment and Suspension, HUD–2992;

(8) Certification of Consistency With EZ/EC Strategic Plan, HUD–2990;

These forms are found in the Appendix B to the General Section of this SuperNOFA. The non-standard forms for the BEDI applications are in Appendix A to this program section.

If an applicant wishes to receive an acknowledgment of HUD's receipt of its application, it should submit a completed Acknowledgment of Receipt of Application form.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

(A) *Environmental Review.* After the completion of this competition and after HUD's award of BEDI grant funds, pursuant to 24 CFR 570.604, each project or activity assisted under this program is subject to the provisions of 24 CFR part 58, including limitations on the BEDI grantee and Section 108 public entity's commitment of HUD and non-HUD funds prior to the completion of environmental review, notification and release of funds. No such assistance will be released by HUD until a request for release of funds is submitted and the requirements of 24 CFR part 58 have been met. All public entities, including non-entitlement public entities, shall submit the request for release of funds and related certification, required pursuant to 24 CFR part 58, to the appropriate HUD field office for each project to be assisted.

(B) *Environmental Justice.* (1) Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) directs Federal agencies to develop strategies to address environmental justice. Environmental justice seeks to rectify the disproportionately high burden of environmental pollution that is often borne by low-income, minority, and other disadvantaged communities, and to ensure community involvement in policies and programs addressing this issue.

(2) Brownfields are often located in distressed neighborhoods, contribute to neighborhood blight, and lower the quality of social, economic, and environmental health of communities. The BEDI program is intended to promote the clean up and redevelopment of brownfields sites and HUD expects that projects presented for BEDI funding will integrate environmental justice concerns and provide demonstrable benefits for affected communities and their current residents for the long term.

IX. Authority

Section 108(q), Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301); 24 CFR part 570.

Appendix A

The non-standard forms for your BEDI application follow.

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APPENDIX A

CHECKLIST AND SUBMISSION TABLE OF CONTENTS

The following checklist helps you to ensure that all of the required items have been submitted in order to receive consideration for funding. The applicant should assemble the application package in the order shown below, check off each item included in its submission package and note the corresponding page number where the response is located.

Check Off		Page Number
☐	Standard Form for Application for Federal Assistance (SF-424)	cover page 1
☐	Transmittal Letter	cover page 2
☐	Checklist and Submission Table of Contents	p. 1
☐	Applicant Narrative Statement (3 pages)	p. ____
☐	EDI/BEDI/108/CDBG Funding Eligibility Statement form (2 pages)	p. ____
☐	**Request for Loan Guarantee Assistance** (check off one of the four options)	p. ____
☐	Formal application	
☐	Brief description; formal application to be submitted in 60 days	
☐	Copy of previously submitted, but not yet approved, Section 108 application.	
☐	Request for Section 108 loan guarantee amendment to increase previously approved amount	
	Response to Rating Factors	
☐	#1 Capacity of the Applicant and Relevant Organizational Experience	p. ____
☐	#2 Distress/Extent of the Problem	p. ____
☐	Distress/Extent of the Problem form (optional)	p. ____
☐	#3 Soundness of Approach	p. ____
☐	Project Timeline form	p. ____
☐	#4 Leveraging Resources/Financial Need	p. ____
☐	Sources and Uses Statement form	p. ____
☐	#5 Coordination, Self-Sufficiency & Sustainability	p. ____
	Application Forms and Certifications	
☐	Section 108 Certifications	p. ____
☐	Federal Assistance Funding Matrix (HUD 424-M)	p. ____
☐	Certification and Disclosure Form Regarding Lobbying (SF-LLL)	p. ____
☐	Applicant/Recipient Disclosure Update Report (HUD-2880)	p. ____
☐	Certification Regarding Debarment & Suspension (HU D-2992)	p. ____
☐	Certification of Consistency w ith EZ/EC/RC Strategic Plan (HUD-2990)	p. ____
☐	Certification for a Drug-Free Workplace (HUD-50070)	p. ____
☐	Certification of Payments to Influence Federal Transactions (HUD-50071)	p. ____
	Certification of Consistency with the Consolidated Plan (HUD-2991)	
	Appendices	
☐	Written Agreements or Signed Letters of Understanding - Rating Factor 1	p. ____
☐	Third Party Funding Commitment Letters - Rating Factor 4, subfactor 3	p. ____
☐	Acknowledgment of Application Receipt	last page

RATING FACTOR 2: DISTRESS/EXTENT OF PROBLEM
(optional form)

Applicant: _____

Project Name/Title: _____

Instructions: The applicant is required to provide information related to the poverty rate for the Target Neighborhood (the area in which EDI/BEDI assistance will be used) and the larger jurisdiction. In addition, the applicant may include optional indicators such as the unemployment rate, median income of persons living in the area, or other indicators of the applicant's choosing. A data source and date are required for each indicator. Use of data from the applicant's Consolidated Plan and/or its Analysis of Impediments to Fair Housing Choice (AI) is encouraged.

	Distress Indicators	Target Neighborhood	Jurisdiction	Data Source & Date
1	Poverty Rate			
2	Unemployment			
3	Median Income			
4				
5				
6				
7				
8				

Definitions: Describe how the areas are defined (i.e., city boundaries, census tracts, zip codes, etc.)

Neighborhood: _____

_____

Jurisdiction: _____

RATING FACTOR 3: SOUNDNESS OF APPROACH
PROJECT TIMELINE

Applicant: _____

Project Name/Title: _____

Instructions: Identify and list each major task/activity associated with the project. Darken appropriate boxes for quarter(s) when task/activity will occur. Fill in the amount of EDI/BEDI/108 funds associated with each task/activity in column labeled EDI/BEDI/108 Funds for Task." Fill in the amount of other sources of funding associated with each task in the column labeled "Other Funds." If the project extends beyond the timeframe indicated on the form, please attach justification/description of proje of pr oject term. Use as many as you need to show beginning -- end timeframes for all phases.

	Tasks/Activities	Year 1 1Q	2Q	3Q	4Q	Year 2 1Q	2Q	3Q	4Q	Year 3 1Q	2Q	3Q	4Q	EDI/BEDI/ 108 Funds for Task	Other Funds for Task
	EXAMPLE: Construction													$1,500,000	$2,500,000
1															
2															
3															
4															
5															
7															
8															
9															
10															
11															
12															
	TOTAL														

form HUD-40076- EDI/BEDI (8/2004

EDI/BEDI/SECTION 108/CDBG FUNDING ELIGIBILITY STATEMENT
Page 1 of 2

Applicant: _____

Project Name/Title: _____

Instructions: The applicant should first enter the total project cost (line 16). Then, working backwards, the applicant should enter the total costs paid with CDBG (line 14) and non CDBG-related funds (line 15). These two amounts should equal the total listed in line 16. Next, the applicant should enter dollar amounts on lines 1-13 in order to demonstrate among which eligible activities the EDI/BEDI, Section 108 or CDBG funds are to be allocated.

Eligible Activities 1/	EDI or BEDI	Section 108	CDBG 2/	Total
1 **Acquisition of Real Property** 24 CFR 570.703(a)				
2 **Rehabilitation of Publicly Owned Real Property** 24 CFR 570.703(b)				
3 **Payment of Interest** 24 CFR 570.703(c)				
4 **Relocation Payments** 24 CFR 570.703(d)				
5 **Clearance, Demolition, Removal** 24 CFR 570.703(e)				
6 **Site Preparation** 24 CFR 570.703(f)				
7 **Payment of Issuance Fees** 24 CFR 570.703(g)				
8 **Housing Rehabilitation** 24 CFR 570.703(h)				
* 9 **Economic Development Activities** 24 CFR 570.703(i) (and 570.203/.204)				
10 **Construction of Housing** 24 CFR 570.703(j)				
11 **Debt Service Reserve** 24 CFR 570.703(k)				
12 **Public Facilities** 24 CFR 570.703(l)				
13 **Public Facilities - Colonias** 24 CFR 570.703(m)				
14 **Subtotal**				
15 **Costs Paid with Non CDBG-Related Funds**				
16 **Total Project Costs 3/**				

1/ The eligible Section 108 activities are defined in detail at 24 CFR 570.703.
2/ CDBG grants and program income other than EDI, BEDI or Section 108.
3/ This figure should match the total provided on the Sources & Uses stateme nt.

form HUD-40076 EDI/BEDI (8/2004)

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EDI/BEDI/SECTION 108/CDBG FUNDING ELIGIBILITY STATEMENT
Page 2 of 2

Applicant: _____

Project Name/Title: _____

National Objective 1/

Single Project (check one only)		**Loan Fund** (check all that apply)	
☐ Low-Mod Area Benefit	24 CFR 570.208(a)(1)	☐ Low-Mod Area Benefit	24 CFR 570.208(a)(1)
☐ Low-Mod Limited Clientele	24 CFR 570.208(a)(2)	☐ Low-Mod Limited Clientele	24 CFR 570.208(a)(2)
☐ Low-Mod Area Housing	24 CFR 570.208(a)(3)	☐ Low-Mod Area Housing	24 CFR 570.208(a)(3)
☐ Low-Mod Job Creation/Retention	24 CFR 570.208(a)(4)	☐ Low-Mod Job Creation/Retention	24 CFR 570.208(a)(4)
☐ Slum/Blight Area Basis	24 CFR 570.208(b)(1)	☐ Slum/Blight Area Basis	24 CFR 570.208(b)(1)
☐ Slum/Blight Spot Basis	24 CFR 570.208(b)(2)	☐ Slum/Blight Spot Basis	24 CFR 570.208(b)(2)
☐ Slum/Blight Urban Renewal	24 CFR 570.208(b)(3)	☐ Slum/Blight Urban Renewal	24 CFR 570.208(b)(3)
☐ Urgent Need/Imminent Threat	24 CFR 570.208(c)	☐ Urgent Need/Imminent Threat	24 CFR 570.208(c)

Public Benefit

PLEASE NOTE: This section is applicable only to projects which plan to spend funds on eligible economic development activities as defined by 24 CFR 570.703(i).

A. If this project will meet the public benefit standard based upon the number of jobs to be created [see 570.209(b)(3)(i)(A)], enter the total number of jobs: ☐

B. If this project will meet the public benefit standard based upon the number of low- and moderate-income persons served in the project area [see 570.209(b)(3)(i)(B)], enter the number of low- and moderate-income persons living in the project area: ☐

1/ The CDBG national objectives are defined in detail at 24 CFR 570.208.

form HUD-40076 EDI/BEDI (8/2004)

Certification of Consistency with the RC/EZ/EC Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the Strategic Plan of a Federally-designated Empowerment Zone (EZ), Enterprise Community (EC), an Urban Enhanced Enterprise Community, Strategic Planning Community or Renewal Community.

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of RC/EZ/EC _____

I further certify that the proposed activities/projects will be located within the RC/EZ/EC/Urban Enhanced EC or Strategic Planning Community and will serve the RC/EZ/EC/Urban Enhanced EC, Strategic Planning Community residents, or Renewal Community. (2 points)

Name of the Official Authorized to Certify the RC/EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

S. 1857/P.L. 107–153

To encourage the negotiated settlement of tribal claims. (Mar. 19, 2002; 116 Stat. 79)

Last List March 19, 2002

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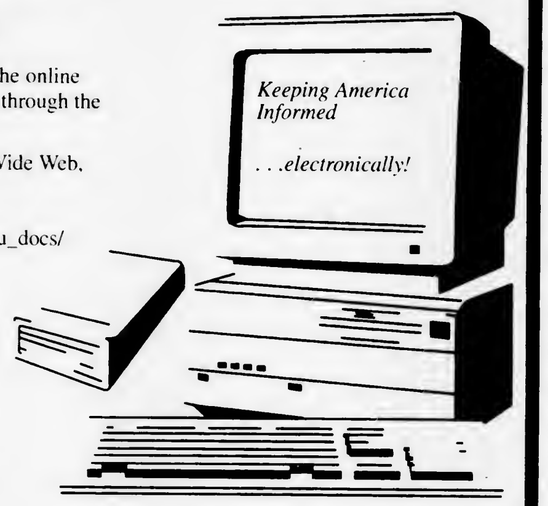
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Federal Register

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Vol. 67 No. 58 Mar. 26, 2002

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)

PROGRAM OVERVIEW

Purpose of the Program. To facilitate and encourage innovative homeownership opportunities through self-help housing where the homebuyer contributes a significant amount of sweat-equity toward the construction of the new dwelling.

Available Funds. Approximately $22 million.

Eligible Applicants. You must be a national or regional nonprofit organization or consortium.

Application Deadline. June 19, 2002.

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information:

I. Application Due Date, Standard Forms, Further Information, and Technical Assistance

Application Due Date. Applications for SHOP grants are due on or before June 19, 2002.

See the General Section of this SuperNOFA for specific procedures governing the form of application submission (*e.g.*, mailed applications, express mail, or overnight delivery).

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (UPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without an escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received in HUD Headquarters on or within fifteen (15) days of the application due date. Applicants must obtain and save a Certificate of Mailing showing the date, when your application was submitted to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express service no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday through Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Address for Submitting Applications. Submit one original and two copies of the application to Department of Housing and Urban Development, Office of Community Planning and Development, Processing and Control Unit, 451 Seventh Street, SW, Room 7251, Washington, DC 20410, ATTN: Self-Help Homeownership Opportunity Program (SHOP).

For Application Forms. Only national and regional nonprofit organizations and consortia are eligible to apply. There is no separate application kit. This notice contains all the information necessary for submission of your application. Copies of the standard forms are located in the General Section of this SuperNOFA or you may request copies by calling HUD's SuperNOFA Information Center at: 1–800-HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800-HUD–2209. When requesting standard forms, you should refer to SHOP and provide your name and address (including zip code) and telephone number (including area code). See Section VI for application submission requirements. You may also access the application requirements on the Internet through HUD's web site at *www.hud.gov/grants.*

Further Information and Technical Assistance. You may contact Lou Thompson, Office of Affordable Housing Programs, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2684, ext. 4594 (this is not a toll-free number). This number can be accessed via TTY by calling the Federal Information Relay Service Operator at 1–800–877–8339.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at *http://www.hud.gov/grants.*

II. Amount Allocated

The amount available for this program is approximately $22 million. Any unobligated funds from previous competitions or additional funds that may become available, as a result of deobligation or recaptures from previous awards or budget transfers, may be used in addition to the Fiscal Year 2002 appropriation to fund applications submitted in response to this NOFA.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* SHOP is intended to facilitate and encourage innovative homeownership opportunities on a national geographically-diverse basis through self-help housing where the homebuyer contributes a significant amount of sweat-equity toward the construction or rehabilitation of the dwelling.

Decent, safe, and sanitary non-luxury dwellings developed under SHOP must be made available to eligible homebuyers at prices below the prevailing market prices. Eligible homebuyers are low-income individuals and families (those whose annual incomes do not exceed 80 percent of the median income for the area, as established by HUD) who are unable to purchase a dwelling. Housing assisted under this Notice must involve community participation through the use of homebuyers and/or volunteers in the construction of dwellings and by other activities that involve the community in the project.

(B) *Eligible Applicants.* You must be a national or regional nonprofit organization or consortium that has the capacity and experience to provide or facilitate self-help housing homeownership opportunities. Local affiliates of national or regional organizations or consortia must apply as part of the national or regional organization or consortia and may not apply for SHOP independently. "Regional" is defined for the purpose of this program section of the SuperNOFA to be a "regional area" such as the Southwest or Northeast that must include at least two or more States (the States need not be contiguous and the operational boundaries of the organization need not precisely conform to State boundaries). If you are a consortium, one organization must be chosen as the lead entity. The lead entity must submit the application and,

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if selected for funding, will execute the grant agreement and assume primary responsibility for carrying out grant activities in compliance with all program requirements. Other participants in your consortium must be identified in your application.

Your application may not propose a partnership with or funding for any affiliate or consortium member that is also included in another SHOP application. You must assure that any affiliate or consortium member under your FY 2002 application is not also seeking funding from another SHOP applicant for FY 2002 funds.

(C) *Eligible Activities.* The only eligible activities are: (1) land acquisition (including financing and closing costs), which may include reimbursing an organization, consortium, or affiliate, upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced to acquire land before completion of the review; (2) infrastructure improvements (installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure, including removal of environmental hazards); and (3) administration, planning and management development as defined under the HOME Investment Partnerships Program (24 CFR 92.207) and not to exceed 20 percent of any SHOP grant. Funding of eligible activities may be used for both single-family and multifamily dwellings.

(D) *Ineligible Costs:* Costs associated with the rehabilitation, improvement, or construction of dwellings *are not eligible* uses of program funds.

IV. Program Requirements

In addition to meeting the Requirements and Procedures Applicable to All Programs in Section II of the General Section of this SuperNOFA, you are subject to the following SHOP requirements:

(A) *Conducting Business In Accordance With Core Values and Ethical Standards:* See Section II(B)(2) of General Section of the SuperNOFA.

(B) *Statutory Requirements.* You must comply with all statutory requirements applicable to SHOP as cited in Section IX of this program section below. There are no regulations for this program. You must be capable of:

(1) Developing, through significant amounts of sweat-equity and volunteer labor, at least 30 dwellings at an average cost of no more than $10,000 per unit in SHOP funds for land acquisition and infrastructure improvements;

(2) Using your grant to leverage other sources of funding, including private or other public funds, to complete the housing units;

(3) Developing quality dwellings that comply with local building and safety codes and standards and which will be available to homebuyers at prices below the prevailing market price; and

(4) Scheduling activities to expend all grant funds awarded and substantially fulfill your obligations under your grant agreement, including timely development of the appropriate number of dwelling units. Grant funds must be expended within 24 months, except that grant funds provided to affiliates and consortium members that develop five or more units must be expended within 36 months.

(C) *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* If you fund infrastructure improvements under this program, you are required to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons) and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E. Section 3 requires that you provide training, employment and other economic opportunities, to the greatest extent feasible, to: (1) Low- and very low-income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low- and very low-income persons.

V. Application Selection Process

(A) *Rating.* HUD will review all applications in accordance with the Application Selection Process in Section III of the General Section of this SuperNOFA. HUD will review all applications based on the threshold factors listed in Section V(D) of this program section below. Applications that meet all threshold requirements will be rated according to the selection factors in this section of the SuperNOFA. Applications that do not meet all threshold factors will be rejected and not rated.

(B) *Ranking and Selection Procedures.* Applications that receive a total rating of 70 points or more (without the addition of Empowerment Zones/Enterprise Communities/Urban Enhanced Enterprise Communities/Strategic Planning Communities, or Renewal Communities [RC/EZ/ECs] bonus points) will be eligible for selection, and HUD will place them in rank order. After adding any bonus points for RC/EZ/ECs, HUD will consider rank order and funds availability in the selection and funding of applications.

HUD reserves the right to fund less than the full amount requested in any application to ensure a fair distribution of the funds and that dwellings will be developed on a national geographically-diverse basis as required by the statute. HUD will not fund any portion of an application that is ineligible for funding under program statutory requirements, or which does not meet the requirements of the General Section of this SuperNOFA or the requirements in the SHOP section of the SuperNOFA. HUD will not fund any eligible applicant for less than the minimum amount necessary to complete at least 30 homes (at a maximum investment of $10,000 per home or a lesser amount if lower costs are reflected in the application). If funds remain after all selections have been made, these funds may be available for other competitions.

(C) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and not longer than 120 days, HUD will, upon receiving a written request from an applicant, provide a debriefing to the requesting applicant. Materials provided during a briefing will be the applicant's final score for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied. Applicants requesting to be debriefed must send a written request to Lou Thompson, Office of Affordable Housing Programs, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW, Washington, DC 20410.

(D) *Threshold Requirements.* The following threshold requirements apply specifically to SHOP. You must also be sure to address the threshold requirements listed in Section II(B) of the General Section of the SuperNOFA and must submit all forms, certifications, and assurances identified in Section II(H) of the General Section.

(1) You, the applicant, must be eligible to apply under SHOP (see Section III(B) of this program section of the SuperNOFA).

(2) The amount of funding you request must support no less than 30 self-help units and may not exceed an average investment of $10,000 per unit in SHOP funding.

(3) The population you plan to serve must be eligible under SHOP (see Section III(A) of this program section of the SuperNOFA).

(4) You must demonstrate that you have completed at least 30 self-help homeownership units within a national or regional area (where the homebuyers contributed a significant amount of sweat-equity and/or volunteer labor toward the construction of the dwellings) within the 24-month period preceding the publication of this SuperNOFA.

Submission Threshold Requirements:

(1) Evidence of your non-profit status, such as a copy of a current Internal Revenue Service ruling that your organization is exempt from taxation under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986. Where an IRS ruling is unavailable, you may submit a certified copy of your approved charter, articles of incorporation or bylaws demonstrating that you are established as a nonprofit organization under state law. If you are a consortium, each participant in your consortium must be a nonprofit organization. Each consortium member must submit evidence of its nonprofit status to the lead entity for inclusion in the Consortium's application package.

Submission threshold requirements (2) through (4) require no additional submissions. These requirements are addressed under the submission requirements for the rating factors listed in Section V(D) of this program section of the SuperNOFA below.

(E) *Factors for Award Used to Evaluate Applications.* HUD will rate all SHOP applications that successfully complete technical processing using the Rating Factors and the Application Submission Requirements described below. The maximum number of points for this program is 102. This includes two RC/EZ/EC bonus points, as described in Section III(C)(1) of the General Section of the SuperNOFA. In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including accounting for funds appropriately, the timely use of funds received from HUD, meeting performance targets for completion of activities, and the number of persons served.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (20 Points)

This factor examines the extent to which you, as a single applicant or as a consortium (including affiliates and/or members of the consortium, if any), have the experience and organizational resources necessary to carry out the proposed activities in a timely manner.

In evaluating this factor, HUD will consider your recent and relevant experience in carrying out the activities you propose, and your administrative and fiscal management capability to administer the grant, including the ability to account for funds appropriately. HUD will assess your organization's past performance based upon performance reports for completion of activities and the number of families/persons provided housing, financial status information focusing on expediency of draws and use of funds, monitoring reports, audit reports and other information available to HUD in making its determination under this factor. If you are not a current recipient of HUD funds, you should submit any existing internal or external performance reports or other information that will assist HUD in making this determination.

Submission Requirements for Rating Factor 1.

(1) You must describe your past experience in carrying out activities (describe the time frame when these activities occurred) that are the same as, or similar to, the activities you propose for funding, and demonstrate reasonable success in carrying out those activities. You may demonstrate such reasonable success by showing that your previous activities were carried out as proposed consistent with the time frame you proposed for completion of all work. You must show that established benchmarks for acquiring properties and completing housing construction were met and performance reports were submitted, as required. You must also describe any delays that were encountered, and the actions you took to overcome such delays to successfully complete your program.

(2) You must demonstrate that you have completed at least 30 self-help homeownership units within a national or regional area (where the homebuyers contributed sweat-equity and/or volunteer labor toward the construction of the dwellings) within the 24-month period preceding the publication of this SuperNOFA. In identifying these recent projects, please include all projects completed, regardless of whether they were funded with Federal, State, local, public or private funds.

(3) You must provide a description of your organization's management structure. You must also describe how you will staff and manage your proposed activities within the organization if funds are awarded.

(4) You must demonstrate your ability to handle financial resources with adequate financial control and accounting procedures. You must describe how your financial control procedures meet 24 CFR 84.21, "Standards for Financial Management Systems." You must provide a copy of your most recent audit (only an audit of the lead entity must be provided with an application for a consortium).

(5) You must demonstrate your experience and ability in constructing and altering homes by describing the kinds of features that you have used to design homes in accordance with universal design or otherwise make homes accessible to the elderly or persons with disabilities.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor examines the extent to which you identify the community need, or problem, or distress that your proposed activities will target, and the urgency of meeting that need.

The purpose of this factor is to make sure that funding is provided where a need for funding exists. Under this factor, you must identify the need or needs in the community that your proposed activities are designed to address or, if you plan to select specific affiliates only after you receive SHOP funding, you must demonstrate how you plan to identify need prior to your selection of affiliates.

Submission Requirements for Rating Factor 2.

(1) Identify the communities or areas in which your proposed activities will be carried out or how you will select communities or projects based on need after you have received an award under SHOP.

(2) Depending on the type of activities proposed, the kind of information you submit to demonstrate the need or needs in the target area may include, but is not limited to, one or more of the following:

(a) Housing market data such as information included in the local Five Year Consolidated Plan or other data sources;

(b) Data dealing with such factors as housing density, housing affordability, housing age or deterioration, and lack of adequate infrastructure or utilities;

(c) Data on the need for accessible homes in the area;

(d) Evidence of housing discrimination;

(e) Evidence from the local Analysis of Impediments to Fair Housing Choice that shows the need for this program.

Rating Factor 3: Soundness of Approach (45 Points)

This factor examines the quality of your plan of proposed activities. In evaluating this factor HUD will consider:

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(1) Your specific use of SHOP funds, the number of units and the type(s) of housing to be constructed, and the use of sweat equity/volunteer labor; your established timeline for performance; your schedule for expending funds and completing construction; the proposed budget and cost effectiveness of your program; and your plans to reach all potentially-eligible homebuyers, including those with disabilities or least likely to apply. You may not require a homebuyer to make financial contributions to a unit other than cash contributed for down payment or closing costs at the time of acquisition.

(2) How your planned activities further the Department's FY 2002 policy priorities noted in Section VI of the General Section. You will receive one rating point for each priority addressed in your program of activities and associated with performance measures. For FY 2002, HUD's policy priorities are:

(i) Increasing Homeownership Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities and the Elderly, and Minorities and Families where English may be a second language.

(ii) Improving the Quality of Public Housing and Providing More Choices for Its Residents.

(iii) Encouraging Accessible Design Features: Visitability in New Construction and Substantial Rehabilitation Activities and Universal Design.

(iv) Improving Computer Access, Literacy, and Employment Opportunities.

(v) Providing Full and Equal Access to Faith Based and Other Community Based Organizations in HUD Program Implementation.

(vi) Ensuring that Programs are Accountable for the Promises Made and the Actions Taken.

(vii) Colonias.

Submission Requirements for Factor 3

(1) Identify all activities you propose to fund with SHOP.

(2) Provide a timetable for the selection of your participating local affiliates if they are not specified in the application.

(3) Identify the housing type(s) (single family or multifamily, or both) you plan to develop and the form of ownership (fee simple, condominium, cooperative, etc.) you propose to use.

(4) Submit a construction and completion schedule which expends SHOP funds and substantially fulfills your obligations, including the development of the appropriate number of dwelling units, within 24 months, or in the case of affiliates that develop five or more units, within 36 months, and demonstrates that remaining housing construction will be completed within a reasonable period of time.

(5) Submit a timeline listing milestones against which HUD is to measure your performance progress in expending funds, and completing acquisition, infrastructure and housing construction activities within the schedule in Item 4 above. These milestones should be at reasonable intervals (*e.g.*, monthly, quarterly, etc.).

(6) Describe how your proposed activities address the need or needs you have identified under Rating Factor 2 above.

(7) List the long- and short-term benefits from your activities to the community and targeted groups within the community, and describe how you will ascertain and measure the benefits.

(8) Provide a detailed budget with a break out for each proposed task and each budget category (acquisition, infrastructure improvements, and administration) in the SF–424A. If SHOP funds will be used for administration of your grant, you must include the cost of monitoring affiliates once during the grant period. Your budget must also include leveraged funding to cover all costs of completing the proposed number of units.

(9) Demonstrate that projected costs for the proposed activities do not deviate substantially from the norm in the locale in which your activities will take place, will not exceed an average cost of $10,000 per unit in SHOP funds, and illustrate your ability to carry out your proposed activities cost effectively.

(10) Describe how each of the Department's policy priorities are furthered by your proposed activities. To receive a point for a policy priority, you must describe how your proposed work activities address the specific policy and list proposed performance measurements related to it.

(11) Describe how you will reach potential homebuyers through the use of services and materials that are accessible or visitable to all persons, including persons with disabilities (*e.g.*, languages, formats, locations, distribution, and use of minority media to attract those least likely to apply).

(12) Describe your criteria and procedures for selecting homebuyers and how activities will benefit eligible homebuyers.

(13) Describe how your proposed activities will yield long-term results and innovative strategies or "best practices" that can be readily disseminated to other organizations, communities, and/or State and local governments.

(14) Describe how your program will provide reasonable accommodations for persons with a variety of disabilities by providing "sweat equity" assignments that can be performed by the client regardless of disability.

Rating Factor 4: Leveraging Resources (15 Points)

This factor addresses your ability to secure other resources that can be combined with HUD's program resources to achieve the purposes of SHOP. HUD will consider only those leveraging contributions for which current firm commitments have been provided. Leveraging can be counted only if you have secured a firm financial commitment described and listed under this Factor. A firm commitment letter means the agreement by which the contributing partner or entity agrees to perform an activity specified in your application which should demonstrate your financial capacity to deliver the resources necessary to carry out the activity. Firm commitments of resources may be in the form of cash funding, in-kind contributions, or personnel from Federal, State, local, and private sources, which are jointly referred to as your leverage partners. HUD will also consider the extent that the applicant's proposed sweat-equity requirements and other leveraged resources will serve to reduce costs to the homebuyers.

Submission Requirements for Factor 4

(1) Provide a list of amounts and sources of all firm commitments of cash funding, in-kind contributions, or personnel from other Federal, State, local, and private sources which will be available to complete your project. Together with the grant funds, these commitments must be sufficient to develop the proposed number of units in your application, which must be 30 units or more.

(2) Provide firm written commitments (letters, agreements, etc.) from the source of the commitment to support your list of firm commitments. This written commitment should include your organization's name, the contributing organization's name, and the proposed type and level of commitment and responsibilities as they relate to your proposed program. This leveraging commitment must be signed by an official of the organization legally able to make the commitment on behalf of the organization and must be specifically targeted to support your FY 2002 SHOP application. The written commitment may be contingent upon your receiving a grant award.

(3) Provide a description of the individual sweat-equity requirements (types of tasks and number of hours) of your program and how this contribution of labor will serve to reduce the costs of the home to the homebuyer. Reasonable accommodation must be allowed for persons with a variety of disabilities to participate in your program.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (5 Points)

This factor addresses the extent to which your application reflects a comprehensive approach that coordinates effectively with other organizations in the community and fosters self-sufficiency of beneficiaries in your program after completion of the grant award. In evaluating this factor, HUD will consider:

(1) The extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed work activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner; and

(2) The extent to which your application implements practical solutions within the grant term to result in assisting beneficiaries of grant program funds in achieving independent living, housing choice or improved living environments.

Submission Requirements for Factor 5

(1) Describe the steps taken to coordinate your program activities at the national, regional and local levels with other organizations not directly participating in your program and work activities. If affiliates are selected after grant award, you must describe how your selections will be made to ensure that the affiliates' programs fit in with other activities and programs that are being carried out by others in the local communities.

(2) Describe the steps to be taken within the grant term that provide assistance to homebuyers in a manner that achieves independent living, housing choice in a wider range of neighborhoods and improved living conditions free from overcrowding and environmental hazards, such as lead-based paint, Brownfields, etc.

VI. Application Requirements and Checklist for Application Submission

Your application consists of the items listed in this Section VI. The standard forms, certifications, and assurances that are applicable to this funding (collectively, referred to as the "standard forms") can be found in Appendix B to the General Section of the SuperNOFA. The following checklist helps to ensure that all of the required items have been submitted in order to receive consideration for funding:

_____ Standard Form 424, Application for Federal Assistance (signed by the authorized representative of the organization eligible to receive funds)
_____ Evidence of Non-Profit status
_____ A copy of your code of conduct and a narrative description of the methods you will use to ensure that all officers, employees and agents of your organization become aware of your code of conduct.

Narrative Statement Addressing:
_____ Factor 1—Capacity of the Applicant and Relevant Organizational Staff, including recent audit.
_____ Factor 2—Need/Extent of the Problem
_____ Factor 3—Soundness of Approach
_____ Factor 4—Leveraging Resources
_____ Factor 5—Coordination, Self Sufficiency and Sustainability

Forms, Certifications and Assurances:
_____ SF 424A, Budget Information, Non-Construction Programs
_____ SF 424B, Assurances—Non-Construction Programs
_____ SF 424M, Federal Assistance Funding Matrix
_____ HUD–50070, Certification for a Drug-Free Workplace
_____HUD–50071, Certification of Payment to Influence Federal Transactions
_____SF–LLL, Disclosure of Lobbying Activity, as applicable
_____HUD–2880, Applicant/Recipient Disclosure/Update Report
_____HUD–2990, Certification of Consistency with the RC/EZ/EC Strategic Plan
_____HUD–2992, Certification Regarding Debarment and Suspension
_____HUD–2993, Acknowledgment of Application Receipt

VII. Corrections to Deficient Applications

The *General Section* of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

The provisions contained in Section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, Environmental Review, implemented in the Environmental Review regulations at 24 CFR part 58, are applicable to properties assisted with SHOP funds. All SHOP assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities. SHOP grant applicants are cautioned that no federal or non-federal funds or assistance which limits reasonable choices or could produce a significant adverse environmental impact may be committed to a project until all required environmental reviews and notifications have been completed by a unit of general local government, tribe or State and until HUD approves a recipient's request for release of funds under the environmental provisions contained in 24 CFR part 58. Not withstanding the preceding sentence, in accordance with Section 11(d)(2)(A) of the Housing Opportunity Extension Act of 1996 and HUD Notice CPD–01–09, an organization, consortium or affiliate receiving SHOP assistance may advance nongrant funds to acquire land prior to completion of an environmental review and HUD's approval of a request for release of funds and environmental certification. Any advances to acquire land prior to such approval are made at the risk of the organization, consortium or affiliate and reimbursement from SHOP funds for such advances will depend on the result of the environmental review.

IX. Authority

The funding made available under this program section of the SuperNOFA is authorized by section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) (the "Extension Act").

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

YOUTHBUILD

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FUNDING AVAILABILITY FOR THE YOUTHBUILD PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. The purpose of the Youthbuild program is to assist disadvantaged young adults in distressed communities in completing their high school education, to provide on-site construction training experiences which also results in the rehabilitation or construction of housing for homeless persons and low- and very low-income families, to foster leadership skills, to further opportunities for placement in apprenticeship programs, and to promote economic self-sufficiency.

Available Funds. Approximately $59.750,000 is available for the Youthbuild Program.

Adjustments to Funding. HUD reserves the right to utilize this year's funding to fund previous years errors prior to rating and ranking this year's applications. HUD reserves the right to reallocate funds between categories to achieve the maximum allocation of funds.

Eligible Applicants. Eligible applicants are public or private nonprofit agencies, including State or local housing agencies or authorities, State or units of local government, or any entity eligible to provide education and employment training under other Federal employment training programs, as further defined in HUD's regulation at 24 CFR 585.4.

Application Deadline. May 30, 2002.

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please carefully review the *General Section* of this SuperNOFA and the following additional information.

I. Application Due Date and Technical Assistance

Application Due Date. Completed applications (one original signed application and two copies) must be submitted on or before May 30, 2002 to the HUD Headquarters address shown below.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that impact application submission procedures. Please read the following instructions carefully and completely.

Addresses for Submitting Applications. Completed applications (one original signed application and two copies) must be submitted to the Processing and Control Unit, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7255, Washington, DC 20410, Attention: Youthbuild Program. When submitting your application, please include your name and mailing address (including zip code) and telephone number and fax number (including area code).

Applications sent to HUD headquarters may be mailed using the United States Postal (USPS) or may be shipped via the following delivery services: United Parcel Services (UPS), FedEx, DHL, or Falcon Carrier. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above. Delivery of these services must be made during business hours between 8:30 AM and 5:30 PM Eastern time, Monday through Friday. If these companies do not service your area, you should submit your application via the United State Postal Service.*

Mailed Applications. Your applications will be considered timely filed if postmarked on or before 12:00 midnight (Eastern Time) on the application due date and received at the address above on or within fifteen (15) calendar days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was filed in a timely manner.

Applications sent by overnight delivery or express mail will be considered timely filed if they are received before or on the application due date, or upon submission of documentary evidence that your application was placed in transit with the overnight delivery service by no later than the specified application due date. *For Application Kits.* For an application kit and any supplemental material please call the SuperNOFA Information Center at 1–800-HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. An application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to Youthbuild and provide your name, address (including zip code), and telephone number (including area code).

For information concerning the HUD Youthbuild program, contact Ms. Phyllis Williams, Community Planning and Development Specialist, Office of Rural Housing and Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7136, Washington, DC 20410; telephone (202) 708–2035 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For Technical Assistance. Write or call Mr. Peter Twichell, YouthBuild USA, 58 Day Street, Somerville, MA 02144, telephone (617) 623–9900, ext. 1211, under contract with HUD to provide technical assistance. Prior to the application deadline, YouthBuild USA will be available to provide general guidance on the application submission process and location of information, but not guidance in actually preparing the application. HUD staff will also be available to provide technical assistance.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

(A) *Available Funds.* Approximately $59,750,000 in Fiscal Year (FY) 2002 funding is being made available through this program section of this SuperNOFA for the Youthbuild program. The breakdown of funding is discussed below.

The FY 2002 HUD Appropriations Act. The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub.L. 107–73 approved November 26, 2001) (the "FY 2002 HUD Appropriations Act") made $65,000,000 available of which $59,750,000 is allocated for grants.

(B) *Funding Categories.* HUD will award up to $59,750,000 on a competitive basis. Funds will be divided between four categories of grants as described below.

Category 1 *New Applicants.* HUD will award up to $10,000,000 for new applicants that have not previously received implementation grants since the inception of the Program for a period not to exceed 30 months. The maximum amount awarded to a successful applicant in this category is $400,000.

Category 2 *Grants up to $700,000.* HUD will award up to $37,750,000 for grants up to $700,000 for a period not to exceed 30 months. The maximum

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amount awarded to a successful applicant in this category is $700,000.

Category 3 *Underserved and Rural Areas.* HUD will award up to $10,000,000 for grants to organizations serving clients in underserved and rural areas as defined in this NOFA for a period not to exceed 30 months. The maximum amount awarded to a successful applicant in this category is $400,000.

Category 4 *Individual Development Accounts (IDAs).* HUD will award up to $2,000,000 for grants for previous or existing Youthbuild grantees for a period not to exceed 30 months, to support the outreach, development and implementation of Individual Development Accounts (IDAs) for Youthbuild program participants. The maximum amount awarded under this category is $200,000.

Applicants must indicate on their transmittal/cover letter which funding categories they are applying for.

III. Program Description and Eligible Activities

(A) *Program Description.* The purposes of the Youthbuild Program are to:

(1) Provide economically disadvantaged young adults with opportunities to obtain an educational experience that will enhance their employment skills, as a means to achieving self-sufficiency;

(2) Foster the development of leadership skills and commitment to community;

(3) Expand the supply of permanent affordable housing for homeless and low- and very low-income persons by providing implementation grants for carrying out a Youthbuild program;

(4) Provide disadvantaged young adults with meaningful on-site training experiences in housing construction and rehabilitation that will enable them to render a service to their communities by helping to meet the housing needs of homeless persons and low-income families; and

(5) Give to the greatest extent possible, job training, employment, contracting and other economic opportunities to low-income young adults.

HUD also focuses on the Youthbuild Program as a way to foster the development of nonprofit organizations which over time can provide the services mentioned above to disadvantaged youth and which at the same time rely less on HUD's financial support to carryout these activities.

(B) *Eligible Activities.*

(1) Work and activities associated with the acquisition, architectural and engineering work, rehabilitation or construction of the housing, as defined in HUD's regulations at 24 CFR 585.309, 585.310, and 585.311.

(2) Relocation payments and other assistance required to comply with HUD's regulation at 24 CFR 585.308;

(3) Costs of ongoing training and technical assistance needs related to carrying out a Youthbuild program;

(4) Education, job training, counseling, employment, leadership development services and optional activities that meet the needs of the participants including entrepreneurial training, drivers' education, apprenticeship opportunities, financial literacy, credit counseling, assistance programs for those with learning disabilities, and in-house staff training;

(5) Outreach to potential participants;

(6) Wages, benefits, and need-based stipends for participants and;

(7) Administrative costs, which must not exceed 10 percent of the grant award.

HUD encourages you to use grant funds for outreach, recruitment, training and other services for the participants that facilitate program implementation. Please refer to HUD's regulation at 24 CFR 585.305 for further details on eligible activities.

IV. Program Requirements

In addition to the requirements listed in the General Section of this SuperNOFA, as an applicant you must comply with the following Youthbuild program requirements:

(A) *Eligible Applicants.* Eligible applicants as defined in HUD's regulation at 24 CFR 585.4.

(B) *Eligible Participants.* Participants in a Youthbuild program must be very low-income high school dropouts between the ages of 16 and 24, inclusive, at the time of enrollment. Up to 25 percent of participants may be above very low-income, or may be high school graduates (or equivalent), but must have educational needs (such as lack of reading, writing and communication skills) that justify their participation in the program.

(C) *Locational Limitations.* You may submit more than one application in the current competition if your program's participant recruitment and housing areas are in different jurisdictions. Each application you submit may only propose activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program.

(D) *Response to NOFA—Page Limitation.* The total narrative response to all factors identified in Section VI of this program NOFA must not exceed 15 pages, and must be submitted on 8.5" by 11" paper, using a 12 point font, with lines double spaced and printed only on one side. Please note that submitting pages in excess of the page limit will not disqualify your application. However, HUD will not review or consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(E) *Youthbuild Program Components.* Applications that receive assistance under this Youthbuild Program section of the SuperNOFA must contain the three components described as follows:

(1) Educational and job training services;

(2) Leadership training, counseling, and other support activities;

(3) On-site training through actual housing rehabilitation and/or new construction work, including the provision of alternative training experiences that are necessary as a reasonable accommodation for students with disabilities.

(F) *Identification of and Access to Property.* Your application must identify the location of the site(s) or property(ies) (e.g. addresses, parcel numbers, etc.) that will be used for on-site construction. Your application MUST contain a letter from the property owner or property management company(ies) allowing access to the housing site(s) for on-site construction training. HUD may deem as ineligible any application that fails to specifically identify the location of the on-site construction.

(G) *Training Requirement.* Each program must be structured so that 50 percent of each participant's time is spent in on-site training and the other 50 percent in educational training.

(H) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* Section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u) is applicable to the Youthbuild program. Please see Section II of the General Section of the SuperNOFA.

(I) *Participation in Local Workforce Investment Act One-Stop Center.* Youthbuild grantees are mandatory partners in one-stop centers authorized by the Workforce Investment Act of 1998 (Pub. L. 105–220).

V. Desirable Elements of a Youthbuild Program

You should document the extent to which HUD's initiatives are furthered by the proposed activities. Such initiatives include:

(1) Promoting healthy, safe, and energy efficient homes;

(2) Affirmatively furthering fair housing by promoting greater opportunities for housing choice for minorities and persons with disabilities;

(3) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(4) Providing educational, apprenticeship and job training opportunities;

(5) Promoting welfare reform;

(6) Encouraging visitability in new construction and substantial rehabilitation activities; and

(7) Encouraging universal design.

First time applicants. If you are a first time applicant applying for funding under Category 1, HUD recommends that you have a graduating class of not more than 20 participants.

VI. Application Selection Process

Applicants must meet all of the applicable threshold requirements of Section II(B) of the General Section of the SuperNOFA and Sections IV(A), (B), (C), (D), (E), (F), (G) and (H) of this program section of the SuperNOFA. HUD will review each application and assign points in accordance with the selection factors described in this section. The maximum number of points is 102 (except for an application submitted by the City of Dallas, Texas, which would be eligible for a maximum of 104 points). HUD will award up to two (2) additional points, as described in the General Section of the SuperNOFA, to any application submitted by the City of Dallas, Texas, to the extent that Factor 3 is addressed. Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD will consider the extent to which the application's proposed activities will eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order. This maximum includes two Renewal Community/Empowerment Zone/Enterprise Community (RC/EZ/EC) bonus points as described in Section III(C) of the General Section of the SuperNOFA. An application must receive a minimum of 70 points to be eligible for funding.

(A) *Rating and Ranking.*

(1) *General.* To review and rate applications, HUD may establish panels including officials from other Federal agencies and outside experts or consultants to obtain certain expertise and other outside points of view. In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including the ability to account for funds appropriately, timely use of funds received either from HUD or from other Federal, State or local programs and meeting performance targets for completion of activities and number of persons served or targeted for assistance. HUD may use information relating to these items based on information at hand or available from public sources such as newspapers, Inspector General or Government Accounting Office Reports or Findings, hotline complaints that have been proven to have merit, or other such sources of information.

(2) *Rating.* All applications for funding will be evaluated against the rating factors described in Section (VI) of this NOFA.

(3) *Ranking.* Applications will be ranked separately within each of the four funding categories. Applications will be selected for funding in accordance with their rank order in each category.

(4) To be eligible for funding, an application must have an overall minimum score of 70 points and a minimum score of 40 points for the total combined number of points for Rating Factors 1 (Capacity of the Applicant and Relevant Organization) and Rating Factor 3 (Soundness of Approach).

If two or more applications are rated fundable and have the same score, but there are insufficient funds to fund all of them, HUD will select the application(s) with the highest score for Rating Factor 3 (Soundness of Approach). If two or more applications still have the same score, the highest score in the following factors will be selected sequentially until one highest score can be determined: Rating Factor 1 (Capacity of the Applicant and Relevant Organization); Rating Factor 4 (Leveraging of Resources) and Rating Factor 2 (Need/Extent of the Problem).

(B) *Categories of Grants.* HUD will make grants in four categories:

(1) *Category 1 Grants.* Grants for new applicants that have not previously received funding under the Youthbuild program since the inception of the Program and that have elected not to apply under Category 2 or 3. HUD will make available approximately $10,000,000 to new applicants proposing grant(s) of $400,000 or less for activities not to exceed 30 months.

(2) *Category 2 Grants.* HUD will make available approximately $37,750,000 to applicants proposing grant(s) of $700,000 or less for activities not to exceed 30 months.

(3) *Category 3 Grants.* HUD will make available $10,000,000 for applicants proposing grant(s) of $400,000 or less to establish programs in underserved and rural areas not to exceed 30 months. Rural and Underserved areas are defined as follows:

(a) *Rural Area.* A Rural area is defined in one of five ways:

(i) A place having fewer than 2,500 inhabitants (within or outside of metropolitan areas).

(ii) A county with an urban population of 20,000 inhabitants or more.

(iii) Rural portions of extended cities, as identified by the U.S. Census Bureau.

(iv) Open country, which is not part of or associated with an urban area. The United States Department of Agriculture (USDA) describes "open country" as a site separated by open space from any adjacent densely populated urban area. Open space includes undeveloped land, agricultural land or sparsely settled areas but does not include physical barriers, (such as rivers and canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, and open space set aside for future development.

(v) Any place with a population not in excess of 20,000 and not located in a Metropolitan Statistical Area.

(b) *Underserved Area.* An underserved area is defined as an area comprised of census tracts with the following distress criteria:

(i) A census tract where the unemployment remains high (50 percent or more above the nation's unemployment rate) and

(ii) A census tract where high rates of poverty (50 percent or more above the national average) persists.

(4) *Category 4 Grants.* HUD will make available approximately $2,000,000 for applicants proposing grants of $200,000 or less to develop or support Individual Development Accounts (IDAs).

IDAs are matched savings accounts designed to assist low and very low-income families to accumulate savings for education, job training, homeownership or small business or micro-enterprise development. IDAs may be structured to provide both current program participants and those who successfully completed the program with access to IDAs. This category of funds must be used in conjunction with funds awarded under Category 2 or Category 3 and may be used for outreach, financial literacy training, matching funds, administrative costs and/or monitoring. Participants save monthly for a specific purpose with their savings matched by designated funders (usually at a rate ranging from one dollar for each dollar saved to four dollars for each dollar saved). In order to be considered for

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funding under Category 4 (Individual Development Accounts), the applicant must apply for Category 4 along with either Category 2 or Category 3. In order to be awarded funding under Category 4, the applicant must also be awarded funding under either Category 2 or Category 3.

(C) *Grant Period.* You must expend funds awarded within 30 months of the effective date of the grant agreement, or such other period specified.

(D) *Maximum Awards.* Under the competition established by this Youthbuild Program section of the SuperNOFA, the maximum award for a Youthbuild grant is $700,000. Special Note: The maximum award under the combined categories 2 and 4 is $900,000. HUD will not make amendments to awards under this competition that will increase previously approved grant amounts.

(E) *Potential Environmental Disqualification.* HUD reserves the right to disqualify an application where one or more environmental thresholds are exceeded if HUD determines that it cannot conduct the environmental review and satisfactorily complete the review within the HUD application review period. (See 24 CFR 585.307.) Environmental thresholds are explained in Appendix A of this program section of this SuperNOFA. Complete form 2C13a, 2C13b, or 2C13c and form 2C15 only if you are proposing to use Youthbuild funds for new housing construction or rehabilitation.

(F) *Notification of Approval or Disapproval.* HUD will notify you whether or not you have been selected for an award. If you are selected, HUD's notice to you of the amount of the grant award based on the approved application will constitute HUD's CONDITIONAL approval, subject to negotiation and execution of the grant agreement by HUD.

(G) *Rating Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for the program is 104. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA and two bonus points given to the city of Dallas, TX.

(H) *Application Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not less than 120 days, HUD will, upon written request from the applicant, provide a debriefing to the requesting applicant. Materials provided during the debriefing will be the applicant's final scores for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which the assistance was provided or denied. Applicants requesting to be debriefed must send a written request to Ms. Jackie W. Mitchell, Director, Office of Rural Housing and Economic Development (ORHED), Office of Community Planning and Development, 451 Seventh Street, SW, Room 7136, Washington, DC 20410. Debriefing information can be found in Section VII(E)(2) of the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 points)

This factor addresses the qualifications and experience of the applicant and participating parties to implement a successful young adult education, training program in accordance with your work plan as further described in Factor 3. HUD will review and evaluate information provided documenting recent capability. Experience within the last 5 years will be considered recent. In reviewing this rating factor, HUD will evaluate the following sub-factors:

(1) *Team Member Composition and Experience (5 points).* Your experience and the experience of your project director, core staff competencies including your day-to-day program manager, consultants and contractors. You must demonstrate that your program manager has the background, experience and capacity to implement all of the program components of the proposed work plan, as evidenced by recent work experience (within the last 5 years) in managing projects of the same or similar size, dollar amount, types of activities and beneficiaries as those proposed in your work plan. If any gaps exist in your experience or organizational structure to carry out the program, describe how you will fill those gaps including the hiring of consultants or other outside parties. Applicants for funding under Category 4 (Individual Development Accounts) should include in their response their experience and capability in providing support services to low income individuals and families seeking to achieve economic sustainability and self-sufficiency and in recruiting, educating and assisting project participants to increase their economic independence and general well-being through economic literacy education and the accumulation of assets.

(2) *Organizational Structure (5 points).* The structure of your organization, management structure, including reporting relationships of key staff, a system for coordinating with outside contractors or third party service providers, a mechanism for an internal and external auditing relationships, and an accounting system which meets Federal accounting system requirements. You should provide a clear description of how your organizational structure will operate to carry out your work plan.

(3) *Relevant Experience (5 points).* The objectives and accomplishments of your past experience in conducting similar activities. You must describe your past project objectives and accomplishments which are similar to those of your proposed work plan to show your effectiveness and timeliness in managing similar projects. If you have received similar grants including previous Youthbuild grants, you must describe your effectiveness of your administration including timeliness and performance in meeting reporting requirements and your ability to have resolved problems that presented themselves during the grant period. In addressing timeliness of reports, you must compare when your reports were due with when they were actually submitted. You must describe your achievements, including those of previous Youthbuild grants, of specific measurable outcome objectives. Specific outcome objectives include: number of youths recruited, trained and received GEDs; number of youths obtaining jobs (i.e. those that are a part of a career path or apprenticeship program), number of youths participating in apprenticeships and number of housing units rehabilitated or constructed and made available for low and moderate income persons.

Also, you must describe the extent to which you or participating partners have been successful in past education, training and employment programs and activities, including Federally-funded Youthbuild programs. If you have received a Youthbuild grant, you must submit copies of your last two progress reports or, if applicable, a closeout report. In applying the rating criteria, HUD will take into consideration your performance (including meeting target dates and schedules) as reported.

The more recent, relevant, and successful the experience of the proposed team members, organization and other participating entities in relation to the work plan, the greater the number of points that you will receive. For previous and existing Youthbuild grantees, applicants that can demonstrate a closer and greater linkage between the expected outcomes and the previously generated outcomes will receive a higher amount of points for this Factor.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This Factor addresses the extent to which there is need for funding the proposed activities based on levels of distress and an indication of the urgency of meeting the need/distress in the applicant's target area. In responding to this Factor, applications will be evaluated on the extent to which the level of need for the proposed activity and the urgency in meeting the need are documented and compared, vis-a-vis the target area and national data.

(1) In applying this Factor, HUD will consider current levels of distress for the area (i.e., Census Tract(s) or Block Groups) immediately surrounding the project site or the target area to be served by the proposed project, and in the nation. This means that an application that provides data that show levels of distress in the target area expressed as a percent greater than the national average will be rated higher under this Factor.

Notwithstanding the above, an applicant proposing a project to be located outside the target area could still receive points under the Distress Factor if a clear rationale and linkage is provided linking the proposed project location and the benefits to be derived by persons living in more distressed area(s) of the applicant's target area.

(2) Applicants should provide data that address indicators of distress, as follows:

(a) Poverty (5 points)—data should be provided in both absolute and percentage form (i.e., whole numbers and percents) for the target area(s); an application that compares the local poverty rate in the following manner to the national average at the time of submission will receive points under this section as follows:

(1) Less than the national average: 0 points
(2) Equal to but less than twice the national average: 1 points
(3) Twice but less than three times the national average: 3 points
(4) Three or more times the national average: 5 points

(b) Unemployment (5 points)—for the project area;

(1) Less than the national average: 0 points
(2) Equal to but less than twice the national average: 1 points
(3) Twice but less than three times the national average: 2 points
(4) Three but less than four times the national average: 3 points
(5) Four but less than five times the national average: 4 points
(6) Five or more times the national average: 5 points

(c) High School Dropouts (10 points)—for the project area;

(1) Less than the national average: 0 points
(2) Equal to but less than twice the national average: 2 points
(3) Twice but less than three times the national average: 4 points
(4) Three but less than four times the national average: 6 points
(5) Four but less than five times the national average: 8 points
(6) Five or more times the national average: 10 points

(d) Other Indicators of social and/or economic decline that best capture the applicant's local situation (5 points). Examples that could be provided under this section are information on the community's stagnant or falling tax base, including recent commercial or industrial closings, housing conditions, such as the number and percentage of substandard and/or overcrowded units, rent burden (defined as average housing cost divided by average income) for the target area and urgency in addressing problems facing youth, local crime statistics, etc.

(3) In rating applications under this Factor, HUD reserves the right to consider sources of available objective data, such as the U.S. Census, other than, or in addition to, those provided by applicants, and to compare such data to those provided by applicants and local crime statistics for the project site.

HUD requires use of sound and reliable data (e.g., U.S. Census data, State statistical reports, university studies/reports that are verifiable) to support distress levels cited in each application. A source for all information along with the publication or origination date must also be provided.

Updated Census data are available as follows for the listed indicators:

(a) Unemployment rate—estimated monthly, with a two-month lag;

(b) Population—estimated for incorporated places through 2000;

(c) Poverty rate—1990 data being the most recent available.

Rating Factor 3: Soundness of Approach (40 points)

Youthbuild Program Work Plan. This factor addresses the quality and cost-effectiveness of your proposed work plan. There must be a clear relationship between your proposed activities, community needs and the purpose of the Youthbuild program. HUD will consider the overall quality and feasibility of your proposed work plan and budget which must be consistent with the Youthbuild program as measured by your specific activities and outcomes.

Specifically, HUD will consider the following categories when assessing your proposed work plan:

(1) Program Components (15 points):

(a) Outreach strategy, recruitment strategy and selection activities. HUD will determine the extent to which you demonstrate a clear linkage with the following work plan activities and proposed outcomes and results. Points will be awarded based upon overall quality and feasibility of the outreach, recruitment and selection activities, the number and types of outreach activities, number of youths to be recruited including eligible participants who are harder to reach and comprehensiveness of the local selection process.

Letters describing specific resources or services to be contributed by non-applicant organizations must be included in your application. In evaluating this category, HUD will consider:

(i) Specific steps you will take to attract potential eligible participants who are unlikely to be aware of this program (because of race, ethnicity, sex or disability) and selection strategies;

(ii) Special outreach efforts you will make to recruit eligible young women, young women with dependent children, and persons receiving public assistance; and

(iii) Recruitment arrangements you have made with public agencies, courts, homeless shelters, local school systems, local workforce development systems, one-stop centers and, community-based organizations, etc. You will receive a greater number of points if your outreach and recruitment arrangements are consistent with the purpose of the Youthbuild program and your project goals and the resources provided.

(b) Educational and job training services and activities. HUD will evaluate the extent to which you demonstrate a clear linkage with the following work plan activities and proposed outcomes and results.

Letters describing specific resources or services to be contributed by non-applicant organizations must be included in your application. Points will be awarded based upon the quality and feasibility of your proposed curriculum, qualifications of instructors and proposed wages and stipends for youth participants. In evaluating this category, HUD will consider:

(i) The types of in-class academic and vocational instruction you will provide;

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(ii) The number and qualifications of program instructors and ratio of instructors to participants;

(iii) Scheduling plan for classroom and on-the-job training needed to meet program requirements and ensure timely completion of your program; and

(iv) Reasonable payments of participants' wages, stipends, and incentives. You will receive a greater number of points if your educational and job training services are consistent with the purpose of the Youthbuild program and your project goals and the resources provided.

(c) Leadership development. HUD will determine the extent to which you demonstrate a clear linkage with work plan activities and proposed outcomes and results. Letters describing specific resources or services to be contributed by non-applicant organizations must be submitted in your application. Points will be awarded based upon the quality and feasibility of your proposed leadership curriculum, qualifications of instructors and the impact of the proposed leadership activities on the target area. You must describe the leadership development training you will offer to participants and strategies for providing the training to build group cohesion and peer support. You will receive a greater number of points if your leadership development activities are consistent with the purpose of the Youthbuild program and your project goals and the resources provided.

(d) Support services. HUD will determine the extent to which you demonstrate a clear linkage with work plan activities and proposed outcomes and results.

Letters describing specific resources or services to be contributed by non-applicant organizations must be included in your application. Points will be awarded based upon the quality and feasibility of your proposed support services strategy and stipends for the participants.

You must assess the need for counseling and referral services during each stage of program implementation: outreach strategy, recruitment strategy, youths interviewed and not selected for the program, program participants, youths who drop out of the program and graduates of the program. Describe how the participant needs will be addressed, document counseling and referral services to be offered to participants, the type of counseling, social services, and/or need-based stipends you will provide.

Special Note to applicants under Category 4 for Individual Development Accounts:

Applicants under this Category should precisely identify the target population(s) to be served and provide a description of the geographic area to be impacted. Applicants that target individuals residing in one or more well defined neighborhoods or communities (including public housing developments, RCs/EZs/ECs) that experience high rates of poverty or unemployment will also receive a greater number of points under this subfactor. Applicants applying under Category 4 should describe, in outline form, how the IDA program would operate. The applicant should outline: (i) The process for the recruitment of participants; (ii) how participants will be selected; (iii) how and with what assistance will the participant determine the levels of savings and purpose or qualified expenses; (iv) when, where and with whom the participant is to sign a savings plan agreement; (v) the process for opening an IDA account and the role of the participating financial institution; (vi) how and where savings deposits are to be made and the consequences to a participant should the participant fail to make a scheduled deposit; (vii) where, when and from whom the participant will receive financial literacy, credit repair and other training and support services; (viii) where, when and from whom will the participant receive training needed support to remain employed to assure continued savings from earned income; (ix) where, when and from whom the participant will receive training needed with respect to the qualified expenditure or purpose of the IDA, in the area of homeownership, pursuit of educational goal, business plan development and management, etc.; and (x) when, where and how the participant will make withdrawals to support the purposes of the IDA, once the IDA savings and match goals have been achieved. Applicants must also identify the state or Federal institution with which they are partnering in the development and implementation of their IDA project.

All applicants under Category 4 must include a copy of a signed agreement between the applicant and the financial institution(s), which sets forth: (i) That the project's reserve fund will be established in the financial institution; (ii) the rate of interest to be paid on amounts in the reserve fund; (iii) how, when, and where participant deposits will be made; (iv) how and when matching contributions will be made (e.g. in a parallel account); (v) the rate and frequency of interest payments on accounts, including matching contributions; (vi) the data and reports that will be furnished to the grantee concerning the reserve fund and IDA accounts; (vii) the contribution, if any, being made by the financial institution for deposit in the reserve fund, and the schedule of deposits of such contribution; and (viii) other services to be provided by the financial institution(s) that could strengthen the project, such as financial education seminars, favorable pricing on fees, out-stationing of services in community facilities, or assistance in recruitment of project participants. The narrative response to this subfactor need only identify the partnering financial institution(s) and reference the agreement(s) provided with the application.

Applicants will receive a greater number of points if your support service activities are consistent with the purpose of the Youthbuild program and your project goals and the resources provided.

(e) Follow-up assistance and support activities to program graduates. HUD will evaluate the extent to which you provide assistance to Youthbuild program participants after graduation. Letters describing specific resources or services to be contributed by non-applicant organizations must be included in your application. Points will be awarded based upon the quality and feasibility of your proposed strategy. You must describe the type of proposed assistance and support which should be based upon an assessment of the needs of the program graduates and should include continued linkage to the local Youthbuild program, counseling and social service referral services. You will receive a greater number of points if your follow-up assistance and support service activities to program graduates are consistent with the purpose of the Youthbuild program and your project goals and the resources provided.

(f) On-site training. HUD will evaluate the extent to which the work plan provides for quality and comprehensive on-site construction training by addressing the categories below. Letters describing specific resources or services to be contributed by any non-applicant organizations must be included in your application. Points will be awarded based upon the quality and feasibility of your proposed curriculum, experience of proposed instructors, number of youth to be trained and wages or stipends for participants. HUD will consider:

(i) The housing construction or rehabilitation activities participants will undertake at the site(s) to be used for the on-site training component of the program as provided in the training curriculum and methodology for carrying out on-site training;

(ii) The qualification and number of on-site supervisors;

(iii) The ratio of trainers to participants;

(iv) The number of participants per site; and

(v) The amounts, wages, and/or stipends you will pay to participants during on-site work.

All applicants will receive a greater number of points if your on-site training plan is consistent with the purpose of the Youthbuild program and your project goals and the resources provided.

(2) Strategy for Job Placement. (10 points)

HUD will evaluate the quality and feasibility of your proposed strategy to place youth participants in permanent jobs.

Letters describing specific resources or services to be contributed by non-applicant organizations must be included in your application. You will be rated on the following factors: (a) Proposed number of youth to obtain jobs that promote economic self-sufficiency (*i.e.* those that are a part of career paths or apprenticeship programs); (b) proposed number of youths who will continue post-secondary or secondary education; (c) proposed number of youths to receive entrepreneurship training. Two points of this factor will be awarded based upon the comprehensiveness and feasibility of your strategies and procedures to place youth participants in related apprenticeships and commitments from construction trade unions. You will receive a greater number of points if your strategy for job placement is consistent with the purpose of the Youthbuild program, your proposed project and the resources provided.

(3) Expected Outcomes. (5 points). Describe the number of youths to be trained and the number of housing units to be rehabilitated or constructed. As a part of this evaluation, HUD will assess the cost effectiveness of your stated outcomes as compared to the funds that you are requesting in the Youthbuild Grant Budget. You will receive a greater number of points if your proposed outcomes are consistent with the purpose of the Youthbuild program, your proposed project and the resources provided.

(4) Housing Program Priority. (10 points) HUD will assign Housing Program Priority points to all applications that contain evidence that housing resources for other Federal, State, local or private sources that are available and firmly committed to cover all costs, in full, for the following housing activities for the proposed Youthbuild program: acquisition, architect and engineering fees, construction, and rehabilitation. Applications that do not include proper documentation of firm financial commitments of non-Youthbuild resources or propose to use Youthbuild grant funds, in whole or in part, or do not evidence site control, for any one of the housing activities listed above will not be entitled to housing program priority points. Forms 2C, Housing Site Description, and 2C10, Youthbuild Grant Individual Housing Project Site Estimate, must be completed to receive the Housing Program Priority points.

Rating Factor 4: Leveraging Resources (10 Points)

(Exhibit 4B Non-Housing Program Resources Must Be Complete and You Must Provide Letters of Firm Commitment From the Donor With the Amount of Cash of In-Kind Contribution) This factor addresses the ability of the applicant to secure non-HUD resources. This factor measures the extent to which you have established partnerships with other entities to secure resources for your proposed program. Each commitment described in the narrative for this Factor must have a firm commitment letter. Grantees who leverage significant resources will receive a greater number of points.

HUD will evaluate the extent to which firm commitment of resources are obtained from Federal, State, local, and private and nonprofit sources. HUD will award a greater number of points based upon a comparison of the extent of leveraged funds and the requested Youthbuild grant. The greater the amount of resources leveraged, the higher the points that will be awarded. In assigning points for this criterion, HUD will consider the level of non-applicant resources obtained for cash or in-kind contributions to cover the following kinds of areas:

(1) Social services (*i.e.*, counseling and training);

(2) Use of existing vocational, adult, and bilingual educational courses;

(3) Donation of labor, resource personnel, supplies, teaching materials, classroom, and/or meeting space;

(4) For Individual Development Accounts matching funds, financial services or other resources to be provided in support of such accounts; and

(5) Other commitments. In rating this element, HUD will consider only those contributions for which current firm commitments have been provided. HUD will evaluate the level of non-applicant resources proposed based on their importance to the total program. Leveraging will only be counted if you have secured a firm financial commitment. A firm commitment letter means the agreement by which an applicant's partner or contributing entity agrees to perform an activity specified in the application and demonstrates the financial capacity to deliver the resources necessary to carry out the activity, and commits the resources to the activity either in cash, through in-kind services or contributions and is irrevocable, subject only to approval and receipt of a FY 2002 Youthbuild grant. For all applicants, each letter of commitment should include the organization's name, the applicant's name, the proposed program, the proposed total level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization and not earlier than the date that this NOFA is published. In documenting a firm commitment, the applicant's partner or contributing entity must:

(i) Specify the authority by which the commitment is made, the amount of the commitment and the use of funds. If the committed activity is to be self-financed, the applicant's partner or contributing entity must evidence its financial capability through a corporate or personal financial statement or other appropriate means. If any portion of it is to be financed through a lending institution, the participant must evidence the institution's commitment to fund the commitment.

(ii) State the amount and use of the commitment, and the relationship of the commitment to the proposed investment; and

(iii) Affirm that its investment is contingent only upon receipt of FY 2002 Youthbuild funds and state a willingness on the part of the signatory to sign a legally binding commitment (conditioned on HUD environmental review and approval of a property, where applicable) upon award of the grant.

Resources from other Federal, State, Local governments or Private Entities. HUD encourages use of existing housing and homeless assistance programs administered by HUD or other Federal, State, local governments, or private and nonprofit housing programs as part of your Youthbuild program. In addition, HUD encourages use of other non-Youthbuild funds available for vocational, adult, and bilingual

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education programs or for job training under the Workforce Investment Act and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Grantees who leverage significant resources will receive more points.

(1) Public sector sources—Federal, State, or local government sources to provide resources to carry out Youthbuild activities. (5 points)

(2) Private or nonprofit sector sources to provide resources to carry out Youthbuild activities. (5 points)

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which your proposed program is coordinated with other ongoing and related activities in the area you propose to serve, how well your program outcomes result in increased independence and empowerment to your beneficiaries, and your organization's ability to becoming financially self-sustaining into the future absent any HUD funding. Your response to this sub-factor should provide a clear statement of the adverse conditions to be addressed by your organization's assistance, the expertise of your organization in addressing those conditions and your plans for ensuring that your organization will be able to sustain those efforts without further assistance from HUD at the conclusion of the grant period. HUD will evaluate the extent to which your application meets the following three elements: (1) *Coordination of activities* (4 points). The extent to which you have coordinated your activities with other known organizations that are not directly in your proposed work activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner. The goal of coordination is to ensure that programs do not operate in isolation. The more your activities are coordinated with other agencies in your service area, the more points you will receive. An example of coordination activities would be the applicant's partnership with an existing child day care facility (which is not funded by program) that provides day care services to the Youthbuild participants during the hours they are being trained or receiving education. (2) *Self-Sufficiency* (3 points) The extent to which your application implements practical solutions within the grant term that result in assisting beneficiaries of grant program funds in achieving independent living, economic empowerment, educational opportunities, housing choice or improved environments which are free from environmental hazards such as lead hazards, brownfields, overcrowded housing, etc. Applicants that clearly describe the extent to which proposed activities result in increased independence and empowerment for their beneficiaries will receive higher points in this sub-factor. (3) *Sustainability* (3 points). The extent to which your program exhibits the potential to be financially self-sustaining by decreasing dependence on Youthbuild funding and relying more on state, local and private funding so your activities can be continued after your grant award is complete. Applicants that demonstrate a reduced dependence on Youthbuild funds over the life of their award will receive a greater number of points for this sub-factor. This decreasing dependence on Youthbuild funds should be present in a workplan that explains how this independence will be achieved.

VII. Application Submission Requirements

(A) *Site Access Submission Requirements.* You must submit identification of specific housing sites, and firm evidence of site access.

(1) Guidance on evidence of site access:

(i) If the applicant or joint applicant has a contract or option to purchase the property, you should provide a statement to that effect and include a copy of the contract or option;

(ii) If a third party owns the property or has a contract or option to purchase, that third party must provide a letter to you stating the nature of the ownership and specifically providing you with access to the property for the purposes of the program and the time frame in which the property will be available. In the case of a contract or option, include a copy of the document; and

(iii) You must provide the required certification that the proposed activities are consistent with the HUD-approved Consolidated Plan in accordance with 24 CFR part 91 and referenced in the General Section of the SuperNOFA.

(B) *Category 3 applicants only.* You must state that the proposed project to be established will be located in an underserved or rural area as defined in Section (VI)(B)(3) of this notice.

(C) *Application Items.* Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives, letters), referred to as the "non-standard forms" can be found as Appendix B to this program section of the SuperNOFA. The items are as follows:

(1) SF–424, Application for Federal Assistance.

(2) HUD–424M, Federal Assistance Funding Matrix.

(3) SF–424A, Budget Information for Non-Construction Programs.

(4) SF–424B, Assurances for Construction Programs.

(5) SF–424C, Budget Information for Construction Programs.

(6) HUD–50070, Certification of Drug-Free Workplace.

(7) HUD–2880, Applicant/Recipient Disclosure/Update Form.

(8) HUD–50071, Certification of Payments to Influence Certain Federal Transactions;

(9) SF–LLL, Disclosure of Lobbying Activities (if applicable);

(10) HUD–2992, Certification Regarding Debarment and Suspension;

(11) Letters from property owners allowing access to the housing site for construction training.

(12) Submission of 501(c)(3) status and/or letter certifying non-profit status if the applicant is a public non-profit organization.

(13) Narrative Response to Factors for Award.

Factor 1—Capacity of the Applicant and Relevant Organizational Experience.

Factor 2—Need/Extent of the Problem.

Factor 3—Soundness of Approach, including the following non-narrative items: (a) Completed Youthbuild Grant Budget (Exhibit 4A), (b) housing site description (Exhibit 2C), (c) Youthbuild Grant individual housing site estimate (Exhibit 2C10), (d) letters from non-applicant resource providers describing contributions or support, (e) documentation necessary to complete environmental review (Exhibit 2C15), and description of relocation, if applicable.

Factor 4—Leveraging Resources, including your letters(s) evidencing the leveraged commitment(s), which will not be counted in the 15 page limitation.

Factor 5—Coordination, Self Sufficiency and Sustainability, include HUD–2991, Certification of Consistency with the Consolidated Plan.

(14) HUD–2990, Certification of Consistency with the EZ/EC Strategic Plan (if applicable);

(D) The total narrative response to all factors identified in Section VI(C)(13) of this program NOFA must not exceed 15 pages, and must be submitted on 8.5" by 11" paper, using a 12 point font, with lines double-spaced and printed only on one side. Please note that submitting pages in excess of the page limit will not disqualify your application. However, HUD will neither review nor consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

VIII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

IX. Environmental Requirements

Environmental procedures apply to HUD approval of grants when you propose to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property proposed for housing project development. Environmental procedures do not apply to HUD approval of your application when you propose to use your Youthbuild funds solely to cover costs for classroom and/or on-the-job construction training and support services.

If you propose to use your Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, you must submit all relevant environmental information in your application to support HUD decision-making in accordance with the environmental procedures and standards set forth in HUD Regulation 24 CFR 585.307.

X. Authority

This program is authorized under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3723, 42 U.S.C. 12899). The Youthbuild Program regulations are found in 24 CFR part 585.

Appendix A—Instructions for Completion of Youthbuild Environmental Requirements (Exhibit 2C(15))

A. Instructions to Applicants

1. If you propose to use Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction or real property, you shall submit all relevant environmental information in your application to support HUD decision making in accordance with the environmental procedures and standards set forth in 24 CFR 585.307. For each proposed Youthbuild property for which HUD environmental procedures apply, you are to prepare a separate Exhibit 2C(15) in which you supply HUD with environmental threshold information and letters from qualified data sources (see definition below) which support the information. HUD will review your submission and determine how, if necessary, HUD will comply with any Federal laws and authorities that may be applicable to your property proposed for Youthbuild funding. If environmental procedures apply and Exhibit 2C(15) with supporting documentation is not included then the application will be deemed ineligible.

You are to follow these instructions for preparing Exhibit 2C(15). The instructions advise you on how to obtain and document certain information to be supplied to HUD in this exhibit. Before selecting a property for Youthbuild funding, you should read these instructions and be advised that HUD encourages you to select, to the extent practicable, properties and locations that are free of environmental hazards and problems discussed in these instructions. The responses to the environmental criteria in Exhibit 2C(15) will be used to determine environmental approval or disapproval by HUD of proposals for physical development of properties.

2. After selecting a property for proposed Youthbuild funding, you are to determine the activities to be undertaken with your Youthbuild funds. You are to indicate in Section E whether the Youthbuild funds will be used for:

(a) Lease or purchase of a property;

(b) Minor rehabilitation or

(c) Major rehabilitation; or

(d) New construction of housing.

The activities proposed for Youthbuild funding will determine the kind of data that you will need to obtain from a qualified data source in order to complete Exhibit 2C(15).

3. Once you have selected a property and determined the activities for Youthbuild funding, you are advised to check with your city or county agency that administers HUD's Community Development Block Grant program and performs environmental reviews, or the local planning agency. The reason is that most, if not all, the data needed for preparing Exhibit 2C(15) is readily available from the local community development agency and the local planning agency. You are advised to ask the environmental staff of those agencies the following:

(a) Has the agency ever prepared an environmental review of the proposed Youthbuild property or the neighborhood in which the property is located, and if so, would it provide a copy to the applicant for use by HUD;

(b) Would the agency assist you in completing section G; or if the agency is not able to help complete any item in section G, would the agency advise you which local or State agency is the appropriate qualified data source for obtaining the information.

Also, you should check with the local planning agency before proceeding elsewhere for the information.

You are advised that the cost of preparing information and analyses needed for Exhibit 2C(15) is an eligible cost under the Youthbuild program and is reimbursable if you are approved for a grant.

4. The following definitions are of key terms used in these instructions. Most of the other terms are technical and their definition would be known to qualified data sources.

(a) Qualified data source means any Federal, State or local agency with expertise or experience in environmental protection (e.g., the local community development agency; the land planning agency; the State environmental protection agency; the State Historic Preservation Officer) or any other source qualified to provide reliable information on the particular subject. A letter supporting the information from each qualified data source is to be attached to Exhibit 2C(15).

(b) Minor rehabilitation means proposed fixing and building repair:

(i) Where the estimated cost of the work is less than 75 percent of the property value after completion;

(ii) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential;

(iii) That does not involve the demolition of one or more buildings, or parts of a building, containing the primary use served by the project; and

(iv) That does not increase unit density by more than 20 percent.

For minor rehabilitation of a building located in a floodplain, the criteria for substantial improvement modify this definition. (See Item B 3 below)

(c) Major rehabilitation means proposed fixing and building repair:

(i) Where the estimated cost of the work is 75 percent or more of the property value after completion; or

(ii) That involves changes in land use from residential to nonresidential, or from nonresidential to residential; or

(iii) That involves the demolition of one or more buildings, or parts of a building, containing the primary use served by the project; or

(iv) That increases unit density by more than 20 percent.

(d) Multifamily housing means any residential building that contains five or more apartments or rooming units.

(e) Single-family housing means any residential building that contains one-to-four dwelling units.

Because each Federal environmental law or authority has compliance requirements that differ according to the type of proposed activity to be funded, you are required to supply information in Exhibit 2C(15) only for the type of activity for which the Youthbuild grant will be used.

(a) If you propose new construction or major rehabilitation of multifamily housing, you must supply complete and reliable environmental threshold information for items 1 through 13 in section G.

(b) If you propose new construction of single family housing, you must supply complete and reliable environmental threshold information for items 1 through 12 in section G.

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(c) If you propose minor rehabilitation of multifamily or single-family housing, or the purchase or lease of a property, you must supply complete and reliable environmental threshold information for items 1 through 7 in section G.

5. Applicants subject to HUD's environmental procedures are to submit Exhibit 2C(15) and accompanying documentation to HUD with the applications for grant assistance. Such applicants are prohibited from committing or expending State, local or other funds to undertake property rehabilitation, construction (including demolition), or acquisition (including lease), until HUD and the grantee execute a grant agreement for the proposed Youthbuild project.

6. HUD reserves the right to disqualify any application where one or more environmental thresholds are exceeded if HUD determines that the compliance review cannot be conducted and satisfactorily completed within the HUD review period for Youthbuild applications.

B. Environmental Threshold and Documentation Requirements

The threshold and documentation requirements for each of the Federal environmental laws and authorities are described below, following the same order as they appear in section G .

1. Site within designated coastal barrier resources:

Threshold: Youthbuild applicants are prohibited by Federal law from using Federal financial assistance for properties, if the properties are located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes (Coastal Barrier Resources Act, as amended, 16 U.S.C. 3501).

* *Documentation:* You are to select either A or B for the condition that best describes the property and report the option selected in item 1 of section G.

A. You state that your program operates in a community that does not contain any shores along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes.

B. If your program operates in a community that does contain shores along the Atlantic Ocean, the Gulf of Mexico, or the Great Lakes, you must provide HUD with a finding made by a qualified data source stating that the proposed property is not located within a designated coastal barrier resource by citing the map panel number of the official maps issued by the Department of the Interior (DOI) on the basis of which the finding was made.

2. Site contaminated with toxic chemicals and radioactive materials:

Threshold: Under HUD policy, as described in HUD Notice 79–33 (Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials), HUD will not approve the provision of financial assistance to residential properties located on contaminated sites. Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to sites: (i) listed on either an EPA Superfund National Priorities List (NPL) or CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) List, or equivalent State list; (ii) located within 3,000 feet of a toxic or solid waste landfill site; or (iii) with an underground storage tank (which is not a residential fuel tank).

* *Documentation:* You are to select either A or B for the condition that best describes property and report the option selected in item 2 of section G.

A. You are providing HUD with a finding made by a qualified data source stating that the proposed Youthbuild property and any neighboring properties do not contain any sites known or suspected to be contaminated with toxic chemicals and radioactive materials.

B. You are providing any site contamination data by a qualified data source in your letter for HUD's evaluation of contamination and/or suspicion of any contamination of a proposed property or any neighboring properties.

3. Site affecting a floodplain:

Threshold: A property located within a floodplain and proposed for funding is subject to Executive Order 11988, Floodplain Management. The Executive Order directs HUD to avoid, where practicable, proposed financial support for any floodplain property, whenever HUD has options to approve properties in flood-free locations. The Order does not apply to existing single-family properties proposed for purchase or lease except for: (i) Property that is located within a floodway or coastal high hazard area; and (ii) substantial improvement. Substantial improvement for flood hazard purposes means any property rehabilitation which: (a) Increases the unit density of the property; or (b) equals or exceeds 50 percent of the market value of the property before rehabilitation, but excluding the costs for correcting health, sanitary, and safety code violations. Note: Proposed funding for substantial improvement and new construction are subject to the Executive Order decision-making process. This may result in a disqualification of your application (refer above to number 7 under "Instructions to Applicants").

* *Documentation:* You are to select A or B for the condition that best describes your property and report the option selected in item 3 of section G.

A. You are providing HUD with a finding made by a qualified data source stating that the property is not located within the Special Flood Hazard Area (SFHA).

B. You are providing HUD with a finding made by a qualified data source that the property is located within the Special Flood Hazard Area (SFHA) and indicating if whether the property is located within a floodway or coastal high hazard area.

The information for A and B must provide HUD with the flood map panel number obtained either from the official maps issued for the National Flood Insurance Program or from the property appraisal report used to make the finding.

For all proposed rehabilitation of properties that are located within a SFHA, you must provide HUD with estimates of: (i) the property value before rehabilitation, and (ii) the cost of the proposed rehabilitation. Provide the estimates in section F.

If the property is found to be located within a SFHA, proceed to item 4 on flood insurance protection. Otherwise proceed to item 5.

4. Building requiring flood insurance protection:

Threshold: HUD will estimate the amount and period of flood insurance coverage that is to be made a condition of approval of any HUD financial assistance for a building located within a Special Flood Hazard Area (SFHA). The Flood Disaster Protection Act of 1973 requires owners of HUD-assisted buildings to purchase and maintain flood insurance protection as a condition of approval of any HUD financial assistance for the proposed purchase, rehabilitation, or new construction of any SFHA building. The law prescribes the coverage period and dollar amount of flood insurance protection.

Proof of Purchase of Flood Insurance Protection: You must provide HUD with proof of purchase of flood insurance protection for any proposed Youthbuild building located within the SFHA, whenever HUD funding is being used for property purchase, rehabilitation, or new construction. The standard documentation for compliance is the Policy Declarations form issued by the National Flood Insurance Program (NFIP) or issued by any property insurance company offering coverage under the NFIP. Whenever the requirement applies to coverage which extends to future years, the grant agreement will require that the insured has its insurer automatically forward to HUD, in the same manner as to the insured, an information copy of the Policy Declarations form, which is used to verify compliance. The Youthbuild applicant's responsibility ceases in cases where a mortgage loan is approved requiring flood insurance as condition of loan approval by a lender (other than the Youthbuild applicant), whose responsibility is to assure flood insurance coverage for the loan.

**Documentation:* You are to select either A or B for the condition that best describes your property and report the option selected in item 4 of section G.

A. You already own the property and attach a copy of the Policy Declarations form confirming that a current flood insurance policy is in effect and the policy provides adequate coverage for the building proposed for the Youthbuild project located within the Special Flood Hazard Area.

B. After you have purchased (or constructed, in the case of proposed new construction) the Youthbuild property, you must obtain and maintain flood insurance protection. For the term and amount of coverage prescribed by law, you must provide HUD with a copy of the Policy Declarations form confirming that the flood insurance policy is in effect and the policy provides adequate coverage for the Youthbuild building located within the Special Flood Hazard Area.

5. Site within clear zones or accident potential zones of airports and airfields:

Threshold: HUD policy as described in 24 CFR part 51, subpart D applies to HUD approval of financial assistance to: (a) properties located within clear zones; and (b) in the case of new construction or major rehabilitation, properties located within accident potential zones.

(a) Clear zones: New construction and major rehabilitation of a property that is located on a clear zone site is prohibited. HUD financial assistance in a clear zone is allowed only for the proposed lease, purchase, or minor rehabilitation of properties (24 CFR 51.302(a)). For HUD funding approval for any property in a clear zone: (a) HUD will give advance written notice to the prospective property buyer in accord with 24 CFR 51.303(a)(3); and (b) a copy of the HUD notice signed by the prospective property buyer will be placed in the property file. The written notice informs the prospective property buyer of: (i) The potential hazards from airplane accidents which studies have shown more likely to occur within clear zones than in other areas around the airport/airfield; and (ii) the potential acquisition by airport or airfield operators, who may wish to buy the property at some future date as part of a clear zone acquisition program.

(b) Accident potential zones: For properties located within the accident potential zone (APZ), HUD shall determine whether the use of the property is generally consistent with Department of Defense "Land Use Compatibility Guidelines for Accident Potential Zones."

**Documentation:* You are to select either A or B for the condition that best describes your property and report the option selected in item 5 of section G.

A. The property is not located within 3,000 feet of a civil airport or military airfield.

B. If your property is located within 3,000 feet of a civil airport or military airfield, you must provide HUD with a finding from the airport operator stating whether or not the property is located within a runway clear zone at a civil airport, or a clear zone or accident potential zone at a military airfield.

For properties that are located within a runway clear zone or a clear zone or accident potential zone, if you propose to rehabilitate such a property you must provide HUD with estimates of: (i) The cost of the proposed rehabilitation, and (ii) the property value after completion of the rehabilitation. The estimates are to be provided in section F.

6. Site is or affects an historic property:

Threshold: Only if a property is proposed for rehabilitation or new construction must HUD in consultation with the State Historic Preservation Officer (SHPO), and following the Department of the Interiors Standards and Guidelines for Evaluation, make a determination whether the property is:

(a) Listed on or formally determined to be eligible for listing on the National Register of Historic Places;

(b) Located within or directly adjacent to an historic district; or

(c) A property whose area of potential effects includes an historic district or property.

Historic properties and districts are subject by law to special protection and historic preservation processing which HUD must perform to comply with the regulations of the Advisory Council on Historic Preservation (ACHP: 36 CFR part 800). Note: If you are using information from the SHPO as a qualified data source you need to allow sufficient time to obtain the information from the SHPO. You may wish to make special arrangements with the SHPO for rapid review of the proposed property where this is practicable. In addition, for properties determined to be historic properties, HUD will require 30 to 90 days in most cases for HUD to perform historic preservation compliance with the ACHP regulations. This may result in a disqualification of the application (refer above to number 7 under "Instructions to Applicants").

**Documentation:* You are to select one of the following options that best describes the condition of your property and report the option selected in item 6 of section G.

A. You propose financial assistance for rehabilitation or new construction, and are providing HUD with a SHPO's finding that the proposed Youthbuild activity:

1. Is located within an area where there are no historic properties; or

2. Will have no effect on historic properties; or

3. Will have an effect on historic properties not considered adverse

B. You propose financial assistance for rehabilitation or new construction, and are providing HUD with a SHPOs finding that the proposed Youthbuild activity will have an adverse effect on historic properties.

C. You are providing HUD with a copy of a letter from the SHPO stating any reasons for not being able to provide you with the requested information and finding.

7. Site near hazardous industrial operations:

Threshold: Properties that are located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature are subject to HUD safety standards (24 CFR 51, Subpart C). However, under the Youthbuild program, these standards would apply only if you propose: (i) Construction of a building; (ii) conversion of a non-residential land use to a residential land use including making habitable a building condemned for habitation; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units. In the case of tanks containing common liquid fuels, the requirement for an acceptable separation distance (ASD) calculation only applies to storage tanks that have a capacity of more than 100 gallons.

**Documentation:* You are to select one of the following options that best describe the condition of the property, and report the option selected in item 7 of section G.

A. The proposed project does not include: (i) Construction of a building; (ii) conversion of a non-residential land use to a residential land use including making habitable a building condemned for habitation; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units.

B. The proposed project includes: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making habitable a building condemned for habitation; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; and you are providing HUD with a finding by a qualified data source that the proposed property is not located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature by citing data used and the maps used.

C. The applicant proposes: (i) Construction of a building; (ii) conversion of a non-residential land use to a residential land use including making habitable a building condemned for habitation; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; and the grantee provides HUD a finding made by a qualified data source stating: (1) That the proposed property is located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature; (2) the type and scale of such hazardous industrial operations; (3) the distance of such operations from the proposed property; (4) a preliminary calculation of the acceptable separation distance (ASD) between such operations and the proposed property; and (5) a recommendation as to whether it is safe to use the property in accord with 24 CFR 51, Subpart C.

8. Site near high noise source:

Threshold: For new construction which is to occur in high noise areas (i.e. exceeding 65 decibels), applicants shall incorporate noise attenuation features to the extent required by HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51. Approvals in a Normally unacceptable noise zone require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

Proposed housing sites with above 75 decibels are unacceptable and the noise attenuation measures require the approval of the Assistant Secretary for Community Planning and Development. In Unacceptable noise zones, HUD strongly encourages conversion of noise-exposed sites to non-housing land uses compatible with the high noise levels.

For major rehabilitation projects involving five or more dwelling units located in the "Normally Unacceptable" and "Unacceptable" noise zones, HUD actively seeks to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level of exterior noise exposure.

**Documentation:* You are to select A or B for the condition that best describes their project and report the option selected in item 8 of section G.

A. You are providing HUD with a finding made by a qualified data source stating that the property proposed by the applicant for a major rehabilitation or new construction project involving five or more dwelling units is not located within: (I) 1,000 feet of a major noise source, road, or highway; (ii) 3,000 feet

of a railroad; or (iii) 1 mile of a civil or 5 miles of a military airfield.

B. The applicant provides HUD with a finding made by a qualified data source: (I) Stating that the plans for the property proposed by the applicant for a major rehabilitation or new construction project involving five or more dwelling units will incorporate noise attenuation features in accord with HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51; (ii) stating whether the property is located within a "Normally Unacceptable" or "Unacceptable" noise zone; and (iii) providing HUD plans and a statement of the anticipated interior noise levels.

9. Site affecting coastal zone management:

Threshold: Only for proposed activities involving new construction or major rehabilitation of multifamily housing does the Coastal Zone Management (CZM) authority apply. Projects that can affect the coastal zone must be carried out in a manner consistent with the approved State coastal zone management program under Sec. 307 of the Coastal Zone Management Act of 1972, as amended.

**Documentation:* You are to select either A or B for the condition that best describes the project and report the option selected in item 9 of section G.

A. You state that your project is not located within a coastal zone, as defined by the States Coastal Zone Management Plan.

B. If your project is located within a coastal zone, you are providing HUD with a finding made by the State CZM agency that the project proposed by the applicant is consistent with the approved State coastal zone management program.

10. Site affecting a sole source aquifer:

Threshold: The sole source aquifer authority applies primarily to activities involving proposed new construction or conversion to housing of non-residential property. Projects which can affect aquifers designated by the Environmental Protection Agency (EPA) must be reviewed for impact on such designated aquifer sources. The Safe Drinking Water Act of 1974 requires protection of drinking water systems which are the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.

**Documentation:* You are to select either A or B for the condition that best describes their project and report the option selected in item 10 of section G.

A. You are providing HUD with a finding made by a qualified data source stating that the proposed property is not located on nor does it affect a sole source aquifer designated by EPA.

B. If your project proposes new construction or conversion activities that are located on or may affect any sole source aquifer designated by the EPA, you are identifying the aquifer and providing HUD with an explanation of the effect on the aquifer from a qualified data source, and/or a copy of any comments on the proposed project that have been received from the EPA Regional Office as well as from any State or local agency with jurisdiction for protecting the drinking water system.

11. Site affecting endangered species:

Threshold: The Endangered Species Protection (ESP) authority applies primarily to activities involving proposed new construction or conversion to housing of a non-residential property. Projects which can affect listed or proposed endangered or threatened species or critical habitats require consultation with the Department of the Interior in compliance with the procedure of Section 7 of the Endangered Species Act of 1973, as amended.

**Documentation:* You are to select either A or B for the condition that best describes the property and report the option selected in item 11 of section G.

A. If your project proposes new construction or conversion activities, you are providing HUD with a finding made by a qualified data source that the project is not likely to affect any listed or proposed endangered or threatened species or critical habitat. The finding shall indicate whether the project is located within a critical habitat, and if so, explain why the project is not likely to affect the species or habitat.

B. If your project proposes new construction or conversion activities that are likely to affect listed or proposed endangered or threatened species or critical habitat, you are providing HUD with a statement from a qualified data source explaining the likely affect, and/or a finding made by the Fish and Wildlife Service of the Department of the Interior stating as acceptable the proposed mitigation that you will provide to protect any affected endangered or threatened species or critical habitat.

12. Site affecting a designated wetland:

Threshold: New construction or conversion to housing of a non-residential property located within a designated wetland is subject to Executive Order 11990, Protection of Wetlands. This Executive Order directs HUD to avoid, where practicable, financial support for new construction on wetland property. Note: Proposed funding for new construction or conversion is subject to the Executive Order decision making process. This may result in a disqualification of the application (refer above to number 7 under "Instructions to Applicants").

**Documentation:* You are to select A or B for the condition that best describes the property and report the option selected in item 12 of section G.

A. You are providing HUD with a finding made by a qualified data source stating that the property is not located within a designated wetland where new construction or conversion is proposed.

B. You are providing HUD with a finding made by a qualified data source that the property is located within a designated wetland, which applies only to property where new construction or conversion is proposed.

The information for A and B must provide HUD with the wetland panel number obtained from official maps issued by the Department of the Interior on the basis of which the finding was made, or where DOI has not mapped the area, a letter or other documentation from the Army Corps of Engineers or other Federal agency.

13. Significant impact to the human environment:

Threshold: HUD must perform an environmental assessment of any property proposed for major rehabilitation or new construction except for a single-family property having one-to-four dwelling units. It is the policy of the Department to reject proposals which have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality and minimize environmental harm. This policy is authorized by the National Environmental Policy Act (NEPA) and the implementing regulations of the Council on Environmental Quality and HUD's Environmental Rule at 24 CFR part 50.

**Documentation:* You are to provide HUD with any information on any adverse environmental impacts that affect the property or that the project would create. You are to report this data on a separate sheet and attach it to Exhibit 2C(15). Examples of adverse impacts are: soil instability and erodibility; natural or person-made hazards and nuisances; air pollution; inadequate infrastructure (e.g., water supply, waste water treatment, storm water management, solid waste collection), inadequate public services (i.e., fire, police, health care, social services, schools, parks) and transportation; and encroachment on prime farmlands and wild and scenic river areas. You are to identify any significant impacts to the human environment.

Appendix B

The non-standard forms, which follow, are required for your Youthbuild application.

BILLING CODE 4210-32-P

APPENDIX B

Exhibit 2F: Court-ordered Consideration

Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application by the City of Dallas, Texas, for HUD funds, HUD shall consider the extent to which the Youthbuild strategy for the Dallas area will be used to eradicate the vestiges of segregation in the Dallas Housing Authority's low-income housing programs.

Is the applicant the City of Dallas, Texas?

☐ **No**

☐ **Yes**

If "yes", please attach a statement that addresses the effect(s), if any, that vestiges of racial segregation in the Dallas Housing Authority's low-income programs have no potential participants in the Youthbuild program and identify proposed actions for remedying those vestiges. Label this documentation Exhibit 2F.

2 C. Housing Site Description

Complete **all** sections.

1. Housing Site Identification	2. Number of housing units planned to be produced	3. Type of housing to be produced: (check all that apply) ☐ residential rental ☐ homeownership ☐ transitional housing for the homeless

4. Homeless Housing: For housing that will be transitional housing for the homeless, attach a description of the plan for the outreach and placement of homeless families or individuals. (1 page) **Label this narrative Exhibit 2C4.**

5. Will all housing produced be provided for homeless, low-income, or very-low income persons? ☐ Yes ☐ No	6. The on-site training will consist of: ☐ New Construction ☐ Rehabilitation
7. Are any of the units currently occupied? ☐ Yes ☐ No If yes, attach a relocation narrative that identifies: the number of persons, the business or others occupying the property on the date of submission of this application, the number to be displaced, the number to be temporarily relocated but not displaced, the estimated cost of relocation services payments and services, the source of funds for relocation, and the organization that will provide relocation assistance to occupants and the contact person's name and phone number. **Label this attachment as Exhibit 2C7.**	8. Name of the current owner of the property.

9. Documentation of Access: Attach required evidence of site access. (Letter from the owner identified in No. 8) **Label this attachment Exhibit 2C9.**

10. Individual Housing Project Site Estimate and Documentation of Resources

Complete the attached Exhibit 2C10 for each housing project site to be used in conjunction with the Youthbuild implementation program. **Attach documentation of resources behind each Exhibit 2C10.**

11. Describe the applicant's role and responsibilities for the on-site housing construction or rehabilitation work. **Label this description Exhibit 2C11.**

12. Name the entity which will own and manage the property after the construction or rehabilitation work is completed.	13. Housing Project Certifications. Housing Certifications are Attached: ☐ Yes ☐ No
14. Model Lease A Model Lease is attached: ☐ Yes ☐ No	15. Environmental Threshold Information for Property Proposed for Youthbuild funding Exhibit 2C15 and supporting documentation is attached: ☐ Yes ☐ No

16. Picture: (optional) Provide a picture of each potential housing site. **Label it Exhibit 2C16.**

(4/98)

2 C 10: Youthbuild Grant
Individual Housing Project Site Estimate

Address of Property (Include city, state, and zip code)

Grant Activities	Resources: Youthbuild	Other Federal	State	Local	Private	Total
1. Acquisition	$	$	$	$	$	$
2. Architecture and Engineering						
3. Housing Construction						
4. Housing Rehabilitation						
5. Total Housing Project Costs for Site						

Note 1: Include both **cash** and **in-kind** contributions.

Note 2: When paid, in whole or in part, with Youthbuild program funds, the activities above will trigger applicable Youthbuild project-related restrictions contained in Youthbuild regulations CFR Part 585.309, 310, or 311. Applicants who propose to use Youthbuild funds for one or more of these activities are required to complete the appropriate certifications.

Documentation of Housing Resources

Attach a letter of commitment from each source of funding.

Name of Provider (Donor)	Cash or In-Kind	Dollar Value Provided	Page No. of Letter	HUD Use Only
		$		
		$		
		$		
		$		
Total		$		

(4/98)

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Exhibit 4A

Total Youthbuild Grant Budget

Grant Activities	Sources of Funds					
	Youthbuild	Other Federal	State	Local	Private	Total
	$	$	$	$	$	$
1. Acquisition						
2. Architecture and Engineering						
3. Housing construction						
4. Housing rehabilitation						
5. Relocation						
6. Outreach and Recruitment Activities						
7. Education and job training (includes on-site training)						
8. Trainee wage, etc.*						
9. Leadership development, counseling, support services						
10. Job placement and follow-up						
11. Subtotal (sum of lines 1 through 10)						
12. Costs of administering Grant. **						
13. Total Costs (sum of lines 11 and 12)	$	$	$	$	$	$

* Include need-based stipends/benefits/incentives/tools/clothing/etc.

Page no: [ ]

form HUD-40200 (4/97)

Exhibit 4B:
Non-Housing Program Resources

Information in this exhibit will be used to rate the Non-Housing Program Resources criterion. Applicants should refer to the specific instructions on how to complete this exhibit. Verify that the letter is acceptable. The "Dollar Value Provided" figure is total of those with an acceptable letter. Do not include any letters that are housing resources.

Name of Provider (Donor)	Cash or In-Kind	Dollar Value Provided	Page No. of Letter	HUD Use Only
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
		$		
Total		$		

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2 C 15: Environmental Threshold Information for a Property Proposed for Youthbuild Funding

(See instructions for completing this exhibit.)

Youthbuild Applicant's Name.	Contact Person's Name.	Phone Number (include Area Code).

A. Street address for the property:(include City, State, Zip Code)

B. Attach a map of the community and mark on themap the location of the property.
Map is attached: Yes ☐ No ☐

C. Attach a copy of any environmental review for the property obtained from the local qualified data source.
Environmental review is attached: Yes ☐ No ☐

D. Indicate the present and proposed use of the property (i.e., whether single-family, multifamily or non-residential); and number of dwellings or rooming units.
Present use: No. of units: _____
Proposed use: No. of units: _____

E. Indicate the activities for which you are proposing to use Youthbuild funds for the property.
☐ Lease or purchase of a property ☐ Major Rehabilitation ☐ Minor Rehabilitation ☐ New Construction

F. If the proposed Youthbuild property is located within a floodplain, or a clear zone or accident potential zone of an airport or airfield, provide the following information:

Property value before rehabilitation (est. in thousands)	Rehabilitation costs (est. in thousands)	Property value after completion of rehabilitation (est. in thousands)
$	$	$

G. For new construction or major rehabilitation of multifamily housing, complete items 1 through 13. For new construction of single-family housing, complete items 1 through 12. For minor rehabilitation of multifamily or single-family housing, or for the purchase or lease of a property, complete items 1 through 7. The designation "A" or "B" or "C" refers to the type of documentation required by the instructions contained in the Appendix

1. Site within designated coastal barrier resources: Indicate A or B ____
2. Site contaminated with toxic chemicals and radioactive materials: Indicate A or B ____
3. Site affecting a floodplain: Indicate A or B ____
4. Building requiring flood insurance protection: Indicate A or B ____
5. Site within clear zones or accident potential zones of airports and airfields: Indicate A or B ____
6. Site is or affects an historic property: Indicate A, B, or C ____
7. Site near hazardous industrial operations: Indicate A, B, or C ____
8. Site near high noise source: Indicate A or B ____
9. Site affecting coastal zone management: Indicate A or B ____
10. Site affecting a sole source aquifer: Indicate A or B ____
11. Site affecting endangered species: Indicate A or B ____
12. Site affecting a designated wetland: Indicate A or B ____
13. Significant impact to the human environment: Are there any adverse environmental impacts that affect the property or that the project would create?
Yes ☐ If yes, document on separate sheet(s).
No ☐

2 C 13a: Housing Project Certifications For Residential Rental Units

Applicants requesting Youthbuild Grant funds to fund any part of the acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves for a housing project that will be used for residential rental units, must make the following certifications. If the rightful property owner is not the applicant, then these certifications must be signed by that property owner. A separate certification must be signed for each housing project.

The Applicant or Rightful Property Owner certifies that, for a period of not less than ten (10) years after construction or rehabilitation is completed and an occupancy permit is issued for the Youthbuild residential rental housing project receiving Youthbuild assistance, it:

A. Will maintain at least a 90 percent level of occupancy for individuals and families with incomes less than 60 percent of the area median income, adjusted for family size. The remaining ten percent of the units will be made available to and occupied by low-income families. The income test will be conducted only at the time of entry for each unit available for occupancy. Each available rental unit will be made available to the 60 percent-of-area-median-income group for an advertising period of not less than 90 days upon each vacancy occurrence throughout the ten year period. Community-wide advertisements for tenants of this income group will be conducted. If, at the end of the 90-day advertising period, no qualifying tenant leases the unit, the unit will be advertised for individuals and families with incomes between 60 and 80 percent of the area median income, adjusted for family size, for another 90-day period. Leases for tenants whose incomes are between 60 and 80 percent of the area median income (exclusive of the ten percent allowance) will be limited to one year and such temporary tenants are not covered by paragraphs C., E., and F. below.

B. Will use the model lease submitted with the Youthbuild application with any modifications approved by HUD at the time of grant award.

C. Will not terminate the tenancy or refuse to renew the lease of a tenant occupying a Youthbuild residential rental housing unit except for serious or repeated violations of the terms and conditions of the lease, or for violation of applicable Federal, state or local laws, or for other good cause. Any termination or refusal to renew the lease will be preceded by a not less than 30-day written notice to the tenant specifying the grounds for the action.

D. Will maintain the premises in compliance with all applicable HUD, other Federal, State or local program housing quality standards and local code requirements. If no public assistance is involved other than the Youthbuild grant, HUD's Section 8 housing quality standards will be followed.

E. Will develop and adopt a tenant selection plan that:
(1) Is consistent with the purpose of providing housing for homeless and very low-income families and individuals;
(2) Is reasonably related to program eligibility and the certifying entity's ability to perform the obligations of the lease;
(3) gives reasonable consideration to the housing needs of families that would qualify for a preference under section 6(c)(4)(A) of the United States Housing Act of 1937;
(4) provides for the selection of tenants from a written waiting list in the chronological order of their application, to the extent practicable, and for the prompt notification in writing of any rejected applicant of the grounds for any rejection; and
(5) acknowledges that a family holding tenant-based assistance under section 8 of the United States Housing Act of 1937 will not be refused tenancy because of the status of the prospective tenant as a holder of such assistance.

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2 C 13b: Housing Project Certifications For Transitional Housing

Applicants requesting Youthbuild Grant funds to fund any part of the acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves for a housing property that will be used for Transitional housing for the homeless must make the certifications below. If the rightful property owner is not the applicant, these certifications must be signed by that owner. A separate certification must be signed for each housing project.

The Applicant or Rightful Property Owner certifies that, for a period of not less than ten (10) years after construction or rehabilitation is completed and an occupancy permit is issued for the Youthbuild transitional housing project receiving Youthbuild assistance, it:

A. Will ensure that the aggregate monthly rental for each Youthbuild project will not exceed the operating costs of the project (including debt service, management, adequate reserves and other documented operating costs) plus a six percent return on any equity investment of the project owner.

B. Will, **if it is a nonprofit organization**, use any profit received from the operation, sale or other disposition of the project for the purposes of providing housing for low- and moderate-income families. Any profit-motivated partners in a nonprofit partnership will receive: (i) not more than a six percent return on their equity investment from project operations; and (ii) upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

C. Will ensure that the transitional housing project shall adhere to the requirements regarding service delivery, housing standards and rent limitations applicable to comparable housing receiving assistance under title IV of the Stewart B. McKinney Homeless Assistance Act, unless these requirements are expressly waived by the Secretary of HUD to permit the conversion of the project to a permanent housing project.

D. Will not convey ownership of the property unless the instrument of conveyance requires a subsequent owner to comply with the above certifications for the balance of the ten year period.

Signature of Authorized Certifying Official of:

☐ Applicant Organization ☐ Rightful Property Owner

Title _____

Organization _____

Date _____

Address of Property:

2 C 13c: Housing Project Certifications For Homeownership

Applicants requesting Youthbuild Grant funds to fund any part of the acquisition, architectural and engineering fees, construction, or rehabilitation for a housing property that will be used for homeownership must provide the certifications below. If the rightful property owner is not the applicant, then these certifications must be signed by that property owner. A separate certification must be signed for each housing project.

The Applicant or Rightful Property Owner certifies that, for a period of not less than ten (10) years after construction or rehabilitation is completed and an occupancy permit is issued for the Youthbuild homeownership housing project receiving Youthbuild assistance, it:

A. Will ensure that the homeownership project will comply with the requirements of the HOPE II or HOPE III programs authorized under subtitles B or C respectively of title IV of the Cranston-Gonzales National Affordable Housing Act.

B. Will not convey ownership of the property unless the instrument of conveyance requires a subsequent owner to comply with the above certification for the balance of the ten year period.

Signature of Authorized Certifying Official of:

☐ Applicant Organization ☐ Rightful Property Owner

Title _____

Organization _____

Date _____

Address of Property:

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RURAL HOUSING AND ECONOMIC DEVELOPMENT

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM

PROGRAM OVERVIEW

Purpose of Program: The purpose of the Rural Housing and Economic Development (RHED) program is to build capacity at the State and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. The funds made available under this program will be awarded competitively, through a selection process conducted by HUD in consultation with the United States Department of Agriculture (USDA).

Available Funds: Approximately $25 million in Fiscal Year (FY) 2002 funding.

Eligible Applicants: Local, rural, non-profit organizations; community development corporations; federally recognized Indian tribes; State housing finance agencies; and, State economic development and/or community development agencies.

Application Deadline: April 26, 2002.

Match: None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information:

I. Application Due Date, Further Information and Technical Assistance

Application Due Date: Applications for RHED grants are due on or before April 26, 2002.

See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, or overnight delivery).

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that apply to application submission . Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (UPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without an escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received in HUD Headquarters on or within fifteen (15) days of the application due date. Applicants must obtain and save a Certificate of Mailing showing the date, when your application was submitted to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express service no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday through Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; ATTN: Office of Rural Housing and Economic Development. When submitting your application, please include your name, mailing address (including zip code), telephone number, and fax number (including area code).

For Application Kits. An application kit is not necessary for submitting an application in response to this announcement. This announcement contains all the information necessary for the submission of your application for the Rural Housing and Economic Development Program.

For Further Information and Technical Assistance. All information and materials required to submit an application for funding under the HUD Rural Housing and Economic Development program are included in the Appendix to this NOFA.

For information concerning the HUD Rural Housing and Economic Development program, contact Mr. Marty Horwath, Community Planning and Development Specialist, or Ms. Holly A. Kelly, Economic Development Program Specialist, Office of Community Planning and Development (CPD), Department of Housing and Urban Development, 451 7th Street, SW., Room 7136, Washington, DC 20410; telephone 202–708–2035 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Prior to the application deadline, HUD staff at the number above will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, consult the HUD web site at *www.hud.gov.*

II. Amount Allocated

(A) *Available Funds.* Approximately $25 million in Fiscal Year (FY) 2002 funding is being made available through this NOFA. The breakdown for this funding is below.

(B) *The FY 2002 HUD Appropriations Act.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73 approved November 26, 2001) (the "FY 2002 HUD Appropriations Act") made $25 million in FY 2002 funds available under the RHED program.

(C) *Funding Categories/ Maximum Award Amounts.* HUD will award up to approximately $25 million on a competitive basis in the following funding categories. Applicants must apply for funds in one of the two categories: Category (1), Capacity Building; or Category (2), Support for Innovative Housing and Economic Development Activities. Only one application will be accepted from any given organization.

(1) *Capacity Building.* HUD will award up to approximately $10 million to build capacity. This amount will go directly to local rural non-profits, community development corporations (CDCs) and federally recognized Indian tribes to increase an organization's capacity to support innovative housing and economic development activities. The maximum amount awarded to a successful applicant in this category will be $150,000. If you received two or more RHED grant for capacity building since 1999, you are not eligible to apply

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under this category. If you received an RHED grant in 2001 for capacity building, you are eligible for a maximum award of $100,000 under this category.

(2) *Support for Innovative Housing and Economic Development Activities.* HUD will award up to approximately $15 million to federally recognized Indian tribes, State Housing Finance Agencies (HFAs), state community and/or economic development agencies, local rural non-profits and CDCs to support innovative housing and economic development activities in rural areas nationwide. The maximum amount awarded to a successful applicant in this category will be $400,000.

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description.

(1) *Background.* There is a great need for expanding the supply of housing in rural America, particularly affordable housing for low-income families and individuals. A number of rural areas have experienced rapid growth as a result of employment opportunities, and now face a shortage of affordable housing. In other rural areas, out-migration other factors contributing to economic dislocation, have caused severe economic distress. There has been a growing national recognition of the need to enhance the capacity of federally recognized Indian tribes, local rural non-profits, CDCs, and State community and/or economic development agencies to expand the supply of affordable housing and to engage in economic development activities in rural areas.

A number of resources are available from the Federal government to address these problems, including programs of the United States Department of Agriculture (USDA), the Economic Development Administration (EDA), the Appalachian Regional Commission (ARC), the Department of Interior (for Indian Tribes) and HUD. The Rural Housing and Economic Development program has been developed to supplement these resources and to focus specifically on capacity building and innovative approaches to housing and economic development in rural areas. In administering these funds, HUD encourages you to coordinate your activities supported by any of these agencies.

(2) *Definitions. Appalachia's Distressed Counties* means those counties in Appalachia that ARC has determined to have unemployment and poverty rates that are 150 percent of the respective U.S. rates and per capita income that is less than 67 percent of the U.S. per capita income, and counties with 200 percent of the U.S. poverty rate and one other indicator such as percent of overcrowded housing, etc. Appendix B to this notice identifies ARC's list of distressed counties.

Colonia means any identifiable community that:

(i) Is located in the State of Arizona, California, New Mexico, or Texas;

(ii) Is located in the U.S.-Mexico border region (that is, within 150 miles of the border between the U.S. and Mexico); and

(iii) Meets objective need criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, sanitary, and accessible housing.

Farmworker means a farm employee of an owner, tenant, labor contractor, or other operator raising or harvesting agricultural or aquacultural commodities; or a worker in the employment of a farm operator, handling, planting, drying, packing, grading, storing, delivering to storage or market, or carrying to market agricultural or aquacultural commodities produced by the operator. Seasonal farm workers are those farm employees who typically do not have a constant year round salary.

A *firm commitment* means the agreement by which an applicant's partner agrees to perform an activity specified in the application and demonstrates the financial capacity to deliver the resources necessary to carry out the activity, and commits the resources to the activity either in cash or through in-kind contributions and is irrevocable, subject only to approval and receipt of a FY 2002 RHED grant. Each letter of commitment should include the organization's name, the applicant's name, the proposed program, the proposed total level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization and dated not earlier than the date of publication of this NOFA. In documenting a firm commitment, the applicant's partner must:

(i) Specify the authority by which the commitment is made, the amount of the commitment, the use of funds and the relationship of the commitment to the proposed investment. If the committed activity is to be self-financed, the applicant's partner must evidence its financial capability through a corporate or personal financial statement or other appropriate means. If any portion of it is to be financed through a lending institution, the participant must evidence the institution's commitment to fund the loan;

(ii) Affirm that the commitment is contingent only upon the receipt of FY 2002 RHED funds and state a willingness on the part of the signatory to sign a legally binding commitment (conditioned on HUD environmental review and approval of a property, where applicable) upon award of the grant.

Indian tribe means any entity eligible to apply for funding under the Indian Community Development Block Grant (ICDBG) program (see 24 CFR 1003.5(a)). The list of federally recognized Indian tribes can be found notice published by the Department of the Interior on March 13, 2000, at 65 FR 13299, and is also available from HUD.

Innovative housing activities means projects, techniques, methods, combinations of assistance, construction materials, and energy efficiency improvements or financing institutions or sources new to the eligible area, or its population. The innovative activities can also build upon and enhance a model that already exists.

Local rural non-profit or community development corporation means either:

(i) Any private entity with tax-exempt status recognized by the Internal Revenue Service (IRS) which serves the eligible rural area involved in the application (including local affiliates of national organizations that provide technical and capacity building assistance in rural areas); or

(ii) Any public non-profit such as a Council of Governments that will serve specific local non-profit organizations in the eligible area.

Lower Mississippi Delta Region means the eight state, 235 county/parish region defined by Congress in the Lower Mississippi Delta Development Act, Pub.L. 100–460. Appendix C to this notice identifies the counties referenced in the Act.

Rural area may be defined in one of five ways:

(i) A place having fewer than 2,500 inhabitants (within or outside of metropolitan areas).

(ii) A county with an urban population of 20,000 inhabitants or less.

(iii) Territory, persons, and housing units in the rural portions of "extended cities." The U.S. Census Bureau identifies the rural portions of extended cities.

(iv) Open country that is not part of or associated with an urban area. The USDA describes "open country" as a site separated by open space from any adjacent densely populated urban area. Open space includes undeveloped land, agricultural land, or sparsely settled areas, but does not include physical barriers (such as rivers and canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, and open space set aside for future development.

(v) Any place with a population not in excess of 20,000 and not located in a Metropolitan Statistical Area.

State economic development and/or community development agency means any state agency that has promotion of statewide or local community/economic development as its primary purpose.

State Housing Finance Agency means any state agency created to assist local communities and housing providers with financing assistance for development of housing in rural areas, particularly for low- and moderate-income people.

(3) *Eligible applicants.* Eligible applicants for each of the funding categories are as follows:

(a) *For capacity building funding.* If you are a local rural non-profit, CDC, or federally recognized Indian tribe, you are eligible for capacity building funding to carry out innovative housing and economic development activities which may also enable an applicant to become self-sustaining in the future.

(b) *For support for innovative housing and economic development activities funding.* If you are a local, rural non-profit; CDC; federally recognized Indian tribe; State HFA; or State economic development and/or community development agency, you may apply for funding to support innovative housing and economic development activities in rural areas.

(4) *Eligible activities.* The following are examples of eligible activities under the Rural Housing and Economic Development program. These examples are illustrative and are not meant to limit the activities that you may propose in your application.

(a) *For capacity building funding.* Capacity building for innovative rural housing and economic development involves the enhancement of existing organizations to carry out new functions and/or to more effectively perform existing functions. Activities may include, but are not limited to the following:

(i) Enhancement of existing functions or creation of new functions to provide affordable housing and economic development in rural areas;

(ii) Acquisition of additional space and support facilities;

(iii) Salaries for additional staff needed to conduct the work, including financial management specialists, and economic development specialists;

(iv) Training of staff in the areas of financial management, economic development financing, housing accessibility and visitability standards, fair housing issues and complaint filing;

(v) Development of business plans in order for the organization to be self-sustaining;

(vi) Development of Management Information Systems (MIS) and software to enable better and more accurate reporting of information to HUD and to other entities;

(vii) Development of feasibility studies and market studies;

(viii) Training on energy efficiency in construction for housing and commercial projects;

(ix) Housing counseling services including the provision of information on budgeting, access to credit and other federal program assistance available including the Section 502 Single Family Housing Loan program under the USDA;

(x) Coordinating with the USDA in holding training sessions with your staff on the Section 502 Single Family Housing loan program and other housing or economic development programs available from USDA;

(xi) Conducting conferences or meetings with other Federal and State agencies to inform residents of programs, rights and responsibilities associated with homebuying opportunities; and;

(xii) Arranging for technical assistance to conduct needs assessments, conduct asset inventories and to develop strategic plans.

(i) Administrative costs for assistance under this funding category may not exceed fifteen percent (15%) of the total grant award.

(b) *For support of innovative housing and economic development activities.*

(i) This category is intended to support, but not be limited to, other costs for innovative housing and economic development activities. Activities may include, but are not limited to the following:

(i) Cost for using new or innovative construction, energy efficiency or other techniques that will result in the design and/or construction of innovative housing and economic development projects;

(ii) Preparation of plans, architectural or engineering drawings;

(iii) Preparation of legal documents, government paperwork requirements and applications to allow construction of housing and economic development activities to occur in the jurisdiction;

(i) Financial assistance for the acquisition of land and buildings;

(i) Demolition of property to permit construction or rehabilitation activities to occur;

(i) Development of infrastructure to support the housing or economic development activities;

(i) Purchase of construction materials;

(ii) Job training to support the activities of the organization;

(iii) Homeownership counseling, including credit counseling, budgeting, access to credit, and other federal assistance available including the Section 502 Single Family Housing Loan program under the USDA;

(iv) Coordinating with the USDA in holding training sessions with staff on the Section 502 Single Family Housing loan program and other housing or economic development programs available from USDA;

(v) Conducting conferences or meetings with other Federal and State agencies to inform residents of programs, rights and responsibilities associated with homebuying opportunities;

(vi) Development of feasibility studies and market studies;

(vii) Development of Management Information Systems (MIS) and software to enable better and more accurate reporting of information to HUD and to other entities;

(viii) Establishing Community Development Financial Institutions (CDFIs), lines of credit, revolving loan funds, microenterprises, and small business incubators; and

(ix) Provision of direct financial assistance to homeowners/businesses/developers, etc. This can be in the form of establishing default reserves, pooling/securitization mechanisms, loans, grants, etc.

Applicants are reminded that they must affirmatively further fair housing. Grantees should demonstrate that their activities will continue to serve the populations that are in need and that beneficiaries will have a choice of innovative housing and economic development opportunities as a result of these activities.

(i) Administrative costs for assistance under this funding category may not exceed fifteen percent (15%) of the total grant award.

(5) Ineligible activities. Examples of ineligible activities for both funding categories include:

(i) the use of RHED grant funds for income payments to subsidize individuals or families;

(ii) political activities;

(iii) general governmental expenses other than expenses related to the administrative cost of the grant; or

(iv) projects and activities intended for personal gain or private use.

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IV. Program Requirements

(A) *General.* To be eligible for funding under this program section of this SuperNOFA, you must meet the threshold and statutory or regulatory requirements applicable to all programs set forth in Section II of the General Section of the SuperNOFA. In addition to the above, you must meet the following program specific requirements.

(B) *Accounting System Requirements.* RHED requires that successful applicants have in place an accounting system that meets the policies, guidance, and requirements as described in the following applicable OMB Circulars and Code of Federal Regulations:

(1) OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);

(2) OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations), (3) OMB Circular No. A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

(4) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and

(5) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments).

These documents apply to the award, acceptance and use of assistance under the Rural Housing and Economic Development program NOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 2002 HUD Appropriations Act, other Federal statutes or the provisions of this NOFA.

(C) *Ethical Standards.* HUD requires that all grantees adhere to core values and ethical business practices, as described in Section II (B)(2) of the General Section of the SuperNOFA as a condition of the award.

(D) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD requires grantees to use small businesses, small disadvantaged businesses and women-owned businesses in conducting your work activities, if possible. Please refer to Section II (F) of the General Section of the SuperNOFA for specific requirements.

(E) *Forms, Certifications and Assurances.* You, the applicant, are required to submit signed copies of the standard forms, certifications and assurances included in the Appendix of this NOFA signed by the managing officer of your organization.

(F) *Environmental Review.* Selection for award does not constitute approval of any proposed sites. Following selection for award, HUD will perform an environmental review of activities proposed for assistance under this part, in accordance with 24 CFR part 50. The results of the environmental review may require that proposed activities be modified or that proposed sites be rejected. Applicants are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties (including establishing lines of credit that permit financing of such activities or making commitments for loans that would finance such activities from a revolving loan fund capitalized by funds under this NOFA) prior to HUD approval of specific properties or areas. Each application must contain an assurance that you, the applicant, will assist HUD to comply with part 50; will supply HUD with all available, relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, demolish, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received. In supplying HUD with environmental information, grantees are to use the same guidance as provided in the Notice CPD–99–01, entitled "Field Environmental Processing for HUD Colonias Initiative (HCI) grants" issued January 27, 1999.

(G) Conflicts of Interest. Consultants and experts assisting HUD in rating and ranking applicants for funding under this NOFA are subject to 18 U.S.C. 208. Refer to Section II (K) of the General Section of the SuperNOFA.

(H) Grant Amounts. In the event, you, the applicant, are awarded a grant that has been reduced (e.g. the application contained some activities that were ineligible or budget information did not support the request), you will be required to modify your project plans and application to conform to the terms of HUD's approval before execution of the grant agreement. HUD reserves the right to reduce or de-obligate the award if approvable modifications to the proposed project are not submitted by the awardee in the required amounts in a timely manner. Any modifications must be within the scope of the original application. HUD reserves the right not to make awards under this NOFA.

(I) Grant Period. Recipients will have 36 months from the date of the executed grant agreement to complete all project activities. .

(J) Lead-Based Paint Hazard Control. All property assisted under the Rural Housing and Economic Development program is covered by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD's implementing regulations at 24 CFR part 35.

(K) Adjustments to Funding. In addition to the items identified under Section III (E) of the General Section of the SuperNOFA, HUD:

(1) reserves the right to utilize this year's funding to fund previous year's errors prior to rating and ranking this year's applications. HUD reserves the right to reallocate funds between categories to achieve the maximum allocation of funds in both categories.

(2) If after all eligible applicants have been selected for funding in Category 2 and funds remain, the remaining funds will be allocated to Category 1 to fund additional eligible applications in that category. If a balance of funds remain, HUD reserves the right to utilize those funds toward the following year's competetion.

V. Policy Priorities

You should document the extent to which HUD's policy priorities are furthered by the proposed activities. Applicants that include activities that can result in the achievement of these Departmental policy priorities as described below and in Section VI of the General Section of this SuperNOFA will receive higher rating points in evaluating your application for funding. Four Departmental policy priorities are listed below. You will receive 1 rating point for each priority addressed in your program of activities and associated with performance measurements and your management plan under Rating Factor 3, described in Section VI of this program NOFA. Such priorities include:

(1) Increasing homeownership for low- and moderate-income persons, persons with disabilities and the elderly, and minorities and families where English may be a second language.

(2) Encouraging visitability in new construction and substantial rehabilitation activities, allowing a person with mobility impairments access into a home, but not requiring that all features be made accessible. A visitable home also serves persons without disabilities, such as a person pushing a stroller or delivering a large appliance. Encouraging universal design, simplifying life for everyone by making products, communications and the built environment more usable by as many people at little or no extra cost. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible at little or not extra cost.

(3) Improving computer access, literacy, and employment opportunities, by providing access to computers to low- and moderate-income adults and children who do not have access and therefore may be disadvantaged with respect to education, work and training opportunities. HUD encourages applicants to incorporate education and job training opportunities through initiatives such as HUD's Neighborhood Networks and 20/20 Education communities in their programs.

(4) Increasing economic mobility choices for rural residents. HUD wants to improve the quality of life for rural residents by providing more residents a chance to move into homeownership opportunities or to provide a community with greater housing choices.

VI. Application Selection Process

(A) *Rating and Ranking.*

(1) *General.* To review and rate applications, HUD may establish panels including outside experts or consultants to obtain certain expertise and outside points of view, including views from other Federal agencies.

(2) *Rating.* All applicants for funding will be evaluated against the criteria below. In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including the ability to account for funds appropriately; timely use of funds received either from HUD or other Federal, State or local programs; meeting performance targets for completion of activities and number of persons to be served or targeted for assistance. HUD may use information relating to these items based on information at hand or available from public sources such as newspapers, Inspector General or Government Accounting Office Reports or Findings, hotline complaints that have been proven to have merit, or other such sources of information. In evaluating past performance, HUD will deduct points from rating scores as specified under Rating Factor 1, Capacity of the Applicant and Relevant Organizational Experience, described in this Section below.

(3) *Ranking.* Applicants will be ranked separately within each of the two funding categories. Applicants will be selected for funding in accordance with their rank order in each category. An application must receive a minimum score of 70 points to be eligible for funding. If two or more applications are rated fundable and have the same score, but there are insufficient funds to fund all of them, the applications(s) with the highest score for Rating Factor 2 (Need and Extent of the Problem) shall be selected. If applications still have the same score, the highest score in the following factors will be selected sequentially until one highest score can be determined, Rating Factor 3 (Soundness of Approach), Rating Factor 1 (Capacity and Experience), Rating Factor 5 (Coordination, Self-Sufficiency, and Sustainability) and Rating Factor 4 (Leveraging Resources). To be eligible for funding in the Innovative category, an application must have a minimum score of 30 points for the total combined number of points for Rating Factors 1 and 3. To be eligible for funding in the Capacity Building category, an application must have a minimum score of 25 points for Rating Factor 3.

(B) *Initial screening.* During the period immediately following the application deadline, HUD will screen each application to determine eligibility. Applications will be rejected if they:

(1) Are submitted by ineligible applicants (including applicants that do not meet the threshold requirements described in Section II(B) of the General Section of the SuperNOFA);

(2) Do not serve an eligible rural area;

(3) Do not meet the objectives of the RHED program;

(4) Propose a program for which significant activities are ineligible.

(C) *Rating Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA.

(D) *Notification of Approval and Disapproval.* HUD will notify you whether or not you have been selected for an award. If you are selected, HUD's notice to you of the amount of the grant award based on the approved application will constitute HUD's preliminary approval, subject to negotiation and execution of the grant agreement by HUD.

(E) *Applicant Debriefing.* Any applicant can obtain a debriefing of their application. Please refer to Section VII (E) of the General Section of the SuperNOFA for details on the conditions and timeframes for requesting a debriefing. In addition, applicants requesting a debriefing must send a written request to Ms. Jackie W. Mitchell, Director, Office of Rural Housing and Economic Development (RHED), at the address listed in Section I of this NOFA under "For Further Information and Technical Assistance."

Rating Factor 1—Capacity of the Applicant and Relevant Organizational Experience (15 points)

This rating factor addresses the extent to which you have the organizational resources necessary to successfully implement your proposed work plan as further described in Rating Factor 3 in a timely manner within the 36 month award period.

Rating standards applicable to individual funding categories. The two funding categories have different objectives. Accordingly, in addition to the generally applicable rating standard discussed above, different standards as discussed below will be used to judge the experience and qualifications of the applicants for each of the two funding categories. HUD fully supports emerging organizations who desire to develop internal capacity. Therefore, the following categories will be evaluated:

(1) *For Capacity Building applications.* (15 points) *Team members, composition, experience, organizational structure and management capacity.* Your response to this subfactor should clearly state the need which your organization is to address through the request for assistance. In addition, you should describe how the enhanced capacity realized through the assistance will fulfill that need. HUD will evaluate the experience of your project director, core staff, any outside consultants, contractors, subrecipients, and project partners to implement all of the work activities in your workplan as they relate to innovative housing and economic development activities. In evaluating your capacity to do the work, HUD will assess the recentness and relevancy of the prior work experience of each of the parties listed above to execute the prescribed activities; the services that consultants or other parties will provide to fill gaps in your staffing structure to enable you to carry out the proposed workplan; the experience of your project director in managing projects of similar size, scope, and dollar amount; the lines of authority and procedures that you have in place for ensuring that workplan goals and objectives are being met, consultants and other project partners are performing as planned, and that beneficiaries are being adequately served. In responding to this sub-factor, please indicate how the capacity

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building assistance will strengthen or otherwise impact your organization's current housing or economic development program portfolio, or if you are a new grantee, how will the capacity assistance ensure that you can carry out your proposed activities. In judging your response to this factor, HUD will only consider work experience gained within the last 3 years. When responding, please be sure to provide the dates, job titles and relevancy of the past experience to work undertaken by the employee or contractor under your proposed RHED application. The more recent, relevant, and successful the experience is of your team members in relationship to the workplan activities, the greater the number of points that you will receive.

(2) *For Support for Innovative Rural Housing and Economic Development Activities applications.*

(a) (5 points) *Team members, composition, and experience.* HUD will evaluate the experience of your project director, core staff, any outside consultants, contractors, subrecipients, and project partners to implement all of the work activities in your workplan. In evaluating your capacity to do the work, HUD will assess the recentness and relevancy of the prior work experience of each of the parties listed above, to execute the prescribed activities; the services that consultants or other parties will provide to fill gaps in your staffing structure to enable you to carry out the proposed workplan; the experience of your project director in managing projects of similar size, scope, and dollar amount; the lines of authority and procedures that you have in place for ensuring that workplan goals and objectives are being met, that consultants and other project partners are performing as planned, and that beneficiaries are being adequately served. In judging your response to this factor, HUD will only consider work experience gained within the last 7 years. When responding, please be sure to provide the dates, job titles and relevancy of the past experience to work undertaken by the employee or contractor under your proposed RHED application. The more recent, relevant, and successful the experience is of your team members in relationship to the workplan activities, the greater the number of points that you will receive.

(b) (5 points) *Organizational structure and management capacity.* HUD will evaluate the extent to which you can demonstrate your organization's ability to manage a workforce composed of full time and/or part-time staff as well as any consultant staff and your ability to work with community-based groups or organizations in resolving issues related to affordable housing and economic development. In evaluating this sub-factor, HUD will take into account your experience in working with community-based organizations to design and implement programs which address the identified housing and economic development issues. The more recent, relevant, and successful the experience is of your organization and any participating entities, the greater the number of points that you will receive.

(c) (5 points) *Experience with performance based funding requirements.* HUD will evaluate your experience in producing timely products and reports in any previous grant programs undertaken with HUD funds or other Federal, state, local or non-profit or for-profit organization funds. In assessing points for this sub-factor, HUD reserves the right to take into account your past performance in meeting performance and reporting goals on any previous HUD awards. HUD will deduct one point for each of the following activities related to previous HUD grant programs for which unsatisfactory performance has been verified and related to: (1) Managing funds, including the ability to account for funds appropriately; (2) timely use of funds received either from HUD or other Federal, State, or local programs; and (3) significant and consistent failure to met performance targets. Among the specific outcomes to be measured are the number of jobs created or retained the number of people trained, the number of housing units rehabilitated or constructed and made available for low- and moderate-income persons, or other relevant objective performance measures related to your previous job experience and/or grant programs. Applicants that can demonstrate a closer and greater linkage between the expected outcomes and the previously generated outcomes will receive higher points for this sub-factor.

Rating Factor 2—Need and Extent of the Problem (25 Points)

The Rural Housing and Economic Development program has been designed to address the problems of rural poverty, inadequate housing and lack of economic opportunity. This Factor addresses the extent to which there is need for funding the proposed activities based on levels of distress, and an indication of the urgency of meeting the need/distress in the applicant's target area. In responding to this Factor, applications will be evaluated on the extent to which the level of need for the proposed activity and the urgency in meeting the need are documented and compared, vis-à-vis, the target area, and national data.

(1) In applying this Factor, HUD will compare current levels of need in the area (i.e. Census Tract(s) or Block Groups), immediately surrounding the project site or the target area to be served by the proposed project and in the national level of need. This means that an application that provides data that show levels of need in the project area expressed as a percent greater than the national average, will be rated higher under this Factor. Notwithstanding the above, an applicant proposing a project to be located outside the target area could still receive points under the Need Factor if a clear rationale and linkage is provided linking the proposed project location and the benefits to be derived by persons living in more distressed area(s) of the applicant's target area.

(2) Applicants should provide data that address indicators of need as follows:

(a) *Poverty Rate* (5 points)—data should be provided in both absolute and percentage form (i.e., whole numbers and percents) for the target area(s). An application that compares the local poverty rate in the following manner to the national average at the time of submission will receive points under this section as follows:

(i) Less than the national average = 0 points;

(ii) Equal to but less than twice the national average = 1 points;

(iii) Twice but less than three times the national average = 3 points;

(iv) Three or more times the national average = 5 points.

(b) *Unemployment* (5 points)—for the target area:

(i) Less than the national average = 0 points;

(ii) Equal to but less than twice the national average = 1 points;

(iii) Twice but less than three times the national average = 2 points;

(iv) Three but less than four times the national average = 3 points;

(v) Four but less than five times the national average = 4 points;

(vi) Five or more times the national average = 5 points.

(c) *Other indicators of social and/or economic decline that best capture the applicant's local situation* (5 points)—Examples that could be provided under this section are information on the community's stagnant or falling tax base, including recent commercial or industrial closings, housing conditions, such as the number and percentage of substandard and/or overcrowded units, rent burden (defined as average housing cost divided by average income) for the target area, local crime statistics, etc. To the extent that the applicant's statewide or local Consolidated Plan, its Analysis of Impediments to Fair Housing choice (AI), and/or its Anti-Poverty Strategy identify the level of distress in the community and the neighborhood in which the project is to be carried out, references to such documents should be included in preparing the response to this Factor.

(3) In rating applications under this Factor, HUD reserves the right to consider sources of available objective data other than, or in addition to, those provided by applicants, and to compare such data to those provided by applicants for the project site. This data includes the use of U.S. Census data or information received from USDA.

(a) HUD requires use of sound and reliable data (e.g., U.S. Census data, State statistical reports, university studies/reports that are verifiable) to support distress levels cited in each application. A source for all information along with the publication or origination date must also be provided.

(b) Updated Census data are available for the following indicators:

(i) Unemployment rate—estimated monthly for counties, with a two-month lag;

(ii) Population—estimated for incorporated places and counties, through 2000;

(c) Poverty rate—1990 data being the most recent available.

(d) *Demographics of Distress—Special Factors (10 points).* Because of the concern of HUD with meeting the needs of certain underserved areas, you will be awarded a total of ten points if you are located in or propose to serve one or more of the following populations, your application demonstrates that 100 percent of the beneficiaries supported by RHED funds are in one or more of the following populations. You must also specifically identify how each population will be served and that the proposed service area meets the definition of "eligible rural area" as described in Section III(A)(2) of this NOFA:

(i) Areas with very small populations in non-urban areas (2,500 population or less);

(ii) Seasonal farmworkers;

(iii) Federally recognized Indian Tribes;

(iv) Colonias;

(v) Appalachia's Distressed Counties; or

(vi) The Lower Mississippi Delta Region (8 States and 235 counties/parishes). For these underserved areas, you should ensure that the populations that you serve and the documentation that you provide is consistent with the information described in the above paragraphs under this rating factor.

Rating Factor 3—Soundness of Approach (40 Points)

This factor addresses the overall quality of your proposed workplan, taking into account the project and the activities proposed to be undertaken; the cost-effectiveness of your proposed program; and the linkages between identified needs, the purposes of this program and your proposed activities and tasks. In addition, this factor addresses your ability to ensure that a clear linkage exists between innovative rural housing and economic development. In assessing cost-effectiveness, HUD will take into account your staffing levels, beneficiaries to be served, a timetable for the achievement of program outcomes, the delivery of products and reports and any anticipated outcomes or products. You will receive a greater number of points if your workplan is consistent with the purpose of the RHED program, your program goals and the resources provided.

(a) (20 points) *Management Plan.* A clearly defined management plan which identifies each of the projects and activities you will carry out to further the objectives of this program; describes the linkage between rural housing and economic development activities; and addresses the needs identified in Factor 2, including needs that had been previously identified in a statewide or local Analysis of Impediments to Fair Housing Choice (AI) or Consolidated Plan. The populations that were described in Rating Factor 2 for the purpose of documenting need should be the same populations which will receive the primary benefit of the activities, both immediately and longterm. The benefits should be affirmatively marketed to those populations least likely to apply for and receive these benefits without such marketing. Your timetable should address the measurable goals and objectives to be achieved through the proposed activities; the method you will use for evaluating and monitoring program progress with respect to those activities and the method you will use to ensure that the activities will be completed on time and within your proposed budget estimates. Applicants that have a clearly defined management plan and which can produce results in less than 36 months will receive higher rating points for this sub-factor. Your management plan should also include the budget for your program, broken out for each line item. Documented projected cost estimates from outside sources are also required. Applicants should submit their workplan on a spreadsheet showing each project, to be undertaken and the tasks (to the extent necessary or appropriate) in your workplan to implement the project with your associated budget estimate per activity/task. Your workplan should provide the rationale for your proposed activities and any assumptions used in determining your project timeline and budget estimates. Failure to provide your rationale may result in an application receiving fewer points for lack of clarity in the proposed management plan. Applicants that propose as part of their workplan activities that address and support HUD's policy priority areas as outlined in Section (V) of this NOFA will receive one rating point for each of the policy priorities described under this sub-factor.

(b) (15 points) *Expected Outcomes.* HUD encourages applicants to include in their workplans, program measures to ensure that goals established in your application can be accounted for and independently assessed to ensure that performance measures have been met. HUD will be assessing outcomes resulting from your proposed workplan for the likelihood it will result in measurable and achievable outcomes that will alleviate or address the needs described in Rating Factor 2 and that those outcomes can and will be sustained beyond the grant period, without further assistance from HUD. You must include in this sub-factor a qualitative or quantitative description of estimated outcomes in order to receive points for this sub-factor. Outcomes may be described in terms of the estimated number of new units constructed or units rehabilitated; jobs retained or created; loans financed; individuals trained, counseled or assisted; and/or number of persons on welfare or under-employed trained in a career path or apprenticeship program.

The exact nature of the expected outcomes will vary according to your proposed workplan. Applicants that propose activities to increase their capacity to carry out innovative rural housing and economic development activities should include among their projected outcomes performance measures for maintaining the financial health and integrity of the organization. Applicants that can demonstrate clearly identified outcomes and the means for ensuring that outcomes will be tracked and are likely to be achieved will receive a greater number of points under this sub-factor.

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(c) (5 points) *Self-monitoring and Program Evaluation.* Your workplan will be evaluated to ensure that you have a mechanism for monitoring and self-assessing your progress in meeting program goals and objectives, ensuring that the integrity of the use of funds is in accordance with OMB Cost Principles and record-keeping requirements and the approved program budget. Applicants that clearly define roles and responsibilities and steps to be taken to meet this requirement will receive a greater number of rating points in the evaluation. Therefore, your workplan should describe and identify the specific steps that you will take to carry out a self-monitoring function that meets these requirements.

Rating Factor 4—Leveraging Resources (10 Points)

This factor addresses the extent to which applicants for any of the two funding categories have obtained firm commitments of financial or in-kind resources from other Federal, State, local, and private sources. For every RHED dollar anticipated, you should provide the specific amount of dollars leveraged. In assigning points for this criterion, HUD will consider the level of outside resources obtained for cash or in-kind services that support activities proposed in your application. HUD will award a greater number of points based upon a comparison of the extent of leveraged funds compared to the requested RHED grant. This criterion is applicable to both funding categories under this NOFA. The level of outside resources for which commitments are obtained will be evaluated based on their importance to the total program. You must provide evidence of leveraging by including in the application letters of firm commitment to participate from any entity, including your own organization, that will be providing matching funds to the project. Each commitment described in the narrative of this factor must be in accordance with the definition of "firm commitment" as defined in Section III(A)(2) of this NOFA.

Rating Factor 5—Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which your proposed program is coordinated with other ongoing and related activities in the area you propose to serve, how well your program outcomes result in increased independence and empowerment to your beneficiaries, and your organization's ability to becoming financially self-sustaining into the future absent any HUD funding.

This factor consists of three elements:

(1) Coordination of activities (4 points). The extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed work activities, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner. The goal of coordination is to ensure that programs do not operate in isolation. The more your activities are coordinated with other ongoing activities in your service area, the more points you will receive.

(2) Self-Sufficiency (3 points). The extent to which your application implements practical solutions within the grant term that result in assisting beneficiaries of grant program funds in achieving independent living, economic empowerment, educational opportunities, housing choice or improved living environments which are free from environmental hazards such as lead hazards, brownfields, overcrowded housing, etc. Applicants that clearly describe the extent to which proposed activities result in increased independence and empowerment for their beneficiaries will receive higher points in this sub-factor.

(3) Sustainability (3 points). The extent to which your program exhibits the potential to be financially self-sustaining by decreasing dependence on RHED funding and relying more on state, local, and private funding so your activities can be continued after your grant award is complete. Applicants that demonstrate a reduced dependence on RHED funds over the life of their award will receive a greater number of rating points for this sub-factor.

RC/EZ/EC Bonus Points (2 points)

HUD will award two bonus points to all applications that include documentation stating that the proposed eligible activities/projects will be located in and serve Federally designated Rural Renewal Communities, Rural Empowerment Zones or Enterprise Communities (Rural EZs/ECs). A listing of Federally designated Rural RCs, EZs and ECs is available on the Internet at http://www.hud.gov.

VII. Application Submission Requirements

(A) *Form of Application.* All pages of the application shall be numbered sequentially. Your application must include an original and two copies of the items listed below.

(B) *Application Items.* Your application must contain the items listed in this section. These items include the standard forms and non-standard certifications that can be found in the Appendices to this program section of the SuperNOFA. The items are as follows:

(1) A transmittal letter;

(2) A table of contents;

(3) A signed SF–424 (application form);

(4) A budget for all funds (Federal and Non-Federal) and a breakdown of all Federal funds requested, in the format provided in Appendix A of this NOFA;

(5) Documentation of funds pledged in support of Rating Factor 4—"Leveraging Resources" (which will not be counted in the 15 page limitation);

(6) The required certifications (signed, as appropriate, and attached as an Appendix);

(7) Acknowledgment of the Application Receipt form (submitted with application and returned to you as verification of timely receipt).

(8) If you are a private nonprofit organization, a copy of your organization's IRS ruling providing tax-exempt status under section 501 of the IRS Code of 1986, as amended.

(9) The attached forms specifying:

(a) Which category of funds, as described in Section II(C), you are applying for.

(b) Which of the five definitions of the term "rural area" set forth in Section III(A)(2) of this NOFA applies to the proposed service area and accompanying documentation as indicated on the form; and

(10) The Environmental Review Assurance.

(11) Narrative Response to Factors for Award

(a) You must describe your organization and the assignment of responsibilities for the work to be carried out under the grant (Rating Factor 1).

(b) You must describe the need and extent of the problem and populations to be served (Rating Factor 2).

(c) You must submit a workplan which describes your soundness of approach and the clear linkage between rural housing and economic development (Rating Factor 3). In addressing this submission requirement, you must:

(i) Describe the activities you propose to undertake to address the needs which have been identified, the linkage between rural housing and economic development, and describe the specific outcomes you expect to achieve.

(ii) Include a management plan which identifies the specific actions you will take to complete the proposed activities on time and a budget in the format provided which explains the uses of both Federal and non-Federal funds and the period of performance under the grant.

(iii) Include a discussion of the process by which the work accomplished with the grant will be evaluated to determine if the objectives of the grant were met.

(d) You must identify the resources which will be leveraged by the amount of this grant's funding that you are requesting. (Rating Factor 4). To receive the maximum number of points under Rating Factor 4 you must provide evidence of firm commitments. The commitment can be contingent upon HUD site approval following environmental review.

(e) You must describe the extent to which your program reflects a coordinated, community based process of identifying needs and building a system to address these needs, providing program beneficiaries outcomes resulting in increased independence and empowerment, and the potential for your organization to become financially self-sustaining.(Rating Factor 5).

The total narrative response to all factors should not exceed 15 pages and must be submitted on 8.5" by 11" paper, using a 12 point font size, with lines double spaced and printed only on one side. Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider or review the information on any excess pages, which may result in a lower score or failure to meet a threshold.

VIII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any eligibility or selection factors. Examples of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 5 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

Catalog of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number is: 14.250

IX. Authority

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 Pub.L. 107–73, approved November 26, 2001).

Appendix A

The standard and non-standard forms that follow are required for your RHED application.

BILLING CODE 4210–32–C

Appendix A

Checklist of Forms and Certifications

Page Number

- ☐ Transmittal Letter
- ☐ Checklist and Submission Table of Contents
- ☐ Standard Form for Application for Federal Assistance (SF-424)
- ☐ Federal Assistance Funding Matrix (HUD-424-M)
- ☐ Assurances - Non-Construction Program (SF-424-B)
- ☐ Assurances - Construction Program (SF-424-D)
- ☐ Statement of Work, including summary and responses to factors for award
- ☐ Budget in support of Rating Factor 3 (HUD-424-CB)
- ☐ Documentation of Funds/In-Kind Services pledged in support of Rating Factor 4
- ☐ Required Certifications (signed)
  - ☐ Certification for a Drug-Free Workplace (HUD-50070)
  - ☐ Certification of Payments to Influence Federal Transac tions (HUD-50071) (see 24 CFR part 87, Appendix A)
  - ☐ Disclosure of Lobbying Activities (SF-LLL) (If required, see 24 CFR part 87, Appendix B)
  - ☐ Applicant/Recipient Disclosure/Update Report (HUD-2880)
  - ☐ Certification Regarding Debarment and Suspension (HUD-2992)
  - ☐ Certification of Consistency with the EZ/EC Strategic Plan (HUD-2990)

- ☐ Acknowledgment of Application Receipt (HUD-2993) (to be returned to applicant)
- ☐ For nonprofit organizations, a copy of the IRS ruling providing tax-exempt status under section 501 of the IRS Code of 1996, as amended
- ☐ Documentation that area served is rural area, as defined in this NOFA
- ☐ The Environmental Review Assurance
- ☐ Client Comments and Suggestions (HUD-2994)

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Environmental Review Assurances

The award of funds under this program is subject to the environmental review requirements of 24 CFR part 50. These requirements only apply to grant-funded projects fully or partially funded by HUD, undertaken by grantees and all tiers of subgrantees and subcontractors.

When a project is limited to activities described in 24 CFR 50.19, it does not require an environmental review. All other activities (for example, acquisition of real property, construction and alteration) are subject to an environmental review. Since the approval of the initial grants in this program must occur prior to the identification of properties to be treated, as is provided for in 24 CFR 50.3(h), the applicant hereby agrees that it will assist HUD to comply with 24 CFR part 50, and that the applicant shall:

1. Advise HUD of all projects requiring a review under 24 CFR part 50 prior to their approval and supply HUD with all available and relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50;

2. Carry out mitigating measures required by HUD or select an alternate property or project;

3. Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities on a HUD-assisted project until HUD has completed an environmental review to the extent required under 24 CFR 50 and has given notification of its approval in accordance with 24 CFR 50.3(h)(3); and

4. Include the above requirements in all subgrants and subcontracts.

Signature of Authorized Certifying Official	Applicant
X	
Title	Date

form HUD-40076-RHED (02/11/2002)

APPENDIX B

Housing Affordability and Quality Indicators for Appalachian Regional Commission -Designated Distressed Counties

State/County	Estimated % of Renters Unable to Afford 2BR FMR[1]	Estimated % of Substandard Housing Units[2]
Alabama		
Hale	63%	14.3%
Macon	49%	8.8%
Pickens	58%	10.0%
Georgia		
Elbert	50%	6.5%
Kentucky		
Adair	43%	6.9%
Bath	51%	10.5%
Bell	52%	8.8%
Breathitt	58%	19.8%
Carter	45%	9.0%
Casey	44%	13.2%
Clay	65%	15.6%
Clinton	55%	11.2%
Cumberland	49%	8.6%
Elliott	66%	15.5%
Estill	45%	12.3%
Floyd	44%	6.1%
Green	49%	5.0%
Harlan	66%	9.0%
Jackson	65%	14.8%
Johnson	41%	7.0%
Knott	59%	10.8%
Knox	66%	10.2%
Lawrence	52%	11.0%
Lee	63%	15.3%
Leslie	50%	14.0%
Letcher	58%	8.9%
Lewis	45%	13.7%
Lincoln	45%	9.9%
McCreary	59%	13.4%
Magoffin	69%	11.0%
Martin	63%	7.1%
Menifee	51%	8.4%
Monroe	45%	8.3%
Morgan	51%	9.8%
Owsley	80%	17.7%
Perry	52%	10.7%
Pike	41%	4.6%
Powell	50%	10.9%
Rockcastle	49%	11.5%

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Housing Affordability and Quality Indicators for Appalachian Regional Commission -Designated Distressed Counties

State/County	Estimated % of Renters Unable to Afford 2BR FMR[1]	Estimated % of Substandard Housing Units[2]
Johnson	48%	7.3%
Meigs	48%	8.0%
Pickett	55%	7.4%
Scott	47%	8.7%
Virginia		
Buchanan	49%	6.7%
Dickenson	62%	8.0%
Lee	53%	10.4%
Russell	50%	6.3%
Wise	53%	5.7%
West Virginia		
Barbour	55%	6.1%
Boone	53%	4.1%
Braxton	48%	8.1%
Calhoun	66%	12.0%
Clay	52%	10.2%
Fayette	44%	5.1%
Gilmer	55%	9.8%
Lewis	49%	4.8%
Lincoln	63%	9.8%
Logan	45%	5.0%
McDowell	68%	8.5%
Mason	43%	5.8%
Mingo	58%	6.6%
Nicholas	55%	5.3%
Pocahontas	45%	7.5%
Raleigh	49%	3.3%
Randolph	45%	5.0%
Ritchie	48%	6.3%
Roane	48%	8.6%
Summers	55%	7.9%
Taylor	49%	4.0%
Upshur	49%	5.6%
Webster	59%	10.2%
Wetzel	43%	5.5%
Wirt	64%	13.5%
Wyoming	58%	5.8%
Mean County-level Indicators	52%	8.7%

APPENDIX C

LOWER MISSISSIPPI DELTA COUNTIES AND PARISHES

ARKANSAS	ILLINOIS	KENTUCKY	LOUISIANA	MISSISSIPPI	MISSOURI	TENNESSEE
Arkansas	Alexander	Ballard	Acadia	Adams	Bollinger	Benton
Ashley	Franklin	Caldwell	Allen	Amite	Butler	Carroll
Baxter	Gallatin	Calloway	Ascension	Attala	Cape Girardeau	Chester
Bradley	Hamilton	Carlisle	Assumption	Benton	Carter	Crockett
Calhoun	Hardin	Christian	Avoyelles	Bolivar	Crawford	Decatur
Chicot	Jackson	Crittenden	Caldwell	Carroll	Dent	Dyer
Clay	Johnson	Fulton	Catahoula	Clairborne	Douglas	Fayette
Cleveland	Massac	Graves	Concordia	Coahoma	Dunkin	Gibson
Craighead	Perry	Henderson	East Baton Rouge	Copiah	Howell	Hardeman
Crittenden	Pope	Hickman	East Carroll	Covington	Iron	Hardin
Cross	Pulaski	Hopkins	East Feliciana	DeSoto	Madison	Haywood
Dallas	Randolph	Livingston	Evangeline	Franklin	Mississippi	Henderson
Desha	Saline	Lyon	Franklin	Grenada	New Madrid	Henry
Drew	Union	Marshall	Grant	Hinds	Oregon	Lake
Fulton	White	McCracken	Iberia	Holmes	Ozark	Lauderdale
Grant	Williamson	McLean	Iberville	Humphreys	Pemiscott	McNairy
Greene		Muhlenberg	Jackson	Issaquena	Perry	Madison
Independence	**TOTAL**	Todd	Jefferson	Jefferson	Phelps	Obion
Izard	**COUNTIES**	Trigg	Lafourche	Jefferson Davis	Reynolds	Shelby
Jackson		Union	LaSalle	Lafayette	Ripley	Tipton
Jefferson	**16**	Webster	Lincoln	Lawrence	St. Genevieve	Weakley
Lawrence		**TOTAL**	Livingston	Leflore	St. Francois	
Lee	**ALABAMA**	**COUNTIES**	Madison	Lincoln	Scott	**TOTAL**
Lincoln	Barbour		Morehouse	Madison	Shannon	**COUNTIES**
Lonoke	Bullock	**21**	Orleans	Marion	Stoddard	**21**
Marion	Choctaw		Ouachita	Marshall	Texas	
Mississippi	Clarke		Pointe Coupee	Montgomery	Washington	
Monroe	Dallas		Plaquemines	Panola	Wayne	
Ouachita	Greene		Rapides	Pike	Wright	
Phillips	Hale		Richland	Quitman		
Poinsett	Lowndes		St. Bernard	Rankin	**TOTAL**	
Prairie	Macon		St. Charles	Sharkey	**COUNTIES**	
Pulaski	Marengo		St. Helena	Simpson	**29**	**GRAND**
Randolph	Perry		St. James	Sunflower		**TOTAL**
St. Francis	Pickens		St. John the	Tallahatchie		
Searcy	Russell		Baptist	Tate		**235**
Sharp	Sumter		St. Landry	Tippah		
Stone	Washington		St. Martin	Tunica		
Union	Wilcox		Tangipahoa	Union		
Van Buren			Tensas	Walthall		
White			Union	Warren		
Woodruff	**TOTAL**		Washington	Washington		
	COUNTIES		West Baton Rouge	Wilkinson		
TOTAL	**16**		West Carroll	Yalobusha		
COUNTIES			West Feliciana	Yazoo		
			Winn			
42			**TOTAL**			
			PARISHES			
			45	**TOTAL**		
				COUNTIES		
				45		

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RESIDENT OPPORTUNITIES AND SELF-SUFFICIENCY (ROSS) PROGRAM

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FUNDING AVAILABILITY FOR PUBLIC HOUSING RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY (ROSS) PROGRAM

PROGRAM OVERVIEW

Purpose of Program. The purpose of the Public Housing Resident Opportunities and Self Sufficiency (ROSS) Program is to link services to public and Indian housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self-sufficient.

Available Funds. A total of $80.1 million; approximately $70 million from FY 2002 funds and $10.1 million in carryover funding.

Eligible Applicants. Public Housing Agencies (PHAs), resident management corporations (RMCs), resident councils (RCs), resident organizations (ROs), Intermediary Resident Organizations (IROs), City-Wide Resident Organizations (CWROs) and nonprofit entities supported by residents. Indian tribes (tribes) and tribally designated housing entities (TDHEs) are eligible for grants under the Resident Management and Business Development (RMBD), Capacity Building (CB), and Resident Service Delivery Models (RSDM) funding categories. Tribes and TDHEs are not eligible for grants as part of Neighborhood Networks, Homeownership Supportive Services and renewal of public housing service coordinator funding categories.

Application Deadline for ROSS Funding Categories.

May 14, 2002 for Resident Management and Business Development;

May 14 2002 for Capacity Building;

June 18, 2002 for Resident Service Delivery Models;

July 10, 2002 for Homeownership Supportive Services;

July 10, 2002 for Neighborhood Networks Centers; and

May 14, 2002 for Public Housing Service Coordinator.

Match. At least 25 percent of the grant amount is required as the grant match. This match does not have to be a cash match. The match can be in-kind and/or cash contributions.

ADDITIONAL INFORMATION

If you are interested in applying for funding under any of these programs, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information and Technical Assistance.

Application Due Date. Your completed application (one original and two copies is due on or before 12:00 midnight, Eastern time, on the following application due dates to HUD Headquarters at the address shown below.

May 14, 2002 for Resident Management and Business Development;

May 14, 2002 for Capacity Building;

June 18, 2002 for Resident Service Delivery Models;

July 10, 2002 for Homeownership and Supportive Services;

July 10, 2002 for Neighborhood Networks Centers; and

May 14, 2002 for Renewal of Public Housing Service Coordinator grants.

See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mail application, express mail, overnight delivery, or hand-carried).

New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applicants must comply with the procedures included in the General Section of the SuperNOFA.

Address for Submitting Applications. You must submit your completed ROSS Program application (the original and two copies) to the Grants Management Center (GMC), 501 School Street, SW., Suite 800, Washington, DC 20024, by mail using the United States Postal Service (USPS) or it may be delivered only via the following four carrier services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 am and 5:30 pm Eastern Standard Time, Monday to Friday. If these companies do not service your area, you must submit your application via the United States Postal Service. All mailed applications must be postmarked on or before midnight of their due date and received within 15 days of the due date.

In the case of tribes/TDHEs, please submit your completed application (the original and two copies) to Denver Program Office of Native American Programs (DPONAP), 1999 Broadway, Suite 3390, Denver, CO 80202, by mail using the United States Postal Service (USPS) or it may be delivered only via the following four carrier services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. Delivery by these services must be made during HUD's business hours, between 8:30 am and 5:30 pm Eastern Standard Time (or Mountain Standard Time for Tribes/TDHEs), Monday to Friday. If these companies do not service your area, you must submit your application via the United States Postal Service. All mailed applications must be postmarked on or before midnight of their due date and received within 15 days of the due date.

For Application Kits. For an application kit and any supplemental material, please call the SuperNOFA Information Center at 1–800-HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209. When requesting an application kit, please refer to the ROSS Program, and provide your name, address (including zip code) and telephone number (including area code). An application kit is also available on the Internet through the HUD web site at *http://www.hud.gov/grants.*

For Further Information and Technical Assistance. You may contact the local HUD field office or you may call the Public and Indian Housing Information and Resource Center at 1–800–955–2232. In the case of tribes/TDHEs, please contact the Local Area DPONAP or Carol Quinlan, DPONAP, Denver Program Office at 1–800–561–5913 or (303) 675–1600 (this is not a toll free number).

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at *http://www.hud.gov/grants.*

II. Amount Allocated

(A) *Total Amount.* A total amount of $80.1 million is allocated for this NOFA. This amount is comprised of $70 million from the FY 2002 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2001, and $10.1 million in carryover funding. For FY 2002, approximately $55 million is available for the Resident Opportunities and Self Sufficiency Program under Section 34 of the U.S. Housing Act of 1937, and $15 million is available from the Public Housing Capital Fund for Neighborhood Networks in public housing developments. The $10.1 million in carryover funding is composed of approximately $8.2 million from FY 1998 and FY 1999 carryover funding is being used from the Public Housing

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Capital Fund, and an additional $1.9 million is carried over from the FY 2000 Community Development Block Grant fund. The $8.2 million is composed of approximately $2.6 million from the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1998 and approximately $5.6 million from the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1999.

(B) *Allocation.* To the extent that there are a sufficient number of qualified applications, not less than 25 percent of funds available for ROSS shall be provided directly to Resident councils (RCs), Resident Organizations (ROs), Resident Management Corporations (RMCs), Intermediary Resident Organizations (IROs), tribes/TDHEs on behalf of tribal residents and City-Wide Resident Organizations (CWROs). This requirement will be implemented by the awards made to resident organizations for the Resident Management and Business Development, Capacity Building, and the Resident Service Delivery Models funding categories.

(C) *Funding Categories and Funds Allocated to Each Category.* The funding categories under ROSS and the amount allocated for each funding category are as follows:

(1) *Resident Management and Business Development (RMBD).* A total of $6 million is allocated for this funding category.

(i) Grants will be made directly to site-basedRAs/ROs, RMCs, CWROs, and to tribal ROs, tribal RMCs, tribes/TDHEs that partner with tribal ROs and tribal RMCs to: increase resident involvement and participation in their housing developments; develop resident management opportunities; provide resident-led business or cooperative development opportunities; and obtain necessary supportive services for self-sufficiency.

(ii) The maximum grant award for this funding category is $100,000 per applicant.

(2) *Capacity Building (CB).* A total of $5 million is allocated for this funding category, described below:

(i) CB grants will be made to Intermediary Resident Organizations (IROs), tribes/TDHEs on behalf of tribal housing residents, tribal ROs, tribal RMCs, and non-profits which operate associations and networks that administer programs benefiting resident organizations. These grants provide assistance to site-based resident associations who do not yet have the capacity to administer a welfare-to-work program or conduct management activities.

(ii) You may apply for funding that will be used to assist public and tribal housing residents in establishing a new resident organization or you may apply for funds to help or enhance the capacity of existing resident organizations to enable residents to participate in housing agency decision-making, manage all or a portion of their housing developments, and/or apply for and administer grants.

(iii) The maximum amounts for CB grants are: $100,000 for CWROs or tribes/TDHEs per applicant, and $240,000 per applicant for all other eligible applicants. Applicants are required to allocate at least two-thirds of the total grant to direct funding of CB activities for site-based RAs/ROs and/or tribal ROs. CWROs or tribes/TDHEs are required to serve a minimum of 3 RAs and/or tribal ROs. All other applicants are required to serve a minimum of 10 RAs and/or tribal ROs.

(3) *Resident Service Delivery Models (RSDM).* A total of $22.9 million is allocated for this category of funding. The Resident Service Delivery Models (RSDM) funding category provides grants to Public Housing Agencies (PHAs), tribes/TDHEs or directly to resident management corporations, resident councils, or resident organizations, and nonprofit entities supported by residents. There are two sub-categories of grants under this funding category: Family Grants for program-related activities and supportive services to establish and implement comprehensive programs that achieve resident self-sufficiency for families; and Elderly and Persons with Disabilities Grants for independent living for the elderly and persons with disabilities.

(a) RSDM Family sub-category.

(i) *Maximum grant amount.* For RSDM, the maximum grant amounts are as follows:

For PHAs applying for family grants, the maximum grant application award will be based on the number of occupied family conventional public housing units. Tribes/TDHEs applying for RSDM should refer to section III (e) of this NOFA for computation of units for the maximum grant amount.

(ii) For the RSDM family category, PHAs must use the number of occupied conventional family public housing units to determine the maximum grant amount in accordance with the categories listed below for families:

— For PHAs with 1 to 780 occupied family units, the maximum grant award is $250,000.
— For PHAs with 781 to 7,300 occupied family units, the maximum grant award is $500,000.
—For PHAs with 7,301 or more occupied family units, the maximum grant award is $1,000,000.

(b) RSDM Elderly and persons with disabilities sub-category.

(i) Maximum grant amount. For the Elderly and Persons with Disabilities RSDM Category, PHAs must use the number of occupied elderly conventional public housing units to determine the maximum awards listed below:

— For 1 to 217 units occupied by elderly residents and persons with disabilities, the maximum grant award is $100,000.
— For 218 to 1,155 units occupied by elderly residents and persons with disabilities, the maximum grant award is $200,000.
— For 1,156 or more units occupied by elderly residents and persons with disabilities, the maximum grant award is $300,000.

(c) The maximum grant award is $100,000 for each RA.

(d) Nonprofit entities supported by residents or RAs/ROs are limited to $100,000 for each RA/RO. A non-profit may submit a single application for no more than three different RAs for a maximum grant award of $300,000.

(e) Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 2001 as defined in 24 CFR 1000.316. Tribes who have not previously received funds from the Department under the 1937 Housing Act should count housing units under management that are owned and operated by the Tribe and are identified in their housing inventory as of September 30, 2001 for either family or elderly/disabled units.

(4) *Homeownership Supportive Services (HSS).* A total of $11.2 million is allocated for this funding category.

(i) This funding category provides grants for a targeted group of public housing residents who were beneficiaries of previously awarded ROSS grants, and public housing Family Self-Sufficiency participants funded through operating subsidy. This funding category recognizes the improved earning capacity of residents participating in self-sufficiency programs and provides the support necessary to achieve increased opportunities for homeownership for public housing residents through housing choice vouchers. Under this funding category, PHAs will receive grants for counseling and other supportive services to achieve homeownership for public housing residents. PHAs will design and develop homeownership supportive services for public housing residents. These supportive services shall comprehensively address the needs identified by the PHA for public housing families to obtain homeownership.

(ii) Grants will be made to PHAs. Tribes/TDHEs are not eligible applicants for the HSS.

(iii) For the Homeownership Supportive Services grants, PHAs must use the number of occupied conventional family public housing units to determine the maximum grant amount in accordance with the categories listed below for families:

— For PHAs with 1 to 780 occupied family units, the maximum grant award is $300,000.
— For PHAs with 781 to 7,300 occupied family units, the maximum grant award is $400,000.
— For PHAs with 7,301 or more occupied family units, the maximum grant award is $500,000.

(5) *Neighborhood Networks (NN).* A total of $15 million is allocated for this funding category. Of this funding, $12 million will provide grants to PHAs to establish and operate new Neighborhood Networks Centers for public housing residents; and $3 million will provide funding to update and expand existing computer technology centers to become Neighborhood Networks centers. Computer centers operating in public housing developments or planned for public housing developments will receive assistance to secure the necessary space, computer hardware, software and peripherals necessary to operate self-sustaining NN centers. Conversion to NN centers will be part of the proposed grant for existing and new computer centers.

(i) For new NN centers, PHAs must use the number of occupied conventional family public housing units to determine the maximum grant amount in accordance with the categories listed below for families:

— For PHAs with 1 to 780 occupied family units, the maximum grant award is $150,000.
— For PHAs with 781 to 7,300 occupied family units, the maximum grant award is $250,000.
— For PHAs with 7,301 or more occupied family units, the maximum grant award is $450,000.

(ii) To update and expand new and existing technology centers, PHAs must use the number of occupied conventional family public housing units to determine the maximum grant amount in accordance with the categories listed below for families:

— For PHAs with 1 to 780 occupied family units, the maximum grant award is $50,000.
— For PHAs with 781 to 7,300 occupied family units, the maximum grant award is $100,000.
— For PHAs with 7,301 or more occupied family units, the maximum grant award is $200,000.

(6) Service Coordinator Renewals. A total of $20 million is allocated for this funding category.

(i) The Service Coordinator Renewal category provides grants to PHAs to address the needs of public housing residents who are elderly and persons with disabilities. Service coordinators help residents obtain supportive services that are needed to maintain independent living. Only renewals of FY 1995 Public Housing Elderly and Persons with Disabilities Service Coordinator grants will be funded under this ROSS competition; no applications for new Service Coordinator grants will be accepted.

(ii) These funds may only be used as follows:

— Renewal of existing Service Coordinator (SC) grants from FY 1995. This limitation is imposed to achieve Congressional intent to renew all service coordinator and congregate services grants.
— For the Elderly and Persons with Disabilities Service Coordinators category, award amounts cannot be higher than your highest funding and staffing level for any one-year period that was approved for their last funded Service Coordinator Grant. An increase of up to 2 percent over this amount will be allowed if supported by a narrative justification.

(D) *Transfer of Funds.* Funds for Neighborhood Networks centers may not be transferred to any other funding category within this NOFA. If all funds are not awarded in the RMBD, CB, HSS, SC funding categories, funds will be transferred to the RSDM funding category in this competition.

(E) *Number of Applications Permitted.* PHAs applying for Service Coordinator Renewal grants under this program section of the SuperNOFA may apply for one renewal grant and three additional grants in the NN, HSS and RSDM funding categories. RO applicants may submit a total of two applications for RMBD and RSDM, but not more than one application in any one funding category. Nonprofit applicants may submit a total of two applications for CB and RSDM, but not more than one application in any one funding category under this ROSS competition. Please read each funding category carefully for additional limitations.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of ROSS is to assist residents to become economically self-sufficient by providing supportive services and resident empowerment activities. This program is consistent with the Department's goal to most effectively focus resources on "welfare to work" and on independent living for the elderly and persons with disabilities. HUD is looking for applications that implement practical solutions within the grant term, and result in improved economic self-sufficiency for public or Indian housing residents. HUD seeks holistic solutions that involve the support of the entire community in providing self-sufficiency opportunities for residents. Therefore, HUD encourages you to involve elderly and persons with disabilities in activities that support self-sufficiency, such as child-care, mentoring, or after school care. This philosophy should be reflected in your proposed grant activities for all funding categories within this ROSS competition. Current experience with welfare to work programs has shown that a single approach or program does not always result in residents reaching desired self-sufficiency goals. The ROSS program permits proposed grant activities, which will build on or expand previous self-sufficiency efforts. Within the scope of the ROSS Program, proposed grant activities may be directed toward building on the foundation created by previous ROSS grants or other federal, State and local self-sufficiency efforts. Proposed grant activities may enhance self-sufficiency by providing opportunities for increased earning capacity; use of tools to encourage economic capacity (such as Individual Development Accounts); and action on resident goals to move toward homeownership. A description of each of the funding categories was provided in Section II of this program section. This section describes the eligible applicants and eligible activities of each funding category.

(B) *Definitions.*

City-Wide Resident Organization consists of members from Resident Councils, Resident Management Corporations, and Resident Organizations who reside in housing developments that are owned and operated by the same PHA within a city.

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Community Facility means a non-dwelling structure that provides space for multiple supportive services for the benefit of public or Indian housing residents and others eligible for the services provided. Services that may include but are not limited to:

(1) Child care;

(2) After-school activities for youth;

(3) Job training;

(4) Twenty/20 Education Communities (TECs) (formerly Campus of Learners) activities; and

(5) English as a Second Language (ESL) classes.

Contract Administrator means an overall administrator and/or a financial management agent that oversees the financial aspects of a grant and assists in the entire implementation of the grant. A signed Contractor Administrator Partnership Agreement must be included in your application. This agreement may be contingent upon you receiving a grant award and adherence to PHA or tribe/TDHE procurement policies. The contract administrator must assure that the financial management system and procurement procedures fully comply with 24 CFR part 84. Contract Administrators may be: Local Housing Agencies; community-based organizations such as Community Development Corporations (CDCs), churches, temples, synagogues, mosques; non-profits; State/Regional associations and organizations. Troubled PHAs are not eligible to be Contract Administrators.

Firmly Committed means that the amount of resources and their dedication to ROSS-funded activities must be explicit, in writing and signed by a person authorized to make the commitment or by a person who certifies the commitment is by an authorized body or person. This written agreement may be contingent upon receiving an award.

Elderly person means a person who is at least 62 years of age.

Jurisdiction-Wide Resident Organization means an incorporated nonprofit organization or association that meets the following requirements:

(1) Most of its activities are conducted within the jurisdiction of a single housing agency;

(2) There are no incorporated Resident Councils or Resident Management Corporations within the jurisdiction of the single housing agency;

(3) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(4) Public housing residents representing unincorporated Resident Councils within the jurisdiction of the single housing agency must comprise the majority of the board of directors.

Tribally Designated Housing Entity (TDHE) is an entity authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

Indian Tribe means any tribe, band, nation, or other organized group of a community of Indians, including any Alaska native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self Determination and Education Act of 1975.

Intermediary Resident Organizations means Jurisdiction-Wide Resident Organizations, City-Wide Resident Organizations, State-Wide Resident Organizations, Regional Resident Organizations, and National Resident Organizations.

National Resident Organization (NRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Person with disabilities means a person who:

(1) Has a condition defined as a disability in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

(3) Is determined to have a physical, mental, or emotional impairment which:

(a) Is expected to be of long-continued and indefinite duration;

(b) Substantially impedes his or her ability to live independently; and

(c) Is of such a nature that such ability could be improved by more suitable housing conditions.

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, solely on the basis of any drug or alcohol dependence.

The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

Program Coordinator is a person who is responsible for coordinating various proposed activities to ensure that their accomplishment will assist in achieving the overall grant goals and objectives.

Project is the same as "low-income housing project" as defined in section 3(b)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act).

Resident Association (RA) means any or all of the forms of resident organizations as they are defined elsewhere in this Definitions section and includes Resident Councils (RC), Resident Management Corporations (RMC), Regional Resident Organizations (RRO), Statewide Resident Organizations (SRO), Jurisdiction-Wide Resident Organizations, and National Resident Organizations (NRO).

Resident Council (RC) means (as provided in 24 CFR 964.115) an incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the PHA/HUD, and be eligible to receive funds for RC activities and stipends for officers for their related costs for volunteer work in public housing. (Although 24 CFR part 964 defines an RC as an incorporated or unincorporated nonprofit organization, HUD requires RC applicants for ROSS grants to be registered with the State at the time of application submission.) The following also applies to resident councils:

(1) The RC must adopt written procedures such as by-laws, or a constitution, which provides for the election of residents to the governing board by the voting membership of the public housing residents. The elections must be held on a regular basis, but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the percentage of voting membership that must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(2) The RC must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose names appear on a lease for the unit in the public housing that the resident council represents.

(3) The RC may represent residents residing in:

(a) Scattered site buildings in areas of contiguous row houses;

(b) One or more contiguous buildings;

(c) A development; or

(d) A combination of the buildings or developments described above.

Regional Resident Organization (RRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) The RRO is regional (i.e., not limited by HUD Areas);

(2) The RRO has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Resident Management Corporation (RMC) (see 24 CFR 964.7, 964.120) means an entity that consists of residents residing in public housing and must have each of the following characteristics in order to receive official recognition by the PHA and HUD:

(1) The RMC shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) The RMC may be established by more than one RC, so long as each such council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation.

(3) The RMC shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) The RMC's by-laws shall require the Board of Directors to include resident representatives of each RC involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall; and term limits if desired;

(5) The RMC's voting members shall be heads of households (any age) and other residents at least 18 years of age and whose names appear on the lease of a unit in public housing represented by the RMC;

(6) Where an RC already exists for the development, or a portion of the development, the RMC shall be approved by the RC board and a majority of the residents. If there is no RC, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) The RMC may serve as both the RMC and the RC, so long as the corporation meets the requirements of 24 CFR part 964 for an RC.

Resident Organization (RO) for tribal entities means an incorporated or nonprofit tribal organization or association that meets each of the following criteria:

(1) It shall consist of residents only, and only residents may vote;

(2) If it represents residents in more that one development or in all of the developments of the tribal/TDHE community, it shall fairly represent residents from each development that it represents;

(3) It shall adopt written procedures providing for the election of specific officers on a regular basis; and

(4) It shall have democratically elected a governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the tribal RO represents.

Secretary means the Secretary of Housing and Urban Development.

Site-Based Resident Associations means Resident Councils and Resident Management Corporations.

Statewide Resident Organization (SRO) means a Site-Based incorporated nonprofit organization or association for public housing that meets the following requirements:

(1) The SRO is Statewide;

(2) The SRO has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the State must comprise the majority of the Board of Directors.

Tribal/TDHE Resident Group means tribal/TDHE resident groups that are democratically elected groups such as IHA-wide resident groups, area-wide resident groups, single development groups, or resident management corporations (RCMs).

(C) *Resident Management and Business Development (RMBD).* This funding category makes grants to establish and strengthen organizational capacity for site-based resident organizations that do not have the capacity to administer a welfare to work program or conduct management activities, conduct training or implement business development.

(1) *Eligible applicants.* Site-Based Resident Associations (RAs), tribes/TDHES, tribes/TDHEs that partner with tribal ROs or tribal RMCs and City-Wide Resident Organizations (CWROs). If you are an RA/RO that is a beneficiary or recipient of proposed grant activities by a CWRO/TDHE, then you cannot also apply under this category. You may only submit one application under this funding category.

(2) *Eligible participants.* Program participants must be residents of conventional public housing or Indian housing programs. You must provide a certification that at least 51 percent of those served by your proposed activities are residents affected by welfare reform.

(3) *Eligible Activities.* Funding is limited to the following activities below:

(a) Training related to resident-owned business, cooperative development, resident property management and technical assistance for job training and placement in housing developments. Proposed grant activities may include but are not limited to: feasibility and market studies; development of business plans; outreach activities; and innovative financing methods including revolving loan funds and the development of credit unions; and legal advice in establishing a resident-managed business entity or cooperative.

(b) Establishing and funding revolving loan funds. Revolving loan funds cannot be used for acquisition, disposition, or physical development;

(c) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a development;

(d) Training residents with respect to fair housing requirements; and

(e) Gaining assistance in negotiating management contracts and designing a long-range planning system.

(f) Providing social support needs (such as self-sufficiency and youth initiatives) including:

(g) Feasibility studies to determine training and social services needs;

(h) Training in management-related trade skills, computer skills, and similar skills;

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(i) Management-related employment training and counseling including job search assistance, job development assistance, job placement assistance, and follow up assistance;

(j) Supportive services including: child care services; educational services, remedial education, literacy training, ESL instruction, assistance in attaining a GED; vocational training including computer training; health care outreach and referral services; meal services for the elderly or persons with disabilities; personal assistance to maintain hygiene/appearance for the elderly or persons with disabilities; housekeeping assistance for the elderly or persons with disabilities; transportation services; congregate services for the elderly or persons with disabilities; and case management;

(k) Training for programs such as childcare, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(l) Training programs on health, nutrition, safety and substance abuse. Food costs that are directly attributable to the nutrition and health training are eligible grant expenditures. These are not food costs associated with entertainment.

(m) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, and goal planning. The workshops can be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire, and Big Brother/Big Sisters. Proposed activities may include training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of youth, improving youth initiatives that are currently active, and training youth, housing agency staff, resident management corporations and resident councils or resident organizations on youth initiatives and program activities;

(n) Physical improvements to facilities at public or tribal housing developments to provide space for self-sufficiency activities for residents, i.e. to provide cosmetic improvements and repairs to space to conduct community activities; or to expand existing community space for your proposed ROSS activities or modifications for accessibility for persons with disabilities. Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements. Your physical improvements may not exceed 50 percent of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments; all renovations must meet appropriate accessibility requirements, including Section 504 requirements at 24 CFR part 8, Architectural Barriers Act at 24 CFR part 40, the Americans with Disabilities Act and the Fair Housing Act.

(i) The renovation, conversion, or combination of vacant dwelling units in a PHA or tribal development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvements.

(ii) The renovation of existing common areas in a PHA or tribal development to accommodate the provision of supportive services.

(iii) The renovation or repair of facilities located near the premises of one or more PHA or tribal developments to accommodate the provision of supportive services.

(iv) If renovation, conversion, or repair is done off-site, the PHA, tribe or owner must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation.

(4) *Ineligible Resident Management and Business Development Activities and Costs.*

(a) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel performed in connection with implementing the Work Plan. A travel budget limit of a maximum of $5,000 is allowed to support travel expenses. These travel expenses must directly pertain to travel related to work plan implementation.

(b) Purchase or rental of land.

(c) Activities not directly related to the welfare-to-work initiatives (*e.g.*, lead-based paint testing and abatement and operating capital for economic development activities).

(d) Purchase of any vehicle (car, van, bus, etc.).

(e) Payment of salaries for routine project operations, such as security and maintenance, or for applicant staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the Resident Management and Business Development grant activities or coordinate on-site social services.

(f) Payment of fees for lobbying services.

(g) Any expenditures that are fraudulent, wasteful or otherwise incurred contrary to HUD or OMB directives.

(h) Any cost otherwise eligible under this program section of the SuperNOFA for which funds are being provided from any other source.

(i) Entertainment equipment such as televisions, radios, stereos, and VCRs. An exception to this item may be granted by the HUD Field or DPONAP Office if funding is being utilized specifically for the purposes of establishing a business directly related to radio, television or film or some other form of technical communication, and equipment is being utilized for training of residents, ROs or RAs. All such exceptions must be authorized in writing by the HUD Field or DPONAP Office before purchases may be made.

(j) The cost of application preparation is not eligible.

(5) *Supporting Information.* The following information may be useful in developing proposed grant activities and costs:

(a) *Training.* Training activities may include training on HUD regulations and policies governing the operation of low-income public or Indian housing including contracting/procurement regulations; financial management; job and business development training; capacity building to develop the necessary skills to assume management responsibilities at the project and property management; and training in accessing other funding sources.

(b) *Hiring trainers or other experts.* Resident grantees must ensure that all training is provided by a qualified public housing or management specialist (Consultant/Trainer), HUD Headquarters, Field or DPONAP staff, or the local PHA or tribe /TDHE. A qualified trainer is one who has a high degree of working program knowledge. To ensure the successful implementation of the grant Work Plan activities, you are required to determine the need to contract for outside consulting/training services. You and the PHA or tribe/TDHE must jointly select and approve the consultant/trainer. Your application should make maximum use of your PHA, non-profit, or other Federal, State, or local government resources for technical assistance and training needs. The amount allowed for hiring an individual consultant for this purpose shall not exceed 30 percent of your total grant amount or $30,000, whichever is less. The amount available for all consultants and contracts should not exceed 50 percent of your grant amount or $50,000, whichever is less. HUD Field or DPONAP Offices will monitor this process to ensure compliance with program and OMB requirements, and particularly the requirement for competitive bidding. You must use performance-based contracting, which requires that fees be paid in exchange for goods and services actually delivered. For example, a trainer would be paid for the number of residents that were trained, *i.e.*, performance, regardless of the maximum dollar amount quoted in the contract.

(c) *Stipends.* Trainees and program participants of an RA, RO or CWRO, may receive stipends for participating in or receiving training under Resident Management to cover reasonable costs related to participation in training and other activities in your program, subject to the availability of funds. The stipends should be used for additional costs incurred during the training programs, such as childcare and transportation costs. The cost of stipends may not exceed $200 per month per trainee without written HUD Field or DPONAP Office authorization.

(d) *Reimbursement of Reasonable Expenses.* Reimbursement of reasonable expenses incurred by Officers and Board members in the performance of their fiduciary duties and/or training related to the performance of their official duties.

(e) *Travel.* Travel directly related to the successful completion of your required Work Plan adhere to the travel policy that sets travel costs at a maximum amount of $5,000 per RA or RO without special HUD approval.

(f) *Child-Care Expenses.* Childcare expenses for individual staff, board members, or residents in cases where those who need child care are involved in training-related activities associated with your grant activities.

(g) *Costs incurred by a RA or RO in applying for 501(c) tax-exempt status with the Internal Revenue Service.* Please refer to the Internal Revenue Service (IRS) Publication 557, which describes the requirements for section 501(c) tax exempt organizations and list the applicable forms required.

(h) *Administrative costs.* These costs are necessary for the implementation of your grant activities. Administrative costs are not to exceed 20 percent of the grant. Appropriate administrative costs include, but are not limited to, the following reasonable costs or activities:

(i) *Space and equipment.* Maintenance, utility costs, postage, building lease/rental costs, purchase or lease of telephone, computer, printing, copying, and sundry non-dwelling equipment (such as office supplies, software, and furniture). If appropriate, you may also include rental or lease of a car, van, or bus by resident grantees to attend training. You must justify the need for this equipment or space based on services being delivered in relationship to implementing your approved grant activities;

(6) *Grant term.* The grant term for Resident Management and Business Development grants is thirty-six months from the execution date of your grant agreement.

(D) *Capacity Building.*

(1) *Eligible applicants.* (a) Intermediary Resident Organizations (IROs) on behalf of public or Indian housing residents, which include Public Housing Site-Based Resident Councils, Resident Organizations and Resident Management Corporations, may apply for Capacity Building (CB) grants. IROs include National Resident Organizations, Statewide Resident Organizations, Regional Resident Organizations, City-Wide Resident Organizations, and Jurisdiction-Wide Resident Organizations.

(b) Non-profits that operate as associations or networks that administer programs that benefit public or Indian housing resident organizations are also eligible for this funding category.

(2) Eligible activities. Eligible activities for CB grants may include, but are not limited to:

(a) Training for Resident Advisory Board Members and Resident representatives that serve on the PHA Board of Directors, and for resident Board members in community organizing, Board development, and leadership training;

(b) Assessing the feasibility of training existing resident groups for resident management or for a specific resident management project;

(c) Assisting in the creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter;

(d) Developing the management capabilities of existing resident organizations; and

(e) Determining the feasibility of homeownership by residents, including assessing the feasibility of other housing (including HUD-owned or held single or multi-family) affordable for purchase by residents.

(3) *Ineligible Activities.* Ineligible activities are the same as those listed in Section III(C)(4) of this program section of the SuperNOFA, above.

(a) In addition, physical development activities are not eligible for funding under CB grants.

(b) The cost of application preparation is not eligible.

(4) *Administrative costs* may include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities. Administrative costs must not exceed 20 percent of the total grant costs.

(5) *Grant term.* The grant term for Capacity Building grants is thirty-six months from the execution date of the grant agreement.

(E) *Resident Service Delivery Models (RSDM).*

(1) *Eligible Applicants.* (a) Family. This funding category provides grants to PHAs, tribes/TDHEs, resident management corporations, resident councils, resident organizations, and nonprofit entities supported by residents, to enable them to establish and implement comprehensive programs that assist residents in becoming self-sufficient.

(b) *Elderly and Persons with Disabilities.* PHAs, tribes/TDHEs and non-profits supported by a duly elected resident council are the only eligible applicants in providing supportive services for the elderly and persons with disabilities.

(c) IROs with 501(c) status may apply as non-profit entities under this funding category.

(2) *Number of RSDM Applications Permitted.*

(a) *General.* A PHA or tribe/TDHE must submit an application either for a family or an elderly grant. ROs or RCs must submit one application for a family grant; and non-profits may submit one application for a family or elderly grant representing up to three public or Indian housing resident groups.

(b) *Joint applications.* Two or more applicants may join together to submit a joint application for proposed grant activities. Joint applications must designate a lead applicant. All parties in a joint application (lead or non-lead) are considered to be applying for ROSS and are therefore subject to the limit of one ROSS application per applicant, with the exception of those Public Housing Service Coordinator renewal applicants that may also apply in one additional ROSS category. Both lead and non-lead applicants are subject to threshold requirements. Joint applications may include PHAs, RAs, IROs, Tribes/TDHEs, and nonprofit entities on behalf of resident organizations. Joint

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applications must also provide evidence of resident support. The maximum funding for joint applications cannot exceed the sum of the individual grants as specified above. Any eligible applicant can serve as a lead applicant.

(3) *Eligible participants.* Program participants must be residents of conventional public or Indian housing. You must provide a certification that at least 51 percent of those served by your proposed activities are residents affected by welfare reform.

(4) *Eligible Activities.* Funds may be used for the activities described below for the family category.

(a) *Program Coordinator.* You are encouraged to include a Program Coordinator for either proposed family or elderly RSDM activities for the entire term of your grant. A Program Coordinator is a person who is responsible for coordinating various proposed activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

(b) *Physical improvements.* Physical improvements to provide space for self-sufficiency activities for residents (*i.e.* to provide cosmetic repairs for space to conduct community activities; or to expand existing community space for proposed ROSS activities) or modification for accessibility for persons with disabilities. Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements. Physical improvements may not exceed 50 percent of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments. All renovations must meet appropriate accessibility requirements, including Section 504 requirements at 24 CFR part 8, Architectural Barriers Act at 24 CFR part 40, the Americans with Disabilities Act and the Fair Housing Act. Physical improvements include the following:

(i) The renovation, conversion, or combination of vacant dwelling units in a housing development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvement;

(ii) The renovation of existing common areas in a housing development to accommodate the provision of supportive services is an eligible activity for physical improvements;

(iii) The renovation or repair of facilities located near the premises of one or more housing developments to accommodate the provision of supportive services is an eligible activity for physical improvements;

(iv) If renovation, conversion, or repair is done off-site, you must provide documentation that you have control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation or other appropriate documentation.

(c) *Entrepreneurship training.* Entrepreneurship training includes literacy training, computer skills training, and business development planning.

(d) *Entrepreneurship development.* Entrepreneurship development includes entrepreneurship training curriculum and entrepreneurship courses.

(e) *Micro/Loan fund.* Developing a strategy for establishing a revolving micro/loan fund and/or capitalizing a loan fund, including licensing, bonding, and insurance needed to operate a business. Revolving loan funds cannot be used for acquisition, disposition, or physical development.

(f) *Developing credit unions.* Developing a strategy to establish and/or create on-site credit union(s) to provide financial and economic development initiatives to PHA residents. (RSDM grant funds cannot be used to capitalize a credit union.) The credit union can support the normal financial management needs of the community (*i.e.*, check cashing, savings, consumer loans, micro-businesses money management, home buyer counseling, educational loans, and other revolving loans).

(g) *Individual development accounts.* Activities or programs that encourage residents to contribute to matched savings accounts known as Individual Development Accounts (IDAs). These programs include financial counseling and education activities. (RSDM funds cannot be used as matching funds for the actual savings account).

(h) *Employment training and counseling* (*e.g.*, job training, establishing registered apprenticeship programs, preparation and counseling, job search assistance, job development and placement, and supportive services to support job training and apprenticeship activities).

(i) *Employer linkage and job placement.*

(j) *Enhanced self-sufficiency programs or work initiatives.* These programs will reinforce initial welfare to work programs and will focus on efforts to increase the earning capacity of residents. With a goal of increased resident earning capacity, additional efforts may be undertaken to establish or develop programs through job training, employment training and counseling, employer linkages and job placement, or other welfare to work initiatives. Activities may include but are not limited to assisting eligible residents in: securing better-paying jobs, seeking an improved work environment, preparing for work in a new job category, or obtaining enhanced job-related skills and educational training.

(k) *Family only—supportive services activities.* The provision of services to assist eligible residents to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job training or educational programs. Eligible supportive services may include, but are not limited to:

(1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(2) Computer-based educational opportunities, skills training, and entrepreneurial activities;

(3) Homeownership training and counseling, development of feasibility studies and preparation of homeownership plans/proposals;

(4) Education including but not limited to: remedial education; computer skills training; career counseling; literacy training; assistance in the attainment of certificates of high school equivalency; two-year college tuition assistance; trade school assistance; youth leadership skills and related activities (activities may include peer leadership roles training for youth counselors, peer pressure reversal, life skills, and goal planning). Academic support shall not be limited to TANF recipients;

(5) Youth mentoring of a type that mobilizes a potential pool of role models to serve as mentors to public housing youth. Mentor activities may include after-school tutoring, help with problem resolution issues, illegal drugs avoidance, job counseling, or mental health counseling;

(6) Transportation costs, as necessary to enable any participating family member to receive available services to commute to his or her training or supportive services activities or place of employment;

(7) Personal well-being (e.g., family/parental development counseling, parenting skills training for adult and teenage parents, self-development counseling, support groups/counseling for victims of domestic violence, and/or families with a mentally ill member, etc.);

(8) Supportive health care services (e.g., outreach and referral services to substance and alcohol abuse treatment and counseling, mental health services, wellness programs). Food costs that are directly attributable to the actual nutrition and health training are eligible grant expenditure. These are not food costs associated with entertainment;

(9) Contracting for case management services or employment of case managers, which must ensure confidentiality about resident's disabilities;

(l) *Administrative costs.* Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, quality assurance, travel, and utilities. Administrative costs must not exceed 20 percent of the total grant costs;

(m) *Stipends.* No more than $200 per participant per month of the grant award may be used for stipends for active trainees and program participants to cover the reasonable costs related to participation in training and other activities.

(5) *Elderly and persons with disabilities"eligible activities.* Supportive services activities for elderly and persons with disabilities activities may include, but are not limited to:

(a) A Program Coordinator (See Section III (E) (4) (a) for a description);

(b) Meal service adequate to meet nutritional need;

(c) Assistance with daily activities;

(d) Housekeeping aid;

(e) Transportation services;

(f) Health and nutrition programs, preventive health education, referral to community resources;

(g) Personal emergency response;

(h) Congregate services—includes supportive services that are provided in a congregate setting at a conventional public housing development;

(i) Case management;

(6) *Administrative costs.* Administrative costs, which may include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities. Administrative costs must not exceed 20 percent of the total grant costs.

(7) *Ineligible Activities.* Activities for which costs are ineligible for funding under the RSDM funding category include:

(a) Elderly Service Coordinator salary funding;

(b) Payment of wages and/or salaries to participants receiving supportive services and/or training programs, except that grant funds under family RSDM may be used to hire a resident(s) as a Program Coordinator or to provide training program activities;

(c) Purchase or rental of land;

(d) New construction, materials, costs;

(e) Purchase of vehicles; and

(f) Cost of application preparation is not eligible.

(8) *Grant term.* The grant term for Resident Service Delivery Models grants is thirty-six months from the execution date of the grant agreement.

(F) *Homeownership Supportive Services (HSS).* This funding category makes grants to PHAs for homeownership counseling and other supportive services for public housing residents who have participated in self-sufficiency programs. HSS activities including housing counseling are a missing link for working public housing residents to secure homeownership. HSS will build on the foundation of previous self-sufficiency activities to enhance the economic benefit for residents. Through these self-sufficiency programs the improved earning capacity of residents can be recognized as a foundation for homeownership. These grants will provide public housing residents with critical preparation for moving from renting to homeownership. In addition, HSS grants will create a pool of residents adequately prepared to pursue homeownership through the housing choice voucher program or other local homeownership programs. Therefore, HSS supports the existing section 8 homeownership program activities.

(1) *Eligible Applicants.* This funding category provides grants to PHAs for homeownership supportive services for public housing residents that were recipients of previously awarded ROSS grants and participates in the public housing Family Self Sufficiency Program funded from the operating fund. Tribes/TDHEs are not eligible applicants for HSS.

(2) *Eligible participants and requirements.* Program participants must meet all of the following conditions:

(a) This funding category is targeted to the population of public housing residents that were recipients/beneficiaries of previously awarded ROSS grants between FY 1999 and FY 2000, and participates in the public housing Family Self Sufficiency Program funded from the operating fund.

(b) Program participants must be residents of conventional public housing. As the applicant you must provide a statement that all of those served are residents affected by welfare reform. This includes those residents who are currently eligible, currently receiving, or have received within the preceding five years, assistance or services funded under TANF, SSI, or food stamp program.

(c) Where the number of targeted residents is not sufficient, the PHA may request a waiver to include conventional public housing residents, who participated in State and/or local self sufficiency programs in order to address homeownership needs in the local area.

(d) ROSS families or PH FSS residents to be targeted for proposed grant activities must meet the following eligibility requirements: Demonstrate an increase over a base year in earned income of at least 35 percent; achieve a level of income within the acceptable range for the local minimum income for home purchases in the local area; and currently reside in public housing.

(e) PHAs must have a Section 8 Homeownership program as stated in 24 CFR 982.625 *et seq.* (65 FR 55163). Those PHAs that have not elected to provide assistance under the voucher homeownership option (see final rule published September 12, 2000, 65 FR 55134), will be required to make such option available to eligible applicants who receive a voucher.

(f) In applying for HSS, applicants will be required to offer a minimum of 10 housing choice vouchers per year for eligible residents described above.

(3) *Eligible Activities.* Under this funding category, PHAs will design and develop homeownership supportive services for public housing residents. These supportive services shall comprehensively address the needs identified by the PHA for public housing families to obtain homeownership.

(a) Eligible activities shall include but not be limited to: Pre-purchase homeownership counseling and training; which may include training on such subjects as credit and financial management; credit repair; housing search; how to finance purchase of a home; fair housing; Individual Development Accounts, Real Estate Settlement Procedures Act (RESPA); and home maintenance.

(b) *Program Coordinator.* You are encouraged to include a Program Coordinator for activities for the entire term of your grant. A Program

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Coordinator is a person who is responsible for coordinating various proposed activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

(c) *Physical improvements.* Physical improvements to facilities at public or tribal housing developments to provide space for self-sufficiency activities for residents, i.e. to provide cosmetic improvements and repairs to space to conduct community activities; or to expand existing community space for your proposed ROSS activities or modifications for accessibility for persons with disabilities. Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements. Your physical improvements may not exceed 50 percent of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments; All renovations must meet appropriate accessibility requirements, including Section 504 requirements at 24 CFR part 8, Architectural Barriers Act at 24 CFR part 40, the Americans with Disabilities Act and the Fair Housing Act.

(i) The renovation, conversion, or combination of vacant dwelling units in a PHA or tribal development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvements.

(ii) The renovation of existing common areas in a PHA or tribal development to accommodate the provision of supportive services.

(iii) The renovation or repair of facilities located near the premises of one or more PHA or tribal developments to accommodate the provision of supportive services.

(iv) If renovation, conversion, or repair is done off-site, the PHA, tribe or owner must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation.

(d) PHAs are strongly encouraged to partner with HUD-approved housing counseling agencies, or other agencies that provide housing counseling services.

(e) *Administrative Costs.* These costs are necessary for the implementation of your grant activities. Administrative costs are not to exceed 10 percent of the grant. Appropriate administrative costs include, but are not limited to, the following reasonable costs or activities:

(f) *Space and equipment.* Maintenance, utility costs, postage, building lease/rental costs, purchase or lease of telephone, computer, printing, copying, and sundry non-dwelling equipment (such as office supplies, software, and furniture). You must justify the need for this equipment or space based on services being delivered in relationship to implementing your approved grant activities.

(4) *Grant Term.* The grant term for Homeownership supportive services grants is thirty-six months from the execution date of your grant agreement.

(G) *Neighborhood Networks.* This funding category provides grants to PHAs to establish and/or operate Neighborhood Networks Centers that use computer technology and telecommunications or to update and expand existing computer centers. These computer centers will function as self-sustaining Neighborhood Networks Centers that: Increase the use of computer technology; reduce welfare dependency; promote economic self sufficiency; improve human development; provide opportunities for job training and development; expand educational opportunities for residents; develop access to health and nutrition information; and empower the clients they serve. All awardees will be required to complete the NN Business Plan and receive designation as a NN center within the grant term as part of proposed grant activities.

(1) *Eligible Applicants.* This funding category provides grants to PHAs. Tribes/TDHEs are not eligible applicants for NN under this funding category.

(2) *Eligible Activities.* Under this funding category, funds may be used for the following activities for either new NN or to update and expand existing computer centers to become NN:

(a) *Program Coordinator.* You are encouraged to include a Program Coordinator for NN activities for the entire term of your grant. A Program Coordinator is a person who is responsible for coordinating various proposed activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

(b) *Physical improvements.* Physical improvements must directly relate to providing space for Neighborhood Networks Center activities for residents, including modifications for accessibility for persons with disabilities. Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements. Your physical improvements may not exceed 20 percent of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments; All renovations must meet appropriate accessibility requirements, including Section 504 requirements at 24 CFR part 8, Architectural Barriers Act at 24 CFR part 40, the Americans with Disabilities Act and the Fair Housing Act.

(i) The renovation, conversion, or combination of vacant dwelling units in a PHA or tribal development to create common areas to accommodate the provision of a NN and supportive services is an eligible activity for physical improvements.

(ii) The renovation of existing common areas in a PHA development to accommodate the provision of a NN and supportive services.

(iii) The renovation or repair of facilities located near the premises of one or more PHA or tribal developments to accommodate the provision of supportive services.

(iv) If renovation, conversion, or repair is done off-site, the PHA, tribe or owner must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation.

(3) *Maintenance and insurance costs.* Include installing, training, and maintaining the hardware and software as well as insurance coverage for the space and equipment. Costs of computer hardware and software necessary to accommodate the needs of persons with disabilities are an eligible cost for this funding category.

(4) *Online computer center coordinator.* Costs for implementing the Neighborhood Networks Center and coordinating with social and supportive services staff.

(5) *Security and related costs.* Includes space and minor refitting, locks, and oversight.

(6) *Resident development and training courses.* These courses may be on disk, through the Web, and/or presented live.

(7) *Distance Learning Equipment.* Distance learning equipment, including the costs for video casting and purchase/lease/rental of distance learning equipment.

(8) *Administrative Costs.* Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities. Administrative costs must not exceed 20 percent of the total grant costs.

(9) *Grant Term.* The grant term for Neighborhood Networks grants is thirty-six months from the execution date of the grant agreement.

(H) *Service Coordinators for Elderly and Persons with Disabilities.*

(1) *Eligible Applicants.* This funding category provides grants to PHAs with developments designated for the elderly and persons with disabilities, which were initially awarded in FY 1995. Tribes/TDHEs are not eligible for public housing service coordinator renewal grants.

(2) *Joint Applications.* Two or more PHAs may join together to share a service coordinator and to submit joint applications. Joint applicants must designate a lead applicant. All joint applicants must be existing service coordinator grantees.

(3) *Eligible Developments.* To be eligible, a development must have elderly residents and/or non-elderly residents with disabilities who together total at least 25 percent of the building's residents.

(4) *Eligible Activities.* Under this funding category, funds may be used for the following activities:

(a) *Service Coordinator.* To pay for the salary, fringe benefits, and related administrative costs for employing a service coordinator. A service coordinator is a social service staff person hired or contracted by the PHA. The coordinator is responsible for assuring that elderly residents, especially those who are frail or at risk, and those non-elderly residents with disabilities are linked to the supportive services they need to continue living independently in that development. The service coordinator, however, may not require any elderly person or person with disabilities to accept the supportive services. For the purposes of this program, a service coordinator is any person who is responsible for one or more of the following functions:

(i) Working with community service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(ii) Establishing a system to monitor and evaluate the delivery, impact, effectiveness and outcomes of supportive services under this program;

(iii) Coordinating this program with other independent living or self-sufficiency, education and employment programs;

(iv) Performing other duties and functions to assist residents to remain independent, and to prevent unnecessary institutionalization; and

(v) Mobilizing other national and local public/private resources and partnerships.

(b) *Administrative Costs.* Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities. Administrative costs must not exceed 20 percent of the total grant costs.

(5) *Ineligible Activities/Costs.* (a) Applicants may not use these monies to replace current funding from other sources for a Service Coordinator or for some other staff person who performs service coordinator functions; and

(b) The cost of application preparation is not eligible.

(6) *Grant Term.* The grant term for Elderly or Persons with Disabilities Service Coordinator grants is 12 months.

IV. Program Requirements

The requirements of this section are applicable to all applicants, and grantees under this announcement of funding availability.

(A) *Compliance with Fair Housing and Civil Rights Laws.* Your application must meet all the applicable threshold requirements found in Section II (B) of the General Section of the SuperNOFA, as well as the following requirements.

(B) *Affirmatively Furthering Fair Housing.* You must adhere to the requirements as provided in Section II(D) of the General Section of the SuperNOFA.

(C) *Conducting Business In Accordance With Core Values and Ethical Standards.* All applicants shall develop and maintain a written code of conduct that reflects Core Values. See Section II(B)(2) of the General Section of the SuperNOFA for requirements.

(D) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* The Department of Housing and Urban Development (HUD) is committed to ensuring that small businesses, small disadvantaged businesses and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. See Section II (F) of the General Section of the SuperNOFA for requirements.

(E) *Economic Opportunities for Low and Very Low Income Persons (Section 3).* You must adhere to the requirements as provided in Section II (E) of the General Section of the SuperNOFA.

(F) *Certifications and Assurances.* You must comply with the certifications and assurances contained in Section II (G) of the General Section of the SuperNOFA.

(G) *Applicant Internet Access.* Prior to the initial draw down, all grantees must have secured online access to the Internet as a means to communicate with HUD on grant matters. Tribes/TDHEs awardees may submit a waiver request to the Office of Native American Programs for this requirement if Internet access cannot be obtained.

(H) *ROSS Evaluation and Assessment.* All applicants selected for award must be willing to participate in the evaluation and assessment that HUD intends to conduct for the ROSS Program. At grant award HUD will provide additional information on the evaluation and assessment for applicants who receive awards.

(I) *ROSS Performance Measures.* All applicants selected for award must use ROSS Performance Measures in grant reporting for all awards. A comprehensive list of Performance Measures is provided in Appendix A to this NOFA. At grant award HUD will provide additional information on the Performance Measures for applicants who receive awards.

V. Application Selection Process

(A) Application Selection Process for Resident Management and Business Development. Applicants for Resident Management and Business Development grants are required to address application submission requirements, but are not required to address selection factors. Eligibility will be determined by applications that meet the threshold requirements of Section VI of this program section of the SuperNOFA. HUD will accept for funding a maximum of the first five eligible applications from each of the ten federal regions and DPONAP on a first-come, first-serve basis for this SuperNOFA. Any funds remaining after making awards to the first five eligible applications from each region and DPONAP will be awarded to the next eligible application from each region, then the next, and so forth until funds are exhausted. If sufficient funds are not available in any round to fund an eligible application from each region and DPONAP, the eligible applications will then be funded in the order in which they were received regardless of region. Where physical development

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activities are proposed, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to award. The results of the environmental review may require that proposed activities be modified or proposed sites rejected. If all funds are not awarded in this funding category, available funds may be transferable to the RSDM funding category in this ROSS competition.

(B) Application Selection Process for Capacity Building. Applicants for Capacity Building grants are required to address application submission requirements but are not required to address selection factors. Eligibility will be determined by applications that meet the threshold requirements of Section VI of this program section of the SuperNOFA. HUD will accept for funding the first two eligible applications from each of the ten federal regions and DPONAP on a first-come, first-served basis for this SuperNOFA. Any funds remaining after making awards to the first two eligible applications from each region and DPONAP will be awarded to the next eligible application from each region and DPONAP, then the next, and so forth until funds are exhausted. If sufficient funds are not available in any round to fund an eligible application from each region and DPONAP, the eligible applications will then be funded in the order in which they were received regardless of region and DPONAP. If all funds are not awarded in this funding category, available funds may be transferable to the RSDM funding category in this ROSS competition.

(C) Application Selection Process for Resident Service Delivery Models.

(1) Three types of reviews will be conducted: a screening to determine if your application submission is complete and on time; a threshold review to determine applicant eligibility; and a technical review to rate your application based on the five rating factors provided in this section. A minimum score of 70 is required to be considered for funding. If you are not the PHA or Tribe/TDHE, where physical development activities are proposed, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to award. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

(2) The selection process is designed to achieve geographic diversity of grant awards throughout the country. HUD will first select the highest ranked application from each of the ten federal regions and DPONAP for funding. After this "round," HUD will select the second highest ranked application in each of the ten federal regions and DPONAP for funding (the second round). HUD will continue this process with the third, fourth, and so on, highest ranked applications in each federal region and DPONAP until the last complete round is selected for funding. If available funds exist to fund some but not all eligible applications in the next round, HUD will make awards to those remaining applications in rank order regardless of region and DPONAP and will fully fund as many as possible with remaining funds. Additional funding rounds to utilized transferred funding will be awarded utilizing the process described above.

(3) Factors for Award Used to Evaluate and Rate RSDM Applications. The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA. The application kit contains a certification that must be completed for the applicant to be considered for RC/EZ/EC bonus points and a listing of federally designated RCs, EZs and ECs. In addition, a list of RCs, EZs, and ECs is attached to the General Section of the SuperNOFA as Appendix A–2 and is also available from the SuperNOFA Information Center, and the HUD web site, *www.hud.gov*. A RSDM application must receive a total of 70 points out of 100 to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *Proposed Program Staffing.* (7 Points)

(a) *Experience.* (4 Points) The knowledge and experience of your proposed project director and staff, including the day-to-day program manager, sub-recipients and partners in planning and managing programs for which funding is being requested. Your experience will be judged in terms of recent, relevant and successful experience to undertake eligible program activities.

(b) *Sufficiency.* (3 Points) You and your sub-recipients and partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including your readiness and ability to immediately begin the proposed work program. To demonstrate sufficiency, you must submit the proposed number of staff years to be allocated to your program by employees and experts, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to your program, and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management.* (7 Points)

(a) *Program Administration.* (4 Points) The soundness of the proposed management of your proposed RSDM program. To receive a high score, you must provide a comprehensive description of your project management structure. Your narrative must provide a description of how any co-applicants, sub-grantees, and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of your proposed program.

(b) *Fiscal Management.* (3 Points) The soundness of your proposed fiscal management. To receive a high score you must provide a comprehensive description of the fiscal management structure, including, but not limited to, budgeting, fiscal controls, and accounting. The application must identify the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record.* (6 Points) To receive a high score, you must demonstrate your (or your proposed Administrator's) program compliance and successful implementation of any resident self-sufficiency, enhanced self-sufficiency program, welfare-to-work initiative, or economic independence oriented grants (including those listed below) awarded to you or overseen by your Administrator. If you or your Administrator has no prior experience in operating programs that foster resident self-sufficiency, enhanced self-sufficiency program, welfare-to-work initiative, or economic independence you will receive a score of 0 on this factor. Your past experience may include, but is not limited to, administering the following grants: Family Investment Center Program; Youth Development Initiative under Family Investment Center Program; Youth Apprenticeship Program; Apprenticeship Demonstration in the Construction Trades Program; Urban Youth Corps Program; HOPE I Program; Public Housing Service Coordinator Program; Public Housing Drug Elimination Program; Tenant Opportunities Program; Economic Development and Supportive Services; Indian Housing Drug Elimination Program; and Youth Sports Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding your proposed program activities to address a documented problem in the target area. You will be evaluated on the extent to which they document a critical level of need in the development or your proposed activities in the area where activities will be carried out. In responding to this factor, you will be evaluated on:

(1) *A Needs Assessment Document.* (18 Points) HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document.

(a) To obtain maximum points for Family RSDM applications, this document must contain statistical data, which provides:

(i) A thorough socioeconomic profile of the eligible residents to be served by your program, in relationship to PHA-wide and national public and assisted housing data on residents who are on TANF, SSI benefits, or other fixed income arrangements; in job training, entrepreneurship, or community service programs; and employed;

(ii) Specific information on training, contracting, and employment through the PHA or tribe/TDHE;

(iii) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use. For enhanced self-sufficiency programs, you must describe specific baseline elements upon which goals will be measured;

(iv) A description of the goals, objectives, and program strategies that will result in the successful transition of residents from welfare-to-work increased earning capacity or sustained work; and

(v) For enhanced self-sufficiency programs, you must describe how your proposed grant activities will contribute to the economic stability of the affected area.

(b) In order to obtain maximum points for Elderly and Persons with Disabilities RSDM applications, the needs assessment document should contain statistical data that provide:

(i) The numbers of residents needing assistance for activities of daily living;

(ii) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use;

(iii) A description of the goals, objectives, and program strategies that will result in increased independence for proposed program participants;

(2) *Level of Priority in Consolidated Plan or Indian Housing Plan.* (2 Points) Documentation of the level of priority the locality's, or in the case of small cities, the State's, Consolidated Plan, or Indian Housing Plan has placed on addressing the needs. You may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing Choice (AI) to further fair housing. If you address needs that are in your community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, you will receive a greater number of points than applicants who do not relate their proposed program to the approved Consolidated Plan or AI or court action. There must be a clear relationship between your proposed activities, community needs and the purpose of the program funding for you to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of your strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which you can realistically accomplish the goals of the proposed RSDM program; the soundness of your plan to evaluate the success of your proposed RSDM program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) *Viability and comprehensiveness of the strategies to address the needs of residents* (21 Points). The score under this subfactor will be based on the viability and comprehensiveness of your strategies to address the needs of residents:

(a) *Services.* (18 Points for Family RSDM applicants and 21 Points for Elderly and Persons with Disabilities RSDM applicants). More points are awarded in the Elderly and Persons with Disabilities RSDM applications to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant) The score under this subfactor will be based on the following:

(i) For Family RSDM applications, the extent to which your plan provides services that specifically address the successful transition from welfare to work of non-elderly families. To receive a high score, your plan must include case management/counseling, job training/development/placement (and/or business training/development/startup), childcare, and transportation services. If you are not proposing to use RSDM funding for these activities, you must show that you will provide these services with other funds or through specific commitments from partners.

(ii) In order to receive maximum points, the goals and objectives of your proposed plan must represent significant achievements related to welfare-to-work, enhanced self-sufficiency programs or other initiatives which build on previous welfare-to-work programs, and other self-sufficiency/independence goals. Specifically for those residents affected by welfare reform, we are interested in achievements that are performance outcomes such as the number of residents employed or businesses started, in addition to process descriptions, such as the number of residents receiving training. Similarly, for those residents involved in enhanced self-sufficiency programs, we are interested in achievements related to performance measures such as sustained work and increased earning capacity.

(iii) For Elderly and/or Persons with Disabilities RSDM applications, services in your plan should include case management, health care, congregate services and transportation. To obtain maximum points, you must describe the goals, objectives, and program strategies that will result in increased independence for proposed program participants; your services must be located in a community facility; and must be available on a 12-hour basis or as needed by the eligible residents.

(b) *Resident Contracting and Employment.* (3 Points for Family RSDM applicants) The score in this factor will be based on the extent to which residents will achieve self-sufficiency or increased earning capacity through your contracts with resident-owned businesses and through resident employment. A high score will be awarded where there is documentation (a letter or resolution from your governing body) describing

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your commitment to hire or contract with at least 15 percent of residents and a narrative describing the number of resident jobs or contracts involved, as well as the training processes related to the comprehensive plan of your application. Elderly and Persons with Disabilities RSDM applications will not be scored on the criterion in this subcategory.

(2) *Budget Appropriateness/Efficient Use of Grant.* (5 Points for Family RSDM and Elderly and Persons with Disabilities RSDM) The score in this factor will be based on the following:

(a) *Detailed Budget Breakout.* The extent to which your application includes a detailed budget breakout for each budget category in the SF–424A.

(b) *Reasonable Administrative Costs.* The extent to which your application includes administrative costs at or below the 20 percent administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which your application requests funds commensurate with the level of effort necessary to accomplish your goals and anticipated results.

(3) *Reasonableness of the Timetable.* (2 Points for Family RSDM applicants and 4 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant)

The score in this factor will be based on a reasonable response that you can accomplish the goals of your proposed RSDM program. To receive a high score, you must demonstrate that it will make substantial program implementation progress within the first six months after grant execution, including putting staff in place, finalizing partnership arrangements, completing the development of requests for proposals, and achieving other milestones that are prerequisites for implementation of the program. In addition, you must demonstrate that your proposed timetable for all components of the proposed program is feasible considering the size of your award and activities and results that can be accomplished within the 36-month time limit.

(4) *Program Assessment.* (3 Points for Family RSDM and Elderly and Persons with Disabilities RSDM) The score in this factor will be based on the soundness of your plan to evaluate the success of your proposed RSDM program both at the completion of your program and during program implementation. At a minimum, you must track the goals and objectives of your proposed work plan program, which must include, if applicable, a plan for monitoring your Contract Administrator's performance. Your application should track specific measurable achievements for the use of program funds, such as number of residents employed, salary scales of jobs obtained, persons removed from welfare roles 12 months or longer, number of elderly or persons with disabilities residents receiving supportive services, increased earnings based on grant activities, and number of persons receiving certificates for successful completion of training in careers such as computer technology.

(5) *Resident and Other Partnerships* (9 Points for Family RSDM applicants and 7 Points for Elderly and Persons with Disabilities RSDM applicants)

(a) *Resident Involvement in RSDM Activities* (3 Points for Family RSDM applicants and 4 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant): The score in this factor will be based on the extent of resident involvement in developing your proposed RSDM program as well as the extent of proposed resident involvement in implementing your proposed RSDM program. To receive a high score on this factor, you must describe the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. For applicants to receive the maximum number of points, a work plan must be included.

(b) *Other Partnerships.* (3 Points) The score in this factor will be based on the successful integration of partners into implementation of the proposed RSDM program. To receive a high score, you must provide a signed Memorandum of Understanding (MOU) or other equivalent signed documentation that delineates the roles and responsibilities of each of the parties in your program and the benefits they will receive. In assessing this subfactor, HUD will examine a number of aspects of the proposed partnership, including:

(i) The division of responsibilities or management structure of your proposed partnership relative to the expertise and resources of your partners;

(ii) The extent to which the partnership as a whole addresses the unmet resident needs; and

(iii) The extent to which the addition of the partners provides the ability to meet needs that the applicant could not meet without the partner(s).

(c) *Overall Relationship/Coordination.* (3 Points for Family RSDM only) For Family RSDM applicants, the score in this factor will be based on the extent of coordination between your proposed RSDM program and any existing or proposed programs within your jurisdiction. To receive a high score, you must contain an MOU that describes collaboration between the applicant and residents on all of the specific components related to the work plan of the proposed RSDM program. To receive points, at a minimum, you must have a narrative description of this collaboration. Elderly and Persons with Disabilities RSDM applications will not be scored on this criterion.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. You must have at least a 25 percent cash or in-kind match to receive points under this rating factor. Leveraging in excess of the 25 percent of the grant amount will receive a higher point value. In evaluating this factor HUD will consider the extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed program activities. The budget, the work plan, and commitments for additional resources and services, other than the grant, must show that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25 percent of the RSDM grant amount proposed in this application. "Firmly committed" means there must be a written agreement with the provider of resources, signed by an official legally able to make commitments on behalf of the organization. The signed, written agreement may be contingent upon you receiving a grant award. Other resources and services may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (not including RSDM funds); funds from any State or local government sources; and funds from private contributions. You may also partner with other program funding recipients to coordinate the use of resources in your target area.

You must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, Memoranda of Understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement with the provider of resources signed by an official legally able to make commitments on behalf of the organization. This agreement may be contingent upon you receiving a grant award. Each letter of commitment, Memorandum of Understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider the extent to which your application addresses:

(1) *Coordination with the Consolidated Plan or Indian Housing Plan.* (2 Points for Family RSDM applicants and 6 points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded for Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant.) Demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or substantially furthers fair housing choice in the community.

(2) *For Family RSDM Applications, Coordination with the State and/or Local Welfare Plan* (4 Points): Provides evidence that your proposed RSDM program has been coordinated with and supports the PHA's efforts to increase resident self-sufficiency or increase resident earning capacity and is coordinated and consistent with the State, or local Welfare Plan.

(3) *Coordination with Other Activities* (4 Points) Demonstrates that in carrying out your program activities, you will develop linkages with: other HUD-funded program activities proposed or on-going in the community; or other State, Federal or locally funded activities proposed or on-going in the community which, taken as a whole, support and sustain a comprehensive system to address the needs.

(D) *Application Selection Process for Homeownership Supportive Services.*

(1) Three types of reviews will be conducted: a screening to determine if your application submission is complete and on time; a threshold review to determine applicant eligibility; and a technical review to rate your application based on the five rating factors provided in this section.

The selection process is designed to achieve geographic diversity of grant awards throughout the country. HUD will first select the highest ranked application from each of the ten federal regions for funding. After this "round," HUD will select the second highest ranked application in each of the ten federal regions for funding (the second round). HUD will continue this process with the third, fourth, and so on, highest ranked applications in each federal region until the last complete round is selected for funding. If available funds exist to fund some but not all eligible applications in the next round, HUD will make awards to those remaining applications in rank order regardless of region and will fully fund as many as possible with remaining funds. If all funds are not awarded in RMBD, CB, HSS, SC funding categories, funds will be transferred to RSDM funding categories in this competition.

(2) *Factors for Award Used to Evaluate and Rate HSS Applications.* The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 1024. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA. The application kit contains a certification that must be completed for the applicant to be considered for RC/EZ/EC bonus points and a listing of federally designated RCs, EZs and ECs. In addition, a list of RCs, EZs, and ECs is attached to the General Section of the SuperNOFA as Appendix A–2 and is also available from the SuperNOFA Information Center, and the HUD web site, *www.hud.gov.* A HSS application must receive a total of 70 points out of 100 to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *Proposed Program Staffing.* (7 Points)

(a) *Experience.* (4 Points) The knowledge and experience of your proposed project director and staff, including the day-to-day program manager, sub-recipients and partners in planning and managing programs for which funding is being requested. Your experience will be judged in terms of recent, relevant and successful experience to undertake eligible program activities.

(b) *Sufficiency.* (3 Points) You and your sub-recipients and partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including your readiness and ability to immediately begin the proposed work program. To demonstrate sufficiency, you must submit the proposed number of staff years to be allocated to your program by employees and experts, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to your program, and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management.* (7 Points)

(a) *Program Administration.* (4 Points) The soundness of the proposed management of your proposed HSS program. To receive a high score, you must provide a comprehensive description of your project management structure. Your narrative must provide a description of how any co-applicants, sub-grantees, and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of your proposed program.

(b) *Fiscal Management.* (3 Points) The soundness of your proposed fiscal management. To receive a high score you must provide a comprehensive description of the fiscal management structure, including, but not limited to, budgeting, fiscal controls, and accounting. The application must identify the staff responsible for fiscal management, and the processes and

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timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record.* (6 Points) To receive a high score, you must demonstrate your (or your proposed Administrator's) program compliance and successful implementation of any resident self-sufficiency, homeownership or independence-oriented grants (including those listed below) awarded to you or overseen by your Administrator. If you or your Administrator has no prior experience in operating programs that foster resident self-sufficiency, homeownership, or independence you will receive a score of 0 on this factor. Your past experience may include, but is not limited to, administering the following grants or programs: Family Self Sufficiency; Family Investment Center Program; Youth Development Initiative under Family Investment Center Program; Youth Apprenticeship Program; Apprenticeship Demonstration in the Construction Trades Program; Urban Youth Corps Program; HOPE I Program; Public Housing Service Coordinator Program; housing choice voucher homeownership program; Public Housing Drug Elimination Program; Tenant Opportunities Program; Economic Development and Supportive Services; and Youth Sports Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding your proposed program activities to address the need/goal of the target population of pervious ROSS recipients/beneficiaries. You will be evaluated on the extent to which you document your proposed activities demonstrate that participants in self sufficiency programs are able to move from renting to homeownership, based on need, increases in resident income and other self sufficiency efforts. In responding to this factor, you will be evaluated on:

(1) *A Needs/Goals Assessment Document.* (18 Points) HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document. To obtain maximum points for HSS applications, this document must contain statistical data that provides:

(a) A thorough socioeconomic profile of the eligible residents to be served by your program, in relationship to PHA-wide and national public and assisted housing data on residents who are on TANF, SSI benefits, or other fixed income arrangements; in job training, entrepreneurship, or community service programs; and employed;

(b) Specific information on training, contracting, and employment through the PHA;

(c) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use;

(d) A description of the goals, objectives, and program strategies that will result in the successful transition of residents from renters to homeowners.

(2) *Level of Priority in Consolidated Plan.* (2 Points) Documentation of the level of priority the locality's, or in the case of small cities, the State's, Consolidated Plan has placed on addressing the needs. You may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing Choice (AI) to further fair housing. If you address needs that are in your community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, you will receive a greater number of points than applicants who do not relate their proposed program to the approved Consolidated Plan or AI or court action. There must be a clear relationship between your proposed activities, community needs and the purpose of the program funding for you to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. In rating this factor HUD will consider: The viability and comprehensiveness of your strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which you can realistically accomplish the goals of the proposed HSS program; the soundness of your plan to evaluate the success of your proposed HSS program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) *Viability and comprehensiveness of the strategies to address the homeownership of transferred residents.* (18 Points) The score under this subfactor will be based on the viability and comprehensiveness of your strategies to address the counseling needs of residents identified for homeownership.

(a) *Services.* The score under this subfactor will be based on the following:

(i) The extent to which your plan provides services that specifically addresses the successful transition from renters to homeowners. To receive a high score, your plan must include case management and/or counseling.

(ii) In order to receive maximum points, the goals and objectives of your proposed plan must represent significant achievements related to moving from renting to homeownership. Specifically for those residents affected by welfare reform, we are interested in achievements that are performance outcomes of residents targeted for homeownership, in addition to, descriptions of residents receiving training and homeownership counseling activities.

(2) *Budget Appropriateness/Efficient Use of Grant.* (8 Points) The score in this factor will be based on the following:

(a) *Detailed Budget Breakout.* The extent to which your application includes a detailed budget breakout for each budget category in the SF–424A.

(b) *Reasonable Administrative Costs.* The extent to which your application includes administrative costs at or below the 10 percent administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which your application requests funds commensurate with the level of effort necessary to accomplish your goals and anticipated results.

(d) *Reasonableness of the Timetable.* The score in this factor will be based on a reasonable response that you can accomplish the goals of your proposed HSS program. To receive a high score, you must demonstrate that it will make substantial program implementation progress within the first six months after grant execution, including putting staff in place, finalizing partnership arrangements, completing the development of requests for proposals, and achieving other milestones that are prerequisites for implementation of the program. In addition, you must demonstrate that your proposed timetable for all components of the proposed program is feasible considering the size of your award and activities and results that can be accomplished within the 36-month time limit.

(3) *Program Assessment.* (5 Points). The score in this factor will be based on the soundness of your plan to evaluate the success of your proposed HSS program both at the completion of your program and during program implementation. At a minimum, you must track the goals and objectives of your proposed work plan program. Your application should track specific measurable achievements for the use of program funds, such as number of residents counseled on becoming homeowners.

(4) *Resident and Other Partnerships.* (9 Points)

(a) *Resident Involvement in HSS Activities.* (3 Points). The score in this factor will be based on the extent of resident involvement in developing your proposed HSS program as well as the extent of proposed resident involvement in implementing your proposed HSS program. To receive a high score on this factor, you must describe the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. For applicants to receive the maximum number of points, a work plan, must be included.

(b) *Other Partnerships.* (3 Points) The score in this factor will be based on the successful integration of partners into implementation of the proposed HSS program. To receive a high score, you must provide a signed Memorandum of Understanding (MOU) or other equivalent signed documentation that delineates the roles and responsibilities of each of the parties in your program and the benefits they will receive. In assessing this subfactor, HUD will examine a number of aspects of the proposed partnership, including:

(i) The division of responsibilities or management structure of your proposed partnership relative to the expertise and resources of your partners;

(ii) The extent to which the partnership as a whole addresses the unmet resident needs; and

(iii) The extent to which the addition of the partners provides the ability to meet needs that the applicant could not meet without the partner(s).

(c) *Overall Relationship/Coordination.* (3 Points) For HSS applicants, the score in this factor will be based on the extent of coordination between your proposed HSS program and any existing or proposed programs within your jurisdiction. To receive points, at a minimum, you must have a narrative description of this collaboration.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. You must have at least a 25 percent cash or in-kind match to receive points under this rating factor. Leveraging in excess of the 25 percent of the grant amount will receive a higher point value.

In evaluating this factor HUD will consider the extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed program activities. The budget, the work plan, and commitments for additional resources and services, other than the grant, must show that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25 percent of the HSS grant amount proposed in this application. "Firmly committed" means there must be a written agreement with the provider of resources, signed by an official legally able to make commitments on behalf of the organization. The signed, written agreement may be contingent upon you receiving a grant award. Other resources and services may include: The value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (not including HSS funds); funds from any State or local government sources; and funds from private contributions. You may also partner with other program funding recipients to coordinate the use of resources in your target area.

You must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, Memoranda of Understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement with the provider of resources signed by an official legally able to make commitments on behalf of the organization. This agreement may be contingent upon you receiving a grant award. Each letter of commitment, Memorandum of Understanding, or agreement to participate must include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider the extent to which your application addresses:

(1) *Coordination with the Consolidated Plan* (2 points). Demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or substantially furthers fair housing choice in the community.

(2) *For HSS Program Applications, Coordination with the State and/or Local Welfare Plan* (4 Points). Provides evidence that your proposed HSS program has been coordinated with and supports the PHA's efforts to increase resident homeownership and is coordinated and consistent with the State, or local Welfare Plan.

(3) *Coordinotion with Other Activities* (4 Points). Demonstrates that in carrying out your program activities, you will develop linkages with: other HUD-funded program activities proposed or on-going in the community; or other State, Federal or locally funded activities proposed or on-going in the community which, taken as a whole, support and sustain a comprehensive system to address the needs.

(E) *Application Selection Process for Neighborhood Networks Centers.*

(1) Three types of reviews will be conducted: A screening to determine if your application submission is complete and on time; a threshold review to determine applicant eligibility; and a technical review to rate your application based on the five rating factors provided in this section. A minimum score of 70 is required to be considered for funding.

(2) The selection process is designed to achieve geographic diversity of grant awards throughout the country. HUD will first select the highest ranked application from each of the ten federal regions for funding. After this "round," HUD will select the second highest ranked application in each of the ten federal regions for funding (the second round). HUD will continue this process with the third, fourth, and so on, highest ranked applications in each federal region until the last complete round is selected for funding. If available funds exist to fund some but not all eligible applications in the next round, HUD will make awards to those remaining applications in rank order regardless of region and will fully fund as many as possible with remaining funds. NN funds may not be transferred to any other funding category within this NOFA.

(3) *Factors for Award Used to Evaluate and Rate NN Applications.* The factors for rating and ranking applicants and maximum points for each factor are provided below. The

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maximum number of points available for this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA. The application kit contains a certification that must be completed for the applicant to be considered for RC/EZ/EC bonus points and a listing of federally designated RCs, EZs and ECs. In addition, a list of RCs, EZs, and ECs is attached to the General Section of the SuperNOFA as Appendix A–2 and is also available from the SuperNOFA Information Center, and the HUD web site, *www.hud.gov*. A NN application must receive a total of 70 points out of 100 to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *Proposed Program Staffing.* (7 Points)

(a) *Experience.* (4 Points) The knowledge and experience of your proposed project director and staff, including the day-to-day program manager, sub-recipients and partners in planning and managing programs for which funding is being requested. Your experience will be judged in terms of recent, relevant and successful experience to undertake eligible program activities.

(b) *Sufficiency.* (3 Points) You and your sub-recipients and partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including your readiness and ability to immediately begin the proposed work program. To demonstrate sufficiency, you must submit the proposed number of staff years to be allocated to your program by employees and experts, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to your program, and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management.* (7 Points)

(a) *Program Administration.* (4 Points) The soundness of the proposed management of your proposed NN program. To receive a high score, you must provide a comprehensive description of your project management structure. Your narrative must provide a description of how any co-applicants, sub-grantees, and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of your proposed program.

(b) *Fiscal Management.* (3 Points) The soundness of your proposed fiscal management. To receive a high score you must provide a comprehensive description of the fiscal management structure, including, but not limited to, budgeting, fiscal controls, and accounting. The application must identify the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record.* (6 Points) To receive a high score, you must demonstrate your (or your proposed Administrator's) program compliance and successful implementation of any resident self-sufficiency, technology-oriented training, community-based job training, telecommunications, or other computer services (including those listed below) awarded to you or overseen by your Administrator. If you or your Administrator has no prior experience in operating programs that foster resident use of technology, computer instruction, or other computer services you will receive a score of 0 on this factor. Your past experience may include, but is not limited to, administering the following grants or programs: Family Self Sufficiency; Family Investment Center Program; Youth Development Initiative under Family Investment Center Program; Youth Apprenticeship Program; Apprenticeship Demonstration in the Construction Trades Program; Urban Youth Corps Program; HOPE I Program; Public Housing Service Coordinator Program; housing choice voucher homeownership program; Public Housing Drug Elimination Program; Tenant Opportunities Program; Economic Development and Supportive Services; and Youth Sports Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding your proposed program activities to address the need of public housing residents for computer technology. You will be evaluated on the extent to which you document your proposed activities in this area. In responding to this factor, you will be evaluated on:

(1) *A Needs/Goals Assessment Document.* (18 Points) HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document. To obtain maximum points for NN applications, this document must contain statistical data that provides:

(a) A profile of the eligible residents to be served by your NN center and its programs;

(b) Specific information on activities and programs to be undertaken as part of the NN center including job training, adult education, using the Internet to make linkages with health care providers, health services, and health information, youth and afterschool programs and other proposed activities;

(c) An assessment of the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use;

(d) A description of the goals and objectives of the NN center.

(2) *Level of Priority in Consolidated Plan.* (2 Points) Documentation of the level of priority the locality's, or in the case of small cities, the State's, Consolidated Plan has placed on addressing the needs. You may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing Choice (AI) to further fair housing. If you address needs that are in your community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, you will receive a greater number of points than applicants who do not relate their proposed program to the approved Consolidated Plan or AI or court action. There must be a clear relationship between your proposed activities, community needs and the purpose of the program funding for you to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of your strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which you can realistically accomplish the goals of the proposed NN program; the soundness of your plan to evaluate the success of your proposed NN program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) *Viability and comprehensiveness of the strategies to address Neighborhood Networks needs in the proposed area.* (10 Points) The score under this subfactor will be based on the viability and comprehensiveness of your strategies to address electronic information needs.

Your application must describe how the Neighborhood Networks Center or its conversion to Neighborhood Networks will address job training, adult education, using the Internet to make linkages with health care providers, health services, and health information, and youth and after-school programs.

(2) *Budget Appropriateness/Efficient Use of Grant.* (10 Points) The score in this factor will be based on the following:

(a) *Detailed Budget Break-Out.* The extent to which your application includes a detailed budget breakout for each budget category in the SF–424A. Your application must include Chart C: Summary of Budget Line Items, for your proposed activities, and Chart D: Budget Work Plan Summary.

(b) *Reasonable Administrative Costs.* The extent to which your application includes administrative costs at or below the 15 percent administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which your application requests funds commensurate with the level of effort necessary to accomplish your goals and anticipated results.

(d) *Reasonableness of the Timetable.* The score in this factor will be based on a reasonable response that you can accomplish the goals of your proposed NN program. To receive a high score, you must demonstrate that it will make substantial program implementation progress within the first six months after grant execution, including putting staff in place, finalizing partnership arrangements, completing the development of requests for proposals, and achieving other milestones that are prerequisites for implementation of the program. In addition, you must demonstrate that your proposed timetable for all components of the proposed program is feasible considering the size of your award and activities and results that can be accomplished within the 36-month time limit.

(3) *Program Assessment.* (10 Points) The score in this factor will be based on the soundness of your plan to evaluate the success and sustainability of your proposed NN program both at the completion of your program and during program implementation. At a minimum, you must track the goals and objectives of your proposed work plan program. Your application should track specific measurable achievements for the use of program funds, such as number of residents using proposed computer related services/programs being offered by the NN. Each applicant must describe how the existing computer center or proposed computer center will become a Neighborhood Networks Center and be self-sustaining after the proposed grant period has been completed.

(4) *Resident and Other Partnerships* (10 Points).

(a) *Resident Involvement in NN Program Activities* (4 Points) The score in this factor will be based on the extent of resident involvement in developing and planning for your proposed NN program as well as the extent of proposed resident involvement in implementing your proposed NN program. To receive a high score on this factor, you must describe the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. For applicants to receive the maximum number of points, a work plan, must be included.

(b) *Other Partnerships.* (3 Points) The score in this factor will be based on the successful integration of partners into implementation of the proposed NN program. To receive a high score, you must provide a signed Memorandum of Understanding (MOU) or other equivalent signed documentation that delineates the roles and responsibilities of each of the parties in your program and the benefits they will receive. Your application should include local partnerships in support of NN activities such as job training, adult education, using the Internet to make linkages with health care providers, health services, and health information, and youth and after school programs. In assessing this subfactor, HUD will examine a number of aspects of the proposed partnership, including:

(i) The division of responsibilities/management structure of your proposed partnership relative to the expertise and resources of your partners;

(ii) The extent to which the partnership as a whole addresses the unmet resident needs; and (iii) The extent to which the addition of the partners provides the ability to meet needs that the applicant could not meet without the partner(s).

(c) *Overall Relationship/Coordination.* (3 Points) For NN applicants, the score in this factor will be based on the extent of coordination between your proposed NN program and any existing or proposed programs within your jurisdiction. To receive points, at a minimum, you must have a narrative description of this collaboration.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. You must have at least a 25 percent cash or in-kind match to receive points under this rating factor. Leveraging in excess of the 25 percent of the grant amount will receive a higher point value.

In evaluating this factor HUD will consider the extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed program activities. The budget, the work plan, and commitments for additional resources and services, other than the grant, must show that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25 percent of the NN grant amount proposed in this application. "Firmly committed" means there must be a written agreement with the provider of resources, signed by an official legally able to make commitments on behalf of the organization. The signed, written agreement may be contingent upon you receiving a grant award. Other resources and services may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (not including NN funds); funds from any State or local government sources; and funds from private contributions. You may also partner with other program funding recipients to coordinate the use of resources in your target area.

You must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, Memoranda of Understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement with the provider of resources signed by an official legally able to make commitments on behalf of the organization. This agreement may be contingent upon you receiving a grant award. Each letter of commitment, Memorandum of Understanding, or agreement to participate must include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program.

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Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider the extent to which your application addresses:

(1) *Coordination with the Consolidated Plan* (2 points). Demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or substantially furthers fair housing choice in the community.

(2) *For NN Program Applications, Coordination with the State and/or Local Welfare Plan* (4 Points). Provides evidence that your proposed NN program has been coordinated with and supports the PHA's efforts to reduce welfare dependency coordinated and consistent with the State, or local Welfare Plan.

(3) *Coordination with Other Activities* (4 Points). Demonstrates that in carrying out your program activities, you will develop linkages with: other HUD-funded program activities proposed or on-going in the community; or other State, Federal or locally funded activities proposed or on-going in the community which, taken as a whole, support and sustain a comprehensive system to address the technology needs of public housing residents.

(F) *Application Selection Process for Service Coordinators.*

Applicants for Service Coordinators are required to address application submission requirements but are not required to address selection factors. Eligibility will be determined by applications that meet the threshold requirements of Section IV of this program section of the SuperNOFA.

If all funds are not awarded in RMBD, CB, HSS, or SC funding categories, funds will be transferred to RSDM funding categories in this competition.

VI. Application Submission Requirements

(A) *All Applications.* All applications for assistance under the ROSS competition for all funding categories must include the forms, certifications and assurances listed in Section IV of the General Section of the SuperNOFA (collectively referred to as the "standard forms"). These forms are:

SF–424, Application Federal Assistance;

HUD–424M, Federal Assistance Funding Matrix;

SF–424A, Federal Assistance Budget Information—Non Construction;

SF–424B, Assurances for Non-Construction Programs;

HUD Form 50070, Drug-Free Workplace Certification;

HUD Form 50071, Certification of Payments to Influence Federal Transactions, and if applicable SF-LLL, Disclosure of Lobbying Activities;

HUD Form 2880, Applicant/Recipient Disclosure/Update Report;

HUD Form 2991, Certification of Consistency with the Consolidated Plan;

HUD Form 2992, Certification of Debarment and Suspension;

HUD Form 2993, Acknowledgment of Application Receipt.

The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives), referred to as the "non-standard forms" can be found as Appendix A to this program section of the SuperNOFA.

All applicants must include the following information regardless of the category under which they are applying for funds.

(1) ROSS Application Cover Sheet;

(2) ROSS Fact Sheet;

(3) ROSS Program Summary;

(4) Certification of Consistency and Compliance with General SuperNOFA Program Requirements;

(5) Match Requirement. (a) You must supplement grant funds with an in-kind and/or cash match of not less than 25 percent of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS funds); funds from any State or local government sources; and funds from private contributions. Any services, such as childcare or mentoring, conducted by elderly or persons with disabilities residents who are not TANF participants, will not be counted toward your match requirement. You may also satisfy the match requirement by establishing the in-kind value of computer and office equipment, software and space used for training in computer technology, education/employment and skills development for self-sufficiency training programs such as Twenty/20 Education Communities (TEC Centers) or Neighborhood Networks Centers.

(b) You must demonstrate that the cash or in-kind resources and services, which you will use as match amounts (including resources from a Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. "Firmly committed" means there must be a written agreement to provide the resources and services signed by an official legally able to make commitments on behalf of the organization that specifies the cash and/or in-kind assistance to be provided. If offering in-kind assistance, the letter must provide an estimated dollar value for the in-kind services. The written agreement may be contingent upon your receiving a grant award. The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located; and

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sale, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or activity is located, as appropriate. You may also satisfy the match requirement by establishing the in-kind value of computer and office equipment, software and space used for training in computer technology, education/employment and skills development for sufficiency training programs such as Twenty/20 Education Communities (TEC Centers) or Neighborhood Networks Centers.

(B) *RMBD Applications.* Applicants for Resident Management and Business Development grants are required to address application submission requirements, but are not required to address selection factors. A threshold review, and not application submission requirements, will be used for determining eligibility for first-come first serve funding.

All applications for funding under this funding category must contain the following documents and information (Please note that items 1–9 are threshold requirements used to determine awards for this category; item 10 and its

subsections will be used for grant administration):

(1) Your application must contain a written certification that at least 51 percent of the public housing residents to be included in the proposed program are currently eligible to receive, are currently receiving, or have received within the preceding five years, assistance or services funded under the TANF, SSI, food stamp programs, or tribal welfare programs.

(2) Your application must contain a signed Memorandum of Understanding (MOU) between the RA and the PHA or the RO/RMC and the Tribe/TDHE which describes the specific roles, responsibilities and activities to be undertaken by all parties to the MOU. Your MOU, at a minimum must identify the principal parties (*i.e.* the name of the PHA or tribe/TDHE and RA or RO, the terms of agreement), expectations or terms for each party, and indicate that the agreement pertains to the support of your grant application. This document is the basis for the foundation of the relationship between the RA or RO and PHA or tribe/TDHE. The MOU must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the RA or RO and PHA or tribe/TDHE upon submission of the application.

(3) Accessible Community Facility. You must provide written evidence (*e.g.* through an executed use agreement if the facility is to be provided by an entity other than the PHA or tribe/TDHE) that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required)), convenient, inexpensive and reliable transportation of the property represented by the PHA or tribe/TDHE. The written agreement must certify that community facilities meet the structural accessibility requirement of section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990. If a tribe/TDHE is the applicant and is using its own property as a community facility, it is not exempt from this requirement. The tribe/TDHE is still required to provide a narrative to address all details requested for this threshold requirement.

(4) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25 percent of the grant amount. See Section VI(A)(5) of the program section of this SuperNOFA.

(5) For applicants other than Tribes/TDHEs, you must provide either a signed certification from HUD or an Independent Public Accountant that your financial management system and procurement procedures fully comply with 24 CFR part 84, or your application must contain a signed Contract Administrator Partnership Agreement that you will use the services of a Contract Administrator in administering your grant. Applicants that are troubled PHAs are required to provide written agreement that a Contract Administrator has been retained for the term of the grant. Those tribes/TDHEs that HUD has determined to have difficulty in managing grants will be required to provide a written agreement that a Contract Administrator has been retained for the term of the grant. In cases where the Contract Administrator is the PHA or tribe/TDHE, the Contract Administration responsibilities can be incorporated into the MOU discussed above.

(6) Except for Tribes/TDHEs, if you are a RA/RC/RMC/CWRO you must include evidence that your organization is registered with the State as a nonprofit corporation at the time of application submission or has section 501(c) status with the United States Internal Revenue Service at the time of application. Evidence of State registration shall be a copy of the certificate of incorporation or certificate of good standing from the State Government (*i.e.* Secretary of State or Secretary of Corporations). Evidence of 501(c) status shall be a copy of the IRS 501(c) designation.

(7) Certification of Resident Council Board Elections. If you are a Resident Organization, you must submit certifications of the RA/ROs board election as required by HUD, signed by the local PHA or tribe/TDHE and/or an independent third party monitor and notarized.

(8) List of RAs, ROs or Indian housing residents participating with the City-Wide Resident Organization (CWRO) or tribe/TDHE. You must list in your application, the name(s) of RAs or ROs that will receive services and you must submit letters of support from each RA or RO identified in your application. Your application must describe the Indian housing residents to be served by proposed grant activities.

(9) Physical Improvements. You must submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities. You must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less that 2 years following the completion of renovation, conversion, or repair activities funded under this ROSS competition.

(10) The following are application submission requirements and will not be used for determining eligibility for first-come first serve funding:

(a) Explanations for proposed grant activities must be provided by narrative statements or descriptions;

(b) Resident Management and Business Development grant applications must include a narrative description (two page limit) describing the activities that you will carry out with RMBD grant funds. Your description must include specific goals, objectives and program strategies that will result in successful transition of residents from welfare to work or other proposed grant activities;

(c) Your RMBD application must provide information about the RA or RO, including its history, staff qualifications, and its previous experience (two page limit). For proposed grant staffing, you must include a resume or summary of qualifications for all proposed grant staff:

Chart A—RMBD Program Staffing

Chart B—RMBD Applicant/ Administrator Track Record

Chart C—Summary RMBD Budget line Items

(d) You must provide a summary of a proposed work plan to carry out proposed grant activities. This work plan must include tasks, budgeted amounts, and dates for all activities during the grant period.

Chart D—Budget Workplan Summary.

(C) *Applications for Capacity Building.* All applications for funding under this funding category must contain the following documents and information. Only threshold requirements, and not application submission requirements, will be used for determining eligibility for funding. (Please note that items 1–6 are threshold requirements for a threshold review that will be used to determine awards for this category; items 7–11 will not be used to select awardees):

(1) Except for Tribes/TDHEs applicants, you must provide evidence that your organization has registered with the State as a nonprofit corporation or has 501(c) nonprofit corporation status with the United States Internal Revenue Service at the time of application submission.

(2) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25 percent of the grant amount. See Section VI(A)(5) of this program section of the SuperNOFA.

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(3) In CB applications, you must list in your application the name of the RAs or ROs that will receive training, technical assistance and/or coordinated supportive services and you must submit letters of support from each entity identified in your application.

(4) For applicants other than Tribes/TDHEs, you must provide either a signed certification from HUD or an Independent Public Accountant that your financial management system and procurement procedures fully comply with 24 CFR part 84 or part 85, or your application must contain a signed Contract Administrator Partnership Agreement that you will use the services of a Contract Administrator in administering your grant. Applicants that are troubled PHAs are required to provide written agreement that a Contract Administrator has been retained for the term of the grant. In cases where the Contract Administrator is the PHA the Contract Administration responsibilities can be incorporated into the MOU discussed below.

(5) Your application must contain a signed Memorandum of Understanding (MOU) between the RA or RO and PHA or tribe/TDHE which describes the specific roles, responsibilities and activities to be undertaken by all parties to the MOU. Your MOU, at a minimum, must identify the principal parties (i.e. the name of the PHA or tribe/TDHE and IRO/nonprofit , the terms of agreement), expectations or terms for each party, and indicate that the agreement pertains to the support of your grant application. This document is the basis for the foundation of the relationship between the IRO/nonprofit and PHA or tribe/TDHE. The MOU must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the IRO/nonprofit and PHA or tribe/TDHE upon submission of the application.

(6) You must provide written evidence (e.g. through an executed space use agreement if the facility is to be provided by an entity other than the PHA or tribe/TDHE) that proposed CB activities or training will take place. The community facilities must be within easy transportation access (i.e., walking or by direct (no transfers required)), convenient, inexpensive and reliable transportation of the property represented by the PHA or tribe/TDHE. The written agreement must certify that community facilities meet the structural accessibility requirement of section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990. If a tribe/TDHE is the applicant and is using its own property as a community facility, it is not exempt from this requirement. The tribe/TDHE is still required to provide a narrative to address all details requested for this threshold requirement.

The following are application submission requirements. Only threshold requirements, and not application submission requirements, will be used to determine eligibility for first-come first serve funding.

(7) Explanations for proposed grant activities must be provided by narrative statements or descriptions as well as the forms indicated below.

(8) Needs Assessment. For the CB grant applications you must provide a narrative description of proposed activities that addresses the following information:

(a) A description of the geographic boundaries of the RAs, ROs, RMCs, or tribes/TDHEs included in the application;

(b) A description of the public or Indian housing community;

(c) A detailed description of the issues or problems involved with each RA or RO to be served by the grant; and

(d) The resources that are currently being devoted to the problem or issue under consideration.

(9) Proposed Program Activities. CB grant applications must include a narrative description describing the activities that you will carry out with CB grant funds. Your description must include specific goals, objectives and program strategies that will result in successful proposed grant activities;

(10) Experience and Staffing. Your CB grant application must provide information about the your organization, including its history, staff qualifications, and its previous experience (two page limit). For proposed grant staffing, you must include a resume or summary of qualifications for all proposed grant staff:

Chart A—CB Program Staffing
Chart B—CB Applicant/Administrator Track Record
Chart C—Summary CB Budget Line Items

(11) Budget and Cost Information. You must provide a summary of your proposed work plan to carry out your proposed grant activities. The work plan must include tasks/activities, budgeted amounts, and start and end dates for all activities during the grant period.

Chart D—Budget Workplan Summary

(D) Application Submission Requirements for Resident Service Delivery Models. All applications for funding under this funding category must contain the following documents and information (Please note that items 1–10 are threshold requirements for a threshold review and responses to factors of award will be used to determine scoring of rating and ranking factors for this category):

(1) Your application must contain a written certification that at least 51 percent of the public housing residents to be included in the proposed program are currently eligible to receive, are currently receiving, or have received within the preceding five years, assistance or services funded under the TANF, SSI, food stamp programs or tribal welfare programs.

(2) Elderly and/or Persons with Disabilities Housing Development Certification. A certification that at least 25 percent of the residents of the development(s) proposed for grant activities are elderly and/or non-elderly people with disabilities at the time of application.

(3) Accessible Community Facility. You must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA or tribe/TDHE) that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required)), convenient, inexpensive and reliable transportation) of the property represented by the PHA or tribe/TDHE. The written agreement must certify that the community facilities meet the structural accessibility requirements of section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990. If a tribe/TDHE is the applicant and is using its own property as a community facility, it is not exempt from this requirement. The tribe/TDHE is still required to provide a narrative to address all details requested for this threshold requirement.

(4) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25 percent of the grant amount. See Section VI(A)(5) of this program section of the SuperNOFA.

(5) Physical Improvements. You must submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities. You must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less that 2 years following the completion of renovation, conversion, or repair activities funded under this ROSS competition.

(6) Except for PHA's or tribes/TDHEs, you must provide either a signed certification from HUD or an Independent Public Accountant that your financial management system and procurement procedures fully comply with 24 CFR part 84 or 85, or your application must contain a signed Contract Administrator Partnership Agreement that you will use the services of a Contract Administrator in administering your grant. Applicants that are troubled PHAs are required to provide evidence that a Contract Administrator has been retained for the term of the grant. In cases where the Contract Administrator is the PHA, the Contract Administration responsibilities can be incorporated into the MOU discussed below.

(7) Applicant Non-Profit Status. Except for PHAs or tribes/TDHEs, you must provide evidence that the applicant is registered with the State as a nonprofit corporation or has 501(c) status with the United States Internal Revenue Service at the time of application submission. Evidence of State registration shall be a copy of the certificate of incorporation or certificate of good standing from the State Government (i.e. Secretary of State or Secretary of Corporations). Evidence of 501(c) status shall be a copy of the IRS 501(c) designation.

(8) Certification of Resident Council Board Elections.

(9) List of RAs or ROs Receiving Support. In RSDM applications you must list in your application the name of the RAs or ROs that will receive training, technical assistance and/or coordinated supportive services and must submit letters of support from each entity identified in your application.

(10) Responses to Factors of Award may be narrative statements or descriptions and the forms indicated below:

Factor 1—Capacity of the Applicant and Relevant Organizational Experience;
Chart A—Program Staffing
Chart B—Applicant/Administrator Track Record
Factor 2—Need/Extent of the Problem;
Chart C—Summary Budget line Items
Chart D—Budget Workplan Summary
Factor 3—Soundness of Approach;
Factor 4—Leveraging Resources; and
Factor 5—Coordination, Self-Sufficiency and Sustainability.
Certification of Consistency with the Consolidated Plan
Bonus Points
Certification of Consistency with the RC/EZ/EC Strategic Plan

(E) *Application Submission Requirements for Homeownership Supportive Services.* All applications for funding under this funding category must contain the following documents and information (Please note that items 1–5 are threshold requirements for a threshold review and responses to factors of award will be used to determine scoring of rating and ranking factors for this category):

(1) Your application must contain a written certification that at least 51 percent of the public housing residents to be included in the proposed program are currently eligible to receive, are currently receiving, or have received within the preceding five years, assistance or services funded under the TANF, SSI, or food stamp programs.

(2) Your application must provide evidence that the targeted population of public housing residents to be served by the proposed grant (a) were beneficiaries of a previously awarded ROSS grant between FY 1999 and FY 2000, or a state or local self-sufficiency program, (b) participates in a public housing family self-sufficiency program funded from operating subsidies, (c) had increases in earned income of at least 35% over a base year, and (d) achieved a level of income that is within the acceptable range of the local minimum income required for the purchase of a home in the local area.

(3) You must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA) that a majority of the proposed activities will be administered at accessible community facilities within easy transportation access (i.e., walking or by direct (no transfers required)), convenient, inexpensive and reliable transportation) of the property represented by the PHA. The written agreement must certify that the community facilities meet the structural accessibility requirements of section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990.

(4) Physical Improvements. You must submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities. You must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less that 2 years following the completion of renovation, conversion, or repair activities funded under this ROSS competition.

(5) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25 percent of the grant amount. See Section VI(A)(5) of this program section of the SuperNOFA.

(6) Responses to Factors of Award may be narrative statements or descriptions and the forms indicated below:

Factor 1—Capacity of the Applicant and Relevant Organizational Experience;
Chart A—Program Staffing.
Chart B—Applicant/Administrator Track Record.
Factor 2—Need/Extent of the Problem;
Factor 3—Soundness of Approach;
Chart C—Summary Budget line Items.
Chart D—Budget Work plan Summary.
Factor 4—Leveraging Resources; and
Factor 5—Coordination, Self-Sufficiency and Sustainability.
Certification of Consistency with the Consolidated Plan
Bonus Points
Certification of Consistency with the RC/EZ/EC Strategic Plan.

(F) *Application Submission Requirements for Neighborhood Networks Centers.* All applications for funding under this funding category must contain the following documents and information (Please note that items 1–5 are threshold requirements that will be used for a threshold review and responses to factors of award will be used to determine scores for rating and ranking for this category:);

(1) Your application must contain a written certification that at least 51 percent of the public housing residents to be included in the proposed program are currently eligible to receive, are currently receiving, or have received within the preceding five years, assistance or services funded under the TANF, SSI, or food stamp programs.

(2) Accessible Community Facility. You must provide written evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required)), convenient, inexpensive and reliable transportation) of the property represented by the PHA. The written agreement must certify that community facilities meet the structural accessibility requirement of section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990.

(3) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25 percent of the grant amount. See Section VI(A)(5) of the program section of this SuperNOFA.

(4) You must have an approved financial management system and procurement procedures. As evidence of your approved financial management or procurement system, you must provide

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a copy of your latest audit report indicating that there are no deficiencies in either area and that your financial management system and procurement procedures fully comply with 24 CFR part 85. Applicants that are troubled PHAs are required to provide written agreement that a Contract Administrator has been retained for the term of the grant.

(5) Physical Improvements. You must submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities. You must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 2 years following the completion of renovation, conversion, or repair activities funded under this ROSS competition. The following are application submission requirements and will not be used for determining eligibility for funding.

(6) Responses to Factors of Award may be narrative statements or descriptions and the forms indicated below:

Factor 1—Capacity of the Applicant and Relevant Organizational Experience;
Chart A—Program Staffing
Chart B—Applicant/Administrator Track Record
Factor 2—Need/Extent of the Problem;
Factor 3—Soundness of Approach;
Chart C—Summary Budget line Items
Chart D—Budget Work plan Summary
Factor 4—Leveraging Resources; and
Factor 5—Coordination, Self-Sufficiency and Sustainability.
Certification of Consistency with the Consolidated Plan
Bonus Points
Certification of Consistency with the RC/EZ/EC Strategic Plan.

(G) *Application Submission Requirements for Public Housing Service Coordinators for the Elderly and Persons with Disabilities.* All applications for funding under this funding category must contain the following documents and information (Please note that items 1–2 are threshold requirements for a threshold review to be used to determine renewal funding for this category):

(1) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25 percent of the grant amount. See Section VI(A)(5) of this program section of the SuperNOFA.

(2) SC Request Letter Format.

The following are application submission requirements. Only threshold requirements, and not application submission requirements, will be used for determining eligibility for renewal funding.

(3) Evidence of comparable salaries in local area; and

(4) Lead Agency letter format (if appropriate);

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

It is anticipated that most activities under this ROSS funding will be categorically excluded under 24 CFR 58.34(a)(3) or (a)(9), 58.35(b)(2) or (b)(4), 50.19(b)(3), (b)(9), (b)(12), or (b)(14). An applicant proposing any long-term leasing, or physical development activities is prohibited from rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) If the grantee is not a PHA or tribe/TDHE, HUD has completed an environmental review to the extent required by 24 CFR part 50, prior to grant award.

(2) If the grantee is a PHA or tribe/TDHE, HUD has approved the grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review under 24 CFR part 58, where required, or if HUD has determined in accordance with § 58.11 to perform the environmental review itself under part 50, HUD has completed the environmental review.

IX. Authority

Section 34 of the U.S. Housing Act of 1937 and 24 CFR 964.

Appendix B

The non-standard forms, which follow, are required for the ROSS application.

BILLING CODE 4210–32–P

APPENDIX A

ROSS PERFORMANCE MEASURES FOR THE FY 2002 ROSS NOFA

ROSS Funding Category	OUTPUTS	PERFORMANCE MEASURE (S)	OUTCOMES
RMBD	Deliver training sessions	• Number of residents enrolled or recruited; • Number of residents completing training; • Number of training sessions completed	Increased capacity and skills
	Develop Business Plans	• Number of business plans completed	Generate new business opportunities
	Deliver technical assistance	• Number of technical assistance sessions completed	Increased management and leadership skills
	Deliver Supportive Services	• Number of new services provided by the ROSS grant; • Number of residents served	Increased resident opportunities in local welfare to work and other self sufficiency programs
CB	Complete training sessions	• Number of residents enrolled or recruited; • Number of residents completing training; • Number of training sessions completed	Increase resident participation and involvement
RSDM	Deliver training sessions	• Number of residents enrolled or recruited; • Number of residents completing training; • Number of training sessions completed	Increased capacity and skills
	Complete training related to entrepreneurship	• Number of training sessions completed • Number of Business plans completed	Increase knowledge, skills or capacity
	Establish a Revolving Loan Fund	• Number of loans made • Status of loans made (i.e., current, outstanding, paid-off, delinquent)	Increased access to financing and resources
	Deliver Supportive Services	• Number of new services provided by the ROSS grant; • Number of residents served	Increased resident opportunities in local welfare to work and other self sufficiency programs

ROSS Funding Category	OUTPUTS	PERFORMANCE MEASURE (S)	OUTCOMES
HSS	Deliver Homeownership Counseling	• Number of residents recruited or enrolled; • Number of homeownership counseling sessions held; • Number of residents completing homeownership counseling; • Number of residents moving from renting to homeownership.	Movement from self sufficiency programs to homeownership
NN	Deliver Computer Technology and Support	• Number of computer technology centers established; • Number of computer technology centers upgraded; • Number of residents using technology center.	
SC	Deliver Supportive Services	• Number of new services provided by the ROSS grant; • Number of residents served	Improved quality of life for elderly residents and persons with disabilities

OMB Approval No. 2577-0221

RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY PROGRAM

APPLICATION FOR FY 2002 FUNDING COVER SHEET

Funding Category (Check ONE):

_____ **Resident Management and Business Development**
_____ **Capacity Building**
_____ **Resident Service Delivery Models – Family**
_____ **Resident Service Delivery Models –Elderly/Disabled**
_____ **Homeownership Supportive Services**
_____ **Neighborhood Networks**
_____ **Service Coordinators**

Submitted By: _____
(Applicant Name)

Contact Person: _____

Telephone: ( ) _____

Delivered To: _____
(HUD Field Office)

Date: _____

PLEASE USE THIS PAGE AS COVER PAGE

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ROSS FY 2002 FUNDING

FACT SHEET

Applicant Information

Applicant:_____

Applicant Type: ___PHA ___RA ___IRO ___NONPROFIT ___ TRIBE/TDHE

HUD Region:_____ State: _____ HUD Field Office:_____

Contact

Name/Title _____

Street Address _____

City/State/Zip _____

Telephone No. ( ) _____

Fax No. ( ) _____

Assistance for which the applicant is applying:

_____ Resident Management and Business Development
_____ Capacity Building
_____ Resident Service Delivery Models
_____ Homeownership Supportive Services
_____ Neighborhood Networks
_____ Service Coordinator Renewal

Unit Count

_____ Total number of conventional public housing units under management** (excluding any Section 8)

_____ Total number of family-occupied conventional public housing units.

_____ Total number of elderly/disabled-occupied conventional public housing units.

****Tribal or TDHE applicants should use the unit count described in the NOFA Section II (F).**

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FACT SHEET (continued)

SITE-BASED RESIDENT ASSOCIATION BOARD INFORMATION (Does not apply to SC applicants)

Name of Board Member Title Appointment Term Date

_____
_____
_____
_____
_____
_____
_____
_____

Date of Last Board Election:_____

Does the organization have block captains? Yes____ No____

Does the organization have an operating committee? Yes____ No____

For any previous ROSS grants you have received, you must note the Fiscal Year, ROSS Category (RSDM, RMBD, etc.), and Award Amount.

_____

_____

_____

_____

_____

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

Name(s) of public housing development(s) targeted for ROSS Activities (Use additional pages if necessary.)

Name of Public Housing Development	PIH Project #

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or Other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY

Applicant: _____ **Date:** _____

Applicant type: ___PHA ___RA ___IRO ___NONPROFIT ___TRIBE/TDHE

Funding Category: _____

This narrative will be used for congressional notification and will serve as the official program summary.

A. Please provide a brief summary of the program proposed in your application (100 words or less) including a brief description of key program components.

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PROGRAM SUMMARY (continued)

B. Please provide a listing of all partners involved, their in-kind/cash contribution, and number of persons to be served by each partner using the format below. (You may copy this page if additional space is needed.)

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

TOTAL _____ _____

HUD-2002-ROSS (02/02)

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.

(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official of the Jurisdiction Name: _____

Title: _____

Signature: _____

Date: _____

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ROSS FY 2002 FUNDING
RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

APPLICATION CHECKLIST

I CERTIFY that the following application checklist is complete and that it accurately reflects the contents of my application.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive Officer or Other Authorized Representative

For Applicant: _____

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

COVER MATERIALS (See Part II of this application kit for forms in this tab.)

- ❑ Table of Contents _____ _____
- ❑ Application Checklist _____ _____
- ❑ Application for Federal Assistance (Form SF-424) _____ _____
- ❑ Federal Assistance Funding Matrix (Form HUD-424M) _____ _____
- ❑ Standard Form for Budget Information—Non-Construction Programs (Form SF-424A) _____ _____
- ❑ Assurances—Non-Construction Programs (Form SF-424B) _____ _____
- ❑ ROSS Fact Sheet _____ _____
- ❑ ROSS Program Summary _____ _____
- ❑ Certification of Consistency and Compliance with General SuperNOFA Threshold Requirements _____ _____

TAB 1: Threshold Requirements

- ❑ Threshold Checklist _____ _____
- ❑ RMBD Certification on Residents Affected by Welfare Reform _____ _____

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ROSS FY 2002 FUNDING
RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

APPLICATION CHECK LIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

- ❑ Memorandum of Understanding (MOU) for Partnership between Applicant and PHA/tribe/TDHE _____ _____
- ❑ Accessible Community Facility - Executed Use Agreement _____ _____
- ❑ Match Agreements – Not less than 25% of grant requested _____ _____
- ❑ Certification of Compliance with 24 CFR Part 84 **or** Contract Administrator Signed Statement (not tribes/TDHEs) _____ _____
- ❑ Proof of Applicant Nonprofit Status – Copy of Certification of Incorporation **or** Good Standing from the State or Copy of IRS 501 (c) designation (not tribes/TDHEs) _____ _____
- ❑ Certification of Resident Council Board Election _____ _____
- ❑ List of RAs To Receive Support **and** Letters of Support from RAs _____ _____
- ❑ Physical Improvements (Only for applicants proposing physical improvements) _____ _____

--A description of the renovation or conversion to be conducted, along with a budget and timetable for those activities.
--A firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 2 years following the completion of renovation, conversion, or repair activities funded under this competition.

- ❑ Certification of Consistency and Compliance with General SuperNOFA Threshold Requirements _____ _____

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RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

APPLICATION CHECK LIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

TAB 2: Program Description and Budget

- ❑ Program Activities Description—Narrative _____ _____
- ❑ Your Resident Organization and it's History—Narrative _____ _____
- ❑ Chart A: RMBD Program Staffing _____ _____
- ❑ Resumes or summary of proposed staff's qualifications _____ _____
- ❑ Chart B: RMBD Applicant/Administrator Track Record _____ _____
- ❑ Chart C: RMBD Summary Budget Line Items _____ _____
- ❑ Summary of Proposed Work Plan _____ _____
- ❑ Chart D: RMBD Budget Work Plan Summary, Parts I and II _____ _____

TAB 3: Other Certifications and Assurances
(See Part VII of this Application Kit for all forms in this tab.)

- ❑ Certification for a Drug-Free Workplace (Form HUD–50070) _____ _____
- ❑ Certification of Payments to Influence Federal Transactions (Form HUD-50071), and if applicable, Disclosure of Lobbying Activities (Form SF- LLL) and Disclosure of Lobbying Activities Continuation Sheet (Form SF-LLL-A) _____ _____
- ❑ Applicant/Recipient Disclosure/Update Report (Form HUD-2880) _____ _____
- ❑ Certification Regarding Debarment and Suspension (Form HUD–2992) _____ _____
- ❑ Acknowledgment of Application Receipt (Form HUD-2993) _____ _____

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ROSS FY 2002 FUNDING
RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

THRESHOLD CHECKLIST

Applicant: _____ **Date:** _____

You must address the following threshold requirements for your application to be complete and acceptable for rating and ranking. You can verify that information is included in your application kit by using a check mark in the space provided. Please note that HUD will also verify that information is included appropriately. (See NOFA, Section VI (A) & (B) (1-9) and SuperNOFA, General Section II.) *Note: Items marked with an * do not apply to tribes/TDHEs.*

THRESHOLD REQUIREMENT	APPLICANT USE ONLY	HUD USE ONLY
1. Certification on Residents Affected by Welfare Reform	_____	_____
2. Memorandum of Understanding (MOU) for Partnership between Applicant and PHA/tribe/TDHE	_____	_____
3. Accessible Community Facility - Executed Use Agreement or MOU	_____	_____
4. Match Agreements	_____	_____
5. *Certification of Compliance with 24 CFR Part 84 **or** Contract Administrator Signed Statement	_____	_____
6. *Proof of Applicant Nonprofit Status (State **or** IRS)	_____	_____
7. Certification of Resident Council Board Election	_____	_____
8. List of RAs to Receive Support and Letters of Support From RAs (CWRO applicants only)	_____	_____
9. Physical Improvements–Description, Budget, Timetable, and Firm Commitments for Service Provision (Only for applicants proposing physical improvements)	_____	_____

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ROSS FY 2002 FUNDING
RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

Applicant: _____ **Date:** _____

THRESHOLD REQUIREMENTS

1. Focus on Residents Affected by Welfare Reform. Your RMBD application must contain the following written certification that at least 51% of residents to be included in your proposed program are affected by welfare reform.

RMBD CERTIFICATION ON RESIDENTS AFFECTED BY WELFARE REFORM

I certify that a total of _____ people reside in the housing developments listed below, which are targeted for activities during the proposed RMBD grant.

_____

_____

_____

This proposed RMBD grant will serve a total of _____ residents. Included in the recipients to be served are residents affected by welfare reform who are:

(1) Currently eligible to receive, are currently receiving, or shall have received within the preceding 4 years assistance or services funded under Temporary Assistance for Needy Families (TANF), SSI, or Food Stamps.

(2) Elderly or disabled, otherwise not affected by welfare reform, who will provide services such as child care or mentoring to families affected by welfare reform.

I certify that _____% of the residents to be served are affected by welfare reform, as defined above. **At least 51% of residents must be affected by welfare reform for your application to meet the threshold requirement of this NOFA.**

Signed this _____ day of _____ ,2002.

By: _____
President of Resident Organization or other Authorized Representative

For: _____
Applicant Name

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RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

Applicant: _____ **Date:** _____

7. Certification of Resident Council Board Election. You must submit certification of the Resident Organization board election as required by HUD, signed by the local PHA and/or an independent third-party monitor and notarized.

CERTIFICATION OF RESIDENT COUNCIL BOARD ELECTION

I CERTIFY that _____
(name of organization)

located in _____ has duly elected
(city & state)

all of the Resident Council Officers as required by the U.S. Department of Housing and Urban Development, 24 Code of Federal Regulations, Part 964.

Date of Last Resident Council Board Election: _____.

_____
(Name and Title of Certifying Housing Agency Official)

_____
(Signature) (Date)

_____
(Name and Title of Independent Third-Party Monitor)

_____
(Signature) (Date)

_____
NOTARY (Signature & Date)

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FY 2002 Resident Management and Business Development Applicant:

List of Resident Associations Participating with the City-Wide Resident Organization

(Only City-Wide Resident Organization Applicants Need to Complete and Submit this Chart)

Name of the Resident Association	Contact Person	Address, City, & State	PHA/Tribe

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RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

Chart A: RMBD Program Staffing **Applicant Name:**

I. Applicant (PHA or CWRO)				
Name of Staff Person	Organization and Position	Role in Grant Program	Percent of Time on Grant	Cost to Grant

II. CONTRACT ADMINISTRATOR		
Contract Administrator to be Solicited	Role in Grant Program	Estimated Cost to Grant Program
III.CONSULTANT(S)/TRAINERS/SVC. PROVIDERS/OTHER EXPERTS		
Consultants/Trainers to be Solicited	Role in Grant Program	Estimated Cost to Grant Program

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Chart B: RMBD Applicant/Administrator Track Record
Applicant:

Program Component	Program No.	% of Term Complete	% of Funds Drawn Down	Major Goal #1	% Complete	Major Goal #2	% Complete

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RESIDENT MANAGEMENT AND BUSINESS DEVELOPMENT

CHART C
RMBD BUDGET LINE ITEM SUMMARY

Applicant Name:_____ **Date:**_____

Please check the following as appropriate for your proposed program.

Resident Management and Business Development

____	**1010**	**Physical Improvements**
____	**1020**	**Resident Business Development**
____	1021	Develop Business Plan
____	1022	Conduct Market Analysis
____	1023	Licensing, Insurance Bonding
____	1024	Training Related to Resident Owned Business
____	1025	Establishment of Resident Managed Business Development
____	1026	Technical Assistance
____	**1030**	**Resident Organization Development Activities**
____	1031	Organize Community
____	1032	Operating Procedures
____	1033	Develop MOU
____	1034	Develop Plan for Technical Assistance
____	1035	Consultant Contracts
____	1036	Self Sufficiency Programs
____	**1040**	**Resident Management**
____	1041	Conduct Feasibility Study
____	1042	Secure Training/Skills/Expertise
____	1043	Develop MOU
____	1044	Secure T/A to Draft Contract
____	1045	Negotiate Contract with PHA
____	1046	Conduct Resident Training/Preparation
____	**1050**	**Self Sufficiency Program**
____	1051	Employment and Job Readiness
____	1052	Job Training
____	1053	Management Related Employment Training
____	1054	Vocational Training
____	1055	Technical Assistance
____	**1060**	**Supportive Services**
____	**9100**	**Travel Costs**
____	**9200**	**Other Resident Costs (Stipends, Reimbursements)**
____	**9300**	**Contract Administrator**
____	**9400**	**Administrative and Other Costs**

See Appendix X for Narrative Descriptions

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Chart D: RMBD Budget Workplan Summary - Part I **Applicant:** _____

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RMBD GRANT FUNDS	NON-RMBD/ PARTNER FUNDS	ACTIVITY START/END DATES
1010 Physical Improvements TOTAL: $				
1020 Resident Business Dev. TOTAL: $				
1021 Develop Business Plan				
1022 Conduct Market Analysis				
1023 Licensing, Insurance, Bonding				
1024 Training Related to Resident Owned Business				
1025 Establishment of Resident Managed Business Dev.				
1026 Technical Assistance				

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Chart D: RMBD Budget Workplan Summary – Part I (cont'd) **Applicant:** _____

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RMBD GRANT FUNDS	NON-RMBD/ PARTNER FUNDS	ACTIVITY START/END DATES
1030 Resident Org. Dev. Activities TOTAL: $				
1031 Organize Community				
1032 Operating Procedures				
1033 Develop MOU				
1034 Develop Plan for Technical Assistance				
1035 Consultant Contracts				
1036 Self Sufficiency Programs				
1040 Resident Management TOTAL: $				

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Chart D: RMBD Budget Workplan Summary - Part I (cont'd) **Applicant:**

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RMBD GRANT FUNDS	NON-RMBD/ PARTNER FUNDS	ACTIVITY START/END DATES
1041 Conduct Feasibility Study				
1042 Secure Training/Skills/Expertise				
1043 Develop MOU				
1044 Secure T/A to Draft Contract				
1045 Negotiate Contract with PHA				
1046 Conduct Resident Training/ Preparation				
1050 Self Sufficiency Program TOTAL: $				

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Chart D: RMBD Budget Workplan Summary - Part I (cont'd) **Applicant:**

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RMBD GRANT FUNDS	NON-RMBD/ PARTNER FUNDS	ACTIVITY START/END DATES
1051 Employment and Job Readiness				
1052 Job Training				
1053 Management Related Employment Training				
1054 Vocational Training				
1055 Technical Assistance				
1060 Supportive Services TOTAL: $				
9100 Travel Costs TOTAL: $				
9200 Other Resident Costs (Stipends, Reimbursements) TOTAL: $				

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Applicant:

Chart D: RMBD Budget Workplan Summary - Part I (cont'd)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RMBD GRANT FUNDS	NON-RMBD/ PARTNER FUNDS	ACTIVITY START/END DATES
9300 Contract Administrator TOTAL: $				
9400 Admin. and Other Costs TOTAL: $				

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Chart D: RMBD Budget Workplan Summary - Part II

Please insert below the totals for each Summary Budget Line Item to be included in your grant.
These totals can be found in the far left column on Part I of the chart above.

SUMMARY BUDGET LINE ITEMS	RMBD GRANT TOTAL
1010 Physical Improvements	$
1020 Resident Business Development	$
1030 Resident Organization Development Activities	$
1040 Resident Management	$
1050 Self Sufficiency Program	$
1060 Supportive Services	$
9100 Travel Costs	$
9200 Other Resident Costs (Stipends, Reimbursements, etc.)	$
9300 Contract Administrator	$
9400 Administrative and Other Costs	$
TOTAL of all RMBD Funds Requested	$

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Certification of Consistency and Compliance with General SuperNOFA Program Requirements

I CERTIFY that the proposed ROSS activities will be consistent with the following and comply with all statutes, regulations, and U.S. Department of Housing and Urban Development guidance related to the following:

1. **Compliance with Fair Housing and Civil Rights laws**. Compliance with all Fair Housing and Civil Rights laws, statues, regulations, and Executive order as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with non-discrimination provisions in 24 CFR 1003.601.

2. **Affirmatively Furthering Fair Housing.** Affirmative duty to further fair housing, including elimination of impediments to fair housing; the local jurisdiction or regional Analysis of Impediments to Fair Housing Choice; and the affirmative duty to carry out activities proposed specifically in your application to address the furtherance of fair housing. *Section 109 of the Housing and Community Development Act of 1974.*

3. **Economic Opportunities for Low and Very Low-Income Persons.** Section 3 of the *Housing and Urban Development Act of 1968*, 12 U.S.C. sec. 1791u, Economic Opportunities for Low and Very Low-Income Persons; HUD regulations at 24 CFR part 135, including but not limited to subpart E and G reporting requirements; and any Section 3 employment, housing opportunity, or other plan adopted by the Housing Agency.

4. **Conducting Business In Accordance With Core Values and Ethical Standards.** Documentation of a written code of conduct as contained in 24 CFR 84.42 and 85.36(b)(3)

5. **Ensuring the Participation of Small Business, Small disadvantaged Businesses, and Women-Owned Businesses.** Compliance with 24 CFR 84.44(b) and 85.36(e) in contracting for purchasing of goods and services.

6. **Uniform Relocation.** *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (URA) and implementing regulations at 49 CFR part 24.

7. **Nondiscrimination.** The *Americans with Disabilities Act*, Title IX of the *Education Amendments Act of 1972*, *Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, section 504 of the *Rehabilitation Act of 1973*, the *Age Discrimination Act of 1975*, and section 109 of the *Housing and Community Development Act of 1974.*

8. **Cost Principles.** OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) or OMB Circular No. A-87 (Cost Principles for Local Units of Government), as appropriate.

Signed this _____ day of _____, 2002.

By:_____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____

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RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY PROGRAM

APPLICATION FOR FY 2002 FUNDING COVER SHEET

Funding Category (Check ONE):

_____ **Resident Management and Business Development**
_____ **Capacity Building**
_____ **Resident Service Delivery Models – Family**
_____ **Resident Service Delivery Models –Elderly/Disabled**
_____ **Homeownership Supportive Services**
_____ **Neighborhood Networks**
_____ **Service Coordinators**

Submitted By: _____
(Applicant Name)

Contact Person: _____

Telephone: ( ) _____

Delivered To: _____
(HUD Field Office)

Date: _____

PLEASE USE THIS PAGE AS COVER PAGE

HUD-2002 ROSS (02/02)

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ROSS FY 2002 FUNDING

FACT SHEET

Applicant Information

Applicant: _____

Applicant Type: ___PHA ___RA ___IRO ___NONPROFIT ___ TRIBE/TDHE

HUD Region: _____ State: _____ HUD Field Office: _____

Contact

Name/Title _____

Street Address _____

City/State/Zip _____

Telephone No. ( ) _____

Fax No. ( ) _____

Assistance for which the applicant is applying:

_____ Resident Management and Business Development
_____ Capacity Building
_____ Resident Service Delivery Models
_____ Homeownership Supportive Services
_____ Neighborhood Networks
_____ Service Coordinator Renewal

Unit Count

_____ Total number of conventional public housing units under management** (excluding any Section 8)

_____ Total number of family-occupied conventional public housing units.

_____ Total number of elderly/disabled-occupied conventional public housing units.

****Tribal or TDHE applicants should use the unit count described in the NOFA Section II (F).**

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FACT SHEET (continued)

SITE-BASED RESIDENT ASSOCIATION BOARD INFORMATION (Does not apply to SC applicants)

Name of Board Member Title Appointment Term Date

_____

_____

_____

_____

_____

_____

_____

Date of Last Board Election:_____

Does the organization have block captains? Yes____ No____

Does the organization have an operating committee? Yes____ No____

For any previous ROSS grants you have received, you must note the Fiscal Year, ROSS Category (RSDM, RMBD, etc.), and Award Amount.

_____

_____

_____

_____

_____

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

Name(s) of public housing development(s) targeted for ROSS Activities (Use additional pages if necessary.)

Name of Public Housing Development	PIH Project #

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or Other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY

Applicant: _____ **Date:** _____

Applicant type: ___PHA ___RA ___IRO ___NONPROFIT ___TRIBE/TDHE

Funding Category: _____

This narrative will be used for congressional notification and will serve as the official program summary.

A. Please provide a brief summary of the program proposed in your application (100 words or less) including a brief description of key program components.

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY (continued)

B. Please provide a listing of all partners involved, their in-kind/cash contribution, and number of persons to be served by each partner using the format below. (You may copy this page if additional space is needed.)

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

TOTAL	_____	_____

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Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.

(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official of the Jurisdiction Name: _____

Title: _____

Signature: _____

Date: _____

OMB Approval No. 2577-0221

ROSS FY 2002 FUNDING

CAPACITY BUILDING

APPLICATION CHECKLIST

I CERTIFY that the following application checklist is complete and that it accurately reflects the contents of my application.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive Officer or Other Authorized Representative

For Applicant: _____

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
Cover Materials (See Part II of this application kit for forms in this tab.)		
☐ Table of Contents	_____	_____
☐ Application Checklist	_____	_____
☐ Application Cover Sheet	_____	_____
☐ Application for Federal Assistance (Standard Form SF-424)	_____	_____
☐ Federal Assistance Funding Matrix (Form HUD-424M)	_____	_____
☐ Budget Information —Non-Construction Programs (Standard Form SF-424A)	_____	_____
☐ Assurances—Non-Construction Programs (Standard Form SF-424B)	_____	_____
☐ ROSS Fact Sheet	_____	_____
☐ ROSS Program Summary	_____	_____
☐ Certification of Consistency and Compliance with General SuperNOFA Threshold Requirements	_____	_____

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CAPACITY BUILDING

APPLICATION CHECKLIST (continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

TAB 1: Threshold Requirements

- ☐ Threshold Checklist _____ _____
- ☐ Proof of Applicant Nonprofit Status – Copy of Certification of Incorporation or Good Standing from the State **or** Copy of IRS 501(c) designation (not for tribes/TDHEs) _____ _____
- ☐ Match Agreements -- Not less than 25% of grant requested _____ _____
- ☐ List of RAs to Receive Support and Letters of Support from RAs _____ _____
- ☐ Certificate of Compliance with either 24 CFR Part 84 **or** Contract Administrator Signed Statement (not for tribes/TDHEs) _____ _____
- ☐ MOU between Applicant and PHA/tribe/TDHE _____ _____
- ☐ Accessible Community Facility – Description or Executed Use Agreement _____ _____

TAB 2: Program Description and Budget

- ☐ Needs Assessment Report _____ _____
- ☐ Proposed Program Activities Description _____ _____
- ☐ Experience and Staffing—Narrative _____ _____
- ☐ Chart A: CB Program Staffing _____ _____

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ROSS FY 2002 FUNDING

CAPACITY BUILDING

APPLICATION CHECKLIST (continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

- ☐ Resumes **or** Summary of Proposed Staff's Qualifications _____ _____
- ☐ Chart B: Applicant Track Record _____ _____
- ☐ Work Plan Summary _____ _____
- ☐ Chart C: Summary Budget Line Items _____ _____
- ☐ Chart D: Budget Workplan Summary, Parts I and II _____ _____

TAB 3: Other Certifications and Assurances
(See Part VII of this Application Kit for all forms in this tab.)

- ☐ Certification for a Drug-Free Workplace (Form HUD–50070) _____ _____
- ☐ Certification of Payments to Influence Federal Transactions (Form HUD-50071), and if applicable, Disclosure of Lobbying Activities (Form SF- LLL) and Disclosure of Lobbying Activities Continuation Sheet (Form SF-LLL-A) _____ _____
- ☐ Applicant/Recipient Disclosure/Update Report (Form HUD-2880) _____ _____
- ☐ Certification Regarding Debarment and Suspension (Form HUD–2992) _____ _____
- ☐ Acknowledgement of Application Receipt (Form HUD-2993) _____ _____

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ROSS FY 2002 FUNDING CAPACITY BUILDING

THRESHOLD CHECKLIST

Applicant:_____ **Date:**_____

You must address the following threshold requirements for your application to be complete and acceptable for rating and ranking. You can verify that information is included in your application kit by using a check mark in the space provided. Please note that HUD will also verify that information is included appropriately. (See ROSS NOFA, Section VI (A) & (C) and General SuperNOFA Section II). *Note: Items marked with an * do not apply to tribes/TDHEs.*

THRESHOLD REQUIREMENT	APPLICANT USE ONLY	HUD USE ONLY
1. *Proof of Applicant Nonprofit Status -- Copy of Certification of Incorporation or Good Standing from the State **or** Copy of IRS 501(c) designation	____	____
2. Match Agreements—Not less than 25% of grant requested	____	____
3. List of RAs to Receive Support **and** Letters of Support from RAs	____	____
4. *Certificate of Compliance with either 24 CFR Part 84 **or** Contract Administrator Signed Statement	____	____
5. MOU between Applicant and PHA/tribe/TDHE	____	____
6. Accessible Community Facility – Description or Executed Use Agreement	____	____

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ROSS FY 2002 FUNDING CAPACITY BUILDING

Applicant: _____ **Date:** _____

THRESHOLD REQUIREMENTS

1. Focus on Residents Affected by Welfare Reform. This requirement is not applicable to your program if it serves the elderly or persons with disabilities. Your Family CB application must contain a certification (using the certification provided below) that at least 51% of residents to be included in your proposed program are affected by welfare reform. □

CB CERTIFICATION ON RESIDENTS AFFECTED BY WELFARE REFORM

I certify that a total of _____ people reside in the housing developments listed below, which are targeted for activities during the proposed CB grant.

_____

_____

_____

This proposed CB grant will serve a total of _____ residents. Included in the recipients to be served are residents affected by welfare reform who are either:

(1) Currently eligible to receive, are currently receiving, or shall have received within the preceding 4 years assistance or services funded under Temporary Assistance for Needy Families (TANF), SSI, or Food Stamps.

(2) Elderly or disabled persons, otherwise not affected by welfare reform, who will provide services such as child care or mentoring to families affected by welfare reform.

I certify that _____% of residents to be served are affected by welfare reform, as defined above. **At least 51% of residents must be affected by welfare reform for your application to meet the threshold requirement of this NOFA.**

Signed this _____ day of _____, 2002.

By:_____
Applicant Executive Director or other Authorized Representative

For: _____
Applicant Name

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FY 2002 Capacity Building **Applicant:** _____

List of Resident Associations Participating

Name of RA/Resident Association	Contact Person	Address, City, State	Housing Authority/Tribe

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Chart A: CB PROGRAM STAFFING Applicant Name: _____

I. APPLICANT

Name of Staff Person	Organization and Position	Role in Grant Program	Percent of Time on Grant	Cost to Grant

II. CONTRACTOR ROLE

Type of Contractor to be Solicited	Role in Grant Program	Estimated Cost to Grant Program

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Chart B: CB Applicant Track Record
Applicant:

Program	Project Number	% of Tasks Complete	% of Funds Drawn Down	Major Goal #1	Percent Complete	Major Goal #2	Percent Complete

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CHART D: BUDGET WORK PLAN SUMMARY –PART I (Capacity Building) **Applicant Name:**

BUDGET LINE ITEM Include grant funding totals in each bolded line item.	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	CB GRANT FUNDS	NON-CB PARTNER FUNDS	ACTIVITY START/END DATE
3000 Capacity Building Activities TOTAL: $				
3010 Training				
3011 Consultants				
3012 Other				
9100 Travel Costs TOTAL: $				
9300 Contract Administrator TOTAL: $				
9400 Administrative Costs TOTAL: $				

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CHART D: BUDGET WORK PLAN SUMMARY –PART I (Capacity Building) **Applicant Name:**

BUDGET LINE ITEM Include grant funding totals in each bolded line item.	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	CB GRANT FUNDS	NON-CB PARTNER FUNDS	ACTIVITY START/END DATE
3000 Capacity Building Activities TOTAL: $				
3010 Training				
3011 Consultants				
3012 Other				
9100 Travel Costs TOTAL: $				
9300 Contract Administrator TOTAL: $				
9400 Administrative Costs TOTAL: $				

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CHART D: BUDGET WORK PLAN SUMMARY-PART I (Continued)

BUDGET LINE ITEM Include grant funding totals in each bolded line item.	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	CB GRANT FUNDS	NON-CB PARTNER FUNDS	ACTIVITY START/END DATE
9100 Travel Costs TOTAL: $				
9300 Contract Admin. TOTAL: $				
9400 Administrative Costs TOTAL: $				

Chart D: CB Budget Work Plan Summary - Part II (Capacity Building)

Please insert below the totals for each Summary Budget Line Item to be included in your **Capacity Building** grant. These totals can be found in the far left column on Part I of the chart above.

SUMMARY BUDGET LINE ITEMS	CB GRANT TOTAL
3000 Capacity Building Activities	$
9100 Travel Costs	$
9300 Contract Administrator	$
9400 Administrative and Other Costs	$
TOTAL of all Capacity Building Funds Requested	$

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ROSS FY 2002 FUNDING

Certification of Consistency and Compliance with General SuperNOFA Program Requirements

I CERTIFY that the proposed ROSS activities will be consistent with the following and comply with all statutes, regulations, and U.S. Department of Housing and Urban Development guidance related to the following:

1. **Compliance with Fair Housing and Civil Rights laws**. Compliance with all Fair Housing and Civil Rights laws, statues, regulations, and Executive order as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with non-discrimination provisions in 24 CFR 1003.601.

2. **Affirmatively Furthering Fair Housing.** Affirmative duty to further fair housing, including elimination of impediments to fair housing; the local jurisdiction or regional Analysis of Impediments to Fair Housing Choice; and the affirmative duty to carry out activities proposed specifically in your application to address the furtherance of fair housing. *Section 109 of the Housing and Community Development Act of 1974.*

3. **Economic Opportunities for Low and Very Low-Income Persons.** Section 3 of the *Housing and Urban Development Act of 1968*, 12 U.S.C. sec. 1791u, Economic Opportunities for Low and Very Low-Income Persons; HUD regulations at 24 CFR part 135, including but not limited to subpart E and G reporting requirements; and any Section 3 employment, housing opportunity, or other plan adopted by the Housing Agency.

4. **Conducting Business In Accordance With Core Values and Ethical Standards.** Documentation of a written code of conduct as contained in 24 CFR 84.42 and 85.36(b)(3).

5. **Ensuring the Participation of Small Business, Small disadvantaged Businesses, and Women-Owned Businesses.** Compliance with 24 CFR 84.44(b) and 85.36(e) in contracting for purchasing of goods and services.

6. **Uniform Relocation.** *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (URA) and implementing regulations at 49 CFR part 24.

7. **Nondiscrimination.** The *Americans with Disabilities Act*, Title IX of the *Education Amendments Act of 1972*, *Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, section 504 of the *Rehabilitation Act of 1973*, the *Age Discrimination Act of 1975*, and section 109 of the *Housing and Community Development Act of 1974*.

8. **Cost Principles.** OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) or OMB Circular No. A-87 (Cost Principles for Local Units of Government), as appropriate.

Signed this _____ day of _____, 2002.

By:_____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____

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RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY PROGRAM

APPLICATION FOR FY 2002 FUNDING
COVER SHEET

Funding Category (Check ONE):

_____ **Resident Management and Business Development**
_____ **Capacity Building**
_____ **Resident Service Delivery Models – Family**
_____ **Resident Service Delivery Models –Elderly/Disabled**
_____ **Homeownership Supportive Services**
_____ **Neighborhood Networks**
_____ **Service Coordinators**

Submitted By: _____
(Applicant Name)

Contact Person: _____

Telephone: ( ) _____

Delivered To: _____
(HUD Field Office)

Date: _____

PLEASE USE THIS PAGE AS COVER PAGE

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ROSS FY 2002 FUNDING

FACT SHEET

Applicant Information

Applicant:_____

Applicant Type: ___PHA ___RA ___IRO ___NONPROFIT ___ TRIBE/TDHE

HUD Region:_____ State: _____ HUD Field Office:_____

Contact

Name/Title _____

Street Address _____

City/State/Zip _____

Telephone No. ( ) _____

Fax No. ( ) _____

Assistance for which the applicant is applying:

_____ Resident Management and Business Development
_____ Capacity Building
_____ Resident Service Delivery Models
_____ Homeownership Supportive Services
_____ Neighborhood Networks
_____ Service Coordinator Renewal

Unit Count

_____ Total number of conventional public housing units under management** (excluding any Section 8)

_____ Total number of family-occupied conventional public housing units.

_____ Total number of elderly/disabled-occupied conventional public housing units.

****Tribal or TDHE applicants should use the unit count described in the NOFA Section II (F).**

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

SITE-BASED RESIDENT ASSOCIATION BOARD INFORMATION (Does not apply to SC applicants)

Name of Board Member Title Appointment Term Date

_____
_____
_____
_____
_____
_____
_____
_____

Date of Last Board Election:_____

Does the organization have block captains? Yes____ No____

Does the organization have an operating committee? Yes____ No____

For any previous ROSS grants you have received, you must note the Fiscal Year, ROSS Category (RSDM, RMBD, etc.), and Award Amount.

_____

_____

_____

_____

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

Name(s) of public housing development(s) targeted for ROSS Activities (Use additional pages if necessary.)

Name of Public Housing Development	PIH Project #

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or Other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY

Applicant: _____ **Date:** _____

Applicant type: ___PHA ___RA ___IRO ___NONPROFIT ___TRIBE/TDHE

Funding Category: _____

This narrative will be used for congressional notification and will serve as the official program summary.

A. Please provide a brief summary of the program proposed in your application (100 words or less) including a brief description of key program components.

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PROGRAM SUMMARY (continued)

B. Please provide a listing of all partners involved, their in-kind/cash contribution, and number of persons to be served by each partner using the format below. (You may copy this page if additional space is needed.)

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
TOTAL	_____	_____

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ROSS FY 2002 FUNDING

Certification of Consistency and Compliance with General SuperNOFA Program Requirements

I CERTIFY that the proposed ROSS activities will be consistent with the following and comply with all statutes, regulations, and U.S. Department of Housing and Urban Development guidance related to the following:

1. **Compliance with Fair Housing and Civil Rights laws**. Compliance with all Fair Housing and Civil Rights laws, statues, regulations, and Executive order as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with non-discrimination provisions in 24 CFR 1003.601.

2. **Affirmatively Furthering Fair Housing.** Affirmative duty to further fair housing, including elimination of impediments to fair housing; the local jurisdiction or regional Analysis of Impediments to Fair Housing Choice; and the affirmative duty to carry out activities proposed specifically in your application to address the furtherance of fair housing. *Section 109 of the Housing and Community Development Act of 1974.*

3. **Economic Opportunities for Low and Very Low-Income Persons.** Section 3 of the *Housing and Urban Development Act of 1968*, 12 U.S.C. sec. 1791u, Economic Opportunities for Low and Very Low-Income Persons; HUD regulations at 24 CFR part 135, including but not limited to subpart E and G reporting requirements; and any Section 3 employment, housing opportunity, or other plan adopted by the Housing Agency.

4. **Conducting Business In Accordance With Core Values and Ethical Standards.** Documentation of a written code of conduct as contained in 24 CFR 84.42 and 85.36(b)(3).

5. **Ensuring the Participation of Small Business, Small disadvantaged Businesses, and Women-Owned Businesses.** Compliance with 24 CFR 84.44(b) and 85.36(e) in contracting for purchasing of goods and services.

6. **Uniform Relocation.** *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (URA) and implementing regulations at 49 CFR part 24.

7. **Nondiscrimination.** The *Americans with Disabilities Act*, Title IX of the *Education Amendments Act of 1972*, *Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, section 504 of the *Rehabilitation Act of 1973*, the *Age Discrimination Act of 1975*, and section 109 of the *Housing and Community Development Act of 1974.*

8. **Cost Principles.** OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) or OMB Circular No. A-87 (Cost Principles for Local Units of Government), as appropriate.

Signed this _____ day of _____, 2002.

By:_____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____

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ROSS FY 2002 FUNDING
RESIDENT SERVICE DELIVERY MODELS

APPLICATION CHECKLIST

I CERTIFY that the following application checklist is complete and that it accurately reflects the contents of my application.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive Officer or Other Authorized Representative

For Applicant: _____

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

COVER MATERIALS (See Part II of this application kit for forms in this tab.)

- ☐ Application Checklist _____ _____
- ☐ Application Cover Sheet _____ _____
- ☐ Application for Federal Assistance (Standard Form SF-424) _____ _____
- ☐ Federal Assistance Funding Matrix (Form HUD-424M) _____ _____
- ☐ Standard Form for Budget Information Non-Construction Programs (SF-424A) _____ _____
- ☐ Assurances – Non-Construction Programs (Form SF-424B) _____ _____
- ☐ ROSS Fact Sheet _____ _____
- ☐ ROSS Program Summary _____ _____
- ☐ Certification of Consistency and Compliance with General SuperNOFA Threshold Requirements Certification _____ _____

TAB 1: Threshold Requirements

- ☐ Threshold Checklist _____ _____

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RESIDENT SERVICE DELIVERY MODELS

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

- ☐ Certification on Resident Affected by Welfare Reform (Family RSDM Applicants Only) _____ _____
- ☐ Elderly Housing Development Certification (Elderly RSDM Applicants Only) _____ _____
- ☐ Accessible Community Facility –Description or Executed Use Agreement (if facility provided is not a PHA) _____ _____
- ☐ Match Agreements-Not less than 25% of grant requested _____ _____
- ☐ Physical Improvements (Only for applicants proposing physical improvements) _____ _____
- ☐ Certificate of Compliance with either 24 CFR Part 84 or 85 **or** Contract Administrator Signed Statement (not for Tribes/TDHEs or non-troubled PHAs) _____ _____
- ☐ Proof of Nonprofit Status (RA, IRO, and Nonprofit Applicants Only). IROs must have 501 (c) status _____ _____
- ☐ Certification of Resident Council Board Election (RA Applicants Only) _____ _____
- ☐ List of RAs to Be Served and Letters of Support from RAs _____ _____

TAB 2: Capacity of the Applicant and Relevant Organizational Experience (Factor 1)

- ☐ Chart A: Program Staffing _____ _____
- ☐ Narrative on proposed staffing and coordination among service providers _____ _____

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RESIDENT SERVICE DELIVERY MODELS

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
☐ Chart B: Applicant/Administrator Track Record	_____	_____
☐ Organization Chart	_____	_____
☐ Staff Position Descriptions	_____	_____
☐ Staff Resumes or Background/ Experience Descriptions	_____	_____
☐ Narrative on program administration and fiscal management structure	_____	_____
TAB 3: Needs/Extent of Problem (Factor 2)		
☐ Needs Assessment Report	_____	_____
☐ Narrative on level of priority in Consolidated Plan/IHP	_____	_____
TAB 4: Soundness of Approach (Factor 3)		
☐ Narrative describing proposed services	_____	_____
☐ Narrative on resident contracting and employment	_____	_____
☐ Chart C: Summary Budget Line Items	_____	_____
☐ Chart D: Budget Work Plan Summary, Parts I and II	_____	_____
☐ Narrative on program assessment	_____	_____
☐ Narrative on resident involvement and other partnerships	_____	_____
☐ Narrative on relationship coordination	_____	_____
TAB 5: Leveraging Resources (Factor 4)		
☐ Narrative on the contributions, roles, and responsibilities of each partner	_____	_____

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RESIDENT SERVICE DELIVERY MODELS

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
TAB 6: Coordination, Self-sufficiency, and Sustainability (Factor 5)		
☐ Narrative demonstrating review of Consolidated Plan/IHP	_____	_____
☐ Narrative on coordination w/ State/local welfare plan	_____	_____
☐ Narrative on coordination with other activities	_____	_____
☐ Certification of Consistency w/ the Consolidated Plan	_____	_____
☐ Certification of Consistency w/ the Indian Housing Plan (Tribes/TDHEs only)	_____	_____
TAB 7: Bonus Points		
☐ EZ/EC Certification	_____	_____
TAB 8: Other Certifications and Assurances (See Section VII of this Application Kit for all forms in this tab.)		
☐ Certification for a Drug-Free Workplace (Form HUD–50070)	_____	_____
☐ Certification of Payments to Influence Federal Transactions (Form HUD 50071), and if applicable, Disclosure of Lobbying Activities (Form SF- LLL) and Disclosure of Lobbying Activities Continuation Sheet (Form SF-LLL-A)	_____	_____
☐ Applicant/Recipient Disclosure/Update Report (Form HUD-2880)	_____	_____
☐ Certification Regarding Debarment and Suspension (Form HUD–2992)	_____	_____
☐ Acknowledgment of Application Receipt (Form HUD-2993)	_____	_____

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ROSS FY 2002 FUNDING
RESIDENT SERVICE DELIVERY MODELS

THRESHOLD CHECKLIST

Applicant: _____ **Date:** _____

You must address the following threshold requirements for your application to be complete and acceptable for rating and ranking. You can verify that information is included in your application kit by using a check mark in the space provided. Please note that HUD will also verify that information is included appropriately. (See NOFA, Section VI (A) & (D) and General SuperNOFA Section II).

THRESHOLD REQUIREMENT	APPLICANT USE ONLY	HUD USE ONLY
1. Certification on Residents Affected by Welfare Reform (Family applicants only)	____	____
2. Elderly Housing Development Certification (Elderly applicants only)	____	____
3. Accessible Community Facility Description or Executed Use Agreement (if facility provided is not a PHA)	____	____
4. Match Agreements	____	____
5. Physical Improvements (Only for applicants proposing physical improvements)	____	____
6. Certification of Compliance with either 24 CFR Part 84 or 85 or Contract Administrator Signed Statement (not for Tribes/TDHE or non-troubled PHAs)	____	____
7. Proof of Applicant Nonprofit Status (RA, IROs, and non- profit applicants only)	____	____
8. Certification of Resident Board Election (RA applicants only)	____	____
9. List of RAs to be Served and Letters of Support from RAs	____	____

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RESIDENT SERVICE DELIVERY MODELS

Applicant: _____ **Date:** _____

THRESHOLD REQUIREMENTS

1. Focus on Residents Affected by Welfare Reform. This requirement is not applicable to your program if it serves the elderly or persons with disabilities. Your Family RSDM application must contain a certification (using the certification provided below) that at least 51% of residents to be included in your proposed program are affected by welfare reform. ❑

RSDM CERTIFICATION ON RESIDENTS AFFECTED BY WELFARE REFORM

I certify that a total of _____ people reside in the housing developments listed below, which are targeted for activities during the proposed RSDM grant.

_____

_____

_____

This proposed RSDM grant will serve a total of _____ residents. Included in the recipients to be served are residents affected by welfare reform who are either:

(1) Currently eligible to receive, are currently receiving, or shall have received within the preceding 4 years assistance or services funded under Temporary Assistance for Needy Families (TANF), SSI, or Food Stamps.

(2) Elderly or disabled persons, otherwise not affected by welfare reform, who will provide services such as child care or mentoring to families affected by welfare reform.

I certify that _____% of residents to be served are affected by welfare reform, as defined above. **At least 51% of residents must be affected by welfare reform for your application to meet the threshold requirement of this NOFA.**

Signed this _____ day of _____ , 2002.

By: _____
Applicant Executive Director or other Authorized Representative

For: _____
Applicant Name

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RESIDENT SERVICE DELIVERY MODELS

Applicant: _____ **Date:** _____

2. Elderly Housing Development Certification. You must certify that at least 25% of the residents in the development(s) proposed for the grant activities are elderly and/or non-elderly people with disabilities.

RSDM ELDERLY HOUSING DEVELOPMENT CERTIFICATION

I CERTIFY that _____% of the residents in the development(s) proposed for the grant activities are elderly and/or non-elderly people with disabilities at the time of the application; thereby meeting or exceeding the 25% requirement.

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING
RESIDENT SERVICE DELIVERY MODELS

Applicant: _____ **Date:** _____

7. Certification of Resident Board Election. RA applicants must submit certification of the RA board election as required by HUD, signed by the local PHA and/or an independent third-party monitor and notarized.

Certification of Resident Council Board Election

I CERTIFY _____
(name of organization)

located in _____ has duly elected all
(city & state)

of Resident Council Officers as required by the U.S. Department of Housing and Urban Development, 24 Code of Federal Regulations (CFR), Part 964.

Date of Last Resident Council Board Election: _____

_____
(Name and Title of Certifying Housing Agency Official)

_____
(Signature) (Date)

_____
(Name and Title of Independent Third-Party Monitor)

_____
(Signature) (Date)

NOTARY (*Signature & Date*) _____

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FY 2002 Resident Service Delivery Models Applicant:

Name of the Resident Organization	Contact Person	Address, City, & State	Housing Authority/Tribe

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Chart A: RSDM PROGRAM STAFFING Applicant Name:

I. APPLICANT STAFF

Name of Staff Person	Organization and Position	Role in Grant Program	Percent of Time on Grant	Cost to Grant
Budget line item 2005 Program Coordination				

II.CONTRACTOR/CONSULTANT ROLE

Type of Contractor to be Solicited	Role in Grant Program	Estimated Cost to Grant Program
III.Contract Administrator		
Budget Line Item 9300 Contract Administrator		

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Chart B: RSDM Applicant/Administrator Track Record
Applicant: _____

Program Year	Project No.	% of Term Complete	Major Goal #1	% Complete	Major Goal #2	% Complete

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RESIDENT SERVICE DELIVERY MODELS

Chart C
RSDM SUMMARY BUDGET LINE ITEMS

Applicant Name:_____ **Date:**_____

Please check specific budget amounts for each line item. These budget line items and amounts will be programmed into HUD's Line of Credit Control System (LOCCS) for designating and tracking uses of grant drawdowns.

BUDGET LINE ITEM		AMOUNT
2005	**Program Coordinator** (family or elderly)	_____
2010	**Physical Improvements**	_____
2020	**Entrepreneur Business Development**	_____
2021	Establishing A Revolving Loan Fund	_____
2022	Developing a Credit Union	_____
2030	**Business Development**	_____
2031	Develop Business Plan	_____
2032	Conduct Market Analysis	_____
2033	Secure Licensing, Insurance, Bonding	_____
2034	Training Related to Resident Owned Business	_____
2035	Establishment of Resident Managed Business Development	_____
2040	**Resident Organization Development Activities**	_____
2041	Organize Community	_____
2042	Operating Procedures	_____
2043	Develop MOU	_____
2044	Develop Plan for Technical Assistance	_____
2045	Consultant Contracts	_____
2046	Self Sufficiency Programs	_____
2050	**Resident Management**	_____
2051	Conduct Feasibility Study	_____
2052	Secure Training/Skills/Expertise	_____
2053	Develop MOU	_____
2054	Consultant	_____
2055	Secure T/A to Draft Contract	_____
2056	Negotiate Contract with PHA	_____
2057	Conduct Resident Training Preparation	_____

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SUMMARY BUDGET INFORMATION (continued)

2060	**Self Sufficiency Program**	_____
2061	Program Coordinator	_____
2062	Physical Improvements	_____
2063	Employment and Job Readiness	_____
2064	Job Training	_____
2065	Management Related Employment Training	_____
2066	Vocational Training	_____
2067	Technical Assistance	_____
2070	**Family Supportive Services**	_____
2870	**Elderly Supportive Services**	_____
9100	**Travel Costs**	_____
9200	**Other Resident Costs (Stipends, Reimbursements)**	_____
9300	**Contract Administrator**	_____
9400	**Administrative and Other Costs**	_____

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CHART D: RSDM Budget Work Plan Summary – Part I **Applicant Name:**

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RSDM GRANT FUNDS	NON-RSDM/ PARTNER FUNDS	ACTIVITY START/END DATE
2010 Physical Improvements TOTAL: $				
2020 Entrepreneur Bus. Dev. TOTAL: $				
2021 Establish a Revolving Loan Fund				
2022 Develop a Credit Union				
2030 Business Development TOTAL: $				
2031 Develop Business Plan				
2032 Conduct Market Analysis				
2033 Secure Licensing, Insurance, Bonding				

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CHART D: RSDM Budget Work Plan Summary – Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: Housing Authority, Contractor, Subgrantee, or other partners)	RSDM GRANT FUNDS	NON-RSDM/ PARTNER FUNDS	ACTIVITY START/END DATE
2034 Training Related to Resident Owned Business				
2035 Establishment of Resident Managed Business Development				
2040 Resident Organization Development Activities TOTAL: $				
2041 Organize Community				
2042 Operating Procedures				
2043 Develop MOU				
2044 Develop Plan for Technical Assistance				

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CHART D: RSDM Budget Work Plan Summary – Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RSDM GRANT FUNDS	NON-RSDM/ PARTNER FUNDS	ACTIVITY START/END DATE
2045 Consultant Contracts				
2046 Self Sufficiency Programs				
2050 Resident Management TOTAL: $				
2051 Conduct Feasibility Study				
2052 Secure Training/Skills/ Expertise				
2053 Develop MOU				
2054 Consultant				

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CHART D: RSDM Budget Work Plan Summary – Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RSDM GRANT FUNDS	NON-RSDM/ PARTNER FUNDS	ACTIVITY START/END DATE
2055 Secure T/A to Draft Contract				
2056 Negotiate Contract with PHA				
2057 Conduct Resident Training Preparation				
2060 Self Sufficiency Program TOTAL: $				
2061 Program Coordinator				
2062 Physical Improvements				
2063 Employment and Job Readiness				

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CHART D: RSDM Budget Work Plan Summary – Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RSDM GRANT FUNDS	NON-RSDM/ PARTNER FUNDS	ACTIVITY START/END DATE
2064 Job Training				
2065 Management Related Employment Training				
2066 Vocational Training				
2067 Technical Assistance				
2070 Family Supportive Svs TOTAL: $				
2005 Program Coordinator TOTAL: $				
2870 Elderly Supportive Svs TOTAL: $				
9100 Travel Costs TOTAL: $				
9200 Other Resident Costs (Stipends, Reimbursements) TOTAL: $				

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CHART D: RSDM Budget Work Plan Summary -- Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	RSDM GRANT FUNDS	NON-RSDM/ PARTNER FUNDS	ACTIVITY START/END DATE
9300 Contract Administrator **TOTAL: $**				
9400 Admin. & Other Costs **TOTAL : $**				

Chart D: RSDM Budget Work Plan Summary - Part II

Please insert below the totals for each Summary Budget Line Item to be included in your grant.
These totals can be found in the far left column on Part I of the chart above.

SUMMARY BUDGET LINE ITEMS	RSDM GRANT TOTAL
2005 Program Coordinator	$
2010 Physical Improvements	$
2020 Entrepreneur Business Development	$
2030 Business Development	$
2040 Resident Organization Development Activities	$
2050 Resident Management	$
2060 Self Sufficiency Programs	$
2070 Family Supportive Services	$
2870 Elderly Supportive Services	$
9100 Travel Costs	$
9200 Other Resident Costs (Stipends, Reimbursements, etc.)	$
1060 Supportive Services	$
9100 Travel Costs	$
9300 Contract Administrator	$
9400 Administrative and Other Costs	$
TOTAL of all RSDM Funds Requested	$

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.

(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official of the Jurisdiction Name: _____

Title: _____

Signature: _____

Date: _____

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CERTIFICATION OF CONSISTENCY WITH THE INDIAN HOUSING PLAN

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Indian Housing Plan.

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program(s) to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Title: _____

Signature: _____

Date: _____

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Certification of Consistency with the RC/EZ/EC Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the Strategic Plan of a Federally-designated Empowerment Zone (EZ), Enterprise Community (EC), an Urban Enhanced Enterprise Community, Strategic Planning Community or Renewal Community.

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of RC/EZ/EC _____

I further certify that the proposed activities/projects will be located within the RC/EZ/EC/Urban Enhanced EC or Strategic Planning Community and will serve the RC/EZ/EC/Urban Enhanced EC, Strategic Planning Community residents, or Renewal Community. (2 points)

Name of the Official Authorized to Certify the RC/EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

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RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY PROGRAM

APPLICATION FOR FY 2002 FUNDING COVER SHEET

Funding Category (Check ONE):

_____ **Resident Management and Business Development**
_____ **Capacity Building**
_____ **Resident Service Delivery Models – Family**
_____ **Resident Service Delivery Models –Elderly/Disabled**
_____ **Homeownership Supportive Services**
_____ **Neighborhood Networks**
_____ **Service Coordinators**

Submitted By: _____
(Applicant Name)

Contact Person: _____

Telephone: ( ) _____

Delivered To: _____
(HUD Field Office)

Date: _____

PLEASE USE THIS PAGE AS COVER PAGE

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ROSS FY 2002 FUNDING

FACT SHEET

Applicant Information

Applicant:_____

Applicant Type: ___PHA ___RA ___IRO ___NONPROFIT ___ TRIBE/TDHE

HUD Region:_____ State: _____ HUD Field Office:_____

Contact

Name/Title _____

Street Address _____

City/State/Zip _____

Telephone No. ( ) _____

Fax No. ( ) _____

Assistance for which the applicant is applying:

_____ Resident Management and Business Development
_____ Capacity Building
_____ Resident Service Delivery Models
_____ Homeownership Supportive Services
_____ Neighborhood Networks
_____ Service Coordinator Renewal

Unit Count

_____ Total number of conventional public housing units under management**
(excluding any Section 8)

_____ Total number of family-occupied conventional public housing units.

_____ Total number of elderly/disabled-occupied conventional public housing units.

****Tribal or TDHE applicants should use the unit count described in the NOFA Section II (F).**

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

SITE-BASED RESIDENT ASSOCIATION BOARD INFORMATION (Does not apply to SC applicants)

Name of Board Member Title Appointment Term Date

_____
_____
_____
_____
_____
_____
_____
_____

Date of Last Board Election:_____

Does the organization have block captains? Yes____ No____

Does the organization have an operating committee? Yes____ No____

For any previous ROSS grants you have received, you must note the Fiscal Year, ROSS Category (RSDM, RMBD, etc.), and Award Amount.

_____
_____
_____
_____

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

Name(s) of public housing development(s) targeted for ROSS Activities (Use additional pages if necessary.)

Name of Public Housing Development	PIH Project #

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or Other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY

Applicant: _____ **Date:** _____

Applicant type: ___PHA ___RA ___IRO ___NONPROFIT ___TRIBE/TDHE

Funding Category: _____

This narrative will be used for congressional notification and will serve as the official program summary.

A. Please provide a brief summary of the program proposed in your application (100 words or less) including a brief description of key program components.

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY (continued)

B. Please provide a listing of all partners involved, their in-kind/cash contribution, and number of persons to be served by each partner using the format below. (You may copy this page if additional space is needed.)

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

Partner's Name _____ In-Kind/Cash Contribution _____ # Persons Served _____

Partner's Address

_____

TOTAL _____ _____

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ROSS FY 2002 FUNDING

Certification of Consistency and Compliance with General SuperNOFA Program Requirements

I CERTIFY that the proposed ROSS activities will be consistent with the following and comply with all statutes, regulations, and U.S. Department of Housing and Urban Development guidance related to the following:

1. **Compliance with Fair Housing and Civil Rights laws**. Compliance with all Fair Housing and Civil Rights laws, statues, regulations, and Executive order as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with non-discrimination provisions in 24 CFR 1003.601.

2. **Affirmatively Furthering Fair Housing.** Affirmative duty to further fair housing, including elimination of impediments to fair housing; the local jurisdiction or regional Analysis of Impediments to Fair Housing Choice; and the affirmative duty to carry out activities proposed specifically in your application to address the furtherance of fair housing. *Section 109 of the Housing and Community Development Act of 1974.*

3. **Economic Opportunities for Low and Very Low-Income Persons.** Section 3 of the *Housing and Urban Development Act of 1968*, 12 U.S.C. sec. 1791u, Economic Opportunities for Low and Very Low-Income Persons; HUD regulations at 24 CFR part 135, including but not limited to subpart E and G reporting requirements; and any Section 3 employment, housing opportunity, or other plan adopted by the Housing Agency.

4. **Conducting Business In Accordance With Core Values and Ethical Standards.** Documentation of a written code of conduct as contained in 24 CFR 84.42 and 85.36(b)(3).

5. **Ensuring the Participation of Small Business, Small disadvantaged Businesses, and Women-Owned Businesses.** Compliance with 24 CFR 84.44(b) and 85.36(e) in contracting for purchasing of goods and services.

6. **Uniform Relocation.** *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (URA) and implementing regulations at 49 CFR part 24.

7. **Nondiscrimination.** The *Americans with Disabilities Act*, Title IX of the *Education Amendments Act of 1972, Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, section 504 of the *Rehabilitation Act of 1973*, the *Age Discrimination Act of 1975*, and section 109 of the *Housing and Community Development Act of 1974*.

8. **Cost Principles.** OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) or OMB Circular No. A-87 (Cost Principles for Local Units of Government), as appropriate.

Signed this _____ day of _____, 2002.

By:_____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____

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ROSS FY 2002 FUNDING
SERVICE COORDINATORS

APPLICATION CHECKLIST

I CERTIFY that the following application checklist is complete and that it accurately reflects the contents of my application.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive or Other Authorized Representative

For Applicant: _____

Use this checklist to review your package and insure all materials are properly completed and included. **Submit a copy of this form with your application.**

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
Cover Materials **(See Part II of this application kit for some forms in this tab.)**		
☐ Application Checklist	_____	_____
☐ Application Cover Sheet	_____	_____
☐ Lead agency letter form (if applicable)	_____	_____
☐ Evidence of Comparable Salaries in Local Area	_____	_____
☐ Application for Federal Assistance (Standard Form SF-424)	_____	_____
☐ Federal Assistance Funding Matrix (Form HUD-424-M)	_____	_____
☐ Assurances—Non-Construction Programs (Standard Form SF-424B)	_____	_____
☐ ROSS Fact Sheet	_____	_____
☐ Chart A: Summary Budget Line Items	_____	_____

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ROSS FY 2002 FUNDING
SERVICE COORDINATORS

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
TAB 1: Threshold Requirements		
❑ Request Letter	_____	_____
❑ Match Agreements – Not less than 25% of the grant requested	_____	_____

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ROSS FY 2002 FUNDING
SERVICE COORDINATORS

REQUEST LETTER FORMAT

Dear _____ Date:_____
Director, Public Housing

The following is my request for a one-year Service Coordinator renewal grant. I am requesting a total grant amount of $_____.

I. APPLICANT AND DEVELOPMENT(S)

1. PHA name and address:
2. Development name(s) and address(s):

_____

_____

_____

3. Development number(s) and Congressional District(s):

_____

_____

_____

4. Did you have a FY 1995 Elderly Service Coordinator grant? ___Yes ___No.

II. DEVELOPMENT INFORMATION

1. Total Number of Units Occupied by the Elderly and/or Persons with Disabilities: ___.
2. Total Number of Residents: ___.
3. Estimated Number Frail Elderly and Persons with Disabilities: ___.
4. Estimated Number At-Risk Elderly: ___.
5. Applicant will contract out for a Service Coordinator. ___Yes ___No

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6. Development will share a Service Coordinator with other development(s) or applicant(s). ___Yes ___No

If yes, please give name and address of the development(s) and applicant(s), if different.

_____

_____

_____

7. Total number of Service Coordinators to be funded by the grant funds: ___.

III. COSTS

FY 2002 award amounts cannot be higher than the applicant's highest funding and staffing level approved for a one-year period for the applicant's last funded Service Coordinator grant. An increase of up to 2% will be allowed if supported by a narrative justification attached to this Request Letter.

1. **Salary Rate**

a. Determine the base salary level, looking at comparable positions (modified by number of hours worked).

Base salary level $_____

b. Fringe benefits

% of base salary _____%

Dollar value $_____

c. Salary rate

$_____ + $_____ = $_____
base salary | fringe benefits | salary rate

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III. COSTS (continued)

2. **Administrative Costs**

Any administrative costs may amount to no more than 20% of the total grant.

Item	Amount
_____	$_____
_____	$_____
_____	$_____
Total:	$_____

3. **Total Cost**

One-year total costs:

Allowable administrative costs $_____ +
Annual salary rate $_____ =

Total Cost $_____ .

Please distribute the TOTAL Amount Requested by the following Budget Line Items:

Service Coordinators

_____ **9810**	**Administrative Costs**
_____ **9820**	**Other Program Expenses**
_____ **9830**	**Training**
_____ **9840**	**Salaries**
_____ **9850**	**Fringe**
_____	**TOTAL**

We appreciate your consideration of this request. If there are any questions, your staff may call _____ at _____ for further information.

Sincerely,

_____ _____ _____
Signature | Typed Name | Title

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ROSS FY 2002 FUNDING SERVICE COORDINATORS

TRANSMITTAL LETTER FORMAT FOR DESIGNATED LEAD AGENCY

If more than one public housing agency is proposing to share a service coordinator, one agency **must** designate itself the "lead." This agency must submit a letter following this format on organization letterhead, signed by an authorized person.

Dear _____ _____
Director, Public Housing Date

The following PHAs are jointly submitting a single Service Coordinator application:

_____

_____

This request includes _____ (specify the number) developments, which will share a Service Coordinator. The developments are:

Development Name and Address	Amount Requested ($)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The completed requests from each of these ___(specify number)____ applicants are attached to this letter.

Sincerely,

_____
Signature

_____
Typed Name

_____
Title

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RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY PROGRAM

APPLICATION FOR FY 2002 FUNDING COVER SHEET

Funding Category (Check ONE):

_____ **Resident Management and Business Development**
_____ **Capacity Building**
_____ **Resident Service Delivery Models – Family**
_____ **Resident Service Delivery Models –Elderly/Disabled**
_____ **Homeownership Supportive Services**
_____ **Neighborhood Networks**
_____ **Service Coordinators**

Submitted By: _____
(Applicant Name)

Contact Person: _____

Telephone: ( ) _____

Delivered To: _____
(HUD Field Office)

Date: _____

PLEASE USE THIS PAGE AS COVER PAGE

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ROSS FY 2002 FUNDING

FACT SHEET

Applicant Information

Applicant:_____

Applicant Type: ___PHA ___RA ___IRO ___NONPROFIT ___ TRIBE/TDHE

HUD Region:_____ State: _____ HUD Field Office:_____

Contact

Name/Title _____

Street Address _____

City/State/Zip _____

Telephone No. ( ) _____

Fax No. ( ) _____

Assistance for which the applicant is applying:

_____ Resident Management and Business Development
_____ Capacity Building
_____ Resident Service Delivery Models
_____ Homeownership Supportive Services
_____ Neighborhood Networks
_____ Service Coordinator Renewal

Unit Count

_____ Total number of conventional public housing units under management** (excluding any Section 8)

_____ Total number of family-occupied conventional public housing units.

_____ Total number of elderly/disabled-occupied conventional public housing units.

****Tribal or TDHE applicants should use the unit count described in the NOFA Section II (F).**

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

SITE-BASED RESIDENT ASSOCIATION BOARD INFORMATION (Does not apply to SC applicants)

Name of Board Member Title Appointment Term Date

_____
_____
_____
_____
_____
_____
_____
_____

Date of Last Board Election:_____

Does the organization have block captains? Yes____ No____

Does the organization have an operating committee? Yes____ No____

For any previous ROSS grants you have received, you must note the Fiscal Year, ROSS Category (RSDM, RMBD, etc.), and Award Amount.

_____

_____

_____

_____

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ROSS FY 2002 FUNDING

FACT SHEET (continued)

Name(s) of public housing development(s) targeted for ROSS Activities (Use additional pages if necessary.)

Name of Public Housing Development	PIH Project #

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or Other Authorized Representative

For: _____
Applicant Name

HUD-2002-ROSS (02/02)

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY

Applicant: _____ **Date:** _____

Applicant type: ___PHA

Funding Category: _____

This narrative will be used for congressional notification and will serve as the official program summary.

A. Please provide a brief summary of the program proposed in your application (100 words or less) including a brief description of key program components.

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ROSS FY 2001 FUNDING

PROGRAM SUMMARY (continued)

B. Please provide a listing of all partners involved, their in-kind/cash contribution, and number of persons to be served by each partner using the format below. (You may copy this page if additional space is needed.)

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____

Partner's Address

_____

TOTAL	_____	_____

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ROSS FY 2002 FUNDING
NEIGHBORHOOD NETWORKS

APPLICATION CHECKLIST

I CERTIFY that the following application checklist is complete and that it accurately reflects the contents of my application.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive Officer or Other Authorized Representative

For Applicant: _____

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

COVER MATERIALS (See Part II of this application kit for forms in this tab.)

- ❑ Application Checklist _____ _____
- ❑ Application Cover Sheet _____ _____
- ❑ Application for Federal Assistance (Standard Form SF-424) _____ _____
- ❑ Federal Assistance Funding Matrix (Form HUD-424M) _____ _____
- ❑ Standard Form for Budget Information Non-Construction Programs (SF-424A) _____ _____
- ❑ Assurances – Non-Construction Programs (Form SF-424B) _____ _____
- ❑ ROSS Fact Sheet _____ _____
- ❑ ROSS Program Summary _____ _____
- ❑ Certification of Consistency and Compliance with General SuperNOFA Threshold Requirements Certification _____ _____

TAB 1: Threshold Requirements

- ❑ Threshold Checklist _____ _____

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ROSS FY 2002 FUNDING
NEIGHBORHOOD NETWORKS

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
❑ Certification of Residents Affected by Welfare Reform	_____	_____
❑ Accessible Community Facility –Description or Executed Use Agreement	_____	_____
❑ Match Agreements-Not less than 25% of grant requested	_____	_____
❑ Certification of Compliance with 24 CFR Part 85	_____	_____
❑ Physical Improvements (Only for applicants proposing physical improvements)	_____	_____
TAB 2: Capacity of the Applicant and Relevant Organizational Experience (Factor 1)		
❑ Chart A: Program Staffing	_____	_____
❑ Narrative on proposed staffing and coordination among service providers	_____	_____
❑ Chart B: Applicant/Administrator Track Record	_____	_____
❑ Organization Chart	_____	_____
❑ Staff Position Descriptions	_____	_____
❑ Staff Resumes or Background/ Experience Descriptions	_____	_____
❑ Narrative on program administration and fiscal management structure	_____	_____

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ROSS FY 2002 FUNDING
NEIGHBORHOOD NETWORKS

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY
TAB 3: Needs/Extent of Problem (Factor 2)		
❑ Needs Assessment Report	_____	_____
❑ Narrative on level of priority in Consolidated Plan	_____	_____
TAB 4: Soundness of Approach (Factor 3)		
❑ Narrative describing proposed services	_____	_____
❑ Chart C: Summary Budget Line Items	_____	_____
❑ Chart D: Budget Work Plan Summary, Parts I and II	_____	_____
❑ Narrative on program assessment	_____	_____
❑ Narrative on resident involvement and other partnerships	_____	_____
❑ Narrative on relationship coordination	_____	_____
TAB 5: Leveraging Resources (Factor 4)		
❑ Narrative on the contributions, roles, and responsibilities of each partner	_____	_____
TAB 6: Coordination, Self-Sufficiency, and Sustainability (Factor 5)		
❑ Narrative demonstrating review of Consolidated Plan	_____	_____
❑ Narrative on coordination w/ State/local welfare plan	_____	_____
❑ Narrative on coordination with other activities	_____	_____
❑ Certification of Consistency w/ the Consolidated Plan	_____	_____
TAB 7: Bonus Points		
❑ EZ/EC Certification	_____	_____

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NEIGHBORHOOD NETWORKS

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

TAB 8: Other Certifications and Assurances
(See Section VII of this Application Kit for all forms in this tab.)

- ❑ Certification for a Drug-Free Workplace (Form HUD–50070) _____ _____
- ❑ Certification of Payments to Influence Federal Transactions (Form HUD 50071), and if applicable, Disclosure of Lobbying Activities (Form SF- LLL) and Disclosure of Lobbying Activities Continuation Sheet (Form SF-LLL-A) _____ _____
- ❑ Applicant/Recipient Disclosure/Update Report (Form HUD-2880) _____ _____
- ❑ Certification Regarding Debarment and Suspension (Form HUD–2992) _____ _____
- ❑ Acknowledgment of Application Receipt (Form HUD-2993) _____ _____

ROSS FY 2002 FUNDING
NEIGHBORHOOD NETWORKS

THRESHOLD CHECKLIST

Applicant: _____ **Date:** _____

You must address the following threshold requirements for your application to be complete and acceptable for rating and ranking. You can verify that information is included in your application kit by using a check mark in the space provided. Please note that HUD will also verify that information is included appropriately. (See NOFA, Section VI (A) & (D) and General SuperNOFA Section II).

THRESHOLD REQUIREMENT	APPLICANT USE ONLY	HUD USE ONLY
1. Certification on Residents Affected by Welfare Reform	_____	_____
2. Accessible Community Facility Description or Executed Use Agreement	_____	_____
3. Match Agreements	_____	_____
4. Certification of Compliance with 24 CFR Part 85	_____	_____
5. Physical Improvements (Only for applicants proposing physical improvements)	_____	_____

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NEIGHBORHOOD NETWORKS

Applicant: _____ **Date:** _____

THRESHOLD REQUIREMENTS

1. Focus on Residents Affected by Welfare Reform. This requirement is not applicable to your program if it serves the elderly or persons with disabilities. Your NN application must contain a certification (using the certification provided below) that at least 51% of residents to be included in your proposed program are affected by welfare reform. □

NN CERTIFICATION ON RESIDENTS AFFECTED BY WELFARE REFORM

I certify that a total of _____ people reside in the housing developments listed below, which are targeted for activities during the proposed NN grant.

_____

_____

_____

This proposed NN grant will serve a total of _____ residents. Included in the recipients to be served are residents affected by welfare reform who are either:

(1) Currently eligible to receive, are currently receiving, or shall have received within the preceding 4 years assistance or services funded under Temporary Assistance for Needy Families (TANF), SSI, or Food Stamps.

(2) Elderly or disabled persons, otherwise not affected by welfare reform, who will provide services such as child care or mentoring to families affected by welfare reform.

I certify that _____% of residents to be served are affected by welfare reform, as defined above. **At least 51% of residents must be affected by welfare reform for your application to meet the threshold requirement of this NOFA.**

Signed this _____ day of _____ , 2002.

By: _____
Applicant Executive Director or other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING
Certification of Consistency and Compliance with General SuperNOFA Program Requirements

I CERTIFY that the proposed ROSS activities will be consistent with the following and comply with all statutes, regulations, and U.S. Department of Housing and Urban Development guidance related to the following:

1. **Compliance with Fair Housing and Civil Rights laws**. Compliance with all Fair Housing and Civil Rights laws, statues, regulations, and Executive order as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with non-discrimination provisions in 24 CFR 1003.601.

2. **Affirmatively Furthering Fair Housing.** Affirmative duty to further fair housing, including elimination of impediments to fair housing; the local jurisdiction or regional Analysis of Impediments to Fair Housing Choice; and the affirmative duty to carry out activities proposed specifically in your application to address the furtherance of fair housing. *Section 109 of the Housing and Community Development Act of 1974.*

3. **Economic Opportunities for Low and Very Low-Income Persons.** Section 3 of the *Housing and Urban Development Act of 1968*, 12 U.S.C. sec. 1791u, Economic Opportunities for Low and Very Low-Income Persons; HUD regulations at 24 CFR part 135, including but not limited to subpart E and G reporting requirements; and any Section 3 employment, housing opportunity, or other plan adopted by the Housing Agency.

4. **Conducting Business In Accordance With Core Values and Ethical Standards**. Documentation of a written code of conduct as contained in 24 CFR 84.42 and 85.36(b)(3).

5. **Ensuring the Participation of Small Business, Small disadvantaged Businesses, and Women-Owned Businesses.** Compliance with 24 CFR 84.44(b) and 85.36(e) in contracting for purchasing of goods and services.

6. **Uniform Relocation.** *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (URA) and implementing regulations at 49 CFR part 24.

7. **Nondiscrimination.** The *Americans with Disabilities Act*, Title IX of the *Education Amendments Act of 1972*, *Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, section 504 of the *Rehabilitation Act of 1973*, the *Age Discrimination Act of 1975*, and section 109 of the *Housing and Community Development Act of 1974*.

8. **Cost Principles.** OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) or OMB Circular No. A-87 (Cost Principles for Local Units of Government), as appropriate.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____

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Chart A: NN PROGRAM STAFFING Applicant Name: _____

I. APPLICANT STAFF

Name of Staff Person	Organization and Position	Role in Grant Program	Percent of Time on Grant	Cost to Grant
Budget line item 2005 Program Coordination				

II.CONTRACTOR/CONSULTANT ROLE

Type of Contractor to be Solicited	Role in Grant Program	Estimated Cost to Grant Program
III.Contract Administrator		
Budget Line Item 9300 Contract Administrator		

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Chart B: NN Applicant/Administrator Track Record
Applicant: _____

Program	Project No.	% of Term Complete	% of Funds Draw Down	Major Goal #1	% Complete	Major Goal #2	% Complete

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ROSS FY 2002 FUNDING
NEIGHBORHOOD NETWORKS

Chart C
NN SUMMARY BUDGET LINE ITEMS

Applicant Name:_____ **Date:**_____

Please check specific budget amounts for each line item. These budget line items and amounts will be programmed into HUD's Line of Credit Control System (LOCCS) for designating and tracking uses of grant drawdowns.

BUDGET LINE ITEM		AMOUNT
2005	**Program Coordinator**	_____
2010	**Physical Improvements**	_____
3000	**Computer Equipment and Software**	_____
3010	Computer Hardware	_____
3011	Computer Software	_____
3012	Other Equipment	_____
3020	**Training**	_____
3030	**Insurance and Security**	_____
3031	Insurance	_____
3032	Security	_____
3040	**Maintenance**	_____
3050	**NN Business Plan**	_____
9100	**Travel Costs**	_____
9200	**Other Resident Costs (Stipends, Reimbursements)**	_____
9300	**Contract Administrator**	_____
9400	**Administrative and Other Costs**	_____

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Applicant Name:

CHART D: NN Budget Work Plan Summary – Part I

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	NN GRANT FUNDS	NON-NN/ PARTNER FUNDS	ACTIVITY START/END DATE
2010 Physical Improvements TOTAL: $				
3000 Computer Equip & Sftwre TOTAL: $				
3010 Computer Hardware				
3011 Computer Software				
3012 Other Equipment				
3020 Training TOTAL: $				
3030 Insurance and Security TOTAL: $				
3031 Insurance				
3032 Security				
3040 Maintenance TOTAL: $				
3050 NN Business Plan TOTAL: $				

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CHART D: NN Budget Work Plan Summary – Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: Housing Authority, Contractor, Subgrantee, or other partners)	NN GRANT FUNDS	NON-NN/ PARTNER FUNDS	ACTIVITY START/END DATE
2005 Program Coordinator TOTAL: $				
9100 Travel Costs TOTAL: $				
9200 Other Resident Costs (Stipends, Reimbursements) TOTAL: $				
9300 Contract Administrator TOTAL: $				
9400 Admin. & Other Costs TOTAL: $				

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Chart D: NN Budget Work Plan Summary - Part II

Please insert below the totals for each Summary Budget Line Item to be included in your grant.
These totals can be found in the far left column on Part I of the chart above.

SUMMARY BUDGET LINE ITEMS	NN GRANT TOTAL
2005 Program Coordinator	$
2010 Physical Improvements	$
3000 Computer Equipment & Software	$
3020 Training	$
3030 Insurance & Security	$
3040 Maintenance	$
3050 NN Business Plan	$
9100 Travel Costs	$
9200 Other Resident Costs (Stipends, Reimbursements, etc.)	$
9300 Contract Administrator	$
9400 Administrative and Other Costs	$
TOTAL of all NN Funds Requested	$

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CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program(s) to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official of the Jurisdiction Named: _____

Title: _____

Signature: _____

Date: _____

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Certification of Consistency with the EZ/EC Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the Strategic Plan of a Federally-designated Empowerment Zone (EZ), Enterprise Community (EC), an Urban Enhanced Enterprise Community, Strategic Planning Community or Renewal Community

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of EZ/EC _____

I further certify that the proposed activities/projects will be located within the EZ/EC/Urban Enhanced EC or Strategic Planning Cummunity and will serve the EZ/EC/Urban Enhanced EC, Strategic Planning Community residents, or Renewal Community. (2 points)

Name of the Official Authorized to Certify the EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

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RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY PROGRAM

APPLICATION FOR FY 2002 FUNDING COVER SHEET

Funding Category (Check ONE):

_____ **Resident Management and Business Development**
_____ **Capacity Building**
_____ **Resident Service Delivery Models – Family**
_____ **Resident Service Delivery Models –Elderly/Disabled**
_____ **Homeownership Supportive Services**
_____ **Neighborhood Networks**
_____ **Service Coordinators**

Submitted By: _____
(Applicant Name)

Contact Person: _____

Telephone: ( ) _____

Delivered To: _____
(HUD Field Office)

Date: _____

PLEASE USE THIS PAGE AS COVER PAGE

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ROSS FY 2002 FUNDING

FACT SHEET

Applicant Information

Applicant:_____

Applicant Type: ___PHA ___RA ___IRO ___NONPROFIT ___ TRIBE/TDHE

HUD Region:_____ State: _____ HUD Field Office:_____

Contact

Name/Title _____

Street Address _____

City/State/Zip _____

Telephone No. ( ) _____

Fax No. ( ) _____

Assistance for which the applicant is applying:

_____ Resident Management and Business Development
_____ Capacity Building
_____ Resident Service Delivery Models
_____ Homeownership Supportive Services
_____ Neighborhood Networks
_____ Service Coordinator Renewal

Unit Count

_____ Total number of conventional public housing units under management** (excluding any Section 8)

_____ Total number of family-occupied conventional public housing units.

_____ Total number of elderly/disabled-occupied conventional public housing units.

****Tribal or TDHE applicants should use the unit count described in the NOFA Section II (F).**

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FACT SHEET (continued)

SITE-BASED RESIDENT ASSOCIATION BOARD INFORMATION (Does not apply to SC applicants)

Name of Board Member Title Appointment Term Date

_____
_____
_____
_____
_____
_____
_____
_____

Date of Last Board Election:_____

Does the organization have block captains? Yes____ No____

Does the organization have an operating committee? Yes____ No____

For any previous ROSS grants you have received, you must note the Fiscal Year, ROSS Category (RSDM, RMBD, etc.), and Award Amount.

_____

_____

_____

_____

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FACT SHEET (continued)

Name(s) of public housing development(s) targeted for ROSS Activities (Use additional pages if necessary.)

Name of Public Housing Development	PIH Project #

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or Other Authorized Representative

For: _____
Applicant Name

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ROSS FY 2002 FUNDING

PROGRAM SUMMARY

Applicant: _____ **Date:** _____

Applicant type: ___PHA ___RA ___IRO ___NONPROFIT ___TRIBE/TDHE

Funding Category: _____

This narrative will be used for congressional notification and will serve as the official program summary.

A. Please provide a brief summary of the program proposed in your application (100 words or less) including a brief description of key program components.

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PROGRAM SUMMARY (continued)

B. Please provide a listing of all partners involved, their in-kind/cash contribution, and number of persons to be served by each partner using the format below. (You may copy this page if additional space is needed.)

Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
Partner's Name	In-Kind/Cash Contribution	# Persons Served
_____	_____	_____
Partner's Address		
_____		
TOTAL	_____	_____

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ROSS FY 2002 FUNDING

Certification of Consistency and Compliance with General SuperNOFA Program Requirements

I CERTIFY that the proposed ROSS activities will be consistent with the following and comply with all statutes, regulations, and U.S. Department of Housing and Urban Development guidance related to the following:

1. **Compliance with Fair Housing and Civil Rights laws**. Compliance with all Fair Housing and Civil Rights laws, statues, regulations, and Executive order as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with non-discrimination provisions in 24 CFR 1003.601.

2. **Affirmatively Furthering Fair Housing.** Affirmative duty to further fair housing, including elimination of impediments to fair housing; the local jurisdiction or regional Analysis of Impediments to Fair Housing Choice; and the affirmative duty to carry out activities proposed specifically in your application to address the furtherance of fair housing. *Section 109 of the Housing and Community Development Act of 1974.*

3. **Economic Opportunities for Low and Very Low-Income Persons.** Section 3 of the *Housing and Urban Development Act of 1968*, 12 U.S.C. sec. 1791u, Economic Opportunities for Low and Very Low-Income Persons; HUD regulations at 24 CFR part 135, including but not limited to subpart E and G reporting requirements; and any Section 3 employment, housing opportunity, or other plan adopted by the Housing Agency.

4. **Conducting Business In Accordance With Core Values and Ethical Standards.** Documentation of a written code of conduct as contained in 24 CFR 84.42 and 85.36(b)(3).

5. **Ensuring the Participation of Small Business, Small disadvantaged Businesses, and Women-Owned Businesses.** Compliance with 24 CFR 84.44(b) and 85.36(e) in contracting for purchasing of goods and services.

6. **Uniform Relocation.** *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (URA) and implementing regulations at 49 CFR part 24.

7. **Nondiscrimination.** The *Americans with Disabilities Act*, Title IX of the *Education Amendments Act of 1972*, *Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, section 504 of the *Rehabilitation Act of 1973*, the *Age Discrimination Act of 1975*, and section 109 of the *Housing and Community Development Act of 1974*.

8. **Cost Principles.** OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) or OMB Circular No. A-87 (Cost Principles for Local Units of Government), as appropriate.

Signed this _____ day of _____, 2002.

By:_____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____

HUD-2002-ROSS (03/02)

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ROSS FY 2002 FUNDING
HOMEOWNERSHIP SUPPORTIVE SERVICES

APPLICATION CHECKLIST

I CERTIFY that the following application checklist is complete and that it accurately reflects the contents of my application.

Signed this _____ day of _____, 2002.

By:

_____

Applicant Chief Executive Officer or Other Authorized Representative

For Applicant:

_____

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

COVER MATERIALS (See Part II of this application kit for forms in this tab.)

- ❑ Application Checklist _____ _____
- ❑ Application Cover Sheet _____ _____
- ❑ Application for Federal Assistance (Standard Form SF-424) _____ _____
- ❑ Federal Assistance Funding Matrix (Form HUD-424M) _____ _____
- ❑ Standard Form for Budget Information—Non-Construction Programs (SF-424A) _____ _____
- ❑ Assurances – Non-Construction Programs (Form SF-424B) _____ _____
- ❑ ROSS Fact Sheet _____ _____
- ❑ ROSS Program Summary _____ _____
- ❑ Certification of Consistency and Compliance with General SuperNOFA Threshold Requirement Certification _____ _____

TAB 1: Threshold Requirements

- ❑ Threshold Checklist _____ _____

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HOMEOWNERSHIP SUPPORTIVE SERVICES

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

- ❑ Certification of Residents Affected by Welfare Reform _____ _____
- ❑ Certification of previous self-sufficiency program participation, certification of earned income Increase, and acceptable range of local minimum income to purchase a home in the local area. _____ _____
- ❑ Accessible Community Facility –Description or Executed Use Agreement _____ _____
- ❑ Physical Improvements _____ _____
- ❑ Match Agreements-Not less than 25% of grant requested _____ _____

TAB 2: Capacity of the Applicant and Relevant Organizational Experience (Factor 1)

- ❑ Narrative description of experience of Project Director and Staff
- ❑ Allocation of staff years for activities and personnel of the proposed HSS activities
- ❑ Chart A - Program staffing

Program Administration And Fiscal Management

- ❑ Description of proposed HSS Project Management Structure
- ❑ Description of proposed HSS Fiscal Management Structure

Applicant/Administrator Track Record

- ❑ Narrative description of previous experience in implementing Self-Sufficiency and Homeownership Programs
- ❑ Chart B – Applicant track record

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HOMEOWNERSHIP SUPPORTIVE SERVICES

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

TAB 3: Needs/Extent of Problem (Factor 2)

- ❑ Needs Assessment Report _____ _____
- ❑ Narrative on level of priority in Consolidated Plan _____ _____

TAB 4: Soundness of Approach (Factor 3)

- ❑ Narrative describing proposed homeownership counseling and supportive services _____ _____
- ❑ Narrative on budget and implementation timetable _____ _____
- ❑ Chart C: Summary Budget Line Items _____ _____
- ❑ Chart D: Budget Work Plan Summary, Parts I and II _____ _____
- ❑ Narrative on program assessment _____ _____
- ❑ Narrative on resident involvement and other partnerships _____ _____
- ❑ Narrative on coordination and collaboration _____ _____

TAB 5: Leveraging Resources (Factor 4)

- ❑ Narrative on the contributions, roles, and responsibilities of each partner _____ _____

TAB 6: Coordination, Self Sufficiency, and Sustainability (Factor 5)

- ❑ Narrative demonstrating review of Cons. Plan _____ _____
- ❑ Narrative on coordination w/ State/local welfare plan _____ _____

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HOMEOWNERSHIP SUPPORTIVE SERVICES

APPLICATION CHECKLIST (Continued)

SUBMISSION	APPLICANT USE ONLY	HUD USE ONLY

- ❑ Narrative on coordination with other activities _____ _____
- ❑ Certification of Consistency w/ the Consolidated Plan _____ _____

TAB 7: Bonus Points

- ❑ EZ/EC Certification _____ _____

TAB 8: Other Certifications and Assurances
(See Section VII of this Application Kit for all forms in this tab.)

- ❑ Certification for a Drug-Free Workplace (Form HUD–50070) _____ _____
- ❑ Certification of Payments to Influence Federal Transactions (Form HUD 50071), and if applicable, Disclosure of Lobbying Activities (Form SF- LLL) and Disclosure of Lobbying Activities Continuation Sheet (Form SF-LLL-A) _____ _____
- ❑ Applicant/Recipient Disclosure/Update Report (Form HUD-2880) _____ _____
- ❑ Certification Regarding Debarment and Suspension (Form HUD–2992) _____ _____
- ❑ Acknowledgement of Application Receipt (Form HUD-2993) _____ _____

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ROSS FY 2002 FUNDING
HOMEOWNERSHIP SUPPORTIVE SERVICES

THRESHOLD CHECKLIST

Applicant: _____ **Date:** _____

You must address the following threshold requirements for your application to be complete and acceptable for rating and ranking. You can verify that information is included in your application kit by using a check mark in the space provided. Please note that HUD will also verify that information is included appropriately. (See NOFA, Section VI (A) & (D) and General SuperNOFA Section II).

THRESHOLD REQUIREMENT	APPLICANT USE ONLY	HUD USE ONLY
1. Certification of Residents Affected by Welfare Reform (Family applicants only)	____	____
2. Certification of previous self-sufficiency program participation, certification of earned income increase, and acceptable range of local minimum income to purchase a home in the local area.	____	____
3. Accessible Community Facility Description or Executed Use Agreement (if facility provided is not a PHA)	____	____
4. Physical Improvements	____	____
5. Match Agreements	____	____

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HOMEOWNERSHIP SUPPORTIVE SERVICES

Applicant: _____ **Date:** _____

THRESHOLD REQUIREMENTS

1. Focus on Residents Affected by Welfare Reform. This requirement is not applicable to your program if it serves the elderly or persons with disabilities. Your Family HSS application must contain a certification (using the certification provided below) that at least 51% of residents to be included in your proposed program are affected by welfare reform.

HSS CERTIFICATION ON RESIDENTS AFFECTED BY WELFARE REFORM

I certify that a total of _____ people reside in the housing developments listed below, which are targeted for activities during the proposed HSS grant.

_____

_____

_____

This proposed HSS grant will serve a total of _____ residents. Included in the recipients to be served are residents affected by welfare reform who are either:

(1) Currently eligible to receive, are currently receiving, or shall have received within the preceding 4 years assistance or services funded under Temporary Assistance for Needy Families (TANF), SSI, or Food Stamps.

(2) Elderly or disabled persons, otherwise not affected by welfare reform, who will provide services such as child care or mentoring to families affected by welfare reform.

I certify that _____% of residents to be served are affected by welfare reform, as defined above. **At least 51% of residents must be affected by welfare reform for your application to meet the threshold requirement of this NOFA.**

Signed this _____ day of _____, 2002.

By: _____
Applicant Executive Director or other Authorized Representative

For: _____
Applicant Name

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HOMEOWNERSHIP SUPPORTIVE SERVICES

1.) For residents eligible for Homeownership, your application must provide evidence/certification that the targeted population of public housing residents to be served by the proposed grant were beneficiaries of a previously awarded ROSS grant between FY 1999 and FY 2000; eligible population group, 35% earned income and that income is within the range of the income minimum.

_____ Total number of residents (previous participants in ROSS for 1999 or 2000, or other State & Local Self Sufficiency Programs) who will participate in proposed homeownership activities

Proposed Targeted Residents	Minimum Local Income Level for Homeownership	Base Year	Base Year Income	Current Income	Percentage over Base Year

I certify that the proposed residents to be served are within the eligible population group; have an earned income increase of at least 35% and are within the minimum range of income for Homeownership in my local area.

Signed this _____ day of _____, 2002.

By: _____
Applicant Chief Executive Officer or Other Authorized Representative

For: _____
Applicant

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Chart A: HSS PROGRAM STAFFING

I. Applicant Staff

Name of Staff Person	Organization and Position	Percent of Time on Grant	Cost to Grant
Budget line item 2005 Program Coordination			

II. CONTRACTOR/CONSULTANT ROLE

Type of Contractor to be Solicited	Role in Grant Program	Estimated Cost to Grant Program

III. Contract Administrator

Budget Line Item 9300 Contract Administrator		

Applicant Name:

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Chart A: HSS PROGRAM STAFFING Applicant Name:

I. Applicant Staff

Name of Staff Person	Organization and Position	Role in Grant Program	Percent of Time on Grant	Cost to Grant
Budget line item 2005 Program Coordination				

II.CONTRACTOR/CONSULTANT ROLE

Type of Contractor to be Solicited	Role in Grant Program	Estimated Cost to Grant Program
III.Contract Administrator		
Budget Line Item 9300 Contract Administrator		

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Chart B: HSS Applicant/Administrator Track Record
Applicant: _____

Program	Project No.	% of Term Complete	% of Funds Draw Down	Major Goal #1	% Complete	Major Goal #2	% Complete

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HOMEOWNERSHIP SUPPORTIVE SERVICES

Chart C
HSS SUMMARY BUDGET LINE ITEMS

Applicant Name:_____ **Date:**_____

Please check specific budget amounts for each line item. These budget line items and amounts will be programmed into HUD's Line of Credit Control System (LOCCS) for designating and tracking uses of grant drawdowns.

	BUDGET LINE ITEM	AMOUNT
2005	**Program Coordinator**	_____
2060	**Self Sufficiency Program**	_____
2061	Program Coordinator	_____
2062	Physical Improvements	_____
2063	Employment and Job Readiness	_____
2064	Job Training	_____
2065	Management Related Employment Training	_____
2066	Vocational Training	_____
2067	Technical Assistance	_____
2070	**Family Supportive Services**	_____
2080	**Homeownership Counseling Programs**	_____
9100	**Travel Costs**	_____
9200	**Other Resident Costs (Stipends, Reimbursements)**	_____
9300	**Contract Administrator**	_____
9400	**Administrative and Other Costs**	_____

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CHART D: HSS Budget Work Plan Summary – Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	HSS GRANT FUNDS	NON-HSS/ PARTNER FUNDS	ACTIVITY START/END DATE
2005 Program Coordinator TOTAL: $				
2060 Self Sufficiency Program TOTAL: $				
2061 Program Coordinator				
2062 Physical Improvements				
2063 Employment and Job Readiness				
2064 Job Training				
2065 Management Related Employment Training				
2066 Vocational Training				

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CHART D: HSS Budget Work Plan Summary -- Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	HSS GRANT FUNDS	NON-HSS/ PARTNER FUNDS	ACTIVITY START/END DATE
2067 Technical Assistance				
2070 Family Supportive Svs TOTAL: $				
2080 Homeownership Supportive Svs				
2081 Counseling Services				
2005 Program Coordinator TOTAL: $				
2870 Elderly Supportive Svs TOTAL: $				
9100 Travel Costs TOTAL: $				
9200 Other Resident Costs (Stipends, Reimbursements) TOTAL: $				

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CHART D: HSS Budget Work Plan Summary -- Part I (continued)

BUDGET LINE ITEM For each bolded line item, enter total grant funds	ACTIVITIES (Identify lead agency: housing authority, contractor, subgrantee, etc)	HSS GRANT FUNDS	NON-HSS/ PARTNER FUNDS	ACTIVITY START/END DATE
9300 Contract Administrator TOTAL: $				
9400 Admin. & Other Costs TOTAL : $				

Chart D: HSS Budget Work Plan Summary - Part II

Please insert below the totals for each Summary Budget Line Item to be included in your grant.
These totals can be found in the far left column on Part I of the chart above.

SUMMARY BUDGET LINE ITEMS	HSS GRANT TOTAL
2005 Program Coordinator	$
2060 Self Sufficiency Programs	$
2070 Family Supportive Services	$
2080 Homeownership Supportive Services	$
9100 Travel Costs	$
9200 Other Resident Costs (Stipends, Reimbursements, etc.)	$
1060 Supportive Services	$
9100 Travel Costs	$
9300 Contract Administrator	$
9400 Administrative and Other Costs	$
TOTAL of all HSS Funds Requested	$

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Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.

(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official of the Jurisdiction Name: _____

Title: _____

Signature: _____

Date:. _____

Certification of Consistency with the RC/EZ/EC Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the Strategic Plan of a Federally-designated Empowerment Zone (EZ), Enterprise Community (EC), an Urban Enhanced Enterprise Community, Strategic Planning Community or Renewal Community.

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of RC/EZ/EC _____

I further certify that the proposed activities/projects will be located within the RC/EZ/EC/Urban Enhanced EC or Strategic Planning Community and will serve the RC/EZ/EC/Urban Enhanced EC, Strategic Planning Community residents, or Renewal Community. (2 points)

Name of the Official Authorized to Certify the RC/EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONTINUUM OF CARE HOMELESS ASSISTANCE

SUPPORTIVE HOUSING

SHELTER PLUS CARE

SECTION 8 MODERATE REHABILITATION SINGLE ROOM OCCUPANCY FOR HOMELESS INDIVIDUALS (SRO)

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FUNDING AVAILABILITY FOR CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS—SUPPORTIVE HOUSING PROGRAM (SHP), SHELTER PLUS CARE (S+C), SECTION 8 MODERATE REHABILITATION SINGLE ROOM OCCUPANCY PROGRAM FOR HOMELESS INDIVIDUALS (SRO)

PROGRAM OVERVIEW

Purpose of the Programs. The purpose of the Continuum of Care Homeless Assistance Programs is to fund projects that will fill gaps in locally developed Continuum of Care systems to assist homeless persons to move to self-sufficiency and permanent housing. An important element of meeting this objective is to fund projects that will meet the Department's goal of ending chronic homelessness.

Available Funds. Approximately $950 million.

Eligible Applicants. The chart in the Appendix A to this program section of this SuperNOFA identifies the eligible applicants for each of the three programs under the Continuum of Care.

Application Deadline. June 21, 2002.

Match. Yes.

ADDITIONAL INFORMATION

If you are interested in applying for funding under any of the Continuum of Care Homeless Assistance programs, please review carefully the General Section of the SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original containing the signed documentation and two copies) is due on or before 5:30 PM Eastern time, on June 21, 2002 to the addresses shown below.

See the General Section of this SuperNOFA for specific procedures that you must follow for the form of application submissions (e.g., mailed applications, express mail, or overnight delivery).

New Security Procedures. HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEX, DHL, or Falcon Carrier. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.*

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by HUD Headquarters on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of the four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx, and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

Addresses for Submitting Applications. To HUD Headquarters. Submit your original completed application (the application with the original signed documentation) to: Room 7270, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Attention: Continuum of Care Programs.

To the Appropriate CPD Field Office. Also submit two copies of your completed application to the Community Planning and Development Division of the appropriate HUD Field Office for your jurisdiction. The HUD Field Office must receive the two copies of your application by the deadline date as well. The determination, however, that your application was received on time will be made *solely on receipt of the application at HUD Headquarters in Washington.* Reviews will be based upon the contents of the application submitted to HUD Headquarters.

For Application Kits. For an application kit, please call the SuperNOFA Information Center at 1–800–HUD–8929 (voice) or 1–800–HUD–2209 (TTY), or you may download an application by Internet at *http://www.hud.gov.*

For Further Information. You may contact the HUD Field Office serving your area, at the telephone number shown in Appendix A to the General Section of the SuperNOFA, or you may contact the Community Connections Information Center at 1–800–998–9999 (voice) or 1–800–HUD–2209 (TTY) or by Internet at: *http://www.hud.gov.*

For Technical Assistance. Before the application deadline, HUD staff will be available to provide you with general guidance. HUD staff, however, cannot provide you with guidance in actually preparing your application. HUD Field Office staff also will be available to help you identify organizations in your community that are involved in developing the Continuum of Care system. Following conditional selection of applications, HUD staff will be available to assist selected applicants in clarifying or confirming information that is a prerequisite to the offer of a grant agreement or Annual Contributions Contract by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of your application pertinent to HUD's funding decision.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at *http://www.hud.gov.*

II. Amount Allocated

Approximately $950 million is available for this competition in FY 2002. Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards or budget transfers may be used in addition to 2002 appropriations to fund applications submitted in response to this program section of this SuperNOFA. The FY 2002 HUD Appropriation Act requires HUD to obligate all Continuum of Care homeless assistance funds by September 30, 2004. While these funds will remain available for expenditure for five years following that date, any funds that you have not used by September 30, 2009, will cease to be available altogether. In the Continuum programs, obligation occurs upon execution of the grant agreement by HUD and the grantee, or in the Section 8 Moderate Rehabilitation for

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Single Room Occupancy program, execution of the Annual Contributions Contract (ACC). If you do not have a fully executed grant agreement or ACC by September 30, 2004, your award will be withdrawn. If you have not used all program funds by September 30, 2009, the funds will be deobligated. This requirement is in conflict with the statutory ten years of funding that is authorized for the Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals program, the Shelter Plus Care/SRO component program and the Shelter Plus Care with Rehabilitation component program. HUD will seek legislative authority to exempt these programs from the statutory mandate that any unexpended balances remaining in an account five years after they cease to be available for obligation are cancelled. If this legislative authority is not passed, project applicants should be aware that remaining funds will be cancelled by September 30, 2009. The funds available for the Continuum of Care program can be used under any of three programs that can assist in creating community systems for combating homelessness. The three programs are:

(1) Supportive Housing;
(2) Shelter Plus Care; and
(3) Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals.

The chart in the Appendix A to this program section of this SuperNOFA summarizes key aspects of the programs, and also provides the citations for the statutes and regulations that authorize these programs. The regulations listed in the chart provide more detailed descriptions of each of the programs.

As in previous funding availability announcements for the Continuum of Care Homeless Assistance Programs, HUD will not specify amounts for each of the three programs this year. Instead, the distribution of funds among the three programs will depend largely on locally determined priorities and overall demand. Local priorities notwithstanding, the FY 2002 HUD Appropriations Act requires that not less than 30 percent of this year's $1.123 billion Homeless Assistance Grants appropriation, excluding amounts provided for one-year renewals under the Shelter Plus Care Program, must be used for permanent housing projects. For the purposes of this 2002 NOFA, HUD is estimating that $118 million of the appropriation will be provided for one-year Shelter Plus Care Program renewals. (See Sections V(A)(5)(b) and V(A)(8) of this program section of the SuperNOFA for additional information.) Since this permanent housing set-aside requirement is expected to continue to be part of future competitions and may affect project funding selections as described below, you are strongly encouraged to begin planning as soon as possible for new permanent housing projects to be included as part of your submission in this and future competitions.

Under the FY 2002 HUD Appropriations Act, eligible Shelter Plus Care Program grants whose terms are expiring in FY2003 and Shelter Plus Care Program grants that have been extended beyond their original five-year terms but which are projected to run out of funds in FY 2003 will be renewed for one year provided that they are determined to be needed by the Continuum of Care as evidenced by their inclusion on the priority chart. These projects must also meet the applicant and sponsor eligibility and capacity requirements described in Section V(A)(1) of this NOFA. However, these S+C renewal projects will not count against a continuum's pro rata need amount. On the other hand, no S+C renewal adjustment will be made to a Continuum of Care's pro rata need amount since these projects are being funded outside of the competition. Please be advised that Shelter Plus Care renewal applications which are not submitted as part of either a "consolidated" or "associated" Continuum of Care application will not be considered as eligible for funding. (See Section VI for a description of the three options for submitting applications.)

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description.

(1) *Developing Continuum of Care Systems.* The purpose of the Continuum of Care Homeless Assistance Programs is to fund projects that will fill gaps in locally developed Continuum of Care systems to assist homeless persons, especially the chronically homeless, to move to self-sufficiency and permanent housing. The process of developing a Continuum of Care system to assist homeless persons is part of the community's larger effort of developing a Consolidated Plan. For a community to successfully address its often complex and interrelated problems, including homelessness, the community must marshal its varied resources—community and economic development resources, social service resources, housing and homeless assistance resources—and use them in a coordinated and effective manner. The Consolidated Plan, including the Analysis of Impediments to Fair Housing Choice, serves as the vehicle for a community to comprehensively identify each of its needs and to coordinate a plan of action for addressing them.

In addition to prevention, a Continuum of Care system consists of four basic components:

(a) A system of outreach and assessment for determining the needs and conditions of an individual or family who is homeless;

(b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(c) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to permanent housing and independent living; and

(d) Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families.

A Continuum of Care system is developed through a community-wide or region-wide process involving nonprofit organizations (including those representing persons with disabilities), government agencies, public housing authorities, faith-based and other community-based organizations and other homeless providers, housing developers and service providers, private businesses and business associations, law enforcement agencies, funding providers, and homeless or formerly homeless persons. To ensure that the Continuum of Care system addresses the needs of homeless veterans, it is particularly important that you involve veteran service organizations with specific experience in serving homeless veterans. A Continuum of Care system should address the specific needs of each homeless subpopulation: the jobless, veterans, persons with serious mental illnesses, persons with substance abuse issues, persons with HIV/AIDS, persons with co-occurring diagnoses, victims of domestic violence, youth, and any others: The term "co-occurring diagnoses" may include diagnoses of multiple physical disabilities or multiple mental disabilities or a combination of these two types.

Your application is more likely to be given a high score under the Continuum of Care scoring factors if the application demonstrates the achievement of three basic goals:

• That you have provided maximum participation by nonprofit organizations (including those representing persons with disabilities), government agencies, public housing authorities, faith-based and other community-based organizations and other homeless providers, housing developers and service providers, private businesses and business associations, law enforcement agencies, funding providers, and homeless or formerly homeless persons.

• That you have created, maintained and built upon a community-wide inventory of housing and services for homeless families and individuals; identified the full spectrum of needs of homeless families and individuals; and coordinated efforts to fill gaps between the current inventory and existing needs. This coordinated effort must appropriately address all aspects of the continuum, especially permanent housing.

• That you have instituted a Continuum of Care-wide strategy to coordinate homeless assistance with mainstream health, social services and employment programs for which homeless individuals and families may be eligible. These programs include Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program, and Veterans Health Care.

Should HUD determine, in its sole discretion, that sufficient evidence exists to confirm that the entity responsible for convening and managing the Continuum of Care process in a community has failed to follow locally established or accepted procedures governing the conduct of that process or has failed to provide for a fair process, including a project priority selection process that gives equal consideration to projects proposed by nonprofit organizations, HUD reserves the authority to impose sanctions up to and including a prohibition on that entity and the individuals comprising that entity from participating in that capacity in the future. In making this determination, HUD will consider as evidence court proceedings and decisions, or the determinations of other independent and impartial review bodies. This authority cannot be exercised until after a description of procedural safeguards, including an opportunity for comment and appeal, and the specific process and procedures for imposing a prohibition or debarment, have been published in the **Federal Register**.

In deciding what geographic area you will cover in your Continuum of Care strategy, you should be aware that the single most important factor in being awarded funding under this competition will be the strength of your Continuum of Care strategy when measured against the Continuum of Care rating factors described in this program section of the SuperNOFA. When you determine what jurisdictions to include in your Continuum of Care strategy area, include only those jurisdictions that are involved in the development and implementation of the Continuum of Care strategy.

The more jurisdictions you include in the Continuum of Care strategy area, the larger the pro rata need share that will be allocated to the strategy area (as described in Section V (A)(5) of this program section of the SuperNOFA). However, it would be a mistake to include jurisdictions that are not fully involved in the development and implementation of the Continuum of Care strategy since this would adversely affect the Continuum of Care score. If you are a rural county, you may wish to consider working with larger groups of contiguous counties to develop a region-wide or multi-county Continuum of Care strategy covering the combined service areas of these counties.

Since the basic concept of a Continuum of Care strategy is to create a single, coordinated, inclusive homeless assistance system for an area, the areas covered by Continuum of Care strategies should not overlap. If the geography included in your Continuum of Care strategy geographically overlaps to the extent that it competes with another application, projects within the Continuum of Care application that receive the highest Continuum of Care score will be eligible for up to 40 Need points. Projects in the competing Continuum of Care application with the lower Continuum of Care score will be eligible for only 10 Need points. In no case will the same geographical area be used more than one time in assigning Need points. The local HUD Field Office can help you determine if any of the areas proposed for inclusion by your Continuum of Care system is also likely to be claimed under another Continuum of Care system in this competition.

(2) *Prioritizing.* In HUD's view, project priority decisions are best made through a local process, which includes nonprofit organizations, and are key to the ultimate goal of reducing homelessness. Again this year, you must list all projects proposed for funding in priority order from the highest priority to the lowest, and indicate the applicant, project sponsor, and term for each project. Generally, this priority order will mean, for example, that if HUD has funds available only to award 8 of 10 proposed projects, then it will award funding to the first eight eligible projects listed, except as may be necessary to achieve the 30 percent overall permanent housing requirement—in which case higher priority non-permanent housing projects may be skipped over to fund lower priority permanent housing projects. Since you are now able to closely calculate your Continuum of Care's total pro rata need amount using information provided to you from HUD, and now that you no longer need to carry the large cost burden imposed by Shelter Plus Care five-year renewals, the tiering of projects (splitting into two or more projects by year or by units) on your priority list is not permitted.

To promote permanent housing, a special incentive is being provided to Continuum of Care systems that place an eligible, new permanent housing project in the number one priority slot on the priority list. See Section V (A)(5)(b) of this program section of the SuperNOFA for a description of this incentive.

HUD will use this priority list to award up to 40 points per project under the "Need" scoring factors. Higher priority projects will receive more points under Need than lower priority projects. A project priority chart is included in the application kit and you should complete and submit it. If you do not submit clear project priority designations for the continuum, or if HUD, at its sole discretion, cannot determine priority designations, then HUD will give all projects the lowest score for Need.

(3) *Project renewals.* If your Supportive Housing or Shelter Plus Care grant will be expiring in calendar year 2003, or if your Shelter Plus Care Program grant has been extended beyond its original five-year term and is projected to run out of funds in FY 2003, you must apply under this Continuum of Care program section of the SuperNOFA to get continued funding.

Your local needs analysis process must consider the need to continue funding for projects expiring in calendar year 2003. HUD will not fund competitive renewals out of order on the priority list except as may be necessary to achieve the 30 percent overall permanent housing requirement. HUD reserves the authority to use FY 2003 funds, if available, to conditionally select for one year of funding lower-

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rated eligible SHP renewal projects that are assigned 40 need points in either a "consolidated" or "associated" Continuum of Care application receiving at least 20 points under the Continuum of Care scoring factor that would not otherwise receive funding for these projects.

It is important that SHP renewals and Shelter Plus Care non-competitive renewals meet minimum project eligibility and capacity standards identified in this program section of the SuperNOFA or they will be rejected from consideration for either competitive or non-competitive funding.

For the renewal of a Supportive Housing Program project, you may request funding for one (1), two (2) or three (3) years. The total amount of the request cannot exceed the average yearly amount received in total for leasing, supportive services, and/or operations for the grant being renewed, plus up to five percent for administration.

For the renewal of a Shelter Plus Care project, the grant term will be one (1) year, as specified by Congress. For Shelter Plus Care renewals, you may request up to the amount determined by multiplying the number of units under lease at the time of your application for renewal funding by the applicable current Fair Market Rent(s) by 12 months, except that for Shelter Plus Care grants having been awarded one year of renewal funding in 2001, the number of units requested for renewal this year may not exceed the number of units funded in 2001. While full funding of existing grants may be requested, there is no guarantee that the entire amount will be awarded. As is the case with SHP, HUD will recapture Shelter Plus Care grant funds remaining unspent at the end of the previous grant period when it renews a grant. The one-year term of non-competitively awarded Shelter Plus Care renewal projects may not be extended.

This program section of the SuperNOFA is not applicable to the renewal of funding under the SRO program. For further guidance on SRO renewals, please contact your local HUD Field Office.

As a project applicant, you are eligible to apply for renewal of a grant only if you have executed a grant agreement for the project directly with HUD. If you are a project sponsor or subrecipient who has not signed such an agreement, you are not eligible to apply for renewal of these projects. HUD will reject applications for renewal submitted by ineligible applicants. If you have questions about your eligibility to apply for project renewal, contact the local HUD field office. To be considered an applicant when applying as part of a "consolidated" application, you must be an eligible applicant for the program for which you are applying, and you must submit an originally signed Form SF–424 and the necessary certifications and assurances. (See Section VI for a description of the three options for submitting an application.) Only public housing authorities and private nonprofits are eligible applicants for the Section 8 Moderate Rehabilitation for Single Room Occupancy program. If you are a unit of general local government acting as an applicant for a consolidated application and plan to include a request for Section 8 SRO funds, you must have a public housing authority or nonprofit listed as the Section 8 SRO applicant and they must submit a signed Form SF–424, along with all necessary certifications and assurances applicable to the Section 8 SRO project.

(B) Eligible Applicants

See Appendix A.

(C) Eligible Activities

See Appendix A.

IV. Program Requirements

(A) Conducting Business In Accordance With Core Values and Ethical Standards

See Section II(A)(2) of General Section of the SuperNOFA.

(B) Statutory and Regulatory Requirements

If your project is selected for funding as a result of the competition, you will be required to coordinate and integrate your homeless program with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program and Veterans Health Care. In addition, as a condition for award, any governmental entity serving as an applicant must agree to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. This condition for award is intended to emphasize that States and units of general local government are primarily responsible for the care of these individuals, and to forestall attempts to use scarce McKinney-Vento Act funds to assist such persons in lieu of State and local resources.

(C) Program specific requirements follow:

(1) *SRO Program.* As an applicant, you need to know that the following limitations apply to the Section 8 SRO program:

- Under section 8(e)(2) of the United States Housing Act of 1937, no single project may contain more than 100 assisted units;
- Under 24 CFR 882.802, applicants that are private nonprofit organizations must subcontract with a Public Housing Authority to administer the SRO assistance;
- Under section 8(e)(2) of the United States Housing Act of 1937 and 24 CFR 882.802, rehabilitation must involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade conditions to comply with the Housing Quality Standards.
- Under section 441(e) of the McKinney-Vento Act and 24 CFR 882.805(d)(1), HUD publishes the SRO per unit rehabilitation cost limit each year to take into account changes in construction costs. This cost limitation applies to rehabilitation that is compensated for in a Housing Assistance Payments Contract. For purposes of Fiscal Year 2002 funding, the cost limitation is raised from $18,200 to $18,500 per unit to take into account increases in construction costs during the past 12-month period.
- The SRO Program is subject to the Federal labor standards provisions at 24 CFR part 882, subpart H.
- Individuals assisted through the SRO Program must meet the definition of homeless individual found at section 103 of the McKinney-Vento Act.

(2) *Shelter Plus Care/SRO Component.* With regard to the SRO component of the Shelter Plus Care program, if you are a State or a unit of general local government, you must subcontract with a Public Housing Authority to administer the Shelter Plus Care assistance. Also with regard to this component, no single project may contain more than 100 units.

(3) *Supportive Housing Program.* Please be advised that where an applicant for Supportive Housing Program funding is a State or unit of general local government that utilizes one or more nonprofit organizations to administer the homeless assistance project(s), administrative funds provided as part of the SHP grant must be passed on to the nonprofit organization(s) in proportion to the administrative burden borne by them for the SHP project(s). HUD will consider States or units of general local government that pass on at least 50 percent of the administrative funds made available under the grant as having met this requirement which was contained in the congressional committees' report accompanying the FY 2001 HUD Appropriations Act. This requirement does not apply to either the SRO Program, since no administrative funds are provided as part of the grant, or to the S+C Program, since paying the costs associated with the administration of these grants is ineligible by regulation.

(D) Match

You must match Supportive Housing Program funds provided for acquisition, rehabilitation, and new construction with an equal amount of funds from other sources; for operating costs, since by law SHP can pay no more than 75% of the total operating budget for supportive housing, you must provide at least 25% of the annual operating costs. In addition, you must provide a 25% cash match of all SHP funding for supportive services. The cash source may be you, the Federal Government, State and local governments, or private resources. You must match rental assistance provided through the Shelter Plus Care Program in the aggregate with supportive services.

(E) Timeliness Standards

As an applicant, you are expected to initiate your approved projects promptly in accordance with Section II of this NOFA. In addition, HUD may take action if you fail to satisfy the following timeliness standards:

(1) Supportive Housing Program

- HUD will deselect your award if you do not demonstrate site control within one (1) year of the date of your grant award letter, as required by the McKinney-Vento Act at 42 U.S.C. 11386(a)(3) and implemented in program regulations at 24 CFR 583.320(a).
- HUD may deobligate SHP funds if the following additional timeliness standards are not met:

—You must begin construction activities within eighteen (18) months of the date of HUD's grant award letter and complete them within thirty-six (36) months after that notification.

—For activities that cannot begin until construction activities are completed, such as supportive service or operating activities that will be conducted within the building being rehabilitated or newly constructed, you must begin these activities within three (3) months after you complete construction.

—You must begin all activities that may proceed independent of construction activities within twelve (12) months of the date of HUD's grant award letter.

(2) Shelter Plus Care Program Components Except SRO Component

HUD may deobligate S+C funds if you do not meet the following timeliness standards:

- For Tenant-based Rental Assistance, for Sponsor-based Rental Assistance, and for Project-based Rental Assistance without rehabilitation, you must start the rental assistance within twelve (12) months of the date of HUD's grant award letter.
- For Project-based Rental Assistance with rehabilitation, you must complete the rehabilitation within twelve (12) months of the date of HUD's grant award letter.

(3) SRO Program and SRO Component of the Shelter Plus Care Program

For projects carried out under the SRO program and the SRO component of the S+C program, the rehabilitation work must be completed and the Housing Assistance Payments contract executed within twelve (12) months of execution of the Annual Contributions Contract. HUD may reduce the number of units or the amount of the annual contribution commitment if, in HUD's determination, the Public Housing Authority fails to demonstrate a good faith effort to adhere to this schedule.

V. Application Selection Process

(A) *Review, Rating and Conditional Selection.* HUD will use the same review, rating, and conditional selection process for all three programs (S+C, SRO, and SHP). The standard factors for award identified in the General Section of this SuperNOFA have been modified in this program section as described below. Only the factors described in this program section—Continuum of Care and Need—will be used to assign points. To review and rate applications, HUD may establish panels. In order to obtain certain expertise and outside points of view, including views from other Federal agencies, these panels may include persons not currently employed by HUD. Two types of reviews will be conducted. Paragraphs (1) and (2) below describe threshold reviews and paragraphs (3) and (4) describe factors—Continuum of Care and Need—that will be used to assign points. Up to 104 points (including 2 bonus points for RC/EZ/EC communities described in Section III (C)(1), and 2 bonus points for the court-ordered consideration described in Section III (C)(3), of the General Section of the SuperNOFA) will be assigned using these factors.

(1) *Applicant and sponsor eligibility and capacity.* HUD will review your capacity as the applicant and project sponsor to ensure the eligibility and capacity standards in this section are met. If HUD determines these standards are not met, the project will be rejected from the competition. The eligibility and capacity standards are:

- You must be eligible to apply for the specific program;
- You must demonstrate ability to carry out the project(s). With respect to each proposed project, this means that in addition to knowledge of and experience with homelessness in general, the organization carrying out the project, its employees, or its partners, must have the necessary experience and knowledge to carry out the specific activities proposed, such as housing development, housing management, and service delivery;
- If you or the project sponsors are current or past recipients of assistance under a HUD McKinney-Vento Act program, there must have been no delay in implementing projects exceeding applicable program timeliness standards that HUD determines is within your or the project sponsor's control, no unresolved HUD finding, or no outstanding audit finding of a material nature regarding the administration of the program; and
- You and the project sponsors must be in compliance with applicable civil rights laws and Executive Orders, and must meet the threshold requirements of Section II(B) of the General Section of the SuperNOFA.

(2) *Project eligibility.* HUD will review projects to determine if they meet the following eligibility standards. If HUD determines the following standards are not met by a specific project or activity, the project or activity will be rejected from the competition.

- The population to be served must meet the eligibility requirements of the specific program, as described in this program section;
- At least one of the activities for which assistance is requested must be eligible under the specific program, as described in the program regulations;

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• The project must be cost-effective in HUD's opinion, including costs associated with construction, operations, administration, and supportive services with such costs not deviating substantially from the norm in that locale for the type of structure or kind of activity;

• For the Section 8 SRO program, at least 25 percent of the units to be assisted at any one site must be vacant at the time of application. Tenants returning after having vacated their units during the rehabilitation period are not eligible to receive rental assistance under the SRO Program since they do not meet the McKinney-Vento Act definition of homeless individual; and

• For those projects proposed under the SHP innovative category: Whether or not a project is considered innovative will be determined on the basis that the particular approach proposed is new and can be replicated.

(3) *Project quality.* HUD will review projects to determine if they meet the following quality standards. The housing and services proposed must be appropriate to the needs of the persons to be served. HUD may find a project to be inappropriate if:

• The type, scale and general location of the housing or services do not fit the needs of the proposed participants. A S+C or SHP project renewal will be considered as having met this requirement through its previously approved grant application.

• A specific plan for ensuring that clients will be assisted to obtain the benefits of the mainstream health, social service, and employment programs for which they are eligible is not provided. A S+C project renewal will be considered as having met this requirement through its previously approved grant application;

• Housing accessibility for persons with disabilities will not be provided as required by applicable laws. A SHP or S+C project renewal will be considered as having met this requirement through its previously approved grant application;

• The description of supportive services only projects, and all others, do not show how participants will be helped to access permanent housing and achieve self-sufficiency. A S+C project renewal will be considered as having met this requirement through its previously approved grant application;

• Renewal projects must evidence satisfactory performance for their existing grant in HUD's opinion based upon the substantial achievement of their program goals as reflected in their most recent Annual Progress Report. (New projects funded for one year in 2001 are not subject to this requirement.);

• Renewal projects do not evidence that they have assisted clients to obtain the benefits of the mainstream health, social service, and employment programs for which they were eligible as evidenced in their most recent Annual Progress Report;

(4) *Continuum of Care.* HUD will award up to 60 points as follows:

(a) *Process and Strategy.* HUD will award up to 20 points based on the extent to which your application demonstrates:

• The existence of a coordinated and inclusive community process, including organizational structure(s), for developing and implementing a Continuum of Care strategy which includes nonprofit organizations (such as veterans service organizations, organizations representing persons with disabilities, faith-based and other community-based organizations, and other groups serving homeless persons), State and local governmental agencies, public housing authorities, housing developers and service providers, law enforcement, hospital and medical entities, funding providers, local businesses and business associations, and homeless or formerly homeless persons; and

• That a well-defined and comprehensive strategy has been developed which addresses the components of a Continuum of Care system (i.e., prevention, outreach, intake, and assessment; emergency shelter; transitional housing; permanent and permanent supportive housing) and that strategy has been designed to serve all homeless subpopulations in the community (e.g., seriously mentally ill, persons with multiple diagnoses, veterans, persons with HIV/AIDS), including those persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) *Gaps and Priorities.* HUD will award up to 20 points based on the extent to which your application:

(i) Describes the gap analysis performed, uses reliable information and sources that are presented completely and accurately; and

(ii) Proposes projects that are not inconsistent with the gaps analysis described in the Continuum of Care strategy, describes a fair project selection process, explains how gaps identified through the analysis are being addressed, and correctly completes the priority chart.

When HUD reviews a community's Continuum of Care to determine the points to assign, HUD will consider whether the community took its renewal needs into account in preparing its project priority list. (See discussion on renewals in Section III(A)(3) of this NOFA.)

(c) *Supplemental Resources.* HUD will award up to 15 points based on the extent to which your application incorporates mainstream resources and demonstrates leveraging of funds requested under this program section of the SuperNOFA with other resources, including private, other public, and mainstream services and housing programs. To achieve the highest rating for this factor, applicants must evidence explicit Continuum of Care-wide strategies to coordinate homeless assistance with mainstream health, social services and employment programs for which homeless populations may be eligible. These include Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, the Welfare-to-Work grant program, and Veterans Health Care.

(d) *Emphasis on housing.* HUD will award up to 5 points based upon the relationship between funds requested for housing activities and funds requested for supportive service activities among projects assigned 40 need points (excluding Shelter Plus Care renewals). Points will be awarded on a sliding scale with the Continuums with the highest percentage of approvable requests for funds for housing activities receiving the highest points. To receive points, the Continuum must have a total amount of approvable funds for housing activities that is at least 50 percent of funds for all approvable projects that are assigned 40 need points (excluding Shelter Plus Care renewals). HUD will count as housing activity all approvable funds for rental assistance and approvable funds for acquisition, rehabilitation, construction, leasing and operations when used in connection with housing.

(e) *EZ/EC bonus points.* As provided for in Section III(C)(1) of the General Section of this SuperNOFA, HUD will add a bonus of up to 2 points to the Continuum of Care score when: (1) At least one proposed homeless assistance project will be located within the boundaries and/or will principally serve the residents of a federal Empowerment Zone, Enterprise Community, Enhanced Enterprise Community, Strategic Planning Community or Renewal Community (collectively "EZ/EC"); and (2) if priority placement will be given by the project(s) to homeless persons living on the streets or in shelters within the EZ/EC, or whose last known address was within the EZ/EC. In addition, and in order for a Continuum of Care system to receive any of the bonus points, the applicant must specifically state how it meets the requirements for the two EZ/EC bonus points, and provide a narrative describing the extent of the linkages and coordination between proposed projects and the EZ/EC. Examples of such coordination include having common board or committee membership (EZ/EC and Continuum of Care), and having EZ/EC resources directed toward Continuum of Care activities. The greater the extent of EZ/EC involvement in, and coordination with, the implementation strategy for the Continuum of Care system and projects, the greater the likelihood that bonus points will be awarded.

(f) *Court-ordered consideration.* Section III(C)(3) of the General Section is applicable to this program.

(5) *Need.* HUD will award up to 40 points for need. There is a three-step approach to determining the need scores to be awarded to projects:

(a) *Determining relative need:* To determine the homeless assistance need of a particular jurisdiction, HUD will use nationally available data, including the following factors as used in the Emergency Shelter Grants program: data on poverty, housing overcrowding, population, age of housing, and growth lag. Applying those factors to a particular jurisdiction provides an estimate of the relative need index for that jurisdiction compared to other jurisdictions applying for assistance under this program section of the SuperNOFA.

(b) *Applying relative need:* HUD will then apply that relative need index to the total amount of funding estimated to be competitively available under this program section of the SuperNOFA to determine a jurisdiction's pro rata need. However, in order to promote permanent housing for the homeless, if a Continuum of Care's number one priority project qualifies as an eligible, new permanent housing project, then the full amount of that project's eligible activities, up to the lesser of 100 percent of the Continuum of Care's preliminary pro rata need or $500,000, will be added to the final pro rata need amount for the Continuum. HUD also reserves the right to adjust pro rata need, if necessary, to address SHP project renewals.

(c) *Awarding need points to projects:* Once the pro rata need is established, it is applied against the priority project list in the application. Starting from the highest priority project, HUD proceeds down the list to award need points to each project. An eligible project will receive the full 40 points for need if at least one half of its requested amount falls within the pro rata need amount for that Continuum of Care (COC). Thereafter, HUD proceeds further down the priority project list and awards 15 points for need to each project if at least one half of its requested amount falls within the "second tier" of pro rata need amount for that Continuum of Care. The "second tier" is the amount between the pro rata need and twice the pro rata need for the COC. Remaining projects each receive 10 points. If projects are not prioritized for the Continuum, then all projects will receive 10 points for Need.

In the case of competing applications from a single jurisdiction or service area, projects in the application that received the highest score out of the possible 60 points for Continuum of Care are eligible for up to 40 points under Need. Projects in the competing applications with lower Continuum of Care scores are eligible for only 10 points under Need.

(6) *Ranking.* HUD will add the score for Continuum of Care to the Need score and EZ/EC bonus points, if any, to obtain a total score for each project. The projects will then be ranked from highest to lowest according to the total combined score.

(7) *Conditional Selection and Adjustments to Funding.*

(a) *Conditional Selection.* Whether a project is conditionally selected, as described in Section V (B) below, will depend on its overall ranking compared to others, except that HUD reserves the right to select lower rated eligible projects in order to meet the 30 percent overall permanent housing requirement. (See Section V (A)(8) for additional selection information.)

When insufficient funds remain to fund all projects in the competition having the same total score, HUD will first fund permanent housing projects if necessary to achieve the 30 percent overall permanent housing requirement. HUD will then break ties among the remaining projects with the same total score by comparing scores received by the projects for each of the following scoring factors, in the order shown: Need, Overall Continuum of Care score, COC Process and Strategy, COC Gaps and Priorities, and COC Supplemental Resources. The final tie-breaking factor is the priority number of the competing projects on the applicable COC priority list(s).

(b) *Adjustments to Funding.* The Secretary of HUD has determined that geographic diversity is appropriate to carrying out homeless assistance programs in an effective manner. HUD believes that geographic diversity can be achieved best by awarding grants to as many COCs as possible. To this end, in instances where any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa does not have at least one funded COC, HUD reserves the right to fund eligible project(s) receiving 40 Need points in the COC with the highest total score in that jurisdiction. To qualify for funding, the total score for these first tier projects on the COC priority list must be at least 65 points. In the case of two or more COCs with the same total score, HUD will use the tie-breaking rules described above. In addition, if the highest priority project passing threshold requirements within a COC fails to meet the criteria for receiving 40 Need points, HUD reserves the right to reduce the total requested amount for that project to allow it to qualify for 40 Need points. Finally, if the total amount that would be awarded for first tier projects in a Continuum of Care exceeds the final pro rata need amount for that COC by more than $250,000, the lowest priority first tier project being selected for funding will be reduced to the level necessary to ensure that the total amount being awarded for such projects does not exceed the final pro rata need amount by more than $250,000. HUD may otherwise adjust funding of applications in accordance with the provisions of Section III(E) of the General Section of the SuperNOFA. In addition, HUD reserves the right to ensure that a project that is applying for, and eligible for, selection under this competition is not awarded funds that duplicate activities.

(8) *Additional selection considerations.* HUD also will apply the limitations on funding described below in making conditional selections.

In accordance with the appropriation for homeless assistance grants in the Fiscal Year 2002 Appropriation Act for HUD (Pub.L. 107–73, approved November 26, 2001; 115 Stat. 651), HUD will use not less than 30 percent of the total FY 2002 Homeless Assistance Grants appropriation, excluding amounts provided for renewals under the Shelter Plus Care Program, to fund projects that meet the definition of permanent housing. Projects meeting the definition of permanent housing for this purpose are: (1) New Shelter Plus Care projects, (2) Section 8 SRO projects, and (3) new and renewal

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projects under the Supportive Housing Program that are designated as either permanent housing for homeless persons with disabilities or Safe Havens projects having the characteristics of permanent housing for homeless persons with disabilities, including leases with the program participants, that, in addition, have been assigned at least 15 Need points, and which are submitted as part of either a "consolidated" or "associated" Continuum of Care application receiving at least 20 points under the Continuum of Care scoring factor. However, no Continuum of Care application may receive more than 30 percent of its pro rata need, up to $3 million, for "second-tier" permanent housing projects assigned 15 Need points that are selected for funding under this procedure. (See Section V(A)(5)(c) for definition of "second-tier".) Since the FY 2002 Homeless Assistance Grants appropriation, excluding an estimated $118 million for Shelter Plus Care Program renewals, is $1.005 billion, not less than approximately $302 million must be awarded to permanent housing projects unless an insufficient number of approvable permanent housing projects are submitted. This permanent housing funding requirement may result in higher scoring non-permanent housing projects being skipped over to fund lower scoring permanent housing projects or, within a Continuum, higher priority non-permanent housing projects being skipped over to fund lower priority permanent housing projects. HUD will first skip over new non-permanent housing projects when making project selections in order to meet the 30 percent requirement. If the 30 percent requirement has not been met after skipping over the new non-permanent housing projects, then HUD will skip over non-permanent housing renewal projects. In skipping over new non-permanent housing projects, HUD will begin with the lowest rated, eligible new non-permanent project at the funding line and continue up the ranking until the 30 percent requirement is met. If HUD is required to skip over non-permanent housing renewal projects, HUD will proceed in the same way.

In accordance with section 429 of the McKinney-Vento Act, HUD will award Supportive Housing funds as follows: Not less than 25 percent for projects that primarily serve homeless families with children; not less than 25 percent for projects that primarily serve homeless persons with disabilities; and not less than 10 percent for supportive services not provided in conjunction with supportive housing. After projects are rated and ranked, based on the factors described above, HUD will determine if the conditionally selected projects achieve these minimum percentages. If not, HUD will skip higher-ranked projects in order to achieve these minimum percentages.

In accordance with section 463(a) of the McKinney-Vento Act, as amended by the Housing and Community Development Act of 1992, at least 10 percent of Shelter Plus Care funds will be awarded for each of the four components of the program: Tenant-based Rental Assistance; Sponsor-based Rental Assistance; Project-based Rental Assistance; and Section 8 Moderate Rehabilitation of Single Room Occupancy Dwellings for Homeless Individuals (provided there are sufficient numbers of approvable projects to achieve these percentages). After projects are rated and ranked, based on the factors described above, HUD will determine if the conditionally selected projects achieve these minimum percentages. If necessary, HUD will skip higher-ranked projects in order to achieve these minimum percentages.

In accordance with section 455(b) of the McKinney-Vento Act, no more than 10 percent of the assistance made available for Shelter Plus Care in any fiscal year may be used for programs located within any one unit of general local government. In accordance with section 441(c) of the McKinney-Vento Act, no city or urban county may have Section 8 SRO projects receiving a total of more than 10 percent of the assistance made available under this program. HUD is defining the 10 percent availability this fiscal year as $10 million for Shelter Plus Care and $10 million for Section 8 SRO. However, if the amount awarded under either of these two programs exceeds $100 million, then the amount awarded to any one unit of general local government (for purposes of the Shelter Plus Care program) or city or urban county (for the purposes of the SRO program) could be up to 10 percent of the actual total amount awarded for that program.

Lastly, HUD reserves the right to reduce the amount of a grant if necessary to ensure that no more than 10 percent of assistance made available under this program section of the SuperNOFA will be awarded for projects located within any one unit of general local government or within the geographic area covered by any one Continuum of Care. If HUD exercises a right it has reserved under this program section of the SuperNOFA, that right will be exercised uniformly across all applications received in response to this program section of the SuperNOFA.

(B) *Action on Conditionally Selected Applications.* HUD will notify conditionally selected applicants in writing. As necessary, HUD will subsequently request them to submit additional project information, which may include documentation to show the project is financially feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for HUD to perform an environmental review, where applicable; and such other documentation as specified by HUD in writing to the applicant, that confirms or clarifies information provided in the application. HUD will notify SHP, SRO, S+C and S+C/SRO applicants of the deadline for submission of such information. If an applicant is unable to meet any conditions for fund award within the specified timeframe, HUD reserves the right not to award funds to the applicant, but instead to either: use them to select the next highest ranked application(s) from the original competition for which there are sufficient funds available; or add them to funds available for the next competition for the applicable program.

(C) *Applicant Debriefing.* See Section VII (E)(2) of the General Section of the SuperNOFA.

VI. Application Submission Requirements

The application kit provides the application materials, including Form SF–424 and certifications, that must be used in applying for homeless assistance under this SuperNOFA. These application materials substitute for the forms, certifications, and assurances listed in Section II(H) of the General Section of the SuperNOFA (collectively, the "standard" forms).

In addition to the required narratives, the items that you must submit to HUD as part of the application for homeless assistance funding are the following:

(1) 2002 Application Summary Form
(2) Continuum of Care and Project Exhibits
(3) Gaps Analysis Form
(4) Project Priorities Form
(5) Project Leveraging Form
(6) EZ/EC Certification
(7) SF–424
(8) Applicant Certifications
(9) Consolidated Plan Certification(s)

The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining forms

(i.e., excluding such items as narratives), referred to as the non-standard forms, can be found in Appendix B to this program section of the SuperNOFA).

The application requires a description of the Continuum of Care system and the proposed project(s). To ensure that no applicant is afforded an advantage in the rating of the Continuum of Care element (described in Section V (A)(4) above), HUD is establishing a limitation of 25 pages, excluding required multiple page tables or charts but including any attachments, on the length of Exhibit 1 of any application submitted in response to this NOFA. HUD will not consider the contents of any pages exceeding this limit when rating the Continuum of Care element of any application. The application kit also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable State or unit of general local government, including the Analysis of Impediments to Fair Housing Choice and the Action Plan to address these impediments. Projects funded under this SuperNOFA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (42 U.S.C. 3601–19), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301) or the Age Discrimination Act of 1974 (42 U.S.C. 6101).

There are three options for submitting an application under this program section of the SuperNOFA.

One: A "Consolidated Application" is submitted when a jurisdiction (or a consortium of jurisdictions) submits a single application encompassing a Continuum of Care strategy and containing all the projects within that strategy for which funding is being requested. Individual projects are contained within the one consolidated application. Grant funding may go to one entity which then administers all funded projects submitted in the application, or under this option, grant funding may go to all or any of the projects individually. Your application will specify the grantee for each project.

Two: "Associated Applications" are submitted when applicants plan and organize a single Continuum of Care strategy that is adopted by project sponsors or operators who choose to submit separate applications for projects while including the identical Continuum of Care strategy. In this case, project funding would go to each successful applicant individually and each would be responsible to HUD for administering its separate grant.

Three: A "Solo Application" is submitted when an applicant applies for a project exclusive of participation in any community-wide or region-wide Continuum of Care development process.

Options one and two are not substantively different and will be considered equally competitive. Applicants are advised that projects that are not a part of a Continuum of Care strategy will receive few, if any, points under the Continuum of Care rating factors.

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications (See Section V of the General Section).

VIII. Environmental, Local Resident Employment, and Relocation Requirements

(A) *Environmental Requirements.* All Continuum of Care assistance is subject to the National Environmental Policy Act and applicable related Federal environmental authorities. Section 208 of Public Law 106–377 (114 Stat. 1441, approved October 27, 2000) amended section 443 of the Stewart B. McKinney-Vento Homeless Assistance Act to provide that for purposes of environmental review, Continuum of Care projects shall be treated as assistance for special projects that are subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, and shall be subject to HUD's regulations implementing that section. The effect of this provision is that environmental reviews for Continuum of Care activities are to be completed by responsible entities (States or units of general local government) in accordance with 24 CFR part 58, whether or not the applicant is itself a State or a unit of general local government. Applicants (such as PHAs or nonprofit organizations) that are not States or units of general local government must request the unit of general local government to perform the environmental review. This statutory provision supersedes those portions of 24 CFR 582.230 and 583.230 that provide for automatic HUD environmental review in the case of applications from such entities. With this exception, conditional selection of projects under the Continuum of Care Program is subject to the environmental review requirements of 24 CFR 582.230, 583.230, and 882.804(c), as applicable. Recipients may not commit or expend any Continuum of Care assistance or nonfederal funds on project activities (other than those listed in 24 CFR 58.22(c), 58.34 or 58.35(b)) until HUD has approved a Request for Release of Funds and environmental certification from the responsible entity. The expenditure or commitment of Continuum of Care assistance or nonfederal funds for such activities prior to this HUD approval may result in the denial of assistance for the project under consideration.

(B) *Local Resident Employment.* To the extent that any housing assistance (including rental assistance) funded through this program section of the SuperNOFA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement) or housing construction, then it is subject to section 3 of the Housing and Urban Rehabilitation Act of 1968, and the implementing regulations at 24 CFR part 135. Section 3, as amended, requires that economic opportunities generated by certain HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

(C) *Relocation.* The SHP, S+C, and SRO programs are subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). These requirements are explained in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Any person or family that moves, even temporarily, as a direct result of acquisition, rehabilitation or demolition for a project that is assisted through one of these programs (whether or not HUD funded the acquisition, rehabilitation or demolition) is entitled to relocation assistance. Displacement that results from leasing a unit in a structure may also trigger relocation requirements. Relocation assistance can be expensive. To avoid unnecessary costs, it is important to provide occupants with timely information notices, including a general information notice to be sent at

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the time the application is submitted to HUD. HUD Handbook 1378 contains guideform information notices. The HUD field office can provide a copy of the handbook and copies of appropriate information booklets to be provided to occupants. Accordingly, if the site is occupied, the applicant should contact the HUD field office in the planning stage to obtain advice, including help in estimating the cost of required relocation assistance.

IX. Authority

The Supportive Housing Program is authorized by title IV, subtitle C, of the Stewart B. McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), 42 U.S.C. 11381. Funds made available under this program section of the SuperNOFA for the Supportive Housing Program are subject to the program regulations at 24 CFR part 583.

The Shelter Plus Care program is authorized by title IV, subtitle F, of the McKinney-Vento Act, 42 U.S.C. 11403. Funds made available under this program section of the SuperNOFA for the Shelter Plus Care program are subject to the program regulations at 24 CFR part 582.

The Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (SRO) is authorized by section 441 of the McKinney-Vento Act, 42 U.S.C. 11401. Funds made available under this NOFA for the SRO program are subject to the program regulations at 24 CFR part 882, subpart H.

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APPENDIX A
CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS

ELEMENTS	SUPPORTIVE HOUSING	SHELTER PLUS CARE	SECTION 8 SRO
AUTHORIZING LEGISLATION	Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act	Subtitle F of Title IV of the McKinney-Vento Homeless Assistance Act	Section 441 of the McKinney-Vento Homeless Assistance Act
IMPLEMENTING REGULATIONS	24 CFR part 583	24 CFR part 582	24 CFR part 882
ELIGIBLE APPLICANT(S)	• State • Units of general local government • Special purpose units of government such as public housing agencies (PHAs) • Private nonprofit organizations • CMHCs that are public nonprofit organizations	• States • Unites of general local governments • PHAs	• PHAs • Private nonprofit organizations
ELIGIBLE COMPONENTS	• Transitional housing • Permanent housing for disabled persons only • Supportive services not in conjunction with supportive housing • Safe Havens • Innovative supportive housing	• Tenant-based • Sponsor-based • Project-based • SRO-based	• SRO housing
ELIGIBLE ACTIVITIES See footnotes 1,2 and 3	• Acquisition • Rehabilitation • New construction • Leasing • Operating costs • Supportive services	• Rental assistance	• Rental assistance
ELIGIBLLE POPULATIONS See footnote 2	• Homeless persons	• Homeless disabled individuals • Homeless disabled individuals & their families	• Homeless individuals
POPULATIONS GIVEN SPECIAL CONSIDERATION	• Homeless persons with disabilities • Homeless families with children	Homeless persons who. • Are seriously mentally ill • Have chronic problems with alcohol and/or drugs • Have AIDs & related diseases	N/A
INITIAL TERM OF ASSISTANCE	3 years	5 years: TRA, SRA, and PRA if no rehab 10 years: SRO, and PRA with rehab	10 years

Footnote 1: Homeless prevention activities are statutorily ineligible under these programs.
Footnote 2: Persons at risk of homelessness are statutorily ineligible for assistance under these programs.
Footnote 3: Acquisition, construction, rehabilitation, leasing, and operating costs for emergency shelters are statutorily ineligible for assistance under Shelter Plus Care and Section 8 SRO.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY

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FUNDING AVAILABILITY FOR SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM (SECTION 202 PROGRAM)

PROGRAM OVERVIEW

Purpose of the Program. This program provides supportive housing for very low-income persons 62 years of age or older.

Available Funds. Approximately $485.6 million.

Eligible Applicants. Private nonprofit organizations and nonprofit consumer cooperatives (see Section III(B) of this NOFA). (See Section VIII of this NOFA for information regarding the formation of the Owner corporation.)

Eligible Activities. New construction, rehabilitation, or acquisition of housing with or without rehabilitation (see Section III(C) of this NOFA).

Application Deadline. June 5, 2002.

Match Requirements. No.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Submit your completed applications on or before 6 p.m., local time, on June 5, 2002 at the address shown below.

See the General Section of this SuperNOFA for specific procedures governing the submission of applications to HUD Field Offices. Only Section 202 applications mailed by United States Postal Service (USPS) will be accepted.

Address for Submitting Applications. Submit your completed application (an original and four copies are required) to the Director of the appropriate Multifamily Hub Office or Multifamily Program Center as listed in Appendix A to the Section 811 program section of this SuperNOFA with the following exceptions:

1. Applications for projects proposed to be located within the jurisdiction of the Seattle, Washington and the Anchorage, Alaska Offices must be submitted to the Portland, Oregon Office.

2. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.

3. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.

4. Applications for projects proposed to be located within the jurisdiction of the Washington, DC Office must be submitted to the Baltimore, Maryland Office.

The application kit also includes a listing of the Multifamily Hubs and Program Centers, their addresses and telephone numbers, including TTY numbers. This information is also available from HUD's SuperNOFA Information Center at 1–800–HUD–8929 and from the Internet through the HUD web site at *http://www.hud.gov/grants.* Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209.

For Application Kits. For an application kit and any supplemental materials, please call HUD's SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, please refer to the Section 202 Program and provide your name, address (including zip code), and telephone number (including area code). The application kit also will be available on the Internet through the HUD web site at *http://www.hud.gov/grants* and from the appropriate Multifamily Hub or Multifamily Program Center.

For Further Information and Technical Assistance. You may contact the appropriate Multifamily Hub Office or Multifamily Program Center, Evelyn Berry at HUD Headquarters at (202) 708–2866, or access the Internet at *http://www.hud.gov/grants.* Persons with hearing and speech challenges may access the above number via TTY (text telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number).

HUD encourages minority organizations and grassroots organizations (e.g., civic organizations, congregations and faith-based and other community-based organizations) to participate in this program and strongly recommends that prospective applicants attend the local HUD Office workshop. At the workshops, HUD will explain application procedures and requirements as well as address concerns such as local market conditions, building codes and accessibility requirements, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs. If you are interested in attending the workshop, make sure that your name, address and telephone number are on the appropriate HUD Office's mailing list so that you will be informed of the date, time and place of the workshop. Persons with disabilities should call the appropriate HUD Office to ensure that any necessary arrangements can be made to enable your attendance and participation in the workshop.

If you cannot attend the workshop, call the appropriate HUD Office if you have any questions concerning the submission of applications to that particular office and to request any materials distributed at the workshop.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at *http://www.hud.gov/grants.*

II. Amount Allocated

For FY 2002, $ 485,585,696 is available for capital advances for the supportive housing for the elderly program. The FY 2002 HUD Appropriations Act, Pub. L. 107–73, approved November 26, 2001, (HUD Appropriations Act) provides $683,286,000 for capital advances, including amendments to capital advance contracts, for supportive housing for the elderly as authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959. Of this amount, $600,000 shall be transferred to the Working Capital Fund for the development and maintenance of information technology systems.

In accordance with the waiver authority provided in the HUD Appropriations Act, the Secretary is waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to 5 years. HUD anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, HUD will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent.

The allocation formula used for Section 202 reflects the "relevant characteristics of prospective program participants," as specified in 24 CFR

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791.402(a). The FY 2002 formula consists of one data element: A measure of the number of one and two person elderly renter households with incomes at or below HUD's Very-low Income Limit (50 percent of area median family income, as determined by HUD, with an adjustment for household size), which have housing deficiencies. The counts of elderly renter households with housing deficiencies were taken from a special tabulation of the 1990 Decennial Census. The formula focuses the allocation on targeting the funds based on the unmet needs of elderly renter households with housing problems.

Under Section 202, 85 percent of the total capital advance amount is allocated to metropolitan areas and 15 percent to nonmetropolitan areas. In addition, each HUD Office jurisdiction receives sufficient capital advance funds for a minimum of 20 units in metropolitan areas and 5 units in nonmetropolitan areas. The total amount of capital advance funds to support these minimum set-asides are subtracted from the respective (metropolitan or nonmetropolitan) total capital advance amounts available. The remainder is fair shared to each HUD Office jurisdiction whose fair share exceeds the minimum set-aside based on the allocation formula fair share factors described below.

Note: The allocations for metropolitan and nonmetropolitan portions of the Multifamily Hub or Program Center jurisdictions reflect the most current definitions of metropolitan and nonmetropolitan areas, as defined by the Office of Management and Budget.

A fair share factor is developed for each metropolitan and nonmetropolitan portion of each local HUD Office jurisdiction by dividing the number of elderly renter households in the respective metropolitan and nonmetropolitan portion of the jurisdiction by the total number of elderly rental households in the metropolitan and nonmetropolitan portions of the United States. The resulting percentage for each local HUD Office jurisdiction is then adjusted to reflect the relative cost of providing housing among the HUD Office jurisdictions. The adjusted needs percentage for the applicable metropolitan or nonmetropolitan portion of each jurisdiction is then multiplied by the respective total remaining capital advance funds available nationwide. Based on the allocation formula, HUD has allocated the available capital advance funds as shown on the following chart:

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ATTACHMENT 1

FY 2002 SECTION 202 ALLOCATIONS BY FIELD OFFICE

OFFICES	METROPOLITAN UNITS	METROPOLITAN CAPITAL ADVANCE	NONMETRO UNITS	NONMETRO CAPITAL ADVANCE	TOTALS UNITS	TOTALS CAPITAL ADVANCE
BOSTON HUB						
BOSTON	182	17,095,800	9	871,849	191	17,967,649
HARTFORD	90	8,323,282	5	462,656	95	8,785,938
MANCHESTER	46	3,419,646	36	2,619,501	82	6,039,147
PROVIDENCE	53	4,946,196	5	467,631	58	5,413,827
TOTAL	371	33,784,924	55	4,421,637	426	38,206,561
NEW YORK HUB						
NEW YORK	445	52,963,795	5	594,489	450	53,558,284
BUFFALO HUB						
BUFFALO	139	11,586,210	27	2,281,610	166	13,867,820
PHILADELPHIA HUB						
CHARLESTON	20	1,432,742	17	1,253,338	37	2,686,080
NEWARK	209	20,455,274			209	20,455,274
PHILADELPHIA	175	15,167,280	22	1,883,785	197	17,051,065
PITTSBURGH	89	6,708,139	19	1,400,751	108	8,108,890
TOTAL	493	43,763,435	58	4,537,874	551	48,301,309
BALTIMORE HUB						
BALTIMORE	75	5,813,649	10	795,860	85	6,609,509
RICHMOND	72	4,900,280	25	1,659,129	97	6,559,409
WASHINGTON	77	6,343,979			77	6,343,979
TOTAL	224	17,057,908	35	2,454,989	259	19,512,897

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OFFICES	METROPOLITAN UNITS	METROPOLITAN CAPITAL ADVANCE	NONMETRO UNITS	NONMETRO CAPITAL ADVANCE	TOTALS UNITS	TOTALS CAPITAL ADVANCE
GREENSBORO HUB						
COLUMBIA	50	3,577,352	19	1,347,983	69	4,925,335
GREENSBORO	83	7,136,248	40	3,392,949	123	10,529,197
TOTAL	133	10,713,600	59	4,740,932	192	15,454,532
ATLANTA HUB						
ATLANTA	84	5,583,511	37	2,485,079	121	8,068,590
KNOXVILLE	39	2,544,398	12	767,283	51	3,311,681
LOUISVILLE	52	3,673,056	29	2,031,880	81	5,704,936
NASHVILLE	56	3,691,879	20	1,323,179	76	5,015,058
SAN JUAN	42	4,206,569	14	1,428,319	56	5,634,888
TOTAL	273	19,699,413	112	8,035,740	385	27,735,153
JACKSONVILLE HUB						
BIRMINGHAM	64	4,202,269	25	1,675,945	89	5,878,214
JACKSON	20	1,273,549	31	1,996,275	51	3,269,824
JACKSONVILLE	263	17,005,562	16	1,006,576	279	18,012,138
TOTAL	347	22,481,380	72	4,678,796	419	27,160,176
CHICAGO HUB						
CHICAGO	229	20,860,254	35	3,208,125	264	24,068,379
INDIANAPOLIS	85	6,085,240	24	1,750,973	109	7,836,213
TOTAL	314	26,945,494	59	4,959,098	373	31,904,592
COLUMBUS HUB						
CINCINNATI	68	4,757,977	5	350,723	73	5,108,700
CLEVELAND	113	8,804,341	15	1,180,209	128	9,984,550
COLUMBUS	51	3,518,332	18	1,260,390	69	4,778,722
TOTAL	232	17,080,650	38	2,791,322	270	19,871,972

OFFICES	METROPOLITAN UNITS	METROPOLITAN CAPITAL ADVANCE	NONMETRO UNITS	NONMETRO CAPITAL ADVANCE	TOTALS UNITS	TOTALS CAPITAL ADVANCE
DETROIT HUB						
DETROIT	119	9,784,106	9	732,309	128	10,516,415
GRAND RAPIDS	47	3,260,631	19	1,326,569	66	4,587,200
TOTAL	166	13,044,737	28	2,058,878	194	15,103,615
MINNEAPOLIS HUB						
MINNEAPOLIS	79	6,762,238	30	2,532,642	109	9,294,880
MILWAUKEE	90	7,352,513	32	2,658,828	122	10,011,341
TOTAL	169	14,114,751	62	5,191,470	231	19,306,221
FT. WORTH HUB						
FT. WORTH	111	7,291,523	33	2,149,978	144	9,441,501
HOUSTON	71	4,632,362	12	814,571	83	5,446,933
LITTLE ROCK	38	2,290,047	28	1,685,013	66	3,975,060
NEW ORLEANS	72	4,537,849	17	1,062,119	89	5,599,968
SAN ANTONIO	61	3,759,266	13	801,214	74	4,560,480
TOTAL	353	22,511,047	103	6,512,895	456	29,023,942
KANSAS CITY HUB						
DES MOINES	39	2,677,581	29	2,009,507	68	4,687,088
KANSAS CITY	66	4,803,339	29	2,033,464	95	6,836,803
OKLAHOMA CITY	47	2,969,922	23	1,417,292	70	4,387,214
OMAHA	20	1,462,591	16	1,162,010	36	2,624,601
ST LOUIS	63	5,114,191	21	1,733,176	84	6,847,367
TOTAL	235	17,027,624	118	8,355,449	353	25,383,073
DENVER HUB						
DENVER	85	6,447,806	41	2,836,584	126	9,284,390

OFFICES	UNITS	METROPOLITAN CAPITAL ADVANCE	METROPOLITAN UNITS	NONMETRO CAPITAL ADVANCE	NONMETRO UNITS	TOTALS CAPITAL ADVANCE
SAN FRANCISCO HUB						
SAN FRANCISCO	189	21,226,464	12	1,214,906	201	22,441,370
HONOLULU	20	3,581,856	5	895,464	25	4,477,320
PHOENIX	64	4,365,093	10	694,269	74	5,059,362
SACRAMENTO	63	5,634,521	11	998,142	74	6,632,663
TOTAL	336	34,807,934	38	3,802,781	374	38,610,715
LOS ANGELES HUB						
LOS ANGELES	372	32,775,813	5	440,270	377	33,216,083
SEATTLE HUB						
SEATTLE	84	7,285,506	17	1,505,772	101	8,791,278
ANCHORAGE	20	3,581,856	5	895,464	25	4,477,320
PORTLAND	65	5,073,957	23	1,741,806	88	6,815,763
TOTAL	169	15,941,319	45	4,143,042	214	20,084,361
NATIONAL TOTAL	4,856	412,747,840	960	72,837,856	5,816	485,585,696

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* HUD provides capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. Capital advances may be used for the construction or rehabilitation of a structure, or acquisition of a structure with or without rehabilitation (including structures from the Federal Deposit Insurance Corporation (FDIC). Capital advance funds bear no interest and are based on development cost limits published in this SuperNOFA. Repayment of the capital advance is not required as long as the housing remains available for occupancy by very low-income elderly persons for at least 40 years.

Project rental assistance contract (PRAC) funds are used to cover the difference between what the residents pay for rent and the HUD-approved expense to operate the project. PRAC funds may also be used to provide supportive services and to hire a service coordinator in those projects serving the frail elderly residents. The supportive services must be appropriate to the category or categories of frail elderly residents to be served.

(B) *Eligible Applicants.* Private nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this Section 202 Program. Neither a public body nor an instrumentality of a public body is eligible to participate in the program.

A Sponsor or Co-sponsor may not apply for more than 200 units of housing for the elderly in a single Hub or more than 10 percent of the total units allocated to all HUD Offices. Also, no single application may propose more than the number of units allocated to a HUD office or 125 units, whichever is less. Reservations for projects will not be approved for fewer than 5 units. If the proposed project will be a scattered-site development, the 5-unit minimum requirement will apply to each site. Affiliated entities that submit separate applications are considered to be a single entity for the purpose of these limits.

(C) *Eligible Activities.* Section 202 capital advance funds must be used to finance the development of housing through new construction, rehabilitation, or acquisition of housing with or without rehabilitation. Capital advance funds may also be used in combination with other non-Section 202 funding sources to develop additional units for a mixed-finance or mixed-used project. Project rental assistance funds are provided to cover the difference between the HUD-approved operating costs and the amount the residents pay (each resident pays 30 percent of adjusted income) as well as to provide supportive services to frail elderly residents. In projects principally serving the frail elderly, eligible costs include the salary of a service coordinator.

Note: For purposes of approving Section 202 capital advances, HUD will consider proposals involving mixed-financing or a mixed-use purpose for additional units. However, you must obtain funds to assist the additional units with other than PRAC funds. HUD will not provide PRAC funds for non-Section 202 units.

(D) *Ineligible Activities.* Section 202 funds may not be used for nursing homes, infirmaries, medical facilities, mobile home projects, community centers, headquarters for organizations for the elderly, nonhousekeeping accommodations, or refinancing of sponsor-owned facilities without rehabilitation.

Note: You may propose to rehabilitate an existing currently-owned or leased structure that may or may not already serve elderly persons.

IV. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, as an applicant, you must comply with the following requirements. By signing the Section 202 Application for a Fund Reservation, you are certifying that you, the applicant, will comply with all program requirements, including the following requirements:

(A) *Statutory and Regulatory Requirements.* You must comply with all Section 202 Program statutory and regulatory requirements, as listed in Sections III, IV and IX of this program section of the SuperNOFA.

(B) *HUD/RHS Agreement.* HUD and the Rural Housing Service (RHS) have an agreement to coordinate the administration of the agencies' respective rental assistance programs. As a result, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider RHS' comments in its review and application selection process.

(C) Development Cost Limits. (1) The following development cost limits, adjusted by locality as described in Section IV(C)(2) of this program section of the SuperNOFA, below, will be used to determine the capital advance amount to be reserved for projects for the elderly:

(a) The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features you must pay for) may not exceed:

Nonelevator structures:
- $41,238 per family unit without a bedroom;
- $47,548 per family unit with one bedroom;
- $57,344 per family unit with two bedrooms;

For elevator structures:
- $43,398 per family unit without a bedroom;
- $49,748 per family unit with one bedroom;
- $60,493 per family unit with two bedrooms.

(b) These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the accessibility requirements of § 891.120(b); and the project design and cost standards of § 891.120 and § 891.210.

(2) Increased development cost limits.

(a) HUD may increase the development cost limits set forth in Section IV(C)(1) of this program section of the SuperNOFA, above, by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis. This increase may include covering additional costs to make dwelling units accessible through rehabilitation.

(b) If HUD finds that high construction costs in Alaska, Guam, the Virgin Islands, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in Section IV(C)(1) of this program section of the SuperNOFA, above, the amount of the capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(D) *Minimum Capital Investment.* Selected nonprofit organizations must provide a minimum capital investment of one-half of one percent of the HUD-approved capital advance amount, not to exceed $10,000 in accordance with § 891.145, with the following exception. If you, as Sponsor or Co-Sponsor, have

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one or more Section 202 or one or more Section 811 project(s) under reservation, construction, or management in two or more different HUD geographical regions (Hubs), the minimum capital investment shall be one half of one percent of the HUD-approved capital advance amount, not to exceed $25,000.

(E) *Accessibility.* If you intend to construct, substantially rehabilitate, or acquire, with or without rehabilitation, structures to be used as housing for the elderly, you should note 24 CFR 891.120, which requires that your project meets accessibility requirements. In addition, you should note that 24 CFR 8.4(b)(5) prohibits the selection of a site or location which has the purpose or effect of excluding persons with disabilities from the Federally-assisted program or activity. Thus, if you choose an existing structure, make sure that it can be made accessible in accordance with 24 CFR 891.120 and section 504 of the Rehabilitation Act of 1973, without resulting in an infeasible project. HUD also encourages you to add accessible design features beyond those required under civil rights laws and regulations. See Section VI(C) of the General Section of this SuperNOFA, entitled "Encouraging Accessible Design Features."

(F) *Conducting Business in Accordance with HUD Core Values and Ethical Standards.* Section 202 Sponsors are not subject to the requirements of 24 CFR parts 84 and 85 as outlined in the General Section of this SuperNOFA. However, Sponsors are still subject to the core values and ethical standards as they relate to the conflict of interest provisions in 24 CFR 891.130. To ensure compliance with the program's conflict of interest provisions, Section 202 applicants are required to sign a Conflict of Interest Resolution and include it in the Section 202 application package. Further, if awarded a Section 202 fund reservation, the officers, directors, board members, trustees, stockholders and authorized agents of the Section 202 Sponsor and Owner entities will be required to submit to HUD individual certifications regarding compliance with HUD's conflict of interest requirements.

(G) *Ensuring the Participation of Small Businesses , Small Disadvantaged Businesses, and Women-Owned Businesses.* Although the Section 202 program is not subject to the provision of 24 CFR 85.36(e) as described in the corresponding paragraph in the General Section of the SuperNOFA, you are required to comply with Executive Order 12432, Minority Business Enterprise Development and Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise as they relate to the encouragement of HUD grantees to utilize minority business enterprises.

(H) *Fair Housing Requirements.* You must comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108, and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. In addition, you are required to affirmatively further fair housing in conducting your program or activities in accord with Section II(D) of the General Section of the SuperNOFA entitled "Affirmatively Furthering Fair Housing."

(I) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* You must comply with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons), and its implementing regulations at 24 CFR part 135. You must ensure that training, employment and other economic opportunities shall, to the greatest extent feasible, be directed toward low and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low and very low-income persons. To comply with Section 3 requirements, you are hereby certifying that you will strongly encourage your general contractor and subcontractors to participate in local apprenticeship programs or training programs registered with or certified by the Department of Labor's Office of Apprenticeship, Training, Employer and Labor Services or recognized State Apprenticeship Agency.

(J) *Design and Cost Standards.* You must comply with HUD's Section 202 design and cost standards (24 CFR 891.120 and 891.210, the Uniform Federal Accessibility Standards (24 CFR 40.7), Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and the Americans with Disabilities Act of 1990.

(K) *Acquisition and Relocation.* You must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR part 24, and 24 CFR 891.155(e)) (URA) which covers the acquisition of sites, with or without, existing structures. However, you are exempt from complying with the site acquisition requirements of the URA if you do not have the power of eminent domain and prior to entering into a contract of sale, option to purchase or any other method of obtaining site control, you inform the seller of the land (1) that you do not have the power of eminent domain and, therefore, you will not acquire the property if negotiations fail to result in an amicable agreement, and (2) of the estimate of the fair market value of the property. An appraisal is not required to meet this requirement, however, your files must include an explanation (with reasonable evidence) of the basis for the estimate.

(L) *Formation of Owner Corporation.* You must form an Owner (in accordance with 24 CFR 891.205) after issuance of the capital advance, must cause the Owner to file a request for determination of eligibility and a request for capital advance, and must provide sufficient resources to the Owner to ensure the development and long-term operation of the project, including capitalizing the Owner at firm commitment processing in an amount sufficient to meet its obligations in connection with the project.

(M) *Supportive Services.* You must not require residents to accept any supportive services as a condition of occupancy.

(N) *Davis-Bacon.* You must comply with the Davis-Bacon requirements and the Contract Work Hours and Safety Standards Act.

(O) *Flood Disaster Protection Act of 1973.* You must comply with the requirements under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and the Coastal Barrier Resources Act (16 U.S.C. 3601).

(P) *National Environmental Policy Act.* You must comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and applicable related environmental authorities at 24 CFR 50.4, HUD's implementing regulations at 24 CFR part 50 and 24 CFR 891.155(b).

(Q) *Truth and Accuracy.* By signing your application, you are certifying that the information you are providing to HUD in your application under the Section 202 Program of Supportive Housing for the Elderly is true and accurate, to the best of your knowledge.

(R) *Expiration of Section 202 Funds.* The FY 2002 HUD Appropriations Act requires HUD to obligate all 202 funds appropriated for FY 2002 by September 30, 2004. Under 31 U.S.C. Section 1551, no funds can be disbursed from the account after September 30, 2009. Under Section 202, obligation of funds occurs for both capital advances and project rental assistance upon fund reservation and acceptance. If all funds are not disbursed by HUD and expended by the project Owner by September 30, 2009, the funds even though obligated will expire and no further disbursements can be made from this account. In submitting an application you need to carefully consider whether your proposed project can be completed through final capital advance closing no later than September 30, 2009. Furthermore, absent Congressional relief, all unexpended balances, including any remaining balance on PRAC contracts, will be cancelled as of October 1, 2009. Amounts needed to maintain PRAC payments for any remaining term on the affected contracts beyond that date will have to be funded from other current appropriations.

V. Application Selection Process

(A) Review for Curable Deficiencies. You should ensure that your application is complete before submitting it to the appropriate HUD Office. HUD will screen all applications received by the deadline for curable deficiencies. A curable deficiency is a missing Exhibit or portion of an Exhibit that will not affect the rating of the application. The following is a list of the deficiencies that will be considered curable in a Section 202 application:

Exhibits

(1) Form 92015–CA (Application Form)*
(2) (a) Articles of Incorporation*
(b) By-laws*
(c) IRS tax exemption ruling*
(4) (c)(ii) Energy efficiency
(d)(i) Evidence of site control
(d)(ii) Evidence site is free of limitations, restrictions or reverters
(d)(vi) Phase I Environmental Site Assessment
(d)(vii) Letter from State Historic Preservation Officer (SHPO)
(6) Relocation
(7) (a) Standard Form 424, Application for Federal Assistance and Compliance with Executive Order 12372*
(b) HUD–50070, Certification of a Drug-free Workplace
(c) Form-HUD 50071, Certification of Payments to Influence Federal Transactions and Standard Form-LLL, Disclosure of Lobbying Activities
(d) Form-HUD 2880, Applicant/Recipient Disclosure/Update Report
(e) Form-HUD 2992, Certification Regarding Debarment and Suspension
(f) Form-HUD 2991, Certification of Consistency with Consolidated Plan
(g) Conflict of Interest Resolution
(h) Resolution for Commitment to Project*

The HUD Office will notify you in writing if your application is missing any of the above exhibits or portions of exhibits and you will be given 14 days from the date of the HUD notification to submit the information required to cure the noted deficiencies. The items identified by an asterisk (*) must be dated on or before the application deadline date.

(B) *Rating.* HUD will review and rate your application in accordance with the Application Selection Process in the General Section of this SuperNOFA with the following exception. HUD will not reject your application based on technical review without notifying you of that rejection with all the reasons for rejection, and providing you an opportunity to appeal. You will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD office.

The HUD office will make a determination on an appeal before making its selection recommendations. All applications will be either rated or technically rejected at the end of technical review. If your application meets all program eligibility requirements after completion of technical review, it will be rated according to the rating factors in Section V(D) of this Section 202 Program section of the SuperNOFA.

If an Exhibit or portion of an Exhibit listed above as curable is not discovered as a missing item until technical processing, HUD will provide you with 14 calendar days in which to cure the deficiency.

(C) *Ranking and Selection Procedures.* Applications submitted in response to the advertised metropolitan allocations or nonmetropolitan allocations that have a total base score (without the addition of EC/EZ bonus points) of 70 points or more and meet all of the applicable threshold requirements of Section II(B) of the General Section of the SuperNOFA will be eligible for selection, and HUD will place them in rank order per metropolitan or nonmetropolitan allocation. These applications, after adding any bonus points for EC/EZ, will be selected based on rank order, up to and including the last application that can be funded out of each HUD office's metropolitan or nonmetropolitan allocation. HUD offices must not skip over any applications in order to select one based on the funds remaining. After making the initial selections in each allocation area, however, HUD may use any residual funds to select the next rank-ordered application by reducing the number of units by no more than 10 percent, rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of five units or less.

Once this process has been completed, HUD offices may combine their unused metropolitan and nonmetropolitan funds in order to select the next ranked application in either category, using the unit reduction policy described above, if necessary.

After the offices have funded all possible projects based on the process above, combined metropolitan and nonmetropolitan residual funds from all HUD Offices in each Multifamily Hub will be combined. These funds will be used first to restore units to projects reduced by HUD offices based on the above instructions. Second, additional applications within each Multifamily Hub will be selected in rank order with only one application selected per HUD Office. More than one application may be selected per HUD Office if there are no approvable applications in other HUD Offices within the Multifamily Hub. This process will continue until there are no more approvable applications within the Multifamily Hub that can be selected with the remaining funds. Applications may not be skipped over to select one based on funds remaining. However, HUD may use any remaining residual funds to select the next rank-ordered application by reducing the number of units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible or result in the project being less than five units.

Funds remaining after these processes are completed will be returned to Headquarters. HUD Headquarters will use these residual funds first to restore units to projects reduced by HUD offices as a result of the instructions for using their residual funds. Second, HUD Headquarters will use these funds for selecting applications based on field offices' rankings beginning with the highest rated application nationwide. However, after restoring units to projects where necessary, priority will be given to those applications for projects in non-metropolitan areas, if necessary to meet the statutory requirement pertaining to Section 202 funding in non-metropolitan areas. Only one application will be selected per HUD office from the national residual amount. If there are no approvable applications in other HUD offices, the process will begin with the selection of the next highest rated application nationwide. This process will continue until all approvable applications are

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selected using the available remaining funds.

(D) *Factors For Award Used To Evaluate and Rate Applications.* HUD will rate applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements identified in Section VI(B) below. The maximum number of points an application may receive under this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (25 Points)

This factor addresses the extent to which you have the organizational resources to successfully implement the proposed activities in a timely manner. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(2), (B)(3)(a), (B)(3)(b), (B)(3)(e) and (B)(5) of Section VI of this program section of the SuperNOFA.

In rating this factor, HUD will consider the extent to which your application demonstrates your ability to develop and operate the proposed housing on a long-term basis, considering the following:

(a)(i) (14 points) The scope, extent, and quality of your experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (i.e., number of units, services, relocation costs, development, and operation) in relationship to your demonstrated development and management capacity as well as your financial management capability;

(a)(ii) (1 point) Your organization is a grassroots organization as defined in the General Section of this SuperNOFA.

(b) (10 points) The scope, extent, and quality of your experience in providing housing or related services to minority persons or families as well as your ties to the community at large and to the minority and elderly communities in particular. For purposes of this program section of the SuperNOFA, "minority" means the basic racial and ethnic categories for Federal statistics and administrative reporting, as defined in the Appendix section of the Office of Management and Budget's (OMB) **Federal Register** Notice entitled "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity" and dated October 30, 1997 (62 FR 58782–90). It can be found on the OMB Website at *www.whitehouse.gov/omb/fedreg/ombdir15.html.*

(c) (−2 points) A fund reservation you received under either the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities has been extended beyond 36 months (except if the delay was beyond your control). Examples of such delays include, but are not limited to, initial closing delays that are: (1) directly attributable to HUD, (2) directly attributable to third party opposition, including litigation, and (3) due to a disaster, as declared by the President of the United States.

(d) (−1 point) Amendment money was required as a result of the delay (except if the delay was beyond your control).

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed activities to address a documented problem in the target area. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(4)(a) and (B)(4)(b) of Section VI of this program section of the SuperNOFA. In evaluating this factor, HUD will consider:

The extent of the need for the project in the area based on a determination by the HUD Office. In making this determination, HUD will consider your evidence of need in the area, as well as other economic, demographic, and housing market data available to the HUD office. The data could include information on the number of existing Federally assisted housing units (HUD and RHS) for the elderly in the area and current occupancy in such facilities; Federally assisted housing for the elderly under construction or for which fund reservations have been issued; and in accordance with an agreement between HUD and the RHS, comments from the RHS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area. The Department will also review more favorably those applications which establish a connection between the proposed project and the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization. You must show how your proposed project will address an impediment to fair housing choice described in the AI or meet a need identified in the other type of planning document.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of your proposal. There must be a clear relationship between your proposed activities, the community's needs and purposes of the program funding for your application to receive points for this factor. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(4)(c), (B)(4)(d) and (B)(4)(e) of Section VI of this program section of the SuperNOFA. In evaluating this factor, HUD will consider the following:

(a)(i) (15 points) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets; freedom of the site from adverse environmental conditions; compliance with site and neighborhood standards (24 CFR 891.125(a), (d) and (e));

(a)(ii) (-1 point) HUD will deduct one (1) point from this Factor if the site(s) is not already permissively zoned for the intended use.

(b) (10 points) The suitability of the site from the standpoints of promoting a greater choice of housing opportunities for minority elderly persons/families, and affirmatively furthering fair housing. In reviewing this criterion, HUD will assess whether the site meets the site and neighborhood standards at 24 CFR 891.125(b) and (c) by examining relevant data in your application or in the HUD Office. Where appropriate, HUD may visit the site.

(i) The site will be deemed acceptable if it increases housing choice and opportunity by:—Expanding housing opportunities in non-minority neighborhoods (if located in such a neighborhood). The term "nonminority area" is defined as one in which the minority population is lower than 10 percent; or

— Contributing to the revitalization of and reinvestment in minority neighborhoods, including improvement of the level, quality and affordability of services furnished to minority elderly. You should refer to the Site and Neighborhood Standards provisions of the regulations governing the Section 202 Supportive Housing for the Elderly program (24 CFR 891.125(b) and (c)) when considering sites for your project.

(ii) For the purpose of this competition, the term "minority neighborhood (area of minority concentration)" is defined as one where any one of the following statistical conditions exists:

— The percentage of persons of a particular racial or ethnic minority is at least 20 points higher than the minority's or combination of minorities' percentage in the housing market as a whole; or,

— The neighborhood's total percentage of minority persons is at least 20 points higher than the total percentage of minorities for the housing market as a whole; or,

— In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(c) (3 points) The extent to which your proposed design will meet the special physical needs of elderly persons;

(d) (3 points) The extent to which the proposed size and unit mix of the housing will enable you to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(e) (3 points) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve;

(f) (3 points) The extent to which the proposed supportive services meet the identified needs of the anticipated residents; and

(g) (3 points) The extent to which you demonstrate that the identified supportive services will be provided on a consistent, long-term basis.

(h) (−1 point) HUD will deduct one (1) point from the rating of this Factor if you do not include a plan for completing your project within the initial fund reservation period of 18 months.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other community resources which can be combined with HUD's program resources to achieve program purposes. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(3)(c) and (B)(3)(d) of Section VI of this program section of the SuperNOFA.

(a) (5 points) The extent of local government support (including financial assistance, donation of land, provision of services, etc.) for the project; and

(b) (5 points) The extent of your activities in the community, including previous experience in serving the area where the project is to be located, and your demonstrated ability to enlist volunteers and raise local funds.

Rating Factor 5: Coordination, Self Sufficiency and Sustainability (10 Points)

This factor addresses the extent to which you coordinated your activities with other known organizations that will not be directly involved in the proposed project, participate or promote participation in the community's planning process (e.g., the Consolidated Planning process, including the Analysis of Impediments to Fair Housing Choice), and are working toward addressing a need in a holistic and comprehensive manner to ensure that the project will not operate in isolation. This factor also addresses the extent to which your project will implement practical solutions that will result in assisting residents in achieving independent living, educational opportunities, and improved living environments. Finally, this factor addresses the extent to which the long-term viability of your project will be sustained for the duration of the 40-year capital advance period. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(3)(f), (B)(3)(g), (B)(3)(h),(B)(3)(i) and (B)(3)(j) of Section VI of this program section of the SuperNOFA.

(a) (2 points) Your involvement of elderly persons, particularly minority elderly persons, in the development of the application, and your intent to involve elderly persons, particularly minority elderly persons, in the development and operation of the project;

(b) (2 points) The extent to which you coordinated your application with other organizations that will not be directly participating in your project, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner;

(c) (2 points) The extent to which you demonstrated that you have been actively involved, or if not currently active, the steps you will take to become actively involved in the community's planning process (e.g., the Consolidated Planning process, including the Analysis of Impediments to Fair Housing Choice) to identify and address a need/problem that is related in whole or part, directly or indirectly to the proposed project;

(d) (2 points) The extent to which your project will implement practical solutions that will result in assisting residents in achieving independent living, educational opportunities, and improved living environments; and

(e) (2 points) The extent to which you demonstrated that your project will remain viable as housing with the availability of supportive services for very low-income elderly persons for the 40-year capital advance period.

Bonus Points

(2 bonus points) Location of proposed site in an EZ/EC area, as described in the General Section of this SuperNOFA. Submit the information responding to the bonus points in accordance with the Application Submission Requirements in paragraph (B)(7)(i) of Section VI of this program section of the SuperNOFA.

(E) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced pursuant to this program NOFA, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to the Director, of the Office of Multifamily Housing in the local HUD Office in which the application was filed. Materials provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

VI. Application Submission Requirements

(A) *Application.* Your application must include all of the information, materials, forms, and exhibits listed in Section VI(B) of this program section of the SuperNOFA (unless you were selected for a Section 202 fund reservation within the last three funding cycles). If you qualify for this exception, you are not required to submit the information described in Sections VI(B)(2)(a), (b), and (c) of this program section of the SuperNOFA (Exhibits 2.a., b., and c. of the application kit), which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of these documents since your previous HUD approval, you must submit the updated information in your application. HUD offices will verify your indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office based on the

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information submitted in response to Section VI(B)(2) below.

In addition to this relief of paperwork burden in preparing applications, you will be able to submit information and exhibits you have previously prepared for prior applications under Section 202, Section 811, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 Programs, your experience in the provision of housing and services, supportive services plan, community ties, and experience serving minorities.

(B) *General Application Requirements.* Your application must contain the items listed in this Section VI(B). These items include the standard forms, certifications, and assurances listed in the General Section of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives), referred to as the "non-standard forms" can be found as Appendix B to this program section of the SuperNOFA. The items are as follows:

(1) Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

(2) Evidence of your and each Co-Sponsor's legal status as a private nonprofit organization or nonprofit consumer cooperative, including the following:

(2)(a) Articles of Incorporation, constitution, or other organizational documents;

(2)(b) By-laws;

(2)(c) IRS tax exemption ruling (this must be submitted by you and each Co-Sponsor, including churches). A consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if it is not eligible for tax exemption.

Note: If you received a Section 202 Fund Reservation within the last three funding cycles, you are not required to submit the documents described in paragraphs (2)(a), (2)(b), and (2)(c), above. Instead, you must submit the project number of the latest application selected and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(3) A description of your purpose, community ties, and experience, including the following:

(3)(a) A description of your purpose, current activities and how long you have been in existence;

(3)(b) A description of your ties to the community in which your project will be located and to the minority and elderly communities in particular, including a description of the specific geographic area(s) in which you have served;

(3)(c) A description of local government support for the project (including financial assistance, donation of land, provision of services, etc.);

(3)(d) Letters of support for your organization and for the proposed project from organizations familiar with the housing and supportive services needs of the elderly that you expect to serve in the proposed project;

(3)(e) A description of your housing and/or supportive services experience. The description should include any rental housing projects and/or supportive services facilities that you have sponsored, owned, and/or operated; your past or current involvement in any programs other than housing that demonstrates your management capabilities (including financial management) and experience; your experience in serving the elderly, including elderly persons with disabilities, and/or families and minorities; and the reasons for receiving any increases in fund reservations for developing and/or operating previously funded Section 202 or Section 811 projects. The description should include data on the facilities and services provided, the racial/ethnic composition of the populations served, if available, and information and testimonials from residents or community leaders on the quality of the activities. Examples of activities that could be described include housing counseling, nutrition and food services, special housing referral, screening and information projects.

(3)(f) A description of your efforts to involve elderly persons, including minority elderly persons, in the development of the application, as well as your intent to involve elderly persons in the development and operation of the project.

(3)(g) A description of the steps you took to coordinate your application with other organizations, that will not be directly involved in your project but with which you share common goals and objectives, to complement and/or support the proposed project so that the project will provide a comprehensive and holistic solution to the needs of the elderly. Also, describe the steps you will take, if funded, to share information on solutions and outcomes relative to the development of the proposed project.

(3)(h) A description of your involvement in the community's planning process (e.g., the Consolidated Planning process, including the Analysis of Impediments to Fair Housing Choice), including:

(3)(h)(i) An identification of the lead/facilitating agency that organizes/administers the process;

(3)(h)(ii) An identification of the areas of the community's planning process in which you participate;

(3)(h)(iii) Your level of participation in the process, including active involvement with any neighborhood-based organizations, associations, or any committees that support programs and activities that enhance projects or the lives of residents of the projects, such as the one proposed in your application.

If you are not currently active, describe the specific steps you will take to become active in the community's planning process. If adopting the Consolidated Plan community process, consult the local HUD Office for the identification of the appropriate area.

(3)(i) A description of the practical solutions you will implement which will enable the residents of your project to achieve independent living. In addition, describe the educational opportunities you will provide for the residents and how you will provide them. This description should include any activities that will enhance the quality of life for the residents. And, finally, describe how your proposed project will be an improved living environment for the residents when compared to their previous place of residence.

(3)(j) Describe how you will ensure that your proposed project will remain viable as housing with the availability of supportive services for very low-income elderly persons for the 40-year capital advance period. This description should address the measures you would take should any of the following occur: (i) funding for any of the needed supportive services becomes depleted, or (ii) if, for any state-funded services for your project, the state changes its policy regarding the provision of supportive services to projects such as the one you propose, or (iii) if the need for housing for the elderly wanes over time, causing vacancies in your project.

(4) Project information, including the following:

(4)(a) Evidence of need for supportive housing. Such evidence would include a description of the category or

categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and RHS; e.g., public housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition; the types of supportive services arrangements currently available in the area; and the use of such services as evidenced by data from local social service agencies or agencies on aging. Also, a description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the project.

(4)(b) A description of how the proposed project will benefit the target population and the community in which it will be located.

(4)(c) A description of the project, including the following:

(4)(c)(i) A narrative description of the building design, including a description of the number of units with bedroom distributions, any special design features, amenities, and/or community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years.

Note: If these community spaces, amenities, or features would not comply with the project design and cost standards of 24 CFR 891.120 and the special project standards of 24 CFR 891.210, you must state your ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features;

(4)(c)(ii) A description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(4)(c)(iii) If applicable, a description of any plans and the actions you have taken to create a mixed-finance/mixed-use project by developing additional units (i.e., in addition to the Section 202 units) with the use of Section 202 capital advance funds in combination with other funding sources. Specify the number of Section 202 units and the number of additional units from non-Section 202 funding sources. Provide copies of any letters you have sent seeking outside funding for the non-Section 202 units and any responses thereto. You also must demonstrate your ability to proceed with the development of a Section 202 project that will not involve mixed-financing or a mixed-use purpose, as proposed in your application, in the event you are later unable to obtain the necessary outside funding or HUD disapproves your proposal for mixed-financing or a mixed-use.

Note: Approval of the Section 202 capital advance will not necessarily be approval of the mixed-finance/mixed-use proposal. If approved for a reservation of capital advance funds, you will be required to submit, after reservation of capital advance funds, a detailed proposal outlining how you will fund both development and operation of the additional units in accordance with HUD instructions that will be issued later. Based on the strength of your organization and HUD's prior experience with your projects, as well as your outline of your intentions, at the time of making the fund reservation, HUD will determine whether you will be permitted to submit a mixed-finance/mixed-use proposal at a later time. Only those Sponsors that indicate in their application for a fund reservation an intention to propose additional units will be eligible to submit, at a later time, a mixed-finance/mixed-use proposal for additional units. (A mixed-finance/mixed-use project, as used here, does not include the development of Section 202 units using secondary/supplemental financing or the development of a mixed-use project in which the Section 202 units are mortgaged separately from the other uses of the structure).

(4)(c)(iv) Describe your plan for completing the proposed project within the initial 18-month term of the fund reservation (optional).

(4)(d) Evidence that the Sponsor has site control and permissive zoning, including the following:

(4)(d)(i) Acceptable evidence of site control is limited to any one of the following:

(*A*) Deed or long-term leasehold which evidences that you have title to or a leasehold interest in the site. If a leasehold, the term of the lease must be at least 75 years;

(*B*) Contract of sale for the site which is free of any limitations affecting ability to deliver ownership to you after you receive and accept a notice of Section 202 capital advance. The only condition for closing on the sale can be your receipt and acceptance of the capital advance. The contract of sale cannot require closing on a date earlier than the Section 202 closing.

(*C*) Option to purchase or for a long-term leasehold which must remain in effect for six months from the date on which the applications are due, and must state a firm price binding on the seller. The only condition on which the option may be terminated is if you are not awarded a fund reservation. The option must be renewable at the end of the six months option period.

(*D*) Where the proposed site is subject to a mortgage under a HUD program (e.g., an earlier 202 or an FHA insured mortgage), you must submit evidence that consent to release of the site from that mortgage has been obtained or has been requested from HUD and from the mortgagee, if other than HUD.

(*E*) For sites to be acquired from a public body, evidence is needed that the public body possesses clear title to the site and has entered into a legally binding agreement to lease or convey the site to you after you receive and accept a notice of Section 202 capital advance. Where HUD determines that time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating that conveyance or leasing of the site is acceptable without imposition of additional covenants or restrictions and only contingent on the necessary approval action. Such a letter commitment will be considered sufficient evidence of site control.

Note: For this funding cycle, New York City-owned sites that are designated as community gardens and are involved in litigation will not meet site control requirements due to litigation involving those sites.

(4)(d)(ii) Whether you have title to the site, a contract of sale, an option to purchase, or are acquiring the site from a public body, you must provide evidence (a title policy or other acceptable evidence) that the site is free of any limitations, restrictions, or reverters which could adversely affect the use of the site for the proposed project for the 40-year capital advance period under HUD's regulations and requirements (e.g., reversion to seller if title is transferred). If the title evidence contains restrictions or covenants, copies of such covenants or restrictions must be submitted with the application. If the site is subject to any such limitations, restrictions, or reverters, the application will be rejected. Purchase money mortgages that will be satisfied from capital advance funds are not considered to be limitations or restrictions that would adversely affect the use of the site. If the contract of sale or the option agreement contains

provisions that allow a Sponsor not to purchase the property for reasons such as environmental problems, failure of the site to pass inspection, or the appraisal is less than the purchase price, then such provisions are not objectionable and a Sponsor is allowed to terminate the contract of sale or the option agreement.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 202 project or from any other development team member.

(4)(d)(iii) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for your belief that the proposed action will be completed successfully before the submission of the firm commitment application (e.g., a summary of the results of any requests for rezoning and/or the procedures for obtaining special or conditional use permits on land in similar zoning classifications and the time required for such rezoning, or preliminary indications of acceptability from zoning bodies, etc.).

(4)(d)(iv) A narrative topographical and demographic description of the suitability of the site and area, and how the site will promote greater housing opportunities for minority elderly persons, thereby affirmatively furthering fair housing.

Note: You can best demonstrate your commitment to affirmatively furthering fair housing by describing how your proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the applicable jurisdiction's Analysis of Impediments to Fair Housing Choice (AI), which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. The applicable Consolidated Plan and AI may be the Community's, the County's, or the State's, to which input should have been provided by local community organizations, agencies in the community, and residents of the community. Alternatively, a document that addresses fair housing issues and remedies to barriers to fair housing in the community that was previously prepared by a local planning, or similar organization, may be used. Applicable impediments could include the need for improved housing quality and services for elderly minority families, lack of affirmative marketing and outreach to minority elderly persons, and the need for quality eldercare services within areas of minority concentration when compared with the type and quality of similar services and housing in nonminority areas.

(4)(d)(v) A map showing the location of the site, the racial composition of the neighborhood, and any areas of racial concentration. For this competition, applicants should use the racial and ethnic data categories stated in the Appendix section of the October 30, 1997, Office of Management and Budget **Federal Register** Notice (62 FR 58782–90), (*www.whitehouse.gov/omb/fedreg/ombdir15.html*) and data from the 1990 Census of Population when determining the racial and ethnic composition of the neighborhood surrounding the proposed site. Data from the 1990 Census of Population may be found at *www.factfinder.census.gov/servlet/BasicFactsServlet.*

(4)(d)(vi) A Phase I Environmental Site Assessment (ESA), in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended. The Phase I ESA must be completed and submitted with the application. In order for the Phase I ESA to be acceptable, it must have been completed, or updated, no earlier than six months prior to application deadline date. Therefore, it is important that you start the Phase I ESA process as soon after publication of this SuperNOFA as possible.

If the Phase I ESA indicates the possible presence of contamination and/or hazards, you must decide whether to continue with this site or choose another site. Should you choose another site, the same Phase I ESA process identified above must be followed for the new site. NOTE: You are not limited to acquiring properties from the FDIC. However, if the property is to be acquired from the FDIC, include a copy of the FDIC prepared Transaction Screen Checklist or Phase I ESA, and applicable documentation, per the FDIC/RTC Environmental Guidelines.

If you choose to continue with the original site on which the Phase I ESA indicated contamination or hazards, you must undertake a detailed Phase II Environmental Site Assessment (ESA) by an appropriate professional. If the Phase II ESA reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 2002 funding competition, you must submit this information to the local HUD office on or before July 5, 2002.

Note: This could be an expensive undertaking. You must pay for the cost of any clean-up and/or remediation.

(4)(d)(vii) A letter from the State Historic Preservation Officer (SHPO) indicating whether the proposed site has any historical significance. If you cannot obtain a letter from the SHPO due to the SHPO not responding to your request or the SHPO responding that it cannot or will not comply with the requirement, you must submit the following:

(*A*) A letter indicating that you attempted to get the required letter from the SHPO but that the SHPO either had not responded to your request or would not honor or recognize your request;

(*B*) A copy of your letter to the SHPO requesting the required letter; and,

(*C*) A copy of the SHPO's response, if available.

(4)(e) Provision of supportive services in the proposed facility:

(4)(e)(i) A detailed description of the supportive services proposed to be provided to the anticipated occupancy;

(4)(e)(ii) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services;

(4)(e)(iii) The manner in which such services will be provided to such persons (i.e., on or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

Note: You may not require residents, as a condition of occupancy, to accept any supportive service.

(5) A list of the applications, if any, that you have submitted or are planning to submit to any other HUD office in response to this announcement of Section 202 Program funding availability or the announcement of Section 811 Program (Supportive Housing for Persons with Disabilities) funding availability, published elsewhere in this SuperNOFA. Indicate by HUD office, the proposed location by city and State, and the number of units requested for each application. Include a list of all FY 2001 and prior year projects to which you are a party. Identify each by project number and HUD Office and include the following information: (a) Whether the project has initially closed and, if so, when; (b) if the project was older than 36 months when it initially closed or is older than 36 months now and has not initially closed, provide the reasons for the delay in closing; (c) whether amendment money was or will be needed for any project in (b) above; and (d) those projects which have not been finally closed.

(6) A statement that:

(6)(a) Identifies all persons (families, individuals, businesses, and nonprofit organizations), by race/minority group, and status as owners or tenants, occupying the property on the date of submission of the application for a capital advance;

(6)(b) Indicates the estimated cost of relocation payments and other services;

(6)(c) Identifies the staff organization that will carry out the relocation activities; and

(6)(d) Identifies all persons who have moved from the site within the past 12 months.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, you must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (i.e., cost of site acquisition, relocation, construction, and other project costs).

(7) *Certifications and Resolutions.* In addition to the certifications and assurances listed in the General Section of this SuperNOFA with the exception of SF–424A, SF–424B, SF–424C, SF–424D, HUD–424M and the OMB Circulars which are not required, you are required to submit signed copies of the following:

(7)(a) *Standard Form 424.* Application for Federal Assistance, indication of whether you are delinquent on any Federal debt, and compliance with Executive Order 12372 (a certification that you have submitted a copy of your application , if required, to the State agency (Single Point of Contact) for state review in accordance with Executive Order 12372). (See instructions for submitting this form in the Consolidated Application Submission section of the General Section of the SuperNOFA.)

(7)(b) *Drug-Free Workplace (HUD–50070).* Certification to provide a drug-free workplace.

(7)(c) *Payments to Influence Federal Transactions (HUD–50071) and Standard Form LLL, Disclosure of Lobbying Activities.* Certification of whether any of the funds received will be used to influence any Federal transactions and disclosure of those activities, if applicable.

(7)(d) *Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers, (HUD–2880).* A disclosure of assistance from other government sources received in connection with the project.

(7)(e) *Certification Regarding Debarment and Suspension (HUD–2992) (24 CFR 24.510).* A certification attesting to the eligibility of your principals.

(7)(f) *Certification of Consistency with the Consolidated Plan (Plan), Form HUD–2991, for the jurisdiction in which the proposed project will be located.* The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise, the certification may be made by the State, or by the unit of general local government if the project will be located within the jurisdiction of the unit of general local government authorized to use an abbreviated strategy, and if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth in this program section of the SuperNOFA. The Plan regulations are published in 24 CFR part 91.

(7)(g) *A certified Board Resolution that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner* or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending dates of each person's term.

(7)(h) *A certified Board Resolution, acknowledging the responsibilities of sponsorship,* long-term support of the project(s), your willingness to assist the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project, and that it reflects the will of your membership. Also, the resolution shall indicate your willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000, if nonaffiliated with a National Sponsor; one-half of one-percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors;), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(7)(i) *Certification of Consistency with the EZ/EC Strategic Plan, HUD–2990).* A certification that the project is consistent with the EZ/EC strategic plan, is located within the EZ/EC, and serves EZ/EC residents. (This certification is not required if the project site(s) will not be located in an EZ/EC.)

VII. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Formation of Owner Corporation for Development of Section 202 Projects and for Section 202 Projects Involving Mixed-Financing or a Mixed-Use Purpose.

Applicant eligibility for purposes of applying for a Section 202 fund reservation under this NOFA has not changed; i.e., all Section 202 Sponsors and Co-Sponsors must be private nonprofit organizations and nonprofit consumer cooperatives. However, the Owner corporation, when later formed by the Sponsor, may be (1) a single-purpose private nonprofit organization that has tax-exempt status under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code of 1986, (2) nonprofit consumer cooperative, OR (3) for purposes of developing a mixed-finance/mixed-use project for developing additional units over and above the Section 202 units, a for-profit limited partnership with a nonprofit entity as the sole general partner.

IX. Authority

The Section 202 Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (Pub.L. 101–625; approved November 28, 1990); the Housing and Community Development Act of 1992 (Pub.L. 102–550; approved October 28, 1992), the Rescissions Act (Pub.L. 104–19; enacted on July 27, 1995); the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569; approved December 27, 2000); and the Fiscal Year 2002 HUD Appropriations Act (Pub. L. 107–73, approved November 26, 2001).

Appendix A

Addresses for Submitting Applications

Please see Appendix A to the Section 811 Program Section of this SuperNOFA. Submit your completed application (an original and four copies) to the Director of the appropriate Multifamily Hub Office or Multifamily Program Center as listed in Appendix A to the Section 811 program section of this SuperNOFA. See Section I., Address for Submitting Applications, of this program NOFA, for the exceptions regarding where to file your application.

Appendix B

The non-standard forms, which follow, are required for your Section 202 Program application.

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APPENDIX B

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PART I - APPLICATION FORM FOR SECTION 202 SUPPORTIVE HOUSING - CAPITAL ADVANCE

EXHIBIT 1: Form HUD-92015-CA, Application for Section 202 Supportive Housing Capital Advance _____

PART II - YOUR ABILITY TO DEVELOP AND OPERATE THE PROPOSED PROJECT

EXHIBIT 2: Your Legal Status

(a) Articles of Incorporation (or other organizational documents) _____

(b) By-laws _____

(c) IRS Tax Exemption Ruling _____

[EXCEPTION: SEE EXHIBIT TO DETERMINE IF YOU MAY BE EXEMPT FROM SUBMITTING THESE DOCUMENTS.]

EXHIBIT 3: Your purpose, community ties and experience:

(a) Purpose(s), current activities, how long you have been in existence _____

(b) Ties to the community at large, to the target population, and description of geographic areas served _____

(c) Local government support for project _____

(d) Letters of support for your organization and for the proposed project _____

(e) Housing and/or supportive services experience _____

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(f) Efforts to involve target population _____

(g) Identification/coordination with other organizations; information sharing on solutions/outcomes about project development _____

(h) Involvement in the community's planning process including Analysis of Impediments to Fair Housing Choice:

(i) Agency that organizes/ administers the process _____

(ii) Identification of areas of community's planning process in which you participate _____

(iii) Level of your participation in the process _____

OR

Specific steps you will take to become active in the process _____

(i) Description of practical solutions to be implemented _____

(j) Description of how project will remain viable _____

PART III - THE NEED FOR SUPPORTIVE HOUSING FOR THE TARGET POPULATION IN THE AREA TO BE SERVED, SITE CONTROL AND SUITABILITY OF SITE, ADEQUACY OF THE PROVISION OF SUPPORTIVE SERVICES AND OF THE PROPOSED PROJECT

EXHIBIT 4: Project information including:

(a) Evidence of need for project _____

(b) How project will benefit target population and community _____

(c) A narrative description of the project, including:

(i) Building design _____

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(ii) Whether and how project will promote energy efficiency _____

(iii) If, applicable, description of plans and actions to create a mixed-finance/mixed-use project _____

(iv) Description of plan for completing project within 18 mth fund reservation period (optional) _____

(d) Evidence of site control and permissive zoning

(i) Site control document(s) _____

(ii) Evidence site is free of limitations, restrictions, or reverters

(iii) Evidence of permissive zoning or statement of proposed action required to make project permissible _____

(iv) Narrative topographical/ demographic description of site/area suitability, how site will promote greater housing opportunities for minorities/target population _____

(v) Racial composition/concentration map of site _____

(vi) Phase I Environmental Site Assessment _____

(vii) Letter from State Historic Preservation Office (SHPO) _____

OR

If no response from SHPO:

(A) Letter indicating no response from SHPO and why _____

(B) Your letter to SHPO requesting required letter _____

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(C) SHPO's response, if available _____

(e) Provision of supportive services:

(i) Description of services _____

(ii) Public/private funding sources for proposed services _____

(iii) Manner in which services will be provided _____

PART IV - GENERAL APPLICATION REQUIREMENTS, CERTIFICATIONS AND RESOLUTIONS

EXHIBIT 5: **A list of applications, if any, you have submitted or are planning to submit to any other HUD Office** in response to the Section 202 or Section 811 NOFA, and required information about each _____

EXHIBIT 6: **A statement that:**

(a) Identifies all persons occupying property on application submission date _____

(b) Indicates estimated cost of relocation payments/other services _____

(c) Identifies staff organization that will carry out relocation activities _____

(d) Identifies all persons who have moved from site within past 12 months _____

EXHIBIT 7: **CERTIFICATIONS AND RESOLUTIONS:**

(a) Standard Form 424 _____

(b) Drug-Free Workplace (HUD-50070) _____

(c) Certification of Payments to Influence Federal Transactions (HUD-50071), and _____

Disclosure of Lobbying Activities (Standard Form LLL), if applicable _____

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(d) Applicant/Recipient Disclosure/Update Report (HUD-2880) _____

(e) Certification Regarding Debarment and Suspension (HUD-2992) _____

(f) Certification of Consistency with the Consolidated Plan (HUD-2991) _____

(g) Sponsor's Conflict of Interest Resolution _____

(h) Sponsor's Resolution for Commitment to Project _____

(i) Certification of Consistency with the EZ/EC Strategic Plan (HUD-2990) _____

Supportive Housing for Persons with Disabilities
Section 811

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0462
(exp.6/30/2002)

Application for Capital Advance Summary Information

For HUD Use Only | HUD Project Number | PRAC Number

1. Name(s), Address(es), Contact Person, and Telephone Number(s) of Sponsor(s)

2. Minority Sponsor Designation: A minority sponsor is one in which at least 51 percent of the board members are minority.
Is this sponsor a minority applicant? ☐ Yes ☐ No
If "Yes," identify by numeric code as shown below ..... ☐
Codes: 2 - Black; 3 - Native American
4 - Hispanic; 5 - Asian Pacific 6 - Asian Indian

3a. Location of Site (city & State)

3b. Will project be located within the boundaries of a Federally-designated: (1) Empowerment Zone, (2) Enterprise Community, (3) Urban Enhanced Enterprise Community, or (4) Strategic Planning Community?
(Contact local HUD Office for information on these designated areas.)
☐ Yes ☐ No
If "Yes," please indicate appropriate number as shown above. ☐

4a. Congressional District

4b. Census Tract

5. Capital Advance Amount Requested
$

6. Project Rental Assistance Contract Amount Requested
$

Note: For a group home(s)in 10. below, include the number of disabled residents in both the "Total Units" and the "Total Disabled Residents" categories. For an independent living project(s), include Resident Manager unit, if applicable, in the "Total Units" category.

7. Application Contains
☐ Evidence of Site Control
☐ Identification of Site

8. Type of Construction
☐ New Construction
☐ Rehabilitation
☐ Acquisition

9a. Occupancy Type
☐ Physically Disabled
☐ Developmentally Disabled
☐ Chronically Mentally Ill
☐ Mixed Occupancy
Identify Categories _____

9b. Restricted Occupancy Requested
☐ Yes
☐ No
If "Yes," identify subcategory _____

10. Project Type & Number of Units/Residents Proposed

a. **Group Home**

Site	No. of Disabled Residents	Resident Mgr. Unit (Y/N)	Address
#1			
#2			
#3			
#4			

b. **Independent Living Project**

Site	Units by No. of Bedrooms 0	1	2	3	Total Disabled Units	Residents	Resident Mgr. Unit (Y/N)	Total Units	Address
#1									
#2									
#3									
#4									

c. **Condominium**

Site	Units by No. of Bedrooms 0	1	2	3	Total Disabled Units	Residents	Resident Mgr. Unit (Y/N)	Total Units	Address
#1									
#2									
#3									
#4									

Note: If an elevator structure in b or c above, indicate by placing an "E" next to the total number of units for each applicable site.

Totals

	Units (Section 811)
	Disabled Residents
	Sites

Mixed Finance or Mixed Use Project for Additional Units
☐ Yes ☐ No # of Add'l Units _____

Previous editions are obsolete

form **HUD-92016-CA** (02/2001)
ref Handbook 4571.2

11. Check utilities and services not included in the rent and to be paid directly by the tenant
- ☐ Electric
- ☐ Water
- ☐ Heat
- ☐ Gas

12. Unusual Site Features
- ☐ None
- ☐ Cuts
- ☐ Fill
- ☐ Erosion
- ☐ Poor Drainage
- ☐ Retaining Walls
- ☐ Rock Foundations
- ☐ High Water Table
- ☐ Other (specify)

13. Off-Site Facilities:

	Public	At Site	Fl. from Site
Water	☐	☐	_____
Sewer	☐	☐	_____
Paving	☐	☐	_____
Gas	☐	☐	_____
Electric	☐	☐	_____

14. Community Spaces to be Included inProject: (identified by site no. indicated in 10 above):

15. If Sponsor is applying for more than one HUD program from the SuperNOFA, indicate which application(s) contain the forms with original signatures.
Program Name — Form

16. Name, Address and Telephone Number of (mark one box)
- ☐ Consultant
- ☐ Agent
- ☐ Authorized Representative

17. Sponsor's Attorney (name, address and telephone number)

By (signature of sponsor's authorized representative)

Type in Name

Title — Date(mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 46 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is in support of HUD's efforts to expand the supply of Supportive Housing for Persons with Disabilities under Section 811. The information is necessary to assist HUD to determine applicant eligibility and ability to develop housing for disabled with statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical to protect the Government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds. This application does not collect any sensitive information. HUD does not ensure confidentiality.

Previous editions are obsolete

Page 2 of 2

form **HUD-92016-CA** (02/2001)
ref Handbook 4571.2

SPONSOR'S CONFLICT OF INTEREST RESOLUTION

TO: The Secretary of Housing and Urban Development

SUBJECT: Section 202 Program - Application for Fund Reservation
Section 811 Program - Application for Fund Reservation

Sponsor:
Project Location:

WHEREAS, Section 202 of the Housing Act of 1959, as amended, authorizes the making of capital advances for housing for the elderly to private, nonprofit corporations, OR Section 811 of the National Affordable Housing Act of 1990, as amended, authorizes the making of capital advances to nonprofit corporations for housing for persons with disabilities, no part of the net earnings of which inure to the benefit of any member, founder, contributor or individual;

WHEREAS, HUD has implemented this statutory requirement by promulgating a regulation providing that the Sponsor may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. The regulation also prohibits any officer or director of the Sponsor from having any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings or equipment, construction of the project, procurement of the site or any other matters whatsoever, except with respect to management or supportive services contracts entered into by the Owner with the Sponsor or its nonprofit affiliate.

WHEREAS, HUD has determined that assurance of compliance with this prohibition can best be obtained by requiring that all officers and directors of the Sponsor certify that they do not have and will not have during their term of office, any prohibited financial interest.

WHEREAS, because of the time constraints imposed under the application process and difficulties in meeting these deadlines caused by such factors as large boards and unavailability of officers and directors of the board, some prospective Sponsors have been unable or experienced hardship in obtaining all of the required certifications for submission with the applications for fund reservation.

WHEREAS, HUD is willing to defer submission of the required Sponsors' Conflict of Interest and Disclosure Certifications until the submission of the firm commitment applications by those

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Owners for which fund reservations were approved, if such certifications are provided by all the Sponsor's officers and directors listed below, who are duly qualified and sitting in these capacities from the date of the Sponsor's fund reservation application.

[LIST THE NAME, TITLE, AND THE BEGINNING AND ENDING DATES OF THE TERM OF ALL OFFICERS AND DIRECTORS]

NOW, THEREFORE, in order to induce HUD to forego requiring submission of the Conflict of Interest and Disclosure Certifications until after projects have been selected and fund reservations granted, it is hereby resolved and agreed by the Board of Directors of the Sponsor:

1. That it will submit an updated Incumbency Certificate, in a form prescribed by HUD, showing all changes in incumbency for submission with the Owner's Application for Firm Commitment, initial closing and final closing.

2. That no officer or director of the Sponsor has or will be permitted to have any prohibited interest which would prevent him or her from signing the required Conflict of Interest and Disclosure Certification.

3. That the fund reservation will be subject to cancellation by HUD if the officers or directors of either the Sponsor or the Owner fail to submit Conflict of Interest and Disclosure Certifications duly executed by each and all of their respective officers and directors.

4. That no HUD capital advance funds or project rental assistance funds will be expended on account of any contract or arrangement where a conflict of interest is determined to exist, and the Sponsor shall be responsible for the payment of any and all obligations involving its officers and directors.

5. That should any contract or arrangement entered into by the Owner be determined by HUD to involve a conflict of interest, involving either the Sponsor's or Owner's officers or directors, the Sponsor will exercise its best efforts to cause the Owner to promptly cancel or terminate such contract or arrangement at HUD's request.

Adopted and approved by the Board of Trustees of the Sponsor on the _____ date of _____, _____.

_____
Authorized Signature

SPONSOR'S RESOLUTION FOR COMMITMENT TO PROJECT

TO: Secretary of Housing and Urban Development

SUBJECT: Section 202 Program - Application for Fund Reservation
Section 811 Program - Application for Fund Reservation

Sponsor:
Project Location:

1. **WHEREAS**, under the Section 202 Program for Supportive Housing for the Elderly, the Sponsor acknowledges its responsibilities of sponsorship, long-term support, its willingness to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and it reflects the will of its membership. The Sponsor is required to make a commitment to cover the estimated start-up expenses, the minimum capital investment of 1/2 of one percent of the HUD-approved capital advance, not to exceed $25,000 ($10,000 for sponsors not affiliated with a national sponsor) and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

OR

Whereas, under the Section 811 Program of Supportive Housing for Persons with Disabilities, the Sponsor acknowledges its respon-sibilities of sponsorship, long-term support, its willingness to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. The Sponsor is required to make a commitment to cover the estimated start-up expenses, the minimum capital investment of 1/2 of one percent of the HUD-approved capital advance, not to exceed $10,000 and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

2. **WHEREAS**, HUD has determined that assurance by the Sponsor of its commitment and willingness to provide those funds can best be assured by requiring a resolution of the Board of Directors that funds will be made available for such purposes.

3. **NOW, THEREFORE**, the Board of Directors of the Sponsor hereby resolves and agrees that funds will be available for the subject project to meet estimated start-up expenses, the

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minimum capital investment and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

Adopted and approved by _____ of the Sponsor on the _____ day of _____, _____.

_____
Authorized Signature

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ASSISTED LIVING CONVERSION PROGRAM (ALCP)

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR THE ASSISTED LIVING CONVERSION PROGRAM (ALCP) FOR ELIGIBLE MULTIFAMILY HOUSING PROJECTS

PROGRAM OVERVIEW

Purpose of the Program. The purpose of this program is to provide grants for the conversion of some or all of the dwelling units in an eligible project into assisted living facilities (ALFs) for frail elderly persons.

Available Funds. Approximately $93 million are available for the conversion of eligible multifamily projects to ALFs ($50 million under the Fiscal Year 2002 Appropriations Act and $43 million in Fiscal Year 2001 carryover funds).

Eligible Applicants. Only private nonprofit project owners of eligible developments (as described in Section III of this NOFA) may apply for and become the recipient of a grant.

Application Due Dates. July 3, 2002.

Match. None required.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date. Your completed application (one original and four copies) is due on July 3, 2002, at the address shown below.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that impact application submission procedures. See the General Section of the SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, or overnight delivery.) Only ALCP applications mailed by the United States Postal Service (USPS) will be accepted by HUD.

Addresses for Submitting Applications. The official place for receipt of your application is ONLY in the appropriate Multifamily Hub Office. Submit an original and four copies of the ALCP application to the Director of the appropriate HUD Multifamily Hub Office, as listed in Appendix A of this NOFA, with jurisdiction over your development.

Appendix B to this NOFA lists the 18 Multifamily Hubs with the Program Centers under them, to facilitate applicants knowing the correct location to send the application. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date, when you submit your application to the USPS. The Certificate of Mailing will be your documentary evidence that your application was timely filed.

For Application Kits, Further Information, and Technical Assistance.

For Application Kits. You may obtain an ALCP application kit and supplemental information by calling the SuperNOFA Information Center at (voice) 1–800–HUD–8929 (1–800–483–8929). Persons with hearing or speech impairment may call the Center's TTY number at 1–800–HUD–2209. Please be sure to provide your name, address (including zip code), and telephone number (including area code). The application kit is also available on the Internet through the HUD web site at http://www.hud.gov/grants.

Note: There is a separate application kit for service coordinator funds (which is necessary for those needing to enhance or add service coordination per Section III (B)(13) of this NOFA).

For Further Information and Technical Assistance. You should contact the Multifamily Hub where you will be mailing your ALCP Application. (Please refer to Hub telephone numbers in Appendix A.)

You also may contact Faye Norman, Housing Project Manager at (202) 708–3000 x2482 or Aretha Williams, Director, Grant Policy and Management Division, Room 6138 at (202) 708–3000 x2480 for questions regarding the ALF process. This is not a toll free number. Ms. Williams can be reached, by e-mail, at "*aretha_m._williams@hud.gov*" and Ms. Norman at "*faye_l._norman@hud.gov*. Both Ms. Williams and Ms. Norman are located at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

If you have a hearing or speech impairment, you may access the telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

This NOFA makes available approximately $93 million (approximately $78 million for the physical conversion of eligible multifamily assisted housing projects or portions of projects to ALFs and approximately $15 million for the conversion of up to 3 unused or underutilized commercial properties to ALFs). The Fiscal Year (FY) 2002 funding of $50 million is in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act Pub.L.107–73, approved November 26, 2002). The $93 million includes $43 million in Fiscal Year 2001 carryover funds. The allocation formula used for the ALCP to fair share the $78,000,000 reflects demographic characteristics of age and incidence of frailty that would be expected for program participants. The FY 2002 formula consists of three data elements from the 1990 decennial census:

(1) The number of non-institutional elderly population aged 75 years or older with a self-care limitation,

(2) The number of non-institutional elderly population aged 75 or older with a mobility limitation, and,

(3) The number of the non-institutional elderly population aged 75 or older with both a mobility limitation and a self-care limitation. The data were taken from the 1990 Census Special Tabulation on Aging, STP–14, sponsored by the Administration on Aging, U.S. Department of Health and Human Services.

A mobility limitation is defined as a health condition that has lasted for six (6) or more months, making it difficult for the person to go outside the home alone. This includes outside activities such as shopping or visiting the doctor's office. A self-care limitation is defined as a health care limitation that has lasted for six (6) months or more which makes it difficult for the person to take care of his/her own personal needs such as dressing, bathing, or getting around in the home.

A fair share factor for each state was developed by taking the sum of the three elements within each state as a percentage of the sum of the three elements for the total United States. The resulting percentage for each state was then adjusted to reflect the relative difference in the cost of providing housing among the states. The total of the grant funds available ($78 million) was multiplied by the adjusted fair share percentage for each state, and the resulting funds for each state were totaled for each Hub.

The ALCP grant funds fair share allocations, based on the formula above, to the 18 multifamily Hubs are as shown on the following chart:

FISCAL YEAR ALLOCATION 2002 FOR THE ASSISTED LIVING CONVERSION PROGRAM (ALCP) OF ELIGIBLE ASSISTED MULTIFAMILY PROJECTS

HUB	Grant authority
Boston	4,726,439
Buffalo	2,091,360
New York	4,497,621
Philadelphia	8,527,962
Baltimore	3,183,601
Greensboro	3,276,631

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FISCAL YEAR ALLOCATION 2002 FOR THE ASSISTED LIVING CONVERSION PROGRAM (ALCP) OF ELIGIBLE ASSISTED MULTIFAMILY PROJECTS—Continued

HUB	Grant authority
Atlanta	5,712,662
Jacksonville	6,746,209
Chicago	5,957,418
Columbus	3,345,185
Detroit	2,733,470
Minneapolis	2,843,015
Fort Worth	5,972,447
Kansas Coty	4,841,730
Denver	1,728,217
Los Angeles	4,574,289
San Francisco	4,649,855
Seattle	2,591,889
Total	78,000,000

III. Program Description; Eligible and Ineligible Applicants, Developments, and Activities

(A) *Program Description.* Assisted living facilities (ALFs) are designed to accommodate frail elderly persons and people with disabilities who need certain support services (e.g., assistance with eating, bathing, grooming, dressing and home management activities). ALFs must provide support services such as personal care, transportation, meals, housekeeping, and laundry. Frail elderly person means an individual 62 years of age or older who is unable to perform at least three activities of daily living (ADLs) as defined by the regulations for HUD's Section 202 Program (Supportive Housing for the Elderly) at 24 CFR 891.205. Assisted living is defined in section 232(b)(6) of the National Housing Act (12 U.S.C. 1715w).

The ALCP provides funding for the physical costs of converting some or all of the units of an eligible multifamily development into an ALF, including the unit configuration, common and services space and any necessary remodeling, consistent with HUD or the State's statute/regulations (whichever is more stringent). Typical funding will cover basic physical conversion of existing project units, common and services space. There must be sufficient community space to accommodate a central kitchen or dining facility, lounges, recreation and other multiple-areas available to all residents of the project, or office/staff spaces in the ALF. When food is prepared at an off-site location, the preparation area of the facility must be of sufficient size to allow for the installation of a full kitchen, if necessary. You must provide supportive services for the residents either directly or through a third party. Your application must include a firm commitment for the supportive services to be offered within the ALF as part of the application. You may charge assisted living residents for meals and/or service fees. Residents may contract with third party agencies directly for nursing, therapy or other services not offered by the ALF.

(B) *Program Requirements.* The following program requirements apply: (**Note:** Program Requirements described in paragraphs 3, (8)(a) and (b), and (12) below are not applicable to applicants requesting funding to convert commercial facilities):

(1) Your ALF facility must be licensed and regulated by the state (or if there is no state law providing such licensing and regulation, by the municipality or other subdivision in which the facility is located). Each assisted living unit must include its own kitchen, bathroom, living/dining area (1 bedroom unit) or bedroom/living/dining area (efficiency unit) and must meet the state and/or local licensing, building, zoning and other requirements for an ALF.

(2) Your ALF must be available to qualified elderly persons and persons with disabilities, consistent with the rules and payment plans of the State, who need and want the supportive services in order to remain independent and avoid premature institutionalization.

(3) Your ALF's residents must be tenants or residents of the multifamily project and must comply with the requirements applicable to the project. Thus, you cannot charge additional rent over what is charged to residents in the non-ALF portion of the project. All admissions to the ALF must be through the applicable project admissions office. However, persons accepted into the ALF also must sign an ALF admissions agreement which shall be an addendum to the applicable project lease.

(4) At a minimum, your ALF must provide room, board (as defined in Section III(B)(6)) of this NOFA) and continuous protective oversight (CPO). CPO involves a range of activities and services that may include such things as awareness by management and staff of the occupant's condition and location as well as an ability to intervene in a crisis for dependent and relatively independent occupants on a 24-hour basis. The two occupant groups in an ALF are:

(a) *Independent Occupants:* Awareness by management and staff of the occupant's condition and whereabouts as well as the availability of assistance for the occupants as needed.

(b) *Dependent occupants:* Supervision of nutrition, assistance with medication and continuous responsibility for the occupants' welfare.

(5) Anyone moving into an ALF unit must agree to accept as a condition of occupancy the board and services required for the purpose of complying with state and local law and regulation. *However, occupancy in an ALF unit may not be conditioned on receipt of other services or board not required by state or local requirements.*

(6) Your ALF must offer three meals per day to each resident.

(a) Residents in projects which were originally constructed without kitchens in their units must take such meals as required by their mandatory meals agreement, or by the state's mandated requirements if more stringent (e.g., 2 meals, 2 snacks daily).

(b) Residents whose apartments have kitchens must take at least the number of meals a day provided by the facility, per their mandatory meals requirement, or as required by state or local rules, if more stringent. If the facility does not have a mandatory meals plan, then state and local rules govern.

In either case, ALF management must coordinate meals requirements with the needs of residents who are out part of the day (e.g., in day care). The meals program may not be operated at a profit by the project owner.

(7) Your ALF's operation must be part of the project owner's management organization. Some or all of its functions may be contracted out. The ALF must predicate its budget on a two-tiered structure under which board and supportive service income and expenses must be maintained separately and independently from the regular income and expenses of the applicable project. The two components of ALF costs are:

(a) Charges/payment for board, which may be on a sliding scale or any other equitable fee system; and

(b) Charges/payment for necessary supportive services, which may include a combination of resident fees, Medicaid and/or other third party payments.

(8) Priority admissions for ALF units are as follows:

(a) Current residents desiring an ALF unit and meeting the program requirements (no resident can be required to accept an ALF unit).

(b) Qualified individuals or families needing ALF services who are already on the project's waiting list;

(c) Qualified individuals or families in the community needing ALF services wanting to be added to the project's waiting list; and

Note: Qualified disabled non-elderly persons needing assisted living services are eligible to occupy these units on the same basis as elderly persons, except for section 202 project rental assistance contracts (PRAC) projects and unused/underutilized commercial properties.

(9) The management of the project must set up a separate waiting list for ALF units. ALF units must be for eligible residents who meet the admissions/discharge requirements as established for assisted living by State and local licensing, or HUD frailty requirements under 24 CFR 891.205 if more stringent.

(10) Costs of meals and supportive services are NOT covered by this HUD grant. These items must be paid for through other sources (e.g., a mix of resident fees and/or third party providers). Evidence of third party commitment(s) must be included as part of the application. (See Section IV(B) of this NOFA.) The assisted living supportive services program must promote independence and provide personal care assistance based on individual needs in a home-like environment (see Section VI(B)(8)(b) through (c) of this NOFA).

(11) Upon receipt of a grant under this program, all project owners participating in the ALCP must provide a Declaration of Restrictive Covenants (DRC), which will be recorded with the land, to retain the low income character of the housing, and to maintain the project (including the ALF), as a moderate, low, or very low income facility (as appropriate) for at least 20 years beyond the current 40-to-50 year term of the mortgage loan or capital advance. Recipients of grant funds to convert unused or underutilized commercial property must provide a DRC for at least 20 years or for the term of the mortgage on the property whichever is longer.

(12) This program does NOT allow permanent displacement of any resident living in the project at the time the application was submitted to HUD. (HUD will only provide temporary relocation costs for current tenants if they must vacate their unit while conversion work is underway (normal temporary relocation costs include increases in rent, reconnection of telephones, moving costs and appropriate out-of-pocket expenses)).

(13) The ALCP requires service coordination responsible for linking the ALF to services in the community which are available to low income persons. All projects funded under this NOFA must have sufficient service coordination in place, or request additional funds if appropriate, to ensure that services meeting licensing requirements are available to ALF residents on an ongoing basis. Service coordination must be described in the application (see Section VI(B)(8)(b) through (c) of this NOFA). If you need to enhance an existing service coordination program or add one where it does not exist, you may apply for funding through the Service Coordinator NOFA, published elsewhere in this SuperNOFA, and attach a copy of the Form HUD 424M so indicating the request to the ALCP application. Alternatively, you may show evidence that funding for the enhanced service coordination is provided by other sources and indicate such funding on the HUD Form 424M which is exhibit 10(c) of your ALF application. If you are funded under this NOFA and requested new or enhanced service coordination you will be funded first under the service coordinator NOFA.

Note: If you are a Section 202 PRAC project owner or an owner with unused or underutilized commercial properties, you are NOT eligible to request funding under the service coordinator NOFA. Section 202 PRAC owners can pay for the service coordinator out of PRAC funds.

In addition to above requirements, the following applicable guidelines are stated:

(a) The ALF must be staffed either directly or through coordination with local agencies, depending on state regulations or local requirements. These may also serve non-ALF residents of the project on a time available and appropriate fee basis.

(b) The ALF may cater to the special needs of residents depending on their condition or diagnosis, such as Alzheimer's disease. If it does so, the design/environment of such facilities must accommodate those needs, e.g., dementia special care unit. However, the ALF CANNOT provide a service it is not licensed by the State or locality to provide.

Note 1: Owners of section 202/PRAC projects are reminded that they may include a PRAC payment of up to $15/unit/month not to exceed 15% of the total program cost, consistent with 24 CFR 891.225(b)(2) to cover part of the cost of meals and/or supportive services for frail elderly residents, including residents of the ALF.

Note 2: Training for ALF staff is an eligible project cost under existing operating procedures.

For further information on ALFs, please refer to Handbook 4600.1, CHG–1, "Mortgage Insurance for Residential Care Facilities," Chapter 13. This Handbook and recent ALF program Notices are accessible through HUDCLIPS on HUD's web site. The URL for the HUDCLIPS Database Selection Screen is *http://www.hudclips.org/subscriber/cgi/legis.cgi.* These notices are in the Handbooks and Notices—Housing Notices database. Enter only the number without the letter prefix (e.g., 99–16) in the "Document number" to retrieve the program notice.

For further guidance on service coordinators, please refer to Handbook 4381.5 REV–2, CHANGE–2, Chapter 8, "The Management Agent's Handbook," which is also available through the HUDCLIPS database.

(C) *Eligible Applicants.* Only private nonprofit owners of eligible multifamily assisted housing developments specified in section 683(2) (B), (C), (D), (E), and (F) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and private nonprofit owners of an unused or underutilized commercial property are eligible for funding. To be eligible, project owners must meet the following criteria where applicable:

(1) Must be in compliance with your Loan Agreement, Capital Advance Agreement, Regulatory Agreement, Housing Assistance Payment contract, Project Rental Assistance Contract, Rent Supplement or LMSA contract, or any other HUD grant or contract document.

(2) Must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). See Section V(B) of this NOFA for further explanation.

Note: If your eligibility status changes during the course of the grant term, making it ineligible to receive the grant (e.g., prepayment of mortgage, sale/TPA of property, or opting out of a Section 8 Housing Assistance Payment (HAP) contract), HUD retains the right to terminate the grant and recover funds made available through this NOFA.

(D) *Eligible Developments.*

(1) Section 202 projects, Section 202 projects receiving rental assistance under Section 8, and Section 202 projects receiving project rental assistance under Section 202(C)(2). Rural housing projects assisted under Section 515 of the Housing Act of 1949 receiving Section 8 rental assistance are also included. Projects receiving project-based rental assistance under Section 8, among others, housing constructed, substantially rehabilitated or receiving moderate rehabilitation assistance under Section 8. Also included are housing financed by a below-market interest rate loan or mortgage insured under Section 221(d)(3) of the National Housing Act; and housing with financing insured, assisted or held by HUD or a State or State Agency under Section 236 of the National Housing Act. The housing projects must be owned by a private

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nonprofit entity that is designated primarily for occupancy by elderly persons. The project must have been in occupancy for at least five years from the date the HUD–92485 Form Permission to Occupy Project Mortgages was issued and final closing must have been completed. Your project must:

(a) Meet HUD's Uniform Physical Conditions Standards at 24 CFR part 5, subpart G. Meeting these standards as described, means that the project, based on the most recent Real Estate Assessment Center (REAC) physical inspection report and responses thereto, must have a "satisfactory" rating as evidenced by a score of 60 or better or a HUD-approved and on schedule repair plan for developments scoring less than 60. Additionally, the project must have no uncorrected and outstanding Exigent Health and Safety violations. Finally, the project must not have on file a management review with a rating of "minimally satisfactory" or "unsatisfactory" with open and unresolved findings.

(b) Have a residual receipts account separate from the Reserve for Replacement account, or agree to establish this account as a condition for getting the award(s).

(2) Unused and underutilized commercial properties.

(E) *Ineligible Applicants.*

(1) Owners of developments designed specifically for people with disabilities.

(2) Owners of Section 232 developments.

(3) Property management companies and agents of property management companies.

(4) Limited dividend partnerships.

(5) Nonprofit Public Agencies.

(6) Owners of unused/underutilized hospitals or other health-related facility which are considered to be eleemosynary institutions rather than commercial enterprises.

(F) *Eligible Conversion Activities.* Eligible activities are:

(1) Retrofitting to meet Section 504 accessibility requirements, minimum property standards for accessibility and/or building codes and health and safety standards for ALFs in that jurisdiction. Examples are items such as addition of:

(a) Sprinkler systems;

(b) An elevator or upgrades thereto;

(c) Lighting upgrades;

(d) Major physical or mechanical systems of projects necessary to meet local code or assisted living requirements;

(e) Upgrading to accessible units for the ALF with movable cabinetry, accessible appliances, sinks, bathroom and kitchen fixtures, closets, hardware and grab bars, widening of doors, etc.;

(f) Upgrades to safety and emergency alert systems;

(g) Addition of hallway railings; and,

(h) Medication storage and work stations;

(2) Retrofitting to add, modify and/or outfit common space, office or related space for ALF staff including a service coordinator and file security, and/or a central kitchen/dining facility to support the ALF function (e.g., outfit lounge/common space/dining furniture, kitchen equipment for cooking/serving and dishware).

(3) Retrofitting to upgrade a regular unit to an accessible unit for a person/family with disabilities who is being displaced from an accessible unit in the portion of the project that is being converted to the ALF, where another accessible unit is not available.

(4) Temporary relocation (not applicable to commercial property).

(5) Consultant, architectural and legal fees.

(6) Vacancy payments not more than 30 days after conversion to an ALF.

(G) *Ineligible Activities.* You may not use funds available through this NOFA to:

(1) Add additional dwelling units to the existing project (not applicable to commercial property);

(2) Pay the costs of any of the necessary direct supportive services needed to operate the ALF;

(3) Purchase or lease additional land;

(4) Rehabilitate (see definition at 24 CFR 891.105) the project for needs unrelated directly to the conversion of units and common space for assisted living;

(5) Use the ALCP to reduce the number of accessible units in the project that are not part of the ALF (not applicable to commercial property);

(6) Permanently relocate any resident out of the project; and,

(7) Increase the management fee.

IV. Program Requirements

Each applicant must comply with the following requirements:

(A) *Statutory, Regulatory, and Other Program Requirements.* You must comply with all applicable statutory requirements to the projects specified in Section 202(b) and statutory requirements under Section 232(b)(6). Please note that all ALCP projects must conform to the 500-year flood plain limitation (See Section VII of this NOFA.) Construction of ALCP units is considered a "critical action" for purposes of the flood plain requirement.

Excess Residual Receipts (over $500/unit) and Reserve for Replacement (R4R) funds (over $1000/unit) in Project Accounts that are not approved for another use at the time of application to HUD under this NOFA are considered available funds and must be applied towards the cost of conversion activities. Before making this determination, however, HUD staff will consider the extent of repair/replacement needs indicated in the most recent REAC physical inspection and not yet approved and any ongoing commitments such as non-grant-based service coordinator or other funding, where existing, deduct the estimated costs of such items from the R4R and residual receipts balances to determine the extent of available residual receipts and R4R funds for the ALCP. (This paragraph is not applicable to commercial properties.)

If funded, you must also file a HUD Form-2530 for all construction contractors, architects, consultants, and service provider organizations under direct contract with you that will be engaged under this NOFA and comply with all State and local licensing, zoning and building code requirements.

(B) *Meals and Supportive Services.* You must develop and submit a Supportive Services Plan (SSP) for the services and coordination of the supportive services which will be offered in the ALF to the appropriate state or local organization(s) which are expected to fund those supportive services. (See Section VI(B)(8) of this NOFA below, for the information which must be in the SSP.) You must submit one copy of your SSP to each appropriate State or local service funding organizations well in advance of the application deadline, for appropriate review. The State or local funding organization(s) must return the SSP to you with appropriate comments and indication of funding commitment, which you will then include with the application you submit to HUD.

You must ALSO submit the SSP to the appropriate organization(s) which license ALFs in your jurisdiction. The licensing agency(ies) must approve your plan, and must also certify that the ALF and the proposed supportive services identified in your SSP, are consistent with local statute and regulations and well designed to serve the needs of the frail elderly and people with disabilities who will reside in the ALF portion of your project.

Finally, you must also submit an agreement to pursue appropriate ALF licensing in a timely manner.

(C) *Minimum Size Limits for an ALF.* An ALF must be economically feasible. Consistent with HUD Handbook 4600.1, CHG–1, the minimum size for an ALF is five units.

(D) *Economic Opportunities for Low and Very Low Income Persons (Section 3).* You must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low Income Persons), and its implementing regulations at 24 CFR part 135. You must ensure that training, employment and other economic opportunities shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low and very low income persons and including people with disabilities.

(E) *Compliance with Fair Housing and Civil Rights Laws.* If you, the applicant (a) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) are the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) have received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, your application will not be evaluated under this NOFA if, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline, HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(F) *Additional Nondiscrimination Requirements.* As you will be converting some of your project to an ALF, you should note that 24 CFR 891.120(b) requires you to meet all accessibility requirements. Additionally, you must comply with the section 504 regulations at 24 CFR part 8, the Americans with Disabilities Act and the regulations at 28 CFR part 36, as applicable.

(G) *Executive Order 12372.* Information regarding this requirement may be found in the General Section of the SuperNOFA.

(H) *Conducting Business in Accordance with HUD Core Values and Ethical Standards.* Owners are required to develop and maintain a written code of conduct in accordance with 24 CFR 84.42. Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among employees, officers or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value, and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees and agents of your organization are aware of your code of conduct. You will also be required to sign the Conflict of Interest Resolution and include it in your application see Exhibit (10)(i).

(I) *Ensuring the Participation of Small Businesses, Small Disadvantaged Business, and Women-Owned Business.* Information regarding this provision may be found in the General Section of the SuperNOFA. Upon acceptance of grant funds under the ALCP, Grantees must comply with the requirements pursuant to Executive Orders 11625 and 12432 (concerning Minority Business Enterprises) and Executive Order 12138 (concerning Women's Business Enterprise).

(J) *Compliance with Other Program Requirements:* By the submission of the application for grant funds, the Owner is certifying to comply with the following program requirements:

(1) Establish a residual receipt account as soon as there is surplus cash available, if applicable.

(2) Apply for an ALF license with due diligence and in a timely fashion.

(3) Comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135, the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108, and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity including affirmatively furthering fair housing, and other certifications listed in the application.

(4) Comply with section 232 of the National Housing Act, as applicable, the Uniform Federal Accessibility Standards (24 CFR 40.7), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and the Americans with Disabilities Act of 1990 for all portions of the development physically affected by this proposal;

(5) Comply with the Davis-Bacon requirements and the Contract Work Hours and Safety Standards Act as applied to this program. While it has been determined that Davis-Bacon does not apply statutorily to the ALCP, the Department has administratively determined that Davis-Bacon standards and overtime rates in accordance with the Contract Work Hours and Safety Standards Act will be adhered to in any ALCP conversion grant in which the total cost of the physical conversion to an ALF (and including any additional renovation work undertaken at the same time) is $500,000 or more (this includes ALCP grant funds, owner funds, or any third party funds loaned or granted in support of the conversion or other renovation for the project associated with this grant), AND in which the ALF portion of the project is 12 units or more.

V. Application Selection Process

(A) *Review for Curable Deficiencies.* You should ensure that your application is complete before submitting it to HUD.

HUD will screen all applications received by the deadline for curable deficiencies. With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, under this NOFA, the appropriate HUD Multifamily Hub Office will notify you in writing by describing the clarification or technical deficiency. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the Hub Office within 14 calendar days of the date of receipt of the HUD notification. (If the

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due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding. The following is a list of the deficiencies that will be considered curable in ALCP applications:

Exhibits

(1) *(a) Articles of Incorporation, or certification of Articles of Incorporation.

*(b) By-laws, or certification of by-laws.

(3) Evidence of occupancy for at least five years (not applicable to commercial facilities).

(5) (c) Original project plans.

(h) Relocation (not applicable to commercial property).

(7) Evidence of Permissive Zoning.

(8) (g) Support Letters from Governmental Agencies that License ALFs.

(10) *Certifications, Forms and Resolution*

(a) Standard Form 424, Application for Federal Assistance and Compliance with Executive Order 12372.

(b) Standard Form 424D, Assurances Construction Programs.

(c) Form HUD 424M, Federal Assistance Funding Matrix.

(d) Form HUD–50070, Drug-free Workplace.

(e) Form HUD–50071, Payments to Influence Federal Transactions and Standard Form-LLL, Disclosure of Lobbying Activities.

(f) Form HUD 2880, Applicant/ Recipient Disclosure/Update Report including Social Security and Employment Identification numbers.

(g) Form HUD–2992, Certification Regarding Debarment and Suspension.

(h) Form HUD–2991, Certification of Consistency with the Consolidated Plan (Plan), for the Jurisdiction in which the Proposed ALF will be located.

(i) Conflict of Interest Resolution.

The appropriate Hub Office will notify you in writing if your application is missing any of the exhibits listed above and you will be given 14 days from the date of receipt of the HUD notification to submit the information required to cure the noted deficiencies. The exhibits identified by an asterisk (*) must be dated on or before the application deadline date. If not so dated the application will be rejected.

After the completeness review, HUD staff will review your application to determine whether the application meets the threshold requirements listed below. Only if your application meets all the threshold requirements is it eligible to be rated and ranked. Applications that do not pass threshold will be rejected.

(B) *Threshold Review.* In order to pass threshold, you must:

(1) Be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a), and as noted earlier in this NOFA under Sections III(B)(2) and IV(E).

(2) Be an eligible applicant.

(3) Not request more funds than advertised.

(4) Additionally, HUD will also reject your application if the SSP and/or commitment and support letter(s) from the appropriate funding organizations and the appropriate licensing agency(ies):

(i) Are not submitted with your application;

(ii) Indicate that the ALF units, facilities, meals and supportive services to be provided are not designed to meet the special needs of the residents who will reside in the ALF as defined in this NOFA,

(iii) Do not show commitment for funding the meals and supportive services proposed; or

(iv) Indicate that the project as proposed will not meet the licensing requirements of the appropriate State/ local agency(ies).

(C) *Review Panels*

The Office of Housing's Multifamily Hubs will establish panels to review all eligible applications that have passed threshold. The panels may include knowledgeable persons not currently employed by HUD.

(D) *Rating of Applications* (See paragraph below for selection of applications for commercial properties).

HUD staff teams will review and rate ALCP applications in accordance with the Ranking and Selection procedures (see Section V(F) of this NOFA below). All applications will be either rated or technically rejected at the end of technical review. If your application meets all program eligibility requirements after completion of technical review, it will be rated according to the rating selection factors in Section V(G) of this NOFA. HUD reserves the right to reduce the amount requested in the application if any proposed components are ineligible or if the cost of items is not deemed reasonable. HUD will *NOT* reject an ALCP application based on technical review without notifying you of that rejection with all the reasons for the rejection, and providing you an opportunity to appeal. As discussed above, you will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the Multifamily Hub where the applications were sent originally. HUD staff will make a determination on an appeal before finalizing selection recommendations.

(E) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above-mentioned **Federal Register** notice, and for not longer than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefing must be made in writing and submitted to the local Hub in which you applied for assistance. Materials provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(F) *Ranking and Selection Procedures.* (Paragraphs (F)(1)—(4) are not applicable to applicants of commercial properties.)

Applications submitted in response to this NOFA that are eligible, pass threshold and have a total score of 70 points (or more) are eligible for ranking and selection. (Applications for the conversion of commercial properties with a score of at least 70 points will not be ranked but will be submitted to HUD Headquarters for selection.)

(1) Hub staff teams will be established for ALCP review in each Hub to do the application ratings (see Section V(D) above). See list of Hubs in Appendix A of this NOFA.

(2) From within rank order, Hub staff teams in each of the 18 Hubs will select the highest ranked applications from within that Hub in order, that can be funded from within the dollars available. Each Hub will select applications based on rank order up to and including the last application that can be funded out of each Hub's allocation. Hubs must not skip over any applications in order to select one based on the funds remaining.

(3) After making the initial selections, however, Hubs may use any residual funds to select the next rank-ordered application by reducing the dollars requested by no more than 10 percent (10%) and reducing the number of units proposed, but in no case reducing the number of units below the financial threshold feasibility of five ALF units.

(4) Funds remaining after these processes are completed will be returned to HUD Headquarters. HUD will use these funds to restore units to any project reduced as a result of using the residual grant funds in a Hub. Secondly, HUD will use these funds for selecting one or more additional applications based on the Hubs rating and rankings, beginning with the highest rated application within the 18 Hubs. Only one application will be selected per Hub from the national residual amount. If there are no approvable applications in other Hubs, the process will begin again with the selection of the next highest rated application within the remaining Hubs. This process will continue until all approvable applications are selected using the available remaining funds. If there is a tie score between two or more applications, and there are insufficient residual funds to cover all tied applications, HUD Headquarters staff will choose the winning application(s) by lottery and/or reduction of grant requests consistent with the instructions above.

(5) Up to 3 applications will be selected using the $15 million set-aside to provide grant funds to nonprofit applicants proposing to convert *unused or underutilized commercial property into assisted living.* HUD Multifamily Hubs will review applications for commercial properties for completeness and compliance with the eligibility criteria set forth in Section III of this NOFA. Hub staff will forward applications to Headquarters providing the application was received by the deadline date, meets all eligibility criteria, proposes reasonable costs for eligible activities, and includes all technical corrections by the designated deadline date. Headquarters will select no more than 3 applications on a first-come, first-served basis that can be funded within the $15,000,000 available.

Note: Only applications that can be fully funded will be selected. If an application that cannot be fully funded is selected, it will be discarded and another application selected until an applicant is selected that is within the available remaining funds. Any remaining funds after this selection process will be returned to the funds allocated for eligible multifamily assisted projects.

(G) *Factors For Award Used To Evaluate and Rate Applications.*

HUD will rate ALCP applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements identified in Section VI(B) of this NOFA, below. The maximum number of points an application may receive under this program is 100.

(1) The Department encourages applicants to either partner, fund or sub-contract with grassroots organizations, particularly faith-based and other community-based organizations in conducting their work programs. (See the General Section of the SuperNOFA for the definition of "grassroots organizations").

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (20 Points)

This factor addresses your capacity to carry out the conversion in a timely, cost-conscious and effective manner. It also reviews your experience with the supportive services which the ALF intends to provide to elderly residents, especially in such areas as meals, 24-hour staffing and on-site health care. Submit information responding to this factor in accordance with Application Submission Requirements in Sections VI(B)(5)(a), (8)(h), and (2)(d) of this NOFA.

In rating this factor, HUD will consider the extent to which your application demonstrates your ability to carry out a successful conversion of the project and to implement the plan to deliver the supportive services on a-long term basis, considering the following:

(1) (9 points) The practicality of your plan and timetable to carry out the physical conversion of the development to the ALF.

(2) (10 points) Your past experience in providing or arranging for supportive services either on or off site for those who are frail. (If you are applying to convert an unused or underutilized commercial facility to assisted living and you do not own or operate a project with frail elderly residents, you must provide information on any past experience in providing or arranging supportive services for those who are frail.) Examples are: Meals delivered to apartment of resident or in a congregate setting (2 points), arranging for or providing personal care (3 points), providing 24-hour staffing (1 point), providing or making available on-site preventive health care (2 points) and other support services (2 points).

(3) (1 point) Your organization is a "grassroots" organization as defined in the General Section of the SuperNOFA.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which the conversion is needed by the categories of elderly persons and persons with disabilities that the ALF is intended to serve (very low income elderly persons and people with disabilities who have limitations in three or more activities of daily living). The application must provide evidence of current needs among project residents (not applicable to applications proposing to convert unused or underutilized commercial facilities) and needs of potential residents in the housing market area for such persons including economic and demographic information on very-low income frail elderly and people with disabilities and information on current assisted living resources in the market area.

The factor also addresses your inability to fund the repairs or conversion activities from existing financial resources. In making this determination, HUD will consider project financial information or the organization's financial information for unused or underutilized commercial facilities. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(4)(a) through (d), (2)(c) and (9)(a) through (c) of the NOFA. In evaluating this factor, HUD will consider:

(1) (7 points) The need for assisted living among the elderly and disabled residents of the project taking into consideration those currently in need and the depth of future needs given aging in place. (Not applicable to applications to convert unused or underutilized commercial facilities to assisted living.)

(2) (3 points (10 points for applications to convert unused or underutilized commercial facilities to assisted living.)) The need for assisted living among very-low income elderly persons and people with disabilities in the housing market area.

(3) (9 points) Insufficient funding for any needed conversion work, as evidenced by the project's financial statements and specifically the lack of excess reserve for replacement dollars (R4R) and residual receipts. If the available R4R and residual receipts are less than 10% of the total funds needed – 9 points; if the available R4R and residual receipts are 10 – 50% of need = 5 points; and, if the available R4R and residual receipts are 51% or more of the total funds of needed = 0 points). For commercial properties, if the available working capital exceeds 10 percent of the total conversion = 5 points; if the working capital is less than 10 percent of the total conversion = 9 points.

(4) (1 point) The Department will provide one (1) point to those

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applications which establish a connection between the proposed ALF and the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization.

Rating Factor 3: Soundness of Approach (40 Points).

This factor addresses the quality and effectiveness of your proposal in addressing the proposed conversion, effectiveness of service coordination and management planning and the meals and supportive services which the ALF intends to provide. There must be a relationship between the proposed activities, the project's and the community's needs and purposes of the program funding for your application to receive points for this factor. Submit information responding to this factor in accordance with Application Submission Requirements in Sections VI(B)(5)(b) through (e) and (h) and (7) and (B)(8))(a) through (e) and (g) and (h) of this NOFA.

In evaluating this factor, HUD will consider the following:

(1) (12 points) The extent to which the proposed ALF design will meet the special physical needs of frail elderly persons or persons with disabilities expected to be served at reasonable cost (consider the ALF design: meets needs = 12 points; ALF design partially meets needs = 6 points; and ALF design does not meet needs = 0 points).

(2) (12 points) The extent to which the ALF's proposed management and operational plan ensures that the provision of both meals and supportive services planned will be accomplished over time. (Consider ALF design/management plan: meets needs of management operations = 12 points; ALF design/management plan partially meets needs of management operations = 6 points; and ALF design/management plan does not meet needs of management operations = 0 points.)

(3) (7 points) The extent to which the proposed supportive services meet the anticipated needs of the frail elderly and disabled residents (consider Yes = 7 points; partially meets needs = 4 points; and, does not meet needs = 0 points); and

(4) (7 points) The extent to which the service coordination function is addressed and explained as onsite and sufficient, onsite and augmented or new, and addresses the ongoing procurement of needed services for the residents of the ALF (does meet = 7 points, partially meets = 4 points, does not meet = 0 points).

(5) (2 point) The extent to which there is an operating philosophy which promotes the autonomy and independence of the frail elderly persons it is intended to serve (is fully addressed = 2 points, no or not addressed = 0 points).

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other community resources which can be combined with HUD's grant funds to achieve program purposes. For the ALCP to succeed, you *MUST* generate local funding for the necessary supportive services to operate the ALF. HUD also encourages local funding for some of the necessary conversion work, or other work needed in the project (*e.g.*, general modernization) which is *NOT* specifically linked to the ALF).

Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(5)(f), (g), and (B)(8)(f) of this NOFA.

(1) (5 points) The extent to which there are commitments for the funding needed for the meals and the supportive services planned for the ALF and that the total cost of the estimated budget of the ALF is covered. Consider 90% or more commitment for the total budget with no more than 10% general support = 5 points; 80–89.9% or more commitment for the total budget with no more than 20% general support = 4 points; 65–79.9% firm commitment with no more than 35% general support = 3 points; 40–64.9% firm commitment for the total budget with no more than 60% general commitment = 2 points; less than 40% firm commitment for the total budget with no more than 60% general support = 0 points.

(2) (3 points) The extent of local organizations' support which is firmly committed to providing at least 50 percent of the total cost of ALF conversion (consider 50% or more = 3 points, 20–49.9% = 2 points, and under 20% = 0 points).

(3) (2 points) The extent of local organizational support which is firmly committed to providing funds for additional repair or retrofit necessary for the project NOT specifically directed to activities eligible under this NOFA (consider yes = 2 points, no = 0 points).

Rating Factor 5: Coordination, Self-sufficiency and Sustainability (10 Points)

This factor addresses the extent to which you have evidenced general support for conversion by participating in your community's Consolidated Planning Process, involving the residents in the planning process (not applicable to applications proposing to convert unused or underutilized commercial facilities); the extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed work activities and are working toward addressing the need in a holistic and comprehensive manner through linkages with other activities in the community; the extent to which your project will implement practical solutions that will result in assisting residents in achieving independent living and the extent to which the project will be viable absent HUD funds but rely more on state, local and private funds. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(2)(a) through (d), (B)(8)(a)–(e) of this NOFA.

(1) (4 points) The extent to which you have coordinated your activities with other known organizations that are not directly participating in your proposed work activities, but share common goals and objectives and are working together to meet objectives; the involvement of project residents (including minority residents) or their representatives, in the development of the ALCP application, and your intent to involve residents, in the development and operation of the project and in relocation planning (Minus two (−2) points if not addressed); (If you are applying to convert an unused or underutilized commercial facility to assisted living, provide information on the involvement of elderly persons in the development of the ALCP application, and your intent to involve residents, in the development and operation of the project.)

(2) (2 points) The extent to which you demonstrated that you have been actively involved (or if not currently active, the steps you will take to become actively involved) in your community's Consolidated Planning/AI processes to identify and address a need/problem that is related in whole or part, directly or indirectly to the proposed project;

(3) (2 points) The extent to which your assisted living facility will implement practical solutions that will result in assisting residents in achieving independent living and improved living environment.

(4) (2 points) The extent to which you demonstrate that the project will be viable absent HUD funds while relying more on state, local and private funds.

VI. Application Submission Requirements

(A) *Application—General.* Your application must include all of the information, materials, forms, and exhibits listed in Section VI(B). In cases where your (i) articles of incorporation and (ii) by-laws have NOT changed since the project was originally approved by HUD, self-certification to that effect—that the documents on file with HUD are current—is sufficient. Items in Section VI(B) for which self-certification of currency is possible are denoted by a "**".

In addition to the relief of paperwork burden in preparing applications, you will not have to submit certain new/recent information and exhibits you have previously prepared. See individual item descriptions, below to identify such items. An example of such an item may be the FY 2001 Annual Financial Statement.

(B) *General Application Requirements.*

(1) Application Summary for the Assisted Living Conversion Program and Evidence that you are a private non-profit organization or nonprofit consumer cooperative and have the legal ability to operate an ALF program, per the following:

(a) Articles of Incorporation, constitution, or other organizational documents, or self-certification of these documents, if there has been no change in the Articles since they were originally filed with HUD;** and

(b) By-laws, (for non-profits) or self-certification of by-laws, if there has been no change in the by-laws since they were originally filed with HUD.**

(2) A description of your community ties and established linkages:

(a) A description of your links to the community at large and to the minority and elderly communities in particular; and

(b) A description of your efforts to involve elderly persons, including minority elderly persons and persons with disabilities in:

(i) The development of the application;

(ii) The development of the ALF operating philosophy;

(iii) Review of the application prior to submission to HUD; and

(iv) Your intent to involve elderly persons in the operation of the project or not.

Also, demonstrate that you made the application available to the residents of the project (in their language(s)) AND requested and considered comments from them (in their language(s)). Applicants of converted commercial facilities should indicate that the application will be made available to the residents of the project in their language(s) and will request and consider comments from them in their language(s).

(c) A description of your involvement in your community's Consolidated Planning and Analysis of Impediments to Fair Housing (AI) processes including:

(i) An identification of the lead/facilitating agency(ies) that organizes/administers the processes;

(ii) A listing of the Consolidated Plan/AI issue areas in which you participate; and

(iii) The level of your participation in the processes, including active involvement with any neighborhood-based organizations, associations, or any committees that support programs and activities that enhance projects or the lives of residents of the projects, such as the one proposed in your application.

If you are not currently active, describe the specific steps you will take to become active in the Consolidated Planning and AI processes. (Consult the local HUD Office for the identification of the Consolidated Plan community process for the appropriate area.)

(d) A description of how the assisted living facility will implement practical solutions that will result in assisting residents in achieving independent living and improved living environment.

(3) Evidence of your project being in occupancy for at least five years as of the date of application to HUD. (Not applicable to commercial facilities.)

(4) A market analysis of the need for the proposed ALF units, including information from both the project and the housing market, containing:

(a) Evidence of need for the ALF by current project residents; (Not applicable to commercial facilities.)

(i) A description of the demographic characteristics of the elderly residents currently living in the project, including the current number of residents, distribution of residents by age and sex, an estimate of the number of residents with frailties/limitations in activities of daily living and an estimate of the number of residents in need of assisted living services. (Not applicable to commercial facilities.)

(ii) A description of the services which are currently available to the residents and/or provided on or off-site and what services are lacking; (Not applicable to commercial facilities.)

(b) Evidence of the need for ALF units by very low income elderly and disabled households in the market area; a description of the trend in elderly and disabled population and household change; data on the demographic characteristics of the very low income elderly in need of assisted living services (age, race, sex, household size and tenure) and extent of residents with frailty/limitations in existing federally-assisted housing for the elderly (HUD and Rural Housing Service); and an estimate of the very low income elderly and disabled in need of assisted living taking into consideration any available State or local data.

(c) A description of the extent, types and availability and cost of alternate care and services locally, such as: Home health care, adult day care, housekeeping services, meals programs, visiting nurses, on-call transportation services, health care and providers of supportive services who address the needs of the local low income population.

(d) A description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the ALF (covering items in Section VI(B)(4)(a) and (b) of this NOFA).

(5) A description of the physical ALF conversion, including the following:

(a) How you propose to carry out the physical conversion (including a timetable and relocation planning).

(b) A short narrative stating the number of units, special design features, community and office space/storage, dining and kitchen facility and staff space and the physical relationship to the rest of the project. Also, you must describe how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over at least the next 10 years.

(c) A copy of the original plans for all units and other areas of the development which will be included in the conversion. (If you are applying to convert an unused or underutilized commercial facility to assisted living, provide a copy of the original plans of the facility).

(d) A description of the conversion must clearly address the following accessibility issues: All door openings must have a minimum clear opening of 32 inches; and, all bathrooms and kitchens must be accessible to and functional for persons in wheelchairs, according to the "Uniform Federal Accessibility Standards."

(e) Architectural sketches of the conversion to a scale of ¼ inch to one foot that indicate the following:

(i) All doors being widened;

(ii) Typical kitchen and bathroom reconfiguration: Show all wheelchair clearances, wall reinforcing, grab bars

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and elevations of counters and work surfaces;

(iii) Bedroom/living/dining area modification, if needed;

(iv) Any reconfigured common space;

(v) Added/reconfigured office and storage space;

(vi) Monitoring stations, and

(vii) The kitchen and dining facility.

All architectural modifications must meet section 504 and ADA requirements as appropriate.

(f) A budget showing at least estimated costs for materials, supplies, fixtures and labor for each of the items listed in Section VI(B)(5)(e), items i through vii, above.

(g) Include firm commitment letters with specific dollar amounts from appropriate organization(s) for conversion needs (within the scope of the ALF conversion NOFA) which will be supported by non-HUD funding.

(h) A description of any relocation of current tenants including a statement that: (Not applicable to commercial property applicants.)

(i) Indicates the estimated cost of temporary relocation payments and other related services;

(ii) Identifies the staff organization that will carry out the relocation activities; and

(iii) Identifies all tenants that will have to be temporarily moved to another unit within the development OR from the development during the period that the physical conversion of the project is under way.

Note: If any of the relocation costs will be funded from sources other than the ALCP grant, you must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (i.e., cost of conversion, temporary relocation, service coordinator and other project costs).

(6) A description of any retrofit or renovation which will be done at the project (with third party funds) that is separate and distinct from the ALF conversion. With such description, attach firm commitment letters from third party organizations in specific dollar amounts which will cover the cost of any work outside the scope of this NOFA.

(7) Evidence of permissive zoning, showing that the modifications to include the ALF into the project as proposed are permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for your belief that the proposed action will be completed successfully within six months of the date of grant award by HUD (e.g., a summary of the results of any requests for rezoning and/or the procedures for obtaining special or conditional use permits on land in similar zoning classifications and the time required for such rezoning, or preliminary indications of acceptability from zoning bodies, etc.);

(8) A supportive services plan (SSP), a copy of which must be submitted to the appropriate state and/or local agency as instructed in Section IV(B) of this NOFA. For those applicants needing to contact state Medicaid offices, a list is provided on the Internet at "*www.hcfa.gov/medicaid/medicaid.htm.*" The SSP must include:

(a) A description of the supportive services needed for the frail elderly the ALF is expected to serve. This must include at least (i) meals and such other supportive services required locally or by the State, and (ii) such optional services or care to be offered on an "as needed" basis.

Examples of both mandatory and optional services (which will vary from state to state) are: Two meals and two snacks or three meals daily; 24-hour protective oversight; personal care; housekeeping services; personal counseling and transportation.

(b) A description of how you will provide the supportive services to those who are frail and have disabilities (i.e., on or off-site or combination of on or off-site), including an explanation of how the service coordination role will facilitate the adequate provision of such services to ALF residents, and how the services will meet the identified needs of the residents. Also indicate how you intend to fund the service coordinator role.

(c) A description of how the operation of your ALF will work. Address: (i) General operating procedures; (ii) ALF philosophy and how it will promote the autonomy and independence of the frail elderly and persons with disabilities; (iii) what will the service coordination function will do and the extent to which this function already exists, or will be augmented or new; (iv) ALF staff training plans; and (v) the degree to which and how the ALF will relate to the day-to-day operations of the rest of the project.

(d) The monthly individual rate for board and supportive services for the ALF listing the total fee and components of the total fee for the items required by state or local licensing AND list the appropriate rate for any optional services you plan to offer to the ALF residents. Provide an estimate of the total annual costs of the required board and supportive services you expect to provide and an estimate of the amount of optional services you expect to provide.

(e) List who will pay for the board and supportive services (e.g., $__ for meals by sponsor, $__ for housekeeping services by city government; $__ for personal care by State Department of Health; $__ for __ by state __ program; $__ in fees by tenants; and, $__ by __). The amounts and commitments from both tenants and/or providers must equal the estimated amounts necessary to cover the monthly rates for the number of people expected to be served. If you include tenant fees in the proposal, list and show any proposed scaling mechanism. All amounts committed/collected must equal the annualized cost of the monthly rates calculated by the expected percentage of units filled.

(f) A support/commitment letter from *EACH* listed proposed funding source per paragraph (e), above, for the planned meals and supportive services listed in the application. The letter must cover the total planned annual commitment (and multiyear amount total, if different), length of time for the commitment, and the amounts payable for each service covered by the provider/paying organization. There must be a letter from EACH participating organization listed in Section VI(B)(8)(e) of this NOFA, above.

(g) A support letter from *EACH* governmental agency which provides licensing for ALFs in that jurisdiction.

(h) A description of your relevant experience in arranging for and/or delivering supportive services to frail residents. (If you are applying to convert an unused or underutilized commercial facility to assisted living, provide information on your relevant experience in arranging for and/or delivering supportive services to frail elderly persons). The description should include any supportive services facilities owned/operated; your past or current involvement in any project-based programs that demonstrates your management capabilities. The description should include data on the facilities and specific meals and/or supportive services provided on a regular basis, the racial/ethnic composition of the populations served, if available, and information and testimonials from residents or community leaders on the quality of the services.

Note: If a funds request for service coordination for the ALF and/or the whole project is included as part of this application, the Form HUD–424M, indicating the dollars requested must be attached as Exhibit 10(c). Do NOT attach the whole service coordinator application.

(9) A description of your project's resources: (Items (9)(a)–(b) are not applicable to applicants of commercial property.)

(a) A copy of the most recent project Repair and Replacement (R4R) account statement, and an R4R analysis showing plans for its use over the next five years, and any approvals received from the HUD field office to date.

(b) A copy of the most recent Residual Receipts Account statement. Indicate any approvals for the use of such receipts from the field office for over $500/unit.

(c) Annual Financial Statement (AFS). If your FY 2002 AFS was due to REAC more than 120 days BEFORE the due date for this application, in the interest of reducing work burden, only include the date that it was sent to REAC. If the AFS was due to REAC 120 days or less from the due date of this application, you MUST include a paper copy. For commercial properties, the most recent financial statement or annual report.

(10) *Forms, Certifications and Resolutions.* The following exhibits, forms, certifications and assurances are required:

(a) *Standard Form 424, Application for Federal Assistance* and indication of whether you are delinquent on any federal debt and compliance with Executive Order 12372 (a certification that you have submitted a copy of your application, if required, to the State agency (Single Point of Contact) for State review in accordance with Executive Order 12372 (see the General Section of the SuperNOFA for instructions in submitting this form).

(b) *Standard Form 424D, Assurances, Construction Programs.*

(c) *Form HUD 424M, Federal Assistance Funding Matrix.*

(d) *Form HUD–50070, Drug-free Workplace.* Certification to provide a drug-free workplace.

(e) *Form HUD–50071, Payments to Influence Federal Transactions and Standard Form-LLL, Disclosure of Lobbying Activities.* Certification of whether any of the funds received will be used to influence any federal transactions and disclosure of these activities, if applicable.

(f) *Form-HUD 2880, Applicant/Recipient Disclosure/Update Report, including Social Security and Employment Identification numbers.* A disclosure of assistance from other government sources received in connection with the project.

(g) *Certification Regarding Debarment and Suspension (HUD–2992) (24 CFR 24.510).*

(h) *Form HUD–2991, Certification of Consistency with the Consolidated Plan (Plan),* for the jurisdiction in which the proposed ALF will be located. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise, the certification may be made by the State, or by the unit of general local government if the project will be located within the jurisdiction of the unit of general local government authorized to use an abbreviated strategy, and if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth herein. The Plan regulations are published in 24 CFR part 91.

(i) *A certified Board Resolution that no officer or director of the Owner has or will have any financial interest in any contract with the Owner* or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending dates of each person's term.

VII. Environmental Requirements

Your ALCP application is subject to the National Environmental Policy Act of 1969 and applicable related Federal environmental authorities. (See 24 CFR part 50, as applicable.) An environmental review will be completed by HUD before the award of any grant under this program. Pursuant to 24 CFR part 55, ALCP projects are critical actions for purposes of floodplain management review.

VIII. Authority

The Assisted Living Conversion Program is authorized by Section 202(b) of the Housing Act of 1959 (12 U.S.C. 1701q-2) and the Fiscal Year 2002 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act.

Appendix A.—HUD Field Office List for Mailing Assisted Living Conversion Program Applications

HUD—Boston Hub

Boston Office, Room 301, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234, TTY Number: (617) 565–5453.

HUD—New York Hub

New York Office, 26 Federal Plaza—32nd Floor, New York, NY 10278–0068, (212) 264–8000, TTY Number: (212) 264–0927

HUD—Buffalo Hub

Buffalo Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755, TTY Number: (716) 551–5787

HUD—Philadelphia Hub

Philadelphia Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0600, TTY Number: (215) 656–3452

HUD—Boltimore Hub

Baltimore Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, TTY Number: (410) 962–0106

HUD—Greensboro Hub

Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (336) 547–4000, TTY Number: (336) 547–4055

HUD—Atlanto Hub

Atlanta Office, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303-2806, (404) 331-5001, TTY Number: (404) 730–2654

HUD—Jacksonville Hub

Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626, TTY Number: (904) 232–2631

HUD—Chicogo Hub

Chicago Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–5944

HUD—Detroit Hub

Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue—17th Floor, Detroit, MI 48226–2592, (313) 226–7900, TTY Number: (313) 226–6899

HUD—Columbus Hub

Columbus Office, 200 North High Street, 7th Floor, Columbus, OH 43215–2499, (614) 469–5737, TTY Number: (614) 469–6694

HUD—Minneapolis Hub

Minneapolis Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000, TTY Number: (612) 370–3186

HUD—Ft. Worth Hub

Ft. Worth Office, 801 N. Cherry Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 978–9000, TTY Number: (817) 978–9273

HUD—Kansos City Hub

Kansas City Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462, TTY Number: (913) 551–6972

HUD—Denver Hub

Denver Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5440, TTY Number: (303) 672–5248

HUD—San Francisco Hub

San Francisco Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6550, TTY Number: (415) 436–6594

HUD—Los Angeles Hub

Los Angeles Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3106, (213) 894–8000, TTY Number: (213) 894–8133

HUD—Seattle Hub

Seattle Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5101, TTY Number: (206) 220–5185

Note: The first line of the mailing address for all offices is the U. S. Department of Housing and Urban Development. Telephone numbers listed are not toll free.

Appendix B

HUD—Boston Hub

Hartford Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, (860) 240–4800, TTY Number: (860) 240–4665

Boston Office, Room 375, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234, TTY Number: (617) 565–5453

Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681, TTY Number: (603) 666–7518

Providence Office, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5230, TTY Number: (401) 528–5403

HUD—New York Hub

New York Office, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–8000, TTY Number: (212) 264–0927

HUD—Buffalo Hub

Buffalo Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755, TTY Number: (716) 551–5787

HUD—Philadelphia Hub

Philadelphia Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0600, TTY Number: (215) 656–3452

Charleston Office, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000, TTY Number: (304) 347–5332

Newark Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (973) 622–7900, TTY Number: (973) 645–3298

Pittsburgh Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, (412) 644–6428, TTY Number: (412) 644–5747

HUD—Baltimore Hub

Baltimore Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, TTY Number: (410) 962–0106

Washington, DC Office, 820 First Street, NE, Suite 300, Washington, D.C. 20002–4205, (202) 275–9200, TTY Number: (202) 275–0772

Richmond Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, (804) 278–4500, TTY Number: (804) 278–4501

HUD—Greensboro Hub

Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (336) 547–4000, TTY Number: (336) 547–4055

Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592, TTY Number: (803) 253–3071

HUD—Atlanta Hub

Atlanta Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Suite 600, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303–3388 2806, (404) 331–5136 5001, TTY Number: (404) 730–2654

San Juan Office, Edificio Administracion de Terrenos, 171 Carlos Chardon Avenue, Suite 301, San Juan, PR 00918–0903, (787) 766–5400, TTY Number: (787) 776–5609

Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251, TTY Number: 1–800–648–6056

Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (423) 545–4384, TTY Number: (423) 545–4559

Nashville Office, Suite 200, 251 Cumberland Bend, Nashville, TN 37228–1803, (615) 736–5213, TTY Number: (615) 736–2886

HUD—Jacksonville Hub

Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626, TTY Number: (904) 232–2631

Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617, TTY Number: (205) 290–7624

Jackson Office, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1096, (601) 965–4700, TTY Number: (601) 965–4171

HUD—Chicago Hub

Chicago Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–5944

Indianapolis Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303, TTY Number: (317) 226–7081

HUD—Detroit Hub

Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900, TTY Number: (313) 226–6899

Grand Rapids Office, Trade Center Building, 50 Louis Street, NW, Third Floor, Grand Rapids, MI 49503–2648, (616) 456–2100, TTY Number: (616) 456–2159

HUD—Columbus Hub

Columbus Office, 200 North High Street, 7th Floor, Columbus, OH 43215–2499, (614) 469–5737, TTY Number: (614) 469–6694

Cleveland Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, (216) 522–4058, TTY Number: (216) 522–2261

HUD—Minneapolis Hub

Minneapolis Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000, TTY Number: (612) 370–3186

Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214, TTY Number: (414) 297–1423

HUD—Ft. Worth Hub

Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931, TTY Number: (501) 324–5931

New Orleans Office, Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200, TTY Number: (504) 589–7279

Ft. Worth Office, 801 N. Cherry Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 978–9000, TTY Number: (817) 978–9273

Houston Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 313–2274, TTY Number: (713) 834–3274

San Antonio Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 475–6800, TTY Number: (210) 475–6885

HUD—Great Plains

Des Moines Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512, TTY Number: (515) 284–4728

Kansas City Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462, TTY Number: (913) 551–6972

Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100, TTY Number: (402) 492–3183

Saint Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583, TTY Number: (314) 539–6331

Oklahoma City Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102–2233, (405) 553–7401, TTY Number: 1–800–877–8339

HUD—Denver Hub

Denver Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5440, TTY Number: (303) 672–5248

HUD—San Francisco Hub

Phoenix Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434, TTY Number: (602) 379–4464

San Francisco Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6550, TTY Number: (415) 436–6594

Honolulu Office, Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8185, TTY Number: (808) 522–8193

HUD—Los Angeles Hub

Los Angeles Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3106, (213) 894–8000, TTY Number: (213) 894–8133

HUD—Seattle Hub

Portland Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, (503) 326–2561, TTY Number: (503) 326–3656

Note: The first line of the mailing address for all offices is the U. S. Department of Housing and Urban Development. Telephone numbers listed are not toll free.

APPENDIX C

The non-standard forms required for the ALCP application.

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APPENDIX C

EXHIBIT I

Multifamily Housing
Assisted Living Conversion Program U.S. DEPARTMENT OF HOUSING
APPLICATION SUMMARY SHEET AND URBAN DEVELOPMENT

Owner (Funds Recipient) Name _____

Address _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Grant Contact Person (Name) _____

Phone (Include Area Code) _____

E-mail address _____

List the specific development(s) targeted for assistance under this grant. Use additional sheets as needed.

Development Name _____

Address _____

City _____ State _____ Zip _____

FHA/Project Number _____ Sec.8 Number _____

Project Type (e.g., 236) _____ No. of Units _____

Location (Urban, suburban, or rural) _____

Number of Residents _____ Estimated number of frail elderly _____

Estimated number of non-elderly people with disabilities _____

Estimated number of at-risk elderly _____

Are you applying for a Service Coordinator Grant? _____ Yes _____ No

Will this development share a service coordinator with other developments? _____ Yes _____ No
If yes, please give name and address of the development(s) if different.

_____

_____

_____

Senators 1. _____ 2. _____

Congressional Representative(s) Name(s) 1. _____ District(s) 1. _____
2. _____ 2. _____

EXHIBIT 10(i)

OWNER'S CONFLICT OF INTEREST RESOLUTION

TO: The Secretary of Housing and Urban Development

SUBJECT: Assisted Living Conversion Program (ALCP) for Eligible Multifamily Housing Projects - Application for Grant

Owner:
Project Location:

WHEREAS, Section 202b of the Housing Act of 1959, as amended, authorizes the making of grants to owners of eligible multifamily housing projects designated for the elderly for conversion (in whole or in part) into assisted living facilities for elderly persons.

WHEREAS, HUD has implemented this statutory requirement by promulgating a regulation providing that the owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. The regulation also prohibits any officer or director of the owner from having any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings or equipment, construction of the project, procurement of the site or any other matters whatsoever, except with respect to management or supportive services contracts entered into by the owner with its nonprofit affiliate.

WHEREAS, HUD has determined that assurance of compliance with this prohibition can best be obtained by requiring that all officers and directors of the owner corporation, if different, certify that they do not have and will not have during their term of office, any prohibited financial interest.

WHEREAS, because of the time constraints imposed under the application process and difficulties in meeting these deadlines caused by such factors as large boards and unavailability of officers and directors of the board, some owners have been unable or experienced hardship in obtaining all of the required certifications for submission with the applications for fund reservation.

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WHEREAS, HUD is willing to defer submission of the required owners Conflict of Interest and Disclosure Certifications until no later that 45 days after receipt by the owner of an approval letter for funding for a grant under the Assisted Living Conversion Program (ALCP) if such certifications are provided by all the owner's officers and directors listed below, who are duly qualified and sitting in these capacities from the date of submission of the owner's ALCP application.

[LIST THE NAME, TITLE, AND THE BEGINNING AND ENDING DATES OF THE TERM OF ALL OFFICERS AND DIRECTORS]

NOW, THEREFORE, in order to induce HUD to forego requiring submission of the Conflict of Interest and Disclosure Certifications until after ALCP conversion projects have been selected and funds granted, it is hereby resolved and agreed by the Boards of Directors of the owner:

1. That both entities will submit updated Incumbency Certificates, in a form prescribed by HUD, showing all changes in incumbency for submission with the Owner's Application for the ALCP grant.

2. That no officer or director of the owner has or will be permitted to have any prohibited interest which would prevent him or her from signing the required Conflict of Interest and Disclosure Certification.

3. That the grant will be subject to cancellation by HUD if the officers or directors of the owner fail to submit Conflict of Interest and Disclosure Certifications duly executed.

4. That no HUD ALCP grant will be expended on account of any contract or arrangement where a conflict of interest is determined to exist, and the owner shall be responsible for the payment of any and all obligations involving its officers and directors.

5. That should any contract or arrangement entered into by the Owner be determined by HUD to involve a conflict of interest, involving either the owner's officers or directors, the owner will exercise its best efforts to promptly cancel or terminate such contract or arrangement at HUD's request.

Adopted and approved by the Board of Trustees of the owner on the _____ date of _____, _____.

_____
Authorized Signature

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

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FUNDING AVAILABILITY FOR THE SECTION 811 PROGRAM OF SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES (SECTION 811 PROGRAM)

Program Overview

Purpose of the Program. This program provides funding for supportive housing for very low-income persons with disabilities who are at least 18 years old. Additionally, organizations receiving funds must assure that an array of community support services are identified and available. (Please note that funding for a related program, Mainstream Housing Opportunities for Persons with Disabilities, is found elsewhere in this SuperNOFA.)

Available Funds. Approximately $117.5 million.

Eligible Applicants. Nonprofit organizations that have a section 501(c)(3) tax exemption from the Internal Revenue Service (See Section III(B) of this NOFA). (See Section VIII of this NOFA for information regarding the formation of the Owner corporation.)

Eligible Activities. New construction, rehabilitation, or acquisition (with or without rehabilitation) of housing (see Section III(C) of this NOFA).

Application Deadline. June 5, 2002.

Match Requirements. No.

Additional Information

If you are interested in applying for funding under this program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Submit your completed application on or before 6:00 pm, local time, on June 5, 2002, at the address shown below.

See the General Section of this SuperNOFA for specific procedures governing the application submission requirements to HUD field offices. Only Section 811 applications mailed via the United States Postal Service will be accepted.

Address for Submitting Applications. Submit your completed application (an original and four copies are required) to the Director of the appropriate Multifamily Hub Office or Multifamily Program Center as listed in Appendix A to this program section of the SuperNOFA with the following exceptions:

1. Applications for projects proposed to be located within the jurisdiction of the Seattle, Washington and the Anchorage, Alaska Offices must be submitted to the Portland, Oregon Office.

2. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.

3. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.

4. Applications for projects proposed to be located within the jurisdiction of the Washington, DC Office must be submitted to the Baltimore, Maryland Office.

The application kit also includes a listing of the Multifamily Hubs and Program Centers, their addresses and telephone numbers, including TTY numbers. This information is also available from HUD's SuperNOFA Information Center at 1–800-HUD–8929 and from the Internet through the HUD web site at http://www.hud.gov/grants. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209.

For Application Kits. For an application kit and any supplemental information, please call HUD's SuperNOFA Information Center at 1–800-HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800-HUD–2209. When requesting an application kit, please refer to the Section 811 Program and provide your name, address (including zip code), and telephone number (including area code). The application kit also will be available on the Internet through the HUD Web site at *http://www.hud.gov/grants* and from the appropriate Multifamily Hub Office or Multifamily Program Center.

For Further Information and Technical Assistance. You may contact the appropriate Multifamily Hub Office or Multifamily Program Center, Gail Williamson at HUD Headquarters at (202) 708–2866, or access the Internet at *http://www.hud.gov/grants.* Persons with hearing and speech impairments may access the above number via TTY (text telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number).

HUD encourages minority organizations and grassroots organizations (e.g., civic organizations, congregations and faith-based and other community-based organizations) to participate in this program and strongly recommends prospective applicants attend the local HUD Office workshop. At the workshops, HUD will explain application procedures and requirements, as well as address concerns such as local market conditions, building codes and accessibility requirements, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs. If you are interested in attending the workshop, make sure that your name, address and telephone number are on the appropriate HUD Office's mailing list so that you will be informed of the date, time and place of the workshop. Persons with disabilities should call the appropriate HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop.

If you cannot attend the workshop, call the appropriate HUD Office if you have any questions regarding the submission of applications to that particular office and to request any materials distributed at the workshop.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD Web site at *http://www.hud.gov/grants.*

II. Amount Allocated

For FY 2002, $117,475,266 for capital advances is available for the Section 811 Program of Supportive Housing for Persons with Disabilities. The FY 2002 HUD Appropriations Act (Pub.L. 107–73, approved November 26, 2001) (HUD Appropriations Act) provides $240,865,000 for capital advances, including amendments to capital advance contracts; for supportive housing for persons with disabilities, as authorized by section 811 of the National Affordable Housing Act of 1990 (NAHA); and for project rental assistance for supportive housing for persons with disabilities under section 811 of the NAHA, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term and for tenant-based rental assistance contracts entered into pursuant to section 811 of the NAHA. Of this amount, $600,000 shall be transferred to the Working Capital Fund for the development and maintenance of information technology systems.

Twenty-five percent (25%) of $215,823,000 or $53.9 million (the amount remaining after the deductions for project rental assistance contract (PRAC) renewals, renewals of expiring contracts for tenant-based assistance and the amount to be transferred to the Working Capital Fund) is being set aside for tenant-based rental assistance for

persons with disabilities administered through public housing agencies (PHAs) and nonprofit organizations under the Mainstream Housing Opportunities for Persons with Disabilities Program which is found elsewhere in this SuperNOFA.

In accordance with the waiver authority provided in the HUD Appropriations Act, the Secretary is waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to 5 years. HUD anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, HUD will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent.

The allocation formula used for Section 811 reflects the "relevant characteristics of prospective program participants," as specified in 24 CFR 791.402(a). The FY 2002 formula consists of two data elements from the 1990 Decennial Census: (1) the number of non-institutionalized persons age 16 or older with a work disability and a mobility or self-care limitation and (2) the number of non-institutionalized persons age 16 or older having a mobility or self-care limitation but having no work disability.

A work disability is defined as a health condition that had lasted for 6 or more months which limited the kind (restricted the choice of jobs) or amount (not able to work full time) of work a person could do at a job or business. A mobility limitation is defined as a health condition that lasted for 6 or more months, making it difficult for the person to go outside the home alone. This includes outside activities, such as shopping or visiting a doctor's office. A self-care limitation is defined as a health care limitation that had lasted for 6 or more months which made it difficult for the person to take care of his/her own personal needs such as dressing, bathing, or getting around inside the home. Temporary (short term) problems such as broken bones that are expected to heal normally are not considered problems.

Under the Section 811 Program, each HUD Office jurisdiction receives sufficient capital advance funds for a minimum of 10 units. The total amount of capital advance funds to support this minimum set-aside is then subtracted from the total capital advance available. The remainder is fair shared to each HUD Office jurisdiction whose fair share would exceed the set-aside based on the allocation formula fair share factors described below.

The fair share factors were developed by taking the sum of the number of persons in each of the two elements for each state, or state portion, of each local HUD Office jurisdiction as a percent of the sum of the two data elements from the Decennial Census, described above, for the total United States. The resulting percentage for each local HUD Office is then adjusted to reflect the relative cost of providing housing among the local HUD Office jurisdictions. The adjusted needs percentage for each local HUD Office is then multiplied by the total amount of capital advance funds available nationwide.

The Section 811 capital advance funds have been allocated, based on the formula above, to 51 local HUD Offices as shown on the following chart:

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Fiscal Year 2002 Allocations for Supportive Housing for Persons with Disabilities

[Fiscal Year 2002 Section 811 Allocations]

Office	Capital Advance Authority	Units
Boston Hub:		
Boston	$2,976,663	33
Hartford	1,936,740	23
Manchester	1,271,053	19
Providence	879,638	10
Total	**7,064,094**	**85**
New York Hub:		
New York	7,648,935	68
Total	**7,648,935**	**68**
Buffalo Hub:		
Buffalo	2,299,638	29
Total	**2,299,638**	**29**
Philadelphia Hub:		
Newark	4,112,294	44
Pittsburgh	1,980,587	28
Philadelphia	3,953,620	48
Charleston	1,386,307	20
Total	**11,432,808**	**140**
Baltimore Hub:		
Baltimore	1,784,474	24
Richmond	1,720,331	28
D.C.	1,883,997	25
Total	**5,388,802**	**77**
Greensboro Hub:		
Columbia	1,880,200	28
Greensboro	3,294,280	41
Total	**5,174,480**	**69**

Atlanta Hub:		
Atlanta	2,466,215	40
San Juan	2,650,388	28
Louisville	1,901,310	29
Knoxville	1,243,966	21
Nashville	1,417,019	23
Total	**9,678,898**	**141**
Jacksonville Hub:		
Jacksonville	4,539,477	75
Birmingham	2,046,309	33
Jackson	1,545,040	26
Total	**8,130,826**	**134**
Chicago Hub:		
Chicago	5,019,623	58
Indianapolis	2,172,915	32
Total	**7,192,538**	**90**
Columbus Hub:		
Cincinnati	1,372,687	21
Cleveland	2,506,192	34
Columbus	1,359,500	21
Total	**5,238,379**	**76**
Detroit Hub:		
Detroit	3,023,387	40
Grand Rapids	1,215,602	19
Total	**4,238,989**	**59**
Minneapolis Hub:		
Milwaukee	1,975,162	25
Minneapolis	1,851,097	23
Total	**3,826,259**	**48**
Fort Worth Hub:		
Fort Worth	2,712,704	45
Houston	1,811,282	30
Little Rock	1,317,626	24
New Orleans	1,911,260	32
San Antonio	1,655,717	29
Total	**9,408,589**	**160**
Kansas City Hub:		
Des Moines	1,268,970	20
Kansas City	1,764,278	26
Omaha	679,936	10
Oklahoma City	1,410,061	25
St. Louis	1,808,839	24
Total	**6,932,084**	**105**

Denver Hub:		
Denver	2,063,368	31
Total	**2,063,368**	**31**
San Francisco Hub:		
Honolulu (Guam)	1,711,728	10
Phoenix	1,513,446	23
Sacramento	1,643,154	19
San Francisco	4,469,565	43
Total	**9,337,893**	**95**
Los Angeles Hub:		
Los Angeles	7,108,940	85
Total	**7,108,940**	**85**
Seattle Hub:		
Anchorage	1,711,728	10
Portland	1,654,235	23
Seattle	1,943,783	24
Total	**5,309,746**	**57**
National Total	**$117,475,266**	**1,549**

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III. Program Description: Eligible Applicants; Eligible Activities

(A) *Program Description.* HUD provides capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. Capital advances may be used to construct, rehabilitate, or acquire structures (including structures from the Federal Deposit Insurance Corporation (FDIC)), to be developed into a variety of housing options described in Section III(C) below. Capital advance funds may also be used in combination with other non-Section 811 funding sources to develop additional units for a mixed-finance or mixed-use project. (See Note below.) Capital advance funds bear no interest and are based on development cost limits published in this SuperNOFA. Repayment of the capital advance is not required as long as the housing remains available for at least 40 years for occupancy by very low-income persons with disabilities. PRAC funds are used to cover the difference between the tenants' contributions toward rent (30 percent of adjusted income) and the HUD-approved cost to operate the project.

Note: For purposes of approving Section 811 capital advances, HUD will consider proposals involving mixed-financing or a mixed-use purpose for additional units if the Sponsor has legal control of an approvable site and the additional units do not cause the project to exceed the project size limits if they will also house persons with disabilities. However, you must obtain funds to assist the additional units with other than PRAC funds. HUD will not provide PRAC funds for non-Section 811 units.

(B) *Eligible Applicants.* Nonprofit organizations with a section 501(c)(3) tax exemption from the Internal Revenue Service are the only eligible applicants for this program. A Sponsor or Co-sponsor may not apply for more than 70 units of housing or 4 projects (whichever is less) for persons with disabilities in a single Hub. In addition, a Sponsor or Co-sponsor may not apply for more units in a given HUD Office than allocated for the Section 811 program in that HUD Office, or for more than 10 percent of the total units allocated in all HUD offices. If the proposed project will be an independent living project, your application must request at least five units, not necessarily in one structure. If your proposed project will be a group home, your Sponsor must request at least two units per group home. If your proposed project will be a combination of an independent living project and a group home, your application must request at least the minimum number of units for each project type. Affiliated entities that submit separate applications are considered a single entity for the purpose of these limits.

(C) *Eligible Activities.* The types of housing that can be developed with Section 811 capital advance funds include independent living projects, dwelling units in multifamily housing developments, condominium and cooperative housing and small group homes.

(**Note:** You may propose to rehabilitate an existing currently-owned or leased structure that may or may not already serve persons with disabilities.)

(D) *Ineligible Activities.* Section 811 funds may not be used for any of the following:

(1) Nursing homes, infirmaries and medical facilities;

(2) Transitional housing facilities;

(3) Manufactured housing facilities;

(4) Intermediate care facilities;

(5) Community centers, with or without special components for use by persons with disabilities;

(6) Sheltered workshops and centers for persons with disabilities;

(7) Headquarters for organizations for persons with disabilities; and

(8) Refinancing of Sponsor-owned facilities without rehabilitation.

IV. Program Requirements

By signing Form HUD–92016, Application for a Section 811 Capital Advance, you are certifying that you will comply with the program requirements listed in the **General Section** of this SuperNOFA as well as the following requirements:

(A) *Statutory and Regulatory Requirements.* You must comply with all statutory and regulatory requirements listed in Sections III, IV and IX of this program section of the SuperNOFA.

(B) *HUD/RHS Agreement.* HUD and the Rural Housing Service (RHS) have an agreement to coordinate the administration of the agencies' respective rental assistance programs. As a result, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider RHS comments in its review and application selection process.

(C) *Development Cost Limits.* (1) The following development cost limits, adjusted by locality as described in Section IV(C)(2) below, must be used to determine the capital advance amount reserved for projects for persons with disabilities:

(a) *For independent living projects and dwelling units in multifamily housing developments, condominium and cooperative housing:* The total development cost of the project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features you will pay for) may not exceed:

Non-elevator structures:

$41,238 per family unit without a bedroom;

$47,548 per family unit with one bedroom;

$57,344 per family unit with two bedrooms;

$73,400 per family unit with three bedrooms;

$81,770 per family unit with four bedrooms.

For elevator structures:

$43,398 per family unit without a bedroom;

$49,748 per family unit with one bedroom;

$60,493 per family unit with two bedrooms;

$78,257 per family unit with three bedrooms;

$85,902 per family unit with four bedrooms.

(b) *For group homes only:*

TYPE OF DISABILITY

# Residents	Physical/ develop-mental	Chronic mental illness
2	$166,022	$160,262
3	178,533	172,340
4	191,045	183,069
5	203,556	193,798
6	216,054	204,527

(c) These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of 24 CFR 891.310(a) (if applicable); the accessibility requirements of 24 CFR 891.120(b) and 891.310(b); and the project design and cost standards of 24 CFR 891.120.

(2) *Increased development cost limits.*

(a) HUD may increase the development cost limits set forth in Section IV(C)(1) of this program section of the SuperNOFA by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis. This increase may include covering additional costs to make dwelling units accessible through rehabilitation.

(b) If HUD finds that high construction costs in Alaska, Guam, the Virgin Islands or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in Section IV(C)(1) of this program section of the SuperNOFA, the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(c) For group homes only, HUD Offices may approve increases in the development cost limits in Section IV(C)(1)(b), above, in areas where you can provide sufficient documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area where your project is to be built. The average cost of the documented sales must exceed ten percent of the development cost limit for your project in order for an increase to be considered.

(D) *Minimum Capital Investment.* Selected nonprofit organizations must provide a minimum capital investment of one-half of one percent of the HUD-approved capital advance amount not to exceed a maximum of $10,000 in accordance with 24 CFR 891.145.

(E) *Accessibility.* If you intend to construct, substantially rehabilitate, or acquire, with or without rehabilitation, structures to be used as housing for persons with disabilities, you should note 24 CFR 891.310, which requires that your project meet accessibility requirements. In addition, you should note that 24 CFR 8.4(b)(5) prohibits the selection of a site or location which has the purpose or effect of excluding persons with disabilities from the Federally assisted program or activity. Thus, if you choose an existing structure, make sure that it can be made accessible, in accordance with 24 CFR 891.120, 891.310 and section 504 of the Rehabilitation Act of 1973, without resulting in an infeasible project. HUD also encourages you to add accessible design features beyond those required under civil rights laws and regulations. See Section VI(C) of the **General Section** of this SuperNOFA, entitled "Encouraging Accessible Design Features."

(F) *Conducting Business in Accordance With Core Values and Ethical Standards.* Section 811 Sponsors are not subject to the requirements of 24 CFR parts 84 and 85 as outlined in the **General Section** of this SuperNOFA. However, Sponsors are still subject to the core values and ethical standards as they relate to the conflict of interest provisions in 24 CFR 891.130. To ensure compliance with the program's conflict of interest provisions, you are required to submit a signed Conflict of Interest Resolution and include it in your application. Further, if awarded a Section 811 fund reservation, the officers, directors, board members, trustees, stockholders and authorized agents of the Section 811 Sponsor and Owner entities will be required to submit to HUD individual certifications regarding compliance with HUD's conflict of interest requirements.

(G) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* Although the Section 811 program is not subject to the provisions of 24 CFR 85.36(e) as described in the corresponding paragraph in the **General Section** of the SuperNOFA, you are required to comply with Executive Order 12432—Minority Business Enterprise Development and Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise as they relate to the encouragement of HUD grantees to utilize minority business enterprises.

(H) *Fair Housing Requirements.* You must comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108, and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. You are required to affirmatively further fair housing in conducting your programs or activities in accord with Section II(D) of the **General Section** of the SuperNOFA entitled, "Affirmatively Furthering Fair Housing."

(I) *Economic Opportunities for Low and Very Low Income Persons.* You must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low Income Persons) and its implementing regulations at 24 CFR part 135. To comply, you must ensure that training, employment and other economic opportunities are directed, to the greatest extent feasible, toward low and very low income persons, particularly those who are recipients of government assistance for housing; and to business concerns which provide economic opportunities to low and very low income persons. To comply with section 3 requirements, you are required to strongly encourage the general contractor and subcontractors to participate in local apprenticeship programs or training programs registered with or certified by the Department of Labor's Office of Apprenticeship, Training, Employer and Labor Services or recognized State Apprenticeship Agency.

(J) *Design and Cost Standards.* You must comply with HUD's Section 811 project design and cost standards (24 CFR 891.120 and 891.310), the Uniform Federal Accessibility Standards (24 CFR 40.7), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and the Americans with Disabilities Act of 1990.

(K) *Acquisition and Relocation.* You must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR part 24 and 24 CFR part 891.155(e)) (URA), which covers the acquisition of sites, with or without existing structures. However, you are exempt from complying with the site acquisition requirements of the URA if you do not have the power of eminent domain and prior to entering into a contract of sale, option to purchase or any other method of obtaining site control, you inform the seller of the land: (1) That you do not have the power of eminent domain and, therefore, you will not acquire the property if negotiations fail to result in an amicable agreement, and (2) of the estimate of the fair market value of the property. An appraisal is not required to meet this requirement, however, your files must include an explanation, with reasonable evidence of the basis for the estimate.

(L) *Formation of Owner Corporation.* You must form an "Owner" in accordance with 24 CFR 891.305 after issuance of the capital advance; cause the Owner to file a request for determination of eligibility and a request for capital advance, and provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at firm commitment processing in an amount sufficient to meet its obligations in connection with the project.

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(M) *Supportive Services.* You are required to include a Supportive Services Plan and a certification from the appropriate State or local agency that the provision of services identified in your Supportive Services Plan is well designed to address the individual health, mental health and other needs of persons with disabilities who will live in your proposed project. Section VI(B)(4)(e) of this program section of the SuperNOFA, below, outlines the information that must be in the Supportive Services Plan. You must submit one copy of your Supportive Services Plan to the appropriate State or local agency well in advance of the application submission deadline date for the State or local agency to review your Supportive Services Plan and complete the Supportive Services Certification and return it to you so that you can include it in the application you submit to HUD.

(1) HUD will reject your application if the supportive services certification:

(i) Is not submitted with your application *and* is not submitted to HUD within the 14-day cure period; or

(ii) Indicates that the provision of supportive services is not well designed to address the individual health, mental health and other needs of persons with disabilities who will live in your project; or

(iii) Indicates that the provision of supportive services will not enhance independent living success or promote the dignity of the persons with disabilities who will live in your proposed project.

(2) In addition, if the agency completing the certification will be a major funding or referral source for your proposed project or be responsible for licensing the project, HUD will reject your application if either the agency's supportive services certification indicates—or, where the agency fails to complete item 3 or 4 of the certification, HUD determines that:

(i) You failed to demonstrate that supportive services will be available on a consistent long-term basis; and/or

(ii) The proposed housing is not consistent with State or local agency plans/policies addressing the housing needs of people with disabilities.

Any prospective resident of a Section 811 project who believes he/she needs supportive services must be given the choice to be responsible for acquiring his/her own services or to take part in your Supportive Services Plan which must be designed to meet the individual needs of each resident.

You must not require residents to accept any supportive services as a condition of occupancy or admission.

(N) *Davis-Bacon.* You must comply with the Davis-Bacon Requirements and the Contract Work Hours and Safety Standards Act.

(O) *Flood Disaster Protection Act of 1973.* You must comply with the requirements under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and the Coastal Barrier Resources Act (16 U.S.C. 3601).

(P) *National Environmental Policy Act.* You must comply with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321) and applicable related environmental authorities at 24 CFR Part 50.4 and HUD's implementing regulations at 24 CFR part 50 and 24 CFR 891.155(b).

(Q) *Sites.* (1) NAHA requires you to provide in your application either:

(a) Evidence of site control, or

(b) A reasonable assurance that you will have control of a site within six months of notification of fund reservation.

(2) Accordingly, if you have control of a site at the time you submit your application, you must include evidence of such as described in Section VI(B)(4)(d)(i) of this program section of the SuperNOFA relative to site control. If you do not have site control of one or more of your sites, you must provide the information required in Section VI(B)(4)(d)(ix) of this program section of the SuperNOFA under "site identified" for any site not under control as a reasonable assurance that site control will be obtained within six months of fund reservation notification.

(3) Under Criterion (a) of Rating Factor 3 in Section V(D), below, related to your proposed site, your application has the potential of earning 17 points. Criterion (a)(i) is related to site approvability and is worth a maximum of 7 points. Five points for Criterion (a)(ii) will be awarded if your project will represent an integrated housing model (e.g., condominium units scattered within one or more buildings or non-contiguous independent living units on scattered sites). Criterion (a)(iii) which is worth five points for site control will be awarded as outlined in Section IV(D)(5) below. Regardless of whether you submit evidence of site control or have identified a site without obtaining control of the site, the site will be evaluated based on its proximity or accessibility to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment and other necessary services to the intended tenants.

(4) To meet the "proximity" or "accessibility" test, you must demonstrate that community services and amenities described above are either near or accessible to the residents. Sites where the community services and amenities described above are either near or accessible to the residents other than solely by a project residence or private vehicle will be rated more favorably than sites where residents must depend upon the project residence or private vehicle to access such community services and amenities. Your application will also be evaluated to determine whether it complies with the site and neighborhood standards in 24 CFR 891.125.

(5) Criterion (a)(iii) relates to the existence of legally acceptable site control. If you:

(a) Submit evidence of site control for all proposed sites in your application,

(b) The evidence is determined to be legally acceptable for all of the sites, and

(c) All of the sites are approvable (i.e., receive a score of 1 or higher for Criterion (a)(i), your application will receive 5 points for Criterion (a)(iii).

(d) If any of your proposed sites are not permissively zoned, one (1) point will be deducted in Criterion 3(a)(iv).

(6) If your application contains evidence of site control where either the evidence or the site is not approvable, your application will *not* be rejected provided you indicate in your application that you are willing to seek an alternate site and provide an assurance that site control will be obtained within six months of fund reservation notification.

(R) *Project Size Limits.*

(1) *Independent living project*—The minimum number of units that can be applied for in one application is five; not necessarily in one structure. The maximum number of persons with disabilities that can be housed in an independent living project is 14 plus one additional one or two bedroom unit for a resident manager, if necessary.

(2) *Group home*—The minimum number of persons with disabilities that can reside in a group home is two, and the maximum number is six. An additional one or two bedroom unit can be provided for a resident manager. Only one person per bedroom is allowed, unless two residents choose to share one bedroom or a resident determines he/she needs another person to share his/her bedroom.

(S) *Lead-Based Paint.* You must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35.

(T) *Truth and Accuracy.* By signing your application, you are certifying that the information you are providing to HUD in your application under the Section 811 Program of Supportive Housing for Persons with Disabilities is true and accurate, to the best of your knowledge.

(U) *Expiration of Section 811 Funds.* The FY 2002 HUD Appropriations Act requires HUD to obligate all Section 811 funds appropriated for FY 2002 by September 30, 2004. Under 31 USC 1551, no funds can be disbursed from this account after September 30, 2009. Under Section 811, obligation of funds occurs for both capital advances and project rental assistance upon fund reservation and acceptance. If all funds are not disbursed by HUD and expended by the project owner by September 30, 2009, the funds, even though obligated, will expire and no further disbursements can be made from this account. In submitting an application, you need to carefully consider whether your proposed project can be completed through final capital advance closing no later than September 30, 2009. Furthermore, absent Congressional relief, all unexpended balances, including any remaining balance on PRAC contracts, will be cancelled as of October 1, 2009. Amounts needed to maintain PRAC payments for any remaining term on the affected contracts beyond that date will have to be funded from other current appropriations.

V. Application Selection Process

(A) *Review for Curable Deficiencies.* You should ensure that your application is complete before submitting it to the appropriate HUD office. HUD will screen all applications received by the deadline to determine if there are any curable deficiencies. A curable deficiency is a missing Exhibit or portion of an Exhibit that will not affect the rating of your application. The following is a list of the only deficiencies that will be considered curable in a Section 811 application:

Exhibits

(1) Form 92016–CA (Application Form)*
(2) (a) Articles of Incorporation*
(b) By-laws*
(c) IRS tax exemption ruling*
(4) (c)(ii) Energy efficiency
(d)(vii) Letter from the State Historic Preservation Officer (SHPO)
(d)(viii) Seek alternate site
(e) Supportive Services Plan
(6) Relocation
(7) (a) Standard Form 424, Application for Federal Assistance (and compliance with Executive Order 12372)*
(b) Form-HUD 50070, Certification of a Drug-Free Workplace
(c) Form-HUD 50071, Certification of Payments to Influence Federal Transactions and Standard Form-LLL, Disclosure of Lobbying Activities
(d) Form-HUD 2880, Applicant/Recipient Disclosure/Update Report
(e) Form-HUD 2992, Certification Regarding Debarment and Suspension
(f) Form-HUD 2991, Certification of Consistency with Consolidated Plan
(g) Conflict of Interest Resolution
(h) Resolution for Commitment to Project*
(j) Supportive Services Certification

The HUD Office will notify you in writing if your application is missing any of the above exhibits or portions of exhibits and will give you 14 days from the date of the notification to submit the information required to cure the noted deficiencies. The items identified by an asterisk (*) must be dated on or before the application deadline date.

(B) *Rating.* HUD will review and rate your application in accordance with the Application Selection Process in the **General Section** of this SuperNOFA with the following exception. HUD will not reject your application based on technical review without notifying you of the rejection with all the reasons for rejection and providing you an opportunity to appeal. You will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office.

The HUD Office will make a determination on an appeal before making its selection recommendations. Your application(s) will be either rated or technically rejected at the end of technical review. If your application meets all program eligibility requirements after completion of technical review, your application will be rated according to the Rating Factors in Section V(D) below.

If an Exhibit or portion of an Exhibit listed above as curable is not discovered as missing until technical processing, HUD will provide you with 14 calendar days in which to cure the deficiency.

(C) *Ranking and Selection Procedures.* Applications that have a total base score of 70 points or more (without the addition of EC/EZ bonus points) and meet all of the applicable threshold requirements of Section II(B) of the **General Section** of the SuperNOFA will be eligible for selection and will be placed in rank order. HUD will select applications, after adding any bonus points for EC/EZ, based on rank order, up to and including the last application that can be funded out of each HUD Office's allocation. HUD Offices must not skip over any applications in order to select one based on the funds remaining. After making the initial selections, however, HUD may use any residual funds to select the next rank-ordered application by reducing the number of units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of five units or less.

After this process is completed, residual funds from all HUD Offices within each Multifamily Hub will be combined. First, these funds will be used to restore units to projects reduced by HUD Offices based on the above instructions. Second, additional applications within each Multifamily Hub will be selected in rank order with only one application selected per HUD Office. More than one application may be selected per HUD Office if there are no approvable applications in other HUD Offices within the Multifamily Hub. This process will continue until there are no more approvable applications within the Multifamily Hub that can be selected with the remaining funds. Applications may not be skipped over to select one based on funds remaining. However, HUD may use any remaining residual funds, to select the next rank-ordered application by reducing the number of units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible or result in the project being less than 5 units.

Funds remaining after these processes are completed will be returned to Headquarters. HUD Headquarters will use these funds first to restore units to projects reduced by HUD Offices as a result of the instructions for using their residual funds. HUD Headquarters will then use these funds for selecting applications based on field offices' rankings, beginning with the highest rated application nationwide. Only one application will be selected per HUD Office from the national residual amount. If there are no approvable applications in other HUD Offices, the process will begin again with the selection of the next highest rated application nationwide. This process will continue until all approvable applications are selected using the available remaining funds.

(D) *Factors For Award Used To Evaluate and Rate Applications.* HUD will rate applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements in Section

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VI(B) below. The maximum number of points an application may receive under this program is 102. This includes two (2) EZ/EC bonus points, as described in the **General Section** of this SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (25 Points)

This factor addresses the extent to which you have the organizational resources to successfully implement the proposed activities in a timely manner. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(2), (B)(3)(a), (B)(3)(b), (B)(3)(e), and (B)(5) of Section VI of this program section of the SuperNOFA.

In rating this factor, HUD will consider the extent to which your application demonstrates your ability to develop and operate the proposed housing on a long-term basis, considering the following:

(a)(i) **(11 POINTS)** The scope, extent, and quality of your experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to your demonstrated development and management capacity as well as your financial management capability;

(a)(ii) **(1 POINT)** Your organization is a "grassroots" organization as defined in the **General Section** of this SuperNOFA.

(b) **(8 POINTS)** The scope, extent, and quality of your experience in providing housing or related services to minority persons or families as well as your ties to the community at large and to the minority and disability communities in particular. For purposes of this program section of the SuperNOFA, "minority" means the basic racial and ethnic categories for Federal statistics and administrative reporting, as defined in the Appendix section of the Office of Management and Budget's (OMB) **Federal Register** Notice entitled "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity" and dated October 30, 1997 (62 FR 58782–90). This notice contains the definitions of the various racial and ethnic data categories that were used in the 1990 Census. It can be found on the OMB Web site at: *www.whitehouse.gov/omb/fedreg/ombdir15.html*.

(c) **(5 POINTS)** You have experience in developing integrated housing (e.g., condominium units scattered within one or more buildings or non-contiguous independent living units on scattered sites).

(d) **(−2 POINTS)** A fund reservation you received under either the Section 811 program of Supportive Housing for Persons with Disabilities or the Section 202 program of Supportive Housing for the Elderly has been extended beyond 36 months (except if the delay was beyond your control). Examples of such delays include, but are not limited to, initial closing delays that are: (1) directly attributable to HUD, (2) directly attributable to third party opposition, including litigation, and (3) due to a disaster, as declared by the President of the United States.

(e) **(−1 POINT)** Amendment money was required as a result of the delay in (d) above (except if the delay was beyond your control).

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed activities to address a documented problem in the target area. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(4)(a) and (B)(4)(b) of Section VI of this program section of the SuperNOFA. In evaluating this factor, HUD will consider:

The extent of the need for the project in the area based on a determination by the HUD Office. In making this determination, HUD will consider your evidence of need in the area, as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing comparable subsidized housing for persons with disabilities and current occupancy in such housing, comparable subsidized housing for persons with disabilities under construction or for which fund reservations have been issued, and, in accordance with an agreement between HUD and RHS, comments from RHS on the demand for additional comparable subsidized housing and the possible harm to existing projects in the same housing market area. The Department also will review more favorably those applications which establish a connection between the proposed project and the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization. You must show how the proposed project will address an impediment to fair housing choice described in the AI or meet a need identified in the other type of planning document.

Rating Factor 3: Soundness of Approach (38 Points)

This factor addresses the quality and effectiveness of your proposal. There must be a clear relationship between the proposed activities, the community's needs and purposes of the program funding for your application to receive points for this factor. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(2)(d), (B)(4)(c), (B)(4)(d), and (B)(4)(e) of Section VI of this program section of the SuperNOFA. In evaluating this factor, HUD will consider the following:

(a)(i) **(7 POINTS)** Site approvability—The proximity or accessibility (other than by sole means of a project residence or private vehicle) of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended tenants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (based on site visit for site control projects only); and compliance with site and neighborhood standards in 24 CFR 891.125(a), (d), and (e);

(a)(ii) **(5 POINTS)** Integrated model—If your project will be an integrated model as described in Section IV(Q) above, your application will receive 5 points for this Criterion.

(a)(iii) **(5 POINTS)** Site control—If your application contains legally acceptable site control for all proposed sites and all of the proposed sites are approvable (i.e., receive a score of 1 or higher on Criterion (a)(i)), your application will receive 5 points for site control.

(a)(iv) **(−1 POINT)** One or more of your proposed sites is not permissively zoned for the intended use.

(b) **(8 points)** The suitability of the site from the standpoints of promoting a greater choice of housing opportunities for minorities and persons with disabilities and affirmatively furthering fair housing. In reviewing this criterion, HUD will assess whether the site meets the site and neighborhood standards at 24 CFR 891.125(b) and (c) by examining relevant data in your application or in the HUD Office. If appropriate, HUD may visit the site.

(i) The site will be deemed acceptable if it increases housing choice and opportunity by:

—Expanding housing opportunities in non-minority neighborhoods if located in such a neighborhood. ("Nonminority area" is defined as one in which the minority population is lower than 10 percent.); or

—Contributing to the revitalization of and reinvestment in minority neighborhoods, including improvement of the level, quality and affordability of services furnished to minority persons with disabilities. You should refer to the Site and Neighborhood Standards provisions of the regulations governing the Section 811 Supportive Housing Program (24 CFR 891.125(b) and (c)) when considering sites for your projects.

(ii) For the purpose of this competition, the term "minority neighborhood (area of minority concentration)" is defined as one where any one of the following statistical conditions exists:

—The percentage of persons of a particular racial or ethnic minority is at least 20 points higher than the minority's or combination of minorities' percentage in the housing market as a whole; or,

—The neighborhood's total percentage of minority persons is at least 20 points higher than the total percentage of minorities for the housing market area as a whole; or

—In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(c) **(4 points)** The extent to which the proposed design of the project, including both the exterior and interior design, will meet the individual needs of persons with disabilities the housing is expected to serve;

(d) **(4 points)** The extent to which the proposed design of the project and its placement in the neighborhood will facilitate the integration of the residents into the surrounding community and promote the ability of the residents to live as independently as possible; and

(e) **(5 points)** At least 51% of your board members are persons with disabilities.

(f) **(−1 point)** Your application did not include a plan for completing your project within the initial fund reservation period of 18 months.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other community resources which can be combined with HUD's program resources to achieve program purposes. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(3)(c) and (B)(3)(d) of Section VI of this program section of the SuperNOFA.

(a) **(5 points)** The extent of local government support (including financial assistance, donation of land, provision of services, etc.) for the project; and

(b) **(5 points)** The extent of your activities in the community, including previous experience in serving the area where the project is to be located, developing integrated housing models and your demonstrated ability to enlist volunteers and raise local funds.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (12 Points)

This factor addresses the extent to which you coordinated your activities with other known organizations that will not be directly involved in the proposed project, participate or promote participation in the community's planning process (*e.g.*, the Consolidated Planning process including the Analysis of Impediments to Fair Housing Choice), and are working towards addressing a need in a holistic and comprehensive manner to ensure that the project will not operate in isolation. This factor also addresses the extent to which your project will implement practical solutions that will result in assisting residents in achieving independent living, economic empowerment, educational opportunities, and improved living environments. Finally, this factor addresses the extent to which the long-term viability of your project will be sustained for the duration of the 40-year capital advance period. Submit information responding to this factor in accordance with Application Submission Requirements in paragraphs (B)(3)(f), (B)(3)(g), (B)(3)(h), (B)(3)(i) and (B)(3)(j) of Section VI of this program section of the SuperNOFA.

(a) **(3 points)** You involved persons with disabilities (including minority persons with disabilities) in the development of the application, and will involve persons with disabilities (including minority persons with disabilities) in the development and operation of the project;

(b) **(2 points)** The extent to which you coordinated your application with other organizations (including local independent living centers; a list of such can be obtained from the local HUD Office) that will not be directly participating in your project, but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner;

(c) **(2 points)** The extent to which you demonstrated that you have been actively involved, or if not currently active, the steps you will take to become actively involved in the community's planning process (*e.g.*, the Consolidated Planning process including the Analysis of Impediments to Fair Housing Choice) to identify and address a need/problem that is related in whole or part, directly or indirectly to the proposed project;

(d) **(2 points)** The extent to which your project will implement practical solutions that will result in assisting residents in achieving independent living, economic empowerment, educational opportunities, and improved living environments; and

(e) **(2 points)** The extent to which you demonstrated that your project will remain viable as housing with the availability of supportive services for very low income persons with disabilities for the 40-year capital advance period.

(f) **(1 point)** Your project will provide activities that will improve computer access, literacy and employment opportunities (*e.g.*, programs that can teach residents how to use computers to achieve educational goals and economic self-sufficiency through job training and placement).

Bonus Points

(2 bonus points) Location of proposed site in an EZ/EC area, as described in the **General Section** of this SuperNOFA. Submit the information responding to the bonus points in accordance with the Application Submission Requirements in paragraph (B)(7)(i) of Section VI of this program section of the SuperNOFA.

(E) *Applicant Debriefing.* In accordance with the **General Section** of this SuperNOFA, you may request a debriefing on your application. The request must be made in writing to the Director of Multifamily Housing in the HUD Field Office to which you sent your application no sooner than 30 days after the awards for assistance are announced in the **Federal Register**. Materials provided to you during your debriefing will be the score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

VI. Application Submission Requirements

(A) *Application.* Your application must include all of the information, materials, forms, and exhibits listed in Section VI(B) of this program section of the SuperNOFA (unless you were selected for a Section 811 fund reservation within the last three funding cycles). If you qualify for this exception, you are not required to submit the information described in Section VI(B)(2)(a), (b), and (c), below, of this

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program section of the SuperNOFA (Exhibits 2.a., b., and c. of the application kit), which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of these documents since your previous HUD approval, you must submit the updated information in your application. The HUD Office will verify your indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office based on information submitted in Section VI(B)(2) below.

In addition to this relief of paperwork burden in preparing applications, you are able to use information and exhibits previously prepared for prior applications under Section 811, Section 202, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs, your experience in the provision of housing and services, supportive services plans, community ties, and experience serving minorities.

(B) **General Application Requirements.** Your application must contain the items listed in this Section VI(B). These items include the standard forms, certifications, and assurances listed in the **General Section** of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms can be found in Appendix B to the **General Section** of the SuperNOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives), referred to as the "non-standard forms" can be found as Appendix B to this program section of the SuperNOFA. The items are as follows:

Note: You may apply for a scattered site project in one application.

(1) Form HUD–92016–CA, Application for Section 811 Supportive Housing Capital Advance.

(2) Evidence of your and each Co-Sponsor's legal status as a nonprofit organization, including the following:

(2)(a) Articles of Incorporation, constitution, or other organizational documents;

(2)(b) By-laws;

(2)(c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by you and all Co-Sponsors, including churches).

Note: If you received a Section 811 Fund Reservation within the last three funding cycles, you are not required to submit the documents described in paragraph (2)(a), (2)(b), and (2)(c), above. Instead, you must submit the project number of the latest application selected and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(2)(d) The number of people on your board and the number of those people who have disabilities.

(3) A description of your purpose, community ties, and experience, including the following:

(3)(a) A description of your purpose, current activities and how long you have been in existence;

(3)(b) A description of your ties to the community in which your project will be located and to the minority and disability communities in particular, including a description of the specific geographic area(s) in which you have served;

(3)(c) A description of local government support for the project (including financial assistance, donation of land, provision of services, etc.);

(3)(d) Letters of support for your organization and for the proposed project from organizations familiar with the housing and supportive services needs of the persons with disabilities that you expect to serve in the proposed project (*e.g.*, the local center for independent living, the Statewide Independent Living Council);

(3)(e) A description of your housing and/or supportive services experience. The description should include any rental housing projects (including integrated housing developments) and/or supportive services facilities that you have sponsored, owned, and/or operated; your past or current involvement in any programs other than housing that demonstrates your management capabilities (including financial management) and experience, and your experience in serving persons with disabilities and minorities; and the reasons for receiving any increases in fund reservations for developing and/or operating any previously funded Section 811 or Section 202 projects. The description should include data on the facilities and services provided, the racial/ethnic composition of the populations served, if available, and information and testimonials from residents or community leaders on the quality of the activities. Examples of activities that could be described include housing counseling, nutrition and food services, special housing referral, screening and information projects.

(3)(f) A description of your efforts to involve persons with disabilities (including minority persons with disabilities) in the development of your application and in the development and operation of the project.

(3)(g) A description of the steps you took to coordinate your application with other organizations (*e.g.*, the local center for independent living), that will not be directly involved in your project but with which you share common goals and objectives, to complement and/or support your proposed project so that the project will provide a comprehensive and holistic solution to the needs of persons with disabilities. Also describe the steps you will take, if funded, to share information on solutions and outcomes relative to the development of your proposed project.

(3)(h) A description of your involvement in the community's planning process (*e.g.*, the Consolidated Planning process including the Analysis of Impediments to Fair Housing Choice), including:

(3)(h)(i) An identification of the lead/facilitating agency that organizes/administers the process;

(3)(h)(ii) An identification of the areas of the community's planning process in which you participate;

(3)(h)(iii) Your level of participation in the process, including active involvement with any neighborhood-based organizations, associations or any committees that support programs and activities that enhance projects, or the lives of residents of projects, such as the one proposed in your application.

If you are not currently active, describe the specific steps you will take to become active in the community's planning process. (Consult the local HUD Office for the identification of the Consolidated Plan community process for the appropriate area if that is the process you wish to become involved in.)

(3)(i) A description of the practical solutions you will implement which will enable the residents of your project to achieve independent living and economic empowerment. In addition, describe the educational opportunities you will provide for the residents and how you will provide them. This description should include the activities you will undertake that will improve computer access, literacy and employment opportunities (*e.g.*, provide programs that can teach residents how to use computers to become educated as well as achieve economic self-sufficiency through job training and placement). And, finally, describe how your proposed project will be an improved living environment for the residents when compared to their previous place of residence.

(3)(j) Describe how you will ensure that your proposed project will remain viable as housing with the availability of supportive services for very low income persons with disabilities for the 40-year capital advance period. This description should address the measures you would take should any of the following occur: (1) funding for any of the needed supportive services becomes depleted or, (2) if, for any state funded services for your project, the state changes its policy regarding the provision of supportive services to projects such as the one you propose, or (3) if the need for housing for the population you will be serving wanes over time, causing vacancies in your project.

(4) Project information including the following:

(4)(a) Evidence of need for supportive housing. Such evidence would include a description of the proposed population and evidence demonstrating sustained effective demand for supportive housing for the proposed population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing comparable subsidized housing for persons with disabilities, State or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the use of such services as evidenced by data from local social service agencies. Also, a description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the project.

(4)(b) A description of how the proposed project will benefit the target population and the community in which it will be located;

(4)(c) A description of the project, including the following:

(4)(c)(i) A narrative description of the building(s) including the number and type of structure(s), number of units with bedroom distribution if independent living units (including dwelling units in multifamily housing developments, condominiums and cooperatives), number of bedrooms if group home, number of residents with disabilities, and any resident manager per structure; an identification of all community spaces, amenities, or features planned for the housing and a description of how the spaces, amenities, or features will be used, and the extent to which they are necessary to accommodate the needs of the proposed residents. If these community spaces, amenities, or features would not comply with the project design and cost standards of § 891.120 and the special project standards of § 891.310, you must demonstrate your ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features; and a description of how the design of the proposed project will promote the integration of the residents into the surrounding community and create opportunities for independent living; and

(4)(c)(ii) A description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(4)(c)(iii) If applicable, a description of any plans and the actions you have taken to create a mixed-finance/mixed-use project by developing additional units (*i.e.*, in addition to the Section 811 units) with the use of Section 811 capital advance funds in combination with other funding sources. See Section III.A. for further information regarding the additional units. Specify the number of Section 811 units and the number of additional units from non-Section 811 funding sources. Provide copies of any letters you have sent seeking outside funding for the non-Section 811 units and any responses thereto. You must also demonstrate your ability to proceed with the development of a Section 811 project that will not involve mixed-financing or a mixed-use purpose, as proposed in your application, in the event you are later unable to obtain the necessary outside funding, or HUD disapproves your proposal for mixed-financing or mixed-use.

Note: Approval of the Section 811 capital advance will not necessarily be approval of the mixed-finance/mixed-use proposal. If approved for a reservation of capital advance funds, you will be required to submit, after reservation of capital advance funds, a detailed proposal outlining how you will fund both development and operation of the additional units in accordance with HUD instructions that will be issued later. Based on the strength of your organization and HUD's prior experience with your projects, as well as your outline of your intentions, at the time of making the fund reservation, HUD will determine whether you will be permitted to submit a mixed-finance/mixed-use proposal at a later time. Only those Sponsors that indicate in their application for a fund reservation an intention to propose additional units will be eligible to submit, at a later time, a mixed-finance/mixed-use proposal for additional units. (A mixed-finance/mixed-use project, as used here, does not include the development of Section 811 units using secondary/supplemental financing or the development of a mixed-use project in which the Section 811 units are mortgaged separately from the other uses of the structure).

(4)(c)(iv) Describe your plan for completing the proposed project within the initial 18-month term of the fund reservation (optional).

(4)(d) Evidence of control of an approvable site, or identification of a site for which you provide a reasonable assurance that you will obtain control within 6 months from the date of fund reservation (if you are approved for funding).

Site control—If you are submitting an application with site control, you must submit the following:

(4)(d)(i) Acceptable evidence that you have site control, which is limited to any one of the following:

(*A*) Deed or long-term leasehold which evidences that you have title to or a leasehold interest in the site. If a leasehold, the term of the lease must be at least 75 years;

(*B*) Contract of sale for the site which is free of any limitations affecting ability to deliver ownership to you after you receive and accept a notice of Section 811 capital advance. The only condition for closing on the sale can be your receipt and acceptance of the capital advance. The contract of sale cannot require closing on a date earlier than the Section 811 closing.

(*C*) Option to purchase or for a long-term leasehold which must remain in effect for six months from the date on which the applications are due and must state a firm price binding on the seller. The only condition on which the option may be terminated is if you are not awarded a fund reservation. The option must be renewable at the end of the six month option period.

(*D*) Where the proposed site is subject to a mortgage under a HUD program (e.g., an earlier Section 811 or an FHA-insured mortgage), you must submit evidence that consent to release of the site from the mortgage has been obtained or has been requested from HUD and from the mortgagee, if other than HUD.

(*E*) For sites to be acquired from a public body, evidence is needed that the public body possesses clear title to the site and has entered into a legally binding agreement to lease or convey the site to you after you receive and accept a notice of Section 811 capital advance. If HUD determines that time constraints of the funding round will not permit you to obtain all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, you may include in your application a letter from the mayor or director of the appropriate local agency indicating that conveyance or leasing of

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the site is acceptable without imposition of additional covenants or restrictions, and only contingent on the necessary approval action. Such a letter commitment will be considered sufficient evidence of site control.

Note: For this funding cycle, New York City-owned sites that are designated as community gardens and are involved in litigation will not meet site control requirements due to litigation involving those sites.

(4)(d)(ii) Whether you have title to the site, a contract of sale, an option to purchase or are acquiring a site from a public body, you must provide evidence (a title policy or other acceptable evidence) that the site is free of any limitations, restrictions, or reverters which could adversely affect the use of the site for the proposed project for the 40-year capital advance period under HUD's regulations and requirements (e.g., reversion to seller if title is transferred). If the title evidence contains restrictions or covenants, copies of the restrictions or covenants must be submitted with the application. If the site is subject to any such limitations, restrictions, or reverters, the site will be rejected. Purchase money mortgages that will be satisfied from capital advance funds are not considered to be limitations or restrictions that would adversely affect the use of the site. If the contract of sale or option agreement contains provisions that allow a Sponsor not to purchase the property for reasons such as environmental problems, failure of the site to pass inspection, or the appraisal is less than the purchase price, then such provisions are not objectionable and a Sponsor is allowed to terminate the contract of sale or the option agreement.

Note: A proposed project site may not be acquired or optioned from a General Contractor (or its affiliate) that will construct the Section 811 project or from any other development team member.

(4)(d)(iii) Evidence that your project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make your proposed project permissible. You must provide the basis for your belief that the proposed action will be completed successfully before the submission of the firm commitment application (*e.g.*, a summary of the results of any requests for rezoning and/or the procedures for obtaining special or conditional use permits on land in similar zoning classifications and the time required for such rezoning, or preliminary indications of acceptability from zoning bodies, *etc.*).

Note: You should be aware that under certain circumstances the Fair Housing Act requires localities to make reasonable accommodations to their zoning ordinances or regulations to offer persons with disabilities an opportunity to live in an area of their choice. If you are relying upon a theory of reasonable accommodation to satisfy the zoning requirement, then you must clearly articulate the basis for your reasonable accommodation theory.

(4)(d)(iv) A narrative topographical and demographic description of the suitability of the site and area as well as a description of the area surrounding the site, the characteristics of the neighborhood, how the site will promote greater housing opportunities for minorities and persons with disabilities thereby affirmatively furthering fair housing.

Note: You can best demonstrate your commitment to affirmatively furthering fair housing by describing how your proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the applicable jurisdiction's Analysis of Impediments to Fair Housing Choice (AI), which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. The applicable Consolidated Plan and AI may be the Community's, the County's, or the State's, to which input should have been provided by local community organizations, agencies in the community, and residents of the community. Alternatively, a document that addresses fair housing issues and remedies to barriers to fair housing in the community that was previously prepared by a local planning board, or similar organization, may be used. Applicable impediments could include a lack of units that are accessible to persons with disabilities, a lack of transportation services or other assistance that would serve persons with disabilities, or the need for improved housing quality and services for all persons with disabilities.

(4)(d)(v) A map showing the location of the site, the racial composition of the neighborhood, and any areas of racial concentration. For this competition, you should use the racial and ethnic data categories stated in the Appendix section of the October 30, 1997, Office of Management and Budget **Federal Register** Notice (62 FR 58782–90) (a copy may also be obtained at *http://www.whitehouse.gov/omb/fedreg/ombdir15.html*), and data from the 1990 Census of Population, when determining the racial and ethnic composition of the neighborhood surrounding the proposed site. Data from the 1990 Census of Population may also be found at *www.factfinder.census.gov/servlet/BasicFactsServlet*.

(4)(d)(vi) A Phase I Environmental Site Assessment (ESA), in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended, in order for the application to be considered as an application with site control. The Phase I ESA must be completed and submitted with the application. In order for the Phase I ESA to be acceptable, it must have been completed or updated no earlier than six months prior to the application deadline date. The Phase I study is not a curable deficiency for the Section 811 Program. Therefore, it is important that you start the Phase I ESA process as soon after publication of this SuperNOFA as possible.

If the Phase I ESA indicates the possible presence of contamination and/or hazards, you must decide whether to continue with this site or choose another site. Should you choose another site, the same Phase I ESA process identified above must be followed for the new site.

Note: You are not limited to acquiring properties from the FDIC. However, if the property is to be acquired from the FDIC, include a copy of the FDIC prepared Transaction Screen Checklist or Phase I ESA, and applicable documentation, per the FDIC Environmental Guidelines.

If you choose to continue with the original site on which the Phase I ESA indicated contamination or hazards, you must undertake a detailed Phase II ESA by an appropriate professional. If the Phase II ESA reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for your application to be considered as an application with site control you must submit this information to the local HUD Office on or before July 5, 2002.

Note: This could be an expensive undertaking. You must pay for the cost of any clean-up and/or remediation.

(4)(d)(vii) A letter from the State Historic Preservation Officer (SHPO) indicating whether the proposed site(s) has any historical significance. If you cannot obtain a letter from the SHPO due to the SHPO not responding to your request or the SHPO responding that it cannot or will not comply with the requirement, you must submit the following:

(*A*) A letter indicating that you attempted to get the required letter from the SHPO but that the SHPO either had not responded to your request or would not honor or recognize your request;

(*B*) A copy of your letter to the SHPO requesting the required letter; and

(*C*) A copy of the SHPO's response, if available.

(4)(d)(viii) A statement that you are willing to seek a different site if the preferred site is unapprovable and that site control will be obtained within six months of notification of fund reservation.

Site identified—If you have identified a site, but do not have it under control, you must submit the following information:

(4)(d)(ix) A description of the location of the site, including its street address, its unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, and how the site will promote greater housing opportunities for minorities and persons with disabilities thereby affirmatively furthering fair housing. You can best demonstrate your commitment to affirmatively furthering fair housing by describing how your proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the community's AI or any other planning document that addresses fair housing issues. Examples of the applicable impediments include the need for improved housing quality and services for minority persons with disabilities and the need for quality services for persons with disabilities within the type and quality of similar services and housing in minority areas;

(4)(d)(x) A description of the activities undertaken to identify the site, as well as what actions must be taken to obtain control of the site, if approved for funding;

(4)(xi) An indication as to whether the site is properly zoned. If it is not, an indication of the actions necessary for proper zoning and whether these can be accomplished within six months of fund reservation award, if approved for funding;

(4)(d)(xii) A status of the sale of the site; and

(4)(d)(xiii) An indication as to whether the site would involve relocation.

Note: If an application is submitted without evidence of site control and does not provide a specific street address for the identified site(s) (e.g, only an indication that the project will be developed in a particular part of town but a site(s) has not been chosen) the application will be rejected.

(4)(e) A supportive services plan (a copy of which must be sent to the appropriate State or local agency as instructed in Section IV(M) of this program section of the SuperNOFA) that includes:

(4)(e)(i) A detailed description of whether the housing is expected to serve persons with physical disabilities, developmental disabilities, chronic mental illness or any combination of the three. Include how and from whom/where persons will be referred to and accepted for occupancy in the project.

(4)(e)(ii) Information concerning limitation of occupancy, if applicable. You may, with the approval of the Secretary, limit occupancy within housing developed under this program section of the SuperNOFA to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, the Owner must permit occupancy by any qualified person with a disability who could benefit from the housing and/or services provided, regardless of the person's disability. If you are requesting approval to limit occupancy in your proposed project(s), you must submit the following:

(*A*) A description of the population of persons with disabilities to which occupancy will be limited;

(*B*) An explanation of why it is necessary to limit occupancy of the proposed project(s) to the population described in (4)(e)(ii) above. This should include but is not limited to:

—An explanation of how limiting occupancy to a subcategory of persons with disabilities promotes the goals of the Section 811 Program; and,

—An explanation of why the housing and/or service needs of this population cannot be met in a more integrated setting

(*C*) A description of your experience in providing housing and/or supportive services to the proposed occupants; and

(*D*) A description of how you will ensure that the occupants of the proposed project(s) will be integrated into the neighborhood and surrounding community.

(4)(e)(iii) A detailed description of the supportive service needs of the persons with disabilities that the housing is expected to serve.

(4)(e)(iv) A list of community service providers, including those that are consumer-controlled, and letters of intent to provide services to residents of the proposed project(s) from as many potential service providers as possible. You must make this list available to any residents who wish to be responsible for acquiring their own supportive services. However, a provider may not require residents to accept any particular service.

(4)(e)(v) The evidence of each service provider's capability and experience in providing such supportive services (applicable even if you will be the service provider);

(4)(e)(vi) Identification of the extent of State and/or local agency involvement in the project (*i.e.*, funding for the provision of supportive services, referral of residents, or licensing the project). If there will be any State or local agency involvement, a description of the State or local agency's philosophy/policy concerning housing for the population to be served and a demonstration that your application is consistent with State or local plans and policies governing the development and operation of housing for the same disabled population;

(4)(e)(vii) If you will be making any supportive services available to the residents or will be coordinating the availability of any supportive services, a letter providing:

(*A*) A description of the supportive services that you will make available to the residents or, if you will be coordinating the availability of any supportive services, a description of the supportive service(s) and how the coordination will be implemented;

(*B*) An assurance that any supportive services that you will make available to the residents will be based on their individual needs; and

(*C*) A commitment to make the supportive services available or coordinate their availability for the life of the project.

(4)(e)(viii) A description of how the residents will be afforded opportunities for employment.

(4)(e)(ix) An indication as to whether the project will include a unit for a resident manager; and

(4)(e)(x) A statement that you will not condition occupancy on the resident's acceptance of any supportive services.

(5) A list of the applications, if any, that you have submitted or are planning to submit to any other HUD Office in response to this announcement of Section 811 Program funding availability or the announcement of funding availability for the Section 202 Program of Supportive Housing for the Elderly, published elsewhere in this SuperNOFA. Indicate, by HUD Office, the number of units requested and the proposed location by city and State for each application. Include a list of all FY 2001 and prior year projects to which you are a party. Identify each by project number and HUD Office and include the following information: (a) whether the project has initially closed and, if so, when, (b) if the project was older than 36 months when it initially closed or is older than 36 months now and has not initially closed, provide the reasons for the delay in closing; (c) whether

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amendment money was or will be needed for any project in (b) above; and (d) those projects which have not been finally closed.

(6) A statement that:

(6)(a) Identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group and status as owners or tenants occupying the property on the date of submission of the application for a capital advance;

(6)(b) Indicates the estimated cost of relocation payments and other services;

(6)(c) Identifies the staff organization that will carry out the relocation activities; and

(6)(d) Identifies all persons who have moved from the site within the last 12 months. (This requirement applies to applications with site control only. Sponsors of applications with identified sites that are selected will be required to submit this information at a later date once they have obtained site control.)

Note: If any of the relocation costs will be funded from sources other than the Section 811 capital advance, you must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of site acquisition, relocation, construction and other project costs).

(7) *Certifications and Resolutions.* In addition to the certifications and assurances listed in the **General Section** of this SuperNOFA with the exception of SF–424A, SF–424B, SF–424C, SF–424D, HUD 424M and the OMB Circulars which are not required, you are required to submit signed copies of the following:

(7)(a) *Standard Form 424.* Application for Federal Assistance and indication of whether you are delinquent on any Federal debt, and compliance with Executive Order 12372 (a certification that you have submitted a copy of your application, if required, to the state agency (Single Point of Contact) for state review in accordance with Executive Order 12372). (See instructions for submitting this form in the Consolidated Application Submissions section of the **General Section** of the SuperNOFA.)

(7)(b) *Drug-Free Workplace (HUD–50070).* Certification to provide a drug-free workplace.

(7)(c) *Payments to Influence Federal Transactions (HUD–50071) and Standard Form LLL, Disclosure of Lobbying Activities.* Certification of whether any of the funds received will be used to influence any Federal transactions and disclosure of those activities, if applicable.

(7)(d) *Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers, (HUD–2880).* A disclosure of assistance from other government sources received in connection with the project.

(7)(e) *Certification Regarding Debarment and Suspension (HUD–2992) (24 CFR 24.510)*

—a certification attesting to the eligibility of your principals.

(7)(f) *Certification of Consistency with the Consolidated Plan (Plan) (Form HUD–2991)* for the jurisdiction in which the proposed project will be located. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise, the certification may be made by the State, or by the unit of general local government if the project will be located within the jurisdiction of the unit of general local government authorized to use an abbreviated strategy, and if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth in this program section of the SuperNOFA. The Plan regulations are published in 24 CFR part 91.

(7)(g) *A certified Board Resolution that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner* or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term.

(7)(h) *A Certified Board Resolution acknowledging responsibilities of sponsorship,* long-term support of the project(s), your willingness to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of your membership. Also, it shall indicate your willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(7)(i) *Certification of Consistency with the EZ/EC Strategic Plan (HUD–2990).* A certification that the project is consistent with the EZ/EC strategic plan, is located within the EZ/EC, and serves EZ/EC residents. (This certification is not required if the project site(s) will not be located in an EZ/EC.)

(7)(j) *Supportive Services Certification.* A certification from the appropriate State or local agency identified in the application kit indicating whether the:

(7)(j)(i) Provision of supportive services is well designed to serve the needs of persons with disabilities the housing is expected to serve;

(7)(j)(ii) The provision of supportive services will enhance independent living success and promote the dignity of those who will access your proposed project;

(7)(j)(iii) Supportive services will be available on a consistent, long-term basis; and

(7)(j)(iv) Proposed housing is consistent with State or local plans and policies addressing the housing needs of people with disabilities if the State or local agency will provide funding for the provision of supportive services, refer residents to the project or license the project. (The name, address, and telephone number of the appropriate agency will be identified in the application kit and can also be obtained from the appropriate HUD Office.)

VII. Corrections to Deficient Applications

The **General Section** of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Formation of Owner Corporation for Development of Section 811 Projects and for Section 811 Projects Involving Mixed-Financing or a Mixed-Use Purpose.

Applicant eligibility for purposes of applying for a Section 811 fund reservation under this NOFA has not changed; i.e., all Section 811 Sponsors and Co-Sponsors must be nonprofit organizations. However, the Owner corporation, when later formed by the Sponsor, may be (1) a single-purpose nonprofit organization that has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, OR (2) for purposes of developing a mixed-finance/mixed-use project for developing additional units over and above the Section 811 units, a for-profit limited partnership with the nonprofit entity as the sole general partner.

IX. Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (Pub.L. 101–625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992) (Pub.L. 102–550, approved October 28, 1992); the Rescissions Act (Pub.L. 104–19, approved July 27, 1995); the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) and the fiscal year 2002 HUD Appropriations Act (Pub.L. 107–73, approved November 26, 2001) authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and the HCD Act of 1992, to authorize supportive housing for the elderly).

APPENDIX A: LOCAL HUD OFFICES

Notes: (1) The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll free.

(2) Applications for projects proposed to be located within the jurisdiction of the Seattle, Washington and the Anchorage, Alaska Offices must be submitted to the Portland, Oregon Office.

(3) Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.

(4) Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.

(5) Applications proposed to be located within the jurisdiction of the Washington, DC Office must be submitted to the Baltimore, Maryland Office.

HUD—Boston Hub

Hartford Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, (860) 240–4800, TTY Number: (860) 240–4665

Boston Office, Room 301, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 994–8500, TTY Number: (617) 565–5453

Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681, TTY Number: (603) 666–7518

Providence Office, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5230, TTY Number: (401) 528–5403

HUD—New York Hub

New York Office, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–8000, TTY Number: (212) 264–0927

HUD—Buffalo Hub

Buffalo Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755, TTY Number: (716) 551–5787

HUD—Philadelphia Hub

Philadelphia Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0600, TTY Number: (215) 656–3452

Charleston Office, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000, TTY Number: (304) 347–5332

Newark Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (973) 622–7900, TTY Number: (973) 645–3298

Pittsburgh Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, (412) 644–6428, TTY Number: (412) 644–5747

HUD—Baltimore Hub

Baltimore Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, TTY Number: (410) 962–0106

Richmond Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, (804) 278–4500, TTY Number: (804) 278–4501

HUD—Greensboro Hub

Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (336) 547–4000, TTY Number: (336) 547–4055

Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592, TTY Number: (803) 253–3071

HUD—Atlanta Hub

Atlanta Office, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303–2806, (404) 331–5001, TTY Number: (404) 730–2654

San Juan Office, Edificio Administracion de Terrenos, 171 Carlos Chardon Avenue, Suite 301, San Juan, PR 00918–0903, (787) 766–5400, TTY Number: (787) 776–5609

Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251, TTY Number: 1–800–648–6056

Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (423) 545–4384, TTY Number: (423) 545–4559

Nashville Office, Suite 200, 235 Cumberland Bend, Nashville, TN 37228–1803, (615) 736–5213, TTY Number: (615) 736–2886

HUD—Jacksonville Hub

Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626, TTY Number: (904) 232–2631

Birmingham Office, Medical Forum Building, 950 22nd St., North, Suite 900, Birmingham, AL 35203–5301, (205) 731–2630, TTY Number: (205) 731–2624

Jackson Office, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1096, (601) 965–4700, TTY Number: (601) 965–4171

HUD—Chicago Hub

Chicago Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–5944

Indianapolis Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303, TTY Number: (317) 226–7081

HUD—Detroit Hub

Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900, TTY Number: (313) 226–6899

Grand Rapids Office, Trade Center Building, 50 Louis Street, NW., Third Floor, Grand Rapids, MI 49503–2648, (616) 456–2100, TTY Number: (616) 456–2159

HUD—Columbus Hub

Columbus Office, 200 North High Street, 7th Floor, Columbus, OH 43215–2499, (614) 469–2540, TTY Number: (614) 469–6694

Cleveland Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, (216) 522–4058, TTY Number: (216) 522–2261

HUD—Minneapolis Hub

Minneapolis Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000, TTY Number: (612) 370–3186

Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214, TTY Number: (414) 297–1423

HUD—Ft. Worth Hub

Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931, TTY Number: (501) 324–5931

New Orleans Office, Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200, TTY Number: (504) 589–7279

Ft. Worth Office, 801 Cherry Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 978–5965, TTY Number: (817) 978–5595

Houston Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 313–2274, TTY Number: (713) 834–3274

San Antonio Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 475–6800, TTY Number: (210) 475–6885

HUD—Great Plains

Des Moines Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512, TTY Number: (515) 284–4728

Kansas City Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462, TTY Number: (913) 551–6972

Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100, TTY Number: (402) 492–3183

Saint Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583, TTY Number: (314) 539–6331

Oklahoma City Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102–2233, (405) 553–7401, TTY Number: 1–800–877–8339

HUD—Denver Hub

Denver Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5440, TTY Number: (303) 672–5248

HUD—San Francisco Hub

Phoenix Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434, TTY Number: (602) 379–4464

San Francisco Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6550, TTY Number: (415) 436–6594

Honolulu Office, Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8185, TTY Number: (808) 522–8193

HUD—Los Angeles Hub

Los Angeles Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3106, (213) 894–8000, TTY Number: (213) 894–8133

HUD—Seattle Hub

Portland Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, (503) 326–2561, TTY Number: (503) 326–3656

Appendix B

The non-standard forms, which follow, are required for your Section 811 Program application.

BILLING CODE 4210–32–P

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PART I - APPLICATION FORM FOR SECTION 811 SUPPORTIVE HOUSING - CAPITAL ADVANCE

EXHIBIT 1: Form HUD-92016-CA, Application for Section 811 Supportive Housing Capital Advance _____

PART II - YOUR ABILITY TO DEVELOP AND OPERATE THE PROPOSED PROJECT

EXHIBIT 2: Your Legal Status

(a) Articles of Incorporation (or other organizational documents) _____

(b) By-laws _____

(c) IRS Tax Exemption Ruling _____

[EXCEPTION: SEE EXHIBIT TO DETERMINE IF YOU MAY BE EXEMPT FROM SUBMITTING THESE DOCUMENTS.]

(d) The number of people on your board and the number of board members who have disabilities _____

EXHIBIT 3: **Your purpose, community ties and experience:**

(a) Purpose(s), current activities, how long you have been in existence _____

(b) Ties to the community at large, to the target population, and description of geographic areas served _____

(c) Local government support for project _____

(d) Letters of support for your organization and for the proposed project _____

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(e) Housing and/or supportive services experience _____

(f) Efforts to involve target population _____

(g) Identification/coordination with other organizations; information sharing on solutions/outcomes about project development _____

(h) Involvement in the community's planning process including Analysis of Impediments to Fair Housing Choice:

(i) Agency that organizes/ administers the process _____

(ii) Identification of areas of community's planning process in which you participate _____

(iii) Level of your participation in the process _____

OR

Specific steps you will take to become active in the process _____

(i) Description of practical solutions to be implemented _____

(j) Description of how project will remain viable _____

PART III - THE NEED FOR SUPPORTIVE HOUSING FOR THE TARGET POPULATION IN THE AREA TO BE SERVED, SITE CONTROL AND/OR IDENTIFICATION OF SITE, SUITABILITY OF SITE, ADEQUACY OF THE PROVISION OF SUPPORTIVE SERVICES AND OF THE PROPOSED PROJECT

EXHIBIT 4: Project information including:

(a) Evidence of need for project _____

(b) How project will benefit target population and community _____

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(c) A narrative description of the project, including:

(i) Building design _____

(ii) Whether and how project will promote energy efficiency _____

(iii) If, applicable, description of plans and actions to create a mixed-finance/mixed-use project _____

(iv) Description of plan for completing project within 18 mth fund reservation period (optional) _____

(d) Evidence of site control and permissive zoning, **OR** identification of site if applying for Section 811 without having site control (in this latter case skip to **Identification of Site** below):

Evidence of Site Control:

(i) Site control document(s) _____

(ii) Evidence site is free of limitations, restrictions, or reverters

(iii) Evidence of permissive zoning or statement of proposed action required to make project permissible _____

(iv) Narrative topographical/ demographic description of site/area suitability, how site will promote greater housing opportunities for minorities/target population _____

(v) Racial composition/concentration map of site _____

(vi) Phase I Environmental Site Assessment _____

(vii) Letter from State Historic

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Preservation Office (SHPO) _____

OR

If no response from SHPO:

(A) Letter indicating no response from SHPO and why _____

(B) Your letter to SHPO requesting required letter _____

(C) SHPO's response, if available _____

(viii) Willingness to seek an alternate site _____

Identification of a Site:

(ix) Location of site _____

(x) Steps undertaken to identify site; what must be done to obtain site control _____

(xi) Whether site is properly zoned _____

(xii) Status of the sale of the site _____

(xiii) Whether the site would involve relocation _____

(e) Provision of supportive services:

(i) Description of occupancy _____

(ii) Request for approval to limit occupancy, if applicable, including:

(A) Description of population to which occupancy will be limited _____

(B) Why it is necessary to limit occupancy, including:

-- How goals of 811 will still be achieved _____

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-- Why housing and services needs cannot be met in more integrated setting _____

(C) Experience in providing housing and/or supportive services to proposed population _____

(D) How you will ensure occupants will be integrated into neighborhood and community _____

(iii) Supportive services needs of proposed population _____

(iv) List of community service providers with letters of intent _____

(v) Evidence of each service provider's capability and experience _____

(vi) Extent of State and local agency involvement in project _____

(vii) Letter indicating your commitment to make services available or coordinate their availability _____

(viii) How residents will be afforded employment opportunities _____

(ix) Whether project will include manager's unit _____

(x) Statement that you will not condition occupancy on the resident's acceptance of supportive services _____

PART IV - GENERAL APPLICATION REQUIREMENTS, CERTIFICATIONS AND RESOLUTIONS

EXHIBIT 5: **A list of applications, if any, you have submitted or are planning to submit to any other HUD Office** in response to the Section 811 or Section 202 NOFA, and

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required information about each _____

EXHIBIT 6: A statement that:

(a) Identifies all persons occupying property on application submission date _____

(b) Indicates estimated cost of relocation payments/other services _____

(c) Identifies staff organization that will carry out relocation activities _____

(d) Identifies all persons who have moved from site within past 12 months _____

NOTE: Exhibit 6 applies to applications with site control only.

EXHIBIT 7: CERTIFICATIONS AND RESOLUTIONS:

(a) Standard Form 424 _____

(b) Drug-Free Workplace (HUD-50070) _____

(c) Certification of Payments to Influence Federal Transactions (HUD-50071), and _____

Disclosure of Lobbying Activities (Standard Form LLL), if applicable _____

(d) Applicant/Recipient Disclosure/Update Report (HUD-2880) _____

(e) Certification Regarding Debarment and Suspension (HUD-2992) _____

(f) Certification of Consistency with the Consolidated Plan (HUD-2991) _____

(g) Sponsor's Conflict of Interest Resolution _____

(h) Sponsor's Resolution for Commitment to Project _____

(i) Certification of Consistency with the EZ/EC Strategic Plan (HUD-2990) _____

(j) Supportive Services Certification _____

Supportive Housing for Persons with Disabilities
Section 811

Application for Capital Advance Summary Information

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0462
(exp.6/30/2002)

For HUD Use Only | HUD Project Number | PRAC Number

1. Name(s), Address(es), Contact Person, and Telephone Number(s) of Sponsor(s)

2. Minority Sponsor Designation: A minority sponsor is one in which at least 51 percent of the board members are minority.
Is this sponsor a minority applicant? ☐ Yes ☐ No
If "Yes," identify by numeric code as shown below ☐
Codes: 2 - Black; 3 - Native American; 4 - Hispanic; 5 - Asian Pacific; 6 - Asian Indian

3a. Location of Site (city & State)

3b. Will project be located within the boundaries of a Federally-designated: (1) Empowerment Zone, (2) Enterprise Community, (3) Urban Enhanced Enterprise Community, or (4) Strategic Planning Community?
(Contact local HUD Office for information on these designated areas.)
☐ Yes ☐ No
If "Yes," please indicate appropriate number as shown above. ☐

4a. Congressional District

4b. Census Tract

5. Capital Advance Amount Requested
$

6. Project Rental Assistance Contract Amount Requested
$

Note: For a group home(s)in 10. below, include the number of disabled residents in both the "Total Units" and the "Total Disabled Residents" categories. For an independent living project(s), include Resident Manager unit, if applicable, in the "Total Units" category.

7. Application Contains
☐ Evidence of Site Control
☐ Identification of Site

8. Type of Construction
☐ New Construction
☐ Rehabilitation
☐ Acquisition

9a. Occupancy Type
☐ Physically Disabled
☐ Developmentally Disabled
☐ Chronically Mentally Ill
☐ Mixed Occupancy
Identify Categories _____

9b. Restricted Occupancy Requested
☐ Yes
☐ No
If "Yes," identify subcategory _____

10. Project Type & Number of Units/Residents Proposed

a. **Group Home**

Site	No. of Disabled Residents	Resident Mgr. Unit (Y/N)	Address
#1			
#2			
#3			
#4			

b. **Independent Living Project**

Site	Units by No. of Bedrooms 0	1	2	3	Total Disabled Units	Residents	Resident Mgr. Unit (Y/N)	Total Units	Address
#1									
#2									
#3									
#4									

c. **Condominium**

Site	Units by No. of Bedrooms 0	1	2	3	Total Disabled Units	Residents	Resident Mgr. Unit (Y/N)	Total Units	Address
#1									
#2									
#3									
#4									

Note: If an elevator structure in b or c above, indicate by placing an "E" next to the total number of units for each applicable site.

Totals

	Units (Section 811)
	Disabled Residents
	Sites

Mixed Finance or Mixed Use Project for Additional Units
☐ Yes ☐ No # of Add'l Units _____

Previous editions are obsolete

form **HUD-92016-CA** (02/2001)
ref Handbook 4571.2

11. Check utilities and services not included in the rent and to be paid directly by the tenant
- ☐ Electric
- ☐ Water
- ☐ Heat
- ☐ Gas

12. Unusual Site Features
- ☐ None
- ☐ Cuts
- ☐ Fill
- ☐ Erosion
- ☐ Poor Drainage
- ☐ Retaining Walls
- ☐ Rock Foundations
- ☐ High Water Table
- ☐ Other (specify)

13. Off-Site Facilities:

	Public	At Site	Ft. from Site
Water	☐	☐	_____
Sewer	☐	☐	_____
Paving	☐	☐	_____
Gas	☐	☐	_____
Electric	☐	☐	_____

14. Community Spaces to be Included inProject: (identified by site no. indicated in 10 above):

15. If Sponsor is applying for more than one HUD program from the SuperNOFA, indicate which application(s) contain the forms with original signatures.
Program Name — Form

16. Name, Address and Telephone Number of (mark one box)
- ☐ Consultant
- ☐ Agent
- ☐ Authorized Representative

17. Sponsor's Attorney (name, address and telephone number)

By (signature of sponsor's authorized representative)

Type in Name

Title — Date(mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 46 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is in support of HUD's efforts to expand the supply of Supportive Housing for Persons with Disabilities under Section 811. The information is necessary to assist HUD to determine applicant eligibility and ability to develop housing for disabled with statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical to protect the Government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds. This application does not collect any sensitive information. HUD does not ensure confidentiality.

Previous editions are obsolete — Page 2 of 2 — form HUD-92016-CA (02/2001) ref Handbook 4571.2

SPONSOR'S CONFLICT OF INTEREST RESOLUTION

TO: The Secretary of Housing and Urban Development

SUBJECT: Section 202 Program - Application for Fund Reservation
Section 811 Program - Application for Fund Reservation

Sponsor:
Project Location:

WHEREAS, Section 202 of the Housing Act of 1959, as amended, authorizes the making of capital advances for housing for the elderly to private, nonprofit corporations, OR Section 811 of the National Affordable Housing Act of 1990, as amended, authorizes the making of capital advances to nonprofit corporations for housing for persons with disabilities, no part of the net earnings of which inure to the benefit of any member, founder, contributor or individual;

WHEREAS, HUD has implemented this statutory requirement by promulgating a regulation providing that the Sponsor may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. The regulation also prohibits any officer or director of the Sponsor from having any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings or equipment, construction of the project, procurement of the site or any other matters whatsoever, except with respect to management or supportive services contracts entered into by the Owner with the Sponsor or its nonprofit affiliate.

WHEREAS, HUD has determined that assurance of compliance with this prohibition can best be obtained by requiring that all officers and directors of the Sponsor certify that they do not have and will not have during their term of office, any prohibited financial interest.

WHEREAS, because of the time constraints imposed under the application process and difficulties in meeting these deadlines caused by such factors as large boards and unavailability of officers and directors of the board, some prospective Sponsors have been unable or experienced hardship in obtaining all of the required certifications for submission with the applications for fund reservation.

WHEREAS, HUD is willing to defer submission of the required Sponsors' Conflict of Interest and Disclosure Certifications until the submission of the firm commitment applications by those

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(2)

Owners for which fund reservations were approved, if such certifications are provided by all the Sponsor's officers and directors listed below, who are duly qualified and sitting in these capacities from the date of the Sponsor's fund reservation application.

[LIST THE NAME, TITLE, AND THE BEGINNING AND ENDING DATES OF THE TERM OF ALL OFFICERS AND DIRECTORS]

NOW, THEREFORE, in order to induce HUD to forego requiring submission of the Conflict of Interest and Disclosure Certifications until after projects have been selected and fund reservations granted, it is hereby resolved and agreed by the Board of Directors of the Sponsor:

1. That it will submit an updated Incumbency Certificate, in a form prescribed by HUD, showing all changes in incumbency for submission with the Owner's Application for Firm Commitment, initial closing and final closing.

2. That no officer or director of the Sponsor has or will be permitted to have any prohibited interest which would prevent him or her from signing the required Conflict of Interest and Disclosure Certification.

3. That the fund reservation will be subject to cancellation by HUD if the officers or directors of either the Sponsor or the Owner fail to submit Conflict of Interest and Disclosure Certifications duly executed by each and all of their respective officers and directors.

4. That no HUD capital advance funds or project rental assistance funds will be expended on account of any contract or arrangement where a conflict of interest is determined to exist, and the Sponsor shall be responsible for the payment of any and all obligations involving its officers and directors.

5. That should any contract or arrangement entered into by the Owner be determined by HUD to involve a conflict of interest, involving either the Sponsor's or Owner's officers or directors, the Sponsor will exercise its best efforts to cause the Owner to promptly cancel or terminate such contract or arrangement at HUD's request.

Adopted and approved by the Board of Trustees of the Sponsor on the _____ date of _____, _____.

_____
Authorized Signature

SPONSOR'S RESOLUTION FOR COMMITMENT TO PROJECT

TO: Secretary of Housing and Urban Development

SUBJECT: Section 202 Program - Application for Fund Reservation
Section 811 Program - Application for Fund Reservation

Sponsor:
Project Location:

1. WHEREAS, under the Section 202 Program for Supportive Housing for the Elderly, the Sponsor acknowledges its responsibilities of sponsorship, long-term support, its willingness to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and it reflects the will of its membership. The Sponsor is required to make a commitment to cover the estimated start-up expenses, the minimum capital investment of 1/2 of one percent of the HUD-approved capital advance, not to exceed $25,000 ($10,000 for sponsors not affiliated with a national sponsor) and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

OR

Whereas, under the Section 811 Program of Supportive Housing for Persons with Disabilities, the Sponsor acknowledges its respon-sibilities of sponsorship, long-term support, its willingness to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. The Sponsor is required to make a commitment to cover the estimated start-up expenses, the minimum capital investment of 1/2 of one percent of the HUD-approved capital advance, not to exceed $10,000 and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

2. WHEREAS, HUD has determined that assurance by the Sponsor of its commitment and willingness to provide those funds can best be assured by requiring a resolution of the Board of Directors that funds will be made available for such purposes.

3. NOW, THEREFORE, the Board of Directors of the Sponsor hereby resolves and agrees that funds will be available for the subject project to meet estimated start-up expenses, the

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minimum capital investment and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

Adopted and approved by _____ **of the Sponsor on the** _____ **day of** _____, _____.

_____
Authorized Signature

CERTIFICATION FOR PROVISION OF SUPPORTIVE SERVICES (Section 811 Only)

The undersigned certifies that this Agency has reviewed the Sponsor's supportive services plan and finds that:

1. The provision of supportive services is:

   ____ Well designed ____ Not well designed

   to serve the individual needs of persons with disabilities the housing is expected to serve.

2. The provision of supportive services will enhance independent living success and promote the dignity of those who will access the proposed project.

   ____ Will enhance ____ Will not enhance

3. The supportive services will be available on a consistent, long-term basis.

   ____ Yes ____ No

4. The proposed housing is:

   ____ Consistent ____ Inconsistent

   with State or local plans and policies addressing the housing needs of people with disabilities.

_____ _____
Sponsor **Project Location**

_____
(Print Name of Authorized Official)

_____
(Signature) / (Date)

_____
(Title)

_____
(Agency Name)

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)

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FUNDING AVAILABILITY FOR THE HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA) PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. To provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing and related supportive service needs of persons with HIV/AIDS and their families.

Available funds. Approximately $27,543,000 (and under a related part of this SuperNOFA, up to $2,000,000 for technical assistance for the HOPWA program). Funds will be made available under this program NOFA in the following priority order: (1) Renewal of expiring HOPWA grants providing permanent supportive housing as described in Part B: Renewal Projects; (2) award of project outcome add-on funding for HOPWA grants not receiving such funding, as described in Part C: Project Outcomes Add-on Funding; and (3) to continuing and new projects seeking HOPWA funding, as described under Part D: Continuing and New Projects.

Eligible Applicants. States, units of general local government, and nonprofit organizations may apply for HOPWA competitive funding under this NOFA. Additional, eligibility requirements are outlined under each part of this program NOFA.

Application Deadline.

Part B: Project Renewals: May 16, 2002
Part C: Project Outcome Add-on Funding: May 16, 2002
Part D: Continuing and New Projects: June 25, 2002

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the **General Section** of this SuperNOFA and the following sections of this program NOFA. For more information on the program itself including eligible uses of funds, see the HOPWA program regulations at 24 CFR Part 574 and the AIDS Housing Opportunity Act (42 U.S.C. 12901), which control over any information contained herein.

PART A: GENERAL PROGRAM REQUIREMENTS

The following information provides general guidelines, policies, and requirements for applicants applying for HOPWA competitive funding under this NOFA. Unless otherwise noted, the following provisions apply to applicants of Parts B–D of this program NOFA.

I. Available Funding and Additional Resources

(A) *HOPWA FY2002 Competitive Program.* Through this NOFA, approximately $27,543,000 is being made available for HOPWA awards. Additional funds may be awarded if funds are recaptured, deobligated, appropriated or otherwise made available during the fiscal year. Priority funding will be given to applicants applying, first, to renewal of expiring permanent supportive housing grants as outlined under Part B of this program NOFA. Secondly, if funds remain, HUD will fund applicants for project outcome add-on funding, as outlined under Part C of this program NOFA. Lastly, if funds remain, HUD will award funds for continuing or new projects, as outlined under Part D of this program NOFA.

(B) *Availability of FY 2002 Formula Allocations.* You should consider seeking funds from the formula component of the HOPWA program and from other resources. Ninety (90) percent of the HOPWA program is allocated by formula to recipient states and cities. In FY2002, a total of $247,889,000 million was allocated by formula to the qualifying cities for 74 eligible metropolitan statistical areas (EMSAs) and to 34 eligible States for areas outside of EMSAs. All HOPWA formula grants are available as part of the jurisdiction's Consolidated Plan. Information on consolidated planning, including HOPWA formula programs and descriptions of previously awarded competitive grants, is available on the HUD HOME Page at www.hud.gov/grants.

(C) *Availability of National HOPWA Technical Assistance.* To apply for HOPWA technical assistance funds, submit an application for funds under the Community Development Technical Assistance (CDTA) part of this notice, which is published elsewhere in this SuperNOFA. The CDTA notice makes available up to $2,000,000 in HOPWA funds to organizations for technical assistance support on a national or regional basis.

II. Application Kits, Further Information, and Technical Assistance

(A) *Where to Send Your Application.* You must send your application on or before **12:00 midnight, Eastern time**, consistent with the specific due date for your application as stated in the Program Overview of this program NOFA, to HUD Headquarters. See the **General Section** of this SuperNOFA for specific procedures governing the form of application submission (*e.g.*, mailed applications, express mail, or overnight delivery.

(B) *Address for Submitting Applications.* Your completed application consists of an original signed application and three copies. Submit the original application and one copy to: Department of Housing and Urban Development, Attn: HOPWA, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. The original application submitted to HUD headquarters is considered the official application.

Submit the additional two (2) copies of your application to the area CPD Field Office or Offices that serve the area in which activities are proposed. For multi-state efforts you must submit two copies of your application to the Field Office that serves your main office. The list of addresses for area CPD Field Offices is provided as Appendix B of this program section of this SuperNOFA. If you propose nationwide activities, you must send all copies to the HUD headquarters office. When submitting your applications, please refer to HOPWA, and include your name, mailing address (including zip code), facsimile, email, and telephone number (including area code).

(C) *For Application Kits.* Although you may begin working on your application with the materials provided in this NOFA and its appendixes, please call the SuperNOFA Information Center at 1–800–HUD–8929 (1–800–483–8929) for an application kit. Persons with hearing or speech challenges may access the above number via TTY (text telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). The application kit also will be available on the Internet through the HUD Web site at *http://www.hud.gov/grants.*

(D) *For Further Information and Technical Assistance.* You may call the HUD Field Office serving your area, at the telephone number shown in Appendix B, or you may contact the Office of HIV/AIDS Housing, HUD at (202) 708–1934. HUD staff may assist with program questions, but may not assist in preparing your application.

(E) *Seeking Technical Assistance in Developing a HOPWA Application.* HOPWA TA providers may not provide technical assistance in the drafting of responses to HUD's NOFA due to the unfair advantage such assistance gives to one organization over another. If HUD determines that HOPWA technical assistance has been used to draft a HOPWA application, HUD reserves that right to reject the application for funding. If, after your application has been selected for an award, HUD

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determines that HOPWA technical assistance was used to draft your application, the award will be withdrawn and you may be liable for any funds already spent.

(F) *Satellite Broadcast.* HUD will hold information broadcasts via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD Web site at *http://www.hud.gov/grants.*

III. Applicable Requirements of the General Section of the SuperNOFA

The provisions outlined within the General Section of the SuperNOFA apply to the HOPWA program unless otherwise stated within this program NOFA. Specifically, you are encouraged to review:

(A) *Section II: Requirements and Procedures Applicable to All Programs.* The threshold requirements in the General Section apply to the HOPWA program and applicants must meet all threshold requirements to receive funding.

(B) *Section VI: HUD's* FY 2002 SuperNOFA Policy *Priorities.* HUD has identified policy priorities which applicants are encouraged to address in implementing programs funded under this notice. Applicable policy priorities for HOPWA grants seeking funding under Part D of this program NOFA are outlined in Part D, Section III: Policy Priorities. Applicants seeking funding under Parts B and C of this program NOFA are not required to address HUD's policy priorities.

IV. Corrections to Deficient Applications

See Part V: Corrections to Deficient Applications of the **General Section** of the SuperNOFA.

V. Award Modifications

After reviewing each application HUD reserves the right to:

(A) *Make Award Adjustments.* HUD reserves to make award adjustments as outlined in Section III.(E), Application Selection Process, of the **General Section** of this SuperNOFA.

(B) *Add Project Outcome Funding.* Applicants must add up to $50,000 to the HOPWA application for the purposes of the collection of data on project outcomes. If an applicant fails to request this level of funding for this activity, HUD reserves the right to add such funding to the selected application.

(C) *Not to Duplicate Continuum of Care Projects.* HUD reserves the right to ensure that activities funded under the FY 2002 Continuum of Care will not duplicate new or continuing activities funded under this competition.

VI. Statutory Certifications

HOPWA applicants are not required to provide the forms, certifications, and assurances listed in the **General Section** of the SuperNOFA unless stated below. The following certifications must be included with your application. All certifications and forms, except those found in the **General Section** of the SuperNOFA, are included in the appendixes to the HOPWA section of the NOFA.

(A) *Certifications found in the General Section of the SuperNOFA.*

(1) *Consolidated Plan Certification (HUD–2991).* Except as stated below, you must include a Consolidated Plan certification from the applicable State or local government official responsible for submitting the appropriate plan. If your project will be carried out on a national basis or will be located on a reservation of an Indian tribe, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands you are not required to include a Consolidated Plan certification with your application. The authorizing official from the State or local government must sign this certification.

(2) Certification of Drug-Free Workplace (HUD–50070)

(3) Certification of Payments to Influence Federal Transactions (HUD–50071)

(4) Disclosure of Lobbying Activities (SF–LLL)

(5) Certification Regarding Debarment and Suspension (HUD–2992)

(6) Consistency with the RC/RC/EZ/EC Strategic Plan (HUD–2990)

(7) Applicant/Recipient Disclosure/ Update Report (HUD–2880)

(B) *HOPWA Certification found at Appendix D of this program section of the NOFA.*

(1) Fair Housing and Non-discrimination

(2) Environmental Law and authorities

(3) Continued use periods for assisted structures

(4) Debarred, Suspended and Ineligible Principals

VII. Program Requirements

(A) *Nonprofit Requirement.* To be eligible as a nonprofit applicant or project sponsor, you must satisfy the requirements of 24 CFR 574.3. Your application must establish both that you are a nonprofit organization and that your organizational documents include a purpose of significant activities related to providing services or housing to persons with HIV/AIDS.

If you do not qualify as a nonprofit, you are not eligible to receive funds and serve as the grantee or as a project sponsor. However, you may collaborate with eligible nonprofit organizations or with a government agency that applies for the grant and assist them, for example, in planning for the proposed activities, identifying needs in your community and identifying clients who will be assisted. In addition, you may do work under contract with a grantee for services funded by this grant.

(1) We will accept as evidence of your nonprofit status:

(a) A copy of the Internal Revenue Service (IRS) ruling providing tax-exempt status under Section 501(C) (3), (4), (6), (7), (9) or (19) of the IRS code; or

(b) A ruling from the Treasury Department of the Commonwealth of Puerto Rico granting income tax exemption under section 101 of the Income Tax Act of 1954, as amended (13 LPRA 3101); or

(c) Documentation showing that the applicant is a certified United Way agency; or

(d) All of these:

(i) A certification by the appropriate official of the jurisdiction under whose laws the nonprofit was organized that your organization was so organized and is in good standing;

(ii) A certification from a designated official of the organization that no part of the net earnings of the organization inures to the benefit of any member, founder, contributor, or individual; that the organization has a voluntary board; and that the organization practices nondiscrimination in the provision of assistance; and

(iii) An opinion letter from a CPA that the nonprofit has a functioning accounting system that provides for each of these (the letter must mention all of them):

(*1*) Accurate, current and complete disclosure of the financial results of each federally funded project;

(*2*) Records that identify adequately the source and application of funds for federally funded activities;

(*3*) Effective control over and accountability for all funds, property and other assets;

(*4*) Comparison of outlays with budget amounts;

(*5*) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the US Treasury and the use of funds for program purposes;

(*6*) Written procedures for the determining the reasonableness, allocability and allowability of costs; and

(*7*) Accounting records including cost accounting records that are supported by source documentation.

(2) We will accept as evidence of your purpose, a certified copy of the organization's articles of incorporation and by-laws which includes in the organization's purposes significant activities related to providing services or housing to persons with HIV/AIDS.

(B) *Performance Benchmark Requirements.* All grantees receiving funds under this program NOFA are expected to meet the following benchmark requirements. If a selected project does not meet the appropriate performance benchmark, HUD reserves the right to cancel or withdraw the grant funds.

(1) *Execution of Grant Agreement.* Selected applicants must execute grant agreements by the earlier of September 25, 2003 or the first anniversary of HUD's announcement of the awards. HOPWA grants are obligated upon grant execution and the FY 2002 Appropriations Act requires HUD to obligate funds within two years of the appropriation, September 30, 2003, or to lose the funds.

(2) *Disbursement of Funds.* Grantees receiving awards under this NOFA must fully expended their grants no later than the earlier of three years following the effective date of the grant agreement or by September 30, 2008. The FY2002 Appropriation Act requires deobligation of grant funds which not expended within five years of the appropriation, September 30, 2008.

(3) *Site Control through Acquisition or Lease.* If you acquire or lease a site, you are required to gain site control within one year from the date your selection letter was signed by HUD.

(4) *Rehabilitation or New Construction.* If you propose to use HOPWA funds for rehabilitation or new construction activities, you must begin the rehabilitation or construction within 18 months and complete that work within 3 years from the date your selection letter was signed by HUD.

(5) *Program Operations.* For projects conducting rehabilitation or new construction activities, program operations must begin within 36 months of the date your selection letter was signed by HUD. Program operations begin when clients begin receiving housing or supportive services.

(6) *Six-Month Report.* You must provide an initial report to the Field Office and Headquarters on the startup of the planned activities within six months of your selection. Outline any accomplishments in implementing the funds along with identifying any barriers or issues for which the Department may provide assistance.

(C) *Program Guidance.*

(1) *Program Operating Year.* Grants awarded through this NOFA must designate the 12-month operating year, which indicates the start and end dates of the term of the grant, at the signing of the grant agreement. The operating year may begin within four months of the signing of the grant agreement or as specified by HUD at the time of award. The operating period begins the day when participants begin to receive housing or supportive services, or for capital development activities at site control or the start of rehabilitation or new construction activities. The operating period is a 12-month period for which grantees report annual accomplishments. Grantees are required to submit annual progress reports to HUD within 90 days following the end of each operating year.

(2) *Incorporation of Mainstream Resources.* To the extent possible, HUD encourages projects to incorporate mainstream resources into their project plans to maximize the benefit of requested HOPWA funds. Mainstream resources may include private, other public, and mainstream services and housing programs that provide benefits to eligible clients. Applicants are encouraged to create community wide strategies to coordinate assistance to eligible clients through these mainstream programs. These mainstream programs include Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act and the Welfare-to-Work grant program. Under each part of this program NOFA, as an applicant, you may be asked to address how your project is incorporating mainstream programs to benefit clients.

VIII. Other Requirements

(A) *Environmental Requirements.* All HOPWA assistance is subject to the National Environmental Policy Act and applicable related Federal environmental authorities. In accordance with Section 856(h) of the AIDS Housing Opportunities Act, environmental reviews for HOPWA activities are to be completed by responsible entities (including units of general local government, States, Indian tribes and Alaska Native villages) in accordance with 24 CFR Part 58. Applicants or grantees that are not States or units of general local government must request the unit of general local government to perform the environmental review. This statutory provision supersedes the environmental provisions in the HOPWA regulation at 24 CFR 574.510. HOPWA grantees and project sponsors may not commit or expend any grant or nonfederal funds on project activities (other than those listed in 24 CFR 58.22(c), 58.34 or 58.35 (b)) until HUD has approved a Request for Release of Funds and environmental certification from the responsible entity. The expenditure or commitment of HOPWA or nonfederal funds for such activities prior to this HUD approval may result in the denial of assistance for the project under consideration.

(B) *Local Resident Employment (Section 3 Requirements).* For grants in excess of $200,000, to the extent that grant funds are used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement) or housing construction, then it is subject to section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. Section 3 requires that economic opportunities shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

IX. Authority

This program is authorized under the AIDS Housing Opportunity Act (42 U.S.C. 12901). The regulations for HOPWA are found at 24 CFR part 574.

PART B. RENEWAL PROJECTS

HUD will consider applications under this part that are renewals of expiring HOPWA competitive grants whose primary purpose is the provision of permanent supportive housing.

I. General Policies on Renewal of Permanent Supportive Housing Grant—Purpose

Under the provisions of the HUD Appropriation Act for FY2002, the Secretary is required to renew qualifying expiring contracts for permanent supportive housing on a priority basis. Grants funded under prior HOPWA competitions that meet the below eligibility requirements and meet all program requirements will be given priority renewal by HUD. Applications will be reviewed on a pass/fail threshold review system and are not required to address the departmental policy priorities described in the General Section of the

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SuperNOFA. If you have an expiring grant, which is not for permanent supportive housing, you may apply for funding under Part D of this NOFA.

II. Eligibility of Applicants and Grants

To be eligible for priority renewal under this part, you must meet all of the following eligibility requirements:

(A) *Eligible Permanent Supportive Housing Grants.* To be eligible, your project must provide permanent supportive housing to eligible persons. Permanent supportive housing is housing in which the eligible person has a continuous legal right to remain in the unit and which provides the eligible person on-going supportive services through qualified providers. HUD has deemed grants in which 51 percent or more of HOPWA program activity funds are used (1) to provide permanent housing where on-going supportive services are made available through other resources; or (2) to provide supportive services where permanent housing is provided through other resources, to be grants providing permanent supportive housing, and thereby eligible. To establish eligibility, provide documentation of the following:

(1) *Certification of the Provision of Permanent Housing.* You must certify that at least 51% of the HOPWA program activity funds awarded to your grant were and are being used to provide permanent supportive housing to eligible persons. To determine whether your grant meets this test, use the Permanent Supportive Housing Worksheet found in Appendix D and submit it with your certification. The test is based on the HOPWA funded program activity costs approved in the original application or, as amended by HUD, excluding administrative costs and project outcome funding. To be counted, the grant funds must be used to provide the housing or to provide supportive services to eligible persons living in permanent housing.

(2) *Documentation of Other Resources.* If your project relies on other state, local, Federal, or private resources to provide the permanent housing or supportive services portion of your project, you must demonstrate that the other resources will continue to be available for that purpose throughout the term of the renewal grant. The continuing assistance must have been documented within the original application to HUD and be used in conjunction with requested HOPWA funds. Evidence of continuing assistance must be provided, as follows:

(a) *Permanent Housing.* Permanent housing provided through other resources must be documented in the renewal application through a leveraging letter. The leveraging letter must outline the amount of funds for the housing to be provided, the term the funds will be made available, and be signed by the organization providing such housing or funding for the housing. See Part D, Section V, Rating Factor 4: Leveraging Resources, for acceptable leveraging letter examples.

(b) *Supportive Services.* Supportive services provided through other resources must be documented through a commitment letter(s), which outline(s) the type of support that will be provided to clients, the organizations providing such support, and the length of time such supportive will be available. Supportive services must be available to clients in permanent housing throughout the term of the renewal grant.

(3) *Evidence of Permanent Client Occupancy.* Except for funds used for short term mortgage, rent and utility payments, you must evidence that the client has a continuous legal right to remain in the unit or property and has access to on-going supportive services provided through qualified providers. You must include in your application a copy of the standard lease form used for residents of the project. It must be for a term of at least one year, be renewable by the tenant and may only be terminable by the landlord for cause.

(B) *Eligible Expiring Grant.* To be eligible, the HOPWA grant must be an expiring grant, defined as a grant that will not have sufficient funds to continue activities until September 30, 2003, if not awarded additional Federal funds. The applicant must demonstrate to HUD that all funds awarded in the grant it seeks to renew will be expended before September 30, 2003 (as measured by reimbursements filed with HUD under the financial system, PAS). HUD may deobligate funding of HOPWA grants that have been renewed on this basis and fail to expend funding by September 30, 2003.

(C) *Eligible Prior Grants.* To be eligible, prior grants must have been selected by HUD for funding under HUD's SuperNOFA process in 1998, 1999, or 2000 and must not have been renewed through a previous competition. Grants selected in 1997 were required to operate and complete activities before the end of fiscal year 2001. Grants funded in 1997 are not eligible for renewal, unless the grantee documents that HUD approved a grant extension of the project that would allow for its continued operations in the Federal Fiscal Year 2002 or 2003.

(D) *Eligibility based on Achieving Measurable Progress.* To be eligible, prior grants must have operated with measurable progress, defined as not evidencing weak performance. Weak performance consists of sanctions or unresolved monitoring findings during the active competitive period, from the date of publication of this NOFA until the selection of grants, or other HUD knowledge of unresolved problems. Unresolved problems may include that planned activities remain delayed in their implementation, a significant number of units are vacant, annual progress reports were not filed with HUD at by the application due date under this NOFA for renewals, or significant citizen complaints are unresolved or not responded to with justified reasons. Weak performance is also evident if more than 50 percent of grant funds remain unexpended on the first day of the month in which the application due date for renewals under this NOFA falls (as measured by reimbursements filed with HUD's financial system, PAS).

(E) *Eligible Applicant for Renewals.* You are eligible to apply for renewal of a prior HOPWA grant only if you have executed a grant agreement for the project directly with HUD. If you are a project sponsor or subrecipient who has not signed such an agreement, you are not eligible to apply. HUD will reject applications submitted by ineligible applicants. If you have questions about your eligibility to apply, contact the local HUD field office.

(F) *Eligible Project Sponsors.* The project should also continue with the same project sponsors, as documented in the prior HOPWA application funded by HUD. HUD will consider the merits for changing a project sponsor if the new sponsor evidences the capacity to enhance project operations or improve responsiveness to clients. Such examples for changing a project sponsor may be that a new project sponsor has greater capacity to conduct program activities, a prior project sponsor is no longer in operation or has merged with another entity, or HUD approved such a sponsor change through a grant amendment.

(G) *Ineligible Grants and Projects.* You are ineligible if any of the following apply:

(1) *Expired Grants.* Your grant expired in the Federal Fiscal Year 2001 or earlier, i.e. all funds were expended (as measured by PAS) by September 30, 2001, or only a residual amount that is less than one percent of the amount of the prior grant remains, are not eligible to apply for renewal funding under this notice.

(2) *Prior Grants.* Your grant was awarded under the 1992–1996 HOPWA competitions. These grants were required to complete activities within three years of the grant agreement.

(3) *Non-Permanent Supportive Housing Projects.* Projects primarily offering short-term, transitional, or emergency housing options are not eligible. Applicants with existing HOPWA projects that do not qualify for priority renewal under this part, may apply for continuing funding under Part D: Continuing and New Projects section of this program NOFA.

III. Renewable Activities and Amount of Renewals

(A) Eligible grants will receive renewal funding on approved eligible activities, as follows:

(A) *Eligible Renewal Activities.* The activities to be renewed must be on-going forms of support, such as rental assistance, short-term rent, mortgage and utility payments, operating costs for housing facilities, leasing, supportive service costs, housing information services, resource identification/technical assistance for community residences activities and administrative costs. Additionally, applicants must request up to $50,000 in project outcome funding as a part of their renewal budget request.

(B) *Ineligible Renewal Activities.* Funds for acquisition, new construction or for rehabilitation costs will not be renewed. These capital development activities are not on-going or available for additional sites. If you wish to undertake additional capital development activities or to add funding for new activities, such as operating costs and services, you must apply under Part D.

(C) *Amount of Renewals.* Renewal projects may only request renewal funds for continuing a previously approved project at the same level of housing and/or services provided in the previous grant. Proposals to expand or significantly alter a funded-project must apply under Part D for the new activities or the expanded part of the project.

(D) *Project and Activity Funding.* Renewal funding must not exceed 120% of the amount originally awarded for an activity, but may be less than the amount originally awarded, including any amendments affecting this amount that were approved by HUD prior to the publication of this NOFA. However, the total activity costs may not exceed $1,200,000. The limits on administrative costs, three percent for grantees and seven percent for project sponsors, continue to apply. In addition, renewal grantees must add up to $50,000 to the renewal award for the purpose of the collection of data on program outcomes.

(E) *Annual Amounts.* As an applicant for renewal funding, you must specify the annual amount needed to continue each activity and specify the number of years, up to three, for your request by completing the HOPWA Renewal Budget Form (Appendix A). You should describe your plan for continued operations in the Executive Summary section of your application, including any significant reduction to your prior award level.

IV. Selection Criteria and Process

(A) *Selection Process.* To the degree that funds are available, the Department will select for funding all renewal requests from applicants that meet program requirements and pass a threshold review for a need for renewal. In the case that the amount requested for renewal is less than the amount available under this notice, HUD will apply the remaining funds, first, to applicants under Part C and then, second, Part D. If the amount of the request for renewal activities is greater than the amount made available by this notice, HUD will select all of the approvable applications and allocate awards to each based on a prorata reduction to the amount available under this notice to ensure that all eligible and performing renewal projects receive funding that allows their continued operation.

(B) *Selection Criteria.* HUD will conduct a threshold review of all renewal applications based on the following criteria:

(1) *Eligibility.* HUD will review your eligibility to apply for renewal funding under this program as described above under Part B, Section II, *Eligibility of Applicants and Grants.*

(2) *Organizational Capacity.* If a new project sponsor is added, HUD will review the project sponsor's capacity to conduct program activities.

(3) *Provision of Permanent Supportive Housing.* HUD will review whether your project provides permanent supportive housing.

(4) *Need for Renewal.* HUD will review your need for renewal, and how this project has operated with measurable progress, as described below in the *Need for Renewal Narrative.*

(5) *Standard Eligibility Threshold Requirements.* HUD will also review your application to ensure that your project meets the standard eligibility threshold requirements as described in Part A, Section III.(A), above.

(C) *Application Contents.* Applicants are requested to submit the following information:

(1) *Application for Federal Assistance (Form SF–424).* You should complete Items 1 through 18 with the following additions:

(a) Item 5—Add e-mail address of the contact person;

(b) Item 7—The applicable letters are "A" for State; "B, C, or D" for a unit of local government; or "N" for Nonprofit;

(c) Item 9—Enter U.S. Department of Housing and Urban Development or HUD if not preprinted;

(d) Item 10—Enter 14–241 and the title "Housing Opportunities for Persons With AIDS Program" or "HOPWA" for the Catalogue of Federal Domestic Assistance;

(e) Item 15—You must complete the budget on HUD–424M and the HOPWA Renewal Project Budget Form. Please make sure that both the Total Amount on HUD–424M and the "Total Budget" section on the HOPWA Renewal Project Budget Form are the same. In the event that the total budgets are in conflict, HUD will refer to the HOPWA Project Budget form.

(f) Item 16—Check "No".

(2) *Executive Summary and Synopsis.* On no more than five (5) double spaced pages, please provide an Executive Summary of the renewal project, beginning with a two to three sentence synopsis of the focus of your project. In the Executive Summary, please provide the name of the grantee and any project sponsors.

(3) *Narrative Statements.* Your application must include the following narrative statements:

(a) *Organizational Capacity Narrative.* If a new project sponsor(s) is added to the proposal, please describe the capacity of the project sponsor(s) to conduct program activities. Please provide this information on no more than two double-spaced typed pages. If you are adding more than one project sponsor, you may add two (2) additional pages per project sponsor. Address the extent to which the project sponsor(s) have the organizational resources necessary to successfully implement your proposed activities in a timely manner. HUD will review the project sponsor's ability to develop and operate your proposed program. With regard to new project sponsor(s), HUD will consider:

(i) Past experience and knowledge in serving persons with HIV/AIDS and their families;

(ii) Past experience and knowledge in programs similar to those proposed in your application;

(iii) Experience and knowledge in monitoring and evaluating program performance and disseminating information on project outcomes; and

(iv) Past experience as measured by expenditures and measurable progress

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in achieving the purpose for which funds were provided.

(b) In reviewing the elements of organizational capacity under paragraph (a), immediately above, HUD will consider the extent to which your proposal demonstrates:

(i) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing the kind of activities for which you are requesting funds. The project sponsor will be reviewed in terms of recent, relevant and successful experience of staff to undertake eligible program activities, including experience and knowledge in serving persons with HIV/AIDS and their families.

(ii) The project sponsor's experience in managing complex interdisciplinary programs, especially those involving housing and community development programs directly relevant to the work activities proposed and carrying out grant management responsibilities.

(iii) If the project sponsor received funding in previous years in the program area for which you are currently seeking funding, the sponsor's past experience will be reviewed in terms of the ability to attain demonstrated measurable progress in the implementation of the grant award. Measurable progress is defined as:

(1) Meeting performance benchmarks, as applicable, in program development and operation;

(2) Meeting project goals and objectives, such as, that the number of persons assisted was comparable to the number that was planned at the time of application;

(3) Submitting timely performance reports; and

(4) Expending prior funding as outlined in the prior proposal with no outstanding audit or monitoring issues.

(c) *Provision of Permanent Supportive Housing Narrative.* On no more than three (3) double-spaced pages, demonstrate how your project provides permanent supportive housing through HOPWA and other resources. Include the type of assistance and number of housing units being provided and a description of the supportive services provided. Additionally, your description should outline how HOPWA and other funding, if applicable, work together to provide permanent supportive housing. In addition, you must provide the following:

(i) *Certification of the Provision of Permanent Housing.* A certification, in the form provided in Appendix A, that at least 51% of the HOPWA funds awarded the Project were and will continue to be used to provide permanent supportive housing to eligible persons. To determine whether you can make this certification, complete the "Permanent Supportive Housing Worksheet" provided in Appendix A.

(ii) *Documentation of Other Resources.* If your project relies on other state, local, Federal, or private resources to provide the housing or supportive services, you must document that such assistance will be provided throughout the term of the renewal grant. For information on acceptable forms of evidence, see Part B, Section II (A)(2).

(iii) *Evidence of Permanent Housing.* Except for funds used for short term mortgage, rent and utility payments, you must provide a copy of the standard lease used for residents of the project. The lease must be for a term of at least one year, be renewable by the tenant and may be terminated by the landlord for cause.

(d) *Need for Renewal Narrative.* Please address the following on no more than three (3) double-spaced pages:

(i) *Measurable Progress.* Please demonstrate the need for renewal funding and how this project has operated with measurable progress. Measurable progress is defined as not failing or not evidencing weak performance in:

(*1*) Meeting performance benchmarks, as appropriate, in program development and operation;

(*2*) Meeting project goals and objectives, such as, that the number of persons assisted is comparable to the number that was planned at the time of the application;

(*3*) Submitting timely performance reports;

(*4*) Expending over 50% of prior funding at the beginning of the month for the due date for renewals (as measured by reimbursements filed with HUD's financial system, PAS.).

(ii) *Need for Renewal Chart.* Additionally, you should complete the HOPWA Need for Renewal Chart, which demonstrates that prior grant funds will expire by September 30, 2003. You must complete the HOPWA Need for Renewal Chart (Appendix A), as described below:

Line 1.—Indicate the amount of the prior HOPWA award:_____

Line 2.—Indicate the amount expended as of 9–30–01:_____

Line 3.—Subtotal: subtract line 2 from line 1:_____

Line 4.—Indicate the amount to be expended in FY2002:_____ (By September 30, 2002)

Line 5.—Indicate the amount to be expended in FY2003:_____ (By September 30, 2003)

Line 6.—Subtotal: subtract lines 4 and 5 from line 3:_____

Notes: If the subtotal on Line 6 is greater than zero, you are not eligible to apply for renewal funding under this notice. Also note that continued use of prior funds may require that you file an extension request with the area CPD Field Office. Further, if the subtotal on Line 3 is zero or a residual amount that is less than one percent of the amount on Line 1, you are not eligible to apply for renewal funding under this notice. In reviewing the information that you provide in this chart, HUD will determine your eligibility for renewal funding based on financial records for reimbursement of expenditures that are filed under HUD's financial system (PAS).

(4) *HOPWA Renewal Budget.* Please complete the HOPWA Renewal Budget Form (Appendix A). See Part B, Section III, *Renewable Activities and Amount of Renewals,* for details on renewal funding.

(5) *HOPWA Renewal Project Form (Appendix A).* Complete the form including the following:

(a) *Project Sponsor.* You must identify any organization that will receive HOPWA funds as a project sponsor and the amount of funds to be received.

(b) *Non-profit Status.* If not previously submitted to HUD through the prior HOPWA application or if a change occurred in non-profit status, non-profit grantees or project sponsors must submit documentation verifying your non-profit status, as outlined under Part A, Section VII (A).

(c) *Service Areas.* Your application must identify the area(s) in which you are proposing to offer housing and other assistance.

(6) *Statutory Certifications.* The renewal application should include the required certifications as described under Part A, Section VI, *Statutory Certifications.*

After your entire application is assembled, please mark each exhibit with an appropriately numbered tab and number every page of the application sequentially. Complete the HOPWA Renewal Application Checklist found in Appendix A to this program section of the SuperNOFA. Attach the HOPWA Renewal Application Checklist to the front of your application.

V. Additional Renewal Information

As an applicant of renewal funding, you are encouraged to read Part A: General Program Requirements at the beginning of this program NOFA. This section outlines submission details,

technical assistance, and statutory requirements for using HOPWA funds.

PART C: PROJECT OUTCOMES ADD-ON FUNDING

I. Purpose

Funds for data collection on project outcomes are made available in this part of the NOFA to enable all HOPWA competitive grantees to enhance efforts in gathering information on client and project accomplishments. The information to be collected is related to the special design features, service delivery models, or objectives of these grants that were selected by national competition, as Special Projects of National Significance or projects that serve clients in areas that are not eligible for HOPWA formula allocations. The use of these additional funds will allow your agency to enhance the design of outcome measures, the collection of this data, the evaluation and reporting on this information. In assisting HUD to better disseminate the results from your efforts, the project outcome reports and findings are expected to be of benefit to other communities in considering improvements in their area efforts that provide housing assistance to eligible persons. HUD has made funding for data collection on project outcomes a feature of the national HOPWA competitions in 1998–2001, although not all applicants requested such funding. To assist all recipients to enhance their evaluation efforts, this funding is again being made available to the prior grantees that did not receive funds under this budget line item in their approved application. A threshold review will be undertaken to select applications from current HOPWA competitive grants that propose responsive evaluation and dissemination activities. HUD will award up to $50,000 per application.

II. Eligible Applicants

Eligible applicants are grantees that were awarded HOPWA funds under the FY1999 or FY2000 HOPWA competitive program and were not originally granted project outcome funding. Since the eligible applicants are limited to current recipients of HOPWA competitive funding, HUD will not require applicants to duplicate their original application as to the eligibility of the applicant, client, or activities. HUD is satisfied that the review that was undertaken for these entities in the FY1999 and FY2000 HOPWA competition, for which these entities were determined eligible, is sufficient for the award of these additional funds. Applicants will be required to submit an abbreviated application.

III. Threshold Review

The Department will conduct a threshold review of all HOPWA grantees requesting project outcome add-on funding. Applicants failing to meet the threshold review requirements will not be awarded project outcome add-on funding. The basic threshold review will consist of the following criteria:

(A) *Eligibility.* HUD will review your eligibility to apply for the project outcome add-on funding under this section, as described above under *Eligibility.*

(B) *Monitoring Review.* HUD will review your current HOPWA grant to ensure the project is meeting applicable benchmark requirements and making measurable progress, defined as not evidencing weak performance. HUD will consider that weak performance is evidenced if there are sanctions or unresolved monitoring findings during the active competitive period, from the date of this notice until the selection of grants, or other HUD knowledge of unresolved problems. Unresolved problems may include that planned activities remain delayed in their implementation, a significant number of units are vacant, annual progress reports were not filed with HUD at the time of the due date for applications, or significant citizen complaints are unresolved or not responded to with justified reasons. Grants in default of grant agreement or with unresolved management issues will not be awarded project outcome add-on funding.

(C) *Project Outcome Plan.* You may request up to $50,000 to collect information and report to HUD, or a third party designated by HUD, on project outcomes. HUD will review your plan to ensure the requested funding will be used to conduct eligible activities. The requested funding may be used for the following activities:

(1) Defining monitoring questions that will be addressed and examined during the project period;

(2) Specifying outcome measures;

(3) Development instruments to assess project outcomes and systems outcomes;

(4) Training project staff in the collection of data, including the preparation of the standard HOPWA Annual Progress Report to HUD;

(5) Monitoring data collection activities to assure the submissions are complete and accurate, including data coding and entry;

(6) Summarizing data collected;

(7) Participate in HUD-sponsored collaboration and HUD-designated training events in order to prepare and disseminate the finding of reports on project accomplishments and lessons learned.

Applicants may include an expert third-party to conduct project outcome/evaluation activities, but grantees are encouraged to train staff internally. Such training will increase the internal capacity of your and your partner organizations by learning how to make use of project outcome data in operating and adjusting assistance provided to clients.

IV. Application Submission

To apply for add-on funding you must submit the following:

(A) *Application for Federal Assistance (Form SF–424).* You should complete Items 1 through 18 with the following additions:

(1) Item 5—Add e-mail address of the contact person (if applicable);

(2) Item 7—The applicable letters are "A" for State; "B, C, or D" for a unit of local government; or "N" for Nonprofit;

(3) Item 9—Enter U.S. Department of Housing and Urban Development or HUD if not preprinted

(4) Item 10—Enter 14–241 and the title "Housing Opportunities for Persons With AIDS Program" or "HOPWA" for the Catalogue of Federal Domestic Assistance;

(5) Item 15—You must complete the budget on HUD–424M.

(6) Item 16—Check "No".

(B) Project Narrative. A written description approximately one to two pages on:

(1) The current status of your grant including how the project has met NOFA benchmark requirements, in compliance with the statute and regulations, and is making measurable progress. See Part C, Section III(B): Monitoring Review.

(2) Your plan for utilizing project outcome/evaluation funding. Include a request to receive an amount up to $50,000 and describe your plan to use the additional funds through the remaining term of your grant. See Part C, Section III: Project Outcome Plan.

V. Award Modifications

HUD reserves the right to modify the requested amount of project outcome funding based on a grantees expenditure rate as measured through PAS. HUD may prorate requested funding to match the percentage of remaining funds on any current HOPWA grant.

PART D: CONTINUING AND NEW PROJECTS

I. Program Purpose

Funds under this program are to be used to support the Department's national goal of increasing the availability of decent, safe, and affordable housing in American

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communities. The statutory purpose of the HOPWA program is meeting the housing needs of low-income persons with HIV/AIDS and their familiies. Projects selected for HOPWA awards will be funded to provide housing and related supportive services for eligible persons under two categories of assistance:

(A) Grants for Special Projects of National Significance (SPNS) that, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the housing and related supportive service needs of low-income persons living with HIV/AIDS and their families; and

(B) Grants for projects that are part of Long-Term Comprehensive Strategies (Long-Term) which provide housing and related supportive services for low-income persons living with HIV/AIDS and their families in areas that are not eligible for HOPWA FY 2002 formula allocations found in Appendix C of this program section of this SuperNOFA.

II. Eligible Applicants and Activities

(A) *Eligible Applicants and Project Sponsors.*

(1) States, units of general local government, and nonprofit organizations may apply for SPNS grants.;

(2) States and units of general local government may apply for grants for projects under the Long-Term category of grants, if proposed activities will serve areas that were not eligible to receive HOPWA formula allocations in Fiscal Year 2002. Nonprofit organizations are not eligible to apply directly for the Long-Term grants but may serve as a project sponsor for an eligible State or local government grantee.

(3) You must identify your project sponsors in your application. Project Sponsors cannot be identified at a later date through such processes as an RFP or other selection process.

(B) *Eligible Activities.*

(1) *HOPWA Activities.* Eligible activities with their standards and limitations may be found in the HOPWA regulations at 24 CFR Part 574. A copy of the regulations may be downloaded from the HUD Web site at *http://www.hud.gov* or may be obtained through the application kit. You are encouraged to review the HOPWA regulations before seeking funding.

(2) *Additional Guidance on Use of Program Funds.*

(a) *Housing Assistance.* To receive the maximum points under the rating criteria, your project must clearly address the housing need of eligible persons. If you are proposing emergency or transitional housing assistance, your plan should include linkages to or the provision of permanent supportive housing.

(b) *Supportive Services.* Many of the clients who will be served by HOPWA may need services in addition to housing. It is important that you design programs which enhance access to those needed services, including access to health-care, AIDS drug assistance, and other services funded through the Ryan White CARE Act or other Federal, state, local or private funds. While HUD recognizes that there are many ways to ensure that clients receive the services they need, to the extent possible, HUD encourages you to develop housing programs which do not require participation in services as a part of your or your project sponsor's tenancy requirements. Further, to help ensure that selected projects address hc using related purposes, no more than 35 percent of the proposed budget for program activities can be designated for supportive services costs. If HOPWA funds will be utilized to operate or develop a supportive service only facility through acquisition, rehabilitation, new construction, lease, or operating costs, these costs will be considered related supportive service costs and will be subject to the 35 percent cap on program activity costs.

(c) *Resource identification.* HUD will not select under this notice an application that is solely directed at providing resource identification activities, since national HOPWA technical assistance funds are being made available under the Community Development Technical Assistance (CDTA) part of this NOFA for this purpose. You may propose a resource identification or technical assistance component in your application, if the amount of funds designated for these activities are less than 20 percent of the proposed program activity costs.

(d) *Other Activities.* As authorized by the statute, you may propose other activities in your application, if approved by HUD. HUD will not approve proposals that depend on future decisions on how funds are to be used, for example, a proposal to establish a local request-for-proposal process to select activities or project sponsors.

(e) *Project Outcome Funding.* You must request funding to conduct data collection on project outcomes. The budget provides that up to $50,000 may be added to collect information and report to HUD on the outcomes of your service delivery model. You must propose data collection activities in your application. Project outcome activities include:

(i) Defining monitoring questions that will be addressed and examined during the project period;

(ii) Specifying outcome measures;

(iii) Developing instruments to assess project outcomes and systems outcomes;

(iv) Training project staff in the collection of data, including the preparation of the standard HOPWA Annual Progress Report to HUD;

(v) Monitoring data collection activities to assure that submissions are complete and accurate, including data coding and entry;

(vi) Summarizing data collected; and

(vii) Participate in HUD-sponsored collaborations and HUD-designated training events in order to prepare and disseminate the findings of reports on project accomplishments and lessons learned.

Applicants may include an expert third-party to conduct project outcome activities, but grantees are encouraged to train staff internally. Such training will increase the internal capacity of your and your partner organizations by learning how to make use of project outcome data in operating and adjusting assistance provided to clients.

(3) *Maximum Grant Amounts.* The maximum amount that you may receive is $1,200,000 for program activities (*e.g.*, activities that directly benefit eligible clients), irrespective of the number of applications that you submit. You may also add-on up to 3 percent of this program activities amount for grantee administrative costs and, if your program involves project sponsors, add-on up to 7 percent of the amount they receive for their administrative costs. In addition, you must add up to $50,000 for project outcome activities.

III. Policy Priorities

(A) *Departmental Policy Priorities.* As outlined in Section VI of the General Section of the SuperNOFA, HUD has identified policy priorities that applicants are encouraged to address through the proposed plans. HUD has identified two Departmental policy priorities as being applicable to the HOPWA program. Applications for HOPWA funding will receive a rating point for each applicable Departmental policy priority initiative addressed through the proposed program activities and performance goals and objectives. Applicants must demonstrate how these priorities will be addressed through the Soundness of Approach Section of the application as outlined under Rating Factor 3. One Rating Point will be awarded to each of the following addressed priorities:

(1) In accordance with Section VI(C) of the **General Section** of the SuperNOFA, for applicants seeking HOPWA funds for capital development activities, including rehabilitation or new construction, you are encouraged to:

(a) Institute visitablity standards in these activities undertaken with HOPWA funds. Vistiablity standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible.

(b) Incorporate universal design in the construction or rehabilitation of housing undertaken with HOPWA funds. Universal design provides housing that is usable by all without the need for adaptation or specialized design.

(2) For applications in which the grantee, project sponsor(s), or other collaborating organizations meets the definition of a faith-based and other community-based, or grassroots organization as defined in Section VI(E) of the **General Section** of the SuperNOFA.

(B) *Program Policies—Target Populations.* The Department has been advised by persons living with HIV/AIDS, HIV/AIDS housing providers, and national organizations, of the continuing disparity in accessing housing, health-care, and HIV/AIDS treatment among underserved populations, as well as health-related disparities that result from limited access to health-care, treatment and other support for persons living with HIV/AIDS. Applications seeking to provide housing assistance and related supportive services to one or more of the following underserved populations will receive priority consideration in the selection of grants. To receive this consideration, you must demonstrate the need of the special population in your area under the Need /Extent of the Problem section of your application as outlined under Rating Factor 2, as well as, demonstrate your response to this need under the Soundness of Approach section of your application as outlined under Rating Factor 3.

HUD reserves the right to select the highest rated application (but not one that is rated at less than 70 points) that demonstrates that the planned HOPWA activities and activities supported by leveraged funds, will serve one of the following special populations of HOPWA eligible persons. If funds are insufficient to select one of each of these four special demonstration grants, HUD's selection priority will be in the order listed:

(1) *Persons with HIV/AIDS and their families who are living in the Colonias.* Primarily the southwest border of the United States, the Colonias are home to persons living an extreme poverty and poor housing conditions. With the limited access to HIV/AIDS housing, services, healthcare, and treatment, persons living with HIV in the Colonias do not receive the necessary care and treatment. HUD is encouraging applications that strive to meet the needs of eligible clients living in the Colonias.—Applicants seeking funding as a Colonias must meet the definition of a Colonias as defined in the General Section of the SuperNOFA.

(2) *Youth.* Stable housing is one of the most important parts of the safety net for persons living with HIV and AIDS and their families. Youth who are homeless or who run away from home are at greater risk of HIV infection. Youth who are infected with HIV are more likely to be able to follow complex treatment regimens if they have a reliable address where they can be reached by care providers, a safe place to keep medications, refrigeration for drugs that require it, and other necessities that many of us take for granted. Some 20,000 young people are still becoming infected every year, and most of them are not receiving the medical care they need. HUD is encouraging applications that strive to meet the needs of youth impacted by HIV/AIDS.

(3) *Rural Populations.* A growing number of new HIV and AIDS cases are known to be occurring in the rural and smaller population areas of the country. In many areas, the limited availability of affordable and quality housing, the lack of specialized service providers, excessive travel distances to access HIV care and treatment and/or the lack of HIV treatment options, provide difficult challenges in providing for comprehensive housing and service programs for persons living with HIV/AIDS. HUD is encouraging applications that strive to meet the special need of rural populations through the provision of housing and related supportive services geared to ensure that clients have improved access to necessary treatment. A model service delivery project under this demonstration effort must be located in and serve clients in areas that are outside of the metropolitan statistical areas that have populations of more than 500,000 persons.

(4) *Post-Incarcerated.* The U.S. Department of Justice (DOJ) estimates that 2.1% of all state and federal prison inmates are persons who are living with HIV, a rate that is higher than the rest of the population. Due to their criminal history, many post-incarcerated persons have difficulty in reentering the community, especially in finding basic housing as well as employment, health care and other necessities when dealing with HIV-infection. Discharge planning actions can coordinate resources to help post-incarcerated persons successfully reintegrate into the community as productive, law abiding citizens. HUD, in partnership with DOJ, the U.S. Departments of Health and Human Services and Education, and other federal agencies, is encouraging the development of projects in which applicants would provide post-incarcerated persons with linkages to permanent housing and services to reduce recidivism, maintain access to healthcare and HIV/AIDS treatment, and access to education, job training and placement opportunities.

IV. Program Requirements

(A) *Performance Measures and Project Goals and Objectives.* You must use HUD's required performance measures, as detailed below, that will show your accomplishments in using HOPWA funds to expand the housing options that benefit eligible persons. You must also establish individual goals and objectives for your proposal. They should be specific, achievable and measured within set time periods. Your individual goals and objectives should result in possible findings on the successes and lessons learned in undertaking your activities that would be shared with other communities. In designing your proposal, please use the following:

(1) *Required HOPWA national performance goal.* Your proposed activities must increase the amount of housing assistance and related supportive services to eligible persons to enable them to achieve housing stability and access to health-care and related supportive services.

(2) *Measurements of Performance.* After each year of operation, you must report on the number of housing units that were provided with HOPWA and other funding, and number of additional persons served with related supportive services. HUD will measure your progress and achievements in evaluating your performance on your HOPWA grant.

(B) *Descriptive Budget.* You must provide a description of each of your requested budget items and how the funds will be used, including each amount of requested funding for you and your project sponsors, and a description of how each line item will relate to eligible HOPWA activities as defined in Part D, Section II (B). You are expected to match requested funds to

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specific goals and objectives in your project. See Appendix D.

V. Application Selection Process

(A) *HOPWA Application Threshold Reviews.* HUD will review your HOPWA application to ensure that:

(1) Your application meets the threshold requirements found in Section II of the **General Section** of the SuperNOFA.

(2) Your application contains all required certifications as outlined in Part A, Section VI: *Statutory Certifications.*

(B) *Procedures for the Rating of Applications.* HUD will rate all HOPWA applications based on the factors listed below.

The points awarded for the factors total 100. In addition, bonus points for projects in RC/EZ/EC areas and by the City of Dallas may be available under Section III(C) of the **General Section** of this SuperNOFA apply to this competition. After rating, all applications will be placed in the rank order of their final score for selection within the appropriate category of assistance.

Rating Factor 1: Capacity of the Applicant and Project Sponsors and Relevant Organizational Experience (20 Points)

Address the following factor on not more than five (5) double-spaced, typed pages. For each project sponsor, you may add two additional pages. This factor addresses the extent to which you and any project sponsor have the organizational resources necessary to successfully implement your proposed activities in a timely manner. If you will be using project sponsor(s) in your project, you must identify each project sponsor in your application. HUD will award up to 20 points based on your and any project sponsor's ability to develop and operate your proposed program in relation to which entity is carrying out an activity.

(a) With regard to both you and any project sponsor(s), HUD will consider:

(i) Past experience and knowledge in serving persons with HIV/AIDS and their families;

(ii) Past experience and knowledge in programs similar to those proposed in your application;

(iii) Experience and knowledge in monitoring and evaluating program performance and disseminating information on project outcomes; and

(iv) Past experience as measured by expenditures and measurable progress in achieving the purpose for which funds were provided.

(b) In reviewing the elements of paragraph (1), HUD will consider:

(i) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing the kind of activities for which you are requesting funds. You and any project sponsor will be judged in terms of recent, relevant and successful experience of staff in undertaking eligible program activities;

(ii) Your and/or the project sponsor's experience in managing complex interdisciplinary programs, especially those involving housing and community development programs directly relevant to the work activities proposed and carrying out grant management responsibilities.

(iii) If you and/or the project sponsor received funding in previous years in the program area for which you are currently seeking funding, you and your project sponsor's past experience will be evaluated in terms of the ability to attain demonstrated measurable progress in the implementation of your grant awards. Measurable progress is defined as:

(*1*) Meeting applicable performance benchmarks in program development and operation;

(*2*) Meeting project goals and objectives, such as, that the number of persons assisted was comparable to the number that was planned at the time of application;

(*3*) Submitting timely performance reports; and

(*4*) Expending prior funding as outlined in the prior proposal with no outstanding audit or monitoring issues.

Rating Factor 2: Need/Extent of the Problem (20 Points)

Address this factor on not more than five (5) double-spaced, typed pages. Up to 20 points will be awarded for this factor.

(a) *AIDS Cases*—**(5 Points)**. Up to five of these points will be determined by the relative numbers of AIDS cases and per capita AIDS incidence within your service area, in metropolitan areas of over 500,000 population and in areas of a State outside of these metropolitan areas, in the State for proposals involving state-wide activities, and in the nation for proposals involving nation-wide activities. Your application must define a planned service area. To determine these points, HUD will obtain AIDS surveillance information from the Director of the Centers for Disease Control and Prevention.

(b) *Description of Unmet Need*—**(5 Points)**. Up to five of these points will be awarded based on demonstration of need for funding eligible activities in the area to be served. To receive the maximum points, demonstrate that substantial housing and related service needs of eligible persons and/or the target population, as outlined in Part D, Section III (B), are not being met in the area and that reliable statistics and data sources (i.e. Census, health department statistics, research, scientific studies, and Needs Analysis of Consolidated Plan and/or Continuum of Care documentation) show this unmet need. To receive the maximum points, show that your jurisdiction's Consolidated Plan and Analysis of Impediments to Fair Housing Choice, Continuum of Care Homeless Assistance plans (if homeless persons are to be served), and comprehensive HIV/AIDS housing plans are applicable to your project and identify the level of the problem and the urgency of the need.

(i) If you apply for a SPNS grant, you must describe a need that is not currently addressed by other projects or programs in the area. Also describe any unresolved or emerging issues and the need to provide new or alternative forms of assistance that, if provided, would enhance your area's programs for housing and related care for persons living with HIV/AIDS and their families; or

(ii) If you apply for a project that is part of a Long-Term Comprehensive Strategy in an area that does not receive a HOPWA formula allocation, you must describe the need that is not currently addressed by other projects or programs in the area. You must also describe any unresolved or emerging issues and/or the need to provide forms of assistance that enhance the community's strategy for providing housing and related services to eligible persons.

(iii) HUD will evaluate your presentation of statistics and data sources based on soundness, reliability and the specificity of information to the target population and the area to be served. If you propose to serve a subpopulation of eligible persons on the basis that these persons have been traditionally and are currently underserved (e.g., persons with multiple disabilities including AIDS), your application must document the need for this targeted effort through statistics and data sources that support the need of this population in your service area.

(c) *Need in Non-Formula Areas and Need for Renewals*—**(5 Points)**.

Within the points available under this criterion, HUD will award points under the following two circumstances:

(i) Five points will be awarded, if your SPNS application proposes to serve clients in an area that does not qualify for HOPWA formula allocation; or

(ii) Up to five points will be awarded, if you propose to continue the operations of HOPWA funded activities that have been supported by HOPWA competitive funds in years immediately prior to this application and that have operated with measurable success. To receive the maximum points, you must describe what unmet need would result if funding for the project was not renewed from this Federal funding and describe your efforts to secure other sources of funding to continue this project. You must also show that you operated with measurable progress and your previous HOPWA-funded activities have been carried out and are nearing completion of the planned activities in a timely manner. Measurable progress is defined as:

(*1*) Meeting performance benchmarks, as appropriate, in program development and operation;

(*2*) Meeting project goals and objectives, such as, that the number of persons assisted is comparable to the number that was planned at the time of application;

(*3*) Submitting timely performance reports; and

(*4*) Expending 50% of prior funding by the application due date of this program section of the SuperNOFA.

(d) *Highest Rated in a State or the Nation (for nationwide activities)*—**(5 Points)**. After rating of all other factors, HUD will award five of the points to help achieve greater geographic diversity in funding activities within a variety of States. Under this criterion, five points will be awarded to the highest rated SPNS and Long-term applications in each State and to the highest rated SPNS application among the applications that propose nationwide activities.

Rating Factor 3: Soundness of Approach: Responsiveness and Model Qualities (40 Points)

Address the factor on not more than fifteen (15) double-spaced, typed pages. Include the HOPWA Budget Forms found in Appendix D. This factor addresses the method by which your plan meets your identified needs. HUD will award up to 40 points based on the extent to which your plan evidences a sound approach in its responsiveness to eligible persons and how it offers model qualities in providing supportive housing opportunities for eligible persons, when compared to other applications and projects funded under previous HOPWA competitions.

(a) *Responsiveness*—**(20 Points)**. HUD will award up to 20 points based on how well your project plan responds to the unmet needs of the eligible population, including target populations outlined under Part D, Section III, and establishes specific goals and objectives for providing housing and related supportive services eligible persons. To receive the highest ratings in this element, describe:

(i) *Your project's goals and objectives.* Demonstrate how you will measure how the project is performing under the required HOPWA performance measures. Review Part D, Section IV (A), *Performance Measures and Project Goals and Objectives* of this NOFA. To receive the highest rating your goals and objectives must address:

(*1*) The projected numbers of persons to be served through each activity for each year of your program;

(*2*) The projected number of housing units by type to be provided through your project by year over a 3-year period, and;

(*3*) The specific organizations that will provide housing, supportive services, or other activities either through an agreement with your organization or through funding from your project.

(ii) *Your plans for accomplishing these goals and objectives.* Demonstrate your methodologies for achieving these goals and objectives by describing the project plan. Include a description of the coordination, roles, and responsibilities of your project sponsors and/or other organizations within your project plan to conduct eligible activities. Your plan must describe the eligible activities you intend to conduct and how those activities will benefit eligible clients. To receive the maximum points your project plan you must explain and include the eligible activities that you or your project sponsor will conduct in meeting the housing needs of eligible persons. A description may include such activities as:

(*1*) *Housing Activities.* You must demonstrate how the housing needs of clients will be addressed through one or more of the HOPWA eligible activities or through other resources and how such activities coordinate with other housing assistance. Your plan for housing assistance must include:

(*a*) *Linkages to or the provision of permanent supportive housing.* You must describe how clients will access permanent housing options through your project or through linkages with other community providers, even if the focus of your project is emergency or transitional assistance.

(*b*) *Description of housing sites.* You must describe any appropriate site features, including accessibility, visitability, and access to other community amenities associated with your project.

(*c*) *A development and operations plan.* You must describe a development and/or operations plan for the housing assistance you are proposing to provide. For rental assistance programs, this will include your plan for providing rental assistance, proposed housing sites, and length of stay. If you are proposing to use HOPWA funds for acquisition, rehabilitation, or new construction activities your plan must also document that you have secured funding sources (if applicable), identified a site(s), and must provide rehabilitation/construction timelines.

(*2*) *Supportive Service Activities.* You must describe how the supportive service needs of clients will be addressed from HOPWA or other sources by describing the type of supportive services that will be offered directly by the program and/or how services will be accessed and coordinated from other sources. Explain the connection of these services in helping clients obtain and/or maintain housing. You are reminded that supportive service costs may represent no more than 35 percent of your program activity costs. In describing your supportive services delivery plan, explain:

(*a*) How clients will have access to mainstream programs that offer healthcare and other supportive services, as discussed in Part A, Section VI (C);

(*b*) How clients will participate in decision making in the project operation and management;

(*c*) Your plan for delivering supportive services through a comprehensive plan. If you plan on using HOPWA funds to acquire, rehabilitate, lease, or operate a supportive service only facility, you must describe your development and operations plan for that facility. Include in the plan how such a facility relates to the program purpose of housing eligible clients and document that other funding has been secured, if applicable, a site has been identified, and provide rehabilitation/construction timelines.

(*3*) *Additional Activities.* You must describe your plan for utilizing other requested HOPWA funds (described at 24 CFR 574.300 (b)). Explain how these activities will be integrated to your overall plan in the provision of housing and related supportive services to eligible clients.

(*4*) *Other Activities.* As authorized by statute and in addition to the activities

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at 24 CFR 574.300(b), you may propose other activities in your application.

(b) *Model Qualities*—**(20 Points)**. HUD will award up to 20 points based on your service delivery plan and how well it addresses the ongoing housing and supportive service needs within a replicable operational framework. To receive the maximum points, you must offer a plan that describes the following:

(i) *Policy Priorities.* Describe how you will meet the Departmental policy priorities emphasized in Part D, Section III of this NOFA.

(ii) *Operational Procedures.* Describe your outreach, intake, and assessment procedures, as well as how clients will link to services and (if necessary) housing funded from other sources and how your project provides for consistent monitoring of all clients. Include a description of how a client moves through the program from intake, assessment, service delivery, and finally to termination or linkage to other services.

(iii) *Project Management and Oversight.* Describe your method for managing and overseeing your, your project sponsors'', and any other organizations activities. Identify staff members who are responsible for management and oversight of the project and activity implementation.

(iv) *Evaluation.* Evaluation is defined as your method for collecting data on HUD program measures and your project's goals and objectives. HUD will assess your method for reviewing this data and your basis for making relative adjustments based on outcomes and lessons learned. Your evaluation plan must include how you propose to utilize the project outcome funding, as described in Part D, Section II (B)(2)(v). HUD will award a greater number of points for programs which will serve as a national model and which provide for the dissemination of information from the lessons learned from your proposed activities.

(v) *Innovative Qualities.* If you propose a new program, or an alternative method of meeting the needs of your clients, describe the innovative qualities of your activities. HUD will rate your applications higher if you provide strong evidence that your methods will yield qualities that will benefit or expand knowledge in serving eligible persons, when compared to other applications and HOPWA projects funded in the past. In order to learn about innovative qualities of previously funded and on-going HOPWA projects, please review the HOPWA Executive Summaries for all HOPWA formula and competitive grantees at *http://www.hud.gov.*

(vi) *Descriptive Budget.* HUD will review your budget in describing:

(1) How each amount of requested funding for you and your project sponsors will be used;

(2) How each line item will relate to eligible HOPWA activities as defined in Part D, Section II (B), of this program section of the SuperNOFA; and

(3) How specific line items match with the goals and objectives in your project. You must complete the HOPWA Project Budget Form as described in Part B, Section VI (E). Please note that only the forms are required and an additional narrative under the Model Qualities Section is not required.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources that can be combined with HUD's funds to achieve program purposes. HUD will award up to 10 points based on the extent to which resources from other public or private sources have been committed at the time of application, to support your project. To receive the maximum points, you must evidence commitments of leveraged resources that match or exceed the amount of HOPWA funds that are requested, but not including funds designated for data collection.

(a) In establishing leveraging, HUD will not consider other HOPWA-funded activities, entitlement benefits inuring to eligible persons, or conditioned commitments that depend on future fund-raising or actions. In assessing the use of acceptable leveraged resources, HUD will consider the likelihood that State and local resources will be available and continue during the operating period of your grant. In evaluating this factor HUD will also consider:

(i) The extent to which you document leveraged resources, such as funding and/or in-kind services from governmental entities, private organizations, resident management organizations, educational institutions, or other entities to achieve the purposes of the project for which you are requesting HOPWA funds;

(ii) The extent to which the documented resources evidence that you have partnered with other entities to make more effective use of available public or private resources. Partnership arrangements may include funding or in-kind services from local governments or government agencies, nonprofit or for-profit entities, private organizations, educational institutions, or other entities that are willing to partner with you on proposed activities, or partnering with other program funding recipients to make more effective use of resources within the geographic area covered by your award.

(b) To receive highest leveraging points, you must document the cash value of leveraged resources pledged to your project(s). The commitment of resources will be evidenced by use the appropriate language as described below:

(i) *Applicant or Third Party Cash Resources.* If this proposal is funded, (applicant name or third party name) commits $(amount) (of its own funds, if applicant, or to applicant name, if third party) for (type of activity) to be made available to the HOPWA program. These funds will be available from (date) to (date). (Signature and Title of authorized representative and date).

(ii) *Non-Cash Resources.* If this proposal is funded, (organization's name) commits to make available (type of resource) valued at $(amount) to the HOPWA program proposed by (applicant name). These resources will be made available to the HOPWA program from (date) to (date). (Signature and Title of authorized representative and date) The donation of a third party professional service should be valued at the professional's customary charge. The value of materials to be contributed to the project by a third party or by the applicant may also be counted as leveraging.

(iii) *Volunteer Time.* If this proposal is funded, (name of the organization or of self), commits to provide (number of hours) of volunteer time from (date) to (date) to provide (type of activity) to the HOPWA program proposed by (applicant name). The total value of these services, based on $10.00 per hour, is $(amount). (Signature and Title, and date) Time to be contributed to the project by volunteers should be valued at $10.00 per hour. In the case of individuals volunteering their time directly to the applicant, the applicant should list itself as the organization.

(iv) *Contribution of a Building.* If this proposal is funded, (applicant name) pledges the building at (site address) to the HOPWA program. The building has a fair market value of $(amount). A licensed independent real estate appraiser made this appraisal, which is based on comparable properties in the area. (Signature of applicants authorized representative and date) Ownership of a building or portion of a building to be used in the project may be counted as leveraging. The fair market value of the building or portion of the building being contributed may be counted. Do not send an appraisal to HUD, but keep documentation of fair market value on file. The contribution of land (as a leveraged resource for new construction) should be treated the same as contribution of a building. You will need to keep documentation of the fair market value on file, particularly if it is improved land and you wish to include the value of the improvements in the contribution.

(v) *Contribution of a Building to be Acquired with HOPWA Funds.* If this proposal is funded, (applicant name) commits the building at (site address) for the HOPWA program. The building has a fair market value of $(amount). A licensed independent real estate appraiser made this appraisal, which is based on comparable properties in the area. The HOPWA request for the building is $(amount). Therefore, the contribution is the difference between the fair market value and the HOPWA request, or $(amount). (Signature of applicants authorized representative and date) The difference between the documented fair market value and the portion paid for with HOPWA funds may be counted as leveraging. Maintain documentation of fair rental value on file.

(vi) *Contribution of Leasehold Interest.* If this proposal is funded, (applicant name) commits the leasehold interest at (site address) for the HOPWA program. The fair rental value of this site is $(amount) annually, and at constant value will amount to $(amount) over (term of the lease, up to three years). An appropriate independent third party made this appraisal, which is based on comparable properties in the area. The total leasing cost over the term of the lease to be paid with HOPWA funds is $(amount). Therefore, the contribution is the difference between the HOPWA leasing cost and the fair rental value, or $(amount). (Signature of applicants authorized representative and date) The difference between the fair rental value (for a term up to three years) and the cost of the lease to be paid for with HOPWA funds may be counted as leveraging.

Factor 5: Coordination, Self-Sufficiency and Sustainability (Maximum 10 Points)

Address the factor on not more than five (5) double-spaced, typed pages. Coordination involves efforts that are taken outside of your project to help clients become self-sufficient and that enable the project to become sustainable from other resources. HUD will award up to 10 points based on your proposal's coordination, self-sufficiency, and sustainability efforts.

(a) *Coordination.* You should demonstrate the extent to which you have coordinated your activities and the activities of your project sponsors with other organizations that are not directly participating in your proposed work activities. This involves organizations for which you share common goals and objectives. You will be rated on the extent to which you demonstrate you have:

(i) Coordinated your proposed activities with those of other groups or organizations within the community or region prior to submission, to best complement, support, and coordinate all housing and supportive service activities;

(ii) Developed your project through consultation with other organizations, groups, or consumers involved with area HIV/AIDS housing and service planning, including Ryan White Planning and other Federal planning. You should demonstrate that the project is linked or promotes participation in HUD's planning processes, such as the jurisdiction's Consolidated Planning process or the community's Continuum of Care Homeless Assistance planning process (if homeless persons are to be served by proposed activities);

(iii) Coordination with other HUD-funded programs outside of the Consolidated Planning Process, for example accessing additional housing resources through a local public housing authority;

(iv) Coordination with mainstream resources including private, other public, and mainstream services and housing programs. To achieve the maximum points, applicants must evidence explicit agency strategies to coordinate client assistance with mainstream health, social services and employment programs for which eligible clients may benefit.

(b) *Self-sufficiency.* Demonstrate the extent to which your application implements practical solutions within the grant term to assist clients in achieving independent living, economic empowerment, educational opportunities, housing choice, or improved living environments. This may be demonstrated through such efforts as ensuring access to permanent, safe, decent, and affordable housing for eligible clients, educational programs designed to return clients to work, or through independent living services for clients.

(c) *Sustainability.* Demonstrate the extent to which your program exhibits the potential to be financially self-sustaining by decreasing dependence on Federal funding and relying more on state, local and private funding so your activities can be continued after your grant award period is completed. In order to ensure that resources are used to their maximum effect within the community, it is important that you demonstrate involvement in other state, local, and private funding arenas. In evaluating this factor HUD will consider the extent you have:

(i) Developed linkages, or specific steps you will take to develop linkages with other activities, programs or projects through meetings, information networks, planning processes, or other mechanisms, to coordinate your activities so solutions are holistic and comprehensive with other state, local, or private entities;

(ii) Demonstrate how planned activities may be sustained through other resources in order to provide a comprehensive and responsive range of housing and related supportive services to meet the changing needs of persons with HIV/AIDS.

(C) *Selection of HOPWA Awards.* Whether your HOPWA application is conditionally selected will depend on your overall ranking compared to other applications within each of the two categories of assistance. HUD will select applications in rank order in each category of assistance to the extent that funds are available, except as outlined in Part D, Section III (B):

Policy Priorities, where HUD reserves the right to select applications that target the priority eligible populations. In allocating amounts to the categories of assistance, HUD reserves the right to ensure that sufficient funds are available for the selection of at least one application with the highest ranking under each category of assistance. HUD will not select an application that is rated below 70 points.

In the event of a tie between applications in a category of assistance, HUD reserves the right to break the tie by selecting the proposal that was scored higher on a rating criterion in the following order: Soundness of Approach: Responsiveness and Model Qualities (Rating Factor 3); Comprehensiveness and Coordination (Rating Factor 5); the Capacity of the Applicant and Relevant Organizational Experience (Rating Factor 1); the Need/Extent of the Problem (Rating Factor 2); and Leveraging Resources (Rating Factor 4).

HUD will notify you in writing if you are conditionally selected. You may be notified subsequently of any modification made by HUD, the additional project information necessary for grant award, and the date of deadline for submission of the required information. In the event that a conditionally-selected applicant is unable to meet any conditions for fund

award within the specified time, HUD reserves the right not to award funds to the applicant, but use those funds to make awards to the next highest rated applications in this competition; to restore amounts to a funding request that had been reduced in this competition; or to add amounts to funds available for the next competition.

VI. Application Submission Requirements

Your HOPWA application must contain the following items in the order shown below. The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining application items that are forms (i.e., excluding such items as narratives, letters) can be found as Appendix D to this program section of the SuperNOFA. The items are as follows:

(A) *Application for Federal Assistance (Form SF–424).* You should complete Items 1 through 18 with the following additions:

(1) Item 5—Add e-mail address of the contact person (if applicable);

(2) Item 7—The applicable letters are "A" for State; "B, C, or D" for a unit of local government; or "N" for Nonprofit;

(3) Item 9—Enter U.S. Department of Housing and Urban Development or HUD if not preprinted;

(4) Item 10—Enter 14–241 and the title "Housing Opportunities for Persons With AIDS Program" or "HOPWA" for the Catalogue of Federal Domestic Assistance;

(5) Item 15—You must complete the budget on HUD–424M and the HOPWA Project Budget Form. Please make sure that both the Total Amount on HUD–424M and the "Total Budget" section on the HOPWA Project Budget Form are the same. In the event that the total budgets are in conflict, HUD will refer to the HOPWA Project Budget form.

(6) Item 16—Check "No".

(B) *Executive Summary and Synopsis.* Please provide a two to three sentence synopsis of the main focus or features of your proposed program, followed by an Executive Summary of the proposed project on no more than two double-spaced, typed pages. HUD will use this as a summary if your project is chosen for funding. In your abstract, include your organization's name and the name of any project sponsor.

(C) *Narrative Statements.* Your application must include narrative statements that address each of the Factors for Award found at Part D, Section V (B) of this program section of the SuperNOFA. Respond to each factor within the stated page limits and do not use a font size smaller than 12 point. Applications failing to submit any of the narrative statements will be rated as zero during the rating process.

(D) *Proposed HOPWA Project Information Form.* See Appendix D in program section of SuperNOFA. Complete the form including the following:

(1) *Project Sponsors.* You must identify any organization that will receive HOPWA funds as a project sponsor and the amount of funds to be received.

(2) *Non-profit Status.* Non-profit grantees or project sponsors must submit documentation verifying your non-profit status, as outlined in Part A, Section VI (A).

(3) *Service Areas.* Your application must identify the area(s) in which you are proposing to offer housing and other assistance.

(E) *Budget.* You must complete the HOPWA Project Budget Form found in Appendix D of this program section of the SuperNOFA, which lists the amount of requested HOPWA funds designated for each type of HOPWA-eligible activity. For more information, please see Part D, Section IV (B) and Rating Factor 3, *Soundness of Approach.*

(F) *Statutory Certifications.* You must complete the statutory certifications as outlined in Part A, Section VI section of this program NOFA.

After your entire application is assembled, please mark each exhibit with an appropriately numbered tab and number every page of the application sequentially. Complete the HOPWA, Application Checklist found in Appendix D to this program section of the SuperNOFA. Attach the HOPWA Application Checklist to the front of your application.

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HOPWA NOFA – Appendix A

HOPWA Renewal Application Checklist

Checklist of Exhibits

Please insert page numbers

- ☐ Transmittal Letter (that identifies HOPWA and amount requested)
- ☐ Application for Federal Assistance (form SF-424) and (HUD-424M)
- ☐ Project Synopsis and Executive Summary
- ☐ Organizational Capacity Narrative (if applicable)
- ☐ Provision of Permanent Supportive Housing Narrative
- ☐ HOPWA Permanent Supportive Housing Certification
- ☐ HOPWA Permanent Supportive Housing Worksheet
- ☐ Need for Renewal Narrative
- ☐ HOPWA Need for Renewal Chart
- ☐ HOPWA Renewal Budget Form
- ☐ HOPWA Renewal Project Form
- ☐ Statutory Certifications (Required by law)
- ☐ Acknowledgement of Application Receipt (Optional) (HUD-2993)
- ☐ Client Comments and Suggestions (Optional) (HUD-2994)

form HUD-40110-B (2/02) Page no: ☐ Please include this page in your application.

HOPWA Permanent Supportive Housing Certification

The Applicant, in order to induce HUD to renew the Applicant's Grant with HUD for HOPWA Project Number _____, pursuant to HUD's authority under the FY 2002 Appropriations Act, hereby assures and certifies HUD that no less than 51 percent of the HOPWA funds awarded to the Project were and continue to be used to provide permanent supportive housing to low income persons with HIV/AIDS and their families. Permanent housing is defined as housing in which the resident has a lease for a term of at least one year, which is renewable by the tenant and which may be terminated by the landlord for cause. Permanent supportive housing is permanent housing, which provides the tenant with on-going supportive services through qualified providers.

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code.

HOPWA Applicant Certifications

Name of Applicant

Signature of Authorized Certifying Official & Date

Typed Name of Signatory

Title of Signatory

Date

Permanent Supportive Housing Worksheet

Applicants seeking renewal under Part B of the HOPWA NOFA, must demonstrate that the HOPWA project supported by the prior HOPWA grant and continued through this renewal provides permanent supportive housing to eligible clients. Permanent supportive housing is defined in Part B, Section II of the HOPWA program NOFA. To meet this definition, you must document that at least 51 percent of the HOPWA program activity funds awarded to the grant you are seeking to renew provided direct permanent supportive housing assistance or provided supportive services to clients living in permanent housing you provided with resources other than HOPWA funds. Complete the following worksheet to determine if your project at least meets this 51 percent threshold.

INSTRUCTIONS

Part 1: Calculation of Funding

1. **HOPWA Project Funding – Funding amount of the original or amended HOPWA grant, which you seek to renew.**
   Column A - Original or Amended HOPWA Grant. In Column A, for HOPWA funds only, enter the total program activity costs requested and approved in the prior HOPWA grant. Please note, these costs do not include administrative or project outcome costs. Total Column A.
2. **Permanent Supportive Housing Funding – Percentage of funding dedicated to permanent supportive housing, as defined in the HOPWA NOFA.**
   Column B - HOPWA. In Column B, enter the amount of HOPWA funds from the prior HOPWA grant expended or pending use as approved in the grant that directly provide permanent supportive housing. HOPWA funds used for services or housing of clients in emergency, short-term, or transitional situations, may not be included (expect in relation to short-term rent, mortgage, or utility payments). For example, if part of the supportive services provided actually provides services in a short-term, transitional housing situation or to clients not receiving housing assistance, then only the amount of funds directly providing the permanent supportive housing may be used in the calculation.

Please note, HUD has determined that only the following activity categories allow expenditures that meet the definition of permanent supportive housing under your prior grant. You may only account for the percentage of funds that were expended or will be expended on permanent housing activities through:

- Acquisition
- Rehabilitation, repair, and conversion
- New construction
- Rental Assistance
- Short-term rent, mortgage, or utility payments

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- Lease
- Operating Costs
- Supportive Services (for residents of permanent housing only)
- Other HUD approved permanent housing activities

Other HOPWA funded activities, like housing information or resource identification, do not meet the definition of permanent supportive housing. Total Column B.

Column C – Other Funding. If applicable, enter the amount of other funds that provide permanent supportive housing. Other funding resources must be documented in the prior HOPWA grant and documentation that such assistance will continue during the term of the renewal grant must be provided to HUD. Total Column C.

Eligible Activity	HOPWA Project Funding	Permanent Supportive Housing*	
	A. Original or Amended	B. HOPWA	C. Other
1. Acquisition	$	$	$
2. Rehabilitation, Repair, & Conversion	$	$	$
3. New Construction	$	$	$
4. Lease	$	$	$
5. Operating Costs	$	$	$
6. Supportive Services	$	$	$
7. Housing Information	$		
8. Technical Assist. & Resource Identification	$		
9. Rental Assistance	$	$	$
10. Short-term rent, mortgage, & Utility Payments	$	$	$
11. Other (name the type of alternative activity – must be approved in the prior HOPWA grant) _____	$		
12. Total	$	$	$

* Enter only the amounts of HOPWA or other resources that directly provide permanent supportive housing. You may not consider funds providing other types of housing assistance.

Part 2: Calculation

To determine if your project uses at least 51 percent of funding to provide permanent supportive housing, please make the following calculation:

a. Amount of HOPWA funds providing permanent supportive housing (Total of Column B)	
b. Total amount of project activities (Total of Column A)	
c. Divide Row (a) by Row (b) and multiply by 100.	X100
d. Percentage of project funds providing permanent supportive housing.	*

***Please note:**

1) If the percentage is less than 51 percent, you are not eligible to apply for renewal under Part B.
2) If the percentage is 51 percent or over, you are eligible to apply for renewal under Part B and must complete the "Certification of Permanent Supportive Housing".

Part 3: Other Resources

If your project relies on other state, local, Federal, or private resources to provide the permanent housing or supportive services portion of your project, you must demonstrate that the other resources will continue to be available for that purpose throughout the term of the renewal grant. The continuing assistance must have been documented within the original application to HUD and be used in conjunction with requested HOPWA funds. Evidence of continuing assistance must be provided, as follows:

A. Permanent Housing. Permanent housing provided through other resources must be documented in the renewal application through a leveraging letter. The leveraging letter must outline the amount of funds for the housing to be provided, the term the funds will be made available, and be signed by the organization providing such housing or funding for the housing. See Part D, Section V, Rating 4: Leveraging Resources of the HOPWA NOFA, for acceptable leveraging letter examples.

B. Supportive Services. Supportive services provided through other resources must be documented through a commitment letter(s), which outline(s) the type of support that will be provided to clients, the organizations providing such support, and the length of time such supportive will be available. Supportive services must be available to clients in permanent housing throughout the term of the renewal grant.

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HOPWA NOFA – Appendix A

HOPWA Need for Renewal Chart

Please complete the following chart and submit with your Need for Renewal Narrative. HUD will review this chart and determine your eligibility for renewal funding based on financial records for reimbursement of expenditures that are filed under HUD's financial system (PAS).

To be eligible, the HOPWA grant must be an expiring grant, defined as a grant that will not have sufficient funds to continue activities until September 30, 2003, if not awarded additional Federal funds. The applicant must demonstrate to HUD that all funds awarded in the grant it seeks to renew will be expended before September 30, 2003 (as measured by reimbursements filed with HUD under the financial system, PAS). HUD may deobligate funding of HOPWA grants that have been renewed on this basis and fail to expend funding by the September 30, 2003.

In addition, if the grant expired in the Federal Fiscal Year 2001 or earlier, i.e. all funds were expended (as measured by PAS) by 9-30-01 or only a residual amount that is less than one percent of the amount of the prior grant remains, you are **not eligible** to apply for renewal funding under this notice.

Line 1	Indicated the amount of the prior HOPWA award.	$
Line 2	Indicate the amount expended as of 9-30-01.	$
Line 3	Subtotal: subtract Line 2 from Line 1. (See Item 1 below.)	$
Line 4	Indicate the amount to be expended in FY2002. (By September 30, 2002)	$
Line 5	Indicate the amount to be expended in FY2003. (By September 30, 2003)	$
Line 6	Subtotal: Subtract Lines 4 and 5 from Line 3. (See Item 2 below)	$

1. If the subtotal on Line 3 is zero or a residual amount that is less than one percent of the amount on Line 1, you are not eligible to apply for renewal funding under this notice.

2. If the subtotal on Line 6 is greater than zero, you are **not eligible** to apply for renewal funding under the HOPWA Renewal Section of HUD's SuperNOFA. Also note that continued use of prior funds may require that you file an extension request with the area CPD Field Office.

HOPWA NOFA – Appendix A

HOPWA Renewal Project Budget Form

A. Renewal Project Summary Budget. In column A, enter the amount of HOPWA funding that was awarded under the prior HOPWA award (including any change approved by HUD). In column B, enter the total amount of new HOPWA funds being requested as outlined below in Section B: "Annual Summary Budget" – Column D. In column C, enter any other funds (i.e. private, local, or state resources) that will be used in conjunction with the requested HOPWA renewal funds to undertake the project. Enter the sum total of requested *HOPWA funds* and *Other funds* (sum of columns B and C) in column D. Enter the totals of each column in line 13 of the budget form.

Eligible Activity	HOPWA Project Funding			
	A. Original/Amd.	B. Renewal Amt.*	C. Other	D. Total
1. Lease	$	$	$	$
2. Operating Costs	$	$	$	$
3. Supportive Services	$	$	$	$
4. Housing Information	$	$	$	$
5. Technical Assistance & Resource Identification	$	$	$	$
6. Rental Assistance	$	$	$	$
7. Short-term Rent, Mortgage, and Utility Payments to Prevent Homelessness	$	$	$	$
8. Other (please indicate the activity) ____	$	$	$	$
9. Subtotal of Activity Costs (not to exceed $1,200,000)	$	$	$	$
10. Grantee's Administrative Costs (not to exceed 3% of Subtotal)	$	$	$	$
11. Project Sponsor's Administrative Costs (not to exceed 7% of amounts received by sponsors)	$	$	$	$
12. Collect data on Project Outcomes (not to exceed $50,000)	$	$	$	$
13. Total	$	$	$	$

*Note: Column B should reflect the total of funding requested for all years as outlined in Section B.

B. Annual Summary Budget. In columns A through C enter the requested amount of HOPWA funds by year. The term of the grant may be up to 3 years. You may request up to 20 percent more than the original award for renewal by activity, but the total requested funds must not exceed $1,200,000. For additional details on eligible activities and limitations, consult the program regulations at 24 CFR 574.300-340. One-time capital development costs are not eligible for renewal. In column D, enter the total amount of requested HOPWA funds for each year by summing columns A through C. The totals in Column D should equal the totals in Column B in Section A-"Renewal Project Summary Budget" and should represent your total request for HOPWA funds. Enter the totals of each column in line 13 of the budget form.

Indicate the number of years you are requesting renewal funding (1-3 years). ____

Eligible Activity	HOPWA Project Funding			
	A. Year 1	B. Year 2	C. Year 3	D. Total *
1. Lease	$	$	$	$
2. Operating Costs	$	$	$	$
3. Supportive Services	$	$	$	$
4. Housing Information	$	$	$	$
5. Technical Assistance & Resource Identification	$	$	$	$
6. Rental Assistance	$	$	$	$
7. Short-term Rent, Mortgage, and Utility Payments to Prevent Homelessness	$	$	$	$
8. Other (please indicate the activity) ____	$	$	$	$
9. Subtotal of Activity Costs (not to exceed $1,200,000)	$	$	$	$
10. Grantee's Administrative Costs (not to exceed 3% of Subtotal)	$	$	$	$
11. Project Sponsor's Administrative Costs (not to exceed 7% of amounts received by sponsors)	$	$	$	$
12. Collect data on Project Outcomes (not to exceed $50,000)	$	$	$	$
13. Total	$	$	$	$

*Note: Totals in this column should equal the totals in Column B, Section A – "Renewal Project Summary Budget".

C. Renewal Project Descriptive Budget.

Instructions:

A. For the grantee and each project sponsor receiving HOPWA renewal funds under this application, please complete the Renewal Project Descriptive Budget Form. The first form should be completed for the grantee, followed by one form for each project sponsor. In the form number boxes enter the number of the form followed by the total numbers of forms submitted. For example, if you are the grantee and have two project sponsors, you will complete three forms. The first form should be for the grantee and will be numbered as (1 of 3). You will then complete two additional forms for each project sponsor. The first project sponsor form will be numbered as (2 of 3), and the second (3 of 3).

B. Enter the name of the organization (grantee or project sponsor).

C. As applicable, mark if you are completing this form for the grantee or project sponsor.

D. For each HOPWA Eligible Activity that you are requesting HOPWA renewal funding, give a brief description of the activity. This description should be a 1-2 line summary of the activity.

EXAMPLE 1:

HOPWA Eligible Activity and Description	**HOPWA Request**
Rental Assistance	$100,000
Description: *Provide long-term, tenant-based rental assistance through the "Rent Project" to 25 individuals and 10 families per year over a three-year grant period.*	

EXAMPLE 2:

Eligible Activity and Description	**HOPWA Request**
Supportive Services	$30,000
Description: *Provide case management, nutritional services, and mental health counseling to 45 individuals in the "AIDS Housing" facility each year for the three years of the grant term.*	

E. For each HOPWA Eligible Activity (lines 1-10), enter the amount of requested HOPWA renewal funds. NOTE: A sum of each HOPWA request completed on the Project Descriptive Budget for the grantee and each project sponsor should equal the totals entered in Section A- Column B of the Renewal Project Summary Budget.

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HOPWA NOFA – Appendix A

A. HOPWA Renewal Project Description Budget Form *Form* ☐ *of* ☐

B. Name of Grantee/Project Sponsor:

C. Mark one of the following:
Grantee ☐ **Project Sponsor** ☐

Is the organization a religious organization, or a religiously affiliated or motivated organization? (Note: This characterization of religious is broader than the standards used for defining a religious organization as "primarily religious" for purposes of applying HUD's church/state limitations. For example, while the YMCA is often not considered "primarily religious" under applicable church/state rules, it would likely be classified as a religiously motivated entity.)

☐ Yes ☐ No

D. Eligible Activity and Description	E. HOPWA Renewal Request
1. Lease	$
Description:	
2. Operating Costs	$
Description:	
3. Supportive Services	$
Description:	
4. Housing Information	$
Description:	
5. Technical Assistance and Resource Identification	$
Description:	
6. Rental Assistance	$
Description:	
7. Short-term Rent, Mortgage & Utility Payment to Prevent Homelessness	$
Description:	

HOPWA NOFA – Appendix A

Form, page 2

8. Other (please indicate the activity)	$
Description:	
9. Administrative Costs (Grantee or Project Sponsor)	$
Description:	
10. Collect data on Project Outcomes (not to exceed $50,000)	$
Description:	

HOPWA NOFA – Appendix A

HOPWA Renewal Project Information Form

A. Grant Number
Please provide the grant number of the HOPWA grant for which you are seeking renewal.

Grant Number		Year Funded:	

B. Service Area. Please identify the intended service area, i.e., the name of the community or metropolitan area, or, if activities are planned for a state-wide or nation-wide basis:

C. Project Sponsors and Sites. On a separate page, if needed, identify all the project sponsors that are involved in your proposed project, the sponsor's mailing address, telephone, email address, fax number, and the name of a contact person.

Are new project sponsor(s) being added to the renewal project? Yes ☐ / No ☐
Please note you must provide an Organizational Capacity Narrative if a new project sponsor is added to your renewal project.

Sites. For projects involving sites, for example, a structure where HOPWA funds will be used for operating costs, and/or project-based rental assistance, please attach or provide the address of the project site.

Confidentiality. Please indicate if the site location is confidential or a public site by checking the appropriate box below.

☐ Confidential Site.
(Do not release the street location of this project.)

☐ Public Site.
(The address may be released to inform clients and the public.)

Photo. Please attach a photograph of the structure.

HOPWA NOFA – Appendix A

D. Summary of Proposed Accomplishments.
Summary of Housing Assistance: Please provide best estimates in the following table. Enter number of units of housing served if renewal project is funded and is fully implement and operational.

		Accomplishment by Year		
1. Facility-based Housing: Enter total units to be provided.		Year 1	Year 2	Year 3
Short-term facility				
Single room occupancy dwelling	☐ Permanent ☐ Non-Permanent			
Community residence	☐ Permanent ☐ Non-Permanent			
Other housing facility (specify) ____	☐ Permanent ☐ Non-Permanent			
2. Scattered-site Payments		Year 1	Year 2	Year 3
Tenant-based rental assistance				
Short-term rent, mortgage, and utility payments				
Total Units				

Example: If your four-unit community residence will be funded and operational in each of the next three years, enter 4 in each of the 3 boxes after community residences.

Summary of Persons Assisted. Please provide best estimates in the following table:

	Accomplishment by Year		
	Year 1	Year 2	Year 3
1. Number of persons with HIV/AIDS who will receive some form of housing assistance			
2. Number of family members of the above who will be residing with the person receiving housing assistance			
3. Number of persons with HIV/AIDS who will only be receiving some form of supportive services (persons receiving both services and housing are reported in item 1 above)			
4. Number of other family members who will only be receiving some form of supportive services (persons receiving both services and housing are reported in item 2 above).			
5. Number of persons who will be receiving housing information services.			

Example: If some clients transition out of your 4 unit community residence each year and new clients enter the project, enter your best estimate of all the persons projected to be served for each year.

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HOPWA NOFA – Appendix A

E. Additional Information

The Department of Housing and Urban Development needs the following information to respond to public inquiries about program benefit. Your responses will not affect in any way the scoring of your submission.

1. Which of the following subpopulations will your project serve? (Check all that apply)

☐ Severely Mentally Ill ☐ Chronic Substance Abuse ☐ Veterans

☐ Multiply-Diagnosed ☐ Victims of Domestic Violence

2. Will the proposed project be located in a rural area? (A project is considered to be in a rural area when the project either (1) is in an area outside of Metropolitan Areas, or (2) is outside of the urbanized areas within a Metropolitan Area.)

☐ Yes ☐ No

HOPWA NOFA – Appendix B

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
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FY 2002 HOPWA Formula Allocations Including Non-Eligible Areas

On November 29, 2001, HUD announced that $247.889 million, or 90 percent of the total FY2002 HOPWA appropriation of $277.432 million, was allocated under the statutory formula to 108 HOPWA grantees, including 74 cities for Eligible Metropolitan Statistical Areas (EMSA's) and 34 States. The grantee for these amounts is the State or, for the EMSA, the most populous city in that area, which is the jurisdiction noted below. The State of New Jersey will administer funds for the four New Jersey Counties that are in the Philadelphia Metropolitan Area. Each of the allocations are made available under the jurisdiction's consolidated plan.

Three new FY2002 grantees are noted as (*) in following metropolitan areas: Charleston, SC, Greenville, SC, and Tucson, AZ. The new EMSA's will reduce the prior service areas of two State grants in Arizona and South Carolina. In addition Wake County, NC was given authorization to administer the grant to the Raleigh Metropolitan Area.

For further information regarding HOPWA formula grantees visit the HOPWA website at http://www.hud.gov/offices/cpd/aidshousing.

AL	BIRMINGHAM	$469,000
AL	ALABAMA STATE PROGRAM	$1,076,000
AZ	PHOENIX	$1,299,000
AZ	TUCSON*	$376,000
AZ	ARIZONA STATE PROGRAM	$121,000
AR	ARKANSAS STATE PROGRAM	$706,000
CA	LOS ANGELES	$10,288,000
CA	OAKLAND	$1,969,000
CA	RIVERSIDE	$1,699,000
CA	SACRAMENTO	$784,000
CA	SAN DIEGO	$2,593,000
CA	SAN FRANCISCO	$9,414,000
CA	SAN JOSE	$764,000
CA	SANTA ANA	$1,389,000
CA	CALIFORNIA STATE PROGRAM	$2,952,000
CO	DENVER	$1,374,000
CT	HARTFORD	$996,000
CT	NEW HAVEN	$706,000
CT	CONNECTICUT STATE PROGRAM	$1,137,000
DE	WILMINGTON	$1,015,000
DE	DELAWARE STATE PROGRAM	$150,000
DC	WASHINGTON	$10,451,000
FL	FT LAUDERDALE	$6,960,000
FL	MIAMI	$12,482,000
FL	ORLANDO	$2,711,000

FL	TAMPA	$2,771,000
FL	WEST PALM BEACH	$3,960,000
FL	JACKSONVILLE-DUVAL	$1,865,000
FL	FLORIDA STATE PROGRAM	$4,129,000
GA	ATLANTA	$3,884,000
GA	GEORGIA STATE PROGRAM	$1,701,000
HI	HONOLULU	$438,000
HI	HAWAII STATE PROGRAM	$160,000
IL	CHICAGO	$5,301,000
IL	ILLINOIS STATE PROGRAM	$691,000
IN	INDIANAPOLIS	$708,000
IN	INDIANA STATE PROGRAM	$751,000
KY	LOUISVILLE	$405,000
KY	KENTUCKY STATE PROGRAM	$390,000
LA	BATON ROUGE	$999,000
LA	NEW ORLEANS	$2,602,000
LA	LOUISIANA STATE PROGRAM	$933,000
MD	BALTIMORE	$7,033,000
MA	BOSTON	$2,416,000
MA	SPRINGFIELD	$535,000
MA	MASSACHUSETTS STATE PROGRAM	$1,072,000
MI	DETROIT	$1,913,000
MI	MICHIGAN STATE PROGRAM	$856,000
MN	MINNEAPOLIS	$817,000
MN	MINNESOTA STATE PROGRAM	$107,000
MS	MISSISSIPPI STATE PROGRAM	$1,097,000
MO	KANSAS CITY	$959,000
MO	ST LOUIS	$1,155,000
MO	MISSOURI STATE PROGRAM	$484,000
NV	LAS VEGAS	$891,000
NV	NEVADA STATE PROGRAM	$225,000
NJ	DOVER TOWNSHIP	$707,000
NJ	JERSEY CITY	$2,707,000
NJ	NEWARK	$6,979,000
NJ	PATERSON	$1,333,000
NJ	WOODBRIDGE	$786,000
NJ	NEW JERSEY STATE PROGRAM	$1,991,000
NM	NEW MEXICO STATE PROGRAM	$501,000
NY	ALBANY	$432,000
NY	BUFFALO	$446,000
NY	ISLIP TOWN	$1,633,000
NY	NEW YORK CITY	$49,409,000
NY	ROCHESTER	$566,000
NY	NEW YORK STATE PROGRAM	$2,239,000
NC	CHARLOTTE	$520,000
NC	GREENSBORO	$413,000
NC	WAKE COUNTY	$494,000

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NC	NORTH CAROLINA STATE PROGRAM	$1,172,000
OH	CINCINNATI	$464,000
OH	CLEVELAND	$824,000
OH	COLUMBUS	$543,000
OH	OHIO STATE PROGRAM	$1,020,000
OK	OKLAHOMA CITY	$491,000
OK	OKLAHOMA STATE PROGRAM	$491,000
OR	PORTLAND	$950,000
PA	PHILADELPHIA	$7,125,000
PA	PITTSBURGH	$579,000
PA	PENNSYLVANIA STATE PROGRAM	$1,443,000
RI	PROVIDENCE	$521,000
SC	CHARLESTON*	$524,000
SC	COLUMBIA	$1,019,000
SC	GREENVILLE*	$374,000
SC	SOUTH CAROLINA STATE PROGRAM	$1,041,000
TN	MEMPHIS	$1,801,000
TN	NASHVILLE-DAVIDSON	$1,454,000
TN	TENNESSEE STATE PROGRAM	$694,000
TX	AUSTIN	$948,000
TX	DALLAS	$3,022,000
TX	FORT WORTH	$798,000
TX	HOUSTON	$4,653,000
TX	SAN ANTONIO	$965,000
TX	TEXAS STATE PROGRAM	$2,779,000
UT	SALT LAKE CITY	$421,000
UT	UTAH STATE PROGRAM	$65,000
VA	RICHMOND	$638,000
VA	VIRGINIA BEACH	$957,000
VA	VIRGINIA STATE PROGRAM	$614,000
WA	SEATTLE	$1,641,000
WA	WASHINGTON STATE PROGRAM	$608,000
WI	MILWAUKEE	$483,000
WI	WISCONSIN STATE PROGRAM	$385,000
PR	SAN JUAN MUNICIPIO	$7,831,000
PR	PUERTO RICO STATE PROGRAM	$2,266,000

Non-Eligible Areas:
The following areas are not eligible for HOPWA FY 2002 formula allocations. State and units of general local government from these areas may apply for HOPWA projects under the Long-Term category of grants as detailed in the HOPWA program section of the SuperNOFA.

STATE	NON-ELIGIBLE AREAS
AK	State of Alaska
CO	State of Colorado (outside of Denver, EMSA)
IA	State of Iowa
ID	State of Idaho
KS	State of Kansas (outside of Kansas City, EMSA)
ME	State of Maine
MD	State of Maryland (outside of Baltimore, Washington DC, and Wilmington EMSA)
MT	State of Montana
ND	State of North Dakota
NE	State of Nebraska
NH	State of New Hampshire (outside of Boston, EMSA)
OR	State of Oregon (outside of Portland, EMSA)
RI	State of Rhode Island (outside of Providence, EMSA)
SD	State of South Dakota
VT	State of Vermont
WV	State of West Virginia (outside of Washington DC, EMSA)
WY	State of Wyoming
	Virgin Islands
	Pacific Islands

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HOPWA Application Checklist

Checklist of Exhibits
Please insert page numbers

- ☐ Transmittal Letter (that identifies HOPWA and amount requested)
- ☐ Application for Federal Assistance (Form SF-424) and (HUD-424M)
- ☐ Project Synopsis and Executive Summary
- ☐ Exhibit 1 Applicant and Sponsor Information
- ☐ Exhibit 2 Need/Extent of Problem
- ☐ HOPWA Project Information Form
- ☐ Exhibit 3 Soundness of Approach
- ☐ HOPWA Project Budget Form
- ☐ Exhibit 4 Leveraging
- ☐ Exhibit 5 Coordination, Self-Sufficiency, and Sustainability
- ☐ Statutory Certifications (Required by law)
- ☐ Acknowledgement of Application Receipt (Optional) (HUD-2993)
- ☐ Evaluation by Customer (Optional) (HUD-2994)

HOPWA Project Information Form

Exhibit 3: Proposed HOPWA Project / Soundness of Approach
Please complete form and place before the Soundness of Approach narrative section of your application.

A. Category of Assistance. Check only one of the following two boxes.

- ☐ **Category 1: Special Projects of National Significance.**
- ☐ **Category 2: Projects which are part of long-term comprehensive strategies for providing housing and related services** in an area that did not qualify for a HOPWA formula award.

B. Duplication of Assistance Requested. Please indicate if you or your project sponsor is seeking funding under this HOPWA competition for an activity that is duplicated in an application under the HUD Continuum of Care Homeless Assistance 2002 competition as follows:

- ☐ A proposed HOPWA activity is identical and ***duplicates funding*** requested in an application for HUD continuum of care funding;
- ☐ A proposed activity is related but ***not identical*** to the requested funding.
- ☐ No related assistance is being requested.

D. Service Area. Please identify the intended service area, i.e., the name of the community or metropolitan area, or, if activities are planned for a state-wide or nation-wide basis:

C. Summary of Proposed Accomplishments.

Summary of Housing Assistance: Please provide best estimates in the following table. Enter number of units of housing served if project is funded and is fully implement and operational.

		Accomplishment by Year		
1. Facility-based Housing: Enter total units to be provided.		**Year 1**	**Year 2**	**Year 3**
Short-term facility				
Single room occupancy dwelling	☐ Permanent ☐ Non-permanent			
Community residence	☐ Permanent ☐ Non-permanent			
Other housing facility (specify)____	☐ Permanent ☐ Non-permanent			
2. Scattered-site Payments		**Year 1**	**Year 2**	**Year 3**
Tenant-based rental assistance				
Short-term rent, mortgage, and utility payments				
Total Units				

Example: If your four-unit community residence will be funded and operational in each of the next three years, enter 4 in each of the 3 boxes after community residences.

Summary of Persons Assisted. Please provide best estimates in the following table:

	Accomplishment by Year		
	Year 1	**Year 2**	**Year 3**
1. Number of persons with HIV/AIDS who will receive some form of housing assistance			
2. Number of family members of the above who will be residing with the person receiving housing assistance			
3. Number of persons with HIV/AIDS who will only be receiving some form of supportive services (persons receiving both services and housing are reported in item 1 above)			
4. Number of other family members who will only be receiving some form of supportive services (persons receiving both services and housing are reported in item 2 above).			
5. Number of persons who will be receiving housing information services.			

Example: If some clients transition out of your four unit community residence each year and new clients enter the project, enter you best estimate of all the persons projected to be served for each year.

E. Project Sponsors and Sites. Below or on a separate page, if needed, identify all the project sponsors that are involved in your proposed project, including the amount of funds each will utilize; and the sponsor's mailing address, telephone, email address, fax number, and the name of a contact person. Your narrative on the proposed program activities should also specify which activities each sponsor will be carrying out.

Sites. For projects involving sites, for example, a structure where HOPWA funds will be used for new construction, acquisition, rehabilitation, operating costs, and/ or project-based rental assistance, please attach or provide the address of the project site.

Confidentiality.

☐ Confidential Site. (Do not release the street location of this project.)

☐ Public Site. (The address may be released to inform clients and the public.)

Photo. Please attach a photograph of the structure (except for new constructions).

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F. Additional Information
The Department of Housing and Urban Development needs the following information to respond to public inquiries about program benefit. Your responses will not affect in any way the scoring of your submission.

1. Which of the following subpopulations will your project serve? (Check all that apply)

☐ Severely Mentally Ill

☐ Chronic Substance Abuse

☐ Multiply-Diagnosed

☐ Victims of Domestic Violence

☐ Veterans

2. Will the proposed project be located in a rural area? (A project is considered to be in a rural area when the project either (1) is in an area outside of Metropolitan Areas, or (2) is outside of the urbanized areas within a Metropolitan Area.)

☐ Yes

☐ No

HOPWA Project Budget Form

A. Project Summary Budget. In columns A & B, enter the appropriate amount of funding that will be utilized for the HOPWA eligible activity for all years requested. For example, in column A enter the amount of HOPWA funds being requested for each eligible activity. In column B, enter the amount of other funds, if any, (i.e. private, local, or state resources) that will be used in conjunction with the requested HOPWA funds to complete the project. Enter the sum total of requested *HOPWA funds* and *Other funds* (sum of columns A & B) in column C. Enter the totals of each column in line 16 of the budget form. For additional details on eligible activities and limitations, consult the program regulations at 24 CGR 574.300-340.

Eligible Activity	Project Funding		
	A. HOPWA	B. Other	C. Total
1. Acquisition	$	$	$
2. Rehabilitation, Repair, & Conversion*	$	$	$
3. New Construction*	$	$	$
4. Lease	$	$	$
5. Operating Costs	$	$	$
6. Supportive Services (May not exceed 35% of activity costs.)	$	$	$
7. Housing Information	$	$	$
8. Technical Assist. & Resource Identification (May not exceed 20% of activity costs.)	$	$	$
9. Rental Assistance	$	$	$
10. Short-term Rent, Mortgage, and Utility Payments to Prevent Homelessness	$	$	$
11. Other (name the type of alternative activity that is also described in exhibit 3)	$	$	$
12. Subtotal of Activity Costs (not to exceed $1,200,000)	$	$	$
13. Grantee's Administrative Costs (not to exceed 3% of Subtotal)	$	$	$
14. Project Sponsor's Administrative Costs (not to exceed 7% of amounts received by sponsors)	$	$	$
15. Collect data on Project Outcomes (not to exceed $50,000)	$	$	$
16. Total	$	$	$

*If over $200,000, the project would be subject to Sec. 3 requirements, if selected, pertaining to economic opportunities for low and very low-income persons.

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B. Annual Summary Budget. In columns A through C enter the requested amount of HOPWA funds by year. The term of the grant may be up to 3 years. In column D, enter the total amount of requested HOPWA funds for each year by summing columns A through C. The totals in Column D should equal the totals in Column A in Section A-"Project Summary Budget" and should represent your total request for HOPWA funds. Enter the totals of each column in line 16 of the budget form.

Indicate the number of years you are requesting renewal funding (1-3 years). ____

Eligible Activity	Project Funding			
	A. Year 1	B. Year 2	C. Year 3	D. Total
1. Acquisition	$	$	$	$
2. Rehabilitation, Repair, & Conversion*	$	$	$	$
3. New Construction*.	$	$	$	$
4. Lease	$	$	$	$
5. Operating Costs	$	$	$	$
6. Supportive Services (May not exceed 35% of activity costs)	$	$	$	$
7. Housing Information	$	$	$	$
8. Technical Assist. & Resource Identification (May not exceed 20% of activity costs.)	$	$	$	$
9. Rental Assistance	$	$	$	$
10. Short-term Rent, Mortgage, and Utility Payments to Prevent Homelessness	$	$	$	$
11. Other (name the type of alternative activity that is also described in exhibit 3) ____	$	$	$	$
12. Subtotal of Activity Costs (not to exceed $1,200,000)	$	$	$	$
13. Grantee's Administrative Costs (not to exceed 3% of Subtotal)	$	$	$	$
14. Project Sponsor's Administrative Costs (not to exceed 7% of amounts received by sponsors)	$	$	$	$
15. Collect data on Project Outcomes (not to exceed $50,000)	$	$	$	$
16. Total	$	$	$	$

*If over $200,000, the project would be subject to Sec. 3 requirements, if selected, pertaining to economic opportunities for low and very low-income persons.

C. Project Descriptive Budget.

Instructions:

A. For the grantee and each project sponsor receiving HOPWA funds under this application, please complete the Project Descriptive Budget Form. The first form should be completed for the grantee, followed by one form for each project sponsor. In the form number boxes enter the number of the form followed the total numbers of forms submitted. For example, if you are the grantee and have two project sponsors, you will complete three forms. The first form should be for the grantee and will be number as (1 of 3). You will then complete two additional forms for each project sponsor. The first project sponsor form will be numbered as (2 of 3), and the second (3 of 3).

B. Enter the name of the organization (grantee or project sponsor).

C. As applicable, mark if you are completing this form for the grantee or project sponsor.

D. For each HOPWA Eligible Activity that you are requesting HOPWA funding, give a brief description of the activity. This description should be a 1-2 line summary of the activity as presented in your application. In addition, reference the project goal or objective which corresponds to the described activity. See the below examples:

EXAMPLE 1:

HOPWA Eligible Activity and Description	HOPWA Request
Rental Assistance	$100,000
Description: *Provide long-term, tenant-based rental assistance through the "Rent Project" to 25 individuals and 10 families per year over a three year grant period. (See Project Goals/Objectives, Goal 1 pg. 23)*	

EXAMPLE 2:

Eligible Activity and Description	HOPWA Request
Supportive Services	$30,000
Description: *Provide case management, nutritional services, and mental health counseling to 45 individuals in the "AIDS Housing" facility each year for the three years of the grant term. (See Project Goals/Objectives, Goal 3, pg. 21)*	

E. For each HOPWA Eligible Activity (lines 1-13), enter the amount of requested HOPWA funds. NOTE: A sum of each HOPWA request completed on the Project Descriptive Budget for the grantee and each project sponsor, should equal the totals entered in Section A - Column A of the Project Summary Budget.

HOPWA NOFA – Appendix D

A. HOPWA Project Description Budget Form *Form* ☐ *of* ☐

B. Name of Grantee/Project Sponsor:

C. Mark one of the following:
Grantee ☐ **Project Sponsor** ☐

Is the organization a religious organization, or a religiously affiliated or motivated organization? (Note: This characterization of religious is broader than the standards used for defining a religious organization as "primarily religious" for purposes of applying HUD's church/state limitations. For example, while the YMCA is often not considered "primarily religious" under applicable church/state rules, it would likely be classified as a religiously motivated entity.)

☐ Yes ☐ No

D. Eligible Activity and Description	E. HOPWA Request
1. Acquisition	$
Description:	
2. Rehabilitation, Repair & Conversion	$
Description:	
3. New Construction	$
Description:	
4. Lease	$
Description:	
5. Operating Costs	$
Description:	
6. Supportive Services	$
Description:	
7. Housing Information	$
Description:	

HOPWA NOFA – Appendix D

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D. Eligible Activity and Description	E. HOPWA Request
8. Technical Assistance and Resource Identification	$
Description:	
9. Rental Assistance	$
Description:	
10. Short-term Rent, Mortgage & Utility Payment to Prevent Homelessness	$
Description:	
11. Other (name the type of alternative activity that is also described exhibit 3)	$
Description:	
12. Administrative Costs (Grantee or Project Sponsor)	$
Description:	
13. Collect data on Project Outcomes (not to exceed $50,000)	$
Description:	

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Leveraging HOPWA Resources

Leveraging
Applicants will receive points to the extent that they document resources that are being brought to the project from other public or private sources. Enter in this chart the cash value of documented cash and in-kind resources from other public (including other Federal) and private sources that are committed to the project during the grant period.

Value of Documented Resources

Resource	Page No. of Documentation	Cash Value	HUD Use Only
a. Cash		$	
b. Non-cash Resources		$	
c. Volunteer Time		$	
d. Contribution of a Building		$	
e. Contribution of a Building to be Acquired with HOPWA		$	
f. Contribution of a Leasehold interest		$	
Total of all Leveraging		$	

HOPWA Applicant Certifications

These certified statements are required by law.

The Applicant hereby assures and certifies that:

1. Within the HOPWA eligible population, it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR Part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

It will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and with implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing. For Indian tribes, it will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), instead of Title VI and the Fair Housing Act and their implementing regulations.

It will comply with Executive Order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR Part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

It will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1), which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and regulations pursuant thereto (24 CFR Part 135), which require that to the

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greatest extent feasible opportunities for training and employment be given to lower-income residents of the project and contracts for work in connection with the project be awarded in substantial part to per-sons residing in the area of the project.

It will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR Part 8, which prohibit discrimination based on handicap in Federally-assisted programs and activities.

It will comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, and where applicable, the design and construction requirements of the Fair Housing Act.

It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

It will comply with Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

If persons of any particular race, color religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.

2. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR Part 24.

3. It will not acquire, rehabilitate, convert, lease, repair or construct property to provide housing or commit HUD, State, local or other funds to program activities with respect to any eligible property until it has obtained HUD approval of form HUD-7015.15, "Request for the Release of Funds and Certification" of compliance with the National Environmental Policy Act and implementing regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities) or, in cases where HUD has performed the environmental review, the Applicant has obtained HUD approval of the site following HUD's completion of form HUD-4128.

4. Any building or structure assisted with amounts under this part will be maintained as a facility to provide assistance for eligible persons: (i) for not less than 10 years in the case of assistance involving new construction, substantial rehabilitation or acquisition of a building or structure; and (ii) for not less than three years in cases involving non-substantial rehabilitation or repair of a building or structure.

5. It and its principals (see 24 CFR 24.105(p)):

(a) are not presently debarred, suspended, proposed for debarment,

declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or other-wise criminally or civilly charged by a govern-mental entity (Federal, State or local) with commission of any of the offenses enumerated in (b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation behind this page.

HOPWA Applicant Certifications

Signature of Authorized Certifying Official & Date

X

Title

Name of Applicant

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MAINSTREAM HOUSING OPPORTUNITIES FOR PERSONS WITH DISABILITIES

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FUNDING AVAILABILITY FOR MAINSTREAM HOUSING OPPORTUNITIES FOR PERSONS WITH DISABILITIES (MAINSTREAM PROGRAM)

PROGRAM OVERVIEW

Purpose of the Program. The purpose of this program is to provide vouchers under the Housing Choice Voucher Program to enable persons with disabilities (elderly and non-elderly) to access affordable private housing.

Available Funds. Approximately $53.9 million in five-year budget authority, derived from Section 811 funding, for approximately 1,900 vouchers is available to public housing agencies (PHAs) and nonprofit disability organizations.

Applications are also being invited from PHAs for one-year budget authority funding (non-Section 811 funds) that HUD anticipates may be available for the Mainstream Program in FY 2002. Specifically, any portion of the $40 million in one-year budget authority contained in FY 2002 appropriations related to designated housing plans; preferences in occupancy for the elderly in certain types of Section 8 project-based developments; or restrictions in occupancy to elderly only in certain types of Section 202, Section 221(d)(3), or Section 236 developments remaining unobligated and not needed to fund approvable applications under these programs will be added to the approximately $53.9 million in five-year budget authority available under this announcement. This one-year budget authority will be used only for non-elderly disabled families.

See section II(A) of this funding announcement which fully addresses (1) the source of the $53.9 million in five-year budget authority appropriated by Congress for FY 2002 under Section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), and (2) the source of the non-Section 811 funds comprising one-year budget authority which may also be available under this funding announcement. All future references in this funding announcement to five-year budget authority or one-year budget authority, respectively, are based upon these funding sources.

Eligible Applicants. PHAs and nonprofit disability organizations that provide services to disabled families are eligible to apply for the $53.9 million in five-year budget authority for applications submitted in FY 2002. While PHAs and nonprofit disability organizations are eligible to apply for the $53.9 million in five-year budget authority available under this announcement, only PHAs are eligible to apply for the one-year budget authority that may also be available under this announcement (see Section II(A) of this announcement regarding the possibility of one-year funding also being available for the Mainstream Program). PHAs or nonprofit disability organizations that fall into any of the categories in section VII(B)(2) of this announcement are ineligible to have an application funded under this announcement. Indian Housing Authorities (IHAs), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996, does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

The vouchers that HUD will provide under this announcement must be made available to eligible disabled families regardless of their type of disability. (See the definition of disabled family in Section IV(E) of this announcement.) The Mainstream Program vouchers must not be issued by the administering agency on the basis of any preference system favoring any particular type of disability over another, nor shall the vouchers be issued solely on the basis of an administering agency's waiting list which is based on that agency's having heretofore served only certain types of disabled persons. The Housing Choice Voucher Program regulations provide at 24 CFR 982.207(c) that a PHA may give preference for admission of families that include a person with disabilities; however, the PHA may not give preference for admission of persons with a specific disability. This regulatory requirement is also applicable to nonprofit disability organizations who receive funding under this announcement as such organizations must comply with the regulatory requirements applicable to the Housing Choice Voucher Program.

Application Deadline. July 22, 2002.

Match. None.

Additional Information

If you are interested in applying for funding under the Mainstream Program, please review carefully the General Section of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information and Technical Assistance

Application Due Date. Submit your completed application (an original and one copy) to HUD on or before July 22, 2002. *See the paragraphs titled "Mailed Applications" and "Applications Sent by Overnight/Express Mail Delivery" in section I of this funding announcement regarding the specific time on the application due date by which applications are to be submitted.* This application deadline date is firm. In the interest of fairness to all competing PHAs and nonprofit disability organizations, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the competition under this funding announcement, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Your completed application consists of one original and one copy. Submit your original application and one copy to: *Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.* The Grants Management Center (GMC) is the official place of receipt for all applications in response to this announcement of funding availability. Applications not submitted to the GMC will not be considered. A copy of the application is not required to be submitted to the local HUD Field Office. For ease of reference, the term "local HUD Field Office" will be used in this announcement to mean the local HUD Field Office Hub and the local HUD Field Office Program Center. A listing of HUD Field Offices is attached to the **General Section** of this SuperNOFA.

New Security Procedures. In response to the terrorist attacks in September 2001, HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications sent to Headquarters may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the GMC on or within fifteen (15) days

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of the application due date. *All applicants must obtain and save a* Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx, and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern Time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

For Application Kits. An application kit is not necessary for submitting an application in response to this announcement. This announcement contains all the information necessary for the submission of your application for voucher funding for the Mainstream Program.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may contact the Grants Management Center at (202) 358–0221. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, you should consult the HUD Web site at *www.hud.gov.*

II. Amount Allocated

(A) *Available Funding for Mainstream Program.* Approximately $53.9 million in five-year funding is available for approximately 1,900 vouchers. This allocation is consistent with the FY 2002 HUD Appropriations Act which provides that the Secretary of HUD may designate up to 25 percent of the amounts earmarked for supportive housing for persons with disabilities, under section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), for tenant-based assistance. The $53.9 million in five-year budget authority made available to applicants under this Mainstream Program funding announcement does not exceed 25 percent of the $240.9 million made available for the Section 811 Program under the FY 2002 HUD Appropriations Act.

All of the approximately $53.9 million in funding is for use in the housing of elderly and non-elderly disabled families. HUD will supplement the $53.9 million of five-year budget authority with additional funding of up to as much as $40 million in one-year budget authority initially earmarked for (1) housing choice vouchers for non-elderly disabled families in support of designated housing plans, and (2) non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owners establishing preferences for the admission of elderly families, or non-elderly disabled families not being housed in certain section 202, section 221(d)(3) and section 236 developments (or portions thereof) where the owners have restricted occupancy to elderly families. The FY 2002 HUD Appropriations Act states that to the extent the Secretary determines that the FY 2002 appropriations related to designated housing plans and certain types of Section 8 project-based developments and certain types of section 202, section 221(d)(3) and section 236 developments are not needed to fund applications, the funds may be used for other non-elderly disabled families. Any such remaining funds will be used to supplement funding for the Mainstream Program.

(B) *Funding for the Section 811 Program.* The Section 811 Program of Supportive Housing for Persons With Disabilities, located elsewhere in the SuperNOFA, provides capital advances and project rental assistance in FY 2002. The Section 811 Program of Supportive Housing for Persons With Disabilities will provide funding to nonprofit organizations (sponsors) for the development and operation of small, scattered-site housing to enable adults with disabilities to live as independently as possible in the community. The capital advance does not need to be repaid as long as the housing is used for its intended purpose for at least 40 years. The project rental assistance funds cover the difference between the HUD-approved operating expenses of the housing and the tenant's contribution towards rent, which is 30 percent of adjusted income. The types of housing that are typically developed through the program are small group homes for no more than six persons, independent living projects containing individual apartment units for no more than 18 persons, and condominium units. Sponsors are required to ensure that residents have access to any necessary supportive services but cannot require the acceptance of such as a condition of occupancy.

(C) *Housing Choice Voucher Funding.*

(1) *Lottery.* HUD will select approvable applications for funding by lottery in the event approvable applications are received for more funding than is available under this Mainstream Program announcement. In such event, a separate lottery will be held first to select applications for funding for the $53.9 million available in five-year budget authority available under this announcement, and a separate lottery will be held to select applications for funding for whatever amount of one-year budget authority may be available during FY 2002 for the Mainstream Program. PHAs should clearly indicate in their applications if they are applying for both five-year and one-year funding in order to ensure their inclusion in both lotteries. This would allow the last selected application (if a PHA) under the five-year funding lottery to be automatically funded with one-year budget authority for the remaining number of vouchers requested, but for which there was insufficient five-year budget authority at the point the PHA was selected in the five-year funding lottery. This would also allow a PHA to be automatically included in the lottery for one-year budget authority funding if not fortunate enough to be selected for any funding in the five-year budget authority lottery. PHAs applying for one-year funding must make it clear in their applications that they have a sufficient number of non-elderly disabled families to support the number of vouchers being requested. *As indicated earlier in this announcement, one-year budget authority funding is for use only by PHAs solely for non-elderly disabled families, whereas five-year budget authority is for use by PHAs and nonprofit disability organizations for both elderly and non-elderly disabled families.*

(2) *Maximum Voucher Request.* There is a limit on the number of vouchers that may be requested. An eligible applicant may apply for a maximum of 75 vouchers. No more than a grand total of 75 vouchers will be awarded to any applicant under the FY 2002 Mainstream Program; i.e., a PHA or nonprofit disability organization receiving five-year budget authority funding shall be funded for no more than 75 vouchers; a PHA receiving a combination of five-year and one-year budget authority shall be funded for no more than 75 vouchers; and a PHA receiving only one-year budget authority funding shall be funded for no more than 75 vouchers.

(3) *Determination of Funding Amount for the Applicant's Requested Number of Vouchers.* HUD will determine the amount of funding that an applicant will be awarded under this announcement based upon an actual annual per unit cost {except for Moving to Work (MTW) agencies the per unit cost will be calculated in accordance with the agency's MTW Agreement for MTW units} using the following two step process:

(a) HUD will extract the total expenditures for all the PHA's housing choice voucher and certificate programs and the unit months leased information from the most recent approved year end statement (Form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's housing choice voucher and certificate programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

Note: Applicants who do not currently administer a housing choice voucher program shall have their voucher funding based upon the actual annual per unit costs of the PHA in their most immediate area administering a housing choice voucher program, using the two step process described immediately above.

(4) *Preliminary Fee.* A preliminary fee of up to $500 per unit for preliminary (start-up) expenses will be paid to applicants that have not previously administered their own housing choice voucher program that are selected for funding under this announcement. The preliminary fee will be provided to such applicants only in their first year administering housing choice vouchers.

III. Program Description, Eligible Applicants and Eligible Participants

(A) *Program Description.* The Secretary has established a Mainstream Housing Opportunities for Persons with Disabilities Program (Mainstream Program) to provide vouchers to enable persons with disabilities to access affordable private housing of their choice.

The Mainstream Program will assist PHAs and nonprofit disability organizations in providing housing choice vouchers to a segment of the population recognized by HUD's housing research as having one of the worst housing needs of any group in the United States; i.e., very low-income households with adults with disabilities. In addition, the Mainstream Program will assist persons with disabilities who often face difficulties in locating suitable and accessible housing on the private market.

(B) *Eligible Applicants.* Public housing agencies (PHAs) and nonprofit disability organizations that provide services to the disabled {as defined in Section IV(E) of this announcement} are eligible applicants for the five-year budget authority funding available under this funding announcement. Only PHAs are eligible to apply for the one-year budget authority funding that may be available under this funding announcement. PHAs or nonprofit disability organizations that fall into any of the categories in section VII(B)(2) of this announcement are ineligible to have an application funded under this announcement. Indian Housing Authorities (IHAs), Indian tribes and their tribally designated housing entities are not eligible to apply for new increments of housing choice voucher funding because the Native American Housing Assistance and Self-Determination Act of 1996, does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

(1) *PHAs.*

(a) A PHA may submit only one application under this announcement. This one application per PHA limit applies regardless of whether or not the PHA is a State or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such instance, a separate application under each code shall be considered for funding, with the cumulative total of vouchers applied for under the applications not to exceed the maximum of 75 vouchers the PHA is eligible to apply for under section II(C)(2) of this announcement; i.e., no more than the number of vouchers the same PHA would be eligible to apply for if it only had one PHA code number.

(b) PHAs are encouraged to involve nonprofit disability organizations that provide services to disabled families, as defined in section III(B)(2) of this announcement, in the administration of the Mainstream Program's vouchers. Such organizations have frequently in the past demonstrated a capacity to assist disabled families, as well as have an in-depth knowledge of the disability community.

(i) A nonprofit disability organization could function as either a contract administrator for the PHA's Mainstream vouchers, or as a subcontractor responsible for providing case management services or assisting disabled families to locate suitable housing, gain access to supportive services, or identify private funding sources to cover the costs of unit modifications needed as a reasonable accommodation.

(ii) Such contractual arrangements must, however, ensure equal opportunity among the wide variety of disabled populations in the PHA's service area.

(c) In some cases a PHA currently administering the housing choice voucher program has, at the time of publication of this SuperNOFA, been designated by HUD as a troubled PHA under the Section 8 Management Assessment Program (SEMAP), or has major program management findings from Inspector General audits that are unresolved. HUD will not accept an application from such a PHA as a contract administrator if, on the application due date, the troubled PHA designation under SEMAP has not been removed by HUD, or the findings are not resolved. If the PHA wants to apply for funding under this announcement, the PHA must submit an application that designates another contractor that is acceptable to HUD. The PHA's application must include an agreement by the other contractor to administer the new funding increment on behalf of the PHA, and (in the instance of a PHA with unresolved major program management findings) a statement that outlines the steps the PHA is taking to resolve the program findings.

Immediately after the publication of this SuperNOFA, the Office of Public Housing in the local HUD Field Office will notify, in writing, those PHAs that have been designated by HUD as troubled under SEMAP, and those PHAs with unresolved major program management findings that are not

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eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the Director of the Grants Management Center. The PHA may appeal the decision, in writing, if HUD has mistakenly classified the PHA as having unresolved major program findings. The PHA may not appeal its designation as a troubled PHA under SEMAP. Any appeal with respect to unresolved major program management findings must be accompanied by conclusive evidence of HUD's error (i.e., documentation showing that the finding has been cleared) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the Grants Management Center with a copy of the PHA's written appeal and the Field Office's written response to the appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(2) *Nonprofit Disability Organization.* An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual, that provides services to persons with disabilities and has received a federal tax-exempt designation, under section 501(c)(3) of the Internal Revenue Code, from the U.S. Internal Revenue Service.

(a) The nonprofit entity must:

(i) Have a voluntary board;

(ii) Be authorized by its charter or State law to enter into a contract with the Federal Government to provide housing assistance to persons with disabilities;

(iii) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(iv) Practice nondiscrimination in the provision of assistance.

(b) A nonprofit disability organization meeting the definition of a nonprofit disability organization as defined in this Section III(B)(2), and wishing to apply for the funding available under this announcement must have the capacity to:

(i) Comply with the Section 8 Management Assessment Program (SEMAP) certification requirements under 24 CFR part 985.

(ii) Carry out such housing choice voucher and SEMAP specific related activities as making determinations as to rent reasonableness, performing housing quality standards (HQS) inspections and enforcement, conducting annual reexaminations of participant families, as well as otherwise meeting housing choice voucher program requirements under 24 CFR part 982.

(iii) Manage the Mainstream Program vouchers in a manner equivalent to an overall performance rating under SEMAP (24 CFR part 985) of "standard" during the first fiscal year of its receiving Mainstream Program funding.

(iv) Administer rental housing programs or manage rental housing, as demonstrated by a specific list of rental housing programs the nonprofit disability organization has administered or the rental housing the organization has managed (e.g. private rental housing, HUD or State-related housing programs, etc.).

Nonprofit disability organizations are encouraged to seek out PHAs in their geographic area to develop cooperative contractual relationships under the Mainstream Program, and to enhance services to disabled families. In addition to contacting local PHAs, nonprofit disability organizations may also wish to contact regional (multi-county), or statewide PHAs who may be applying for Mainstream Program funding.

(C) *Eligible Participants.* Only a disabled family that is income eligible under 24 CFR 982.201(b)(1), as well as otherwise eligible under the regulations at 24 CFR 982.201(b), may receive a voucher awarded under the Mainstream Program. While elderly and non-elderly disabled families are eligible to receive a voucher awarded to a PHA or nonprofit disability organization using five-year budget authority under this announcement, only non-elderly disabled families are eligible to receive a voucher awarded to a PHA using one-year budget authority that may be available for the Mainstream Program under this announcement. Applicants with disabilities must be selected from the PHA's or nonprofit disability organization's housing choice voucher waiting list. Additional information on those families and individuals eligible to receive a voucher is located at the following HUD Web site: *www.hud.gov/offices/pih/programs/hcv.*

IV. Program Requirements and Definitions

In addition to the civil rights compliance and nondiscrimination requirements listed in the **General Section** of this SuperNOFA, grantees must meet the following program requirements:

(A) *Affirmatively Furthering Fair Housing.* Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(1) Examine their own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in the Consolidated Plan); develop a plan to (a) address those impediments in a reasonable fashion in view of the resources available; (b) work with the local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and (c) maintain records reflecting these analyses and actions;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, applicants have a duty to carry out the specific activities cited in their responses under this announcement to address affirmatively furthering fair housing.

(B) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(C) *Voucher Assistance Requirements.*

(1) *Housing Choice Voucher Program Regulations.* Applicants must administer the Mainstream Program in accordance with HUD regulations and requirements governing the Housing Choice Voucher Program. The only exception to this requirement shall be for nonprofit disability organizations which shall not be required to comply with the requirements of 24 CFR part 903 , subpart B as concerns the requirement for a PHA Plan.

(2) *Housing Choice Voucher Program Admission Requirements.* Housing choice voucher assistance must be provided to eligible disabled families in conformity with regulations and requirements governing the Housing Choice Voucher Program and the PHA's administrative plan.

(3) *Turnover.* When a voucher under this announcement becomes available for reissue (*e.g.*, the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the voucher may be used only for another family eligible for assistance under this announcement for five years for the five-year funding or for one year for the one-year funding under this announcement from the date the rental assistance is placed under an annual contributions contract (ACC). If there is ever an insufficient pool of disabled families on the PHA's or nonprofit disability organization's housing choice voucher waiting list, the PHA or nonprofit disability organization shall conduct outreach to encourage eligible persons to apply for this special allocation of vouchers. Outreach may include contacting independent living centers, advocacy organizations for persons with disabilities, and medical, mental health, and social service providers for referrals of persons receiving such services who would benefit from housing choice voucher assistance. If the PHA's or nonprofit disability organization's housing choice voucher waiting list is closed, and if the PHA or nonprofit disability organization has insufficient applicants on its housing choice voucher waiting list to use all awarded vouchers under this announcement, the PHA or nonprofit disability organization should open the waiting list for applications from disabled families. PHAs and nonprofit organizations must take care to keep track of the number of disabled vouchers they have been awarded under this funding announcement versus the number of such vouchers that have actually been issued to disabled families.

(D) *PHA and Nonprofit Disability Organization Responsibilities.* In addition to the responsibilities under the Housing Choice Voucher Program and HUD regulations concerning nondiscrimination based on disability (24 CFR 8.28) and to affirmatively further fair housing, PHAs and nonprofit disability organizations that receive voucher funding shall:

(1) Where requested by an individual, assist program participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of participation or continued occupancy in the program.

(2) Identify public and private funding sources to assist participants in covering the costs of modifications that need to be made to their units as a reasonable accommodation for their disabilities.

(3) Not deny persons who qualify for rental assistance under this program other housing opportunities, or otherwise restrict access to PHA or nonprofit disability organization programs to eligible applicants who choose not to participate.

(4) Provide housing choice voucher search assistance.

(5) In accordance with regulatory guidance, provide higher rents to owners necessary for the provision of accessible units and structural modifications for persons with disabilities.

(6) Provide technical assistance to owners for making reasonable accommodations or making units accessible to persons with disabilities.

(E) *Definitions.* The following definitions apply.

(1) *Disabled Family.* Disabled family means a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

Note: This definition applies to the approximately $53.9 million in five-year budget authority available under the Mainstream Program, as well as to any one-year budget authority that may be available. This definition shall be modified, however, to be limited solely to non-elderly disabled families (families whose head, spouse or sole member is disabled and under the age of 62) regarding any funding available and awarded from the approximately $40 million in FY 2002 for designated housing allocation plans, or in connection with certain Section 8 project-based developments or certain section 202, section 221(d)(3) or section 236 developments. See Section II(A) of this announcement regarding the possibility of additional Mainstream Program funding during FY 2002 beyond the approximately $53.9 million initially available.

(2) *Person with disabilities.* Means a person who:

(a) Has a disability as defined in 42 U.S.C. 423;

(b) Is determined, pursuant to HUD regulations, to have a physical, mental or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions;

(c) Has a developmental disability as defined in 42 U.S.C. 6001;

(d) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

(e) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence.

(3) *Housing choice voucher search assistance.* Assistance to increase access by program participants to housing units in a variety of neighborhoods (including areas with low poverty concentrations) and to locate and obtain units suited to their needs.

(F) *Homeownership and Family Self-Sufficiency (FSS).* Applicants are encouraged to establish or expand upon an existing housing choice voucher homeownership program, as well as complete the closing process on homeownership units. Applicants are also encouraged to fill slots under a mandatory FSS program and to establish a voluntary FSS program and fill slots thereunder where a mandatory FSS program is not required.

(G) *Increasing the Participation of Faith-Based and Community-Based Organizations in HUD Program Implementation.* HUD believes that grassroots organizations; e.g., civic organizations, congregations, and other community-based and faith-based organizations, have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services such as assisting the homeless and preventing homelessness; counseling individuals and families on fair housing rights; providing elderly housing opportunities; developing first time homeownership programs; increasing homeownership and rental housing opportunities; developing affordable and accessible housing in neighborhoods across the country; and creating economic development programs. The goal of this policy priority is to make HUD's housing choice voucher program more effective, efficient, and accessible by expanding opportunities for faith-based and community-based organizations to participate in developing solutions for their own neighborhoods. PHAs are encouraged to coordinate with and otherwise involve faith-based and other community-based organizations in those activities under the housing choice voucher program where their services, expertise and knowledge may be most effective.

(H) *Conducting Business in Accordance With Core Values and Ethical Standards.* To reflect core values, all applicants shall develop and maintain a written code of conduct in the PHA administrative plan that (1) requires compliance with the conflict of interest requirements of the Housing Choice Voucher Program at 24 CFR 982.161, and (2) prohibits the solicitation or acceptance of gifts or gratuities, in excess of a nominal value, by any officer or employee of the PHA,

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or any contractor, subcontractor or agent of the PHA. The PHA's administrative plan shall state PHA policies concerning PHA administrative and disciplinary remedies for violation of the PHA code of conduct. The PHA should inform all officers, employees and agents of its organization of the PHA's code of conduct.

V. Application Selection Process

After the Grants Management Center has screened and disapproved any applications found unacceptable for further processing, the Grants Management Center will review all acceptable applications to ensure that they are technically adequate and responsive to the requirements of this announcement, HUD Headquarters will fund all applications from PHAs and nonprofit disability organizations that are recommended for funding by the Grants Management Center unless HUD receives approvable applications for more funds than are available. If HUD receives approvable applications for more funds than are available, HUD will select applicants to be funded by lottery. A separate lottery will be held first for those PHAs and nonprofit disability organizations seeking funding under the five-year budget authority available under this announcement, and a separate lottery will next be held for those PHAs seeking funding under the one-year budget authority that may be available under this announcement. (Nonprofit disability organizations are not eligible to apply for the one-year budget authority that may be available under this announcement.) All applicants identified by the Grants Management Center as having submitted technically adequate and responsive applications will be included in the lottery. As applicants are selected, the cost of funding the applications will be subtracted from the funds available. In order to achieve geographic diversity, HUD Headquarters will limit the number of applications selected for funding from any State to 10 percent of the budget authority available for the Mainstream Program. The 10 percent limit shall be applied first during the lottery for the five-year funding and shall continue over into the lottery for any one-year funding that may be available. This, for instance, may result in a State reaching the 10 percent limit prior to the start of the lottery for any one-year funding that may be available, and therefore any PHAs from that State would not be eligible for any further Mainstream funding. If establishing this geographic limit would result, however, in unreserved budget authority, HUD may modify this limit to assure that all available funds are used.

Applications will be funded for the total number of units requested by the applicant and recommended for approval by the Grants Management Center (not to exceed 75 units) in accordance with this announcement. When remaining budget authority is insufficient to fund the last selected application in full, HUD Headquarters will fund that application to the extent of the funding available, unless the applicant indicates that it will only accept a higher number of units. In that event, the next selected application shall be one that has indicated a willingness to accept the lesser amount of funding for the units available.

VI. Application Submission Requirements

(A) *Form HUD–52515.* All applicants must complete and submit Form HUD–52515, Funding Application, for the Housing Choice Voucher Program, (dated January 1996). This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities. PHAs are requested to enter their housing authority code (for example, CT002), telephone number, facsimile number and electronic mail address in the same space at the top of the form where they are also to enter the PHA's name and mailing address. Section C of the form should be left blank. The form must be completed in its entirety, with the exception of Section C, signed and dated. A copy of Form HUD–52515 is included in the forms found in Appendix B to the **General Section** of the SuperNOFA. Copies of the form may also be downloaded from the following HUD Web site: *www.hud.gov*. (On the HUD Web site click on "handbooks and forms," then click on "forms," then click on "HUD–5" and click on "HUD–52515." In addition, the Form HUD–52515 will also be posted with the Mainstream funding announcement at the following HUD Web site: *www.hud.gov/offices/adm/grants/fundsavail.cfm*.

In the instance of a nonprofit disability organization that does not currently manage a housing choice voucher program, the nonprofit disability organization shall fill in Section B, Proposed Assisted Dwelling Units, of the form HUD–52515, by either basing the numbers the organization enters in this section on information requested from the nearest public housing agency, based upon its housing choice voucher waiting list, or based upon information from local advocacy groups and local public and private service agencies familiar with the needs of elderly and non-elderly persons with disabilities, census data, and pertinent information from the Consolidated Plan applicable to the applicant's jurisdiction. Section C, Average Monthly Adjusted Income, should be left blank. Section F, New HA Information, requires information on Financial and Administrative Capability and Qualification as a HA. For Financial and Administrative Capability, a nonprofit disability organization may reference that part of its application addressing the requirements of section VI (E) of this announcement. For Qualification as a HA, the nonprofit disability organization should submit information validating its qualifications as a nonprofit disability organization as defined in Section III (B)(2) of this announcement. The submission of enabling legislation is not required, but a legal opinion supportive of the applicant's status as a nonprofit disability organization, as delineated in Section III (B)(2) of this announcement, is required.

(B) *Letter of Intent and Narrative.* The applicant must state in its cover letter to the application whether it is a PHA applying for five-year and/or one-year funding, or a nonprofit disability organization applying for five-year funding. The applicant must also indicate the number of vouchers being requested, whether it will accept a reduction in the number of vouchers, and the minimum number of vouchers the applicant will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The maximum number of vouchers that an applicant may apply for under this announcement is limited to 75.

PHAs and nonprofit disability organizations that do not currently administer a housing choice voucher program must identify the nearest PHA (including the full name, address, and tel. no.) that does administer a housing choice voucher program. This information will be necessary for HUD to calculate annual per unit costs for voucher funding awarded under this funding announcement for such PHAs and nonprofit disability organizations (see section II (C) (3) of this funding announcement).

(C) *Description of Need for Mainstream Program Vouchers.* The PHA's and nonprofit disability organization's application must demonstrate a need for Mainstream Program vouchers by providing information documenting that the demand for housing for non-elderly and elderly persons with disabilities in connection with a request for five-year funding under this announcement would equal or exceed the requested number of vouchers. If the PHA is requesting one-year funding, the demand for housing for non-elderly disabled persons must be demonstrated as equaling or exceeding the number of vouchers being requested. The applicant must assess and document the housing need for elderly and non-elderly persons with disabilities using a range of sources including, but not limited to: census data, information from the applicant's waiting list (both public housing and housing choice voucher), statistics on recent public housing admissions and housing choice voucher use, data from local advocacy groups and local public and private service agencies familiar with the housing needs of elderly and non-elderly persons with disabilities, and pertinent information from the Consolidated Plan [including the Analysis of Impediments to Fair Housing Choice (AI)] applicable to the applicant's jurisdiction. {See 24 CFR 91.205(d).} The applicant's demonstrated need for vouchers must clearly support need on the basis of only non-elderly disabled families when requesting one-year funding. This distinction is important, as any FY 2002 Mainstream Program funding that may be available beyond the approximately $53.9 million under this announcement, must be used to assist only non-elderly disabled families and will be available only to PHAs. (See Section II (A) of this announcement regarding the possibility of substantially more Mainstream Program funding being available beyond the approximately $53.9 million.)

(D) *Mainstream Program Operating Plan.* The application must include a description of an adequate plan for operating a program to serve eligible disabled families, including:

(1) A description of how the applicant will carry out its responsibilities under 24 CFR 8.28 to assist recipients in locating units with needed accessibility features; and

(2) A description of how the applicant will identify private or public funding sources to help participants cover the costs of modifications that need to be made to their units as reasonable accommodations to their disabilities.

(3) A description of how the applicant will use a nonprofit disability organization or PHA (if any) under a contract to administer the Mainstream Program vouchers, or to otherwise provide services.

(E) *Certification Applicable to Nonprofit Disability Organizations.* A nonprofit disability organization applying for funding available under this announcement must provide a certification stating that the applicant can meet the capacity requirements applicable to a nonprofit disability organization delineated in Section III (B)(2)(b) of this announcement. The certification must specifically list the four capacity requirements from that paragraph, and must specifically list the rental housing programs the nonprofit disability organization has administered or the rental housing the nonprofit disability organization has managed.

(F) *Statement Regarding the Steps the PHA and Nonprofit Organization Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's and nonprofit organization's statement must include, but not necessarily be limited to:

(1) The examination of the PHA's and nonprofit organization's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); and a description of a plan to (a) address those impediments in a reasonable fashion in view of the resources available; (b) work with local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and (c) the maintenance of records reflecting this analyses and actions;

(2) Remedy discrimination in housing for persons with disabilities regardless of race, color, religion, sex, familial status, national origin, or nature of disability; or

(3) Promote fair housing rights and fair housing choice.

The applicant's statement must fully address the above areas. A general statement that the applicant will promote fair housing choice by reason of not discriminating on the basis of race, color, religion, etc. will not be sufficient.

(G) *Moving to Work (MTW) PHA Certification.* See Section VII (B)(2)(c) regarding the 97 percent lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

(H) *Form HUD–2993.* All PHAs must complete and submit form HUD–2993, Acknowledgement of Application Receipt. In addition to the PHA entering its name and address on the form, the full title of the program under which the PHA is seeking funding must also be entered. This form is located in the General Section of the SuperNOFA and is also available at the following HUD Web site: *www.hud.gov*. On this Web site click on "handbooks and forms."

VII. Corrections to Deficient Applications

(A) *Acceptable Applications.* The application must include all of the information specified in section VI, Application Submission Requirements, of this announcement. The **General Section** of the SuperNOFA provides the procedures for corrections to deficient applications.

(B) *Unacceptable Applications.*

(1) After the 14-calendar day technical deficiency correction period, the Grants Management Center will disapprove all applications from PHAs and nonprofit disability organizations that the Grants Management Center determines are not acceptable for processing. The Grant Management Center's notification of rejection letter must state the basis for the decision. The applicant may request an applicant debriefing. Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not longer than 120 days, HUD will, upon receiving a written request from the applicant, provide a debriefing to the requesting applicant. Applicants requesting to be debriefed must send a written request to Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

(2) Applications from PHAs or nonprofit disability organizations that fall into any of the following categories will not be processed:

(a) Applications that do not meet the fair housing and civil rights compliance threshold requirements of Section II(B) of the **General Section** of the SuperNOFA.

(b) If the applicant is a PHA and the PHA is designated as troubled by HUD under SEMAP, or has major program management findings in an Inspector General audit for its voucher or certificate programs that are unresolved. The only exception to this category is if the PHA has been identified under the policy established in Section III(B)(1)(c) of this announcement and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) If the PHA has failed to achieve a lease-up or budget authority utilization rate of 97 percent for its combined certificate and voucher units under contract for its fiscal year ending on either September 30, 2000; December

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31, 2000; March 31, 2001; or June 30, 2001. PHAs that have been determined by HUD to have passed either the 97 percent lease-up, or 97 percent budget authority utilization requirement for their fiscal year ending on either September 30, 2000; December 31,.2000; March 31, 2001; or June 30, 2001, will be listed with the Mainstream funding announcement at the following HUD Web site: *www.hud.gov/offices/adm/grants/fundsavail.cfm*. A PHA not listed may submit monthly lease-up and budget authority utilization information (following the methodology of Appendix A of this announcement and using the format in Appendix B which also includes a blank version of the format) as part of its application supportive of its contention that it should have been included among those potential applicants HUD listed on the HUD web site as having achieved either a 97 percent lease-up rate or 97 percent budget authority utilization rate for fiscal years ending on either September 30, 2000; December 31, 2000; March 31, 2001; June 30, 2001; or subsequent full fiscal year not yet processed by HUD but certified by the applicant. Unless utilization information is submitted on the blank form in Appendix B, the application will otherwise be determined ineligible for funding under this announcement.

Note: The lease-up and budget authority utilization requirement shall not apply to applicants not currently administering a voucher program, or to new units associated with funding increments obligated during the applicant's last fiscal year and units obligated for litigation. In addition, lease-up or budget authority utilization rates of 96.5 percent but less than 97 percent shall be rounded up to 97 percent.

Moving to Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 97 percent lease-up and budget authority utilization requirements referenced above. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 97 percent lease-up or budget authority utilization requirements.

(d) The PHA or nonprofit disability organization is involved in litigation and HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

(e) An application that does not comply with the requirements of 24 CFR 982.102 and this program section after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this announcement.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(i) The PHA did not have its PHA plans approved by HUD for the FY 2000 plan cycle on the application due date for this funding announcement. (This category of ineligibility does not apply to nonprofit disability organizations whose housing choice voucher program is based solely upon previously approved housing choice vouchers under the Mainstream Program.)

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option of this program are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR 58.35(b)(5), but PHAs and nonprofit organizations are responsible for the environmental requirements in 24 CFR 982.626(c).

IX. Authority

Authority for this program is found in the Departments of Veteran's Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2002 (Pub.L. 107–73, approved November 26, 2001). This FY 2002 Appropriations Act also authorized appropriations for housing choice vouchers to assist non-elderly disabled families affected by the designation of a public housing development under section 7 of the United States Housing Act of 1937, as amended; the establishment of preferences in accordance with section 651 of the Housing and Community Development Act (HCDA) of 1992, or the restriction of occupancy to elderly families in accordance with section 658 of the HCDA Act. The FY 2002 Appropriations Act allows the Secretary to transfer any unobligated funds for these purposes, to the extent they are not needed, to assist other non-elderly disabled families. Therefore, any funds remaining unobligated under these program sections will be used to fund applications under the Mainstream Program in the SuperNOFA.

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APPENDIX A
METHODOLOGY FOR DETERMINING LEASE-UP AND BUDGET AUTHORITY UTILIZATION PERCENTAGE RATES

Using data from the HUDCAPS system, HUD determined which PHAs met the 97% budget authority utilization or 97% lease-up criteria. The data used in the determination was based on PHA fiscal years ending September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA year ending September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001, for the PHA's combined certificate and voucher program. Annual budget authority associated with new funding increments obligated during the last PHA fiscal year and annual budget authority for litigation were excluded.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD-52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA year for each funding increment which had an active contract term during all or a portion of the PHA year. ABA is adjusted for new funding increments obligated during the last PHA fiscal year and for litigation funding increments.

EXAMPLE:
PHA ABC
Fiscal year 10/1/99 through 9/30/00
HUD 52681 Approved Data:

HAP	$2,150,000
Administrative Fee	$ 215,000
Hard to House Fee	$ 1,000

Audit	$ 2,000
Total	$2,368,000
Program receipts other than Annual Contributions	($2,500)
Total contributions required	**$2,365,500**

Calculation of Annual Budget Authority

Increments	Contract Term	Total BA	ABA
001	11/01/99 -10/31/00	$1,300,000	$1,191,667
002	01/01/00-12/31/00	$1,200,000	$ 900,000
003	04/01/00-03/31/01	$ 950,000	$ 475,000
004	07/01/00-06/30/01	$1,500,000	$ 375,000
Totals		$4,950,000	**$2,941,667**
ABA associated with litigation			($475,000)
Total ABA			($2,466,667)

Budget Authority Utilization

Total contributions required divided by	**$2,365,500**
Annual budget authority equals	**$2,466,667**
Budget Authority Utilization	**95.9%**

Lease-up Rate

The lease-up rate was determined by comparing the reserved units (funding increments active as of the end of the PHA year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001.

Units associated with new funding increments obligated during the last PHA fiscal year and units obligated for litigation were excluded from the reserved units.

EXAMPLE:

Increments	Contract Term	Units
001	11/01/99-10/31/00	242
002	01/01/00-12/31/00	224
003	04/01/00-03/31/01	178

004	07/01/00-06/30/01	280	
Totals			924
Increment 003 litigation		(178)	
Adjusted contract units	**746**		

Unit months leased reported by PHA	8,726
divided by 12	727
Units Leased	**727**

Lease-up Rate

Units leased	**727**
divided by adjusted contract units equals	**746**
Lease-up Rate	**97.5%**

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APPENDIX B

Example

Main Street HA 12/31/01 Year End January 1, 2001 through December 31, 2001
ACC units applicable: 653 (Litigation and new units obligated during the fiscal year are excluded)

Month	Total HAP	UMLs	Admin Fee	HH Fee	Requirements	Cumulative Total	Annual Budget Authority (ABA)
January	$291,874	623	$29,119	$0	$320,993	$320,993	$295,650
February	$211,945	620	$30,058	$1,125	$243,128	$564,121	$295,650
March	$234,521	618	$29,961	$450	$264,932	$829,053	$295,650
April	$226,489	620	$30,058	$750	$257,297	$1,086,350	$295,650
May	$240,414	616	$29,864	$675	$270,953	$1,357,303	$295,650
June	$245,600	614	$29,767	$825	$276,192	$1,633,495	$295,650
July	$251,300	615	$29,815	$675	$281,790	$1,915,285	$309,103
August	$265,304	611	$29,621	$900	$295,825	$2,211,110	$309,103
September	$285,504	610	$29,573	$375	$315,452	$2,526,562	$309,103
October	$298,503	612	$29,670	$525	$328,698	$2,855,260	$309,103
November	$325,008	628	$30,445	$300	$355,753	$3,211,013	$309,103
December	$355,006	640	$31,027	$225	$386,258	$3,597,271	$309,105
Totals	$3,231,468	7,427	$358,978	$6,825		$3,597,271	$3,628,520

Leaseup Rate: 94.78% (UMLs/ACC units)
ABA Utilization 99.14% (Requirements/ABA)

Certification:

_____
Executive Director

_____
Section 8 Program Administrator

HA Name and fiscal year end:
ACC Units applicable in fiscal year: _____

Month	Total HAP	UMLs	Admin Fee	Hard to House Fee	Requirements	Cumulative Total	Annual Budget Authority (ABA)
Totals							

Leaseup Rate: 0.00% (UMLs/ACC units)
ABA Utilization: 0.00% (Requirements/ABA)

Certification:

_____
Executive Director

_____
Section 8 Program Administrator

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RENTAL ASSISTANCE FOR NON-ELDERLY PERSONS WITH DISABILITIES RELATED TO CERTAIN DEVELOPMENTS

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FUNDING AVAILABILITY FOR RENTAL ASSISTANCE FOR NON-ELDERLY PERSONS WITH DISABILITIES RELATED TO CERTAIN TYPES OF SECTION 8 PROJECT-BASED DEVELOPMENTS AND SECTIONS 202, 221(d)(3) AND 236 DEVELOPMENTS

PROGRAM OVERVIEW

Purpose of the Program. The purpose of this program is to provide housing choice vouchers to non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owners establishing preferences for the admission of elderly families, or in certain types of Section 202, Section 221(d)(3), or Section 236 developments where the owners are restricting occupancy in the developments (or portions thereof) to elderly families. The vouchers will enable non-elderly disabled families to access affordable housing.

Available Funds. Approximately $20 million in one-year budget authority for approximately 3,950 housing choice vouchers.

Eligible Applicants. Public housing agencies (PHAs). PHAs that fall into any of the categories in Section VII(B)(2) of this announcement are ineligible to have an application funded under this announcement. Indian Housing Authorities (IHAs), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996, does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Deadline. July 2, 2002.

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the **General Section** of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information and Technical Assistance.

Application Due Date. Submit the original and one copy of your completed application to HUD on or before July 2, 2002. *See the paragraphs titled "Mailed Applications" and "Applications Sent by Overnight/Express Mail Delivery" in section I of this funding announcement regarding the specific time on the application due date by which applications are to be submitted.* This application deadline date is firm. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the competition under this funding announcement, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Your completed application consists of an original and one copy. Submit your original application and one copy to: *Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, DC 20024.* The Grants Management Center is the official place of receipt for all applications in response to this announcement of funding availability. Applications not submitted to the GMC will not be considered.

A copy of your application is not required to be submitted to the local HUD Field Office. For ease of reference, the term "local HUD Field Office" will be used in this announcement to mean the local HUD Field Office Hub and local HUD Field Office Program Center. A listing of HUD Field Offices is attached to the **General Section** of this SuperNOFA.

New Security Procedures. In response to the terrorist attacks in September 2001, HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed to the GMC in HUD Headquarters using the United States Postal Service (USPS). Applications may also be shipped to the GMC via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the GMC within fifteen (15) days of the application due date. *All applicants must obtain and save a* Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx, and Falcon Carrier. Delivery by these services must be made during HUD Headquarters business hours, between 8:30 AM AND 5:30 PM Eastern Time, Monday to Friday. If these companies do not service your area, you should submit your application via the USPS.

For Application Kits. An application kit is not necessary for submitting an application in response to this announcement. This announcement contains all the information necessary for the submission of your application for voucher funding under this announcement.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may contact the Grants Management Center at (202) 358–0221. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, you should consult the HUD Web site at *www.hud.gov.*

II. Amount Allocated

(A) *Available Funding.* Approximately $20 million in one-year budget authority is available to provide assistance to approximately 3,950 non-elderly disabled families (who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owners

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establishing a preference for the admission of elderly families, and for non-elderly disabled families not being housed in certain Section 202, Section 221(d)(3) and Section 236 developments or portions thereof where the owners have restricted occupancy to elderly families).

In the event approvable applications are received for more than the approximately $20 million announced as available under this announcement, funds will be transferred from the approximately $20 million available under the funding announcement for Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans program to the extent funds remain unobligated after funding all approvable applications under that announcement.

Any funding remaining unobligated under this announcement providing assistance for non-elderly persons with disabilities related to certain developments will be used first to fund any approvable applications under the announcement for Rental Assistance for Non-Elderly Persons With Disabilities in Support of Designated Housing Plans, for which there may be insufficient funds. Any funds still remaining unobligated will be used to fund any approvable applications under the announcement for Mainstream Housing Opportunities for Persons with Disabilities for which there are insufficient funds.

(B) *Voucher Funding and Preliminary Fees.*

(1) *Voucher Funding.*

(a) *Maximum Voucher Request.* PHAs are limited to applying for no more than a maximum of 200 units (vouchers). A PHA may apply only for the number of units needed to house:

(i) Those non-elderly disabled families who are on the waiting list of an owner of a Section 8 project-based development identified in Section III (A)(1) of this announcement where the owner elected to provide preferences to elderly families, and to house other non-elderly disabled families residing in the community who would qualify for one- or zero-bedroom units; and/or

(ii) Those non-elderly disabled families who are on the waiting list of an assisted housing development identified in Section III(A)(2) of this announcement, or are otherwise residing in the community, but in either instance are not being housed in these assisted housing developments where the owners have restricted occupancy in the developments (or portion thereof) to elderly. Non-elderly disabled families in this second category would also need to qualify for one-or zero bedroom units.

Note: The PHA may apply for a two-bedroom unit under Section II (8) of this announcement in instances where a non-elderly disabled family requires the extra bedroom for purposes of a live-in aide, medical equipment, or other justifications based on a reasonable accommodations request.

(b) *Determination of Funding Amount for the PHA's Requested Number of Vouchers.* HUD will determine the amount of funding that you will be awarded under this announcement based upon an actual annual per unit cost {except for Moving to Work (MTW) agencies the per unit cost will be calculated in accordance with the agency's MTW Agreement for MTW units} using the following two step process:

(i) HUD will extract the total expenditures for all the PHA's housing choice voucher and certificate programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all the PHA's housing choice voucher and certificate programs by the unit months leased to derive an average monthly per unit cost.

(ii) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

Note: If you do not currently administer a housing choice voucher program, your voucher funding will be based upon the annual per unit costs of a PHA in your most immediate area administering a housing choice voucher program, using the two step process described immediately above.

(2) *Preliminary Fee.* A preliminary fee of up to $500 per unit for preliminary (start-up) expenses will be paid to PHAs that have not previously administered their own housing choice voucher program that are selected for funding under this announcement. The preliminary fee will be provided to such PHAs only in their first year administering housing choice vouchers.

III. Program Description, Eligible Applicants, and Eligible Participants

(A) *Program Description.* This program provides housing choice vouchers to non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owners establishing preferences for the admission of elderly families, or in certain types of Section 202, Section 221(d)(3), or Section 236 developments where the owners are restricting occupancy in the developments (or portions thereof) to elderly families. The vouchers will enable non-elderly disabled families to rent affordable housing. The specific types of developments covered under these two broad categories are as follows:

(1) Section 651 of the Housing and Community Development Act of 1992 {42 U.S.C. 13611 allowed owners of the *following covered Section 8 project-based developments* (limited to only such developments originally designed primarily for occupancy by elderly families){ to provide preferences to elderly families in selecting tenants for available assisted units in those projects:

(a) Section 8 New Construction Program, 24 CFR part 880;

(b) Section 8 Substantial Rehabilitation Program, 24 CFR part 881;

(c) State Housing Agencies Program (insofar as involving new construction and substantial rehabilitation), 24 CFR part 883;

(d) New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; and

(e) Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as involving substantial rehabilitation), 24 CFR part 886, subpart C.

(2) Section 658 of the 1992 Act provides that an owner of a Federally assisted project (or portion thereof) that was designed for occupancy for elderly families may continue to restrict occupancy in such project (or portion) to elderly families in accordance with the rules, standards, and agreements governing occupancy in such housing in effect at the time of the development of the housing. The *three types of assisted housing developments covered by Section 658 are as follows:*

(a) Housing assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act (NAHA);

(b) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears an interest rate determined under section 221(d)(5); and

(c) Housing insured, assisted or held by the Secretary or a State or State Agency under section 236 of the National Housing Act.

(B) *Eligible Applicants.*

(1) PHAs are eligible applicants. PHAs falling into any of the categories in Section VII (B)(2) of this announcement are ineligible to have an application funded under this announcement. A PHA may submit only one application. This one application per PHA limit applies regardless of whether or not the PHA is a State or regional PHA, except in those instances where such a PHA has been assigned more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such instance, a separate application under each code shall be considered for funding, with the cumulative total of vouchers applied for under the applications not to exceed the maximum number of vouchers the PHA is eligible to apply for under Section II (B)(1)(a) of this announcement; i.e., no more than the number of vouchers the same PHA would be eligible to apply for if it only had one PHA code number.

Indian Housing Authorities (IHAs), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher (Section 8) annual contributions contracts (ACC) with IHAs after September 30, 1997.

In some cases a PHA currently administering the housing choice voucher program has, at the time of publication of this SuperNOFA, been designated by HUD as a troubled PHA under the Section 8 Management Assessment Program (SEMAP), or has major program management findings from Inspector General audits that are unresolved. HUD will not accept an application from such a PHA as a contract administrator if, on the application due date, the troubled designation under SEMAP has not been removed by HUD, or the findings are not resolved. If the PHA wants to apply for funding under this announcement, the PHA must submit an application that designates another contractor that is acceptable to HUD. The PHA's application must include an agreement with the other contractor to administer the new funding increment on behalf of the PHA, and (in the instance of a PHA with unresolved major program management findings) a statement that outlines the steps the PHA is taking to resolve the program findings.

Immediately after the publication of this SuperNOFA, the Office of Public Housing in the local HUD Field Office will notify, in writing, those PHAs that have been designated by HUD as troubled under SEMAP, and those PHAs with unresolved major program management findings that are not eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the Grants Management Center. The PHA may appeal the decision in writing, if HUD has mistakenly classified the PHA as having unresolved major program management findings. The PHA may not appeal its designation as a troubled PHA under SEMAP. Any appeal with respect to unresolved major program management findings must be accompanied by conclusive evidence of HUD's error (i.e., documentation showing that the finding has been cleared) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the Grants Management Center with a copy of the PHA's written appeal, and the Field Office's written response to the appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(C) *Eligible Participants.* Eligible participants include non-elderly disabled families who were on the waiting list (at the time of the PHA's application) of a covered development identified in this announcement where the owner had exercised a preference for the admission of elderly families, or restricted occupancy to elderly families, at the time the PHA received the names of these families from the owner of the development(s) for purposes of requesting housing choice vouchers in response to this announcement. These non-elderly disabled families need not be listed on the PHA's housing choice voucher waiting list in order to be offered and receive housing choice voucher assistance; i.e., it is sufficient that their names are on the waiting list for a covered development at the time their names are provided to the PHA by the owner. Eligible participants also include other non-elderly disabled families residing in the community who would qualify for a one-or zero-bedroom unit. (See the note in this announcement at the end of Section II(B)(1)(a) for those limited instances in which a PHA could also apply for funding for a two-bedroom unit.) Non-elderly disabled families must be income eligible under 24 CFR 982.201(b)(1) in order to receive a housing choice voucher, as well as otherwise eligible for assistance under the regulations at 24 CFR part 982.201(b). Additional information on the eligibility requirements for a family or individual to receive a housing choice voucher are located at the following HUD Web site: *www.hud.gov/offices/pih/programs/hcv.*

IV. Program Requirements and Operations

In addition to the civil rights compliance and nondiscrimination requirements listed in the General Section of this SuperNOFA, grantees must meet the following program requirements:

(A) *Affirmatively Furthering Fair Housing.* Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(1) Examine the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); develop a plan to (a) address those impediments in a reasonable fashion in view of the resources available; (b) work with the local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and (c) maintain records reflecting these analyses and actions;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, applicants have a duty to carry out the specific activities cited in their responses under this announcement to address affirmatively furthering fair housing.

(B) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(C) *Voucher Assistance Requirements.*

(1) *Housing Choice Voucher Program regulations.* PHAs must administer the housing choice vouchers received under this announcement in accordance with HUD regulations and requirements governing the Housing Choice Voucher Program.

(2) *Housing Choice Voucher admission requirements.* Housing choice vouchers must be provided to eligible applicants in conformity with regulations and requirements governing the Housing Choice Voucher Program and the PHA's administrative plan.

(3) *Turnover.* When a voucher under this announcement becomes available for reissue (*e.g.*, the family initially selected for the program drops out of the program or is unsuccessful in the search

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for a unit), the voucher may be used only for another non-elderly disabled family eligible for assistance under this announcement for one year from the date the voucher funding is placed under an annual contributions contract (ACC).

If there is ever an insufficient pool of non-elderly disabled families on the PHA's housing choice voucher waiting list, the PHA shall conduct outreach to encourage eligible persons to apply for this special allocation of vouchers. Outreach may include contacting independent living centers, advocacy organizations for persons with disabilities, and medical, mental health, and social service providers for referrals of persons who would benefit from housing choice voucher assistance. If the PHA's housing choice voucher waiting list is closed, and if the PHA has insufficient applicants on its housing choice voucher waiting list to use all awarded vouchers under this announcement, the PHA should open the waiting list for applications from non-elderly disabled families. PHAs must take care to keep track of the number of non-elderly disabled vouchers they have been awarded versus the number of such vouchers that have actually been issued to non-elderly disabled families.

(D) *PHA Responsibilities.* In addition to PHA responsibilities under the Housing Choice Voucher Program and HUD regulations concerning nondiscrimination based on disability (24 CFR 8.28) and to affirmatively further fair housing, PHAs that receive voucher funding shall:

(1) Where requested by an individual, assist program participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of participation or continued occupancy in the program.

(2) Identify public and private funding sources to assist participants with disabilities in covering the costs of modifications that need to be made to their units as a reasonable accommodation for their disabilities.

(3) Not deny persons who qualify for a housing choice voucher under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate.

(4) Provide housing choice voucher search assistance.

(5) In accordance with regulatory guidance, provide higher rent to owners necessary for the provision of accessible units and structural modifications for persons with disabilities.

(6) Provide technical assistance to owners for making reasonable accommodations or making units accessible to persons with disabilities.

PHAs are encouraged to coordinate with/involve nonprofit disability organizations in their meeting the requirements of paragraphs 1, 2, 4 and 6 immediately above. PHAs are encouraged to seek out nonprofit disability organizations in this regard due to such organizations' capacity for assisting disabled families, and their in-depth knowledge of the disability community and the available resources to assist disabled persons.

(E) *Definitions.*

(1) *Elderly Family.* A family whose head of household, spouse, or sole member is 62 years or older.

(2) *Non-elderly Disabled Family.* A family who is not elderly, and whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

(3) *Person with Disabilities.* Means a person who—

(a) Has a disability as defined in 42 U.S.C. 423;

(b) Is determined, pursuant to HUD regulations, to have a physical, mental or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions;

(c) Has a developmental disability as defined in 42 U.S.C. 6001;

(d) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; and

(e) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence.

(4) *Housing Choice Voucher Search Assistance.* Assistance to increase access by program participants to housing units in a variety of neighborhoods (including areas with low poverty and/or minority concentrations) and to locate and obtain units suited to their needs.

(F) *Homeownership and Family Self-Sufficiency (FSS).* Applicants are encouraged to establish or expand upon an existing housing choice voucher homeownership program, as well as complete the closing process on homeownership units. Applicants are also encouraged to fill slots under a mandatory FSS program and to establish a voluntary FSS program and fill slots thereunder where a mandatory FSS program is not required.

(G) *Increasing the Participation of Faith-Based and Community-Based Organizations in HUD Program Implementation.* HUD believes that grassroots organizations; e.g., civic organizations, congregations, and other community-based and faith-based organizations, have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services such as assisting the homeless and preventing homelessness; counseling individuals and families on fair housing rights; providing elderly housing opportunities; developing first time homeownership programs; increasing homeownership and rental housing opportunities; developing affordable and accessible housing in neighborhoods across the country; and creating economic development programs. The goal of this policy priority to make HUD's housing choice voucher program more effective, efficient, and accessible by expanding opportunities for faith-based and other community-based organizations to participate in developing solutions for their own neighborhoods. PHAs are encouraged to coordinate with and otherwise involve faith-based and other community-based organizations in those activities under the housing choice voucher program where their services, expertise and knowledge may be most effective.

(H) *Conducting Business in Accordance With Core Values and Ethical Standards.* To reflect core values, all PHAs shall develop and maintain a written code of conduct in the PHA administrative plan that (1) requires compliance with the conflict of interest requirements of the Housing Choice Voucher Program at 24 CFR 982.161, and (2) prohibits the solicitation or acceptance of gifts or gratuities, in excess of a nominal value, by any officer or employee of the PHA, or any contractor, subcontractor or agent of the PHA. The PHA's administrative plan shall state PHA policies concerning PHA administrative and disciplinary remedies for violation of the PHA code of conduct. The PHA shall inform all officers, employees and agents of its organization of the PHA's code of conduct

V. Application Selection Process

After the Grants Management Center has screened all applications and disapproved any found unacceptable for further processing, the Grants Management Center will review all remaining applications to ensure that they are technically adequate and responsive to the requirements identified in this program section of the SuperNOFA.

HUD Headquarters will fund on a first-come, first-serve basis all approvable applications that are recommended for funding by the Grants Management Center, based upon the date and time the application is received in the Grants Management Center. As applications are selected, the cost of funding the applications will be subtracted from the funds available. In the event approvable applications are received for more than the approximately $20 million available, funds will be transferred from the approximately $20 million available under the Rental Assistance for Non-elderly Persons with Disabilities in Support of Designated Housing Plans program to the extent such funds have not been obligated under that program for approvable applications. Applications will be funded for the total number of units requested and recommended for approval by the Grants Management Center. When remaining budget authority is insufficient to fund the last selected application in full, the Grants Management Center will fund that application to the extent of the funding available, unless the application indicates that the PHA will only accept a higher number of units. In that event, HUD will fund the next selected application that has indicated a willingness to accept the lesser amount of funding for units available.

VI. Application Submission Requirements

(A) *Form HUD–52515.* All PHAs must complete and submit form HUD–52515, Funding Application, for the Housing Choice Voucher Program (dated January 1996). This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities. PHAs are requested to enter their housing authority code number (for example, CT002), telephone number, facsimile number, and electronic mail address in the same space at the top of the form where they also enter the PHA's name and mailing address. Section C of the form should be left blank. The form must be completed in its entirety, with the exception of Section C, signed and dated. A copy of Form HUD–52515 is included in the forms found in the **General Section** of the SuperNOFA. Copies of the form may also be downloaded from the following HUD Web site: *www.hud.gov.* (On the HUD Web site click on "handbooks and forms," then click on "forms," then click on "HUD–5" and click on "HUD–52515.") In addition, the Form HUD–52515 will also be posted with the Certain Developments funding announcement at the following HUD Web site: *www.hud.gov/offices/adm/grants/fundsavail.cfm.*

(B) *Letter of Intent and Narrative.* The PHA must state in its cover letter to the application whether the PHA will accept a reduction in the number of vouchers, and the minimum number of vouchers the PHA will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The maximum number of vouchers that a PHA may apply for under this announcement is limited to 200.

PHAs that do not currently administer a housing choice voucher program must identify the nearest PHA (including the full name, address, and tel. no.) that does administer a housing choice voucher program. This information will be necessary for HUD to calculate annual per unit costs for voucher funding awarded under this funding announcement to such PHAs (see section II (B)(1)(b) of this funding announcement).

(C) *Demonstration of Need: Certification/Waiting List Information and Other Non-Elderly Disabled Families Residing in the Community.* In order to support the number of vouchers being requested on the form HUD–52515, the PHA's application must include:

(1) A certification from the owner of a covered development (see the different types of covered developments listed in Section III(A)(1) and (2) of this announcement), stating the specific type of covered development, preferences are provided to elderly families in selecting tenants (Section 8 project-based developments) or occupancy in the development (or portion thereof) is restricted to elderly families (assisted housing developments), and the number of non-elderly disabled families on the owner's waiting list for the development. PHAs should contact the local HUD Field Office's Director, Multifamily Division, to get the names, addresses and telephone numbers of the developments falling under Section III (A)(1) and (2) in this announcement. The PHA will then need to contact the management/owners of these developments within their jurisdiction to verify that the development is a covered development. Owners of covered developments are encouraged to cooperate with PHAs and provide the required certification (if applicable) in a timely manner, along with the names, addresses and telephone numbers of those families on the development's waiting list that are non-elderly disabled families.

(2) PHAs must also submit information supportive of the number of other non-elderly disabled families residing in the community who would qualify for one-bedroom or zero-bedroom units (not on the waiting lists of covered developments). (See the note at the end of Section II (B)(1)(a) of this announcement which identifies those limited instances in which a PHA may apply for funding for a two-bedroom unit.) The application must demonstrate a need for vouchers by providing information documenting that the demand for housing for non-elderly disabled families would equal or exceed the requested number of vouchers (not to exceed 200). The PHA must assess and document the need using a range of sources including, but not limited to: census data, information from the PHA's waiting list (both public housing and housing choice voucher), statistics on recent public housing admissions and voucher use, data from local advocacy groups and local public and private service agencies familiar with the housing needs of non-elderly disabled families, and pertinent information from the Consolidated Plan (including the Analysis of Impediments to Fair Housing Choice) applicable to the PHA's jurisdiction. (See 24 CFR 91.205(d).)

(D) *Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's statement must include, but not necessarily be limited to:

(1) The examination of the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); and a description of a plan developed to (a) address those impediments in a reasonable fashion in view of the resources available; (b) work with local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and (c) the maintenance of records reflecting this analysis and actions;

(2) Remedy discrimination in housing for persons with disabilities regardless of race, color, religion, sex, familial status, national origin, or nature of disability; or

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(3) Promote fair housing rights and fair housing choice.

The PHA's statement must fully address the above areas. A general statement that the PHA will promote fair housing choice by reason of not discriminating on the basis of race, color, religion, etc. will not be sufficient.

(E) *Moving to Work (MTW) PHA Certification.* See Section VII (B)(2)(c) regarding the 97 percent lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

(F) *Form HUD–2993.* All PHAs must complete and submit form HUD—2993, Acknowledgement of Application Receipt. In addition to the PHA entering its name and address on the form, the full title of the program under which the PHA is seeking funding must also be entered. This form is located in the General Section of the SuperNOFA and is also available at the following HUD Web site: *www.hud.gov.* On this Web site click on "handbooks and forms."

VII. Corrections to Deficient Applications

(A) *Acceptable Applications.* The application must include all of the information specified in Section VI, Application Submission Requirements, of this announcement. The **General Section** of the SuperNOFA provides the procedures for corrections to deficient applications.

(B) *Unacceptable Applications*

(1) After the 14-calendar day technical deficiency correction period (as provided in the General Section), the Grants Management Center will disapprove all applications that the Grants Management Center determines are not acceptable for processing. The Grants Management Center's notification of rejection letter will state the basis for the decision. The applicant may request an applicant debriefing. Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not longer than 120 days, HUD will, upon receiving a written request from the applicant, provide a debriefing to the requesting applicant. Applicants requesting to be debriefed must send a written request to Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

(2) Applications that fall into any of the following categories will not be processed:

(a) Applications that do not meet the threshold fair housing and civil rights compliance requirements of Section II(B) of the **General Section** of the SuperNOFA.

(b) The PHA is designated as troubled by HUD under SEMAP, or has major program management findings in an Inspector General audit for its voucher or certificate programs that are unresolved. The only exception to this category is if the PHA has been identified under the policy established in Section III (B)(2) of this announcement and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up or budget authority utilization rate of 97 percent for its combined certificate and voucher units under contract for its fiscal year ending on either September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001. PHAs that have been determined by HUD to have passed either the 97 percent lease-up, or 97 percent budget authority utilization requirement for their fiscal year ending on either September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001, will be listed with this funding announcement at the following HUD Web site: *www.hud.gov/offices/adm/grants/fundsavail.cfm.* A PHA not listed may submit monthly lease-up and budget authority utilization information (following the methodology of Appendix A of this announcement and using the format in Appendix B which also includes a blank version of the format) as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD web site as having achieved either a 97 percent lease-up rate or 97 percent funding utilization rate for its fiscal year ending on either September 30, 2000; December 31, 2000; March 31, 2001; June 30, 2001; or subsequent full fiscal year not yet processed by HUD but certified by the applicant. Unless utilization information is submitted on the blank form in Appendix B, the application will otherwise be determined ineligible for funding under this announcement.

Note: The lease-up and budget authority utilization requirement shall not apply to applicants not currently administering a voucher program, or to new units associated with funding increments obligated during the applicant's last fiscal year and units obligated for litigation. In addition, lease-up or budget authority utilization rates of 96.5 percent but less than 97 percent will be rounded up to 97 percent.

Moving To Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 97 percent lease-up and budget authority utilization requirements referenced above. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 97 percent lease-up or budget authority utilization requirement.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the vouchers.

(e) An application that does not comply with the requirements of 24 CFR 982.102 and this program section after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this announcement.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(i) The PHA did not have its PHA plans approved by HUD for the FY 2000 plan cycle on the application due date for this funding announcement.

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option of this program are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR 58.35(b)(5), but PHAs are responsible for the environmental requirements in 24 CFR 982.626(c).

IX. Authority

Authority for this program is found in the Departments of Veteran's Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2002 (Pub.L. 107–73, approved November 26, 2001). This FY 2002 Appropriations Act authorized

appropriations for housing choice vouchers to assist non-elderly disabled families affected by the establishment of preferences in accordance with section 651 of the Housing and Community Development Act of 1992, or the restriction of occupancy to elderly families in accordance with section 658 of the Act. The FY 2002 Appropriations Act also allows the Secretary to transfer any unobligated funds for this purpose to assist non-elderly disabled families to the extent they are not needed under Sections 651 and 658 for such families. Therefore, any funds remaining unobligated under this program section of this SuperNOFA will be used first to fund any approvable applications under the Rental Assistance for Non-Elderly Persons With Disabilities in Support of Designated Housing Plans program for which there are insufficient funds. Thereafter, any funds still remaining unobligated will be used to fund applications under the Mainstream Program in the SuperNOFA.

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APPENDIX A
METHODOLOGY FOR DETERMINING LEASE-UP AND BUDGET AUTHORITY UTILIZATION PERCENTAGE RATES

Using data from the HUDCAPS system, HUD determined which PHAs met the 97% budget authority utilization or 97% lease-up criteria. The data used in the determination was based on PHA fiscal years ending September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA year ending September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001, for the PHA's combined certificate and voucher program. Annual budget authority associated with new funding increments obligated during the last PHA fiscal year and annual budget authority for litigation were excluded.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD-52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA year for each funding increment which had an active contract term during all or a portion of the PHA year. ABA is adjusted for new funding increments obligated during the last PHA fiscal year and for litigation funding increments.

EXAMPLE:
PHA ABC
Fiscal year 10/1/99 through 9/30/00
HUD 52681 Approved Data:

HAP	$2,150,000
Administrative Fee	$ 215,000
Hard to House Fee	$ 1,000
Audit	$ 2,000
Total	$2,368,000

Program receipts other than Annual Contributions	($2,500)
Total contributions required	**$2,365,500**

Calculation of Annual Budget Authority

Increments	Contract Term	Total BA	ABA
001	11/01/99 -10/31/00	$1,300,000	$1,191,667
002	01/01/00-12/31/00	$1,200,000	$ 900,000
003	04/01/00-03/31/01	$ 950,000	$ 475,000
004	07/01/00-06/30/01	$1,500,000	$ 375,000
Totals		$4,950,000	**$2,941,667**
ABA associated with litigation			($475,000)
Total ABA			($2,466,667)

Budget Authority Utilization

Total contributions required	**$2,365,500**
divided by	
Annual budget authority	**$2,466,667**
equals	
Budget Authority Utilization	**95.9%**

Lease-up Rate

The lease-up rate was determined by comparing the reserved units (funding increments active as of the end of the PHA year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001.

Units associated with new funding increments obligated during the last PHA fiscal year and units obligated for litigation were excluded from the reserved units.

EXAMPLE:

Increments	Contract Term	Units
001	11/01/99-10/31/00	242
002	01/01/00-12/31/00	224
003	04/01/00-03/31/01	178
004	07/01/00-06/30/01	280
Totals		924

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Increment 003 litigation	(178)
Adjusted contract units	**746**

Unit months leased reported by PHA	8,726
divided by 12	727
Units Leased	**727**

Lease-up Rate	
Units leased	**727**
divided by adjusted contract units	**746**
equals	
Lease-up Rate	**97.5%**

APPENDIX B

Example

Main Street HA 12/31/01 Year End January 1, 2001 through December 31, 2001
ACC units applicable: 653 (Litigation and new units obligated during the fiscal year are excluded)

Month	Total HAP	UMLs	Admin Fee	HH Fee	Requirements	Cumulative Total	Annual Budget Authority (ABA)
January	$291,874	623	$29,119	$0	$320,993	$320,993	$295,650
February	$211,945	620	$30,058	$1,125	$243,128	$564,121	$295,650
March	$234,521	618	$29,961	$450	$264,932	$829,053	$295,650
April	$226,489	620	$30,058	$750	$257,297	$1,086,350	$295,650
May	$240,414	616	$29,864	$675	$270,953	$1,357,303	$295,650
June	$245,600	614	$29,767	$825	$276,192	$1,633,495	$295,650
July	$251,300	615	$29,815	$675	$281,790	$1,915,285	$309,103
August	$265,304	611	$29,621	$900	$295,825	$2,211,110	$309,103
September	$285,504	610	$29,573	$375	$315,452	$2,526,562	$309,103
October	$298,503	612	$29,670	$525	$328,698	$2,855,260	$309,103
November	$325,008	628	$30,445	$300	$355,753	$3,211,013	$309,103
December	$355,006	640	$31,027	$225	$386,258	$3,597,271	$309,105
Totals	$3,231,468	7,427	$358,978	$6,825		$3,597,271	$3,628,520

Leaseup Rate: 94.78% (UMLs/ACC units)
ABA Utilization 99.14% (Requirements/ABA)

Certification:

_____
Executive Director

_____
Section 8 Program Administrator

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HA Name and fiscal year end:
ACC Units applicable in fiscal year: _____

Month	Total HAP	UMLs	Admin Fee	Hard to House Fee	Requirements	Cumulative Total	Annual Budget Authority (ABA)
Totals							

Leaseup Rate: 0.00% (UMLs/ACC units)
ABA Utilization: 0.00% (Requirements/ABA)

Certification:

_____
Executive Director

_____
Section 8 Program Administrator

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RENTAL ASSISTANCE FOR NON-ELDERLY PERSONS WITH DISABILITIES IN SUPPORT OF DESIGNATED HOUSING PLANS

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FUNDING AVAILABILITY FOR RENTAL ASSISTANCE FOR NON-ELDERLY PERSONS WITH DISABILITIES IN SUPPORT OF DESIGNATED HOUSING PLANS

PROGRAM OVERVIEW

Purpose of the Program. The purpose of the voucher funding being made available under the Housing Choice Voucher Program through this announcement is to enable non-elderly families with disabilities to access affordable private housing. The vouchers will assist public housing agencies (PHAs) in providing sufficient alternative resources to meet the housing needs of those non-elderly disabled families who would have been housed by the PHA if occupancy in a designated public housing project/building (or portion thereof) were not restricted to elderly households, and assist PHAs who wish to continue to designate their buildings as "mixed elderly and disabled buildings" but can demonstrate a need for alternative resources for non-elderly disabled families.

Available Funds. Approximately $20 million in one-year budget authority for approximately 3,950 housing choice vouchers.

Eligible Applicants. Public housing agencies (PHAs). PHAs that fall into any of the categories in section VII(B)(2) of this announcement are ineligible to have an application funded under this announcement. Indian Housing Authorities, Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996, does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997. Further, IHAs would not otherwise have been eligible to apply under this announcement because the requirements of section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e) regarding designated housing plans are not applicable to IHAs.

Application Deadline. The application in its entirety must be submitted to HUD's Grants Management Center by July 23, 2002. By not later than May 20, 2002, the designated housing plan portion of the application must be submitted to HUD's Special Application Center.

Match: None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the **General Section** of this SuperNOFA and the following additional information.

I. Application Due Dates, Application Kits, Further Information and Technical Assistance

Application Due Dates. Submit your original and one copy of your completed application (including the designated housing plan, as appropriate) to HUD on or before July 23, 2002. *See the paragraphs titled "Mailed Applications" and "Applications Sent by Overnight/Express Mail Delivery" in section I of this funding announcement regarding the specific time on the application due date by which applications are to be submitted.* This application deadline date is firm. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the competition under this funding announcement, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Your completed application consists of an original and two copies. Submit the original application and one copy to: *Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School; Street, SW, Suite 800, Washington, DC 20024.* The Grants Management Center (GMC) is the official place of receipt for all applications in response to this announcement of funding availability. Applications not submitted to the GMC will not be considered.

Submit one copy of the designated housing plan portion of your application to the Office of Public Housing, Special Application Center (SAC), Room 2401, 77 West Jackson Boulevard, Chicago, IL 60604 (312–886–9754), so as to be received by the SAC by not later than May 20, 2002. See the paragraph titled "Mailed Applications" in section I of this funding announcement regarding the specific time on the application due date by which applications are to be submitted.

Note: The Special Application Center is allowed, by statute, 60 days in which to review a PHA's designated housing plan.

A PHA submitting an application for voucher funding under this announcement shall not be eligible for funding if it does not submit its entire application to the GMC, and the designated housing plan portion of its application (as applicable) to the SAC, by the deadline dates specified above.

A copy of your application is not required to be submitted to the local HUD Field Office. For ease of reference, the term "local HUD Field Office" will be used in this announcement to mean the local HUD Field Office Hub and local HUD Field Office Program Center. A listing of HUD Field Offices is attached to the **General Section** of this SuperNOFA.

New Security Procedures. In response to the terrorist attacks in September 2001, HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed to the GMC in HUD Headquarters, or (for the designated housing plan portion of the application) to the SAC in Chicago, Illinois, using the United States Postal Service (USPS). Applications may also be shipped to the GMC via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. (Use of these delivery services or any other delivery services for the submission of the designated housing plan portion of the application to the SAC is not allowed.) No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered to be timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the GMC (the entire application) and the SAC (designated housing plan portion of the application) within fifteen (15) days of the application due dates applicable to each of these separate submissions. *All applicants must obtain and save* a Certificate of Mailing showing the date when you submitted your application to the United States Postal Service (USPS). The Certificate of mailing will be your documentary evidence that your application was timely filed.

Applications Sent to the GMC by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD

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Headquarters regularly. These services are UPS, DHL, FedEx, and Falcon Carrier. Delivery by these services must be made during HUD Headquarters business hours, between 8:30AM and 5:30PM Eastern Time, Monday to Friday. If these companies do not service your area, you should submit your application via the USPS. (The submission by a PHA to the SAC of the designated housing plan portion of its application must be done solely by mail using the USPS.)

For Application Kits. An application kit is not necessary for submitting an application in response to this announcement. This announcement contains all the information necessary for the submission of your application for voucher funding under this announcement.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1872, ext.4064. Subsequent to application submission, you may contact the Grants Management Center at (202) 358–0221. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, you should consult the HUD Web site at *www.hud.gov.*

II. Amount Allocated.

(A) *Available Funding.* Approximately $20 million in one-year budget authority is available for housing choice vouchers for non-elderly disabled families in support of designated housing plans to designate public housing for occupancy by elderly families only, or elderly families and disabled families only. This funding is expected to provide assistance to approximately 3,950 non-elderly disabled families.

The FY 2002 HUD Appropriations Act allows the Secretary of HUD to transfer any unobligated funds for support of designated housing plans to assist non-elderly disabled families to the extent they are not needed to fund approvable applications related to designated housing plans during FY 2002. Accordingly, any funds remaining unobligated under this announcement will first be used to fund any approvable applications under HUD's announcement for Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Section 202, Section 221(d)(3) and Section 236 Developments, for which there are insufficient funds. Any funds still remaining unobligated under this announcement for funding in support of designated housing plans shall be used to fund any approvable applications under HUD's announcement for Mainstream Housing Opportunities For Persons With Disabilities, for which there are insufficient funds.

(B) *Voucher Funding.*

(1) *Maximum Voucher Request.* A PHA may apply for only the number of units needed to house those non-elderly disabled families that otherwise would have been housed if not for the designation of a project/building (or portion thereof) for occupancy by the elderly only. The size of the units applied for must bear a direct relationship to the size of the units designated. PHAs are limited to applying for no more than a maximum of 200 units (vouchers).

(2) *Determination of Funding Amount for the PHA's Requested Number of Vouchers.* HUD will determine the amount of funding that a PHA will be awarded under this announcement based upon an actual annual per unit cost {except for Moving to Work (MTW) agencies the per unit cost will be calculated in accordance with the agency's MTW Agreement for MTW units} using the following two step process:

(a) HUD will extract the total expenditures for all the PHA's housing choice voucher and certificate programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's housing choice voucher and certificate programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

Note: Applicants who do not currently administer a housing choice voucher program shall have their voucher funding based upon the actual annual per unit costs of the PHA in their most immediate area administering a housing choice voucher program, using the two step process described immediately above.

(3) *Preliminary Fee.* A preliminary fee of up to $500 per unit for preliminary (start-up) expenses will be paid to PHAs that have not previously administered their own housing choice voucher program and that are selected for funding under this announcement. The preliminary fee will be provided to such PHAs only in their first year administering housing choice vouchers.

III. Program Description, Eligible Applicants, and Eligible Participants

(A) *Program Description.* This program provides housing choice vouchers to assist non-elderly disabled families who would have been housed by a PHA if occupancy in the designated public housing project/building (or portion thereof) were not restricted to elderly households, and assist PHAs that wish to continue to designate their projects/buildings (or portions thereof) as "mixed elderly and disabled buildings" and can demonstrate a need for alternative housing resources for non-elderly disabled families that is consistent with the jurisdiction's Consolidated Plan and the low-income housing needs of the jurisdiction.

(B) *Eligible Applicants.* PHAs are the eligible applicants. PHAs that fall into any of the categories in section VII(B)(2) of this announcement are ineligible to have an application funded under this announcement. A PHA may submit only one application under this announcement. This one application per PHA limit applies regardless of whether the PHA is a State or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such instance, a separate application under each code shall be considered for funding, with the cumulative total of vouchers applied for under the applications not to exceed the maximum number of vouchers the PHA is eligible to apply for under section II (B)(1) of this announcement; i.e., no more than the number of vouchers the same PHA would be eligible to apply for if it only had one PHA code number.

Indian Housing Authorities (IHAs), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996, does not allow HUD to enter into new Housing Choice Voucher Program annual contributions contracts (ACC) with IHAs after September 30, 1997. Further, IHAs would not otherwise have been eligible to apply under this announcement because the requirements of section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e) regarding designated housing plans are not applicable to IHAs.

In some cases a PHA currently administering the housing choice voucher program has, at the time of publication of this SuperNOFA, been designated by HUD as a troubled PHA under the Section 8 Management Assessment Program (SEMAP), or has major program management findings from Inspector General audits that are unresolved. HUD will not accept an application from such a PHA as a contract administrator if, on the application due date, the troubled designation under SEMAP has not been removed by HUD, or the findings are not resolved. If the PHA wants to apply for funding under this announcement, the PHA must submit an application that designates another contractor that is acceptable to HUD. The PHA's application must include an agreement by the other contractor to administer the new funding increment on behalf of the PHA, and (in the instance of a PHA with unresolved major program management findings) a statement that outlines the steps the PHA is taking to resolve the program findings.

Immediately after the publication of this SuperNOFA, the Office of Public Housing in the local HUD Field Office will notify, in writing, those PHAs that have been designated by HUD as troubled under SEMAP, and those PHAs with unresolved major program management findings that are not eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the Grants Management Center. The PHA may appeal the decision, in writing, if HUD has mistakenly classified the PHA as having unresolved major program management findings. The PHA may not appeal its designation as a troubled PHA under SEMAP. Any appeal with respect to unresolved major program management findings must be accompanied by conclusive evidence of HUD's error (i.e., documentation showing that the finding has been cleared) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the Grants Management Center with a copy of the PHA's written appeal and the Field Office's written response to the appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(C) *Eligible Participants.* Only non-elderly disabled families that are income eligible under 24 CFR 982.201(b)(1) and who live in public housing that has been designated for occupancy by the elderly, or non-elderly disabled families who are on the PHA's public housing waiting list, may receive a voucher awarded in conjunction with an approved designated housing plan. Such families need not be listed on the PHA's housing choice voucher waiting list in order to be offered and receive a housing choice voucher. These families may be admitted to the housing choice voucher program as a special admission (24 CFR 982.203). Additional information on the eligibility requirements for a family or individual to receive a housing choice voucher are located at the following HUD Web site: **www.hud.gov/offices /pih/programs/hcv.**

IV. Program Requirements and Definitions

In addition to the civil rights compliance and nondiscrimination requirements listed in the **General Section** of this SuperNOFA, grantees must meet the following program requirements:

(A) *Affirmatively Furthering Fair Housing.* Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(1) Examine the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); develop a plan to (a) address those impediments in a reasonable fashion in view of the resources available; (b) work with the local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and (c) maintain records reflecting these analyses and actions;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, applicants have a duty to carry out the specific activities cited in their responses under this announcement to address affirmatively furthering fair housing.

(B) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(C) *Voucher Assistance Requirements.*

(1) *Housing Choice Voucher Program Regulations.* PHAs must administer the housing choice vouchers received under this announcement in accordance with HUD regulations and requirements governing the Housing Choice Voucher Program.

(2) *Housing Choice Voucher Admission Requirements.* Housing choice vouchers must be provided to eligible applicants in conformity with regulations and requirements governing the Housing Choice Voucher Program and the PHA's administrative plan.

(3) *Turnover.* When a voucher under this announcement becomes available for reissue (e.g., the non-elderly disabled family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the rental assistance may be used only for another non-elderly disabled family eligible for assistance under this announcement for one year from the date the rental assistance is placed under an annual contributions contract (ACC). If there is ever an insufficient pool of non-elderly disabled families on the PHA's housing choice voucher waiting list, the PHA shall conduct outreach to encourage eligible non-elderly disabled families to apply for this special allocation of vouchers. Outreach may include contacting independent living centers, advocacy organizations for persons with disabilities, and medical, mental health, and social service providers for referrals of persons who would benefit from housing choice voucher assistance. If the PHA's housing choice voucher waiting list is closed, and if the PHA has insufficient non-elderly disabled applicants on that waiting list to use all awarded vouchers under this announcement, the PHA should open the waiting list for applications from non-elderly disabled families. PHAs must take care to keep track of the number of non-elderly disabled vouchers they have been awarded versus the number of such vouchers actually issued to non-elderly disabled families.

(D) *PHA Responsibilities.* In addition to PHA responsibilities under the Housing Choice Voucher Program and HUD regulations concerning nondiscrimination based on disability (24 CFR 8.28) and to affirmatively further fair housing, PHAs that receive voucher funding shall:

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(1) Where requested by an individual, assist program participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of participation or continued occupancy in the program.

(2) Identify public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities.

(3) Not deny persons who qualify for a housing choice voucher under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate.

(4) Provide housing choice voucher search assistance.

(5) In accordance with regulatory guidance, provide higher rent to owners necessary for the provision of accessible units and structural modifications for persons with disabilities.

(6) Provide technical assistance to owners for making reasonable accommodations or making units accessible to persons with disabilities.

PHAs are encouraged to coordinate with/involve nonprofit disability organizations in meeting the requirements of sections 1, 2, 4 and 6 immediately above. PHAs are encouraged to seek out nonprofit disability organizations in this regard due to such organizations' capacity for assisting disabled families, and their in-depth knowledge of the disability community and the available resources to assist disabled persons.

(E) *Definitions.*

(1) *Designated Housing Plan.* A HUD-approved designated housing plan is required of PHAs seeking to designate a project/building (or portion thereof) for occupancy by elderly families only, or elderly and disabled families only. See section 10(a) of the Housing Opportunity Extension Act of 1996 (Pub. L. 104–120, approved March 28, 1996) as explained in Notice PIH 97–12 (HA), Requirements for Designation of Public Housing Projects. This Notice was extended by Notice PIH 2001–17 (HA). Section 10(a) amended section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e).

(2) *Elderly Family.* A family whose head of household, spouse, or sole member is 62 years or older.

(3) *Non-elderly Disabled Family.* A family who is not elderly, and whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

(4) *Person with disabilities.* Means a person who—

(a) Has a disability as defined in 42 U.S.C. 423;

(b) Is determined, pursuant to HUD regulations, to have a physical, mental or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(c) Has a developmental disability as defined in 42 U.S.C. 6001;

(d) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; and

(e) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence.

(5) *Housing choice voucher search assistance.* Assistance to increase access by program participants to housing units in a variety of neighborhoods (including areas with low poverty concentrations) and to locate and obtain units suited to their needs.

(F) *Homeownership and Family Self-Sufficiency (FSS).* Applicants are encouraged to establish or expand upon an existing housing choice voucher homeownership program, as well as complete the closing process on homeownership units. Applicants are also encouraged to fill slots under a mandatory FSS program and to establish a voluntary FSS program and fill slots thereunder where a mandatory FSS program is not required.

(G) *Increasing the Participation of Faith-Based and Community-Based Organizations in HUD Program Implementation.* HUD believes that grassroots organizations; *e.g.*, civic organizations, congregations, and other community-based and faith-based organizations, have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services such as assisting the homeless and preventing homelessness; counseling individuals and families on fair housing rights; providing elderly housing opportunities; developing first time homeownership programs; increasing homeownership and rental housing opportunities; developing affordable and accessible housing in neighborhoods across the country; and creating economic development programs. The goal of this policy priority is to make HUD's housing choice voucher program more effective, efficient, and accessible by expanding opportunities for faith-based and other community-based organizations to participate in developing solutions for their own neighborhoods. PHAs are encouraged to coordinate with and otherwise involve faith-based and other community-based organizations in those activities under the housing choice voucher program where their services, expertise and knowledge may be most effective.

(H) *Conducting Business in Accordance With Core Values and Ethical Standards.* To reflect core values, all PHAs shall develop and maintain a written code of conduct in the PHA administrative plan that (1) requires compliance with the conflict of interest requirements of the Housing Choice Voucher Program at 24 CFR 982.161, and (2) prohibits the solicitation or acceptance of gifts or gratuities, in excess of a nominal value, by any officer or employee of the PHA, or any contractor, subcontractor or agent of the PHA. The PHA's administrative plan shall state PHA policies concerning PHA administrative and disciplinary remedies for violation of the PHA code of conduct. The PHA shall inform all officers, employees and agents of its organization of the PHA's code of conduct.

V. Application Selection Process

After the Grants Management Center has screened PHA applications and disapproved any applications found unacceptable for further processing, the Grants Management Center will review all acceptable applications (exclusive of the Designated Housing Plan portion of the application—which is reviewed by the Special Application Center) to ensure that they are technically adequate and responsive to the requirements of this announcement of funding availability.

The Special Application Center will send to the Grants Management Center the following information on each designated housing plan, or updated needs data in connection with a previously approved designated housing plan, submitted in conjunction with this announcement:

(1) A copy of the letter to the PHA approving or disapproving its designated housing plan, or updated needs data.

(2) Special Application Center contact person and telephone number.

HUD Headquarters will fund on a first-come, first-serve basis all approvable applications from PHAs that are recommended for funding by the Grants Management Center and that the Special Application Center advises has an approved designated housing plan or acceptable updated needs data, based upon the date and time the application is received in the Grants Management Center. As PHAs are selected, the cost of funding the applications will be subtracted from the funds available. In the event approvable applications are received for more than the approximately $20 million available under this announcement, funds will be transferred from the approximately $20 million available under the announcement for non-elderly disabled families not receiving housing assistance in certain Section 8 project-based developments, or certain Section 202, Section 221(d)(3) or Section 236 developments, to the extent funds are not needed for approvable applications under that announcement. Applications will be funded for the total number of units requested by the PHA and approved by the Grants Management Center in accordance with this funding announcement for support of Designated Housing Plans. When remaining budget authority is insufficient to fund the last selected PHA application in full, however, HUD Headquarters will fund that application to the extent of the funding available, unless the PHA's application indicates that the PHA will only accept a higher number of units. In that event, the next selected application shall be one that has indicated a willingness to accept the lesser amount of funding for the units available.

VI. Application Submission Requirements

(A) *Form HUD–52515.* All PHAs must complete and submit form HUD–52515, Funding Application, for the Housing Choice Voucher Program, (dated January 1996). This form includes all the necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities. PHAs are requested to enter their housing authority code number (for example, CT002), telephone number, facsimile number, and electronic mail address in the same place at the top of the form where they are also to enter the PHA's name and mailing address. The information entered in Section B of the form for bedroom size and number of requested units must bear a direct relationship to the bedroom size and number of units designated in the PHA's designated housing plan that will no longer be available for the future admission of non-elderly disabled families. Section C of the form should be left blank. The form must be completed in its entirety, with the exception of Section C, signed and dated. A copy of Form HUD–52515 is included in the forms found in the *General Section* of the SuperNOFA. Copies of the form may also be downloaded from the following HUD Web site: *www.hud.gov.* (On the HUD Web site click on "handbooks and forms," then click on "forms," then click on "HUD–5" and click on "HUD–52515." In addition, the Form HUD–52515 will also be posted with the Designated Housing funding announcement at the following HUD Web site: *www.hud.gov/offices/adm/grants/fundsavail.cfm.*

(B) *Letter of Intent and Narrative.* The PHA must state in its cover letter to the application whether the PHA will accept a reduction in the number of vouchers, and the minimum number of vouchers that the PHA will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The maximum number of vouchers that a PHA may apply for under this announcement is limited to 200.

PHAs that do not currently administer a housing choice voucher program must identify the nearest PHA (including the full name, address, and tel. no.) that does administer a housing choice voucher program. This information will be necessary for HUD to calculate annual per unit costs for voucher funding awarded under this funding announcement to such PHAs (see section II (B)(2)(c) of this funding announcement).

(C) *Approvable Designated Housing Plan.* The application must include an approvable plan to designate housing in accordance with section 10(a) of the Housing Opportunities Extension Act of 1996 (Pub.L 104–120, approved March 28, 1996) as explained in Notice PIH 97–12 (HA), Requirements for Designation of Public Housing Projects. This Notice was extended by Notice PIH 2001–17 (HA), dated May 16, 2001.

PHAs should also bear in mind that the HUD regulations require PHAs to submit an Annual Plan which must provide a statement regarding any public housing project (or portion thereof) which the PHA plans to designate as elderly only or mixed elderly and disabled {see 24 CFR 903.7 (1)(ii)}. Only those PHAs which are designated by HUD as high performing PHAs, or are small PHAs (less than 250 public housing units) that are not designated as troubled, are excluded from the requirement to address the designation of elderly and disabled public housing units in the Annual Plan. The Special Application Center will not process a designated housing plan if the PHA's intent to designate is not covered in its Annual Plan.

(D) *Designated Housing Plan Previously Approved.* Any PHA wishing to rely on a designated housing plan previously approved by HUD, that did not require housing choice vouchers or certificates for non-elderly disabled families or that now requires more vouchers than previously justified, will be required to submit the information called for in sections (A) and (B) immediately above, a copy of the previously HUD-approved designated housing plan, and updated needs data supporting the need now for vouchers not previously deemed necessary as an alternative housing resource. The updated needs data should indicate why the PHA does not have the appropriate resources to carry out the previously approved plan, identify the number of vouchers needed for non-elderly disabled families, and address the housing needs in its Consolidated Plan. While updated needs data is not considered an amendment or revision of a previously approved designated housing plan, the updated needs data must be submitted to the Special Application Center for review. The deadline date and submission requirements for updated needs data are the same as for the designated housing plan (see section I of this announcement).

Conversely, any PHA wishing to rely on a designated housing plan previously approved by HUD, contingent upon the PHA's future submission of an application for housing choice vouchers as an alternative housing resource for non-elderly disabled families, will need to only submit the HUD-approval letter for the designated housing plan in lieu of the plan itself (updated needs data also unnecessary).

(E) *Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's statement must include, but not necessarily be limited to:

(1) The examination of the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice in its Consolidated Plan); and a description of a plan to (a) address those impediments in a reasonable fashion in view of the resources available; (b) work with local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and

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(c) the maintenance of records reflecting these analyses and actions;

(2) Remedy discrimination in housing for persons with disabilities regardless of race, color, religion, sex, familial status, national origin, or nature of disability; or

(3) Promote fair housing rights and fair housing choice.

The PHA's statement must fully address the above areas. A general statement that the PHA will promote fair housing choice by reason of not discriminating on the basis of race, color, religion, etc. will not be sufficient.

(F) *Moving to Work (MTW) PHA Information and Certification.* See section VII (B)(2)(c) regarding the 97 percent lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

(G) *Form HUD–2993.* All PHAs must complete and submit form HUD–2993, Acknowledgement of Application Receipt. In addition to the PHA entering its name and address on the form, the full title of the program under which the PHA is seeking funding must also be entered. This form is located in the **General Section** of the SuperNOFA and is also available at the following HUD Web site: *www.hud.gov.* On this Web site click on "handbooks and forms."

VII. Corrections to Deficient Applications

(A) *Acceptable Applications.* The application must include all of the information specified in section VI, Application Submission Requirements. The **General Section** of the SuperNOFA provides the procedures for corrections to deficient applications.

(B) *Unacceptable Applications.*

(1) After the 14-calendar day technical deficiency correction period, the Grants Management Center will disapprove all PHA applications that the Grants Management Center determines are not acceptable for processing. The Grants Management Center's notification of rejection letter must state the basis for the decision. The applicant may request an applicant debriefing. Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not longer than 120 days, HUD will, upon receiving a written request from the applicant, provide a debriefing to the requesting applicant. Applicants requesting to be debriefed must send a written request to Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications that do not meet the fair housing and civil rights compliance threshold requirements of the **General Section** of the SuperNOFA.

(b) The PHA is designated as troubled by HUD under SEMAP, or has major program management findings in an Inspector General audit for its voucher or certificate programs that are unresolved. The only exception to this category is if the PHA has been identified under the policy established in Section III (B) of this announcement and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up or budget authority utilization rate of 97 percent for its combined certificate and voucher units under contract for its fiscal year ending on either September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001. PHAs that have been determined by HUD to have passed either the 97 percent lease-up, or 97 percent budget authority utilization requirement for their fiscal year ending on either September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001, will be listed with this funding announcement at the following HUD Web site: *www.hud.gov/offices/adm/grants/fundsavail.cfm.* A PHA not listed may submit monthly lease-up and budget authority utilization information (following the methodology of Appendix A of this announcement and using the format in Appendix B which also includes a blank version of the format) as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD website as having achieved either a 97 percent lease-up rate or 97 percent budget authority utilization rate for fiscal years ending on either September 30, 2000; December 31, 2000; March 31, 2001; June 30, 2001; or subsequent full fiscal year not yet processed by HUD but certified by the applicant. Unless utilization information is submitted on the blank form in Appendix B, the application will otherwise be determined ineligible for funding under this announcement.

Note: The lease-up and budget authority utilization requirement shall not apply to applicants not currently administering a voucher program, or to new units associated with funding increments obligated during the applicant's last fiscal year and units obligated for litigation. In addition, lease-up or budget authority utilization rates of 96.5 percent but less than 97 percent shall be rounded up to 97 percent.)

Moving To Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 97 percent lease-up and budget authority utilization requirements referenced above. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 97 percent lease-up or budget authority utilization requirements.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the vouchers.

(e) An application that does not comply with the requirements of 24 CFR 982.102 and this program section after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this announcement.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(i) The PHA did not have its PHA plans approved by HUD for the FY 2000 plan cycle on the application due date for this funding announcement.

VIII. Environmental Requirements

In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option of this program are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR 58.35(b)(5), but PHAs are responsible for the environmental requirements in 24 CFR 982.626(c).

IX. Authority

Authority for this program is found in the Departments of Veteran's Affairs and Housing and Urban Development, and

Independent Agencies Appropriations Act, FY 2002 (Pub. L. 107–73, approved November 26, 2001). This FY 2002 Appropriations Act authorized appropriations for housing choice vouchers to assist non-elderly disabled families affected by the designation of a public housing development under section 7 of the United States Housing Act of 1937, as amended. The FY 2002 Appropriations Act also allows the Secretary to transfer any unobligated funds for this purpose to assist non-elderly disabled families affected by the establishment of preferences in accordance with section 651 of the Housing and Community Development Act (HCDA) of 1992 or the restriction of occupancy to elderly families in accordance with section 658 of the HCDA of 1992. Thereafter, the FY 2002 Appropriations Act allows for any funds still remaining unobligated to be used to fund applications for vouchers for non-elderly disabled families under the Mainstream Program in the SuperNOFA.

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APPENDIX A
METHODOLOGY FOR DETERMINING LEASE-UP AND BUDGET AUTHORITY UTILIZATION PERCENTAGE RATES

Using data from the HUDCAPS system, HUD determined which PHAs met the 97% budget authority utilization or 97% lease-up criteria. The data used in the determination was based on PHA fiscal years ending September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA year ending September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001, for the PHA's combined certificate and voucher program. Annual budget authority associated with new funding increments obligated during the last PHA fiscal year and annual budget authority for litigation were excluded.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD-52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA year for each funding increment which had an active contract term during all or a portion of the PHA year. ABA is adjusted for new funding increments obligated during the last PHA fiscal year and for litigation funding increments.

EXAMPLE:
PHA ABC
Fiscal year 10/1/99 through 9/30/00
HUD 52681 Approved Data:

HAP	$2,150,000
Administrative Fee	$ 215,000
Hard to House Fee	$ 1,000

Audit	$ 2,000
Total	$2,368,000
Program receipts other than Annual Contributions	($2,500)
Total contributions required	**$2,365,500**

Calculation of Annual Budget Authority

Increments	Contract Term	Total BA	ABA
001	11/01/99 -10/31/00	$1,300,000	$1,191,667
002	01/01/00-12/31/00	$1,200,000	$ 900,000
003	04/01/00-03/31/01	$ 950,000	$ 475,000
004	07/01/00-06/30/01	$1,500,000	$ 375,000
Totals		$4,950,000	**$2,941,667**
ABA associated with litigation			($475,000)
Total ABA			($2,466,667)

Budget Authority Utilization

Total contributions required	**$2,365,500**
divided by	
Annual budget authority	**$2,466,667**
equals	
Budget Authority Utilization	**95.9%**

Lease-up Rate

The lease-up rate was determined by comparing the reserved units (funding increments active as of the end of the PHA year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for September 30, 2000; December 31, 2000; March 31, 2001; or June 30, 2001.

Units associated with new funding increments obligated during the last PHA fiscal year and units obligated for litigation were excluded from the reserved units.

EXAMPLE:

Increments	Contract Term	Units
001	11/01/99-10/31/00	242
002	01/01/00-12/31/00	224
003	04/01/00-03/31/01	178

004	07/01/00-06/30/01	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units	**746**	

Unit months leased reported by PHA	8,726
divided by 12	727
Units Leased	**727**

Lease-up Rate	
Units leased	**727**
divided by adjusted contract units	**746**
equals	
Lease-up Rate	**97.5%**

APPENDIX B

Example

Main Street HA 12/31/01 Year End January 1, 2001 through December 31, 2001
ACC units applicable: 653 (Litigation and new units obligated during the fiscal year are excluded)

Month	Total HAP	UMLs	Admin Fee	HH Fee	Requirements	Cumulative Total	Annual Budget Authority (ABA)
January	$291,874	623	$29,119	$0	$320,993	$320,993	$295,650
February	$211,945	620	$30,058	$1,125	$243,128	$564,121	$295,650
March	$234,521	618	$29,961	$450	$264,932	$829,053	$295,650
April	$226,489	620	$30,058	$750	$257,297	$1,086,350	$295,650
May	$240,414	616	$29,864	$675	$270,953	$1,357,303	$295,650
June	$245,600	614	$29,767	$825	$276,192	$1,633,495	$295,650
July	$251,300	615	$29,815	$675	$281,790	$1,915,285	$309,103
August	$265,304	611	$29,621	$900	$295,825	$2,211,110	$309,103
September	$285,504	610	$29,573	$375	$315,452	$2,526,562	$309,103
October	$298,503	612	$29,670	$525	$328,698	$2,855,260	$309,103
November	$325,008	628	$30,445	$300	$355,753	$3,211,013	$309,103
December	$355,006	640	$31,027	$225	$386,258	$3,597,271	$309,105
Totals	**$3,231,468**	**7,427**	**$358,978**	**$6,825**		**$3,597,271**	**$3,628,520**

Leaseup Rate: **94.78% (UMLs/ACC units)**
ABA Utilization **99.14% (Requirements/ABA)**

Certification:

_____
Executive Director

_____
Section 8 Program Administrator

HA Name and fiscal year end:
ACC Units applicable in fiscal year: _____

Month	Total HAP	UMLs	Admin Fee	Hard to House Fee	Requirements	Cumulative Total	Annual Budget Authority (ABA)
Totals							

Leaseup Rate: 0.00% (UMLs/ACC units)
ABA Utilization: 0.00% (Requirements/ABA)

Certification:

_____
Executive Director

_____
Section 8 Program Administrator

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SERVICE COORDINATORS IN MULTIFAMILY HOUSING

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FUNDING AVAILABILITY FOR SERVICE COORDINATORS IN MULTIFAMILY HOUSING

PROGRAM OVERVIEW

Purpose of the Program. The purpose of this Service Coordinator program is to allow multifamily housing owners to assist elderly individuals and people with disabilities living in HUD-assisted housing and in the surrounding area to obtain needed supportive services from the community, in order to enable them to continue living as independently as possible in their own homes.

Available Funds. Approximately $25 million.

Eligible Applicants. Only owners of eligible developments may apply for and become the recipient of grant funds. Property management companies may administer grant programs but are not eligible applicants. See Section III for more detailed eligibility criteria.

Application Deadline: July 3, 2002.

Match. None.

ADDITIONAL INFORMATION

If you are interested in applying for funding under this program, please review carefully the **General Section** of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original and two copies) is due on or before 6:00 pm, local time, on July.3, 2002 at the address given below.

See the **General Section** of this SuperNOFA for specific procedures concerning the form of application submission (*e.g.*, mailing applications by U.S. Postal Service). Only Service Coordinator applications mailed via the United States Postal Service will be accepted.

Addresses for Submitting Applications. Appendix A to this program section contains a list of HUD Field Offices where you must send your application by the deadline. Please address your application to the Director, Multifamily Housing Hub or Program Center in your local HUD Field Office. You should not submit any copies of your application to HUD Headquarters.

For Application Kits. For an application kit, please call the SuperNOFA Information Center at 1–800–HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, please refer to the Multifamily Housing Service Coordinator Program and provide your name, address (including zip code) and telephone number (including area code). An application kit also will be available on the Internet at *http://www.hud.gov.*

For Further Information and Technical Assistance. You may contact your local HUD Field Office staff for questions you have regarding this program section of the SuperNOFA and your application kit. Please contact the Multifamily Housing Resident Initiatives Specialist or Service Coordinator contact person in your local Office. If you are an owner of a Section 515 development, contact the Multifamily HUB or Multifamily Program Center in the HUD Field Office that normally provides asset management to that development. If you have a question that the Field staff are unable to answer, please call Carissa Janis, Housing Project Manager, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6146, Washington, DC 20410; (202) 708–2866, extension 2487. (This number is not toll free). If you are hearing or speech impaired, you may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD Web site at *http://www.hud.gov.*

II. Amount Allocated

(A) *Available Funding.* This NOFA makes available approximately $25 million in Fiscal Year (FY) 2002 funding from the $50 million provided in the Housing for Special Populations account in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub.L. 107–73, approved November 26, 2001).

HUD will use the remaining $25 million appropriated this year to provide one-year extensions to expiring Service Coordinator and Congregate Housing Services Program (CHSP) grants.

HUD will first fund Service Coordinator costs in applications selected to receive an Assisted Living Conversion Program (ALCP) grant award. The Department estimates that approximately $2 million will be needed to fund these programs. The actual amount will be based upon demand and the number of applications that meet threshold criteria in both the ALCP and Service Coordinator programs. HUD will set-aside the requested amount of ALCP/Service Coordinator funds prior to conducting the national lottery. Any funds not used for ALCP Service Coordinator programs will revert to the lottery to fund all other eligible applications submitted under this NOFA.

In FY 2001, HUD awarded 218 grants for a total of $25,125,340. One of the 218 grants was awarded to an ALCP grant recipient, for $70,431.

(B) *Maximum Grant Award.* There is no maximum grant amount. The grant amount you request must be based on the number of frail or at-risk elderly or non-elderly people with disabilities who live in your development. Under normal circumstances, a full-time Service Coordinator should be able to serve about 50–60 frail or at-risk elderly or non-elderly people with disabilities. "Frail elderly" person means an individual 62 years of age or older who is unable to perform at least three activities of daily living (ADLs) as defined by the regulations for HUD's Section 202 Program (Supportive Housing for the Elderly) at 24 CFR 891.205. An "at-risk elderly" person is an individual 62 years of age or older who is unable to perform one or two ADLs. Your proposed salary must also be supported by evidence of comparable salaries in your area.

(C) *Reduction of Requested Grant Amounts.* You may be awarded an amount less than requested if:

(1) HUD determines that some elements of your proposed action plan are ineligible for funding;

(2) Insufficient amounts remain under the allocation to fund the full amount you requested, and HUD determines that partial funding is a viable option; or

(3) HUD determines that a reduced grant would prevent duplicative Federal funding.

(D) *Alternative Funding for Service Coordinators.* Owners may submit requests following instructions in Housing's Management Agent Handbook 4381.5, REVISION–2, CHANGE–2, Chapter 8. This Handbook provides procedures for requesting funding for a coordinator using residual receipts, the budget-based rent increase process, contract rents adjusted by the Annual Adjustment Factor (AAF) or the Project Rental Assistance Contract (PRAC). Refer to Housing Notice H–01–07 for information on using Section 236 excess income to fund a Service Coordinator. HUD Field staff will approve use of Section 8 funds or excess income consistent with current policy.

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Field Office staff may approve use of project funds for a Service Coordinator at any time, as long as you have available project funds. You should discuss these alternative funding options with your Field Office staff prior to submitting a grant application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The Service Coordinator Program provides funding for the employment and support of Service Coordinators in insured and assisted housing developments that were designed for the elderly and persons with disabilities and continue to operate as such. Service Coordinators help residents obtain supportive services from the community that are needed to enable independent living and aging in place.

A Service Coordinator is a social service staff person hired or contracted by the development's owner or management company. The Coordinator is responsible for assuring that elderly residents, especially those who are frail or at risk, and those non-elderly residents with disabilities are linked to the supportive services they need to continue living independently in that development. All services should meet the specific desires and needs of the residents themselves. The Service Coordinator may not require any elderly individual or person with a disability to accept any specific supportive service(s).

You may want to review the Management Agent Handbook 4381.5 REVISION–2, CHANGE–2, Chapter 8 for further guidance on service coordinators. This Handbook is accessible through HUDCLIPS on HUD's Web site at *http://www.hudclips.org.* The Handbook is in the Handbooks and Notices—Housing Notices database. Enter the Handbook number in the "Document Number" field to retrieve the Handbook.

There is no minimum unit number for eligible developments. In proposing a Service Coordinator program at a small development, however, be careful to follow the guidance provided in Section II.B of this NOFA. You may also use grant funds to augment current Service Coordinator programs and to continue programs in cases where current or previous funding sources are no longer available. Please refer to Sections III.D and E, below.

The American Homeownership and Economic Opportunity Act of 2000 (Pub.L. 106–569, approved December 27, 2000) expanded the scope of the Service Coordinator program. This Act allows owners of eligible developments to provide service coordination to low-income elderly or disabled families living in the vicinity of the development. You have the option to serve such community residents as a part of your proposed program to provide coordination to current residents of an eligible development. The objective of this expanded authority is to help additional low-income elderly and disabled individuals age in place and live as independently as possible in their current homes. Any reference in this program NOFA or in the application kit to elderly or disabled residents of a development shall be construed to include low-income elderly or disabled families living in the vicinity of such a development.

(B) *Eligible Applicants and Developments.*

To be eligible for funding, you must meet all of the applicable threshold requirements of Section II(B) of the **General Section** of the SuperNOFA.

(1) You must be an owner of a development assisted under one of the following programs:

(a) Section 202 and 202/8;

(b) Existing Section 8 project-based and moderate rehabilitation developments (includes any multifamily housing development with project-based Section 8; or

(c) Section 221(d)(3) below-market interest rate, and 236 developments that are insured or assisted.

(2) Additionally, developments listed in paragraph (1), above, are eligible only if they meet the following criteria:

(a) Have frail or at-risk elderly residents and/or non-elderly residents with disabilities who together total at least 25 percent of the building's residents.

(b) Were designed for the elderly or persons with disabilities and continue to operate as such. This includes any building within a mixed-use development that was designed for occupancy by elderly persons or persons with disabilities at its inception and continues to operate as such, or consistent with title VI, subtitle D of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). If not so designed, a development in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or persons with disabilities, for all units in that development.

(c) Are current in mortgage payments or are current under a workout agreement.

(d) Meet HUD's Uniform Physical Conditions Standards (codified in 24 CFR part 5, subpart G), based on the most recent physical inspection report and responses thereto, as evidenced by a score of 60 or better or by an approved plan for developments scoring less than 60.

(e) Are in compliance with their regulatory agreement, Housing Assistance Payment (HAP) Contract, and other outstanding directives.

(f) Owners using the AAF rent increase process or who are profit-motivated must provide certification that rental and other income from the development are insufficient to pay for a service coordinator.

(3) If your eligibility status changes during the course of the grant term, making you ineligible to receive a grant (e.g. due to prepayment of mortgage, sale of property, or opting out of a Section 8 Housing Assistance Payment (HAP) contract), HUD has the right to terminate your grant.

(4) If you are applying for an Assisted Living Conversion Program (ALCP) grant, you may apply for new or augmented Service Coordinator costs to serve Assisted Living residents and/or all residents of your development.

(C) *Ineligible Applicants and Developments.*

(1) Property management companies, area agencies on aging, and other like organizations are not eligible applicants for Service Coordinator funds. Such agents may prepare applications and sign application documents if they provide written authorization from the owner corporation as part of the application. In such cases, the owner corporation *must* be indicated on all forms and documents as the funding recipient.

(2) Developments not designed for the elderly or disabled or those no longer operating as such.

(3) Section 221(d)(4) developments without project-based Section 8 assistance.

(4) Section 202/811 developments with a PRAC. Owners of Section 202 PRAC developments may obtain funding by requesting an increase in their PRAC payment consistent with Handbook 4381.5 REVISION–2, CHANGE–2, Chapter 8.

The American Homeownership and Economic Opportunity Act of 2000 provides authority for Section 202 PRACs to receive Service Coordinator grants as described in this program NOFA and separate from their PRAC funding. However, PRAC funds are a readily accessible funding source for Service Coordinators in Section 202 PRAC developments. Including the Service Coordinator in the PRAC development's operating budget also provides a more stable and permanent source of funding. For these reasons, the Department has chosen to limit funding available through this program NOFA to those eligible housing developments listed in section III.B(1) of this NOFA.

There is no statutory authority for service coordinators in Section 811 developments.

(D) *Eligible Activities.*

(1) Service Coordinator Program grant funds may be used to pay for the salary, fringe benefits, and related administrative costs of employing a service coordinator. Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, computer hardware and software, Internet service, training, quality assurance, travel, and utilities.

You may use grant funds to pay for Quality Assurance (QA) in an amount that does not exceed 10% of the Service Coordinator's salary. QA is limited monitoring oversight of the Service Coordinator by a qualified third party, to assure that the position is effectively implemented. A qualified individual must have supervisory work experience and education in social or health care services. On-site housing management staff cannot perform QA and current salaries of in-house staff may not be augmented for this purpose.

(2) You may use funds to augment a current Service Coordinator program, by increasing the hours of a currently employed Service Coordinator, or hiring an additional Service Coordinator or aide on a part- or full-time basis.

(3) You may use funds to continue a Service Coordinator program that has previously been funded through other sources. In your application, you must provide evidence that this funding source has already ended or will discontinue within six months following the application deadline date and that no other funding mechanism is available to continue the program. This applies only to funding sources other than the subsidy awards and grants provided by the Department through program Notices beginning in FY 1992. HUD currently provides one-year extensions to these subsidy awards and grants through a separate funding action.

(4) You may propose reasonable costs associated with setting up a confidential office space for the Service Coordinator. Such expenses must be one-time only administrative start-up costs. Such costs may involve acquisition, leasing, rehabilitation, or conversion of space. HUD Field Office staff must approve both the proposed costs and activity and must perform an environmental assessment on such proposed work prior to grant award.

(5) You may provide service coordination to low-income elderly or disabled families living in the vicinity of an eligible development. Community residents should come to your housing development to meet with and receive service from the Service Coordinator.

(E) *Ineligible Activities.*

(1) You may not use funds available through this NOFA to replace currently available funding from other sources for a Service Coordinator or for some other staff person who performs service coordinator functions.

(2) Owners with existing service coordinator subsidy awards or grants may not apply for renewal or extension of those programs under this NOFA.

(3) Congregate Housing Services Program (CHSP) grantees may not use these funds to meet statutory program match requirements and may not use these funds to replace current CHSP program funds to continue the employment of a service coordinator.

(4) The cost of application preparation is not eligible.

(5) Grant funds cannot be used to increase a project's management fee.

(6) You cannot hire an additional part of full-time Service Coordinator for the sole purpose of serving low-income elderly or disabled families who live in the vicinity of your development.

IV. Program Requirements

In addition to the requirements listed in Section II of the **General Section** of this SuperNOFA, you must also meet the requirements in Section IV of this program section of the SuperNOFA. These requirements apply to all activities, programs, and functions used to plan, budget, and evaluate the work funded under your program.

(A) *Administrative Costs.* HUD has the right to reduce the proposed costs if they appear unreasonable or inappropriate.

(B) *Term of Funded Activities.* The grant term is three years. Grants will be renewable subject to the availability of funds.

(C) *Subgrants and Subcontracting.* You may directly hire a Service Coordinator or you may contract with a qualified third party to provide this service.

(D) As a condition of receiving a grant, Section 202 developments with project-based Section 8 must open a Residual Receipts account separate from the Reserve for Replacement account, if they do not already have such a separate account.

(E) *Forms, Certifications, and Assurances.* See the **General Section** of the SuperNOFA for the applicable forms, certifications, and assurances that you must submit. This includes a certification that you are in compliance with Federal Civil Rights laws, as specified in Section II(H) of the **General Section** of this SuperNOFA.

(F) *Affirmatively Furthering Fair Housing.* You must comply with Section II(D) of the **General Section** of this SuperNOFA.

(G) *Conducting Business In Accordance With Core Values and Ethical Standards.* Entities that are subject to 24 CFR parts 84 and 85 (most nonprofit organizations and State, local and tribal governments or government agencies or instrumentalities who receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (See §§ 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among employees, officers or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value, and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this SuperNOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees and agents of your organization are aware of your code of conduct.

V. Application Selection Process

(A) *General.* Service Coordinator Program grant funds will not be awarded through a rating and ranking process. Instead, HUD will hold one national lottery for all approvable applications forwarded from Multifamily HUB and Multifamily Program Centers (a list of these offices is found in the Appendix to this notice).

(B) *Threshold Eligibility Review.* HUD Multifamily Field Office staff will review applications for completeness and compliance with the eligibility criteria set forth in Section III of this NOFA. Field Office staff will forward application information to Headquarters for entry into the lottery if the application was received by the deadline date, meets all eligibility criteria, proposes reasonable costs for eligible activities, and includes all technical corrections by the designated deadline date.

"Reasonable costs" are generally those that are consistent with salaries and administrative costs of similar

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programs in the jurisdiction of the HUD Field Office.

(C) *Service Coordinators in ALCP projects.* The Department will first fund approved Service Coordinator requests in ALCP applications selected to receive an ALCP award. HUD estimates that approximately $2 million will be needed to fund these programs. Any funds not used for ALCP Service Coordinator programs will revert to the national lottery.

(D) *The Lottery.* HUD staff will use a computer program to randomly select applications. HUD will fully fund as many applications as possible with the given amount of funds. If funds remain after fully funding as many applications as possible, HUD will offer to partially fund the next application chosen in the lottery, in order to use the entire allocation of funds.

VI. Application Submission Requirements

(A) *Single Applications.* (1) You may submit one application for one or more developments that your corporation owns.

(2) You may submit more than one application to a single Field Office, if you wish to increase your chances of selection in the lottery. Each application must propose a stand-alone program and the development(s) must all be located in the same Field Office jurisdiction.

(3) If you wish to apply on behalf of developments located in different Field Office jurisdictions, you must submit a separate application to each Field Office.

(B) *Joint Applications.* You may join with one or more other eligible owners to share a Service Coordinator and submit a joint application. In the past, joint applications have been used by small developments who joined together to hire and share a part or full-time Service Coordinator.

(C) *There is no maximum grant amount.* The grant amount you request must be based on the number of frail or at-risk elderly or non-elderly people with disabilities who live in your development. (See Section II.B of this NOFA for more information.)

(D) *Application Submission Requirements for ALCP Applicants.* If you are an ALCP applicant and you request new or additional Service Coordinator costs specifically for your proposed Assisted Living Program, you must submit an application containing all required documents and information listed in this NOFA. In addition, you must submit a HUD–424–M "Federal Assistance Funding Matrix and Certifications" with your ALCP application, which indicates the amount of funds you are requesting to cover Service Coordinator costs. HUD Field Office staff will review both applications simultaneously.

ALCP applicants must submit all the required items in the Service Coordinator application listed in Section VI(E) of this NOFA. You may provide a copy of all standard forms in your Service Coordinator application. If you do not provide either an original or copy of these forms, your Service Coordinator application will be incomplete.

If you currently do not have a Service Coordinator working at the development proposed in your ALCP application and your ALCP application is selected to receive an ALCP award, HUD will fund a Service Coordinator to serve either ALCP residents only or all residents of the development dependent upon your request. If your development currently has a Service Coordinator, you may request additional hours for the Service Coordinator to serve the Assisted Living residents. If you request additional hours, you must specify the number of additional hours per week and provide an explanation based on the anticipated needs of the Assisted Living residents. Provide this explanation in your ALCP application as instructed in the ALCP NOFA.

If you request Service Coordinator funding to serve all residents of your development, your request can be entered into the national lottery if your ALCP application is not selected to receive an award. You will be able to indicate this request in the application materials.

Owners applying for ALCP grants may also submit separate Service Coordinator applications for entry into the lottery for other eligible developments they own and that are not included in their ALCP application.

(E) *Your application must contain the items listed in this Section VI(E).* These items include the standard forms, certifications, and assurances listed in the **General Section** of the SuperNOFA that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B to the **General Section** of the SuperNOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives, letters), referred to as the "non-standard forms" can be found as Appendix B to this program section of the SuperNOFA. The items are as follows:

Standard Forms

(1) Standard Form for Application for Federal Assistance (SF–424) (which includes civil rights/fair housing certification);

(2) Federal Assistance Funding Matrix and Certifications (HUD–424M);

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B);

(4) Drug Free Workplace Certification (HUD–50070);

(5) Certification of Payments to Influence Federal Transactions (HUD–50071) and if engaged in lobbying, the Disclosure Form Regarding Lobbying (SF–LLL);

(6) Applicant/Recipient Disclosure/Update Report Form (HUD–2880);

(7) Certification Regarding Debarment and Suspension (HUD–2992); and

(8) Acknowledgment of Application Receipt (HUD–2993).

Other Application Items

All applications for funding under the Service Coordinator Program must contain the following documents and information:

(1) Transmittal letter and request, using the designated format provided in both Appendix B to this NOFA and in the application kit.

(2) (If applicable) Lead agency letter format.

(3) Evidence of comparable salaries in local area.

(4) If quality assurance is included in the proposed budget, a justification and explanation of who will perform this work, what responsibilities are involved, and how often the work will be done.

(5) If you propose to serve low-income elderly or disabled families living in the vicinity of the development(s) included in your application, a narrative description of your plan.

(6) (If applicable) Evidence that prior funding sources for your development's Service Coordinator program are no longer available or will expire within six months following the application deadline date.

(7) A bank statement showing the current residual receipts or excess income balance in the development's account.

(8) *Service Coordinator Certifications.* This includes certifications that you, the applicant, will comply with the following:

(a) The requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and that you will affirmatively further fair housing; and

(b) The nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(9)(a) Certification from an Independent Public Accountant or the cognizant government auditor stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by HUD regulations at 24 CFR parts 84 and 85.

(b) Owners applying on behalf of developments using the AAF must also provide certification from the auditor that the development's rental or other income is insufficient to pay the costs of employing a Service Coordinator.

(10) Applicant checklist.

VII. Corrections to Deficient Applications

The **General Section** of the SuperNOFA provides the procedures for corrections to deficient applications.

VIII. Environmental Requirements

It is anticipated that most activities under this program are categorically excluded from NEPA and related environmental authorities under 24 CFR 50.19(b)(3), (4), (12), or (13). If grant funds will be used to cover the cost of any activities which are not exempted from environmental review requirements—such as acquisition, leasing, construction, or building rehabilitation, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

IX. Authority

Section 808 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), and section 851 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000).

Appendix A: HUD Field Office List for Mailing Service Coordinator Applications

Alabama

Multifamily Housing Program Center, HUD—Birmingham Office, 600 Beacon Parkway West, Rm. 300, Birmingham, AL 35209–3144, OFC Phone: (205) 290–7611, FAX: (205) 290–7632

Alaska

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

Arizona

Multifamily Housing Program Center, HUD Phoenix Office, 400 North Fifth Street, Suite 1600, Phoenix, AZ 85004–2361, OFC Phone: (602) 379–4434, FAX: (602) 379–3985

Arkansas

Multifamily Housing Program Center, HUD Little Rock Office, 425 West Capitol Avenue #900, Little Rock, AR 72201–3488, OFC Phone: (501) 324–5401, FAX: (501) 324–6142

California

Multifamily Housing Hub, HUD—San Francisco Office, 450 Golden Gate Avenue, PO Box 36003, San Francisco, CA 94102–3448, OFC Phone: (415) 436–6505, FAX: (415) 436–8996

Los Angeles Multifamily Hub, 611 West Sixth Street, Suite 800, Los Angeles, CA 90017, OFC Phone: (213) 894–8000 x 3634, Fax: (213) 894–8255

Colorado

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 11th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

Connecticut

Multifamily Housing Program Center, HUD—Hartford Office, One Corporate Center, 19th floor, Hartford, CT 06103–3220, OFC Phone: (860) 240–4800 Ext. 3068, FAX: (860) 240–4850

Delaware

Multifamily Housing Hub, HUD Philadelphia Office, The Wanamaker Building, 100 Penn Square, East, Philadelphia, PA 19107–3380, OFC Phone: (215) 656–0609 Ext. 3533, FAX: (215) 656–3427

District of Columbia

Multifamily Housing Program Center, HUD Washington, DC Office, Suite 300, 820 First Street, NE., Washington, DC 20022–4205, OFC Phone: (202) 275–9200, FAX: (202) 275–9212

Florida

Multifamily Housing Hub, HUD—Jacksonville Office, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, OFC Phone: (904) 232–1777 x2144, FAX: (904) 232–2731

Georgia

Multifamily Housing Hub, HUD—Atlanta Office, Five Points Plaza Building, 40 Marietta Street, SW., Atlanta, Georgia 30303–2806, OFC Phone: (404) 331–4976, FAX: (404) 331–4028

Hawaii

Multifamily Housing Program Center, HUD Honolulu Office, 7 Waterfront Plaza, 500 Ala Moana Blvd. #500, Honolulu, HI 96813–4918, OFC Phone: (808) 522–8185 Ext. 244, FAX: (808) 522–8194

Idaho

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

Illinois

Multifamily Housing Hub, HUD—Chicago Office, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, OFC Phone: (312) 353–6236 Ext. 2202, FAX: (312) 886–2729

Indiana

Multifamily Housing Program Center, HUD Indianapolis Office, 151 North Delaware Street, Suite 1200, Indianapolis, IN 46204–2526, OFC Phone: (317) 226–6303, FAX: (317) 226–7308

Iowa

Multifamily Housing Program Center, HUD Des Moines Office, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, OFC Phone: (515) 284–4736, FAX: (515) 284–4743

Kansas

Multifamily Housing Hub, HUD Kansas City Office, 400 State Avenue, Room 200, Kansas City, KS 66101–2406, OFC Phone: (913) 551–6844, FAX: (913) 551–5469

Kentucky

Multifamily Housing Program Center, HUD—Louisville Office, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, OFC Phone: (502) 582–6124, FAX: (502) 582–6547

Louisiana

Multifamily Housing Program Center, HUD New Orleans Office, Hale Boggs Bldg.—501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, OFC Phone: (504) 589–7236, FAX: (504) 589–6834

Maine

Multifamily Housing Program Center, HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03101–2487, OFC Phone: (603) 666–7684, FAX: (603) 666–7697

Maryland

Multifamily Housing Hub, HUD Baltimore Office, 5th Floor, 10 South Howard Street, Baltimore, MD 21201–2505, OFC Phone: (410) 962–2520 Ext. 3474, FAX: (410) 962–1849

Massachusetts

Multifamily Housing Hub, HUD—Boston Office, O'Neil Federal Building, 10 Causeway Street, Rm. 375, Boston, MA 02222–1092, OFC Phone: (617) 565–5162, FAX: (617) 565–6557

Michigan

Multifamily Housing Hub, HUD Detroit Office, 477 Michigan Avenue, Detroit, MI 48226–2592, OFC Phone: (313) 226–7900, FAX: (313) 226–5611

Multifamily Housing Program Center, HUD Grand Rapids, Trade Center Building, 50 Louis Street, NW., Grand Rapids, MI

49503–2648, OFC Phone: (616) 456–2100, FAX: (616) 456–2191

Minnesota

Multifamily Housing Hub, HUD Minneapolis Office, 220 Second Street, South, Minneapolis, MN 55401–2195, OFC Phone: (612) 370–3051 Ext. 0, FAX: (612) 370–3090

Mississippi

Multifamily Housing Program Center, HUD Jackson Office—McCoy Federal Building, 100 W. Capitol Street, Room 910, Jackson, MS 39269–1096, OFC Phone: (601) 965–4738, FAX: (601) 965–4773

Missouri

Multifamily Housing Hub, HUD Kansas City Office, 400 State Avenue, Room 200, Kansas City, KS 66101–2406, OFC Phone: (913) 551–6844, FAX: (913) 551–5469

Multifamily Housing Program Center, HUD St. Louis Office, Robert A. Young Federal Building, 1222 Spruce Street—Third Floor, St. Louis, MO 63103–2836, OFC Phone: (314) 539–6382, FAX: (314) 539–6356

Montana

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

Nebraska

Multifamily Housing Program Center, HUD Omaha Office, 10909 Mill Valley Road, Suite 100, Omaha, NE 68154–3955, OFC Phone: (402) 492–3113, FAX: (402) 492–3184

Nevada

Multifamily Housing Program Center, HUD Las Vegas Office, 333 N. Rancho Drive—Atrium Bldg. Suite 700, Las Vegas, NV 89106–3714, OFC Phone: (702) 388–6525, FAX: (702) 388–6244

New Hampshire

Multifamily Housing Program Center, HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03101–2487, OFC Phone: (603) 666–7684, FAX: (603) 666–7697

New Jersey

Multifamily Housing Program Center, HUD—Newark Office—13th Floor, One Newark Center, Newark, NJ 07102–5260, OFC Phone: (973) 622–7900 Ext. 3400, FAX: (973) 645–2271

New Mexico

Multifamily Housing Hub, HUD Ft. Worth Office, 801 Cherry Street, PO Box 2905, Ft. Worth, TX 76102–2905, OFC Phone: (817) 978–5764, FAX: (817) 978–5520

New York

Multifamily Housing Hub, HUD—New York Office, 26 Federal Plaza—Room 3214, New York, NY 10278–0068, OFC Phone: (212) 264–0777 Ext. 3713, FAX: (212) 264–1277

Multifamily Housing Hub, HUD—Buffalo Office, Lafayette Court, 5th Floor 465 Main Street, Buffalo, NY 14203–1780, OFC Phone: (716) 551–5755 Ext. 5509, FAX: (716) 551–3252

North Carolina

Multifamily Housing Hub, HUD Greensboro Office—Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407, OFC Phone: (336) 547–4034, FAX: (336) 547–4121

North Dakota

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

Ohio

Multifamily Housing Hub, HUD Columbus Office, 200 North High Street, Columbus, OH 43215–2499, OFC Phone: (614) 469–5737, Ext. 8111, FAX: (614) 469–2432

Multifamily Housing Program Center, HUD Cincinnati Office, 525 Vine Street, Suite 700, Cincinnati, OH 45202–3188, OFC Phone: (513) 684–2350, FAX: (513) 684–6224

Multifamily Housing Program Center, HUD Cleveland Office, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, OFC Phone: (216) 522–4058 Ext. 7000, FAX: (216) 522–4067

Oklahoma

Multifamily Housing Program Center, HUD Oklahoma City Office, 500 W. Main Street, Suite 400, Oklahoma City, OK 73102–2233, OFC Phone: (405) 553–7410, FAX: (405) 553–7406

Oregon

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

Pennsylvania

Multifamily Housing Hub, HUD Philadelphia Office, The Wanamaker Building, 100 Penn Square, East, Philadelphia, PA 19107–3380, OFC Phone: (215) 656–0609 Ext. 3533, FAX: (215) 656–3427

Multifamily Housing Program Center, HUD Pittsburgh Office, 339 Sixth Avenue—Sixth Floor, Pittsburgh, PA 15222–2515, OFC Phone: (412) 644–6639, FAX: (412) 644–5872

Puerto Rico

Multifamily Housing Program Center, HUD Caribbean Office, 171 Carlos E. Chardon Avenue, San Juan, PR 00918–0903, OFC Phone: (787) 766–5401, FAX: (787) 766–5522

Rhode Island

Multifamily Housing Program Center, HUD—Providence Office, 10 Weybosset Street, Sixth Floor, Providence, RI 02903–2808, OFC Phone: (401) 528–5230, FAX: (401) 528–5097

South Carolina

Multifamily Housing Program Center, HUD Columbia Office, 1835 Assembly Street, Columbia, SC 29201–2480, OFC Phone: (803) 765–5162, FAX: (803) 253–3043

South Dakota

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

Tennessee

Multifamily Housing Program Center, HUD—Knoxville Office, 710 Locust Street, SW, Knoxville, TN 37902–2526, OFC Phone: (423) 545–4411, FAX: (423) 545–4578

Multifamily Housing Program Center, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, OFC Phone: (615) 736–5748, FAX: (615) 736–2018

Texas

Multifamily Housing Hub, HUD Ft. Worth Office, 801 Cherry Street, PO Box 2905, Ft. Worth, TX 76102–2905, OFC Phone: (817) 978–5764, FAX: (817) 978–5520

Multifamily Housing Program Center, HUD Houston Office, 2211 Norfolk, #200, Houston, TX 77098–4096, OFC Phone: (713) 313–2274 Ext. 7015, FAX: (713) 313–2319

Multifamily Housing Program Center, HUD San Antonio Office, 800 Dolorosa, San Antonio, TX 78207–4563, OFC Phone: (210) 475–6831, FAX: (210) 472–6897

Utah

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

Vermont

Multifamily Housing Program Center, HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03101–2487, OFC Phone: (603) 666–7684, FAX: (603) 666–7697

Virginia

Multifamily Housing Hub, HUD Richmond Office, 3600 West Broad Street, Richmond, VA 23230–4920, OFC Phone: (804) 278–4500 Ext. 3146, FAX: (804) 278–4613

Washington

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

West Virginia

Multifamily Housing Program Center, HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, OFC Phone: (304) 347–7000 Ext. 103, FAX: (304) 347–7050

Wisconsin

Multifamily Housing Program Center, HUD Milwaukee Office, 310 West Wisconsin Avenue, Room 1380, Milwaukee, WI 53203–2289, OFC Phone: (414) 297–3214 Ext. 8662, FAX: (414) 297–3204

Wyoming

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

Appendix B

The non-standard forms required for the Service Coordinators in Multifamily Housing application follow:

1. Applicant Checklist (Non-ALCP Applicants)
2. Sample Request Letter Format
3. Service Coordinator Certifications
4. Transmittal Letter Format for Designated Lead Agency
5. ALCP Applicant Checklist and ALCP Applicants' Form

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APPLICANT CHECKLIST (Non-ALCP Applicants)

Use this checklist to review your package and insure that all materials are properly completed and included. Submit a copy of this form with your request to HUD.

_____ (1) Request Letter

_____ (2) Lead agency letter format (if appropriate)

_____ (3) Evidence of comparable salaries in local area.

_____ (4) If quality assurance is included in the proposed budget, a justification and explanation of how this work will be performed.

_____ (5) *(If applicable)* A narrative description of your proposed plan to serve low-income elderly or disabled families living in the vicinity of the development(s).included in your application, of your plan.

_____ (6) *(If applicable)* Evidence that prior funding sources for your development's Service Coordinator program are no longer available or will expire on or before January 3, 2003.

_____ (7) A bank statement with the development's current residual receipts or excess income balance.

_____ (8) Service Coordinator Certifications

_____ (9)(a) A certification from an independent Public Accountant or the cognizant government auditor stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by the pertinent OMB circular.

_____(9)(b) In the case of developments using the AAF or that are profit-motivated, the certification states that the development does not have sufficient funds from rental/other income to fund the Service Coordinator.

_____ (10) Standard Form for Application for Federal Assistance (SF-424)

_____ (11) Federal Assistance Funding Matrix and Certifications (HUD-424M)

_____ (12) Standard Form for Assurances - Non-Construction Programs (SF-424B)

Attachment 1

_____ (13) Drug Free Workplace Certification (HUD-50070)

_____ (14) Certification of Payments to Influence Federal Transactions (HUD-50071)

_____ (15) Disclosure Form Regarding Lobbying (SF-LLL)

_____ (16) Applicant/Recipient Disclosure/Update Report Form (HUD-2880)

_____ (17) Certification Regarding Debarment and Suspension (HUD-2992)

_____ (18) Acknowledgment of Application Receipt (HUD-2993)

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Attachment 2

REQUEST LETTER FORMAT

Use the format shown below to request Service Coordinator grant funds. Write this letter on your organization's letterhead. If you submit a joint application with another owner, you both must submit a separate letter.

Dear _____ _____
Director, Multifamily Hub/Program Center Date

The following is my request for a three-year Service Coordinator grant. I am requesting a total grant amount of $_____.

Owner name and address: _____

_____

DEVELOPMENT INFORMATION (Include relevant information for each development in your application.)

1. Development name and address:

_____

_____

_____

2. _____ _____ _____
Project Number Section 8 Number Development's Cong. District

3. Project Type - check one:

____ 202 or 202/8

____ Section 8 (including moderate rehabilitation and Rural Housing Service 515/8)

____ Section 221(d)(3) below-market interest rate

____ 236 insured or assisted

Attachment 2

4. Project uses which method (check one):

____ Budget-based rent increase ____ AAF increase

5. Total Number of Rental Units _____.

6. Total Number of Residents _____.

7. Estimated Number Frail elderly and non-elderly people with disabilities _____.

8. Estimated Number at-risk elderly _____

9. Are you planning to contract out for a Service Coordinator? ____ Yes ____ No

10. Development will share a Service Coordinator with other development(s)? ____ Yes ____ No

If yes, please give name and address of the development(s) and owner(s), if different.

_____

_____

EXPLANATION OF FIRST YEAR COSTS

A. First Year Program Costs

1. **Salary Rate**

a. Determine the first year's base salary level, looking at comparable positions (modified by number of hours worked).

Base salary level $_____

b. Fringe benefits
% of base salary _____%

Dollar value $_____

c. First year salary rate $_____ + $_____ = $_____
base salary fringe benefits salary rate

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Attachment 2

2. **Administrative Costs**

- First, determine start-up costs:

  Item _____ $_____

  Item _____ $_____

  Total: $_____

- Then estimate annual on-going administrative costs for your program:

  Item _____ $_____

  Item _____ $_____

  Item _____ $_____

- Identify total first year on-going administrative cost: $_____
- Sum start-up and on-going costs for year one: $_____

Is quality assurance included as an administrative cost? ___ Yes ___ No

If yes, provide justification and explanation of how it will be done.

Do you plan any activity related to setting up confidential office space for the Service Coordinator that would be considered part of start-up administrative costs? ___ Yes ___ No

If yes, provide a detailed explanation of your proposed plan.

Attachment 2

3. **Total cost**

First year's total costs:

Annual salary rate $_____ +

Allowable administrative costs $_____ =

Total cost $_____.

B. Costs for Year 2 and 3

Before determining second year costs, subtract any one-time start-up costs in year one from that year's total expected cost. Use this "adjusted" total year-one cost in the calculations below.

Use a five percent inflation factor to determine costs for years 2 and 3.

Year 1 total cost $_____ x 1.05 = total cost year 2 $_____

Year 2 total cost $_____ x 1.05 = total cost year 3 $_____

Sum costs for years 1 - 3 = $_____.
This is my total grant request.

The total grant request breaks down as follows:

	SALARY	FRINGE	ADMIN. COSTS	TOTAL
YEAR 1	$	$	$	$
YEAR 2	$	$	$	$
YEAR 3	$	$	$	$
TOTAL	$	$	$	$

USE OF RESIDUAL RECEIPTS OR EXCESS INCOME

When financially possible, developments should use available residual receipts or excess income before receiving grant funds. Owners can use residual receipts or excess income in conjunction

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Attachment 2

with grant funds. Section 202 developments must maintain a minimum of $500 per unit in their residual receipts account. Indicate amounts of these funds to be used along with grant funds below:

	RESIDUAL RECEIPTS OR EXCESS INCOME	GRANT FUNDS	TOTAL
YEAR 1	$	$	$
YEAR 2	$	$	$
YEAR 3	$	$	$
TOTAL	$	$	$

C. Serving Community Residents

Do you propose to provide service coordination to low-income elderly or disabled families living in the vicinity of the development(s) included in this application? ___ Yes ___ No

If yes, please provide a narrative description of your plan to provide such services to community residents.

Description:

We appreciate your consideration of this request. If there are any questions, your staff may call _____ at _____ for further information.

Sincerely,

_____ _____
Signature Typed Name

Chairperson, Owner/borrower corporation

Attachment 3

SERVICE COORDINATOR CERTIFICATIONS

1. At least 25 percent (25%) of the residents of the development are frail or at-risk elderly and/or non-elderly people with disabilities at the time of your request to HUD.

2. There is sufficient separate office space available for the Service Coordinator (and aides, if appropriate), including space for confidential meetings and a separate location in which to secure files, without adversely affecting normal activities.

3. You (1) have not been charged with a violation of the Fair Housing Act by the Secretary; (2) are not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice, and (3) have not received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act.

   If you have resolved a charge, lawsuit, or letter of findings, as described above, you have done so to the satisfaction of the Department.

4. You do not have any outstanding Inspector General Audit findings.

5. Client files shall be kept in a secured location and accessible ONLY to the Service Coordinator, consistent with maintaining confidentiality of information related to any individual per the Privacy Act of 1974.

6. In the event that the Service Coordinator (directly hired or contracted) is not fully trained at the point of hiring, you agree to ensure that the Service Coordinator receives and completes appropriate training and ongoing continuing education requirements, consistent with Housing's *Management Agent* Handbook 4381.5, Revision-2, Change-2, Chapter 8.9.

7. If you are applying on behalf of a Section 202 development, the development has a residual receipts account separate from the reserve for replacement account or you agree to establish one as a condition of receiving this grant.

8. You will not use grant funds to replace currently available funding from other sources that is currently paying for a Service Coordinator or for some other staff person who performs Service Coordinator functions.

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Attachment 3

SERVICE COORDINATOR CERTIFICATIONS (continued)

9. You agree to submit quarterly payment vouchers and semi-annual performance and financial status reports to your local HUD Field Office, presenting on-going information about your program's activities.

Signature	Print Name	Date

Chairperson, Owner/borrower corporation.

Attachment 4

TRANSMITTAL LETTER FORMAT FOR DESIGNATED LEAD AGENCY

If more than one owner is proposing to share a Service Coordinator, one agency must designate itself the "lead". This agency must submit a letter following this format on organization letterhead.

Dear _____ _____
Director, Multifamily Hub/Program Center Date

The _____ for _____ is requesting grant
Owner Name Development Name and city)
funds to hire a Service Coordinator.

This request includes _____ developments, which will share a Service Coordinator.
Give #

The developments are:

Owner	Development Name and Address	$ Requested
	Total:	

The completed requests from each of these _____ applicants are attached to this letter.
Give #

Sincerely,

_____ _____
(Signature) (Typed Name)
Chairperson, owner/borrower corporation

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Attachment 5

ALCP APPLICANT CHECKLIST

Use this checklist to review your materials to make sure they are properly completed and included. Submit a completed form with your request to HUD.

_____ (1) Request Letter

_____ (2) Lead agency letter format (if appropriate)

_____ (3) Evidence of comparable salaries in local area.

_____ (4) If quality assurance is included in the proposed budget, a justification and explanation of how this work will be performed.

_____ (5) If you propose to serve low-income elderly or disabled families living in the vicinity of the development(s) included in your application, a narrative description of your plan.

_____ (6) *(If applicable)* Evidence that prior funding sources for your development's Service Coordinator program are no longer available or will expire on or before January 3, 2003.

_____ (7) A bank statement with the development's current residual receipts or excess income balance.

_____ (8) Service Coordinator Certifications

_____ (9)(a) A certification from an independent Public Accountant or the cognizant government auditor stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by the pertinent OMB circular.

_____(9)(b) In the case of developments using the AAF or that are profit-motivated, the certification states that the development does not have sufficient funds from rental/other income to fund the Service Coordinator.

_____ (10) Standard Form for Assurances - Non-Construction Programs (SF-424B)

_____ (11) ALCP applicants' form.

Attachment 5

Original or copies of the following forms:

_____ (12) Standard Form for Application for Federal Assistance (SF-424)

_____ (13) Federal Assistance Funding Matrix and Certifications (HUD-424M)

_____ (14) Drug Free Workplace Certification (HUD-50070)

_____ (15) Disclosure Form Regarding Lobbying (SF-LLL)

_____ (16) Applicant/Recipient Disclosure/Update Report Form (HUD-2880)

_____ (17) Certification Regarding Debarment and Suspension (HUD-2992)

_____ (18) Acknowledgment of Application Receipt (HUD-2993)

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Attachment 5

ALCP APPLICANTS FORM

Complete this form ONLY if you are applying for both an ALCP grant and a Service Coordinator grant. Complete Part I or II, not both.

I. I currently do not have a Service Coordinator working at the site, _____, included in my ALCP application. (Development Name)

I expect _____ residents to participate in the ALCP and to receive assistance from the Service Coordinator.

I expect _____ non-ALCP development residents to also use the services of the Service Coordinator.

The Service Coordinator will work _____ hours per week.

My first year annual cost is estimated at $_____

and my 3-year grant request is for $_____

If my ALCP application IS NOT selected to receive a grant, please enter my Service Coordinator request in the Service Coordinator national lottery. Yes____ No____

(*Your request for the number of work hours and the total number of residents to be served, as indicated above, will be entered in the lottery.)

(Continued next page)

Attachment 5

ALCP APPLICANTS FORM

II. I currently have a Service Coordinator working at the site, _____, included in my ALCP application. (Development Name)

The Service Coordinator currently works _____

hours per week and serves _____ residents.

I would like to augment the Service Coordinator's time or hire another full or part-time Service Coordinator or aide to work with ALCP residents.

My request is to add _____ hours a week to the Service Coordinator's time.

I expect to serve _____ residents in my ALCP.

My first year annual cost is estimated at $_____.

and my 3-year grant request is for $_____.

Please remember to include in your ALCP application an explanation of why you are seeking incremental hours for your Service Coordinator Program. What additional responsibilities will the Service Coordinator have in working with ALCP residents. Why are additional hours needed to make your ALCP a success?

If my ALCP application IS NOT selected for an award, I understand that HUD will not fund the incremental hours requested.

Application for Federal Assistance

OMB Approval No. 0348-0043

	2. Date Submitted (mm/dd/yyyy)	Applicant Identifier
1. Type of Submission Application: ☐ Construction ☐ Non-Construction Pre-application: ☐ Construction ☐ Non-Construction	3. Date Received by State (mm/dd/yyyy)	State Application Identifier
	4. Date Received by Federal Agency (mm/dd/yyyy)	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit
Address (give city, county, State, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number (EIN) (xx-yyyyyyy)

[ ] – [ ]

7. Type of Applicant (enter appropriate letter in box) [ ]

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Inter-municipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N Nonprofit
O Public Housing Agency
P. Other (Specify)

8. Type of Application:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) [ ] [ ]

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. Name of Federal Agency

10. Catalog of Federal Domestic Assistance Number (xx-yyy)

[ ] – [ ]

Title:

11. Descriptive Title of Applicant's Project

12. Areas Affected by Project (cities, counties, States, etc.)

13. Proposed Project		14. Congressional Districts of	
Start Date (mm/dd/yyyy)	Ending Date (mm/dd/yyyy)	a. Applicant	b. Project

15. Estimated Funding

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. Total	$	.00

Complete form HUD-424-M, Funding Matrix

16. Is Application Subject to Review by State Executive Order 12372 Process?

a. **Yes** This pre-application/application was made available to the State Executive Order 12372 Process for review on:

Date (mm/dd/yyyy)_____

b. **No** ☐ Program is not covered by E.O. 12372

or ☐ Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?

☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/pre-application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number (Include Area Code)
d. Signature of Authorized Representative		e. Date Signed (mm/dd/yyyy)

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form **SF-424** (7/97)
Prescribed by OMB Circular A-102

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043, Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency .

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For pre-applications, use a separate sheet to provide a summary description of this project.

Item Entry

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. **Use form HUD-4243-M, Funding Matrix**. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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form **SF-424** (7/97)
Prescribed by OMB Circular A-102

Federal Assistance Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which Federal funding is being requested, and complete the certifications.

Program*	Applicant Share	Federal Share	State Share	Local	Other	Program Income	Total
Grand Totals							

* For FHIPs, show both initiative and component

Instructions for the HUD-424-M

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form is to be used by applicants requesting funding from the Department of Housing and Urban Development for application submissions for Federal assistance.

Enter the following information:

Program: The HUD funding program you are applying under.

Applicant Share: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Federal Share: Enter the amount of HUD funds you are requesting with your application.

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is contributing to your project or program of activities.

Local Share: Enter the amount of funds or cash equivalent of in-kind services your local government is contributing to your project or program of activities.

Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being contributed to your project or program of activities.

Program Income: Enter the amount of program income you expect to generate and contribute to this program over the life of your award.

Total: Please total all columns and fill in the amounts.

Assurances—Non-ConstructionPrograms

OMB Approval No. 0348-0040

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.O. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 36701 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (e) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of

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project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the national Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

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SF-424B (Rev. 4/92)
Prescribed by OMB Circular A-102

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Signature X	Date

form **HUD-50070** (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

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Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title

Signature	Date (mm/dd/yyyy)

Previous edition is obsolete

form HUD 50071 (3/98)
ref. Handboooks 7417.1, 7475.13, 7485.1, & 7485.3

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code): ( ) -	2. Social Security Number or Employer ID Number: - -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). ☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 ☐ Yes ☐ No.

If you answered **"No"** to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature. X	Date: (mm/dd/yyyy)

Form **HUD-2880** (3/99)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the dunng the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUO, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance):** **General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to *either* questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: I.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

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Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

☐ Enclosed

☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form HUD-2993 (2/99)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING CHOICE VOUCHER FAMILY SELF-SUFFICIENCY (FSS) PROGRAM COORDINATORS

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR HOUSING CHOICE VOUCHER FAMILY SELF-SUFFICIENCY (FSS) PROGRAM COORDINATORS

PROGRAM OVERVIEW

Purpose of Program. The Housing Choice Voucher FSS program (referred to in previous NOFAs as the Section 8 FSS program and as the Rental Certificate/Housing Choice Voucher FSS program) is intended to promote the development of local strategies to coordinate the use of assistance under the Housing Choice Voucher program with public and private resources to enable participating families to achieve economic independence and self-sufficiency. As a result of their participation in the FSS program, many families have achieved stable, well-paid employment, which has made it possible for them to become homeowners. An FSS program coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

Funding under this NOFA may not be used to pay the salary of an FSS coordinator for a public housing FSS program. Operating subsidy may be used to fund a public housing FSS program coordinator's salary.

Available Funds. This NOFA announces the availability of up to $46.4 million in Fiscal Year (FY) 2002 for Housing Choice Voucher FSS program coordinators. If additional funding becomes available during FY 2002, HUD may increase the amount available for Housing Choice Voucher FSS Program coordinators under this NOFA. Salaries of FSS program coordinators funded under this NOFA must not exceed salaries for comparable positions in the PHA's local area and are subject to a cap of $62,000 per full time coordinator position funded. Under this NOFA, if PHAs apply jointly, the $62,000 maximum amount that may be requested per position applies to each full-time coordinator position in the application as a whole, not to each PHA separately. Evidence of salary comparability to similar positions in the local jurisdiction for each position must be kept on file in the PHA office.

Eligible Applicants: Public housing agencies (PHAs) eligible to receive funding under this NOFA are those that received funding for one or more FSS program coordinators under the FY 2001 FSS Program Coordinator NOFA and apply under this NOFA and those PHAs with HUD approval to administer a Housing Choice Voucher FSS program of at least 25 slots, or, if they are PHAs with HUD approval to administer Housing Choice Voucher FSS programs of fewer than 25 slots, they apply jointly with one or more other PHAs so that between or among them they have HUD approval to administer at least 25 Housing Choice Voucher FSS slots. PHAs that were funded under the FY 2001 FSS NOFA that offer homeownership opportunities to FSS program participants may also apply for funding for an additional coordinator position to support homeownership activities for its FSS program participants.

Application Deadline. May 21, 2002.

Match. None

ADDITIONAL INFORMATION

If you are interested in applying for Housing Choice Voucher FSS Program Coordinator funding under this NOFA, please review carefully the **General Section** of this SuperNOFA and the following additional information.

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date. Your completed application (an original and two copies) is due on or before May 21, 2002.

See the **General Section** of this SuperNOFA for specific procedures concerning the form of application submission.

Address for Submitting Applications. Your completed application consists of one original and two copies. Submit your original application and one copy with an Acknowledgment of Application Receipt, form HUD–2993, to: Michael E. Diggs, Director, PIH Grants Management Center, Department of Housing and Urban Development, 501 School Street, Suite 800, Washington, DC 20024.

Submit the second copy of your application to your local HUD Field Office Public Housing Hub or Program Center. A listing of HUD Field Offices is attached to the **General Section** of this SuperNOFA. This copy is provided to the local HUD Field Office for informational purposes. Late receipt of the application by the field office will not disqualify the application.

Application Submission Procedures. New Security Procedures. HUD has implemented new security procedures that impact on application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, DHL, or Falcon Carrier. No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of the four carriers listed above.

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12 midnight on the application due date and received by the PIH Grants Management Center on or within fifteen (15) days of the application due date. All applicants must obtain and save a Certificate of mailing showing the date, when you submitted your application to the United States Postal Service (USPS). The Certificate of Mailing will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/ Express mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use one of four carrier services that do business with HUD Headquarters regularly. These services are UPS, DHL, FedEx and Falcon Carrier. Delivery by these services must be made during HUD's Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday to Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

For Application Kits. There is no application kit for this NOFA. This announcement contains all the information necessary for the submission of your application for Housing Choice Voucher FSS program coordinator funding.

For Further Information and Technical Assistance. For answers to your questions, you may contact the Public and Indian Housing Resource Center at 1–800–955–2232 or the Hub Director of Public Housing or the Program Center Coordinator in the local HUD Field Office or you may contact the Grants Management Center at (202) 358–0221, extension 7675. Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number). Information can be accessed via the Internet at *http://www.hud.gov/grants.*

Prior to the application deadline, staff at the numbers given above will be available to provide general guidance,

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but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

Satellite Broadcast. HUD plans to hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, you should consult the HUD Web site at *www.hud.gov.*

II. Amount Allocated

For FY 2002, up to $46.4 million is available under the HUD 2002 Appropriations Act for PHA administrative fees for Housing Choice Voucher FSS program coordinators. This amount is from HUD's Congressional justifications that were submitted in support of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub.L. 107–73, approved November 26, 2001). If additional funds become available in FY 2002, through retention, recapture, or reallocation, HUD may seek to reprogram all or some of these funds to fund additional applications submitted in response to the NOFA. This is the ninth fiscal year of funding for Housing Choice Voucher FSS program coordinators.

HUD Corrections to Funding Provided Under the FY 2001 NOFA

HUD has determined that the funding reserved under the FY 2001 Rental Certificate/Housing Choice Voucher NOFA for eleven PHAs was lower than the PHAs should have received under that NOFA and HUD believes that underfunding should be corrected. Therefore, prior to funding any applications under the FY 2002 NOFA, HUD is making funding, in the amount of $627,046 in FY 2002 funding, available to correct those errors as follows: Pico Rivera Housing Assistance Agency, CA—$60,000; New Britain Housing Authority, CT—$168,000; Cedar Rapids Housing Services, IA—$87,180; City of Louisville, KY—$70,824; East Baton Rouge Housing Authority, LA—$33,537; Salem Housing Authority, MA—$26,537; Metropolitan Council, MN—$56,738; Norfolk Housing Authority, NE—$34,800; Rochester Housing Authority, NY—$48,041; Economic Improvement Council, Inc., NC—$28,389; Municipality of Yabucoa, PR—$13,000.

III. Program Description; Eligible Applicants; Number of Positions for Which Eligible Applicants May Apply; Eligible Activities

(A) *Program Description.* Through annual NOFAs, HUD has provided funding to PHAs that are operating Housing Choice Voucher FSS programs to enable those PHAs to hire Housing Choice Voucher FSS program coordinators.

In the FY 2002 FSS NOFA, HUD is making funding available to renew positions funded under the FY 2001 FSS NOFA to allow PHAs to continue to pay the salaries of Housing Choice Voucher FSS program coordinators funded under the FY 2001 NOFA for another year.

Under this NOFA, for the first time, HUD also invites PHAs that qualify for renewal of positions awarded under the FY 2001 NOFA to apply for an additional coordinator position to support homeownership activities for its FSS program participants. To qualify for this additional position, eligible renewal PHAs must have implemented or participate in homeownership programs, including homeownership voucher programs, that are available to families participating in the FSS program.

Because of the importance of the FSS program in helping families increase earned income and develop assets, HUD will also accept applications from PHAs that were not funded under the FY 2001 NOFA. In addition, under this NOFA eligible new and renewal state and regional PHAs that have HUD approval of their FSS action plans to operate separate FSS programs of at least 25 slots in different parts of their jurisdictions may also apply for up to one new position for any part of the PHA jurisdiction where the state or regional PHA did not receive funding under the FY 2001 NOFA.

Applicants should be aware that in this NOFA, the HUD-approved FSS slots means the total number of mandatory and voluntary housing choice voucher FSS program slots identified in the PHA's HUD-approved FSS action plan. It does not mean the number of families currently enrolled in the FSS program or the number of families the PHA has served including those that have graduated. The FSS action plan can be updated by means of a simple one page addendum which reflects the total number of FSS slots (voluntary and/or mandatory slots) the PHA plans to serve. This addendum must be submitted to the PHA's local HUD office as it is approved by that office.

Both the voluntary Housing Choice Voucher FSS slots and the mandatory Housing Choice Voucher FSS slots, identified in the PHA's HUD-approved FSS Action Plan, are counted in determining the PHA's Housing Choice Voucher FSS program size. Prior to submitting an application, PHAs may wish to confirm the number of HUD-approved slots their local HUD field office has on record for the PHA to assure that it is accurate.

To qualify for consideration for funding with those FSS program coordinator applications submitted by the due date under this NOFA, amendments to change the number of FSS slots in the PHA's FSS Action Plan must be approved by the local HUD field office prior to the application due date. PHAs whose FSS action plans are approved after the due date of applications under this NOFA would be considered for funding only if funding remains after funding of all eligible applications received by the due date.

There are no maximum or minimum Housing Choice Voucher program size requirements for PHAs applying for funding under this NOFA.

(B) *Eligible Applicants.* Public housing agencies (PHAs) eligible to receive funding under this NOFA are: (1) Those PHAs that received funding under the FY 2001 NOFA for Rental Certificate/Housing Choice Voucher FSS Program Coordinators. (To qualify for renewal of positions funded under the FY 2001 FSS NOFA, the number of FSS slots in the PHA's HUD-approved FSS Action Plan must remain at a level that will support the number of positions that were funded in FY 2001 and the PHA must continue to operate an FSS program, have hired an FSS program coordinator or coordinators with funding awarded for that purpose under the FY 2001 FSS NOFA, and executed FSS contracts of participation with program participants.) (2) PHAs that were not funded under the FY 2001 FSS NOFA that are authorized through their HUD-approved FSS Action Plan to administer a Housing Choice Voucher FSS program of at least 25 slots; or, if they are PHAs with HUD approval to administer Housing Choice Voucher FSS programs of fewer than 25 slots, they apply jointly with one or more other PHAs so that between or among them they have HUD approval to administer at least 25 Housing Choice Voucher FSS slots. Joint applicants must specify a lead co-applicant which will receive and administer the FSS program coordinator funding.

PHAs that qualify to apply as renewal PHAs under category (1) above, that have implemented or participate in homeownership programs, including Housing Choice Voucher homeownership programs as well as other programs such as state or local homeownership programs, that are available to families participating in FSS programs, may apply for an additional coordinator position to support homeownership activities for families participating in the FSS program.

PHAs that are administering Family Self-Sufficiency programs under the Moving to Work (MTW) demonstration may qualify for funding under this NOFA if the PHA administers a Family Self-Sufficiency program that serves Housing Choice Voucher program families. When determining the size of a MTW PHA's HUD-approved FSS program, the PHA may request that the number of FSS slots reflected in the PHA's MTW agreement be used instead of the number in the PHA's FSS Action Plan.

(C) *Number of Positions for which Eligible PHAs may apply:* Eligible PHAs may apply for coordinator positions under this NOFA as follows:

(1) *PHAs funded under the FY 2001 FSS NOFA:* PHAs that received funding under the FY 2001 FSS NOFA that qualify as eligible PHAs under the definition of eligible applicants in Section III.B. of this NOFA, may apply for:

(a) Renewal of the FSS coordinator positions funded under the FY 2001 FSS NOFA that have been filled by the PHA,

(b) If the PHA administers or participates in a homeownership program which gives a selection preference for FSS families or limits eligibility to FSS families, and the PHA currently has FSS families ready to, or already participating in, a homeownership program, the PHA may apply for up to one additional full time FSS coordinator position to support FSS program homeownership activities and;

(c) If the PHA is a state or regional PHA with HUD approval to administer an FSS program in more than one part of its jurisdiction and has filled all positions funded under the FY 2001 FSS NOFA, the PHA may apply for an additional position for any area of its jurisdiction where it has HUD approval to operate a Housing Choice Voucher FSS program of at least 25 slots if the PHA was not funded for a position for that area under the FY 2001 FSS NOFA.

(2) *PHAs not funded under the FY 2001 FSS NOFA:* PHAs that were not funded under the FY 2001 FSS NOFA, including PHAs applying jointly and state and regional PHAs, that qualify as eligible new applicants under the definition of eligible applicants in Section III.B. of this NOFA may apply for positions as follows:

(a) PHAs with HUD approval to administer an FSS program of 25 or more slots may apply for up to one full time FSS coordinator position and;

(b) Eligible state or regional PHAs with HUD approval to operate FSS program in different parts of their jurisdiction may apply for up to one FSS coordinator in any area where they have HUD approval to administer a Housing Choice Voucher FSS program of at least 25 slots.

(D) *Eligible Activities.* Funds are available to PHAs under this NOFA to employ or otherwise retain the services of Housing Choice Voucher FSS program coordinators for one year. A part-time Housing Choice Voucher FSS program coordinator may be retained where appropriate. In the Housing Choice Voucher FSS program, PHAs are required to use rental assistance under the Housing Choice Voucher program together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful FSS program. PHAs are encouraged to outreach to disabled Housing Choice Voucher program participants who might be interested in participating in the FSS program and to include on their FSS Program Coordinating Committees agencies that work with and provide services for disabled families. The FSS program supports the Department's objective of helping poor and disadvantaged families and individuals increase wages, develop assets and move to homeownership. The program provides critical tools that can be used by communities to support welfare reform and help families develop new skills that will lead to economic self-sufficiency.

IV. Program Requirements

(A) *Program Coordinator Role.* PHAs administering the FSS program use program coordinating committees (PCCs) to assist them to secure resources and implement the FSS program. The PCC is made up of representatives of businesses, local government, job training and employment agencies, local welfare agencies, educational institutions, childcare providers, and nonprofit service providers, including faith-based and other community organizations.

An FSS program coordinator works with the PCC and with local service providers to assure that program participants are linked to the supportive services they need to achieve self-sufficiency. The FSS program coordinator may ensure, through case management, that the services included in participants' contracts of participation are provided on a regular, ongoing and satisfactory basis, that participants are fulfilling their responsibilities under the contracts and that FSS escrow accounts are established and properly maintained for eligible families. FSS coordinators may also perform job development functions for the FSS program.

(B) *Staffing Guidelines.* Under normal circumstances, a full-time FSS program coordinator should be able to serve approximately 50 FSS participants, depending on the coordinator's case management functions.

(C) *Conducting Business in Accordance With HUD Core Values and Ethical Standards.* All applicants shall develop and maintain a written code of conduct that reflects their core values in accordance with the requirements stated in Section II.B.(2) of the **General Section** of this the SuperNOFA.

(D) *Other Requirements.* PHAs must meet the civil rights compliance and nondiscrimination requirements listed in the General Section of this SuperNOFA.

V. Application Selection Process

The funds available under this NOFA are not being awarded on a competitive basis. Applications will be reviewed by the Grants Management Center (GMC) to determine whether or not they are technically adequate based on the NOFA requirements. Field offices will provide to the GMC in a timely manner, as requested, information needed by the GMC to make its determination, such as the HUD-approved Housing Choice Voucher FSS program size and information on the PHA's administrative capabilities. Categories of applications that will not be funded are stated in Section VII.(B) of this NOFA.

All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will fund eligible applicants as follows: Applications will be divided into the following categories of funding priority:

Priority 1—Applications from PHAs, including state and regional PHAs, for continuation of the position or positions funded under the FY 2001 FSS NOFA where a coordinator has been hired by the PHA.

Priority 2—Applications from eligible renewal PHAs, funded under priority 1 of this NOFA, for an additional

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coordinator position to support FSS homeownership activities.

Priority 3—Priority 3 will consist of: (a) Applications for up to one initial FSS coordinator position from PHAs that were not funded under the FY 2001 FSS NOFA including, for state and regional PHAs with HUD approval to operate FSS programs in different parts of their jurisdictions, up to one FSS coordinator position per area where they are authorized to operate a Housing Choice Voucher FSS program of at least 25 FSS slots.

(b) Applications from Priority 1 (renewal) state and regional PHAs for up to one full time FSS program coordinator position in any area of their jurisdiction where they are authorized to operate a Housing Choice Voucher FSS program of at least 25 FSS slots, but did not receive funding for a full time FSS program coordinator position under the FY 2001 FSS NOFA.

HUD will first fund all eligible Priority 1 applications to continue funding for Housing Choice Voucher FSS program coordinators funded under the FY 2001 FSS NOFA where the PHA has hired an FSS program coordinator. If the amount available is not sufficient to fund all eligible applications, HUD will determine if all applications can be funded if salary increases are limited to three percent of the FY 2001 awards. If monies are still not sufficient to fund all eligible applicants, HUD will begin funding eligible applications by Housing Choice Voucher program size starting with the smallest Housing Choice Voucher programs first. Housing Choice Voucher program size will be determined by HUD using baseline data developed by the Department.

If funding remains after funding all priority 1 applications, HUD will then provide funding to eligible Priority 2 applicants for up to one additional Housing Choice Voucher FSS program coordinator position per eligible PHA to support the homeownership activities of Housing Choice Voucher FSS program participants. If there are not sufficient monies to fund an additional FSS coordinator for each Priority 2 PHA, HUD will begin funding up to one full-time coordinator for each eligible Priority 2 applicant starting with PHAs with the highest percentage of FSS families currently ready for homeownership. The percentage will be computed using the HUD-approved Housing Choice Voucher FSS program size in the PHA's HUD-approved FSS action plan.

If funding remains after funding all Priority 1 and 2 applications, HUD will then provide funding to eligible Priority 3 applicants for up to one Housing Choice Voucher FSS program coordinator position per PHA, or in the case of state and regional PHAs, up to one full time coordinator for each area where they are authorized to operate a Housing Choice Voucher program of at least 25 slots and did not receive funding for the position under the FY 2001 FSS NOFA. If there is insufficient funding for all Priority 3 applicants, funding will be awarded to applicants in Housing Choice Voucher program size order starting from the PHAs with the smallest Housing Choice Voucher programs first. Housing Choice Voucher program size will be determined by HUD using baseline data developed by the Department. If there are not sufficient monies to fund all applications from Priority 3 PHAs with the same Housing Choice Voucher program size, funding will be provided based on the size of the PHA's Housing Choice Voucher FSS program, reflected in the PHA's HUD-approved Housing Choice Voucher FSS Action Plan, starting with the largest approved Housing Choice Voucher FSS program first.

If funding remains after all eligible applications submitted in response to this NOFA are funded and received by the due date, the Grants Management Center will use any funding still available through the end of FY 2002 to fund applications submitted after the due date of this NOFA that meet all other requirements of this NOFA. These applications will be funded on a first-come, first-serve basis through September 30, 2002, as long as funds are available.

VI. Application Submission Requirements

(A) *Application Requirement for PHAs that Received FY 2001 FSS Program Coordinator Funding.* Each PHA that received funding for a Rental Certificate/Housing Choice Voucher FSS program coordinator or coordinators under the FY 2001 FSS NOFA that wishes to receive funding under this NOFA must complete a certification in the format shown as "Attachment A" of this NOFA, and must include all information required in "Attachment A." The completed Attachment A certification along with the Fair Housing Certification (Attachment C of this NOFA) and the Certification Regarding Lobbying (Attachment D of this NOFA) constitute the entire PHA application for funding under this section unless the PHA is also applying for an additional position to support FSS homeownership activities. PHAs applying for an additional position to support FSS homeownership activities must also submit Attachment E. The certifications must be submitted to the GMC by the due date to be eligible for the initial round of funding under this NOFA.

(B) *Request for FSS Program Coordinator Funds by Eligible PHAs that were NOT Funded in FY 2001.* PHAs that did not receive funding under the FY 2001 FSS Program Coordinator NOFA must complete a certification in the format shown as "Attachment B" of this FSS NOFA and must include all information required in Attachment B. The completed Attachment B certification along with the Fair Housing Certification (Attachment C of this NOFA) and the Certification Regarding Lobbying (Attachment D of the NOFA) constitute the entire PHA application for funding under this section. The certifications must be submitted to the GMC by the due date to be considered for funding for the initial round of funding under this NOFA.

(C) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register** notice, and for no less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefing must be made in writing and submitted to Michael E. Diggs, Director, PIH Grants Management Center, Department of Housing and Urban Development, 501 School Street, Suite 800, Washington, DC 20024. Materials provided will include the final assessment indicating the basis upon which assistance was provided or denied.

VII. Corrections to Deficient Applications

(A) *Acceptable Applications.* The General Section of the SuperNOFA provides the procedures for corrections to deficient applications. Examples of correctable technical deficiencies include, but are not limited to, failure to submit the proper attachment C, D or E certifications, submission of an attachment A or B with missing information or submission of an attachment or certification that lacks an original signature by an authorized official.

(B) *Unacceptable Applications.*

(1) After the 14-calendar day technical deficiency correction period (as provided in the **General Section**), the GMC will disapprove PHA applications that it determines are not acceptable for processing under the initial round of funding.

(2) Applications from PHAs that fall into any of the following categories are ineligible for funding under this NOFA and will not be processed:

(a) An application from a PHA that is not an eligible PHA under Section III.B. of this NOFA or an application that does not comply with the requirements of Section VI. of this NOFA.

(b) An application from a PHA that does not meet the requirements of fair housing and civil rights compliance requirements of Section II(B) of the **General Section** of the SuperNOFA.

(c) An application from a PHA that at the end of the 14-calendar day technical correction period has not made progress satisfactory to HUD in resolving serious outstanding Inspector General audit findings, or serious outstanding HUD management review or independent public accountant (IPA) audit findings for one or more of the following programs: Housing Choice Voucher or Moderate Rehabilitation. Serious program management findings are those that would cast doubt on the capacity of the PHA to administer its Housing Choice Voucher program in accordance with applicable HUD regulatory and statutory requirements.

(d) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this announcement.

(e) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(3) Otherwise eligible applications that are not received by the due date of this NOFA will not be funded unless funds remain available after all eligible applications received by the due date have been funded. If at that time all the funding under this NOFA has not been awarded, then otherwise eligible applications received after the due date will be funded on a first come, first served basis through the end of FY 2002, as long as funding remains available. If more than one such application is received at the same date and time, the application from the PHA with the smallest Housing Choice Voucher program will be funded first.

VIII. Environmental Requirements

No environmental review is required in connection with the award of assistance under this NOFA, because the NOFA only provides funds for employing a coordinator that provides public and supportive services, which are categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and not subject to compliance actions for related environmental authorities under 24 CFR 50.19(b)(4) and (12).

IX. Authority

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) allows funding for program coordinators under the Housing Choice Voucher FSS program. As a result, the Department determined to make a sufficient amount available under this NOFA, under Part 984, in accordance with section 984.302(b), to enable PHAs to employ one or more Housing Choice Voucher FSS program coordinators for one year at a reasonable cost as determined by the PHA and HUD, based on salaries for similar positions in the locality.

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ATTACHMENT A

REQUIRED CERTIFICATION FORMAT FOR FY 2002 HOUSING CHOICE VOUCHER FSS PROGRAM COORDINATOR FUNDING FOR PHAs THAT RECEIVED FUNDING UNDER THE FY 2001 RENTAL CERTIFICATE/ HOUSING CHOICE VOUCHER FSS PROGRAM COORDINATOR NOFA

Mr. Michael E. Diggs, Director
Grants Management Center
501 School Street, Suite 800
Washington, DC 20024

Dear Mr. Diggs:

In connection with the FY 2002 NOFA for Housing Choice Voucher FSS program coordinators, I hereby certify for the _____(enter PHA name. For joint applications, please indicate the names of all co-applicants and identify the lead PHA that received and administered funds received under the FY 2001 NOFA.) that:

(1) The PHA received funding under the FY 2001 FSS program coordinator NOFA for ___(enter number of positions that were funded) FSS program coordinators.

(2) The PHA's HUD-approved FSS Action Plan continues to reflect a number of FSS slots that support the level of funding received in FY 2001.

(3) The PHA continues to operate an FSS program and has hired _____(enter number of positions filled) FSS program coordinators using HUD funds provided for that purpose under the FY 2001 FSS program coordinator NOFA, and,

(4) The PHA has executed FSS contracts of participation with FSS program participants.

(5) The PHA has/has not (indicate appropriate choice) filled all FSS program coordinator positions funded under the FY 2001 FSS NOFA (If all positions have not been filled, the PHA must state here the number of FSS coordinator positions not yet filled and the salary provided under the FY 2001 NOFA for each position);

(6) Funding requested for renewal positions:

(a) Total number of renewal positions:_____. (Enter the total number of positions for which the PHA is requesting funding to continue a position or positions funded under the FY 2001 FSS NOFA. The PHA may receive renewal funding only for those positions where they have hired an FSS coordinator to fill the position.);

(b) Total salary:____ (State the total salary amount, including fringe benefits, for each renewal position or if appropriate, the number of positions at each salary level. Salaries must be comparable to salaries for similar positions in the local jurisdiction and must not exceed the cap of $62,000 per position.)

(7) The PHA is/is not (indicate appropriate choice) applying for an additional FSS program coordinator in support of FSS homeownership activities. (PHAs applying for an FSS coordinator to support homeownership activities must state total salary requested for the position – base salary plus fringe benefits, and complete Attachment E of this NOFA and submit it with their FSS application.)

(8) The PHA is/is not (indicate appropriate choice) a state or regional PHA operating separate Housing Choice Voucher FSS programs in more than one part of its jurisdiction.

(9) New positions for State or regional agencies. A State or regional PHA applying for coordinator positions for programs operated in different parts of its jurisdiction where they did not receive funding for a coordinator under the FY 2001 NOFA must identify for each new coordinator position requested: the geographic area where the PHA is authorized to operate a separate FSS program, the number of HUD-approved FSS slots for that area and the total salary, including fringe benefits, requested for the coordinator position for that area.

(10) Total Positions Requested Under This NOFA:____ (Enter the total number of Housing Choice Voucher program coordinator positions requested under the FY 2002 Housing Choice Voucher FSS NOFA. Total should include renewal positions, and, if applicable, the new

position to support homeownership activities, if requested, and, for state and regional PHAs, any new positions requested for areas where a coordinator was not funded under the FY 2001 NOFA)

(11) Evidence demonstrating salary comparability to similar positions in the local jurisdiction for each of the above positions is on file at the PHA.

If there are any questions, please contact _____ at _____

Sincerely,

Executive Director

ATTACHMENT B

Required Format for Certification from PHAs that Did Not Receive Rental Certificate/Housing Choice Voucher FSS Program Coordinator Funding under the FY 2001 NOFA

Mr. Michael E. Diggs,
Director, Grants Management Center
501 School Street, Suite 800
Washington, DC 20024

Dear Mr. Diggs:

In connection with the FY 2002 NOFA for FSS program coordinators, this is a request for funds to pay the salary of _____ (Enter number of positions.) Housing Choice Voucher FSS program coordinators for one year. (NOTE: Under this NOFA, only state and regional PHAs with HUD approval to operate separate FSS programs of at least 25 slots in different parts of the PHA's jurisdiction may apply for more than one full-time FSS program coordinator.) I hereby certify for the _____ (Enter PHA name. For joint applications, indicate the names of all co-applicants and identify the lead PHA that will receive and administer the funding requested under this NOFA.) that:

1. Our HUD-Approved FSS Program Size is: _____. (Enter the total number of HUD-approved voluntary and mandatory Housing Choice Voucher FSS program slots identified in the PHAs HUD-Approved FSS Action Plan OR when PHAs are applying jointly, the combined total of Rental Certificate/Housing Choice Voucher FSS program slots in the HUD-approved Action plans of the PHAs.)

2. The PHA is/is not (indicate appropriate choice) a State or regional PHA operating separate Housing Choice Voucher FSS programs in more than one part of its jurisdiction.

3. Positions and Salary Requested: Total Housing Choice Voucher FSS Program

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Coordinator salary, INCLUDING, if applicable, amount for fringe benefits: _____.

If funding is being requested by a state or regional PHA for positions in more than one location in its jurisdiction, the PHA must provide information in the format below for each location where positions are requested.

Location: ____, # of approved FSS slots:____, Salary, including fringe benefits: _____.

4. Evidence demonstrating salary comparability to similar position in the local jurisdiction is on file in the PHA office.

If there are any questions, please contact _____at _____.

Sincerely,

Executive Director

ATTACHMENT C

FAIR HOUSING AND EQUAL OPPORTUNITY CERTIFICATIONS

The housing agency (PHA) certifies that in administering the funding for the Rental Certificate/Housing Choice Voucher Family Self-Sufficiency program coordinators it will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act.

Name of PHA

_____

Signature and Title of PHA Representative Date

_____ _____

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ATTACHMENT D

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite

for making or entering into this transaction imposed by section 1342, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature of PHA Representative	Name of PHA
Name of Signatory (Print or Type)	Date signed

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ATTACHMENT E

HOMEOWNERSHIP PROGRAM CERTIFICATION

The _____(Enter housing agency (PHA) name or names) certifies that:

1) The PHA administers (or participates) in the following homeownership program or programs:

2) The homeownership program or programs above gives a selection preference for families participating in the PHA's FSS program or limits eligibility for the homeownership program to FSS program participants.

3) The PHA currently has _____ (enter number) FSS families participating in or ready to participate in the homeownership program identified above.

Name of PHA/PHAs:

Name of Signatory PHA Representative (Type or Print):

Signature of PHA representative:

Date Signed;

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

EARLY DOCTORAL STUDENT RESEARCH GRANT PROGRAM

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR EARLY DOCTORAL STUDENT RESEARCH GRANT PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. To help eligible doctoral students cultivate their research skills through the preparation of research manuscripts that focus on housing and urban development issues.

Available Funds. Approximately $150,000 in FY 2002 funds.

Eligible Applicants: Only pre-dissertation Ph.D. students whose studies include urban economics as a major or concentration within another field related to housing and urban development.

Application Deadline. June 20, 2002.

Match. None.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 20, 2002. You should read the **General Section** of the SuperNOFA because it contains more detailed information about the application due date.

Address for Submitting Applications. Your completed application consists of an original signed application and an electronic copy of the application. All applications must be submitted via the United States Postal Service to the following address: University Partnerships Clearinghouse, Aspen Systems Corporation, Mail Stop 6P, 2277 Research Blvd., Rockville, MD 20850. You should read the **General Section** of the SuperNOFA because it contains more detailed information on submission deadlines. Please mark on the envelope for your application that it is for the Early Doctoral Student Research Grant Program.

HUD will accept only one application per doctoral student.

For Application Kits. The application requirements are contained in this program NOFA. There is no separate application kit for the program.

For Further Information and Technical Assistance. You may contact Armand Carrier of HUD's Office of University Partnerships at 202–708–3061 ext 3181. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Mr. Carrier via e-mail at Armand_W._Carriere@hud.gov.

II. Amount Allocated

Approximately $150,000 in FY 2002 funds is being made available under this SuperNOFA for Early Doctoral Student Research Grant Program (EDSRG).

The maximum grant period is 12 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested by and awarded to a doctoral student is $15,000. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

Program Description; Eligible Applicants; Eligible Activities

(A) Program Description. The purpose of the EDSRG is to enable doctoral students to cultivate their research skills through the preparation of research manuscripts that focus on policy-relevant housing and urban development issues. The program will also provide a forum for new scholars to share their research findings through presentation of this research to a scholarly conference and/or publication in a refereed journal. The FY 2002 EDSRG Program seeks to fund research studies that will inform Federal problem solving and policymaking relating to HUD's policy priorities for this year. Examples of topics addressing these priorities include but are not limited to:

- *Homeownership*

1. Homeownership
   (a) Relative importance of factors in tenure decisions
   (b) Estimation of private and social benefits and costs of homeownership
   (c) Role in employment, household savings, and investment decisions
   (d) Effects of demographics, macro-economic environment and government policies on homeownership
   (e) Effects of homeownership on low- and moderate-income
2. Housing finance
   (a) Institutional barriers to efficiency in the housing finance system
   (b) Enabling the housing finance system to better serve low-income and minority borrowers
3. Home Equity Conversion Mortgages

- *Housing Market Conditions*

1. Housing markets
   (a) Factors affecting rents, home values, tenure, vacancy rates
   (b) Market absorption of new units
   (c) Construction activity
1. Housing Stock
   (a) Durability of stock
   (b) Energy efficiency
   (c) Factors determining rehabilitation and remodeling
   (d) Comparisons with stock in other developed countries
3. Availability of Affordable Housing
   (a) Policy and program options in tight or "soft" markets
   (b) Preservation of existing stock

- *Equal Opportunity and Access to Housing*

1. Effectiveness of different models (including local initiatives) for promoting Fair Housing Objectives
2. Discrimination in housing and lending
   (a) Methods to detect discrimination
   (b) Systemic patterns and practices

- *Homelessness*

1. Strategies to combat homelessness
   (a) Addressing chronic homelessness
   (b) Preventing homelessness
   (c) Helping families move from transitional to permanent housing
   (d) Issues and responses to youth homelessness
   (e) Causes of homelessness

- *Community and Economic Development*

1. Create or expand business
   (a) Meet the needs of underserved inner city, older suburb, or rural areas
   (b) Expansion of access to capital
   (c) Joint ventures with faith-based or other community-based grassroots organizations
2. Development of inner cities
   (a) Studies of reinvestment pressures
   (b) Theories of capital/land/market failure that help to explain depopulation or disinvestment
   (c) Government policies or market interventions that would alleviate these patterns
3. Regionalism and growth management
   (a) The economic interdependence of cities and suburbs
   (b) Rehabilitation and infill development
   (c) Regional problem solving and coalition building
   (d) Reinvestment in the urban core
   (e) Impact of community economic development policies, programs, and initiatives

- *Faith-Based and Other Community-Based Partnerships*

1. Community development and community building
   (a) Role of faith-based groups in low-income housing and community development efforts
   (b) Faith-based and higher education community building efforts
2. Evaluation of college/community partnerships and institutionalizing

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these partnerships at colleges and universities

- *Assisted Housing Programs*

1. Affordability of rental housing
   (a) Innovative partnerships or finance tools
   (b) Cost-benefit analyses of alternative methods of providing housing assistance
   (c) Effectiveness of voucher programs
   (d) Evaluations of existing programs
2. Housing needs of the elderly and persons with disabilities
   (a) Availability
   (b) Design and Quality, including Accessibility
   (c) Affordability
   (d) Linked Services
3. Strategies for helping families in public and assisted housing make progress toward self-sufficiency and become homeowners.

- *Colonias*

1. How current housing policies determine the kinds of housing available
2. The perception of "community" in colonias
3. Evaluation of existing housing programs in colonias

(B) *Eligible Applicants.* You must meet the following requirements:

(1) You must be a currently enrolled and full-time student in an accredited doctoral program at an accredited institution of higher education;

(2) You must have urban economics as your major field or as a concentration within a major in another field related to housing and urban development;

(3) You must not have taken your preliminary/comprehensive examinations;

(4) You must have completed at least two semesters or three terms of your doctoral studies program (depending on the course structure of the institution); and

(5) You must have been assigned a faculty advisor to supervise your research manuscript.

You must provide documentation from the chair of your department that you meet all of these conditions and that in his/her opinion it is realistic to believe that the research manuscript can be completed within the one-year grant period. In addition, you and your institution must meet all the applicable threshold requirements found in Section II(B) of the General Section of the SuperNOFA.

(C) *Eligible Activities.* Your grant must support direct costs incurred in the timely completion of a research manuscript. Eligible costs include stipends, computer software, the purchase of data, travel expenses to collect data; transcription services, and compensation for interviews. Three thousand dollars of the grant will be held back until you have completed your research manuscript and either it has been accepted for presentation at a conference or for publication in a refereed journal by September 30, 2003, or a committee of three faculty members (including your faculty sponsor, as the principal investigator of the grant) has determined and certified to HUD that the manuscript is of high quality and worthy of submission to conferences or journals.

(D) *Ineligible Activities.* Your grant may not be used to pay for tuition, computer hardware, or meals.

(E) *Other Requirements:*

(1) *Support from your university.* Support from your university is required. Such support might include tuition waivers, office space, equipment, computer time, or similar items you might need in order to complete your dissertation. This support may not replace support or assistance that your institution would otherwise provide you.

(2) *University sponsorship.* The university shall enter into a Grant Agreement with HUD that provides for payment of the grant by HUD to the university and from the university to you, the approved applicant, and that further provides all required certifications and assurances. The university shall agree to provide as the Principal Investigator under the Grant Agreement a dissertation advisor or chair of the applicant's dissertation committee who shall supervise your work under the Grant Agreement.

(3) *Progress reporting.* You will be required to submit a report, halfway through your grant, on the progress you have made towards completion of the research manuscript and the likelihood that you will complete it on time.

IV. Application Selection Process

HUD will conduct two types of review: a threshold review to determine your eligibility to apply; and a technical review to rate your application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application can only be rated if the following standards are met:

(1) You are an eligible doctoral student, as defined in Section III(B) above and have provided a letter from your department chair, in the format in Appendix A, confirming this;

(2) You have requested no more than the grant maximum of $15,000; and

(3) Your institution has agreed to provide some support to you as part of this grant.

(B) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100.

Rating Factor 1: Capacity To Do the Research (20 Points)

In reviewing this factor, HUD will determine the extent to which:

(1) Your skills and experience are relevant to your proposed research manuscript (*e.g.*, course work, teaching, research projects, presentations);

(2) You have undertaken appropriate preparation (*e.g.*, preliminary design of the survey collection instruments, pre-clearance on interviews) to undertake the dissertation; and

(3) Your proposed research will help to further your research skills (*i.e.*, it is relevant to the kinds of projects you will continue to work on as you earn your Ph.D.).

Rating Factor 2: Need for the Research (35 Points)

In reviewing this factor, HUD will determine the extent to which your research manuscript will produce policy-relevant information that is directly related to one of the research priorities listed above (*i.e.*, the research that will be produced could have an effect on HUD's strategic goals and HUD's programs and policies to achieve these goals—see the HUD Web site at *http://www.hud.gov/about/budget/fy02/cjs/fy2002app.pdf* for a discussion of these goals. The less directly related to one of these topics your research is, the fewer points you will receive. For example, a study of minorities' housing choice decisions would have high relevance to HUD's strategic goals; a study of transportation inequities would have medium relevance; and a study of the effects of global warming on urban development would have low relevance.

Rating Factor 3: Soundness of Approach (35 Points)

In reviewing this factor, HUD will determine the extent to which your research design and methodology are likely to produce data and information that will successfully answer your research hypotheses. HUD will also evaluate the extent to which the methodology you propose to use is sound and generally accepted by the relevant research community. Reviewers will be looking at the extent to which you use standard methodological practices in line with research already

completed or existing publications in the field related to your research questions.

In reviewing this factor, HUD will also determine the extent to which your research design and methodology and plan for completion of your research manuscript can feasibly be completed within the one-year grant period. Applications that propose extremely complex and time-consuming data collection efforts (*e.g.*, major longitudinal studies or a very large number of sites visits within the grant period) will be determined to be less feasible of completion within the allowed time frame. For example, if you propose a methodology based on information that may not be publicly available until after the end of the grant period (*e.g.*, Census information), or a data collection plan that will take longer than the time you have allowed for it, you will get zero points for this factor.

Rating Factor 4: Issuance of Your Research Manuscript (10 Points)

One purpose of the EDSRG Program is to fund research studies that will inform Federal problem solving and policymaking relating to HUD's policy priorities for this year. HUD, therefore, will evaluate the likelihood that the manuscript will be ready to present at a conference or be ready for publication in a refereed journal by September 30, 2003. HUD will also evaluate your plans to disseminate your research though other means, *e.g.*, seminars, your university's publications, or relevant internet listserves.

(C) *Selections.* In order to be funded, you must receive a minimum score of 70 points. HUD will fund applications in rank order, until it has awarded all available funds. If two or more applications have the same number of points, the application with the most points for Factor 1, Relevance to HUD's Mission, shall be selected. If there is still a tie, the application with the most points for Factor 2, Quality of the Research Design, shall be selected.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest-ranking applicant, and proceed with negotiations with that applicant.

(D) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to Armand Carrier of HUD's Office of University Partnerships, Robert C. Weaver Building, 451 7th St. SW., Room 8106, Washington DC 20410. You may also write to Mr. Carrier via e-mail at *Armand_W._Carrie@hud.gov*.

Information provided to you during your debriefing will include the final scores you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

V. Application Submission Requirements

You should include an original and one computer disk (in Word 6.0 or higher) of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section and they must be included in the order shown here. There is no separate application kit for this program. These items include the standard forms, certifications, and assurances listed in the **General Section** of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms can be found in Appendix B to the **General Section** of the SuperNOFA. The remaining application, referred to as the "non-standard forms," can be found as Appendix A to this program section of the SuperNOFA. The Catalog of Federal Domestic Assistance number for this program is 14.517 and is listed in the program chart in the **General Section** of the SuperNOFA. Sample documents are also included in this appendix. The items are as follows:

(A) *SF–424, Application for Federal Assistance.* Include the name and address of the person authorized to execute the grant agreement in Block 5. Include the institution's tax ID number in Block 6. The form should be signed by the appropriate university official.

(B) *Table of contents of the application.*

(C) *Transmittal Letter,* from you, containing the following information:

(1) Title of your research project;

(2) Your name, university and home addresses, university and home telephone numbers, facsimile numbers, and email address;

(3) Your university's name, department, mailing address, telephone and facsimile numbers.

(4) Your faculty advisor's name, address, telephone and facsimile numbers—this person will serve as the Principal Investigator for the grant.

(D) A statement from your department chair that you have met all the eligibility criteria described in Section III(B) (see Appendix A for a sample).

(E) A statement from the appropriate official that describes your university's support, as described in Section III(E) (see Appendix B for a sample).

(F) An abstract of 500 words or less that addresses the following topics:

(1) Specific purpose of the dissertation;

(2) Methodology being used; and

(3) How you meet the eligibility criteria.

(G) A narrative of the proposed research, not to exceed 5 double-spaced typed pages. This narrative must include the following items in the following order:

(1) Statement of the problem;

(2) Your capacity to do the research. (Include your resume, showing educational background, research experience, background in statistics and empirical research, computer experience, and background in housing and/or urban studies.)

(3) Need for the research;

(4) Approach (research design and methodology);

(5) Your plan for disseminating your research.

(H) A proposed budget (See Appendix C for a sample).

(I) *Certifications.* These forms must be signed by the doctoral candidate and can be downloaded from the HUD web site at www.hud.gov.

(1) HUD–2992, Certification regarding debarment and suspension pursuant to 24 CFR part 24.

(2) HUD–50071, Disclosure of lobbying pursuant to 24 CFR part 87.

(3) HUD–50070, Certification of Drug-Free Workplace, pursuant to 24 CFR 24.600 *et seq.*

(J) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

VI. Environmental Requirements

The provision of assistance under this program is categorically excluded from environmental review under the National Environmental Policy Act of

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1969 (42 U.S.C. 4321) and not subject to compliance actions for related environmental authorities under § 50.19(b)(1) and (b)(9).

VII. Authority

This program is being undertaken under HUD's research authority under Title V of the Housing and Urban Development Act of 1970.

Appendices A, B and C

The non-standard sample forms and letters, which follow, are required for your Early Doctoral Student Research Grant application.

BILLING CODE 4210–32–P

Appendix A

SAMPLE STATEMENT FROM ADVISOR

March 10, 2002

To Whom It May Concern:

Jane Jones is a doctoral student at Northern State University. As of the date of this letter her major field of study is (e.g., planning, public policy, urban studies) with a concentration in urban economics. She has completed three terms of her doctoral coursework and has not yet taken her comprehensive examinations. An advisor has been assigned to her for the work she would do under this grant. It is realistic to expect that the proposed research manuscript will be completed within the one-year grant period and either accepted for presentation at a scholarly conference and/or publication in a refereed journal by September 30, 2003, or certified by a faculty committee that it is worthy of being submitted for presentation or publication.

Sincerely,

Dr. Peter Paul
Professor and Chair
Department of City Planning

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Appendix B

SAMPLE DESCRIPTION OF UNIVERSITY SUPPORT

March 9, 2002

To Whom It May Concern:

John Grey is a doctoral student in the Planning Department at Eastern University, working on a research manuscript titled "The Economics of Smart Growth." Office space, computer hardware, software for preparing statistical summaries, a research library, and several bibliographic databases will be available to Mr. Grey without charge to the grant for which he is applying.

Prof. Bradley Street
Department of Geography
Dissertation Committee Chair

Appendix C

BUDGET INSTRUCTIONS

A sample budget for an application is shown below. The categories of expenses shown do not necessarily apply to all applications, and some applications may have expense categories not shown. The sample is representative, not binding.

John Jones
621 Elm Street
Academia, USA 12345
March 10, 2002

"The Economics of Smart Growth"

Services:			
Applicant (J. Jones):			
_____days @ $_____/day	=	$	x,xxx
Other Professionals:			
A. Smith, _____days @ $_____/day	=	$	xx,xxx
B. Brown, _____days @ $_____/day		=	$ xxx
Clerical:			
C. Johnson,_____days @ $_____/day	=	$	xxx
Subtotal, Service		=	$xx,xxx
Other:			
Travel: _____trips @ $_____/trip		=	$ x,xxx
Computer Usage	=	$	xxx
Reproduction Costs		=	$ xxx
Phone, Mailing, Misc. Materials		=	$ xxx
Subtotal, Other	=	$	x,xxx
Total Estimated Cost			$xx,xxx

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DOCTORAL DISSERTATION RESEARCH GRANT PROGRAM

Billing Code 4210-32-C

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FUNDING AVAILABILITY FOR DOCTORAL DISSERTATION RESEARCH GRANT PROGRAM

PROGRAM OVERVIEW

Purpose of the Program. To assist Ph.D. candidates complete their research and dissertations on housing and urban development issues.

Available Funds. Approximately $400,000 in FY 2002 funds.

Eligible Applicants: Only Ph.D. candidates who have completed all of their doctoral program requirements except the preparation of the dissertation.

Application Deadline. June 20, 2002.

Match. None.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before June 20, 2002. You should read the general section of the SuperNOFA because it contains more detailed information about the application due date.

Address for Submitting Applications. Your completed application consists of an original signed application and an electronic copy of the application. All applications must be submitted via the United States Postal Service to the following address: University Partnerships Clearinghouse, Aspen Systems Corporation, Mail Stop 6P, 2277 Research Blvd., Rockville, MD 20850. You should read the General Section of the SuperNOFA because it contains more detailed information on submission deadlines. Please mark on the envelope for your application that it is the Doctoral Dissertation Research Grant Program.

HUD will accept only one application per Ph.D. candidate.

For Application Kits. The application requirements are contained in this program NOFA. There is no separate application kit for the program.

For Further Information and Technical Assistance. You may contact Armand Carriere of HUD's Office of University Partnerships at 202–708–3061, extension 3181. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Mr. Carriere via e-mail at *Armand_W._Carrier@hud.gov*.

II. Amount Allocated

Approximately $400,000 in FY 2002 funds is being made available under this SuperNOFA for the Doctoral Dissertation Research Grant Program (DDRG).

The maximum grant period is 24 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested by and awarded to a Ph.D. candidate is $25,000. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of DDRG is to enable Ph.D. candidates enrolled at accredited institutions of higher education to complete their research and dissertations on HUD-related housing and urban development issues. The FY 2002 DDRG program seeks to fund dissertations that will inform Federal problem-solving and policy making relating to policy-relevant issues. Examples of such topics include but are not limited to:

- *Homeownership*

1. Homeownership
   (a) Relative importance of factors in tenure decisions
   (b) Estimation of private and social benefits and costs of homeownership
   (c) Role in employment, household savings, and investment decisions
   (d) Effects of demographics, macro-economic environment and government policies on homeownership
   (e) Effects of homeownership on low- and moderate-income households
2. Housing finance
   (a) Institutional barriers to efficiency in the housing finance system
   (b) Enabling the housing finance system to better serve low-income and minority borrowers
3. Home Equity Conversion Mortgages

- *Housing Market Conditions*

1. Housing Markets
   (a) Factors affecting rents, home values, tenure, vacancy rates
   (b) Market absorption of new units
   (c) Construction activity
2. Housing Stock
   (a) Durability of stock
   (b) Energy efficiency
   (c) Factors determining rehabilitation and remodeling
   (a) Comparisons with stock in other developed countries
3. Availability of Affordable Housing
   (a) Policy and program options in tight or "soft" markets
   (b) Preservation of existing stock

- *Equal Opportunity and Access to Housing*

1. Effectiveness of different models (including local initiatives) for promoting Fair Housing Objectives
2. Discrimination in housing and lending
   (a) Methods to detect discrimination
   (b) Systemic patterns and practices

- *Homelessness*

1. Strategies to combat homelessness
   (a) Addressing chronic homelessness
   (b) Preventing homelessness
   (c) Helping families move from transitional to permanent housing
   (d) Causes of homelessness
   (e) Issues and responses to youth homelessness

- *Community and Economic Development*

1. Create or expand business
   (a) Meet the needs of underserved inner city, older suburb, or rural areas
   (b) Expansion of access to capital
   (c) Joint ventures with faith-based or other community-based grassroots organizations
2. Development of inner cities
   (a) Studies of reinvestment pressures
   (b) Theories of capital/land/market failure that help to explain depopulation or disinvestment
   (c) Government policies or market interventions that would alleviate these patterns
3. Regionalism and growth management
   (a) The economic interdependence of cities and suburbs
   (b) Rehabilitation and infill development
   (c) Regional problem solving and coalition building
   (d) Reinvestment in the urban core
   (e) Impact of community economic development policies, programs, and initiatives

- *Faith-Based and Other Community-Based Partnerships*

1. Community development and community building
   (a) Role of faith-based groups in low-income housing and community development efforts
   (b) Faith-based and higher education community building efforts
2. Evaluation of college/community partnerships and institutionalizing these partnerships at colleges and universities

- *Assisted Housing Programs*

1. Affordability of rental housing
   (a) Innovative partnerships or finance tools
   (b) Cost-benefit analyses of alternative

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methods for providing housing assistance
(c) Effectiveness of voucher programs
(d) Evaluations of existing programs
2. Housing needs of the elderly and persons with disabilities
(a) Availability
(b) Design and Quality, including Accessibility
(c) Affordability
(d) Linked Services
3. Strategies for helping families in public and assisted housing make progress toward self-sufficiency and become homeowners.

• *Colonias*

1. How current housing policies determine the kinds of housing available
2. The perception of "community" in colonias
3. Evaluation of existing housing programs in colonias

(B) *Eligible Applicants.* You must be a currently enrolled and matriculated student who has been accepted into candidacy in an accredited doctoral program at an accredited institution of higher education and have a fully developed and approved dissertation proposal. You must provide documentation from your dissertation committee chair that:

(1) By the application due date, your dissertation proposal has been accepted by your full dissertation committee and you have been assigned a dissertation advisor;

(2) By September 1, 2002, you will have satisfactorily completed all other written and oral Ph.D. requirements, including all your examinations and defense of your proposal, except the dissertation; and

(3) It is realistic to believe that the dissertation can be completed within the two-year grant period.

In addition, you and your institution must meet all the applicable threshold requirements found in Section II(B) of the **General Section** of the SuperNOFA.

Note: Institutions which have had previously awarded Doctoral Dissertation Research Grants terminated for non-performance and have outstanding funds owed to HUD resulting from this determination will be excluded from competition for the Doctoral Dissertation Research Grant program until the outstanding funds are repaid.

(C) *Eligible Activities.* Your grant must support direct costs incurred in the timely completion of a dissertation. Eligible costs include stipends, computer software, the purchase of data, travel expenses to collect data; transcription services, and compensation for interviews. Six thousand dollars of the grant will be held back until you have completed your dissertation, had it approved by your committee, and submitted it to HUD.

(D) *Ineligible Activities.* Your grant may not be used to pay for tuition, computer hardware, or meals.

(E) *Other Requirements.* (1) *Support from your university.* Support from your university is required. Such support might include tuition waivers, office space, equipment, computer time, or similar items you might need in order to complete your dissertation. This support may not replace support or assistance that your institution would otherwise provide you.

(2) *University sponsorship.* The university shall enter into a Grant Agreement with HUD that provides for payment of the grant by HUD to the university and from the university to you, the approved applicant, and that further provides all required certifications and assurances. The university shall agree to provide as the Principal Investigator under the Grant Agreement a dissertation advisor or chair of the applicant's dissertation committee who shall supervise your work under the Grant Agreement.

(3) *Progress reporting.* You will be required to submit a report, at the end of the first year of your grant, on the progress you have made towards completion of the dissertation and the likelihood that you will complete it on time.

IV. Application Selection Process

HUD will conduct two types of review: a threshold review to determine your eligibility to apply; and a technical review to rate your application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application can only be rated if the following standards are met:

(1) You are an eligible Ph.D. candidate, as defined in Section III(B) above and have provided a letter from your dissertation committee chair, in the format in Appendix A, confirming this;

(2) You have requested no more than the $25,000 grant maximum; and

(3) Your institution has agreed to provide some support to you as part of this grant.

(B) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100.

Rating Factor 1: Capacity To Do the Research (20 points)

In reviewing this factor, HUD will determine the extent to which your skills and experience are relevant to your proposed dissertation (e.g., course work, teaching, research projects, presentations). HUD will determine the extent to which you have undertaken appropriate preparation (e.g., selecting sites for data collection, identifying potential interviewees and categories of interviewees, pre-clearance on interviews) to undertake the dissertation. HUD will also determine the extent to which your previous research experience (e.g., graduate-level research projects, presentations at conferences, publications, etc.) is relevant to and supportive of your proposed dissertation.

Rating Factor 2: Need for Your Research (35 Points)

In reviewing this factor, HUD will determine the extent to which your dissertation will produce policy-relevant information that is directly related to one of the research priorities listed above (i.e., the research that will be produced could have an effect on HUD's strategic goals and HUD's programs and policies to achieve these goals—see the HUD Web site at *http://www.hud.gov/about/budget/fy02/cjs/fy2002app.pdf* for a discussion of these goals). The less directly related to one of these topics your dissertation is, the fewer points you will receive. For example, a study of minorities' housing choice decisions would have high relevance to HUD's strategic goals; a study of transportation inequities would have medium relevance; and a study of the effects of global warming on urban development would have low relevance.

Rating Factor 3: Soundness of Approach (35 Points)

In reviewing this factor, HUD will determine the extent to which your research design and methodology are likely to produce data and information that will successfully answer your research hypotheses. HUD will also evaluate the extent to which the methodology you propose to use is sound and generally accepted by the relevant research community. Reviewers will be looking at the extent to which you use standard methodological practices in line with research already completed or existing publications in the field related to your research questions.

HUD will also determine the extent to which your research design and methodology and plan for completion of the dissertation can be completed within the two-year grant period. Applications that propose extremely complex and time-consuming data collection efforts (e.g., major longitudinal studies or a very large number of sites visits within the two year grant period) will be determined to be less feasible of completion within the allowed time frame. For example, if you propose a methodology based on information that may not be publicly available until after the end of the two-year grant period (e.g., Census information), or a data collection plan that will take longer than the time you have allowed for it, you will get zero points.

Rating Factor 4: Dissemination of Your Dissertation (10 Points)

An important purpose of the DDRG Program is to fund research that will inform Federal problem-solving and policy making relating to housing and urban development. In reviewing this factor, HUD will evaluate the likelihood that your research will be ready and suitable for publication or presentation at policy conference by the end of the grant period. HUD will also evaluate your plans to disseminate your research though other means, e.g., seminars, your university's publications, or relevant internet list services.

(C) *Selections.* In order to be funded, you must receive a minimum score of 70 points. HUD will fund applications in rank order, until it has awarded all available funds. If two or more applications have the same number of points, the application with the most points for Factor 1, Relevance to HUD's Mission, shall be selected. If there is still a tie, the application with the most points for Factor 2, Quality of the Research Design, shall be selected.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest-ranking applicant, and proceed with negotiations with that applicant.

(D) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for not less than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to Armand Carriere of HUD's Office of University Partnerships Robert C. Weaver Building, 451 7th St. SW., Room 8106, Washington DC 20410. You may also write to Mr. Carriere via e-mail at *Armand_W._Carriere@hud.gov.*

V. Application Submission Requirements

You should include an original and one computer disk (in Word 6.0 or higher) of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section and they must be included in the order shown here. There is no separate application kit for this program. These items include the standard forms, certifications, and assurances listed in the **General Section** of the SuperNOFA that are applicable to this funding (collectively referred to as the "standard forms"). The standard forms can be found in Appendix B to the **General Section** of the SuperNOFA. The remaining application, referred to as the "non-standard forms," can be found as Appendix A to this program section of the SuperNOFA. The Catalog of Federal Domestic Assistance number for this program is 14.516 and is listed in the program chart in the **General Section** of the SuperNOFA. Sample documents are also included in this appendix. The items are as follows:

(A) *SF–424, Application for Federal Assistance.* Include the name and address of the person authorized to execute the grant agreement in Block 5. Include the institution's tax ID number in Block 6. The form should be signed by the appropriate university official.

(B) *Table of contents of the application.*

(C) *Transmittal Letter,* from you, containing the following information:

(1) Title of your dissertation;

(2) Your name, university and home addresses, university and home telephone and facsimile numbers, and email address;

(3) Your university's name, department, mailing address, telephone and facsimile numbers.

(4) Your dissertation advisor's name, address, telephone and facsimile numbers—this person will serve as the Principal Investigator for the grant.

(D) A statement from your dissertation advisor or chair of the dissertation committee that you have met all the eligibility criteria described in Section III(B) (see Appendix A for a sample).

(E) A statement from the appropriate official that describes your university's support, as described in Section III(E) (see Appendix B for a sample).

(F) An abstract of 500 words or less that addresses the following topics:

(1) Specific purpose of the dissertation;

(2) Methodology being used; and

(3) How you meet the eligibility criteria.

(G) A narrative of the proposed research, not to exceed 10 double-spaced typed pages. Do not submit your dissertation proposal itself. This narrative must include the following in the following order:

(1) Statement of the problem;

(2) Your capacity to do the research. (Include your resume, showing educational background, research experience, background in statistics and empirical research, computer experience, and background in housing and/or urban studies.)

(3) Need for the research;

(4) Approach (research design and methodology);

(5) Your plan for disseminating your research.

(H) A proposed budget (See Appendix C for a sample).

(I) *Certifications.* These forms must be signed by the doctoral candidate and can be downloaded from the HUD web site at www.hud.gov.

(1) HUD–2992, Certification regarding debarment and suspension pursuant to 24 CFR part 24.

(2) HUD–50071, Disclosure of lobbying pursuant to 24 CFR part 87.

(3) HUD–50070, Certification of Drug-Free Workplace, pursuant to 24 CFR 24.600 *et seq.*

(J) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

VI. Environmental Requirements

The provision of assistance under this program is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and not subject to compliance actions for related environmental authorities under § 50.19(b)(1) and (b)(9).

VII. Authority

This program is being undertaken under HUD's research authority under Title V of the Housing and Urban Development Act of 1970.

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Appendices A, B and C

The non-standard sample forms and letters, which follow, are required for your Doctoral Dissertation Research Grant application.

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Appendix A

SAMPLE STATEMENT FROM ADVISOR

March 10, 2002

To Whom It May Concern:

John Jones, a Ph.D. candidate in urban studies at Northern State University, will have defended his dissertation proposal as of the date of this letter. The dissertation committee has formally approved of his dissertation proposal. A dissertation advisor has been assigned to him. In addition, he will have completed all written and oral Ph.D. examination requirements by September 1, 2002. It is realistic to believe that Mr. Jones' dissertation can be completed within a two-year period.

Sincerely,

Dr. Peter Paul
Professor of Urban Studies and Chairman
of John Jones' Dissertation Committee

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Appendix B

SAMPLE DESCRIPTION OF UNIVERSITY SUPPORT

March 9, 2002

To Whom It May Concern:

Sarah Grey is a Ph.D. student in the Geography Department of Eastern University, working on a dissertation titled "Redevelopment Practices in Elm City." Office space, computer hardware, software for preparing statistical summaries, a research library, and several bibliographic databases will be available to Ms. Grey without charge to the grant for which she is applying.

Sincerely,

Prof. Bradley Street
Department of Geography
Dissertation Committee Chair

Appendix C

BUDGET INSTRUCTIONS

A sample budget for an application is shown below. The categories of expenses shown do not necessarily apply to all applications, and some applications may have expense categories not shown. The sample is representative, not binding.

John Jones
621 Elm Street
Academia, USA 12345
March 10, 2002

"A Study of Faith-Based Organizations' Effectiveness in Local Community Development Projects"

Services:

Applicant (J. Jones):		
_____days @ $_____/day	=	$ x,xxx
Other Professionals:		
A. Smith, _____days @ $_____/day	=	$ xx,xxx
B. Brown, _____days @ $_____/day	=	$ xxx
Clerical:		
C. Johnson,_____days @ $_____/day	=	$ xxx
Subtotal, Service	=	$xx,xxx
Other:		
Travel: _____trips @ $_____/trip	=	$ x,xxx
Computer Usage	=	$ xxx
Reproduction Costs	=	$ xxx
Phone, Mailing, Misc. Materials	=	$ xxx
Subtotal, Other	=	$ x,xxx
Total Estimated Cost		$xx,xxx

[FR Doc. 02–6710 Filed 3–25–02; 8:45 am]
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Federal Register

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3–27–02
Vol. 67 No. 59
Pages 14627–14842

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to Certificate of Compliance (CoC) Number 1014. This amendment will modify the present cask system design, under a general license, to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment will also use revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to applicable CoC conditions and sections of Appendix A and Appendix B to the CoC to reflect the changes.

DATES: The final rule is effective June 10, 2002, unless significant adverse comments are received by April 26, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013330457. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

CoC No. 1014, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment No. 1, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec HI-STORM 100 cask design and added it to the list of

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NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1014.

Discussion

On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. No other changes to the Holtec HI-STORM 100 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Holtec HI-STORM 100 cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1014. The amendment consists of changes to the Technical Specifications as described above in the "Discussion" portion of this document. The particular Technical Specifications that are changed are identified in the NRC staff's Safety Evaluation Report for Amendment 1.

The amended Holtec HI-STORM 100 cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1014 is revised by adding the effective date of the initial certificate, and the effective date of Amendment Number 1.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1014 and does not include other aspects of the Holtec HI-STORM 100 cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on June 10, 2002. However, if the NRC receives significant adverse comments by April 26, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by April 26 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Holtec HI-STORM 100 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Holtec HI-STORM 100 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specification for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the Holtec HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes.

The alternative to this action is to withhold approval of this amended cask system design and issue a site-specific license to each licensee. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption or a site-specific license.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping

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requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014
Initial Certificate Effective Date: June 1, 2000
Amendment Number 1 Effective Date: June 10, 2002
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System
Docket Number: 72–1014
Certificate Expiration Date: June 1, 2020
Model Number: HI-STORM 100

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–7320 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–05–AD; Amendment 39–12684; AD 2002–06–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80E1 series turbofan engines, installed on Airbus Industrie A330 series airplanes. This action requires initial and repetitive pressure testing of the directional pilot valve (DPV) assembly, with replacement of DPV assemblies that fail the pressure test, or, replacing the DPV assembly without performing pressure testing, with a serviceable DPV assembly, or, deactivating the fan reverser for no longer than 10 days until replacement of the DPV assembly is done. This amendment is prompted by a review of thrust reverser safety analyses following a report of inadvertent thrust reverser deployment on another make and model engine. The actions specified in this AD are intended to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

DATES: Effective May 1, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA received a report of inadvertent thrust reverser deployment on a Pratt & Whitney powered Airbus Industrie A300–600 series airplane. Following that event, the FAA reviewed thrust reverser safety analyses on other make and model engines, including GE CF6–80E1 series turbofan engines that are used on Airbus Industrie A330 series airplanes. A review of thrust reverser actuation system (TRAS) shop findings and component failure rate data, test data, and system safety analyses revealed that a hidden failure mode involving the directional pilot valve (DPV) assembly exists. The DPV assembly controls the direction of the operation of the center drive unit when the TRAS is activated. If high pressure downstream of the pressure regulating and shutoff valve (PRSOV) exists in combination with a leaking DPV assembly, an inadvertent deployment could occur. High pressure downstream of the PRSOV can be caused by auto-restow of the thrust reverser, PRSOV open failures, or significant PRSOV leakage. PRSOV open failures and significant PRSOV leakage are detected by the DPV assembly pressure switch. DPV assembly open failures and significant DPV assembly leakage are detected by the inability to stow the reverser. However, there exists a range of DPV assembly leakage rates from a closed DPV assembly which are not detectable during normal operation.

This undetectable failure mode of the DPV assembly, concurrent with high pressure downstream of the PRSOV, can result in an inadvertent thrust reverser deployment. This condition, if not corrected, could result in inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Middle River Aircraft Systems CF6–80E1 Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001, that describes procedures for thrust reverser inspections and checks, and DPV assembly replacement.

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–80E1 series turbofan engines of the same type design, installed on Airbus Industrie A330 series airplanes, this AD is being issued to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane. This AD requires:

- Initial and repetitive pressure testing of the DPV assembly, with replacement of DPV assemblies that fail the pressure test, or
- Replacing the DPV assembly without performing pressure testing, with a serviceable DPV assembly, or
- Deactivating the fan reverser for no longer than 10 days until replacement of the DPV assembly is done.

The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–05–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–07 General Electric Company: Amendment 39–12684. Docket No. 2002–NE–05–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80E1 series turbofan engines that are installed on Airbus Industrie A330 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane, do the following:

(a) Perform one of the following, in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001, before exceeding 7,000 flight hours time-since-new (TSN) or 1,000 flight hours time-in-service (TIS) after the effective date of this AD:

(1) Perform a directional pilot valve (DPV) assembly pressure check for leakage, and, if necessary, do one of the following:

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(i) Replace the DPV assembly with a serviceable assembly, and then perform a system test of the thrust reverser, or

(ii) Deactivate the thrust reverser. However, the DPV assembly must be replaced with a serviceable assembly, and a system test of the thrust reverser performed within 10 days after deactivation.

(2) Replace the DPV assembly with a serviceable assembly, and then perform a system test of the thrust reverser.

(b) Thereafter, at intervals not to exceed 7,000 flight hours TIS since the last check or replacement of the DPV assembly, perform one of the following, in accordance with paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A5053, dated October 30, 2001:

(1) Perform a DPV assembly pressure check for leakage, and, if necessary, either:

(i) Replace the DPV assembly with a serviceable assembly and then perform a system test of the thrust reverser, or

(ii) Deactivate the thrust reverser. However, the DPV assembly must be replaced with a serviceable assembly, and a system test of the thrust reverser performed within 10 days after deactivation.

(2) Replace the DPV assembly with a serviceable assembly and then perform a system test of the thrust reverser.

Definition of Serviceable DPV Assembly

(c) For the purpose of this AD, a serviceable DPV assembly is an assembly that has either accumulated zero TSN, or has accumulated zero TIS after having passed the tests in the Middle River Aircraft Systems Component Maintenance Manual GEK 85007 (78–31–51), Directional Pilot Solenoid Valve, Page Block 101, Testing and Troubleshooting, or has been successfully leak checked in accordance with paragraph 2.B. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A5053, dated October 30, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Incorporation by Reference

(f) The actions required by this AD must be done in accordance with Middle River Aircraft Systems CF6–80E1 Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 1, 2002.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6912 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–07–AD; Amendment 39–12687; AD 2002–06–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to replace the metered connector and oxygen tubing and related components in the rear seat bench. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to correct the potential for insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions. This condition could result in reduced occupant safety at the rear bench seat location.

DATES: This AD becomes effective on May 6, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 6, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a design problem, the flow of oxygen to each occupant on the rear seat bench is insufficient. The current configuration uses two-metered connectors, which restricts the flow of oxygen.

What Is the Potential Impact if FAA Took No Action?

If not corrected, insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions could occur. This condition could result in reduced occupant safety at the rear bench seat location.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 2, 2002 (67 FR 29). The NPRM proposed to require you to replace the two-metered connector and oxygen tubing with a system that incorporates a single-metered connector in the rear seat bench.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 5 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	Pilatus will provide free parts	$120	$600

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is "within the next 30 calendar days after the effective date of this AD".

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The oxygen flow on the rear bench seat is reduced through two metered connectors when only one reduction is necessary. Because these parts of poor design could have been installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 1,000 hours TIS. Therefore, we believe that 30 calendar days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–06–10 Pilatus Aircraft Ltd.: Amendment 39–12687; Docket No. 2001–CE–07–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers with rear bench seats (part number 525.22.12.016) installed, that are certificated in any category:

Model	Serial Nos.
PC–12 and PC–12/45	From 101 through 365

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the potential for insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions. This condition could result in reduced occupant safety at the rear bench seat location.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Remove the oxygen tubing and connector assembly, the oxygen tubing support bracket and grommet assembly, and the hose clamp (or FAA-approved equivalent parts) from the rear bench seat (part number 525.22.12.016). Replace these parts with parts of improved design as specified in the service bulletin (or FAA-approved equivalent parts).	Within the next 30 days after May 6, 2002 (the effective date of this AD), unless already accomplished.	Follow the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 35–002, dated December 19, 2000.

Actions	Compliance	Procedures
(2) Do not install any of the components referenced in paragraph (d)(1) of this AD unless they are of improved design as specified in the service bulletin (or FAA-approved equivalent parts).	As of May 6, 2002 (the effective date of this AD).	As specified in (Pilatus Aircraft Ltd., PC–12 Service Bulletin No. 35–002, dated December 19, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 35–002, dated December 19, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland, or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–001, dated December 28, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on May 6, 2002.

Issued in Kansas City, Missouri, on March 14, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6911 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–8071; 34–45601 35–27505; 39–2396; IC–25471; and IA–2021]

Approved Information Collections

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules concerning information collection requirements under the Paperwork Reduction Act to update the display of OMB control numbers associated with the Commission's collection of information. The display does not alter any Commission collection of information.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Michael E. Bartell, Associate Executive Director at U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, 202–942–8800.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is updating the information displayed at 17 CFR 200.800. This amendment sets forth control numbers assigned by the Office of Management and Budget to information collection requirements of the Commission as of the date of this release. The Commission finds that this amendment pertains to agency organization, procedure, or practice and is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring advance notice and opportunity for public comment prior to publication. In addition, the Commission finds good cause for immediate effectiveness upon publication in the **Federal Register**. Delayed effectiveness is unnecessary because this is a technical amendment and will not affect any rights or obligations of members of the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy.

Text of Amendment

For the reasons set forth in the Preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The title to Subpart N and Subpart N are revised to read as follows:

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose:* This subpart collects and displays the control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.* This subpart displays current OMB control numbers for those information collection requirements of the Commission that are rules and regulations and codified in 17 CFR either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Regulation S–X	PART 210	3235–0009

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Regulation S–B	PART 228	3235–0417
Regulation S–K	PART 229	3235–0071
Rule 154	230.154	3235–0495
Rule 155	230.155	3235–0549
Rule 236	230.236	3235–0095
Rule 237	230.237	3235–0528
Regulation A	230.251 thru 230.263	3235–0286
Regulation C	230.400 thru 230.494	3235–0074
Rule 425	230.425	3235–0521
Rule 477	230.477	3235–0550
Rule 489	230.489	3235–0411
Rule 498	230.498	3235–0488
Regulation D	230.501 thru 230.506	3235–0076
Regulation E	230.601 thru 230.610a	3235–0232
Rule 604	230.604	3235–0232
Rule 605	230.605	3235–0232
Rule 609	230.609	3235–0233
Rule 701	230.701	3235–0522
Regulation S	230.901 thru 230.905	3235–0357
Regulation S–T	Part 232	3235–0424
Form SB–1	239.9	3235–0423
Form SB–2	239.10	3235–0418
Form S–1	239.11	3235–0065
Form S–2	239.12	3235–0072
Form S–3	239.13	3235–0073
Form N–2	239.14	3235–0026
Form N–1A	239.15A	3235–0307
Form S–6	239.16	3235–0184
Form S–8	239.16b	3235–0066
Form N–3	239.17a	3235–0316
Form N–4	239.17b	3235–0316
Form S–11	239.18	3235–0067
Form N–14	239.23	3235–0336
Form N–5	239.24	3235–0169
Form S–4	239.25	3235–0324
Form F–1	239.31	3235–0258
Form F–2	239.32	3235–0257
Form F–3	239.33	3235–0256
Form F–4	239.34	3235–0325
Form F–6	239.36	3235–0292
Form F–7	239.37	3235–0383
Form F–8	239.38	3235–0378
Form F–9	239.39	3235–0377
Form F–10	239.40	3235–0380
Form F–80	239.41	3235–0404
Form F–X	239.42	3235–0379
Form F–N	239.43	3235–0411
Form ET	239.62	3235–0329
Form ID	239.63	3235–0328
Form SE	239.64	3235–0327
Form TH	239.65	3235–0425
Form 1–A	239.90	3235–0286
Form 2–A	239.91	3235–0286
Form 144	239.144	3235–0101
Form 1–E	239.200	3235–0232
Form CB	239.800	3235–0518
Rule 6a–1	240.6a–1	3235–0017
Rule 6a–3	240.6a–3	3235–0021
Rule 6a–4	240.6a–4	3235–0554
Rule 6h–1	240.6h–1	3235–0555
Rule 8c–1	240.8c–1	3235–0514
Rule 9b–1	240.9b–1	3235–0480
Rule 10a–1	240.10a–1	3235–0475
Rule 10b–10	240.10b–10	3235–0444
Rule 10b–17	240.10b–17	3235–0476
Rule 10b–18	240.10b–18	3235–0474
Rule 10A–1	240.10A–1	3235–0468
Rule 11a1–1(T)	240.11a1–1(T)	3235–0478
Rule 11Aa3–2	240.11Aa3–2	3235–0500
Rule 11Ab2–1	240.11Ab2–1	3235–0043
Rule 11Ac1–3	240.11Ac1–3	3235–0435
Rule 11Ac1–4	240.11Ac1–4	3235–0462

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Rule 11Ac1–5	240.11Ac1–5	3235–0542
Rule 11Ac1–6	240.11Ac1–6	3235–0541
Rule 11Ac1–6	240.11Ac1–6	3235–0541
Rule 11Ac1–7	240.11Ac1–7	3235–0543
Rule 12a–5	240.12a–5	3235–0079
Regulation 12B	240.12b–1 thru 240.12b–36	3235–0062
Rule 12d1–3	240.12d1–3	3235–0109
Rule 12d2–1	240.12d2–1	3235–0081
Rule 12d2–2	240.12d2–2	3235–0080
Rule 12f–1	240.12f–1	3235–0128
Rule 13a–16	240.13a–16	3235–0116
Regulation 13D/G	240.13d–1 thru 240.13d–7	3235–0145
Schedule 13D	240.13d–101	3235–0145
Schedule 13G	240.13d–102	3235–0145
Rule 13e–1	240.13e–1	3235–0305
Rule 13e–3	240.13e–3	3235–0007
Schedule 13E–3	240.13e–100	3235–0007
Schedule 13e–4F	240.13e–101	3235–0375
Regulation 14A	240.14a–1 thru 240.14a–12	3235–0059
Schedule 14A	240.14a–101	3235–0059
Regulation 14C	240.14c–1	3235–0057
Schedule 14C	240.14c–101	3235–0057
Regulation 14D	240.14d–1 thru 240.14d–9	3235–0102
Schedule TO	240.14d–100	3235–0515
Schedule 14D–1	240.14d–101	3235–0102
Schedule 14D–9	240.14d–101	3235–0102
Schedule 14D–1F	240.14d–102	3235–0376
Schedule 14D–9F	240.14d–103	3235–0382
Regulation 14E	240.14e–1 thru 240.14e–2	3235–0102
Rule 14f–1	240.14f–1	3235–0108
Rule 15a–4	240.15a–4	3235–0010
Rule 15a–6	240.15a–6	3235–0371
Rule 15b1–1	240.15b1–1	3235–0012
Rule 15b6–1(a)	240.15b6–1(a)	3235–0018
Rule 15c1–5	240.15c1–5	3235–0471
Rule 15c1–6	240.15c1–6	3235–0472
Rule 15c1–7	240.15c1–7	3235–0134
Rule 15c2–1	240.15c2–1	3235–0485
Rule 15c2–5	240.15c2–5	3235–0198
Rule 15c2–7	240.15c2–7	3235–0479
Rule 15c2–8	240.15c2–8	3235–0481
Rule 15c2–11	240.15c2–11	3235–0202
Rule 15c2–12	240.15c2–12	3235–0372
Rule 15c3–1	240.15c3–1	3235–0200
Rule 15c3–1(c)(13)	240.15c3–1(c)(13)	3235–0499
Appendix F to Rule 15c3–1	240.15c3–1f	3235–0496
Rule 15c3–3	240.15c3–3	3235–0078
Rule 15c3–4	240.15c3–4	3235–0497
Rule 15d–16	240.15d–16	3235–0116
Rule 15g–2	240.15g–2	3235–0434
Rule 15g–3	240.15g–3	3235–0392
Rule 15g–4	240.15g–4	3235–0393
Rule 15g–5	240.15g–5	3235–0394
Rule 15g–6	240.15g–6	3235–0395
Rule 15g–9	240.15g–9	3235–0385
Rule 15Aj–1	240.15Aj–1	3235–0044
Rule 15Ba2–1	240.15Ba2–1	3235–0083
Rule 15Ba2–5	240.15Ba2–5	3235–0088
Rule 15Bc3–1	240.15Bc3–1	3235–0087
Rule 17a–1	240.17a–1	3235–0208
Rule 17a–2	240.17a–2	3235–0201
Rule 17a–3	240.17a–3	3235–0033
Rule 17a–3(a)(16)	240.17a–3(a)(16)	3235–0508
Rule 17a–4	240.17a–4	3235–0279
Rule 17a–4(b)(10)	240.17a–4(b)(10)	3235–0506
Rule 17a–5	240.17a–5	3235–0123
Rule 17a–5(c)	240.17a–5(c)	3235–0199
Rule 17a–6	240.17a–6	3235–0489
Rule 17a–7	240.17a–7	3235–0131
Rule 17a–8	240.17a–8	3235–0092
Rule 17a–9T	240.17a–9T	3235–0524
Rule 17a–10	240.17a–10	3235–0122

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Rule 17a–11	240.17a–11	3235–0085
Rule 17a–12	240.17a–12	3235–0498
Rule 17a–13	240.17a–13	3235–0035
Rule 17a–19	240.17a–19	3235–0133
Rule 17a–22	240.17a–22	3235–0196
Rule 17a–25	240.17a–25	3235–0540
Rule 17f–1(b)	240.17f–1(b)	3235–0032
Rule 17f–1(c)	240.17f–1(c)	3235–0037
Rule 17f–1(g)	240.17f–1(g)	3235–0290
Rule 17f–2(a)	240.17f–2(a)	3235–0034
Rule 17f–2(c)	240.17f–2(c)	3235–0029
Rule 17f–2(d)	240.17f–2(d)	3235–0028
Rule 17f–2(e)	240.17f–2(e)	3235–0031
Rule 17f–5	240.17f–5	3235–0269
Rule 17h–1T	240.17h–1T	3235–0410
Rule 17h–2T	240.17h–2T	3235–0410
Rule 17Ab2–1	240.17Ab2–1(a)	3235–0195
Rule 17Ac2–1	240.17Ac2–1	3235–0084
Rule 17Ad–2(c), (d), and (h)	240.17Ad–2(c), (d) and (h)	3235–0130
Rule 17Ad–3(b)	240.17Ad–3(b)	3235–0473
Rule 17Ad–4 (b) and (c)	240.17Ad–4(b) and (c)	3235–0341
Rule 17Ad–6	240.17Ad–6	3235–0291
Rule 17Ad–7	240.17Ad–7	3235–0291
Rule 17Ad–10	240.17Ad–10	3235–0273
Rule 17Ad–11	240.17Ad–11	3235–0274
Rule 17Ad–13	240.17Ad–13	3235–0275
Rule 17Ad–15	240.17Ad–15	3235–0409
Rule 17Ad–16	240.17Ad–16	3235–0413
Rule 17Ad–17	240.17Ad–17	3235–0469
Rule 19b–1	240.19b–1	3235–0354
Rule 19b–4	240.19b–4	3235–0045
Rule 19b–4(e)	240.19b–4(e)	3235–0504
Rule 19b–5	240.19b–5	3235–0507
Rule 19b–7	240.19b–7	3235–0553
Rule 19d–1	240.19d–1(b) thru 240.19d–1(i)	3235–0206
Rule 19d–2	240.19d–2	3235–0205
Rule 19d–3	240.19d–3	3235–0204
Rule 19h–1	240.19h–1(a), (c) thru (e), and (g)	3235–0259
Rule 24b–1	240.24b–1	3235–0194
Rule 101	242.101	3235–0464
Rule 102	242.102	3235–0467
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Form 8–A	249.208a	3235–0056
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Form N–17F–1	274.219	3235–0359
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Dated: March 20, 2002.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7287 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–035]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Brightman Street Bridge, mile 1.8, across the Taunton River between Somerset and Fall River, Massachusetts. This deviation from the regulations, effective from 9 p.m. on April 5, 2002 through 4 p.m. on April 19, 2002, allows the bridge to remain in the closed position for vessel traffic to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from April 5, 2002 through April 19, 2002.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs at the bridge, replacement of the main floor beam, at the bridge.

This deviation to the operating regulations, effective from 9 p.m. on April 5, 2002 through 4 p.m. on April 19, 2002, allows the Brightman Street Bridge to remain in the closed position for vessel traffic. There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 19, 2002.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–7357 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–030]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the NJTRO HX Railroad Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey. This deviation from the regulations, effective from April 6, 2002 through April 28, 2002, allows the bridge to remain in the closed position on four weekends to facilitate scheduled maintenance repairs at the bridge.

DATES: This deviation is effective from April 6, 2002 through April 28, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The existing drawbridge operating regulations are listed at 33 CFR 117.723.

The owner of the bridge, the New Jersey Transit, requested a temporary deviation from the drawbridge operating regulations that govern their NJTRO HX Bridge, at mile 7.7, across the Hackensack River in Secaucus, New Jersey, to facilitate necessary structural repairs at the bridge.

This deviation to the operating regulations allows the NJTRO HX Bridge to remain in the closed position every weekend in April, from 6 a.m. on Saturday through 6 p.m. on Sunday. The effective dates are as follows: April 6–7, 13–14, 20–21, 27–28, 2002. The Coast Guard coordinated this closure with the mariners that normally use this waterway to help select the best effective dates this temporary deviation will be in effect.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 19, 2002.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–7358 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–004]

RIN 2115–AA97

Security Zone; Operation Native Atlas 2002, Waters Adjacent to Camp Pendleton, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to Camp Pendleton, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

In addition, the U.S. Navy will be installing 1260 feet of elevated causeway pier (ELCAS) at Red Beach, and conducting Offshore Petroleum Discharge System (OPDS) operations offshore from Red Beach. Both operations present a significant hazard to vessel's transiting within the zone.

DATES: This rule is effective from 12:01 a.m. (PDT) on March 22, 2002, to 11:59 p.m. (PDT) on April 15, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 02–004, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard recently issued a similar temporary final rule under docket COTP San Diego 02–001, and published that rule in the **Federal Register** on February 22, 2002 (67 FR 8197). Also on February 22, 2002, because the exercise was postponed, the Captain of the Port ceased enforcement of that security zone and announced that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

This rulemaking action was taken at the request of the United States Navy and is considered necessary to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. This temporary security zone is necessary for protection of the public from the hazards of upcoming Naval operations in support of Operation Native Atlas 2002 in the area and for the protection of the operations from compromise and interference.

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Due to the complex planning, national security reasons, and the coordination involved with Naval scheduling, final details for the Operation Native Atlas 2002 were not provided to the Coast Guard in time to draft and publish a NPRM or a final rule 30 days in advance of its effective date. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in, and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Background and Purpose

United States Navy officials have requested that the Captain of the Port, San Diego, California establish a temporary security zone in the area of Camp Pendleton, California. This request was made to improve security of Naval facilities and operations at this location and to protect the public from hazardous operations. Several hazardous or classified Naval operations, including activities related to Operation Native Atlas 2002 will be conducted near this location that are vital to national security and require protection of the public or protection of the operation from compromise and interference. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States.

This security zone is necessary to provide for the safety and security of the United States of America. This security zone, prohibiting all vessel traffic from entering, transiting or anchoring within the areas defined by the security zone, is necessary for the security and protection of national assets. U.S. Navy personnel and U.S. Coast Guard vessels will enforce this zone.

Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

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This security zone is established pursuant to the authority of The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to national security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Camp Pendleton, California. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lt Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.lD, this rule, which establishes a security zone, is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add new § 165.T11–036 to read as follows:

§ 165.T11–036 Security Zone: Waters Adjacent to Camp Pendleton, California

(a) *Location.* The following area is a security zone: All waters and shoreline areas within the following boundaries: A point on the shore at 33°–15′30″ N, 117°–26′14″– W (Point A); proceeding westward to 33°–15′24″ N, 117°–30′45″ W (Point B); then north westward to 33°–18′30″ N, 117°32′55″ W (Point C); then eastward to the shore at 33°–18′42″ N, 117°–29′00″ W (Point D); thence along the shoreline to the point of beginning.

(b) *Effective dates.* This security zone will be in effect from 12:01 a.m. (PDT) on March 22, 2002, to 11:59 p.m. (PST) on April 15, 2002. If the need for this security zone ends before the scheduled termination time and date, the Captain of the Port will cease enforcement of the security zones and will also announce that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary regulation, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary regulation. Mariners requesting permission to transit through the security zones must request authorization to do so from the Captain of the Port, who may be contacted at (619) 683–6495, or U.S. Navy Force Security Officer (FSO), who may be reached during normal working hours at (619) 437–9828. After normal working hours the FSO can be reached at (619) 437–9480.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: March 15, 2002.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–7355 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG 1999–6094]

RIN 2115–AF87

Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard removes a suspended provision, which would have required the public to report collisions of recreational vessels involving two or more vessels, regardless of the amount of damage to property. This removal streamlines reporting criteria and reduces paperwork burdens on the public, the States, and the Coast Guard, for accidents causing minor or cosmetic damage. The remaining provision, which requires the public to report damage to vessels and other property when it totals $2,000 or more or there is a complete loss of any vessel, is in effect as published.

DATES: Effective March 27, 2002.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG 1999–6094 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Bruce Schmidt, Project Manager, Office of Boating Safety, Program Management Division, Coast Guard, by e-mail at *bschmidt@comdt.uscg.mil* or by telephone at 202–267–0955.

If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org,* or the Internet Site for the Docket Management Facility, at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The National Association of State Boating Law Administrators (NASBLA) is a professional association whose members include officials of States, commonwealths, and provinces. These officials are responsible for administering and enforcing the boating laws of their jurisdictions. The Boating Accident Investigation, Reporting, and Analysis Committee (BAIRAC) is a subcommittee of NASBLA and is responsible for the reporting and analysis of accidents.

The Boating Law Administrators (BLAs) who serve on BAIRAC are experts in enforcement, education for boating safety, and investigation of boating accidents. Through their experience with and knowledge of various types of boat damage and subsequent repair costs, they strongly encouraged the Coast Guard to raise the threshold of property damage for reports of accidents involving recreational vessels to a level that reflects current prices of boats and costs of repair.

BAIRAC asked the Coast Guard to initiate a rulemaking that would change the threshold for reports of accidents involving only property damage from $500 to $2,000 and would amend the reportable conditions to include all accidents involving collisions of multiple vessels. While the Coast Guard concurred that a threshold of $2,000 for those accidents involving only property damage would enable States' accident investigators to focus on reports of safety-related damage and eliminate most of the reports of cosmetic damage, we needed to study the feasibility of requiring the reports of all multi-vessel accidents.

Data within the Boating Accident Report Database (BARD) for 1998 show that 1,718 reported multi-boat collisions involved only property damage. Of those 1,718, 1,002 involved property damage below the proposed threshold of $2,000. Taking a closer look at the data, we discovered that nearly 90% of those 1,002 involve property damage at or below a threshold of $1,500. We considered most of these more cosmetic than safety-related. So, recognizing the

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need to reduce the number of reports for minor or cosmetic damage, the need to reduce the administrative burden on the public and the States of reports for such damage, and the need for States' accident investigators to focus on safety-related damage, we did not mandate reports of all multi-boat collisions at that time.

After we published our Notice of Proposed Rulemaking (NPRM), we received five comments that urged us to include a provision that required reports of all multi-vessel collisions because most of these accidents are caused by boat operators who violate navigation rules. As first written, our Final Rule would have raised the reporting threshold to $2000, yet also have required that all multi-vessel accidents must be reported; however, shortly after the publication date, though before the effective date of the Rule, we received a comment that recommended that we suspend the provision to require reports of multi-vessel collisions. The commenter indicated that his State could not comply with the Rule because his State did not require such reports, nor could the legislature in his State meet before the effective date of the Rule. (All States currently require owners or operators to report accidents costing $500 or more; however, few States require them to report all accidents. To change this, each State's legislature would have to vote to require reports of all multi-vessel accidents.) While the portion of the Rule that raised the threshold went into effect as planned, we suspended the multi-vessel provision and requested comments. On the basis of the feedback we received from that Notice of Suspension, we are removing the suspended provision.

This Rule will raise the threshold of property damage for reports of accidents involving recreational vessels (including multi-vessel accidents) from the current level of $500 to $2000. This higher threshold will reduce the numbers of reports of accidents involving minor or cosmetic damage and reduce the burden of paperwork on the boating public, the States, and the Coast Guard itself.

Regulatory History

We published an NPRM [65 FR 38229 (June 20, 2000)]. In it, we proposed to raise the threshold of reporting accidents from $500 to $2000. To it, we received seventeen comments. Twelve of them supported raising the threshold of property damage to $2,000; five of those twelve also supported requiring the reporting of all accidents involving collisions of two or more vessels, regardless of the amount of property damage. The five not among the twelve opposed raising the threshold of property damage at all.

We decided to move forward with our plan to raise the reporting threshold to $2000. On the basis of comments submitted by NASBLA and BAIRAC, we also planned on requiring reports of all accidents involving collisions of two or more vessels, regardless of the amount of property damage, because boat operators who violate a navigation rule cause most of these accidents. We published a Final Rule to codify these plans [66 FR 21671 (May 1, 2001)].

Shortly after publication of the Final Rule, we received a comment that indicated that many States would be unable to comply with the requirement to report all multi-vessel accidents, because few States have such a requirement in their books, few States have statutory authority to require such reports, and many States' legislative calendars preclude compliance by the published effective date, July 2, 2001.

In response to this comment, we suspended the provision that required the reporting of all multi-vessel accidents, and we requested further comments [66 FR 33844 (June 26, 2001)]. We reopened the comment period to accommodate a request by NASBLA, so they could meet as a body and forward their official comment to us [66 FR 53754 (October 24, 2001)]. On the basis of the comments we received, we are removing the provision we suspended, which would have required the reporting of all multi-vessel accidents; and, though it is already in effect, we are finalizing the remainder of the rule: report damage to vessels and other property that totals $2,000 or more and report the complete loss of any vessel.

Discussion of Comments and Changes

We received a total of nine comments to our Partial Suspension of Rule; Request for Comments. One comment was submitted to this docket in error; another requested that we reopen the comment period; therefore, we analyzed a total of seven comments.

While all commenters were concerned with either safety, reporting efficiency, or both, their approaches to achieve these goals varied. Three commenters indicated that they do not favor removing 33 CFR 173.55(a)(3)(ii), that is, they prefer requiring reports on all multi-vessel accidents, regardless of cost. One of these three indicated willingness to compromise by keeping the reporting threshold for multi-vessel accidents at $500.

Two of the three comments in favor of requiring reports of all multi-vessel accidents, regardless of the amount of damage to property, came from State Boating Law Administrators (BLAs). One indicated that suspending the effective date for a year would be acceptable in giving the States time to gain statutory authority to require reports of multi-vessel accidents. The second was concerned that many multi-vessel accidents involving smaller boats would go unreported. The third thought that, without reports of these accidents, it would be difficult to determine whether a safety problem exists. After thoughtfully considering the three comments, the Coast Guard decided that the prospect of all States' getting statutory authority to uniformly require reports of multi-vessel accidents is not realistic either from a logistical or from a legislative perspective.

Two BLA commenters indicated that they do favor removing the provision, because their States would not have the statutory authority to require reports of all multi-vessel accidents. These two indicated that changing their States' laws to eliminate the value of property damage for multi-vessel accidents would be difficult and time-consuming. They recommend keeping the reporting threshold for multi-vessel accidents at $500 since all States maintain at least a $500 reporting threshold and, therefore, legislation would be unnecessary for reporting multi-vessel accidents at that level. After thoughtfully considering these two comments, the Coast Guard decided that a uniform threshold of $2,000 for reports of property damage that includes multi-vessel accidents would be better understood by those individuals required to file accident reports.

Another commenter favored removing the provision out of concern for our workload.

We agree that the requirement to report multi-vessel accidents would create an undue burden for those required to process all reports of multi-vessel accidents in each State.

NASBLA wrote to the docket and requested that we reopen the comment period so they could discuss this rulemaking at their next scheduled meeting. We did to accommodate their request. NASBLA (whose subcommittee, BAIRAC, had recommended that the Coast Guard raise the reporting threshold in the first place) indicated that a majority of their members voted to recommend removing the provision and to uniformly report all accidents with $2,000 or more in property damage including two-vessel collisions. On the basis of the comments we received, especially that of NASBLA, which represents boating authorities of all 50 States and the U.S. Territories, we are removing the provision that requires all multi-vessel collisions to be reported. Therefore, as previously published in the Final Rule, regardless of whether multiple vessels are involved, an accident report is required only when damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel.

While the threshold of $2,000 for reports of accidents with only property damage now becomes the minimum set by Federal rule, States remain free to impose stricter requirements. Thus, a State could require reports of accidents involving collisions of multiple vessels, even if they resulted only in property damage below the threshold of $2,000.

Also note that, if, after an accident, a vessel valued at less than $2000 is a complete loss, that too must be reported. The Coast Guard will continue to collect, analyze, and report data so that, together with the States, industry, and public, we can enhance the safety of recreational boating.

List of Subjects in 33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 173 as follows:

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

Subpart C—Casualty and Accident Reporting

1. The citation of authority for part 173 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

§ 173.55 [Amended]

2. Revise § 173.55(a)(3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(3) Damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel;

* * * * *

Dated: March 20, 2002.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 02–7235 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–2000–8589]

RIN 2115–AG04

Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule; notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing the Final Rule on the wearing of PFDs by certain children aboard recreational vessels. It needs to reconsider the extent, if any, to which its rule should supersede States' rules that are compatible in most respects, but that are divergent in some. It hopes to save children's lives on the water and yet accord our system of federalism "full faith and credit."

DATES: This final rule amending 33 CFR part 175 published on February 27, 2002 [67 FR 8881] is withdrawn as of March 27, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–8589 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Carl Perry, Coast Guard, telephone: 202–267–0979. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 1, 2001, we published in the **Federal Register** [66 FR 21717] a notice of proposed rulemaking (NPRM) entitled, "Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels". We received 46 letters commenting on the proposed rule. No public hearing was requested and none was held.

The NPRM followed two published notices of request for comments, both titled "Recreational Boating Safety-Federal Requirements for Wearing Personal Flotation Devices," under the docket number CGD 97–059. The first appeared in the **Federal Register** on September 25, 1997 [62 FR 50280]; the second, which extended the comment period, on March 20, 1998 [63 FR 13586]. The comments received in response to these notices were discussed in the NPRM.

After summarizing the comments received in response to the NPRM, we consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding the results. NBSAC recommended that we proceed to publish a final rule, as proposed.

We published a final rule in the **Federal Register** on February 27, 2002 [67 FR 8881] establishing two Federal requirements. The first was for children under 13 aboard recreational vessels to wear PFDs, while the children are on deck and their vessels are underway. The second adopted any age requirement enacted or adopted by a State age requirement as the Federal age requirement, within the States. The rule did not formally address the various limits such as those related to length of vessel, by which some States qualified the applicability of their age requirements. We did not consider these differences between Federal and State requirements, according to vessel length, to be a problem. The rule would have been effective on March 29, 2002.

Withdrawal

After the rule was published, a State's Boating Law Administrator alerted us to potential enforcement problems resulting from these differences. At the same time, as we prepared guidance for our boarding officers on the fine points of enforcement, we observed the same potential enforcement problems with the differences. We decided that we needed to withdraw the Final Rule as it stood and fix it.

Therefore, we are withdrawing the final rule [67 FR 8881] and are revising some of its provisions. We are determining how to resolve the differences between Federal and State requirements and will notify the public and publish our decision in the **Federal Register**.

Again, we need to reconsider the extent, if any, to which our rule should supersede States' rules that are compatible in most respects but that are divergent in some, such as vessel length. We will do this in candor because we are dedicated to maintaining the public trust.

Meanwhile, we ask parents to ensure that children under 13 wear Coast

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Guard approved lifejackets while the children are on deck and their vessels are under way. Children's safety is the ultimate objective and the delay of the rule should not stand in the way of sound judgment.

Dated: March 20 2002.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 02–7236 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[Alaska 001; FRL–7158–2]

Outer Continental Shelf Air Regulations; Consistency Update for Alaska

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: EPA is updating the Outer Continental Shelf ("OCS") Air Regulations as they apply to OCS sources off the coast of Alaska. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is the designated COA. The intended effect of incorporating the State of Alaska requirements applicable to OCS sources in effect as of July 2, 2000, is to regulate emissions from OCS sources consistent with the requirements onshore.

EFFECTIVE DATE: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 26, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle WA 98101, Telephone: (206) 553–4150.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2001, the EPA published a direct final rule (66 FR 12982), and an accompanying proposed rule (66 FR 12986) updating the OCS Air Regulations as they apply to OCS sources off the coast of Alaska. In the direct final rule, EPA indicated that if adverse comment was received, EPA would publish a withdrawal of the direct final rule in the **Federal Register**. On March 9, 2001, EPA received adverse comments from the International Association of Drilling Contractors (Association). Accordingly on October 23, 2001, EPA removed the amendment made by that final rule due to the adverse public comments received and reinstated the previous regulatory text (66 FR 53533). In this action, EPA is summarizing and responding to the comments while also finalizing the amendments as previously proposed on March 1, 2001.

Response to Comments

On March 1, 2001, the EPA proposed to incorporate the State of Alaska requirements that are applicable to OCS sources, July 2, 2000, into 40 CFR part 55. The State of Alaska requirements applicable to OCS sources included the State of Alaska's revised marine vessel visible emission standards, 18 AAC 50.070, effective June 21, 1998. The standards limit visible emissions from marine vessels within three miles of the Alaska coastline. Note, the State of Alaska's seaward boundary extends out three miles from its coastline. Alaska's jurisdiction does not extend beyond this three mile limit. When EPA proposed to incorporate into 40 CFR part 55 the marine vessel emission standards in the State of Alaska requirements applicable to OCS sources, EPA intended for the standards to apply outside the seaward boundary of the State of Alaska despite the fact that 18 AAC 50.070, on its face, applies only to marine vessel visible emissions within Alaska's seaward boundary. 18 AAC 50.070, provides in part that "visible emissions, excluding condensed water vapor, may not reduce visibility through the exhaust effluent of a marine vessel by more than 20 percent. * * *"

EPA received adverse comments from the Association regarding the applicability of the marine vessel visible emission standards, 18 AAC 50.070, to activity on the OCS. The Association believes that 18 AAC 50.070 should be excluded from 40 CFR part 55 because the emission standards, as written, apply only to vessels within three miles of the Alaska coastline. The Association also commented that the 18 AAC 50.070 should not be incorporated into 40 CFR part 55 for the same reasons that 18 AAC 50.300(g) and (h)(11) are excluded. In response to the Association's comments, EPA is providing the rationale to support the incorporation of 18 AAC 50.070 into 40 CFR part 55.

Pursuant to section 328(a)(1) of the Clean Air Act, EPA shall establish requirements to control air pollution from OCS sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act. Such requirements shall be the same as would be applicable if the source were located in the COA. The marine vessel visible emission standards are rationally related to the attainment and maintenance of Federal and State ambient air quality standards for particulate matter and part C of title I of the Act. Visible emissions from marine vessels consist, in part, of particulate matter. Limiting these visible emissions also limits particulate matter emissions, thus assisting in the protection of the particulate matter ambient air quality standards and the prevention of significant air quality deterioration. The marine vessel visible emission standards are not designed expressly to prevent exploration and development of the OCS as evidenced by the fact that the same standards apply to exploration and development projects in Alaskan waters. It is appropriate that the marine vessel visible emission standards are applied to OCS sources because marine vessels are capable of generating visible emissions and the vessels operate on the OCS; thus, the vessels should be subject to requirements that are "the same as" the requirements that apply within three miles of the Alaska coastline. In response to the second part of the Association's comments, the visible emission requirements in 18 AAC 50.070 are very different from the requirements of 18 AAC 50.300(g) and (h)(11). By their terms, 18 AAC 50.300(g) and (h)(11) apply only to Anchorage. Thus, contrary to the Association's comment, the rationale for excluding 18 AAC 50.300(g) and (h)(11) is not applicable to 18 AAC 50.070 and provides no basis for excluding 18 AAC 50.070 from 40 CFR part 55. Lastly, the marine vessel emission standards are not arbitrary or capricious and EPA's incorporation of these standards into 40 CFR part 55 is not arbitrary or capricious as evidenced by the reasoning provided above.

EPA has evaluated the COA requirements to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

EPA Action

In this document, EPA takes final action under section 328(a)(1) of the Act, 42 U.S.C. 7627, to incorporate the State of Alaska requirements applicable to OCS sources, July 2, 2000, into 40 CFR part 55. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act)," signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective April 26, 2002.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 6, 2002.

L. John Iani,

Regional Administrator, Region 10.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) State of Alaska Requirements Applicable to OCS Sources, July 2, 2000.

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading "Alaska" to read as follows:

APPENDIX A TO 40 CFR PART 55—LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE

* * * * *

Alaska

(a) * * *

(1) The following State of Alaska requirements are applicable to OCS Sources, July 2, 2000. Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter. (effective 1/18/1997)
18 AAC 50.010. Ambient Air Quality Standards. (effective 6/21/1998)
18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions. (effective 1/18/1997)
Table 1. Air Quality Classifications
18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations. (effective 6/21/1998)
Table 2. Baseline Dates
Table 3. Maximum Allowable Increases
18 AAC 50.025. Visibility and Other Special Protection Areas. (effective 1/18/1997)
(a) [untitled]
18 AAC 50.030. State Air Quality Control Plan. (effective 9/04/1998)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference. (effective 7/02/2000)
18 AAC 50.045. Prohibitions. (effective 1/18/1997)
18 AAC 50.050. Incinerator Emission Standards. (effective 1/18/1997)
Table 4. Particulate Matter Standards for Incinerators
18 AAC 50.055. Industrial Processes and Fuel-burning Equipment. (effective 11/04/1999)
18 AAC 50.065. Open Burning. (effective 1/18/1997)
(a) General Requirements.
(b) Black Smoke Prohibited.
(c) Toxic and Acid Gases and Particulate Matter Prohibited.
(d) Adverse Effects Prohibited.
(e) Air Quality Advisory.
(i) Firefighter Training: Fuel Burning.
(j) Public Notice.
(k) Complaints.
18 AAC 50.070. Marine Vessel Visible Emission Standards. (effective 6/21/1998)
18 AAC 50.080. Ice Fog Standards. (effective 1/18/1997)
18 AAC 50.100. Nonroad engines. (effective 1/18/1997)
18 AAC 50.110. Air Pollution Prohibited. (effective 5/26/1972)

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18 AAC 50.201. Ambient Air Quality Investigation. (effective 1/18/1997)
18 AAC 50.205. Certification. (effective 1/18/1997)
18 AAC 50.210. Potential to Emit. (effective 1/18/1997)
18 AAC 50.215. Ambient Air Quality Analysis Methods. (effective 6/21/1998)
18 AAC 50.220. Enforceable Test Methods. (effective 1/18/1997)
18 AAC 50.225. Owner-requested Limits. (effective 6/21/1998)
18 AAC 50.230. Preapproved Limits. (effective 6/21/1998)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions. (effective 6/14/1998)
18 AAC 50.240. Excess Emissions. (effective 1/18/1997)

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(a) Application Required.
(b) Operating Permit Coordination.
(c) General Information.
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(e) Excluded Ambient Air Monitoring.
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(g) Demonstration Required Near A Nonattainment Area.
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(j) Nonattainment Air Contaminant Reductions.
(k) Revising Permit Terms.
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18 AAC 50.320. Construction Permits: Content and Duration. (effective 1/18/1997)
18 AAC 50.325. Operating Permits: Classifications. (effective 6/21/1998)
18 AAC 50.330. Operating Permits: Exemptions. (effective 1/18/1997)
18 AAC 50.335. Operating Permits: Application. (effective 6/21/1998)
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(c) General Emission Information.
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(l) Permit Shield.
(m) Supporting Documentation.
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18 AAC 50.340. Operating Permits: Review and Issuance. (effective 1/18/1997)
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18 AAC 50.341. Operating Permits: Reopenings. (paragraphs a, b, c, f, and g)(effective 6/14/1998)
18 AAC 50.345. Operating Permits: Standard Conditions. (effective 6/21/1998)
18 AAC 50.350. Operating Permits: Content. (effective 6/21/1998)
(a) Purpose of Section
(b) Standard Requirements.
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(d) Source-Specific Permit Requirements.
(e) Facility-Wide Permit Requirements.
(f) Other Requirements.
(g) Monitoring Requirements.
(h) Records.
(i) Reporting Requirements.
(j) Compliance Certification.
(k) Compliance Plan and Schedule.
(l) Permit Shield.
(m) Insignificant Sources.
18 AAC 50.355. Changes to a Permitted Facility. (effective 1/18/1997)
18 AAC 50.360. Facility Changes that Violate a Permit Condition. (effective 1/18/1997)
18 AAC 50.365. Facility Changes that do not Violate a Permit Condition. (effective 6/14/1998)
18 AAC 50.370. Administrative Revisions. (effective 6/14/1998)
18 AAC 50.375. Minor and Significant Permit Revisions. (effective 6/21/1998)
18 AAC 50.380. General Operating Permits. (effective 6/14/1998)
18 AAC 50.385. Permit-by-rule for Certain Small Storage Tanks. (effective 6/21/1998)

Article 5. User Fees

18 AAC 50.400. Permit Administration Fees. (effective 6/21/1998)
18 AAC 50.410. Emission Fees. (effective 1/18/1997)
18 AAC 50.420. Billing Procedures. (effective 1/18/1997)

Article 9. General Provisions

18 AAC 50.910. Establishing Level of Actual Emissions. (effective 1/18/1997)
18 AAC 50.990. Definitions. (effective 1/01/2000)

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[FR Doc. 02–6612 Filed 3–26–02; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301225; FRL–6829–3]

RIN 2070–AB78

Acetamiprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues ofacetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine in or on citrus dried pulp, citrus fruit group, cotton gin byproducts, cotton undelinted seed, grape, fruiting vegetable group, leafy brassica vegetable group, leafy vegetable (except brassica) group, pome fruit group, and tomato paste; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on fat, meat, and meat byproducts of cattle, hog, horse, goat, and sheep; milk; poultry eggs,fat, liver, and meat. Aventis CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 27, 2002. Objections and requests for hearings, identified by docket control number OPP–301225, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may besubmitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Akiva Abramovitch, Registration Division (7505C), Office of Pesticide Programs, EnvironmentalProtection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8328; e-mail address: abramovitch.akiva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301225. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 30, 2001 (66 FR 29213)(FRL–6782–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F06082) by Aventis CropScience (formerly Rhone-Poulenc Ag Company), P.O. Box 12014, #2 T.W. Alexander Drive, Research Triangle Park, NC 207709. This notice included a summary of the petition prepared by Aventis CropScience, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on brassica (cole crops) at 1.2 parts per million (ppm), canola seed and mustard seed at 0.01 ppm, citrus at 0.5 ppm, cottonseed at 0.06 ppm, fruiting vegetables at 0.2 ppm, grapes at 0.2 ppm, leafy vegetables at 3.0 ppm, and pome fruits at 0.70 ppm. The Agency will not address the canola seed and mustard seed tolerances at this time.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that" there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]- N2-cyano-N1-methylacetamidine in or on citrus fruit group at 0.50 ppm, citrus dried pulp and leafy brassica vegetable group at 1.20 ppm each, cotton gin byproducts at 20.0 ppm, cotton undelinted seed at 0.60 ppm, leafy vegetable group (except brassica) at 3.0 ppm, fruiting vegetable group and grape at 0.20 ppm each, pome fruit group at 1.0 ppm, and tomato paste at 0.40 ppm; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on meat and fat of cattle, hog, horse, goat, and sheep at 0.10 ppm each; meat byproducts of cattle, hog, horse, goat, and sheep at 0.20 ppm each; milk at 0.10 ppm; poultry eggs, meat and fat at 0.010 ppm each; and poultry liver at 0.050 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by acetamiprid are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	13–Week Feeding - Rat	NOAEL: 12.4/14.6 mg/kg/day - Male/Female (M/F) LOAEL: 50.8/56.0 mg/kg/day (M/F) based on decreased Body Weight (BW), BW gain and food consumption.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	13–Week Feeding - Mouse	NOAEL: 106.1/129.4 mg/kg/day (M/F) LOAEL: 211.1/249.1 mg/kg/day (M/F) based on reduced BW and BW gain, decreased glucose and cholesterol levels, reduced absolute organ weights.
870.3150	90–Day oral toxicity in nonrodents	NOAEL: 13/14 mg/kg/day (M/F) LOAEL: 32 mg/kg/day based on reduced BW gain in both sexes.
870.3200	21–Day dermal toxicity - rabbit	NOAEL: 1,000 mg/kg/day - Highest Dose Tested (HDT) LOAEL: >1,000 mg/kg/day
870.3700	Prenatal developmental in rodents	Maternal NOAEL: 16 mg/kg/day Maternal LOAEL: 50 mg/kg/day based on reduced BW and BW gain and foodconsumption, increased liver weights. Developmental NOAEL: 16 mg/kg/day Developmental LOAEL: 50 mg/kg/day based on increased incidence of shortening of the 13th rib.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL: 15 mg/kg/day Maternal LOAEL: 30mg/kg/day based on BW loss and decreased food consumption. Developmental NOAEL: 30 mg/kg/day (HDT) Developmental LOAEL: > 30 mg/kg/day.
870.3800	Reproduction and fertility effects	Parental systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Parental systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) based on decreased BW, BW gain and food consumption. Offspring systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Offspring systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) based on reductions in pup weight, litter size, viability and weaning indices; delay in age to attain preputial separation and vaginal opening. Reproductive NOAEL: 17.9/21.7 mg/kg/day (M/F) Reproductive LOAEL: 51.0/60.1 mg/kg/day (M/F) based on reductions in litter weights and individual pup weights on day of delivery.
870.4100	Chronic toxicity dogs	NOAEL: 20/21 mg/kg/day (M/F) LOAEL: 55/61 mg/kg/day (M/F) based on initial BW loss and overall reduction in BW gain.
870.4100/870.4200	Chronic toxicity/Carcinogenicity - rats	NOAEL: 7.1/8.8 mg/kg/day (M/F) LOAEL: 17.5/22.6 mg/kg/day (M/F) based on decreases in mean BW and BW gain (F) and hepatocellular vacuolation (M) Evidence of treatment-related increase in mammary tumors.
870.4300	Carcinogenicity mice	NOAEL: 20.3/75.9 mg/kg/day (M/F) LOAEL: 65.6/214.6 mg/kg/day (M/F) based on decreased BW and BW gain andamyloidosis in numerous organs (M) and decreased BW and BW gain (F). Not oncogenic under conditions of study.
870.5100	Reverse gene mutation assay	*Salmonella typhimurium/E. coli* - Not mutagenic under the conditions of the study.
870.5300	Mammalian cells in cultureForward gene mutation assay - CHO cells	Not mutagenic under the conditions of the study.
870.5375	*In vitro* mammalian chromosomal aberrations - CHO cells	Acetamiprid is a clastogen under the conditions of the study.
870.5385	*In vivo* mammalian chromosome aberrations - rat bone marrow	Acetamiprid did not induce a significant increase in chromosome aberrations in bone marrow cells when compared to the vehicle control group.
870.5395	*In vivo* mammalian cytogenetics - micronucleus assay in mice	Acetamiprid is not a clastogen in the mouse bone marrow micronucleus test.
870.5550	UDS assay in primary rat hepatocytes/ mammalian cell culture	Acetamiprid tested negatively for UDS in mammalian hepatocytes *in vivo*.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity - rat	NOAEL: 10 mg/kg LOAEL: 30 mg/kg based on reduction in locomotor activity.
870.6200	Subchronic neurotoxicity - rat	NOAEL: 14.8/16.3 mg/kg/day (M/F) LOAEL: 59.7/67.6 mg/kg/day (M/F) based on reductions in BW, BW gain, foodconsumption and food efficiency.
N/A	28–day feeding - dog	NOAEL: 16.7/19.1 mg/kg/day (M/F) LOAEL: 28.0/35.8 mg/kg/day based on reduced BW gain.
870.7485	Metabolism - mouse, rat, rabbit Special Study	Male mice, rats or rabbits were administered single doses of acetamiprid by gavage, intraperitoneal injection (i.p.) or intravenous injection (i.v.) up to 60 mg/kg. The animals were assessed for a variety of neurobehavioral parameters. In vitro experiments were also done using isolated ileum sections from guinea pigs to assess contractile responses in the absence and presence of agonists (acetylcholine, histamine diphosphate, barium chloride and nicotine tartrate). Acetamiprid was also assessed via i.v. in rabbits for effects on respiratory rate, heart rate and blood pressure; via gavage in mice for effects on gastrointestinal motility; and via i.p. in rats for effects on water and electrolyte balance in urine, and blood coagulation, hemolytic potential and plasma cholinesterase activity. Based on a number of neuromuscular, behavioral and physiological effects of acetamiprid in male mice, under the conditions of this study, a overall NOAEL of 10 mg/kg (threshold) and LOAEL of 20 mg/kg could be estimated for a single dose by various exposure routes.
870.7485	Metabolism and pharmacokinetics - rat	Extensively and rapidly metabolized. Metabolites 79–86% of administered dose. Profiles similar for males and females for both oral and intravenous dosing. Thirty-seven percent of dose recovered in urine and feces as unchanged test article. Urinary and fecal metabolites from 15–day repeat dose experiment only showed minor differences from single-dose test. Initial Phase I biotransformation: demethylation of parent. 6-chloronicotinicacid most prevalent metabolite. Phase II metabolism shown by increase in glycine conjugate.
870.7600	Dermal absorption	The majority of the dose was washed off with the percent increasing with dose. Skin residue was the next largest portion of the dose with the percent decreasing with dose. In neither case was there evidence of an exposure related pattern. Absorption was small and increased with duration of expure. Since there are no data to demonstrate that the residues remaining on the skin do not enter the animal, then as a conservative estimate of dermal absorption, residues remaining on the skin will be added to the highest dermal absorption value. The potential total absorption at 24 hours could be approximately 30%.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from thetoxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for acetamiprid used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACETAMIPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietarygeneral population including infants and children	NOAEL = 10 mg/kg UF = 100 Acute RfD = 0.10 mg/kg/day	FQPA SF = 1 aPAD = 0.10 mg/kg/day	Acute mammalian neurotoxicity study in the rat LOAEL = 30 mg/kg based on reduction in locomotor activity in males.
Chronic Dietary all populations	NOAEL= 7.1 mg/kg/day UF = 100 Chronic RfD = 0.07 mg/kg/day	FQPA SF = 3 cPAD = 0.023 mg/kg/day	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BW gain (females) and hepatocellular vacuolation (males).
Short- and Intermediate-Term Incidental Oral (1 to 30 days and 1 month to 6 months) (Residential)	NOAEL= 15 mg/kg/day	LOC for MOE = 300 (Residential)	Co-critical studies: subchronic oral (rat); subchronic neurotoxicity (rat) developmental toxicity (rat); LOAEL = 50 mg/kg/day based on reductions in BW, BW gain and food consumption.
Short- and Intermediate-TermDermal (1 to 30 days; and 1 month to 6 months) (Residential)	oral study NOAEL= 17.9 mg/kg/day (dermal absorption rate = 30%	LOC for MOE = 100 (Occupational), 300 (Residential)	2-generation reproduction study (rat) LOAEL = 51.0 mg/kg/day based on reductions in pup weights in both generations, reductions in litter size and viability and weaning indices among F_2 offspring, significant delays in age to attain vaginal opening and preputial separation.
Long-Term Dermal (6 months to lifetime) (Residential)	oral study NOAEL= 7.1 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Occupational), 300 (Residential)	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BWgain (females) and hepatocellular vacuolation (males).
Short- and Intermediate-Term Inhalation (1 to 30 days and 1 month to 6 months)(Residential)	oral study NOAEL= 17.9 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational), 300 (Residential)	2-generation reproduction study (rat) LOAEL = 51.0 mg/kg/day based on reductions in pup weights in both generations, reductions in litter size and viability and weaning indices among F_2 offspring, significant delays in age to attain vaginal opening and preputial separation.
Long-Term Inhalation (6 months to lifetime) (Residential)	oral study NOAEL= 7.1 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational), 300 (Residential)	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BWgain (females) and hepatocellular vacuolation (males).
Cancer (oral, dermal, inhalation) - not likely to be carcinogenic.			

*The reference to the FQPA Safety Factor refers to any additional safety factor that is retained due to concerns unique to the FQPA. The PAD (Population-adjusted Dose) incorporates the FQPA Safety Factor into the dose for use in risk assessment: PAD = RfD/FQPA SF.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been established for the residues of acetamiprid, in or on raw agricultural commodities and no tolerances have been established for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on meat, milk, poultry and egg commodities. Risk assessments were conducted by EPA to assess dietary exposures from acetamiprid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The assessment assumed that 100% of the crops listed on the proposed label were treated and that crops listed on the label and livestock had residues of concern at the tolerance level. For processed commodities without a proposed tolerance, the analysis used the default processing factors provided with the model. A Tier 1 analysis results in highly conservative estimates of exposure and risk. Consideration of processing factors, anticipated residues in foods at the time of consumption, and percent of crop treated would result in

lower exposure and risk estimates than those presented here. Even without such refinement, the acute dietary risk estimates are below the Agency's level of concern [i.e., <100% of the population-adjusted dose (PAD)] for all population subgroups. Dietary (food only) exposure estimates were greatest for the population subgroup composed of children ages 1–6 years old. Acute exposure is estimated to be 0.039606 mg/kg (95th percentile of exposure), which is equal to 40% of the acute population-adjusted dose (aPAD). The results are summarized in the accute dietary exposureportion of Table 3.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The assessment assumed that 100% of the crops listed on the proposed label were treated and that crops listed on the label and livestock had residues of concern at the tolerance level. For processed commodities without a proposed tolerance, the analysis used the default processing factors provided with the model. A Tier 1 analysis results in highly conservative estimates of exposure and risk. Consideration of processing factors, anticipated residues in foods at the time of consumption, and percent of crop treated would result in lower exposure and risk estimates than those presented here. Even without such refinement the chronic dietary risk estimates are below the Agency's level of concern [i.e., <100% of the population-adjusted dose (PAD)] for all population subgroups. Chronic exposure is estimated to be 0.014687 mg/kg/day, which is equal to 64% of the cPAD. Although there is the potential for incidental ingestion of pesticide residues and soil from treated vegetables and foliage in home gardens via hand-to-mouth transfer, incidental oral exposure was not quantitatively assessed. Toddlers are not expected to spend a significant amount of time in a home garden and any resulting incidental oral exposures would be minimal and not quantifiable. Therefore, the Agency does not believe that incidental oral exposure from the requested homeowner uses will result in significant incidental oral exposures to children. The results are summarized in the chronic exposure portion of Table 3.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE AND CHRONIC EXPOSURE TO ACETAMIPRID

Population Subgroup	Acute		Chronic	
	95th percentile Exposure mg/kg	%aPAD	Exposure mg/kg/day	%cPAD
U.S. Population (total)	0.016921	17	0.005395	24
All Infants (<1 year old)	0.038317	38	0.010261	45
Children 1–6 years old	0.039606	40	0.014687	64
Children 7–12 years old	0.022084	22	0.008072	35
Females 13–50	0.011451	11	0.003970	17
Males 13–19	0.011627	12	0.004460	19
Males 20+ years	0.009624	10	0.003673	16
Seniors 55+	0.010242	10	0.004005	17

[1] %aPAD and %cPAD are exposures presented as percentages ofthe acute and chronic population-adjusted doses, respectively. For acetamiprid, the aPAD = 0.1 mg/kg; the cPAD = 0.023 mg/kg/day.

iii. *Cancer.* The Agency classified acetamiprid into the category not likely to be carcinogenic to humans based on the absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the historical control data from the same lab, it was within the range of values from the supplier.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for acetamiprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of acetamiprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to acetamiprid they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of acetamiprid for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 0.0008 ppb for ground water. The EECs for chronic exposures are estimated to be 4.0 ppb for surface water and 0.0008 ppb for ground water.

3. *From non-dietary exposure.* The term "residentialexposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Acetamiprid is proposed with this notice to be registered for use on the following residential non-dietary sites: ornamentals, flowers, vegetable gardens, and fruit trees. The risk assessment showed the following: for residential applicators, total MOEs for short- and intermediate-term residential dermal and inhalation exposures range from 1.2×10^5 to 6×10^5. For post-application activities, short- and intermediate-term MOEs range from 1.8×10^4 to $1.8\ 10^5$ for adults and from 2.3×10^4 to 2.2×10^5 for youth ages 10–12 years. The residential uses for acetamiprid are not expected to result in long-term exposures.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity.

EEPA does not have, at this time, available data to determine whether acetamiprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, acetamiprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that acetamiprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is noquantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental studies. In the rat, an increase in the incidence of shortening of the 13th rib was observed in fetuses at the same LOAEL as the dams, which exhibited reduced mean body weight, body weight gain and food consumption and increased liver weights. No developmental toxicity was observed in the rabbit at dose levels that induced effects in the does: body weight loss and decreased food consumption. In the multi-generation reproduction study, qualitative evidence of increased susceptibility of rat pups is observed. The parental and offspring systemic NOAELs are 17.9/21.7 (M/F) mg/kg/day and the offspring/parental systemic LOAELs are 51.0/60.1 mg/kg/day based on a decrease in mean body weight, body weight gain and food consumption in the parents and significant reductions in pup weights in both generations, reductions in litter size, and viability and weaning indices among F_2 offspring as well as significant delays in the age to attain vaginal opening and preputial separation in the offspring. The offspring effects are considered to be more severe than the parental effects.

3. *Conclusion.* There is a complete toxicity data base for acetamiprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency FQPA Safety Factor Committee recommended that the FQPA safety factor be reduced to 3x in assessing the risk posed by this chemical. The Committee determined that the safety factor is necessary when assessing the risk posed by acetamiprid because there is qualitative evidence of increased susceptibility following prenatal/postnatal exposure to acetamiprid in the 2-generation reproduction study in rats. However, the Committee concluded that the safety factor could be reduced to 3x for acetamidprid because the toxicology database is complete; there is no quantitative or qualitative evidence of increased susceptibility following *in utero* exposure of rat and rabbit fetuses; the dietary (food and water) and residential exposure assessments will not underestimate the potential exposures for infants, children, and/or women of childbearing age; and the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study and a safety factor. The Committee recommended that the safety factor be required for all population subgroups when assessing chronic dietary exposures as well as when assessing residential short-, intermediate-, and long-term exposure durations to address the concern for the effects seen following prenatal/postnatal exposure to acetamiprid in the 2-generation reproduction study in rats; the FQPA Safety Factor can be removed (i.e., reduced to 1x) when assessing acute dietary exposure.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates drinking water level of concerns (DWLOCs) which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide from food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the population adjusted dose (PAD)) is available for

exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of aggregate risk assessment scenario: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to acetamiprid will occupy 17% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 38% of the aPAD for all infants (<1 year old) and 40% of the aPAD for children ages 1–6 years. In addition, there is potential for acute dietary exposure to acetamiprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ACETAMIPRID

Population Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppd)[a]
U.S. Population	0.10	17	0.0008	17	2,900
All Infants (<1 year old)	0.10	38	0.0008	17	620
Children 1–6 years	0.10	40	0.0008	17	600
Children 7–12 years	0.10	22	0.0008	17	780
Females 13–50 years	0.10	11	0.0008	17	2,700
Males 13–19 years	0.10	12	0.0008	17	3,100
Males 20+ years	0.10	10	0.0008	17	3,200
Seniors (55+ years)	0.10	10	0.0008	17	3,100

[a] Drinking Water Level of Comparison = aPAD-Acute DietaryExposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acetamiprid from food will utilize 24% of the cPAD for the U.S. population, 45% of the cPAD for all infants (< 1 year old) and 64% of the cPAD for children ages 1–6 years. Based on the use pattern, chronic residential exposure to residues of acetamiprid is not expected. In addition, there is potential for chronic dietary exposure to acetamiprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppd)[a]
U.S. Population	0.023	24	0.0008	4	620
All Infants (<1 year old)	0.023	45	0.0008	4	130
Children 1–6 years old	0.023	64	0.0008	4	80
Children 7–12 years old	0.023	35	0.0008	4	150
Females 13–50 years old	0.023	17	0.0008	4	670

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppd)[a]
Males 13–19 years old	0.023	19	0.0008	4	650
Males 20+ years old	0.023	16	0.0008	4	680
Seniors (55+ years old)	0.023	17	0.0008	4	670

[a] Chronic Drinking Water Level of Comparison = cPAD-Chronic Dietary Exposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.

3. *Short-term risk and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetamiprid is currently proposed for uses that could result in short-term and intermediate residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate exposures for acetamiprid. Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that aggregated food and residential exposures aggregated result in aggregate MOEs of 18,000 for adults, and 23,000 for youth (ages 10–12 years) for the non-oral routes of exposure (i.e., combined dermal and/or inhalation pathways). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of acetamiprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURE TO ACETAMIPRID

Population Subgroup	MOE (Food)[a]	Total Non-Oral MOE[b]	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term and Intermediate-Term DWLOC (ppd)[c,d]
U.S. Population	2,780	18,000	4	0.0008	1,500
All Infants (<1 year old)	1,462	N/A[e]	4	0.0008	400
Children 1–6 years old	1,021	N/A	4	0.0008	400
Children 7–12 years old	1,858	23,000	4	0.0008	400
Females 13–50 years old	3,778	18,000	4	0.0008	1,400
Males 13–19 years old	3,363	18,000	4	0.0008	1,600
Males 20+ years old	4,084	18,000	4	0.0008	1,600
Seniors (55+ years old)	3,745	18,000	4	0.0008	1,600

[a] Food MOE = Short-term NOAEL (15 mg/kg/day) ÷Chronic Dietary Exposure (food only)
[b] Total non-oral MOEs are from the Occupational and Residential Risk Assessment. Note that given the currently requested use patterns, incidental oral exposure is an insignificant pathway of exposure and has not been factored into the DWLOCs.
[c] Maximum Water Exposure = Short/Intermediate-term NOAEL (15 mg/kg/day) × (1 ÷ Target MOE) - (1 ÷ Food MOE + 1 ÷ Oral MOE + 1 ÷ Non-Oral MOE)
[d] Short- and Intermediate-term Drinking Water Level of Concern = Maximum Water Exposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.
[e] N/A = Not Applicable

4. *Aggregate cancer risk for U.S. population.* The Agency classified acetamiprid into the category not likely to be carcinogenic to humans based on the absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the laboratories historical control data from the same lab: the increase was within the range of values from the supplier.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Enforcement methods are available for vegetable and non-citrus crops, citrus crops, and livestock commodities. Citrus and livestock methods consist of solvent extraction, followed by solid-phase cleanup, and high performance liquid chromatography/ultraviolet determination of residues. The vegetable and non-citrus crop method differs in that it employs gas chromatography/

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electron capture detection determination of residues. The livestock method analyzes acetamiprid and IM-2-1 simultaneously. Limits of quantitation are 0.01 ppm for vegetable and non-citrus fruits, meat, milk, fat, and eggs; and 0.05 ppm for citrus and meat byproducts. Adequate radiovalidation and independent laboratory validation (ILV) data have been received and the method was forwarded to the Analytical Chemistry Laboratory (ACL) for petition method validation (PMV). The petitioner will be required to make any modifications or revision to the proposed enforcement method resulting from PMV. When the PMV is finalized, the method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for acetamiprid in or on citrus fruit group, citrus dried pulp, cotton, fruiting and leafy, leafy vegetables, tomato paste; and for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) in or on fat, meat, and meat byproducts of cattle, goat, hog, horse, and sheep; milk; poultry eggs, fat, liver, and meat.

C. Conditions

The conditions of the acetamiprid registration contained the following confirmatory data and label requirements: rotational crop storage stability; and radiovalidation data for IM-2-1-amide in ruminant muscle. The storage stability data is considered confirmatory data since the Agency has examined other storage stability data of acetamiprid and found it to be stable upon storage. The Agency decided to impose tolerances on meat and poultry products upon review of the data although tolerances for IM-2-1 were not considered by the registrant in the original submission.

V. Conclusion

Therefore, tolerances are established for residues of acetamiprid N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-N1-methylacetamidine in or on citrus fruit group, citrus dried pulp, cotton undelinted seed, cotton gin byproducts, fruiting vegetable group, grape, leafy vegetable group (except brassica), leafy vegetable brassica group, pome fruit group, and tomato paste; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on fat, meat, and meat byproducts of cattle, hog, horse, goat, and sheep; milk; eggs; fat, liver and meat of poultry.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301225 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 28, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees.

EEPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301225, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption.

Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104– 113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.578 is added to read as follows:

§ 180.578 Acetamiprid; tolerances forresidues.

(a) *General.* (1) Tolerances are established for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine in or on the following commodities:

Commodity	Parts per million
Citrus, dried pulp	1.20
Cotton, gin byproducts	20.0
Cotton, undelinted seed	0.60
Fruit, citrus group	0.50
Fruit, pome group	1.0
Grape	0.20
Tomato, paste	0.40
Vegetable, brassica, leafy group	1.20

Commodity	Parts per million
Vegetable, fruiting group	0.20
Vegetable, leafy group, except brassica	3.00

(2) Tolerances are established for the combined residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine andN1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-acetamidine in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, meat	0.10
Cattle, meat byproducts	0.20
Egg	0.010
Goat, fat	0.10
Goat, meat	0.10
Goat, meat byproducts	0.20
Hog, fat	0.10
Hog, meat	0.10
Hog, meat byproducts	0.20
Horse, fat	0.10
Horse, meat	0.10
Horse, meat byproducts	0.20
Milk	0.10
Poultry, fat	0.010
Poultry, liver	0.050
Poultry, meat	0.010
Sheep, fat	0.10
Sheep, meat	0.10
Sheep, meat byproducts	0.20

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–7098 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket Nos. 98–137, ASD File No. 98–91; FCC 99–397]

1998 Biennial Regulatory Review—Review of the Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rules published in the **Federal Register** on April 10, 2000. These rules amend the Commission's rules governing the depreciation requirements for price cap incumbent local exchange carriers. The Commission details the reporting and data requirements that the carriers must comply with when they want to change their prescribed depreciation rate.

DATES: Section 43.43 paragraphs (c) and (e) published at 65 FR 18926 (April 10, 2000) became effective on June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, (202–418–1575).

SUPPLEMENTARY INFORMATION: On June 19, 2000 Office of Management and Budget (OMB) approved the amendment to the depreciation rate rules § 43.43 (c) and (e) pursuant to OMB Control No. 3060–0168. Accordingly, the rules in § 43.43 (c) and (e) became effective on June 29, 2000.

List of Subjects in 47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7262 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 032102B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf group king mackerel resource.

DATES: Effective 12:01 a.m., local time, March 23, 2002, through June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota newly implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with hook-and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone was reached on March 22, 2002. Accordingly, the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone is closed effective 12:01 a.m., local time, March 23, 2002, through June 30, 2002, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone which from November 1 through March 31 extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat.(a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. and 25°48′ N. lat.(a line directly west from the Monroe/Collier County, FL boundary), i.e., the area off Collier County.

NMFS previously determined that the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone was reached and closed that segment of the fishery on November, 10, 2001 (66 FR 57396, November 15, 2001). Next, the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on November 19, 2001 (66 FR 58410, November 21, 2001). Subsequently, NMFS determined that the commercial quota that the commercial quota for Gulf group king mackerel for vessels fishing with run-around gillnets in the southern Florida west coast subzone was reached and closed that segment of the fishery on January 28, 2002 (67 FR 4677, January 31, 2002). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the southern Florida west coast subzone through June 30, 2002.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 22, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–7329 Filed 3–22–02; 2:24 pm]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 59
Wednesday, March 27, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Holtec International HI–STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to the Certificate of Compliance (CoC). This amendment would modify the present cask system design to permit a licensee, under a general license, to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI–STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment would also use revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications would be made applicable to CoC conditions and sections of Appendix A and Appendix B to the CoC to reflect the changes.

DATES: Comments on the proposed rule must be received on or before April 26, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; email CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013330457. If you do not have access to ADAMS or if their problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, email jmm2@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1014 and does not include other aspects of the Holtec HI–STORM 100 cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on June 10, 2002. However, if the NRC receives significant adverse comments by April 26, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.
Initial Certificate Effective Date: June 1, 2000.
Amendment Number 1 Effective Date: June 10, 2002.
SAR Submitted by: Holtec International.
SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.
Docket Number: 72–1014.
Certificate Expiration Date: June 1, 2020.
Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–7321 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AA97

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is proposing to amend its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov*. Copies of comments may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as "a board consisting of three PBGC officials."

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this proposed rule would authorize any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC would continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

The PBGC invites public comment on this proposal.

Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from the notice and public comment and delayed effective date requirements of section 553 of the Administrative Procedure Act. However, because the PBGC wishes to provide an opportunity for public comment, this rule is being published as a proposed rule.

Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. *See* 5 U.S.C. 601(2), 603, 604.

This rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend 29 CFR Part 4003 as follows.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

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2. Add new § 4003.61 to read as follows:

§ 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

Issued in Washington, DC, this 20th day of March, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–7297 Filed 3–26–02; 8:45 am]

BILLING CODE 7708–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–367; MM Docket No. 02–31, RM–10351]

Radio Broadcasting Services; Memphis, TN, Olive Branch & Horn Lake, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc. the reallotment of Channel 239A from Olive Branch, Mississippi, to Horn Lake, Mississippi, and modification of the license for Station WOTO at coordinates 35–04–19 and 89–59–13. To ensure local service at Olive Branch, Clear Channel has requested the reallotment of Channel 266C1 from Memphis, Tennessee to Olive Branch, Mississippi, and modification of the license for Station KJMS at coordinates 35–08–01 and 90–05–38. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 239A to Olive Branch and Channel 266C1 at Horn Lake.

DATES: Comments must be filed on or before April 8, 2002, and reply comments on or before April 23, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson L.L.P., 555—13th Street, NW., Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–31, adopted February 6, 2002, and released February 15, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 239A and adding Channel 266C1 at Olive Branch and by adding Horn Lake, Channel 239A.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 266C1 at Memphis.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7190 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–565, MM Docket No. 02–49, RM–10220]

Radio Broadcasting Services; Worcester and Westborough, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Entercom Boston License, LLC, proposing the reallotment of Channel 297B from Worcester to Westborough, Massachusetts, as the modification of Station WAAF(FM)'s license accordingly. Channel 297B can be reallotted to Westborough in compliance with the Commission's minimum distance separation at without the imposition of a site restriction petitioner's presently licensed site. The coordinates for Channel 297A at Westborough are 42–18–11 North Latitude and 71–53–52 West Longitude. Since Westborough is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been requested. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 297A at Westborough, Massachusetts.

DATES: Comments must be filed on or before April 29, 2002, reply comments on or before May 14, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elizabeth N. Alexander, Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, NW, Suite 600, Washington, DC 20006–1809 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–49, adopted February 27, 2002, released March 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Channel 297B at Worcester; and by adding Westborough, Channel 297B.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7189 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–7; Notice No. 4]

RIN 2130–AA68

Freight Car Safety Standards: Maintenance-of-Way Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This document terminates the rulemaking action initiated in FRA Docket No. RSFC–7. In its Notice of Proposed Rulemaking (NPRM), FRA proposed an amendment of the Freight Car Safety Standards, which currently do not apply to maintenance-of-way (MOW) equipment if stenciled and not used in revenue service. The NPRM proposed an additional 20 miles per hour (mph) speed restriction on MOW equipment in order for it to be operated without complying with the Freight Car Safety Standards. Termination of this rulemaking is based on consideration of the comments submitted in response to the NPRM, the need to consider and evaluate more current safety and accident data related to MOW equipment, and FRA's desire to potentially reevaluate and develop alternative approaches to the issues, if necessary, based on current fact-based data.

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop 10, Washington, D.C. 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION: In March of 1994, FRA issued an NPRM proposing an amendment to the Freight Car Safety Standards (FCSS), codified in 49 CFR Part 215, to make all maintenance-of-way (MOW) equipment subject to the FCSS except such equipment stenciled MOW equipment, not used in revenue service, and restricted to a speed of less than 20 miles per hour (mph). *See* 59 FR 11238 (March 10, 1994). Under the existing regulations, the exception for MOW equipment requires only that it be stenciled and not used in revenue service. Thus, FRA proposed an additional restriction related to the operation of MOW equipment not in compliance with the FCSS, requiring such equipment to be operated at a speed of less than 20 mph.

The preamble to the NPRM discussed the basis of FRA's concerns regarding the need for the proposed speed restriction on MOW equipment. The preamble noted that FRA conducted three surveys between 1983 and 1986 on MOW equipment which resulted in a high percentage of such equipment being found with conditions not in compliance with the FCSS. *See* 59 FR 11239. It should be noted that the conducted surveys disclosed that the percent of MOW equipment found with defective conditions under the FCSS decreased with each successive survey. *See id.* The preamble also discussed a train derailment which occurred on July 18, 1983, in Crystal City, Missouri, the investigation of which indicated that a MOW vehicle with a cracked and displaced centerplate was a major contributing cause to the accident. The NTSB estimated the damages related to this accident at more than $1 million and issued the following recommendation to FRA:

Require that MOW cars meet the Railroad Freight Car Safety Standards or, in the alternative, impose operating restrictions on MOW cars being moved in revenue freight trains to compensate for the actual mechanical conditions of the cars. (R–84–10) (February 22, 1984).

In November of 1994, NTSB closed this 10-year-old recommendation and has not reissued a similar recommendation. The preamble to the NPRM also discussed the potential impact of AAR's 1994 change to its interchange rules, prohibiting the interchange of cars equipped with friction bearings. As a large number of MOW cars were equipped with friction bearings, FRA raised concerns regarding whether the industry's prohibition on interchanging such equipment would result in a reduction in the number of locations on the railroads where personnel are capable of performing frequent inspections and lubrication of these components.

FRA's economic evaluation developed in connection with the NPRM identified the costs and benefits related to the proposed 20-mph speed restriction on

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MOW equipment not in compliance with the FCSS. The evaluation identified approximately $1.1 million in safety benefits based on a review of FRA's accident data between 1980 and mid-1987. This review identified 26 accidents caused by MOW equipment which resulted in approximately $1.1 million in damage to railroad property and involved no injuries or fatalities. The evaluation also estimated the costs associated with the proposed restriction based on the assumption that railroads would repair existing equipment to meet the FCSS rather than operate MOW equipment pursuant to the proposed 20-mph restriction. The evaluation identified a 10-year Net Present Value cost associated with the proposed restriction of approximately $4.4 million. The estimate determined that approximately $3.3 million would be required to bring existing MOW equipment into compliance with the FCSS and that an additional $330,000 a year would be required to maintain the equipment consistent with the requirements of the FCSS.

FRA received written comments from six parties raising various concerns related to the additional restriction proposed in the NPRM. These commenters included:

Association of American Railroads (AAR),
American Short Line and Regional Railroad Association (ASLRRA),
Brotherhood of Railway Carmen, Division of the Transportation Communications International Union (BRC),
Brotherhood of Maintenance of Way Employes (BMWE),
Duluth, Missabe and Iron Range Railway Company (DMIR), and
Norfolk Southern Corporation (NS).

AAR, ASLRRA, and NS all commented that FRA failed to establish a significant safety rationale for proposing the costly operating restrictions on MOW equipment. These commenters did not believe that any change to the FCSS was warranted. AAR objected to the age of the data used by FRA to justify the proposal in 1994 and noted that the data itself showed that the percentage of MOW equipment containing defective conditions under the FCSS was declining into the mid-1980s. AAR also noted that none of the accidents relied on by FRA involved any injury or fatality. AAR further contended that MOW equipment was sufficiently covered by the safety appliance and power brake regulations contained in 49 CFR parts 231 and 232 and that FRA had not established that such equipment comprised a safety threat.

AAR and NS also asserted that FRA's economic evaluation was seriously flawed because it failed to consider the impact of the proposal on MOW equipment over 50 years old. These commenters contended that the proposal to apply the FCSS to MOW equipment would significantly impact MOW equipment which is more than 50 years old because § 215.203 imposes strict limits on the use of such equipment. AAR asserted that the impact on 50-year-old MOW equipment would constitute a significant "opportunity cost" to the industry. AAR and NS contended that the cost to replace this older equipment would be in excess of $220 million.

AAR also claimed that FRA's economic analysis significantly underestimated the maintenance costs involved with maintaining MOW equipment in accordance with the FCSS. AAR noted that FRA only assumed $41 per car annually to maintain the equipment consistent with the requirements of the FCSS. AAR asserted that the annual maintenance cost would likely be closer to $300 per car. Thus, AAR claimed that FRA's cost estimates should have been increased by approximately $12 million based on this factor alone.

AAR and NS claimed that FRA could apply the FCSS to MOW equipment in a manner which was much less costly than that proposed by FRA. These commenters recommended that any application of the FCSS to MOW equipment should provide an exception from § 215.203 for cars more than 50 years old. They also recommended an exemption for emergency and specialized MOW equipment (pile drivers, track geometry cars, snow plows, etc.) and suggested that a significant transition period, at least five years, be provided to allow the industry time to upgrade existing equipment. In a second set of comments (August 4, 1995) submitted in response to FRA questions, AAR suggested a further alternative to the proposed 20-mph speed restriction for improving the mechanical state of existing MOW equipment. This alternative involved the creation and application of a System Safety Quality Assurance (SSQA) performance standard based on train accidents per million-train-miles. Under this approach, a railroad's failure to operate within the established SSQA standard would result in FRA's imposition of certain equipment and operational requirements on that railroad, provided there is a link between the imposed requirements and the safety problem.

Although the ASLRRA did not believe any change to part 215 was justified, it recommended that if FRA determines a speed restriction is necessary, that the restriction should be 25 mph rather than 20 mph as proposed. ASLRRA stated that 25 mph would be consistent with operations over FRA Class 2 track and would reduce the burden being imposed on many short line operations because a larger number of such railroads already operate at restricted speeds. ASLRRA asserted that it would be a significant expense for most smaller railroads to bring MOW equipment into compliance with part 215 and, thus, most smaller railroads would comply with any imposed speed restriction. Furthermore, a 25-mph speed limit would avoid confusion with existing federal track standards and would reduce the number of rules with which small railroads must deal.

Comments received from the DMIR, in response to the NPRM, contended that there would be a significant impact on its operation if self-propelled MOW equipment (ballast regulators, tampers, high-rails, yard cleaners, motor cars, etc.) were required to comply with the requirements contained in the FCSS as proposed. DMIR asserted that virtually none of its self-propelled MOW equipment operates in revenue trains and, thus, did not pose the hazard FRA was attempting to address in the NPRM. Consequently, DMIR believed there was no safety benefit in requiring self-propelled MOW equipment to comply with the requirements of the FCSS when operated over 20 mph.

Comments received from BMWE and BRC supported the proposal to the extent that all MOW equipment should be covered by the provisions contained in the FCSS. These commenters generally contended that all equipment operated by the railroads should be required to comply with the FCSS whether or not they are used in revenue service, including equipment used solely in work train service. BRC believed that the proposed 20-mph speed restriction would not improve safety because most MOW equipment is not safe to operate at any speed if it does not comply with the FCSS. They asserted that no operating restrictions justify the use of equipment not in compliance with part 215.

In April 1996, subsequent to the closing of the comment period on the NPRM in this proceeding, FRA established the Railroad Safety Advisory Committee (RSAC), which is composed of representatives from railroad management, railroad labor, FRA, and other interested organizations. RSAC is designed to cooperatively address safety problems based upon agreed-upon facts and, where regulation appears necessary, recommend to FRA regulatory options to implement the needed solutions. In September of 1997, FRA proposed that the RSAC accept the task of recommending revisions to part 215 as it pertains to MOW equipment. Had RSAC accepted the task, FRA would have withdrawn the NPRM to permit RSAC to work from a clean slate. The full RSAC could not reach consensus regarding acceptance of the task and, thus, the RSAC rejected the task of revising part 215. Many members of the RSAC did not believe that the issues raised in this proceeding involved a safety priority when compared to other tasks being addressed by the committee. In a late submission to the docket (January 1998), BMWE urged FRA to pursue this issue through traditional rulemaking despite the RSAC's rejection of the task. The BMWE further recommended that an additional amendment be made to part 215 which would prohibit employees or personnel from riding on, occupying, or being transported in equipment not meeting the requirements contained in part 215. BMWE believed this restriction should be imposed on all freight cars including those used exclusively in MOW service. Of course, such requirements would be well beyond the limited scope of the NPRM. After RSAC's rejection of the task, FRA allowed this proceeding to remain open while the agency pursued much higher regulatory priorities, including passenger equipment standards and revised freight power brake rules.

After consideration of all the comments and information noted above and based on general observations made by FRA during the last eight years with regard to MOW equipment and the applicability of part 215 to such equipment, FRA believes that a number of conclusions can be drawn. FRA agrees that the data relied on when developing the NPRM in this proceeding is dated and likely does not represent the condition of MOW equipment currently being operated by most railroads. The data relied on when developing the NPRM was gathered between 1980 and 1987. Thus, much of the data, both inspection and accident, is close to or more than two decades old. Since publication of the NPRM, FRA believes that railroads have made a concerted effort to bring most MOW equipment closer to compliance with the requirements contained in part 215, particularly MOW equipment regularly operated in revenue trains. Moreover, since 1980, FRA is not aware of any accident or incident involving MOW equipment resulting in injury or fatality in which a contributing cause of the accident or incident was a condition not in compliance with part 215 on a piece of MOW equipment. Consequently, while not intending to imply that there is no need to address the mechanical condition of MOW equipment currently in use on the nation's railroad's, FRA does believe that MOW equipment is maintained in better condition, from a mechanical perspective, than it was 15 to 20 years ago.

FRA further believes that any sustainable approach to the issues raised in this proceeding must be based on current, fact-based data which accurately captures both the safety need and the economic consequences of any course of action. Just as the safety benefits associated with this rulemaking have likely declined over time, similarly the costs of compliance have likely declined, as well. Further, many of the costs of concern to the railroads might very well be mitigated by continuing to except such equipment from the 50-year requirement. However, FRA recognizes that such assessments take considerable time and resources. In addition to simply gathering data, the agency must also determine whether the gathered data establishes a need for regulatory action and the form of that action. FRA believes that a rulemaking docket should not be left open and pending indefinitely while the agency determines whether or how such data gathering will be pursued or evaluated. Moreover, it must be stressed that MOW equipment remains subject to the FCSS if it is used in revenue service or is not stenciled and, under all circumstances, is subject to the federal regulations applicable to safety appliances and power brakes contained in parts 231 and 232, respectively. Thus, MOW equipment is continually inspected by railroads and monitored by FRA for compliance with those requirements as well as any other condition that may constitute an imminent safety risk to railroad employees or the public at large.

In addition to FRA's concerns regarding the data relied on in this proceeding, FRA also believes that the NPRM did not fully consider all of the potential economic and operational impacts that the proposed 20-mph speed restriction would have on the industry. FRA believes that several commenters in this proceeding raise valid concerns related to the impact of the proposal on MOW equipment over 50 years in age and the potential impact to the operation of a number of revenue trains. FRA also notes that a number of alternative approaches to the issues were provided in the comments received in response to the NPRM. Furthermore, several commenters recommended that additional restrictions be placed on certain MOW equipment or raised issues which were not fully explored or discussed in the NPRM which relate to the operation of MOW equipment. Therefore, should FRA develop fresh data and analysis which establishes a need for regulatory action, the content of that action is likely to be significantly different from that proposed in this NPRM and may focus on a variety of issues not contemplated in the current proceeding. Consequently, FRA believes that continuance of the present proceeding is neither productive nor useful at this time.

Termination of Rulemaking

Based on the foregoing discussion, FRA has decided to terminate this rulemaking. While we note that this rulemaking has been useful in raising both FRA's and the industry's awareness of the issues related to the operation and safety of MOW equipment, FRA believes that it is not prudent to pursue this rulemaking, based on its present content, at this time. FRA will continue to monitor the condition and operation of MOW equipment and will assess the need, from a safety perspective, to pursue either regulatory or other less formal methods to ensure the safety of both railroad employees and the public as it relates to the use and operation of this equipment. In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, DC on March 22, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7364 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

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ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 1999 calendar year before October 25, 2002. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than May 28, 2002. Insurers listed in the appendices are required to submit reports on or before October 25, 2002.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice and submit your comments in writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. You may also submit written comments to the docket on a computer diskette. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail *hspinner@nhtsa.dot.gov*. Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 24, 2001 (66 FR 53731). Based on the 1999 calendar year data market shares from A.M. Best, we propose to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by part 544 for each State in which it did business in the 1999 calendar year. As long as these 20 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1999, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1999 calendar year data for market shares from A.M. Best, we propose to remove Concord Group Insurance Companies (Vermont) from Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 1999 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2002, and set forth the information required by part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1999, NHTSA proposes to remove A T & T Automotive Services, Inc. from Appendix C and to add Ford Rent-A-Car System to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1999 no later than October 25, 2002, and set forth the information required by part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2001 (see *http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $88,500 for any insurer added to Appendix A, $35,420 for any insurer added to Appendix B, and $10,219 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one company and add two companies; for Appendix B, the agency would remove one company; and for Appendix C, the agency would remove one company and add one company. The agency estimates that the net effect of this proposal, if made final, would be $53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulotion Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language

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includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail*: Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: hspinner@nhtsa.dot.gov;* or

c. *Fax*: (202) 493–2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above, in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was "NHTSA 1998–1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The "pdf" versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices A, B, and C of 49 CFR 544, insurer reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is proposed to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2002 will contain the required information for the 1999 calendar year).

* * * * *

3. Appendix A to Part 544 is proposed to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group[1]
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group[1]
Nationwide Group
Progressive Group
SAFECO Insurance Companies
St. Paul Companies
State Farm Group
Travelers PC Group
USAA Group

4. Appendix B to Part 544 is proposed to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is proposed to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
Ford Rent-A-Car System[1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: March 21, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–7367 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–59–P

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2002.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of three units whose boundaries encompass an area of approximately 1,697 hectares (ha) (4,193 acres (ac)) on the island of Kauai, Hawaii. Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on new information received during the comment period.

DATES: We will accept comments until the close of business on May 28, 2002. Requests for public hearing must be received by May 13, 2002.

ADDRESSES: Comment submission: If you wish to comment, you may submit your comments and materials as follows:

(1) You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

(2) You may hand-deliver written comments to our Pacific Islands Fish and Wildlife Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Kauai is the oldest of the main islands, with most of its land mass being formed between 3.6 and 5.6 million years ago (MYA) from a single, large shield volcano, now represented by the Alakai Plateau and adjacent ridges. Younger, secondary eruptions occurred over the eastern portion of the island as recently as the Pleistocene era (approximately 0.6 MYA). Due to the age of the island, the terrain is heavily eroded, with steep water-carved valleys and gulches characterizing the slopes of the Alakai Plateau and other isolated ridges. The Alakai Plateau is one of the wettest places on earth, receiving an average of 1.3 meters (m) (444 inches (in)) of rain annually (Juvik and Juvik 1998). Rain is delivered to the island by prevailing trade winds which come from the northeast. Southern and southwestern portions of the island lie in the rain shadow of the Alakai Plateau, ridges, or other uplands, and receive relatively little rain (22 to 91 centimeters (cm) (9 to 36 in) per year in Waimea Town) (NOAA 1990–1999).

The Koloa District lies in the southeast corner of Kauai and includes the town of Koloa and the community and resort area of Poipu. The area is dry to mesic (moderate rainfall), receiving an average of 107 to 223 cm (42 to 88 in) of rain annually. Although the Koloa District includes upland areas such as ridge lines derived from the Alakai Plateau and Haupu ridge, most human-occupied areas lie between sea level and about 183 m (600 ft) in elevation.

The Koloa area is composed of the youngest rock on Kauai, the Koloa Volcanics (MacDonald *et al.* 1960;

Langenheim and Clague 1987), with flows dating from between 0.6 and 1.4 million years. Younger, consolidated marine deposits and lithified sand dunes lie on top of some coastal portions of the older Koloa Volcanics. The great age and subsequent weathering that has occurred on Kauai has resulted in most lava tubes having been collapsed or filled with sediments (MacDonald *et al.* 1960; Howarth 1973; Berger *et al.* 1981; Howarth 1987), relative to younger islands (e.g., Hawaii) where lava tubes are common features (Howarth 1983a). It is only in portions of the Koloa District, with its younger, cave-bearing rock, relative lack of developed soils, and minimal rainfall and subsequent sedimentation, that caves are known to be relatively common features on Kauai (Howarth 1981).

Kauai Cave Wolf Spider

The Kauai cave wolf spider (*Adelocosa anops*) is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinctive eye pattern, including two particularly large eyes located within the middle row of eight eyes (Foelix 1982). While wolf spiders are typically visual predators, the most conspicuous physical character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and, in part, provides justification for the recognition of a separate genus for this taxon (Gertsch 1973). A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (mm) (0.5 to 0.75 in) in total body length with a reddish-brown carapace, pale to silvery abdomen and beige to pale orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth, two situated basally, and the third at the outer end of the chelicera. The tibiae of the two front pairs of legs have four pairs of ventral spines, and the tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long, silky, and shiny trichobothria (sensory hairs) (Gertsch 1973).

Dr. Frank Howarth, of the Bishop Museum, first discovered the Kauai cave wolf spider in Koloa in 1971, and it was formally described by Willis Gertsch of the Bishop Museum (Gertsch 1973). The Kauai cave wolf spider is a predator, and although blind, can detect the presence of potential food items through chemo-tactile sensory organs and actively stalks its prey (Howarth 1983a). Although predation has not been observed in the field, the spider probably feeds on the Kauai cave amphipod, other cave-inhabiting arthropods, and alien species of arthropods that enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs produced in each egg sac (Wells *et al.* 1983; Howarth 1991). Newly hatched spiderlings are unusually large for wolf spiders, and are carried on the back of the female for only a few days (Howarth 1991; Howarth and Mull 1992). Other species of wolf spider may have in excess of 100 offspring per clutch and the newly hatched spiderlings are relatively small (Foelix 1982; Howarth 1991; Howarth and Mull 1992).

Kauai Cave Amphipod

The Kauai cave amphipod (*Spelaeorchestia koloana*) was discovered in some of the same caves as the Kauai cave wolf spider in 1971 (Bousfield and Howarth 1976). Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (thoracic appendage) of the amphipod, and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets and pigmentation, and extremely elongate, spiny, post-cephalic appendages. Adult cave amphipods are 7 to 10 mm (0.25 to 0.4 in) in length with a slender, laterally compressed body and a hyaline cuticle, giving it a shiny, translucent appearance. The second pair of antenna are slender and elongate, with the flagellum (slender outer part of the antenna) only slightly longer than the peduncle (narrow stalk attaching to the body). Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial or lacking. Uropods (tail-like appendages) 1 and 2 have well-developed pre-peduncles, and brood plates in the mature female are vestigial or entirely absent (Bousfield and Howarth 1976).

The Kauai cave amphipod is a detritivore and has been observed feeding on the roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig), rotting roots, sticks, branches, and other plant material washed into, or otherwise carried into the caves, as well as the fecal material of other arthropods. In large cave passages, most individuals are found in association with roots or rotting plant debris. When disturbed, this cave amphipod typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small number of large offspring (Poulson and White 1969; Bousfield and Howarth 1976).

Cave Habitat

Cave habitats have a high degree of zonation which plays a major role in the distribution of cave-dwelling organisms. Howarth and Stone (1990) recognize five distinct zones, not all of which are always present within any one cave. The first zone, the "entrance zone," typically receives large amounts of solar radiation and is often vegetated with surface plants. Within the second zone, the "twilight zone," ambient light levels decrease as one moves away from the entrance and photosynthesizing plants that may be present in the entrance decline. The third zone is referred to as the "transition zone." The transition zone lacks light penetrance from the entrance, but other outside factors still greatly influence the cave habitat (e.g., ample air movement and daily temperature fluctuations). All of the above described zones (entrance, twilight, and transition) are typically influenced by surface conditions, daily cycles of warming and cooling, surface humidity, and a fair degree of air exchange occurring between these zones and surface habitats over relatively short periods of time (daily). The fourth cave zone, the "dark zone," typically exhibits a sharp climatological change from the three previously described zones. The dark zone largely lacks daily air exchange with the surface and the three previously described zones. The relatively constant conditions encountered in the dark zone are often the result of a narrowing cave passage or low ceiling(s) that serve as physical barriers that restrict air exchange with other cave zones, or may be due to an up-slope orientation into a dead-end passage that traps warm, moist air. While the dark zone may undergo drastic changes in temperature and relative humidity, this more often is associated with seasonal rather than diurnal changes in air temperature. As a result of this, dark zones are seasonally stable in their micro-climatic conditions, remaining warm and humid during warm seasons. The final recognized cave zone is that of the "stagnant" zone (Howarth and Stone 1990). This zone lies deeper than the dark zone, receiving significantly less air exchange. As a consequence, the composition of gasses within this last zone is often largely controlled by the decomposition of organic matter and maintains high concentrations of carbon dioxide and low concentrations of oxygen. While considered inhospitable by human standards, field observations have indicated that obligate cave-dwelling species are highly tolerant of these conditions and many may, in fact, thrive in the stagnant air zone of caves (Howarth and Stone 1990).

Cave habitats almost always contain small voids, cracks, and passages (mesocaverns) that cannot be accessed by researchers (Howarth 1983b), but remain readily accessible (or preferred) by small troglobites (obligate cave-dwelling animals). Although such voids and cracks can occur in any zone and possess characteristics of each of the five zones, they frequently represent areas of reduced air flow and consequently are most similar to the dark and stagnant air zones. Passages and mesocaverns in limestone caves can form or be destroyed at almost anytime in the life of the cave, depending on the chemical characteristics of the rock and normal geologic processes. Limestone caves often become larger over time as acidic waters from the surface dissolve away the calcium carbonate bedrock. Since water flow enlarges and creates caves in limestone by solution, subterranean voids do not fill through erosion. If any do, the water quickly finds a different path and enlarges a new void. Limestone caves grow deeper as the water table sinks and the surface over the caves dissolves away. Limestone caves improve with age because, although individual voids and passages may be short-lived, limestone caves continuously reform so that habitat can remain suitable for very long time spans. Caves derived from lava tube systems are fundamentally different from limestone in that basalt is not as readily soluble. Hence, lava tube passages and mesocaverns do not typically dissolve away and become larger (formed), but are subject to filling with sediments (destroyed).

The tendency for Hawaiian basalt to shrink and crack upon cooling results in younger lava flows having an abundance of mesocaverns throughout their structure that may serve as habitat or as corridors between habitats. However, the cave-building process typically stops some time after cave and crack formation, and is replaced by the cave-filling processes as weathering and sedimentation begin filling in mesocaverns and passages. On younger islands, the abundance of mesocaverns may allow cave animals to move among and between larger, adjacent lava tubes (Berger *et al.* 1981; Howarth 1991). However, because these smaller voids become filled with erosional sediment in older flows like the Koloa Volcanics, and as a result of surface disturbance (Mueller-Dombois and Howarth 1981; Adam Asquith, Service, *in litt.*, 1994a), it is less likely that the Kauai cave animals can readily move among separate lava tubes or other cave systems. Therefore, this places great importance on protecting the remaining undeveloped lands since they now represent only a fraction of habitat and interhabitat corridors where the cave animals can readily move between areas that were present before modern (i.e., post-European colonization) habitat modification.

Cave ecosystems are typically regarded as being food limited, and in most caves, the resident food-web communities require food input which is derived from surface systems based upon a photo-autotrophic (i.e., photosynthesizing plants) food base (Culver 1986). Nutrients may enter caves via subterranean streams or other surface runoff; as guano from bats, birds, rodents or other cave visitors or residents; or from plant roots that penetrate the cave (Culver 1986). Of these methods, roots from surface plants are the primary means by which Hawaiian caves receive nutrient input (Howarth 1973). Protection and/or restoration of surface plant communities is, therefore, an extremely important consideration for cave conservation in Hawaii, as it is elsewhere (Culver *et al.* 2000). Factors or activities that impact or modify surface vegetation over caves (e.g., fire, replacement of native or other perennial vegetation with grasses or some non-native plants) can damage or destroy the underlying cave community.

Adaptations of Troglobitic Animals

As discussed in the species descriptions of the Kauai cave wolf spider and cave amphipod, troglobites typically possess specialized anatomical characters that represent adaptations to life in the cave environment. Such anatomical adaptations include enlarged and/or elongate tactile-sensory appendages (e.g., legs or other appendages, antennae), and the lack of, or reduced, pigmentation and/or eyes (Barr 1968). Less obvious adaptations are also present in the physiology of troglobites and this has the potential to restrict their distribution within various cave zones (Huppop 1985). Laboratory studies with Hawaiian crickets were conducted that compared the abilities of closely related surface and cave-dwelling forms (*Caconemobius* spp.) to cope with desiccation (Ahearn and Howarth 1982). Surface-dwelling species exhibited considerably lower evaporation/desiccation rates than did the troglobitic species, and in one case, the surface species became dehydrated at half the rate of its cave-inhabiting relative. This low desiccation threshold largely confines these troglobites to the high-humidity environment of the deeper portions of caves, the dark and stagnant air zones. While such tests have not been conducted on the Kauai cave species, a logical assumption is that they have similar humidity tolerances, and this has been supported by field studies and observations conducted in the Kauai caves (see below). Similar adaptations in other troglobitic faunas (Vandel 1965; Barr 1968; Huppop 1985) support the universality of these traits in troglobitic animals.

Given the great vulnerability of troglobites to desiccation, adjacent mesocavern habitats will contain appropriate microclimate conditions and provide habitat or serve as refugia for troglobites when conditions in the main cave passages become drier or otherwise less accommodating. For example, during a previous survey of one cave of the Koloa area, the Kauai cave amphipod was not observed (Miura and Howarth 1978). However, on a subsequent survey, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth 1983a, 1983b). The foraging activities of both the Kauai cave wolf spider and the Kauai cave amphipod are restricted to dark, moist areas of large caverns and mesocaverns, and it is possible that the majority of their time is spent within such spaces.

Both Howarth (1983a) and Huppop (1985) have postulated that troglobites may be adapted to cope with low levels of oxygen and/or elevated concentrations of carbon dioxide, similar to conditions that would be encountered in the stagnant air zone of caves. This ability has been substantiated from observations in known stagnant air zones (Howarth and Stone 1990), as well as under controlled laboratory experiments. Hadley *et al.* (1981) conducted experiments with Hawaiian wolf spiders, both troglobites (*Lycosa howarthi*) and a related surface-dwelling species (*Lycosa* sp.). These researchers found the surface-inhabiting spider had a higher metabolic rate, requiring 2.5 times more oxygen as did its cave-dwelling relative. The reduced need for oxygen would better allow these spiders to survive in stagnant air cave zones. Given the ability of at least

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some troglobites to cope with reduced oxygen and elevated carbon dioxide, as well as their ability to inhabit inaccessible mesocaverns, it is assured that many troglobites will be able to reside in areas not readily surveyed by biologists. Hence, cave habitats will extend well beyond those areas accessible by researchers (Howarth 1983a).

Species Distribution and Abundance

The Kauai cave wolf spider and Kauai cave amphipod are generally restricted to cave dark and stagnant air zones, or other subterranean habitats such as cracks, voids, and other mesocaverns containing microclimate conditions similar to those zones. However, both the cave wolf spider and amphipod may be found in sub-optimal cave habitats (e.g., cave transition zone) when conditions are appropriate (e.g., elevated humidity during periods of increased rainfall). All of the caves where the cave amphipod has been located contain penetrating plant roots and/or other decomposing plant material which serves as a food source for this detritivore. Plant material upon which the amphipods feed need not be from native plants, although non-native toxic or indigestible plants may be inappropriate or damaging for amphipod foraging. The Kauai cave wolf spider can be found in caves where the cave amphipod does not occur, but, other, non-native arthropods (e.g., cockroaches, wood lice, small spiders) can be used as food for this generalist predator.

Since its discovery in 1971, the Kauai cave wolf spider has been observed in only five caves in the Koloa area. Since 1996, Service biologists have conducted annual surveys, and starting in 1998, we have conducted biannual monitoring visits to three of the known occupied caves. Observations recorded in these visits include a total count of animals within each cave, potential threats to the listed cave organisms or their habitat, and the cave's condition (e.g., human disturbance, presence of standing water). The following information is based on these monitoring visits.

In three of these five caves, wolf spiders have been seen on only three occasions, but have been more often observed in two other caves. Of the two known occupied caves, in only one of these are wolf spiders encountered during every monitoring visit with 14 to 28 individuals being encountered during any monitoring visit (USFWS data from 18 January 1996 to 22 June 2001). The second cave contains a smaller number of wolf spiders (one to four per monitoring visit) and spiders are frequently absent; since April 2000, no wolf spiders have been observed in this cave. This decline in wolf spiders has been matched with a corresponding increase in the number of resident brown violin spiders, an alien, web-building species that likely preys upon both the Kauai cave wolf spider and amphipod (A. Asquith, *in litt.* 1994b; David Hopper, Service, *in litt.* 1999). Although these data are not conclusive, the declining numbers in the second of the regularly occupied caves warrants concern with regard to population persistence.

To date, the Kauai cave amphipod has been recorded from six caves in the Koloa area but is only regularly encountered in three of these caves. In one of these three caves, where the amphipod is found with the wolf spider, their numbers have ranged from 8 to 37 during the biannual monitoring visits. In another regularly occupied cave, amphipod numbers have increased steadily from 10 to 20 individuals per visit in pre-1998 counts to over 300 individuals during a visit in November 2000 (Service, unpub. data).

In three of the six known occupied caves, the lack of observations of the species is probably due to several factors. In one of these caves, relative humidity is often below 100 percent, which is a suboptimal condition for troglobites. Amphipods have been found in this cave when humidity conditions were optimal, such as after heavy rains which saturated the soil and increased the relative humidity in the dark zone. In a second cave, amphipods appeared to be resident but were only observed during two visits that were conducted soon after the cave had been exposed by heavy machinery, and prior to the cave being re-closed for road construction (A. Asquith, *in litt.* 1999). The last of these caves has been visited irregularly and amphipods have been observed during some, but not all, visits (Bousfield and Howarth 1976; D. Hopper, *in litt.* 1998a; D. Hopper, *in litt.*, 2000a).

Despite the data obtained in these biannual monitoring counts, the quantities of animals reported do not represent sound population estimates. The methods needed to conduct non-damaging, mark-recapture studies for accurate estimates of population size are yet un-developed for these animals, and no attempt to conduct such studies have been undertaken.

Cave systems may be separated by various physical barriers such as subterranean streams, or areas with developed soils that have filled in the mesocavern passages or habitats of these old caves (Mueller-Dombois and Howarth 1981). The degradation and loss of naturally occurring mesocavern habitats and corridors has likely been accelerated with development or other land uses which often requires clearing of vegetation, blasting, and filling of trenches and construction sites. These activities, as well as modern agricultural practices, exacerbate the rates of sediment mobilization (Kirch 1982; Cuddihy and Stone 1990) resulting in the filling of caves and mesocaverns (Howarth 1973; Mueller-Dombois and Howarth 1981; Burney *et al.* 2001).

Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, the Koloa Caves #1 and #2 and adjacent areas are considered to harbor one population of the spider and one population of the amphipod. The seaward Kiahuna Caves #267 and #276 harbor another population of both the spider and amphipod; the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod; the Mahaulepu Cave harbors a population of the cave amphipod (Service, unpublished data, 1998–1999); and a small cave near the Koloa bypass road harbors a fifth amphipod population.

Previous Federal Action

On June 16, 1978, we published in the **Federal Register** a proposal to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened (43 FR 26084). That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of the proposal or within one year after passage of the Amendments, which ever period was longer. An initial comprehensive Notice of Review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules.

We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). In this notice, the Kauai cave wolf spider and Kauai cave amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. However, in the Notice of Review for all animal taxa published on November 21, 1991 (56 FR 58804), the two Kauai cave arthropods were listed as category 2 candidates. In the November 15, 1994, Notice of Review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were again elevated to category 1 candidates. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using candidate category designations and included the two cave arthropods as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. The two cave arthropods were included as candidate species in the September 19, 1997 (62 FR 49398), Notice of Review.

A proposed rule to list these two species as endangered was published on December 5, 1997 (62 FR 64340), and the final rule to list them was published on January 14, 2000 (65 FR 2348). Since that time, we have conducted conservation efforts through private lands partnerships with two landowners in the Koloa area within which the Kauai cave wolf spider and Kauai cave amphipod are known to occur.

In the proposed listing rule, we indicated that designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod was not prudent. Our concern was that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase human visitation to these highly sensitive cave habitats, which could lead to incidents of vandalism, destruction of habitat, and unintentional cases of take. Also, we believed that critical habitat designation would not provide any additional benefit to these species beyond that provided through listing as endangered.

However, in the final rule, we determined that critical habitat designation was prudent as we did not find specific evidence of taking, vandalism, collection, or trade of these species or any other similarly situated species. Also, we did find that there may also be some educational or informational benefit to designating critical habitat. Therefore, we found that the benefits of designating critical habitat for these two species outweighed the benefits of not designating critical habitat.

On June 2, 2000, the U.S. District Court for the District of Hawaii, in the case of *Center for Biological Diversity* v. *Babbitt and Clark*, Civ. No. 99–00603 (D. Haw.), ordered us to publish the final critical habitat designation by February 1, 2002. Currently, the plaintiffs and the Service have entered into a consent decree dated October 2, 2001, stating that we will jointly seek an extension of this deadline to August 10, 2002 (*Center for Biological Diversity, et al.* vs. *Norton*, Civil No. 01–2063 (D.D.C).

On February 14, 2001, we mailed pre-proposal letters to 96 interested parties and cave biologists informing them that we were in the process of designating critical habitat for the Kauai cave wolf spider and Kauai cave amphipod. We requested from them information on management of lands that are known to currently support the Kauai cave wolf spider or amphipod. The letters contained a fact sheet describing the two species and their habitat, and a map showing the presumed historic and current range (based on occupied habitat and the distribution of similar geology and soils) of one or both of these species. The letter requested any information regarding current or planned land management practices benefiting these animals or their habitat, which we requested be returned to us by March 31, 2001. We received eight responses to our landowner and interested parties mailing.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, in such instances critical habitat designation would not afford any additional regulatory protection under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be

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inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that, when determining the final designation of critical habitat, we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, however, and populations may move from one area to another over time. In addition, given the cryptic nature of these animals and their habitat, additional populations may be discovered in other areas over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Kauai cave wolf spider and the Kauai cave amphipod. This information included: peer-reviewed scientific publications; the final listing rule for the Kauai cave wolf spider and Kauai cave amphipod (65 FR 2348); the Hawaii Natural Heritage Program database; unpublished field data collected by Service biologists, unpublished field notes and communications with other qualified biologists or experts (e.g., F. Howarth, Bishop Museum); published descriptions of the regional geology and soils (MacDonald *et al.* 1960; Foote *et al.* 1972); and the Recovery Outline and draft Endangered Species Recovery Plan for Two Cave Arthropods from Kauai, Hawaii (Service, *in litt.*, 2000).

The Koloa lava tubes of Kauai and their associated endangered fauna were identified as one of the ten most endangered cave communities in the world (Tongvig and Mylroie, *in litt.* 1998; Belson 1999). Approximately 36 percent of the original habitat available for the cave animals is now designated as "urban" or "urban residential" (County of Kauai, *in litt.* 1994), and the human population of the Koloa area is expected to double by the year 2015 (KPMG Peat Marwick 1993). Thus most of the land that potentially harbored these animals has been highly modified, and an estimated 75 percent of the area has been rendered uninhabitable. The remaining habitat is being degraded by current land use or is threatened with degradation and destruction from proposed development and alien species. The area currently known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod represents a small percent of the species' likely range, harboring three known (sub)populations of the Kauai cave wolf spider and five known (sub)populations of the Kauai cave amphipod. These existing (sub)populations would be unlikely to persist because their small sizes make them vulnerable to extinction due to a variety of natural and human-induced processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and ability to cope with environmental change (Frankel 1970, 1983). Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Soule 1983; Gilpin and Soule 1986). In addition, the low reproductive potential of both cave species (less than five percent of their surface relatives) means that they require more time and space to recover from a disturbance than would similar animals living on the surface (F. Howarth, *in litt.* 2001).

One of the major threats facing the Kauai cave wolf spider and the Kauai cave amphipod is the introduction of invasive alien diseases (F. Howarth, *in litt.* 2001). Of particular concern are the several disease-causing micro-organisms that are being sold or are in development for sale as biopesticides in the United States. These species are inhabitants of soil, and would be expected to do well in caves. An example of one of these micro-organisms currently used in Hawaii is BT (*Bacillus thuringiensis*). Most recently BT was promoted in the State's efforts to eradicate an outbreak of dengue fever. In addition to intentional introductions, an unintentional introduction from a soil source originating outside of Hawaii could begin an epizootic that could sweep through part or all of the Koloa cave habitat. If portions of the habitat are more or less isolated and protected, the chances are greater that the animals would survive and eventually re-colonize their former habitat. This situation would also apply for other surface disturbances, such as oil spills, pollution, and pesticide application.

Human impacts in the Koloa caves, and resulting impacts on the Kauai cave wolf spider and Kauai cave amphipod are another concern. Caves are frequently sought out by curiosity seekers, and over-use of caves occurs readily due to their fragile nature (Howarth 1982; Culver 1986). In addition, both natural and cultural features (e.g., human burials and associated artifacts) of caves are often damaged or destroyed by collectors or vandals (Howarth 1982; N. McMahon, Hawaii Dept. Historic Preservation, pers. comm., 2001). Unauthorized visitation and vandalism is such an issue in caves that the Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*; 102 Stat. 4546) was passed with the main intent of protecting cave-associated natural and cultural resources. Unauthorized entry and vandalism of the Koloa caves has been documented (D. Hopper, *in litt.*, 1998b, 2000a), and public interest in visiting caves is reflected in the publication of the location of two of these caves in a recent tourist guide (Doughty and Friedman 1998).

Human visitation to caves, even when not intentionally destructive, often results in severe impacts to the resident troglobites or other cave inhabitants. For example, nicotine is a potent insecticide that is easily introduced into the cave environment through cigarette smoke or discarded butts. Given the confined space and poor air circulation encountered in caves supporting suitable troglobite habitat, the effects of cigarette smoke are far more pronounced in caves (Howarth 1982; Howarth and Stone 1993). The impacts of cigarette smoke are not restricted to the main cavern and will also impact mesocavern habitats, where its effects cannot be seen. Although less toxic than cigarette smoke, wood fire smoke may be equally damaging since far more smoke is produced and detrital food reserves may be burned. The use of cigarettes, as well as fire activity, have been documented in the Koloa caves (D. Hopper, *in litt.*, 1998b, 2000a).

The narrow confines of most caves often result in focusing human travel and associated impacts to a small area, and increase the likelihood of troglobite mortality from unintentional trampling and the destruction or disturbance of food resources (e.g., roots, detrital matter). In addition, human use of caves frequently results in the importation of garbage, which encourages the invasion of caves by potential competitors and predators such as cockroaches (F. Howarth, Bishop Museum, pers. comm., 1994; A. Asquith, *in litt.*, 1994a).

The restricted area in which the Koloa cave animals occur is rapidly undergoing development (KPMG Peat Marwick 1993). The shallow cave habitat has been, and continues to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, diversion of waste water into subterranean voids and spaces, and other activities associated with development and agriculture.

The Kauai cave wolf spider and Kauai cave amphipod are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, non-native animals (Howarth 1985, pers. comm., 1994; A. Asquith, *in litt.*, 1994a, b; D. Hopper, *in litt.*, 1999), biological and chemical pest control activities associated with residential and golf course development (Hawaii Office of State Planning 1992); and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals, populations, and their limited distribution.

Due to the small number of known caves inhabited by these animals, we remain concerned that these threats may be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Since publication of the proposed listing rule for these animals in 1997 (62 FR 64340), we have found evidence of increased entry and vandalism in these caves (D. Hopper, *in litt.* 1998b, 2000b). While direct and intentional threats to these species from human take and collection are not documented, the sensitive nature of these animals and their habitat to increased human presence makes increased human awareness of these caves a potential direct threat to the Kauai cave wolf spider and Kauai cave amphipod.

Prior to human alteration of the surface and subsurface habitats, which resulted in the loss of subterranean habitat and dispersal corridors, troglobite subpopulations were probably more genetically mixed, being exposed to a greater frequency of emigration and immigration between these subpopulations. Connecting subpopulations via dispersal corridors would increase the overall effective population size and increase genetic exchange, thereby helping to alleviate the threats associated with small population size, and would better reflect the conditions under which the Kauai cave wolf spider and the Kauai cave amphipod existed prior to human alteration of the Koloa area. Areas between known, occupied caves that could contain important subterranean habitat (e.g., undeveloped lands) include, but are not limited to: Active and fallow agricultural lands, livestock pasture, golf courses, undeveloped land between "low density" residences, and undisturbed, but biologically invaded (i.e., non-native weeds) forests and shrublands. Protecting habitat areas around known subpopulations of these endangered cave animals would increase the likelihood of their survival since it would potentially increase the size of the habitat patch and increase the probability of emigration and immigration with other subpopulations. In addition, if each cave population is isolated, it will be only a matter of time before individual events eventually result in the extinction of each population in turn. If the caves are connected, the animals would have a better chance at retreating from disturbances and a disturbance affecting one or more cave systems will be less likely to result in the extinction of the species.

Section 3(5)(A)(ii) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of these species. Although we do not know whether the entire area is currently occupied, to date, all caves that have been surveyed within the Koloa Basin, that contain the primary constituent elements, have contained the Kauai cave amphipod and/or cave wolf spider. Hence, where appropriate habitat occurs within the Koloa Basin, we fully expect it will be occupied by one or both of these species. Intervening areas between the known occupied caves, that are comprised of cave-bearing rock, will contain occupied habitat and/or serve as corridors between suitable habitat and all of these areas need to be protected if these species are to be conserved. The final rule listing the Kauai cave wolf spider and Kauai cave amphipod stressed that these animals were at increasing risk from "'predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution'" (65 FR 2348). Recovery may require augmentation or enhancement of suitable cave habitat in areas in which the current population densities of one or both of these animals are known to be low due to food limitation. Protected areas around and adjacent to accessible, occupied caves are needed for recovery since these habitat areas will allow for the expansion of existing populations and help alleviate the threats associated with small population size. Subterranean habitats that lack appropriate food resources must also be protected since such spaces will provide opportunities for dispersal among

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subpopulations, promoting mate location and genetic exchange, and will allow these animals to gain access to other needed resources that may become limiting within a smaller area.

In determining these areas we started with lands within the region containing geologic and soil characters similar or identical to those of known, occupied, accessible caves. This area includes the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972) where it over lies the Koloa Volcanic Series flows (MacDonald *et al.* 1960). Within this area, we conferred individually with the recognized expert on the probable distribution of appropriate mesocaverns (F. Howarth *in litt.* 2001). Multiple cave entrances are known within the following geographic zone—the area between Kukuiula Bay, northeast to Koloa Town and east to, and including, the volcanic cones inland of Poipu, as well as the Mahaulepu limestone bluff and cave and a wide connecting corridor in limestone and lava along the coast from Poipu to Mahaulepu. The whole region is similar to the Koloa Cave reserve (Kukuiula area) in surface environment and sporadic bare lava exposures, while areas to the south and east include prominent cave and mesocavern-bearing limestone features. Expert opinion is that these areas represent good habitat for the cave animals (F. Howarth, *in litt.* 2001). Within the areas described above are occupied lava tubes as well as geologic features indicating the presence of additional cave-bearing rock.

The Kukuiula area (that area lying between Kukuiula Bay, Koloa Town, Waikomo Stream and south to the coast) is known to contain numerous caves and cave-bearing rock. Two caves within this area are occupied by the Kauai cave wolf spider and the Kauai cave amphipod, and one of these caves is home to the largest known population of the wolf spider.

Three caves known to contain one or both of the Kauai cave arthropods are located in the area east of Waikomo Stream and west of the Poipu volcanic cones (Puu Wanawana, Puu Hunihuni, and the Puu Hi Reservoir cone). This area is similar to the Kukuiula area in the amount of exposed cave-bearing rock (pahoehoe lava flows) and degree of geologic weathering. In addition, Puu Wanawana and Puu Hi are spatter cones that are known to contain caves. In addition, the longest known cave on Kauai was located upslope from Kiahuna, between the Koloa Mill on the east and Koloa Town on the west. This cave was filled with cane waste in the early 1970s, before it could be surveyed but indicates that there are other caves and mesocaverns in the area (Howarth 1973, and F. Howarth, pers. comm., 2001).

The exposed sea cliffs along the coast from Poipu to Mahulepu are composed of calcified marine deposits. These karst outcrops are part of the same geologic deposits that contain the cave at Mahulepu that is occupied by the Kauai cave amphipod. Solution pockets and voids are abundant in this rock type and, like the cave at Mahulepu, lie on top of old, lava-tube-bearing pahoehoe flows. The presence of both basalt and calcareous cave-bearing rock along this coast line indicates that there is suitable habitat connecting the Mahaulepu caves with those of the lava tubes of the Koloa area.

Because a recovery plan for neither of these species has been completed, in making this determination we looked to the most likely historical distribution of the Kauai cave wolf spider and the Kauai cave amphipod. We included areas within the region containing geologic and soil characters similar or identical to those of known occupied habitat, and further refined it by conferring with the recognized expert on the probable distribution of mesocaverns in the Koloa area (F. Howarth *in litt.* 2001). This approach is consistent with the approved recovery outline for the Kauai cave wolf spider and the Kauai cave amphipod. If, after critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod is designated, a final approved recovery plan for these animals calls for a different approach to the conservation of the Kauai cave wolf spider and the Kauai cave amphipod, we will consider amending the critical habitat designation, subject to resource and workload priorities.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to consider those physical and biological features essential to the species' conservation that may require special management considerations and protection. Such features are termed primary constituent elements, and include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, minerals and other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance and represent the historic geographical and ecological distributions of the species.

The habitat requirements of the Kauai cave wolf spider and Kauai cave amphipod may differ slightly as the wolf spider can feed on other arthropods that become trapped in caves or reside in caves facultatively. However, as observed elsewhere in Hawaii, the presence of a healthy, intact cave ecosystem, which includes roots or other sources of naturally occurring detritus and an associated detritivore or herbivore fauna, contains larger numbers of healthy troglobitic predators (A. Asquith, pers. comm., 2001). While native, troglobitic predators, detritivores, and herbivores may be present in caves lacking naturally occurring plant biomass, this situation represents an un-healthy cave ecosystem. Native troglobitic assemblages occurring in "sterile" caves (those lacking roots or other sources of active nutrient input) probably represent declining populations that will be extirpated as the existing plant biomass is consumed.

As with most troglobites, both the Kauai cave wolf spider and Kauai cave amphipod require dark or stagnant air zone habitats in caves. These zones typically have atmospheres with humidity at saturation levels (greater or equal to 100 percent), which is necessary to prevent desiccation and death of the troglobites.

A sustainable food base, such as the roots of living perennial plants or other sources of detritus, is necessary to support a breeding population and for the long-term survival of the Kauai cave amphipod and other herbivorous or detritivorous troglobites. In turn, healthy populations of herbivores or detritivores will help ensure that co-evolved predators, such as the Kauai cave wolf spider, will also persist as viable populations.

There is little information on what, if any, species of food plants are preferred by the Kauai cave amphipod. Since the amphipod is regarded as a detritivore, there may be little or no food specialization by these animals. However, plant species containing naturally occurring toxic compounds, such as tannins or alkaloids, might be of low food value, inhibit feeding, or result in the direct mortality of cave organisms. For this reason plant species and their potential toxicity must be considered as well. Likely candidates for suitable plants would be native species like ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*).

The primary constituent elements required by the Kauai cave wolf spider and the Kauai cave amphipod consist of two environmental parameters. The first of these is the presence of subterranean

spaces from 5 mm to 25 cm (0.2 in to 10 in) at the narrowest dimension (collectively termed "mesocaverns") or caves or passages, (spaces greater than 25 cm) (>10 in) that have dark and/or stagnant air zones that maintain microclimates with humidity at saturation levels. The second is the presence of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*) in these types of mesocaverns or caves.

The areas proposed as critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod are designed to incorporate what is essential for their conservation. Habitat components that are essential for these two species include the primary biological needs of foraging, reproduction, intra-specific communication, dispersal, genetic exchange, or non-restricted movement to appropriate microclimates in mesocaverns, and refugia from human induced or other environmental threats. Caves and mesocaverns containing actively growing tree roots or other sources of detritus provide a food source for herbivorous or detritivorous troglobites, which in turn provide food for predators. Such caves will be necessary for the long-term persistence of viable populations of the endangered troglobites by providing areas for foraging and reproduction. Caves and or mesocaverns lacking food resources but containing appropriate microclimates are important in providing corridors which facilitate movement and genetic exchange between populations or subpopulations. In addition, these areas may also provide dispersal opportunities from areas impacted by human-induced or other environmental threats, and may provide humid refugia at times when main cave passages become temporarily drier or otherwise less accomodating.

Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands for designation as critical habitat. First we selected critical habitat areas based on the known distributions of the Kauai cave wolf spider and the Kauai cave amphipod (known occupied habitat). We then added lands containing the primary constituent elements that are needed for recovery of the species but where, due to the cryptic nature of the habitat, it is unknown whether they are occupied or not. As discussed in greater detail in the Methods section, in deciding which areas were essential for recovery, we used the areas within the region containing geologic and soil characters similar or identical to those of known occupied habitat. In addition, we conferred individually with the recognized expert on the probable distribution of mesocaverns in the Koloa area. These areas are likely to contain caves or appropriate mesocavern habitats. For the purpose of this proposed determination, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates using a scale of 1:85,000. Soil series was determined using information and maps from soil surveys (Foote *et al.* 1972). Geologic and soil features that appear to limit the distribution of cave and mesocavern habitats were determined using information and maps from MacDonald *et al.* (1960) and Foote *et al. (1972).*

We were unable to map the critical habitat unit boundaries in sufficient detail to exclude all existing developed lands that do not contain the primary constituent elements. As specified in the proposed rule language, existing features and structures within the boundaries of the mapped units that have resulted in below-surface modification or alteration are excluded from critical habitat designation. Human-constructed structures and features, such as large buildings, homes, major roads, and other activities or projects that require trenching, filling, and/or excavation, likely resulting in loss or severe degradation of the primary constituent elements and are therefore not included within this critical habitat designation. Such human-constructed structures and features would include homes and buildings for which the underlying bedrock has been altered for their construction through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water and underground electrical supply corridors and conduits. Additional areas that are also excluded from critical habitat include paved roads, locations of prior or current use as a quarry, and sewage treatment facilities. Included in critical habitat are areas that have been modified on the surface, but for which below-surface modifications have not severely altered the underlying bedrock and subterranean habitat. These land uses include but are not limited to—agriculture (e.g., sugar cane, corn, coffee), range land, golf courses, county and city parks, unimproved roads, and undeveloped lands. These areas may lie adjacent to areas that have undergone extensive below-surface modification. Prior to finalizing this rule, we will seek ways to refine our mapping in order to exclude, from within the critical habitat boundary, developed areas or other areas that do not contain the primary constituent elements and therefore, would not be considered to be critical habitat.

Critical Habitat Proposal

Lands proposed as critical habitat provide the full range of primary constituent elements needed by the Kauai cave wolf spider and Kauai cave amphipod, including cave-bearing rock underlying undeveloped areas and areas with minimum or moderate surface modification in the Koloa District, to be used for foraging, shelter, and raising of offspring. Habitat that provides for dispersal of individuals and allows genetic exchange between populations has also been incorporated. Undeveloped areas lying between known occupied caves will contain subterranean spaces and voids that will provide primary habitat or act as corridors for movement of animals between foraging sites and dispersal between subpopulations, and should be regarded as critical habitat. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

Lands proposed as critical habitat for the Kauai cave wolf spider and Kauai cave amphipod occur in three separate units. The approximate area encompassing the proposed designation of critical habitat by land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

Unit	State/Local	Private	Federal	Total
1a. Waikomo	128 ha 316 ac	1,480 ha 3,658 ac	0 ha 0 ac	1,608 ha 3,974 ac
1b. Waikomo	0 ha	7 ha	0 ha	7 ha

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TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP—Continued

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

Unit	State/Local	Private	Federal	Total
2. Haula	0 ac 0 ha	17 ac 68 ha	0 ac 0 ha	17 ac 68 ha
3. Puu Keke	0 ac 0 ha 0 ac	168 ac 14 ha 34 ac	0 ac 0 ha 0 ac	168 ac 14 ha 34 ac
Total	128 ha 316 ac	1,569 ha 3,877ac	0 ha 0 ac	1,697 ha 4,193 ac

Proposed critical habitat includes land under private, county, and State ownership. Proposed lands include areas known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod and includes habitat with similar distribution of geologic and soil characteristics of known occupied habitat and that contain the most probable distribution of appropriate mesocaverns. A brief description of each unit and reasons for proposing it as critical habitat are presented below.

Unit 1: Waikomo

Unit 1 is the largest unit, encompassing 1,615 ha (3,991 ac) of the greater Koloa Basin from sea level to elevations of approximately 120 m (400 ft) above sea level. This unit has been further divided into two subunits, 1A and 1B, since intervening areas between these units have undergone development and the below surface habitats have been extensively modified. Natural features of the unit include Kaulala Point to the southwest, Makahuena Point to the extreme south, Puna-hoa Point to the southeast, and Puu Hunihuni. Developed areas within the unit include Koloa Town and the Poipu residential and resort area.

Unit (subunit) 1A is the larger of the two subunits, comprising the vast majority of the proposed critical habitat (1,608 ha (3,974 ac)). The western portion of this subunit does not include areas along the coast where prior intensive development (e.g., major road, resort, and home construction) have greatly altered the subsurface habitats. Coastal areas excluded from this subunit include developed areas from Kaulala Point to western Makahuena Point. This subunit does include coastal areas from the Puu Ainako and Makawehi Bluff/Bench areas and to the east to the end of this subunit (i.e. Punahoa Point and Mahaulepu).

Unit 1B is a relatively small subunit (7 ha (17 ac)) that is comprised of undeveloped basalt and calcareous sea cliffs and adjacent areas from eastern Makahuena Point, east to areas above but adjacent to western Shipwreck Beach (Keoneloa Bay). This area has been spared from extensive development and the cave-bearing nature of the rock is identical to the Mahaulepu area which includes a cave occupied by the cave amphipod.

The Koloa Basin was the first location where large-scale sugar cane cultivation was established in Hawaii. Although sugar cane is no longer commercially harvested in Koloa, it is present over extensive areas where soils are relatively well developed and other land uses have not been implemented. Given the long history and use of this area by Polynesian and European cultures, very little native vegetation is present and the area is dominated by alien species such as kiawe (*Prosopis pallida*), koa haole (*Leucaena leucocephala*), banyan (*Ficus* spp.), Manila tamarind (*Pithecellobium deluce*), and numerous other naturalized ornamentals and cultivars. Adjacent areas containing more contiguous stands of native vegetation are located at higher elevations, in areas of well-developed soils, outside of the Waikomo Soils area and the proposed critical habitat.

This unit (two subunits) contains all of the known occupied habitats of both the Kauai cave wolf spider and Kauai cave amphipod (*i.e.*, a total of seven caves), and all of these caves occur within private or county land. All of the occupied caves occur in volcanic flows of the Koloa Volcanic Series, which are present as exposed rock or covered under the shallow soils of the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972), or in depositions of cave-bearing, calcareous (*e.g.*, calcified dunes, limestone) deposits. Proposed lands in Unit 1 provide for expansion of subpopulations by providing areas that share geologic and soil characteristics of known occupied habitat and include the most probable distribution of required mesocaverns. This habitat also has the largest human presence, which is likely to grow and increase, and therefore is under the greatest threat from human visitation and development. Inclusion of this additional habitat is essential to provide for: population expansion and dispersal, refuge from catastrophic events, and habitat corridors needed to maintain gene-flow within the population and/or subpopulations.

Unit 2: Haula

Unit 2 is the second largest of the three units, being approximately 68 ha (168 ac) in total area covered. The elevational range of this unit is sea level to approximately 110 m (360 ft) above sea level. Natural features of the unit include Haula, Paoo Point, and a portion of the coast of Kawailoa Bay. Unit 2 contains no developed areas, but the area has been greatly altered from various human uses such as grazing, and has been altered by the invasion of alien plants such as koa haole and iron wood (*Casuarina equisetifolia*). Native dryland vegetation such as ilima (*Sida fallax*) and maiapilo (*Capparis sandwichiana*) is common along portions of the coast line and uplands. The high-elevation portions of the unit need further surveys but are expected to be alien-dominated.

Unit 2 is composed of uplifted coral and algal reefs and consolidated calcareous deposits (MacDonald *et al.* 1960), and exposed, basaltic flows are not believed to be present within this unit. This unit lies only a short distance (approximately 350 m (1,100 ft)) from the occupied Waikomo Unit, and was likely once connected to that unit in the geologic past (Pleistocene Era) by deposits that have since eroded away or have been covered by unconsolidated sediments. It is not known if this unit is currently occupied by the Kauai cave wolf spider, Kauai cave amphipod, or other endemic troglobites.

Recent visits to this unit have found that the area is composed of exposed calcareous deposits containing cracks and solution pockets, which are indicative of the presence of underlying cave and mesocavern habitats. While accessible caves have not been located, air-passages, holes, and fissures visible above ground strongly suggest the presence of underlying caves or mesocaverns. Critical habitat designation of this unit is proposed because of the cave-bearing nature of the geology, and because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform thereby providing suitable habitat for very long time spans, this area is essential to provide for expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area and there are no known current plans for development.

Unit 3: Puu Keke

Approximately 14 ha (35 ac) in total area, Unit 3 is the smallest of the three units and lies between 30 to 60 m (100 to 200 ft) above sea level. It's geographic and geologic setting is similar to that of Unit 2 which lies less than 46 m (150 ft) to the east. Like Unit 2, the vegetation is not well characterized but most likely is largely dominated by alien vegetation.

This unit is also composed of consolidated calcareous deposits, and has a high probability of containing subsurface habitats, but details of the composition of these deposits are not known. The presence of obligate cave-dwelling organisms is presently unknown. Critical habitat designation of this unit is proposed because of the cave-bearing nature of the geology, and because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform thereby providing suitable habitat for very long time spans, this area is essential to provide for expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area and there are no known current plans for development.

Effects of Critical Habitat Designation

Section 7. Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are unlikely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Kauai cave wolf spider or Kauai cave amphipod or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency (FEMA), or Natural Resources Conservation Service (NRCS)) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the Kauai cave wolf spider and Kauai cave amphipod is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

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Activities that may directly or indirectly adversely affect critical habitat for these cave animals include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation occurring directly above or adjacent to the cave or within the cave (roots) or mesocaverns (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., wood cutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Activities within or outside of the cave or other mesocavern (i.e., all cave-bearing rock) that promotes prolonged soil-disturbance, resulting in the filling of caves, voids, and mesocaverns, with sediments or other materials, or alters airflow, and/or light penetration such that habitat microclimates are exposed to conditions of desiccation. These activities include, but are not limited to: utilizing caves for the disposal of wastes or unwanted soil or rock, elevated and prolonged soil disturbance above or adjacent to cave-bearing rock, closing existing cave openings, breeching existing caves (i.e., creating new openings), modifying the natural geomorphology of a cave interior, passage, or opening;

(3) Appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential troglophilic) (i.e., non-obligate cave visitors) predators, parasitoids, diseases, or disease vectors (e.g., non-native arthropods), vertebrate or invertebrate food competitors, or invasive plant species), habitat fragmentation, overgrazing, water diversion or impoundment, groundwater pumping, inappropriately planned ground water disposal (e.g., diversion into potential habitat or prevention of natural water recharge into soils and rock above and adjacent to caves) or other activities that could potentially alter water quality or quantity to an extent that vegetation structure is affected, reduced cave humidity levels, habitat is flooded, or toxic materials (e.g., pesticides, fuel, solvents, or other household or industrial chemicals) are transported into habitat, and activities that increase the risk of fire within or outside habitats above the cave;

(4) Application of pesticides, herbicides, insecticides, fungicides or other such chemicals within, above, or adjacent to known habitat, that may directly or indirectly affect troglobitic organisms; and

(5) Release of certain biological control organisms within or outside of the critical habitat area. Biological organisms include, but are not limited to: predaceous or parasitoid vertebrates or invertebrates, fungi, bacteria, or other natural or bio-engineered bio-control organisms.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat.

Actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area affected by the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

Federal agencies already consult with us on activities in areas where the species may be affected by their projects to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as the Department of Housing and Urban Development;

(4) Construction of communication sites licensed by the Federal Communications Commission;

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(6) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(7) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, NRCS), Department of Defense, Department of Transportation, Department of Energy, Department of the Interior (U.S. Fish and Wildlife Service, U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), ACOE, FEMA, Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Exclusions Under Section 3(5)(A) Definition

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod and do not require additional management or protection, we may exclude such areas from the proposed rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

We used the following three guidelines to determine if a plan provides adequate management or protection—(1) A current plan specifying the management actions must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective.

In determining if management strategies are likely to be implemented, we considered whether: (1) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we considered whether: (1) The plan specifically addresses the management needs, including reduction of threats to the species; (2) such actions have been successful in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (4) adaptive management principles have been incorporated into the plan.

Based on information provided to us by landowners and managers to date, we find no areas are adequately managed and protected to address all of the threats to Kauai cave wolf spider and Kauai cave amphipod and thus no areas qualify for exclusion under section 3(5)(A) of the Act. Several areas are covered under management plans and are currently managed in a manner that meets some of the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod, but we find that in none of these areas does present management adequately reduce all the primary threats to these species or that such management will be implemented into the future. For example, we have no assurance that one cave system, currently free of development plans, will retain a protected status for the long-term. Other areas of habitat lack a timely implementation schedule and appropriate management has lagged.

Adequate reduction of the threat from non-native predators (e.g., brown violin spider), already present within some caves may, to some extent, require different management activities. This may be difficult for managers to control and is not, at this time, a requirement in determining whether an area is being adequately managed such that it does not meet the definition of critical habitat.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an economic analysis for this proposal prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period on the draft economic analysis and proposed rule at that time.

We believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. Currently, there are no HCPs including the Kauai cave wolf spider and/or the Kauai cave amphipod as covered species. However, two separate landowners have entered into cooperative agreements with us that cover both of these species. Conservation actions were outlined in those agreements to benefit these species, and one landowner has initiated a couple of those actions, such as gating and locking one of the caves to prevent disturbance, and planting suitable vegetation above the cave foot print to enhance the below-ground habitat. The other landowner has not yet initiated conservation actions outlined in their agreement. In the event that these cooperative agreements are developed into HCPs, or future HCPs are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential for the conservation of these species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas to minimize impacts to critical habitat.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and/or distribution of Kauai cave wolf spider and/or the Kauai cave amphipod, and what areas are essential to the conservation of these species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and,

(7) Economic and other values associated with designating critical habitat for the Kauai cave wolf spider and/or the Kauai cave amphipod, such as those derived from non-consumptive uses (e.g., hiking, sight-seeing, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The Service is soliciting comments and additional information on the Kauai cave wolf spider and amphipod, their habitats, and any new information on their status or status of the habitat or lands throughout the proposed critical habitat area.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the

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beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

Executive Order 12866

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see the "Exclusions Under Section 4(b)(2)" section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the Kauai cave wolf spider and the Kauai cave amphipod since its listing in January 2000 (66 FR 4770). We will evaluate any additional impact through our economic analysis. Because of the potential for impacts on other Federal agencies activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies actions.

(c) We do not believe this rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we will evaluate any additional impacts through an economic analysis.

(d) OMB has determined that this rule raises novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Association, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Kauai cave wolf spider or the Kauai cave amphipod. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants where consultation would already be required due to the presence of the listed species, because the duty to avoid adverse modification of critical habitat would not likely trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since the Kauai cave wolf spider and the Kauai cave amphipod have only been listed since January 2000, and no consultations have occurred involving these species, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because the Kauai cave wolf spider and the Kauai cave amphipod have been listed only a relatively short time and no activities with Federal involvement have occurred in these areas during this time, there is no history of any formal consultations based on the listing of these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

None of the proposed designation is on Federal lands. One of the three units contain land parcels owned and managed by the State of Hawaii. All of these State owned parcels are zoned as "urban." On State lands, activities with no Federal involvement would not be affected by the critical habitat designation.

All three units of the proposed designation include private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation.

On the Island of Kauai, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Department of the Navy, and the ACOE. In the case of ACOE consultations, the applicant is often the County of Kauai which is not considered a small entity as defined here. ACOE consultations involve wetlands or waterways and occur due to the presence of species that spend at least part of their life in aquatic habitats. Consultation with the ACOE may occur if a permit is required for a project in Waikomo Stream that may negatively impact adjacent cave systems. Waikomo Stream runs between two known occupied cave systems and consultation may be required if the activities on the stream may affect the cave systems and the Kauai cave amphipod and Kauai cave wolf spider.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize

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adverse impact to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. Although we have no consultation history for the Kauai cave wolf spider or the Kauai cave amphipod prior to their listing as endangered species, a road project was slightly modified when a cave occupied by the Kauai cave amphipod was breeched and threatened by the construction. The Service provided technical assistance to the Federal Highways Administration (FHA) which resulted in the project being implemented in a timely fashion without major changes, little or no added project costs, and without impacting the cave habitat. The modifications suggested were based on the geometry of the cave in relation to the road construction project, and our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule, the draft Recovery Plan, and in this proposed critical habitat designation, as well scientific papers on the habitat requirements of troglobitic species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, identification and protection of occupied habitats, management of competing non-native species and predators, restoration and management of degraded habitat (surface and subterranean), and regular monitoring. For most foreseeable projects, these measures are not likely to result in a significant economic impact to project proponents because based on our experience, no proposed projects have been prevented from being implemented with or without some modification, due to the presence of known occupied caves, and some of these activities have been carried out by other private landowners with Service involvement. As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. It would not have a significant economic impact on a substantial number of small entities. The entire designation involves three units which primarily includes private land as well as some State and County lands. Probable future land uses in these areas are not expected to result in a Federal nexus or section 7 consultations. Projects likely to occur in these areas would likely involve only private funding and are not likely to require Federal permits. In these areas, Federal involvement— and thus section 7 consultations, the only trigger for economic impact under this rule— would be limited to a subset of the area proposed. The most likely Federal involvement would be associated with activities involving the U.S. Department of Agriculture, Federal Highways Administration (U.S. Department of Transportation), or the Federal Emergency Management Agency. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact since we expect that most proposed projects, with or without modification, can be implemented in such a way as to avoid adversely modifying critical habitat, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would provide can usually be implemented at low cost and include activities or measures such as modification of project foot-print, landscaping with native, perennial vegetation, and controlled use of pesticides. We are certifying that the proposed designation of critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod will not have a significant economic impact on a substantial number of small entities and that this proposed rule does not meet the criteria under SBREFA as a major rule: therefore an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under E.O. 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

a. This rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Kauai cave wolf spider and the Kauai cave amphipod would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Interior's Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and will plan public hearings on the proposed designation during the comment period, if requested. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kauai cave wolf spider and Kauai cave amphipod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. The proposed designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available, upon request, from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

This rule was primarily prepared by the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entries for "spider, Kauai cave wolf" under "ARACHNIDS" and "amphipod, Kauai cave" under "CRUSTACEANS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
ARACHNIDS							
Spider, Kauai cave wolf	*Adelocosa anops*	U.S.A. (HI)	NA	E	676	17.95(g)	NA
CRUSTACEANS							
Amphipod, Kauai cave	*Spelaeorchestia koloana*	U.S.A. (HI)	NA	E	676	17.95(h)	NA

3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

a. In paragraph (g), critical habitat for the Kauai cave wolf spider (*Adelocosa anops*); and

b. In paragraph (h), critical habitat for the Kauai cave amphipod (*Spelaeorchestia koloana*), as set forth below.

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(g) *Arachnids.*

Kauai cave wolf spider (*Adelocosa anops*)

(1) Critical habitat units are depicted for the island of Kauai, Hawaii, on the map below.

(2) The primary constituent elements for the Kauai cave wolf spider and the

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Kauai cave amphipod are the presence of subterranean spaces from 5 mm to 25 cm (0.2 in to 10 in) at their narrowest point (collectively termed "mesocaverns") and/or cave passages greater than 25 cm (>10 in) that have dark and/or stagnant air zones that maintain relative humidity at saturation levels (≥100 percent); and the presence in these types of mesocaverns or caves of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*). All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave wolf spider.

(3)(i) Existing human-constructed features and structures within the boundaries of mapped units that required trenching, filling or excavation resulting in below-surface modification or alteration would not contain either of the primary constituent elements and are excluded from critical habitat designation. Such features and structures include but are not limited to: Homes and buildings for which the underlying bedrock has been altered for their construction or through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water or underground electrical supply corridors; paved roads; and areas previously or currently used as a quarry.

(ii) Areas that have been modified on the surface but without trenching, filling or excavation resulting in below-surface modification or alteration are included in the critical habitat designation, even if they are adjacent to areas that have undergone below-surface modification. Such areas include but are not limited to: Active or fallow agricultural lands; range land; golf courses; county and city parks; unimproved road; and undeveloped lands.

(4) Unit 1—Waikomo Unit, Island of Kauai (1,615 ha (3,991 ac)):

(i) *Unit 1A.* Unit 1A consists of boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (Nad83):

(A) 451377, 2420941; 451318, 2421296; 451365, 2421383; 451432, 2421109; 451596, 2421040; 451959, 2421072; 452051, 2421203; 452003, 2421772; 452057, 2421775; 452169, 2421853; 452125, 2421972; 451884, 2422006; 452107, 2422210; 452088, 2422291; 452683, 2421992; 452828, 2422429; 452693, 2422516; 452580, 2422426; 452535, 2422471; 452566, 2422602; 452491, 2422655; 452558, 2422751; 452872, 2422984; 453183, 2422994; 453561, 2422770; 453689, 2422802; 453710, 2423076; 453803, 2423173; 453928, 2423094; 454010, 2423198; 453900, 2423337; 453989, 2423437; 454124, 2423472; 454142, 2423601; 454096, 2423765; 454199, 2423872; 454267, 2423643; 454452, 2423640; 454616, 2424086; 454780, 2424043; 454757, 2423914; 454891, 2423911; 454673, 2423458; 454987, 2423312; 454770, 2422941; 454834, 2422595; 454688, 2422555; 454631, 2422409; 454866, 2422399; 455030, 2422481; 455001, 2422349; 455009, 2422131; 455631, 2421763; 456040, 2421846; 456196, 2422136; 456445, 2422235; 456572, 2421329; 456982, 2421024; 457171, 2421036; 457345, 2420833; 457027, 2420606; 456763, 2420391; 456728, 2419912; 456456, 2419772; 455868, 2419764; 455633, 2419645; 455601, 2419531; 455389, 2419219; 455225, 2419029; 455014, 2418947; 455014, 2419015; 454875, 2419059; 454861, 2419151; 455014, 2419182; 455056, 2419329; 455001, 2419400; 454781, 2419487; 454388, 2419255; 453419, 2419161; 453425, 2419586; 453516, 2419934; 453495, 2420106; 453368, 2420082; 453384, 2419931; 453275, 2419923; 453275, 2419438; 453252, 2419031; 453114, 2419045; 453162, 2419267; 452950, 2419349; 453029, 2419550; 452799, 2419624; 452707, 2419428; 452638, 2419449; 452691, 2419590; 452540, 2419649; 452416, 2419487; 452294, 2419410; 452057, 2419393; 451918, 2419437; 451814, 2419420; 451685, 2419686; 451812, 2419796; 451712, 2419918; 451815, 2420032; 451796, 2420129; 451672, 2420235; 451733, 2420399; 451601, 2420492; 451558, 2420333; 451561, 2420058; 451614, 2420037; 451587, 2419912; 451516, 2419770; 451449, 2419696; 451188, 2419748; 451212, 2419865; 450884, 2419942; 450661, 2419968; 450603, 2419919; 450443, 2419921; 450202, 2419919; 449823, 2420156; 449805, 2420288; 449905, 2420389; 450560, 2420577; 451016, 2420683; 450974, 2420585; 451194, 2420502; 451201, 2420756; 451193, 2420887; 451377, 2420941.

(B) Excluding seven areas:

(*1*) Bounded by the following fifteen points (31 ha, 77 ac): 456695, 2420426; 456573, 2420330; 456388, 2420278; 456081, 2420300; 456051, 2420586; 456163, 2420674; 456259, 2420772; 456357, 2420895; 456412, 2420942; 456538, 2420879; 456570, 2420792; 456741, 2420763; 456682, 2420622; 456714, 2420574; 456695, 2420426.

(*2*) Bounded by the following fourteen points (1 ha, 3 ac): 454229, 2420036; 454177, 2420082; 454147, 2420126; 454158, 2420147; 454202, 2420185; 454250, 2420172; 454242, 2420136; 454231, 2420112; 454264, 2420082; 454294, 2420066; 454326, 2420085; 454332, 2420050; 454286, 2420025; 454229, 2420036.

(*3*) Bounded by the following seven points (2 ha, 5 ac): 452714, 2419850; 452561, 2419837; 452519, 2419846; 452504, 2419912; 452533, 2419989; 452613, 2419958; 452714, 2419850.

(*4*) Bounded by the following thirty-one points (16 ha, 38 ac): 452185, 2420755; 452280, 2420765; 452349, 2420719; 452402, 2420614; 452434, 2420595; 452451, 2420559; 452438, 2420516; 452462, 2420442; 452486, 2420421; 452498, 2420398; 452480, 2420334; 452412, 2420247; 452399, 2420223; 452435, 2420209; 452444, 2420139; 452467, 2420112; 452467, 2420069; 452443, 2420047; 452391, 2420052; 452288, 2420126; 452239, 2420219; 452191, 2420271; 452190, 2420397; 452177, 2420428; 452190, 2420478; 452215, 2420500; 452173, 2420538; 452193, 2420597; 452190, 2420654; 452158, 2420722; 452185, 2420755.

(*5*) Bounded by the following eleven points (17 ha, 14 ac): 454202; 2421942, 454138; 2421880, 454209; 2421804, 454226; 2421640, 454083; 2421628, 453679; 2421700, 453652; 2421875, 453771; 2421965, 453915; 2421937, 454078; 2422088, 454202; 2421942.

(*6*) Bounded by the following seven points (1 ha, 4 ac): 454850, 2419801; 454897, 2419736; 454922, 2419684; 454860, 2419633; 454825, 2419667; 454740, 2419694; 454850, 2419801.

(*7*) Bounded by the following five points (1 ha, 2 ac): 452149, 2419675; 452231, 2419635; 452180, 2419556; 452101, 2419583; 452149, 2419675.

(ii) Unit 1B (ha; 17 ac). Unit consists of twenty-one boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 454027, 2418515; 454106, 2418549; 454143, 2418484; 454378, 2418600; 454341, 2418842; 454405, 2418865; 454385, 2418971; 454483, 2418981; 454531, 2418957; 454517, 2418910; 454398, 2418787; 454409, 2418590; 454378, 2418573; 454341, 2418505; 454303, 2418512; 454262, 2418484; 454272, 2418426; 454170, 2418362; 454109, 2418338; 454055, 2418369; 454027, 2418515.

(5) Unit 2—Haula Unit, Island of Kauai (68 ha (168 ac)):

(i) Unit consists of 45 boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (Nad83):

(ii) Starting on the coastline at approximately coordinates of: 458997, 2422152; follow: 458345, 2422341; 458686, 2422405; 458786, 2422373; 458934, 2422253; 459001, 2422151; 458997, 2422152; 457589, 2420990; 457575, 2420975; 457511, 2420984; 457631, 2421127; 457738, 2421168; 457900, 2421206; 458023, 2421343; 458023, 2421417; 457895, 2421435; 457803, 2421394; 457686, 2421405; 457637, 2421453; 457631, 2421540; 457678, 2421675; 457766, 2421821; 457908, 2421944; 458069, 2421867; 458216, 2421849; 458244, 2421886; 458253, 2421996; 458235, 2422079; 458299, 2422272; 458345, 2422341; 457589, 2420990; to approximately: 457590, 2420991 (coastline); follow coastline to the approximate coordinates of: 458494, 2421794; then follow: 458494, 2421795; 458495, 2421795; 458502, 2421802, 458492, 2421904; 458483, 2421987; 458566, 2422060; 458559, 2422190; 458630, 2422263; 458718, 2422262; 458805, 2422159; 458777, 2422115; 458686, 2422119; 458658, 2422060; 458667, 2421987; 458702, 2421920; to the coastline, approximately at: 458702, 2421919; follow coastline to beginning point: 458997, 2422152.

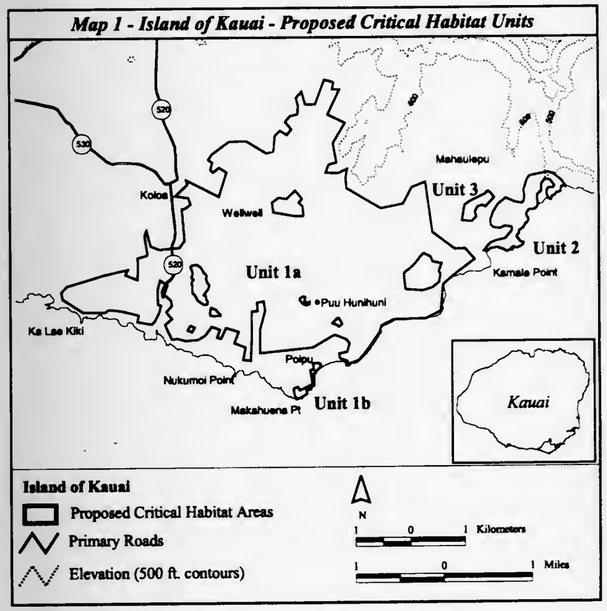
(6) Unit 3—Puu Keke Unit, Island of Kauai (14 ha (35 ac)):

(i) Unit consists of 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (Nad83):

(ii) Follow the approximate coordinates: 457583, 2422071; 457631, 2422040; 457702, 2421952; 457543, 2421778; 457490, 2421812; 457400, 2421778; 457352, 2421693; 457380, 2421601; 457297, 2421518; 457115, 2421532; 457162, 2421817; 457279, 2421895; 457536, 2422014; 457583, 2422071.

(7) Note: Map 1—Units 1, 2, and 3 follows:

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* * * * *

(h) *Crustaceans.*

Kauai Cave Amphipod (*Spelaeorchestia koloana*)

The critical habitat designation and the primary constituent elements for the Kauai cave amphipod are exactly the same as those of the Kauai cave wolf spider. See the entry in paragraph (g) of this section for the Kauai cave wolf spider. All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave amphipod.

* * * * *

Dated: March 12, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–6801 Filed 3–26–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2048–07; I.D. 021202A]

RIN 0648–AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP), specifically with regard to the straight set of gillnets in the Southeast U.S. Restricted Area in waters off the coasts of Georgia and Florida. The intent of this proposed rule is to prohibit straight sets of gillnets at night from November 15 through March 31, annually, to reduce the risk of entanglement of large whales, including the western North Atlantic right whale. NMFS is also announcing the availability of an Environmental Assessment (EA) and a Regulatory Impact Review (RIR).

DATES: Comments on the proposed prohibition of the straight set of gillnets must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on May 28, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this proposed rule to the Chief, Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.

Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katie Moore, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Katie Moore, NMFS, Southeast Region, 727–570–5312; Diane Borggaard, NMFS, Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Copies of the EA and RIR can be obtained from the ALWTRP Web site: http://www.nero.nmfs.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of whales by Atlantic lobster trap and gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is set out in the preamble to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), interim final (65 FR 80368, December 21, 2000), interim final (67 FR 1142, January 9, 2002), final (67 FR 1133, January 9, 2002), and final (67 FR 1300, January 10, 2002) rules implementing the ALWTRP. Copies of these documents and supporting EAs are available from the contacts noted in the **ADDRESSES** section of this proposed rule.

NMFS issued four biological opinions (BOs) on the multispecies, spiny dogfish, monkfish, and lobster fisheries on June 14, 2001, in accordance with section 7 of the Endangered Species Act (ESA). The BOs concluded that all four of the fisheries jeopardized the continued existence of the western North Atlantic right whale. The reasonable and prudent alternative (RPA) in the June 14, 2001, BOs included additional gear modifications for the northeast lobster trap fisheries and new gear modifications for the mid-Atlantic and southeast gillnet fisheries that are necessary to avoid jeopardizing the continued existence of western North Atlantic right whales. Southeast gillnet gear restrictions identified in this proposed rule address the RPA in an effort to reduce potential entanglements of western North Atlantic right whales.

Take Reduction Planning Activities in 2000 and 2001

Pursuant to section 118 (f)(7)(E) and (F) of the MMPA, NMFS has reconvened the ALWTRT periodically to monitor progress of the ALWTRP and to make recommendations for improvements. During the February 2000 meeting, the ALWTRT split into sub-groups covering the northeast, mid-Atlantic, and southeast areas. The recommendations of the northeast sub-group were addressed by the December 2000 interim final rule. The mid-Atlantic and southeast sub-groups met on August 25, 2000, and July 24, 2000, respectively, and provided meeting summaries with recommendations to the entire ALWTRT for review.

The ALWTRT met as a whole on June 27 and 28, 2001, to review the elements of the RPA required by the four BOs and recommend measures that would not only satisfy the requirements of the ESA and the four BOs, but would also satisfy the requirements of the MMPA. The MMPA provides the goals of reducing takes in commercial fishing operations to below the potential biological removal (PBR) level within 6 months of the ALWTRP's implementation and the achievement of a zero mortality rate within 5 years of ALWTRP implementation. For western North Atlantic right whales, these two goals are essentially the same since the PBR level is defined as zero. Consequently, the ALWTRT concurred that additional entanglement risk reduction is needed to comply with the MMPA.

NMFS published a proposed rule on October 1, 2001 (66 FR 49896), and final rule on January 10, 2002 (67 FR 1300), to amend the ALWTRP per the RPA and the Atlantic Large Whale Take Reduction Team's recommendations. The rule included provisions such as requiring weak links, temporal anchoring, and line diameter restrictions. The proposed rule also included provisions addressing the straight set of gillnets in the Southeast U.S. Restricted Area at night. Though NMFS prepared a thorough analysis of the straight set provision to include in the proposed rule's EA, NMFS accidentally left out the analysis in the EA. In order to ensure that the public had sufficient information to review and analyze the straight set provision in the proposed rule, NMFS removed the straight set provision from the January 10, 2002, final rule. NMFS is issuing this proposed rule to provide the public adequate time to review and comment on the measure and the EA. The EA and RIR regarding the straight set provision are now available for public review, and NMFS is seeking public comments.

Changes Proposed for the ALWTRP for Gillnet Gear

Regulatory measures discussed by the southeast sub-group included applying northeast gear marking requirements to the southeast area and a restriction on gear deployment methods for non-shark gillnets during the western North Atlantic right whale calving season. The October 1, 2001, proposed rule discussed NMFS' decision to leave the existing gear marking requirement in place for the Southeast U.S. Restricted Area. Additional gillnet restrictions discussed but not adopted by the sub-group included time-area management, net modifications (e.g., weak links), and seasonal restrictions. In the development of the proposed rule, NMFS excluded these preliminary alternatives and several others from detailed analysis, because the alternatives were not considered to be within the scope of the action, technically feasible, or recommended by the ALWTRT.

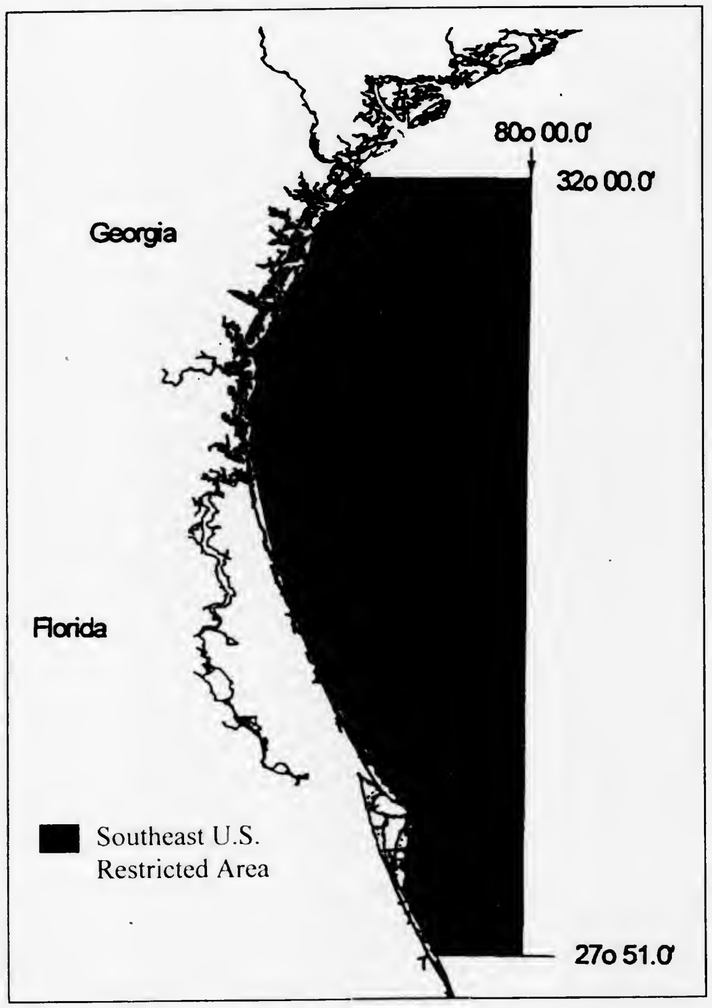
The gillnet restriction recommended by the southeast sub-group was the prohibition of straight sets of gillnets at night from November 15 through March 31, annually, in the Southeast U.S. Restricted Area, (i.e., unless the exemption under 50 CFR 229.32 (f)(3)(iii), which relates to shark gillnets, applies). The Southeast U.S. Restricted Area consists of those waters from 27° 51′ N lat. (near Sebastian Inlet, FL) to 32° 00′ N lat. (near Savannah, Georgia) extending from the shore outward to 80° W long. Night means any time between one-half hour before sunset and one-half hour after sunrise, as per the ALWTRP (50 CFR 229.2).

A straight set is the deployment of a gillnet in a straight line, as opposed to the deployment of a gillnet in a circular manner, for example, around a school of fish. Both deployment types are currently fished in the proposed management area, the U.S. Restricted Area, which includes a nursery area for mothers and calves. Right whales generally occur in this area from November 15 through March 31. A prohibition during that time-area of the gear types with which the right whale is known to have become entangled would afford additional protection to the concentrations of western North Atlantic right whales. NMFS believes that straight set gillnets deployed during daytime are of very minimal threat to whales. Such gear is retrieved within about one-half hour of every set, and thus the fisher would be on-site in the possible event of an entanglement. Straight sets at night pose a higher level of risk of entanglement to whales than strike sets or straight sets during the day, because fishers are not as actively involved with straight set gear (in comparison to the strike set method used in southeast Atlantic waters), and whales are much more difficult to spot at night due to darkness. Through the proposed rule, NMFS aims to reduce the potential for the entanglement of western North Atlantic right whales in straight set gillnet gear. Due to the gear restrictions, the proposed rule will reduce the likelihood of effort influx into the fishery in the future, thereby further reducing the potential likelihood of entanglements.

Figure 1 shows the boundaries for the Southeast U.S. Restricted Area. Currently the shark gillnet fishery is regulated using these boundaries (50 CFR 229.32 (f)(1)).

BILLING CODE 3510–22–S

Figure 1



November 15 to March 31 Straight Set Gillnet Restrictions

BILLING CODE 3510-22-C

Classification

This proposed rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The MMPA provides the statutory basis for the rule. The proposed rule would prohibit the use of straight set gillnets in the Southeast U.S. Restricted Area at night from November 15 through March 31, annually, unless the fishing activity was exempted under 50 CFR 229.32 (f)(3)(iii), which pertains to restrictions on shark gillnet fishing.

The objective of the proposed rule is to eliminate serious injuries or mortalities of western North Atlantic right whales attributable to entanglements with fishing gear and incorporates the time and area during which right whale calves are born.

Available data do not demonstrate that the fishing behavior or methodology restricted by the proposed rule is utilized to a great extent in the restricted area. Virtually all recorded gillnet harvests from this area and season are attributed to runaround gillnets and not straight set gillnets. Less than $133 per year of gross revenues in total can potentially be attributed to the use of straight set gillnets. Further, data on average trip times, soak times, and vessel characteristics indicate that the fishery is primarily prosecuted as a day fishery. Therefore, any direct economic impacts on the fishery will be minimal since the fishery does not substantially operate in the manner being restricted.

Generally, a fish-harvesting business is considered a small business if it is independently owned and operated, not dominant in its field of operation, and has annual receipts not in excess of $3.5 million. One hundred two unique entities (vessels or persons) have reported landings in this fishery over the 1997-2000 fishing seasons. Total dockside value of commercial harvests by these entities from all fishing activities and all gears averaged from $16,000 to $24,000 per year over this period. The maximum gross revenues were less than $300,000. All operations would be considered small business entities. Thus, business operations in this fishery consist solely of small business entities.

The determination of significant economic impact can be ascertained by examining two criteria: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All business entities participating in the respective area of the south Atlantic gillnet fishery are considered small business entities. Thus, the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The predominant harvest methodology in this fishery is runaround (i.e., strike) gillnets and day trips and not the methodology restricted by the proposed rule. Less than $500, or $133 per year, of reported landings from all participants over the 1997-2000 fishing seasons is potentially attributable to straight set gillnets. Participation ranged from 41 to 62 vessels during this period, for an average of less than $4 per vessel. Whether spread over multiple participants or attributed to a single vessel, it is clear that restricting the use of this gear will not significantly reduce profits for a substantial number of small entities. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

This proposed rule has been determined not to be significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals.

Dated: March 19, 2002.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 229 as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1371 *et seq.*

2. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32(f)(1) through (f)(4), unless the gear or the person with gillnet gear complies with the gear marking requirements specified in § 229.32(f)(2), the requirements for observer coverage as specified in §229.32(f)(3), and the closures, requirements, and other restrictions as specified in 229.32(f)(4).

* * * * *

3. In § 229.32, the heading of paragraph (f) and paragraph (f)(3) are revised; and paragraph (f)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) *Restrictions applicable to the Southeast U.S. Restricted Area and the Southeast U.S. Observer Area.* * *

* * * * *

(3) *Observer requirement.* No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(4) *Restricted Period, closure and restrictions, and exemption.*

(i) *Restricted period.* The restricted period for the southeast U.S. restricted area is from November 15 through March 31 of the following year, unless the Assistant Administrator revises this restricted period in accordance with paragraph (g) of this section.

(ii) *Closure for shark gillnet gear.* Except as provided under paragraph (f)(4)(iv) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the restricted period.

(iii) *Restrictions for straight sets.* Except as provided for shark gillnet gear under paragraph (f)(4)(iv) of this section, no person may fish with a straight set of gillnet gear at night in the southeast U.S. restricted area during the restricted period. A straight set is defined as a set in which the gillnet is placed in a line in the water column, as

opposed to a circular set in which the gillnet is placed to encircle an area in the water column.

(iv) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

* * * * *

[FR Doc. 02–7129 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 59

Wednesday, March 27, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality; Meeting

AGENCY: Natural Resources Conservation Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to discuss critical air quality issues in relation to agriculture. The emphasis of the meeting will be on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Wednesday, May 1, 2002, at 9 a.m., and continue until 4 p.m. The meeting will resume Thursday, May 2, 2002, and continue from 9 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service, at the address below, on or before April 19, 2002.

ADDRESSES: On May 1, 2002, the meeting will be held in the Williamsburg Room in the Jamie L. Whitten Federal Building at 12th Street and Jefferson Dr., SW., Washington, DC 20250. On May 2, 2002, the meeting will be held in Room 333 at the Hall of States, 444 North Capitol Street, Washington, DC 20001. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA/NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013. Due to the heightened security measures in place, submission of the names and affiliations for those planning to attend the meeting on May 1, 2002, will expedite entry into the Federal building.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the May 1 and 2, 2002, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at: *http://www.nhq.nrcs.usda.gov/faca/aaqtf.html*.

Draft Agenda of the May 1 and 2 Meeting

A. Welcome to Washington, DC

- Local officials

B. Approve minutes of the Phoenix, Arizona, January 16–17, 2002, AAQTF meeting

C. EPA Update

- EPA official—Expectations regarding regulation of agriculture
- National Academy of Sciences Scientific Assessment update
- Regional Planning Organizations update—potential impacts to agriculture
- Title V update
- Update on monitoring and speciation work across country
- Comprehensive Environmental Response, Compensation, and Liability Act; Emergency Planning and Community Right-to-Know Act update/discussion

D. Subcommittee Business

- Research Priorities and Oversight Subcommittee
- Emissions Factors Subcommittee
- Concentrated Animal Feeding Operation Subcommittee
- Voluntary/Incentive Based Program Subcommittee
- Follow-up Subcommittee
- Agricultural Burning Subcommittee
- Title V Subcommittee
- Monitoring Subcommittee
- Implementation Subcommittee

E. New Topics

- President's Global Climate Change Initiative
- Odor control and particulate capture/dispersion—windbreaks, other BMPs
- Iowa CAFO study
- Regulatory choices at the State level

F. Next Meeting, time/place

G. Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than April 19, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than April 19, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, statutes enforced by USDA also prohibit discrimination on the basis of political beliefs and marital or family status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD).

To file a complaint of discrimination to USDA, write to the Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410; or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on March 7, 2002.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–7279 Filed 3–26–02; 8:45 am]

BILLING CODE 3410–16–P

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1211]

Grant of Authority; Establishment of a Foreign-Trade Zone, Jefferson County, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the North Central Pennsylvania Regional Planning and Development Commission, a Pennsylvania not-for-profit corporation (the Grantee), has made application to the Board (FTZ Docket 19–2001, filed 4/27/01), requesting the establishment of a foreign-trade zone at a site in Jefferson County, Pennsylvania, adjacent to the Pittsburgh Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 23001, 5/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 254, at the site described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 2002.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 02–7333 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocations in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Heavy Forged Hand Tools (hammers/sledges, and picks/mattocks) from the People's Republic of China and Certain Preserved Mushrooms from Indonesia.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
France:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–427–816	2/1/01–1/31/02
Usinor S.A.	
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/01–1/31/02
Steel Authority of India, Ltd.	
Certain Preserved Mushrooms, A–533–813	2/1/01–1/31/02
Agro Dutch Foods, Ltd.	
Weikfield Agro Products, Ltd.	
Himalaya International, Ltd.	
Stainless Steel Bar, A–533–810	2/1/01–1/31/02
Isibars Limited	
Mukand Ltd.	
Venus Wire Industries Limited	
Viraj Alloys, Ltd.	
Viraj Viraj Forgings, Ltd.	
Viraj Impoexpo Ltd.	
Viraj Smelting	
Viraj Profiles	
Viraj Group	
Forged Stainless Steel Flanges, A–533–809	2/1/01–1/31/02
Metal Forging Rings & Bearings	
Snowdrop Trading, Pvt. Ltd.	
Viraj Group	
Bhansali Ferromet Pvt. Ltd.	
Echjay Forgings Ltd./Pushpaman Exports	

	Period to be reviewed
Isibars, Ltd.	
Panchmahal Steel, Ltd.	
Patheja Forgings & auto Parts, Ltd.	
Viraj Forgings, Inc.	
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/01–1/31/02
PT Gunawan Dianjaya Steel	
PT Jaya Pari Steel Corporation	
PT Krakatau Steel	
Certain Preserved Mushrooms, A–560–802	2/1/01–1/31/02
PT IndoEvergreen	
PT Zeta Argo Corporation	
PT Dieng Djaya	
PT Surya Jaya	
Italy:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/01–1/31/02
Palini B Bertoli S.p.A.	
Stainless Steel Butt-Weld Pipe Fittings, A–475–828	8/2/00–1/31/02
Union Piping S.P.A.	
Coprosider S.P.A.	
Japan:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/01–1/31/02
Kawasaki Steel Corporation	
Kobe Steel, Ltd.	
Nippon Steel Corporation	
NKK Corporation	
Sumitomo Metal Industries, Ltd.	
Certain Stainless Steel Bar, A–588–833	2/1/01–1/31/02
Aichi Steel Corporation	
Mechanical Transfer Presses, A–588–810	2/1/01–1/31/02
Hitachi Zosen Corporation	
Hitachi Zosen Fukui Corp. d/b/a H & F Corp.	
Komatsu, Ltd.	
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	12/27/00–1/31/02
Schulz (Mfg.) Sdn. Bhd.	
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/01–1/31/02
Dongkuk Steel Mill Co., Ltd.	
The People's Republic of China: Axes/adzes,* A–570–803	2/1/01–1/31/02
Tianjin Machinery Import & Export Corp.	
Bars/wedges,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
Hammers/sledges,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Picks/mattocks,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Certain Preserved Mushrooms,[1] A–570–851	2/1/01–1/31/02
China Processed Food Import & Export Co.	
Compania Envasadora del Atlantico	
Gerber Food (Yunnan) Co., Ltd.	
Green Fresh Foods (Zhangzhou) Co., Ltd.	
Raoping Xingyu Foods, Co., Ltd.	
Shantou Hongda Industrial General Corporation	
Shenxian Dongxing Foods Co., Ltd.	
Natural Bristle Paintbrushes and Brush Heads,[2] A–570–501	2/1/01–1/31/02
Hunan Provincial Native Products Import & Export Corporation	
Hebei Founder Import & Export Company	
Countervailing Duty Proceedings: None.	
Suspension Agreements: None.	

* If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of natural bristle paintbrushes and brush heads from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

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During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspensed investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 20, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02-7332 Filed 3-26-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 01-024. *Applicant:* Howard Hughes Medical Institute, Chevy Chase, MD 20815-6789. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002. *Order Date:* October 4, 2001.

Docket Number: 01-027. *Applicant:* University of Cincinnati, Cincinnati, OH 45267-0521. *Instrument:* Electron Microscope, Model JEM-1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002. *Order Date:* June 22, 2001.

Docket Number: 02-002. *Applicant:* Fox Chase Cancer Center, Philadelphia, PA 19111. *Instrument:* Electron Microscope, Model Tecnai 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 8939, February 27, 2002. *Order Date:* November 30, 2001.

Docket Number: 02-003. *Applicant:* Albert Einstein College of Medicine of Yeshiva University, Bronx, NY 10461. *Instrument:* Electron Microscope, Model Tecnai 20. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 8939, February 27, 2002. *Order Date:* March 30, 2001.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02-7334 Filed 3-26-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032002B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of request to modify research and enhancement permit 1266.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permit (1266) from John Glass, of REMSA, Inc. (1266).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 26, 2002.

ADDRESSES: Written comments on the modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301-713-2289, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301-713-2319, fax: 301-713-0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea Turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

The applicant requests a modification to Permit 1266. Permit 1266 authorizes the capture by trawl, handle, flipper tag and release of sea turtles while removing them from the path of hopper dredges. The Permit authorized the take of 30 loggerhead, 7 green, 5 Kemp's ridleys, 4 hawksbills and 4 leatherback sea turtles. These animals were measured, flipper tagged and released. Modification #1 would increase the authorized annual take to 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles for the purpose of moving them out of the path of hopper dredges and to tag the sea turtles for tracking purposes. The applicant would also begin passive integrated transponder (PIT) tagging the sea turtles.

Dated: March 21, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-7341 Filed 3-26-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032102C]

Marine Mammals; File Application No. 1004-1656

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: The National Marine Fisheries Service is extending the comment period for the application submitted by Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, OH 44202, to import two killer whales (*Orcinus orca*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before April 11, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Glouster, MA, 01930-2298 (978/281-9116).

Written comments or requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan,(301/713-2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

A notice of receipt of this application was published on November 30, 2001 (66 FR 59781) and the comment period closed on December 31, 2001. Based on substantive comments received during the initial comment period, NMFS requested additional information from the applicant and NMFS attempted to provide the additional information by mail to commenters who had expressed interest in the information. The comment period was reopened on February 25, 2002 (67 FR 8526) to close March 27, 2002. Due to an unforseen delay with the mail, this information did not reach the intended recipients in a timely manner. NMFS reviewed the situation and has determined that in this case, there is cause to provide for an extension of the comment period, allowing the interested parties to review the additional information and provide comments. In extending this comment period NMFS finds that a public hearing is not warranted because the issues raised by the comments can be clarified in writing. However, NMFS is providing through this notice an opportunity for additional written comments.

Dated: March 22, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-7340 Filed 3-26-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Application for Patent Examiners—Job Application Rating System (JARS)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703-308-7400; by facsimile at 703-308-7407; or by e-mail to *susan.brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Vivian Clark, Policy, Analysis & Automation Division, Office of Human Resources, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703-305-8227; or by e-mail to *vivian.clark@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Job Application Rating System (JARS) is a system by which the USPTO can rapidly review applications for employment of entry-level patent examiners. The Office of Human Resources (OHR), armed with a recommendation from a Supervisory Patent Examiner (SPE) can, in turn, rapidly make an offer of employment and support hiring actions with necessary administrative action. Over the past three fiscal years, JARS has enabled the Patent Corps to hire more than 1,600 entry-level patent examiners.

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Since the inception of JARS, upgrades have increased the flexibility of the system and the speed and ease with which the Office of Human Resources can support hiring recommendations. Specifically, JARS now allows applicants to update personal information without submitting a new application. Additional form letters and reports are now available, date tracking of previous employment is significantly improved; and status tracking improvements enable users to tell who has previously updated the record and when. Future JARS upgrades will be conducted to further enhance the system.

In the current employment environment, information technology professionals and engineering graduates are in great demand. The USPTO is in direct competition with private industry for the same caliber of candidates with the requisite knowledge and skills to perform patent examination work. Consequently, it is imperative that every available technology be employed if the USPTO is to remain competitive, meet the hiring goal, and fulfill the agency's congressional commitment to reduce the pendency rate for the examination of patent applications. The information supplied to the USPTO by an applicant seeking a patent examiner position with the USPTO assists the Human Resources Specialists and hiring managers in determining whether an applicant possesses the basic qualification requirements for the patent examiner position.

JARS provides the USPTO a user-friendly online employment application process for applicants and enables the USPTO to process hiring actions in an efficient and timely manner. The online application provides an electronic real-time candidate inventory that allows the USPTO to review applications from potential applicants almost instantaneously. Given the immediate hiring need of the Patent Examining Corps, time consumed in the mail distribution system or paper review of applications delays the decision-making process by several weeks. The JARS system results in increased speed and accuracy in the employment process, in addition to streamlining labor and reducing costs.

The use of the JARS online application fully complies with 5 U.S.C. 2301, which requires adequate public notice to assure open competition by guaranteeing that necessary employment information will be accessible and available to the public on inquire. The JARS online application is fully compliant with section 508 (29 U.S.C. 794d), which requires agencies to provide disabled employees and members of the public access to information that is comparable to the access available to others.

Since the JARS online application is used as an alternative form of employment application, the collection and use of the information requires OMB approval as outlined in Section 5.1 of the Delegated Examining Operations Handbook. The Handbook provides guidance to agencies under a delegated examining authority by OPM, under the provisions of Title 5, U.S. Code, Chapter 11, Section 1104.

II. Method of Collection

The application information is collected electronically from the applicant. The application form may be completed online and then transmitted to the USPTO electronically, via the Internet. For those applicants who do not have access to a personal computer, applications are available in the Personnel Office at the USPTO, or the applicant can go to the local library to complete an application.

III. Data

OMB Number: 0651–0042.

Form Number(s): PTO–2041.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 5,000 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 30 minutes to complete the employment application, depending upon the situation. There is one form associated with this information collection, Form PTO–2041.

Estimated Total Annual Respondent Burden Hours: 2,500 hours per year.

Estimated Total Annual Respondent Cost Burden: $75,675. Using the median hourly rate for scientists and engineers of $30.27, according to the Bureau of Labor Statistics, the USPTO estimates $75,675 per year for salary costs associated with respondents.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Electronic Employment Application	30	5,000	2,500
TOTAL		5,000	2,500

Estimated Total Annual Nonhour Respondent Cost Burden: $0. (There are no capitol start-up or maintenance costs associated with this information collection.)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 22, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–7319 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber and Textile Products Produced or Manufactured in India

March 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on March 28, 2002, you are directed to reduce the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
Levels in Group I	
334/634	190,231 dozen.
338/339	4,729,459 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–7331 Filed 3–26–02 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Request of the National Futures Association for Approval of Interpretive Notice to NFA Compliance Rule 2–9: Supervision of the Use of Automated Order Routing Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and request for comment.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or "CFTC") has determined, pursuant to section 17(j) of the Commodity Exchange Act (the "Act"), to review the National Futures Association's ("NFA's") proposed Interpretive Notice of (the "Interpretive Notice") to its Compliance Rule 2–9 regarding supervision of the use of automated order routing systems ("AORSs") that route orders through futures commission merchants ("FCMs"). The Interpretive Notice would require that NFA members adopt and enforce written procedures in the areas of security, capacity, and credit and risk management controls in connection with AORSs, but it provides flexibility for members to design procedures tailored to their own circumstances. Because NFA's policy is to set standards rather than to require specific technology, other procedures than those described in the Interpretive Notice may comply with the general standards for supervisory responsibilities imposed by NFA Compliance Rule 2–9. The proposed Interpretive Notice would become effective upon approval by the Commission. Therefore, the Commission has determined to provide an opportunity for public comment prior to its consideration of the Interpretive Notice.

DATES: Comments must be received by April 26, 2002.

ADDRESSES: Comments on the proposed rules may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made too "NFA Interpretive Notice Regarding Supervision of Automated Order Routing Systems."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450, facsimile number: (202) 418–5536, electronic mail: *lpatent@cftc.gov*, or *ccummings@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated March 1, 2002, NFA submitted to the Commission for its approval, pursuant to section 17(j) of the Act, NFA's proposed Interpretive Notice to its Compliance Rule 2–9 regarding supervision of the use of AORSs that route orders through FCMs. NFA's submission indicates that the Interpretive Notice would become effective upon approval by the Commission. NFA Compliance Rule 2–9 requires, in relevant part, that "(e)ach Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member." NFA believes that supervisory standards do not change with the medium used, but that the manner in which those standards are applied may be affected by technology. In order to fulfill their supervisory obligations, NFA members using AORSs must adopt and enforce written procedures to examine the security,

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capacity and credit and risk management controls provided by the firm's AORSs.

NFA notes that the proposed Interpretive Notice applies to AORSs that are within an NFA member's control (including those provided by an application service provider or an independent software vendor). While a member would not be responsible for an AORS chosen by the customer and not under the member's control, the member would be required to adopt procedures that could reasonably be expected to address the trading, clearing and other risks arising from its customer relationship.

II. Description of the Interpretive Release

The proposed Interpretive Notice would require that NFA members adopt and enforce written procedures in three general areas: (1) Security procedures to protect the reliability and confidentiality of customer orders and account information; (2) capacity procedures to maintain adequate personnel and facilities for timely and efficient delivery of orders and reporting of executions, as well as for timely handling of customer complaints; and (3) credit and risk management controls to prevent customers from entering trades that could create undue financial risks for the NFA member or its other customers.

Without specifying the manner in which they are to be implemented, the proposed Interpretive Notice describes a set of essential functions under each general heading and gives non-exclusive examples to illustrate. The essential functions that are listed under security procedures include: (1) Authentication of the user; (2) encryption or equivalent protections; (3) firewalls or equivalent protections; (4) means for customers to give notice that a person is no longer authorized; (5) periodic testing; and (6) administrative oversight and supervision. The essential functions that are listed under capacity procedures include: (1) Regular evaluation of the system's capacity (with increases as needed); (2) monitoring of system capacity and performance; (3) follow-up on customer access complaints; (4) disaster recovery and redundancies; (5) prompt notice to customers of operational difficulties; and (6) advance disclosure of factors that could stress the system. The essential functions that are listed under credit and risk management controls are: (1) Pre-execution controls (to be imposed when appropriate); (2) post-execution controls and trade monitoring; (3) extra precautions for direct-access systems; and (4) review of AORS controls in conjunction with the member's regular credit and risk control procedures.

NFA has also revised the required annual self-examination to include the WebTrust℠/™ Self-Assessment Questionnaire, which was developed by the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. WebTrust℠/™ states that it is "for use by electronic commerce service providers to document their business practices/transaction integrity disclosures, policies, procedures and monitoring."

As noted earlier, the proposed Interpretive Release would become effective upon approval by the Commission. Accordingly, the Commission seeks comments on the proposed Interpretive Notice to NFA Compliance Rule 2–9 regarding supervision of the use of AORs.

Copies of the proposed Interpretive Notice will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address by telephoning (202) 418–5100.

Issued in Washington, DC on March 21, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–7345 Filed 3–26–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Federal Acquisition Regulation; Submission for OMB Review; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form (SF) 255; Architect-Engineer and Related Services Questionnaire for Specific Project. A request for public comments was published in the **Federal Register** at 67 FR 6011 on February 8, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 4.
Annual Responses: 20,000.
Hours Per Response: 1.2.
Total Burden Hours: 24,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7335 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0031]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Government Supply Sources

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor use of Government supply sources. A request for public comments was published at 67 FR 6911, February 14, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Respondents: 300.
Responses Per Respondent: 7.
Annual Responses: 2,100.
Hours Per Response: .25.
Total Burden Hours: 525.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7336 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0044]

Federal Acquisition Regulation; Submission for OMB Review; Bid/Offer Acceptance Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bid/offer acceptance period. A request for public comments was published in the **Federal Register** at 67 FR 6234, on February 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services

Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by providing a period of time in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

Respondents: 308.

Responses Per Respondent: 40.

Annual Responses: 12,320.

Hours Per Response: .017.

Total Burden Hours: 209.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: March 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7337 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. A request for public comments was published at 67 FR 6911, February 14, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.

Responses Per Respondent: 2.

Annual Responses: 140.

Hours Per Response: .5.

Total Burden Hours: 70.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: March 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7338 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Defense Against Unconventional Use of Nuclear Weapons Against the US Homeland will meet in closed session on April 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will review the Department of Defense's (DoD) responsibilities, current capabilities, and the scope of activities conducted by DoD to ensure its future preparedness to prevent, deter, detect, identify, warn, defend against, respond to, and attribute attack of the U.S. homeland by unconventional delivery of conventional and unconventional nuclear weapons, as well as radiological weapons.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will determine the adequacy of the U.S. ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorist or sub national entities. The Task Force will also identify capabilities of the Department to provide protection against such nuclear attacks in support of national capabilities in homeland defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: March 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7303 Filed 3–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense is tentatively scheduled to meet in closed session on April 29–30, 2002; May 20–21, 2002; June 18–19, 2002; and July 15–16, 2002; at the Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the DSB Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: March 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7304 Filed 3–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The Department of Energy (DOE) announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy efficiency. It is estimated that funding of approximately $1.2 million will be available for renewable energy programs and an additional $3 million will be available for energy efficiency programs for awards under this solicitation in fiscal year 2002. Areas of interest involving renewable energy include wind, hydrogen and geothermal technologies. Energy efficiency areas of interest include energy efficiency in the transportation, buildings, and industrial sectors. The awards may be for a period of six months to three years. Proposals will be subject to the objective merit review procedures for the *Office of Energy Efficiency and Renewable Energy (EERE).* Eligible applicants for this solicitation are profit organizations, non-profit institutions and organizations, state and local governments, universities, individuals, Native American organizations, and Alaskan Native Corporations.

ADDRESSES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued in the beginning of April 2002. The solicitation will include specific funding totals for each program area of interest. Applications will be due for the various program areas in mid-May 2002. The formal solicitation will be disseminated electronically as solicitation number DE–PS01–02EE10846 through *DOE's e-Center Web site and Industry Interactive Procurement System (IIPS)* located at *http://e-center.doe.gov.* You can get more information about IIPS or register your organization to use IIPS on the e-center home page. Registration is a prerequisite to the submission of an application and applicants are encouraged to register as soon as possible. A users' manual for IIIPS can be found under the help button on the main e-Center page. Assistance for IIPS related problems is available through the IIPS help desk from 8 am to 8 pm, Monday through Friday, at 1–800–683–0751.

FOR FURTHER INFORMATION CONTACT: Contact the U.S. Department of Energy, Office of Headquarters Procurement Services, Attention ME–642.1 (Larry Lansing or Tova Stein, EERE–2002), 1000 Independence Ave., SW., Washington, DC 20585, e-mail: *eere.grants@pr.doe.gov.* Questions or comments should be categorized as *administrative* or *financial assistance related.* Administrative questions or comments relate only to the operation of IIPS. All questions or comments should be directed to the attention of Mr. Lansing (for program Areas of Interest 1 and 4) or Ms. Stein (for Program Areas of Interest 2, 3 and 8)). The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments coordinated

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with Mr. Lansing or Ms. Stein will be considered.

SUPPLEMENTARY INFORMATION: EERE supports DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts: reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) Stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy; (3) disseminate information to states, local governments and the public on EERE programs and technologies; and (4) address barriers to markets for EERE technologies. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Power Technologies (OPT)—The primary mission of this Office is: (1) To enable U.S. industry to complete the research, testing and field verification needed to fully develop advanced wind energy technologies that lead the world in cost effectiveness and reliability; (2) dramatically reduce dependence on foreign oil by developing a next generation hydrogen energy system to meet the President's National Energy Policy goal of reliable, affordable and environmentally sound energy for America's future; (3) provide unbiased technical assessments and information to federal, regional, and state decision makers on the benefits and costs of electric utility restructuring issues related to renewable energy and energy efficiency; (4) setting goals for the President's energy vision as part of the National Energy Policy and the Strategic Program Review; (5) develop renewable energy generation technologies capable of economically increasing the deployment of non-hydroelectric renewable generation capacity to a total of at least 25,000 megawatts by 2010; and (6) work in partnership with U.S. industry to establish geothermal energy as an economically competitive contributor to the U.S. energy supply. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving several specific renewable technologies such as wind, hydrogen and geothermal technologies. Also, applications will be requested to perform information dissemination, public outreach and related technical assistance for: the co-sponsorship of conferences involving the Power Technologies sector; Power Technologies analysis collaborative incentives analysis, information dissemination and outreach; and electricity restructuring.

Office of Industrial Technologies (OIT)—The mission of this Office of Industrial Technologies (OIT) is to improve energy efficiency, environmental performance, and productivity of materials and process industries by developing and delivering advanced science and technology options that will: (1) Lower raw material and depletable energy use per unit output; (2) improve labor and capital productivity; and (3) reduce the generation of wastes and pollutants. OIT accomplishes its mission through its Industries: aluminum, steel, metal casting, glass, forest and paper products, chemicals, petroleum refining, agriculture-biobased products, and mining. At the national level, OIT has successfully facilitated the development of industry visions and technology roadmaps with these nine industries that are called the "vision industries." Financial assistance applications will be requested to support information dissemination and outreach to facilitate multi-States implementation of the Industries of the Future program.

Office of Transportation Technologies (OTT)—The primary mission of this Office operates several programs to help promote the introduction of alternative fuel and advanced fuel and advance vehicle technology (fuels, vehicles, infrastructure) into the domestic transportation system in a safe, economical, and businesslike manner. OTT also supports the deployment of technologies, providing needed support at critical points in the transition of technologies from the laboratory to the marketplace. In addition, OTT implements many activities related to the alternative fuel provisions of the Energy Policy Act of 1992 (EPAct), including the Clean Cities program, federal fleet programs, analytical work, testing and evaluation, and regulatory efforts. Financial assistance applications will be requested to support information, dissemination and outreach activities for: co-sponsorship of conferences and events; training for local clean cities coalitions; and information dissemination and public outreach for niche markets.

Office of Building Technology, State and Community Programs (BTS)—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more livable. Financial assistance applications will be requested to support information dissemination, public outreach, and related technical analysis activities for the following BTS priorities: Addressing the efficient and renewable energy technology information deficit among commercial building constructors, owners, and managers; promoting energy efficiency and renewable energy utilization as a public value for residential builders and home buyers; increasing the availability of energy efficient school design, retrofit and technical resource information for school board members and school administrators; preparing the building trades, building operators, and building managers for the new generation of efficient and renewable energy technologies; promoting the widespread installation of dedicated compact fluorescent lamp fixtures; and strengthening the *Rebuild America Program* through outreach activities with stakeholder organizations representing facility managers, business officials and policy makers at colleges and universities, State and Local governments, elementary and secondary schools, and public and other low-income housing.

Federal Energy Management Program (FEMP)—The mission of the Federal Energy Management Program (FEMP) is to reduce the cost and environmental impact of government resource use by advancing energy efficiency and water conservation, promoting the use of renewable energy and managing utility costs in Federal buildings, facilities and operations. This program supports the Department's priority to lead by example through the government's own actions. FEMP accomplishes this mission, in part, by providing guidance on the use of effective energy saving technologies. Lighting systems consume approximately 40% of total building electricity, on a national average, and represent the largest single opportunity for reducing the energy use of Federal facilities. This work will provide certification of lighting professionals to help ensure that new and retrofit lighting projects exhibit the highest degree of energy efficiency and effectiveness to meet the President's National Energy Policy goal of reducing the cost of government by reducing energy use in federal facilities. FEMP also promotes Federal leadership in energy management and increasing awareness and energy management expertise in the Federal sector by providing technical assistance to senior FEMP management and federal facility energy managers which requires technology transfer and information dissemination to broad audiences. Financial assistance will be requested to support several specific program areas such as a national lighting certification program for lighting professionals.

Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at *http://www.eren.doe.gov/ee.html*.

Issued in Washington, DC on March 21, 2002.

Beth Tomasoni,

Acting Director, Operations Division B, Office of Headquarters Procurement Services.

[FR Doc. 02–7299 Filed 3–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF01–1–000]

Dominion Transmission, Inc.; Notice of Site Visits

March 21, 2002.

On April 2 through April 4, 2002, and April 16 through April 17, 2002, the staff of the Office of Energy Projects will conduct pre-filing site visits of Dominion Transmission, Inc.'s (Dominion) Greenbrier Pipeline Project in Virginia and North Carolina. The project area will be inspected by automobile and on foot, as appropriate. The staff also plans to attend two Open Houses being held by Dominion on April 2 and 16 at the following locations:

April 2, 2002: Laurel Park High School, 280 Laurel Park Drive, Martinsville, Virginia 276 632–7216.

April 16, 2002: City of Eden Municipal Building, 308 East Stadium Drive, Eden, North Carolina 336 623–2110.

These Open Houses will start at 6 p.m.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For additional information about the site visit, contact the Commission's Office of External Affairs at (202) 208–1088.

For information concerning the Open Houses contact Sean R. Sleigh, Certificates Manager for Dominion at (800) 624–3101 or (304) 627–3462.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7309 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–71–000]

State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents; Notice of Complaint

March 21, 2002

Take notice that on March 20, 2002, The State Of California, ex rel. Bill Lockyer, Attorney General of the State of California (Attorney General), submitted a Complaint alleging that sellers of energy and ancillary services to the California Power Exchange (PX), the California Independent System Operator (ISO), and the California Energy Resources Scheduling Division of the California Department of Resources (CERS) have violated Section 205(c) of the Federal Power Act (16 U.S.C. Section 824d(c)) and an express condition of their grants of market-based rate authority by failing to file their rates in the manner required by law. The Complaint alleges that Respondents' pro forma market-based rate schedules fail to provide FERC an adequate opportunity to determine in advance whether their rates are just and reasonable, and fail to provide the public with adequate notice of the rates to be charged. The Complaint further alleges that the Respondents' quarterly transaction reports, filed by up to four months after the completion of a market-based transaction, do not cure the statutory failure to file all rates prior to the time service commences. The Complaint further alleges that, even if quarterly, after-the-fact reporting of rates were found to comply with Section 205, sellers have failed to report transaction-specific information on their sales to the ISO, PX, and CERS, as required by FERC, negating any claim that their rates are on file. The Complaint seeks an order requiring sellers to: comply with the Section 205 rate filing requirement on a prospective basis; provide transaction-specific information to FERC on all sales to the ISO, PX, and CERS in calendar years 2000–2001; and, to the extent any rates charged are found to exceed just and reasonable levels, refund the difference between the rates charged and a just and reasonable rate, plus interest.

Copies of the Complaint were served via e-mail on all parties to Docket Nos. EL00–95–000 *et al.* A copy of the Complaint is available on the web site of the California Department of Justice (www.caag.state.ca.us).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 9, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7307 Filed 3–26–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000; EL00–98–000]

San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Technical Conference

March 20, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate a discussion between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. The conference will held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on April 4 and 5, 2002, beginning at 9 a.m. This technical conference is to assist the CAISO in preparation of its May 1, 2002, filing, as required by Commission order 97 FERC 61,275 (2001).

For additional information concerning the conference, interested persons may contact Robert Pease at (202) 208–0131 or by electronic mail at "*robert.pease@ferc.gov.*" No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7306 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–042, Project No. 943–075]

Public Utility District No.1 of Chelan County, Washington; Notice of Availability of Environmental Assessment

March 21, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Energy Projects has reviewed Public Utility District No.1 of Chelan County's applications for license amendment to install small turbines in fishway attraction water conduits at the Rocky Reach and Rock Island Projects located on the Columbia River in Chelan and Douglas Counties, Washington, and has prepared an Environmental Assessment (EA). The project occupies lands managed by the Bureau of Land Management and the U.S. Forest Service.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendments and concludes that approval of the proposed amendments with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on March 14, 2002 for the above applications. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, contact Vince Yearick at (202) 219–3073.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7308 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

March 21, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order

b. *Project No:* DI02–2–000

c. *Date Filed:* March 5, 2002

d. *Applicant:* Sheldon Jackson College

e. *Name of Project:* Indian River Project

f. *Location:* The project is located on the Indian River at Sitka Sound, in Sitka, Alaska, at T. 56 S., R. 63 E. This project will not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. §§ 817 (b).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, telephone (202) 408–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 219–2678, or e-mail address: *henry.ecton@ferc.gov*

j. *Deadline for filing comments and or motions:* April 22, 2002

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov.*

Please include the docket number (DI02–2–000) on any comments or motions filed.

k. *Description of Project:* The Indian River Project, a run-of-river development, owned and operated by Sheldon Jackson College, consists of: (1) a reservoir with a surface area of approximately 1 acre; (2) a 10-foot-high, 110-foot-long, low-head rock-filled dam; (3) a reinforced concrete intake structure; (4) a 1,000–foot-long, 42-inch-diameter steel diversion flume; (5) a screened diversion weir in an unlined canal which diverts water into a 900–foot-long, 42–inch-diameter buried wood-stave pipeline; (6) a powerhouse containing a 75–kilowatt generator; (7) a concrete tailrace discharging through two fish broodstock pens into Crescent Bay; and (8) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7305 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–002; RP01–484–000; RP01–486–000; RP00–139–000]

El Paso Natural Gas Co.; Aera Energy, LLC, et al., Complainants v. El Paso Natural Gas Co., Respondent; Texas, New Mexico and Arizona Shippers, Complainants v. El Paso Natural Gas Co., Respondent; KN Marketing, L.P., Complainant v. El Paso Natural Gas Co., Respondent; Notice of Public Conference

March 21, 2002.

At the March 13, 2002 Commission meeting, the Commission directed that a public conference be held to take comments on Staff's recommended basis for assigning capacity and receipt points on the El Paso Natural Gas Company system (El Paso). A description of Staff's proposal is posted on the Commission's website at *http://www.ferc.gov/calendar/commissionmeetings/discussion_papers.htm*

Take notice that on April 16, 2002 at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, the Commission Staff will hold a public conference to receive comments on Staff's capacity allocation proposal. The conference will consist of short presentations by panels of interested parties, including full requirements shippers, contract demand shippers, state interests, and El Paso. Persons interested in participating in the panels should indicate their interest by March 28, 2002 by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket RP00–336–002, *et al.* Each request to participate must include a contact person, telephone number and E-mail address. Comments addressing capacity allocation issues may also be filed on April 16, 2002.

Every effort will be made to accommodate requests to make presentations, but depending on the number of requests received, a limit may have to be placed on the number of participants or the time for presentations. To provide for a more productive conference, interested persons should coordinate their efforts and choose one spokesperson to make a statement on behalf of a group where interests coincide. Upon receipt of these requests, a subsequent notice of the conference presentation schedule will be issued.

The conference will be transcribed, so that those not attending can review the proceedings. Those interested in obtaining transcripts of the proceedings should contact Ace Federal Reporters at (202) 347–3700.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7310 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–1]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with DynCorp I&ET, Incorporated, to provide assistance in the enforcement of regulatory requirements under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, until September 30, 2004. DynCorp has been authorized to have access to information submitted to EPA under these statutes that may be claimed and determined to be confidential business information.

DATES: This notice is effective March 27, 2002.

ADDRESSES: Address all comments concerning this notice to Sounjay Gairola, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–4003. Fax: (202) 564–0053. Internet mail address: *gairola.sounjay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Telephone: (202) 564–4003. Fax: (202) 564–0053. Internet mail address: gairola.sounjay@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has authorized DynCorp I&ET, Incorporated, ("DynCorp"), a contractor, to access information submitted to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. Some of this information may be claimed and determined to be confidential business information ("CBI"). The EPA contract number is 68–W–99–072. The DynCorp corporate address is: DynCorp I&ET, Incorporated

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6101 Stevenson Avenue, Alexandria, VA 22304.

Under the contract, DynCorp provides enforcement support to the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance in a number of activities primarily related to the Clean Air Act. The contractor may also be called upon to provide support to other EPA offices under the other statutes. The activities in which DynCorp provides enforcement support include, but are not limited to: Analyzing evidence regarding changes or modifications made by utility power plants and the effect such changes may have on compliance with the Prevention of Significant Deterioration, New Source Review, New Source Performance Standards and other requirements of the Clean Air Act; and, Administrative support in managing documents concerning EPA investigations of utility power plants, such as photocopying and filing.

The type of information that may be disclosed includes, but is not limited to: Records related to the production of electricity, power plant construction records, Public Utility Commission records, Federal Energy Regulatory Commission records, and records of capital expenditures.

It is necessary for DynCorp to have access to these records in order to support EPA in determining whether regulated parties are in compliance with applicable regulatory requirements under the above listed statutes. DynCorp may be assisted in these activities by a subcontractor, Joyo Environmental Services of Alexandria, Virginia, working under DynCorp subcontract number K0–1–0074.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to DynCorp and its subcontractor is necessary for these entities to carry out the work required by this contract. EPA is issuing this notice to inform all submitters of information to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, that EPA may allow access to CBI contained in such submittals to DynCorp and their subcontractor as necessary to carry out work under this contract. Disclosure of CBI under this contract may continue until September 30, 2004.

As required by 40 CFR 2.301(h)(2), the DynCorp contract includes provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors. Similar requirements are contained under 40 CFR 2.302(h), 40 CFR 2.305(h), and 40 CFR 2.306(j), for the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, respectively. The notice is intended to meet the requirements of these regulations as well.

In accordance with 40 CFR 2.301(h)(2)(iii), EPA is affording individuals affected by this Notice an opportunity to comment on the disclosure of confidential business information to its contractor DynCorp. Comments should be addressed to the information contact given above.

Dated: March 14, 2002.

Bruce C. Buckheit,

Director, Air Enforcement Division.

[FR Doc. 02–7330 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34253; FRL–6824–7]

Imazalil; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for imazalil. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket control number OPP–34253 for imazalil, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34253 for imazalil in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Dayton Eckerson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8038 ; e-mail address: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for imazalil, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34253. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: opp-docket@epa.gov or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for imazalil, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the imazalil RED will be made available for public comment at a future date.

EPA and United States Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as imazalil, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for imazalil. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The imazalil risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 15, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6944 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34254; FRL–6829–4]

Ziram; Availability of Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the risk assessment and related documents for Ziram. This notice also starts a 60-day public comment period for the risk assessment. Comments are to be limited to issues directly associated with Ziram and raised by the risk assessment or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that the risk assessment for Ziram is preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34254, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34254 for Ziram in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8180; e-mail address: Dobak.Pat@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to fruit, vegetable, and nut producers; food processors; painters; worker protection advocates; environmental groups; and the chemical industry. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the risk assessment and certain related documents may also be accessed at http: www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34254. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34254 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #12, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34254. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility and tolerance reassessment decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's risk assessment and other related documents for Ziram are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for Ziram.

The Agency cautions that the Ziram risk assessment is preliminary and that further refinements may be appropriate. Risk assessment documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessment for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessment and associated documents. All comments should be submitted by May 28, 2002 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION.** Comments will become part of the Agency record for Ziram.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 15, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–7099 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50895; FRL–6826–1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: *By mail*: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each EUP: 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

053263–EUP–1. Amendment. Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232–1419. The EUP amendment for poly(oxy-1,2,-ethanediyl), alpha-isoctadecyl-omega-hydroxy for control of immature midges and mosquitoes was published in the **Federal Register** of October 31, 2001 (66 FR 54995) (FRL–6804–8). The original issuance allowed 1,700 pounds of the insecticide poly(oxy-1,2,-ethanediyl), alpha-isoctadecyl-omega-hydroxy to be used to treat and evaulate 67 acres of mosquitoes and midges habitats in the States of California, Florida, and South Carolina. This amendment will allow for additional use sites, bringing the count to 135 acres. The program is authorized only in the States of California, Florida, and South Carolina. This EUP is effective from October 31, 2001 to October 31, 2002. (Dani Daniel: Rm. 211, Crystal Mall #2; telephone number: (703) 305–5409; e-mail address: daniel.dani@epa.gov).

62719–EUP–45. Issuance. Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. This EUP allows the use of 67,000 pounds of the ProFume Gas Fumigant (sulfuryl fluoride) on up to 141 structures/enclosures to evaluate the control of post harvest infestations of insect and rodent pests in walnut and raisin processing facilities, warehouses, storage bins and facilities, fumigation chambers, and permanent and temporary enclosures (tarped commodity fumigation). This EUP allows evaluation of sulfuryl fluoride as an alternative to methyl bromide in the post-harvest fumigation of stored commodities. The program is authorized only in the State of California. The EUP is effective from March 1, 2002 to March 1, 2005. Temporary tolerances were established and published in the **Federal Register** of February 7, 2002 (67 FR 5735) (FRL–6823–4) for residues of the active ingredient sulfuryl fluoride

and its metabolite fluoride in or on walnuts and raisins. (Dennis McNeilly; Rm. 213, Crystal Mall #2; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov).

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 18, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–7226 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jbherman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0386.

Title: Section 74.1635, Special Temporary Authorizations (STA's).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions.

Number of Respondents: 1,550.

Estimated Time Per Response: 1–4 hours (avg.).

Total Annual Burden: 2,000 hours.

Annual Reporting and Recordkeeping Cost Burden: $919,955.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file for special temporary authority to operate broadcast stations at specified variances from station authorization not to exceed 180 days. Data are used by FCC staff to ensure that such operation will not cause interference to other stations.

OMB Control No.: 3060–1004.

Title: Orders Re: E911 Waivers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, state, local and tribal government.

Number of Respondents: 22.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 110 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Quarterly and semi-annual reporting requirements, recordkeeping requirement.

Needs and Uses: The quarterly and supplemental reports will be used by the Commission to monitor carrier progress in transition to E911, and thus ensure that this important effort will continue in an orderly and timely fashion. The Commission received emergency approval from the Office of Management and Budget (OMB) on February 14, 2002 (67 FR 09450, 3/1/02).

Comments submitted regarding these paperwork burdens will be reflected in the Commission's request for the three-year approval under the Paperwork Reduction Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7261 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeeting, Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Friday, March 22, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 22, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–7442 Filed 3–25–02; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Commission hereby gives notice that on March 21, 2002, the Westbound Transpacific Stabilization Agreement withdrew its proposed Reefer Trade Management Program, FMC Agreement No. 011325–027. The Commission, therefore, will not hold an oral hearing on the matter as noticed in the **Federal Register** on March 20, 2002, 67 FR 12993.

Dated: March 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7368 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010776–121.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., APL Co. Pte Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A. P. Moller-Maersk Sealand, Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P & O Nedlloyd B.V., P & O Nedlloyd Limited.

Synopsis: The proposed agreement modification extends the suspension of the conference for another six-month period, through November 1, 2002.

Agreement No.: 011708–002.

Title: Zim/COSCON Slot Charter Agreement.

Parties: Zim Israel Navigation Company Ltd., COSCO Container Lines Co. Ltd.

Synopsis: The proposed amendment adds the trade between the United States East Coast and North Europe to the scope of the agreement, extends the duration of the agreement, and makes address/contact information and other technical revisions.

Agreement No.: 011795.

Title: Puerto Rican Cross Space Charter and Sailing Agreement.

Parties: Compania Chilena de Navegacion Interoceanica S.A., Compania Sud Americana de Vapores S.A.

Synopsis: The proposed agreement authorizes the parties to cross charter container space in the trade between Puerto Rican ports, on the one hand, and ports on the Mediterranean, Black, and Caribbean Seas and ports on the West coast of South America, on the other hand. The parties request expedited review.

Dated: March 22, 2002.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7369 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16587N.

Name: Fescargo Corporation.

Address: 1145 West Walnut Street, Compton, CA 90220.

Date Revoked: March 7, 2002.

Reason: Failed to maintain valid bond.

License Number: 12086N.

Name: Globe Cargo, Inc.

Address: 12621 Chadron Avenue, Suite B, Hawthorne, CA 90250.

Date Revoked: March 1, 2002.

Reason: Failed to maintain valid bond.

License Number: 16036N.

Name: House to House International Freight Forwarders, Inc.

Address: 2103 NW 79th Avenue, Miami, FL 33122.

Date Revoked: March 7, 2002.

Reason: Failed to maintain a valid bond.

License Number: 3903F.

Name: Jagro California, Inc.

Address: c/o Jagro Customs Brokers and International Freight Forwarders, Inc., 290 Nye Avenue, Irvington, NJ 07111.

Date Revoked: February 13, 2002.

Reason: Surrendered license voluntarily.

License Number: 4304F.

Name: K.A.K. LLC dba Hoosier Forwarders.

Address: 1507 South Olive, South Bend, IN 46619.

Date Revoked: February 12, 2002.

Reason: Surrendered license voluntarily.

License Number: 10380N.

Name: Pana-York Maritima, Ltd.

Address: 411A N. Wood Avenue, Suite 5, Linden, NJ 07036.

Date Revoked: February 27, 2002.

Reason: Failed to maintain a valid bond.

License Number: 3406N.

Name: Simmons International Express, Inc.

Address: 101 E. Clarendon Street, Prospect Heights, IL 60070.

Date Revoked: January 4, 2002.

Reason: Failed to maintain a valid bond.

License Number: 15129N.

Name: Vanguard Moving & Storage Co., Inc. dba Guardship.

Address: 1901 Light Street, Baltimore, MD 21230.

Date Revoked: March 7, 2002.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–7371 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
4335F	International Services, Inc., 2907 Empress Court, Valrico, FL 33594	December 5, 2001.

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License No.	Name/Address	Date Reissued
17007N	JHJ International Transportation Co., Ltd., Suite 2502, Shartex Plaza No. 88, Zun Yi Nan, Shanghai, 200336, China, and 765 Dillon Drive, Wood Dale, IL 60191 .	January 10, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–7372 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Uniworld Express, Inc., 520 Carson Plaza Ct., Suite 211, Carson, CA 90746, Officer: James Hwang, President, (Qualifying Individual).

Jet-Speed Logistics (USA), LLC dba Jet-Speed Ocean Line, 1555 Mittel Boulevard, Suite M, Wood Dale, IL 60191, Officer: Mark K. Phillips, Owner, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

The Relocation Freight Corporation of America, 200 Summit Lake Drive, Valhalla, NY 10595, Officers: Michael Cazalet, Vice President, (Qualifying Individual), P. David Franzetta, President.

Dated: March 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7370 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Gertrude Myers 1988 Revocable Trust, and Marilyn Myers Bouziden, both of Alva, Oklahoma; as trustee, to acquire control of Myers Bancshares, Inc., Alva, Oklahoma, and thereby indirectly acquire voting shares of The Central National Bank of Alva, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7343 Filed 3–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo-und Vereinsbank AG, Munich, Germany; which is partially owned by Munchener Ruckversicherungs-Gesellschaft AG, Munich, Germany, which is partially owned by Allianz AG, Munich, Germany; to acquire Digital Signature Trust Company, Salt Lake City, Utah, and thereby indirectly engage through Identrus, LLC, New York, New York, in certification authority activities, and other incidental activities relating to the certification authority activities, pursuant to *Bayerische Hypo-und Vereinsbank AG*, 86 Fed. Res. Bull. 56 (2000).

Board of Governors of the Federal Reserve System, March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–7342 Filed 3–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

AGENCY: Office of Public Health and Science, Office for Human Research Protections, HHS.

ACTION: Notice of April 29–30, 2002 Meeting; Correction.

SUMMARY: The National Human Research Protections Advisory Committee published an announcement in the **Federal Register** on March 13, 2002, concerning the April 29–30, 2002 NHRPAC committee meeting. The announcement contained the incorrect location of the meeting.

FOR FURTHER INFORMATION CONTACT: Keisha Johnson, (301) 435–4917.

Correction

In the **Federal Register** of March 13, 2002, in FR Doc. 02–5925, on page 11343, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 265–1600.

Dated: March 21, 2002.

Greg Koski,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 02–7280 Filed 3–26–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDCAssistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Ovarian Cancer Patterns of Care Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Ovarian cancer is the second most common gynecologic cancer in the United States (U.S.), with 23,100 new cases and 14,000 deaths expected in 2001. Five-year relative survival is 95% for cases diagnosed at localized stage (25% of ovarian cancers), 79% for cases diagnosed with regional disease (9% of ovarian cancers), and 28% for those with distant disease at diagnosis (60% of ovarian cancers). Currently, screening tests that would detect ovarian cancer at an early stage and thus decrease mortality are not available.

Studies suggest that some ovarian cancer patients may not receive recommended treatment and staging. Limited information regarding recent, population-based estimates of the patterns of care for ovarian cancer treatment is available. While cancer registries generally collect information on treatment and stage of disease, detailed information is often not reported, and the accuracy of treatment and stage data collected is unknown.

The purpose of this project is to determine the type of treatment received by ovarian cancer patients, the medical specialty providing care, treatment outcome, staging procedures performed, and the accuracy of treatment and staging data in central cancer registries. A random sample of 1,500 cases per site diagnosed with first primary ovarian cancer is selected from three population-based central cancer registries (diagnosis years 1998–2000 in New York State and California, and 1997–2000 in Maryland). Because not all information may have been reported to the central cancer registries, this data will be collected from medical records of these cases for patient and tumor characteristics, treatment, and staging. Data collected will be sent to CDC investigators for analysis. The estimated annualized cost to respondents is $650,000.

Respondents	Number of respondents	Number of responses per respondent	Average burden of response (in hours)	Total burden (in hours)
Physicians (M.D., D.O.)	2250	1	15/60	563
Total				563

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Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7276 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Survey of Dentists to Obtain Information that will Improve the Reporting of Oral and Pharyngeal Cancers—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Legislation in most States requires the collection of incidence and mortality data on all types of cancers to identify cancer control needs and to track progress in reducing cancer incidence and deaths. These data include the counting of cancer cases as well as basic medical information about these cases such as the stage of the tumors at time of diagnosis. The goal of this project is to help the States of West Virginia and South Carolina to improve the accuracy, completeness and timeliness of oral and pharyngeal cancer data in their Central Cancer Registries. Oral and pharyngeal cancer is the focus of this project because it is suspected that many cases of these cancers are currently undercounted and the quality of available data is in need of improvement. In addition, oral and pharyngeal cancers have very poor 5-year survival (less than 50%), yet most are preventable. Therefore, control of oral and pharyngeal cancer is an important public health goal of these State Health Departments. These improved data will better meet the State's own legal mandate of cancer surveillance as part of the State public health infrastructure, and assist in the planning and evaluation of oral and pharyngeal cancer control efforts.

While cancer registries routinely receive pathology reports of tumor diagnoses, it is possible that for some cases of oral and pharyngeal cancer, the pathology specimens are sent to special pathology labs associated with dental schools, or to out-of-state laboratories. To ascertain these under-utilized pathology reporting sources, a simple survey will be sent to dental health providers (mostly dentists and oral surgeons). All such providers will be surveyed in West Virginia, while a sample of providers will be surveyed in South Carolina. The survey will ask if oral cancer screening is performed in the practice, if suspicious lesions are biopsied in the practice, and if not, to which specialists are referrals made. If the practice performs biopsies of oral lesions, the name and address of the pathology laboratory will be requested. These laboratories will be informed of their responsibility to report newly diagnosed tumors to the State Central Cancer Registry. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden of response (in hours)	Total burden (in hours)
Dentist and Oral Surgeons	1600	1	12/60	320
Total				320

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7277 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–19–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Reactions to Canadian-style Cigarette Warning Labels—NEW—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), proposes to conduct a national survey of young persons to assess their attitudes towards larger and more graphic cigarette warning labels, such as those currently used in Canada. Although the purpose of cigarette warning labels is to alert consumers about the health hazards of smoking, research suggests that current U.S. warnings fail to get the attention of smokers, an important first step if warnings are to have any deterrent effect. Cigarette warning labels have not changed since 1984 in the United States.

The proposed study will be conducted through implementation of a web-based survey. We propose to administer a 10 minute survey to 2000 persons 18 to 24 years of age. The survey will include images of Canadian cigarette packs with their current warning labels and questions about reactions to these warnings, including acceptability, and perceived usefulness (perceived impact on starting to smoke or deciding to quit). The results of this study will be shared with policy makers and public health officials. The total burden for this data collection is 200 hours.

Respondents	Number of respondents	Responses/respondent	Avg. burden per Response (in hrs)
Persons 18–24 years old	1200	1	10/60

Dated: March 19, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7275 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143; Correction

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Centers for Disease Control and Prevention, published a document in the **Federal Register**, March 19, 2002, (67 FR 12570), concerning Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143. The meeting time has changed.

CONTACT PERSON FOR MORE INFORMATION: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, M/S R–6, Cincinnati, Ohio 45226, telephone 513–841–4560.

Correction: In the **Federal Register** of March 19, 2002, (Volume 67, Number 53) [Notices] Page 12570, correct the "Times and Dates" to read:

Times and Dates:

2 p.m.–2:15 p.m., April 2, 2002

(Open)

2:20 p.m.–4 p.m., April 2, 2002

(Closed)

The meeting place, status, and purpose, announced in the original notice remain unchanged.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 21, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–7317 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0458]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 26, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review (OMB Control No. 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrates a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collections of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and

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premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (i.e., foreign studies), and information to support a request for accelerated approval. The discussion of such information in a premeeting package may be summarized if it has already been previously submitted to FDA under an OMB approved collection of information. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB Control No. 0910–0014, expires September 30, 2002); 356h (OMB Control No. 0910–0338, expires March 31, 2003); and 3397 (OMB Control No. 0910–0297, expires February 29, 2004).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 45. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period of 1998 to 2000. For these 3 years, CBER and CDER together received a yearly average of 53 requests from 45 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document. Not all requests for fast track designation may meet the statutory standard. Of the average 53 requests made per year, the agency granted 33 requests for fast track designation. For each of the 33 granted requests, FDA estimates that a premeeting package was submitted to the agency. FDA estimates that a premeeting package needs more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in table 1 of this document. The hour burden estimates contained in table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

In the **Federal Register** of October 23, 2001 (66 FR 53612), FDA published a 60-day notice requesting public comment on the information collection provisions (the October 2001 notice). One letter of comment was received in response to the 60-day notice on the information collection.

The comment declared, without any explanation or supporting information, that the proposed collection of information was unnecessary. The comment also attempted to reserve judgment as to whether our estimated information collection burden was accurate. The comment seemed to object to fast track drug development programs and stated in part that "for our Congress to even think about letting it happen is playing games with the existing laws."

FDA disagrees with the comment. Section 506 of the act requires sponsors to submit sufficient clinical data for FDA to determine, after preliminary evaluation, whether a fast track product may be effective. To obtain that clinical data as described in the guidance document, FDA must have an approved collection of information. Failure to obtain OMB approval for the proposed collection of information would undermine the guidance document's value (because FDA might not receive information that would help the review or receive unnecessary or confusing information) and ultimately undermine the efficiency of the review under a fast track drug development program.

Additionally, the October 2001 notice provided sufficient information and opportunity for public comment on the information collection burden estimates given in the notice. The comment received did not provide any figures or explanations that would cause us to change our burden estimates, so FDA has no reason to revise the collection burden estimates.

As for the comment's remarks regarding fast track drug development programs and Congress, such matters are outside the scope of this notice. We do, however, regard the statute as providing sufficient safeguards to prevent unsafe or ineffective drugs from reaching the public.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation request	45	1.18	53	60	3,180
Premeeting packages	33	1.00	33	100	3,300
Total					6,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7375 Filed 3–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: April 24–26, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Michael B. Small, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7266 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 9, 2002.

Open: 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov.*

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7269 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(60), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with

the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard D. Crosland, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Ninds/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological and Stroke Special Emphasis Panel.

Date: April 24, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7264 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 10, 2002.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7271 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 86.

Date: April 11, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 87.

Date: April 29, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Trlangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7272 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

Date: April 11–12, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tommy L. Broadwater, Chief, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building/MSC 6500, 45 Center Drive, Room 5AS–25U, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7273 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2002, 2 p.m. to March 27, 2002, 3 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on March 18, 2002, 67 FR 12034–12036.

The meeting will be held April 1, 2002, from 4 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7265 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabhe L. Atreya, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 1, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 2, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Call).

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 2, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 5, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The River In, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 9–10, 2002.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 10, 2002.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265 *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 9:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.
Contact Person: Carl D. Banner, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7267 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2002, 4:30 p.m. to March 27, 2002, 5 p.m., NIH, Rockledge 2, Bethesda, MD. 20892 which was published in the **Federal Register** on March 18, 2002, 67 FR 12034–12036.

The meeting will be held April 2, 2002, from 12 p.m. to 1 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7268 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 1, 2002.
Time: 10:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 2–3, 2002.
Agenda: To review and evaluate grant applications.
Time: 8:30 a.m. to 4 p.m.
Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Clare K. Schmitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148, *schmittc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 2, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 2, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 3, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 4, 2002.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 7–9, 2002.
Time: 4 p.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Argonne Guest House, Argonne National Laboratory, 9700 South Cass Avenue—Building 460, Argonne, IL 60439.
Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 10, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, Scientific Review Administrator, Center for Scientific Review, National Institues of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gordon L. Johnson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome SEP.
Date: April 11, 2002.
Time: 10 a.m. to 3 p.m.
Agendo: To review and evaluate grant applications.
Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.
Contact Person: J. Terrell Hoffeld, DDS, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MS 7844, Bethesda, MD 20892, (301) 435–1018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7270 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 21406, April 30, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the Office of Equal Opportunity, Office of the Director, NIH, as follows: (1) Retitle the Office of Equal Opportunity (NAD, formerly HNAD) as the Office of Equal Opportunity and Diversity Management and revise the functional statement; (2) retitle the Complaints Management and Adjudication Branch (NAD2, fomerly HNAD2) as the Division of Complaints Management and Resolution and revise the functional statement; (3) establish the Division of Diversity Policy, Planning and Evaluation (NAD5, formerly HNAD5), and transfer into this division the functions of the Affirmative Employment and Programs Branch (NAD3, formerly HNAD3) and the Program Planning and Evaluation Branch (NAD4, formerly HNAD4); and (4) abolish the Affirmative Employment and Programs Branch (NAD3) and the Program Planning and Evaluation Branch (NAD4).

Section N–B, Organization and Functions, is amended by replacing the current section NAD (formerly HNAD) with the following:

Office of Equal Opportunity and Diversity Management (NAD, formerly HNAD). Serves as the focal point for NIH-wide policy formulation, implementation, coordination and management of the civil rights, equal opportunity, affirmative employment, and workforce diversity programs of the NIH. Specifically, NAD (1) advises the NIH director and staff, as well as Institute and Center (IC) staff, on matters related to the equal employment opportunity (EEO) programs and policies of the NIH; (2) provides leadership on policy development and implementation in all areas of EEO to include diversity management, affirmative action planning, and complaints management; (3) consults with and provides advice and guidance to responsible NIH officials regarding the progress of the EEO programs within their respective organizations; (4) oversees the implementation of Title VI of the Civil Rights Act as it relates to research contractors and grantees, and reports its progress to the NIH Director; (5) provides leadership in the overall management of the discrimination and complaints process for all NIH employees or applicants in all pay plans to ensure fair and judicious treatment of all parties involved; (6) provides advice and guidance to responsible NIH management officials on developing and implementing their Affirmative Action plans and Workforce Diversity initiatives; (7) provides advice and guidance to sponsoring ICs in the planning and presentation of annual NIH cultural observances and EEO educational seminars or programs; (8) represents the NIH Director in contacts with groups, both within and outside NIH, and maintains liaison with other Federal agencies regarding EEO issues; (9) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Department of Justice, United States Commission on Civil Rights, DHHS Office of Civil Rights and the DHHS Office of the General Counsel regarding NIH EEO programs (10) prepares responses to Congressional, internal, external, and other inquiries on issues relating to NIH EEO programs and policies; (11) performs studies and analyses, as necessary, and provides related advice and guidance to NIH program managers in support of the EEO programs at NIH; and (12) conducts evaluations of EEO programs for NIH

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components and ensures compliance with all applicable laws and regulations.

Division of Complaints Management and Resolution (NAD2, formerly HNAD2). Provides leadership in the overall management of the discrimination complaints process for all NIH employees or applicants in all pay plans. Specifically, NAD2 (1) manages and provides oversight for NIH complaints processing; (2) manages the formal complaints process for all NIH components, conducts investigations, reviews and analyzes investigative files, prepares proposed dispositions, (including addressing management problems identified in the investigations), presents recommendations for corrective action, identifies those complaints recommended for settlement, and prepares appropriate documents; (3) monitors and reviews the Commissioned Corps complaint management system to ensure proper processing of complaints; (4) monitors discrimination complaints at the NIH level to identify patterns of discrimination, as well as conducts data analysis on trends in filing and resolution of similar complaints; (5) prepares responses to Congressional or other requests and inquiries on EEO complaints; (6) provides leadership in policy development or changes to current NIH policies and procedures in the area of the discrimination complaints process and resolution; (7) represents the Director, Office of Equal Opportunity and Diversity Management (OEODM), at all internal and external meetings related to complaints processing and adjudication; and (8) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Justice Department and the DHHS Office of the General Counsel.

Division of Diversity Policy, Planning and Evaluation (NAD5, formerly HNAD5). Provides leadership in the overall management of all areas related to diversity management and affirmative action as well as compliance with all EEO related requirements and evaluation of EEO and diversity programs throughout the NIH. Specifically, NAD5 (1) serves as consultant to senior NIH management officials as well as IC program officials in all areas of equal opportunity, civil rights, affirmative action, and diversity management; (2) provides advice and guidance to responsible NIH management officials on developing and implementing their Affirmative Action Plans and Workplace Diversity initiatives; (3) identifies training and educational needs in the areas of affirmative employment and diversity management and assesses the effectiveness of training activities; (4) in collaboration with the OIR, OEO and OHRM, develops NIH-wide policies and initiatives to eliminate barriers to equal employment opportunity and the effective management of diversity, which includes all job categories and segments of the work force; (5) ensures that all laws, regulations, executive orders, procedure and policies governing equal opportunity, civil rights, affirmative action, and diversity management are promulgated throughout the NIH; (6) provides leadership to the ICs and coordinates recruitment, placement and retention programs and strategies for underrepresented groups by promoting EEO and diversity awareness for all members of the NIH workforce; (7) in conjunction with the Office of Human Resource Management (OHRM) and the ICs, conducts community outreach activities to increase minority representation in new hires and career opportunities; (8) examines organizational personnel policies and practices to identify and eliminate barriers to full participation of all EEO groups in NIH employment opportunities; (9) provides advice and guidance to sponsoring ICs in the planning and presentation of annual NIH cultural observances and EEO educational seminars or programs; (10) develops criteria and conducts EEO and diversity program evaluations for NIH components; (11) develops and utilizes statistical research methods for the collection and analysis of data on various aspects of EEO to include new or modified methods to analyze workforce profiles, manpower distributions, and overall EEO effectiveness, and prepares and issues statistical reports on these projects; (12) handles EEO data requests from external and internal organizations, OEODM assessments and reports required by higher level authorities, as well as responses to Congressional and other inquires on affirmative action and diversity management; and (13) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Justice Department, and the DHHS Office of the General Counsel regarding the NIH affirmative action and diversity management programs.

Delegations of authority statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: March 8, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7274 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for a Permit

SUMMARY: On February 12, 2002, Circo Hermanos Suarez, S.A., applied for a permit to re-export polar bears under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We are publishing this notice due to the high level of interest expressed by the public and members of Congress.

DATES: We have been and continue to receive information from numerous sources related to the status and condition of the bears, and their possible re-export. Our determination regarding the issuance of this permit will be based on all substantive information available to us. However, we anticipate that the review and processing of this application will require at least 45–60 days. Therefore, we will not be able to make a determination on this application until April 26, 2002, and will consider any additional information received by this date.

ADDRESSES: As with all applications received, documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281. Please refer to the PRT number when requesting a copy of the documents.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Circo Hermanos Suarez, S.A., PRT–053440 requests a CITES certificate for the re-export of 5 male and 2 female polar bears (*Ursus maritimus*) from Puerto Rico to the Netherlands Antilles.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 26, 2002.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7315 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 26, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Thomas J. Moore, III, Ingram, TX, PRT–803337.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of three years. Permittee must apply for renewal annually.

Applicant: University of New Mexico/Depart. of Anthropology, Albuquerque, NM, PRT–013176.

The applicant requests renewal of a permit to authorize the import of biological samples from wild, captive-held, and captive-born chimpanzees (*Pan troglodytes*), pygmy chimpanzees (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) from various countries for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of five years.

Applicant: National Aviary, Pittsburgh, PA, PRT–053886.

The applicant requests a permit to export viable eggs of captive-bred Manchurian cranes (*Grus japonensis*) and white-naped cranes (*Grus vipio*) to the Khinganski Nature Reserve, Arkara, Russia for the purpose of enhancement of the survival of the species through captive breeding and re-introduction to the wild. As this request for a permit is part of an ongoing program, this application file will be established as a master file from which a permit will be issued for this year's export, and as the basis for which permits can be issued for similar activities to be conducted by the applicant over the next 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 15, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7316 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance; Endangered Species

On March 6, 2002, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–053151) to the Centers for Disease Control/National Center for Infectious Diseases, Atlanta, Georgia, to import biological samples collected post-mortem from one captive-born female Sumatran orangutan (*Pongo pygmaeus abelii*), and two male and one female captive-held/captive-born Bornean orangutan (*Pongo pygmaeus pygmaeus*) from the Singapore Zoological Gardens, Singapore. The 30-day comment period required by Section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the remaining Singapore Zoo population of 26 orangutans existed, and that no reasonable alternative was available to the applicant for several reasons.

The Centers for Disease Control (CDC) received a request from the Agricultural and Veterinary Authority of Singapore for assistance in determining the cause of death of two Bornean orangutans that died unexpectedly at the Singapore Zoological Gardens on January 20th and 21st, 2002. The request asked for assistance in determining whether the cause of death of these specimens was infectious in nature. The Singapore Authorities wanted to rule out two possible viral infections, Coxsackievirus B and encephalomyelitis virus (EMCV). They do not have the capability to conduct these same tests in Singapore. The Singapore Zoo also experienced two deaths of orangutans at their facility prior to the recent loss of these specimens. Tissue samples from all four specimens are being imported to determine whether the cause of death may be from the same disease vector.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

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Dated: March 15, 2002.

Timothy J. Van Norman,

Chief, Branch of Permits (International), Division of Management Authority.

[FR Doc. 02–7314 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions, decisions, and agenda items for consideration at meetings of the Conference of the Parties to CITES. The United States may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The twelfth regular meeting of the Conference of the Parties to CITES (COP12) will be held in Santiago, Chile, November 3–15, 2002.

With this notice we:

Announce a public meeting to discuss proposed amendments to the CITES Appendices (species proposals), resolutions, decisions, and agenda items that the United States is considering submitting for consideration at COP12; and

Provide information on how non-governmental organizations based in the United States can attend COP12 as observers.

DATES: The public meeting will be held on April 17, 2002, at 1:30 p.m. We will consider written information and comments you submit concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12, and other items relating to COP12, if we receive them by May 17, 2002.

ADDRESSES:

Public Meeting

The public meeting will be held in Sidney Yates Auditorium, in the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. Directions to the building can be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT,** below).

Available Information

Information concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12 is available upon request from the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203. Effective April 1, 2002, this information will also be available from our World Wide Web site *(http://international.fws.gov/cites/cites.html)* and via our Faxback system. You may obtain the information via the Faxback system by dialing 703/358–2400, our Faxback telephone number, following the automated instructions, and entering Document Number 5054 when prompted to enter a document number.

Comment Submission

Comments pertaining to proposed resolutions, proposed decisions, and/or agenda items should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203, or via E-mail at: fw9 cites@fws.gov, or via fax at: 703/358–2298. Comments pertaining to species proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203, or via e-mail at: fw9 scientific authority@fws.gov, or via fax at: 703/358–2276. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Division of Management Authority, Branch of CITES Operations, phone: 703/358–2095, fax: 703/358–2298, E-mail: fw9 cites@fws.gov; or Robert R. Gabel, Division of Scientific Authority, phone: 703/358–1708, fax: 703/358–2276, E-mail: fw9 scientific authority@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction if their trade is not controlled. These species are listed in Appendices to CITES, copies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our World Wide Web site at *http://international.fws.gov/cites/cites.html*, or from the official CITES Secretariat Website at *http://www.cites.org/eng/append/index.shtml*. Currently, 157 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by the other Parties.

This is our third in a series of **Federal Register** notices that provide you with an opportunity to participate in the development of the United States' negotiating positions for the twelfth regular meeting of the Conference of the Parties to CITES (COP12). We published our first such **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species amendments for the United States to consider proposing at COP12. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Division of Scientific Authority at the above address. We published our second such **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, proposed decisions, and agenda items, from the Division of Management Authority at the above address. You may locate our regulations governing this public process in 50 CFR 23.31–23.39.

COP12 is scheduled to be held in Santiago, Chile, November 3–15, 2002.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12. The public meeting will be held on April 17, 2002, from 1:30 p.m. to 4:30 p.m. in Sidney Yates Auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, DC. You can obtain directions to the building by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT,** above). Sidney Yates Auditorium is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible. All persons planning to attend the meeting will be required to present photo identification when entering the building.

Observers

Article XI, paragraph 7 of CITES states the following:

"Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote."

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at COP12 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at COP12 must receive prior approval from our Division of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of COP12 to participate in COP12 as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws, and a list of representatives it intends to send to COP12. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past five years must submit a request but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in COP12 as an observer. These requests should be sent to the Division of Management Authority (*see* **ADDRESSES**, above).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. Any organization requesting approval for observer status at COP12 will be added to our CITES Mailing List if it is not already included, and will receive notice of all future **Federal Register** notices and other information pertaining to COP12. A list of organizations approved for observer status at COP12 will be available upon request from the Division of Management Authority just prior to the start of COP12. The deadline for registration of an organization as an observer at COP12 is one month prior to the opening of the COP.

Future Actions

The United States must submit any species proposals, proposed resolutions, proposed decisions, and agenda items for consideration at COP12, to the CITES Secretariat 150 days prior to the start of the meeting (i.e., by June 6, 2002). We are planning to soon publish a **Federal Register** notice announcing species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting to COP12, and soliciting further information and comments on them. We will consider all available information and comments, including those presented at the public meeting (see **DATES** above) or received in writing during the comment period, in deciding which species proposals, proposed resolutions, proposed decisions, and agenda items warrant submission by the United States for consideration of the Parties. Those we decide to submit for consideration at COP12 will be submitted to the CITES Secretariat by June 6, 2002.

We expect the CITES Secretariat to provide us with a provisional agenda for COP12 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice. We will also plan to provide it through our Website, if it is available.

Approximately four months prior to COP12, we plan to announce those species proposals, proposed resolutions, proposed decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at COP12 by posting a notice on our Website, if it is available.

Through a **Federal Register** notice approximately two months prior to COP12, we will publish the provisional agenda for COP12 and inform you about proposed U.S. negotiating positions on proposals to amend the Appendices, draft resolutions, draft decisions, discussion papers, and other issues before the Parties for consideration at COP12. We will also publish an announcement of a public meeting that we expect to hold approximately 30 to 45 days prior to COP12, to receive public input on our positions regarding COP12 issues.

Prior to COP12, we plan to post on our Website (if it is available) any changes the United States makes to its proposed negotiating positions contained in the **Federal Register** notice referred to in the above paragraph.

Authority: The primary author of this notice is Mark Albert, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 12, 2002.

Steve Williams,

Director.

[FR Doc. 02–7313 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscriber Line Forum

Notice is hereby given that, on February 5, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

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15 U.S.C. 4301 *et seq.* ("the Act"), The Digital Subscriber Line Forum ("DSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, US Robotics, Schaumburg, IL, and Uniden America Corporation, Fort Worth, TX, have been added as parties to this venture. Also, Mitel Semiconductor is now called Mitel Networks, Ottawa, Ontario, Canada.

In addition, Globespan and Virata Ltd. have merged to become GlobespanVirata, cambridge, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on October 9, 2001. A notice for this filing has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7281 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Nanometer Scale Patterning for Terabyte Capacity Disk Drives

Notice is hereby given that, on February 28, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Nanometer Scale Patterning for Terabyte Capacity Disk Drives has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are GE Corporate Research and Development, Niskayuna, NY; Imation Corporation, Oakdale, MN; and IBM Corporation, Almaden Research Center, San Jose, CA. The nature and objectives of the venture are to develop and demonstrate "Nanometer Scale Patterning for Terabyte Capacity Disk Drives".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7286 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intellinet Corporation, Richmond Heights, OH and Situs Management Inc., Tokyo, JAPAN have been added as parties to this venture. Also, the following are no longer members: 2nd Wave Inc., Dallas, TX; Access360, Irvine, CA; AdventNet Inc., Pleasanton, CA; Altaworks Corporation, Nashua, NH; Aptegrity Inc., Fairfield, NJ; Arsenal Digital Solutions, Durham, NC; Arula Systems Inc., Cupertino, CA; Avasta Inc., San Francisco, CA; AVCOM, Sunnyvale, CA; Candle Corporation, El Segundo, CA; Center 7 Inc., Lindon, UT; Check Point Software Technologies Ltd., Redwood City, CA; Crystal Group Inc., Hiawatha, IA; DefendNet Solutions Inc., Providence, RI; developNET Corporation, Portland, OR; Digital Fuel Technologies Inc., Redwood City, CA; Dimension Data McLean, VA; Dirig Software, Nashua, NH; e4e Inc., Santa Clara, CA; EasyVista.com, Beverly, MA; Entuity, New York, NY; Envive Corporation, Mountain View, CA; esavio, Berwyn PA; Euclid Network Solutins Inc., Santa Clara, CA; FusionStrorm, San Francisco, CA; Gomez Networks, Lincoln, MA; Guardent Inc., Waltham, MA; ISManaged Inc., Plano, TX; Keynote Systems Inc., San Mateo, CA; Kinetica Pty. Ltd., Pymble, New South Wales, AUSTRALIA; Logical Worldwide, Slough, UNITED KINGDOM; Luminate Inc., Redwood City, CA; ManagedStorage International Inc., Broomfield, CO; Marimba Inc., Mountain View, CA; N-able Technologies, Ottowa, Ontario, CANADA, NCMX Inc., Seattle, WA; NEXL Inc., Peabody MA; NOCpulse Inc., Sunnyvale, CA; Objective Systems Integrators, Folsom, CA; Oblicore Inc., Ramat Gan, ISRAEL; OMRON ALPHATEC Corporation, Tokyo, JAPAN; Opticom Inc., Andover, MA; PatchLink.com Corporation, Scottsdale, AZ; Precise Software Systems Ltd., Westwood, MA; Qualys Inc., Redwood City, CA; Raymond James & Associates, St. Petersburg, FL; Selis Networks Inc., San Francisco, CA; SilverBack Technologies, Billerica, MA; StorageWay Inc., Fremont, CA; Symantec Corporation, Cupertino, CA; TEKsystems Internet Business Services LLC, Beaverton, OR; and Trend Micro Inc., Cupertino, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on November 20, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 2002 (67 FR 5292).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 02–7282 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Test Methods, Camberley, Surrey, UNITED KINGDOM; Datappli, Midland, MI; Data Patterns, West Mambalam, Chennai, INDIA; GTE–ERS, Ontario, CA; SBS Greenspring Computers, Newark, CA; Shaanxi Hitech, Xi'an, PEOPLE'S REPUBLIC OF CHINA; and Vero/APW Electronics, Southhampton, Hampshire, UNITED KINGDOM have been dropped as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department of August 20, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49042).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7283 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 13, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ines GmbH, Leibnizstrasse, Bad Breisig, Germany has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 11, 2002. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7284 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on February 26, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nissan Chemical Industries, Ltd., Tokyo, Japan has been added as a party to this venture. Also, Micro-Flo Company, Memphis, TN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. membership in this group research project remains open, and Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on January 28, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7285 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Notice of Registration

By Notice dated September 24, 2001, and published in the **Federal Register** on October 3, 2001 (66 FR 50454), Roche Diagnostics Corporation, ATTN: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of alphamethadol (9605) a basic class of controlled substance listed in Schedule I.

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substance for incorporation in drug of abuse detection kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Roche Diagnostics Corporation, is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have

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included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR § 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 18, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–7259 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52782), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Stepan Company, Natural Products Department to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company, Natural Products Department on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 18, 2002.

Laura M. Nagel,

Deputy Assistance Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 02–7260 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–04–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Large Irradiators.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 7 Agreement State reports submitted annually.

5. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

6. *An estimate of the number of responses:* 87 (3 NRC licensee + 7 Agreement State licensee responses + 77 recordkeepers).

7. *The estimated number of annual respondents:* 77 (22 NRC licensees and 55 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 35,975 (10,277 hours for NRC licensees [10,087 recordkeeping + 190 reporting] and 25,698 hours for Agreement State licensees [25,218 recordkeeping + 480 reporting]) or 467 hours per licensee.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC world wide web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 26, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of March, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7324 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Decommissioning Criteria for the West Valley Demonstration Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting in West Valley, New York.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a transcribed, facilitated meeting on April 17, 2002 with the public to discuss the Commission's policy statement on the clean up criteria for the West Valley site entitled, "Decommissioning Criteria for the West Valley Demonstration Project at the West Valley Site." The meeting will also include a discussion of the perspectives, roles, and responsibilities of the NRC and other federal and state agencies involved at the West Valley site. The Department of Energy and New York State Energy Research and Development Authority will also participate.

DATE/TIME: The meeting will be held on Wednesday, April 17, 2002, from 7 p.m. through 10 p.m. The meeting will be preceded by an "open house" between 6 p.m. and 7 p.m to allow for individual discussions with staff members.

LOCATION: Ashford Office Complex, 9030 Route 219, West Valley, New York.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov.* Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site, *http://www.access.gpo.gov/su_docs/fedreg/frcont02.html,* or by contacting Mr. Chad Glenn at (800) 368–5642, ext. 6722, or via e-mail at *cjg1@nrc.gov.* The policy statement was published in the **Federal Register** on February 1, 2002 (67 FR 5003). Those who wish to ask questions should register with Mr. Glenn prior to the meeting or at the Ashford Office Complex, 9030 Route 219, West Valley, New York meeting site 15 minutes prior to the start of the meeting. Individual oral questions may be limited by the time available, depending on the number of persons who register. Copies of the information on the policy statement will also be available at the meeting. All attendees are requested to bring photo identification (*i.e.*, driver's license).

Dated at Rockville, Maryland this 21st day of March, 2002.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 02–7323 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on an Overview of Recent Activities Related to the Potential High-Level Waste Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Beatty, Tonopah, and Ely, Nevada.

SUMMARY: This is being reprinted to clarify dates, times and locations. The U.S. Nuclear Regulatory Commission (NRC) staff will hold three public meetings on regulation of a potential high-level waste repository at Yucca Mountain. The meetings are intended to foster a common understanding among the stakeholders on safety and regulatory issues, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, NRC.

The meetings are primarily to acquaint the public with the NRC oversight of a potential high-level waste repository at Yucca Mountain. It will begin with an overview of NRC's responsibilities, include a discussion of NRC's regulations and preparations for evaluating a potential U.S. Department of Energy (DOE) license application, and conclude with an overview of the NRC's role with respect to the transportation of high-level waste. Several opportunities for questions will be provided. In addition, members of the NRC staff will be available for informal discussion with members of the public. The dates, times, and locations of the public meetings are shown below.

Date/Time: Monday, April 8, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Beatty Senior Center, 150 A Avenue South, Beatty, Nevada.

Date/Time: Tuesday, April 9, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Tonopah Convention Center, 301 West Brougher Avenue, Tonopah, Nevada.

Date/Time: Wednesday, April 10, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Holiday Inn Prospector Inn & Casino, 1501 E. Aultman Street, Ely, Nevada.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov.*

Dated at Rockville, MD this 22nd day of March, 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7322 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25468; 812–12446]

UTEK Corporation; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant, UTEK Corporation ("UTEK"), requests an order approving its Non-Statutory Stock Option Plan (the "2000 Plan") and the grant of certain stock options under the 2000 Plan.

FILING DATES: The application was filed on February 13, 2001, and amended on January 3, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the

reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, 202 South Wheeler Street, Plant City, FL 33566.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation and an internally managed business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] UTEK's primary investment objective is to increase its net assets by exchanging stock in its portfolio companies for cash and other assets it will use to acquire additional technologies. UTEK seeks to achieve that investment objective by developing portfolio companies that identify, license and market new technologies invented primarily by employees of universities and laboratories. UTEK expects that the primary source of technology opportunities will be, as it has been in the past, presented to it as a result of contacts with universities research laboratories and in private industry, provided by its management, including its Non-Officer Directors as defined below.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the 2000 Plan for directors who are not employees or officers of the applicant ("Non-Officer Directors").[2] Applicant has a seven-member board of directors (the "Board"), five of whom are not interested persons of the applicant ("Disinterested Directors").[3] On February 8, 2000, applicant's Board approved the 2000 Plan, and applicant's shareholders approved the 2000 Plan on October 2, 2000. The 2000 Plan will become effective on the date that the Commission issues an order on the application (the "Order Date").

3. The 2000 Plan provides for the grant of stock options to purchase shares of applicant's common stock ("Options") to each of the Non-Officer Directors on the Order Date. The Non-Officer Directors will receive Options pursuant to the following formula: Options representing 25,000 Shares will be granted to four of the five Non-Officer Directors on the Order Date, with 6,250 Options for each grantee vested at the time of grant, and an additional 6,250 Options vesting on each anniversary of the grant for three consecutive years. One Non-Officer Director will be granted 50,000 Options, with 12,500 Options vested at the time of grant and an additional 12,500 Options vesting on each anniversary of the grant for three consecutive years. Any Non-Officer Director that is elected or appointed to the Board after the Order Date will receive Options representing 25,000 shares upon his or her election or appointment, with 6,250 Options vested at the time of grant and an additional 6,250 Options vesting on each anniversary of the grant for three consecutive years.

4. Under the 2000 Plan, the exercise price for Options will not be less than 100% of the current market value of the shares on the date of grant. Options granted under the 2000 Plan are exercisable for a period of 10 years from the date of grant or a shorter period as the Board may establish. In the event of death or permanent and total disability of an Non-Officer Director during the Director's service, unexercised Options will become exercisable only during the period of twelve months following the date of death or disability. In the event of the termination of a Non-Officer Director's directorship for a reason other than by death or permanent and total disability, an Option shall be held at the date of termination and may be exercisable in whole or in part for three months, or some lesser period not to be less than 30 days, as is provided for in the Option agreement. The Options will not be transferable except for disposition by gift, will, intestacy, or pursuant to a qualified domestic relations order ("QDRO") as defined by section 414(p) of the Internal Revenue Code of 1986, as amended.[4]

5. Applicant states that, in addition to the 2000 Plan, UTEK also has in place another stock option plan, which was adopted by UTEK's stockholders in 1999 (the "1999 Plan"). The 1999 Plan provides for the issuance of up to 500,000 options to purchase applicant's common stock. Non-Officer Directors are not eligible to receive options under the 1999 Plan. Applicant states that there is also an outstanding warrant to purchase up to 100,000 shares of UTEK's common stock held by Schneider Securities Inc., a registered broker-dealer. UTEK's outstanding options and warrant represent 471,600 shares or approximately 12% of its outstanding common stock as of September 30, 2001. UTEK does not have any other options, warrants or rights outstanding.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the 2000 Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states that Non-Officer Directors not only provide UTEK with skills and experience necessary for management and oversight of UTEK's investments and operations and are likely to have specific experience with respect to technologies in which UTEK invests, but they are also considered an important source of technology investment opportunities. Applicant also states that Non-Officer Directors with industry or other relevant experience also are expected to participate on an ongoing basis in the analysis of prospective portfolio companies, as well as to provide managerial assistance to UTEK's portfolio companies and aid them in their business of researching, identifying, developing and licensing new technology. Applicant believes that its ability to make Option grants under the 2000 Plan to Non-Officer Directors provides a means of retaining the services of its current Non-Officer Directors and of attracting qualified persons to serve as Non-Officer Directors in the future. The Options also will provide a means for UTEK's Non-Officer Directors to increase their ownership interest in UTEK, thereby helping to ensure a close identification of their interests with those of UTEK and its shareholders. Applicant submits that the terms of the 2000 Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders and that the grant of Options to Non-Officer Directors will not have a substantial dilutive effect on the net asset value of UTEK's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7290 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Non-Officer Directors currently receive no compensation for their services on the board of directors or committees, except for the reimbursement of out-of pocket expenses incurred in attending meetings.

[3] The Non-Officer Directors are Disinterested Directors.

[4] A QDRO is made pursuant to a court order or decree under state domestic relations laws (e.g., involving divorce, child support, alimony, or marital property rights). Under section 414(p) of the Code, a QDRO permits a state domestic relations court to issue orders that will allow for employee plan benefits to be paid to an alternate payee.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25492; 812–12644]

Nationwide Life Insurance Company, et al.; Notice of Application

March 21, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts both within and outside the same group of investment companies.

Applicants: Nationwide Life Insurance Company ("NLIC"), Gartmore Mutual Funds ("GMF"), Gartmore Variable Insurance Trust ("GVIT"), Gartmore Mutual Fund Capital Trust ("GMFCT"), Gartmore Global Asset Management Trust ("GGAMT") and Gartmore Morley Capital Management ("GMCM" and, together with GMFCT and GGAMT, the "Advisers").

Filing Dates: The application was filed on September 12, 2001 and amended on March 21, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, One Nationwide Plaza, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. GMF is an Ohio business trust registered under the Act as an open-end management investment company. GVIT is a Massachusetts business trust registered under the Act as an open-end management investment company. The Gartmore Investment Companies (as defined below) are comprised of separate series, each of which represents a separate portfolio of securities with its own investment objectives and policies. The term "Gartmore Investment Companies" refers to GMF and GVIT and any current or future registered open-end management investment companies that are part of the "same group of investment companies" (as defined in section 12(d)(1)(G) of the Act) as GMF and GVIT.

2. NLIC is a stock life insurance company organized under the laws of the state of Ohio and a wholly owned subsidiary of Nationwide Financial Services, Inc. ("NFS"), a provider of diversified financial services.[1] NLIC issues variable insurance contracts, which offer opportunities to invest in the Gartmore Investment Companies through separate accounts registered under the Act ("Registered Separate Accounts") and separate accounts exempt from registration under the Act ("Unregistered Separate Accounts" and, together with the Registered Separate Accounts, the "Separate Accounts"). The Gartmore Investment Companies, including the Funds of Funds (as defined below), serve, although not exclusively, as funding mediums for the Separate Accounts and may serve, in the future, as funding mediums for Separate Accounts sponsored by insurance companies other than NLIC.

3. Applicants request relief to permit certain series of GMF and GVIT that are advised by an Adviser (the "Funds of Funds") to invest (a) in other series of the Gartmore Investment Companies ("Affiliated Underlying Funds") and (b) in other registered open-end management investment companies and unit investment trusts that are not part of the "same group of investment companies" as the Gartmore Investment

[1] For purposes of the requested relief, NLIC includes any entity controlling, controlled by, or under common control with NLIC.

Companies ("Unaffiliated Underlying Funds" and, together with the Affiliated Underlying Funds, the "Underlying Funds").[2]

4. Each Fund of Funds may make investments in government securities, short-term fixed income securities and other securities that are not issued by registered investment companies and which are consistent with its investment objectives and in a fixed rate investment contract issued by NLIC ("Nationwide Contract"). Applicants state that each Fund of Funds will enable investors to create a comprehensive asset allocation program with just one investment and will provide a simple, convenient and cost-efficient program for investors who are able to identify their investment goals and risk tolerances but may not be comfortable deciding how to invest their assets to achieve those goals.

5. GMFCT, GGAMT, and GMCM are registered as investment advisers under the Investment Advisers Act of 1940. GMFCT serves as investment adviser to the Funds of Funds and certain other series of the Gartmore Investment Companies, including the GMF Index Funds. GMFCT is an indirect subsidiary of NFS. GGAMT serves as investment adviser to certain series of the Gartmore Investment Companies. GMCM serves as investment adviser to two series of GMF.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit Underlying Funds to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. To limit the control that a Fund of Funds may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting the Advisers, the Fund of Funds, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. To limit further the potential for undue influence by a Fund of Funds or its affiliates over an Unaffiliated Underlying Fund, applicants state that a Fund of Funds and its Adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, a "Fund of Funds Affiliate") will not cause any investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser, sponsor, promoter, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an "Unaffiliated Fund Affiliate"). The board of trustees of the Fund of Funds ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), also will adopt procedures designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions. The board of each Unaffiliated Underlying Fund that is organized as an open-end management investment company ("Unaffiliated Fund"), including a majority of the Disinterested Trustees, also will determine that, among other things, any consideration paid by the Unaffiliated Fund to the Fund of Funds or a Fund of Funds Affiliate is fair and reasonable and does not involve overreaching on the part of any person concerned.

6. To avoid the possibility that a Fund of Funds or a Fund of Funds Affiliate could force an Unaffiliated Underlying Fund to purchase certain securities, applicants state that a Fund of Funds will not cause an Unaffiliated Underlying Fund to purchase a security from an underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person (each, an "Underwriting Affiliate"). For the purpose of the requested relief, an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

7. Applicants further state that the board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures designed to monitor any purchases of securities by the Unaffiliated Fund in Affiliated Underwritings, including any purchases made directly from each Underwriting Affiliate, and will make certain findings to assess whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. An Unaffiliated Fund will keep certain records concerning these purchases.

8. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds and Unaffiliated Fund will execute an agreement (prior to an investment in the shares of the Unaffiliated Fund in excess of the limits of section 12(d)(1)(A)(i) of the Act) stating that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. Applicants note that an Unaffiliated Underlying Fund may choose to reject an investment from a Fund of Funds.

[2] For purposes of the requested relief, Adviser includes any entity controlling, controlled by, or under common control with an Adviser.

9. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD"), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in rule 2830 of the Conduct Rules of the NASD. Applicants represent that, with respect to an investment by a Registered Separate Account in a Fund of Funds, the aggregate of all fees and charges at all levels will be reasonable in relation to the services rendered, the expenses expected to be incurred and the risks assumed by the applicable parties.

10. In addition, applicants note that the Board of a Fund of Funds, including a majority of the Disinterested Trustees, would be required to determine that the advisory or management fees charged to the Fund of Funds are based on services provided that are in addition to, rather than duplicative of, services provided to Underlying Funds in which a Fund of Funds invest. Furthermore, an Adviser to a Fund of Funds will waive or offset fees otherwise payable to the Adviser by a Fund of Funds in an amount at least equal to any compensation received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund in connection with the investment by a Fund of Funds in the Unaffiliated Underlying Fund.

11. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order. Applicants also represent that a Fund of Fund's prospectus and sales literature will contain clear, concise "plain English" disclosure designed to inform investors of the unique characteristics of the Fund of Funds' structure, including but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company or an affiliated person of such person. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among others: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Underlying Funds may be deemed to be under common control by virtue of having the same Adviser. Additionally, applicants state that a Fund of Funds and an Unaffiliated Underlying Fund may become affiliated persons if a Fund of Funds acquires more than 5% of the Unaffiliated Underlying Fund's outstanding voting securities. Applicants also state that GMFCT may be deemed an affiliated person of NLIC, the issuer of the Nationwide Contract, as they are both under the common control of NFS. The Funds of Funds, through their affiliation with NFS, may therefore be deemed affiliated persons of NLIC. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds and purchasing the Nationwide Contract from NLIC.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds. Applicants state that the investment by a Fund of Funds in shares of the Underlying Funds and the Nationwide Contract and the issuance of shares of the Underlying Funds to a Fund of Funds will be effected in accordance with the investment policies contained in the registration statement of such Fund of Funds. In addition, the Fund of Funds will pay no sales load when purchasing the Nationwide Contract, and the guaranteed rate on the Nationwide Contract will be at least as favorable as the guaranteed rate on all other similar fixed contracts issued by NLIC. Furthermore, each Fund of Funds will be permitted to remove its assets from the Nationwide Contract at any time without the imposition of a sales charge or market value adjustment.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Advisers, (b) any person controlling, controlled by, or under common control with the Advisers, and (c) any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Advisers or any person controlling, controlled by, or under common control with an Adviser (the "Group") will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group (except for any member of the Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Underlying Fund in the

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same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. A Fund of Funds and a Fund of Funds Affiliate will not cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limits of 12(d)(1)(A)(i) of the Act, the board of each such Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. No Fund of Funds or Fund of Funds Affiliate will cause an Unaffiliated Underlying Fund to purchase a security from an Underwriting Affiliate.

6. The board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The board of the Unaffiliated Fund should consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interest of shareholders.

7. The Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limits of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to an investment in shares of an Unaffiliated Fund in excess of the limits in section 12(d)(1)(A)(i), the Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that the Unaffiliated Fund understand the terms and conditions of the order and agrees to fulfill its responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limits in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

9. Prior to approving any investment advisory or management contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, must find that the advisory or management fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, the services provided to Underlying Funds in which the Fund of Funds will invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Funds.

10. An Adviser to a Fund of Funds will waive or offset fees otherwise payable to the Adviser by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in rule 2830 of the Conduct Rules of the NASD.

12. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the act, except to the extent that such Underlying Fund (i) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (ii) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one more affiliated investment companies for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7325 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–25493; 812–12650]

First American Investment Funds, Inc., et al.; Notice of Application

March 21, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act, (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act, (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility. The requested order would also amend a condition of a prior order ("Order").[1]

Applicants: First American Investment Funds, Inc. ("FAIF"), First American Funds, Inc. ("FAF"), First American Strategy Funds, Inc. ("FASF"), First American Insurance Portfolios, Inc. (collectively, the "Investment Companies"), U.S. Bancorp Asset Management, Inc. ("USBAM") and all other open-end registered management investment companies and their series that now or in the future are advised by USBAM or a person controlling, controlled by, or under common control with USBAM (together with the Investment Companies, the "Funds").[2]

Filing Dates: On September 28, 2001 and amended on March 19, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o James D. Alt, Esq., 601 Second Avenue South, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Investment Company is registered under the Act as an open-end management investment company and is organized as a Maryland or a Minnesota corporation. USBAM is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. The Funds have obtained an order permitting each Fund to use its uninvested cash to purchase shares of one or more affiliated money market funds that comply with rule 2a–7 of the Act (the "Money Market Funds.").[3] The Funds have also obtained an order permitting the Funds to invest cash on a joint basis through joint accounts ("Joint Accounts").[4]

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or by investing in other short-term instruments either directly or through Joint Accounts. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a fund has been delayed. Currently, the Funds have credit arrangements with their custodian (*i.e.*, overdraft protection).

4. If the Funds were to borrow money from their custodian under their current arrangements or from another bank, the Funds would pay a significantly higher interest rate than the rate that would be earned by other Funds on repurchase agreements and other short-term instruments. Applicants state that this differential represents the bank's profit for serving as middleman between a borrower and a lender.

5. Applicants request an order that would permit the Funds to enter into lending agreements under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Proposed Credit Facility"). Applicants believe that the Proposed Credit Facility would substantially reduce the Funds' potential borrowing costs and enable the Funds to earn higher rates of interest on cash balances they currently invest in Money Market Funds or repurchase agreements. Although the Proposed Credit Facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish a committed line of credit or other borrowing arrangements with banks. The Funds would also continue to maintain overdraft protection with their custodian.

6. Applicants anticipate that the Proposed Credit Facility would enable the Funds to borrow for temporary purposes at a substantially reduced cost in the event of unexpected cash needs due to "failed" sales of securities or an unanticipated volume of redemption requests or for other reasons. Sales fails

[1] *First American Strategy Funds, Inc.*, Investment Company Act Rel. Nos. 22173 (Aug. 26, 1996) (notice) and 22241 (Sept. 23, 1996) (order), *amendment by First American Funds, Inc.*, Investment Company Act Rel. Nos. 22910 (Nov. 25, 1997) (notice) and 22950 (Dec. 23, 1997) (order).

[2] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the order in the future will do so in accordance with representations and conditions of application.

[3] *First American Funds, Inc.*, Investment Company Act Rel. Nos. 22910 (Nov. 25, 1997) (notice) and 22950 (Dec. 23, 1997) (order) ("Cash Sweep Order").

[4] *First American Investment Funds, Inc.*, Investment Company Act Rel. Nos. 22537 (March 3, 1997) (notice) and 22589 (March 28, 1997) (order).

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may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from the securities sold. In the event the Funds are unable to liquidate portfolio securities for immediate settlement to meet redemption requests, which normally are effected immediately, they will not receive payment in settlement for up to three days. The Proposed Credit Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. While borrowing arrangements with banks will continue to be available to cover unexpected cash needs, under the Proposed Credit Facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans and for overdraft protection with its custodian bank. In addition, Funds lending through the Proposed Credit Facility would earn interest at a rate higher than they otherwise could obtain from investing their cash balances in repurchase agreements or the Money Market Funds. Thus, applicants believe that the Proposed Credit Facility will benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any loan made pursuant to the Proposed Credit Facility (the "Interfund Loan Rate") will be the average of the current overnight repurchase agreement rate available either directly or through the Joint Accounts (the "Repo Rate") and a single benchmark rate set for all Funds (the "Bank Loan Rate"). The Bank Loan Rate will be calculated by USBAM each day according to a formula established by each Fund's board of directors ("Board") to approximate the lowest interest rate at which bank loans would be available to the Funds. The formula will be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and will vary with this rate so as to reflect changing bank loan rates. The initial Bank Loan Rate formula and any subsequent modifications to the formula will be subject to the approval of each Fund's Board. Each Fund's Board periodically will review the continuing appropriateness of reliance on the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates.

9. The Proposed Credit Facility will be administered by the Cash Sweep and Interfund Borrowing Committee of USBAM (the "Committee") and is composed of USBAM's chief executive officer, chief investment officer, chief operating officer, corporate counsel and head of compliance operations. The Proposed Credit Facility will be available to Funds as lenders if the Fund would otherwise invest on any given day in the Money Market Funds pursuant to the Cash Sweep Order, or, in the case of Money Market Funds, if that Fund would otherwise invest in overnight repurchase agreements or other high quality short-term investments. Under the Proposed Credit Facility, the portfolio managers for each participating Fund, other than the Money Market Funds, may provide the Committee with instructions to participate as a borrower or lender. On each business day, the Committee will collect data on the uninvested cash balances and borrowing requirements of all participating Funds, other than the Money Market Funds, from the Funds' custodian. With respect to the Money Market Funds, the portfolio managers will inform the Committee of the amount of cash, if any, they wish to make available under the Proposed Credit Facility as a lender. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Committee will allocate loans among borrowing Funds. Applicants expect that there typically would be far more available uninvested cash for borrowing than borrowing demand. After the Committee has allocated cash for interfund loans, it will inform the Money Market Fund managers of the amount of loans, if any, made for the account of each Money Market Fund, so that the Fund managers may invest any remaining cash in other available short-term instruments. With respect to other participating Funds, the Committee will follow standing instructions from the portfolio managers to invest the remaining amounts daily in the Money Market Funds pursuant to the Cash Sweep Order.

10. The Committee will allocate borrowing demand and cash available for lending among the Funds on an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to keep the number of transactions and associated administrative costs to a minimum. To reduce transaction costs, each single loan normally will be allocated to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures will be established by each Fund's Board, including a majority of directors who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Independent Directors"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. USBAM will (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and restrictions, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Boards of the Funds concerning any transactions by the Funds under the Proposed Credit Facility and the interest rates charged. USBAM will administer the Proposed Credit Facility as part of its duties under its existing management agreement with each Fund and would receive no additional fee as compensation for its services.

12. Each Fund's participation in the Proposed Credit Facility will be governed by and be consistent with its organizational documents and fundamental investment restrictions. Each Fund currently has a non-fundamental investment restriction limiting borrowings to 10% of total assets and barring the Funds from borrowing for leverage purposes. In the event a Fund does not have an investment restriction that prohibits the Fund from borrowing for other than temporary or emergency purposes, that Fund's borrowings through the Proposed Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days. No Fund will be permitted to participate in the Proposed Credit Facility unless the Fund has fully disclosed all material information concerning the Proposed Credit Facility in its statement of additional information.

13. Applicants state that certain Funds operate in reliance on the Order. Applicants state that condition 2 of the Order provides that Underlying Portfolios, as defined in the Order, will not acquire securities of other investment companies in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants request that condition 2 of the Order be amended solely to the extent necessary to permit the Underlying Portfolios to engage in interfund borrowing and lending transactions through the Proposed Credit Facility.

14. Applicants seek an order pursuant to section 6(c) of the Act exempting them from sections 18(f) and 21(b) of the Act, pursuant to section 12(d)(1)(J) of

the Act exempting them from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1) and 17(a)(3) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements. Applicants also seek an exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act solely to the extent necessary to amend the Order.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having USBAM as their common investment adviser and having the same Board.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the Proposed Credit Facility transactions do not raise these concerns because (a) USBAM will administer the program as a disinterested fiduciary, (b) all interfund loans will consist only of uninvested cash balances the lending Fund would have invested in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund, (c) the interfund loans will not involve a greater risk than other similar investments, (d) the lending Funds will receive interest at a rate higher than it could otherwise receive for similar short-term investments, and (e) the borrowing Funds will pay interest at a rate lower than otherwise available to them under bank loan agreements. Moreover, applicants believe that the other conditions in the application will effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund. For the same reasons, applicants believe that the proposed amendment of the Order satisfies the standards of section 17(b) of the Act.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b), and from 17(a) to amend the Order, and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the Proposed Credit Facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that USBAM would receive no additional compensation for its services in administering the Proposed Credit Facility. Applicants also note that the purpose of the Proposed Credit Facility is to provide economic benefits for all the participating Funds. Applicants further state that for all of the above reasons, the requested amendment of the Order does not implicate any of the concerns behind section 12(d)(1) of the Act.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Proposed Credit Facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds under the Proposed Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates, unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis preposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the Proposed Credit Facility is consistent with the provisions, policies

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and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and restrictions. Applicants believe that each Fund's participation in the Proposed Credit Facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rate to be charged to the Funds under the Proposed Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for interfund loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than both the Repo Rate and the then-current yield on the highest-yielding Money Market Fund in which the lending Fund could invest under the Cash Sweep Order, and its investment policies and restrictions, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any interfund loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan of the Fund, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the interfund loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Proposed Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Proposed Credit Facility only on a secured basis. A Fund may not borrow through the Proposed Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding interfund loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the interfund loan.

6. No Fund may lend to another Fund through the Proposed Credit Facility if the loan would cause its aggregate outstanding loans through the Proposed Credit Facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each interfund loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

10. A Fund's participation in the Proposed Credit Facility must be consistent with its investment policies and limitations and its organizational documents.

11. Except as set forth in this condition, no Fund may borrow through the Proposed Credit Facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the Proposed Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

12. The Committee will calculate total Fund borrowing and lending demand through the Proposed Credit Facility, and allocate interfund loans on an equitable basis among the Funds. The Committee will not solicit cash for the Proposed Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Committee will invest amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Money Market Funds.

13. USBAM will monitor the interest rates charged and the other terms and conditions of the interfund loans and will make a quarterly report to the Boards of the Funds concerning the participation of the Funds in the Proposed Credit Facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's Board, including a majority of the Independent Directors: (a) Will review no less frequently than quarterly the Fund's participation in the Proposed Credit Facility during the preceding quarter for compliance with the conditions of any order permitting the transactions, (b) will establish the Bank Loan Rate formula used to determine the interest rate on interfund loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Proposed Credit Facility.

15. In the event an interfund loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, USBAM will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning the interfund loans.[5] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on all Funds involved. The arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Proposed Credit Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on the Money Market Funds and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. USBAM will prepare and submit to the Funds' Boards for review an initial report describing the operations of the Proposed Credit Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the Proposed Credit Facility, USBAM will report on the operations of the Proposed Credit Facility at the Boards' quarterly meetings. In addition, for two years following the commencement of the Proposed Credit Facility, the independent public accountant for each Fund shall prepare an annual report that evaluates USBAM's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield on the highest yielding Money Market Fund in which a lending Fund is permitted to invest, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any interfund loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the interfund loan.

After the final report is filed, the Funds' external auditors, in connection with their Fund audit examinations, will continue to review the operation of the Proposed Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Proposed Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

Applicants also agree that condition number 2 to the Order will be modified as follows:

No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that an Underlying Portfolio has obtained exemptive relief from the Commission permitting it to (i) purchase securities of an affiliated money market fund for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7326 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[5] If the dispute involves Funds with separate Boards, the directors of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25490; File No. 812–12714]

Integrity Life Insurance Company, et al.; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission ("SEC or "Commission")

ACTION: Notice of application for an order pursuant to pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act"), approving substitution of shares of one registered management investment company with shares of another registered management investment company.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Touchstone High Yield Fund for shares of the Morgan Stanley High Yield Portfolio (the "Substitution").

APPLICANTS: Integrity Life Insurance Company ("Integrity"), Separate Account II of Integrity Life Insurance Company ("Integrity Separate Account"), National Integrity Life Insurance Company ("National Integrity"), Separate Account II of National Integrity Life Insurance Company ("National Integrity Separate Account") and Touchstone Advisors, Inc. ("Touchstone") (collectively, the "Applicants").

FILING DATE: The application was filed on December 7, 2001 and amended and restated on March 18, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For Applicants: P.O. Box 740074, Louisville, Kentucky, 40202–3319.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna

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MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. The Integrity Separate Account was established under Ohio law in 1992. The Integrity Separate Account is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One Integrity variable annuity contract (the "Integrity Contract") is affected by this application.

2. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

3. The National Integrity Separate Account was established under New York law in 1992. The National Integrity Separate Account is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One National Integrity variable annuity contract (the "National Integrity Contract") is affected by this application (collectively, Integrity Contracts and National Integrity Contracts referred to as the "Contracts").

4. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Integrity and National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity and National Integrity. Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

5. Touchstone, a subsidiary of Western and Southern Life Insurance Company, is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 2001, Touchstone had $1.6 billion in assets under management.

6. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. At the time of filing this application, the Integrity Contract offered 50 portfolios and the National Integrity Contract offered 31 portfolios. Both Contracts offer the Morgan Stanley High Yield Portfolio of the Universal Institutional Funds, Inc. (the "Universal Funds").

7. Both Contracts permit transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges. No sales charge applies to such a transfer of accumulation value among Subaccounts. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 may be imposed on transfers in excess of twelve in a contract year. Transfers must be at least $250, or, if less, the entire amount in the subaccount from which value is to be transferred. A variety of types of automatic scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

8. Each of the Contracts reserves the right, upon notice to contractowners, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount. The reserved right is disclosed in each Contract's prospectus.

9. The Morgan Stanley High Yield Portfolio, a separate series of the Universal Funds, is currently an investment option under the Contracts. The Universal Funds is an open-end management investment company registered under the Act. The Morgan Stanley High Yield Portfolio is managed by Morgan Stanley Asset Management, Inc. ("MSAM").

10. The investment objective of the Morgan Stanley High Yield Portfolio is to seek above-average total return over a market cycle of three to five years by investing primarily in high yield securities (commonly referred to as "junk bonds"). The total annual expenses of the Morgan Stanley High Yield Portfolio for the fiscal year ended December 31, 2000 were .80% of average daily net assets (.26% in management fees and .54% in other expenses). Absent voluntary reimbursements by MSAM, those expenses would have been 1.04% (.50% in management fees and .54% in other expenses). As of December 31, 2001, the Morgan Stanley High Yield Portfolio had $52.9 million in assets. As of December 31, 2001, the average annual total returns of the Morgan Stanley High Yield Portfolio, whose inception date is August 31, 1992, were as follows:

1 year	3 years	5 years	10 years	Life of portfolio
5.87%	−4.33%	−1.50%	n/a	4.13%

11. The Touchstone High Yield Fund is a separate series of the Touchstone Variable Series Trust, an open-end management investment company registered under the Act. It is currently not an investment option under the Contracts. The Touchstone High Yield Fund is managed by Touchstone.

12. The investment objective of the Touchstone High Yield Fund is to achieve a high level of current income as its main goal, with capital appreciation as a secondary consideration, by investing primarily in high yield securities. The total annual expenses of the Touchstone High Yield Fund for the fiscal year ended December 31, 2000 were .80% of average daily net assets (.10% in management fees and .70% in other expenses). Absent voluntary reimbursements by Touchstone Advisors, Inc., those expenses would have been 1.50% (.60% in management fees and .90% in other expenses). However, on February 21, 2002, Touchstone's Board of Directors voted to amend the investment advisory agreement with the Touchstone High Yield Fund to decrease the contractual management fee before waivers and reimbursements to .50% effective May 1, 2002. As of December 31, 2001, the Touchstone High Yield Fund had $17.2 million in assets. As of December 31, 2001, the average annual total returns of the Touchstone High Yield Fund, whose inception date is May 17, 1999, were as follows:

1 year	3 years	5 years	10 years	Life of portfolio
5.38%	n/a	n/a	n/a	−2.07%

13. Applicants seek an order permitting the substitution of shares of Touchstone High Yield Fund for shares of the Morgan Stanley High Yield Portfolio. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any contractowner's cash value or death benefit or in the dollar value of his or her investment in either of the subaccounts. Accordingly, there will be no financial impact on any contractowner. The Substitution will be effected by having each of the subaccounts that invests in the Morgan Stanley High Yield Portfolio redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the Touchstone High Yield Fund at the net asset value calculated on the same date.

14. The Substitution will be described in supplements to the prospectuses for the Contracts ("Stickers") filed with the Commission and mailed to contractowners. The Stickers will give contractowners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contractowners with value allocated to a subaccount investing in the Morgan Stanley High Yield Portfolio that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contractowners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Morgan Stanley High Yield Portfolio, and
- For 30 days after the Substitution from the subaccounts investing in Touchstone High Yield Fund to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

15. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contractowner will be provided with a prospectus for the Touchstone High Yield Fund before the Substitution. Within five days after the Substitution, Integrity and National Integrity will each send affected contractowners written confirmation that the Substitution has occurred.

16. Integrity and National Integrity, as applicable, will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

17. Applicants believe that their request satisfies the standards for relief of section 26(c) of the Act, as set forth below, because the affected contractowners will have:

(1) Contract value allocated to a subaccount invested in a portfolio with an investment objective and investment policies substantially similar to the investment objective and policies of the substituted portfolio—both the Morgan Stanley High Yield Portfolio and the Touchstone High Yield Fund seek a high return by investing primarily in high yield securities;

(2) superior performance to that of the substituted portfolio—the Touchstone High Yield Fund has consistently outperformed the Morgan Stanley High Yield Portfolio since its inception; and

(3) current total annual expenses that are the same as those of the substituted portfolio—the Touchstone High Yield Fund has the same current total annual expenses as the Morgan Stanley High Yield Portfolio and anticipates decreasing its gross expenses as it achieves economies of scale through asset growth.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contractowner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substitute portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio. The Morgan Stanley High Yield Portfolio and the Touchstone High Yield Fund have substantially similar investment objectives and policies. The current total annual expenses for each of the portfolios are .80%. The Touchstone High Yield Fund has had consistently better performance than the Morgan Stanley High Yield Portfolio since its inception.

5. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

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(1) The Touchstone High Yield Fund is an appropriate portfolio to which to move contractowners with value allocated to the Morgan Stanley High Yield Portfolio because the portfolios have substantially similar investment objectives and policies.

(2) The costs of the Substitution, including any brokerage costs, will be borne by Integrity and National Integrity and will not be borne by contractowners. No charges will be assessed to effect the Substitution.

(3) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's cash value or death benefit or in the dollar value of his or her investment of either of the subaccounts.

(4) The Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution and in each case will result in contractowners' contract values being moved to a portfolio with the same current total annual expenses (including lower current management fees) than the current total annual expenses of the Morgan Stanley High Yield Portfolio.

(5) Touchstone will cap total annual expenses of the Touchstone High Yield Fund at .80% of average daily net assets for a two-year period beginning on the date of the Substitution.

(6) All contractowners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contractowner's free transfers in a contract year.

(7) Within five days after the Substitution, Integrity and National Integrity will send to its affected contractowners written confirmation that the Substitution has occurred.

(8) For those contractowners who are contractowners on the date of the Substitution, Integrity and National Integrity will not increase Separate Account or Contract fees and expenses for a two-year period beginning on the date of the Substitution.

(9) The Substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of Integrity and National Integrity.

(10) The Substitution will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

Conclusion

Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-7289 Filed 3-26-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-8072, File No. S7-04-02]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of conference; Request for comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on April 15, 2002. This meeting seeks to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, principally to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on April 15, 2002. Your comments must be received by April 10, 2002 in order to be considered for discussion by conference participants.

ADDRESSES: Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also can be sent electronically to the following e-mail address: *rule-comments@sec.gov*. Comment letters should refer to File No. S7–04–02; if e-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, NW, Washington, DC 20549–0102. All electronic comment letters will be posted on the Commission's Internet Web site, *http://www.sec.gov*.[1]

FOR FURTHER INFORMATION CONTACT: Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0310, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The federal government and the states have jointly regulated securities offerings and the securities industry since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[2] Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, must comply with the federal securities laws as well as all applicable state laws and regulations. Parties involved in this process have long recognized the need to increase uniformity and cooperation between the federal and state regulatory systems so that capital formation can be made easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[3] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators that can assist in carrying out that Section's policy and purpose. Section 19(c) mandates greater federal and state cooperation in securities matters in order to:

- Maximize effectiveness of regulation;
- Maximize uniformity in federal and state standards;
- Minimize interference with the business of capital formation; and
- Reduce the costs, paperwork and burdens of raising investment capital, particularly by small business, and also reduce the costs of the government programs involved.

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] 15 U.S.C. 77a *et seq.*

[3] Pub. L. 96-477, 94 Stat. 2275 (October 21, 1980).

The Commission is required to conduct an annual conference to establish ways to achieve these goals. The 2002 meeting will be the nineteenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation. It considered the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. Congress passed the National Securities Markets Improvement Act of 1996 ("NSMIA")[4] as a result. NSMIA contains significant provisions that realign the partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 2002 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[5] are planning the 2002 Conference on Federal-State Securities Regulation, which will be held April 15, 2002 in Washington, DC. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, only Commission and NASAA representatives may attend the conference to encourage open and frank discussion. However, each working group in its discretion may invite specific self-regulatory organizations ("SROs") to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, self-regulatory organizations, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. Conference attendees will consider all comments.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference consists of the following topics in the areas of corporation finance, market regulation, investment management, investor education, and enforcement.

(1) Corporation Finance Issues

NSMIA amended section 18 of the Securities Act[6] to preempt state blue-sky registration and review of offerings of covered securities.[7] Covered securities, as defined by section 18, include several types of securities. One class of covered securities is securities traded on the national markets like the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange LLC ("Amex") and the Nasdaq National Market System ("Nasdaq/NMS"). Covered securities also include registered investment company securities and some exempt securities and offerings.

The states retain some authority over offerings of covered securities despite this preemption. Except for nationally-traded securities, the states have the right to require fee payments and notice filings. The states also retain antifraud authority over all securities offerings, including offerings of covered securities.

Securities that are not covered securities remain subject to state registration requirements. These securities generally include the securities of smaller companies, like those quoted on the Nasdaq SmallCap market or the over-the-counter Bulletin Board, or in the "pink sheets." Securities issued under some federal exemptions from registration are not covered securities; the states retain authority to register or exempt those securities. These include securities issued in unregistered offerings under the following exemptions:

- Section 3(a)(11) of the Securities Act and Rule 147 for intrastate offerings;[8]
- Section 4(2) of the Securities Act where the offering does not meet the safe harbor requirements of Rule 506 of Regulation D;[9]
- Regulation A;[10] and
- Rules 504 and 505 of Regulation D.[11]

The states' authority over securities offerings, particularly their ability to register and review offerings of non-covered securities, continues the need for uniformity between the federal and state registration systems, where consistent with investor protection. Staff from the Commission's Division of Corporation Finance and state representatives will discuss ways to increase uniformity between the systems. The group will focus primarily on the following topics:

A. Transactions Involving "Qualified Purchasers"

Under the provisions of section 18 of the Securities Act, an additional category of covered securities is subject to preemption, *i.e.*, transactions involving qualified purchasers. This term is subject to definition by the Commission. On December 19, 2001, the Commission published a release proposing an amendment to Rule 146 under the Securities Act.[12] The proposed amendment provides a definition for the term "qualified purchaser" for purposes of section 18(b)(3) of the Securities Act in order to implement the provision. As proposed, "qualified purchaser" will be defined in the same manner as "accredited investor," under Rule 501 of Regulation D.[13] If adopted, securities offered or sold to a "qualified purchaser" will be preempted from state registration requirements. The Commission has sought public comment on the proposed definition. Participants will discuss the proposed amendment.

B. Federal Exemptions

1. Regulation A

The participants will consider possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act. As presently constituted, the provision permits the offer and sale of up to $5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Such offering materials are subject to Commission staff review. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state

[4] Pub. L. 104-290, 110 Stat. 3416 (October 11, 1996).

[5] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[6] 15 U.S.C. 77r.

[7] 15 U.S.C. 77r(a) and (b).

[8] 17 CFR 230.147.

[9] 17 CFR 230.501 through 230.508.

[10] 17 CFR 230.251 through 230.263.

[11] 17 CFR 230.504 and 230.505. Other securities also are not considered covered securities. These include securities traded on regional exchanges and asset-backed and mortgage-backed securities.

[12] Release No. 33-8041 (December 27, 2001) (66 FR 66839).

[13] 17 CFR 230.501.

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laws, issuers may be required to provide audited financial statements. Further, the current level of exemption may be too low to invite professional underwriting interest in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small businesses, consonant with investor protection.

Regulation A also permits the offering of securities in the manner of "testing the waters" to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

2. Form D

As the result of a cooperative effort between NASAA and the Commission, in 1982, the Commission adopted Regulation D, which was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and section 4(6) of the Securities Act. Rule 503 requires issuers seeking an exemption under Regulation D to file Form D with the Commission within 15 days after the first sale. [14] Issuers must also file the Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption ("ULOE") [15] and the Form D. Currently, the Commission and some states receive paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D using the EDGAR system. The conferees will discuss methods of simplifying the form for electronic filing purposes as well as the contents of the notice.

C. Securities of Blank Check Companies

A blank check issuer or company is one in the development stage with no specific business plan or purpose, or one that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.[16] In 1990, the U.S. Congress found that offerings by these kinds of issuers were common vehicles for fraud and manipulation in the market for penny stocks. The Commission has adopted several rules, as Congress directed, to deter fraud in connection with these offerings.[17]

The group will discuss matters of mutual concern relating to these offerings, including recent developments and possible new rules and revisions of existing rules.

D. General Disclosure and Other Developments Impacting the Registration and Review of Securities Offerings

On February 13, 2002, the Commission announced its intention to propose new corporate disclosure rules in an effort to improve the financial reporting and disclosure system.[18] The rule amendments would govern insider transactions and secondary market reporting, and disclosures about critical accounting policies. Generally, the proposed rules will:

- Accelerate quarterly and annual reporting—the due date for quarterly reports will be shortened from 45 to 30 days after the period end; annual reports will be due 60 days after year end, rather than 90 days;
- Require companies to post their Securities Exchange Act of 1934 ("Exchange Act") [19] reports on their websites concurrently with Commission filings;
- Expand the list of significant events requiring current disclosure on Form 8–K, and accelerate the current due dates to no later than the second business day following the occurrence that triggered the Form 8–K filing;
- Require accelerated reporting by companies of transactions by company insiders in company securities, including transactions with the company; and
- Require disclosure of critical accounting policies in the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") section of periodic reports.[20]

Participants will discuss these possible rule amendments and other initiatives aimed at improving the financial reporting and disclosure system.

(2) Market Regulation Issues

A. Business Continuity Planning for Broker-Dealers

The participants will discuss business continuity planning for broker-dealers in light of the lessons learned from the events of September 11, 2001.

B. Shorter Settlement Cycles and Immobilization of Stock Certificates

In an effort to reduce systemic risks and increase efficiencies, the Commission issued a rule in 1993 that required the industry to reduce the settlement time for securities transactions from five days to three days (T+3) by June 1995.[21] The Commission believes that the reasons identified at that time, mainly the reduction of settlement risk and an increase in efficiencies, continue to present sufficient justification to again shorten the securities settlement time.

In 2000 the Securities Industry Association ("SIA") prepared a report, "*The Business Case Model,*" containing a cost-benefit analysis and a proposed implementation strategy for T+1. The report concluded that while the industry strongly supports T+1 because it would significantly reduce settlement exposure and create efficiencies, the cost of implementing the necessary systems and operational improvements would be substantial.

To offset these costs, the industry is proposing that the Commission promulgate a number of regulatory changes. One of the more controversial of the proposed changes is adding rules to discourage the issuance and use of physical certificates. The report indicates that the costs of processing physical securities and the risks inherent with the use of physical securities are significant to the industry and ultimately their customers. Therefore, in connection with shortening the settlement cycle, the industry is proposing that new securities be issued in book-entry form only. They also suggest that the Commission, or alternatively the exchanges and the National Association of Securities Dealers, Inc. ("NASD"), adopt rules to prohibit a broker-dealer from taking a sell order unless the shares are on deposit with the broker-dealer, a bank, or in the book-entry direct registration system operated by the Depository Trust Company ("DTC").

The Commission's staff will explore with NASAA ways in which to discourage the issuance and use of physical certificates, restrictions imposed by certain state laws and exchange listing standards regarding the issuance of physical certificates, and requiring listed companies to issue in book-entry only.

C. Possible Changes to NASD Rules Relating to Tape Recording of Communications

The participants may discuss a proposed rule change filed with the Commission by the NASD to amend NASD Rule 3010(b)(2) (the "Taping Rule") and NASD Interpretive Memorandum ("IM") 8310–2.[22] Under the Taping Rule, firms that hire a significant number of employees from previously disciplined firms must employ special written procedures to supervise the telemarketing activities of their registered persons, install taping systems to record all telephone conversations between registered persons and both existing and potential customers, review the tape recordings, and file quarterly reports with NASD Regulation. The proposed changes generally would: (1) Permit firms that become subject to the Taping Rule a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule; (2) revise the criteria by which firms become subject to the Taping Rule by not counting certain short-term employees of disciplined firms toward the threshold levels; (3) extend the compliance deadline to install taping systems to 60 days; (4) clarify the NASD staff's authority to grant exemptions in exceptional cases only; and (5) extend the taping requirements from two years to three years to eliminate conflicting time periods in the Taping Rule. In addition, NASD Regulation proposes amendments to NASD IM–8310–2 to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule.

D. Possible Revisions to Form BD

Under the regulatory scheme of the Exchange Act, broker-dealers must register with the Commission, as well as with at least one self-regulatory organization. Broker-dealers apply for registration by filing Form BD,[23] the uniform application for broker-dealer registration. The state securities regulators also use this form. Form BD requires the applicant or registrant filing the form to provide certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit regulators to determine whether the applicant meets the statutory requirements to engage in the securities business.

The Commission last amended Form BD on July 2, 1999 to support electronic filing in the Internet-based Central Registration Depository ("CRD") system.[24] Since the July 1999 amendments, the President signed both the Gramm-Leach-Bliley Act of 1999 [25] and the Commodity Futures Modernization Act of 2000 ("CFMA") [26] into law. On August 21, 2001, the Commission implemented Section 203 of the CFMA, which provides for expedited notice registration for intermediaries trading security futures products.[27] Specifically, the Commission adopted Form BD–N and related rules to permit futures commission merchants and introducing brokers that are both registered with the Commodity Futures Trading Commission and members of the National Futures Association to register by notice with the Commission as broker-dealers for the limited purpose of trading security futures products (*i.e.*, futures on individual securities and narrow-based security indexes).

These developments may indicate the need for possible further amendments to Form BD. Other amendments to the form may also be considered, including (1) requiring owners of non-voting stock to disclose their identity; (2) requiring the disclosure of unregistered satellite offices and expanding the disclosure requirements; and (3) requiring the disclosure of the Commission number of a registered entity if the entity does not have a CRD number.

E. Regulatory Regime for Certain Brokers

A task force of the American Bar Association's Small Business Committee is exploring ways to develop a streamlined regulatory regime for persons who are classified as brokers because they earn transaction-based compensation to facilitate capital raising securities transactions, but who do not provide the secondary market services or other services that traditional broker-dealers provide to investors. The Commission's staff, as well as NASD and NASAA personnel, have held several discussions with the task force and its representatives. Moreover, the Government-Business Forum on Small Business Capital Formation, sponsored by the Commission, has discussed similar issues.

Many of these discussions have focused on the speed of the current registration process, and on whether it would be possible to accelerate the process for those persons. Other issues that have been raised include questions about what substantive regulations should apply to these brokers.

The Commission's staff believes that further discussion by representatives of the Commission, the NASD and state securities regulators would be helpful in defining the scope of any problems that exist, and in finding ways to improve the regulatory regime for these brokers.

F. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: examination priorities, summits and examination coordination, branch office examinations, complaint trends, and anti-money laundering compliance.

(3) Investment Management Issues

A. Electronic Filing and the Investment Adviser Registration Depository ("IARD")

Investment advisers registered with the Commission completed their transition to electronic filing on IARD between January 1 and April 30, 2001 using amended Form ADV.[28] New advisers applying for registration with the Commission after January 1, 2001 also filed electronically through IARD since paper filings are no longer accepted. State registered advisers began switching to the electronic filing process on IARD during 2001. Conferees will review and discuss the performance of IARD during its initial year of operation. The transition of investment adviser representatives to electronic filing in 2002 will be discussed. Conferees also will discuss issues related to the future use and development of IARD.

B. Division of Regulatory Authority

NSMIA divided regulatory responsibility for investment advisers between the Commission and state securities regulators. Advisers generally register with the Commission if they have assets under management of $25 million or more, or if they advise registered investment companies. Advisers with less than $25 million in assets under management generally must register with the appropriate state securities authorities. Approximately 7,500 advisers currently are registered

[14] 17 CFR 230.503.

[15] The ULOE provides a uniform exemption from state registration for offerings complying with Regulation D.

[16] See section 7(b)(3) of the Securities Act, 15 U.S.C. 77g(b)(3).

[17] 17 CFR 230.419 and 17 CFR 240.15g–8.

[18] Securities and Exchange Commission Press Release No. 2002–22 (February 13, 2002).

[19] 15 U.S.C. 78a *et seq.*

[20] Item 303 of Regulations S–B and S–K, 17 CFR 228.303 and 17 CFR 229.303.

[21] 17 CFR 240.15c6–1.

[22] SR–NASD–2002–04.

[23] 17 CFR 249.501.

[24] Release No. 34–41594 (July 2, 1999) [64 FR 37586].

[25] Pub. L. 106–102, 113 Stat. 1338 (November 12, 1999).

[26] Pub. L. 106–554, 114 Stat. 2763 (December 21, 2000).

[27] Release No. 34–44730 (Aug. 21, 2001) [66 FR 45137].

[28] 17 CFR 279.1.

with the Commission. The conferees will discuss their experiences with implementing the provisions of NSMIA. Jurisdictional issues related to increased use of the Internet by advisers also will be discussed. Conferees also will discuss ways to work together to help advisers understand and comply with their regulatory responsibilities.

C. Current Issues and Rulemaking Initiatives

Conferees will discuss a number of rulemaking initiatives under the Investment Advisers Act of 1940 [29] and state securities laws that respond to changes in advisory business practices and developments in local, national and global financial markets. Conferees will discuss regulatory developments related to the implementation of privacy requirements for advisers and an adviser's duties to its clients. Conferees also will discuss adviser continuing education needs in light of the expanding financial responsibilities of advisers and dynamic business trends. Ways to enhance the understanding advisers have of their regulatory responsibilities also will be reviewed and discussed.

(4) Investor Education and Assistance Issues

The Commission and NASAA currently pursue a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a long-standing commitment to investor education, and the Commission intends to complement those efforts to the greatest extent possible. Participants will discuss the following investor education initiatives and potential joint projects:

A. Facts on Saving and Investing Campaign

In the spring of 1998, the Commission and NASAA in conjunction with the Council of Securities Regulators of the Americas ("CSA") launched the "Facts on Saving and Investing Campaign." Led primarily by securities regulators, the campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. Participants will discuss this year's campaign, including the Canadian Securities Administrators' heightened involvement and future campaign initiatives. The participants also will discuss other initiatives for international investor education.

[29] 15 U.S.C. 80b–1 *et seq.*

B. Investor Summit

The Commission's staff will update NASAA on current plans for the first Investor Summit to be held by the Commission in late spring 2002. The summit aims to give investors nationwide an opportunity to weigh in on the broad policy issues that affect them, including ways to improve corporate disclosure.

C. Financial Literacy 2010

In the spring of 1998, NASAA, the NASD, and the Investor Protection Trust ("IPT") joined forces to launch "Financial Literacy 2001," an unprecedented campaign targeting 25,000 high school teachers across the United States of America. Recently renamed "Financial Literacy 2010" to reflect the ongoing commitment to offer the financial education program to teachers, the program aims to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing. Working together, NASAA, the NASD, and the IPT have developed and updated a state-by-state customized classroom guide and have provided aggressive distribution and teacher training. Representatives from the states will brief the Commission's staff on the updated program that contains components of economics, the progress of the program, and its dissemination to economics teachers.

D. Online Investor Protection

NASAA will discuss ongoing state initiatives to enhance investor protection online, including the status of the Investing Online Resource Center. Similarly, the Commission's staff will discuss its continuing efforts to educate investors on how to use the Internet to invest wisely. The Commission's staff will also update the status of the Commission's initiative to launch fake scam sites on the Internet that warn investors about "get-rich-quick" schemes.

E. New Programs on Investor Education

Participants will discuss ideas for new investor education programs, including joint NASAA and Commission initiatives.

F. Investor Education Resources

Participants will view the CSA's segment on young investors produced for a national television show, and view the Ontario Securities Commission's Web site created for youth that includes games, quizzes, screen savers, and videos. Participants will also further discuss the most efficient and effective ways to provide educational resources to individuals at both a national and a grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues of mutual interest.

(6) General

There are a number of matters that are applicable to all, or a number, of the areas noted above. These include EDGAR (the Commission's electronic disclosure system), rulemaking procedures, training and education of staff examiners and analysts and information sharing. In addition, a committee of the National Conference of Commissioners on Uniform State Laws is in the process of drafting a new version of the Uniform Securities Act. The Uniform Securities Act is a model uniform state securities law statute. Two versions are currently in force—the Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The new version will modernize and update the law for many changes including, for example, NSMIA, technology advances, and internationalization of securities trading.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: March 20, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7288 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45603; File No. SR–CBOE–00–12]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Expansion of the Equity Hedge Exemption From Position and Exercise Limits

March 20, 2002.

I. Introduction

On March 31, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the current equity hedge exemption to eliminate position and exercise limits for certain qualified hedge strategies.

On July 20, 2001, the CBOE filed Amendment No. 1 with the Commission.[3] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on August 17, 2001.[4] On February 22, 2002, the CBOE submitted Amendment No. 2 to the proposal.[5] The Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Accordingly, the CBOE proposes to amend Interpretation .04 of Exchange Rule 4.11 to expand the definition of a "qualified" hedged position. Listed below are the proposed qualified hedge strategies and their accompanying examples.

(i) Positions hedged or covered with the underlying security or securities readily convertible into stock (long call/short stock or short call/long stock or long put/long stock or short put/short stock). This hedge strategy is currently exempt pursuant to the equity-hedge exemption provision contained in Exchange Rule 4.11; contracts are covered on a one-for-one basis.

For example, account ABC is short 5,000 GE Apr 35 calls and long 500,000 shares of GE common stock. Account ABC is also short 1,000 GE April 40 calls but has no corresponding stock hedge. The account is exempt on 5,000 contracts hedged with stock and the short 1,000 GE April 40 call position is not considered hedged and thus applied to the applicable position limit.

(ii) Reverse Conversion (buy call/sell put (same expiration)/sell stock).[6] For example, assume account ABC establishes the following position:

Long 25,000 GE April 35 calls
Short 25,000 GE April 35 puts
Short 2,500,000 shares of GE common stock

Under the proposed rule change, two options contracts (*i.e.*, one long call and one short put) will be treated as one contract for hedging purposes. Each reverse conversion option position must be hedged with 100 shares of the underlying security to remain exempt. Account ABC increases its position by establishing a long call position of 5,000 April 40 contracts with no qualified hedge. Option contracts held by account ABC number 55,000 on the short call long put side of the market. The 50,000 contract reverse conversion position is a qualified hedge strategy and is thus exempt from the position and exercise limit. The remaining 5,000 contracts and any future positions established by the account in which a non-qualified strategy is employed would be added to the account's existing 5,000 contract position and applied to the standard position limit.

(iii) Conversion (sell call/buy put (same expiration)/buy stock).[7] The components and hedge treatment of the conversion strategy is the same as the reverse conversion except that the option component of the position is on the short side of the market (*i.e.*, short call, long put) and is hedged with long stock.

(iv) Collar (sell call/buy put, both out-of-the-money when established with the same expiration where the strike price of the short call exceeds the strike price of the long put/buy stock).[8] A collar strategy provides downside protection by the use of put option contracts and finances the purchase of the puts through the sale of short call option contracts. The goal of this strategy is to bracket the price of the underlying security at the time the position is established. For example, assume that the price of an underlying equity, XYZ, is $53 and account ABC is long 5000 shares of XYZ at $53. Account ABC sells 50 XYZ April 55 calls and purchases 50 XYZ April 50 puts. Under the collar exemption, one collar (*i.e.*, one short call, and one long put) must be hedged with 100 shares of the underlying security to remain exempt. Additionally, both call and put components of the option strategy must be out-of-the-money at the time the position is established, both contracts must expire at the same time, and the strike price of the short call must exceed the strike price of the long put position. One leg of the option position (*i.e.*, short call or long put) can be an OTC contract guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

(v) Box Spread (buy call, sell put at one strike price, sell call, buy put at another strike price). Assume that account ABC maintains the following position:

Long 5,000 April 35 calls
Short 5,000 April 40 calls
Long 5,000 April 40 puts
Short 5,000 April 35 puts

This position is a qualified box spread and would be exempt from the position limit. Any future option positions established that do not meet the requirements of the qualified hedge strategies would be applied to the account's applicable position limit.

(vi) Listed vs. OTC Options Spreads (options are generally to be within one strike of each other and no more than

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 19, 2001 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1, which (i) deletes language contained in Exchange Rule 4.11 Interpretation .04(b) regarding the limitation on the number of contracts that can be maintained under the equity hedge exemption and (ii) includes examples of the proposed qualified hedge strategies.

[4] *See* Securities Exchange Act Release No. 44681 (August 10, 2001), 66 FR 43274.

[5] *See* Letter from Christopher R. Hill, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 21, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE established a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

[6] For these strategies one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under CBOE Rule 4.11. Interpretation .02. For purposes of this rule filing, an OTC option contract is defined as an option that is not listed on a National Securities Exchange or cleared at the Options Clearing Corporation.

[7] *Id.*

[8] *Id.*

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one expiration month apart).[9] Member firms that conduct an over-the-counter options business utilize the listed options market to hedge their customer facilitated OTC transactions. It is the CBOE's understanding that some member firms participate in stock buy-back programs whereby the firm purchases OTC put option contracts from the subject corporation, the corporation, in turn, will be assigned its short put position, thereby "buying back" its own stock.

To hedge this position, the firm will sell put option contracts in the listed market. For example, Firm ABC purchases 50,000 XYZ puts with a strike price of 63.34 expiring in 1/19/03 from XYZ Corporation. At the expiration of the OTC contract, the firm will sell to XYZ Corporation 5,000,000 shares of its common stock at a price of $63.34. To hedge its position, the firm will sell put option contracts on the CBOE; often at a strike price close to the noted OTC contract with the same expiration date as the OTC contract. OTC contracts hedged on a one-for-one basis against listed option contracts would be exempt from the position limit. As the OTC position generally does not change, the Exchange would require the exempt firm to forward to the Exchange, on the Monday following the monthly expiration, the status of its OTC position.

Within the list of proposed hedge strategies eligible for an equity hedge exemption, the Exchange proposes that the option component of a reversal, conversion, or collar position be treated as one contract rather than as two contracts. All three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous[10] purchase/sale of both a call and put component against the appropriate number of shares underlying the option (generally 100 shares), the Exchange believes that the position should be treated as one contract for hedging purposes.

Under the proposed rule change, the existing standard position and exercise limits will remain in place for unhedged equity option positions. Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. The exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange) to the extent that the member identifies that a pre-existing qualified hedge strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to the Exchange.

The exemption will remain in effect to the extent that the exempted position remains intact and that the Exchange is provided with any required supporting documentation. Procedures to demonstrate that the option position remains qualified will be similar to those currently in place for equity hedge exemptions. Currently a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts are reported to the Exchange electronically, via the Large Options Position Report. Market maker account information is also reported to the Exchange electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of section 6 of the Act[12] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14]

The Commission has carefully considered the CBOE's proposal to expand the hedge exemption from position and exercise limits. Given the market neutral characteristic of all the proposed qualified hedge strategies (except covered stock positions), the Commission believes it is permissible to expand the current equity hedge exemption without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that existing position and exercise limits, procedures for maintaining the exemption, and the reporting requirements imposed by the Exchange will help protect against potential manipulation. The Commission notes that the existing standard position and exercise limits will remain in place for unhedged equity option positions. To further ensure against market disruption, the CBOE will establish a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. Although the exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange), the exemption will remain in effect only to the extent that the exempted position remains intact and that the Exchange is provided with any required supporting documentation.

In addition, as described above, a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts are reported to the Exchange electronically, via the Large Options Position Report. Market maker account information is also reported to the Exchange electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

The Commission believes these reporting requirements will help the CBOE to monitor options positions and ensure that only qualified hedges are being exempt from position and exercise limits. To the extent that any position raises concerns, the Commission believes that the CBOE, through its monitoring, will be promptly notified, and the Commission would expect the CBOE to take any appropriate action, as permitted by its rules.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving Amendment No 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 establishes a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component. Setting the position and exercise limit at this level should provide Exchange members greater flexibility in using hedge strategies advantageously, while providing an adequate level of protection against the opportunity for manipulation of these securities and disruption in the underlying market. Accordingly, the Commission finds good cause, consistent with sections 6(b)(5)[16] and 19(b)(2)[17] of the Act to accelerate approval of Amendment No. 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–12 and should be submitted by April 17, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR-CBOE–00–12), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7327 Filed 3–26–02; 8:45 am]

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[9] Hedge transactions and positions established pursuant to this strategy are subject to a position limit equal to five times the standards limit-established under CBOE Rule 4.11, Interpretation .02.

[10] At or about the same time.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45605; File No. SR–GSCC–2001–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Establishing a Loss Allocation Cap for Dealers Acting as Brokers on Substantially All of Their Repurchase Agreement Trades

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 16, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and an on August 31, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes an account-based loss allocation process for dealers that act as brokers in certain repurchase agreement transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its current loss allocation rule concerning non-inter-dealer broker ("dealer") members who act as brokers in certain of their repurchase agreement (repo) transactions. Under the proposed amended rule, repo transaction accounts of these dealers will be subject to the same $5 million per event absolute loss allocation cap currently applicable to inter-dealer brokers ("IDBs") instead of an unlimited loss allocation liability. The proposed rule change is designed to afford appropriate relief for these dealers while not unfairly burdening other members.

(i) Current Loss Allocation Procedure

If upon liquidating a defaulting member's positions GSCC incurs a loss due to the failure of the defaulting member to fulfill its obligations to GSCC, GSCC looks to the collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's collateral is insufficient to cover the loss, the defaulting member's most "recent" trading partners will be looked to, on a pro rata basis, in order to satisfy the "remaining loss."

Before the loss can be allocated to the defaulting member's most "recent" trading partners, GSCC must first determine the proportion of the loss that arose in connection with member-brokered transactions and non-member brokered transactions and the proportion that arose in connection with direct transactions.

To the extent the remaining loss is determined by GSCC to arise in connection with member brokered transactions, GSCC's rules provide that fifty percent of the loss will be allocated to netting members that are category 1

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

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IDBs or category 2 IDBs pro rata based upon the dollar value of each such IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. The remaining fifty percent of the loss will be allocated to the dealer netting members pro rata based upon the dollar value of the trading activity through IDBs of each such dealer netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with member brokered transactions, an IDB netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than $5 million. A dealer netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of $5 million or five percent of the overall loss amount allocated to dealer netting members. To the extent that this cap is applicable, any excess amounts not collected from individual netting members, whether an IDB or a dealer, will be reallocated to the netting membership in general, pro rata based on average daily clearing fund deposit requirement over the twelve-month period prior to the insolvency. However, even with the reallocation, an IDB netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than $5 million.

To the extent a remaining loss is determined by GSCC to arise in connection with non-member brokered transactions, it will be allocated among the recent category 2 IDB netting members that were parties to such non-member brokered transactions pro rata based upon the dollar value of each such category 2 IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with non-member brokered transactions, there is no loss-allocation cap.

To the extent a remaining loss is determined to arise in connection with direct transactions, it will be allocated among the recent counterparty netting members pro rata based on the dollar value of the trading activity of each such netting member's trading activity with the defaulting member compared, netted, and novated during the recent trading period. For purposes of an allocation of loss determined to arise in connection with direct transactions, there is no loss-allocation cap.

Under the current loss allocation procedure, dealer netting members acting as brokers on all or substantially all of their repo transactions do not enjoy the $5 million per event absolute loss allocation cap applicable to IDBs. Consequently, these dealers likely would be disproportionately assessed for allocation loss in the current environment.

(ii) Proposed Changes

The proposed rule change addresses the manner in which the loss allocation procedure described in subsection (i) above applies to dealers that act as brokers in their repo transactions. Specifically, the proposed rule change would establish an account-based loss allocation process whereby the segregated repo accounts of these dealers would be treated in the same way as IDB accounts.

In order to accomplish this, GSCC is proposing to add two new definitions to its rules, "non-IDB repo broker" and "segregated repo account." A non-IDB repo broker, with respect to activity in its segregated repo account, is a dealer netting member that GSCC has determined operates in the same manner as a broker and participates in GSCC's repo netting service pursuant to the same requirements imposed under the rules on IDB netting members that participate in that service. These requirements include keeping their brokered repo activity (with two GSCC netting members on both sides of each trade) in a separate account, the segregated repo account.

Since GSCC's loss allocation procedures with respect to remaining losses distinguish between brokered transactions and direct transactions and since it is with respect to non-IDB repo brokers' brokered transactions that GSCC is proposing to give relief, the proposed rule filing would amend: (i) The definition of "brokered transaction" to include transactions to which a non-IDB repo broker, with regard to activity in its segregated repo account, is a party; (ii) the loss allocation rule applicable to brokered transactions to include references to non-IDB repo brokers and the activity in their segregated repo accounts; and (iii) the loss allocation rule to provide non-IDB repo brokers with regard to activity in their segregated repo accounts with a cap on their total loss allocation obligation of $5 million as is currently applied to IDB netting members.

All of the other activity processed by non-IDB repo brokers outside of their segregated repo broker accounts would continue to be subject to the loss allocation rules applicable to dealer netting members.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it provides for a more equitable loss allocation process among GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–10 and should be submitted by April 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7291 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release 34–45607; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 20, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 8, 2002, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a request that the Commission grant MBSCC full registration as a clearing agency or in the alternative extend MBSCC's temporary registration as a clearing agency until such time as the Commission is able to grant MBSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through June 30, 2002.

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted MBSCC registration as a clearing agency on a temporary basis for a period of eighteen months.[5] The Commission subsequently has extended MBSCC's registration through March 31, 2002.[6]

The Commission today is extending MBSCC's temporary registration as a clearing agency so that MBSCC may continue to act as a clearing agency while the Commission seeks comment on granting MBSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent registration as a clearing agency during the calendar year 2002.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or institution proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–22 and should be submitted by April 17, 2002.

It is therefore ordered that MBSCC's temporary registration as a clearing agency (File No. 600–22) be and hereby is extended through June 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7292 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(a).

[2] Letter from Jeffrey F. Ingber, Managing Director, General Counsel and Secretary, MBSCC (February 8, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; and 44831 (September 21, 2001) 66 FR 49728.

[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45604; File No. SR–MBSCC–2001–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding the Monitoring of MBSCC Participants' Financial Condition and Activities

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 27, 2001, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on December 26, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change strengthens the process regarding MBSCC's monitoring of its participants' financial condition and activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

To strengthen MBSCC's monitoring of participants' financial condition and activities, as well as to conform to MBSCC's standard practices, MBSCC is proposing the following modifications to its rules: (i) Add a requirement that registered brokers and dealers submit copies of supplemental reports filed with the Commission pursuant to Rule 17a–11 to MBSCC; (ii) establish a formal surveillance status mechanism; (iii) allow non-domestic participants to submit required financial statements prepared in accordance with their home country Generally Accepted Accounting Principles ("GAAP"); and (iv) expand the financial criteria used by MBSCC for calculating a participant's financial ability.

The first proposed modification to the rules would require broker-dealer participants to submit copies of supplemental reports filed pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

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Rule 17a–11 to MBSCC concurrently with their submission to the Commission. Rule 17a–11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum requirements. Such notices should provide MBSCC with early warnings of such broker-dealers' potential financial problems.

The second proposed modification would enhance MBSCC's policies and procedures regarding its participant surveillance procedures by establishing a formal surveillance status mechanism. The proposed rule change would establish a tiered surveillance mechanism wherein the degree of risk posed by a participant would be appropriately categorized so MBSCC would be able to react more swiftly to changes in a participant's condition.

The third proposed modification would allow non-domestic participants to meet their financial reporting requirements to MBSCC by submitting financial statements prepared in accordance with their home country GAAP. MBSCC's rules currently require these participants to submit financial statements prepared in accordance with U.S. GAAP. MBSCC has found this requirement to be burdensome and unnecessarily restrictive. MBSCC also proposes to permit these participants to use another recognized accounting standard (such as, for example, International Accounting Standards) deemed acceptable by MBSCC. In both cases (when a participant submits financial statements prepared in accordance with their home country GAAP and when a participant submits financial statements prepared in accordance with some other recognized accounting standard deemed acceptable by MBSCC), the participant must provide MBSCC with a discussion of the material variations of the accounting standards used from U.S. GAAP.

The fourth proposed modification allows MBSCC to use net asset value or other applicable indicia in calculating a participant's financial ability. MBSCC's rules do not currently specify the types of financial indicia that MBSCC may use to calculate a participant's net worth for determining whether the participant meets MBSCC's minimum financial requirements. MBSCC's analysts currently use the appropriate financial indicia for each type of participant. For example, shareholders equity is used to determine the financial ability of a bank whereas net asset value is more appropriate for determining the financial ability of certain types of funds, such as most registered investment companies. The proposed rule change would expand the language in MBSCC's rules to permit use of the appropriate financial indicia.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance MBSCC's monitoring of participants' financial condition and activities and thereby should protect MBSCC and its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–2001–06 and should be submitted by April 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7295 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45602; File No. SR–NYSE–2001–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto by the New York Stock Exchange, Inc. Regarding Method of Delivery of Annual Reports and Proxy Materials

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NYSE. The Exchange submitted Amendment No. 1 to the proposed rule change on January 15, 2002.[3] The Exchange submitted Amendment No. 2 to the proposed rule change on March 5, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE made technical changes to its rule text. See letter to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated January 11, 2002 ("Amendment No. 1").

[4] In Amendment No. 2, NYSE made additional minor technical changes to its rule text. See letter to Nancy Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated March 4, 2002 ("Amendment No. 2").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 203.01, 204.04, 402.04, and 402.10 of the Exchange's Listed Company Manual ("Manual") in respect of method of delivery of annual reports and proxy materials. The proposed amendment will specify that annual reports and proxy materials should be distributed in such format and by such methods as are permitted or required by applicable law and regulations. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Listed Company Manual

203.00 Annual and Interim Reporting Requirements

* * * * *

203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and distribute to shareholders an annual report containing financial statements of the company and its consolidated subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than 120 days (225 days for Non-US issuers) after the close of each fiscal year. Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-US issuers are encouraged to do so when possible.) When the annual report is [mailed] *distributed* to shareholders, two copies should be sent to the Exchange together with advice as to the date of [mailing] *distribution* to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to shareholders, or by distributing to shareholders the Form 10–K (or Form 20–F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10–K or Form 20–F) is *distributed* [mailed] to shareholders, two copies should be sent to the Exchange, together with advice as to the date of *distribution* [mailing] to shareholders. Distribution *shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC).* ([s]*See,* for example, [materials referenced in Listed Company Manual section 402.04(B)] *the following interpretations by the SEC: Release No. 34–36345; File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release No. 34–42728, File No. S7–11–00.* [by electronic means (including by posting on the company's web site) will be effective only as to beneficial holders who have given their prior consent to receiving the report in that form. Such consent must be in writing, which may be in the form of electronic mail.]

* * * * *

(A) through (D)—No change.

(E) Occasional Delay in Issuance of Statements.

* * * * *

So far as the [three months time limit of the listing agreement] *120 day (225 day) time limit stated in the first paragraph of this Section 203.01* is concerned, the Exchange, while ready to extend such time limit on the basis of necessity, does not feel free to do so on the basis of convenience. For example it cannot consent to a delay in the issuance of the statements just to make possible their simultaneous *distribution* [mailing] with the proxy material.

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204.00 Notices by the Company to the Exchange

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204.04 Annual Report

The Exchange requires that two copies of the company's annual report be provided to the Exchange when it is [mailed] *distributed* to shareholders. These reports should be accompanied by notice to the Exchange as to the date [mailed] *distributed* to shareholders.

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402.00 Proxies

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402.04 Proxy Solicitation Required

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(B) *Proxy materials shall be in such format and shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC).* [Electronic Delivery of Proxy Materials. As permitted by applicable state and federal law (including any interpretations thereof by the SEC) a company may arrange for the delivery of its proxy material by electronic means (including by posting on company's web site with an electronic mail notice to the beneficial owner of its availability on the web site) to beneficial owners who have given prior written consent to such a delivery. Such consent may be in the form of electronic mail. Such arrangements should be made in coordination with any intermediaries that are record holders of the securities. Proxies may also be delivered by electronic means by beneficial owners as permitted by applicable state and federal law (including any interpretation thereof by the SEC) and if appropriate arrangements have been made with any intermediaries that are record holders of the securities.] (See, for example, the following interpretations by the SEC: Release No. 34–36345; File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release [Nos. 33–7856,] *No.* 34–42728, File No. S7–11–00). *Companies should also note the NYSE Rules (451 and 465) applicable to members and member organizations regarding the furnishing of annual reports and proxy materials to account holders.*

* * * * *

402.10 Charges by Member Organizations for Distributing Material

* * * * *

(A) through (B) No change.

(C) Charges for Interim Report *Distributions* [Mailings].

* * * * *

"Householding" of Reports

Rules 451 and 465 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions or reports, statements or other materials to beneficial owners having the same address, provided *they comply with applicable SEC rules with respect thereto (see SEC Rule 14b–1 under the Securities Exchange Act of 1934).* [that (i) at least one such report or statement is transmitted to a beneficial owner at that address; and (ii) any beneficial owner having that address, to whom a report is not sent, has agreed thereto in writing.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has

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prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1999, the Exchange filed amendments to Section 203 of the Manual clarifying that listed companies were permitted to make electronic delivery of annual reports to beneficial holders, as long as beneficial holders had given prior written consent to such delivery. The Commission approved the rule change in March 2000.[5]

Last year, the Exchange filed an amendment to Section 402.04 of the Manual extending the same electronic delivery option to delivery of proxies and proxy material, subject to the same affirmative written assent from beneficial holders.[6] Responding to comments from the Commission staff, the Exchange modified the proposed amendment to specify that companies arranging for the electronic delivery of proxy materials must do so as permitted by and in compliance with applicable state and federal law, including any applicable interpretation by the Commission.[7] The amended rule change was approved by the Commission in March 2001.[8]

Thereafter, the Exchange received comments from listed companies maintaining that the Exchange's requirement of prior written consent for delivery of proxy materials to beneficial holders is more restrictive than the prerequisites contained in the Commission's current interpretations. The Exchange has also been asked whether delivery of these materials on a compact disk is permissible, and whether delivery of a CD by mail is delivery of the information by electronic means.

The Exchange staff discussed all of the foregoing with the Exchange's Legal Advisory Committee ("LAC") in June of this year. Specifically, it was noted that the Commission in effect had pre-empted the field in terms not only of the content of proxy material and the annual report, but also in regulating delivery of the material to investors, issuing specific interpretations since 1995. The LAC agreed that in view of this, it is advisable for the Exchange to cease attempting to legislate for listed companies how they must act in this regard. Accordingly, as recommended by the LAC, the Exchange proposes to eliminate from Section 402.04 any specific requirements regarding the format and method of delivery, specifying instead that companies should distribute proxy materials in such format and by such methods as are permitted or required by applicable law and regulations. To be helpful the Exchange will retain the informational references to the applicable Commission interpretive releases, and will cross-reference the Exchange's rules 451 and 465 applicable to members and member organizations when they furnish information to account holders. To be consistent, the Exchange also proposes to make similar amendments to Sections 203.01 and 204.04, dealing with annual reports.

Finally, the Exchange is proposing to make housekeeping changes to Section 203.01(E) of the Manual relating to time limits for the delivery of annual reports and to Section 402.10 of the Manual relating to householding of reports to conform to related rule changes effected last year.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–40 and should be submitted by April 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7296 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 42574 (March 24, 2000), 65 FR 17326 (March 31, 2000).

[6] File No. SR–NYSE–2000–21.

[7] Applicable Commission interpretations, which are cited in Section 402.04, as amended, include October 1995 Release *Use of Electronic Media for Delivery Purposes;* May 1996 Release *Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information;* and April 2000 Release *Delivery of Proxy Statements and Information to Households.* (Release No. 34–36345, File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; Release No. 34–42728, File No. S7–11–00.)

[8] Securities Exchange Act Release No. 44133, 66 FR 18134 (April 5, 2001).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45594; File No. SR–PCX–2002–05]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

March 19, 2002.

On January 18, 2002, the Pacific Exchange, Inc. ("PCX"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of $2,500 in connection with their appeal of the Corporation's decision to delist a security.

The proposed rule change was published for comment in the **Federal Register** on February 12, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,[6] which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among issuers. The Commission believes that the fees are reasonable because they are designed to recoup the costs of processing requests for review and holding the subsequent proceedings.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PCX–2002–05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7293 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45396 (February 5, 2002), 67 FR 6569.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45595; File No. SR–PCX–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to 30-Second ITS Commitment Expirations

March 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend PCXE Rule 7.66(b)(2)(F) to conform to the Seventeenth Amendment of the Intermarket Trading System ("ITS") Plan, which provides for a 30-second commitment expiration period.[3]

The text of the proposed rule change is available upon request from Office of the Secretary, the PCX and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCXE Rule 7.66(b)(2)(F) to provide for a 30-second commitment expiration period for orders received through the ITS, consistent with the Seventeenth Amendment to the ITS Plan. The Exchange notes that the 30-second commitment expiration period is a six-month pilot program under the ITS Plan that commenced on January 7, 2002 and would remain available until the last trading day of the sixth full calendar month following such commencement.

Presently, PCXE Rule 7.66(b)(2)(F) provides that the sender of an ITS commitment may designate a time period during which a commitment will be irrevocable following acceptance by the system. The ITS Plan provides for three irrevocable time-period options consisting of 30-seconds (or "T–30s"), one minute and two minutes. Accordingly, PCX proposes to replace the current rule text in PCXE Rule 7.66(b)(2)(F), which states that there are "two" irrevocable time-period options, with the word "three" thereby making the rule text consistent with the ITS Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[4] of the Act in general, and furthers the objectives of section (b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44903 (October 3, 2001), 66 FR 52159 (October 12, 2001) (order approving the Seventeenth Amendment of the ITS Plan). The ITS is a National Market System ("NMS") plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983) (adopting the restated ITS Plan).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[6] it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–2002–07 and should be submitted by April 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7294 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[6] On January 29, 2002, the PCX submitted a draft proposal and asked the Commission to consider the proposal pursuant to section 19(b)(3)(A) of Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6). The Commission has agreed to accept the draft proposal as satisfying the 5-day pre-filing requirement pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45606; File No. SR–PCX–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to change its marketing fee for certain options and to declare a marketing fee for recently listed options. A copy of the proposed new schedule of fees is available at the PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to LMMs for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options and to adopt new marketing fees for newly listed options beginning at the commencement of the March 2002 trade month and continuing until further notice. The PCX proposes to change the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Only the amount of the fee is being changed. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable it to compete with other markets in attracting options business.

Basis

The Exchange believes that the proposal is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

[3] See Securities Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX has designated the foregoing as a fee change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–14 and should be submitted by April 17, 2002.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7328 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 3955]

Office of the Coordinator for Counterterrorism; Designation Under Executive Orders

AGENCY: Department of State.

ACTION: Designation under Executive Orders 13224 and 12947.

Pursuant under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, the Deputy Secretary of State, acting under the authority delegated to him by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined, that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Pursuant to section 1(a)(ii)(A) of the Executive Order 12947 of January 23, 1995, the Deputy Secretary of State, acting under the authority delegated to him by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined, that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East Peace Process.

Dated: March 25, 2002.

Mark Wong,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–7492 Filed 3–26–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 3952]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation of Foreign Terrorist Organizations.

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996), the Secretary of State hereby designates, effective March 27, 2002, the following organizations as foreign terrorist organizations:

Al-Aqsa Martyrs Brigade also known as the Al-Aqsa Martyrs Battalion

Asbat al-Ansar

Salafist Group for Call and Combat also known as the Salafist Group for Preaching and Combat also known as GSPC also known as Groupe Salafiste pour la Prédication et le Combat

Dated: March 19, 2002.

Francis X. Taylor,

Ambassador, Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–7212 Filed 3–26–02; 5:00 pm]

BILLING CODE 4710–10–P

[6] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Ghana has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Ghana qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–

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200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Ghana as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the United States Trade Representative the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Ghana has taken, I have determined that Ghana has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Ghana" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–7374 Filed 3–26–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-European Free Trade Association Mutual Recognition Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The United States is considering a proposal to negotiate a mutual recognition agreement (MRA) with European Free Trade Association (EFTA) countries who are part of the European Economic Area (EEA)—*i.e.*, Norway, Iceland, and Liechtenstein. Such an agreement would parallel the provisions of the 1998 U.S.–EU MRA, but would be restricted to sectoral annexes on telecommunications equipment, electromagnetic compatibility (EMC) and recreational craft. The Office of the United States Trade Representative (USTR) seeks public comment on the desirability of negotiating a mutual recognition agreement in these sectors with EFTA EEA.

DATES: Comments should be submitted no later than Friday, May 3, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC 20508, tel: (202) 395–3475. All other questions should be addressed to Jim Sanford, Director for European Affairs at (202) 395–3320; or Jason Buntin, Director for EFTA Affairs at (202) 395–4620.

SUPPLEMENTARY INFORMATION: Since 1995, the European Free Trade Association (EFTA) countries who are part of the European Economic Area (EEA)—i.e., Norway, Iceland, and Liechtenstein—have requested that the United States negotiate a mutual recognition agreement (MRA) that would parallel the agreement concluded between the United States and the European Community (EC) in 1998. The United States has indicated that it would continue to review EFTA's interest in an MRA as implementation of the U.S.–EU MRA proceeded. Now that the U.S.–EU MRA sectoral annexes on telecommunications equipment, EMC and recreational craft are fully operational, the United States is in a position to consider an MRA with EFTA EEA in these sectors. The possible addition of other sectors in the future will be considered in the context of agency priorities and the availability of agency resources.

In 1994, the Agreement on the European Economic Area (EEA) created a single market ensuring free circulation of goods, persons, capital and services among the 15 EU Member States and the three EFTA EEA states. Norway, Iceland, and Liechtenstein, are integrated into the European Community Single Market and thereby apply the internal market legislation (acquis communautaire). This ensures that the EEA EFTA States and their economic operators are subject to the same rights and obligations as their counterparts in the Community, and that a product placed on the market in accordance with the EU technical requirements freely circulates within the EEA. Therefore, U.S. products marketed according to EC requirements also automatically comply with the requirements of the EEA EFTA States.

An agreement between the United States and the EEA EFTA States would ensure U.S. producers direct market access to the EFTA part of the Community's Single Market. In effect, an MRA with EFTA EEA would extend the benefits of selected annexes of the U.S.–EU MRA to the markets of Norway, Iceland, and Liechtenstein.

US–EU MRA: In December 1998, the United States and the EU began implementation of the U.S.–EU Mutual Recognition Agreement. The U.S.–EU MRA is designed to facilitate trade, while maintaining our current high levels of health and safety protection. Once fully implemented, this MRA will permit U.S. exporters to conduct required conformity assessment procedures (*e.g.*, product tests, inspections, and certifications) in the United States according to EU requirements, and vice versa. The sectoral annexes of the U.S.–EU MRA cover the following products and associated conformity assessment procedures: (1) Telecommunications and information technology equipment; (2) network and electromagnetic compatibility (EMC) for electrical products; (3) electrical safety for electrical products; (4) good manufacturing practices (GMP) for pharmaceutical products; (5) product assessment for certain medical devices and quality systems-related inspections for most medical devices; (6) and safety of recreational craft. Each sectoral annex contains specific provisions with respect to the products and associated conformity assessment procedures covered in the annex.

Currently, three sectoral annexes of the U.S.–EU MRA are fully operational (telecommunications equipment, EMC and recreational craft). The U.S.–EU mutual recognition agreement annexes on telecommunications equipment covers telecommunications terminal equipment, including radio transmitters and information technology equipment. The annex on electromagnetic compatibility (EMC) covers equipment subject to EU and U.S. radio interference and compatibility requirements, including radios and VCRs imported into the United States and most electrical and electronic equipment exported to the EU. The recreational craft annex covers the safety certification of small boats.

PUBLIC COMMENTS: USTR invites written comments from interested persons on the desirability of negotiating an MRA with EFTA covering the sectors of telecommunications equipment, electromagnetic compatibility, and recreational craft. Comments are invited in particular on: (a) The benefits for pursuing an MRA covering these sectors; and (b) any specific issues regarding an MRA covering any of the sectors. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position.

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

Written comments, requests, or other information submitted in connection with this request, except information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 3, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof, in the form specified above. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–7373 Filed 3–26–02; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of Trade Agreements Act

Editorial Note: Due to numerous errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Thursday, February 21, 2002 at 67 FR 8057.

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Procurement Thresholds Under the WTO Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement.

SUMMARY: Executive Order 12260 requires the U.S. Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*), which implements U.S. obligations under the World Trade Organization Government Procurement Agreement (GPA) and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to covered procurements valued at or above the specified U.S. dollar thresholds. The U.S. Trade Representative has determined that, for the calendar years 2002–2003, the thresholds are as follows:

I. WTO Government Procurement Agreement

A. Central Government Entities listed in U.S. Annex 1

(1) Procurement of goods and services—$169,000.

(2) Procurement of construction services—$6,481,000.

B. Sub-Central Government Entities listed in U.S. Annex 2

(1) Procurement of goods and services—$460,000.

(2) Procurement of construction services—$6,481,000.

C. Other Entities listed in U.S. Annex 3

(1) Procurement of goods and services—$518,000.

(2) Procurement of construction services—$6,481,000.

II. Chapter 10 of the NAFTA

A. Federal Government Entities listed in the U.S. schedule to Annex 1001.1a–1

(1) Procurement of goods and services—$56,190.

(2) Procurement of construction services—$7,304,733.

B. Government Enterprises listed in the U.S. schedule to Annex 1001.1a–2

(1) Procurement of goods and services—$280,951.

(2) Procurement of construction services—$8,990,862.

FOR FURTHER INFORMATION CONTACT: Questions relating to the implementation of NAFTA Chapter 10 may be directed to Karissa Kovner, USTR Director for International Procurement Negotiations (202/395–3063), Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC 20508.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–4120 Filed 2–20–02; 8:45 am]

BILLING CODE 3190–01–P

Editorial Note: Due to numerous errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Thursday, February 21, 2002 at 67 FR 8057.

[FR Doc. R2–4120 Filed 3–26–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Highway Administration

Environmental Impact Statement: Orange, Polk, and Hillsborough Counties in Florida

AGENCIES: Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FRA and FHWA are issuing this notice to advise the public that the agencies will prepare an environmental impact statement (EIS) for a proposed Florida High Speed Rail project between Orlando and Tampa, Florida.

FOR MORE INFORMATION CONTACT: David Valenstein, Environmental Program Manager, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington DC 20590, (202) 493–6368 and/or George Hadley, Environmental Programs Coordinator,

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Federal Highway Administration, 227 North Bronough Street, Tallahassee, Florida 32301, (850) 942–9650 extension 3011.

SUPPLEMENTARY INFORMATION: The FRA and FHWA in cooperation with the Florida High Speed Rail Authority, will prepare an EIS for a proposal being considered by the Authority to construct a high speed rail project between Orlando, and Tampa, Florida. The project would be approximately 90 miles long. The proposed project may include acquisition of right of way and construction of guide way structures and track, stations, park and ride lots, storage and maintenance facilities, and other ancillary facilities. The facilities would be build to allow trains to operate at speeds in excess of 120 miles per hour. The proposed high speed rail system would provide a new mode of intercity travel to link major metropolitan areas and interface with airports, mass transit and highways to provide added capacity to meet increases in intercity travel demand in a manner sensitive to, and protective of Florida's unique natural resources.

Alternatives under consideration include: (1) The "no build alternative"; (2) build alternatives in a variety of corridors between Orlando and Tampa; and, (3) a variety of high speed rail technology. The corridor alternatives traverse areas where various social, economical, and environmental resources and issues are believed to exist. The social, economical and environmental resources and issues may include but are not limited to: community and neighborhood, noise, wetlands, cultural resources, water quality, safety, residential and business relocations, wildlife and habitat, land use planning, parklands, economic, and floodplains.

Notice describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have expressed an interest in this proposal. The Federal agencies and The Authority will hold interagency and public meetings and public hearings in several locations in the project area. Information on the time and place of the public meetings and hearings will be provided in the appropriate local news media. There are plans to hold a scoping meeting on April 30, 2002 in the Orlando/Tampa, Florida area.

Comments and suggestions are invited from all interested parties to insure the full range of issues related to the proposed action and alternatives are addressed and all significant issues are identified. Comments and questions concerning the proposed action should be directed to the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 19, 2002.

James E. St. John,

FHWA Division Administrator, Tallahassee, Florida.

[FR Doc. 02–7278 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–6285]

Parts and Accessories Necessary for Safe Operation; Renewal of Fuel Tank Exemptions for Vehicles Manufactured by the General Motors Corporation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the General Motors Corporation (GM) for exemptions for the vehicles specified in this notice. Those exemptions are from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Renewal of the exemptions enables motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by GM which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the exemptions have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that renewing the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on March 27, 2002. The exemptions expire on March 29, 2004.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as see the submissions of other commenters at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgment page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Background

GM's Application for Exemptions

GM applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On December 20, 1999 (64 FR 71186), the Federal Highway Administration (FHWA) published a notice of intent to grant GM's applications. The FHWA requested public comment on GM's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on April 26, 2000 (65 FR 24531). In that notice (at 65 FR 24532–24533), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of approximately 10 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and § 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in " § 393.67, respectively.

On December 27, 2001 (66 FR 66972) the FMCSA announced its intent to renew GM's exemption. The FMCSA received no comments to that notice.

FMCSA Decision

The FMCSA has decided to renew the exemptions because the commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have submitted comments to the docket since April 26, 2000, the date the original exemption was granted, indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is granting the exemptions that were the subject of the December 27, 2001, notice for another two-year period.

Terms and Conditions for the Exemption

The FMCSA is continuing to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with gross vehicle weight ratings over 10,000 pounds. The exemptions are effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and are valid for two years from the date of approval, unless revoked earlier by the FMCSA. GM, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption continues to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the original exemption, the motor carriers operating these vehicles are not required to maintain documentation concerning the exemption because the vehicles have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain either a "J" or a "K" in the forth position of the VIN. In addition, the seventh position of the VINs on the G-Van would contain a "1."

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: March 22, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7362 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5867]

Parts and Accessories Necessary for Safe Operation; Fuel Tank Exemptions for Vehicles Manufactured by the Ford Motor Company

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the Ford Motor Company (Ford) for exemptions for the vehicles specified in this notice. The exemptions sought are from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). These exemptions enable motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by Ford which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the current exemptions for similarly-equipped Ford CMVs have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that granting the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on March 27, 2002. The exemptions expire on March 29, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to this docket in response to the previous notice by using the universal resource locator (URL) *http://dms.dot.gov*, and by requesting the docket referenced at the beginning of this notice. You can examine and copy this document and all comments received at the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

Background

Ford's Applications for Exemptions

Ford first applied in April 1999, for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On August 10, 1999 (64 FR 43417), the Federal Highway Administration (FHWA) published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on December 20, 1999 (64 FR 71184). In that notice (at 64 FR 71185), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of 17 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and § 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable

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rules in § 393.67, respectively. The exemptions were granted for two years.

On November 2, 2001, (66 FR 55727) the FMCSA published a notice of its intent to renew these exemptions. The FMCSA received one comment, from Ford. Ford requested that the FMCSA renew its exemption for the fuel tanks covered in that notice. On December 27, 2001 (66 FR 66970), the agency published a notice granting the application for renewing these exemptions.

In its comment to the November 2, 2001, notice, Ford also advised the agency that it sought additional exemptions to cover the fuel tanks of additional models of E-series vehicles that were not in production at the time of the original 1999 petition, and for certain F-series vehicles.

In a second notice, also published December 27, 2001 (66 FR 66971), the FMCSA announced its intent to grant exemptions for these additional vehicles. The FMCSA received no comments to that notice.

FMCSA Decision

The FMCSA has decided to grant the exemptions for the additional Ford vehicles specified in the second December 27, 2001, notice. The commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have submitted comments to the docket indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is granting the exemptions that were the subject of the December 27 notice for a two-year period.

Terms and Conditions for the Exemption

The FMCSA is continuing to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating the Ford vehicles specified in the next paragraph. The exemptions are effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and are valid until March 29, 2004, unless revoked earlier by the FMCSA. Ford, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption continues to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the other exemption granted to Ford, the motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs for the additional E-series vehicles contain E35 or E55 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, F7UA–9002D*, YC25–9002–D* (a new fuel tank for E37 series vehicles), or 2C24–9002–E* (a new fuel tank for E55 series vehicles) where the asterisk (*) represents a "wild card" character (any character of the alphabet). The VINs for the F-series vehicles contain an F53 code in the fifth, sixth, and seventh positions. The fuel tanks are marked with part numbers 1C34–9K007–F*, 1C34–9K007–G*, and 1C34–9K007–H* where the asterisk (*) represents a "wild card" character (any character of the alphabet).

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: March 22, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7363 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 28, 2002.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0533." Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Deal at *dian.deal@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Qualifications For Locomotive Engineers.

OMB Control Number: 2130–0533.

Abstract: Section 4 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), later amended and re-codified by Public Law 103–272, 108 Stat. 874 (July 5, 1994), required that FRA issue regulations to establish any necessary program for certifying or licensing locomotive engineers. The collection of information is used by FRA to ensure that railroads employ and properly train qualified individuals as locomotive engineers and designated supervisors of locomotive engineers. The collection of information is also used by FRA to verify that railroads have established required certification programs for locomotive engineers and that these programs fully conform to the standards specified in the regulation.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion; annually; tri-annually.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
240.9—Waivers	685 railroads	5 waivers	1 hour	5	$170
240.101/103—Certification Prog	685 railroads	10 programs	200 hours/40 hours	1,840	62,560
240.101/103—Cert. Prog.—Final Rev	685 railroads	10 reviews	1 hour	10	340
240.105(a)—Selection Criteria for DSLEs.	685 railroads	10 reports	1 hour	10	490
240.105(b)—DSLE Approval Plan—Amendments.	685 railroads	75 amendments	1 hour	75	2,550
240.111—Duty to Furnish Data on Prior Safety Conduct—Car Drvr.	685 railroads	400 calls	10 minutes	67	3,149
240.1111—Driver's License Data	13,333 candidates	13,333 requests	15 minutes	3,333	156,651
240.111/App. C—RR Notification to candidate—NDR Match.	685 railroads	267 requests	30 minutes	134	5,427
240.111(g)—Notice to RR of Absence of License.	40,000 candidates	4 letters	15 minutes	1	47
240.111/App. C—Written Response from candidate on Driver's Lic Data.	685 railroads	40 comments	15 minutes	10	470
240.113—Notice to RR Furnishing Data on Prior Safety Conduct—Diff. RR.	13,333 candidates	534 requests/resp	15 min./30 min	200	7,671
240.115—Candidate's Comments on Prior Saf. Conduct Data.	13,333 candidates	133 responses	30 minutes	67	3,149
240.117—Criteria—Oper. Rules Compl. Data.	685 railroads	3 violations/appeals	12 hours	36	1,764
240.121—Criteria—Vision/Hearing Acuity Data—New Railroads.	10 railroads	10 copies	15 minutes	3	102
240.121—Criteria—Vision/Hearing Acuity Data—Cond. Certification.	685 railroads	17 reports	1 hour	17	578
240.121—Criteria—Vision/Hearing Acuity Data—Not Meeting Standards.	685 railroads	10 notifications	15 minutes	3	141
240.201/221—List of Certified Loco. Engineers.	685 railroads	685 updates	15 minutes	171	5,814
240.201/221—List of Qualified DSLEs	685 railroads	685 updates	15 minutes	171	5,814
240.201/223/301—Loco. Engineers Certificate.	40,000 candidates	13,333 certificates	5 minutes	1,111	37,774
240.201/223—List of Des. Persons Authorized to Sign DSLE Certificate.	685 railroads	20 lists	15 minutes	5	170
240.205—Data to EAP Counselor	685 railroads	267 records	5 minutes	22	1,034
240.207—Medical Certificate	40,000 candidates	13,333 certificates	70 minutes	15,555	528,870
240.209/213—Written Test	40,000 candidates	13,333 tests	2 hours	26,666	906,644
240.211/213—Perf. Test	40,000 candidates	13,333 tests	2 hours	26,666	906,644
240.215—Record Keeping—Loc. Eng	685 railroads	13,333 records	10 minutes	2,222	75,548
240.219—Denial of Certification	13,333 candidates	150 letters/resp.	1 hour	150	6,075
240.219—Denial of Certification—Notices.	685 railroads	75 notifications	1 hour	75	2,550
240.227—Canadian Certification Data	Canadian railroads	200 certifications	15 minutes	50	1,700

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REPORTING BURDEN—Continued

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
240.229—Requirement For Joint Operations Territory.	685 railroads	184 calls	5 minutes	15	705
240.303—Annual Op. Monitoring Obs	40,000 candidates	40,000 tests	2 hours	80,000	3,920,000
240.303—Annual Operational Observ	40,000 candidates	40,000 tests	1 hour	40,000	1,960,000
240.305—Eng. Notification of Non-Qualification.	40,000 candidates	10 notifications	5 minutes	1	47
240.305—Engineer Notice of Loss of Qualification.	40,000 candidates	2 letters	30 minutes	1	47
240.307—Rev. of Certification—Notice of Eng. Disqualification.	685 railroads	500 letters	1 hour	500	17,000
240.309—RR Oversight Resp.—RR Annual Review.	42 railroads	42 reviews	80 hours	3,360	188,160
240.309—RR Oversight Resp	15 railroads	10 annotations	15 minutes	3	147
240.401—Engineer Appeal to FRA	40,000 Engineers	97 petitions	12 hours	1,164	54,708
240.405—RR's Response to Appeal	685 railroads	97 responses	6 hours	582	28,518
240.407—Request For a Hearing	685 railroads and 40,000 Engineers.	16 Hearing requests	30 minutes	8	376
240.411—Appeals	685 railroads and 40,000 Engineers.	2 Appeal notices	2 hours	4	94

Total Responses: 164,568.

Estimated Total Annual Burden: 204,313 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 19, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–7351 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. See also 49 CFR 211.7 and 211.9. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

North County Transit District

[Docket Number FRA–2002–11809]

The North County Transit District ("NCTD"), located in Oceanside, California, seeks a permanent waiver of compliance from certain CFR Parts of Title 49, specifically: Part 210, Railroad Noise Emission Compliance Regulations; Part 217, Railroad Operating Rules; Part 218, Railroad Operating Practices; Part 219, Control of Alcohol and Drug Use; Part 221, Rear End Marking Devices—Passenger, Commuter and Freight Trains; Part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; Part 225, Railroad Accidents/Incidents: Report Classification, and Investigations; Part 229, Railroad Locomotive Safety Standards; Part 231 Railroad Safety Appliance Standards; Part 238, Passenger Equipment Safety Standards; Part 239, Passenger Train Emergency Preparedness; and Part 240, Qualification and Certification of Locomotive Engineers.

NCTD seeks approval of shared track usage and waiver of certain FRA regulations involving planned light rail passenger operations on the same track with freight trains between Oceanside, CA and Escondido, CA (Oceanside-Escondido Rail Project). FRA will have jurisdiction over the 22-mile portion of the NCTD Oceanside-Escondido Rail Project that is also used for freight rail carrier service. The freight operator is The Burlington Northern and Santa Fe Railway Company (BNSF), and BNSF currently conducts operations over this trackage. NCTD proposes to operate light rail vehicles on the same track as BNSF freight trains, but under temporal separation. See *Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, 65 FR 42529 (July 10, 2000). See also *Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

Since FRA has not yet completed its investigation of NCTD's petition, the agency takes no position at this time on the merits of NCTD's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board, and that person will participate in the board's consideration of NCTD's waiver petition.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA 2002–11809) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including NCTD's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered to the extent practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above-referenced facility.

Issued in Washington, DC, on March 19, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–7353 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Southern Indiana Railway, Inc.

[Waiver Petition Docket Number FRA–2002–11669]

Southern Indiana Railway, Inc. of Sellersburg, Indiana seeks a permanent waiver of compliance from the requirements of 49 CFR part 223 (Safety Glazing Standards) for two diesel-electric locomotives, SIND 103 and SIND 104. The subjects of this petition are Model S–3 locomotives built by American Locomotive Company (Alco) in 1950.

These locomotives are used on five (5) miles of single track through mostly rural or lightly populated areas, interchanging with CSX and the Louisville and Indiana Railroad. Southern Indiana Railway reports that they have never had an employee injury due to broken locomotive glazing and have no history of previous glazing related accidents or injuries. They describe the current glazing as single pane safety plate glass in good condition.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (e.g., Waiver Petition Docket Number FRA–2002–11669) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, D.C. 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on March 19, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–7354 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972 Formerly FRA Docket No. 87–2; Notice No. 14]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendments to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts-Extension of Massachusetts Bay Transit Authority (MBTA) and CSX Transportation (CSXT) Temporary Operating Protocols.

SUMMARY: FRA makes two amendments to its Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). In these amendments, FRA extends previously granted exceptions that allowed MBTA and CSXT to follow temporary operating protocols. For both MBTA and CSXT, the exceptions now run until July 1, 2002, to allow MBTA time to complete equipping its locomotives as required for ACSES service, and to allow CSXT time to complete testing of Amtrak-supplied software.

DATES: The amendments to the Order are effective March 27, 2002.

FOR FURTHER INFORMATION CONTACT: W. E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web site (*www.dms.dot.gov*) and click on the "Help" menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In six subsequent notices, FRA amended the Order to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; and 67 FR 6753, February 12, 2002.

Background

FRA is making the amendments to this Order effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

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FRA is not reopening the comment period since the amendments to this Order are necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendments to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

Extension of MBTA Temporary Operating Protocols

This is the latest in a series of amendments that allows MBTA to follow temporary operating protocols whenever it cannot dispatch a train equipped with ACSES. MBTA has had repeated difficulties in equipping sufficient locomotives with ACSES by the timetable specified in the Order. It is FRA's understanding, however, that Amtrak and MBTA have reached an agreement on what is needed for MBTA to complete equipment of its locomotive fleet for ACSES service.

Amtrak and MBTA agree that 40 MBTA locomotives must be equipped with an FM–8 ACSES configuration. MBTA currently has more than 40 ACSES-equipped locomotives, but only 24 of these have an FM–8 configuration. MBTA has the materials to equip its remaining 16 ACSES-equipped locomotives with an FM–8 configuration, but estimates that it will need four days to equip each locomotive, including transit time. Using this estimate, MBTA has asked for a final extension of the temporary protocols to allow it time to complete equipment of its fleet of ACSES-equipped locomotives. FRA is pleased that Amtrak and MBTA now agree on equipment needs, and will therefore grant MBTA a last extension to use the temporary operating protocols until July 1, 2002. Other than the final extension granted above, the MBTA temporary operating protocols specified in Notice No. 11 (66 FR 34512, June 28, 2001) remain in effect without change.

Extension of CSXT Temporary Operating Protocols

On June 28, 2001, in Notice No. 11, FRA granted CSXT a relief period from the implementation schedule specified in the Order. FRA has extended this relief period several times to allow CSXT time to test new Amtrak operational software. FRA is extending the date by which CSXT must complete software testing to July 1, 2002 since Amtrak is continuing to make adjustments to its new operational software.

Other than the extension for software testing explained above, the CSXT temporary operating protocols specified in Notice No. 11 remain in effect without change.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. Paragraph 11 is amended as follows:

11. Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols

(a) Effective upon March 27, 2002 until July 1, 2002, Amtrak must adhere to the following procedures if it becomes necessary to dispatch an MBTA train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

3. *Paragraph 12 is amended to read as follows:*

12. CSX Transportation (CSXT) Temporary Operating Protocols

(a) Effective upon March 27, 2002 until July 1, 2002, CSXT must adhere to the following protocols if it becomes necessary to dispatch a CSXT train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

Issued in Washington, DC, on March 15, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7352 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–11911]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35001 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on December 27, 2001.

DATES: Comments must be submitted before April 26, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 5335(a) and (b) National Transit Database (*OMB Number: 2132–0008*)

Abstract: 49 U.S.C. Section 5335(a) and (b) require the Secretary of Transportation to maintain a reporting system by uniform categories to accumulate mass transportation financial and operating information and a uniform system of accounts and records. Each year, transit authorities that receive FTA funding submit data to the National Transit Database. The data that is submitted is used in statutory formulae to apportion over $4 billion in federal funds back to those agencies. In addition, federal, state, and local government, transit agencies/boards, labor unions, manufacturers, researchers, consultants and universities use the National Transit Database for making transit related decisions. State and local governments also use the National Transit Database in allocating funds under 49 U.S.C. Section 5307. National Transit Database information is essential for understanding cost, ridership and other national performance trends, including transit's share of urban travel. It would be difficult to determine the future structure of FTA programs, to set policy, and to make funding and other decisions relating to the efficiency and effectiveness of the Nation's transit operations without the National Transit Database.

Estimated Total Annual Burden: 238,136 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: March 22, 2002.

Timothy B. Wolgast,

Deputy Associate Administrator for Administration.

[FR Doc. 02–7365 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34060]

Midwest Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will County, IL

AGENCY: Surface Transportation Board.

ACTION: Notice of conditional grant of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Midwest Generation, LLC (Midwest) of a line of railroad, approximately 4,007 feet long, to serve its coal-fired generating plant in Joliet, Will County, IL.[1]

DATES: The exemption is subject to our further consideration of the anticipated environmental impacts of the proposal and will not become effective until the environmental review process is completed. The Board will then issue a further decision addressing the environmental issues and establishing an effective date for the exemption, if warranted, subject to any necessary conditions. Petitions to reopen must be filed by April 16, 2002.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34060, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; (2) Michael F. McBride, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Avenue, NW., Washington, DC 20009–5728 (Midwest counsel); and (3) Paul A. Cunningham, Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664 (IC counsel).

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da–2–Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available at our Web site at *www.stb.dot.gov.*

Decided: March 20, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7244 Filed 3–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority—Construction of a Line of Railroad in Pemiscot County, MO

AGENCY: Surface Transportation Board.

ACTION: Notice of ruling on fee waiver.

SUMMARY: The Surface Transportation Board (Board) grants an appeal of the denial of a fee waiver request, but reaffirms that henceforth it will narrowly apply its rule providing for a waiver of filing fees for state and local government entities, as originally intended.

DATES: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Vernon A. Williams, (202) 565–1650 [TDD/TTY for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: This decision addresses an appeal of a Board order denying a request for waiver of a filing fee. Under the law, the Board is required to assess fees upon parties filing pleadings seeking to engage the Board's processes. The fees that the Board charges were established by the Board's predecessor, the Interstate Commerce Commission (ICC), in *Regulations Governing Fees for Services*, 1 I.C.C.2d 60 (1984), and they have been amended on various occasions.

The Board's fee program is described fully in 49 CFR 1002.2. Under the provisions of 49 CFR 1002.2(e)(1), a government entity may request a waiver of the otherwise applicable filing fee. In *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—Policy Statement*, STB Ex Parte No. 542 (Sub-No. 6) (STB served Dec. 6, 2000) (*Policy Statement*), the Board reviewed how the government-entity fee waiver provision had been used by "state or local government entit[ies] acting in a proprietary capacity as [carriers]" (*id.* at 3), specifically citing cases in which "states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party." *Id.* The Board expressed the view that, in the past, waivers had been too readily issued, and emphasized that, for the future, it would closely adhere to the strict guidelines established by the ICC in determining whether to grant a waiver. In particular, the Board stated (*id.* at 4, emphasis in original) that "fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, * * * and comes before the Board in that capacity."

In this case, Pemiscot County Port Authority (Pemiscot) filed a request with the Office of the Secretary for waiver of the $51,500 filing fee required in connection with a petition for a construction exemption under 49 U.S.C. 10502. Because Pemiscot would be seeking authority to construct and operate (through a third party operator) a line of railroad, by letter dated December 10, 2001, Pemiscot's request for waiver of the fee was denied. On March 8, 2002, Pemiscot submitted an untimely appeal, which we will accept for filing, of the decision denying the fee waiver request. In its appeal, Pemiscot argues that even though it will retain a residual common carrier obligation if it contracts with a third party to operate the proposed line, the project that it wants to pursue would "convey[] a public benefit, * * * the project would not exist but for public funding; and * * * the transaction does not entail any effort to gain an advantage over another party." Pemiscot also argues that a waiver is in the best interest of the public and that denial of the waiver would impose an undue hardship on it.

Pemiscot has clearly not shown that the denial of its waiver request was erroneous, and indeed, the decision follows closely the guidelines laid out in the *Policy Statement*. Nevertheless, because a party in a different case was granted a fee waiver after issuance of the *Policy Statement* under circumstances not substantially different from those prevailing here, we will grant

[1] On June 19, 2001, Midwest filed a petition under 49 U.S.C. 10901(d) to require the Illinois Central Railroad Company (IC) to allow Midwest's proposed construction to cross IC's track. The proceeding is docketed as STB Finance Docket No. 34060 (Sub-No. 1), *Midwest Generation, LLC—Petition for Line Crossing Authority Under 40 U.S.C. 10901(d).* The crossing proceeding remains pending.

Pemiscot's appeal and waive the filing fee that should be required in this case. However, in the future, we will construe the waiver provision narrowly, as we said we would do in the *Policy Statement*.

Decided: March 21, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7339 Filed 3–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–49–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–49–88 (TD 8546), Limitations on Corporate Net Operating Loss (§ 1.382–6).

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1381.

Regulation Project Number: CO–49–88.

Abstract: This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after ownership change under section 382 of the Internal Revenue Code, including an election to make the allocation based on a closing of the books as of the change date.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 0.1 hr.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7348 Filed 3–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

OMB Number: 1545–1776.

Form Number: 1041–N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 231 hours.

Estimated Total Annual Burden Hours: 4,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7349 Filed 3–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0094."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0094" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–4169 is used to gather the necessary information to determine from certain applicants service information, place of residence, evidence held by the applicant to prove service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. The information collected is used in determining eligibility for benefits based on Commonwealth Army or recognized guerrilla service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at page 35700.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: March 15, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–7311 Filed 3–26–02; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0101."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0101" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Eligibility Verification Reports

a. Eligibility Verification Report Instructions, VA Form 21–0510.

b. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.

c. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S–1.

d. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.

e. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V–1.

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f. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.

g. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S–1.

h. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.

i. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V–1.

j. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.

k. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513–1.

l. DIC Parent's Eligibility Verification Report, VA Form 21–0514.

m. DIC Parent's Eligibility Verification Report, VA Form 21–0514–1.

n. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.

o. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516–1.

p. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.

q. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517–1.

r. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.

s. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518–1.

t. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.

u. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C–1.

v. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

w. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Eligibility Verification Reports are used to report changes in entitlement factors in VA's income-based benefit programs, pension and parents' Dependency and Indemnity Compensation (DIC). Any individual who has applied for or receives pension or parents' DIC must promptly notify VA in writing of any changes in entitlement factors.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 23, 2001, at pages 58782–58783.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,947 hours.

Estimated Average Burden Per Respondent: 30 minutes per report.

Frequency of Response: On occasion.

Estimated Number of Respondents: 293,894.

Dated: March 7, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7312 Filed 3–26–02; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Wednesday,
March 27, 2002

Part II

Department of Health and Human Services

45 CFR Parts 160 and 164

Office of the Secretary; Standards for Privacy of Individually Identifiable Health Information; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB14

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office for Civil Rights, HHS.

ACTION: Proposed rule; modification.

SUMMARY: The Department of Health and Human Services (HHS) proposes to modify certain standards in the Rule entitled "Standards for Privacy of Individually Identifiable Health Information" (the "Privacy Rule"). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

The purpose of this action is to propose changes that maintain strong protections for the privacy of individually identifiable health information while clarifying misinterpretations, addressing the unintended negative effects of the Privacy Rule on health care quality or access to health care, and relieving unintended administrative burden created by the Privacy Rule.

DATES: To assure consideration, written comments mailed to the Department as provided below must be postmarked no later than April 26, 2002, and written comments hand delivered to the Department and comments submitted electronically must be received as provided below, no later than 5 p.m. on April 26, 2002.

ADDRESSES: Comments will be considered only if provided through any of the following means:

1. Mail written comments (1 original and, if possible, 3 copies and a floppy disk) to the following address: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Privacy 2, Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.
2. Deliver written comments (1 original and, if possible, 3 copies and a floppy disk) to the following address: Attention: Privacy 2, Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.
3. Submit electronic comments at the following Web site: *http://www.hhs.gov/ocr/hipaa/*.

See the **SUPPLEMENTARY INFORMATION** section for further information on comment procedures, availability of copies, and electronic access.

FOR FURTHER INFORMATION CONTACT: Felicia Farmer 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

SUPPLEMENTARY INFORMATION: Comment procedures, availability of copies, and electronic access.

Comment Procedures: All comments should include the full name, address, and telephone number of the sender or a knowledgeable point of contact. Comments should address only those sections of the Privacy Rule for which modifications are being proposed or for which comments are requested. Comments on other sections of the Privacy Rule will not be considered, except insofar as they pertain to the standards for which modifications are proposed or for which comments are requested. Each specific comment should specify the section of the Privacy Rule to which it pertains.

Written comments should include 1 original and, if possible, 3 copies and an electronic version of the comments on a 3½ inch DOS format floppy disk in HTML, ASCII text, or popular word processor format (Microsoft Word, Corel WordPerfect). All comments and content must be limited to the 8.5 inches wide by 11.0 inches high vertical (also referred to as "portrait") page orientation. Additionally, if identical/duplicate comment submissions are submitted both electronically at the specified Web site and in paper form, the Department requests that each submission clearly indicate that it is a duplicate submission.

Because of staffing and resource limitations, the Department will not accept comments by telephone or facsimile (FAX) transmission. Any comments received through such media will be deleted or destroyed, as appropriate, and not be considered as public comments. The Department will accept electronic comments only as submitted through the Web site identified in the **ADDRESSES** section above. No other form of electronic mail will be accepted or considered as public comment. In addition, when mailing written comments, the public is encouraged to submit comments as early as possible due to potential delays in mail service.

Inspection of Public Comments: Comments that are timely received in proper form and at one of the addresses specified above will be available for public inspection by appointment as they are received, generally beginning approximately three weeks after publication of this document, at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 4 p.m. Appointments may be made by telephoning 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–866–512–1800) or by fax to (202) 512–2250. The cost for each copy is $10.00. Alternatively, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

Electronic Access: This document is available electronically at the OCR Privacy Web site at *http://www.hhs.gov/ocr/hipaa/*, as well as at the Web site of the Government Printing Office at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

I. Background

A. Statutory Background

Congress recognized the importance of protecting the privacy of health information given the rapid evolution of health information systems in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which became law on August 21, 1996. HIPAA's Administrative Simplification provisions, sections 261 through 264 of the statute, were designed to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to financial and administrative transactions carried out by health plans, health care clearinghouses, and health care providers who transmit information electronically in connection with such transactions. To implement these provisions, the statute directed HHS to adopt a suite of uniform, national standards for transactions, unique health identifiers, code sets for the data elements of the transactions, security of health information, and electronic signature.

At the same time, Congress recognized the challenges to the confidentiality of health information presented by the increasing complexity of the health care industry, and by advances in the health information systems technology and communications. Thus, the Administrative Simplification provisions of HIPAA authorized the Secretary to promulgate regulations on standards for the privacy of individually identifiable health information if Congress did not enact health care privacy legislation by August 21, 1999. HIPAA also required the Secretary of HHS to provide Congress with recommendations for protecting the confidentiality of health care information. The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress was unable to act within its self-imposed deadline.

With respect to these regulations, HIPAA provided that the standards, implementation specifications, and requirements established by the Secretary not supersede any contrary State law that imposes more stringent privacy protections. Additionally, Congress required that HHS consult with the National Committee on Vital and Health Statistics, a Federal Advisory committee established pursuant to section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and the Attorney General in the development of HIPAA privacy standards.

After a set of standards is adopted by the Department, HIPAA provides HHS with authority to modify the standards as deemed appropriate, but not more frequently than once every 12 months. However, modifications are permitted during the first year after adoption of the standard if the changes are necessary to permit compliance with the standard. HIPAA also provides that compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary, which may not be earlier than 180 days from the adoption of the modification.

B. Regulatory and Other Actions to Date

As Congress did not enact legislation regarding the privacy of individually identifiable health information prior to August 21, 1999, HHS published a proposed Rule setting forth such standards on November 3, 1999 (64 FR 59918). The Department received more than 52,000 public comments in response to the proposal. After reviewing and considering the public comments, HHS issued a final Rule (65 FR 82462) on December 28, 2000, establishing "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule").

In an era where consumers are increasingly concerned about the privacy of their personal information, the Privacy Rule creates for the first time national protections for the privacy of their most sensitive information—health information. Congress has passed other laws to protect consumer's personal information contained in bank, credit card, other financial records, and even video rentals. These health privacy protections are intended to provide consumers with similar assurances that their health information, including genetic information, will be properly protected. Under the Privacy Rule, health plans, health care clearinghouses, and certain health care providers must guard against misuse of individuals' identifiable health information and limit the sharing of such information, and consumers are afforded significant new rights to understand and control how their health information is used and disclosed.

After publication of the Privacy Rule, HHS received many inquiries and unsolicited comments through telephone calls, e-mails, letters, and other contacts about the impact and operation of the Privacy Rule on numerous sectors of the health care industry. Many of these commenters exhibited substantial confusion over how the Privacy Rule will operate; others expressed great concern over the complexity of the Privacy Rule. In response to these communications and to ensure that the provisions of the Privacy Rule would protect patients' privacy without creating unanticipated consequences that might harm patients' access to health care or quality of health care, the Secretary of HHS requested comment on the Privacy Rule in March 2001 (66 FR 12738). After an expedited review of the comments by the Department, the Secretary decided that it was appropriate for the Privacy Rule to become effective on April 14, 2001, as scheduled (65 FR 12433). At the same time, the Secretary directed the Department immediately to begin the process of developing guidelines on how the Privacy Rule should be implemented and to clarify the impact of the Privacy Rule on health care activities. In addition, the Secretary charged the Department with proposing appropriate changes to the Privacy Rule during the next year to clarify the requirements and correct potential problems that could threaten access to, or quality of, health care. The comments received during the comment period, as well as other communications from the public and all sectors of the health care industry, including letters, testimony at public hearings, and meetings requested by these parties, have helped to inform the Department's efforts to develop proposed modifications and guidance on the Privacy Rule.

On July 6, 2001, the Department issued its first guidance to answer common questions and clarify certain of the Privacy Rule's provisions. In the guidance, the Department also committed to proposing modifications to the Privacy Rule to address problems arising from unintended effects of the Privacy Rule on health care delivery and access. The guidance is available on the HHS Office for Civil Rights (OCR) Privacy Web site at *http://www.hhs.gov/ocr/hipaa/*.

II. Overview of the Proposed Rule

As described above, through public comments, testimony at public hearings, meetings at the request of industry and other stakeholders, as well as other communications, the Department learned of a number of concerns about the potential unintended effect certain provisions would have on health care delivery and access. In response to these concerns, and pursuant to HIPAA's provisions for modifications to the standards, the Department is proposing modifications to the Privacy Rule.

In addition, the National Committee for Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality, held public hearings on the implementation of the Privacy Rule on August 21–23, 2001, and January 24–25, 2002, and provided recommendations to the Department based on these hearings. The NCVHS serves as the statutory advisory body to the Secretary of HHS with respect to the development and implementation of the Rules required by the Administrative Simplification provisions of HIPAA, including the privacy standards. Through the hearings, the NCVHS specifically solicited public input on issues related to certain key standards in the Privacy Rule: consent, minimum necessary, marketing, fundraising, and research. The resultant public testimony and subsequent recommendations submitted to the Department by the NCVHS also served to inform the development of these proposed modifications.

Based on the information received through the various sources described above, the Department proposes to modify the following areas or provisions of the Privacy Rule: consent, including other provisions for uses and disclosures of protected health information for treatment, payment, and health care operations; notice of privacy

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practices for protected health information; minimum necessary uses and disclosures, and oral communications; business associates; uses and disclosures for marketing; parents as the personal representatives of unemancipated minors; uses and disclosures for research purposes; uses and disclosures of protected health information for which authorizations are required; and de-identification of protected health information. In addition to these key areas, the proposal includes changes to certain other provisions where necessary to clarify the Privacy Rule. The Department also includes in the proposed Rule a list of technical corrections intended as editorial or typographical corrections to the Privacy Rule.

The proposed modifications collectively are designed to ensure that protections for patient privacy are implemented in a manner that maximizes the effectiveness of such protections while not compromising either the availability or the quality of medical care. They reflect a continuing commitment on the part of the Department to strong privacy protections for medical records and the belief that privacy is most effectively protected by requirements that are not exceptionally difficult to implement. If there are any ways in which privacy protections are unduly compromised by these modifications, the Department welcomes comments and suggestions for alternative ways effectively to protect patient privacy without adversely affecting access to, or the quality of, health care.

Given that the compliance date of the Privacy Rule for most covered entities is April 14, 2003, and statutory requirements to ensure that affected parties have sufficient time to come into compliance require any revisions to become effective by October 13, 2002, the Department is soliciting public comment on these proposed modifications for only 30 days. As stated above, the modifications address public concerns already communicated to the Department through a wide variety of sources since publication of the Privacy Rule in December 2000. For these reasons, the Department believes that 30 days should be sufficient for the public to state its views fully to the Department on the proposed modifications to the Privacy Rule.

III. Description of Proposed Modifications

A. Uses and Disclosures for Treatment, Payment, and Health Care Operations

1. Consent

Treatment and payment for health care are core functions of the health care industry, and uses and disclosures of individually identifiable health information for such purposes are critical to the effective operation of the health care system. Health care providers and health plans must also use individually identifiable health information for certain health care operations, such as administrative, financial, and legal activities, to run their businesses, and to support the essential health care functions of treatment and payment. Equally important are health care operations designed to maintain and improve the quality of health care. In developing the Privacy Rule, the Department considered the privacy implications of uses and disclosures for treatment, payment, and health care operations in connection with the need for these activities to continue. In balancing the need for these activities and the privacy interests involved in using and disclosing protected health information for these purposes, the Department considered the fact that many individuals expect that their health information will be used and disclosed as necessary to treat them, bill for treatment, and, to some extent, operate the covered entity's health care business. Due to individual expectations with respect to the use or disclosure of information for such activities and so as not to interfere with an individual's access to quality health care or efficient payment for such health care, the Department's goal is to permit these activities to occur with little or no restriction.

Consistent with this view, the Privacy Rule generally provides covered entities with permission to use and disclose protected health information as necessary for treatment, payment, and health care operations. For certain health care providers that have a direct treatment relationship with individuals, such as many physicians, hospitals, and pharmacies, the Privacy Rule requires such providers to obtain an individual's written consent prior to using or disclosing protected health information for these purposes.

To implement the consent standard, the Privacy Rule requires a covered health care provider with a direct treatment relationship with the individual to obtain a single, one-time, general permission from the individual prior to using or disclosing protected health information about him or her for treatment, payment, and health care operations. An individual may revoke his or her consent at any time, except to the extent that the covered entity has taken action in reliance on the consent. The Privacy Rule contains exceptions to the consent requirements, under which a provider may use or disclose protected health information without prior consent when there is an emergency treatment situation, when a provider is required by law to treat the individual, or when there are substantial communication barriers. Additionally, because the Department realizes that a health care provider cannot treat a patient without being able to use and disclose his or her protected health information for treatment purposes, the Privacy Rule permits a covered health care provider to refuse to treat a patient who refuses to provide consent. Finally, the Privacy Rule permits other covered entities to voluntarily obtain consent, in accordance with these consent provisions.

The consent requirement for health care providers with direct treatment relationships was a significant change from the Department's initial proposal published in November 1999. At that time, the Department proposed to permit all covered entities to use and disclose protected health information to carry out treatment, payment, and health care operations without any requirement that the covered entities obtain an individual's consent for such uses and disclosures, subject to a few limited exceptions. Further, the Department had proposed to prohibit covered entities from obtaining an individual's consent for uses and disclosures of protected health information for these purposes, unless required by other applicable law. Instead, the Department relied on the principle of fair notice, coupled with regulatory limits on the use and disclosure of health information, to balance the individual's privacy interests against the need not to impede the delivery of quality health care. Providing individuals with fair notice about the information practices and responsibilities of their plans and providers, and their rights with respect to information about them, is a privacy principle as important as the principle of consent. Indeed, consents often provide individuals with little actual control over information. When an individual is required to sign a blanket consent at the point of treatment as a condition of treatment or payment, that consent is often not voluntary. Instead, therefore, the Department proposed to require most covered entities to create and provide to individuals a notice describing all of the entity's information practices, including their practices with respect to uses and disclosures of protected health information to carry out treatment, payment, and health care operations.

The Department received a strong public response opposing this proposal. Health care providers and patients argued that consent provides individuals with a sense of control over how their information will be used and disclosed, is a current practice of many health care providers, and is expected by patients. Providers explained that they would face an ethical conflict from a prohibition on obtaining consent. The consent requirement for direct treatment providers was a direct response to these comments.

Public Comments

The Department received many comments in March 2001, as well as recommendations from the NCVHS based on public testimony, about the consent provisions in the Privacy Rule. There were some proponents of consent that urged the Department to retain, expand, or strengthen the consent provisions. There were also many opponents of consent that raised a number of issues and serious concerns that the consent requirements will impede access to, and the delivery of, quality health care. Most significantly, many covered entities described an array of circumstances when they need to use or disclose protected health information for treatment, payment, or health care operations purposes prior to the initial face-to-face contact with the patient, and therefore, prior to obtaining consent.

Consistent with the comments that the Department received after the initial notice of proposed rulemaking (NPRM), proponents of the consent requirement argued that consent is integral to providing individuals the opportunity to be active participants in their own health care and can bolster patient trust in providers. One of the most significant values that proponents placed on consent was that it defines an "initial moment" when patients can focus on information practices and raise questions about privacy concerns. Some proponents recommended that the consent requirement be extended to health plans because these entities may not have the same duty and legal obligation as health care providers to maintain confidentiality.

Others urged the Department to strengthen consent by eliminating the ability of providers to condition treatment on the receipt of consent. There were also some commenters that thought that consent should be required more frequently. They claimed that the consent provisions will be ineffective to provide individuals with control over how their information will be used or disclosed because it is general and only must be obtained one time. They argued that an individual may have differing degrees of concern about the privacy of health information, depending on the nature of the information raised in the particular encounter with the provider, and that an initial, one-time consent cannot account for such variation.

At the same time, most covered entities were concerned about significant practical problems that resulted from the consent requirements in the Privacy Rule. Commenters raised numerous examples of obstacles that the prior consent provisions will pose to timely access to health care. Health care providers commented that they often use health information about an individual for necessary treatment, payment, and health care operations activities prior to the first face-to-face contact with the individual. Under the Privacy Rule, these routine and often essential activities are not permitted unless the provider first obtains consent from the individual. Although the consent only needs to be obtained one time, there may be problems for new patients who have not yet provided consent, for existing patients who have not yet provided consent after the compliance date of the Privacy Rule, for patients who have revoked consent, and for patients who may have provided consent, but the provider cannot find such documentation.

These concerns were primarily raised by pharmacists and pharmacies, but the same issue exists in any referral or new patient situation. Pharmacists informed us that they typically use individually identifiable health information, received from a physician, to fill a prescription, search for potential drug interactions, and determine eligibility and obtain authorization for payment, before the individual arrives at the pharmacy to pick up the prescription. The consent requirement would delay such activity for any first-time customers and for many more customers immediately following the compliance date of the Privacy Rule. Tracking consents in large, multi-state pharmacy chains can result in delays as well. At best, an individual will experience significant delays in obtaining his or her prescription if a pharmacist cannot fill the prescription until the individual is present to sign a consent. Even greater delays may be experienced by individuals too ill to pick up their own prescriptions. Although the Privacy Rule permits a friend or neighbor to pick up the prescription, that person may not have the legal authority to sign a consent on the individual's behalf. Thus, a number of trips back and forth to the pharmacy may be needed to obtain the prior consent. This problem is greatly magnified in rural areas, where persons may travel much longer distances to see health care providers, including pharmacists.

Similarly, a hospital receives information about a patient from a referring physician and routinely uses this information to schedule and prepare for procedures before the individual presents at the hospital for such procedure. The Privacy Rule's requirement that a covered entity obtain an individual's consent prior to using or disclosing their information is an impediment to these activities and could require an individual to make an additional trip to the hospital simply to provide consent. The Department did not intend that the Privacy Rule interfere with such activities.

Commenters also raised concerns that providers who do not provide treatment in person may be unable to provide care because they are unable to obtain prior written consent to use protected health information at the first service delivery. This was a special concern with respect to providers who care for individuals over the telephone. For example, providers who cover for other providers during non-business hours or providers who had not yet had the opportunity to obtain a patient's consent were concerned that they would not be able to respond to telephone calls from individuals in need of treatment because they were not able to obtain consent over the telephone. Nurses who staff telephone centers that provide health care assessment and advice, but who never see patients, had similar concerns.

Other concerns related to treatment were expressed about the limitations of the exceptions to the consent requirement in the Privacy Rule. For example, emergency medical providers were unclear as to whether all activities in which they engage qualify for the emergency treatment exception to the consent requirement. As a result of this confusion, they were concerned that, if a situation was urgent, they would have to try to obtain consent to comply with the Privacy Rule even if that would be inconsistent with current practice of emergency medicine. These providers

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also were concerned about the requirement that a provider must attempt to obtain consent as soon as reasonably practicable after an emergency. Emergency medical providers explained that they typically do not have ongoing relationships with individuals and that the requirement to attempt to obtain consent after the emergency would require significant efforts and administrative burden on their part, and would be viewed as harassment by individuals.

Providers who do not provide emergency care and who are not likely meet one of the consent exceptions were concerned that they may be put in the untenable position of having to decide whether to withhold treatment when an individual does not provide consent or proceed to use information to treat the individual in violation of the consent requirements.

Covered entities were also concerned that the difficultly in tracking consents may hamper treatment. The Privacy Rule permits an individual to revoke his or her consent. Large institutional providers claimed that, since tracking of patient consents and revocations would be very difficult and expensive, in practice, they would need to obtain consent for each patient encounter, rather than just one-time as allowed by the Privacy Rule. Covered entities were concerned that, if an individual revokes consent, they would have to eliminate all protected health information about that individual from their systems in order to ensure that it was not used inadvertently for routine health care operations purposes, which would hinder their quality improvement activities and other health care operations. Additionally, testimony before the NCVHS revealed a concern that the ability of a patient to revoke consent might prevent health care providers from accessing protected health information that is critical for the treatment of an individual in an emergency treatment situation where a new consent is not obtained.

The Department also heard many concerns about the transition provisions related to the use and disclosure of protected health information for treatment, payment, or health care operations. The Privacy Rule permits covered health care providers that are required to obtain consent for treatment, payment, or health care operations to continue, after the compliance date of the Privacy Rule, to use and disclose protected health information they created or received prior to the compliance date of the Privacy Rule for these purposes if they have obtained consent, authorization, or other express legal permission to use or disclose such information for any of these purposes, even if such permission does not meet the consent requirements under the Privacy Rule. Many providers informed the Department that they currently were not required to obtain consent for these purposes, that these transition provisions would result in significant operational problems, and the inability to access health records would have an adverse effect on quality activities.

Concerns also were raised regarding the exception to the consent requirement for cases where a provider is required by law to treat an individual. For example, providers that are required by law to treat were concerned about the mixed messages to patients and interference with the physician-patient relationship that would result when they are required to ask for consent to use or disclose protected health information for treatment, payment, or health care operations, but if the patient says "no," they are permitted to use or disclose the information for such purposes anyway.

There also was confusion about the interaction of the consent provisions and the provisions regarding parents and minors. Testimony received by the NCVHS indicated uncertainty as to the validity of a consent signed by a parent for his or her minor child once the child reaches the age of majority. The NCVHS requested clarification regarding whether a child must sign a new consent upon reaching the age of majority.

The NCVHS hearings and recommendations focused on practical implementation issues, including the unintended consequences of the consent provisions, but did not address whether the Privacy Rule should or should not require consent. The NCVHS generally recommended that the Department consider circumstances in which protected health information could be used and disclosed without an individual's prior written consent and modify the Privacy Rule accordingly. The Committee specifically recommended that the Privacy Rule should be amended to include provisions for allowing covered entities to use and disclose protected health information prior to the initial face-to-face contact with an individual.

Proposed Modifications

The Department is concerned by the multitude of comments and examples demonstrating that the consent requirements result in unintended consequences that impede the provision of health care in many critical circumstances and that other such unintended consequences may exist which have yet to be brought to its attention. However, the Department understands that the opportunity to discuss privacy practices and concerns is an important component of privacy, and that the confidential relationship between a patient and a health care provider includes the patient's ability to be involved in discussions and decisions related to the use and disclosure of any protected health information about him or her.

Accordingly, the Department proposes an approach that protects privacy interests by affording patients the opportunity to engage in important discussions regarding the use and disclosure of their health information, while allowing activities that are essential to provide access to quality health care to occur unimpeded. Specifically, the Department proposes to make optional the obtaining of consent to use and disclose protected health information for treatment, payment, or health care operations on the part of all covered entities, including providers with direct treatment relationships. Under this proposal, health care providers with direct treatment relationships with individuals would no longer be required to obtain an individual's consent prior to using and disclosing information about him or her for treatment, payment, and health care operations. They, like other covered entities, would have regulatory permission for such uses and disclosures.

In order to preserve flexibility and the valuable aspects of the consent requirement, the Department proposes changes that would: (1) Permit all covered entities to obtain consent if they choose, (2) strengthen the notice requirements to preserve the opportunity for individuals to discuss privacy practices and concerns with providers, and (3) enhance the flexibility of the consent process for those covered entities that choose to obtain consent. See section III.B. of the preamble below for the related discussion of proposed modifications to the Privacy Rule's notice requirements.

Other individual rights would not be affected by this proposal. Although covered entities would not be required to obtain an individual's consent, any uses or disclosures of protected health information for treatment, payment, or health care operations would still need to be consistent with the covered entity's notice of privacy practices. Also, the removal of the consent requirement only applies to consent for treatment, payment, and health care operations; it does not alter the requirement to obtain an authorization under § 164.508 for uses and disclosures of protected health information not otherwise permitted by the Privacy Rule. The functions of treatment, payment, and health care operations were all given carefully limited definitions in the Privacy Rule, and the Department intends to enforce strictly the requirement for obtaining an individual's authorization, in accordance with § 164.508, for uses and disclosure of protected health information for other purposes not otherwise permitted or required by the Privacy Rule. Furthermore, individuals would retain the right to request restrictions, in accordance with § 164.522(a).

Although consent for use and disclosure of protected health information for treatment, payment, and health care operations would no longer be mandated, the Department is proposing to allow covered entities to have a consent process if they wish to do so. The Department heard from some commenters that obtaining consent was an integral part of the ethical and other practice standards for many health care professionals. The Department, therefore, would not prohibit covered entities from obtaining consent.

Under this proposal, a consent could apply only to uses and disclosures that are otherwise permitted by the Privacy Rule. A consent obtained through this voluntary process would not be sufficient to permit a use or disclosure which, under the Privacy Rule, requires an authorization or is otherwise expressly conditioned. For example, a consent could not be obtained in lieu of an authorization or a waiver of authorization by an IRB or Privacy Board to disclose protected health information for research purposes.

The Department proposes to allow covered entities that choose to have a consent process complete discretion in designing this process. The comments have informed the Department that one consent process and one set of principles will likely be unworkable. As a result, these proposed standards would leave complete flexibility to each covered entity. Covered entities that chose to obtain consent could rely on industry practices to design a voluntary consent process that works best for their practice area and consumers.

To effectuate these changes to the consent standard, the Department proposes to replace the consent provisions in § 164.506 with a new provision at § 164.506(a) that would provide regulatory permission for covered entities to use or disclose protected health information for treatment, payment, and health care operations, and a new provision at § 164.506(b) that would allow covered entities to obtain consent if they choose to, and make clear that such consent may not permit a use or disclosure of protected health information not otherwise permitted or required by the Privacy Rule. Additionally, the Department proposes a number of conforming modifications throughout the Privacy Rule to accommodate the proposed approach. The most substantive corresponding changes are proposed at §§ 164.502 and 164.532. Section 164.502(a)(1) provides a list of the permissible uses and disclosures of protected health information, and refers to the corresponding section of the Privacy Rule for the detailed requirements. The Department collapses the provisions at §§ 164.502(a)(1)(ii) and (iii) that address uses and disclosures of protected health information for treatment, payment, and health care operations and modifies the language to eliminate the consent requirement for these purposes.

Section 164.532 consists of the transition provisions. In § 164.532, the Department deletes references to § 164.506 and to consent, authorization, or other express legal permission obtained for uses and disclosures of protected health information for treatment, payment, and health care operations prior to the compliance date of the Privacy Rule. The proposal to permit a covered entity to use or disclose protected health information for these purposes without consent or authorization would apply to any protected health information held by a covered entity whether created or received before or after the compliance date. Therefore, transition provisions would not be necessary.

The Department also proposes conforming changes to the definition of "more stringent" in § 160.202, § 164.500(b)(1)(v), §§ 164.508(a)(2)(i) and (b)(3)(i), the introductory text of §§ 164.510 and 164.512, the title of § 164.512, and § 164.520(b)(1)(ii)(B) to reflect that consent is no longer required.

2. Disclosures for Treatment, Payment, or Health Care Operations of Another Entity

The Privacy Rule permits a covered entity to use and disclose protected health information for treatment, payment, or health care operations (subject to a consent in some cases). Uses and disclosures for treatment are broad because the definition of treatment incorporates the interaction among more than one entity; specifically, coordination and management of health care among health care providers or by a health care provider with a third party, consultations between health care providers, and referrals of a patient for health care from one health care provider to another. As a result, covered entities are permitted to disclose protected health information for treatment regardless of to whom the disclosure is made, as well as to disclose protected health information for the treatment activities of another health care provider.

However, for payment and health care operations, the Privacy Rule generally limits a covered entity's uses and disclosures of protected health information to those that are necessary for its own payment and health care operations activities. This limitation is explicitly stated in the preamble discussions in the Privacy Rule of the definitions of "payment" and "health care operations." The Privacy Rule also provides that a covered entity must obtain authorization to disclose protected health information for the payment or health care operations of another entity. The Department intended these requirements to be consistent with individuals' privacy expectations. See §§ 164.506(a)(5) and 164.508(e).

Public Comments

A number of commenters raised specific concerns with the restriction that a covered entity is permitted to use and disclose protected health information only for its own payment and health care operations activities. These commenters presented a number of examples where such a restriction would impede the ability of certain covered entities to obtain reimbursement for health care, to conduct certain quality assurance or improvement activities, such as accreditation, or to monitor fraud and abuse.

With regard to payment, the Department received specific concerns about the difficultly that the Privacy Rule will place on certain providers trying to obtain information needed for reimbursement for health care. Specifically, ambulance service providers explained that they normally receive the information they need to seek payment for treatment from the hospital emergency departments to which they transport their patients, since it is usually not possible at the time the service is rendered for the ambulance service provider to obtain such information directly from the individual. Nor is it practicable or

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feasible in all cases for the hospital to obtain the individual's authorization to provide payment information to the ambulance service provider after the fact. This disclosure of protected health information from the hospital to the ambulance service provider is not permitted under the Privacy Rule without an authorization from the patient because it is a disclosure by the hospital for the payment activities of the ambulance service provider.

In addition, commenters stated that physicians and other covered entities outsource their billing, claims, and reimbursement functions to accounts receivable management companies. These collectors often attempt to recover payments from a patient for care rendered by multiple health care providers. Commenters were concerned that the Privacy Rule will prevent these collectors, as business associates of multiple providers, from using a patient's demographic information received from one provider in order to facilitate collection for another provider's payment purposes.

With regard to health care operations, the Department also received comments about the difficultly that the Privacy Rule will place on health plans trying to obtain information needed for quality assessment activities. Health plans informed the Department that they need to obtain individually identifiable health information from health care providers for the plans' own quality-related activities, accreditation, and performance measures, e.g., Health Plan Employer Data and Information Set (HEDIS). Commenters explained that the information provided to plans for payment purposes (e.g., claims or encounter information) may not be sufficient for quality assessment or accreditation purposes. Plans may receive even less information from their capitated providers.

The NCVHS also received specific public testimony with regard to this issue as part of public hearings held in August 2001. The NCVHS subsequently recommended to the Department that the Privacy Rule be amended to allow for uses and disclosures for quality-related activities among covered entities without individual written authorization.

Proposed Modifications

Based on concerns raised by comments, the Department proposes to modify § 164.506 to permit a covered entity to disclose protected health information for the payment activities of another covered entity or health care provider, and for certain health care operations of other covered entities. This proposal would broaden the uses and disclosures that are permitted as part of treatment, payment, and health care operations so as not to interfere inappropriately with access to quality and effective health care, while limiting this expansion in order to continue to protect the privacy expectations of individuals. It would be a limited expansion of the information that is allowed to flow between entities, without an authorization, as part of treatment, payment, and certain health care operations.

The Department proposes the following. First, the Department explicitly includes in § 164.506(c)(1) language stating that a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations without prior consent or authorization.

Second, in § 164.506(c)(2), the Department includes language to clarify its intent that a covered entity may share protected health information for the treatment activities of another health care provider. For example, a primary care provider, who is a covered entity under the Privacy Rule, may send a copy of an individual's medical record to a specialist who needs the information to treat the same individual. No authorization would be required.

Third, with respect to payment, the Department proposes, in § 164.506(c)(3), to explicitly permit a covered entity to disclose protected health information to another covered entity or health care provider for the payment activities of that entity. The Department recognizes that not all health care providers who need protected health information to obtain payment are covered entities, and therefore, proposes to allow disclosures of protected health information to both covered and non-covered health care providers. The Department is unaware of any similar barrier with respect to plans that are not covered under the Privacy Rule to obtain the protected health information they need for payment purposes, but solicits comment on whether such barriers exist. Therefore, the Department proposes to limit disclosures under this provision to those health plans that are covered by the Privacy Rule.

Fourth, in § 164.506(c)(4), the Department proposes to permit a covered entity to disclose protected health information about an individual to another covered entity for certain health care operations purposes of the covered entity that receives the information. The proposal would permit such disclosures only for the activities described in paragraphs (1) and (2) of the definition of "health care operations," as well as for health care fraud and abuse detection and compliance programs (as provided for in paragraph (4) of the definition of "health care operations"). The activities that fall into paragraphs (1) and (2) of the definition of "health care operations" include quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management, conducting training programs, and accreditation, certification, licensing, or credentialing activities. This provision is intended to allow information to flow from one covered entity to another for activities important to providing quality and effective health care.

The proposed expansion for permissible disclosures for health care operations without authorization is more limited than the permissible disclosures for treatment and payment in two ways. First, in contrast to treatment and payment, the proposal limits the types of health care operations that are covered by this expansion. The Department proposes this limitation because it recognizes that "health care operations" is a broad term and that individuals are less aware of the business-related activities that involve the use and disclosure of protected health information. In addition, many commenters and the NCVHS focused their comments on covered entities' needs to share protected health information for quality-related health care operations activities.

Second, in contrast to the treatment and payment provisions in this section, the proposal for disclosures of protected health information for health care operations of another entity limits disclosures to other covered entities. By limiting disclosure for such purposes to entities that are required to comply with the Privacy Rule, the protected health information would continue to be protected. The Department believes that this would create the appropriate balance between meeting an individual's privacy expectations and meeting a covered entity's need for information for quality-related health care operations.

These proposed modifications to allow disclosures for health care operations of another entity are permitted only to the extent that each entity has, or has had, a relationship with the individual who is the subject of the information being requested. Where the relationship between the individual and the covered entity has ended, a disclosure of protected health information about the individual only would be allowed if related to the past

relationship. The Department believes that this limitation is necessary in order to protect the privacy expectations of the individual. An individual should expect that two providers that are providing treatment to the individual, and the health plan that pays for the individual's health care, would have protected health information about the individual for health care operations purposes. However, an individual would not expect a health plan with which the individual has no relationship to be able to obtain identifiable information from his or her health care provider. Therefore, this proposed limitation would minimize the effect on privacy interests, while not interfering with covered entities' ability to continue to provide access to quality and effective health care.

These provisions do not eliminate a covered entity's responsibility to apply the Privacy Rule's minimum necessary provisions to both the disclosure of and request for information for payment and health care operations purposes. In addition, the Department continues to strongly encourage the use of de-identified information wherever feasible.

The Department, however, is aware that the above proposal could pose barriers to disclosures for quality-related health care operations to plans and health care providers that are not covered entities, or to entities that do not have a relationship with the individual. For example, the proposal could be a problem for hospitals that share aggregated but identifiable information with other hospitals for health care operations purposes, when the recipient hospital does not have a relationship with the individual who is the subject of the information being disclosed. While the Department believes the proposed modification strikes the right balance between privacy expectations and covered entities' need for information for such purposes, the Department is considering permitting the disclosure of information that is not facially identifiable for quality-related purposes, subject to a data use or similar agreement. This would permit uses and disclosures for such purposes of a limited data set that does not include facially identifiable information, but in which certain identifiers remain. The Department is requesting comment on whether this approach would strike a proper balance. See section III.I of the preamble regarding de-identification of protected health information for a detailed discussion of this proposed approach.

Related to the above modifications, and in response to comments evidencing confusion on this matter, the Department proposes in § 164.506(c)(5) to make it clear that covered entities participating in an organized health care arrangement (OHCA) may share protected health information for the health care operations of the OHCA. The Privacy Rule allows legally separate covered entities that are integrated clinically or operationally to be considered an OHCA for purposes of the Privacy Rule if protected health information must be shared among the covered entities for the joint management and operations of the arrangement. See the definition of "organized health care arrangement" in § 164.501. Additionally, the Privacy Rule, in the definition of "health care operations," permits the sharing of protected health information in an OHCA for such activities. The Department proposes to remove the language regarding OHCAs from the definition of "health care operations" as unnecessary because such language now would appear in § 164.506(c)(5).

In addition, the Department proposes a conforming change to delete the word "covered" in paragraph (1)(i) of the definition of "payment." This change would be necessary because the proposal would permit disclosures to non-covered providers for their payment activities.

B. Notice of Privacy Practices for Protected Health Information

The Privacy Rule requires most covered entities to provide individuals with adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights, and the covered entity's responsibilities, with respect to protected health information. See § 164.520. Content requirements for the notice are specified in the Privacy Rule. There are also specific requirements, which vary based on the type of covered entity, for providing such notice to individuals.

For example, a covered health care provider that has a direct treatment relationship with an individual must provide the notice by the date of the first service delivery and, if such provider maintains a physical service delivery site, must post the notice in a clear and prominent location. In addition, whenever the notice is revised, the provider must make the notice available upon request. If the covered provider maintains a website, the notice must also be available electronically on the web site. If the first service delivery to an individual is electronic, the covered provider must furnish electronic notice automatically and contemporaneously in response to the individual's first request for service.

Proposed Modifications

In order to preserve some of the most important benefits of the consent requirement, the Department proposes to modify the notice requirements at § 164.520(c)(2) to require that a covered health care provider with a direct treatment relationship make a good faith effort to obtain an individual's written acknowledgment of receipt of the provider's notice of privacy practices. Other covered entities, such as health plans, would not be required to obtain this acknowledgment from individuals, but could do so if they chose.

The Department believes that promoting individuals' understanding of privacy practices is an essential component of providing notice to individuals. In addition, the Department believes it is just good business practice to provide individuals with fair notice about how their information will be used, disclosed, and protected. This proposal would strengthen the notice process by incorporating into the notice process the "initial moment" between a covered health care provider and an individual, where individuals may focus on information practices and privacy rights and discuss any concerns related to the privacy of their protected health information. This express acknowledgment would also provide the opportunity for an individual to make a request for additional restrictions on the use or disclosure of his or her protected health information or for additional confidential treatment of communications, as permitted under § 164.522.

The Department intends the proposed notice acknowledgment requirement to be simple and not impose a significant burden on either the covered health care provider or the individual. First, the requirement for good faith efforts to obtain a written acknowledgment only applies to covered providers with direct treatment relationships. This is the same group of covered entities that would have been required to obtain consent under the Privacy Rule. The Department believes that these are the covered entities that have the most direct relationships with individuals, and therefore, the entities for which the requirement will provide the greatest privacy benefit to individuals with the least burden to covered entities.

Second, the Department designed the timing of the proposed good faith acknowledgment requirement to limit the burden on covered entities by generally making it consistent with the

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timing for notice distribution. Therefore, with one exception, a covered health care provider would be required to make good faith efforts to obtain a written acknowledgment of the notice at the time of first service delivery—the same time that the notice must be provided. The Department understands, however, that providing notice and obtaining an acknowledgment is not practicable during emergency treatment situations. In these situations, the Department proposes in § 164.520(c)(2) to delay the requirement for provision of notice until reasonably practicable after the emergency treatment situation, and exempt health care providers from having to make a good faith effort to obtain the acknowledgment in emergency treatment situations.

Third, the proposal does not prescribe in detail the form the acknowledgment must take. Rather, the Department proposes to require only that the acknowledgment be in writing, and intends to allow each covered health care provider to choose the form and other details of the acknowledgment that are best suited to the entity's practices and that will not pose an impediment to the delivery of timely, quality health care. While the Department believes that requiring the individual's signature is preferable because an individual is likely to pay more attention or more carefully read a document that he or she signs, the proposal does not require an individual's signature on the notice. An acknowledgment under this proposed modification also may be obtained, for example, by having the individual sign a separate list or simply initial a cover sheet of the notice to be retained by the covered entity. The proposal would not limit the manner in which a covered entity obtains the individual's acknowledgment of receipt of the notice.

Most importantly, the proposed modification would require only the good faith effort of the provider to obtain the individual's acknowledgment. The Department understands that an individual may refuse to sign or otherwise fail to provide his or her acknowledgment. Unlike the Privacy Rule's consent requirement, an individual's failure or refusal to acknowledge the notice, despite a covered entity's good faith efforts to obtain such signature, would not interfere with the provider's ability to deliver timely and effective treatment. Failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort, would not be considered a violation of the Privacy Rule. Compliance with this requirement would be achieved in a particular case if the provider with a direct treatment relationship either: (1) Obtained a written acknowledgment, or (2) made a good faith effort to obtain such acknowledgment and documented such efforts and the reason for failure. Such reason for failure simply may be, for example, that the individual refused to sign after being requested to do so. In addition to the individual's failure or refusal to acknowledge receipt of the notice, this proposed provision is intended to allow covered health care providers flexibility to deal with a variety of circumstances in which obtaining an acknowledgment is problematic.

The requirement for a good faith effort to obtain the individual's acknowledgment would apply, except in emergency treatment situations, to the provision of notice on the first delivery of service, regardless of whether such service is provided in person or electronically. When electronic notice is provided as part of the first service delivery, the system should be capable of capturing the individual's acknowledgment of receipt electronically. The Department does not anticipate that a notification of receipt would be difficult or costly to design.

Documentation requirements under this proposal would be required to comply with the documentation requirements in § 164.530(j). In addition, nothing in the proposed requirements described above would relieve any covered entity from its duty to provide the notice in plain language so that the average reader can understand the notice. As stated in the preamble to the Privacy Rule, the Department encourages covered entities to consider alternative means of communicating with certain populations, such as with individuals who cannot read or who have limited English proficiency.

C. Minimum Necessary and Oral Communications

The Privacy Rule at § 164.502(b) generally requires covered entities to make reasonable efforts to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. Protected health information includes individually identifiable health information in any form, including information transmitted orally, or in written or electronic form. See the definition of "protected health information" at § 164.501. The minimum necessary standard is intended to make covered entities evaluate their practices and enhance protections as needed to limit unnecessary or inappropriate access to, and disclosures of, protected health information.

The Privacy Rule sets forth requirements at § 164.514(d) for implementing the minimum necessary standard with regard to a covered entity's uses, disclosures, and requests. Essentially, a covered entity is required to develop and implement policies and procedures appropriate to the entity's business practices and workforce that reasonably minimize the amount of protected health information used, disclosed, and requested; and, for uses of protected health information, that also limit who has access to such information. Specifically, for uses of protected health information, the policies and procedures must identify the persons or classes of persons within the covered entity who need access to the information to carry out their job duties, the categories or types of protected health information needed, and conditions appropriate to such access. For routine or recurring requests and disclosures, the policies and procedures may be standard protocols. Non-routine requests for and disclosures of protected health information must be reviewed individually.

With regard to disclosures, the Privacy Rule permits a covered entity to rely on the judgment of certain parties requesting the disclosure as to the minimum amount of information that is needed. For example, a covered entity is permitted to reasonably rely on representation from a public health official that the protected health information requested is the minimum necessary for a public health purpose. Similarly, a covered entity is permitted to reasonably rely on the judgment of another covered entity requesting a disclosure that the information requested is the minimum amount of information reasonably necessary to fulfill the purpose for which the request has been made. See § 164.514(d)(3)(iii).

The Privacy Rule contains some exceptions to the minimum necessary standard. The minimum necessary requirements do not apply to uses or disclosures that are required by law, disclosures made to the individual or pursuant to an authorization initiated by the individual, disclosures to or requests by a health care provider for treatment purposes, uses or disclosures that are required for compliance with the regulations implementing the other administrative simplification provisions of HIPAA, or disclosures to the Secretary of HHS for enforcement purposes. See § 164.502(b)(2).

The Department received much, varied commentary both on the minimum necessary provisions, as well as on the Privacy Rule's protections of oral communications. The following discussion addresses the concerns identified by commenters that were common to both the Privacy Rule's standards for minimum necessary as well as protecting oral communications, and describes the Department's proposal for modifying the Privacy Rule in response to these concerns. In addition, the Department proposes to modify certain other paragraphs within § 164.514(d) to clarify the Department's intent with respect to these provisions. The Department also discusses some of the other concerns that have been received, which the Department attempted to address in its July 6 guidance on the Privacy Rule. Lastly, the Department describes the recommendations provided to the Department by the NCVHS as a result of public testimony received on implementation of the minimum necessary standard, as well as the Department's response to these recommendations.

Public Comments—Incidental Uses and Disclosures

During the March 2001, comment period on the Privacy Rule, the Department received a number of comments raising concerns and questions as to whether the Privacy Rule's restrictions on uses and disclosures will prohibit covered entities from engaging in certain common and essential health care communications and practices in use today. Commenters were concerned that the Department is imposing through the Privacy Rule absolute, strict standards that would not allow for the incidental or unintentional disclosure that could occur as a by-product of engaging in these health care communications and practices. It was argued that the Privacy Rule will, in effect, prohibit such practices and, therefore, impede many activities and communications essential to effective and timely treatment of patients.

These concerns were raised both in the context of applying the Privacy Rule's protections to oral communications, as well as in implementing the minimum necessary standard. For example, with regard to oral communications, commenters expressed concern over whether health care providers may continue to engage in confidential conversations with other providers or with patients, if there were a possibility that they could be overheard. As examples, commenters specifically questioned whether health care staff can continue to: coordinate services at hospital nursing stations orally; discuss a patient's condition over the phone with the patient or another provider, if other people are nearby; discuss lab test results with a patient or other provider in a joint treatment area; call out a patient's name in a waiting room; or discuss a patient's condition during training rounds in an academic or training institution.

Many covered entities also expressed confusion and concern that the Privacy Rule will stifle or unnecessarily burden many of their current health care practices. For example, commenters questioned whether they will be prohibited from using sign-in sheets in waiting rooms or maintaining patient charts at bedside, or whether they will need to isolate X-ray lightboards or destroy empty prescription vials. These concerns seemed to stem from a perception that covered entities will be required to prevent any incidental disclosure such as those that may occur when a visiting family member or other person not authorized to access protected health information happens to walk by medical equipment or other material containing individually identifiable health information, or when individuals in a waiting room sign their name on a log sheet and glimpse the names of other patients.

Proposed Modifications—Incidental Uses and Disclosures

The Department, in its July 6 guidance, clarified that the Privacy Rule is not intended to impede customary and necessary health care communications or practices, nor to require that all risk of incidental use or disclosure be eliminated to satisfy its standards. So long as reasonable safeguards are employed, the burden of impeding such communications are not outweighed by any benefits that may accrue to individuals' privacy interests. The guidance assured that the Privacy Rule would be modified to clarify that such communications and practices may continue, if reasonable safeguards are taken to minimize the chance of incidental disclosure to others.

Accordingly, the Department proposes to modify the Privacy Rule to add a new provision at § 164.502(a)(1)(iii) which explicitly permits certain incidental uses and disclosures that occur as a result of an otherwise permitted use or disclosure under the Privacy Rule. An incidental use or disclosure would be a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure under the Privacy Rule. The Department proposes that an incidental use or disclosure be permissible only to the extent that the covered entity has applied reasonable safeguards as required by § 164.530(c), and implemented the minimum necessary standard, where applicable, as required by §§ 164.502(b) and 164.514(d).

Under this proposal, an incidental use or disclosure that occurs as a result of a failure to apply reasonable safeguards or the minimum necessary standard, as appropriate, is not a permissible use or disclosure and is, therefore, a violation of the Privacy Rule. For example, a covered entity that asks for a patient's health history on the waiting room sign-in sheet is not abiding by the minimum necessary requirements and, therefore, any incidental disclosure of such information that results from this practice would be an unlawful disclosure under the Privacy Rule.

Further, this proposed modification is not intended to excuse erroneous uses or disclosures or those that result from mistake or neglect. The Department would not consider such uses and disclosures to be incidental as they do not occur as a by-product of an otherwise permissible use or disclosure. For example, an impermissible disclosure would occur when a covered entity mistakenly sends protected health information via electronic mail to the wrong recipient or when protected health information is erroneously made accessible to others through the entity's web site.

Proposed Modifications to the Minimum Necessary Standard

Section 164.502(b)(2) sets forth the exceptions to the minimum necessary standard in the Privacy Rule. The Department proposes to separate § 164.502(b)(2)(ii) into two subparagraphs (§ 164.502(b)(2)(ii) and (iii)) to eliminate confusion regarding the exception to the minimum necessary standard for uses or disclosures made pursuant to an authorization under § 164.508 and those for disclosures made to the individual. Additionally, to conform to the proposal to eliminate the special authorizations required by the Privacy Rule at § 164.508(d), (e), and (f) (see section III.H for the relevant preamble discussion regarding authorization), the Department proposes to expand the exception for authorizations to apply generally to any authorization executed pursuant to § 164.508. Therefore, the proposal would exempt from the minimum necessary standard any uses or disclosures for which the covered entity

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has received an authorization that meets the requirements of § 164.508.

The Privacy Rule at § 164.514(d) lists the standard and the specific requirements for implementing the minimum necessary standard. The Department proposes to modify § 164.514(d)(1) to delete the term "reasonably ensure" in response to concerns that the term connotes an absolute, strict standard and, therefore, is inconsistent with how the Department has described the minimum necessary requirements as being reasonable and flexible to the unique circumstances of the covered entity. In addition, the Department generally revises the language to be more consistent with the description of standards elsewhere in the Privacy Rule.

The Privacy Rule at § 164.514(d)(4) consists of the implementation specifications for applying the minimum necessary standard to a request for protected health information. The Department intended these provisions to be consistent with the requirements set forth in § 164.514(d)(3) for applying the minimum necessary standard to disclosures of protected health information, so that covered entities would be able to address requests and disclosures in a similar manner. However, with respect to requests not made on a routine and recurring basis, the Department omitted from § 164.514(d)(4) the requirement that a covered entity may implement this standard by developing criteria designed to limit its request for protected health information to the minimum necessary to accomplish the intended purpose. The Department proposes to add such a provision to make the implementation specifications for applying the minimum necessary standard to requests for protected health information by a covered entity more consistent with the implementation specifications for disclosures.

Other Comments on the Minimum Necessary Standard

In addition to the comments described above regarding incidental uses or disclosures, the Department received many other varied comments expressing both support of, and concerns about, the minimum necessary standard. The Department, in its July 6, 2001, guidance, attempted to address many of the commenters' concerns by clarifying the Department's intent with respect to the minimum necessary provisions. For example, many commenters expressed concerns about the costs and burden to covered entities in implementing the standard. A number of these commenters questioned whether they will be required to redesign office space or implement expensive upgrades to computer systems.

The Department's guidance emphasized that the minimum necessary standard is a reasonableness standard, intended to be flexible to account for the characteristics of the entity's business and workforce. The standard is not intended to override the professional judgment of the covered entity. The Department clarified that facility redesigns and expensive computer upgrades are not specifically required by the minimum necessary standard. Covered entities may, however, need to make certain adjustments to their facilities, as reasonable, to minimize access or provide additional security. For example, covered entities may decide to isolate and/or lock file cabinets or records rooms, or provide additional security, such as passwords, on computers that maintain protected health information.

A number of commenters, especially health care providers, also expressed concern that the minimum necessary restrictions on uses within the entity will jeopardize patient care and exacerbate medical errors by impeding access to information necessary for treatment purposes. These commenters urged the Department to expand the treatment exception to cover uses of protected health information within the entity. Other commenters urged the Department to exempt all uses and disclosures for treatment, payment, and health care operations purposes from the minimum necessary standard.

The Privacy Rule is not intended to impede access by health care professionals to information necessary for treatment purposes. As the Department explained in its guidance, a covered entity is permitted to develop policies and procedures that allow for the appropriate individuals within the entity to have access to protected health information, including entire medical records, as appropriate, so that those workforce members are able to provide timely and effective treatment.

With regard to payment and health care operations, the Department remains concerned, as stated in the preamble to the Privacy Rule, that, without the minimum necessary standard, covered entities may be tempted to disclose an entire medical record when only a few items of information are necessary, to avoid the administrative step of extracting or redacting information. The Department also believes that this standard will cause covered entities to assess their privacy practices, give the privacy interests of their patients and enrollees greater attention, and make improvements that might otherwise not be made. For these reasons, the Department continues to believe that the privacy benefits of retaining the minimum necessary standard for these purposes outweigh the burdens involved.

In addition, the NCVHS Subcommittee on Privacy and Confidentiality solicited public testimony on implementation of the minimum necessary standard of the Privacy Rule at its August 2001 public hearings. The testimony reflected a wide range of views, from those who commented that the Privacy Rule provides sufficient protections on individually identifiable health information without the minimum necessary standard, to those who expressed strong support for the standard as an integral part of the Privacy Rule. A number of panelists welcomed the flexibility of the standard, while others expressed concern that the vagueness of the standard might restrict the necessary flow of information, impede care, and lead to an increase in defensive information practices that would lead to the withholding of important information for fear of liability. Testimony also reflected differing views on the cost and administrative burden of implementing the standard. Some expressed much concern regarding the increased cost and burden, while others argued that the cost will be barely discernable.

The NCVHS developed recommendations on the minimum necessary standard based on the testimony and written comments provided at the hearings. In its recommendations, the NCVHS strongly reaffirmed the importance of the minimum necessary principle, but also generally recommended that HHS provide additional clarification and guidance to industry regarding the minimum necessary requirements to assist with effective implementation of these provisions, while allowing for the necessary flow of information and minimizing defensive information practices. While the NCVHS pointed out that many panelists at the hearing found the Department's July 6 guidance helpful in addressing questions about the minimum necessary standard, the Committee heard that many questions still remain within the industry. Therefore, the NCVHS specifically requested further guidance by the Department on the reasonable reliance provisions, and the requirement that covered entities develop policies and procedures for addressing routine uses

of information. In addition, the NCVHS recommended that the Department provide education to address the increasing concerns about liability and defensive information practices that may lessen the flow of information and impede care. The NCVHS generally recommended that the Department issue advisory opinions, publish best practices, and make available model policies, procedures, and forms to assist in alleviating the cost and administrative burden that will be incurred when developing policies and procedures as required by the minimum necessary provisions.

The Department agrees with the NCVHS about the need for further guidance on the minimum necessary standard and intends to issue further guidance to clarify issues causing confusion and concern in the industry, as well as provide additional technical assistance materials to help covered entities implement the provisions.

D. Business Associates

The Privacy Rule at § 164.502(e) permits a covered entity to disclose protected health information to a business associate who performs a function or activity on behalf of, or provides a service to the covered entity that involves the creation, use, or disclosure of, protected health information, provided that the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information. The Department recognizes that most covered entities do not perform or carry out all of their health care activities and functions by themselves, but rather acquire the services or assistance of a variety of other persons or entities. Given this framework, the Department intended these provisions to allow such business relationships to continue while ensuring that identifiable health information created or shared in the course of the relationships was protected.

The Privacy Rule requires that the satisfactory assurances obtained from the business associate be in the form of a written contract (or other written arrangement as between governmental entities) between the covered entity and the business associate that contains the elements specified at § 164.504(e). For example, the agreement must identify the uses and disclosures of protected health information the business associate is permitted or required to make, as well as require the business associate to put in place appropriate safeguards to protect against a use or disclosure not permitted by the contract or agreement.

The Privacy Rule also provides that, where a covered entity knows of a material breach or violation by the business associate of the contract or agreement, the covered entity is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement. If termination of the contract or arrangement is not feasible, a covered entity then is required to report the problem to the Secretary of HHS. A covered entity that violates the satisfactory assurances it provided as a business associate of another covered entity will be in noncompliance with the Privacy Rule's business associate provisions.

The Privacy Rule's definition of "business associate" at § 160.103 includes some of the functions or activities, and all of the types of services, that make a person or entity who engages in them a business associate, if such activity or service involves protected health information. For example, a third party administrator (TPA) is a business associate of a health plan to the extent the TPA assists the health plan with claims processing or another covered function. Similarly, accounting services performed by an outside consultant give rise to a business associate relationship when provision of the service entails access to the protected health information held by a covered entity.

The Privacy Rule excepts from the business associate standard certain uses or disclosures of protected health information. That is, in certain situations, a covered entity is not required to have a contract or other written agreement in place before disclosing protected health information to a business associate or allowing protected health information to be created by the business associate on its behalf. Specifically, the standard does not apply to: disclosures by a covered entity to a health care provider for treatment purposes; disclosures to the plan sponsor by a group health plan, or a health insurance issuer or HMO with respect to a group health plan, to the extent that the requirements of § 164.504(f) apply and are met; or to the collection and sharing of protected health information by a health plan that is a public benefits program and an agency other than the agency administering the health plan, where the other agency collects protected health information for, or determines, eligibility or enrollment with respect to the government program, and where such activity is authorized by law. See § 164.502(e)(1)(ii).

Public Comments

The Department has received many comments on the business associate provisions of the Privacy Rule. The majority of commenters expressed some concern over the anticipated administrative burden and cost to implement the business associate provisions. Some commenters stated that covered entities might have existing contracts that are not set to terminate or expire until after the compliance date of the Privacy Rule. Many of these commenters expressed specific concern that the two-year compliance period does not provide enough time to reopen and renegotiate what could be hundreds or more contracts for large covered entities. A number of these commenters urged the Department to grandfather in existing contracts until such contracts come up for renewal instead of requiring that all contracts be in compliance with the business associate provisions by the compliance date of the Privacy Rule. In response to these comments, the Department intends to relieve some of the burden on covered entities in complying with the business associate provisions, both by proposing to grandfather certain existing contracts for a specified period of time, as well as publishing model contract language. These proposed changes are discussed below in this section under "Proposed Modifications."

In addition, commenters continued to express concern over a perceived liability imposed by the Privacy Rule that would essentially require that the covered entity monitor, and be responsible for, the actions of its business associates with respect to the privacy and safeguarding of protected health information. However, the Privacy Rule only requires that, where a covered entity knows of a pattern of activity or practice that constitutes a material breach or violation of the business associate's obligation under the contract, the covered entity take steps to cure the breach or end the violation. Accordingly, the Department, in its July 6 guidance, clarified that active monitoring of the actions of business associates is not required of covered entities, and more importantly, that covered entities are not responsible or liable for the actions of their business associates.

A number of commenters urged the Department to exempt covered entities from having to enter into contracts with business associates who are also covered entities under the Privacy Rule. The Department continues to believe, as stated in the preamble to the Privacy Rule, that a covered entity that is a

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business associate should be restricted from using or disclosing the protected health information it creates or receives through its business associate function for any purposes other than those explicitly provided for in its contract. In addition, the contract serves to clarify the uses and disclosures made as, and the protected health information held by, the covered entity, versus those uses and disclosures made as, and the protected health information held by, the same entity as the business associate.

Many commenters continued to express concerns that requiring business associate contracts between health care providers in treatment situations would burden and impede quality care. The Department clarifies that the Privacy Rule does not require a contract for a covered entity to disclose protected health information to a health care provider for treatment purposes. In fact, such disclosures are explicitly excepted from the business associate requirements. *See* § 164.502(e)(1). For example, a hospital is not required to have business associate contracts with health care providers who have staff privileges at the institution in order for these entities to share protected health information for treatment purposes. Nor is a physician required to have a business associate contract with a laboratory as a condition of disclosing protected health information for the treatment of an individual.

Some commenters requested clarification as to whether business associate contracts were required between a health plan and the health care providers participating in the plan's network. Participation in a plan network in and of itself does not give rise to a business associate relationship to the extent that neither entity is performing functions or activities, or providing services to, the other entity. For example, each covered entity is acting on its own behalf when a provider submits a claim to a health plan, and when the health plan assesses and pays the claim. Discount payment arrangements do not require business associate relationships. However, this does not preclude a covered entity from establishing a business associate relationship with the health plan or another entity in the network for some other purpose. If the health plan and one or more of the providers participating in its network do perform covered functions on behalf of each other, a business associate agreement is required. For example, if one health care provider handles the billing activities of another health care provider in the same network, a business associate contract would be required before protected health information could be disclosed for this activity.

Proposed Modifications

The Department proposes new transition provisions at § 164.532(d) and (e) to allow covered entities, other than small health plans, to continue to operate under certain existing contracts with business associates for up to one year beyond the April 14, 2003, compliance date of the Privacy Rule. This modification is proposed in response to commenter concerns regarding the insufficient time provided by the two-year period between the effective date and compliance date of the Privacy Rule for covered entities, especially large entities, to reopen and renegotiate all existing vendor and service contracts in order to bring such contracts into compliance with the Privacy Rule's requirements.

The additional transition period would be available to a covered entity, other than a small health plan, if, prior to the effective date of this transition provision, the covered entity has an existing contract or other written arrangement with a business associate, and such contract or arrangement is not renewed or modified between the effective date of this provision and the Privacy Rule's compliance date of April 14, 2003. The provisions are intended to allow those covered entities who qualify as described above to continue to disclose protected health information to the business associate, or allow the business associate to create or receive protected health information on its behalf, for up to one year beyond the Privacy Rule's compliance date, regardless of whether the contract meets the applicable contract requirements in the Privacy Rule. The Department proposes to deem such contracts to be compliant with the Privacy Rule until either the covered entity has renewed or modified the contract following the compliance date of the Privacy Rule (April 14, 2003), or April 14, 2004, whichever is sooner. In cases where a contract simply renews automatically without any change in terms or other action by the parties (also known as "evergreen contracts"), the Department intends that such evergreen contracts would be eligible for the extension and that deemed compliance would not terminate when these contracts automatically roll over.

Covered entities that were concerned about timely compliance wanted to be able to incorporate the business associate contract requirements at the time they would otherwise be modifying or renewing the contract. Therefore, the extension would only apply until such time as the contract is modified or renewed following the effective date of this modification. Furthermore, the Department proposes to limit the deemed compliance period to one year, as the appropriate balance between maintaining individuals' privacy interests and alleviating the burden on the covered entity.

These transition provisions would apply to covered entities only with respect to written contracts or other written arrangements as specified above, and not to oral contracts or other arrangements. In addition, a covered entity that enters into a contract after the effective date of this modification must have a business associate contract that meets the applicable requirements of §§ 164.502(e) and 164.504(e) by April 14, 2003.

The proposed transition provisions would not apply to small health plans, as defined in the Privacy Rule. Small health plans would still be required to have business associate contracts that are in compliance with the Privacy Rule's applicable provisions, by the Privacy Rule's compliance deadline for such covered entities of April 14, 2004. The Department proposes to exclude this subset of covered entities from these provisions because the statute already provides an additional year for these smaller entities to come into compliance, which should be sufficient for compliance with the Privacy Rule's business associate provisions. In addition, the Department believes that the proposed model contract provisions (see the Appendix to the preamble) will assist small health plans and other covered entities in their implementation of the Privacy Rule's business associate provisions by April 14, 2004.

Proposed § 164.532(e)(2) provides that, after the Privacy Rule's compliance date, these new provisions would not relieve a covered entity of its responsibilities with respect to making protected health information available to the Secretary, including information held by a business associate, as necessary for the Secretary to determine compliance. Similarly, under proposed § 164.532(e)(2), these provisions would not relieve a covered entity of its responsibilities with respect to an individual's rights to access or amend his or her protected health information held by business associates, or receive an accounting of uses and disclosures by business associates, as provided for by the Privacy Rule's requirements at §§ 164.524, 164.526, and 164.528. Covered entities would still be required to fulfill individuals' rights with respect to their protected health information, including information held by a business associate of the covered entity. Covered entities must ensure, in whatever manner effective, the appropriate cooperation by their business associates in meeting these requirements.

The Department retains without modification the standards and implementation specifications that apply to business associate relationships as set forth at §§ 164.502(e) and 164.504(e), respectively, of the Privacy Rule.

E. Uses and Disclosures of Protected Health Information for Marketing

The Privacy Rule defines "marketing" at § 164.501 as a communication about a product or service, a purpose of which is to encourage recipients of the communication to purchase or use the product or service, subject to certain limited exceptions. The definition does not limit the type or means of communication that is considered marketing. In general, a covered entity is not permitted to use or disclose protected health information for the purposes of marketing products or services that are not health-related without the express authorization of the individual. Moreover, the Privacy Rule prohibits a covered entity from selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the independent marketing activities of the third party, without the express authorization of the individual.

The Department understands that covered entities need to be able to discuss their own health-related products and services, or those of third parties, as part of their everyday business and as part of promoting the health of their patients and enrollees. For example, a health care provider may recommend to a patient a particular brand name drug for the treatment of that patient. Even though these communications also meet the above definition of "marketing," the Privacy Rule does not require an authorization for such communications. Instead, the Privacy Rule addresses these types of health-related communications in two ways.

First, the Department did not want to interfere with or unnecessarily burden communications about treatment or about the benefits and services of plans and providers. Therefore, the Privacy Rule explicitly excludes from the definition of "marketing" certain health-related communications that may be part of a covered entity's treatment of the individual or its health care operations, but that may also promote the use or sale of a service or product. For example, communications made by a covered entity for the purpose of describing the participating providers and health plans in a network, or describing the services offered by a provider or the benefits covered by a health plan, are excluded from the definition of "marketing." In addition, communications made by a health care provider as part of the treatment of a patient and for the purpose of furthering that treatment, or made by a covered entity in the course of managing an individual's treatment or recommending an alternative treatment, are not considered marketing under the Privacy Rule. These exceptions do not apply, however, to written communications for which a covered entity is compensated by a third party. The Department intended that covered entities be able to discuss freely their products and services and the products and services of others in the course of managing an individual's health care or providing or discussing treatment alternatives with an individual. Under the Privacy Rule, therefore, covered entities are permitted to use and disclose protected health information for these excepted activities without authorization under § 164.508.

Second, the Privacy Rule permits, at § 164.514(e), covered entities to use and disclose protected health information without individual authorization for other health-related communications that meet the definition of "marketing," subject to certain conditions on the manner in which the communications are made. The Privacy Rule does not condition the substance of health-related marketing communications. Rather, it attempts to assure that individuals are aware of the source of the communication and the reason they received such communications, as well as to provide individuals with some control over whether or not they receive these communications in the future.

Specifically, the Privacy Rule permits a covered entity to use or disclose protected health information to communicate to individuals about the health-related products or services of the covered entity or of a third party if the communication: (1) Identifies the covered entity as the party making the communication; (2) identifies, if applicable, that the covered entity received direct or indirect remuneration from a third party for making the communication; (3) generally contains instructions describing how the individual may opt out of receiving future communications about health-related products and services; and (4) where protected health information is used to target the communication about a product or service to individuals based on their health status or health condition, explains why the individual has been targeted and how the product or service relates to the health of the individual. The Privacy Rule also requires a covered entity to make a determination, prior to using or disclosing protected health information to target a communication to individuals based on their health status or condition, that the product or service may be beneficial to the health of the type or class of individual targeted to receive the communication.

For certain permissible marketing communications, however, the Department did not believe these conditions to be practicable. Therefore, § 164.514(e) also permits, without the above conditions, a covered entity to make a marketing communication that occurs in a face-to-face encounter with the individual, or that involves products or services of only nominal value. These provisions permit a covered entity to discuss services and products, as well as provide sample products without restriction, during a face-to-face communication, or distribute calendars, pens, and other merchandise that generally promote a product or service if they are of only nominal value.

Public Comments

The Department received many comments on the Privacy Rule's marketing requirements, as well as recommendations from the NCVHS, based on public testimony from trade associations, medical associations, insurance commissioners, academic medical centers, non-profit hospitals, and consumers. Both industry and consumer groups argued that the marketing provisions were complicated and confusing. Covered entities expressed confusion over the Privacy Rule's distinction between health care communications that are excepted from the definition of "marketing" versus those that are marketing but permitted subject to the special conditions in § 164.514(e). For example, commenters questioned if, and if so, when, disease management communications or refill reminders are "marketing" communications subject to the special disclosure and opt-out conditions in § 164.514(e). Commenters also stated that it was unclear how to characterize various health care operations activities, such as general health-related educational and wellness promotional activities, and therefore unclear how to treat such activities under the marketing provisions of the Privacy Rule.

The Department also learned of a general dissatisfaction by consumers

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with the conditions required by § 164.514(e). Many commenters questioned the general effectiveness of the conditions and whether the conditions would properly protect consumers from unwanted disclosure of protected health information to commercial entities, the re-disclosure of the information by these commercial entities, and the intrusion of unwanted solicitations. They did not feel that they were protected by the fact that commercial entities handling the protected health information would be subject to business associate agreements with covered entities. In addition, commenters expressed specific dissatisfaction with the provision at § 164.514(e)(3)(iii) for individuals to opt out of future marketing communications. Many argued for the opportunity to opt out of marketing communications before any marketing occurred. Others requested that the Department limit marketing communications to only those consumers that affirmatively chose to be the target of such communications.

Proposed Modifications

In response to these concerns, the Department proposes to modify the Privacy Rule to make the marketing provisions clearer and simpler. First, and most significantly, the Department proposes to simplify the Privacy Rule by eliminating the special provisions for marketing health-related products and services at § 164.514(e). Instead, any communication defined as "marketing" in § 164.501 would require authorization by the individual. In contrast to the Privacy Rule, under these proposed modifications, covered entities would no longer be able to make any type of marketing communications without authorization simply by meeting the disclosure and opt-out provisions in the Privacy Rule. The Department believes that requiring authorization for all marketing communications would effectuate greater consumer privacy protection not currently afforded by the disclosure and opt-out conditions of § 164.514(e) of the Privacy Rule.

Second, the Department proposes to maintain the substance of the Privacy Rule's definition of "marketing" at § 164.501, with minor clarifications. Specifically, the Department proposes to define "marketing" as "to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service." The proposed modification retains the substance of the "marketing" definition, but changes the language slightly to avoid the implication that marketing is tied to the intent of the communication. Removing language referencing the purpose of the communication would shift the assessment of whether a communication is marketing from the intent of the speaker to the effect of the communication. If the effect of the communication is to encourage recipients of the communication to purchase or use the product or service, the communication would be marketing.

Third, with respect to the exclusions from the definition of "marketing" in § 164.501, the Department has tried to simplify the language to avoid confusion and better conform to other sections of the regulation, particularly in the area of treatment communications, and is proposing one substantive change. The modified language reads as follows: "(1) To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or service (or payment for such product or service) is provided by a covered entity or included in a plan of benefits; (2) For treatment of that individual; or (3) For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual."

With respect to the third exclusion, the Department is proposing to replace a communication made "in the course of managing the treatment of that individual," with a communication for "case management" or "care coordination" for that individual. The Department is proposing these changes for clarity because "case management" and "care coordination" are the terms that are used in the definition of "health care operations," while "managing the treatment of that individual" is not. These changes are not intended to increase the scope of the marketing exclusions.

The Department is proposing to eliminate the distinction in the definition of "marketing" at § 164.501 pertaining to written communications for which a covered entity is compensated by a third party. Under the Privacy Rule, exceptions from the definition of "marketing" are only applicable if the communication is made either orally or in writing when no remuneration from a third party has been paid to a covered entity for making the communication. The Department found that these rules led to confusion and many questions about treatment-related communications, such as prescription refill reminders. Many commenters felt that these restriction rules could burden the ability of providers and patients to communicate freely about treatment. Most commenters did not want any treatment communications to be considered marketing. The Department understands these concerns and wants to avoid situations where a health care provider would be required to obtain an authorization to send out a prescription refill reminder, even if the provider is compensated by a third party for the activity. Therefore, the Department proposes to eliminate this provision in order to facilitate necessary and important treatment communications.

None of these proposed modifications change the basic prohibition in the Privacy Rule against covered entities selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the independent marketing activities of a third party, without the express authorization of the individual.

The Department received numerous comments suggesting that the Privacy Rule's marketing exceptions in the definition and under § 164.514(e) may not allow for certain common health care communications, such as disease management, wellness programs, prescription refill reminders, and appointment notifications that individuals expect to receive as part of their health care to continue unimpeded. The Department believes that these types of communications are allowed under the exceptions to the definition of "marketing" in the Privacy Rule, and therefore would continue to be allowed under the proposed modification. The Department is interested in comments identifying specific types of communication that should or should not be considered marketing.

To reinforce the policy requiring an authorization for most marketing communications, the Department proposes to add a specific marketing provision at § 164.508(a)(3) explicitly requiring an authorization for a use or disclosure of protected health information for marketing purposes. Additionally, if the marketing is expected to result in direct or indirect remuneration to the covered entity from a third party, the Department proposes that the authorization state this fact. As in the Privacy Rule at § 164.514(e)(2), proposed § 164.508(a)(3) would exclude from the marketing authorization requirements face-to-face communications made by a covered entity to an individual. The Department proposes to retain this exception in the Privacy Rule so that the marketing provisions would not interfere with the relationship and dialogue between health care providers and individuals. Similarly, the Department proposes to retain the Privacy Rule's exception to the authorization requirement for a marketing communication that concerns products or services of nominal value, but proposes to replace the language with the common business term "promotional gift of nominal value."

Given the above proposal, the Department also proposes to remove § 164.514(e) as unnecessary. Accordingly, conforming changes to remove references to § 164.514(e) are proposed at § 164.502(a)(1)(vi) and in paragraph (6)(v) of the definition of "health care operations" in § 164.501.

With the elimination of the special rules in § 164.514(e), the Department thereby proposes to eliminate the requirement that disclosures for health-related marketing are limited to disclosures to business associates hired to assist the covered entity with the communication. Under the proposed rule, this distinction would serve no purpose, because an authorization would be required for such disclosures and thus the individual would know from the face of the authorization who will receive the information. Similarly, this simplification also would eliminate the requirement that a marketing communication identify the covered entity responsible for the communication. Under the proposal, the individual would have authorized the disclosure and thus would know which plans and providers are disclosing health information for marketing purposes. There would be added burden but no benefit in retaining an additional notification requirement.

F. Parents as Personal Representatives of Unemancipated Minors [1]

The Privacy Rule is intended to assure that parents have appropriate access to health information about their children. By generally creating new protections and individual rights with respect to individually identifiable health information, the Privacy Rule establishes new rights for parents with respect to the health information about their minor children in the vast majority of cases. In addition, the Department intended that State or other applicable law regarding disclosure of health information about a minor child to a parent should govern where such law exists.

Under the Privacy Rule, parents are granted new rights with respect to health information about their minor children as the personal representatives of their minor children. See § 164.502(g). Generally, parents will be able to access and control the health information about their minor children. See § 164.502(g)(3).

The Privacy Rule recognizes a limited number of exceptions to this general rule. These exceptions generally track the ability of certain minors to obtain specified health care without parental consent under State or other applicable laws. For example, every State has a law that permits adolescents to be tested for HIV without the consent of a parent. These laws are created to assure that adolescents will seek health care that is essential to their own health, as well as public health. In these exceptional cases, where a minor can obtain a particular health care service without the consent of a parent under State or other applicable law, it is the minor and not the parent who may exercise the privacy rights afforded to individuals under the Privacy Rule. See § 164.502(g)(3)(i)–(ii).

The Privacy Rule also allows the minor to exercise control of the protected health information when the parent has agreed to the minor obtaining confidential treatment (see § 164.502(g)(3)(iii)), and allows a covered health care provider to choose not to treat a parent as a personal representative of the minor when the provider is concerned about abuse or harm to the child. See § 164.502(g)(5).

Of course, a covered provider always may disclose health information about a minor to a parent in the most important cases, even if one of the limited exceptions discussed above apply. Disclosure of such information is always permitted as necessary to avert a serious and imminent threat to the health or safety of the minor. See § 164.512(j). The Privacy Rule also states that disclosure of health information about a minor to a parent is permitted if State law authorizes or requires disclosure to a parent, thereby allowing such disclosure where State law determines it is appropriate. See § 160.202, definition of "more stringent." Finally, health information about the minor may be disclosed to the parent if the minor involves the parent in his or her health care and does not object to such disclosure. See §§ 164.502(g)(3)(i) and 164.510(b). The parent will retain all rights concerning any other health information about his or her minor child that does not meet one of the exceptions.

Rationale for Privacy Rule's Provisions Regarding Parents and Minors

The Department continues to balance multiple goals in developing standards in the Privacy Rule with respect to parents and minors. First, the standards need to operate in a way that facilitates access to quality health care. This is an overarching goal throughout the Privacy Rule and is equally important here. Thus, the Department wants to ensure that parents have appropriate access to the health information about their minor children to make important health care decisions about them. The Department also wants to make sure that the Privacy Rule does not interfere with a minor's ability to consent to and obtain health care under current State or other applicable law. Second, the Department does not want to interfere with State or other applicable laws related to competency or parental rights, in general, or the role of parents in making health care decisions about their minor children, in particular. Third, the Department does not want to interfere with the professional requirements of State medical boards or other ethical codes of health care providers with respect to confidentiality of health information or health care practices of such providers with respect to adolescent health care.

As a result of these competing goals, the Department's approach continues to be that the standards, implementation specifications, and requirements with respect to parents and minors defer to, and are consistent with, State or other applicable law and professional practice. Where State and other applicable law is silent, the Department has attempted to create standards that are consistent with such laws and that permit States the discretion to continue to decide the rights of parents and minors with respect to health information without interference from the federal Privacy Rule.

Public Comments

Since December 2000, the Department has heard concerns about the impact of the Privacy Rule on both parental and minor rights. Physicians and other health care professionals who treat adolescents support the existing provisions in the Privacy Rule. These commenters assert that these provisions allow health care providers to deliver care in a manner consistent with their ethical and legal obligations, and that they strike the appropriate balance by permitting providers to render confidential care to minors in limited circumstances, while providing States

[1] Throughout this section of the preamble, "minor" refers to an unemancipated minor and "parent" refers to a parent, guardian, or other person acting *in loco parentis*.

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the ultimate discretion to determine the extent of parents' access to information.

Other commenters oppose the Privacy Rule on the grounds that the Privacy Rule unduly interferes with parental rights to control health care for their minor children and to access health information about their minor children. They assert that failure to provide parents with access to all health information about their minor children could result in negative health outcomes because parents could be making health care decisions for their children based on incomplete information.

Finally, some commenters believe, incorrectly, that the Privacy Rule creates new rights for minors to consent to treatment. The Department issued guidance to clarify that the Privacy Rule does not address access to treatment or the ability to consent to treatment. It is State or other applicable law, and not the Privacy Rule, that governs who can consent to treatment. The Privacy Rule does not in any way alter the ability of a parent to consent to health care for a minor child or the ability of a minor child to consent to his or her own health care.

Proposed Modifications

The Department has reassessed the parents and minors provisions in the Privacy Rule, and does not propose to change its approach. The Department will continue to defer to State or other applicable law and to remain neutral and preserve the status quo to the extent possible. However, the Department is proposing changes to these standards where they do not operate as intended and are inconsistent with the Department's underlying goals.

The Privacy Rule accomplishes the goals of deferring to State law and preserving the status quo when State law is definitive, that is, when State law requires or prohibits disclosure or access. However, when State law provides discretion or is silent, the Privacy Rule may not always accomplish these goals. In particular, the Department has identified two areas in which the standard does not work as intended. First, the language regarding deference to State law that authorizes or prohibits disclosure of health information about a minor to a parent fails to assure that State law governs when the law grants a provider discretion to disclose protected health information to a parent in certain circumstances. Second, the Privacy Rule may prohibit parental access in cases where State law is silent, but where a parent could get access today, consistent with State law.

First, in order to assure that State and other applicable laws that address disclosure of health information about a minor to his or her parent govern in all cases, the Department proposes to move the relevant language about the disclosure of health information from the definition of "more stringent" (see § 160.202) to the standards regarding parents and minors (*see* § 164.502(g)(3)). This change would make it clear that State and other applicable law governs not only when a State explicitly addresses disclosure of protected health information to a parent but also when such law provides discretion to a provider.

The language itself is also changed in the proposal to adapt it to the new section. The proposed language in § 164.502(g)(3)(ii) states that a covered entity may disclose protected health information about a minor to a parent if an applicable provision of State or other law, including applicable case law, permits or requires such disclosure, and that a covered entity may not disclose protected health information about a minor to a parent if an applicable provision of State or other law, including applicable case law, prohibits such disclosure. This new language would help clarify when disclosure of health information about a minor to his or her parent is permitted or prohibited based on State or other law. The revision would also clarify that the deference to State or other applicable law includes deference to established case law as well as an explicit provision in a statute or regulation.

Second, the Department proposes to add a new paragraph (iii) to § 164.502(g)(3) to establish a neutral policy regarding the right of access of a parent to health information about a minor under § 164.524, in the rare circumstance in which the parent is technically not the personal representative of the minor under the Privacy Rule. This policy would apply particularly where State or other law is silent or unclear. The new paragraph would not change the right of access, but would simply provide that the person who can exercise the right of access to health information under the Privacy Rule must be consistent with State or other applicable law. It would assure that the Privacy Rule would not prevent a covered entity from providing such access, in accordance with the Privacy Rule, to a parent, as if a personal representative of the minor child, if access would be consistent with State or other applicable law.

This modification also would not affect a parent's right of access under the Privacy Rule in the vast majority of cases where the parent is the personal representative of the minor. In those cases, the parent could exercise the right of access in accordance with the Privacy Rule. This provision would be relevant only in the rare exceptions in which the parent is not the personal representative of the minor.

The Department proposes to use the phrase "consistent with State or other applicable law" with regard to access in the personal representatives section of the Privacy Rule. This is different than the proposed language in the section about personal representatives that relates to disclosures, in which a disclosure to a parent is permitted if such disclosure is permitted or required by an "applicable provision of State or other law, including applicable case law." The language in the disclosure paragraphs requires an explicit law for such disclosure to be permitted by the Privacy Rule. The language in the access paragraphs permits parental access in accordance with the Privacy Rule if such access is consistent with State or other law, regardless of whether such law is explicit. Therefore, if a State permits a minor to obtain care without the consent of a parent, but is silent as to whether the parent can access the related medical records of the minor, as is typically the case, then the provider may provide access to the parent if such access is consistent with State law and could deny access to the parent if such denial of access is consistent with State law. This may be based on interpretation of State consent law or may be based on other law. The provider could not, however, abuse this provision to deny access to both the parent and the minor.

This provision would not significantly change the operation of the Privacy Rule with respect to parental access. In cases where the parent is not the personal representative of the minor under the Privacy Rule, the proposed language would not require a provider to grant access to a parent. In these cases, a provider would have discretion to provide access to a parent when permitted to do so under State or other applicable law despite the ability of the minor to obtain health care confidentially or without parental consent under applicable law or professional practice. The Department further assumes that current professional health care provider practices with respect to access by parents and confidentiality of minor's records are consistent with State and other applicable law. In any event, parental access under this section would continue to be subject to any relevant limitations on access in

§ 164.524. This proposed change provides States with the option of clarifying the interaction between their consent laws and the ability for parents to have access to the health information about the care that their minor children received in accordance with such laws. As such, this change should more accurately reflect current State law.

G. Uses and Disclosures for Research Purposes

1. Institutional Review Board (IRB) or Privacy Board Approval of a Waiver of Authorization

Much of the biomedical and behavioral research conducted in the U.S. is governed either by the rule entitled "Federal Policy for the Protection of Human Subjects" (the "Common Rule") and/or the Food and Drug Administration's (FDA) human subject protection regulations. Although these regulatory requirements, which apply to federally-funded and to some privately-funded research, include protections to help ensure the privacy of subjects and the confidentiality of information, the intent of the Privacy Rule, among other things, is to supplement these protections by requiring covered entities to implement specific measures to safeguard the privacy of individually identifiable health information.

The Common Rule applies to all human research that is supported, conducted, or regulated by any of the seventeen federal agencies that have adopted the Common Rule, including research that uses individually identifiable health information. FDA's human subject protection regulations generally apply to clinical investigations under FDA's jurisdiction, whether or not such research is federally funded. Both sets of regulations have requirements relating to review by an institutional review board (IRB) to ensure that the risks to research participants, including privacy risks, are minimized. As part of this review, generally, IRBs must consider the informed consent document that will be used to inform prospective research participants about the study. Both the Common Rule and FDA regulations have provisions relating to the waiver of informed consent. The Common Rule waiver provisions allow research covered by the Common Rule to be conducted if an IRB determines that certain criteria specified in the Common Rule have been met. FDA's regulations do not contain equivalent waiver provisions since the criteria for a waiver of informed consent are generally not appropriate for clinical research. However, FDA's human subject protection regulations contain exceptions to informed consent for emergency research and for the emergency use of an investigational product.

The Common Rule and FDA's regulations explicitly address privacy and confidentiality in the following places: (1) The informed consent document is required to include "a statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained" (Common Rule § ____.116(a)(5), 21 CFR 50.25(a)(5)); and (2) to approve a study an IRB must determine that "when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data" (Common Rule § ____.111(a)(7), 21 CFR 56.111(a)(7)).

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The Privacy Rule builds upon these existing federal regulations. The requirements are intended to strike a balance by minimizing the privacy risks of research participants, while not impeding the conduct of vital national and international research. For research participants, this means that they will have more information about how their protected health information may be used for research purposes. The Privacy Rule requires researchers who are subject to the Common Rule or FDA's human subject protection regulations to make some changes to the way they use and disclose protected health information. Researchers who are not currently subject to these requirements may, however, need to make more significant changes to current practice.

The Privacy Rule at §§ 164.508 and 164.512(i) establishes the conditions under which covered entities may disclose protected health information for research purposes. In general, covered entities are permitted to use or disclose protected health information for research either with individual authorization, or without individual authorization in limited circumstances and under certain conditions.

A covered entity is permitted to use and disclose protected health information for research purposes with an authorization from the research participant that meets the requirements of § 164.508 of the Privacy Rule. Additional requirements apply to research that is not solely record-based but, rather, involves the treatment of individuals. Specifically, in order for a covered entity to use or disclose protected health information that it creates from a research study that includes treatment of individuals (e.g., a clinical trial), the Privacy Rule at § 164.508(f) requires that additional research-specific elements be included in the authorization form, which describes how protected health information created for the research study will be used or disclosed. The Privacy Rule provides that such an authorization pursuant to § 164.508(f) may be combined with the traditional informed consent document used in research, as well as the consent required under § 164.506 and the notice of privacy practices required under § 164.520. In addition, a covered entity is permitted to condition the provision of the research-related treatment on the individual's authorization for the covered entity to use and disclose protected health information created from the study. The Privacy Rule, however, does not permit an individual authorization form for a research use or disclosure of *existing* protected health information to be combined with a research informed consent document or an authorization form for research that involves treatment.

Alternatively, a covered entity is permitted to use or disclose protected health information for research purposes without authorization by the research participant if the covered entity first obtains either of the following:

- Documentation of approval of a waiver of authorization from an IRB or a Privacy Board. The Privacy Rule delineates specific requirements for the elements that must be documented, including the Board's determinations with respect to eight defined waiver criteria.
- Where a review is conducted preparatory to research or where research is conducted on decedent's information, certain representations from the researcher, including that the use or disclosure is sought solely for such a purpose and that the protected health information is necessary for the purpose.

Public Comment

A number of commenters argued that the waiver criteria in the Privacy Rule were confusing, redundant, and internally inconsistent. These commenters urged the Department to simplify the provisions, especially for entities subject to both the Privacy Rule and the Common Rule. Consequently, these commenters recommended that the Privacy Rule be modified to allow protected health information to be used or disclosed for research without individual authorization if informed consent is obtained as stipulated by the Common Rule or FDA's human subject protection regulations, or waived as

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stipulated by the Common Rule. Commenters who favored these changes asserted that the existing federal human subject protection regulations adequately protect all of the rights and welfare of human subjects, and therefore, the Privacy Rule's provisions are unnecessary and duplicative for research currently governed by federal regulations. These commenters also argued that the Privacy Rule's waiver criteria and requirements for individual authorization, in effect, inappropriately modify the Common Rule, since the Privacy Rule prohibits covered entities from honoring an IRB's decisions unless the Privacy Rule's requirements are met. Some of these commenters further suggested that the confidentiality provisions of the Common Rule and FDA's human subject protection regulations be reviewed to determine if they adequately protect the privacy of research participants, and if found to be inadequate, these regulations should be modified.

The Department understands commenters' recommendations to simplify the Privacy Rule as it applies to research. However, as stated in the preamble to the Privacy Rule and the Department's July 6 guidance, the Department disagrees that the Privacy Rule will modify the Common Rule. The Privacy Rule regulates only the content and conditions of the documentation that covered entities must obtain before using or disclosing protected health information for research purposes.

The NCVHS also heard a number of concerns and confusion in testimony at the August 2001 hearing regarding the research provisions in the Privacy Rule. As a result, the NCVHS generally recommended that the Department provide additional guidance in this area. Consistent with this recommendation, the HHS Office for Civil Rights and the HHS Office for Human Research Protections intend to work together to provide interpretations, guidance, and technical assistance to help the research community in understanding the relationship between the Privacy Rule and the Common Rule.

The NCVHS also received testimony requesting that uses and disclosures of protected health information for research be characterized as an element of treatment, payment, and health care operations under the Privacy Rule, and thus be permitted without individual authorization. The NCVHS, in their recommendations to the Department, disagreed with this viewpoint, and expressed support for the policy embodied in the Privacy Rule, permitting uses and disclosures for research pursuant to an authorization or an IRB or Privacy Board waiver of authorization.

In addition, the NCVHS received testimony regarding the issue of recruiting research subjects. Commenters expressed concern and confusion as to how researchers would be able to recruit research subjects when the Privacy Rule does not permit protected health information to be removed from the covered entity's premises during reviews preparatory to research. The NCVHS recommended that the Department provide guidance on this issue. The Department clarifies that the Privacy Rule's provisions for IRB or Privacy Board waiver of authorization are intended to encompass a partial waiver of authorization for the purposes of allowing a researcher to obtain protected health information necessary to recruit potential research participants. For example, even if an IRB does not waive informed consent and individual authorization for the study itself, it may waive such authorization to permit the disclosure of protected health information to a researcher as necessary for the researcher to be able to contact and recruit individuals as potential research subjects.

Many researchers also expressed concerns that the Privacy Rule's de-identification safe harbor was so strict that it would result in more research being subject to IRB review than is currently the case. These commenters requested that the standards for de-identification be changed in order to make de-identification a more plausible option for the sharing of data with researchers.

The Privacy Rule's de-identification safe harbor was not designed to be used for research purposes. Rather, the Privacy Rule permits uses and disclosures of protected health information for research purposes with individual authorization, or pursuant to an IRB or Privacy Board waiver of authorization as permitted by § 164.512(i). The Department is aware, however, that some research is conducted today without IRB oversight because the information is not facially identifiable. While the Department is not convinced of the need to modify the safe harbor standard for de-identified information, the Department is requesting comment on an alternative approach that would permit uses and disclosures of a limited data set for research purposes which does not include facially identifiable information but in which certain identifiers remain. See section III.I of the preamble regarding de-identification of protected health information for a detailed discussion of this proposed approach.

A number of commenters were concerned about the Privacy Rule's requirement for "a statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke * * *", because this provision would prohibit researchers from analyzing the data collected prior to the individual's decision to revoke his or her authorization. The Department is not proposing to modify this provision. The Privacy Rule limits an individual's right to revoke his or her authorization by the extent to which the covered entity has taken action in reliance on the authorization. Therefore, even though a revocation will prohibit a covered entity from further disclosing protected health information for research purposes, the exception to this requirement is intended to allow for certain continued uses of the information as appropriate to preserve the integrity of the research study, *e.g.*, as necessary to account for the individual's withdrawal from the study.

The Department believes that researchers have established practices for accommodating an individual's decision to withdraw from a research study. Indeed, the Common Rule at §___.46.116 and FDA's human subject protection regulations at 21 CFR 50.25(a)(8) contain similar provisions that require the informed consent document include a statement that "* * * the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled." However, the Department understands that these practices may not be uniform and may vary depending on the nature of the research being conducted, with respect to the continued use or disclosure of data collected prior to the participant's withdrawal. If covered entities were permitted to continue using or disclosing protected health information for the research project even after an individual had revoked his or her authorization, this would undermine the primary objective of the authorization requirements to be a voluntary, informed choice of the individual. The Department believes that limiting uses and disclosures following revocation of an authorization to those necessary to preserve the integrity of the research appropriately balances the individual's right of choice and the researcher's reliance on the authorization. However, the Department solicits comment on other means of achieving this balance.

Specific comments, including testimony to the NCVHS, are addressed below where relevant to the corresponding proposed modifications to the Privacy Rule.

Proposed Modifications to Waiver Criteria

The Department understands commenters' concerns that several of the Privacy Rule's criteria for the waiver of a research participant's authorization are confusing and redundant, or inconsistent and conflicting with the Common Rule's requirements for the waiver of an individual's informed consent. However, since the Common Rule's criteria for the waiver of informed consent do not explicitly require IRBs to consider issues related to the privacy of prospective research participants, the Department disagrees with the recommendation to exempt from the Privacy Rule research uses and disclosures that are made with a waiver of informed consent pursuant to the Common Rule.

In response to commenter concerns, the Department proposes the following modifications to the waiver criteria to maintain uniform standards in the Privacy Rule for all research, whether or not the research is subject to the Common Rule, as well as to ensure that the Privacy Rule's waiver process works more seamlessly with the Common Rule's waiver process. The Department, in reassessing the waiver criteria defined by the Common Rule, believes that only two of the Common Rule waiver criteria are practicable when focused solely on patient privacy. Accordingly, the Department proposes to retain the following two criteria in the Privacy Rule that are comparable to two of the Common Rule criteria: (1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals; and (2) the research could not practicably be conducted without the waiver or alteration. The criterion in the Common Rule to determine that the rights and welfare of subjects will not adversely be affected, when limited to privacy, seems to conflict with the criterion regarding assessing minimal privacy risk; it is not clear how both criteria can be met when the focus is solely on privacy. The Department therefore proposes to delete the criterion in the Privacy Rule that the alteration or waiver will not adversely affect the privacy rights and the welfare of the individuals.

Moreover, the Department understands commenters' concerns that substantial overlap and potential inconsistency may exist among three of the Privacy Rule's criteria and the criterion that the use or disclosure involves no more than a minimal risk to the individuals. The Department believes that the three criteria in the Privacy Rule that focus on (1) plans to protect identifiers from improper use and disclosure, (2) plans to destroy the identifiers at the earliest opportunity, and (3) adequate written assurances against redisclosure, essentially help to define when the research use or disclosure poses only a minimal risk to the individual's privacy interests, rather than operate as stand-alone criteria. As such, the Department proposes to require the assessment of these three factors as part of the waiver criterion for assessment of minimal privacy risk. This provision does not preclude the IRB or Privacy Board from assessing other criteria as necessary to determine minimal privacy risk, *e.g.*, whether the safeguards included in the protocol are appropriate to the sensitivity of the data.

In addition, the Department agrees with commenters that the following waiver criterion is unnecessarily duplicative of other provisions to protect patients' confidentiality interests, and therefore, proposes to eliminate it: the privacy risks to individuals whose protected health information is to be used or disclosed are reasonable in relation to the anticipated benefits, if any, to the individual, and the importance of the knowledge that may reasonably be expected to result from the research.

Lastly, the Department proposes to retain the criterion that the research could not practicably be conducted without access to and use of the protected health information. The Privacy Rule permits a covered entity to reasonably rely on a researcher's documentation of approval of these waiver criteria, and a description of the data needed for the research as approved by an IRB or Privacy Board, to satisfy it's obligation with respect to limiting the disclosure to the minimum necessary.

In sum, the Department proposes that the following wavier criteria replace the waiver criteria listed in the Privacy Rule at § 164.512(i)(2)(ii):

(1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:

(a) an adequate plan to protect the identifiers from improper use and disclosure;

(b) an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(c) adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research project, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(2) The research could not practicably be conducted without the waiver or alteration; and

(3) The research could not practicably be conducted without access to and use of the protected health information.

The Department believes that the proposed modifications to the waiver criteria in the Privacy Rule would eliminate both the redundancies in the waiver criteria and the conflicts these provisions pose to research conducted pursuant to the Common Rule.

2. Research Authorizations

Several commenters argued that certain authorization requirements in the Privacy Rule at § 164.508 are problematic as applied to research uses and disclosures. Generally, commenters raised concerns that the requirements for individual authorization for uses and disclosures for research purposes are unduly complex and burdensome. In response to these concerns, the Department proposes to make a number of modifications to simplify the authorization requirements, both generally and in certain circumstances as they specifically apply to uses and disclosures of protected health information for research. The discussion below focuses on the proposed modifications specific to uses and disclosures for research. See section III.H of the preamble for a discussion of the Department's general proposal to modify the Privacy Rule's authorization requirements.

In particular, the Department proposes a single set of requirements that generally apply to all types of authorizations, including those for research purposes. This modification would eliminate the specific provisions at § 164.508(f) for authorizations for uses and disclosures of protected health information created for research that includes treatment of the individual. As a result, an authorization for such purposes would not require any additional elements above and beyond those required for authorizations in general at § 164.508(c). To conform to this proposed change, the Department also proposes to modify the requirements for prohibiting

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conditioning of authorizations at § 164.508(b)(4)(i) to remove the reference to § 164.508(f). A covered health care provider, thus, would be able to condition the provision of research-related treatment on provision of an authorization for the use and disclosure of protected health information for the particular research study.

Additionally, the Department proposes to modify § 164.508(b)(3)(i) to reflect its intent to eliminate the special authorization requirements for research studies that involve treatment in § 164.508(f), as well as to clarify that the Privacy Rule would allow an authorization for the use or disclosure of protected health information for research to be combined with any other legal permission related to the research study, including another authorization or consent to participate in the research. The Department heard from several provider groups who thought the authorization provisions as they relate to research to be too complex. These commenters argued in favor of permitting covered entities to combine all of the research authorizations required by the Privacy Rule with the informed consent to participate in research. To simplify the requirements in response to these concerns, the Department proposes to modify the Privacy Rule to allow for the combining of such permissions.

Finally, the Department proposes to include provisions specific to authorizations for research within the core element proposed at § 164.508(c)(1)(v) for an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. First, the Department proposes to explicitly provide that the statement "end of the research study" or similar language is sufficient to meet this requirement for an expiration date or event where the authorization is for a use or disclosure of protected health information for research. This modification is proposed in response to commenter concerns that the particular end date of a research study may not be known and questions regarding whether the end of a research study is an "event". In addition, such a statement would also be sufficient to encompass additional time, even after the conclusion of the research, to allow for the use of protected health information as necessary to meet record retention requirements to which the researcher is subject. The Department, therefore, proposes to clarify that including such a statement on the research authorization would fulfill the requirement to include an expiration event.

Similarly, the Department proposes to explicitly provide that the statement "none" or similar language is sufficient to meet this provision if the authorization is for a covered entity to use or disclose protected health information for the creation or maintenance of a research database or repository. The Department proposes this modification in response to commenter concerns that the Privacy Rule's requirement for an "expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure" will create a significant obstacle for the development of research databases or repositories. Commenters stated that research databases and repositories are often retained indefinitely, and the requirement that an authorization include an expiration date or event was found to be counter to the purpose of developing such research resources. The Department understands these concerns and, therefore, proposes to permit an individual's authorization to use or disclose protected health information for the creation and maintenance of a research database or repository to be valid without an expiration date or event. The Department emphasizes that this provision is intended to apply only in the limited circumstances where a use or disclosure is sought solely for the creation or maintenance of a database or repository, and does not extend to authorizations for further research or any other purpose. Therefore, subsequent research using the information maintained in the database or repository pursuant to an authorization would require that the authorization include the term "end of the research study" or other explicit expiration date or event.

3. Research Transition Provisions

The Privacy Rule includes at § 164.532 different transition requirements for research that includes treatment (*i.e.*, clinical trials) and for research that does not include treatment (*i.e.*, records research). For research that includes treatment, the Privacy Rule states that as long as legal permission was obtained to use or disclose protected health information for a specific research project, that legal permission will continue to be valid until the completion of the research project; a new permission will not be required to use or disclose protected health information that was created or received either before or after the compliance date. However, for research that does not include treatment, a legal permission obtained before the compliance date will only be valid for the use and disclosure of protected health information obtained before the compliance date. The Privacy Rule does not prescribe the form of the express legal permission in either case. Express legal permission could be a signed agreement by the individual to participate in a privately-funded research study.

The Privacy Rule does not explicitly address transition provisions for research studies ongoing after the compliance date where the legal permission of the individual had not been sought. This point was noted by several of those who commented on the Privacy Rule's transition provisions as they apply to research. Some of these commenters recommended that the Privacy Rule be revised to grandfather in the research use and disclosure of all protected health information that existed prior to the compliance date. These commenters expressed concern that much data would be lost to the research community since it would often be infeasible or impossible to obtain individuals' permission to use this archival information.

Given the confusion about the transition provisions and to assure that ongoing, vital research will not be impeded, the Department reassessed the relevant provisions and proposes that there be no distinction between research that includes treatment and research that does not, and no distinction between requirements for research conducted with patients' informed consent versus research conducted with an IRB-approved waiver of patients' informed consent. Therefore, the Department proposes to permit a covered entity to use or disclose for a specific research study protected health information that is created or received either before or after the compliance date (if there is no agreed-to restriction in accordance with § 164.522(a)), if the covered entity has obtained, prior to the compliance date an authorization or other express legal permission from an individual to use or disclose protected health information for the research study. In addition, the Department proposes to grandfather in research in which the individual has signed an informed consent to participate in the research study, or an IRB has waived informed consent for the research study, in accordance with the Common Rule or FDA's human subject protection regulations.

These proposed provisions are intended to apply once any of the permissions described above has been granted, regardless of whether the research study actually has begun by the compliance date or not, provided that the permission was obtained prior to the compliance date. In addition, with respect to the informed consent of the individual, the Department proposes not to limit the transition provisions to an informed consent pursuant to the Common Rule, but rather intends to allow for the transition of an informed consent for privately-funded research. Research studies that do not obtain such express legal permission, informed consent, or IRB waiver prior to the compliance date must obtain either authorization, as required by § 164.508, or a waiver of authorization from an IRB or Privacy Board, as required by § 164.512(i).

H. Uses and Disclosures for Which Authorization Is Required

The Privacy Rule permits covered entities to use and disclose protected health information for treatment, payment, and health care operations (subject to the individual's consent, if applicable) and as necessary for public policy purposes, such as public health and safety, health oversight activities, and enforcement. Covered entities must obtain an individual's voluntary and informed authorization before using or disclosing protected health information for any purpose that is not otherwise permitted or required under the Privacy Rule.

The Privacy Rule provides for the individual's voluntary authorization for uses and disclosure of his or her protected health information by prohibiting, with very limited exceptions, covered entities from conditioning treatment, payment, or eligibility for benefits or enrollment in a health plan, on obtaining an authorization. Furthermore, in § 164.508(b)(5), the Privacy Rule permits individuals, with limited exceptions, to revoke an authorization at any time. These provisions are intended to prevent covered entities from coercing individuals into signing an authorization that is not necessary for their health care.

To help ensure that individuals give their authorization for the use or disclosure of their protected health information on an informed basis, the Privacy Rule, under § 164.508(c), sets out core elements that must be included in any authorization. These core elements are intended to provide individuals with information needed to make an informed decision about giving their authorization. This information includes specific details about the use or disclosure, as well as providing the individual fair notice about his or her rights with respect to the authorization and the potential for the information to be redisclosed. The Privacy Rule requires authorizations to provide individuals with additional information for specific circumstances under the following three sets of implementation specifications: in § 164.508(d), for authorizations requested by a covered entity for its own uses and disclosures; in § 164.508(e), for authorizations requested by a covered entity for disclosures by others; and in § 164.508(f), for authorizations for research that includes treatment of the individual. Additionally, the authorization must be written in plain language so individuals can understand the information presented in the authorization.

Public Comments

The Department received a number of comments raising various issues regarding implementation of the authorization requirements. A majority of commenters said the authorization provisions of the Privacy Rule are too complex and confusing. Some commented that the sets of implementation specifications are not discrete, creating the potential for the implementation specifications for specific circumstances to conflict with the required core elements. Others expressed confusion generally about which authorization requirements they would be required to implement.

Commenters also have raised concerns about the revocation provisions in § 164.508(b)(5). The Privacy Rule provides an exception to the individual's right to revoke an authorization where the authorization is obtained as a condition of obtaining insurance coverage, or where other law provides the insurer the right to contest a claim under the policy. The Department intended this provision to permit insurers to obtain necessary protected health information during contestability periods under State law. For example, an individual may not revoke an authorization for the disclosure of protected health information to a life insurer for the purpose of investigating material misrepresentation if the individual's policy is still subject to the contestability period. However, commenters were concerned because other law also provides the insurer with the right to contest the policy itself, not just a claim under the policy, and the Privacy Rule does not provide an explicit exception to allow for this right.

Proposed Modifications

In response to these concerns, the Department is proposing modifications to the Privacy Rule to simplify the authorization provisions, while preserving the provisions for ensuring that authorizing the use or disclosure of protected health information is a voluntary and informed decision. The Department proposes to consolidate the implementation specifications into a single set of criteria to simplify these provisions, prevent confusion, and eliminate the potential for conflicts between the authorization requirements.

Thus, under the proposed modifications, the specifications for the elements and requirements of an authorization would be consolidated under § 164.508(c). Paragraphs (d), (e), and (f) in this section would be eliminated. Paragraph (c)(1) would require all authorizations to contain the following core elements: (1) A description of the information to be used or disclosed, (2) the identification of the persons or class of persons authorized to make the use or disclosure of the protected health information, (3) the identification of the persons or class of persons to whom the covered entity is authorized to make the use or disclosure, (4) a description of each purpose of the use or disclosure, (5) an expiration date or event, (6) the individual's signature and date, and (7) if signed by a personal representative, a description of his or her authority to act for the individual. The Department also proposes to add new language to clarify that when the individual initiates the authorization for his or her own purposes, the purpose may be described as "at the request of the individual." Thus, individuals would not have to reveal the purpose of the requested disclosure if they chose not to do so.

Paragraph (c)(2) would require authorizations to contain the following notifications: (1) A statement that the individual may revoke the authorization in writing, and either a statement regarding the right to revoke, and instructions on how to exercise such right, or to the extent this information is included in the covered entity's notice, a reference to the notice, (2) a statement that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by the Privacy Rule, or, if conditioning is permitted by the Privacy Rule, a statement about the consequences of refusing to sign the authorization, and (3) a statement about the potential for the protected health information to be subject to redisclosure

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by the recipient. The Department also proposes to limit the requirement that a covered entity disclose any remuneration that will result from obtaining an authorization, to authorizations for marketing purposes. Therefore, the remuneration disclosure requirement appears only in the new § 164.508(a)(3) on marketing authorizations. These modifications would permit covered entities to use a single authorization form, and make it easier to use for the individual and the covered entity, as well as third parties.

The Department also proposes to add language to the revocation exceptions in § 164.508(b)(5)(ii) to include an exception with respect to the insurer's right to contest the policy under other law. This proposed modification would recognize, without expanding upon, an insurer's right to contest the policy under existing law.

Other proposed modifications concerning authorizations for research are discussed in section III.G of the preamble.

Finally, the Department proposes a number of technical conforming modifications throughout this section of the Privacy Rule to accommodate the modifications to this section, as well as the proposed modifications to the consent provision. Specifically, the Department proposes to modify the exception to the minimum necessary standard in the Privacy Rule at § 164.502(b)(2), which exempts from the standard uses or disclosures made pursuant to an authorization under § 164.508, except for authorizations requested by the covered entity under § 164.508(d), (e), or (f). By simplifying the authorization requirements, the proposed modifications described above would eliminate the special authorizations required by § 164.508(d), (e), or (f) in the Privacy Rule. To be consistent with the proposed approach, the Department proposes to eliminate the reference to such authorizations in the exception at § 164.502(b)(2), thereby expanding the exception to exempt from the minimum necessary standard uses and disclosures made pursuant to an authorization for any purpose.

The Department also proposes modifications at §§ 164.508(a)(2)(i)(A), (B), and (C) to place limits on the use and disclosure of psychotherapy notes without authorization to carry out treatment, payment or health care operations. The modifications clarify that this information is not permitted to be used or disclosed without individual authorization for purposes of another entity.

The Department proposes to delete § 164.508(b)(4)(iii), relating to a health plan conditioning payment of a claim on the provision of an authorization, since this provision will be rendered moot under the proposed modifications to the consent provision. Additionally, the Department proposes to delete § 164.508(b)(2)(iv) of the Privacy Rule, because it is redundant with § 164.508(b)(1)(i), and to modify § 164.508(b)(1)(i) to clarify that an authorization is valid only if it meets the requirements of paragraphs (c)(1) and (c)(2). Modifications are also proposed at § 164.508(b)(1)(v) of the Privacy Rule (newly designated as § 164.508(b)(2)(iv) in the proposed Rule) to clarify that an authorization that violates paragraph (b)(4) (prohibiting the conditioning of authorizations) is not a valid authorization.

These proposed modifications also expressly provide that an authorization is needed for purposes of marketing. *See* section III.G of the preamble for a detailed discussion of the proposed modifications regarding marketing.

I. De-Identification of Protected Health Information

At § 164.514(a)–(c), the Privacy Rule permits a covered entity to de-identify protected health information so that such information may be used and disclosed freely, without being subject to the Privacy Rule's protections. Health information is de-identified, or not individually identifiable, under the Privacy Rule, if it does not identify an individual and if the covered entity has no reasonable basis to believe that the information can be used to identify an individual. In order to meet this standard, the Privacy Rule provides two alternative methods for covered entities to de-identify protected health information.

First, a covered entity may demonstrate that it has met the standard if a person with appropriate knowledge and experience applying generally acceptable statistical and scientific principles and methods for rendering information not individually identifiable makes and documents a determination that there is a very small risk that the information could be used by others to identify a subject of the information. The preamble to the Privacy Rule refers to two government reports that provide guidance for applying these principles and methods, including describing types of techniques intended to reduce the risk of disclosure that should be considered by a professional when de-identifying health information. These techniques include removing all direct identifiers, reducing the number of variables on which a match might be made, and limiting the distribution of records through a "data use agreement" or "restricted access agreement" in which the recipient agrees to limits on who can use or receive the data.

Alternatively, covered entities may choose to use the Privacy Rule's safe harbor method for de-identification. Under the safe harbor method, covered entities must remove all of a list of 18 enumerated identifiers and have no actual knowledge that the information remaining could be used alone or in combination to identify a subject of the information. The identifiers that must be removed include direct identifiers, such as name, street address, social security number, as well as other identifiers, such as birth date, admission and discharge dates, and five-digit zip code. The safe harbor does allow for the disclosure of all geographic subdivisions no smaller than a State, as well as the initial three digits of a zip code if the geographic unit formed by combining all zip codes with the same initial three digits contains more than 20,000 people. In addition, age, if less than 90, gender, ethnicity, and other demographic information not listed may remain in the information. The safe harbor is intended to provide covered entities with a simple, definitive method that does not require much judgment by the covered entity to determine if the information is adequately de-identified.

The Privacy Rule also allows for the covered entity to assign a code or other means of record identification to allow de-identified information to be re-identified by the covered entity, if the code is not derived from or related to information about the subject of the information, *e.g.*, derivation of the individual's social security number, and is not otherwise capable of being translated so as to identify the individual. The covered entity also may not use or disclose the code for any other purpose, and may not disclose the mechanism, *e.g.*, algorithm or other tool, for re-identification.

The Department is cognizant of the increasing capabilities and sophistication of electronic data matching used to link data elements from various sources, and from which, therefore, individuals may be identified. Given this increasing risk to individuals' privacy, the Department included in the Privacy Rule the above stringent standards for determining when information may flow unprotected. The Department also wanted the standards to be flexible enough so the Privacy Rule would not be a disincentive for covered entities to use or disclose de-identified

information wherever possible. The Privacy Rule, therefore, strives to balance an individuals' privacy interests with providing a sufficient level of information to make de-identified databases useful.

Public Comments

The Department heard a number of concerns from commenters regarding the de-identification standard in the Privacy Rule. These comments generally were raised in the context of using and disclosing information for research, public health purposes, or for certain health care operations. Commenters were concerned that the safe harbor method for de-identifying protected health information was so stringent that it required removal of many of the data elements that were essential to their analyses for these purposes. The comments, however, demonstrated little consensus as to which data elements were needed for such analyses, with many commenters requesting elements, such as birth date, neighborhood, account numbers, medical record numbers, and device identifiers. In addition, commenters largely were silent with regard to the feasibility of using the Privacy Rule's alternative statistical method to de-identify information. The Department is aware, however, of a general view of covered entities that the statistical method is beyond their capabilities.

With regard to health care operations, a number of state hospital associations were concerned that the Privacy Rule will prevent them from collecting patient information from area hospitals in order to conduct and disseminate analyses that are useful for hospitals in making decisions about quality and efficiency improvements. These commenters explained that the Privacy Rule's stringent provisions for de-identification would not allow for the necessary data elements to be collected for such analyses. Specifically, commenters identified the following critical elements that would be restricted from disclosure by the Privacy Rule's de-identification standard: Five-digit zip code, city, county or neighborhood; the dates on which the injury or illness was treated and the patient released from the hospital; and the month of birth (noted by commenters as especially important for very young children). In addition, commenters argued that the Privacy Rule's provisions for data aggregation by a business associate, while allowing for the collection and aggregation of identifiable data from multiple hospitals for quality and efficiency purposes, would not allow state hospital associations to disclose all the desired analyses back to the contributing hospitals because some identifiers would remain in the data. These commenters emphasized the importance to hospitals to have access to information about community health care needs and the ability to compare their community to others in the state so that they may adequately respond to and fulfill such needs.

In addition, commenters identified a problem with hospitals themselves sharing aggregated information with other hospitals for health care operations purposes. The Privacy Rule prohibits covered entities from disclosing protected health information for the health care operations purposes of other covered entities. As described in section III.A.2 of the preamble regarding Uses and Disclosures for Treatment, Payment, and Health Care Operations, the Department is proposing to modify this restriction and allow covered entities to disclose protected health information for another covered entity's health care operations under some circumstances. However, two conditions on the sharing of individually identifiable information for health care operations may continue to pose a problem. The proposed modifications would condition the sharing on both entities being covered entities and both entities having a relationship with the individual. Hospitals wishing to exchange patient information with each other or with other community health care providers would not satisfy these conditions in all cases.

Many researchers expressed similar concerns, explaining that the Privacy Rule's de-identification safe harbor was so strict that it would result in more research being done on identifiable health information and, thereby, being subject to IRB review than is currently the case. Under the Common Rule, research that uses "identifiable private information" must undergo IRB review. However, there is no agreed-upon definition of "identifiable private information" and IRBs determine on a case-by-case basis what constitutes "identifiable private information." Consistent with this variability, the comments did not demonstrate consensus on what identifiers should be permitted to be retained for research purposes.

In addition, commenters also expressed concerns with respect to public health reporting. For example, some product manufacturers subject to the jurisdiction of FDA were concerned that they would not be able to operate post-marketing surveillance registries, to which health care providers report problems. Commenters stated that even though they do not need information with direct identifiers, the Privacy Rule's strict de-identification standard would not allow the reporting of useful information into the registry. Additionally, a number of commenters described the de-identification standard as hampering many research and health care operations activities that also serve a public health purpose, *e.g.*, the tracking of the emergence of disease that could be the result of bioterrorism.

The Department also heard from some consumer advocates who supported the elimination of barriers they believe are imposed by the de-identification standard to important medical research. In order to ensure privacy is protected, but at the same time not render impossible research using de-identified information, these commenters recommended that the Department permit the use of information for research that is facially de-identified, *i.e.*, stripped of direct identifiers, so long as the research entity provides assurances that it will not use or disclose the information for purposes other than research and will not identify or contact the individuals who are the subjects of the information.

Solicitation of Comment

The Department is aware of the importance of the activities described by the commenters but is not currently convinced of the need to modify the safe harbor standard for de-identified information. Instead, the Department requests comment on an alternative approach that would permit uses and disclosures of a limited data set which does not include facially identifiable information but in which certain identifiers would remain. The Department is not considering permitting the disclosure of any such limited data set for general purposes, but rather is considering permitting disclosure of such information for research, public health, and health care operations purposes.

The limited data set would not include the following information, which the Department considers direct identifiers: name, street address, telephone and fax numbers, e-mail address, social security number, certificate/license number, vehicle identifiers and serial numbers, URLs and IP addresses, and full face photos and any other comparable images. The limited data set would include the following identifiable information: admission, discharge, and service dates; date of death; age (including age 90 or over); and five-digit zip code. The

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Department solicits comment on whether another one or more geographic units smaller than State, such as city, county, precinct, neighborhood or other unit, would be needed in addition to, or be preferable to, five-digit zip code.

In addition, to address concerns raised by commenters regarding access to birth date for research or other studies relating to young children or infants, the Department clarifies that the Privacy Rule does not prohibit age of an individual from being expressed as an age in months, days, or hours. Given that the limited data set would include all ages, including age in months, days, or hours, if preferable, the Department requests comment on whether date of birth is needed and, if so, whether the entire date is needed, or just the month and year.

In addition, to further protect privacy, the Department would propose to condition the disclosure of the limited data set on covered entities obtaining from the recipients a data use or similar agreement, in which the recipient would agree to limit the use of the limited data set to the specified purposes in the Privacy Rule, and limit who can use or receive the data, as well as agree not to re-identify the data or contact the individuals. Commenters seemed to indicate that recipients would be amenable to such conditions.

The Department solicits public comment on the feasibility and acceptability of the above approach for the described purposes, and whether or not the limitations and conditions would be sufficiently protective of patient privacy.

Proposed Modifications

In addition to the solicitation of comment above, the Department proposes a technical modification to the safe harbor provisions. A number of commenters expressed confusion regarding what was believed to be conflicting provisions within the de-identification standard. Commenters argued that, on the one hand, the Privacy Rule treats information as de-identified if all listed identifiers on the information are stripped, including any unique, identifying number, characteristic, or code. Yet, the Privacy Rule permits a covered entity to assign a code or other record identification to the information so that it may be re-identified by the covered entity at some later date.

The Department did not intend the re-identification code to be considered one of the enumerated identifiers. Therefore, the Department proposes to clarify its intent by explicitly excepting the re-identification code or other means of record identification permitted by § 164.514(c) from the listed identifiers at § 164.514(b)(2)(i)(R).

J. Technical Corrections and Other Clarifications

In addition to the modifications described above, the Department proposes to make the following clarifications:

1. Changes of Legal Ownership. The Privacy Rule's definition of health care operations, at §164.501, includes business management and general administrative activities of the entity, including, due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity or, following completion of the sale or transfer, will become a covered entity.

In the preamble to the Privacy Rule, the Department explained that this language was included to remedy an omission in the 1999 proposed Rule by

> add[ing] to the definition of health care operations disclosures of protected health information for due diligence to a covered entity that is a potential successor in interest. This provision includes disclosures pursuant to the sale of a covered entity's business as a going concern, mergers, acquisitions, consolidations, and other similar types of corporate restructuring between covered entities, including a division of a covered entity, and to an entity that is not a covered entity but will become a covered entity if the reorganization or sale is completed.

65 FR at 82609 (December 28, 2000) (response to comment); *see also* 65 FR at 82491 (similar language); 65 FR at 82652 ("We clarify in the definition of health care operations that a covered entity may sell or transfer its assets, including protected health information, to a successor in interest that is or will become a covered entity.")

Despite language in the preamble to the contrary, the definition of health care operations in the Privacy Rule does not expressly provide for the transfer of protected health information upon sale or transfer to a successor in interest. Instead, the definition of "health care operations" only mentions disclosures of protected health information for "due diligence" purposes when a sale or transfer to a successor in interest is contemplated. "Due diligence" is generally understood to mean the "[a] prospective buyer's or broker's investigation and analysis of a target company, a piece of property, or a newly issued security." Black's Law Dictionary (7th ed. 1999) *available in* Westlaw, DIBLACK database.

The Department proposes to add language to paragraph (6) of the definition of "health care operations" to clarify the intent to permit the transfer of records to a covered entity upon a sale, transfer, merger, or consolidation. This proposed change would prevent the Privacy Rule from interfering with necessary treatment or payment activities upon the sale of a covered entity or its assets.

The Department also proposes to use the terms "sale, transfer, consolidation or merger" to eliminate the term "successor in interest" from this paragraph. The Department intended this provision to apply to any sale, transfer, merger or consolidation and believes the current language may not sufficiently accomplish this goal. The proposed language's use of the terms "sale, transfer, merger and consolidation" is based on language used in model State laws addressing the disclosure of personal or privileged information collected or received in connection with an insurance transaction.

The Department retains the limitation that such disclosures are health care operations only to the extent the entity receiving the protected health information is a covered entity or will become a covered entity as a result of the sale, transfer, merger, or consolidation. In addition, the proposed modification does not affect any responsibility of covered entities either under other law or ethical obligation to notify individuals appropriately of a sale, transfer, merger, or consolidation.

2. Group Health Plan Disclosures of Enrollment and Disenrollment Information to Plan Sponsors. The Department proposes to modify the Privacy Rule to make express the Department's policy, which was explained in the preamble to the Privacy Rule, that group health plans are permitted to share enrollment and disenrollment information with plan sponsors without amending plan documents. Under the Privacy Rule, a group health plan, as well as a health insurance issuer or HMO providing health insurance or health coverage to the group health plan, are covered entities. Neither employers nor other plan sponsors are defined as covered entities. The Department recognizes the legitimate need of the plan sponsor to have access to health information of these covered entities in certain situations. Therefore, the Privacy Rule at § 164.504(f) permits a group health plan, and health insurance issuers or HMOs with respect to the group health plan, to disclose protected health information to the plan sponsor provided that, among other requirements, the plan documents are amended to appropriately reflect and restrict the plan sponsor's uses and disclosures of such information.

There are two exceptions where the Privacy Rule permits group health plans (or health insurance issuers or HMOs, as appropriate) to disclose information to a plan sponsor without requiring amendment of plan documents. First, § 164.504(f) permits such disclosures when the information needed by the plan sponsor is summary health information. Second, as explained in the preamble to the Privacy Rule, a plan sponsor is permitted to perform enrollment functions on behalf of its employees without meeting the requirements of § 164.504(f), as such functions are considered outside of the plan administration functions. Therefore, a group health plan is also permitted to disclose enrollment or disenrollment information to the plan sponsor without amending the plan documents as required by § 164.504(f).

However, this policy regarding disclosures of enrollment or disenrollment information was addressed only in the preamble to the Privacy Rule and not explicitly in the regulation itself. As a result, the policy seems to have been overlooked and the absence of a specific provision in the regulation itself has caused misinterpretation within industry. To remedy this misunderstanding and make its policy clear, the Department proposes to add an explicit exception at § 164.504(f)(1)(iii) to clarify that group health plans (or health insurance issuers or HMOs, as appropriate) are permitted to disclose enrollment or disenrollment information to a plan sponsor without meeting the plan document amendment and other related requirements.

3. Definition of "Individually Identifiable Health Information." The Department proposes to move the definition of "individually identifiable health information" from § 164.501 to § 160.103 to clarify that the definition is relevant to all of the provisions in Parts 160 through 164.

4. Accounting of Disclosures of Protected Health Information. Under the Privacy Rule at § 164.528, individuals have the right to receive an accounting of disclosures of protected health information made by the covered entity, with certain exceptions. These exceptions, or instances where a covered entity is not required to account for disclosures, include disclosures made by the covered entity to carry out treatment, payment, or health care operations, as well as disclosures to individuals of protected health information about them.

The accounting is required to include the following: (1) disclosures of protected health information that occurred during the six years prior to the date of the request for an accounting, including disclosures to or by a business associate of the covered entity; (2) for each disclosure: the date of the disclosure; the name of the entity or person who received the protected health information; if known, the address of such entity or person; a brief description of the protected health information disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such a statement, a copy of the individual's written authorization pursuant to § 164.508 or a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512. For multiple disclosures of protected health information to the same person, the Privacy Rule allows covered entities to provide individuals with an accounting that contains only the following information: (1) For the first disclosure, a full accounting, with the elements described in (2) above; (2) the frequency, periodicity, or number of disclosures made during the accounting period; and (3) the date of the last such disclosure made during the accounting period.

A number of commenters raised concerns that the high costs and administrative burdens associated with the accounting requirements would deter covered entities from disclosing protected health information. In response to these concerns, the Department proposes to expand the exceptions to the standard at § 164.528(a)(1) to include disclosures made pursuant to an authorization as provided in § 164.508. Covered entities would no longer be required to account for any disclosures authorized by the individual in accordance with § 164.508. The Department is proposing to alleviate burden in this way because it is believed that an accounting of disclosures made pursuant to such permissions is unnecessary because such disclosures are already known by the individual, in as much as the individual was required to sign the forms authorizing the disclosures.

Accordingly, the Department proposes to make two conforming amendments at §§ 164.528(b)(2)(iv) and (b)(3) to delete references in the accounting content requirements to disclosures made pursuant to an authorization.

5. Uses and Disclosures Regarding FDA-regulated Products and Activities. The Department recognizes the importance of public health activities and, in the Privacy Rule, allows information to be used and disclosed for these purposes without requiring individual consent or authorization. The recent anthrax attacks and the threat of other forms of bio-terrorism have served to underscore the vital necessity of a strong and effective public health system. The Rule allows covered entities to disclose protected health information to public health authorities for a broad array of public health purposes, including reporting of diseases, injuries, vital statistics, and for the conduct of public health surveillance and interventions. The Rule permits public health reporting to private persons who are contractors for or agents of the public health authority. The Rule also recognizes the essential role of manufacturers and other private persons in carrying out the Food and Drug Administration's (FDA) public health mission.

The Privacy Rule, at § 164.512(b)(1)(iii), specifically permits covered entities to disclose protected health information, without individual authorization, to a person who is subject to the jurisdiction of the FDA for the following specified purposes: (1) To report adverse events, defects or problems, or biological product deviations with respect to products regulated by the FDA (if the disclosure is made to the person required or directed to report such information to the FDA), (2) to track products (if the disclosure is made to the person required or directed to report such information to the FDA), (3) for product recalls, repairs, or replacement, and (4) for conducting post-marketing surveillance to comply with FDA requirements or at the direction of the FDA.

The Department received a number of comments on the provisions for public health activities related to FDA-regulated products. The majority of these commenters were concerned that the Privacy Rule constrains important public health surveillance and reporting activities by impeding the flow of needed information to those subject to the FDA's jurisdiction. In particular, commenters noted that limiting disclosures to those that are "required or directed" by FDA does not reflect the breadth of public health activities that are currently being conducted by the private sector on a voluntary basis or under the general auspices of—but not at the direction of—FDA. In general, commenters were concerned that such limitations would stifle current reporting practices. For example, the

FDA currently obtains the vast majority of its information about drugs and devices indirectly from health care providers who voluntarily report known adverse events or problems to the manufacturer of the product. The manufacturer may or may not be required to report such adverse events to FDA. Commenters assert that the present language of the Privacy Rule will have a "chilling effect" on these important communications due to uncertainty over the manufacturer's obligation to report to the FDA.

Some concern was expressed about the potential liability of a covered entity for a disclosure to an employee of the manufacturer who is not "a person subject to the jurisdiction of the FDA" or to the wrong manufacturer. The Department seeks to assure covered entities that use of the term "a person" was not intended to limit reporting to a single individual within an entity, but to allow reporting to flow as it does today between health care providers and representatives of manufacturers or other companies. Moreover, the Department seeks to clarify that covered entities may continue to disclose protected health information to the companies identified on the product labels as the manufacturer registered with the FDA to distribute the product.

To eliminate the "chilling effect" of the Rule, some commenters requested that the Department include in the Rule a "good-faith" safe harbor to protect covered entities from enforcement actions arising from unintentional violations of the Privacy Rule. For example, a health care provider would not have violated the Rule if the disclosure was made in the good faith belief that the entity to whom the adverse event was reported was responsible for the FDA-regulated product, even if it turned out to be the wrong manufacturer.

Finally, a number of commenters, including some that are subject to the FDA's jurisdiction, suggested that: identifiable health information is not necessary for some or all of these public health reporting purposes; that identifiable health information is not reported to FDA; and that for purposes of post-marketing surveillance, information without direct identifiers (such as name, mailing address, phone number, social security number, and email address) should suffice. The Department recognizes that there must be a balance between the need for public health activities that benefit every individual by safeguarding the effectiveness, safety, and quality of the products regulated by the FDA, and the privacy interests of specific individuals. However, the comments did not offer a consensus as to which activities could be performed without identifiable information or which identifiers, if any, were needed. In Section III.I of this preamble regarding De-identification issues, the Department is soliciting comments on a limited data set for use for specific purposes, including public health. The Department also requests comments as to whether this limited data set should be required or permitted for some or all public health purposes or if a special rule should be developed for public health reporting.

The Department did not intend the Privacy Rule to discourage or prevent the reporting of adverse events or otherwise disrupt the flow of essential information that FDA and persons subject to the jurisdiction of FDA need in order to carry out their important public health activities. Therefore, the Department proposes a number of changes to eliminate uncertainties identified by the commenters, and, thereby, encourage covered entities to continue to report and cooperate in these essential public health activities. The proposed modifications attempt to recognize and preserve current public health activities of persons subject to the jurisdiction of the FDA while not diminishing the health information privacy protections for individuals.

Specifically, the Department proposes to remove from § 164.512(b)(1)(iii)(A) and (B) the phrase "if the disclosure is made to a person required or directed to report such information to the Food and Drug Administration" and to remove from subparagraph (D) the phrase "to comply with requirements or at the direction of the Food and Drug Administration." In lieu of this language, HHS proposes to describe at the outset the public health purposes for which disclosures may be made. The proposed language reads: "A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity."

The Department proposes to retain the listing of specific activities identified in paragraphs (A), (B), (C), and (D), to give covered entities additional assurance that public health disclosures for these activities are permissible under the Privacy Rule. The listing, however, is no longer an exclusive list of FDA-related public health activities, but rather is a list of examples of the most common activities. Additionally, language has been added to paragraph (C) to include "lookback" activities which are necessary for tracking blood and plasma products, as well as quarantining tainted blood or plasma and notifying recipients of such tainted products.

The privacy of individuals' health information would continue to be protected through the limitations placed on the permissible disclosures for FDA purposes. Specifically, such disclosures must relate to FDA-regulated products or activities for which the person using or receiving the information has responsibility, and for activities related to the safety, effectiveness, or quality of such FDA-regulated product or activity.

The Department is not proposing a good-faith safe harbor at this time because it believes that these proposed modifications will adequately address the concerns and uncertainties facing covered entities. However, the Department is interested in hearing from affected parties as to whether the proposed modifications are adequate or if additional measures are necessary for health care providers or others to continue to report this vital information about FDA-regulated products or activities.

6. Hybrid Entities. The Privacy Rule defines covered entities that primarily engage in activities that are not covered functions—i.e., functions that relate to the entity's operation as a health plan, health care provider, or health care clearinghouse—as hybrid entities. See § 164.504(a). In order to limit the burden on such entities, most of the requirements of the Privacy Rule only apply to the health care component(s) of the hybrid entity and not to the parts of the entity that do not engage in covered functions. The health care component(s) include those components of the entity that perform covered functions and other components of the entity that support those covered functions, in the same way such support may be provided by a business associate. A covered entity that is a hybrid entity is required to define and designate those parts of the entity that engage in the covered functions and "business associate" functions and that are, therefore, part of the health care component(s). The health care component is designed to include components that engage in "business associate" functions because it is impossible for the entity to contract with itself and the authorization requirement would limit the ability to engage in necessary health care operations functions.

The hybrid entity is also required to create adequate separation (i.e., fire walls) between the health care component(s) and other components of the entity. Transfer of protected health information held by the health care component to other components of the hybrid entity is a disclosure under the Privacy Rule and is only allowed to the same extent as such disclosure would be permitted to a separate entity.

Examples of hybrid entities are: (1) corporations that are not in the health care industry, but that operate on-site health clinics, and (2) insurance carriers that have multiple lines of business which include both health insurance and other insurance lines such as general liability or property and casualty insurance.

A "hybrid entity" is defined in the Privacy Rule as an entity "whose covered functions are not its *primary* functions." (emphasis added). In the preamble to the Privacy Rule, the Department explained that the use of the term "primary" in the definition of a "hybrid entity" was not intended to operate with mathematical precision. The Department intended a common sense evaluation of whether the covered entity mostly operates as a health plan, health care provider, or health care clearinghouse. If an entity's primary activity was engaging in covered functions, then the whole entity would be a covered entity and the hybrid entity provisions would not apply. However, if the covered entity primarily conducted non-health activities, it would qualify as a hybrid entity and would be required to comply with the Privacy Rule with respect to its health care component(s). Commenters expressed concern that the policy guidance in the preamble was insufficient as long as the Privacy Rule itself limited the hybrid entity provisions to entities that primarily conducted non-health related activities. There were particular concerns in cases in which the health plan line of business was the primary business, and the line of business that is one of the excepted benefits, *e.g.*, workers' compensation insurance, was only a small portion of the business. There were also concerns about what "primary" meant if not a mathematical calculation and how the entity would know whether or not it was a hybrid entity based on the guidance in the preamble.

As a result of these comments, the Department proposes to delete the term "primary" from the definition of "hybrid entity" in § 164.504(a). In order to avoid the problem of line drawing, the Department proposes to permit any covered entity to be a hybrid entity if it is a single legal entity that performs both covered and non-covered functions, regardless of whether the non-covered functions represent that entity's primary function, a substantial function, or even a small portion of the entity's activities.

The Department proposes to permit covered entities that could qualify as hybrid entities to choose whether or not they want to be hybrid entities. Elimination of the requirement in the definition of "hybrid entity" that covered functions not be the "primary" functions of the covered entity would greatly increase the proportion of covered entities that are hybrid entities. In order to avoid the burden of requiring many more covered entities to designate the health care components and create fire walls within their entity when it is administratively simpler to treat the entire entity as a covered entity, the proposal would allow the covered entity to choose whether it will be a hybrid entity or not. To accomplish this objective, the proposed definition of "hybrid entity" would require that in order to be a hybrid entity, a covered entity that otherwise qualifies must designate health care components. If a covered entity does not designate health care components, the entire entity would be a covered entity.

There are advantages and disadvantages to being a hybrid entity. Whether or not the advantages outweigh the disadvantages will be a decision of each covered entity that may qualify as a hybrid entity and will be influenced by factors such as how the entity is organized and the proportion of the entity that must be included in the health care component. Where the non-covered functions of the entity are only a small portion of the entity, it will likely be more efficient to simply consider the entire entity as a covered entity. Nonetheless, the Department is proposing to permit flexibility for covered entities to choose whether or not to be treated as a covered entity entirely or as a hybrid entity.

The Department also proposes to simplify the definition of "health care component" in § 164.504(a) to make clear that a health care component is whatever the covered entity designates as the health care component, consistent with the provisions regarding designation in § 164.504(c)(3)(iii). The specific language regarding which components make up a health care component would be in the implementation specification that addresses designation of health care components. The Department proposes to move this specific language because it provides requirements and directions that are more appropriately placed in an implementation specification. The Department proposes that health care components may include: (1) Components of the covered entity that engage in covered functions, and (2) any component that engages in activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

With respect to the components that perform covered functions, the Department also clarifies that a hybrid entity must include in its health care component(s) any component that would meet the definition of "covered entity" if it were a separate legal entity. "Covered functions" are those functions of a covered entity that make the entity a health plan, health care provider, or health care clearinghouse. However, there was some ambiguity as to whether a component of a covered entity that is a health care provider, but that does not conduct standard electronic transactions, must be included in the health care component. The proposed language would clarify that any component that would be a covered entity if it were a separate legal entity must be included in the health care component.

Under these proposed changes, a component that is a health care provider and that engages in standard electronic transactions must be included in the health care component, but a component that is a health care provider but that does not engage in standard electronic transactions may, but would not be required to, be included in the health care component of the hybrid entity. The decision would be left to the covered entity in the second case. For example, in a university setting, the single legal entity may operate hospital facilities that bill electronically and research laboratories that do not engage in any electronic billing. The modification would clarify that the university as a hybrid entity need only include the hospital facilities that bill electronically in the health care component. The modification also would make clear that the university has the option to include the components, such as the research laboratory, that function as a health care provider, but not as a covered health care provider. A covered entity that chooses to include a non-covered health care provider in their health care component would be required to ensure that the non-covered health care provider, as well as the rest of the health care component, is in compliance with the Privacy Rule.

There is also a conforming change in the proposed language in § 164.504(c)(1)(ii) to make it clear that a reference to a "covered health care provider" in the Privacy Rule could

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include the functions of a health care provider who does not engage in electronic transactions, if the covered entity chooses to include such functions in the health care component.

With respect to the language regarding components that engage in "business associate" functions, the Department does not make any substantive change. The components of a hybrid that may provide services to the component that performs covered functions, such as a portion of the legal or accounting departments of the entity, may be included in the health care component so protected health information can be shared with such components of the entity without requiring business associate agreements or individual authorizations. The related language in paragraph (2)(ii) of the definition of "health care component" in the Privacy Rule that requires the "business associate" functions include the use of protected health information is not included in this proposed Rule because it is redundant.

It is important to note that a covered entity may include components that engage in "business associate" functions in its health care component or not. It is not a violation of the Privacy Rule to fail to include such a component in the health care component designation. However, a disclosure of protected health information from the health care component to such other component if it is not part of the health care component is the same as a disclosure outside the covered entity and is a violation unless it is permitted by the Privacy Rule. Because an entity cannot have a business associate contract with itself, such a disclosure likely would require individual authorization.

Finally, to avoid needless application of the hybrid entity provisions to a covered entity's activities as an employer, rather than as a health plan, health care provider, or health care clearinghouse, the Department proposes to modify the definition of "protected health information" in § 164.501. The preamble to the Privacy Rule makes clear that the Privacy Rule does not treat employment records as protected health information. To avoid any confusion or misinterpretation on this point, the Department proposes to expressly exclude employment records held by a covered entity in its role as employer from the definition of "protected health information." In that way, employment records will be treated in the same manner as student medical records covered by FERPA, which the Privacy Rule excludes from the definition of "protected health information." This change will limit the need for a covered entity, whose primary activities are covered functions, to designate itself as a hybrid entity simply to carve out employment records.

It is important to note that the exception from the definition of "protected health information" for employment records only applies to individually identifiable health information in those records that are held by a covered entity in its role as employer. The exception does not apply to individually identifiable health information held by a covered entity when carrying out its health plan or health care provider functions. Such information would be protected health information. The Department specifically is soliciting comments on whether the term "employment records" is clear or whether it needs to be more fully explained. It would be particularly helpful if commenters could identify certain types of records that should be included or excluded from "employment records."

7. Technical Corrections. The Privacy Rule contained some technical and typographical errors. Therefore, the Department proposes to make the following corrections:

a. In § 160.102(b), beginning in the second line, "section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191)," is replaced with "42 U.S.C. 1320a–7c(a)(5)".

b. In § 160.203(b), in the second line, "health information" is replaced with "individually identifiable health information".

c. In § 164.102, "implementation standards" is corrected to read "implementation specifications."

d. In § 164.501, in the definition of "protected health information", "Family Educational Right and Privacy Act" is corrected to read "Family Educational Rights and Privacy Act."

e. In § 164.508(b)(1)(ii), in the fifth line, the word "be" is deleted.

f. In § 164.508(b)(3)(iii), a comma is added after the words "psychotherapy notes".

g. In § 164.510(b)(3), in the third line, the word "for" is deleted.

h. In § 164.512(b)(1)(v)(A), in the fourth line, the word "a" is deleted.

i. In § 164.512(b)(1)(v)(C), in the eighth line, the word "and" is added after the semicolon.

j. In § 164.512(f)(3), paragraphs (ii) and (iii) are redesignated as (i) and (ii), respectively.

k. In § 164.512(g)(2), in the seventh line, the word "to" is added after the word "directors."

l. In § 164.512(i)(1)(iii)(A), in the second line, the word "is" after the word "sought" is deleted.

m. In § 164.522(a)(1)(v), in the sixth line, "§§ 164.502(a)(2)(i)" is corrected to read "§§ 164.502(a)(2)(ii)".

n. In § 164.530(i)(4)(ii)(A), in the second line, "the requirements" is replaced with the word "specifications".

IV. Preliminary Regulatory Impact Analysis

Federal law (5 U.S.C. 804(2), as added by section 251 of Pub. L. 104–21), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects in competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

The impact of the modifications proposed in this rulemaking would be a net reduction of costs associated with the Privacy Rule of approximately $100 million. Therefore, this Rule is a major rule as defined in 5 U.S.C. 804(2).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The purpose of the regulatory impact analysis is to assist decision-makers in understanding the potential ramifications of a regulation as it is being developed. The analysis is also intended to assist the public in understanding the general economic ramifications of the regulatory changes.

The Privacy Rule included a regulatory impact analysis (RIA), which estimated the cost of the Privacy Rule at $17.6 billion over ten years. 65 FR 82462, 82758. The changes to the Privacy Rule proposed by this notice of proposed rulemaking are a result of comment by the industry and the public at large identifying a number of unintended consequences of the Privacy Rule that could adversely affect access to, or the quality of health care delivery. These proposed changes should facilitate implementation and compliance with the Privacy Rule, and lower the costs and burdens associated with the Privacy Rule while maintaining the confidentiality of protected health information.

The proposed changes would affect five areas of the Privacy Rule that will have an economic impact: (1) Consent; (2) notice; (3) marketing; (4) research; and (5) business associates. In addition, the proposal contains a number of changes that, though important, can be categorized as clarifications of intended policy. For example, the modifications would permit certain uses and disclosures of protected health information that are incidental to an otherwise permitted use or disclosure. This change would recognize such practices as the need for physicians to talk to patients in semi-private hospital rooms or nurses to communicate with others in public areas, and avoids the costs covered entities might have incurred to reconfigure facilities as necessary to ensure absolute privacy for these common treatment-related communications. This and other modifications in this proposal (other than those described below) clarify the intent of the standards in the Privacy Rule and, as such, do not change or alter the associated costs that were estimated for the Privacy Rule. There are no new costs or savings by these changes, and therefore, there is no cost estimate made here for them.

A. Summary of Costs and Benefits in Final Regulatory Impact Statement

The Privacy Rule was estimated to produce net costs of $17.6 billion, with net present value costs of $11.8 billion (2003 dollars) over ten years (2003–2012). The Department estimates the modifications in this proposal would lower the net cost of the Privacy Rule by approximately $100 million over ten years.

Measuring both the economic costs and benefits of health information privacy was recognized as a difficult task. The paucity of data and incomplete information on current industry privacy and information system practices made cost estimation a challenge. Benefits were difficult to measure because they are, for the most part, inherently intangible. Therefore, the regulatory impact analysis in the Privacy Rule focused on the key policy areas addressed by the privacy standards, some of which would be affected by the proposed modifications in this rulemaking.

B. Proposed Modifications To Prevent Barriers to Access to or Quality of Health Care

The changes proposed in this rulemaking are intended to address the possible adverse effects of the final privacy standards on an individual's access to, or the quality of, health care. The modifications touch on five of the key policy areas addressed by the final regulatory impact analysis, including consent, research, marketing, notice, and business associates.

Consent

Under the Privacy Rule, a covered health care provider with a direct treatment relationship with an individual must obtain the individual's prior written consent for use or disclosure of protected health information for treatment, payment, or health care operations, subject to a limited number of exceptions. Other covered health care providers and health plans may obtain such a consent if they so choose. The initial cost of the consent requirement was estimated to be $42 million. Based on assumptions for growth in the number of patients, the total costs for ten years was estimated to be $103 million. *See* 65 FR 82771 (December 28, 2000).[2]

The proposed modifications would eliminate the consent requirement. The consent requirement posed many difficulties for an individual's access to health care, and was problematic for operations essential for the quality of the health care delivery system. However, any health care provider or health plan may choose to obtain an individual's consent for treatment, payment, and health care operations. The elimination of the consent requirement reduces the initial cost of the privacy standards by $42 million in the first year and by $103 million over ten years.

As explained in detail in section III.A.1. above, many comments that the Department received in March 2001 and testimony before the NCVHS revealed that the consent requirements in the Privacy Rule create unintended barriers to timely provision of care, particularly with respect to use and disclosure of health information prior to a health care provider's first face-to-face contact with the individual. These and other barriers discussed above would have entailed costs not anticipated in the economic analyses in the Privacy Rule. These comments also revealed that the consent requirements create administrative burdens, for example, with respect to tracking the status and revocation of consents, that were not foreseen and thus not included in that economic analysis. Therefore, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

Notice

In eliminating the consent requirement, the Department proposes to preserve the opportunity for a covered health care provider with a direct treatment relationship with an individual to engage in a meaningful communication about the provider's privacy practices and the individual's rights by strengthening the notice requirements. Under the Privacy Rule, these health care providers are required to distribute to individuals their notice of privacy practices no later than the date of the first service delivery after the compliance date. The modifications would not change this distribution requirement, but would add a new documentation requirement. A covered health care provider with a direct treatment relationship would be required to make a good faith effort to obtain the individual's acknowledgment of receipt of the notice provided at the first service delivery. The form of the acknowledgment is not prescribed and can be as unintrusive as retaining a copy of the notice initialed by the individual. If the provider's good faith effort fails, documentation of the attempt is all that would be required. Since the modification would not require any change in the form of the notice or its distribution, the ten-year cost estimate of $391 million for these areas in the Privacy Rule's impact analysis remains the same. *See* 65 FR 82770 (December 28, 2000).

However, the additional effort by direct treatment providers in obtaining and documenting the individual's acknowledgment of receipt of the notice would add costs. This new requirement would attach only to the initial provision of notice by a direct treatment provider to an individual after the compliance date. Under the proposed modification, providers would have considerable flexibility on how to achieve this. Some providers could

[2] The total cost for consent in the regulatory impact analysis showed an initial cost of $166 million and $227 million over ten years. Included in these total numbers is the cost of tracking patient requests to restrict the disclosure of their health information. This right is not changed in these modifications. The numbers here represent the costs associated with the consent functions that are proposed to be repealed.

choose to obtain the required written acknowledgment on a separate piece of paper, while others could take different approaches, such as an initialed check-off sheet or a signature line on the notice itself with the provider keeping a copy.

In the original analysis, the Department estimated that the consent cost would be $0.05 per page based on the fact that the consent had to be a stand alone document requiring a signature. This proposed modification to the notice requirement would provide greater flexibility and, therefore, greater opportunity to reduce costs compared to the consent requirement. The Department estimates that the additional cost of the signature requirement, on average, would be $0.03 per notice. Based on data obtained from the Medical Expenditure Panel Survey (MEPS), which estimate the number of patient visits in a year, the Department estimates that in the first year there would be 816 million notices distributed, including the new additional information needed to acknowledge receipt of the notice. Over the next nine years, the Department estimates, again based on MEPS data, that there would be 5.3 billion visits to health care providers by new patients (established patients will not need to receive another copy of the notice). At $0.03 per document, the first year cost would be $24 million and the total cost over ten years would be $184 million.

Business Associates

The Privacy Rule requires a covered entity to have a written contract, or other arrangement that documents satisfactory assurances that a business associate will appropriately safeguard protected health information in order to disclose protected health information to the business associate. The regulatory impact analysis for the Privacy Rule provided cost estimates for two aspects of this requirement. In the Privacy Rule, $103 million in first-year costs was estimated for development of a standard business associate contract language. (There were additional costs associated with these requirements related to the technical implementation of new data transfer protocols, but these are not affected by the changes being proposed here.) In addition, $197 million in first-year costs and $697 million in total costs over ten years were estimated in the Privacy Rule for the review and oversight of existing business associate contracts.

The modifications do not change the standards for business associate contracts or the implementation specifications with respect to the covered entity's responsibilities for managing the contracts. However, as part of this proposal, the Department is including model business associate contract language. This model is only suggested language and is not a complete contract. The model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties. The final regulatory impact analysis assumed the development of such standard language by trade and professional associations. While this has, in fact, been occurring, the Department continues to receive requests for model contract language, particularly from small health care providers. The Department expects that trade and professional associations will continue to provide assistance to their members. However, the model contract language in this proposal will simplify their efforts by providing a base from which they can develop language. The Department had estimated $103 million in initial year costs for this activity based on the assumption it would require one hour per non-hospital provider and two hours for hospitals and health plans to develop contract language and to tailor the language to the particular needs of the covered entity. The additional time for hospitals and health plans reflected the likelihood that these covered entities would have a more extensive number of business associate relationships. Because there will be less effort expended than originally estimated in the Privacy Rule, the Department estimates a reduction in contract development time by one-third because of the availability of the model language. Thus, the Department now estimates that this activity will take 40 minutes for non-hospital providers and 80 minutes for hospitals and health plans. The Department estimates that the savings from the proposed business associate contract language would be approximately $35 million in the first year.

The Department is also proposing in this rulemaking to give covered entities additional time to review their existing business associate contracts and to conform written contracts to the privacy standards. Under the proposal, a covered entity's written business associate contracts, existing at the time the modifications become effective, would be deemed to comply with the privacy standards until such time as the contracts are renewed or modified or until April 14, 2004, whichever is earlier. The effect of this proposal would be to spread first year costs over an additional year, with a corresponding postponement of the costs estimated for the out years. However, the Department has no reliable information as to the number of contracts potentially affected by the modification or how long a delay may occur. Therefore, the Department does not compute any cost savings to this modification.

Marketing

Under § 164.514(e) of the Privacy Rule, certain health-related communications are subject to special conditions on marketing communications, if they also serve to promote the use or sale of a product or service. These marketing conditions require that particular disclosures be made as part of the marketing materials sent to individuals. Absent these disclosures, protected health information can only be used or disclosed in connection with such marketing communications with the individual's authorization. The Department is aware that the Privacy Rule's § 164.514(e) conditions for health-related communications create a potential burden on covered entities to make difficult assessments regarding many of their communications. The proposed modifications to the marketing provisions would relieve the burden on covered entities by making most marketing subject to an authorization requirement and eliminating the § 164.514(e) conditions on marketing communications.

In developing the final impact analysis for the Privacy Rule, the Department was unable to estimate the cost of the marketing provisions. There was too little data and too much variation in current practice to estimate how the Privacy Rule might affect marketing. The same remains true today. However, the proposed modifications would relieve burden on the covered entities in making communications for treatment and certain health care operations relative to the requirements in the Privacy Rule. Although the Department cannot provide a quantifiable estimate, the effect of these proposed changes will be to lower costs relative to the Privacy Rule.

Research

In the final impact analysis for the Privacy Rule, the Department estimated the total cost of the provisions requiring documentation of an Institutional Review Board (IRB) or Privacy Board waiver of individual authorization for the use or disclosure of protected health information for a research purpose as $40 million for the first year and $585 million for the ten-year period. The costs were estimated based on the time that an IRB or privacy board would need to consider a request for a waiver under the criteria provided in the Privacy Rule. See 65 FR 82770–82771 (December 28, 2000).

The proposed modification would simplify and reduce the number of criteria required for an IRB or Privacy Board to approve a waiver of authorization in three ways. First, the proposal would simplify the criteria for waivers to better conform to the Common Rule's waiver criteria for informed consent to participate in the research study. Second, the proposal would simplify the accounting procedures for research by eliminating the need to account for disclosures based on individual authorization. Third, the proposal would simplify the authorization process for research to facilitate the combining of the informed consent for participation in the research itself with all authorizations required under the Privacy Rule. Therefore, the Department estimates that the net effect of these modifications would be to reduce the time necessary to assemble the necessary waivers and for an IRB or Privacy Board to consider and act on waiver requests by one quarter. The Department estimates these simplifications would reduce the expected costs first year costs by $10 million and the ten year costs by $146 million, relative to the Privacy Rule. Since this initial estimate is based on limited information available to the Department, the Department requests information to better assess this cost savings.

PRIVACY RULE MODIFICATIONS—TEN-YEAR COST ESTIMATES

Policy	Original Cost	Modification	Change due to modification
Consent	$103 million	Provision removed	−$103 million.[1]
Notice	$391 million	Good faith effort to obtain acknowledgment of receipt.	+$184 million.
Marketing	Not scored due to lack of data.	Fewer activities constitute marketing.	Reduction in cost but magnitude cannot be estimated.
Business Associates	$103 million for contract modifications.	Model language provided	−$35 million.
Research	$585 million	Waiver requirements simplified.	−$146 million.
Net Change			−$100 million.

[1] As noted above in the discussion on consent, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

C. Costs to the Federal Government

The proposed changes in this Rule will result in small savings to the federal government relative to the costs that would have occurred under the Privacy Rule. Although there will be some increase in costs for the new requirements for obtaining acknowledgment for receipt of the notice, these costs are partially offset by the savings in the elimination of the consent. As discussed above, to the extent comments are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. The Department does not believe the federal government engages in significant marketing as defined in the Privacy Rule. The federal government will have business associates under the Privacy Rule, and therefore, the model language proposed in this rulemaking will be of benefit to federal departments and agencies. The Department has not estimated the federal government's portion of the $35 million savings it estimated for this change. Similarly, the federal government, which conducts and sponsors a significant amount of research that is subject to IRBs, will realize some savings as a result of the research modifications proposed in this rulemaking. The Department does not have sufficient information, however, to estimate the federal government's portion of the total $146 million savings with respect to research modifications.

D. Costs to State and Local Government

The proposed changes also may affect the costs to state and local governments. However, these effects likely will be small. As with the federal government, state and local governments will have any costs of the additional notice requirement offset by the savings realized by the elimination of the consent requirement. As discussed above, to the extent comments are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. State and local governments could realize savings from the model language for business associates and the changes in research, but the savings are likely to be small. The Department does not have sufficient information to estimate the state and local government's share of the net savings from the proposed changes.

E. Benefits

The benefits of these modifications would be lower costs, and enhanced implementation and compliance with the Privacy Rule without compromising the protection of individually identifiable health information or access to quality health care.

F. Alternatives

In July 2001, the Department clarified the Privacy Rule in guidance, where feasible, to resolve some of the issues raised by commenters. Issues that could not adequately be addressed through guidance because of the need for a regulatory change are addressed in this proposed Rule. The Department examined a number of alternatives to these proposed provisions. One alternative was to not make any changes to the Privacy Rule, but this option was rejected for the reasons explained throughout the preamble. The Department also considered various alternatives to specific provisions in the development of this proposed Rule. These alternatives are generally discussed above, where appropriate.

V. Preliminary Regulatory Flexibility Analysis

The Department also examined the impact of this proposed Rule as required

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by the Small Business Regulatory Enforcement and Fairness Act (SBREFA) (5 U.S.C. 601, *et seq.*). SBREFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities.

The law does not define the thresholds to use in implementing the law and the Small Business Administration discourages establishing quantitative criteria. However, the Department has long used two criteria—the number of entities affected and the impact on revenue and costs—for assessing whether a regulatory flexibility analysis is necessary. Department guidelines state that an impact of three to five percent should be considered a significant economic impact. Based on these criteria, the Department has determined that a regulatory flexibility analysis is not required.

As described in the Regulatory Flexibility Analysis for the Privacy Rule, most covered entities are small businesses—approximately 465,000. *See* Table A, 65 FR 82780 (December 28, 2000). Lessening the burden for small entities, consistent with the intent of protecting privacy, was an important consideration in developing these modifications. However, as discussed in the Preliminary Regulatory Impact Analysis, above, the net affect of the proposed changes is an overall savings of approximately $100 million over ten years. Even if all of this savings were to accrue to small entities (an over estimation), the impact per small entity would be de minimis.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, the Department is required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agency.
- The accuracy of the estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In accordance with these requirements, the Department is soliciting public comments on the model business associate contract language displayed in the Appendix to this proposed Rule. The Department provides these model business associate contract provisions in response to numerous requests for guidance. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. Nor is the model language a complete contract. Rather, the model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties.

Section 164.506—Consent for Treatment, Payment, and Health Care Operations

Under the Privacy Rule, a covered health care provider that has a direct treatment relationship with individuals must, except in certain circumstances, obtain an individual's consent to use or disclose protected health information to carry out treatment, payment, and health care operations. The modifications would eliminate this requirement. While the consent requirement is subject to the PRA, the Department believes that the burden associated with the requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2). Therefore, the modification does not affect the paperwork burden associated with the Privacy Rule.

Section 164.520—Notice of Privacy Practices for Protected Health Information

The modifications would impose a good faith effort on direct treatment providers to obtain an individual's acknowledgment of receipt of the notice of privacy practices for protected health information and to document such acknowledgment or, in the absence of such acknowledgment, the entity's good faith efforts to obtain it. In addition, a covered entity would have to retain the acknowledgment or documentation of the good faith effort as required by § 164.530(j). The Department is continuing to work on estimating the burden imposed by the Privacy Rule. The estimate for the acknowledgment of receipt of the notice will be reflected in the paperwork reduction package to be submitted to OMB as required by the PRA.

The Department has submitted a copy of this proposed Rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Center for Medicaid and Medicare Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke, HIPAA Privacy;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Herron Eydt, CMS Desk Officer.

VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million in a single year. A final cost-benefit analysis was published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82794). In developing the final Privacy Rule, the Department adopted the least burdensome alternatives, consistent with achieving the Rule's goals. The Department does not believe that the modifications in the proposed Rule would qualify as an unfunded mandate under the statute.

VIII. Environmental Impact

The Department has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent Privacy Rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The federalism implications of the Privacy Rule were assessed as required by Executive Order 13132 and published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82797). The proposed change with the most direct effect on federalism principles concerns the clarifications regarding the rights of parents and minors under State law. The modifications would make clear the intent of the Department to defer to State law with respect to such rights. Therefore, the Department believes that the modifications in this proposed Rule would not significantly affect the rights, roles and responsibilities of States.

Appendix to the Preamble—Model Business Associate Contract Provisions

Introduction

The Department of Health and Human Services provides these model business associate contract provisions in response to numerous requests for guidance. This is only model language. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. The language may be amended to more accurately reflect business arrangements between the covered entity and the business associate.

These or similar provisions may be incorporated into an agreement for the provision of services between the entities or they may be incorporated into a separate business associate agreement. These provisions only address concepts and requirements set forth in the Privacy Rule and alone are not sufficient to result in a binding contract under State law and do not include many formalities and substantive provisions that are required or typically included in a valid contract. Reliance on this model is not sufficient for compliance with state law and does not replace consultation with a lawyer or negotiations between the parties to the contract.

Furthermore, a covered entity may want to include other provisions that are related to the Privacy Rule but that are not required by the Privacy Rule. For example, a covered entity may want to add provisions in a business associate contract in order for the covered entity to be able to rely on the business associate to help the covered entity meet its obligations under the Privacy Rule. In addition, there may be permissible uses or disclosures by a business associate that are not specifically addressed in these model provisions. For example, the Privacy Rule does not preclude a business associate from disclosing protected health information to report unlawful conduct in accordance with § 164.502(j). However, there is not a specific model provision related to this permissive disclosure. These and other types of issues will need to be worked out between the parties.

Model Business Associate Contract Provisions [1]

Definitions (alternative approaches)

Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

Examples of specific definitions:

(a) *Business Associate.* "Business Associate" shall mean [Insert Name of Business Associate].

(b) *Covered Entity.* "Covered Entity" shall mean [Insert Name of Covered Entity].

(c) *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(d) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(e) *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

(g) *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. [This provision may be included if it is appropriate for the Covered Entity to pass on its duty to mitigate damages by a Business Associate.]

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. [Not necessary if business associate does not have protected health information in a designated record set.]

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. [Not necessary if business associate does not have protected health information in a designated record set.]

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section [Insert Section Number in Contract Where Provision (i) Appears] of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions (alternative approaches)

Specify purposes:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity: [List Purposes].

Refer to underlying services agreement:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

[1] Words or phrases contained in brackets are intended as either optional language or as instructions to the users of these model provisions and are not intended to be included in the contractual provisions.

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Specific Use and Disclosure Provisions [only necessary if parties wish to allow Business Associate to engage in such activities]

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions [provisions dependent on business arrangement]

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. [Include an exception if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate].

Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of [Insert Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement [and the ____ Agreement/sections ____ of the ____ Agreement] if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement [and the ____ Agreement/sections ____ of the ____ Agreement] if Business Associate has breached a material term of this Agreement and cure is not possible. [Bracketed language in this provision may be necessary if there is an underlying services agreement. Also, opportunity to cure is permitted, but not required by the Privacy Rule.]

(c) *Effect of Terminotion.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104–191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section [Insert Section Number Related to "Effect of Termination"] of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

List of Subjects

45 CFR Part 160

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

45 CFR Part 164

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

Dated: March 12, 2002.

Tommy G. Thompson,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend 45 CFR Subtitle A, Subchapter C, as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 continues to read as follows:

Authority: Sec. 1171 through 1179 of the Social Security Act, (42 U.S.C. 1320d–1329d–8) as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031 and sec. 264 of Pub. L. 104–191 (42 U.S.C. 1320d–2(note)).

§ 160.102 [Amended]

2. Amend § 160.102(b), by removing the phrase "section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191)" and adding in its place the phrase "the Social Security Act, 42 U.S.C. 1320a–7c(a)(5)".

3. In § 160.103 add the definition of "individually identifiable health information" in alphabetical order to read as follows:

§ 160.103 Definitions.

* * * * *

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

* * * * *

4. In § 160.202 revise paragraphs (2) and (4) of the definition of "more stringent" to read as follows:

§ 160.202 Definitions.

* * * * *

More stringent means * * *

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

* * * * *

(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

* * * * *

§ 160.203 [Amended]

5. Amend § 160.203(b) by adding the words "individually identifiable" before the word "health".

PART 164—SECURITY AND PRIVACY

Subpart E—Privacy of Individually Identifiable Health Information

1. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(note)).

§ 164.102 [Amended]

2. Amend § 164.102 by removing the words "implementation standards" and adding in its place the words "implementation specifications."

§ 164.500 [Amended]

3. In § 164.500, remove "consent," from paragraph (b)(1)(v).

§ 164.501 [Amended]

4. Amend § 164.501 as follows:

a. In the definition of "health care operations" remove from the introductory text of the definition ", and any of the following activities of an organized health care arrangement in which the covered entity participates" and revise paragraphs (6)(iv) and (v).

b. Remove the definition of "individually identifiable health information".

c. Revise the definition of "marketing".

d. In paragraph (1)(ii) of the definition of "payment," remove the word "covered".

e. Revise paragraph (2) of the definition of "protected health information".

The revisions read as follows:

§ 164.501 Definitions.

* * * * *

Health care operations means * * *

(6) * * *

(iv) The sale, transfer, merger, or consolidation of all or part of a covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and

(v) Consistent with the applicable requirements of § 164.514, creating de-identified health information and fundraising for the benefit of the covered entity.

* * * * *

Marketing means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service. *Marketing* excludes a communication made to an individual:

(1) To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or services (or payment for such product or service) is provided by a covered entity or included in a plan of benefits;

(2) For treatment of that individual; or

(3) For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual.

* * * * *

Protected health information means * * *

(2) *Protected health information* excludes individually identifiable health information in:

(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(iii) Employment records held by a covered entity in its role as employer.

* * * * *

5. Amend § 164.502 as follows:

a. Revise paragraphs (a)(1)(ii), (iii), and (vi).

b. Revise paragraph (b)(2)(ii).

c. Redesignate paragraphs (b)(2)(iii) through (v) as paragraphs (b)(2)(iv) through (vi).

d. Add a new paragraph (b)(2)(iii).

e. Redesignate paragraphs (g)(3)(i) through (iii) as (g)(3)(i)(A) through (C) and redesignate paragraph (g)(3) as (g)(3)(i).

f. Add new paragraphs (g)(3)(ii) and (iii).

The revisions and additions read as follows:

§ 164.502 Uses and disclosures of protected health information: general rules.

(a) *Standard.* * * *

(1) *Permitted uses and disclosures.*

* * *

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) As incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of § 164.502(b), § 164.514(d), and § 164.530(c) with respect to such otherwise permitted or required uses or disclosures;

* * * * *

(vi) As permitted by and in compliance with this section, § 164.512, or § 164.514(f) and (g).

* * * * *

(b) *Standard: Minimum necessary.*

* * *

(2) *Minimum necessary does not apply.* * * *

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

* * * * *

(g)(1) *Standard: Personal representatives.* * * *

(3) *Implementation specification: unemancipated minors.*

(i) * * *

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) A covered entity may disclose protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* if an applicable provision of State or other law, including applicable case law, permits or requires such disclosure; and

(B) A covered entity may not disclose protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* if an applicable provision of State or other law, including applicable case law, prohibits such disclosure.

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(iii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section, a covered entity must, consistent with State or other applicable law, provide a right of access, as set forth in § 164.524 to either:

(A) A parent, guardian, or other person acting *in loco parentis*, as the personal representative of the unemancipated minor;

(B) The unemancipated minor; or

(C) Both.

* * * * *

6. Amend § 164.504 as follows:

a. In paragraph (a), revise the definitions of "health care component" and "hybrid entity".

b. Revise paragraph (c)(1)(ii).

c. Revise paragraph (c)(3)(iii).

d. Revise paragraph (f)(1)(i).

e. Add paragraph (f)(1)(iii).

The revisions and addition read as follows:

§ 164.504 Uses and disclosures: Organizational requirements.

(a) *Definitions.* * * *

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with paragraph (c)(3)(iii) of this section.

Hybrid entity means a single legal entity:

(1) That is a covered entity;

(2) Whose business activities include both covered and non-covered functions; and

(3) That designates health care components in accordance with paragraph (c)(3)(iii) of this section.

* * * * *

(c)(1) *Implementation specification: Application of other provisions.* * * *

(ii) A reference in such provision to a "health plan," "covered health care provider," or "health care clearinghouse" refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable; and

* * * * *

(3) *Implementation specifications: Responsibilities of the covered entity.* * * *

(iii) The covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation as required by § 164.530(j), provided that if the covered entity designates a health care component or components, it must include any component that would meet the definition of covered entity if it were a separate legal entity. Health care component(s) may include a component that performs:

(A) covered functions; and

(B) activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

* * * * *

(f)(1) *Standard: Requirements for group health plans.* (i) Except as provided under paragraph (f)(1)(ii) or (iii) of this section or as otherwise authorized under § 164.508, a group health plan, in order to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of this subpart.

* * * * *

(iii) The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan to the plan sponsor.

* * * * *

7. Revise § 164.506 to read as follows:

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Permitted uses and disclosures.* Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) *Standard: Consent permitted.* (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent of an individual under this paragraph shall not be effective to permit a use or disclosure of protected health information that is not otherwise permitted or required by this subpart.

(c) *Implementation specifications: Treatment, payment, or health care operations.*

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of another health care provider.

(3) A covered entity may disclose protected health information to another covered entity or health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if both entities have a relationship with the individual who is the subject of the protected health information being requested, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

8. Amend § 164.508 as follows:

a. Remove "consistent with consent requirements in § 164.506" in paragraph (a)(2)(i).

b. Add "the" before "originator" in paragraph (a)(2)(i)(A).

c. Remove the word "in" after the term "covered entity" and add in its place the words "for its own" in paragraph (a)(2)(i)(B).

d. Add the words "itself in" after the word "defend" in paragraph (a)(2)(i)(C).

e. Add paragraph (a)(3).

f. Revise paragraphs (b)(1)(i).

g. Remove the word "be" in paragraph (b)(1)(ii).

h. Remove ", (d), (e), or (f)" from paragraph (b)(2)(ii).

i. Remove paragraph (b)(2)(iv).

j. Redesignate paragraphs (b)(2)(v) and (vi) as paragraphs (b)(2)(iv) and (v).

k. Add "or (4)" after "(b)(3)" in redesignated paragraph (b)(2)(iv).

l. Revise paragraphs (b)(3)(i).

m. Add a comma after the term "psychotherapy notes" in paragraph (b)(3)(iii).

n. Remove "under paragraph (f) of" and add in its place "for the use or disclosure of protected health information for such research under" in paragraph (b)(4)(i).

o. Add the word "and" at the end of paragraph (b)(4)(ii)(B).

p. Remove paragraph (b)(4)(iii).

q. Redesignate paragraph (b)(4)(iv) as paragraph (b)(4)(iii).

r. Add "or the policy itself" after the word "policy" in paragraph (b)(5)(ii).

s. Remove paragraphs (d), (e), and (f).

t. Revise paragraph (c).

The revisions and addition read as follows:

§ 164.508 Uses and disclosures for which an authorization is required.

(a) *Standard: Authorizations for uses and disclosures.* * * *

(3) *Authorization required: Marketing.* (i) Notwithstanding any other provision of this subpart other than § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing is expected to result in direct or indirect remuneration to the covered entity from a third party, the authorization must state that such remuneration is expected.

* * * * *

(b) *Implementation specifications: General requirements.* * * *

(1) *Valid authorizations.*

(i) A valid authorization is a document that meets the requirements in paragraphs (c)(1) and (2) of this section.

* * * * *

(3) *Compound authorizations.* * * *

(i) An authorization for the use or disclosure of protected health information for a specific research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a consent to participate in such research;

* * * * *

(c) *Implementation specifications: Core elements and requirements.* (1) *Core elements.* A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The following statements meet the requirements for an expiration date or an expiration event if the appropriate conditions apply:

(A) The statement "end of the research study" or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research.

(B) The statement "none" or similar language is sufficient if the authorization is for the covered entity to use or disclose protected health information for the creation and maintenance of a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) *Required statements.* In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this rule.

(3) *Plain language requirement.* The authorization must be written in plain language.

(4) *Copy to the individual.* If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

9. Amend § 164.510 as follows:

a. Revise the first sentence of the introductory text.

b. Remove the word "for" from paragraph (b)(3).

The revision reads as follows:

§ 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. * * *

* * * * *

10. Amend § 164.512 as follows:

a. Revise the section heading and the first sentence of the introductory text.

b. Revise paragraph (b)(1)(iii).

c. In paragraph (b)(1)(v)(A) remove the word "a" before the word "health."

d. Add the word "and" after the semicolon at the end of paragraph (b)(1)(v)(C).

e. Redesignate paragraphs (f)(3)(ii) and (iii) as (f)(3)(i) and (ii).

f. In the second sentence of paragraph (g)(2) add the word "to" after the word "directors."

g. In paragraph (i)(1)(iii)(A) remove the word "is" after the word "disclosure."

h. Revise paragraph (i)(2)(ii).

The revisions read as follows:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section,

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subject to the applicable requirements of this section. * * *

* * * * *

(b) *Standard: uses and disclosures for public health activities.*

(1) *Permitted disclosures.* * * *

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

* * * * *

(i) *Standard: Uses and disclosures for research purposes.* * * *

(2) *Documentation of waiver approval.* * * *

(ii) *Waiver criteria.* A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(*1*) An adequate plan to protect the identifiers from improper use and disclosure;

(*2*) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(*3*) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

* * * * *

11. Amend § 164.514 as follows:

a. Revise paragraph (b)(2)(i)(R).

b. Revise paragraph (d)(1).

c. Revise paragraph (d)(4)(iii).

d. Remove and reserve paragraph (e).

The revisions read as follows:

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

* * * * *

(b) *Implementation specifications: Requirements for de-identification of protected health information.* * * *

(2)(i) * * *

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and

* * * * *

(d)(1) *Standard: minimum necessary requirements.* In order to comply with § 164.502(b) and this section, a covered entity must meet the requirements of paragraphs (d)(2) through (d)(5) of this section with respect to a request for or the use and disclosure of protected health information.

* * * * *

(4) *Implementation specifications: Minimum necessary requests for protected health information.* * * *

(iii) For all other requests, a covered entity must:

(A) Develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made; and

(B) Review requests for disclosure on an individual basis in accordance with such criteria.

* * * * *

(e) [Removed and Reserved]

* * * * *

12. Amend § 164.520 as follows:

a. Remove the word "consent or" from paragraph (b)(1)(ii)(B).

b. Revise paragraph (c)(2)(i).

c. Redesignate paragraphs (c)(2)(ii) and (iii) as (c)(2)(iii) and (iv).

d. Add new paragraph (c)(2)(ii).

e. Amend redesignated paragraph (c)(2)(iv) by removing "(c)(2)(ii)" and adding in its place "(c)(2)(iii)'.

f. Revise paragraph (c)(3)(iii) by adding a sentence at the end.

g. Revise paragraph (e).

The revisions and addition read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(c) *Implementation specifications: provision of notice.* * * *

(2) *Specific requirements for certain covered health care providers.* * * *

(i) Provide the notice:

(A) No later than the date of the first service delivery, including service delivered electronically, to such individual after the compliance date for the covered health care provider; or

(B) In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation.

(ii) Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt of the notice provided in accordance with paragraph (c)(2)(i) of this section, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained;

* * * * *

(3) *Specific requirements for electronic notice.* * * *

(iii) * * * The requirements in paragraph (c)(2)(ii) of this section apply to electronic notice.

* * * * *

(e) *Implementation specifications: Documentation.* A covered entity must document compliance with the notice requirements, as required by § 164.530(j), by retaining copies of the notices issued by the covered entity and, if applicable, any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment, in accordance with paragraph (c)(2)(ii) of this section.

§ 164.522 [Amended]

13. Amend § 164.522 by removing the reference to "164.502(a)(2)(i)" in paragraph (a)(1)(v), and adding in its place "164.502(a)(2)(ii)".

14. Amend § 164.528 as follows:

a. In paragraph (a)(1)(i), remove "§ 164.502" and add in its place "§ 164.506".

b. Redesignate paragraphs (a)(1)(iii) through (vi) as (a)(1)(iv) through (vii).

c. Add paragraph (a)(1)(iii).

d. Revise paragraph (b)(2)(iv) in its entirety.

e. Remove "or pursuant to a single authorization under § 164.508," from paragraph (b)(3).

The addition and revision read as follows:

§ 164.528 Accounting of disclosures of protected health information.

(a) *Standard: Right to an accounting of disclosures of protected health information.*

(1) * * *

(iii) Pursuant to an authorization as provided in § 164.508.

* * * * *

(b) Implementation specifications: Content of the accounting. * * *

(2) * * *

(iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512, if any.

* * * * *

15. Amend § 164.530 as follows:

a. Redesignate paragraph (c)(2) as (c)(2)(i).

b. Add paragraph (c)(2)(ii).

c. Remove the words "the requirements" from paragraph (i)(4)(ii)(A) and add in their place the word "specifications."

The addition reads as follows:

§ 164.530 Administrative requirements.

* * * * *

(c) *Standard: Safeguards.* * * *

(2) *Implementation specifications: Safeguards.* (i) * * *

(ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

* * * * *

16. Revise § 164.532 to read as follows:

§ 164.532 Transition Provisions.

(a) *Standard: Effect of prior authorizations.* Notwithstanding §§ 164.508 and 164.512(i), a covered entity may use or disclose protected health information, consistent with paragraphs (b) and (c) of this section, pursuant to an authorization or other express legal permission obtained from an individual permitting the use or disclosure of protected health information, informed consent of the individual to participate in research, or a waiver of informed consent by an IRB.

(b) *Implementation specification: Effect of prior authorization for purposes other than research.* Notwithstanding any provisions in § 164.508, a covered entity may use or disclose protected health information that it created or received prior to the applicable compliance date of this subpart pursuant to an authorization or other express legal permission obtained from an individual prior to the applicable compliance date of this subpart, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction in accordance with § 164.522(a).

(c) *Implementation specification: Effect of prior permission for research.* Notwithstanding any provisions in §§ 164.508 and 164.512(i), a covered entity may use or disclose, for a specific research study, protected health information that it created or received either before or after the applicable compliance date of this subpart, provided that there is no agreed-to restriction in accordance with § 164.522(a) and that the covered entity has obtained, prior to the applicable compliance date, either:

(1) The authorization or other express legal permission from an individual to use or disclose protected health information for the research study;

(2) The informed consent of the individual to participate in the research study; or

(3) A waiver, by an IRB, of informed consent for the research study, in accordance with 7 CFR 1c.116(d), 10 CFR 745.116(d), 14 CFR 1230.116(d), 15 CFR 27.116(d), 16 CFR 1028.116(d), 21 CFR 50.24, 22 CFR 225.116(d), 24 CFR 60.116(d), 28 CFR 46.116(d), 32 CFR 219.116(d), 34 CFR 97.116(d), 38 CFR 16.116(d), 40 CFR 26.116(d), 45 CFR 46.116(d), 45 CFR 690.116(d), or 49 CFR 11.116(d), provided that a covered entity must obtain authorization in accordance with § 164.508 if, after the compliance date, informed consent is sought from an individual participating in the research study.

(d) *Standard: Effect of prior contracts or other arrangements with business associates.* Notwithstanding any other provisions of this subpart, a covered entity, other than a small health plan, may disclose protected health information to a business associate and may allow a business associate to create, receive, or use protected health information on its behalf pursuant to a written contract or other written arrangement with such business associate that does not comply with §§ 164.502(e) and 164.504(e) consistent with the requirements, and only for such time, set forth in paragraph (e) of this section.

(e) *Implementation specification: Deemed compliance.*—(1) *Qualification.* Notwithstanding other sections of this subpart, a covered entity, other than a small health plan, is deemed to be in compliance with the documentation and contract requirements of §§ 164.502(e) and 164.504(e), with respect to a particular business associate relationship, for the time period set forth in paragraph (e)(2) of this section, if:

(i) Prior to the effective date of this provision, such covered entity has entered into and is operating pursuant to a written contract or other written arrangement with a business associate for such business associate to perform functions or activities or provide services that make the entity a business associate; and

(ii) The contract or other arrangement is not renewed or modified from the effective date of this provision and until the compliance date set forth in § 164.534.

(2) *Limited deemed compliance period.* A prior contract or other arrangement that meets the qualification requirements in paragraph (e) of this section, shall be deemed compliant until the earlier of:

(i) The date such contract or other arrangement is renewed or modified on or after the compliance date set forth in § 164.534; or

(ii) April 14, 2004.

(3) *Covered entity responsibilities.* Nothing in this section shall alter the requirements of a covered entity to comply with part 160, subpart C of this subchapter and §§ 164.524, 164.526, and 164.528 with respect to protected health information held by a business associate.

[FR Doc. 02–7144 Filed 3–21–02; 12:00 pm]
BILLING CODE 4153–01–P

VOL
67
ISS
59
MR
27
2002
UMI

Federal Register

Wednesday,
March 27, 2002

Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2002; Proposed Rule

VOL 67 ISS 59 MR 27 2002 UMI

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately $479.5 million.

DATES: The comment period expires April 26, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that the NRC collect the FY 2002 fees by September 30, 2002, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1678). Comments may be faxed to (301) 415–1101.

Comments may also be submitted via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson; Telephone 301–415–6057 or Robert Carlson; Telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately $479.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 96 percent of its FY 2002 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2002 is $559.1 million, of which approximately $23.7 million has been appropriated from the NWF. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately $479.5 million in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2002 is $26.2 million more than the amount estimated for recovery in FY 2001.

The FY 2002 fee recovery amount is reduced by a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately $477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $120.2 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately $8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining $348.9 million would be recovered through the part 171 annual fees, compared to $331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in millions]

Total Budget Authority	$559.1
Less NWF	−23.7
Less General Fund	−36.0
Balance	$499.5
Fee Recovery Rate for FY 2002	× 96.0%
Total Amount to be Recovered For FY 2002	$479.5
Less Carryover from FY 2001	−1.7
Amount to be Recovered Through Fees and Other Receipts	$477.8
Less Estimated Part 170 Fees and Other Receipts	−120.7
Part 171 Fee Collections Required	$357.1
Part 171 Billing Adjustments:	
Unpaid FY 2002 Invoices (estimated)	2.9
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	−11.1
Subtotal	−8.2
Adjusted Part 171 Collections Required	$348.9

The FY 2002 final fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2002 final rule. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule would be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule would be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

The NRC, in proposing FY 2002 fees for uranium recovery licensees, is cognizant that the National Mining Association (NMA) has filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the fee schedules to waive all fees for uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NRC not only published the petition in the **Federal Register** for comment (66 FR 55604; November 2, 2001), but also mailed the **Federal Register** document noticing the petition and inviting public comment to each of the NRC's more than 5,000 licensees. The comment period expired on January 16, 2002. The NRC is now evaluating the comments it has received in response to this action.

The Commission anticipates issuing its decision on the rulemaking petition before the projected promulgation of the final FY 2002 fee rule in June. Should the Commission decide to grant the rulemaking petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The additional fees to be distributed among other licensees could be between $3.0 and $4.0 million in FY 2002. In such a case, more than 85 percent of this sum would be allocated to power reactors based on the NRC's established method for allocating costs not attributable to those licensees paying annual fees. Thus, the NRC is inviting those who have arguments to place before the Commission *that were not submitted* in response to the November 2, 2001, **Federal Register** document requesting public comment on the petition to do so now.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June 2002. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates. Additionally, the NRC is proposing to revise part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in § 170.20. These proposed rates would be based on the number of FY 2002 direct program full time equivalents (FTEs) and the FY 2002 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the part 170 fees. The proposed hourly rate for the reactor program is $156 per hour ($276,345 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The proposed hourly rate for the materials program (nuclear materials and nuclear waste programs) is $152 per hour ($269,451 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2001 final fee rule, the reactor and materials program rates were $150 and $144, respectively. The proposed increases are primarily due to the Government-wide pay increase in FY 2002.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2002 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor programs	Materials program
Direct Program Salaries & Benefits	117.0	32.2
Overhead Salaries & Benefits, Program Travel and Other Support	59.2	15.6
Allocated Agency Management and Support	106.9	29.0
Subtotal	283.1	76.8
Less offsetting receipts	−0.1	−0.0
Total Budget Included in Hourly Rate	283.0	76.8
Program Direct FTEs	1024.0	285.1
Rate per Direct FTE	276,345	269,451
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	156	152

As shown in Table II, dividing the $283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of $276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program would be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,345) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Similarly, dividing the $76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of $269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program would be $152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($269,451) by the number of productive hours in one year (1,776 hours).

2. Fees for Storage of Greater Than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in § 72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of § 170.31 to specifically include storage of reactor-related GTCC waste licensed under part 72. Category 1.B. of § 170.31 currently refers only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

3. Fee Adjustments

The NRC is proposing to adjust the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 would be based on the proposed professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2002 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application ("flat" fees) would be adjusted to reflect the increase in the professional hourly rates from FY 2001. The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

4. Fee Waivers

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC as a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to § 170.21, Footnote 5 to § 170.31, and material in the definition of *Special Projects* in § 170.3 concerning these types of requests and reports provide information that is more suitable for inclusion in § 170.11, Exemptions.

Therefore, the NRC is proposing to delete Footnote 4 to § 170.21 and Footnote 5 to § 170.31, to modify the language that is currently in those footnotes and add the revised fee waiver provisions to the Exemption section as § 170.11(a)(1). The NRC also proposes to remove the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in § 170.3. The fee waiver provisions will be revised to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, plans to use the submission for that purpose. The proposed modification would also clarify that the waiver provisions do not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in § 170.5, fee exemption requests should be made to the NRC's Chief Financial Officer. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the types of submissions that meet the fee waiver criteria and those that do not would be provided in § 170.11(a)(1).

In summary, the NRC is proposing to amend 10 CFR part 170 to—

1. Revise the materials and reactor program FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates;

3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees would be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and

4. Add to § 170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to § 170.21 and Footnote 5 to § 170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These footnotes, as well as material in the definition of *Special Projects* in § 170.3 related to certain special requests and reports submitted to NRC for review, would be deleted.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2002, to amend part 171 to specifically cover combined licenses issued under part 52, to clarify the annual fee exemption provision for reactors, and to modify the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. The proposed amendments are as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees for all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which would have annual fee decreases.

The annual fees in §§ 171.15 and 171.16 would be revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is $348.9 million, compared to $331.6 million for FY 2001.

The proposed FY 2002 annual fees would increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 5.1 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.6 percent for non-power reactors, to approximately 18 percent for the Title II uranium recovery specific licenses.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated part 170 collections for the various classes of licenses, a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a $3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the proposed decreases for the Title II uranium recovery specific licenses are based on a proposed change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I and Title II licenses. This proposed change is described in detail in B. below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448; June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has resulted in classifying approximately four staff members as PMs at this time, compared to approximately 97 in FY 2000. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed 75 percent of the assigned person's time for any given two week period, then the staff member will be considered a "Point of Contact." As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under part 171.

Although the change in policy for assigning PMs causes a decrease in estimated part 170 collections for some classes, it also results in more of the budgeted costs for that class being

recovered through annual fees. However, the change does not result in an increase in total fees paid by these classes. Licensees in the rare earth facility class, for example, would have an annual fee increase of approximately 129 percent, although the total budgeted costs for the class actually decreased from FY 2001. The increase in annual fees is primarily the result of the change in PM policy which caused a shift in cost recovery from part 170 to part 171. The effect of this change on the part 170 fees, part 171 fees, and the total fees for the class compared to FY 2001 is illustrated in Table III below.

TABLE III.—FEES FOR THE RARE EARTH CLASS FOR FY 2001 AND FY 2002

[Dollars in millions]

	FY 2001	FY 2002	Difference
Estimated part 170 fees	$.81	$.50	−$.31
Total annual fee amount	.09	.21	.12
Total	.90	.71	−.19

Table IV below shows the proposed rebaselined annual fees for FY 2002 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2002

Class/category of licenses	Proposed FY 2002 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$2,869,000
Spent Fuel Storage/Reactor Decommissioning	239,000
Nonpower Reactors	71,300
High Enriched Uranium Fuel Facility	4,073,000
Low Enriched Uranium Fuel Facility	1,366,000
UF_6 Conversion Facility	585,000
Uranium Mills	7,700
Transportation:	
Users/Fabricators	72,800
Users Only	7,300
Typical Materials Users:	
Radiographers	13,700
Well Loggers	10,000
Gauge Users	2,700
Broad Scope Medical	26,200

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2002 will be reduced by about $20.0 million. The total FY 2002 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$8.4
b. Agreement State oversight	8.7
c. Low-level waste disposal generic activities	1.5
d. Site decommissioning management plan activities not recovered under part 170	8.3
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	7.9
b. Licensing and inspection activities associated with other Federal agencies	3.7
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.0
b. Generic decommissioning/reclamation (except those related to power reactors)	8.3
Total surcharge costs	64.4

TABLE V.—SURCHARGE COSTS—Continued

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
Less 4 percent of NRC's FY 2002 total budget (NWF and General Fund amounts)	−20.0
Total Surcharge Costs to be Recovered	44.4

As shown in Table V, $44.4 million would be the total surcharge cost allocated to the various classes of licenses for FY 2002. The NRC would continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2002 proposed surcharge costs that would be allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$,M	Percent	$,M	$,M
Operating Power Reactors	74	1.1	79.7	34.1	35.3
Spent Fuel Storage/Reactor Decomm.			7.7	3.3	3.3
Nonpower Reactors			0.1	0.0	0.0
Fuel Facilities	8	0.1	5.8	2.5	2.6
Materials Users	18	0.3	4.5	1.9	2.2
Transportation			1.3	0.5	0.5
Rare Earth Facilities			0.2	0.1	0.1
Uranium Recovery			0.9	0.4	0.4
Total Surcharge	100	1.5	100.0	42.9	44.4

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address *http://www.gov/reading-rm/adams.html*. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

Because the FY 2002 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 final rule would be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule would be billed for the annual fee at the FY 2002 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities

The FY 2002 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately $18.8 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to part 171 fees applicable to fuel facilities, the budgeted costs included in the annual fee would be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

Prior to the beginning of FY 2002, one low enriched uranium fuel facility

permanently ceased licensed operations and filed for an amendment to place its license in a decommissioning status. The proposed annual fees for the fuel facility class reflect this change in the number of licensees subject to annual fees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the basis for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a numeric value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII below.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
UF_6 Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the $18.8 million total annual fee amount for the fuel facility class results in the proposed annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES

Facility type	Proposed FY 2002 annual fee
High Enriched Uranium Fuel	$4,073,000
Uranium Enrichment	2,537,000
Low Enriched Uranium	1,366,000
UF_6 Conversion	585,000
Limited Operations Facility	537,000
Others	390,000

B. Uranium Recovery Facilities

The FY 2002 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.7 million. Based on the following proposed change in the way NRC allocates these costs, approximately $1.0 million of this amount would be assessed to DOE. The remaining $0.7 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

The NRC is proposing to revise its methodology for allocating uranium recovery budgeted costs to be recovered through annual fees among the two major types of programs in the uranium recovery class. The first type is the NRC's Title I program for DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The second type is the NRC's UMTRCA Title II program; specifically, commercial solution mining facilities, conventional mills, and 11e.(2) mill tailings disposal facilities. Although the Title I program is part of the uranium recovery class, DOE is not currently assessed a portion of the NRC budgeted costs attributed to generic/other activities for the uranium recovery program. As a consequence, licensees under the NRC's specific licensing program (UMTRCA Title II) bear the entire cost of these activities.

In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined that it was appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care.

Therefore, the proposed methodology would allocate the total annual fee amount, less the amounts specifically budgeted for Title I activities, equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. Thus, the costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$377,232
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for DOE	1,056,000
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for Title II Specific Licenses	678,768

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Level of benefit			
	Number of facilities	Category weight	Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

Applying these factors to the $0.7 million in budgeted costs to be recovered from Title II specific licensees results in the following proposed annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	Proposed FY 2002 annual fee
Class I (conventional mills)	$77,700
Class II (solution mining)	65,100
11e.(2) disposal	47,900
11e.(2) disposal incidental to existing tailings sites	7,600

In the FY 2001 final rule (66 FR 32478), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2002 exceed the amount of the revised annual fee, the overpayment will be refunded. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

C. Power Reactors

The approximately $273.6 million in budgeted costs to be recovered through FY 2002 annual fees assessed to the power reactor class would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2002 annual fee of $2,630,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2002 spent fuel storage/reactor decommissioning annual fee of $239,000. This would result in a total FY 2002 annual fee of $2,869,000 for each power reactor licensed to operate.

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D. Spent Fuel Storage/Reactor Decommissioning

For FY 2002, budgeted costs of approximately $28.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2002 annual fee of $239,000 per licensee.

E. Non-Power Reactors

Approximately $285,200 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2002. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2002 annual fee of $71,300 for each licensee.

F. Rare Earth Facilities

The FY 2002 budgeted costs of approximately $205,300 for rare earth facilities to be recovered through annual fees would be divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is a proposed FY 2002 annual fee of $68,400 for each rare earth facility.

As explained previously, the increase in annual fees for the rare earth class is not the result of increased budgeted costs for the class, but rather the result of the change in NMSS's revised PM policy, which resulted in a shift of cost recovery for certain activities from part 170 to part 171.

G. Materials Users

To equitably and fairly allocate the $25.1 million in FY 2002 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $17.5 million in general costs and is 1.07 for FY 2002. The inspection multiplier is the multiple necessary to recover approximately $5.3 million in inspection costs for FY 2002, and is 1.1 for FY 2002. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2002, of the unique costs attributable to medical licensees for the medical development program, approximately $126,900 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the $1.9 million in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $300,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in § 171.16(d).

H. Transportation

Of the approximately $4.8 million in FY 2002 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.4 million would be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.4 million, approximately 25 percent would be allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent would be allocated only to the 39 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of $7,300 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of $72,800 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Part 52 Combined Licenses

The NRC proposes revising part 171 to: authorize assessment of annual fees for holders of combined licenses issued under part 52; clarify that the annual fees would be assessed for each license, and not for each unit; and establish when assessment of annual fees would begin.

Part 171 currently covers annual fees for part 50 licenses, but does not specifically cover annual fees for combined licenses issued under part 52. Additionally, neither part 52 nor part 171 addresses when NRC would begin to assess an annual fee to a part 52 license holder. The NRC proposes to revise § 171.3 "Scope" to specify that the annual fee regulations also apply to any person holding a combined license issued under part 52.

The annual fees for a part 52 combined license would be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Currently, § 171.15(a) provides that reactor licensees shall pay an annual fee "* * * for each unit for each license held * * *". It is the agency's present practice to charge annual fees per license, and the NRC is proposing to revise § 171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no existing combined licenses issued under part 52. However, the NRC is proposing these changes so potential applicants for a part 52 combined license are aware that such a license will be subject to annual fees in the future.

3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying § 171.11(c) to clarify that the annual fee exemption provision applies only to "operating" reactors. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986), which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with "operating" licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in § 171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for § 171.11, the NRC stated that the added exemption section "* * * provides that the holder of a license to 'operate' a power reactor * * * may apply to the Commission for partial relief from annual fee[s]."

In the FY 1999 final fee rule (64 FR 31448; June 10, 1999), the NRC established the Spent Fuel Storage/Reactor Decommissioning (SFSRD) class with an annual fee to be assessed to all reactor licensees having fuel onsite, regardless of their operating status. In the statement of considerations for the FY 1999 fee rule, the NRC stated that the Commission determined all reactors, including those which are shut down, should pay the SFSRD annual fee to recover the NRC's costs related to generic reactor decommissioning and spent fuel storage activities. It is clear from the statement of considerations that the Commission did not intend to relieve reactors that are not operating from the annual fee requirements unless they had permanently ceased operations and had no fuel onsite.

The Commission reemphasizes that all communications concerning annual fees, including exemption requests, should be addressed to the Chief Financial Officer, U.S. NRC, Washington DC 20555–0001 in accordance with § 171.9.

4. Administrative Amendment

The NRC is proposing to modify Category 1.B. of § 171.16(d) to specifically include licenses issued under part 72 for the reactor-related GTCC waste. This is an administrative change that would be made only to ensure consistency with the proposed description for fee category 1.B. of § 170.31 as described in A. above. The NRC is not proposing an annual fee for this category of license.

In summary, the NRC is proposing to—

1. Establish rebaselined annual fees for FY 2002;

2. Modify part 171 to specifically authorize assessment of annual fees to part 52 combined licenses;

3. Clarify that the annual fee exemption provision in § 171.11(c) applies only to "operating" reactors;

4. Make an administrative change to fee category 1.B. of § 171.16(d) to be consistent with the proposed change to category 1.B. of § 170.31.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 96 percent of its budget authority in FY 2002 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water

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Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2002 is 96 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the proposed amount of the FY 2002 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 96 percent of the Commission's FY 2002 budget of $559.1 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 96 percent of its FY 2002 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2002. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2002.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special projects* and adding, in alphabetical order, the definition for *Greater than Class C Waste* or *GTCC Waste* to read as follows:

§ 170.3 Definitions.

* * * * *

Greater than Class C Waste or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

* * * * *

3. In § 170.11, paragraph (a)(1) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A special project that is a request/report submitted to the NRC—

(i) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(ii) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts.

(A) This fee exemption applies only when:

(*1*) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements); and

(*2*) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(*1*) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

* * * * *

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities)—$156 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)—$152 per hour

5. In § 170.21, the introductory text and, in the table, Category J, Category K, and footnotes 1, 2, and 3 are revised and footnote 4 is removed to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services:

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
. . . . .	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses: Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application-new license	$9,900.
Amendment	$9,900.
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application-new license	5,800.
Amendment	5,800.
3. Application for export of components requiring foreign government assurances only.	
Application-new license	1,800.
Amendment	1,800.
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application-new license	1,200.
Amendment	1,200.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
Amendment	230.

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fees[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$700.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application	$1,400.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fees[2 3]
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$170.
C. All other source material licenses:	
Application	$6,000.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$7,100.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,300.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$9,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$2,600.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$8,500.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$2,400.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$3,600.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$620.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$6,000.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,600.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,700.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Registration	$4,400.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,400.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Application	$450.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,800.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,700.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$5,900.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,100.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,600.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,700.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,300.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$350.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,600.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,600.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,700.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$580.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$680.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$9,900.
Amendment	$9,900.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,800.
Amendment	$5,800.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,800.
Amendment	$1,800.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$230.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,400.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

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PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. Section 171.3 is revised to read as follows:

§ 171.3. Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

9. In § 171.5, the definition of *Greater than Class C Waste* or *GTCC waste* is added in alphabetical order to read as follows:

§ 171.5 Definitions.

* * * * *

Greater than Class C Waste or *GTCC waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

10. In § 171.11, paragraph (c) is revised to read as follows:

§ 171.11 Exemptions.

* * * * *

(c) An exemption for operating reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

* * * * *

11. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 2002 annual fee for each operating power reactor which must be collected by September 30, 2002, is $2,869,000.

(2) The FY 2002 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2002 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $239,000.

(2) The FY 2002 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2002 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2002 surcharge allocated to the operating power reactor class of licenses is $35.3 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2002 operating power reactor surcharge to be assessed to each operating power reactor is approximately $339,400. This amount is calculated by dividing the total operating power reactor surcharge ($35.3 million) by the number of operating power reactors (104).

(3) The FY 2002 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $3.3 million. The FY 2002 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $27,300. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2002 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$71,300
Test reactor—$71,300

12. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	$2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	$2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	$2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at *http://www.nrc.gov*. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at <fees@nrc.gov.>

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2002 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown for convenience in paragraph (e) of this section. The FY 2002 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox, SNM–42	$4,073,000
Nuclear Fuel Services, SNM–124	4,073,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
General Electric Company, SNM–1097	1,366,000
Siemens Nuclear Power, SNM–1227	1,366,000
Westinghouse Electric Company, SNM–1107	1,366,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	537,000
(b) All Others:	
General Electric SNM–960	390,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,500
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,600
E. Licenses or certificates for the operation of a uranium enrichment facility	2,537,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	585,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	77,700
Class II facilities [4]	65,100
Other facilities [4]	68,400
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	47,900
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	7,600
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	760
C. All other source material licenses	12,300
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,400
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,700
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	14,000
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,500
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	23,200
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	3,700
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,300
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,400
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,600
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,200
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	4,900
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,300
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	13,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,700
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,100
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	10,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	19,200
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [9]	26,200
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [9]	5,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	6,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,000
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	690
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
Users and Fabricators	72,800
Users	7,300
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	283,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,368,000

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SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,056,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2001, and permanently ceased licensed activities entirely by September 30, 2001. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR Part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 19th day of March, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. In addition, $36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately $479.5 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation

of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2002. Rebaselining fees would result in increased annual fees for a majority of the categories of licenses, and decreased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2002 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,300 licensees for FY 2001) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the

maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees; rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

As stated in the 2001 Regulatory Flexibility Analysis, (66 FR 32452; June 14, 2001), the NRC will re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule (65 FR 36946; June 12, 2000). Therefore, the FY 2002 small entity annual fee will remain at $2,300, and the lower tier small entity annual fee will remain at $500. The NRC plans to re-examine the small entity fees in FY 2003.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 96 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 2001 fee rule remain valid for FY 2002.

Attachment 1 to Appendix A; U. S. Nuclear Regulatory Commission Small Entity Compliance Guide—Fiscal Year 2002

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees comply with the FY 2002 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2002 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's external web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institutional institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration's regulations (13 CFR part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association , who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's external web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates— not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources —not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq*. NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 02–7114 Filed 3–26–02; 8:45 am]
BILLING CODE 7590–01–P

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To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001. (Mar. 25, 2002; 116 Stat. 80)

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Federal Register

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Rules and Regulations

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AG08

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds appropriated under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002. The DIPP indemnifies dairy farmers and manufacturers for losses suffered due to contamination of milk and milk products, through no fault of their own.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hill, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512; telephone (202) 720–9888; e-mail address is *Elizabeth_Hill@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed pursuant to Executive Order 12988. To the extent State and local laws are in conflict with these regulatory provisions, these regulations will prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendment to 7 CFR part 760 set forth in this final rule does not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB and assigned OMB Control Number 0560–0116.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program was extended several times. Funds were appropriated for DIPP by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("the 2001 Act"), Pub. L. 106–387, which authorized the program until the funds were expended. Most recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 ("the 2002 Act"), Pub. L. 107–76, which authorizes the program to be carried out until the funds appropriated under the 2002 Act are expended. The funds appropriated under the 2001 Act that have not been expended will be combined with the funds appropriated under the 2002 Act.

The objective of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR part 760.1–760.34. This final rule makes no changes in the provisions of the regulations. Since the only purpose of this final rule is to revise the authority citation pursuant to the 2002 Act, it has been determined that no further public rulemaking is required. Therefore, this final rule shall become effective upon the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, 7 CFR part 760 is amended as follows:

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PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

The authority citation for Subpart—Dairy Indemnity Payment Program is revised to read as follows:

Authority: Pub. L. 106–387, 114 Stat. 1549, and Pub. L. 107–76, 115 Stat. 704.

Signed in Washington, DC, on March 8, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–7422 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV01–929–3C FR]

Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule published on February 14, 2002 (67 FR 6843), concerning cranberries grown in Massachusetts, *et al.* The correction is made in the amendatory instruction section of the final rule.

DATES: Effective March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938.

SUPPLEMENTARY INFORMATION:

Background

This rule increases the assessment rate established under the cranberry marketing order for the 2001–2002 and subsequent fiscal years from $.08 to $.18 per barrel of cranberries handled. This assessment rate increase was recommended by the Committee to fund a domestic market development program to increase demand for cranberries and cranberry products and thus expand cranberry shipments. The rule was issued under Marketing Order No. 929, as amended (7 CFR Part 929). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Correction

In FR Doc. 02–3635, published February 14, 2002 (67 FR 6843) make the following correction.

§ 929.236 [Corrected]

On page 6846, in column 1, instruction number 2, and the section heading are corrected to read as follows:

2. Section 929.236 is revised to read as follows:

§ 929.236 Assessment rate.

Dated: March 21, 2002.

A.J. Yates,

Administrator, Agricultural Morketing Service.

[FR Doc. 02–7425 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–70–AD; Amendment 39–12688; AD 2002–06–51]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–06–51 that was sent previously to all known U.S. owners and operators of certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes by individual notices. This AD requires revising the Airplane Flight Manual to provide procedures for addressing uncommanded transfer of fuel from wing fuel tanks to center fuel tank. This action also requires revising the Minimum Equipment List (MEL); limiting operation of the airplane to flight within 60 minutes of a suitable alternative airport; and ensuring that normal mission fuel requirements are increased by 3,000 pounds. This action was prompted by reports of uncommanded fuel transfer between the wing fuel tanks and the center fuel tank. The actions specified by this AD are intended to ensure that the flight crew has the procedures necessary to address such uncommanded fuel transfer, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation.

DATES: Effective April 2, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–06–51, issued on March 12, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–70–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Test Pilot, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 12, 2002, the FAA issued emergency AD 2002–06–51, which is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes.

That action was prompted by reports of uncommanded fuel transfer between the wing fuel tanks and the center fuel tank. Such uncommanded fuel transfer, if not corrected, could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation. In addition, such fuel leakage on the ground could cause a fire.

Explanation of Relevant Service Information

Canadair Regional Jet Series 700 Airplane Flight Manual (AFM) CSP B–012, Temporary Revision (TR) RJ 700/23–1, was issued on March 7, 2002. The TR describes procedures for revising the Limitations section of the AFM that describes requirements for the prohibition of dispatch with the fuel quantity gauging system inoperative. In addition, the TR specifies additional fuel system limitations and additional changes to the "L or R MAIN EJECTOR" of the Abnormal Procedures section.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, classified the TR as mandatory and issued Canadian airworthiness directive CF–2002–19, dated March 8, 2002, in order to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2002–06–51 to require revising specified sections of AFM CSP B–012 to provide the flight crew with the appropriate procedures to follow in order to address uncommanded transfer of fuel from the wing fuel tanks to the center fuel tank. The AFM actions are required to be accomplished per the previously referenced TR. This AD also requires each operator to revise the Minimum Equipment List (MEL) by removing certain relieving requirements specified in the MEL. In addition, this AD requires limiting operation of the airplane to flight within 60 minutes of a suitable alternative airport, and, prior to each further flight, ensuring that the normal mission fuel requirements are increased by 3,000 pounds.

Differences Between Canadian Airworthiness Directive and This AD

Although the Canadian airworthiness directive did not include procedures for revising the MEL, or for prohibiting dispatch with fuel quantity inoperative, this AD includes those requirements.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on March 12, 2002 to all known U.S. owners and operators of certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–51 Bombardier, Inc. (Formerly Canadair): Amendment 39–12688. Docket 2002–NM–70–AD.

Applicability: Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, serial numbers 10005 through 10039 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer between the wing fuel tanks and the center fuel tank, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation; accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 2 days after the effective date of this AD, revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (a)(1) and (a)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the "Limitations—Power Plant," Paragraph 6, "Fuel", to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002: "Dispatch with the fuel quantity gauging system inoperative is prohibited."

(2) Revise the "Abnormal Procedures—Fuel," Paragraph H, "L or R Main Ejector" to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

"H. L or R MAIN EJECTOR

(1) Left and right boost pumps	Confirm operating
(2) Affected engine instruments	Monitor
(3) Fuel tank quantity	Monitor and balance, if required
If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):	
(4) Land at the nearest suitable airport.	
If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):	
(5) Affected engine thrust	IDLE

(6) Consider shutting down affected engine to prevent centre tank transfer.

- Ensure both BOOST PUMPs are operating.

If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):

(7) Land immediately at the nearest suitable airport."

Revision of Minimum Equipment List (MEL)

(b) Within 2 days after the effective date of this AD, remove the relieving requirements specified in MEL CL–600–2C10 for the following items.

- Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).
- Fuel Transfer shutoff values (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).
- Xflow Pump (Ref. MMEL Item 28–13–10).
- Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).
- EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).
- Fuel Computer Channels (Ref. MMEL Item 28–41–03).

Operational Limitation

(c) Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Operational Requirement

(d) Within 2 days after the effective date of this AD, and prior to each further flight, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to ensure that the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. The operational limitations and requirements of paragraphs (c) and (d) of this AD will be applicable to all special flight permits.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–19, dated March 8, 2002.

Effective Date

(g) This amendment becomes effective on April 2, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–06–51, issued on March 12, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 21, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7409 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2002–11577]

RIN 2105–AD09

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules governing airline computer reservations systems (CRSs), by changing the expiration date from March 31, 2002, to March 31, 2003. If the expiration date were not changed, the rules would terminate on March 31, 2002. This extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations. The Department has concluded that the current rules should be maintained for another year because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were most recently extended from March 31, 2001, to March 31, 2002.

DATES: This rule is effective on March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara/ index.html.*

Section 255.12 of the rules establishes a sunset date for the rules to ensure that we will reexamine the need for the rules and their effectiveness. The original sunset date was December 31, 1997. We have changed it four times, and the current sunset date is March 31, 2002. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); 65 FR 16808 (March 30, 2000); and 66 FR 17352 (March 30, 2001). We concluded that these extensions were necessary to prevent the harm that would arise if the CRS business were not regulated and that extending the rules would not impose substantial costs on the industry.

We are now changing the sunset date to March 31, 2003, because we have been unable to complete our reexamination of the current rules by March 31, 2002. Since we believed that the rules should remain in effect until we complete that process, we proposed that additional extension of the rules' expiration date. 67 FR 7100 (February 15, 2002). We are continuing to work actively on completing our overall reexamination of the rules. Upon completion of the rulemaking process, we will decide whether the rules are necessary and, if so, how they should be updated.

Comments were filed by Worldspan, Amadeus Global Travel Distribution, United, Delta, Northwest, America West, the Air Carrier Association of America ("ACAA"), the American Society of Travel Agents ("ASTA"), RADIUS, the National Business Travel Association ("NBTA"), and a number of individual travel agents. The commenters disagree over whether the rules should be extended, as discussed below.

Background

We adopted our rules governing CRS operations, 14 CFR part 255, on the basis of our findings that they were necessary to protect airline competition and to ensure that consumers can obtain accurate and complete information on airline services. 57 FR 43780 (September 22, 1992). Market forces did not discipline the price and quality of services offered airlines by the systems, because almost all airlines found it essential to participate in each system. Travel agents relied on CRSs to obtain airline information and make bookings for their customers, and typically each travel agency office entirely or predominantly used one system for these tasks. Moreover, one or more airlines or airline affiliates owned each of the systems and could operate the system in ways designed to prejudice the competitive position of other airlines.

Our rules included a sunset date to ensure that we would reexamine whether the rules were necessary and effective after they had been in force for several years. 14 CFR 255.12; 57 FR 43829–43830 (September 22, 1992). To conduct that reexamination, we began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified, by issuing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997). We later published a supplemental advance notice of proposed rulemaking that asked the parties to update their comments in light of recent developments, primarily the changes in the systems' ownership, which meant that airlines had little or no control over some systems, and the increasing importance of the Internet in airline distribution, and to comment on whether any rules should be adopted regulating the use of the Internet in airline distribution. 65 FR 45551, 45554–45555 (July 24, 2000). Almost all of the parties responding to our supplemental advance notice of proposed rulemaking (and the initial advance notice of proposed rulemaking) contended that CRS rules remained necessary. Some of the parties argued that the continued regulation of the CRS business would be harmful and unnecessary.

In addition to issuing the two advance notices of proposed rulemaking, we have been informally studying recent developments in airline distribution. We have also been investigating the business plan and operations of Orbitz, the on-line travel agency developed by five major U.S. airlines.

Our Proposed Extension of the CRS Rules

We have been unable to finish our overall reexamination of our rules by March 31, 2002, their current expiration date. We therefore proposed to change the rules' expiration date to March 31, 2003, so that they would remain in effect while we complete our reexamination of the need for the rules and their effectiveness. 67 FR 7100 (February 15, 2002).

We reasoned that changing the rules' sunset date to March 31, 2003, would preserve the status quo until we determine whether the rules should be readopted and, if so, how they should be modified. Keeping the current rules in place would be consistent with the expectations of the systems and their users that each system would operate in compliance with the rules. The systems, airlines, and travel agencies, moreover, would be unreasonably burdened if we allowed the rules to expire and later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

We tentatively determined that extending the rules appeared necessary to protect airline competition and consumers against unreasonable and unfair practices. 67 FR 7103. Our past examinations of the CRS business and airline marketing showed that CRSs were still essential for the marketing of the services of almost all airlines. 67 FR 7102, citing 57 FR 43780, 43783–43784 (September 22, 1992). CRS rules were necessary because the airlines relied heavily on travel agencies for

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distribution, because travel agencies relied on CRSs, because most travel agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them would be difficult, and because non-owner airlines were unable to induce agencies to use a CRS that provided airlines better or less expensive service instead of another that provided poorer or more expensive service. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that airline. As a result of the importance of marginal revenues in the airline industry, an airline could not afford to lose access to a significant source of revenue. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. We believed that these findings were still valid despite such developments as the increasing importance of the Internet for airline distribution. 67 FR 7102. We noted that most of the commenters that responded to the advance notice of proposed rulemaking and the supplemental advance notice of proposed rulemaking contended that the rules remained necessary. 67 FR 7102. We therefore tentatively concluded that our past findings on the need for CRS rules are sufficiently valid to justify a short-term extension of the rules' expiration date. 67 FR 7103.

We additionally noted that an extension would be consistent with our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements. Many of the United States' bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. Our rules provide an assurance of fair and nondiscriminatory treatment for foreign airlines. 67 FR 7103.

We stated, however, that we have not determined in our review of the current rules whether they should be readopted. 67 FR 7102.

Comments

Amadeus, America West, ACAA, ASTA, NBTA, and RADIUS either explicitly support the proposed extension or implicitly do so by urging us to modify the existing rules in ways that would assertedly promote competition and protect consumers. Several travel agencies and travel agents argue that we must strengthen the rules to protect travel agencies and their customers. United, Delta, and Northwest oppose the proposed extension. Worldspan contends that we should suspend the rules for two years on an experimental basis.

Amadeus Global Travel Distribution, one of the systems, supports the proposed extension of the rules. Amadeus asks us to act promptly on one issue, the alleged tying by some airlines that own or market a system of access to their corporate discount fares with the use by a travel agency or corporate travel department of their affiliated systems. Amadeus additionally argues, among other things, that we have the statutory authority to regulate all systems, whether or not owned or controlled by an airline.

America West states that it supports our proposed extension of the rules, since "the current CRS regulations remain necessary to protect airline competition and to protect consumers from unreasonable and unfair practices." America West Comments at 1. The airline argues that we should address the booking fee issue promptly, since the systems have been increasing the fees imposed on airline participants.

ACAA, a trade association commenting on behalf of low-fare airlines, argues that we should immediately suspend section 255.10(a) of our rules, which requires each system to make available to all participating airlines any marketing and booking data generated from the bookings made through the system. ACAA asserts that the data sold by the systems enable the large airlines to eliminate competition from low-fare airlines.

ASTA, the largest travel agency trade association, supports the proposed extension of the rules, which are assertedly essential for maintaining competition and preventing abuses of market power in the system-travel agency subscriber relationship. ASTA also asks us to take immediate action on two CRS issues due to Delta's recent elimination of base commissions for all travel agencies. ASTA urges us to ban productivity pricing provisions in contracts between systems and travel agencies that effectively penalize travel agents for making bookings through the Internet instead of the system used by the agency (productivity pricing clauses typically require travel agencies to pay substantially higher fees for CRS service if they do not make a minimum number of bookings each month through the system). The productivity pricing clauses deter travel agents from booking tickets through the Internet, often the only source for the airlines' E-fares, which are usually the lowest available fares. Secondly, ASTA asks us to prohibit systems from selling marketing and booking data to airlines that show the bookings made by individual travel agencies.

RADIUS, which states that it is the world's largest travel management company, argues that we should apply the rules to all Internet sites used for the sale of airline tickets. RADIUS contends that we should also require airlines to make available through the systems all of the fares offered to the public through airline websites. RADIUS agrees with ACAA and ASTA that we should prohibit airlines from obtaining data showing bookings made by individual travel agencies.

The NBTA, which represents corporate travel managers at large companies, urges us to rule that travel agencies and corporations should have full access to the airlines' E-fares by requiring airlines to make those fares saleable through the systems. Each airline now typically makes its E-fares available only through its own website and Orbitz. NBTA additionally asks us to prohibit systems from enabling large airlines to get data on the bookings made by individual travel agencies and corporate travel departments.

Several individual travel agencies and travel agents have submitted comments in this docket urging us to require airlines to give travel agencies the ability to sell their E-fares. Worldspan, one of the systems, suggests that we suspend the operation of the rules for two years so that we can see from experience whether the rules are still needed. Such an experimental suspension would additionally eliminate the anomalies allegedly now created by the rules. One such anomaly is that the rules' continuing applicability to Sabre and Galileo depends on whether they continue to be marketed by airlines; Worldspan, in contrast, is clearly subject to the rules, since it is owned and controlled by three airlines. Worldspan's three owners—American, Delta, and Northwest—are the only U.S. airlines still subject to the mandatory participation rule, since the U.S. airlines that formerly held an ownership interest in other systems have divested their CRS stock (the mandatory participation rule requires airlines with a significant ownership interest in one CRS to choose the same level of participation in competing systems that they choose in their own system, if the competing systems' terms for participation are commercially reasonable). Worldspan further contends that there is no evidence that a system would be operated in a way that would prejudice airline competition or mislead consumers.

Delta alleges that the Internet and other developments have substantially eroded the original basis for the rules' adoption. Delta agrees with those parties supporting the rules' abolition due to the requirement that Delta, as a system owner, participate in each system competing with Worldspan while other airlines that market a system have no obligation to participate in systems competing with their affiliated system. As an alternative, Delta supports Worldspan's proposal that we suspend the rules for a two-year period. Delta also opposes suggestions for regulating the Internet, particularly proposals that airlines must make their E-fares (or webfares) available for sale by travel agents through the systems. Delta points out that travel agents can book Delta's E-fares through the website created by Delta for travel agent use.

United argues that we no longer have a legal or factual basis for regulating the systems. United asserts that the rules were originally adopted because airlines controlled each of the systems and that two of the four systems are no longer controlled by any airlines. While conceding that the rules by their terms cover systems marketed by an airline, United asserts that no evidence exists showing that a marketing relationship between an airline and system creates a risk of anticompetitive conduct. United additionally argues that the other two systems' ownership by three airlines means that they are also unlikely to engage in anticompetitive conduct. The growth of the Internet has assertedly given airlines alternatives to CRS participation and thereby ended the systems' market power as to airlines. Finally, United contends that the rules in effect protect the systems from competition and enable them to impose high fees on participating airlines.

Northwest contends that letting the rules sunset would better serve competition and the public interest than would their continuation. If we nonetheless maintain the rules, Northwest argues that we must repeal the mandatory participation rule, clearly require all systems to comply with the same rules, prohibit systems from tying access to their travel agency subscribers with the airlines' provision of other fares and services, and not regulate use of the Internet in airline distribution.

Final Rule

We are changing the rules' sunset date to March 31, 2003, as we proposed. Although we have not determined whether we should readopt the rules at the end of our reexamination of them, our past findings on the need for the rules and evidence submitted in Docket 2881, the docket for the reexamination of the rules, indicate that allowing the rules to expire now could create a significant risk that the systems and their airline owners would engage in unfair methods of competition and that the systems would engage in unfair and deceptive practices by biasing their displays of airline services, as explained below. That possible risk justifies another short-term extension of the rules while we finish our reexamination of the need for the rules and their effectiveness.

The comments submitted on our proposed extension of the rules underscore the need to complete our review of the rules promptly and determine on the basis of the extensive record in the proceeding whether the rules should be readopted (with or without changes) or allowed to expire. Our staff is moving forward expeditiously to bring the rulemaking to completion. In our reexamination we are doing what Delta requests—we are "carefully examin[ing] each section and subpart of the current rules one-by-one to determine if it is essential to protect airline competition in today's marketplace." Delta Comments at 4.

Among the issues that we are addressing are those raised by commenters in this docket: whether we should keep, expand, or abolish the mandatory participation rule, whether we should regulate the Internet, whether airlines should make their E-fares saleable through the systems used by travel agents, whether the systems should be able to sell detailed marketing and booking data to airlines, and whether we should regulate booking fee levels. Although some of the commenters assert that individual rulemaking issues require action by us before we complete our overall reexamination of the rules, we think that we can most efficiently resolve the issues by addressing all of them in a single proceeding, which we are now doing. For the same reason we will consider there whether the rules should be temporarily suspended, as suggested by Worldspan and Delta. Since we did not propose a two-year suspension of the rules in our notice, we doubt that we could adopt their suggestion as our final decision in this docket. We will consider the parties' comments in this docket along with those filed in Docket 2881 in our review of the current rules.

As stated above, we have not determined whether all or some of the rules should be kept. We are nonetheless unwilling at this time to allow the rules to expire, as requested by United, because the record suggests that the Internet, the changes in the systems' ownership, and other airline distribution developments may not have eliminated the potential for anticompetitive conduct or deceptive practices by the systems. We also are unwilling at this point to agree with United that we have no jurisdiction to regulate systems not owned and controlled by one or more airlines. The current rules govern systems owned or marketed by an airline, and require each airline that owns or markets a system to ensure that the system complies with the rules. The rules by their terms also directly impose requirements on the systems. No one challenged our decision in our last overall rulemaking to apply the rules to systems owned or marketed by airlines.

The fundamental basis for our readoption of the rules was each system's market power with respect to almost all airlines. Most airlines rely on travel agencies for the sale of the majority of their tickets, travel agents rely on the systems to determine what airline services are available and to make bookings, and few travel agency offices make extensive use of more than one system, as we stated when we proposed the extension. 67 FR 7102–7103. For the purposes of a one-year extension of the rules, these findings still seem valid. Northwest, which opposes the extension, agrees that the systems still have market power, Northwest Comments at 6:

> There continue to be only four computer reservation systems used by U.S. travel agents. Sales to consumers over the Internet, via both airline websites and online agents, have provided significant new competition to CRSs, but each CRS typically remains the only means by which to reach the travel agents who use that system. Each CRS therefore continues to have significant market power based on the travel agents to which it has exclusive access.

United has not persuaded us that the Internet has ended the systems' ability to engage in anti-competitive conduct. Consumers are, of course, increasingly using the Internet for airline bookings, and, as United asserts, some low-fare airlines are now obtaining a large share of their total revenues from Internet bookings. All of the on-line travel agencies, however, use one of the systems at least for some booking functions. Furthermore, even the low-fare airlines, except for Southwest and JetBlue, have found it necessary to continue participating in the systems, notwithstanding the high fees charged by the system. 62 FR 47608. The network airlines like United thus far have not succeeded as well in encouraging consumers to use the Internet. United itself does not claim

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that the Internet has made it possible for United to end its reliance on participation in the systems, and United admits that most airline tickets are still sold by travel agents. United Comments at 12. As long as travel agencies are an important distribution channel, most airlines will need to participate in the systems used by the agencies, since airlines cannot afford to lose access to any important distribution channel. 57 FR 43783; Orbitz Supp. Reply, Daniel Kasper Statement at 7 (Docket 2881); 62 FR 59789, quoting comments submitted by the Justice Department.

Since we are not convinced yet by United's argument that the systems no longer have market power, we do not agree with United's contention that the rules themselves enable the systems to impose high fees on airline participants, because the rules allegedly eliminate any need for the systems to negotiate with airlines over the price and terms of airline participation. United Comments at 8–9. United's own conduct seems inconsistent with its claim that airlines could obtain better terms without the rules. United is no longer subject to the mandatory participation rule and so could lower its level of participation in any of the systems, or withdraw entirely, if it believes that the price and terms for participation are unreasonable. United has not done that. That suggests that United is not free for business reasons to withdraw, since its services would then no longer be readily saleable by the travel agents using the system. We are not persuaded by United's claim that any withdrawal by United would be ineffective due to our rule barring systems from discriminating against some airline participants. United is so large an airline that its insistence on obtaining better terms should have an effect, even if the system would have to apply the same terms to other airline participants. However, one of the key issues in our overall reexamination of the rules is the extent of the systems' market power and whether that would justify maintaining all or some of the current rules.

We are also not persuaded that we have no legal basis to maintain the rules. United may err in assuming that we may regulate only airlines and travel agencies under 49 U.S.C. 41712, recodifying section 411 of the Federal Aviation Act ("section 411"). Section 411 authorizes us to regulate "ticket agents", and the statutory definition of "ticket agent" may include the systems. Whether it does is an issue we are considering in our overall reexamination of the rules. While United relies on *Official Airline Guides, Inc.* v. *FTC*, 630 F.2d 920 (2nd Cir. 1980), for the ruling that section 411 does not cover the Official Airline Guide, a publisher of airline schedules, United Comments at 3, n.2, that decision does not resolve the issue of whether section 411 would cover the systems, which do more than just publish schedules. United additionally overstates the court's holding on the scope of the Federal Trade Commission's comparable authority to prohibit unfair methods of competition in other industries. United claims that the FTC (and thus this Department) could never regulate a monopolist's conduct on the basis of that firm's impact on a second industry in which it does not compete. United Comments at 17. However, the Second Circuit suggested that the FTC could regulate a monopolist's conduct in one industry in order to prevent that firm from carrying out an intent to restrain competition in a second industry or from acting coercively. 630 F.2d at 927–928. *See also LaPeyre* v. *FTC*, 366 F.2nd 117 (5th Cir. 1966).

Although United argues that the antitrust principles used to support the rules' original adoption by the Civil Aeronautics Board ("the Board") and their readoption by us could never be validly applied to the systems, United Comments at 4, 6, the Seventh Circuit held that these antitrust principles did justify the Board's decision to regulate the systems. *United Air Lines* v. *CAB*, 766 F.2nd 1107 (7th Cir. 1985). Whether the principles would again support a readoption of the rules is a question that we are considering in our reexamination of the rules.

As we noted in our proposal, we have an obligation under 49 U.S.C. 40105(b) to act consistently with the United States' obligation under treaties and bilateral air services agreements. Those agreements typically assure the airlines of each party a fair and equal opportunity to compete, and many have provisions designed to ensure that the systems operating in one country do not discriminate against the airlines of the other party. We think the extension of the rules is the most effective way to carry out those provisions, even if the existing rules may not be the only way of doing so.

Despite United's claim to the contrary, there has been evidence that systems marketed by airlines or owned by more than one airline would engage in behavior requiring regulation. Ownership by several airlines in the past has not prevented anti-competitive or deceptive conduct. After United ceased to be the sole owner of Galileo, for example, Galileo gave United access to booking data that were not made available to other participating airlines, in violation of our rules. 57 FR 43788. United also caused Galileo to adopt a display algorithm that unreasonably downgraded the position of single-plane service in order to improve the display position of the connecting services operated by United and other airlines that followed a hub-and-spoke route strategy. Galileo kept using that algorithm even though travel agents then could not easily find the services that best met their customer's needs. 61 FR 42208, 42212–42213 (August 14, 1996).

Similarly, a marketing relationship between an airline and a system may lead to a distortion of competition. There have been cases where an airline marketing a system denied competing systems complete access to its fare data and booking features in order to compel travel agencies in areas where that airline was the dominant airline to use the system affiliated with that airline. 61 FR 42197, 42206 (August 14, 1996). Several of the parties, including Amadeus and some travel agencies, have alleged that some airlines that own or market a system often force travel agencies and corporate travel departments to use the airline's affiliated system in order to obtain access to its corporate discount fares.

The systems, moreover, could potentially engage in deceptive conduct even without any ties to travel suppliers. Northwest alleges, for example, that systems not owned by airlines could sell display bias to individual airlines. Northwest Comments at 7. One of the commenters in the overall rulemaking has alleged that one of his clients, a rental car company, was harmed because a system sold a preferential display position to a competing rental car company. Marshall A. Fein Comments (Docket 2881). United's assertion that publicly-owned systems would have no incentive to create misleading displays for travel agents, United Comments at 7, n. 10, thus is not necessarily valid.

In addition, United's opposition to the proposed extension ignores one basis for our rules, the systems' past adoption of contract practices with their travel agency subscribers that deterred or prohibited travel agencies from using more than one system or from using other databases for obtaining airline information and making bookings, such as the Internet. When we readopted the rules, we found it necessary to prohibit some such contract practices. 57 FR 43822–43826. In addition, the systems had generally required travel agency subscribers to use equipment provided by the system and barred them from

accessing other systems or databases from that equipment. Since keeping separate equipment for accessing different systems was usually impracticable for travel agencies, these practices prevented travel agency offices from making extensive use of more than one system. We accordingly adopted a rule giving travel agencies the right to acquire their own equipment and to access any system or database from that equipment. 57 FR 43796–43797. And to give airlines a greater ability to choose which level of service they would purchase from each system, we barred each system from enforcing certain contract clauses that deny participating airlines that ability, as long as the airline does not own or market a competing system. 62 FR 59784 (November 5, 1997). We adopted these rules in order to reduce the systems' market power and enable airlines to use alternative means of communicating electronically with travel agencies.

We are also not prepared now to accept United's suggestion that we can eliminate the rules by relying instead on our section 411 enforcement authority on an *ad hoc* basis to keep systems and affiliated airlines from engaging in anti-competitive practices. Since the system practices that we have found could constitute unfair methods of competition or unfair and deceptive practices have generally been industry-wide practices, maintaining industry-wide rules would be the more efficient method of addressing potential problems while we complete our reexamination of the rules.

Finally, United implicitly concedes that maintaining the rules for another year will not impose significant costs on the systems and their users, if we do not accept its theory that the rules enable the systems to charge higher fees. United Comments at 8.

We recognize the point of the Worldspan owners' complaint about the applicability of the mandatory participation clause, since the rule currently covers only the owners of Worldspan and Amadeus and does not cover airlines marketing a system. Whether that rule should be kept, and, if so, whether its reach should be extended or narrowed, are issues that we are considering in our review of the rules. In our judgment, the Worldspan owners' continuing obligation to participate in competing systems would not justify allowing the CRS rules to expire. The mandatory participation rule by its terms exempts an airline owner from the obligation to participate in a competing system's feature or functionality if the terms for participation are not commercially reasonable. That should enable Delta and Northwest to avoid participating in system services when the fees are too high or the quality of service is too low. And Delta and Northwest have not shown that the mandatory participation rule is currently causing them harm, for example, by forcing them to participate in expensive and unnecessary system features. In addition, some parties have alleged in the overall rulemaking (Docket 2881) that Northwest and Delta have limited their participation in competing systems, or denied users of competing systems access to the airlines' corporate discount fares, in order to give Worldspan an unfair competitive advantage in areas where Delta or Northwest is the dominant airline. System One Comments at 3–4, 6–7; Galileo Supp. Comments at 12, n. 11; Continental Reply to Amadeus petition at 2. Those allegations (which we are reviewing along with the responses by Delta and Northwest) make us unwilling to suspend the mandatory participation rule before we complete our reexamination of all of the rules.

We are not suspending or amending section 255.10(a) as requested by ACAA, ASTA, RADIUS, and NBTA. That rule requires each system to make available to all participating airlines any data that it chooses to generate from the bookings made by travel agents. Suspending the section would not prevent large airlines from gaining access to the marketing and booking data produced and sold by the systems. Suspending the section would only end the systems' obligation to make the data available to all participating airlines. Unless we adopted a rule prohibiting the release of the data, the systems could continue selling it to airline and non-airline firms. We recognize the importance of reexamining the provision, as we stated in our advance notice of proposed rulemaking, 62 FR 47610, and we are doing so in the context of our overall reexamination of the rules.

Several travel agencies have submitted comments that argue, like NBTA's comments, that we should require each airline to allow travel agencies to sell all of the low fares available on the airline's own website or through on-line travel agencies like Orbitz. The current rules do not impose such a requirement on the airlines. Whether the rules should do so is one of the issues we are now examining.

Finally, we are not taking immediate action on ASTA's request that we bar systems from enforcing productivity pricing clauses in subscriber contracts. Whether and how we should continue regulating subscriber contracts is an issue that we are exploring in the overall rulemaking.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2002, rather than thirty days after publication as required by the Administrative Procedure Act except for good cause shown. 5 U.S.C. 553(d). To keep the current rules in force, we must make this amendment effective by March 31, 2002. Since the amendment preserves the status quo, it will not require the systems, airlines, or travel agencies to change their operating methods. Making this amendment effective on less than thirty days notice accordingly will not impose an undue burden on anyone.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979).

In our notice of proposed rulemaking, we tentatively concluded that maintaining the current rules should not impose significant costs on the systems. They have already taken the steps necessary for compliance with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on the systems. Keeping the rules in force would benefit participating airlines, since otherwise they could be subjected to unreasonable terms for participation, and consumers, who might otherwise obtain incomplete or inaccurate information on airline services. The rules would also prevent some types of abuses by systems in their competition for travel agency subscribers.

In our last major CRS rulemaking, we published a tentative economic analysis with our notice of proposed rulemaking and included a final analysis in our final rule. Our notice proposing to extend the rules to March 31, 2003, stated that the analysis should be applicable to our proposal and that no new regulatory impact statement appeared to be necessary. We stated that we would consider comments from any party on that analysis before we make our proposal final. 67 FR 7103.

No one filed comments on the economic analysis, so we are basing this rule on the analysis used in our last

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overall CRS rulemaking. We will prepare a new economic analysis as part of our reexamination of our existing rules, if we determine that CRS rules remain necessary.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to keep small entities from being unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposal. We also pointed out that maintaining the current rules would not modify the existing regulation of small businesses. We noted that the final rule in our last major CRS rulemaking contained a regulatory flexibility analysis on the impact of the rules. Relying on that analysis, we tentatively determined that this regulation would not have a significant economic impact on a substantial number of small entities. We stated that that analysis appeared to be valid for our proposed extension of the rules' termination date. We therefore adopted that analysis as our tentative regulatory flexibility statement, and we stated that we would consider any comments filed on that analysis in connection with the proposed extension of the rules. 67 FR 7103–7104.

While maintaining the CRS rules would primarily affect two types of small entities, smaller airlines and travel agencies, the rules would also affect all small entities that purchase airline tickets. If the rules enable airlines to operate more efficiently and to reduce their costs, airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

Continuing the rules would protect smaller non-owner airlines from several potential system practices that could injure their ability to operate profitably and compete successfully. No smaller airline has a CRS ownership interest. Market forces do not significantly influence the systems' treatment of airline participants. As a result, if there were no rules, the airlines affiliated with the systems could use them to prejudice the competitive position of other airlines. The rules therefore provide important protection to smaller airlines. For example, by prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its affiliated airlines and against other airlines. The rules also prohibit the systems from charging participating airlines discriminatory fees. The rules, on the other hand, impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. Since the rules prohibit display bias based on carrier identity, they also enable travel agencies to obtain more useful displays of airline services.

We invited interested persons to address our tentative conclusions under the Regulatory Flexibility Act in their comments on the notice of proposed rulemaking. 67 FR 7104.

Since no one commented on our Regulatory Flexibility Act analysis, we are adopting the analysis set forth in the notice of proposed rulemaking.

This rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

We stated that we had reviewed our proposed rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States. Nothing in this rule will directly preempt any State law or regulation. We are adopting this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. Our notice of proposed rulemaking stated our belief that the policy set forth in this rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute.

We invited comments on these conclusions. 67 FR 7104. No one commented on our federalism assessment. We will therefore make it final. Because the rule will have no significant effect on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation amends 14 CFR part 255 as follows:

PART 255—(AMENDED)

1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on March 31, 2003.

Issued in Washington, DC on March 25, 2002, under authority delegated by 49 CFR 1.56a(h)2.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–7510 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–62–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect an organizational reassignment of the FOIA function within TVA. It also provides a new address for filing FOIA appeals.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499, telephone number (865) 632–6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective March 28, 2002.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Government in the Sunshine, Privacy.

For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, Subpart A, continues to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552.

2. In § 1301.9, revise paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the Vice President, External Communications, Tennessee Valley Authority, 400 Summit Hill Drive (ET 6A), Knoxville, TN 37902–1499. You must make your appeal in writing and it must be received by the Vice President, External Communications within 30 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the TVA determination (including the assigned request number, if known) that you are appealing. An adverse determination by the TVA Appeal Official will be the final action of TVA.

* * * * *

Tracy S. Williams,

Vice President, External Communications, Tennessee Valley Authority.

[FR Doc. 02–7432 Filed 3–27–02; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310

[DEA Number 163F]

RIN 1117–AA44

Implementation of the Comprehensive Methamphetamine Control Act of 1996; Regulation of Pseudoephedrine, Phenylpropanolamine, and Combination Ephedrine Drug Products and Reports of Certain Transactions to Nonregulated Persons

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is amending its regulations to implement the requirements of the Comprehensive Methamphetamine Control Act of 1996 (MCA) with respect to the regulation of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products as List I chemicals, and the reporting of certain transactions involving pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products.

The MCA removed the previous exemption from regulation as List I chemicals which had applied to pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products. This action makes persons who distribute the products subject to the registration requirement. Also, distributions, importations, and exportations of the products became subject to the existing chemical controls relating to regulated transactions, except in certain circumstances specified in the MCA. The MCA also requires that reports be submitted for certain distributions involving pseudoephedrine, phenylpropanolamine, and ephedrine (including drug products containing those chemicals) by Postal Service or private or commercial carrier to nonregulated persons.

This final rule amends the regulations to make them consistent with the language of the MCA and to establish specific procedures to be followed to satisfy the new reporting requirement. DEA has, where possible, taken action to limit the public impact of these new requirements while remaining consistent with the intent of the MCA to attack the diversion of regulated drug products to the clandestine manufacture of methamphetamine.

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Special Notice Regarding Phenylpropanolamine

On November 6, 2000, the Food and Drug Administration (FDA) issued a public advisory announcing that it is taking steps to remove phenylpropanolamine from all drug products and has requested that all drug companies discontinue marketing products containing phenylpropanolamine.

What Is the Basis for This Action?

The Comprehensive Methamphetamine Control Act of 1996 was enacted on October 3, 1996, to provide a comprehensive system of controls relating to the distribution, importation, and exportation of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products, along with other strong tools to attack the illicit traffic in regulated chemicals. The MCA retained the existing Controlled Substances Act (CSA) requirements for distributors of List I chemicals and made certain changes with respect to the regulation of drug products containing pseudoephedrine, phenylpropanolamine, and ephedrine.

What Are the Requirements of the MCA?

Principal among the changes made by the MCA was amendment of the definition of regulated transaction (21 U.S.C. 802(39)) to remove the exemption for drug products that contain pseudoephedrine, phenylpropanolamine, or ephedrine and to establish a 24 gram threshold for the sale of pseudoephedrine or phenylpropanolamine products by a retail distributor or a distributor required to make reports by section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)). The definition was also amended to provide that the sale of ordinary over-the-counter

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pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction.

The MCA also added two new definitions:

The term ordinary over-the-counter pseudoephedrine or phenylpropanolamine product is defined in section 102(45) of the CSA (21 U.S.C. 802(45)) as a product containing pseudoephedrine or phenylpropanolamine that is regulated pursuant to the CSA and, except for liquids, is packaged with not more than 3 grams of pseudoephedrine or phenylpropanolamine base per package, contained in blister packs, with not more than two dosage units per blister, or where the use of blister packs is not technically feasible, packaged in unit dose packets or pouches. For liquids, the product is sold in package sizes of not more than 3 grams of pseudoephedrine or phenylpropanolamine base per package.

The term retail distributor is defined in section 102(46) of the CSA (21 U.S.C. 802(46)) as a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. Sale for personal use is defined by the MCA as the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

The MCA also defined combination ephedrine product and established a 24 gram single transaction limit, notwithstanding the form of product packaging, for sales by retail distributors and distributors required to submit a report under section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)), and a 1-kilogram threshold for transactions by other distributors, importers, and exporters.

Additionally, the MCA amended section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)) to require that regulated persons who engage in transactions with pseudoephedrine, phenylpropanolamine, or ephedrine (including drug products containing those chemicals) to non-regulated persons (i.e., someone who does not further distribute the product) and use or attempt to use the Postal Service or any private or commercial carrier shall submit a report of all such transactions each month.

The MCA also provided expanded opportunity for reinstatement of a product exemption, through amendment of section 204 of the CSA (21 U.S.C. 814(e)), if it is determined that the product is manufactured and distributed in a manner that prevents diversion, and changed the record retention period for List I chemical transactions to 2 years from 4 years.

The requirements with respect to the regulation of combination ephedrine drug products and reports of sales to nonregulated individuals went into effect on October 3, 1996. In order to allow uninterrupted availability of the products while companies applied for and received their registrations, DEA published interim and final rules in the **Federal Register** on February 10, 1997 and October 7, 1997 (62 FR 5914 and 62 FR 52253) respectively, establishing a temporary waiver of the registration requirement for any person who submitted an application for registration prior to December 3, 1997. DEA also published a notice regarding the reporting requirement on February 7, 1997 (62 FR 5851), which provided affected persons guidance regarding submission of the required reports to DEA and requested certain additional information be submitted with the reports.

The requirements with respect to pseudoephedrine and phenylpropanolamine became effective on October 3, 1997.

What Regulatory Amendments Is DEA Making?

This rule makes final the notice of proposed rulemaking (NPRM) that DEA published in the **Federal Register** on October 7, 1997 (62 FR 52294), which proposed to implement certain regulatory changes mandated by the MCA. The changes included conforming regulatory definitions to the language of the MCA; new record retention, threshold and reporting requirements; and expanding waivers of the registration requirement. These changes are discussed in greater detail in the following paragraphs.

Because many of the requirements of the MCA were set out in such detail as to be self-implementing, many of the proposed regulatory changes are conforming amendments to make the language of the regulations consistent with that of the new law. The definitions of regulated transaction and retail distributor are updated and the definitions of ordinary over-the-counter pseudoephedrine or phenylpropanolamine product and combination ephedrine product are inserted. Additionally, 21 CFR 1310.04 was proposed to be amended to reflect the new List I chemical record retention period and new threshold requirements; 21 CFR 1310.04–06 were proposed to be updated to reflect the new reporting requirement; and 21 CFR 1309.71 was proposed to be amended to reflect that in retail settings open to the public ephedrine drug products, in both single-entity and combination form, must be stored behind a counter where only employees have access. Finally, 21 CFR part 1309 was proposed to be amended to consolidate the various waivers of the registration requirement into one section, expand the current waiver of registration for retail distributors of combination ephedrine products to include retail distributors of pseudoephedrine and phenylpropanolamine products, and to provide a temporary waiver of the registration requirement for persons who distribute, import, or export pseudoephedrine or phenylpropanolamine drug products provided they submitted an application on or before December 3, 1997.

What Comments Were Received?

The comment period for the NPRM closed on December 8, 1997. Twenty comments were submitted which, while supportive of the efforts of the law and regulations to control the diversion of drug products and the illicit manufacture of methamphetamine, raised the following issues and concerns:

Registration Requirement

A number of comments focused on the registration requirement, expressing concerns that the paperwork burden and cost of registration are not commensurate with the volume of business being conducted in the products or that the manner in which the products are packaged or distributed is not conducive to diversion. The commenters recommended that DEA adopt alternative registration requirements, allowing for:

1. Exempting below threshold sales from the registration requirement;
2. A related general recommendation was also made that the retail distribution exemption for ordinary over-the-counter products be extended to the wholesale level;
3. Exempting distributors that purchase '2 pill packs' (presumably products that meet the definition of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products) to manufacture retail displays and refills that contain 24 to 30 packs, for sale to distributors who, in turn, sell to retailers. This segment of the industry should not be subject to registration on the grounds that clandestine laboratory operators are not interested in '2 pill packs' and the $595.00 cost of registration would be more than many of the distributors of these products would be willing to pay.
4. Exempting any distributor that purchases less than the threshold amount in a calendar month; and
5. Exempting vending machine sales from the registration requirement.

The first two recommendations, exemption of below threshold sales and extension of the retail exemption for ordinary over-the-counter pseudoephedrine and phenylpropanolamine products to wholesale distributions of the products were discussed at length in DEA's final rule, published in the **Federal Register** on October 7, 1997 (62 FR 52253) (DEA–154F, RIN 1117–AA42), entitled Implementation of the Comprehensive Methamphetamine Control Act of 1996; Possession of Listed Chemicals Definitions, Record Retention, and Temporary Exemption From Chemical Registration for Distributors of Combination Ephedrine Products. In summary, DEA noted with respect to below threshold sales that the chemical registration requirement was patterned after the system of registration required for controlled substances handlers. The controlled substances registration system, while providing exemptions for certain products that contain controlled substances, does not take into consideration the quantity of controlled substance involved when determining whether registration is required; either a product is exempt from registration or it is not, the amount of the product involved in the transaction is immaterial. To clarify the fact that it is product exemption, rather than transaction exemption, that applies, §1309.21 is being amended to clarify that the exemption in §1300.02(b)(28)(i)(D) is determined irrespective of the threshold provisions in §1300.02(b)(28)(i)(D)(2).

With respect to the issue of extension of the retail distributor exemption for ordinary over-the-counter products to wholesale activities within the retail distribution chain, DEA noted that the MCA does not exempt retail distributors, it exempts sales by retail distributors, which sales are defined in section 401(b)(4) of the MCA as "* * * either directly to walk-in customers or in face-to-face transactions by direct sales." The sales are further qualified in section 401(b)(4) of the MCA as involving "* * * below threshold quantities in a single transaction to an individual for legitimate medical use." The specific language of the MCA in defining the type of transactions that are exempted from the requirements of the law makes it clear that only qualifying retail transactions are to be exempted; the language does not contemplate the exemption of a major class of wholesale distributions.

In connection with the first two recommendations, certain commenters also raised the concern that, based on their sales, the initial registration fee of $595.00 was too high. It should be noted that on October 17, 1997, DEA published a notice in the **Federal Register** (62 FR 53958) waiving a substantial portion of the registration fee, reducing it from $595.00 to $116.00. The reduction of the fee should address those concerns.

With respect to the issue of '2 packs', the assertion of the commenter that such products would not be of interest to clandestine laboratory operators at the retail level given their pricing and the 24 gram transaction limit may be true. However, at the wholesale level, with its much higher thresholds and size of transactions, 2 packs, while not the most convenient, would still represent a worthwhile source of material. The reduction of the fee should address the principal concern of this industry with respect to registration.

The fourth recommendation, exempting distributors from registration if they purchase less than a threshold amount in a calendar month, while appearing to be reasonable on the surface, would pose a potentially fatal flaw in the chemical control system. The basic premise of the registration system is to require identification of the participants in the system to DEA and give DEA the opportunity to review their credentials and background. Allowing an entire class of distributors to engage in general distribution outside of this system would provide an opportunity for illicit manufacturers to obtain the supplies they need. The current thresholds for pseudoephedrine and phenylpropanolamine at the wholesale level are 1 kilogram (2.2 pounds) and 2.5 kilograms (5.5 pounds) respectively. Under the proposed scenario, anyone could obtain drug products containing 2 pounds of pseudoephedrine and 5 pounds of phenylpropanolamine per month without being identified to DEA or subject to any background checks to confirm their legitimacy. This volume of product would allow, at the currently estimated conversion ratio of 50% to 70% in clandestine laboratories, the manufacture of between 1 and 1.4 pounds of methamphetamine and 2.5 to 3.5 pounds of amphetamine per month. In light of the opportunistic nature of the clandestine laboratory operators, providing such an unregulated source of supply would be a golden opportunity. Further, the reduction of the new application fee minimizes the economic burden associated with registration for this class of distributor.

The fifth issue, vending machine sales, is apparently based on the mistaken assumption that vending machine sales and the supplying of vending machines is a form of wholesale distribution. DEA considers the sale of regulated drug products via vending machines to be retail sales. The sales are made in 'face-to-face' transactions to individual users for their personal medical use in amounts less than the 24 gram threshold. In a related issue, an individual owner of vending machines may receive and distribute regulated drug products to his/her machines without obtaining a registration as a distributor. DEA recognizes that, as a rule, vending machines are placed in locations that are not under the control of the machine owner and to which the owner cannot usually have supplies delivered. Under such circumstances, the owner of the machines may receive regulated drug products at another location for the purpose of resupplying the machines, without having to be registered as a distributor.

After careful review of the comments, DEA has concluded that its current waivers of the registration requirement constitute an appropriate balance between minimizing regulatory burden and preventing diversion. DEA believes that expanding the registration waivers as suggested in the above comments could result in an appreciable increase in the potential for diversion.

Security Requirements

Three commenters expressed concerns regarding the proposed requirement that combination ephedrine drug products be maintained behind the counter, noting that such a requirement appears to be inconsistent with the waiver of registration for retail distributors of these products. The diversion of ephedrine products at the retail level has been a significant problem in the past and remains an issue today. DEA is aware that there is some level of retail diversion and is concerned that, as controls at higher levels in the distribution system become more effective, the pressure to divert from retail sources will increase. However, in lieu of requiring that combination ephedrine products be maintained behind the counter, DEA will continue to monitor diversion from this level and, if circumstances require,

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will consider additional controls, including removing the exemption from registration for retail distributors of non-ordinary over-the-counter drug products as well as imposition of additional security requirements. The existing requirement that single-entity ephedrine drug products be stocked behind the counter, where only employees have access, remains in effect.

Mail Order Reporting Requirement

A number of comments were received regarding the mail order reporting requirement. The comments focused on the following issues:

1. In addition to requiring that all distributions (regardless of amount) of ephedrine, pseudoephedrine, or phenylpropanolamine to non-regulated persons be reported under the mail order reporting requirement, the MCA also establishes a general distribution threshold of 24 grams in a single transaction, rather than the existing thresholds set forth in §1310.04, for persons required to submit mail order reports. Some commenters expressed the position that the 24 gram threshold applies only to those transactions that must be reported and not to all transactions of the distributor;

2. The reporting requirement should be amended to exclude pharmacies that deliver or mail prescriptions to patients and to exclude mail order transactions that are below established thresholds;

3. The reporting requirement is in conflict with patient confidentiality requirements; and

4. The additional information required by DEA adds to an already burdensome requirement, especially the requirement for the date of transaction and the lot number, which should be stricken from the requirement.

The first of the commenters' concerns relates to specific requirements of the MCA with respect to reporting mail order transactions over which DEA has no discretion. The MCA requires, at Section 402 (codified at 21 U.S.C. 830(b)(3)), that all distributions (regardless of quantity) of ephedrine, pseudoephedrine, or phenylpropanolamine to non-regulated persons be reported to DEA monthly in a format determined by the Attorney General (delegated to DEA). In section 401 (codified at 21 U.S.C. 802(39)(A)(iv)(II), the MCA also defines a "regulated transaction," which is subject to various other regulatory requirements of Section 830 and elsewhere, to be any single transaction of 24 grams or more by a mail order distributor (the statute refers to "distributors required to submit reports by section 830(b)(3) of this title"). For this business sector, the higher distribution thresholds set forth in §1310.04 (e.g., 1 kilogram for pseudoephedrine and 2.5 kilograms for phenylpropanolamine) are not applicable. Therefore, the position expressed by the commenters that the 24 gram threshold applies only to those transactions that must be reported under the mail order reporting requirement, and not to all transactions of a mail order distributor, runs contrary to the law as interpreted by the agency.

One commenter noted that the proposed amendment to §1310.04(f)(ii) should be amended to reflect that the single transaction threshold also applies to distributions by persons required to report mail order transactions. This correction has been made to the final regulations.

As to the issue of waiving the reporting requirement for pharmacies for delivering or mailing regulated drug products to patients, the law provides no discretion to waive the reporting requirement for any categories of transactions; all described transactions must be reported. A legislative amendment is being considered to address this issue.

Amending the mail order requirement to exclude the delivery or mailing of prescriptions would also address the issue of patient confidentiality. Pending such an amendment, it must be noted that DEA often reviews prescription information, including the names and addresses of patients, in the course of investigations and audits. Disclosure of such information from DEA's files is made only to other law enforcement and regulatory agencies engaged in the enforcement of controlled substances or chemical control laws; when relevant in any investigation or proceeding for the enforcement of controlled substances or chemical control laws; and when necessary for compliance by the United States under treaty or other international agreement. Other requests for disclosure of such information must be made under the Freedom of Information Act and are subject to the full requirements and protections of the Privacy Act. Further, section 310 of the CSA (21 U.S.C. 830), which requires chemical records and reports, including the mail order reports, also contains protections against the disclosure of confidential business information collected by DEA pursuant to the section. DEA is amending §1310.06 to add a paragraph clarifying that the protections set forth in 21 U.S.C. 830(c) for confidential business information will also apply to information collected in the mail order reports.

With respect to the additional information (name of recipient, if different from the purchaser; address of purchaser, if different from address delivered to; shipping date; and lot number, if drug products) that DEA is requesting in the reports, such information is important in helping to identify efforts to divert the chemicals, especially where orders are being placed with a number of different mail order providers. It is not unusual for traffickers to attempt to circumvent the chemical controls by ordering small, apparently innocuous amounts of product from a variety of different sources or having a number of individuals place orders for delivery to the same location. The availability of the additional information is critical for identification of such efforts. The lot numbers for drug products are important in allowing DEA to track and identify the source of products that are found at clandestine laboratory sites. Finally, to reflect organizational changes within DEA, references to "Chemical Operations Section" have been changed to "Chemical Control Section".

One commenter requested clarification of the shipment date, package type, and package quantity. Shipment date refers to the date the product is shipped by the regulated person to the non-regulated person. Package type refers to the specific form of packaging of the product, i.e., bottle, blister pack, etc., and package quantity refers to the number of packages shipped. Section 1310.06 has been amended to include examples for items, where appropriate, for clarification.

One commenter expressed concern that with the mail order reporting requirement "* * * DEA is unfairly creating an 'unlevel' playing field between retail distributors and mail order distributors."

The statutory language enacting the mail order reporting requirement is clear and unequivocal and allows DEA no discretion to limit the requirement or exclude any categories of mail order transactions; all mail order transactions by a regulated person with a non-regulated person must be reported. As noted earlier, DEA is considering a legislative amendment to allow some discretion in the enforcement of this requirement of the MCA. However, until such an amendment is passed by Congress and signed into law, DEA must enforce the requirement as written.

In a related issue, two commenters that distribute ephedrine and pseudoephedrine products to Occupational Health Clinics requested that proposed §1310.04(f)(1)(i)(B)(2) and (D)(2) be amended to increase the

threshold from 24 grams to 160 grams for products packaged in unit dose form. DEA has responded directly to each of the commenters clarifying the fact that distributions to Occupational Health Clinics would not be subject to the mail order reporting requirement. If the commenters' activities are restricted to such sales they would be subject to the appropriate wholesale thresholds for ephedrine and pseudoephedrine and not to the threshold that applies to persons required to submit mail order reports.

Waiver of the Registration Requirement for Retail Distributors

One commenter objected to DEA's waiver of registration, contained in §1309.24(e), for retail distributors of regulated drug products "* * * irrespective of the form of packaging * * *. The commenter argued that Congress intended that the exemption apply only to 'ordinary over-the-counter products' and that the commenter was unaware of * * * any authority that DEA has to determine that 'minimizing the burden on industry' is more important than implementing public law."

The implementation of any law that has an impact on legitimate commerce is a balancing act between the specific requirements of the law and the impact that the law will have on the industry engaged in such commerce. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act of 1996 all require that implementation of regulatory requirements be accomplished in such a manner as to minimize the burden on the public to the greatest possible extent while remaining consistent with the requirements of the law. DEA has, in implementing the requirements of the MCA, acted consistently with those principles.

The definition of 'retail distributor' established by Congress is sufficiently restrictive that, as noted in the proposed rule, * * * the new controls of the MCA should, as a practical matter, significantly reduce the potential for major diversion from this level (provided retailers comply with the law and are alert to attempts to circumvent the controls.) Because of the limited amount of product permitted to be distributed in an individual transaction, attempts to divert the products by the retail distributors should be noticeable, given that the volume of material required is out of proportion with any reasonable amount that might be purchased for personal use." This fact, coupled with the widespread concern that these regulations have the smallest necessary impact on public access to the products at the retail level led DEA to exercise its authority under section 302(d) of the CSA (21 U.S.C. 822(d)) to exempt retail distributors from the registration requirement.

It should be noted that waiver of registration for retail distributors does not confer 'ordinary over-the-counter' status on products not meeting the definition of that category. Retail distributors whose transactions in listed chemicals consist solely of 'ordinary over-the-counter' products are exempt from the registration, recordkeeping, and reporting requirements of §1310.05, but not the reporting requirements of §1310.03(c). Retail distributions of products not meeting the definition of that category that exceed the retail threshold of 24 grams in a single transaction are subject to the registration, recordkeeping, and reporting requirements.

In granting the waiver of registration for retail distributors of regulated drug products irrespective of the form of packaging, DEA has acted within the bounds of responsible rulemaking without jeopardizing the requirements or intent of the MCA. Two commenters, representing elements of the manufacturing and retail distribution industry, recognized the waiver as * * * a rational interpretation of the MCA" and commended DEA for the action.

Miscellaneous

One commenter, while acknowledging the analysis of regulatory alternatives in the proposed rule, expressed concern that DEA has overlooked a class of affected entities that deserves additional consideration: wholesalers that distribute their products to small independent retailers. The commenter suggested that DEA consider less frequent reporting or waive the registration requirement for such small wholesalers.

DEA is familiar with the independent wholesale industry, having worked with the national trade associations representing this segment of the industry on a number of occasions since the passage of the MCA regarding its requirements and impact on the industry. As a result of requests from this part of the industry, DEA waived a substantial portion of the registration fee in order to reduce the economic impact of registration on the wholesalers. However, as noted earlier, waiving the registration requirement altogether is not an acceptable alternative; to do so would establish an unregulated portion of the industry that could become a source of supply for clandestine laboratory operators. This segment of the industry has been the subject of a substantial portion of DEA's enforcement efforts. Since October, 1997, there have been at least 33 criminal convictions and 23 civil fines obtained against wholesalers, all for violations of the CSA involving sales of regulated drug products. Additionally, at least 4 wholesalers have surrendered their registrations for violations involving regulated drug products, 6 have had their registrations suspended, and 13 companies are the subject of administrative actions to deny an application or revoke a registration. A recent national enforcement action directed at this segment of the industry resulted in over 170 arrests and seizure of sufficient product to provide over 12 tons of pseudoephedrine to the methamphetamine traffickers. Thus, it is clear that some level of regulation and oversight of this sector of the industry is necessary.

With respect to the issue of reporting, the only reports that must be made periodically are mail order reports, which are mandated by Congress. DEA has no discretion to modify the required reporting period. All other reports are to be submitted on an as-needed basis using the guidance of §1310.05. In total, DEA has taken action where possible to limit the burden on industry without compromising the legislative efforts to attack the problem of diversion of regulated drug products to clandestine laboratories.

In a related issue, two commenters objected to the characterization of the wholesale industry as the source of choice for the clandestine laboratory operators. It has never been the intent of DEA to cast the wholesale industry in a negative light. The majority of the industry is honest and reputable and has worked with DEA and Congress in an effort to address the diversion problem. However, there are the few proverbial 'bad apples' whose activities reflect poorly on the industry as a whole. These individuals, who are the focus of DEA's enforcement efforts, have taken advantage of their position within the wholesale industry to sell their products to clandestine laboratory operators or those who supply them, in order to gain illicit profits. DEA recognizes that while the clandestine laboratory operators have been able to obtain their supplies through this route, the actions of the few corrupt wholesalers are in no way a reflection of the industry as a whole. DEA looks forward to working with the legitimate industry in dealing with the problem of

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diversion of regulated drug products to clandestine laboratories.

One commenter requested clarification regarding the status of a variety of activities, such as contract processors, vending machine sales, and samples and donations. The commenter also proposed that DEA should more clearly define the evidentiary standards for reinstatement of the drug product exemption.

DEA recognizes that there are within the chemical and drug product industry certain activities of which regulation is not necessary for effective enforcement of the law. In that regard, DEA is preparing a separate proposed rule regarding the waiver for certain activities, including those listed in the previous paragraph, from either the registration requirement or the fee requirement. Until such waivers are finalized, however, the full requirements of the law and regulations apply.

With respect to the exemption criteria, DEA understands the desire on the part of industry for concrete, objective evidentiary guidelines to be satisfied in requesting reinstatement of the exemptions for certain drug products. However, the variety of circumstances that could affect a decision to grant such a reinstatement for any product is so great that the establishment of a concise and exclusive standard is not possible. As an alternative, DEA maintains a policy of open discussion with applicants for reinstatement. If there are any questions regarding an application or is a need for additional information, DEA will work with the applicant in an effort to address the issues.

One commenter objected that during the course of pre-registration investigations, DEA investigators were requesting information to which DEA is not entitled. This concern was also brought directly to DEA's attention by the commenter and has been resolved through a modification of the pre-registration investigation information collection procedures.

One commenter noted that the difficulties and burdens experienced by small distributors in complying with the recordkeeping requirement reinforce the need to establish waivers from the regulations where possible. DEA is committed to ensuring that the requirements of the chemical control program are applied with the least possible public burden while remaining consistent with the intent of the law. As noted earlier, DEA is preparing a proposal to exempt certain activities from the registration or fee requirement. DEA will continue to review the chemical control requirements to try and identify further waivers that might be possible.

Note Regarding Amendments to the Regulations

On October 17, 2001, DEA published a final rule in the **Federal Register** entitled "Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and its salts) as List I Chemicals". That final rule added new text to 21 CFR 1309.29. This final rule removes 21 CFR 1309.29 and incorporates its text into 21 CFR 1309.24. The amendments made in the October 17, 2001, final rule have been incorporated into new 21 CFR 1309.24, where appropriate.

Regulatory Flexibility Act

The Administrator in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it hereby certifies that this rulemaking will not have a significant economic impact upon a substantial number of small entities for the following reasons. As discussed in the NPRM, in the section regarding SMALL BUSINESS IMPACT AND REGULATORY FLEXIBILITY CONCERNS, consideration was given to the population that would be impacted, the potential impact of varying levels of regulation, and the nature of the problem to be addressed by the regulations.

As noted in the NPRM, there are two distinct, but related, groups within the industry: retail distributors and wholesalers. There are an estimated 750,000 retail distributors who distribute the regulated drug products directly to the public. Their activities are, by law, limited almost exclusively to sales of 24 grams or less directly to walk-in customers or in face-to-face sales for personal medical use. Wholesalers, while far fewer in number (approximately 3,500) and engaging in fewer transactions, account for as great a level of commerce as retail distributors through significantly larger transaction sizes.

There were three basic enforcement options available to DEA in applying the requirements of the MCA:

1. Apply the requirements to both the retail and wholesale distributor industries;

2. Regulate only the retail distributors; or

3. Regulate only the wholesale distributors.

In reviewing the options, it became clear that the burdens associated with regulation of retail distributors would potentially be enormous. As detailed in the NPRM, the initial registration cost for 750,000 retail distributors at $255.00 each would be over $190 million, with a subsequent annual reregistration cost, at $116.00 each, of approximately $87 million. Additionally, there would be a 150,000 hour annual paperwork burden associated with the registration requirement. For DEA, the administrative burden of handling 750,000 applications per year would be enormous. Further, the new requirements of the MCA with respect to retail distributors should reduce the potential for significant diversion, provided that retailers comply with the requirements of the law and are alert to attempts to circumvent the controls. Because of the limited amount of product permitted to be distributed in a single transaction, attempts to divert the products at the retail level should be noticeable, given that the volume of material required is out of proportion with any reasonable amount that might be purchased for personal use. Under the circumstances, the monetary and administrative burdens associated with registration and regulation of the retail industry would be out of proportion with the benefits to be derived and might unnecessarily interfere with legitimate public access to the products.

Registration and regulation of the wholesale industry would have a much lesser impact. With respect to registration, the cost for initial registration would be slightly more than $2 million (3,500 registrations at $595.00 each) and annual reregistration costs would be approximately $1.7 million (3,500 at $477.00 each). The annual paperwork burden associated with registration would be 700 hours per year. With respect to regulation, the recordkeeping requirement would be minimal, since the transaction information DEA requires would generally be maintained by a business as a matter of good business practice, and the reporting requirements (except for the mail order reporting requirement which is non-discretionary) are limited to an "as-needed" basis using the guidance of §1310.05. Weighing these much lower economic and administrative costs against the larger volumes of products per transaction at wholesale, the opportunity for relatively anonymous transactions, and the existing history of diversion point to the need for adequate registration and regulatory controls at this level of the industry.

Therefore, to best achieve the intended results of the MCA, while minimizing the burden on the industry, DEA has determined that the registration and regulatory controls will apply to the manufacturer/wholesale level, while retail distributors will be exempt from the registration and recordkeeping requirements provided that the requirements of the law and regulations with respect to retail distributions are met.

These regulations provide a system of controls to prevent the diversion of the drug products to clandestine laboratories that is consistent with the intent of the MCA, while providing regulatory relief for the approximately 750,000 retail distributors, most of whom are small businesses. For the remaining 3000 to 4000 wholesale distributors, importers, and exporters that became subject to registration and regulation, DEA reduced the initial registration fee from $595.00 to $116.00, thus minimizing the financial impact. With respect to the other requirements, DEA has traditionally based the recordkeeping requirement on standard business practices, thus minimizing the impact. Further, the MCA reduced the record retention period from 4 years to 2 years. As for reports, the MCA is absolute in the requirement that mail order reports be submitted monthly; DEA has no discretion to modify that requirement. For other reports, the requirement is limited to reporting only those transactions that are suspicious or unusual; it is not necessary for the regulated persons to report all their transactions.

DEA has not restricted its consideration of the impact of the MCA to this rulemaking only. DEA continues to work with the industry in identifying areas in which regulation is not necessary for effective enforcement of the chemical controls. As noted earlier, DEA is drafting a separate proposed rule to exempt certain other activities from either registration or registration fees. As the chemical program matures, DEA will continue to work to focus the controls where they are necessary. A copy of this rulemaking has been provided to the Chief Counsel for Advocacy at the Small Business Administration.

Executive Order 12866

This rulemaking has been drafted and reviewed in accordance with Executive Order 12866. This rulemaking has been determined to be a significant action and, therefore, this rulemaking has been reviewed and approved by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule contains a new reporting requirement, Report of Mail Order Transactions, that has been reviewed and approved by the Office of Management and Budget and issued OMB approval number 1117–0033.

List of Subjects

21 CFR Part 1300

Definitions, Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, List I and II chemicals, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR parts 1300, 1309, and 1310 are amended as follows:

PART 1300—[AMENDED]

1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

2. Section 1300.02 is amended by revising paragraph (b)(28)(i)(D) and by adding new paragraphs (b)(31) and (32) to read as follows:

§ 1300.02 Definitions relating to listed chemicals.

* * * * *

(b) * * *

(28) * * *

(i) * * *

(D) * * *

(1)(i) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers, pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise exempted under § 1310.11 of this chapter, except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction; or

(ii) The Administrator has determined pursuant to the criteria in §1310.10 of this chapter that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(2) The quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by §1310.03(c) shall be 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in a single transaction. For combination ephedrine products the threshold for any sale by retail distributors or by distributors required to submit reports by §1310.03(c) shall be 24 grams of ephedrine in a single transaction.

* * * * *

(31) The term ordinary over-the-counter pseudoephedrine or phenylpropanolamine product means any product containing pseudoephedrine or phenylpropanolamine that is—

(i) Regulated pursuant to the Act; and

(ii)(A) Except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dosage units, or where the use of

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blister packs is technically infeasible, that is packaged in unit dose packets or pouches, and

(B) For liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.

(32) The term combination ephedrine product means a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers, and therapeutically significant quantities of another active medicinal ingredient.

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.21 is revised to read as follows:

§ 1309.21 Persons required to register.

(a) Every person who distributes, imports, or exports any List I chemical, other than those List I chemicals contained in a product exempted under §1300.02(b)(28)(i)(D) of this chapter (irrespective of the threshold provisions under § 1300.02(b)(28)(i)(D)(2) of this chapter), or who proposes to engage in the distribution, importation, or exportation of any List I chemical, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.26 of this part. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(b) Every person who distributes or exports a List I chemical they have manufactured, other than a List I chemical contained in a product exempted under § 1300.02(b)(28)(i)(D) of this chapter, or proposes to distribute or export a List I chemical they have manufactured, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.26 of this part.

3. Section 1309.22 is amended by revising paragraph (b) to read as follows:

§ 1309.22 Separate registration for independent activities.

* * * * *

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.26, except that a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

4. Section 1309.24 is revised to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his or her business or employment.

(b) The requirement of registration is waived for any person who distributes a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to manufacture, distribute or dispense a controlled substance.

(c) The requirement of registration is waived for any person who imports or exports a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance.

(d) The requirement of registration is waived for any person who distributes a prescription drug product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter.

(e) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are limited to the distribution of below-threshold quantities of a pseudoephedrine, phenylpropanolamine, or combination ephedrine product that is regulated pursuant to §1300.02(b)(28)(i)(D) of this chapter, in a single transaction to an individual for legitimate medical use, irrespective of whether the form of packaging of the product meets the definition of ordinary over-the-counter pseudoephedrine or phenylpropanolamine product under § 1300.02(b)(31) of this chapter. The threshold for a distribution of a product in a single transaction to an individual for legitimate medical use is 24 grams of pseudoephedrine, phenylpropanolamine, or ephedrine base.

(f) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

(g) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and isotainers (with capacities greater than or equal to 2500 gallons in a single container).

(h) The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

(i) If any person exempted under paragraph (b), (c), (d), (e), (f) or (g) of this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for such activities, as required by § 1309.21 of this part.

(j) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b), (c), (d), (e), (f) or (g) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.55 of this part. In considering the revocation or suspension of a person's waiver granted pursuant to paragraph (b) or (c) of this section, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to 21 U.S.C. 824 is warranted.

(k) Any person exempted from the registration requirement under this section shall comply with the security requirements set forth in §§ 1309.71–1309.73 of this part and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

5. Section 1309.25 is revised to read as follows:

§ 1309.25 Temporary exemption from registration for chemical registration applicants.

(a) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a combination ephedrine product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before July 12, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in this part 1309 and parts 1310, and 1313 of this chapter remain in full force and effect.

(b) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a pseudoephedrine or phenylpropanolamine drug product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before October 3, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in this part 1309 and parts 1310 and 1313 of this chapter remain in full force and effect.

6. Sections 1309.27, 1309.28 and 1309.29 are removed.

7. Section 1309.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1309.71 General security requirements.

(a) * * *

(2) In retail settings open to the public where drugs containing ephedrine as the sole active medicinal ingredient are distributed, such drugs will be stocked behind a counter where only employees have access.

* * * * *

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.03 is amended by adding a new paragraph (c) to read as follows:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

(c) Each regulated person who engages in a transaction with a nonregulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals), and uses or attempts to use the Postal Service or any private or commercial carrier shall file monthly reports of each such transaction as specified in § 1310.05 of this part.

3. Section 1310.04 is amended by removing paragraph (g) and revising paragraph (f)(1) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) List I chemicals:

(i) Except as provided in paragraph (f)(1)(ii) of this section, the following thresholds have been established for List I chemicals.

Chemical	Threshold by base weight
(A) Anthranilic acid, its esters, and its salts	30 kilograms.
(B) Benzyl cyanide	1 kilogram.
(C) Ephedrine, its salts, optical isomers, and salts of optical isomers	No threshold. All transactions regulated.
(D) Ergonovine and its salts	10 grams.
(E) Ergotamine and its salts	20 grams.
(F) N-Acetylanthranilic acid, its esters, and its salts	40 kilograms.
(G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(H) Phenylacetic acid, its esters, and its salts	1 kilogram.
(I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(J) Piperidine and its salts	500 grams.
(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(L) 3,4–Methylenedioxyphenyl-2-propanone	4 kilograms.
(M) Methylamine and its salts	1 kilogram.
(N) Ethylamine and its salts	1 kilogram.
(O) Propionic anhydride	1 gram.
(P) Isosafrole	4 kilograms.
(Q) Safrole	4 kilograms.
(R) Piperonal	4 kilograms.
(S) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine)	1 kilogram.
(T) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(U) Hydriodic Acid	1.7 kilograms (or 1 liter by volume).
(V) Benzaldehyde	4 kilograms.
(W) Nitroethane	2.5 kilograms.

(ii) Notwithstanding the thresholds established in paragraph (f)(1)(i) of this section, the following thresholds will apply for the following List I chemicals that are contained in drug products that are regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter (thresholds for retail distributors and distributors required to report under § 1310.03(c) of this part are for a single transaction; the cumulative threshold provision does not apply. All other distributions are subject to the cumulative threshold provision.):

Chemical	Threshold by weight
(A) Ephedrine, its salts, optical isomers, and salts of optical isomers as the sole therapeutically significant medicinal ingredient.	No threshold. All transactions regulated.
(B) Ephedrine, its salts, optical isomers, and salts of optical isomers in combination with therapeutically significant amounts of another medicinal ingredient:	
(1) Distributions by retail distributors	24 grams.

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Chemical	Threshold by weight
(2) Distributions by persons required to report under § 1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(B) (1) and (2) of this section)	1 kilogram.
(4) Imports and Exports	1 kilogram
(C) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (other than ordinary over-the-counter products):	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by persons required to report under §1310.03(c) of this part	24 grams.
(3) All other domestic distributions, (other than paragraphs (f)(1)(ii)(C) (1) and (2) of this section)	1 kilogram.
(4) Imports and Exports	1 kilogram.
(D) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (ordinary over-the-counter products):	
(1) Distributions by retail distributors	Exempt.
(2) Distributions by persons required to report under §1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(D) (1) and (2) of this section)	1 kilogram.
(4) Imports and Exports	1 kilogram.
(E) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (other than ordinary over-the-counter products):	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by persons required to report under § 1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(E) (1) and (2) of this section)	2.5 kilograms.
(4) Imports and Exports	2.5 kilograms.
(F) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (ordinary over-the-counter products):	
(1) Distributions by retail distributors	Exempt.
(2) Distributions by persons required to report under §1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(F) (1) and (2) of this section)	2.5 kilograms.
(4) Imports and Exports	2.5 kilograms.

4. Section 1310.05 is amended by adding a new paragraph (e) to read as follows:

§ 1310.05 Reports.

* * * * *

(e) Each regulated person required to report pursuant to § 1310.03(c) of this part shall either:

(1) Submit a written report, containing the information set forth in § 1310.06(i) of this part, on or before the 15th day of each month following the month in which the distributions took place. The report shall be submitted under company letterhead, signed by the person authorized to sign the registration application forms on behalf of the registrant, to the Chemical Control Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; or

(2) Upon request to and approval by the Administration, submit the report in electronic form, either via computer disk or direct electronic data transmission, in such form as the Administration shall direct. Requests to submit reports in electronic form should be submitted to the Chemical Control Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, ATTN: Electronic Reporting.

5. Section 1310.06 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 1310.06 Content of records and reports.

* * * * *

(i) Each monthly report required by § 1310.05(e) of this part shall provide the following information for each distribution:

(1) Supplier name and registration number.

(2) Purchaser's name and address.

(3) Name/address shipped to (if different from purchaser's name/address).

(4) Name of the chemical and total amount shipped (i.e. Pseudoephedrine, 250 grams).

(5) Date of shipment.

(6) Product name (if drug product).

(7) Dosage form (if drug product) (i.e., pill, tablet, liquid).

(8) Dosage strength (if drug product) (i.e., 30mg, 60mg, per dose etc.).

(9) Number of dosage units (if drug product) (100 doses per package).

(10) Package type (if drug product) (bottle, blister pack, etc.).

(11) Number of packages (if drug product) (10 bottles).

(12) Lot number (if drug product).

(j) Information provided in reports required by § 1310.05(e) of this part which is exempt from disclosure under section 552(a) of Title 5, by reason of section 552(b)(6) of Title 5, will be provided the same protections from disclosure as are provided in section 310(c) of the Act (21 U.S.C. 830(c)) for confidential business information.

6. Section 1310.10 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 1310.10 Removal of the exemption of drugs distributed under the Food, Drug, and Cosmetic Act.

* * * * *

(d) Any manufacturer seeking reinstatement of a particular drug product that has been removed from an exemption may apply to the Administrator for reinstatement of the exemption for that particular drug product on the grounds that the particular drug product is manufactured and distributed in a manner that prevents diversion. In determining whether the exemption should be reinstated the Administrator shall consider:

* * * * *

Dated: March 18, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–7258 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–09–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–006]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River due to imminent failure of the upper tread plates if the drawbridge continues to operate in accordance with the existing regulation. The drawbridge will remain in the closed-to-navigation position on weekdays from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times including weekends and Federal Holidays the drawbridge will remain in the open-to-navigation position. Allowing the drawbridge to remain in the open-to-navigation position most of the time will reduce the number of turns of the swing span and extend the life of the deteriorated upper tread plates until they can be replaced.

DATES: This temporary rule is effective from 8 a.m. on March 13, 2002, to 8 a.m. on December 31, 2002. Comments must be received by May 28, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–006 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at the Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the Department of the Army, Rock Island Arsenal and the date of requested closure. The Coast Guard received the request from the Department of the Army, Rock Island Arsenal, on March 5, 2002.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. If the drawbridge continues to operate at its normal frequency, the failure of the upper tread plates is imminent. Failure of the upper tread plates will result in total loss of operation of the drawbridge with catastrophic consequences to traffic on the Mississippi River. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators. No objections were raised.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking [CGD08–02–006], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received. We may change this rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On March 5, 2002, the Department of the Army, Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois. Department of the Army, Rock Island Arsenal requested that the drawbridge remain closed to navigation from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times including weekends and Federal Holidays the drawbridge will remain in the open-to-navigation position. The deteriorated upper tread plates make it necessary to reduce the number of turns of the swing span.

The Rock Island Railroad and Highway Drawbridge has a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Department of the Army, Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times including weekends and Federal Holidays the drawbridge will remain in the open-to-navigation position. Limiting the operation of the swing span will extend the life of the worn tread plates until they can be replaced during the 2002 winter maintenance season. If this regulatory action is not taken, catastrophic consequences to traffic on the Mississippi River are imminent. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators. No objections were raised.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Since the proposed regulation change will have little effect on present operating conditions for rail or river traffic, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies

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or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulation actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector or $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1 (series), this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m., March 13, 2002, through 8 a.m., December 31, 2002, § 117.T–408 is added to read as follows:

§ 117.T–408 Upper Mississippi River.

From 8 a.m., March 13, 2002, through 8 a.m., December 31, 2002, the Rock Island Railroad Drawbridge, mile 482.9, may be maintained in the closed-to-navigation position on weekdays from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times, including weekends and Federal Holidays, the drawbridge will remain in the open-to-navigation position.

Dated: March 13, 2002.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 02–7356 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes to Announce the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule provides a change to certain sections applicable to Periodicals mail in the *Domestic Mail Manual* (DMM). It adds a new optional method a publisher may use to determine per-copy weights and to substantiate the advertising percentage in each edition of each issue of a periodical. The new option is called the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program.

EFFECTIVE DATE: March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Tricamo, New York Rates and Classification Service Center, at (212) 613–8754.

SUPPLEMENTARY INFORMATION: In this rulemaking, the Postal Service announces the adoption of an optional method that will eliminate a publisher's need to submit a manually marked copy showing the percentage of advertising for each edition of each issue at the time of mailing. It also eliminates the requirement for Postal Service acceptance employees to determine per-copy weights by weighing 10 copies of each edition at the time of mailing.

Because of technology innovations made in the publishing industry, the Postal Service developed an evaluation program to test the accuracy of Publishing and Print Planning (PPP) software to calculate advertising percentages and copy weights. This new optional program, designed in cooperation with the Periodicals industry, allows publishers to submit postage statements completed entirely with electronically generated per-copy weights in a totally automated environment. The Postal Service will sample a limited amount of actual copies to ensure the weights are accurate. If the sampling determines that the publisher's weights are not within tolerance, a postage adjustment will be generated.

On October 10, 2001, the Postal Service published for public comment in the **Federal Register** a proposed rule (66 FR 51617–51619) regarding the new optional Periodicals Accuracy, Grading, and Evaluation (PAGE) Program. The Postal Service received four comments during the 30-day comment period. One mailer commented that the company applauds the initiative of the PAGE Program claiming it is a more efficient way to determine weights and it reduces workhours for both the mailers and the Postal Service. A second mailer submitted a statement of support to establish the new optional method for determining per-copy weights and advertising percentages electronically and considers PAGE a major step forward in reduction of longtime costs associated with the processing of Periodicals mail. The third and fourth mailers "fully support" and "fully agree" with implementation of the PAGE Program.

After full consideration of the comments received, and for the reasons cited above, the Postal Service believes it appropriate to adopt a rulemaking for the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program.

Program Information and Participation

To participate in this program, publishers must successfully complete three stages of authorization.

Stage One—Product Certification for Software Developers

Developers may have their PPP software PAGE-certified by applying to the National Customer Support Center (NCSC) and paying the appropriate fee. Developers are charged the software analysis fee of $1,000.00 for testing. One charge will cover up to three certification reviews of a specific software package by a software developer. If a developer requires an on-site analysis, the fee is $2,500.00. An additional $1,500.00 will be charged for each subsequent certification review of a specific software package required at a developer's site. A developer's software will be certified for one PAGE cycle only. A PAGE cycle is one year beginning March 11, and ending March 10 of the following year. Certification for the next PAGE cycle will require payment of an analysis fee of either $1,000.00 for NCSC analysis or $2,500.00 for an on-site analysis. Publishers must use PPP software certified by the Postal Service to generate per-copy weights and advertising percentages to progress to stage 2.

The first testing cycle will begin March 11, 2002.

Stage Two—User Certification for PPP Software.

A publisher may participate in the PAGE Program only when its employees or agents who use the PPP software have been certified by the Postal Service to use PAGE-certified software. Publishers must apply to the NCSC to be certified for all employees who will input data into their PPP software program. Publishers will be charged $25.00 for a User Testing Package and Analysis Kit for each employee. There will be a $25.00 fee for each attempt at user certification. Each user must reapply for certification every 2 years. Any new employees who will use PPP software must be certified before using the software if a publisher has been authorized to submit Periodicals mailings using the PAGE Program. As an option, a publisher may purchase a reference kit containing mailing standards, Postal Service Customer Service Support Rulings (and updates), Publication 32, *Glossary of Postal Terms*, and Postal Explorer for $20.00.

Users testing cycle begins April 11, 2002.

Stage Three—PAGE Program Authorization

Publishers must complete an application for authorization to submit PAGE-certified calculated copy weights and advertising percentages to participate in the program. The application may be obtained from and must be returned to the New York Rates and Classification Service Center (RCSC) U.S. Postal Service, 1250 Broadway, 14th Floor, New York, NY 10095–9599. A publisher must report all authorized Periodicals publications and print sites that will use PAGE-certified software. There is no charge for this authorization, and the publisher is required to reapply annually.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, the Postal Service adopts the following amendments to the *Domestic Mail Manual*, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 407, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the following sections of the *Domestic Mail Manual* as follows:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

P000 Basic Information

P010 General Standards

* * * * *

P013 Rate Application and Computation

* * * * *

7.0 COMPUTING POSTAGE—PERIODICALS

7.1 Percentage of Advertising

[Add the following sentence at the end of 7.1:]

* * * Advertising percentages may also be calculated through the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program using the procedures in P200.4.

7.2 Weight Per Copy

[Add the following sentence at the end of 7.2:]

* * * Per-copy weights may also be calculated through the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program using the procedures in P200.4.

* * * * *

P200 Periodicals

* * * * *

1.0 BASIC INFORMATION

* * * * *

1.2 Marked Copy

[Add the following sentence at the end of 1.2:]

* * * Mailers do not have to submit marked copies if certified by the Postal Service to use the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program in P200.4.

* * * * *

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[Add new 4.0 as follows:]

4.0 PERIODICALS ACCURACY, GRADING, AND EVALUATION (PAGE) PROGRAM

4.1 Basic Information

The Periodicals Accuracy, Grading, and Evaluation (PAGE) Program is a process to evaluate Publishing and Print Planning (PPP) software and to determine its accuracy in computing per-copy weights and calculating advertising percentages for Periodicals mail using DMM standards. Certification of PAGE software is available only to those companies that develop or write PPP software. PAGE certification does not guarantee acceptance of the publisher's per-copy weights and advertising percentages prepared with PAGE-certified software.

4.2 Process

The PAGE Program evaluates and tests PPP software. In addition, the PAGE Program tests and qualifies publishing personnel to submit data to the Postal Service using PAGE-certified PPP software. The Postal Service National Customer Support Center (NCSC) in Memphis, Tennessee, is the Postal Service location for certifying developer's software and a publisher's employees to use certified PPP software to submit Periodicals mailings. The PAGE Program involves the following three elements:

Stage One—Product Certification for Software Developers

NCSC evaluates the accuracy of the calculations of PPP software by processing a test publication file either at the NCSC or at the developer's location (through an on-site visit).

Stage Two—User Certification for PPP Software

NCSC provides test packages to the users and evaluates the results.

Stage Three—PAGE Program Authorization

Only publishers who have PAGE-certified users and use PAGE-certified software to submit per-copy weight and calculated advertising percentages may apply for authorization to the Manager, New York Rates and Classification Service Center.

4.3 Participation

For information about charges and the PAGE Program, publishers may request a technical guide (including order forms) from the NCSC by calling 1–800–238–3150. Additional information is also available from the New York Rates and Classification Service Center at (212) 613–8676.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–7388 Filed 3–27–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301221; FRL–6828–3]

RIN 2070–AB78

Propiconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of the fungicide propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on blueberries at 1.0 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective March 28, 2002. Objections and requests for hearings, identified by docket control number OPP–301221, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301221 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301221. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), it established a time-limited tolerance for the combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on blueberries at 1.0 ppm, with an expiration date of December 31, 1999. This time-limited tolerance was subsequently extended via a **Federal Register** notice published on August 16, 2000 (65 FR 49924) (FRL–6737–1), which had the effect of extending the time-limited tolerance for blueberries until December 31, 2001. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propiconazole on blueberries for this year's growing season due to the continued problems posed by pathogens that cause mummy berry disease, *Monilinia vaccinium-corymbosi*. After having reviewed the submission, EPA concurs that emergency conditions continue to exist. EPA has authorized under FIFRA section 18 the use of propiconazole on blueberries for control of mummy berry disease in the 2002 growing season.

EPA assessed the potential risks presented by residues of propiconazole in or on blueberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8). Based on that data and information considered, the Agency reaffirms that the re-establishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is re-established for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301221 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 28, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–

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5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301221, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.434 [Amended]

2. In § 180.434, amend the table in paragraph (b) by revising the "Expiration/revocation date" "12/31/01" for the commodity "Blueberrries" to read "12/31/03."

[FR Doc. 02–7494 Filed 3–27–02; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF ENERGY

48 CFR Parts 902, 904, 909, 913, 914, 915, 916, 917, 925, 931, 933, 950, 952, and 970

RIN 1991–AB51

Acquisition Regulation: Technical and Administrative Amendments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the regulation. This rulemaking incorporates technical and administrative changes to the DEAR that include: expanding definitions to distinguish the National Nuclear Security Administration (NNSA) as an agency within the DOE; acknowledging the Administrator of the NNSA as an agency head; and recognizing the Senior Procurement Executives for DOE, the NNSA, and the Federal Energy Regulatory Commission (FERC). Additional changes include removing obsolete coverage; renumbering and updating certain parts of the regulation to conform with the Federal Acquisition Regulation (FAR); and correcting typographical errors. These changes have no significant impact on non-agency persons such as contractors or offerors.

EFFECTIVE DATE: This final rule will be effective April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Denise P. Wright, Office of Procurement and Assistance Policy (ME–61), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–6217.

SUPPLEMENTARY INFORMATION:

I. Explanation of Revisions.
II. Procedural Requirements.
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 13132
F. Review Under the National Environmental Policy Act
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

I. Explanation of Revisions

1. Section 902.200, Definitions Clause, is amended to the definitions for "Head of Agency" and "DOE" and to add a definition for "Senior Procurement Executive." These changes are made pursuant to the establishment of the NNSA under the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), sections 3202 and 3212 of which provide that the Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security and head of the NNSA and carry out the functions as specified in Section 3212. The clause is further amended to correct typographical errors.

2. Section 904.404, Contract clause, paragraph (4) is amended to correct typographical errors.

3. Section 904.7102, Waiver by the Secretary, is amended to reflect organizational changes within the DOE.

4-5. Part 909, Contractor Qualifications, 909.403 Definitions, is amended to revise the designation for "Debarring Official" and "Suspending Official" for DOE, the NNSA, and the FERC to be the Director, Office of Procurement and Assistance Management, DOE, or designee.

6. Part 913, Simplified Acquisition Procedures, 913.3 Fast Payment Procedure, 913.4 Imprest Fund, and 913.5 Purchase Orders, are amended to conform to the FAR.

7. Section 914.406, Mistake in bids, 914.406–3 Other mistakes disclosed before award, and 914.406–4 Mistakes after award, are amended. The changes are made to conform to current FAR numbering.

8. Section 915.606, Agency procedures. (DOE coverage-paragraph (b)) is amended. The location for submission of unsolicited proposals is changed. The change is made to ensure consistency in current DOE procedure.

9. Section 916.6, Time and Materials, Labor Hour, and Letter Contracts, is amended to incorporate an approved class deviation to the requirement at 48 CFR 16.601, paragraph (c), for a determination and findings documenting the suitability of a time and materials contract.

10. Section 917.602, Policy, is amended to clarify that only the Secretary may authorize non-competitive awards and extensions of management and operating contracts pursuant to Section 301 of Public Law 106–377.

11. Section 925.901, Omission of the audit, is amended to reflect organizational changes within the DOE.

12. Section 931.205–19, Insurance and Indemnification, is amended to revise the reference to the prescribed contract clause.

13. Section 933.103, Protests to the agency, is amended to reflect organizational changes within the DOE.

14. Section 950.104, Reports, is deleted current FAR coverage is sufficient.

15. Section 952.202–1, Definitions, is amended to revise the terms "Head of Agency" and "DOE," and to add a definition for "Senior Procurement Executive."

16. Sections 952.208–7, 952.217–70, 952.227–13, 952.233–2, 952.236–72, and 952.250–70 are revised to update incorrect references.

17. Section 952.231–71, Insurance-Litigation and Claims, is added to clarify coverage for certain non-management and operating contracts.

18. Section 952.236–70, Administrative terms for architect-engineer contracts, is removed in its entirety. The coverage is determined to be obsolete.

19. Section 952.249–70, Termination clause for cost-reimbursement architect-engineer contracts, is removed. The current FAR coverage at 52.249–6, Termination (Cost-Reimbursement), is sufficient.

20. Section 970.3102–05–53, Preexisting conditions, is amended to renumber as 970.3102–05–70 since the coverage is unique to DOE and does not supplement the FAR.

21. Section 970.5228–1, Insurance-litigation and claims, is amended to revise paragraphs (e)(2), (h), and (j)(4) to correct references.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant

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regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and, therefore, the Regulatory Flexibility Act does not apply to this rulemaking proceeding.

D. Review Under the Paperwork Reduction Act

No new collection of information or recordkeeping requirement is imposed by this rulemaking. Accordingly, no OMB clearance is required subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 48 CFR Parts 902, 904, 909, 913, 914, 915, 916, 917, 925, 931, 933, 950, 952, and 970

Government procurement.

Issued in Washington, DC, on March 20, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 902, 904, 909, 914, 915, 916, 917, 925, 931, 933, 950, and 952 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

PART 902 —DEFINITIONS OF WORDS AND TERMS

2. Section 902.200 is revised to read as follows:

902.200 Definitions clause.

As prescribed by FAR subpart 2.2, insert the clause at FAR 52.202–1, Definitions, but modify it to limit the definition at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, or the Under Secretaries of the Department of Energy, and the Chairman, Federal Energy Regulatory Commission. The contracting officer shall also add paragraphs (h) and (i) or (g) and (h) if Alternate I of the FAR clause is used. Paragraph (h) defines "DOE" as meaning the United States Department of Energy, "FERC" as meaning the Federal Energy Regulatory Commission, and "NNSA" as meaning the National Nuclear Security Administration. Paragraph (i) identifies the Senior Procurement Executive, DOE, as the Director, Office of Procurement and Assistance Management; the Senior Procurement Executive, NNSA, as the Administrator for Nuclear Security, NNSA; and the Senior Procurement Executive, FERC, as the Chairman, Federal Energy Regulatory Commission.

PART 904—ADMINISTRATIVE MATTERS

904.4 [Amended]

3. Section 904.404 is amended as follows:

a. In paragraph (4) remove "should" and add in its place "may".

904.7102 [Amended]

4. Section 904.7102 is amended in paragraph (b) by removing "Office of Clearance and Support" and adding in its place "Office of Contract Management"

PART 909—CONTRACTOR QUALIFICATIONS

5.–6. Section 909.403 is revised to read as follows:

909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

Debarring Official. The Debarring Official for both DOE and NNSA is the Director, Office of Procurement and Assistance Management, DOE, or designee.

Suspending Official. The Suspending Official for both DOE and NNSA is the Director, Office of Procurement and Assistance Management, DOE, or designee.

7. Revise Part 913 to read as follows:

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 913.3—Simplified Acquisition Methods

Sec.
913.307 Forms

Subpart 913.4—Fast Payment Procedure

913.402 General.

Authority: 42 U.S.C. 7101 *et seq.*, 41 U.S.C. 418(b); 50 U.S.C. 2401 *et seq.*

Subpart 913.3—Simplified Acquisition Methods

913.307 (b))

(b) Optional Forms 347 and 348, or DOE F 4250.3, may be used for purchase orders using simplified acquisition procedures. These forms shall not be used as the contractor's invoice. See 48 CFR 12.204 regarding the use of SF–1449 for the acquisition of commercial items using simplified acquisition procedures.

Subpart 913.4—Fast Payment Procedure

913.402 General.

The fast payment procedure delineated in FAR subpart 13.4 is not to be used by DOE.

PART 914—SEALED BIDDING

914.4 [Amended]

8. Redesignate sections 914.406, 914.406–3, and 914.406–4 as sections 914.407, 914.407–3, and 914.407–4, respectively.

9. Redesignated section 914.407–3 is amended in paragraph (e) as follows:

a. In first sentence remove "14.406–3(e)" and "14.406–3" and add in their place "14.407–3(e)" and "14.407–3," respectively.

b. In the second sentence remove "14.406–3" and add in its place "14.407–3."

10. Redesignated section 914.407–4 is amended as follows:

a. In the first sentence remove "14.406–4" and add in its place "14.407–4"

b. In the second sentence remove "14.406–4(e) and add in its place "14.407–4(e)."

PART 915—CONTRACTING BY NEGOTIATION

11. Section 915.606 is amended by removing "Office of Procurement and Assistance, Washington, DC 20585", and adding in its place "U.S. Department of Energy, National Energy Technology Laboratory (PGH), Pittsburgh, PA 15236–0940."

PART 916—TYPES OF CONTRACTS

12. Subpart 916.6 is added to read as follows:

Subpart 916.6—Time and Materials, Labor Hour, and Letter Contracts

916.601 Time and Materials (DOE coverage (c)).

(c) Limitations. The Contracting Officer is not required to execute a separate Determination and Findings as required by FAR 16.601 3(c) if other file documentation adequately justifies contract actions.

13. Section 917.602 is amended in paragraph (c) by removing "Head of the Agency" and adding in its place "Secretary."

PART 925—FOREIGN ACQUISITION

925.901 [Amended]

14. Section 925.901 is amended in paragraph (c) by removing "Office of Clearance and Support" and adding in its place "Office of Contract Management."

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

15. Section 931.205–19, paragraph (h) is revised to read as follows:

931.205–19 Insurance and Indemnification. (DOE coverage-paragraph (h)).

(h) The contracting officer shall insert the clause at 48 CFR 952.231–71 in non-management and operating cost reimbursement contracts involving work performed at facilities owned or leased by the Department exceeding $100,000,000.

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

933.103 [Amended]

16. Section 933.103 is amended in paragraphs (f)(2), (j), and (k) by removing "Office of Clearance and Support" and adding in its place "Office of Contract Management."

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

950.104 [Removed]

17. Section 950.104 is removed.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 952.202–1 is revised to read as follows:

952.202–1 Definitions.

(a) As prescribed in 902.200, insert the clause at FAR 52.202–1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

(a) *Head of Agency* means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iiii) the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraphs (h) and (i) except that they will be designated paragraphs (g) and (h) if Alternate I of the FAR clause is used.

(h) The term DOE means the Department of Energy, FERC means the Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.

(i) The term Senior Procurement Executive means, for DOE:

Department of Energy—Director, Office of Procurement and Assistance Management, DOE;

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National Nuclear Security Administration—Administrator for Nuclear Security, NNSA; and

Federal Energy Regulatory Commission—Chairman, FERC.

19. In the table below, for each section indicated in the left column remove the language indicated in the middle column and add in its place the language in the right column.

Section	Remove	Add
952.208–7, Introductory Text	908.7101–7	908.1104
952.217–70, Introductory Text	917.7403(c)	917.7403
952.227–13, Introductory Text	927.303(c)	927.303(a)(1)
952.233–2, Introductory Text	Clause	Provision
952.236–72, Introductory Text	936.202(j)	936.202(h)
952.250–70, Note II	(date to be that of the Final Rule resulting from the proposed rule herein.	June 12, 1996

20. Section 952.231–71 is added to read as follows:

952.231–71 Insurance-litigation and claims.

As prescribed in 48 CFR 931.205–19, insert the following clause in applicable non-management and operating contracts:

Insurance-Litigation and Claims (APRIL 2002)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation. (End of Clause)

952.236–70 [Removed]

21. Section 952.236–70 is removed.

952.249–70 [Removed]

22. Section 952.249–70 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

23. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

24. 970.3102–05–53 is redesignated as 970.3102–05–70.

25. 970.5228–1 is amended by revising paragraphs (e)(2), (h) introductory language, and (j)(4) to read as follows:

970.5228–1 Insurance-litigation and claims.

* * * * *

(e) * * *

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."

* * * * *

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

* * * * *

(j) * * *

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245–1.

* * * * *

[FR Doc. 02–7300 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 952, and 970

RIN 1991–AB42

Acquisition Regulation: Security Amendments to Implement Executive Order 12829, National Industrial Security Program

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to implement Executive Order 12829, National Industrial Security Program, dated January 6, 1993, and Section 828 of the National Defense Authorization Act for Fiscal Year 1997, and to bring the DEAR into conformance with existing practices. DOE is making these changes to its security system to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The changes also include a provision to allow the Secretary of Energy to waive the prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved.

EFFECTIVE DATE: This interim final rule will be effective May 28, 2002.

Comment date: Comments should be submitted on or before April 29, 2002.

ADDRESSES: Mail comments to Richard Langston, Office of Procurement and Assistance Policy (MA–51), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

Submit electronic comments to richard.langston@pr.doe.gov.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Policy (MA–51), 202–586–8247 or by electronic mail addressed as above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Explanation of Revisions
III. Procedural Requirements
A. Review Under Executive Order 12866.
B. Review Under Executive Order 12988.
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E. Review Under the National Environmental Policy Act.
F. Review Under Executive Order 13132.
G. Review Under the Unfunded Mandates Reform Act of 1995.
H. Review Under the Treasury and General Government Appropriations Act, 1999.
I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996.
J. Review Under Executive Order 13211.

I. Background

Executive Order 12829, National Industrial Security Program (January 6, 1993), requires a uniform system for classifying, safeguarding, and declassifying national security information. DOE is making these changes to its security system to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The Federal agencies are adopting the National Industrial Security Program (NISP) as the uniform Federal industrial security program within the limitations of their separate statutory requirements. Among the more significant features of the new rule is the use of a Standard Form 328, Certificate Pertaining to Foreign Interests, to gather information relative to foreign ownership, control or influence. Previously, DOE used a separate questionnaire of its own with more and somewhat different questions. Now all agencies will collect the same information. This feature will result in the greatest savings for both contractors and Federal agencies because agencies

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will accept each others' clearances on a reciprocal basis, in most circumstances. A DOE clearance was not previously valid for a Department of Defense (DOD) contract and vice versa. In most instances, a contractor interested in seeking a contract requiring a DOE clearance will already have either a DOD or a DOE clearance, and there will be no need to submit the detailed information required to establish a Facility Clearance.

Section 2536(a) of 10 U.S.C. prohibits award of a DOD or DOE contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to a proscribed category of information to perform the contract. The cognizant Secretary is authorized to waive this prohibition if the Secretary determines that a waiver is essential to the national security interests of the United States. That prohibition is implemented by Subpart 904.7100 of the Department of Energy Acquisition Regulation (DEAR).

Section 2536(b)(1)(B) of 10 U.S.C. provides separate waiver authority for a contract for environmental restoration, remediation, or waste management at a DOD or DOE facility. For such a contract, the prohibition on award of a contract under a national security program to an entity controlled by a foreign government which requires access to a proscribed category of information to perform the contract may be waived only if the Secretary concerned determines that (1) a waiver will advance the environmental restoration, remediation, or waste management objectives of the cognizant Department, (2) a waiver will not harm the national security interests of the United States, and (3) the entity to which the contract is to be awarded is controlled by a foreign government with which the cognizant Secretary has authority to exchange Restricted Data under section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)). Section 904.7102 of the DEAR is being revised to reflect this waiver authority.

In order to implement 10 U.S.C. 2536 and the National Industrial Security Program in a timely manner, the Department previously issued interim guidance to its personnel in two Acquisition Letters. Acquisition Letter 97–03 was issued February 4, 1997 to implement the requirements of 10 U.S.C. 2536. Acquisition Letter 99–03 was issued April 2, 1999 to implement the National Industrial Security Program. These issuances will be cancelled upon the effective date of this rule.

II. Explanation of Revisions

We have made the following changes to the DEAR:

1. Restated the authority citation.
2. Added definitions of "Access Authorization" and "Facility Clearance," revised the definitions of "Classified Information" and "Restricted Data," and updated the Executive Order reference at 904.401;
3. Added the word "industrial" between "DOE" and "security" to reflect the uniform nature of the DOD and DOE industrial security programs, added references to the applicable Executive Orders, and substituted the words "Restricted Data" for the words "national security information" in the reference to 10 CFR part 1045 at 904.402;
4. At 904.404, the title is changed from "Contract clause" to "Solicitation provision and contract clause," revisions are made in paragraphs (d)(1) and (d)(2), and a new paragraph (d)(5) is added;
5. Changed the title of Subpart 904.70 "Foreign Ownership, Control or Influence Over Contractors" to "Facility Clearance";
6. Revised the text of 904.7000 to substitute terminology better suited to the National Industrial Security Program;
7. Added a definition for "Facility Clearance" at 904.7002;
8. Revised 904.7003 by making minor wording changes at paragraphs (a) and (b) for brevity and clarity;
9. Removed 904.7005, Solicitation provision and contract clause;
10. Removed the words "a company owned by" which precede the words "an entity controlled by a foreign government" and changed "company" to "entity" following the words "for that" in 904.7100, Scope of Subpart.
11. Added an additional waiver authority for projects involving environmental restoration, remediation or waste management at a DOE site from the prohibition for the national security program on contracting with foreign government controlled entities in 904.7102;
12. Revised 904.7103, Solicitation provision and contract clause, by removing the words "with its Alternate I" at the end of paragraph (a) and changing the citation "952.204–74" to read "952.204–2" at the end of paragraph (b).
13. Revised the Security clause at 952.204–2 by removing the existing paragraph (j) and adding a new paragraph (j), Foreign Ownership Control and Influence;
14. Replaced the current "Foreign Ownership, Control or Influence Over Contractor" with a new provision entitled "Facility Clearance" at 952.204–73;
15. Removed the clause "Foreign Ownership, Control or Influence Over Contractor" at 952.204–74;
16. Restated the authority citation for Part 970.
17. Revised 970.0404–1, Definitions, to add definitions for "Access Authorization" and "Facility Clearance" and to revise the definition of Restricted Data;
18. Revised 970.0404–2, General, to substitute a revised paragraph (a), delete paragraphs (b) through (d) and to redesignate the existing paragraph (e) as paragraph (b);
19. Revised 970.0404–3, Responsibilities of contracting officers, to delete paragraph (a) which is inconsistent with National Industrial Security Program procedures. Paragraphs (b) and (c) will be retained but will be designated paragraphs (a) and (b).

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This interim final rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. This rule, which would implement provisions of Executive Order 13101 concerning use of recycled materials, would not have a significant economic impact on small entities. While rule requirements may flow down to subcontractors in certain circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910–0300. There are no new burdens imposed by this rule.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each agency to assess the effects of Federal regulatory action on State, local and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

List of Subjects in 48 CFR Parts 904, 952 and 970

Government procurement.

Issued in Washington, DC, on March 19, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for parts 904 and 952 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 904—ADMINISTRATIVE MATTERS

2. Section 904.401 is revised to read as follows:

904.401 Definitions.

Access Authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, or information determined to require protection against unauthorized disclosure under Executive Order 12958, or prior Executive Orders, which is identified as National Security Information.

Facility Clearance means an administrative determination that a

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facility is eligible to access, produce, use or store classified information, or special nuclear material.

Restricted Data means all data concerning the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2162).

3. Section 904.402 is revised to read as follows:

904.402 General.

(a) The basis of DOE's industrial security requirements is the Atomic Energy Act of 1954, as amended, and Executive Orders 12958 and 12829.

(b) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

4. Section 904.404 is amended by revising the title and paragraph (d)(1), revising the paragraph (d)(2) heading, revising the phrase "included in DOE 1240.2 (see current version.), Attachment 3, and any subsequent changes" to read "referenced in DOE N 142.1" in the second sentence of paragraph (d)(3), and by adding (d)(5) to read as follows:

904.404 Solicitation provision and contract clause. [DOE Coverage—Paragraph (d)]

(d) * * *

(1) Security, 952.204–2. This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information. DOE utilizes the National Industrial Security Program but DOE's security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies' authorities. For this reason, DOE contracts must contain the clause at 952.204–2 rather than the clause at FAR 52.204–2.

(2) Classification/Declassification, 952.204–70 * * *

* * * * *

(5) Facility Clearance, 952.204–73. This solicitation provision should be used in solicitations expected to result in contracts and subcontracts that require employees to possess access authorizations.

904.70 [Amended]

5. Subpart 904.70 is amended by revising the title "Foreign Ownership, Control, or Influence Over Contractors" to read "Facility Clearance."

6. Section 904.7000 is revised to read as follows:

904.7000 Purpose.

This subpart sets forth the Department of Energy policies and procedures regarding Facility Clearances for contractors and subcontractors that require access to classified information or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for classified activities being performed at the facility and upon a favorable foreign ownership, control, or influence (FOCI) determination.

7. Section 904.7002 is amended by adding the definition of "Facility Clearance" in alphabetical order to read as follows:

904.7002 Definitions.

* * * * *

Facility Clearance means an administrative determination that a facility is eligible to access, produce, use, or store classified information, or special nuclear material.

* * * * *

8. Section 904.7003 is amended by revising paragraphs (a) and (b) as follows:

904.7003 Disclosure of foreign ownership, control, or influence.

(a) If a contract requires a contractor to have a Facility Clearance, DOE must determine whether the contractor is or may be subject to foreign ownership, control or influence before a contract can be awarded.

(b) If, during the performance of a contract, the contractor comes under FOCI, then the DOE must determine whether a continuation of the Facility Clearance may pose an undue risk to the common defense and security through the possible compromise of that information or material. If the DOE determines that such a threat or potential threat exists, the contracting officer shall consider the alternatives of negotiating an acceptable method of isolating the foreign interest which owns, controls, or influences the contractor or terminating the contract.

* * * * *

904.7005 [Removed]

9. Section 904.7005, Solicitation provision and contract clause, is removed.

904.7100 [Amended]

10. In Section 904.7100, remove the words "a company owned by" and revise the word "company" following the words "for that" to read "entity'.

11. Section 904.7102 is revised to read as follows:

904.7102 Waiver by the Secretary.

(a) 10 U.S.C. 2536(b)(1)(A) allows the Secretary of Energy to waive the prohibition on the award of contracts set forth in 10 U.S.C. 2536(a) if the Secretary determines that a waiver is essential to the national security interests of the United States. Any request for a waiver regarding award of a contract or execution of a novation agreement shall address:

(1) Identification of the proposed awardee and description of the control by a foreign government;

(2) Description of the procurement and performance requirements;

(3) Description of why a waiver is essential to the national security interests of the United States;

(4) The availability of other entities to perform the work; and

(5) A description of alternate means available to satisfy the requirement.

(b) 10 U.S.C. 2536(b)(1)(B) allows the Secretary of Energy to waive the prohibition on the award of contracts set forth in 10 U.S.C. 2536(a) for environmental restoration, remediation or waste management contracts at a DOE facility if the Secretary determines that a waiver will advance the environmental restoration, remediation or waste management objectives of DOE; will not harm the national security interests of the United States; and may be authorized because the entity to which the contract is to be awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under Section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)). Any request for such a waiver regarding award of a contract or execution of a novation agreement shall address:

(1) Identification of the proposed awardee and description of the control by a foreign government;

(2) Description of the procurement and performance requirements;

(3) A description of how the Department's environmental restoration, remediation, or waste management objectives will be advanced;

(4) A description of why a waiver will not harm the national security interests of the United States;

(5) The availability of other entities to perform the work;

(6) A description of alternate means available to satisfy the requirement; and

(7) Evidence that the entity to which a contract is to be awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under Section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(c) Any request for a waiver under paragraph (a) or (b) of this section shall be forwarded by the Head of the Contracting Activity to the Office of Contract Management within the Headquarters procurement organization.

(d) If the Secretary decides to grant a waiver for an environmental restoration, remediation, or waste management contract, the Secretary shall notify Congress of this decision. The contract may be awarded or the novation agreement executed only after the end of the 45-day period beginning on the date notification is received by the Senate Committee on Armed Services and the House Committee on National Security.

(e) Any request for a waiver under this subpart shall be accompanied by the information required by DEAR 952.204–73 that has been developed by the Safeguards and Security Lead Responsible Office at the contracting activity.

12. Section 904.7103, Solicitation provision and contract clause, is amended by deleting the words "with its Alternate I" at the end of paragraph (a) and by revising paragraph (b) to read as follows:

904.7103 Solicitation Provision and Contract Clause.

(a) * * *

(b) Any contract, including those awarded under simplified acquisition procedures, under the national security program which require access to proscribed information to enable performance, shall include the clause at 48 CFR 952.204–2.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 952.204–2 is amended by revising the clause date and paragraph (j) to read as follows:

952.204–2 Security Requirements.

* * * * *

Security (May 2002)

* * * * *

(j) Foreign Ownership, Control or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204–73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

(5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

14. Section 952.204–73 is revised to read as follows:

952.204–73 Facility Clearance.

As prescribed in 904.404(d)(5), insert the following provision in all solicitations which require the use of Standard Form 328, Certificate Pertaining to Foreign Interests for contracts or subcontracts subject to the provisions of 904.70.

Facility Clearance (May 2002)

Notices

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328.

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions.

(1) *Foreign Interest* means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such

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that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

Notice to Offerors—Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the company;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (*i.e.* ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

952.204–74 [Removed]

15. Section 952.204–74 is removed.

16. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

17. Section 970.0404–1, Definitions, is amended by adding, in alphabetical order, definitions for "Access Authorization" and "Facility Clearance" and revising the definition of "Restricted Data" to read as follows:

970.0404–1 Definitions.

Access Authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

* * * * *

Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information or special nuclear material.

Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2162).

18. Section 970.0404–2, General, is revised to read as follows:

970.0404–2 General.

(a) Guidance regarding the National Industrial Security Program as implemented by the Department of Energy may be found at 904.4, Safeguarding Classified Information Within Industry. Additional information concerning contractor ownership when national security or atomic energy information is involved may be found at 904.70. Information regarding contractor ownership involving national security program contracts may be found at 904.71.

(b) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. DOE has established a counterintelligence program subject to this Executive Order which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations, should undertake the necessary precautions to ensure that DOE and covered Contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

19. Section 970.0404–3, Responsibilities of contracting officers, is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

[FR Doc. 02–7298 Filed 3–27–02; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1510

[Docket No. TSA–2001–11120]

RIN 2110–AA01

Imposition and Collection of Passenger Civil Aviation Security Service Fees; Amendment; Reopening of Comment Period.

AGENCY: Transportation Security Administration, DOT.

ACTION: Interim final rule; amendment; reopening of comment period.

SUMMARY: On December 31, 2001, the Transportation Security Administration (TSA) published an interim final rule on the imposition and collection of Passenger Civil Aviation Security Service Fees (September 11th Security Fees). The comment period closed on March 1, 2002. Since that time, however, TSA has tentatively determined that some of the data direct air carriers and foreign air carriers are required to submit in the quarterly reports pursuant to § 1510.17 of the interim final rule may be overinclusive. This action amends the requirements under § 1510.17(b) and (c) and reopens the comment period solely with respect to those paragraphs until April 30, 2002. So that TSA may review and consider all comments received on this action, the first quarterly report due by April 30, 2002, need not be submitted until July 31, 2002, i.e., the same date the second quarterly report is due. TSA intends to provide a form for the data required in the quarterly reports and will publish the form together with guidance in the **Federal Register** and on DOT's Web site prior to July 31, 2002.

DATES: This amendment to the interim final rule is effective on March 28, 2002. Comments only with respect to this action, which amends the reporting requirements under § 1510.17 of the interim final rule, will be accepted through April 30, 2002.

ADDRESSES: Submit written, signed comments only with respect to this action to TSA Docket No. 2001–11120, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard on which the following statement is made: "Comments to Docket No. TSA–2001–11120." The post card will be date stamped and mailed to the sender. Comments also may be sent electronically to the Dockets Management System (DMS) at: *http://dms.dot.gov* at any time. Those who wish to file comments electronically should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: For guidance involving technical matters: A. Thomas Park, Acting Deputy Chief Financial Officer, Department of Transportation, Office of the Secretary, Office of the Assistant Secretary for Budget and Programs, 400 Seventh St., SW., Room 10101, Washington, DC 20590; telephone (202) 366–9192. For other guidance: Rita M. Maristch, Department of Transportation, Office of the General Counsel, Office of Environmental, Civil Rights and General Law, 400 Seventh St., SW., Room 10102, Washington, DC 20590; telephone (202) 366–9161. Office hours are from 9 a.m. to 5:30 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of the Interim Final Rule and Comments Received

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the **Federal Register**'s Home Page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov*.

Internet users can access this document and all comments received by TSA through DOT's docket management system Web site, *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. However, because TSA was established on November 19, 2001, pursuant to Aviation and Transportation Security Act, Public Law 107–71, it does not yet have the infrastructure or personnel to provide such information and guidance. Until such time that it does, the Office of the Secretary of Transportation will handle all SBREFA inquiries. Accordingly, any small entity that has a question regarding this document may contact the individuals listed under the caption **FOR FURTHER INFORMATION CONTACT**.

Background

On December 31, 2001, TSA published an interim final rule that imposes a $2.50 fee on each air carrier passenger enplanement in order to help pay for the Federal government's costs in providing aviation security services. *See* 66 FR 67698 (to be codified at 49 CFR part 1510). Passengers may not be charged for more than two enplanements per one-way trip or more than four enplanements per round trip. The fee, commonly referred to as the September 11th Security Fee, was authorized in the landmark Aviation and Transportation Security Act, which was signed into law by President Bush on November 19, 2001. Public Law 107–71. The September 11th Security Fees will help pay for passenger and baggage screeners, security managers and law enforcement personnel at airports, and other aviation security efforts, such as the purchase of explosive detection systems.

According to the interim final rule, direct air carriers, both domestic and foreign, were required to begin collecting the September 11th Security Fee for enplanements originating from U.S. airports beginning February 1, 2002, and transmitting them to DOT's newly established TSA. In addition, the interim final rule at § 1510.17 requires direct air carriers and foreign air carriers to submit quarterly reports to TSA. More specifically, § 1510.17(b) requires that the quarterly reports state the direct air carrier or foreign air carrier involved, the total security service fee imposed, collected, refunded and remitted, the number of enplanements for which a fee was collected, the total number of frequent flyer and nonrevenue passengers, and the total number of enplanements for which the fee was not collected. The reports must explain why any fee imposed under 49 CFR part 1510 was not collected.

Since the publication of the interim final rule, TSA has had an opportunity to review the data to be included in the quarterly report and tentatively believes that some of the data may be overinclusive. Based on its review, TSA believes that the following data would provide the necessary information it seeks and therefore amends § 1510.17(b) to require that all quarterly reports state:

(1) The direct air carrier or foreign air carrier involved;

(2) The total amount of September 11th Security Fees imposed on passengers in U.S. currency for each

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month during the previous quarter of the calendar year;

(3) The net amount of September 11th Security Fees collected in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year;

(4) The total amount of September 11th Security Fees refunded in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year; and

(5) The total amount of September 11th Security Fees remitted in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year.

This interim final rule also amends § 1510.17(c) to reflect that direct air carriers and foreign air carriers must submit their reports to TSA on the last day of the calendar month following the quarter of the calendar year in which the fees were imposed.

TSA will consider public comment through April 30, 2002, solely with respect to § 1510.17(b) and (c), as amended. Given this fact, TSA has determined that the first quarterly report, which, according to the rule, is due by April 30, 2002, must now be submitted together with, or prior to, the second quarterly report for this calendar year, which is due by July 31, 2002. TSA intends to provide a form for the data required in the quarterly reports and will publish the form together with guidance in the **Federal Register** and on DOT's Web site prior to July 31, 2002.

Good Cause for Immediate Adoption

Section 44940(d)(1) of title 49, U.S.C., explicitly exempts the imposition of the civil aviation security service fees authorized in section 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553. Apart from that exemption, it would have been impractical and contrary to the public interest to provide for notice and comment before issuing the interim final rule on December 31, 2002. Immediate action was necessary to begin collecting the security service fees provided for by the statute. However, TSA sought comments on the interim final rule through March 1, 2002 and is in the process of reviewing those comments. In the meantime, TSA seeks comments on this action amending the reporting requirements under § 1510.17 through April 30, 2002, but will consider comments filed late to the extent practicable. TSA may further amend the interim final rule in light of the comments it receives.

Paperwork Reduction Act

On January 31, 2002, TSA published a notice in the **Federal Register** announcing that it had submitted a request for emergency processing of a public information collection to the Office of Management and Budget (OMB) regarding the quarterly reporting requirements in § 1510.17 of the interim final rule. On that same date, OMB approved the information collection contained in the interim final rule and assigned it OMB control number 2110–0001. This collection of information is approved through July 31, 2002. *See* 67 FR 7582, February 19, 2002. TSA has determined that this action, which amends § 1510.17 of the interim final rule, will reduce the collection of information burdens originally required by that section and approved by OMB. Therefore, it is not necessary for TSA to apply to OMB for additional emergency approval with respect to this action, but prior to July 31, 2002, TSA will apply for a three-year extension as well as approval of the information collection form it is developing. Interested parties are invited to send comments regarding any aspect of the information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of TSA, including whether the information has practical utility; (2) the accuracy of the estimated burden that DOT has provided to OMB; (3) ways to enhance the quality, utility, and clarity of the collection of information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Economic Analyses

This rulemaking action is taken in an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department's Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and Department's policies and procedures because it may impose significant costs on air carriers and foreign air carriers. An assessment in accordance with the Executive Order will be conducted in the future. No additional regulatory analysis or evaluation accompanies this rule. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980. When no notice of proposed rulemaking has first been published, the Regulatory Flexibility Act does not apply.

OMB has reviewed this rulemaking action under the provisions of section 6(a)(3)(D) Executive Order 12866.

Executive Order 13132, Federalism

TSA has analyzed this amendment to its interim final rule published on December 31, 2001, under the principles and criteria of Executive Order 13132, Federalism. TSA has determined that the interim final rule, as amended, will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, TSA has determined that this rulemaking action does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

The requirements of Title II of the Act do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, the TSA has not prepared a statement under the Act.

Environmental Review

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended. (42 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1510

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on March 25, 2002.

John W. Magaw,

Under Secretary of Transportation for Security.

Accordingly, part 1510 of Title 49 CFR is amended as follows:

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

1. The authority citation for part 1510 continues to read as follows:

Authority: 49 U.S.C. 44940.

2. Paragraphs (b) and (c) of § 1510.17 are revised to read as follows:

§ 1510.17 Reporting requirements.

* * * * *

(b) Quarterly reports must state:

(1) The direct air carrier or foreign air carrier involved;

(2) The total amount of September 11th Security Fees imposed on passengers in U.S. currency for each month during the previous quarter of the calendar year;

(3) The net amount of September 11th Security Fees collected in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year;

(4) The total amount of September 11th Security Fees refunded in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year; and

(5) The total amount of September 11th Security Fees remitted in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year.

(c) The report must be filed by the last day of the calendar month following the quarter of the calendar year in which the fees were imposed.

[FR Doc. 02–7652 Filed 3–26–02; 2:29 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 031902D]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the NAFO Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective March 28, 2002, through December 31, 2002. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2002. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through April 29, 2002.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, Maryland 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: *pat.moran@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Jennifer L. Anderson at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9394, e-mail: *jennifer.anderson@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.ca*.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2002 NAFO Special Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2002. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities are as follows:

(1) Redfish	NAFO Division 3M	69 mt
(2) Squid	NAFO Subareas 3 & 4	453 mt
(3) Shrimp	NAFO Division 3L	67 mt
(4) Shrimp	NAFO Division 3M	1 vessel/100 days

U.S. Fish Quota Allocations

All U.S. fish quota allocations in NAFO are available to be taken by U.S. vessels in possession of a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries (see **DATES** and **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and time of fishing operations should be included. If necessary to ensure equitable access by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization on board the vessel issued by the Regional Administrator;

(2) For the duration of the trip, the vessel fishes exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

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(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2002 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be accepted from owners of U.S. vessels in possession of a valid HSFCA permit. All expressions of interest should be directed in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries (see **DATES** and **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2002 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2002 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2002, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. allocations provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocations are transferred to that flag state. Such a transfer must be adopted by NAFO Parties through a mail voting process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the U.S. must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: Provisional monthly catches within 30 days following the calender month in which the catches were made; provisional monthly fishing days in Division 3M within 30 days following the calender month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the U.S. may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag State; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed 6 months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel would actually take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to transfer the U.S. 3M shrimp effort allocation to the vessel (pending approval by NAFO).

All individuals/companies submitting expressions of interest to NMFS will be contacted once the allocation has been awarded. Please note that once the U.S. portion of the 2002 NAFO 3L or 3M shrimp allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: March 21, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-7512 Filed 3-27-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 032502B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 25, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 1,487 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. In accordance with § 679.20(a)(11)(iii), Pacific cod bycatch taken between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,487 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 A season Pacific cod TAC specified for the offshore component in the Central Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 A season Pacific cod TAC specified for the offshore component in the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2002.

John H. Dunigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-7490 Filed 3-25-02; 2:28 pm]

BILLING CODE 3510-22-S

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Proposed Rules

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE175]; Notice No. 23–02–02–SC

Special Conditions: Installation of Full Authority Digital Engine Control (FADEC) System on The Lancair Company, Model LC40–550FG–E Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for The Lancair Company, Model LC40–550FG–E Airplane, which will use a FADEC System. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 29, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE175, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE175. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE175." The postcard will be date stamped and returned to the commenter.

Background

On November 8, 2001, The Lancair Company applied to amend Type Certificate A0003SE for the addition of the Model LC40–550FG–E airplane. The Model LC40–550FG–E is a small, utility category airplane. The airplane is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

Under the provisions of 14 CFR 21.101(c), The Lancair Company must show that the Model LC40–550FG–E meets the applicable provisions of the certification basis specified in Amendment 6 to TCDS A00003SE except as follows:

- FAR 23.1305 as of Amendment 52.
- FAR 23.1359 as of Amendment 49.
- Special conditions will be applied to the FADEC installation for protection against high intensity radiated fields (HIRF) and for installed system reliability (FAR 23.1309 applicability).

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model LC40–550FG–E because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LC40–550FG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Lancair Company, Model LC40–550FG–E Airplane will incorporate the following novel or unusual design features:

The Lancair Company, Model LC40–550FG–E Airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Lancair Company, Model LC40–550FG–E will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for The Lancair Company, Model LC40–550FG–E to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the The Lancair Company, Model LC40–550FG–E Airplane. Should The Lancair Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, The Lancair Company, Model LC40–550FG–E Airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for The Lancair Company, Model LC40–550FG–E Airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

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or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on February 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7503 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–124–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposed AD would establish a life limit for the front fuselage struts and would require you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by the proposed AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 10, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–124–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 98–CE–124–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone: (516) 256–7523; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be Sure FAA Receives my Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 98–CE–124–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports numerous incidents of corrosion of the front fuselage struts. Further analysis of the front fuselage struts reveals that these parts are not life limited and incur corrosion and fatigue damage over time.

What are the Consequences if the Condition is not Corrected?

Corrosion damage, if not detected and corrected, could result in failure of the front fuselage and possible reduced or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

De Havilland Inc. has issued Parts Service Manual (PSM) No. 1–2–2, Part 5, Temporary Revision 2–22; and PSM No. 1–2T–2, Part 5, Temporary Revision 2T–6, both dated August 3, 1998. These service documents establish a life limit of 15 years for the front fuselage struts. The procedures for replacement of the front fuselage struts are included in the applicable maintenance manual.

What Action did the Transport Canada Take?

Transport Canada issued Canadian AD CF–98–37, dated September 29, 1998, in order to ensure the continued airworthiness of these airplanes in Canada. This Canadian AD established a 15-year life limit on the front fuselage struts and requires replacement at that time on the affected airplanes in the Canadian registry.

Transport Canada revised this AD (Canadian AD CF–98–37R1, dated August 20, 1999) to allow repetitive inspections of the front fuselage struts until corrosion damage exceeds a certain limit. When it exceeds this limit, front fuselage strut replacement is mandatory.

Was This in accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, Transport Canada has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA Decided?

The FAA has examined the findings of Transport Canada; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes of the same type design that are on the U.S. registry;

—A life limit of 15 years should be established on the front fuselage struts of the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would establish a life limit for the front fuselage struts and would require you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD would affect 354 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed replacement:

Labor cost	Parts cost per airplane	Total cost per airplane	Total cost on U.S. operators
108 workhours X $60 an hour = $6,480 per airplane	$2,352	$8,832	$3,126,528 per replacement

Compliance Time of this Proposed AD

What Would be the Compliance Time of This Proposed AD?

The replacement compliance time of this proposed AD is upon accumulating 15 years from the date of installation of the front fuselage struts or within the next 12 calendar months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 15 years. If the repetitive inspection option is used, then the repetitive compliance time interval would be at 1 and 5 years depending on the method used (provided certain corrosion or damage limits are not exceeded).

Why is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of the proposed AD is presented in calendar time instead of hours TIS. The need for establishing a life limit for the front fuselage struts as specified in the proposed AD is the result of reports of corrosion found in this area on the affected airplanes. Corrosion can occur regardless of whether the aircraft is in operation. In order to ensure that the unsafe condition specified in the proposed AD does not go undetected if the airplane was not in operation for an extended period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Flexibility Determination and Analysis

What are the requirements of the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What is FAA's Determination?

The FAA has determined that this proposed AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this proposed action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled "Initial Regulatory Flexibility Analysis") that was prepared for this proposed AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

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Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

de Havilland Inc.: Docket No. 98–CE–124–AD

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace each front fuselage strut with a new strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.	Initially replace upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after the effective date of this AD, whichever occurs later. Repetitively replace thereafter upon accumulating 15 years on each front fuselage strut.	In accordance with the applicable maintenance manual, as specified in de Havilland Parts Service Manual 1–2–2, Part 5, Temporary Revision 2–22; and de Havilland Parts Service Manual 1–2T–2, Part 5, Temporary Revision 2T–6, both dated August 3, 1998.
(2) As an alternative method of compliance to the replacements in paragraph (d)(1) of this AD, you may repetitively inspect each front fuselage strut, as follows:	Initially inspect upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after the effective date of this AD, whichever occurs later. Accomplish the repetitive detailed inspection thereafter at intervals not to exceed 12 months and the ultrasonic thickness measurement at intervals not to exceed 5 years. Accomplish the corrosion prevention work prior to further flight after each inspection. Accomplish the replacement prior to further flight after damage is found or the thickness is found below 0.030 inches. Then after replacement either replace with a new strut at 15-year intervals thereafter or repetitively inspect as prescribed above beginning at 15 years after each replacement.	For the detailed inspection, use an inspection light, inspection mirror, and 10X magnifying glass. For the ultrasonic inspection, use FAA-approved procedures that follow a similar calibration and measures strut thickness to that detailed in Bombardier Service Bulletin 2/49, Revision C.
(i) perform a detailed inspection of each front fuselage strut and all fittings attached to the frame for damage (corrosion, cracks, dents). When fatigue damage is found, you must replace the damaged strut. After each inspection, clean the drain holes around the bottom end fitting and protect the tube with an appropriate corrosion preventive spray. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.		
(ii) perform an ultrasonic thickness measurement of all surfaces on each front months and the Service fuselage strut. When minimum thickness is below 0.030 inches, you must replace the affected strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.		

Actions	Compliance	Procedures
(3) Do not install, on any affected airplane, any front fuselage strut unless it has a part number specified in the Replacement Part Number column of the chart presented in paragraph (e) of this AD.	As of the effective date of this AD	Not Applicable.

(e) *What part number front fuselage struts should I use for replacements?* The following charts presents the part numbers for existing parts and replacement parts for the front fuselage strut replacements:

Installed part number	Replacement part number	Description
C2FS209 or C2FS3281A	C2FS3281A	Strut Assembly Front Fuselage, Left.
C2FS210 or C2FS3282A	C2FS3282A	Strut Assembly Front Fuselage, Right.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, New York Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specify actions you propose to address it.

(g) *Where can I get informotion about any already-approved alternative methods of compliance?* Contact Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone: (516) 256–7523; facsimile: (516) 256–2716.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may direct technical questions to or get copies of the documents referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Canadian AD CF–98–37R1, dated August 20, 1999.

Issued in Kansas City, Missouri, on March 20, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7417 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Power Systems (Formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T series auxiliary power units (APU's) with compressor wheel part number (P/N) 100636–1 installed. This proposal would require the replacement of compressor wheels P/N 100636–1. This proposal is prompted by a manufacturer's stress analysis that indicates stress levels high enough to initiate and drive crack growth in these compressor wheels. The actions specified by the proposed AD are intended to mandate the replacement of the affected compressor wheels, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane.

DATES: Comments must be received by May 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9–ane–adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Hamilton Sundstrand Power Systems, Technical Publications Department, P.O. Box 7002, Rockford, IL, 61125–7002; telephone (815) 623–5983; fax (815) 966–8525. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket

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number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Hamilton Sundstrand Power Systems recently informed the FAA that models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's with compressor wheel P/N 100636–1 installed, have high probability of uncontained compressor wheel failure caused by low-cycle fatigue. Several low-cycle fatigue failures of compressor wheels on the larger, Hamilton Sundstrand Power Systems model T–62T–40C APU, triggered the manufacturer to perform analysis of the geometrically similar compressor wheel P/N 100636–1. Although no uncontained failures of compressor wheel P/N 100636–1 have been known to occur in APU's installed on airplanes of U.S. registry, inspections of some compressor wheels during maintenance revealed cracks in attachment holes that are a precursor to failure. The manufacturer is aware also that four compressor wheels of the affected P/N have failed in APU's installed on U.S. military aircraft. This condition, if not corrected, could result in uncontained compressor wheel failure and damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other aircraft with Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's installed, the proposed AD would require replacement at new reduced cycle life limits of compressor wheels P/N 100636–1, with compressor wheel P/N 4503164, 4504174, or M4504174. Two manufactured types of compressor wheel P/N 100636–1 exist. One type is a cast steel compressor wheel, identifiable by a four-digit casting lot vendor identification number, used as a prefix to the serial number. The other type is a wrought steel compressor wheel, identifiable by a serial number beginning with the letter W.

Cast steel compressor wheel replacement schedule:

- Replace compressor wheels with 2,350 or greater cycles-since-new (CSN) on the effective date of the proposed AD within 250 cycles-in-service (CIS) after the effective date of the proposed AD.
- Replace compressor wheels with less than 2,350 CSN on the effective date of the proposed AD before accumulating 2,600 CSN.

Wrought steel compressor wheel replacement schedule:

- Replace compressor wheels with 3,600 or greater CSN on the effective date of the proposed AD within 500 CIS after the effective date of the proposed AD.
- Replace compressor wheels with less than 3,600 CSN on the effective date of the proposed AD before accumulating 4,100 CSN.

Economic Analysis

There are approximately 492 Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's of the affected design in the worldwide fleet. The FAA estimates that 337 APU's installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 40 work hours per APU to do the proposed actions, and that the average labor rate is $60 per work hour. The cost of a replacement compressor wheel is estimated to be $16,799. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $6,470,063.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Hamilton Sundstrand Power Systems:
Docket No. 2002–NE–01–AD.

Applicability: This airworthiness directive (AD) is applicable to aircraft with Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 auxiliary power units (APU's) installed that have compressor wheel part number (P/N) 100636–1 installed. These APU's are installed on, but not limited to, Fairchild FH–227, Dassault Falcon 20, Lockheed 1329 series (Jetstar), British Aerospace Jetstream 3101, Raytheon Aircraft HS125–600,—700,—800, and Sabreliner Corporation 60 and 80 aircraft, and Boeing Defense & Space Group 234 Series Helicopters.

Note 1: This AD applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APU's that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair of the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To replace affected compressor wheels P/N 100636–1, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane, do the following.

Cast Steel Compressor Wheel Replacement

(a) For compressor wheels, P/N 100636–1, made of cast steel, identifiable by a four-digit casting lot vendor identification number used as a prefix to the serial number, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace cast steel compressor wheels with 2,350 or greater cycles-since-new (CSN) on the effective date of this AD within 250 cycles-in-service (CIS) after the effective date of this AD.

(2) Replace cast steel compressor wheels with less than 2,350 CSN on the effective date of this AD before accumulating 2,600 CSN.

Wrought Steel Compressor Wheel Replacement

(b) For compressor wheels, P/N 100636–1 made of wrought steel, identifiable by a serial number beginning with the letter W, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace wrought steel compressor wheels with 3,600 or greater CSN on the effective date of this AD within 500 CIS after the effective date of this AD.

(2) Replace wrought steel compressor wheels with less than 3,600 CSN on the effective date of this AD before accumulating 4,100 CSN.

(c) Information on procedures for replacing compressor wheel P/N 100636–1 may be found in Hamilton Sundstrand Power Systems service bulletin No. SB–T–62T–49–148, Revision 1, dated December 20, 2001.

Reduced Life Limits

(d) This AD establishes new cyclic life limits for compressor wheels P/N 100636–1, of 2,600 CSN for cast steel compressor wheels and 4,100 CSN for wrought steel compressor wheels. Except as provided in paragraph (e) of this AD, no alternate life limits for these parts may be approved.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on March 20, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–7416 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts, and corrective actions, if necessary. This action is necessary to prevent excessive deformation of the floor structure in the event of rapid decompression in the lower cargo hold due to missing attachment bolts in the replaceable frame struts. Such deformation may result in the flight and engine control cables becoming jammed, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–289–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–289–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that an operator discovered that an airframe strut connecting the floor beams and the fuselage frame was missing the lower attachment bolt; the bolt hole was not drilled and only a pilot hole was present. This condition, if not corrected, could result in excessive deformation of the floor structure in the event of a rapid decompression in the lower cargo hold. Such deformation may result in the flight and engine control cables becoming jammed, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–53–096, dated April 11, 2001. The service bulletin describes procedures for performing a one-time general visual inspection for detecting any missing attachment bolts in the replaceable frame struts; for drilling a new hole; and for installing a new bolt (including a nut and washer), if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2001–055, dated April 27, 2001, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. If any missing attachment bolts are detected, the proposed AD would also require a general visual inspection to detect any deformation or crack in the affected floor beams and the fuselage frame C-channel at the strut attachment, and repair, if necessary.

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2001–NM–289–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive deformation of the floor structure to the extent that flight and engine control cables might jam, accomplish the following:

Inspection

(a) Within 14 months after the effective date of this AD, do a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts per Part 1, Part 2, and Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, dated April 11, 2001; as applicable.

Corrective Actions

(b) If any attachment bolts are found missing during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Drill a new hole and install a new bolt (including nut and washer), per the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, dated April 11, 2001.

(2) Do a general visual inspection to detect any deformation or crack in the affected floor beams and the fuselage frame C-channel at the strut attachment. If any deformation or crack exists, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2001–055, dated April 27, 2001.

Issued in Renton, Washington, on March 22, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7429 Filed 3–27–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–388–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 650 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 650 airplanes. This proposal would require a one-time inspection of the side brace mechanism assemblies of the left and right main landing gears (MLG) to detect any incorrect part number, and corrective actions if necessary. This action is necessary to prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly, which could lead to collapse of the respective MLG, and result in a gear-up landing and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 13, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–388–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–388–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

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submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–388–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–388–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Four incidents of main landing gear (MLG) collapse were reported on Cessna Model 650 airplanes upon landing. In one of those incidents, the right MLG became unlocked, while in two of those incidents, the left MLG became unlocked. In the fourth incident, the left MLG became unlocked, and, after the MLG struck a landing light fixture, the right MLG became unlocked. Another incident occurred during maintenance of an airplane, when the right outboard tire was overpressurized, causing failure of the tire/wheel in the hangar, and resulting in the right MLG becoming unlocked and consequent collapse of the MLG. Such conditions, if not corrected, could result in gear-up landing and possible injury to passengers and crew.

Background Information

The MLG actuators are operated hydraulically to retract and extend the MLGs during normal operation. During such operation, the actuators are retracted/extended by the airplane's hydraulic system. In addition, the emergency system is used to extend the actuators, while the MLG side brace incorporates a locking mechanism that locks the side brace in the extended position to prevent the MLG from collapsing when fully extended. When hydraulic pressure is applied to retract the MLG, the locking mechanism is unlocked.

Explanation of Relevant Service Information

The FAA has reviewed and approved the technical content of the initial issue of Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000, which describes procedures for replacing any side brace mechanism assembly having an incorrect part number with a new, improved assembly. The new assembly includes an improved actuator that minimizes the chance of inadvertent unlock of the MLG. This replacement action is intended to address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the side brace mechanism assemblies of the left and right MLGs to detect any incorrect part number, and corrective actions if necessary. If an assembly having the correct part number is found, no further action is required by this proposed AD. However, if an assembly having an incorrect part number is found, corrective actions include removing the side brace mechanism assembly of the respective main landing gear; and installing a new, improved assembly having the correct part number. The proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

The previously referenced service bulletin specifies a compliance time of approximately 1 year for accomplishing the replacement action. However, the FAA has determined that a 1-year compliance time would not address the identified unsafe condition in a timely manner because of the consequences of MLG failure, as described earlier. In developing an appropriate compliance time for this proposed AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the one-time inspection. In light of all of these factors, the FAA finds a 6-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 353 Model 650 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $169,200, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna Aircraft Company: Docket 2000–NM–388–AD.

Applicability: Model 650 airplanes, serial numbers –0001 through –0241 inclusive, and serial numbers –7001 through –7112 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly of the left or right main landing gear (MLG), which could lead to collapse of the respective MLG, and result in gear-up landing and possible injury to passengers and crew; accomplish the following:

One-Time Inspection

(a) Within 6 months after the effective date of this AD, do a one-time inspection of the side brace mechanism assemblies of the left and right MLGs to detect any incorrect part number (P/N) found installed, as specified in Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000.

(1) If the correct part number is found installed on the left side brace mechanism assembly, P/N 6217076–201, and on the right side brace mechanism assembly, P/N 6217076–202, no further action is required by paragraph (a) of this AD.

Corrective Action

(2) If incorrect P/N 6217076–2, 6217076–4, or 6217076–9 is found installed on either the left or right side brace mechanism assembly: Prior to further flight, replace any incorrect left side brace mechanism assembly with a new, improved assembly, P/N 6217076–201; and replace any incorrect right side brace mechanism assembly with a new, improved assembly, P/N 6217076–202; per Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000. After the replacement action, no further action is required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install a left or right MLG side brace mechanism assembly, P/N 6217076–2, 6217076–4, or 6217076–9, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 22, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7428 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

[Public Notice 3950]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This rule proposes fees for consular services. The rule also makes appropriate implementing and other related changes in affected portions set forth in these regulations. Specifically, the rule makes changes in the Schedule of Fees for Consular Services ("Schedule of Fees" or "Schedule") and makes technical changes concerning passport fees. The primary objective of the adjustments to the Schedule of Fees is to ensure that the costs of consular services are recovered through user fees to the maximum extent appropriate and permitted by law. As a result of new data on the cost of services, most fees are being increased. The proposed Schedule lowers the notarial fee by shifting some of the costs of this service to appropriations. In addition, the Schedule of Fees is being restructured and streamlined, making the Schedule easier to read and understand. Some services have been removed from the Schedule; in most cases, this is because services have been consolidated. Certain consular services performed for no fee are included in the Schedule so that members of the public will be aware of significant consular services provided by the Department that they may request and for which they will not be charged. Codes are being added to the Schedule to facilitate consular officers' use of the Department's consular accounting codes when the fees are actually collected.

DATES: Written comments must be received on or before April 29, 2002.

ADDRESSES: Interested persons are invited to submit written comments to: Office of the Executive Director, Bureau of Consular Affairs, Department of State, Suite H1004, 2401 E Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, telefax: (202) 663–2499; e-mail: *fees@state.gov*.

SUPPLEMENTARY INFORMATION:

Background

The majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701, and/or U.S.C. 4219, which, as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services provided by embassies and consulates. Fees established under these authorities include fees for immigrant and nonimmigrant visa processing, for fingerprints, and for overseas citizens services. In addition, a number of statutes address specific fees: Passport application fees (including the cost of passport issuance and use) are authorized by 22 U.S.C. 214, as are fees for the execution of passport applications. (This provision was amended on November 29, 1999, by Public Law 106–113, to permit collection of a nonrefundable application fee subject to promulgation of implementing regulations, which are at 22 CFR parts 51 and 53.) Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–703–704 (Sept. 30, 1996), authorizes establishment of a diversity visa application fee to recover the full costs of the visa lottery conducted pursuant to Sections 203 and 222 of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1153, 1202. Nonimmigrant visa reciprocity fees are authorized and, in fact, generally required, pursuant to Section 281 of the INA, 8 U.S.C. 1351. Notwithstanding the general rule of reciprocity, however, a cost-based, nonimmigrant visa processing fee for the machine readable visa (MRV) and

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for a combined border crossing and nonimmigrant visa card (BCC) (22 CFR 41.32) is authorized by Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236 (April 30, 1994). Certain persons are exempted by law or regulation from payment of specific fees. These exemptions are noted in the fee schedule and include the nonimmigrant visa fee exemptions set forth in 22 CFR 41.107 for certain individuals who engage in charitable activities or who qualify for diplomatic visas. In addition, aliens under age 15 are in certain circumstances entitled to a combined MRV/BCC for a statutorily established fee of $13, which is below the full cost of service, pursuant to Section 410 of Title III of the Commerce, Justice, State Appropriations Act enacted as part of the Omnibus FY 1999 Appropriations Act, Public Law 105–277 (Oct. 21, 1998). Various statutes also permit the Department to retain some of the consular fees it collects. These are, at present, the MRV and BCC fees, the passport expedite fee, the fingerprint fee, the J Visa Waiver fee, and the Diversity Visa Lottery fee. Authority to retain the Affidavit of Support fee has existed in the past and may be renewed.

With the exception of nonimmigrant visa reciprocity fees, which are established based on the practices of other countries, all consular fees are established on a basis of cost and in a manner consistent with general user charges principles, regardless of the specific statutory authority under which they are promulgated. As set forth in OMB Circular A–25, the general policy underlying user charges is that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of government service or property from which the user derives a special benefit. The OMB guidance covers all Federal Government activities that convey special benefits to recipients beyond those that accrue to the general public. The Department of State is required to review consular fees periodically to determine the appropriateness of each fee in light of applicable provisions of OMB Circular A–25. While services of direct benefit to individuals, organizations or groups should be paid for by the users rather than by taxpayers in general, the guidelines state that services performed for the primary benefit of the general public or the U.S. Government should be supported by tax revenues. The changes set forth in the proposed Schedule of Fees reflect these guidelines.

The last major revision of the Schedule of Fees was in 1998. Consistent with OMB Circular A–25, from September 1999 to October 2001, the Department conducted a cost-of-service study to determine the current direct and indirect costs associated with each consular service the Department provides, so that the Schedule could be updated. The study was supervised by the Bureau of Consular Affairs and performed with the assistance of an independent contractor. The contractor and Department staff surveyed and visited domestic and overseas consular sites handling a representative sample of all consular services worldwide in FY 2000. This review attempted to identify the fully allocated costs of consular services (direct and indirect). The results of the review indicated that a fee established on the basis of the average cost of a consular officer's time should be $235 per hour. This hourly rate is used in the proposed schedule to recover the cost of services that are infrequently provided and that may require very different expenditures of time depending on the unique circumstances of the service, such as providing a certificate of American ownership for a yacht, a service that directly benefits an individual. In situations where services are provided often enough to develop a reliable estimate of the average time involved, however, the schedule generally sets a flat service fee. In either case, the fee is designed to recover some or all—but not more than—actual fully allocated costs the Department expects to incur over the period that the Schedule will be in effect. When the fee is set below costs, the remaining cost is either recovered through allocation to related services for which are fees charged, or will be covered by taxpayers through appropriations. (Detailed information concerning the methodology of the study is available from the Bureau of Consular Affairs.) Based on this effort and subsequent analysis, the Department is now proposing adjustments to the Schedule of Fees. Major changes to the schedule are discussed below.

Passport Execution and Processing Fees (Effective August 15, 2002)

Passport fees for execution and application services ("execution" and "issuance" fees, under the current Schedule) have been raised. The proposed $30 (currently $15) execution fee for first-time applicants and others who must apply in person covers all costs associated with providing this service, both domestically and abroad. It is retained by non-Department acceptance agencies when such agencies are used. One passport application fee will be charged for each first-time and each renewal application: $55 for applicants age 16 or over and $40 for applicants under 16. Although the processing and issuance of a child's passport is more labor-intensive and therefore more costly, the shorter, five-year validity of a child's passport is the basis for charging the lower, $40 fee. A revision of 22 CFR 51.61 is included in this proposed rule to reflect the elimination of different passport application fees for first-time and renewal applications and the requirement that the execution fee be paid at the time of application rather than issuance.

The new passport fees will fully recover the cost of domestic and overseas passport application processing. In addition, consistent with long-standing Department practice, the fee will recover the cost of all emergency citizens services performed abroad, including assistance to U.S. citizens in cases of arrest, detention, death, serious illness or accident abroad. Also covered are the costs of certain non-emergency citizens services such as passport amendments and the voluntary registration of U.S. citizens at posts abroad.

Passport Expedite Fee (Effective August 15, 2002)

The proposed Schedule increases the passport expedite fee from $35 to $60. This fee pays for all of the additional costs associated with expediting the processing and issuance of an applicant's passport at a U.S. Passport Agency, so that the applicant can receive a passport in three days or less, instead of a domestic timeframe of approximately five weeks for mail-in applications that are not expedited. No overseas costs have been included in the fee for this service as the fee is not charged abroad, where the smaller volume of passport applications and other factors allow the Department's posts generally to act on all passport applications in three days or less, eliminating the need to differentiate between standards of service.

File Search and Verification of U.S. Citizenship (effective August 15, 2002)

The proposed $45 fee for this service has been held below cost because it is almost always associated with a passport application. Remaining costs have been allocated to the passport application, both adult and minor.

Adjudication of Citizenship for Undocumented Passport Applicants Born Abroad

This item has been eliminated from the proposed Schedule because the fee was reduced from $100 to 0, effective March 30, 2001, by Public Notice 3625, **Federal Register**, March 30, 2001 (66 FR 17360), for the reasons explained therein.

Report of Birth

The proposed Schedule increases the application fee for a Report of Birth of a U.S. Citizen Abroad from $40 to $65. The actual cost of performing the service is considerably higher, especially when the parents have lived abroad for long periods of time and their prior residency in the United States must be confirmed if their ability to transmit citizenship to their children is subject to a residency transmission requirement. It is in the U.S. Government's interest, however, to have U.S. citizens documented as early as possible. Keeping the fee below cost is intended to ensure that the fee itself does not serve as a disincentive to having young children documented as U.S. citizens. Remaining costs have been allocated to the passport application, both adult and minor. Fees for duplicate copies of Reports of Birth will be charged as presented in the Schedule under Documentary Services.

Overseas Citizens Services

The primary responsibility of U.S. consular officers abroad is the protection and welfare of U.S. citizens. No-fee services performed in instances of arrests, missing persons, child custody inquiries and destitution (requiring repatriation and/or emergency dietary assistance loans) are listed on the proposed Schedule for the information of the U.S. citizen traveler. As noted in the discussion of the passport fee, the costs for these services will continue to be allocated to the passport fee, consistent with long-standing Department practice. This ensures that any U.S. citizen traveling abroad may obtain emergency consular services without regard to ability to pay for the actual services rendered.

Death and Estate Services

No-fee services provided to the next-of-kin after the death of a U.S. citizen abroad have been consolidated under one item. The costs of these services are allocated to the passport fee.

The $235 hourly rate for consular time plus costs incurred will be charged for making arrangements for a deceased non-U.S. citizen family member. It replaces the current $700 flat fee for assistance in arranging transshipment of a foreign national's remains and in providing related documentary services. Assistance in the case of a non-U.S. citizen's death is provided only under special circumstances, e.g., when a U.S. citizen relative requires assistance or no representative of the deceased's country of nationality is present to render assistance. The proposed Schedule sets a $60 fee for the issuance of a Consular Mortuary Certificate on behalf of a non-U.S. citizen, based on the average time required to prepare the document.

The proposed Schedule combines all estate services for U.S. citizens under a single item. Consular officers have authority to take possession of and inventory estates and to oversee the final disposition of estates of U.S. citizens who die abroad. This authority is generally exercised, often on an interim basis, in the absence of a legal representative or in emergency situations. Expenses incurred in settling estates are generally paid from estate proceeds or must be paid by the estate representative. The costs of consular time and incidental expenses attributable to estate work are generally allocated to the passport fee because of the circumstances in which these services are provided and because the amount of consular time required usually is small. An additional reason for this approach is that most estates abroad are small and the net proceeds from disposition of the assets would not be sufficient to pay for even the minimal consular time usually involved. Thus, the Schedule proposes no separate fee for most estate work. In those few estate cases that do require significant consular time or expenditures, however, the Department has determined it is appropriate to charge for consular time and/or to require reimbursement of expenses. (In such cases, overseeing the sale and final disposition of the estate—disbursing funds and carrying out other legally related estate business—is often more appropriately handled by a private attorney or executor.)

Nonimmigrant Visa Services

The proposed Schedule raises to $65 the nonimmigrant Machine Readable Visa (MRV) application processing and Border Crossing Card fees. These fees pay for all costs associated with the processing and issuance of either an MRV or a machine-readable combined border crossing card and nonimmigrant visa (BCC). The five-year border crossing card fee for qualified Mexican children under the age of 15 remains $13, in accordance with Public Law 105–277 (see discussion under BACKGROUND above). Costs not recovered through the $13 fee have been reallocated to the fee for the 10-year MRV/BCC, as authorized by Public Law 105–277.

An exemption from the MRV fee has been added for U.S. government employees traveling on official business. A parallel exemption has been added under the nonimmigrant visa issuance fee, which is reciprocal, and varies according to the fees charged U.S. citizens by the applicant's country of origin. The U.S. government is deemed the primary beneficiary of this exemption because it applies to non-U.S. citizen U.S. government employees who travel to the United States on U.S. government orders to carry out their duties as employees.

Immigrant Visa Services

The proposed Schedule sets one immigrant visa application processing fee of $335 to replace the current Schedule's two separate fees for immigrant visa application processing ($260) and immigrant visa issuance ($65). The Department determined that charging one fee would simplify fee collection and enhance both administrative efficiency and convenience to the applicant. Some of the costs of related services (e.g., Affidavit of Support review, returning resident status determinations) have also been allocated to the immigrant visa application fee to keep the fees for those services at lower levels. Because a single processing fee will be charged, the Department has also reviewed and is proposing changes in its regulation regarding the circumstances in which a refund will be allowed (22 CFR 42.71). Since there will be no issuance fee, refunds will no longer be related to whether or not an immigrant visa is issued. Given that the actual work involved in processing an immigrant visa application has already commenced by the time the application fee is paid, the fee will be non-refundable unless the application is not or cannot be adjudicated as a result of action by the U.S. Government. The proposed revision is included in this proposed rule.

The current $75 Diversity Visa (DV) Lottery surcharge for the immigrant visa application will increase to $100. The Department has legal authority to establish the surcharge, which is paid only by persons who "win" the lottery and apply for a DV visa, at a level sufficient to cover the entire cost of running the lottery. The full exercise of this authority would lead to a much higher surcharge because the number of winning applicants (roughly 55,000) is much smaller than the total number of

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lottery entrants (recently about 10 million). The surcharge has been kept below the legally authorized amount. The Department notes that DV applicants must also pay the immigrant visa application processing fee; that the $100 surcharge will represent an increase in this surcharge of 33 percent; and that the $100 surcharge will cover the Department's direct (but not indirect) costs of running the lottery. The Department believes that a $100 surcharge is therefore reasonable. Costs not recovered by the surcharge have been allocated to appropriations.

The proposed Schedule raises to $65 the Affidavit of Support Review Fee, currently $50. This fee is charged domestically for all Affidavits of Support reviewed at the National Visa Center to ensure that they are properly completed before they are forwarded to a consular post for adjudication. The fee has been held below the cost of service; costs not recovered through the fee have been allocated to the immigrant visa application.

Special Visa Services

While higher than current fees, the proposed fees for determining returning resident status ($360, currently $50), and for a transportation letter for legal permanent residents of the U.S. ($300, currently $100) will represent only approximately 50% of the Department's full costs of providing these services. Costs not covered by the fees for these special visa services have been allocated to the immigrant visa application-processing fee. This allocation allows the special visa service fees to be lower and is appropriate given that the users of the special visa services generally are persons who have previously been issued immigrant visas, and that someone issued an immigrant visa may reasonably expect to use such services at some point in the future in an unforeseen situation.

The proposed fee charged for a waiver of the two-year residency requirement for J-visa holders has increased to $230. This fee has been set to recover all of the costs associated with providing this service.

The current $25 fee for fingerprinting, when required in connection with a visa application, will increase to $85 to cover all costs incurred in providing this service abroad, including FBI costs billed to the Department of State for fingerprint processing.

Documentary Services

For documentary services, the proposed Schedule establishes a new fee structure that the Department expects will be easy to administer and that will lower the direct cost to customers. It establishes a consistent per-item fee for all documentary services. Customers requiring a service multiple times as part of a single transaction (e.g., notarization of a bill of sale and five copies, or notarization of three documents required for a single real estate transaction) will be charged one fee for the initial seal and a reduced fee for each subsequent seal. The current fees for documentary services are $55 for notarials, $20 for certifications, $10 for additional certified copies, and $32 for authentications. The proposed Schedule sets a fee of $30 for the first seal for a notarial, certified copy, copy or certified document from the Department's Vital Records Section, and $20 for each additional seal. A fee of $30 is proposed for each authentication of a U.S. or foreign official seal or signature. Costs not covered by the proposed fees will be offset by appropriations. The Department notes that there is a long-standing, statutory requirement that consular officers perform notarial services abroad. Such services are available for minimal fees in the United States, and public concern over the Department's notarial fees when they were set in 1998 to ensure that the actual users pay the full cost of service has demonstrated a widespread expectation that notarial and similar services will be available from the U.S. Government to overseas users for fees that are not significantly higher than domestic fees, even if the overseas fee is well below the actual cost of service. Thus, the Department has concluded that allocating part of the cost of notarials to the general taxpayer is appropriate.

Under the proposed Schedule, documentary fee exemptions for U.S. federal, state and local government agencies are combined under one item. One new exemption has been added: No fee will be charged for notarial services performed with respect to endorsing U.S. Savings Bonds Certificates. The U.S. Government is a beneficiary of the U.S. Savings Bond program, and imposing a fee on the individual bondholders for this service in the past has at times adversely affected persons of limited resources, thereby potentially discouraging use of this investment vehicle.

Judicial Assistance Services

The proposed Schedule separates judicial assistance services from documentary services. A fee of $650 is proposed for processing letters rogatory, judicial assistance cases under the Foreign Sovereign Immunities Act, and certificates for return of letters rogatory executed by foreign officials. The $650 fee covers the estimated costs incurred in a routine case. A flat rate of $475 is proposed for making arrangements for taking one or more depositions that will run continuously in a single location on a single day so that only one set of reservations for facilities, reporting, and other services need be made. This fee also reflects the estimated cost of a normal case. It will be charged again if a deposition for which the fee has been paid is cancelled and rescheduled. When a consular official must also attend or take the deposition or execute a commission to take testimony, the Department proposes to charge, in addition, the hourly rate for the time spent performing this service and for expenses actually incurred. A flat fee of $235 is proposed for swearing in witnesses for telephone depositions, reflecting that a consular officer will generally have to reserve an hour of time for this service. If the consular officer must remain on the line while the deposition proceeds, an hourly rate of $235 will be charged for each hour or part thereof over the first hour. The $60 fee proposed for providing seal and certification of depositions is based on an estimate of the average time needed to perform this service.

The proposed Schedule includes two exemptions from fees for judicial assistance services:

—The first applies to U.S. Federal, state, and local government agencies. The Department has determined that it is normally in the interest of the U.S. Government to perform services for other government agencies without assessing fees to those agencies. It streamlines administrative procedures for both agencies and facilitates performance of the task. In some cases, however, the effort required of the consular officer abroad can be extreme, in terms of time and cost. In those cases, the Department reserves the right to recover those costs by charging other agencies for consular time and expenses incurred. The cost of normal services for government agencies will otherwise be recovered through appropriations.

—Under the second exemption, no fee will be charged to execute commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of federal court on behalf of an indigent party. The Department has determined that it is in the U.S. Government's interest to perform these services without assessing fees. It streamlines administrative procedures, facilitates performance of the task without imposing bureaucratic obstacles, and is consistent with the government's broad interest in ensuring that criminal defendants get a fair trial.

Services Relating to Vessels and Seamen

The Schedule proposes to recover all costs associated with the processing and issuance of shipping and seamen services by charging the proposed $235 hourly rate for consular time plus any expenses incurred. These services include, but are not limited to, recording a bill of sale of a vessel purchased abroad, renewal of a marine radio license, and issuance of a certificate of American ownership. As these services are not performed on any routine basis, an average fee could not be determined. In paying the hourly rate for consular time, the beneficiary of the service will bear the full cost.

Administrative Services

The fee for setting up and maintaining a trust account increases from $25 to $30. It is Department policy to keep this fee below the cost of service because it is generally provided to individuals who have limited resources or who face unusual obstacles in transferring funds abroad. The remaining costs have been allocated to the passport application fee.

Consular time charges increase to $235 per hour and reflect the actual direct and indirect cost of service as determined by the Cost of Service Study conducted by the Bureau of Consular Affairs. The Department notes that this rate is high in part because maintaining consular officers and facilities abroad, including secure work and living environments, is costly.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a proposed rule with a 30-day provision for public comments.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order. In addition, OMB has been provided with an information copy of the proposed regulation.

Executive Order 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements.

List of Subjects

22 CFR Part 22

Consular services, Fees, Schedule of fees for consular services, Passports and visas.

22 CFR Part 51

Fees, Passports and visas.

Accordingly, 22 CFR parts 22 and 51 are proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub.L. 105–277, 112 Stat. 2681 et seq.; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is revised to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the U.S. Department of State's schedule of fees for consular services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
1. Passport Execution: Required for first-time applicants and others who must apply in person (effective 8/15/02) [01—PASSPORT EXECUTION].	$30.
2. Passport Application Services (effective 8/15/02) for:	
(a) Applicants age 16 or over (including renewals) [02—ADULT PASSPORT]	$55.
(b) Applicants under age 16 [03—MINOR PASSPORT]	$40.
(c) Passport amendments (extension of validity, name change, etc.) [04—AMENDMENT]	No fee.
3. Expedited service: Guaranteed 3-day processing and/or in-person service at a U.S. Passport Agency (effective 8/15/02; not applicable abroad) [EXPEDITED SERVICE].	$60.
4. Exemptions: The following applicants are exempted from passport fees:	

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SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(a) Officers or employees of the United States and their immediate family members (22 U.S.C. 214) and Peace Corps Volunteers and Leaders (22 U.S.C. 2504(a)) proceeding abroad or returning to the United States in the discharge of their official duties [04—PASSPORT EXEMPT].	No fee.
(b) U.S. citizenseamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214) [04—PASSPORT EXEMPT].	No fee.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214) [04—PASSPORT EXEMPT].	No fee.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States (10 U.S.C. 2603) [04—PASSPORT EXEMPT].	No fee.
5. Travel Letter: Provided as an emergency accommodation to a U.S. citizen returning to the United States when the consular officer is unable to issue a passport book (consular time charges, item 75, may apply) [05—U.S.C. TRAVEL LETTER].	No fee.
6. File search and verification of U.S. citizenship (effective 8/15/02): When applicant has not presented evidence of citizenship and previous records must be searched (except for an applicant abroad whose passport was stolen or lost abroad or when one of the exemptions is applicable) [06—PPT FILE SEARCH].	$45.
7. Application for Report of Birth Abroad of a Citizen of the United States: [07—REPORT BIRTH ABROAD]	$65.
(Items nos. 8 through 10 vacant.)	
Overseas Citizens Services	
Arrests, Welfare and Whereabouts, and Related Services:	
11. Arrest and prison visits	No fee.
12. Assistance regarding the welfare and whereabouts of a U.S. Citizen, including child custody inquiries	No fee.
13. Loan processing	
(a) Repatriation loans	No fee.
(b) Emergency dietary assistance loans	No fee.
Death and Estate Services	
14. Assistance to next-of-kin:	
(a) After the death of a U.S. citizen abroad (providing assistance in disposition of remains, making arrangements for shipping remains, issuing Consular Mortuary Certificate, and providing up to 20 original Consular Reports of Death).	No fee.
(b) Making arrangements for a deceased non-U.S. citizen family member (providing assistance in shipping or other disposition of remains of a non-U.S. Citizen) [11—NON U.S.C. DEATH].	Consular time (item 75) plus expenses.
15. Issuance of Consular Mortuary Certificate on behalf of a non-U.S. Citizen [12—NON-U.S.C. MORT CERT]	$60.
16. Acting as a provisional conservator of estates of U.S. Citizens:	
(a) Taking possession of personal effects; making an inventory under an official seal (unless significant time and/or expenses incurred).	No fee.
(b) Overseeing the appraisal, sale, and final disposition of the estate, including disbursing funds, forwarding securities, etc. (unless significant time and/or expenses incurred).	No fee.
(c) For services listed in 16(a) or (b) when significant time and/or expenses are incurred [13—ESTATE COSTS]	Consular time (item 75) and/or expenses.
(Items nos. 17 through 20 vacant.)	
Nonimmigrant Visa Services	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Nonimmigrant visa [21—MRV PROCESSING]	$65.
(b) Border crossing card—10 year (age 15 and over) [22—BCC 10 YEAR]	$65.
(c) Border crossing card—5 year (under age 15)	
(d) For Mexican citizen if parent or guardian has or is applying for a border crossing card [23—BCC 5 YEAR]	$13.
22. EXEMPTIONS from nonimmigrant visa application processing fee:	
(a) Applicants for A, G, C—3, NATO and diplomatic visas as defined in 22 CFR 41.26 [24—MRV EXEMPT]	No fee.
(b) Applicants for J visas participating in official U.S. Government sponsored educational and cultural exchanges [24—MRV EXEMPT].	No fee.
(c) Replacement machine-readable visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant [24—MRV EXEMPT].	No fee.
(d) Applicants exempted by international agreement as determined by the Department, including members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families [24—MRV EXEMPT].	No fee.
(e) Applicants travelling to provide charitable services as determined by the Department [24—MRV EXEMPT]	No fee.
(f) U.S. Government employees travelling on official business [24—MRV EXEMPT]	No fee.
23. Nonimmigrant visa issuance fee, including border-crossing cards. [25—NIV ISSUANCE RECIPROCAL] RECIPROCAL	
24. EXEMPTIONS from nonimmigrant visa issuance fee:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member; members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly; and applicants for diplomatic visas as defined under item 22(a); and their immediate families [26—NIV ISSUANCE EXEMPT].	No fee.
(b) An applicant transiting to and from the United Nations Headquarters [26—NIV ISSUANCE EXEMPT]	No fee.
(c) An applicant participating in a U.S. Government sponsored program [26—NIV ISSUANCE EXEMPT]	No fee.
(d) An applicant travelling to provide charitable services as determined by the Department [26—NIV ISSUANCE EXEMPT].	No fee.
(Items Nos. 25 through 30 vacant.)	

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
Immigrant and Special Visa Services	
31. Filing immigrant visa petition (Collected for INS and subject to change):	
(a) Petition to classify status of alien relative for issuance of immigrant Visa [31—INS I—130 PETITION]	$130.
(b) Petition to classify orphan as an immediate relative [32—INS I–600 PETITION]	$460.
32. Immigrant visa application processing fee (per person) [33—IV APPLICATION]	$335.
33. Diversity Visa Lottery surcharge for immigrant visa application (per person applying as a result of the lottery program) [34—DV PROCESSING].	$100.
34. Affidavit of Support Review (only when AOS is reviewed domestically)	$65.
35. Special visa services:	
(a) Determining Returning Resident Status [35—RETURNING RESIDENT]	$360.
Transportation letter for Legal Permanent Residents of U.S. [36—LPR TRANSPORTATION LETTER]	$300.
(c) Waiver of 2 year residency requirement [27—J WAIVER]	$230.
(d) Waiver of immigrant visa ineligibility (collected for INS and subject to change) [37—IV WAIVER]	$195.
(e) Refugee or significant public benefit parole case processing [38—REFUGEE/PAROLE]	No fee.
(f) U.S. Visa fingerprinting [39—FINGERPRINTS]	$85.
(Item Nos. 36 through 40 vacant.)	
Documentary Services	
41. Providing notarial service:	
(a) First service (seal) [41—NOTARIAL]	$30.
(b) Each additional seal provided at the same time in connection with the same transaction [42—ADDITIONAL NOTAR].	$20.
42. Certification of a true copy or that no record of an official file can be located (by a post abroad):	
(a) First Copy [43—CERTIFIED COPY]	$30.
(b) Each additional copy provided at the same time [44—ADDITIONAL COPY]	$20.
43. Provision of documents, certified copies of documents, and other certifications by the Department of State (domestic):	
(a) Documents relating to births, marriages, and deaths of U.S. citizens abroad originally issued by a U.S. Embassy or Consulate.	$30.
(b) Issuance of Replacement Report of Birth Abroad	$30.
(c) Certified copies of documents relating to births and deaths within the former Canal Zone of Panama from records maintained by the Canal Zone Government from 1904 to September 30, 1979.	$30.
(d) Certifying a copy of a document or extract from an official passport record	$30.
(e) Certifying that no record of an official file can be located [45—BRTH/MAR/DEATH/NO RECORD]	$30.
(f) Each additional copy provided at same time [46—ADDITIONAL CERT]	$20.
44. Authentications (by posts abroad):	
(a) Authenticating a foreign notary or other foreign official seal or signature	$30.
(b) Authenticating a U.S. Federal, State, or territorial seal	$30.
(c) Certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government.	$30.
(d) Each authentication [47—AUTHENTICATION]	$30.
45. Exemptions: Notarial, certification, and authentication fees (items 35, 36, and 37) or passport file search fees (item 4) will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant costs would be incurred) [48—DOCUMENTS EXEMPT].	No fee.
(b) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining Federal, State, or municipal benefits [48—DOCUMENTS EXEMPT].	No fee.
(c) For U.S. citizens outside the United States preparing ballots for any public election in the United States or any of its territories [48—DOCUMENTS EXEMPT].	No fee.
(d) At the direct request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use [48—DOCUMENTS EXEMPT].	No fee.
(e) At the direct request of a foreign government official when appropriate or as a reciprocal courtesy [48—DOCUMENTS EXEMPT].	No fee.
(f) At the request of direct hire U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or traveling officially in a foreign country [48—DOCUMENTS EXEMPT].	No fee.
(g) With respect to documents whose production is ordered by a court of competent jurisdiction [48—DOCUMENTS EXEMPT].	No fee.
(h) With respect to affidavits of support for immigrant visa applications [48—DOCUMENTS EXEMPT]	No fee.
(i) With respect to endorsing U.S. Savings Bonds Certificates [48—DOCUMENTS EXEMPT]	No fee.
(Item nos. 46 through 50 vacant.)	
Judicial Assistance Services	
51. Processing letters rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases, including providing seal and certificate for return of letters rogatory executed by foreign officials:	
[51—LETTERS ROGATORY]	$650.
[52—FSIA]	$650.
52. Taking depositions or executing commissions to take testimony:	
(a) Scheduling/arranging appointments for depositions, including depositions by video teleconference (per daily appointment) [53—ARRANGE DEPO].	$475.
(b) Attending or taking depositions, or executing commissions to take testimony (per hour or part thereof) [54—DEPOSE/HOURLY].	$235 per hour plus expenses.

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SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(c) Swearing in witnesses for telephone depositions [55—TELEPHONE OATH]	$235.00.
(d) Supervising telephone depositions (per hour or part thereof over the first hour) [56—SUPERVISE TEL DEPO]	$235 per hour plus expenses.
(e) Providing seal and certification of depositions [57—DEPOSITION CERT]	$60.00.
53. Exemptions: Deposition or executing commissions to take testimony. Fees (item 42) will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant time required and/or expenses would be incurred) [58—JUDICIAL EXEMPT].	No fee.
(b) Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party [59—INDIGENT TEST].	No fee.
(Items no. 54 through 60 vacant.)	
Services Relating to Vessels and Seamen	
61. Shipping and Seaman's services: Including but not limited to, recording a bill of sale of a vessel purchased abroad, renewal of a marine radio license, and issuance of certificate of American ownership:	
[61—SHIPPING BILL OF SALE]	Consular time (item 75) plus expenses.
[62—SHIPPING RADIO LISC]	Consular time (item 75) plus expenses.
[63—SHIPPING CERT AM OWN]	Consular time (item 75) plus expenses.
[64—SHIPPING MISC]	Consular time (item 75) plus expenses.
(Item nos. 62 through 70 vacant.)	
Administrative Services	
71. Non-emergency telephone calls.. [71—TOLL CALL COST] [72—TOLL COST SURCHARGE]	Long distance charge plus $10.
72. Setting up and maintaining a trust account: For 1 year or less to transfer funds to or for the benefit of a U.S. citizen in need in a foreign country [73—OCS TRUST].	$30.
73. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary [74—TRANSPORTATION].	Expenses incurred.
74. Return check processing fee [75—RETURN CHECK]	$25.
75. Consular time charges: As required by this schedule and for fee services performed away from the office or during after-duty hours (per hour or part thereof/per consular employee) [76—CONSULAR TIME].	$235.
76. Photocopies (per page) [77—PHOTOCOPY]	$1.
(Items nos. 77 through 80 vacant.)	

PART 51—[AMENDED]

3. The authority citations for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a; 213, 2651a; 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570; sec. 236, Pub. L. 106–113, 113 Stat. 1501A–430; 18 U.S.C.1621(a)(2).

4. Sec. 51.61 is revised to read as follows:

§ 51.61 Passport fees.

Fees, including execution fees, shall be collected for the following passport services in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1):

(a) A fee for each passport application filed, which fee shall vary depending on the age of the applicant. The passport application fee shall be paid by all applicants at the time of application, except as provided in § 51.62(a), and is not refundable, except as provided in § 51.63. A person who is denied a passport may request that the application be reconsidered without payment of an additional fee upon the submission, within 90 days after the date of the denial, of documentation not previously presented that is sufficient to establish citizenship or entitlement to a passport.

(b) A fee for execution of the passport application, except as provided in § 51.62 (b), when the applicant is required to execute the application in person before a person authorized to administer oaths for passport purposes. This fee shall be collected as part of the passport application fee at the time of application and is not refundable (see § 51.65). When execution services are provided by an official of a state or local government or of the United States Postal Service, the fee may be retained by that entity to cover the costs of service pursuant to an appropriate agreement with the Department of State.

(c) A fee for expedited services, if any, provided pursuant to § 51.66.

Dated: February 1, 2002.

Grant S. Green,

Under Secretary of State for Management, Department of State.

[FR Doc. 02–6863 Filed 3–27–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Fixed and Floating Platforms and Documents Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to May 28, 2002, the previous deadline of March 27, 2002, for submitting comments on the proposed rule published December 27, 2001 (66 FR 66851) that addresses fixed and floating offshore platforms and floating production systems (FPSs). It replaces the previous extension of the comment period to March 27, 2002, that was issued on February 12, 2002 (67 FR 6453).

DATES: We will consider all comments received by May 28, 2002, and we may not fully consider comments received after May 28, 2002.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Carl Anderson, Engineering and Operations Division, at (703) 787–1608.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subparts A, I, and J to incorporate by reference new documents governing fixed and floating platforms and new riser, stationkeeping, and pipeline technology. The request was based on the considerations that FPSs previously have not been directly addressed in 30 CFR 250 and that issues related to increasing the use of FPSs on the Outer Continental Shelf are complex. MMS agrees that more time is appropriate to ensure that all of the issues in this area are fully addressed.

The FPSs are variously described as column-stabilized units (CSUs); floating production, storage and offloading facilities (referred to by industry as "FPSOs"); tension-leg platforms (TLPs); spars, etc. We are also incorporating into our regulations a body of industry standards pertaining to platforms and FPSs that will save the public the costs of developing separate and, in some cases, unnecessarily duplicative government standards.

Public Comments Procedures:

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 26, 2002.

Michael C. Hunt,

Acting Associate Director for, Offshore Minerals Management.

[FR Doc. 02–7588 Filed 3–26–02; 11:50 am]

BILLING CODE 4310–MR–W

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–11876]

Public Meeting on Motorcoach Safety Improvements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces that NHTSA will be holding a public meeting regarding improvements in passenger crash protection regulations for motorcoaches. Because Canada shares a common interest in the safety of passengers that ride in motorcoaches, this meeting is being held jointly in cooperation with Transport Canada. This notice invites persons to make presentations and submit written comments on the same subject.

NHTSA and Transport Canada recognize that the occupant protection issues for motorcoaches differ significantly from those of passenger cars and trucks. Safety countermeasures that are cost effective for passenger vehicles may not necessarily be as effective in motorcoaches, particularity given travel comfort expectations associated with long distance travel by motorcoach. Therefore, it was decided to hold this public meeting to hear the views and comments from manufacturers, operators, users, and the public at large in order to be better informed of their specific needs, and to help us determine whether improvements in motorcoach passenger crash protection standards are warranted.

DATES: Public Meeting: NHTSA will hold a public meeting in Washington, DC on April 30, 2002, from 9:30 am until 5 pm at the below listed address.

Written Comments: Written requests to speak at the public meeting, comments to be submitted for the public record, and suggestions for items to be included in the meeting agenda, should be received at Docket Management at the below address no later than April 29, 2002.

ADDRESSES: Public Meeting: The public meeting will be held at the National Transportation Safety Board's meeting room at 429 L'Enfant Plaza, SW., Washington, DC.

Written Comments: Submit written comments to the DOT Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001.

Comments should refer to the Docket Number (NHTSA–02–11876) and two copies should be submitted. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the DOT Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket Number.

FOR FURTHER INFORMATION CONTACT: Charles Hott, Office of Crashworthiness Standards, NPS–12, NHTSA, 400 7th Street, SW., Washington, DC 20590 (telephone 202–366–0247, Fax: 202–493–2739).

Crash Statistics

Historically, motorcoaches (intercity buses) have been a relatively safe mode of transportation with about 10 fatalities per year (9 passengers and 1 driver). However, in severe crashes and rollovers, motorcoach passengers may have not been provided sufficient crash protection against ejection from the motorcoach. Data from the Fatality Analysis Reporting Systems supplemented by the National Transportation Safety Board (NTSB) was used to obtain the following information about motorcoach fatalities. As shown in Table 1, during the period of 1991 through 2000, there were 48 motorcoach crashes resulting in 101 motorcoach fatalities (16 drivers and 85 passengers). Of the 16 driver fatalities, 12 percent (2) were ejected from the bus and 88 percent (12) were not ejected. Of the 85 passenger fatalities, 55 percent (47) were ejected from the bus and 45 percent (37)

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were not ejected, (one passenger had an unknown ejection status).

TABLE 1.—1991–2000 MOTORCOACH FATALITIES

48 Crashes	Total	Ejected	Not ejected	Unknown
Driver	16	2	14	
Passenger	85	47	37	1
Total	101	49	51	1

A large number of motorcoach fatalities occur in crashes involving motorcoach rollover. In fact, during the 19912000 period, the motorcoach rolled over in 18 of the 48 fatal crashes resulting in 37 fatalities (2 drivers and 35 passengers). Fatality data is shown in Table 2. Of the 35 passenger fatalities, 74 percent (26) were ejected from the bus and 26 percent (9) were not ejected. There were two driver fatalities, one ejected and one not ejected.

TABLE 2.—1990–1999 MOTORCOACH FATALITIES (ROLLOVER CRASHES)

18 Crashes	Total	Ejected	Not ejected
Driver	2	1	1
Passenger	35	26	9
Total	37	27	10

As shown in Table 3, there were 30 non-rollover crashes that produced 64 fatalities, 14 drivers and 50 passengers. Of the 50 passenger fatalities, 42 percent (21) were ejected from the bus and 58 percent (28) remained inside the bus. There were 14 driver fatalities. It should be noted that a single crash, where the bus did not rollover, produced 44 percent (22) of the passenger fatalities.

TABLE 3.—1990–1999 MOTORCOACH FATALITIES (NON-ROLLOVER CRASHES)

30 Crashes	Total	Ejected	Not ejected	Unknown
Driver	12	2	10	
Passenger	50	21	28	1
Total	64	23	38	1

National Transportation Safety Board Recommendations

In September 1999, the National Transportation Safety Board (NTSB) made several safety recommendations to the agency regarding regulations for improvement of passenger crash protection, roof crush, and advance glazing research in motorcoaches. The Safety Recommendations are as follows:

H–99–47—In 2 years, develop performance standards for motorcoach occupant protection systems that account for frontal impact collisions, side impact collisions, rear impact collisions, and rollovers.

H–99–48—Once pertinent standards have been developed for motorcoach occupant protection systems, require newly manufactured motorcoaches to have an occupant crash protection system that meets the newly developed performance standards and retains passengers, including those in child restraint systems, within the seating compartment throughout the accident sequence for all accident scenarios.

H–99–49—Expand your research on current advanced glazing to include its applicability to motorcoach occupant ejection prevention, and revise window glazing requirements for newly manufactured motorcoaches based on the results of this research.

H–99–50—In 2 years, develop performance standards for motorcoach roof strength that provide maximum survival space for all seating positions and that take into account current typical motorcoach window dimensions.

H–99–51—Once performance standards have been developed for motorcoach roof strength, require newly manufactured motorcoaches to meet those standards.

In a March 3, 2000 letter to NTSB, the agency responded to NTSB with the following:

In addressing this issue, NHTSA must also consider using its limited resources most efficiently. * * * The crashworthiness issues about motorcoaches the Safety Board raised deserve to be analyzed. Therefore, NHTSA will examine opportunities to share the cost of research with motorcoach manufacturers. The Safety Board's suggested time limitation of two years is not achievable given current resources. NHTSA asks that the Safety Board take under consideration that for many of the safety issues raised, appropriate industry standards are not in place on which to base regulations. Therefore, primary research needs to be performed prior to the issuance of any regulation.

The motorcoach manufacturers have now formed a bus manufacturer's council to address safety issues regarding motorcoaches.

Issues

This section discusses a range of issues and presents a series of questions for public comment to aid the agency in evaluating motorcoach safety protection and in determining potential improvements in motorcoach passenger crash protection standards.

(1) NHTSA and Transport Canada recognize that a two-tier approach is needed to improve occupant protection in motorcoaches. The first tier is the prevention of the crash or rollover event from occurring. There are technologies that are currently being developed for use in passenger cars, such as (i) smart cruise control, (ii) stability control, and (iii) equipment that warns the driver of inadvertent lane changes. Are there technologies being developed, or that can be developed, that will reduce the likelihood of a crash or rollover for use in motorcoaches?

(2) The second tier is the mitigation of fatalities/injuries should a crash or rollover event occur. As stated earlier, passenger ejection appears to be a significant factor in severe motorcoach crashes and rollover events. Accident investigations reveal that large windows typically break away in a rollover, leaving large portals through which passengers can be ejected. We are interested in obtaining views on what structural changes in motorcoach design would be needed to mitigate ejection fatalities/injuries from motorcoach rollover events.

(3) Mitigation of ejection fatalities/injuries can be done by limiting the size of the glazing materials, and also by upgrading the standard for window retention and emergency exits in motorcoaches so that the windows do not come open or break during crashes or rollover events. Limiting the size of the glazing would offer smaller portals for ejection and reduces the likelihood of ejection during a rollover event. What changes to the existing regulation on window retention and emergency exits would be necessary to limit the size of the glazing and upgrade the standard to make it more applicable to the type of buses manufactured today? Should the agency change the window retention requirements to require that the windows be manufactured from materials that will not breakaway during impacts?

(4) Another possible improvement for motorcoaches may be to introduce a roof crush safety standard for motorcoaches. Such a standard could conceivably limit the size of the windows while providing additional structural support that could reduce intrusion into the passenger compartment during rollover events. What is the best approach to developing a roof crush standard that could conceivably maintain the size of the windows while providing additional structural support that could reduce intrusion into the passenger compartment during rollover events?

(5) We are aware that new technology of side curtain airbags is currently being offered in passenger cars. Passenger car side curtains may reduce the likelihood of ejection of unrestrained passengers. Some aspects of this technology may be adaptable for use in motor coaches. We are interested in any comments regarding the use of this or other technologies to reduce motorcoach ejections.

(6) Restraint systems are another possibility for mitigating ejection fatalities/injuries in motorcoach crashes. Technology was examined during NHTSA's school bus occupant protection research program to determine the feasibility for integrated lap/shoulder belts in school buses. What changes in the structure of the motorcoach would be necessary to ensure that the seats and seat belts have adequate strength to withstand impacts? What modifications to seat reclining features would be needed? What seat belt usage rates would be anticipated? What occupant size ranges would be necessary to accommodate for belt comfort and convenience?

(7) Another area of concern is occupant fatalities/injuries that are caused by head impact into interior components. Motorcoaches have features such as seat back lap trays and television monitors that are not normally found in general passenger vehicles. We are seeking comments on how to bring about occupant interior impact safety improvements, while recognizing that these features are for the comfort of passengers on long trips.

Procedural Matters

If you wish to make a presentation at the meeting, please contact Charles Hott at the above mailing address or telephone number by April 26, 2002. If your presentation will include slides, motion pictures, or other visual aids, please so indicate and NHTSA will make the proper equipment available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record. Those speaking at the public meeting should limit the length of their presentations to 20 minutes. Due to time imitations, NHTSA may have to limit the number of presenters per organization. NHTSA will provide auxiliary aids to participants as necessary. Any person desiring "auxiliary aids" (e.g., sign language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailed materials, or large print materials and/or a magnifying device), please contact Charles Hott.

The agency intends to conduct the meeting informally to allow for maximum participation by all who attend. Interested persons may ask questions or provide comments during any period after a party has completed its presentation, on a time allowed basis as determined by the presiding official. If time permits, persons who have not requested time to speak, but would like to make a statement, will be afforded an opportunity to do so. The agency is interested in obtaining the views of its customers, both orally and in writing. An agenda for the meeting will be made based on the number of persons wishing to make oral presentations and will be available on the day of the meeting.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: March 21, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–7366 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–59–P

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Notices

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request extension and reinstatement of the information collection currently approved for the Dairy Indemnity Payment Program.

DATES: Comments on this notice must be received on or before May 28, 2002 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Hill, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512, telephone number (202) 720–9888. Comments may also be submitted by e-mail to: *Elizabeth_Hill@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Dairy Indemnity Payment Program.

OMB Control Number: 0560–0116.

Expiration Date of Approval: February 28, 2002.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Secretary of Agriculture is authorized to make Dairy Indemnity Payments to producers who have been directed to remove their raw milk from the commercial market because it has been contaminated by pesticides, nuclear radiation or fallout, or toxin substance and chemical residues other than pesticides.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 5 minutes per producer.

Respondents: Producers.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 126 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility and protect the interests of CCC and the producer; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who respond, including the use of appropriated automated, electronic, mechanical, or techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Elizabeth A. Hill, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512, telephone number (202) 720–9888. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on March 8, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–7424 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

American Indian Livestock Feed Program

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: The Executive Vice President, Commodity Credit Corporation (CCC), is announcing the termination of the American Indian Livestock Feed Program (AILFP). Funds were discontinued after September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Steven Peterson, Chief, Noninsured Assitance Programs Branch (NAPB), Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–5172; facsimile (202) 720-3646; e-mail *StevePeterson@wdc.fsa.usda.gov*.

EFFECTIVE DATE: This notice is effective on March 28, 2002.

SUPPLEMENTARY INFORMATION: The final rule for AILFP was published on June 8, 2000, with an initial budget of $12.5 million. This funding was nearly exhausted by January 2001. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (2001 Act) provided additional funding of $11.9 million to continue the AILFP.

The 2001 Act authorized AILFP funding only for those AILFP contracts and requests to extend feeding periods for existing AILFP contracts that were approved by the Deputy Administrator for Farm Programs (DAFP) no later than September 30, 2001. As a result of this statutory provision, AILFP funding is not available for any AILFP contract or request to extend a feeding period for an existing AILFP contract not submitted and approved by DAFP by September 30, 2001. The program is terminated.

Signed at Washington, DC, on March 28, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corportation.

[FR Doc. 02–7423 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–009N]

Codex Alimentarius Commission: 17th Session of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food And Drug Administration (FDA), are sponsoring a public meeting on March 26, 2002, to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on General Principles (CCGP), which will be held in Paris, France, on April 15–19, 2002. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 17th Session of the General Principles Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 17th CCGP.

DATES: The public meeting is scheduled for Tuesday, March 26th, 2002, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Jamie E. Whitten Building, 1400 Independence Ave, SW., Washington, DC. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents are also accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/ccgp17/gp02_01e.htm*. If you have comments, please send an original and two copies to the FSIS Docket Room, Docket #02–009N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. F. Edward Scarbrough, U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760. Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. F. Edward Scarbrough at the above telephone number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO), and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex activities.

The Codex Committee on General Principles deals with such procedural and general matters as are referred to it by the Codex Alimentarius Commission. Such matters have included the establishment of the General Principles that define the purpose and scope of the Codex Alimentarius; the nature of Codex standards and the forms of acceptance by countries of Codex standards; the development of Guidelines for Codex Committees; the development of a mechanism for examining any economic impact statements submitted by governments concerning possible implications for their economies of some of the individual standards or some of the provisions thereof; and the establishment of a Code of Ethics for the International Trade in Food. The Committee is chaired by France.

Issues To Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda.
2. Matters referred by the Codex Alimentarius Commission and other Codex Committees, including Traceability.
3. Risk Analysis
   (a) Proposed Draft Working Principles for Risk Analysis
   (b) The Application of Risk Analysis in the Elaboration of Codex Standards (prepared by India)
   (c) Consideration of the development of working principles for risk analysis to be applied by governments
4. Proposed Draft Revised Code of Ethics for International Trade in Foods
5. Guidelines for Cooperation with International Intergovernmental Organizations
6. Membership in the Codex Alimentarius Commission of Regional Economic Integration Organizations
7. Other Business, Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the French Secretariat at the 17th Session of CCGP. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 26th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the 17th CCGP.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to better ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update.

The Agency provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding Agency policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, the Agency is able to provide information with a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC on: March 21, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–7469 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–004N]

Codex Alimentarius Commission: Twenty-fifth Session of the Codex Committee on Fish and Fishery Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

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SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), of the Department of Health and Human Services, are sponsoring a public meeting on May 8, 2002, to review technical content of the agenda item documents and to receive comments on all issues coming before the Twenty-fifth Session of the Codex Committee on Fish and Fishery Products (CCFFP), which will be held in Alesund, Norway, June 3–7, 2002.

DATES: The public meeting is scheduled for Wednesday, May 8, 2002, from 9:00 a.m. to 12:00 noon.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740, Conference Room 4B 047.

To receive copies of the documents referenced in this notice, contact the Food Safety Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex*. Send comments, in triplicate, to the FSIS Docket Room and reference Docket #02–004N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed Amjad Ali, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Janet Walraven, Consumer Safety Officer, Office of Seafood, FDA, at telephone (301) 436–1404; Fax (301) 436–2601.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex), was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Fish and Fishery Products was established to elaborate codes and standards for fish and fishery products. The Government of Norway hosts this Committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters Referred by the Codex Alimentarius Commission and other Codex committees.
2. Review Proposed Draft Standard for Dried Salted Anchovies.
3. Proposed Draft for Salted Atlantic Herring and Sprats for Histamine levels.
4. Proposed Draft Code of Practice for Fish and Fishery Products (sections 1, 2.1, 2.2, 2.9, 3 to 6 and 13).
5. Proposed Draft Code of Practice for Fish and Fishery Products: sections other than those listed in Item 3; Coated Fish; Retail; Surimi; Cephalopods; Transportation; Smoked; Salted; Molluscan Shellfish.
6. Proposed Draft Standard for Live, Quick Frozen and Canned bivalve Molluscs.
7. Proposed Draft Model Certificate for Fish and Fishery Products.
8. Proposed Draft Standard for Smoked Fish.
9. Proposed Draft Amendment to the Standard for Quick Frozen Lobsters.
10. Proposed Draft Standard for Scallops.
11. Discussion Paper—Inclusion of additional species and on labelling requirements related to the "name of the product" in Codex Standards (Proposed Draft Amendment to the Canned Sardines Standard).
12. Discussion paper on fish content in fish sticks.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: March 21, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–7470 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, April 15, 2002. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office in North Fork, CA. The purpose of the meeting is to review the RAC application process, review the draft evaluation sheet, and review current applications.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, April 15, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the USDA Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review the application process; (2) review draft evaluation sheet; (3) review current project applications; (4) public comments. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 22, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–7430 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on April 9, 2000, 6:30–9:15 p.m. The Fresno County Resource Advisory Committee will meet at the Forest Supervisor's office Clovis, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on April 9, 2002. The meeting will be held from 6:30 p.m. to 9:15 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra National Forest Supervisor's office, 1600 Tollhouse Road, Clovis, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611, (559) 297–0706 ext. 4804; e-mail *skexline@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the March 19, 2002 meeting notes; (2) Consideration of Title II Project proposals from the public; (3) Consideration of Title II Project proposals from the RAC members; (4) Determine the date and location of the next meeting; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 19, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–7407 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, USDA, Agricultural Research Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection from the Food Safety Training and Education Alliance (FSTEA). This voluntary question form would allow FSTEA's external customers, who are primarily food safety trainers and educators, to ask questions and get answers regarding food safety training and education in the retail or foodservice sector. This form will assist FSTEA in providing a valuable service to its customers.

DATES: Comments on this notice must be received by June 3, 2002 to be assured of consideration.

ADDRESSES: Address all comments and questions concerning this notice to: Jimmy C. Liu, Food Safety Information Specialist, National Agricultural Library, 10301 Baltimore Avenue, Room 105, Beltsville, MD 20705–2351, 301–504–5840 301–504–6409. Submit electronic comments to *jliu@nal.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Ask An Expert (Food Safety Training and Education Alliance).

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection from food safety educators and trainers.

Abstract: The collection of information using a voluntary question form will provide the Food Safety Training and Education Alliance (FSTEA) customers an opportunity to ask questions pertaining to food safety training and education in the retail or foodservice sector. Knowledgeable experts in the field will then answer the questions. The contribution form consists of one document comprised of 12 inquiry components. Some of these components include standard contact information, subject, and a field for the question itself.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.05 hours per response.

Respondents: Respondents will be food safety educators or trainers, primarily those working in the retail or foodservice sector.

Estimated Number of Respondents: 40 per year.

Estimated Total Annual Burden on Respondents: 2.0 hours.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: March 8, 2002.

Caird E. Rexroad,

Associate Deputy Administrator.

[FR Doc. 02–7468 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year

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that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster or are experiencing fundamental structural changes in the economic base.

Not more than 12 percent of the Agency quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guarantee percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBANK) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. CAIP loans are subject to a 50 percent limit of the overall CAIP loan program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business and Industry Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Processing Branch Chief, Business and Industry Division, Rural Business-Cooperative Service, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 720–7818.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: March 7, 2002.

John Rosso,

Administrator.

[FR Doc. 02–7500 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 19, 2002–MARCH 19, 2002

Firm name	Address	Date petition accepted	Product
Supreme Tool & Die Co., Inc..	1536 Fenpark Drive, Fenton, MO 63026.	02/21/02	Metal industrial tooling and die fabrication.
M. W. Technologies, Inc.	71 Midland Avenue, Elmwood Park, NJ 07407.	02/22/02	Industrial process control instruments and apparatus for the pharmaceutical and food processing industries.
Border Foods, Inc.	4065 J Street, S.E., Deming, NM 88030.	02/25/02	Processed green chile.
Airpax, L.L.C.	807 Woods Road, Cambridge, MD 21613.	02/27/02	Magnetic circuit breakers.
Eminence Speaker, L.L.C. ..	838 Mulberry, Eminence, KY40019.	02/28/02	Loudspeakers for the music and entertainment industries.
Quad Tool & Design, Inc. ...	8565 Highway 45, Kewaskum, WI 53040.	02/27/02	Tooling for the molding of plastic articles, machined of metal.
Southwest Specialty Heat Treat, Inc..	225 East Marshall Wytheville, VA 24382.	03/04/02	Heat treatment of metal fasteners.
Randolph Dimension Corp.	216 Main Street, Jamestown, NY 14272.	03/04/02	Hardwood furniture products such as rails, arms and backs, and cabinets and other wood products.
S.O.S. From Texas	Route 4, Box 49, Shamrock, TX 79070.	03/04/02	Unisex tee shirts.
Larand Corporation	2450 West 3rd Court, Miami, FL 33010.	03/05/02	Metal stock shapes of brass, carbon steel, stainless steel and aluminum alloy for the recreational marine industry.
Rezolex Limited Company ..	2240 Pepper Road, Las Cruces, NM 88005.	03/05/02	Paprika-based oleo resin.
Rowe Foundry & Machine Co. dba Rowe Foundry Inc..	147 West Cumberland St., Martinsville, Il 62442.	03/06/02	Counterweights for backhoes.
Paul Villwock Farms	600 Perrydale Road, Dallas, Oregon 97338.	03/18/02	Plums.
Henry County Plywood Corporation.	1580 Phospho Springs Road, Ridgeway, Virginia 24148.	03/19/02	Hardwood plywood for the furniture industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: March 20, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–7433 Filed 3–27–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001206342–2025–02; I.D. 020502B]

RIN 0348–ZB00

NOAA Restoration Center; Request for National and Regional Habitat Restoration Partners

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for partnership proposals.

SUMMARY: The purpose of this document is to invite the public to submit multi-year proposals for establishing innovative partnerships with the NOAA Restoration Center (RC) at a national or regional level to further habitat restoration that will benefit living marine resources including anadromous fish. NOAA envisions working jointly on such partnerships, through its Community-Based Restoration Program (CRP), to select, competitively fund, and administer projects with substantial community involvement that restore NOAA trust resource habitats.

This document describes the types of habitat restoration partnerships that the RC envisions establishing, and describes criteria under which applications will be evaluated for funding consideration. Partnerships selected through this notice will be implemented through a grant or cooperative agreement mechanism and will involve joint selection and co-funding of multiple community-based habitat restoration projects. Funding for establishing new partnerships in FY 02 is limited and the selection process is anticipated to be highly competitive. This is not a request for individual community-based habitat restoration project proposals.

DATES: This is an open notice for applications that runs through August 1, 2002. Applications will be evaluated and partners selected monthly after date of publication in the **Federal Register** until the close of this solicitation. Applications that are not selected in a previous month will be considered in subsequent months to compete on a rolling basis. Applications received later than 5 days following the closing date will not be accepted or returned. No facsimile or electronic mail applications will be accepted.

ADDRESSES: Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Partnership Applications.

See **SUPPLEMENTARY INFORMATION** section under Electronic Access for additional information on the CRP and for application form information.

FOR FURTHER INFORMATION CONTACT: Robin J. Bruckner or Alison Ward, (301) 713–0174, or by e-mail at *Robin.Bruckner@noaa.gov* or *Alison.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Description

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local levels to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass, that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves. Priorities for habitat restoration partnership activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, state, and Federal agencies to implement habitat restoration projects to benefit NOAA trust resources. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally-important living marine resources and develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that partnerships can play in making habitat restoration happen within communities, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens' hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see Electronic Access.

II. Restoration Partnership Goals

NOAA is interested in developing national and regional partnerships that will lead to the accomplishment of on-the-ground, community-based

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restoration of marine, coastal and freshwater habitats to benefit living marine resources, including anadromous fish species. The primary goals of NOAA in establishing these partnerships are to restore living marine resource habitats; to involve community member volunteers in restoration activities to increase public awareness of the ecological value of fisheries habitat and foster a sense of community stewardship and pride for local restoration efforts; to develop and maintain long-term, ongoing, working relationships of mutual benefit by partnering on activities where the priorities and goals of partners overlap; to combine resources with national and regional partners to increase the geographic scope and rate at which habitat restoration can be conducted; and to collaborate on project identification, development, and selection for funding with partners that are able to coordinate and manage most or all aspects of restoration activities.

The RC envisions four primary means of working collaboratively to implement fisheries habitat restoration through partnerships: (1) Through sharing of restoration priorities, project ideas and techniques among interested organizations; (2) through the investment of technical assistance and oversight on particular restoration projects of mutual interest; (3) through collaborative identification of quality habitat restoration projects, and independent investment of technical assistance and cash and in-kind project contributions; and (4) through cooperative agreements, where potential national and regional partners apply for funds to work with the RC on a multi-year basis to identify, develop, implement and monitor community-based habitat restoration projects to benefit NOAA trust resources. Establishing partnerships through a cooperative agreement mechanism will involve joint selection and co-funding of numerous community-based habitat restoration projects, and is the primary focus of this **Federal Register** document.

III. National and Regional Restoration Partnerships

NOAA invites the submission of multi-year proposals of up to 3 years for establishing innovative partnerships with the RC at a national or regional level to further coastal habitat restoration. Successful applicants will be those whose partnership proposals are broad-reaching and demonstrate the potential for significant benefits to living marine resources across a large geographic area, and those whose restoration projects will actively engage community participation. Applicants seeking to establish partnerships must demonstrate that restoration activities will be consistent with NOAA Fisheries goals outlined in this notice.

Proposals for both national and regional partnerships are encouraged. However, because regional partnerships are more focused in geographic scope, these applicants will be expected to demonstrate coordinated efforts among multiple groups such as universities, science centers, state and municipal agencies, watershed groups, local schools, civic groups and non-governmental organizations. Applications for regional partnerships should involve a coalition that will develop joint goals and objectives to accomplish habitat restoration, and whose activities are expected to take place across a substantial and defined geographic region, such as the Chesapeake Bay watershed, or the states that border the Gulf of Maine or the Gulf of Mexico, for example.

The CRP has worked with a variety of partners on community-based fishery habitat restoration. Successful partnerships resulted where joint goals and priorities were most effectively accomplished through collaborative activities, including the pooling of financial and technical resources. The following narrative highlights the qualitites the CRP desires in working with national and regional community-based restoration partners. The example illustrates aspects that will be considered in the evaluation of applications, but it is not intended to limit the scope of partnership proposals.

The CRP seeks partnerships to match NOAA cash contributions at a minimum of a 1:1 level, enabling a greater number of jointly evaluated and selected community-based habitat restoration projects to be implemented. The combined partnership investments are to be subsequently leveraged between 1 and 5 times once cash and in-kind contributions from local partners and volunteers are included. Ideally, NOAA's contribution under a partnership is used to co-fund competitive habitat restoration projects that benefit a wide range of NOAA trust resources over a substantial geographic area. NOAA and its partner(s) will jointly solicit for local, citizen-driven habitat restoration proposals, and identify, evaluate and prioritize individual projects for funding. Partners will be expected to play a primary role in project development, the competitive solicitation of proposals, the coordination of joint reviews and evaluations of proposals, the award and administration of sub-grants, and the direct administrative oversight and routine review of funded projects. Partners will be expected to ensure that all work on individual projects will meet Federal, state and local environmental permitting requirements and that projects will be monitored to evaluate their success. Partners also will be expected to conduct all financial, administrative and contractual aspects of subsequent awards, consistent with all applicable Federal regulations and U.S. Department of Commerce/NOAA procedures and policies. NOAA's role in most partnerships would be to provide technical assistance in project development, conduct requisite field visits, assist in the review and evaluation of proposals, and provide funding and technical guidance during project implementation and monitoring of project success.

Projects funded under a partnership will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring. Therefore, to allow maximum flexibility under a partnership, applicants should avoid unduly restricting proposed activities to specific restoration phases.

Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passageway; natural or artificial reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fish; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and nursery areas essential to marine or anadromous fish.

A partnership application may target the restoration of specific habitats, or restrict work to certain geographic locations or the use of certain restoration techniques, if the restoration of these habitats or work in designated locations or with particular techniques has been documented under a regional planning effort to be a priority that is also consistent with the priorities of NOAA Fisheries. An example of suitable documentation includes proposed restoration activities resulting from a regional planning or other process where multiple stakeholders have reached consensus. Proposals for partnerships with a narrow restoration focus that will benefit limited resources or few user groups, or that request funding solely to support or increase general organizational activities, are not considered ideal for the partnership development goals of the NOAA Restoration Center, and will be less likely to be selected for partnership agreements with the RC.

IV. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666, to provide grants or cooperative agreements for fisheries habitat restoration.

V. Catalogue of Federal Domestic Assistance

The CRP is described in the "Catalogue of Federal Domestic Assistance," under program number 11.463, Habitat Conservation.

VI. Eligible Applicants

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments, and Federal agencies. Although Federal agencies are eligible to apply, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply as potential NOAA habitat restoration partners, rather than seeking partnerships directly with NOAA. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/NOAA encourages proposals for innovative national and regional partnerships involving MSIs according to the criteria in this document, to strengthen the capacity of MSIs to foster student careers, research and workforce competitiveness in fisheries habitat restoration through identification, development, implementation and monitoring of on-the-ground community-based restoration projects on a national or regional scale.

VII. Anticipated Funding Levels for Partnership Activities

This solicitation invites multi-year partnerships of up to 3 years with the NOAA Restoration Center, in the form of cooperative agreements of up to $3,000,000 (combined NOAA and partner funds, maximum Federal funds $1,500,000) for the formation of national and regional habitat restoration partnerships in FY 2002, with allowances for higher amounts if the applicants can produce a cash match in excess of 1:1. Combined funds for partnerships may be scaled up from FY 2002 levels to $4,000,000 in FY 2003, and to $6,000,000 in FY 2004 dependent upon future budget increases. In accordance with NOAA Community-Based Restoration Program Guidelines (65 FR 16890, March 30, 2000), the Restoration Center Director (Director) will determine the proportion of funds available to the CRP on an annual basis that will be obligated to national and regional partnerships each year, including the proportion to be used for interagency partnerships, and the proportion to be used for direct solicitations for restoration projects through the CRP. The number of partnership awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating partnerships by the applicants, the merit and rating of the proposals, and the amount of funds made available to the CRP by Congress. There is no guarantee that sufficient funds will be available to initiate partnerships where funding has been recommended, and the number of national and regional partnerships will be up to the discretion of the Director. Regional partnerships generally will have preference over national partnerships if available funds are limited. The exact amount of funds that may be awarded to work within a habitat restoration partnership will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to establish any specific partnership proposed or to obligate all or any parts of the available funds for partnership activities.

For partnerships where funding is recommended, funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the partnership role. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable." Allowable costs are determined by reference to the OMB Circulars A–122, "Cost Principles for Non-profit Organizations"; A–21, "Cost Principles for Education Institutions"; A–87, "Cost Principles for State, Local and Indian Tribal Governments"; and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 "Contracts with Commercial Organizations."

VIII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants seeking national and regional partnerships with the RC are encouraged to demonstrate a minimum 1:1 non-Federal match. While this is not a requirement, the RC strongly advises applicants to leverage as much investment as possible. Applicants with less than 1:1 match will not be disqualified, however applicants should note that cost sharing is an element considered in evaluation criteria (5) Cost-effectiveness and Budget Justification. The match can come from a variety of public and private sources and can include in-kind goods and services. Federal funds may not be considered matching funds. Applicants are permitted to combine non-Federal contributions from additional partners in order to meet the 1:1 match expected to establish a partnership, as long as the matching funds are not already being used to match other funding sources. Applicants whose proposals are selected for habitat restoration partnership funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

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IX. Type of Funding Instrument

Partnership proposals selected through this notice will be implemented through a cooperative agreement or interagency transfer. A cooperative agreement is a legal instrument reflecting a relationship between NOAA and a recipient whenever (1) the principal purpose of the relationship is to provide financial assistance to the recipient and (2) substantial involvement in the project by NOAA is anticipated during performance of the contemplated activity. NOAA may play a substantial role in any or all of the following: (1) Developing national and regional partnerships to promote locally driven habitat restoration activities; (2) conducting cooperative activities with recipients in project identification and ranking; (3) evaluating the performance of restoration projects; and (4) supporting project partners to enhance their effectiveness in meeting stated restoration goals for improving fisheries habitat.

X. Award Period and Partnership Duration

Applications for national and regional partnerships should cover a project period between 1 and 3 years. Multi-year project period requests may be funded incrementally on an annual basis, but once awarded, multi-year partnerships will not need to compete for funding in subsequent years. If an application is selected and approved for funding under a partnership, NOAA has no obligation to provide additional funding in connection with this partnership in subsequent years. However, the intention of the CRP is to attract and maintain partnerships that will be ongoing and long-lasting. Established partnerships are expected to continue through the duration of the project period. Future opportunities for submitting proposals to the competitive process for developing multi-year, national and regional habitat restoration partnerships are anticipated, but will be dependent on CRP funding levels and on the performance of existing partners to successfully maintain existing partnership activities to identify, develop, evaluate, implement and monitor community-based fisheries habitat restoration projects. A recommendation to the NOAA Grants Management Division (GMD) to continue an award for a partnership in subsequent years, or to extend the period of performance, is at the total discretion of the Director.

XI. Electronic Access

Information on the CRP, including examples of national partnerships and community-based habitat restoration projects that have been funded to date, can be found on the world wide web at *http://www.nmfs.noaa.gov/habitat/restoration/community/index.html*. The standard NOAA grants application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Potential applicants are encouraged to contact the NOAA Restoration Center to discuss partnership ideas and request an application package that contains instructions for submitting NOAA grants applications and supplementary instructions specific to the NOAA Community-Based Restoration Program.

XII. Application Process

To submit a proposal, a complete NOAA grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: cover sheet (an applicant must use OMB Standard Form 424 as the cover sheet for each project); budget detail (SF 424A and budget justification narrative); grant assurances (SF424B); certifications (CD–511); and SF-LLL and CD–346 if applicable; and narrative project description (statement of work). Budgets should include a detailed breakdown by category of cost estimates as they relate to specific aspects of the partnership, with appropriate justification for both the Federal and non-Federal shares.

The narrative project description should be no more than 15 double-spaced pages long, in 12 point font, and should give a clear presentation of the proposed partnership. It should identify the problems the partnership will address and the geographic area over which the partnership will operate. The narrative should describe short- and long-term objectives and goals, methods for identifying potential projects, the criteria that will be used for selecting restoration proposals and determining the success of projects implemented at a community level under the partnership, and the relevance of the proposed partnership to enhancing habitat to benefit living marine resources. The narrative also should address a mechanism that partners will use to ensure that all necessary environmental permits and consultations will be secured prior to the use of Federal funds. Additionally, the narrative should identify the anticipated partnership duration, amount and timing of funds requested, potential sources of match, and any restrictions the partner may impose on the further use of Federal funds. For example, if the partner anticipates limiting competition by restricting the level of funding per project, restricting funding to specific project phases, cost categories or to specific recipients, restricting habitat types, organization types or geographic locations from consideration, these restrictions should be clearly detailed in the narrative. It is NOAA's intention to maintain maximum competition and flexibility in the use of Federal restoration funds.

Anticipated project partners other than the applicant should be identified; this is particularly important for those applying to establish regional partnerships. The project narrative should describe the organizational structure of the applicant group(s), detail their qualifications and identify proposed partnership staff. In general, applications should clearly demonstrate the broad-based benefits expected to habitats, and how these benefits will be achieved through partnership activities with the RC. Partnerships that emphasize a single restoration component, such as only outreach, monitoring, or program coordination are discouraged, as are applications that propose partnerships to expand an organization's day-to-day activities that have limited NOAA involvement, or primarily support administration, salaries, overhead and travel.

Applications should not be bound or stapled and should be printed on one side only. Incomplete applications will be returned to the applicant. Three copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional copies (seven are needed for reviewing purposes) if it does not cause a financial hardship.

XIII. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g. lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular partnership. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

XIV. Partnership Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration partnership proposals will undergo a technical review, rating, and selection process. Proposals will be reviewed by NOAA regional and headquarters staff to determine how well applications meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC for establishing partnerships. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each partnership proposed and may request evaluations from other NOAA offices, the GMD, the U.S. Department of Commerce, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter.

Applications for proposed partnerships will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and scores will be presented to the Director. Applications that were not selected in a previous month will be considered in subsequent months, but will only be evaluated and scored once. The Director, in consultation with CRP staff, may take into account the following program policy factors: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed partnership activities with other partnerships that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers that would affect achievement of the CRP's objectives as described in this announcement and the Program Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, partnership awards may not necessarily be extended to all applicants that score well. The Director, in consultation with CRP staff, will select the partnerships to be recommended to the GMD for funding and determine the amount of funds available for each approved partnership. Unsuccessful applicants will be notified in writing that their proposal was not among those selected for funding, and unsuccessful applications will be kept on file until the close of the current fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the partnership duration, and specific NOAA cooperative involvement with the activities proposed under selected partnerships will be determined in pre-award negotiations among the applicant, the GMD, and CRP staff. Partnership activities should not be initiated in expectation of Federal funding until a notice of award document is received from the GMD.

Successful applicants will be selected to establish habitat restoration partnerships with the RC monthly until the close of this solicitation. Notification of approved partnership status will take place approximately 60 days after the cooperative agreement application is forwarded to the GMD, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed partnership activities.

XV. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 (unacceptable) to 100 (excellent) points based on the following five evaluation criteria and respective weights:

(1) *Potential of the Partnership to Benefit Living Marine Resources* (20 percent)

Proposals will be evaluated on (a) the national or regional extent of proposed habitat restoration activities and (b) the types of habitats that will be restored under the partnership. In particular, NOAA will evaluate partnership proposals based on the potential of the applicant and proposed magnitude of the partnership to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship.

(2) *Partner Strengths and Experience* (20 percent)

The applicant should demonstrate its abilities to effectively and efficiently manage a significant number of projects simultaneously. Applicants will be evaluated on the qualifications, past experience, and potential of the project partners to effectively identify, develop, select, manage and oversee all project phases, particularly financial and administrative management of sub-awards, and the ability to ensure scientifically-based monitoring is implemented on individual projects funded through sub-awards.

(3) *Adequacy of Partnership Plan* (20 percent)

The partnership plan will be evaluated on: (a) the adequacy of proposed strategies for coordination with NOAA in all phases of project selection, design, implementation and monitoring; (b) the degree to which the selection process is competitive, and ensures that sub-awards are made according to technical evaluations and identified weighting factors consistent with NOAA priorities; (c) the ability of the partner to foster restoration activities under the partnership that will be consistent with regional or community planning processes, or other stakeholder mechanisms used to prioritize projects; (d) the degree to which projects selected for sub-awards are expected to have long-lasting results that will be sustained into the future through conservation easements or similar protection; (e) the ability to advance the partnership and increase awareness of the importance of habitat restoration; and (f) the ability to provide assurance that projects implemented through sub-awards will meet all Federal and state environmental laws and obtain applicable permits and consultations.

(4) *Ability to Engage Communities in Habitat Restoration* (20 percent)

Proposals will be evaluated on the suitability of proposed actions to involve citizens and broaden their participation in habitat restoration projects. Proposals must include information on how the selection of projects under the partnership with NOAA will promote significant community involvement in fisheries habitat restoration and stewardship. Community participation may include: (a) hands-on training and restoration activities undertaken by volunteers; (b) sponsorship from local entities, either through in-kind goods and services (earth moving, technical expertise, conservation easements) or cash

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contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored resources and to generate a community conservation ethic.

(5) *Cost-effectiveness and Budget Justification* (20 percent)

Proposals will be evaluated on: (a) the percentage of funds that will be dedicated to all phases of restoration project implementation including physical, on-the-ground restoration compared to the percentage that is for administration and overhead to be used by the partner; (b) the overall leverage of NOAA funds anticipated, including the amount of cash match; (c) the ability to which the partnership and projects selected are likely to catalyze future restoration and protection of living marine resources; and (d) the ability of the applicant organization to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA desires cost sharing to leverage funding and to further encourage partnerships among government, industry, and academia. In order to encourage on-the-ground restoration, if funding for salaries is requested, it must be used to support staff directly involved in overseeing the accomplishment of the restoration work that will take place under the partnership.

XVI. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of October 1, 2001 (66 FR 49917), will be applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See Building and Construction Trades Department v. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

The CRP will determine National Environmental Policy Act compliance on a project by project basis under each funded partnership.

This action has been determined to be not significant for purposes of Executive Order 12866.

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD-346 have been approved by OMB under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02-7511 Filed 3-27-02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032502C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Bottomfish Plan Team (BPT) in Honolulu, HI.

DATES: The meeting of the BPT will be held on April 10 and 11, 2002, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The BPT will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808-522-8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on April 10 and 11, 2002, at the Council Conference Room to discuss the following agenda items:

Wednesday, April 10, 2002, 8:30 a.m.

(1) Introduction

(2) Annual Report review

a. Review Status of 2000 Annual Report Recommendations

b. Identify problems and possible solutions for uncompleted recommendations

c. Review 2001 Annual Report modules and recommendations

American Samoa

Guam

Hawaii

Northern Mariana Island

d. 2000 Annual Report region-wide recommendations

(3) Research priorities for Western Pacific Region bottomfish fisheries

a. Bottomfish research needs

i. American Samoa

ii. Guam

iii. Hawaii

iv. CNMI

b. Prioritize research needs and recommendations

Thursday, April 11, 2002, 8:30 a.m.

(4) Guam offshore bottomfishery development

a. Report on the fishery

b. Management considerations

(5) Northwestern Hawaiian Islands (NWHI) Issues

a. Management under the Clinton Executive Orders that establish the NWHI Coral Reef Reserve

b. Sanctuary Designation Process

c. Pending management actions under the Magnuson-Stevens Act

i. New entry criteria for Mau Zone

ii. Modification to permit renewal and lease charter provisions

(6) Status of Draft Environmental Impact Statement, Biological Opinion, and Marine Mammal Protection Act requirements

(7) Monk Seals

a. Recommendations from the Hawaiian Monk Seal Recovery Team

b. Review and classification of past monk seal hookings

(8) Observer and Monitoring Program

a. NMFS plan for observer coverage

b. New technology options to monitor bottomfish vessels

c. Vessel Monitoring System and depth sensor technology; and

(9) Other Business.

The order in which the agenda items are addressed may change. The BPT will meet as late as necessary to complete scheduled business. Although non-emergency issues not contained in this agenda may come before the BPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

Dated: March 25, 2002.

Matteo Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-7513 Filed 3-27-02; 8:45 am]

BILLING CODE 3510-22-S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, April 3, 2002, 2:00 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b) (3), (7), (9), and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED: Compliance Status Report. The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: March 25, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02-7722 Filed 3-26-02; 3:08 pm]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 29, 2002.

Title, Form, and OMB Number: Commissary Evaluation and Utility Surveys—Generic; OMB Number 0704-0407.

Type of Request: Revision.

Number of Respondents: 50,000.

Responses Per Respondent: 1.

Annual Responses: 50,000.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: The Defense Commissary Agency will conduct a variety of surveys to include, but not limited to customer satisfaction, transaction based comment cards, transaction based telephone interviews, commissary sizing, and patron migration. The information collection will provide customer perceptions, demographics, and will identify agency operations that need quality improvement, provide early detection of process or system problems, and focus attention on areas where customer service and functional training, new construction/renovations, and changes in existing operations that will improve service delivery.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: March 22, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-7391 Filed 3-27-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary; Preparation of a Supplemental Environmental Impact Statement for the Airborne Laser Program

AGENCY: Missile Defense Agency (MDA), Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Missile Defense Agency is preparing a Supplement to the Final Environmental Impact Statement (FEIS) for the Program Definition and Risk Reduction (PDRR) Phase of the Airborne Laser (ABL) Program (April 1997) and Record of Decision (September 1997). This Supplemental Environmental Impact Statement (SEIS) will analyze proposed ABL Program test activities at Kirtland Air Force Base (KAFB), Holloman Air Force Base (HAFB), and White Sands Missile Range (WSMR), New Mexico; and Edwards Air Force Base (EAFB), Vandenberg Air Force Base (VAFB), and the Adjacent Point Mugu Naval Air Warfare Center (PMNAWC) Sea Range, California. The SEIS will be prepared in accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*), and the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). The ABL is a laser weapon system installed on a Boeing 747-400F aircraft capable of operating for extended periods of time. Up to two such aircraft would be developed. The ABL weapon system is proposed to include four lasers:

- Active Ranging System (ARS) Laser (a small carbon dioxide laser used to begin tracking a target),
- Track Illuminator Laser (TILL), (a solid state laser used to provide detailed tracking of a target),
- Beacon Illuminator Laser (BILL), (a solid state laser used to measure atmospheric distortion), and
- High-Energy Laser (HEL), (i.e., Chemical Oxygen-Iodine Laser (COIL)—a chemical laser used to destroy a target).

An additional laser, a surrogate for the High-Energy Laser (SHEL), will be used during testing in place of the HEL. The SHEL is a low-power solid-state laser that would be used in both ground- and flight-testing. The ABL also would

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include an Infrared Search and Track sensor (IRST) (a passive infrared device used to identify heat sources). The 1997 PDRR ABL FEIS analyzed use of a COIL HEL on board an aircraft to destroy ballistic missiles in the boost phase. The Record of Decision (ROD) on the FEIS documented the Air Force's decision to proceed with PDRR phase ABL home base activities at EAFB, diagnostic test activities over WSMR, and expanded area test activities at VAFB and the PMNAWC Sea Range. Since completion of the FEIS, specific proposed test activities have been identified and additional information made available about the proposed testing that warrant preparation of an SEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Pamelia Bain, Director, External Affairs, Missile Defense Agency, 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: The MDA is developing an ABL element of the Ballistic Missile Defense System (BMDS). The BMDS being developed is intended to provide an effective defense for the United States, its deployed forces, and its friends and allies from limited missile attack, during all segments of an attacking missile's flight. The BMDS includes separate elements to provide a defense during each of the three segments of missile flight. These segments are boost, midcourse, and terminal. While multiple elements could be used to defend against an attack, if necessary, during each of the threat's flight segments, each BMDS element is designed to work separately to provide a militarily significant defense, even if no other BMDS element exists. The ABL element of BMDS is being developed to provide an effective defense to limited ballistic missile threats during the boost segment of an attacking missile's flight. The Air Force began development of the ABL program aircraft in November 1996. In October 2001, ABL was transferred from the Air Force to the Ballistic Missile Defense Organization, which was renamed in January 2002 as the Missile Defense Agency.

Alternatives

Test activities and proposed alternative test locations to be addressed in the SEIS include:

- Ground tests of the ARS, TILL, BILL, and SHEL at KAFB, WSMR/Holloman AFB.
- Flight tests of the ARS, TILL, BILL, SHEL and HEL (i.e., COIL) at WSMR;
- Flight tests of the ARS, TILL, BILL, and HEL at VAFB and the PMNAWC Sea Range; and
- Ground and flight tests of the ARS, TILL, BILL, SHEL, and HEL at EAFB.

As proposed, the ABL aircraft would be housed in an existing hanger at EAFB. EAFB is also where the laser device would be integrated into the aircraft, where ground and flight tests would occur, and where initial flight tests of the aircraft would be performed. The ABL aircraft also would be flown to KAFB to conduct ground testing and would use existing runways at both bases. Additional flight tests would take place at WSMR. Both ground and flight tests would take place at VAFB and the PMNAWC Sea Range. Flight tests that include ABL destruction of a missile are proposed at WSMR and/or VAFB and the PMNAWC Sea Range.

PDRR ABL ground tests[1] are proposed to include tests of individual components, integration of the components on the ABL, and ground test of the integrated ABL. Flight tests are proposed to test each stage of the target acquisition and destruction process. Early flight tests will test the ARS, TILL, and BILL ability to provide accurate tracking and targeting. The flight tests will progress to use of SHEL, and will culminate with tests of the entire ABL element's ability to destroy a representative threat missile using the COIL HEL. Targets for flight tests are proposed to include target boards attached to balloons (MARTI[2]) and to piloted aircraft (Proteus[3]), sounding rockets, Lance, Black Brant, Aries missiles, and a limited number of representative threat missiles.

Although the FEIS (1997) analyzed both ground and flight tests involving the COIL HEL, the majority of these tests have not yet been performed. All tests proposed for the ABL PDRR phase are summarized in the following table. The table includes the tests analyzed in the FEIS which have not yet been performed, as well as additional ground and flight tests required for testing the ARS, TILL, BILL, SHEL, and HEL.

Proposed test location	Type of test	Type of flight engagement for each aircraft		
		MARTI Drop	Proteus aircraft	Missile launch
VAFB	Flight Tests	0	0	25
WSMR/Holloman	Ground/Flight Tests	50	50	35
EAFB	Ground/Flight Tests	50	50	0
KAFB	Ground Tests	0	0	0

Scoping Process

This SEIS will assess environmental issues associated with the proposed action; reasonable alternatives including the no-action alternative; and foreseeable future actions and cumulative effects. Under the No Action alternative, there would be no change to ABL test activities from those documented in the PDRR ABL ROD signed in September 1997. Scoping will be conducted to identify environmental, safety and occupational health issues to be addressed in the SEIS. Public scoping meetings will be held as part of the SEIS preparation process, as described below. Public comments will be solicited to assist in scoping related environmental issues for analysis in the SEIS. Alternatives to the proposed actions may be identified verbally and in writing during the public scoping process.

Location	Date	Place	Time (p.m.)
Lancaster, CA	4/1/02	Antelope Valley Inn 44055 North Sierra Highway	7:00

[1] Ground tests include rotoplane, billboard, and range simulator targets. The billboard target is a piece of material such as Plexiglas or stainless steel that contains sensors. A rotoplane target is a spinning ground target designed to simulate a missile in flight.

[2] Missile Alternative Range Target Instrument (MARTI) Drop is a balloon with a target board attached used during flight tests.

[3] Proteus Aircraft is a manned aircraft with a target board attached that is used during flight tests.

Location	Date	Place	Time (p.m.)
Lompoc, CA	4/3/02	Lompoc City Council Chambers 100 Civic Center Plaza	7:00
Albuquerque, NM	4/15/02	Albuquerque Marriott 2101 Louisiana Boulevard, NE	7:00
Las Cruces, NM	4/17/02	Holiday Inn de Las Cruces 201 E. University Avenue	7:00

Dated: March 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liason Officer, Department of Defense.

[FR Doc. 02–7628 Filed 3–26–02; 1:49 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Preparation of the Ground-Based Midcourse Defense Extended Test Range Environmental Impact Statement

ACTION: Notice of Intent.

SUMMARY: In order to meet the requirement to increase the realism of GMD integrated flight testing, MDA proposes to enhance the current test capability that includes the missile launch sites and array of sensors and other test equipment associated with the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii and Vandenberg Air Force Base (AFB) in California. The Department of Defense is publishing this notice to announce the initiation and preparation of the Ground-Based Midcourse Defense (GMD) Extended Test Range (ETR) Environmental Impact Statement (EIS) per Council of Environmental Quality regulations.

Background

The Ground-Based Midcourse Defense (GMD) Joint Program Office of the Missile Defense Agency (MDA) has been directed to conduct more operationally realistic testing of the GMD element of the Ballistic Missile Defense System (BMDS). The BMDS being developed is intended to provide an effective defense to the United States, its deployed forces, and its friends and allies from limited missile attack, during all segments of an attacking missile's flight. The GMD element of BMDS is being developed to protect the entire United States against limited ballistic missile threats during the midcourse segment of an attacking missile's flight. The extension of the GMD test range would increase the realism of GMD testing by using multiple engagement scenarios, trajectories, geometry, distances, speeds of targets and interceptors that closely resemble those in which an operational system would be required to provide an effective defense. The extension of the GMD test range is a separate effort, independent of the test bed that MDA proposes to develop in order to validate the operational concept of GMD. Both the validation of the GMD operational concept test bed and the extension of the GMD test range are intended to be interoperable parts of the multi-parted BMDS test bed, if MDA proceeds with both efforts.

Alternatives

Potential alternatives to be analyzed in the EIS, that may meet some of the enhanced test objectives, may include launching target and/or interceptor missiles from Kodiak Launch Complex (KLC) on Kodiak Island, Alaska, adding interceptor launches from Vandenberg AFB and launching target missiles from aircraft over the broad ocean area. Enhanced GMD testing may also include use of existing ship-borne radars, new land-based radars in southern Alaska and an early-warning radar at Beale AFB. The early-warning radar at Beale AFB may already have been upgraded to support the separate, validation of the GMD operational concept part of the BMDS test bed. If the early-warning radar at Beale AFB has not already been upgraded, new software and hardware will be installed that will enhance the radar's detection and discrimination capabilities as part of the extension of the GMD integrated flight test range. The target and interceptors may be launched in sets of two under some testing scenarios from either KLC or VAFB. Existing launch sites and test resources would continue to be used in enhanced test scenarios. Other reasonable alternatives identified during the scoping process would also be evaluated in the EIS. In addition, the EIS will analyze the No-Action Alternative, which would be a MDA decision not to enhance the capabilities of the existing test range but to continue testing within the existing range constraints to develop and improve the GMD system.

As with current testing, all missile intercepts from test activities would occur over the broad ocean area. The environmental impacts associated with these intercepts have been analyzed in previous NEPA documents. To the extent that enhanced testing would involve similar effects over the broad ocean area, those analyses will be incorporated by reference in the EIS.

The action alternatives could include construction of two interceptor launchers, one additional target launch pad and construction/alteration of launch support facilities at the KLC, construction of In-Flight Interceptor Communication System (IFICS) Data Terminals (IDT), military and commercial satellite communications (MIL/COMSATCOM) in the mid-Pacific and at KLC or VAFB, added range instrumentation (tracking and range safety radars) in the vicinity of sites, and use of either existing Battle Management Command and Control (BMC2) Facilities at RTS, or new BMC2 Facilities that may be developed at Fort Greely, AK and/or Shriever AFB or Cheyenne Mountain Complex, CO in the validation of the GMD operational concept part of the BMDS test bed.

The MDA will analyze the environmental issues associated with licenses or permits required to implement the proposed action at each of the potential extended test range sites. The Federal Aviation Administration (FAA) Office of Commercial Space Transportation (AST) will be a cooperating agency in this Environmental Impact Analysis Process because of their regulatory authority in licensing the Kodiak Launch Complex. The term of the current Launch Operator License (LOL) held by the Alaska Aerospace Development Corporation will expire in September 2003. Renewal or modification of the KLC LOL is considered a major federal action and will require environmental review of the proposed activities. The range of alternatives that the FAA may consider in its licensing decision may include but are not limited to (1) renewing the license in current status; (2) licensing with the addition of MDA's proposed activities in whole or part and (3) the No Action Alternative, not renewing the license. As a Cooperating Agency, the FAA may use the analysis contained in the Extended Test Range (ETR) EIS to support its licensing decision.

Scoping Process

This EIS will assess environmental issues associated with the proposed action; reasonable alternatives including the no-action alternative; foreseeable future actions; and cumulative effects.

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Scoping will be conducted to identify environmental, safety and occupational health issues to be addressed in the EIS. Public scoping meetings will be held as a part of the process. The scoping meetings will be held in Kodiak and Anchorage, Alaska and Lompoc, CA. Exact dates, locations and times of the scoping meetings will be advertised at a later date.

Public input and comments are solicited concerning the environmental safety and occupational health issues related to the proposed action. To ensure the program office will have sufficient time to fully consider public input on issues, written comments should be mailed to ensure receipt no later than thirty days after public release.

As a part of the decision-making process, the U.S. Army Space and Missile Defense Command (USASMDC) is managing the preparation of the EIS for flight-testing of GMD on behalf of the MDA. Comments concerning the public scoping process or the EIS process should be addressed to: U.S. Army Space and Missile Defense Command, ATTN: SMDC–EN–V (Mrs. Julia Hudson-Elliott), 106 Wynn Drive, Huntsville, AL 35805, or by e-mail at *gmdetreis@smdc.army.mil.*

Dated: March 26, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7629 Filed 3–26–02; 1:49 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Conference Meeting of the United States Strategic Command, Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The United States Strategic Command (USSTRATCOM) Strategic Advisory Group (SAG) will meet in closed session on April 18 and 19, 2002.

The mission of the SAG is to provide timely advice on scientific, technical, intelligence, and policy-related issues to the Commander-in-Chief, U.S. Strategic Command. The purpose of this meeting it to discuss strategic issues that relate to the development of the Single Integrated Operational Plan.

The meeting will involve classified information and access must be strictly limited to personnel having requisite clearances and specific need-to-know. In accordance with section 10(d) of the Federal Advisory Committee Act (5 USC, App. 2), the meeting will be closed to the public.

DATES: April 18 and 19, 2002.

ADDRESSES: U.S. Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–6030.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Druskis, USSTRATCOM SAG, (402) 294–4102.

Dated: March 22, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7390 Filed 3–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Exclusive, Partially Exclusive, or Non-Exclusive Licensing of U.S. Patent Concerning Noise Abatement Technology

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a noise abatement technology as described in U.S. Patent No. 4,928,573, Fansler, et al., May 29, 1990, entitled "Silencer for saboted projectiles." Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–7521 Filed 3–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Proposed University of California at Merced and Associated Infrastructure Projects, Corps Permit Application Numbers 199900203 and 200100570

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The University of California and County of Merced propose to construct a major university campus and associated infrastructure in Merced County, California. The project as proposed would impact over 92 acres of waters of the United States, including vernal pools and other associated wetlands.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ms. Nancy Haley, (916) 557–7772, *ucmerced@spk.usace.army.mil*, 1325 J Street, Room 1480, Sacramento, CA 95814–2922.

SUPPLEMENTARY INFORMATION: The applicants have applied for Department of the Army permits under Section 404 of the Clean Water Act to construct a tenth University of California campus to support 25,000 full-time equivalent students and associated infrastructure. The proposed campus would be 2,000 acres in size, and comprised of a Main Campus (910 acres), Merced Irrigation District canals and easements (70 acres), a Campus Land Reserve (340 acres), and a Campus Natural Reserve (750 acres).

The Main Campus would consist of an academic core, student support services, student and faculty housing, campus support, on-campus research facilities, athletic and recreation facilities, and parking. The Campus Land Reserve is proposed for future growth of the University facility. The Campus Natural Reserve would be preserved and managed to maintain and enhance its natural environmental functions and values. Over 86 acres of waters of the United States would be directly impacted by this project. Additional indirect impacts to waters would likely occur; however those impacts have not yet been quantified.

Construction of the first phase of the UC Merced Campus is proposed to begin in 2002, on about 110 acres of the existing Merced Hills Golf Course located at the southern end of the proposed Main Campus. The applicant has stated that construction of the first phase will not involve any placement of dredged or fill material into any waters of the United States, including wetlands.

The proposed project is located east of Lake Road, and Yosemite Lake, approximately two miles northeast of the City of Merced, Merced County, California.

Alternatives to be examined for the campus include: Bellevue Ranch site, Castle Airport site, City of Merced in-fill sites, and various configurations on, and/or adjacent to, the proposed project site.

The Infrastructure project would include construction of a major north-south arterial north of Yosemite Road, portions of two additional minor arterial roadways and collector streets, and utility lines (storm drainage, sewer, potable water, fire and irrigation water, telecommunications, electric and gas) within the rights-of-way secured for those roadways. A storm water collection system would be constructed parallel to the major arterial roadway.

Although this infrastructure is needed for the campus, it is proposed to be located and configured in such a manner as to allow the development of a campus community adjacent to the campus.

The infrastructure would directly impact over 6 acres of waters of the United States. Indirect impacts have not yet been quantified. This project is located north of Yosemite Road, and parallel to Lake Road, northeast of the City of Merced, Merced County, California.

No alternatives to the infrastructure have been identified to date. However, the proposed infrastructure, alternatives to its proposed size, design and location will be considered in the Section 404(b)(1) analysis that will be prepared for this application.

The Corps' public involvement program includes several opportunities to provide oral and written comments. Affected Federal, state, local agencies, Indian tribes and other interested private organizations and parties are invited to participate. Significant issues to be analyzed in depth in the DEIS include, loss of waters of the United States, including vernal pools and other wetlands; cultural resources; threatened and endangered species; surface water and groundwater; water quality; socio-economic effects; aesthetics. The DEIS for both the Infrastructure and the UC Merced projects will be combined into one document to facilitate public review and analysis.

The Corps has initiated formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act for eight, Federally threatened and endangered species and one species proposed for listing that may be affected by this project. In addition, the Corps will be consulting with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act regarding potential impacts to sites listed, or eligible for listing, on the National Register of Historic Places.

Two scoping meetings will be held on April 18, 2002, at the Merced Civic Center. The first meeting will be held from 3:00p.m. to 5:00p.m., with the second from 7:00p.m. to 9:00p.m.

The estimated date when the DEIS will be made available to the public is Fall 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–7523 Filed 3–27–02; 8:45 am]

BILLING CODE 3710–EH–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting. The meeting is open to the public.

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: April 11, 2002.

Location: Florence Room at the Four Points by Sheraton Hotel, 1 Plaza Square, Rock Island, IL.

Time: 8:00 AM to 3:30 PM. Central Daylight Savings Time.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: 202–761–4558.

SUPPLEMENTARY INFORMATION: The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. The theme of this meeting is environmental sustainability within the Corps of Engineers Military and Civil Works functions. It will include a discussion of the Corps of Engineers Operating Principles and draft guidance on the incorporation of sustainability into Corps projects, such as the current study of navigation on the Upper Mississippi River and Illinois Waterways System. Time will be provided for public comment. Each speaker will be limited to no more than three minutes in order to accommodate as many people as possible within the limited time available. However, this is not a public meeting on the Upper Mississippi River—Illinois Waterway System Navigation Study, per se. If you wish to receive electronic notice of future meetings you may subscribe to a list server at: *http://www.usace.army.mil/inet/functions/cw/hot_topics/eab.htm.*

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–7522 Filed 3–27–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Stabilization of In-Water Facilities at the Fox Island Laboratory, Tacoma, WA and Public Scoping Meeting

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the stabilization of in-water facilities at the Naval Surface Warfare Center Carderock Division (NSWCCD) Fox Island Laboratory (FIL) near Tacoma, WA.

DATES AND ADDRESSES: A public scoping meeting will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public scoping meeting will be held on Wednesday, April 17, 2002, from 6:00 p.m. to 9:00 p.m. at the Nichol's Community Center, 690 9th Ave, Fox Island, WA. All written comments must be postmarked by May 17, 2002, and be mailed to: Commander, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 19917 7th Ave NE, Poulsbo, WA 98370, Attn: Code 05EC3.KK (Mrs. Kimberly Kler), telephone (360) 396–0927, fax (360) 396–0854, E-Mail *klerkh@efanw.navfac.navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. William Baxley, (Code 0670), Naval Surface Warfare Center Carderock Division, 8010 North Ocean Drive, Dania, FL 33004; telephone (954) 926–4015, fax (954) 926–4031, E-Mail *baxleywe@nswccd.navy.mil.*

SUPPLEMENTARY INFORMATION: The NSWCCD FIL needs to provide stable and safe in-water facilities, in order to meet its mission requirements. The facility, consisting of four barges, a pier, and associated mooring components has sustained substantial weather-related

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damage and portions of the facility have reached a point of questionable structural integrity. The Navy proposes to either replace the barges with a more stable platform or repair the mooring structures. This project is required in order to continue the FIL mission in support of Navy programs, prevent additional damage to existing facilities, and improve personnel safety.

NSWCCD is currently evaluating several alternative methods of stabilizing the Fox Island Laboratory in-water assets. The NSWCCD preferred alternative is to replace mooring components and improve access to the in-water operational facilities through the installation of a 240-ft floating concrete pontoon platform further offshore. Other alternatives include: installation of a 360-ft concrete pontoon platform, installation of a pile-supported pier, replacement of the mooring system while maintaining the current configuration, and the No Action alternative of maintaining the current mooring system and barge configuration.

The EIS will address the potential environmental impacts, as well as the potential effects on neighboring properties that may result from stabilization activities. These include, but are not limited to, adjacent shoreline post-project configurations, endangered and threatened species (salmon and trout), marine mammals, benthic communities (sea grasses), water quality, water views, and coastal zone management issues.

NSWCCD is initiating a scoping process to identify community concerns and local issues that will be addressed in the EIS. Federal, state, local agencies, and interested persons are encouraged to provide oral and/or written comments to NSWCCD to identify environmental concerns that they believe should be addressed in the EIS. NSWCCD will consider these comments in determining the scope of the EIS.

Dated: March 21, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–7475 Filed 3–27–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 22, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Application Demonstration Projects for Faculty Training in Disability Issues (1890–0001).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 75.

Burden Hours: 2250.

Abstract: Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education Program: Collect program and budget information to make grants to institutions of higher education. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting "Browse Pending Collections" and clicking on link number 1981. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7427 Filed 3–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from October 1, 2001 through December 31, 2001.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD) you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

The following list identifies correspondence from the Department issued from October 1, 2001 through December 31, 2001.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B; Assistance for Education of All Children with Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Section 619—Preschool Grants

Topic Addressed: Allocation of Grants

- Letter dated December 18, 2001 to U.S. Congressman Charles F. Bass, regarding implementation of the Preschool Grants and Assistance to States formulas and the options available for distribution of funds under sections 611 and 619.

Section 612—State Eligibility.

Topic Addressed: Confidentiality of Education Records

- Letter dated December 4, 2001 to U.S. Congressman Roscoe E. Bartlett from Family Policy Compliance Office Director LeRoy Rooker, regarding the circumstances under which an educational agency can permit the disclosure of education records without prior written parental consent.

Topic Addressed: Children In Private Schools

- Letter dated October 4, 2001 to individual, (personally identifiable information redacted), clarifying that there is no inconsistency between the statute and the regulations implementing IDEA regarding the extent of rights available to parentally-placed private school children with disabilities and their parents.

Topic Addressed: State Educational Agency General Supervisory Authority

- Letter dated November 6, 2001 to Ohio Department of Education Interim Director of the Office for Exceptional Children Ed Kapel, regarding a State's obligation to resolve complaints in accordance with the complaint requirements in Part B within the required timeline.

Topic Addressed: Assessments

- Letter dated October 10, 2001 to U.S. Congressman Curt Weldon, regarding the Federal requirements for including children with disabilities in assessments and the implementation of the IDEA provisions related to alternate assessments.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements.

Topic Addressed: Evaluations and Reevaluations

- Letter dated November 5, 2001 to New Jersey Department of Education Commissioner Vito A. Gagliardi, Sr., regarding the IDEA Part B requirement that parental consent must be obtained before the initial evaluation, the reevaluation, and the provision of special education and related services and the fact that Part B does not permit public agencies to override a parent's refusal of consent for initial services or to initiate a due process hearing if a parent refuses consent to the initial provision of special education and related services.

Topic Addressed: Educational Placements

- Letter dated November 26, 2001 to Attorney Paul Veazey regarding the role of the placement team, including the child's parents, in the placement decision for a child with a disability and the authority of a public agency to make an administrative determination of the educational placement of a child with a disability consistent with the placement team's decision.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities.)

Dated: March 22, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–7473 Filed 3–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131, of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy and the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada.

This subsequent arrangement concerns the retransfer of DUPIC fuel elements, containing 5,085 g uranium enriched to 1.08 per cent uranium-235 and 40 g plutonium from the Korea Atomic Energy Research Institute (KAERI) to the Chalk River Laboratories, Chalk River, Ontario, Canada. The DUPIC fuel elements, currently located at KAERI's Taejon, Korea facility, were manufactured using spent PWR fuel at KAERI. KAERI intends to use the fuel elements for irradiation tests in the NRU

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research reactor operated by Chalk River Laboratories.

In accordance with section 131, of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

Dated: March 22, 2002.

For the Department of Energy.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 02–7439 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–211–A]

Application to Export Electric Energy; DTE Energy Trading, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: DTE Energy Trading, Inc. (DTE) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 12, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 24, 1999 the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–211 authorizing DTE to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company (formally The Detroit Edison Company), Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on June 24, 2001.

On March 5, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from DTE to transmit electric energy from the United States to Canada. Further, DTE requests that an electricity export authorization be issued for a 5-year term and that consideration of the application be expedited so that it may participate in the new competitive marketplace scheduled to begin in Ontario, Canada, on May 1, 2002.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the DTE application to export electric energy to Canada should be clearly marked with Docket EA–211–A. Additional copies are to be filed directly with Raymond O. Sturdy, Jr., DTE Energy Company, 2000 Second Avenue, 688 WCB, Detroit, MI 48226 *and* Sandra C. Steffen, DTE Energy Trading, Inc., 200 Ashley Mews, 414 South Main Street, Ann Arbor, MI 48104.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–211. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–211 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 22, 2002.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–7441 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–07; Atmospheric Radiation Measurement Program—Extension of Due Date

AGENCY: Department of Energy (DOE).

ACTION: Extension of due date for notice inviting grant applications. The Office of Biological and Environmental Research (OBER), Office of Science (SC), U.S. Department of Energy (DOE), hereby extends the due date for this notice.

Published in 67 FR 1204–1206, January 9, 2002.

The deadline for formal applications has been extended to April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–0043, fax (301) 903–8519, Internet e-mail address: *wanda.ferrell@science.doe.gov*.

Issued in Washington, DC on March 20, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–7440 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: April 12–13, 2002.

ADDRESSES: The Westin in Cincinnati. 21 East Fifth Street, Cincinnati, OH 45202, Phone: 513–621–7700.

FOR FURTHER INFORMATION CONTACT: Patti Kidd, The Perspectives Group, 6186 Old Franconia Road, Alexandria, VA, 22310; Phone: (703) 837–9269; e-mail: *pkidd@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, April 12, 2002

8–8:30 a.m., Registration
8:30–8:45 a.m., Welcome and Logistics, Jim Bierer, Fernald Chair.
8:45—9:30 a.m., Round Robin (5 minutes per site).
—Top Three Issues per Site
—Potential Afternoon Breakout Sessions
9:30—12 p.m., Top to Bottom Review and 2003 Budget
—Overview and Latest Developments
—Administration of $800 Million Fund
DOE Plans for Public Participation and SSABs
Chairs Discussion
12–1 p.m., Lunch
1–2 p.m., Discussion with Jessie Roberson
2–3 p.m., Status and Implications of Long Term Stewardship
—Strategic Plan (Dave Geiser)
3–3:30 p.m., Chairs Discussion on Long Term Stewardship Issues
3:30–4 p.m., Public Comment
4 p.m., Adjourn

Saturday, April 13, 2002

8–8:30 a.m., Registration
8:30–9 a.m., Discussion and Signing of Ground Water Workshop Statements
9–11 a.m., Chairs Discussion
—Response to Top to Bottom Review and the Future of the SSABs
11–11:30 a.m., Chairs Discussion
—Future Workshops and Chairs Meetings
11:30–12 p.m., Public Comment
12–12:30 p.m., Wrap Up
12:30 p.m., Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Patti Kidd at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make a public comment will be provided a maximum of five minutes to present their comments at the end of the meeting. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing or calling Patti Kidd at the address or telephone number listed above.

Issued at Washington, DC on March 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7438 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Worker Advocacy Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of cancellation of open meeting.

This notice announces the cancellation of the April 4–5, 2002, meeting of the Worker Advocacy Advisory Committee published in the **Federal Register** on March 20, 2002 (67 FR 12980). A meeting will be scheduled after the Physician Panel Rule is published.

Issued in Washington, DC on March 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7437 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–204–000]

Central New York Oil And Gas Company, LLC; Notice of Tariff Filing

March 22, 2002.

Take notice that on March 19, 2002, Central New York Oil And Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective April 18, 2002:

First Revised Sheet No. 0
First Revised Sheet No. 25
First Revised Sheet No. 80
First Revised Sheet No. 104

CNYOG states that the purpose of its filing is to revise the name of CNYOG's Internet Web site, to change e-mail and telephone contact information, to revise its tariff to conform to its soon to be filed statement on standards of conduct and to correct a typographic error.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7461 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–862–000]

Entergy Power Ventures, L.P.; Notice of Issuance of Order

March 22, 2002.

Entergy Power Ventures, L.P. (Entergy Ventures) submitted for filing a rate schedule under which Entergy Ventures will engage in the sales of capacity, energy and ancillary services at market-based rates, and for the reassignment of transmission capacity. Entergy Ventures also requested waiver of various Commission regulations. In particular, Entergy Ventures requested that the Commission grant blanket approval

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under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Entergy Ventures.

On March 19, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Entergy Ventures should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Entergy Ventures is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Entergy Ventures, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Entergy Ventures' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7447 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118–001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 19, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fifth Revised Sheet No. 171 and Substitute Third Revised Sheet No. 172. HIOS requests that these sheets be made effective January 4, 2002.

HIOS states that the referenced sheets are being filed in compliance with the Commission's March 4, 2002 Order in the referenced proceeding, which relates to HIOS'' authority to negotiate rates with its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7459 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–900–000]

Mirant Sugar Creek, L.L.C.; Notice of Issuance of Order

March 22, 2002.

Mirant Sugar Creek, L.L.C. (Mirant Sugar Creek) submitted for filing a rate schedule under which Mirant Sugar Creek will engage in the sales of capacity, energy and ancillary services at market-based rates, and for the reassignment of transmission capacity. Mirant Sugar Creek also requested waiver of various Commission regulations. In particular, Mirant Sugar Creek requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mirant Sugar Creek.

On March 19, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mirant Sugar Creek should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Mirant Sugar Creek is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mirant Sugar Creek, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mirant Sugar Creek's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7448 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–115–000]

Mississippi River Transmission Corporation; Notice of Application for Construction Authorization

March 22, 2002.

On March 15, 2002, Mississippi River Transmission Corporation (MRT), 1111 Louisiana Street, Houston, Texas 77002, filed an application in Docket No. CP02–115–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, an application for any and all construction authority required by MRT to drill, own and operate two vertical storage wells, located in the State of Louisiana. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202)208–2222 for assistance).

Any questions regarding this application should be directed to Cyril J. Zebot, Vice President, Financial Analysis/Market Development Analysis, Mississippi River Transmission Corporation, P. O. Box 4455, Houston, Texas 77210, at (713) 207–5163 or Lawrence O. Thomas, Director-Rates & Regulatory, at (713) 429–2804.

Specifically, MRT proposes to construct two vertical storage wells in its East Unionville Storage Field located in Lincoln Parish, Louisiana for the purpose of maintaining and restoring late season deliverability for MRT's customers.[1] MRT states that this application is submitted pursuant to the terms of the Uncontested Stipulation and Agreement (Agreement) in Docket No. RP01–292–000, et. al., and TM00–1–25–000, et. al., approved by the Commission on January 16, 2002. MRT states that in accordance with the terms of the Agreement, MRT does not request rolled-in rate treatment for the costs associated with the construction of the proposed facilities, which will be recorded and maintained in a separate account to be excluded from future rate base treatment. MRT states that granting this certificate application will not impact the transportation/storage rates of MRT's customers. Total construction costs are estimated to be approximately $2.3 million.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before April 12, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7446 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

[1] In addition, MRT plans to construct two 6-inch gas storage field flow lines approximately 2,200 feet each in length to connect the proposed wells to an existing central meter facility in the East Unionville Storage Field. MRT states that the flow lines will be constructed and connected pursuant to MRT's blanket certificate authorized pursuant to Docket No. CP82–389 (20 FERC ¶ 62,579).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–206–000]

Tenaska Marketing Ventures, Complainant, v. Northern Border Pipeline Company, Respondent; Notice of Complaint

March 22, 2002.

Take notice that on March 20, 2002, Tenaska Marketing Ventures (TMV) submitted a complaint against Northern Border Pipeline Company (Northern Border).

TMV alleges that Northern Border is refusing to enforce its FERC Gas Tariff and contracts by not terminating its service agreements with affiliate Enron North America (ENA). TMV alleges that if Northern Border had properly terminated ENA's service agreements, it could no longer bill for and collect transportation charges from temporary capacity release replacement shippers (such as TMV) that have acquired ENA capacity because once Northern Border terminates the underlying service agreements, all subordinate capacity releases also terminate unless the pipeline makes alternative arrangements with the replacement shippers in a manner consistent with Northern Border's tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 9, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7462 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–76–006, RP01–382–010, RP01–396–004, RP00–404–004 (Not Consolidated)]

Northern Natural Gas Company; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 14, 2002, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be in effect January 1, 2002:

Second Substitute 27 Revised Sheet No. 52

Northern states that it is refiling Tariff Sheet No. 52 to reflect the correct Market Area Winter TI Rate as an erroneous rate was filed on March 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7458 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–408–002]

Ozark Gas Transmission, L.L.C.; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 18, 2002, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed in Appendix A attached to the filing, to be effective March 1, 2002.

Ozark states that the purpose of its filing is to comply with the Commission's order issued March 1, 2002, in Docket No. RP00–408–001 regarding Ozark's compliance with Order No. 637 (Ozark Gas Transmission, 98 FERC ¶ 61,230 (2001)). In that order, the Commission directed Ozark to file certain tariff revisions regarding receipt and delivery point flexibility and discount retention to comply with the requirements of Order No. 637.

Ozark states that it is also filing revisions to its tariff required to reconcile changes conditionally accepted by the Commission's order in this proceeding with changes to Ozark's tariff accepted by the Commission's February 28, 2002 Letter Order in Docket Nos. RP02–155–000 and CP01–407–001.

Ozark further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7457 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–397–002, and RP01–33–004]

Questar Pipeline Company; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 18, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of April 19, 2002.

Questar states that the filing is being made in compliance with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L issued on February 14, 2002, (the February 14th order) in Docket Nos. RP00–397–000, RP01–33–000, –001 and –002.

The February 14th order approved, in part, Questar's pro forma tariff sheets filed July 17, 2000, and directed Questar to make further modifications. Questar tendered for filing, proposed actual tariff sheets that include the language approved in Questar's July 17, 2000, pro forma compliance filing as well as language that comports with the Commission's directives. These modifications are included in First Revised Volume No. 1 of Questar's FERC Gas Tariff to be effective April 19, 2002.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7456 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–145–001]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

March 22, 2002.

Take notice that on March 15, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission its Refund Report made pursuant to the Commission's Letter Order issued February 14, 2002 in Docket No. RP02–145–000.

Williston Basin states that on March 11, 2002, refunds associated with the final reconciliation of the gas supply realignment (GSR) amortization account as of January 31, 2002, were sent to applicable Rate Schedule FT–1 shippers. These refunds included interest through March 11, 2002, in accordance with Section 154.501 of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 29, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7460 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1028–000]

Wrightsville Power Facility, L.L.C.; Notice of Issuance of Order

March 22, 2002.

Wrightsville Power Facility, LLC (Wrightsville Power) submitted for filing a rate schedule under which Wrightsville Power will engage in the sales of capacity, energy and ancillary services at market-based rates, and for the reassignment of transmission capacity. Wrightsville Power also requested waiver of various Commission regulations. In particular, Wrightsville Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Wrightsville Power.

On March 20, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Wrightsville Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Wrightsville Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Wrightsville Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Wrightsville Power's

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issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 19, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–7449 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1261–004, et al.]

EE South Glens Falls, et al.; Electric Rate and Corporate Regulation Filings

March 22, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. EE South Glens Falls

[Docket No. ER99–1261–004]

Take notice that on March 15, 2002, South Glens Falls Energy, LLC (South Glens Falls Energy) tendered a letter correcting its name as it appears in its March 11, 2002 triennial market power review. *Comment Date*: April 5, 2002.

2. Duke Energy Washington, LLC

[Docket No. ER02–795–001]

Take notice that on March 15, 2002, Duke Energy Washington, LLC filed a notice of status change with the Federal Energy Regulatory Commission (Commission) in connection with the Commission's Order authorizing a change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc. (Engage Energy America, LLC, Frederickson Power L.P., Duke Energy Corp., 98 FERC ¶ 61,207 (2002)).

Copies of the filing were served upon all parties on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding. *Comment Date*: April 5, 2002.

3. AES Ironwood, L.L.C.

[Docket Nos. ER02–872–001]

Take notice that on March 15, 2002, AES Ironwood, L.L.C (AES Ironwood) resubmitted its long-term power sales agreement between AES Ironwood and Williams Energy Marketing & Trading Company (the Agreement) to fully comply with Order 614, 90 FERC ¶ 61,352. Confidential treatment of the Agreement, pursuant to 18 CFR 385.112 (2000), has been requested.

Comment Date: April 5, 2002.

4. Vandolah Power Company, L.L.C.

[Docket No. ER02–1336–000]

Take notice that on March 19, 2002, Vandolah Power Company, L.L.C. (Vandolah Power), filed with the Federal Energy Regulatory Commission (Commission) an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's regulations.

Vandolah Power is a limited liability corporation formed under the laws of Delaware. Vandolah Power owns a 630-MW generating plant that is under construction in Hardee County, Florida.

Comment Date: April 9, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1341–000]

Take notice that on March 20, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following executed agreements: (I) an umbrella agreement for short-term firm point-to-point service with Dominion Energy Marketing, Inc. (Dominion); (ii) an umbrella agreement for non-firm point-to-point transmission service with Dominion; (iii) an umbrella agreement for short-term firm point-to-point transmissions service with RWE Trading Americas, Inc. (RWE Trading); (iv) an umbrella agreement for non-firm point-to-point transmission service with RWE Trading.

PJM requested a waiver of the Commission's notice regulations to permit effective date of February 22, 2002 for the agreements. Copies of this filing were served upon Dominion and RWE Trading, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: April 10, 2002.

6. State Line Energy, L.L.C. and Dominion State Line, Inc.

[Docket Nos. ER02–1342–000 and ER96–2869–003]

Take notice that on March 20, 2002, State Line Energy, L.L.C. (State Line Energy) filed with the Federal Energy Regulatory Commission (Commission) its Joint Application to Renew Market-Based Rate Authorization and Filing of Notice of Change in Status, First Revised Volume No. 1 and Service Agreement No. 1 of its Market-Based Rate Tariff pursuant to Section 205 of the Federal Power Act, to address a proposed upstream change in ownership.

State Line Energy owns and operates the approximately 515 MW, coal-fired State Line power generation facility in Hammond, Indiana. This filing is made necessary to reflect the proposed sale, by Mirant Americas Generation, LLC, an indirect subsidiary of Mirant Corporation, of one hundred percent (100%) of the issued and outstanding capital stock of Mirant State Line Ventures, Inc., which holds, through its direct and indirect subsidiaries, one hundred percent (100%) of the ownership interests in State Line Energy to Dominion State Line, Inc., an indirect subsidiary of Dominion Resources, Inc. *Comment Date*: April 10, 2002.

7. Michigan Electric Transmission Company and Consumers Energy Company

[Docket No. ER02–1343–000]

Take notice that on March 19, 2002, Consumers Energy Company (Consumers) and Michigan Electric Transmission Company (METC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Third Supplemental Notice of Succession and a Rate Schedule Filing for METC related to the transfer of transmission assets from Consumers to Michigan Transco. If acted on by the Commission as requested, the Third Supplemental Notice of Succession and related METC Rate Schedule would be effective April 1, 2001.

A full copy of the filing was served upon the Michigan Public Service Commission and The Detroit Edison Company, which is a party to each of the agreements here at issue.

Comment Date: April 9, 2002.

8. Public Service Company of New Mexico

[Docket No. ER02–1344–000]

Take notice that on March 18, 2002, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP), and the other owners of interests in the San Juan Generating Station covering the period from January 1, 2002 through December 31, 2002. The Interim Invoicing Agreement is an appendix to the San Juan Project Participation Agreement (PPA), and effectively modifies the PPA for that same period. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 2002. Copies of the filing have been sent to the New Mexico Public Regulation Commission, TEP, and each of the owners of an interest in the San Juan Generating Station.

Comment Date: April 8, 2002.

9. American Transmission Systems, Inc.

[Docket No. ER02–1345–000]

Take notice that on March 20, 2002, American Transmission Systems, Inc., filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Dominion Energy Marketing, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc., Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission (Commission) in Docket No. ER99–2647–000.

The proposed effective date under the Service Agreement is March 18, 2002 for the above mentioned Service Agreement in this filing.

Comment Date: April 10, 2002.

10. Metropolitan Edison Company

[Docket No. ER02–1347–000]

Take notice that on March 20, 2002, Metropolitan Edison Company (MetEd) submitted for filing a Borderline Service Agreement between MetEd and PPL Electric Utilities Corporation (PPL). Under the Agreement, MetEd will supply electric service to two PPL customers—Randy Stoudt and the Red Suspenders Gun Club—located near MetEd facilities but inside the PPL service territory in Pine Grove, Pennsylvania.

Comment Date: April 10, 2002.

11. UBS AG

[Docket No. ER02–1348–000]

Take notice that on March 20, 2002, UBS AG (UBS) tendered for filing with the Federal Energy Regulatory Commission (Commission) correspondence approving its membership to the Western Systems Power Pool (WSPP). UBS requests that the Commission allow its membership in the WSPP to become effective on March 20, 2002.

UBS states that a copy of this filing has been provided to the WSPP Executive Committee and to Michael E. Small, Esq.

Comment Date: April 10, 2002.

12. Tucson Electric Power Company

[Docket No. ER02–1349–000]

Take notice that on March 20, 2002, Tucson Electric Power Company tendered for filing an Amended Service Agreement for Network Integration Transmission Service.

Comment Date: April 10, 2002.

13. SIGCORP Energy Services LLC

[Docket No.ER02–1350–000]

Take notice that on March 20, 2002, SIGCORP Energy Services, LLC (SIGCORP Energy), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation, effective March 20, 2002, of SIGCORP Energy Rate Schedule FERC No. 1.

IGCORP Energy provides that it is canceling its Rate Schedule FERC No. 1 because it has never sold electric power pursuant to that Rate Schedule and does not contemplate doing so in the future. SIGCORP Energy states that there is no need for SIGCORP Energy to maintain its Rate Schedule FERC No. 1.

Comment Date: April 10, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7445 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–56–000, et al.]

Mirant Americas Generation LLC, et al.; Electric Rate and Corporate Regulation Filings

March 21, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Mirant Americas Generation LLC, Dominion State Line, Inc.

[Docket No. EC02–56–000]

Take notice that on March 15, 2002, Mirant Americas Generation, LLC, and Dominion State Line, Inc. (collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission) a joint application (Application) pursuant to Section 203 of the Federal Power Act for authorization of the sale by Mirant Americas Generation, LLC, an indirect subsidiary of Mirant Corporation, to Dominion State Line, Inc., an indirect subsidiary of Dominion Resources, Inc, of one hundred percent (100%) of the issued and outstanding capital stock of Mirant State Line Ventures, Inc., which holds, through its direct and indirect subsidiaries, one hundred percent (100%) of the ownership interests in State Line Energy, L.L.C. State Line Energy, L.L.C. owns and operates the approximately 515 MW, coal-fired State Line power generation facility in Hammond, Indiana.

Comment Date: May 14, 2002.

2. Mirant Oregon, L.L.C.

[Docket No. ER02–1331–000]

Take notice that on March 18, 2002, Mirant Oregon, L.L.C. (Mirant Oregon) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and

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waiving certain regulations of the Commission.

Mirant Oregon requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or May 1, 2002. Mirant Oregon also filed its FERC Electric Tariff No. 1.

Comment Date: April 8, 2002.

3. Progress Energy, Inc. on behalf of Carolina Power & Light Company, Progress Ventures, Inc., Monroe Power Company, Effingham County Power LLC, Rowan County Power, LLC and MPC Generating LLC

[Docket No. ER02–1334–000]

Take notice that on March 15, 2002, Progress Energy, Inc. on behalf of Carolina Power & Light Company, Progress Ventures, Inc., Monroe Power Company, Effingham County Power LLC, Rowan County Power, LLC and MPC Generating LLC (collectively the Applicants), tendered for filing with the Federal Energy Regulatory Commission (Commission) an Assignment and Assumption Agreement among Monroe Power, MPC Generating, and Georgia Power Company.

Comment Date: April 5, 2002.

4. BP West Coast Products LLC

[Docket No. ER02–1335–000]

Take notice that on March 19, 2002, BP West Coast Products LLC (BP West Coast Products) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (2000), and part 35 of the Commission's regulations, 18 CFR part 35, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1 authorizing BP West Coast Products to make sales at market-based rates.

BP West Coast Products intends to sell electric power at wholesale. In transactions where BP West Coast Products sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. BP West Coast Products' Tariff provides for the sale of energy and capacity at agreed prices.

Comment Date: April 9, 2002.

5. Virginia Electric and Power Company

[Docket No. ER02–1337–000]

Take notice that on March 19, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement by Virginia Electric and Power Company to Dominion Retail, Inc. Designated as Service Agreement No. 2 under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002.

The Company requests an effective date of March 1, 2002, as requested by the customer.

Copies of the filing were served upon Dominion Retail, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: April 9, 2002.

6. Puget Sound Energy, Inc.

[Docket No. ER02–1338–000]

Take notice that on March 19, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Sempra Energy Trading Corp. (Sempra), as Transmission Customer.

A copy of the filing was served upon Sempra.

Comment Date: April 9, 2002.

7. Pacific Gas and Electric Company

[Docket No. ER02–1339–000]

Take notice that on March 19, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 2001, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for First Revised PG&E Rate Schedule FERC Nos. 88, 91, and 136.

Copies of this filing have been served upon SMUD, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: April 9, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–1340–000]

Take notice that on March 18, 2002, PJM Interconnection, L.L.C. (PJM), filed a Notice of Cancellation notifying the Commission that effective September 22, 2001, FPL Energy Services, Inc. (FPLES) has withdrawn from PJM membership, and that the following service agreements with FPLES have been cancelled: (1) umbrella agreement for non-firm point-to-point transmission service (PJM FERC Electric Tariff Third Revised Volume No. 1—Service Agreement No. 303); (2) umbrella agreement for network integration transmission service under state required retail access programs (PJM FERC Electric Tariff Third Revised Volume No. 1—Service Agreement No. 263); and (3) umbrella agreement for short-term firm point-to-point transmission service (PJM FERC Electric Tariff Third Revised Volume No. 1—Service Agreement No. 287).

Copies of this filing were served upon all PJM members, FPLES, and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of September 22, 2001 for FPLES's withdrawal from membership in PJM, and the cancellation of the service agreements.

Comment Date: April 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7444 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 10461–002 and 10462–002 New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Draft Environmental Assessment

March 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for original licenses for Erie Boulevard Hydropower L.P.'s Parishville Hydroelectric Project and Allens Falls Hydroelectric Project, both located on the West Branch St. Regis River in St. Lawrence County, New York, and has prepared a Draft Environmental Assessment (DEA) for the projects. Neither project occupies any lands of the United States.

The DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 10461–002 and Project No. 10462–002 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.For further information, contact Peter Leitzke at (202) 219–2803.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7453 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

March 22, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 2210–075.

c. *Date Filed*: March 6, 2002.

d. *Applicant*: Appalachian Power Company (APC).

e. *Name of Project*: Smith Mountain.

f. *Location*: The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact*: Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions*: April 22, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–075) on any comments or motions filed.

k. *Description of Request*: APC is requesting Commission approval to permit Bernard's Landing-CPOA (permittee) to install and operate within the project boundaries: (a) seven (7) stationary docks providing a total of fifty-six covered stationary boat slips at four different sites located within the Bernard's Landing area of Smith Mountain Lake.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7450 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Scoping Comments

March 22, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 2782–006.

c. *Date filed:* October 30, 2001.

d. *Applicant:* Parowan City.

e. *Name of Project:* Red Creek Hydroelectric Project.

f. *Location:* On Red Creek, near the City of Paragonah, in Iron County, Utah. The project is partially on United States lands administered by the Bureau of Land Management.

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g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, Sunrise Engineering, Inc., 25 E. 500 N., Fillmore, Utah 84631–3513; (435) 743–1143.

i. *FERC Contact:* Steve Hocking at *steve.hocking@ferc.gov* or (202) 219–2656.

j. *Deadline for filing scoping comments:* May 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site. *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) The Red Creek diversion dam which is a concrete structure 8 feet high and 48 feet long; an intake with a radial gate and trash rack connected to a 16,098-foot-long, 16 to 18-inch diameter steel penstock, (2) the South Fork diversion dam which is a concrete structure 8 feet high and 29 feet long; an intake with a radial gate and trash rack connected to a 4,263-foot-long, 10-inch-diameter steel penstock, (3) a pump station at the junction of the South Fork and Red Creek penstocks housing a 15 horsepower and a 20 horsepower pump with control equipment, (4) a 27-foot by 32-foot concrete block powerhouse with a single 500-kilowatt (kW) generator; (5) two 270-foot-long transmission lines, and (6) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:*

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives by issuing Scoping Document 1 (SD1).

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7451 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene and Protests

March 22, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a: *Application Type:* Extension of Temporary Amendment of License.

b: *Project No.:* 2899–105.

c: *Date Filed:* March 18, 2002.

d: *Applicant:* Idaho Power Company.

e: *Name of Project:* Milner Hydroelectric Project.

f: *Location:* The Milner hydroelectric project is located on the Snake River in TwinFalls and Cassia Counties, Idaho. The project includes 109 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h: *Applicant Contact:* Mr. Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707; (208) 388–2676.

i. *FERC Contact:* Questions about this notice can be answered by Kenneth Hogan at (202) 208–0434 or e-mail address: *Kenneth.Hogan@ferc.gov*. The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, terms and conditions, motions to intervene, and protests:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *www.ferc.gov*.

k. Idaho Power Company (IPC) filed an application for an extension of the temporary amendment authorized by the Commission's order dated May 8, 2001, which temporarily waived the minimum flow requirement set forth in Article 407, and approved the dewatering of the Milner bypass reach between May 8, 2001, and March 31, 2002. Article 407 reads as follows:

The licensee shall discharge from Milner Dam a target flow of 200 cubic feet per second as measured at the Milner gage located in the bypass reach. The licensee shall release water from the Idaho Water Bank and/or make releases from upstream storage controlled by the licensee to provide the necessary flow to achieve the 200-cfs target. The main powerhouse shall not operate during any time the target flow is not met. The target flow may be temporarily reduced if required by operating emergencies beyond the control of the licensee or for short periods upon mutual agreement between the licensee and Idaho Department of Fish and Game.

Idaho Power requests that the May 8, 2001 order, superceding Article 407, be extended to the end of the irrigation season, October, 2002.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

The application may be viewed on the Web at *http://www.ferc.gov*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7452 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 22, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket no.	Date filed	Presenter or requester
1. CP01–176–000, et al. CP01–179–000.	03–20–02	Laura Turner.
2. CP01–176–000, et al. CP01–179–000.	03–20–02	Laura Turner.
3. Project No. 1354–000.	03–21–02	Jeanni Darnell.

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Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–7454 Filed 3–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000, RT01–10–000, RT01–15–000, ER02–323–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (RTO Cost Benefit Analysis Report); Notice of Additional Material Relating to Economic Assessment of RTO Policy Report

March 22, 2002.

During the regional teleconferences held on March 13 through March 19, 2002 to discuss the "Economic Assessment of RTO Policy" Report, released on February 27, 2002, participants requested additional factual information relating to the report. The following additional information in response to these requests is being provided: the Request for Proposal (RFP) issued for the project; additional details about the Northeast region; and a detailed discussion of the assumptions in the report.

This additional information is available on the FERC Web site, *http://www.ferc.gov.* It also will be placed in each of the dockets listed in the caption, and is available through the FERC Records and Information Management System.

For further information, please contact either:

William Meroney, 202–208–1069, *William.meroney@ferc.gov.*
Charles Whitmore, 202–208–1256, *Charles.whitmore@ferc.gov.*
Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–7455 Filed 3–27–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–2]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS) (40 CFR part 60), and the National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR parts 61 and 63).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the ADI at: *http://cfpub.epa.gov/adi.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which are different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 30 of such documents added to the ADI on January 22, 2002. The subject, author, recipient, and date (header) of each letter and memorandum is listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI at: *http://cfpub.epa.gov/adi.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on January 22, 2002; the applicable category; the subpart(s) of 40 CFR parts 60, 61, or 63 (as applicable) covered by the document; and the title of the document which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI DETERMINATIONS UPLOADED ON DATE

Control No.	Category	Subpart(s)	Title
M020001	MACT	M	Dry Cleaner Major Source Threshold

ADI DETERMINATIONS UPLOADED ON DATE—Continued

Control No.	Category	Subpart(s)	Title
M020002	MACT	R	Monitoring Operating Parameter for John Zink Enclosed Flares.
0100077	NSPS	Dc	Alternative Fuel Usage Recordkeeping Frequency.
0100078	NSPS	VV	Alternative Monitoring Proposal for Ethylene Glycol Vapor.
0100079	NSPS	OOO	Applicability to Blast Furnace Slag Crushing and Grinding.
0100080	NSPS	Db, Dc	Boiler Derate.
0100081	NSPS	VV, NNN	Design Capacity Exemption.
0100082	NSPS	Dc	Boiler Derate.
0100083	NSPS	NNN, RRR	Biological Processes for Ethanol Manufacturing.
0100084	NSPS	A, NNN, RRR	Review of Alternative Monitoring/Testing Requirements.
0100085	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100086	NSPS	GG	Waiver for Reference Method 20 Oxygen Tracers.
0100087	NSPS	GG	Alternate Performance Test Method.
0100088	NSPS	GG	Custom Fuel Monitoring & Nitrogen Waiver.
0100089	NSPS	GG	Custom Fuel Monitoring & Nitrogen Waiver.
0100090	NSPS	GG	Custom Fuel Monitoring Schedule.
0100091	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100092	NSPS	GG	Modification to Test Method 20.
0100093	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100094	NSPS	GG	Custom Fuel Monitoring Schedule.
0100095	NSPS	GG	Custom Fuel Monitoring Schedule.
0100096	NSPS	GG	Alternate Test Performance Procedure.
0100097	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100098	NSPS	GG	Custom Fuel Monitoring.
0100099	NSPS	GG	Custom Fuel Monitoring.
0100100	NSPS	GG	Custom Fuel Monitoring.
0100101	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100102	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100103	NSPS	GG	Custom Fuel Monitoring.
0100104	NSPS	Y	Applicability to Screening Operations.

Abstracts

Abstract for [M020001]

Q1: Will EPA consider a facility that does not have a permit limiting its potential to emit below the major source threshold before the first compliance date of the dry cleaner MACT, Subpart M, an area source if the facility can demonstrate that it maintained its consumption of perc below the major source threshold in the dry cleaner MACT?

A1: Yes. EPA intended that the dry cleaner MACT provide the method for identifying major sources under both the MACT program and Title V. However, the facility must reconcile reported VOC emissions that indicate perc consumption almost double the threshold.

Q2: For a new facility subject to the MACT, Subpart M, does the one-time initial fill count in determining whether the facility is a major source?

A2: No. The initial fill does not indicate perc emissions, since perc has been neither consumed nor emitted.

Abstract for [M020002]

Q. Under MACT standard, Subpart R, what is the required monitored operating parameter for the John Zink enclosed flares?

A: The MACT standard, Subpart R, requires that thermal oxidation systems (e.g., John Zink enclosed flares) monitor temperature for continuous compliance monitoring.

Abstract for [0100077]

Q: A company with a natural gas-fired boiler proposes to record and maintain weekly records of fuel usage, instead of daily records as required by NSPS Subpart Dc, at 40 CFR 60.48c(g). Is this acceptable?

A: Yes. If only natural gas or low sulfur fuel oils are used, compliance with NSPS Subpart Dc, can be adequately verified by keeping fuel usage records less frequently. Based on past determinations, records of fuel usage may be kept on a weekly basis, as proposed, or on a monthly basis as has been approved for other natural gas-fired facilities.

Abstract for [0100078]

Q: A company subject to NSPS Subpart VV, has proposed to conduct quarterly visual inspections of equipment in ethylene glycol vapor service, instead of using Method 21. Since ethylene glycol has a boiling point of approximately 197 degrees centigrade, any vapor escaping from process equipment would quickly condense and form a liquid, making detection by Method 21 less accurate and reliable. Is the use of visual inspections acceptable?

A: Yes. The proposed alternative monitoring is acceptable as a substitute for Method 21.

Abstract for [0100079]

Q: Is a blast furnace slag crushing/grinding operation subject to NSPS Subpart OOO?

A: No. Because slag is not a nonmetallic mineral, the crushing and grinding of slag is not regulated by NSPS Subpart OOO.

Abstract for [0100080]

Q: A boiler derate is proposed for a unit subject to NSPS Subpart Db which will include the replacement of an existing burner with a new burner rated at 95 mm btu/hr. Is the proposed derate acceptable?

A: Yes. The proposed derate is consistent with criteria used in past boiler derates.

Abstract for [0100081]

Q: Does the design capacity exemption provided in NSPS Subparts VV and NNN apply to a process unit at a plant which will produce a product which will contain 50 percent hydrogen cyanide and 50 percent methanol? Hydrogen cyanide will be produced at the facility, but methanol will not be produced. The design capacity for hydrogen cyanide is less than one gigagram per year.

A: Yes. The design capacity for the process unit will be less than the threshold of one gigagram per year. The applicable recordkeeping and reporting requirements of NSPS Subparts VV and NNN will need to be met.

Abstract for [0100082]

Q: A derate method is proposed which will limit the capacity of a boiler by reducing the air volume into the boiler. Will the proposed method be acceptable to comply with NSPS Subpart Dc?

A: Yes. The proposed derate is consistent with criteria used in past boiler derates.

Abstract for [0100083]

Q: Are ethanol manufacturing facilities exempt from the requirements of NSPS Subparts RRR and NNN?

A: EPA has previously determined that ethanol manufacturing facilities may be exempted from NSPS Subparts RRR and NNN on a case-by-case basis. The ethanol facility in question here uses a biological process to ferment the converted starches in corn into ethanol. These Subparts did not envision unit operations for biological processes.

Abstract for [0100084]

Q: Will EPA approve alternative monitoring and waive the requirement for performance testing for boilers and process heaters that are fired with fuel gas containing a vent stream from a facility subject to NSPS Subpart NNN?

A: Yes. EPA will approve the provisions of NSPS Subpart RRR as alternative monitoring to the provisions of NSPS Subpart NNN and waive the requirement for performance testing for boilers and process heaters that are fired with fuel gas containing a vent stream from a facility subject to NSPS Subpart NNN.

Abstract for [0100085]

Q1: Will EPA exempt a new stationary gas turbine facility subject to NSPS Subpart GG from daily nitrogen testing?

A1: Yes. Nitrogen monitoring shall be waived for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions.

Q2: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A2: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q3: Will EPA approve an alternative test method under NSPS Subpart GG?

A3: Yes. In accordance with an April 26, 1999, memorandum from EPA's Office of Air Quality Planning and Standards, "length of stain" detector tubes will be allowed in cases where fuel gas sulfur content is well below the standard level.

Abstract for [0100086]

Q: Will EPA grant a source subject to NSPS Subpart GG, a waiver to Reference Method 20 to allow use of a single multi-hole probe in lieu of oxygen traverses prior to initiating performance tests?

A: Yes. EPA grants the waiver on the basis that information provided indicates that the oxygen concentrations have been uniform within a variation of less than five percent across the two turbine stacks. Also, verbal information indicated that the multi-hole probe flow rate test showed that the sample flow rate through each hole is within plus or minus ten percent of the average through the eight holes at the design flow rate for the probe.

Abstract for [0100087]

Q: Under NSPS Subpart GG, will EPA approve an alternative test method for two gas turbines whose stacks have four sampling ports on one side only?

A: Yes. EPA approves the use of a nine-hole probe in the existing four ports to accomplish a four by nine sample point matrix instead of the required six by six matrix to determine the one of four ports with the lowest oxygen. EPA will also allow the use of a single multi-hole sample probe installed through the port which exhibits the lowest average diluent (oxygen) concentration for the oxygen traverse and the performance tests.

Abstract for [0100088]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100089]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100090]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100091]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100092]

Q: Will EPA approve a request for use of a multi-hole probe as a modification to Reference Method 20 under NSPS Subpart GG?

A: Yes. EPA will approve the request because it believes that the modified method could generate acceptably accurate data as long as the multi-hole probe is designed and conforms to the tests specified in EPA Guideline Document GD–031.

Abstract for [0100093]

Q1: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A1: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q2: Will EPA exempt a new stationary gas turbine facility from daily nitrogen testing under NSPS Subpart GG?

A2: Yes. Nitrogen monitoring shall be waived for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions.

Q3: Will EPA approve an alternative test method under NSPS Subpart GG?

A3: Yes. In accordance with an April 26, 1991, memorandum from EPA's Office of Air Quality Planning and Standards, "length of stain" detector tubes will be allowed in cases where fuel gas sulfur content is well below the standard level.

Abstract for [0100094]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100095]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100096]

Q: Will EPA approve an alternate test performance procedure for stacks whose sampling ports are located 39 inches rather 60 inches from the top of the stacks?

A: Yes. EPA will approve sampling at 39 inches from the top of the stacks as long as the facility can demonstrate in accordance with Method 1 that there is a consistent stack flow and there is no cyclonic flow.

Abstract for [0100097]

Q1: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A1: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q2: Will EPA exempt a new stationary gas turbine facility from daily nitrogen testing under NSPS Subpart GG?

A2: Yes. Nitrogen monitoring shall be waived for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions.

Q3: Under NSPS Subpart GG, will EPA approve an alternate load test procedure for a facility whose permit does not allow operation of turbines below 75% load rate?

A3: Yes. EPA approves testing at four points in the normal operating range between 75% and 100% of peak load.

Abstract for [0100098]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100099]

Q: Under NSPS Subpart GG, will EPA approve a request to eliminate submission of sulfur monitoring data and allow monitoring of sulfur level on a semi-annual basis?

A: Yes. EPA will approve the request. Based on sulfur analyses submitted it appears that the gas used consistently meets the regulatory definition for natural gas. Although it does not appear to be pipeline natural gas, it is very low in sulfur and much cleaner than the sulfur standard of 0.8 percent by weight. The semi-annual monitoring results must be retained by the facility's owner.

Abstract for [0100100]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100101]

Q1: Under NSPS Subpart GG, will EPA approve a request to waive the requirement to monitor nitrogen content and sulfur content of natural gas on a semi-annual basis?

A1: Yes. EPA will waive nitrogen monitoring for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions. A record shall be maintained documenting a constant supplier or source of fuel. If there is a change in either, the facility must notify EPA.

Q2: Under NSPS Subpart GG, will EPA approve a request to test for fuel sulfur content using the method specified in 40 CFR part 75, appendix D, section 2.3?

A2: Yes. EPA approves the request to use the monitoring requirements for sulfur in 40 CFR part 75. This alternative monitoring method may only be used when pipeline natural gas is the only fuel being burned.

Q3: Under NSPS Subpart GG, will EPA approve a request to determine fuel consumption at full load only as an alternative to testing at four loads where the turbines are not expected to operate below 90%?

A3: Yes. EPA approves the request to use a single load test at full load. However, should the operation fall below 90% of maximum load, then testing at four loads would be required within 60 days of the new operating level.

Abstract for [0100102]

Q: Under NSPS Subpart GG, will EPA grant a waiver of nitrogen content testing and approval of both an alternate monitoring plan and an alternate test method for a turbine that was inadvertently left off an October 1996 request?

A: Yes. EPA will grant the waiver and approvals on the terms of its determination letter of May 1, 1997.

Abstract for [0100103]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100104]

Q: Does NSPS Subpart Y apply to a bulk coal handling operation that operates an ancillary coal screening process to separate coarse coal from fine coal?

A: Yes. NSPS Subpart Y applies to the screening process, the equipment used to transfer coal to and from the screening process, and any equipment used to transfer and load coal for shipment at the source.

Dated: March 22, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–7491 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00332; FRL–6828–6]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on April 9–11, 2002, in

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Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of proposed Acute Exposure Guideline Levels (AEGLs) for various chemicals and to discuss comments on these chemicals.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on April 9, 2002; from 8:30 a.m. to 5 p.m. on April 10, 2002; and from 8:30 a.m. to noon on April 11, 2002.

ADDRESSES: The meeting will be held at the U. S. Department of Transportation, DOT Headquarters, Nassif Bldg., Rooms 6200–6204, 400 7th St., SW., Washington, DC. (L'Enfant Plaza Metro stop). Visitors should bring a photo identification for entry into the building and should contact the Designated Federal Officer under **FOR FURTHER INFORMATION CONTACT** to have their names added to a security entry list. Visitors must enter the building at the Southwest Entrance/Visitor's Entrance, 7th & E Sts. Quadrant.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406M), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00332. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Agenda

At this meeting, the NAC/AEGL Committee will address, as time permits:

1. The various aspects of the acute toxicity and the development of AEGL values for acrylic acid, allyl alcohol, ethyleneneimine, furan, methyl mercaptan, phosphorus trichloride, piperidine, propyleneimine, toluene, and trichloroethylene.

2. The proposed 10 minute AEGL values for ammonia, chloroform, fluorine, nitric acid, nitric oxide, and nitrogen dioxide.

3. The comments from the National Academy of Sciences Subcommittee for AEGLs for allyl alcohol, allyl amine, crotonladehyde, cyclohexylamine, diborane, ethylenediamine, ethyleneimine, furan, G-Agents, hydrogen sulfide, iron pentacarbonyl, nickel carbonyl, perchloromethyl mercaptan, phosgene, propyleneimine, and VX.

4. The comments from the notice published in the **Federal Register** of February 15, 2002 (67 FR 7164–7176) and the decision to raise to interim status the AEGL values for boron trifluoride dimethyl ether, carbon tetrachloride, chlorine, chlorine dioxide, methyl nonafluorobutyl ether (HFE-7100 component), methyl nonafluoroisobutyl ether (HFE-7100 component), propylene oxide, and uranium hexafluoride.

5. The overview for benzene, methylene chloride, and phenol.

III. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemicalspecific information should be directed to the DFO.

IV. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for June 17–19, 2002.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: March 18, 2002.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 02–7499 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP– 00745; FRL–6809 –9]

Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration (PR) Notice entitled "False or Misleading Pesticide Product Brand Names." PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice provides guidance to registrants, applicants and the public as to what product brand names may be false or misleading, either by themselves or in association with company names or trademarks.

DATES: Comments, identified by docket control number OPP–00745, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit V.A. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00745 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobial Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Guidance Does this PR Notice Provide?

This draft PR Notice provides guidance to registrants and distributors concerning pesticide product brand names that may be false or misleading, either by themselves or in association with particular company names or trademarks. Occasionally, some registrants and distributors have considered or adopted product brand names (or placed company names or trademarks within or in close proximity to product brand names) that conflict with current Agency regulations concerning false or misleading claims [40 CFR 156.10(a)(5) and (b)(2)] and with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) sections 12(a)(1)(e) and 2(q)(1)(A). Under these regulations, products with brand names (or any other statements) that state or imply safety, efficacy, or comparative claims, or are false or misleading in any particular, are considered to be misbranded. To address this problem as it specifically relates to pesticide product brand names, the Agency is proposing to clarify the applicability of its regulations as follows:

- These regulations (40 CFR 156.10(a)(5) and 156.10(b)(2)) require that a pesticide product brand name, either by itself or containing or located in close proximity to a company name or trademark, not be false or misleading. Examples of potentially false or misleading product brand names are provided in Table 1 in the draft PR Notice. In addition, the guidance provided by Section III.4. of PR Notice 93–6 (pertaining to the use of "Brand" to qualify superlative terms) would be superseded by this notice.
- When the draft PR Notice is formally issued, following this notice and comment, the Agency would be applying these regulations as clarified in the notice when evaluating applications for new products or brand names, or notifications for alternate or changed brand names, for registration or reregistration. Registrants would review their product names in light of the notice, and, if warranted, take corrective action before October 1, 2003. It is proposed that as of that date, EPA would use this guidance when determining whether a product is misbranded under FIFRA section 12.

Because of the growing potential for product brand names (either by themselves or in association with company names or trademarks) that appear not to comply with FIFRA and the regulations, the Agency believes that additional guidance is needed so that registrants can better understand the circumstances under which product brand names are potentially false or misleading and what kinds of corrective actions are needed for registered products already bearing such brand names.

The Agency's policy as set forth in the draft PR Notice concludes that a pesticide product brand name, either by itself or in connection with a company name or trademark must not be false or misleading in any particular. EPA's regulations (40 CFR 156.10(a)(5) and (b)(2)) and FIFRA give the regulatory foundation for this position.

The draft PR notice is intended to aid registrants in bringing their product brand names into compliance with those regulatory requirements. Specifically, that draft document provides clarifying guidance to help registrants determine whether their product brand names, alone or through association with their company names or trademarks, comply with the regulations cited above. To ensure that a product's name is consistent with those regulations, a registrant would review the brand names of its products in light of the regulations and guidance in this notice and take corrective action, if warranted. Examples of words, terms, or phrases that might cause product brand names to be false or misleading are listed in the draft PR Notice. By examining these examples as well as other terms listed in the regulations cited above, registrants could determine whether they need to take corrective steps.

If a Federal registrant or distributor of a product were to have a product bearing a false or misleading product brand name, then the draft PR Notice would provide two basic options for bringing that product label into compliance, depending on the specific circumstances:

(1) Change or delete words, phrases, company names or trademarks in the product brand name, and/or

(2) use an appropriate qualifier or disclaimer.

The draft PR notice proposes implementation steps for assuring that all products are brought into compliance with the applicable regulations. When the PR Notice is signed and formally issued, EPA would review all applications for new pesticide product registrations, for amendments to registered products, and for reregistration of registered products using this guidance. It is proposed that as of October 1, 2003, the Agency would monitor registered products using this guidance to determine whether their

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labeling is consistent with (40 CFR 156.10(a)(5) and 156.10(b)(2)) and FIFRA. Pesticide products that are released for shipment by registrants or distributors on or after that date and that bear product brand names or trademarks that EPA determines are false or misleading would risk being considered in violation of FIFRA.

To give sufficient time for pesticide products in the channels of trade to be distributed or sold to users or otherwise disposed of, the Agency would provide a period of time for companies to comply with those labeling elements that have been clarified by this notice. Therefore, pesticide products released for shipment prior to October 1, 2003, would be considered existing stocks in the channels of trade that may be sold, used or otherwise disposed of until exhausted. Registrants and distributors would need to take corrective measures as soon as possible to assure that their product brand names are in compliance with FIFRA and its implementing regulations. Registrants who would want to modify their product labels to ensure compliance with FIFRA would submit revised labeling using the notification or amendment application process, as applicable.

The Agency is aware of certain Constitutional considerations that are applicable to commercial speech such as use of a corporate or product name or other statements in connection with a product's features or claims. It is the Agency's intent to address such considerations in this proposed PR Notice so as to promote the exercise of commercial speech in a way that does not run afoul of statutory and regulatory prohibitions against false or misleading statements in connection with sale or distribution of pesticide products. This proposed PR Notice deals with inherently false or misleading statements or claims and potentially false or misleading statements or claims--in particular, those that occur in names that appear on products. Rather than attempting to prohibit product names or claims where they may seemingly be false or misleading, the PR Notice incorporates an approach where the remedy is tailored to the situation. As such, the Agency recognizes that there may be instances where full prohibition may not be warranted and that some remedy short of prohibition might be employed such as the use of qualifiers or different placement of the statement or name on the product label. This proposed PR Notice seeks to employ such an approach.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. While the requirements in the statutes and Agency regulations described here are binding on EPA and the applicants, this PR Notice itself is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

IV. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain an electronic copy of this **Federal Register** document using the date of publication from the listing of EPA **Federal Register** documents at http://www.epa.govlfedrgstr/. You may obtain an electronic copy of this PR-Notice, as well as other PR-Notices, both final and draft, at http://www.epa.gov/PR_Notices/.

2. *Fax-on-demand.* You may request a faxed copy of the draft Pesticide Registration (PR) Notice entitled "False or Misleading Pesticide Product Brand Names," by using a faxphone to call (202) 401–0527 and selecting item 6146. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00745. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

V. How Do I Submit Comments?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00745 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00745. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. Issues for Comment

Following are several key issues that you may wish to comment on. While the Agency has identified these three issues, it does not intend to limit the issues upon which you may provide comments should you believe the Agency needs to consider other issues.

1. Does the draft PR Notice provide a reasonable approach to qualifying or disclaiming product names that might otherwise appear to conflict with EPA's regulations concerning false or misleading claims?

2. Could some claims in product names be so egregious that they could not be adequately qualified or disclaimed (e.g., "Safe As Water Insecticide")?

3. Does the Agency's proposed approach adequately balance commercial speech considerations and protection of the public against false or misleading claims in connection with the sale or distribution of pesticide products?

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 14, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc 02–7495 Filed 3–27–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30524; FRL–6827–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30524, must be received on or before April 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30524 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By Mail: Andrew Bryceland, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6928 and e-mail address: bryceland.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30524. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m.,

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Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30524 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), OPP, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30524. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 70051–TA. *Applicant*: Thermo Trilogy Corporation, 9145 Guilford Road, Suite 175, Columbia, MD, 21046. *Product name*: Olive Fly Attract and Kill (A and K) Target Device. *Type of product*: Pheromone/attractant. *Active ingredients*: Ammonium bicarbonate at 12.8% and 1,7-dioxaspiro-(5,5)-undecane (Spiroketal) at 0.2%. *Proposed classification/Use*: An attractant that is used in an attract and kill device that is used to attract and kill the Olive Fruit Fly in olive orchards.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 14, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–7496 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1077; FRL–6829–1]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–1077, must be received on or before April 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1077 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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C. How and to Whom Do I Submit Comments?

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1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received an amended pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Richard P. Keigwin, Jr.,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent the views of the petitioner. The petition summary announces the availability of

a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 2E6355, 2E6367, 2E6368

EPA has received pesticide petitions (2E6355, 2E6367, 2E6368) from the Interregional Research Project Number 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.371 by establishing tolerances for combined residues of thiophanate-methyl, (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue dimethyl-4,4-o-phenylenebis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the following raw agricultural commodities:

1. Pesticide Petition (PP) 2E6355 proposes a tolerance for pistachio at 0.2 parts per million (ppm).

2. PP 2E6367 proposes a tolerance for potato at 0.05 ppm.

3. PP 2E6368 proposes a tolerance for canola at 0.1 ppm.

This notice includes a summary of the petition prepared by Cerexagri, Inc., 2000 Market Street, Philadelphia, PA 19103. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of thiophanate-methyl in plants is well understood.

2. *Analytical method.* An adequate method for purposes of enforcement of the proposed thiophanate-methyl tolerances is available. The method uses a HPLC system employing column-switching capabilities. It consists of reverse phase HPLC with UV detection, and is capable of analyzing for residues of thiophanate-methyl and its metabolite, MBC.

3. *Magnitude of residues.* The magnitude of residues for pistachio, potato, and canola are adequately understood for the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Technical thiophanate-methyl is practically non-toxic (Toxicity Category III) after administration by the oral, dermal and respiratory routes. Thiophanate-methyl is a skin sensitizer.

2. *Genotoxicity.* Thiophanate-methyl has been tested in the Salmonella typhimurium reverse mutation assay with and without activation, the Chinese hamster V79 gene mutation assay with and without activation, the Chinese hamster ovary cell chromosomal aberration assay with and without activation, a primary rat hepatocyte unscheduled DNA synthesis assay, and a mouse dominant lethal assay. All these tests were negative. Thiophanate-methyl is not genotoxic.

3. *Reproductive and developmental toxicity.* At non-maternally toxic doses, thiophanate-methyl induced no teratogenic or fetotoxic effects in rats or rabbits. Even at doses well above maternally toxic levels, thiophanate-methyl caused only minor reversible effects in fetuses and even these effects may not have been compound related. In addition, thiophanate-methyl showed no developmental effects. In rat developmental studies, no abnormalities were observed at gavage doses up to 1,000 mg/kg/day or in a dietary study of doses up to 163 mg/kg/day. Furthermore, increased offspring sensitivity was not observed in the reproductive toxicity studies at doses up to 172 mg/kg/day.

4. *Subchronic toxicity.* Thiophanate-methyl was administered dermally to male and female New Zealand white rabbits 6/hours/day, 5 days/week for 21 days at 100, 300, and 1,000 mg/kg/day. Slight dermal irritation was noted in all the treatment groups during the second week of the study. Decreased food consumption was observed in males at 1,000 mg/kg/day. A systemic NOAEL of 100 mg/kg/day was established. A systemic LOAEL of 300 mg/kg/day was established based on significant decreases in food consumption in female rabbits.

Thiophanate-methyl was evaluated in a 90 day rat feeding study. The effects of treatment were anemia, follicular hyperplasia and hypertrophy of the thyroid, hepatocellular swelling and lipofuscin, fatty degeneration of the adrenal cortex and glomerulonephrosis. The LOAEL was 2,200 ppm (155 mg/kg/day). Based on these results, a NOAEL of 200 ppm (15.7 mg/kg/day) was established for both males and females.

Dogs were fed thiophanate-methyl for 90 days. Based on the occurrence of follicular hypertrophy of the thyroid gland in both sexes and decreased serum glutamic pyruvic transaminase (SGPT) activity in females the LOAEL was determined to be 50 mg/kg/day. No NOAEL was established. (The NOAEL for the one year chronic study was 8 mg/kg/day.)

5. *Chronic toxicity.* Thiophanate-methyl was administered by capsule to beagle dogs for 1 year. Based on the decreased body weight gain in both sexes, decreased T4 levels in males and increased thyroid-to-body weight ratio and hypertrophic histologic changes in the thyroid gland in both sexes, the LOAEL for thiophanate-methyl is 40 mg/kg/day and the NOAEL is 8 mg/kg/day.

A combined chronic/carcinogenicity feeding study was performed in rats at dosages of 0, 75, 200, 1,200 and 6,000 ppm thiophanate-methyl for two years. No clinical signs attributable to thiophanate-methyl were noted in the first 52 weeks. It was concluded that the effects of the treatment with thiophanate-methyl included growth depression, anemia, morphological and functional changes in the thyroid and pituitary, hepatocellular hypertrophy with lipofuscin, accelerated nephropathy and lipidosis of the adrenal cortex. The maximally tolerated dose (MTD) was determined to be 1,200 ppm for both males and females. At 6,000 ppm, approximately five times the MTD, an increase in thyroid follicular cell adenomas was observed in males. Thyroid hyperplasia and hypertrophy were observed only at or above the MTD. These effects are considered to be related to the treatment related changes in hormonal homeostasis of the pituitary-thyroid axis. The NOAEL is 200 ppm (8.8 mg/kg/day in males and 10.2 mg/kg/day in females) when fed for 104 weeks.

In a 2–year feeding study in F344 rats, females receiving up to 334.7 mg/kg/day thiophanate-methyl showed no increase in carcinomas but did show a slight increase in benign adenomas at the highest dose. Male rats showed a dose related increase in benign adenomas and three animals at the highest dose (281 mg/kg/day) had carcinomas. However, the MTD was exceeded for both male and female rats at the highest dose tested. In males, the MTD was exceeded, as demonstrated by the severity of toxicity seen in various organs and excessive mortality (2/55 survivors at study end vs. 37/50 controls). In the highest dose females, net body weight gain was only 69% ($p < 0.001$) of the control value at the end of the study.

In an 18-month feeding study in CD-1 mice, males receiving 3,000 ppm (468 mg/kg/day) showed an increased incidence of hepatocellular hypertrophy and a small, but statistically significant, decrease in body weight (<8%). Transient increases in serum thyroid stimulating hormone (TSH) and in absolute and relative thyroid weights were also observed in males. At the highest dose tested (7,000 ppm) both males and females showed increased mortality and increased liver weight at both weeks 39 and 78. Females at 7,000 ppm (1329 mg/kg/day) showed a statistically significant decrease in body weight (<8%), decreased serum thyroxine (T4) at week 39, and increased heart weight at weeks 39 and 78. A dose-related statistically significant increase in the incidence of hepatocellular adenomas was observed in both sexes at 3,000 and 7,000 ppm. Two hepatocarcinomas and one hepatoblastoma were found. The systemic NOAEL is 150 ppm (23.7 mg/kg/day in males and 28.7 mg/kg/day in females). The LOAEL is 640 ppm based on an increased incidence of hepatocellular hypertrophy in females.

6. *Animal metabolism.* The metabolism of thiophanate-methyl in animals is well understood.

7. *Metabolite toxicology.* There are two primary metabolites of thiophanate-methyl: MBC and 2-AB. The metabolite that has been extensively evaluated for toxicity is MBC. The toxicity of MBC is well understood and documented in the report of the International Programme on Chemical Safety (Environmental Health Criteria 149).

8. *Endocrine disruption.* No effects were observed that would indicate that the endocrine system is disrupted with regard to the reproductive system (i.e., is anti-estrogenic, estrogenic, androgenic, or anti-androgenic). Thiophanate-methyl does alter thyroid function through the thyroid stimulating hormone.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure is the primary route of exposure to thiophanate-methyl. Tolerances have been established for the residues of thiophanate-methyl in or on a variety of raw agricultural commodities.

i. *Food.* For the purposes of assessing the potential dietary exposure for these existing and pending tolerances, Cerexagri, Inc. conducted exposure estimates using the Lifeline software version 1.1 from The Lifeline Group, results from field trials and processing studies, monitoring data, consumption data from the 1994-1996, 1998 USDA Continuing Surveys of Food Intakes by Individuals (CSFII), and information on the percentages of the crops treated (where available) with thiophanate-methyl were utilized.

ii. *Drinking water.* Thiophanate-methyl is not expected to be found in water. The half-life of thiophanate-methyl is very short in soil and water. When metabolized or chemically converted to MBC, none is expected to leave the soil. In dissipation studies neither thiophanate-methyl nor MBC was found below the top layer of the soil (0-8 cm or 0-6 inches). Little to no thiophanate-methyl exposure is expected in drinking water.

2. *Non-dietary exposure.* Thiophanate-methyl has turf use patterns. The primary use is commercial (golf course, turf sale). Based on the limited use of the product on golf courses, and the low dermal toxicity, little to no contribution to the thiophanate-methyl risk cup is expected through non-occupational exposure.

D. Cumulative Effects

Benomyl (marketed until recently), MBC, thiabendazole, and thiophanate-methyl have been evaluated for similar toxicity patterns because of the potential structure-activity relationship. Thiophanate-methyl, although displaying some similarities to each of the other benzimidazoles, is also very different. These benzimidazoles do not share a toxicity profile that would indicate there is common mode of action. The difference in toxicity patterns is apparent in the recent HED Revised Preliminary Risk Assessment for thiophanate-methyl. In this assessment, none of the NOAELs for thiophanate-methyl are based on liver effects, while both subchronic and chronic NOAELs for MBC are based on liver effects. In acute studies, MBC has testicular effects, while thiophanate-methyl induce tremors at high doses. The main overlap in toxicity profiles between thiophanate-methyl and MBC are non-specific effects such as reduced food consumption and body weights in dietary studies.

In addition, for subchronic and chronic exposures, thiophanate-methyl toxicity primarily involves the thyroid. In contrast, no disruption of the thyroid-pituitary-liver axis is documented in either the carbendazim or the benomyl studies. Secondary effects on the liver could be seen in common, but these too are very different. If driven by MBC alone, thiophanate-methyl should have a dose effect much higher than MBC. In fact, it is two to three times higher. Reproductive, developmental and genetic toxicity are also different between thiophanate-methyl and MBC. Likewise, thiabendazole is different than thiophanate-methyl. It does not metabolize to MBC and shows significant differences from thiophanate-methyl in the type of toxicities observed. Therefore, there is no scientific basis for aggregating this class of fungicides, due to a lack of common mechanisms of toxicity.

E. Safety Determination

1. *U.S. population.* For both the general population and all specific subpopulations, there is a reasonable certainty of no harm associated with all exposure assessments. Non-cancer and cancer risks are lower than have been previously calculated by EPA because: (i) PDP data were used where appropriate rather than field trial data, (ii) updated usage data lowered the estimates of the percent of crop treated for some key commodities, such as stone fruit, and (iii) a consumer washing factor of 0.07 was used for smooth skinned fruits (apples, blueberries, and strawberries). Note that two separate Lifeline analyses were conducted and submitted to EPA, one on October 3, 2001, and a second on October 19, 2001. The second analysis used actual MBC residues to calculate MBC and 2-AB residues, rather than estimating them based on thiophanate-methyl residues. The use of actual MBC data provided a more accurate assessment of exposure.

2. *Infants and children.* The rabbit study indicated that even at twice the maternal LOAEL, thiophanate-methyl induced only two effects of questionable significance, increase in supernumerary ribs (a reversible condition) and a reduction in fetal weight that was not statistically significant and was likely related to maternal toxicity. The rat developmental study showed no teratogenic or fetotoxic effects at any dose tested.

The thiophanate-methyl 2-generation reproduction study showed thyroid and liver effects in both the parental and first generation pups. The effects were greater in the parental animals than in subsequent generations. This would indicate that there is no greater sensitivity for infants and children to thiophanate-methyl than the general population.

F. International Tolerances

There are no Codex Alimentarius Commission tolerances for canola, pistachios, or potatoes. The European Union tolerances for each of the three commodities is 0.1 ppm (lower limit of analytical determination).

[FR Doc 02–7497 Filed 3–27–02; 8:45 a.m.]

BILLING CODE 6560–50–S

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ENVIRONMENTAL PROTECTION AGENCY

[PF–1078; FRL–6828–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1078, must be received on or before April 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1078 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8263; e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent BioSciences Corporation

PP 2G6378

EPA has received a pesticide petition (2G6378) from Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, to expand an existing tolerance exemption for the biochemical pesticide 6–benzyladenine in or on agricultural commodities apples and pistachios.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Valent BioSciences Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Valent BioSciences Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

6–Benzyladenine is a naturally occurring plant growth regulator used on certain fruit trees and certain ornamental lily tubers. In January 1990, the Agency classified 6–benzyladenine as a biochemical pesticide because it resembles natural plant regulators and it displays a nontoxic mode of action. The new use being proposed for 6–benzyladenine (6–BA) is as an effective stand-alone fruitlet thinner when applied to apples in the post-bloom period at an application rate not to exceed 182 grams active ingredient/acre/season (g/ai/acre/season). 6–Benzyladenine has also been shown to directly increase cell division of treated fruit, resulting in improvements in fruit size over what would be expected from the normal thinning effect. The frequency and timing of application will vary according to the specific growing conditions being treated.

The second proposed new use is to reduce alternate bearing in pistachio and thus increase cumulative yield. The proposed maximum application rate for pistachio is 60 g/ai/acre/season.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* 6–Benzyladenine *N*-(phenylmethyl)-1H-purin-6-amine has been tested and residue data generated have been provided to EPA by Valent BioSciences Corporation.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Trials conducted in various states (MI, NY, OR, PA, VA, and WA) and on various apple cultivars, support the proposed temporary exemption from the requirement of a tolerance. Residue levels following the maximum number (four) of applications on apple were very close to the limit of quantitation (LOQ) of 5 parts per billion (ppb) at normal harvest, which averaged 80 days after the last application. Trials indicate rapid degradation of 6–BA residues among all the apple varieties and geographies evaluated.

The analytical methods for detection of 6–BA in apple raw agricultural and processed commodities are comprised of extraction, cleanup on a strong cation exchange (SCX) solid-phase extraction cartridge, derivitization and quantitation by gas chromatography (GC). These were developed by Valent BioSciences Corporation, constituting a practical analytical method for detecting and measuring levels of 6–BA in or on commodities with a limit of quantitation (LOQ) of 0.005 ppm that allows for monitoring of food, with the residues at or above the LOQ which has been submitted to EPA.

Residue data on 6–BA use on pistachio have been provided to EPA by Valent BioSciences Corporation. Trials were conducted in locations representing the major pistachio production area in the United States. No residues were detected following the maximum number (two) of applications at normal harvest, which averaged 60 days after the last application.

An analytical method based on extraction, clean up and derivitization of 6–BA followed by quantitation by GC was submitted to EPA for residue determination on pistachio. This GC method is adequate for determining residues in or on pistachios with a LOQ of 0.05 ppm.

3. *Analytical method.* Usually, a request for an exemption from the requirement of a tolerance is not accompanied by residue data and an analytical method. Valent BioSciences Corporation has provided this information to the Agency in this case. The information demonstrates that any residue is detected at levels very close to the LOQ. Although a numeric tolerance could be established, it would be very difficult to enforce, as demonstrated by the risk characterization. Valent BioSciences Corporation proposes that the submitted residue data and analytical method support their conclusion that there is a

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reasonable certainty that no harm to humans or the environment will result from the experimental use of 6–BA on apples and pistachios.

C. Mammalian Toxicological Profile

1. *Acute toxicity.* The oral LD_{50} of 6–benzyladenine is estimated by probit analysis at 1.3 grams/kilogram (g/kg) in the rat. The dermal LD_{50} in the rabbit is >5.0 g/kg. The acute inhalation LC_{50} in the rat is 5.2 milligrams/Liter/hour (mg/L/hour). A primary eye irritation study in the rabbit showed moderate conjunctival effects which cleared within 7 days. A dermal irritation study in the rabbit showed slight dermal irritation, which lasted for 5 days. Sensitization potential has been examined, and 6–benzyladenine (99% pure) was demonstrated not to be a dermal sensitizer in guinea pigs under conditions of the study.

2. *Genotoxicity.* Mutagenicity studies including Ames test, mouse micronucleus assay, and unscheduled DNA synthesis (UDS) assay in rat were negative for mutagenic effects.

3. *Developmental toxicity.* Developmental toxicity in rats fed 6–benzyladenine (99% pure) was manifested as significantly decreased fetal body weight (bwt), increased incidence of hydrocephaly and unossified sternbrae, incompletely ossified phalanges, and malaligned sternbrae at 175 milligrams/kilogram body weight/day (mg/kg bwt/day). Maternal toxicity was also observed at 175 mg/kg bwt/day, which was manifested as significantly decreased body weight, weight gain, and food consumption. Thus the no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) for maternal and developmental toxicity were 50 and 175 mg/kg bwt/day, respectively.

4. *Subchronic toxicity.* 6–Benzyladenine (99% pure) fed to rats for 13 weeks produced decreased weight gain at 1,500 and 5,000 ppm (121 and 322 mg/kg bwt/day) in females and 5,000 ppm (295 mg/kg bwt/day) in males. This decreased weight gain appeared to be related to decreased food consumption. Serum alkaline phosphatase activity and blood urea nitrogen levels were increased in both sexes receiving 5,000 ppm; thus, the NOAEL was 1,500 ppm (approximately 111 mg/kg bwt/day in both sexes combined) and the LOAEL was 5,000 ppm (approximately 304 mg/kg bwt/day in both sexes), based on the decreased body weight gain, food consumption, increased blood urea nitrogen, and minimal histological changes in the kidneys.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* In conducting this exposure assessment, Valent BioSciences Corporation used very conservative assumptions; 100% of all commodities were assumed to be treated, and those residues would be at twice the LOQ -- which result in a large overestimate of human exposure. The analysis assumes that all residues have the same magnitude, and the treated commodity is 100% of a daily diet. Thus, in making a safety determination for these temporary tolerance exemptions, Valent BioSciences Corporation took into account this very conservative exposure assessment. The last application precedes harvest by approximately 2.5 months in apples; therefore, the potential for dietary exposure is considered negligible by Valent BioSciences Corporation. Application precedes harvest by approximately 2 months in pistachios. Also pistachios have their hulls, which cover the shell, removed at harvest; therefore, the potential for dietary exposure is considered negligible by Valent BioSciences Corporation. Residues are below the LOQ (0.05 ppm) in pistachio.

ii. *Drinking water.* The proposed uses on apples and pistachios are not expected to add potential exposure to drinking water. Soil leaching studies have suggested that 6–BA is relatively immobile, absorbing to sediment. Residues reaching surface waters from field runoff should quickly absorb to sediment particles and be partitioned from the water column. 6–Benzyladenine also has low solubility in water, 0.061 mg/mL, and detections in ground water are not expected. Valent BioSciences Corporation concludes that together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure.* The proposed uses involve application of 6–BA to crops grown in an agriculture environment. The only non-dietary exposure expected is that to applicators. However, the protective measures prescribed by the product's label are expected to be adequate to minimize exposure and protect applicators of the chemical.

E. Cumulative Exposure

No cumulative adverse effects are expected from long-term exposure to this chemical. There is no reliable information to indicate that toxic effects produced by 6–BA would be cumulative with those of any other pesticide chemical.

F. Safety Determination

1. *U.S. population.* Chronic dietary exposure estimates were conducted for the overall U.S. population and 25 population subgroups, including infants and children. These estimated daily intakes were compared against a chronic population adjusted dose (cPAD) based on a NOAEL of 50 mg/kg bwt/day from a developmental study in rats. To account for intraspecies and interspecies variation and the use of an acute toxicological endpoint for a chronic assessment, an uncertainty factor (UF) of 1,000 was applied to the acute NOAEL. This resulted in a cPAD of 0.05 mg/kg bwt/day. Daily exposure for the overall U.S. population was estimated by Valent BioSciences Corporation to be 0.000014 mg/kg bwt/day, representing less than 0.1% of the estimated cPAD.

2. *Infants and children.* Estimated daily exposures from tolerance level residues on 100% of the apple and pistachio commodities for the most highly exposed population subgroup, non-nursing infants, was estimated to be 0.000085 mg/kg bwt/day, or 0.2% of the estimated cPAD.

G. Effects on the Immune and Endocrine Systems

6–Benzyladenine is a naturally occurring cytokinin which has plant growth regulator properties. There is no indication that this plant growth regulator belongs to a class of chemicals known or suspected of having adverse effects on the immune and endocrine systems. It can be concluded that based upon the existing toxicology there would be no adverse effects on the immune or endocrine systems from the use of 6–benzyladenine. Last, there is no evidence that 6–benzyladenine bioaccumulates in the environment.

H. Existing Tolerances

The plant growth regulator 6–benzyladenine is exempt from the requirement of a tolerance when used as a fruit-thinning agent at an application rate not to exceed 30 grams of active ingredient per acre in or on apples.

I. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits for use of 6–benzyladenine on apples or pistachio.

[FR Doc. 02–7498 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–3]

Arsenic Treatment Demonstrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (U.S. EPA) plans to conduct a demonstration program on the treatment (reduction and/or removal) of arsenic in drinking water. The U.S. EPA recently promulgated a standard that limits arsenic concentrations in drinking water to 10 ug/l. Through this demonstration program the U.S. EPA intends to identify and evaluate the ability of commercially available technologies and engineering or other approaches to cost effectively meet the new standard in small water systems (<10,000 customers). Through this notice, the U.S. EPA is inviting the public at large, governmental and regulatory agencies, public health agencies, and drinking water utilities to identify small water utilities that may be interested in hosting a demonstration at their facility. Such utilities should be those which will require treatment to comply with the new arsenic standard. This notice does not constitute a procurement.

DATES: Please submit the requested information by June 28, 2002.

ADDRESSES: Details on participation in this study can be found at *http://www.epa.gov/ORD/NRMRL/arsenic/*.

FOR FURTHER INFORMATION CONTACT: Robert Thurnau, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio, 45268, telephone (513) 569–7504.

Dated: February 15, 2002.

E. Timothy Oppelt,

Director, National Risk Management Research Laboratory.

[FR Doc. 02–7493 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Reports and Guidance Documents

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice of New Exposure Drafts *Target Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government,* and *Selected Standards for the Consolidated Financial Report of the United States Government.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published two new exposure drafts, Target Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government, and Selected Standards for the Consolidated Financial Report of the United States Government.

A summary of the proposed Statement follows: On March 19, 2002, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED), Target Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government, that proposes the concept that the primary target audience of the CFR is external users represented by citizens and their intermediaries. The second exposure draft (ED), Selected Standards for the Consolidated Financial Report of the United States Government, proposes standards on applying FASAB standards to the CFR, exempting the CFR from the requirement for the Statement of Budgetary Resources and the Statement of Financing, and requiring two new statements for the CFR.

The exposure drafts will soon be mailed to FASAB's mailing list of subscribers. Additionally, it is available on FASAB's home page *http://www.fasab.gov*. Copies can be obtained by contacting FASAB at (202) 512–7350, or *lomaxm@fasab.gov* or *fontenroser@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by June 30, 2002, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy M. Comes, Executive Director, 441 G Street, NW., Suite 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: March 25, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–7434 Filed 3–27–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Report and Guidance Documents

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice of New Exposure Draft *Eliminating the Category National Defense Property, Plant, and Equipment.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, Eliminating the Category National Defense Property, Plant, and Equipment.

A summary of the proposed Statement follows: On March 25, 2002, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 8, Supplementary Stewardship Reporting, and Statement of Federal Financial Accounting Standards (SFFAS) 6, Accounting for Property, Plant and Equipment. The amendment proposed in the ED would make the following changes. The term "ND PP&E" would be rescinded. All items previously considered ND PP&E would be classified as general PP&E. Accordingly, these items would be capitalized and, with the exception of land and land improvements that produce permanent benefits, depreciated. This ED also notes that all entities are permitted to use the composite or group depreciation methodology to calculate depreciation. The amendments proposed in this ED would take effect for accounting periods beginning after September 2002.

The exposure draft will soon be mailed to FASAB's mailing list of subscribers. Additionally, it is available on FASAB's home page *http://www.fasab.gov/*. Copies can be obtained by contacting FASAB at (202) 512–7350, or *wascakr@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft.

Written comments are requested by May 20, 2002, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., 6814, Washington, D.C. 20548, or call (202) 512–7350.

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Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: March 25, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–7435 Filed 3–27–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jbherman@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0174.

Title: Section 73.1212, Sponsorship identification; list retention; related requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, state, and not-for-profit institutions.

Number of Respondents: 15,122.

Estimated Time Per Response: Recordkeeping requirement—0.1 hours/broadcast; sponsorship identification—4 seconds/broadcast.

Frequency of Response: Recordkeeping requirement: and third party disclosure requirement.

Total Annual Burden: 91,231 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.1212 requires a broadcast station to identify the sponsor of any matter for which consideration is provided. For matter advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In the case of television political advertisements concerning candidates for pubic office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical height of the television screen. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter. Sponsorship announcements are waived with respect to broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection. The data is used by the public so that they may know by whom they are being persuaded.

OMB Control No.: 3060–XXXX.

Title: Data Quality Comment Form.

Form No.: FCC Form 115.

Type of Review: New collection.

Respondents: Individuals or households, business or other for-profit, not-for profit institutions, and state, local or tribal government.

Number of Respondents: 25.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 25 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 115 is required by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 105–554). Section 515 directs federal agencies to implement guidelines that include administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with OMB guidelines. The Commission has developed FCC Form 115 to obtain the necessary data from the public and to use it as a tracking mechanism for these types of comments.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7405 Filed 3–27–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 20, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to *jbherman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jbherman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1005.

Title: Numbering Resource Optimization—Phase 3.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, state, local, or tribal government.

Number of Respondents: 53.

Estimated Time Per Response: 63.77 hours (average hours per response).

Total Annual Burden: 3,380 hours.

Annual Reporting and Recordkeeping Cost Burden: $12,000.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Needs and Uses: In the Third Report and Order and Second Order on Reconsideration in CC Docket No. 99–200, the Commission continued its efforts to maximize the efficiency with which numbering resources in the North American Number Plan (NANP) are utilized. In order for price cap LECs to qualify for exogenous adjustment to access charges established under the federal cost recovery mechanism, they must demonstrate that pooling results in a net cost increase rather than a cost reduction. Applications to state commissions from carriers must demonstrate that certain requirements are met before states may grant use of the safety valve mechanism. State commissions seeking to implement service-specific and/or technology-specific area code overlays, must request delegated authority to do so.

The Commission received emergency (6 month) approval under the emergency processing procedure on 3/12/02. This notice is being published in the **Federal Register** to start a 60-day comment period under the Paperwork Reduction Act in order to obtain a full three-year approval.

OMB Control No.: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Station.

Form No.: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,636.

Estimated Time Per Response: 1–3 hours.

Total Annual Burden: 2,636 hours.

Annual Reporting and Recordkeeping Cost Burden: $1,054,400.

Frequency of Response: On occasion, biennial and other reporting requirements.

Needs and Uses: FCC Form 323–E is filed by licensees/permittees of noncommercial FM and TV broadcast stations when the original construction permit is granted, on the date it applies for a station license, in conjunction with the station's renewal application and every two years thereafter. The data are used by FCC staff to determine if licensees/permittees are in compliance with Sections 308 and 310 of the Communications Act, as amended, and the Commission's ownership disclosure requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7406 Filed 3–27–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–18–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404)498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Telephone Survey of Urban Mosquito Control Programs—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). West Nile virus is a mosquito-borne virus that is native to the eastern hemisphere, where it recently caused large epidemics of human disease in eastern Europe, Russia, and the Middle East. In 1999, West Nile virus first appeared in the United States when it caused an epidemic of mosquito-borne encephalitis and meningitis in the greater New York City metropolitan area. During 1999–2000, 83 persons (mostly senior citizens) with West Nile viral disease and 9 fatalities were reported in New York, New Jersey, and Connecticut. The apparent primary vector to humans was the house mosquito, *Culex pipiens*, which occurs in virtually all urban areas of the United States. This species is also one of the principal vectors of St. Louis encephalitis virus, historically the most important cause of epidemic viral encephalitis in the United States, and a close relative of West Nile virus. Based on the detection of West Nile virus in birds and mosquitoes, this virus has now spread to a 12-state region of the eastern United States, extending from New Hampshire to North Carolina, and from the Atlantic coast to western Pennsylvania. It is likely that West Nile virus will continue to expand its geographic range within the United States, mainly through distribution by infected birds. Thus, many cities in the United States are at risk for West Nile virus epidemics, especially those without mosquito control programs that target Culex mosquitoes. No systematically collected information on such programs is currently available. Currently in the United States, mosquito control is largely a local issue funded by state and local tax dollars. In the proposed survey, mosquito control program managers will be identified and interviewed by telephone to estimate the number of U. S. cities of at least 100,000 population that have functional programs for controlling urban *Culex* mosquitoes, by geographic region. The survey will be conducted twice, once at baseline and again two years later, to assess national and regional trends in establishing such control programs. This information will serve as a resource for the Centers for Disease Control and Prevention, state and local health departments, policymakers, and funding agencies. The estimated annualized burden is 48 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Initial Telephone interview	143	1	10/60
Follow-up Telephone Interview with Initial Respondents	143	1	10/60

Dated: March 19, 2002.

Nancy Cheal,

Acting Associate Director for, Policy, Planning and Evaluation, Centers for Disease Control, and Prevention.

[FR Doc. 02–7408 Filed 3–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 56562–63, dated November 8, 2001) is amended to revise the mission statement for the Office of the Director, Division of Adult and Community Health, and establish the Emerging Investigations and Analytic Methods Branch, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the mission statement for the *Office of the Director (CL31), Division of Adult and Community Health (CL3),* and insert the following:

(1) Manages, coordinates, and evaluates the activities and programs of the Division; (2) ensures that Division activities are coordinated with other components of CDC both within and outside the Center, with Federal, State, and local health agencies, and with voluntary and professional health agencies; (3) provides leadership and coordinates Division responses to requests for research, consultation, training, collaboration, and technical assistance or information on managed care, health promotion, behavioral surveys, cardiovascular health, aging, epilepsy, and arthritis; (4) provides administrative, logistical, and management support for Division field staff; (5) provides administrative and management support for the Division including guidance on the organization of personnel and the use of financial resources, and oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

After the functional statement for the *Cardiovascular Health Branch (CL33),* insert the following:

Emerging Investigations and Analytic Methods Branch (CL34). (1) Conducts epidemiologic research and investigations of cross-cutting emerging scientific issues for NCCDPHP; (2) uses geographic information systems (GIS) to provide spatial and temporal relationships among data; (3) conducts operational research to evaluate the cost-effectiveness or cost-benefit of chronic disease prevention and control technologies and develops and recommends national policy to address issues related to the economics of health care; (4) performs research on racism and its social determinants on health, adverse childhood events, mental health, gene environment interactions, and alcohol; (5) coordinates and provides guidance in the evaluation of community and state-based intervention programs; (6) designs and produces a wide range of visual materials (e.g., slides, overheads, exhibits) for presentations and instructional activities; (7) coordinates Branch activities through the Division with other components of CDC, other Federal, State, and local Government agencies, and other private, public, nonprofit, and international organizations as appropriate.

Dated: March 19, 2002.

Jeffrey P. Koplan,

Director.

[FR Doc. 02–7385 Filed 3–27–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: April 17–18, 2002.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Martin H. Goldrosen, BS, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7394 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 18, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jerry Roberts, PhD., Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7398 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: March 21, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7399 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 26, 2002.

Time: 10:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2002.

Time: 10:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2002.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 29, 2002.

Time: 10:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

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Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7397 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 20, 2002, 2:00 PM to February 20, 2002, 3:30 PM, Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC, 20007 which was published in the **Federal Register** on February 7, 2002, 67 FR 5841–5842.

The meeting has been changed to a telephone conference call to be held March 27, 2002, from 3:00 PM to 4:00 PM. The meeting is closed to the public.

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7395 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 1, 2002.

Time: 3:45 PM to 5:15 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2002.

Time: 9:45 AM to 11:45 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, *leving@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 98.893, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7396 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Proposed Change in PHS Policy on Humane Care and Use of Laboratory Animals

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The NIH is proposing to change the PHS Policy on Humane Care and Use of Laboratory Animals (PHS Policy) to permit institutions with PHS Animal Welfare Assurances to submit verification of Institutional Animal Care and Use Committee (IACUC) approval for competing applications subsequent to peer review but prior to award. Current PHS Policy, applicable to all PHS-conducted or supported activities involving live, vertebrate animals, provides institutions with a PHS approval Animal Welfare Assurance the option of submitting IACUC approval for competing application subsequent to the submission of the application of proposal, but within 60 days from the receipt date. NIH grants policy mandates that applications lacking IACUC approval are considered incomplete; thus IACUC approval is presently required prior to initial NIH peer review.

DATES: Comments must be submitted on or before May 28, 2002.

ADDRESSES: Comments may be submitted to Anthony Demsey, Ph.D., Senior Advisor for Policy, Office of Extramural Research, National Institutes of Health, Building 1, Room 154, Bethesda, Maryland 20892. All comments received will be available for inspection weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 4:30 p.m. at this address.

SUPPLEMENTARY INFORMATION: The NIH is proposing to revise the requirement that IACUC verification be submitted prior to NIH peer review. This revision would permit Assured institutions to submit IACUC verification for competing application subsequent to peer review but prior to award. This concept is often referred to as "just-in-time." The proposed change would enhance the flexibility of institutions and reduce the burden on applicants and IACUCs, allowing resources to be focused on substantive review of proposals likely to be funded.

On May 1, 2000, the NIH announced that IRB approval would no longer be required prior to NIH peer review of an application that involves human subjects. Because of the different bases for these policies, the NIH did not extend this permission to IACUC approval at that time. However, the NIH is now inviting comments from the community on proceeding with a revision of the Humane Care and Use of Laboratory Animals to permit IACUC approval for competing applications to be submitted subsequent to peer review but prior to award. If such a change were adopted it would be optional (*i.e.*, as a matter of institutional policy institutions could require IACUC review and approval prior to submission of applications or prior to NIH peer review). The current requirement that modifications required by the IACUC must be submitted to NIH with the verification of IACUC approval would remain in effect.

Public comment on this proposed revision is encouraged.

Dated: March 19, 2002.

Ruth Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7400 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on One Additional Substance Proposed for Listing in the Report on Carcinogens, Eleventh Edition

Additional Nomination Under Consideration

The National Toxicology Program (NTP) announces its intent to review one additional substance, 2-Amino-3,8-dimethylimidazo[4,5-f]quinoxaline (MeIQx), (Chemical Abstract Services Registry Number 77500–04–0) for possible listing in the Report on Carcinogens (RoC), Eleventh Edition that is scheduled for publication in 2004. This substance is added to the list of nominations under consideration for the Report on Carcinogens (RoC), Eleventh Edition that was announced previously in the **Federal Register** (July 24, 2001: Volume 66, Number 142, pages 38430–38432). Background information about the RoC, including the criteria for listing, is provided in that notice. A detailed description of the review procedures, including the steps in the formal review process, is available at *http://ntp-server.niehs.nih.gov* (see Report on Carcinogens) or can be obtained by contacting Dr. C. W. Jameson, Head of the Report on Carcinogens, at the address below.

MeIQx is a heterocyclic amine that is formed during heating or cooking of meat and fish. It was nominated by the National Institute of Environmental Health Sciences (NIEHS) based on the International Agency for Research on Cancer (IARC) finding of sufficient evidence of carcinogenicity of MeIQx in experimental animals (Vol. 56; 1993).

Public Comment Requested

The NTP invites public comment on this additional nomination, and asks for relevant information concerning carcinogenicity, as well as human exposure. The NTP also invites interested parties to identify any scientific issues related to the listing of this nomination in the RoC that they feel should be addressed during the reviews. Comments concerning this nomination for listing in the Eleventh RoC will be accepted through May 28, 2002. Individuals submitting public comments are asked to include relevant contact information [name, affiliation (if any), address, telephone, fax, and email]. Comments or questions should be directed to Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3118, PO Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov*.

Dated: March 1, 2002.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 02–7401 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–09]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–3041 extension 3574 (this is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals is available at 1 (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is given of administrative actions that have been taken by the Mortgagee Review Board from October 1, 2001 through December 31, 2001.

1. Ambassador Mortgage Corporation, Turnersville, NJ

[Docket No. 99–985–MR]

Action: In a letter dated December 10, 2001, the Board proposed the withdrawal of Ambassador Mortgage Corporation's ("AMC") HUD/FHA approval for three years.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: AMC employed loan officers who were not exclusive employees; AMC failed to provide complete loan origination files for review; and AMC failed to implement and maintain a Quality Control Plan.

2. Capital Mortgage Services/Siwell, Inc., Lubbock, TX

[Docket No. 01–1540–MR]

Action: Settlement Agreement signed December 4, 2001. Without admitting fault or liability, Capital Mortgage Services/Siwell, Inc. ("CMS") agreed to a payment of $1,000.

Cause: HUD received a complaint from an FHA mortgagor which revealed the following violations of HUD/FHA requirements: CMS failed to comply with HUD/FHA's Loss Mitigation policies and failed to provide appropriate loan servicing using required loss mitigation tools; and CMS terminated FHA Mortgage Insurance without the mortgagor's approval.

3. CBSK Financial Group, Inc., Santa Ana, CA

[Docket No. 01–1488–MR]

Action: Settlement Agreement signed November 6, 2001. Without admitting fault or liability, CBSK Financial Group, Inc. ("CBSK") agreed to a payment of $500,000. In addition, CBSK refunded unallowable fees to 18 mortgagors.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: CBSK operated branch offices in Oklahoma and Utah under prohibited branch arrangements; CBSK failed to implement adequate branch office quality control procedures; CBSK failed to ensure unallowable fees were not charged to mortgagors; and CBSK failed to retain complete loan origination files.

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4. Chase Mortgage Company—West, f/k/a Mellon Mortgage Company, Houston, TX

[Docket No. 01–1433–MR]

Action: Settlement Agreement signed October 16, 2001. Without admitting fault or liability, Chase Mortgage Company—West, f/k/a Mellon Mortgage Company, ("CMCW") agreed to a payment of $236,500. CMCW also agreed to indemnify HUD for any losses incurred on 35 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Mellon Mortgage Company ("MMC") failed to comply with HUD's Loss Mitigation policies and procedures; MMC failed to maintain a current and accurate Quality Control Plan and to properly implement the plan; and MMC failed to properly report under HUD's Single Family Default Monitoring System (SFDMS).

5. Continental Capital Corporation, Huntington Station, NY

[Docket No. 01–1588–MR]

Action: By memorandum dated November 8, 2001, the Board referred for Administrative Offset losses that HUD incurred on a loan originated by Continental Capital Corporation ("CCC") that was subject to a 1997 settlement agreement for indemnification.

Cause: CCC failed to comply with the terms of an Indemnification Agreement with the Mortgagee Review Board.

6. Foundation Funding Group, Inc., d/b/a Greatstone Mortgage, Tampa, FL

[Docket No. 01–1583–MR]

Action: In a letter dated November 28, 2001, the Board permanently withdrew Foundation Funding Group, Inc.'s (d/b/a Greatstone Mortgage, "FFGI") HUD/FHA approval.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: FFGI allowed improper charges to be financed into new mortgages; FFGI improperly allowed co-borrowers to be removed from the mortgage note; FFGI refinanced fixed rate mortgages into adjustable rate mortgages in a manner that violated HUD/FHA requirements; FFGI provided improper cash-out on streamline refinanced loans; and FFGI failed to have a Quality Control Plan that complied with HUD/FHA requirements.

7. GHI Corporation, d/b/a U.S. Capital Mortgage, Miami, FL

[Docket No. 00–1360–MR]

Action: Settlement Agreement signed December 18, 2001. Without admitting fault or liability, GHI Corporation, d/b/a U.S. Capital Mortgage ("GHI") agreed to a civil money penalty of $7,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: GHI failed to file an annual loan origination report for 1998, which supplements the requirements of the Home Mortgage Disclosure Act; GHI failed to establish, maintain, and implement a Quality Control Plan in compliance with HUD/FHA requirements; GHI allowed interested third parties to participate in the origination of two HUD/FHA insured loans; and GHI failed to maintain complete loan origination files for three loans.

8. Heartland Mortgage, Inc., Tucson, AZ

[Docket No. 00–1105–MR]

Action: Settlement Agreement signed December 18, 2001. Without admitting fault or liability, Heartland Mortgage, Inc. ("HMI") agreed to a civil money penalty of $5,000. [This settlement agreement resolves the civil money penalty matter previously voted on by the Board. It does not change HUD's withdrawal of Heartland's HUD/FHA approval for three years, as noted in 66 FR at 38305 (July 23, 2001).]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: HMI failed to implement a Quality Control Plan; HMI failed to file annual loan origination reports for 1997 and 1998 which supplements the requirements of the Home Mortgage Disclosure Act; HMI employed two loan officers who were also real estate agents/brokers; HMI failed to properly document gift letters in two loans; HMI failed to properly document liabilities in one loan; and HMI failed to maintain complete loan origination files in 7 loans.

9. Legacy Mortgage, Provo, Utah

[Docket No. 01–1469–MR]

Action: In a letter dated December 5, 2001, the Board proposed the withdrawal of Legacy Mortgage's ("Legacy") HUD/FHA approval for three years. In addition, the Board voted to impose a civil money penalty of $55,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Legacy failed to remit Up-Front Mortgage Insurance Premiums to HUD/FHA within 15 days of closing for 173 loans and failed to segregate escrow funds from operational funds; Legacy failed to submit loans for endorsement within 60 days after loan closing for 146 loans; Legacy failed to properly verify the source and adequacy of funds for the downpayment and/or closing costs for five loans; Legacy failed to properly verify and analyze income in two loans; Legacy failed to ensure property eligibility for HUD/FHA mortgage insurance in four loans; Legacy failed to properly qualify the mortgagors in three loans; and Legacy failed to recognize and adjust for "inducements to purchase" in two loans.

10. Litton Loan Servicing, LP, Houston, TX

[Docket No. 01–1490–MR]

Action: Settlement Agreement signed December 4, 2001. Without admitting fault or liability, Litton Loan Servicing, LP, ("LLSI") agreed to a payment of $35,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: LLSI failed to perform or to document appropriate loan servicing activities; and LLSI failed to consider loss mitigation alternatives when loans were in default or prior to initiating foreclosure.

11. McSwain Mortgage Company, f/k/a HomeLink Mortgage Company, LLC, Memphis, TN

[Docket No. 01–1422–MR]

Action: In a letter dated November 28, 2001, the Board proposed the withdrawal of McSwain Mortgage Company's (f/k/a HomeLink Mortgage Company, "HLM") HUD/FHA approval for three years. In addition, the Board voted to impose a civil money penalty of $36,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: HLM violated the Department's conflict of interest prohibited payments provisions; HLM failed to establish, maintain and implement a Quality Control Plan for the origination of FHA insured mortgages; and HLM failed to be clearly identified to the general public.

12. Northstar Mortgage Corporation, Dallas, TX

[Docket No. 00–1346–MR]

Action: Settlement Agreement signed December 12, 2001. Without admitting fault or liability, Northstar Mortgage Corporation, ("NSMC") agreed to a civil money penalty of $13,000. NSMC also agreed to indemnify HUD for any losses incurred on two loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: NSMC approved loan applications originated and processed by personnel not employed by NSCM or Capitol State Mortgage Corporation, its loan correspondent; NSMC failed to accurately calculate the mortgagor's income and to justify the income used on one loan; NSMC failed to verify or adequately document the source of funds required for closing on two loans.

13. Platinum Capital Group, Inc., Manhattan Beach, CA

[Docket No. 00–1352–MR]

Action: Settlement Agreement signed December 28, 2001. Without admitting fault or liability, Platinum Capital Group, Inc., ("PCG") agreed to a civil money penalty of $21,500. PCG also agreed to indemnify HUD for any losses incurred on two loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: PCG failed to maintain and implement a quality control plan in compliance with HUD requirements; PCG failed to engage in business practices that conform to generally accepted practices of prudent mortgagees; PCG employed loan officers that were not exclusive employees of PCG; PCG failed to ensure that gift letters contained all required information; and PCG failed to ensure compliance with HUD/FHA's ban on loans to private investors.

14. Traditional Bankers Mortgage Corporation, Ponce, PR

[Docket No. 00–1321–MR]

Action: Settlement Agreement signed December 28, 2001. Without admitting fault or liability, Traditional Bankers Mortgage Corporation, ("TBMC") agreed to a civil money penalty of $40,000. TBMC also agreed to indemnify HUD for any losses incurred on nine loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: TBMC allowed lenders not approved by HUD/FHA to participate in the origination and processing of loans insured by the Department; TBMC allowed non-employees to participate in the origination of loans insured by HUD/FHA; TBMC failed to resolve conflicting information regarding a borrower's employment; TBMC failed to properly verify the borrower's source of funds for down payment and/or closing costs; TBMC failed to properly verify the borrowers' effective income; TBMC failed to properly address conflicting and/or derogatory credit information; TBMC failed to resolve inconsistencies on the property appraisal reports; TBMC submitted an unacceptable loan for FHA insurance; TBMC failed to be clearly identified to the general public; and TBMC failed to establish, maintain, and implement a Quality Control Plan for the origination of HUD/FHA insured mortgages.

Dated: March 20, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 02–7389 Filed 3–27–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Protection Act; Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised marine mammal stock assessment reports for Pacific walrus, polar bear, and sea otter in Alaska; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has developed draft revised marine mammal stock assessment reports for Pacific walrus, polar bear, and sea otter in Alaska which are available for public review and comment.

DATES: Comments must be received by June 26, 2002.

ADDRESSES: Copies of the draft revised stock assessment reports are available from the Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503, (800) 362–5148. They can also be viewed in Adobe Acrobat format at *http://www.r7.fws.gov/mmm/SAR.*

Comments on the draft revised stock assessment reports should be sent to: Supervisor, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503 by conventional mail, or *mmm.sar@fws.gov* by electronic mail.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361–1407) requires the FWS and the National Marine Fisheries Service (NMFS) to prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. Section 117 of the MMPA also requires the FWS and the NMFS to review and revise the stock assessment reports (a) at least annually for stocks which are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every three years for all other stocks. Stock assessment reports for Pacific walrus, polar bar, and sea otters in Alaska were last published in 1998.

Previous stock assessments covered a single stock of Pacific walrus, two stocks of polar bears (Bering/Chukchi seas and southern Beaufort sea), and a single stock of sea otters in Alaska. There are no changes in stock identification for Pacific walrus and polar bear, however three stocks of sea otters (southwest Alaska, southcentral Alaska, and southeast Alaska) have been identified.

A strategic stock is defined in the MMPA as a marine mammal stock (A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or (C) which is listed as a threatened or endangered species under the Endangered Species Act of 1973, or is designated as depleted under the MMPA.

With the exception of the southwest Alaska stock of sea otters, all stocks remain classified as non-strategic in these draft reports. Based on the best available scientific information, sea otter numbers across southwest Alaska are declining. In April 2000, an aerial survey of sea otters in the Aleutian Islands indicated the population had declined by 70% during the period from 19922000. In August 2000 FWS designated the northern sea otter in the Aleutian Islands as a candidate species under the Endangered Species Act. Additional surveys in 2000 and 2001 along the Alaska Peninsula and Kodiak archipelago also showed population declines in these areas. As a result, the southwest Alaska stock is classified as strategic in the draft report and is under review for possible listing under the Endangered Species Act.

A summary of the draft revised stock assessment reports is presented in Table 1. The table lists each marine mammal stock, estimated abundance (N_{EST}), minimum abundance estimate (N_{MIN}), maximum theoretical growth rate (R_{MAX}), recovery factor (F_R), Potential Biological Removal (PBR), annual

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estimated average human-caused mortality, and the status of each stock.

In accordance with the MMPA, a list of the sources of information or public reports upon which the assessment is based is included in this notice.

TABLE 1.—SUMMARY OF DRAFT STOCK ASSESSMENT REPORT FOR PACIFIC WALRUS POLAR BEAR, AND SEA OTTER IN ALASKA

Species	Stock	N_{EST}	N_{MIN}	R_{MAX}	F_R	PBR	Mortality causes (5 yr. average)			Stock/Status
							Subsistence	Fishery	Other	
Pacific Walrus.	Alaska	.....	.....	0.08	.....	.....	5,789	2	4	Non-strategic.
Polar Bear	Alaska Chukchi/Bering Seas	.....	.....	0.06	0.5	.....	45 (Alaska) – (Russia)	0	0 (Alaska) – (Russia)	Non-strategic.
Polar Bear	Alaska Southern Beaufort Sea	2,272	1,971	0.06	1.0	88	34 (Alaska) 20 (Canada)	0	<1 (Alaska) 0 (Canada)	Non-strategic.
Sea Otter ..	Southeast Alaska.	8,807	8,709	0.20	1.0	871	301	0	0	Non-strategic.
Sea Otter ..	Southcentral Alaska.	21,749	19,508	0.20	1.0	1,951	297	0	0	Non-strategic.
Sea Otter ..	Southwest Alaska.	23,967	21,518	0.20	0.5	1,076	97	<1	0	Strategic.

Dash (–) indicates unknown value.

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Dated: January 29, 2002.

David B. Allen,

Regional Director.

[Marine Mammal Protection Act; Stock Assessment Reports]

[FR Doc. 02–7436 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0079).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart G, Abandonment of Wells.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart G, Abandonment of Wells.

OMB Control Number: 1010–0079.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on offshore resources in the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act Amendment of 1978 amended section 3(6) to state that "operations in the outer Continental Shelf should be conducted * * * using technology, precautions, and techniques sufficient to prevent or minimize * * * physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." To carry out these responsibilities, the Secretary has authorized MMS to issue orders and regulations governing offshore oil and gas lease operations.

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart G, Abandonment of Wells, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program). For MMS to determine the necessity to allow a well to be temporarily abandoned, the lessee/operator must demonstrate that there is a reason to not permanently abandon the well, and the temporary abandonment will not constitute a significant threat to fishing, navigation, or other uses of the seabed. We use the information and documentation to verify that the lessee is diligently pursing final disposition of the well, and the lessee has performed the temporary plugging of the wellbore.

It should be noted that MMS is in the process of issuing a final rulemaking that will establish a new 30 CFR 250, subpart Q, on decommissioning activities. When these regulations take effect, they will consolidate all of the OCS decommissioning activities, including well abandonment requirements, and 30 CFR 250, subpart G, will be removed from 30 CFR part 250. Should the new final subpart Q regulations take effect before expiration of the current OMB approval of the subpart G information collection requirements, we would take no further action to renew OMB approval of the subpart G information collection requirements.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 650 hours. The following chart details the individual reporting components and respective hour burden estimates of this ICR. There are no recordkeeping requirements under 30 CFR 250, subpart G. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 Subpart G	Reporting requirement	Burden per requirement
701; 702(i); 703(b)	Submit form MMS–124 to request approval of well abandonment operations—burden included with 1010–0045.	
703(c)	Submit annual report on plans for reentry to complete or permanently abandon the well	2 hours.
704(a)	Request approval of site clearance method	4 hours.
704(b)	Submit form MMS–124 to certify location cleared of obstructions—burden included with 1010–0045.	
700–704	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	2 hours.

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Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens for this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 15, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7380 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart C, Pollution Prevention Control.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." Section 1334(a)(8) requires that regulations include provisions "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State." Section 1843(b) calls for "regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart C, Pollution Prevention and Control, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and

information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions collect information required under subpart C to ensure that there is no threat of serious, irreparable, or immediate damage to the marine environment, and to identify potential hazards to commercial fishing caused by OCS activities. We also use the information collected to ensure that operations are conducted according to all applicable regulations and permit conditions/requirements, comply with the approved emission levels to minimize air pollution of the OCS and adjacent onshore areas, and are conducted in a safe and workmanlike manner. In addition, we require daily inspection of facilities to prevent pollution and to ensure that problems observed have been corrected.

In the Gulf of Mexico OCS Region (GOMR), we require lessees/operators to periodically monitor and collect air emissions and meteorological data to satisfy Environmental Protection Agency and Clean Air Act requirements. The states and regional air quality groups use the information to perform regional air quality modeling in support of State Implementation Plans (SIPs). The GOMR plans regional modeling for emissions data in the year 2005. In preparation, affected respondents will be required to collect and report air pollutant emissions data for OCS activities in the GOMR for the year 2005. The year 2005 corresponds to a Clean Air Act requirement for states with non-attainment areas to prepare and/or update air pollutant emission inventories suitable for air quality modeling in support of the development of SIPs. Thus the year 2005 OCS emissions inventory will be contemporary with the emissions inventory the states are required to prepare. The onshore and OCS 2005 data will be used in regional air quality modeling and emissions control decision-making. Respondents will gather OCS 2005 data during the calendar year 2005 and report in 2006.

Frequency: On occasion, monthly, or annually; and daily for inspection recordkeeping.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees and 17 states.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved total "hour" burden for this information collection is 194,311 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart C	Reporting and recordkeeping requirement	Burden per requirement
	Reporting Requirements	
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, and other well solids.	3 hours.
300(c)	Mark items that could snag or damage fishing devices	½ hour.
300(d)	Report items lost overboard	1 hour.
303(a), (b), (c), (d), (i), (j); 304(a), (f).	Submit Exploration Plans and Development and Production Plans—burden covered in 1010–0049.	
303(k); 304(g)	If requested, submit additional or follow-up monitoring information for year 2000 study of selected sites in the Breton National Wildlife Area, GOMR.	8 hours.
303(k); 304(a), (g)	If requested, submit additional or follow-up monitoring information for year 2000 study of selected sites in the western/central GOMR on ozone and regional haze air.	4 hours.
303(k); 304(a), (g)	Monitor air quality emissions and submit data to MMS or to a State (new 1-year study of sites in the western/central GOMR on ozone and regional haze air quality—data collection in 2005; report submitted in 2006).	2 hours per month × 12 months = 24 hours.
303(l); 304(h)	Collect and submit meteorological data—not routinely collected; none planned for the next 3 years.	
304(a), (f)	Affected State may submit request to MMS for basic emission data from existing facilities to update State's emission inventory.	4 hours.
304(e)(2)	Submit compliance schedule for application of best available control technology	40 hours.
304(e)(2)	Apply for suspension of operations—burden covered in 1010–0114.	
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	8 hours.
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2 hours.
	Recordkeeping Requirements	
300(d)	Record items lost overboard	1 hour/year.
301(a)	Inspect drilling/production facilities daily for pollution; maintain inspection/repair records 2 years.	¼ hour/day.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We anticipate no non-hour cost burdens during the next 3 years.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the

proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. We have identified none for the next 3 years. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 28, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7381 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0059).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems.

OMB Control Number: 1010–0059.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS. This must be done in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart H, Oil and Gas Production Safety Systems, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

MMS OCS Regions use the information submitted under subpart H to evaluate equipment and/or procedures that lessees propose to use during production operations, including evaluation of requests for departures or use of alternative procedures. Information submitted is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements.

The Gulf of Mexico OCS Region (GOMR) has recently re-evaluated its policy, and issued guidance, regarding approval of "new" requests to use a chemical-only fire prevention and control system in lieu of a water system. With respect to "currently-approved" departures, MMS may require additional information be submitted to maintain approval of the departure. They use the information to determine if the chemical-only system provides the equivalent protection of a water system for the egress of personnel should a fire occur.

In the Pacific OCS Region, MMS reviews copies of the Emergency Action Plans (EAP) that lessees and operators submit to their local air quality agencies to ensure that abatement procedures do not jeopardize safe platform operations.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 5,204 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart H	Reporting and recordkeeping requirement	Burden per requirement (hour(s))
	Reporting Requirements	
800; 801; 802; 803; related NTLs	Submit application and request approval for design, installation, and operation of subsurface safety devices and surface production-safety systems; including related requests for departures or use of alternative procedures (i.e., firefighting systems, supervisory control and data acquisition systems, valve closure times, time delay circuitry, etc.)	4
801(g)	Submit annual verification of no-flow condition of well	2
801(h)(1)	Form MMS–124, Sundry Notices and Reports on Wells—burden covered under 1010–0045	
801(h)(2); 803(c)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service—usual/customary safety procedures for removing or identifying out-of-service safety devices.	
802(e)(5)	Submit statement verifying final surface production safety system installed conforms to approved design.	3
803(b)(8); related NTLs	Submit information to maintain current firefighting system departure approval (GOMR)	4
803(b)(8)(iv)	Post diagram of firefighting system	2
804(a)(11); 800	Notify MMS prior to production and request MMS conduct pre-production test and inspection	5
804; related NTLs	Request departure from testing schedule requirements	1
804; related NTL	Submit copy of state-required EAP containing test abatement plans (Pacific OCS Region)	1
806(c)	Request evaluation and approval of other quality assurance programs covering manufacture of SPPE.	2
800–807	General departure and alternative compliance requests not specifically covered elsewhere in subpart H regulations.	2
	Recordkeeping Requirements	
801(h)(2); 802(e); 804(b)	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, departure approvals, etc.	12
803(b)(1)(iii), (2)(i)	Maintain pressure-recorder charts	10
803(b)(4)(iii)	Maintain schematic of the emergency shutdown which indicates the control functions of all safety devices.	4
803(b)(11)	Maintain records of wells which have erosion-control programs and results	2.8

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a

result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 13, 2002.

William S. Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–7382 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 250, subpart M, Unitization.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 1334(a) of the OCS Lands Act specifies that the Secretary prescribe rules and regulations "to provide for the prevention of waste and conservation of the natural resources of the [O]uter Continental Shelf, and the protection of correlative rights therein" and include provisions "for unitization, pooling, and drilling agreements." To carry out these responsibilities, the Secretary has authorized MMS to issue orders and regulations governing offshore oil and gas lease operations.

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart M, Unitization, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory or are required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program). MMS OCS Regions use the information to determine whether to approve a proposal to enter into an agreement to unitize operations under two or more leases or to approve modifications when circumstances change. The information is necessary to ensure that operations will result in preventing waste, conserving natural resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 2,742 hours. The following chart details the individual reporting components and respective hour burden estimates of this ICR. There are no recordkeeping requirements under 30 CFR 250, subpart M. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement (hours)
1301	General description of requirements—burden included in following sections.	
1301(f)(3), (g)(1)	Request suspension of production or operations—burden covered under 1010–0114.	
1302(b)	Request preliminary determination on competitive reservoir	24
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence	24
1302(c), (d)	Submit joint plan of operations or separate plan if agreement cannot be reached	24
1303	Apply for voluntary unitization, including submitting unit agreement, unit operating agreement, joint plan of operation, and supporting data; request for variance from model agreement.	144

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement (hours)
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, and supporting data; serving nonconsenting lessees with documents.	144
1304(d)	Request hearing on required unitization	1
1304(e)	Submit statement at hearing on compulsory unitization	4
130(e)	Submit three copies of verbatim transcript of hearing	1
1304(f)	Appeal final order of compulsory unitization—burden covered under 1010–0121.	
1300–1304	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	2

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: Section 250.1304(d) provides an opportunity for parties notified of compulsory unitization to request a hearing. Section 250.1304(e) requires the party seeking the compulsory unitization to pay for the court reporter and three copies of the verbatim transcript of the hearing. It should be noted there have been no such hearings in the recent past, and none are expected in the near future. We estimate that the burden would be less than $100 to reproduce the copies.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Except as noted above for costs associated with § 250.1304(d), we have identified no other non-hour cost burdens. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 12, 2002.

William S. Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–7383 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) for a new "Form MMS–144, Rig Movement Notification Report" for reporting rig movement information. We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by April 29, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–XXXX), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also

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contact Alexis London to obtain a copy at no cost of the form MMS–144.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–144, Rig Movement Notification Report.

OMB Control Number: 1010–XXXX.

Abstract: The Outer Continental Shelf (OCS) Lands Act (Act), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) of the Act requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

This ICR concerns regulations in 30 CFR 250 subparts D, E, and F, and specifically in §§ 401(g), 502, and 602, on the movement of drilling, completion, and workover rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform. Although the requirement for operators to notify MMS of rig movements is not specifically stated in the referenced sections, since MMS is mandated to perform timely inspections on rigs and platforms, we must have accurate information with regard to their location on the OCS. We use this information in scheduling inspections with regard to priority and cost effectiveness.

Operators have filed rig movement reports for many years. Presently, the MMS Gulf of Mexico OCS Region (GOMR) requires an operator to inform us of rig arrival and departure times as conditions of approval for Applications for Permit to Drill (drilling) and Sundry Notices (completion, workover, and abandonment). In reporting a rig movement, respondents will generally fax the information or leave a telephone message. The current regulations do not specifically state what information MMS needs, and MMS has not issued standard instructions on what to report. Therefore, in many cases, the respondents have not provided sufficient information for MMS to identify data with regard to location, rig type, and well operation. This then requires follow-up telephone calls or messages to the respondent to obtain the needed information. The proposed form MMS–144 will give MMS the proper information.

Each MMS District Office conducts inspections and uses helicopters to transport inspectors from rig to rig. As the major duty of approximately one-half of the personnel in those offices is to perform inspections on the OCS, and with helicopter usage being a major cost item ($450 to $520 per hour) in their budget, proper scheduling is an extremely important issue. In many cases, due to inaccurate information, the current non-standard format for rig movement reporting has resulted in unnecessary increased inspection flight time (and higher costs) and loss of inspector man-hours.

Because of the volume of activity in the GOMR, to avoid these recurring problems, that Region has developed a new form MMS–144, "Rig Movement Notification Report." The MMS District Offices will use the information reported to accurately ascertain the arrival and departure of all rigs in OCS waters and to verify compliance with approved permits. It is reiterated that only the form is new, not the reporting requirement.

The OMB has approved the rig movement notice with the other information collection requirements of the 30 CFR 250, subparts D, E, and F regulations (1010–0053, 1010–0067, and 1010–0043). Also, OMB approved this reporting notification in the pending revised subpart D proposed (§ 250.404) regulations (1010–0141). Responses are mandatory. No questions of a "sensitive" nature are asked, and no proprietary information is involved.

Frequency: The frequency is "on occasion."

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the average hour burden is 6 minutes to complete form MMS–144. MMS receives approximately 1,800 notices each year, for an estimated 180 annual burden hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burden associated with form MMS–144.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 1, 2001, we published a **Federal Register** notice (66 FR 12955) announcing that we would submit the ICR to OMB for approval. The notice provided the required 60-day comment period. We received three requests for copies of the new form, but only one follow-up comment/request for clarification. The commenter asked if the form addressed the needs of the U.S. Coast Guard (USCG) and Defense Mapping Agency and whether the form would be used to report a rig skid to a new well on the same platform in lieu of the informal telephone notification. In response, the GOMR explained that the form would replace the current informal telephone notification to MMS, not duplicate it.

As a result of comments and discussions with representatives of the Offshore Operators Committee (an industry consortium) on the proposed form, we have included certain "optional" data elements. These were added so that respondents will have the option of also sending the MMS form to the USCG. If notification of a particular rig movement only needs to be reported to MMS, these optional data elements need not be completed by the lessee/operator.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 29, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 5, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7384 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Finding of No Significant Impact (FONSI) for Environmental Assessment on the Mount Vernon Trail Bridge #12 Safety Realignment

AGENCY: National Park Service, Interior.

ACTION: Availability of the FONSI and decision record for the proposed safety improvements to Bridge #12 located approximately ¼ mile north of the southbound Fort Hunt exit of the George Washington Memorial Parkway along the Mount Vernon Trail.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of the FONSI and decision record for the proposed safety improvements on and around Mount Vernon Trail Bridge #12 within the George Washington Memorial Parkway. The FONSI and decision record identifies Alternative 2 as the preferred Alternative in the "Environmental Assessment for the Mount Vernon Trail Bridge #12 Safety Realignment." Under this alternative, trail realignment and bridge construction will correct the steep and sharp-curved approaches to the bridge, provide a more sustainable bridge structure, provide for safety on the bridge, and continue to protect natural and cultural resources in and around the bridge. All environmental measures will be taken to minimize impacts to resources during old bridge demolition and new bridge construction.

DATES: The Environmental Assessment, upon which the FONSI determination was made, was available for public comment from May 31–June 29, 2001 and one written comment was received in support of the project.

ADDRESSES: The FONSI and decision record will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at George Washington Memorial Parkway Headquarters, Turkey Run Park, McLean, VA.

SUPPLEMENTARY INFORMATION: The FONSI and decision record completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Brazinski (703) 289–2541.

Rich Foster,

Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 02–7379 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Finding of No Significant Impact (FONSI) for the Environmental Assessment for the Glen Echo Park North Arcade Rehabilitation

AGENCY: National Park Service, Interior.

ACTION: Availability of the FONSI and decision record for the proposal to replace the existing deteriorated North Arcade structure and damaged portions of the adjacent arcade structure with a new North Arcade structure in Glen Echo Park.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the and National Park Service (NPS) announces the availability of the FONSI and decision record for the proposed replacement of the existing deteriorated North Arcade structure and damaged portions of the adjacent arcade structure with a new North Arcade structure in Glen Echo Park, a unit of the George Washington Memorial Parkway. The FONSI and decision record identifies Alternative B as the preferred Alternative in the "Environmental Assessment for the Glen Echo Park North Arcade Rehabilitation." Under this alternative, the existing North Arcade structure located in Glen Echo Park, Glen Echo, Maryland, would be demolished and a new structure built in the same location. Although the NPS determined that this undertaking will have an "Adverse Effect" upon the North Arcade structure itself, the action overall will have "No Adverse Effect" on the qualities that qualify the Glen Echo Park Historic District for listing on the National Register of Historic Places. In accordance to the Memorandum of Agreement with the Maryland State Historic Preservation Officer signed July 17, 2001, the NPS will mitigate the demolition of historic structures and will design the new structures in a manner complementing the original and respecting the surrounding Historic District.

DATES: The Environmental Assessment, upon which the FONSI was made, was available for public comment from July 2–31, 2001 and no comments were received.

ADDRESSES: The FONSI and decision record will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at George Washington Memorial Parkway Headquarters, Turkey Run Park, McLean, VA.

SUPPLEMENTARY INFORMATION: The FONSI and decision record completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Brazinski (703) 289–2541.

Rich Foster,

Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 02–7378 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement for the General Management Plan for Fort Matanzas National Monument, St. Augustine, FL

SUMMARY: The National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Fort Matanzas National Monument. The statement will assess potential environmental impacts associated with various types and levels

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of visitor use and resources management within the National Monument. This General Management Plan and Environmental Impact Statement are being prepared in response to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning guidance for National Park Service units that became effective May 27, 1998. The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Fort Matanzas. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at Fort Matanzas are encouraged. The comment period for each of these meetings will be announced at the meetings and will be published on the Fort Matanzas General Management Plan Web site at *http://www.nps.gov/foma*.

DATES: Locations, dates and times of public scoping meetings will be published in local newspapers and may also be obtained by contacting the National Park Service Southeast Regional Office, Division of Planning and Compliance. This information will also be published on the General Management Plan web site for Fort Matanzas.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida, 32084. Telephone 904–829–6506, ext. 221.

FOR FURTHER INFORMATION CONTACT: Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida, 32084. Telephone 904–829–6506, ext. 221.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan Amendment and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

Due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Anonymous comments will not be considered. However, individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for the Environmental Impact Statement is Jerry Belson, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: August 6, 2001.

W. Thomas Brown,

Regional Director, Southeast Region.

Editorial note: This document was received at the Office of the Federal Register, March 22, 2002.

[FR Doc. 02–7377 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for three collections of information: 30 CFR 872, Abandoned mine reclamation funds; 30 CFR 955 and the Form OSM–74, Certification of Blasters in Federal program States and on Indian lands; and 30 CFR 705 and the Form OSM–23, Restriction on financial interests of State employees.

DATES: Comments on the proposed information collection must be received by May 28, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 872, Abandoned mine reclamation funds; (2) Form OSM–74 which incorporates the requirements of 30 CFR part 955, Certification of Blasters in Federal program States and on Indian lands; and (3) 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of State employees. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Abandoned mine reclamation funds, 30 CFR part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR part 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Fequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: Certification of blasters in Federal program States and on Indian lands, 30 part CFR 955.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent of being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 33.

Total Annual Burden Hours: 57.

Title: Restrictions on financial interests of State employees, 30 CFR 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 2,909.

Total Annual Burden Hours: 974.

Dated: March 5, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–7387 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–443]

In the Matter of Certain Flooring Products; Notice of Final Determination of No Violation of Section 337

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: David I. Wilson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 708–2310. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server, *http://www.usitc.gov*.

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on December 27, 2000, based on a complaint filed on behalf of Alloc, Inc., Racine, Wisconsin; Berry Finance N.V., Oostrozebeke, Belgium; and Välinge Aluminum AB, Viken, Sweden (collectively "complainants"), 66 FR 1155 (2001). The notice of investigation was published in the **Federal Register** on January 5, 2001. Id. The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain flooring products by reason of infringement of claims 1–3, 5–6, 8–12, 14–15, 17–36, and 38–41 of U.S. Letters Patent 5,860,267 ("the '267 patent") and claims 1–14 of U.S. Letters Patent 6,023,907 ("the '907 patent"). *Id.* The Commission named seven respondents: Unilin Decor N.V., Wielsbeke, Belgium; BHK of America, Inc., Central Valley, NY; Meister-Leisten Schulte GmbH, Rüthen, Germany (collectively, Unilin); Pergo, Inc., Raleigh, NC ("Pergo"); Akzenta Paneele + Profile GmbH, Kaisersesch, Germany ("Akzenta"); Tarkett, Inc., Whitehall, PA; and Roysol, Saint-Florentin, France ("Roysol").

On March 5, 2001, the ALJ issued an ID (ALJ Order No. 8) granting complainants' motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1, 8, 13–14, 21, 26–27, 34, 39–41, and 48 of U.S. Letters Patent 6,182,410 ("the '410 patent"). On July 10, 2001, the ALJ issued an ID (ALJ Order No. 26) granting complainants' motion for summary determination on the economic prong of the domestic industry requirement. Those IDs were not reviewed by the Commission. An evidentiary hearing was held from July 26, 2001, through August 1, 2001. The ALJ heard closing arguments on October 16, 2001. On October 19, 2001, the ALJ issued an ID (ALJ Order No. 30) granting complainants' unopposed motion to terminate the investigation with respect to claims 1–3, 5–6, 8–12, 14–15, 17–18, 20–22, 24–36, 38, and 40–41 of the '267 patent; claims 4–14 of the '907 patent; and claims 8, 13–14, 21, 27, 34, and 40 of the '410 patent. On October 25, 2001, the ALJ issued an ID (ALJ Order No. 31) terminating the investigation as to respondent Tarkett, Inc. Those IDs were not reviewed by the Commission. The only asserted claims remaining in the investigation are claims 19, 23, and 39 of the '267 patent, claims 1–3 of the '907 patent, and claims 1, 26, 39, 41, and 48 of the '410 patent.

The ALJ issued his final ID on November 2, 2001, concluding that there was no violation of section 337, based on the following findings: (a) Complainants have not established that any of the asserted claims are infringed by any of the respondents; (b) respondents have failed to establish that the asserted claims of each of the '267, '907, and '410 patents are not valid; (c) no domestic industry exists that exploits any of the '267, '907, and '410 patents; and (d) it has not been established that complainants misused any of the patents in issue. The ALJ also made recommendations regarding remedy and bonding in the event the Commission concludes there is a violation of section 337. On November 15, 2001, complainants and the Commission investigative attorney ("IA") petitioned for review of the ID. On November 23, 2001, respondents Unilin, Pergo, Roysol, and Akzenta, and complainants filed responses to the petitions for review. On December 20, 2001, the Commission determined to review: (1) The ID's construction of the asserted claims of the '410 patent; (2) the ID's construction of the asserted claims of the '267 and '907 patents, except not to review the ID's construction of those claims apart from 35 U.S.C. 112, ¶ 6; (3) the ID's infringement conclusions with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that (a) the asserted claims of the '267 and '907 patents are not infringed when those claims are construed apart from 35 U.S.C. 112, ¶ 6 and (b) complainants have not established that there are no substantial noninfringing uses for the accused

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products and hence there is no contributory infringement; (4) the ID's validity conclusions with respect to the '267, '410, and '907 patents, except not to review the ID's validity conclusions when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. 112, ¶ 6; and (5) the ID's conclusions with respect to the technical prong of the domestic industry requirement with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that complainants have failed to establish the technical prong of the domestic industry requirement when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. 112, ¶ 6.

The Commission also determined to review the procedural question of whether complainants waived the issue of whether the accused products infringe the asserted claims of the patents in controversy to the extent that the asserted claims are construed under 35 U.S.C. 112, ¶ 6 to cover equivalents of the structure disclosed in the specification, viz., equivalents of a mechanical joint with play, by failing to raise the issue before the ALJ. The Commission determined not to review the remainder of the ID. The Commission also determined to extend the target date for completion of the investigation to March 7, 2002. The Commission subsequently determined to further extend the target date to March 21, 2002. In accordance with the Commission's directions, the parties filed main briefs on January 10, 2002, and reply briefs on January 17, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found that there is no infringement of any claims at issue of the '410, '267, and '907 patents; no domestic industry exists with respect to the '410, '267, and '907 patents; and that the '410, '267, and '907 patents are not invalid. The Commission also determined that the complainants waived the issue of whether the accused products infringe the asserted claims of the '410, '267, and '907 patents to the extent that the asserted claims are construed under 35 U.S.C. 112, ¶ 6 to cover equivalents of the structure disclosed in the specification. Nonetheless, the Commission examined the issue and determined that, even if the argument had been timely raised, it would not have led to a different result. The Commission determined that complainants waived the issue of whether the accused products infringe the asserted claims of the '410, '267 and '907 patents under the doctrine of equivalents. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

By order of the Commission.

Issued: March 22, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7402 Filed 3–28–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–114, Exclusion Order Modification Proceeding]

In the Matter of Certain Miniature Plug-In Blade Fuses; Notice of Exclusion Order Modification

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that changed conditions have caused the U.S. International Trade Commission to modify the trade dress provision of the general exclusion order issued on January 13, 1983, in the above-captioned investigation. In light of certain judicial decisions, the Commission modified that provision by removing a reference to "product configuration" from the description of "trade dress." As a result, the modified provision requires the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a packaging, simulating that of Littelfuse, Inc.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. General information concerning the Commission, the above-captioned investigation, and the exclusion order modification proceeding also may be obtained by accessing its Internet server, *http://www.usitc.gov*.

Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the subject investigation in 1982 to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 USC 1337 (1978 and 1981 Supp.)) in the importation or sale of certain miniature plug-in blade fuses that allegedly misrepresented their place of geographic origin, infringed the complainant's patents and/or trademarks, misappropriated the complainant's trade dress, were passed off as merchandise of the complainant, or were the subject of false advertising. The complainant was the patent and trademark owner, Littelfuse, Inc., of Des Plaines, Illinois, a firm that manufactures and markets electronic devices, including the subject fuses.[1] The Commission named nine firms in Taiwan and three domestic firms as respondents in the investigation, 47 FR 1448, Jan. 13, 1982.

The investigation resulted in the issuance of a general exclusion order in 1983, requiring, among other things, the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a product configuration and/or packaging, simulating that of complainant Littelfuse. *Certain Miniature Plug-In Blade Fuses*, Inv. No. 337–TA–114, USITC Publication 1337 (Jan. 1983), Commission Action and Order at page 2, paragraph 2 (Jan. 13, 1983).

As the result of a Commission-initiated modification proceeding under 19 CFR 210.76 (*see* 66 FR 9359, Feb. 7, 2001, and Commission Order (Feb. 1, 2001)), the Commission concluded that conditions which led to the inclusion of product configuration in the trade dress provision of the exclusion order no longer exist. In particular, the product configuration protected by that provision was, by Littelfuse's admission, substantially the same configuration that the U.S. District Court for the Northern District of Georgia, Atlanta Division, found to be functional and not entitled to trademark protection. See the unpublished Judgment and the unpublished Order issued on January 7, 1998 in Civil Action No. 1:95–CV–2445–JTC, *Wilhelm Pudenz Gmbh [and] Wickmann USA, Inc.* v. *Littelfuse, Inc.* (The U.S. Court of Appeals for the Eleventh Circuit affirmed the District Court's decision. *Wilhelm Pudenz GmbH* v. *Littlefuse [sic], Inc.*, 177 F.3d 1204, 51 U.S.P.Q.2d 1045 (11th Cir. 1999).)

The Commission accordingly has modified the trade dress provision of its section 337 exclusion order by deleting the reference to product configuration. The modified provision thus requires the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a packaging, simulating that of Littelfuse.

[1] Miniature plug-in blade fuses are installed in automobiles as original equipment. They also are sold in the automotive aftermarket, as replacement parts for original equipment.

Upon request, all nonconfidential documents filed or issued in the investigation or the exclusion order modification proceeding will be made available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802.

In addition, the Final Determination and Commission Order effecting the modification and all nonconfidential documents filed or issued in the modification proceeding are available for inspection on the Commission's Web site. To access them, go to the "*ITC RESOURCE PAGE*," and then click on "EDIS On-Line for Public File Room."

By order of the Commission.

Issued: March 20, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7404 Filed 3–27–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–457]

In the Matter of Certain Polyethylene Terephthalate Yarn and Products Containing Same; Notice of Commission Determination To Review in Part an Order Granting-In-Part and Denying-In-Part a Motion for Summary Determination of Invalidity and Non-Infringement of the Only Patent at Issue in the Investigation; Determination To Grant Two Motions To Strike Exhibits

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an order (Order No. 61) issued on February 4, 2002, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting-in-part and denying-in-part a motion for summary determination of invalidity and non-infringement of the only patent at issue in the investigation. The Commission has determined to review only the issue of indefiniteness under 35 U.S.C. 112, second paragraph. The Commission has also determined to grant two motions to strike certain exhibits attached to pleadings filed in connection with Order No. 61.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of the public version of Order No. 61 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*. General information concerning the Commission may also be obtained by accessing its Internet server, *http://www.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain polyethylene terephthalate yarn and products containing same, on May 17, 2001. 66 FR 27586. The complainant, Honeywell International Inc. of Morris town, New Jersey named Hyosung Corp. of Seoul, Korea as the only respondent. On September 21, 2001, the Commission determined not to review an ID adding Hyosung America, Inc., a wholly-owned U.S. subsidiary of Hyosung Corp., as a respondent.

On December 13, 2001, respondent Hyosung moved for summary determination of patent invalidity and non-infringement. The motion was opposed by Honeywell and supported by the Commission investigative attorney. On February 4, 2002, the ALJ issued an order, Order No. 61, which granted Hyosung's motion for summary determination of non-infringement, but denied the motion as to patent invalidity. Honeywell filed a petition for review of the initial determination portion of the order on February 19, 2002. Hyosung and the Commission investigative attorney (IA) filed appeals of the portion of the order denying summary determination on the same date. Each of these parties filed responses to the February 19, 2002, filings on February 26, 2002.

Although the Commission has determined to review the issue of definiteness under 35 U.S.C. 112, second paragraph, it does not wish to receive any further written submissions.

On February 25, 2002, Hyosung moved to strike certain documents that were attached to Honeywell's response to the appeals of the order on the ground that the documents were not before the ALJ when he decided the motion for summary determination. On March 1, 2002, Honeywell opposed the motion. On February 28, 2002, Hyosung moved to strike a document that was attached to Honeywell's response to Hyosung's and the IA's petitions for review on the ground that the document was not of record. This motion was opposed by Honeywell on March 7, 2002. Both motions to strike were supported by the IA on March 7, 2002.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 190, as amended, 19 U.S.C. 1337, and in sections 210.24 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.24, 210.42(h).

By order of the Commission.

Issued: March 21, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7403 Filed 3–27–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 42 U.S.C. 9622(d)(2), notice is hereby given that on March 13, 2002, a proposed consent decree in a case captioned *United States* v. *A.O. Smith Corp., et al.*, Civil Action No. 1:02–CV–0168 (W.D. Mich.) was lodged with the United States District Court for the Western District of Michigan. The proposed consent decree relates to the Ionia City Landfill Superfund Site ("Site") in the City of Ionia, Ionia County, Michigan.

In a compliant that was filed simultaneously with the Consent Decree, the United States sought recovery of response costs and performance of response actions at the Site pursuant to Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9606(a), 9607(a), against A.O. Smith Corp., the City of Ionia, Consumers Energy Co., Federal-Mogul Corp., General Motors Corp., Kmart Corp., the Michigan Department of Corrections, and Premiere Agri Technologies, Inc. (the "Defendants").

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Under the proposed consent decree, the Defendants will perform the remedy selected in a Record of Decision that EPA issued for the Site on September 28, 2000. The remedy includes restricting access to and development of certain portions of the Site; maintaining the existing groundwater treatment system; maintaining institutional controls; and monitoring the natural attenuation that is taking place. Defendant A.O. Smith also agrees to pay all future response costs at the Site. Under a prior Consent Decree, the Defendants already had paid all past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *A.O. Smith Corp., et al.*, Civil Action No. 1:02–CV–0168 (W.D. Mich.) and DOJ Reference No. 90–11–2–476/1.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave., NW., Grand Rapids, MI 49503; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Copies of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting copies from the Consent Decree Library, please refer to the above-referenced case and DOJ Reference Number 90–11–2–476/1 and enclose a check for $81.00 (324 pages at 25 cents per page reproduction cost) made payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7418 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.*, 96 Civ. 8563 (BSJ), was lodged on February 20, 2002, with the United States District Court for the Southern District of New York. The Consent Decree addresses the hazardous waste contamination at the Port Refinery Superfund Site (the "Site"), located in the Village of Rye Brook, Westchester County, New York. the Consent Decree requires four generators of hazardous substances transported to the Site to pay to the United States a total of $415,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publicaiton, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Evnrionment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.*, DOJ Ref. #90–11–3–1142A.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 33 Whitehall Street, New York, New York (contact Assistant United States Attorney Kathy S. Marks); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Michael Mintzer). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.00 (25 cents per page reproduction costs) for the Consent Decree, payable to the Cnsent Decree Library.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7419 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree: Natural Resource Damages Under the Oil Pollution Act of 1990

Notice is hereby given that on March 18, 2002, a proposed Consent Decree: Natural Resource Damages ("Decree") in *United States and State of Alaska* v. *Kuroshima Shipping, S.A. and Unique Trading Co., Ltd*, Civil Action No. A02–0057 (JWS) was lodged with the United States District Court for the District of Alaska.

In this action brought pursuant to section 1002(b)(2)(A) of the Oil Pollution Act of 1990, 33 U.S.C. 2702(b)(2)(A), the United States and that State of Alaska sought natural resource damages, including and subsequent discharge of oil from the M/V Kuroshima in the area of Summer Bay, Unalaska Island, Alaska ("the Kuroshima Spill"). The defendants are the owner and operator of the vessel at the time of the incident. The federal and state natural trustees in consultation with Qawalangin Tribe of Unalaska conducted an assessment of damage to natural resources and loss of use of natural resources occasioned by the Kuroshima Spill and have proposed a plan for restoring these natural resources and the loss of their use by the public. That plan appears as Appendix A to the Decree. The proposed Decree provides that defendants shall pay $644,017 to the natural resource trustees for their conduct of the restoration plan and place another $9,000 in the registry of the Court until the natural resource trustees determine whether the amount is necessary for the field component of the restoration plan aimed at restoring vegetation. The proposed Decree requires that the defendants reimburse the natural resources trustees $66,158.09 for damage assessment costs. In exchange for these payments, the United States and the State of Alaska covenant not to sue the defendants for natural resource damages arising from the Kuroshima Spill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice and sent to 801 B Street, Suite 504, Anchorage, Alaska 99501–3657. Comments should refer to *United States* v. *Kuroshima Shipping, S.A. et al*, D.J. Ref. #90–5–1–1–06147.

The Decree may be examined at the above address by contacting Lorraine Carter (907–271–5452). A copy of the Decree (minus Appendix A) may be obtained by contacting Ms. Carter in writing at the address above. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. A copy of Appendix A may be obtained during the comment period from the National Oceanic and Atmospheric Administration by contacting Doug Helton at 206–526–4563 or at *Doug.Helton@noaaw.gov*. Alternately, Appendix A may be viewed at *www.darenw.noaa.gov/kuro.htm*.

Walter B. Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7420 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Laurel Creek Co., Inc.

[Docket No. M–2002–014–C]

Laurel Creek Co., Inc., P.O. Box 57, Dingess, West Virginia 25671 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Mine No. 4 (I.D. No. 46–08902) located in Mingo County, West Virginia. For mobile battery-powered machines used inby the last open crosscut, the petitioner proposes to use a spring-loaded device on battery plug connectors in lieu of a padlock. This is intended to prevent the plug connector from accidentally disengaging while under load. The petitioner states that a warning tag that states "Do Not Disengage Under Load," will be installed on all battery plug connectors and that instructions on the safe practices and provisions for complying with its proposed alternative method will be provided to all persons who operate or maintain the battery-powered machines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Peabody Coal Company

[Docket No. M–2002–015–C]

Peabody Coal Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Camp #11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. Due to hazardous roof conditions and roof falls blocking the air course entries, the petitioner proposes to continuously monitor methane and oxygen concentrations at evaluation points closest to the mine fan and XC–91. The petitioner proposes to use a Conspec Mine Monitoring System that would be manned around the clock and set up to alarm at oxygen levels less than 19.5% and methane levels greater than 1.0%. The petitioner states that weekly examinations would be conducted and evaluation points would be checked by a certified person to determine the methane and oxygen concentrations, and the volume of air. The results of the examinations would be recorded in a book and maintained on the surface of the mine. The petitioner asserts that application of the standard would result in diminution of safety to the miner and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Blue Diamond Coal Company

[Docket No. M–2002–016–C]

Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763–0047 has filed a petition to modify the application of 30 CFR 77.214 (Refuse piles; general) to its #76 Preparation Plant (I.D. No. 15–16520) located in Perry County, Kentucky. The petitioner requests a modification of the existing standard to allow Coarse Refuse Fill #1 to be placed over abandoned mine openings located in the Leatherwood (5A) seam using specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Knox Creek Coal Corporation

[Docket No. M–2002–017–C]

Knox Coal Corporation, P.O. Box 519, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.350 (Air course and belt haulage entries) to its Tiller No. 1 Mine (I.D. No. 44–06804) located in Tazewell County, Virginia. The petitioner requests a modification of the existing standard to allow the use of belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake spacing between air courses. The distance between sensors will not exceed 1,000 feet along each conveyor belt entry. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Paramont Coal Corporation

[Docket No. M–2002–018–C]

Paramont Coal Corporation, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.350 (Air course and belt haulage entries) to its Virginia Commonwealth #5 Mine (I.D. No. 44–06929) located in Wise County, Virginia. The petitioner requests a modification of the existing standard to allow the use of belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air course. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. White County Coal, LLC

[Docket No. M–2002–019–C]

White County Coal, LLC, 1525 County Road 1300 N., P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its Pattiki II Mine (I.D. No. 11–03058) located in White County, Illinois. The petitioner proposes to use a round, eye-bolt snap device to secure screw caps in place on battery plugs of battery operated scoops and tractors. This is in lieu of using its presently approved bolt and nut padlock. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Alfred Brown Coal Company

[Docket No. M–2002–020–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Alfred Brown Coal Company

[Docket No. M–2002–021–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335

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(Construction of seals) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of seal construction. The petitioner proposes to use wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Alfred Brown Coal Company

[Docket No. M–2002–022–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Alfred Brown Coal Company

[Docket No. M–2001–023–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (Pre-shift examination at fixed intervals) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of examination and evaluation of seals. The alternative method would include a visual examination of each seal for physical damage from the slope gunboat during the pre-shift examination after an air quantity reading is taken just inby the intake portal. The petitioner proposes to instruct the examiner to take an additional reading and gas test for methane, carbon dioxide, and oxygen deficiency at intake air split locations just off the slope in the gangway portion of the working section. A record of all readings, gas test results, and his/her initials, date, and time and location of examinations will be available to anyone prior to entering the mine. The petitioner states that regardless of the conditions at the section evaluation point, the entire length of the slope would be traveled and physically examined on a monthly basis. A record of the dates, time, and the initials of the person conducting the examinations will be made available on the surface. The petitioner also states that any hazards would be corrected prior to transporting personnel in the slope. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Alfred Brown Coal Company

[Docket No. M–2001–024–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. Rosebud Mining Company

[Docket No. M–2002–025–C]

Rosebud Mining Company, R.D. 9, Box 379A, Kittanning, Pennsylvania 16201 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Logansport Mine (I.D. No. 36–08841) located in Armstrong County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of an alternative method of compliance for firefighting equipment required at temporary electrical installations. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and would not result in a diminution of safety to the miners.

13. Peabody Coal Company

[Docket No. M–2002–026–C]

Peabody Coal Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Type and quality of firefighting equipment) to its Camp #11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method for conducting functional tests of its complete deluge-type water system. The petitioner proposes to conduct these tests on a weekly basis instead of annually. The petitioner states that the existing standard will not allow the system to be functionally tested weekly because the dust covers could be blown off and to return the water spray system safely for compliance with the existing standard, the belt would have to be de-energized, locked and tagged, and the dust cover would have to be replaced, which would take approximately 30 minutes per belt drive. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard since any restrictions to the spray system otherwise prevented by the blow-off dust covers would be recognized during the weekly functional test and promptly corrected.

14. Dakota Mining, Inc.

[Docket No. M–2002–027–C]

Dakota Mining, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables, and transformers) to its #2 Mine (I.D. No. 46–08589) located in Boone County, West Virginia. The petitioner proposes to replace a low-voltage continuous miner with a 2,400-volt Joy 12CM27 machine. The petitioner states that mining at the #2 Mine is approaching an area of the reserve where the seam height thickens and is concerned that the current equipment will not be capable of reaching the roof without blocking and ramping the continuous miner. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 29, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 22nd day of March 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–7466 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–19; Exemption Application Number D–11041]

Notice of Grant of Individual Exemption To Modify Prohibited Transaction Exemption 90–23 (PTE 90–23); Prohibited Transaction Exemption 90–31 (PTE 90–31) and Prohibited Transaction Exemption 90–33 (PTE 90–33) Involving J.P. Morgan Chase & Company and Its Affiliates (the Applicants) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of grant of individual exemption to modify PTE 90–23; PTE 90–31; and PTE 90–33 (collectively, the Exemptions).

SUMMARY: This document contains a notice of grant of a proposed individual administrative exemption which amends: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.[1] The Exemptions provide relief for the operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (the Plans) of certificates or debt instruments that are issued by such trusts with respect to which one of the Applicants is the lead underwriter or a co-managing underwriter. This amendment permits the trustee of the trust to be an affiliate of the underwriter. The amendment affects the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8546. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 18, 2002, notice was published in the **Federal Register** (67 FR 2699) of the pendency before the Department of a proposed exemption to amend the Exemptions. The amendment, as proposed, would modify the Exemptions, each as subsequently amended by PTE 97–34 (62 FR 39021, July 21, 1997) and PTE 2000–58 (65 FR 67765, November 13, 2000) as set forth below:

The first sentence of section II.A.(4) of the Exemptions is amended to read: "The trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter."

The only written comment received by the Department on the proposed amendment was submitted by the Applicants, who requested that the Department clarify and restate the Exemptions as a single exemption. In response to that comment, the Department has determined to publish the final exemption as requested, which includes all of the amendments made by PTEs 97–34 and 2000–58.

The Department also received an e-mail message regarding the proposed amendment from an interested person who suggested that the same amendment be made to other exemptions previously granted by the Department for transactions involving asset-backed securities relating to credit card receivables [e.g., PTE 98–13, 63 FR 17020 (April 7, 1998) regarding MBNA America Bank, N.N.; and PTE 98–14, 63 FR 17027 (April 7, 1998) regarding Citibank (South Dakota), N.A., and Affiliates]. The Department has determined to separately consider a similar amendment to its prior individual exemptions for credit card securitizations in a separate proposal at a later date.

Finally, the Department contacted The Bond Market Association (TBMA) to discuss extending similar relief to all of the prior individual exemptions granted for mortgage-backed and other asset-backed securities (commonly known as the "Underwriter Exemptions"). In this regard, the Department notes that all of the Underwriter Exemptions are essentially identical to the original three Underwriter Exemptions [i.e., PTE 89–88, 54 FR 42582 (October 17, 1989), regarding Goldman, Sachs & Co., et al.; PTE 89–89, 54 FR 42569 (October 17, 1989), regarding Salomon Brothers, Inc.; and PTE 89–90, 54 FR 42597 (October 17, 1989), regarding First Boston Corp.]. In addition, each of the Underwriter Exemptions was also subsequently amended by PTEs 97–34 and 2000–58.[2] In this regard, the Department anticipates a similar amendment to the remaining Underwriter Exemptions.

Exemption

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department amends the following individual exemption for J.P. Morgan Chase & Company and its Affiliates and restates the following individual Prohibited Transaction Exemptions (PTEs) as a single exemption: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section

[1] The notice of proposed exemption for PTE 90–23 was published on February 20, 1990 at 55 FR 5906; the notice of proposed exemption for PTE 90–31 was published on February 21, 1990 at 55 FR 6074; and the notice of proposed exemption for PTE 90–33 was published on February 21, 1990 at 55 FR 6082.

[2] For a listing of such exemptions, see PTE 2000–58, footnote 1, 65 FR at 67765 (November 13, 2000).

4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[3]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[4] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in a Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[5] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000 or the date such Servicer became an Affiliate of the Trustee; and

(ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

[3] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3-21(c).

[4] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed on a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

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(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. *Security* means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. *Issuer* means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2)[6]; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[7]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) the assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. *Underwriter* means:

(1) J.P. Morgan Chase & Company (the Applicant);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Applicant; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. *Sponsor* means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. *Master Servicer* means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. *Trust* means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. *Trustee* means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. *Insurer* means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. *Obligor* means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. *Restricted Group* with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

[6] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[7] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. *Sale* includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. *Pooling and Servicing Agreement* means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. *Rating Agency* means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. *Capitalized Interest Account* means an Issuer account: (i) Which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. *Closing Date* means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. *Pre-Funding Account* means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)-(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. *Pre-Funding Limit* means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. *Pre-Funding Period* means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. *Designated Transaction* means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. *Eligible Swap* means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.*, payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. *Eligible Swap Counterparty* means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A *qualified professional asset manager* (QPAM),[8] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An *in-house asset manager* (INHAM),[9] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. *Excess Spread* means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. *Eligible Yield Supplement Agreement* means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this individual exemption to modify the Exemptions, refer to the notice of proposed individual exemption to modify the Exemptions that was published on January 18, 2002 at 67 FR 2699.

EFFECTIVE DATE: This exemption is effective as of March 13, 2002.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7518 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P

[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–17; Application No. D–10961]

Grant of Individual Exemption for State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On March 22, 2002, the Department published, in the **Federal Register** (67 FR 13366), a notice of individual exemption for State Farm Mutual Automobile Insurance Company (State Farm) and for State Farm VP Management Corp. (SFVPMC) which permits the purchase or redemption of an institutional class of shares of State Farm mutual funds, as defined in the exemption, by certain pension plans, which are established by:

(a) Independent contractor agents (the Agents) of State Farm or its affiliates, who are also registered representatives of SFVPMC, for themselves and their employees, and

(b) The family members of such Agents, as defined in the exemption, provided that certain conditions are satisfied.

The Department wishes to correct certain typographical errors that appeared in the exemption. In this regard, in Section I captioned, "Transactions," the citation, "406(a)(1)(A) through (d)," on page 13366, column 2, line 2 should be replaced by the citation, "406(a)(1)(A) through (D)," and, the citation, "4974 of the Code," on page 13366, column 2, line 4 should be amended to read, "4975 of the Code." In Section II captioned, "Conditions," the following amendments should be made:

(1) in section II(g) the word, "prevention," on page 13366, column 3, line 3 should be replaced by the word, "provision";

(2) in section II(j)(1)(D), the word, "member," on page 13367, column 1, line 2 should be capitalized;

(3) in section II(j)(2), the word, "asset," on page 13367, column 1, line 6 should be plural; and

(4) in section II(o), the word, "plan," on page 13368, column 1, line 1 should be capitalized.

Accordingly, the Department hereby corrects the typographical errors set forth above.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department at (202) 693–8551. (This is not a toll-free number.)

Signed at Washington, DC, this 25th day of March, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7517 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10976]

Prohibited Transaction Exemption 2002–20; Grant of Individual Exemptions; Union Bank of California (UBOC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Union Bank of California (UBOC), Located in San Francisco, California

[Prohibited Transaction Exemption 2002–20; Application No. D–10976]

Exemption

Section I—Retroactive and Prospective Exemption for In-Kind Redemption of Assets

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of June 15, 2001, to certain in-kind redemptions (the Redemptions) by the Union Bank of California Retirement Plan or any other employee benefit plan sponsored by UBOC or an affiliate of UBOC (an In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by the HighMark Funds or other investment companies (the Funds) for which HighMark Capital Management, Inc. or an affiliate thereof (the Adviser) provides investment advisory and other services, provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and affiliates of UBOC (UBOC Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, the Adviser, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval for such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, UBOC or the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing. For Redemptions occurring on June 15, 2001, the Independent Fiduciary's review included testing a limited sampling of certain material aspects of the Redemption deemed in its judgment to be representative;[1]

(K) Each of the In-house Plan's dealings with: the Funds, the Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) UBOC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBOC, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than UBOC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary, (iv) any employer with respect to the In-house Plan, and (v) any employee organization whose members are covered by such In-house Plan.

(2) None of the persons described in paragraphs (M)(1)(ii) through (v) shall be authorized to examine trade secrets of UBOC, the Funds, or the Adviser, or commercial or financial information which is privileged or confidential.

(3) Should UBOC, the Funds, or the Adviser refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (M)(2) above, UBOC, the Funds, or the Adviser shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) Independent of and unrelated to UBOC

[1] The reason for this difference is to conform to the language used in the initial independent fiduciary agreement that U.S. Trust and UBOC entered into with respect to the June 15, 2001 transactions.

and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to UBOC if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with UBOC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; (except that an Independent Fiduciary may receive compensation from UBOC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision); and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by UBOC and its affiliates in the fiduciary's current tax year.

(E) The term *Transferable Securities* shall mean securities (1) for which market quotations are readily available as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and (2) which are not: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and that of the high none was the package together for this; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family," as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Written Comments

The Department received three written comments with respect to the proposed exemption. Two comments sought clarification as to the terms of the proposed exemption, the remaining comment was submitted by UBOC. In its letter, UBOC stated the following:

(1) Footnote 14 of the Summary of Facts and Representations states that certain HighMark portfolios were redeemed on Dec. 14, 2001. The correct date was Dec. 12, 2001.

(2) Footnote in 19 indicates that UBOC agreed to make a cash payment sufficient to make the Retirement Plan whole with respect to the in-kind redemption of shares from the HighMark International Fund. As indicated its post transaction report dated January 25, 2002, U.S. Trust concluded that, based on its analysis of data from the actual transaction, the in-kind redemption was more favorable to the Retirement Plan than a hypothetical redemption in cash. Therefore, UBOC was not requested to, and did not, make a cash contribution to the Retirement Plan in connection with this redemption.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the clarifications described above.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10976) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8547. (This is not a toll-free number.)

Pacific Investment Management Company LLC (PIMCO) Located in Newport Beach, CA

[Prohibited Transaction Exemption 2002–21; Exemption Application No. D–11005]

Exemption

Section I. Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, [2] shall not apply, effective February 5, 2002, to the purchase of shares of one or more open-end management investment companies (the PIMCO Mutual Funds) registered under the Investment Company Act of 1940 (the ICA), to which PIMCO or any affiliate of PIMCO (the PIMCO Affiliate) [3] serves as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) or sub-Account with PIMCO (the Purchase Transaction), provided that the following conditions are met:

(a) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to PIMCO, as defined in paragraph (g) of Section III below (the Second Fiduciary), provides, prior to the first Purchase Transaction, the written approval described in paragraph (b) or (c) of this Section I, as applicable, following the disclosure of written information concerning the PIMCO Mutual Funds, which includes the following:

(1) A current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account;[4]

[2] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[3] Unless otherwise noted, "PIMCO" refers to "PIMCO" and to any "PIMCO Affiliates" and the term "PIMCO Mutual Funds" refers to any registered investment funds that are managed or advised by PIMCO or a PIMCO Affiliate.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Exchange Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit Second Fiduciaries to make informed investment decisions.

(2) A statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the PIMCO Mutual Fund and the rates of the fees otherwise payable by the Plan to PIMCO;

(3) A statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan;

(4) A statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Funds, and if so, the nature of such limitations;

(5) In the case of a Plan having total assets that are less than $200 million, in connection with obtaining the advance written approval described in paragraph (c)(2) of this Section I, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds; and

(6) Upon such Second Fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are at least $200 million, gives PIMCO a standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for —

(1) The Purchase Transactions, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The investment guidelines for the Account (the Strategy) and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(3) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy;

(4) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and

(5) The receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

(c) On the basis of the foregoing information in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are less than $200 million, gives PIMCO—

(1) A standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(i) The Strategy and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(ii) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy; and

(iii) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time.

(2) Advance written approval for—

(i) Each Purchase Transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act; and

(ii) The receipt of confirmation statements with respect to Purchase Transactions in the form of written reports to the Second Fiduciary.

(d) No sales commissions or other fees are paid by a Plan in connection with a Purchase Transaction.

(e) All transferred assets are securities for which market quotations are readily available.

(f) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary, and any securities which have been acquired through the investment and reinvestment of such securities in the implementation of the Strategy.

(g) With respect to assets transferred in kind, each Plan receives shares of a PIMCO Mutual Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b under the ICA (Rule 17a–7), as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by the PIMCO Mutual Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two sources that are market makers or pricing services independent of PIMCO.

(h) PIMCO sends by regular mail, express mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, a report containing the following information about each Purchase Transaction:

(1) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that has been valued for purposes of the Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA;

(2) The current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction;

(3) The identity of each pricing service or market maker consulted in determining the value of such securities;

(4) The aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and

(5) The number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(Such report is disseminated by PIMCO to the Second Fiduciary by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.)

(i) With respect to each of the PIMCO Mutual Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, PIMCO provides the Second Fiduciary with—

(1) A copy of an updated prospectus or offering memorandum for such PIMCO Mutual Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other statement) containing a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

(j) As to each Plan, the combined total of all fees received by PIMCO for the provision of services to the Plan, and in connection with the provision of services to a PIMCO Mutual Fund in which the Plan holds shares acquired in connection with a Purchase Transaction, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(k) All dealings in connection with a Purchase Transaction between a Plan and a PIMCO Mutual Fund are on a basis no less favorable to the Plan than dealings between the PIMCO Mutual Fund and other shareholders.

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(l) No Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to the date the proposed exemption is published in the **Federal Register**.

(m) PIMCO maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (n) of this Section I, to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PIMCO, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than PIMCO, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m) of this Section I.

(n)(1) Except as provided in paragraph (n)(2) of this Section I and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of Section I above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the PIMCO Mutual Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (n)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of PIMCO or commercial or financial information which is privileged or confidential.

Section II. Availability of Prohibited Transaction Exemption (PTE) 77–4 [5]

Any purchase of PIMCO Mutual Fund shares by a Plan that complies with the conditions of Section I of this proposed exemption shall be treated as a "purchase or sale" of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4.

Section III. Definitions

For purposes of this exemption,

(a) The term "PIMCO" means Pacific Investment Management Company LLC, any successors thereto, and affiliates of PIMCO (as defined in paragraph (b) of this Section III), including Nicholas-Applegate Capital Management, PIMCO Equity Advisers, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors and Oppenheimer Capital, and their existing and future affiliates.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "PIMCO Mutual Fund" or "PIMCO Mutual Funds" means any open-end investment company or companies registered under the ICA for which PIMCO serves as investment adviser, administrator, or investment manager. The term is also meant to include a PIMCO Affiliate Mutual Fund in which a PIMCO Affiliate serves as an investment adviser or investment manager.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and redemptions calculated by dividing the value of all securities, determined by a method as set forth in a PIMCO Mutual Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such PIMCO Mutual Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a relative as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to PIMCO. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PIMCO if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with PIMCO;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of PIMCO (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from PIMCO for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of PIMCO (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the written authorization provided to PIMCO for the Purchase Transactions; (C) the Plan's decision to continue to hold or to redeem shares of the PIMCO Mutual Funds held by such Plan; and (D) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

(h) The term "Strategy" refers to the set of investment guidelines that have been established in advance to govern the Account. The Strategy is created by PIMCO in collaboration with the Second Fiduciary of a client Plan and may be mutually amended, from time to time.

EFFECTIVE DATE: This exemption is effective as of February 5, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 5, 2002 at 67 FR 5307.

Written Comments

During the comment period, the Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment letter was submitted by PIMCO and it requests that certain clarifications be made to the proposal.

Discussed below are the revisions suggested by PIMCO and the changes made by the Department to the final exemption in response to the concerns expressed by PIMCO in its comment letter.

1. *Name of Applicant.* On page 5307 of the proposed exemption there is a comma in the caption identifying PIMCO by its full name as the applicant in this exemption request. Because PIMCO explains that there is no comma in its full name, the Department has revised the caption in the final exemption to read "Pacific Investment Management Company LLC (PIMCO)."

2. *Timing of Disclosure Regarding Transferrable Securities.* On page 5308 of the proposal, Section I(a)(5) requires that PIMCO disclose, to a Second Fiduciary of a Plan having total assets that are less than $200 million, all securities PIMCO deems suitable for transfer to the PIMCO Mutual Funds. However, PIMCO wishes to clarify the timing of this disclosure by adding the following italicized language to Section I(a)(5):

> In the case of a Plan having total assets that are less than $200 million, *in connection with obtaining the advance written approval described in paragraph (c)(2) of this Section I,* the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds.

In response to this comment, the Department has revised Section I(a)(5) of the final exemption to reflect the change suggested by PIMCO.

3. *Transferred Assets and Ongoing Purchase Transactions.* On page 5308 of the proposed exemption, Section I(f) states that the transferred assets will consist of assets transferred to a Plan's Account at the direction of the Second Fiduciary. Because the Purchase Transactions under the exemption will be permitted on a recurring basis, PIMCO wishes to clarify that securities that are transferred to an Account by a Second Fiduciary, including those acquired through the investment and reinvestment of such securities, may be used to purchase additional shares, in-kind. Therefore, PIMCO suggests that the following italicized language be added to Section I(f) of the final exemption:

> The transferred assets consist of securities transferred to the Plan's Account at the direction of the Second Fiduciary, *and any securities which have been acquired through the investment and reinvestment of such securities in the implementation of the Strategy.*

The Department has revised Section I(f) of the final exemption, accordingly, in response to this comment.

4. *No Minimum Plan Size.* On page 5310 of the proposed exemption, the last sentence in Representation 2 of the Summary states, in part, that each Plan proposing to engage in Purchase Transactions must have total assets of at least $100 million. PIMCO notes that although there are different rules regarding disclosure and consent based on whether a Plan has at least $200 million in assets, there is no minimum asset size requirement for investing Plans. Therefore, PIMCO requests that this sentence be stricken from Representation 2 and the Department notes this revision in the final exemption.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the clarifications described above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11005) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7519 Filed 3–27–02; 8:45 am]

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[5] In relevant part, PTE 77–4 (42 FR 18732 (April 8, 1977) permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve purchases and sales of mutual fund shares on the basis of the disclosures given.

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,

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including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 1, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
2. *Date:* April 2, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
3. *Date:* April 4, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
4. *Date:* April 5, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
5. *Date:* April 8, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
6. *Date:* April 10, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
7. *Date:* April 10, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 2002 deadline.
8. *Date:* April 12, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
9. *Date:* April 15, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
10. *Date:* April 19, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
11. *Date:* April 22, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 1, 2002 deadline.
12. *Date:* April 24, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
13. *Date:* April 25, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2002 deadline.
14. *Date:* April 26, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2002 deadline.
15. *Date:* April 30, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2002 deadline.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 02–7421 Filed 3–27–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of two new guides in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guides are temporarily identified by their task numbers, DG–1114 and DG–1115, which should be mentioned in all correspondence concerning these draft guides. Draft Regulatory Guide DG–1114, "Control Room Habitability at Light-Water Nuclear Power Reactors," is being developed to provide guidance and criteria acceptable to the NRC staff for implementing the NRC's regulations regarding control room habitability.

Draft Regulatory Guide DG–1115, "Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors," is being developed to provide guidance acceptable to the NRC staff for performing periodic verification of inleakage into the control room. These inleakage values are used to assure that the control room will be habitable during normal and accident conditions.

These draft guides have not received complete staff approval and do not represent official NRC staff positions.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by June 28, 2002.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page, *http://www.nrc.gov*. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1114 and the related documents, contact Mr. W.M. Blumberg at (301)415–1083, e-mail *WMB1@NRC.GOV*; for information about Draft Regulatory Guide DG–1115 and the related documents, contact Mr. S.F. LaVie at (301)415–1081, e-mail *SFL@NRC.GOV*.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301)415–4737 or (800)397–4205; fax (301)415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of March 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–7501 Filed 3–27–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application to Withdrawal From Listing and Registration on the New York Stock Exchange, Inc. (Bankers Trust Corporation and BT Alex. Brown Holdings Incorporated, 7⅝% Senior Notes (due 2005)) File No. 1–5920

March 22, 2002.

Bankers Trust Corporation and BT Alex. Brown Holdings Incorporated ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7⅝% Senior Notes (due 2005) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

On January 24, 2002, and February 5, 2002, respectively, the Board of Directors of the Issuer adopted resolutions to terminate the NYSE listing of its Security. In June 1999, the Issuer was acquired by Deutsche Bank AG and the Issuer's common stock was terminated on the NYSE. The Issuer states that it wishes to reduce the administrative burden to former entities that are not actively engaged in customer business. In addition, as a part of the efforts of Deutsche Bank AG to promote a more uniform brand in the United States, the Issuer has proposed that the name of the Corporation be changed to Deutsche Bank Trust Corporation, effective on or about April 15, 2002. The Issuer states that withdrawal of the Security from listing and registration on the NYSE will not affect an investor's ability to trade in the over-the-counter market. The Security currently has a limited number of registered holders. The Issuer is not obligated by the terms of the indenture under which the Security was issued or by any other document to maintain a listing on the NYSE or any other exchange. The Company has stated that the NYSE does not intend to object to the withdrawal of the Security.

Any interested person may, on or before April 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7464 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

File No. 1–13949

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration From the American Stock Exchange LLC (Local Financial Corporation, 11% Senior Notes)

March 22, 2002.

Local Financial Corporation, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 11% Senior Notes ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees ("Board") of the Issuer unanimously approved a resolution on February 27, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board states that the Issuer has no continuing obligation to list the Security. The Issuer states that the Security is rarely traded and the Issuer has no record of any transaction occurring on the Amex since the original listing of the Security in April 1998. In addition, the Issuer wishes to reduce the cost of continuing to list the Security and has other securities outstanding which obligate it to continue filing its reports with the Commission. The Issuer's application relates solely to the withdrawal of the Security from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(d).

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

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Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7463 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27509]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 22, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 16, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 16, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company Inc., et al. (70–10057)

American Electric Power Company Inc. ("AEP"), a registered holding company, and its twelve electric utility subsidiary companies, AEP Generating Company ("Generating"), Appalachian Power Company ("Appalachian"), Central Power and Light Company ("Central"), Columbus Southern Power Company ("Columbus"), Indiana Michigan Power Company ("Indiana"), Kentucky Power Company ("Kentucky"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio"), Public Service Company of Oklahoma ("Oklahoma"), Southwestern Electric Power Company ("Southwestern"), West Texas Utilities Company ("West Texas"), and Wheeling Power Company ("Wheeling"), all located at 1 Riverside Plaza, Columbus, Ohio, 43215, (collectively, "Applicants") have filed a declaration under section 12(d) of the Act and rule 44 under the Act.

Applicants request authority to sell certain utility assets, particularly substations, transmission and distribution lines and other utility assets that serve customers of the Applicants as well as poles that will be transferred as part of joint use agreements. By previous order dated December 31, 1996 (HCAR No. 26622), AEP's electric utility subsidiaries were authorized to sell utility assets for consideration of up to $5 million per operating subsidiary per calendar year. This authority was granted through December 31, 2001. Applicants now request authority for the twelve utility subsidiaries to sell utility assets for consideration up to $15 million per operating company per calendar year ("Authorized Amount") through September 30, 2006 ("Authorization Period"). As the electric utility industry makes its transition to a more competitive environment, Texas has adopted measures requiring restructuring of utilities. In response to requests of customers and as mandated by the Public Utility Commission of Texas, AEP is required to transfer substations and transmission and distribution lines or other utility assets that serve the customer, if so requested by the customer, to that customer or to potential customers. In addition, AEP will be involved in routine transfers of poles to joint users.

Applicants request that they and any affiliated public utility company succeeding to the utility assets as part of restructuring of the AEP system required by restructuring of the electric power industry be permitted to transfer utility assets to customers and non-customers through the Authorization Period at not less than the net book value of the assets on the date of the sale. In the case of a lease, the lease payments will be valued over the term of the lease and be counted against the Authorized Amount in the initial year of the lease. Proceeds for sales of the utility assets will be added to the general funds of the companies making the sales and will be used to pay the general obligations of the companies.

Alliant Energy Corporation, et al. (70–10052)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, Alliant Energy Resources, Inc. ("AER"), a wholly owned direct nonutility subsidiary of Alliant Energy, Alliant Energy Corporate Services, Inc. ("Alliant Services"), a wholly owned direct service company subsidiary of Alliant Energy, Energys, Inc., a wholly owned direct nonutility subsidiary of Alliant Energy Integrated Services Company ("Integrated Services"),[1] Alliant Energy Generation, Inc., a wholly owned direct nonutility subsidiary of AER, Heartland Energy Group, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, Heartland Energy Services, Inc., a wholly owned direct nonutility subsidiary of Alliant Energy Investments, Inc. ("AE Investments"),[2] all at 222 West Washington Avenue, Madison, Wisconsin 53703, Interstate Power and Light Company ("IP&L"), a direct public-utility company subsidiary of Alliant Energy, Alliant Energy Transportation, Inc. ("AE Transportation"), a wholly owned direct nonutility subsidiary of AER, AE Investments, a wholly owned direct nonutility subsidiary of AER, Iowa Land and Building Company, a wholly owned direct nonutility subsidiary of AE Investments, Alliant Energy International, Inc., a wholly owned direct nonutility subsidiary of AER, Integrated Services, a wholly owned direct nonutility subsidiary of AER, Alliant Energy Integrated Services-Energy Management LLC, a wholly owned direct nonutility subsidiary of Integrated Services, Alliant Energy Integrated Services-Energy Solutions LLC, a wholly owned direct nonutility subsidiary of Integrated Services, Iowa Land and Building Company, a wholly owned direct nonutility subsidiary of AE Investments, Prairie Ridge Business Park, L.C., a wholly owned direct nonutility subsidiary of AE Investments, Transfer Services, Inc., a wholly owned direct nonutility subsidiary of AE Transportation, Williams Bulk Transfer Inc., a wholly owned direct nonutility subsidiary of AE Transportation, all at Alliant Tower, 200 First Street, SE., Cedar Rapids, Iowa 52401, Alliant Energy Field Services, LLC, a wholly owned direct nonutility subsidiary of Integrated Services, 5033 A Tangle Lane, Houston, Texas 77056, Cedar Rapids and Iowa City Railway Company, a wholly owned direct nonutility subsidiary of AE Transportation, 2330 12th Street, SW., Cedar Rapids, Iowa 52404, Cogenex Corporation, a wholly owned direct nonutility subsidiary of Integrated Services, Boott Mills South, 100 Foot of John St., Lowell, Massachusetts 01852, Energy Performance Services, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, Industrial Energy Applications, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, both 201 Third Avenue, SE., Suite 300, Cedar Rapids, Iowa 52406, Heartland Properties, Inc., a wholly owned direct nonutility subsidiary of AE Investments, Capital Square Financial Corporation, a wholly owned direct nonutility subsidiary of AER, both 122 W. Washington Avenue, Madison, Wisconsin 53703, IEI Barge Services, Inc., a wholly owned direct nonutility subsidiary of AE Transportation, 18525 Hwy 20 West, East Dubuque, Illinois 61025, Industrial Energy Applications Delaware, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 5925 Dry Creek Lane, NE., Cedar Rapids, Iowa 52402, RMT, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 744 Heartland Trail, Madison, Wisconsin 53717, Schedin & Associates, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 920 Plymouth Building, 12 South Sixth Street, Minneapolis, Minnesota 55401, SVBK Consulting Group, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 37 N. Orange Ave., Suite 710, Orlando, Florida 32801, and Whiting Petroleum Corporation, a wholly owned direct nonutility subsidiary of AER, Mile High Center, Suite 2300, 1700 Broadway, Denver, Colorado 80290 (collectively, "Applicants"), have filed an application-declaration with the Commission under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 24, 43(a), 45(a), and 54 under the Act.

I. Background

By orders dated December 18, 1998 (HCAR No. 26956) and December 15, 2000 (HCAR No. 27304), the Commission authorized Alliant Energy to issue and sell $1 billion in notes and/or commercial paper through June 30, 2004 ("Prior Authorization Period") and to use the proceeds to fund two money pools, one for its public-utility company subsidiaries other than South Beloit Water, Gas & Electric Company ("Utility Money Pool") and the other for certain of its nonutility subsidiaries ("Nonutility Money Pool"). More specifically, by those orders the Commission authorized: (1) Alliant Energy to loan up to $475 million in 2001, through the Utility Money Pool, to IP&L, Wisconsin Power & Light Company, and Alliant Services; (2) Alliant Energy to lend up to $525 million through the Utility Money Pool during the remainder of the Prior Authorization Period; and (3) Alliant Energy to provide guaranties, enter into expense agreements, and otherwise provide credit support in an amount not to exceed $600 million at any time outstanding, to support a separate commercial paper program to fund the Nonutility Money Pool. Accordingly, AER established a separate commercial paper program and bank credit facilities totaling $600 million, which are used to fund loans through the Nonutility Money Pool. Alliant Energy guarantees all of those borrowings.

By order dated October 24, 2001 (HCAR No. 27456 and, together with HCAR No. 26956 and HCAR No. 27304, "Prior Orders"), the Commission authorized among other things: (1) Interstate Power Company, a wholly owned public-utility company subsidiary of Alliant Energy, to merge into IES Utilities Inc., another wholly owned public-utility company subsidiary of Alliant Energy; and (2) IES Utilities Inc. to borrow up to $250 million at any one time outstanding through the Utility Money Pool.

II. Proposals

Applicants seek to restate, modify, and extend the authorizations granted under the Prior Orders. Applicants request that the Commission authorize through December 31, 2004 ("Authorization Period") the continued operation of the Utility Money Pool. They state that the Utility Money Pool would be operated and administered in the same manner, except that: (1) WP&L, a direct public-utility company subsidiary of Alliant Energy, would no longer participate; and (2) Alliant Energy, IP&L, or both, would invest funds derived from external sources. To the extent required, Applicants request authority for the participants in the Utility Money Pool to make loans and extend credit to each other.[3]

Applicants also request that the Commission authorize the continued operation of the Nonutility Money Pool through the Authorization Period. They state that the Nonutility Money Pool would continue to be operated on the same terms and conditions as the Utility Money Pool, except that Alliant Energy intends to fund directly the Nonutility Money Pool using proceeds from sales of its short-term debt.[4] Applicants state that terminating AER's separate commercial paper facility would eliminate duplicate program costs. However, in the event that Alliant Energy decides to continue funding the Nonutility Money Pool through AER, Applicants request authority for Alliant Energy, through the Authorization Period, to guarantee borrowings by AER in an aggregate amount that would not exceed $700 million at any one time outstanding.[5] Applicants state that all loans to and borrowings from the Nonutility Money Pool would be used to finance the existing businesses of the participants and, correspondingly, would be exempt under rule 52(b) under the Act.

Applicants seek to obtain external funds to invest in, among other things, the Utility and Nonutility Money Pools. Specifically, they request authority for Alliant Energy to issue and sell through the Authorization Period up to an aggregate amount of $1 billion, at any time outstanding, of commercial paper to dealers and notes and other forms of short-term indebtedness to banks and other institutional lenders (collectively, "Short-Term Debt"). All Short-Term Debt would have maturities of less than one year from the date of issuance, and the effective cost of money on all Short-Term Debt would not exceed at the time of issuance 300 basis points over the London Interbank Offered Rate for maturities of one year or less. Applicants state that the proceeds from the sales of Short-Term Debt would be invested in the Utility and Nonutility Money Pools[6] and/or used for other corporate purposes, including funding of investments in exempt wholesale

[4] 15 U.S.C. 78l(g).

[1] Integrated Services is described below.

[2] AE Investments is described below.

[3] Applicants state that Alliant Energy would participate in the Utility Money Pool only as a lender.

[4] Currently, AER invests in the Nonutility Money Pool using external funds obtained through sales of its commercial paper and bank credit facilities it maintains, and Alliant Energy guarantees those debt issuances.

[5] The proposed guaranty authority would be in addition to the authorization granted by the Commission in an order dated October 3, 2001. *See Alliant Energy*, HCAR No. 27448.

[6] Applicants state that Alliant Energy would invest up to an aggregate amount of $350 million at any one time outstanding in the Utility Money Pool, and up to an aggregate amount of $700 million at any one time outstanding in the Nonutility Money Pool.

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generators and foreign utility companies.

Applicants request authority for IP&L to issue and sell Short-Term Debt through the Authorization Period in a principal amount which, when added to the principal amount of its borrowings through the Utility Money Pool, would not at any time exceed $300 million. Applicants state that, presently, borrowings by IP&L have a lower effective cost than borrowings by Alliant Energy, its parent company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-7465 Filed 3-27-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-28586]

Application and Opportunity for Hearing: USG Corporation

March 22, 2002.

The Securities and Exchange Commission gives notice that USG Corporation has filed an application under Section 310(b)(1)(ii) of the Trust Indenture Act of 1939. USG asks the Commission to find that the trusteeship of National City Bank of Indiana as successor trustee under:

- An indenture dated October 1, 1986, between USG and Harris Trust and Savings Bank, a predecessor trustee, with respect to 9¼% Senior Notes due September 15, 2001 and 8½% Senior Notes due August 1, 2005, and
- 12 indentures between USG and certain predecessor trustees, with respect to tax-exempt bonds listed in Exhibit A, that have not been qualified under the 1939 Act,

is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify National City from acting as trustee under these indentures.

Section 310(b) of the 1939 Act provides, in part, that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest described in that section, the trustee must, within ninety days after ascertaining that it has a conflicting interest, either eliminate the conflicting interest or resign. Section 310(b)(1) provides, with stated exceptions, that a trustee shall be deemed to have a conflicting interest if the trustee is also a trustee under another indenture under which any other securities of the same obligor are outstanding. However, under Section 310(b)(1)(ii), specified situations are exempt from the deemed conflict of interest under Section 310(b)(1). Section 310(b)(1)(ii) provides, in part, that an indenture to be qualified shall be deemed exempt from Section 310(b)(1) if:

> the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture * * * is not so likely to involve a *material conflict of interest* as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures * * * Section 310(b)(1)(ii) (emphasis added).

Under this provision, National City's trusteeship under the indentures may be excluded from the operation of Section 310(b)(1) if USG sustains the burden of proving, on application to the Commission, that a material conflict of interest is not so likely as to make it necessary in the public interest or for the protection of investors to disqualify National City from acting as trustee under any of the indentures.

In its application, USG alleges that:

1. USG issued the 9¼% Senior Notes due September 15, 2001 and the 8½% Senior Notes due August 1, 2005 in registered public offerings in the United States (Registration Statement Nos. 33-52433 and 33-60563), and USG qualified the indenture under the 1939 Act. USG issued the tax-exempt bonds under indentures that were not qualified under the 1939 Act. The securities outstanding under the indentures rank *pari passu* with each other and are wholly unsecured. However, none of the indentures references any other indenture.

2. As a result of a Resignation, Appointment and Acceptance Agreement, dated and effective June 18, 2001, National City succeeded as trustee under the qualified indenture. Under various other Resignation, Appointment and Acceptance Agreements that are listed in Exhibit A, National City has succeeded, or is in the process of succeeding, as trustee under the non-qualified indentures.

3. As of the date of USG's application, USG is in default under the indentures due to its filing of a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code on June 25, 2001. The commencement of a voluntary case under the U.S. Bankruptcy Code constitutes an "Event of Default" under Section 6.01 of the qualified indenture. The commencement of a voluntary case under the U.S. Bankruptcy Code also constitutes an "Event of Default" under each of the non-qualified indentures. Thus, USG is in default under all of the indentures.

4. Section 310(b)(1)(i) exempts an indenture from the provisions of Section 310(b) "if the indenture to be qualified and any such other indenture or indentures * * * are wholly unsecured and rank equally, and such other indenture or indentures * * * are specifically described in the indenture to be qualified or are thereafter qualified." None of the indentures references any other indenture. USG asserts that the absence of these references does not create a risk of material conflict between the indentures where none otherwise exists.

5. USG asserts that because the securities outstanding under all of the indentures rank equally with one another in right of payment and are wholly unsecured, it is highly unlikely that National City would ever be subject to a conflict of interest with respect to issues relating to the priority of payment. National City would neither be in a position, nor required by the terms of any indenture, to assert that securities outstanding under one indenture are entitled to payment prior to payment of claims under another indenture.

6. Further, USG asserts that there are no material variations among the default and remedy provisions of the indentures. USG asserts that because of the similarity of these provisions, including the cross-default provisions, and the defaults under all of the indentures, it is highly unlikely as a practical matter that National City would find itself in a position of proceeding against USG for a default under one indenture but not another indenture.

7. USG asserts that it is in the best interest of USG and the holders of the securities under the indentures that National City serves simultaneously as trustee under all the indentures. National City is not a creditor of USG and has no business relationship with USG other than under the indentures. National City's trusteeship also will allow USG to avoid the significant duplicative costs associated with having more than one trustee and their separate professionals review, understand, and administer similar indentures, and interact with USG and other parties in interest as USG works to address its present financial circumstances.

USG has waived notice of a hearing in connection with this matter. Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File No. 22-28586, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than April 22, 2002. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Margaret H. McFarland, Deputy Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. At any time after April 22, 2002, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—TAX-EXEMPT OBLIGATIONS OF, OR ASSUMED BY, USG CORPORATION

Date of indenture	Description of issue	Predecessor trustee	Principal outstanding	Interest rate (percent)	Date trusteeship assumed	Maturity date
12/01/84	Nolan County Industrial Development Corporation Industrial Development Revenue Bonds (United States Gypsum Company Project) Series 1984 due 2014.	Bank One [1] ..	$ 1,000,000	7.25	06/21/01	12/01/2014
08/01/97	State of Ohio Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1997 due 2032.	Bank One	45,000,000	5.60	06/22/01	08/01/2032
03/01/98	State of Ohio Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1998 due 2033.	Bank One	44,400,000	5.65	06/22/01	03/01/2033
08/01/99	State of Ohio Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1999 due 2034.	Bank One	9,000,000	6.05	06/22/01	08/01/2034
07/10/99	Pennsylvania Economic Development Financing Authority Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1999 due 2031.	Chase [2]	110,000,000	6.00	07/13/01	06/01/2031
09/01/77	Town of Shoals, Indiana Economic Development Revenue Bonds (United States Gypsum Company Project) Series A dated 1977 due 2007.	Bank One	1,000,000	5.90	08/01/01	09/01/2007
09/01/77	City of Fort Dodge, Iowa Industrial Development Revenue Bonds (United States Gypsum Company Project) Series A dated 1977 due 2007.	Bank One	1,000,000	5.90	09/18/01	09/01/2007
10/01/84	The Trustees of the Blaine County Industrial Authority Industrial Development Revenue Refunding Bonds (United States Gypsum Company Project) Series 1974 due 2010.	Bank One	1,000,000	7.25	[4]	10/01/2010
10/01/84	Jacksonville Port Authority Industrial Development Revenue Refunding Bonds (United States Gypsum Company Project) Series 1984 due 2014.	Bank One	1,000,000	7.25	09/06/01	10/01/2014
09/01/98	City of East Chicago, Indiana Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1998 due 2038.	Bank One	10,000,000	5.50	10/16/01	09/01/2028
08/01/99	City of East Chicago, Indiana Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1999 due 2029.	Bank One	10,000,000	6.375	10/16/01	08/01/2029
12/01/99	State of Oregon Solid Waste Disposal Facilities Economic Development Revenue Bonds Series 192 (USG Corporation Project) Series 1999.	Wells Fargo [3]	11,000,000	6.40	10/01/01	12/01/2029

[1] Bank One Trust Company, N.A.
[2] Chase Manhattan Trust Company, National Association.
[3] Wells Fargo Bank Northwest, National Association.
[4] Pending.

[FR Doc. 02-7426 Filed 3-27-02; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 3915]

Shipping Coordinating Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Tuesday, April 16, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the Eighty-Fourth Session of the International Maritime Organization (IMO) Legal Committee (LEG 84), scheduled for April 22 through 26, 2002.

The Legal Committee will review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol) to determine if the instruments need to be updated in light of the September 11, 2001 terrorist attacks against the United States of America. The Committee will also examine the draft Wreck Removal Convention with the objective of having the draft ready for a Diplomatic Conference in the 2004-5 biennium. In addition, the Legal Committee will consider a proposal to increase the

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limits of compensation under the 1992 protocols to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. If results are submitted, the Legal Committee will study the survey conducted by the Comite Maritime International on the potential legal issues surrounding the topic of places of refuge. The Legal Committee will then turn its attention to the status of the implementation of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea. Time also will be allotted to address any other issues on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. Due to building security, it is recommended that those who plan on attending call or send an e-mail two days ahead of the meeting so that we may place your name on a list for security personnel to reference. For further information please contact Captain Joseph F. Ahern or Lieutenant Carolyn Leonard-Cho, at U.S. Coast Guard, Office of Maritime and International Law (G-LMI), 2100 Second Street, SW., Washington, DC 20593-0001; e-mail *cleonardcho@comdt.uscg.mil*, telephone (202) 267-1527; fax (202) 267-4496.

Dated: March 14, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02-7471 Filed 3-27-02; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF STATE

[Public Notice 3916]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Wednesday, April 24, 2002, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to discuss the outcome of the forty-sixth session of the International Maritime Organization's Subcommittee on Fire Protection, held February 4–8, 2002. Preparations for the next session will also be discussed.

The meeting will focus on proposed amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) concerning the fire safety of commercial vessels. Specific discussion areas include:

—Recommendation on evacuation analysis for new and existing passenger vessels;
—Smoke control and ventilation;
—Unified interpretations to SOLAS chapter II-2 and related fire test procedures;
—Analysis of fire casualty records;
—Large passenger ship safety; and
—Performance testing and approval standards for fire safety systems.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Chief, Office of Design and Engineering Standards, Commandant (G-MSE-4), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001, by calling: LCDR Brian Gilda at (202) 267-1444, or by visiting the following World Wide Web site: *http://www.uscg.mil/hq/g-m/mse4/stdimofp.htm*.

Dated: March 14, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02-7472 Filed 3-27-02; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Systems and Equipment Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments on proposed Advisory Circular (AC) 23-17A.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, Advisory Circular (AC) 23-17A, Systems and Equipment Guide for Certification of Part 23 Airplanes. Proposed Advisory Circular 23-17A provides information and guidance concerning acceptable means, but not the only means, of showing compliance with part 23 applicable to Subpart D from § 23.671 and Subpart F.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Regulations & Policy (ACE-111), 901 Locust Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Les Taylor, Regulations & Policy (ACE-111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 329-4134.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC either by downloading it from the Web site at *http://www.faa.gov/certification/aircraft/small_airplane_directorate_news_proposed.html* or by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited

We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23-17A and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. By making prior arrangements with the individual listed under **FOR FURTHER INFORMATION CONTACT,** the proposed AC and comments received may be inspected in the Standards Office (ACE-110), Room 301, 901 Locust, Kansas City, Missouri, between the hours of 8:30 and 4:00 p.m. weekdays, except on Federal holidays.

Background

The Federal Aviation Administration reviewed the airworthiness standards of part 23 in 1968. Since then, the standards have been amended several times. Accordingly, the FAA is proposing and requesting comments on AC 23-17A, which will provide guidance for the original issue of part 23 and the various amendments up through Amendment 23-53. The amended version of the advisory circular covers policy available through June 30, 2001. Policy available after that date will be covered in future amendments to the advisory circular.

Issued in Kansas City, Missouri, on March 13, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-7487 Filed 3-27-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Ten Current Public Collections of Information.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on ten currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267-9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew their clearances.

1. 2120-0009, Pilot Schools—FAR 141. The information collected is used to determine compliance with 14 CFR part 141 of civilian schools giving instruction in flying. These schools may receive certification if the minimal acceptable training standards prescribed by this regulation are met. The current estimated annual reporting burden is 28,878 hours.

2. 2120-0044, Rotocraft External-Load Certificate Application. The information collected is required by 14 CFR part 133 and used by the FAA to process the operating certificate for non passenger-carrying rotorcraft external-load operations conducted for compensation or hire. The FAA requires information reporting by affected rotorcraft external-load operators in order to maintain its regulatory responsibilities. The current estimated annual reporting burden is 3,268 hours.

3. 2120-0060, General Aviation/Air Taxi Activity and Avionics Survey. Respondents to this survey are owners of general aviation aircraft and the collected information covers civil aeronautics, the development of air commerce and aeronautical industries, the development and use of navigable airspace, and aids for air navigation. The information collected is used by the FAA, NTSB, other government agencies, the aviation industry, and others for safety assessment, planning forecasting, cost/benefit analysis, and to target areas for research. The current estimated annual reporting burden is 4,875 hours.

4. 2120-0505, Indirect Air Carrier Security, 14 CFR part 109. Security programs required by 14 CFR part 109 set forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities in the forwarding of package cargo by passenger aircraft. The information collection burden is a recordkeeping burden that requires each affected air carrier to keep at least one copy of its security program at its principle business office and a complete copy of the pertinent portions of its security program where package cargo is accepted. The current estimated annual reporting burden is 664 hours.

5. 2120-0577, Explosives Detection System Certification Training. The FAA has prepared a management plan that outlines the framework for explosive detection systems (EDS) certification testing. This plan is based on the general testing protocols developed independently by the National Academy of Sciences. Private manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results (vendor qualification data package) to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center for certification testing. The current estimated annual reporting burden is 775 hours.

6. 2120-0587, Aviator Safety Studies. In order to develop effective intervention programs to improve aviation safety, data are required on the type and range of various pilot attributes related to their skill in making safety-related aeronautical decisions. The information collected will be used to develop new training methods particularly suited to general aviation pilots. The current estimated annual reporting burden is 13,333 hours.

7. 2120-0601, Financial Responsibility for Licensed Launch Activities. The information collected is used to determine if licensees have complied with federal responsibility requirements (including maximum probable loss determination) as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation. Respondents are all licensees authorized to conduct licensed launch activities. The current estimated annual reporting burden is 1,827 hours.

8. 2120-0633, Exemptions for Air Taxi and Commuter Air Carrier Operations. This collection is used to (1) expedite the FAA's issuance of operating authority for small charter air carriers, and (2) protect the competitive interests of these carriers, and (3) relieve the safety concerns of the traveling public with regard to the operations of the carriers. The current estimated annual reporting burden on the air taxi and commuter air carrier operators is 793 hours.

9. 2120-0646, Protection of Voluntarily Submitted Information. This collection is intended to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System. The current estimated annual reporting burden is 5 hours.

10. 2120-0677, Enhanced Security Procedures at Certain Airports, Washington DC Area. This SFAR has put into place security measures and air traffic control procedures that allow three Maryland airports (Potomac, Hyde, and College Park) to resume normal flight operations, small business operations and private pilot operations at each of these locations after the massive closure of airspace following September 11, 2001. Respondents include airport security personnel, clerical support personnel, and pilots. The current estimated annual reporting burden is 8,299 hours.

Issued in Washington, DC, on March 20, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF-100.

[FR Doc. 02-7504 Filed 3-27-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 14, 2001 on pages 57149–57150.

DATES: Comments must be submitted on or before April 29, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration

Title: Aircraft Registration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0042.

Form(s): AC8050–1, AC8050–2, AC8050–4, AC8050–81, AC8050–98, AC8050–117.

Affected Public: A total of 41978 individual airmen, state & local governments, and businesses.

Abstract: The information requested is used by the FAA to register an aircraft or hole an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

Estimated Annual Burden Hours: An estimated 67,153 hours annually.

Issued in Washington, DC, on March 22, 2002.

Patricia W. Carter,

Acting Manager, Standard and Information Division, APF–100.

[FR Doc. 02–7489 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–21]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–11870 or FAA–2002–11868 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 25, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11870.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.365(e).

Description of Relief Sought: To permit a time-limited exemption for a period of time not to exceed five years to allow continued delivery of Model 747 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2).

Docket No.: FAA–2002–11868.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.365(e).

Description of Relief Sought: To permit a time-limited exemption for a period of time not to exceed five years to allow continued delivery of Model 747 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2).

[FR Doc. 02–7484 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–22]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 8, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number of FAA–2001–11316 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed postcard.

You must also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 22, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11316.

Petitioner: Fairchild Dornier Gmbh.

Section of 14 CFR Affected: 14 CFR 25.785(b) (formerly § 25.785(a)).

Description of Relief Sought: To allow Fairchild Dornier to install side-facing divan seats in Dornier 328–100 and 328–300 series airplanes, and to provide Fairchild Dornier with relief from the requirement that each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designed as occupiable during takeoff and landing be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562.

[FR Doc. 02–7485 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–23]

Petition for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 25, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No.: FAA–2001–10800.

Petitioner: Sierra Industries, Inc.

Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought/Disposition: To permit certain qualified pilots of its Cessna Citation Model 500 series airplanes, equipped with certain supplemental type certificates, to operate those aircraft without a pilot who is designated as second in command. *Grant, 3/11/2002, Exemption No. 5517F (Previously Docket No. 26734)*

Docket No.: FAA–2002–11564.

Petitioner: Cedar Rapids Police Department, Air Support Division.

Section of 14 CFR Affected: 14 CFR 91.209(a) and (b).

Description of Relief Sought/Disposition: To permit the Cedar Rapids Police Department to conduct air operations without lighted position and anticollision lights required by § 91.209. *Grant, 3/11/2002, Exemption No. 6780B (Previously Docket No. 27821)*

Docket No.: FAA–2002–11402.

Petitioner: Experimental Aircraft Association.

Section of 14 CFR Affected: 14 CFR 61.58(a)(2) and 91.5.

Description of Relief Sought/Disposition: To permit Experimental Aircraft Association members to complete an approved training course in lieu of a pilot proficiency check. *Grant, 3/11/2002, Exemption No. 4941G (Previously Docket No. 25242)*

Docket No.: FAA–2002–11498.

Petitioner: Air Tractor, Inc.

Section of 14 CFR Affected: 14 CFR 61.31(a)(1).

Description of Relief Sought/Disposition: To permit Air Tractor and pilots of Air Tractor AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating, although the maximum gross weight of the airplane exceeds 12,500 pounds. *Grant, 3/11/2002, Exemption No. 5651G (Previously Docket No. 27122)*

Docket No.: FAA–2002–11568.

Petitioner: Broward County Public Works Department, Mosquito Control Section.

Section of 14 CFR Affected: 14 CFR 137.53(c)(2).

Description of Relief Sought/Disposition: To permit Broward County Public Works Department, Mosquito Control Section to conduct aerial applications of insecticide materials from a Beechcraft C–45H aircraft without the aircraft being equipped with a device that is capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operating over a congested area. *Grant, 3/11/2002, Exemption No. 6470C (Previously Docket No. 28422)*

Docket No.: FAA–2002–11284.

Petitioner: Tulsa Air & Space Center Airshows, Inc.

Section of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).

Description of Relief Sought/Disposition: To permit Tulsa Air &

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Space to operate its North American B–25 aircraft for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 3/12/2002, Exemption No. 7126B)*

[FR Doc. 02–7486 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–24]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–90001. You must identify the docket number FAA–2001–11155 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 25, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11155.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.961(a)(5).

Description of Relief Sought:

Boeing is requesting relief from the requirements of 14 CFR 25.961(a)(5) for JP–4 and Jet B fuel usage on 757–300 airplanes powered by Pratt & Whitney engines. The regulation requires that the airplane and engines perform satisfactorily with the critical fuel at a temperature of at least 110°F. Boeing requests that FAA approve a set of limitations for JP–4 and Jet B fuels on the Pratt & Whitney powered 757–300 in lieu of compliance with the specified temperature of 110°F. The limitations consist of restricting the fuel temperature to 85°F, restricting the initial cruise altitude vs. fuel temperature, and restricting JP–4 and Jet B fuels to the main tanks only.

[FR Doc. 02–7488 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–18]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 21, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11619.

Petitioner: FedEx Express.

Section of 14 CFR Affected: 14 CFR 121.503(b).

Description of Relief Sought: To permit FedEx Express pilots to operate additional flight hours, when necessary, after having exceeded 8 hours of flight time within the preceding 24 hours.

[FR Doc. 02–7507 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM—1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 21, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29969.

Petitioner: National Agricultural Aviation Association.

Section of 14 CFR Affected: 14 CFR 91.313(e).

Description of Relief Sought:

To permit NAAA members to ferry restricted category agricultural aircraft and authorize operations over densely populated areas, on congested airways, or into busy airports where passenger transport operations are being conducted, without previously issuing a waiver or operation limitations. The exemption, if granted, would apply only to aircraft being ferried from one location to another without a dispensable load.

Dispositions of Petitions

Docket No.: FAA–2001–8613.

Petitioner: Midwest Express Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought/Disposition:

To permit MWEA to replace the required approved pyrotechnic signaling device on each aircraft with crewmember personal flotation devices each equipped with an approved survivor locator light.

Denial, 02/20/200, Exemption No. 7721.

Docket No.: FAA–2000–8497.

Petitioner: America West Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought/Disposition:

To permit America West to operate its aircraft over water without at least one pyrotechnic signaling device aboard the aircraft.

Denial, 02/20/200, Exemption No. 7719

Docket No.: FAA–2000–8579.

Petitioner: Astral Aviation, Inc. dba Skyway Airlines.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought:

To permit Astral to replace the required approved pyrotechnic signaling device on each aircraft with crewmember personal flotation devices each equipped with an approved survivor locator light.

Denial, 02/20/200, Exemption No. 7721.

[FR Doc. 02–7508 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued.

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal

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holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 21, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11169
Petitioner: Lockheed Martin
Section of 14 CFR Affected: 14 CFR SFAR–88
Description of Relief Sought:
To permit Lockheed Model L–188 airplanes to operate without meeting the requirements of SFAR–88.

Dispositions of Petitions

Docket No: 30122
Petitioner: Bombardier Aerospace Dallas/Fort Worth Customer Training Center
Section of 14 CFR Affected: 14 CFR from 91.105(a) and 135.338(f)
Description of Relief Sought/Disposition:
To permit persons assigned as required crewmembers on aircraft operated by Bombardier Aerospace to temporarily relinquish their crewmember stations to Bombardier Aerospace DFW–CTC instructors for the purpose of meeting the requirements of 14 CFR 142.53(b)(1) when those instructors do no hold valid medical certificates issued by the FAA. In addition, the proposed exemption would permit individuals who meet the requirements of § 142.53(b)(1) to be considered to meet the requirements of § 135.338(f)(1).
Denial, 02/28/2002, Exemption No. 7732
Docket No.: FAA–2001–11011
Petitioner: Executive Jet International
Section of 14 CFR Affected: 14 CFR 135.152(j)
Description of Relief Sought/Disposition:
To permit EJI to operate one Gulfstream Model GV (GV) airplane (Serial No. 687) without that airplane being equipped with the required flight data recorder after the August 19, 2002, compliance date. The FAA notes that EJI did not own the indicated aircraft at the time the petition was submitted; the airplane manufacturer (Gulfstream Aerospace Incorporated) petitioned for relief on behalf of EJI, citing EJI's "willingness to accept" this GV airplane if the requested relief were granted.
Denial, 02/25/2002, Exemption No. 77735

[FR Doc. 02–7509 Filed 3–27–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss tasks concerning quality assurance and ratings for aeronautical repair stations.

DATES: The meeting will be held April 17–18, 2002, from 10 a.m. to 5 p.m. Arrange for teleconference capability and presentations no later than 3 business days before the meeting.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meeting will be held April 17–18, 2002, from 10 a.m. to 5 p.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818. The committee will discuss quality assurance and ratings for aeronautical repair stations.

Attendance is open to the public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification no later than 3 business days before the meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at the meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as assistive listening device, if requested no later than 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 25, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–7482 Filed 3–27–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Airport Certification Issues Meeting

AGENCY: Federal Aviation Administrative (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss Airport Certification issues.

DATES: The meeting will be held on April 8, 2002, from 1:00 p.m. to 4:00 p.m. Arrange presentations by April 1, 2002.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW, Room 600 East, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, FAA, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW, Washington, DC 20591. Telephone, (202) 267–7653, fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on April 8, 2002, from 1:00 p.m. to 4:00 p.m. at the Federal Aviation Administration, 800 Independence Ave. SW, Room 600 East, Washington, DC 20591. The agenda will include:

1. Opening Remarks.
2. Committee Administration.
3. Rescue and Firefighting Requirements Working Group Report.
4. Future Meetings.

Attendance is open to the interested public but will limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification before April 1, 2002. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitian area will be responsible for paying long distance charges.

The public must make arrangements by April 1, 2002, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation, as well as an assistive listening device, can be made available, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 19, 2002.

Ben Castellano,

Assistant Executive Director for Airport Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–7506 Filed 3–27–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airworthiness Approval of Traffic Alert and Collision Avoidance Systems and Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a revised draft Advisory Circular (AC) 20–131B Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders. The draft AC provides guidance material for the airworthiness approval of Traffic Alert and Collision Avoidance Systems (TCAS II) certified to Technical Standard Order (TSO)—C119b and Mode S transponders.

DATES: Comments submitted must be received on or before June 26, 2002.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–13, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mary Grice, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft engineering Division, Avoionic Systems Branch AIR–130, 800 Independence Avenue SW, Washington, DC 20591, Telephone: (202) 267–9897, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the draft AC listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked "Comments to AC 20–131B." Comments received on the draft advisory circular may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, S.W., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. all communications received on or before the closing date for comments specified will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The FAA is developing a new Advisory Circular, AC 20–131B, Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders. This advisory circular (AC) provides guidance material for the airworthiness approval of Traffic Alert and Collision Avoidance systems (TCAS II) and Mode S transponders. This revision to the current AC is prompted by the development of TCAS II version 7 and the publication of Technical Standard Order (TSO) C–119b, Traffic Alert and Collision Avoidance system (TCAS) Airborne Equipment, TCAS II, dated 18 December, 1998. At this time, there is no plan to mandate an upgrade of existing TCAS II units to version 7. TCAS II version 7 was developed to be interoperable with existing TCAS II version v6.04a equipment. Version 7 includes numerous software changes improving surveillance performance and providing other improved capabilities such as in multiple aircraft encounters. This AC also proposes a reduction or elimination of flight test requirements under certain conditions when upgrading existing TCAS II units.

How To Obtain Copies

A copy of the revised draft AC may be obtained via Internet, *(http://www.faa.gov/avr/air/airhome.htm),* or on request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 14, 2002.

John W. McGraw,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–7505 Filed 3–27–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Party War Risk Liability Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from March 21, 2002 through May 19, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst APO–3, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at *FAA Insurance Web site: http://api.hq.faa.gov/911policies/inscover.html.*

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SUPPLEMENTARY INFORMATION: On March 19, 2002, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum To the President

"Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(c) of chapter 443 of 49 U.S.C.—Aviation Insurance, the period for provision of insurance shall be extended from March 21, 2002, through May 19, 2002."

/s/ Norman Y. Mineta

Affected Public: Air Carriers who currently have Third Party War-Risk Liability Insurance with the Federal Aviation Administration.

Issued in Washington, DC on March 22, 2002.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 02–7483 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11944]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALEXES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11944. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: ALEXES. *Owner:* Action Beach and Bay Rentals.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "LOA: 38' Beam: 14" Draft: 3'4" Displacement: 24,000 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Point Conception, California to Cabo San Lucas, BCS Mexico, and out 200 miles . . ." ". . . charter boat . . .".

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1963. *Place of construction:* uncertain.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Action Beach has operated the ALEXES as a charter boat from Mission Bay, San Diego, California for two years. No adverse impact on other commercial passenger vessel operators has occurred, and none is expected if this waiver is granted."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "No adverse impact on US shipyards will occur if this waiver is granted."

Dated: March 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7480 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11910]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HOLY MOSES.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11910. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* HOLY MOSES. *Owner:* David L. Williams Trust.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "L/O; 50'3"; Registered Length, LWL/45'8"; Beam: 15'6"; Draft: 4'6"; Tonnage: Net/40; Gross/50".

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The vessel will be used for . . . 1 to 10 day charters, with a maximum of six [6], charter passengers on one day trips, and 1 to 3 charter passengers on overnight charters. The vessel operates in the waters of Puget Sound, USA . . . and Southern Alaska, USA."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1981. *Place of construction:* Kaohsiung, Taiwan, ROC.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The operation of HOLY MOSES Charters . . . will have "0" impact on other charter operations in the San Juan Islands area of Puget Sound because:

(a) Charter guests for the H/M operation have been and will be derived from the charter customers of LinnLine Marine, Inc. "which has been in the sailing charter business in Hawaii since 1977. These customers have chartered with us for many years and we have become good friends and therefore compatible for extended charters.

(b) Our customers book with us because they wish to cruise with us and are not nor would be available to other operators in the Northwest area.

(c) H/M charter activity is limited to the summer months of June thru September; and due to sleeping arrangements aboard the vessel, is limited to a max of 3 charter guests for overnight trips, which consists of 5 to 10 days in length and we limit these to 4 to 6 charters per season. These "guests". . . are "friends". . . since they do contribute to the cost of the cruise are considered in the eyes of maritime law, "paying guests" and I, by accepting said contributions, I am . . . "chartering".

There are a number of large charter co.'s operating in the San Juan Islands area . . . The larger companies have fleets of vessels and offer both crewed and "bare boat" type's of charters. Again, there will be no impact on their operations as stated above, 100% of our guests are from my own past charters customers and not drawn from their area.

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "a. There will be no negative impact of US ship yards as the cost of producing a vessel of the class quality and equipped as HOLY MOSES is, would be over three times the amount that I have invested in the vessel. There is no possible way that I could or would be able to afford to buy one. b. The positive impact on US ship yards will be that I will be able to keep spending money with them to have the vessel hauled and . . . maintained at least once a year."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7476 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11909]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MOJO.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11909. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

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Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: MOJO. Owner: Ridgeway Yachting, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: Gross tonnage: 30 GRT, Net tonnage: 27 NRT, Length 52.4, Breadth 15.0, Depth 10.5

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "* * * day and term charters * * * from Long Island Sound to Northern Maine. For day charters we would like to carry the maximum 12 passengers and for term charters no more than 6."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1987. Place of construction: Kaohsiung Hsien, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "While there are a large number of people interested in chartering sailboats (aka. demand) in New England there are relatively few charter boats available for public hire in the region (aka. supply). As such, we believe the impact of our high quality marketing efforts (see enclosed brochure) will actually help grow the industry and satisfy, as yet, unmet demand while not adversely impacting the businesses of existing charter operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "* * * "MoJo" would provide additional revenue opportunities for seaside resort communities and boat yards through New England."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7477 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11907]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PET.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11907. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: PET. *Owner:* Allen Douglas Henderson.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length 56.5′ Breadth 13.4′ Depth 8.9′ Gross 33 Net 30″.

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Our plan is short term charters with a captain and twelve or less passengers during Classic Regattas races and similar events. Our passengers would be drawn from a select group of clientele interested in wooden sailing vessels. The market was checked and there is an unmet demand for this type of charter." "PET will operate mainly in New England waters and the Atlantic seaboard including the waters of Long Island Sound, Rhode Island Sound, Massachusetts Bay and the Gulf of Maine in the summer time and the waters off the southeast coast of Florida in the wintertime."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1982. *Place of construction:* Whangarei, New Zealand.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "* * * the impact on other commercial passenger vessel operators will be negligible or non-existent * * * Considering the activities I plan to pursue I am confident that this waiver will have no adverse effect upon commercial vessel operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "Because of the size and type of vessel and the uses contemplated by this waiver, there will be no negative impact on our U.S. shipyards and all repair work or retrofitting of the vessel will be done in U.S. Shipyards therefore, this waiver will have a positive impact."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7479 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11908]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel QUINTESSENCE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11908. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: QUINTESSENCE. *Owner:* Roy F. Stringfellow.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "LOA 55′ * * * gross tonnage of 38 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

"The main use of the vessel is recreational but I do like to offer day and term charters on Biscayne Bay down to the Florida Keys. There are no plans for any domestic commercial activity beyond the eastern coastal waters of the United States and Gulf of Mexico". "I would like for my request to cover from Panama City eastward around the Keys up to Jacksonville."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1988. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "I * * * assist other full time captains when additional boats are needed to accommodate large groups which we get from the conventions and meeting held in Florida. This waiver will have very little impact on the other operators other than to increase their business by offering a larger fleet to their clients."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "I also expect no impact on U.S. shipyards as recreation is the main purpose of my ownership."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7478 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–02–11923]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of Information.

SUMMARY: Before a Federal agency can collect certain information from the public; it must receive approval from the Office of Management and Budget (OMD). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

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DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Jonathan D. White, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319 Washington, DC 20590. Telephone: (202) 366–5226; Fax: (202) 366–7882. Please identify any relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act 1995, before the agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Incompliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Defect Noncompliance Determination.

OMB Control Number: 2127–0004.

Affected Public: Manufactures.

Form Number: OMB 83–I.

Abstract: NHTSA is amending its regulation pertaining to Chapter 301 of Title 49 that requires motor vehicle and motor vehicle equipment manufacturers to include a schedule for dealer notification in their defect and noncompliance reports. This amendment also requires manufacturers to advise dealers of the prohibition against selling defective or noncomplying vehicles in dealer inventory until all outstanding recall work has been completed.

Estimated Burden Hours: 6,348.

Number of Respondents: 600.

Issued on: March 25, 2002.

Kathleen C. DeMeter,

Director, Office of Defects Investigation.

[FR Doc. 02–7481 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register

Vol. 67, No. 60

Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2002–05]

RIN 3069–AB12

Technical Amendments to Federal Housing Finance Board Regulations

Correction

In rule document 02–5462 beginning on page 12841 in the issue of Wednesday, March 20, 2002, make the following correction:

§ 951.4 [Corrected]

On page 12852, in the first column, in § 951.4, amendatory instruction "118.", the words "Council members" should read, "Council members'".

[FR Doc. C2–5462 Filed 3–27–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–CN]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

Correction

In rule document 02–6757 appearing on page 13278, in the issue of Friday, March 22, 2002, make the following correction:

On page 13278, in the third column, under the heading, **Corrections to Preamble**, in the first line, "column 3" should read "column 2".

[FR Doc. C2–6757 Filed 3–27–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Science (NIEHS)

Correction

In notice document 02–5652 beginning on page 10734 in the issue of Friday, March 8, 2002, make the following correction:

On page 10735, in the first column, under **Request for Public Comments**, in the first paragraph, three lines from the bottom "[Please insert date 60 days from publication of this notice]" should read "May 7, 2002".

[FR Doc. C2–5652 Filed 3–27–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Agency

21 CFR Part 1308

[DEA–225P]

Schedule of Controlled Substances: Proposed Rule: Rescheduling of Buprenorphine From Schedule V to Schedule III

Correction

In proposed rule document 02–6767 beginning on page 13114 in the issue of Thursday, March 21, 2002, make the following corrections:

1. On page 1135, in the first column, in the second paragraph, in the first line, "(0.3mg/m1)" should read, "(0.3mg/ml)".

2. On the same page, in the first column, in the second paragraph, in the fifth line, "Subozone®" should read, "Suboxone®".

3. On the same page, in the second column, in the second paragraph, in the thirteenth line, "table" should read, "tablet".

4. On the same page, in the same column, in the second paragraph, in the 15th line, "fewer" should read, "newer".

5. On page 13115, under the heading "**What Is the Effect of This Notice?**", in the first paragraph, in the fourth line, "salts or " should read, " salts of".

[FR Doc. C2–6767 Filed 3–27–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

A.C.L.N. Ltd.; Order of Suspension of Trading

March 18, 2002.

Correction

In notice document 02–6819 appearing on page 13029 in the issue of Wednesday, March 20, 2002, the heading is corrected to read as set forth above.

[FR Doc. C2–6819 Filed 3–27–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

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Part II

Office of Management and Budget

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on the attached Draft Report to Congress on the Costs and Benefits of Federal Regulation. The Draft Report is divided into four chapters. Chapter I discusses regulatory policy during the Administration's first year. It discusses OMB's role in coordinating regulatory policy, its open and transparent approach to regulatory oversight, and its function as overseer of information and quality analysis. Chapter II presents estimates of the costs and benefits of Federal regulation and paperwork with an emphasis on the major regulations issued over the last 30 months. Chapter III discusses developments in regulatory policy governance that have recently taken place in the international arena and its relevance for the U.S. Chapter IV asks for recommendations from the public for the reform of Federal rules.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by OMB no later than May 28, 2002.

ADDRESSES: Comments on this Draft Report should be addressed to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503.

You may also submit comments by facsimile to (202) 395–6974, or by electronic mail to *jmorrall@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–7316.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY2001 Treasury and General Government Appropriations Act, also known as the "Regulatory Right-to-Know Act," (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendations for reform. The Act says that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Executive Summary

This Draft Report to Congress on regulatory policy was prepared pursuant to the Regulatory Right-to-Know Act (Section 624 of the Treasury and General Government Appropriations Act, 2001), which requires such an account each year. It provides (a) an overview of the Bush Administration's centralized approach to federal regulatory policy; (b) a statement of the costs and benefits of federal regulations, including assessments of their impact on State, local and tribal governments, small businesses, wages and economic growth; and (c) recommendations for regulatory reforms. The report will be published in final form after revisions to this draft are made based on public comment, external peer review, and interagency review.

Its major features and findings include:

1. In the last six months, OMB has cleared 41 significant federal regulations aimed at responding to the terrorist attacks of September 11th. These rules addressed urgent matters such as homeland security, immigration control, airline safety, and assistance to businesses harmed by the resulting economic disaster experienced in several regions of the country.

2. The Bush Administration's approach to regulatory review, through OMB's Office of Information and Regulatory Affairs (OIRA), is characterized by openness, transparency, analytic rigor, and promptness. OIRA's website puts that perspective on display, with daily updates and an unprecedented amount of information about OIRA's activities. The 20 significant rules that OMB returned to agencies for reconsideration from July 1, 2001 to March 1, 2002 are more than the total number of rules returned to agencies during the Clinton Administration. Inadequate analysis by agencies is the most common reason for returns. The number of OMB reviews consuming more than the allotted 90 days has declined from what had regularly been 15–20 rules to near zero in recent months. OMB has also demonstrated its commitment to necessary federal regulation by clearing numerous well-analyzed rules and prompting agencies to initiate or complete cost-effective rulemaking opportunities. In order to perform its role with greater competence, OIRA is expanding its staffing expertise in several fields of science and engineering that are central to reviewing regulatory proposals.

3. Under the Bush Administration, OIRA is taking a proactive role in suggesting regulatory priorities for agency consideration. In order to play this role constructively, we have devised the "prompt" letter as a modest device to bring a regulatory matter to the attention of agencies. OIRA's initial five prompt letters have addressed a range of issues at four different agencies, including the use of lifesaving defibrilators in the workplace, food labeling requirements for trans fatty acids, and better information regarding the environmental performance of industrial facilities.

4. Pursuant to statutory mandate, OIRA has issued government-wide guidelines to enhance the quality of information that federal agencies disseminate to the public. OIRA is now working with agencies to finalize their guidelines by October 1, 2002. These guidelines will offer a new opportunity for affected members of the public to challenge agencies when poor quality information is disseminated. OMB has required each agency to develop an administrative mechanism to resolve these challenges, including an independent appeals mechanism.

5. The report summarizes regulatory reform activities now underway in developed countries throughout the world, with special focus on the European Union.

6. Major federal regulations cleared by OMB from April 1, 1995 to September 30, 2001 were examined to determine their quantifiable benefits and costs. The estimated annual benefits range from $49 billion to $68 billion while the estimated costs range from $51 billion to $54 billion. Estimates of the total benefits and costs of *all* federal regulations currently in effect are found in the Appendix, because they are based substantially on figures that the agencies did not produce and OMB did not review. The estimates of total benefits, which are highly uncertain, range from about one-half to three times the total costs, which are pegged at $520 billion to $620 billion per year. Total cost figures are roughly comparable to the federal government's total discretionary budget authority in FY 2001.

Finally, OMB seeks public comment on all aspects of this Draft Report. OMB is also calling for public nominations of regulatory reforms in the following three areas:

- Reforms to specific existing regulations that, if adopted, would increase overall net benefits to the public, considering both qualitative and quantitative factors. These reforms might include (1) extending or expanding existing regulatory programs; (2) simplifying or modifying existing rules or (3) or rescinding outmoded or unnecessary rules.
- Identification of specific regulations, guidance documents, and paperwork requirements that impose especially large burdens on small businesses and other small entities without an adequate benefit justification.
- Reviews of problematic agency "guidance" documents of national or international significance that should be reformed through notice and comment rulemaking, peer review, interagency review, or rescission.

Nominations should be presented in the format provided in the report to facilitate orderly consideration by OMB, agencies, and the public. OMB will consider the nominations, provide a preliminary evaluation, and report these evaluations in the final draft of this report. OMB will request that agencies consider all nominations but especially those that OMB's preliminary evaluation suggest merit "high priority."

In addition, OMB would welcome: (1) Comments on any cases where consultations under the Unfunded Mandates Reform Act between federal agencies and State, local, and tribal governments were not sufficient or timely enough to have a meaningful impact on the rulemaking process; and (2) suggestions of analytical issues needing refinement or development to improve OMB's analytic guidance document.

Chapter I: Regulatory Policy Under the Bush Administration: The First Year

Federal regulation is a fundamental instrument of national policy. It is one of the three major tools—besides spending and taxing—used to implement policy. It is used to advance numerous public objectives, from homeland security to privacy, environmental protection, food safety, transportation safety, delivery of quality health care, equal employment opportunity, energy security, educational quality, immigration control and consumer protection. Yet regulation also is costly. While the exact cost of regulation is uncertain, the total cost is comparable to discretionary spending—about $640 billion in 2001. Regulation can increase the cost of producing goods and services in the economy, thereby raising prices to the consumer, creating potential competitive problems for U.S. firms in a global economy, exacerbating fiscal challenges to State and local governments, and placing jobs and wages at risk. Regulatory policy does not lend itself to simple answers because the underlying scientific and economic issues often are complex, there may be tradeoffs between laudable social objectives, and success often hinges on the details about how a rule is designed, implemented and enforced.

The Bush Administration supports federal regulations that are sensible and based on sound science, economics, and the law. Through OMB's Office of Information and Regulatory Affairs (OIRA), the Administration is stimulating development of a regulatory process that adopts new rules when markets fail, simplifies and modifies existing rules to make them more effective and/or less costly or intrusive, and rescinds outmoded rules whose benefits do not justify their costs. In pursuing this agenda, OIRA has pursued an approach based on the principles of regulatory analysis and policy espoused in Executive Order 12866, signed into law by President Clinton in 1993.

The regulatory reforms now being implemented and described below, while modest, incremental and generally procedural in nature, promise to have a powerful positive long run effect on the quality of federal regulation. With regard to federal regulation, the Bush Administration's objective is quality, not quantity. Those rules that are adopted promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack.

One of OIRA's most important functions is coordinating the President's regulatory policy. As discussed in last's year's annual report to Congress, the first regulatory action taken by the Bush Administration was issuance of the "Card Memorandum," a January 20, 2001 directive from the President's Chief of Staff, Andrew H. Card, Jr., to agency heads to take steps to ensure that policy officials in the incoming Administration had the opportunity to review any new or pending regulations. In last year's report, we provided a summary of actions taken by agencies pursuant to rules targeted for scrutiny by the Card memo, and by a subsequent OMB memorandum to agencies. In Appendix A of this report, we provide an update of these actions. In the next section, we discuss another coordinating role OMB is playing—one that was unexpected.

A. The Regulatory Response to September 11th

After the shocking terrorist attacks of September 11, 2001, the American public looked to the federal government to take action not only to prevent future security threats but also to provide relief for individuals affected by the tragedies. In response, the federal government revisited its current practices and procedures, and sought solutions to address these concerns. Also in response to the attacks, several agencies including Departments of Justice, Transportation, Labor, Health and Human Services, and Commerce and the Office of Personnel Management, Small Business Administration, and Office of Management and Budget issued new regulations. Table 1 lists the 41 significant federal regulations issued in response to the terrorist attacks.

TABLE 1.—THE 41 REGULATIONS RESPONDING TO THE TERRORIST ATTACKS OF SEPT. 11, 2001

Agency	Sub agency	Title	Rulemaking stage
DOC	BXA	India and Pakistan: Lifting of Sanctions, Removal of Indian and Pakistani Entities, and Revision in License Review Policy.	Final Rule.
DOJ	BOP	National Security: Prevention of Acts of Rule Violence and Terrorism.	Interim Final Rule.
DOJ	LA	September 11th Victim Compensation Fund of 2001	Pre-rule.
DOJ	LA	September 11th Victims Compensation Fund of 2001	Final Rule.

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TABLE 1.—THE 41 REGULATIONS RESPONDING TO THE TERRORIST ATTACKS OF SEPT. 11, 2001—Continued

Agency	Sub agency	Title	Rulemaking stage
DOJ	INS	Custody Procedures	Interim Final Rule.
DOJ	INS	Review of Custody Determinations	Interim Final Rule.
DOJ	LA	September 11th Victim Compensation Fund of Rule 2001	Interim Final Rule.
DOL	ETA	Disaster Unemployment Assistance Program Amendment	Interim Final Rule.
DOT	FAA	Screening of Checked Baggage on Flights within the United States.	Final Rule.
DOT	FAA	Aircraft Security under General Operating and Flights Rules	Final Rule.
DOT	FAA	Flight Crew Compartment Access and Door Design	Final Rule.
DOT	OST	Procedures for Compensation of Air Carriers	Final Rule.
DOT	FRA	Locational Requirement for Dispatching of U.S. Rail Operations.	Interim Final Rule.
DOT	FAA	Flight Crew Compartment Access and Door Designs	Final Rule.
DOT	FAA	Criminal History Background Checks	Final Rule.
DOT	FAA	Security Screeners: Qualifications, Training and Testing	Other.
DOT	FAA	Security Considerations in the Design of the Flight Deck on Transport Category Airplanes.	Other.
DOT	TSA*	Imposition and Collection of Passenger Civil Aviation Security Fees in the Wake of September 11, 2001.	Other.
DOT	TSA	Aviation Security Infrastructure Fees	Interim Final Rule.
DOT	TSA	Security Programs for Aircraft with a Maximum Certificated Takeoff Weight of 12,500 Pounds or More.	Interim Final Rule.
DOT	TSA	Civil Aviation Security Rules	Interim Final Rule.
DOT	FAA	Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT.	Final Rule.
DOT	FAA	Procedures for Reimbursement of Proposed Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates.	Notice of Proposed Rulemaking.
DOT	FAA	Firearms, Less-Than-Lethal Weapons, and Emergency Services on Commercial Air Flights.	Request for comments.
DOT	FAA	Temporary Extension of Time Allowed for Certain Training and Testing.	Final Rule.
DOT	FAA	Security control of Air Traffic	Final Rule; request for comments.
DOT	FAA	Temporary Flight Restrictions	Final Rule.
HHS	SAMHSA	Substance Abuse and Mental Health Services Administration Mental Health and Substance Abuse Emergency Response Criteria.	Interim Final Rule.
OMB		Regulation for Air Carrier Guarantee Loan Program	Final Rule.
OPM		Absence and Leave Use of Restored Annual Leave	Interim Final Rule.
OPM		Absence and Leave Use of Restored Annual Leave	Final Rule.
OPM		Administratively Uncontrollable Overtime Pay	Interim Final Rule.
SBA**		Size Standards; Inflation Adjustment	Interim Final Rule.
SBA		Disaster Loan Program	Interim Final Rule
SBA		Small Business Size Standards: Travel Agencies	Interim Final Rule.
Treasury	FinCEN	Amendment to the Bank Secrecy Act Regulations Rule	Interim Final Rule.
Treasury	FinCEN	Proposed Amendment to the Bank Secrecy Act Regulations	Notice of Proposed Rulemaking.
Treasury	FinCEN	Cooperative Efforts to Deter Terrorist Rule and Financing and Money Notice of Laundering.	Temporary Rule and Notice of Proposed Rulemaking.
Treasury	Departmental Offices	Counter Money Laundering Requirements—Correspondent Accounts with Foreign Shell Banks; Rulemaking Recordkeeping Related to Foreign Banks with Correspondent Accounts.	Temporary Rule and Notice of Proposed Rulemaking.
Treasury	IRS	Special Form 720 Filing Rule	Final Rule Rule without Notice of Proposed Rulemaking.
Treasury and other Financial Institutions***		Identity Verification Program	Notice of Proposed Rulemaking.

*Traffic Safety Administration.
**Small Business Administration.
***Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union.

As an integral part of the expedited issuance of these rules, OIRA conducted its full regulatory review and coordination function under Executive Order 12866. OIRA ensured that all affected agencies were aware of what other agencies were proposing and facilitated their timely comments on the proposed actions. These efforts made sure that all September 11th related rules received priority attention from the appropriate reviewers and that the Administration's best solutions to the circumstances caused by the terrorist attacks were implemented.

The Administration issued two types of rules in response to the events of September 11th. The first improves and strengthens national security. The second directs relief to the individuals affected by the attacks.

The Department of Justice promulgated several rules that addressed the need for heightened security at home and compensation for victims of the attacks. Shortly after the September 11th, 2001 terrorist attack, the President signed the "September 11th Victim Compensation Fund of 2001" into law as Title IV of the Air Transportation Safety and System Stabilization Act. The Act authorizes compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day. The Victims Compensation Fund is designed to provide a no-fault alternative to tort litigation for individuals who were physically injured or killed as a result of the aircraft hijackings and crashes on September 11th. This regulation established procedural rules for administration of the Victims Compensation Fund.

A second Justice rule involved the monitoring of communications between an inmates and their attorneys or their agents, where the Attorney General has determined that such actions are reasonably necessary in order to deter future acts of violence or terrorism, and upon a specific notification to the inmate and attorneys involved. Under the rule, a privilege team of individuals not involved in the underlying investigation would sift through the attorney-client communications. The privilege team would disclose information to the investigators and prosecutors only upon approval of a federal judge, unless the team leader determined that acts of violence or terrorism are imminent.

On the immigration side, the Department of Justice and the Immigration and Naturalization Service issued two rules signaling the need for tighter security. INS established an automatic stay of the judge's decision in cases where the individual is ordered to be released, allowing INS to continue to detain the alien while it appeals the decision. An additional INS rule extended the period an individual can be held in custody after his or her initial arrest. This rule afforded the INS additional time to run background security clearances on individuals to determine whether they were security risks.

The Department of Transportation and the Federal Aviation Administration issued over a dozen rules in four key areas: flight-deck security requirements, airline compensation, background checks, and flight rules. In order to improve security on aircrafts, the FAA issued a series of rules to strengthen cockpit doors and locks to protect against unauthorized access to the cockpit. FAA also issued an interim final rule to require more permanent measures such as the replacement of cockpit doors. In addition, to fund enhanced security measures, such as airport screener services, a rule was promulgated that allowed for a $2.50 security fee per segment traveled, with a maximum of $10.00 per round trip. The fee is to be used for enhanced security protections.

In compensation, FAA issued a rule which set forth procedures for the allocation for approximately $5 billion to air carriers affected by the events of September 11th. In the final two categories of rules, the FAA promulgated several regulations regarding criminal history background checks, security procedures, screening of passengers, and screening of checked baggage.

The Treasury Department issued a series of rules to tighten the security of financial banking and establish procedures to identify suspicious transactions as part of the counter money-laundering program. With the need to deter the financing of terrorist acts, the Treasury also issued a rule permitting information sharing among financial institutions and the federal government.

The second category of rules promulgated seeks to provide assistance to individuals affected by the September 11th attacks. The Department of Labor issued a rule regarding disaster relief for individuals unemployed as a result of the attacks, clarifying eligibility requirements. In addition, the Office of Personnel Management set forth a rule to assist agencies dealing with individuals who were forced to take leave during the national emergency and risked losing annual leave time. A second OPM regulation clarified technical procedures on compensation of individuals whose work is now related to the September 11th tragedy and recent security concerns. This would include law enforcement officials who have been temporarily reassigned work in response to recent national emergency declaration.

The Department of Health and Human Services issued a rule regarding mental health and substance abuse that was drafted prior to the 11th. After the events, the Department added language to the preamble discussing the attacks, though no changes to the regulation itself were made. Finally, the Small Business Administration set forth rules on disaster loan programs and inflation that may occur as a result of the terrorist attacks and economic downturns.

Since the events of September 11, the Administration has sought to address the need for heightened national security in addition to assistance for disaster victims. OIRA has collaborated with the agencies on 41 significant regulatory actions made necessary by the events of September 11th. The regulatory actions summarized above occurred in the months soon after the attacks in order to implement solutions expeditiously.

B. An Open Approoch to Centralized Regulotory Oversight

The Bush Administration supports strong, centralized oversight by OMB's Office of Information and Regulatory Affairs (OIRA) to stimulate development of a smarter regulatory process. To best achieve this goal, OIRA has developed a more transparent and open approach to centralized regulatory oversight. This policy of openness reflects the preferences of the current OMB Director and OIRA Administrator but also responds to past complaints that OMB decision making was secretive and rooted more in interest-group politics than professional analysis. Although some critics continue to perceive OIRA as a mysterious organization, the long-term, cumulative impact of the steps described below should demystify the process of regulatory oversight.

OMB has taken the following specific steps to enhance the openness of the regulatory review process:

- OIRA is improving implementation of the public disclosure provisions in E.O. 12866, including both the letter and spirit of the provisions relating to communications with outside parties interested in regulations under review by OIRA. The Administrator's relevant guidance to OIRA staff is available on OIRA's website: < *http://www.whitehouse.gov/omb/inforeg/regpol.html*>.
- For meetings subject to the disclosure provisions of E.O. 12866, OIRA maintains a log (which notes the meeting date, topic, lead agency, and participants) on OIRA's website and docket room. We also invite the relevant agency and file any documents submitted at EO 12866 meetings in our docket room with copies provided to the agency.
- Under the E.O. 12866 disclosure procedures, we are posting information about written correspondence from outside parties on regulations under review by OIRA. Information on this correspondence—including the date of the letter, the sender and his or her organizational affiliation, and the

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subject matter—is available on the OIRA website. Copies of these letters are also available in the docket room.[1]

• OIRA has increased the amount of information available on the OIRA website. In addition to the information on meetings and correspondence noted above, OIRA makes available communications from the OIRA Administrator to agencies, including "prompt," "return," and "post clearance" letters, as well as the Administrator's memorandum to the President's Management Council (September 20, 2001) on "Presidential Review of Agency Rulemaking by OIRA."

• OIRA has adopted an open-door approach to meetings with outside parties, leading to meetings with more than 100 outside groups from July 2001 to December 2001 on matters of general regulatory policy or specific rules.

• OIRA has initiated a multi-year process aimed at linking up to the Administration's E-government initiative, thereby allowing outside parties electronic access to the information now contained in OIRA's docket room while giving the public greater opportunity to provide and view the electronic input of others on OIRA decision-making.

Openness does not necessarily reduce controversy. In pursuit of the policies and priorities of the Bush Administration, OIRA is already establishing procedures and making decisions that are controversial. That is the nature of regulatory policy. However, the objective of openness is to transform controversy from a dispute about decision process (who was able to speak with OMB officials before the decision was made?) to a dispute about the substance of regulatory analysis or policy (e.g., do the benefits of this rule justify the costs?). Indeed, explicitness about the grounds for regulatory decision making will in some cases sharpen public controversy by making differences of opinion more apparent to everyone interested in regulatory outcomes. Thus, OIRA does not regard absence of public controversy as a measure of success of regulatory oversight.

C. Gatekeeper for New Rulemakings

Presidential Executive Order 12866 provides OIRA with substantial authority to review rulemaking proposals from agencies. During the Clinton Administration, concerns were raised that the sound principles and procedures in this Order were not always implemented and enforced by OIRA.

An average of 600 significant rulemaking actions were approved per year during the Clinton Administration. During the last three years of the Clinton Administration, there were exactly zero rules returned to agencies by OMB for reconsideration.[2] The absence of returns could indicate either that the agency-OIRA relationship was tilted too heavily in favor of the agencies or that the agencies were meeting OIRA's expectations. Although it is often better for OIRA to work with an agency to resolve a problem rather than simply return a rule, the degree of OIRA's actual effectiveness can be questioned when it declines to use its authority to return rules.

Under the Bush Administration, OIRA has revived the "return letter," making clear that OMB is serious about the quality of new rulemakings. From July 2001 to December 2001, there were 18 significant rulemakings returned to agencies for reconsideration.[3] As the data in Table 2 illustrate, this represents a significant rate of return when measured against recent history. The technical and policy rationales for these returns are stated in letters to agency officials that are made public and posted on OIRA's web site. In five cases, after modifications and later submission for review under E.O. 12866, OIRA approved the rule. More importantly, agencies are beginning to invite OIRA staff into earlier phases of regulatory development in order to prevent returns late in the rulemaking process. It is at these early stages where OIRA's analytic approach can most improve on the quality of regulatory analyses and the substance of rules.

TABLE 2.—EXECUTIVE ORDER REVIEWS 1981–2001

Year	Total reviews	Returns	Percent
All	35,111	414	1.2
2001	700	18	2.6
2000	579	0	0.0
1999	583	0	0.0
1998	486	0	0.0
1997	507	4	0.8
1996	503	0	0.0
1995	619	3	0.5
1994	861	0	0.0
1993	2,167	9	0.4
1992	2,286	9	0.4
1991	2,525	28	1.1
1990	2,138	21	1.0
1989	2,220	29	1.3
1988	2,362	29	1.2
1987	2,315	10	0.4
1986	2,011	29	1.4
1985	2,213	34	1.5
1984	2,113	58	2.7
1983	2,484	32	1.3
1982	2,641	56	2.1
1981	2,798	45	1.6

[1] Please call (202) 395-6880 for access to the docket room located in Room 10102, the New Executive Office Building, 725 17th St., NW., Washington DC 20503.

[2] During the full eight years of the Clinton Administration, OMB returned for reconsideration approximately one rule in 500.

[3] A detailed table of the number of regulations reviewed by OMB by agency and type of action taken from January 1, 2001 to the present is maintained on our website at <*http://www.whitehouse.gov/library/omb/OMBRCYTD-2001.html*>.

In a September 20, 2001 memorandum to the President's Management Council, the OIRA Administrator summarized for top agency officials the supporting information that must accompany a draft significant regulatory action. The six specific elements are described below.

• First, the agency should articulate how the draft regulatory action is consistent with the principles and procedures of E.O. 12866 and the underlying statute(s). An important aspect of OIRA's review of a draft rule is an evaluation of the possible impact on the programs of other Federal agencies. OIRA will make an assessment, in collaboration with policy officials from interested agencies, as to whether the draft action is consistent with the policies and priorities of the Administration.

• Second, the agency must prepare a formal regulatory impact analysis for rulemaking actions deemed economically significant. This analysis should include an assessment of benefits and costs (quantitative and qualitative) and a rigorous analysis of several regulatory alternatives. The RIAs should be timely and prepared in a way consistent with OMB's government-wide guidance, as explained by OMB on March 22, 2000 and June 19, 2001. An RIA is necessary regardless of whether the underlying statute governing agency action requires, authorizes or prohibits cost-benefit analysis as an input to decisionmaking. The public and Congress have an interest in benefit and cost information, regardless of whether it plays a central role in decisionmaking under the agency's statute. Congress has mandated that OMB provide this information in this annual report to Congress on the costs and benefits of regulation.

• Third, for draft regulatory actions that are supported by risk assessments of health, safety and environmental hazards, OIRA recommends that agencies adopt the basic informational quality and dissemination standards that Congress adopted in the Safe Drinking Water Act Amendments of 1996. These standards were recently codified in OMB's government-wide guidelines on information quality.

• Fourth, OIRA recommends that draft RIAs, including supporting technical documents (*e.g.*, risk assessments), be subjected to formal, independent external peer review by qualified specialists. Given the growing public interest in peer review at agencies, OIRA recommends that (a) peer reviewers be selected primarily on the basis of necessary technical expertise; (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand; (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (public and private); and (d) peer reviews be conducted in an open and rigorous manner. OIRA will give a measure of deference to agency analysis that has been developed in conjunction with such peer review procedures. EPA's recent decision to affirm an arsenic standard in drinking water of 10 parts per billion is a good illustration of a recent regulatory decision that was supported by rigorous external peer reviews.

• Fifth, for regulatory actions with impacts on State, local, and tribal governments, OIRA staff will insist on agency certification of compliance with Executive Orders 13132 and 13175 and compliance with the Unfunded Mandates Reform Act. The OMB Director has pledged to Congress that OIRA will return any rulemaking proposal to agencies that has not been subjected to adequate consultation with affected State, local, and tribal officials.

• Sixth, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires that OIRA ensure that impacts on small businesses and other small entities are taken into account in the regulatory process. This work is done in part in collaboration with the Small Business Administration's Chief Counsel for Advocacy. OIRA looks to see that an appropriate analysis of small business impacts has been performed, including an evaluation of regulatory alternatives designed to reduce the burden on small businesses without compromising the statutory objective. In the cases of OSHA and EPA rulemakings under SBREFA that are expected to have economically significant impacts on a substantial number of small entities. OIRA staff participate in Small Business Advocacy Panels prior to publication of a rulemaking proposal.

In addition, under E.O. 13045, OIRA reviews proposed regulatory actions that may pose disproportionate environmental or safety risks to children.[4] E.O. 13045 requires agencies to prepare an evaluation of the risks to children of planned regulations including an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Finally, OIRA administers the provisions of Executive Order 13211, especially the required "Statements of Energy Effects," in situations where a rule may have significant impacts on energy supply, distribution or use. OIRA published guidance for implementing the new energy executive order on July 13, 2001.

Despite the apparent complexity of these analytical and procedural requirements, OIRA is committed to performing its regulatory reviews within the 90-day period set out in E.O. 12866. As Table 3 reveals, OIRA has already made substantial progress in reducing the number of reviews that consume more than the allotted 90 days. The OIRA Administrator has informed OIRA staff that no review will be permitted to extend beyond 90 days without the explicit permission of the OIRA Administrator.

TABLE 3.—EO 12866 REVIEWS OVER 90 DAYS BY DATE

Month	Year	Pending Over 90 Days	Pending	Percent Over 90 days
January	1999	15	77	19.5
April	1999	10	84	11.9
July	1999	11	84	13.1
October	1999	16	76	21.1
January	2000	15	83	18.1
April	2000	19	124	15.3

[4] See E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks, April 21, 1997.

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TABLE 3.—EO 12866 REVIEWS OVER 90 DAYS BY DATE—Continued

Month	Year	Pending Over 90 Days	Pending	Percent Over 90 days
July	2000	24	101	23.8
October	2000	42	154	27.3
January	2001	50	117	42.7
April	2001	4	72	5.6
July	2001	25	97	25.8
October	2001	1	62	1.6
January	2002	0	86	0.0

OIRA regards the 90-day review limit as a performance indicator for a strong regulatory gatekeeper. In previous Administrations there were cases where OIRA reviews consumed more than six months or even more than a year without any conclusion for the agency. OIRA intends to provide agencies with prompt and explicit responses to its draft rulemaking actions.

D. Proactive Role in Establishing Regulatory Priorities

Historically, OIRA has been a reactive force in the regulatory process, responding to proposed and final rulemakings generated by federal agencies. Under the Bush Administration, OIRA is taking a proactive role in suggesting regulatory priorities for agency consideration. In order to play this role constructively, we have devised the "prompt" letter as a modest device to bring a regulatory matter to the attention of agencies.

OIRA's initial five prompt letters have addressed a range of issues at four different agencies:

- A letter to FDA requested that a consumer labeling rule involving the trans fatty-acid content of foods be finalized in order to reduce an established risk factor for coronary artery disease;
- A letter to OSHA urged that actions be taken to promote the availability and proper use of automated external defibrilators, a technology that can save lives among people suffering from sudden cardiac arrest;
- A letter to NHTSA urged initiation of a new rulemaking that would require vehicle manufacturers to test cars and light trucks for occupant protection in what are called "offset" frontal collisions, a crash mode responsible for a significant number of lower extremity injuries to occupants;
- A letter to EPA urged administrative and legislative action to reduce public exposure to fine particles in outdoor air emissions, coupled with a targeted, multi-year research program aimed at discovering which sources of particles are most responsible for the adverse health impacts of breathing fine particulate matter; and
- A letter to EPA encouraged steps to improve the utility of the data available on the environmental performance of industrial facilities. Better environmental information plays an essential role in advancing our objectives of protecting public health and the environment. The letter suggested that EPA explore several steps to enhance the practical utility of the information available to the public by establishing a single facility identification number, setting up an integrated system for reporting and access of data across multiple programs, and improving the timeliness of the availability of Toxic Release Inventory data.

Prompt letters do not have the mandatory implication of a Presidential directive. Unlike a "return letter," which is authorized by E.O. 12866, the prompt letter simply constitutes an OIRA request that an agency elevate a matter in priority, recognizing that agencies have limited resources and many conflicting demands for priority attention. The ultimate decision about priority setting remains in the hands of the regulatory agency.

An important feature of the prompt letter can be its public nature, aimed at stimulating agency, public and congressional interest in a potential regulatory priority. Although prompt letters could be treated as confidential pre-decisional communications, OIRA believes that it was wiser to make these prompt letters publicly available in order to focus congressional and public scrutiny on the important underlying issues.

OIRA's experience with the first five prompt letters suggests that (a) preliminary dialogue between OIRA and agency staff is advisable; (b) touching base with OMB budget officials and interested EOP staff is wise; and (c) informal communication with policy officials at agencies is necessary, though it is important for OIRA to send some prompt letters that policy officials at agencies would prefer not to receive.

The original ideas for the initial five prompt letters came from OIRA personnel but there is no reason why members of the public should not suggest ideas for prompt letters to the OIRA Administrator. These suggestions can be faxed to the OIRA Administrator at (202) 395–3047 (note OIRA is still not receiving first-class mail due to the anthrax threat) or submitted in the public comment process leading to the publication of this annual report. Agencies are still responding to the first five prompt letters, but the original letters and initial agency responses are posted on OIRA's web site.

E. Overseer of Analysis and Information Quality

The public image of OIRA, insofar as one exists, is an office that concentrates on clearing, modifying, or returning specific rulemaking proposals by agencies. OIRA also plays an important role, as a result of its broad-based responsibility, for ensuring the quality of information used and disseminated by agencies, including the information posted on agency web sites, issued in routine, yet important statistical reports, and used in regulatory impact analyses.

In the Bush Administration, OIRA has taken a strong interest in improving the quality of information and analysis used and disseminated by agencies. This initiative complements a variety of the initiatives in the President's Management Agenda.

The Paperwork Reduction Act of 1980, as amended in 1995, provides OMB broad authority in the field of information policy. OMB Circular A–130, "Management of Federal Information Resources," provides structure and content to the executive branch's commitment to information dissemination.

During the Clinton Administration, concerns were raised that scientific information produced with federal financial support and used to support binding agency actions were not always available for public scrutiny and reanalysis. With new authority from Congress, OMB played an important

role, through OMB Circular A–110, in clarifying the degree of public access to such information required through the Freedom of Information Act.

In Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), Congress further directed OMB to issue government-wide guidelines to ensure and maximize the quality of information disseminated by federal agencies. After two rounds of public and interagency comment, OMB issued these final guidelines on September 28, 2001 and January 3, 2002.[5] Each federal agency, including the independent agencies, must now issue tailored information-quality guidelines that are compatible with OMB's general guidelines. Section 515 reflects a concern by Congress that some agencies are distributing information to the public that is of questionable quality, objectivity, usefulness and security.

The OMB guidelines provide affected parties concerned about poor quality information with the opportunity to seek administrative corrections to agency information, with assurances that their complaints will be addressed in a timely manner. Although some agencies already have well-developed information quality management procedures, OMB believes agency practices are uneven and relatively little thought has been devoted to assuring the objectivity of agency responses to complaints from the public.

Improving information quality is costly and thus it is important that the value of better information to the public be considered. In this regard, the OMB guidelines draw a consequential distinction between "influential" and ordinary information, where "influential" is defined, when used in the context of "scientific, financial and statistical information," as information that the agency "can reasonably determine * * * will have or does have a clear and substantial impact on important public policies or important private sector decisions." Influential information is subject to higher quality standards by the OMB guidelines.

With several important exceptions and qualifications, the OMB guidelines require that influential information disseminated by agencies be reproducible by qualified third parties. If influential information is to be disseminated without the capability of reproduction, it is subject to some special robustness and transparency requirements. The OMB guidelines provide agencies a measure of flexibility in the interpretation and implementation of these expectations.

In order to facilitate better public and scientific input into the process of information-quality improvement, OMB has encouraged agencies to commission the National Research Council of the National Academy of Sciences to undertake several workshops aimed at assisting agencies in the development of their information quality guidelines. OMB is also organizing several interagency committees to address information quality issues that are likely to be common across two or more federal agencies. OMB will review the proposed and final information guidelines prepared by agencies pursuant to statutory mandate.

OMB's new information quality guidelines establish stricter standards for agency analyses of original data than for the data themselves. OMB believes that agencies are in a better position than OMB to establish specific quality standards for the generation of original and supporting data.

With regard to the quality of regulatory impact analyses prepared by agencies, OIRA has initiated a process of refinement to its formal analytic guidance documents. This activity, to be co-chaired by the OIRA Administrator and a member of the Council of Economic Advisors (CEA), will be supported by public comment, agency comments, and external peer review. In this draft report, OMB is seeking comment on the particular analytic issues that should be addressed in the refinement of OMB's analytic guidelines. At a minimum, OMB–CEA intend to address the following issues

- The practice of applying a 7% real discount rate to future costs and benefits;
- The methods employed to account for latency periods between exposure to toxic agents and development of chronic diseases;
- The methods employed to evaluate the risk of premature death, particularly the relative advantages and disadvantages of differing statistical approaches including the quality-adjusted-life year (QALY) approach; [6]
- The need for use of methods of risk assessment that supply central estimates of risk as well as upper and lower bounds on the true yet unknown risks;
- The need for methods of risk assessment to account for the vulnerabilities of specific subpopulations such as the children, the elderly, and the infirm; and
- Methods for valuing improvements in the health of children.

We urge public commentators and agencies to nominate additional analytic issues for consideration in this process. The ultimate guidance that emerges from this process will be used by OIRA when evaluating the regulatory proposals and analyses submitted by agencies.

F. Expanded and Diversified Professional Staff

In Supreme Court Justice Stephen Breyer's book *Breaking the Vicious Circle*, centralized regulatory oversight is viewed as a predominantly professional activity rooted in the analytical insights gleaned from tools that are taught in professional schools throughout the United States. OIRA's history and structure is based on this professional model. If OIRA were strictly a political review mechanism, there might be no need for career civil servants at OIRA. Yet the Bush Administration supports the development of a strong professional staff at OIRA to support Presidential management of the regulatory state. OMB has reviewed the situation and determined that additional allocations of staff are necessary at OIRA.

As Table 4 shows, staffing at OIRA declined steadily from a peak of 90 FTEs in 1981, when the Office was first created, to a low of 47 FTEs from 1997 to 2000. The decline occurred continuously for 20 years, through both Republican and Democratic Administrations. The decline in OIRA staffing has been steeper than the general decline experienced throughout the Office of Management and Budget. These staffing declines have occurred at the same time that OIRA has assumed new statutory responsibilities from the Congress on issues concerning unfunded mandates, paperwork reduction, small business, regulatory accounting, and information policy.

TABLE 4.—OIRA STAFF CEILING

Fiscal year	Full time equivalents ceiling
1981	90
1982	79
1983	77
1984	80
1985	75

[5] A final corrected version was published on February 22, 2002 (67 FR 8452). It is also available on our web site at <*http://www.whitehouse.gov/omb/*>.

[6] The quality-adjusted-life-year or QALY approach weights life-years extended based on criteria established by medical experts, patients, and community residents to allow comparisons of different health outcomes. See M.R. Gold, J.E. Siegel, L.B. Russell, and M.C. Weinstein, (eds.) *Cost-Effectiveness in Health and Medicine*. New York, NY, Oxford University Press, 1996.

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TABLE 4.—OIRA STAFF CEILING—Continued

Fiscal year	Full time equivalents ceiling
1986	*75/69
1987	69
1988	69
1989	62
1990	65
1991	*65/60
1992	60
1993	57
1994	52
1995	50
1996	49
1997	47
1998	47
1999	47
2000	47
2001	49
2002	54

*Indicates a ceiling was reduced in mid-year.

The Bush Administration has begun to reverse the 20-year decline in OIRA staffing, adding a total of seven new OIRA positions for a total of about 54 FTEs. Four of these positions will provide new science and engineering expertise to OIRA. This will enable us to develop a more diversified pool of expertise to ask penetrating technical questions about agency proposals. It will also enable us to collaborate more effectively with our colleagues in the Office of Science and Technology Policy. The remaining positions will buttress OIRA's staffing in information technology and policy for the E-Government initiative. The new staffing will complement OIRA's historical staffing strengths in economics, policy analysis, statistics and law.

G. Facilitator of Targeted Agency Reviews of Existing Rules

There are so many federal regulations now on the books that there has never been an accurate, up-to-date count of their exact number. Since many of these rules are quite old, it is logical to suggest that existing rules be reviewed to determine whether they remain appropriate. Yet regulated entities often adapt creatively to federal rules in ways that reduce or minimize their adverse impact while fulfilling the social objective. The dynamics of post-regulation behaviors call into question the validity of efforts to simply add up the costs and benefits of existing rules based on analyses done prior to the original promulgation of rules.

Thus, any comprehensive effort to look at existing rules requires original data collection and evaluation, a resource-intensive exercise for agencies and regulated entities. Across-the-board reviews of all existing rules have been attempted in the past but have not always been particularly successful and have induced a questionable allocation of limited agency and OIRA resources. The Bush Administration believes that a targeted review process for existing rules, pursuant to public comment and new statutory authority provided to OIRA, is the best available mechanism to facilitate review of existing rules outside of the authority under the Regulatory Flexibility Act. [7]

Last year's version of this report to Congress represented OIRA's first effort to facilitate reviews of existing rules under unique statutory authority provided to OIRA. We requested that public commentators nominate specific existing rules that should be rescinded or changed to increase net benefits by either reducing costs or increasing benefits. We called for such nominations in a **Federal Register** notice that also requested public comment on a draft version of the year 2001 report to Congress. We provided a suggested format for nominations in order to facilitate organized public comment and both OIRA and agency consideration of nominations.

We believe that OIRA's first effort at targeted reviews of existing rules was partially successful but can be improved. There were a total of 71 specific nominations covering 17 agencies suggested by 33 commentators. A particularly diligent commentator, the Mercatus Center at George Mason University, submitted 44 nominations based on public filings before agencies they had been doing for several years.

OIRA evaluated these nominations and assigned each nomination to one of three categories: (1) High priority, indicating that OIRA is inclined to agree with the comment and look into the suggestion, (2) medium priority, meaning that OIRA needs more information before it can give a clear indication of priority, and (3) low priority, meaning that OIRA is not convinced of the merits of the suggestion. There were a total of 23 nominations rated by OIRA as "high priority." Appendix B to this report provides preliminary information about what agencies are doing about these 23 regulations. We intend to update this accounting of the outcome of reform nominations in our final report.

Eight of the 23 nominations address EPA rules while another five address rules that might be considered environmental in nature (i.e., those concerning DOI, DOE and USDA rules). However, a closer examination of OIRA's decision making process reveals no implicit or explicit intent to target environmental rules for scrutiny.

The distribution of nominated rules by agency reflects the concerns raised by public comments, not the interests of OIRA. Of the 71 nominations, over half (43) might be considered "environmental" regulations, a pattern that is unsurprising since federal environmental regulation is of broad public interest and a source of persistent public controversy. OIRA was quite critical in its internal evaluation of all nominations, including those in the environmental arena. Only 13 of the 33 "environmental" rule nominations were rated as "high priority" for agency reconsideration. A review of these 13 nominations reveals that some had already been established as an Administration priority for review. Few comments suggested repeal or loosening of environmental standards. The new reform ideas (*e.g.*, regarding rules under Toxic Substances Control Act (TSCA) and Resource Conservation and Recovery Act (RCRA) were modest in nature. OIRA welcomes nominations from all interested parties, including regulated entities.

Indeed OIRA desires the broadest possible public participation in the nomination process including input from environmental advocacy groups, consumer groups, and public health and safety groups. We will be taking several aggressive steps to broaden participation by these groups in coming years. OIRA will not rely exclusively on the **Federal Register** as a vehicle to publicize the request for public nominations. OIRA's website will also this opportunity. A press release will be issued to increase public awareness of nomination opportunities. OIRA welcomes all good ideas, regardless of whether or not statutory change is required, though suggestions that do not entail legislative action may receive more near-term priority.

H. Formation of a Scientific Advisory Panel to OIRA

At the suggestion of the OMB Director, OIRA is in the process of forming a scientific advisory panel that will suggest initiatives to OIRA, evaluate OIRA's ongoing activities, comment on national and international policy developments of interest to OIRA, and act as a resource and recruitment mechanism for OIRA staff. OIRA envisions that the panel will be comprised of academics with specialized expertise in economics, administrative law, regulatory analysis, risk assessment, engineering, statistics, and health and medical science. The composition and formation of the panel will comply with the guidance on competent and credible peer review mechanisms espoused by the OIRA Administrator in his September 20, 2001, memorandum to the President's Management Council.

OIRA envisions that the panel will meet twice each year in Washington, DC. Panel meetings will be open to the public. OIRA expects that the first meeting of this panel will occur this summer.

I. Agency Compliance With the Unfunded Mandates Reform Act

In last year's report to Congress "Making Sense of Regulation," OMB included its annual report to Congress on agency compliance with the Unfunded Mandates Reform Act in addition to OIRA's report on the costs and benefits of regulations. This was done because the two reports together address many of the same issues and both highlight the need for regulating in a responsible manner that both accounts for the costs and benefits of rules and takes into consideration the interests of our intergovernmental partners.

OIRA intends to continue to publish these two reports together. We are currently working with the agencies to gather data on the extent of consultations with State, local, and tribal governments through September 2001. The results of this work will appear along with a discussion of any rules that imposed and unfunded mandate (defined in the Act as expenditures of $100 million or greater) between May 2001 and October 2001 in the final report.

However, as noted in last year's report, many of our intergovernmental partners feel that they are not being consulted sufficiently on those issues that matter most to them. The Office of Management and Budget is particularly interested in what State, local, and tribal governments perceive as failures in the consultation process. We invite public comment on the two questions listed below:

1. In the examples of federal consultation described in last year's report (available at *http://www.whitehouse.gov/omb/inforeg/costbenefitreport.pdf*), was the consultation sufficient? Was it conducted at a time in the decisionmaking process when it was meaningful? Were the views of States, local governments and tribes sufficiently solicited by the agencies?

2. Are there instances other than those described in last year's report where consultation should have taken place between an agency and a State, local, or tribal government where it did not?

Responses to these two questions will be very valuable as the Administration develops policies to further the rights of State, local and tribal governments under the Unfunded Mandates Reform Act.

J. Summary Statistics on the Bush Administration's Regulatory Record

Basic statistics about regulatory transactions provide a crude indicator of the dynamics of regulatory activity at federal agencies and OIRA. In Table 15 in Appendix E, we provide a statistical comparison of regulatory transactions (total and by agency) for calendar years 1998, 1999, 2000, and 2001.

These data indicate that out of the roughly 4,500 regulatory actions that occur on average each year, about 500 are judged to be significant and a far smaller number, about 70, are judged to be economically significant. Only "significant" actions are subject to OIRA review under E.O. 12866, and only the "economically significant" rules are required to be supported by a regulatory impact analysis. Ranked by the number of E.O. reviews at OIRA, the busiest 11 regulatory agencies over the last four years are, in order: HHS, USDA, EPA, DOT, DOI, DOC, HUD, OPM, VA, DOJ, ED. Three agencies—HHS, EPA, and USDA—accounted for about 70 percent of the economically significant rules.

Chapter II: The Costs and Benefits of Federal Regulations

Section 624 of the FY 2001 Treasury and General Government Appropriations Act, the "Regulatory Right-to-Know Act," [8] requires OMB to submit "an accounting statement and associated report" including:

"(1) An estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

(A) In the aggregate;

(B) by agency and agency program; and

(C) by major rule;

"(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

"(3) recommendations for reform.[9]

This report revises the estimates in last year's report by updating the estimates to the end of fiscal year 2001 (September 30, 2001). We make three types of revisions. First, we include the costs and benefits of the economically significant rules reviewed by OMB between April 1, 1999 and September 30, 2001. Second, we revised our estimates and discussion of estimates based on studies and data that became available since the last report was written. Third, we updated our estimates to 2001 dollars from the 1996 dollars used in the four previous reports.

Estimates of the Total Costs and Benefits of Regulations Reviewed by OMB [10]

Table 5 presents estimates by agency of the costs and benefits of major rules reviewed by OMB over the period April 1, 1999 to September 30, 2001.[11] We reviewed 117 final major rules over that period. Of the 117 rules, 72 implemented federal budgetary programs, which caused income transfers from one group to another, and 45 imposed mandates on state and local entities or the private sector.[12] Of the 45 social regulations, we are able to present estimates of both monetized costs and benefits for 19 rules.[13] Seven agencies issued major regulations adding from $32 billion to $53 billion annual benefits and from $15 billion to $18 billion annual costs over the 30 month period. About 80% of the benefits and 70% of the costs were from one agency, EPA. Table 6 presents estimates for six and a half years by expanding the period covered by Table 5 back by four years to April 1, 1995.[14] Before April 1, 1995, OMB did not systematically

[7] Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review rules that have a significant economic impact on a substantial number of small entities within 10 years of their publication.

[8] 31 U.S.C. 1105 note, Pub. L. 106–554, § 1(a)(3) [Title VI, § 624], Dec. 21, 2000, 114 Stat. 2763, 2763A–161. (See Appendix F).

[9] Recommendations for reform are discussed in Chapter IV.

[10] In our previous four reports, we presented detailed discussions about the difficulty of estimating and aggregating the costs and benefits of different regulations over long time periods and across many agencies. We do not repeat those discussions here. Our previous reports are on our website at <*http://www.whitehouse.gov/omb/inforeg/regpol.html*>.

[11] The list of major rules and their individual cost and benefit estimates and discussion of the assumptions and calculations used to derive the estimates are in Appendix D.

[12] Rules that transfer Federal dollars among parties are not included because transfers are not social costs or benefits. If included, they would add equal amounts to benefits and costs.

[13] We used agency estimates where available. If an agency quantified estimates but did not monetize, we used standard assumptions to monetize as explained in Appendix D.

[14] Table 6 is the sum of Table 5 in this report and Table 5 from the 2000 report (OMB 2000) after converting to 2001 dollars and excluded three regulations to prevent double counting: emission standards for heavy duty engines and the NAAQS ozone and particulate matter rules. These calculations are explained in Appendix D. Two other rules reviewed by OMB are not included: OSHA's ergonomics rule that was overturned under the Congressional Review Act and FDA's tobacco rule that was overturned by the Supreme Court.

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estimate and sum the benefits of major rules.

TABLE 5.—ESTIMATES OF THE ANNUAL COSTS AND BENEFITS OF MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001
[Millions of 2001 dollars]

Agency	Costs	Benefits
Agriculture	814	<1.
DOE	1,520	3,110.
HHS	2,400	5,792.
HUD	150	190.
DOL	78	167.
DOT	400 to 1,600	140 to 2,000.
EPA	10,742 to 12,302	23,738 to 43,491.
Total	16,104 to 19,264	33,137 to 54,350.

TABLE 6.—ESTIMATES OF THE ANNUAL COSTS AND BENEFITS OF MAJOR RULES, APRIL 1, 1995 TO SEPTEMBER 30, 2001
[Millions of 2001 dollars]

Agency	Costs	Benefits
Agriculture	2,249 to 2,271	2,938 to 5,989.
Ed	362 to 610	655 to 814.
DOE	1,836	3,991 to 4,059.
HHS	2,988 to 3,067	8,165 to 9,182.
HUD	150	190.
DOL	361	1,173 to 3,557.
DOT	1,756 to 3,808	2,400 to 4,312.
EPA	41,523 to 42,326	29,140 to 66,092.
Total	51,225 to 54,429	48,652 to 67,602.

We provide revised estimates of the aggregate costs and benefits of social regulation (health, safety and environmental regulation) in the aggregate and by major program as of September 30, 2001, in Appendix C.[15] We also include estimates of the aggregate costs of economic and process regulation in Appendix C.[16] We include these aggregate estimates in the appendix rather than the text to emphasize the quality differences in the two sets of estimates. The estimates of the costs and benefits of Federal regulations over the period April 1, 1995 to March 31, 2001, are based on agency analyses subject to public notice and comments and OMB review under E.O. 12866. The estimates in the Appendix for earlier regulations are based on studies of varying quality. Some are first-rate studies published in peer reviewed journals. Others are non random surveys of questionable methodology. And some estimates are based on studies completed 20 years ago for regulations issued over 30 years ago, whose precise cost and benefit estimates today are unknown.

Also included in Appendix C is an analysis of impacts of Federal regulation on State, local, and tribal governments, small business, wages, and economic growth, as required by Section 624(a)(2) of the Act.

Estimates of Benefits and Costs of This Year's "Major" Rules

In this section, we examine the benefits and costs of each "major rule," as required by section 624(a)(1)(C). We have included in our review those final regulations on which OMB concluded review during the 18-month period April 1, 2000, through September 30, 2001. We used an 18 month period this year to transition to a fiscal year reporting period. The four previous reports used a "regulatory year," ending on March 31st.

The statutory language categorizing the rules we consider for this report differs from the definition of "economically significant" in Executive Order 12866 (section 3(f)(1)). It also differs from similar statutory definitions in the Unfunded Mandates Reform Act and subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996—Congressional Review of Agency Rulemaking. Given these varying definitions, we interpreted section 624(a)(1)(C) broadly to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866
- Rules designated as "major" under 5 U.S.C. 804(2) (Congressional Review Act)
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538)

We also include a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Order 12866. This discussion is based on data provided by these agencies to the General Accounting Office (GAO) under the Congressional Review Act that met the criteria noted above. Of these rules, USDA submitted nineteen; the DOC, DOE, Social Security Administration, and Federal Emergency Management Administration, each submitted three; HHS twenty-two; DOL eight; Treasury, DOJ, Architectural and Transportation Barriers Compliance Board (ATBCB), DoD, the Office Federal Housing Enterprise Oversight, Veterans Administration, Office of Personnel Management each submitted one; DOI five; DOT four; EPA seven; SBA and

[15] We calculated these estimates by adding the estimates in Table 5 above to Table 4 of the 2000 OMB report and updating Table 4's 1996 dollars to 2001 dollars using the CPI.

[16] Economic regulation restricts the price or quantity of a product or service that firms produce including whether firms can enter or exit specific industries.

FAR two. One of these rules was a common rule issued by three agencies-DOL, HHS and Treasury. These 86 rules represent less than 20 percent of the final rules reviewed by OMB during this period.

Social Regulation

Of the 86 economically significant rules reviewed by OMB, 34 are regulations requiring substantial additional private expenditures and/or providing new social benefits as described in Table 7. EPA submitted seven; DOI, DOL and HHS each submitted five; USDA, DOC, DOE each submitted three; DOT two; DOJ, Treasury and ATBCB each submitted one. Agency estimates and discussion are presented in a variety of ways, ranging from a mostly qualitative discussion, for example, the USDA's National Organic Program rule where all of the benefits and costs except for the recordkeeping component were discussed qualitatively, to a more complete benefit-cost analysis such as the EPA's heavy-duty engine and vehicle rule.

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
USDA	Roadless Area Conservation	Estimated $219,000/year cost savings from reduced road maintenance activities.	Loss of $56.9 million (direct) and $164 million (total) per year in the short term, with an additional impact of $12.4 million (direct) and $20.2 million (total) per year in the long term.	Monetized costs include an estimated 1,054 direct and 4,032 total jobs lost related to road construction, timber harvesting, and mining in the short term, with an additional 308 direct and 509 total jobs lost in the long term. [66 FR 3268—3269] Other costs include the following: "about 873 million tons of phosphate and 308—1,371 million tons of coal would likely be unavailable for development. About 11.3 trillion cubic feet of undiscovered gas and 550 million barrels of undiscovered oil resources may be unavailable." [66 FR 3269] A variety of other nonquantified benefits were mentioned in the preamble to the final rule.
USDA	National Organic Program	Not estimated	$13 million/yr for recordkeeping; others not estimated.	Because basic market data on the prices and quantities of organic goods and the costs of organic production are limited, it is not possible to provide quantitative estimates of all benefits and costs of the final rule. Consequently, the analysis does not estimate the magnitude or the direction (positive or negative) of net benefits." [65 FR 80663]
USDA	Retained Water in Raw Meat and Poultry Products.	Not estimated	$110 million	"Consumers will benefit from the additional information on retained water that will be provided as a result of the labeling requirement. The information on retained water should contribute to a sounder basis for purchasing decisions. Consumers are currently not being informed about the amount of retained water. Consumers will benefit from having improved knowledge of product quantity in terms of meat or poultry meat content." [66 FR 1768]
DOC	Annual Framework Adjustment (framework 14) for the Atlantic sea scallop fishery management plan for 2001.	Not estimated	Not estimated.	
DOC	Closure of Critical Habitat Pursuant to a Court Order.	Not estimated	Up to $88 million	"NMFS estimates that the potential economic losses in closing critical habitat to pollock trawling from June through December 2000 could be as high as $88 million. Industry has estimated that if the injunction remains in place through the A/B seasons, loses could be as high as $250 million." [65 FR 49769]
DOC	Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska.	Not estimated	Not estimated	"NMFS issues an emergency interim rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. These management measures will disperse fishing effort over time and area and provide protection from fisheries competition for prey in waters adjacent to rookeries and important haulouts" [66 FR 7276]
DOE	Energy Conservation Standards for Fluorescent Lamp Ballasts.	$3.51 billion (present value) in energy savings between 2005 and 2030.	$.9 billion (present value) for purchases between 2005 and 2030.	DOE projects a cumulative reduction in nitrogen oxide emissions of 59.6 thousand metric tons (undiscounted) over the period 2005–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 19 million metric tons (undiscounted) over the period 2005–2020.
DOE	Energy Conservation Standards for Water Heaters.	$8.6 billion (present value) in energy savings between 2004 and 2030.	$6.4 billion (present value) for purchases between 2004 and 2030.	DOE projects a cumulative reduction in nitrogen oxide emissions of 90 thousands metric tons discounted over the period 2004–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 50 million metric tons discounted over the period 2004–2020.
DOE	Energy Conservation Standards for Clothes Washers.	$27.2 billion (present value) in energy and water savings between 2004 and 2030.	$11.9 billion (present value) for purchases between 2004 and 2030.	DOE projects a cumulative reduction in nitrogen oxide emissions of 70.8 thousand metric tons discounted over the period 2004–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 24.1 million metric tons discounted over the period 2004–2020.
HHS	Health Insurance Reform: Standards for Electronic Transactions.	$36.9 billion over 10 years	$7 billion over 10 years	"The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. These costs include system conversion/upgrade costs, start-up costs of automation, training costs, and costs associated with implementation problems. These costs will be incurred during the first three years of implementation * * * The benefits of EDI include reduction in manual data entry, elimination of postal service delays, elimination of the costs associated with the use of paper forms, and the enhanced ability of participants in the market to interact with each other." [65 FR 50351] The discounted present value of the savings is $19.1 billion over ten years. Furthermore, the updated impact analysis still produces a conservative estimate of the impact of administrative simplification. For example, the new impact analysis assumes that over the ten-year post-implementation period, only 11.2% of the growth in electronic claims will be attributable to HIPAA." [65 FR 50355]
HHS	Safe and Sanitary Processing and Importing of Juice.	$151 monthly/yr	$44 million to $55 million in the first year and $23 million/yr thereafter.	"The quantified benefits (discounted annually over an infinite time horizon at 7 percent) are expected to be about $2 billion ($151 million/7 percent) and the quantified costs (discounted annually over an infinite time horizon at 7 percent) are expected to be about $400 million." [66 FR 6190]

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01—Continued
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
HHS	Standards for Privacy of Individually Identifiable Health Information.	Net present value savings of $19 billion.	Net present value costs of $11.8 billion.	The Rule shows a net savings of $29.9 billion over 10 years (2002–2011), or a net present value savings of $19 billion. This estimate does not include the growth in "e-health" and "e-commerce" that may be spurred by the adoption of uniform codes and standards. This final Privacy Rule is estimated to produce net costs of $18.0 billion, with net present value costs of $11.8 billion (2003 dollars) over ten years (2003–2012). This estimate is based on some costs already having been incurred due to the requirements of the Transactions Rule, which included an estimate of a net savings to the health care system of $29.9 billion over 10 years (2002 dollars) and a net present value of $19.1 billion. The Department expects that the savings and costs generated by all administrative simplification standards should result in a net savings to the health care system. [65 FR 82761]
HHS	Labeling of Shell Eggs	$261 million/yr	$56 million in the first year, $10 million/yr. thereafter.	"Although there were no comments directly on the estimated benefits, several comments argued that FDA used too high a baseline number of SE illnesses. In addition, some comments cited new data from CDC on SE. In the economic analysis in the proposal, FDA used the results of the USDA SE risk assessment for one estimate of the baseline risk and the CDC Salmonella surveillance data for another estimate of the baseline." [65 FR 76105] "The agency estimated the median benefits attributable to labeling alone to be $261 million using the USDA SE risk assessment baseline and $103 million using the CDC surveillance baseline." [65 FR 76106]
HHS/DOL/Treasury	Nondiscrimination in Health Coverage in the Group Market.	Not estimated	A one time cost of $19 million the first year for affected businesses, plus $10.2 million annually for government enforcement.	"The premium and claims cost incurred by group health plans to provide coverage under HIPAA's statutory nondiscrimination provisions to individuals previously denied coverage or offered restricted coverage based on health factors are offset by the commensurate or greater benefits realized by the newly eligible participants on whose behalf the premiums or claims are paid." [66 FR 1389]
DOI	Early-Season Migratory Bird Hunting Regulations 2000–2001	$50 million to $192 million/yr	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Late Season Migratory Game Bird Hunting regulations 2000–2001.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Early-Season Migratory Bird Hunting Regulations 2001–2002.	$50million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and 1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Late season Migratory Game Bird Hunting regulations 2001–2002.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Mining Claims under the General Mining Law; Surface Management.	Not estimated	Enforcement and administrative costs of $15.6 million annually ($1999); foregone production between 0 and $133 million per year.	" * * these values may overstate actual losses because a number of factors will act to mitigate any production losses and because they are calculated using a base of total U.S. gold production, not production originating from public lands. Simply adjusting for production originating on public lands could reduce the value of forgone production by half." [65 FR 70101]
DOJ	Adjustment of Status to That Person Admitted for Permanent Residence.	Not estimated	$178 million in 2001, $99.2 million in 2002, and 91.9 million in 2003.	"This rule adds the new sunset date of April 30, 2001, for the filing of qualifying petitions or applications that enable the applicant to apply to adjust status using section 245(i) of the Act, clarifies the effect of the new sunset date on eligibility, and discusses motions to reopen." [66 FR 16383]
DOL	Ergonomics Program	$9.1 billion/yr. (1996 dollars)	$4.5 billion/yr (1996 dollars)	"The cost analysis does not account for any changes in the economy over time, or for possible adjustments in the demand and supply of goods, changes in production methods, investment effects, or macroeconomic effects of the standard." [65 FR 68773]
DOL	Occupational Injury and Illness Recording and Reporting Requirements.	Not Estimated	$38.6 million	Qualitative benefits of the rule include: (1) Enhanced ability of employers and employees to prevent injuries and illnesses, and (2) Increased utility of and data to OSHA.
DOL	Safety Standards for Steel Erection.	22 fatalities and 1,142 injuries per year.	$78.4 million/year	OSHA estimates that, of the 35 annual steel erection fatalities, 8 fatalities will be averted by full compliance with the existing standard and that an additional 22 fatalities will be averted by compliance with the final standard. Additionally, of the 2,279 lost-workday steel erection injuries occurring annually, OSHA estimates that 1,142 injuries will be averted by full compliance with the existing and final standards [66 FR 5199] OSHA projects that full compliance with the final standard will, after deducting costs incurred to achieve compliance with the existing standard, result in net (or incremental) annualized costs of $78.4 million for affected establishments. [66 FR 5251]

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01—Continued
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
DOL	Amendments to Summary Plan Description Regulations.	Not estimated	$47 million in 2001, $208 million in 2002, $24 million/yr. thereafter.	"The regulation will ensure that participants have better access to more complete information about their benefit plans. Such information is important to participants' ability to understand and secure their rights under their plans at critical decision points, such as when illness arises, when they must decide whether to participate in a plan, or when they must determine which benefit package option might be most suitable to individual or family needs." "Improved information is expected to promote efficiency by fostering competition based on considerations beyond pricing alone, and by encouraging providers to enhance quality and reduce costs for value-conscious consumers. Complete disclosure will limit competitive disadvantages that arise when, for example, incomplete or inaccurate information on different benefit option packages is used for decision making purposes. Information disclosure also promotes accountability by ensuring adherence to standards. Equally importantly, information disclosure under the SPD regulation, if combined with additional disclosures pertaining to plan and provider performance, and with other health system reforms that promote efficient, competitive choices in the health care market, could yield even greater benefits." [65 FR 70234]
DOT	Light Truck Average Fuel Economy Standard, Model Year 2003.	Not estimated	Not estimated.	
DOT	Advanced Airbags	-233 to 215 fatalities and 1,966 to 2,388 nonfatal injuries prevented and $.2 billion to $1.3 billion in reduced property damage/yr.	$400 million to $2 billion/yr	Benefit estimates are undiscounted.
ATBCB	Electronic Information Technology Accessibility Standards.	Not estimated	$177–1,068 million/yr. in $2000.	The federal proportion of the costs will range from $85 million to $691 million.
EPA	Identification of Dangerous Levels of Lead.	$45 billion to 176 billion (present value over 50 years).	$70 billion (present value over 50 years).	"The upper benefit estimate is obtained using the IEUBK model while the lower benefit estimate is obtained using the empirical model." [66 FR 1235] EPA calculated present values using a 3 percent discount rate.
EPA	Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting.	Not Estimated	$80 million in first year; $40 million in subsequent years.	Benefits include more information about environmental releases of lead and lead compounds and promotion of pollution prevention.
EPA	Revisions to the Water Quality Planning and Management Regulation.	Not estimated	$23 million/yr ($2000) annualized over 10 yrs.	EPA believes that these regulations will benefit human health and the environment by establishing clear goals for identification of impaired waterbodies and establishment of TMDLs and establishing priorities for clean-up. [65 FR 43586]
EPA	Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring.	$140–198 million/yr	$206 million/yr	"EPA was not able to quantify many of the health effects potentially associated with arsenic due to data limitations. These health effects include other cancers such as skin and prostate cancer and non-cancer endpoints such as cardiovascular, pulmonary, and neurological impacts." [66 FR 7012] The benefit estimates do not account for significant time lags between reduced exposure and reduced incidence of disease.
EPA	Control of emissions of air pollution from 2004 and later model year highway heavy-duty engines; revision of light-duty truck definition.	Reduced emissions of 2.5 million tons/year nitrogen oxides, 167,000 tons/year nonmethane hydrocarbons, 11160 tons/year air toxics (benzene, formaldehyde, acetaldehyde, 1,3-butadiene).	$479 million/yr.	
EPA	Heavy-Duty Engine and Vehicle Standards.	$70.4 billion in 2030 (1999$)	$4.3 billion in 2030 (1999$)	Benefit and cost estimates are annualized to the year 2030.
EPA	National emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources.	$280 million to $370 million/yr ($1999).	$240 million in capital costs and then $30 million annually ($1999).	"Implementation is expected to reduce emissions of HAP, PM, VOC, CO, and SO2, while it is expected to slightly increase emissions of NOX. Such pollutants can potentially cause adverse health effects and can have welfare effects, such as impaired visibility and reduced crop yields. (In the benefits analysis, we have not conducted detailed air quality modeling to evaluate the magnitude and extent of the potential impacts from individual pulp and paper facilities. Nevertheless, to the extent that emissions from these facilities cause adverse effects, this final rule would mitigate such impacts". [66 FR 3189])

TRANSFER RULES

Dept. of Agriculture (USDA)
Agricultural Disaster and Market Assistance
2000 Crop Agricultural Disaster and Market Assistance
Market Assistance for Cottonseed, Tobacco, and Wool and Mohair
Bioenergy Program
Farm Storage Facility Loan Program
Wool, Mohair, and Apple Market Loss Assistance Programs
Dairy, Honey, and Cranberry Market Loss Assistance and Sugar Programs
Livestock Assistance, American Indian Livestock Feed, Pasture Recovery, and Dairy Price Support Programs
2000 Crop Disaster Program
Catastrophic Risk Protection Endorsement
Food Stamp Program: Recipient Claim Establishment and Collection Standards
National School Lunch and School Breakfast Program: Additional menu Planning Approaches
Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts
Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
Non-Citizen Eligibility and Certification Provisions of Public Law 104–193
Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Dept. of Defense
Tricare: Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), NDAA for FY 2001 and Pharmacy Benefits Program
Dept. of Health and Human Services (HHS)

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TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01—Continued
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
	Medicare Program: Medicare + Choice			
	Prospective Payment System for Home Health Agencies			
	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities			
	Medicare Program: Hospital Inpatient Payments and Rates and Costs of Graduate Medical Education (1999)			
	Medicare Program: Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2001 Rates			
	Medicare Program: Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2001			
	Medicare Program: Expanded Coverage for Outpatient Diabetes			
	Prospective Payment System for Hospital Outpatient Services			
	Revision to Medicaid Upper Payment Limit Requirements for Inpatient Hospital Services			
	Medicaid Program: Medicaid Managed Care			
	Medicaid Program: Change in Application of Federal Financial Participation Limits			
	Medicare Program: Inpatient Payments and Rates and Costs fo Graduate Medical Education (2000)			
	Medicare Program: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update			
	Medicare Program: Prospective Payment System for Inpatient Rehabilitation Hospital Services			
	Medicare Program: Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs fo Graduate Medical Education for Fiscal Year 2002			
	Modification of the Medicaid Upper Payment Limit Transition Period for Hospitals, Nursing Facilities, and Clinic Services			
	State Child Health; Implementing Regulations for the State Children's Health Insurance Programs			
Social Security Administration				
	Supplemental Security Income: Determining Disability for a Child Under Age 18			
	Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria			
	Collection of the Title XVI Cross-Program Recovery			
The Office of Federal Housing Enterprise Oversight				
	Risk-based Capital			
Department of Labor				
	Government Contractors, Affirmative Action Requirements			
	Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act			
	Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts ("Helpers")			
	Birth and Adoption Unemployment Compensation			
Dept. of Transportation				
	Safety Incentive Grants for the Use of Seatbelts			
	Amendment of Regulations Governing Railroad Rehabilitation and Improvement Financing Program			
Veterans Administration				
	Disease Associated with Exposure to Certain Herbicide Agents: Type 2 diabetes			
Federal Emergency Management Administration				
	Supplemental Property Acquisition and Elevation Assistance			
	Disaster Assistance: Cerro Grande Fire Assistance			
	Supplemental Property Acquisition and Elevation Assistance			
Small Business Administration				
	Small Business Size Standards: General Building Contractors, etc.			
	New Market Venture Capital Program			
Office of Personnel Management				
	Health Insurance Premium Conversion			
Federal Acquisition Regulation (FAR)				
	Electronic Commerce in Federal Procurement: FAR case 1997–304			
	Electronic Commerce and Information Technology Accessibility: FAR case 1999–607			
Securities and Exchange Commission (SEC)				
	Disclosure of Mutual Fund After-Tax Returns			
	Privacy of Consumer Financial Information (Regulation S–P)			
	Selective Disclosure and Insider Trading			
	Unlisted Trading Privileges			
	Disclosure of Order Execution and Routing Practices			
	Revision of the Commission's Auditor Independence Requirements			
Federal Trade Commission (FTC)				
	Privacy of Consumer Financial Information			
Federal Communications Commission (FCC)				
	Promotion of Competitive Networks in Local Telecommunications Markets			
	Competitive Bidding Procedures			
	Installment Payment Financing for Personal Communications Services (PCS) Licensees			
	Assessment and Collection of Regulatory Fees for Fiscal Year 2000			
	Narrowband Personal Communications Services; Competitive Bidding			
	24 Ghz Service; Licensing and Operation			
	Extending Wireless Telecommunications Services to Tribal Lands			
	Assessment and Collection of Regulatory Fees for Fiscal Year 2001			
Nuclear Regulatory Commission				
	Revision of Fee Schedules; 100% Fee Recovery			
	Emergency Core Cooling System Evaluation Models			
	Revision of Fee Schedules; Fee Recovery for FY 2001			
Federal Reserve System				
	Privacy of Consumer Financial Information			

1. Benefits Analysis

Agencies monetized at least some benefit estimates for 19 of the 34 rules including: (1) EPA's estimate of $70.4 billion in 2030 primarily from reduced PM exposure from diesel fuel; (2) DOE's present value estimate of $8.6 billion from 2004 through 2030 in energy savings from water heater energy conservation; and (3) DOI's estimate of $50 million to $192 million per year in benefits from its migratory bird hunting regulations. In one case, the agency provides some of the benefit estimates in monetized and quantified for, but discusses other benefits qualitatively. Namely, USDA estimated that the Roadless Area Conservation rule will save $219,000 per year from reduced road maintenance but did not quantify the benefits associated with projected increases in air and water quality and biodiversity. In three cases, the agencies did not monetize all of the quantified benefits. For example, DOE quantified and monetized the energy saving benefits from its three energy conservation standards, but did not monetize the projected reductions in nitrogen oxide emissions. In 14 cases, agencies did not report any quantified or monetized benefit estimates.

2. Cost Analysis

For 26 of the 34 rules, agencies provided monetized cost estimates. These include such items as HHS's estimate of $56 million in the first year and $10 million annually thereafter as the cost of labeling shell eggs. For the remaining seven rules, DOI's four migratory bird hunting rules, DOC's two emergency fishery management rules, and DOT's light truck fuel economy rule, the agencies did not estimate costs

3. Net Monetized Benefits

Twelve of the 34 rules provided at least some monetized estimates of both benefits and costs. Of these, the estimated monetized benefits of nine of the rules unambiguously exceed the estimated monetized costs. The magnitude of the net benefits vary from less than $100 million per year to $66 billion per year. Two rules have negative net monetized benefits with variation ranging from approximately $10 million per year to $70 million per year. One rule yielded an estimate that included the possibility of positive or negative net benefits. EPA estimated that the expected benefits from identifying dangerous levels of lead range from $45 billion to $176 billion over 50 years depending on the underlying model, resulting in the net benefit estimates ranging from -$25 billion to $106 billion.

The presentation of the monetized benefits and costs varied. Five rules presented both benefits and costs in present value terms, whereas two rules used annualized forms. Four rules presented the estimated benefits in annualized forms and the costs in annual form. This distinction is important since annualized form smooths the projected streams of benefits and costs evenly over a period of time while the annual form does not. The annual form allows the reader to glean information on not only how much benefits and costs are likely to accrue but when.

4. Rules Without Quantified Effects

Three of the rules in Table 7 are classified as economically significant even though the agency did not provide any quantified estimates their effects.

DOC—Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska: Based upon publicly available information, OMB determined that rules covering these species were major.

DOC—Annual Framework Adjustment (framework 14) for the Atlantic Sea Scallop Fishery Management Plan for 2001: Based upon publicly available information, OMB determined that rules covering these species were major.

DOT—Light Truck CAFÉ: For each model year, DOT must establish a corporate average fuel economy (CAFÉ) standard for light trucks, including sport-utility vehicles and minivans. (DOT also sets a separate standard for passenger cars, but is not required to revisit the standard each year.) For the past five years, however, appropriations language has prohibited NHTSA from spending any funds to change the standards. In effect, it has frozen the light truck standard at its existing level of 20.7 miles per gallon (mpg) and has prohibited NHTSA from analyzing effects at either that or alternative levels. Although DOT did not estimate the benefits and costs of the standards, the agency's experience in previous years indicates that they may be substantial. Over 5 million new light trucks are subject to these standards each year, and the 20.7 mpg standard is binding on several manufacturers. In view of these likely, substantial effects, we designated the rule as economically significant even though consideration of the effects was prohibited by law.

Transfer Regulations

Of the 86 rules listed in Table 7, 53 implement Federal budgetary programs. The budget outlays associated with these rules are "transfers" to program beneficiaries. Of the 53, 16 are USDA rules in which 10 are crop assistance and disaster aids for farmers and 6 are food stamp program rules. HHS promulgated 17 rules implementing Medicare and Medicaid policy. The Social Security Administration and Federal Emergency Management Agency each promulgated three rules. DOL promulgated four rules including two on compensation programs on occupational illness and paid leave for birth and adoption. DOT, SBA and FAR each finalized two rules, one of which promotes safety incentive grants for seatbelt use. DoD, the Office of Federal Housing Enterprise Oversight, Veterans Administration, and the Office of Personnel Management each finalized one rule.

Major Rules for Independent Agencies

The congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA) require the General Accounting Office (GAO) to submit reports on major rules to the committees of jurisdiction, including rules issued by agencies not subject to Executive Order 12866 (the "independent" agencies). We reviewed the information on the costs and benefits of major rules contained in GAO reports for the period of April 1, 2000 to September 30, 2001.

GAO reported that five independent agencies issued nineteen major rules during this period. Two agencies did not conduct benefit-cost analyses. Three agencies considered benefits and costs of the rules. OIRA lists the agencies and the type of information provided by them (as summarized by GAO) in Table 8. Securities and Exchange Commission and Federal Trade Commission consistently considered benefits and costs in their rulemaking processes while Federal Communications Commission did not prepare benefit-cost analyses.

In comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of the major rules. As Table 8 indicates, eight of the 19 rules included some discussion of benefits and costs. Six of the 19 regulations had monetized cost information; three regulations monetized benefits. However, it is difficult to discern whether the rigor and the extent of the analyses conducted by the independent agencies are similar to those agencies subject to the Executive Order.

Chapter III: Regulatory Governance Abroad

As a special feature, this year's Annual Report to Congress on the Costs and Benefits of Regulation includes information on regulatory governance developments in other developed countries. The information is drawn from reports from the Organisation for Economic Co-operation and Development (OECD), Asian Pacific Economic Cooperation, (APEC) and the European Commission (EC) and supplemented by insights drawn from

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OIRA discussions with OECD, APEC, and EC officials.

TABLE 8.—RULES FOR INDEPENDENT AGENCIES (APRIL, 2000–SEPTEMBER, 2001)

Agency	Rule	Information on costs or benefits	Monetized costs	Monetized benefits
Federal Communications Commission	Narrowband personal communications services.	No	No	No.
Federal Communications Commission	Assessment and collection of regulatory fees for fiscal year 2000.	No	No	No.
Federal Communications Commission	Extending wireless telecommunications services to tribal lands.	No	No	No.
Federal Communications Commission	Installment payment financing for personal communications services (PCS) licensees.	No	No	No.
Federal Communications Commission	Competitive bidding procedures	No	No	No.
Federal Communications Commission	24 Ghz Service; Licensing and operation	No	No	No.
Federal Communications Commission	Promotion of competitive networks in local telecommunications markets.	No	No	No.
Federal Communications Commission	Assessment and collection of regulatory fees for fiscal year 2001.	No	No	No.
Federal Reserve System	Privacy of consumer financial information	No	No	No.
Federal Trade Commission	Privacy of consumer financial information	Yes	No	No.
Nuclear Regulatory Commission	Emergency core cooling system evaluation models.	Yes	Yes	Yes.
Nuclear Regulatory Commission	Revision of fee schedules; 100% fee recovery, FY 2000.	No	No	No.
Nuclear Regulatory Commission	Revision of fee schedules; Fee recovery for FY 2001.	No	No	No.
Securities and Exchange Commission	Privacy of consumer financial information	Yes	Yes	No.
Securities and Exchange Commission	Selective disclosure and insider trading	Yes	Yes	No.
Securities and Exchange Commission	Unlisted trading privileges	Yes	No	No.
Securities and Exchange Commission	Disclosure of order execution and routing practices.	Yes	Yes	Yes.
Securities and Exchange Commission	Revision of the commission's auditor independence requirements.	Yes	Yes	Yes.
Securities and Exchange Commission	Disclosure of mutual fund after-tax returns	Yes	Yes	No.

OECD Activities

The OECD consists of 30 democracies with advanced, market economies, in Western Europe, North America, Australia, New Zealand, Japan, and Korea. As an integral part of its mission, OECD's Public Management program (PUMA) assists governments with the "tools" and "rules" of good governance to build and strengthen effective, efficient and transparent government structures.

The OECD countries have developed, through OECD's PUMA activities, a systematic approach to evaluating the quality of national regulatory management programs. In its 1997 report, OECD reported that the number of countries with such programs has grown from three or four in 1980 to almost all 30 OECD countries today. The international public debate about regulatory improvement has been transformed from a discussion about whether regulatory reform programs should be adopted to a debate about what specific measures should be implemented to improve regulatory performance.

In 1995 the OECD published the first internationally accepted set of principles on ensuring regulatory quality: the Recommendation of the Council of the OECD on Improving the Quality of Government Regulation. We have reproduced these principles in Box 1. OECD reports that experience in member countries reveals that an effective regulatory management system requires three basic components: a regulatory policy adopted at the highest political level; explicit and measurable standards for regulatory quality; and a continuing regulatory management capacity. Countries vary in how well they provide these components, which OECD considers as mutually reinforcing in their impact on the quality of regulatory governance.

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Box 1. The OECD Reference Checklist for Regulatory Decision-making

- **Is the problem correctly defined?**

The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

- **Is government action justified?**

Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of actions (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

- **Is regulation the best form of government action?**

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

- **Is there a legal basis for regulation?**

Regulatory processes should be structured so that all regulatory decisions rigorously respect the "rule of law; that is responsibility should be explicit for ensuring that all regulations are authorized by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

- **What is the appropriate level (or levels) of government for this action?**

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

- **Do the benefits of regulation justify the costs?**

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

- **Is the distribution of effects across society transparent?**

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

- **Is the regulation clear, consistent, comprehensible and accessible to users?**

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

- **Have all interested parties had the opportunity to present their views?**

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interested groups, or other levels of government.

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In light of these OECD principles, the Secretariat of the OECD has been sponsoring, since 1998, detailed reviews of the regulatory governance programs in member countries. Sixteen country reviews have been completed from 1998 to 2001 and several more are now underway. OECD also commissioned a regulatory survey of member countries in 2000, convened a meeting of senior risk management officials from governments in October 2001, and sponsored an international meeting in December 2001.

Taken as a whole, the country-specific reviews, the 2000 OECD survey and recent international meetings reveal that the most common feature of regulatory management programs is that affected parties be consulted prior to regulation. A requirement for regulatory impact analysis prior to regulation has also been adopted in a majority of OECD countries. About half have some general requirement that regulatory alternatives be considered. Formal evaluation requirements for existing rules are less widespread. Some countries (*e.g.*, Japan and Korea) have focused on the need to reduce overregulation while in other countries (*e.g.*, the United States) the recent focus has been on improving regulatory quality through better analysis of benefits, costs and alternatives.

APEC Activities

The Asia-Pacific Economic forum was established by President George H.W. Bush in 1989. It is the primary international organization for promoting open trade and international cooperation among the 21 Pacific Rim countries. In addition to the seven OECD Pacific Rim countries, APEC includes Russia, China, Hong Kong, Chinese Taipei, Singapore, and Chile, among others. The APEC economies account for almost 50 percent of world trade. APEC is promoting increased transparency, openness and predictability based on the rule of law for both trade and regulation. It seeks to eliminate impediments to trade and investment by encouraging member economies to reduce barriers, adopt transparent, market-oriented policies and address such issues as outdated telecommunications regulatory practices. APEC requires its member countries to post on its web site individual action plans (IAPs) that set out how they plan to meet the APEC goals and to update them each year. One of the IAPs is a deregulation initiative based on the USG's and other countries' experiences. The main focus of the deregulation initiative is to promote information sharing and dialogue, and increase the transparency of existing regulatory regimes and regulatory reform processes. OIRA has been helping USTR and the State Department promote this effort by highlighting our open, transparent, and analytically based regulatory development and oversight program.

EC Activities

The European Union has been criticized on the grounds that its approach to governance is too disconnected from the concerns of ordinary residents of the member states. To address these concerns, the European Commission prepared in early 2001 a white paper entitled "European Governance," which describes major areas of concern and promising directions for reform of governance in the EU. Public consultation on the contents of the white paper is scheduled to extend until March 2002, with conclusions drawn by the EC prior to the next Intergovernmental Conference, where European governance will be debated.

The white paper addressed broad concerns about good governance and the need for increased openness, participation, accountability, effectiveness and coherence. These five principles are designed to reinforce the overriding principles of proportionality and subsidiarity. Before launching an initiative, applying these principles means checking systematically to determine (a) if public action is really necessary; (b) if the European level is the most appropriate one; and (c) if the measures chosen are proportionate to the objectives.

Concern about regulatory policy—both the EC's and the member states roles—is featured in the white paper. As the executive arm of the European Union, the EC was granted the exclusive power to propose or initiate legislation and policy for Europe. The European Parliament (elected representatives of the people) and the European Council (comprised of representative ministers from member states) can modify EC proposals but do not have the power to initiate proposals. The EC has the initiating role in both "regulations," which become law throughout Europe after Council and Parliament approval, and "directives", which must be "transposed" (i.e., tailored and implemented) by the Member States before they are legally enforceable.

The white paper calls for attention to "improving the quality, effectiveness and simplicity of regulatory acts". The mechanisms cited include formal regulatory analysis, consideration of various policy instruments, choice of the right type of instrument, consideration of "co-regulation" involving cooperation among regulated entities, more cooperation among member states on practices and targets, evaluation and feedback once rules are established, discouraging over complicated proposals, and faster legislative processes. The white paper, recognizing the extent of existing regulation but the absence of credible regulatory agencies in some areas, calls for both a comprehensive program of simplification of existing regulations as well as the creation of some new independent regulatory agencies (*e.g.*, in airline and food safety where public confidence in Europe is low). The white paper also notes that a stronger regulatory system in Europe will allow the EU to be a more effective advocate of regulatory management in international settings.

Soon after the Commission adopted the white paper in July 2001, a more specific "communication" was issued by the EC on "Simplifying and Improving the Regulatory Environment." This document calls for at least a 25 percent reduction in the overall volume of European regulation (measured as the number of printed pages of laws) and the withdrawal of 100 or so pending yet outmoded proposals from before 1999. With regard to new actions, the communication calls for enhancement of consultation, especially electronic, on-line consultation, and impact analysis. The latter, defined as "pre-assessments" of draft proposals to determine which proposals merit detailed impact analysis, including assessments covering economic, social and environmental consequences.

A far more detailed report on "better regulation" was prepared by an authoritative group chaired by the distinguished Frenchman Dieudonne Mandelkern. Known as the Mandelkern Report. As published in November 2001, this report emphasized the economic significance of regulatory policy, suggesting that regulatory expenditures comprise perhaps 2 percent to 5 percent of the European gross domestic product. The report rejects unthinking deregulation but recognizes that better regulation is necessary to enhance public confidence in government and assure that the public-welfare benefits of regulatory policy are attained in the future.

The Mandelkern Report provides a detailed action plan on the themes of impact assessment, consultation, simplification, institutional structures to promote better regulation, alternatives to regulation, public access to the texts of regulations and "transposition" (or the tailoring and implementation of EC directives by the member states of Europe). Annex A of the Mandelkern Report draws from the recent OECD regulatory work to define the crucial steps in achieving better regulation.

Late in 2001 the Economic and Social Committee of the European Parliament issued an "Opinion" on regulatory simplification by a vote of 62 votes in favor, 5 votes against and 5 abstentions. The Committee concluded as follows:

—The over-regulation of business is primarily a national problem but it also has a European dimension that needs to be addressed;
—There is a manifest need for a fundamental overhaul of the regulatory framework within the European Union, accompanied by a streamlining and simplification of the existing body of legislation;
—This regulatory review must focus not just on the future but also on the existing body of legislation and must be oriented not only towards simplification and improved methods but towards quantitative reductions;
—The regulatory environment should establish a level playing field for businesses operating throughout Europe, which means a reduction in the variability in the requirements on businesses established by the member states;
—A regulatory review body should be set up to review existing legislation and set out the guidelines for introducing new legislation. It should also conduct ex-post evaluations of the effects of legislation. This body should comprise representatives of the Commission, the national agencies and business.

The stage is obviously set for a vigorous public debate about which steps should actually be taken to accomplish better regulation throughout the European Union. It is too early to assess what actions will be taken, but the next steps taken by the European Commission may be critical in determining whether meaningful regulatory improvements will occur. Even if the EC does take concrete steps, supportive steps will also be required by the other EU institutions as well as the member states.

Chapter IV. Recommendations for Reform

In addition to estimates of the costs and benefits of Federal rules and paperwork, the Regulatory Right-to-Know Act also requires OMB to submit "recommendations for reform." Below we highlight for comment two reform initiatives. First, we repeat our solicitation of public comments on regulations or regulatory programs in need of reform. Second, we invite a review of agency practice regarding guidance documents.

Review of Regulations and Regulatory Programs

Efforts to improve regulation should not be prospective only. Agencies also should look back and review existing rules to streamline and modernize those that are outdated, duplicative, ineffective, or unnecessary. With the passage of time, outmoded agency decisions need review and revision.

OMB is calling for public nominations of regulatory reforms to specific existing regulations that, if adopted, would increase overall net benefits to the public, considering both qualitative and quantitative factors. These reforms might include (1) extending or expanding existing regulatory programs; (2) simplifying or modifying existing rules or (3) rescinding outmoded or unnecessary rules.

The Administration recognizes that agencies should be particularly sensitive to the burden of their rules on small business. The Regulatory Right-to-Know Act directs that analysis of the impacts of Federal rules should give special consideration to small business impacts. As Congress stated in the findings for the Small Business Regulatory Enforcement Fairness Act of 1996, "small businesses bear a disproportionate share of regulatory costs and burdens." A recent empirical study sponsored by the Small Business Administration Office of Advocacy supports this finding. The study shows that the average regulatory costs per employee were about 60 percent higher for small businesses than for large businesses: the average regulatory cost was about $7,000 for firms with less than 20 employees compared to about $4,500 for firms with over 500 employees.[17] This is a significant finding since small firms accounted for about three-quarters of the employment growth and 90 percent of the new business growth in the 1990s.[18] Small business ownership is a critical vehicle for all Americans—and increasingly for women and minorities—to achieve greater economic opportunity.[19] Accordingly, OMB requests comments on needed reforms of regulations unnecessarily impacting small businesses and identification of specific regulations and paperwork requirements that impose especially large burdens on small businesses and other small entities without an adequate benefit justification. OMB also requests comments from the small business community on problematic guidance documents discussed in the following section. OMB will coordinate with the Office of Advocacy of the Small Business Administration on this initiative.

While broad reviews of existing regulations have been required since 1981 under Executive Orders 12291, 12498, and 12866, they have met with limited success. Clearly, achieving broad agency review of existing rules is much easier said than done. In the first annual report on Executive Order 12866 released in November 1994, OIRA Administrator Sally Katzen noted that bureaucratic incentives make such review a difficult undertaking. While the "lookback" process had begun under E.O. 12866, she said, "it had proven more difficult to institute than we had anticipated.* * * [A]gencies are focused on meeting obligations for new rules, often under statutory or court deadlines, at a time when staff and budgets are being reduced; under these circumstances, it is hard to muster resources for the generally thankless task of rethinking and rewriting current regulatory programs" (p. 36). Past efforts at broad reviews of existing regulations, including reviews under Executive Order 12866 and the National Performance Review, were largely unsuccessful.[20] Beyond bureaucratic disincentives, resource constraints, and the complexity of the task, reviewing old rules may be hampered by unfounded fears that any attempt to modernize or streamline old rules is a veiled attempt to "rollback" needed safeguards. The difficulties and concerns surrounding this task do not mean it should be abandoned; they do counsel that an across-the-board review of all existing rules could be a poor use

[17] See W. Mark Crain & Thomas D. Hopkins, "The Impact of Regulatory Costs for Small Firms," a report for the U.S. Small Business Administration, Office of Advocacy, RFP No. SBAHQ–00–R–0027 (2001).

[18] *Small Business Economic Indicators 2000* (SBA, Office of Advocacy 2001).

[19] The number of women-owned businesses increased by 16 percent between 1992 and 1997 (*Women in Business*, 2001: SBA, Office of Advocacy, October 2001) while the while the percent of minority-owned businesses increased from 6.8 percent in 1982 to 14.6 percent in 1997 (*Minorities in Business, 2001:* SBA,Office of Advocacy, November 2001).

[20] See, *e.g.*, General Accounting Office, *Regulatory Reform: Agencies' Efforts to Eliminate and Revise Rules Yield Mixed Results* (Oct. 1997); Statement of L. Nye Stevens, Director, Federal Management and Workforce Issues, General Government Division, General Accounting Office, before the Senate Committee on Governmental Affairs, February 24, 1998.

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of OMB and agency resources, and that a review of old rules should be done carefully and openly . Accordingly, OMB has established a modest process to review and improve old rules based on a public comment process.

With respect to improving existing rules or eliminating outmoded ones, OIRA would like to receive comments that are as specific as possible. In addition to supplying documentation and supporting materials (including citations to published studies), OIRA would appreciate use of the following format to summarize the suggestions:

FORMAT FOR SUGGESTED REGULATORY REFORM IMPROVEMENTS

Name of regulation	
Regulating Agency	(Include any subagency).
Citation	(Code of Federal Regulations).
Authority	(Statute).
Description of Problem	(Harmful impact and on whom).
Proposed Solution	(Both the fix and the procedure to fix it).
Estimate of Economic Impacts	(Quantified benefits and costs if possible. Qualitative descriptions if needed).

In selecting which rules or regulatory programs to propose for review, commenters should consider the extent to which (1) the rule or program could be revised to be more efficient or effective; (2) the agency has discretion under the statute authorizing the rule to modify the rule or program; and (3) the rule or program is important relative to other rules or programs being considered for review.

Review of Problematic Agency Guidance

As the scope and complexity of regulation and the problems it addresses have grown, so too has the need for government agencies to inform the public and provide direction to their staffs. To meet these challenges, agencies have relied increasingly on issuing guidance documents. The use of guidance documents is widespread, and often for good reasons. Agencies may properly provide guidance to interpret existing law, through an interpretative rule, or to clarify how the agency will treat or enforce a governing legal norm, through a policy statement. In some cases, Congress has directly expressed the need for guidance, such as the small business compliance guides mandated by Section 212 of the Small Business Regulatory Enforcement Fairness Act.[21] Guidance documents, used properly, can channel the discretion of agency employees, increase efficiency by simplifying and expediting agency enforcement efforts, and enhance fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties.

Experience has shown, however, that guidance documents also may be used improperly. Problematic guidance documents have received increasing scrutiny by the courts, the Congress and scholars.[22] While recognizing the enormous value of agency guidance in general, in this section OMB requests public comment on problematic agency guidance documents.

To promulgate regulations, an agency must ordinarily comply with the notice-and-comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553. Section 553 requires that agencies must, in many cases, publish a notice of proposed rulemaking in the **Federal Register**. 5 U.S.C. 553(b). When notice is given, agencies also generally give interested persons an opportunity to comment on the proposal in writing. Agencies also may invite the public to present their views in person. 5 U.S.C. 553(c). Unless otherwise required by statute, notice and opportunity for comment are not required when an agency issues rules of agency organization, procedure, or practice; or where the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(A)–(B).

Generally speaking, guidance (as opposed to regulations) is issued without notice and comment in order to clarify or explain an agency interpretation of a statute or regulation. These guidance documents may have many formats and names, including guidance documents, manuals, interpretive memoranda, staff instructions, policy statements, circulars, bulletins, and so on.

Beyond being exempt from notice-and-comment procedures, guidance documents may not normally be subject to judicial review or the kind of careful OMB and interagency review required by Executive Order 12866, as amended. Finally, some guidance documents may not be subjected to the rigorous expert peer review conducted on some complex legislative rulemakings. Because it is procedurally easier to issue guidance documents, there may be an incentive for regulators to issue guidance documents rather than conduct notice and comment rulemakings. As the D.C. Circuit recently observed in *Appalachian Power:*

> The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the agency offers more and more detail regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the **Federal Register** or the Code of Federal Regulations.
>
> 208 F.2d at 1019. Through guidance documents, agencies sometimes have issued or extended their "real rules," *i.e.*, interpretative rules and policy statements, quickly and inexpensively—particularly with the use of the Internet—and without following procedures prescribed under statutes or Executive orders.

[21] 5 U.S.C. 601 note, Title II of Pub. L. 104–121, Mar. 29, 1996.

[22] E.g., *United States* v. *Mead*, 533 U.S. 218 (2001); *Appalachian Power Company* v. *Environmental Protection Agency*, 208 F.3d 1015 (D.C. Cir. 2000); "Non-Binding Legal Effect of Agency Guidance Documents," H. Rep. 106–1009 (106th Cong., 2d Sess. 2000); H.R. 3521, the "Congressional Accountability for Regulatory Information Act of 2000," Section 4; Robert A. Anthony "Interpretative Rules, Policy Statements, Guidances, Manuals and the Like—Should Federal Agencies Use Them to Bind the Public?," 41 Duke L.J. 1311 (1992); Richard J. Pierce, Jr., "Seven Ways to Deossify Agency Rulemaking," 47 Admin. L. Rev. 59 (1995); Peter L. Strauss, "Comment, the Rulemaking Continuum," 41 Duke L.J. 1463 (1992); Administrative Conference of the United States, Rec. 92–2, 1 CFR 305.92–2 (1992); Carnegie Commission, *Risk and the Environment: Improving Regulatory Decisionmaking* (1993).

The failure to comply with the APA's notice-and-comment requirements or observe other procedural review mechanisms can undermine the lawfulness, quality, fairness, and political accountability of agency policymaking. The misuse of agency guidance also can impose significant costs on or limit the freedom of regulated parties without affording an opportunity for public participation.

Problematic guidance may take a variety of forms. An agency publication that is characterized as some kind of "guidance" document or "policy statement" may directly or indirectly seek to alter rights or impose obligations and costs not fairly discernible from the underlying statute or legislative rule that the document purports to interpret or implement. Such documents are occasionally treated by the agency as having legally binding effect on private parties. When that occurs, substantial question can arise regarding the propriety of the guidance itself—specifically whether it should be considered a regulation subject to APA procedures. Some guidance documents also may be founded on complex technical or scientific analyses or conclusions, which would be improved not only by public comment but also by expert, independent peer review. Finally, problematic guidance might be improved by interagency review.

The benefits of these procedural safeguards are well established. Notice-and-comment procedures can benefit agency policymaking in several ways. Potentially affected parties may improve the quality of a rule by supplying helpful information or alerting the agency to unintended consequences of a proposal. Notice-and-comment procedures also increase fairness by allowing potentially affected parties to participate in the decisionmaking process, and enhance political accountability by providing the public and its elected representatives advance notice of its policy decisions and an opportunity to shape them. As the Supreme Court recently confirmed in the *Mead* decision, the rule of law supports the use of regulations over guidance to bind the public, and guidance will receive less deference by the courts than properly implemented agency rules. Legislative rulemaking may also increase efficiency by allowing an agency to resolve recurring issues of legislative fact once instead of addressing such issues repeatedly on a case-by-case basis. Moreover, independent and expert peer review of highly technical or scientific agency guidance can enhance its objectivity and reliability and lead to better-informed decisionmaking. Finally, interagency review can ensure that agency action is consistent with Administration policy and is beneficial from a broader, societal perspective.

Under its obligation to promote recommendations for reforming the regulatory process and agency rules under the "Regulatory Right-to-Know Act" as well as its general duties to manage the efficiency and integrity of the regulatory process, OMB requests public comment on problematic Federal agency guidance. Specifically, OMB seeks public comment on the nature and extent of problematic guidance documents in agency policymaking, the adverse impacts, the benefits of proper guidance documents, criteria to identify problematic guidance, current examples of problematic guidance documents, and suggestions on how problematic guidance can be curtailed without undermining the typically appropriate use of guidance by Federal agencies.

OMB asks commenters to identify examples of problematic agency "guidance" documents of national or international significance. Commenters should submit to OMB a copy of the problematic guidance, with any relevant portions identified. They also should submit recommendations for remedying the problem, such as reissuance through notice and comment rulemaking, peer review, interagency review or rescission. Where guidance elaborates on an existing legislative rule or statute, OMB requests that commenters provide a copy of the relevant rule or statute and a concise explanation of how the guidance alters rights or imposes costs and obligations on the public that are not fairly discernible from the text of the statute or legislative rule, as well as, to the extent feasible, an estimate of such costs. In such cases, commenters also should explain whether the agency has provided reasonably sufficient detail in the legislative rule before resorting to guidance, considering the importance of the relevant issues, competing demands on the agency, available resources, and the need for resolution of the issues. In addition to supplying documentation and supporting materials (including citations to published studies), OIRA would appreciate use of the following format to summarize the suggestions.

FORMAT FOR SUGGESTED GUIDANCE DOCUMENT IMPROVEMENTS

Name of guidance document	
Regulating Agency	(Include any subagency).
Citation	(E.g. FEDERAL REGISTER).
Authority	(Statute or Legislative Rule).
Description of Problem	(Harmful impact and on whom).
Proposed Solution	(Both the fix and the procedure to fix it).
Estimate of Economic Impacts	(Quantified benefits and costs if possible. Qualitative descriptions if needed).

Appendix A. Update of Impact of the Card Memorandum

On January 20, 2001, the President's Chief of Staff issued a directive to agency heads to take steps to ensure that policy officials in the incoming Administration had the opportunity to review any new or pending regulations. This followed similar practices adopted at the beginning of previous administrations.

In last year's annual report to Congress, we provided a summary of actions taken by agencies pursuant to rules identified by the directive, and by a subsequent OMB memorandum to agencies. These actions, subject to certain exceptions, included withdrawing unpublished regulations from the **Federal Register** and from OMB's Office of Information and Regulatory Affairs, and delaying the effective date of final rules published in the **Federal Register** but not yet in effect. As noted in last year's annual report, by the end of May 2001, agencies had conducted reviews and taken appropriate action on most of the regulations subject to the directive and to subsequent OMB guidance. The final disposition of many of these rules, however, had not been decided.

The directives issued by Chief of Staff Card and OMB Director Mitchell E. Daniels, Jr. to Federal agencies to review and, if necessary and appropriate, withdraw unpublished regulations and delay the effective date of certain published regulations allowed newly appointed political officials to ensure that regulations published and implemented after January 20, 2001, reflected the priorities and policies of the Bush Administration. Given the deliberative (and often lengthy) nature of the rulemaking process, some of the regulations subject to the reviews and procedures required by the directives remain under active consideration by agencies.

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Agency heads also had to review published final rules that had not yet become effective to decide which ones should go into effect as scheduled and which ones should be delayed to allow for the proper policy review. According to a recent General Accounting Office (GAO) report, a total of 371 published final rules were potentially subject to the directives' requirements that effective dates be delayed by agencies.[23] GAO found that, as of January 20, 2002, agencies had allowed 281 of these 371 rules to go into effect without delay. Agencies decided to delay the effective dates of the remaining 90 regulations. Table 9 lays out an agency-by-agency accounting of these rules. GAO's review of the 90 rules delayed by agencies determined that 75 went into effect after one or more delays. GAO reported that 13 of the delayed regulations were modified, withdrawn, and/or replaced by agencies. Other delayed rules were the subject of pending litigation including some of the 15 rules that remained delayed as of January 20, 2002.[24]

TABLE 9.—NUMBER OF REGULATIONS DELAYED AND NOT DELAYED

Department/Agency	Delayed	Not delayed	Total
Agriculture	10	6	16
Commerce	2	12	14
Education	3	10	13
Energy	8	6	14
Health and Human Services	16	13	29
Housing and Urban Development	4	1	5
Interior	6	2	8
Justice	4	4	8
Labor	5	3	8
Transportation	15	117	132
Treasury	0	12	12
Environmental Protection Agency	8	52	60
Independents and Other	9	43	52
Total	90	281	371

Source: General Accounting Office, "Delay of Effective Dates of Final Rules Subject to the Administration's January 20, 2001, Memorandum" (GAO–02–370R) [forthcoming].

Following the issuance of the directives, OMB instructed agencies to withdraw from OMB review regulations that they had submitted prior to January 20th. Except for those rules that met the exemptions provided for by the Card Memorandum, agencies formally withdrew 130 regulations. By the end of 2001, OMB subsequently cleared 61 after they were reviewed and resubmitted to OMB. Table 10 presents the numbers of regulations that agencies withdrew from OMB and those that agencies then submitted to OMB for Executive Order 12866 review and approval.

TABLE 10.—NUMBER OF REGULATIONS WITHDRAWN FROM AND SUBSEQUENTLY CLEARED BY OMB

Department/Agency	Withdrawn (as of 5/18/01)	Cleared (as of 12/31/01)
Agriculture	13	7
Commerce	5	3
Defense	2	1
Education	1	0
Health and Human Services	13	5
Housing and Urban Development	11	5
Interior	3	0
Justice	13	7
Labor	2	0
Transportation	12	5
Veterans Affairs	18	12
Environmental Protection Agency	21	10
Office of Personnel Management	6	3
Small Business Administration	3	1
Social Security Administration	2	1
Other	5	1
Total	130	61

Source: General Services Administration, Regulatory Information Service Center.

Appendix B. Proposals for Reform of Regulations

In the draft version of last year's annual report, OMB asked for suggestions from the public about specific regulations that should be modified or rescinded in order to increase net benefits to the public. We received suggestions regarding 71 regulations from 33 commenters involving 17 agencies. In an initial review of the comments, OIRA placed the suggestions into three categories: high priority, medium priority, and low priority.

Twenty-three agency actions were rated Category 1, those suggestions OIRA agreed were "high priority review" candidates. Since the publication of last year's report, OIRA has discussed these regulations with the agencies to better understand where they fit with agency priorities. As detailed below, agencies have already taken action on a number of these suggestions. On others, agencies have agreed to consider the need for reform and will be evaluating specific actions. Finally for some, agencies have convinced us that reform is unnecessary. A status report on the high priority reviews is provided below.

USDA: Forest Service Planning Rules and Roadless Area Conservation Regulations (2 rules)—On May 10, 2001, a federal judge issued an injunction blocking implementation of the roadless rule and a portion of the forest planning rule. In July, the Forest Service issued an advanced notice soliciting comments on possible changes to the roadless rule in light of the court action. Further action awaits the Forest Service's consideration of comments.

Department of Education: Regulations Related to Financial Aid.—These regulations are the subject of annual regulatory negotiations. For this year the Department has made clear its commitment to streamlining the regulations consistent with statutory requirements.

Department of Energy: Central Air Conditioning and Heat Pump Energy Conservation Standards—On January 3, 2002, DOE submitted a revision to this rule to OMB for review. OMB completed review on February 1, 2002.

Department of Health and Human Services: Standards for Privacy of Individually Identifiable Health Information—HHS has issued guidance clarifying the requirements of this rule and has publicly committed to making regulatory changes to certain aspects of the rule.

Department of Health and Human Services: Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content and Health Claims—OIRA Administrator John D. Graham sent a prompt letter to FDA on September 18, 2001 urging the agency to finalize this rulemaking. Secretary Thompson responded on November 26, 2001, agreeing that finalization was a high priority. FDA is currently awaiting the results of a National Academy of Science's study on this subject prior to proceeding with the final rule.

Department of the Interior: Amendments to National Park Service Snowmobile Regulations—The snowmobile industry filed a lawsuit against this rule, and this Administration reached a settlement with the plaintiffs on June 29, 2001 to revise the January 22, 2001 final rule. Public comments are now being solicited on several alternatives.

Department of the Interior: Regulations Governing Hardrock Mining Operations—DOI completed a revision of these regulations on October 31, 2001.

Department of Labor: Procedures for Certification of Employment-Based Immigration and Guest Worker Applications—On November 21, 2001, DOL submitted a proposed regulation on this subject to OMB for review. We completed review on February 19, 2002.

Department of Labor: Proposal Governing "Helpers" on Davis-Bacon Act Projects—DOL has decided that changes in the Davis-Bacon regulations are not appropriate at this time.

Department of Labor: Overtime Compensation Regulations Under the Fair Labor Standards Act—DOL is considering whether revisions to these regulation would be appropriate.

Department of Labor: Recordkeeping and Notification Requirements Under the Family and Medical Leave Act—DOL is considering whether revisions to these regulations would be appropriate.

Department of Labor: Equal Opportunity Survey—DOL is considering whether modifications to the survey would be appropriate.

Department of Transportation: Hours of Service of Drivers—DOT is considering revisions to these regulations which were proposed in 2000. Any final rule will reflect public comments in response to the notice of proposed rulemaking.

Equal Employment Opportunity Commission: Uniform Guidelines for Employee Selection Procedures—EEOC has requested and received an extension of clearance of these guidelines under the Paperwork Reduction Act to allow further consideration of changes.

Environmental Protection Agency: "Mixture and Derived From" Rule—EPA is considering whether revisions to these regulations would be appropriate.

Environmental Protection Agency: Proposed Changes to the Total Maximum Daily Load Program—EPA is considering whether revisions to these regulations would be appropriate.

Environmental Protection Agency: Drinking Water Regulations: Cost Benefit Analyses—OIRA will address these issues in its forthcoming analytical guidance project.

Environmental Protection Agency: Economic Incentive Program Guidance—EPA issued guidance in January 2001, and the States are now using the guidance in developing economic incentive programs. OIRA will consider further review of the guidance after the States have further experience with the current guidelines.

Environmental Protection Agency: New Source Review—EPA is considering whether revisions to these regulations and guidance documents are appropriate.

Environmental Protection Agency: Concentrated Animal Feeding Operations Effluent Guidelines—This rule was proposed in December 2000. EPA is currently examining comments and will consider all of these comments and those raised in the last report in producing a final rule.

Environmental Protection Agency: Arsenic in Drinking Water—EPA has decided not to modify this final rule.

Environmental Protection Agency: Notice of Substantial Risk: TSCA—EPA is considering several options to address the issues raised in its last report.

Appendix C. Estimates of the Aggregate Costs and Benefits of Regulation

Since there are so many different types of Federal regulation, it is useful to break rules down into categories. Three main categories of regulations are widely used: social, economic and process. The discussions in earlier reports provide examples for each of these categories.

A. Social Regulation

Table 11 presents the estimate of the total annual costs and benefits of social regulation (health, safety, and the environmental regulation) in the aggregate and by major program as of September 30, 2001. We calculated it by adding the estimates from table 1 in Chapter II to Table 4 from the 2000 OMB report, updated to 2001 dollars.

TABLE 11.—ESTIMATES OF TOTAL ANNUAL MONETIZED COSTS AND MONETIZED BENEFITS OF SOCIAL REGULATIONS

[Billions of 2001 dollars as of 2001, Q3]

	Environmental	Transportation	Labor	Other	Total
Costs	$120 to 203	$17 to 22	$20 to 22	$24 to 30	$181 to 277.
Benefits	$120 to 1,783	$95 to 126	$32 to 34	$61 to 66	$308 to 2,009.
Net Benefits[a]	$−83 to 1,663	$73 to 109	$10 to 14	$31 to 42	$31 to 1,828.

Source: Table 6, Ch.II and Table 4 from (OMB 2000) as adjusted per fn. 6 updated to 2001 dollars.
[a] Lower estimate calculated by subtracting high cost from low benefit. Higher estimate calculated by subtracting low cost from high benefit.
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs (including indirect costs) that were not quantified.

B. Economic Regulation

Economic regulation restricts the price or quantity of a product or service that firms produce, including whether firms can enter or exit specific industries. In previous reports, OIRA presented an estimate that the efficiency costs of economic regulation amounted to $80 billion (updated to 2001 dollars). In a 1999 comprehensive report on regulatory reform in the United States by a panel of experts from around the world, the OECD estimated that additional reforms in

[23] General Accounting Office, "Delay of Effective Dates of Final Rules Subject to the Administration's January 20, 2001, Memorandum" (GAO–02–370R) [forthcoming].

[24] General Accounting Office, ibid., p. x. GAO's report provides a detailed discussion of specific actions taken by agencies on regulations delayed pursuant to the Card Memorandum.

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the transportation, energy and telecommunications sectors would lead to an increase in GDP of 1 percent (OECD, 1999). One percent of the 2001 GDP of $10.15 trillion is about $100 billion. This estimate does not include the costs of international trade protection, which Hopkins included in his estimate of the cost of economic regulation.

According to a recent study, the potential consumer gains from removing trade barriers existing in 1990 would be about 1.3 percent of GDP (Council of Economic Advisers 1998) or about $130 billion for the 2001, assuming trade barriers have not changed.[25] These estimates taken together suggest that Hopkins' 1992 estimate may be too low. Crain and Hopkins (2001) in a report for the Small Business Administration recently estimated the efficiency costs of economic regulation at $150 billion (updated to 2001 dollars).[26] Crain and Hopkins state that they reestimated the earlier Hopkins estimate based on OMB's 2000 report which also discussed the CEA (1998) estimate cited above. Economic theory predicts that regulation that restricts competitive prices and establishes entry barriers produces no social benefits except in the case of natural monopoly, a phenomenon becoming rare in a world of rapid technological progress.

C. Process Regulation

The main burden of process regulation consist of the paperwork costs imposed on the public. Section 624(a)(1)(A) of the FY 2001 Treasury and General Government Appropriations Act (the Act), also known as the "Regulatory Right to Know Act," calls on OMB to examine the costs and benefits of paperwork. OMB has worked in the past with IRS on this issue. Currently, IRS is developing a new model that will estimate the amount of burden incurred by wage and investment taxpayers as a result of complying with the tax system. IRS has undertaken this study to improve understanding of taxpayer burdens, to enable us to measure both current and future levels of burden, and to help isolate the burden of particular tax provisions, regulations, or procedures. To help provide input into reporting of monetized burdens, the IRS paperwork burden study included the development of a white paper, "Revealed and Stated Preference Estimation of the Value of Time Spent for Tax Compliance" (Cameron 2000).

In the annual *Information Collection Budgets*, OIRA calculates paperwork burden imposed on the public, using information that agencies give us with their information collection requests. Table 12 presents estimates of paperwork burden in terms of the hours the public devotes annually to gathering and providing information for the Federal government. At a future point, OIRA hopes to be able to provide information on the dollar cost of paperwork burden imposed by Federal agencies. At present, it is not feasible to estimate the value of annual societal benefits of the information the government collects from the public.

Table 12 shows total burden hours by agency of the paperwork approved by OMB under the Paperwork Reduction Act as of September 30, 2001. The total burden of 7,651 million hours is made up of 6,416 million hours for the Treasury Department (84 percent) and 1,235 million hours for the rest of the Federal government. Using the estimate of average value of time from our previous four reports ($30 in 2001 dollars) per hour for individuals and entities that provide information to the government, we derive a cost estimate of public paperwork of $230 billion. Note, however, that (1) this is a rough average and should not be applied to individual agencies or agency collections; and (2) this estimate should not be added to our estimates of the costs of regulation because it would result in some double counting. Our estimates of regulatory costs already include some paperwork costs. Many paperwork costs arise from regulations, often for enforcement and disclosure purposes. One way to eliminate this overlap is to focus on tax compliance costs by using the burden estimate for the Treasury Department. This produces an estimate of $190 billion. The basis for our complex tax system is presumably related to considerations of equity and fairness. The changes in the distribution of income that our tax system produces are transfers and not counted as social benefits.

TABLE 12.—SUMMARY OF ACTIVE INFORMATION COLLECTIONS APPROVED UNDER THE PAPERWORK REDUCTION ACT AS OF 09/30/2001

[Millions of hours]

Department/Agency	Total hour burden
Agriculture	86.72
Commerce	10.29
Defense	92.05
Education	40.50
Energy	3.84
Health and Human Services	186.61
Housing and Urban Development	12.05
Interior	7.55
Justice	40.52
Labor	186.10
State	16.57
Transportation	80.33
Treasury	6,415.84
Veterans Affairs	5.30
EPA	130.78
FAR	23.74
FCC	40.10
FDIC	10.53
FEMA	5.50
FERC	3.95
FTC	72.59
NASA	6.87
NSF	4.72
NRC	8.17
SEC	144.28
SBA	1.93
SSA	24.26
Government Total	7,651.42

Table 13 presents an estimate of the total annual costs and benefits of Federal rules and paperwork to the extent feasible in the aggregate, as required by Section 624 (a)(1)(A) of the Act.

TABLE 13.—TOTAL ANNUAL COST AND BENEFITS OF REGULATIONS AS OF SEPTEMBER 30, 2001

[Billions of 2001 dollars]

Type of regulation	Costs	Benefits
Social	181 to 277	308 to 2,009.
Economic (efficiency Loss)	150	0.
Process	190	0 .
Total	521 to 617	308 to 2,009.
Economic (transfer)	337	337

Source: Table 11 and text.

[25] The CEA report also went on to state that studies of this type only capture static costs, fail to capture value of foregone varieties of products, quality improvements, and productivity enhancements that would take place in the absence of trade barriers, and thus understate the benefits from trade (CEA 1998, p. 238). The Michigan Model of World Production and Trade, a computational general equilibrium model that takes into account some of these considerations, predicts that the elimination of all global trade restrictions (not just U.S.) would increase U.S. GDP by 5.92 percent. [Brown, Deardorff, and Stern, 2001].

[26] Crain and Hopkins also include an alternative estimate of the cost of economic regulation of $435 billion by including transfer costs, which are equal shifts of income from one group of citizens to another. Since transfers are not net costs to society (one person's loss is another's gain), transfers should not be added to our other cost estimates. Nevertheless, transfers may affect economic incentives and produce indirect costs to society.

Sec. 638 (a)(2) of the Act calls on OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal governments, small business, wages, and economic growth.

Impact on State, Local, and Tribal Government

Over the past five years, five rules have imposed costs of more than $100 million on State, local, and Tribal governments (and thus have been classified as public sector mandates under the Unfunded Mandates Act of 1995).[27] All five of these rules were issued by the Environmental Protection Agency. These rules are described in greater detail below.

- *EPA's Rule on Standards of Performance for Municipal Waste Combustors and Emissions Guidelines* (1995): This rule set standards of performance for new municipal waste combustor (MWC) units and emission guidelines for existing MWCs under sections 111 and 129 of the Clean Air Act [42 U.S.C. 7411, 42 U.S.C. 7429]. The standards and guidelines apply to MWC units at plants with aggregate capacities to combust greater than 35 megagrams per day (Mg/day) (approximately 40 tons per day) of municipal solid waste (MSW). The standards require sources to achieve the maximum degree of reduction in emissions of air pollutants that the Administrator determined is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements.

EPA estimated the national total annualized cost for the emissions standards and guidelines to be $320 million per year (in constant 1990 dollars) over existing regulations. EPA estimated the cost of the emissions standards for new sources to be $43 million per year. EPA estimated the cost of the emissions guidelines for existing sources to be $277 million per year. The annual emissions reductions achieved through this regulatory actions include, for example, 21,000 Mg. of SO2; 2,800 Mg. of particulate matter (PM); 19,200 Mg of NOX: 54 Mg. of mercury; and 41 Kg. of dioxin/furans.

- *EPA's Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills* (1996): This rule set performance standards for new municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills to implement section 111 of the Clean Air Act. The rule addressed non-methane organic compounds (NMOC) and methane emissions. NMOC include volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. Of the landfills required to install controls, about 30 percent of the existing landfills and 20 percent of the new landfills are privately owned. The remainder are publicly owned. The total nationwide annualized costs for collection and control of air emissions from new and existing MSW landfills are estimated to be $94 million per year annualized over five years, and $110 million per year annualized over 15 years.

- *National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts* (1998): This rule promulgates health-based maximum contaminant level goals (MCLGs) and enforceable maximum contaminant levels (MCLs) for about a dozen disinfectants and byproducts that result from the interaction of these disinfectants with organic compounds in drinking water. The rule will require additional treatment at about 14,000 of the estimated 75,000 water systems nationwide affected by this rule. The costs of the rule are estimated at $700 million annually. The quantified benefits estimates range from zero to 9,300 avoided bladder cancer cases annually, with an estimated monetized value of $0 to $4 billion. Possible reductions in rectal and colon cancer and adverse reproductive and developmental effects were not quantified.

- *National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment* (1998): This rule establishes new treatment and monitoring requirements (primarily related to filtration) for drinking water systems that use surface water as their source and serve more than 10,000 people. The purpose of the rule is to enhance protection against potentially harmful microbial contaminants. EPA estimated that the rule will impose total annual costs of $300 million per year. The rule is expected to require treatment changes at about half of the 1,400 large surface water systems, at an annual cost of $190 million. Monitoring requirements add $96 million per year in additional costs. All systems will also have to perform enhanced monitoring of filter performance. The estimated benefits include mean reductions of from 110,000 to 338,000 cases of cryptosporidiosis annually, with an estimated monetized value of $0.5 to $1.5 billion, and possible reductions in the incidence of other waterborne diseases.

- *National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges* (1999): This rule would expand the existing National Pollutant Discharge Elimination System program for storm water to cover smaller municipal storm sewer systems and construction sites that disturb one to five acres. The rule allows for the exclusion of certain of these sources from the program based on a demonstration of the lack of impact on water quality. EPA estimates that the total cost of the rule on Federal and State levels of government, and on the private sector, is $803.1 million annually. EPA considered alternatives to the rule, including the option of not regulating, but found that the rule was the option that was, "most cost effective or least burdensome, but also protective of the water quality."

While these five EPA rules were the only ones over the past five years to require expenditures by State, local and Tribal governments exceeding $100 million, they were not the only rules with impacts on other levels of governments. For example, 15 percent, 10 percent, and 6 percent of rules listed in the April 2000 Unified Regulatory Agenda cited some impact on State, local or Tribal governments, respectively. In general, OMB works with the agencies to ensure that the selection of the regulatory option for all final rules complies fully with the Unfunded Mandates Reform Act. For proposed rules, OMB works with the agencies to ensure that they also solicited comment on alternatives that would reduce costs to all regulated parties, including State, local and Tribal governments.

Agencies have also significantly increased their consultation with State, local, and Tribal governments on all regulatory actions that impact them. For example, EPA and the Department of Health and Human Services have engaged in particularly extensive consultation efforts over a wide variety of programs, on both formal unfunded mandates as defined by the Unfunded Mandates Reform Act and other rules with intergovernmental impacts. Agencies have also made real progress in improving their internal systems to manage consultations better. This has helped them analyze specific rules in ways that reduce costs and increase flexibility for all levels of government and for the private sector, while implementing important national priorities.

This Administration will bring more uniformity to the consultation process to help both agencies and intergovernmental partners know when, how and with whom to communicate. States and localities should have a clear point of contact in each agency, and agencies must understand that "consultation" means more than making a telephone call the day before a rulemaking action is published in the **Federal Register**. Finally, this Administration intends to enforce the Unfunded Mandates Reform Act to ensure that agencies are complying with both the letter and the spirit of the law. If an agency is unsure whether a rule contains a significant mandate, it should err on the side of caution and prepare an impact statement prior to issuing the regulation.

Clearly, more still needs to be done to ensure that this consultation takes place in all instances where it is needed and early in the federal decisionmaking process. Toward that end, the President established an Interagency Working Group on Federalism. Devolving authority and responsibility to State and local governments, and to the people, is a central tenet of the President's management of the Executive Branch. This working group is striving to turn this principle into policy.

In Chapter I above we ask for comments from the public for suggestions to help improve the consultation process. We intend to include a discussion of those comments in the final report. We also intend to include in our final report a full discussion of agency

[27] EPA's proposed rules setting air quality standards for ozone and particulate matter may ultimately lead to expenditures by State, local or tribal governments of $100 million or more. However, Title II of the Unfunded Mandates Reform Act provides that agency statements on compliance with Section 202 must be conducted "unless otherwise prohibited by law." The conference report to this legislation indicates that this language means that the section "does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." EPA has stated, and the courts have affirmed, that under the Clean Air Act, the air quality standards are health-based and EPA is not to consider costs.

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compliance with the Unfunded Mandates Reform Act.

Impact on Small Business

The Administration explicitly recognizes the need to be sensitive to the impact of regulations and paperwork on small business with Executive Order 12866, "Regulatory Planning and Review." The Executive Order calls on the agencies to tailor their regulations by business size in order to impose the least burden on society, consistent with obtaining the regulatory objectives. It also calls for the development of short forms and other streamlined regulatory approaches for small businesses and other entities. Moreover, in the findings section of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Congress stated that ". . . small businesses bear a disproportionate share of regulatory costs and burdens." This is largely attributable to fixed costs—costs that all firms must bear regardless of size. Each firm has to determine whether a regulation applies, how to comply, and whether it is in compliance. As firms increase in size, fixed costs are spread over a larger revenue and employee base resulting in lower unit costs.

This observation is supported by empirical information from a study sponsored by the Office of Advocacy of the Small Business Administration (Crain and Hopkins 2001). That study found that regulatory costs per employee decline as firm size—as measured by the number of employees per firm—increases. Crain and Hopkins (2001) estimate that the total cost of regulation (environmental, workplace, economic, and tax compliance regulation) was 60 percent greater per employee for firms with under 20 employees compared to firms with over 500 employees. [28]

These results do not indicate, however, the extent to which reducing regulatory requirements on small firms would affect net benefits. That depends upon the differences between relative benefits per dollar of cost by firm size, not on differences in costs per employee. If benefits per dollar of cost are smaller for small firms than large firms, then decreasing requirements for small firms while increasing them for large firms should increase net benefits. The reverse may be true in some cases.

Impact on Wages

The impact of Federal regulations on wages depends upon how "wages" are defined and on the types of regulations involved. If we define "wages" narrowly as workers' take-home pay, social regulation usually decreases average wage rates, while economic regulation often increases them, especially for specific groups of workers. If we define "wages" more broadly as the real value or utility of workers' income, the directions of the effects of the two types of regulation can be reversed.

1. Social Regulation

By broad measures of welfare, social regulation, regulation directed at improving health, safety, and the environment is intended to create benefits for workers and consumers that outweigh the costs. Compliance costs, however, must be paid for by some combination of workers, business owners, and/or consumers through adjustments in wages, profits, and/or prices. This effect is most clearly recognized for occupational health and safety standards. As one leading text book in labor economics suggests: "Thus, whether in the form of smaller wage increases, more difficult working conditions, or inability to obtain or retain one's first choice in a job, the costs of compliance with health standards will fall on employees." [29]

Viewed in terms of overall welfare, the regulatory benefits of improved health, safety, and environmental improvements for workers can outweigh their costs assuming the regulation produces net benefits. In the occupational health standards case, where the benefits of regulation accrue mostly to workers, workers are likely to be better off if health benefits exceed compliance costs. [30] Although wages may reflect the cost of compliance with health and safety rules, the job safety and other benefits of such regulation can compensate for the monetary loss. Workers as consumers benefitting from safer products and a cleaner environment may also come out ahead if regulation produces significant net benefits for society.

2. Economic Regulation

For economic regulation, designed to set prices or conditions of entry for specific sectors, these effects may at times be reversed to some degree. Economic regulation can result in increases in income narrowly defined for workers in the regulated industries, but decreases in broader measures of income based on utility or overall welfare, especially for workers in general. Economic regulation is often used to protect industries and their workers from competition. Examples include the airline and trucking industries in the 1970s and trade protection, today. These wage gains come at a cost in inefficiency from reduced competition, however, which consumers must bear. Moreover, growth in real wages, which are limited generally by productivity increases, will not grow as fast without the stimulation of outside competition. [31]

These statements are generalizations for the impact of regulation in the aggregate or by broad categories. Specific regulations can increase or decrease the overall level of benefits accruing to workers depending upon the actual circumstances and whether net benefits are produced.

Economic Growth

The conventional measurement of GDP does not take into account the market value of improvements in health, safety, and the environment. It does incorporate the direct compliance costs of social regulation. Accordingly, conventional measurement of GDP can suggest that regulation reduces economic growth. [32] In fact, sensible regulation and economic growth are not inconsistent once all benefits are taken into account. By the same token, inefficient regulation reduces true economic growth.

The OECD (1999) estimates that the economic deregulation that occurred in the U.S. over the last 20 years permanently increased GDP by 2 percent. The OECD also estimates that further deregulation of the transportation, energy, and telecommunication sectors would increase U.S. GDP by another 1 percent. Jaffe, Peterson, Portney, and Stavins (1995) summarize their findings after surveying the evidence of the effects of environmental regulation on economic growth as follows: "Empirical analysis of the productivity effects have found modest adverse impacts of environmental regulation." Based on the studies that tried to explain the decline in productivity that occurred in the US during the 1970s, they placed the range attributable to environmental regulation from 8 percent to 16 percent (p. 151).

As indicated above, conventionally measured GDP growth does not take into account the market value of the improvements in health, safety, and the environment that social regulation has brought us. If even our lower range estimate of the benefits of social regulation ($266 billion) were added to GDP, then the more comprehensive measure of GDP, one that includes the value of nonmarket goods and services provided by regulation, would be about 3 percent greater. [33] Focusing on the effect of social regulation on economic growth is misleading if it does not take into account the full benefits of regulation.

More important than knowing the impact of regulation in general on growth is the impact of specific regulations and alternative regulatory designs on economic growth. As Jaffe et al put it: "Any discussion of the productivity impacts of environmental protection efforts should recognize that not all environmental regulations are created equal in terms of their costs or their benefits." (p 152).

[28] The average per employee regulatory costs were $6,975 for firms with under 20 employees compared to $4,463 for firms with over 500 employees. These findings are based on their overall estimate of the cost of Federal regulation for 2000 of $843 billion. (See Crain and Hopkins, "The Impact of Regulatory Costs for Small Firms" SBA, Office of Advocacy, 2001).

[29] From Ehrenberg and Smith's *Modern Labor Economics*, p. 279.

[30] Based on a cost benefit analysis of OSHA's 1972 Asbestos regulation by Settle (1975), which found large net benefits, Ehrenberg and Smith cite this regulation as a case where workers' wages were reduced, but they were made better off because of improved health (p. 281).

[31] Winston (1998) estimates that real operating costs declined between 25 and 75 percent in the sectors that were deregulated over the last 20 years—transportation, energy, and telecommunications.

[32] Social regulation reduces measured growth by diverting resources from the production of goods and services that are counted in GDP to the production or enhancement of "goods and services" such as longevity, health, and environmental quality that generally are not counted in GDP.

[33] Including the value of increasing life expectancy in the GDP accounts to come up with a more comprehensive measure of the full output of the economy is not as far fetched as it sounds. It was first proposed and estimated in 1973 by D. Usher in "An Imputation to the Measure of Economic Growth for Changes in Life Expectancy" *NBER Conference on Research in Income and Wealth*.

In this regard, market-based or economic-incentive regulations will tend to be more cost-effective than those requiring specific technologies or engineering solutions. Under market-based regulation, profit-maximizing firms have strong incentives to find the cheapest way to produce the social benefits called for by regulation. How you regulate can go a long way toward reducing any negative impacts on economic growth and increasing the overall long run benefits to society.

Appendix D. Explanation of Calculations for Costs and Benefits Tables

Chapter II presents estimates of the annual costs and benefits of major regulations reviewed by OMB between April 1, 1995 and September 30, 2001, for which we had quantified costs and benefits. The explanation for the calculations of the major rules reviewed by OMB between April 1, 1995 and March 31, 1999, is in Chapter IV of our 2000 report (OMB 2000). Table 14 presents OIRA's estimates of the benefits and costs of the 19 individual rules reviewed between April 1, 1999 and September 30, 2001 which were included in Table 5. As mentioned in Chapter II, we adjusted these estimates to update the estimates to 2001 dollars and removed three EPA regulations to prevent double counting. First, we decided to exclude the benefit and cost estimates for the Ozone and fine Particulate Matter NAAQS. EPA has adopted a number of key rules in the ensuing five years—for example, the NO_X SIP Call, the Regional Haze rule, the Tier II rule setting stringent emission limits for light duty vehicles, and the Heavy Diesel Engine rules setting stringent emission limits for on-highway diesel engines. These rules can achieve emission reductions and impose costs that were also included in the EPA benefit and cost estimates developed for the O_3 and PM NAAQS rules. Second, EPA issued a 1998 rule limiting Heavy Duty Diesel Engine emissions beginning in 2004 and "reaffirmed" the 1998 rule in a final rule issued last year. OIRA has used the benefit and cost estimates from EPA's 2001 rulemaking because we believe it provides a better estimate of the likely emission reductions and costs of these emission standards.

In assembling estimates of benefits and costs, OIRA has:

(1) Applied a uniform format for the presentation of benefit and cost estimates in order to make agency estimates more closely comparable with each other (for example, providing the benefit and cost streams over time and annualizing benefit and cost estimates); and

(2) monetized quantitative estimates where the agency has not done so (for example, converting some projections of tons of pollutant per year to dollars).

Adopting a format that presents agency estimates so that they are more closely comparable also allows, at least for purposes of illustration, the aggregation of benefit and cost estimates across rules. While OIRA has attempted to be faithful to the respective agency approaches, the reader should be cautioned that agencies have used different methodologies and valuations in quantifying and monetizing effects.

Valuation Estimates for Regulatory Effects [34]

Agencies continue to take different approaches in monetizing benefits for rules that affect small risks of premature death. As a general matter, we have deferred to the individual agencies' judgment in this area. In cases where the agency both quantified and monetized fatality risks, we have made no adjustments to the agency's estimate. In cases where the agency provided only a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates in order to convert these effects into a common unit. For example, in the case of HHS's organ donor rule, the agency estimated, but did not monetize, statistical life-years saved (although it has discussed its use of $116,500 per life-year in other contexts). OIRA valued those life-years at $116,500 each. For NHTSA's child restraint rule, OIRA used NHTSA's approach to valuing life saving benefits.

In cases where agencies have not adopted estimates of the value of reducing these risks, OIRA used estimates supported by the relevant academic literature. [35] OIRA did not attempt to quantify or monetize fatality risk reductions in cases where the agency did not at least quantify them. As a practical matter, the aggregate benefit and cost estimates are relatively insensitive to the values we have assigned for these rules because the aggregate benefit estimates are dominated by EPA's rules.

The following is a brief discussion of OIRA's valuation estimates for other types of effects that agencies identified and quantified, but did not monetize.

- *Injury.* For the child restraint rule, the Department of Transportation approach of converting injuries to "equivalent fatalities" was adopted. These ratios are based on DOT's estimates of the value individuals place on reducing the risk of injury of varying severity relative to that of reducing risk of death. For the OSHA industrial truck operator rule, OIRA did not monetize injury benefits beyond OSHA's estimate of the direct cost of lost workday injuries. For the OSHA safety standards for steel erection, OIRA monetized injury benefits using a value of $50,000 per injury averted.
- *Change in Gosoline Fuel Consumption.* We valued reduced gasoline consumption at $.80 per gallon pre-tax.
- *Reduction in Barrels of Crude Oil Spilled.* OIRA valued each barrel prevented from being spilled at $2,000. This is double the sum of the most likely estimates of environmental damages plus cleanup costs contained in a recently published journal article (Brown and Savage, 1996).
- *Change in Emissions of Air Pollutants.* Estimates of the benefits per ton for reductions in hydrocarbon, nitrogen oxide (NO_X), sulfur dioxide (SO_2), and fine particulate matter (PM) were derived from EPA's pulp and paper cluster rule (October, 1997). These estimates were obtained from the RIA prepared for EPA's July, 1997 rules revising the primary NAAQS for ozone and fine PM. In this area, as in others, the academic literature offers a number of methodologies and underlying studies to quantify the benefits. There remain considerable uncertainties with each of these approaches. In particular, the derivation and application of per-ton coefficients to value reductions in these pollutants requires significant simplifying assumptions. This is particularly true with respect to the relationship between changes in emitted precursors pollutants and changes in the ambient pollutant concentrations which yield actual benefits. As a result of these simplifying assumptions, the monetary benefit estimates obtained by multiplying tons reduced by benefit estimates per-ton, which we derive from analyses of other rules, should be considered highly uncertain. For each of these pollutants, the following values (all in 1996$) were used for changes in emissions: [36]

Hydrocarbons: $519 to $2,360/ton;
Nitrogen Oxides: $519 to $2,360/ton;
Particulate Matter: $11,539/ton; and
Sulfur Dioxide: $3,768 to $11,539/ton.

The NO_X benefit estimate is based on benefit transfer values ranging from $519 to $2,360 per ton derived from a 1997 benefit analysis of VOC emission reductions, as noted above. This analysis required two key assumptions: (1) That NO_X reductions have no effect on particulate matter concentrations; and (2) that NO_X and VOC reductions contribute proportionately to ozone reductions. While reductions in VOC and NO_X emissions both lead to reductions in ambient concentrations of ozone, reductions in NO_X emissions also lead to reductions in particulate matter. In addition, reductions in NO_X may have a disproportionate impact on reductions in ozone. For these reasons, estimates of benefits based on the VOC transfer coefficients should be viewed with caution. All else equal, they are likely to underestimate actual NO_X -related benefits.

Analysis of other recent EPA rules yield a range of estimates for the NO_X benefits per ton. Each of these analyses is arguably methodologically superior to the 1997 benefit analysis. For example, the OTAG SIP and the Section 126 rules limiting NO_X emissions from electric utilities yielded estimates of $960 to $2500 per ton and $1350 to $2100 per ton in 2007, respectively, and the recent Tier 2 rule limiting NO_X emissions from cars and light trucks yielded estimates of $4500 to $7900 per ton in 2030. Finally, a recent EPA memo on the benefits of the NSR program provided an estimate based on previous EPA analyses that the average mortality-related benefits estimate is around $1300 per ton of NO_X reduced. The

[34] The following discussion updates the monetization approach used in previous reports and draws on examples from this and previous years.

[35] As a result of OSHA's interpretation of the Supreme Court's decision in the "Cotton Dust" case, *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 491 (1981), OSHA does not conduct cost-benefit analysis or assign monetary values to human lives and suffering.

[36] Where applicable, the lower (higher) end of the value ranges in all of the tables throughout this report reflect the lower (higher) values in these ranges.

corresponding benefits estimate for SO_2 reductions is $7300 per ton. In these studies, the mortality-related benefits generally accounted for over 90 percent of monetary benefits. Currently, we recognize that there are potential problems and significant uncertainties that are inherent in any benefits analysis based on $/ton benefit transfer techniques. The extent of these problems and the degree of uncertainty depends on the divergence between the policy situation being studied and the basic scenario providing the benefits transfer estimate.

Several factors may be responsible for uncertainty and variability in the benefits transfer values. These factors include sources of emissions, meteorology, transport of emissions, initial pollutant concentrations, population density, and population demographics, such as proportion of elderly and children and baseline incidence rates for health effects. In order to minimize the uncertainty associated with benefits transfer, benefit transfer values should be taken from situations that are similar to the rule being evaluated. For example, where possible, benefit transfer values for individual pollutants should be based on primary benefits analyses for rules where the pollutant of interest, e.g. NO_x, is the primary pollutant controlled by the rule.

These additional issues are particularly relevant for the NO_X benefits transfer conducted for this report. Alternative benefits transfer analyses are available, as outlined above, including a benefits transfer estimate offered by EPA based on its recent analysis of the Tier 2 rule and the EPA staff estimate recently included in the New Source Review docket. Relative to the 1997 VOC rule, the benefits transfer based on these alternative analyses are (a) more focused on NO_X emissions, (b) based on more up-to-date data and methods, and (c) focused on sources more similar in character to the sources being evaluated in this report. The EPA staff estimate for the NSR docket is within the $520 to $2,360 per ton estimate used in this report.

In order to make agency estimates more consistent, we developed benefit and cost time streams for each of the rules. Where agency analyses provide annual or annualized estimates of benefits and costs, we used these estimates in developing streams of benefits and costs over time. Where the agency estimate only provided annual benefits and costs for specific years, we used a linear interpolation to represent benefits and costs in the intervening years.[37] For the Tier 2 rule and the Heavy Duty Diesel Engine rules, EPA only developed benefit estimates for a single year (2030) because of the difficulty of doing the air quality modeling necessary to support development of benefits estimates over multiple years. However, EPA did develop estimates of the expected emission reductions for intermediate years. We used these emission reduction estimates to scale the 2030 benefit estimate to provide a benefit stream over the relevant time period. For the Regional Haze rule, EPA provided only an estimate of benefits and costs in 2015. To develop benefit and cost streams, we used a linear extrapolation of benefits and costs beginning in 2009 and scaling up to the reported 2015 estimates.

Agency estimates of benefits and costs cover widely varying time periods. While HHS analyzed the effects of providing transplant-related data from 1999 through 2004, other agencies generally examined the effects of their regulations over longer time periods. HHS used a 10-year period for its over-the counter drug labeling rule; DOL also used a 10-year period for its truck operator training rule. EPA's analyses on disinfection and enhanced water treatment rules evaluated the effects over a twenty-year period. The differences in the time frames used for the various rules evaluated generally reflect the specific characteristics of individual rules such as expected capital depreciation periods or time to full realization of benefits.

In order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data. We have not made any changes to agency monetized estimates. To the extent that agencies have adopted different monetized values for effects—for example, different values for a statistical life or different discounting methods—these differences remain embedded in the tables. Any comparison or aggregation across rules should also consider a number of factors which our presentation does not address. For example, these analyses may adopt different baselines in terms of the regulations and controls already in place. In addition, the analyses for these rules may well treat uncertainty in different ways. In some cases, agencies may have developed alternative estimates reflecting upper- and lower-bound estimates. In other cases, the agencies may offer a midpoint estimate of benefits and costs. In still other cases the agency estimates may reflect only upper-bound estimates of the likely benefits and costs.

While we have relied in many instances on agency practices in monetizing costs and benefits, we believe that it may be critical in the coming year to take a more precise look at the variety of agency practices in use. Accordingly, our citation of or reliance on agency data in this report should not be taken as an OIRA endorsement of all of the varied methodologies used to derive benefit and cost estimates.

TABLE 14.—ESTIMATE OF BENEFITS AND COSTS OF 19 MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001

[Annualized 2001 dollars in millions]

Regulation	Agency	Benefits	Costs	Explanation
1999–2000:				
Lead-Based Paint Hazards	HUD	190	150	Both costs and benefits come from Table 4 of the 2001 report. The present value estimates are amortized over five years.
Storm Water Discharges Phase II.	EPA	700–1,700	900–1,100	From Table 4 of 2001 report.
Tier 2 Motor Vehicle Emission Standards.	EPA	7,300–13,400	4,000	EPA provided a monetized benefit estimate only for the year 2030. EPA also estimated reductions for various individual years between 2004 and 2030. We assumed that the monetized benefits were directly correlated with emission reductions. We developed an annualized stream of emission reductions by interpolating between years for which EPA provided estimates. We then prorated the monetized benefits annually in proportion to the annual emission reductions. Finally, we annualized the resulting stream of monetized benefits. We used EPA's annual cost estimates to develop the annualized cost estimates.
Regional Haze	EPA	300–7,000	300–1,600	EPA provided a monetized benefit and cost range of estimates only for the year 2015. EPA also estimated emission reductions targeted for improving visibility for various individual years between 2010 and 2105, We assumed that the monetized benefits were directly correlated with emission reductions. We developed an annualized stream of emission reductions by assuming a linear improvement in haze from 2010 to 2015. We than prorated the monetized benefits annually in proportion to the annual emission reductions. Finally, we annualized the resulting stream of monetized benefits. We used EPA's annual cost estimates to develop the annualized cost estimates.
Handheld Engines	EPA	250–860	190–250	For benefits, we valued EPA's annualized emission reductions at $1,000—$2500 per ton. Costs and benefits are taken directly from table 4: Summary of Agency Estimates for Final Rules 4/1/99–3/31/00, converted to 2001$.
Total		8,740–23,150	5,540–7,100	
2000–2001:				
Roadless Area Conservation	USDA	0.219	184	Both costs and benefits come from Table 7: summary of Agency Estimates for Final Rules, 4/1/00–9/30/01. The benefits are taken as given. Costs aggregate the total short-term and long term per year costs provided.
Energy Conservation Standards for Fluorescent Lamp Ballasts.	DOE	280	70	Benefits and costs are estimated by amortizing the estimated present value of $3.51 billion in benefits and $.9 billion in costs over the next 30 years.
Energy Conservation Standards for Water Heaters.	DOE	680	510	Benefits and costs are estimated by amortizing the estimated present value of $8.6 billion in benefits and $6.4 billion in costs over the next 30 years.
Energy Conservation Standards for Clothes Washers.	DOE	2,150	940	Benefits and costs are estimated by amortizing the estimated present value of $27.2 billion in benefits and $11.9 billion in costs over the next 30 years.
Health Insurance Reform: Standards for Electric Transactions.	HHS	2,720	700	Benefits are estimated by annualizing the $19.1 billion present value of benefits estimated to accrue in the next 10 years. Costs are estimated by assuming that the estimated $7 billion of costs occur evenly over the next 10 years.
Safe and Sanitary Processing and Importing of Juice.	HHS	150	30	Benefits above are identical to what is listed in Table 7; the costs are estimated as $23 million per year with an up-front costs of $44–$55 million in the first year. The first year costs are amortized over the next 30 years.
Standards for Privacy of Individually Identifiable Health Information.	HHS	2,700	1,680	Amortized the net present value of benefits and costs of $19 billion and $11.8 billion respectively.
Labeling of Shell Eggs	HHS	261	15	Benefits above are identical to what is listed in Table 7; the costs are estimated as $10 million per year with an up-front costs of $56 million in the first year. The first year costs are amortized over the next 30 years.
Safety Standards for Steel Erection.	DOL	167	78	Benefits are estimated at 22 fatalities averted and 1,142 injuries averted per year. Each fatality averted is valued at $5 million, and each injury averted is valued at $50,000. Costs are what was estimated by the agency.
Advanced Airbags	DOT	140–1,600	400–2000	Based on methodology in NHTSA's "The Economic Cost of Motor Vehicle Crashes, 1994."
Identification of Dangerous Levels of Lead.	EPA	1,750–6,840	2,700	Calculated by amortizing the estimated present value of benefits of $45–$176 billion as well as the estimated present value of benefits of $70 billion using a discount rate of 3%, a rate explicitly specified the EPA in this rule.
Arsenic and Clarifications	EPA	140–198	206	Both costs and benefits taken directly from Table 7.

[37] In other words, if hypothetically we had costs of $200 million in 2000 and $400 million in 2020, we would assume costs would be $250 million in 2005, $300 million in 2010, and so forth.

TABLE 14.—ESTIMATE OF BENEFITS AND COSTS OF 19 MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001—Continued

[Annualized 2001 dollars in millions]

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TABLE 14.—ESTIMATE OF BENEFITS AND COSTS OF 19 MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001—Continued

[Annualized 2001 dollars in millions]

Regulation	Agency	Benefits	Costs	Explanation
National Emission Standards for Hazardous Air Pollutants for Chemical Recovery.	EPA	293–393	32	Both costs and benefits taken directly from Table 7.
Heavy-Duty Engine and Vehicle Standards.	EPA	13,000	2,400	We estimated the present value of the stream of costs and benefits generated until 2030, deflated the present value to 2001$'s, and then annualized the streams.
Total		24,435–31,139	9,965–11,565	

Note: Assumptions: 7% discount rate unless another rate explicitly identified by the agency. For DOL: $5 million VSL assumed for deaths averted when not already quantified. Injuries averted valued at 50,000 both of the above from Viscusi. All values converted to 2001 dollars. All costs and benefits stated on a yearly basis.

Appendix E.

TABLE 15.—REGULATIONS REVIEWED BY AGENCY, 1998—2001

	Total	2001	2000	1999	1998
USDA:					
S	225	53	56	69	47
ES	46	8	24	10	4
HHS:					
S	334	66	89	88	91
ES	101	28	26	22	25
EPA:					
S	201	52	51	42	56
ES	56	9	18	15	14
DOT:					
S	129	48	29	26	26
ES	38	14	7	8	9
DOC:					
S	139	20	47	46	26
ES	11	2	4	4	1
DOI:					
S	142	32	63	28	19
ES	16	3	6	4	3
ED:					
S	58	9	29	23	6
ES	1	0	0	1	0
HUD:					
S	126	35	29	36	26
ES	6	0	2	3	1
VA:					
S	113	68	12	20	13
ES	5	4	1	0	0
DOJ:					
S	108	39	29	13	27
ES	4	2	0	1	1
OPM:					
S	121	32	37	28	24
ES	0	0	0	0	0
Sum:					
S	1,696	445	471	419	361
ES	284	70	88	68	58

*Data are all for years beginning 2/1 and extending through 1/31 the next year.
S = Significant rulemaking.
ES = Economically significant rulemaking.

Appendix F. The "Regulatory Right-to-Know Act" [38]

SEC. 624. (a) IN GENERAL.—For calendar year 2002 and each year thereafter, the Director of the Office of Management and Budget shall prepare and submit to Congress, with the budget submitted under section 1105 of title 31, United States Code, an accounting statement and associated report containing—

(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible—

(A) in the aggregate;

(B) by agency and agency program; and

(C) by major rule;

(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

(3) recommendations for reform.

(b) NOTICE.—The Director of the Office of Management and Budget shall provide public notice and an opportunity to comment on the statement and report under subsection (a) before the statement and report are submitted to Congress.

(c) GUIDELINES.—To implement this section, the Director of the Office of Management and Budget shall issue guidelines to agencies to standardize—

(1) measures of costs and benefits; and

(2) the format of accounting statements.

(d) PEER REVIEW.—The Director of the Office of Management and Budget shall provide for independent and external peer review of the guidelines and each accounting statement and associated report under this section. Such peer review shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

[38] Section 624 of the Treasury and General Government Appropriations Act, 2001, 31 U.S.C. 1105 note, Pub. L. 106–554, sec. 1(a)(3) [Title VI, sec. 624], Dec. 21, 2000, 114 Stat. 2763, 2763A–161.

[FR Doc. 02–7257 Filed 3–27–02; 8:45 am]
BILLING CODE 3110–01–P

VOL
67

ISS
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MR
28

2002

UMI



Federal Register

Thursday,
March 28, 2002

Part III

Department of Education

Elementary and Secondary School Counseling Programs; Notice

VOL
67
ISS
60
MR
28
2002
UMI

DEPARTMENT OF EDUCATION

[CFDA No: 84.215E]

Elementary and Secondary School Counseling Programs

AGENCY: U.S. Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: We invite applications for new grant awards for FY 2002 for the Elementary and Secondary School Counseling Programs. These grants are authorized under Title V, Part D, Subpart 2 of the Elementary and Secondary Education Act (ESEA). We also announce the final priority and selection criteria to govern this competition and FY 2002 award of these grants. The Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program will administer this grant competition.

Purpose of Program: The purpose of this program is to focus Federal financial assistance on establishing and expanding elementary school counseling programs.

Eligible Applicants: Eligible applicants under this competition are local educational agencies (LEAs). LEAs may apply in consortia with one or more LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

Applications Available: March 28, 2002.

Deadline for Receipt of Applications: May 13, 2002.

Deadline for Intergovernmental Review: July 11, 2002.

Available Funds: approximately $2.3 million.

Estimated Number of Awards: 7.

Maximum Grant Award: $400,000 (for each year of funding).

Estimated Size of Awards: $250,000—$400,000.

Estimated Average Size of Awards: $335,000.

Note: This Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Program Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: In making awards under this grant program, we will ensure an equitable geographic distribution among the regions of the United States and among LEAs located in urban, suburban, and rural areas.

Contingent upon the availability of funds, we may make additional awards in FY 2003 from the rank-ordered list of unfunded applications from this competition.

Note: Section 5421(g)(2) of the ESEA requires the Secretary to award grants to LEAs only to establish or expand counseling programs in elementary schools if the appropriation for the program is less than $40,000,000. The appropriation for fiscal year 2002 is $32,500,000, so FY 2002 funds may be used only to establish or expand counseling programs in elementary schools.

Definitions: By statute, the following definitions apply to this program:

(1) The term 'child and adolescent psychiatrist' means an individual who–

(A) possesses State medical licensure; and

(B) has completed residency training programs in both general psychiatry and child and adolescent psychiatry;

(2) The term 'other qualified psychologist' means an individual who has demonstrated competence in counseling children in a school setting and who–

(A) is licensed in psychology by the State in which the individual works; and

(B) practices in the scope of the individual's education, training, and experience with children in school settings;

(3) The term 'school counselor' means an individual who has documented competence in counseling children and adolescents in a school setting and who—

(A) is licensed by the State or certified by an independent professional regulatory authority;

(B) in the absence of such State licensure or certification, possesses national certification in school counseling or a specialty of counseling granted by an independent professional organization; or

(C) holds a minimum of a master's degree in school counseling from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs or the equivalent;

(4) The term 'school psychologist' means an individual who—

(A) has completed a minimum of 60 graduate semester hours in school psychology from an institution of higher education and has completed 1,200 clock hours in a supervised school psychology internship, of which 600 hours are in the school setting;

(B) is licensed or certified in school psychology by the State in which the individual works; or

(C) in the absence of such State licensure or certification, possesses national certification by the National School Psychology Certification Board; and

(5) The term 'school social worker' means an individual who—

(A) holds a master's degree in social work from a program accredited by the Council on Social Work Education; and

(B)(i) is licensed or certified by the State in which services are provided; or

(ii) in the absence of such State licensure or certification, possesses a national credential or certification as a school social work specialist granted by an independent professional organization.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437 (d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. This is the first competition under the Elementary and Secondary School Counseling Programs, which was substantially revised by the No Child Left Behind Act.

Absolute Priority: Under 34 CFR 75.105(c)(3), we give an absolute priority to LEA projects that establish or expand elementary school counseling programs at elementary schools with at least one grade below fifth and no grade higher than eighth. Under this competition, we fund only applications that meet this absolute priority.

Statutory Requirements: The statute requires each program assisted under this competition to:

(1) Be comprehensive in addressing the counseling and educational needs of all students;

(2) Use a developmental, preventive approach to counseling;

(3) Increase the range, availability, quantity, and quality of counseling services in elementary schools of the LEA;

(4) Expand counseling services through qualified school counselors, school social workers, school psychologists, other qualified psychologists, or child and adolescent psychiatrists;

(5) Use innovative approaches to increase children's understanding of peer and family relationships, work and self, decision making, academic and career planning, or to improve peer interaction;

(6) Provide counseling services in settings that meet the range of student needs;

(7) Include in-service training for teachers, instructional staff, and appropriate school personnel, including in-service training in appropriate identification and early intervention techniques by school counselors, school social workers, school psychologists, other qualified psychologists, and child and adolescent psychiatrists;

(8) Involve parents of participating students in the design, implementation, and evaluation of the counseling program;

(9) Involve community groups, social service agencies, or other public or private entities in collaborative efforts to enhance the program and promote school-linked integration of services;

(10) Evaluate annually the effectiveness and outcomes of the counseling services and activities assisted under this section;

(11) Ensure a team approach to school counseling in the schools served by the LEA by working toward ratios recommended by the American School Health Association of one school counselor to 250 students, one school social worker to 800 students, and one school psychologist to 1,000 students; and

(12) Ensure that school counselors, school psychologists, other qualified psychologists, school social workers, or child and adolescent psychiatrists paid from funds made available under this section spend a majority of their time counseling students or in other activities directly related to the counseling process.

The statute also requires each grantee to—

(1) Assure that the funds made available for any fiscal year will be used to supplement, and not supplant, any other Federal, State, or local funds used for providing school-based counseling and mental health services to students.

(2) Assure that the applicant will appoint an advisory board composed of interested parties, including parents, teachers, school administrators, counseling service providers, and community leaders to advise the LEA on the design and implementation of the counseling program.

(3) Use not more than 4 percent of the amounts made available for any fiscal year for administrative costs.

Selection Criteria: We will use the following selection criteria to evaluate applications under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parenthesis with the criterion.

(1) *Need for the project* (20 points).

(A) Applicants must propose projects that demonstrate the greatest need for new or additional counseling services among children in the elementary schools served by the project;

(B) In determining applications with the greatest need the following factors are considered:

(i) The magnitude or severity of the problem to be addressed by the proposed project;

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project; and

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses; and

(C) In describing the proposed project, applicants must:

(i) Describe the school population to be targeted by the program; the particular counseling needs of that population; the current ratios of students to school counselors, students to school social workers, and students to school psychologists; and the current school counseling resources available for meeting such needs; and

(ii) Describe how diverse cultural populations, if applicable, will be served through the program.

(2) *Quality of the project design* (20 points).

(A) Applicants must propose projects that demonstrate the most promising and innovative approaches for initiating or expanding counseling services in the target schools;

(B) In determining the quality of the project design the following factors are considered:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the counseling needs of the target population;

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance; and

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies or organizations providing services to the target population; and

(C) In describing the project design, applicants must:

(i) Describe the activities, services, and training to be provided by the program and the specific approaches to be used to meet the needs of the target population; and

(ii) Describe how the LEA will involve community groups, social service agencies, and other public and private entities in collaborative efforts to enhance the program and promote school-linked services integration.

(3) *Quality of the project evaluation* (20 points).

(A) Applicants must provide a detailed description of their plan to annually evaluate the outcomes and effectiveness of the proposed counseling services and strategies;

(B) In determining the quality of the project evaluation the following factors are considered:

(i) The extent to which the methods of evaluations are thorough, feasible, measurable, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings; and

(C) In describing the proposed project evaluation, applicants must:

(i) Describe the methods to be used to evaluate the outcomes and effectiveness of the project; and

(ii) Agree to cooperate with any national evaluation of this grant competition that we may require.

(4) *Quality of the management plan* (20 points).

(A) Applicants must provide a detailed description of their plan to manage the activities outlined in their proposal;

(B) In determining the quality of the management plan the following factors are considered:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director, project evaluator, and other key project personnel are appropriate and adequate to meet the objectives of the proposed project; and

(iii) The extent to which the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(C) In describing the management plan, applicants must:

(i) Describe how the LEA will involve community groups, social service

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agencies, and other public or private entities in collaborative efforts to enhance the program and promote school-linked services integration; and

(ii) Document that the LEA has the personnel qualified to develop, implement, and administer the program.

(5) *Adequacy of resources* (20 points).

(A) Applicants must describe the resources committed to the proposed project;

(B) In determining the adequacy of resources for the proposed project, the following factors are considered:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits; and

(iii) The potential for the incorporation of the project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Elementary and Secondary School Counseling Programs is one of the programs included in the pilot project. If you are an applicant under the Elementary and Secondary School Counseling Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Elementary and Secondary School Counseling Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications or Information Contact: Loretta McDaniel, U.S. Department of Education, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW., Room 3E220, Washington, DC 20202–6123. Telephone: (202) 260–2661, or the following e-mail or Internet addresses:

loretta.mcdaniel@ed.gov.

www.ed.gov/offices/OESE/SDFS.

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 5421.

Dated: March 25, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–7474 Filed 3–27–02; 8:45 am]

BILLING CODE 4001–01–M

Federal Register

Thursday,
March 28, 2002

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

Delinquent Filer Voluntary Compliance Program; Final Rule

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

RIN 1210–AA86

Delinquent Filer Voluntary Compliance Program

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice, Delinquent Filer Voluntary Compliance Program.

SUMMARY: This Notice modifies the Delinquent Filer Voluntary Compliance Program ("DFVC Program" or "Program") announced by the Department of Labor's Pension and Welfare Benefits Administration in 1995. The DFVC Program is intended to encourage, through the assessment of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Following a review of the DFVC Program, as adopted in 1995, the Department has determined to update the Program and adjust the civil penalty structure under the Program in an effort to further encourage and facilitate voluntary compliance by plan administrators with ERISA's annual reporting requirements. Because the modifications to the DFVC Program include lower civil penalty assessments, the modifications are being put into effect upon publication of this notice in the **Federal Register**. Nonetheless, the Department is seeking comments from the public on the modified Program.

DATES: *Effective Date:* March 28, 2002. The modified Program adopted herein supercedes and replaces, as of its effective date, the DFVC Program as adopted on April 27, 1995 (60 FR 20874).

Comment Date: Written comments must be received by the Department no later than May 28, 2002.

ADDRESSES: Interested persons are invited to submit written comments on the DFVC Program to: DFVC Comments, Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Warner or Scott C. Albert, Office of the Chief Accountant, Pension and Welfare Benefits Administration, telephone (202) 693–8360. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Labor has the authority under section 502(c)(2) of ERISA to assess civil penalties of up to $1,100 [1] a day against plan administrators who fail or refuse to file complete and timely annual reports as required under section 101(b) of ERISA and the Secretary's regulations. Pursuant to 29 CFR 2560.502c–2 and 29 CFR 2570.60 *et seq.*, the Pension and Welfare Benefits Administration (PWBA) has maintained a program for the assessment of civil penalties for noncompliance with ERISA's annual reporting requirements. Under this program, plan administrators filing late annual reports may be assessed $50 per day for each day an annual report is filed after the date on which the annual report was required to be filed, without regard to any extensions of time for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report or that there was reasonable cause why the penalty, as calculated, should not be assessed.

In an effort to encourage delinquent filers to voluntarily comply with the annual reporting requirements under Title I of ERISA, the Department adopted, on April 27, 1995, the Delinquent Filer Voluntary Compliance (DFVC) Program (60 FR 20874). The Program, as adopted in 1995, permitted administrators otherwise subject to the assessment of higher civil penalties for failing to file a timely annual report to pay reduced civil penalties for voluntarily complying with the requirement to file an annual report under Title I of ERISA.

Under the 1995 DFVC Program, plan administrators filing the Form 5500–C (plans with fewer than 100 participants at the beginning of the plan year or plans filing the Form 5500–C pursuant to the "80–120" participant rule in § 2520.103–1(d) ("small plans")) were subject to a civil penalty assessment of $50 per day up to $1,000 when the annual report was twelve months or less late, and $2,000 when the annual report was more than twelve months late.[2] Plan administrators filing the Form 5500 (plans with 100 or more participants at the beginning of the plan year other than a plan filing pursuant to the "80–120" participant rule ("large plans")) were subject to a civil penalty assessment of $50 per day up to $2,500 when the annual report was one year or less late, and $5,000 when the annual report was more than one year late. A civil penalty assessment of $2,500 applied to late filings by plan administrators for apprenticeship and training plans described in § 2520.104–22 and "top hat" plans described in § 2520.104–23(a). Under the terms of the DFVC Program, the Department reserved the right to modify or terminate the Program upon publication of a notice in the **Federal Register**.

B. Modifications to the DFVC Program

The Department is modifying the DFVC Program in order to further facilitate and encourage voluntary compliance with the annual reporting requirements. These modifications take the form of reducing civil penalty assessments, as well as simplifying and updating the process governing participation in the DFVC Program. A discussion of the changes follows.

1. Applicable Penalty Amount

Since the adoption of the DFVC Program in 1995, the Department has received input from plan administrators, as well as from accountants, third party administrators, and other members of the employee benefits community, indicating that the civil penalty assessments provided for under the 1995 Program, while less than the otherwise applicable penalties, nonetheless may be an impediment to many delinquent filers, especially administrators of small plans, because of the absence of a per plan, rather than a per annual report, based cap on the penalty amount. For example, under the 1995 Program, the administrator of a small pension plan with respect to which no annual reports were filed for plan years 1995—1999 would have to pay a civil penalty assessment of $2,000 per report and, therefore, would be required to pay a civil penalty assessment of $10,000 ($2,000 × five plan years), a sizeable amount for many small employers. Public input in this area is consistent with the Department's finding that, although small employers constitute about 80 percent of the Title I of ERISA filers, the majority of plan administrators electing to comply under the DFVC Program are administrators of large plans.

Accordingly, the Department, in an effort to encourage voluntary compliance with ERISA's annual reporting requirements, is modifying the civil penalty structure under the DFVC Program. Specifically, the per day late filing penalty amount for plan administrators taking part in the DFVC Program has been reduced for large and small plans from $50 per day to $10 per day. In the case of a single late annual report filing for a plan, the cumulative daily penalty amount for a plan year is capped at $750 for small plans and $2,000 for large plans. The DFVC Program, as modified, also contains a new per plan cap on the penalty to address the concerns about the cumulative effect of the per annual report penalties when a plan has annual reporting delinquencies for multiple plan years. The per plan cap is $1,500 for a small plan and $4,000 for a large plan and applies on a submission-by-submission basis. Thus, in the case of the previous example where the plan administrator for a small plan did not file an annual report for a five-year period, the applicable penalty amount under the revised DFVC Program would be $1,500 (rather than $10,000 under the 1995 DFVC Program) provided the plan administrator included the annual reports for all five plan years in the same DFVC Program submission.[3]

The Department believes that this approach to applying the caps will encourage complete annual reporting compliance reviews with respect to specific plans, while facilitating Program administration. Although there is nothing in the DFVC Program that precludes a plan administrator from making separate or multiple submissions under the Program, the per plan cap on penalties starts over for each separate submission for a plan that is made under the DFVC Program.[4]

The Department also is revising the applicable penalty structure under the DFVC Program for apprenticeship and training plans and "top hat" plans, as well as adding another class of plans that are eligible to pay special reduced penalties under the Program. In lieu of the $2,500 penalty amount for apprenticeship and training plans and "top-hat" plans, the applicable penalty amount under the modified DFVC Program for such plans is $750. As was the case under the 1995 Program, the applicable penalty will be applied without regard to the number of apprenticeship and training or "top hat" plans maintained by the same plan sponsor and without regard to the number of plan participants covered under such plan or plans. In addition, the Department is establishing a maximum $750 per plan penalty cap for administrators of small plans sponsored by Internal Revenue Code (Code) section 501(c)(3) organizations (including small Code section 403(b) plans). This special penalty amount, however, will not be available if, as of the date the plan files under the DFVC Program, there is a delinquent or late annual report due for a plan year during which the plan was a large plan. The Department is establishing this reduced penalty for administrators of such small plans in recognition of the special character of these organizations, and in light of the fact that the administrators/sponsors of such plans may receive most or all of their funding from government programs and other charitable, educational, or scientific grants, and, in the case of Code section 403(b) plans that are required to file annual reports under ERISA, because the information that is required to be filed annually is similar to the registration-type information required to be filed by apprenticeship and training plans and "top hat" plans under §§ 2520.104–22 and 2520.104–23.

2. Simplification of Process

As noted above, the Department is simplifying the procedures governing participation in the DFVC Program. These changes are intended to make the Program easier for plan administrators to use and to conform the Program to the recent streamlining of the annual report and the implementation of the computerized ERISA Filing Acceptance System (EFAST).

As with the 1995 DFVC Program, the Program adopted herein conditions relief on the filing of a complete annual report, including all required statements and schedules, for each plan year for which relief is sought under the Program. Under the Program, this requirement can be satisfied by the administrator filing an annual report for each plan year for which relief is sought using either: (1) The annual return/report form issued for the plan year(s) for which relief is sought; or (2) the most current annual return/report form available at the time the administrator elects to participate in the Program. By affording this option, administrators can choose to file the Form which is most efficient, and least burdensome, for their particular plan and circumstance.

Also, as with the 1995 Program, the modified Program provides that penalty amount payments must be accompanied by a paper copy of the filed annual return/report (excluding any required statements or schedules).[5] Unlike the 1995 Program, however, the forms and penalty payment no longer have to be annotated in bold red print identifying the filing as a DFVC filing.

3. Scope of Program

As with the 1995 DFVC Program, the modified Program only applies to the correction of reporting violations under Title I of ERISA.[6] Filings that are not required under Title I of ERISA, such as Form 5500–EZ filings, are not eligible for the DFVC Program. Annual reports filed under the DFVC Program may be subjected to the usual edit tests and plan administrators have an opportunity to correct identified deficiencies in accordance with the procedures described in § 2560.502c–2. The failure to correct deficiencies in accordance with these procedures may result in the assessment of further penalties, and the payment of DFVC Program penalties do not serve to reduce the additional civil penalties that may be assessed for the filing of a deficient annual report.

Request for Comments, Effective Date and Requests for Refunds

Although the Department is not required to seek public comments on an enforcement policy, the Department

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[1] In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the Department's regulation at 29 CFR 2575.502c–2 increased the maximum civil penalty from $1,000 a day as stated in section 502(c)(2) of ERISA to $1,100 a day for violations occurring after July 29, 1997.

[2] Plan administrators were not allowed to use the Form 5500–R when filing annual reports under the DFVC Program.

[3] There is no "per administrator" or "per sponsor" cap. Thus, if the same person is the administrator of several plans required to file annual reports under Title I of ERISA, the administrator would need to calculate the applicable penalty amount for each plan.

[4] For purposes of determining whether there is one or more submissions, the mere fact that a submission is transmitted in multiple envelopes or packages will not affect the submission's status as a single submission where there is evidence (*e.g.*, an accompanying letter or note) indicating that submission has been transmitted contemporaneously in multiple envelopes or packages.

[5] While electronic filing of DFVC submissions and deposit of penalty amounts is not currently available, the Department will be evaluating this area for possible future improvements.

[6] Although this Notice does not provide relief from late filing penalties under the Code or Title IV of ERISA, both the IRS and PBGC have agreed to provide certain penalty relief under the Code and Title IV of ERISA. Sections 5.02 and 5.03 of this Notice include information furnished to the Department by the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) regarding the penalty relief they are providing for delinquent Form 5500 Annual Returns/Reports filed for Title I plans when the condition of the DFVC Program have been satisfied.

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solicits comments from the public on all aspects of this Program, including whether the reduced penalty amounts being adopted are set at appropriate levels and whether additional classes of filers should be provided special reduced penalty amounts. At the same time, the Department has determined that the relief afforded by this Program should be made available during and after the comment period. Delaying implementation of the revisions to the DFVC Program until after the end of the comment period would only deprive plan administrators of the ability to pay reduced penalties during the comment period. Accordingly, the DFVC Program adopted herein will be effective upon publication in the **Federal Register**.

In general, the Department will consider requests for refunds under the DFVC Program only when it is determined, upon review, that there was no reporting violation (e.g., the plan was not required to file an annual report or the report was filed timely) or the penalty assessment was otherwise improper. In this regard, the Department will not make refunds with respect to any DFVC filings merely because they were submitted prior to the effective date of the Program adopted herein. In the Department's view such filers received the relief with respect to which the paid penalty related. With regard to DFVC filings received on or after the effective date of the Program adopted herein and with respect to which the plan administrator incorrectly determined the penalty amount by referring to the superceded 1995 Program, the Department intends to return the DFVC Program submission (but not the annual report filing that is submitted to EFAST) to afford the filer the opportunity to make a DFVC submission in accordance with the modified program.

Summary of Economic Impact of the Amended DFVC Program

This amendment to the DFVC Program is intended to increase compliance with reporting requirements by increasing Program participation, especially among small plans. Under the existing Program, administrators of small plans, which are likely to represent a large majority of delinquent filers, have made up only a minority of Program participants. This amendment will reduce Program penalties for many participants, especially for administrators of small plans that have failed to file reports for many years, thereby encouraging more delinquent plan administrators to participate.

By increasing compliance with reporting requirements, the amended Program will yield economic benefits. Greater compliance will improve the quality and availability of information on plans. Plans' annual reports are the principal source of information about the operation, funding and investments of employee benefit plans. Information derived from these reports is integral to PWBA's enforcement, research and policy development programs, and is widely used by other Federal agencies, Congress and the private sector in assessing employee benefit, tax, and economic trends and policies. Plans' reports also serve as the primary means by which participants, beneficiaries and the general public can monitor plan operations. For all of these reasons, better information will serve to improve the security of plan assets and benefits and to promote sound employee benefits policy. Plans that comply with reporting requirements also tend to stay in compliance with reporting requirements, redoubling the benefit of bringing plans into compliance at the earliest opportunity. Finally, participating plan administrators will benefit insofar as they will be relieved of the risk of incurring larger penalties outside the Program, and insofar as the penalties that many must pay in order to participate in the Program will be reduced.

The Department believes that the benefits of the amended Program will exceed its costs. Participating plan administrators will incur a cost in connection with the payment of penalties. Participation in the Program is voluntary, however, so it is reasonable to conclude that participating plans derive an economic benefit equal to or greater than this cost. The Department also notes that the payment of such penalties constitutes a transfer from plan administrators to the U.S. Treasury, thereby benefiting taxpayers at large. The only potentially meaningful economic cost of the Program is the potential for the loss of income to the U.S. Treasury from reduced penalties. This loss of income will be partly or fully offset by penalties paid by plan administrators that would not have participated at the existing Program's higher penalty levels. Moreover, any loss of Treasury revenue will be nominal and more than offset by the benefits of fuller reporting outlined above.

Because the amended program will substantially reduce Program penalties for many participating plan administrators, the Department expects that participation in the Program will grow. The Department lacks an empirical basis on which to estimate the amount by which it will grow, however. In order to assess potential growth, the Department adopted conservative assumptions regarding responsiveness to decreases in Program penalties. On that basis, it is projected that participation by plan administrators in the amended Program will increase to about 2,500 plans per year, up from 1,400 plans under the current Program, an increase of about 75 percent. Participation by administrators of large plans will increase by more than 50 percent to reach about 1,300, while participation by administrators of small plans will grow by more than 100 percent to about 1,100. Total penalties paid under the Program are projected to fall by about one-half, however, from about $9.3 million annually to about $4.7 million. The Department believes that these estimates are highly conservative, and that participation might increase more, while penalties paid might decrease less or even increase. The derivation of these estimates and basis for the Department's conclusion that they are conservative is detailed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" and subject to OMB review under section 3(f)(4) of the Executive Order because it offers a novel method for encouraging compliance while reducing regulatory burden.

As described earlier in this preamble, PWBA introduced the DFVC Program in

April of 1995 in an effort to encourage compliance with annual reporting requirements, which are met generally by filing the Form 5500 Annual Return/Report of Employee Benefit Plan. This amendment to the Program is intended to increase compliance with reporting requirements by increasing Program participation, especially among administrators of small plans. Under the existing Program, small plan administrators, which are likely to represent a large majority of delinquent filers, have made up only a minority of Program participants. (Among the approximately 1 million plans expected to file annual reports normally this year, about 750,000 are expected to be small plans.) This amendment will reduce Program penalties for many Program participants, especially for small plan administrators that have failed to file reports for many years (whose penalties will be capped at $1,500 per plan), thereby encouraging more delinquent administrators to participate and come into compliance with reporting requirements.

To date under the existing Program, 17,545 separate filings have been made by 8,634 separate plans, involving total penalties to plan administrators in excess of $50 million. This amounts to approximately 1,400 participating plans filing about 2,900 annual reports each year, and the administrators of those plans paying penalties of about $9 million. Of the 17,545 filings, 10,082 were for large plans, and 6,781 were for small plans. In addition, there were 672 "top hat" filers and 10 apprenticeship and training plan filers.

About 70 percent of both large and small plan DFVC Program filings were made twelve or more months after they were otherwise due. About 63 percent of participating plan administrators filed for one plan year, about 16 percent filed for two plan years, and 21 percent filed for three or more plan years. The average was approximately two plan years. As a result, most DFVC Program participants paid the applicable maximum for each filing based on the size of the plan and the filing's original due date. Participating plan administrators filing two or more years' reports paid such maximum penalties separately for each report filed.

In developing the amended Program, the Department endeavored to select penalty levels that will maximize reporting compliance, especially among small plans. Maximizing compliance means maximizing Program participation, and with it the prompt submission of now delinquent filings, while at the same time maximizing on-time submission of future filings. The amended Program's penalties are therefore calibrated to be at once low enough so that delinquent plan administrators will not be dissuaded from participating, and high enough to hold plan administrators appropriately accountable for filing on time.

This amendment to the DFVC Program generally will reduce the penalties owed by participating plan administrators. For example, the penalty owed by small and large plan administrators submitting single filings more than 12 months late will be reduced from $2,000 and $5,000, respectively, to $750 and $2,000. The penalty owed by administrators of small and large plans submitting five years' worth of filings all more than 12 months late will be reduced from $10,000 and $25,000 to $1,500 and $4,000.

To gauge the potential impact of the interaction of the new per plan caps for delinquencies involving multiple plan years, which are $1,500 for small plans and $4,000 for large plans, with the single plan year maximum penalties of $750 and $2,000, we computed the penalties that would have been paid by the past DFVC filers under the amended structure, assuming no changes in Program participant characteristics or increase in participation in response to the reduced penalties. This simple calculation of penalties under the prior and amended structures shows a reduction in total penalties paid of about $39 million or 70 percent.

The amended Program will yield economic benefits. Fuller compliance will improve the quality and timeliness of information on the operation and assets of employee benefit plans, which will help to secure plan benefits and assets and promote sound public policy. Participating plan administrators will benefit from shedding the risk of incurring larger penalties outside the Program and from reductions in the penalties they must pay under the Program.

The amended Program's benefits are expected to exceed its costs. Because participation in the Program is voluntary, it is reasonable to conclude that participating plan administrators derive an economic benefit at least equal to the cost of the penalty. The payment of such penalties also enriches the U.S. Treasury to the benefit of taxpayers. Because the amended Program imposes smaller penalties, total penalties paid to the Treasury may fall. The economic cost associated with such a loss of Treasury revenue is expected to be small and more than offset by the benefits of fuller reporting.

The Department estimates that plan participation in the amended Program will increase to about 2,500 filings per year, up from 1,400 under the current Program. Total penalties paid by plan administrators under the Program are projected to fall by about one-half, from about $9.3 million annually to about $4.7 million. These estimates are highly conservative; participation might increase more, while penalties paid might decrease less or even increase.

Basis for Estimate of Economic Impact

As noted above, under the existing DFVC Program, 17,545 separate filings have been made by 8,634 separate plans, involving total penalties to plan administrators in excess of $50 million. This amounts to approximately 1,400 plans participating each year, paying penalties of about $9 million. Based on the discounts available under the amended penalty structure, the Department expects the number of plan administrators participating annually to increase to about 2,500, resulting in annual penalties of about $4.7 million.

Assuming a plan administrator is aware of a plan's reporting obligations, and of any failure to satisfy them, the decision whether or not to participate in the Program is essentially an economic one. The plan administrator must weigh the alternative of remaining out of compliance—and the attendant risk of becoming subject to larger penalties—against the cost of paying reduced penalties under the amended Program. The penalty under the Program can be thought of as a price the administrator can pay to achieve compliance and be relieved from the risk of larger penalties. The size and risk of unreduced penalties represents the value of such relief. Reduced penalties under the Program and potential full penalties will be different for different plans, reflecting their differing characteristics and circumstances. All else equal, the smaller the penalties under the Program relative to the potential unreduced penalties—that is, the lower the price of participation relative to its value—the larger the number of plan administrators that will participate.

Assuming that the risk and potential amount of full penalties are fixed, the increase in participation in the amended Program will depend on the number of delinquent plans, the amount by which penalties under the amended Program are discounted relative to those under the existing Program, and the responsiveness of plan administrators to this price reduction. Price responsiveness is commonly expressed in terms of "elasticity," or the percent increase in quantity demanded that will result from a one percent decrease in price. If administrators' elasticity of

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demand for the Program is one, then a one percent decrease in the penalty will result in a one percent increase in the number of administrators participating.

The Department has no empirical basis on which to estimate the price elasticity of demand for the Program. Estimating elasticity generally requires observation of demand at different price levels. Casual observation reveals that the number of plan administrators participating in the existing Program generally is higher at lower penalty levels. In particular, relatively few participating plan administrators—and very few participating small plan administrators—submitted several years of delinquent filings and consequently owed relatively large penalties. This observation seems consistent with the premise that lower penalties encourage higher participation, but it falls short of providing formal supporting evidence. The Department lacks data on the number and circumstances of nonparticipating delinquent plan administrators. Therefore, it is not possible to determine whether variations in the number of plans participating at different penalty levels under the existing Program reflects responsiveness to those levels or the numbers and circumstances (and potential full penalties) of unobserved, nonparticipating delinquent plan administrators whose participation would trigger penalties at those levels. The Department also lacks any longitudinal basis for estimating the elasticity, because prior to this amendment the penalty levels under the Program had not been changed.

The Department nevertheless attempted to assess the potential magnitude of increased participation in the amended DFVC Program. To do this, the Department examined historical data on participation in the Program, relying on the general assumption that the potential users of the amended Program will resemble the past users of the existing Program. Then, by adopting assumptions regarding the elasticity of demand for the Program and comparing the penalties owed by past participants in the existing Program with the penalties they would owe under the amended Program, the Department projected participation in the amended Program.

Lacking a basis for estimating plan administrators' true elasticities, the Department adopted what it believes are conservative assumptions (that is, assumptions which are likely to be lower then the true elasticities). In the face of uncertainty, it is generally appropriate to adopt conservative assumptions, in order to avoid over estimating the potential benefits of the Program.

The Department assumed that the price elasticity of demand for the Program among administrators of large plans (those with 100 or more participants) is one, and that among administrators of small plans is two. More precisely, it assumed that demand is linear and that large and small plans' price elasticities of demand at the starting positions on their demand curves (the equilibria under the current Program) are equal to one and two, respectively. A large decrease in price will result in movement down the demand curve into a region where elasticity is less than at the starting position. (As a result, total penalties collected under the amended Program are expected to be less than the assumed starting-point elasticities alone would imply.) The Department believes that these assumptions conservatively represent the likely price responsiveness of nonparticipating delinquent plan administrators.

First, the assumption of linear demand (and attendant decreasing elasticity) is inherently conservative in connection with large price decreases. A more plausible, nonlinear demand function with constant elasticity would suggest much larger increases in Program participation.

For administrators of many plans, the price decrease associated with movement from the existing to the amended Program will be large. This is especially true of administrators that are delinquent in connection with several plan years' filings, because the amended Program caps penalties for such plans, while the existing Program caps them only for each separate filing by such plans. For example, historical penalties owed under the existing Program equaled or exceeded $25,000 for 74 participating large plans each year. These would include plan administrators that submitted five or more years' reports, all 12 months or more late, who would owe the maximum $5,000 per filing. Historical penalties equaled or exceeded $10,000 for 52 participating small plans annually, which similarly would include plan administrators owing the maximum $2,000 penalty for each of five or more years' worth of filings. Under the amended Program, similar large plans' penalties will be capped at $4,000 per plan, small at $1,500, representing price reductions of at least 84 percent and 70 percent, respectively.

Microeconomic theory suggests that demand for most goods and services is likely to be better represented by a demand curve with constant elasticity than by a linear one, especially in connection with large price changes. Consider the administrator of a large plans in this example. The Department, assuming linear demand and a starting elasticity of one, projects that an 84 percent fall in price results in an 84 percent increase in participation. However, this implies that the elasticity of demand at the new equilibrium would be just 0.09—that is, an additional one percent price decrease would increase participation by less than one-tenth of one percent. In the case of a small plan administrator, and assuming a starting elasticity of two, elasticity at the new equilibrium would be just 0.37. Under the potentially more plausible assumption of constant demand elasticities of one and two respectively for large and small plans, the 84 percent price decrease available to the large plan administrator would increase participation by 525 percent, while small plan administrators' price decrease would increase their participation by 1,011 percent. This suggests that the Department's assumptions are highly conservative and that the increase in participation, particularly among small plans that are many years delinquent, could be much larger than projected.

Second, the increase in the Program participation is unlikely to be constrained by market saturation anytime soon, and this is especially true for administrators of small plans. Thus, the premise that demand might exhibit a constant elasticity (and that therefore large price decreases could result in very large participation increases) is especially plausible for administrators of small plans.

Participation by both large and small plan administrators over the life of the Program is ultimately constrained to no more than the number of nonparticipating delinquent plans that exist. The Department has no way of knowing this number. As yet, however, there is no evidence that participation in the Program is nearing this constraint. Participation in the Program has been quite consistent since its inception, at about 2,900 filings per year, with small plans representing about 40 percent of each year's total. Small plans in particular are likely to represent a large majority of nonparticipating delinquent plans, just as they represent a large majority of plans that file annual reports on time. For example, among the approximately one million plans expected to file reports this year, about 250,000 will be large and about 750,000 will be small.

Consider again the above example of plans that submitted five or more years' filings 12 or more months late under current Program. Is it plausible that demand could exhibit constant elasticity and that participation increases could therefore be very large? If participation by large plan administrators in similar circumstances increased by 525 percent, the number participating each year on average would grow from about 74 plans to about 463, which is equal to approximately 0.2 percent of large plan filers. A 1,011 percent increase in small plan administrator participation would mean that the number participating each year would grow from about 52 plans to about 578, which is equivalent to about 0.08 percent of small plan filers. Given these relative magnitudes, even these large increases in participation might be viewed as plausible. This would seem to confirm that the Department's assumptions of linear demand, with starting elasticities for large and small plans of one and two respectively, are conservative.

The Department requests comments on all aspects of this analysis, including the penalty levels as they apply to large and small plan administrators, assumptions concerning price responsiveness, and the characteristics of future filers as compared with the actual Program participants. The Department is particularly interested in information on existing rates and reasons for non-compliance with reporting requirements, and specific factors that may influence the decision whether or not to participate in the DFVC Program in light of the penalty reductions being implemented.

Paperwork Reduction Act

The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. OMB clearance of the information collection request (ICR) included in the existing DFVC Program was scheduled to expire prior to the implementation of this modified Program. In order to maintain OMB approval of the ICR, PWBA published a preclearance notice soliciting comments on the ICR (66 FR 44159, August 22, 2001). OMB received the submission for continued approval of the ICR on December 21, 2001. OMB approved the ICR on February 21, 2002. This approval will continue through February 28, 2005, unless the ICR is substantively or materially changed.

Although the Department has updated the Program and adjusted the penalty structure in an effort to further facilitate voluntary compliance, the information collection provisions of the Program are not substantively or materially changed. Under both the existing and amended DFVC Program, participating filers must supply a photocopy of the Form 5500 (without schedules or attachments) as filed along with their penalty check. The Department has, however, adjusted its burden estimates to reflect the expectation of additional participation in the Program due to the reduced penalty incentive and the addition of a penalty cap for small plans sponsored by Code section 501(c)(3) organizations. A summary of the effect of the adjustment has been provided to OMB.

Requests for copies of the ICR may be addressed to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745 (these are not toll-free numbers).

It is estimated that 2,500 filers will avail themselves of the opportunity to correct potential violations pursuant to the DFVC Program annually. The Department estimates that approximately 30 minutes will be required to read instructions, prepare a check, photocopy the Form 5500, and mail the package. It is further assumed that 90 percent of plan administrators sponsors will purchase services from a professional (e.g., accountant or attorney) to comply with the requirements of the Program, and that 10 percent will use in-house staff. The professional wage rate incorporated in the burden cost estimates is $75 per hour. Material and mailing costs are estimated at $0.70 per mailing.

The time and mailing cost assumptions have been increased from what was used in the past (21 minutes and $0.37) due principally to the change in the penalty structure to incorporate a penalty cap for multiple plan year delinquencies. It is assumed that multiple plan year delinquencies will be filed together, requiring some additional time and mailing cost. The method for estimating the number of respondents has also changed due to the change in the penalty structure, with multiple plan year filings now considered one response. As a result, the total number of respondents counted for PRA purposes is reduced, despite the fact that participation in the Program is assumed to increase.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 2,500.

Total Responses: 2,500.

Estimated Burden Hours: 125.

Estimated Annual Costs (Operating and Maintenance): $86,000.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

This document constitutes an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply. However, PWBA has considered the potential costs and benefits of this action for administrators of small plans, that is, plans with fewer than 100 participants, in connection with this amendment to the DFVC Program. The basis of the definition of a small plan is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans.

Small plans represent approximately 75 percent of all annual report filers, but have represented only about 35 percent of DFVC Program filings, despite lower scheduled maximum penalties for small plans. Small plan participants in the Program have represented an average of 0.4 percent of small Form 5500 filers, while large plans have represented about 2 percent of large filers. The reasons for these differentials cannot be known with certainty. The rate of participation in the Program by small plans has been relatively stable since its inception at about 1,000 filings on behalf of 520 plans per year. Historical DFVC Program data also show that more than 70 percent of both large and small DFVC Program filers are more than 12 months late when the filing is

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completed, and small plan filers are about as likely as large plan filers to be required to make two or more filings at the same time to bring the plan into compliance with reporting requirements. This suggests that the penalty structure in effect prior to this amendment, though lower for small plan administrators on a per plan year filing basis, might have discouraged participation when multiple years were involved. Informal comments received by the Department have offered this view.

Under PWBA's program for the assessment of civil penalties for noncompliance with reporting requirements, plan administrators filing late annual reports may be assessed $50 per day for each day an annual report is filed after the date on which the annual report was required to be filed, without regard to any extensions of time for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. The distribution of actual DFVC filers based on the ratio of their voluntary penalty to the penalty that would have been imposed by the Department in penalty enforcement under this program shows that 80 percent of small plan DFVC filers, as compared with only 30 percent of large plan filers, have paid less than 10 percent of the enforcement program penalty. Forty percent of small plan filers paid less than 5 percent of the enforcement program penalty that would otherwise have been imposed. This also seems consistent with the conclusion that a large penalty serves as a significant disincentive for small plan administrators.

The reduction in the participating small plan administrators' maximum penalty for a single year's filing from $2,000 to $750 and the availability of the $1,500 cap for multiple plan year delinquencies is expected to significantly reduce the penalties paid by small DFVC filers. A comparison of the penalties paid under the existing DFVC structure with those that would have been paid under the amended structure by small plans shows a reduction of about 72 percent, or approximately $8 million, assuming no change in behavior or characteristics of the filers.

Based on the discounts available under the amended penalty structure, and assuming an elasticity of two, as described earlier, the number of small plans coming into compliance is expected to increase by 561 plans, to about 1,081 plans per year, with penalties totaling $1.2 million. This expected outcome is consistent with the stated purpose of the amendment.

The Department believes that the DFVC Program as modified offers a flexible and economically advantageous method for administrators of small plans to correct reporting delinquencies, which recognizes the special circumstances of small plans. The Department invites comments on this analysis and on alternatives that might further reduce potential burdens for small plans.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this regulatory action does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This action does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supercede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this enforcement policy do not alter the fundamental reporting requirements or penalty provisions of Title I of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

Congressional Review Act

The DFVC Program is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The Program is not a "major rule" as that term is defined in 5 U.S.C. 804 because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 1—Delinquent Filer Voluntary Compliance (DFVC) Program

The DFVC Program is intended to afford eligible plan administrators (described in Section 2 of this Notice) the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the civil penalties specified in Section 3 or Section 4, as appropriate, of this Notice.

Section 2—Scope, Eligibility and Effective Date

.01 *Scope.* The DFVC Program described in this Notice provides relief from assessment of civil penalties otherwise applicable to plan administrators who fail or refuse to file timely annual reports. Relief under this Program does not extend to penalties that may be assessed for annual reports that are determined by the Department to be incomplete or otherwise deficient.

.02 *Eligibility.* The DFVC Program is available only to a plan administrator that complies with the requirements of Section 3 or Section 4, as appropriate, of this Notice prior to the date on which the administrator is notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA.

.03 *Effective date.* The DFVC Program described herein shall be effective March 28, 2002. The Department intends that this DFVC Program to be of indefinite duration; however, the Program may be modified from time to time or terminated in the sole discretion of the Department upon publication of notice in the **Federal Register**.

Section 3—Plan Administrators Filing Annual Reports

.01 *General.* A plan administrator electing to file a late annual report (Form 5500 Series Annual Return/Report) under this DFVC Program must comply with the requirements of this Section 3.

.02 *Filing a Complete Annual Report.*

(a) The plan administrator must file a complete Form 5500 Series Annual Return/Report, including all required schedules and attachments, for each plan year for which the plan administrator is seeking relief under the Program. This filing shall be sent to PWBA at the appropriate EFAST address listed in the instructions for the most current Form 5500 Annual Return/Report, or electronically in accordance with the EFAST electronic filing requirements. See the EFAST Internet site at *www.efast.dol.gov* to view forms and instructions.

Note: Do not forward the applicable penalty amount described in Section 3.03 to the EFAST addresses listed above.

(b) For purposes of subparagraph (a), the plan administrator shall file either: (1) The Form 5500 Series Annual Return/Report form (but not a Form 5500–R) issued for each plan year for which the relief is sought, or (2) the most current Form 5500 Annual Return/Report form issued (and, if necessary, indicate in the appropriate space on the first page of the Form 5500 the plan year for which the annual return/report is being filed). Forms may be obtained from the IRS by calling 1–800–TAX–FORM (1–800–829–3676). Forms for certain pre-1999 plan years also are available through the Internet sites for PWBA and the Internal Revenue Service (IRS) (*www.dol.gov/dol/pwba, www.irs.gov*). For further information on EFAST filing requirements, see the EFAST Internet site (*www.efast.dol.gov*) and the instructions for the most current Form 5500.

.03 *Payment of Applicable Penalty Amount.*

(a) The plan administrator shall pay the applicable penalty amount by submitting to the DFVC Program the information described in subparagraph (b) along with a check made payable to the "U.S. Department of Labor" for the applicable penalty amount determined in accordance with subparagraph (c). This separate submission shall be made by mail to: DFVC Program, PWBA, P.O. Box 530292, Atlanta, GA 30353–0292. The annual returns/reports for multiple plans may not be included in a single DFVC Program submission. A separate submission to the DFVC Program (including a separate check for the applicable penalty amount) must be made for each plan.

Note: Personal or private delivery service cannot be made to this address.

(b)(1) The administrator shall submit to the DFVC Program, with the applicable penalty amount, a paper copy of the Form 5500 Annual Return/Report filed as described in paragraph .02(a), without schedules and attachments. In the event that the plan administrator files as described in paragraph .02(a) using a 1998 or prior plan year form, a paper copy of only the first page of the Form 5500 or Form 5500–C, as applicable, should be submitted to the DFVC Program.

(2) In the case of a plan sponsored by a Code section 501(c)(3) organization described in paragraph .03(c)(4), the administrator shall clearly note "501(c)(3) Plan" in the upper-right hand corner of the first page of the Form 5500 Annual Return/Report submitted to the DFVC Program (in Atlanta, Georgia). This notation should not be included on the annual report filed with PWBA pursuant to paragraph .02 (in Lawrence, Kansas) because it may interfere with the proper processing of the required report.

(c) The applicable penalty amount shall be determined as follows:

(1) In the case of a plan with fewer than 100 participants at the beginning of the plan year (or a plan that would be treated as such a plan under the "80–120" participant rule described in 29 CFR 2520.103–1(d) for the subject plan year) (hereinafter "small plan"), the applicable penalty amount is $10 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed the greater of: $750 per annual report or, in the case of a DFVC submission relating to more than one delinquent annual report filing for the plan, $1,500 per plan.

(2) In the case of a plan with 100 or more participants at the beginning of the plan year (other than a plan that is eligible to use and uses the "80–120" participant rule) (hereinafter "large plan"), the applicable penalty amount is $10 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed the greater of: $2,000 per annual report or, in the case of a DFVC submission relating to more than one delinquent annual report filing for the plan, $4,000 per plan.

(3) In the case of a DFVC submission relating to more than one delinquent annual report filing for a plan, the applicable penalty amount shall be determined by reference to paragraph (c)(2) if for any plan year for which the submission is made the plan was a "large plan."

(4) In the case of a plan administrator filing an annual report for a "small plan" that is sponsored by a Code section 501(c)(3) organization (including a Code section 403(b) plan), the applicable penalty amount is $10 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed $750 per DFVC submission, including DFVC submissions that relate to more than one delinquent annual report filing for the plan. This paragraph (c)(4) shall not apply if, as of the date the plan files pursuant to this DFVC Program, there is a delinquent or late annual report due for a plan year for which the plan was a "large plan." See paragraph .03(b)(2) for special instructions pertaining to small plans sponsored by Code section 501(c)(3) organizations.

.04 *Liability for Applicability Amount.*

The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA, therefore, civil penalties, including amounts paid under this DFVC Program, shall not be paid from the assets of an employee benefit plan.

Section 4—Plan Administrators Filing Notices for Apprenticeship and Training Plans and Statements for "Top Hat" Plans

.01 *General.* Administrators of apprenticeship and training plans, described in 29 CFR 2520.104–22, and administrators of pension plans for a select group of management or highly compensated employees, described in 29 CFR 2520.104–23(a) ("top hat plans"), who elect to file the applicable notice and statement described in sections 2520.104–22 and 2520.104–23, respectively, as a condition of relief from the annual reporting requirements may, in lieu of filing any past due annual report and paying otherwise applicable civil penalties, comply with the requirements of this Section 4. Administrators who have complied with the requirements of this Section 4 shall be considered as having elected compliance with the exemption(s) and/or alternative method of compliance prescribed in §§ 2520.104–22, or 2520.104–23, as appropriate, for all subsequent plan years.

.02 *Filing Applicable Notice or Statement with the U.S. Department of Labor.*

The plan administrator must prepare and file a notice or statement meeting the requirements of §§ 2520.104–22, or 2520.104–23, as appropriate.

The apprenticeship and training plan notice described in § 2520.104–22 shall be sent by mail or by private delivery service to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200

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Constitution Avenue NW., Washington, DC 20210.

The "top hat" plan statement described in § 2520.104–23 shall be sent by mail or by private delivery service to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Note: A plan sponsor maintaining more than one "top hat" plan is not required to file a separate statement for each such plan. See § 2520.104–23(b).

.03 *Payment of Applicable Penalty Amount.*

(a) The plan administrator shall pay the applicable penalty amount by submitting to the DFVC Program the information described in subparagraph (b) along with a check made payable to the "U.S. Department of Labor" for the applicable penalty amount determined in accordance with subparagraph (c). This submission shall be made by mail to: DFVC Program, PWBA, P.O. Box 530292, Atlanta, GA 30353–0292.

Note: Personal or private delivery service cannot be made to this address.

(b) The administrator shall submit to the DFVC Program with the applicable penalty amount the most current Form 5500 Annual Return/Report (without schedules and attachments). For purposes of this requirement, the plan administrators must complete Form 5500 line items 1a–1b, 2a–2c, 3a–3c, and use plan number 888 for all "top hat" plans and plan number 999 for all apprenticeship and training plans. In the case of plan sponsors maintaining more than one "top hat" plan and plan sponsors maintaining more than one apprenticeship and training plan described in § 2520.104–22, the plan administrator shall clearly identify each such plan on the Form 5500 filed with the Department of Labor or on an attachment thereto. The plan administrator also must sign and date the Form 5500.

(c) The applicable penalty amount is $750 for each DFVC submission, without regard to the number of plans maintained by the same plan sponsor for which notices and statements are filed pursuant to Section 4 and without regard to the number of plan participants covered under such plan or plans.

.04 *Liability for Applicability Amount.* The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA, therefore, civil penalties, including amounts paid under this DFVC Program, shall not be paid from the assets of an employee benefit plan.

Section 5—Waiver of Right to Notice, Abatement of Assessment and Plan Status

.01 Payment of a penalty under the terms of this DFVC Program constitutes, with regard to the filings submitted under the Program, a waiver of an administrator's right both to receive notices of intent to assess a penalty under § 2560.502c–2 from the Department and to contest the Department's assessment of the penalty amount.

.02 Although this Notice does not provide relief from late filing penalties under the Code, the Internal Revenue Service (IRS) has provided the Department with the following information. The Code and the regulations thereunder require information to be filed on the Form 5500 Series Annual Return/Report and provide the IRS with authority to impose or assess penalties for failing to timely file. The IRS has agreed to provide certain penalty relief under the Code for delinquent Form 5500 Annual Returns/Reports filed for Title I plans where the conditions of this DFVC Program have been satisfied. See IRS Notice 2002–23.

.03 Although this Notice does not provide relief from late filing penalties under Title IV of ERISA, the Pension Benefit Guaranty Corporation (PBGC) has provided the Department with the following information. Title IV of ERISA and the regulations thereunder require information to be filed on the Form 5500 Series Annual Return/Report and provide the PBGC with authority to assess penalties against a plan administrator under ERISA § 4071 for late filing of the Form 5500 Series Annual Return/Report. The PBGC has agreed that it will not assess a penalty against a plan administrator under ERISA § 4071 for late filing of a Form 5500 Series Annual Return/Report filed for a Title I plan where the conditions of this DFVC Program have been satisfied.

.04 Acceptance by the Department of a filing and penalty payment made pursuant to this DFVC Program does not represent a determination by the Department of Labor as to the status of the arrangement as a plan, the particular type of plan under Title I or ERISA, the status of the plan sponsor under the Code, or a determination by the Department of Labor that the provisions of §§ 2520.104–22 or 2520.104–23 have been satisfied.

Signed at Washington, DC, this 25th day of March, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7514 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P



Federal Register

Thursday,
March 28, 2002

Part V

Department of Labor

Pension and Welfare Benefits Administration

Adoption of Voluntary Fiduciary Correction Program; Notices

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

RIN 1210–AA76

Adoption of Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, Labor.

SUMMARY: The Department of Labor adopts the Voluntary Fiduciary Correction Program (VFC Program or Program) by the Department of Labor's Pension and Welfare Benefits Administration (PWBA). The VFC Program allows certain persons to avoid potential Employee Retirement Income Security Act of 1974, as amended (ERISA), civil actions initiated by the Department of Labor and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The VFC Program is designed to benefit workers by encouraging the voluntary and timely correction of possible fiduciary breaches of Part 4 of Title I of ERISA.

EFFECTIVE DATE: April 29, 2002.

ADDRESSES: Address questions regarding specific applications for relief under the VFC Program to the appropriate PWBA Regional Office listed in Appendix C.

FOR FURTHER INFORMATION CONTACT: *For Specific Applications Under the VFC Program:* Contact the appropriate PWBA Regional Office listed in Appendix C.

For General Questions Regarding the VFC Program: Contact the appropriate PWBA Regional Office listed in Appendix C or Jeffrey A. Monhart, Lead Investigator, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 693–8454, or Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 693–8510. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Discussion of the Program and Comments

Background

Title I of ERISA, 29 U.S.C. section 1001 *et seq.*, establishes certain standards with which officials of employee benefit plans covered by ERISA must comply. PWBA helps the public to understand the requirements of Title I of ERISA. In addition, PWBA conducts investigations to deter and correct violations of ERISA.

Based on PWBA's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996) (Pension Payback Program), and continued public interest in such programs, PWBA decided to establish the VFC Program on an interim basis (Interim VFC Program). The Interim VFC Program was published in the **Federal Register** on March 15, 2000 (65 FR 14164), and has been administered out of each of PWBA's ten regional offices since April 14, 2000. The VFC Program is designed to assist Plan Officials (as defined in Section 3) by specifying the steps necessary to correct certain potential violations of Title I of ERISA. Based on its experience with administering the Program on an interim basis and the public comments received, PWBA has decided to implement the Program on a permanent basis. The Program will continue to be operated out of the ten regional PWBA offices.

Section 409 of ERISA provides that a fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by Part 4 of Title I of ERISA shall be personally liable to make good to a plan any losses to the plan resulting from each breach, and to restore to the plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary. Where more than one fiduciary is liable for a breach, liability is joint and several. The Secretary of Labor has the authority, under sections 502(a)(2) and 502(a)(5), to bring civil actions to enforce the provisions of Title I of ERISA. Section 502(l) requires the assessment of a civil penalty in an amount equal to 20 percent of the amount recovered under any settlement agreement with the Secretary or ordered by a court in an action initiated by the Secretary under section 502(a)(2) or 502(a)(5) with respect to any breach of fiduciary responsibility under (or other violation of) Part 4 by a fiduciary. Under section 502(l)(1)(B), this civil penalty also is assessed against knowing participants in a breach.

PWBA believes that the possibility of investigation, commencement of a civil action, and imposition of a civil penalty under section 502(l) of ERISA may constrain persons who have engaged in a possible breach of fiduciary responsibility under Part 4 of Title I of ERISA from identifying themselves and working with PWBA to correct the breach fully and make the plan whole. To encourage the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches, PWBA has decided to implement the VFC Program on a permanent basis. Under the Program, persons who are potentially liable for a breach are relieved of the possibility of civil investigation of that breach and/or civil action by the Secretary with respect to that breach, and imposition of civil penalties under section 502(l), if they satisfy the conditions for correcting the breach as described in the VFC Program.

If a person files an application under the VFC Program, but the corrective action falls short of a complete and acceptable correction, PWBA may reject the application and pursue enforcement, including assessment of a section 502(l) penalty. However, no section 502(l) penalty would be imposed on any amounts already restored to the plan by the applicant prior to filing the VFC Program application. The penalty would only apply to the additional recovery amount, if any, paid to the plan pursuant to a court order or a settlement agreement with the Department.

The March 15, 2000 Interim VFC Program

The Interim VFC Program was set forth in seven sections and three appendices. It was structured to maximize the ability of Plan Officials to identify and correct possible breaches that are within the scope of the Program without the need to consult with PWBA. As noted in Section 1, Purpose and Overview of the Voluntary Fiduciary Correction Program, PWBA believed that the VFC Program would assist Plan Officials in understanding the requirements of Part 4 of Title I of ERISA and would facilitate the correction of transactions and the restoration of losses to employee benefit plans resulting from fiduciary breaches.

Section 2, Effect of the VFC Program, made clear that the applicant must be careful to ensure that the eligibility requirements are met and the corrections specified for individual transactions are performed before an application is filed under the VFC Program. Generally, if an applicant is in full compliance with all of the terms and procedures set forth in the VFC Program, PWBA will issue a "no action letter" in the format shown in Appendix A with respect to the breach described in the application. Relief under the Interim VFC Program was limited to the transactions identified in the application and to the persons who corrected those transactions. In certain cases, such as where PWBA might become aware of possible criminal behavior, material misrepresentations or omissions in the VFC Program

application, or other abuse of the VFC Program, relief would not be available under the Interim VFC Program. In those cases, the Department reserved the right to initiate an investigation, which could lead to enforcement action. PWBA expected that such cases would be unusual. Full correction under the Interim VFC Program did not preclude any other governmental agency, including the Internal Revenue Service (IRS), from exercising any rights it might have had with respect to the transactions that were the subject of an application. PWBA sought comments on possible areas of coordination between PWBA and the IRS that would facilitate voluntary correction of breaches of Title I of ERISA. PWBA noted that based on its preliminary review of the VFC Program, the IRS had indicated that except in those instances where the fiduciary breach or its correction results in a tax abuse situation or a plan qualification failure, a correction under this Program generally would be acceptable under the Internal Revenue Code.

The Interim VFC Program was designed to address a wide variety of situations where plans have been harmed as a result of possible breaches of fiduciary duty. Section 3, Definitions, made clear that a transaction may be corrected without a determination that there is an actual breach; there need only be a possible breach. In addition, persons who may correct a fiduciary breach include not only any breaching fiduciary, but also plan sponsors, parties in interest or other persons in a position to correct a breach. However, the definition of Under Investigation, along with the criteria set forth in Section 4, Program Eligibility, provided that persons or plans who are the subject of pending investigations for violations of Title I of ERISA, or who appear to have engaged in criminal violations, could not take advantage of the VFC Program. Further, PWBA reserved the right to reject an application when warranted by the facts and circumstances of a particular case.

The Interim VFC Program noted that PWBA believes that it must assess a penalty under section 502(l) of ERISA to the extent that it negotiates relief owed to the plan as a result of a transaction in exchange for a no action letter to the potentially liable persons. Accordingly, the Interim VFC Program was structured so that applicants have the maximum information available to identify eligible transactions and make complete and fully acceptable corrections without discussion or negotiation with the Department.

Section 5, General Rules for Acceptable Correction, set forth issues that are likely to be present with regard to any transaction described in Section 7. For example, Section 5 described how fair market value determinations must be made, how correction amounts must be determined, and what documentation is required for all applications. Section 5 also made clear that the cost of correction must be borne by the applicant and not the plan. In addition, Section 5 stated when notice must be provided to participants and when former employees who have already been cashed out of a plan must also be included in any amount restored to a plan.

Section 6, Application Procedures, specified the requirements for the application, including documentation and the penalty of perjury statement that must be signed by a plan fiduciary with knowledge of the transaction and the applicant's authorized representative, if any. Section 6 was supplemented by Appendix B, the VFC Program Checklist that was designed to help the applicant determine whether he or she has met all of the application requirements, including all necessary documentation, prior to submission to PWBA.

Section 7, Description of Eligible Transactions and Methods of Correction, set forth five types of transactions that may be corrected pursuant to the VFC Program. The first, "Delinquent Participant Contributions to Pension Plans," was included in the Interim VFC Program based on PWBA's experience with the Pension Payback Program. Unlike the Pension Payback Program, the Interim VFC Program did not exempt from excise taxes any violations of section 4975 of the Internal Revenue Code (the Code). PWBA included the other types of transactions based on its enforcement experience. For the interim stage of the VFC Program, PWBA took a conservative approach and limited the eligible transactions to those where the nature of the transaction and the required correction could be described accurately without reference to specific circumstances, and thus could be corrected satisfactorily without consultation and negotiation with PWBA. PWBA sought comments on whether different correction methods or earnings calculation methods should be available in the Program.

Comments on the Interim VFC Program

In General

In general, comments received on the VFC Program were favorable. Commenters expressed support for a formal program that encourages identification and correction of potential breaches of fiduciary duty. Among the advantages cited were increased fiduciary oversight of plans, reduction of litigation costs, and security of benefits.

Some commenters represented generally, however, that the VFC Program contains disincentives to participation. Other commenters stated that Section 2(c)(6) (Other actions not precluded) will deter potential applicants. These comments noted that Section 2(c)(6) does not preclude PWBA from seeking injunctive relief against any person responsible for a transaction, referring information concerning the transaction to the IRS, or imposing civil penalties under section 502(c)(2) of ERISA. Commenters also pointed out that other parties, including participants, could file suit against applicants. Several comments observed that PWBA reserves the right to reject an application if the facts and circumstances warrant, and that PWBA may initiate a civil or criminal investigation in certain cases. Commenters suggested these provisions might discourage potential applicants from participating in the Program.

Several commenters expressed concern that the Department might target VFC Program applicants for investigation. Commenters believe that the lingering risk of enforcement action creates a disincentive for potentially liable parties to identify themselves to the Department. These comments suggested that the Department should offer public assurances that applicants will not be investigated. The commenters also questioned whether the Department would target an applicant plan for other potential violations for which VFC Program relief had not been requested. Commenters suggested the Department should offer VFC Program relief for violations of sections 403 and 404(a) of ERISA if those violations relate to a transaction corrected under the Program.

PWBA believes that the benefits of participating in the VFC Program should outweigh any concern about possible enforcement by the Department in response to an application. As noted in the preamble to the Interim VFC Program, the Department generally does not anticipate taking enforcement action in response to an application except in the unusual situation where PWBA becomes aware of possible criminal behavior, material misrepresentations or omissions in the VFC Program application, or other abuse of the Program. Moreover, although the VFC

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Program does not provide specifically for relief from violations of section 403 and 404 of ERISA, the Department anticipates that as a general matter applicants will have corrected violations of section 403 and 404 that are integrally related to transactions corrected under the Program. PWBA continues to believe, however, that transactions violative of section 403 and 404 are not appropriate for the Program because unlike the transactions selected for the Program, the nature of the corrections required for violations of sections 403 and 404 will vary under the facts and circumstances of the particular transactions, and thus, proper correction is likely to require negotiations subject to the section 502(l) penalty. PWBA encourages plan officials who discover a transaction that is a breach of both section 404 and 406 to make full correction under the Program and to take any additional action necessary to correct the section 404 violations in conjunction with the appropriate regional office. PWBA emphasizes in this regard that only amounts actually negotiated as settlement in excess of those paid under the VFC Program, or otherwise paid to the plan by the correcting officials after discussion with PWBA, are potentially subject to section 502(l) penalties.

Specific Comments

Excise Tax Relief

Several commenters requested that the VFC Program be amended to provide for relief from excise taxes in addition to the Program's relief from ERISA section 502(l) penalties. Commenters noted that the Department granted relief from excise taxes in its Pension Payback Program. Commenters stated that they believed that the possibility of referral by the Secretary of Labor to the Internal Revenue Service as mandated by section 3003 of ERISA and the absence of any relief under the VFC Program from the Code's requirement that excise taxes be paid in full for the transactions at issue would provide significant disincentives for participating in the Program.

As discussed in more detail in the preamble to the Notice of Proposed Class Exemption, published in this issue of the **Federal Register** simultaneously with the adoption of the VFC Program (Class Exemption),[1] PWBA has determined that limited excise tax relief is appropriate for the correction of certain transactions under the Program.

PWBA also notes that applicants who would not otherwise be liable for excise taxes under section 4975(a) of the Code, but who are in a position to correct a breach, are not made liable for excise taxes solely by virtue of their participation in the Program.

Notice to Participants

The majority of commenters requested that PWBA eliminate or reduce the notice requirements in Section 5, General Rules for Acceptable Corrections. Commenters noted that the Department generally does not require notice of correction to participants when the Department resolves investigations through voluntary compliance or lawsuits. Commenters stated that the notice requirement might invite participant litigation concerning the transaction described in a VFC Program application. Other commenters maintained that notice of the correction might erode employee morale, and that participants would receive sufficient notice simply by observing any increase in their account balance. One commenter explicitly supported the notice requirement in the Interim VFC Program.

PWBA believes that informed participants promote the goals of sound plan administration and protection of benefits. PWBA agrees, however, that the original notice requirements could discourage correction through participation in the VFC Program, and therefore eliminate opportunities to protect and restore plan benefits. Accordingly, in the permanent VFC Program, PWBA has omitted those notice requirements specified in section 5(e) of the Interim VFC Program. To the extent that the applicant avails him or herself of excise tax relief under the Class Exemption, however, the notice requirements described therein must be followed. PWBA also expects that if correction under the Program involves an adjustment of account balances or supplemental distributions, the plan will explain to the affected participants and beneficiaries the basis for such adjustment or distribution.

Protection of Participant Privacy Data

Commenters objected to the fact that requiring production on request to participants of the entire application and supporting documents, which was part of the original notice requirement in section 5(e) of the Interim VFC Program, if read literally, could be interpreted to require the production of protected privacy data. Although the notice requirement, which included a notice of the right to obtain a copy of the application, has been eliminated from the Program, PWBA believes that participants have a right to obtain copies of the application and supporting documentation. PWBA believes that it would be required to produce portions of the application under the Freedom of Information Act. Therefore, such information will be made available by PWBA to any participant or beneficiary who formally seeks such information, but no privacy data that would be protected under law will be disclosed. PWBA encourages plan officials to give copies of applications directly to participants, but recognizes that privacy data need not be disclosed.

Voluntary Self-Correction

A number of commenters suggested that PWBA expand the VFC Program to include voluntary self-correction similar to that in IRS Rev. Proc. 2001–16 (now Rev. Proc. 2001–17).[2] These commenters suggested that the VFC Program provide that if a plan official were to correct a transaction in accordance with the Program without making an application, that PWBA would not take action against potentially liable parties if the transaction in question were discovered on audit. Commenters suggested that adding a self-correction option would encourage correction of minor technical breaches by plan officials and would obviate the need for PWBA to process applications for such types of transactions.

PWBA has decided not to include a formal self-correction option in the VFC Program. PWBA believes that an important result under the VFC Program is certainty that applicants have complied with the terms of the Program and have revealed the details of the transaction and the correction under penalty of perjury. PWBA does not believe that it is possible to offer relief under the VFC Program without the opportunity to scrutinize details of the transaction and correction as would be provided in a formal application. Nonetheless, PWBA notes that an ERISA section 502(l) penalty is assessed only on amounts obtained pursuant to a settlement agreement with the Secretary or ordered by a court to be paid in a judicial proceeding instituted by the Secretary under subsection 502(a)(2) or (5). Accordingly, if a potentially liable party were to have corrected a transaction as specified by the Program and the transaction with the correction were later to be discovered on audit, any penalty to be assessed on an applicable recovery amount within the meaning of section 502(l) would be limited to any additional amount that might be required by PWBA to be paid following the audit.[3]

Expansion of the VFC Program To Include Additional Transactions

PWBA sought input from the public on whether the VFC Program should be expanded to include additional transactions. Some commenters believed that the VFC Program should not be limited to specific transactions, but rather should include all types of fiduciary breaches. Other commenters suggested that certain specific transactions be added to the VFC Program. These transactions included plan contracts that result in excessive surrender charges, losses due to a failure to monitor investments, failure to diversify plan investments and problems with Summary Plan Descriptions (SPDs), Form 5500s and qualified domestic relations order (QDRO) administration. PWBA believes that these transactions are not appropriate for the VFC Program because the adequacy of the correction depends on facts and circumstances and therefore is not sufficiently uniform to be described in the Program in a manner that would obviate the need for any negotiation to ensure full correction. In addition, a separate voluntary compliance program (the Delinquent Filer Voluntary Compliance Program) is maintained for resolution of annual reporting (Form 5500 series) compliance issues. After considering the comments, PWBA has decided to maintain the basic structure of the Interim VFC Program and limit relief to the transactions specified. PWBA believes that the transactions currently included in the Program represent those with respect to which plans will maximize recoveries by voluntary correction without requiring negotiation between applicants and the Department. The Program has been expanded to add correction of delinquent employee contributions to both insured and funded welfare plans. PWBA will continue to review the scope of the VFC Program as it gains more experience with administering the Program. In this regard, PWBA invites members of the public to submit additional comments on viable transactions and reasonable methods of correction through the VFC Program for those suggested transactions.

Use of Alternative Correction Methods

PWBA requested input from the public on additional or different correction methods. Commenters generally favored having more flexibility in choosing correction options. After evaluating the comments, however, PWBA continues to believe that giving applicants complete flexibility in choosing correction methods will necessitate a level of review and negotiation by PWBA that would result in a settlement agreement within the meaning of ERISA section 502(l). Accordingly, PWBA will not make any changes to the VFC Program to permit alternative correction methods.

Use of New Prohibited Transactions as an Alternative Correction Method

One commenter suggested, with respect to proposed alternative correction methods, that the VFC Program permit engaging in a new prohibited transaction to correct the breach where the new prohibited transaction is the most viable way to correct the transaction that is the subject of the application. The Interim VFC Program contains correction methods that do not involve engaging in a new prohibited transaction because a new prohibited transaction would require exemptive relief or be subject to excise taxes.

Parties who believe that it is not feasible to correct a transaction through the VFC Program because the only viable correction, in the applicant's opinion, involves a new prohibited transaction may seek voluntary compliance with the Department outside of the VFC Program or may apply for individual relief from the prohibited transaction provisions for the new transaction from the Office of Exemption Determinations. In such circumstances, the corrected transaction would be subject to any applicable excise taxes and ERISA section 502(l) penalties, but the new transaction would not require the payment of excise taxes. PWBA notes in this regard that Prohibited Transaction Exemption 94–71 exempts from excise taxes new prohibited transactions that are used to correct a past transaction where the Department in a written settlement agreement approves the new prohibited transaction. However, PTE 94–71 does not relieve liable parties from excise taxes for the corrected transaction.

Proof of Payment to Missing Individuals Who Are Entitled to Distributions Under the VFC Program

The correction procedures under the Interim VFC Program required applicants to provide evidence that all participants and beneficiaries entitled to an additional distribution have been paid. One commenter noted that it can take a significant amount of time to locate former employees who are not in current pay status with the plan, their beneficiaries, and alternate payees, and suggested that the Program be amended to provide, similar to the IRS correction programs in Rev. Proc. 2001–17, that the applicant be required only to demonstrate that it has segregated funds for missing individuals and is taking appropriate steps to locate and pay those individuals. PWBA agrees that requiring proof of payment to all entitled individuals could significantly delay an applicant's ability to obtain relief under the Program. PWBA therefore has amended Section 5(d) of the VFC Program to require proof of payment only to participants and beneficiaries whose current location is known to the plan and/or applicant. For missing individuals who need to be located, applicants need only demonstrate that they have segregated adequate funds to pay the missing individuals and demonstrate that they have commenced the process of locating those individuals using either the IRS and Social Security Administration locator services, or other comparable means.

Comments Suggesting Changes Where Correction Includes Distribution to Participants

One commenter suggested that because the cost of making the distribution may sometimes exceed the amount of the distribution, PWBA should use a "reasonableness standard" with some flexibility where either the costs of full correction exceed the actual benefit to the plan or it is impossible to make full correction. The Interim VFC Program did not have a *de minimus* exception for making required distributions. Another commenter suggested that the VFC Program be modified to take into account situations where the costs of correction exceed the benefit to the plan. The IRS Rev. Proc. 2001–17 has an exception for making required distributions where the amount of the distribution is less than $20 and the cost of the distribution exceeds the distribution.

PWBA has decided to amend the VFC Program by adding Section 5(e), *De Minimus* Exception, to parallel the IRS

[1] All references to the Class Exemption hereafter include the Proposed Class Exemption until finalized.

[2] The Interim VFC Program referred to IRS Rev. Proc. 2000–16. IRS Rev. Proc. 2001–17 superceded IRS Rev. Proc. 2000–16. For convenience, all references to the IRS correction programs and procedures are to IRS Rev. Proc. 2001–17 and include reference to any subsequent versions in future years.

[3] PWBA notes that if it discovered on audit a prohibited transaction that is subject to section 4975 of the IRC, it would have an obligation under section 3003 of ERISA to make a referral to the IRS. When plan officials desire to correct a prohibited transaction, plan officials should make sure they satisfy the requirements of both the Department of Labor and the IRS.

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correction programs with respect to former employees, their beneficiaries and alternate payees who have neither account balances with, nor a right to future benefits, from the plan. Under the new section 5(e), where correction under the Program requires distributions to such individuals in amounts of less than $20 per individual, and the applicant demonstrates in its submission that the cost of making the distribution exceeds the cost of correction, the applicant need not make distributions to those individuals who have separated from the plan and who would receive less than $20 as part of the correction. Instead, the applicant need only make payment to the plan in the required amount and the payments will be treated as any other payments or credits to the plan that are not allocated to individual accounts.

Another commenter noted that in situations where assets of the plan are overvalued, such as those situations described in section 7(d) of the Interim VFC Program, correction requires the applicant to make good the losses to the plan, without regard to whether assets are recovered from any participants or beneficiaries who might have received an overpayment. That commenter suggested that the VFC Program should be revised to allow plan fiduciaries first to attempt to collect any overpayment from a participant or beneficiary before the applicant is required to restore the amount overpaid to the plan. PWBA has determined not to amend the VFC Program in this regard. PWBA is concerned that encouraging applicants to pursue participants and beneficiaries for excess benefit payments will unduly delay making the plan whole.

Use of Alternative Earnings Calculations

PWBA also requested comments from the public on whether different earnings calculations might be appropriate to correct some or all of the transactions in the Program. Generally, commenters believed that alternative methods should be permitted so long as they provide adequate recovery. Some commenters believed that the methods described in the Program were too rigid. Others believed that certain of the methods provided more relief than could be obtained by the Department in litigation. Evaluation of alternative earnings calculations, however, would require discussions and negotiations between PWBA and the applicant. Thus, PWBA continues to believe that applicants must use the earnings calculation methods described in the VFC Program in order to obtain relief under the Program and has not amended the Program in this regard.

PWBA also received comments on certain specific aspects of the earnings calculations for the Program. PWBA notes that the correction methods, including earnings calculations in the Program, are fairly closely patterned on those in the IRS correction methods for prohibited transactions (*see* 26 CFR 53.4941(e)–1(c)) and in the IRS correction programs (Rev. Proc. 2001–17).

One commenter suggested that using the Internal Revenue Code section 6621 rate as a "floor" provided an inappropriate windfall to the plan. According to the commenter, profits made on the use of the plan funds rather than the loss to the plan should only be required where there is proof of a causal connection between the use of the funds and the profits gained by the breaching party. PWBA has determined not to amend the Program in this regard. Section 409 of ERISA provides that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to the plan any losses to the plan resulting from each breach, and to restore to the plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary. The VFC Program is structured to make the plan whole without the need for investigation and suit and the costs attendant thereto in exchange for relief from penalties under section 502(l).

Another commenter suggested that for an ERISA section 404(c)-type plan, it would be more appropriate to use a blended rate, as opposed to the highest rate of return, if, for administrative convenience as was permitted under the Interim VFC Program, the applicant was not using the actual return an individual participant would have earned based on his or her investment allocations. PWBA notes that IRS Rev. Proc. 2001–17, Appendix B, permits IRS program applicants to use the highest rate of return for administrative convenience when adding funds to a plan participant's account as part of a correction. Rev. Proc. 2001–17 provides, however, that the employer correcting the violations may use the blended overall return for the plan only if a plan participant has not made any investment allocations and funds are being added to his or her account as part of the correction. PWBA has decided to amend Section 5(b)(5) of the VFC Program to track more closely the IRS correction programs. The VFC Program is modified to permit the use of a blended rate for affected participants who have not made any investment allocations. Where participants have made elections, the applicant must still either calculate the actual rate of return or use the investment with the highest rate of return among the designated broad range of investment alternatives available to the participants.

Certain commenters, as well as applicants who have participated in the Interim VFC Program, identified ambiguities in the earnings calculation methods for lost earnings with respect to delinquent participant contributions to pension plans. PWBA recognizes that calculating lost earnings, particularly for delinquent contributions to 401(k) plans, may be complicated, depending on the length of the delinquency, the number of investment options and the performance of those options. PWBA has elected not to change the VFC Program with respect to the earnings calculations; it believes that only a general formula will address the myriad situations that may arise. PWBA has however, slightly modified the examples to eliminate some references to annualized yields for short correction periods to lessen any possible confusion in applying the principles set forth in the examples. Nonetheless, PWBA recognizes that there may be situations, depending on the duration of the delinquency and the information available to the correcting officials regarding investment performance, where use of a fraction of an annualized yield may be appropriate.

Form 5500 Filings Associated With VFC Program

PWBA received several comments with respect to Form 5500 filings associated with the VFC Program. Commenters generally were concerned that they not be subject to penalties for improper filings if they filed an amended return in connection with the VFC Program. One commenter suggested that the Delinquent Filer Voluntary Compliance Program be consolidated with the VFC Program. Another commenter suggested that there be no penalties associated with any filings required by the VFC Program. One commenter suggested that PWBA eliminate any requirement for filing amended returns to reflect the transactions corrected by the VFC Program.

PWBA has decided to keep the filing requirements associated with the VFC Program as published in the Interim VFC Program. PWBA believes that where a plan has engaged in a prohibited transaction or plan assets have been valued improperly, Forms 5500 must be amended to reflect these

important reporting items. PWBA notes that filing an amended return for these purposes will not trigger a penalty, and accordingly, there is no need to provide special relief under section 502(c)(2). Penalties attach under section 502(c)(2) for delinquent and non-filers. If a plan has filed a return that is inadequate, PWBA can reject the return. If the filer does not correct the return within 45 days of rejection by the Office of the Chief Accountant, PWBA may then assess a penalty. PWBA does not anticipate that amended Forms 5500 filed to reflect transactions or valuations corrected in accordance with the terms of the VFC Program will be subject to rejection for those amendments alone.

The Delinquent Filer Voluntary Compliance Program, as currently operated, applies only to delinquent and non-filers. PWBA anticipates that applicants under the VFC Program will need only to amend their previously filed Forms 5500 to the extent the prohibited transactions or improper valuations were not reported adequately. Accordingly, there is no need to merge the two programs. Nonetheless, if a plan has filing problems and transactions that could be corrected through the VFC Program, all of which need to be corrected, plan officials may wish to consider applying to both programs simultaneously.

Anonymous Presubmissions

Commenters suggested that the public would benefit from the ability of potentially liable parties to presubmit applications anonymously to PWBA prior to filing a formal application for relief under the Program. Certain commenters suggested that if the determination as to the type of transaction to be included in an application and the correction method to be used were negotiated on an anonymous basis, PWBA could negotiate the precise relief necessary without engaging in a settlement agreement within the meaning of section 502(l). PWBA does not believe that it is either practical or appropriate to amend the VFC Program to provide for a formal anonymous presubmission process. A formal process would result in duplicative effort and could be cumbersome to administer. In addition, PWBA believes that negotiation of the type of transaction and the appropriate correction could lead to a settlement within the meaning of section 502(l) even if the negotiations took place on an anonymous basis. PWBA notes that each regional PWBA office has a VFC Program Coordinator. Members of the public are free to contact the VFC Program Coordinator and discuss on an informal, hypothetical basis general issues regarding the scope of the Program, including the types of transactions appropriate for an application and the types of correction that would satisfy the Program.

Ability To Amend Application To Avoid Final Rejection

One commenter requested that the VFC Program expressly provide for amendment of applications. The commenter suggested that Plan Officials be given the opportunity to conduct their own compliance reviews after submitting a preliminary application outlining suspected but uncorrected breaches. The comment stated that such a procedure would enable fiduciaries to resolve known and undiscovered breaches during the compliance review. The commenter suggested that the Department defer any enforcement action pending its receipt of the final application. The commenter also suggested that the VFC Program provide that if the Department intended to reject an application, it provide notice to the applicant, the basis for rejection, and a deadline for correcting deficiencies. The Department believes a formal procedure for amendment of applications as proposed by the commenter is not necessary. The Department emphasizes that the VFC Program includes no limitations on amendment of applications provided such change does not result from negotiation with PWBA. Accordingly, PWBA does not believe it is necessary to amend the VFC Program to provide for a formal procedure. In its administration of the VFC Program, PWBA anticipates providing applicants sufficient opportunity, as the circumstances warrant, to correct defects.

Tolling Agreements

One commenter suggested that certain applicants might desire to enter into tolling agreements with PWBA. This commenter requested that tolling agreements be made part of the VFC Program. PWBA believes that only in rare situations would it be necessary to use tolling agreements in connection with the VFC Program. PWBA believes that in most situations, the transaction that is the subject of the application will be fully corrected in accordance with the VFC Program and there will be no extenuating circumstances that would warrant a tolling agreement with respect to the transaction or related transactions. However, in situations where an applicant believes that it will need additional time to complete an application or to file additional applications for related transactions, PWBA will consider entering into tolling agreements with the applicant. The mere fact that an applicant has entered into a tolling agreement with respect to a transaction or transactions ultimately corrected pursuant to a formal application under the VFC Program will not itself take the application out of the VFC Program and subject the applicant to the possibility of the imposition of section 502(l) penalties. PWBA does not believe, however, that it is necessary to amend the VFC Program formally to permit or require tolling agreements.

Whether Persons Other Than the Applicant Should Be Entitled to Relief Under the VFC Program

Various commenters expressed concern that the relief under the VFC Program was limited to the Program applicant and was not extended to all persons who might have participated in the breach. PWBA does not believe that it is appropriate to extend relief to persons who have not participated in the application process. The application process requires persons in a position to correct the breach to evaluate the transaction and correction and to attest under penalty of perjury as to the accuracy of the application, including whether the correction has been made in accordance with the VFC Program. PWBA notes that more than one party can submit an application. Thus, for example, if a plan sponsor, as the named fiduciary, decides to correct a transaction, and all the plan fiduciaries involved in the transaction join in the submission of the application, including executing the penalty of perjury statement, the relief provided under the VFC Program would extend to all the fiduciaries participating in the application. The Program has been amended to make clear that any number of Plan Officials may be applicants who sign the penalty of perjury statement.

Penalty of Perjury Statement

PWBA received numerous comments that the penalty of perjury statement (Section 6(g)) needed clarification. Several comments noted that the penalty of perjury statement appears to be broader than the eligibility standards (Section 4, VFC Program Eligibility). One commenter questioned why both a plan fiduciary with knowledge of the transaction and the applicant's authorized representative (if any) must sign and date the statement. The commenter represented that the transaction at issue would typically be beyond the personal knowledge of the representative. PWBA has decided to retain the language of the original

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penalty of perjury statement. The penalty of perjury statement, eligibility provisions, and PWBA's reservation of the right to reject an application when warranted by facts and circumstances are all intended to help the potential applicant evaluate whether participation in the VFC Program is appropriate. PWBA believes these provisions are necessary to limit its review to the application only and to avoid follow-up investigations that could render the Program less efficient and focused. PWBA believes the review and signature of the authorized representative is a necessary safeguard that presents an insignificant burden.

Scope of the Term "Under Investigation"

PWBA received several comments requesting clarification of Section 3(b)(3) (Under Investigation) of the VFC Program. In response to the comments, PWBA is amending the definition of Under Investigation to clarify that the definition does not include work paper reviews initiated by PWBA's Office of Chief Accountant under authority of section 504(a) of ERISA. Although PWBA is not making any further amendments to the definition, PWBA also notes, by way of clarification, that a party is Under Investigation if it has received oral or written notification from PWBA of a PWBA investigation of the plan concerning any issue. However, a plan is not Under Investigation if PWBA staff have contacted a Plan Official or representative in connection with a participant complaint that does not relate to a transaction described in the VFC Program application.

Required Documentation Under the VFC Program

Commenters suggested that various types of documentation required by the VFC Program are unnecessary or overly burdensome. One commenter suggested that there is no reason to require the provision of a fidelity bond. Another commenter questioned the need to provide a copy of the entire plan document as part of the application and suggested that providing the relevant portion of the plan should be adequate. PWBA has determined to retain generally all of the documentation requirements of the VFC Program. The documentation is necessary for PWBA to evaluate fully the application and the transaction at issue. However, PWBA believes that streamlining the documentation requirements may encourage additional participation in the VFC Program. Accordingly, PWBA is eliminating the requirement in Section 6(e)(i) of the Interim VFC Program that applicants produce a copy of the fidelity bond. Instead, Section 6(e)(i) of the VFC Program now provides that applicants need only identify in their application the current fidelity bond that meets the requirements of section 412 of ERISA. In addition, the Program is amended to require only production of relevant portions of the plan with the initial application. There may be situations where PWBA will want to examine additional provisions of the plan when reviewing the application. Accordingly, the VFC Program now provides that as part of the application process, applicants may be required to produce the entire plan document on request.

Departmental Approval of Preventive Measures Taken by Applicants

Section 2(c)(2) (Effect of the VFC Program—No implied approval of other matters) states that a no action letter does not imply approval of steps that fiduciaries take to prevent recurrence of the breach described in an application and to ensure future compliance with Title I of ERISA. Appendix B (VFC Program Checklist) at item 12 asks whether the plan has implemented measures to ensure that the transactions specified in the application do not recur. Appendix B states that PWBA will not opine on the adequacy of these measures. One commenter requested that Plan Officials be given the opportunity to request and obtain PWBA's approval of preventive measures. PWBA believes such a procedure is beyond the scope of the VFC Program. A VFC Program application is an insufficient record upon which this type of opinion could be rendered, and PWBA designed the Program to avoid conducting additional inquiries.

Required Use of Independent and Expert Evaluations and Written Appraisals

Each of the Loan and Purchase, Sale, and Exchange corrections described in Section 7(b) and (c) of the Interim VFC Program requires that an independent party provide a specific determination or report. Additionally, the correction of Benefits and Plan Expenses transactions described in Sections 7(d) and (e) requires action by an independent appraiser and an estimator, respectively. Commenters generally represented that these requirements were unnecessary and impractical. One commenter suggested that PWBA clarify that ERISA does not mandate independent written appraisals prior to the sale of an asset that is not publicly traded. Another comment suggested that certification by the applicant or other alternative evidence of a fair market interest rate should suffice. The VFC Program's principle of independence derives in part from PWBA's prohibited transaction exemption program. PWBA believes the requirement for a neutral, qualified independent party is an established and proper safeguard. The unilateral nature of PWBA's application review also compels the requirement of an independent judgment. An objective of the Program is that PWBA need not audit the circumstances of the transaction and its correction. The VFC Program is designed to provide a record free of any appearance of self-dealing or imprudence in the correction of transactions. Accordingly, PWBA has decided not to amend the requirements for the use of independent and expert evaluations and appraisals.

The Revised VFC Program

The VFC Program as adopted here retains the same basic structure as the Interim VFC Program, while adding two new transactions. The effect of the VFC Program, the eligibility requirements, and the application procedures are unchanged. As discussed in more detail above in the responses to specific public comments, the major changes to the Program are the proposal to provide relief from some excise taxes associated with transactions that can be corrected under the Program and the elimination of the requirement of notice to participants, as described in Section 5(e) of the Interim VFC Program. As stated previously, where the applicant is eligible for and elects to take advantage of the excise tax relief available under the Class Exemption, the separate notice requirements of the Class Exemption must be met. The documentation requirements have been simplified to permit applicants to provide a statement that they have a fidelity bond, rather than provide a copy of the bond itself. Additionally, applicants need only submit relevant portions of the applicable plan documents with the application, rather than the entire plan document.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action would create a novel method for accomplishing compliance while reducing regulatory burdens and making effective use of federal resources. As such, this notice is consistent with the principles of the Executive Order. Therefore, this action is "significant" and subject to OMB review under section 3(f)(4) of the Executive Order.

In the Department's view, the benefits of the VFC Program will substantially outweigh its costs, because participation is voluntary, the administrative cost of correcting a potential fiduciary breach through voluntary participation in the Program is lower than the cost of a correction resulting from investigation and litigation, and the value and security of the assets of plans participating in the Program will be increased.

No costs are imposed by the VFC Program unless Plan Officials choose to avail themselves of the opportunity to correct a potential fiduciary breach under the terms of the Program. Because the decision to participate in the VFC Program is made by the relevant Plan Officials, participation is expected to occur only when the projected benefit outweighs the anticipated cost for the plan. The costs of electing to correct potential breaches of fiduciary responsibility under the terms of the VFC Program are expected to arise from the requirement for those participating in the VFC Program to obtain fair market value determinations, computations of losses or profits on the use of plan assets, the administrative costs of supplemental distributions, recomputations of account balances, transaction costs for disposal of assets, and the description and documentation of the correction for purposes of the application to the Department.

The value of assets or losses restored to employee benefit plans as a result of Plan Officials' participation in the VFC Program is viewed as a transfer from a fiduciary or other party in interest to the participants and beneficiaries of the plan. Plan Officials may not transfer the costs of compliance with the terms of this VFC Program to participants and beneficiaries.

The principal benefit of this VFC Program accrues to participants and beneficiaries through restoration of losses to the plan or reversal of impermissible transactions involving the assets of the plan, resulting in greater security of their plan assets. Benefits also accrue to plan fiduciaries through both risk reduction and the savings of civil penalties that would otherwise be payable on the amount of assets recovered by plans following a civil investigation or litigation. Where the Department determines that it will take no civil enforcement action and recommend no further legal action in response to a completed application under the VFC Program, the fiduciary is relieved of potential demands on its resources that might be imposed by a civil investigation and any subsequent litigation.

The VFC Program also allows the Department to encourage compliance with Part 4 of Title I of ERISA while making even more effective use of its limited enforcement resources. The Department believes that the correction of violations through the VFC Program is less costly than correction through active intervention, and that VFC Program applicants have a high likelihood of accomplishing an appropriate correction of a potential violation. To the extent that Plan Officials who wish to correct potential violations do so voluntarily and appropriately, the Department may direct its resources toward other areas where active intervention is more likely to be necessary.

More generally, publication of the specific examples of transactions which may violate ERISA and the activities required to correct those violations will serve to better inform plan fiduciaries and assist them in satisfying their fiduciary obligations in future transactions involving plan assets.

Under the Interim VFC Program, the total benefit to participants and beneficiaries is estimated at approximately $80 million, while the benefit to Plan Officials, to the extent it can be quantified, is estimated at $5.4 million. The Department originally estimated the cost of the Interim VFC Program for the Plan Officials who chose to participate at $1.9 million. Because the Department has amended the VFC Program by streamlining documentation requirements, the overall benefits and costs of the Program as adopted vary from those proposed in the Interim VFC Program only to the extent that the estimated cost for applying to the Program for 700 Plan Officials has been reduced to $1.8 million as a result of the modification in the documentation requirements. Under the Interim VFC Program, initial estimates of costs and benefits were based on the upper bound of the number of Plan Officials that might avail themselves of the Program based on the transactions eligible for correction. Because the actual number of Plan Officials that have taken advantage of the program, averaged over a nine-month period, has not contradicted the original estimates, the Department continues to believe that 700 Plan Officials remains a reasonable estimate of the number of applicants that will avail themselves of the VFC Program. The number of Program participants during the initial months of the Program has been lower than originally projected. However, the addition of a transaction to the permanent Program, the availability of the related exemption, and the elimination of the notice requirement except for that in the related exemption, is expected to increase participation.

Finally, these figures do not include an estimate of the potential benefit to Plan Officials of the reduced risk of investigation and litigation, or the benefit to the Department, to participants and beneficiaries, and to the public in general of realizing efficiencies in the use of enforcement resources because these elements are not readily quantifiable. Because this VFC Program is voluntary, the Department assumes that Plan Officials will in no event make use of the VFC Program unless the projected benefit outweighs the estimated cost of participation.

A discussion of the elements of the costs and benefits of this VFC Program and estimates of their magnitude where they can be specifically quantified follows. Based on the Department's previous experience with the Pension Payback Program, in which approximately 0.1 percent of plans that permitted employee contributions elected to participate during the six-month period when the Pension Payback Program was in effect, the Department projects that Plan Officials of approximately 700 plans will apply for and use the VFC Program. The Department expects a similar rate of participation among the approximately 200,000 plans that currently permit employee contributions. However, it assumes the participation by Plan Officials of 200 plans will occur over an

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annual period in the absence of the six-month time limitation included in the Pension Payback Program. Because the VFC Program permits correction of several other types of transactions in addition to the repayment of delinquent employee contributions, the Department has assumed that the annual rate of participation in the VFC Program by Plan Officials of plans other than those which permit employee contributions will be comparable to the 0.1 per cent assumed for those which permit employee contributions, resulting in participation by Plan Officials of about 500 additional plans, and total participation of 700 plans. The Department views this estimate as an upper bound; actual participation may be somewhat smaller depending on the cost effectiveness of correcting the actual transactions involved, the complexity of the legal and factual issues involved in a given transaction, and the degree of similarity between a specific transaction representing a breach of fiduciary responsibility and a transaction and correction described by the terms of the VFC Program. The Department recognizes that Plan Officials may not view the VFC Program as offering a cost-effective means of correcting all potential violations.

The Department also estimates that $80 million, or an average of $114,300 per plan, will be recovered by plans annually as a result of participation in the VFC Program. Based on its enforcement experience, the Department estimates that about 70 per cent of this total, or $56 million, will consist of restored principal and earnings losses, and restored profits on the use of plan assets by fiduciaries or parties in interest. The total estimated recovery represents the midpoint between the average monetary recovery (excluding assets recovered through litigation) per plan that resulted from civil investigations completed by the Department in the year ended September 30, 1998, and the average per plan monetary recovery which arose from the Pension Payback Program, as applied to the 700 plans assumed to elect to participate in the VFC Program. The Department believes this estimate is reasonable in light of the range of transactions which may be corrected under the VFC Program. It is estimated that approximately 88,000 participants, or an average of 126 participants per plan, will be affected annually by corrections under the VFC Program.

Based on its recent experience with the collection of civil penalties under section 502(l), the Department estimates that Plan Officials will be relieved of approximately $5.4 million in civil penalties as a result of correction of transactions through the VFC Program. This estimate is based on the 700 plans assumed to participate, and the average 502(l) penalty actually collected per plan subject to the penalty in the last two fiscal years. Actual collections take into account the offset of any excise tax payable as a result of a violation of section 4975 of the Code. Relief from section 4975 excise taxes under the Code is available to Plan Officials under the newly proposed Class Exemption to Permit Certain Transactions identified in the Voluntary Fiduciary Correction Program, also published simultaneously in this issue of the **Federal Register** (Application No. D–10933).

The costs for Plan Officials to participate in the VFC Program arise from a range of possible required activities depending on the nature of the transaction to be corrected, including evaluation by Plan Officials and their professionals of the need and usefulness of participation in the VFC Program, obtaining market value determinations, executing asset transactions, adjusting account balances and benefit distributions, documenting the correction, and completing and mailing the application to participate in the Program. The Department anticipates that Plan Officials will in most cases seek the services of a professional (typically an attorney, accountant, or professional administrator) to conduct the applicable activities, although the resources of Plan Officials are expected to be needed as well to gather information, and prepare, sign, and photocopy the application. It is estimated that the entire correction will require approximately 39 hours to complete, including 8 hours of the Plan Official's time, and 31 hours of a professional's time.

At the assumed rate of participation, the total cost of these activities is estimated to amount to $1.8 million (or an average of $2,600 per Plan Official), at an average cost of $57 per hour for work performed in house by Plan Officials and their employees, and a rate of $70 per hour for purchased services. This estimate also includes application materials and mailing costs.

Paperwork Reduction Act

At the time of publication of the Interim VFC Program in the **Federal Register** (65 FR 14164, Mar. 15, 2000), the Department submitted to OMB the information collection request (ICR) included in the Interim VFC Program using emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). Although the Department requested emergency review of the ICR by April 14, 2000, and OMB granted approval of the ICR through September 30, 2000, the Department continued to receive comments until May 15, 2000. The OMB number assigned to the ICR is 1210–0118. The Department subsequently applied for and was granted approval by OMB for an extension of the information collection request. The current OMB approval for this ICR will expire on November 30, 2003. Based on comments received from the public after the Notice in the **Federal Register** and additional consideration by the Department, modifications in the documentation and notification requirements were made to the Interim VFC Program. No comments were received in response to the Department's solicitation of comments concerning the ICR included in the Interim VFC Program. The changes in the hour and cost burdens reflected below are therefore the result of changes made by the Department to the VFC Program as adopted.

The VFC Program permits Plan Officials voluntarily to correct certain potential violations of Part 4 of Title I of ERISA, resulting in the receipt of a "no action" letter from the Department signifying that the applicant had been relieved of the possibility of civil investigation for that breach and/or civil action by the Secretary with respect to that breach, as well as the imposition of civil penalties under section 502(l) of ERISA. Comments received, however, requested that the Department also consider granting relief from the excise taxes imposed on prohibited transactions under section 4975 of the Code because the taxes were considered by Plan Officials to be a disincentive for participation in the VFC Program. In response, the Department is publishing simultaneously the proposed Class Exemption.

Under the Interim VFC Program, notification to interested persons of the application and correction of the eligible transaction was considered a condition for obtaining a "no action" letter. A number of commenters, however, observed that a notice of correction was not generally required by the Department in other circumstances where corrections have occurred and that notification was therefore unnecessary and burdensome. While the Department agreed to remove the notice requirement from the VFC Program, the Department also determined that where a Plan Official intended to seek relief from section 4975 of the Code, interested persons should be made aware of the material facts of the eligible transaction and the resulting correction. Therefore, under the VFC Program as adopted, the notice requirement has been eliminated as a part of the application process; however, a notice requirement has been included among the conditions for relief under the Class Exemption. For purposes of the PRA, the ICR previously described under the Interim VFC Program has been revised to indicate that notification is now a requirement under the Class Exemption rather than under the VFC Program as implemented on a permanent basis. Because the Class Exemption is only used in connection with the VFC Program, the Class Exemption also published simultaneously herewith is treated for purposes of the PRA as a modification of the information collection requirements of the VFC Program.

Based on additional observations received from commenters, the Department has also reduced the documentation required to be included with an application. Proof of bonding, formerly indicated by including a copy of the bond with the application, has been simplified by permitting a Plan Official to simply state in the application that the plan has a current fidelity bond that meets the requirements of section 412 of ERISA. Finally, the Program has been amended to require only production of relevant portions of the employee benefit plan, instead of a copy of the entire plan, with the initial application.

The ICR included in the VFC Program as adopted requires a Plan Official to describe the correction of the potential breach of fiduciary duty and to provide supporting documentation with respect to the correction. The type of supporting documentation will vary with the nature of the transaction involved, but is described in this VFC Program in as specific a manner as feasible. The Plan Official is also required to complete an application, which includes identification of the employee benefit plan and the Plan Official, or representative, relevant plan documents, a statement under penalty of perjury, and signature. Under certain circumstances, for instance if the correction under the Program involves an adjustment of account balances or supplemental distributions for participants or beneficiaries, the plan is expected to explain the basis for the adjustment or distribution. Because plans regularly report to participants or beneficiaries on changes in their account balance, the Department has not attributed an additional cost for disseminating this information. The information submitted to the Department will permit the Department to verify the correction of potential fiduciary breaches and restoration of losses, to evaluate the adequacy of actions taken by a Plan Official pursuant to the VFC Program, and to determine whether further action is necessary to protect the rights of participants and beneficiaries.

It is estimated that Plan Officials of 700 employee benefit plans will avail themselves of the opportunity to correct potential violations pursuant to the VFC Program. The Department estimates that approximately 8 hours of a Plan Official's time will be required to assemble documents and complete and sign the application to participate in the VFC Program. For 700 Plan Officials, the total hour burden is 5,600 hours. At a cost of $57 per hour for a financial manager's time, the administrator most likely to compile the necessary documents, the cost of the hour burden is $319,200.

It is further assumed that evaluation, correction, and documentation of transactions under the VFC Program will require approximately 31 hours, and that Plan Officials will generally elect to hire service providers to complete this work. The Department originally allotted six hours of a service provider's time for the completion of work attributed to the information collection. This included preparing descriptions and documentation, copying relevant supporting statements, and completing the application. Based on comments received on the Interim VFC Program, the Department has reduced the amount of supporting documentation required for the application process (i.e., requiring that only relevant parts of plan documents be submitted and acknowledging that a statement fidelity bonding is sufficient to replace a copy of the bond) and removed the notice requirement from the VFC Program as adopted and included it with the proposed exemption. Because of the changes in document production and notification, the Department has reduced by one hour the number of hours expected to be associated with information collection by service providers under the Program as adopted. Based on the reduction from six to five hours for purchased services, and at an assumed hourly rate of $70 per hour, the total estimated cost to 700 Plan Officials is $246,400. This includes an allowance of $2 per application for materials and mailing costs.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 700.

Total Responses: 700.

Estimated Burden Hours: 5,600 for existing ICR.

Estimated Annual Costs (Operating and Maintenance): $246,400.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

This document reflects an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply. However, PWBA considered the potential costs and benefits of this action for small plans and their Plan Officials in developing the VFC Program.

PWBA generally considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans, which cover fewer than 100 participants. However, because the VFC Program specifically prohibits the cost of participation from being borne by the plan and participants, this Program will impose no costs on the plans, which realize the benefits of the correction of potential violations. Costs will be borne instead by the Plan Officials of an estimated 700-employee benefit plans each year. Plan Officials may include both individual fiduciaries, plan sponsors, or parties in interest, and businesses in their roles as fiduciaries, plan sponsors, or parties in interest.

Although the number of Plan Officials of small plans that will elect to avail themselves of the opportunity to correct potential breaches of fiduciary duty under the terms of the VFC Program is not known, the potential costs and benefits to each Plan Official are summarized below, on the basis of the assumption that each of the participating Plan Officials will itself be a small entity.

Participation in the VFC Program is entirely voluntary, and as such, it is assumed that Plan Officials will elect to participate only when the potential benefits to a Plan Official are expected to exceed the cost of participation. Benefits may include the reduction of exposure to the risk of investigation and subsequent litigation, the potential cost of which cannot be specifically

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quantified, and the saving of penalties under section 502(l) of ERISA which would otherwise be payable on amounts required to be restored to plans by fiduciaries pursuant to a settlement agreement with the Department or court order.

As described in detail above, to the extent that the per small Plan Official costs and benefits of participation in the VFC Program can be quantified, assuming all participating Plan Officials are small entities, administrative costs of participation are estimated to amount to an average of $2,600 per Plan Official, while savings of section 502(l) penalties are estimated at $7,754 per Plan Official. While the average value of assets estimated to be restored to a plan as a result of participation in the VFC Program ($114,300 per plan) may be viewed as an expense by Plan Officials, the Department believes that this expense arises from a previously occurring breach of fiduciary duty rather than from participation in the VFC Program. The fiduciary's potential liability for a breach of fiduciary duty and the cost of remedial relief are expected to be comparable regardless of whether a violation is corrected under the terms of the VFC Program or as a result of an investigation and any subsequent litigation.

On this basis, Plan Officials of small plans electing to correct previously occurring fiduciary breaches through participation in the VFC Program are expected to derive a net benefit, even without consideration of the potential savings associated with the reduction of risk of exposure of its resources in connection with an investigation or litigation. Because penalties and additional resource demands are often relatively more burdensome for small entities than large, the Department views the VFC Program as offering a flexible and economically advantageous alternative to currently available methods of correcting potential breaches of fiduciary duty.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this regulatory action does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding Federalism. The order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any action, which would restrict state policy options or impose substantial direct compliance costs on state and local governments, and take such action only when there is clear constitutional authority and the presence of a problem of national significance. Since this rule does not limit state policy options or impose costs on state and local governments, it does not have federalism implications, and thus Executive Order 13132 does not require a certification that the VFC Program complies with the order.

Congressional Review Act

The VFC Program is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The program is not a "major rule" as that term is defined in 5 U.S.C. 804 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Voluntary Fiduciary Correction Program

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Section 1. Purpose and Overview of the VFC Program

The purpose of the VFC Program is to protect the financial security of workers by encouraging identification and correction of transactions that violate Part 4 of Title I of ERISA. Part 4 of Title I of ERISA sets out the responsibilities of employee benefit plan fiduciaries. Section 409 of ERISA provides that a fiduciary who breaches any of these responsibilities shall be personally liable to make good to the plan any losses to the plan resulting from each breach and to restore to the plan any profits the fiduciary made through the use of the plan's assets. Section 405 of ERISA provides that a fiduciary may be liable, under certain circumstances, for a co-fiduciary's breach of his or her fiduciary responsibilities. In addition, under certain circumstances, there may be liability for knowing participation in a fiduciary breach. In order to assist all affected persons in understanding the requirements of ERISA and meeting their legal responsibilities, PWBA is providing guidance on what constitutes adequate correction under Title I of ERISA for the breaches described in this Program.

Section 2. Effect of the VFC Program

(a) *In general.* PWBA generally will issue to the applicant a no action letter[4] with respect to a breach identified in the application if the eligibility requirements of Section 4 are satisfied and a Plan Official corrects a breach, as defined in Section 3, in accordance with the requirements of Sections 5, 6 and 7. Pursuant to the no action letter it issues, PWBA will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no action letter, or assess a civil penalty under section 502(l) of ERISA on the correction amount paid to the plan or its participants.

(b) *Verification.* PWBA reserves the right to conduct an investigation at any time to determine (1) the truthfulness and completeness of the factual statements set forth in the application and (2) that the corrective action was, in fact, taken.

(c) *Limits on the effect of the VFC Program.* (1) *In general.* Any no action letter issued under the VFC Program is limited to the breach and applicants identified therein. Moreover, the method of calculating the correction amount described in this Program is only intended to correct the specific breach described in the application. Methods of calculating losses other than, or in addition to, those set forth in the Program may be more appropriate, depending on the facts and circumstances, if the transaction violates provisions of ERISA other than those that can be corrected under the Program. In this regard, the Program assumes, for example, that the transaction is otherwise an appropriate investment decision for the plan. If a transaction gave rise to violations not addressed in the Program, such as imprudence not addressed in the Program or a failure to diversify plan assets, the relief afforded by the Program would not extend to such additional violations.

(2) *No implied approval of other matters.* A no action letter does not imply Departmental approval of matters not included therein, including steps that the fiduciaries take to prevent recurrence of the breach described in the application and to ensure the plan's future compliance with Title I of ERISA.

(3) *Material misrepresentation.* Any no action letter issued under the VFC Program is conditioned on the truthfulness, completeness and accuracy of the statements made in the application and of any subsequent oral and written statements or submissions. Any material misrepresentations or omissions will void the no action letter, retroactive to the date that the letter was issued by PWBA, with respect to the transaction that was materially misrepresented.

(4) *Applicant fails to satisfy terms of the VFC Program.* If an application fails to satisfy the terms of the VFC Program, as determined by PWBA, PWBA reserves the right to investigate and take any other action with respect to the transaction and/or plan that is the subject of the application, including refusing to issue a no action letter.

(5) *Criminal investigations not precluded.* Compliance with the terms of the VFC Program will not preclude:

(i) PWBA or any other governmental agency from conducting a criminal investigation of the transaction identified in the application;

(ii) PWBA's assistance to such other agency; or

(iii) PWBA making the appropriate referrals of criminal violations as required by section 506(b) of ERISA.[5]

(6) *Other actions not precluded.* Compliance with the terms of the VFC Program will not preclude PWBA from taking any of the following actions:

(i) Seeking removal from positions of responsibility with respect to a plan or other non-monetary injunctive relief against any person responsible for the transaction at issue;

(ii) referring information regarding the transaction to the IRS as required by section 3003(c) of ERISA; [6] or

(iii) imposing civil penalties under section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500. Applicants should be aware that amended annual report filings may be required if possible breaches of ERISA have been identified, or if action is taken to correct possible breaches in accordance with the VFC Program.

(7) *Not binding on others.* The issuance of a no action letter does not affect the ability of any other government agency, or any other person, to enforce any rights or carry out any authority they may have, with respect to matters described in the no action letter.

(8) *Example.* A plan fiduciary causes the plan to purchase real estate from the plan sponsor under circumstances to which no prohibited transaction exemption applies. In connection with this transaction, the purchase causes the plan assets to be no longer diversified, in violation of ERISA section 404(a)(1)(C). If the application reflects full compliance with the requirements of the Program, the Department's no action letter would apply to the violation of ERISA section 406(a)(1)(A), but would not apply to the violation of section 404(a)(1)(C).

(d) *Correction.* The correction criteria listed in the VFC Program represent PWBA enforcement policy and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person who purports to correct a violation. Applicants are advised that the term "correction" as used in the VFC Program is not necessarily the same as "correction" pursuant to section 4975 of the Code.[7] Correction may not be achieved under the Program by engaging in a new prohibited transaction.

(e) *PWBA's authority to investigate.* PWBA reserves the right to conduct an investigation and take any other enforcement action relating to the transaction identified in a VFC Program application in certain circumstances, such as prejudice to the Department that may be caused by the expiration of the statute of limitations period, material misrepresentations, or significant harm to the plan or its participants that is not cured by the correction provided under the VFC Program. PWBA may also conduct a civil investigation and take any other enforcement action relating to matters not covered by the VFC Program application or relating to other plans sponsored by the same plan sponsor, while a VFC Program application involving the plan or the plan sponsor is pending.

(f) *Confidentiality.* PWBA will maintain the confidentiality of any documents submitted under the VFC Program, to the extent permitted by law. However, as noted in (c)(5) and (6) of this section, PWBA has an obligation to make referrals to the IRS and to refer to other agencies evidence of criminality and other information for law enforcement purposes.

Section 3. Definitions

(a) The terms used in this document have the same meaning as provided in section 3 of ERISA, 29 U.S.C. section 1002, unless separately defined herein.

[4] See Appendix A.

[5] Section 506(b) provides that the Secretary of Labor shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of Title I of ERISA and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of Title 18 of the United States Code.

[6] Section 3003(c) provides that, whenever the Secretary of Labor obtains information indicating that a party in interest or disqualified person is violating section 406 of ERISA, she shall transmit such information to the Secretary of the Treasury.

[7] See section 4975(f)(5) of the Internal Revenue Code (IRC); section 141.4975–13 of the temporary Treasury Regulations and section 53.4941(e)–1(c) of the Treasury Regulations. The Internal Revenue Service has indicated that except in those instances where the fiduciary breach or its correction result in a tax abuse situation or a plan qualification failure, a correction under this Program generally will be acceptable under the Internal Revenue Code.

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(b) The following definitions apply for purposes of the VFC Program:

(1) *Breach.* The term "Breach" means any transaction which is or may be a breach of the fiduciary responsibilities contained in Part 4 of Title I of ERISA.

(2) *Plan Official.* The term "Plan Official" means a plan fiduciary, plan sponsor, party in interest with respect to a plan, or other person who is in a position to correct a Breach.

(3) *Under Investigation.* The term "Under Investigation" means a plan or person that is being investigated pursuant to ERISA section 504(a) or any criminal statute involving a transaction which affects an employee benefit plan. A plan that is Under Investigation by PWBA includes any plan for which a Plan Official, or a plan representative, has received oral or written notification from PWBA of a PWBA investigation of the plan. A plan is not considered to be Under Investigation by PWBA merely because PWBA staff have contacted a Plan Official or representative in connection with a participant complaint, unless the participant complaint concerns the transaction described in the application. A plan also is not considered to be Under Investigation where it is undergoing a work paper review by PWBA's Office of the Chief Accountant under the authority of ERISA section 504(a).

Section 4. VFC Program Eligibility

Eligibility for the VFC Program is conditioned on the following:

(a) Neither the plan nor the applicant is Under Investigation.

(b) The application contains no evidence of potential criminal violations as determined by PWBA.

Section 5. General Rules for Acceptable Corrections

(a) *Fair Market Value Determinations.* Many corrections require that the current or fair market value of an asset be determined as of a particular date, usually either the date the plan originally acquired the asset or the date of the correction, or both. In order to be acceptable as part of a VFC Program correction, the valuation must meet the following conditions:

(1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price).

(2) If there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

(3) An appraiser is "qualified" if he or she has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.

(4) An appraiser is "independent" if he or she is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:

(i) The prior owner of the asset, if the asset was purchased by the plan;

(ii) The purchaser of the asset, if the asset was, or is now being sold, by the plan;

(iii) Any other owner of the asset, if the plan is not the sole owner;

(iv) A fiduciary of the plan;

(v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or

(vi) The VFC Program applicant.

(b) *Correction Amount.* (1) *In general.* Many of the transactions described in the VFC Program result in a loss to the plan or a profit to some party to the transaction. Determining the amount of the loss to the plan requires calculating how much money the plan would have now if a particular transaction had not occurred. In general, the VFC Program requires the fiduciary or other Plan Official to restore to the employee benefit plan the Principal Amount, plus the greater of (i) Lost Earnings from the Loss Date to the Recovery Date or (ii) Restoration of Profits resulting from the use of the Principal Amount for the same period.

(2) *Principal Amount.* "Principal Amount" is the amount that would have been available to the plan for investment or distribution on the date of the Breach, had the Breach not occurred. What constitutes the Principal Amount is identified for each transaction set forth in Section 7 of the VFC Program. The generic term "Principal Amount" is the base on which Lost Earnings are calculated. The Principal Amount shall also include, where appropriate, any transaction costs, such as closing costs, associated with entering into the transaction that constitutes the Breach.

(3) *Loss Date.* "Loss Date" is the date that the plan lost the use of the Principal Amount.

(4) *Recovery Date.* "Recovery Date" is the date that the Principal Amount is restored to the plan.

(5) *Lost Earnings.* For purposes of the VFC Program, Lost Earnings to be restored to a plan is the greater of (i) the amount that otherwise would have been earned on the Principal Amount from the Loss Date to the Recovery Date had the Principal Amount been invested during such period in accordance with applicable plan provisions and Title I of ERISA, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction), or (ii) the amount that would have been earned on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction). In addition, if the date on which the Lost Earnings is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Lost Earnings if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Lost Earnings at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. For a participant-directed defined contribution plan, the Lost Earnings to be restored to the plan is the amount that each participant would have earned on the Principal Amount from the Loss Date to the Recovery Date. However, for administrative convenience, the Lost Earnings amount for a participant-directed defined contribution plan may be calculated using the rate of return of the investment alternative that earned the highest rate of return among the designated broad range of investment alternatives available under the plan during the applicable period. For participants who have not made any participant directions, plan officials may use the plan's average of the rates of return earned by all the designated investment alternatives weighted by the portion of plan assets invested in these alternatives.

(6) *Restoration of Profits.* "Restoration of Profits" is the amount of profit made on the use of the Principal Amount, or the property purchased with the Principal Amount, by the fiduciary or party in interest who engaged in the Breach, or by a knowing participant in the Breach. If the Principal Amount was used for a specific purpose such that the actual profit can be determined, that actual profit must be calculated from the Loss Date to the Recovery Date and returned to the plan. If the Principal Amount was commingled with other funds so that the actual profit cannot be determined, the Restoration of Profits will be calculated as interest on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. In addition, if the date on which the Restoration of Profits is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Restoration of Profits if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Restoration of Profits at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code.

(7) The principles of this paragraph (b) are illustrated by the following examples:

Example 1. An employer who sponsors a plan with a qualified cash or deferred arrangement within the meaning of section 401(k)(2) of the Code ("401(k) plan") could have reasonably paid participant contributions into the plan's trust account within two business days of each pay day. For this employer, the second business day after pay day was therefore the date on which the participant contributions become plan assets, because it is the earliest date on which this employer reasonably could have segregated the participant contributions from the employer's general assets.[8] However, for the pay period ending January 31, a Monday, participant contributions totaling $10,000 were not deposited until March 2.

The Principal Amount is $10,000. The Loss Date is February 2, the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is March 2, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers five investment alternatives representing a broad range of investment alternatives. During the month of February, one of the plan's mutual funds had a one percent return, including all reinvestment earnings. This was the highest return earned by any of the five investment alternatives in this period. The employer elects to use this rate of return for the loss calculations. Accordingly, the Lost Earnings amount is $100 ($10,000 multiplied by one percent).

The employer had the use of $10,000 of the 401(k) plan's assets between February 2 and March 2, while the participant contributions remained commingled with the employer's general assets. The employer's cost of funds (the actual profit from the use of the participant contributions) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the section 6621 rate was 9% (annualized yield for the relevant quarter), the Restoration of Profits amount is $75 ($10,000 multiplied by 9% per annum times one-twelfth of a year).

In this example, the Lost Earnings amount ($100) is greater than the Restoration of Profits amount ($75). Since the Principal Amount of $10,000 was paid to the plan on March 2, the total correction amount to be paid to the plan is the Lost Earnings of $100.

Assume further, in this example, that although the Principal Amount of $10,000 was paid to the plan on March 2, the Lost Earnings of $100 were not paid to the plan until a year later. The plan's annual yield for the highest earning fund was 12 percent. The employer elects to use the highest yielding fund for administrative convenience. Accordingly, an additional $12 ($100 multiplied by 12 percent—the annual yield), must be paid to the plan along with the $100 Lost Earnings amount.

Example 2. On March 15, a plan's trustees authorized the purchase of 1,000 shares of stock. The plan paid $75 per share when the fair market value was $70 per share.[9] The Principal Amount is $5,000 (1,000 shares multiplied by the $5 per share overpayment). The Loss Date is March 15, the date of the overpayment. The Recovery Date will be the date on which the fiduciary or other person repays to the plan the correction amount.

Assume that the plan recoups the $5,000 overpayment a year after the original purchase. During this year, the plan's other investments earned 9%, including all reinvestment earnings. The Lost Earnings amount is $450 ($5,000 multiplied by 9% annual yield for one year). If the Restoration of Profit amount is less than $450, the total amount to be paid to the plan is $5,450 (the Principal Amount of $5,000 plus Lost Earnings of $450).

Example 3. Assume the same facts as in Example 2, except that the proceeds of the sale were used to make another investment, which yielded a 15% annual rate of return. The Restoration of Profits amount is $750 ($5,000 multiplied by 15% per annum times one year). In this example, the Restoration of Profits amount ($750) is greater than the Lost Earnings amount ($450). The total amount to be paid to the plan is $5,750 (the Principal Amount of $5,000 plus Restoration of Profits of $750).

Example 4. On April 20, a plan paid $6,000 in legal fees for legal services that the plan sponsor, not the plan, was obligated to pay. The Principal Amount is $6,000. The Loss Date is April 20, the date the plan improperly paid the plan sponsor's legal expenses. The Recovery Date will be the date on which the plan sponsor reimburses the plan $6,000. Assume that the plan sponsor reimburses the plan on October 20, six months after the Loss Date. During this period, the plan's investment earnings totaled five percent, including all reinvestment earnings. The Lost Earnings amount is $300 ($6,000 multiplied by five percent).

The plan sponsor had constructive use of $6,000 from April 20 until October 20. The plan sponsor's cost of funds (the actual profit from the use of the money) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the published section 6621 rate was 8% per annum for the duration of the period April 20 to October 20, the Restoration of Profits amount is $240 ($6,000 times 8% per annum multiplied by one-half).

In this example, the Lost Earnings amount ($300) is greater than the Restoration of Profits amount ($240). The total amount to be paid to the plan is $6,300 (the Principal Amount of $6,000 plus Lost Earnings of $300).

(c) *Costs of Correction.* (1) The fiduciary, plan sponsor or other Plan Official, not the plan, shall pay the costs of correction.

(2) The costs of correction include, where appropriate, such expenses as closing costs, prepayment penalties, or sale or purchase costs associated with correcting the transaction.

(3) The principle of paragraph (c)(1) is illustrated in the following example and in (d) below:

Example: The plan fiduciaries did not obtain a required independent appraisal in connection with a transaction described in Section 7. In connection with correcting the transaction, the plan fiduciaries now propose to have the appraisal performed as of the date of purchase. The plan document permits the plan to pay reasonable and necessary expenses; the fiduciaries have objectively determined that the cost of the proposed appraisal is reasonable and is not more expensive than the cost of an appraisal contemporaneous with the purchase. The plan may therefore pay for this appraisal. However, the plan may not pay any costs associated with recalculating participant account balances to take into account the new valuation. There would be no need for these additional calculations or any increased appraisal cost if the plan's assets had been valued properly at the time of the purchase. Therefore, the cost of recalculating the plan participants' account balances is not a reasonable plan expense, but is part of the Costs of Correction.

(d) *Distributions.* Plans will have to make supplemental distributions to former employees, beneficiaries receiving benefits, or alternate payees, if the original distributions were too low because of the Breach. In these situations, the Plan Official or plan administrator must determine who received distributions from the plan during the time period affected by the Breach, recalculate the account balances, and determine the amount of the underpayment to each affected individual. The applicant must demonstrate proof of payment to participants and beneficiaries whose current location is known to the plan

[8] *See* 29 CFR 2510.3–102.

[9] If a plan's fiduciaries authorized the purchase of a specific dollar amount of stock rather than the purchase of a specific number of shares, and the plan acquired fewer shares than it should have as a result of paying too much per share, the amount lost equals the number of additional shares that the plan should have acquired, plus any appreciation, dividends, or stock splits associated with those additional shares.

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and/or applicant. For individuals whose location is unknown, applicants must demonstrate that they have segregated adequate funds to pay the missing individuals and that the applicant has commenced the process of locating the missing individuals using either the IRS and Social Security Administration locator services, or other comparable means. The costs of such efforts are part of the Costs of Correction.

(e) *De Minimus Exception.* Where correction under the Program requires distributions in amounts less than $20 to former employees, their beneficiaries and alternate payees, who neither have account balances with, nor have a right to future benefits from the plan, and the applicant demonstrates in its submission that the cost of making the distribution to each such individual exceeds the amount of the payment to which such individual is entitled in connection with the correction of the transaction that is the subject of the application, the applicant need not make distributions to such individuals who would receive less than $20 each as part of the correction. However, the applicant must pay to the plan as a whole the total of such *de minimus* amounts not distributed to such individuals.

Example. Employer X sponsors Plan Y. Employer X submits an application under the VFC Program to correct a failure to forward timely participant contributions to the Plan Y. Employer X had paid the delinquent contributions six months late, but had not paid lost earnings on the delinquency. The correction under the VFC Program, therefore, required only payment of Lost Earnings for the six-month delinquency. During the six-month period 25 employees separated from service and rolled over their plan accounts to individual retirement accounts. The amount of lost earnings due to 20 of those former employees is less than $20, and Employer X demonstrates that the cost of making the distribution to those former employees is $27 per individual. Employer X need not make distributions to those 20 former employees. However, the total amount of distributions that would have been due to those former employees must be paid to Plan Y. The payment to Plan Y may be used for any purpose that payments or credits to Plan Y that are not allocated directly to participant accounts are used. Employer X must make distributions to the five former employees who are entitled to receive distributions of more than $20.

Section 6. Application Procedures

(a) *In general.* Each application must adhere to the requirements set forth below. Failure to do so may render the application invalid.

(b) *Preparer.* The application must be prepared by a Plan Official or his or her authorized representative (*e.g.*, attorney, accountant, or other service provider). If a representative of the Plan Official is submitting the application, the application must include a statement signed by the Plan Official that the representative is authorized to represent the Plan Official.

(c) *Contact person.* Each application must include the name, address and telephone number of a contact person. The contact person must be familiar with the contents of the application, and have authority to respond to inquiries from PWBA.

(d) *Detailed narrative.* The applicant must provide to PWBA a detailed narrative describing the Breach and the corrective action. The narrative must include:

(i) a list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

(ii) the EIN number and address of the plan sponsor and administrator;

(iii) the date the plan's most recent Form 5500 was filed;

(iv) an explanation of the Breach, including the date it occurred;

(v) an explanation of how the Breach was corrected, by whom and when; and

(vi) specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed and an explanation of why payment of Lost Earnings or Restoration of Profits was chosen to correct the Breach.

(e) *Supporting documentation.* The applicant must also include:

(i) a statement that the plan has a current fidelity bond that meets the requirements of section 412 of ERISA and the name of the company providing the bond and the policy number;

(ii) copies of the relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract);[10]

(iii) documentation that supports the narrative description of the transaction and correction:

(iv) documentation establishing the Lost Earnings amount, including documentation of the return on the plan's other investments during the time period on which the Lost Earnings is calculated with respect to the transaction described in the VFC Program application;

(v) documentation establishing the amount of Restoration of Profits;

(vi) all documents described in Section 7 with respect to the transaction involved; and

(vii) proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

(5) *Examples of supporting documentation.* (i) Examples of documentation supporting the description of the transaction and correction are leases, appraisals, notes and loan documents, service provider contracts, invoices, settlement documents, deeds, perfected security interests, and amended annual reports.

(ii) Examples of acceptable proof of payment include copies of canceled checks, executed wire transfers, a signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution), and bank statements for the plan's account.

(g) *Penalty of Perjury Statement.* Each application must also include a Penalty of Perjury statement. The statement shall be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and the authorized representative of the applicant, if any. In addition, all Plan Officials applying under the VFC Program must execute the Penalty of Perjury statement in order to be covered by the No Action Letter. The statement must accompany the application and any subsequent additions to the application. The statement shall read as follows:

I certify under penalty of perjury that I have reviewed this application and all supporting documents and that to the best of my belief the contents are true and complete and comply with all terms and conditions of the VFC Program. I further certify under penalty of perjury that at the date of this certification neither the Department nor any other Federal agency has informed me of an intention to investigate or examine the plan or otherwise made inquiry with respect to the transaction described in this application. I further certify under penalty of perjury that neither I nor any person acting under my supervision or control with respect to the operation of an ERISA-covered employee benefit plan:

(1) Is the subject of any criminal investigation or prosecution involving any offense against the United States;[11]

[10] Applicants must supply complete copies of the plan documents and other pertinent documents if requested by PWBA during its review of the application.

[11] For purposes of this paragraph, an "offense" includes criminal activity for which the Department of Justice may seek civil injunctive relief under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1964(b)). A "subject" is any individual or entity whose conduct is within the scope of any ongoing inquiry being conducted by a Federal investigator(s) who is authorized to investigate criminal offense against the United States.

(2) Has been convicted of a criminal offense involving employee benefit plans at any time or any other offense involving financial misconduct which was punishable by imprisonment exceeding one year for which sentence was imposed during the preceding thirteen years or which resulted in actual imprisonment ending within the last thirteen years, nor has such person entered into a consent decree with the Department or been found by a court of competent jurisdiction to have violated any fiduciary responsibility provisions of ERISA during such period; or

(3) Has sought to assist or conceal the transaction described in this application by means of bribery, or graft payments to persons with fiduciary responsibility for this plan or with the knowing assistance of persons engaged in ongoing criminal activity.

(h) *Checklist.* The checklist in Appendix B must be completed, signed, and submitted with the application.

(i) *Where to apply.* The application shall be mailed to the appropriate regional PWBA office listed in Appendix C.

(j) *Record keeping.* The applicant must maintain copies of the application and any subsequent correspondence with PWBA for the period required by section 107 of ERISA.

Section 7. Description of Eligible Transactions and Corrections Under the VFC Program

PWBA has identified certain Breaches and methods of correction that are suitable for the VFC Program. Any Plan Official may correct a Breach listed in this Section in accordance with Section 5 and the applicable correction method. The correction methods set forth are strictly construed and are the only acceptable correction methods under the VFC Program for the transactions described in this Section. PWBA will not accept applications concerning correction of breaches not described in this Section.

A. Contributions

1. Delinquent Participant Contributions to Pension Plans

(a) *Description of Transaction.* An employer receives directly from participants, or withholds from employees' paychecks, certain amounts for contribution to a pension plan. Instead of forwarding the contributions for investment in accordance with the provisions of the plan and within the time frames described in the Department's regulation at 29 CFR 2510.3–102, the employer retains the contributions for a longer period of time.

(b) *Correction of Transaction.* (1) *Unpaid Contributions.* Pay to the plan the Principal Amount plus the greater of (i) Lost Earnings on the Principal Amount or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b). The Principal Amount is the amount of the unpaid participant contributions and the Loss Date for each contribution is the earliest date on which the contributions reasonably could have been segregated from the employer's general assets. In no event shall the Loss Date be later than the applicable maximum time period described in 29 CFR 2510.3–102.

(2) *Late Contributions.* If participant contributions were remitted to the plan outside of the time period provided by the regulation, the only correction required is to pay to the plan the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b).

(3) *Examples.* The principles of this paragraph (b) are illustrated in the following examples:

Example 1. See Example 1 under Section 5(b).

Example 2. Employer X is a large national corporation, which sponsors a section 401(k) plan. X reasonably is able to segregate participant contributions no later than 10 business days after the end of the month in which participant contributions were withheld from employees' paychecks. For the pay period ending June 15, participant contributions totaling $900,000 were not deposited until August 14.

The Principal Amount is $900,000. The Loss Date is July 14 (the tenth business day in July), the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is August 14, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers eight investment alternatives with daily asset valuation. From July 14 through August 14, most of the plan participants experienced a decrease in their account balances due to a decline in the stock market; however, some participants had a net investment gain. The Code section 6621(a)(2) rate during this period was 8% (annual yield for all quarters) and was greater than the profit to the employer from the use of the funds during the pertinent time period.

For the participants whose account balances declined, the employer pays the Principal Amount plus the Restoration of Profits amount, calculated at 8% (annual yield). For the other participants, the employer pays the Principal Amount plus the higher of each participant's actual investment earnings between July 14 and August 14 or the Restoration of Profits amount calculated at 8%. Since the Principal Amount of $900,000 has already been paid to the plan, the correction amount to be paid to the plan is no less than the Restoration of Profits of $6,000 ($900,000 times 8% per annum multiplied by one-twelfth of a year).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding; and

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion.

2. Delinquent Participant Contributions to an Insured Welfare Plan

(a) *Description of Transaction.* Benefits are provided exclusively through insurance contracts issued by an insurance company or similar organization qualified to do business in any state or through a health maintenance organization (HMO) defined in section 1310(d) of the Public Heath Service Act, 42 U.S.C. 3000e–9(d). An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to an insurance provider for the purpose of providing group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan (including the provisions of any insurance contract) or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(b) *Correction of Transaction.* Pay to the insurance provider or HMO the Principal Amount, as well as any penalties, late fees or other charges necessary to prevent a lapse in coverage due to such failure. Any penalties, late fees or other such charges shall be paid

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by the employer and not from participant contributions.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion;

(4) Copies of the insurance contract or contracts for the group health or other welfare benefits for the plan;

(5) A statement from a Plan Official attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage; and

(6) A statement from a Plan Official attesting that any penalties, late fees or other such charges have been paid by the employer and not from participant contributions.

3. Delinquent Participant Contributions to a Welfare Plan Trust

(a) *Description of Transaction.* An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to a trust maintained to provide, through insurance or otherwise, group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(b) *Correction of Transaction.* (1) *Unpaid Contributions.* Pay to the trust (1) the Principal Amount, and, where applicable, pay any penalties, late fees or other charges necessary to prevent a lapse in coverage due to the failure to make timely payments, and (2) pay to the trust the greater of (i) Lost Earnings on the Principal Amount or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). The Principal Amount is the amount of delinquent participant contributions. The Loss Date for such contributions is the date on which each contribution would become plan assets under 29 CFR 2510.3–102. Any penalties, late fees or other charges shall be paid by the employer and not from participant contributions.

(2) *Late Contributions.* If participant contributions were remitted to the trust outside of the time period required by the regulation, the only correction required is to pay to the trust the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). Any penalties, late fees or other such charges shall be paid by the employer and not from participant contributions.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion; and

(4) A statement from a Plan Official attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage.

B. Loans

1. Loan at Fair Market Interest Rate to a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest at an interest rate no less than that for loans with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. An independent commercial lender must also confirm in writing that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.

(c) *Documentation.* In addition to the documentation required by Section 6, submit a narrative describing the process used to determine the fair market interest rate at the time the loan was made, validated in writing by an independent commercial lender.

2. Loan at Below-Market Interest Rate to a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. (1) Pay to the plan the Principal Amount, plus the greater of (i) the Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b).

(2) For purposes of this transaction, the Principal Amount is equal to the excess of the interest payments that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over interest payments actually received under the loan terms during such period. For purposes of the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

Example: The plan made to a party in interest a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The party in interest or Plan Official must repay the loan in full plus any applicable prepayment penalties. The party in interest or Plan Official also must pay the difference between what the plan would have received through the Recovery Date had the loan been made at 7% and what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus lost earnings on that amount as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(2) a copy of the independent commercial lender's fair market interest rate determination(s); and

(3) a copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s).

3. Loan at Below-Market Interest Rate to a Person Who Is Not a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a person who is not a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings through the Recovery Date, as described in Section 5(b).

(2) Each loan payment has a Principal Amount equal to the excess of (a) interest payments that would have been received until the Recovery Date if the loan had been made at the fair market interest rate over (b) the interest actually received under the loan terms. The fair market interest rate must be determined by an independent commercial lender.

(3) From the inception of the loan to the Recovery Date, the amount to be paid to the plan is the Lost Earnings on the series of Principal Amounts, calculated in accordance with Section 5(b).

(4) From the Recovery Date to the maturity date of the loan, the amount to be paid to the plan is the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(5) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan made a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The borrower or the Plan Official must pay the excess of what the plan would have received through the Recovery Date had the loan been made at 7% over what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as described in Section 5(b). The Plan Official must also pay on the Recovery Date the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate at the time the loan was made; and

(2) A copy of the independent commercial lender's fair market interest rate determination(s).

4. Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest

(a) *Description of Transaction.* For purposes of the VFC Program, if a plan made a purportedly secured loan to a person who is not a party in interest with respect to the plan, but there was a delay in recording or otherwise perfecting the plan's interest in the loan collateral, the loan will be treated as an unsecured loan until the plan's security interest was perfected.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings as described in Section 5(b), through the date the loan became fully secured.

(2) The Principal Amount is equal to the difference between (a) interest payments actually received under the loan terms and (b) the interest payments that would have been received if the loan had been made at the fair market interest rate for an unsecured loan. The fair market interest rate must be determined by an independent commercial lender.

(3) In addition, if the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, the fair market interest rate for the remaining term of the loan must be determined by an independent commercial lender. In that case, the correction amount includes an additional payment to the plan. The amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(4) The principles of this paragraph (b) are illustrated in the following examples:

Example 1: The plan made a mortgage loan, which was supposed to be secured by a Deed of Trust. The plan's Deed was not recorded for six months, but, when it was recorded, the Deed was in first position. The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust. The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed of Trust.

Example 2: Assume the same facts as in Example 1, except that, as a result of the delay in recording the Deed, the plan ended up in second position behind another lender. The risk to the plan is higher and the interest rate on the note is no longer commensurate with that risk. The loan is treated as a below-market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan; and

(2) A copy of the independent commercial lender's fair market interest rate determination(s).

C. Purchases, Sales and Exchanges

1. Purchase of an Asset (Including Real Property) by a Plan From a Party in Interest

(a) *Description of Transaction.* A plan purchased an asset with cash from a party in interest with respect to the plan, and under the circumstances, no prohibited transaction exemption applies.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the asset back to the party in interest who originally sold the asset to the plan or to a person who is not a party in interest. Whether the asset is sold to a person who is not a party in interest with respect to the plan or is sold back to the original seller, the plan must receive the higher of (i) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) For this transaction, the Principal Amount is the plan's original purchase price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan purchased from the plan sponsor a parcel of real property. The plan does not lease the property to any person. Instead, the plan uses the property as an

office. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property at the time of purchase. The appraiser values the property at $100,000, although the plan paid the plan sponsor $120,000 for the property. As of the Recovery Date the property is valued at $110,000. To correct the transaction, the plan sponsor repurchases the property for $120,000 with no reduction for the costs of sale and reimburses the plan for the initial costs of sale. The plan sponsor also must pay the plan the greater of the plan's Lost Earnings or the sponsor's profits on this amount. This example assumes that the plan sponsor did not make a profit on the $120,000 proceeds from the original sale of the property to the plan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the seller;

(2) A narrative describing the relationship between the original seller of the asset and the plan; and

(3) The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery date.

2. Sale of an Asset (Including Real Property) by a Plan to a Party in Interest

(a) *Description of Transaction.* A plan sold an asset for cash to a party in interest with respect to the plan, in a transaction that is not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* (1) The plan must receive the Principal Amount plus the greater of (i) Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b). As an alternative to repayment of the Principal Amount, if it is determined that the plan will realize a greater benefit by repurchasing the asset, the plan may repurchase the asset from the party in interest [12] at the lower of the price for which it sold the property or the FMV of the property as of the Recovery Date plus restoration to the plan of the party in interest's net profits from owning the property, to the extent they exceed the plan's investment return from the proceeds of the sale. The determination as to which correction alternative the plan chooses must be made by an independent fiduciary.

(2) For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the sale price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold a parcel of unimproved real property to the plan sponsor. The sponsor did not make any profit on the use of the property. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property as of the date of sale. The appraiser valued the property at $130,000, although the plan sold the property to the plan sponsor for $120,000. However, the plan fiduciaries have reason to believe that the property will substantially increase in the near future based on the anticipated building of a shopping mall adjacent to the property in question and, as of the Recovery Date, the appraiser values the property at $140,000. An independent fiduciary determines that the property is a prudent investment for the plan, and will not result in any liquidity or diversification problems. The plan corrects by repurchasing the property at the original sale price, with the party in interest assuming the costs of the reversal of the sale transaction.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;

(2) A narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;

(3) The qualified, independent appraiser's report addressing the FMV of the property at the time of the sale from the plan and as of the Recovery Date; and

(4) The independent fiduciary's report that the property is a prudent investment for the plan.

3. Sale and Leaseback of Real Property to Employer

(a) *Description of Transaction.* The plan sponsor sold a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not otherwise exempt.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the parcel of real property back to the plan sponsor or to a person who is not a party in interest with respect to the plan.[13] The plan must receive the higher of (i) FMV of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.

(3) In addition to the correction amount in subparagraph (1), if the plan was not receiving rent at FMV, as determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the plan sponsor's use of the Principal Amount, as described in Section 5(b).

(4) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site. Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent. To correct the transaction, the plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sales price and also pays the Lost Earnings. Because the rent paid to the plan was below the market rate, the sponsor must also make up the difference between the rent paid under the terms of the lease and the amount that should have been paid, plus Lost Earnings on this amount, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;

(2) Documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;

(3) A narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;

(4) A copy of the lease;

(5) Documentation of the date and amount of each lease payment received by the plan; and

(6) The qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the Recovery Date, and the FMV of the lease payments.

4. Purchase of an Asset (Including Real Property) by a Plan From a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Other Than Fair Market Value

(a) *Description of Transaction.* A plan acquired an asset from a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan paid more than it should have for the asset.

(b) *Correction of Transaction.* The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase. The plan must receive the Principal Amount plus the Lost Earnings, as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan bought unimproved land without obtaining a qualified, independent appraisal. Upon discovering that the purchase price was $10,000 more than the appraised FMV, the Plan Official pays the plan the Principal Amount of $10,000, plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;

(2) A narrative describing the relationship of the seller to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.

5. Sale of an Asset (Including Real Property) By a Plan to a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Less Than Fair Market Value

(a) *Description of Transaction.* A plan sold an asset to a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan received less than it should have from the sale.

(b) *Correction of Transaction.* The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property. The plan must receive the Principal Amount plus Lost Earnings as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold unimproved land without taking steps to ensure that the plan received FMV. Upon discovering that the sale price was $10,000 less than the FMV, the Plan Official pays the plan the Principal Amount of $10,000 plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;

(2) A narrative describing the relationship of the buyer to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.

D. Benefits

1. Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based

(a) *Description of Transaction.* A defined contribution pension plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the current benefit payments will be too high. If the plan's assets are undervalued, the current benefit payments will be too low.

(b) *Correction of Transaction.* (1) Establish the correct value of the improperly valued asset for each plan year, starting with the first plan year in which the asset was improperly valued. Restore to the plan for distribution to the affected plan participants, or restore directly to the plan participants, the amount by which all affected participants were underpaid distributions to which they were entitled under the terms of the plan, plus the higher of Lost Earnings or the underpayment rate defined in Section 6621(a)(2) of the Code on the underpaid distributions. File amended Annual Report Forms 5500, as detailed below.

(2) To correct the valuation defect, a Plan Official must determine the FMV of the improperly valued asset per Section 5(a) for each year in which the asset was valued improperly.

(3) Once the FMV has been determined, the participant account balances for each year must be adjusted accordingly.

(4) The Annual Report Forms 5500 must be amended and refiled for (i) the last three plan years or (ii) all plan years in which the value of the asset was reported improperly, whichever is less.

(5) The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly. For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount and Lost Earnings must be paid to the affected individuals. For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the Lost Earnings, as described in Section 5(b), must be restored to the plan or to any participants who received distributions that were too low.

(6) The principles of this paragraph (b) are illustrated in the following examples:

Example 1. On December 31, 1995, a profit sharing plan purchased a 20-acre parcel of real property for $500,000, which represented a portion of the plan's assets. The plan has carried the property on its books at cost, rather than at FMV. One participant left the company on January 1, 1997, and received a distribution, which included her portion of the value of the property. The separated participant's account balance represented 2% of the plan's assets. As part of correction for the VFC Program, a qualified, independent appraiser has determined the FMV of the property for 1996, 1997, and 1998. The FMV as of December 31, 1996, was $400,000. Therefore, this participant was overpaid by $2,000 (($500,000–$400,000) multiplied by 2%). The Plan Officials corrected the transaction by paying to the plan $2,500, consisting of $2,000 Principal Amount and $500 Lost Earnings. The Lost Earnings were based on a return of 25%, which represents the total return on the plan's investments from the date of the distribution to the participant until the date of correction.

The plan administrator also filed an amended Form 5500 for plan years 1996 and 1997, to reflect the proper values. The plan administrator will include the correct asset valuation in the 1998 Form 5500 when that form is filed.

Example 2. Assume the same facts as in Example 1, except that the property had appreciated in value to $600,000 as of December 31, 1996. The separated participant would have been underpaid by $2,000. The correction consists of locating

[12] The repurchase of the same property from the party in interest to whom the asset was sold is a reversal of the original prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an exemption.

[13] If the plan purchased the property from the plan sponsor, the sale of the same property back to the plan sponsor is a reversal of the prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption, as long as the plan did not make improvements while it owned the property.

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the participant and distributing $2,500 to her ($2,000 Principal Amount and $500 Lost Earnings), as well as filing the amended Forms 5500.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;

(2) A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;

(3) If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances; and

(4) If supplemental distributions are made, proof of payment to the individuals entitled to receive the supplemental distributions.

E. Plan Expenses

1. Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan

(a) *Description of Transaction.* A plan paid excessive compensation, including commissions or fees, to a service provider (such as an attorney, accountant, actuary, financial advisor, or insurance agent); a plan paid two or more persons to provide the same services to the plan; or a plan paid a service provider for services that were not necessary for the operation of the plan.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the use of the Principal Amount, as described in Section 5(b).

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan to the service provider during the six years prior to the discontinuation of the payment of the excessive, duplicative, or unnecessary compensation and (b) the reasonable market value of the non-duplicative services.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. Excessive compensation. A plan hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio. In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds. In exchange for his services, the plan paid the investment advisor 3% of the value of the portfolio's assets. If the trustees had inquired they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained. To correct the transaction, the plan must be paid the Principal Amount of 2% of the value of the plan's assets, plus Lost Earnings, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A written estimate of the reasonable market value of the services;

(2) The estimator's qualifications; and

(3) The cost of the services at issue during the period that such services were provided to the plan.

2. Payment of Dual Compensation to a Plan Fiduciary

(a) *Description of Transaction.* A plan pays a fiduciary for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not mere reimbursements of expenses properly and actually incurred by the fiduciary.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the fiduciary's use of the Principal Amount for the same period.

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan during the six years prior to the discontinuation of the payments to the fiduciary and (b) the amount that represents reimbursements of expenses properly and actually incurred by the fiduciary.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. A union sponsored a health plan funded through contributions by employers. The union president receives $50,000 per year from the union in compensation for his services as union president. He is appointed as a trustee of the health plan while retaining his position as union president. In exchange for acting as plan trustee, the union president is paid a salary of $200 per week by the plan while still receiving the $50,000 salary from the union. Since $50,000 is full-time pay, the plan's weekly salary payments are improper. To correct the transaction, the plan must be paid the Principal Amount, which is the $200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Copies of the plan's accounting records which show the date and amount of compensation paid by the plan to the identified fiduciary; and

(2) If any of the amounts paid by the plan to the fiduciary represent reimbursements of expenses properly and actually incurred by the fiduciary, include copies of the plan records which indicate the date, amount, and character of these payments.

Signed at Washington, DC this 25th day of March, 2002.

Ann L. Combs,

Assistant Secretary for Pension and Welfare Benefits Administration, U.S. Department of Labor.

Appendix A.—Sample VFC Program No Action Letter

Applicant (Plan Official)

Address

Dear Applicant (Plan Official):

Re: VFC Program Application No. xx–xxxxxx

The Department of Labor, Pension and Welfare Benefits Administration (PWBA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). PWBA has established a Voluntary Fiduciary Correction Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to PWBA that demonstrates that you have taken the corrective action indicated.

[Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from _____ (date) to _____ (date). All participant contributions were deposited by _____ (date) and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on _____ (date).]

Because you have taken the above-described corrective action that is consistent with the requirements of the VFC Program, PWBA will take no civil enforcement action against you with respect to this breach. Specifically, PWBA will not recommend that the Solicitor of Labor initiate legal action against you, and PWBA will not impose the penalty in section 502(l) of ERISA on the amount you have repaid to the plan.

PWBA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude PWBA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person.

[*If the transaction is a prohibited transaction for which no exemptive relief is available, add the following language: Please also be advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.*]

In addition, you are cautioned that PWBA's decision to take no further action is binding on PWBA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary.

If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number.*

Appendix B.—VFC Program Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate "Yes", "No" or "N/A" next to each item. A "No" answer or the failure to include a completed checklist will delay review of the application until all required items are received.

_____ 1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?

_____ 2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?

_____ 3. Have you provided the EIN # and address of the plan sponsor and plan administrator?

_____ 4. Have you provided the date that the most recent Form 5500 was filed by the plan?

_____ 5. Have you enclosed a signed and dated certification under penalty of perjury for each applicant and the applicant's representative, if any?

_____ 6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?

_____ 7. Have you enclosed a statement identifying the current fidelity bond for the plan?

_____ 8. Where applicable, have you enclosed a copy of an appraiser's report?

_____ 9. Have you enclosed other documents as specified by the individual transactions and corrections?

_____ a. A detailed narrative of the Breach, including the date it occurred;

_____ b. Documentation that supports the narrative description of the transaction;

_____ c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;

_____ d. A list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers, lenders);

_____ e. Documentation establishing the return on the plan's other investments during the time period the plan engaged in the transaction described in the VFC Program application;

_____ f. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed; and

_____ g. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

_____ 10. If you are an eligible applicant and wish to avail yourself of excise tax relief under the Proposed Class Exemption, have you made proper arrangements to provide within 60 calendar days following the date of this application a copy of the Class Exemption's required notice to all interested persons and to the PWBA regional office to which the application is filed?

_____ 11. Where applicable, have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and for participants who need to be located, have you described how adequate funds have been segregated to pay missing participants and commenced the process of locating the missing participants using either the IRS and Social Security Administration locator services, or other comparable means?

_____ 12. Has the plan implemented measures to ensure that the transactions specified in the application do not recur? (Do not include this with the application. The Department will not opine on the adequacy of these measures.)

Signature of Applicant and Date Signed

_____

Name of Applicant (Typed):
Title/Relationship to the Plan (Typed):
Name of Plan, EIN and Plan Number (Typed):

Appendix C.—List of PWBA Regional Offices

Atlanta Regional Office, 61 Forsyth Street, SW, Suite 7B54, Atlanta, GA 30303, telephone (404) 562–2156, fax (404) 562–2168; jurisdiction: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.

Boston Regional Office, J.F.K. Building, Room 575, Boston, MA 02203, telephone: (617) 565–9600, fax: (617) 565–9666; jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, central and western New York, Rhode Island, Vermont.

Chicago Regional Office, 200 West Adams Street, Suite 1600, Chicago, IL 60606, telephone (312) 353–0900, fax (312) 353–1023; jurisdiction: northern Illinois, northern Indiana, Wisconsin.

Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011–2664, telephone (859) 578–4680, fax (859) 578–4688; jurisdiction: southern Indiana, Kentucky, Michigan, Ohio.

Dallas Regional Office, 525 Griffin Street, Rm. 707, Dallas, TX 75202–5025, telephone (214) 767–6831, fax (214) 767–1055; jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Kansas City Regional Office, 1100 Main Street, Suite 1200, Kansas City, MO 64105–2112, telephone (816) 426–5131, fax (816) 426–5511; jurisdiction: Colorado, southern Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.

Los Angeles Regional Office, 790 E. Colorado Boulevard, Suite 514, Pasadena, CA 91101, telephone (626) 583–7862, fax (626) 583–7845; jurisdiction: 10 southern counties of California, Arizona, Hawaii, American Samoa, Guam, Wake Island.

New York Regional Office, temporarily located at 201 Varick Street, New York, NY 10014, telephone (212) 337–2228, fax (212) 337–2112; jurisdiction: southeastern New York, northern New Jersey.

Philadelphia Regional Office, The Curtis Center, 170 S. Independence Mall West, Suite 870 West, Philadelphia, PA 19106–3317, telephone 215–861–5300, fax 215–861–5347; jurisdiction: Delaware, Maryland, southern New Jersey, Pennsylvania, Virginia, Washington, D.C., West Virginia.

San Francisco Regional Office, 71 Stevenson St., Suite 915, San Francisco, CA 94105, telephone (415) 975–4600, fax (415) 975–4589; jurisdiction: Alaska, 48 northern counties of California, Idaho, Nevada, Oregon, Utah, Washington.

**Please verify current telephone numbers and addresses on PWBA's website.

[FR Doc. 02–7516 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Application No. D–10933]

Proposed Class Exemption To Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). This exemption is being proposed in conjunction with the Department's Voluntary Fiduciary Correction (VFC) Program, the final version of which is being published simultaneously in this issue of the **Federal Register**, which allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. If granted, the proposed exemption would affect plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

DATES: Written comments and requests for a public hearing must be received by

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the Department on or before May 13, 2002.

ADDRESSES: All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (attn: D–10933). Written comments may also be sent by e-mail to *moffittb@pwba.dol.gov* or by FAX to (202) 219–0204. Comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (not a toll free number) or Cynthia Weglicki, Plan Benefits Security Division, Office of the Solicitor, (202) 693–5600 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The Department is proposing the class exemption on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).[1]

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is "significant" under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration (PWBA) is soliciting comments concerning the information collection request (ICR) included in the proposed Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program. The information collection provisions of the proposed Class Exemption would revise the currently approved collection of information included in PWBA's Voluntary Fiduciary Correction Program, which is published simultaneously in the **Federal Register**. A copy of the ICR may be obtained by contacting the Pension and Welfare Benefits Administration office listed below.

Comments pertaining to the ICR should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through May 28, 2002, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Class Exemption to ensure their consideration.

Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 693–8410; fax: (202) 219–4745. These are not toll-free numbers.

The Department has submitted a copy of the proposed revision of the information collection request to OMB in accordance with 44 U.S.C. 3507(d) for review and clearance. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

On March 15, 2000, the Department of Labor published a Notice in the **Federal Register** (65 FR 14164), announcing the adoption of a Voluntary Fiduciary Correction Program (VFC Program). The purpose of the VFC Program is to encourage plan fiduciaries to make full correction of certain eligible transactions without fear of civil investigation or litigation. The VFC Program, upon proper application, correction, and receipt of a "no action" letter from the Department, provided relief to Plan Officials from civil penalties under section 502(l) of ERISA for breaches of fiduciary responsibility. The Notice requested comments from the public on all aspects of the Program. Responses indicate that the Program was generally well received by the public. Several commenters, however, while acknowledging the importance of Program relief from section 502(l) of ERISA, also requested additional relief from the tax on prohibited transactions under section 4975 of the Code. Section 4975(a) of the Code imposes a tax on each prohibited transaction at a rate of 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The commenters suggested that providing excise tax relief would benefit employee benefit plans, participants, and beneficiaries by further encouraging Plan Officials to protect plan assets through correction of eligible transactions under the VFC Program. Moreover, the lack of protection from the sanctions of section 4975 of the Code was considered a disincentive to participation in the VFC Program. Because the goal of the Department in establishing the VFC Program was to encourage correction of fiduciary breaches and restoration of losses to participants and beneficiaries, the Department concluded that it would be appropriate to provide limited relief in the form of a Prohibited Transaction Class Exemption from the sanctions of section 4975 of the Code. This proposed exemption describes four prohibited transactions from among those transactions eligible for correction under the VFC Program as transactions suitable for relief from the tax obligations of sections 4975(a) and (b) of the Code. Plan Officials intending to take advantage of the exemption must comply with the requirements of the VFC Program. In addition, in order to appropriately protect the interests of participants and beneficiaries, the Department has elected to require Plan Officials intending to take advantage of the exemption to notify interested persons such as participants and beneficiaries of the plan. Plan Officials also will be required to send a copy of the notice to the appropriate Regional Office of the Pension and Welfare Benefits Administration. The notice must include an objective description of the transaction and the steps taken to correct it. Because section 4975(c)(2) of the Code requires an exemption to be in the interests of a plan as well as protective of its participants and beneficiaries before it can be granted, interested persons must be given adequate notice of the pending exemption and an opportunity to comment. Comments from participants and beneficiaries will contribute to the Department's understanding of the facts as described in the VFC Program application. Interested persons and the Department must receive the notice within 60 days following the date of submission of an application under the VFC Program. Beginning on the date of distribution of the notice, recipients will have 30 calendar days to provide comments to a Regional Office; the notice must include the address and telephone number of such Regional Office. Notification may be given in any manner that is reasonably calculated to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail. The use of the exemption is not required for participation in the Program. The relief provided by the class exemption is not available without participation in the VFC Program, and, as such, the exemption's notice requirement is treated as a revision of the existing VFC Program ICR.

The VFC Program describes certain transactions that are breaches of fiduciary duty under Part 4 of Title I of ERISA and that may be corrected under the Program. Because the VFC Program is new, there is as yet insufficient data on the type or the number of eligible transactions that will be corrected under the Program to support a revision of the original estimates of participation. Based on the Department's experience with the Pension Payback Program, which dealt only with employee contributions and realized corrections by 0.1 per cent of all eligible plans, and allowing for the inclusion of additional transactions for correction under the VFC Program, the Department estimates that there will be 700 applicants to the VFC Program. All Plan Officials that apply to the VFC Program will not necessarily take advantage of the excise tax relief provided under this exemption, either by choice or because the corrected transaction is not an eligible transaction to which this exemption applies. For the purpose of computing the hour and cost burdens under the PRA, therefore, the Department has assumed that one half of all Plan Officials that choose to take advantage of the opportunity to correct a breach under the VFC Program, or 350 Plan Officials, will also choose to avail themselves of the opportunity for excise tax relief.

Because the information to be provided to interested persons in the notice is readily available in the documentation previously submitted as part of the application to the VFC Program, it is likely that a Plan Official that used the services of a professional to apply to the VFC Program will use the same professional to prepare the notice under the exemption. The Department estimates that it will take approximately one hour of a professional's time, or 350 total hours, to produce the notice to interested persons. At $70 an hour for a professional's time, the cost to Plan Officials is $24,500.

Plan officials must distribute the notice in a manner that is reasonably calculated to result in the receipt of such notice by interested persons. Notices are commonly distributed in one of three ways—posting, electronic mail, or regular mail. The Department assumes that only 10% of the applicants availing themselves of the exemption, or 35 Plan Officials, will choose to distribute the notice by regular mail. Based on an estimate of 88,000 participants in plans affected by the VFC Program, 44,000 of which will be in plans assumed to make use of the exemption, 4,400 participants and beneficiaries will receive a notice by regular mail. The cost of mailing 4,400 notices, at $.34 per mailing, results in an additional cost of $1,496. Because of the cost savings, most applicants will likely choose to use either posting or electronic mail as a means of distribution. Applying these methods of distribution, the time required to transfer the notice electronically or to post it in an appropriate place is minimal; the Department has therefore not accounted for a cost burden for notification under either of these choices. Distributing the notice by posting or electronic mail would therefore represent a cost savings of $13,500. The total cost of preparing and distributing the notice under the exemption is $25,996 ($24,500 for a service provider's time and $1,496 for distribution by regular mail).

Preparation of the mailing is likely to be done in-house by clerical staff. For 4,400 interested persons, 1½ minutes of a clerical worker's time per interested person results in a total hour burden of 110 hours.

Type of Review: Revision of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 700.

Frequency of Response: On occasion.

Responses: 700.

Estimated Total Burden Hours: 5,600 for existing ICR; 110 for proposed exemption; total of 5,710 hours.

Total Burden Cost (Operating and Maintenance): $246,400 for existing ICR; $25,996 for proposed exemption; total of $272,396.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 (1995)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

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request; they will also become a matter of public record.

Economic Analysis

Establishing a class exemption to be used in conjunction with the Voluntary Fiduciary Correction Program (VFC Program) will have positive economic effects for employee benefit plans by promoting increased participation in the VFC Program. The purpose of the VFC Program is to encourage the correction of breaches of fiduciary duty under ERISA, resulting in the restoration of plan assets to the benefit of participants and beneficiaries. Under the VFC Program, fiduciaries are relieved of the possibility of civil action and the assessment of civil penalties under Section 502(l) of ERISA. The proposed exemption would enhance the benefits of participation in the VFC Program by granting relief from excise taxes under Section 4975 of the Internal Revenue Code for breaches of duty that are prohibited transactions.

Although plans have benefitted from the Interim VFC Program, we believe that fewer plans have taken advantage of the Interim VFC Program than might have with the inclusion of the proposed exemption. Comments received in response to the publication of the Interim VFC Program support this conclusion. Commenters indicate that, because participation in the VFC Program is voluntary, the lack of Section 4975 tax relief has been a disincentive to participation. This is borne out by information from the earlier Pension Payback Program (61 FR 9203, March 7, 1996) that experienced a .1% rate of participation among pension plans. (The Pension Payback Program was limited to the correction of delinquent participant contributions only.) A significant difference between the Interim VFC Program and the Pension Payback Program is the inclusion of excise tax relief under the latter. Allowing for the inclusion of three more categories of transactions for correction than were included in the Pension Payback Program, it is expected that participation in the VFC Program will increase because of the proposed exemption.

The benefits to plans outweigh any additional cost created by the proposed exemption. Department projections indicate that an average of $114,000 per plan, or approximately $80 million for all plans expected to participate in the VFC Program, will be restored to employee benefit plans. The Department estimates that 350 plans, or one half the number of anticipated participants in the VFC Program, will apply as a result of the relief offered by the proposed exemption. Approximately $40 million in assets will therefore be restored to plans as a result of the proposed exemption. The assets are then available for distribution to participants and beneficiaries or for additional investment opportunities. (The costs and benefits of the VFC Program have been described in more detail in the preamble for the Adoption of the VFC Program.) The economic benefit of the proposed exemption, in addition to the tax relief permitted fiduciaries, is therefore realized through increased participation in the VFC Program.

Fiduciaries that participate in the VFC Program will experience savings in civil penalties under section 502(l) of ERISA. For the 350 plans that participate in the VFC Program as a result of the proposed exemption, the elimination of 502(l) penalties for fiduciaries accounts for $2.7 million. The civil penalty savings are in addition to excise tax savings under section 4975 of the Internal Revenue Code that fiduciaries may realize after satisfying certain conditions of the proposed exemption.

The cost for the proposed exemption is minimal—the result of notifying interested persons and the Department that a fiduciary intends to take advantage of the exemption, or approximately $70–$130 per plan ($24,500–$45,500 for 350 plans), depending on the method of notification selected.

In consideration of the comments received and the Department's experience with the Pension Payback Program, the Department believes that the proposed exemption will have a positive effect on applications to the VFC Program resulting in an economic benefit to plans and fiduciaries that exceeds the cost of the exemption.

Background

Title I of ERISA establishes certain standards of conduct for fiduciaries of employee benefit plans covered by ERISA, including provisions prohibiting fiduciaries from causing a plan to engage in certain classes of transactions with persons defined as parties in interest. In addition, prohibited transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to taxation under section 4975 of the Code.

Section 409 of ERISA provides that a fiduciary who breaches any of the fiduciary responsibility provisions of Part 4 of Title I of ERISA shall be personally liable to the plan for any losses. Section 502(a)(2) and (a)(5) of ERISA authorizes the Secretary of Labor (the Secretary) to bring civil actions to enforce the provisions of Title I of ERISA. Section 502(l) of ERISA requires the assessment of a civil penalty in an amount equal to 20% of the amount recovered under any settlement agreement with the Secretary or ordered by a court in an action initiated by the Secretary with respect to any breach of fiduciary responsibility under (or other violation of) Part 4 by a fiduciary.

Based on its experience with the Pension Payback Program (61 FR 9203, March 7, 1996) (Pension Payback Program) and continued interest in such programs, PWBA decided to establish the VFC Program. Under the VFC Program, persons who are potentially liable for a breach can avoid the possibility of civil investigation and/or civil actions initiated by the Department for that breach and the imposition of civil penalties under section 502(l) of ERISA, if they satisfy the conditions for correcting the breach, as described in the VFC Program. The Department believes that the VFC Program will encourage the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches. In connection with the publication of the VFC Program, the Department sought comments from the public on all aspects of the Program. The VFC Program, as modified in response to the comments received, is being published simultaneously in this issue of the **Federal Register**.

A number of those who commented on the VFC Program requested that the Department amend the VFC Program to provide relief from the excise taxes imposed under section 4975 of the Code for prohibited transactions. The commenters noted that the Department granted similar relief from the taxes imposed by section 4975 of the Code as part of the Pension Payback Program. According to the commenters, the absence of relief from the excise taxes, as well as the possibility of referral by the Secretary to the Internal Revenue Service as mandated by section 3003 of ERISA, create a significant disincentive for Plan Officials to participate in the VFC Program.

Upon consideration of the comments received in connection with the VFC Program, the Department has determined that it would be appropriate to propose limited exemptive relief in this area without impairing the interests of plan participants and beneficiaries. Accordingly, the class exemption, as proposed, would provide relief from the excise taxes imposed by section 4975 of the Code for certain eligible transactions identified in the VFC Program. The Internal Revenue Service has advised the Department that it will not seek to impose the sanctions of section 4975(a) and (b) of the Internal Revenue Code with respect to any prohibited transaction that is covered by the proposed class exemption, notwithstanding any subsequent changes to the proposed class exemption when it is finalized, provided that all of the requirements specified in the proposed class exemption have been met.

Description of the Proposed Exemption

1. Scope

The proposed exemption would provide relief from the sanctions imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for certain eligible transactions identified in the VFC Program. The proposed exemption does not provide relief for any transactions identified in the VFC Program that are not specifically described as eligible transactions under Section I of the proposal. The Department believes that it is appropriate to limit relief to those transactions for which the requisite findings under section 4975(c)(2) of the Code can be made. The Department is proposing prohibited transaction relief from the excise taxes under section 4975 of the Code in order to encourage plan fiduciaries to make full correction of certain eligible transactions which are violations of the prohibited transaction provisions of the Code.

The four eligible transactions described in the proposed exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR section 2510.3–102.

(B) The making of a loan by a plan at a fair market interest rate to a party in interest with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value.

(D) The sale of real property to a plan by the employer and the leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

The eligible transactions may be illustrated by the following examples:

Example (1): Corporation A sponsors a pension plan for its employees. Corporation A borrowed $100,000 from the plan. The loan was made at an interest rate no less than that available for a loan with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) obtainable in an arm's-length transaction between unrelated parties.

Example (2): Corporation B sponsors a pension plan for its employees. The plan sold a parcel of real property to Corporation B. The price Corporation B paid to the plan was the fair market value of the property, as determined by a qualified independent appraiser as of the date of the transaction and reflected in a qualified appraisal report. (If there is a generally recognized market for the property, such as the New York Stock Exchange, the fair market value of the property is the value objectively determined by reference to the price on such market on the date of the transaction, and a determination by a qualified independent appraiser is not required.)

Example (3): Corporation C sponsors a pension plan for its employees. Corporation C sold a parcel of real property to the plan which was simultaneously leased back to Corporation C. The price paid by the plan for the property was its fair market value, and the rent paid by Corporation C to the plan is the fair market rental value, as determined by a qualified independent appraiser and reflected in a qualified appraisal report. The terms of the lease (for example, rent, duration and allocation of expenses) are not less favorable to the plan than those obtained in an arm's-length transaction between unrelated parties.

2. Proposed General Conditions

Section II of the proposal contains general conditions, as discussed below, which the Department views as necessary to ensure that any transaction covered by the proposed exemption would be in the interests of plan participants and beneficiaries, and to support a finding that the proposed exemption meets the statutory requirements of section 4975(c)(2) of the Code.

With respect to a transaction involving delinquent transmittal of participant contributions to a pension plan, the proposal requires that the contributions be transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amount otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

Second, the proposal requires that, with respect to the transactions described in Section I.B., I.C. and I.D., the amount of plan assets involved in the transaction did not exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction. For purposes of this requirement, the 10 percent limitation would apply after aggregating the value of a series of related transactions.

Third, under the proposed exemption, the fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. must have been determined in accordance with section 5 of the VFC Program. Section 5 of the VFC Program requires that the valuation must meet the following conditions: (1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price); and (2) if there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified independent appraiser and reflected in a written appraisal report signed by the appraiser. For purposes of these requirements under the VFC Program, an appraiser is considered qualified if the appraiser has met the education, experience and licensing requirements that are generally recognized for appraisal of the type of asset being appraised. An appraiser is "independent" if the appraiser is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following: (i) The prior owner of the asset, if the asset was purchased by the plan; (ii) the purchaser of the asset, if the asset was or is now being sold by the plan; (iii) any other owner of the asset, if the plan is not the sole owner; (iv) a fiduciary of the plan; (v) a party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or (vi) the VFC Program applicant.

Fourth, under the proposed exemption, the terms of a transaction described in Sections I.B., I.C., or I.D., must have been at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

Fifth, with respect to all of the eligible transactions, the transaction may not have been part of an agreement, arrangement or understanding designed to benefit a party in interest. The Department notes that the intent of this condition is not to deny a direct benefit to the party in interest but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

Sixth, with respect to all of the eligible transactions, the applicant may not have taken advantage of the relief provided by the VFC Program and the proposed exemption for a similar type of transaction identified in the

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application during the three-year period prior to the submission of the application.

3. Compliance With VFC Program

In addition to compliance with the general conditions set forth above, Section III of the proposed exemption requires that the applicant meet the requirements set forth in the VFC Program that are applicable to the particular transaction. The proposal also requires that the applicant must have received a no action letter issued by PWBA with respect to such transaction, which must be an eligible transaction otherwise described in Section I of the proposed exemption. However, the fact that an applicant receives a no action letter issued by PWBA should not be viewed as a determination by PWBA that the applicant has satisfied all of the conditions of the proposed exemption. Each applicant must determine whether the pertinent conditions of the proposed exemption have been met.

4. Notice

Although the Department determined to eliminate the required notice from the final VFC Program (published simultaneously in this issue of the **Federal Register**), it believes that such a requirement is appropriate for those wishing to take advantage of the exemption in light of the additional relief provided. Consistent with the notice requirement of section 4975(c)(2) of the Code, the purpose of the notice requirement of this exemption is to afford interested persons the opportunity to provide the Department with relevant information concerning the transaction.

Notice under the proposed exemption must be given to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program to the Department. Plan assets may not be used to pay for the notice. The exemption does not specify the format or specific content of the notice. However, the notice must include an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice also must provide for a period of 30 calendar days, beginning on the date the notice is distributed, for interested persons to provide comments to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration. The notice must include the address and telephone number of such Regional Office.

A copy of the notice to interested persons, along with an indication of the date on which it was distributed, must be provided to the appropriate Regional Office within the same 60-day period following the date of the submission of the application. Accordingly, applicants under the VFC Program who intend to take advantage of the relief provided under this exemption would indicate on the checklist submitted as part of the VFC Program application that they will, within 60 calendar days following the date of the submission of the application, provide the Department's Regional Office with a copy of the notice to interested persons.

Notice may be given in any manner that is reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) Before this exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the proposed class exemption will be applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address above and within the time period set forth above. All comments received will be made part of the record and will be available for public inspection at the above address.

Proposed Exemption

The Department has under consideration the grant of the following class exemption, under the authority of section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

Section I: Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in section 7 of the Voluntary Fiduciary Correction (VFC) Program, published simultaneously in this issue of the **Federal Register**, provided that the applicable conditions set forth in Sections II, III and IV are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3–102. (*See* VFC Program, section 7.A.1.).

B. Loan at a fair market interest rate to a party in interest with respect to a plan. (*See* VFC Program, section 7.B.1.).

C. Purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value. (*See* VFC Program, sections 7.C.1. and 7.C.2.).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (*See* VFC Program, section 7.C.3.).

Section II: Conditions

A. With respect to a transaction involving participant contributions to pension plans described in Section I.A., the contributions were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., or I.D., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., or I.D. were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I, the transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

F. With respect to any transaction described in Section I, the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is 3 years prior to submission of the current application.

Section III: Compliance with VFC Program

A. The applicant has met all of the applicable requirements of the VFC Program.

B. PWBA has issued a no action letter to the applicant pursuant to the VFC Program with respect to a transaction described in Section I.

Section IV: Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the VFC Program and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the VFC Program and intention of availing itself of relief under the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7515 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P

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Part VI

The President

Proclamation 7535—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7535 of March 25, 2002

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2002

By the President of the United States of America

A Proclamation

Ancient Greece was the birthplace of the democratic principles and thought that fundamentally shaped the growth of democracy in world history. Societies aspiring toward more democratic forms of government have found inspiration in the Greek tradition of representative government and free political discourse. As modern Greece celebrates the anniversary of its independence, won 181 years ago, Greeks can be proud that its vibrant democracy continues and that it is based upon the beliefs in freedom and self-rule first forged in classical Greece over 2500 years ago.

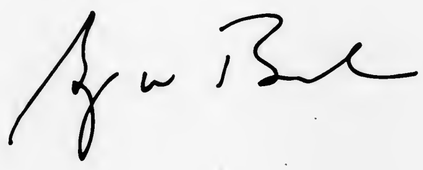
These ideals have been embraced by peoples of the world who aspire towards democracy, including the Founders of the United States; and they were tested by the attacks of September 11, 2001. The terrorists sought to destroy a political and economic system that promotes individual freedoms and tolerance, defends national liberty, and supports the full participation of its citizens in the democratic process. The terrorists failed; but rather than destroying us, their attacks strengthen our resolve to stand up to this evil. Along with the members of our worldwide coalition, including Greece, we are committed to defeating terrorism and protecting liberty.

The friendship between the United States and Greece continues to thrive and is based upon our common cultural bonds and our shared national values. Today, more than 3 million Americans proudly claim Greek heritage, representing a continuing link between our countries. From the arts and education to industry and science, Greek Americans have made significant contributions to the cultural, civic, and economic vitality of our land.

As we celebrate Greek independence, we remember the history of those who sacrificed their lives to preserve freedom and democracy. We value our friendship and continuing partnership with the government and people of Greece, and we commit to work together to provide greater opportunity and more freedoms for the citizens of the world. And we join the world in anticipating the momentous 2004 Summer Olympic Games, which will be held in Athens, the birthplace of Olympic competition.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 2002, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." I encourage all Americans to take special note of Greece's rich history of democracy, the strong bonds of friendship and culture between our countries, and the important role that Greek Americans play in our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of March, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02-7754
Filed 3-27-02; 8:45 am]
Billing code 3195-01-P

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H.R. 3986/P.L. 107–154

To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in

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the case of victims of the terrorist attacks of September 11, 2001. (Mar. 25, 2002; 116 Stat. 80)

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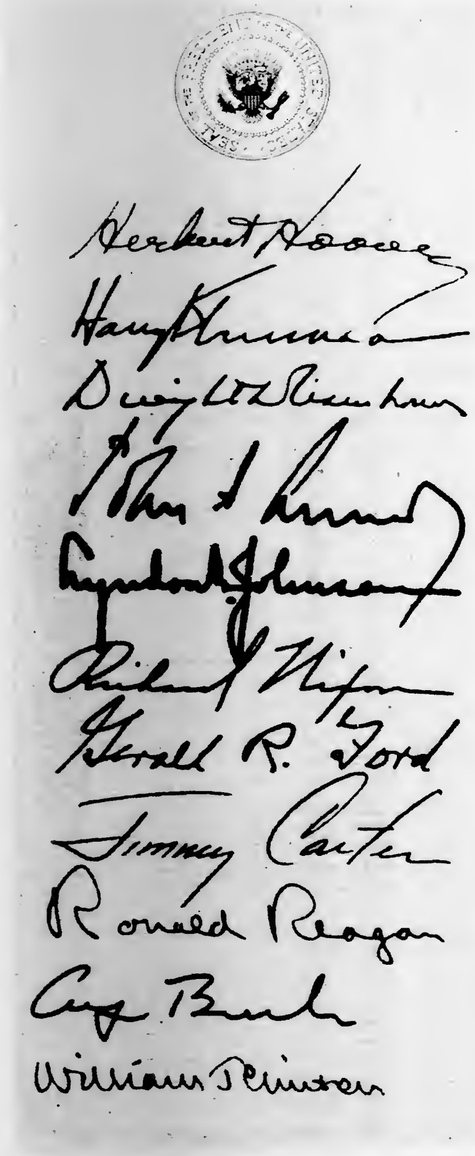
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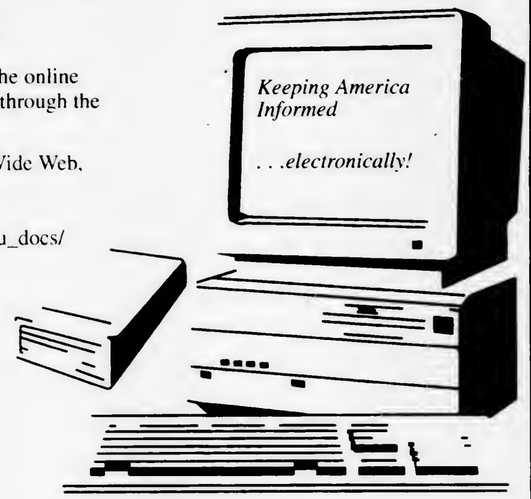
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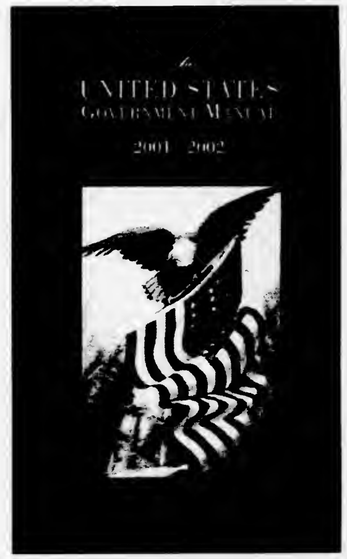
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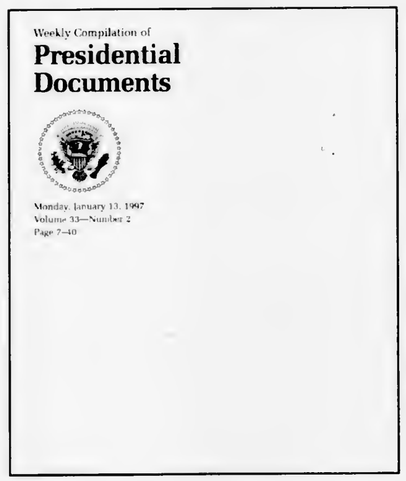
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